

**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  
RESPONSE TO SIANA OIL AND GAS COMPANY'S CLOSING STATEMENT**

Mewbourne Oil Company ("Mewbourne") submits its Response to Siana Oil and Gas Company's Closing Statement pursuant to the Stipulated Scheduling Order issued by the Oil Conservation Division ("Division") on August 19, 2022.

**I. INTRODUCTION**

In its Closing Statement, Siana Oil and Gas Company ("Siana") continues to raise issues that are outside the scope of the Division's authority, ignores the applicable facts and law, and attempts to expand the scope of its Application. Contrary to Siana's claims, Mewbourne appropriately handled Siana's pre-payment overage and provided Siana with detailed statements of the actual well costs for the Inland B2OJ and B2PI Wells ("Wells"). Siana's other claims, including its claims arising under the Oil and Gas Proceeds Payments Act and for penalty interest, are not properly before the Division and lack merit regardless. Siana's attempt to assert new claims for relief, including a generalized accounting on all Mewbourne wells in which Siana participates, are beyond the scope of its Application and must be rejected. As demonstrated in its Closing Brief, Mewbourne has complied with the pooling orders and New Mexico law. Siana's Application should be denied.

## II. ARGUMENT

### A. Mewbourne provided Siana with detailed statements of the actual well costs.

Mewbourne has complied with the Orders by timely filing Form C-105s for the wells and providing Siana with itemized statements for the Actual Well Costs and Operating Charges. The Orders provide that “[n]o later than one hundred eighty (180) days after the Operator submits a Form C-105 for a well,” the Operator must submit to the owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs, and “[n]o later than ninety (90) days after Operator submits a Form C-105 for a well,” the Operator must provide to the owner of a Pooled Working Interest an “itemized schedule of the reasonable charges for operating and maintaining the well” (“Operating Charges”). Mewbourne Exhs. A-2 and A-5, ¶¶ 24, 27.

It is undisputed that Mewbourne provided Siana with Daily Drilling Reports that showed the estimated well costs on a real-time, daily basis, and Joint Interest Billings (“JIBs”) that included detailed cost information by well on a monthly basis. *See* Tr. 31:16-18; 34:13-15; 129:7-14; 192:24-25; 193:1-3; 252:2-16. Thus, Mewbourne provided Siana with far more detailed information than was required by the pooling orders. Siana complains that it would take an interest owner “weeks of analysis” to determine actual well costs based on the JIBs, but that is not true. Siana Closing Statement at 8. Although Siana claimed at hearing that it spent time evaluating costs, it is undisputed that the JIBs show the actual well costs for each well on a monthly basis. Tr. 52:22-54:21; Mewbourne Exh. C-2 at 1-2. Siana’s claimed confusion over the amount of the actual well costs is unfounded and ignores the evidence.

Further, contrary to Siana’s argument, the Orders do not require operators to provide itemized statements of Actual Well Costs or Operating Charges in any specific format. *See*

Mewbourne Exhs. A-2 and A-5.<sup>1</sup> Indeed, Siana has failed to provide a single example of the information it claims Mewbourne should have provided. Rather, Siana claims that Mewbourne should be penalized because it provided Siana with too much detailed cost information in a format Siana disliked. Siana's claim is inconsistent with the pooling orders and should be rejected.

**B. Mewbourne appropriately handled Siana's pre-payment overage.**

Siana's argument that Mewbourne improperly handled Siana's pre-payment overage for the Wells ignores the facts and the law. As an initial matter, Siana's claim is predicated on the argument that Mewbourne should have provided updated estimated well costs when Siana requested them. *See* Siana Closing Statement at 5-6. But the pooling orders do not require an operator to update estimated Authorizations for Expenditure ("AFE"), and the Division does not address claims regarding estimated well costs. Tr. 77:1-7. Well costs fluctuate frequently, and it would be unreasonable for operators to prepare new AFEs every time estimated costs change. Tr. 189:5-11. Further, as Siana conceded at the hearing, the Orders allowed Mewbourne one year to commence drilling. Tr. 49:9-19. Although JOAs often contain provisions regarding cost estimate updates, the pooling orders do not, and Siana chose not to sign a JOA. Tr. 190:10-15. Mewbourne was not obligated to provide Siana with updated estimated AFEs.

Siana's claims regarding the pre-payment overage also ignore the fact that Mewbourne sent Siana a check in the amount of \$406,136.31 in December of 2021, but Siana refused to accept it. *See* Mewbourne Exh. C-5; Tr. 267:13-24. This is the precise amount of the prepayment overage claimed in Siana's Application. *See* Siana Exh. A at ¶ 13. Mewbourne timely submitted the C-105s for the Wells on April 19, 2021, and the check was provided to Siana approximately eight

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<sup>1</sup> Although Siana is a Pooled Working Interest, Siana attempts to create an issue of the fact that Mewbourne does not provide "non-consenting pooled working interests owners...with daily drilling reports." Siana Closing Statement at 8. However, the pooling orders do not require Mewbourne to provide Non-Consenting Pooled Working Interest owners daily drilling reports. *See* Mewbourne Exhs. A-2, A-5.

months later. This is within the timeframe allowed by the pooling orders, as they provide that if actual well costs are lower than the estimated well costs, the operator shall return the overage to the Pooled Working Interest within 285 days (180 days after filing the C-105 plus 45 days for an objection period plus 60 days after expiration of the objection period). Mewbourne Exhs. A-2, A-5 at ¶¶ 24-25. In essence, Siana refused to accept the payment and now claims that it was harmed by the non-payment. Siana cannot have it both ways.

Siana's claim that Mewbourne improperly netted Lease Operating Expenses ("LOEs") for the Wells from Siana's pre-payment overage similarly lacks merit. As discussed in Mewbourne's closing brief, LOEs include items like water disposal, chemicals, and pumping. Tr. 260:10-261:3. LOEs are necessary to produce the Wells, and the Orders authorize Mewbourne to recover its well costs and operating expenses. *See* Mewbourne Exhs. A-2, A-5 at ¶ 28. The Orders state that "Operating Charges shall not include the Reasonable Well Costs or Supervision Charges," but there is no such exclusion regarding lease operating expenses. Mewbourne Exhs. A-2, A-5 at ¶ 27. 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.

Mewbourne also appropriately netted LOEs for other wells from Siana's pre-payment overage because Siana has consistently refused to pay JIBs on all Mewbourne wells, including the wells at issue here. Siana does not dispute that it owed Mewbourne money, and Siana's own accounting witness conceded that Siana has only made one payment to Mewbourne in the past four years. Tr. 105:6-14; 326:19-327:4; *see also* Siana Rebuttal Exhibit. Siana asks the Division to ignore the operative facts and find that Mewbourne should have returned funds to Siana even though it is undisputed that Siana refused to pay Mewbourne amounts it owed. But that is not just and reasonable and it is not how pooling orders are construed. *See* NMSA 1978, § 70-2-17(C)

(pooling orders should be issued “upon such terms and conditions as are just and reasonable . . .”). Siana’s failure to pay JIBs forces Mewbourne to carry Siana’s portion of the costs even though Siana has elected to participate in the wells and, in doing so, avoided the 200% risk penalty that would otherwise be imposed under the pooling orders. Tr. 249:24-250:10. It was within Mewbourne’s rights to net expenses from Siana’s prepayment overage. *See, e.g., City of Carlsbad v. Grace*, 1998-NMCA-144, 126 N.M. 95 (recognizing right of equitable set-off). Neither the pooling orders nor any other provision of New Mexico law preclude an operator from netting amounts from pre-payments in this circumstance. Siana’s arguments regarding Mewbourne’s handling of the pre-payment overage should be rejected.

**C. Siana’s claim that it is entitled to earn penalty interest on the pre-payment overage is contrary to the facts and the law.**

As an initial matter, the Division lacks authority to award Siana penalty interest on the pre-payment overage. *See* Emergency Motion to Suspend Time for Paying Estimated Costs at ¶ 3. 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. *See, e.g., Marbob v. N.M. Oil Conservation Comm’n*, 2009-NMSC-013, 146 N.M. 24 (Because the Division is a creature of statute, its jurisdiction is limited by the Act). The cases cited by Siana did not involve penalty interest on a prepayment overage and are consequently inapplicable. *See* Order No. R-10154-A; Order No. R-1960-B. Mewbourne has not located, and Siana has not cited, a single case where the Division awarded penalty interest under NMSA 1978, Section 56-8-3(B), as Siana requests here.

Further, even if the Division had authority to adjudicate Siana’s claim that it is entitled to interest on the prepayment overage, Siana is not entitled to interest. The pooling orders do not mention or allow awards of interest. Rather, they establish that a party who elects to participate

and pays the applicable share of actual well costs will not be subject to the 200% risk penalty contained in the orders. *See* Orders ¶ 23. That is a benefit of electing to pay actual well costs, but interest awards on pre-payment overages are not. And, as discussed above, Mewbourne had no obligation to update its estimated AFEs. Because the pooling orders do not require an operator to update estimated AFEs, it would be nonsensical to require an operator to pay penalty interest because the estimated AFEs were higher than the actual costs. There is no basis for Siana's request.

Section 56-8-3 similarly precludes an award of interest on Siana's pre-payment overage. The statute allows a party to recover prejudgment interest on money due in the absence of a written contract. *See* NMSA 1978, § 56-8-3. An award of prejudgment interest is at the discretion of the court. *See, e.g., Smith v. McKee*, 116 N.M. 34, 36, 859 P.2d 1061, 1063 (1993). "[T]he purpose of Section 56-8-3 is to compensate the [party] for damages resulting from loss of the use of the funds in cases where money is due...." *Sunwest Bank v. Colucci*, 117 N.M. 373, 377-79, 872 P.2d 346, 350-52 (1994). As the Supreme Court noted, "[t]he obligation to pay prejudgment interest under Section 56-8-3 arises by operation of law and constitutes an obligation to pay damages to compensate a claimant for the lost opportunity to use money owed the claimant and retained by the obligator between the time the claimant's claim accrues and the time of the judgement (the loss of use and earning power of the claimant's funds)." *Id.* at 377.

First, Siana has not established that it has a legal right to any funds held by Mewbourne, as it has admittedly refused to pay Mewbourne's JIBs. Second, Siana did not lose any opportunity to use its pre-payment overage. Rather, because Siana has consistently refused to pay its JIBs, Mewbourne appropriately applied the prepayment overage to Siana's unpaid balance. Tr. 263:17-25; 264:1-8. Siana received the benefit of the money at the time it was owed. In addition, Mewbourne returned the pre-payment overage to Siana, but Siana refused to accept it. Therefore,

interest on the prepayment overage is not proper under Section 56-8-3 even if the Division had authority to award it.

**D. Siana's claims under the Oil and Gas Proceeds Payments Act are not properly before the Division and lack merit.**

As Mewbourne has explained, the Division lacks authority to adjudicate claims under the New Mexico Oil and Gas Proceeds Payment Act. Siana fails to address this critical issue in its Closing Statement and instead only exacerbates the problem by requesting an award of attorneys' fees under the Act. *See* Siana's Closing Statement at 16. As discussed in Mewbourne's Closing Brief, whether an interest is appropriately held in suspense is a matter that arises under the Act and would need to be addressed in District Court. Siana's claim that Mewbourne has improperly held proceeds in suspense should be summarily dismissed.

Regardless, even if Siana's claims were properly before the Division, they should be rejected. Siana argues in its Closing Statement that Mewbourne may only hold revenues in suspense if it has done so "in good faith" reliance "on either a title opinion or information questioning the entitlement of a person claiming right to payment." Siana Closing Statement at 12. It is undisputed that Mewbourne is holding Siana's revenues in suspense because Siana's ownership is disputed by another party in litigation that is pending in the 55<sup>th</sup> Judicial District Court of Harris County, Texas. *See* Tr. 136:25; 137-139. As Mewbourne explained at the hearing, if it were to pay Siana revenues that other parties claim to own, Mewbourne would be subject to liability for making the payments if the other parties prevail. *See id.* Although Siana offers its opinion regarding the extent of its ownership interest that has been challenged, the petition in the Texas litigation is not as narrow as Siana claims and clearly "question[s] the entitlement of" Siana to payments from the proceeds of the Wells. Mewbourne Exh. A-10. Therefore, Mewbourne has properly held Siana's revenues in suspense.

Mewbourne has also properly submitted JIBs to Siana while holding Siana's revenues in suspense. If Mewbourne did not submit JIBs to Siana, it would be required to carry the well operating costs without compensation, as occurs with Non-Consenting Pooled Working Interests. However, under the pooling orders, Mewbourne is entitled to recover a 200% risk penalty from Non-Consenting Pooled Working Interests in exchange for carrying the burden of operating costs while the wells are producing. *See* Mewbourne Exhs. A-2, A-5 at ¶ 29; Tr. 269:10-270:20. Because Siana elected to participate in the wells, Mewbourne cannot recover the 200% risk penalty from Siana, and Siana is responsible for paying its share of the well costs. Siana – not Mewbourne – has the ability to resolve the pending litigation, and Mewbourne should not be penalized because another party has asserted claims against Siana. Mewbourne is appropriately collecting well costs from Siana under the pooling orders and is appropriately holding Siana's revenues in suspense.

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

Siana continues to pursue its ill-reasoned argument that it has a right to take its share of production in-kind. Siana claims that “[e]xpress language exists...in the Orders recognizing that an uncommitted interest owner has the right ‘to produce his just and equitable share of the oil or gas in the pool.’” Siana’s Closing Statement at 15. Siana, however, is not an uncommitted interest owner – it chose to participate in the wells as a working interest owner. Therefore, this provision is not applicable to Siana. Regardless, the right of an uncommitted interest owner “to produce his just and equitable share of oil or gas in the pool” does not translate to the right to take production in-kind. The pooling of interests under Mewbourne’s operation affords the uncommitted interest owner the right to an equitable share of production. 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.

Further, as discussed at length during the hearing and in Mewbourne's Closing Brief, Siana chose to be pooled, in lieu of entering into a JOA with Mewbourne. *See* Tr. 142:24-25; 142:1-2. If Siana had executed a JOA, Siana would have had the ability to take production in-kind. *See* Mewbourne Closing Brief at 12-14. Because allowing pooled interest owners to take their share of production in-kind is inconsistent with the pooling orders, the Oil and Gas Act and the Division's regulations that impose requirements on operators, Siana's claim that it is permitted to take its share of production in-kind should be rejected.

**F. Siana's request that the Division require Mewbourne to provide an accounting for all wells in which Siana has an interest is beyond the scope of Siana's application.**

Siana's Closing Statement asks the Division for the first time to require Mewbourne to provide an accounting "for all wells in which Siana has an interest." *See* Siana's Closing Statement at 15. That request is not included in Siana's application, and Siana has failed to provide any basis for it. Indeed, Siana does not identify the wells at issue or show that the Division has authority to address them. Siana's request is improper and should not be considered.

**G. The Division has already rejected Siana's request for an extension of the deadline for Siana to participate subsequent Inland Wells.**

Although Siana requests that the Division require Mewbourne to allow Siana "a fair opportunity" to participate in subsequent Inland wells, the Division already rejected Siana's request for an extension of the deadline to participate in infill wells under the pooling orders. On March 11, 2022, Siana filed its Emergency Motion to Suspend Time for Paying Estimated Costs, which requested that the Division extend the deadline for Siana to pay the estimated costs of infill wells that Mewbourne proposed under the pooling orders. The motion was fully briefed and argued, and the Division issued an order denying the motion on May 19, 2022. Specifically, the Division concluded: "Neither the Orders nor the rules provide the Division with the authority to

extend the 30 day periods for election to participate and to render payment” and that “[t]here is no basis in law or fact to grant the relief requested in the Motion.” *See* Order No. R-22148. Siana’s request has already been rejected and should not be reconsidered.

### III. CONCLUSION

As set out in Mewbourne’s Closing Brief, Siana’s claims are a continuation of its long-standing refusal to pay Mewbourne the amounts it owes. Siana asks the Division to decide matters that are outside the scope of its authority, that are inconsistent with the pooling orders, and that are unsupported by New Mexico law. Siana’s claims should be rejected and its application should be denied.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on September 30, 2022, I caused a true and correct copy of the foregoing to be emailed to:

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