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

APPLICATION OF MEWBOURNE OIL COMPANY FOR APPROVAL OF EXPANSION OF A UNIT AREA, LEA COUNTY, NEW MEXICO.

CASE NO. 21418

CHISHOLM, COG, AND DEVON REPLY IN SUPPORT OF MOTION FOR CONTINUANCE

Chisholm Energy Operating, LLC ("Chisholm"), COG Operating LLC ("COG"), and Devon Energy Production Company, L.P., ("Devon"), submit this reply in support of the joint motion for continuance to move the Division for a continuance in this matter currently scheduled for the December 3, 2020, Examiner Hearing Docket to the February 18, 2021 hearing or a special hearing date in February 2021.

1. Contrary to Mewbourne's response, COG and Chisholm have had extensive communications with Mewbourne and have articulated concerns to Mewbourne regarding the proposed expansion, development plans, geologic basis for unit expansion, and proposed allocation of proceeds across producing intervals with differing ownership interests.

2. If Mewbourne's unit expansion is approved, it will use its designation as "Operator" of a state unit comprised of more than 13,272 acres, including all of the Bone Spring and Wolfcamp formations, to challenge and impede the development plans of other working interest owners in the acreage who refused to commit to the expansion. This is particularly problematic when Mewbourne has stated it has no plans to develop the Wolfcamp formation within the proposed unit expansion over the next five years.

3. Under the statutory framework of the Oil and Gas Act, the Division serves as "a neutral and detached agency" to "approve[] a proposed unitization after undertaking an extensive and independent study of geological, physical and economic data," in order to "constrain" the risk of bad-faith "abuses by a lessee" seeking to unitize. *See Amoco Prod. Co. v. Heimann*, 904 F.2d 1405, 1413 (10th Cir. 1990). The Division is to approve the proposed "participation formula after a careful and independent inquiry into the relevant geophysical and economic criteria" to confirm that "a fair allocation of proceeds" is being proposed. *Id.* at 1414.

4. Because approval of Unit Agreements and unit expansions are adjudicatory in nature, courts accord the Division's rulings "preclusive effect." *Id.* at 1414.

5. Given this weighty obligation, the Division should favor a continuance to enable a full and fair presentation of the parties' objections and concerns at a time and in a manner that is reasonable and permits the Division to be fully apprised of the facts and issues.

6. The December 3, 2020 docket is ill-suited for that purpose. Permitting Mewbourne's case to proceed to hearing on that date, with deadlines to file written testimony and exhibits in the midst of a holiday, will prevent the parties opposing the application from effectively presenting their cases.

7. Mewbourne does not claim that a continuance will result in prejudice, because there will be no prejudice to Mewbourne. Conversely, proceeding to hearing when multiple parties oppose the application and have requested a continuance so the complexities of their objections can be fully and properly addressed will unfairly prejudice the objectors.

8. Moreover, a continuance would provide the Mewbourne additional time to potentially resolve the parties' objections. A contested hearing may be unnecessary if all or some of the parties are able to reach agreement.

9. Accordingly, there is no reasonable justification to deny the requested continuance.

WHEREFORE, COG, Chisholm and Devon respectfully request that the Division grant the Joint Motion and continue the hearing on this case from December 3, 2020 to the February 18, 2021, Examiner Hearing Docket or to a special hearing date in February.

Respectfully submitted,

HOLLAND & HART, LLP

By: *Adam G. Rankin*
Michael H. Feldewert
Adam G. Rankin
Julia Broggi
Kaitlyn A. Luck
Post Office Box 2208
Santa Fe, New Mexico 87504
TEL: (505) 988-4421
FAX: (505) 983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com
jbroggi@hollandhart.com
kaluck@hollandhart.com

ATTORNEYS FOR COG OPERATING LLC, CHISHOLM ENERGY OPERATING LLC, AND DEVON ENERGY PRODUCTION COMPANY, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2020, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
505-982-2043
jamesbruc@aol.com

Attorney for Mewbourne Oil Company

Adam G. Rankin