## SALT WATER AND NON-HAZARDOUS

## **OIL AND GAS WASTE DISPOSAL AGREEMENT**

STATE OF NEW MEXICO {

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## **KNOWN ALL MEN BY THESE PRESENTS THAT:**

COUNTY OF LEA

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THIS AGREEMENT is made and entered into by and between THE MERCHANT LIVESTOCK CO., INC. (Landowner), hereinafter called "LESSOR" and BC OPERATING, INC., a Texas corporation, hereinafter called "LESSEE".

WHEREAS, LESSOR is the owner of the surface estate of that certain five acre tract situated in Lea County, New Mexico lands, more particularly described in the survey plat marked Exhibit "A", attached hereto (the "Subject Land"); and

WHEREAS, LESSEE wishes to re-enter or drill a disposal well (the "Subject Well") and construct a caliche pad ("the Subject Pad") to dispose of salt water and other non-hazardous oil and gas waste production in connection with oil and gas production operations and LESSOR is agreeable to such utilization by LESSEE, subject to the following terms, conditions and provisions.

In consideration of the mutual promises set out in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, LESSOR and LESSEE agree to be bound by the terms of this agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and obligations set forth herein, LESSOR and LESSEE hereby agree as follows:

#### ARTICLE ONE: LEASED PREMISES

1.1 LESSOR hereby GRANTS, LEASES and LETS exclusively to LESSEE the surface estate of five (5) acres of land described on Exhibit "A" which is located in Section 33, T21S-R33E, NMPM, Lea County, New Mexico, to re-enter or drill the Subject Well and construct the Subject Pad and to operate and use same for commercial purposes as a produced salt water and other non-hazardous oil and gas disposal well and to place and use tank batteries, an off-load station, disposal equipment and truck turn around thereon. LESSEE agrees to construct a suitable caliche pad on the Subject land using caliche not less than six (6) inches deep, compacted to not less than four (4) inches deep. LESSEE agrees to construct a suitable berm(s) surrounding the Subject Well and tank batteries with such berm(s) having sufficient size and capacity to contain one-hundred thirty-three percent (133%) of the entire contents of all tanks located upon Subject Land. LESSEE further agrees to take all other

Case 15398 Exhibit 21

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precautions common to the industry to ensure that no substance escapes onto the Subject Land and /or LESSOR's other lands. Prior to construction of any facilities on the Subject Land, LESSEE agrees to construct, at LESSE's expense, a fence not less than six (6) feet tall surrounding all of LESSEE's equipment and facilities to be located on the Subject Land and said fence shall be sufficient to and maintained to prevent cattle and deer from entering the fenced area of the Subject Land. No additional wells will be re-entered or drilled on the Subject Land without LESSOR's written consent.

- 1.2 LESSEE is further permitted, at no additional cost, to utilize LESSOR's existing power lines and poles, if available. LESSEE, at its own expense, is required to install an electric meter and is responsible for all electric charges and cost associated with the subject matter of this agreement.
- 1.3 LESSOR further GRANTS, LEASES, and LETS to LESSEE the right to run a disposal line from the disposal facility to the Subject Well. No additional pipelines will be run on the Subject Land without LESSOR's consent and the parties enter into separate right of way agreements.
- 1.4 LESSOR grants LESSEE access for ingress and egress to and from the Subject Land from the lease road. LESSEE agrees to maintain the Subject Land free and clear from trash, debris, noxious and/or toxic and/or invasive weeds and shall conduct its operations in a manner so as to prevent damage to LESSOR's lands, pasturage, range and crops. LESSEE hereby agrees it will not build additional roads on the said premises without LESSOR's consent. LESSEE shall observe and obey all speed limits posted on the Subject Land. In the absence of posted speed limits, all large trucks are limited to no more than 15 miles per hour on the Subject Land and all cars and pickup trucks are limited to no more than 20 miles per hour on the Subject Land.

# **ARTICLE TWO: TERM**

- 2.1 This agreement shall be for a term of twenty (20) years from and after the effective date as hereinabove provided and will automatically renew itself for additional successive 20 year terms, subject to the terms and conditions set forth herein.
- 2.2 If at any time during the term hereof, LESSEE shall fail to use the Subject Well for the purpose set out in the Agreement for a continuous period of one year, this Agreement shall terminate.
- 2.3 LESSOR will have the right or option to terminate this Agreement if (a) injection of salt water or other non-hazardous oil and gas waste is not commenced within two (2) years from the date the Commercial Salt Water Disposal Permit is issued, or (b) after first injection of salt water or other non-hazardous oil and gas waste, injection is then suspended for more than one-hundred eighty (180) consecutive days for reasons other than repairs or maintenance, or (c) LESSE is unable as a result of an event of Force Majeure, as defined below, to inject salt water or other non-

hazardous oil and gas waste into the Subject Well or otherwise utilize the disposal facilities associated with the Subject Well. The term "Force Majeure" as used herein means acts of God, landslides, lightning, earthquakes, fire, storms, floods, and washouts.

- 2.4 If, at any time, in the discretion of LESSEE, the injection and disposal of salt water or other non-hazardous oil and gas waste by LESSEE into the Subject Well becomes unprofitable, LESSEE shall have the right to terminate this Agreement by giving thirty (30) days notice of such termination, in writing, to LESSOR, except LESSEE shall not be relieved of any of its unsatisfied accrued obligations prior to such termination nor from any other obligations of LESSEE to be performed subsequent to such termination as provided in this Agreement.
- 2.5 Upon the termination or expiration of this Agreement under provision hereof or otherwise, LESSEE shall, not less than one-hundred eighty (180) days following said termination, plug and abandon the Subject Well in accordance with applicable rules and regulations of regulatory agencies with jurisdiction thereof and remove LESSEE's facilities and equipment from the premises, within one-hundred eighty (180) days of said plugging and abandonment. If LESSEE should fail to remove said facilities and equipment within the prescribed time, LESSOR shall be entitled to remove and dispose of such personal property and LESSEE agrees to bear any charges or cost incurred by LESSOR in the removal or relocation of the said items, at LESSOR's reasonable election. Within 180 days after LESSEE removes itself from the leased premises, LESSEE shall dig and haul all contamination from the Subject Land. Clean margins will be established both horizontally and vertically in the removal of contamination therefrom and LESSEE shall restore the surface of the Subject Land as near its former condition and cultivatable stat as reasonably possible, at LESSEE's own expense. Further, LESSEE shall reseed the disturbed area of the Subject Land with native grass seed acceptable to LESSOR until a stand of native grass has been established that is comparable to that on adjacent land of LESSOR.

## ARTICLE THREE: ROYALTY AND FEES

3.1 LESSEE at its own cost, risk and expense shall install a meter, which is acceptable to LESSOR, to determine volumes of salt water and other non-hazardous oil and gas waste disposed of into the Subject Well. LESSEE agrees to maintain such meter at its own cost, risk and expense and to take monthly readings, which may be witnessed by LESSOR, to determine the volume disposed of during the previous month. Further, LESSEE agrees to meter all water and other non-hazardous oil and gas waste disposed of in the Subject Well and to accurately and timely report it to the New Mexico Oil Conservation Division (OCD) or as may otherwise be required. However, LESSOR shall have the right to check the meter from time to time if he desires to do so in order to verify the accuracy of such meter and to set a check meter at a point reasonably downstream from LESSEE's meter, the location of which shall be agreed upon by the Parties and shall require LESSEE's consent as to the placement of a check meter. Any construction and installation cost associated with

any such check meter installation shall be at LESSOR's sole cost, risk and expense. If LESSOR desires to inspect LESSEE's meter, he shall provide 24 hours notice to LESSEE and allow LESSEE to have a representative present during such inspection.

- 3.2 LESSEE, in operating the Subject Well as a disposal well, shall test on a reasonable basis, but not less than annually, to insure LESSEE is not injecting produced salt water and other non-hazardous oil and gas waste into fresh water bearing sands or oil and gas bearing strata. Prior to any such tests, LESSEE shall notify LESSOR at least forty-eight (48) hours prior to the test so that LESSOR, or his representative, may be present at such test; and LESSEE shall provide LESSOR with a copy of the results for each such test.
- 3.3 Except for oil recovered or separated from its disposal operations, LESSEE shall not use the Subject Land for purposes of reclamation or treatment of oil wastes for reclaiming oil, nor shall LESSEE use the Subject Land as a storage yard for oil field related equipment, tools, pipe or other material which are not necessary for LESSEE's disposal operation conducted on the Subject Land.
- 3.4 LESSEE agrees to pay LESSOR a royalty of of gross amounts charged by LESSEE for the disposal of salt water and other nonhazardous oil and gas waste injected into the Subject Well bore and Said Disposal Royalty shall be payable to LESSOR by cash or check on or before the 29th day of the month following the month during which salt water or other nonhazardous oil and gas waste is disposed and monthly thereafter. Further, LESSEE shall pay LESSOR a minimum monthly payment in the amount of sper month with the first such minimum monthly payment being due and payable upon LESSEE's commencement of construction activities on the Subject Land and continuing thereafter until LESSEE commences the disposal of salt water and other non-hazardous oil and gas waste into Subject Well; provided, however, after LESSEE has completed construction of its facilities and commences operations on the Subject Land, if the total amount of such monthly Disposal Royalty fails to equal per month, LESSEE shall pay to LESSOR a minimum monthly payment in the amount of for each such month and such monthly amount shall be due and payable as provided above.
- 3.5 LESSEE shall furnish an itemized statement to LESSOR, along with each Disposal Royalty payment, sufficient to reflect the methods of computation used in deriving the amount of royalty being paid to LESSOR. In addition, LESSEE shall furnish copies of Form C-120-A and/or any other form LESSEE is required to file with the New Mexico Oil Conservation Division (OCD) for total monthly barrels of water disposed of in the Subject Well and for total barrels of oil sold. In order to further assure the proper payment of said royalty, LESSOR, or its representative, shall have the right and privilege during normal business hours and upon reasonable prior written

notice to LESSEE to inspect LESSEE's books of account relating to operations of the Subject Well at LESSEE's office.

## **ARTICLE FOUR: INDEMNITY, DAMAGES AND REMEDIATION**

- 4.1 LESSEE WILL MAINTAIN IN GOOD CONDITION ALL FACILITIES ASSOCIATED WITH THE DISPOSAL OF SALT WATER AND OTHER NON-HAZARDOUS SUBSTANCES. AS CONTEMPLATED BY THIS AGREEMENT. INCLUDING, WITHOUT LIMITATION, TANK BATTERRIES, OFF-LOAD STATION, DISPOSAL EQUIPMENT AND TRUCK TURN AROUND, FENCING, PADS, DISPOSAL LINE, ETC. AND LESSEE SHALL BE **RESPONSIBLE FOR ANY DAMAGE RESULTING FROM CONSTRUCTION, OPERATION** AND MAINTENANCE OF SUCH EQUIPMENT. LESSEE AGREES THAT IT WILL ASSUME ALL LIABILITIES FOR DAMAGES ARISING FROM ITS OPERATIONS HEREUNDER AND LESSEE AGREES TO DEFEND. INDEMNIFY, AND SAVE LESSOR. HIS HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, ASSIGNS, AND THEIR RESPECTIVE AGENTS, SERVANTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, ACTIONS, JUDGMENTS AND COSTS OF DEFENSE OF SAME WHICH ARE CAUSED BY OR RESULT FROM LESSE'S OPERATIONS UNDER THIS AGREEMENT. · · · · . . ...\*
- 4.2 In the event of any spill on or adjacent to the Subject Land occurring as the result of LESSEE's operations, LESSEE agrees to immediately and adequately remediate any and all contaminated soil to restore said soil to substantially the same condition as existed prior to said spill and to reseed the disturbed area as provided in Section 2.5 above.

# **ARTICLE FIVE: DEFAULT**

5.1 In the event of a default by LESSEE in the payment of any sums due hereunder, LESSOR shall notify LESSEE, in writing, of such default and LESSEE shall have thirty (30) days in which to make payment. LESSEE may make payment and reserve objection to the necessity of making such payment. In the event of a default by LESSEE regarding any other terms and conditions of this Agreement, LESSOR shall notify LESSEE, in writing, of such claimed default and LESSEE shall have sixty (60) days within which to cure the default. If the default cannot be cured within sixty (60) days, and if LESSEE begins diligent and good faith action within 10 days of such notification to cure the default and carry the corrective action not to exceed a total of 120 days from such notification. The prevailing party in any lawsuit related to or arising out of this Agreement shall recover its reasonable costs of litigation, including attorney's fees.

# **ARTICLE SIX: GENERAL PROVISIONS**

6.1 LESSEE shall, at its sole cost and expense, during the term of this Agreement and any renewal term thereof, comply with all federal, state and local laws and all valid

and applicable orders, rules and regulations of any duly constituted state, federal or other governmental regulatory body having jurisdiction.

- 6.2 No fresh water will be used from the Subject Lands without LESSOR's permission.
- 6.3 LESSEE shall keep the Subject Land described herein free and clear of all trash, debris, noxious and/or toxic and/or invasive weeds.
- 6.4 LESSEE is expressly prohibited from hunting or fishing on the Subject Land. LESSEE is expressly prohibited from possessing firearms, alcohol or illegal drugs on the Subject Land.
- 6.5 Each party hereto represents and warrants that it has the power and authority to execute and deliver this Agreement, including any exhibit hereto, which has been executed by or on behalf of such party.
- 6.6 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, there shall be added automatically, as part of this Agreement, a provision as similar in terms and substance to such illegal, invalid, or unenforceable provision as may be possible and legal, valid, and enforceable.
- 6.7 This Agreement contains the entire agreement of the parties and supersedes and replaces any oral or written communication heretofore made between the parties relating to the subject matter hereof.
- 6.8 This Agreement, and the rights granted hereunder and obligations contained herein shall be a covenant running with the Subject Land and shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 6.9 This Agreement shall be governed by and construed in accordance with laws of the State of New Mexico. LESSEE and LESSOR irrevocably and unconditionally agree that all suits, actions, proceedings, or disputes that arise out of or related to this Agreement or the parties' relationship, whether the claims arise from contract or tort, or whether the claims are legal or equitable in nature, must be litigated exclusively in Lea County, New Mexico. LESSEE and LESSOR irrevocably and unconditionally waive any objection to the laying of jurisdiction or venue in Lea County, New Mexico for any suit, action, proceeding, or dispute. The foregoing choice of forum is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigations between the parties in any jurisdiction other than that specified in this section 6.9. Each party hereby waives

any right it may have to assert the doctrine of forum *non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section 6.9. Both parties acknowledge that Lea County, New Mexico is a convenient forum.

- 6.10 The parties acknowledge and represent that they have been afforded an opportunity to consider this agreement and the terms and conditions set forth herein, and that they have consulted with counsel of their choosing prior to executing this Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement may be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision.
- 6.11 LESSEE agrees to sufficiently inform its employees, agents and independent contractors who will enter upon the Subject Land and require each of them to comply with the terms and conditions required or LESSEE set forth in this Agreement.
- 6.12 No Assignment of the Agreement, in whole or in part, shall be made: (1) unless Assignee assumes and agrees to perform the obligations of LESSEE under the terms of this Agreement as same now exists, or as same may be amended from time to time hereafter; and (2) unless LESSOR's prior written consent is obtained to such assignment, which consent of LESSOR shall not be unreasonably withheld.
- 6.13 All notices, instructions, payments, and other communications provided for herein shall be deemed delivered to the appropriate party as specified below upon hand delivery or upon deposit of the same in the United States mail, in a postage pre-paid wrapper, addressed as follows.

If to LESSOR: The Merchant Livestock Co., Inc. P.O. Box 1105 Eunice, NM 88231 If to LESSEE BC Operating P.O. Box 50820 Midland, TX 79710

6.14 It is agreed that this agreement shall not be filed in any public record. In lieu of filing this Agreement for record, LESSOR and LESSEE agree that a memorandum of this agreement making appropriate references hereto shall be filed for record in the county wherein the Subject Land is located. In the event of any conflict between recitations contained in such memorandum and those contained herein, the provisions of this Agreement shall control.

SIGNED this <u>30</u> day of <u>March</u> 2015, but effective for all purpose as of March 1, 2015

The Merchant Livestock Co., Inc.

Bv:

Clabe Pearson, President

**BC Operating, Inc.** By: Michael E. Black, President

Michael E. Black, President

STATE OF NEW MEXICO

COUNTY OF LEA

This instrument was acknowledged before me on this  $30^{\pm}$  day of <u>March</u> 2015, by Clabe Pearson, President of The Merchant Livestock Co., Inc., on behalf of said corporation.

OFFICIAL SEAL RICHARD HICKS. Notary Public State of New Mexico My Comm. Expires 9-19-2016

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Notary Public in and for the State of New Mexico

Print Name: \_ Richard Hicks

My Commission Expires:

Sept. 19,2016

STATE OF TEXAS

This instrument was acknowledged before me on this  $1^{2^{1}}$  day of  $3^{2^{1}}$  day of  $3^{2^{1}}$  by Michael E. Black, as President of BC Operating, Inc., on behalf of said corporation.

BRIAN DAVID HALL Notary Public, State of Texas My Commission Expires January 31, 2018

Notary Public in and for the State of Texas

Print Name: Brian David Hell

My Commission Expires:

1/31/18



PEARSON SWD №. 1 SEC. 33, TWP.-21-S, RGE.-33-E LEA COUNTY, NEW MEXICO B.C. OPERATING, INC.

SHEET 1 OF 2

#### FIELD NOTES DESCRIBING

The proposed well pad for the Pearson SWD No. 1, being 5.00 acres of land. Said well pad being located in the Southeast quarter of the Northeast quarter Section 33, Township 21 South, Range 33 East, New Mexico Principal Meridian, Lea County, New Mexico.

Being more particularly described by metes and bounds as:

BEGINNING at the Northwest corner of said proposed well pad, from which an iron pipe with a 2-1/2 inch brass cap found for the Northwest corner of said Section 33, bears N 68°27'46" W a distance of 4,723.55 feet.

THENCE continue, crossing the Southeast quarter of the Northeast quarter of said Section 33, the following courses and distances:

S 89°59'54" E a distance of 466.73 feet to the Northeast corner of said proposed well pad, S 00°00'06" W a distance of 466.66 feet to the Southeast corner of said proposed well pad, N 89°59'58" W a distance of 466.72 feet to the Southwest corner of said proposed well pad, and N 00°00'03" E a distance of 466.67 feet to the *POINT OF BEGINNING* also being the Northwest corner of said proposed well pad.

The total acreage of the herein described proposed well pad being 5.00 acres of land in the Southeast quarter of the Northeast quarter of said Section 33.

Title information furnished by BC Operating, Inc.

All bearings and coordinates refer to NAD 83, New Mexico State Plane Coordinate System, East Zone, U.S. Survey Feet. (All bearings and distances are grid measurements.)

STATE OF NEW MEXICO COUNTY OF LEA

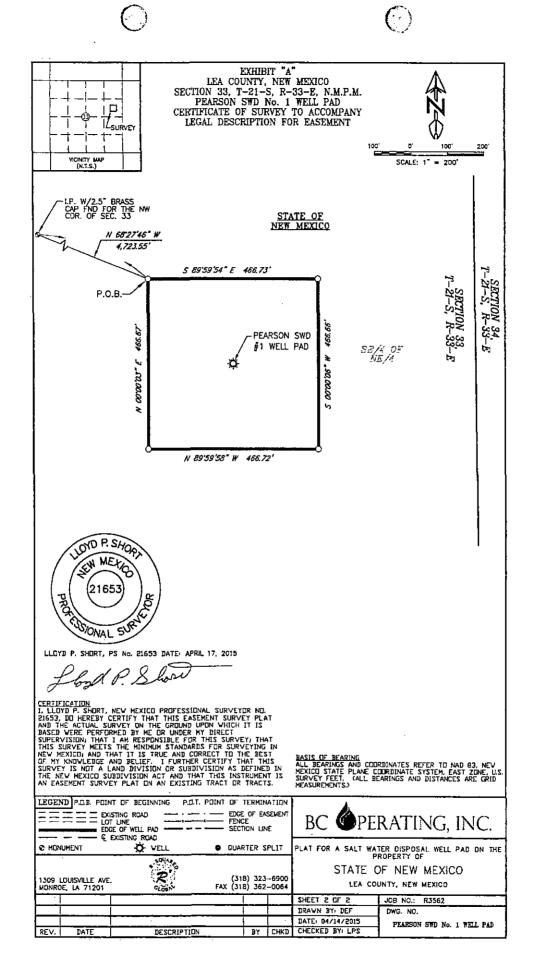
I, Lloyd P. Short, New Mexico Professional Surveyor No. 21653, do hereby certify that this easement survey plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the minimum standards for surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is an easement survey plat crossing an existing tract or tracts.



LLEYD P. SHERT, PS No. 21653 DATE: APRIL 17, 2015

R-SQUARED GLOBAL, LLC PROJECT NO. R3562

Modification in any way of the foregoing description terminates liability of Surveyor.



#### **BC OPERATING, INC.**

P.O. Box 50820 Midland, Texas 79710 4000 N. Big Spring, Suite 310 Midland, Texas 79705 (432) 684-9696 Fax (432) 686-0600

June 2, 2015

## CERTIFIED RETURN RECEIPT REQUESTED

The Merchant Livestock Co., Inc. P. O. Box 1105 Eunice, NM 88231

RE: Salt Water and Non-Hazardous Oil and Gas Waste Disposal Agreement Pearson SWD #1 SE/4 NE/4 Section 33, T21S, R33E Lea County, New Mexico

Gentlemen:

Enclosed please find an executed Salt Water and Non-Hazardous Oil and Gas Waste Disposal Agreement for the Pearson SWD #1 in Lea County, New Mexico.

Yours truly,

D.D.W.

