

**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

MEWBOURNE OIL COMPANY'S PRE-HEARING STATEMENT

Mewbourne Oil Company ("Mewbourne") submits its Pre-Hearing Statement pursuant to the rules of the Oil Conservation Division ("Division") and the Pre-Hearing Order.

I. APPEARANCES

APPLICANT

Siana Oil & Gas Company

ATTORNEYS

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OPPONENT

Mewbourne Oil Company

ATTORNEYS

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II. STATEMENT OF THE CASE

On April 28, 2020, the Division issued Order No. R-21292 in Case No. 21156. The order granted Mewbourne's request to pool uncommitted interests in the Bone Spring formation underlying a 240-acre, more or less, standard horizontal spacing unit comprised of the W/2 E/2 of Section 26 and the W/2 SE/4 of Section 23, Township 21 South, Range 34 East in Lea County, New Mexico. The order dedicated the unit to the **Inland 26/23 B2OJ State Com #1H well** and designated Mewbourne as operator of the well and the unit.

Also on April 28, 2020, the Division issued Order No. R-21293 in Case No. 21157. The order granted Mewbourne's request to pool uncommitted interests in the Bone Spring formation underlying a 240-acre, more or less, standard horizontal spacing unit comprised of the E/2 E/2 of Section 26 and the E/2 SE/4 of Section 23, Township 21 South, Range 34 East in Lea County, New Mexico. The order dedicated the unit to the **Inland 26/23 B2PI State Com #1H well** and designated Mewbourne as operator of the well and the unit.

Siana Oil & Gas Co. ("Siana") failed to enter an appearance in either case. After Order Nos. R-21292 and R-21293 ("Orders") were issued, Siana elected to participate in the wells and paid its share of the estimated well costs. Thus, Siana is deemed a "Pooled Working Interest" under the Orders. Although Siana paid its share of the estimated well costs, it has consistently refused to pay Joint Interest Billings ("JIBs") submitted by Mewbourne. Siana also elected to participate in infill wells (Inland 26/23 B3OJ State Com #2H and Inland 26/23 B3PI State Com #2H) that Mewbourne proposed under the Orders but has refused to pay its share of the estimated well costs. The Division denied Siana's Emergency Motion to Suspend Time for Paying Estimated Costs, so Siana's payments are now overdue and it is deemed a "Non-Consenting Pooled Working Interest."

In this case, Siana asks the Division to require Mewbourne to provide an accounting and determine that certain of Mewbourne's accounting practices under the Orders are improper. Specifically, Siana claims that: (1) Mewbourne's estimated well costs and AFEs for the **Inland 26/23 B2OJ State Com #1H** and **Inland 26/23 B2PI State Com #1H** wells ("Wells") were inflated because they were based on pre-covid pricing; (2) Mewbourne failed to provide an itemized schedule of operation and maintenance costs for the Wells; (3) Mewbourne improperly deducted lease operating expenses from Siana's pre-payment overage; (4) Mewbourne improperly netted lease operating expenses for other wells from Siana's revenues; (5) Mewbourne failed to timely file completion reports for the Wells; (6) Mewbourne refused to refund the difference between the estimated and actual well costs; (7) Mewbourne imposed supervision charges that exceed those permitted by the Orders; (8) Mewbourne improperly held Siana's revenues in suspense; and (9) Mewbourne improperly refused to allow Siana to take its share of production in-kind. Siana also claims that it is entitled to interest on any prepayment overage under NMSA 1978, § 56-8-3.

None of Siana's claims have merit. As explained below, many of Siana's claims are not properly before the Division and are inconsistent with New Mexico law. And as discussed in the attached self-affirmed statements of Brad Dunn, Travis Cude, and Don Russell, Mewbourne has complied with the requirements of the Orders in all respects. In fact, as explained by Mr. Russell, Mewbourne provided Siana with far more detailed cost information than was required by the Orders. Siana's application should be denied.

III. LEGAL ARGUMENT

A. Neither the pooling orders nor any other provision of New Mexico law allows Siana to take its share of production in-kind.

Siana's claim that it has a right to take its share of production in-kind is inconsistent with the pooling orders and with New Mexico law. *See* Application at ¶ 12. Order Nos. R-21292 and R-21293 designate Mewbourne as operator of the units and the Wells. *See* Orders at ¶¶ 15-17. The Division's regulations define an "operator" as "a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation." 19.15.2.7(O)(5) NMAC. As the designated operator of the Wells and the units, Mewbourne alone has the right to control production. The pooling of interests *under Mewbourne's operation* affords owners the right to receive their just and equitable share of production. *See* Orders at ¶ 14 ("This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool."). The Orders do not allow pooled interests to control production by electing to take their share in-kind, and allowing them to do so would thwart Mewbourne's authority as the designated operator of the Wells and units.

Allowing Siana to take its share of production in-kind would undermine Mewbourne's authority to hold revenues in suspense under the Oil and Gas Proceeds Payments Act. The act affords operators the right to suspend payments when an interest owner's entitlement to payment is in dispute. *See* NMSA 1978, § 70-10-4(B). In this case, Mewbourne is holding Siana's revenues in suspense due to a title dispute pending in the 55th Judicial District Court of Harris County, Texas. The Harris County lawsuit challenging Siana's title is styled, Cause No. 2021-66782; *James A. Gibbs, et al. v. Siana Oil & Gas Company, LLC*. By attempting to take its share of production in-kind, Siana impermissibly seeks to avoid the terms of the New Mexico Oil and Gas Proceeds

Payments Act and thwart Mewbourne's ability to protect itself from claims by multiple owners due to the title dispute. Siana should not be permitted to improperly take its production in-kind.

In addition, allowing pooled interest owners to take their share of production in-kind is inconsistent with the Oil and Gas Act and the Division's regulations that impose requirements on operators. For example, Section 70-2-14 of the Act and 19.15.8.9 NMAC require an operator to provide financial assurance for active wells. As operator, Mewbourne – not Siana – has provided financial assurance for the Wells. The Division's regulations regarding releases and remediation also impose requirements on Mewbourne as operator. *See* 19.15.29.6 NMAC. Siana cannot be allowed to take its share of production in-kind when the Act and the regulations establish that the operator is responsible for the wells.

New Mexico law further holds Mewbourne, as the designated operator of the Wells, responsible for the payment of royalties and taxes. For example, Section 7-29-7 of the Oil and Gas Severance Tax Act states:

Each operator shall, in the form and manner required by the division, make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due, or to be remitted, by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

The Oil and Gas Severance Tax Act also imposes reporting obligations on purchasers. *See* NMSA 1978, § 7-29-7. The statute does not contemplate a scenario where a pooled interest owner that is neither an operator nor a purchaser takes its share of production in-kind. In the absence of contractual arrangements regarding the reporting of revenues and the payment of taxes, an interest owner cannot be allowed to take its share of production in-kind.

In essence, Siana's claim that it has a right to take its share of production in-kind would undermine Mewbourne's authority to control production as operator and is consequently inconsistent with the pooling orders, the Division's regulations, the Oil and Gas Act, the Oil and Gas Proceeds Payments Act, and the Oil and Gas Severance Tax Act. Siana has no right to take its share of production in-kind and its claim should be rejected.

B. Siana's claims under the Oil and Gas Proceeds Payments Act are not properly before the Division.

Siana's allegations regarding Mewbourne's decision to hold Siana's revenues in suspense while issuing Joint Interest Billings ("JIBs") are not properly before the Division. *See* Application at ¶ 19. Again, Mewbourne is holding revenues in suspense due to the pending challenge to Siana's title in the Harris County, Texas lawsuit. Were Mewbourne to release revenues in suspense, the Harris County, Texas lawsuit creates a risk of improper payment to multiple parties. Regardless, these issues are not properly before the Division.

The Oil and Gas Act delegates to the Division authority to prevent waste and protect correlative rights. NMSA 1978, §§ 70-2-6; 70-2-11. Although this grant of authority is broad, it does not include the ability to adjudicate private civil claims or award damages. Because the Division is a creature of statute, its jurisdiction is limited by the Act. *See, e.g., Marbob v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24. The Division's authority to seek civil penalties is limited to compliance actions, which do not involve the adjudication of civil disputes between private parties. NMSA 1978, § 70-2-31.

In addition, the Division lacks jurisdiction over claims brought under the Oil and Gas Proceeds Payment Act. The Oil and Gas Proceeds Payment Act establishes specific requirements regarding payments to interest owners and provides remedies when those requirements are not met, but it is not enforced by the Division. *See* NMSA 1978, 70-10-6 (referring to civil actions

brought under the act). Siana's request that the Division adjudicate matters arising under the Oil and Gas Proceeds Payment Act is inconsistent with New Mexico law and would unnecessarily embroil the Division in private disputes.

C. Siana's claim for interest on its pre-payment overage is not properly before the Division.

The Division also lacks authority to adjudicate Siana's claim that Mewbourne has improperly refused to pay interest on any prepayment overage. *See* Emergency Motion to Suspend Time for Paying Estimated Costs at ¶ 3. As discussed above, the Oil and Gas Act delegates to the Division authority to prevent waste and protect correlative rights. NMSA 1978, §§ 70-2-6; 70-2-11. This delegation does not authorize the Division to adjudicate private civil claims and award damages, including interest. Because the Division is a creature of statute, its jurisdiction is limited by the Act. *See, e.g., Marbob v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24. Siana's claim for interest should be rejected.

D. New Mexico law authorizes Mewbourne to deduct lease operating expenses from Siana's pre-payment overage.

Siana's claim that Mewbourne improperly deducted lease operating expenses from its pre-payment overage is inconsistent with the pooling orders and New Mexico law. *See* Application at ¶ 15. The Oil and Gas Act provides that pooling orders should be issued "upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both." NMSA 1978, § 70-2-17(C). Lease operating expenses are necessary, and the Orders authorize Mewbourne to recover its well costs and operating expenses. For example, Paragraph 28 specifically authorizes Mewbourne to withhold from an owner's share of production the proportionate share of supervision charges and operating charges. *See* Orders at ¶

28. The Orders state that “Operating Charges shall not include the Reasonable Well Costs or Supervision Charges,” but they make no such statement regarding lease operating expenses. Orders at ¶ 27. And there would be no basis to exempt lease operating expenses from recovery because those expenses are rightfully incurred by the operator to produce the well.

In addition, Siana has consistently refused to pay Joint Interest Billings (“JIBs”) on *any* Mewbourne well, including the wells at issue here. As a result, it was within Mewbourne’s rights to net lease operating expenses from Siana’s pre-payment overage. *See, e.g., City of Carlsbad v. Grace*, 1998-NMCA-144, 126 N.M. 95 (recognizing right of equitable set-off).

IV. PROPOSED EVIDENCE

Witness	Occupation	Estimated Time	Exhibits
Brad Dunn	Landman	40 minutes	Approx. 13
Travis Cude	Engineer	20 minutes	Approx. 3
Don Russell	Controller	45 minutes	Approx. 4

V. PROCEDURAL MATTERS

Mewbourne is not aware of procedural issues to be addressed at this time. Mewbourne and Siana will submit lists of disputed and undisputed facts on June 30, 2022.

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 24, 2022, I caused a true and correct copy of the foregoing to be emailed to:

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Oil Conservation Division
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QUESTIONS
 Action 120403

QUESTIONS

Operator: MEWBOURNE OIL CO P.O. Box 5270 Hobbs, NM 88241	OGRID: 14744
	Action Number: 120403
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

Testimony	
<i>Please assist us by provide the following information about your testimony.</i>	
Number of witnesses	<i>Not answered.</i>
Testimony time (in minutes)	<i>Not answered.</i>