

**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**

**APPLICANT'S RESPONSE TO MEWBOURNE OIL COMPANY'S CLOSING BRIEF**

As detailed in Applicant's Closing Statement ("Applicant's Closing"), Mewbourne acted and continues to act in violation of New Mexico law and Order Nos. R-21292 and R-21293 ("Orders") by (1) holding overages on estimated costs paid by Applicant ("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 Applicant to take its production in-kind. For all of the reasons stated in Applicant's Closing, the Application should be approved and the Division should provide the relief requested by Applicant. *See id.* at 1-2. As detailed below, Mewbourne makes numerous arguments in an effort to excuse its improper conduct. None have merit.

**A. Mewbourne failed to provide itemized schedules as required by the Orders.**

Mewbourne first argues that it complied with the requirement to provide itemized schedules of actual well costs and operating charges by providing Applicant with daily drilling reports ("DDR's") and joint interest billings ("JIB's"). Mewbourne's Closing Brief at 2 ("Mewbourne's Closing"). Applicant's Closing explains why Mewbourne's argument cannot be sustained. For example, Mewbourne does not provide all of the forcepooled parties with DDR's

and JIBs. *See* Applicant's Closing at 8. As a result, it is generally impossible for an interest owner who does not pay its share of estimated costs to independently determine the actual well costs. Moreover, the logistics of requiring a non-operator to determine actual well costs are overwhelming and unreasonable, requiring weeks to assimilate and analyze information that Mewbourne has at its fingertips. *Id.* at 7-8. In addition, Mewbourne continues to add actual well costs to joint interest billings past the time for making objections as provided in the Orders. *Id.*

Mewbourne's position would preclude any non-operator from making timely objections. The logistics of requiring a non-operator to make timely objections to actual well costs without an itemized schedule are also overwhelming and unreasonable, because it requires the non-operator to review DDRs, surmise when the well was completed, and then check the Division's website on a regular basis within 45 days to see if the well completion report had been filed—all to determine when the objection period begins to run. *Id.* at 8. Again, Mewbourne has this information at its fingertips, yet refuses to provide it to non-operators, including Applicant, in violation of the Orders. Additional facts established at the hearing further illustrate that the DDRs and JIBs do not constitute an itemized schedule of well costs. First, DDRs do not reveal actual costs, but rather estimated costs. *See* Tr. 32:25-33:4; 35:1-3; 56:20-57:1. Second, JIBs contain information on costs related to drilling and completion and to operating costs for numerous wells and thus cannot be considered an itemized schedule of actual well costs for a particular well. *See* Tr. 30:1-10.

Mewbourne repeatedly claims that it provided Siana "with far more detailed cost information than was required by the pooling orders." Mewbourne Closing at 1. However, Mewbourne has provided no facts to support this claim. In fact, Mewbourne admits that its practice requires interest owners to calculate for themselves the actual well costs by looking at monthly JIBs, rather than providing owners with the actual costs. *See* Tr. 151:12-16. The fact that it took

three Siana employees between 140 and 150 hours to come up with a number for actual well costs from the reports provided by Mewbourne further belies Mewbourne's assertion that it provides Siana with the requisite itemized statements. *See Applicant's Closing* at 8-9. By failing to comply with paragraph 24 of the Orders, Mewbourne improperly denies Siana and other working interest owners the opportunity to object to actual well costs in accordance with the Orders. *See id.* at 8.

Mewbourne argues that “[n]either the pooling orders nor any Division regulation require an operator to provide actual well costs in a specific format.” *Mewbourne Closing* at 3. However, the Orders clearly specify that the operator shall submit a singular document, that is, “*an* itemized schedule.” Siana Exhibit M at 3, ¶ 24 [pdf page 1086] (emphasis added). Mewbourne's suggestion that multiple and differing reports satisfy the Order's requirement cannot be supported in light of the problems with this approach noted above. Mewbourne's position subverts the intent of the Division and the purpose of the language in the Order and therefore must be rejected. Because Mewbourne continues to violate the Orders by failing to submit an itemized statement of actual costs to drill and complete each well, Siana retains the right to object to Mewbourne's actual well costs. *See Applicant's Closing* at 8-9; *see also* Tr. 29:5-8.

**B. Mewbourne should have revised its estimated authorizations for expenditures (“AFEs”) after costs declined due to COVID-19.**

Mewbourne argues that it is not required to revise its estimated AFEs when well costs change. *Mewbourne's Closing* at 4. Contrary to standard industry practice, Mewbourne refused to revise its AFEs after Siana pointed out to Mewbourne that its AFEs were based on pre-COVID costs. *See Applicant's Closing* at 5-6. Because the AFEs failed to account for a huge market decline, they were not tendered in good faith and they violated the requirement that an owner must be afforded “the opportunity to recover or receive *without unnecessary expense.*” NMSA 1978, Section 70-2-17(B) (1977) (emphasis added). Notably, Mewbourne does not argue and, in fact,

cannot argue, that the decline in costs was unknown or unknowable. *See generally* Mewbourne's Closing. Mewbourne knew that its AFEs included unjustifiable expenses and still refused to revise its AFEs. Mewbourne's interpretation of the Orders and its obligations thereunder are contrary to Section 70-2-17(B) and should therefore be rejected. *Cf. Abraxas Petro. Corp. v. Hornburg*, 20 S.W.3d 741, 755 (Tex. App. 2000) (stating that AFEs which are "unjustified under the facts" may constitute breach of a joint operating agreement).

**C. The Division has authority to require Mewbourne to comply with the Division's Orders.**

Mewbourne argues that Applicant is asking the Division to adjudicate claims under the Oil and Gas Proceeds Payment Act ("PPA") and that the Division lacks authority in this case "to adjudicate private civil claims or award damages." Mewbourne Closing at 5; *see id.* at 4 (citing generally to the application). Mewbourne misstates Applicant's requests to the Division. Siana does not seek damages or penalties. *See generally* Application. Nor does it seek to adjudicate civil claims. *See id.* Rather, Siana asks the Division to enforce the provisions of the Orders. With respect to the PPA, Siana asks the Division to enforce Paragraph 33 of the Orders: "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.* . . ." Siana Exhibit M at 4, ¶ 33 [pdf page 1087]. The Division clearly has authority to enforce its own orders. *See, e.g.*, 19.15.5.11 NMAC; Siana Exhibit M at 4, ¶ 35 ("OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.").

As detailed in Applicant's Closing, Mewbourne is improperly holding a percentage of Siana's revenue in suspense, when Mewbourne has actual knowledge that such percentage is undisputed. *See id.* at 11-13. This is contrary to Paragraph 33 of the Orders. Notably, Mewbourne does not even attempt to counter the fact that it is withholding revenues for an undisputed interest

owned by Siana. *See generally* Mewbourne's Closing. Mewbourne effectively admits that it is withholding revenues for an undisputed interest and simply argues that the Division can do nothing about it, notwithstanding the clear violation of Paragraph 33. Mewbourne's position would emasculate the clear and broad authority of the Division to enforce its orders issued under the Oil and Gas Act and abrogate the Division's duty to protect correlative rights. *See Applicant's Closing* at 4-5. In short, contrary to Mewbourne's assertions, Applicant does not seek relief in the form of damages or penalties, which would be outside the scope of the Division's authority. *See Applicant's Closing* at 15-16. Rather, Siana simply asks the Division to require that Mewbourne comply with the terms of the Orders.

**D. Mewbourne has improperly held Siana's interest in suspense while continuing to demand payment from Siana for related lease operating expenses.**

Mewbourne asserts that holding Siana's revenues in suspense while simultaneously billing Siana for its interest in the Inland wells are separate issues, because the former relates to the PPA and the latter is governed by the Orders. Mewbourne's Closing at 5-7. In light of Paragraph 33 of the Orders, however, the Division must consider the PPA and the Orders together. *See supra* at 4-5. Moreover, Siana established at hearing that the industry standard is to hold JIBs in suspense when revenues are held in suspense. *See Applicant's Closing* at 13. Mewbourne's only testimony in this regard reveals its blatant disregard of this industry standard. *See id.* at 12-13. Mewbourne's justification for this practice is purportedly because it would "have to pay Siana's share of the costs." Tr. 139:2-6; *see* Mewbourne Closing at 6 ("Mewbourne would have to carry Siana's share of the well costs without compensation[.]"). Mewbourne fails to explain, however, why it cannot use the revenues held in suspense to pay the costs and then allocate revenues and costs to all interest owners when title is quieted. Mewbourne wants to have its cake and eat it too, by holding onto all revenues due to Applicant and requiring payment for all costs allocated to Applicant. Mewbourne

points to no law and no facts that support this practice, which is contrary to the industry standard. As explained at the hearing, “[N]ormally that whole Division Order would be in suspense on both the JIB side and the revenue side.” *See* Applicant’s Closing at 13 (quoting Siana’s accounting witness). Again, Mewbourne effectively admits to this improper accounting conduct, yet contends that the Division can provide no relief.

As explained, the Division has authority to enforce its orders and the Orders here address this issue. Paragraph 28 expressly provides, “Operator may withhold . . . 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.” Siana’s Exhibit M at 3, ¶ 28 [pdf 1086]. A reasonable reading of this language demonstrates that Mewbourne is *not* entitled to demand payment from Siana outside of its share of production. If Siana’s share of production is being held in suspense, all supervision charges and operating charges should be accounted for in suspense, as is the industry standard.

**E. Mewbourne’s treatment of the Overages is contrary to NM law and the Orders.**

Mewbourne claims that Siana “has no basis to complain” about how Mewbourne has treated Siana’s Overages. Mewbourne Closing at 7. This claim lacks merit. As explained in Siana’s Closing Statement (pages 5-10), Mewbourne has continued to violate the Orders by failing to refund Siana’s Overages, and by improperly netting the Overages. *See* Siana’s Closing Statement at 5-10. Mewbourne further claims that because Siana rejected its attempt to refund the Overages, without interest, Siana has no basis to challenge Mewbourne’s treatment of the Overages. Mewbourne Closing at 7. Siana is entitled to challenge Mewbourne’s treatment of the Overages because Mewbourne has failed to comply with the Orders, and Siana is additionally entitled to 15% interest on the Overages. *See* Siana Exhibit M at 3, ¶ 25 [pdf page 1086]; *see also*

NMSA 1978, § 56-8-3(B) (1983). Thus, Siana has *ample* basis to complain about Mewbourne's mistreatment of Siana's Overages.

**F. The Division has authority to award Siana 15% interest on its Overages.**

Mewbourne admits to owing Siana \$406,136.31 in Overages. *See* Mewbourne Closing at 7. At the time of the hearing, Siana had estimated that it was owed approximately \$412,414.31 in Overages, plus 15% interest under Section 56-8-3(B). *See* Tr. 91:19-92:25; Siana's Amended Exhibit P at 9 (July 6, 2022). Division Order Nos. R-10154-A and R-1960-B demonstrate that the Division has authority to grant interest on monies owed to pooled working interest owners wrongfully held by operators. Further, our New Mexico Supreme Court recognizes that "under both the common law and . . . Section 56-8-3, where the amount of indebtedness under the contract is ascertainable by the breaching party, the injured party is entitled to interest as a matter of right on those monies at the legal rate." *Grynberg v. Roberts*, 1985-NMSC-040, ¶ 9, 102 N.M. 560. Mewbourne can ascertain the amount owed to Siana, who is entitled to interest as a matter of right.

Mewbourne's effort to distinguish Order Nos. R-10154-A and R-1960-B is unavailing. There is no lawsuit pending as to Siana's right to the Overages, and Mewbourne does not dispute that the Overages are a result of Siana having paid in full 100% of the estimated costs demanded by Mewbourne. Its refusal to refund the Overages is *not* based on the title dispute. *See generally* Mewbourne's Closing; Tr. Indeed, as Mewbourne admits, it belatedly tried to return the Overages to Siana. Mewbourne Closing at 7. However, Mewbourne refused to pay interest and therefore Siana rightfully refused delivery. Siana notes that Mewbourne is acting in violation of Rule 11-408 NMRA by relying on communications made subject to the Rule by Mewbourne's counsel.

The Division has authority under Section 56-8-3 to award Siana 15% interest on the Overages. Interest should be awarded Siana on the Overages at the discretion of the Division,

unless the Division finds that the interest should be awarded as a matter of right. “In New Mexico, the award of prejudgment interest is governed by the common law and NMSA 1978, Sections 56-8-3 and -4(B). An award of prejudgment interest is committed to the sound discretion of the trial court, except when such interest should be awarded as a matter of right.” *Smith v. McKee*, 1993-NMSC-046, ¶ 7, 116 N.M. 34. Interest is awarded “as a matter of right only when a party has breached a duty to pay a definite sum of money or the amount due under the contract can be ascertained with reasonable certainty.” *Id.* (internal quotations omitted). Our Supreme Court recognizes “a clear public policy in favor of [an owner’s right to interest on funds to which they are entitled.” *First Baptist Church of Roswell v. Yates Petro. Corp.*, 2015-NMSC-004, ¶ 21, 345 P.3d 310. Here, Siana is owed a definite sum of Overages, and the Division should award Siana interest as a matter of right.

Finally, Mewbourne falsely claims that “Siana did not lose any opportunity to use its prepayment overage” because “Mewbourne appropriately applied the prepayment overage to Siana’s unpaid balance.” Mewbourne Closing at 10. As discussed below, Mewbourne’s deduction of LOE from the Overages is improper. Moreover, Mewbourne ignores the fact that Siana lost its opportunity to participate in subsequent wells due to Mewbourne’s improper accounting practices, which it continues to employ in violation of the Orders. *See* Siana Exhibit M at 3 [pdf page 1086].

**G. The Orders do not allow Mewbourne to deduct LOE from Siana’s Overages.**

Mewbourne argues that it is allowed to deduct expenses from Siana’s Overages. *See* Mewbourne Closing at 10-11. Mewbourne’s creative reading of Paragraph 28 cannot be sustained.

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.

Siana Exhibit M at 3, ¶ 28 [pdf page 1086]. Importantly, this paragraph authorizes operators to withhold from the *share of production* due a working interest owner supervision and operating charges. *See id.* In contrast, Paragraph 25 of the Orders makes it clear that only “Actual Well Costs,” *i.e.*, “actual costs to drill, complete and equip the well,” *see id.* at 2, ¶ 23; may be deducted from the Overages paid for estimated well costs. *See id.* at 3, ¶ 25 (stating that “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 also id.* at 3, ¶ 24 (stating that the “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”). The clear language of the Orders reveals that Mewbourne has improperly deducted LOE from Siana’s Overages.

In addition, Mewbourne falsely asserts that Siana “only made one payment to Mewbourne since 2018.” Mewbourne Closing at 11. However, it cannot be disputed that in December 2019, Siana made a \$200,000 payment to Mewbourne. *See Siana’s Rebuttal Exhibit* (July 14, 2022); *see also* Tr. 325:9-15, 326:19-327:4. Moreover, since the December 2019 payment, Mewbourne has consistently and improperly netted Siana’s JIBs, such that no payment was due on subsequent JIBs. *See, e.g.*, Tr. 276:3-278:12. It was then that the disputes between Mewbourne and Siana escalated. *Id.* at 327:5-9. Since that time, Mewbourne has improperly withheld Overages and revenues due and owing to Siana. As discussed, Mewbourne’s improper accounting practices constitute numerous violations of the Orders.

#### **H. The Orders and New Mexico law allow Siana to take its share of production in-kind.**

Mewbourne argues that Siana is not allowed to take its share of production in-kind, because it “would thwart Mewbourne’s authority as the designated operator of the Wells and units.” Mewbourne Closing at 12. Mewbourne cites no authority or evidence in the record in support of

its position. Indeed, as explained in Applicant's Closing, the Orders reference an owner's "share of production." Applicant's Closing at 14-15. Nowhere do the Orders reference "revenue." *See id.* Rather, the Orders expressly provide "to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool." *Id.* at 15.

Again, without citation to authority or evidence, Mewbourne summarily states that "[o]f course, cost and revenues cannot be withheld from the physical share of production." Mewbourne Closing at 12. To the contrary, the Orders expressly contemplate that costs may be withheld from a "share of production." Applicant's Closing at 14-15. Indeed, it is common practice for operators to account for cost deductions "monetarily or volumetrically." *See, e.g., Kunneman Props. LLC v. Marathon Oil Co.*, Case No. 17-CV-00456-GKF-JFJ, 2021 WL 141234 (N.D. Okla. Jan. 14, 2021). Mewbourne's suggestion to the contrary is unsupported. Indeed, Mewbourne admits that production may be taken in kind under a joint operating agreement, under which similar cost disputes can arise. *See* Mewbourne Closing at 12-13.

Mewbourne's reliance on the PPA, the Severance Tax Act, and unrelated regulations likewise fails. *See* Mewbourne Closing at 13-14. Mewbourne is subject to these same obligations regarding financial assurance, releases, remediation, and taxes, whether it is operating pursuant to a joint operating agreement or a compulsory pooling order. Mewbourne provides no rationale or legal authority to support its position that its obligations as an operator preclude Siana from taking its production in kind. *See id.* at 12-14.

#### **I. The Division should grant the Application and the relief requested by Siana.**

Siana respectfully requests that the Division grant Siana's Application and provide Siana with the relief requested in its Closing Statement. *See* Applicant's Closing at 15-16. Applicant hereby submits its proposed findings and conclusions as Exhibit 1, attached hereto.

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 30, 2022, to the following counsel of record:

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**APPLICANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant Siana Oil Company (“Siana”) submits the following proposed findings of fact and conclusions of law.

**I. FINDINGS OF FACT**

1. In Case No. 21156, Order No. R-21292 pooled a 240-acre horizontal spacing unit (“HSU”) located in the W2 E2 of Section 26 and the W2 SE4 of Section 23, all in Township 21 South, Range 34 East, dedicated to the Inland 26/23 B2OJ State Com Well No. 1H, API# 30-025-46931 (“OJ Well”). *See* Siana Exhibit M at 5 [pdf page 1088].

2. In Case No. 21157, Order No. R-21293 pooled a 240-acre HSU in the E2 E2 of Section 26 and the E2 SE4 of Section 23, all in Township 21S, Range 34 East, dedicated to the Inland 26/23 B2PI State Com Well No. 1H, 30-025-45283 (“PI Well”). *See* Siana Exhibit N at 5 [pdf page 1095].

3. Order Nos. R-21292 and R-21293 (“Orders”) were issued on April 28, 2020. *See* Siana Exhibits M-N [pdf pages 1084-1097].

4. Siana is the record title owner of 10% working interest in the OJ and PI Wells, collectively referred to as the “Wells.” *See* Siana Exhibit B at 2 [pdf page 10].

5. 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. *See* Siana Exhibit P at 1 [pdf page 1107].

6. Mewbourne Oil Company (“Mewbourne”) began production of the Wells on March 16, 2021. *See* Reporter’s Transcript of Virtual Proceedings 195:21 (July 8, 2022) (“Tr.”).

7. Mewbourne violated and continues to violate the Orders by failing to provide Siana with itemized schedules of the actual well costs for the Wells as required by paragraph 24 of the Orders. *See* Tr. 29:6-8; Siana Exhibit B at 3 [pdf page 11]; Siana Exhibit M at 3, ¶ 24 [pdf page 1086].

8. Mewbourne violated and continues to violate the Orders by failing to provide Siana with itemized schedules of the reasonable charges for operating and maintaining the Wells as required by Paragraph 27 of the Orders. *See* Tr. 39:21-25; Siana Exhibit M at 3, ¶ 27 [pdf page 1086].

9. Mewbourne’s daily drilling reports (“DDR”) do not constitute itemized schedules of actual well costs because they are estimated costs. *See* Tr. 32:25-33:4; Tr. 35:1-3; Tr. 56:20-57:1.

10. Mewbourne’s joint interest billings (“JIBs”) do not constitute itemized schedules of actual well costs because they contain information on costs related to both drilling and completion and on operating costs for numerous wells. *See* Tr. 30:1-10.

11. Mewbourne’s JIBs do not constitute itemized schedules of actual well costs because an interest owner would be required to invest weeks of time and unnecessary expense to determine the actual well costs. Tr. 80:18-81:3; Tr. 29:24-30:24.

12. Mewbourne's DDRs and JIBs cannot constitute itemized schedules of actual well costs because interest owners who do not pay their estimated well costs do not receive DDRs and JIBs. *See* Tr. 207:2-15.

13. Mewbourne's failure to submit itemized schedules of actual well costs as required by paragraph 24 of the Orders has denied Siana the opportunity to timely file an objection to the actual well costs. *See* Tr. 37:5-8.

14. Mewbourne failed to refund Siana its share of the estimated well costs that exceeded the reasonable well costs ("Overages") pursuant to paragraph 25 of the Orders. *See* Tr. 35:4-11; Siana Exhibit M at 3, ¶ 25 [pdf page 1086].

15. Mewbourne's estimated well costs for the Wells greatly exceeded costs that could be reasonably anticipated at the time that drilling was to occur because Mewbourne failed to account for market decline due to COVID-19. *See* Tr. 74:20-21.

16. Mewbourne refused to revise its estimated well costs after Siana notified Mewbourne that the costs were unreasonably inflated, notwithstanding Mewbourne's knowledge of the decline in market prices. *See* Tr. 76:5-9; *id.* 75:16-76:9.

17. At the time of the hearing, July 8, 2022, Siana estimated that it was owed over \$400,000 in Overages; Mewbourne has never provided Siana with a calculation of the Overages. Tr. 91:19-92:21.

18. Siana is entitled to 15% interest on the Overages pursuant to NMSA 1978, Section 56-8-3 (1983).

19. Mewbourne improperly netted the Overages to pay for lease operating expenses ("LOEs") on the Inland wells. *See* Tr. 91:7-10.

20. Mewbourne improperly netted the Overages to pay LOE for unrelated Mewbourne-operated wells in which Siana holds an interest. *See* Tr. 91:11-14.
21. Mewbourne refused to provide Siana with any accounting information. Tr. 36:7-21.
22. At the time of the hearing, Siana estimated that Mewbourne had improperly netted, from revenues due to Siana on other unrelated wells, approximately \$106,365.24 for the OJ and PI Well LOE charges. *See* Tr. 89:13-16; Siana Exhibit P at 1 [pdf page 1107].
23. At the time of the hearing, Mewbourne's improper netting of LOE from other well revenues due to Siana had caused Siana's monthly revenue to decline by between \$10,000 and \$12,000 per month. *See* Tr. 103:19-23.
24. Mewbourne has improperly held 100% of Siana's revenues from the Wells in suspense since April of 2021. *See* Tr. 138:5-11; Tr. 170:3-7.
25. Mewbourne has actual knowledge that a percentage of Siana's revenues it is holding in suspense are undisputed. *See* Mewbourne Exhibit A-10 at 5 [pdf page 59].
26. The Oil and Gas Proceeds Act requires Mewbourne to pay Siana "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[.]" NMSA 1978, § 70-10-3 (1985).
27. Mewbourne owes Siana 18% interest on the revenues Mewbourne has improperly held in suspense pursuant to NMSA 1978, Section 70-10-5 (1991).
28. Mewbourne has improperly billed Siana for LOE for the Wells while holding Siana's revenue for the Wells in suspense. *See* Tr. 138:17-139:1.

29. Standard practice in the oil and gas industry is to hold both the LOE and revenues in suspense. *See* Tr. 93:25-94:2.

30. Mewbourne is required pursuant to NMSA 1978, Section 70-10-4(A) (1991) to “create a suspense account on [its] books for such interest[.]”

31. Mewbourne’s standard practice is to continue billing LOE while holding the related revenue in suspense. *See* Tr. 148:7-16.

32. Mewbourne refuses to allow Siana to take its share of production in-kind. Tr. 44:5-11.

33. The Orders specify that “the owner of an uncommitted interest [is afforded] the opportunity to produce his just and equitable share of the oil or gas in the pool.” Siana Exhibit M at 2, ¶ 14 [pdf page 1085].

34. New Mexico law requires the Division to “afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool[.]” NMSA 1978, § 70-2-17(A) (1977).

35. The Orders do not preclude Siana from exercising its right to take production in-kind. *See* Siana Exhibit M-N [pdf pages 1084-1097].

36. Mewbourne’s improper accounting practices precluded Siana from participating in other wells that were subsequently proposed by Mewbourne. *See* Tr. 47:4-9.

## **II. CONCLUSIONS OF LAW**

1. Mewbourne’s accounting practices violate the Orders and New Mexico law.
2. Mewbourne is in violation of paragraph 24 of the Orders by failing to provide Siana with an itemized schedule of the actual well costs for the Wells.

3. Mewbourne is in violation of paragraph 25 of the Orders by failing to refund Siana's Overages for the Wells.
4. Mewbourne is in violation of paragraph 27 of the Orders by failing to provide Siana with an itemized schedule of the reasonable charges for operating and maintaining the Wells.
5. Mewbourne is in violation of paragraph 28 of the Orders as a result of its improper accounting practices.
6. Mewbourne is in violation of paragraph 31 of the Orders for refusing to provide Siana with accounting requests.
7. Mewbourne is in violation of paragraph 33 of the Orders due to its improper accounting practices.
8. Mewbourne's JIBs do not constitute itemized schedules of actual well costs as required by paragraphs 24 and 27 of the Orders.
9. Mewbourne's DDRs do not constitute itemized schedules of actual well costs as required by paragraphs 24 and 27 of the Orders.
10. Siana was deprived of the right to object to the reasonableness of Mewbourne's well costs under the Orders because Mewbourne failed to provide itemized schedules of well costs as required by Paragraphs 24 and 27 of the Ordersthe Orders.
11. Mewbourne must provide Siana with the itemized schedules required by the Orders, and Siana's period to object shall begin to run upon its receipt of such schedules.
12. Mewbourne improperly netted LOE unrelated to drilling and completion from the Overages.

13. Mewbourne improperly netted LOE for wells unrelated to the OJ and PI wells from the Overages.
14. Mewbourne acted in bad faith by failing to revise its inflated authority for expenditures for the OJ and PI Wells.
15. Siana is entitled to 15% interest on the Overages pursuant to Section 56-8-3(B).
16. Mewbourne has improperly netted LOE for the OJ and PI wells from revenues due to Siana for production from other wells.
17. Mewbourne must provide an accounting and pay to Siana all revenues from which LOE was improperly netted.
18. Siana is entitled to 18% interest on the revenues that were improperly netted, pursuant to Section 70-10-5.
19. Mewbourne is prohibited from holding any undisputed portion of Siana's revenues in suspense.
20. Mewbourne must provide an accounting and immediately provide to Siana its share of production for the undisputed interest held in suspense since April 2021.
- 21.
22. Mewbourne is prohibited from billing Siana for LOE relating to Siana's share of production in the Wells that is currently held in suspense.
23. Siana is entitled to exercise its right to take its share of production in-kind with regard to the Wells.
24. Mewbourne must provide an accounting for all wells in which Siana owns an interest.
25. Mewbourne must cease improper netting of Siana's revenues.

26. Mewbourne must refrain from engaging in the previously discussed erroneous accounting practices.

27. Mewbourne must provide a fair opportunity for Siana to participate in subsequent Inland wells that were drilled and completed while Mewbourne improperly withheld monies due Siana.

28. The Division has authority pursuant to NMSA 1978, Section 70-2-6(A) (1979) to enforce the provisions of the Orders.

29. The Division has authority pursuant to NMSA 1978, Section 70-2-11(A) (1977) to enforce the provisions of the Orders.

30. The Division has authority to grant Siana interest owed on the Overages pursuant to Section 56-8-3.

31. The Division has authority to grant Siana interest owed on improperly held revenues pursuant to Section 70-10-5.

32. Mewbourne must pay Siana's attorneys' fees pursuant to NMSA 1978, Section 70-10-6 (1991).

33. New Mexico law does not preclude Siana from exercising its right to take production in-kind.

34. Mewbourne cannot refuse to distribute Siana's share of production in kind.

35. Mewbourne must distribute all of Siana's share of production that has been improperly withheld by allowing Siana to take its share of production in kind.

36. Siana's Application should be granted.