

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

**APPLICATION OF SIANA OIL & GAS CO.  
FOR AN ACCOUNTING FROM MEWBOURNE OIL COMPANY  
UNDER ORDER NOS. R-21292 AND R-21293 AND TO DECLARE  
CERTAIN ACCOUNTING PRACTICES IMPROPER,  
LEA COUNTY, NEW MEXICO**

**Case No. 22378  
Order No. R-22589**

**ORDER**

This matter comes before the Director of the New Mexico Oil Conservation Division (“Division”) on an Application filed by Siana Oil & Gas Co. (“Siana”). Mewbourne Oil Company (“Mewbourne”) filed a response, a hearing was held before a Division Hearing Examiner and post-hearing arguments were submitted. Having reviewed the record and the recommendations of the Hearing Examiner, the Director enters the following findings and Order.

**FINDINGS**

1. Siana filed an Application in this Case on November 29, 2021 (“Application”). The Application seeks an accounting under Order Nos. R-21292 and R-21293 (“Orders”) issued to Mewbourne and seeks to have certain of Mewbourne’s accounting practices declared improper.

2. In Case No. 21156, the Division issued Order R-21292, where a 240 acre horizontal spacing unit was pooled and dedicated to the Inland 26/23 B2OJ State Com Well No. 1H, API# 30-025-46931 (“OJ Well”). In Case No. 21157, the Division issued Order No. 21293, where a 240 acre horizontal spacing unit was pooled and dedicated to the Inland 26/23 B2PI State Com Well No. 1H, API # 30-025-45283 (“PI Well”).

3. In the Orders, Mewbourne was designated as the operator of both Wells and units. In both cases, Siana was listed as a party whose interests were being pooled. Siana did not appear at either of the compulsory pooling hearings. Under the terms of the Orders, Mewbourne offered Siana an opportunity to participate in the OJ and PI Wells based on a well proposal and estimated well drilling and completion costs set forth in Authorization for Expenditure forms (“AFEs”). (Mewbourne Exh. A-1, A-7).

4. Siana agreed to participate in both wells and provided Mewbourne with Siana’s estimated proportion of the well costs based on the AFEs. For the OJ Well, Siana paid

Mewbourne \$798,750. For the PI Well, Siana paid Mewbourne \$803,750. (Joint Statement of Material Facts, p.2).

5. Mewbourne completed the Wells on March 16, 2021 and production commenced on March 17, 2021. (Id.; Mewbourne Ex. B).

6. In Case No. 22378, Siana alleges that the accounting practices of Mewbourne result in numerous violations of the Orders. Siana requests that the Division order Mewbourne to provide an accounting for the drilling and operation of the Wells and order Mewbourne to refund any funds improperly withheld from Siana.

7. The specific violations alleged by Siana in the Application were:

- a) Netting OJ Well lease operating expenses from OJ Well drilling and completion costs violates paragraphs 22-25 of the Orders.
- b) Netting lease operating expenses for other wells from OJ Well drilling and completion costs violates paragraphs 22-25 and paragraph 28 of the Order.
- c) Failing to refund the difference between the estimated costs paid and the actual costs violates paragraph 25 of the Order.
- d) Failing to file Form C-105 (completion report) violates 19.15.16.19(A) NMAC.
- e) Imposing supervision charges in excess of the rates specified in Exhibit A to the Order (\$8000/month for drilling and \$800/month for production, with annual adjustments pursuant to COPAS) violates paragraph 26 of the Order.
- f) Keeping the undisputed interest in suspense violates the New Mexico Proceeds Payment Act.

7. A hearing was held for this case on July 8, 2022. Siana presented two witnesses: Tom Ragsdale, President and owner of Siana, and Danielle Caldwell, an accountant for Siana. Mewbourne presented three witnesses: Brad Dunn, landman, Travis Cude, engineer, and Don Russell, controller. Each witness was subject to cross examination by the other party and by the examiners.

8. Siana, in its testimony and pleadings, alleged numerous irregularities in the accounting practices of Mewbourne. These allegations expanded beyond those set forth in the Application and included: a) the failure of Mewbourne to submit itemized statements for actual well costs and operating charges as required under the Orders; b) the failure of Mewbourne to provide updated estimates of well costs and charges; c) the failure of Mewbourne to pay Siana the amount that the payment for estimated well costs exceeded the actual well costs and the application of these overages to lease operating expenses and other charges, including improper charges such as those attributable to other wells; d) the improper holding of Siana's proceeds in suspense due

to claims in litigation while demanding Siana pay all lease operating expenses; and e) the refusal of Mewbourne to allow Siana to take its production in-kind.

9. Siana testified that the failure of Mewbourne to provide Siana with a single statement of actual well costs prevented Siana from challenging the statement pursuant to the provisions of the Orders. (Ragsdale Tr. 29, 37). Siana claims they requested the statements from Mewbourne but Mewbourne did not provide them. (Tr. 36). While the Joint Interest Billings (“JIBs”) and Daily Drilling Reports contained significant amounts of financial data, Siana employees were required to expend significant amount of time to review, compare and compile all the data. (Tr. 29-30; Siana Ex. C).

10. By comparing the data from Mewbourne joint interest billings (Siana Ex. D, E, F and I) and Mewbourne revenue statements (Siana Ex. G, H), Siana created spreadsheets (Siana Ex. P, Q and R) that compiled the costs for drilling and completing the Wells. Siana estimated that the difference between Siana’s payment of Estimated Well Costs and the Siana’s proportion of Actual Well Costs was an overpayment, or overage, of \$406,136.31. (Siana Ex. C).

11. Mewbourne’s witnesses testified that Mewbourne provided Siana with itemized statements on actual well costs. (Dunn Tr. 129-31; Cude Tr. 192-93). Mewbourne provided Siana with both Daily Drilling Reports that showed well costs on a daily basis, and JIBs that included detailed cost information by well on a monthly basis. Mewbourne claimed that the JIBs were itemized statements of actual well costs.

Q. Did Mewbourne provide itemized statements of the actual well cost to Siana?

A. Yes.

Q. And were those itemized statements the JIBs?

A. Yes, they were.

(Tr. 129).

12. Mewbourne’s witnesses testified that if an interest owner wanted to question the reasonableness of the actual costs they would be required to review all the JIBs and compare them with the AFEs.

Q. So you're saying it's up to the interest owner to identify all of the JIBs that have been submitted up to 180 days after the C-105 is filed and they should review all of those JIBs to determine whether there's any cost, well cost that they challenge. Is this Mewbourne's position?

A. I mean, if they're interested in making a challenge as to the reasonableness of our well costs, I do think that that would be on them.

(Cude Tr. 200)

13. Mewbourne also testified that it appropriately handled Siana's overpayments of estimated well costs. After discussions between the parties, Mewbourne sent Siana a check for the overpayments in December 2021 in the amount of \$406,136.31. (Tr. 131; Mewbourne ex. A-9, C, C-5). Siana did not accept the check. (Russell Tr. 267).

14. Suspension of payments. Siana claims, and Mewbourne agrees, that Mewbourne has been withholding well revenue payments to Siana. Mewbourne has been placing Siana's share of revenues into an internal suspense account. (Dunn Tr. 180-82). Mewbourne claims this action is the result of a lawsuit filed in Texas District Court alleging, in part, that Siana is not the rightful owner of all its interests in the Wells. (Mewbourne Ex. A-10). Mewbourne is not a party to this litigation. *owner* *DS*

15. Analysis. For the Division, the primary issues in this case are whether the operator has complied with the requirements of the Orders issued by the Division. The Orders do not mandate that the Division regulate the financial operation of the Wells or the accounting methods employed by the operator. But the Orders do contain a few specific mandates for the operator to provide certain information to the pooled parties and to withhold certain costs and charges from the production due to each pooled interest owner.

16. The Orders contain standard conditions that include obligations for an operator to provide certain information to the "Pooled Working Interest" owners. These include the requirement for the operator to provide two itemized schedules of costs to drill, complete and equip the well. The first itemized schedule is required soon after the order is issued and is an estimate of these costs or "Estimated Well Costs". The second itemized schedule, which is due after the well is completed and the operator has filed a well completion report with the Division, is the "Actual Well Costs". Below are the paragraphs from the Order that outline the obligations surrounding Estimated Well Costs and Actual Well Costs.

22. Operator shall submit to 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").

23. 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."

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

25. 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.

17. The requirements describing the itemized schedules of estimated and actual costs include specific deadlines for both the operator to provide the schedules to the Pooled Working Interest owners and for any Pooled Working Interest owner to file written objections to the schedules. A comparison of the schedules of estimated and actual costs will determine whether a participating Pooled Working Interest owner has either paid too little or too much. A further deadline then requires when either the interest owner must pay the additional costs or the operator must refund the overage to the interest owner.

18. Siana is a Pooled Working Interest owner under the Orders. In accordance with the requirements of the Orders, Mewbourne provided the itemized schedule of Estimated Well Costs to Siana. (Mewbourne Ex. A-7). Siana elected to participate and, based on the amounts in the AFEs, Siana paid its share of Estimated Well Costs to Mewbourne. (Mewbourne Ex. A-8, A-9; Tr. 136).

19. Mewbourne drilled and completed the Wells in February or March of 2021.<sup>1</sup> Mewbourne filed well completion reports on Form C-105s with the OCD. The C-105s are dated April 19, 2021. (Mewbourne Ex. B-3; Tr. 130, 136). Under the Orders, Mewbourne was required to provide "each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs" within 180 days of filing the C-105. Based on the April 19, 2021 filing date, Mewbourne calculated that deadline to be October 16, 2021. (Tr. 131).

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<sup>1</sup> Dunn's affidavit says March 16, 2021 (Mewbourne Ex. 2) and Dunn's testimony says February 8, 2021 (Tr. 130).

20. The issue is whether Mewbourne complied with the requirement to provide the itemized schedule of Actual Well Costs. Because the language in each of the Orders describing the Estimated and Actual Well Costs is similar (estimated or actual “costs to drill, complete and equip the well”) and because the Pooled Working Interest Owner is given a short deadline to compare estimated and actual costs and file any objections, the Division finds that the two itemized schedules should follow the same structure and outline.

21. Since the Estimated Well Costs are provided in a commonly accepted format (AFE) which uses commonly accepted categories of expenditures which have associated codes, the Actual Well Costs must follow the same format. This requirement will allow the Pooled Working Interest Owner an opportunity to compare the estimated and actual costs and determine if objections should be filed with the Division. And if objections are filed with the Division, the Division will be able to better understand the dispute by comparing the two schedules. Also, the submittal of a single schedule of actual costs (as opposed to monthly or daily lists) will trigger the deadline in the Orders for filing any objections.

22. Instead of providing Siana with a single itemized schedule of Actual Well Costs in the AFE format, Mewbourne provided numerous statements of costs on a monthly basis through Joint Interest Billings and also provided Daily Drilling Reports. While these reports did contain significant amounts of financial data, they do not comply with the requirements of the Orders. The Orders require a single statement of total actual well costs that can then be compared to the estimated well costs and result in possible objections.

23. The other condition in the Orders that requires the Operator to submit an itemized schedule and allows an owner of a pooled working interest an opportunity to object involves charges for operating and maintaining the well (“Operating Charges”) and is found in paragraph 27.

27. No later than within ninety (90) days after Operator submits a Form C-105 for a well, Operator shall submit to OCD and 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 OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.

24. Mewbourne claims it complied with the requirement to provide a schedule for the Operating Charges. (Cude Tr. 193-96; Russell Tr. 260-61). Mewbourne provided Daily Drilling Reports (Mewbourne Ex. C-1) and a link to an online service, EnergyLink. (Mewbourne Ex. C-2). Mewbourne later provided a Siana employee with photocopies of the JIBs. (Mewbourne Ex. C ¶4; Ex. C-4).

25. The Orders do not specify the format for the schedule of Operating Charges. The Division finds that Mewbourne provided information on Operating Charges in several formats that would have allowed the Pooled Working Interest owners the opportunity to object.

26. The remaining allegations of Siana involve accounting disputes or other claims (such as production in kind or the Proceeds Payments Act) are outside the scope of the Division's authority.


### **CONCLUSIONS**

27. The Director concludes that Mewbourne failed to comply with Paragraph 24 of the Orders by failing to timely provide an itemized schedule of Actual Well Costs to Siana.

### **ORDER**

**IT IS HEREBY ORDERED THAT**, within thirty days of the date of this Order, Mewbourne is required to provide Siana with an itemized schedule of Actual Well Costs for each Well covered by the Orders in a format similar to the Estimated Well Costs previously provided including the same categories and codes. Siana will then have forty-five days after receipt to file any written objections as provided in Paragraph 24 of the Orders.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

  
**DYLAN FUGE**  
**DIRECTOR (Acting)**  
**DMF/bb**

Date: 3/31/23