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

IN THE MATTER OF THE HEARINGS CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

APPLICATIONS OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

Case No. 23365
Case No. 23366

APPLICATIONS OF EARTHSTONE OPERATING, LLC, FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

Case No. 23475
Case No. 23477

RESPONSE TO MEWBOURNE OIL COMPANY'S MOTION TO DISMISS

Earthstone Operating, LLC ("Earthstone"), through its undersigned attorneys, hereby files this Response to Mewbourne Oil Company's Motion to Dismiss. In support thereof, the following is shown:

I. Background and Facts:

1. The New Mexico Oil Conservation Commission ("OCC"), in the exercise of its statutory authority to create and approve a State Exploratory Unit ("State EU"), established the 2,145.95-acre North Wilson Deep Unit ("NWDU") in 1963. *See* Order No. R-2621, ¶¶ 3-4.

2. On August 11, 2020, Mewbourne Oil Company ("Mewbourne") filed an application in Case No. 21418 with the New Mexico Oil Conservation Division ("OCD" or "Division") requesting that the NWDU be expanded from 2,145.95 acres to 13,272.13 acres to include, among other lands, the E/2 of Sections 7 and 18, Township 21 South, Range 35 East, NMPM.

3. A number of owners in the lands, including Chisholm Energy Operating, LLC ("Chisholm"), Apache Corporation, COG Operating LLC ("COG") Devon Energy Production Company, L.P.("Devon") and Marathon Oil Permian, entered appearances in Case No. 21418 and objected to the expansion of the NWSU, stating that the parties "have serious objections to the proposed unit expansion" that "*raise grave concerns about potential impairment to [parties'] correlative rights….*" *See* Joint Motion for Continuance filed November 29, 2020, at ¶ 7 (emphasis added). Chisholm specifically expressed concern during the hearing in Case No. 21418 that if the OCD approved Mewbourne's unit expansion as proposed, then Mewbourne "will use its designation as 'Operator' of a state unit comprised of more than 13,272 acres…to challenge and impede the development plans of other working interest owners in the acreage who refused to commit to the expansion. *See* Chisholm, COG, and Devon Reply in Support of Motion for Continuance, filed November 29, 2020, at ¶ 2.

4. At the time that Chisholm lodged its opposition to the expansion of the NWDU, it owned a 49.916666% Working Interest ("WI") in the E/2 of Section 18 while Mewbourne did not own any WI. Based on a recent title review, Mewbourne continues to own no interest in Section 18 in the Bone Spring Formation.

5. After raising such concerns, Chisholm entered into negotiations with Mewbourne and the parties reached an agreement that was intended to protect Chisholm's correlative rights in the E/2 of Section 18, as consideration for Chisholm's withdrawal of its objections, thereby providing Mewbourne with a tangible benefit. *See* Hearing Tr. dated December 3, 2020, at 5:20-23.

6. The terms of the agreement between Mewbourne and Chisholm specifically excluded the E/2 of Section 18, among other lands, from the NWDU, as written and memorialized in the

record by the Division. *See* Order No. R-21721, p. 3, ¶ 4(d) ("The Expanded Unit area was originally proposed to be 13,272 acres in size, *but Mewbourne eliminated the E/2 Sec. 18-21S-35E and Sec. 4-22S-35E at the request of Chisholm Energy Operating, LLC*, and the SE/4 Sec. 32-20S-36E at the request of COG Operating LLC. As now proposed, the Expanded Unit covers 12,142.39 acres.") (emphasis added).

7. Thus, the Division only approved the NWDU "*for oil and gas produced from the following described 12,142.39 acres of State trust lands in Lea County, New Mexico*," which includes the E/2 of Section 7 but expressly excludes the E/2 of Section 18. *Id.* at p. 5, ¶ 1. Furthermore, while the OCD found that "[a]pproval of the Expanded Unit will serve to prevent waste and protect correlative rights *within the lands assigned to the unit area, Id.* at p. 5, ¶ 8 (emphasis added), it did not address the prevention of waste or protection of correlative rights outside the lands assigned to the unit area. *Id.* As a result, matters of conservation remain unaccounted for in the E/2 of Section 18.

8. In its Order, the OCD retained jurisdiction over the implementation of the expanded NWDU, stating that the plan contained in the Unit Agreement for the expanded NWDU is:

> *approved in principle*; provided, however, notwithstanding any of the provisions contained in the unit agreement, [the OCD's approval] *shall not be considered as waiving or relinquishing, in any manner, any right, duty, or obligation that is now, or may hereafter be, vested in the Division to supervise and control operations for the unit and production of oil and gas therefrom.*

Id. at p. 6, ¶ 3; *see also* Order No. R-2621, ¶ 3 (original OCC Order issued in 1963 creating the NWDU also established and maintained primary jurisdiction of the OCC and OCD over the NWDU "relative to the supervision and control of operations and development of lands committed to the [NWDU], or relative to the production of oil or gas therefrom.")

9. The New Mexico State Land Office ("SLO") granted final approval for the NWDU Agreement by Letter dated July 21, 2021, but specifically premised its approval on the OCD's approval.

10. Effective on or about November 1, 2021, Earthstone acquired certain working interests and mineral interests from Chisholm located both inside and outside the NWDU, including the E/2 of Section 7, which is located within the NWDU, and the E/2 of Section 18, which the OCD expressly excluded from the NWDU. As a factual matter, Earthstone is the successor in interest to said lands and mineral interests subject to all restrictions and limitations, as agreed upon by Mewbourne and Chisholm and stated in OCD Order No. R-21721, as incorporated into the Unit Agreement.

11. On January 31, 2023, Mewbourne filed an application in Case No. 23365 that proposed a unit comprising of the W/2 E/2 of Section 18, located outside the NWDU, and the W/2 E/2 of Section 7, located within the NWDU; and on the same date, Mewbourne filed an application in Case No. 23366 that proposed a unit comprising of the E/2 E/2 of Section 18, outside the NWDU, and the E/2 E/2 of Section 7, within the NWDU.

12. In both applications, Mewbourne proposes to initiate the drilling of the wells from locations within the E/2 of Section 18, these lands being located outside the NWDU, in which Earthstone owns a substantial 49.916666% WI and Mewbourne owns no interest in the Bone Spring Formation.

13. In response -- following proper procedures available to an owner who has a right to drill a well and who therefore needs the OCD to evaluate the best development plans for the protection of correlative rights and prevention of waste -- Earthstone filed competing applications

in Case Nos. 23475 and 23477 that proposed development plans for the W/2 E/2 of Sections 18 and 7, as a competing unit, and the E/2 E/2 of Sections 18 and 7, as a competing unit.

14. On or about April 17, 2023, Mewbourne filed a Motion to Dismiss Earthstone's competing application in Case Nos. 23475 and 23477, and a Scheduling Order was issued on for a motion hearing to be held on May 4, 2023.

II. Legal Arguments

A. The OCD and the OCC have primary and exclusive jurisdiction for the protection of correlative right and the prevention of waste, as directed by the Oil and Gas Act ("OG Act"), when force pooling tracts involving state lands.

15. The powers and jurisdiction of the SLO and the OCD, both of whom play vital roles in the development of the state's oil and gas resources, are separate and distinct and clearly delineated by law. The SLO, and its executive officer, the Commissioner of Public Lands, "shall have jurisdiction over all lands owned in this [Chapter 19] by the state, *except as may be specifically provided by law." See* NMSA 1978, § 19-1-1 (emphasis added). The New Mexico Supreme Court has declared that the Commissioner of Public Lands is an agent of the state, limited by specific powers, "and only such [powers], as have been conferred upon [her] by the constitution and laws of the state, as limited by the [New Mexico] enabling act." *Harvey E. Yates Co. v. Powell* 98 F.2d 1222, 1239 (10th Cir. 1996) (*citing Hickman v. Mylander*, 1961-NMSC-068, ¶ 10).

16. "In contrast to the Commissioner's limited grant of authority, the state constitution vests the New Mexico legislature with broad powers to prescribe the terms and conditions of mineral leases on the state's public lands." *Id.* Thus, the Land Commissioner has certain specific powers delineated by statute such as executing for the state all deeds, leases, contracts, or other instruments affecting state lands, and collecting and compiling information relative to oil and gas leasing development and production within the state which may affect state lands. *See, i.e.,* § 19-1-2 (Duties

of land commissioner). But the state legislature has not granted the SLO powers to adjudicate questions of conservation, the protection of correlative rights, and the prevention of waste which must be determined as a legal matter by the OCD before tracts of lands, whether state land or otherwise, can be force pooled, drilled, and produced.

17. It is to the OCD and OCC that the legislature has granted the authority and jurisdiction over matters of conservation, correlative rights, and prevention of waste, which is why the SLO cannot preempt or by-pass the OCD's role in the forced pooling of state lands: "The commission [and likewise, the division] has jurisdiction over matters related to conservation of oil and gas in New Mexico, but the basis of its power is founded on the duty to prevent waste and to protect correlative rights." *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11; *see also* NMSA 1978, § 70-2-6 (the "division shall have jurisdiction and authority over all matters relating to the conservation of oil and gas," including "jurisdiction, authority, and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this [Oil and Gas] Act or any other law of this state relating to the conservation of oil or gas."); NMSA 1978, § 70-2-11 (the "division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative right, as this act provided. To that end, the division is empowered to make and enforce rules, regulations, and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section thereof.")

18. Thus, because matters of conservation have not been addressed by the OCD for the lands located outside the NWDU, a compulsory pooling of tracts that include lands inside and outside the NWDU requires that the OCD conduct a full review and evaluation of competing applications to prevent waste and protect correlative rights. This requirement is embodied in the

regulations and statutes governing forced pooling and state lands, both in the law governing the OCD and the law governing the SLO. For example, NMAC 19.2.100.52 requires that the operator of all oil and gas leases covering state owned land force pooled by the OCD "*shall file*" with the land commissioner "a copy of the agreement for unit operations involving state lands *approved in writing by the Oil Conservation Division.*" (emphasis added). *See also:* "Nothing herein [§§ 19-10-45 to 19-10-48, statutes governing cooperative agreements of state lands] contained shall be held to modify in any manner the power of the oil conservation commission under laws now existing or hereafter enacted with respect to the proration, and conservation of oil and gas and the prevention of waste, nor as limiting in any manner the power and the authority of the commissioner of public lands now existing or hereafter vested in [her]." NMSA 1978, § 19-10-45.

19. Furthermore, the necessity for the OCD to determine matters of conservation independently from the SLO is reflected in the very order that approved the state's NWDU. *See, i.e.,* Order No. R-21721, p. 6, ¶ 3 (The OCD stating that the plan contained in the Unit Agreement for the expanded NWDU is "*approved in principle*; provided, however, notwithstanding any of the provisions contained in the unit agreement, [the OCD's approval] *shall not be considered as waiving or relinquishing, in any manner, any right, duty, or obligation that is now, or may hereafter be, vested in the Division to supervise and control operations for the unit and production of oil and gas therefrom.*"). In addition, the OCD has the authority and jurisdiction to revise the Unit Agreement by adding or removing lands from the State EU, *see* Unit Agreement for the NWDU, at ¶ 1, an authority the OCD exercised by excluding the E/2 of Section 18 from the NWDU. The OCD's authority and jurisdiction over the Unit Agreement is further reinforced by the Unit Agreement's requirement that "operations hereunder and production of unitized substances shall be conducted to provide for the most economical recovery of said substances without waste, as defined by or

pursuant to State Laws or regulations," thus directly invoking and incorporating into the Unit Agreement the OCD's role of upholding requirements for the prevention of waste pursuant to the OG Act. *See* Unit Agreement for the NWDU, at ¶ 14.

20. Finally, the Unit Agreement states that Earthstone, as an interested party to the Agreement, "shall have the right…to appear and participate" in any proceeding before the OCD. *See* Unit Agreement for NWDU at ¶ 19. Mewbourne filed pooling applications in Case Nos. 23365 and 23366, in which it proposes to pool separately owned tracts in the E/2 of Section 7, located within the NWDU, and the E/2 of Section 18, in which Mewbourne does not own any interest, located outside the NWDU; in response, Earthstone filed competing applications to pool tracts in the E/2 of Section 7, in which it owns interest, and the E/2 of Section 18, in which it owns a substantial 49.916666% WI.

21. The terms of the Unit Agreement itself guarantee Earthstone the right to appear and participate in any OCD proceeding, and the fact that Earthstone is a WI owner with a right to drill a well in the tracts it has proposed to be a unit in Case Nos. 23475 and 23477 gives Earthstone the right to have its competing applications considered by the OCD for purposes of forced pooling in a contested hearing. *See* NMSA 1978 § 70-2-17(C).

22. In effect, Earthstone has proposed to drill a well in Case Nos. 23475 and 23477, and pursuant to the pooling statute, where such "owner or owners," (i.e. Earthstone and Mewbourne) have not voluntarily agreed to pool their interest, and where one such separate owner, or owners (such as Earthstone), 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 a spacing or proration unit as a unit.*" NMSA 1978, § 70-2-17(C) (emphasis added).

23. Thus, the pooling statute, § 70-2-17(C), requires the OCD to pool the tracts ("shall pool all or any part of such lands") based on an evaluation of which competing owner's development plan best protects correlative rights and prevents waste. *See id.; see also* Order No. R-10731-B, ¶¶ 27-28 (wherein the OCD premised its decision on which competing development plan was superior, it needed to fully address matters of conservation, that is, "to avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order," the application of Medallion Resources, Inc., should be approved and the application of Yates Petroleum Corporation should be denied.); Order No. R-20223, ¶¶ 41 and 52 (approving the competing application of Devon over Pride's application is a ruling necessary for the prevention of waste and the protection of correlative rights). Thus, when two competing applications are presented, it is only through the process of adjudicating the two applications that the OCD is able to prevent waste and protect correlative rights, its primary duties under the OG Act.

24. If the OCD dismisses Earthstone's pooling applications as requested by Mewbourne, then the OCD will have forfeited its ability to prevent waste and protect correlative rights to the full extent of its mandate under the OG Act and will have abdicated its responsibilities and obligations under the OG Act, the requirements of the Unit Agreement, and the statutes governing the SLO that require the SLO to seek the OCD's assurances that the development plan selected for the pooling of state interests best protects correlative rights and prevents waste. The only means by which the OCD can uphold its mandate for conservation, and the only means by which the SLO can be assured that the conservation requirements have been fulfilled, is by the OCD evaluating the development

plans of both Earthstone and Mewbourne in a contested hearing and selecting the best plan. Therefore, Earthstone's applications in Case Nos. 23475 and 23477 must not be dismissed.

B. The agreement between Mewbourne and Chisholm, as written and memorialized by the OCD in Order No. R-21721, creates a covenant that runs with the land which can be removed only by a ruling from the OCD pursuant to a contested hearing that includes Mewbourne and Earthstone, representing the original and successor owners.

25. Under New Mexico Law, a covenant is created that runs with the land if (1) the covenant touches and concerns the land; (2) the original covenanting parties intend the covenant to run; and (3) the successor to the burden must have notice of the covenant. *See Lex Pro Corp. v. Snyder Enterprises, Inc.,* 1983-NMSC-073, ¶ 7; *see also Dunning v. Buending,* 2011-NMCA-010, ¶¶ 16-22.

26. In Case No. 21418, prior to the OCD's approval of the NWDU, Chisholm, predecessor in interest to Earthstone, objected to the NWDU based on a violation of correlative rights. *See* ¶ 3, *supra.* As a result, Mewbourne and Chisholm entered an agreement that allowed Chisholm to withdraw its objection and Mewbourne to obtain OCD's approval of the NWDU. *See* ¶¶ 5-6, *supra.* The agreement between Mewbourne and Chisholm, which the OCD memorialized in writing in Order No. R-21721 and made of record, consisted of Mewbourne removing the E/2 of Section 18 from the NWDU so that the acreage of the NWDU was reduced overall and excluding Mewbourne, as Unit Operator, from having operating rights to the E/2 of Section 18. Thus, the original parties, Mewbourne and Chisholm, in satisfaction of Element (2) of covenant formation, intended that the covenant run with the land, in that, the permanent nature of all conveyances of the E/2 of Section 18 would manifest the covenant by excluding the lands from the NWDU and from the operatorship of Mewbourne as Unit Operator. This intention is inferred both from the recorded testimony in Case No. 21418 and the terms of OCD Order No. R-21721. *See* ¶¶ 5-6, *supra.* In satisfaction of Element (1), the covenant touches and concerns the land because it directly affects

the value of the land and its development. *See* Lex Pro Corp., 1983-NMSC-073, ¶ 8. And finally, Element (3) is satisfied because Earthstone had notice of the covenant when it received its assignment of the lands from Chisholm.

27. Because the OCD created the covenant that permanently excludes the E/2 of Section 18 from the NWDU, based on the agreement and consent of the Mewbourne and Chisholm during the proceedings in Case No. 21418, the SLO, having not been a party involved in the creation of the covenant, has neither the authority nor jurisdiction to remove or reform the covenant; and therefore, the SLO cannot grant Mewbourne the right to drill, penetrate or develop the E/2 of Section 18 as a unilateral effort to expand the scope and acreage of the NWDU but must rely on the OCD to exercise such authority. *See, i.e., Hickman v. Mylander*, 1961-NMSC-068, ¶ 10 (standing for the proposition that the authority granted to the Commissioner of Public Lands to conform the terms of existing agreements, such as leases, involved in Unit Agreements is limited to the lands included in the unit area and does not extend to lands outside the unit area). Only the OCD, through the adjudication of a contested hearing with Mewbourne, as a party to the original agreement creating the covenant, and Earthstone, as a successor in interest to lands subject to the covenant, can remove or reform the covenant on the lands outside the NWDU pursuant to the prevention of waste and the protection of correlative rights, the same considerations that originally motivated the formation of the covenant.

28. In light of the foregoing, and the separation of the domains of authority and jurisdiction between the OCD and the SLO, the email Mewbourne provided from Scott Dawson, as Exhibit B to its Motion to Dismiss, does not and cannot "establish the approval of the Commissioner of Public Lands" for Mewbourne to drill its wells in the E/2 of Sections 18 and 7, as Mewbourne claims. First, the premise of the email, its assertion that "Earthstone is not a part of the Unit Agreement," is mistaken. The Unit Agreement, as stated in its first paragraph, is entered into "by

and between the parties subscribing, ratifying or consenting hereto," which comprise the signatory parties, owners such as Mewbourne and Chisholm, and successors in interest. When Earthstone succeeded to Chisholm's interest, Earthstone became a party to the Unit Agreement. Earthstone suspects that the SLO may not have been aware that Earthstone is a party to the Unit Agreement at the time Mr. Dawson sent his email to Ms. Salgado as it appears that Mewbourne has failed to update the parties to the Agreement in accordance with the requirement of Order No. R-21721, p. 6, ¶ 4 (requiring, in the event of subsequent joinder by any other party [such as Earthstone], that the unit operator to file with the Division, within 30 days thereafter, copies of the unit agreement reflecting the subscription of those interests having joined or ratified).

29. Secondly, the statement in that email that the Unit Agreement is a pooling agreement only between the SLO and Mewbourne is misplaced. As noted, the Agreement is between and among the owners within the NWDU who signed the Unit Agreement, which include Mewbourne, Earthstone, as successor to Chisholm, and 12 other signatory WI owners. The SLO is not a signatory party to the Unit Agreement but is one of the regulatory agencies, along with the OCD, that approves the terms of the Agreement which the signatory parties have joined. Thus, contrary to the email's statement in Mewbourne's Exhibit B, the Unit Agreement is not a pooling agreement only between the SLO and Mewbourne but is an Agreement between and among the 14 WI owners participating in the NWDU as signatories under terms approved by the SLO and OCD, which limited the NWDU to 12,142.39 acres and excluded the E/2 of Section 18.

30. Finally, the email as presented in Mewbourne's Exhibit B cannot grant Mewbourne the right to drill from the E/2 of Section 18 into the E/2 of Section 7, as it purports to do, because such drilling in Section 18, expressly removed from the NWDU as a condition of its approval, would violate the restrictive covenant that the OCD established by Order No. R-21721. After Earthstone

filed its competing applications on April 3, 2023, Mewbourne's Landman, Ms. Salgado, began engaging in unilateral communications and email exchanges with Mr. Dawson, and Earthstone believes that Mr. Dawson's statements in his email sent April 11, 2023, may reflect a premature view that did not receive the benefit of a fully informed perspective on the matter. When Earthstone was finally informed on April 13, 2023, of the email communications Mewbourne had been having with the SLO, it made the effort to provide Mr. Dawson an overview of the situation by an email dated April 14, 2023, with copies addressed to all the parties involved. *See* a copy of Earthstone's email attached hereto as Exhibit 1.

31. In its email to Mr. Dawson, Earthstone asked the SLO to reserve judgment until the OCD has had the opportunity to review and evaluate the cases. As shown herein, the OCD is obligated to evaluate the competing applications in order to ensure that the development plan ultimately selected is the one that best prevents waste and protects correlative rights.

32. Earthstone submits that the manner in which Mewbourne purports to apply NMAC 19.15.16.15(B)(6) in ¶ 6 of its Motion to Dismiss is misplaced. This Rule is not designed, nor should it be used, to preempt and short-circuit the OCD's full evaluation and rulings on waste and correlative rights; on the contrary, this Rule should be interpreted and applied to ensure that the SLO receives the full benefit of the OCD's review, evaluation, findings, and conclusions, so that the Commissioner of Public Lands can be confident that when and if she provides her consent, that it is fully-informed and that the requirements of conservation for the state lands involved have been satisfied. The need for a comprehensive consideration of conservation matters and concerns, including the prevention of waste and protection of correlative rights, should require the OCD to evaluate both Earthstone's and Mewbourne's competing applications in a contested hearing.

C. The Oil and Gas Act prevents the designated operator of a State EU from claiming, without a proper adjudication by the OCD, an exclusive right to operate a proposed unit when it includes lands both inside and outside the State EU.

33. The NWDU encompasses 12,142.39 acres for which Mewbourne is the designated operator within the Unit Agreement. Mewbourne posits that by virtue of Mewbourne being the designated operator of the NWDU under the Unit Agreement, it has somehow acquired the exclusive operating rights to any proposed straddle unit (that is, a unit with lands inside and outside the NWDU). There is no statutory or regulatory basis to support Mewbourne's position that a designated operator of a State EU is vested with the exclusive right to the operation and development of straddle units. Moreover, Mewbourne proposes to ignore its earlier binding agreement with Earthstone's predecessor on which the OCD premised Order No. R-21721, but also to preclude Earthstone, as well as all other WI owners bordering the NWDU, from submitting competing development plans thereby eliminating the comprehensive consideration of conservation matters and concerns that the OCD is obligated to evaluate in the public interest.

34. The intent of the Unit Agreement is to allow Mewbourne the right to develop the designated 12,142.39 acres of the NWDU, a unit area for which the OCD has already adjudicated the prevention of waste and protection of correlative rights with the approval of both SLO and the OCD . When an operator of a State EU, such as Mewbourne, attempts to extend its development plans across the NWDU boundary, the operator, in effect, makes new claims on lands outside the State EU for which questions of waste and correlative rights have not been adjudicated by the OCD and have not been approved by the OCD or the SLO, as required by law.

35. As a result, Mewbourne's proposed straddle unit covering the E/2 of Sections 18 and 7 must be subject to the requirements of the OG Act and OCD's adjudication to determine which development plan and operator would best prevent waste and protect correlative rights. To dismiss

Earthstone's competing application would undermine, and allow Mewbourne to evade, the purpose of the OG Act. And, it would allow Mewbourne to violate the intent and purpose of the Unit Agreement which is to "conserve natural resources, prevent waste and secure other benefits obtainable through development of the subject area [limited to 12,142.39 acres] under the terms, conditions, and limitations herein set forth." *See* Unit Agreement for the NWDU, at p. 1.

36. With advancements in drilling technology, not only have two-mile wells become routine, but three-mile wells are now common. If a designated operator of a State EU, such as Mewbourne, is allowed to have exclusive operating rights of straddle units because part of the proposed straddle unit happens to overlap a section or part of a section in a State EU, the operator would receive an unwarranted windfall by being able to claim exclusive operatorship for thousands of acres beyond what is allowed in the Unit Agreement. If for example, as a policy, Mewbourne were allowed to claim without accountability any additional section adjacent to but outside the NWDU, such claim would potentially extend Mewbourne's exclusive reach to cover approximately an additional 14,720 acres, and if Mewbourne decided to propose and drill 3-mile wells that crossed an additional two sections outside the NWDU, then Mewbourne could make exclusive claims to approximately an additional 16,000 acres, thereby effectively expanding the total size of the NWDU to 42,862.39 acres. *See* Exhibits 2 and 3, attached hereto. Such claims would allow Mewbourne the unfair advantage of developing lands far beyond the original intent and scope of the 12,142.39 acres specified in the Unit Agreement and allow Mewbourne to develop such lands without the prerequisite accountability provided by the OCD under the OG Act.

37. Mewbourne is proposing to drill its straddle unit from a surface location in the E/2 of Section 18, outside the NWDU. Earthstone respectfully submits that the pooling and development of straddle units with lands outside of a designated State EU should be subject to a full evaluation

and adjudication by the OCD, which should include an adjudication of any proposed competing applications, to ensure that waste is prevented and that correlative rights are fully protected. Such a policy would also directly benefit the SLO by ensuring that production of oil and gas from state leases is optimized by the proper selection of the best development plan. Anything less would fail to meet the standards of conservation required by the OG Act and would short-change the SLO.

Conclusion:

For the foregoing reasons, Earthstone respectfully requests that the OCD deny Mewbourne's Motion to Dismiss Earthstone's applications in Case Nos. 23475 and 23477 so that the OCD can move forward with adjudicating the merits of the competing applications in order (1) to ensure that waste is prevented and correlative rights are fully protected, as required by the OG Act, and (2) to provide the SLO the benefit of the OCD's evaluation and rulings as required by law so that the two agencies can fulfill their distinct and essential roles within the cooperative, inter-agency process that allows for both the proper development and conservation of the state's natural resources.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on April 28, 2023:

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/s/ Darin C. Savage

Darin C. Savage

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Subject: RE: North Wilson Deep Unit
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Cc: Darin Savage <darin@abadieschill.com>, "Jamesbruc@aol.com" <Jamesbruc@aol.com>

Hi Scott,
Thank you for your time and call today. As we briefly discussed, I have received the emails you sent to us that show your recent correspondence with Mewbourne Oil Company ("Mewbourne") and with Paul Kautz of the OCD, as well as some of the email exchanges Mewbourne has had with you.

Earthstone is concerned that you and the SLO are not receiving the full picture of this situation with the North Wilson Deep Unit ("NWDU"). This Unit was created with the express approval of the OCD based on specific terms and conditions to which Mewbourne agreed. Mewbourne has submitted pooling applications to the OCD, and Earthstone believes that the manner in which Mewbourne has proposed its units for the E/2 of Sections 7 and 18, T21S-R35E, appears to violate the terms and conditions under which the Unit was approved.

Chisholm was an original owner in the NWDU and withdrew its objection to the OCD's approval of the Unit only under the condition that Section 18 would be excluded from the Unit. It was only after Mewbourne agreed to this exclusion that Chisholm agreed to the approval of and participation in the Unit. We believe Earthstone, who succeeded to Chisolm's interest, has a right to address this condition before the OCD. Also, the fact that Earthstone is a party to the Unit Agreement as an interest owner does not appear to be fully reflected in the SLO records. We have asked Mewbourne to update the records of ownership to show Earthstone's succession.

As a result, and in order to protect the correlative rights of Earthstone and others, and to prevent waste, in the lands that are not part of the NWDU, such as Section 18 and parts of Section 7, Earthstone has filed competing applications with the OCD in order to address our concerns and protect our rights. I have attached Earthstone's applications for your review of the matter that also pertain to Mewbourne's compulsory pooling applications (case# 23365 & 23366) on the same acreage. Please see the attached compulsory pooling notice we received from Mewbourne for their cases for additional information on this matter.

As I understand, Mewbourne soon will be filing a Motion with the OCD in this matter, if it hasn't already, and Earthstone will be responding to that Motion which will address for the OCD the legal matters involved in this controversy. A motion hearing before the OCD should follow the pleadings which will provide the OCD an overview of the parties' positions and the opportunity to address the protection of correlative rights and the prevention of waste.

Earthstone has filed applications with the OCD that propose units in the W/2 of Sections 18 and 7, which are not in the NWDU at all and that propose units in the E/2 of Sections 18 and 7, which only overlap the Wilson Unit in part. We have not yet applied for permits with the OCD; therefore, we believe it is premature for any party, such as Mewbourne, to oppose the approval of permits at this time before the OCD has had an opportunity to consider this matter in full.

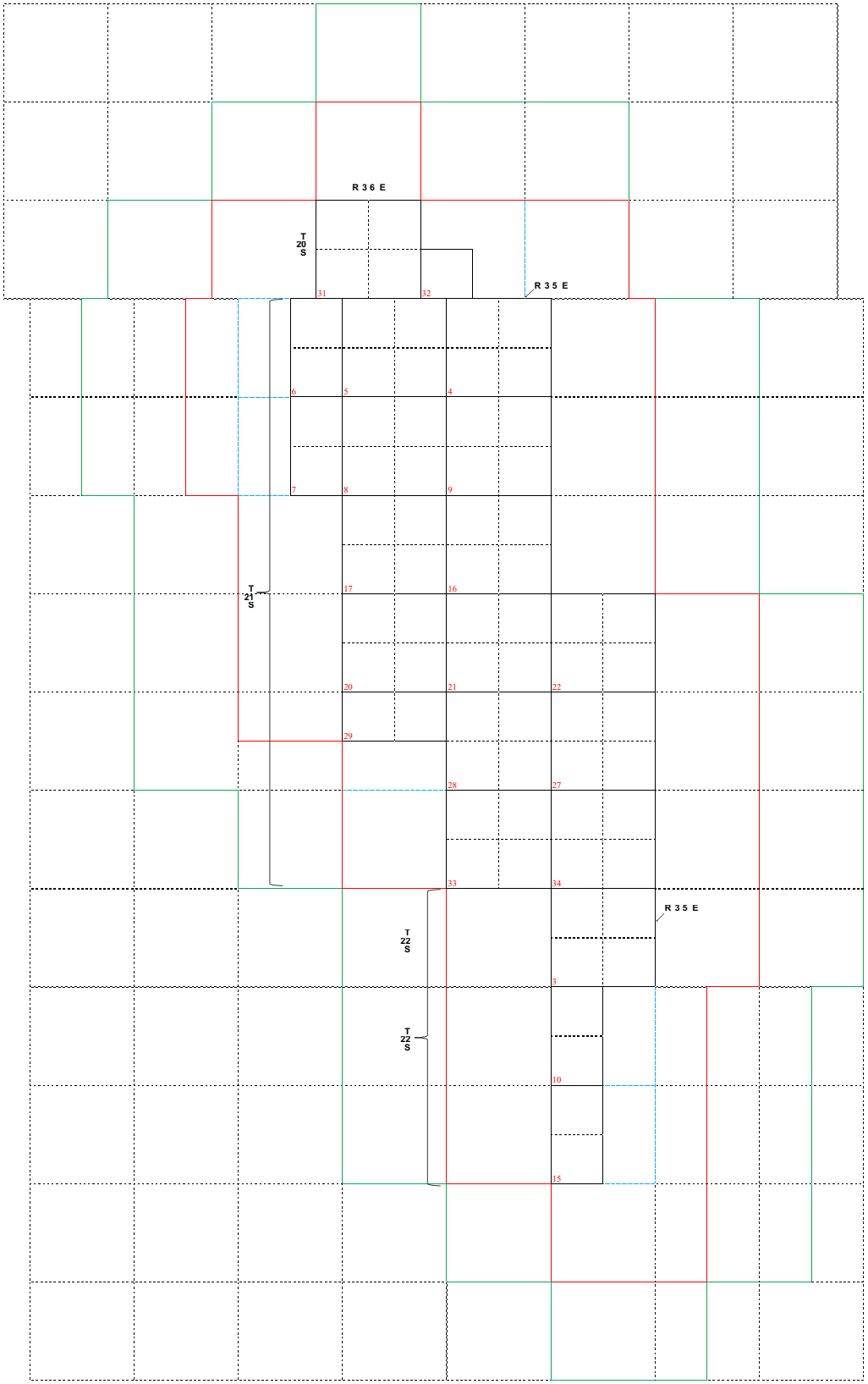
This controversy is complicated, and because it involves lands outside the NWDU that affect correlative rights and waste, Earthstone believes it falls squarely within the jurisdiction of the OCD and the Oil and Gas Act. Earthstone is represented by Darin Savage with Abadie & Schill in these proceedings, and Mewbourne is represented by Jim Bruce. We respectfully ask that you and the SLO reserve judgement and withhold taking a position in this controversy until the parties have had the opportunity to present their positions to the OCD.

We are available for questions and can provide additional information if requested.

Thank you for your consideration.
Regards,
Amanda Redfearn
Senior Landman
Earthstone Operating, LLC
1400 Woodloch Forest Dr., Suite 300 | The Woodlands, TX 77380
281-771-3048 (direct) | 832-217-9069 (cell)

EXHIBIT
1

NORTH WILSON DEEP UNIT

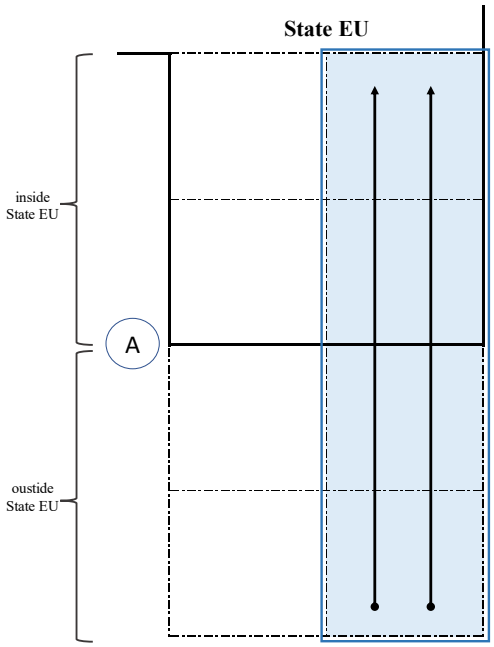


RED- 1 section margin outside NWDU; approximately 14,720 acres

GREEN - 2 section margin outside NWDU; approximately 16,000 acres

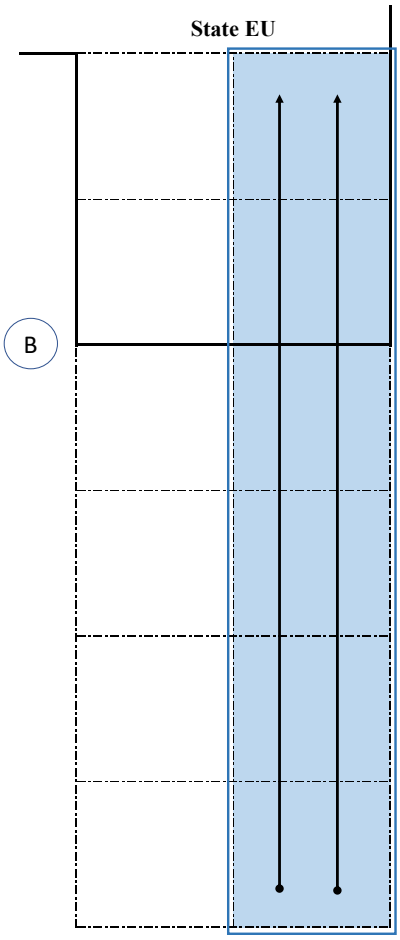
Additional 2 section margin results in an approximate total of 30,720 additional acres outside the NWDU that an operator of the NWDU could potentially and exclusively claim.

EXHIBIT 2



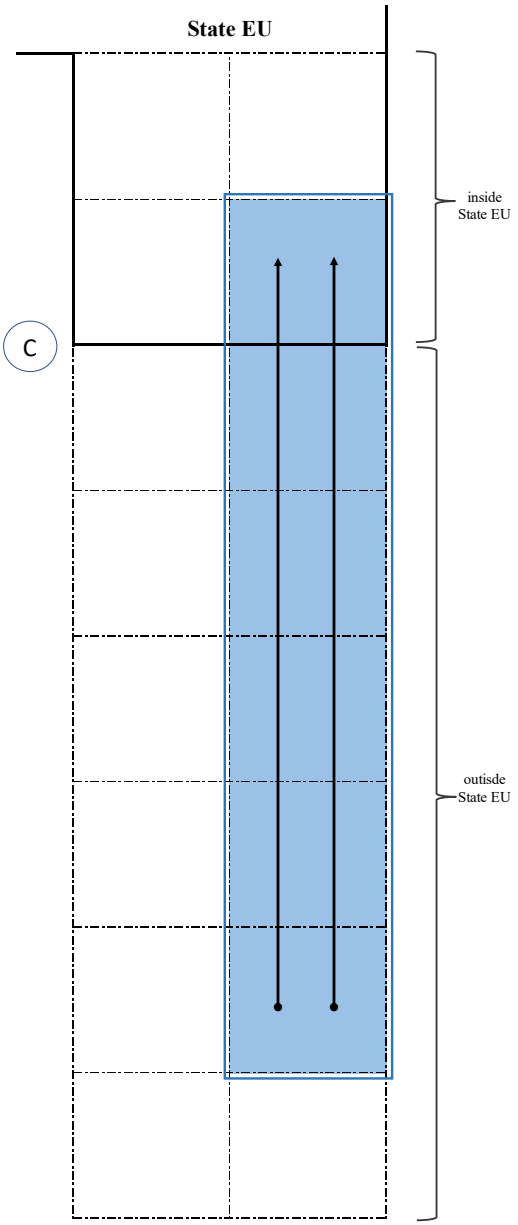
A

Based on Mewbourne's position, an operator of a State EU can claim exclusive operation of an additional section outside the EU to initiate and/or extend a two mile well outside of the EU, and evade OCD accountability for correlative rights and waste for the lands outside the EU. If drilling two mile wells, an operator of a State EU would be able to claim exclusive operation of an additional 320 acres in the proposed unit, and potentially claim an addtional 14,720 acres in the NWDU, as a windfall and without accountability.



B

As 3 mile wells become more common, Mewbourne's position would allow an operator of a State EU to claim operation of an additional 2 sections to initiate and/or extend a 3 mile well outside the State EU without accountability for correlative rights or waste, a windfall that undermines the Oil & Gas Act. A designated operator of the State EU would be able to claim exclusively an additional 640 acres in the proposed unit outside the State EU without accountability by the OCD, and potentially have claim to an additional 30,720 acres outside the NWDU.



C

If Mewbourne's position is adopted, there are a variety of additional configurations for which a designated unit operator could claim exlusive operatorship for a majority of acreage outside the EU, based only on a minor penetration of the EU, all without accountability by the OCD.

EXHIBIT 3