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2012 MAY 31 P 4:11

May 31, 2012

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

Hand Delivered

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, enclosed for filing is an original and five copies of Siana Oil and Gas LLP's Response to Mack Energy Corporation's Partial Motion to Quash.

Thank you.

Very truly yours,

Karen Williams
Assistant to J. Scott Hall

JSH:kw

cc: Mr. Tom Ragsdale
Tom Zabel, Esq.
Jim Bruce, Esq.

378133

REPLY TO:

325 Paseo de Peralta
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**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION COMMISSION**

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2012 MAY 31 P 4: 11

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

CASE NO. 14763 DE NOVO

**SIANA OIL AND GAS LLP'S
RESPONSE TO
MACK ENERGY CORPORATION'S
PARTIAL MOTION TO QUASH**

Siana Oil and Gas LLP and Tom M. Ragsdale, for their Response to Mack Energy Corporation's Partial Motion To Quash, state:

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. 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. This allegation is directly disputed.

Siana Oil and Gas LLP (Tom M. Ragsdale, President) is the owner of oil and gas leasehold working interests (approximately 6.25%) and an overriding royalty interest in the spacing and proration unit that is the subject of Mack's Application. Mack Energy assumed

operations of the well in 2004 when it was plugged-backed, recompleted and production established from the Corbin-Abo pool. However, Mack Energy owns no interest in the well.

Although Mack has operated the well since 2004, it never consolidated and dedicated the interests in the spacing unit to the well either by a voluntary agreement or by obtaining an order of the Division pooling the lands. It did not obtain the requisite statutory authorization to recover well costs and expenses. Neither has Mack filed a complete C-104 for the well. These ongoing acts and omissions violate the Division's rules,¹ as well as the Oil and Gas Act, specifically, NMSA 1978 §70-2-18.

Siana and Mr. Ragsdale contend that Mack Energy has not acted in good faith to obtain Siana's voluntary participation, but has instead engaged in economic coercion. First, in August of 2011, without authority and in violation of law,² Mack Energy cut-off all the production proceeds attributable to the Siana/Ragsdale interest and began appropriating those revenues for itself. On September 6, 2011, Mack then sent an AFE for a questionable frac job, but without balloting the other interest owners or providing terms that would afford them the opportunity to go non-consent. Then, on November 7, 2011, Mack Energy filed its Application for Compulsory Pooling. Afterward, on December 7, 2012, Mack sent an incomplete joint operating agreement to Siana, but Mack Energy continued to appropriate the production proceeds for itself.

Accordingly, Siana Oil and Gas has asked the Division, and now 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.

¹ Under §19.15.16.19 A (1) and (3) NMAC, the well is not entitled to an allowable.

² Oil and Gas Proceeds Payment Act, NMSA 1978 §70-10-1, *et seq.*

(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.

The Subpoena Seeks Pertinent Information.

The subpoena seeks the production of documents relating to production revenues from the well and Mack Energy's decision to discontinue payments. *Subpoena Duces Tecum*, Exhibit A. The few documents that Mack Energy attached to its Motion are not at all responsive to the subpoena and Mack does not deny that it is in possession of all of the materials sought. Mack objects that crude oil contracts and title opinions were previously provided, but as demonstrated by the attached affidavit, they were not. *Affidavit of Doris Biddy*, Exhibit B.

Mack Energy also objects that the documents sought are not relevant. But relevance is an admissibility objection, not a discovery objection. Siana and Mr. Ragsdale are not obliged to demonstrate the relevance of the materials it seeks in the manner contemplated by NMRA 11-401 or 11-402 of the Rules of Evidence. They need only show that they are "pertinent" under NMSA 1978 §70-2-8.

In this case, information relating to production revenues and the operator's discontinuation of production payments pertain directly to (1) Mack Energy's allegation that it has acted in good faith, and (2) the relief requested by Siana and Mr. Ragsdale. Therefore, the "pertinence" standard for subpoenas under NMSA 1978 §70-2-8 is clearly met and the very broad discovery standard of Rule 1-026(B)(1) is also satisfied.

Mack Energy relies on Order No. R-13156 as support for its position,³ (the "XTO order"), but that case is distinguishable. In that case, an interest owner being force pooled after drilling and completion sought to subpoena technical information which the order subsequently

³ Case No. 14331; *Application of XTO Energy, Inc. for Compulsory Pooling and Downhole Commingling, San Juan County, New Mexico*

defined as “well specific data” (e.g., not from an offsetting well) in order to challenge the risk penalty. In the XTO order, the Division reasoned that the data were “confidential business information” and thus entitled to some protection. That is not the case here. Mack Energy also refers to the recently- issued Order No. R-13357⁴ (the “Cimarex Order”) by which the Division also denied Nearburg’s efforts to subpoena “well specific data” in a closed case. Notably, the Cimarex Order holds open the possibility that it will be re-considered if the case is re-opened and Nearburg demonstrates the information is needed to present its case. Siana Oil and Gas and Mr. Ragsdale have established that need here by reference to the claims and defenses of the parties expressed in the pleadings.

The Partial Motion To Quash should be denied and Mack Energy Corporation should be directed to comply with the Division’s Subpoena Duces Tecum without further delay.

Respectfully submitted,

Montgomery and Andrews, P. A.

By:




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Attorneys for Siana Oil and Gas LLP
and Tom M. Ragsdale

⁴ Case No. 14582; *Application of Cimarex Energy Co. of Colorado for Approval of a Non-standard Oil Spacing and Proration Unit and Compulsory Pooling, Lea County, New Mexico.*

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 **31** day of May, 2012.

James Bruce, Esq.
P.O. Box 1056
Santa Fe, NM 87504
jamesbruc@aol.com



J. Scott Hall

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

IN THE MATTER OF THE APPLICATION
OF MACK ENERGY CORPORATION
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

CASE NO. 14763 *DE NOVO*

SUBPOENA DUCES TECUM

TO: Mack Energy Corporation
c/o James Bruce, Esq.
369 Montezuma, No. 213
P. O. Box 1056
Santa Fe, NM 87504-1056

Pursuant to Section 70-2-8, NMSA (1978), and Rule 19.15.4.16 NMAC of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., May 22, 2012, at the offices of the Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 and to produce and make available to Siana Oil and Gas LLP and their attorney, J. Scott Hall, Esq., for copying, the documents and items specified below.

This subpoena is issued on application of Siana Oil and Gas LLP through its attorneys Montgomery and Andrews, P.A., P.O. Box 2307 Santa Fe, New Mexico 87504.

Dated this 3rd day of May, 2012.

NEW MEXICO OIL CONSERVATION DIVISION

By: David K. Brooks
Assistant General Counsel
Jami Bailey, Director

EXHIBIT A

EXHIBIT 'A'

**TO SUBPOENA DUCES TECUM
TO MACK ENERGY CORPORATION
IN NEW MEXICO OIL CONSERVATION COMMISSION
CASE NO. 14763**

For the Cockburn "A" State Well No. 5 (API 30-025-25286); SE/4 NW/4 Section 32, T-17-S, R-33-E, NMPM, Lea County, New Mexico:

1. All crude oil contracts from 2004 to the present.
2. All gas contracts from 2004 to the present.
3. All documents and other materials reflecting the production proceeds payable or attributable to Tom M. Ragsdale and/or Siana Oil and Gas for each month from August, 2011 to the present.
4. All documents and other materials relating to the discontinuation of the payment of production proceeds to Tom M. Ragsdale and/or Siana Oil and Gas.
5. All title opinions, including division order title opinions for the referenced well.

These subpoena items are ongoing and you have the obligation to supplement the production of documents and materials responsive hereto as new documents and materials become available.

AFFIDAVIT OF DORIS BIDDY

Doris Biddy, being duly sworn, states:

1. I am the Joint Interest Billing Accountant for Siana Oil and Gas LLP in the company's Midland, Texas office. I am familiar with the lands and the Cockburn A State Well No. 5 that are the subject of Mack Energy Corporation's Application for Compulsory Pooling and have personal knowledge of the matters set forth herein.
2. I am familiar with and have personally inspected all of the records of Siana Oil and Gas LLP for the Cockburn A State Well No. 5.
3. Further, I am aware that Mack Energy Corporation was previously requested to provide copies of the gas contracts, the Joint Operating Agreement (JOA) for the well, as well as all AFE's signed or acknowledged by Tom M. Ragsdale. Mack Energy did send copies of a gas contract, the JOA and AFEs.
4. I have second-hand knowledge that either Tom M. Ragsdale or a previous employee requested crude oil contract and title opinions, which to my knowledge, Siana has not yet received.
5. Tom M. Ragsdale, President of Siana Oil and Gas, owns both a leasehold working interest and an overriding royalty interest in the well. Although the well has continued to produce, Mack Energy Corporation has not paid for production proceeds attributable to the working interest and overriding royalty interest since August, 2011. I have been verbally told by either Tom M. Ragsdale or a previous employee that payment and payment detail information have been requested on more than one occasion, but Mack Energy has neither paid proceeds nor provided the payment detail.

DATED:

5/31/2012

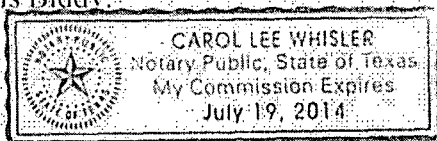
Doris Biddy
Doris Biddy

State of Texas)

) ss:

County of Midland)

The foregoing instrument was acknowledged before me on this 31 day of May, 2012, by Doris Biddy.



Carol Lee Whisler
Notary Public, State of Texas

My Commission Expires: July 19, 2014