

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

**APPLICATION FOR AN ACCOUNTING FROM
MEWBOURNE OIL COMPANY UNDER ORDER
NOS. R- 21292 AND R-21293 AND TO DECLARE
CERTAIN ACCOUNTING PRACTICES IMPROPER**

Case No: 22378

**APPLICATION TO AMEND ORDER
NOS. R-21804 AND R-21805 TO EXTEND
TIME FOR PAYING ESTIMATED COSTS**

Case No. 22439

APPLICANT'S RESPONSE TO

- (1) MEWBOURNE OIL COMPANY'S EXPEDITED MOTION FOR
CONTINUANCE FILED IN CASE NO. 22378, AND**
- (2) MEWBOURN'S OPPOSED MOTION TO PARTIALLY VACATE PRE-
HEARING ORDER AND FOR A CONTINUANCE**

and

OBJECTIONS TO SUBPOENA

Applicant in the above-referenced matters hereby responds to Mewbourne Oil Company's ("Mewbourne") last-minute requests for continuance, including its (1) Expedited Motion for Continuance (Case No. 22378), received Monday, April 11, 2022, at 4:13 PM ("Motion for Continuance"), and (2) Opposed Motion to Partially Vacate Pre-Hearing Order and for a Continuance, received Tuesday, April 12, 2022, at 7:38 PM ("Motion to Partially Vacate," collectively, Motions).¹ Mewbourne. Neither motion is well-taken; both should be denied.

¹ Mewbourne counsel made no effort to confer with undersigned counsel about the Motion to Partially Vacate.

Applicant initiated Case No. 21378 on November 29, 2021, almost five months ago. Applicant initiated Case No. 21439 approximately one week later, on December 7, 2021. Applicant filed pre-hearing statements in both cases on December 30, 2021, and a status conference was held on January 6, 2021. As explained at the status conference and, later, in Applicant's response to Mewbourne's motion to dismiss in Case No. 22439, both of these cases are related to Mewbourne's accounting practices and conduct under forcepooling orders related to the same family of wells. A pre-hearing order ("Order") set both cases on the docket for April 21, 2022 for "separate, consecutive hearings." The Order expressly provides that the hearing examiner may consolidate the cases on the hearing date. Order at 1.

Now, at the last minute, Mewbourne seeks to continue the cases, purportedly due to discovery issues. This is a pretext. Mewbourne is indisputably in possession of all data and information relating to the accounting for the pertinent wells. As explained in Applicant's response to Mewbourne's first subpoena, Applicant will be relying on AFEs, joint interest billings, revenue statements, and daily reports that Mewbourne provided to Applicant in the ordinary course of Mewbourne's business. *See* Response to Mewbourne's Subpoena for Production of Documents in Exhibit B, attached to Motion for Continuance. Applicant should not be required to assume the burden of an accounting for Mewbourne, the party with control of all of the necessary information. *See* Rule 1-026(B)(2) NMRA (providing that a court shall limit discovery when the discovery sought "is obtainable from some other source that is more convenient, less burdensome, or less expensive").

Mewbourne's successive subpoenas are simply a dilatory tactic designed to burden the Applicant and delay the time for Mewbourne to provide a proper accounting and explain its conduct in violation of the applicable orders. Indeed, *documents now sought in the second*

subpoena will be provided to Mewbourne tomorrow, pursuant to the provisions of the pre-hearing order. *See* Order at 1, ¶ 4. Applicant is the party proceeding in the dark, as Mewbourne has refused to provide the information previously requested from Mewbourne prior to filing the instant applications, which information would allow Applicant to more easily evaluate Mewbourne's accounting.

Mewbourne's second subpoena, Subpoena for Deposition Duces Tecum, ("Second Subpoena") seeks the deposition of a corporate witness by May 6, 2022. *See* Motion to Continuance, Exhibit C attached thereto. This request for subpoena should be denied for at least two reasons. First, Division Rule 19.15.4.16(A) NMAC permits "subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown." Mewbourne fails to establish extraordinary circumstances or good cause. *See* Motion for Continuance. In fact, Mewbourne makes no effort to establish either requirement. *See generally* Motion. The subpoena should not be issued for this reason alone.

Second, direct written testimony *on the very issues identified* in the Second Subpoena is due tomorrow. Thus, Mewbourne will have the information it requests in hand in one day, with much less time, effort, and money expended than would be necessary if a deposition duces tecum was issued. Mewbourne's tactics under these circumstances simply highlight the punitive nature of Mewbourne's Motions and subpoenas. Consequently, the Motions should be denied, and the Second Subpoena should not be issued.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, a true and correct copy of the foregoing pleading was served on the following:

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