STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION

APPLICATION OF ALLAR DEVELOPMENT, LLC TO REOPEN DEVON ENERGY PRODUCTION COMPANY, L.P.'S CASE NOS. 21119, 21120, 21121, 21122 AND 21123, EDDY COUNTY, NEW MEXICO

Re-Open Case No. 21346 re Case Nos. 21119, 21120, 21121, 21122, and 21123

DEVON ENERGY PRODUCTION COMPANY, L.P.'S REPLY TO ALLAR DEVELOPMENT, LLC'S RESPONSE TO MOTION TO DISMISS

In accordance with the Oil Conservation Division's ("Division") Scheduling Order on Motion to Dismiss Allar Development, LLC's ("Allar") Application to Reopen, as referenced above, Devon Energy Production Company, L.P., ("Devon") submits its Reply to Allar's Response to Motion to Dismiss, stating as follows:

I. Introduction

1. The dispositive issue herein is whether the Division has grounds to reopen Case Nos. 21119 through 21123 in order to alter existing Pooling Orders that the Division properly decided and issued, based on Allar's speculation that a Joint Operating Agreement ("JOA") might suddenly materialize, after Allar has failed to produce a JOA to Devon, during its inquiries and good faith negotiations, or to the Division at the time of the hearing. The answer is no.

2. The Division need only account for two facts in this dispute to decide whether to dismiss Allar's Application to Reopen. First, there is the Assignment of Oil and Gas Leases recorded July 31, 2018, in Book 503, Page 16 ("OXY – Devon Assignment"), that referenced an

Exploration Agreement dated July 1, 1999, but expired June 30, 2003 ("EA"), which Devon examined during its review of the record. Both Allar and Devon acknowledge that the OXY-Devon Assignment references the EA.

3. Second, contrary to Allar's claim, the EA did not reference, include or incorporate an existing or executed JOA, nor was there filed of record a JOA, or memorandum of JOA. An accounting of these two facts, in their proper legal context, resolves this dispute in favor of Devon. Allar's attempt to conflate the existence of the EA with the existence of a valid JOA is misleading and inaccurate: Allar has failed to produce any JOA, in spite of Devon's inquiries, and Allar has failed to provide the Division with any evidence, new or otherwise, that Allar executed a JOA or that one even exists pursuant to the terms of the EA.

4. Allar's Response to Motion to Dismiss ("Response to Motion") makes reference to the EA only in its Introduction, and then perpetuates the fallacy that a JOA actually exists of record and is applicable to Sections 23 and 26, Township 23 South, Range 29 East, NMPM, Eddy County, New Mexico ("Sections 23 and 26") through the remainder of its Response to Motion by referring only to "the JOA" and not to the EA. In sum, Allar is asking the Division to interpret the contractual terms of the EA, that expired more than 17 years ago, in order to speculate for the benefit of Allar that a JOA might exist or that Allar might execute a JOA pursuant to the expired EA. This request exceeds the Division's authority. *See* Order No. R-14187.

II. The Division properly relied on Devon's accurate testimony of good faith negotiations and due diligence when issuing its Pooling Orders that bind Allar.

5. In its review, Devon identified and closely examined the contractual terms of the EA referenced in the OXY-Devon Assignment. Allar's reliance on *TransTexas Gas Corp. v. Forcenergy Onshore, Inc.,* 13-10-00446-CV, 2012 WL 1244218, at Page 11-12 (Tex. App.

2012) is instructive to show that not only Devon but Allar too is bound by the clear terms of the EA. Quoting *Westland Oil Development Corp. v. Gulf Oil Corp.* 637 S.W.2d 903 (Tex. 1982), the *TransTexas* court noted "that every purchaser is bound by every 'recital, reference and reservation contained in or fairly disclosed by any instrument which forms an essential link in the chain of title under which he claims.'" *Id.* The terms of the EA are part of that essential link in the chain of title that determines the rights of ownership, and claims of interest, for both Devon and Allar.

6. Devon's examination of the EA revealed that it did not include an executed JOA, but only provided the Parties to the EA the potential to enter a JOA upon the satisfaction of certain contractual contingencies in effect prior to the EA's expiration: "After the parties have determined whether ECHO or KOC will operate a given Prospect, each of the parties hereto and the operator will enter into an operating agreement covering the Prospect in the form attached hereto as *Appendix 4*." Exploration Agreement, Article 5, ¶ 5.1, attached as Exhibit A. Furthermore, the term "Prospect" is not defined in the EA as applying to Sections 23 and 26, or to any specific sections or lands, but is defined as a large geographical area covering a multitude of sections, that can be further expanded pursuant to Paragraph 3.5 of the EA. *See* Exploration Agreement, Article 1, ¶ 1.1, attached as Exhibit A. Therefore, not only is there no JOA, but any conjecture that a JOA exists pursuant to the terms of the EA is preempted by basic property law principles of vagueness.

7. Furthermore, the EA does not give constructive notice of an existing JOA for Sections 23 and 26. The only way a JOA could exist for said Sections is if, during the active term of the EA, the Parties selected either ECHO or KOC as the operator for a Prospect, described the lands of that Prospect with legal specificity, and executed a JOA for the Prospect.

Without a specific JOA, or memorandum, filed of record, the language of the EA in Article 5, ¶ 5.1, provides Devon only with inquiry notice, the obligation to make inquiries with Allar whether an actual JOA exists, which Devon satisfied prior to the hearing.

8. Instead of seeking from the Division "a finding that a JOA existed and covered the spacing units," as stated in argument C of its Response to Motion, Allar is obligated to produce the JOA it claims exists so the Division can determine whether it could affect the pooling orders Allar desires to challenge. Allar's request that the Division "find" whether a JOA exists pursuant to the EA requires the Division to interpret the terms of Article 5, ¶ 5.1, to determine whether the original parties, or their successors, might have properly exercised their contractual rights to form a JOA, prior to the expiration of the EA. Devon submits that, if Allar is not currently a party to an existing JOA that was executed prior to the EA's expiration, Allar is barred from reviving this contractual right. Consequently, Allar's assertion that a JOA exists under the terms of the EA that runs with the land and provides constructive notice is false.

9. The *Westland* court makes this perfectly clear, that constructive notice does not apply where upon "diligent inquiry and search," a party is simply unable to obtain a copy of a JOA. *See* Westland 637 S.W.2d at 908 (referencing *Loomis v. Cobb,* 159 S.W. 305 (Tex. Civ. App. – El Paso 1913)). In *Westland*, an oil and gas lease assignment stating it is subject to a specific JOA was filed of record. The referenced JOA, not filed of record, contained a paragraph describing a specific letter agreement, also not of record, that granted rights to certain parties. The *Westland* court held that the assignees were subject to the JOA and letter agreement. However, the *Westland* court, referencing *Loomis v. Cobb*, 159 S.W. 305 (Tex. Civ. App. – El

Paso 1913),[1] stated that it is not unusual for an operating agreement to not be placed of record, and that a different outcome might have resulted, if upon diligent inquiry and search, the assignees were simply unable to obtain a copy of the operating agreement. *See* Westland, 637 S.W.2d at 908.

10. Devon conducted a diligent inquiry and search and was not able to obtain a copy of an existing JOA that covered Sections 23 and 26; in fact, Devon communicated with Allar the day before the hearing to discuss Devon's proposed JOA, to which Allar responded: "We would have no problem signing [Devon's] JOA in this area if everyone signs and we can see the final version." *See* Email exchange between Devon and Allar attached as Exhibit B. Allar, at the time of its statement, would have understood that "everyone" would have referred to the uncommitted interest owners who had not yet signed the JOA, and therefore, Allar implicitly included itself among this group of uncommitted owners. Furthermore, if Allar had knowledge of a competing JOA that covered Sections 23 and 26 to which it was a party, Allar would have produced the JOA at that time to demonstrate its interests were already committed instead of agreeing to execute Devon's JOA "if everyone signs and we can see the final version." Based on this communication, it was reasonable for Devon to assume that Allar consented to being pooled and would decide whether to sign Devon's JOA after the pooling.

III. The Division cannot reopen a case to resolve a private dispute between two parties.

11. To support its request that the Division find a JOA buried somewhere in the contractual language of the EA, when it failed to produce an actual JOA at the hearing, Allar relies

[1] In *Loomis,* the court held that "constructive notice is not absolute; the legal presumption arising under the circumstances is only prima facie; it may be overcome by evidence, and the resulting notice may thereby be destroyed." *Loomis,* 159 S.W. at 308.

on quoting liberally from *NBI Services, Inc. v. Corp. Comm. of State,* 241 P.3d 685 (Okla. App. Div. 2, 2010). However, Allar's reliance on *NBI Services* is misplaced.

12. In *NBI Services*, the court held that when two parties, such as Devon and Allar, are not able to come to terms regarding a voluntary agreement, or when an applicant, such as Devon, determines that there is no agreement in the form of an existing JOA, "[the OCC] is empowered, upon proper application, to order those interests pooled." *See NBI Services*, 241 P.3d at 690 (quoting *Tenneco Oil Co. v. El Paso Natural Gas,* 1984 OK 52, 687 P.2d 1049) (brackets in the original). In the present case, Devon conducted a thorough inquiry to determine whether Allar's leasehold interest was subject to a JOA prior to the hearing and found no evidence, either of record, or from Allar itself, that a governing JOA existed.

13. In *NBI Services*, the court allowed the pooling case to be reopened only because NBI's Motion to Reopen produced the JOA to which NBI was subject, thereby providing to the OCC new evidence that could affect the status of the pooling order. *See id.* at 687. In contrast, Allar has failed to produce a governing JOA to the Division or Devon when it had the opportunity to appear and produce new evidence, and more notably, failed to produce evidence of a governing JOA in its Application to Reopen, referring only to the expired EA. Under the facts and evidence presented by both Devon and Allar, no JOA exists, and the Division properly exercised its powers at the hearing to pool Allar's interest.

14. Allar's reliance on *Chesapeake Operating, Inc. v. Burlington Resources Oil and Gas Company,* 60 P.3d 1052 (Okla. App. Div. 3 2002), is misplaced because this case supports Devon's position. In *Chesapeake,* Burlington claimed in the trial court that because it was party to an existing JOA, Chesapeake had no right to pool its interest and therefore was not subject to the OCC's pooling order. The trial court ruled for Chesapeake, finding that Burlington was subject

to, and bound by, the pooling order. The appellate court affirmed this holding. *Chesapeake,* 60 P.3d at 1053.

15. The facts of *Chesapeake* are complicated, but basically they can be distilled to the following: Burlington was a party to a JOA covering multiple sections. *See id.* An Owner in one of the sections covered by the JOA, but who was not subject to the JOA, decided to force pool the one section for drilling a well. *See id.* at 1054. The Owner named Burlington, a party to the JOA, as a respondent in its pooling application. *See id.* Burlington received notice of the application but did not appear or protest. *See id.* Afterwards, the Owner sent a well proposal and AFE to Burlington as required by the pooling order. *See id.* Believing it was not subject to the order, Burlington never sent a written response. *See id.* Chesapeake acquired the interest in the one section from the Owner and notified Burlington that it was proceeding to drill a well under the pooling order. *See id.* Like Allar, Burlington claimed it was not bound by the pooling order: Burlington alleged "it was not bound by Order No. 449239, that it was entitled to elect under the JOA because Burlington and Chesapeake share a common interest under the JOA and because it participated in the original well under the JOA." *Id.* at 1053-54.

16. However, the OCC found that the pooling order "effectively pooled the owners in the unit, including Burlington, and that it established a plan of development for the unit and all the owners therein." *Id.* at 1055.

> Noting that the Commission is without jurisdiction to determine private disputes -- such as whether the JOA covers the interest Chesapeake acquired from Questar and extends to the non-JOA interest in Section 36 that Chesapeake acquired from Lortz – the [OCC] Referee concluded that Burlington's remedy would be to file an action in district court to adjudicate its claim that, in light of the JOA, the Commission's order is void as to Burlington's interest. Accordingly, the [OCC] Referee determined that it was proper for Chesapeake to invoke the Commission's pooling power as to Burlington's interest. *Id.* (emphasis added)

17. The *Chesapeake* court found the OCC's reasoning dispositive and reiterated it in its final ruling against Burlington, that Burlington was in fact subject to, and bound by, Chesapeake's pooling order and the only venue for interpreting the applicability of the JOA lies with the district court, not with the Commission:

> Burlington's underlying argument – that it should not be subject to the Commission's force pooling order and the Commission is without jurisdiction to force pool Burlington because a private agreement, the JOA, controls – is not a dispute over rights and equities of interest owners within a drilling and spacing unit "which actually affects [correlative] rights within a common source of supply and thus affects the public interest in the protection of production from that source as a whole," but a private dispute over the application and interpretation of a contract. *Samson Resources Co. v. Corporation Comm'n,* 1985 OK 31, Para. 9, 702 P.2d 19, 22; *see also Atlantic Richfield Co. v. Tomlinson*, 1993 OK 106, 859 P.2d 1088. "[D]isputes over *private rights* are properly brought in the district court . . . . the [C]ommission's jurisdiction is limited to protection of public rights in development and production of oil and gas." *Leck v. Continental Oil Co.,* 1989 OK 173, Para. 7, 800 P.2d 224, 226 (emphasis in original). Interpretation of the applicability of the JOA would be beyond the Commission's conferred jurisdiction because it concerns a dispute between private parties in which the public interest in correlative rights is not concerned. *Id.* Accordingly, Burlington's recourse properly lies with the District Court. *Chesapeake* 60 P.3d at 1057.

18. Thus, under the holding in *Chesapeake*, when a dispute is between two parties over a private contract, the pooling order stands, the case is not reopened, and the parties proceed, if so desired, to the proper venue to resolve the dispute. Like Burlington, Allar was provided notice of the Division's hearing, but failed to appear or protest. Furthermore, in *Chesapeake,* Burlington, unlike Allar, submitted an executed JOA to the OCC after it issued the pooling order; however, the *Chesapeake* court found the JOA was insufficient to override a properly issued pooling order, and the only remaining venue for its proper consideration was the district court.

19. Based on the facts of Allar's Application to Reopen -- that Allar has not produced an existing JOA, either prior to the hearing or after the Division issued its order, and that the day before the hearing, Allar informed Devon it had no problem signing the proposed JOA -- there are no grounds to reopen the cases under *NBI Services* or *Chesapeake*.

20. To put Allar's claims in proper perspective, Devon submits that the facts of Allar's Application to Reopen correspond closely to the facts on which the Oklahoma Supreme Court ruled in *Leede Oil & Gas, Inc., v. Corporation Com'n,* 747 P.2d 294 (Okla. 1987). The dispute in *Leede* concerned drilling costs and payment requirements under an existing pooling order, which did not provide for an evaluation of certain costs, in comparison with a JOA entered into after the OCC issued its order, which did provide for evaluation of such costs. *See id.* at 295-296. This is the same concern expressed by Allar: "A concern of Allar under the orders is its inability to evaluate well performance of wells as they are drilled before payment requirements on subsequent wells are due. The JOA allows for such evaluation." Allar's Response to Motion, Page 4, ¶ 3.

21. In *Leede*, Appellant, seeking from the OCC a determination on drilling costs, filed an application to reopen the case. *See* Leede 747 P.2d at 296. Appellant based its application on Oklahoma pooling statute, 52 O.S. § 87.1(e) which gives the OCC jurisdiction over "the question of reasonableness of costs of a well drilled under the auspices of a Commission pooling order." *Id.* at 297. In this respect, 52 O.S. § 87.1(e) mirrors NMSA 1978 § 70-2-17(C) ("In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon.")

22. However, the *Leede* court noted that the case law interpreting this statute did not "involve a subsequent agreement between the parties which could be construed as governing expenditures for the drilling of the well authorized by the pooling order." *Leede* 747 P.2d at 297. While it is clear that the purpose of this statute is to protect the rights of parties holding interests affected by the pooling order, the court opined, it is "equally clear that, once the parties have reached subsequent agreement among themselves regarding the rights and obligations due each

from and to the others in the development of a unit well, the agreement between the parties is enforceable in district court." *Id.*

23. The *Leede* court noted in *Samson Resources Co. v. Corporation Comm'n,* 702 P.2d 19, that it viewed that a "forced pooling order issued by the Commission was in the nature of a 'bare bones' foundation regarding the relative rights and obligations of those holding affected mineral interests," and that the "parties could further flesh out the terms of the pooling order by private contractual agreement…." *Id.* However, the *Leede* court ruled that if the parties enter into a private agreement subsequent to the pooling order, then the proper forum for the adjudication of such terms is not the Commission but only district court. *See id.*

24. Given its failure to produce an existing JOA, either prior to or at the hearing, or with its Application to Reopen, Allar can only address payment provisions that vary from the Division's pooling order through a subsequent private agreement with Devon. Even if Allar were now able to execute a JOA pursuant to the EA, which it cannot, such JOA would be a private contract entered into subsequent to the pooling order. In its Motion to Dismiss, Devon stated that it remains open to further negotiations in the attempt to address Allar's concerns. *See* Motion to Dismiss, Page 10, ¶ 22. However, Devon has communicated to Allar that such negotiated terms cannot absolve Allar of all financial risk associated with drilling, which is contrary to all standards of the industry.

25. In the end, the *Leede* court ruled that the Commission's pooling order stands and affirmed as proper the Commission's ruling to dismiss the appellant's application to reopen the case. *See* Leede, 747 P.2d at 298. Because, as acknowledged by Allar in its Response to Motion, Page 6, the "Oklahoma statute is identical to that portion of NMSA 1978, § 70-2-17(C)" involved in this dispute, and because Allar relies on Oklahoma case law as being highly instructive, if not

dispositive, the Division, on the basis of *Leede, NBI Services,* and *Chesapeake,* should dismiss Allar's Application to Reopen.

26. In sum, Devon exceeded the standards of diligent inquiry and search by thoroughly examining the record for an existing JOA and communicating directly with Allar about the possibility of there being a JOA and found no indication or evidence that such a JOA exists. Finally, if there exists a JOA to which Allar is a party or successor affecting Sections 23 and 26, certainly Allar would have included reference to the JOA in the Assignment of Oil and Gas Leases and Wells, dated March 1, 2020, recorded April 6, 2020, in Book 1135, Page 382, the assignment by which Allar Development, LLC, acquires its interest in Sections 23 and 26 from The Allar Company. Notably, Allar does not reference an existing JOA, or any JOA, or even the EA, in this assignment. *See* Assignment from The Allar Company to Allar Development, LLC, attached as Exhibit C.

27. Procedural due process not only protects all interest owners, but it also protects all pooling applicants. If a pooling applicant, and the Division, cannot rely on the due process of notice in its proceedings, as required by statute and regulation, then an inordinate amount of time, energy and resources will be wasted by the parties' relitigating Division orders, opening the floodgates to judicial waste every time a party becomes unsatisfied with, or has second thoughts about, the terms of a properly issued order.

For the foregoing reasons, Devon remains opposed to Allar's Application to Reopen and

respectfully requests from the Division that it be denied and summarily dismissed.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage

Andrew D. Schill
William E. Zimsky
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com
Attorneys for Devon Energy Production, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on August 17, 2020:

Ernest Padilla
Padilla Law Firm, P.A.
Post Office Box 2523
Santa Fe, New Mexico 87504
(505) 988-7577
padillalawnm@outlook.com
Attorney for Allar Development, LLC

/s/ Darin C. Savage
_____
Darin C. Savage

EXPLORATION AGREEMENT

This EXPLORATION AGREEMENT (*"Agreement"*) is made and entered into as of July 1, 1999, by and between **KUKUI, INC.**, a Texas corporation (*"KUKUI"*), and **The Allar Company**, a Texas corporation, **Talus, Inc.**, a Texas corporation, and **Twin Montana, Inc.**, a Texas corporation. The Allar Company, Talus, Inc., and Twin Montana, Inc. may be referred to herein individually and collectively, jointly and severally as *"The Allar Group."*

RECITALS

A. Each member of the Allar Group has entered into a Geological Consulting Agreement (described more fully below) with John Thoma (*"Thoma"*), a geologist, who has been represented by The Allar Group to have extensive experience generating oil and gas exploration prospects in the area described in *Appendix 1* hereto (the *"Project Area"*), to expend all (100%) of his professional efforts in identifying and evaluating geological features within the Project Area that are of sufficient geological interest to merit the acquisition of exploration and production rights by various means.

B. Each of the parties hereto currently owns certain interests in leases within the Project Area.

C. Subject to the terms and conditions hereof, KUKUI desires to participate with The Allar Group in acquiring interests in certain portions of the Project Area and, in certain cases, conducting joint exploration and development activities thereon.

In consideration of the foregoing recitals, and for other good and valuable consideration received by each of the parties hereto, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions: As used herein, the following terms shall have the meanings indicated below:

"Acquired Interests" shall have the meaning set forth in *Section 3.4.*

"Acquiring Party" shall have the meaning set forth in *Section 6.3.*

"Acquisition Costs" shall mean, with respect to any Acquired Interests, the sum of (i) the acquisition price thereof, (ii) title examination costs, transfer taxes, bonuses, rentals and ad valorem taxes, if any, paid with respect to said Acquired Interests that apply to the acquisition of such Acquired Interests, (iii) fees paid to third parties for legal, accounting, reservoir engineering,

EXHIBIT
A

"Prospect" shall mean a geographical area within the Project Area that is designated by The Allar Company as agent for The Allar Group pursuant to *Section 3.1* below, as such area may be expanded pursuant to *Section 3.5* below.

"Rejected Prospect" shall have the meaning set forth in *Section 3.4*.

"Specified Costs" shall have the meaning set forth in *Section 6.3*.

"Thoma" shall have the meaning set forth in the recitals.

"Thoma Geological Consulting Agreement" shall mean the Geological Consulting Agreement dated November 10, 1998, as amended by that certain First Amendment to Geological Consulting Agreement, dated July 1, 1999, but to be effective as of the date of this Agreement, by and between the members of The Allar Group and Thoma, copies of which have been attached hereto as *Appendix 7* except that Section 4 of the November 10, 1998, Geological Consulting Agreement relating to the Consulting Fee to be paid by The Allar Group to Thoma has been deleted.

1.2 Other Definitional Provisions. All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words "hereof," "herein," and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all Article and Section references are to the Articles and Sections of this Agreement. All references to Exhibits are to the Exhibits attached to this Agreement, and all of said Exhibits are incorporated herein and made a part of this Agreement. Any references herein to "third parties" shall not include Thoma.

ARTICLE 2
PAYMENTS AND ACREAGE CONTRIBUTIONS

2.1 Initial Payment. One or more members of The Allar Group have incurred certain expenses in retaining Thoma, relocating him to Graham, Texas, and providing computer hardware and software to support his professional efforts in connection with the Project Area. As full and complete compensation to each member of The Allar Group for the benefits to be received therefrom by KUKUI and for The Allar Group entering into this Agreement and originating and locating Prospects hereunder KUKUI shall pay to The Allar Company as agent for The Allar Group $65,000.00 (the *"Initial Payment"*). The Initial Payment shall not be refundable and shall be paid by KUKUI to The Allar Company, for the benefit of The Allar Group within five (5) Business Days of the execution and delivery of this Agreement by the parties. As used herein, the term *"Business Day"* means a day other than a Saturday, Sunday, legal holiday for commercial banks under the laws of the State of Texas, or any other day when banking is suspended in the State of Texas.

2.2 Prospect Evaluation Fees. During the term of this Agreement (and only for so long as this Agreement has not been terminated pursuant to the terms hereof), and subject to all of the

pro rata share of an overriding royalty interest of 1.5% of 8/8ths in favor of Thoma (such Existing Burdens shall be proportionately reduced, and said overriding royalty interest of Thoma shall be subject to reduction in accordance with the provisions of Section 5.1 (ii) of the Thoma Geological Consulting Agreement). Thoma's overriding royalty interest shall be conveyed to Thoma by assignment substantially in the form attached hereto as *Appendix 3* and shall be convertible, at Thoma's option, after Payout, to a 5% working interest in the Acquired Interests. Payout shall be determined separately with respect to the 60% interest of KUKUI and the 40% interest of The Allar Group. Payout for KUKUI shall be determined as defined in *Section 1.1* of this Agreement, and Payout for each member of The Allar Group shall be determined as defined the Thoma Geological Consulting Agreement. Said working interest shall be carved out the working interests of the parties hereto in proportion that the overriding royalties of Thoma burden their respective working interests. Further, Thoma shall be entitled to the above described overriding royalty interest and optional working interest after Payout in and to any Exploration Rights conveyed by KUKUI to each member of The Allar Group hereunder insofar as said Exploration Rights cover and affect any Approved Prospect. By Thoma's limited execution of this Agreement, Thoma expressly agrees that his overriding royalty interests in and to an Approved Prospect shall be determined according and subject to the provisions of this *Section 4.2* of this Agreement.

4.3 Documentation of Project Area. The Allar Group shall provide KUKUI, at no cost to KUKUI, copies of all geological and geophysical maps and interpretations, leases, agreements, assignments and any other information and data that KUKUI may reasonably request pertaining to the Project Area, and KUKUI shall jointly own all such documentation as tenants in common with The Allar Group.

ARTICLE 5
OPERATIONS; THE ALLAR GROUP'S MANAGEMENT AND REPORTING DUTIES

5.1 Operating Agreement. Two of every three Prospects designated hereunder shall be operated by KUKUI Operating Company, a Texas corporation, (hereinafter ***"KOC"***), a wholly-owned subsidiary of KUKUI, and one of every three Prospects designated hereunder shall be operated by ECHO in each case pursuant to the terms of an operating agreement in the form attached hereto as *Appendix 4* (the ***"Operating Agreement"***). The parties shall attempt to designate the operator of each Prospect designated hereunder by mutual agreement in accordance with the general principle stated above. In the event the parties disagree as to whether a given Prospect should be operated by ECHO or KOC, the matter shall be resolved by an essentially random process such as the flip of a coin in which each party has an even chance of being selected the operator. If KUKUI is the winner, KOC shall operate that Prospect and the next Prospect designated hereunder. If The Allar Company as agent for The Allar Group is the winner, ECHO shall operate that Prospect. The parties intend that if there is any conflict or inconsistency between this Agreement and the Operating Agreement, the terms of this Agreement shall prevail. After the parties have determined whether ECHO or KOC will operate a given Prospect, each of the parties hereto and the operator will enter into an operating agreement covering the Prospect in the form attached hereto as *Appendix 4*.

for herein is a guarantee of payment and performance and not of collection. It is, therefore, not conditioned or contingent upon any attempt to collect from ECHO. KUKUI shall not be obligated to bring collection proceedings or otherwise enforce any legal remedies against ECHO hereunder or under any Operating Agreement prior to recovering on the guarantee provided for herein.

7.3.2 Notwithstanding anything in this Agreement to the contrary, the obligations of The Allar Company with respect to the guarantee of payment and performance by ECHO as set forth in *Section 7.3.1* above shall terminate on January 1, 2001.

7.4 Guarantee of KOC's Performance. KUKUI absolutely, unconditionally and irrevocably guarantees the full and punctual payment and performance of all obligations of KOC, when due and owing under the terms hereof or under any Operating Agreement referred to herein. If KOC fails to pay or to perform any of said obligations when due and owing, KUKUI shall forthwith fully pay or perform said obligations in the place and stead of KOC, within ten (10) days of receipt of written notice from any member of The Allar Group of such nonpayment or nonperformance. KUKUI hereby waives presentment for payment, protest, notice of protest, bringing of suit and diligence in taking any action with respect to KOC and any and all defenses that may be available to KUKUI on account of any failure by any member of The Allar Group to timely or properly enforce its remedies against KOC hereunder or under the relevant Operating Agreement. KUKUI agrees that the guarantee provided for herein is a guarantee of payment and performance and not of collection. It is, therefore, not conditioned or contingent upon any attempt to collect from KOC. No member of The Allar Group shall be obligated to bring collection proceedings or otherwise enforce any legal remedies against KOC hereunder or under any Operating Agreement prior to recovering on the guarantee provided for herein.

7.5 Tax Matters: Although the rights and liabilities of KUKUI, on one hand, and the members of the Allar Group, on the other hand, are several and not joint or collective, and, as among themselves, the rights and liabilities of The Allar Group are several and not joint or collective, if, however, solely for federal income tax purposes, this Agreement and the relationship established hereby should be regarded as a partnership, then each of the parties hereto elects to be excluded from the application of all of the provisions of Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986 (as amended), as permitted and authorized by Section 761 of said Code and the regulations promulgated thereunder. Should the Internal Revenue Service require that any party hereto furnish further evidence for its election, each party agrees to execute such additional documents as may be required. Further, each of the parties hereto elects to be excluded from the application of any similar provisions in any state income tax law now or hereafter in effect.

ARTICLE 8
TERM

Subject to the terms hereof, the term of this Agreement shall begin on July 1, 1999 and end on June 30, 2002; provided, however, that either party shall have the right to terminate this Agreement, with or without cause, effective as of January 1, 2001, by giving the other party not less

than 30 days' prior written notice of termination. After June 30, 2002, this Agreement may be renewed for consecutive periods of one year by the written agreement of the parties hereto. Expiration of this Agreement shall not relieve either party of any accrued liabilities or obligations. The provisions of *Article 6* shall survive the termination of this Agreement for the period stated therein. Each member of The Allar Group acknowledges that KUKUI would not have entered into this agreement without The Allar Group's having entered into the Thoma Geological Consulting Agreement which provides that Thoma will direct and dedicate all (100%) of his professional efforts to the evaluation and generation of Prospects within the Project Area, subject to the terms of this Agreement. Accordingly, if, during the term hereof Thoma dies, becomes disabled, fails to direct all (100%) of his professional efforts to the evaluation and generation of Prospects within the Project Area or if the Thoma Geological Consulting Agreement is terminated, then KUKUI's shall have the right to terminate this Agreement immediately upon written notice to The Allar Group, without further obligation to The Allar Group for the Project Evaluation Fee attributable to periods subsequent to KUKUI's termination of this Agreement. *(AMI Provision)*

ARTICLE 9
GENERAL PROVISIONS

9.1 Successors and Assigns; Prohibited Assignments. During the term of this Agreement (and for so long as this Agreement has not been terminated pursuant to the terms hereof), neither KUKUI nor any member of The Allar Group may sell, assign, transfer or otherwise dispose of any of their rights or obligations hereunder or in any Acquired Interests without the prior written consent of the other party; provided, however, that: (i) such consent will not be withheld unreasonably with respect to Acquired Interests within an Approved Prospect in which there has been drilled and completed at least one oil and/or gas well which is capable of producing in paying quantities, (ii) no such consent shall be required with respect to Acquired Interests within a Rejected Prospect, and (iii) without such consent the parties may assign all or any portion of their interests to affiliates, 50% or more of the ownership of which is under common ownership. After the expiration or earlier termination of this Agreement, KUKUI and any member of The Allar Group may sell, assign, transfer or otherwise dispose of their interests in any Acquired Interests to the extent permitted under the applicable joint operating agreement and other applicable agreements. Subject to the foregoing provisions of this Section, this Agreement shall be binding upon and inure to the benefit of the parties signatory hereto, and their respective, successors and permitted assigns.

9.2 BROKERS. EACH PARTY HERETO AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTIES FROM AND AGAINST ANY CLAIMS BY THIRD PARTIES CLAIMING UNDER SUCH PARTY FOR BROKERAGE, COMMISSION, FINDERS OR OTHER FEES RELATIVE TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, TOGETHER WITH ANY COURT COSTS, ATTORNEYS' FEES OR OTHER COSTS OR EXPENSES ARISING THEREFROM.

From: **Brown, Verl** Verl.Brown@dvn.com
Subject: RE: [EXTERNAL] RE: Hot Potato Wells - Section 23 & 26-23S-29E
Date: March 4, 2020 at 12:58 PM
To: Jack Graham jack@allarcompany.com

Thank you Jack. I will make sure I send you updates to the JOA when they are made, and I will send you a final version once it has been agreed to by the parties. Attached is the most updated version of the JOA.

Regards,

Verl Brown
Landman

Devon Energy Production Company, L.P.
28.516
405 228 8804 Office
405 228 4461 Fax

devon

From: Jack Graham <jack@allarcompany.com>
Sent: Wednesday, March 4, 2020 9:35 AM
To: Brown, Verl <Verl.Brown@dvn.com>
Subject: [EXTERNAL] RE: Hot Potato Wells - Section 23 & 26-23S-29E

Verl –

We would have no problems signing a JOA in this area if everyone signs and we can see the final version. We have a little more interest in this area, so we would want to have a look at what is the final version. Please send the latest JOA version so we can evaluate.

From: Brown, Verl <Verl.Brown@dvn.com>
Sent: Wednesday, March 4, 2020 9:31 AM
To: Jack Graham <jack@allarcompany.com>
Subject: Hot Potato Wells - Section 23 & 26-23S-29E

Jack,

Devon has sent its proposals for the Hot Potato Wells in Sections 23 & 26-23S-29E Eddy County, NM. Devon has also sent a copy of the JOA for the Hot Potato wells, and I know Franklin Mountain Energy has a few changes, which I will forward to you. However, I was wanting to inquire as to The Allar Company's desire to sign the JOA. Devon only needs three other parties to sign the JOA, and if we can get the other parties to sign the JOA, will The Allar Company join the JOA?

Regards,

EXHIBIT
B

Verl Brown
Landman

Devon Energy Production Company, L.P.
28.516
405 228 8804 Office
405 228 4461 Fax

devon

Hot Potato JOA
1-14-2020.pdf

ASSIGNMENT OF OIL & GAS LEASES AND WELLS

STATE OF NEW MEXICO §
§
COUNTY OF EDDY §

THIS ASSIGNMENT OF OIL & GAS LEASES AND WELLS (this "**Assignment**") is between THE ALLAR COMPANY, a Texas corporation, whose address is P.O. Box 1567, Graham, Texas 76450, ("**Assignor**"), and ALLAR DEVELOPMENT LLC, a Delaware limited liability company, whose mailing address is P.O. Box 1567, Graham, Texas 76450 ("**Assignee**"), effective as of 7:00 a.m. local time on March 1, 2020 (the "**Effective Date**").

ARTICLE I
Grant and Habendum

Section 1.01 The Grant. FOR AND IN CONSIDERATION of One Hundred and No/100 Dollars ($100.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN, and CONVEY unto Assignee all of Assignor's right, title and interest to the following:

(a) The oil and gas leases, mineral executive interests, contractual rights, rights to explore, produce and develop, wellbore interests and/or properties listed and described on **Exhibit "A"** (the "**Leases**"), together with (i) the leasehold estates created thereby and (ii) the lands covered by the Leases or included in units with which the Leases may have been pooled or unitized (the "**Lands**");

(b) The oil and gas wells listed on **Exhibit "B"**, together with any wells located on, or pooled or unitized with, any of the Leases and Lands (collectively the "**Wells**");

(c) All machinery, equipment, improvements and other personal property, facilities and fixtures (including, but not by way of limitation, wellhead equipment, pumping units, flowlines, tanks, injection facilities, saltwater disposal facilities, compression facilities, gathering systems, field gathering system equipment, other equipment, and related transferrable permits) in use or being help for use solely in connection with the operation or maintenance of the Leases or Wells (the "**Facilities**"). The Facilities, Leases and Wells, are collectively herein called the "**Oil and Gas Assets**";

(d) All natural gas, casinghead gas, drip gasoline, natural gasoline, natural gas liquids, condensate, products, crude oil and other hydrocarbons, whether gaseous or liquid, produced or drained from or allocable to the Leases and Wells on and after the Effective Date (the "**Hydrocarbons**");

(e) All prepayments made for the drilling of oil and gas Wells on the Leases and Lands;

(f) Copies of records relating to the Oil and Gas Assets, Hydrocarbons and Contracts;

Reception: 2004457 Book: 1135 Page: 0382 Pages: 6
Recorded: 04/06/2020 10:24 AM Fee: $25.00
Eddy County, New Mexico – Robin Van Natta, County Clerk DR

ALLAR DEVELOPMENT LLC
P O BOX 15[illegible]
GRAHAM

EXHIBIT
C

(g) Assignor excepts and reserves from the Leases and Lands assigned herein as an overriding royalty interest, an undivided percentage interest equal to the positive difference between all presently existing lease burdens and twenty-five percent (25%), proportionately reduced, of all oil, gas, and associated hydrocarbons produced and saved from the interest and the lands assigned herein pursuant to the terms and provisions of the Leases. Assignor's overriding royalty is to be free and clear of all costs, charges, and expenses, but will be subject to a proportionate part of any and all applicable taxes. Said overriding royalty shall extend to any renewals, extensions or top leases thereon that may be taken or become owned by Assignee within twelve (12) months after the surrender, termination, or expiration of such Leases insofar as such renewals, extensions, or top leases apply to the Lands.

Collectively the above conveyed interests are referred to herein as the "**Assets.**"

Section 1.02 Habendum Clause. TO HAVE AND TO HOLD the Assets assigned by Assignor herein, together with all rights, titles, interests, estates, remedies, powers and privileges thereunto appertaining unto Assignee, its successors and assigns forever.

ARTILE II
General

Section 2.01 Special Warranty of Title. Assignor, individually and not jointly, hereby binds itself, its successors, legal representatives and assigns to warrant and forever defend the Assets unto Assignee, its successors and assigns against all claims, liens, burdens and encumbrances arising by, through or under Assignor or its affiliates, but not otherwise.

OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT IN THIS ASSIGNMENT OR IN THE PURCHSE AGREEMENT (AS DEFINED BELOW), ASSIGNOR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ASSETS OR THE TRANSACTION CONTEMPLATED HEREBY, AND ASSIGNEE AGREES THAT THE ASSETS ARE BEING SOLE BY ASSIGNOR "WHERE IS" AND "AS IS", WITH ALL FAULTS. SPECIFCALLY AS A PART OF (BUT NOT IN LIMITATION OF) THE FOREGOING, ASSIGNEE ACKNOWLEDGES THAT, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT IN THIS ASSIGNMENT OR THE PURCHASE AGREEMENT, ASSIGNOR HAS NOT MADE, AND ASSIGNOR HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY (EXPRESS, IMPLIED, UNDER COMMON LAW, BY STATUTE OR OTHERWISE) AS TO THE CONDITION OF THE SUBJECT INTERESTS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR REPRESENTATION AS TO THE QUALITY OR QUANTITY OF HYDROCARBONS ATTRIBUTABLE TO THE ASSESTS OR THE ABILITY OF THE ASSETS TO PRODUCE HYDROCARBONS.

IN WITNESS WHEREOF, the Assignor and Assignee have executed this instrument on the date of such their respective acknowledgements below, but effective as of the Effective Date.

ASSIGNOR

THE ALLAR COMPANY

By: _____
John Chiles Graham, President

ASSIGNEE

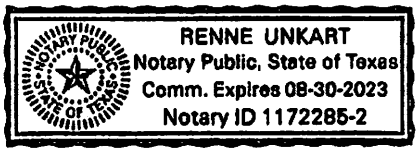
ALLAR DEVELOPMENT LLC

By: _____
Edwin Smith Graham IV, Vice President

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF YOUNG §

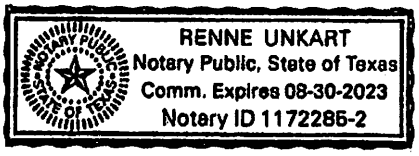
This instrument was acknowledged before me on this 16th day of March, 2020, by John Chiles Graham, President of The Allar Company, a Texas corporation, on behalf of said corporation.



Notary Public

STATE OF TEXAS §
§
COUNTY OF YOUNG §

This instrument was acknowledged before me on this 16th day of March, 2020, by Edwin Smith Graham IV, President of ALLAR DEVELOPMENT LLC, a Delaware limited liability company, on behalf of said limited liability company.



Notary Public

EXHIBIT "A"

OIL AND GAS LEASES

LEASE: NMNM103603
DATE: December 1, 1999
LESSOR: United States of America
LESSEE: Echo Production, Inc.
LANDS: Township 23 South, Range 29 East, N.M.P.M., Eddy County, New Mexico
Section 23: All
Section 26: All

LEASE: NMNM105557
DATE: December 1, 2000
LESSOR: United States of America
LESSEE: Echo Production, Inc.
LANDS: Township 23 South, Range 29 East, N.M.P.M., Eddy County, New Mexico
Section 27: All

LEASE: NMNM103604
DATE: December 1, 1999
LESSOR: United States of America
LESSEE: Echo Production, Inc.
LANDS: Township 23 South, Range 29 East, N.M.P.M., Eddy County, New Mexico
Section 35: NE/4 NE/4; NE/4 NW/4; S/2 SW/4; SE/4

AGREEMENT: NMNM103141 COMPENSATORY ROYALTY AGREEMENT
DATE: December 6, 1999
LESSOR: United States of America
LESSEE: Echo Production, Inc.
LANDS: Township 23 South, Range 29 East, N.M.P.M., Eddy County, New Mexico
Section 35: NW/4 NW/4; S/2 N/2; NW/4 NE/4; N/2 SW/4

LEASE: NMNM102912
DATE: June 1, 1999
LESSOR: United States of America
LESSEE: Echo Production, Inc.
LANDS: Township 24 South, Range 29 East, N.M.P.M., Eddy County, New Mexico
Section 1: Lots 2-4, SW/4 NE/4; S/2 NW/4; SW/4

EXHIBIT "B"

WELLS

Well Name	API
Goodnight 26 Federal #1H Section 26, 23S-29E, Eddy Co., NM	30-015-40007
Goodnight 27 Federal #1H Section 27, 23S-29E, Eddy Co., NM	30-015-22157
Goodnight 27 Federal #2H Section 27, 23S-29E, Eddy Co., NM	30-015-36137
Goodnight 27 Federal #3H Section 27, 23S-29E, Eddy Co., NM	30-015-39220
Goodnight 27 Federal #4H Section 27, 23S-29E, Eddy Co., NM	30-015-39142
Goodnight 27 Federal #5H Section 27, 23S-29E, Eddy Co., NM	30-015-39431
Goodnight 35 Federal #1H Section 35, 23S-29E, Eddy Co., NM	30-015-31096
Goodnight 35 Federal #2H Section 35, 23S-29E, Eddy Co., NM	30-015-36373
Tommy's Boy Federal #1 Section 1, 24S-29E, Eddy Co., NM	30-015-37184
Almost Heroes 1 Federal #4H Section 1, 24S-29E, Eddy Co., NM	30-015-39292