

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

**APPLICATION OF MACK ENERGY CORPORATION  
FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

**CASE NO. 14763 (De Novo)**

**PRE-HEARING STATEMENT AND EXHIBITS  
of  
SIANA OIL AND GAS LLP  
and  
TOM M. RAGSDALE**

J. Scott Hall  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 982-3873



**MONTGOMERY  
& ANDREWS**  
LAW FIRM

**J. SCOTT HALL**

Office: (505) 986-2646  
Email: shall@montand.com  
Reply To: Santa Fe Office  
www.montand.com

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2012 SEP -6 P 4: 26

September 6, 2012

Ms. Florene Davidson, Secretary  
NM Oil Conservation Commission  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**Re: NMOCD Case No. 14763 (De Novo): Application of Mack Energy Corporation for Compulsory Pooling**

Dear Ms. Davidson:

On behalf of Siana Oil and Gas LLP and Tom Ragsdale ("Siana"), enclosed is an original and six copies of Siana's Pre-Hearing Statement, along with six binders containing Siana's exhibits.

Very truly yours,

J. Scott Hall

JSH:kw

cc: James Bruce, Esq. w/enc.

Enclosures

404903

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**REPLY TO:**

325 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307  
Santa Fe, New Mexico 87504-2307

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6301 Indian School Road NE, Suite 400  
Albuquerque, New Mexico 87110  
Telephone (505) 884-4200 • Fax (505) 888-8929

Post Office Box 36210  
Albuquerque, New Mexico 87176-6210

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CORPORATION FOR COMPULSORY  
POOLING, LEA COUNTY, NEW MEXICO**

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**PRE-HEARING STATEMENT**

Siana Oil and Gas LLP (Siana) and Tom M. Ragsdale provide this Pre-Hearing Statement as required by the rules of the Division and the Commission.

**APPEARANCES**

**APPLICANT**

Mack Energy Corporation

**APPLICANT'S ATTORNEY**

James Bruce, Esq.  
P.O. Box 1056  
Santa Fe, NM 87504  
(505) 982-2043

**OPPOSING PARTY**

Siana Oil and Gas LLP,  
Tom M. Ragsdale, President

**OTHER PARTY'S ATTORNEY**

J. Scott Hall  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 982-3873

**STATEMENT OF THE CASE**

**APPLICANT**

Mack Energy Corporation initiated this proceeding by making application to force pool mineral interests from the surface to the base of the Abo formation underlying the SE/4 NW/4 of

Section 32, Township 17 South, Range 33 East, NMPM, to form a standard 40-acre oil spacing and proration unit for (1) the fracture recompletion of the Cockburn A State Well No. 5, (2) the initial consolidation of interests to be dedicated to the well, (3) designation of Applicant as operator, (4) approval and allocation of the costs of recompleting the well, including overhead and supervision charges, and (5) authorizing the operator to assess a risk penalty of costs plus 200% against the interests of non-consenting owners.

#### OTHER PARTY

Tom M. Ragsdale, doing business through Siana Oil and Gas LLC, is the owner of oil and gas leasehold working interests (6.25%) and an overriding royalty interest (1.041667%) located in the spacing and proration unit that is the subject of Mack's Application. The remaining 93.75% is owned by several other individuals and entities.<sup>1</sup> Mack Energy assumed operations of the well in 2004 when it was plugged-backed, recompleted and production established from the Corbin-Abo pool.

Although Mack has operated the well since 2004, it never consolidated and dedicated the separately owned interests in the spacing unit to the well either by a voluntary agreement or by obtaining an order of the Division pooling the lands. Neither has Mack filed a complete C-104 for the well. These ongoing acts and omissions violate the Division's rules, recent adjudicatory orders, as well as the Oil and Gas Act.

Mack Energy's Application specifically alleges as follows: "Applicant has in good faith sought to obtain the voluntary joinder of all other mineral interest owners...". *Application*, ¶ 3.

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<sup>1</sup> Mack Energy owns no interest in the well. On information and belief, Chase Oil Company owns or controls the largest interest.

This allegation is in dispute and the Commission will not be able to make this requisite finding.<sup>2</sup> Siana and Mr. Ragsdale contend that Mack Energy has not acted in good faith to obtain Mr. Ragsdale's voluntary participation, but has instead engaged in economic coercion. First, in August of 2011, without authority and in violation of law,<sup>3</sup> Mack Energy cut-off all the production proceeds attributable to Mr. Ragsdale's interests. Soon thereafter, Mack Energy sent an AFE for a fracture recompletion, but without balloting the other interest owners or providing terms that would afford them the opportunity to go non-consent. Then, on November 2, 2011, Mack Energy filed its Application for Compulsory Pooling. On December 7, 2012, only after this proceeding had been initiated, Mack sent a form joint operating agreement to Siana, but Mack Energy continued to withhold production proceeds from the well.

Accordingly, Siana Oil and Gas asks the Commission for the following relief: (1) Denying the Application in its entirety. (2) Requiring Mack Energy to render a full accounting for production revenues and operating expenses, including overhead and supervision charges, from the time Mack became operator of the well in 2004 to the present. (*See* Order No. R-1960-B.) (3) Requiring Mack to account and pay to Mr. Ragsdale the amount attributable to his interest in the absence of pooling in accordance with NMSA 1978 §70-2-18 B. (4) Denying Mack Energy's request for recovery of the 200% risk penalty for the cost of the proposed fracture recompletion, including any supervision and overhead charges, in accordance with §19.15.13.8 D NMAC.

**The request for relief under §70-2-18 B**

§70-2-18 NMSA (1978) of the Oil and Gas Act provides, in part, as follows:

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<sup>2</sup> See Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316, 318 (1963).

<sup>3</sup> Oil and Gas Proceeds Payment Act, NMSA 1978 §70-10-1, *et seq.*

B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

Under the clear authority of this provision of the Act, the Commission may enter an order requiring Mack Energy (1) to render a full accounting for production revenues and operating expenses, including overhead and supervision charges from 2004 to the present, and (2) directing it to pay to Mr. Ragsdale the greater amount attributable to his interests in the absence of pooling, *without* deductions for charges and expenses.

§70-2-18 A also makes clear that regardless of when an order pooling separately owned interests is obtained, even after drilling, it is to be “effective from the first production.” Yet, the operator of a drilled and completed well obtaining the compulsory pooling order must not be dilatory in the consolidation of un-joined interests as §70-2-18 B is quite evidently intended to operate as a disincentive to such conduct.<sup>4</sup> Because there is “the absence of pooling”, the statute directs that the un-pooled interest owner, Mr. Ragsdale, be paid the “greater amount”. In this case, that amount should be 6.25% of gross production, without deduction for costs or expenses.<sup>5</sup> Absent an agreement or a pooling order, Mack Energy was never authorized to recover “the costs of development and operation” from any of the non-operators. Such authority derives from §70-2-17 B, but only on the Division’s or Commission’s determination of justness and

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<sup>4</sup> Similarly, under §19.15.16.19 A (1) and (3) NMAC, interests are to be consolidated before an allowable may be assigned.

<sup>5</sup> Mack Energy should also be directed to release all overriding royalty interest revenues.

reasonableness. Mack Energy sought no such determination, but a non-operator is clearly authorized to raise such matters as §70-2-17 B specifies that “[i]n the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon.”

**PROPOSED EVIDENCE**

APPLICANT

WITNESSES

EST. TIME

EXHIBITS

OPPONENT

WITNESSES

EST. TIME

EXHIBITS

Tom Ragsdale, Petroleum Engineer

45 min.

9

Matt Doffer, Petroleum Engineer

20 min.

2

**PROCEDURAL MATTERS**

None.

Montgomery and Andrews, P. A.

By:



J. Scott Hall  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873  
(505) 982-4289 fax  
shall@montand.com  
Attorneys for Siana Oil and Gas LLP

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 6th day of September, 2012.

James Bruce, Esq.  
P.O. Box 1056  
Santa Fe, NM 87504  
[jamesbruc@aol.com](mailto:jamesbruc@aol.com)



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J. Scott Hall