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

OCC Case No. 21902 (de novo)
OCD Case No. 21324
Order No. R-21631-A

APPLICATION FOR REHEARING

Pursuant to NMSA 1978, Section 70-2-25(A) and 19.15.4.25 NMAC, Applicant Tom M. Ragsdale ("Applicant" or "Mr. Ragsdale") timely applies for rehearing in the above-referenced matter and requests that the matter be reheard to consider a remedy for Applicant. In support of this application, Applicant states as follows:

1. This application seeks rehearing on the Order of the Commission, Order No. R-21631-A, entered on March 10, 2022 ("Order").

2. The New Mexico Oil Conservation Commission conducted a hearing *de novo* in this matter on January 13-14, 2022. In light of the testimony and record in this case, the Commission deliberated on February 22, 2022, and subsequently issued the Order.

3. The Order is erroneous because it fails to provide a remedy to the Applicant, notwithstanding the Commission's determination that Mewbourne could not impose the costs of the failed drilling attempts on Applicant. *See* Order at 13, ¶¶ 98-99. In particular, Applicant asserted that the estimated costs imposed by Mewbourne for the 15/10 2H well were unreasonable, because the costs of the two junked wells could not be imputed on the costs of another well to be drilled. *See generally* Application (June 1, 2021). Applicant asked the Division to declare "certain costs unreasonable as imposed by Mewbourne" under Order Nos. R-

20924 and R-20924-A in Case Nos. 20580 and 20809. *Id.* at 1. The Commission agreed with Applicant that Mewbourne could not impose such costs. Order at 14, ¶ 98. Nonetheless, the Commission concluded, without explanation, that Applicant's submission of a check for costs that the Commission determined to be proper was "not adequate to show participation in and of itself." *Id.* at 12, ¶ 95. As discussed further below, the Commission erred by providing Applicant with no remedy.

4. The Commission further erred in making the following findings.

a. The Commission erroneously found that Applicant "understood that Mewbourne actually wanted to pool the 10/15 and 15/10 wells under one order" in Case No. 20809. Order at 3, ¶ 19. This finding is contrary to the evidence in the record. Applicant testified that at no time was he informed by Mewbourne that it intended to force pool the 10/15 wells and the 15/10 wells in the same pooling order. January 2022 Tr. at 22:17-20. In addition, the Application expressly asserted that Mewbourne failed to provide notice of its intent to force pool all four wells under one order. Application at 4, Case No. 21324, *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* (June 1, 2020). Counsel for Applicant reiterated this assertion in its opening statement at the hearing before the Commission, "Mewbourne's applications in Case No. 20809 did not state that it would seek to pool the 10/15 and the 15/10 wells in one Order, and Mr. Ragsdale never had Notice of Mewbourne's intent in this regard." *Id.* at 10:9-12.

b. The Commission's finding in paragraph 32 of the Order is not correct. Paragraph 32 states, "Ragsdale reasserted that he was not notified of Mewbourne's

pooling order governing the 10/15 wells, at least not before Mewbourne commenced drilling, for OCD Case No. 20580." Order at 5, ¶ 32. This finding suggests that an order existed prior to the time that Mewbourne commenced drilling. This finding is contrary to the finding in paragraph 57, which states that "Mewbourne proceeded to drill wells before it received its pooling order in OCD Case No. 20580." *Id.* at 7, ¶ 57.

c. Paragraph 59 of the Order is also erroneous: "Mr. Cude stated that the OCD was notified that Mewbourne sought to recoup the costs for the junked well at the merits hearing." *Id.* ¶ 59. However, in response to a direct question to that effect, Mr. Cude responded that Mewbourne "notified the Commission [sic] of our issues and plans to drill from the south on the north, but I don't know if we -- I don't think we were required to let the OCD know that we were including these, because under OCD rules we were allowed to drill substitute wells." January 2022 Tr. at 195:14-21. Indeed, Mr. Cude further testified that when Mewbourne presented the case, it was "presenting the case of this is the cost of these wells moving forward." *Id.* at 196:15-24. Mewbourne did not inform the Division that Mewbourne sought to recoup the costs for the junked well at the merits hearing. *See* January 2022 Tr. at 70:4-9; *see* Oct. 3, 2018 Transcript at 4:1-4, Case No. 20809, *In re Application of Mewbourne Oil Company for Compulsory Pooling* ("[T]hey want to include . . . all four wells . . . because they may still drill the original two wells . . . ."). *See generally id.*

d. The second to last sentence of paragraph 68 is not correct: "Mr. Robb asserted that Ms. Stanford did not seem to understand the concepts presented by Mr. Robb." Order at 8, ¶ 68. This sentence suggests that Ms. Stanford did not understand the circumstances and was not familiar with costs incurred as a result of oil and gas pooling.

Mr. Robb actually testified that Ms. Stanford "wasn't very familiar" with the *legality* of Mewbourne's "reasoning" as to why it could impose the costs on the junked wells on the estimated costs of a different well. January 2022 Tr. at 145:5-21. Indeed, Mr. Robb could not explain the legality of Mewbourne's reasoning and therefore directed Ms. Stanford to contact Mewbourne counsel. *See id.* at 145:18-21. And, ultimately, the Commission determined that Mewbourne's reasoning was not legal. Order at 13, ¶ 98.

e. The last sentence in Paragraph 74 is contrary to the testimony of Mewbourne's witness: "Mr. Robb further stated that, when Ragsdale, through Ms. Stanford complained about the increased costs presented to Ragsdale, Mewbourne provided Ragsdale with the information sought by Ragsdale." This is inconsistent with the testimony of Mr. Robb. As explained above, in paragraph d, Mr. Robb could not explain the legality of Mewbourne's reasoning and therefore directed Ms. Stanford to contact Mewbourne counsel to obtain the information that she sought on behalf of Mr. Ragsdale. *See id.* at 145:18-21; *see also id.* at 145:17 ("I kind of explained our reasoning behind it.").

f. The second finding in Paragraph 75 is also erroneous: "Every party who received that specific AFE elected to participate." This fact is contrary to Mr. Robb's testimony. Mr. Robb testified that all of the forcepooled parties participated, *except* for those who were unlocatable or who did not respond. *Id.* at 161:9-23. Mr. Robb could not definitively tell the Commission how many forcepooled parties voluntarily participated, but estimated that seven or eight out of twelve did so. *Id.* at 161:22-162:9.

5. The Commission erred in concluding that Mewbourne complied with the notice requirements in 19.15.4.9 NMAC. Order at 12, ¶ 94. This conclusion is in error because

Mewbourne failed to provide "a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application." 19.15.4.9 NMAC. Mewbourne did not alert the persons who may be affected of its intent to amend its application in Case No. 20580 in the proceeding in Case No. 20809. Moreover, Mewbourne failed to alert the persons who may be affected, and the Division, of its intent to impose the two junked well costs for one well that was the subject of Case No. 20580 on another well that was the subject of Case No. 20809. Thus, Mewbourne's application and notice did not alert any person that it may be affected in a manner any differently from which such person may be affected under an ordinary forcepooling proceeding. A form of notice appropriate in one circumstance is not necessarily sufficient in a different context. *See Rayellen Res., Inc. v. N.M. Cultural Props. Rev. Comm.*, 2014-NMSC-006, ¶ 19, 319 P.3d 639. Rather, notice must be reasonably calculated, under all of the circumstances, to provide notice to interested parties and allow them an opportunity to present objections. *Id.* Here, Mr. Ragsdale was not informed of the intent of Mewbourne in this proceeding, which was to forcepool four wells in Case No. 20809, so that it could impose the costs of two failed attempts to drill one well on another well. Had Mr. Ragsdale been alerted to Mewbourne's intent, he would have appeared and objected at the hearing. Stated differently, Mr. Ragsdale was deprived of due process because the notice provided by the Division did not afford him an opportunity to present his objections. He could not have known that he had an objection, because the notice did not alert him of Mewbourne's intent to pool all four wells under one order in Case No. 20809 and thereby impose the junked well costs of one well on a different well. *See id.* (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also* Applicant's Closing Statement at 5-7 (Feb. 7, 2022). Moreover, even if he had entered an appearance and participated in the proceeding in Case No. 20809, he would not have been

alerted to Mewbourne's intent, because Mewbourne did not inform the Division of its intent. *See* January 2022 Tr. at 70:4-9. *See generally* Oct. 3, 2018 Transcript, Case No. 20809.

6. The Commission erroneously concludes that "Ragsdale had the option to petition the OCD for relief from Mewbourne's costs in OCD Case Nos. 20580 and 20809, but did not do so." Order at 12, ¶ 95. The instant application, filed on June 1, 2020, is Mr. Ragsdale's petition to the OCD for relief from these two cases. *See* Application at 1-2, 6. Mr. Ragsdale had no prior opportunity to petition the OCD for relief from Mewbourne's costs in these cases. Mr. Ragsdale did not receive the inflated AFE until March 10, 2020. January 2022 Tr. at 152:21-24. Mr. Ragsdale conferred with Mewbourne in an effort to resolve the issue. *See* Applicant's Exhibits 6-10. This was unsuccessful, and Mewbourne ultimately deemed him non-consent on the 15/10 2H well on May 15, 2020. *See* Applicant's Exhibit 9 (deeming him consenting on the 15/10 1H well). Notwithstanding the COVID mandates and lockdowns, Mr. Ragsdale filed the instant application within approximately 45 days of the period in which he conferred with Mewbourne in an effort to resolve the issue. Notably, as explained above, Mr. Ragsdale could not have sought relief in the original hearing in Case No. 20809, because Mewbourne did not disclose its intent to impose the two junked well costs on the 15/10 2H, until Mr. Ragsdale received the inflated AFE on March 10, 2020.

7. In paragraph 95, the Commission concludes that Mr. Ragsdale failed to make a timely reply to the election letter that attempted to impose the costs now determined to be improper. *See* Order at 12. As explained, the parties were negotiating, and Mewbourne agreed to extend the time for replying. *See* Applicant's Exhibits 6-10. Moreover, under the circumstances here, the time for electing to participate should not begin to run until a proper

AFE has been submitted to the non-operator. Otherwise, as explained further below, operators are given carte blanche to submit inflated AFEs, including improper costs, without restraint.

8. In paragraph 96, the Commission misconstrues Applicant's argument with respect to unreasonable costs. Applicant's position is that the estimated costs imposed by Mewbourne on the 15/10 2H well were unreasonable because it included the costs of the two junked wells on the estimated costs for a different well. In light of the Commission's conclusion that such costs could not be imputed to the estimated costs of the 15/10 2H well, the estimated costs for the 15/10 2H well were unreasonable and later deemed improper by the Commission. Order at 13, ¶ 13.

9. The Commission erred in concluding that Mr. Ragsdale is entitled to relief, but failing to provide Mr. Ragsdale with a remedy. *See* Order at 13, ¶¶ 98-99. The only reason that Mr. Ragsdale was deemed non-consent is because he was not willing to pay the costs for the two junked wells that the Commission determined were improperly imposed on the estimated costs for the 15/10 2H well. *See* Applicant's Exhibit 9. Indeed, he was deemed consenting on the 15/10 1H well on the same date that he was deemed non-consenting on the 15/10 2H well. The Commission has authority and a duty to protect correlative rights by providing a remedy to a party who has been forcepooled and deemed non-consenting because he refused to pay costs that he challenged and that were later deemed improper by the Commission. *See* NMSA 1978, §§ 70-2-6, 70-2-11, 70-2-17. The Commission is required to ensure that all compulsory pooling orders "are just and reasonable" and that a party who is forcepooled has "the opportunity to recover or receive *without unnecessary expense* his just and fair share of the oil or gas." Section 70-2-17(C) (emphasis added). Mewbourne's self-serving interpretation of the order is neither just nor reasonable. Moreover, imposing the actual costs of failed drilling attempts on the

estimated costs of a different well imposes unnecessary expense. Under the circumstances present here, the Commission should amend the Orders to allow Mr. Ragsdale to participate in the 15/10 2H well by paying the costs that the Commission determined were proper.

10. Without a remedy for Mr. Ragsdale, Mewbourne suffers no adverse consequences as a result of the Commission's decision, which is contrary to the Commission's determination that the disputed costs could not be imposed on Applicant. Mewbourne is taking Mr. Ragsdale's oil and gas and, in addition further benefitting by imposing a 200% penalty on Mr. Ragsdale as a non-participating owner. This effectively deprives Mr. Ragsdale of his correlative rights. Providing no remedy for Mr. Ragsdale will undoubtedly encourage Mewbourne and other operators to inflate costs and include costs otherwise impermissible in their authorities for expenditure. By this decision, the Commission gives operators free rein to demand payment of inflated estimated costs without risk. The decision effectively allows operators to demand large sums of money for indefinite periods of time, without requiring accountability. This is an abrogation of the Commission's obligations under the Oil and Gas Act.

WHEREFORE, Applicant respectfully requests that the Commission rehear this matter to consider and provide the appropriate remedy to Applicant.

Respectfully submitted,

By: */s/Sharon T. Shaheen*

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2022, a true and correct copy of the foregoing pleading was served upon counsel of record as follows:

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