

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION COMMISSION

**APPLICATION OF TOM M. RAGSDALE TO REVOKE  
ORDER NOS. R-20924 & R-20924-A OR, IN THE ALTERNATIVE,  
TO DECLARE UNREASONABLE CERTAIN COSTS  
IMPOSED BY MEWBOURNE OIL COMPANY**

*de novo* Case No. 21902  
(Division Case No. 21324)

**MEWBOURNE OIL COMPANY'S (CORRECTED) WRITTEN CLOSING**

This written closing statement is submitted by Mewbourne Oil Company ("Mewbourne") as requested by the Commission.

**FACTS.**

1. Order No. R-20924 (entered in Case No. 20580) pooled the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, for the purpose of drilling the Ibex 10/15 B1AP Fed. Com. Well No. 2H ("10/15 2H") and the Ibex 10/15 B3AP Fed. Com. Well No. 1H ("10/15 1H").<sup>1</sup>

2. There are about 50 working interest owners in the Bone Spring formation in the E/2E/2 of Sections 10 and 15, including Tom M. Ragsdale ("Mr. Ragsdale"). Most working interest owners are subject to a JOA, but about 10 owners had to be force pooled, including Mr. Ragsdale. **Transcript ("Tr.") at 148.** He received well proposals and notice of the application but did not enter an appearance in the case.

3. The application in Case No. 20580 was heard on June 13 and 27, 2019, and Order No. R-20924 was entered on October 15, 2019.

4. Due to deadlines in certain leasehold agreements, Mewbourne had to commence a well on the E2/E2 of Sections 10 and 15 in July 2019. **Testimony of M. Robb, Tr. at 149.** The following then occurred:

(a) Mewbourne commenced the Ibex 10/15 2H on July 7, 2019, but encountered lost circulation and other problems as explained in the testimony of Travis Cude. **Mewbourne Exhibit 1.** Given the circumstances, Mewbourne believed it was prudent to junk the initial wellbore and skid the rig and spud the 10/15 No. 2HY. **Tr. at 78-79.**

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<sup>1</sup> "B1" refers to a First Bone Spring test, and "B3" refers to a Third Bone Spring test.

(b) The 10/15 2HY was commenced on July 26, 2019, several days after the plugging of the 10/15 2H. As explained in Mr. Cude's affidavit, Mewbourne planned an additional string of intermediate casing based on the lost circulation experienced in the 10/15 2H well. Mewbourne again encountered lost circulation and other problems. Mewbourne backed off the drill string and junked the 10/15 2HY. **Mewbourne Exhibit 2.**

5. Due to the drilling problems, Mewbourne decided to move the surface locations of both the wells to Section 15. It did stake locations for the 15/10 2H within 10 days of plugging the 10/15 2HY. However, because of the time for the Bureau of Land Management ("BLM") to approve APDs, it was impossible to commence a substitute or replacement well within 10 days after the 10/15 2HY was junked. **Mewbourne Exhibit 1 and Tr. at 79-80, 109-110.**

6. In Case No. 20809 Mewbourne again applied for the pooling of the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, to also pool the Ibex 15/10 B1PA Fed. Com. Well No. 2H ("15/10 2H"), and the Ibex 15/10 B3PA Fed. Com. Well No. 1H ("15/10 1H"). The well **proration** unit and working interest owners in these wells are the same as in Case No. 20580. Mr. Ragsdale also received well proposals and notice of Case No. 20809 but did not enter an appearance in the case.

7. The application in Case No. 20809 was heard on October 3, 2019, and Order No. R-20924-A was entered on February 19, 2020. This order superseded the original order.

8. Mr. Ragsdale had knowledge of the status of the 10/15 wells and the 15/10 wells in 2019. **Tr. at 39.**

9. The Division's well file on the 15/10 2H reveals that the BLM approved the APD on March 30, 2020, and it was spudded on August 30, 2020.

10. On March 11, 2020, Mr. Ragsdale received an election letter and AFEs from Mewbourne under Order No. R20924-A for the 15/10 Wells. **Exhibit 2-G.** The election letter specifically discussed the 10/15 2H and 2HY wells. As explained by Mitch Robb, an election to participate merely requires a party to sign an AFE and e-mail it to the operator, which takes a couple minutes. **Tr. at 147-148.**

11. Mr. Ragsdale's elections were due by April 10, 2020. However, Mewbourne did not receive the elections by the deadline. As a result, Mr. Ragsdale was deemed a non-consenting party to the proposals under Order No. R-20924-A. **Tr. at 146.**

12. Mr. Ragsdale has over 30 years of experience in the oil and gas business. He has been pooled by Mewbourne a number of times, and has knowledge of pooling applications. **Tr. at 17-18, 211.**

13. Mr. Ragsdale did not object to the costs of the 15/10 2H within 30 days after receipt of the election letter. Mr. Robb did not withhold any information from Mr. Ragsdale. **Mewbourne Exhibit 2, Tr. at 150.**

14. In a good-faith effort to work with Mr. Ragsdale, Mewbourne proposed certain stipulations under which it would allow Mr. Ragsdale to participate in the 15/10 Wells in lieu of being treated as non-consenting, for failure to make timely elections under Order No. R-20924-A. Mr. Ragsdale performed under the proposed stipulations for the 15/10 1H and was allowed participate with his interest. Mr. Ragsdale did not perform under the proposed stipulations for 15/10 2H, and remains a non-consenting interest owner.

15. No other working interest owners have objected to the AFE for the 15/10 2H. **Tr. at 150.** Mr. Ragsdale has raised no issue as to the reasonableness of the costs of the junked holes as incurred, only as to their inclusion in the 15/10 2H total well costs.

16. Even if the costs of the 10/15 2H and 2HY wells were disallowed, Mr. Ragsdale remains a non-consenting interest owner in the 15/10 2H well.

## **B. ARGUMENT.**

1. Mewbourne had the right to commence the well before pooling and is entitled to recover reasonable well costs.

Compulsory pooling is permissible before, during, or after a well is drilled. **NMSA 1978 §70-12-17.C** (attached hereto as **Exhibit A**). The Division “shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.”

The only Division requirement for commencing a well prior to pooling is that the operator must own or control **an** interest in each quarter-quarter section in the well unit. **Commission Order No. R-12343-E at page 6** (attached hereto as **Exhibit B**).

In addition, the pooling applications filed by Mewbourne complied with Division Rules for initiating a hearing. **NMAC 19.15.4.8** (attached as **Exhibit C**) states:

The application shall include:

- (1) the applicant’s name;
- (2) the applicant’s address, or the address of the applicant’s attorney, including an e-mail address and fax number if available;
- (3) the name or general description of the common source or sources of supply or the area the order sought affects;
- (4) briefly, the general nature of the order sought;
- (5) a proposed legal notice for publication; and
- (6) any other matter division rules or a division order requires.

The applications complied with the Rule, and thus Mr. Ragsdale’s claim of lack of notice must fail.

Mr. Ragsdale further asserted that Mewbourne “assumed the risk” by drilling before a pooling order was issued and thus he is not responsible for his proportionate share of the junked

holes. The pooling statute does not say that. In fact, the pooling statute states that the parties advancing the costs of the development and operation shall be entitled to recover the costs, “which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable.” **Exhibit A.**<sup>2</sup>

The New Mexico Supreme Court has also held that, absent an operating agreement, the operator of a well is entitled to reimbursement for well costs from non-consenting co-tenants so long as the costs are not “speculative.” **Bellett v. Grynberg, 114 N.M. 690 (1992)**. The costs incurred by Mewbourne were not speculative – they resulted in a commercial well.

Also, the pooling statute also states “In the event of any dispute relative to [well] costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon.” Mr. Ragsdale always had the option to contest well costs, and so his due process argument is invalid.

2. The junked hole costs are reasonable.

Mr. Cude testified that in his opinion the junked hole costs were reasonable, and that they were the actual expenditures for the junked holes. **Tr. at 82**. There is no contrary testimony, so the junked hole costs are reasonable.

Mr. Ragsdale himself did not **claim** that the junked hole costs are unreasonable. He testified that if he had elected to join in the 10/15 2H and 2HY before they were commenced he would be responsible for his proportionate share of those costs. **Tr. at 34-35**. His contention is that the junked holes are for a different well than the 15/10 2H.

Furthermore, the fact that the other 50 or so working interest owners have not objected to the cost of the 15/10 2H indicates that the costs are reasonable.

3. The 15/10 2H is a substitute or replacement well for the 10/15 2H and 2HY.

Mewbourne’s position is that the drilling of the 10/15 2H, 10/15 2HY, and 15/10 2H is all part of a continuous process constituting a single well.

First, **NMSA 1978§70-2-17(C)** states “Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit.” Thus the lands are pooled, not a specific well in the unit. There is no dispute that the lands and well unit involved in this dispute are identical regardless of whether you look at the 10/15 2H, 10/15 2HY, or 15/10 2H. Thus the lands are pooled into a unit, not specific wells, and all reasonable costs in the well unit must be considered.

Second, the costs of failed attempts to drill a well can be recovered when a “substitute well” is drilled. **NMAC 19.15.13.8B (4) (Exhibit D attached hereto)** states:

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<sup>2</sup> A pooling order itself does not approve of well costs. The Division only gets involved after a well is drilled to determine reasonable well costs if an interest owner files an objection.

Well costs shall also include reasonable costs of drilling, testing, completing and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth and the substitute well is located within 330 feet of the original well and the operator commences drilling within 10 days of the original well's abandonment.

The purpose and language of NMAC 19.15.13.8 and the Oil and Gas Act establish that Mewbourne should be authorized to impute the costs of its attempts to drill the 10/15 2H and 2HY to the 15/10 2H. Under New Mexico law, statutes and regulations must be construed to effectuate intent and achieve reasonable results. *See Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Reg. Comm'n*, 2010-NMSC-013, ¶¶ 51-52, 148 N.M. 21; *Quynh Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 29, 147 N.M. 583. To determine intent, courts look to the language used and “the purpose to be achieved and the wrong to be remedied.” *Tolley v. Assoc. Elec. & Gas Ins. Services, Ltd (AEGIS)*, 2010-NMSC-029, ¶ 8, 148 N.M. 436; *see also Baker v. Hedstrom*, 2013-NMSC-043, ¶¶ 11, 34-36, 309 P.3d 1047 (the plain language of a statute is the primary indicator of the Legislature's intent, but statutes must be construed in accordance with their “obvious spirit or reason”).

The Oil and Gas Act delegates to the Commission and Division the authority to prevent waste and protect correlative rights. *See NMSA 1978 § 72-2-11*. The Division's regulations, including NMAC 19.15.13.8, must be construed to effectuate this result.

Although surface location of the 15/10 2H is not located within 330 feet of the 10/15 2H and 10/15 2HY, Mewbourne submits that the 15/10 2H is a substitute or replacement well. Also, the Form C-102s for the wells (**Mewbourne Exhibit 2-H**) shows that the wellbores of the 10/15 2H, 10/15 2HY, and 15/10 are or were to be located 450 feet from the east lines of Sections 10 and 15. As stated, they are mirror locations.

Mewbourne notes that the regulation was enacted in 2008 (**Exhibit D** attached hereto), when virtually all wells were vertical holes. Also, it does not address surface hole locations for horizontal wells. In this case, Mewbourne simply switched surface hole locations and drilled south to north rather than north to south. That was due to the drilling issues in Section 10. Mewbourne switched surface hole locations and drilled successful wells. It was a prudent decision.

The APDs for the 15/10 wells took eight months to obtain from the BLM, which prevented Mewbourne from **spudding** the 15/10 2H within 10 days of junking the 10/15 2HY. Mewbourne's activities in staking and surveying the location, applying for and receiving a permit to drill the 15/10 2H, and beginning to prepare and build the well location constituted drilling operations. **Johnson v. Yates, 127 N.M. 355 (1999)**. Thus, the drilling of the 10/15 2H, 10/15 2HY, and 15/10 2H well are one continuous operation. Therefore, even if the 15/10 2H well is not, strictly speaking, a substitute well, it is a replacement well under industry custom. **Tr. at 80-81.**

In addition, **NMAC 19.15.13.8.B(1) (Exhibit D)** allows the Division to determine if the allowance of reasonable well costs “of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances” for wells “previously abandoned without completion.” That situation applies in this case.

Finally, **NMAC 19.15.13.8.B(3)** states that if an interest owner elects not to pay its share of well costs in advance, “well costs shall include costs of a subsequent operation undertaken to secure or enhance production from a formation pooled by the order... . The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.”

The costs of the 10/15 2H and 2HY wells should be deemed reasonable well costs under the pooling statute and Division Rules, and be allowed to be recovered by Mewbourne.

4. Mr. Ragsdale failed to timely elect on the 15/10 2H well.

Mr. Robb testified that Mr. Ragsdale **failed** to make a timely election on either the 15/10 2H or the 15/10 1H. Nevertheless he was granted the option to join in the wells late. That was fair of Mewbourne.

Mr. Ragsdale also claims that he should be given another election on the 15/10 2H well, basically **claiming** an “Act of God” caused his failure to timely elect. However, it was simply negligence, and he should not be excused from that. He is asking for equitable relief, and the Commission is not a court of equity.

**C. CONCLUSIONS.**

- (a) No reason has been shown by Mr. Ragsdale justifying revocation of Order No. R-20924-A, so the sole issue is the reasonableness of well costs for the 15/10 2H well and its predecessor wells.
- (b) The costs Mewbourne incurred for the 15/10 2H, including the junked hole costs, are fair and reasonable under NMAC 19.15.13.8.B(4), NMAC 19.15.13.8.B(1), and the pooling statute.

**WHEREFORE**, Mewbourne respectfully requests the Division to deny Mr. Ragsdale’s application.