

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

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

Case No. 22439

RESPONSE TO MOTION TO DISMISS

Applicant Siana Oil & Gas Co. (“Applicant” or “Siana”) hereby responds to Mewbourne Oil Company’s (“Mewbourne”) motion to dismiss the application (“Motion”). For all the reasons stated herein, the Motion should be denied.

The basis for the Motion is unclear, and Mewbourne cites no authority to support a dismissal. It appears that its argument is two-fold: (1) The instant case concerns orders that are different from the orders at issue in Applicant’s Case No. 22378, and (2) This application is a collateral attack on the orders at issue in this proceeding. Neither argument warrants dismissal.

I. Mewbourne’s Wrongful Actions Have Occurred Under the Orders that Are the Subjects of Both Case Nos. 22378 and 22439.

Mewbourne cites to no legal authority supporting its request for dismissal on the basis that Case No. 21378 and the orders at issue therein “have nothing to do with this Case No. 22439.” Motion at 2, ¶ B(3). To the contrary, Mewbourne’s wrongful actions have taken place under all four orders and review of Mewbourne’s actions requires consideration of all four orders.

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.” NMSA 1978, § 70-2-17(C) (emphasis added). As explained in the application, Mewbourne’s wrongful actions under

the orders addressed by Case No. 22387 have directly affected Applicant's rights under the orders addressed by Case No. 22439. *See e.g.*, Application ¶¶ 8-13, Case No. 22439. Mewbourne's actions under each of the four orders have effectively rendered the orders unjust and unreasonable. Further, Mewbourne's actions have negated Siana's opportunity to recover its just and fair share of the oil or gas without unnecessary expense. Mewbourne's actions under the orders are contrary to the legislative intent underlying Section 70-2-17, which is evident in the plain language of the statute. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 (stating that the court must give effect to legislative intent when construing a statute and that the plain language of the statute is the primary indicator of the legislature's intent).

The Commission has the authority and the obligation to ensure that the orders and, by extension, the operator's implementation of the orders, are just and reasonable. As explained in the applications, Mewbourne's actions under the orders are wrongful. Evidence establishing Mewbourne's wrongful actions under the orders will be tendered at hearing in Case Nos. 21378 and in the instant case.

Mewbourne has acted wrongfully in the past and continues to do so today. Since the application was filed, Mewbourne has made additional egregious demands on Applicant by withholding drilling cost overages and revenues owed with interest to Applicant while, at the same time, making cash calls on three more wells under Order No. R-21805 (subject of the instant case) and under Order Nos. R-21292 and R-21293 (subjects of Case No. 22378). *See* Emergency Motion to Suspend Time for Paying Estimated Costs, Case Nos. 22378 & 22439

(Mar. 11, 2022)¹ (seeking an order suspending the time for paying estimated costs for an additional three wells to 60 days after final resolution of the issues raised in these cases and Mewbourne's full compliance with any orders issuing therefrom). Thus, Mewbourne's latest wrongful act actually links the orders that Mewbourne now asserts are unrelated. *See id.* at 2, ¶ 3(3); *id.* at ¶ 4; *see also* Letter, Brad Dunn, Mewbourne to Siana (Feb. 16, 2022) (demanding an additional payment of estimated costs in the amount of approximately \$2,329,980 by April 30, 2022, under Order Nos. R-21292, R-21293, and R-21805), attached to Emergency Motion. For all of these reasons, Mewbourne's argument—that Case No. 22439 should be dismissed because it is unrelated to Case No. 22378—cannot be sustained.

II. New Mexico Law Makes Clear that Siana's Request for Amendments to the Orders Is Not a Collateral Attack.

Again without citation to authority, Mewbourne argues that Applicant's request is a collateral attack on the orders. Motion at 2, ¶ 5. Mewbourne is wrong. "A collateral attack is an attempt to avoid, defeat, or evade [a judgment], or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking the judgment." *Lewis v. City of Santa Fe*, 2005-NMCA-032, ¶ 10, 137 N.M. 152 (internal quotation marks and bracket omitted). Applicant does not seek to avoid, defeat, or evade the orders. Nor does it seek to deny their force and effect.

Notably, Applicant does not seek to "undo" the compulsory poolings effected by the orders. Rather, Applicant exercised its right, under 19.15.4.8 NMAC, to request a hearing for the singular purpose of seeking a simple amendment to the orders—extending the time for paying estimated costs. *See Harvey E. Yates Co. v. Cimarex Energy Co.*, No. 12-857 JH/SMV, 2014

¹ Mewbourne has not filed a substantive response to the Emergency Motion to Suspend Time for Paying Estimated Costs in either Case No. 22378 or Case No. 22439. A hearing on the Emergency Motion has not yet been set.

WL 11512599, at *11 (D.N.M. Mar. 5, 2014) (“If a claim does not challenge the Commission's findings or conclusions, it is not barred as a collateral attack on a Commission order.”); Application at 4 (Dec. 7, 2021). Mewbourne admits that “Siana does not complain about the orders entered.” Motion at 2, ¶ B(1). Thus, the application does not constitute a collateral attack.

CONCLUSION

For all the reasons stated above, the Motion should be denied.

Respectfully submitted,

By: /s/ Sharon T. Shaheen

Sharon T. Shaheen

Ricardo S. Gonzales

MONTGOMERY & ANDREWS, P.A.

P.O. Box 2307

Santa Fe, NM 87504-2307

(505) 986-2678

sshaheen@montand.com

rgonzales@montand.com

Attorneys for Siana Oil & Gas Co.

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2022, a true and correct copy of the foregoing pleading was served on the following:

James Bruce
PO Box 1056
Santa Fe, NM 87504
(505) 982-2043
jamesbruc@aol.com

Attorney for Mewbourne Oil Co.

/s/ Sharon T. Shaheen

Sharon T. Shaheen