

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

**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**

**Case No. 21324
Order No. R-21631**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD” or “Division”), having heard this case through a Hearing Examiner on September 11, 2020, and having considered the evidentiary record, including testimony, exhibits, post-hearing submittals and the recommendation of the Hearing Examiners, denies Ragsdale’s application seeking to revoke Orders No. R-20924 and R-20924-A, or alternatively, to declare unreasonable certain costs imposed by Mewbourne, based on the following findings and conclusions:

FINDINGS OF FACT

Orders at Issue

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, in Lea County, New Mexico, for the purpose of drilling the Ibex 10/15 B1AP Fed. Com. Well No. 2H, API# 30-025-46188 (“10/15 2H”) and the Ibex 10/15 B3AP Fed. Com. Well No. 1H, API# 30-025-46189 (“10/15 1H”) (collectively, “10/15 Wells”).

2. Order No. R-20924-A (entered in Case No. 20809) pooled the same unit for the purpose of drilling the 10/15 Wells and for drilling the Ibex 15/10 B1PA Fed. Com. Well No. 2H, API# 30-025-47060 (“15/10 2H”), and the Ibex 15/10 B3PA Fed. Com. Well No. 1H, API# 30-025-46948 (“15/10 1H”) (collectively, “15/10 Wells”).
3. Mewbourne relies on Order No. R-20924-A to assert that it can impute the costs of attempts to drill the 10/15 2H and a substitute well, the Ibex 10/15 B1AP Fed Com No. 2Y (“10/15 2Y”), as part of the estimated costs for the 15/10 2H.
4. Ragsdale asserts insufficient notice to pool four wells in Case No. 20809 under Section 19.15.4.8 NMAC; and failure of the 15/10 2H well to meet the definition of “substitute well” under Section 19.15.13.8.B.4 NMAC.

Procedural History and Chronology of Events

5. Mewbourne mailed well proposals for the 10/15 Wells on March 19, 2019, which Ragsdale received on March 21, 2019.
6. Mewbourne visited with Ragsdale’s representative via phone conversation on April 3, 2019 regarding the 10/15 Wells.
7. On April 4, 2019, Tracy Anderson elected to participate in the 10/15 Wells under the governing Joint Operating Agreement. Ragsdale would later acquire this interest.
8. Mewbourne exchanged emails on April 8, 2019 with Ragsdale’s representative regarding the 10/15 Wells.
9. Mewbourne visited with Ragsdale’s representative via phone conversation on April 16, 2019 regarding the 10/15 Wells.
10. On April 17, 2019, Mewbourne sent Ragsdale a copy of the Joint Operating Agreement covering the 10/15 Wells.

11. There are about 50 working interest owners in the Bone Spring formation in the E/2E/2 of Sections 10 and 15. Most working interest owners are subject to a JOA, but about 10 owners had to be force pooled, including Ragsdale.
12. On or about May 20, 2019, Mewbourne filed an application in Case No. 20580, seeking to pool the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, in Lea County, New Mexico, for the purpose of drilling the 10/15 Wells.
13. On June 6, 2019, Ragsdale received notice of the application in Case No. 20580, but he did not enter an appearance.
14. On June 13, 2019, Case No. 20580 was presented by affidavit, and on June 27, 2019, after notice by publication was complete, the case was taken under advisement.
15. On July 3, 2019, Mewbourne's applications for permits to drill ("APD") the 10/15 Wells were approved.
16. Due to deadlines in certain leasehold agreements, Mewbourne had to commence a well on the E/2E/2 of Sections 10 and 15 in July 2019.
17. Mewbourne owned an interest in each quarter-quarter section of the well unit, and had the right to drill the wells. Tr. at p. 51. See also *Bellett v. Grynberg*, 114 N.M. 690, 845 P.2d 784 (N.M. 1992).
18. On July 12, 2019, Mewbourne spudded the 10/15 2H, had drilling issues, and abandoned the operation.
19. On July 24, 2019, Mewbourne received approval from the Bureau of Land Management to drill a substitute well, the 10/15 2Y.

20. On July 24, 2019, Mewbourne plugged and abandoned the 10/15 2H, due to drilling issues.
21. On July 26, 2019, Mewbourne subsequently spudded the substitute 10/15 2Y well, again had drilling issues, and plugged and abandoned the well.
22. Due to the drilling problems, Mewbourne decided to move the surface locations of both the wells to Section 15. However, because of the time it takes for the Bureau of Land Management to approve APDs, it was impossible to commence a substitute or replacement well immediately after the Ibex 10/15 B1 AP Fed. Com. Well No. 2HY well was junked. Mewbourne Exhibit 1, Tr. at 44, 49.
23. On August 27, 2019, Mewbourne applied for permits to drill the 15/10 2H and the 15/10 1H.
24. The Ibex 15/10 B1 PA Fed. Com. Well No. 2H is simply a mirror well to the Ibex 10/15 B1 AP Fed. Com. Well Nos. 2H and 2HY.
25. On September 3, 2019, prior to the entry of any order in Case No. 20580, Mewbourne filed its application in Case No. 20809, again seeking to pool the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, in Lea County, New Mexico, but for the purpose of drilling the 15/10 Wells, which were the same target interval, same ownership, and same dedicated spacing unit as the 10/15 Wells.
26. Mewbourne's application for Case No. 20809 states that Mewbourne was seeking to pool the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, in Lea County, New Mexico for the

- purpose of drilling the 15/10 Wells. Ragsdale received notice of Case No. 20809, but did not enter an appearance.
27. Mewbourne's application in Case No. 20809 and the notice letter to interested parties did not reference the 10/15 Wells or the request made in Mewbourne's Pre-Hearing Statement and at the hearing that all four wells be pooled together. "This case is related to Case No. 20580, previously heard, in which no order has been issued. Applicant requests that the two wells be added to the order issued in both cases." Pre-Hearing Statement, p. 2, in Case No. 20809.
28. Mewbourne did not personally inform Ragsdale that Mewbourne intended to incorporate the 10/15 Wells in Case No. 20809 along with the 15/10 Wells.
29. Ragsdale was nevertheless aware of the status of the 10/15 wells and the 15/10 wells in September 2019. Testimony of Karen Stanford, Tr. at 26-27, 28-20, 37. He learned of the junked wells from his assignor, Ms. Anderson, with whom he has partnered for years. Tr. at 27, 29-30.
30. Ragsdale also acquired an interest (subject to the JOA) from Tracy Anderson before Order No. R-20924-A was issued, and acquired well information from her. Tr. At 26.
31. On October 3, 2019, Case No. 20809 was presented by affidavit ("15/10 Hearing").
32. At the hearing, Mewbourne's counsel stated:
- "Mewbourne Oil Company seeks to force pool the east half/east half of Section 10 and the east half/east half of Section 15, 23 South, 34 East. This case was originally heard as Case 20580. No Order has been issued, and the wells were from the north to the south. They have filed the additional application to not only cover those two wells but to cover wells from the south to the north, because they had some -- they commenced drilling their very first well out there and they had some surface issues that precluded them from getting more than a few hundred feet deep. Now they want to include both, all four wells, the two 10/15 wells and the two 15/10 wells, because they may still drill the original two wells because they have APDs for those, wells and these are federal wells. So they have filed for

what are called the 15/10 wells ... and it might take some time to do that. But, anyway, they just want all four wells in the same application. And they would ask that an Order be entered covering all four wells rather than just the two originally pooled.”

33. On October 15, 2019, Order No. R-20924 was entered in Case No. 20580, the earlier case, pooling the proposed unit for the purpose of drilling the 10/15 Wells, but Ragsdale never received a copy of the order.
34. Having submitted a second application and presented its case in 20809 to pool all four wells together, Mewbourne never informed Mr. Ragsdale that he had been force pooled in Order No. R-20924.
35. On February 13, 2020, Mr. Ragsdale received a well proposal for the 15/10 Wells for an interest that is not at issue in this proceeding, which was subject to the joint operating agreement (“Subsequently Acquired Interest”). Mr. Ragsdale timely elected to participate in the 15/10 Wells with respect to the Subsequently Acquired Interest. The Authorizations for Expenditure (“AFE”) tendered to Mr. Ragsdale for the Subsequently Acquired Interest did not impose the costs of attempts to drill the 10/15 Wells, because those elections were previously received from Mr. Ragsdale’s predecessor and accounted for under the joint operating agreement.
36. On February 19, 2020, Order No. R-20924-A was entered in Case No. 20809, pooling the proposed unit for the purpose of drilling both the 10/15 Wells and the 15/10 Wells. Order No. R-20924-A expressly superseded Order No. R-20924.
37. On February 27, 2020, Mewbourne received approval of its APD for the 15/10 1H.
38. On March 10 or 11, 2020, Ragsdale received an election notice under Order No. R-20924-A (Case No. 20809) and AFEs for the 15/10 Wells. The AFE for the 15/10 2H

- included an additional \$3,102,500 attributed to Mewbourne's attempts to drill the 10/15 2H and the 10/15 2Y.
39. On March 12, 2020, Mewbourne visited with Ragsdale's representative regarding the AFE costs.
 40. The AFE provided to Ragsdale for the 15/10 2H along with the election letter was not the AFE that was submitted to the Division in Case No. 20809. See Letter, Mitch Robb to Tom Ragsdale (Mar. 5, 2020). The AFE submitted to the Division did not include the imputed costs for the attempts to drill the 10/15 2H and the 10/15 2Y. See Case No. 20809, Verified Statement of Mitch Robb at 2, ¶ 2(i) and Attachment C.
 41. Ragsdale's elections were due by April 10, 2020; Mewbourne did not receive such elections, nor did Mewbourne receive any further communication from Ragsdale after the conversation on March 12, 2020.
 42. 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 p. 57.
 43. By letter dated April 15, 2020, Ragsdale sent executed AFEs to Mewbourne. The AFE for the 15/10 2H was not the AFE provided to Ragsdale along with the pooling order; but it was the AFE that Mewbourne submitted to the Division in Case No. 20809. Ragsdale was past the due date as provided for under the respective pooling order.
 44. In a good-faith effort to work with Ragsdale, Mewbourne proposed certain stipulations for which it would still allow him to participate in the 15/10 Wells in lieu of being treated as non-consenting for not making a timely election under Order No. R-20924-A. Mewbourne responded to Ragsdale's letter dated April 15, 2020,

- allowing him the opportunity to still participate in the subject wells under certain conditions. See Letter, Bruce Insalaco to Karen Stanford & Tom Ragsdale (May 15, 2020).
45. Ragsdale met the conditions set out by Mewbourne for participation in the 15/10 1H and was allowed to participate in that well. He tendered payment for his share of the 15/10 1H and was deemed consenting therein, later selling this interest. See Letter, Bruce Insalaco to Karen Stanford & Tom Ragsdale (May 15, 2020).
46. There was no issue as to the well costs for the Ibex 15/10 B3PA Fed. Com. Well No. 1H. Tr. at p. 25.
47. Ragsdale did not meet the subsequent conditions set out by Mewbourne for participation in the 15/10 2H. Specifically, he did not tender his share of the costs at issue in this proceeding; he believed Mewbourne lacked authority to impose them.
48. Ragsdale has about 30 years' experience in the oil and gas business. Tr. at p. 24. He has been pooled by Mewbourne previously, and has knowledge of pooling applications. Tr. at pp. 55-56.
49. Mr. Robb did not withhold any information from Ragsdale. Mewbourne Exhibit 2, Tr. at p. 58.
50. Beyond asking a question about the costs, Ragsdale did not raise an objection to Mewbourne regarding the costs of the Ibex 15/10 B1 PA Fed. Com. Well No. 2H after receipt of the election letter on March 10 or 11, 2020.
51. No other working interest owners have objected to the AFE for the Ibex 15/10 B1 PA Fed. Com. Well No. 2H. Tr. at p. 59.

52. Ragsdale has raised no issue as to the reasonableness of costs of the junked wells as incurred, except as to their inclusion in the 15/10 2H total well costs.
53. Ragsdale tendered payment for his share of the 15/10 2H, based on the AFE cost to drill that well only, and did not include the imputed costs for the attempts to drill the 10/15 2H and the 10/15 2Y, which Mewbourne had specified as being a condition necessary to take advantage of the conditional opportunity offered by Mewbourne after missing the original deadline for participation. See Ex. 4.
54. This payment was rejected by Mewbourne, which thereafter considered Ragsdale non-consenting in the 15/10 2H. See Letter, Bruce Insalaco to Karen Stanford & Tom Ragsdale (May 15, 2020).

Hearing in this Matter

55. Ragsdale's application in this matter, to revoke R-20924 and R-20924-A, or to declare the costs of the junked wells unreasonable and compel Mewbourne to offer him status as "consenting" without having paid those costs or made a timely election, was heard on September 11, 2020. The hearing was conducted on a virtual platform in accordance with Section 19.15.4 NMAC, the Division's Adjudication procedures. Besides Mewbourne, no other party entered an appearance.

56. Ragsdale presented one witness in support of its applications:

Karen Stanford, a landman, explained why Mr. Ragsdale had not entered in an appearance in Cases No. 20580 or 20809 (he didn't object to the applications as he understood them and thought it was unnecessary); why he was late returning executed AFEs for the 15/10 wells (confounded by extra well costs,

COVID work disruption, death in her family); and answered questions about interactions between party representatives and with others.

57. Mewbourne presented two witnesses in support of its opposition:

- a. Travis Cude, a petroleum engineer, explained why Mewbourne had junked the initial wellbores in 2H and, 2 days later, the wellbore in 2Y (lost circulation, unable to recover fish); and why it was impossible to immediately commence drilling on the relocated wells in which the north-south orientation was switched (it takes BLM several months to approve APDs).
- b. Mitch Robb, a landman, described Ragsdale's working interest in the relevant well unit, and the interest subsequently acquired from Tracy Anderson; the timing of the orders entered in the earlier cases; and his feeling that a pooling order is the equivalent of an operating agreement and that Ragsdale has been treated fairly, not any differently than the other interest owners under the JOA.

58. All witnesses were accepted as qualified to present expert opinion testimony; all witnesses were sworn in, and all were subject to cross-examination by the other party and by the examiners.

59. Following receipt of the transcript, the parties submitted written closing statements on October 26, 2020.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the parties and the subject matter in this case.
2. Proper public notice was given of the Application and the hearing in this case.
3. The Oil and Gas Act, NMSA 1978 Sections 70-2-1 *et seq.* (Act), prohibits the waste of oil and gas and delegates to the Division the authority to prevent waste and protect correlative rights.
4. Section 70-2-17.C of the Act provides that when the owners of the interests in a spacing unit “have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.”
5. With the entry of a compulsory pooling order, “well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production.” Section 19.15.13.8.B NMAC.
6. The costs of failed attempts to drill can be recovered when a “substitute well” is drilled; see Section 19.15.13.8.B(4) NMAC:

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.

7. Although wells 2H and 2Y are not located within 330 feet of the original well, or drilled within 10 days of the original well's abandonment, it is fair to nevertheless consider them as "substitute" or "replacement" wells:

- a. This section of the Division's regulations was written in 2008, before horizontal drilling became popular, and does not address surface hole location (SHL) for such wells. With a horizontal well in this case, Mewbourne simply switched the SHL; i.e., the first take point and the last take point were flipped.
- b. The new federal APDs for the 15/10 wells, required by the switch in SHL, took eight months to obtain from the BLM, which was outside of Mewbourne's control and prevented Mewbourne from drilling a 15/10 well within 10 days of junking the 10/15 2HY well.
- c. The 15/10 wells were successfully drilled; Mewbourne acted as a prudent and diligent operator to move the SHL. Mewbourne Ex. No. 1, Tr. at pp. 49-50.

8. Even if the wells in question do not strictly meet the definition of "substitute well," Section 19.15.13.8.B NMAC includes another subsection, B(1), under which the costs of drilling the junked wells in this case is reasonably imputed to the 2H and 2HY wells:

If, however, a well was previously completed in another formation or bottom hole location, or was previously abandoned without completion, well costs as to that well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

9. Mewbourne's costs of drilling the earlier wells are just and reasonable in these particular circumstances, regardless of whether the focus of the opportunity to participate under a forced pooling order is on each "well," as asserted by Ragsdale, or the "well unit," as asserted by Mewbourne.
10. Ragsdale's contention that the application in Case No. 20809 failed to satisfy the notice requirements in 19.15.4.8 is without merit.
11. Section 19.15.4.8, Initiating an Adjudicatory Hearing, requires an application to 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.
12. A "general description of the common source or sources of supply or the area the order sought affects" does not require a specific statement that take points on a horizontal well will be flipped following the junking of the earlier drilling efforts. Nor does "the general nature of the order sought." The common source or source of supply and the area affected were clearly identified in the application.
13. Ragsdale's contention that the notice of hearing for Case No. 20809 failed to satisfy the notice requirements in 19.15.4.9 is also without merit.
14. Section 19.15.4.9, Adjudicatory Hearing Notice, requires the Division to publish notice with the following information:
 - (1) the adjudicatory hearing's time and place;
 - (2) whether the case is set for hearing before the commission or a division examiner;
 - (3) the applicant's name and address, or address of the applicant's attorney, including an e-mail address and fax number if available;

- (4) a case name and number;
- (5) a brief description of the hearing's purpose;
- (6) a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application;
- (7) if the application seeks to adopt, revoke or amend special pool orders; establish or alter a non-standard unit; permit an unorthodox location or establish or affect a well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and
- (8) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

15. A "brief description of the hearing's purpose" does not require a specific statement that take points on a horizontal well will be flipped following the junking of the earlier drilling efforts. Nor does "a reasonable identification of the adjudication's subject matter." The common source or source of supply and the area affected were clearly identified in the notice.

16. The application and notice of hearing for Case No. 20809 clearly identified the lands on the unit designated thereby, the pool or pools to which it applied, and an operator for the unit. See also Section 70-2-17.C, NMSA 1978.

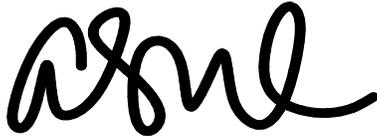
17. As Applicant, Ragsdale bears the burden of proof in establishing that the earlier orders should be revoked, or that Mewbourne should be compelled to recognize him as a consenting owner without paying his share of the earlier junked well costs.

18. Ragsdale failed to establish that his application should be granted.

ORDER

1. Ragsdale's application to revoke Orders No. R-20294 and R-20294-A is denied.
2. Ragsdale's alternative request that the Division declare certain well costs imposed by Mewbourne as unreasonable is denied.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



ADRIENNE SANDOVAL, DIRECTOR

3/18/2021

DATE