

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

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

**Case No. 23365**

**Case No. 23366**

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

**Case No. 23475**

**Case No. 23477**

**EARTHSTONE OPERATING, LLC'S PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These matters concern competing compulsory pooling applications for the acreage in the E/2 E/2 and W/2 E/2 of Sections 7 and 18, Township 21 South, Range 35 East, NMPM, Lea County, New Mexico. Earthstone Operating, LLC, OGRID No. 331165 ("Earthstone"), unlike competing applicant Mewbourne Oil Company ("Mewbourne"), owns working interests in both the E/2 E/2 and W/2 E/2 of Sections 7 and 18. Earthstone has applied for standard 320.00-acre, more or less, horizontal spacing and proration units ("HSUs").

Earthstone requests that that the Oil Conservation Division (the "Division") grant its applications for standard 320.00-acre, more or less, HSUs in the acreage and deny Mewbourne's, because Earthstone's development plan is superior under the factors that the Division uses to determine which competing applications to grant. *See, e.g.*, Order No. R-21834. In deciding competing applications like Earthstone's and Mewbourne's, the Division's "first task" is to determine which plan is superior because it "will most efficiently develop the subject acreage, prevent waste and protect correlative rights." *Id.* ¶ 5. The evidence at the hearing established that Earthstone's plan will most effectively develop the subject acreage, prevent waste and protect correlative rights, as the

evidence established that Earthstone only considered the risk of hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the east in the 2<sup>nd</sup> Bone Spring formation, which resulted in Earthstone's wine-rack wellbore formation in the 2<sup>nd</sup> Bone Spring formation, while Mewbourne presented no evidence it even considered the depletion risk (notwithstanding that even Mewbourne's amended Exhibit 11 submitted in rebuttal actually supports the depletion risk that Earthstone's development plan identified and accounted for). Moreover, the evidence established that Earthstone's development plan will most efficiently develop the acreage, prevent waste and protect correlative rights because its plan proposes drilling four wells, rather than two, and targeting the 1<sup>st</sup> Bone Spring formation at the outset, while Mewbourne's plan proposes drilling only two wells in the 2<sup>nd</sup> Bone Spring formation, even though Mewbourne suggested throughout the hearing – without evidence – that it plans to drill wells to target the 1<sup>st</sup> Bone Spring as well – albeit at some undetermined future time. And even though Earthstone's development plan includes these additional wellbores and accounts for the risk of depletion, its development plan, AFEs, and operating costs are all economical (cheaper), and thus more efficient, than Mewbourne's. Thus, the law and the Division's precedent establish that the Division should grant Earthstone's applications and designate Earthstone operator of the HSUs at issue. Earthstone requests that the Division therefore grant its applications.

In support of its request, Earthstone submits the following proposed findings of fact and conclusions of law taken from the Division's September 21, 2023 hearing on the applications.

#### **FINDINGS OF FACT**

1. The cases involve competing compulsory pooling applications located with the same section with overlapping HSUs filed by Earthstone and Mewbourne.
2. In Case No. 23475, *Application of Earthstone Operating, LLC, for a Horizontal Spacing Unit and Compulsory Pooling, Lea County, New Mexico*, Earthstone proposes to drill the following two wells in the HSU for that application:

- 1) **Outland 18-7 State Com 114H Well**, to be horizontally drilled from a surface location in the SW/4 SE/4 (Unit O) of Section 18 to a bottom hole location in the NE/4 NE/4 (Unit A) of Section 7.
- 2) **Outland 18-7 State Com 214H Well**, to be horizontally drilled from a surface location in the SW/4 SE/4 (Unit O) of Section 18 to a bottom hole location in the NE/4 NE/4 (Unit A) of Section 7.
3. In Case No. 23477, *Application of Earthstone Operating, LLC, for a Horizontal Spacing Unit and Compulsory Pooling, Lea County, New Mexico*, Earthstone proposes to drill the following two wells in the HSU for that application:
  - 1) **Outland 18-7 State Com 113H Well**, to be horizontally drilled from a surface location in the SW/4 SE/4 (Unit O) of Section 18 to a bottom hole location in the NW/4 NE/4 (Unit B) of Section 7.
  - 2) **Outland 18-7 State Com 223H Well**, to be horizontally drilled from a surface location in the SW/4 SE/4 (Unit O) of Section 18 to a bottom hole location in the NW/4 NE/4 (Unit B) of Section 7.
4. In Case No. 23365, *Application of Mewbourne Oil Company for Compulsory Pooling, Lea County, New Mexico*, Mewbourne proposes to drill the following well: **North Wilson Deep Unit Well No. 8H**, from a first take point in the SW/4 SE/4 of Section 18 to a last take point in the NW/4 NE/4 of Section 7.
5. In Case No. 23366, *Application of Mewbourne Oil Company for Compulsory Pooling, Lea County, New Mexico*, Mewbourne proposes to drill the following well: **North Wilson Deep Unit Well No. 9H**, from a first take point in the SE/4 SE/4 of Section 18 to a last take point in the NE/4 NE/4 of Section 7.

6. Mewbourne has no interest in the E/2 of Section 18. *See* Earthstone, Pre-Hearing Amended Pre-Hearing Statement at 5 (filed Sept. 15, 2023); Earthstone Ex. A-2, at 3, 7.

7. Earthstone owns a 49.916667% interest in the E/2 of Section 18. *See* Earthstone Ex. A-2, at 3, 7.

8. Earthstone owns a 24.421073% leasehold working interest in the N/4 of section 7. However, by virtue of being a working interest party to the North Wilson Deep Unit (“NWDU”) and its interests being included in the NWDU, Earthstone’s leasehold interests have been significantly diluted. *See* Earthstone Ex. A ¶ 12; Ex. A-2, at 2\*\*, 6\*\*.

9. A 200% risk charge is appropriate in these cases. *See* Earthstone, Pre-Hearing Amended Pre-Hearing Statement at 5 (filed Sept. 15, 2023); Earthstone Ex. A ¶ 21; Mewbourne Ex. 2 ¶ 2(k).

10. Earthstone properly noticed all of the uncommitted interest owners being pooled. *See* Earthstone Ex. A ¶ 16; Ex. A-4.

11. Mewbourne did not provide the required notice of Mewbourne’s application and the Division’s hearings to uncommitted interest owners Timothy R. MacDonald or Maverick Oil and Gas Corporation. Transcript of the Sept. 21, 2023 Hearing (“Tr.”) 123:22-125:22; *id.* 127:13-19; *id.* 129:1-10.

12. Earthstone will operate the property prudently. Earthstone is a prudent operator, and has a long history as an oil and gas operator. It entered the New Mexico Delaware basin in 2022 with its acquisition of Chisholm Energy Operating, LLC (“Chisholm”), and its later acquisition of Titus Oil & Gas Production, LLC (“Titus”),<sup>1</sup> becoming the operator of 129 existing wells in the Delaware Basin in New Mexico by the end of 2022. In addition, as a

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<sup>1</sup> Titus Oil & Gas Production, LLC is the proper entity name of the company that goes by Titus NM Delaware.

company Earthstone has since drilled 74 wells in New Mexico on the acquired Chisholm and Titus assets. Earthstone thus operates 203 wells on the acquired Chisholm and Titus assets in New Mexico's Delaware Basin. Adjacent to New Mexico, as a company Earthstone has drilled 136 wells since entering the Midland Basin in 2017. This does not include the over 1000 other wells that Earthstone operates in New Mexico and the Midland Basin. *See* Earthstone Pre-Hearing Exhibits Packet, Am. Ex. C ¶ 5(a); Ex. C-1.

13. Earthstone can drill the proposed Outland wells economically and efficiently. Earthstone recently successfully drilled three Outland State wells in a section adjacent to the acreage in the proposed HSU here. The landing zones and inter-well lateral spacing of the wells have been designed to both maximize the recovery of oil and gas from the proposed HSU and to simultaneously minimize any negative impact on horizontal wells in adjacent HSUs. Earthstone Ex. C ¶ 5(b); *see* Ex. C-2.

14. Earthstone can timely locate well sites and timely operate on the surface. The pad location that Earthstone proposes will minimize surface disturbance, because Earthstone will be using existing infrastructure, including roads and pipelines, already in place and will be co-developing with its Dovetail 18-7 State Com development, which will directly offset the proposed Outland 18-7 State Com wells. Earthstone Ex. C ¶ 5(c); *See* Earthstone Ex. A-6; Ex. A ¶¶ 23-25.

15. Mewbourne's development plan will result in significant surface disturbance. Its AFE shows that Mewbourne is missing costs for closed loop drilling, suggesting that Mewbourne will be constructing a pit, which will cause surface disturbance and potential environmental damage. *See* Earthstone Ex. C ¶ 5(d); Ex. C-3; Tr. 254:8-256:7 (explaining Ex. C-3).

16. Earthstone's AFE is more economical than Mewbourne's, which benefits the other owners, including those being pooled. Earthstone's overall proposal is \$461,540 or 4.2% cheaper than that of Mewbourne's AFE proposal. *See* Earthstone Exs. C-3 & C-4. The largest differential is in drilling costs, where Earthstone's drilling time, calculated at nine days less than Mewbourne's, contributes largely to the drilling cost savings of \$388,300. *See* Ex. C-3. Even though Earthstone will pump 28% more sand compared with Mewbourne, which allows for greater fracture complexity, the completions and facilities intangible costs are almost the same. *See* Earthstone Ex. C-4; Tr. 256:8-257:21 (explaining Ex. C-4). Evaluating tangible costs, Earthstone is \$155,700 (approximately 10%) below Mewbourne's proposed costs. *See id.*

17. Earthstone's development is also more economical in that Earthstone requests overhead and administrative rates of \$7,500/month for drilling each well and \$750/month for producing each well. *See* Exhibit A ¶ 20; Exhibit A-3 at 3. Mewbourne, on the other hand, requests overhead and administrative rates of \$8,000/month for drilling each well and \$800/month for producing each well. *See* Mewbourne Exhibit 2 ¶ 2(j).

18. Earthstone's development plan is not only more economical, it's also more efficient, because Earthstone's production includes the running of an Electrical Submersible Pump ("ESP"), which will allow for greater fluid production rates than Mewbourne's proposed artificial lift. Earthstone Ex. C ¶ 5(d); *see* Ex. C-4.

19. Earthstone's development plan is more economical and more efficient because Earthstone's proposed staggered pattern in the 2nd Bone Spring helps mitigate the risk that is present in Mewbourne's development plan of hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the east. Earthstone Ex. B ¶ 9; Tr. 226:12-227:21 (explanation of Ex. B-9); Tr. 222:15-223:23; *see* Earthstone Exs. B-6, B-7, B-8, B-10; Tr.

227:22-228:9 (explanation of Ex. 10); Mewbourne Am. Ex. 11-A; *see* Tr. 285:15-20; *id.* 287:21-288:1 (admitting that Mewbourne's Ex. 11-A shows that children are less productive than parent wells).

20. Child wells – wells that come within a similar formation target bench to an existing well and typically with production to begin six to nine months after production of the existing “parent” well – generally are less productive than the parent well. Tr. 223:6-24; *id.* 225:11-19; *see id.* 207:6-14. Even Mewbourne's own reservoir engineer agreed that parent wells are more productive than child wells. Tr. 285:15-20; *id.* 287:21-288:1; *id.* 291:22-292:17.

21. Earthstone is aware of and has considered a risk that the upper 2<sup>nd</sup> Bone Spring formation is not as productive as the lower 2<sup>nd</sup> Bone Spring, all things being equal; however, all things are not equal given the existence of the NWDU 3H well. That is why Earthstone's development plan targets the upper 2<sup>nd</sup> Bone Spring, because since both Earthstone's and Mewbourne's proposed 2<sup>nd</sup> Bone Spring wells will be a child well, Earthstone's targeted upper 2<sup>nd</sup> Bone Spring is more productive than Mewbourne's planned child well in the lower 2<sup>nd</sup> Bone Spring where the NWDU 3H is already producing from the same reservoir. Tr. 233:3-234:17; *see* Earthstone Ex. B-6.

22. Earthstone's development plan is economically and efficiently superior because Earthstone's use of increased proppant intensity in its completion design provides greater oil estimated ultimate recovery (“EUR”). Earthstone Ex. B ¶ 9; Tr. 246:14-247:7; Earthstone Ex. B-8; *see* Earthstone Exs. B-7, B-9, B-10; Tr. 222:21-225:10; Mewbourne Am. Ex. 11-A. Tr. 285:15-20; *id.* 287:21-288:1.

23. Earthstone's development plan is more economical and superior because it plans to drill the four wells immediately, and not possibly at some unidentified time in the future, even

taking into consideration the likelihood that there may be high levels of sour gas, or hydrogen sulfide, present. *See* Tr. 258:13-259:18.

24. The negotiations between the parties demonstrate that Earthstone has negotiated in good faith and above board, and comparison of the two party's conduct favors Earthstone. The prior negotiations of the parties include the negotiations between Earthstone's predecessor, Chisholm, and Mewbourne, and evidence that Mewbourne has not proceeded in good faith in relation to the development of the acreage in these competing applications. Chisholm entered appearances in Mewbourne's Case No. 21418 where Chisholm, among several other working interest owners, had objected to Mewbourne's application in Case No. 21418 to expand the NWDU. Chisholm objected for the same reason that Earthstone filed this application: Earthstone has almost a 50% working interest in the WI in the E/2 of Section 18, and Mewbourne has none. *See* Earthstone Ex. A-2, at 3, 7. Chisholm wanted to, like Earthstone wants to, make beneficial economic use of that interest, which will not be done if the Division grants to Mewbourne its compulsory pooling applications over Earthstone's here. Mewbourne previously agreed not to expand the North Wilson Deep Unit into E/2 of Section 18 because of that objection by Chisholm. *See* Earthstone Ex. A ¶ 8.

25. Mewbourne also communicated solely with the State Land Office (the "SLO"), without including Earthstone in those communications, when it sought the SLO's approval to drill in the NWDU, and represented to the NWDU that Earthstone had no interest in the NWDU, which is false. *See* Mewbourne Ex. 3; Tr. 117:3-119:9; *id.* 120:23-121:1.

26. The SLO has told the parties that it will reserve and withhold judgment on granting to Earthstone or Mewbourne drilling approval to operate the proposed wells until the Division makes its decision on these competing applications. Tr. 200:9-13.



### **PROPOSED CONCLUSIONS OF LAW**

1. The Division has jurisdiction over these cases and the subject matter.
2. Due public notice has been given as required by law, including because Earthstone only timely noticed all working interest owners. *See* Proposed Finding of Fact (“FOF”) ¶¶ 10, 11.
3. Both Earthstone and Mewbourne have the right to drill within the proposed spacing units.
4. The Oil and Gas Act authorizes the Division to compulsory pool the lands or interests in a spacing unit. When the owners of the interests in a spacing unit have not agreed to voluntarily pool their interests, and when one owner, who has the right to drill, applies to the Division, the Division can pool the lands or interests in the unit “to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste.” NMSA 1978, §70-2-17 (C).
5. The Division and the Oil Conservation Commission (“Commission”) have developed seven factors to consider in evaluating competing compulsory pooling applications, which they have applied to determine which of the competing applications proposes a superior development plan. *See, e.g., in re Longfellow Energy, LP*, Order No. R-21834 ¶¶ 12-14 (Sep. 10, 2021). Those factors are:
  - a. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.
  - b. A comparison of the risk associated with the parties’ respective proposal for the exploration and development of the property.
  - c. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a “good faith” effort.
  - d. A comparison of the ability of each party to prudently operate the property and,

thereby, prevent waste.

- e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
- f. An evaluation of the mineral interest ownership held by each party at the time the application was heard; and
- g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the “surface factor”).

*Id.* ¶ 14.

6. The Division’s first task in deciding which of these competing applications provides the superior development plan is to determine which plan “will most efficiently develop the subject acreage, prevent waste and protect correlative rights,” and, if there are no significant differences between the plans, only then will the Division look at other facts, such as working interest control. *Id.* ¶ 15.

7. The plans for development are similar, both proposing horizontal wells of the same length and same orientation; however, Earthstone’s less expensive development plan proposes four wells targeting both the 1<sup>st</sup> and 2<sup>nd</sup> Bone Spring Formations, with a wine-rack orientation in the 2<sup>nd</sup> Bone Spring Well to avoid depletion risk with the NWDU 3H well, and, therefore, will most efficiently develop the subject acreage, prevent waste and protect correlative rights. *See* FOF ¶¶ 2-5, 13, 16-23.

8. The plans for development are similar in that the SLO has withheld judgment on allowing the parties to drill into the NWDU until the Division acts on the applications. While Mewbourne is the operator of the NWDU, the Division’s and Commission’s precedent does not include that as a factor to consider in competing applications. *See* Proposed Conclusion of Law (“COL”) ¶¶ 4-6. Aside from not being a factor in the Division’s and Commission’s precedential case law, to grant Mewbourne’s applications based on that it operates the NWDU is contrary to

the Division's duty to determine which development plan is superior based on the seven factors identified in its previous orders, including Order No. R-21834, and based on which plan "will most efficiently develop the subject acreage, prevent waste and protect correlative rights." COL ¶¶ 5-6.

9. In addition to consideration of Mewbourne's operator-status of the NWDU being against the Division's and Commission's precedent about deciding on competing applications, to grant Mewbourne's applications here because it operates the NWDU would provide a windfall to Mewbourne for all lands adjacent to the NWDU (or any other similar unit), and provide a dangerous precedent for future applications and prevent the Division and Commission from fully fulfilling its statutory duty to award a compulsory pooling order to "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste." NMSA 1978, §70-2-17 (C).

10. Thus, given that it's undisputed that Mewbourne and Earthstone both have the right to drill the proposed wells in these applications, Mewbourne's operatorship of the NWDU cannot and does not play into the Division's required calculus which of these competing *development plans* is superior, and, thus, which applications should be granted. See COL ¶¶ 8-9.

11. In relation to the geologic evidence presented by both parties, the geologic evidence supports that Earthstone's development plan is superior because it will most efficiently develop the subject acreage.

- a. Both parties propose to target the 2<sup>nd</sup> Bone Spring, and both with two wells. Both parties testified that, all things being equal, they would target the lower 2<sup>nd</sup> Bone Spring with both wells. See FOF ¶ 21.
- b. Earthstone, however, testified that it took into consideration the likely better

reservoir in the 2<sup>nd</sup> Bone Spring, but, because of the existing NWDU 3H well and risk that these child wells if drilled at the same depth as the existing NWDU wells in the lower 2<sup>nd</sup> Bone Spring will cause hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the east, Earthstone developed a wine rack formation to target the upper 2<sup>nd</sup> Bone Spring with the Outland 214H well because it will result in better efficiency. *See* FOF ¶¶ 19-21.

- c. Earthstone's development plan is also more efficient given the risk of hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the east, because Earthstone proposes use of increased proppant intensity in its completion design to provide greater EUR given the adjacent wellbores. *See* FOF ¶ 22.
- d. Mewbourne did not testify that it took any consideration of the risk of hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the east in its development plan.
- e. In addition to mitigation of the risk of hydrocarbon and pressure depletion in Earthstone's development plan, Earthstone's development plan proposes to drill four wells immediately, including drilling wells in the 1<sup>st</sup> Bone Spring formation with Outland 18-7 State Com 113H and 114H wells, whereas Mewbourne does not propose targeting the 1<sup>st</sup> Bone Spring formation. *See* FOF ¶¶ 2-5, 23.
- f. Finally, Earthstone's development plan is more efficient because Earthstone's production includes the running of an ESP, which will allow for greater fluid production rates than Mewbourne's proposed artificial lift. FOF ¶18.

12. A comparison of the risk associated with the respective proposal for the exploration and development of the property also favors Earthstone, because the evidence supports that Earthstone's development plan took into consideration the risk of hydrocarbon and pressure depletion for the existing wellbores in the adjacent NWDU to the East, whereas Mewbourne did not have evidence that it took that depletion into consideration, and because Earthstone recently successfully drilled three Outland State wells in a section adjacent to the acreage in the proposed HSU here. *See* COL ¶¶ 11(b)-11(d); FOF ¶ 13.

13. To the extent that there exists risk in the drilling of the wells because the SLO must approve the wells, as they penetrate the NWDU, the SLO has told the parties that it will reserve judgment on granting approval until the Division decides these cases, which means that it will respect the Division's decision herein. *See* FOF ¶ 26.

14. The above paragraphs – COL ¶¶ 7-13 – are dispositive of the Division's inquiry, as they establish that there are “significant differences between the” development plans, and that Earthstone's development proposal “will most efficiently develop the subject acreage, prevent waste and protect correlative rights.” COL ¶ 6 (quoting *in re Longfellow Energy*, Order No. R-21834 ¶ 15).

15. Should the Division have any need or desire to consider the other factors for virtually identical applications, which it should not because Earthstone's development plan here is superior under the dispositive factors, the remaining factors *all also still weigh in support* of Earthstone.

16. The negotiations between the parties favor Earthstone. Earthstone succeeded to Chisholm's 49.916667% interest in the E/2 of Section 18 and 24.421073% leasehold working interest in the N/4 of Section 7. *See* FOF ¶¶ 7-8. Mewbourne previously applied to the Division

to operate the same acreage at issue in these applications, but agreed with Chisholm not to do so because of Chisholm's desire to operate Section 18 given its working interest. Nevertheless, Mewbourne went to the SLO by itself, without notifying or consulting Earthstone about doing so, to request to drill these wells, and misrepresented to the SLO that Earthstone isn't a party to the NWDU agreement. FOF ¶¶ 24-25.

17. The factor that analyzes and compares the ability of each party to prudently operate the property and, thereby, prevent waste also favors Earthstone. In New Mexico alone, Earthstone became the operator of 129 existing wells in 2022 when it entered New Mexico; it has since drilled 74 wells in New Mexico, operating prudently hundreds of wells in the Delaware Basin and thousands in New Mexico and the Midland Basin. *See* FOF ¶ 12. Indeed, Earthstone recently successfully drilled three Outland State wells in a section adjacent to the acreage in the proposed HSU here. FOF ¶ 13.

18. The factor that analyzes and compares the parties' AFEs strongly favors Earthstone, as the operating fees are less, the drilling fees – for both tangibles and intangibles – and the completion fees – for both tangibles and intangibles – are less than those of Mewbourne. *See* FOF ¶¶ 16-18. Earthstone requests overhead and administrative costs less than Mewbourne, and less than average, and Earthstone's AFEs are approximately 5% less expensive than Mewbourne's and contemplate less drilling days than Mewbourne, even considering the four-well proposal of Earthstone. *Id.*

19. An evaluation of the mineral interests owned by each party also favors Earthstone. Both parties' applications target both Sections 7 and 18 of Township 21 South, Range 35 East. Both parties own working interests in Section 7, but Earthstone only owns a working interest in Section 18; Mewbourne owns no working interest in Section 18. *See* FOF ¶¶

6-7. Thus, the Division should name Earthstone as the operator of the proposed wells in its acreage to protect properly “correlative rights.” COL ¶ 6 (quoting *in re Longfellow Energy*, Order No. R-21834 ¶ 15).

20. Finally, in relation to a comparison of the ability of the applicants to timely locate well sites and to operate on the surface, the surface factor also favors Earthstone. Earthstone’s development plan’s pad location minimizes surface disturbance, because Earthstone will be using existing infrastructure, including roads and pipelines already in place and will be co-developing with its Dovetail 18-7 State Com development, which will directly offset the proposed Outland 18-7 State Com wells. FOF ¶ 14. Mewbourne, on the other hand, doesn’t have the same surface capabilities; Mewbourne’s development plan will result in significant surface disturbance. Mewbourne is missing costs for closed loop drilling, suggesting that Mewbourne will be constructing a pit, which will cause surface disturbance and potential environmental damage. FOF ¶ 15.

21. Thus, whereas the Division’s controlling inquiry is whether significant differences between the development plans “will most efficiently develop the subject acreage, prevent waste and protect correlative rights,” COL ¶ 6 (quoting *in re Longfellow Energy*, Order No. R-21834 ¶ 15), the Division finds that Earthstone’s development plan is superior and Earthstone’s applications, therefore, should be granted. *See* COL ¶ 14. Nevertheless, the additional factors that the Division may take into consideration for substantially similar applications – even though these are not – also favor Earthstone’s development plan. *See* COL ¶¶ 15-20. Therefore, Earthstone’s applications should be granted.

22. The Division therefore concludes that, to avoid the drilling of unnecessary wells, to protect correlative rights, and to avoid waste, the applications of Earthstone should be granted.

**IT IS THEREFORE ORDERED:**

23. The applications of Earthstone (“Operator”) in Case Nos. 23475 and 23477 are granted.
24. The applications of Mewbourne in Case Nos. 23365, 23366 are denied.
25. The uncommitted interests in the HSU are pooled as set forth in Exhibit A. The HSU shall be dedicated to the Well(s) set forth in Exhibit A. Operator is designated as operator of the Unit and the Well(s).
26. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the Division’s approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
27. The Operator shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.
28. This Order shall terminate automatically if Operator fails to comply with Paragraph 27 unless Operator obtains an extension by amending this Order for good cause shown.
29. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
30. Operator shall submit each owner of an uncommitted working interest in the pool (“Pooled Working Interest”) an itemized schedule of estimated costs to drill, complete, and equip the well (“Estimated Well Costs”).
31. No later than thirty (30) days after Operator submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well



Costs or its share of the actual costs to drill, complete and equip the well (“Actual Well Costs”) out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Operator no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a “Non-Consenting Pooled Working Interest.”

32. No later than one hundred eighty (180) days after Operator submits a Form C-105 for a well, Operator shall submit to each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.

33. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD’s order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Operator its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Operator shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

34. The reasonable charges for supervision to drill and produce a well (“Supervision Charges”) shall not exceed the rates specified in Exhibit A, provided however that the rates shall

be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."

35. No later than within ninety (90) days after Operator submits a Form C-105 for a well, Operator shall submit to each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.

36. Operator may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.

37. Operator may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A.

38. Operator shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 37 to each Pooled Working Interest that paid its share of the Estimated Well Costs.

39. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Operator shall provide to each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.

40. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.

41. Except as provided above, Operator shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, §§ 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, §§ 7-8A-1 *et seq.*

42. The Unit shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Operator shall inform OCD no later than thirty (30) days after such occurrence.

43. The Division retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

Respectfully submitted,

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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 October 24, 2023:

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