

STATEMENT PURSUANT TO RULE 7008

1. Sanare does not consent to the jurisdiction of the Court over the claims asserted by PetroQuest in the Motion to Reopen.

2. Sanare further does not consent to the entry of final orders by the Court as to the claims asserted by PetroQuest in the Motion to Reopen.

ANSWER

3. Paragraph 1 of the Motion to Reopen is a summary of the relief requested by PetroQuest and does not require a response by Sanare. To the extent that any response is required, Sanare denies the factual allegations contained in Paragraph 1 of the Motion to Reopen.

4. Sanare admits that it is a party to the PSA that is dated as of January 31, 2018. The remainder of Paragraph 2 of the Motion to Reopen is PetroQuest's restatement of various provisions of the PSA. Sanare asserts that the PSA is the best evidence of its contents and denies the remaining factual allegations contained in Paragraph 2 of the Motion to Reopen.

5. Sanare admits that it cooperated with PetroQuest post-closing with regard to the operation of the WD 89 Properties and related accounting activities under a transition services agreement. Sanare states that the public records maintained by the Plaquemines Parish Conveyance Records speak for themselves and are the best evidence of any filings that were made with that office. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 3 of the Motion to Reopen.

6. Sanare admits it submitted certain forms to BOEM with regard to the WD 89 Lease. Sanare submits that those forms constitute the best evidence of the information filed with BOEM. The last sentence of Paragraph 4 of the Motion to Reopen contains legal conclusions that do not

require a specific response by Sanare. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 4 of the Motion to Reopen.

7. Sanare denies the factual allegations contained in Paragraph 5 of the Motion to Reopen.

8. Sanare admits the factual allegations contained in Paragraph 6 of the Motion to Reopen.

9. Sanare admits that PetroQuest sent a letter dated December 5, 2019. Sanare denies that such letter constituted a demand on Sanare regarding the P&A of the WD 89 Properties. Sanare admits that a letter dated December 16, 2019, a portion of which is quoted in the second sentence of Paragraph 7 of the Motion to Reopen, was sent in response to the December 5, 2019 letter, and states that such letter is the best evidence of its contents. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 7 of the Motion to Reopen.

10. Sanare admits that PetroQuest filed a Second Amended Counterclaim at Docket No. 65. The remainder of Paragraph 8 of the Motion to Reopen is a recitation of PetroQuest's legal position and its requested relief, which does not require a response by Sanare. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 8 of the Motion to Reopen.

11. Sanare admits that the parties filed cross motions for summary judgment. Sanare admits that PetroQuest's motion for summary judgment only sought a ruling on PetroQuest's Count 5, but it denies that its own motion for summary judgment was limited to PetroQuest's Count 5. The remainder of Paragraph 9 purports to be a summary of the Court's findings with regard to the parties' motions for summary judgment and the Declaratory Judgment Order. To the

extent that the summary does not fully and accurately reflect the Court's findings, Sanare denies the facts as set forth in the summary. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 9 of the Motion to Reopen.

12. Sanare admits the factual allegations contained in Paragraph 10 of the Motion to Reopen.

13. Sanare admits the factual allegations contained in the first sentence of Paragraph 11 of the Motion to Reopen. Sanare further admits that the District Court affirmed the Declaratory Judgment Order. The remainder of Paragraph 11 of the Motion to Reopen is PetroQuest's summary of the District Court's holding and does not require a response by Sanare, as the District Court's opinion is the best evidence of that court's holding. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 11 of the Motion to Reopen.

14. Sanare admits the factual allegations contained in the first three sentences of Paragraph 12 of the Motion to Reopen. The remainder of Paragraph 12 is a quotation from the Fifth Circuit's Memorandum Opinion. Sanare states that the Memorandum Opinion speaks for itself, and no further response is required by Sanare. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 12 of the Motion to Reopen.

15. Sanare admits the factual allegations contained in Paragraph 13 of the Motion to Reopen.

16. Sanare denies that PetroQuest has made a claim for indemnity in accordance with the requirements of the PSA. Sanare further denies the remaining factual allegations contained in Paragraph 14 of the Motion to Reopen.

17. The first sentence of Paragraph 15 of the Motion to Reopen is a legal conclusion that does not require a specific response by Sanare. Sanare admits that the WD 89 Lease expired in July 2019. Sanare lacks personal knowledge of PetroQuest's receipt of the INC referenced in the last sentence of Paragraph 15 of the Motion to Reopen. To the extent a further response is required, Sanare denies the remaining factual allegations contained in Paragraph 15 of the Motion to Reopen.

18. Sanare lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in Paragraph 16 of the Motion to Reopen and accordingly denies the same.

19. Sanare lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in Paragraph 17 of the Motion to Reopen and accordingly denies the same.

20. Sanare lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in Paragraph 18 of the Motion to Reopen and accordingly denies the same.

21. Sanare lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in Paragraph 19 of the Motion to Reopen and accordingly denies the same.

22. Paragraph 20 of the Motion to Reopen consists of legal conclusions and a statement of the relief requested by PetroQuest and, therefore, does not require a specific response by Sanare. To the extent a response is required, Sanare denies the factual allegations contained in Paragraph 20 of the Motion to Reopen.

23. Paragraphs 21 through 56 of the Motion to Reopen consist of PetroQuest's legal arguments in support of the relief it requests. Sanare is not required under Rule 7008 of the Federal Rules of Bankruptcy Procedure to provide a specific response to those legal arguments as part of its answer to the Motion to Reopen. Sanare will address PetroQuest's legal arguments at the appropriate time. For the avoidance of doubt, Sanare denies that this Court has subject matter jurisdiction over the relief sought by PetroQuest in the Motion to Reopen. To the extent any further response is required, Sanare denies the factual allegations contained in Paragraphs 21 through 56 of the Motion to Reopen.

24. Paragraph 57 of the Motion to Reopen consists of PetroQuest's prayer for relief, which does not require a specific response by Sanare. To the extent a response is required, Sanare denies the factual allegations contained in Paragraph 57 of the Motion to Reopen.

AFFIRMATIVE DEFENSES

Breach of contract

25. PetroQuest cannot recover against Sanare under the PSA because PetroQuest is in breach of its obligations to Sanare under the PSA.

26. Under the PSA, PetroQuest was obligated to obtain the consent of ENI as to the assignment of the PHA to Sanare prior to closing. PetroQuest did not timely obtain that consent as required under the PSA and is therefore in breach of its obligations to Sanare.

27. Additionally, PetroQuest breached its obligation to Sanare under the PSA with regard to obtaining BOEM approval of the assignment of the WD 89 Lease and the transfer of operatorship to Sanare. PetroQuest did not take any action to extend the term of the WD 89 Lease or to obtain a suspension of production so that the term of the WD 89 Lease would not have run. Additionally, after PetroQuest filed for chapter 11 protection, BOEM decline to approve any

pending assignments, but instead required that PetroQuest obtain express consent from BOEM for any pending assignments and transfers.

Estoppel

28. PetroQuest is estopped from asserting any claims against Sanare arising as a consequence of the termination of the WD 89 Lease.

29. PetroQuest was aware that it remained the owner and operator of record as to the WD 89 Lease and that certain actions were required to prevent the WD 89 Lease from terminating in July 2019. Despite this knowledge, PetroQuest took no action to prevent the termination of the WD Lease. PetroQuest is now estopped from asserting claims that arose from its own willful and knowing inaction.

Failure to Meet Conditions Precedent

30. PetroQuest cannot recover damages against Sanare because it has failed to meet the conditions precedent under section 11.3 of the PSA.

31. The PSA provides that PetroQuest's exclusive remedy for the claims it asserts against Sanare is indemnification under section 11.3 of the PSA. Section 11.7 of the PSA sets out the steps PetroQuest is required to take before it is entitled to recover on any claim for indemnity under section 11.3.

32. PetroQuest has failed to take all of the steps set out in section 11.3. Among other things, it has failed to make demand on Sanare in compliance with the requirements of section 11.7. Compliance with section 11.7 is a condition precedent to any recovery by PetroQuest against Sanare under the PSA. Because PetroQuest has not complied with the requirements of section 11.7, it cannot recover against Sanare.

Lack of Notice

33. PetroQuest has failed to provide proper notice of its indemnification claims against Sanare as required by the terms of the PSA.

34. As noted above, PetroQuest's sole remedy against Sanare under the PSA is indemnification under section 11.3. PetroQuest has failed to comply with the indemnification procedures set out in section 11.7 and, in particular, failed to provide Sanare with the required notices regarding its alleged claims for indemnification. Because PetroQuest has not complied with the notice provisions of section 11.7, it cannot recover damages against Sanare.

Material Prejudice Due to Delay

35. PetroQuest cannot recover against Sanare because it failed to timely comply with the notice requirements of section 11.7 of the PSA, materially prejudicing Sanare's ability to defend against the claims for which PetroQuest now seeks damages.

36. Section 11.3 of the PSA specifically states that a party's delay in providing notice of claim does not relieve a party of its indemnification obligation "except to the extent such failure results in insufficient time being available to permit the Indemnifying Party to effectively defend against the Claim or otherwise materially prejudices the Indemnifying Party's ability to defend against the Claim." PSA, section 11.7(b).

37. PetroQuest's failure to comply with the indemnification procedures set out in section 11.7 of the PSA has resulted in a delay that has materially prejudiced Sanare's ability to defend against the claims for which PetroQuest now (presumably) is seeking indemnification. Under the terms of the PSA, Sanare is therefore relieved of its indemnification obligations.

Failure to Mitigate Damages

38. PetroQuest's claims against Sanare are limited by PetroQuest's own failure to mitigate its damages.

39. PetroQuest, as owner and operator of record of the WD 89 Properties, took no action to extend the term of the WD 89 Lease, thereby triggering the deadline for decommissioning of the WD 89 Properties. Once that deadline was triggered, PetroQuest failed to manage the P&A costs efficiently, thereby incurring expenses that could have been avoided.

40. In addition, PetroQuest did not timely undertake the P&A operations, resulting in increased costs and increased risks when the P&A was conducted on behalf of PetroQuest.

Failure of Cause under Louisiana Law

41. PetroQuest cannot recover against Sanare under the PSA because there has been a failure of cause under Louisiana law. Under Louisiana law, all contracts must be supported by "cause." Cause is the reason why a party obligates itself. Specifically, Sanare's cause to incur the obligation to perform decommissioning of the WD 89 Properties was the corresponding value to be received by Sanare via the assignment of the WD 89 Lease and WD 89 Properties. This cause was known, or should have been known, to PetroQuest.

42. Under the PSA, PetroQuest was required to obtain certain consents related to the assignment of the WD 89 Properties. PetroQuest failed to obtain these consents pre-closing, as required under the PSA. PetroQuest's failure in this regard directly resulted in the termination of the WD 89 Lease, which could not then be assigned to Sanare.

43. Further, as noted above, PetroQuest has consistently failed to comply with the indemnification procedures set out in section 11.7 of the PSA. Instead, it has voluntarily taken on itself to perform the decommissioning before making a valid demand on Sanare.

Intervening Act

44. PetroQuest cannot recover against Sanare because PetroQuest's chapter 11 filing constitutes an intervening act that altered the parties' obligations under the PSA.

45. PetroQuest's chapter 11 plan was confirmed by an order entered on January 13, 2019. This order contained specific provisions, added at the request of the federal authorities, that provided that the PetroQuest debtors assumed all of their "current or former interest in any federal oil and gas leases . . . and/or related decommissioning obligations . . ." Main Case Docket No. 484, paragraph 103. The confirmation order also provided that any pending or future assignment of any federal oil and gas lease would be ineffective absent the consent of the Department of the Interior. *Id.*

46. These provisions in the confirmation order caused reorganized PetroQuest to assume the WD 89 Lease and the related decommissioning obligations. They also invalidated any pending efforts to assign the WD 89 Lease to Sanare. Upon information and belief, PetroQuest has taken no action since the entry of the confirmation order to obtain the consent of the Department of the Interior to the assignment of the WD 89 Lease to Sanare.

Comparative Fault

47. PetroQuest cannot recover against Sanare because PetroQuest's own fault is the sole or contributing cause of the damages it seeks to recover. PetroQuest voluntarily undertook the decommissioning of the WD 89 Properties.

48. PetroQuest is seeking to recover from Sanare costs and fees that it incurred because of the voluntary course of action it chose to pursue and its own negligence and fault in doing so. Under Louisiana law, any damages sought by a claimant for a loss must be reduced in proportion to the degree or percentage of the claimant's own negligence. *See* La. C.C. art. 2323(A). This

result is applicable to any claim for recovery of damages for loss “asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.” La. C.C. art. 2323(B). PetroQuest neglected to take a reasonable course of action in dealing with the federal authorities regarding the decommissioning of the WD 89 Properties. PetroQuest’s own fault in dealing with the federal authorities, followed by its negligence in controlling the decommissioning costs, was the sole or contributing cause of the damages PetroQuest now seeks against Sanare.

RESERVATION OF RIGHTS

49. Sanare reserves the right to plead any additional defenses or affirmative defenses to the claims raised by PetroQuest in the Motion to Reopen that may be applicable based upon evidence revealed during discovery.

WHEREFORE, Sanare requests that the Court enter judgment for Sanare denying the claims asserted by PetroQuest in the Motion to Reopen and grant Sanare such other and further relief as the Court deems just and necessary.

Dated: June 8, 2023

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 8, 2023, a true and correct copy of the foregoing motion was served on all parties of record via the Court's ECF system.

/s/ Elizabeth M. Guffy
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