

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

**APPLICATION OF MEWBOURNE OIL COMPANY TO REVOKE THE INJECTION
AUTHORITY GRANTED UNDER SWD-744 FOR THE WILLOW LAKE WELL NO. 1
OPERATED BY PYOTE WELL SERVICE, LLC, EDDY COUNTY, NEW MEXICO**

CASE NO. 15519

MOTION FOR CONTINUANCE

David Baker, Receiver for the benefit of Pyote Water Solutions LLC and Pyote SWD II LLC ("Receiver") moves the Division enter its order continuing the hearing on the Application in this matter from the September 1, 2016 Examiner hearing docket to October 13, 2016. As grounds for this motion the Receiver states:

The Applicant in this case, Mewbourne Oil Company, seeks an order revoking the injection authority granted under SWD-744 for the Willow Lake Well No. 1 located 660 feet from the North line and 1980 feet from the West line (Unit C) in Section 22, Township 24 South, Range 28 East, N.M.P.M., Eddy County, New Mexico (the "Willow Lake SWD"). In the case caption and throughout Mewbourne's Application, the operator of the well is misidentified as "Pyote Well Service, LLC". In its Pre-Hearing, the opposing party is misidentified as "Pyote Water Systems". It is not known which entity Mewbourne attempted to notify, but both Mewbourne's notice and the advertisement it has provided the Division are no doubt defective.

Neither Pyote Well Service, LLC nor Pyote Water Systems are the real parties in interest and as a potential consequence, Mewbourne's Application is subject to dismissal.

On July 5, 2016, the federal district court in Midland entered its *Amended Agreed Order Appointing Receiver* in ***Bank of America, N.A. v. Pyote Water Solutions LLC, et al., United States District Court for the Western District of Texas; No. 7:16-cv-00108 [Doc. 26]***, copy attached. Pursuant to the order, David Baker, Senior Managing Director of Aurora Management Partners, was appointed Receiver for several of the "Pyote Entities", including Pyote Water Solutions, LLC and Pyote SWD II LLC, and was authorized *inter alia* to take possession of the Pyote Assets and assume management and control over them. Consequently, the Receiver is the party who possesses the authority to defend or resolve Mewbourne's claims, but subject to the approval of the U.S. District Court. Neither Mewbourne nor the Division may proceed without the Receiver's participation.

The Receiver was not informed of Mewbourne's Application or the circumstances surrounding it until July 15, 2016. Subsequently, the Receiver was informed that Pyote Well Service, LLC disavowed responsibility for the Willow Lake Well No. 1 and was not planning to appear in this proceeding in response to Mewbourne's Application.

The Receiver is in the process of gathering operational data concerning the Willow Lake Well No. 1 and obtaining expert technical advice to formulate a response to the assertions in Mewbourne's Application. However, there has not been sufficient time to allow it to do so before the September 1, 2016 hearing scheduled on the Application. Further, the Receiver experienced delays in securing New Mexico counsel for the Division proceeding. As a result of all of these circumstances, the Receiver would incur prejudice and the Division would be placed in the position of making a less fully-informed decision should Mewbourne insist on proceeding to hearing on September 1st.

WHEREFORE, the Receiver requests the Division continue the hearing to the **October 13, 2016** Examiner hearing docket. The Receiver submits this request without waiver of its right to seek dismissal of the Application.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: T. Scott Hall

J. Scott Hall

Seth C. McMillan

Post Office Box 2307

Santa Fe, New Mexico 87504-2307

(505) 982-3873

shall@montand.com

smcmillan@montand.com

Attorneys for Pyote Water Solutions LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on August 19, 2016:

Michael H. Feldewert

Jordan L. Kessler

Holland & Hart, LLP

Post Office Box 2208

Santa Fe, NM 87504-2208

mfeldewert@hollandhart.com

jlkessler@hollandhart.com

T. Scott Hall

J. Scott Hall

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION**

BANK OF AMERICA, N.A.,

Plaintiff,

VS.

**PYOTE WATER SOLUTIONS LLC,
PYOTE WATER SOLUTIONS OPCO
LLC, PYOTE BRINE LLC, PYOTE SWD
LLC, PYOTE SWD II LLC, CLSV
DISPOSAL II, L.L.C., PYOTE WELL
SERVICE, LLC,**

Defendants.

www.pearsoned.com

CASE NO. 7:16-cv-00108-DAE

AGREED ORDER APPOINTING RECEIVER

On this day the Court considered Plaintiff's Complaint for the Appointment of a Receiver (the "Complaint"). After due consideration of the Complaint, the Declaration of Michael J. Hammond, the supporting evidence, and Defendants' agreement to the appointment of a receiver, the Court is of the opinion that a receiver should be appointed.

THE COURT HEREBY FINDS AS FOLLOWS:

1. Plaintiff Bank of America N.A. (“Bank of America”) asserted a claim against Defendants Pyote Water Solutions LLC, Pyote Water Solutions Opco LLC, Pyote Brine LLC, Pyote SWD LLC, Pyote SWD II LLC, CLSV Disposal II, L.L.C., Pyote Well Service, LLC (collectively, “Defendants”). Bank of America alleges that it made certain loans and other financial accommodations to Defendants pursuant to a First Lien Credit Agreement, and that Defendants breached the First Lien Credit Agreement by committing multiple Events of Default.

2. Bank of America seeks appointment of a receiver for Pyote Water Solutions LLC, Pyote Water Solutions Opco LLC, Pyote Brine LLC, Pyote SWD LLC, Pyote SWD II LLC, and CLSV Disposal II, L.L.C., (collectively, the "Pyote Entities"), and for the property mortgaged by Pyote Well Service, LLC (the "Affiliate Mortgagor").

3. Defendants consent to the appointment of a receiver for the Pyote Entities' businesses and their property and for the property mortgaged by Affiliate Mortgagor.

4. Good cause has been shown for appointment of a receiver, including Bank of America's valid claim for the non-payment of the significant debt it is owed and the multiple Events of Default under the First Lien Credit Agreement.

5. Additionally, Bank of America and Defendants stipulated and agreed to the appointment of Mr. David Baker as receiver for the Pyote Entities and their businesses and property and for the property mortgaged by Affiliate Mortgagor.

6. The appointment of a receiver is not intended to be, nor shall it be, an election of remedies by Bank of America, and Bank of America expressly reserves all of its rights and remedies against Defendants and the Collateral under applicable law and the First Lien Credit Agreement, First Lien Guarantee and Security Agreement, First Lien Deeds of Trust, and any other loan document involving Bank of America and any of the Pyote Entities or the Affiliate Mortgagor (collectively, the "Loan Documents") with respect to the debt owed by Defendants to Bank of America.

It is therefore ORDERED, ADJUDGED, AND DECREED THAT:

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and the parties hereto are of diverse citizenship.

8. The appointment of a receiver for the Pyote Entities and their businesses and property and for the property mortgaged by Affiliate Mortgagor is necessary for the preservation of Defendants' assets and operations. Based on all of the facts and circumstances of this case, federal law, and the Loan Documents, Bank of America is entitled to the appointment of a receiver.

9. As of the date of entry of this Order (the "Effective Date"), David Baker, Senior Managing Director of Aurora Management Partners ("Aurora") (the "Receiver"), who the Court finds is qualified and independent, is hereby appointed as receiver for the Pyote Entities and their businesses and property and for the property mortgaged by Affiliate Mortgagor, effective immediately. The Receiver is further appointed as receiver with respect to any and all property and property interests pledged or assigned under the Loan Documents, and with respect to income of any kind from any of the foregoing property and property interests.

10. The Receiver shall be entitled to reasonable compensation and reimbursement of reasonable out-of-pocket expenses (pursuant to the procedures set forth herein); provided, however, all fees and expenses incurred by the Receiver and any Professionals during the Receivership shall not exceed the aggregate amount set forth in the Budget (as defined herein), unless approved by Bank of America in writing. Receiver's bond is hereby waived. All fees and expenses of Receiver and his professionals are subject to Court approval.

11. Subject to the terms and conditions of the Loan Documents and such other instruments, documents, and agreements as Bank of America may require Receiver to execute in connection with any funds advanced by Bank of America to Receiver on behalf of Defendants, Receiver is hereby authorized to borrow funds on behalf of Defendants from Bank of America, only to the extent consented to by Bank of America in its sole discretion and without any

commitment to do so, for expenditures set forth in the budget to be submitted to Bank of America by Receiver (the "Budget"), which advances shall constitute part of Defendants' obligations under the Loan Documents and shall be secured by all of the Collateral pledged under the Loan Documents.

12. Receiver shall faithfully discharge its duties and obey all orders of the Court. Receiver shall collect all Revenues (as defined herein) of Defendants and apply the proceeds to the payment of the Defendants' obligations in accordance with the terms of the Loan Documents and pay any and all reasonable and necessary expenses in managing the Pyote Entities, including their business operations, assets, and property, of whatever nature, and the property mortgaged by Affiliate Mortgagor (collectively, the "Assets and Operations") pursuant to the Budget. Receiver shall not destroy any documents or records of the Defendants without further order of the Court.

13. Receiver and Defendants are hereby jointly directed to inventory the Assets and Operations so that Receiver may make an accounting of same. Receiver shall file with the Court an inventory report and accounting within forty-five (45) days from the Effective Date, and thereafter shall file any and all reports as may be required by the Court from time to time.

14. Receiver may apply to this Court by motion and upon notice to all parties in interest for further or other authority as may be necessary in the performance of its duties hereunder.

15. Receiver shall be named as a primary insured party on existing insurance coverage for the Assets and Operations and, Receiver is authorized to obtain and pay (in accordance with the Budget) the premiums for additional insurance for Defendants or for Receiver (including, without limitation, an error and omissions policy and an umbrella policy)

for the Assets and Operations and to maintain the policies otherwise in accordance with the Loan Documents.

16. Receiver shall have and enjoy all of the powers, immunities, privileges, and prerogatives ordinarily provided to receivers under applicable law unless otherwise prohibited by this Order.

17. On the Effective Date, without further order of the Court, the Receiver shall be authorized and instructed to conduct all affairs connected with the Assets and Operations, including, without limitation, any and all of the following acts:

- (i) to take immediate possession of, custody of, and control over the Assets and Operations;
- (ii) to continue to manage the Assets and Operations;
- (iii) to retain professionals (e.g. counsel, investment bankers, etc.) ("Professionals") to advise and assist Receiver with management of the Assets and Operations;
- (iv) to collect and receive all earnings, rents, issues, income, profits, and other revenues (the "Revenues") of the Assets and Operations now due and unpaid;
- (v) to (a) continue to maintain and utilize Defendants' deposit accounts, which shall be used exclusively for deposits and disbursements of the Revenues and funds of the Receivership Estate and (b) direct payors to deposit funds due and owing to Defendants in the deposit accounts maintained at Bank of America;
- (vi) to market and sell the Assets and Operations, provided that (a) any such sales shall be subject to the prior written approval of Bank of America; (b) Receiver shall provide at least ten (10) business days prior written notice of any sale, where the sale price is for greater than \$25,000, to all holders of liens and security interests against such Assets and Operations; and (c) any sale of all or substantially all of the Assets and/or Operations of any given Defendant or all Defendants shall be subject to approval by further order of the Court. The proceeds of any sale or other disposition of all or any portion of the Assets or Operations shall be held in constructive trust by Receiver for the exclusive benefit of Bank of America and promptly

remitted to Bank of America unless and until all of Defendants' obligations to Bank of America are indefeasibly paid in full in cash and the First Lien Credit Agreement is terminated; any Assets and Operations or proceedings thereof remaining after payment of all of Defendants' obligations to Bank of America in full shall be held by Receiver in constructive trust for the benefit of junior secured and unsecured creditors in the order of priority to be disbursed upon entry of further order of the Court. Notwithstanding the requirements of 28 U.S.C.A. § 2001(b), the Receiver shall be allowed to sell personal property through public or private sale(s), upon prior written approval of Bank of America, and shall not be restricted by the private sale requirements of 28 U.S.C. § 2001(b);

- (vii) to resolve to file a bankruptcy petition or to initiate litigation, and to govern the Defendants (subject to any order of the presiding court and the provisions of the U.S. Bankruptcy Code) as responsible party during any bankruptcy proceedings;
- (viii) to continue utilizing the services of Defendants' personnel (all of whom shall be subject to Receiver's oversight and authority and shall be answerable solely to Receiver to conduct the day-to-day operations of Defendants);
- (ix) to maintain detailed accounting records, supplied to the Court and Bank of America upon request, consisting of an itemized account of the Revenues and any other funds received by or on behalf of the Receiver and operating expenses and other disbursements by or on behalf of the Receiver, and reporting all changes in the Assets and Operations in the Receiver's charge, or claims against the Assets or Operations, that have occurred during the period covered by the report, and to file such reports of receipts and disbursements under oath as required by the Court;
- (x) to take possession of or, if needed, to recover (and the U.S. Postal Service and all courier or delivery services shall be directed to release to Receiver or its designees), all mail or packages addressed to Defendants at any of Defendants' locations;
- (xi) to hire and terminate Defendants' personnel, and to adjust the salaries or compensation of any such personnel, in Receiver's discretion (and with Bank of America's written approval, which approval shall not be unreasonably withheld);
- (xii) to borrow funds on behalf of Defendants as described in this Order to the extent consented to by Bank of America in its sole discretion without any commitment to do so; and

- (xiii) to take any action necessary to ensure that all licenses required under federal, state, or local law to operate the Defendants' businesses are maintained.

18. On the Effective Date, Defendants and where applicable Defendants' officers, shareholders, directors, partners, assigns, agents, servants, employees, accountants, and attorneys, and all other persons in active concert or participation with Defendants:

- (i) shall surrender possession of all of the Assets and Operations to Receiver, and all other property and assets of Defendants, of whatever nature and wherever located, belonging to Defendants, or in which Defendants has or asserts an interest, whether such property and assets are in the possession of Defendants, any affiliate of Defendants, or any of their officers, directors, partners, shareholders, representatives, professionals, employees, or agents, or any other person or entity, and all of such property and assets shall be, on the Effective Date, placed in *custodia legis* of the Court;
- (ii) shall be enjoined, stayed, and prohibited from, other than in proceedings before this Court, taking any action for or on behalf of Defendants, interfering in any way with the actions of the Receiver (or any agent or other designee of the Receiver authorized hereunder or by order of the Court) with regard to Defendants, disposing of, concealing, or hypothecating in any manner any property or assets of Defendants, and the directors, officers, and/or agents of Defendants no longer have the authority to convey, mortgage, or pledge any property and assets of Defendants or to bind Defendants to any obligations;
- (iii) shall be required to immediately provide access, means of access, and make available to the Receiver all keys, books, records, computer hardware and software (including all computer programs, data bases, disks, and other media owned or licensed by Defendants or upon which information regarding the property, assets, accounts, and businesses of Defendants are stored, recorded, or located), mail, and correspondence addressed to or which may contain information regarding the businesses, affairs, Assets and Operations of Defendants, and other property and assets of Defendants; provided, however, that to the extent Receiver seeks access to such mail and correspondence by parties other than Defendants, the obligation of such parties to produce shall be subject to any and all applicable privileges;
- (iv) shall immediately disclose to Receiver the nature, amount, and location of any and all property and assets of Defendants, including,

bank accounts, books, records, computer programs, and media owned by Defendants or connected with businesses of Defendants, and shall immediately turnover to Receiver all property and assets of Defendants forthwith;

- (v) shall cooperate with Receiver and abide by Receiver's requests for information and documentation so that Receiver may perform Receiver's function with full information and knowledge; and
- (vi) shall not interfere with or hinder in any way whatsoever the operations of Receiver.

19. Professionals may seek monthly compensation in accordance with the following procedures:

- (i) Approximately every thirty (30) days after the Effective Date, the Receiver and each Professional seeking compensation shall serve a monthly statement for payment for services rendered and reimbursement of expenses incurred during the immediately preceding month (a "Monthly Fee Statement") on: (a) the Receiver, (b) Bank of America, and (c) the Defendants (collectively, the "Notice Parties"). Monthly Fee Statements are not required to be filed with the Court nor are courtesy copies required to be sent to the presiding judge's chambers.
- (ii) Any Notice Party receiving a Monthly Fee Statement may object to the payment of the fees or the reimbursement of costs set forth therein by serving a written notice of objection (a "Notice of Objection to Fee Statement") (which shall not be filed with the Court) upon the other Notice Parties within 10 business days of receiving the Monthly Fee Statement (the "Objection Deadline"). The Notice of Objection to Fee Statement shall state the nature of the objection and identify the amount of the fees or costs to which the objection is made. Thereafter, the objecting party and the Receiver or Professional member whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made.
- (iii) In the absence of any timely objection, the Receiver is authorized to pay 80 percent of the fees and 100 percent of the expenses identified in each Monthly Fee Statement.
- (iv) If the Receiver receives a Notice of Objection to Fee Statement, it shall withhold payment of that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in sub-paragraph (iii). Any fees incurred in connection with such fee disputes shall not be paid pursuant to a Monthly Fee Statement but may only be sought and paid pursuant to (x) the

objecting party withdrawing, in writing to the Notice Parties, its Notice of Objection to Fee Statement or (y) an order of the Court.

- (v) Upon the termination of the Receivership, the Receiver and each of the Professionals shall file with the Court, and serve on the Notice Parties an application (a "Fee Application") for Court approval and allowance of the compensation and reimbursement of expenses sought by the Receiver and such Professional in its Monthly Fee Statements, including any holdbacks.
- (vi) The Court shall schedule and conduct a hearing to determine all Fee Applications pending before it. If no objections to Monthly Fee Statements have been filed or all objections have been withdrawn, the Court may approve all uncontested Fee Applications without a hearing.
- (vii) The objection to a Monthly Fee Statement shall not disqualify the Receiver or any Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses under the procedures outlined above shall bind this Court with respect to the final allowance of applications for compensation and reimbursement of the Receiver or any Professionals.

20. All written notices called for under this Order shall be: (i) delivered in person; (ii) sent by email; or (iii) mailed, postage prepaid, by overnight express carrier, addressed in each case as follows:

To Bank of America: Michael J. Hammond
Bank of America, N.A.
135 South LaSalle St.
Chicago Illinois 60603
Mail Code: IL4-135-11-43
Michael.J.Hammond@bankofamerica.com

with a copy to: Sean Gorman
Bracewell LLP
711 Louisianan, Suite 2300
Houston Texas 77002
Sean.Gorman@BracewellLaw.com

To Receiver: David M. Baker
Aurora Management Partners
112 South Tryon Street, Suite 1770
Charlotte North Carolina 28284
DBaker@AuroraMP.com

with a copy to: Brian F. Antweil
 John P. Sieger
 Katten Muchin Rosenman LLP
 1301 McKinney Street, Suite 3000
 Houston Texas 77010-3033
 Brian.Antweil@KattenLaw.com
 John.Sieger@KattenLaw.com

To Defendants: Barney R. Given
 Loeb & Loeb
 10100 Santa Monica Boulevard
 Suite 2200
 Los Angeles California 90067
 BGiven@Loeb.com

All notices shall be deemed received and effective: (i) if delivered in person, upon personal delivery; (ii) if sent by email, on the day sent if a business day and received during business hours, or if such day is not a business day or receipt is outside of business hours, then on the next business day; or (iii) if sent by overnight express carrier, on the next business day immediately following the day sent.

21. This Receivership shall terminate upon the earlier of: (i) approval of the Receiver's final report by the Court after all of the Assets and Operations are sold at a trustee's sale, foreclosure sale, UCC sale, or other sale by Receiver, or Bank of America or (ii) such other time as the Court orders.

22. Nothing in this Order shall be construed to impair or otherwise affect Bank of America's rights or remedies under applicable law or the Loan Documents.

23. This Order shall be in full force and effect as of the Effective Date and there is no just cause for delay.

Signed May 26 2016.



The Honorable David A. Ezra
United States District Judge

AGREED:

/s/ Sean Gorman
Sean Gorman
Texas State Bar No. 08218100
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2781
(713) 223-2300 Telephone
(713) 221-1212 Facsimile
Sean.Gorman@BracewellLaw.com

**Attorney-In-Charge for Bank of America,
N.A.**

/s/ Barney Given
Barney Given
10100 Santa Monica Boulevard
Suite 2200
Los Angeles, California 90067
BGiven@Loeb.com
Attorney-In-Charge for Defendants