

July 23, 1985

Phillips Petroleum Company
4001 Penbrook
Odessa, Texas 79762

Re: Salt Water Disposal System
South Peterson Area
Roosevelt County, New Mexico

Gentlemen:

On July 11, 1984, EP Operating Company, formerly Enserch Exploration, Inc., forwarded a Construction and Operating agreement for your consideration. This agreement recommended that Phillips and Enserch share equally in the construction of a four inch (4") polyethylene pipeline from the South Peterson field to the Enserch Scott Federal No. 2 SWD well in the captioned county. To date, we have not received any correspondence relating to this recommendation and hereby consider our proposal null and void.

Yours truly,



Leonard Kersh
District Production Manager

LK/jc

bc: Mr. E.L. Smith, Jr.
Mr. S.D. Campbell

ENSERCH EXPLORATION, INC.

Docket No. 9511 (De Novo)

Exhibit 11

Date ~~2-16-89~~ 3-9-89

**ENSERCH
EXPLORATION** INC.

P. O. Box 4815
Midland, Texas 79704
915-682-9756

Leonard Kersh
District Production Manager
West Texas District
Production Division

July 11, 1984

Phillips Petroleum Company
4001 Penbrook
Odessa, Texas 79762

Attention: Mr. John Maharg

Re: Construction and Operating
Agreement for the Salt Water
Disposal System in the South
Peterson Area, Roosevelt
County, New Mexico

Gentlemen:

Enserch Exploration, Inc. is currently evaluating constructing a four inch (4") polyethylene salt water disposal pipeline from the South Peterson Field to the Scott-Federal No. 2 SWD well located in Roosevelt County, New Mexico (see attached map). Since Phillips Petroleum Company has high water-oil ratio wells in this area, Enserch proposes that the enclosed construction and operating agreement be considered.

If you agree with our recommendation please execute both agreements and return to Enserch. At present, we estimate the construction cost of approximately \$321,000. However, a formal AFE will be provided when warranted.

Yours truly,


Leonard Kersh

LK:vjd

Enclosures

Salt Water Disposal System
Peterson Area
Roosevelt County, New Mexico

<u>Category</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Amount</u>
<u>Material:</u>			
4" SDR 11 Polyethylene line pipe - delivered & laid	56,000'	2.25/ft.	\$ 126,000
2" SDR 11 Polyethylene line pipe - delivered & laid	5,300'	.85/ft.	4,505
Miscellaneous fittings & valves			3,500
Pump	1		7,100
1000 bbl. fiberglass tanks w/walkway and stairs	2	19,125	38,250
Control panels			2,000
Miscellaneous electrical equipment			<u>5,000</u>
Total Material			\$ 186,355
<u>Company Labor</u>			\$ 1,500
<u>Automotive Equipment</u>			\$ 500
<u>Contract Expense:</u>			
Roustabout (5 days)			\$ 2,500
Centerline Description & Profile			9,000
Dirt Work			53,100
Electrical Work			<u>2,000</u>
Total Contract Expense			\$ 66,600
<u>Land-Right Of Way-Damages</u>			\$ 60,960
<u>Miscellaneous</u>			\$ 5,000
Grand Total			<u><u>\$ 320,915</u></u>

THIS OPERATING AND CONSTRUCTION AGREEMENT made and entered into this _____ day of _____, 19____, by and between Enserch Exploration, Inc., Suite 600 Summit Bldg., P. O. Box 4815, Midland, Texas 79704, hereinafter called "Enserch" or "Operator" and Phillips Petroleum Company, 4001 Penbrook, Odessa, Texas 79762, hereinafter called "Phillips."

W I T N E S S E T H

WHEREAS, Enserch owns, operates and maintains facilities for the underground disposal of salt water in and under the following lands situated in Roosevelt County, State of New Mexico, to wit:

A one (1) acre tract of land in the form of a square with the said Scott Federal No. 2 well (hereinafter called "Disposal Well") at its center, which one (1) acre tract is located in the northeast quarter (NE/4) of Section 20, Township 4 South, Range 33 East, Roosevelt County, New Mexico.

WHEREAS, Enserch is the owner of oil and gas leases in the South Peterson (Penn and Fuss) Pool from which salt water is being or will be produced and disposed of in the above-referenced Disposal Well.

WHEREAS, Phillips is the owner of oil and gas leases in the South Peterson (Penn and Fuss) Pool, from which salt water is being or will be produced and disposed of in the above-referenced Disposal Well by agreement between Enserch and Phillips executed October 25, 1982.

WHEREAS, Enserch and Phillips hereby agree to construct, with Enserch as Operator, a four-inch (4") salt water transportation system (hereinafter referred to as "System") from the South Peterson (Penn and Fuss) pool, located in Section 31, Township 5 South, Range 33 East, Roosevelt County, New Mexico, to the Enserch Scott Federal No. 2 salt water disposal well located in the Northeast Quarter (NE/4) of Section 20, Township 4 South, Range 33 East, Roosevelt County, New Mexico. See Exhibit "A." Enserch and Phillips will share equally (50 percent) in the ownership construction costs, benefits and liabilities of said line.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter contained, it is agreed as follows:

ARTICLE I

OPERATOR:

1.1 Enserch Exploration, Inc. shall be the Operator of the System and shall have the exclusive right to operate said System. Operator shall conduct all operations in a good and workmanlike manner, but shall have no liability as Operator to Phillips for losses sustained or liabilities incurred except such as may result from gross negligence or from breach of the provisions of this Agreement.

ARTICLE II

CONSTRUCTION OF SYSTEM

2.1 The System shall be constructed hereunder in accordance with design specifications, plans and schedules as shown on Exhibit "B."

2.2 Operator shall purchase or acquire the surface right-of-ways, grants or easements necessary for the construction of the System.

2.3 Phillips, as far as it has a right to do so, does hereby convey unto Operator full rights of ingress and egress over and upon its respective leaseholds and lands to the extent necessary to effectuate the reasonable purposes hereof.

2.4 Operator shall have direct charge and supervision of all matters arising under the construction contract and all matters arising during the actual construction work, and shall proceed with such matters in accordance with its best judgment of what a prudent Operator would do under the same or similar circumstances. Phillips shall have the right to inspect and observe the construction work at all reasonable times.

2.5 Operator, at its election, at any time, or from time-to-time on or before the twentieth day of any month, in lieu of itself advancing the costs and expenses chargeable hereunder for constructing the System, may call upon Phillips to advance its proportionate part of the estimated construction expenditures for the following month; and not later than 15 days after the receipt of such request, Phillips shall pay to Operator its proportionate part of such estimated expenditures for such month. Should Phillips fail or refuse to pay its said proportionate part within the said 15-day period, the same shall bear interest at the rate of eighteen percent (18%) per annum from the end of said period until paid. Adjustment between the estimated and actual costs shall be made by operator at the close of each calendar month.

ARTICLE III

OWNERSHIP OF THE SYSTEM

3.1 The System shall be owned by Phillips and Enserch and each shall have a fifty percent (50%) ownership interest in the System. Phillips and Enserch also agree to each bear fifty percent (50%) of the expenses, obligations and liabilities of the System.

ARTICLE IV

OPERATION OF THE SYSTEM

4.1 Operator shall have the exclusive right to operate the System.

4.2 Operator shall freely consult with Phillips and shall keep Phillips advised of all matters during the operation of the System which Operator in the exercise of its best judgment considers important.

4.3 Operator, acting individually for itself and for the benefit of itself and Phillips, shall specifically perform the following acts:

- (1) Operate the System in such a manner as to make the System available to Enserch and Phillips on the basis of their interest in the System. Subject to Paragraph 5.1, if either Enserch or Phillips does not utilize its fifty percent (50%) in the capacity of the System, the other party may at its option use the unused capacity for the transportation of its salt water. If the System has capacity which is unused by either Enserch or Phillips, Operator will use its best efforts to encourage third parties to contract to use the System. Operator's agreement to use its best efforts to encourage third parties to use the system is expressly contingent on the third party and Enserch reaching agreement on the terms and conditions of a Salt Water Disposal Agreement which entitles the third party to dispose of salt water in the Disposal Well.
- (2) Make no expenditure for any single project, addition, repair, alteration, replacement or enlargement of the System which involves an expenditure in excess of Ten Thousand Dollars (\$10,000) without first obtaining the approval of Phillips.
- (3) Keep an accurate and itemized record of the accounts of the System and all operations of the System and furnish Phillips with a monthly report of all expenditures made or incurred during the preceding month, together with any reasonable information required by them relating to said accounts and operations.
- (4) Furnish on or before the last day of each calendar month to Phillips a report of operations during the preceding calendar month, the volume of salt water transported, and such other data and information as may be necessary for proper accounting and settlement.
- (5) Enserch shall promptly pay and discharge all costs and expenses incurred during the month. Enserch shall render monthly statements to Phillips showing their proportionate shares of costs and expenses in care of

on or before the twentieth (20th) day of each calendar month for operation of same. Phillips shall pay such amount within fifteen (15) days after receipt of each statement.

- (6) Keep all real property and all personal property and equipment of the System free and clear of all liens and encumbrances on account of any claims arising as a direct result of operations hereunder.
- (7) Abide by and conform to all valid applicable laws, orders, rules and regulations made by duly constituted governmental authorities, and make all necessary reports to governmental authorities and secure all necessary licenses and permits.
- (8) Supervise all other matters necessary to the full accomplishment of the purpose of this Agreement.

4.4 Damage claims caused by and arising out of operations on the System, conducted for the joint account of all parties shall be handled by Operator and its attorneys, the settlement of claims of this kind shall be within the discretion of Operator so long as the amount paid in settlement of any one claim does not exceed One Thousand Dollars (\$1,000).

ARTICLE V

FEES

5.1 Neither Enserch nor Phillips shall be required to pay a fee for the use of their proportionate share of the System's capacity. However, no one (1) party can exceed its pro rata share of the System without the verbal or written consent of the other. For salt water transported in the System which is in excess of each party's proportionate share of the capacity of the System, that party shall pay the other a fee equal to one half (1/2) of the fee per barrel charged to third parties under the most recent Salt Water Transportation Agreement for such excess capacity.

5.2 Any third party using the System shall be required to pay a fee of thirty cents (\$0.30) for each and every barrel of salt water introduced into the System. This fee shall be subject to revision from time-to-time by agreement of Enserch and Phillips. Enserch and Phillips shall each be entitled to fifty percent (50%) of the revenues generated by third party use of the System, regardless of which party or parties has not used its proportionate share of the pipeline's capacity. Third parties shall be required to execute a Salt Water Transportation Agreement which is attached hereto as Exhibit "C". The form of this agreement shall also be subject to revision from time-to-time by agreement of Enserch and Phillips.

5.3 Total pipeline capacity for the System is 3150 barrels per day at 73°F and 145 psi.

5.4 In addition to the foregoing fees, Enserch shall also charge each party using the System, including Phillips, a monthly administrative overhead fee of Five Hundred Dollars (\$500) per month.

ARTICLE VI

PRIVILEGES AND RELATIONSHIPS OF THE PARTIES

6.1 Phillips shall have the right at all reasonable hours to inspect all books and records relating to operation of the System.

6.2 Phillips shall have the right to audit Operator's System records relating to accounting hereunder for any calendar year within the twenty-four month period following the end of said calendar year, provided no more than one audit shall be made each calendar year and no more than one request for adjustments per year to such records. The costs and expenses of auditing shall be borne by Phillips.

6.3 The rights, duties, obligations and liabilities of Enserch and Phillips hereto shall be several and not joint or collective, it being the express purpose and intention of the parties hereto that their ownership in the System covered hereby shall be as tenants in common; and nothing herein contained shall ever be construed as creating a partnership of any kind, joint venture, an association or a trust or as imposing upon any or all of the parties hereto any partnership duty obligation or liability. Each party hereto shall be individually responsible only for its obligations as set out in this Agreement.

ARTICLE VII

TRANSPORTATION BY PARTIES TO THIS AGREEMENT

7.1 The parties agree to transport salt water in the System under the following terms and conditions:

- (1) Phillips and Enserch shall each deliver salt water at their sole risk, cost and expense, to the East half of the North half of the Southwest quarter of Section 31, Township 5 South, Range 33 East, Roosevelt County, New Mexico. Phillips and Enserch agree to secure all necessary right-of-ways and easements to transport their salt water to the said point of delivery. Connection at the point of delivery shall be in a manner designated by the Operator. The cost and expense of connection and/or delivery shall be borne by the party which is making delivery or being connected.
- (2) Phillips and Enserch agree that the salt water delivered hereunder shall be clean and free of oil, basic sediment and other substances which may tend to plug or interfere with the efficient operation of the System, and Operator shall be the sole and exclusive judge as to whether or not said salt water is sufficiently free of said substances. Operator shall have the right to refuse to accept any salt water which does not meet such requirements.

- (3) Water volume shall be determined by meter to determine the amount of salt water transported in the System and the result from such meter readings shall be the basis for determining the monthly amount of salt water delivered by Phillips or Enserch into said System. If the salt water is transported by truck, the volume of such water shall be determined from tank truck hauling tickets to be furnished by the hauling contractor.
- (4) Phillips agrees to hold Enserch harmless from any and all claims, damages or liability which may arise from the delivery of salt water by Phillips to the System. Enserch agrees to hold Phillips harmless from any and all claims, damages or liability which may arise from the delivery of salt water by Enserch to the System.
- (5) Operator shall not be liable in damages or otherwise for delays, failures or omissions due to lack of capacity of said disposal facilities, accidents, breakdowns, closing for repair or remedial work, labor difficulties, strikes, walkouts, fires, storms, acts of God, sabotage, interference by order of or compliance with requests of military or civil authority, whether federal, state, or local, or appropriation, requisition or confiscation of the System.

ARTICLE VIII

TRANSFER OF INTERESTS

7.1 If Enserch or Phillips desires to sell, assign, transfer or convey any interest in the System, it shall notify the other party in writing by pre-paid registered or certified mail, return receipt requested, stating in detail the consideration, terms and conditions of the bona fide offer made by the named prospective purchaser. The other party shall have thirty (30) days after receipt of such notice within which to elect to purchase the interest offered for sale. If that party elects to purchase the interest offered for sale it shall within said thirty (30) day period, notify the selling party who desires to sell the interest in writing by pre-paid registered or certified mail, return receipt requested, of such election. Within sixty (60) days after the date of such notice of election the electing party shall purchase, and the party desiring to sell shall sell, the interest offered for sale upon the identical terms and conditions and for the same consideration stated in the notice setting forth the bona fide offer. If the party does not within the time and in the manner provided in this Paragraph elect to purchase the interests offered for sale, the party desiring to sell the same shall have the right for sixty (60) days immediately following the expiration of the

thirty (30) day term of the preferential right of purchase granted above to complete the sale of the interest in the System offered for sale to the purchaser named in said written notice for the same consideration, and upon the identical terms and conditions stated in such written notice; but if the sale is not completed within the period allowed, or if there is any change in the consideration, terms or conditions of the offer as stated in such written notice to the other party, the sale of the interest shall not be made without again offering the same to the other party as first provided herein.

ARTICLE IX

LAWS, REGULATIONS AND FORCE MAJEURE

9.1 This Agreement and the operations covered hereby shall be subject to all valid applicable laws, orders, rules and regulations made by duly constituted government authorities.

9.2 Except for obligations to make payments of money due under this Agreement, no party hereto shall be liable for any failure to perform the terms of this Agreement when such failure is due to "force majeure" as hereinafter defined, provided that any party claiming "force majeure" which results in a substantial failure of performance shall give the other affected party prompt written notice thereof. The term "force majeure" as employed in this Agreement shall mean acts of God, strikes, lockouts, or industrial disturbances, civil disturbances, arrests, and restraint from rules and people, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure right-of-ways, inability to secure labor or materials (including inability to secure materials as a result of allocations promulgated by authorized governmental agencies), epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage, or accident to machinery or lines of pipe, freezing of wells or pipelines, or any other cause, whether the kind herein enumerated or otherwise, not reasonably within the control of the party claiming "force majeure." Nothing herein contained, however, shall be construed as requiring any party to settle a labor dispute against its will.

ARTICLE X

10.1 All notices required or permitted hereunder shall be addressed to the respective parties at the following addresses or such other address as any party may hereafter designate in writing, to wit:

Enserch Exploration, Inc.
Suite 600, The Summit Building
P. O. Box 4815, Midland, Texas 79704

IN WITNESS WHEREOF, this Agreement is executed as of the
day, month and year first above written.

ATTEST:

ENSERCH EXPLORATION, INC.

_____ By _____

ATTEST:

_____ By _____