UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al*.,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
ANNETTE LEAZER; GORDON D. NISWENDER; JOY DEAN NISWENDER; H.L. WILLETT ESTATE; SAGLIO ENERGY LLC; OVERLAND OIL & GAS ADVISORY LLC; OVERLAND MINERALS AND ROYALTIES LLC; OVERLAND ENERGY PARTNERS FUND I LLC; OVERLAND ENERGY PARTNERS FUND II LLC; J A INVESTMENTS; BRIGHTON SOUTH, LLC; ATOMIC CAPITAL MINERALS, LLC; ACM FUND II LLC; TIMNATH LANDS LLC; RAWAH RESOURCES LLC; THUNDER RIDGE RESOURCES LLC; TRG OIL AND GAS; J MOODY; VAL MOODY; AND ALASKAN OIL AND RESOURCES, LLC,	Adversary No. 20-50963 (CSS)
Plaintiffs	
v.	
EXTRACTION OIL & GAS, INC.; 7N, LLC; 8 NORTH, LLC; AXIS EXPLORATION, LLC; EXTRACTION FINANCE CORP.;	

[1] The Debtors in these chapter 11 cases (collectively referred to as "Defendants"), along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

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MOUNTAINTOP MINERALS, LLC; NORTHWEST CORRIDOR HOLDINGS, LLC; TABLE MOUNTAIN RESOURCES, LLC; XOG SERVICES, LLC; AND XTR MIDSTREAM, LLC, Defendants	

AMENDED[2] COMPLAINT

Annette Leazer; Gordon D. Niswender; Joy Dean Niswender; H.L. Willett Estate; Saglio Energy LLC; Overland Oil & Gas Advisory LLC; Overland Minerals and Royalties LLC; Overland Energy Partners Fund I LLC; Overland Energy Partners Fund II LLC; J A Investments; Brighton South, LLC; Atomic Capital Minerals, LLC; ACM Fund II LLC; Timnath Lands LLC; Rawah Resources LLC; Thunder Ridge Resources LLC; TRG Oil and Gas; J Moody; Val Moody; and Alaskan Oil and Resources, LLC (collectively, the "*Plaintiffs*"), file this Complaint against Extraction Oil & Gas, Inc.; 7N, LLC; 8 North, LLC; Axis Exploration, LLC; Extraction Finance Corp.; Mountaintop Minerals, LLC; Northwest Corridor Holdings, LLC; Table Mountain Resources, LLC; XOG Services, LLC; and XTR Midstream, LLC (collectively, the "*Defendants*"). In support of their Complaint the Plaintiffs state as follows:

I. SUMMARY OF COMPLAINT

1. This Complaint involves causes of action related to underpayments of royalties to the Plaintiffs on oil and natural gas produced and sold by the Defendants from wells located in Colorado. These underpayments are a result of prohibited deductions from the royalty payments

[2] The Complaint has been amended to add the list of Plaintiffs and Defendants to the caption and modifying the initial paragraph, per the Court's request. No other changes were made.

in violation of the royalty agreements between the parties and other miscalculations by Defendants.

II. JURISDICTION, CONSENT TO ENTRY OF JUDGMENT, AND VENUE

2. This Court has jurisdiction over the subject matter of this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (E), and (O).

3. In accordance with Local Rule 7008, the Plaintiffs consent to the entry of final orders or a judgment by the bankruptcy Court in this adversary proceeding.

4. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

III. PARTIES

5. Annette Leazer is an individual who resides in Windsor, Colorado.

6. Gordon D. and Joy Dean Niswender are individuals who reside in Windsor, Colorado.

7. H.L. Willett Estate is a decedent's estate opened in Denver, Colorado.

8. Saglio Energy LLC is a Colorado limited liability company with its principal place of business located in Gypsum, Colorado.

9. Overland Oil & Gas Advisory LLC, Overland Minerals and Royalties LLC, Overland Energy Partners Fund I LLC, and Overland Energy Partners Fund II LLC are related limited liability companies with their principal place of business located in Denver, Colorado.

10. J A Investments is a Colorado limited liability company with its principal place of business located in Windsor, Colorado.

11. Brighton South, LLC is a Colorado limited liability company with its principal place of business located in Denver, Colorado.

12. Atomic Capital Minerals, LLC and ACM Find II LLC are related limited liability companies with their principal place of business located in Houston, Texas.

13. Timnath Lands LLC and Rawah Resources LLC are related limited liability companies with their principal place of business located in Timnath, Colorado.

14. Thunder Ridge Resources LLC is a Colorado limited liability company with its principal place of business located in Arvada, Colorado.

15. TRG Oil and Gas is a Colorado limited liability company with its principal place of business located in Boulder, Colorado.

16. J Moody and Val Moody are individuals who reside in Easton, Colorado, and Alaskan Oil and Resources, LLC is a related limited liability company with a principal place of business also in Easton, Colorado (collectively, the "*Moody Group*").

17. Defendant Extraction Oil & Gas, Inc. ("*Extraction*") is a Delaware corporation with its principal place of business located in the State of Colorado. Extraction is an oil and natural gas development company that conducts business within the State of Colorado.

18. Defendants 7N, LLC; 8 North, LLC; Axis Exploration, LLC; Extraction Finance Corp.; Mountaintop Minerals, LLC; Northwest Corridor Holdings, LLC; Table Mountain Resources, LLC; XOG Services, LLC; and XTR Midstream, LLC are Debtors in this jointly administered case. Upon information and belief, each is affiliated with Extraction.

IV. FACTUAL ALLEGATIONS

19. The Plaintiffs, being lessors and/or overriding royalty interest owners, own royalty interests ("*Royalty Interests*" or "*RIs*") subject to oil and gas leases ("*Royalty Agreements*") in Colorado with Extraction, as lessee and/or well operator under the relevant Royalty Agreements.

20. Extraction has underpaid Plaintiffs on their Royalty Interests since December 1, 2013, by making prohibited deductions that are not authorized by the operative Royalty Agreements and/or paying on prices that are not authorized by the operative Royalty Agreements.

21. In Colorado, "The interpretation of a contract is a question of law that we review de novo. When the contract is an oil and gas lease, a royalty clause should be construed in its entirety and in light of the fact that it is the means by which the lessor receives the primary consideration for the lease." *Savage v. Williams Production RMT Co*., 140 P.3d 67, 69 (Colo. App. 2006) (citations omitted). "[T]he generally accepted rule is that oil and gas leases are strictly construed against the lessee and in favor of the lessor." *Id.* Where a lease is silent, the lessee is obligated to place the product into a market condition and transport it to a marketable location, without allocation of costs to the lessor. *Rogers v. Westerman Farm Co.*, 29 P.3d 887, 888 (Colo. 2001).

22. The Plaintiffs' Royalty Agreements dictate the terms of their RIs. Each Royalty Agreement expressly or implicitly prohibits certain deductions and/or dictates how the RI is to be calculated, which Extraction violated.[3]

[3] Example 1: certain Plaintiffs' Royalty Agreement expressly states: "Any provision of this Lease to the contrary notwithstanding, the royalty payment to be made by Lessee to Lessor shall be twenty percent (20%) of the produced oil, gas, casinghead gas and other hydrocarbons associated therewith."; but Extraction nonetheless deducted from their royalties various costs related to transportation and/or taxes. *See, e.g.,* Exhibit 1, Exhibit A, ⁋⁋ 1, 11. Example 2: certain Plaintiffs' Royalty Agreements are silent as to certain deductions; but Extraction nonetheless deducted from their royalties various costs related to transportation. *See, e.g.,* Exhibit 2, ⁋ 3. Example 3: certain Plaintiffs' Royalty Agreements expressly state royalties will be paid based on "market" or "field" price; but Extraction paid royalties on lower prices. *See, e.g.,* Exhibit 3, ⁋ 1. Example 4: certain Plaintiffs' Royalty Agreement expressly state: "free of cost(s), in the pipeline"; but Extraction nonetheless deducted from their royalties various costs related to transportation and/or taxes. *See, e.g.,* Exhibit 3, ⁋ 1.

23. The prohibited deductions are costs incurred by the Defendants that were wrongfully passed on to the Plaintiffs, thereby taking Plaintiffs' money, i.e., property for Defendants' own use and benefit.

24. In some instances, Defendants also miscalculated Plaintiffs' RI resulting in underpayment of Royalties by failing to account for all oil and gas mineral acreage ("*Mineral Acres*") owned by Plaintiffs or paying on the improper price for oil and gas, also resulting in taking Plaintiffs' money, i.e., property for Defendants' own use and benefit.

TAKE OR PAY FEES

25. Extraction entered into a contract or contracts with third-parties for the delivery of oil it produces in the Denver-Julesburg Basin ("*DJ Basin*") in Colorado into pipelines ("*Pipeline Contract(s)*"), under which Extraction agreed to deliver a certain number of barrels of oil per day to the pipeline(s) ("*Oil Obligations*"). Plaintiffs are not parties to the Pipeline Contracts.

26. Under Extraction's Pipeline Contract(s), Extraction also agreed to pay a penalty or fine to the pipeline company if Extraction could not meet the Oil Obligations. These are generally referred to in the industry as "Take-or-Pay Fees."

27. In the months immediately preceding November, 2016, the oil prices reported by Extraction on its statements ("*Royalty Statements*") to Plaintiffs showing oil and gas produced and sold were higher, relative to the prices reported by the U.S. Energy Information Administration ("*EIA*") for Colorado Crude Oil First Purchase Price and prices paid by other oil and gas operators in the DJ Basin.

28. Starting in November, 2016, the per barrel oil prices reported by Extraction on Plaintiffs' Royalty Statements were significantly lower than in previous months and years relative

to the Colorado Crude Oil First Purchase Price reported by the EIA and the prices paid on barrels of oil by other operators in the DJ Basin.

29. On information and belief, Extraction repeatedly failed to meet its Oil Obligations under the Pipeline Contract(s) beginning in November 2016, and therefore was required to pay Take-or-Pay Fees to the third-party pipeline companies.

30. On information and belief, Extraction repeatedly deducted these Take-or-Pay Fees from Plaintiffs' RIs.

31. Extraction did not identify these deductions for Take-or-Pay Fees in the Royalty Statements provided to Plaintiffs; instead, Extraction intentionally withheld such deduction information by reporting to Plaintiffs lesser per barrel oil prices than the prices for which Extraction actually sold the oil production at issue.

32. None of Plaintiffs' Royalty Agreements authorize Extraction to deduct Take-or-Pay Fees from Plaintiffs' Royalty payments.

33. Extraction does not have contractual or legal authority to deduct such Take-or-Pay Fees from Plaintiffs' Royalties.

TRANSPORT COSTS

34. Some Plaintiffs are paid Royalties pursuant to Royalty Agreements that state that oil Royalties shall be paid "free of cost(s), in the pipeline" and/or pursuant to language that expressly states no deductions may be taken from their stated royalty rate.

35. In order to transport oil and/or gas to the interstate pipeline, Extraction pays a related entity (i.e., another Defendant) and/or third-party certain costs associated with gathering and related services.

36. On information and belief, Extraction has made deductions related to such costs paid to related entities and/or third-parties from Royalties paid to Plaintiffs in breach of its Royalty payment obligations under the Royalty Agreements.

TAXES

37. Extraction universally deducts taxes associated with its oil and gas operations from Plaintiffs' royalties.

38. Some Plaintiffs' Royalty Agreements contain express language prohibiting *any deductions* from their royalties, inclusive of taxes.

PRICING SCHEME

39. Some Plaintiffs are paid Royalties on oil and gas pursuant to Royalty Agreements that state that Royalties shall be paid based on "market," "field" or "field-wide" prices. "Market," "field" or "field-wide" prices are determined by the prices paid by other operators in the "field," e.g., the DJ Basin.

40. The price of oil that Extraction has reported to Plaintiffs, upon which it has paid Royalties, has been significantly lower than the Colorado Crude Oil First Purchase Price reported by the EIA and the prices paid on barrels of oil by other oil and gas operators in the DJ Basin since November, 2016.

41. Likewise, the price of gas Extraction has reported to Plaintiffs, upon which it has paid Royalties, has been significantly lower than the prices paid per mcf of gas by other operators in the DJ Basin. At times, Extraction has paid Plaintiffs on negative gas prices, resulting in improper deductions from their oil Royalty payments. Market gas prices have not been negative during the relevant time period and are generally higher than the gas prices Extraction has paid to Plaintiffs.

42. Some Plaintiffs are paid Royalties on oil and gas pursuant to Royalty Agreements that do not expressly identify how the oil or gas price is to be determined.

43. Where the Royalty Agreement does expressly identify upon what price oil and gas Royalties must be paid, Royalties must be paid on the market price.

44. Extraction has breached and continues to breach its Royalty payment obligations to Plaintiffs on its oil and gas production by underpaying the Royalties owed to them under the Royalty Agreements.

TITLE ERRORS

45. In order to determine Plaintiffs' RI, Extraction determines the number of Mineral Acres owned by Plaintiffs and pays Plaintiffs based on their proportionate interest in each barrel of oil and mcf of gas produced from each well. A lower than actual number of Mineral Acres results in a lower RI and lower Royalty payment.

46. Extraction incorrectly determined for some Plaintiffs the number of Mineral Acres they own, resulting in Royalty underpayments to such Plaintiffs.

BANKRUPTCY

47. Each of the Defendants filed for chapter 11 bankruptcy protection on June 15, 2020.

48. As of the Petition Date, all actions against the Defendants were stayed under 11 U.S.C. § 362.

49. During the pendency of the bankruptcy cases, Defendants asked for, and the Court granted, permission to continue to make Royalty payments.

50. In *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of (A) Mineral Payments, (B) Working Interest Disbursements, and (C) Joint Interest Billings and (II) Granting Related Relief* [Doc. No. 12] (the "*Royalty Payments Motion*"), the Debtors admit

that the Royalty payments and overriding royalty owners' share of production revenues from the wells is not property of the Debtors' estates. *See* Royalty Payments Motion, at ¶¶ 16–22.

51. The Defendants hold both the pre- and post-petition revenues for unpaid Royalties in trust for the Plaintiffs. Proceeds of oil and gas sales that remain as a result of underpayments to Plaintiffs are not property or part of the Debtors' bankruptcy estates.

52. Plaintiffs allege that the prohibited deductions, failure to pay market price for Royalties on oil and gas, and other calculation errors have resulted in the estimated underpayment of Royalties to Plaintiffs of $1,199,233.55, not including any interest or penalties.

FIRST CLAIM FOR RELIEF

(Determination of the Validity, Scope, and Extent of the Under Payments Owed)

53. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 52 of the Complaint as though set forth in full in this Claim for Relief.

54. 28 U.S.C. § 2201 provides, in pertinent part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon a filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

55. Under 28 U.S.C. § 2201 and 11 U.S.C. § 105(a), this Court has the power to declare and adjudicate the rights and obligations of the parties and to grant such other and further relief as may be necessary to enforce the rights and obligations of parties relative to the Plaintiffs' Royalty Agreements.

56. A substantial and actual controversy exists between the Plaintiffs and Defendants. Uncertainty and insecurity currently exist with respect to the rights, status, and other legal relations between the parties concerning the validity, scope and extent of Plaintiffs' Royalty Agreements and the Defendants' prohibited deductions, price determinations, and RI calculations, as set forth below. Failure to resolve such controversies may result in further underpayments by Debtors and/or their successors in interest to Plaintiffs.

57. Based on the factual allegations above, the Plaintiffs seek a declaratory judgment determining the validity, scope and extent of their claims for unpaid Royalties and the amounts owed to the Plaintiffs based on the prohibited deductions and other underpayments taken by the Defendants.

SECOND CLAIM FOR RELIEF

(Determination that the Underpayments Owed are not Property of the Estate)

58. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 57 of the Complaint as though set forth in full in this Claim for Relief.

59. The Plaintiffs further seek a declaration that their Royalties and any Royalty underpayments are not property of the Debtors' bankruptcy estate and must be turned over to Plaintiffs.

60. Section 541(a)(1) of the Bankruptcy Code generally provides that all property to which a debtor has a legal or equitable interest becomes property of the estate upon the commencement of a Chapter 11 case. However, section 541 does not create new legal or equitable interests in property. Rather, property interests are created and defined by state law.

61. If a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor's estate under § 541 of the

Bankruptcy Code and the debtor cannot retain or distribute such property to its creditors.

62. Further, 11 U.S.C. § 541(d) provides that property for which a debtor holds only bare legal title is not property of the estate. And, a debtor who holds proceeds attributable to real property owned by another holds at most bare legal title to such proceeds.

63. Under Colorado law, a Royalty Interest is an interest in real property. *United Bank v. Ferris*, 847 P.2d 146, 149 (Colo. App. 1992) ("the parties do not dispute that the royalty interest seized and sold was an interest in real property, and the federal tax authorities similarly dealt with the property as an interest in real estate. The royalty interest here is considered one in real property by both Colorado and New Mexico.") (citing *Page v. Fees-Krey, Inc.*, 617 P.2d 1188 (Colo. 1980)). Once created, a Royalty Interest becomes the property of its owner. Consequently, when the oil and gas production attributable to a Royalty Interest is sold and the proceeds are held by a bankrupt debtor, the proceeds belong to the owner of the Royalty Interest are not property of the bankruptcy estate and they must be paid to the owner under the contract terms.

64. To the extent Colorado law does not govern, § 541(b)(4)(B) would exclude Plaintiffs' Royalty Interests and the attributable Royalties from property of the Debtors' estates.

65. Because Royalty Interests are not property of the estate either by application of Colorado law or pursuant to section 541(b) of the Bankruptcy Code, any proceeds or profits that the Debtors wrongly withheld which are attributable to the Plaintiffs' Royalty Interests are not property of the estates under section 541(a)(6) of the Bankruptcy Code.

66. To the extent the Debtors have the Plaintiffs' wrongfully withheld Royalty Interest proceeds in their possession, the Debtors hold no legal or equitable title to them. The Debtors only take possession of proceeds from the sale of the Plaintiffs' share of oil and gas production because they market and sell the oil and gas production on behalf of the Plaintiffs pursuant to Lease

Agreements. Debtors merely hold the proceeds from the sale of production attributable to the Royalty Interests in trust for the purpose of distributing them to the Plaintiffs.

67. Courts have also held that in such situations, a resulting or constructive trust is established on behalf of the owners of the interests and that the property subject to the trust is not property of the bankruptcy estate. *See Vess Oil Corp. v. SemCrude, L.P.* (*In re SemCrude, L.P.*), 418 B.R. 98, 106 (holding that funds in debtors' possession held on behalf of royalty interest holders were held in a resulting trust and that such funds were not property of the estate); *see also United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) ("Congress plainly excluded [from section 541] property of others held by the debtor in trust at the time of the filing of the petition."). Indeed, the Debtors plainly admit that the Royalty Payments and disputed amounts thereof are held in trust and therefore do not constitute property of the estates. *See* Royalty Payment Motion, at ¶¶ 16–22.

68. Because the Plaintiffs' Royalty Interests and any proceeds attributable to prohibited deductions and other underpayments are not property of the estates, Debtors have no right to distribute any such proceeds to their creditors. The Plaintiffs therefore request a determination that all proceeds attributable to underpaid Royalty Interests or prohibited deductions be turned over to them.

THIRD CLAIM FOR RELIEF

(Fraud and Misrepresentation)

69. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 68 of the Complaint as though set forth in full in this Claim for Relief.

70. Colorado law requires oil production companies such as the Defendants to file quarterly statements which report the amount of oil produced and sold and the amount of Royalties

withheld and distributed. *Colo. Rev. Stat.* § 39-29-111. This information is also reflected on the monthly Royalty Statements provided to the Plaintiffs for their Royalty Interests.

71. The Defendants made uniform misrepresentations and/or omissions on the reports and monthly Royalty Statements. The Defendants are responsible for the underpayments and deductions and for the inaccurate accounting for the Royalty Interests.

72. The Defendants made material representations that were false and/or omitted one or more material facts needed to make what was stated not misleading when they submitted royalty statements to the Plaintiffs. Upon information and belief, the Defendants knew their material representations were false or misleading and/or made the representations recklessly without any knowledge of their truth or made them with the intent that the Plaintiffs would rely on them. Plaintiffs did rely on and/or are legally presumed to have relied upon these uniform written representations as being truthful and accurate, when they were not, and Plaintiffs suffered injury and were underpaid as a result.

73. The Defendants also concealed or failed to disclose complete and accurate information about the price, volume, value, various products produced, and deductions, which the Defendants had a duty to disclose under the Colorado law and the Royalty Agreements to avoid omitting or misrepresenting the truth.

74. The Defendants had a duty to properly account to the Plaintiffs by providing the information in the Royalty Statements on a monthly basis to the Plaintiffs, taking only those deductions expressly allowed in the Royalty Agreements, paying on prices pursuant to the Royalty Agreements and Colorado law, and correctly calculating Plaintiffs' RI in each well. The Defendants had a duty to make a full and fair disclosure of all relevant facts given the Defendants superior knowledge and access to information as compared to that of the Plaintiffs.

FOURTH CLAIM FOR RELIEF

(Breach of Contract)

75. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 74 of the Complaint as though set forth in full in this Claim for Relief.

76. "Specifically with respect to oil and gas leases, a royalty clause should be construed in its entirety and against the party who offered it, and in light of the fact that the royalty clause is the means by which the lessor receives the primary consideration for a productive lease." *Rogers*, 29 P.3d at 898 (quotations omitted).

77. "In interpreting leases like those in this case, we are mindful of the generally accepted rule that oil and gas leases are strictly construed against the lessee in favor of the lessor." *Id.* at 901; *see also West v. Alpar Res., Inc*., 298 N.W.2d 484, 490–91 (N.D. 1980) (failure to expressly provide for deductions of expenses in ambiguous lease language will result in disallowance of such deductions because lease must be construed strongly against lessee).

78. Certain Plaintiff's Royalty Agreements expressly prohibited certain deductions or were silent on the matter. Additionally, certain Plaintiff's Royalty Agreements expressly defined the price to paid for oil and/or gas or were silent on the matter.

79. The Defendants breached the Royalty Agreements by taking prohibited deductions and/or paying on prices lower than required by the Royalty Agreements, resulting in paying Plaintiffs less than required by the Royalty Interests contracted for.

80. By paying less than the amount due under the Royalty Agreements the Defendants have damaged the Plaintiffs in the aggregate amount of the underpayments.

FIFTH CLAIM FOR RELIEF

(Breach of Implied Covenants)

81 The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 80 of the Complaint as though set forth in full in this Claim for Relief.

82. Under Colorado law, Extraction owes Plaintiffs an implied duty to act as a prudent operator, which requires Extraction to engage in conduct reasonably expected of all operators of ordinary prudence, having regard for the interest of both lessor and lessee.

83. Pursuant to the Royalty Agreements and under Colorado law, Extraction has a duty of good faith and fair dealing to Plaintiffs.

84. Extraction breached its duties when it, by way of example, failed to adhere to Royalty Agreements, failed to market and sell oil and gas at market prices, failed to enter into sale contracts with related entities and/or third parties that are customary and not injurious to the interests of Plaintiffs, failed to accurately determine Plaintiffs' Mineral Acreage, and failed to provide complete and accurate information in the Royalty Statements.

85. By breaching its implied covenants, the Defendants have damaged the Plaintiffs in the aggregate amount of the underpayments.

SIXTH CLAIM FOR RELIEF

(Conversion)

86. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 85 of the Complaint as though set forth in full in this Claim for Relief.

87. Plaintiffs are legally and equitably entitled to the proceeds attributable to their Royalty Interests. The owed but unpaid Royalties are not the Defendants' property, nor property of the bankruptcy estates and cannot be used as part of their Plan of Reorganization.

88. The Defendants are required to set-aside and hold in trust oil and gas revenue or the proceeds attributable to the Plaintiffs' Royalty Interests both before and after the Petition Date.

89. The Defendants kept without justification Plaintiffs' Royalties, or a portion of them, for their own benefit to the detriment of the Plaintiffs. The Defendants' actions were committed intentionally and maliciously, or at a minimum with reckless disregard for the rights of the Plaintiffs. Accordingly, Plaintiffs are entitled to recover both actual and punitive damages from the Defendants, as well as, pre-judgment interest, post judgment interest, monthly reporting penalties, attorneys' fees and costs as permitted under Colorado Law.

SEVENTH CLAIM FOR RELIEF

(Constructive and Resulting Trust as a Remedy)

90. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 89 of the Complaint as though set forth in full in this Claim for Relief.

91. Under Colorado law, a constructive trust is a judicially created equitable remedy applied to prevent unjust enrichment. *In re Marriage of Allen*, 724 P.2d 651, 657 (Colo. 1986). The doctrine of constructive trusts is "extremely flexible[,]" *Sandstead-Corona v. Sandstead*, 415 P.3d 310, 318 (Colo. 2018) (quoting *Mancuso v. United Bank of Pueblo*, 818 P.2d 732, 737 (Colo. 1991) (internal quotation marks omitted)), and is often imposed where there is an inference from the circumstances of the transaction that the person taking title to the property is not intended to own the beneficial interest in that property. *See Sandstead*, 415 P.3d at 319–20.

92. A resulting trust, on the other hand, is imposed where "the circumstances surrounding the transfer of property raise the inference that the parties intended to create a trust." *Mancuso*, 818 P.2d at 738–39. As a general rule, a resulting trust arises when the purchase price is paid by one person and the property is transferred to another. *Id.* As with a constructive

trust, the beneficiary of a resulting trust obtains equitable title to the trust res, with legal title remaining in the trustee. *E.g.*, *Valley State Bank v. Dean*, 97 Colo. 151, 47 P.2d 924 (1935).

93. As a consequence of the fraudulent, wrongful, unlawful and inequitable conduct of the Defendants, they have obtained proceeds attributable to the Plaintiffs' Royalty Interests which belong to the Plaintiffs. The Royalty payments are not the Defendants' property, and they therefore hold those payments in trust for the benefit of the Plaintiffs.

94. The Defendants hold Plaintiffs' unpaid Royalties and the proceeds attributable to them in a constructive or resulting trust for the benefit of the Plaintiffs, including all profits derived from the use of such money and any assets purchased with such money. Plaintiffs have an equitable lien on wrongfully withheld Royalty payments. Accordingly, ownership of all such property interests, sums and assets must be accounted for and adjudicated to be vested in the Plaintiffs.

95. Plaintiffs are entitled to a judgment against the Defendants, imposing a constructive or resulting trust upon and requiring an accounting for all sums paid to or received by the Defendants from the sale of oil and/or gas from wells encumbered by the Royalty Interests, together with all profits derived from the use or investment of money received by the Defendants.

EIGHTH CLAIM FOR RELIEF

(Unjust Enrichment)

96. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 95 of the Complaint as though set forth in full in this Claim for Relief.

97. The Defendants conduct resulted in their withholding or miscalculating of Royalty payments owed to the Plaintiffs. The Defendants unfairly and improperly received a benefit to the detriment of the Plaintiffs.

98. The Plaintiffs are entitled to recover the value of the benefit conferred as damages from the Defendants, together with pre-judgment interest, post-judgment interest, monthly reporting penalties, attorneys' fees, costs and expenses as permitted by law.

NINTH CLAIM FOR RELIEF

(Request for an Accounting)

99. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 98 of the Complaint as though set forth in full in this Claim for Relief.

100. As lessee and operator of certain wells, the Defendants are obligated to report in accordance with C.R.S. § 34-60-118.5 and Royalty Agreements and make Royalty payments to Plaintiffs.

101. The Defendants are required to accurately, properly and timely report, account for and distribute Plaintiffs' Royalties and the information used to calculate these Royalties to Plaintiffs. The Defendants have almost exclusive control over and access to the information related to Plaintiffs' Royalty payments.

102. Plaintiffs request an accounting relating to any and all matters necessary to determine whether Plaintiffs have fully and fairly received their rightful share of Royalties from the production from the leases and wells that are burdened by the Royalty Interests.

103. To the extent the accounting reveals an underpayment of Royalties, Plaintiffs respectfully request that the Court order payment from the Defendants funds to compensate Plaintiffs for any underpayment, and to pay appropriate interest, monthly reporting penalties, attorneys' fees, costs and expenses associated with this action for the recovery of Royalties.

TENTH CLAIM FOR RELIEF

(Preliminary Injunction)

104. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 103 of the Complaint as though set forth in full in this Claim for Relief.

105. Plaintiffs request a preliminary injunction enjoining the Defendants from: deducting costs from the Royalty payments that are prohibited deductions under the Royalty Agreements; paying on lower prices than permitted under the Royalty Agreements; and calculating RIs based on less than true Mineral Acreage. Plaintiffs will suffer irreparable harm if the Defendants are not enjoined during the pendency of this adversary from using Royalty payments that belong to Plaintiffs. The Defendants continue to appropriate Plaintiffs' property for their sole benefit. By failing to segregate Plaintiffs' Royalty payments, money that belongs to Plaintiffs becomes comingled with the assets of the Debtors' estates that could be distributed to creditors, which would be difficult to trace. Such commingling may cause Plaintiffs' funds to be converted to property of the estates.

106. There is a substantial likelihood that Plaintiffs will prevail on the merits in this Adversary proceeding, as case law, Colorado state law, the Royalty Agreements and other supporting facts prohibit the deductions taken and other misconduct by the Defendants.

107. The harm which may result to Plaintiffs outweighs the harm that may be sustained, if any, by the Defendants if the preliminary injunction were granted. Because the Defendants continue to receive proceeds attributable to Plaintiffs' Royalties each month, no additional bond or security is required.

108. Public interest and public policy would also be served by granting of a preliminary injunction. Public interest and public policy are served by preventing on-going conversion by oil

companies to the detriment of landowners.

109. Accordingly, Plaintiffs respectfully request that this Court set their application for preliminary injunction for hearing and, after hearing the request, issue a preliminary injunction against the Defendants.

ELEVENTH CLAIM FOR RELIEF

(Application for Permanent Injunction)

110. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 109 of the Complaint as though set forth in full in this Claim for Relief.

105. Plaintiffs ask the Court to set their application for injunctive relief for a full trial on the issues in this Complaint and, after such trial, to issue a permanent injunction against the Defendants enjoining them from making prohibited deductions from the Royalty payments, paying on improper oil and/or gas prices, and miscalculating RIs.

V. PRAYER FOR RELIEF

Wherefore, the Plaintiffs respectfully request that this matter be set for trial, and that, after final hearing, judgment be entered in their favor and against the Defendants for the following relief:

1. Declaratory relief as requested;

2. Award Plaintiffs actual and compensatory damages;

3. Enter a judgment disgorging from the Defendants all Royalty funds and other valuable consideration the Defendants received as a result of having been unjustly enriched or which they are estopped from retaining, both prepetition and post-petition;

4. Enter a judgment imposing a constructive and resulting trust on the Defendants for the unpaid or underpaid Royalties;

5. Enter a preliminary injunction enjoining the Defendants from making prohibited deductions from Plaintiffs' Royalties;

6. Enter a permanent injunction enjoining the Defendants from making prohibited deductions from Plaintiffs' Royalties;

7. Enter a judgment requiring the Defendants to provide an accounting as requested above to accurately and fully account for funds attributable to Plaintiffs' based on Royalty non-payments and/or underpayments;

8. Such other or further relief that the Court deems just and proper.

Dated: October 29, 2020

Respectfully submitted,
GOLDSTEIN & MCCLINTOCK LLLP

/s/Maria Aprile Sawczuk

Maria Aprile Sawczuk (DE Bar # 3320)
501 Silverside Road, Suite 65
Wilmington, DE 19809
302-444-6710
marias@goldmclaw.com
--and--

Steven Louis-Prescott #46330
HAMRE, RODRIGUEZ,
OSTRANDER & DINGESS, P.C.
3600 S. Yosemite Street, Suite 500
Denver, CO 80237-1829
(303) 779-0200
poolsteven@hrodlaw.com

--and--

Matthew D. Skeen Jr. #46243
SKEEN & SKEEN, P.C.
217 East 7th Avenue
Denver, CO 80203
(720) 507-0270
jrskeen@skeen-skeen.com

Counsel for Plaintiffs

EXHIBIT 1

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08/12/2013 04:15 PM R Fee:$31.00
Steve Moreno, Clerk and Recorder, Weld County, CO

PRODUCERS 88-PAID UP
Rev. 5-60 No. 2
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LEI-2000-3

OIL AND GAS LEASE

THIS AGREEMENT, Made and entered into the **1st** day of **August, 2013**, by and between J. Gale Moody and Valerie A. Moody, husband and wife, whose address is P.O. Box 210, Eaton, CO 80615, (hereinafter called Lessor, whether one or more) and Extraction Oil & Gas, LLC whose address is 1888 Sherman, Suite 500, Denver, CO 80203, (hereinafter called Lessee).

WITNESSETH, That the Lessor, for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, has granted, demised, leased and let, and by these presents does grant, demise, lease and let exclusively unto the said Lessee, the land hereinafter described, with the exclusive right for the purpose of drilling, mining, exploring by geophysical and other methods, and operating for and producing therefrom oil and all gas, to include coalbed methane gas, of whatsoever nature or kind, together with the right to construct and maintain pipelines, telephone and electric lines, tanks, ponds, roadways, plants, equipment, and structures thereon to produce, save and take care of said oil and gas (which right shall include specifically a right-of-way and easement for ingress to and egress from said lands by Lessee, or its assignees, agents or permittees, necessary to or associated with the construction and maintenance of such pipelines, telephone and electric lines, tanks, ponds, roadways, plants, equipment, and structures on said lands to produce, save and take care of the oil and gas), and the exclusive right to inject air, gas, water, brine and other fluids from any source into the subsurface strata, and any and all other rights and privileges necessary, incident to, or convenient for the economical operation of said land, alone or conjointly with neighboring land, for the production, saving and taking care of oil and gas (including dewatering of coalbed gas wells), and the injection of air, gas, water, brine, and other fluids into the subsurface strata, said lands being situated in the County

of Weld, State of Colorado, described as follows, to-wit:

PARCEL 1:
Township 7 North, Range 67 West, 6th P.M.
Section 35: A parcel of land, located in the Southwest Quarter (SW¼) of Section Thirty-Five (35), Township Seven North (T. 7N.) Range Sixty-Seven West (R. 67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado and being more particularly described as follows:
COMMENCING at the West Quarter corner of said Section 35 and assuming the West line of the Northwest Quarter of said Section 35 as bearing North 00°01'47" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2007, a distance of 2675.59 feet with all other bearings contained herein relative thereto;
THENCE North 89°24'31" East along the North line of said SW¼ a distance of 338.46 feet to the POINT OF BEGINNING;
THENCE North 89°24'31" East along said North line a distance of 1201.46 feet;
THENCE South 09°24'37" East a distance of 58.64 feet;
THENCE South 21°49'27" East a distance of 447.22 feet;
THENCE South 32°48'52" East a distance of 971.34 feet;
THENCE South 04°46'17" East a distance of 468.68 feet;
THENCE South 18°16'13" West a distance of 230.86 feet;
THENCE South 29°46'32" West a distance of 171.11 feet;
THENCE South 88°47'38" West a distance of 691.31 feet;
THENCE North 52°17'34" West a distance of 134.56 feet;
THENCE North 27°46'58" West a distance of 311.58 feet;
THENCE North 30°36'38" West a distance of 360.32 feet;
THENCE North 39°34'04" West a distance of 264.95 feet;
THENCE North 24°47'49" West a distance of 739.13 feet;
THENCE North 12°54'27" West a distance of 378.60 feet;
THENCE North 27°06'21" West a distance of 149.77 feet;
THENCE North 18°44'46" West a distance of 85.17 feet to the POINT OF BEGINNING;
Said described parcel contains 59.095 Acres, more or less, and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

AND

PARCEL 2:
Lot B, Recorded Exemption No. 0705-35-3-RE 1022, according to the Plat recorded June 18, 1987 at Reception No. 2103987.
County of Weld, State of Colorado;
Said described parcel contains 114.789 Acres, more or less.

In addition to the lands described above, Lessor hereby grants, leases and lets exclusively unto Lessee, to the same extent as if specifically described, lands which are owned or claimed by Lessor by one of the following reasons: (1) all lands and rights acquired or retained by avulsion, accretion, reliction or otherwise as the result of a change in the boundaries or centerline of any river or stream traversing or adjoining the lands described above; (2) all riparian lands and rights which are or may be incident, appurtenant, related or attributed to Lessor in any lake, stream or river traversing or adjoining the lands described above by virtue of Lessor's ownership of the lands described above; (3) all lands included in any road, easement or right-of-way traversing or adjoining the lands described above which are or may be incident, appurtenant, related or attributed to Lessor by virtue of Lessor's ownership of the lands described above; and (4) all strips or tracts of land adjacent or contiguous to the lands described above owned or acquired by Lessor through adverse possession or other similar statutes of the state in which the lands are located.

For purposes of payment of rentals and royalties, Lessor and Lessee agree that the lease shall be treated as covering **173.884** acres, whether more or less.

As more fully provided in the Addendum attached hereto as Exhibit "A," this is a NO SURFACE OCCUPANCY OR DISTURBANCE LEASE.

1. It is agreed that this lease shall remain in force for a term of five (5) years from this date and as long thereafter as oil or gas of whatsoever nature or kind is produced from said leased premises or on acreage pooled therewith, or drilling operations are continued as hereinafter provided. If, at the expiration of the primary term of this lease, oil or gas is not being produced on the leased premises or on acreage pooled therewith but Lessee is then engaged in drilling, re-working or dewatering operations thereon, then this lease shall continue in force so long as operations are being continuously prosecuted on the leased premises or on acreage pooled therewith; and operations shall be considered to be continuously prosecuted if not more than one hundred eighty (180) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If after discovery of oil or gas on said land or on acreage pooled therewith, the production thereof should cease from any cause after the primary term, this lease shall not terminate if Lessee commences additional drilling or re-working operations within ninety (90) days from date of cessation of production or from date of completion of dry hole. If oil or gas shall be discovered and produced as a result of such operations at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil or gas is produced from the leased premises or on acreage pooled therewith.

2. This is a PAID-UP LEASE. In consideration of the initial cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term. Lessee may at any time or times during or after the primary term surrender this lease as to all or any portion of said land and as to any strata or stratum by delivering to Lessor by filing for record a release or releases, and be relieved of all obligation thereafter accruing as to the acreage surrendered.

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

1st. To deliver to the credit of Lessor, free of cost, in the pipeline to which Lessee may connect wells on said land, the equal twenty percent (20%) part of all oil produced and saved from the leased premises.

2nd. The Lessee shall pay Lessor, as royalty, on gas, including casinghead gas or other gaseous substances, produced from the leased premises and sold or used off the premises or used in the manufacture of gasoline or other products, the market value at the well of twenty percent (20%) of the gas sold or used, provided that on gas sold the royalty shall be twenty percent (20%) of the amount realized from such sale. The amount realized from the sale of gas shall be the price established by the gas sales contract entered into in good faith by Lessee and a gas purchaser for such term and under such conditions as are customary in the industry at the location where the well is located. "Price" shall mean the net amount received by Lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders. Lessor and Lessee agree that costs that are customary in the area which are incurred by Lessee in gathering, compressing, dehydrating, and transporting gas to a pipeline or processing plant may be deducted from the royalty paid to Lessor.

3rd. To pay Lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of twenty percent (20%) of the proceeds, at the mouth of the well, payable at the prevailing market rate.

4. If, at the expiration of the primary term or at any time or times thereafter there is any well on the leased premises either capable of producing oil or gas or subject to dewatering operations, then this lease shall not terminate so long as such well is shut in or such dewatering operations continue. For each such well, Lessee shall pay or tender to Lessor or Lessor's successor or assigns Ten Dollars per year per net mineral acre retained hereunder, such payment or tender to be made on or before the anniversary date of this lease next ensuing after the expiration of 90 days from the date such well is shut in or dewatering commences and thereafter on or before the anniversary date of this lease during the period such well is shut in or is in a dewatering phase. Lessee's failure to pay or tender, or properly pay or tender, any such sum shall render Lessee liable for the amount due but it shall not operate to terminate the lease.

5. If said Lessor owns a lesser interest in the above described land than the entire and undivided fee simple estate therein, then the royalties (including any amount due as described in paragraph # 4 above) herein provided for shall be paid the Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

6. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operation thereon, except water from the wells of Lessor.

7. When requested by Lessor, Lessee shall bury Lessee's pipeline below plow depth.

8. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of Lessor.

9. Lessee shall pay for damages caused by Lessee's operations to growing crops on said land.

10. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

11. The rights of the Lessor and Lessee hereunder may be assigned in whole or in part. No change of ownership of Lessor's interest (by assignment or otherwise) shall be binding on Lessee until Lessee has been furnished with notice, consisting of certified copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Lessor, and then only with respect to payments thereafter made. No other kind of notice, whether actual or constructive, shall be binding on Lessee. No present of future division of Lessor's ownership as to different portions or parcels of said land shall operate to enlarge the obligations or diminish the rights of Lessee, and all Lessee's operations may be conducted without regard to any such division. If all or any part of this lease is assigned, no leasehold owner shall be liable for any act or omission of any other leasehold owner.

12. Lessee, at its option, is hereby given the right and power at any time and from time to time as a recurring right, either before or after production, as to all or any part of the land described herein and as to any one or more of the formations hereunder, to pool or unitize the leasehold estate and the mineral estate covered by this lease with any other land, lease or leases in the immediate vicinity for the production of oil and gas, or separately for the production of either, when in Lessee's judgment it is necessary of advisable to do so, and irrespective of whether authority similar to this exists with respect to such other land, lease or leases. Likewise, units previously formed to include formations not producing oil or gas, may be reformed to exclude such non-producing formations. The forming or reforming of any unit shall be accomplished by Lessee executing and filing of record a declaration of such unitization or reformation, which declaration shall describe the unit. Any unit may include land upon which a well has theretofore been completed or upon which operations for drilling have theretofore been commenced. Production, drilling or reworking operations or a well shut in for want of a market anywhere on a unit which includes all or a part of this lease shall be treated as if it were production, drilling or reworking operations or a well shut in for want of a market under this lease. In lieu of the royalties elsewhere herein specified, including shut-in royalties, Lessor shall receive on production from the unit so pooled royalties only on the portion of such production allocated to this lease; such allocation shall be that proportion of the unit production that the total number of surface acres covered by this lease and included in the unit bears to the total number of surface acres in such unit and shall be subject to paragraph # 5 above. In addition to the foregoing, Lessee shall have the right to unitize, pool or combine all or any part of the above described lands as to one or more of the formations thereunder with other lands in the same general area by entering into a cooperative or unit plan of development or operation approved by any governmental agency having authority to do so and, from time to time, with like approval, to modify, change or terminate any such plan or agreement and, in such event, the terms, conditions and provisions of this lease shall be deemed modified to conform to the terms, conditions, and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling and development requirement of this lease, express or implied, shall be satisfied by compliance with the drilling and development requirements of such plan or agreement, and this lease shall not terminate or expire during the life of such plan or agreement. In the event that said above described lands or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formally express Lessor's consent to any cooperative or unit plan of development or operation adopted by Lessee and approved by any governmental agency by executing the same upon request of Lessee.

13. All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable in 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.

14. Lessor agrees that the Lessee shall have the right at any time to redeem for Lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by Lessor and be subrogated to the rights of the holder thereof, and the undersigned Lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead in the premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made, as recited herein.

15. When drilling, production or other operations are delayed, interrupted or stopped (i) by fire, flood, war, rebellion, insurrection, riot, failure of all available carriers to transport or furnish facilities for transportation of any product produced hereunder, or (ii) as a result of an order, or failure to issue permits, or the approval of any governmental agency (including but not limited to orders restricting fracking or production), provided Lessee has acted diligently in seeking any required permits or approvals, or (iii) as a result of any cause beyond the control of Lessee, the time of such delay, interruption or stoppage (but not to exceed a total of twelve [12] months for all applicable delays, interruptions or stoppages), shall not be counted against the Lessee under any provision of this Lease, and this Lease shall not terminate by reason of any such delay, interruption or stoppage, and the period of such delay, interruption or stoppage shall be added to the term of this Lease.

16. Should any one or more of the parties hereinabove named as Lessor fail to execute this lease, it shall nevertheless be binding upon all such parties who do execute it as Lessor. The word "Lessor," as used in this lease, shall mean any one or more or all of the parties who execute this lease as Lessor. All the provisions of this lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

17. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this lease. Lessee shall then have thirty (30) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of thirty (30) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. This lease shall never be forfeited or cancelled for failure to perform in whole or in part any of its implied covenants, conditions, or stipulations until a judicial determination is made that such failure exists and Lessee fails within a reasonable time to satisfy any such covenants, conditions, or stipulations.

18. Lessee will be deemed to have fully developed the leased premises if each acre of the leased premises is included in a spacing unit or lands pooled therewith.

19. Intentionally Deleted.

20. Intentionally Deleted.

21. This Oil and Gas Lease is subject to the terms of that certain Surface Use and Damage Agreement dated August 1, 2013, between the Lessor and Lessee.

22. ADDITIONAL TERMS AND PROVISIONS OF THIS LEASE ARE SET FORTH ON THE ADDENDUM ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

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

Lessor:

By_____
J. Gale Moody

By_____
Valerie A. Moody

Lessee:

EXTRACTION OIL & GAS, LLC, a Delaware limited liability company

By_____
Matt Owens, President

ACKNOWLEDGMENT

STATE OF COLORADO)
)SS
COUNTY OF LARIMER)

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this 1st day of August, 2013, personally appeared J. Gale Moody and Valerie A. Moody to me known to be the identical person(s) described in and who executed the within and foregoing instrument of writing and acknowledged to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: 11/10/14

Lori K Hanson
Notary Public
Address: 125 South Howes, 6th Floor
Fort Collins, CO 80521

LORI K. HANSON NOTARY PUBLIC STATE OF COLORADO

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Steve Moreno, Clerk and Recorder, Weld County, CO

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Steve Moreno, Clerk and Recorder, Weld County, CO

STATE OF COLORADO)
)SS
COUNTY OF _____)

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this 2nd day of August, 2013, personally appeared Matt Owens, as President of EXTRACTION OIL & GAS, LLC, a Delaware limited liability company , to me known to be the identical person described in and who executed the within and foregoing instrument of writing and acknowledged to me that he duly executed the same as the act of such entity for the uses and purposes therein set forth and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: 02/27/2017

Notary Public
REBECCA E VAN BLARICOM
Notary Public
State of Colorado

Rebecca E. Van Blaricom
2460 So Jackson
Denver CO 80210 -5637

EXHIBIT "A"

This Addendum attached to and made a part of that certain Oil and Gas Lease dated August 1, 2013, by and between J. Gale Moody and Valerie A. Moody, as Lessor, and Extraction Oil & Gas, LLC., as Lessee, covering and affecting approximately 173.884 acres of land, more or less (the "Leased Premises"), located in Weld County, Colorado

Notwithstanding anything to the contrary contained in the printed portion of this Lease, it is agreed and understood that the terms, provisions, and conditions of this Addendum are made a part of the Lease and hereby amend and supersede the terms of the Lease to the extent inconsistent herewith:

1. Any provision of this Lease to the contrary notwithstanding, the royalty payment to be made by Lessee to Lessor shall be twenty percent (20%) of the produced oil, gas, casinghead gas and other hydrocarbons associated therewith.

2. Bonus payments must be received by Lessor before the recording of this Lease or the recording of a Memorandum of this Lease.

3. Lessee and all of Lessee's successors or assigns agree to meter at the well head all oil and/or gas produced from the Leased Premises.

4. This Lease is specifically limited to oil, gas, casinghead gas, and other hydrocarbons associated therewith. All other substances, including sand, coal, gravel, uranium and water, are specifically excluded from this Lease.

5. The shut-in clause contained in this Lease shall not operate to maintain this Lease for periods in excess of twenty-four (24) consecutive months after the expiration of the primary term. This Lease shall not be held through the payment of shut-in royalties for a cumulative period of more than two (2) years beyond the primary term. Upon reaching the cumulative period, Lessee shall promptly execute and deliver to Lessor a release of this Lease as to all lands described in the Lease which had previously been held by payment of shut-in royalties. Shut-in royalties payable pursuant to paragraph 4 of this Lease shall be Ten Dollars ($10.00) per year per net mineral acre. This Lease may be extended by production only if production is in paying quantities. Lessee's failure to pay or tender any such sum shall render Lessee liable for the amount due, but it shall not operate to terminate this Lease unless Lessor shall have given Lessee written notice of such failure to properly or timely make such shut-in well payment.

6. Any change of or assignment of Lessee shall be made known to Lessor within sixty (60) days of such change or assignment. Any change of contact information (address or other) for Lessee shall be made to Lessor within sixty (60) days of such change. Any such changes shall be reported to Lessor as to date, name, and address of such change within the sixty (60) days as above.

7. Notwithstanding anything to the contrary contained in this Lease or in this Addendum, this Lease is made and accepted without any covenant or title warranty of any kind whatsoever by Lessor. Lessee agrees not to make any claim against Lessor pertaining to warranty of title.

8. Lessee agrees to keep and to have in its possession complete and accurate books and records showing the production and disposition of any and all substances produced on the Leased Premises and to permit Lessor, at all reasonable hours, to examine the same, or to furnish copies of same to Lessor upon request along with purchaser's support documentation. Lessor will not be unreasonable with requests. All said books and records shall be retained by Lessee and made available in Colorado to Lessor for a period of not less than five (5) years.

9. At the time of the lapse or termination of this Lease by any of its terms or provisions, Lessee agrees to promptly execute and deliver to Lessor and file for record with the Weld County Clerk and Recorder a written release and surrender of this Lease save and except that portion maintained by virtue of any provisions of this Lease.

10. Pooling and unitization shall be limited to spacing orders approved by the Colorado Oil and Gas Conservation Commission and units for maintenance of pressure. Lessee shall have no right to commit the lands described in this Lease to a state or federal exploratory unit.

11. Post-production costs shall not be deducted from Lessor's royalty. The royalty paid on oil and gas substances as set forth in paragraph 1 of this Lease shall be twenty percent (20%).

12. Lessee shall defend, indemnify, and hold Lessor harmless from any losses, actions, claims, liability, damage, and expense as the result of Lessee's drilling or operations.

13. This Lease does not lease the rights for underground gas storage or sequestration of any substances.

14. Notwithstanding anything to the contrary contained in this Lease, including, but not limited to, the provisions of paragraphs 7, 8, 9, and 10 of this Lease, this Lease is a "no surface occupancy or disturbance" Oil and Gas Lease. It is agreed and understood that Lessee, its successors or assigns, shall not conduct any exploration, drilling, or completion operations or locate any production facilities on the surface of the leased lands, including pipelines and flow lines. Lessee is granted the right to drill and operate horizontal wells under the surface of said lands, irrespective of the bottom hole location of said wells. To this end, Lessor herein grants to Lessee a subsurface easement for all purposes associated with such horizontal well or wells regardless of whether or not Lessor benefits directly or indirectly from said well or wells. Said easement shall remain in full force and effect for the primary term hereof and so long as the lease term is extended as provided in this Lease. Lessee acknowledges that any surface mineral development of the lands leased hereby will interfere with Lessor's contemplated use and development of such lands, resulting in substantial monetary damages to Lessor.

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Steve Moreno, Clerk and Recorder, Weld County, CO



15. As aforesaid, this Oil and Gas Lease is expressly subject to the terms and conditions of that certain Surface Use and Damage Agreement dated August 1, 2013, between Lessor and Lessee (the "Surface Use Agreement"). The Surface Use Agreement establishes a "Surface Use Area" from which Lessee's oil and gas operations shall be conducted and on which certain facilities and installations shall be located.

Lessor:

J. GALE MOODY

VALERIE A. MOODY

Lessee:

EXTRACTION OIL & GAS, LLC, a Delaware limited liability company

By _____
Matt Owens, President

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Steve Moreno, Clerk and Recorder, Weld County, CO

EXHIBIT 2

1/002
F 0803 MARY ANN FEUERSTEIN CLERK & RECORDER WELD CO, CO

AR1889640

Pooling Provision

OIL AND GAS LEASE

THIS AGREEMENT made this 22nd day of March, 19 82, between Arlen D. Debus and Kathryn M. Debus, husband and wife, Box 212, Haxtun, Colorado 80731

Lessor (whether one or more), whose address is:

and H. L. WILLETT, Denver Club Building, Denver, Colorado 80202 Lessee, WITNESSETH:

1. Lessor in consideration of - - - - Ten and more - 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 and gas, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon and on, over and across lands owned or claimed by Lessor adjacent and contiguous thereto, to produce, save, take care of, treat, transport, and own said products, and housing its employees, the following described land in Weld County, Colorado, to-wit:

A parcel of land located in the NW¼ of Section 36, Township 6 North, Range 66 West of the 6th P.M. Weld County, Colorado being more particularly described as follows: Beginning at the Northwest corner of said Section 36 and considering the North line of said NW¼ as bearing S. 88°47'08" E. and with all other bearings contained herein relative thereto: Thence S. 88°47'08" E. 1284.14 feet, thence S. 00°40'28" W. 505.60 feet, thence North 88°46'36" W. 1288.29 feet, thence North 01°08'41" E. 505.38 feet to the point of beginning, and containing 14.926 acres, more or less

2. Without reference to the commencement, prosecution or cessation at any time of drilling or other development operations, and/or to the discovery, development or cessation at any time of production of oil or gas and without further payments than the royalties herein provided, and notwithstanding anything else herein contained to the contrary, this lease shall be for a term of ~~years~~ from this date (called "primary term") and as long thereafter as oil or gas is produced from said land or land with which said land is pooled hereunder. Five years

3. The royalties to be paid by Lessee, are: (a) on oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of Lessor into the pipe line to which the wells may be connected; Lessee may from time to time purchase any royalty oil in its possession, paying the market price therefor prevailing for the field where produced on the date of purchase; (b) on gas, including casinghead gas or other gaseous substance, produced from said land, and sold or used off the premises or for the extraction of gasoline or other product therefrom, the market value at the well of one-eighth of the gas so sold or used, provided that on gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale; while there is a gas well on this lease or on acreage pooled therewith but gas is not being sold or used, Lessee may pay as royalty, on or before ninety (90) days after the date on which said well is shut in and thereafter at annual intervals the sum of $1.00 per acre, and if such payment is made or tendered, this lease shall not terminate and it will be considered that gas is being produced from this lease in paying quantities. Lessee shall have free use of oil, gas, coal and water from said land, except water from Lessor's wells, for all operations hereunder, and the royalty on oil and gas shall be computed after deducting any so used.

4. Lessee, at its option, is hereby given the right and power to pool or combine the acreage covered by this lease, or any portion thereof as to oil and gas, or either of them, with other land, lease or leases in the immediate vicinity thereof to the extent, hereinafter stipulated, when in Lessee's judgment it is necessary or advisable to do so in order properly to explore, or to develop and operate said leased premises in compliance with the spacing rules of the appropriate local governmental authority, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of oil and gas in and under and that may be produced from said premises. Units pooled for oil hereunder shall not substantially exceed 40 acres each in area, and units pooled for gas hereunder shall not substantially exceed in area 640 acres each plus a tolerance of 10% thereof, provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, units thereafter created may conform substantially in size with those prescribed by governmental regulations. 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 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. Lessee may at its election exercise its pooling option after commencing operations for or completing an oil 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. Operations for drilling on or production of oil or gas from any part of the pooled unit which includes all or a portion of the land covered by this lease regardless of whether such operations for drilling were commenced or such production was secured before or after the execution of this instrument or the instrument designating the pooled unit, shall be considered as operations for drilling on or production of oil or gas from land covered by this lease whether or not the well or wells be located on the premises covered by 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 to which owners of royalties and payments out of production and each of them, shall be entitled on production of oil and gas, or either of them, from the pooled unit, there shall be allocated to the land covered by this lease and included in said unit a pro rata portion of the oil and gas, or either of them, produced from the pooled unit after deducting that used for operations on the pooled units. 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 that pro rata portion of the oil and gas, or either of them, produced from the pooled unit which the number of surface acres covered by this lease 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 production, 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 production from an oil well will be considered production from the lease or oil pooled unit from which it is producing and not as production from a gas pooled unit; and production 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.

5. If at the expiration of the primary term oil or gas is not being produced on said land, or from land pooled therewith, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a dry hole thereon within 60 days prior to the end of the primary terms, 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 60 consecutive days, and if they result in the production of oil or gas so long thereafter as oil or gas is produced from said land, or from land pooled therewith. If, after the expiration of the primary term of this lease and after oil or gas is produced from said land, or from land pooled therewith, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences operations for drilling or reworking within 60 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 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land, or from land pooled therewith. Any pooled unit designated by Lessee in accordance with the terms hereof, may be dissolved by Lessee by instrument filed for record in the appropriate records of the county in which the leased premises are situated at any time after the completion of a dry hole or the cessation of production on said unit. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land and within 660 feet of and draining the lease premises, or land pooled therewith, Lessee agrees to drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances. 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.

6. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by Lessee on said land, including the right to draw and remove all casing. When required by Lessor, Lessee will bury all pipe lines below ordinary plow depth, and no well shall be drilled within two hundred feet of any residence or barn now on said land without Lessor's consent.

7. The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their 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; and no change or division in such ownership shall be binding on Lessee until thirty (30) days after Lessee shall have been furnished by registered 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 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. If six or more parties become entitled to royalty hereunder, Lessee may withhold payment thereof unless and until furnished with a recordable instrument executed by all such parties designating an agent to receive payment for all.

8. 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. In the event 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 sixty days after receipt of such notice in which to commence the compliance with the obligations imposed by virtue of this instrument. After the discovery of oil or gas in paying quantities on said premises, Lessee shall develop the acreage retained hereunder as a reasonably prudent operator but in discharging this obligation it shall in no event be required to drill more than one well per forty (40) acres of the area retained hereunder and capable of producing oil in paying quantities and one well per 640 acres plus an acreage tolerance not to exceed 10% of 640 acres of the area retained hereunder and capable of producing gas in paying quantities.

9. Lessor hereby warrants and agrees to defend the title to said land and agrees that Lessee at its option may discharge any tax, mortgage or other lien upon said land either in whole or in part, and in 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. Without impairment of Lessee's right under the warranty in event of failure of title, it is agreed that if Lessor owns an interest in the oil or gas on, in or under said land less than the entire fee simple estate, then the royalties to be paid Lessor shall be reduced proportionately. Should any one or more of the parties named as Lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

10. 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 oil or gas therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, any Federal or state law or any order, rule or regulation of governmental authority, 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; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

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

Arlen D. Debus 505-41-7634
Arlen D. Debus Sec.Sec. Number

Kathryn M. Debus Sec.Sec. Number
Kathryn M. Debus 523-38-7346
Lessor

Lessor

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

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F 0804 MARY ANN FEUERSTEIN CLERK & RECORDER WELD CO, CO

INDIVIDUAL ACKNOWLEDGMENT

STATE OF COLORADO }
County of Phillips } ss.

The foregoing instrument was acknowledged before me this 5th day of ~~March~~ April,
19 82 by Arlen D. Debus and Kathryn M. Debus, husband and wife

My Commission expires August 3, 19 82. Paul M. Wiseman Notary Public
Haxtun, Colorado 80731.

NOTARY PUBLIC STATE OF COLORADO

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____ }
County of _____ } ss.

The foregoing instrument was acknowledged before me this _____ day of _____,
19____ by _____

My Commission expires _____, 19____. _____ Notary Public

Producers 88 Rev. (10 Year Lease) (2-56)
With 640 Acres Pooling Provision

No. _____

Oil and Gas Lease

FROM _____

TO _____

Dated _____, 19____

No. Acres _____

County, _____

Term _____

This instrument was filed for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and duly recorded in Book _____, Page _____ of the _____ records of this office.

_____ County Clerk

By _____, Deputy

When recorded return to

H. L. WILLETT
DENVER CLUB BLDG.
COLO. 80202

6 pp
Jm
Ck# 3962
2 figs

EXHIBIT 3

BOOK 630 Recorded 207 Filed 8 JUL 31 1970

Rec. No. 1552242 Ann Spomer, Recorder

No. 941. PRODUCERS 88.—Bradford Publishing Co., 1824-46 Stout Street, Denver, Colorado 2-1

3.00B

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OIL AND GAS LEASE

AGREEMENT Made and entered into the 13th day of July, 1970,

by and between Isaac Mellman, # 338 West 14th, Ave.,

of Denver, Colorado party of the first part, hereinafter called lessor (whether one or more) and T.M.S.Co., 4485 Wadsworth Blvd., Wheat Ridge, Colo., party of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of .....One..... DOLLARS, cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose of mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land situate in the County of Weld, State of Colorado, described as follows, to wit:

The North Half ($N\frac{1}{2}$), and the Southwest Quarter ($SW\frac{1}{4}$), and the Northeast Quarter ($NE\frac{1}{4}$) of the Southeast Quarter ($SE\frac{1}{4}$) Section 17, Township 2 North, Range 67 West of the 6th, P.M.

It is mutualy agreed between the Lessor and Lessee that this lease is not to be placed on record until a definate deal has been made for a test to be made in one of the following sections; Section 7-8-17-or 18,Twp., 2 N, Range 67 West;

of Section 17 Township 2 North Range 67-W, and containing 520 acres, more or less.

It is agreed that this lease shall remain in force for a term of 5 years from this date, and as long thereafter as oil and gas, or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

1. To deliver to the credit of the lessor, free of cost, in the pipe line to which the lessee may connect his wells, the equal One Eight (1/8th) part of all oil produced and saved from the leased premises, as royalty or, at lessee's election, to pay the lessor for such royalty the market price prevailing the day the oil is run into the pipe line, or in storage tanks. To pay the lessor as royalty One Eight (1/8th) of all other minerals and hydrocarbons which the lessee produces and saves from said lands.

2. To pay for the gas from each well found upon the said premises, which shall produce gas in marketable quantities, a royalty of 12½ per cent of the net proceeds derived from the sale of such gas, or of the gasoline that such gas may be converted into and marketed off the premises.

If no well be commenced on said land on or before the 13th, day of July, 1971, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to the lessor's credit in the Bank of Denver, Colo., or its successors, which shall continue as the depository regardless of changes in the ownership of said land, the sum of One Dollar per acre., DOLLARS, which shall operate as a rental and cover the privilege of deferring the commencement of a well for 12 months from said date. In like manner and upon like payment or tenders the commencement of a well may be further deferred for a like period of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole, then and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals, as above provided that the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in the proportion which his interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operation thereon, except water from wells of lessor.

When requested by lessor, lessee shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for damages caused by its operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either 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 after the lessee has been furnished with a written transfer or assignment or a true 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 assignee or assigns of such part or parts shall fail to make 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 in so far as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payment of said rental.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holders thereof.

War Clause for Oil and Gas Lease:

This lease shall not be terminated, in whole or in part, nor shall lessee be held liable in damages, for failure to comply with the express or implied covenants hereof, if compliance therewith is prevented by, or if such failure is the result of, any Federal or State laws, executive orders, rules, or regulations. If, at the end of the primary term hereof such term has not been extended by production or drilling as in this lease provided, and lessee, by reason of any of the above recited causes, is unable to drill a well on the leased premises for oil or gas, the primary term and the rental provision hereof shall be extended automatically from year to year until the first anniversary hereof occurring ninety (90) or more days following the removal of such delaying cause. During any period that lessee is unable to produce and/or market any products from the leased premises by reason of any of the above recited causes, this lease shall remain in full force and effect. The herein Lease is executed to cover my respective Mineral Interest in said lands described herein,

In Testimony Whereof We Sign, this the 13th, day of July, 1970.

Witness:

Isaac Mellman (SEAL)

Isaac Mellman. (SEAL)

3 0 18

BOOK

1552242

2-2

ACKNOWLEDGMENT TO THE LEASE

STATE OF Colorado,
City and County of Denver. } ss.

I, Adrienne DePrimo, a Notary Public in and for said City and County, in the State aforesaid, do hereby certify that Isaac Mellman, who is personally known to me to be the person whose name is subscribed to the foregoing Lease, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal, this 13th day of July, 19 70

My commission expires August 11, 19 71

Adrienne DePrimo
Notary Public.

NOTARY PUBLIC STATE OF COLORADO

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, That I, T.M.S. Company, by Roy H. McVicker, a principal, the within named lessee, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to me in hand paid, the receipt whereof is hereby confessed and acknowledged, do hereby sell, assign, transfer, set over, and convey unto Tom Vessells Oil and Gas Co. his heirs and assigns, the within lease, grant and conveyance, to have and to hold the same for the term and under the conditions therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of July, 19 70

T.M.S. Co. by Roy H McVicker its principals.

ACKNOWLEDGMENT TO ASSIGNMENT

STATE OF Colorado
County of Jefferson } ss.

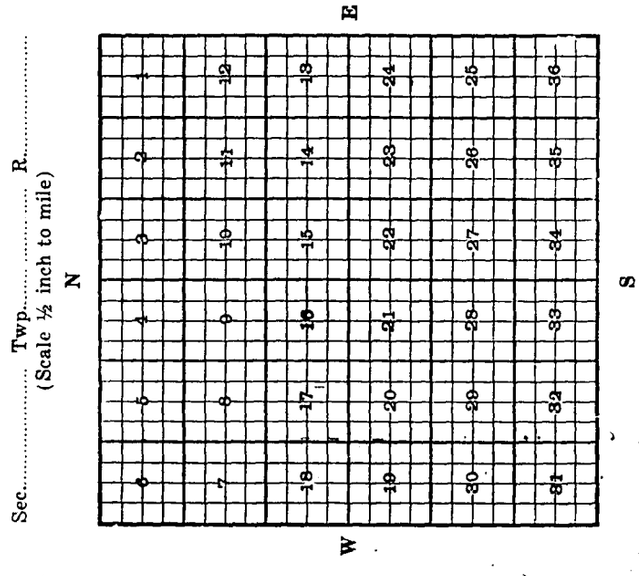
I, Frances Teodonno, a Notary Public in and for said Jefferson County, in the State aforesaid, do hereby certify that Roy H. McVicker, a principal of T.M.S. Co., who is personally known to me to be the person whose name is subscribed to the foregoing Lease, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal, this 13th day of July, 19 70

My commission expires June 14, 19 72

Frances Teodonno
Notary Public.

NOTARY PUBLIC STATE OF COLORADO



No. 1552242

OIL AND GAS LEASE
PRODUCERS 88

TO

STATE OF COLORADO
County of WELD } ss.

I hereby certify that this instrument was filed for record in my office this 31 day of JUL 1970, 19, at 2:09 o'clock P M., and duly recorded in Book 1552 Page

Clerk and Recorder.

By Deputy.

Fees, $

10-66 BRADFORD PUBLISHING CO., DENVER