No. 23-0676

In the Supreme Court of Texas

Cactus Water Services, LLC,

Petitioner,

v.

COG Operating, LLC,

Respondent.

On Petition for Review from the Eighth Court of Appeals
(No. 08-22-00037-CV)

Petition for Review

Marvin W. Jones
marty.jones@sprouselaw.com
C. Brantley Jones
brantley.jones@sprouselaw.com
Sprouse Shrader Smith pllc
701 S. Taylor St., Suite 500
Amarillo, Texas 79105
Tel.: (806) 468-3300
Fax: (806) 373-3454

Dana Livingston
State Bar No. 12437420
dlivingston@cokinoslaw.com
Cokinos | Young
900 S. Capital of Texas Hwy.
Suite 425
Austin, Texas 78746
Tel.: (512) 482-9304
Fax: (512) 610-1184

Counsel for Petitioner, Cactus Water Services, LLC

Identity of Parties and Counsel

Petitioner: *(Defendant/Counter-Plaintiff/ Appellant)*	**Cactus Water Services, LLC**
Other parties at trial dismissed before final judgment:	**Collier Enterprises, Inc.** **Collier Surface, LLC** **Collier Royalty, LLC** **Balmorhea Ranches, Inc.** **Balmorhea Ranches Water, LLC**
Counsel for Petitioner and other dismissed parties:	
Appellate Counsel:	Dana Livingston State Bar No. 12437420 dlivingston@cokinoslaw.com Cokinos | Young 900 S. Capital of Texas Hwy. Suite 425 Austin, Texas 78746 Telephone: (512) 482-9304 Facsimile: (512) 610-1184
Trial and Appellate Counsel:	Marvin W. Jones State Bar No. 10929100 marty.jones@sprouselaw.com C. Brantley Jones State Bar No. 24070042 brantley.jones@sprouselaw.com Sprouse Shrader Smith PLLC 701 S. Taylor, Suite 500 P. O. Box 15008 Amarillo, Texas 79105-5008 Telephone: (806) 468-3300 Facsimile: (806) 373-3454

Appellate Counsel at the Trial Court and at the Eighth Court of Appeals:	Roger D. Townsend Texas Bar No. 20167600 rtownsend@cokinoslaw.com COKINOS | YOUNG 1221 Lamar Street, 16th Floor Houston, Texas 77010 Telephone: (713) 535-5500 Facsimile: (713) 535-5533
Respondent: *(Plaintiff/Counter-Defendant/Appellee)*	**COG Operating, LLC**
Represented by:	Macey Reasoner Stokes State Bar No. 00788253 macey.stokes@bakerbotts.com Benjamin Gonsoulin State Bar No. 24099682 ben.gonsulin@bakerbotts.com BAKER BOTTS LLP 910 Louisiana Street Houston, Texas 77002 Telephone: (713) 229-1234 Facsimile: (713) 229-1522 John A. "Jad" Davis State Bar No. 05511400 jdavis@dgclaw.com Katherine L. Petroski State Bar No. 24088218 klpetroski@dgclaw.com Jill C. Pennington State Bar No. 24007825 jcpennington@dgclaw.com DAVIS, GERALD & CREMER, PC 400 W. Illinois, Suite 1400 Midland, Texas 79701 Telephone: (432) 687-0011

	Ryan Clinton State Bar No. 24027934 rdclinton@dgclaw.com DAVIS, GERALD & CREMER, PC 300 West Sixth St. Suite 1830 Austin, Texas 78701 Telephone: (512) 493-9600
Amicus Curiae *(in the court of appeals)*	**National Association of Royalty Owners-Texas, Inc.**
Represented by:	Charles P. Hosey Texas Bar No. 24125284 chosey@cphlawgroupplc.com CPHLAW GROUP, PLLC 18018 Overlook Loop, Suite 105, PMB #1016 San Antonio, Texas 78259 Telephone: (210) 913-4606
Amicus Curiae *(in the court of appeals)*	**Texas Farm Bureau**
Represented by:	Douglas G. Caroom State Bar No. 03832700 Joshua D. Katz State Bar No. 24044985 BICKERSTAFF HEATH DELGADO ACOSTA LLP 3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 Telephone: (512) 472-8021 Facsimile: (512) 320-5638

Amicus Curiae *(in the court of appeals)*	**Texas & Southwestern Cattle Raisers Association**
Represented by:	James D. Bradbury Texas Bar No. 02814500 jim@bradburycounsel.com Courtney Cox Smith Texas Bar No. 24045711 ccox@bradburycounsel.com JAMES D. BRADBURY, PLLC 9111 Old Jollyville Road Suite 220 Austin, Texas 78759 Telephone: (512) 953-5801
Amicus Curiae *(in the court of appeals)*	**Texas Oil & Gas Association**
Represented by:	Christopher M. Hogan Texas Bar No. 24065434 chogan@hoganthompson.com HOGAN THOMPSON LLP 801 Travis Street Suite 1330 Houston, Texas 77002 Telephone: (713) 671-5630 Facsimile: (713) 671-5632

Table of Contents

Table of Authorities

Page(s)

Cases

Statutes, Rules, and Regulations

Other Authorities

Statement of the Case

Nature of underlying case: This contract case is about who owns the water produced with oil and gas. The surface-estate owners granted the mineral lessee (Respondent, COG Operating, LLC), ownership of "oil, gas and other hydrocarbons" (or in some leases, just "oil and gas"), but expressly denied it the right to use water except for drilling operations on the same lease. By contrast, separate leases expressly granted Petitioner (Cactus Water Services, LLC) ownership of all water contained in and produced from geologic formations under the same lands.

Trial court: Hon. Michael Swanson, 143rd Judicial District, Reeves County

Trial court's disposition: On competing summary-judgment motions, the trial court ruled as a matter of law that COG:

> (1) "owns the oil, gas and other products in commercial oil and gas bearing formations that are produced from the COG wells on the four leases" at issue;
>
> (2) "has the right to exclusive possession, custody, control and disposition of the product stream produced from COG wells" on the four leases "so long as [each lease] remains in effect;" and
>
> (3) "Cactus has no rights in or to the product stream produced from COG wells." 2CR683-84 (footnotes omitted) (App.B).

After the parties non-suited their remaining claims and dismissed other parties, 2CR676-78, 679-81, the trial court signed a final judgment. 2CR682-84 (App.B).

Court of Appeals: Eighth Court of Appeals. Opinion by Chief Justice Rodriguez, joined by Justice Soto. Dissenting opinion by Justice Palafox.

Court of Appeals' Disposition: A divided panel affirmed. *Cactus Water Servs., LLC v. COG Operating, LLC*, 2023 WL 4846861 (Tex. App.—El Paso 2023, pet. filed) (App.A).

Statement of Jurisdiction

This Court has jurisdiction under Government Code section 22.001(a) because the case presents a question of law that is important to the jurisprudence of the State.

Introduction: Reasons to Grant Review

When a surface estate has not expressly conveyed water to the mineral estate, who owns the native water that comes up when oil and gas are produced? This legal question divided the justices of the Eighth Court.

The majority resolved it by saying that the native water is not water, but waste. Yet decades of this Court's decisions have said that, unless expressly conveyed, subsurface water belongs to the surface estate—no matter its depth or mineral content. If left on the books, the Eighth Court's new ownership rule will strip away surface owners' constitutionally protected property rights in subsurface water and cast a dark cloud over this Court's landmark decisions in *Edwards Aquifer Authority v. Day*, *Sun Oil Co. v. Whitaker*, and *Robinson v. Robbins Petroleum Corp.*

Who owns the native water that comes up when oil and gas are produced is indisputably important—and not just because of the billions of dollars at stake for Texas landowners and the State's energy industry pitted against each other in this case and two others abated and awaiting this case's outcome. Nor merely because the issue in this case is being closely watched and prompted significant amici participation below. The issue's resolution is vital to Texas jurisprudence governing the ownership, use, and exploitation of the State's scarce natural resources, including water. Review is needed.

Issues Presented

1. When an oil-and-gas lease grants the right to only "oil, gas and other hydrocarbons" or the right to only "oil and gas"—but nowhere expressly conveys water—does the mineral lessee also own, as a matter of law, all water produced from the oil-and-gas bearing formations?

2. When an oil-and-gas lease expressly limits the mineral lessee's right to use of water that is on or under the land, or from any source from the land, with only narrow exceptions conceded to not apply here, does the lease grant to the mineral lessee, as a matter of law, ownership rights to take, sell, or transfer produced water to third parties for off-premises use?

3. Do surface-use and right-of-way agreements granting easements that permit the mineral lessee to transport liquids in pipelines also transfer ownership—as a matter of law—of all produced water to the lessee, or have any bearing on determining ownership? [*unbriefed issue*]

4. Is the surface owner's express contractual grant of ownership of produced water to Cactus Water rendered null, as a matter of law, by the Natural Resources Code or by the Railroad Commission's authority to regulate "waste" from drilling operations? [*unbriefed issue*]

5. The court of appeals said:

> We do not read *Chalker Energy Partners III, LLC v. Le Norman Operating, LLC*, 595 S.W.3d 668, 677 (Tex. 2020), as supporting the dissent's proposition [that] "A party's actions in 'allowing' a [mineral lessee] to carry out its statutory, regulatory, or contractual duties with respect to waste does not necessarily reflect a waiver of ownership rights, as doing so is not unequivocally inconsistent with such ownership."
>
> Was that error? [*unbriefed issue*]

Statement of Facts[1]

This case arises out of the Collier and Balmorhea lands. They comprise about 37,000 acres subject to the four mineral leases at issue with COG. The leased acreage sits in the Delaware Basin within the larger Permian Basin. 1CR248. For context, in 2020, the Delaware Basin produced about two million barrels of oil per day.[2] But the amount of water that comes up during oil production is much more.

"[P]articularly in the Permian Basin," fracing requires—and in turn generates—"huge amounts of produced water."[3] App.A at *2; *see* 1CR248. For "horizontally-drilled shale formations in the Delaware Basin," the "'water cut'—i.e., the number of barrels of water produced per barrel of oil—is in the 3 to 7 range."[4] Still, "most water that is produced from the mouth of a well" is native-formation water that comes up during mineral production.[5] This dispute centers on who owns that native water. We begin with the controlling lease language.

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[1] The Eighth Court's opinion correctly states the general nature of the case. *See* Tex. R. App. P. 53.2(g).

[2] Ken Mills, *Changing Face of Water Rights*, *in* State Bar of Tex., 23rd Annual Conference on Water Rights, Ch. 14, Part I (2022), *available at* 2022 WL 660576.

[3] The term "produced water" is not always consistently used. Sometimes it is unclear whether an author's use of the term includes "flowback water"—"water that is piped down a wellbore during drilling or fracking that has been purchased by the oil and gas operator from an off-lease source and then flows back out with hydrocarbon production." Mills, *supra* note 2, Part V, 2022 WL 660580.

[4] *Id.* Part I, 2022 WL 660576.

[5] *Id.*; *see* 1CR288.

A. Collier and Balmorhea grant mineral leases to COG to explore for and produce only oil, gas, and other hydrocarbons, or in one instance, only "oil and gas."

Of the four leases, two Collier leases—the 2005 Collier/JAJ Oil Lease and the 2010 Collier/Delaware Basin Resources Lease, Apps.C–D ¶ 1—grant COG the right to explore and produce "oil and gas and other hydrocarbons."

> **GRANT, DEMISE, LEASE and LET** exclusively unto the said Lessee, its successors and assigns, for the sole and only purpose of investigating, exploring, prospecting, drilling, mining and operating for oil and gas and other hydrocarbons, and of laying pipelines and of building tanks, power stations and structures thereon, to produce, save, take care of, store and treat products produced hereunder, and then transport those products from the land in **Reeves County, Texas,** that is hereby described as follows, to

A third Collier lease—the 2014 Collier Lease, App.E ¶ 1—grants COG the right to explore and produce only "oil and gas."

> 1. **Lessor in consideration of Ten and No/100 Dollars ($10.00) in hand paid, of the** oyalties herein provided, and of the agreements of Lessee herein contained, hereby exclusively grants, leases and lets unto Lessee for the purpose of investigating, exploring, prospecting, drilling and producing oil and gas, from the following described land in Reeves County, Texas, o-wit:

And the fourth lease—the 2010 Balmorhea lease, App.F ¶ 1—grants COG the right to explore and produce "oil, gas, and other hydrocarbons."

> 1. Lessor, in consideration of Ten and 00/100 Dollars ($10.00), in hand paid, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby grants, leases and lets exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas, and other hydrocarbons, conducting exploration, geologic and geophysical surveys by seismograph, core test, gravity and magnetic methods, injecting gas, water and other fluids, and air into subsurface strata, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon, to produce, save, take care of, treat, transport and own said products, the following described land in Reeves County, Texas, to-wit:

B. With limited exceptions, the Collier leases expressly provide that COG cannot even *use* water from the lands.

The leases limit COG's rights to even use water. For instance, the 2005 and 2010 Collier leases, Apps.C–D ¶ 18, provide that—"notwithstanding" any other lease provision "to the contrary or apparently to the contrary"—COG cannot use "water from the lands" for "secondary recovery operations."

> 18. Anything herein to the contrary or apparently to the contrary notwithstanding, Lessee, its successors and assigns, shall have no right to use water which is on or under the above described land, except it may itself drill a water well and then use the water from that well in its conduct of the drilling operations that actually are conducted on land covered by this lease. Lessee shall have no right to the use of water from the lands covered hereby for water flooding, secondary recovery operations or camp operations.

This provision's exception allows for water use only from a COG-drilled "water well." *Id.* COG conceded that it never drilled a water well. RR61. But if it had, such water could have been used only for on-lease drilling operations—not for fracing, much less for use off lease. *Id.*

Similarly, the 2014 Collier Lease, App.E ¶ 1, forbade COG from using, without written consent of the landowners, "water from any source from said land."

> and containing 480 acres, more or less. No water from any source from said land shall be used for any purpose without written consent of Lessor.

C. Through produced water lease agreements, Collier and Balmorhea sever the water estate and grant it to Cactus Water.

In 2019, Collier and Balmorhea severed and conveyed water rights to Cactus Water. In identical granting clauses, those produced water lease agreements (PWLAs) leased to Cactus Water the water "on and underlying" the land.

> 2. **Grant.** For good and valuable consideration received and the benefits to be derived by the parties from entering into this Lease, Surface Owner hereby LEASES, LETS AND DEMISES exclusively unto Cactus for the term of this Lease the Water on and underlying the entire Subject Property for the purposes of exercising ownership rights over such Water, as well as capturing, owning, storing, treating, transporting, delivering, marketing, recycling, reusing, disposing of, and/or selling Water produced therefrom, subject to the terms and provisions set forth below. Cactus shall have, and is hereby granted pursuant to the terms of this Lease, the rights to:
>
> a. capture, own *in* situ, store, treat, transport, deliver recycle, reuse, dispose of, and market all the Water produced from oil and gas wells and formations on or under the Subject Property;

Apps.G–H ¶¶ 2–2a.

D. Litigation

After learning of the PWLAs, COG began this litigation. On cross-summary-judgment motions, the trial court ruled for COG, declaring that it owns the native-formation water that comes up during oil-and-gas production. App.B. After the parties nonsuited remaining claims, the trial court rendered final judgment.[6]

In a 2-to-1 decision, the Eighth Court affirmed. App.A.

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[6] Two other cases presenting the same issue await this case's outcome. Both are before the same trial court as here (the 143rd Judicial District Court): *CWS II Delaware, LLC v. Occidental Petroleum Corp. et al.*, No. 21-09-1041 (Loving County), and *CWS II Delaware, LLC v. Chevron Corp. et al.*, No. 21-11-24208-CVR (Reeves County).

Summary of the Argument

Unless expressly conveyed, subsurface water belongs to the surface estate—no matter the water's mineral content. Unquestionably, an express conveyance of water to the mineral estate is completely absent here. In fact, the mineral leases restrict the mineral estate's rights to even use water from under the lands.

Still, the majority held that COG has exclusive rights over everything from its wellbore—including the landowners' native water that comes up during oil-and-gas production. But that inverts Texas law. The majority achieved that result by saying the dispute here concerns waste, not water. Yet this Court has held that water's ownership does not turn on its mineral content. Straying from that precedent, the majority allows mineral lessees to do whatever they want with that water—including selling or monetizing it—without paying the landowners anything.

Left on the books, the Eighth Court's new ownership rule strips away landowners' vested rights in subsurface water and unravels decades of this Court's jurisprudence in decisions like *Edwards Aquifer Authority v. Day*, *Sun Oil Co. v. Whitaker*, and *Robinson v. Robbins Petroleum Corp.* This Court should reaffirm that, unless expressly conveyed, a surface estate owns all subsurface water—including native-formation water that comes up during oil-and-gas production.

ARGUMENT

I. This Court should grant review to address the Eighth Court's 2-to-1 decision that flouts this Court's decisions on water-ownership issues that are important to the jurisprudence and to Texans.

When a surface estate has not expressly conveyed water to the mineral estate, who owns the subsurface native-formation water that comes up when oil and gas are produced? This important legal question—and whether this Court's precedents answer it—divided the Eighth Court's justices. The issue merits this Court's attention.

A. Recurring issues governing water-ownership rights and conciliating correlative rights are jurisprudentially important.

Over the years, this Court has granted review in many cases that have shaped surface-estate rights, including water rights, and the "recurring problem of adjusting correlative rights." *Humble Oil & Refin. Co. v. West*, 508 S.W.2d 812, 815 (Tex. 1974). For example, consider this Court's decision in *Sun Oil Co. v. Whitaker*. There, the Court held that a landowner owns the water beneath its land. 483 S.W.2d 808, 811 (Tex. 1972). The next year, this Court extended the rule to subsurface salt water. *Robinson v. Robbins Petroleum Co.*, 501 S.W.2d 865, 867-68 (Tex. 1973). And, more recently, this Court took up whether groundwater—including subsurface water—can be owned in place. *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 832 (Tex. 2012).

Consider too this Court's grant of review in *Environmental Processing Systems, L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414 (Tex. 2015), concerning subsurface-water migration. The Court ultimately left open whether Texas law recognizes trespass for wastewater migration into deep-subsurface briny groundwater. *Id.* at 416, 425.

And to take just one more example, in *Coyote Lake Ranch, LLC v. City of Lubbock*, this Court considered whether the accommodation doctrine should be extended to a severed groundwater estate. 498 S.W.3d 53, 64-65 (Tex. 2016). *Coyote Lake* holds that it does—and that severing a groundwater estate creates a dominant estate. *Id.* But, as to "whether the accommodation doctrine is workable when both the minerals and the groundwater have been severed from the land," the Court left "that issue for another day." *Id.* at 65 n.55.

This case presents another opportunity for the Court to define the contours of water rights. And no matter if this case is resolved by applying the accommodation doctrine, as the dissent urged, App.A at *11 (Palafox, J., dissenting), or by applying a surface estate's long-settled ownership rights to all subsurface water, the case's ramifications are too important to be left to an intermediate-appellate court. That is "[p]articularly" true, as the dissent recognized, "in the oil-and-gas field" where "parties depend on courts 'for continuity and predictability in the law.'" *Id.* at *12 (quoting *Wenske v. Ealy*, 521 S.W.3d 791, 798 (Tex. 2017)). If Texas law is going to

answer who owns native-formation water that comes up during oil-and-gas production, it should be this Court that determines how the principles announced in its earlier decisions interplay to resolve that question.

B. Water rights are important to Texans.

The Eighth Court held that the landowners (and thus Cactus Water) have no ownership rights to their native-formation water concomitantly produced with mineral extraction. App.A at *6. The Eighth Court's decision has already captured the attention of commentators.

Among them, one noted the importance of issues relating to produced-water rights in Texas: "The ownership of treated produced water is hotly contested and has considerable industry importance. . . . Given the novel question and divided appellate court, the case is a good candidate for review by the Texas Supreme Court."[7] Another said the Eighth Court's split decision shows that arguments can be made for ownership by both the surface or mineral estates.[8] Yet the decision is another reminder of the sometimes-murky intersection between Texas water law and oil-and-gas law.

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[7] Timothy S. McConn & Bonnie Cantwell Fraase, *Cactus v. COG: Waste Not Want Not*, YETTER COLEMAN LEGAL ALERT (Aug. 15, 2023), *available at* https://bit.ly/476BTFM.

[8] Bernard ("Buddy") F. Clark Jr. et al., *Produced Water Ownership in Texas: Is* Cactus Water *the Answer?*, HAYNES & BOONE NEWS AND INSIGHTS (Aug. 16, 2023), *available at* https://bit.ly/3MnHZK3.

Similarly, another predicted that, "[w]ith increased demands for water, particularly in the western parts of Texas," "[t]his case is undoubtedly on its way to the Supreme Court."[9] All in all, the common refrain about the Eighth Court's decision is that, "[w]ith growing commercial interest around the value of produced water, the legal ownership question of produced water has taken on increased importance"—making the issue "ripe for Texas Supreme Court input."[10]

As Texas faces unprecedented population growth and record drought,[11] water is increasingly precious and widely commoditized.[12] That's true for both potable and non-potable water. As the Eighth Court noted, recent water-treatment technologies have created a "new industry" in which treated produced water can be sold back for reuse in fracing. App.A at *2.[13] Along with other a "variety of economic uses for produced water,"[14] reuse is vital because it lessens demands on water needed for

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[9] John McFarland, *Cactus Water Services v. COG Operating—Who Owns Produced Water?*, Oil & Gas Lawyer Blog (Aug. 3, 2023), *available at* https://bit.ly/45MPkK0.

[10] *E.g.*, Clark, *supra* note 8 (cleaned up).

[11] *See* Jess Donald & Spencer Grubbs, *Drought in Texas*, *in* Texas Comptroller Fiscal Note (Dec. 2022), *available at* https://bit.ly/3QDmTda.

[12] *See* Edmond R. McCarthy, Jr., *Mixing Oil & Gas with Texas Water Law*, 44 Tex. Tech. L. Rev. 883, 926 (2012).

[13] *Accord* Clark, *supra* note 8 ("Recent technology innovations have . . . created intrinsic value in produced water . . . [and] a substantial market for third-party companies to purchase, treat, transport, and sell produced water among producers. This itself is a lucrative market given the relative scarcity of water supply in West Texas." (footnote omitted)).

[14] *Id.*

human consumption, agriculture, and ranching. *Coyote Lake*, 498 S.W.3d at 63-64; *see* Amicus Br.—Tex. Farm Bureau 1-2; Amicus Br.—Tex. & Sw. Cattle Raisers Ass'n 2-3.

Until recently, water was far less valuable than oil and gas. A decade ago, though, this Court observed that "the price of bottled water is roughly equivalent to, or in some cases, greater than the price of oil." *Day*, 369 S.W.3d at 831. But "the legal ambiguity as to who owns produced water represents an impediment to the efficient development of the produced water market."[15] And because "produced water is increasingly treated as a monetizable asset by producers and surface owners,"[16] more conflicts between mineral and surface estates will emerge. Indeed, the question of who owns the native water "has divided the midstream industry."[17] Only this Court can provide the answer to that important question. *See* TEX. R. APP. P. 56.1(a)(5)–(6).

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[15] *Id.*

[16] Michael P. Lennon Jr. et al., *Court of Appeals Holds that Mineral Lessee Owns Produced Water in O&G Operations*, MAYER BROWN PERSPECTIVES (Aug. 16, 2023), *available at* https://bit.ly/3MmV3iQ.

[17] *Id.* ("[U]nless or until the Texas Supreme Court settles the question, industry clients may see continued litigation over produced water ownership in other courts statewide, particularly as produced water is increasingly treated as a monetizable asset by producers and surface owners.").

C. Conflicts with this Court's decisions and disagreement among the Eighth Court's justices warrant this Court's intervention.

As we explore below, the legal rule announced by the majority conflicts with this Court's decisions and caused the Eighth Court's justices to split 2-to-1. *See infra* Section II.A–C. Either deserves this Court's attention. *See* TEX. R. APP. P. 56.1(a)(1)–(2).

II. The Eighth Court erred in concluding that the mineral estate owns the surface estates' native water that comes up with mineral production.

A. The majority eschewed 50 years of this Court's precedents holding that, absent specific conveyancing language, the surface estate owns all subsurface water.

The analysis starts with the mineral leases. They expressly convey to COG the right to explore and produce oil, gas, and other hydrocarbons. Apps.C–E ¶ 1. Water is none of the things expressly conveyed.

Other Collier-tract mineral lease provisions reinforce that the surface estates did not convey water to COG. Those provisions restrict COG's right to even use water "which is on or under" or "from" the lands.

> 18. Anything herein to the contrary or apparently to the contrary notwithstanding, Lessee, its successors and assigns, shall have no right to use water which is on or under the above described land, except it may itself drill a water well and then use the water from that well in its conduct of the drilling operations that actually are conducted on land covered by this lease. Lessee shall have no right to the use of water from the lands covered hereby for water flooding, secondary recovery operations or camp operations.

Apps.C–D ¶ 18.

> and containing 480 acres, more or less. No water from any source from said land shall be used for any purpose without written consent of Lessor.

App.E ¶ 1. If the leases had granted COG ownership of water under or from the land, these clauses' restrictions on COG's use of such water would have made no sense. These clauses thus confirm that the leases did not grant COG ownership of water under or from the land. Yet, inverting Texas law, the majority held that the landowners had the burden of *reserving* ownership of produced water. *See* App.A at *5-6.

That holding contradicts this Court's 1972 decision in *Sun Oil*. For a conveyance of the surface estate's water, including subsurface water, Texas law has insisted on a high threshold: it requires express, specific conveyancing language to sever and convey water. *Sun Oil*, 483 S.W.2d at 811 ("Water, unsevered expressly by conveyance or reservation, has been held to be a part of the surface estate."). Conveyance by implication will not suffice. *Id.*; *see* App.A at *8, *10 (Palafox, J., dissenting). Unquestionably, specific conveyancing language is absent from the mineral leases. By shifting the burden to the surface estate to *reserve* produced water, App.A at *5-6, the Eighth Court's majority got *Sun Oil* exactly backwards.

For similar reasons, the majority's conclusion also strays from this Court's 2012 decision in *Day*. There, the Court held that, other than underground rivers or

streams that belong to the State, a surface owner has "absolute title" to water "in place beneath his land." 369 S.W.3d at 831-32; *see* App.A at *8 (Palafox, J, dissenting). Combined, *Sun Oil* and *Day* teach that, absent express, specific conveyancing language, the surface estate owns all absolute title to all subsurface water under its lands. And that's true regardless of the depth, location, or geologic formation in which water is found. *See, e.g.*, *Fleming Found. v. Texaco, Inc.*, 337 S.W.2d 846, 850 (Tex. Civ. App.—Amarillo 1960, writ ref'd n.r.e.).

Ownership of subsurface water also does not turn on the water's mineral content or salinity. That's the holding of this Court's 1973 decision in *Robinson*. 501 S.W.2d at 867. In *Robinson*, under an "oil, gas, and all other *minerals*" clause, Robbins Petroleum produced saltwater from a failed oil well for off-lease use in secondary-recovery operations, without paying the landowner anything. *Id.* at 866-67. This Court held that mineral content in the water produced did not confer ownership on the mineral estate. *Id.* at 867; *see* App.A at *10 (Palafox, J., dissenting). In holding otherwise here, the majority deviated from *Robinson*'s core holding.

When the majority here finally got around to talking about *Robinson*, it did so only at the end of its opinion in a fleeting footnote. App.A at *6 n.5. There, it tried to distinguish *Robinson* away. *Id.* Its attempt to escape the effect of *Robinson*, though, is unconvincing. Given *Robinson*'s importance, we pause to discuss it in more detail.

Robinson starts by laying out the rule that Robbins Petroleum and others had proposed: "It has been said, and is argued here, that a different result should be reached as between fresh water and salt water." 501 S.W.2d at 867. But *Robinson* explicitly rejects that proposal. Putting a fine point on it, this Court said, "We are not attracted to a rule that would classify water according to a mineral contained in solution." *Id.*, *quoted in* App.A at *10 (Palafox, J., dissenting). That should be dispositive here.

Hoping to wire around the decision, COG said *Robinson* was not addressing water co-produced with leased minerals. *See* COG Br.App'ee 42-44. And the majority latched onto this purported distinction as an exit ramp from *Robinson*. *See* App.A. at *6 n.5. Both are wrong. *Robinson* is in fact a case in which water was co-produced with leased minerals; indeed, the presence of salt in the water was the very thing that Robbins Petroleum used to justify the production from the failed oil well under the oil-gas-and-other-*minerals* lease.

On this score, *Robinson*'s guidance is particularly salient. As the opinion reflects, most water has some mineral content: "Water is never absolutely pure unless it is treated in a laboratory." *Id.* at 867. And while salt is a mineral (produced there under an "oil, gas, and all other minerals" clause), it was clear in *Robinson* that it was the "water with which these parties are concerned and not the dissolved salt."

Id. Just the same, *Robinson* explains how the law works when a mineral in water is so valuable that its value would justify producing it and extracting it from the water. In this key passage, *Robinson* makes clear that the mineral estate could produce the water for the purpose of extracting the mineral. Even then, though, the surface estate would retain its ownership of the water:

> If a mineral in solution or suspension were of such value or character as to justify production of the water for the extraction and use of the mineral content, we would have a different case. The substance extracted might well be the property of the mineral owner, and he might be entitled to *use* the water for purposes of production of the mineral. *In either case* the water itself is an incident of surface ownership in the absence of specific conveyancing language to the contrary. And in our case the saline content has no consequence upon ownership.

Id. (citations omitted) (emphasis added).

All told, the Eighth Court's holding that COG owns the native water that comes up during oil-and-gas production cannot be squared with *Robinson*. Because of that conflict, this Court should clarify that *Robinson* applies not just when water is produced while seeking water from a failed oil well, as in *Robinson*, but also when water is produced while seeking and producing oil, as here.

B. The wellbore and product-stream theories fare no better.

The effect of COG's argument adopted by the majority is that COG owns anything that comes up through its wellbore. But this Court has been down this road

before. In *Robinson*, Robbins Petroleum made—and this Court rejected—that same argument. 501 S.W.2d at 867-68. *Robinson* thus blocks COG's wellbore theory.

Nor can COG's wellbore theory survive how this Court resolved the so-called "white oil" cases. *E.g.*, *Amarillo Oil Co. v. Energy-Agri Prods., Inc.*, 794 S.W.2d 20 (Tex. 1990). There, although gas was produced along with oil through the oil lessee's wellbore, this Court rejected the oil lessee's asserted ownership over the gas as beyond the scope of the lease's granting clause. *See id.* at 27-28 & n.6 (ruling instead for the gas lessee). To be sure, the same rule applies even when oil and gas are embedded with other materials; the mineral lessee "does not have any right to the materials surrounding any [leased] minerals—only the minerals themselves." *Lightning Oil Co. v. Anadarko E&P Onshore LLC*, 520 S.W.3d 39, 50 (Tex. 2017).

COG's related product-stream theory—that the surface estate intended to convey ownership of the "product stream" to COG—is similarly unpersuasive. *See* COG Br.App'ee 23. To start, water is not part of the "*product* stream." Water is not a hydrocarbon, and it's not oil or gas—the sole "products" conveyed to the mineral estate to produce. Nor is water a "product" of oil, gas, or other hydrocarbons because it is not a commodity made or manufactured from them.

And producing water unavoidably during mineral production does not transmogrify water into something else—even when it emerges from the wellbore in

the same "stream." *Robinson* teaches as much: "We are not attracted to a rule that would classify water according to a mineral contained in solution. . . . The saline content has no consequence upon ownership" of the water. 501 S.W.2d at 867 (citations omitted). As with its wellbore theory, COG's product-stream theory is also foreclosed.

C. The development-rights rationale is even less capable.

The majority also endorsed COG's argument that its "development rights" gave it ownership over produced water. App.A at *5 (citing *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690 (Tex. 2008), and *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99, 102 (Tex. 1984)). That contention does not hold up.

Here's what happened in *Bowden*. This Court held that royalties should be based on the value of natural gas before its separation into its constituent elements. 247 S.W.3d at 706. In that context, this Court said that the producer will bear both the cost and benefits from processing and treatment *of those minerals*." *Id.* (emphasis added). *Bowden* never suggests that a producer should benefit from or own other substances it had not "bought and paid for." *Id.* Nothing in *Bowden* holds that substances not conveyed—like water here—are, under the rubric of development rights, somehow conveyed by implication. They are not.

The majority's invocation of *Moser* is similarly off base. App.A at *5 (quoting *Moser*'s language that knowledge of the "value, or even the existence of the substance at the time the conveyance was executed" is irrelevant to its inclusion or exclusion from the mineral grant). *Moser* addresses whether uranium was transferred by the "other minerals" language in the lease there. But uranium is a mineral. Water is not. So *Moser* does not support the Eighth Court's holding.

D. The majority's conclusion that the issue here concerns waste instead of water is unsound.

In the majority's view, "[t]he parties' disagreement as to whether produced water is part of the mineral estate essentially depends on whether 'produced water' is, as a matter of law, water or if it is waste." App.A at *4. As the majority notes, the mineral leases here do not define "water." *Id.*

"Thus," as COG told the court of appeals, "its ordinary and natural meaning controls." COG Br.App'ee 48. On this front, though, COG made a key concession. "The ordinary meaning of 'water,'" COG admitted, is the "liquid that descends from the clouds as rain, forms streams, lakes, and seas . . . .'" *Id.* (quoting *Merriam Webster*[18]). We agree.

[18] https://www.merriam-webster.com/dictionary/water?src=search-dict-box.

All water on the surface or subsurface of the Earth fell as rain at one time—including water in the oceans and seas.[19] The native-formation water coming up with COG's mineral production was deposited from an inland sea covering the area.[20] Native-formation water thus falls squarely within COG's cited dictionary definition. *See* COG Br.App'ee 48-49. All of this shows that the native-formation water coming up during mineral production is still water.

Rather than consult dictionaries, the majority looked outside the contract, largely to statutes and regulations. App.A at *4. But those sources point in different directions. Some classify produced water as oil-and-gas waste. *Id.* And some have purportedly contrasting definitions for "fresh water," "groundwater," and "subsurface water," *id.*—but for good reason. Those schemes concern preventing contamination of potable-water sources. *Id.* (citing TEX. NAT. RES. CODE § 91.1011; 16 TEX. ADMIN. CODE § 3.8(a)(26), (29); and TEX. WATER CODE §§ 27.001(6), 27.002(8), 27.003)). Shorn from their context, these definitions supply no support for the majority's conclusion.

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[19] U.S. Nat'l Oceanic & Atmospheric Admin., *Why Do We Have an Ocean?*, *available at* https://bit.ly/3FVBCKm.

[20] *See* 1CR59; U.S. Energy Info. Admin., *Permian Basin, Part 1: Wolfcamp, Bone Spring, Delaware Shale Plays of the Delaware Basin—Geology Review* 2-3, 9-10 & Figure 6 (Feb. 2020), *available at* https://bit.ly/3u7VFTk.

Even then, however, one of those schemes has a flexible definition of water as having properties making it "suitable and feasible for beneficial use for any lawful purpose." *Id.* (citing TEX. WATER CODE § 27.002(8)); *accord* TEX. WATER CODE § 36.001(9). Given that produced water can be recycled and itself is a monetizable commodity for reuse, that definition would include produced water.

Elsewhere, the Water Code's definition of groundwater—"water percolating below the surface of the earth"—includes the native-formation water at issue. TEX. WATER CODE § 36.001(5); *see Tex. Co. v. Burkett*, 296 S.W. 273, 278 (Tex. 1927); *accord* 30 TEX. ADMIN. CODE § 297.1(22) (defining "groundwater" as "[w]ater under the surface of the ground other than underflow of a stream and underground streams, whatever may be the geologic structure in which it is standing or moving").

Another section in that same chapter of the Water Code codifies the Legislature's recognition "that a landowner owns the groundwater below the surface of the landowner's land as real property." TEX. WATER CODE § 36.002(a).[21] The statutory and regulatory analysis, then, is either inconclusive or favors Cactus Water.

[21] The majority also cited TEX. NAT. RES. CODE § 122.001(2), but later sidestepped the 2019 amendment to Chapter 122 in § 122.002—noting its "adopt[ion] after the mineral leases were signed." App.A at *5 n.4. That disqualifying feature, however, also applies to § 122.001(2) for at least some of the mineral leases here. *See* App.A at *11 (Palafox, J., dissenting). Perhaps because of this timing problem—or to avoid a constitutional showdown over whether amended Chapter 122 can withstand a takings challenge—COG disclaimed reliance on it "to *create* a property right." COG Br.App'ee 41; *see supra*, p. xiv (reserving issue for merits briefing).

It certainly does not justify the majority's conclusion that the mineral leases granted native-formation water by implication.

⁂

In sum, there should be no back door to obtaining water ownership without express-conveyancing language absent here. Texas law has never tolerated conveyance of water by implication. It should not do so now.

Prayer

Petitioner asks this Court to grant its petition, reverse the Eighth Court's judgment, render judgment that Cactus Water owns all native-formation water that comes up during oil-and-gas production on the leases at issue, and remand for further trial-court proceedings, or, alternatively, reverse and remand for further trial-court proceedings.

Respectfully submitted,

/s/ Dana Livingston
Dana Livingston
State Bar No. 12437420
dlivingston@cokinoslaw.com
COKINOS | YOUNG
900 S. Capital of Texas Hwy.
Suite 425
Austin, Texas 78746
Tel.: (512) 482-9304
Fax: (512) 610-1184

Marvin W. Jones
State Bar No. 10929100
marty.jones@sprouselaw.com
C. Brantley Jones
State Bar No. 24070042
brantley.jones@sprouselaw.com
SPROUSE SHRADER SMITH PLLC
701 S. Taylor, Suite 500
P. O. Box 15008
Amarillo, Texas 79105-5008
Tel.: (806) 468-3300
Fax: (806) 373-3454

Counsel for Petitioner, Cactus Water Services, LLC

Certificate of Compliance

Based on a word count run in Microsoft Word for Office 365, this Petition contains 4,492 words, excluding the portions of the Petition exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Dana Livingston
Dana Livingston

Certificate of Service

On November 10, 2023, a true and correct copy of this document was served by electronic service through eFile.Texas.gov on parties through counsel of record, as listed below:

Macey Stokes
Macey.stokes@bakerbotts.com
Benjamin Gonsoulin
ben.gonsoulin@bakerbotts.com
Baker Botts llp
910 Louisiana Street
Houston, Texas 77002

John A. "Jad" Davis
jadavis@dgclaw.com
Katherine L. Petroski
klpetroski@dgclaw.com
Davis, Gerald & Cremer, pc
400 W. Illinois, Suite 1400
Midland, Texas 79701

Ryan Clinton
rdclinton@dgclaw.com
Davis Gerald & Cremer, pc
300 West Sixth St., Suite 1830
Austin, Texas 78701

Counsel for Respondent, COG Operating, LLC

/s/ Dana Livingston
Dana Livingston

APPENDIX

Tab	Description	Record Location
A.	Court of appeals' opinions & judgment	
B.	Trial court's final judgment	2CR682-84
C.	2005 Collier/JAJ Lease to COG for "oil and gas and other hydrocarbons"	1stSuppCR211-19
D.	2010 Collier/Delaware Basin Resources Lease to COG for "oil and gas and other hydrocarbons"	1stSuppCR220-32
E.	2014 Collier Lease to COG for "oil and gas"	1stSuppCR326-36
F.	2010 Balmorhea Lease to COG for "oil, gas and other hydrocarbons"	1CR218-24
G.	2019 Collier Produced Water Lease Agreement to Cactus Water *(including chart listing Collier tracts subject to this PWLA)*	1stSuppCR421-43
H	2019 Balmorhea Produced Water Lease Agreement to Cactus Water *(including chart listing Balmorhea tracts subject to this PWLA)*	1stSuppCR183-211

Tab A
Opinions and Judgment of the Court of Appeals

2023 WL 4846861
Only the Westlaw citation is currently available.

Court of Appeals of Texas, El Paso.

CACTUS WATER SERVICES, LLC, Appellant,
v.
COG OPERATING, LLC, Appellee.

No. 08-22-00037-CV
|
July 28, 2023

Synopsis

Background: Mineral lessee brought action against other lessee for declaratory judgment, alleging that lessee had exclusive right to "produced water" from its oil and gas wells. The 143rd District Court, Reeves County, granted lessee's motion for summary judgment. Other lessee appealed.

The Court of Appeals, Rodriguez, C.J., held that lessee had exclusive right to "produced water" as part of oil and gas product stream.

Affirmed.

Gina M. Palafox, J., filed dissenting opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Appeal from the 143rd District Court of Reeves County, Texas, Cause No. 20-03-23456-CVR

Attorneys and Law Firms

Joshua Katz, Austin, Civil - Amicus Curiae for Texas Farm Bereau.

Christopher Hogan, Civil - Amicus Curiae for Texas Oil & Gas Association.

Katherine Petroski, Macey Reasoner Stokes, Benjamin Gonsoulin, Houston, John A. 'Jad' Davis, Ryan Clinton, Austin, for Appellee.

Roger Townsend, Houston, Dana Livingston, Austin, Marvin Jones, Amarillo, for Appellant.

Charles Hosey, Civil - Amicus Curiae for National Association of Royalty Owners-Texas, Inc.

Before Rodriguez, C.J., Palafox, and Soto, JJ.

OPINION

YVONNE T. RODRIGUEZ, Chief Justice

***1** This case decides who owns produced water arising from a hydraulic fracturing operation: COG Operating, LLC (the existing mineral lessee) or Cactus Water Services, LLC (who later entered a produced water lease agreement with the surface owners). On cross-motions for summary judgment, the trial court decided the ownership question in COG's favor. Cactus appeals, contending the trial court's judgment lacks support in the contractual language of the operator's mineral lease and is unsupported by Texas jurisprudence, statutes, or regulations. We affirm.

I. BACKGROUND

COG is the mineral lessee under four leases, executed in 2005, 2010, and 2014, and covering approximately 37,000 acres in Reeves County, Texas ("the Leased Lands"), with two surface owners. [1] Under these leases, COG has the exclusive right to explore for and produce oil and gas on the Leased Lands:

- 2005 and 2010 Collier Leases: "Lessor[s] ... have GRANTED, DEMISED, LEASED and LET, and by these presents do GRANT, DEMISE, LEASE and LET exclusively unto the said Lessee, its successors and assigns, for the sole and only purpose of investigating, exploring, prospecting, drilling, mining and operating for oil and gas and other hydrocarbons, and of laying pipelines and of building tanks, power stations and structures thereon, to produce, save, take care of, store and treat products produced hereunder, and then to transport those products from the land in Reeves County, Texas [covered by the lease][.]"

- 2014 Collier Lease: "Lessor ... hereby exclusively grants, leases and lets unto Lessee for the purpose of investigating, exploring, prospecting, drilling and producing oil and gas, from the [land covered by the lease]."

- 2010 Balmorhea Lease: "Lessor ... hereby grants, leases and lets exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas, and other hydrocarbons, conducting exploration, geologic and geophysical surveys by seismographs, core test, gravity and magnetic methods, injecting gas, water and other fluids, and air into subsurface strata, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon, to produce, save, take care of, treat, transport and own said products, the [land covered by the lease]."

[1] Cactus urges an additional fifteen leases convey an interest in some portion of Section 34, Block 51, Township 8 Abstract 5880, T&P R.R. Co. Survey, but those leases were apparently not included in Cactus's definition of "Leased Premises" in its live pleading in the trial court. We do not consider them to be part of the Leased Premises for purposes of this appeal.

COG's operations in the Leased Lands center around a region in the Delaware Basin with dense shale and poor permeability. Given those conditions, COG's operations have focused on drilling and completing horizontal wells—*i.e.*, hydraulic fracturing, or "fracing."

Fracing involves "pumping fluid down a well at high pressure so that it is forced out into the formation," which "creates cracks in the rock that propagate along the azimuth of natural fault lines in an elongated elliptical pattern in opposite directions from the well." *Coastal Oil & Gas Corp. v. Garza Energy Tr.*, 268 S.W.3d 1, 6 (Tex. 2008). The fluid contains proppants that keep those cracks open and allow oil and gas to flow to the wellbore. *Id.* at 6-7. However, what travels to the wellbore involves other substances too, both hydrocarbon and not. The composition of that fluid depends on the location, but here, those substances include sodium, calcium, potassium, strontium, barium, iron, carbon dioxide, and brine, or water molecules mixed with hydrogen sulfide and chloride.

***2** Once the stream reaches the surface, it is treated by equipment that separates out the oil and gas. What remains is referred to as produced water—a liquid containing chloride, sodium, calcium, potassium, strontium, barium, iron, hydrogen sulfide, carbon dioxide, trace amounts of oil, and water. Because fracing requires so much water per well, it also generates huge amounts of produced water, particularly in the Permian Basin. *See* Andrew J. Kondash et al., *The Intensification of the Water Footprint of Hydraulic Fracturing*, Science Advances (2018), https://www.science.org/doi/epdf/10.1126/sciadv.aar5982 (noting the median water usage of a Permian Basin well is 42,500 cubic meters). For example, since COG entered the mineral leases, its operations have resulted in nearly 52,000,000 barrels of produced water. And because produced water presents a danger to the surrounding environment, including "usable-quality water," it must be carefully handled and disposed. 16 TEX. ADMIN. CODE § 3.13(a)(1)(R.R. Comm. of Tex., Casing, Cementing, Drilling, Well Control and Completion Requirements). That process is highly regulated in Texas and includes penalties for improper disposal. *See id.* § 3.8. While the handling, treatment, and disposal of produced water have long been costly expenditures for operators, recent

water treatment technologies have made the reuse of such waste possible, creating a new industry in which treated wastewater can be sold back to operators for drilling. Christopher M. Matthews, *The Next Big Bet in Fracking: Water*, THE WALL STREET JOURNAL (Aug. 22, 2018), https://www.wsj.com/articles/the-next-big-bet-in-fracking-water-1534930200.

Since COG began operations on the Leased Lands, it has disposed of its oil and gas waste, including produced water. To aid that process, COG has both surface use compensation agreements (SUCA) and right-of-way agreements (ROW Agreements) with the surface owners to facilitate its use of the surface estate when it transports product and waste from its wells. The SUCA gives COG the right to:

> [C]onstruct, operate and maintain tank battery sites ... for the gathering, storing, and transporting of ***oil, gas, other petroleum products, water, and/or any other liquids, gases or substances which can be transported through a pipeline***. Said site is to include tanks, pipelines, pipeline connections and other fixtures and appurtenances reasonably necessary or convenient to Operator's use and Operations of the lands as a tank batter[y] site.

It also provides that " '[f]resh water lines, produced water lines and flow lines may be laid on the surface of the Lands.' " The ROW Agreements also grant COG the right to lay pipelines for the "transportation **of oil, gas, petroleum, produced water and any other oilfield related liquids or gases**[.]" COG's production facilities can store roughly 24-hours' worth of produced water before it must be sent offsite; otherwise, production must stop. COG has incurred significant costs in handling and disposing its produced water from the Leased Lands, paying over $20.5M to its liquid-waste disposal contractor from December 2018 through March 2021. [2]

[2] Before December 2018, COG disposed of this waste directly and through other third-party facilities, though the record does not include the cost for that work.

COG's leases notwithstanding, in 2019 and 2020, the surface owners transferred to Cactus all the surface estates' water rights on the Leased Lands. The leases give Cactus ownership and the right to sell all water "produced from oil and gas wells and formations on or under the [covered properties]." "Water" is defined as:

> [A]ny and all water contained in and produced from geologic formations under the Subject Property through any wellbores drilled for the production of oil, gas, and natural gas liquids (collectively, 'hydrocarbons'), whether economically

> productive or not, regardless of salinity. 'Water' excludes all water originating from shallow geological intervals that do not and have never produced oil, other hydrocarbon liquids, and/or natural gas anywhere in the Permian Basin. 'Water' also excludes water purposely and directly produced from the Ogallala, Pecos Valley Alluvium, Edwards Trinity, Dockum Aquifers or any other freshwater aquifers.

Cactus informed COG of its produced water leases in early March 2020. COG then sued, seeking a declaratory judgment that it has the sole right to the produced water by virtue of its mineral leases, SUCAs, and at common law. Cactus counterclaimed, asserting its right of ownership over the produced water under its own leases. But unlike the produced water leases, none of the mineral leases define the term "water." The 2005 and 2010 leases do, however, specifically limit COG's use of water on the Leased Lands:

> ***3** [COG] shall have no right to use water which is on or under the above described land, except it may itself drill a water well and then use the water from that well in its conduct of the drilling operations that actually are conducted on land covered by this lease.

Similarly, the 2014 lease states, "No water from any source from said land shall be used for any purpose without written consent of Lessor." Thus, COG and Cactus dispute whether the mineral leases conveyed produced water to COG. If so, the surface owners' later transfer of produced water to Cactus is void.

Both parties moved for summary judgment, and the trial court granted summary judgment in COG's favor. After the parties nonsuited their remaining claims, the trial court entered a final judgment declaring that COG owns, by virtue of its mineral leases, the oil, gas, and other products contained in the commercial oil and gas bearing formations that are produced from the COG wells on the properties; that COG has the right to exclusive possession, custody, control, and disposition of the product stream produced from the wells under the mineral leases so long as the leases remain in effect; and that Cactus has no rights in or to the product stream from COG's wells so long as the mineral leases remain in effect. Cactus appealed.

II. STANDARD OF REVIEW

We review a trial court's granting of summary judgment de novo. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018). When parties bring cross-motions for summary judgment, each party's burden is to establish it is entitled to judgment as a matter of law. *Miles v. Tex. Cent. R.R. & Infr., Inc.*, 647 S.W.3d 613, 619 (Tex. 2022). When one party's motion is granted and the other is denied, on review we " 'determine all questions presented' and 'render the judgment that the trial court should have rendered.' " *Id.* (quoting *City of Garland v. Dall. Morning News*, 22 S.W.3d 351, 356 (Tex. 2000)).

Declaratory judgments are reviewed under the same standards as other judgments, looking to the procedure used in the trial court to resolve the issue, and applying the standard of review applicable to that procedure. *Browne v. Ortiz*, 657 S.W.3d 704, 708 (Tex. App.—El Paso 2022, no pet.). In this case, because the summary judgment included declaratory portions, we also review the declaratory portions of the judgment de novo. *See Sanchez v. Barragan*, 624 S.W.3d 832, 838 (Tex. App.—El Paso 2021, no pet.).

III. ANALYSIS

Cactus argues the trial court's ruling on summary judgment has no support in the mineral leases, nor in Texas's jurisprudence, statutes, or regulations. COG responds that consistent with the relevant statutory and regulatory landscape, the mineral leases necessarily convey the oil and gas product stream, which includes the produced water.

We begin with the mineral leases. "When interpreting a written contract, the prime directive is to ascertain the parties' intent as expressed in the instrument." *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 757 (Tex. 2018). When, as here, several instruments pertain to the same transaction, those instruments may be read together to determine the parties' intent, even if the parties executed the instruments at different times. *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000). While our "focus is on the words the parties chose to memorialize their agreement," we recognize "language is nuanced, and meaning is often context driven." *URI, Inc.*, 543 S.W.3d at 757. To that end, Texas courts have long construed words in the context in which they are used. *Id.* at 764. That includes "the commercial or other setting in which the contract was negotiated and other *objectively* determinable factors that give a context to the transaction," as "[s]etting can be critical to understanding contract language[.]" *Id.* at 768 (citations omitted). Though surrounding facts and circumstances "cannot be used to augment, alter, or contradict the terms of an unambiguous contract," they can "inform the meaning of language." *Id.* at 758. "Understanding the context in which an agreement was made is essential in determining the parties' intent *as expressed in the agreement*, but it is the parties' expressed intent that the court must determine." *Anglo-Dutch Petroleum In'l, Inc. v. Greenberg Peden, P.C.*, 352 S.W.3d 445, 451 (Tex. 2011). Our approach is "holistic" and aimed at determining intent from all words and

parts of the contract. *Greer v. Shook*, 503 S.W.3d 571, 582 (Tex. App.—El Paso 2016, pet. denied). Ultimately, our goal is to objectively determine what the parties intended by construing the contract "from a utilitarian standpoint bearing in mind the particular business activity sought to be served." *Reilly v. Rangers Mgmt., Inc.*, 727 S.W.2d 527, 530 (Tex. 1987).

***4** Cactus contends that the mineral leases grant the right to "oil, gas and other hydrocarbons," or the right to "oil and gas," which does not encompass all produced water from the oil-and-gas bearing formations. Cactus also contends that because the mineral leases limit COG's use of surface water, the leases do not allow COG to sell produced water to third parties for off-premises use. Its argument hinges on the chemical composition of water: Because water is not a hydrocarbon, Cactus argues that water was not conveyed as part of the mineral estate. Thus, Cactus urges the produced water was later conveyed through produced water leases it entered with the surface owners.

COG argues the leases must be construed to effectuate the parties' general intent to convey oil and gas in their natural form. Because produced water is part of the single, combined product stream that arises from its wells, COG contends it owns the produced water as a waste byproduct. COG also claims ownership through its development rights under its mineral leases, which include the right to dispose of the waste generated by its wells.

The parties' disagreement as to whether produced water is part of the mineral estate essentially depends on whether "produced water" is, as a matter of law, water or if it is waste. Because the terms "water" or "produced water" are not defined in the mineral leases, we look to state statutory and regulatory definitions for relevant context. *See Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 595 (Tex. 2018) ("Although mineral leases are contracts, they are subject to legal and regulatory restrictions."); *URI, Inc.*, 543 S.W.3d at 764 (recognizing the context in which words are used may encompass the circumstances present when the contract was entered).

The Texas Natural Resources Code, Texas Water Code, and the Railroad Commission Rules each define "oil and gas waste":

> 'O]il and gas waste' means waste that arises out of or incidental to the drilling for or producing of oil or gas ... includ[ing] salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material[.] TEX. NAT. RES. CODE ANN. § 91.1011.
>
> 'Fluid oil and gas waste' means waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water, produced water, or other fluid that arises out of or is incidental to the drilling for or production of oil or gas. *Id.* § 122.001(2).
>
> 'Oil and gas waste' means waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources .... The term includes but is not limited to salt water, brine, sludge,

> drilling mud, and other liquid or semi-liquid waste material. TEX. WATER CODE ANN. § 27.002(6).
>
> Oil and gas wastes—Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources .... The term 'oil and gas wastes' includes but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. 16 TEX. ADMIN. CODE § 3.8(a)(26) (R.R. Comm. of Tex., Water Protection).

The Texas Water Code and Railroad Commission Rules also define water as follows:

> 'Fresh water' means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose. TEX. WATER CODE ANN. § 27.002(8).
>
> 'Groundwater' means water percolating below the surface of the earth. *Id.* § 35.0029(5).
>
> Surface or subsurface water—Groundwater, percolating or otherwise ....16 TEX. ADMIN. CODE § 3.8(a)(29) (R.R. Comm. of Tex., Water Protection).

***5** This framework draws a clear distinction between produced water and groundwater. "[W]hen the legislature uses certain language in one part of the statute and different language in another, the [C]ourt assumes different meanings were intended." *Ineos USA, LLC v. Elmgren*, 505 S.W.3d 555, 564 (Tex. 2016) (quoting *DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex. 1995)) (alterations in original). The relevant legal definitions of oil and gas waste include produced water. And because the Legislature defines produced water as oil and gas waste, it cannot also be groundwater. Indeed, the definitions of oil and gas waste echo what COG's petroleum engineering expert points out: the term "produced water" is essentially a misnomer, as it bears little resemblance to water given the "numerous constituents" it contains other than water. Instead, produced water is more accurately classified as a waste byproduct of oil and gas production. [3]

3 *Cf.* TEX. NAT. RES. CODE ANN. § 85.001(a)(4) (" 'Product' and 'product of oil or gas' mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.").

The same legal and regulatory framework also contains provisions to protect groundwater from oil and gas waste and require proper disposal of that waste. For example, the Railroad Commission Rules state no one "may cause or allow pollution of surface or subsurface water in the state" and require a permit for any disposal of oil and gas wastes. 16 TEX. ADMIN. CODE §§ 3.8(b), (d)(1). The rules place liability for improper disposal squarely on the operator. *See id.* §§ 3.8(d)(5)(B) ("No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes."), (h) ("Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission."). This distinction underscores the understanding of produced water as oil and gas waste—something that operators must keep from contaminating usable quality water—rather than water. *See id.* § 3.13(a)(1).

Characterizing produced water as oil and gas waste, rather than groundwater, also conforms with industry practice. Indeed, produced water has long been treated as a liability, not an asset, both throughout the fracing industry and in the context of COG's operations on the Leased Lands. Here, since COG began drilling on the Leased Lands, the surface owners never tried to claim ownership over the produced water before entering the produced water lease with Cactus. The mineral leases were likewise executed before the parties perceived produced water as a substance with value. However, "[t]he knowledge of the parties of the value, or even the existence of the substance at the time the conveyance was executed" is "irrelevant to its inclusion or exclusion from a grant of minerals." *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99, 102 (Tex. 1984). To read the mineral leases as reserving produced water—something that exists separate from oil and gas only after processing and treatment—for the surface estate would give the surface estate (and thus Cactus) "the benefit of costs and risks [COG] voluntarily undertook."[4] *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 706 (Tex. 2008).

4 Indeed, the Legislature recognized in its 2019 amendment to Section 122.002 of the Natural Resources Code that produced water is typically conveyed as part of the mineral estate:

> Unless otherwise expressly provided by an oil or gas lease, a surface use agreement, a contract, a bill of sale, or another legally binding document ... when fluid oil and gas waste is produced and used by or transferred to a person who takes possession of that waste for the purpose of treating the waste for a subsequent beneficial use, the waste is considered to be the property of the person who takes possession of it for the purpose of treating the waste for subsequent beneficial use until the person transfers the waste or treated waste to another person for disposal or use[.]

Section 122.002 clarifies that whoever takes possession of the fluid oil and gas waste—including produced water—to treat it for "subsequent beneficial use" owns it. This amendment was adopted after the mineral leases were signed, so it does not assign ownership

rights here. But Section 122.002 codifies the understanding that under Texas law, produced water is oil and gas waste byproduct, not regarded as "water" as Cactus claims.

***6** The mineral leases were negotiated against this backdrop—with a legal framework distinguishing oil and gas waste from groundwater, making clear that produced water is categorized within the former, and placing the burden of its safe disposal on operators, and according to years of the common industry practice in which operators have processed, transported, and disposed of oil and gas waste. Reading the mineral leases in the context in which they were made "elucidates the meaning of the words employed[.]" *See URI, Inc.*, 543 S.W.3d at 765. Here, that context clarifies that the grant of "oil, gas and other hydrocarbons" or "oil and gas" includes the rights and duties associated with disposing of its waste, including produced water, which cannot be extracted separate from the oil and gas. *See Turner v. Big Lake Oil Co.*, 128 Tex. 155, 96 S.W.2d 221, 226 (1936) ("One of the by-products of oil production is salt water[.]"). Nothing in the mineral leases indicates that the parties intended to upend the definitions of these terms or common practices. Indeed, they could have—through an *express* reservation. TEX. NAT. RES. CODE ANN. § 122.002; *see Sharp v. Fowler*, 151 Tex. 490, 252 S.W.2d 153, 154 (1952) ("A reservation of minerals to be effective must be by clear language. Courts do not favor reservations by implication."). But here there is none: Though the mineral leases restrict COG's use of "water" on the Leased Lands, that has no bearing on COG's right to the oil and gas waste byproduct from its wells. [5]

5 This is also why the dissent's reliance on *Robinson v. Robbins Petroleum Corp., Inc.*, 501 S.W.2d 865 (Tex. 1973) is inapposite. *Robinson* determined ownership rights under a mineral lease specifically excepting use of water from the lessor's wells in which saltwater was extracted from a former oil well—not waste produced from an oil and gas well. *Id.* at 867–68; *Robinson v. Robbins Petroleum Corp., Inc.*, 487 S.W.2d 794, 796 (Tex. App.—Tyler 1972), *rev'd*, 501 S.W.2d 865 (Tex. 1973).

In sum, nothing in the mineral leases suggests the parties intended to assign rights at a molecular level, following both extraction from the well and post-production processing. Nor do the mineral leases indicate an intent to reserve oil and gas waste produced through COG's drilling operations. Reading the mineral leases in the context in which they were executed confirms COG has the exclusive right to the oil and gas product stream, including the produced water. [6] The subsequent leases purporting to convey produced water rights to Cactus were thus ineffective. [7]

6 Because we determine the mineral leases conveyed produced water to COG, we need not address Cactus' issue asking whether the SUCA and ROW Agreements independently transfer ownership of produced water to COG (an argument COG does not assert).

7 We do not read *Chalker Energy Partners III, LLC v. Le Norman Operating LLC*, 595 S.W.3d 668, 677 (Tex. 2020) as supporting the dissent's proposition "A party's actions in 'allowing' a party to carry out its statutory, regulatory, or contractual duties with respect to waste does not necessarily reflect a waiver of ownership rights, as doing so is not unequivocally inconsistent with such ownership."

IV. CONCLUSION

Having overruled each of Cactus's issues on appeal, we affirm.

Palafox, J. Dissenting

DISSENTING OPINION

GINA M. PALAFOX, Justice

Water—unsevered by express conveyance or reservation—has long been held a part of the surface estate. *Robinson v. Robbins Petroleum Corp.*, 501 S.W.2d 865, 867 (Tex. 1973) ("[T]he water itself is an incident of surface ownership in the absence of specific conveyancing language to the contrary."). But it is also long recognized that the surface estate must accommodate the reasonable use of the water as is necessary to effectuate the purpose of an oil and gas lease. *See Sun Oil Co. v. Whitaker*, 483 S.W.2d 808, 811 (Tex. 1972). These principles of oil and gas jurisprudence are fundamental. Yet, by its decision, the majority reaches a result that upends this balancing of competing rights and responsibilities. Here, the Court holds that water produced from an oil and gas well is owned not by the surface estate but rather by the oil-and-gas lessee. This result bears out even though no conveyance is expressed by the terms of the oil and gas leases. Standing apart from the majority, I disagree. Based on the express language of the leases, I would interpret the granting language as conveying oil, gas, and hydrocarbons produced from the Leased Land, but not the water incidentally recovered from the subsurface, from which oil and gas has been removed. Because the majority concludes otherwise, I respectfully dissent.

I. OIL, GAS, AND GROUNDWATER

***7** The parties agree that COG was conveyed the mineral estate of the Leased Lands based on the subject oil-and-gas leases. By the granting clause of the four oil and gas leases, COG is conveyed

"oil and gas and other hydrocarbons," or, more narrowly, only "oil and gas," as stated in the more recent leases. The parties here place no importance on that wording variation. Over time, and by assignment, Cactus later acquired an interest in the produced water of the surface estate. At present, the conflict centers on whether the oil-and-gas leases at issue conveyed to COG all the water produced from their oil-and-gas wells, or whether Cactus maintains ownership of all produced water that remains after COG's reasonable use.

A. Principles of Lease Construction

The proper construction of an unambiguous lease is a question of law determined de novo. *Samson Explor., LLC v. T.S. Reed Props., Inc.*, 521 S.W.3d 766, 787 (Tex. 2017). "An unambiguous contract—one whose meaning is certain and definite—will be enforced as written." *Blue Stone Nat. Res. II, LLC v. Randle*, 620 S.W.3d 380, 387 (Tex. 2021). Here, although the parties differ in their interpretation of the oil and gas leases, neither of them assert the leases are ambiguous. Also, ambiguity does not arise merely because the parties assert differing interpretations. *N. Shore Energy, LLC v. Harkins*, 501 S.W.3d 598, 602 (Tex. 2016).

The rules and principles generally applied in contract interpretation are also used to construe oil-and-gas leases. *Endeavor Energy Res., LP v. Discovery Operating, Inc.*, 554 S.W.3d 586, 595 (Tex. 2018). Unless a lease is ambiguous, our primary duty is "to ascertain the intent of the parties from all of the language within the four corners" of the lease. *See Wenske v. Ealy*, 521 S.W.3d 791, 794 (Tex. 2017). "This analysis begins with the [lease's] express language." *Murphy Explor. & Prod. Co.—USA v. Adams*, 560 S.W.3d 105, 108 (Tex. 2018). "We give the lease's language its plain, grammatical meaning unless doing so would clearly defeat the parties' intentions." *Apache Deepwater, LLC v. Double Eagle Dev., LLC*, 557 S.W.3d 650, 654 (Tex. App.—El Paso 2017, pet. denied) (citing *Fox v. Thoreson*, 398 S.W.2d 88, 92 (Tex. 1966)). "We presume the parties intended every clause to have some effect, so we 'examine the entire lease and attempt to harmonize all its parts, even if different parts appear contradictory or inconsistent.' " *Endeavor Energy*, 554 S.W.3d at 595 (quoting *Anadarko Petrol. Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002)).

Texas has long recognized a strong public policy favoring the freedom to contract, and we are compelled to "respect and enforce" the parties' agreements. *See id.*, 554 S.W.3d at 595. "Absent compelling reasons, courts must respect and enforce the terms of a contract the parties have freely and voluntarily entered[.]" *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 481 (Tex. 2017). Along these lines, parties have the right to contract as they see fit so long as their agreement does not violate the law or public policy. *Id.* at 481.

Having laid this legal framework, I turn to how I would interpret the leases at issue.

B. Analysis

1. The Leases

In my view, the majority's reading of the parties' disagreement as "whether 'produced water' is, as a matter of law, water or if it is waste," mistakenly presumes the leases transferred ownership of produced water to COG. I believe the ultimate issue is whether the entire "product stream" (of which produced water is only a part), [1] is conveyed by a granting clause that merely conveys "oil and gas." And even though COG's claim encompasses the entire "oil and gas product stream," Cactus's competing claim seeks the produced water remaining only after conveyed substances have already been removed. To resolve these claims, I would start with the leases' granting clauses.

[1] Even the use of the term "product stream" presupposes that everything coming from the well is a product. For lack of a better term, I will refer to the totality of substances that come from the well bore as the "product stream," but in my view, water is not a product under the oil and gas leases.

***8** Textually, neither water (in any form) nor oil and gas waste, for that matter, is mentioned in any of the lease language. For example, the term, "produced water," does not appear anywhere in the four oil and gas leases. Other than certain limitations on its use and provisions prohibiting contamination of both the surface and the subsurface, "water" is also not mentioned in the leases. Likewise, the term "waste" also does not appear in the lease terms. Keeping the language in mind, the Supreme Court of Texas has long addressed the proper interpretation of lease terms.

One of a property owner's core rights is the right to transfer property—in the case of real property, a legal unit of ownership called an "estate." *See Evanston Inc. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 383 (Tex. 2012) (listing core rights in a property owner's bundle of rights); *City of Baytown v. Schrock*, 645 S.W.3d 174, 179 (Tex. 2022) (the right to privately own real property is a fundamental right); *Averyt v. Grande, Inc.*, 717 S.W.2d 891, 894 (Tex. 1986) (an estate is "a legal unit of ownership in the physical land"). "[A] landowner may sever the mineral and surface estates and convey them separately." *Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 60 (Tex. 2016). And with respect to water, the surface estate owner, who owns all groundwater in place beneath the surface of the land, can sever and convey an interest in the groundwater similar to such severing of a mineral interest. *See Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 831 (Tex. 2012); *see also Coyote Lake Ranch*, 498 S.W.3d at 63.

The severance of a mineral estate is typically accomplished by granting or reserving "oil, gas and other minerals." *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99, 101 (Tex. 1984). And here, the leases' granting clauses are narrowly stated, merely including "oil and gas," or, "oil, gas, and other hydrocarbons." This language contrasts with the commonly used phrase of "oil, gas, and

other minerals." The narrowing of the substances being conveyed certainly may be a response to cases interpreting lease language. In *Moser*, for example, the Supreme Court of Texas confirmed that only certain substances are impliedly conveyed or reserved by the use of the phrase, "other minerals." *Id.* *Moser* confirmed that water remains a part of the surface estate and is not conveyed by the terms, "oil, gas and other minerals." *Id.* (citing *Sun Oil*, 483 S.W.2d at 811).

In that context, as expressed by lease language, water is not "a thing of like kind to oil and gas." *Fleming Found. v. Texaco, Inc.*, 337 S.W.2d 846, 852 (Tex. App.—Amarillo 1960, writ ref'd n.r.e.). It follows, then, that a grant of "oil, gas and other minerals" does not include a conveyance of water. To be sure, unless water (or subsurface water) is expressly reserved or conveyed, it remains an unsevered part of the surface estate. *Sun Oil Co.*, 483 S.W.2d at 811; *Pfluger v. Clack*, 897 S.W.2d 956, 959 (Tex. App.—Eastland 1995, writ denied); *Fleming Foundation*, 337 S.W.2d at 852. Based on these authorities, I would conclude the oil and gas leases at issue here do not expressly convey water in any form. But even so, as *Sun Oil* clarified, the mineral estate owner may use the water to the extent reasonably necessary for the production of its minerals. *Sun Oil*, 483 S.W.2d at 810 ("Sun has the implied right to free use of so much of the water in question as may be reasonably necessary to produce the oil from its oil wells.").

Here, this conclusion—that water was not included with the oil-and-gas estate—harmonizes the granting clause of the leases with further restrictions included by other language. That is, paragraph 18 of the Collier leases limits COG's use of water "on or under" the Leased Lands to drilling a water well for use in its operations. If all of the subsurface water had been granted to COG, there would be no need to include such limiting provision. *See Endeavor Energy*, 554 S.W.3d at 595.

9** In addition to looking at the leases, the majority cites the ancillary surface use and right-of-way agreements between COG and the surface owners, which COG argues give it the "right" to dispose of all produced water. COG contends these ancillary agreements support its argument that the parties intended to transfer the oil and gas waste to COG. But the stated purpose of these agreements is to establish guidelines and payments for ***use of the surface and to grant ***use*** of the surface, respectively. Unlike the majority, I would hold that neither the surface use agreements nor the right-of-way agreements support a transfer of ownership of produced water. [2]

2 Also inapplicable here are the cases COG cites for the proposition that the right to develop includes the right to dispose of produced water. *See Brown v. Lundell*, 162 Tex. 84, 344 S.W.2d 863, 867 (1961), *Turner v. Big Lake Oil Co.*, 128 Tex. 155, 96 S.W.2d 221 (1936), and *TDC Eng'g, Inc. v. Dunlap*, 686 S.W.2d 346, 349 (Tex. App.—Eastland 1985, writ ref'd n.r.e.). These cases deal with the right to use the leased premises to dispose of salt water and do not grant ownership of the water to the mineral lessee. Contrary to COG's representation, any "core principle" underlying these cases has to do with the producer's

obligation to responsibly dispose of salt water, not the producer's ownership of it. *See Brown*, 344 S.W.2d at 864; *Turner*, 96 S.W.2d at 221; *TDC Eng'g*, 686 S.W.2d at 347.

In fact, the parties' recognition of water and "produced water" as being distinct substances from oil and gas—listing water along with oil and gas in the substances that may be gathered, stored, and transported under the ancillary agreements—indicates the parties recognized that water and "produced water" were separate substances from the oil and gas specifically granted by the leases themselves. Certainly, the parties could have included additional substances in the granting clause (as such were included in the ancillary agreements), if they had intended the additional substances that were allowed to be gathered, stored, transported, and even disposed of, were also meant to be conveyed to COG. *See CKB & Assocs., Inc. v. Moore McCormack Petro., Inc.*, 734 S.W.2d 653, 655-56 (Tex. 1987); *In re Estate of Anderegg*, 360 S.W.3d 677 (Tex. App.—El Paso 2012, no pet.); *In re Choice! Energy, L.P.*, 325 S.W.3d 805, 809 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *OXY USA, Inc. v. Sw. Energy Prod. Co.*, 161 S.W.3d 277, 285 (Tex. App.—Corpus Christi 2005, pet. denied).

Additionally, I am not persuaded by COG's argument that the parties generally intended to convey anything and everything that came through the wellbore with the conveyed oil and gas. This "general intent" test has been applied when it is "not clear exactly what the term 'minerals' encompasses," and it supplies a presumption "that the parties intended the conveyance of only those substances which would allow them the full enjoyment of their respective estates." *Schwarz v. State*, 703 S.W.2d 187, 189 (Tex. 1986). The Supreme Court recognized this test as "merely a device for construing ambiguous conveyances." *Id.* Importantly, it also cautioned that, "[i]f there is an express conveyance of a specific substance, or some other controlling rule of construction indicating a different intent, we are not bound to follow [the] presumption." *Id.*; *see also Wilderness Cove, Ltd. v. Cold Spring Granite Co.*, 62 S.W.3d 844, 848-49 (Tex. App.—Austin 2001, no pet.) ("In examining a deed containing a specific conveyance of a mineral interest, courts must strive to give effect to the intentions expressed in the document itself."). Here, specific substances were conveyed—oil and gas—yet another substance—water, which is a substance that must be specifically conveyed—was not likewise included in the operative language. I would conclude the "general intent" test does not apply.

2. The characterization of produced water

***10** In my view, the majority's characterization of produced water as mere oil-and-gas waste does not automatically cause that substance to fall within the scope of the granting clause. Simply because water is produced from an oil-and-gas well does not necessarily change its character. [3]

[3] At times, the terms "produced water" and "salt water" have been used interchangeably. *See Ambassador Oil Corp. v. Robertson*, 384 S.W.2d 752, 760 (Tex. App.—Austin 1964,

writ ref'd n.r.e.) (attorney and deponent used "produced water," "salt water," and "water" interchangeably, and the court did not distinguish between the two, referring to the substance as "salt water"); *Exxon Corp. v. Train*, 554 F.2d 1310, 1313 (5th Cir. 1977) (referring to "brine" parenthetically as "produced water"); *American Petroleum Institute v. E.P.A.*, 661 F.2d 340, 343 (5th Cir. 1981) (referring to "produced water" as "unsavory mineral water").

For example, the Supreme Court of Texas has previously addressed the ownership of saltwater produced from a mineral lessee's well. *See Robinson*, 501 S.W.2d at 866. In *Robinson*, the owner of the mineral estate used one of its non-producing oil wells to produce saltwater for the purpose of repressurizing the oil-bearing formation. *Id.*; *see also Robinson v. Robbins Petrol. Corp., Inc.*, 487 S.W.2d 794, 796 (Tex. App.—Tyler 1972), *rev'd*, 501 S.W.2d 865 (Tex. 1973). The surface owner sued for damages, claiming the saltwater as his own. *Robinson*, 501 S.W.2d at 866. The mineral lessee countered that salt water produced from a well should be treated differently from fresh water, which had been held to be part of the surface estate. *Id.* at 867 (quoting *Sun Oil Co.*, 483 S.W.2d 808 (Tex. 1972)). The Supreme Court used language applicable to the case at hand, stating as follows:

> We are not attracted to a rule that would classify water according to a mineral contained in solution. Water is never absolutely pure unless it is treated in a laboratory. It is the water with which these parties are concerned and not the dissolved salt.... **[T]he water itself is an incident of surface ownership in the absence of specific conveyancing language to the contrary.** And in our case the saline content has no consequence upon ownership.

Id. (emphasis added) (internal citation omitted).

Robinson makes it clear that not just freshwater, but even deeper, mineralized water produced from a well, belongs to the surface estate and is only transferred through a specific conveyance. *Id.* Based on *Robinson*, I see no distinction between subsurface water and produced water. Rather, if a mineral producer seeks to separate its portion of the product stream from a wellhead, the producer may do that (and I suspect it already does). That is, a producer is entitled to recover minerals granted under the lease from the product stream itself. But water by any name, even when mixed with other substances, still remains as water. The Supreme Court of Texas has not distinguished between different types of groundwater indicating that some water does not belong to the surface estate. And it has never indicated that a specific reservation is required to maintain water ownership rights, as the majority suggests the landowners should have done in this case. Following established Texas precedents, I would conclude that absent a specific conveyance of the groundwater estate, a portion of the product stream remained a part of the surface estate.

***11** Subject to lease terms otherwise limiting the use of water, I believe the Court should have concluded that the accommodation doctrine applied such that COG was permitted a reasonable use of the produced water, but not its ownership. The accommodation doctrine balances the rights between the dominant and subservient estates, providing that the mineral estate owner has an implied right to use so much of the surface as is reasonably necessary to develop and produce its minerals, though it "must exercise that right with due regard for the landowner's rights." *Coyote Lake Ranch*, 498 S.W.3d at 55. In the absence of any lease language governing the ownership of produced water, I believe the accommodation doctrine applies under the circumstances. As an owner of the mineral estate, COG has the right to use the produced water as is reasonably necessary for its production of oil and gas, but it has no ownership rights to that estate. *See id.; Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 50 (Tex. 2017).

3. The surrounding facts and circumstances

None of the leases define the terms "water" or "produced water." The majority concludes that ancillary agreements, regulatory definitions, and industry practices may all be consulted to determine the parties' intent regarding produced water and the scope of the mineral conveyance. Contrary to *URI's* directive, the majority considers surrounding facts and circumstances to make the leases' " 'say what [they] unambiguously do[ ] not say' " and " 'to show that the parties probably meant ... something other than what their agreement[s] stated.' " *See URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 757 (Tex. 2018). By doing so, the Court concludes the mineral leases transferred not only the oil and gas produced from the land, but also the entire product stream. I disagree.

a. The timing of the "statutory framework"

Contrary to well-established authority, the majority classifies produced water as waste, not as water. Citing to statutory and regulatory definitions for "relevant context," the majority claims the Texas Legislature drew a "clear distinction" between produced water and groundwater. However, only the definition of fluid oil and gas waste found in § 122.001(2) of the Texas Natural Resources Code includes produced water in a list but does not otherwise define it. *See* TEX. NAT. RES. CODE ANN. § 122.001(2). Still, the majority recognizes that § 122.002 is not controlling being that it was adopted only after the signing of these oil and gas leases. Similarly, however, § 122.001 was added at the same time by the same legislative act. *See id.* §§ 122.001, .002. Certainly, then, this legislative "framework" provides no point of reference upon which the parties seemingly based their agreement.

b. The "regulatory framework"

The majority also determines that an operator's statutory duty to protect groundwater provides support for the proposition that the surface owner intended to surrender its ownership rights merely because the operator was legally bound to dispose of waste. I disagree.

The mineral lessee's duty to properly dispose of waste is typically dictated through three sources—contracts, statutes, and regulations. Until passage of § 122.002 of the Natural Resources Code—which the majority concedes does not apply and is inapplicable when a contract so provides—no statute conveyed ownership based merely on a duty to properly dispose of oil and gas waste. Further, the Railroad Commission's governance over such disposal also provides no authority to effectuate a transfer of property rights. *See Nale v. Carroll*, 155 Tex. 555, 289 S.W.2d 743, 745 (1956).

Here, I disagree that the regulatory framework plays any role in determining the ownership of produced water under these leases. I would conclude the regulatory framework did not convey title of the produced water to COG.

c. Industry practices

Finally, the majority also attributes an industry practice of operators processing, transporting, and disposing of oil and gas waste as a basis for lease interpretation. COG argues, and the majority agrees, that the development rights granted by the leases evidence an intent to transfer ownership of the produced water along with the oil and gas waste.

***12** Without stating so, the majority's holding seems to treat this circumstance as one wherein the landowner has waived its rights to any water included in the produced oil and gas waste. But waiver requires an "intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right." *Paxton v. City of Dallas*, 509 S.W.3d 247, 262 (Tex. 2017). A party's actions in "allowing" a party to carry out its statutory, regulatory, or contractual duties with respect to waste does not necessarily reflect a waiver of ownership rights, as doing so is not unequivocally inconsistent with such ownership. *See Chalker Energy Partners III, LLC v. Le Norman Operating LLC*, 595 S.W.3d 668, 677 (Tex. 2020).

Here, the majority rewards COG for the "costs and risks" it undertook in disposing of oil and gas waste. It claims the parties only recently perceived such waste as having independent value. But none of this analysis is applicable here. Without doubt, water was not conveyed by the scope of the granting clauses of the leases at issue here, unlike the uranium transferred by the "other

minerals" language included in the lease in *Moser*. *See Moser v. U.S. Steel Corp.*, 676 S.W.2d 99 (Tex. 1984). Here, the parties' knowledge of the potential value of produced water was not irrelevant because of the holding in *Moser*. Rather, that knowledge is irrelevant because water, as a substance, was not expressly severed from the surface estate. And unlike the producer in *Bowden*, who undertook "costs and risks" to add value to its production by separating the components of the conveyed natural gas, COG did not voluntarily undertake anything—COG was both contractually and statutorily required to dispose of or otherwise deal with produced water in a manner that would not harm the surface estate or the environment generally. *See Bowden v. Phillips Petro. Co.*, 247 S.W.3d 690, 706 (Tex. 2008).

II. CONCLUSION

In sum, I disagree with the majority's consideration of surrounding facts and circumstances to interpret whether the leases conveyed produced water. Particularly in the oil-and-gas field, parties depend on courts "for continuity and predictability in the law," relying on principles pronounced by the Supreme Court of Texas. *Wenske v. Ealy*, 521 S.W.3d 791, 798 (Tex. 2017). Based on long established principles, I would conclude the oil and gas leases contain no express conveyance of water to COG. Instead, I would conclude the surface estate's water rights were conveyed to Cactus by the assignment of rights to produced water. Because the majority concludes otherwise, I respectfully dissent.

All Citations

--- S.W.3d ----, 2023 WL 4846861

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COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CACTUS WATER SERVICES, LLC,	§	No. 08-22-00037-CV
Appellant,	§	Appeal from the
v.	§	143rd District Court
COG OPERATING, LLC,	§	of Reeves County, Texas
Appellee.	§	Cause No. 20-03-23456-CVR

J U D G M E N T

The Court has considered this cause on the record and concludes there was no error in the trial court's judgment. We therefore affirm the judgment of the court below. We further order that Appellee recover from Appellant and its sureties, if any, *see* TEX. R. APP. P. 43.5, on the judgment and all costs, both in this Court and the court below for which let for which let execution issue. This decision shall be certified below for observance.

IT IS SO ORDERED THIS 28TH DAY OF JULY, 2023.

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Soto, JJ.
Palafox, J. Dissenting

Tab B
Trial Court's
Final Judgment

CAUSE NO. 20-03-23456-CVR

COG OPERATING LLC	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	REEVES COUNTY, TEXAS
	§	
CACTUS WATER SERVICES, LLC;	§	
COLLIER ENTERPRISES, INC.;	§	
COLLIER SURFACE, LLC; and	§	
COLLIER ROYALTY, LLC	§	
	§	
Defendants.	§	143rd JUDICIAL DISTRICT

FINAL JUDGMENT

On August 18, 2021, the Court heard argument and considered the following motions for partial summary judgment:

1. Second Amended Traditional and No-Evidence Motion for Partial Summary Judgment of Defendant and Counter-Plaintiff Cactus Water Services, LLC, as well as COG Operating LLC's Response; and

2. COG Operating LLC's Motion for Partial Summary Judgment, as well as Cactus Water Services, LLC's Response.

The Court is of the opinion and finds that Cactus Water Services, LLC's Second Amended Traditional and No-Evidence Motion for Partial Summary Judgment should be DENIED and that COG Operating LLC's Motion for Partial Summary Judgment should be GRANTED. The Court made this ruling from the bench at the hearing on August 18, 2021.

On September 30, 2021 COG Operating LLC and Cactus Water Services, LLC each filed a Notice of Partial Non-Suit pursuant to Rule 162, Tex. R. Civ. Pro., dismissing without prejudice all of the claims that were not the subject of or decided by the said partial summary judgment

motions. Given the two notices of partial non-suit, the Court finds that all claims of all parties have been adjudicated and therefore a final judgment should be entered.

Accordingly, it is ORDERED that the Second Amended Traditional and No-Evidence Motion for Partial Summary Judgment of Defendant and Counter-Plaintiff Cactus Water Services, LLC be, and it is hereby DENIED.

Further, it is ORDERED that COG Operating LLC's Motion for Partial Summary Judgment be, and it is hereby GRANTED.

Further, the following is the ORDER, DECREE AND DECLARATION of the Court:

(a) COG owns the oil, gas and other products contained in commercial oil and gas bearing formations that are produced from the COG wells[1] on the four leases[2];

(b) Under Lease No. 1, COG has the right to exclusive possession, custody, control and disposition of the product stream produced from COG wells from Lease No. 1 lands so long as Lease No. 1 remains in effect;

(c) Cactus has no rights in or to the product stream from COG wells from Lease No. 1 so long as Lease No. 1 remains in effect;

(d) Under Lease No. 2, COG has the right to exclusive possession, custody, control and disposition of the product stream produced from COG wells from Lease No. 2 lands so long as Lease No. 2 remains in effect;

(e) Cactus has no rights in or to the product stream produced from COG wells from Lease No. 2 so long as Lease No. 2 remains in effect;

[1] The "COG wells" are identified in Paragraphs 17-19 of COG's Third Amended Petition for Declaratory Judgment and Tortious Interference with Existing Contracts and Answer to Defendant's Third Amended Counterclaim.
[2] "Lease No. 1," "Lease No. 2," "Lease No. 3," and "Lease No. 4" are defined on page 4 and are attached as Exhibits A1, A2, A3, and A4 to COG Operating LLC's Motion for Partial Summary Judgment.

(f) Under Lease No. 3, COG has the right to exclusive possession, custody, control and disposition of the product stream produced from COG wells from Lease No. 3 lands so long as Lease No. 3 remains in effect;

(g) Cactus has no rights in or to the product stream produced from COG wells so long as Lease No. 3 remains in effect;

(h) Under Lease No. 4, COG has the right to exclusive possession, custody, control and disposition of the product stream produced from COG wells from Lease No. 4 lands so long as Lease No. 4 remains in effect;

(i) Cactus has no rights in or to the product stream produced from COG wells from Lease No. 4 so long as Lease No. 4 remains in effect;

All costs are adjudged against Cactus Water Services, LLC. This judgment finally disposes of all parties and all claims and is appealable.

SIGNED this 2nd day of November 2021.

Mike Swanson
JUDGE PRESIDING

Tab C:
2005 Collier/JAJ Lease to COG Operating for "oil and gas and other hydrocarbons"

OIL AND GAS LEASE

THIS AGREEMENT is made and entered into as of September 28, 2005, by and between **COLLIER ENTERPRISES, INC.**, whose address is P.O. Box 9025, Verhalen, Texas 79772; **DRUE C. STANFORD,** Individually and as Attorney-in-Fact for Ethel A. Collier, Trustee of the Howard T. Collier, Jr. Family Trust; whose address is P.O. Box 9025, Verhalen, Texas 79772; **CHARLES STANFORD**, whose address is P.O. Box 9025, Verhalen, Texas 79772; **CATHRYN GODFREY**, whose mailing address is 2874 Cedar Hollow Road, Georgetown, Texas 78628; and **HOWARD COLLIER, III**, whose address is 210 Clinton Street, Abilene, Texas 79603 ("Lessor"), and **JAJ OIL & GAS PROPERTIES, INC.**, whose address is P.O. Box 302, Midland, Texas 79702 ("Lessee");

1. Lessor, for and in consideration of the sum of **Ten Dollars ($10.00)** and other good and valuable consideration to them cash in hand paid, the receipt and sufficiency of all of which being hereby acknowledged, and of the covenants and agreements herein contained upon the part of the Lessee to be paid, kept and performed, have **GRANTED, DEMISED, LEASED and LET**, and by these presents do **GRANT, DEMISE, LEASE and LET** exclusively unto the said Lessee, its successors and assigns, for the sole and only purpose of investigating, exploring, prospecting, drilling, mining and operating for oil and gas and other hydrocarbons, and of laying pipelines and of building tanks, power stations and structures thereon, to produce, save, take care of, store and treat products produced hereunder, and then transport those products from the land in **Reeves County, Texas**, that is hereby described as follows, to wit:

*** See Exhibit "A" attached for legal description**

of which the lands described on Exhibit "A" shall be deemed to comprise **16,208.70** acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall be for a primary term **five (5) years** from the date hereof (called primary term), and for so long thereafter as oil, gas or other hydrocarbons, or any of them, are produced in commercial quantities from said land.

3. In consideration of the premises, the said Lessee covenants and agrees:

a) To deliver to the Lessor, free of cost in the pipeline to which well or wells may be connected, the equal **three-sixteenths (3/16ths)** part of all oil and other liquid hydrocarbons produced and saved from the leased premises.

b) Lessee shall pay to Lessor as royalty on gas (including casinghead gas and all gaseous substances) produced from the leased premises and sold or used off the leased premises or in the manufacture of gasoline or other products therefrom **three-sixteenths (3/16ths)** of the market value at the well of the gas sold or used, provided, that on gas sold at the well to a third party which is in nowise related to or affiliated with Lessee, the royalty shall be **three-sixteenths (3/16ths)** of the amount realized from such sale. The Lessor hereby reserves unto themselves, their heirs, personal representatives and assigns, at their risk and expense, the right at any time and from time to time as long as this lease is in effect to take, or have delivered to their designated purchaser, their share of royalty gas in kind by giving the Lessee **sixty (60) days** written notice. In the event the Lessor exercises this right, such gas shall be delivered at a convenient point near the wellhead or the connecting pipeline at which point such gas shall be metered through a meter furnished by Lessor and approved by Lessee. The Lessor also agrees to secure any authority or permit required from any governmental agency having jurisdiction, make all necessary reports to any such agency, and to account for all taxes which may be due on such royalty gas. As a part of Lessor's notice to Lessee of the exercise of their right to take their share of royalty gas in kind or to have the same delivered to a designated purchaser, Lessor shall advise Lessee of any proposed sale of royalty gas, including the price and all other terms of such proposed sale, and within thirty (30) days of the giving of such written notice, Lessee, or its nominee, may elect to purchase such royalty gas for the same price and on the same terms as offered by such third party purchaser.

4. If on or before the first anniversary date hereof, operations for the drilling of a well for oil or gas or other substances covered hereby have not been commenced on the leased premises or land pooled therewith, or if there then is no production in paying quantities from the leased premises or land pooled therewith, this lease shall terminate as to both parties unless Lessee on or before that date pays to Lessor or to Lessor's credit in the **West Texas National Bank at P.O. Box 2077, Pecos, Texas 79772**, or its successors, which shall be Lessor's depository agent for receiving payments regardless of changes in the ownership of said land, the sum of **Sixteen Thousand Two Hundred Eight and 70/100 Dollars ($16,208.70)** as rental covering the privilege of deferring the commencement of operations for the drilling of a well for a period of **twelve (12) months** from said anniversary date. In like manner and upon like

payments, the commencement of operations for the drilling of a well may be further deferred for one or more twelve-month periods during the primary term of this lease. All payments may be made by check or draft mailed or delivered on or before the rental payment date. If the depository bank should liquidate or be succeeded by another bank, or for any reason fail or refuse to accept rental payment hereunder, Lessee shall not be held in default for failure to make such payment unless Lessor has delivered to Lessee a proper recordable instrument naming another bank as depository agent to receive payments and Lessee has failed to make such payment within **sixty (60) days** after receipt of such notice. It is agreed that the cash bonus consideration first recited above covers not only the right to defer drilling during the first year of this lease, but also all subsequent deferrals of drilling as aforesaid, along with all other rights of Lessee hereunder. If on or before any rental payment date Lessee in good faith makes an erroneous rental payment by paying the wrong person, the wrong depository, or the wrong amount, Lessee shall be unconditionally obligated to make proper rental payment for the period involved and this lease shall continue in effect as though such rental payment had been properly made, provided that proper rental payment shall be made within **thirty (30) days** after receipt by Lessee of written notice of the error from Lessor, accompanied by any documents and other evidence necessary to enable Lessee to make proper payment.

5. If, at the expiration of the primary term, oil or gas is not being produced from said land, but Lessee is then engaged in drilling or reworking operations thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than **sixty (60) consecutive days**, and if they result in the production of oil or gas, so long thereafter as oil, gas or other hydrocarbons in commercial quantities are produced from said land. In the event a well or wells producing oil, gas or liquid hydrocarbons in paying quantities should be drilled and completed subsequent to the date of this lease on adjacent land or lands, and be draining the leased premises, Lessee agrees to drill the offset wells on tracts then covered hereby that a then reasonably prudent operator would drill if faced with the same or similar circumstances.

6. If prior to discovery of oil, gas or other hydrocarbons on said land, Lessee should drill a dry hole or dry holes thereon, or if after discovery of oil, gas or other hydrocarbons on said land, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences additional drilling or reworking operations within **ninety (90) days** thereafter, and diligently prosecutes the same until commercial production is obtained or restored from said land or, if it be within the primary term, commences or resumes payment or tender of rents on or before the rental payment paying date next ensuing after the expiration of **ninety (90) days** from date of completion of the dry hole or cessation of production.

7. If this lease covers a lesser interest in oil, gas and other hydrocarbons than the entire and undivided fee simple estate therein, then the rents and royalties to be paid shall be reduced proportionately, and the rents and royalties shall be paid only in the proportion which the interest therein covered by this lease bears to the whole and undivided interest and estate therein.

8. When requested by Lessor, Lessee shall bury pipelines below ordinary plow depth.

9. No well shall be drilled nearer than **two hundred feet (200')** to a house or barn on said premises without the written consent of the surface owner.

10. Within **one hundred twenty (120) days** after this lease has terminated as to any portion of the land covered hereby, Lessee shall remove all machinery, equipment and fixtures placed on said premises, including pipelines and flow lines placed on the premises that are not buried below ordinary plow depth as to which this lease has terminated.

11. Lessee shall pay to Lessor at their address in **Verhalen, Reeves County, Texas**, all actual damages to the land, improvements thereon, and other property situated thereon, that may be proximately caused by operations for or by Lessee hereunder.

12. If the estate of any party hereto is assigned and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the Lessee until **thirty (30) days** after the Lessee has been furnished with a written transfer or assignment or a recorded copy thereof; and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assigns or assignees of such part or parts shall fail to make or default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the Lessee or any assignee thereof shall make due payment of such rental.

13. It is agreed that this lease shall never be terminated, forfeited or canceled for failure to perform, in whole or in part, any of its implied covenants, conditions or stipulations, until it shall have been first finally judicially determined that such failure exists, and, after such final judicial determination, Lessee is given a reasonable time therefrom to comply with any such covenant, condition or stipulation.

14. Lessor hereby agrees that Lessee, at its option, may discharge any tax mortgage or other lien upon said land; and in the event Lessee does so, Lessee shall be subrogated to such lien with the right to enforce the same and apply rentals and royalties accruing under the same towards satisfying the same.

15. Lessee may, at any time, execute and deliver to Lessor, or place of record, a release or releases covering any portion or portions of the above described premises, and thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered, and thereafter, the rentals payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

16. All express and implied covenants of this lease shall be subject to all federal and state laws, executive orders, rules and regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable for damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such law, order, rule or regulation.

17. By the acceptance hereof, it is agreed that in carrying on any operations hereunder, Lessee shall prevent the contamination of any and all waters of Lessor in surface tanks or storage tanks and any and all surface and subsurface water bearing strata. Likewise, Lessee shall prevent contamination of the surface of the above described land from salt water or other contaminating substance flowing over or seeping onto the same. Lessee shall also fence out all drilling, slush or other pits which it may create or cause to be created on such land so that the fluids therein or damaging substances thereof shall at all times be wholly unavailable to livestock that is on or is being grazed upon the land above described.

18. Anything herein to the contrary or apparently to the contrary notwithstanding, Lessee, its successors and assigns, shall have no right to use water which is on or under the above described land, except it may itself drill a water well and then use the water from that well in its conduct of the drilling operations that actually are conducted on land covered by this lease. Lessee shall have no right to the use of water from the lands covered hereby for water flooding, secondary recovery operations or camp operations.

19. Lessee agrees, to the extent practical, to utilize existing roadways over and across the above described lands. All roads constructed by Lessee hereunder shall be caliched, and shall at all times be maintained as private, but all-weather roads, and Lessor shall be compensated for any new road construction.

20. Lessor hereby covenants that the above described premises are free and clear of any encumbrance done or suffered by them, and, to that extent only, warrant to defend the title to said premises unto the Lessee, its successors and assigns forever, against the lawful claims and demands of all persons claiming under them.

21. If, at any time, or from time to time, either before or after the expiration of the primary term of this lease, there is any gas well on the leased premises which is capable of producing in paying quantities, but which is shut in before or after production therefrom, such well shall be considered under all provisions of this lease to be a well producing in paying quantities, and this lease shall remain in force in like manner as though gas therefrom was actually being sold or used. In such event, Lessee covenants and agrees to pay Lessor, as royalty, the sum of **Eighty-one Thousand Forty-three and 50/100 Dollars ($81,043.50)** per annum for the period commencing on the date such well is actually shut in, unless this lease is being maintained in force and effect by some other provision hereof, in which event, such period shall commence on the date this lease ceases to be maintained in full force and effect by some other provision hereof. Payment or tender shall be made to Lessor, or deposited to the credit of Lessor, at the **West Texas National Bank, Pecos, Texas.** The first payment shall be due and payable on or before **ninety (90) days** from the date this lease ceases to be maintained in force by some other provision hereof. Unless gas from such well is produced and sold or used prior thereto, except temporary sales, or used for lease operations, subsequent payments shall be due annually thereafter on the anniversary date of the period for which such prior payment was made. No additional payment shall be required if there is more than one shut-in gas well on the leased premises. The term "gas well" shall include wells capable of producing natural gas, condensate, or any gaseous substance, and wells classified as gas wells by any government authority having jurisdiction. Anything herein contained to the contrary notwithstanding, this lease may not be maintained in force by the payment of shut-in gas royalties for a period in excess of three (3) cumulative years beyond the expiration of the primary term hereof.

22. Lessee shall have the free use of oil and gas produced under the terms of this lease for drilling operations hereunder only, and the royalty shall be computed after deducting any so used.

23. Lessee shall not be liable for any delays in its performance of any covenant or condition hereunder, expressed or implied, or for total or partial nonperformance thereof, due to force majeure. The term "force majeure", as used herein, shall mean any circumstance or any condition beyond the control of Lessee, including, but not limited to, acts of God and actions of the elements; acts of the public enemy; strikes; lockouts, accidents, laws, acts, rules, regulation and orders of federal, state or municipal governments, or officers or agents thereof, failure of transportation; or the exhaustion, unavailability, or delays in delivery, of any product, labor, service, or material. If Lessee is required to delay the commencement of drilling operations, cease drilling or reworking or producing operations on the leased premises by force majeure, then until such time as such force majeure is terminated, and for a period of **ninety (90) days** after such termination, each and every provision of this lease that might operate to terminate it shall be suspended and this lease shall continue in full force and effect during such suspension period. If any period of suspension occurs during the primary term, the term thereof shall be added to such term.

24. At the expiration of the primary term hereof, Lessee agrees to commence a continuous drilling program on the leased premises and thereafter continue such continuous drilling program until all proration units prescribed (required) by the Railroad Commission of Texas, or agency having jurisdiction, have been drilled, allowing not more than **one hundred eighty (180) days** to elapse between the completion of one well and the commencement of another well. Should Lessee fail to commence such continuous drilling program or defaults in the performance thereof, then, in any event, this lease shall terminate as to all lands covered hereby, save and except for rights down to **one hundred feet (100')** below the base of the producing formation from which commercial production is then being obtained situated on each proration unit. The term "proration unit", as used herein, means any acreage designated as a drilling unit or production unit in accordance with the Rules of the Railroad Commission of Texas. The term "discovery date", as used herein, means the later of (1) the date that well logs have been run over the formation in which a discovery in commercial quantities is claimed, (2) the date that the formation is drill stem tested, or (3) the date that the formation is production tested through perforations in the casing.

25. In conducting operations on the **Collier Ranch** of which the leased premises is a part, in addition to the other covenants and agreements herein contained, Lessee agrees that it will:

a) Keep all creeks and gully crossings traversed by Lessee both graded and passable;

b) Place single lane cattleguards, set in concrete, at all fence crossings, and in doing so, set a cattleguard box set on concrete having a depth of at least **three feet (3')** beneath the surface, and construct adequate H-frames with dead men on each side of the proposed cattleguard site before cutting the fence to install the cattleguard; and thereafter keep such cattleguards cleaned out at all times to prevent passage of livestock thereover. With respect to all cattleguards used by Lessee, Lessee shall install a swinging arm approximately **three feet (3')** above the surface which can be locked or otherwise secured;

c) In all work, construction and maintenance activities on the **Collier Ranch**, prevent soil washing and erosion and promptly repair such as may occur;

d) Permit no firearms on the **Collier Ranch**; permit no discharging of firearms; and permit no hunting thereon by Lessee or any of its invitees;

e) Promptly pick up and remove all trash introduced onto the **Collier Ranch** by Lessee or its invitees;

f) As soon as feasible; remove all plastic pit liners, fill and level all drilling mud and water pits used in drilling operations; double-ditch all buried pipelines so as to replace the original topsoil at the surface; restore to the maximum extent practicable to original condition all drill sites and pipeline rights-of-way, and re-seed the same with native type grasses, to be selected and sown in sowing season as designated by Lessor;

g) In laying pipelines, make no cuts in the grass turf on the **Collier Ranch**, except as necessary to enable pipeline laying machinery to operate; and with respect to such pipelines, promptly fill and restore all sinkholes as may develop;

h) Permit no consumption of alcoholic beverages on the **Collier Ranch** by Lessee or its invitees;

i) Forthwith, close and secure all gates opened by Lessee or its invitees;

j) Maintain metal trash containers at all work sites while such work is in progress;

k) Permit no dumping of trash or fluids of any sort, except at such disposal sites, if any, as may have been designated by Lessor as such;

l) Maintain and enforce a speed limit for all vehicles on the **Collier Ranch** for vehicles of Lessee and its invitees of not to exceed **twenty-five miles per hour (25 mph)**, or such lesser speed as necessary to prevent the raising of excess dust;

m) While a road is being used to conduct drilling operations, reworking operations and pipeline laying operations, keep the portion of the road so used adequately watered down to prevent the raising of dust;

n) If requested by Lessor, equip cattleguards at public roads with gates that can be locked;

o) Leave cased and in good condition for use by Lessor such water wells as Lessee may be authorized to drill on the **Collier Ranch**;

p) Use no part of the **Collier Ranch** to store machinery, equipment pipe or other property while it is not being used; and use no part of the **Collier Ranch** to house employees or other personnel, except temporarily at well sites while wells are being drilled or completed on such well site;

q) Use no chemicals or apply no manufactured chemical substances on roads, drill sites, and rights-of-way;

r) Consult with the **Collier Ranch Manager, Charles Stanford**, at his residence located on the ranch, telephone number **(915)447-9629**, regarding the location and construction of roadways, pipelines, power lines, telephone lines, and other improvements to be located on the **Collier Ranch**, to the end that the parties might arrive at an orderly plan for locating such and constructing such in a manner that is practicable for purposes of the operation of the **Collier Ranch** and which is practicable for the purposes of Lessee;

28. For damages for 3-D seismic operations, Lessor shall be paid **Seven Dollars and 50 Cents ($7.50)** per acre of land contained in said lands that may be traversed by such 3-D seismic survey.

27. This Oil and Gas Lease may be executed in counterparts, with multiple signature pages attached for recording purposes and is binding upon the undersigned, their heirs, successors and assigns. Each signature page may be detached and attached to the body of one instrument.

28. Notwithstanding any implication herein or any judicial opinions to the contrary, it is not the intent of Lessor nor Lessee to communitize or voluntarily pool any interest covered hereby, but to include the lands covered hereby in one lease to facilitate the prudent exploration, development, production, and operations of the lands covered hereby. Therefore, for the purpose of royalty payments only, each tract of land, whether or not described separately herein under which Lessor owns less than all of the royalty, shall be deemed a separate lease. Royalties attributable from production from any tract will be paid to the royalty owners under each such producing tract unless Lessee has the rights hereunder and appropriately exercises its right to pool tracts with different royalty ownership, obtaining, if legally required, the appropriate ratifications from any non-participating royalty owners in the tracts to be pooled.

IN WITNESS WHEREOF we have hereunto set our hands the day and year first above written.

LESSOR:

COLLIER ENTERPRISES, INC.

_____

Drue C. Stanford, Individually and as President
of Collier Enterprises, Inc.

Howard Collier, III, Individually and as Vice-President of Collier Enterprises, Inc.

Cathryn Godfrey, Individually and as Secretary of Collier Enterprises, Inc.

Charles Stanford, Individually

Drue C. Stanford, Attorney-in-Fact for Ethel A. Collier, Trustee of the Howard T. Collier, Jr. Family Trust

LESSEE:

JAJ OIL & GAS PROPERTIES, INC.

James H. Essman, President

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2005 by **DRUE C. STANFORD**, Individually and as President of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:

_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2005 by **DRUE C. STANFORD**, Attorney-in-Fact for Ethel A. Collier, Trustee of the **HOWARD T. COLLIER, JR. FAMILY TRUST.**

My commission expires:

_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2005 by **HOWARD COLLIER, III,** Individually and as Vice-President of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:
_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF Williamson §

This instrument was acknowledged before me on the 4th day of October, 2005 by **CATHRYN GODFREY,** Individually and as Secretary of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:
June 23, 2007

Jennifer Hernandez
Notary Public in and for the State of Texas

JENNIFER HERNANDEZ
Notary Public, State of Texas
My Commission Expires
JUNE 23, 2007

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2005 by **CHARLES STANFORD,** Individually.

My commission expires:
_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF Midland §

This instrument was acknowledged before me on the 10th day of October, 2005 by **JAMES H. ESSMAN** as President of, **JAJ OIL & GAS PROPERTIES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:
_____

M.K. Brasuel
Notary Public in and for the State of Texas

M K Brasuel
Notary Public, State of Texas
My Commission Expires:
October 19, 2008

Exhibit "A"

ATTACHED TO AND MADE PART OF THAT CERTAIN OIL AND GAS LEASE DATED SEPTEMBER 28, 2005, BY AND BETWEEN COLLIER ENTERPRISES, ET AL, AS LESSOR, AND JAJ OIL & GAS PROPERTIES, INC. AS LESSEE, COVERING 16,208.70 ACRES.

Block 52, Twp. 8, T&P Ry. Co. Survey

Section	1 :	S/2 SW/4
Section	10 :	S/160 acres
Section	12 :	SE/4
Section	13 :	All
Section	14 :	All
Section	23 :	E/2
Section	24 :	All
Section	25 :	All
Section	36 :	All

Block 51, Twp. 8, T&P Ry. Co. Survey

Section	8 :	All
Section	18 :	All
Section	19 :	All
Section	20 :	NE/4
Section	28 :	All
Section	30 :	All
Section	31 :	All
Section	32 :	All
Section	33 :	All
Section	34 :	S/2 & NW/4
Section	35 :	All
Section	36 :	All
Section	37 :	All
Section	38 :	All
Section	39 :	All
Section	40 :	All
Section	41 :	All
Section	42 :	All

Block 13, H&GN Ry. Co. Survey

Section	186 :	S/2, less 31.23 acres out of the NW part of the S/2 described by metes and bounds in that certain Deed dated March 13, 1946 from May Collier to F. M. Reeves, recorded in Volume 135, Page 516, Deed Records, Reeves County, Texas
Section	212 :	S/2
Section	273 :	S/2
Section	274 :	S/2
Section	276 :	NW/4

Certificate of Record

38.00 Recording Fee

Certified Copy Fee

38.00 Total Paid

004656

Return to:

Jim Essman

FILED FOR RECORD

2005 OCT 11 PM 4:53

DIANNE O. FLOREZ
COUNTY CLERK, REEVES COUNTY, TX.

BY: N Chavez DEPUTY

COMPARED

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS, }
COUNTY OF REEVES. }

I, hereby certify that this instrument with its certificates of authenticity was FILED on the date and at the time stamped hereon and was duly RECORDED in the OFFICIAL PUBLIC RECORDS of Real Property of Reeves County, Texas, as indicated.

OPR VOL. 714 PAGE 152 DATE RECORDED 10/12/2005

DIANNE O. FLOREZ, COUNTY CLERK
REEVES COUNTY, TEXAS

By: _____, Deputy

BEAR GRAPHICS, INC.

Tab D:

2010 Collier/Delaware Basin Resources Lease to COG Operating for "oil and gas and other hydrocarbons"

FILE # 3459

OIL AND GAS LEASE

THIS AGREEMENT is made and entered into as of April 27, 2010, by and between **COLLIER ENTERPRISES, INC.**, whose address is P.O. Box 9025, Verhalen, Texas 79772; **DRUE C. STANFORD**; whose address is P.O. Box 9025, Verhalen, Texas 79772; **CHARLES STANFORD**, whose address is P.O. Box 9025, Verhalen, Texas 79772; **CATHRYN GODFREY**, whose mailing address is 2874 Cedar Hollow Road, Georgetown, Texas 78628; and **HOWARD COLLIER, III**, whose address is 210 Clinton Street, Abilene, Texas 79603 ("Lessor"), and **DELAWARE BASIN RESOURCES LLC**, whose address is 110 West Louisiana, Suite 500, Midland, Texas 79701 ("Lessee"):

1. Lessor, for and in consideration of the sum of **Ten Dollars ($10.00)** and other good and valuable consideration to them cash in hand paid, the receipt and sufficiency of all of which being hereby acknowledged, and of the covenants and agreements herein contained upon the part of the Lessee to be paid, kept and performed, have **GRANTED, DEMISED, LEASED and LET**, and by these presents do **GRANT, DEMISE, LEASE and LET** exclusively unto the said Lessee, its successors and assigns, for the sole and only purpose of investigating, exploring, prospecting, drilling, mining and operating for oil and gas and other hydrocarbons, and of laying pipelines and of building tanks, power stations and structures thereon, to produce, save, take care of, store and treat products produced hereunder, and then transport those products from the land in **Reeves County, Texas**, that is hereby described as follows, to wit:

*** See Exhibit "A" attached for legal description**

of which the lands described on Exhibit "A" shall be deemed to comprise 9,820.00 acres, whether it actually comprises more or less.

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2. Subject to the other provisions herein contained, this lease shall be for a primary term **three (3)** years from the date hereof (called primary term), and for so long thereafter as oil, gas or other hydrocarbons, or any of them, are produced in commercial quantities from said land.

3. In consideration of the premises, the said Lessee covenants and agrees:

a) To deliver to the Lessor, free of cost in the pipeline to which well or wells may be connected, the equal **one-fifth (1/5th)** part of all oil and other liquid hydrocarbons produced and saved from the leased premises.

b) Lessee shall pay to Lessor as royalty on gas (including casinghead gas and all gaseous substances) produced from the leased premises and sold or used off the leased premises or in the manufacture of gasoline or other products therefrom **one-fifth (1/5th)** of the market value at the well of the gas sold or used, provided, that on gas sold at the well to a third party which is in nowise related to or affiliated with Lessee, the royalty shall be **one-fifth (1/5th)** of the amount realized from such sale. The Lessor hereby reserves unto themselves, their heirs, personal representatives and assigns, at their risk and expense, the right at any time and from time to time as long as this lease is in effect to take, or have delivered to their designated purchaser, their share of royalty gas in kind by giving the Lessee **sixty (60) days** written notice. In the event the Lessor exercises this right, such gas shall be delivered at a convenient point near the wellhead or the connecting pipeline at which point such gas shall be metered through a meter furnished by Lessor and approved by Lessee. The Lessor also agrees to secure any authority or permit required from any governmental agency having jurisdiction, make all necessary reports to any such agency, and to account for all taxes which may be due on such royalty gas. As a part of Lessor's notice to Lessee of the exercise of their right to take their share of royalty gas in kind or to have the same delivered to a designated purchaser, Lessor shall advise Lessee of any proposed sale of royalty gas, including the price and all other terms of such proposed sale, and within thirty (30) days of the giving of such written notice, Lessee, or its nominee, may elect to purchase such royalty gas for the same price and on the same terms as offered by such third party purchaser.

4. If on or before the first anniversary date hereof, operations for the drilling of a well for oil or gas or other substances covered hereby have not been commenced on the leased premises or land pooled therewith, or if there then is no production in paying quantities from the leased premises or land pooled therewith, this lease shall terminate as to both parties unless Lessee on or before that date pays to Lessor or to Lessor's credit in the **West Texas National Bank at P.O. Box 2077, Pecos, Texas 79772**, or its successors, which shall be Lessor's depository agent for receiving payments regardless of changes in the ownership of said land, the sum of **Nine Thousand Eight Hundred Twenty Dollars ($9,820.00)** as rental covering the privilege of deferring the commencement of operations for the drilling of a well for a period of **twelve (12) months** from said anniversary date. In like manner and upon like payments, the

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commencement of operations for the drilling of a well may be further deferred for one or more twelve-month periods during the primary term of this lease. All payments may be made by check or draft mailed or delivered on or before the rental payment date. If the depository bank should liquidate or be succeeded by another bank, or for any reason fail or refuse to accept rental payment hereunder, Lessee shall not be held in default for failure to make such payment unless Lessor has delivered to Lessee a proper recordable instrument naming another bank as depository agent to receive payments and Lessee has failed to make such payment within **sixty (60)** days after receipt of such notice. It is agreed that the cash bonus consideration first recited above covers not only the right to defer drilling during the first year of this lease, but also all subsequent deferrals of drilling as aforesaid, along with all other rights of Lessee hereunder. If on or before any rental payment date Lessee in good faith makes an erroneous rental payment by paying the wrong person, the wrong depository, or the wrong amount, Lessee shall be unconditionally obligated to make proper rental payment for the period involved and this lease shall continue in effect as though such rental payment had been properly made, provided that proper rental payment shall be made within **thirty (30)** days after receipt by Lessee of written notice of the error from Lessor, accompanied by any documents and other evidence necessary to enable Lessee to make proper payment.

5. If, at the expiration of the primary term, oil or gas is not being produced from said land, but Lessee is then engaged in drilling or reworking operations thereon, this lease shall remain in force so long as operations are prosecuted with no cessation of more than **sixty (60) consecutive days**, and if they result in the production of oil or gas, so long thereafter as oil, gas or other hydrocarbons in commercial quantities are produced from said land. In the event a well or wells producing oil, gas or liquid hydrocarbons in paying quantities should be drilled and completed subsequent to the date of this lease on adjacent land or lands, and be draining the leased premises, Lessee agrees to drill the offset wells on tracts then covered hereby that a then reasonably prudent operator would drill if faced with the same or similar circumstances.

6. If prior to discovery of oil, gas or other hydrocarbons on said land, Lessee should drill a dry hole or dry holes thereon, or if after discovery of oil, gas or other hydrocarbons on said land, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences additional drilling or reworking operations within **ninety (90) days** thereafter, and diligently prosecutes the same until commercial production is obtained or restored from said land or, if it be within the primary term, commences or resumes payment or tender of rents on or before the rental payment paying date next ensuing after the expiration of **ninety (90)** days from date of completion of the dry hole or cessation of production.

7. If this lease covers a lesser interest in oil, gas and other hydrocarbons than the entire and undivided fee simple estate therein, then the rents and royalties to be paid shall be reduced proportionately, and the rents and royalties shall be paid only in the proportion which the interest therein covered by this lease bears to the whole and undivided interest and estate therein.

8. When requested by Lessor, Lessee shall bury pipelines below ordinary plow depth.

9. No well shall be drilled nearer than **two hundred feet (200')** to a house or barn on said premises without the written consent of the surface owner.

10. Within **one hundred twenty (120) days** after this lease has terminated as to any portion of the land covered hereby, Lessee shall remove all machinery, equipment and fixtures placed on said premises, including pipelines and flow lines placed on the premises that are not buried below ordinary plow depth as to which this lease has terminated.

11. Lessee shall pay to Lessor at their address in **Verhalen, Reeves County, Texas**, all actual damages to the land, improvements thereon, and other property situated thereon, that may be proximately caused by operations for or by Lessee hereunder.

12. If the estate of any party hereto is assigned and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the Lessee until **thirty (30) days** after the Lessee has been furnished with a written transfer or assignment or a recorded copy thereof; and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assigns or assignees of such part or parts shall fail to make or default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the Lessee or any assignee thereof shall make due payment of such rental.

13. It is agreed that this lease shall never be terminated, forfeited or canceled for failure to perform, in whole or in part, any of its implied covenants, conditions or stipulations, until it shall have been first finally judicially determined that such failure exists, and, after such final judicial determination, Lessee is given a reasonable time therefrom to comply with any such covenant, condition or stipulation.

14. Lessor hereby agrees that Lessee, at its option, may discharge any tax mortgage or other lien upon said land; and in the event Lessee does so, Lessee shall be subrogated to such lien with the right to enforce the same and apply rentals and royalties accruing under the same towards satisfying the same.

15. Lessee may, at any time, execute and deliver to Lessor, or place of record, a release or releases covering any portion or portions of the above described premises, and thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered, and thereafter, the rentals payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

16. All express and implied covenants of this lease shall be subject to all federal and state laws, executive orders, rules and regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable for damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such law, order, rule or regulation.

17. By the acceptance hereof, it is agreed that in carrying on any operations hereunder, Lessee shall prevent the contamination of any and all waters of Lessor in surface tanks or storage tanks and any and all surface and subsurface water bearing strata. Likewise, Lessee shall prevent contamination of the surface of the above described land from salt water or other contaminating substance flowing over or seeping onto the same. Lessee shall also fence out all drilling, slush or other pits which it may create or cause to be created on such land so that the fluids therein or damaging substances thereof shall at all times be wholly unavailable to livestock that is on or is being grazed upon the land above described.

18. Anything herein to the contrary or apparently to the contrary notwithstanding, Lessee, its successors and assigns, shall have no right to use water which is on or under the above described land, except it may itself drill a water well and then use the water from that well in its conduct of the drilling operations that actually are conducted on land covered by this lease. Lessee shall have no right to the use of water from the lands covered hereby for water flooding, secondary recovery operations or camp operations.

19. Lessee agrees, to the extent practical, to utilize existing roadways over and across the above described lands. All roads constructed by Lessee hereunder shall be caliched, and shall at all times be maintained as private, but all-weather roads, and Lessor shall be compensated for any new road construction.

20. Lessor hereby covenants that the above described premises are free and clear of any encumbrance done or suffered by them, and, to that extent only, warrant to defend the title to said premises unto the Lessee, its successors and assigns forever, against the lawful claims and demands of all persons claiming under them.

21. If, at any time, or from time to time, either before or after the expiration of the primary term of this lease, there is any gas well on the leased premises which is capable of producing in paying quantities, but which is shut in before or after production therefrom, such well shall be considered under all provisions of this lease to be a well producing in paying quantities, and this lease shall remain in force in like manner as though gas therefrom was actually being sold or used. In such event, Lessee covenants and agrees to pay Lessor, as royalty, the sum of **Forty-nine Thousand One Hundred Dollars ($49,100.00)** per annum for the period commencing on the date such well is actually shut in, unless this lease is being maintained in force and effect by some other provision hereof, in which event, such period shall commence on the date this lease ceases to be maintained in full force and effect by some other provision hereof. Payment or tender shall be made to Lessor, or deposited to the credit of Lessor, at the **West Texas National Bank, Pecos, Texas.** The first payment shall be due and payable on or before **ninety (90) days** from the date this lease ceases to be maintained in force by some other provision hereof. Unless gas from such well is produced and sold or used prior thereto, except temporary sales, or used for lease operations, subsequent payments shall be due annually thereafter on the anniversary date of the period for which such prior payment was made. No additional payment shall be required if there is more than one shut-in gas well on the leased premises. The term "gas well" shall include wells capable of producing natural gas, condensate, or any gaseous substance, and wells classified as gas wells by any government authority having jurisdiction. Anything herein contained to the contrary notwithstanding, this lease may not be maintained in force by the payment of shut-in gas royalties for a period in excess of three (3) cumulative years beyond the expiration of the primary term hereof.

22. Lessee shall have the free use of oil and gas produced under the terms of this lease for drilling operations hereunder only, and the royalty shall be computed after deducting any so used.

23. Lessee shall not be liable for any delays in its performance of any covenant or condition hereunder, expressed or implied, or for total or partial nonperformance thereof, due to force majeure. The term "force majeure", as used herein, shall mean any circumstance or any condition beyond the control of Lessee, including, but not limited to, acts of God and actions of the elements; acts of the public enemy; strikes; lockouts, accidents, laws, acts, rules, regulation and orders of federal, state or municipal governments, or officers or agents thereof, failure of transportation; or the exhaustion, unavailability, or delays in delivery, of any product, labor, service, or material. If Lessee is required to delay the commencement of drilling operations, cease drilling or reworking or producing operations on the leased premises by force majeure, then until such time as such force majeure is terminated, and for a period of **ninety (90) days** after such termination, each and every provision of this lease that might operate to terminate it shall be suspended and this lease shall continue in full force and effect during such suspension period. If any period of suspension occurs during the primary term, the term thereof shall be added to such term.

Prescribed Only

24. At the expiration of the primary term hereof, Lessee agrees to commence a continuous drilling program on the leased premises and thereafter continue such continuous drilling program until all proration units prescribed (required) by the Railroad Commission of Texas, or agency having jurisdiction, have been drilled, allowing not more than **one hundred eighty (180) days** to elapse between the completion of one well and the commencement of another well. Should Lessee fail to commence such continuous drilling program or defaults in the performance thereof, then, in any event, this lease shall terminate as to all lands covered hereby, save and except for rights down to **one hundred feet (100')** below the base of the producing formation from which commercial production is then being obtained situated on each proration unit. The term "proration unit", as used herein, means any acreage designated as a drilling unit or production unit in accordance with the Rules of the Railroad Commission of Texas. The term "discovery date", as used herein, means the later of (1) the date that well logs have been run over the formation in which a discovery in commercial quantities is claimed, (2) the date that the formation is drill stem tested, or (3) the date that the formation is production tested through perforations in the casing.

25. In conducting operations on the **Collier Ranch** of which the leased premises is a part, in addition to the other covenants and agreements herein contained, Lessee agrees that it will:

a) Keep all creeks and gully crossings traversed by Lessee both graded and passable;

b) Place single lane cattleguards, set in concrete, at all fence crossings, and in doing so, set a cattleguard box set on concrete having a depth of at least **three feet (3')** beneath the surface, and construct adequate H-frames with dead men on each side of the proposed cattleguard site before cutting the fence to install the cattleguard; and thereafter keep such cattleguards cleaned out at all times to prevent passage of livestock thereover. With respect to all cattleguards used by Lessee, Lessee shall install a swinging arm approximately **three feet (3')** above the surface which can be locked or otherwise secured;

c) In all work, construction and maintenance activities on the **Collier Ranch**, prevent soil washing and erosion and promptly repair such as may occur;

d) Permit no firearms on the **Collier Ranch**; permit no discharging of firearms; and permit no hunting thereon by Lessee or any of its invitees;

e) Promptly pick up and remove all trash introduced onto the **Collier Ranch** by Lessee or its invitees;

f) As soon as feasible; remove all plastic pit liners; fill and level all drilling mud and water pits used in drilling operations; double-ditch all buried pipelines so as to replace the original topsoil at the surface; restore to the maximum extent practicable to original condition all drill sites and pipeline rights-of-way, and re-seed the same with native type grasses, to be selected and sown in sowing season as designated by Lessor;

g) In laying pipelines, make no cuts in the grass turf on the **Collier Ranch**, except as necessary to enable pipeline laying machinery to operate; and with respect to such pipelines, promptly fill and restore all sinkholes as may develop;

h) Permit no consumption of alcoholic beverages on the **Collier Ranch** by Lessee or its invitees;

i) Forthwith, close and secure all gates opened by Lessee or its invitees;

j) Maintain metal trash containers at all work sites while such work is in progress;

k) Permit no dumping of trash or fluids of any sort except at such disposal sites, if any, as may have been designated by Lessor as such;

l) Maintain and enforce a speed limit for all vehicles on the **Collier Ranch** for vehicles of Lessee and its invitees of not to exceed **twenty-five miles per hour (25 mph)**, or such lesser speed as necessary to prevent the raising of excess dust;

m) While a road is being used to conduct drilling operations, reworking operations and pipeline laying operations, keep the portion of the road so used adequately watered down to prevent the raising of dust;

n) If requested by Lessor, equip cattleguards at public roads with gates that can be locked;

o) Leave cased and in good condition for use by Lessor such water wells as Lessee may be authorized to drill on the **Collier Ranch**;

p) Use no part of the **Collier Ranch** to store machinery, equipment pipe or other property while it is not being used; and use no part of the **Collier Ranch** to house employees or other personnel, except temporarily at well sites while wells are being drilled or completed on such well site;

q) Use no chemicals or apply no manufactured chemical substances on roads, drill sites, and rights-of-way;

r) Consult with the **Collier Ranch Manager, Charles Stanford**, at his residence located on the ranch, telephone number **(915) 447-9629**, regarding the location and construction of roadways, pipelines, power lines, telephone lines, and other improvements to be located on the **Collier Ranch**, to the end that the parties might arrive at an orderly plan for locating such and constructing such in a manner that is practicable for purposes of the operation of the **Collier Ranch** and which is practicable for the purposes of Lessee;

26. For damages for 3-D seismic operations, Lessor shall be paid **Seven Dollars and 50 Cents ($7.50)** per acre of land contained in said lands that may be traversed by such 3-D seismic survey.

27. This Oil and Gas Lease may be executed in counterparts, with multiple signature pages attached for recording purposes and is binding upon the undersigned, their heirs, successors and assigns. Each signature page may be detached and attached to the body of one instrument.

28. Notwithstanding any implication herein or any judicial opinions to the contrary, it is not the intent of Lessor nor Lessee to communitize or voluntarily pool any interest covered hereby, but to include the lands covered hereby in one lease to facilitate the prudent exploration, development, production, and operations of the lands covered hereby. Therefore, for the purpose of royalty payments only, each tract of land, whether or not described separately herein under which Lessor owns less than all of the royalty, shall be deemed a separate lease. Royalties attributable from production from any tract will be paid to the royalty owners under each such producing tract unless Lessee has the rights hereunder and appropriately exercises its right to pool tracts with different royalty ownership, obtaining, if legally required, the appropriate ratifications from any non-participating royalty owners in the tracts to be pooled.

29. This lease is a top lease, and covers the reversionary interest of Lessor in the lands covered hereby, and is made and entered into subject to that certain Oil and Gas Lease between Collier Enterprises, Inc., Lessor, and JAJ Oil & Gas Properties, Inc., as Lessee, dated September 28, 2005, recorded in counterparts in Volume 714, Page 144, Volume 714, Page 168 and Volume 714, Page 176 of the Official Public Records of Reeves County, Texas, hereinafter referred to as the "Existing Lease". This lease shall only vest to create a possessory estate in the oil, gas and other minerals covered herein upon termination of the Existing Lease, in whole or in part. Lessor represents and warrants that it has not entered into, and agrees that from and after the date hereof it will not enter into, any renewal or extension of, or amendment to, the Existing Lease which would serve to continue the Existing Lease in effect beyond the time at which it would otherwise expire. This lease shall not interfere with the rights of any party under the Existing Lease. Lessee shall have no rights of entry or possession for the purpose of exercising its rights hereunder until the expiration of the Existing Lease. At such time as the Existing Lease terminates, in whole or in part (such date herein the "Effective Date"), this lease shall become

effective as to the lands no longer subject to the Existing Lease and Lessee shall pay to lessor, at the address provided for herein, of the sum of one hundred fifty and no/100 dollars ($150.00) per net mineral acre that becomes subject to this lease. The rights of Lessee provided for herein to vest this lease as valid and subsisting, unless sooner exercised, shall terminate on September 28, 2015. Lessee may exercise its rights to vest this lease as to any part of the lands covered hereby that are no longer subject to the Existing Lease.

30. Lessee is hereby given the option to extend the primary term of this lease, as to all or any portion of the lands covered hereby, for an additional two (2) years from the expiration of the original primary term hereof. This option may be exercised by Lessee at any time during the original primary term by paying the sum of Two Hundred and No/100's Dollars ($200.00) per acre to Lessor or to the credit of Lessor in any depository named in this lease, (which depository and its successors are Lessor's agents and shall continue as the depository regardless of changes in ownership of said land). Payment to exercise the option to extend the primary term of this lease shall be based upon the number of acres then covered by this lease which are not at such time being maintained by any other provision hereof, only insofar as to the lands upon which Lessee exercises this option. Such payment may be made by the check or draft of Lessee mailed or delivered to Lessor or to said depository at any time during the original primary term hereof. If such depository (or any successor thereto) should fail, liquidate or be succeeded by another entity, or for any reason fail or refuse to accept payment, Lessee shall not be held in default for failure to make such payment until thirty (30) days after Lessor's delivery to Lessee of a proper recordable instrument naming another bank as agent to receive such payment. If, at the time such payment is made, various parties are entitled to specific amounts according to Lessee's records, this payment may be divided between said parties and paid in the same proportion. Should this option be exercised as herein provided, it shall be considered for all purposes as though this lease originally provided for a primary term of five (5) years. In the event this lease is being maintained by any other provision hereof at or after the expiration of the original primary term but within five (5) years from the date hereof, Lessee shall have a period of sixty (60) days from the date this lease ceases to be so maintained within which to exercise this option to extend the primary term.

IN WITNESS WHEREOF we have hereunto set our hands the day and year first above written.

LESSOR:

COLLIER ENTERPRISES, INC.

Drue C. Stanford

Drue C. Stanford, Individually and as President of Collier Enterprises, Inc.

Howard Collier, III, Individually and as Vice-President of Collier Enterprises, Inc.

Cathryn Godfrey, Individually and as Secretary of Collier Enterprises, Inc.

Charles Stanford

Charles Stanford, Individually

LESSEE:

Delaware Basin Resources LLC

Benjamin A. Strickling, III, Manager

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Howard Collier, III, Individually and as Vice-President of Collier Enterprises, Inc.

Cathryn Godfrey, Individually and as Secretary of Collier Enterprises, Inc.

Charles Stanford, Individually

LESSEE:

Delaware Basin Resources LLC

Benjamin A. Strickling, III, Manager

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LESSOR:

COLLIER ENTERPRISES, INC.

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Howard Collier, III, Individually and as Vice-President of Collier Enterprises, Inc.

Cathryn Godfrey

Cathryn Godfrey, Individually and as Secretary of Collier Enterprises, Inc.

Charles Stanford, Individually

LESSEE:

Delaware Basin Resources, LLC

Benjamin A. Strickling, III, Manager

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the 27 day of April, 2010 by DRUE C. STANFORD, Individually and as President of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

Notary Public in and for the State of Texas

M. STERLING
Notary Public
STATE OF TEXAS
My Comm. Exp. 11/08/2012

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by HOWARD COLLIER, III, Individually and as Vice-President of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by CATHRYN GODFREY, Individually and as Secretary of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the 27 day of April, 2010 by CHARLES STANFORD, Individually.

My commission expires:

Notary Public in and for the State of Texas

M. STERLING
Notary Public
STATE OF TEXAS
My Comm. Exp. 11/08/2012

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2010 by **DRUE C. STANFORD**, Individually and as President of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:

_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF Taylor §

This instrument was acknowledged before me on the 12 day of July, 2010 by **HOWARD COLLIER, III**, Individually and as Vice-President of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:
Dec 7 2013

_____
Notary Public in and for the State of Texas

SHAWN MICHAEL EDAMIAK
Notary Public, State of Texas
My Commission Expires
December 07, 2013

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by **CATHRYN GODFREY**, Individually and as Secretary of, **COLLIER ENTERPRISES, INC.**, a Texas corporation, on behalf of said corporation.

My commission expires:

_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by **CHARLES STANFORD**, Individually.

My commission expires:

_____

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by DRUE C. STANFORD, Individually and as President of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

_____

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by HOWARD COLLIER, III, Individually and as Vice-President of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

_____

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the 13 day of July, 2010 by CATHRYN GODFREY, Individually and as Secretary of, COLLIER ENTERPRISES, INC., a Texas corporation, on behalf of said corporation.

My commission expires:

USETTE MERCADO
MY COMMISSION EXPIRES
March 2, 2013

_____

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the _____ day of _____, 2010 by CHARLES STANFORD, Individually.

My commission expires:

_____

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF Midland §

This instrument was acknowledged before me on the 20th day of September, 2010 by BENJAMIN A. STRICKLING, III as Manager of, DELAWARE BASIN RESOURCES LLC, a Delaware Limited Liability Company, on behalf of said company.

My commission expires:
10/31/2011

Notary Public in and for the State of Texas

NORA NORDSTOG
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
10-31-11

EXHIBIT "A"

ATTACHED TO AND MADE PART OF THAT CERTAIN OIL AND GAS LEASE DATED APRIL 27, 2010, BY AND BETWEEN COLLIER ENTERPRISES, ET AL, AS LESSOR, AND DELAWARE BASIN RESOURCES LLC, AS LESSEE, COVERING 9,820.00 ACRES.

Block 50, Twp. 8, T&P Ry. Co. Survey		
Section	39 :	All
Section	40 :	All
Section	41 :	All
Section	42 :	All
Block 1, H&TC Ry. Co. Survey		
Section	141 :	All
Section	142 :	All
Section	143 :	E/2
Section	144 :	All, less SE/4 SE/4 — ¼ AC 640 - ¼ = 600 AC
Section	177 :	E/2 & SW/4
Section	178 :	E/2 & NW/4
Section	180 :	All
Section	181 :	All
Section	182 :	All
Section	184 :	All
Section	186 :	All
Section	188 :	All
J. G. Love Survey (Scrap File #8636)		
Section	92 :	All

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

FILE # 3459

FILED FOR RECORD ON THE 29TH DAY OF SEPTEMBER A.D. 2010 2:17 P M.

DULY RECORDED ON THE 5TH DAY OF OCTOBER A.D. 2010 9:00 A M.

BY: _____ DEPUTY

DIANNE O. FLOREZ, COUNTY CLERK
REEVES COUNTY, TEXAS

Tab E:
2014 Collier Lease to COG Operating for "oil and gas"

OIL AND GAS LEASE

NOTICE: PRIOR TO RECORDING THIS INSTRUMENT, A NATURAL PERSON MAY REMOVE OR STRIKE HIS/HER SOCIAL SECURITY OR DRIVER'S LICENSE NUMBER THEREFROM.

THIS AGREEMENT is made this 1st day of January, 2014, between Collier Enterprises, Inc., P.O. Box 9025, Verhalen, Texas 79772, Lessor and COG Operating LLC, One Concho Center, 600 W. Illinois Avenue, Midland, Texas 79701, Lessee.

WITNESSETH:

1. Lessor in consideration of Ten and No/100 Dollars ($10.00) in hand paid, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby exclusively grants, leases and lets unto Lessee for the purpose of investigating, exploring, prospecting, drilling and producing oil and gas, from the following described land in Reeves County, Texas, to-wit:

SW/4 of Section 178, Abstract 4483, and the W/2 of Section 143,
Abstract 950, all in Blk. 1 H&TC Survey, Reeves County, TX

and containing 480 acres, more or less. No water from any source from said land shall be used for any purpose without written consent of Lessor.

2. Subject to the other provisions herein contained, the lease shall be for a term of three (3) years from this date (called "primary term") and as long thereafter as oil and/or gas is produced in paying quantities from said land hereunder.

3. The Royalties to be paid Lessor are:

(a) On oil (including condensate and other liquid hydrocarbons) sold by Lessee, one-fourth (1/4th) of the Gross Proceeds received by Lessee or an affiliate of Lessee from the first sale thereof to a non-affiliated purchaser ("Gross Proceeds" to mean the total price received from the first non-affiliated purchaser without deduction of any expenses (production or post-production) incurred upstream of the point of first sale to a non-affiliated purchaser to get the oil to the point of sale or in marketable condition) or one-fourth (1/4th) of the market value thereof at the well, whichever is greater; and on oil (including condensate and other liquid hydrocarbons) used off the premises, one fourth (1/4th) of the market value at the point of use of the oil so used.

(b) On gas sold by Lessee, one-fourth (1/4th) of the Gross Proceeds received by Lessee of an affiliate of Lessee from the first sale thereof to a non-affiliated purchaser ("Gross Proceeds" to mean the total price received from the first non-affiliated purchaser without deduction of any expenses (production or post-production) incurred upstream of the point of first sale to a non-affiliated purchaser to get the gas to the point of sale or in marketable condition) or one-fourth (1/4th) of the market value thereof at the well, whichever is greater; and on gas used off the premises, one fourth (1/4th) of the market value at the point of use of the gas so used.

(c) Notwithstanding the provisions of (b) above, Lessor may elect one (1) time only, to take in kind its royalty share of gas and gaseous substances produced. Once the election is made, all of Lessor's gas shall be marketed by Lessor, and delivered to Lessor, free of production costs, by Lessee at the wellhead.

(d) Whenever Lessor takes its royalty share of oil or gas in kind, it shall construct or cause to be constructed, such facilities as may be necessary in connection with such taking in kind at or near Lessee's facilities, at Lessor's sole cost and expense.

(e) In addition to Lessor's royalty or share of the oil and gas provided above, Lessee agrees to pay Lessor one-fourth (1/4th) of the total value or money received, whichever is the greater (free of cost to Lessor), of any contract, agreement, exchange or other bargain that Lessee may enter into that in anywise pertains to any of the oil or gas under the land, whether produced or not, and of the total of any other benefit Lessee may receive under any incident of ownership of this lease. Such payment to Lessor shall be at the same time Lessee receives the value or money. Such payment or obligation of payment shall not extend the term of this lease or

diminish any other obligation of Lessee under this lease agreement. This paragraph 3(f) is not applicable to any value or payment received by Lessee for a bona fide sale of any of Lessee's interest in this lease to another party or entity.

(f) At and/or after expiration of the primary term, if there is a well on said land capable of producing gas in paying quantities, and if gas is not being sold for a period in excess of ninety (90) days, and this lease is not then being maintained in force and effect under the other provisions hereof, this lease shall automatically terminate unless Lessee shall pay as royalty on or before ninety (90) days from the date production of shut-in, a sum (herein called "shut-in royalty") of Five Dollars ($5.00) for each acre of land subject to this lease on the date of payment, and upon such payment this lease shall remain in force as to the acreage for which such payment is made for a period of one (1) year from the date of such payment; this lease shall automatically terminate at the expiration of each period of one (1) year for which payment of shut-in royalty has been made if the lease is not then being maintained in force and effect under the other provisions of the lease unless on or before the expiration of such period of one (1) year, Lessee shall pay a shut-in royalty computed as hereinabove provided, and upon each such payment, this lease shall remain in force as to the acreage for which such payment is made for an additional period of one (1) year; provided, however, that payment of shut-in royalty shall not maintain this lease in force or effect to any extent for a total period in excess of two (2) consecutive years after the date of the expiration of the primary term of this lease, and no such payment shall be treated or considered as advance royalty payment on any gas produced from the land.

(g) Affiliate status shall be determined in accordance with 30 C.F.R. § 206.151.

(h) Lessee shall have a duty to act as a reasonably prudent operator relative to limiting shrinkage and other losses of produced oil and gas that reduce the sales and/or use volumes upon which royalties are payable.

(i) In addition to being entitled to take its royalty oil and/or gas in kind, Lessor shall be entitled, by written notice to the first non-affiliated purchaser with copy to Lessee, to be paid directly by said purchaser, for the royalty share of production from the leased premises sold to said purchaser, to insure payment to Lessor of its royalty share of the gross proceeds paid by said purchaser.

4. This is a paid-up oil and gas lease for a primary term of three (3) years.

5. (a) If oil or gas is not being produced from said land in paying quantities at the expiration of the primary term hereof, than this lease shall ipso facto terminate as to both parties unless Lessee is engaged in actual drilling of an oil and/or gas well thereon or reworking operations thereon, then this lease shall remain in force as long as said drilling and reworking operations are diligently prosecuted, and if the drilling or reworking operations result in the production and sale of oil and/or gas in paying quantities, then so long thereafter as oil or gas in paying quantities is produced and sold from said land, but subject to the termination or partial termination provisions contained herein. If, after the expiration of the primary term, production and sale of oil and/or gas in paying quantities should cease for any cause, this lease, subject to the termination or partial termination provisions contained herein, shall remain in force as long as drilling or reworking operations are commenced within ninety (90) days after such causation and are thereafter pursued with no cessation of ninety (90) consecutive days, and if said reworking operations result in the production and sale of oil and/or gas in paying quantities, so long thereafter as oil and/or gas in paying quantities is produced and sold from the leased premises.

(b) Notwithstanding anything contained herein to the contrary, if at the end of the primary term, oil and/or gas is being produced and sold, or if this said lease is being maintained in force and effect under other provisions hereof, this lease will remain in force and effect as to all acreage so long as Lessee commences to drill an oil and/or gas well, and drills same with due diligence, every six (6) months after the end of the primary term, and upon failure to do so, this lease shall ipso facto terminate as to all acreage except for: (i) acreage in a pooled unit and (ii) acreage around a producing well in paying quantities in the form of a square or rectangle tract (to the extent reasonably practical) containing the minimum area permitted or prescribed by the applicable rules and regulations of the Railroad Commission of Texas with reference to the spacing of wells or the size of producing and/or proration units for the well that

would entitle said well to the maximum available allowable, and thereafter ipso facto terminate as to any retained proration unit and retained pooled unit upon cessation of production in paying quantities therefrom (i.e., each such retained proration unit and retained pooled unit shall thereafter, solely for purposes of determining whether this lease is maintained relative to the acreage constituting same, be treated as a separate lease), if same is not held by a lease saving provision of this lease (shut-in royalty, operations/rework and/or force majeure) as separately applicable to that retained proration unit or pooled unit. This lease shall also ipso facto terminate after the expiration of the primary term and/or continuous drilling program, whichever is later, on a unit-by-unit basis as to all depths more than one hundred feet (100') below the deepest producing formation. Provided, however, that if a shut-in well(s), capable of producing in paying quantities, is located on the acreage contained herein, and if Lessee has adhered to the provisions of paragraph 3(g) hereof, or if there is a well as to which there has been a cessation of production and/or operations for less than 90 consecutive days or as to which force majeure is or has been applicable, this lease shall remain in full force and effect as to the pooled unit or proration unit around each such well as to a depth of one hundred feet (100') below the producing/capable of producing/previously producing formation of the well.

6. If a vertical well capable of producing oil, gas or other hydrocarbon in paying quantities shall be completed hereafter on land not owned by the Lessor within less than three hundred thirty (330) feet of a lease boundary, or if a horizontal well capable of producing oil, gas or other hydrocarbon in paying quantities shall be completed hereafter on land not owned by the Lessor parallel or substantially parallel to a lease boundary such the majority of its perforations are within less than three hundred thirty (330) feet of a lease boundary, then within one hundred eighty (180) days after such well shall have been completed on such other land (or in case of a gas or gas condensate well, within one hundred eighty (180) days after commencement of first production of gas therefrom). In such situations Lessee shall commence operations for, and shall thereafter diligently prosecute the drilling of an offset well on the leased land off-setting the adjoining well's proration unit. Lessee has the option to release the offset proration unit, as to the formation(s) from which the potentially draining well is producing, in lieu of drilling an offset well. For this paragraph the word completion shall be defined as the date reported to Railroad Commission of Texas for the First Potential Test. Nothing herein shall require Lessee to drill an offset well where Lessee has an existing well producing oil or gas in paying quantities on a proration unit on the leased land at the time of completion of a well on an adjoining proration unit to the leased land. Nothing herein shall relieve Lessee of its obligation to protect the lease as would a reasonably prudent operator, the provisions hereof being in addition to, and not in lieu of, said duty as implied in the absence of an express covenant addressing said duty. This section is applicable to each separate producing formation.

7. This lease may NOT be assigned in whole, or in part, without written consent of Lessor, except to an affiliate or subsidiary business entity of Lessee. If assigned with written permission, the provisions hereof shall extend to the heirs, successors and assigns, but no change or division in ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. Written permission shall not be unreasonably withheld by Lessor. No sale or assignment by Lessor shall be binding on Lessee until 30-days after Lessee shall be furnished with a copy of a recorded instrument evidencing same.

8. Lessee is given the right to pool or combine, the lands covered by this lease as to oil and gas, or either of them, with any other land covered by this lease, and/or with any other adjoining land, lease or leases; provided, pooling authority shall be limited to creating pooled units for, around and including or to include an initial well, with the area of each such pooled unit to be limited to and conform with the minimum area permitted or prescribed by the applicable rules and regulations of the Railroad Commission of Texas with reference to the spacing of wells or the size of producing and/or proration units for the well that would entitle said well to the maximum available allowable. In the event a pooled unit is formed hereunder before the unit well is drilled and completed (i.e., for a proposed well), so that the applicable pooling criteria are not yet known, the unit shall be based on the pooling criteria for that anticipated field of completion that would allow for the largest pooled unit under the criteria set out above; provided that within a reasonable time after completion of the well, the unit shall be reduced in size if and as necessary to conform to the pooling criteria that exist relative to that well as it has been originally drilled and completed. Lessee under the provisions hereof may pool or combine acreage covered by this lease or any portion thereof as above provided as to oil in any one or more strata and/or as to gas in any one or more strata. The units formed by pooling as to any stratum or strata need not conform in size or area with the unit or units into which the

lease is pooled or combined as to any other stratum or strata, and oil units need not conform as to area with gas units. The pooling in one or more instances shall not exhaust the rights of the Lessee hereunder to pool this lease or portions thereof into other units. Lessee shall file for record in the appropriate records of the county in which the leased premises are situated an instrument describing and designating the pooled acreage as a pooled unit; and upon such recordation the unit shall be effective as to all parties hereto, their heirs, successors, and assigns, irrespective of whether or not the unit is likewise effective as to all other owners surface, mineral, royalty, or other rights in land included in such unit. Lessee may exercise its pooling option before or after commencing operations for an oil or gas well on the leased premises, and the pooled unit may include, but it is not required to include, land or leases upon which a well capable of producing oil or gas in paying quantities has theretofore been completed or upon which operations for the drilling of a well for oil or gas have theretofore been commenced. In the event of operations for drilling on or production of oil or gas from any part of a pooled unit which includes all or a portion of the land covered by this lease, such operations shall be considered as operations for drilling on or production of oil and gas from the pooled tract of this lease whether or not the well or wells be located on the premises covered by only the pooled area of this lease and in such event operations for drilling shall be deemed to have been commenced on said tract of this lease; and the entire acreage constituting such unit or units, as to oil and gas, or either of them, as herein provided, shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if the same were included in this lease. For the purpose of computing the royalties and other payments to which owners of royalties and payments of oil or gas well flow and each of them shall be entitled on flow of oil and gas, or either of them, from a pooled unit, there shall be allocated to the land covered by this lease and included in said unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) a pro-rata portion of the oil and gas or either of them, produced from the pooled unit. Such allocation shall be on an acreage basis, that is to say there shall be allocated to the acreage covered by this lease and included in the pooled unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that pro-rata portion of the oil and gas, or either of them, flowed from the pooled unit which the number of surface acres covered by this lease (or in each such separate tract) and included in the pooled unit bears to the total number of surface acres included in the pooled unit. Royalties hereunder shall be computed on the portion of such flow, whether it be oil and gas, or either of them, so allocated to the land covered by this lease and included in the unit just as though such production were from such land. The flow of oil from a well will be considered as production from the lease or oil pooled unit which it is producing and not as production from a gas pooled unit; and flow of gas from a gas well will be considered as production from the lease or gas pooled unit from which it is producing and not from an oil pooled unit. The formation of any unit hereunder shall not have the effect of changing the ownership of any shut-in royalty which may become payable under this lease. Shut-in gas royalty shall be applicable only to the actual acreage pooled and not to other acreage under this lease. After the partial termination provided for in 5(b) above at the end of continuous development, production of oil and/or gas from, and/or operations upon, a pooled unit shall maintain this lease in effect only as to that portion of the leased premises which is included in that pooled unit. This lease may be maintained in effect as to the remainder of the leased premises in accordance with the other provisions of this lease. Where a well is completed in multiple fields, such that multiple field and/or statewide rules are applicable to that well, and unit size is based upon spacing, density and/or proration rules that may be permitted or prescribed by a governmental authority having jurisdiction to do so, the unit size allowed hereby shall be the same as to all pooled depths, and that unit size shall be determined in accordance with the field and/or statewide rules that permit or prescribe the greatest number of acres to be assigned to a well.

9. Lessor hereby agrees that Lessee at its option may discharge any tax, mortgage or other lien bearing upon the mineral interest of Lessor with the right to enforce same and apply royalties accruing hereunder toward satisfying same. It is agreed that if Lessor owns an interest in said land less than the entire fee simple estate, then the royalties and other payments to be paid Lessor shall be reduced proportionately.

10. If Lessee fails to pay both the oil and gas royalty due hereunder within the period of time as provided by the Texas Natural Resource Code, Section 91.042 (as now constituted), and thereafter if Lessor notifies Lessee in writing of such failure to pay royalty, and payment thereof is not received by Lessor within thirty (30) days after notifying Lessee, then Lessee shall become liable for prejudgment interest from and after said cure period at the statutory rate

(Texas Natural Resource Code §91.403) plus an additional two percent (2%) as well as for Lessor's attorneys if and to the extent Lessor is required to retain an attorney to recover royalties due and owing to it hereunder and is successful in doing so. If Lessee fails to pay the oil and gas royalty within sixty (60) days after receipt of Lessor's written notification by certified mail, return receipt requested, served both upon Lessee's registered agent for service in Texas (if any) (with the Texas Secretary of State), and also addressed to Lessee and including in the address "Attn: Vice-President-Land – Potential Lease Termination Notice," then this lease shall terminate, except for the amount of royalty owed Lessor, and Lessee's post-termination lease obligations. Lessee's address shall be the last known address to Lessor. However, if there is a bona fide dispute or a good faith question of royalty entitlement as to amount, then Lessee and Lessor shall within thirty (30) days after such dispute or question arises arrange a meeting and attempt to reach a resolution. If Lessee and Lessor meet within thirty (30) days after such dispute or question arises, then Lessor shall not have the right to terminate this lease for nonpayment of royalty.

11. If any operation permitted or required hereunder, or the performance by Lessee of any covenant, agreement or requirement hereof is delayed or interrupted by any law, order of the Government of the United States or of any State or other governmental body, or act of God or other circumstance, event or condition (excluding financial) which results in Lessee being prevented from conducting drilling operations, reworking operations or producing operations, then until such time as such law, order, or regulation is terminated and for a period of ninety (90) days after such termination and after such act of God, each and every provision of this lease that might operate to terminate it shall be suspended. If any period of suspension occurs during the primary term, the time thereof shall be added to the primary term.

12. Lessee agrees to indemnify and hold Lessor harmless from all liability, by reason of loss, damage, expense and obligations resulting from injury to (including the death of) persons or damages to property, pollution, environment, air space, surface and subsurface, of any kind arising out of or in connection with Lessee's operations on the leased premises.

13. Lessor does not warrant title, express, implied, statutory or of seizin to the mineral rights hereunder except to the extent of any bonus and/or royalties received from that portion of the land to which the mineral title shall fall or a proportionate part of said bonus and/or royalties in the event of failure of title to an undivided interest in said portion. Notwithstanding the fact that the Lessor has executed this lease on the above described lands, and the ownership is now, or in the future may be in separate tracts or parcels, this lease shall be treated as an entirety, except that royalties as to any producing well or shut-in gas well shall be payable to the owner or owners of the royalty in the respective tracts upon which the producing well or shut-in gas well is located.

14. Lessee agrees, upon Lessor's written request, to furnish written notice of spud date, cessation of production, workover, re-entry, temporary abandonment or abandonment of any well and copies of Railroad Commission forms for application to drill, completion tests and plugging reports. The Lessor reserves the right to require Lessee to furnish logs on all wells drilled on said land. Lessor agrees to keep such logs furnished to it confidential until released to the public.

15. At such time as this lease expires or is terminated, for any reason whatsoever, Lessee agrees to furnish Lessor, within thirty (30) days thereafter, execute a Release of said lease, in appropriate recordable form. Upon termination of this lease or any part thereof, Lessee shall within ninety (90) days remove all leasehold equipment permitted by law or regulation, and if Lessee fails to do so, said leasehold equipment shall belong to Lessor, however Lessee shall continue to be liable for the cost of the removal thereof by Lessor, and the plugging of all wells drilled or operated by Lessee for seven (7) years after termination.

16. Lessee agrees during the term and at the end of this lease to remove from the land all equipment and fixtures not active in the lease operations including all pipelines, buried or on the surface, and restore the surface in a reasonable manner to its original condition.

17. Lessee has the option, but not the obligation, of extending the primary term of this lease for an additional two (2) years from the expiration of the primary term by the payment to Lessor on the expiration of the primary term, a sum equal to the original bonus money paid plus $1,800.00 per net mineral acre.

18. This lease is subject to a Surface Use Agreement of even date herewith.

19. If Lessor brings a lawsuit to enforce any of Lessor's rights hereunder and obtains any judgment against Lessee, Lessor shall be entitled to recover reasonable attorney's fees, expert's fees and all reasonable costs of prosecuting the litigation and costs of court from Lessee.

20. This lease may be executed in several counterparts, no one of which needs to be executed by all parties thereto. Lessee agrees to provide each Lessor with a copy of fully executed leases of all the Lessor(s).

This oil and gas lease agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, successors and permitted assigns.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:

Collier Enterprises, Inc

By: _____
Name: _____
Title: _____

By: Howard T. Collier III
Name: Howard T. Collier
Title: Vice President

By: _____
Name: _____
Title: _____

18. This lease is subject to a Surface Use Agreement of even date herewith.

19. If Lessor brings a lawsuit to enforce any of Lessor's rights hereunder and obtains any judgment against Lessee, Lessor shall be entitled to recover reasonable attorney's fees, expert's fees and all reasonable costs of prosecuting the litigation and costs of court from Lessee.

20. This lease may be executed in several counterparts, no one of which needs to be executed by all parties thereto. Lessee agrees to provide each Lessor with a copy of fully executed leases of all the Lessor(s).

This oil and gas lease agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, successors and permitted assigns.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:

Collier Enterprises, Inc

By: Drue E. Stanford
Name: Drue E. Stanford
Title: Pres.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

18. This lease is subject to a Surface Use Agreement of even date herewith.

19. If Lessor brings a lawsuit to enforce any of Lessor's rights hereunder and obtains any judgment against Lessee, Lessor shall be entitled to recover reasonable attorney's fees, expert's fees and all reasonable costs of prosecuting the litigation and costs of court from Lessee.

20. This lease may be executed in several counterparts, no one of which needs to be executed by all parties thereto. Lessee agrees to provide each Lessor with a copy of fully executed leases of all the Lessor(s).

This oil and gas lease agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, successors and permitted assigns.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:

Collier Enterprises, Inc

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: Cathryn J. Dobbins
Name: Cathryn J. Dobbins
Title: secretary

ACKNOWLEDGMENT

STATE OF Texas §

COUNTY OF Reeves §

This instrument was acknowledged before me on the 7 day of February, 2014, by Drue C. Stanford, President of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

JOANN GRACE KLEIN
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES
10-27-2014

Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Texas

STATE OF TX §

COUNTY OF Taylor §

This instrument was acknowledged before me on the 13th day of February, 2014, by Howard Collier, VP of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

DEBORAH A. SHERMAN
Notary Public, State of Texas
My Commission Exp 02-25-17

Deborah A. Sherman
Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Texas

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Texas

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Texas

STATE OF Texas §

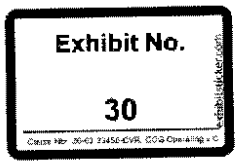
COUNTY OF Williamson §

This instrument was acknowledged before me on the 18 day of February, 2014, by Cathryn J. Godfrey, Secretary of Collier Enterprises, Inc., a Texas corporation, on behalf of said corporation.

LISETTE MERCADO
MY COMMISSION EXPIRES
March 4, 2017

_____
Notary Public in and for the State of Texas

Tab F:
2010 Balmorhea Lease to COG Operating for "oil, gas, and other hydrocarbons"



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Paid-Up

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 29th day of July 2010, between BALMORHEA RANCHES, INC., a Texas corporation, as Lessor (whether one or more), whose address is: 8708 Savannah Ave., Lubbock, Texas 79424, and JAJ OIL & GAS PROPERTIES, INC., whose address is P.O. Box 302, Midland, Texas 79702, as Lessee,

WITNESSETH:

1. Lessor, in consideration of Ten and 00/100 Dollars ($10.00), in hand paid, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby grants, leases and lets exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas, and other hydrocarbons, conducting exploration, geologic and geophysical surveys by seismograph, core test, gravity and magnetic methods, injecting gas, water and other fluids, and air into subsurface strata, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon, to produce, save, take care of, treat, transport and own said products, the following described land in Reeves County, Texas, to-wit:

*** See Exhibit "A" attached for legal description**

*** See Exhibit "B" attached for additional provisions**

For the purposes of determining the amount of any payment hereunder, the number of acres covered by this lease shall be deemed to be 11,356.00 acres, whether actually more or less.

2. Subject to the other provisions of this lease shall be for a term of Three (3) years (called "primary term"), and as long thereafter as oil, gas or other hydrocarbons are produced from said land.

3. As royalty, Lessee covenants and agrees:

(a) To deliver to the credit of Lessor, free of cost in the pipelines to which lessee may connect its wells, the equal 1/5th part of all oil and other liquid hydrocarbons produced and saved by Lessee from said land, or from time to time, at the option of Lessor, to pay Lessor the market price prevailing for the field where produced on the date of purchase of such 1/5th part of such oil at the wells as of the day it is run to the pipe line or storage tanks, but in no event less than the specified portion of the price received by Lessee for its share of such oil and other liquid hydrocarbons;

(b) To pay Lessor for gas (including casinghead gas and any other gaseous substances) produced from said land and sold or used off said land or in the manufacture of gasoline or other products therefrom 1/5th of the market value at the well of the gas sold or used, provided that on gas sold at the well to a third party which is in no way related to or affiliated with Lessee the royalty shall be 1/5th of the amount realized from such sale. If Lessee receives additional consideration for the sale, commitment, or dedication of gas or gas reserves from said lands such as advance payments, payments under take-or-pay clauses or other similar arrangements, Lessee, at the option of Lessor, shall pay to Lessor, as royalty, 1/5th of such consideration, as and when received and subject to a proportionate part of all requirements for refund that may be imposed upon Lessee under such arrangements. Gas attributable to said land may be sold, exchanged, or otherwise disposed of for delivery to or use by a third party which is related to or affiliated with Lessee, its successors and assigns, only with the prior written consent of Lessor, Notwithstanding the foregoing or any other provisions of this lease to the contrary, Lessor reserves unto itself, its successors and assigns, at its sole risk and expense, the continuing right at any time and from time to time as long as this lease is in effect to take, or have delivered to its purchaser, its share of royalty gas in kind by giving Lessee sixty (60) days' written notice. If Lessor exercises this right to take in kind, such gas shall be delivered at a convenient point near the wellhead or the connecting pipeline, at which point such gas shall be metered through a meter furnished by Lessor and approved by Lessee, with Lessor to bear the costs of any facilities required in order for it to take its royalty share of gas in kind hereunder.

If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land capable of producing oil or gas, and all such wells are shut-in for a period of ninety (90) consecutive days for want of an available market, and during such time there are no operations on said land, then such wells shall be considered wells producing gas in paying quantities for all purposes of this lease if, on or before expiration of such ninety day period (and annually thereafter as hereinafter provided) Lessee shall pay or tender in accordance with the provisions of this paragraph, by check or draft of Lessee, as royalty, a sum equal to one dollar ($1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the and of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Notwithstanding the foregoing, in no event shall Lessee

have the right to extend this lease by payment of shut-in royalties for a duration in excess of two consecutive years. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the Pay direct to Lessor at the above address Bank at _____ or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownership's thereof, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release this lease as provided in paragraph 4 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owners of this lease, severally as to acreage owned by each. If production is being sold by Lessee from another well or wells on the leased premises, no shut-in royalty shall be due until the end of the 90 day period next following cessation of such operations or production.

(c) If not paid within sixty (60) days following the month of production in the case of oil or ninety (90) days following the month of production in the case of gas, all royalty payments prescribed herein shall bear interest at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate lawfully chargeable under applicable law for monetary obligations of this kind. Notwithstanding the foregoing, Lessor shall have up to one hundred twenty (120) days following the month of initial production under this lease in which to commence royalty disbursements hereunder without being in breach hereof, but shall thereafter pay royalties within the time periods set forth immediately above.

4. If at the expiration of the primary term, oil, gas, or other hydrocarbons are not being produced on said land, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a well which is either a dry hole or not capable of producing in paying quantities thereon within 90 days prior to the end of the primary term, the lease shall remain in force so long as operations on said well or for drilling or reworking of any additional well are prosecuted with no cessation of more than 90 consecutive days, and if they result in the production of oil, gas or other hydrocarbons, so long thereafter as oil, gas, or other hydrocarbons is produced from said land. If, after the expiration of the primary term of this lease and after oil, gas, or other hydrocarbons is produced from said land, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences operations for drilling or reworking within 90 days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than 90 consecutive days, and if they result in the production of oil, gas, or other hydrocarbons, so long thereafter as oil, gas, or other mineral is produced from said land. Lessee agrees to drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances or, alternatively, at Lessee's option, to release the producing interval in all acreage covered hereby that is being drained by the applicable well or wells within ninety (90) days following written request for drilling or release by Lessor. Lessee may at any time execute and deliver to Lessor or place of record a release or releases covering any portion or portions of the above described premises and thereby surrender this lease as to such portion or portions and be relieved of an subsequently accruing obligations as to the acreage surrendered.

5. Lessee may not assign this lease, in whole or in part, without the written consent of Lessor, which consent shall not be unreasonably withheld or delayed. The provisions hereof shall extend to the heirs, successors and permitted assigns of the parties; but no change or division in ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee; and no change or division in such ownership shall be binding on Lessee until forty-five (45) days after Lessee shall have been furnished by registered or certified U. S. Mail at Lessee's principal place of business, with a certified copy of recorded instrument or instruments evidencing same. In the event of an authorized assignment hereof in whole or in part, liability for breach of any obligation hereunder shall rest exclusively upon the owner of this lease or of a portion thereof who commits such breach.

6. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this lease nor cause a termination or reversion of the estate created hereby nor be grounds for cancellation hereof in whole or in part. Lessee shall develop the acreage covered hereby as a reasonably prudent operator. If after expiration of the primary term, Lessor considers that operations are not at any time being conducted in compliance with this lease, Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach hereof, and Lessee, if in default, shall have ninety days after receipt of such notice in which to commence the compliance with the obligations imposed by virtue of this instrument before such breach may constitute a basis for termination of the rights granted hereunder. No litigation shall be initiated by Lessor with respect to any breach or default by Lessee hereunder for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default, within such period. In the event the matter is litigated and there is a final Judicial determination that a breach or default has occurred, this lease shall not be forfeited or canceled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

7. Lessor agrees to warrant and defend title to its interest in the premises covered hereby by, through, and under Lessor only. Lessor agrees that Lessee at its option may discharge any tax, mortgage or other lien upon Lessor's interest in said land either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with the right to enforce same and apply royalties accruing hereunder toward satisfying same. It is further agreed that if this lease covers a lesser interest in the oil, gas, or other hydrocarbons in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, and other monies accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as Lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

8. Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or from producing any oil, gas or other hydrocarbons therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, or by Federal or state law or any order, rule or regulation of governmental authority, or any other matter not reasonably within the control of Lessee, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the leased premises.

9. In exploring for, developing, producing and marketing oil, gas and other substances covered hereby on the leased premises, in primary and/or enhanced recovery, Lessee shall have the right of ingress and egress along with the right to conduct such operations on the leased premises as may be reasonably necessary for such purposes, including but not limited to geophysical operations, the drilling of wells, and the construction and use of roads; canals, pipelines, tanks, water wells, disposal wells, injection wells, pits, electric and telephone lines, power stations, and other facilities reasonably deemed necessary by Lessee to discover, produce, store, treat and/or transport production. In exploring, developing, producing or marketing from the leased premises, the ancillary rights granted herein shall apply to the entire leased premises described in Paragraph 1 above, notwithstanding any partial release or other partial termination of this lease.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:

BALMORHEA RANCHES, INC.

Dudley K. Montgomery, President

LESSEE:

JAJ OIL & GAS PROPERTIES, INC.

James H. Essman

James H. Essman, President

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF Lubbock

This instrument was acknowledged before me on the 29 day of July 2010, by Dudley K Montgomery, President of Balmorhea Ranches, Inc. a Texas corporation on behalf of said corporation.

Notary Public State of TEXAS

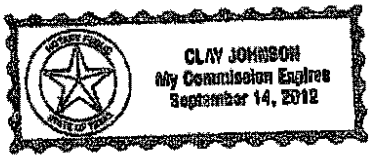
CLAY JOHNSON
My Commission Expires
September 14, 2012

Balmorhea 735

STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 29 day of July 2010, by James H. Essman, President of JAJ Oil & Gas Properties, Inc., a Texas corporation, on behalf of said corporation.



Clay Johnson
Notary Public, State of TEXAS

Exhibit "A"

Attached to and made a part of that certain Oil, Gas and Mineral Lease dated July 29, 2010, by and between Balmorhea Ranches, Inc., as Lessor and JAJ Oil & Gas Properties, Inc., as Lessee covering 11,356.00 acres, more or less in Reeves County, Texas

Block 1, H&TC Ry. Co. Survey		Acres
Section 93:	All	544.70
Section 94:	All	544.20
Section 106:	All	640.00
Section 107:	All	640.00
Section 108:	All	644.61
Section 134:	All	640.00
Section 135:	All	640.00
Section 136:	NW/4	160.81
Section 146:	All	640.00
Section 147:	All	640.00
Section 148:	All	643.12
Section 173:	All	640.00
Section 174:	All	641.36
Section 175:	All	640.00
Section 176:	All	641.59
Section 133:	All	640.00
Section 131:	All	311.35
Section 132:	All	315.14
Section 172:	E/2	321.81
Section 149:	All	516.80
J. B. Gibson Survey, SF 7900, A-2159		
Section 49:	All	310.51
Total		11,356.00

EXHIBIT "B"

Attached to and made a part of that certain Oil and Gas Lease dated as of July 29, 2010, by and between Balmorhea Ranches, Inc., as Lessor and JAJ Oil & Gas Properties, Inc., as Lessee covering 11,356.00 acres, more or less, in Reeves County, Texas

10. Any provisions of this lease to the contrary notwithstanding, this lease covers only oil, gas, and other hydrocarbons and shall not cover, or be deemed to cover, any minerals other than oil, gas, and other hydrocarbon substances.

11. Any provisions of this lease to the contrary notwithstanding, in no event shall the royalty interest of Lessor ever be required to bear or pay any costs of processing, dehydration, compression, transportation, or other matter necessary to market oil, gas, and other hydrocarbons produced from said land.

12. Lessee shall provide written notice to Lessor in advance of Lessee's entry upon the leased premises to drill. Lessee shall provide the following to Lessor promptly upon written request therefor by Lessee: (a) copies of any proprietary seismic data of Lessor with respect to the leased premises, (b) copies of all title opinions covering the leased premises, (c) copies of all filings made by Lessee with the Railroad Commission of Texas pertinent to the drilling, completion, and operation of wells on the leased premises, (d) copies of all daily drilling reports, (e) full information as to the production and sales from wells on the leased premises, (f) copies of all gas contracts and any other agreements pursuant to which Lessee shall sell, use, transfer, or dispose of any hydrocarbon substance or product extracted therefrom that was produced from the leased premises. Lessor shall additionally have the right to inspect, audit and copy all records of Lessee pertaining to the production and sale of oil and gas from the Lease Premises and the calculation and payment of Lessor's royalty hereunder. Pending termination or release of this lease as to applicable acreage, Lessor shall keep and hold the information in items (a)-(d) confidential and not disclose the same to third parties without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

13. Lessee agrees by the acceptance and recording of this lease, to comply, to the best of its ability, with all environmental, safety and health rules, laws and regulations applicable to its operations upon the above-described property, and the Lessee covenants and agrees that it will indemnify, defend, and hold the Lessor harmless from any claims or damages resulting from any violations by the Lessee of any of the above laws, regulations or provisions.

14. If Lessee is at the expiration of the primary term engaged in actual drilling operations, this lease shall remain in full force and effect as to all lands covered hereby for so long as such operations continue to completion or abandonment and for so long thereafter as continuous development is conducted, being defined as no more than 180 days elapsing between the completion or abandonment of one well and the commencement of actual drilling operations of another well; or if at the expiration of the primary term, Lessee is not conducting actual drilling operations, but Lessee has completed a well on the leased premises prior to the expiration of the primary term which is capable of producing oil and/or gas in paying quantities, this lease shall remain in full force and effect for so long as actual drilling operations on an additional well are commenced within 180 days following the expiration of the primary term, and this lease shall continue in force for so long thereafter as continuous development is conducted, being defined as no more than 180 days elapsing between completion or abandonment of one well and the commencement of actual drilling on the next succeeding well. Should Lessee fail to begin the continuous drilling program or subsequently default in the performance thereof; then in either event, this lease shall terminate as to all lands covered hereby, save and except rights down to 100 feet below the deepest producing formation in the proration unit surrounding each well then producing or capable of producing in paying quantities or upon which operations are being conducted. As used in this paragraph: i) the term "commission" means the Railroad Commission of the State of Texas or any successor agency, ii) the term "proration unit" means any acreage designated as a drilling unit or production unit in accordance with the rules of the commission (or any other governmental authority having jurisdiction), provided that in the absence of field rules for the applicable acreage, proration unit shall be deemed to encompass 40 acres in the form of a square for an oil well, 160 acres in the form of a square for a horizontal oil well, and 320 acres in the form of a square for a gas well. iii) the terms "commenced" and "commencement" mean the date when a well is spudded, and iv) the terms "completed" and "completion" mean the date the initial potential test report is filed with the commission, if a productive well, or the date the plugging report is filed with the commission, if a dry hole. If the commission shall at any time modify any applicable field rules to prescribe or permit a lesser amount of acreage to be included within a proration unit than originally allocated to any well hereunder, this lease shall automatically terminate as to the excess acreage formerly allocated to the applicable proration unit, unless within 90 days following adoption of such modification, Lessee shall commence actual drilling operations on such excess land and thereafter pursue such operations with diligence and dispatch until production in paying quantities is established therefrom. Notwithstanding the partial termination of this lease, Lessee shall continue to have the rights of ingress and egress across all of the leased premises to and from lands that remain subject to this lease, for the purposes described in paragraph 1 hereof, together with easements and rights of way for roads, pipelines, flowlines and other facilities on or across all of the leased premises for the exploration, development, production, gathering or transportation of oil, gas and other products from the lands still subject to this lease, subject in all respects to the Surface Use Agreement. The sole liability or penalty for the failure of Lessee to drill any well or wells required or permitted by the foregoing continuous development provisions of this lease shall be the termination or partial termination of Lessee's rights under the lease as provided above.

15. Lessee is hereby given the option to extend the primary term of this lease, as to all or any portion of the lands covered hereby, for an additional two (2) years from the expiration of the original primary term hereof. This option may be exercised by Lessee at any time during the original primary term by paying the sum of Two Hundred Fifty and No/100's Dollars ($250.00) per acre to Lessor or to the credit of Lessor in any depository named in this lease, (which depository and its successors are Lessor's agents and shall continue as the depository regardless of changes in ownership of said land). Payment to exercise the option to extend the primary term of this lease shall be based upon the number of acres then covered by this lease which are not at such time being maintained by any other provision hereof, only insofar as to the lands upon which Lessee exercises this option. Such payment may be made by the check or draft of Lessee mailed or delivered to Lessor or to said depository at any time during the original primary term hereof. If such depository (or any successor thereto) should fail, liquidate or be succeeded by another entity, or for any reason fail or refuse to accept payment, Lessee shall not be held in default for failure to make such payment until thirty (30) days after Lessor's delivery to Lessee of a proper recordable instrument naming another bank as agent to receive such payment. If, at the time such payment is made, various parties are entitled to specific amounts according to Lessee's records, this payment may be divided between said parties and paid in the same proportion. Should this option be exercised as herein provided, it shall be considered for all purposes as though this lease originally provided for a primary term of five (5) years. In the event this lease is being maintained by any other provision hereof at or after the expiration of the original primary term but within five (5) years from the date hereof, Lessee shall have a period of sixty (60) days from the date this lease ceases to be so maintained within which to exercise this option to extend the primary term.

Tab G:
Produced Water Lease Agreement (PWLA) —Collier

PRODUCED WATER LEASE AGREEMENT

This Produced Water Lease Agreement (the "Lease" or "Agreement"), is made effective as of February 1st, 2019 (the "Effective Date"), by and between COLLIER ENTERPRISES, INC., a Texas corporation whose address is set forth below ("Surface Owner"), and CACTUS WATER SERVICES, LLC, a Texas Limited Liability Company, whose address is set forth below ("Cactus"). Surface Owner and Cactus are sometimes referred to as a "Party" and collectively the "Parties".

RECITATIONS

Surface Owner is the owner of the surface of the Subject Property (as defined below).

Subject to existing oil, gas and mineral leases on the Subject Property, Surface Owner desires to lease exclusively to Cactus, and Cactus desires to lease from Surface Owner, the rights to all water contained in, and produced from, formations that are considered oil and gas objectives in the Permian Basin underlying the Subject Property as well as certain rights related thereto for purpose of Cactus capturing, owning, storing, treating, transporting, selling, delivering, disposing of, recycling, reusing, and marketing water from oil and gas producing formations and flowback water (collectively, "Water") produced from oil and gas operations on the Subject Property, on the terms and conditions described herein. This Lease shall be non-exclusive in terms of possession of the Subject Property, but exclusive as to the rights set forth in Paragraph 2 (a-c) below (to the extent, and only to the extent, such exclusivity does not contradict any existing oil, gas, and mineral leases).

NOW, THEREFORE, in consideration of the respective covenants and agreements to be kept and performed by the parties hereto, as herein set forth, and other valuable consideration passing between the parties, it is agreed as follows:

1. **Definitions**

a. "Cactus Equipment and Facilities" means the casing, pipe, valves, tanks, meters, pumps, generators, electric distribution lines, transformers and other electrical equipment, and all other equipment, personal property, fixtures and facilities, located, constructed and/or intended for use, by Cactus in testing, capturing, storing, treating, transporting, delivering and marketing the Water (defined below), or which is otherwise used or useful in connection with the exercise by Cactus of the Water Rights (defined below).

b. "Subject Property" means that certain real property situated in Reeves County, Texas, more particularly described on Exhibit A attached hereto and made a part hereof.

c. "Water" means any and all water contained in and produced from geologic formations under the Subject Property through any wellbores drilled for the production of oil, gas, and natural gas liquids (collectively, "hydrocarbons"), whether economically productive or not, regardless of salinity. "Water" excludes all water originating from shallow geological intervals that do not and have never produced oil, other hydrocarbon liquids, and/or natural gas anywhere in the Permian Basin. "Water" also excludes water purposely and directly produced from the Ogallala, Pecos Valley Alluvium, Edwards Trinity, Dockum Aquifers or

any other freshwater aquifers.

d. "Water Rights" means:

i. except as expressly provided to the contrary in this Lease, all right, title and interest in and to the Water;

ii. the exclusive right to own *in* situ and after severance from the formation, store, treat, transport, dispose of, market and sell all Water produced from any oil and gas wellbores and all hydrocarbon-bearing formations on or under the Subject Property;

iii. the exclusive right to test, capture, store, treat, transport, market and use Water produced from such wellbores;

iv. the right to use, construct, maintain, repair, refurbish and/or replace any Cactus Equipment and Facilities associated therewith, for testing, developing, producing, withdrawing, capturing, storing, treating, transporting, using and/or marketing the Water; and

v. all transferable right, title to, and interest in the Water and to permits, licenses, or other governmental authorizations relating to the production, transportation, sale and/or marketing of the Water.

2. **Grant.** For good and valuable consideration received and the benefits to be derived by the parties from entering into this Lease, Surface Owner hereby LEASES, LETS AND DEMISES exclusively unto Cactus for the term of this Lease the Water on and underlying the entire Subject Property for the purposes of exercising ownership rights over such Water, as well as capturing, owning, storing, treating, transporting, delivering, marketing, recycling, reusing, disposing of, and/or selling Water produced therefrom, subject to the terms and provisions set forth below. Cactus shall have, and is hereby granted pursuant to the terms of this Lease, the rights to:

a. capture, own *in* situ, store, treat, transport, deliver recycle, reuse, dispose of, and market all the Water produced from oil and gas wells and formations on or under the Subject Property;

b. upon the prior written consent of Surface Owner produce Water from (i) any abandoned, temporarily or otherwise, or shut-in oil and/or gas well or wells currently or hereafter located on the Subject Property, which may be converted by Cactus to a well for such purposes, (ii) any well or wells drilled by Cactus on the Subject Property to any depth thereunder, and (iii) any well or wells owned by Surface Owner and located on the Subject Property that Surface Owner expressly allows Cactus to use for such purposes; and

c. reasonably use that certain portion of the Subject Property, subject to the Surface Use Agreement attached as Exhibit B hereto and incorporated herein for all purposes for (i) the sale and marketing of Water produced from the Subject Property, (ii) the storage, treatment, recycling, disposal, and handling of the Water, and (iii) the transportation of all such Water on to and elsewhere over,

through and across those certain portions of the Subject Property; including, in all such matters set forth or otherwise contemplated in this Lease, the construction, installation, maintenance, repair and replacement of all pumps, engines, tanks, pits, meters, valves, pipelines and other facilities, as well as the right of ingress and egress on to and over, through and across the Subject Property via only approved access points and roads.

3. **Subsurface Easement**. Surface Owner also hereby grants unto Cactus, its successors and assigns, for the benefit of Cactus, its successors and assigns, and their respective lessees, employees, agents, contractors, licensees, and invitees, an exclusive subsurface easement to inject the Water under the Subject Property in accordance with all applicable laws and regulations. Such injection may occur into and through any existing well bore that is re-completed for such purposes, as well as through any well bore which may be drilled by Cactus with the written consent of Surface Owner, for the purposes of injecting water into such well bores. The subsurface easement also includes the right to store the water in subsurface formations and confers the right and obligation to legally defend actual and potential subsurface storage spaces against intrusion from saltwater and other fluids injected by third parties for any purpose other than hydraulic fracturing completions of oil and gas wells.

4. **Prioritization of Produced Water Disposal on Surface Owner's Tract**. To the maximum extent allowed by available infrastructure and injection capacity, Cactus shall utilize saltwater disposal wells located on the Subject Property to dispose of Water emanating from oil and gas wells on the Subject Property that cannot be treated and re-sold as recycled water.

    a. As an example, but not a limitation, if the available Water volume from oil and gas wells on the Subject Property was 50,000 barrels per day and Cactus operated two disposal wells on the Subject Property that each offered 20,000 barrels per day of operable disposal capacity, Cactus would be required to dispose of 40,000 barrels per day of said Water in the disposal wells located on the Subject Property.

5. **Surface Owner Consent for Importation of Produced Water for Disposal.** In the event Cactus wishes to import off-tract produced water for injection disposal, it shall only do so after receipt of the written consent of Surface Owner, which consent shall not be unreasonably withheld. Cactus shall have the right to import produced water for the purpose of recycling and re-sale and Surface Owner shall be entitled to the royalties from the sale of such recycled water as described in Section 10 of this Agreement.

6. **Term**. Unless sooner terminated under another provision hereof, this Lease shall continue in force for a period of three (3) years (the "Primary Term"). This Lease shall continue in full force and effect after the Primary Term as to the entire Subject Property after Commercial Sales of water and/or Construction of Water-Related Infrastructure have begun and shall continue in full force and effect up until the point at which 180 days have passed since the last payment of Royalty equalling Commercial Sales under the Lease. The 180-day period shall be tolled for any Force Majeure events. To preserve the Lease in the event that water monetization and/or infrastructure construction are interrupted for more than 180 days by events other than those qualifying as Force

Majuere events, Cactus shall have the option to pay Surface Owner [redacted] ($[redacted]) dollars every [redacted] ([redacted]) months until qualifying commercial activity resumes or the lease will terminate immediately upon the expiration of any such [redacted] ([redacted]) month period.

a. "Commercial Sales" of water is defined as the generation of water-related revenues amounting to at least $[redacted] in Royalty per calendar quarter on or from the Subject Property.

b. "Water-Related Infrastructure" shall include, but is not limited to, ponds, pits, and other catchment facilities, saltwater disposal wells, pipelines, and treatment equipment.

c. "Construction" is defined as the process of physically emplacing water infrastructure and/or actively seeking to secure the permits and any other regulatory approvals and/or Surface Owner consent required to build such infrastructure.

7. **Royalty; Metering; Record Keeping.**

a. Subject to the other terms and conditions herein, Surface Owner shall be paid a royalty by Cactus in the following amount:

i. **Salt Water Disposal Wells.** Surface Owner shall be entitled to [redacted] cents ($0.[redacted]) per barrel of water injected into saltwater disposal wells located on the Subject Property.

ii. **Other Water-Related Activities.** Surface Owner shall be entitled to an amount equal to [redacted] ([redacted]) of the gross revenues generated by all other water-related business activities on the Subject Property, including, but not limited to, the sale of hydrocarbons ("skim oil") captured from inbound water streams handled by Cactus or its contractors and any sale of Water or amounts received for handling, recycling, or transferring any Water, recycled or otherwise (the "Royalty") free of any marketing, processing, tranportation, or any other cost or expense, such cost and expense to be borne solely by Cactus. Cactus will be solely responsible for all of the costs associated with the Cactus Equipment and Facilities during the term of the Lease. Royalty payments shall be made to Surface Owner on a monthly basis not later than end of the second month following the earlier month during which either (i) the Water is delivered to a purchaser by Cactus, or (ii) consideration for which Royalty is owed is received by Cactus. Notwithstanding anything herein to the contrary, Surface Owner agrees and acknowledges that Cactus may use Water produced under this Lease for Cactus' operations. No Royalty shall be owed to Surface Owner for Water volumes from the Subject Property which is used by Cactus in Cactus' operations or which must be sent off-tract on a temporary basis for disposal due to infrastructure repairs or other scheduled and unscheduled operational upsets. Surface Owner shall bear no cost of any disposal of Water whether located on or off of the Subject Property.

b. **Metering.** Cactus will install, maintain and operate one or more meters for the measurement of Water produced from the Subject Property and will calibrate the meters at least once quarterly. Cactus will take monthly meter readings of the volume of said Water produced from the Subject Property and furnish Surface Owner a monthly statement of such Water produced and sold commercially by Cactus in any preceding calendar month.

c. **Record Keeping and Right of Audit.** At all times while this Lease remains in force, Cactus shall keep accurate records of the Water sold to any party from the Subject Property. During the term of this Lease, Surface Owner may, at Surface Owner's expense and upon seven (7) days advance written notice to Cactus, audit the records of Cactus pertaining to the production and sale of Water under this Lease. Such audit shall be conducted at Cactus' offices (at the address specified for Cactus herein or as otherwise specified by Cactus) between the hours of 10:00 a.m. and 4:00 p.m. on Cactus' normal business days. Surface Owner shall have the right to perform such an audit once per year In the event any such audit reveals that Surface Owner has been underpaid the Royalty by more than [redacted] percent ([redacted]%), Cactus shall reimburse Surface Owner within sixty (60) days for the cost of such audit. Any payments made hereunder shall be final after the lapse of 4 years from their due date, except as to matters that either Party has noted in a specific written objection to the other Party in writing during the 4-year period.

d. **Proportionate Reduction.** If Surface Owner's interest in the Water is less than the entire undivided fee simple estate or, if due to statutory limitation, this Agreement covers an interest that is less than the entire undivided fee simple Water estate of the Subject Property, then the Royalty shall be paid to Surface Owner in the proportion that Surface Owner's actual interest bears to the entire fee simple Water estate of the Subject Property.

8. **Dispensation of Asset Sale Proceeds.** In the event of a sale of the Cactus Equipment and Facilities, Cactus and Surface Owner shall be compensated as follows:

a. Cactus shall receive [redacted] ([redacted]%) of the net sale proceeds and Surface Owner shall receive [redacted] ([redacted]%) of the net sale proceeds. Thereafter, the Royalty for gross water-related revenues generated upon the Subject Property by all activities other than saltwater disposal wells shall reduce to [redacted] ([redacted]). The new Royalty rate of [redacted] shall supercede any pre-existing royalty rates. After a sale of any saltwater disposal assets on the Subject Property, Surface Owner shall maintain its saltwater disposal royalty of $0.[redacted] per barrel injected using said assets.

b. For the purposes of this section, "net sale proceeds" shall mean the funds left over after the following items are counted against a buyer's gross payment for the asset package:

i. Capital expenditures made by a party that have not yet been recouped. As an illustration but not as a limitation, if Cactus invested [redacted] in capital for a water recycling facility used by the party's entity, and such

amounts had not previously been recouped, and the combined interest sold for $[redacted] Cactus would be entitled to $[redacted] and then the parties would divide the remaining funds in accordance with the provisions of this Section 9.

ii. Professional services fees incurred by the parties. A party's professional fees will count against the proceeds which accrue to it based on its fractional interest. As an illustration but not as a limitation, if the gross asset sale proceeds were $[redacted] and one party had incurred $[redacted] in professional services related to its interest, that expenditure would count against the gross revenue it was entitled to and would not burden the other party's gross revenue amount.

iii. Surface Owner shall have the right to demand an accounting from Cactus of that Party's capital expenditures made and professional service fees incurred to effect the sale of an interest in the water asset package. Such an accounting shall be delivered in writing and Cactus shall provide a substantive response to Surface Owner's request within 10 business days of such request being made.

iv. This section applies only to the sale or assignment of assets on the Subject Property by Cactus.

c. The proceeds split ennumerated in this section applies only to sale or assignment of assets by Cactus to a bona fide independent third party that operates at arms length and is not a subsidiary or affiliate of Cactus. In the event of a corporate restructuring or other event that leads Cactus to assign assets to an affiliated party, the original terms of this Agreement shall remain in force.

9. **Pooling.** Cactus may, with Surface Owner's prior written consent, pool all the Subject Property or interests covered by this Lease with Cactus's other lands, leases, and interests. Such consent may be withheld for any reason or no reason. For the purpose of computing Surface Owner's Royalty, Surface Owner shall receive Royalty on Water emanating or produced from the Subject Property (as properly metered and documented as set forth herein) and disposal only income at the per-barrel basis set forth above for any Water disposed of in disposal wells located on the Subject Property regardless of the origination of such Water.

10. **Right of First Refusal.** Cactus shall have a right of first refusal as to the disposition of all Water from the Subject Property subject to payment of the Royalty or disposal fee, as applicable. As an example, but not a limitation, Cactus may take water "in-kind" at no charge or charge midstream service providers a royalty for Water produced from oil and gas wellbores on the Subject Property.

11. **Survival of Accrued Obligations.** The expiration or termination of this Lease for any cause shall not relieve either Surface Owner or Cactus from any accrued or continuing obligation or liability under or associated with the Lease prior to its termination, including, but not limited to, the obligation to pay Royalty or any other sum when due.

12. **Right to Terminate; Default.** If following thirty (30) days' prior written notice from Surface Owner specifying an event of default or breach of this Agreement and reasonably describing the steps required to cure such default or breach, Cactus fails to pay any money due hereunder or continues in breach of any term or condition of this Agreement, Cactus shall be in breach of this Lease, in which event Surface Owner may terminate this Lease with written notice to Cactus. With regard to any other non-monetary breach of this Lease by Cactus, Surface Owner may, along with any other remedy available at law or in equity, terminate this Lease with written notice to Cactus; provided, however, Cactus shall have a period of thirty (30) days following the receipt of such written notice to cure said breach. Notwithstanding the foregoing, if an event of default or breach of this Lease is capable of cure, but incapable of cure within such thirty (30) day period, then provided that Cactus is diligently working to cure such event of default or breach of this Lease within such thirty (30) day period and diligently pursues such cure to completion, the Lease continues in force and effect. Cactus may terminate this Lease at any time by delivery of written notice to Surface Owner, and upon such termination of this Lease pursuant to the terms of this Section 12, all obligations of the Surface Owner and Cactus under this Lease shall immediately terminate except for any accrued or continuing obligations or liabilities under or associated with the Lease prior to its termination, and any obligations or liabilities which expressly survive termination in accordance with the terms of this Lease.

13. **Force Majeure.** In the event of "Force Majeure" during the term of this Agreement, Cactus is rendered unable, wholly, or in part, to carry out its duties or obligations under this Agreement, Cactus shall give Surface Owner written notice thereof and a full description of the cause relied upon as Force Majeure within a reasonable time after the occurrence of such cause, whereupon Cactus, for the time that (and to the extent that) it is affected by Force Majeure, shall be relieved of any consequences, including any claims of default, resulting from its failure to fulfill its duties and obligations hereunder, except payment obligations, and shall not be liable in damages of any nature, during the continuance of any inability so caused, provided that no damage(s) were as a result of Cactus's negligence and provided that such cause shall so far as possible be remedied with all reasonable dispatch. "Force Majeure", for purposes of this Agreement, shall include an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, lightning, fire, storm, flood, explosion, cyberattack, governmental action or delay, producing companies' decisions to shut-in or not complete wells drilled in Cactus's area of service, scarcity of inability to obtain equipment or materials, lack of market and any other cause, whether of the kind specifically enumerated above or otherwise, which is not within the control of the party claiming suspension. If a market-driven event of the type described above manifests and Cactus is unable to generate commercial revenue for a period of more than one-hundred and eighty (180) days, it shall have the right to preserve the Agreement by means of a [redacted] dollar ($[redacted]) payment made to Surface Owner every subsequent 180 days until Commercial Water Sales can resume.

14. **Indemnity.**

    a. Cactus agrees to defend, indemnify and hold harmless Surface Owner, its partners, trustees, beneficiaries, directors, officers, employees, heirs, successors, representatives, agents and assigns (all such parties being hereafter called "Indemnitees"), from and against any and all claims, demands and causes of action arising out of operations on the Subject Property conducted under or pursuant to this Lease by Cactus, its agents, employees, guests, licensees, invitees, or independent

contractors, including, without limitation, claims for injury (including death) or damage to persons or property arising out of or resulting from such operations, and from and against all reasonable costs and expenses incurred by Indemnitees by reason of any such claim or claims, including reasonable attorneys' and expert witness' fees; and each assignee of this Lease or an interest therein, agrees to defend, indemnify and hold harmless Indemnitees in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted under or pursuant to this Lease, howsoever caused, INCLUDING BUT NOT BY WAY OF LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF INDEMNITEES OR CLAIMS BY THIRD PARTIES TO ANY WATER OR VIOLATIONS OR ACCUSATIONS OF VIOLATIONS OF OIL AND GAS LEASES RELATED TO CACTUS' OPERATIONS OR CLAIMS FOR WATER PURSUANT TO THIS LEASE. CACTUS' OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES SHALL APPLY WHETHER OR NOT INDEMNITEES MAY BE GUILTY OF ANY NEGLIGENT ACT OR OMISSION WHICH RESULTED IN OR CONTRIBUTED TO THE COST, EXPENSE OR LIABILITY AGAINST WHICH CACTUS IS OBLIGATED TO INDEMNIFY INDEMNITEES HEREUNDER, AND WHETHER OR NOT INDEMNITEES' LIABILITY IS IMPOSED BY ANY STATUTORY OR COMMON-LAW THEORY OF STRICT LIABILITY. Notwithstanding the foregoing sentence, Cactus shall have no obligation to indemnify any Indemnitee against liability arising out of the gross negligence or intentional misconduct of such Indemnitee.

b. Notwithstanding anything in this Lease to the contrary, no Indemnitee shall be entitled to recover from Cactus, or its affiliates, any special, indirect, consequential, punitive, exemplary, remote or speculative damages, including damages for lost profits of any kind arising under or in connection with this Lease or the transactions contemplated hereby, except to the extent any such Indemnitee suffers such damages (including costs of defense and reasonable attorneys' fees incurred in connection with defending such damages) to a third party, which damages (including costs of defense and reasonable attorneys' fees incurred in connection with defending against such damages) shall not be excluded by this provision as to recovery hereunder. Subject to the preceding sentence, Surface Owner, on behalf of each of the Indemnitees, waives any right to recover any special, indirect, consequential, punitive, exemplary, remote or speculative damages, including damages for lost profits of any kind, arising in connection with or with respect to this Lease or the transactions contemplated hereby.

15. **Environmental Provisions**.

a. During the term hereof, Cactus shall, at Cactus's sole expense: (i) comply in all material respects with all applicable Environmental Requirements (hereafter defined) relating to the Subject Property and the use of the Subject Property by Cactus, and (ii) promptly following the discovery by Cactus, deliver to Surface Owner notice of any event that would render any representation or warranty contained herein incorrect in any respect if made at the time

of such discovery. Cactus shall indemnify, defend, save and hold harmless Surface Owner from and against any and all losses, liabilities, damages, costs and expenses suffered or incurred by Surface Owner as a result of: (i) the occurrence of any Environmental Activity or any failure of Cactus to comply in all material respects with all applicable Environmental Requirements relating to the use of the Subject Property by Cactus and Cactus' operations: and/or (ii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency or any other regulatory body which has resulted or is alleged to have resulted directly from any Environmental Activity relating to the use of the Subject Property by Cactus or Cactus' operations during the term hereof. Notwithstanding anything herein to the contrary, Cactus shall not indemnify Surface Owner for (i) any Environmental Activity which occurred solely prior to Cactus taking possession of the Subject Property pursuant to this Lease; (ii) any prior failure of either Surface Owner or any other party to comply with all applicable Environmental Requirements prior to Cactus taking possession of the Subject Property pursuant to this Lease, and (iii) any Environmental Activity which occurs after Cactus takes possession of the Subject Property, but is due solely to either Surface Owner's or its agent's, employee's, invitee's or licensee's presence or activities on the Subject Property. The indemnity contained in this provision shall survive the expiration or earlier termination of this Lease. Cactus shall, at its sole expense, take all necessary remedial action required to adequately respond to the presence of Hazardous Substances on or under the Subject Property for which it is responsible hereunder.

b. For the purposes of this Lease "Environmental Activity" means any surface or subsurface, actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling, or transportation of any Hazardous Substance from, under, into or on the Subject Property or otherwise relating to the Subject Property or the use of the Subject Property. "Environmental Requirements" means all present and future federal, state and local laws and ordinances (including CERCLA and other applicable provisions of the Code and rules and regulations promulgated thereunder), rules, regulations, authorizations, judgments, degrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any Hazardous Substance or Environmental Activity. "Hazardous Substance" means (i) asbestos, polychlorinated biphenyls, urea formaldehyde, lead based paint, radon gas, petroleum, oil, solid waste, pollutants and contaminants and (ii) any chemicals, materials, wastes or substances that are defined, regulated, determined or identified as toxic or hazardous in any Environmental Requirement.

c. CACTUS HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT CACTUS HAS OR WILL HAVE, PRIOR TO BEGINNING OPERATIONS ON THE SUBJECT PROPERTY PURSUANT TO THIS LEASE, THOROUGHLY INSPECTED AND EXAMINED THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY TO THE EXTENT DEEMED NECESSARY BY CACTUS IN ORDER TO ENABLE CACTUS TO EVALUATE THE ENVIRONMENTAL CONDITION OF THE SUBJECT PROPERTY. CACTUS HEREBY ACKNOWLEDGES AND AGREES THAT CACTUS IS RELYING SOLELY UPON SUCH INSPECTIONS, EXAMINATIONS AND EVALUATIONS OF THE SUBJECT PROPERTY BY CACTUS AND THAT CACTUS IS LEASING THE SUBJECT PROPERTY ON AN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" BASIS. SURFACE OWNER HEREBY SPECIFICALLY

DISCLAIMS ANY KNOWLEDGE OF COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS PRIOR TO THE EFFECTIVE DATE HEREOF OR OF ANY ENVIRONMENTAL ACTIVITY WHICH MAY AFFECT SUCH COMPLIANCE.

16. **Insurance.** Cactus shall obtain and maintain, and cause each of its contractors and subcontractors to obtain and maintain, the following insurance coverage during the term of this Agreement:

    a. A comprehensive commercial general liability insurance ("CGLI") policy satisfactory to Surface Owner in form and substance, issued by an "A-" or higher rated carrier authorized to sell insurance in Texas, and having limits of not less than $1,000,000.00 per occurrence and not less than $10,000,000.00 in the aggregate;

    b. Automobile liability insurance ("ALI") for owned and non-owned automobiles with coverage of a combined single limit of $1,000,000.00; and

    c. Worker's compensation employer's liability coverage of $1,000,000.00.

    d. Such CGLI and ALI policies shall: 1) contain an endorsement naming Surface Owner as an additional insured, 2) be endorsed to waive subrogation against Surface Owner, and 3) provide for notice to Surface Owner prior to any cancellation or modification. Specifically, the CGLI and ALI policies shall be endorsed to name Surface Owner as an additional insured, but only to the extent caused in whole or in part by a negligent act, error, or omission or willful misconduct of Cactus, its employees, agents and contractors.

    e. Cactus shall procure and maintain all such insurance on a primary, non-contributory basis. Within 7 days after execution of this Agreement and thereafter upon written request from Surface Owner, Cactus shall furnish to Surface Owner a certificate and all required endorsements evidencing such coverage.

17. **No Liens.** Cactus has no authority to cause or permit any lien or encumbrance of any kind to affect Surface Owner's interest in the Subject Property. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Cactus, then Cactus shall at its expense within 20 days thereafter either discharge or contest the lien or claim. If Cactus contests the lien or claim, then Cactus shall (i) within such 20 day period, provide Surface Owner adequate security for the lien or claim by bonding in accordance with the Texas Property Code, (ii) contest the lien or claim in good faith by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Cactus does not comply with these requirements, Surface Owner may upon prior written notice to Cactus discharge the lien or claim, and the amount paid, as well as attorney's fees and other expenses incurred by Surface Owner, shall be due to Surface Owner by Cactus on demand.

18. **Miscellaneous Provisions.**

    a. **Notices.** Any notice required by or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown for such recipient below. Notice

may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means, including, but not limited to, e-mail, which will be effective when actually received.

Surface Owner's Contact Information:

To Surface Owner:	Collier Enterprises, Inc. Attn: Drue Stanford P.O. Box 9025 Verhalen, Texas 79772 pecosstanfordranch@yahoo.com
With a copy to:	Brittany Stanford brittanymstanford@gmail.com

Cactus' Contact Information:

Mailing Address:
Cactus Water Services, LLC

Attn: Brice Ferguson
Email Address: bferguson@gtvrd.com

b. **Amendment.** This Lease may be amended only by an instrument in writing signed by each of the parties hereto.

c. **Covenants Run with the Land.** The terms and provisions of this Lease shall run with the Subject Property.

d. **No Warranty.** This Lease is granted by Surface Owner without any warranties – express, implied or arising under statute -- of any kind or character, including, without limitation, any warranty of title, suitability or fitness.

e. **Compliance with Laws.** At all times while this Lease is in force, Cactus will fully comply with all applicable laws, statutes, rules, regulations, ordinances, permits, licenses and orders.

f. **Waiver of Default.** Except as expressly provided in this Lease to the contrary, a party's failure to give any notice, take any action or otherwise enforce its rights under this Lease with respect to the default or breach of this Lease by the other party shall not constitute a waiver or estoppel of such rights.

g. **Severability.** If a provision of this Lease is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if the unenforceable provision were not apart of

the Lease.

h. **Assignability.** The rights of either party under this Agreement may be assigned in whole or in part, by surface area and/or by depth or formation, and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns of the respective parties to any party who agrees in writing to assume and perform the obligations of such assigning Party under the Lease from and after the effective date of any such assignment. Cactus shall notify Surface Owner regarding any proposed assignments prior to any assignment being entered into or becoming effective. Notwithstanding any assignment of this Lease, such assigning Party shall remain responsible for all obligations under the Lease arising before, or attributable to periods before the effective date of any such assignment.

i. **No Guarantee of Sales or Water.** Cactus will use its best efforts to sell Water produced from the Subject Property, but Cactus shall not be liable to Surface Owner under this Lease or otherwise for any failure to sell any such Water. Surface Owner acknowledges and agrees that Cactus has made no warranties, guarantees or representations to Surface Owner, express or implied, regarding the amount of Water that will be sold pursuant to this Lease, and Cactus hereby expressly disclaims any and all such warranties. Cactus acknowledges and agrees that Surface Owner has made no warranties, guarantees or representations to Cactus, express or implied, regarding any third parties agreeing to provide and/or sell Water to Cactus. Surface Owner specifically disclaims any liability associated with Cactus' ability to receive or purchase Water from any third party.

j. **Recording.** Surface Owner and Cactus agree to execute a Memorandum of Lease giving notice of the existence of this Lease, a description of the Subject Property, the Term, a general description of the rights granted to Cactus herein, and other provisions, to be recorded in the county where the Subject Property is located. This Lease shall not be recorded in the county property records. Upon the expiration or earlier termination of this Lease, Cactus agrees to promptly execute and deliver to Surface Owner a recordable release of the Memorandum of Lease.

k. **Mutual Non-Disclosure Obligations.** Cactus and Surface Owner shall both hold commercial details of this Agreement strictly confidential and neither Party shall disclose such information without the written consent of the other Party. "Commercial details" includes any and all information petaining to pricing, royalty rates, division of sale proceeds, and other such commercially sensitive data. Notwithstanding the foregoing, a Party may share commercial details with (a) specified employees who require access to and have a bona fide need for such information to enable them to carry out the purpose of this Agreement and who have been made aware of and instructed to observe the terms of this Agreement, (b) to its advisors, contractors, consultants and representatives who require access to and have a bona fide need for such information to enable them to carry out the purpose of this Agreement, who have been notified as to the existence of this Agreement and who have agreed in writing to observe the terms of this Agreement, and (c) as may be required by law, judicial order or decree.

i. **Rights Upon Breach.** The Parties agree that in the event of any breach or threatened breach by the other Party of any of the non-disclosure covenants set forth in this Agreement, the Disclosing Party shall have the right to apply to a court of competent jurisdiction for the entry of an immediate order to restrain or enjoin the breach of said covenants by the other Party and otherwise to specifically enforce the provisions of this Agreement. Nothing herein shall be construed as prohibiting any Party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages and all reasonable attorney's fees and costs of suit.

ii. **Waiver.** The failure or delay of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the Party against whom enforcement is sought.

iii. **Term.** These non-disclosure provisions shall commence on the Effective Date and continue for five (5) years, but in any event shall become null and void in the event of an approved assignment by Cactus to a third party.

l. **Further Cooperation.** Surface Owner expressly agrees to cooperate with Cactus as reasonably necessary to assist Cactus in securing any and all licenses and permits that may be necessary in connection with the transactions contemplated by this Lease so long as such cooperation is of no cost or expense to Surface Owner.

m. **Execution.** This Lease may be executed in multiple counterparts, each of which shall be considered an original for all purposes.

[SIGNATURE PAGES FOLLOW]

EXECUTED on the dates of acknowledgment appended hereto, but effective as of the date first written above.

SURFACE OWNER:

COLLIER ENTERPRISES, INC.,
a Texas corporation

By: Drue Stanford, President

By: Cathryn Godfrey, Vice President

CACTUS:

CACTUS WATER SERVICES, LLC,
a Texas limited liability company

By:
Name: BRICE FERGUSON
Title: MEMBER & VICE PRESIDENT

Exhibit A

Subject Property

SURFACE ESTATE ONLY of the following tracts of real property in Reeves County, Texas, according to that Warranty Deed thereof recorded in Volume 431, Page 98, of the Official Public Records of Reeves County, Texas:

1. Block 51, Tsp. 8, T&P Ry. Co. Survey:
    a. Section 40;
    b. Section 39;
    c. Section 41;
    d. Section 42;
    e. Section 33;
    f. NW/4 and S/2 of Section 34;
    g. S/2 of Section 35;
    h. Section 32;
    i. Section 31;
    j. Section 8, save and except 25 acres;
    k. Section 28;
    l. Section 18;
    m. NW/4 of Section 19;
    n. NE/4 and S/2 of Section 19;
    o. N/2 and SW/4 of Section 30;
    p. SE/4 of Section 30;
    q. NE/4 of Section 20;
    r. Section 43;
    s. Section 45;
    t. Sections 36 and 37; and
    u. Section 38

2. Block 52, Tsp. 8, T&P Ry. Co. Survey:
    a. Section 25;
    b. S/2 of Section 2;
    c. Section 13;
    d. Section 24;
    e. Section 36, save and except 310 acres;
    f. W/2 and SE/4 of Section 14;
    g. E/2 of Section 23;
    h. Section 12;
    i. E/2 of Section 1;
    j. S/2 of SW/4 of Section 1; and
    k. South part of Section 10

3. Block 50, Tsp. 8, T&P Ry. Co. Survey:

a. Sections 39, 40, 41 and 42;
b. Sections 33 and 34;
c. Section 32;
d. 24.30 acres out of Section 43;
e. Fractional Section 44, containing 21.8 acres; and
f. Section 28

4. Section 92, SF 8636, J. G. Love, Grantee.

5. Block 1, H&TC Ry. Co. Survey:
   a. Section 142;
   b. Section 186;
   c. Section 184;
   d. Section 180;
   e. Section 182, save and except 160.59 acres out of the NE/4;
   f. Section 188;
   g. Section 178;
   h. Section 141;
   i. Section 143;
   j. Section 144;
   k. Sections 185 and 187;
   l. S/2 and NE/4 of Section 183; and
   m. E/2 and SW/4 of Section 177

6. Part of Section 12, Block 7, H&GN RR. Co. Survey.

7. Section 4, Block 51, Township 10, T&P R. Co. Survey.

8. Block 13, H&GN RR. Co. Survey:
   a. Section 276, save and except 38.48 acres out of the NW/4;
   b. Section 273; and
   c. Section 274

SAVE AND EXCEPT Block 13, H&GN RR. Co. Survey, Section 209.

Exhibit B

Surface Use Agreement

This Surface Use Agreement is attached to that certain Produced Water Lease Agreement by and between Collier Enterprises, Inc. as Surface Owner and Cactus Water Services, LLC as Cactus and incorporated fully therein.

1. **Prior Consent to Infrastructure Siting and Emplacement.** Prior to commencing any infrastructure siting operations on the Subject Property, Cactus shall seek Surface Owner's written consent for proposed operations in the manner detailed in sub-sections (a-d) below. Cactus agrees to meet with Surface Owner, if requested, to answer questions and address issues with the proposed development plan. If Surface Owner objects to any such requests, Surface Owner shall do so in writing to Cactus and shall propose commercially reasonable alternatives to any portion of the infrastructure development to which Surface Owner may object. After approval of an infrastructure route/site, Cactus' activities on the Subject Property shall be conducted in accordance therewith and Cactus shall be required to seek Surface Owner's consent to materially alter the route or location of said infrastructure. Any pipelines constructed shall be be memorialized and governed by easements on a mutually agreeable form to be recorded in the Official Public Records of Reeves County, Texas.

    a. **Pipeline and Layflat Routing.** Cactus will deliver written notice of proposed pipeline and layflat hose routes to Surface Owner in advance of construction. The notice period shall be forty five (45) days for fixed pipelines and ten (10) days for initial emplacement of a temporary layflat hose. The notice period for redeployments of an already emplaced layflat hose shall be five (5) days. During the aforesaid notice period, Surface Owner shall have the option to reject Cactus's initial proposed pipeline/layflat route and propose a commercially reasonable alternative, which Cactus will then utilize in place of its initial proposed route. If Surface Owner does not propose a commercially reasonable alternative route within the notice period of forty five (45) days for fixed pipelines and ten (10) days for initial layflat hose emplacements and five (5) days for redeployments of already emplaced layflat hoses, then it shall be deemed to have accepted Cactus's initial proposed route and Cactus shall have the right to proceed forthwith in emplacement of said pipeline/layflat.

    b. **Pits.** Cactus shall have no right to dig any pits on the Subject Property except with Surface Owner's prior written consent. Surface Owner shall issue a denial/approval in writing within thirty (30) days of receiving a pit construction request in writing from Cactus. If Surface Owner does not respond within the thirty (30) day notice period, it shall be deemed to have accepted Cactus's pit construction request.

    c. **Water Treatment/Recycling Infrastructure.** Cactus will deliver written notice of proposed water treatment infrastruture emplacements to Surface Owner in advance of construction and/or emplacement. The notice period shall be thirty (30) days from the time at which Surface Owner receives Cactus's written request.. During the aforesaid notice period, Surface Owner shall have the option to reject Cactus's initial proposed emplacement and propose a commercially reasonable alternative, which Cactus will then utilize in place of its initial proposed route. If Surface Owner does not propose a commercially reasonable alternative emplacement location within the notice period of

thirty (30) days, then it shall be deemed to have accepted Cactus's initial proposed emplacement location and Cactus shall have the right to proceed forthwith in emplacement of said treatment/recycling infrastructure. For the purposes of this Agreement, water treatment and recycling infrastructure shall include, but is not limited to, fixed and mobile treatment units utilizing various oxidizing agents that may be chosen at Cactus's sole discretion, as well as equipment for separation and recovery of hydrocarbons from water.

d. **Saltwater Disposal Wells and Associated Facilities.** Cactus shall seek Surface Owner's written consent for proposed locations upon which Cactus wishes to permit saltwater disposal wells and if the permits are approved by the relevant authorities, drill such disposal wells. The notice period shall be thirty (30) days from the time at which Surface Owner receives Cactus's written request. During the aforesaid notice period, Surface Owner shall have the option to reject Cactus's initial proposed emplacement and propose a commercially reasonable alternative, which Cactus will then utilize in place of its initial proposed route. If Surface Owner does not propose a commercially reasonable alternative emplacement location within the notice period of thirty (30) days, then it shall be deemed to have accepted Cactus's proposed permitting site and Cactus shall be allowed to proceed with permitting and subsequently, drilling and completing such as SWD and the associated surface facilities.

2. **Removal of Equipment; Restoration of Subject Property.** During the term of this Lease, Cactus shall own, maintain, have sole liability for, and bear all costs associated with the acquisition, installation, construction, location and use of the Cactus Equipment and Facilities. Within ninety (90) days following the expiration or termination of this Lease for any cause, Cactus shall remove the Cactus Equipment and Facilities from the Subject Property and restore any portion of the surface of the Subject Property affected by Cactus' operations thereon to as near the condition it was in on the Effective Date, as reasonably practical and excepting ordinary wear and tear, including, but not limited to, re-seeding the affected portions of the Subject Property with native type grasses, to be selected and sown in sowing season as designated and directed by Surface Owner. If Cactus fails to remove any of the Cactus Equipment and Facilities within said 90-day period, it shall be deemed that Cactus has abandoned such Cactus Equipment and Facilities, and title to same shall automatically vest in Surface Owner. If Surface Owner elects to remove said abandoned Cactus Equipment and Facilities after such 90-day period, then Cactus shall reimburse Surface Owner for any cost or expense related to such removal plus a management fee of 15% of such costs.

3. **Bond Requirement.** Cactus shall provide security to cover the estimated removal costs associated with the Cactus Equipment and Facilities on the Subject Property. The security shall be, at Cactus' option, either a surety bond from an issuer reasonably acceptable to Surface Owner, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to Surface Owner and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to Surface Owner, a cash deposit, or other security reasonably acceptable to Surface Owner (the selected security herein referred to as the "Removal Bond"). The amount of the Removal Bond shall be the estimated cost of (i) removing the Cactus Equipment and Facilities, net of the estimated salvage value, as estimated by a construction company selected by Cactus and reasonably acceptable to Surface Owner, and (ii) restoration of the Subject Property in accordance with this Lease. The amount of the Removal

Bond shall be updated every year after the initial estimate based on a new estimate by a construction company selected by Cactus and reasonably acceptable to Surface Owner. Once the Removal Bond is in place, Cactus shall keep the Removal Bond (or a resplacement Removal Bond) in force throughout the remaider of the Term or then current Renewal Term.

4. **Standard of Care.** All operations by or for Cactus on the Subject Property shall be conducted in such a way as not to unduly interfere with Surface Owner's or Surface Owner's tenants' operations on the premises, it being understood that the Subject Property is owned and held by Surface Owner primarily for cattle and livestock ranching and farming purposes and leased for oil, gas and mineral development. Cactus agrees that all operations hereunder will be conducted having due regard for the continued use of the Subject Property by Surface Owner and its succesors and assigns and Surface Owner's tenants. Cactus agrees to take all reasonable steps to prevent its operations from:
    a. Causing or contributing to soil erosion or to the injury of terraces or other soil conserving structures on the Subject Property;

    b. Polluting the soil of the premises or the waters of the reservoirs, springs, streams, or wells on the Subject Property or adjacent thereto;

    c. Damaging crops, grasses or other foliage or trees whether natural or improved, cultivated or not, of whatsoever nature; or

    d. Harming or injuring in any way the animals or livestock owned by Surface Owner or Surface Owner's tenants and kept or pastured on the Subject Property.

    Cactus shall at all times use reasonable care in all of Cactus' operations on the Subject Property, to prevent injury or damage to the grass, crops, cattle, livestock, buildings or other property situated thereon, or to water wells or tanks located thereon. Cactus agrees not to allow any waste oil or salt water to flow over the surface of the Subject Property, nor to allow same to drain down any draws, drains, creeks or ravines, nor allow same to contaminate any tanks, ground water or underground water thereon. Cactus may not "land farm" any contaminated soils or produced substances without Surface Owner's written consent. Cactus shall pay for any damages resulting from any contamination of the premises by salt water or waste oil or any other substance resulting from Cactus' operations, whether caused by Cactus' negligence or otherwise. The measure of such damages shall be the greater of (i) the difference between the market value of the property before and after such contamination, or (ii) the cost of remediation of such contamination. If any well, pipeline, tank or other receptacle or facility of Cactus on the Subject Property spills, leaks or discharges water, oil or other fluids, Cactus shall not permit such fluids to flow unrestrained over the Subject Property but shall contain same, preventing it securely from penetrating, seeping or flowing into any fresh water on or under the premises or into any creek, tank, reservoir or water course on the Subject Property. Cactus shall have the duty of seeing that no such fluid shall injure the surface of the Subject Property or penetrate fresh water formations beneath the surface. Any freshwater bearing stratum encountered in the drilling of any well (if applicable) will be securely cased and/or cemented off in accordance with state and/or federal regulations so that the waters therein will not be contaminated.

5. **Surface Use.**

a. **Construction and Maintenance of Roads.** Cactus agrees, to the extent practical, to utilize existing roadways over and across the Subject Property. In the event the construction of new roads becomes necessary, Cactus agrees to construct not more than one road to each location on the Subject Property, to construct such roads using all-weather caliche and in a good and workmanlike manner, and to confine all travel incident to operations to the single road to each site. Cactus shall consult with Surface Owner prior to locating any roads, so that they may be located to interfere as little as reasonably possible with Surface Owner's use of the surface estate. Cactus shall have no right to use existing roads on the Subject Property except with Surface Owner's prior written consent. Cactus agrees to maintain all roads used by Cactus in Cactus' operations on the Subject Property in good condition and repair during the period of Cactus' operations on the Subject Property. Cactus shall construct and maintain terraces across roads where necessary to prevent erosion. When any roads constructed by Cactus are no longer used by Cactus, if Cactus has constructed any character of topping, such as caliche, blacktop or otherwise, on such roads, Surface Owner shall have the right to require Cactus to remove such topping from the roads and to restore the surface of the land to substantially its former condition. If any employees, contractors, employees of Water purchasers, or others authorized to use lease roads by virtue of this Lease fail to confine their travel on the Subject Property to the designated lease roads, Surface Owner shall have the right, in addition to any other remedy provided under this Lease or by law, to deny further access by such person to the Subject Property, to treat such person as a trespasser, and to receive compensation from Cactus for any damages caused by such person to the Subject Property by reason of his use of portions of the surface of the Subject Property other than the designated lease roads. Cactus shall maintain and enforce a speed limit for all vehicles on the Subject Property for vehicles of Cactus and its invitees not to exceed fifteen miles per hour (15 mph), or such lesser speed as necessary to prevent the raising of excess dust. Cactus shall additionally water any roads it is actively utilizing as necessary to prevent the raising of excess dust.

b. **Pits.** Cactus shall have no right to dig any pits on the Subject Property except with Surface Owner's prior written consent.

c. **No Lease Houses.** Cactus shall have no right to construct any lease houses or lease camps for housing Cactus' employees on the Subject Property.

d. **No Hunting or Fishing or Recreational Use.** This Lease does not cover nor include any right or privilege of hunting with firearms or with dogs or otherwise on the Subject Property, nor of fishing on the Subject Property, nor of any recreational use of the Subject Property onr any archaelogical use or studies, all such hunting and fishing and recreational rights being expressly reserved to Surface Owner. Cactus agrees that none of Cactus' officers, agents, employees, representatives or contractors will bring any dog, firearm, fishing tackle, alcoholic beverages or illegal drugs or other illegal substances upon the Subject Property and will not fire any weapon or firearm or consume alcoholic beverages or illegal drugs or other illegal substances thereon. Cactus' agents, officers, employees, representatives and contractors shall not bring any recreational-type vehicle on the Subject Property, except vehicles used for Cactus' operations, or bring motorcycles, dune buggies, or similar vehicles on the Subject Property. If any such

person shall violate the provisions of this Section, such person shall no longer have any right to go on, or to be on, the Subject Property, and if such person shall go on or be on the Subject Property, he shall be a trespasser and subject to prosecution under the trespass laws of the State of Texas. At all times while on the Subject Property, Cactus' officers, agents, employees, representatives and contractors must carry such identification as Surface Owner shall reasonably require, and may be required to place such identifying marks on any vehicles brought by them upon the Subject Property as Surface Owner may require. Any person on the Subject Property without such identification may be required to leave the Subject Property immediately.

e. **Trash and Debris; Repair.** Cactus will keep the Subject Property free of trash and debris brought on such property by Cactus or anyone acting on Cactus' behalf. If Surface Owner's property is damaged as a result of Cactus' operations, Cactus agrees to promptly repair the property to Surface Owner's reasonable satisfaction.

f. **Pipelines.** Following approval of the location for any such pipeline from Surface Owner, and if applicable, Surface Owner's tenant, Cactus shall have the right to lay on the surface or bury poly, steel, layflat hoses, or other pipelines on and/or under the Subject Property for the transporting of Water over, on and across such property. Cactus shall double-ditch all buried pipelines so as to replace the original topsoil at the surface and shall make no cuts in the grass turf on the Subject Property, except as necessary to enable pipeline laying machinery to operate. Cactus shall promptly fill and restore all sinkholes as may develop. Cactus shall provide to Surface Owner a map or plat showing the route of any and all such pipelines.

g. **Fences and Gates.** Cactus will not cut or go over any fence or fences on the Subject Property at any time or in connection with any operations on the Subject Property, without first obtaining Surface Owner's written consent. If Surface Owner consents to the cutting of a fence, the cuts must be made at the place designated by Surface Owner; and Cactus agrees, prior to cutting any fence of Surface Owner, to brace the existing fence adequately on both sides of the proposed cut so that when the fence is cut there will be no slackening of the wires. For any fence cut, Cactus agrees to install and maintain a substantial iron cattle guard capable of turning cattle promptly after making such cut. Such cattleguard shall be single lane and set in concrete with a depth of at least three feet (3') beneath the surface with adequate H-frame construction complete with dead men on each side of such cattleguard. A welded pipe gate with a swing arm approximately three feet (3') above the surface shall be installed across said cattleguard, and when not in actual use the gate shall be kept locked by Cactus. Cactus shall thereafter keep any such cattleguard cleaned out so as to prevent the passage of livestock. Surface Owner may install Surface Owner's own lock in addition to Cactus's lock on said gate. Upon termination of this Lease, or the portion thereof on which any cattle guard and gate are located, such cattle guard and gate shall, at the option of Surface Owner, become Surface Owner's property or be removed by Cactus and the fences restored to their original condition. So long as this Lease shall remain in force, such gates and cattle guards shall not be removed and shall be maintained in good condition and repair, capable of turning cattle. Any gates in fences must be installed only at places and in a manner reasonably approved by the Surface Owner whose fence is affected. Cactus agrees to promptly close all gates and lock all outside gates which Cactus and Cactus's agents, employees,

guests, invitees or independent contractors may use in Cactus's operations on the Subject Property, to prevent the escape of cattle or livestock through any open gate.

h. **Maintenance of Equipment and Facilities.** Cactus shall maintain all of the Cactus Equipment and Facilities in good working condition. Surface Owner shall maintain all of the Surface Owner Equipment and Facilities in good working condition.

i. **No Chemicals.** Cactus shall not use chemicals or apply manufactured chemical substances on roads, drill sites, and rights-of-way.

j. **Surface Damage Compensation.** For the construction of infrastructure on the Subject Property needed to effect this transportation of Water, Cactus shall compensate Surface Owner according to the damages schedule provided in Exhibit C. The damage payment schedule shall be adjusted on an annual basis, according to proportional changes in the University damages rates.

6. **CPI Adjustment.** Any renewal amounts and the amount of all consideration payable for surface damages, and any other amounts paid to Surface Owner by Cactus under this Lease (aside from the Royalty), shall be subject to an adjustment under this paragraph beginning January 1, 2020, and every January 1st thereafter, to reflect any increases or decreases in the Consumer Price Index for all Urban Consumers, All Items (before seasonal adjustment), issued by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U"). This adjustment shall be determined by multiplying each applicable payment by a fraction, the numerator of which is the CPI-U index number for January of the year for which the calculation is being made (the first year being 2020, the second year being 2021, etc.), and the denominator of which is the CPI-U index number for January 2019. If the CPI-U is discontinued or otherwise becomes unavailable as an index, the adjustment must be made by substituting a comparable index chosen by Cactus and Surface Owner. Cactus and Surface Owner understand that the CPI-U for January of each year will not be available for some period of time after January of each year. Cactus and Surface Owner further understand that the calculation of the stipulated consideration adjustment will be made as soon as the applicable CPI-U is available and the new consideration will be applied retroactively to all payments made for the year of the adjustment.

Exhibit C

Surface Damages Schedule

Flat lines: $[redacted] per section (where "section" means a 640-acre tract of land) every [redacted] days

Roads: $[redacted] per rod

Power lines: $[redacted] per pole

Pipeline Right of Way

- 6" diameter or less: $[redacted] per rod
- 6" to 8" diameter: $[redacted] per rod
- 8" to 10" diameter: $[redacted] per rod
- 10" diameter or more: negotiable .
- *The term shall be renewable every [redacted] ([redacted]) years.

Frac Ponds

- Under (5) acres: $[redacted]
- (5) to (8) acres: $[redacted]
- *The term shall be renewable every [redacted] years.

Facilities

- Under (3) acres: $[redacted]
- (3) to (5) acres: $[redacted]
- (5) to (10) acres: $[redacted]
- *The term shall be renewable every [redacted] ([redacted]) years.

**Cactus shall obtain prior written approval from Surface Owner for all sites, routes, pipelines, flat lines, frac ponds, locations or facilities.

Tab H:
1st Amended & Restated Produced Water Lease Agreement (PWLA)—Balmorhea

FIRST AMENDED AND RESTATED PRODUCED WATER LEASE AGREEMENT

This Water Lease Agreement (the "Lease" or "Agreement"), is made effective as of August 28, 2019 (the "Effective Date"), by and between **Balmorhea Ranches, Inc.**, a Texas corporation, whose address is set forth below ("Surface Owner"), and **Balmorhea Ranches Water, LLC**, a Texas Limited Liability Company, whose address is set forth below ("Lessee").

RECITATIONS

Surface Owner is the owner of the surface of the Subject Property (as defined below).

Surface Owner desires to lease exclusively to Lessee, and Lessee desires to lease from Surface Owner, the rights to all water contained in, and produced from, formations that are considered oil and gas objectives in the Permian Basin underlying the Subject Property as well as certain rights related thereto for purpose of Lessee capturing, owning, storing, treating, transporting, selling, delivering, disposing of, recycling, reusing, and marketing Water from oil and gas producing formations and flowback water produced from oil and gas operations on the Subject Property, on the terms and conditions described herein. Surface Owner also desires to lease exclusively to Lessee, and Lessee desires to lease from Surface Owner, the right to handle all produced water-related service operations on the Subject Property, including the right to build, drill, own, and operate disposal wells and the associated equipment for the purpose of disposing of oilfield produced water and other such fluids under the Subject Property.

NOW, THEREFORE, in consideration of the respective covenants and agreements to be kept and performed by the parties hereto, as herein set forth, and other valuable consideration passing between the parties, it is agreed as follows:

1. **Definitions**

a. "Lessee Equipment and Facilities" means the casing, pipe, valves, tanks, meters, pumps, generators, electric distribution lines, transformers and other electrical equipment, and all other equipment, personal property, fixtures and facilities, located, constructed and/or intended for use, by Lessee in testing, capturing, storing, treating, transporting, disposing of, delivering and marketing the Water (defined below), or which is otherwise used or useful in connection with the exercise by Lessee of the Water Rights (defined below).

b. "Disposal Wells" means wellbores approved by the Texas Railroad Commission used to dispose of saltwater generated by oilfield and mining operations into any formation below the fresh-water level, as well as meters, tanks, pumps, wellheads, tubing, casing, injection equipment, pipelines, and other related facilities necessary to enable the wells to inject saltwater into the approved subsurface intervals.

c. "Subject Property" means that certain real property situated in Reeves County, Texas, more particularly described on Exhibit A attached hereto and made a part hereof.

d. "Water" means any and all water contained in and produced from geologic formations under the Subject Property through any wellbores drilled for the production of oil, gas, and natural gas liquids (collectively, "hydrocarbons"),

whether economically productive or not, regardless of salinity. "Water" excludes all water originating from shallow geological intervals that do not and have never produced oil, other hydrocarbon liquids, and/or natural gas anywhere in the Delaware Basin. With the exception of "blend water" defined in Section 7 (below), "Water" also excludes water purposely and directly produced from the Ogallala, Pecos Valley Alluvium, Edwards Trinity, Dockum Aquifers or any other freshwater aquifers.

e. "Water Rights" means:

a) except as expressly provided to the contrary in this Lease, all right, title and interest in and to the Water;

b) the exclusive right to own *in* situ and after severance from the formation, store, treat, transport, dispose of, market and sell all Water produced from any oil and gas wellbores and all hydrocarbon-bearing formations on or under the Subject Property;

c) the exclusive right to test, capture, store, treat, transport, market and use Water produced from such wellbores;

d) the right to use, construct, maintain, repair, refurbish and/or replace any Lessee Equipment and Facilities associated therewith, for testing, developing, producing, withdrawing, capturing, storing, treating, transporting, using and/or marketing the Water; and

e) all transferable right, title to, and interest in the Water and to permits, licenses, or other governmental authorizations relating to the production, transportation, sale and/or marketing of the Water.

2. **Grant.** For good and valuable consideration received and the benefits to be derived by the parties from entering into this Lease, Surface Owner hereby LEASES, LETS AND DEMISES exclusively unto Lessee for the term of this Lease the Water on and underlying the entire Subject Property for the purposes of exercising ownership rights over such Water, as well as capturing, owning, storing, treating, transporting, delivering, marketing, recycling, reusing, disposing of, and/or selling Water produced therefrom, subject to the terms and provisions set forth below. Lessee shall have, and is hereby granted pursuant to the terms of this Lease, the rights to:

a. capture, own *in* situ, store, treat, transport, deliver recycle, reuse, dispose of, and market all the Water produced from oil and gas wells and formations on or under the Subject Property;

b. [redacted]

c. upon the prior written consent of Surface Owner produce Water from (i) any abandoned, temporarily or otherwise, or shut-in oil and/or gas well or wells

currently or hereafter located on the Subject Property, which may be converted by Lessee to a well for such purposes, (ii) any well or wells drilled by Lessee on the Subject Property to any depth thereunder, and (iii) any well or wells owned by Surface Owner and located on the Subject Property that Surface Owner expressly allows Lessee to use for such purposes; and

d. reasonably use the Subject Property (subject to the Surface Use Agreement attached as Exhibit B hereto) for (i) the sale and marketing of Water produced from the Subject Property, (ii) the storage, treatment, recycling, disposal, and handling of Water, (iii) the transportation of Water on, over, under, through and across the Subject Property, (iv) the construction, installation, maintenance, repair and replacement of all pumps, engines, tanks, pits, meters, valves, pipelines and other facilities, and (v) the right of ingress and egress on, over, under, through and across the Subject Property via approved access points and roads.

3. **Subsurface Easement**. Surface Owner also hereby grants unto Lessee, its successors and assigns, for the benefit of Lessee, its successors and assigns, and their respective lessees, employees, agents, contractors, licensees, and invitees, an exclusive subsurface easement to inject the Water under the Subject Property in accordance with all applicable laws and regulations, and so long as this Lease is in full force and effect. Such injection may occur into and through any existing well bore that is re-completed for such purposes, as well as through any well bore which may be drilled by Lessee with the written consent of Surface Owner, for the purposes of injecting water into such well bores. The subsurface easement also includes the right to store the water in subsurface formations and confers the right to legally defend actual and potential subsurface storage spaces against intrusion from saltwater and other fluids injected by third parties for any purpose other than hydraulic fracturing completions of oil and gas wells.

4. **Prioritization of Produced Water Disposal on Surface Owner's Tract**. To the maximum extent allowed by available infrastructure and injection capacity, Lessee shall utilize Disposal Wells drilled, constructed, owned, operated and/or maintained by Lessee located on the Subject Property to dispose of Water produced from oil and gas wells located on the Subject Property that cannot be treated and re-sold as recycled water.

   a. As an example, but not a limitation, if the available Water volume from oil and gas wells on the Subject Property was 50,000 barrels per day and Lessee operated two Disposal Wells on the Subject Property that each offered 20,000 barrels per day of operable disposal capacity, Lessee would be required to dispose of 40,000 barrels per day of said Water in the Disposal Wells located on the Subject Property.

5. **Exclusive Right To Supply, Transport, Treat, Gather, and Dispose of Water**. Surface Owner hereby grants unto Lessee, its successors in interest, and their respective lessees, employees, agents, contractors, licensees, and invitees, the exclusive right to (A) supply water for oilfield purposes including hydraulic fracturing, on the Subject Property, [redacted] (B) to gather, treat, recycle, transport, and dispose of all Water being used in, or emanating from oil and gas producing wells on the Subject Property and (C) the exclusive right to construct and operate Water supply, transport, treatment, and disposal infrastructure on the Subject Property. [redacted]

[redacted]

6. **Surface Owner Consent for Importation of Produced Water for Disposal**. In the event Lessee wishes to import off-tract produced water for injection into Lessee's disposal wells located on the Subject Property, it shall only do so only after (a) receipt of the written consent of the Surface Owner, which consent shall not be unreasonably withheld and [redacted] Lessee shall have the right to import produced water for the purpose of recycling and re-sale and Surface Owner shall be entitled to the royalties from the sale of such recycled water [redacted]

7. **Right to Blend Water**. Lessee shall have the right to access a certain volume of fresh or brackish water that does not come from oil and gas wellbores on the Subject Property (henceforth, "blend water") for the purposes of blending with treated produced water for sale as a final blended product.

[redacted]

8. **Term**. Unless sooner terminated under another provision hereof, this Lease shall continue in force for a period of [redacted] (the "Primary Term"). The Primary Term shall be tolled for any Force Majeure event. This lease shall continue in full force and effect after the Primary Term as to the entire Subject Property so long as Commercial Sales of Water and/or Construction of Water-Related Infrastructure have begun and shall continue in full force and effect up until the point at which 180 days have passed since either the last payment of Royalty equalling Commercial Sales under this Lease or the Construction of Water-Related Infrastructure. The 180-day period shall be tolled for any Force Majeure events. To preserve this Lease in the event that water monetization and/or infrastructure construction are interrupted for more than 180 days by events other than those qualifying as Force Majeure events, Lessee shall have the option [redacted]

   a. "Commercial Sales" of water is defined as the generation of water-related revenues amounting to [redacted]

   b. "Water-Related Infrastructure" shall include, but is not limited to, ponds, pits, and other catchment facilities, saltwater disposal wells, pipelines, and treatment equipment.

e. "Construction" is defined as the process of physically emplacing water infrastructure and/or actively seeking to secure the permits and any other regulatory approvals and/or actively seeking to secure Surface Owner consent required to build such infrastructure.

9. **Royalty; Metering; Record Keeping.** Subject to the other terms and conditions herein, Surface Owner shall be paid a royalty by Lessee in the following amount:

[redacted]

10. **Metering.** Lessee will install, maintain and operate one or more meters for the measurement of Water produced from the Subject Property and will calibrate the meters at least once quarterly. Lessee will take monthly meter readings of the volume of said Water produced from the Subject Property and furnish Surface Owner a monthly statement of such Water produced and sold commercially by Lessee in any preceding calendar month.

11. **Record Keeping and Right of Audit.** At all times while this Lease remains in force, Lessee shall keep accurate records of the Water sold to any party from the Subject Property. During the term of this Lease, Surface Owner may, at Surface Owner's expense and upon seven (7) days advance written notice to Lessee, audit the records of Lessee pertaining to the production and sale of Water under this Lease. Such audit shall be conducted at Lessee' offices (at the address specified for Lessee herein or as otherwise specified by Lessee) between the hours of 10:00 a.m. and 4:00 p.m. on Lessee' normal business days. Surface Owner shall have the right to perform such an audit once per year. In the event any such audit reveals that Surface Owner has been underpaid the Royalty by more than five percent (5%), Lessee shall reimburse Surface Owner within sixty (60) days for the cost of such audit. Any payments made hereunder shall be final after the lapse of 2 years from their due date, except as to matters that either Party has noted in a specific written objection to the other Party in writing during the 2 year period.

12. **Proportionate Reduction**. If Surface Owner's interest in the Water is less than the entire undivided fee simple estate or, if due to statutory limitation, this Agreement covers an interest that is less than the entire undivided fee simple Water estate of the Subject Property, then the Royalty shall be paid to Surface Owner in the proportion that Surface Owner's actual interest bears to the entire fee simple Water estate of the Subject Property.

[redacted]

[redacted]

b. **Sale Proceeds.** [redacted]

i. [redacted]

ii. For the purposes of this section, "net sale proceeds" shall mean the funds left over after the following items are counted against a buyer's gross payment for the asset package:

a) Capital expenditures made by a party that have not yet been recouped. As an illustration but not as a limitation, if Lessee invested [redacted] in capital for a water recycling facility used by the party's entity, and such amounts had not previously been recouped, and the combined interest sold for [redacted] Lessee would be entitled to [redacted] and then the parties would divide the remaining funds in accordance with the provisions of this Section 9.

b) Professional services fees incurred by the parties. A party's professional fees will count against the proceeds which accrue to it based on its fractional interest. As an illustration but not as a limitation, if the gross asset sale proceeds were $1,000,000 and one party had incurred $100,000 in professional services related to its interest, that expenditure would count against the gross revenue it was entitled to and would not burden the other party's gross revenue amount.

c) Surface Owner shall have the right to demand an accounting from Lessee of that Party's capital expenditures made and professional service fees incurred to effect the sale of an interest in the water asset package. Such an accounting shall be delivered in writing and Lessee shall provide a substantive response to Surface Owner's request within 10 business days of such request being made.

iii. The proceeds split enumerated in this section applies only to sale or assignment by Lessee to a bona fide independent third party that operates at arms length and is not a subsidiary or affiliate of Lessee. In the event of a corporate restructuring or other event that leads Lessee to assign assets to an affiliated party, the original terms of this Agreement shall remain in force.

14. **Right of First Refusal.** Lessee shall have a right of first refusal as to the disposition of all Water from the Subject Property subject to payment of the Royalty or disposal fee, as applicable.

15. **Survival of Accrued Obligations**. The expiration or termination of this Lease for any cause shall not relieve Lessee from any accrued or continuing obligation or liability under or associated with Lease, including, but not limited to, the obligation to pay Royalty or any other sum when due.

16. **Right to Terminate; Default**. If Lessee fails to pay any money due hereunder or continues in breach of any term or condition of this Agreement following thirty (30) days' prior written notice from Surface Owner specifying a material event of default or breach of this Agreement and reasonably describing the steps required to cure such default or breach, Surface Owner may terminate this Lease with written notice to Lessee. Notwithstanding the foregoing, if an event of default or breach of this Lease is capable of cure, but incapable of cure within such thirty (30) day period, then provided that Lessee is diligently working to cure such event of default or breach of this Lease within such thirty (30) day period and diligently pursues such cure to completion, this Lease will continue in force and effect, not to exceed six (6) months however. Lessee may terminate this Lease at any time by delivery of written notice to Surface Owner. Notwithstanding any termination, Lessee will still owe Surface Owner any monetary amounts and/or duty to remove any facilities placed on the Subject Property. Surface Owner may terminate this Lease in the event that a court of competent jurisdiction rules against Cactus in any Litigation concerning the Subject Property (as defined below).

17. **Force Majeure**. In the event of "Force Majeure" during the term of this Agreement, Lessee is rendered unable, wholly, or in part, to carry out its duties or obligations under this Agreement, Lessee shall give Surface Owner written notice thereof and a full description of the cause relied upon as Force Majeure within a reasonable time after the occurrence of such cause, whereupon Lessee, for the time that (and to the extent that) it is affected by Force Majeure, shall be relieved of any consequences, including any claims of default, resulting from its failure to fulfill its duties and obligations hereunder, except payment obligations, and shall not be liable in damages of any nature, during the continuance of any inability so caused, provided that no damage(s) were as a result of Lessee's gross negligence and provided that such cause shall so far as possible be remedied with all reasonable dispatch. "Force Majeure", for purposes of this Agreement, shall include an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, lightning, fire, storm, flood, explosion, cyberattack, pandemic, epidemic, governmental action or delay, legal proceedings over ownership or control of Water, producing companies' decisions to shut-in or not complete wells drilled in Lessee's area of service, scarcity of inability to obtain equipment or materials, lack of market and any other cause, whether of the kind specifically enumerated above or otherwise, which is not within the control of the party claiming suspension. In order for Lessee to be entitled to the benefits of this Section 17 of the Lease, Lessee must notify Lessor in writing within thirty (30) days of each claimed specified event and provide complete particulars with respect to the specified event or condition giving rise to the terms hereof and Lessee shall not be allowed to claim any specified event as to which it fails to so notify Lessor. Nothing contained in this Section 17 shall excuse Lessee from paying, or extending the time for paying, any royalty or other payment payable in money under the Lease, nor shall it permit Lessee to maintain this lease in force and effect under Section 17 for any period longer than six (6) consecutive months for each such specified event; provided, however, said six (6) month limitation does not apply if the specified event is an event of Litigation, as defined below.

    a. In the event of Litigation, as defined below, or other legal contestation by external parties of Lessee's water ownership and/or associated rights under this Agreement, the Parties hereby agree that the 3-year primary term of this Agreement between the Parties shall be tolled during the pendency of any Litigation concerning the Agreement. Once any such Litigation is resolved either

through a settlement or a final, non-appealable judgment, the 3-year primary term will begin running once again.

b. "Litigation" shall mean legal proceedings that materially impede Lessee from developing infrastructure and achieving Commercial Water Sales thresholds on the Subject Lands. Such Litigation would include, but not necessarily be limited to, legal proceedings concerning ownership or title to the Water that is the subject of the Agreement referenced above.

c. Litigation is defined as being "underway" if proceedings are ongoing and there is not yet a final, non-appealable judgment or dismissal with prejudice pursuant to a settlement agreement

18. **Hold Harmless.**

a. **Except for instances of gross negligence or willful misconduct by Surface Owner or its contractors, heirs, executors, representatives, administrators, and assigns, Lessee agrees to hold harmless, defend and indemnify Surface Owner, its trustees, agents, employees, beneficiaries, successors and assigns, and all other persons, or entities of any form bound by any contract to pay any judgment or claim made against Lessee or the Surface Owner of and from any damages, actual or exemplary, costs, expenses and attorney fees the released parties may sustain or incur as a result of any such claims, or causes of action, made, instituted or brought by any plaintiff, individually, or by his or her heirs, executors, representatives, administrators, assigns and attorneys, arising from any events, incidents or occurrences relating to this Lease that occurred on or after the Effective Date of this Lease, including but not limited to claims of tortious interference, breach of contract and/or unjust enrichment.**

19. **Environmental Provisions.**

a. During the term of this Agreement, Lessee shall, at Lessee's sole expense comply in all material respects with all applicable Environmental Requirements (hereafter defined) relating to the Subject Property and the use of the Subject Property by Lessee. Lessee shall indemnify, defend, save and hold harmless Surface Owner from and against any and all losses, liabilities, damages, costs and expenses suffered or incurred by Surface Owner as a result of: (i) the occurrence of any Environmental Activity relating to the use of the Subject Property by Lessee during the term of this Agreement or any failure of Lessee to comply in all material respects with all applicable Environmental Requirements relating to the use of the Subject Property by Lessee or (ii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which has resulted or is alleged to have resulted directly from any Environmental Activity relating to the use of the Subject Property by Lessee during the term hereof. Notwithstanding anything herein to the contrary, Lessee shall not indemnify Surface Owner for (i) any Environmental Activity which occurred prior to Lessee taking possession of the Subject Property pursuant to this Lease; (ii) any prior failure of either Surface Owner or any other party to comply with all applicable Environmental Requirements; or (iii) any Environmental Activity which occurs after Lessee takes possession of the Subject Property, but is due to either Surface Owner's or its agent's, employee's, invitee's or licensee's presence or activities on the Subject Property. The indemnity contained in this provision shall survive the expiration or earlier termination of this Lease. Lessee shall, at its sole expense, take all necessary remedial action required to adequately respond to the presence of Hazardous Substances on or under the Subject Property for which it is

responsible hereunder.

b. For the purposes of this Lease "Environmental Activity" means any surface or subsurface, actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling, or transportation of any Hazardous Substance from, under, into or on the Subject Property or otherwise relating to the Subject Property or the use of the Subject Property. "Environmental Requirements" means all present and future federal, state and local laws and ordinances (including CERCLA and other applicable provisions of the Code and rules and regulations promulgated thereunder), rules, regulations, authorizations, judgments, degrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any Hazardous Substance or Environmental Activity. "Hazardous Substance" means (i) asbestos, polychlorinated biphenyls, urea formaldehyde, lead based paint, radon gas, petroleum, oil, solid waste, pollutants and contaminants and (ii) any chemicals, materials, wastes or substances that are defined, regulated, determined or identified as toxic or hazardous in any Environmental Requirement.

20. **Insurance**. Once water sales and/or infrastructure contruction operations commence upon the Subject Property, Lessee shall obtain and maintain, and cause each of its contractors and subcontractors to obtain and maintain, the following insurance coverage during the term of this Agreement:

a. A comprehensive commercial general liability insurance ("CGLI") policy satisfactory to Surface Owner in form and substance, issued by an "A-" or higher rated carrier authorized to sell insurance in Texas, and having limits of not less than $1,000,000.00 per occurrence and not less than $10,000,000.00 in the aggregate;

b. Automobile liability insurance ("ALI") for owned and non-owned automobiles with coverage of a combined single limit of $1,000,000.00; and

c. Worker's compensation employer's liability coverage of $1,000,000.00.

d. Such CGLI and ALI policies shall: 1) contain an endorsement naming Surface Owner as an additional insured, 2) be endorsed to waive subrogation against Surface Owner, and 3) provide for notice to Surface Owner prior to any cancellation or modification. Specifically, the CGLI and ALI policies shall be endorsed to name Surface Owner as an additional insured, but only to the extent caused in whole or in part by a negligent act, error, or omission or willful misconduct of Lessee, its employees, agents and contractors.

e. Lessee shall procure and maintain all such insurance on a primary, non-contributory basis. Within 7 days after execution of this Agreement and thereafter upon written request from Surface Owner, Lessee shall furnish to Surface Owner a certificate and all required endorsements evidencing such coverage.

21. **No Liens**. Lessee has no authority to cause or permit any lien or encumbrance of any kind to affect Surface Owner's interest in the Subject Property. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Lessee, then Lessee shall at its expense within 20 days thereafter either discharge or contest the lien or claim. If Lessee contests the lien or claim, then Lessee shall (i) within such 20 day period, provide Surface Owner adequate security for the lien or claim by bonding in accordance

with the Texas Property Code, (ii) contest the lien or claim in good faith by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Lessee does not comply with these requirements, Surface Owner may upon prior written notice to Lessee discharge the lien or claim, and the amount paid, as well as attorney's fees and other expenses incurred by Surface Owner, shall be due to Surface Owner by Lessee on demand.

22. **Miscellaneous Provisions.**

a. **Notices.** Any notice required by or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown for such recipient below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means, including, but not limited to, e-mail, which will be effective when actually received.

Surface Owner's Contact Information:

To Surface Owner:

Balmorhea Ranches, Inc.
8708 Savannah Avenue
Lubbock, Texas 79424

Lessee' Contact Information:

Mailing Address:

Balmorhea Ranches Water, LLC
8708 Savannah Avenue
Lubbock, Texas 79424

b. **Amendment.** This Lease may be amended only by an instrument in writing signed by each of the parties hereto.

c. **Protection of Rights**. The provisions of this Lease and obligations contained herein shall extend to Surface Owner and Lessee' heirs, successors, and assigns. No change or division in ownership of the Subject Property, however accomplished, shall operate to enlarge or diminish the rights of Lessee.

d. **No Warranty**. This Lease is granted by Surface Owner without any warranties -- express, implied or arising under statute -- of any kind or character, including, without limitation, any warranty of title, suitability or fitness.

e. **Subject to Existing Agreements**. This Lease is subject to any and all prior disposal agreements, salt water disposal agreements, water sales agreements, water sales contracts, surface use agreements, easements, pipeline easements, road

easements, oil and gas leases, including but not limited to any agreements recorded in the Real Property Records of Reeves County.

f. **No Interference.** Lessee hereby agrees that neither it nor its successors or assigns shall be entitled to ever use any portion of the surface of the Subject Property for the purpose of investigating, exploring, prospecting, drilling, or mining for or producing oil, gas or other minerals or any related activities. Any such rights granted under this Lease shall in no manner interfere with any oil and gas development, oil and gas exploration, oil and gas production and or oil and gas operations on the Subject Property, except to the extent said interfere arises from any Litigation regarding the Subject Property.

g. **Compliance with Laws.** At all times while this Lease is in force, Lessee will fully comply with all applicable laws, statutes, rules, regulations, ordinances, permits, licenses and orders.

h. **Waiver of Default.** Except as expressly provided in this Lease to the contrary, a party's failure to give any notice, take any action or otherwise enforce its rights under this Lease with respect to the default or breach of this Lease by the other party shall not constitute a waiver or estoppel of such rights.

i. **Severability.** If a provision of this Lease is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if the unenforceable provision were not apart of this Lease.

j. **Assignability.** The rights of either party under this Agreement may be assigned in whole or in part, by surface area and/or by depth or formation, and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns of the respective parties, subject to the written consent of the non-assigning party which will not be unreasonably withheld. Lessee will deliver written notice of an assignment under this Section 22(j) to Surface Owner in advance of such assignment. The notice period shall be thirty (30) days from the time at which Surface Owner receives Lessee's written request. If Surface Owner does not object to the assignment within the notice period of thirty (30) days, then it shall be deemed to have accepted Lessee's assignment.

k. **No Guarantee of Sales or Water.** Lessee will use its best efforts to sell Water produced from the Subject Property, but Lessee shall not be liable to Surface Owner under this Lease or otherwise for any failure to sell any such Water. Surface Owner acknowledges and agrees that Lessee has made no warranties, guarantees or representations to Surface Owner, express or implied, regarding the amount of Water that will be sold pursuant to this Lease, and Lessee hereby expressly disclaims any and all such warranties. Lessee acknowledges and agrees that Surface Owner has made no warranties, guarantees or representations to Lessee, express or implied, regarding any third parties agreeing to provide and/or sell Water to Lessee. Surface Owner specifically disclaims any liability associated with Lessee' ability to receive or purchase Water from any third party.

l. **Recording.** Surface Owner and Lessee agree to execute a Memorandum of Lease giving notice of the existence of this Lease, a description of the Subject Property, the Term, a general description of the rights granted to Lessee herein, and other provisions, to be recorded in the county where the Subject Property is located. This Lease shall not be recorded in the county property records. Upon the expiration or earlier termination of this Lease, Lessee agrees to promptly execute and deliver to Surface Owner a recordable release of the Memorandum of Lease.

m. **Mutual Non-Disclosure Obligations**. Lessee and Surface Owner shall both hold commercial details of this Agreement strictly confidential and neither Party shall disclose such information without the written consent of the other Party. "Commercial details" includes any and all information pertaining to pricing, royalty rates, division of sale proceeds, and other such commercially sensitive data. Notwithstanding the foregoing, a Party may share commercial details with (a) specified employees who require access to and have a bona fide need for such information to enable them to carry out the purpose of this Agreement and who have been made aware of and instructed to observe the terms of this Agreement, (b) to its advisors, contractors, consultants and representatives who require access to and have a bona fide need for such information to enable them to carry out the purpose of this Agreement, who have been notified as to the existence of this Agreement and who have agreed in writing to observe the terms of this Agreement, and (c) as may be required by law, judicial order or decree.

i. **Rights Upon Breach.** The parties agree that in the event of any breach or threatened breach by the other party of any of the non-disclosure covenants set forth in this Agreement, the non-disclosing party shall have the right to apply to a court of competent jurisdiction for the entry of an immediate order to restrain or enjoin the breach of said covenants by the disclosing party and otherwise to specifically enforce the provisions of this Agreement. Nothing herein shall be construed as prohibiting any party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages and all reasonable attorney's fees and costs of suit.

ii. **Waiver**. The failure or delay of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the party against whom enforcement is sought.

iii. **Term.** These non-disclosure provisions shall commence on the Effective Date and continue for five (5) years, but in any event shall become null and void in the event of an approved assignment by Lessee to a third party.

n. **Further Cooperation.** Surface Owner expressly agrees to cooperate with Lessee as reasonably necessary to assist Lessee in securing any and all licenses and permits that may be necessary in connection with the transactions contemplated by this Lease so long as such cooperation is of no cost or expense to Surface Owner.

o. **Execution**. This Lease may be executed in multiple counterparts, each of which shall be considered an original for all purposes.

p. **Venue**. Venue for any issue arising out of this Agreement shall be in Reeves County, Texas.

Prior Agreement and Conflicts. This Agreement is in lieu of and replaces that certain Agreement dated August 28, 2019, by and between Surface Owner and Lessee ("Prior Agreement"). In the event there exists any conflicts or inconsistencies between the terms of this Agreement and the Prior Agreement and the terms of any other documents, the terms of this Agreement shall govern and control.

[SIGNATURE PAGES FOLLOW]

EXECUTED on the dates of acknowledgment appended hereto, but effective as of the date first written above.

SURFACE OWNER:

BALMORHEA RANCHES, INC., a Texas corporation

By: _____
Trey Miller, General Manager

LESSEE:

BALMORHEA RANCHES WATER, LLC, a Texas limited liablity company

By: _____
Trey Miller, Manager

EXHIBIT "A"

Attached to and made a part of that First Amended and Restated Produced Water Lease Agreement effective August 28, 2019, by and between BALMORHEA RANCHES, INC. and BALMORHEA RANCHES WATER, LLC.

SUBJECT PROPERTY

REEVES COUNTY, TEXAS

See Page 2, attached hereto and made a part hereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

BALMORHEA RANCHES, INC.

Barilla Pasture: Blk. 1, H&TC

	Section	Acres
	49	310.51
	93	544.70
	94	544.20
	106	640.00
	107	640.00
	108	644.61
	131	311.33
	132	311.35
	133	640.00
	134	640.00
	135	640.00
NW/4 of	136	160.00
	146	640.00
	147	640.00
	148	643.12
	149	516.80
E/2	172	321.81
	173	640.00
	174	641.36
	175	640.00
	176	641.59
		11,351.38

Sisk Pasture: Blk. 5, H&GN

	Section		Acres
	23		640.00
	29		640.00
	31		640.00
	33		640.00
	34	State	640.00
Minerals only	49		~~160.00~~ 480
N/2	50	State	~~640.00~~ 320
	41		640.00
	43		640.00
N/2	44	State	320.00
W/2 & NE/4	State-200	Blk. 13 H&GN	480.00
			6,560.00

EXHIBIT "B"

Attached to and made a part of that First Amended and Restated Produced Water Lease Agreement effective August 28, 2019, by and between BALMORHEA RANCHES, INC. and BALMORHEA RANCHES WATER, LLC.

SURFACE USE AGREEMENT

This Surface Use Agreement (this "Agreement") is attached to that certain Produced Water Lease and Associated Services Agreement (the "Lease") by and between BALMORHEA RANCHES, INC., as "Surface Owner", and BALMORHEA RANCHES WATER, LLC, as "Lessee", and incorporated fully therein. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

1. **Prior Consent to Infrastructure Siting and Emplacement**. Prior to commencing any infrastructure siting operations on the Subject Property, Lessee shall seek Surface Owner's written consent, which will not be unreasonably withheld, for proposed operations in the manner detailed in sub-sections (a-d) below. Lessee agrees to meet with Surface Owner, if requested, to answer questions and address issues with the proposed Development Plan. After approval of an infrastructure route/site, Lessee' activities on the Subject Property shall be conducted in accordance therewith and Lessee shall be required to seek Surface Owner's consent to materially alter the route or location of said infrastructure. Any pipelines constructed shall be be memorialized and governed by permits on a mutually agreeable form to be recorded in the Official Public Records of Reeves County, Texas.

    a. **Pipeline and Layflat Routing**. Lessee will deliver written notice of proposed pipeline and layflat hose routes to Surface Owner in advance of construction. The notice period shall be forty five (45) days for fixed pipelines and ten (10) days for initial emplacement of a temporary layflat hose. The notice period for redeployments of an already emplaced layflat hose shall be five (5) days. If Surface Owner does not object in writing to the route within the notice period of forty five (45) days for fixed pipelines and ten (10) days for initial layflat hose emplacements and five (5) days for redeployments of already emplaced layflat hoses, then it shall be deemed to have accepted Lessee's initial proposed route and Lessee shall have the right to proceed forthwith in emplacement of said pipeline/layflat. If Surface Owner does object to the route within the applicable time period, Surface Owner shall propose a commercially reasonable alterntive for the route. In such instance, Lessee may accept Surface Owner's proposed alternative location or submit to Surface Owner a new notice of proposed route.

    b. **Pits**. Lessee shall have no right to dig any pits on the Subject Property except with Surface Owner's prior written consent.

    c. **Water Treatment/Recycling Infrastructure.** Lessee will deliver written notice of proposed water treatment infrastruture emplacements to Surface Owner in advance of construction and/or emplacement. The notice period shall be thirty (30) days from the time at which Surface Owner receives Lessee's written request. If Surface Owner does not object in writing to the emplacement location within the notice period of thirty (30) days, then it shall be deemed to have accepted Lessee's initial proposed emplacement location and Lessee shall have the right to proceed forthwith in emplacement of said treatment/recycling infrastructure. If Surface Owner does object to the emplacement location within the applicable time period, Surface Owner shall propose a commercially reasonable alterntive for the location. In such instance,

Lessee may accept Surface Owner's proposed alternative location or submit to Surface Owner a new notice of a proposed alternative emplacement location. For the purposes of this Agreement, water treatment and recycling infrastructure shall include, but is not limited to, fixed and mobile treatment units utilizing various oxidizing agents that may be chosen at Lessee's sole discretion, as well as equipment for separation and recovery of hydrocarbons from water.

d. **Saltwater Disposal Wells and Associated Facilities.** Lessee shall seek Surface Owner's written consent for proposed locations upon which Lessee wishes to permit saltwater disposal wells and if the permits are approved by the relevant authorities, drill such disposal wells. The notice period shall be thirty (30) days from the time at which Surface Owner receives Lessee's written request. During the aforesaid notice period, Surface Owner shall have the option to reject Lessee's initial proposed emplacement. If Surface Owner does not object in writing to the emplacement location within the notice period of thirty (30) days, then it shall be deemed to have accepted Lessee's proposed permitting site and Lessee shall be allowed to proceed with permitting and subsequently, drilling and completing such as SWD and the associated surface facilities. If Surface Owner does object to the emplacement location within the applicable time period, Surface Owner shall propose a commercially reasonable alternative for the location. In such instance, Lessee may accept Surface Owner's proposed alternative location or submit to Surface Owner a new notice of a proposed alternative emplacement location.

2. **Removal of Equipment; Restoration of Subject Property.** During the term of the Lease, Lessee shall own, maintain, have sole liability for, and bear all costs associated with the acquisition, installation, construction, location and use of the Lessee Equipment and Facilities. Within ninety (90) days following the expiration or termination of the Lease for any cause, Lessee shall remove the Lessee Equipment and Facilities from the Subject Property and restore any portion of the surface of the Subject Property affected by Lessee' operations thereon to as near the condition it was in on the Effective Date, as reasonably practical and excepting ordinary wear and tear, including, but not limited to, re-seeding the affected portions of the Subject Property with native type grasses, to be selected and sown in sowing season as designated and directed by Surface Owner. If Lessee fails to remove any of the Lessee Equipment and Facilities within said 90-day period, it shall be deemed that Lessee has abandoned such Lessee Equipment and Facilities, and title to same shall automatically vest in Surface Owner. If Surface Owner elects to remove said abandoned Lessee Equipment and Facilities after such 90-day period, then Lessee shall reimburse Surface Owner for any reasonable cost or expense related to such removal plus a management fee of 15% of such costs.

3. **Bond Requirement**. Once infrastructure construction operations commence upon the Subject Property, Lessee shall provide security to cover the estimated removal costs associated with the Lessee Equipment and Facilities on the Subject Property. The security shall be, at Lessee' option, either a surety bond from an issuer reasonably acceptable to Surface Owner, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to Surface Owner and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to Surface Owner, a cash deposit, or other security reasonably acceptable to Surface Owner (the selected security herein referred to as the "Removal Bond"). The amount of the Removal Bond shall be the estimated cost of (i) removing the Lessee Equipment and Facilities, net of the estimated salvage value, as estimated by a construction company selected by Lessee and reasonably acceptable to Surface Owner, and (ii) restoration of the Subject Property in accordance with this Agreement. The amount of the Removal Bond shall be updated every year after the initial estimate based on a new estimate by a construction company selected by Lessee and reasonably acceptable to Surface Owner. Once the Removal Bond is in place, Lessee shall keep the Removal Bond (or a resplacement Removal Bond) in

force throughout the remaider of the Term or then current Renewal Term.

4. **Standard of Care.** All operations by or for Lessee on the Subject Property shall be conducted in such a way as not to unduly interfere with Surface Owner's or Surface Owner's tenants' operations on the premises, it being understood that the Subject Property is owned and held by Surface Owner primarily for cattle and livestock ranching and farming purposes and leased for oil, gas and mineral development. Lessee agrees that all operations hereunder will be conducted having due regard for the continued use of the Subject Property by Surface Owner and its successors and assigns and Surface Owner's tenants. Lessee agrees to take all reasonable steps to prevent its operations from:

    a. Causing or contributing to soil erosion or to the injury of terraces or other soil conserving structures on the Subject Property;

    b. Polluting the soil of the premises or the waters of the reservoirs, springs, streams, or wells on the Subject Property or adjacent thereto;

    c. Damaging crops, grasses or other foliage or trees whether natural or improved, cultivated or not, of whatsoever nature; or

    d. Harming or injuring in any way the animals or livestock owned by Surface Owner or Surface Owner's tenants and kept or pastured on the Subject Property.

        i. Lessee shall at all times use reasonable care in all of Lessee' operations on the Subject Property, to prevent injury or damage to the grass, crops, cattle, livestock, buildings or other property situated thereon, or to water wells or tanks located thereon. Lessee agrees not to allow any waste oil or salt water to flow over the surface of the Subject Property, nor to allow same to drain down any draws, drains, creeks or ravines, nor allow same to contaminate any tanks, ground water or underground water thereon. Lessee may not "land farm" any contaminated soils or produced substances without Surface Owner's written consent. Lessee shall pay for any damages resulting from any contamination of the premises by salt water or waste oil or any other substance resulting from Lessee' operations, whether caused by Lessee' negligence or otherwise. The measure of such damages shall be the greater of (i) the difference between the market value of the property before and after such contamination, or (ii) the cost of remediation of such contamination. If any well, pipeline, tank or other receptacle or facility of Lessee on the Subject Property spills, leaks or discharges water, oil or other fluids, Lessee shall not permit such fluids to flow unrestrained over the Subject Property but shall contain same, preventing it securely from penetrating, seeping or flowing into any fresh water on or under the premises or into any creek, tank, reservoir or water course on the Subject Property. Lessee shall have the duty of seeing that no such fluid shall injure the surface of the Subject Property or penetrate fresh water formations beneath the surface. Any freshwater bearing stratum encountered in the drilling of any well (if applicable) will be securely cased and/or cemented off in accordance with state and/or federal regulations so that the waters therein will not be contaminated.

5. **Surface Use.**

    a. **Construction and Maintenance of Roads.** Lessee agrees, to the extent practical, to utilize existing roadways over and across the Subject Property. In the event the construction of new roads becomes necessary, Lessee agrees to construct not more than one road to each location on the Subject Property, to construct such roads using all-weather caliche and in a good and

workmanlike manner, and to confine all travel incident to operations to the single road to each site. Lessee shall consult with Surface Owner prior to locating any roads, so that they may be located to interfere as little as reasonably possible with Surface Owner's use of the surface estate. Lessee shall have no right to use existing roads on the Subject Property except with Surface Owner's prior written consent. Lessee agrees to maintain all roads used by Lessee in Lessee' operations on the Subject Property in good condition and repair during the period of Lessee' operations on the Subject Property. Lessee shall construct and maintain terraces across roads where necessary to prevent erosion. When any roads constructed by Lessee are no longer used by Lessee, if Lessee has constructed any character of topping, such as caliche, blacktop or otherwise, on such roads, Surface Owner shall have the right to require Lessee to remove such topping from the roads and to restore the surface of the land to substantially its former condition. If any employees, contractors, employees of Water purchasers, or others authorized to use lease roads by virtue of the Lease fail to confine their travel on the Subject Property to the designated lease roads, Surface Owner shall have the right, in addition to any other remedy provided under the Lease or by law, to deny further access by such person to the Subject Property, to treat such person as a trespasser, and to receive compensation from Lessee for any damages caused by such person to the Subject Property by reason of his use of portions of the surface of the Subject Property other than the designated lease roads. Lessee shall maintain and enforce a speed limit for all vehicles on the Subject Property for vehicles of Lessee and its invitees not to exceed fifteen miles per hour (15 mph), or such lesser speed as necessary to prevent the raising of excess dust. Lessee shall additionally water any roads it is actively utilizing as necessary to prevent the raising of excess dust.

b. **Pits**. Lessee shall have no right to dig any pits on the Subject Property except with Surface Owner's prior written consent.

c. **No Lease Houses**. Lessee shall have no right to construct any lease houses or lease camps for housing Lessee' employees on the Subject Property.

d. **No Hunting or Fishing or Recreational Use**. The Lease does not cover nor include any right or privilege of hunting with firearms or with dogs or otherwise on the Subject Property, nor of fishing on the Subject Property, nor of any recreational use of the Subject Property onr any archaelogical use or studies, all such hunting and fishing and recreational rights being expressly reserved to Surface Owner. Lessee agrees that none of Lessee' officers, agents, employees, representatives or contractors will bring any dog, firearm, fishing tackle, alcoholic beverages or illegal drugs or other illegal substances upon the Subject Property and will not fire any weapon or firearm or consume alcoholic beverages or illegal drugs or other illegal substances thereon. Lessee' agents, officers, employees, representatives and contractors shall not bring any recreational-type vehicle on the Subject Property, except vehicles used for Lessee' operations, or bring motorcycles, dune buggies, or similar vehicles on the Subject Property. If any such person shall violate the provisions of this Section, such person shall no longer have any right to go on, or to be on, the Subject Property, and if such person shall go on or be on the Subject Property, he shall be a trespasser and subject to prosecution under the trespass laws of the State of Texas. At all times while on the Subject Property, Lessee' officers, agents, employees, representatives and contractors must carry such identification as Surface Owner shall reasonably require, and may be required to place such identifying marks on any vehicles brought by them upon the Subject Property as Surface Owner may require. Any person on the Subject Property without such identification may be required to leave the Subject Property immediately.

e. **Trash and Debris; Repair.** Lessee will keep the Subject Property free of trash and debris

brought on such property by Lessee or anyone acting on Lessee' behalf. If Surface Owner's property is damaged as a result of Lessee' operations, Lessee agrees to promptly repair the property to Surface Owner's reasonable satisfaction.

f. **Pipelines**. Following approval of the location for any such pipeline from Surface Owner, and if applicable, Surface Owner's tenant, Lessee shall have the right to lay on the surface or bury poly, steel, layflat hoses, or other pipelines on and/or under the Subject Property for the transporting of Water over, on and across such property. Lessee shall double-ditch all buried pipelines so as to replace the original topsoil at the surface and shall make no cuts in the grass turf on the Subject Property, except as necessary to enable pipeline laying machinery to operate. Lessee shall promptly fill and restore all sinkholes as may develop. Lessee shall provide to Surface Owner a map or plat showing the route of any and all such pipelines.

g. **Fences and Gates**. Lessee will not cut or go over any fence or fences on the Subject Property at any time or in connection with any operations on the Subject Property, without first obtaining Surface Owner's written consent. If Surface Owner consents to the cutting of a fence, the cuts must be made at the place designated by Surface Owner; and Lessee agrees, prior to cutting any fence of Surface Owner, to brace the existing fence adequately on both sides of the proposed cut so that when the fence is cut there will be no slackening of the wires. For any fence cut, Lessee agrees to install and maintain a substantial iron cattle guard capable of turning cattle promptly after making such cut. Such cattleguard shall be single lane and set in concrete with a depth of at least three feet (3') beneath the surface with adequate H-frame construction complete with dead men on each side of such cattleguard. A welded pipe gate with a swing arm approximately three feet (3') above the surface shall be installed across said cattleguard, and when not in actual use the gate shall be kept locked by Lessee. Lessee shall thereafter keep any such cattleguard cleaned out so as to prevent the passage of livestock. Surface Owner may install Surface Owner's own lock in addition to Lessee's lock on said gate. Upon termination of the Lease, or the portion thereof on which any cattle guard and gate are located, such cattle guard and gate shall, at the option of Surface Owner, become Surface Owner's property or be removed by Lessee and the fences restored to their original condition. So long as this Lease shall remain in force, such gates and cattle guards shall not be removed and shall be maintained in good condition and repair, capable of turning cattle. Any gates in fences must be installed only at places and in a manner reasonably approved by the Surface Owner whose fence is affected. Lessee agrees to promptly close all gates and lock all outside gates which Lessee and Lessee's agents, employees, guests, invitees or independent contractors may use in Lessee's operations on the Subject Property, to prevent the escape of cattle or livestock through any open gate, fence is affected. Lessee agrees to promptly close all gates and lock all outside gates which Lessee and Lessee's agents, employees, guests, invitees or independent contractors may use in Lessee's operations on the Subject Property, to prevent the escape of cattle or livestock through any open gate.

h. **Maintenance of Equipment and Facilities.** Lessee shall maintain all of the Lessee Equipment and Facilities in good working condition. Surface Owner shall maintain all of the Surface Owner equipment and facilities in good working condition.

i. **No Chemicals**. Lessee shall not use chemicals or apply manufactured chemical substances on roads, drill sites, and rights-of-way.

j. **Surface Damage Compensation.** For the construction of infrastructure on the Subject Property needed to effect this transportation and processing/handling of Water, Lessee shall compensate Surface Owner according to the damages schedule provided in Exhibit C. The

damage payment schedule shall be adjusted on an annual basis, according to proportional changes in the University damages rates.

EXHIBIT "C"

Attached to and made a part of that First Amended and Restated Produced Water Lease Agreement effective August 28, 2019, by and between BALMORHEA RANCHES, INC. and BALMORHEA RANCHES WATER, LLC.

[redacted]

Flat lines: [redacted]

Roads:

Power lines:

Pipeline Right of Way

- 6" diameter or less:
- 6" to 8" diameter:
- 8" to 10" diameter:
- 10" diameter or more

Frac Ponds

- Under (5) acres:
- (5) to (8) acres:

Facilities

- Under (3) acres:
- (3) to (5) acres:
- (5) to (10) acres:

**Lessee shall obtain prior written approval from Surface Owner for all sites, routes, pipelines, flat lines.

ASSIGNMENT OF FIRST AMENDED AND RESTATED PRODUCED WATER LEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF REEVES §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, **BALMORHEA RANCHES WATER, LLC**, a Texas limited liability company, ("Assignor") is the record owner of a First Amended and Restated Produced Water Lease Agreement effective August 28, 2019, by and between BALMORHEA RANCHES, INC. and BALMORHEA RANCHES WATER, LLC covering the Lands described in Exhibit "A," attached hereto and made a part hereof ("Lease and Lands").

NOW THEREFORE, for $10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Assignor, **BALMORHEA RANCHES WATER, LLC** does hereby sell, assign, convey, transfer, set over and deliver unto **CACTUS WATER SERVICES, LLC**, a Texas Limited Liability Company (hereinafter referred to as "Assignee"), whose address is P.O. box 10821, Midland, Texas 79701 and Assignee's successors and assigns the following properties and rights:

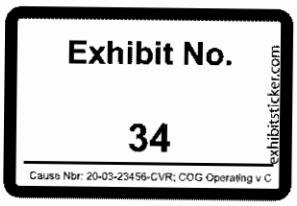
(a) All of Assignor's rights in and to the Lease and Lands; and

(b) A like interest in and to all rights, duties and obligations attributable to or arising from the Lease, as same are appurtenant or relate to the Lease and Lands all such rights, duties and obligations are referred to in this Assignment as the "Contract Rights").

This Assignment herein made is subject to:

(1) The terms, provisions, covenants and royalties pertaining to the Lease and the Lands.

(2) Assignee assuming all of Assignor's duties and obligations of the Assignor, express or implied, with respect to the Lease, including, without limitation, those arising under or by virtue of any permits, applicable statute or rule, regulation or order of any governmental authority.



(3) **Except for instances of gross negligence or willful misconduct by Assignor and/or Surface Owner or its contractors, representatives, administrators and assigns, Assignee agrees to hold harmless, defend and indemnify Assignor and/or Surface Owner, its trustees, agents, employees, beneficiaries, successors and assigns, and all other persons, or entities of any form bound by any contract to pay any judgment or claim made against Assignee or the Assignor and/or Surface Owner of and from any damages, actual or exemplary, costs, expenses and attorney fees the released parties may sustain or incur as a result of any such claims, or causes of action, made, instituted or brought by any plaintiff, individually, or by his or her heirs, executors, representatives, administrators, assigns and attorneys, arising from any events, incidents or occurrences relating to the Lease that occurred on or after the Effective Date of this Assignment, including but not limited to claims of tortious interference, breach of contract and/or unjust enrichment.**

(4) **THIS ASSIGNMENT IS MADE BY ASSIGNOR AND ACCEPTED BY ASSIGNEE WITHOUT REPRESENTATIONS, COVENANTS OR WARRANTIES AS TO THE TITLE, EITHER EXPRESSED OR IMPLIED, ASSIGNEE HAVING MADE ITS OWN INDEPENDENT EXAMINATION AND FOUND SAME TO BE SATISFACTORY.**

TO HAVE AND TO HOLD, all and singular, the Lease and the Lands and the Contract Rights associated therewith unto the Assignee, Assignee's successors in title and assigns subject the term set out the Lease.

All of the terms, provisions, covenants and agreements herein contained shall extend to and be binding upon the parties hereto and their respective heirs, successors in title and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date of the acknowledgment annexed hereto.

ASSIGNOR:

BALMORHEA RANCHES WATER, LLC, a Texas limited liability company

By: _____
Trey Miller, Manager

STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this _____ day December, 2020, by TREY MILLER, as Manager of BALMORHEA RANCHES WATER, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
NOTARY PUBLIC, STATE OF TEXAS

ASSIGNEE:

CACTUS WATER SERVICES, LLC, a Texas limited liability company

By: _____
Brice Ferguson, Vice President

STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this _____ day December, 2020, by BRICE FERGUSON, as Vice President of CACTUS WATER SERVICES, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT "A"

Attached to and made a part of that certain Assignment of First Amended and Restated Produced Water Lease Agreement from BALMORHEA RANCHES WATER, LLC to CACTUS WATER SERVICES, LLC.

REEVES COUNTY, TEXAS

See Page 2, attached hereto and made a part hereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

BALMORHEA RANCHES, INC.

Barilla Pasture: Blk. 1, H&TC

	Section	Acres
	49	310.51
	93	544.70
	94	544.20
	106	640.00
	107	640.00
	108	644.61
	131	311.33
	132	311.35
	133	640.00
	134	640.00
	135	640.00
NW/4 of	136	160.00
	146	640.00
	147	640.00
	148	643.12
	149	516.80
E/2	172	321.81
	173	640.00
	174	641.36
	175	640.00
	176	641.59
		11,351.38

Sisk Pasture: Blk. 5, H&GN

	Section		Acres
	23		640.00
	29		640.00
	31		640.00
	33		640.00
	34	State	640.00
Minerals only	49		~~160.00~~ 480
N/2	50	State	~~640.00~~ - 320
	41		640.00
	43		640.00
N/2	44	State	320.00
W/2 & NE/4	State-200	Blk. 13 H&GN	480.00
			6,560.00

Balmorhea 1328