

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

**APPLICATION OF SIANA OIL & GAS CO.
FOR AND ACCOUNTING UNDER ORDER NOS. R-21292
AND R-21293 AND TO DECLARE CERTAIN
ACCOUNTING PRACTICES IMPROPER,
LEA COUNTY, NEW MEXICO**

Case No. 22378

CLOSING STATEMENT

Applicant Siana Oil & Gas Co. (“Siana”) hereby submits this closing statement as requested by the Hearing Examiner at the hearing in this matter on July 8, 2022.

SUMMARY OF ARGUMENT

As established at hearing on July 8, 2022, Mewbourne Oil Company (“Mewbourne”) acted wrongfully by (1) holding overages on estimated costs paid by Siana (“Overages”), (2) taking improper deductions from the Overages for costs unrelated to drilling and completion, (3) taking improper deductions for operating costs attributed to the OJ and PI Inland wells from revenues due for production from other wells, (4) holding proceeds in suspense without justification while demanding full payment for operating costs and (5) refusing to allow Siana to take its production in-kind. In doing so, Mewbourne has violated New Mexico law and numerous provisions of Order Nos. R-21292 and R-21293 (“Orders”), including but not limited to paragraphs 22, 23, 24, 25, 27, 28, and 29.

Siana respectfully requests the Division to order that Mewbourne provide an accounting and otherwise comply with New Mexico law, including the Orders. Mewbourne should be required to do the following immediately:

- A. Submit itemized statements for actual well costs and operating charges;

- B. Provide an accounting for all wells in which Siana has an interest that have been impacted by Mewbourne's conduct discussed herein;
- C. Cease improper netting of Siana's revenues;
- D. Refund overages for estimated costs of OJ/PI Wells with 15% interest pursuant to NMSA 1978, Section 56-8-3(B) (1983);
- E. Disburse all revenues improperly held in suspense with 18% interest and attorney fees due under NMSA 1978, Sections 70-10-5 to -6 (1991);
- F. Refrain from engaging in improper accounting practices identified herein;
- G. Allow Siana to take its share of production in-kind; and
- H. Require Mewbourne to provide a fair opportunity for Siana to participate in subsequent Inland wells that were drilled and completed while Mewbourne improperly withheld monies due Siana.

Siana further asks that the Division retain jurisdiction in this proceeding to hear any objections to the reasonableness of costs that are timely made after Mewbourne submits the requisite itemized statements.

BACKGROUND

Siana filed its application in this matter ("Application") pursuant to 19.15.4.8 NMAC on November 29, 2021. Therein, Siana seeks an order from the Division requiring Mewbourne to provide an accounting for the drilling and operation of wells drilled and operated under the Orders, which were previously issued in Case Nos. 21156 and 21157 on April 28, 2020, among other things. Applicant Siana Oil & Gas Co.'s Corrected Exhibit Package (July 1, 2022), Exhibit A [pdf

2-7].¹ A hearing was held before the Hearing Examiner in this matter on July 8, 2022. *See generally* Tr.

The Orders pooled acreage dedicated to the Inland 26/23 B2OJ State Com Well No. 1H, API#30-025-46931 (“OJ Well”), and the Inland 26/23 B2PI State Com Well No. 1H, 30-025-45283 (“PI Well”; collectively, “OJ and PI Wells” or “Wells”). Mewbourne operates the Wells. Siana is owner of record of a ten percent working interest in each spacing unit and well. Siana Exhibit B at 2 [pdf page 11]. Siana elected to participate in and paid estimated drilling and completion costs (“D&C Costs”) of \$798,750.00 for the OJ Well, and \$803,750.00 for the PI Well. Siana Exhibit P at 1 [pdf page 1108]. Mewbourne began production of the Wells on March 16, 2021. Tr. 195:21.

Mewbourne has continually engaged in improper accounting practices regarding wells that it operates in which Siana has an interest. Indeed, since the hearing on July 8, 2022, Mewbourne continues to employ its improper practices. The following examples relate to the Wells at issue in this proceeding.

In violation of the Orders, Mewbourne failed to provide Siana with the itemized statements of actual well costs for the Wells as required by paragraph 24 of the Orders. Tr. 14:13-14; Siana Exhibit M at 3 [pdf page 1087]. Mewbourne also failed to provide itemized statements of the reasonable operating charges of the Wells, in violation of paragraph 27 of the Orders. Tr. 129:7-12; Siana Exhibit M at 3 [pdf page 1087]. As best as can be estimated without the itemized statements required by the Orders, at the time of hearing, Mewbourne’s AFEs and Siana’s payment of estimated costs exceeded the actual well costs for drilling and completion by approximately

¹ Hereinafter, Siana cites to each of the exhibits from its Corrected Exhibit Package as “Siana Exhibit X” and provides the pdf page within the Package for the pinpoints, *e.g.*, Siana’s Exhibit A at 1 [pdf page 2].

\$412,414.31. Siana Exhibit P at 9 [pdf page 1116]. In further violation of the Orders, Mewbourne failed to refund Siana the amount of estimated well costs that exceeded the reasonable well costs. Tr. 35:7-11; Siana Exhibit M at 3 [pdf page 1087].

Instead, Mewbourne netted the Overages to pay for monthly operating costs, also known as lease operating expenses (“LOEs”), on the Inland wells and other unrelated wells. Tr. 91:3-6. Mewbourne also netted Inland well LOEs from revenues due for production from other, unrelated wells. Tr. 89:13-16. In addition, without providing any notice to Siana, Mewbourne improperly held in suspense 100% of Siana’s revenue from the Inland wells and from other wells. Tr. 138:5-11. Although Mewbourne continues to hold 100% of Siana’s revenue from the Inland Wells, at the same time Mewbourne demands that Siana pay 100% of its monthly joint interest billings (“JIB”) for each well. Tr. 138:17-139:1. As discussed in detail below, Mewbourne has no justification for its improper conduct.

CLOSING ARGUMENT

The Division has broad authority under the Oil and Gas Act, NMSA 1978, Sections 70-2-6 (1979) and 70-2-11 (1977). “The division shall have . . . jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas[.]” Section 70-2-6(A). In addition, the Division has a duty “to prevent waste . . . and to protect correlative rights” and is empowered by statute to “do whatever may be reasonably necessary to carry out the purpose of this act.” Section 70-2-11(A). In addition, NMSA 1978, Section 70-2-17 (1977) requires the Commission to ensure that all compulsory pooling orders “are just and reasonable” and that a party who is forcepooled under an order has “the opportunity to recover or receive without unnecessary

expense his just and fair share of the oil or gas.” Siana’s requests for relief and the issues detailed in this matter directly relate to Siana’s correlative rights as a working interest owner in oil and gas.

“A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division *shall comply with every term*, condition and provision of the permit, administrative order, authorization or approval.” 19.15.5.11 NMAC (emphasis added). Here, Mewbourne has failed to comply with multiple terms of the Orders, as well as applicable statutes and rules. Further, Mewbourne has consistently refused to allow Siana to take its oil and gas in kind. Mewbourne has no factual or legal basis for its conduct. Mewbourne’s conduct is in violation of New Mexico law and the Orders. The Division should exercise its authority and satisfy its duty to protect correlative rights by providing the relief requested herein.

I. Mewbourne has wrongfully withheld Overages on estimated costs paid by Siana.

Under the Orders, Mewbourne is required to “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.” Siana Exhibit M at 3, ¶ 25 [pdf page1086]. Mewbourne wrongfully withheld the Overages, in violation of the Orders. In addition, Mewbourne improperly netted the overages for the Wells’ LOE and for LOE for other, unrelated wells. *See* Tr. 91:3-14.

Notably, Mewbourne’s estimated well costs far exceeded costs that could be reasonably anticipated at the time drilling was to occur, because Mewbourne’s AFEs and cash calls were based on pre-COVID prices in January of 2020. *See* Tr. 74:20-21. At the hearing, Siana’s witness explained that estimated costs for fracing were down approximately 40% after COVID-19, due to the collapse of the price of oil. *See* Tr. 75:1-25; *see id.* 74:23-25 (“COVID came along a month or two later, February, March and activity just went to a standstill and oil plunged.”).

Consequently, in accordance with standard industry practice, Siana expressly asked in writing for revised AFEs when Mewbourne made its cash calls post-COVID in May of 2020. Siana's witness testified that "the market had changed and we pointed out to Mewbourne when they gave us the AFEs that they were basically—they were pre-COVID AFEs . . . we just knew they were too high . . . I even wrote a letter to Ken Waits asking him to reconsider or refile. It's an industry norm to adjust the AFEs if you're too high or too low for market conditions." Tr. 75:16-25. Nonetheless, Mewbourne refused to provide AFEs that would reflect accurate estimated costs at the time that the AFEs were submitted to Siana. Tr. 76:6-9 (stating that Mewbourne "totally ignore[d] us and just st[]uck with the pre-COVID of much higher . . . [than] the prevailing rates were at the time").

Due to Mewbourne's refusal to revise its estimated costs in light of indisputable changes in the market, as of the date of hearing, Mewbourne owed Siana approximately \$412,414.31 in overages, plus 15% interest as allowed by Section 56-8-3(B). *See* Tr. 91:19-92:25; Siana's Amended Exhibit P at 9 (July 6, 2022); *see also* Caldwell Demonstrative Exhibit (July 14, 2022); Tr. 87:3-90:11, 106:18-108:7, 108:17- 109:17, 110:8-18, 111:5-112:23; *cf.* Case No. 13957 (*de novo*), *In re Application of Energen Resources Corp. to Amend Cost Recovery Provisions of Compulsory Pooling Order No. R-1960, to Determine Reasonable Costs, and for Authorization to Recover Costs from Production of Pooled Mineral Interest*, Order No. R-1960-B at 5, ¶ E (Aug. 13, 2009) (relying on NMSA 1978, § 70-10-1 *et seq.*, the Oil and Gas Proceeds Payment Act, for guidance regarding interest due); Case No. 15072, *In re Application of Energen Resources Corp. to Amend Compulsory Pooling Order No. R-10154*, Order No. R-10154-A at 9, ¶ 9 (July 28, 2016) (awarding interest under NMSA 1978, Sections 70-10-3 (1985) and 70-10-4 (1991)).

Mewbourne's accounting practices are improper and are contrary to the Orders, including but not limited to paragraphs 24 to 28. The Orders require that "[n]o later than one hundred eighty [180] days after an operator submits a Form C-105 for a well, Operator shall submit to OCD and to each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs." Siana Exhibit M at 3, ¶ 24 [pdf 1086]. Mewbourne's accounting practices violate the Orders because, among other things, Mewbourne refuses to provide the requisite itemized statements notwithstanding Siana's numerous requests. Tr. 36:7-13. In addition, Mewbourne has failed to provide Siana with itemized schedules of the reasonable charges for operating and maintaining the OJ and PI Wells, in further violation of the Orders. Tr. 129:7-12; Siana Exhibit M at 3, ¶ 27 [pdf page 1086].

Indeed, Mewbourne admits that it does not send an itemized schedule of the actual well costs to owners of a Pooled Working Interest and contends that Mewbourne's monthly JIBs allow an owner to calculate for themselves what the Actual Well Cost is for the previous month. *See* Tr. 150:22-151:16. Contrary to Mewbourne's representation, the JIBs that Mewbourne sends to interest owners monthly cannot constitute an itemized schedule of actual well costs, which would trigger the period for objections provided by the Orders, because it would require each participating working interest owner to engage in a detailed analysis of all JIBs and revenue statements to ascertain the actual costs. *See, e.g.*, Siana's Exhibit B at 3 [pdf page 11]. Each non-operator would have to devote weeks of analysis to ascertain the actual costs of drilling two wells. *See id.* Further, Mewbourne continues to add "actual well costs" on its JIBs after the 180 days allowed by the Orders. Thus, issuance of monthly JIBs cannot be considered an acceptable substitute for the itemized schedule, because it prevents a working interest owner from accurately

estimating the actual well costs and timely objecting to reasonableness of such costs in accordance with the Orders.

Notably, the Orders provide that “Actual Well Costs shall be considered to be the Reasonable Well Costs unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the [itemized] schedule.” Siana Exhibit M at 3, ¶ 24 [pdf page 1086]. Thereafter, if an objection is timely filed, “OCD shall determine the Reasonable Well costs after public notice and hearing.” Siana Exhibit M at 3, ¶ 24 [pdf page 1086]. Because Mewbourne continues to violate the Orders by refusing to submit itemized schedules of actual well costs, Siana has been denied its opportunity to timely file an objection to the actual well costs. *See* Tr. 37:15-19. Moreover, Mewbourne thereby evaded the deadline for refunding the Overages under the Order. Under these circumstances, Siana’s deadline to object to reasonableness of the actual well costs has not elapsed. The time period for objections never began to run because Mewbourne failed to provide the requisite itemized statements.

Mewbourne admits that if a working interest owner wanted to object to actual well costs they would have to determine this cost themselves, by looking at daily drilling reports, determining when the well was completed, checking the OCD website regularly to see if a form C-105 was filed and posted by OCD, in order to determine when the owners’ 45 day objection period would begin. *See* Tr. 205:11-20. However, Mewbourne also admits that non-consenting pooled working interest owners are not provided with daily drilling reports. *See* Tr. 207:2-15. Thus, Mewbourne’s practices do not enable all parties forcepooled under an order to be able to determine independently the actual well costs.

Three Siana employees were required to spend approximately 140-150 hours analyzing the data from all revenue statements, JIBs, and daily drilling reports, to determine the actual well costs

for the Wells. *See* Tr. 80:18-81:3; *see also* Tr. 29:24-30:24. This is an excessive and unnecessary amount of time and expense that any working interest owner would be required to expend to determine independently Mewbourne's actual well costs. Moreover, the necessary analysis could only be done if all working interest owners are privy to these documents, which Mewbourne admits is not the case. Mewbourne must be required to submit itemized schedules of actual well costs, as required by the Orders, and ultimately refund, with interest, all paid estimated costs that exceed reasonable actual costs.

II. Mewbourne has taken improper deductions from the Overages for costs unrelated to drilling and completion of the Inland Wells.

The Orders require Mewbourne to refund to each owner of a pooled working interest its share of paid estimated costs that exceed the "reasonable well costs." Siana Exhibit M at 3, ¶ 25 [pdf page 1086]. In violation of the Orders, Mewbourne not only withheld the Overages of the estimated costs paid by Siana, it also improperly deducted costs from those Overages. For example, Mewbourne used the Overages to net LOE for the Wells, which are the subject of the Order. *See* Siana's Amended Exhibit P; *see also* Tr. 91:3-10. In addition, Mewbourne wrongfully netted LOE from the Overages for other Mewbourne-operated wells in which Siana holds an interest. *See* Tr. 91:3-14. Siana's accountant witness testified that in her experience as an accountant for oil and gas companies, she has never seen an operator net LOE for unrelated wells from estimated prepaid costs to drill another well. *See* Tr. 92:22-93:4.

Mewbourne admits that it improperly netted LOE for other wells from the Overages, "[w]e kind of had an unintentional event happen in July of '21. There was a software issue. It applied the remainder of their prepayment to their account which then applied it to all of their invoices." Tr. 262:16-20. Despite Mewbourne's claim that the netting was due to a software issue, Mewbourne claims that it is appropriate to commingle revenues and net unrelated well costs.

When asked whether netting LOEs from other wells from overages was appropriate, Mewbourne's witness testified, "I think we have—I mean, I found it to be appropriate in the past. Like I said, you know, if we have money on someone's account why send them a bill for something and then send them a refund . . . you net those together and send out what's owed then." Tr. 263:4-11. In light of this conduct, the Division should order Mewbourne to provide an accounting for all netting of LOE purportedly due from Siana and to rectify its improper netting of costs from the Overages.

III. Mewbourne has taken improper deductions for operating costs from revenues due for production from other wells.

In addition to Mewbourne's improper netting from the Overages for costs related to the Wells and other unrelated wells, Mewbourne has also netted LOE for the OJ and PI Wells from other revenues Mewbourne owes Siana. Siana's accountant calculated that Mewbourne improperly netted approximately \$106,365.24 against other well revenue to pay LOE costs of the OJ and PI Wells. *See* Tr. 89:13-16. Siana's accountant testified that before this, she had never seen LOE for one well deducted from revenues for another well. *See* Tr. 93:22-25. Her testimony established that costs and revenues from separate wells should not be commingled: "[O]ur revenue on the other wells, the Inland Wells were being commingled into that to pay those wells or to pay the Inland Wells when the Inland Well[s] should have just been treated separately." Tr. 103:13-17.

Because Mewbourne is inappropriately netting Inland Well costs from other Siana revenues, Siana is receiving less revenue than it should. For example, in one month, Siana received \$10,000 to \$12,000 less in revenue from other wells, because Mewbourne is deducting LOE for the Wells from revenue due for production from unrelated wells. *See* Tr. 103:19-23. Consequently, as of the date of hearing, Mewbourne improperly netted approximately \$106,365.24 from revenue due for unrelated wells. *See* Tr. 89:13-16. In light of this conduct, the Division should order

Mewbourne to provide an accounting for all netting of LOE purportedly due from Siana, rectify its improper netting of costs from revenues due for production from other wells, and pay Siana all revenues from which LOE was improperly netted, along with 18 percent interest under NMSA 1978, Section 70-10-5 (1991).

IV. Mewbourne has wrongfully held Siana's proceeds in suspense without justification.

a. Mewbourne has wrongfully held 100% of Siana's revenues in suspense without notifying Siana.

Mewbourne admits that in response to a petition it received regarding claims against Siana's interest in the Wells, it began holding Siana's entire interest in the Wells in suspense. *See* Tr. 139:5-11. Siana never received notice by Mewbourne that it intended to hold Siana's revenue in suspense. Tr. 42:20-24. Mewbourne claims that it is unaware of the percentage of Siana's interest in the Inland wells which is in dispute, and therefore argues that it is entitled to hold 100% of Siana's interest in suspense. Tr. 138:13-16 ("Mewbourne can't determine whether that's correct based on the lawsuit documents."). However, Mewbourne's own exhibit demonstrates the falsity of that claim. *See* Mewbourne Exhibit A-10 at 5 [pdf page59]. Upon receipt of Exhibit A-10 ("Petition"), Mewbourne had actual knowledge of the percentage of interest in dispute.

The Petition plainly states on page 5 the percentage of the total working interest that is in dispute. *Id.* From a cursory review of the Petition, it is clear that a portion of Siana's working interest is not disputed. Because Mewbourne has knowledge of the undisputed percentage, Mewbourne should *at least* be paying Siana its revenues and requesting payment of LOE based on the undisputed percentage. Even applying Mewbourne's logic, it should only hold in suspense that portion of Siana's interest that is being claimed by other parties. Mewbourne has no factual

or legal support to hold 100% of the Wells' revenues in suspense. Rather, Mewbourne's holding 100% of Siana's interest in suspense violates New Mexico law.

Section 70-10-4(A) provides that "[a]ny delay in determining any person legally entitled to an interest in the proceeds from production shall not affect payments to all other persons entitled to payments." Similarly, any undisputed percentage of payments should not be delayed due to determining the legal interest of a defined percentage of interest. Mewbourne is only excused from compliance with the penalty provisions of Section 70-10-5 if it has relied "in good-faith" on either a title opinion or information questioning the entitlement of a person claiming right to payment. Section 70-10-5(A)-(B). There is no good faith basis for Mewbourne's refusal to pay Siana the revenues on Siana's undisputed interest in the Wells. Therefore, Mewbourne is in violation of New Mexico law and must pay the applicable 18% interest rate under the penalty provisions for revenues improperly held in suspense.

Section 70-10-3 requires that proceeds from the sale of oil and gas production "shall be paid to all persons legally entitled to such payments, commencing not later than six months after the first day of the month following the date of first sale and thereafter not later than forty-five days after the end of the calendar month within which payment is received by payor for production." Because Mewbourne failed to make payments to Siana of the undisputed interest revenue pursuant to Section 70-10-3, Mewbourne is required to comply with the penalty provisions of Section 70-10-5, which provide interest at the rate of 18% per year on the unpaid balance.

b. While continuing to hold all of Siana's revenues in suspense, Mewbourne has demanded full payment for all related LOE.

Mewbourne continues to bill Siana for 100% of the LOE while holding 100% of Siana's revenue in suspense. Mewbourne's rationale for billing Siana for LOE while it withholds all of Siana's revenue on the Wells is that Mewbourne cannot incur the cost. Mewbourne's witness

testified that “with respect to cost, Mewbourne incurs cost to drill the wells and Siana claims an interest in the wells. And under the pooling orders, Siana is required to pay the costs.” Tr. 138:22-139:1. Mewbourne’s witness claims that in his experience dealing with working interest owners’ revenues which are held in suspense, he has “many times” charged interest owners monthly JIBs while at the same time holding revenues in suspense. Tr. 148:7-16. Mewbourne’s position is contrary to industry practice.

As explained by Siana’s accountant witness, when a working interest is in revenue suspense, the JIBs for related LOE should likewise be suspended. *See* Tr. 93:11-21. The industry standard, which Mewbourne chooses to ignore, is to hold both the expenses and the revenues in suspense:

Q. So in your experience, you’ve never seen LOE for one well deducted from revenues for another well; is that right?

A. On a working interest, no, because normally that whole Division order would be in suspense on both the JIB side and the revenue side.

Tr. 93:22-94:2. Siana’s witness further explained: “The point [is] that if there’s a legal suspense on the working interest on the revenue there should be a question on the working interest on the JIB debt. So if it comes out that it’s actually still 10 percent, then, yes, we owe that 10 percent on the JIBs. But if it comes out that it’s just 5 percent, then we only owe 5 percent.” Tr. 96:17-24.

For these reasons, Mewbourne should be required to hold any LOE in suspense that correlates to the revenue held in suspense. Mewbourne should be ordered to provide an accounting with respect to LOE previously netted and to credit Siana for improper netting of such costs, with interest.

V. Mewbourne wrongfully refuses to allow Siana to take its production in-kind.

The Orders and New Mexico law provide that an owner of a working interest in oil and gas must have an “opportunity to produce his *just and equitable share of the oil or gas* in the pool.” Siana Exhibit M at 2, ¶ 14 [pdf 1085] (emphasis added); *see* Section 70-2-17 (providing that a party who is forcepooled has “the opportunity to recover or receive without unnecessary expense his *just and fair share of the oil or gas*” (emphasis added)). Thus, Mewbourne has wrongfully denied Siana the opportunity to take its minerals in kind. New Mexico oil and gas law has defined the first element of correlative rights as “an opportunity to produce.” *Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶ 27, 70 N.M. 310.

Siana repeatedly asked to receive its share of production in-kind. *See* Tr. 43:19-22. Notwithstanding Siana’s requests, Mewbourne has consistently and wrongfully denied Siana its right to take production in-kind.

Q. How did Mewbourne respond to that request?

A. They were not – they were just, they have a wall up about that. That’s a total – they won’t even discuss it. They won’t even talk about it. They want control of everybody’s crude oil and natural gas. They want control of all, the 100 percent stream of the products being sold.

Tr. 43:23-44:4. Mewbourne reasons that if it allowed Siana to exercise its right to production in-kind, it would not be able to withhold 100% of Siana’s interest in the wells. *See* Tr. 143:3-6. This assertion lacks merit because Mewbourne could certainly withhold a percentage of Siana’s interest by withholding a proportionate share of the oil and gas.

Mewbourne further attempts to justify its denial of Siana’s right to take production in-kind by assuming that the Orders preclude force-pooled interest owners from taking their share of production in-kind. *See, e.g.*, Tr. 162:19-163:4. The Orders provide no such justification. Nothing in the Orders precludes an interest owner from taking its share of production in-kind. Mewbourne

admits that “[t]here’s not express language” in the Orders precluding Siana from taking its share of production in-kind. Tr. 163:7. Express language exists, however, 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.” *See* Siana Exhibit M at 2, ¶ 14 [pdf page 1085]. Notably, nowhere do the Orders refer to “revenue.” Rather, the Orders expressly recognize the interest owners’ rights to their “share of production.” *Id.* at 3, ¶¶ 28-29 [pdf page 1086] (providing that the “Operator may withhold the following costs and charges from the share of *production* due to each owner” (emphasis added); *see* 1 Nancy Saint-Paul, *Summers Oil and Gas* § 3:3 (3d ed. 2021) (“The term ‘correlative rights’ in oil and gas law describes a bundle of legal rights and duties. It means that . . . each owner of an interest in a common source of supply of oil and gas has a legal privilege, as against other owners, to take oil and gas by lawful operations[.]”). Thus, the Orders contemplate that a working interest owner may elect to take its share of production in kind, and Mewbourne should be ordered to allow Siana to take its production in kind accordingly.

REQUEST FOR RELIEF

WHEREFORE, Siana respectfully requests the Division to order that Mewbourne provide an accounting and otherwise comply with New Mexico law, including the Orders. Mewbourne should be required to immediately do the following:

- A. Submit itemized statements for actual well costs and operating charges;
- B. Provide an accounting for all wells in which Siana has an interest that have been impacted by Mewbourne’s conduct discussed herein;
- C. Cease improper netting of Siana’s revenues;
- D. Refund overages for estimated costs of OJ/PI Wells with 15% interest pursuant to NMSA 1978, Section 56-8-3(B) (1983);

- E. Disburse all revenues improperly held in suspense with 18% interest and attorney fees due under NMSA 1978, Sections 70-10-5 to 70-10-6 (1991);
- F. Refrain from engaging in improper accounting practices identified herein;
- G. Allow Siana to take its share of production in-kind; and
- H. Require Mewbourne to provide a fair opportunity for Siana to participate in subsequent Inland wells that were drilled and completed while Mewbourne improperly withheld monies due Siana.

Siana further asks that the Division retain jurisdiction in this proceeding to hear any objections to the reasonableness of costs that are timely made after Mewbourne submits the requisite itemized statements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on September 15, 2022 to the following:

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