

**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 CLOSING BRIEF

Mewbourne Oil Company ("Mewbourne") submits its Closing Brief pursuant to the Stipulated Scheduling Order issued by the Oil Conservation Division ("Division") on August 19, 2022.

I. INTRODUCTION

Siana Oil and Gas Company ("Siana") asserts a long list of claims in its Application, none of which have merit. The crux of Siana's complaint is that the daily drilling reports ("DDR's") and monthly joint interest billings ("JIBs") provided by Mewbourne were not "itemized statements of actual well costs" under the Division's pooling orders because they contained too much detailed cost information. Siana's claim elevates form over substance and ignores that Mewbourne provided Siana with far more detailed cost information than was required by the pooling orders.

Siana also claims: (1) Mewbourne should have revised its estimated authorizations for expenditures ("AFEs") after costs declined even though the pooling orders do not impose any such requirement; (2) it is entitled to earn interest on the amount of its pre-payment overage that resulted from Mewbourne completing the Inland B2OJ and B2PI Wells ("Wells") significantly under budget, when neither the pooling orders nor New Mexico law support that result; (3) Mewbourne should not have deducted lease operating expenses from Siana's pre-payment overage, when the pooling orders specifically include operating expenses; and (4) Mewbourne should have refunded

Siana's pre-payment overage even though Siana owed money to Mewbourne and had consistently refused to pay JIBs. Siana also falsely claims that Mewbourne failed to timely file completion reports for the wells and seeks to subject Mewbourne to duplicative liability by claiming that Mewbourne should have paid Siana its share of revenues even though Siana's ownership interest in the Wells has been challenged by another party in pending litigation. Siana further asserts the unsupported allegation that it should have been allowed to take its share of production in-kind, when no such right exists under New Mexico law and when Siana refused to execute a Joint Operating Agreement ("JOA") that would have afforded such a right.

Through its testimony and exhibits, Mewbourne has established that it complied with the pooling orders and New Mexico law. At bottom, Siana makes claims that are unsupported by New Mexico law and seeks to embroil the Division in a private business dispute that has resulted from Siana's long-standing refusal to pay Mewbourne the amounts it owes. For the reasons discussed below, the Division should deny Siana's application and enter the Proposed Findings of Fact and Conclusions of Law attached as Exhibit 1.

II. ARGUMENT

A. **Mewbourne complied with Order Nos. R-21292 and R-21293 and Siana has no basis to challenge Reasonable Well Costs or Operating Charges.**

Siana claims that Mewbourne has not complied with Order Nos. R-21292 and R-21293 because Mewbourne did not provide Siana with itemized schedules of Actual Well Costs and Operating Charges. However, it is undisputed that Mewbourne provided Siana with DDRs that showed the estimated well costs on a real-time, daily basis, and 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. As Mewbourne has explained, the JIBs *are* itemized statements of the actual well costs. Tr. 256:2-257:12. In fact, Siana conceded at hearing that the JIBs provided the actual well

costs for the Inland wells. Tr. 54:2-21. Neither the pooling orders nor any Division regulation require an operator to provide actual well costs in a specific format. Further, if Siana had reviewed the JIBs provided by Mewbourne, it could have objected to the actual well costs. *See* Tr. 257:7-16; 259:3-5.

In addition, although the Orders required Mewbourne to submit the actual well costs to the Division, *see* Mewbourne Exhs. A-2 and A-5 at ¶¶ 24, 27, the Division subsequently removed that requirement from the standard pooling order because there was no mechanism for the Division to review those costs. *See, e.g.*, Order No. R-22066, attached as Exhibit 2. The Division's current form of pooling order requires operators to submit itemized schedules of Actual Well Costs and Operating Charges directly to the Pooled Working Interest owners, so that they may object within 45 days. *Id.* at ¶¶ 24, 27. This change demonstrates it is the duty of the Pooled Working Interest owner—and not the Division—to object to the reasonableness of these costs. As a result, it would be reasonable to amend the Orders to delete that requirement or grant Mewbourne an exception. Regardless, Mewbourne is willing to submit those costs to the Division should the Division determine it is necessary.

Siana also claims that Mewbourne failed to comply with the Orders because it exceeded the overhead costs allowed in the Orders. *See* Siana Exh. A. The JIBs that were introduced into evidence at the hearing include line items for “company supervision,” “overhead,” and “lease maintenance.” *See* Mewbourne Exh. C-4. Siana claims that these costs appear to exceed the \$8,000 per month in supervision costs permitted by the Orders. However, as Mewbourne's witnesses explained, the “company supervision charges” included in the JIBs are for “Mewbourne contractors that are boots on the ground performing...daily activity...on the rig floor while [they are] running casing, managing the directional plan.” *See* Tr. 215:1-10. Thus, the “company

supervision” line items on the JIBs are operating costs that differ from the \$8,000 overhead charge permitted by the Orders. *See* Tr. 215:23-25; 216:1-6. Siana has no basis to object or challenge the actual well costs and its argument on this issue should be rejected.

B. Mewbourne was not required to revise its estimated AFEs due to changes in well costs.

Siana asserts the unsupported allegation that Mewbourne should have revised its estimated AFEs because drilling and completion costs declined due to Covid-19. Siana Exh. A. However, the pooling orders do not require operators to re-submit AFEs due to cost changes. *See generally* Mewbourne Exhs. A-2, A-5; Tr. 189:25-190:3. 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. Tr. 190:10-15. Again, Siana chose not to sign a JOA and instead accepted the terms of the pooling order. *Id.* It’s claim on this issue has no merit.

C. Siana’s claims under the Oil and Gas Proceeds Payments Act are not properly before the Division.

Siana’s claim that Mewbourne is not properly holding its revenues in suspense arises under the Oil and Gas Proceeds Payments Act and is not properly before the Division. *See* Siana Exh. A. As mentioned above, Mewbourne is holding Siana’s revenues in suspense because Siana’s ownership is disputed by another party in litigation that is pending in the 55th 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.* Despite this fact, Siana

attempts to raise claims against Mewbourne under the Oil and Gas Proceeds Payments Act. Those claims are not properly before the Division.

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. Although this grant of authority is broad, it does not include the ability to adjudicate private civil claims or award damages. Because the Division is a creature of statute, its jurisdiction is limited by the Act. *See, e.g., Marbob v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24. The Division's authority to seek civil penalties is limited to compliance actions, which do not involve the adjudication of civil disputes between private parties. NMSA 1978, § 70-2-31.

The Oil and Gas Proceeds Payment Act establishes specific requirements that govern payments to interest owners and provides remedies when those requirements are not met, but it is not enforced by the Division. *See* NMSA 1978, 70-10-6 (referring to civil actions brought under the act). Whether an interest is appropriately held in suspense is a matter that arises under the act and would need to be addressed by a court. Siana's request that the Division adjudicate matters arising under the Oil and Gas Proceeds Payment Act is inconsistent with New Mexico law and would unnecessarily embroil the Division in private disputes.

D. Siana's claim that Mewbourne improperly held revenues in suspense while collecting well costs from Siana ignores the Oil and Gas Proceeds Payments Act and the pooling orders.

Siana's claim that Mewbourne improperly held revenues in suspense while collecting well costs from Siana lacks merit. The holding of revenues in suspense under the Oil and Gas Proceeds Payments Act and the collection of costs from working interest owners under the pooling orders are separate matters. Under the Oil and Gas Proceeds Payments Act, operators have the right to withhold revenues when an interest is disputed. Specifically, Section 70-10-3 provides: "The oil

and gas proceeds derived from the sale of production from any well producing oil, gas or related hydrocarbons in New Mexico *shall be paid to all persons legally entitled to such payments . . .*” See § 70-10-3 (emphasis added). If a party is deemed to be entitled to revenues and payments are not timely made, Section 70-10-4 of the act provides for interest during the time period of the delay.

In this case, there is a legal dispute regarding Siana’s ownership interest, and the court has not yet determined that Siana is legally entitled to receive proceeds from the Wells. If the court eventually determines that Siana does in fact own an interest in the Wells, *then* Siana will be legally entitled to revenues and payments under the Oil and Gas Proceeds Payments Act. Until that occurs, Mewbourne is appropriately holding Siana’s revenues in suspense so that it can avoid duplicative liability.

With respect to well costs, the pooling orders establish specific criteria that apply to payments by pooled parties. See Mewbourne Exhs. A-2, A-5 at ¶¶ 22- 23. Specifically, Paragraph 22 provides that the operator “shall submit to each owner of an uncommitted working interest in the pool . . . an itemized schedule of the estimated costs to drill, complete, and equip the well . . .” Mewbourne relied on title information available at the time it filed its applications and pooled Siana’s claimed interest, and Siana claims an interest in the Wells and paid its share of the estimated costs. Although the pooling orders reference the holding of revenues in suspense under the Oil and Gas Proceeds Payments Act, they do not contain any provision that precludes an operator from collecting well costs from a pooled party when the party’s ownership interest is subsequently disputed.

And this makes sense, because otherwise Mewbourne would have to carry Siana’s share of the well costs without compensation for doing so. Although Mewbourne carries well costs for

Non-Consenting Pooled Working Interests, it also recovers a 200% risk penalty from those parties. *See* Mewbourne Exhs. A-2, A-5 at ¶ 29; Tr. 269:10-270:20. Because Siana elected to participate in the Wells, Mewbourne is not recovering the 200% risk penalty from Siana. It would be inconsistent with the pooling orders, and with the Oil and Gas Proceeds Payments Act, to preclude Mewbourne from collecting well costs from Siana and holding Siana's revenues in suspense.

E. Siana's claims regarding Mewbourne's treatment of Siana's pre-payment overage disregard the facts and the law.

1. Siana's claims regarding the pre-payment overage should be rejected because Mewbourne sent Siana a check for the amount of the overage, but Siana refused to accept it.

As discussed at the hearing, Mewbourne sent a check to Siana in the amount of \$406,136.31 in December of 2021, but Siana refused to accept the check. *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. The C-105s for the Wells were timely submitted on April 19, 2021, and the check was provided to Siana approximately eight 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. Parties have an obligation to mitigate their damages, which is the opposite of what has occurred here. Siana has no basis to complain about Mewbourne's treatment of the prepayment overage and none of its claims on this issue should be considered.

2. The Division lacks authority to award Siana interest on its pre-payment overage.

In addition to the fact that Siana has no basis to complain about Mewbourne's treatment of the prepayment overage, the Division lacks authority to award Siana penalty interest on the overage. *See* Emergency Motion to Suspend Time for Paying Estimated Costs at ¶ 3. As discussed above, 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 Division orders cited by Siana in support of its interest claim have no bearing here. In Order No. R-10154-A, a court order in a title dispute caused the operator to retroactively pool an owner's interest 20 years after the well had commenced production. Given the amount of time that had elapsed, the Division ordered an audit that would be used to calculate a payment to the pooled party, which would include interest under Section 70-10-4 of the Oil and Gas Proceeds Payments Act. In that case, the court had determined that the party owned the interest and was therefore entitled to payment it had not received. Here, no such adjudication has occurred, and there has been no showing that Siana has not received revenues to which it is entitled.

Order No. R-1960-B is similarly inapplicable. In that case, the Division addressed a dispute in which a party had refused to market and sell gas under a pooling order for approximately ten years. The Division ordered an audit to determine the amount of funds that were due, including interest, because it was undisputed that the complainant had a legal right to receive payments that had not been made. Again, that is not the situation here, where there has been no showing that Siana has not received revenues to which it is entitled.

Neither the Oil and Gas Act nor the Oil and Gas Proceeds Payments Act delegate to the Division authority to award interest in this circumstance. Siana's argument on this issue should be rejected.

3. Siana is not entitled to interest on the pre-payment overage even if the Division had authority to award it.

Further, even if the Division had the authority to adjudicate Siana's claim that it is entitled to interest on its prepayment overage, Siana is not entitled to interest under the pooling orders, the Oil and Gas Proceeds Payments Act, or NMSA 1978, § 56-8-3. 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.

Section 70-10-4 of the Oil and Gas Proceeds Payments Act similarly does not allow interest in this circumstance. Rather, it provides:

The person entitled to payment from the suspended funds shall be entitled to interest on the suspended funds from the date payment is due under Section 70-10-3 NMSA 1978. The interest awarded shall be the discount rate charged by the federal reserve bank of Dallas to member banks plus one and one-half percent on the date payment is due. Payment of principal and interest on the suspended funds shall be made to all persons legally entitled to the funds within thirty days from the date that the persons are determined to be entitled to the suspended funds by a final legal determination.

Thus, although Siana may be entitled to interest on revenues held in suspense if a court determines it owns the interest and is entitled to payment, it is not entitled to interest on its pre-payment overage.

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.

In this case, 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. Otherwise, Mewbourne would have refunded money to Siana while it was billing Siana for other amounts that Siana was refusing to pay, which is not fair or equitable. Tr. 263:1-13. Siana received the benefit of the money at the time it was owed. Therefore, interest on the prepayment overage is not proper under NMSA 1978, § 56-8-3 even if the Division had authority to award it.

4. The pooling orders authorize Mewbourne to deduct lease operating expenses from Siana’s pre-payment overage.

Siana’s claim that Mewbourne improperly deducted lease operating expenses from its pre-payment overage is inconsistent with the pooling orders and New Mexico law. The Oil and Gas Act provides that pooling orders should be issued “upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both.” NMSA 1978, § 70-2-17(C). As explained by Mewbourne’s witnesses, lease operating expenses

include items like water disposal, chemicals, and pumping. Tr. 260:10-261:3. There is no dispute that lease operating expenses are necessary, and the Orders authorize Mewbourne to recover its well costs and operating expenses. For example, Paragraph 28 specifically authorizes Mewbourne to withhold from an owner's share of production the proportionate share of supervision charges and operating charges. *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 they make no such statement 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.

5. Mewbourne appropriately netted the amounts due from Siana from Siana's pre-payment overage.

Siana makes much of the fact that Mewbourne netted amounts Siana owed from its prepayment overage, but Mewbourne's actions were entirely appropriate. As discussed extensively at the hearing, Siana has consistently refused to pay JIBs on Mewbourne wells, including the wells at issue here. Siana's own accounting witness even conceded that Siana only made one payment to Mewbourne since 2018. Tr. 326:19-327:4; *see also* Siana Rebuttal Exhibit. Siana's failure to pay JIBs harms Mewbourne, because Mewbourne incurs costs to pay vendors and must carry Siana's portion of the costs even though it 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. As a result, 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.

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

Siana's claim that it has a right to take its share of production in-kind is inconsistent with the pooling orders and with New Mexico law. Order Nos. R-21292 and R-21293 designate Mewbourne as operator of the units and the Wells. *See* Mewbourne Exhs. A-2, A-5 at ¶¶ 15-17. The Division's regulations define an "operator" as "a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation." 19.15.2.7(O)(5) NMAC. As the designated operator of the Wells and the units, Mewbourne alone has the right to control production. The pooling of interests *under Mewbourne's operation* affords owners the right to receive their just and equitable share of production. *See* Mewbourne Exhs. A-2, A-5 at ¶ 14 ("This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool."). 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.

Siana's claim that the pooling orders allow it to take production in-kind because they refer to an owner's "opportunity to produce his just and equitable share of the oil or gas in the pool" lacks merit. The orders are clearly referring to the owner's economic share of the oil and gas rather than the owner's physical allocation of oil and gas. For example, the orders allow the operator to "withhold . . . costs and charges from the share of production due to each owner of a Pooled Working Interest . . ." Mewbourne Exhs. A-2, A-5 at ¶ 28. Of course, cost and revenues cannot be withheld from the physical share of production. Furthermore, as mentioned above, the orders designate Mewbourne as operator of the Wells.

In addition, 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, the agreement would have established

requirements that apply to a party's ability to take production in-kind, such as metering, responsibility for compliance with OCD regulations, responsibility for payment of royalties and taxes, and liability for spills and environmental issues. *See* Tr. 64:22-25; 65:1-15; 142:3-15. The pooling orders do not address any of the responsibilities associated with taking production in-kind. Tr. 65:16-18; 142:16-23.

Allowing Siana to take its share of production in-kind would also undermine Mewbourne's authority to hold revenues in suspense under the Oil and Gas Proceeds Payments Act. *See* Tr. 143:3-6. The act affords operators the right to suspend payments when an interest owner's entitlement to payment is in dispute. *See* NMSA 1978, § 70-10-4(B). In this case, Mewbourne is holding Siana's revenues in suspense due to a title dispute pending in the 55th Judicial District Court of Harris County, Texas, which is styled Cause No. 2021-66782; *James A. Gibbs, et al. v. Siana Oil & Gas Company, LLC*. *See* Tr. 136:25; 137-139. By attempting to take its share of production in-kind, Siana impermissibly seeks to avoid the terms of the New Mexico Oil and Gas Proceeds Payments Act and thwart Mewbourne's ability to protect itself from claims by multiple owners due to the title dispute.

In addition, allowing pooled interest owners to take their share of production in-kind is inconsistent with the Oil and Gas Act and the Division's regulations that impose requirements on operators. For example, Section 70-2-14 of the Act and 19.15.8.9 NMAC require an operator to provide financial assurance for active wells. As operator, Mewbourne – not Siana – has provided financial assurance for the Wells. The Division's regulations regarding releases and remediation also impose requirements on Mewbourne as operator. *See* 19.15.29.6 NMAC. Siana cannot be allowed to take its share of production in-kind when the Act and the regulations establish that the operator is responsible for the wells.

New Mexico law further holds Mewbourne, as the designated operator of the Wells, responsible for the payment of royalties and taxes. For example, Section 7-29-7 of the Oil and Gas Severance Tax Act states:

Each operator shall, in the form and manner required by the division, make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due, or to be remitted, by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act may be required.

The Oil and Gas Severance Tax Act also imposes reporting obligations on purchasers. *See* NMSA 1978, § 7-29-7. The statute does not contemplate a scenario where a pooled interest owner that is neither an operator nor a purchaser takes its share of production in-kind. In the absence of contractual arrangements regarding the reporting of revenues and the payment of taxes, an interest owner cannot be allowed to take its share of production in-kind.

In essence, Siana's claim that it has a right to take its share of production in-kind would undermine Mewbourne's authority to control production as operator and is consequently inconsistent with the pooling orders, the Division's regulations, the Oil and Gas Act, the Oil and Gas Proceeds Payments Act, and the Oil and Gas Severance Tax Act. Siana has no right to take its share of production in-kind and its claim should be rejected.

III. CONCLUSION

Siana's claims against Mewbourne are a continuation of its long-standing effort to avoid paying Mewbourne for the benefits of participating in its wells. 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

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**MEWBOURNE OIL COMPANY’S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mewbourne Oil Company (“Mewbourne”) submits the following Proposed Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Siana Oil & Gas Company (“Siana”) and Mewbourne have a long history of business dealings, as Siana owns interests in a significant number of Mewbourne’s wells. *See* Transcript of July 8, 2022 Proceedings (“Tr.”) 42:3-8.

2. Siana has consistently refused to pay Joint Interest Billings (“JIBs”) on Mewbourne wells, including the wells at issue here, and has only made one payment to Mewbourne since 2018. Tr. 326:19-327:4; 102:1-7, 104:1-5, 274:5-18, 276:12-18; 326:19-327:4; Siana Rebuttal Exhibit.

3. Siana’s refusal to pay JIBs harms Mewbourne because it is forced to carry Siana’s share of the monthly costs without recovering the 200% risk penalty from Siana. Tr. 270:17-25, 271:1-2.

4. Order No. R-21292, issued on April 28, 2020, granted Mewbourne’s request to pool uncommitted interests in the Bone Spring formation underlying a 240-acre, more or less, standard horizontal spacing unit comprised of the W/2 E/2 of Section 26 and the W/2 SE/4 of Section 23, Township 21 South, Range 34 East in Lea County; dedicated the unit to the Inland 26/23 B2OJ

State Com #1H well; and designated Mewbourne as operator of the well and the unit. *See* Mewbourne Exh. A-2.

5. Order No. R-21293, issued on April 28, 2020, granted Mewbourne's request to pool uncommitted interests in the Bone Spring formation underlying a 240-acre, more or less, standard horizontal spacing unit comprised of the E/2 E/2 of Section 26 and the E/2 SE/4 of Section 23, Township 21 South, Range 34 East in Lea County; dedicated the unit to the Inland 26/23 B2PI State Com #1H well; and designated Mewbourne as operator of the well and the unit. *See* Mewbourne Exh. A-5.

6. Siana was timely notified of the hearings and failed to enter an appearance in either case. Tr. 48:15-20.

7. Siana chose to be pooled instead of signing a Joint Operating Agreement ("JOA") with Mewbourne. Tr. 61:7-10, 190:10-15.

8. In accordance with the Orders, on May 12, 2020, Mewbourne sent "to each owner of an uncommitted working interest...an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs")," Mewbourne Exhs. A-2 and A-5 ¶ 22, A-7.

9. Siana received Mewbourne's correspondence, elected to participate in the wells, and paid its share of the estimated well costs. Tr. 49:15-19. Thus, Siana is deemed a "Pooled Working Interest" under the Orders.

10. The pooling orders did not require Mewbourne to revise its AFEs due to changes in the estimated well costs. Mewbourne Exhs. A-2 and A-5; Tr. 189:25-190:3.

11. Well costs fluctuate frequently, and it would be unreasonable for operators to prepare new AFEs every time estimated costs change. Tr. 189:5-11.

12. Although JOAs often contain provisions regarding cost estimate updates, the pooling orders do not. Tr. 190:10-15. Siana elected not to sign a JOA. Tr. 61:7-10, 190:10-15.

13. Mewbourne completed the Inland 26/23 B2OJ State Com #1H and Inland 26/23 B2PI State Com #1H wells on March 16, 2021, and production commenced on March 17, 2021. *See* Mewbourne Exh. A, ¶ 14; Tr. 195:21. Mewbourne timely filed its C-105s for both wells on April 19, 2021. *See* Tr. 195:14-18; Mewbourne Exh. B-3.

14. The Orders require that “[n]o later than one hundred eighty (180) days after the Operator submits a Form C-105 for a well,” the Operator submit to the owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs, Mewbourne Exhs. A-2 and A-5 ¶ 24, and “[n]o later than ninety (90) days after Operator submits a Form C-105 for a well,” that the Operator 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 ¶ 27.

15. The Orders do not require operators to provide the itemized statements of Actual Well Costs or Operating Charges to the Pooled Working Interests in any specific format. *See* Mewbourne Exhs. A-2 and A-5.

16. Beginning in February 2021, Mewbourne provided Siana, and other Pooled Working Interests, with itemized statements of the well costs through JIBs and Daily Drilling Reports (“DDR”). Tr. 129:7-14; Exh. C-1.

17. The DDR provide detailed, itemized statements of the estimated well costs as they are incurred on a daily basis, and the JIB’s provide detailed, itemized statements of the actual well costs on a monthly basis. The JIB’s identify the costs by category and by well and are far more

detailed than the estimated costs set out in an AFE. *Compare* Exhs. C-1 through C-4 with Exhs. A-7, B-1.

18. Mewbourne's provision of the actual well costs, through the JIBs, was well within the 180 days and 90 days permitted under the Orders. *See* Mewbourne Exhs. A-2 and A-5.

19. Following the receipt of the Actual Well Costs and the Operating Charges, the Orders allow a Pooled Working Interest to make written objections to the Actual Well Costs within forty-five (45) days following the receipt of the itemized schedule of Actual Well Costs from the Operator. *See* Mewbourne Exhs. A-2 and A-5 ¶ 24.

20. Siana never objected within the time period provided in the Orders. *See* Mewbourne Exhs. A-2 and A-5 ¶ 24; Tr. 257:7-16; 259:3-5.

21. The Orders further provide that no later than sixty days after the expiration of the period to file a written objection, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay 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. *See* Mewbourne Exhs. A-2 and A-5 ¶ 25.

22. In this case, the actual well costs were approximately \$2 million lower than the estimated well costs, which resulted in Siana's share being approximately \$406,136.31 less than its payment for the estimated costs. Tr. 193:4-18.

23. Mewbourne initially applied the prepayment overage to Siana's unpaid balance due to Siana's failure to pay JIBs. Tr. 263:17-25, 264:1-8.

24. If Mewbourne had not applied the prepayment overage to Siana's unpaid balance,

Mewbourne would have refunded money to Siana at the same time it was billing Siana for other amounts that Siana was refusing to pay. Tr. 263:1-13.

25. Mewbourne sent Siana a check for the amount of the prepayment overage on December 10, 2021, but Siana refused to accept it. *See* Exh. C-5.

26. The check was provided to Siana within 60 days after the objection period expired. Tr. 267:16-24.

27. The pooling orders do not provide for interest on a pre-payment overage. *See* Mewbourne Exhs. A-2 and A-5.

28. The pooling orders allowed Mewbourne one year from the date of the orders to commence drilling the wells. *See* Mewbourne Exhs. A-2 and A-5 ¶ 19.

29. In April of 2021, Mewbourne was notified of the lawsuit *James A. Gibbs, et al. v. Siana Oil & Gas Co., LLC*, Cause No. 2021-66782, 55th Judicial District Court of Harris County, Texas, in which another party disputes Siana's ownership interest in the Wells. As a result, Mewbourne began holding revenues attributable to Siana's claimed interest in the Wells in suspense. *See* Exh. A, ¶ 14; Tr.138:7-25, 139:1, 169:22-25, 170:1-7.

30. If Mewbourne 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 in the lawsuit. *See* Tr. 136:25; 137-139.

31. Although the pooling orders reference the holding of revenues in suspense under the Oil and Gas Proceeds Payments Act, they do not contain any provision that precludes an operator from collecting well costs from a pooled party when the party's ownership interest is subsequently disputed. *See* Mewbourne Exhs. A-2 and A-5 at ¶¶ 22- 23.

32. If Mewbourne was unable to collect the estimated well costs from Siana, it would have to carry Siana's share of the well costs without compensation for doing so. Although Mewbourne carries well costs for Non-Consenting Pooled Working Interests, it also recovers a 200% risk penalty from those parties. *See* Mewbourne Exhs. A-2 and A-5 at ¶ 29; Tr. 97:20-98:4; 269:10-270:20. Because Siana elected to participate in the Wells, Mewbourne is not recovering the 200% risk penalty from Siana. *Id.*

33. The line items on Mewbourne's JIBs for "company supervision," "overhead," and "lease maintenance," are operating costs that differ from the \$8,000 supervision charge permitted by the Orders. Tr. 215:23-25; 216:1-6.

34. Lease operating expenses include items like water disposal, chemicals, and pumping that are necessary to operate the wells. Tr. 260:10-261:3.

35. The pooling orders designate Mewbourne as operator of the Wells. *See* Mewbourne Exhs. A-2 and A-5 ¶ 17.

36. The pooling orders do not contain any provision that allows Siana to take its share of production in kind. *See* Mewbourne Exhs. A-2 and A-5.

37. If Siana had chosen to execute a JOA, the agreement would have established requirements that apply to a party's ability to take production in-kind, such as metering, responsibility for compliance with OCD regulations, responsibility for payment of royalties and taxes, and liability for spills and environmental issues. *See* Tr. 64:22-25; 65:1-15; 142:3-15.

38. The pooling orders do not address any of the responsibilities associated with taking production in-kind. Tr. 65:16-18; 142:16-23.

39. The Orders provide guidance on costs and charges that an Operator, such as Mewbourne, may withhold from each owner of a Pooled Worked Interest who paid its share of Estimated Well Costs. *See* Exh. A-2, ¶¶ 28, 30, 31; Exh. A-5, ¶¶ 28, 30, 31.

40. The Orders do not contemplate a situation where a Pooled Working Interest fails to pay costs billed by the Operator for several years, or where a Pooled Working Interest's ownership is the subject of a lawsuit. *See* Exh. A-2, ¶¶ 28, 30, 31; Exh. A-5, ¶¶ 28, 30, 31.

II. CONCLUSIONS OF LAW

1. Mewbourne complied with Order Nos. R-21292 and R-21293 when it provided Siana with Joint Interest Billings, which provided itemized schedules of Actual Well Costs and Operating Charges.

2. Mewbourne was not required to revise its AFEs due to changes in estimated well costs.

3. Mewbourne did not exceed the overhead costs allowed in the Orders.

4. Siana did not object to the actual well costs within the time period set out in the Orders.

5. Siana has no basis to object or challenge the Actual Well Costs or Operating Charges.

6. The Orders do not give Siana to a right to take its share of production in-kind

7. The Division does not have jurisdiction to adjudicate claims brought under the Oil and Gas Proceeds Payment Act.

8. The Orders do not preclude Mewbourne from collecting estimated well costs from Siana while Siana's revenues are held in suspense due to pending litigation.

9. The Division lacks authority to resolve Siana's claim that it is entitled to interest on any prepayment overage, but even if it did, Siana is not entitled to interest on the prepayment overage.

10. Mewbourne is permitted to net lease operating expenses from Siana's prepayment overage.

11. Mewbourne is permitted to deduct lease operating expenses from Siana's prepayment overage.

12. Siana's Application is denied.

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

**IN THE MATTER OF APPLICATION FOR
COMPULSORY POOLING SUBMITTED BY
MEWBOURNE OIL COMPANY**

**CASE NO. 22365
ORDER NO. R-22066**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on February 17, 2022, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Mewbourne Oil Company (“Operator”) submitted an application (“Application”) to compulsory pool the uncommitted oil and gas interests within the spacing unit (“Unit”) described in Exhibit A. The Unit is expected to be a standard horizontal spacing unit. 19.15.16.15(B) NMAC. Operator seeks to be designated the operator of the Unit.
2. Operator will dedicate the well(s) described in Exhibit A (“Well(s)”) to the Unit.
3. Operator proposes the supervision and risk charges for the Well(s) described in Exhibit A.
4. Operator identified the owners of uncommitted interests in oil and gas minerals in the Unit and provided evidence that notice was given.
5. The Application was heard by the Hearing Examiner on the date specified above, during which Operator presented evidence through affidavits in support of the Application. No other party presented evidence at the hearing.

CONCLUSIONS OF LAW

6. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.
7. Operator is the owner of an oil and gas working interest within the Unit.
8. Operator satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.
9. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.
10. Operator has the right to drill the Well(s) to a common source of supply at the

EXHIBIT 2

depth(s) and location(s) in the Unit described in Exhibit A.

11. The Unit contains separately owned uncommitted interests in oil and gas minerals.
12. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Unit.
13. The pooling of uncommitted interests in the Unit will prevent waste and protect correlative rights, including the drilling of unnecessary wells.
14. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

ORDER

15. The uncommitted interests in the Unit are pooled as set forth in Exhibit A.
16. The Unit shall be dedicated to the Well(s) set forth in Exhibit A.
17. Operator is designated as operator of the Unit and the Well(s).
18. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
19. 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.
20. This Order shall terminate automatically if Operator fails to comply with Paragraph 19 unless Operator obtains an extension by amending this Order for good cause shown.
21. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
22. 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").
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

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ORDER NO. R-22066

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- 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 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.
 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.
 26. 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."
 27. 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.
 28. 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.
 29. 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.

30. Operator shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 29 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
31. 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.
32. 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.
33. 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, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*
34. 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.
35. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



ADRIENNE SANDOVAL
DIRECTOR

AES/jag

Date: 3/09/2022

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Exhibit A

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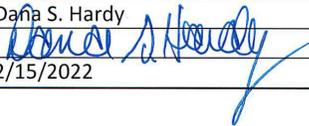
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COMPULSORY POOLING APPLICATION CHECKLIST	
ALL INFORMATION IN THE APPLICATION MUST BE SUPPORTED BY SIGNED AFFIDAVITS	
Case No.:	22365
Hearing Date:	1/6/2022
Applicant	Mewbourne Oil Company
Designated Operator & OGRID	OGRID # 14744
Applicant's Counsel	Hinkle Shanor LLP
Case Title	Application of Mewbourne Oil Company for Compulsory Pooling, Lea County, New Mexico
Entries of Appearance/Intervenors	COG Operating LLC; Concho Oil & Gas LLC
Well Family	Dragonstone
Formation/Pool	
Formation Name(s) or Vertical Extent	Bone Spring
Primary Product (Oil or Gas)	Oil
Pooling this vertical extent	Bone Spring
Pool Name and Pool Code	Young; Bone Spring-North Pool (63350)
Well Location Setback Rules	Statewide
Spacing Unit Size	240-acre
Spacing Unit	
Type (Horizontal/Vertical)	Horizontal
Size (Acres)	240-acre
Building Blocks	quarter-quarter
Orientation	Standup
Description: TRS/County	E/2E/2 of Section 11 and E/2SE/4 of Section 2, Township 18 South, Range 32 East, Lea County, New Mexico
Standard Horizontal Well Spacing Unit (Y/N), If No, describe	Yes
Other Situations	
Depth Severance: Y/N. If yes, description	No
Proximity Tracts: If yes, description	No
Proximity Defining Well: if yes, description	N/A
Well(s)	
Name & API (if assigned), surface and bottom hole location, footages, completion target, orientation, completion status (standard or non-standard)	Add wells as needed
Well #1	Dragonstone 11/2 B2PI Fed Com #1 (API # pending) SHL: 405' FNL & 630' FEL (Unit A), Section 14, T18S-R32E BHL: 2540' FSL & 495' FEL (Unit I), Section 2, T18S-R32E Completion Target: Bone Spring formation (Approx. 9277' TVD)
Horizontal Well First and Last Take Points	Exhibit A-2
Completion Target (Formation, TVD and MD)	Exhibit A-4
AFE Capex and Operating Costs	
Drilling Supervision/Month \$	8000
Production Supervision/Month \$	800
Justification for Supervision Costs	Exhibit A
Requested Risk Charge	200%
Notice of Hearing	
Proposed Notice of Hearing	Exhibit A-1
Proof of Mailed Notice of Hearing (20 days before hearing)	Exhibit A-6
Proof of Published Notice of Hearing (10 days before hearing)	Exhibit A-7
Ownership Determination	

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Land Ownership Schematic of Spacing Unit	Exhibit A-3
Tract List (including lease numbers & owners)	Exhibit A-3
Pooled Parties (including ownership type)	Exhibit A-3
Unlocatable Parties to be Pooled	Exhibit A-3
Ownership Depth Severance	N/A
Joinder	
Sample Copy of Proposal Letter	Exhibit A-4
List of Interest Owners (ie Exhibit A of JOA)	Exhibit A-3
Chronology of Contact with Non-Joined Working Interests	Exhibit A-5
Overhead Rates In Proposal Letter	Exhibit A-4
Cost Estimate to Drill and Complete	Exhibit A-4
Cost Estimate to Equip Well	Exhibit A-4
Cost Estimate for Production Facilities	Exhibit A-4
Geology	
Summary (including special considerations)	Exhibit B
Spacing Unit Schematic	Exhibit B-1
Gunbarrel/Lateral Trajectory Schematic	N/A
Well Orientation (with rationale)	Exhibit B
Target Formation	Exhibit B
HSU Cross Section	Exhibit B-3
Depth Severance Discussion	N/A
Forms, Figures and Tables	
C-102	Exhibit A-2
Tracts	Exhibit A-3
Summary of Interests, Unit Recapitulation (Tracts)	Exhibit A-3
General Location Map (including basin)	Exhibit B-1
Well Bore Location Map	Exhibit B-1
Structure Contour Map - Subsea Depth	Exhibit B-2
Cross Section Location Map (including wells)	Exhibit B-2
Cross Section (including Landing Zone)	Exhibit B-3
Additional Information	
CERTIFICATION: I hereby certify that the information provided in this checklist is complete and accurate.	
Printed Name (Attorney or Party Representative):	Dana S. Hardy
Signed Name (Attorney or Party Representative):	
Date:	2/15/2022

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