

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

ATTORNEYS AT LAW

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WILLIAM B. BURFORD
RICHARD E. OLSON
RICHARD S. WILFONG
THOMAS J. MCBROCK

NANCY S. CUSACK
JEFFREY L. FORNACIA
THOMAS A. FORBES
JEFFREY W. HELLBERG
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ALBERT L. FITTS
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JOHN C. CHAMBERS
W. K. BROWN, JR.
RUSSELL J. BAILEY
STEVEN G. ARNOLD
THOMAS G. HANKE, JR.
GREGORY J. HIBERT

JAMES H. HUDSON
REBECCA NICHOLS JOHNSON
STANLEY K. MOTTSBY, JR.
ELLEN B. CASEY
S. BARRY FISHER
ANDREW J. CLOUTIER
WILLIAM F. BLATTERY
GARY W. LARSON
DAVID B. LAWRENCE
DEBORAH BOODELL POLAN
JULIA JOPLIN SHALLOW

KENNETH E. WESTON
JOEL M. CARSON, III
JEANMARIE CHEBET
RYAN M. RANDALL
AMY M. SHELLEMER
GREG L. BROOKS
DUSTY J. STOCKARD
CHAS. S. HART

OF COURSE,
D. H. CALDWELL
ROBERT D. TANCHERT
WYATT H. HEARD
PAUL W. EATON
CONRAD E. COFFIELD
RECORDED
LEWIS C. COX, JR. 1983-1988
CLARENCE E. HINKLE 1900-1988

*NOT LICENSED IN TEXAS

February 5, 2004

IN RE: OPINION OF TITLE TO:)
NE1/4SW1/4, SE1/4 Section 20,)
Township 23 South, Range 37)
East, N.M.P.M., Lea County,)
New Mexico, containing) No. 33,610
200 acres, more or less,)
as to depths between the)
surface and 3,750 feet)
subsurface.)
Teague Prospect)
Resler "A" and "B" Leases)
Arch Lease L870.001)

It is understood and agreed that Fogo Processing Company, its subsidiaries, affiliates and employees shall never be liable, but shall always be held harmless and indemnified from any and all actions and damages which may be occasioned by the use of or reliance upon the title opinion to which this stamp is affixed.

Arch Petroleum Inc.
300 North Marienfeld, Suite 600
Post Office Box 10340
Midland, Texas 79702-7340

Attention: Mr. Terry Gant
Division Landman

Gentlemen:

In connection with title to the captioned lands, we have examined the following:

- (a) Copy of title opinion of Atwood & Malone, attorneys of Roswell, New Mexico, dated August 7, 1956, addressed to Eugene E. Nearburg and Resler & Sheldon, reporting title to S1/4 of the captioned Section 20, based on an abstract last certified to June 21, 1956 at 7:00 A.M.;
(b) Elliott & Waldron Title & Abstract Co., Inc. Supplemental Abstract No. 03-606, containing 1701 pages in seven parts, which covers the public records of Lea County, New Mexico pertaining to S1/4 of the captioned Section 20 from June 21, 1956 at 7:00 A.M. to September 23, 2003 at 7:00 A.M.; and
(c) Copies of the following instruments:
(i) Term Assignment of Oil & Gas Leasehold Estate with Reservation of Overriding Royalty from Bonnie Resler Karlsrud, individually and as a beneficiary of Resler & Sheldon, et al., to Eagle-K Production Co., dated August 15, 2003, filed for record November 3, 2003, recorded in Book 1263, Page 850 of the Lea County Records;

POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88408
(505) 822-8910
FAX (505) 823-9332

POST OFFICE 8
AMARILLO, TEX
(806) 375-4
FAX (806) 37

NMOCC CASE NO. 13274
APRIL 19, 2007
RESLER & SHELDON
EXHIBIT NO. 6

20
08

919 CONGRESS, SUITE 1150
AUSTIN, TEXAS 78701
(512) 478-7137
FAX (512) 478-7146

(ii) Term Assignment of Oil & Gas Leasehold Estate with Reservation of Overriding Royalty from Gretchen Nearburg to Eagle-K Production Co., dated August 15, 2003, filed for record November 3, 2003, recorded in Book 1263, Page 857 of the Lea County Records;

(iii) Assignment of Oil and Gas Leases from Eagle-K Production Co. to Arch Petroleum Inc., dated November 18, 2003, effective August 15, 2003;

(iv) Operating Agreement Correction dated January 28, 1957, between Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon, as operator, and Peerless Oil & Gas Company, as nonoperator; and

(v) Mutual Release and Waiver dated November 16, 1962, among Dale Resler and wife, Nona Resler, Vilas P. Sheldon and Peerless Oil & Gas Company.

From our examination of the foregoing, and based solely thereon, we report the status of title to the captioned lands, for acquisition and drilling purposes, as of September 23, 2003 at at 7:00 A.M. (and after the more recent assignments noted above), as follows:

I. TITLE TO SURFACE:

The heirs or devisees
of A. B. (Bert) Steeler,
deceased (claimed by
James Alvin Davis) ----- All

II. TITLE TO OIL AND GAS (INCLUDING LEASING RIGHTS, RIGHTS TO BONUS, RENTS AND ROYALTIES, BUT SUBJECT TO THE OUTSTANDING OIL AND GAS LEASES ANALYZED HEREIN):

<u>Owner</u>	<u>Lease</u>	<u>Fractional Mineral Interest</u>	<u>Interest in Production Under Current Lease</u>
Gretchen B. Nearburg, a widow	1	1/128	.00097656
Anna A. Nearburg (now Reischman), as her separate property	1	1/128	.00097656 ?
Tom L. Ingram, whose wife is Joan L. Ingram	1	1/64	.00195313
The heirs or devisees of Wanda Grace Jones, deceased	2	1/256	.00048829
Gladys Jones Petrilla, as her separate property	2	3/1792	.00020926

It is understood and agreed that Pogo Producing Company, its subsidiaries, affiliates and employees shall never be liable, but shall always be held harmless and indemnified from any and all actions and damages which may be occasioned by the use of or reliance upon the title opinion to which this stamp is affixed.

Ottis Alice Jones Gray (or her heirs or devisees if deceased)	2	3/1792	.00020926
Ursula Mae Jones Goss, as her separate property	2	3/1792	.00020926
Albert C. Jones, as his separate property	2	3/1792	.00020926
Ralph Shelby Jones, as his separate property	2	3/1792	.00020926
Russell King Jones, as his separate property	2	3/1792	.00020926
Otis L. Jones, as his separate property	2	3/1792	.00020926
Vernell C. Anthony, a widow	2	1/64	.00195313
Wills Royalty Inc.	3	1/64	.00195313
Gordon Donald Gayle, whose wife is Katherine F. Gayle	4	1/16	.01123047
First Roswell Company, a New Mexico corporation	5	1/16	.01123047
Bank of Oklahoma, N.A. (or its successor) and Rita Louise Willis, Co-Trustees under Trust Agreement dated June 18, 1977	6	1/32	.00561523
Oklahoma Medical Research Foundation	7	1/32	.00561523
Marion Wier DeFord, a widow, and the heirs or devisees of Mary Amma DeFord, deceased	8	1/64	.00280762
Mary Lee Saunders Reese, as her separate property	9	1/128	.00140381
The Trustees of the Richard Blotter Revocable Trust under Trust Agreement dated June 24, 1991, as amended	9	1/128	.00140381

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The Toles Company, a New Mexico limited partnership	10	1/192	.00093587
Edward T. Matheny, Jr. and Commerce Bank of Kansas City (or its successor), as Trustees under the will of Elyse Saunders Patterson	10	1/192	.00093587
Robert L. Graham, Jr.	10	1/768	.00023397
Jimi S. Gadzia	10	1/768	.00023397
Curtis S. Graham	10	1/768	.00023397
Brook H. Graham	10	1/768	.00023397
Nancy Kay Jones Hargrove, as her separate property	11	1/24	.00781250
Cynthia Harper Murchison, as her separate property	11	1/24	.00781250
LeMoynes Harper Odell, as her separate property	11	1/24	.00781250
OXY USA WTP Limited Partnership	12, 13	1/4	.04687500
Apache Corporation	14, 15	1/4*	*
Geodyne Nominee Corporation	JOA	1/16	.00781250
TOTAL			<u>.13000488</u>

* The interest of Apache Corporation is subject to nonparticipating royalty interests totaling .04687500 of all oil and gas produced from NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20 and .14062500 of all oil and gas produced from SE $\frac{1}{4}$ Section 20, which interests are equivalent to all of the royalty on oil and gas attributable to Lease 14 and all of the gas royalty attributable to Lease 15. These nonparticipating royalty interests are owned as follows:

Kimbell Art Foundation, a non-profit corporation	.7109825
MAP00-NET, a Texas general partnership	.1554104
The Roach Foundation	.0877053
Bill Burton	.0108787

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Totals
18,359,374.15
81,640,621.17

Ben J. Fortson III, Trustee
of the Ben J. Fortson III
Children's Trust .0051804

Robert C. Grable .0051804

Ben J. Fortson, Jr., Trustee
of the following trusts:

MWB 1998 Trust .0015541
CCB 1998 Trust .0015541
DCB 1998 Trust .0015541

Sundance Minerals I .0200000

III. TITLE TO OIL AND GAS LEASEHOLD ESTATE:

A. Title to Overriding Royalty Interests:

1. Overriding Royalty Interests in Oil and Gas Production from NE4SW4 Section 20, except Gas Production from Unitized Yates Formation:

<u>Owner</u>	<u>Leases</u>	<u>Calculation</u>	<u>Decimal Overriding Royalty Interest</u>
Jimmy D. Evans and wife, Linda B. Evans	1	45.7219% x 1/16 x 1/32	.00089300
Margaret Todd Sherrill	1	13.5695% x 1/16 x 1/32	.00026503
Thomas E. Todd, Jr.	1	13.5695% x 1/16 x 1/32	.00026503
Mary Anne Todd	1	16.9786% x 1/16 x 1/32	.00033161
Harry L. Todd, Jr.	1	3.0749% x 1/16 x 1/32	.00006006
Raymond L. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Tommy T. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Anne T. Barfield	1	0.9358% x 1/16 x 1/32	.00001828
Vernell C. Anthony, a widow	2-10	(1/16 x 3/64) + (1/128 x 15/64)	.00476074
Bonnie Resler Karlsruud	1-12 & 14	40% x 93-1/3% x [(25% - 18.75%) x 15/16] + 40% x [(25% - 12.5%) x 1/16]	.02500000

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Wayne Resler, aka Joseph Wayne Resler	1-12 & 14	40% x 93-1/3% x [(25% - 18.75%) x 15/16] + 40% x [(25% - 12.5%) x 1/16]	.02500000
Jimmy D. Evans and wife, Linda B. Evans	1-12 & 14	20% x 93-1/3% x [(25% - 18.75%) x 15/16] + 20% x [(25% - 12.5%) x 1/16] + (3-1/3% + 17.7% x 3-1/3%) x [(25% - 18.75%) x 15/16]	.01479883
Gretchen B. Nearburg, a widow	1-12 & 14	82.3% x 3-1/3% x [(25% - 18.75%) x 15/16]	.00160742
TOTAL			.07312012

2. Overriding Royalty Interests in Oil Production, and Gas Production from Depths Below 3,100 Feet Subsurface, in SE 1/4 Section 20:

Owner	Leases	Calculation	Decimal Overriding Royalty Interest
Jimmy D. Evans and wife, Linda B. Evans	1	45.7219% x 1/16 x 1/32	.00089300
Margaret Todd Sherrill	1	13.5695% x 1/16 x 1/32	.00026503
Thomas E. Todd, Jr.	1	13.5695% x 1/16 x 1/32	.00026503
Mary Anne Todd	1	16.9786% x 1/16 x 1/32	.00033161
Harry L. Todd, Jr.	1	3.0749% x 1/16 x 1/32	.00006006
Raymond L. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Tommy T. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Anne T. Barfield	1	0.9358% x 1/16 x 1/32	.00001828
Vernell C. Anthony, a widow	2-10	(1/16 x 3/64) + (1/128 x 15/64)	.00476074

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Bonnie Resler Karlsruud	1-11 & 13	40% x 93-1/3% x [(25% - 18.75%) x 7/16] - 43) 5 + 40% x [(25% - 18.75%) x 1/4] + 40% x [(25% - 12.5%) x 1/16]	.01958333
Wayne Resler, aka Joseph Wayne Resler	1-11 & 13	40% x 93-1/3% x [(25% - 18.75%) x 7/16] + 40% x [(25% - 18.75%) x 1/4] + 40% x [(25% - 12.5%) x 1/16]	.01958333
Jimmy D. Evans and wife, Linda B. Evans	1-11 & 13	20% x 93-1/3% x [(25% - 18.75%) x 7/16] + 20% x [(25% - 18.75%) x 1/4] + 20% x [(25% - 12.5%) x 1/16] + (3-1/3% + 17.7% x 3-1/3%) x [25% - 18.75%) x 7/16]	.01086446
Gretchen B. Nearburg, a widow	1-11 & 13	82.3% x 3-1/3% x (25% - 18.75%) x 7/16	.00075013
TOTAL		* 82.3 x 3 1/3 x	.05749512

3. Overriding Royalty Interests in Gas Produced from Depths Between the Surface and 3,100 Feet Subsurface, Excluding Unitized Yates Formation, in SEM Section 20:

<u>Owner</u>	<u>Leases</u>	<u>Calculation</u>	<u>Decimal Overriding Royalty Interest</u>
Jimmy D. Evans and wife, Linda B. Evans	1	45.7219% x 1/16 x 1/32	.00089300
Margaret Todd Sherrill	1	13.5695% x 1/16 x 1/32	.00026503
Thomas E. Todd, Jr.	1	13.5695% x 1/16 x 1/32	.00026503
Mary Anne Todd	1	16.9786% x 1/16 x 1/32	.00033161
Harry L. Todd, Jr.	1	3.0749% x 1/16 x 1/32	.00006006
Raymond L. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Tommy T. Todd	1	3.0749% x 1/16 x 1/32	.00006006

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Anne T. Barfield	1	0.9358% x 1/16 x 1/32	.00001828
Vernell C. Anthony, a widow	2-10	(1/16 x 3/64) + (1/128 x 15/64)	.00476074
Bonnie Resler Karlsru	1-11, 13, 15	40% x 93-1/3% x [(25% - 18.75%) x 7/16] + 40% x [(25% - 18.75%) x 1/4] + 40% x [(25% - 12.5%) x 1/16] - 40% x (9/16 x 25% x 1/4)	.00552083
Wayne Resler, aka Joseph Wayne Resler	1-11, 13, 15	40% x 93-1/3% x [(25% - 18.75%) x 7/16] + 40% x [(25% - 18.75%) x 1/4] + 40% x [(25% - 12.5%) x 1/16] - 40% x (9/16 x 25% x 1/4)	.00552083

TOTAL

.01775553

4. Overriding Royalty Interests in Unitized Yates Formation Gas Production:

<u>Owner</u>	<u>Leases</u>	<u>Calculation</u>	<u>Decimal Overriding Royalty Interest</u>
Jimmy D. Evans and wife, Linda B. Evans	1	45.7219% x 1/16 x 1/32	.00089300
Margaret Todd Sherrill	1	13.5695% x 1/16 x 1/32	.00026503
Thomas E. Todd, Jr.	1	13.5695% x 1/16 x 1/32	.00026503
Mary Anne Todd	1	16.9786% x 1/16 x 1/32	.00033161
Harry L. Todd, Jr.	1	3.0749% x 1/16 x 1/32	.00006006
Raymond L. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Tommy T. Todd	1	3.0749% x 1/16 x 1/32	.00006006
Anne T. Barfield	1	0.9358% x 1/16 x 1/32	.00001828

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Vernell C. Anthony, 2-10 (1/16 x 3/64) .00476074
 a widow + (1/128 x 15/64)

Bonnie Resler 1-15 (1/2 x 40% x .01716667
 Karlsrud 93-1/3% x 13/16
 x 15/16) + (1/2
 x 40% x 7/8 x
 1/16) + (1/2
 x 40% x 93-1/3%
 x 13/16 x 7/16)
 + (1/2 x 40%
 x 7/8 x 1/16) +
 (1/2 x 40% x
 13/16 x 1/4) +
 (1/2 x 40% x
 93-1/3% x
 7/16 x 1/4) -
 37-5/6% x 72.5%

Wayne Resler, 1-15 (1/2 x 40% x .01716667
 aka Joseph Wayne Resler 93-1/3% x 13/16
 x 15/16) + (1/2
 x 40% x 7/8 x 1/16)
 + (1/2 x 40% x
 93-1/3% x 13/16 x
 7/16) + (1/2 x 40%
 x 7/8 x 1/16) +
 (1/2 x 40% x
 13/16 x 1/4) +
 (1/2 x 40% x
 93-1/3% x
 7/16 x 1/4) -
 37-5/6% x 72.5%

Jimmy D. Evans 1-15 SW (1/2 x 20% x .00953351
 and wife, Linda 93-1/3% x 13/16
 B. Evans x 15/16) + (1/2 x
 20% x 7/8 x 1/16) SW
 + ((1/2 x (0.59%
 + 3-1/3%) x 13/16) - SW
 x 15/16) + ((1/2 x
 20% x 93-1/3% x
 13/16 x 7/16) +
 (1/2 x 20% x 1/16)
 + (1/2 x 20% x
 13/16 x 1/4) +
 (1/2 x 20% x 93-1/3%
 x 7/16 x 1/4) + (1/2
 x (0.59% + 3-1/3%) x
 (13/16 x 7/16) + (1/2
 x (0.59% + 3-1/3%)
 x 7/16 x 1/4) -
 22.104375% x 72.5%

Gretchen B. (1/2 x 82.3% x .00088730
 Nearburg, a 3-1/3% x 13/16 x
 widow 15/16) + (1/2 x
 82.3% x 3-1/3% x
 13/16 x 7/16) + (1/2
 x 82.3% x 3-1/3% x
 7/16 x 1/4) -
 2.2289583% x 71.5%

TOTAL

It is understood and agreed that Pogo Producing Company. .05146802
 its subsidiaries, affiliates and employees shall never be
 liable, but shall always be held harmless and indemnified
 from any and all actions and damages which may be occasioned
 by the use of or reliance upon the title opinion to which
 this stamp is affixed.

B. Title to Working Interests:

1. Working Interest in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, Except Gas Production from Yates Formation:

<u>Owner</u>	<u>NRI Calculation</u>	<u>Gross Working (Cost-Bearing) Interest</u>	<u>Interest in Production (Net Revenue Interest)</u>
Arch Petroleum Inc.	100% x 75%	1.00000000	.75000000

Restler "A" No. 1 well

2. Working Interest in SE $\frac{1}{4}$ Section 20, Excluding Gas Production from Depths Between the Surface and 3,100 Feet:

<u>Owner</u>	<u>NRI Calculation</u>	<u>Gross Working (Cost-Bearing) Interest</u>	<u>Interest in Production (Net Revenue Interest)</u>
Arch Petroleum Inc.	75% x 75%	.75000000	.56250000
Unleased (Apache Corporation)	25% - 14.0625%	.25000000	.10937500*
TOTAL		1.00000000	.67187500

* If Apache Corporation elects not to consent to the drilling of a well, .21875000 of oil and gas production will be available to Arch Petroleum Inc. to be applied toward recoupment of the nonconsent penalty under the operating agreement. The remaining .03125000 will be payable to the nonparticipating royalty owners whose interests burden the Apache interest.

3. [REDACTED] in [REDACTED] Section 20:

<u>Owner</u>	<u>NRI Calculation</u>	<u>Gross Working (Cost-Bearing) Interest</u>	<u>Interest in Production (Net Revenue Interest)</u>
Arch Petroleum Inc.	100% x [(13/16 x 11/16) + (7/16 x 1/4) + (7/8 x 1/16)] - 1.104166%	1.00000000	.71161459

4. [REDACTED]

<u>Owner</u>	<u>NRI Calculation</u>	<u>Gross Working (Cost-Bearing) Interest</u>	<u>Interest in Production (Net Revenue Interest)</u>
Arch Petroleum Inc.	(97.7710417% x 72.5%) + (2.2289583% x 71.5%)	1.00000000	.72477710

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IV. OIL AND GAS LEASES - ASSIGNMENTS - OVERRIDING ROYALTY INTERESTS - FARMOUT AGREEMENTS - OPERATING AGREEMENT - LEASE EXTENSION AND PRODUCTION HISTORY - WELL INFORMATION:

1. Oil and Gas Leases: The following oil and gas leases cover mineral interests in the captioned lands and depths (15/16 of the oil and gas mineral estate in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, 15/16 of the gas rights in SE $\frac{1}{4}$ Section 20 down to 3100 feet, and 11/16 of the oil rights as to all depths down to 3750 feet and the oil and gas rights between 3100 feet and 3750 feet in SE $\frac{1}{4}$ Section 20):

X Lease 1: From Otis L. Jones and Opal M. Jones, his wife, to Dalport Oil Corporation, dated July 20, 1954, recorded in Book 119, Page 278, Lea County Oil and Gas Records, covering the exact captioned lands, providing for a primary term of 10 years and royalty of 1/8 on oil and gas. This lease covers an undivided 1/32 mineral interest in S $\frac{1}{2}$ Section 20, or 10 mineral acres (6.25 mineral acres in the captioned lands).

According to the prior title opinion, Lease 1 is on a "Hall-Poorbaugh Commencement Form" of lease. Annual delay rentals were payable during the primary term, in the absence of drilling or production, in the amount of \$320.00, subject to proportionate reduction. Shut-in gas royalty may be paid in the amount of \$50.00 per well per year. There is no pooling provision. The lease is assignable and includes a partial surrender provision. Otherwise, the prior title opinion only reports that the lease contains no "unusual or special provisions."

Y Lease 2: From Wanda Grace Jones, individually and as Guardian of Curran K. Jones, an incompetent, her husband, to William E. Anthony, dated September 12, 1956, recorded in Book 147, Page 438, Lea County Oil and Gas Records, covering an undivided 1/32 interest in S $\frac{1}{2}$ Section 20, providing for a primary term of five years and royalty of 1/8 on oil and gas. This lease evidently replaced an identical lease between Wanda Grace Jones, Guardian of the Estate of Curran K. Jones, incompetent, and Wanda Grace Jones, wife of Curran K. Jones, as lessor, and William E. Anthony, as lessee, dated May 19, 1956, recorded in Book 147, Page 436. Each of the leases provides for annual delay rentals in the amount of \$10.00, to the credit of the lessor in Central National Bank of San Angelo, Texas. The later lease, which we presume to be the effective one, covers an undivided 1/32 mineral interest in S $\frac{1}{2}$ Section 20, or 10 mineral acres (6.25 mineral acres in the captioned lands).

Lease 2 is on a form printed by Hall-Poorbaugh Press of Roswell, New Mexico, identified as Form 88-(Producer's Revised) (New Mexico). This is a commence form of lease and contains assignment, warranty and lesser interest provisions. It includes a force majeure provision applicable only to circumstances involving governmental action. It does not include a provision for extension of the lease on cessation of production by additional drilling and reworking nor shut-in royalty or pooling provisions. (Probably this is the same form as that of Lease 1.)

Y Lease 3: From Neil H. Wills and Mary E. Wills, husband and wife, to William E. Anthony, dated July 11, 1956, recorded in Book 147, Page 456, Lea County Oil and Gas Records, covering S $\frac{1}{2}$ of the captioned Section 20, providing for a primary term of five years and royalty of 1/8 on oil and gas. Annual delay rentals are payable in the amount of \$320.00 to the credit of the lessors in Carlsbad National Bank. This lease covers an undivided 1/64

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mineral interest in S $\frac{1}{4}$ Section 20, or 5 mineral acres (3.125 mineral acres in the captioned lands).

Lease 3 is on a Form 88-(Producers Special) New Mexico and Texas Form, Form 318 printed by Hall-Poorbaugh Press of Roswell, New Mexico. This is a commence form of lease and contains a provision for extension of the lease by additional drilling upon cessation of production (but not reworking) and assignment, force majeure, lesser interest and warranty provisions. Shut-in royalty may be paid in the amount of \$50.00 per well per year, which probably must be paid before the well is shut in to maintain the lease in effect. There is no pooling provision.

✓ Lease 4: From Gordon Donald Gayle and wife, Katherine F. Gayle, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 450, covering S $\frac{1}{4}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/16 mineral interest in S $\frac{1}{4}$ Section 20, or 20 mineral acres (12.5 mineral acres in the captioned lands).

Lease 4 is on the same form as the above described Lease 3 but contains an additional provision that as a condition, the lessee agrees to commence a well within 120 days and to drill to approximately 3600 feet; and that if the well were drilled, the lessee would earn all rights to a depth of 100 feet below the depth penetrated, but in no event to exceed 4000 feet in total depth. We construe this provision to limit the lease to coverage of depths down to 100 feet below the total depth drilled in the first well, so that it appears that the lease covers depths between the surface and 3768 feet subsurface only.

✓ Lease 5: From Rose M. Fortier, a widow, by her attorney-in-fact Juliette D. Dunlavey, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 458, Lea County Oil and Gas Records, covering S $\frac{1}{4}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/16 mineral interest in S $\frac{1}{4}$ Section 20, or 20 mineral acres (12.5 mineral acres in the captioned lands).

Lease 5 is on the same form as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

✓ Lease 6: From S. Morse Willis and wife, Verda Lee Willis, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 444, Lea County Oil and Gas Records, covering S $\frac{1}{4}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/32 mineral interest in S $\frac{1}{4}$ Section 20, or 10 mineral acres (6.25 mineral acres in the captioned lands).

Lease 6 is on the same form as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

✓ Lease 7: From T. J. Horsley and wife, Maude Horsley, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 452, Lea County Oil and Gas Records, covering S $\frac{1}{4}$ of the captioned Section 20, providing for a primary term of 120 days and royalty

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of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/32 mineral interest in S $\frac{1}{2}$ Section 20, or 10 mineral acres (6.25 mineral acres in the captioned lands).

Lease 7 is on the same form and includes the same provisions as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

X Lease 8: From Ronald K. DeFord and wife, Mary Amma DeFord, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 448, Lea County Oil and Gas Records, covering S $\frac{1}{2}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/64 mineral interest in S $\frac{1}{2}$ Section 20, or 5 mineral acres (3.125 mineral acres in the captioned lands).

Lease 8 is on the same form and contains the same provisions as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

Y Lease 9: From Woodlan P. Saunders and wife, Virginia Lee Saunders, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 446, Lea County Oil and Gas Records, covering S $\frac{1}{2}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/64 mineral interest in S $\frac{1}{2}$ Section 20, or 5 mineral acres (3.125 mineral acres in the captioned lands).

Lease 9 is on the same form and contains the same provisions as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

X Lease 10: From Sally Saunders Toles and her husband, J. Penrod Toles, Sue Saunders Graham and her husband, Robert L. Graham, and Elyse Saunders Patterson and her husband, Robert M. Patterson, as lessors, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 460, Lea County Oil and Gas Records, covering S $\frac{1}{2}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 1/8 on oil and on the proceeds from the sale of gas, plus an overriding royalty of 1/16 of 7/8 of all oil and gas produced, saved and sold. This lease covers an undivided 1/64 mineral interest in S $\frac{1}{2}$ Section 20, or 5 mineral acres (3.125 mineral acres in the captioned lands).

Lease 10 is on the same form and contains the same provisions as the above described Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

X Lease 11: From Sol Kelly and wife, Lyle Kelly, to William E. Anthony, dated May 3, 1956, recorded in Book 147, Page 454, Lea County Oil and Gas Records, covering S $\frac{1}{2}$ of the captioned Section 20, providing for a primary term of 120 days and royalty of 3/16 on oil and gas. This lease covers an undivided 1/8 mineral interest in S $\frac{1}{2}$ Section 20, or 40 mineral acres (25 mineral acres in the captioned lands).

Lease 11 is on the same form and, except with respect to the royalty rate, contains the same provisions as the above described

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Lease 4, including the drilling obligation and depth limitation reported in connection with that lease.

X Lease 12: From Cities Service Oil Company to William E. Anthony, dated June 14, 1956, recorded in Book 147, Page 432, Lea County Oil and Gas Records, covering SW $\frac{1}{4}$ of the captioned Section 20 down to a depth of 3,768 feet. This lease provides for a primary term of one year and royalty of 1/8 on oil and on the gross proceeds at the prevailing market rate on gas, plus 1/16 of 8/8 of all oil, gas, casinghead gas and other minerals. It covers an undivided 1/4 mineral interest in SW $\frac{1}{4}$ Section 20, or 40 mineral acres therein (10 mineral acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20).

Lease 12 is on a form identified as Form 88-(Producers) B W. It is a completion form of lease (and we suspect a well had actually already been drilled by the time the lease was executed and delivered) and contains assignment and lesser interest provisions but no warranty or force majeure provisions, no provision for extension of the lease upon cessation of production, and no shut-in royalty or pooling provision. It includes a special provision under which the lessee agrees to continue drilling with not more than 90 days between the completion of one well and commencement of the drilling of a succeeding well "on an accumulative basis" until the lands are developed on a 40-acre spacing plan of not less than one well on each 40 acres. The lease is made subject to a letter agreement between the parties dated June 14, 1956, which we have not examined but which is reported in the prior title opinion and is noted below.

NO ✓ Lease 13: From Cities Service Oil Company to Vilas P. Sheldon and Dale Resler, dba Resler & Sheldon, a partnership, dated February 18, 1957, recorded in Book 156, Page 356, Lea County Oil and Gas Records, covering SE $\frac{1}{4}$ of the captioned Section 20 down to 3,790 feet. This lease provides for a primary term of 90 days and royalty of 3/16 on oil and gas. It covers an undivided 1/4 mineral interest in SE $\frac{1}{4}$ Section 20, or 40 mineral acres therein.

Lease 13 is on a printed form identified as Form 88 (Producers) (Kansas). This is a commence form of lease and contains assignment and lesser interest provisions but no warranty or force majeure provisions, nor provisions for extension of the lease by additional drilling or reworking upon cessation of production. There is no shut-in royalty provision. Pooling with SW $\frac{1}{4}$ of Section 20 is allowed for production of natural gas and condensate. The lease is made subject to a letter agreement between the parties dated February 18, 1957, which we have not examined.

✓ Lease 14: From Amerada Petroleum Corporation to Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon (86-2/3%), Eugene E. Nearburg (3-1/3%), Tom L. Ingram (3-1/3%) and Charles C. Loveless, Jr. (6-2/3%), dated November 5, 1956, recorded in Book 147, Page 467, Lea County Oil and Gas Records, covering SW $\frac{1}{4}$ of the captioned Section 20 to a horizontal depth of 3768 feet. The lease provides for a primary term of one year from September 5, 1956 and royalty of 3/16 of all oil and of the gross proceeds at the market price on gas. This lease covers an undivided 1/4 mineral interest in SW $\frac{1}{4}$ Section 20, or 40 mineral acres therein (10 mineral acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20).

Lease 14 is a typed, commence form of lease that contains assignment and lesser interest provisions but no force majeure, warranty, shut-in royalty or pooling provisions, nor any

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provision for extension of the lease by additional drilling or reworking upon cessation of production. Although there is no pooling provision in the lease, it was amended pursuant to Lease 15 described below to allow the lessee to pool the lease to form a unit consisting of S $\frac{1}{4}$ Section 20 for gas production.

NO
Lease 15: Agreement and Gas Lease from Amerada Petroleum Corporation to Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon (86-2/3 $\frac{1}{4}$), Eugene E. Nearburg and Tom L. Ingram, dba Nearburg & Ingram (6-2/3 $\frac{1}{4}$), and Charles C. Loveless, Jr. (6-2/3), dated January 15, 1958, recorded in Book 131, Page 355 of the Lea County Miscellaneous Records. This lease covers gas only in SE $\frac{1}{4}$ Section 20, to a depth of 3100 feet beneath the surface. It provides for a primary term of one year and royalty of 9/16 of the gross proceeds at the prevailing market rate for all gas sold or used off the premises. This lease covers an undivided 1/4 of the gas rights in SE $\frac{1}{4}$ Section 20, or 40 acres of gas rights in said lands.

Lease 15 is on a specially prepared form that is a commence form and contains assignment and lesser interest provisions but no force majeure or warranty provisions and no provision for extension of the lease by additional drilling or reworking upon cessation of production. There is no shut-in royalty provision. The lease grants the lessee the right to pool the lease with SW $\frac{1}{4}$ Section 20, and the lessee agrees to pool with those lands within 30 days (which was done) or the lease would have become void. The rights leased are, under the terms of the lease, withdrawn from the operating agreement of June 14, 1957, described below. This instrument also amends the above described Lease 14, covering SW $\frac{1}{4}$ Section 20, to grant the lessee the right to pool into a unit for gas production from S $\frac{1}{4}$ Section 20.

NOTE: In addition to the foregoing leases, the unleased interests in the captioned lands are covered by operating agreements, described below, under which the unleased mineral interests subject thereto are treated as being subject to a lease providing for a 1/8 royalty, proportionately reduced.

2. Assignments - Overriding Royalty Interests: The materials under examination include the following assignments of interests in the above described oil and gas leases, resulting in the overriding royalty and working interest ownership reported hereinabove:

(a) Dalport - Anthony (SW $\frac{1}{4}$): By Assignment dated July 11, 1956, recorded in Book 147, Page 442, Lea County Oil and Gas Records, Dalport Oil Corporation assigned to William E. Anthony the above described Lease 1, insofar as it covers SW $\frac{1}{4}$ Section 20 down to 100 feet below the greatest depth drilled but in no event below 4,000 feet. The assignment reserved to the assignor an overriding royalty of 1/16 of 8/8 of all oil, gas, casinghead gas and other minerals produced from the lands covered by the assignment. (There is no proportionate reduction language, but since the lease being assigned only covered an undivided 1/32 mineral interest, we believe that proportionate reduction must be inferred.) The assignment is made subject to a letter agreement between the parties dated July 10, 1956.

(b) Dalport - Resler & Sheldon et al. (SE $\frac{1}{4}$): By Assignment dated April 2, 1957, recorded in Book 157, Page 433, Lea County Oil and Gas Records, Dalport Oil Corporation assigned all of its interest in the above described Lease 1, insofar as SE $\frac{1}{4}$ Section 20 down to 3750 feet, to Dale Resler

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and Vilas P. Sheldon, dba Resler & Sheldon (86-2/3%), Eugene E. Nearburg (3-1/3%), Tom L. Ingram (3-1/3%) and Charles C. Loveless, Jr. (6-2/3%), reserving to the assignor an overriding royalty interest of 1/16 of 8/8 of all oil, gas and casinghead gas and other minerals produced from the lands covered by the assignment.

(c) Anthony - Resler & Sheldon et al.: By Assignment dated August 20, 1956, recorded in Book 147, Page 463, Lea County Oil and Gas Records, William E. Anthony and wife, Vernell C. Anthony, assigned to Eugene E. Nearburg, Tom L. Ingram, Charles C. Loveless, Jr. and Resler & Sheldon, a partnership composed of Dale Resler and Vilas P. Sheldon, the lease of May 19, 1956 described in connection with Lease 2 above, as well as Leases 3-11, and also a Farmout Agreement from Cities Service Oil Company dated June 14, 1956 covering SW $\frac{1}{4}$ Section 20 and a Farmout Agreement dated July 10, 1956 from Dalport Oil Corporation covering SW $\frac{1}{4}$ Section 20. The assignment reserves an overriding royalty interest equal to 1/16 of 8/8 of the interest in minerals covered by the leases and farmout agreements of all oil and gas produced, saved and sold from S $\frac{1}{4}$ Section 20 under the leases and farmout agreements, absorbing prior overriding royalty interests, production payments or royalty interests over 1/8. By Assignment dated September 14, 1956, recorded in Book 147, Page 440, the same assignors assigned the above described Lease 2, dated September 12, 1956, to the same assignees. (We have construed the parties' intention to have been that William E. Anthony and wife reserved a 1/16 overriding royalty interest on production under Lease 2, regardless of which of the two leases from the same lessor is the correct lease, although the overriding royalty interest was reserved in the assignment of the May 19, 1956 lease but not in the assignment of the September 12, 1956 lease.)

(d) Anthony - Resler & Sheldon et al. (Lease 1): By Assignment dated January 2, 1957, recorded in Book 149, Page 462, Lea County Oil and Gas Records, William E. Anthony and "Verrell" C. Anthony, his wife, assigned all of their right, title and interest in the above described Lease 1 to Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon (86-2/3%), Eugene E. Nearburg (3-1/3%), Tom L. Ingram (3-1/3%) and Charles C. Loveless, Jr. (6-2/3%).

(e) Anthony - Resler & Sheldon (Lease 12): By Assignment dated November ____, 1956, acknowledged on November 16, 1956, recorded in Book 147, Page 434, Lea County Oil and Gas Records, William E. Anthony and wife, Vernell C. Anthony, assigned the above described Lease 12 to Resler & Sheldon.

(f) Resler & Sheldon - Loveless, Ingram and Nearburg (Lease 12): By Assignment dated December 31, 1956, recorded in Book 149, Page 464, Dale Resler and wife, Nona Resler, and Vilas P. Sheldon and wife, Della Sheldon, assigned interests of an undivided 6-2/3% to Charles C. Loveless, Jr., 3-1/3% to Tom L. Ingram, and 3-1/2% to Eugene E. Nearburg in the rights assigned in the assignment described immediately above (i.e., Lease 12). (The assignment makes reference to an agreement among the parties in which an undivided 3-1/3% is to be vested in Eugene E. Nearburg. It is clear, under the circumstances, that the percentage of 3-1/2% stated to have been assigned to Nearburg is a clerical error and should be 3-1/3%.)

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(g) Nearburg and Ingram - Nearburg & Ingram Partnership: By Assignment dated May 30, 1962, recorded in Book 186, Page 415, Lea County Miscellaneous Records, Eugene E. Nearburg and Tom L. Ingram assigned to Nearburg & Ingram, a partnership composed of Eugene E. Nearburg and Tom working interest only then resting in the assignors' names in the "Steeler A and B Lease" consisting of S^{1/4} of the captioned Section 20. This assignment was not joined by the wife of either assignor, and we have commented further in this regard below.

(h) Nearburg & Ingram Partnership - Nearburg and Ingram: By Conveyance in Dissolution dated August 26, 1964, recorded in Book 226, Page 21, Lea County Miscellaneous Records, Nearburg & Ingram, a partnership in dissolution, by Eugene E. Nearburg and Tom L. Ingram, assigned all of its property in New Mexico (except certain specified property other than any interest in the captioned lands) to Eugene E. Nearburg, a single man (1/2) and Tom L. Ingram, whose wife was Joan L. Ingram (1/2). The assignment specifically describes a .0625 gross working interest and .04570313 net revenue interest in SW^{1/4} Section 20 and a .04583333 gross working interest and .03351586 net revenue interest in SE^{1/4} Section 20.

(i) Nearburg - Capitan: By Assignment dated December 24, 1965, effective December 31, 1965, recorded in Book 256, Page 715, Lea County Miscellaneous Records, Eugene E. Nearburg, a single man, assigned all of his interest in SW^{1/4} Section 20 down to 3,768 feet and in SE^{1/4} Section 20 down to 3,750 feet to Capitan, Inc., a Texas corporation.

(j) Capitan - Nearburg, Copass and Warren: By Assignment dated December 21, 1966, effective January 1, 1967, recorded in Book 249, Page 988, Lea County Oil and Gas Records, Capitan, Inc. assigned all of its right, title and interest in the leasehold estate in the same lands as the assignment described immediately above to the following assignees:

Eugene E. Nearburg	72.3%
Ben A. Copass, Jr.	17.7%
Joe A. Warren	10.0%

(k) Warren - Nearburg: By Assignment dated March 16, 1984, recorded in Book 371, Page 492 of the Lea County Oil and Gas Records, the "Estate of Joe A. Warren," by Emma Jean Warren, Executrix, purported to assign Emma Jean Warren a .003 working interest in SW^{1/4}SE^{1/4} Section 20 down to 3,768 feet. We believe that this instrument was intended as a distribution of the interest of Joe A. Warren in SW^{1/4} and SE^{1/4} Section 20; see our further comments concerning the Estate of Joe A. Warren under Exception to Title No. 6 below. Thereafter, by General Assignment and Conveyance dated May 30, 1985, effective April 1, 1985, recorded in Book 386, Page 76 of the Oil and Gas Records, Emma Jean Warren, a widow, assigned to Eugene E. Nearburg all of her interest in "SW^{1/4}SE^{1/4}" Section 20 down to 3,768 feet (which, again, we believe was intended to described SW^{1/4} and SE^{1/4} Section 20). A subsequent Assignment, Conveyance and Declaration of Interest between the same parties dated June 2, 1986, recorded in Book 400, Page 842 of the Oil and Gas Records, clarified Emma Jean Warren's intent to exercise her power of a sale under the will of Joe A. Warren, binding on the

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remainder after her life estate. Approximately two years later, Emma Jean Warren executed a Corrected Assignment, Conveyance and Declaration of Interest in favor of Eugene E. Nearburg, dated March 11, 1988, effective April 1, 1985, recorded in Book 421, Page 572 of the Oil and Gas Records, assigning all of her right, title and interest individually "and/or has Power of Sale over remaindermen's interests" under the will of Joe A. Warren in and to SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 20 from the surface to 3,768 feet. Finally, by Conveyance dated February 1, 1992, recorded in Book 474, Page 262 of the Oil and Gas Records, Emma Jean Warren, individually, as Independent Executrix of the Estate of Joe A. Warren, and as sole heir of Joe A. Warren, assigned to Eugene E. Nearburg all of her right, title and interest in various assignments, including that in which Capitan, Inc. assigned Joe A. Warren an interest as described above, specifically describing SW $\frac{1}{4}$ of Section 20 from the surface to 3,768 feet and SE $\frac{1}{4}$ Section 20 from the surface to 3,750 feet.

(l) Nearburg - Nearburg: By Assignment, Conveyance and Bill of Sale dated September 6, 1994, effective January 1, 1994, recorded in Book 505, Page 162 of the Oil and Gas Records, Eugene E. Nearburg assigned all of his right, title and interest in all oil, gas and other mineral properties in Lea County, among other counties, specifically include SW $\frac{1}{4}$ Section 20 to 3,768 feet, to Eugene E. Nearburg and Gretchen B. Nearburg, husband and wife, as joint tenants. According to a death certificate recorded in Volume 829, Page 548, Eugene Everett Nearburg died on August 17, 1997, survived by his wife, Gretchen Beidler Nearburg.

(m) Copass - Evans: By Assignment dated December 31, 1985, recorded in Book 394, Page 147, Lea County Oil and Gas Records, Ben A. Copass, Jr. and wife, Dorothy K. Copass, assigned all of their right, title and interest in the oil and gas lease covering SW $\frac{1}{4}$ Section 20 from the surface to 3,768 feet and in SE $\frac{1}{4}$ Section 20 from the surface to 3,750 feet to James L. Evans and wife, Billie J. Evans.

(n) Ingram - Evans: By Assignment dated December 9, 1986, effective December 1, 1986, recorded in Book 405, Page 214, Lea County Oil and Gas Records, Tom Ingram purported to assign to James L. Evans and wife, Billie J. Evans, all of the grantor's right, title and interest in the oil and gas lease covering SW $\frac{1}{4}$ Section 20 from the surface to 3,768 feet and SE $\frac{1}{4}$ Section 20 from the surface to 3,750 feet. The assignment does not mention the marital status of Tom Ingram, although we know that he had been married to Joan L. Ingram. We have discussed the failure of the wife of Tom Ingram to join in this assignment further below.

(o) Loveless - Resler & Sheldon: By Assignment dated August 20, 1971, recorded in Book 274, Page 278 of the Lea County Oil and Gas Records, Charles C. Loveless, Jr. and wife, Nadine P. Loveless, assigned to Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon, all of their right, title and interest in, to and under the various assignments and agreements under which Charles C. Loveless, Jr. had acquired interests in S $\frac{1}{2}$ Section 20.

(p) Sheldon - Evans: By Assignment dated May 24, 1977, effective May 1, 1977, recorded in Book 303, Page 578 of the Oil and Gas Records, Vilas P. Sheldon, a single man,

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assigned James L. Evans his entire interest in "a fee lease" covering S $\frac{1}{4}$ of the captioned Section 20, reciting that the assignor owned a 20% interest in a 7/8 working interest in production from zones between 3,100 feet and 3,768 feet in SW $\frac{1}{4}$ Section 20 and 20% of a 61.953125% interest in production from the surface to 3,100 feet in the entire S $\frac{1}{4}$ of Section 20.

(q) Resler Distribution Assignments: Dale Resler, who had evidently owned an 80% interest in the partnership of Resler & Sheldon and was entitled to 80% of its interests in the captioned lands, died in 1976, dissolving the partnership. By Assignment dated October 5, 1978, recorded in Book 314, Page 686 of the Lea County Oil and Gas Records, the State National Bank of El Paso, Texas, as Ancillary Executor of the Estate of Dale Resler, deceased, joined by Nona Resler, the surviving wife of Dale Resler, assigned all right title and interest owned by Dale Resler and wife in leasehold estates, working interests, operating agreements, mineral rights and other oil and gas properties in Lea County, including the property included in the inventory in Dale Resler's estate, 1/2 to the State National Bank of El Paso, as Trustee of Trust A created in the Will of Dale Resler, deceased, and 1/2 to the State National Bank of El Paso, as Trustee of Trust B created in the Will of Dale Resler, deceased. Vilas P. Sheldon and James L. Evans joined in this instrument to acknowledge that the properties held in the name of Resler & Sheldon were owned 80% by the Reslers and 20% by Vilas P. Sheldon (who had assigned his interest to James L. Evans as noted above). Thereafter, by Distribution Assignment dated July 9, 1992, recorded in Book 559, Page 749 of the Lea County Miscellaneous Records, AmeriTrust Texas, N.A., fka MTrust Corp., National Association, Substitute Trustee for MTrust Texas, N.A., fka the State National Bank of El Paso, Trustee of Trust A under the Will of Dale Resler, assigned all of its interest in the same properties to Nona E. Resler. Shortly thereafter, by two Distribution Assignments, both dated July 29, 1992, recorded in Book 479, Pages 283 and 285 of the Lea County Oil and Gas Records, Nona E. Resler assigned 1/2 of all interest held by her in leasehold and other mineral rights in Lea County to each of Bonnie Resler Karlsrud and Wayne Resler, reciting consideration of love and affection and \$10.00. Finally, by Distribution Assignment dated October 6, 1995, recorded in Book 516, Page 338, Lea County Deed Records, Texas Commerce Bank National Association (successor in interest as trustee to the State National Bank of El Paso), Trustee of Trust B under the Will of Dale Resler, assigned all remaining interests held by the assignor in leasehold and other mineral rights in Lea County to Bonnie Resler Karlsrud and Wayne Resler.

(r) Geodyne - Penroc: By Assignment dated October 28, 1994, effective December 1, 1994, recorded in Book 595, Page 326 of the Lea County Miscellaneous Records, Geodyne Nominee Corporation (which owned an unleased 1/16 mineral interest in the captioned lands as successor to the interest of Peerless Oil and Gas Company, subject to the operating agreement of August 29, 1956, described below) assigned to Penroc Oil Corporation all of the assignor's contractual interest and oil and gas leasehold rights created by, through and under (1) the operating agreement of August 29, 1956, described below, stated to embrace oil rights down to 4,000 feet below the surface and gas rights down to 3,100 feet under S $\frac{1}{4}$ Section 20; (2) the operating agreement of

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June 14, 1957, described below, stated to embrace oil rights down to 3,750 feet and gas rights down to 3,100 feet in SE $\frac{1}{4}$ Section 31; and (3) the pooling and communitization agreement dated February 7, 1958, described below, pooling gas from the surface down to 3,100 feet under S $\frac{1}{2}$ Section 20. The assignment states that it conveys only leasehold, apparently meaning the working interest deemed to be considered covered by a form of oil and gas lease pursuant to the operating agreements, and no mineral interest owned by the assignor.

(s) Penroc - Resler & Sheldon: By Assignment and Bill of Sale dated May 19, 1995, effective December 1, 1994, recorded in Book 515, Page 838, Lea County Oil and Gas Records, Penroc Oil Corporation assigned to Resler & Sheldon 100% of its revenue and working interest in the leases covering the lands set forth in Exhibit "A" thereto, including S $\frac{1}{2}$ of the captioned Section 20.

(t) Dalport - Todd Family: By Assignment, Bill of Sale and Conveyance dated April 19, 1994, effective January 1, 1994, recorded in Book 500, Page 442 of the Lea County Oil and Gas Records, Dalport Oil Corporation, a Delaware corporation, assigned all of its interest under leases covering the lands described in Exhibit "A" thereto, including S $\frac{1}{2}$ of the captioned Section 20, to the following assignees in the following proportions:

The W. L. and Virginia Todd Revocable Trust U/A dated June 25, 1993	45.7219%
Margaret Todd Sherrill and Thomas E. Todd, Jr., jointly	0.1336%
Thomas E. Todd, Jr.	13.5027%
Margaret Todd Sherrill	13.5027%
Mary Anne Todd	16.9786%
Harry L. Todd, Jr.	3.0749%
Raymond L. Todd	3.0749%
Tommy T. Todd	3.0749%
Anne T. Barfield	0.9358%

(u) Todd Trust - Evans: By Assignment dated August 1, 1994, effective June 1, 1994, recorded in Book 505, Page 1 of the Lea County Oil and Gas Records, "the W. L. and Virginia Todd Revocable trust" (by W. L. Todd and Virginia Todd) assigned all of its right, title and interest in the oil and gas lease covering S $\frac{1}{2}$ Section 20 to James L. Evans and wife, Billie J. Evans. The capacity in which W. L. Todd and Virginia Todd executed the assignment is not stated either in the body of the instrument or in the acknowledgment, but we presume W. L. Todd and Virginia Todd executed as trustees. We have discussed this discrepancy further below.

(v) Evans - Evans: By Assignment dated July ____, 2001, effective July 1, 2001, recorded in Book 1088, Page

454, James L. Evans and Billie J. Evans assigned to Jimmy D. Evans and Linda B. Evans their entire interest in the "oil and gas lease" described as covering S $\frac{1}{4}$ Section 20 under the several assignments in which the assignors had acquired interests.

(w) Resler & Sheldon, Nearburg - Eagle-K: We have been submitted copies of two assignments that are very similar in most respects, as follows:

(i) Term Assignment of Oil & Gas Leasehold Estate with Reservation of Overriding Royalty from Bonnie Resler Karlsrud, individually and as a beneficiary of Resler & Sheldon, joined by her husband, Quentin Karlsrud, Wayne Resler, individually and as beneficiary of Resler & Sheldon, joined by his wife, Patricia Resler, and Jimmy D. Evans, individually and as beneficiary of Resler & Sheldon, joined by his wife, Linda Evans, to Eagle-K Production Co., dated effective August 15, 2003, recorded in Book 1263, Page 850 of the Lea County Records, assigning all of the assignors' right, title and interest in and to the captioned lands under leases described in Exhibit "A" thereto, which Exhibit "A" describes all of the above described oil and gas leases, the operating agreements and declaration of pooling described below, a Farmout Agreement dated July 10, 1956 from Dalport Oil Corporation to Wm. E. Anthony, and the Agreement dated August 21, 1956, between Resler & Sheldon, as operator, and Eugene E. Nearburg et al. described below. The assignment is for a term of two calendar years from the effective date and as long thereafter as oil and/or gas is produced from the captioned lands. It reserves to the assignors an overriding royalty equal to 25% of 8/8 less current burdens of record in and to all oil and liquid hydrocarbons and gas produced and sold from the lands, except any gas produced from the Yates Formation, and an overriding royalty of 27.5% of 8/8 less the current burdens of record as to gas and condensate produced and sold from the unitized Yates Formation, both proportionately reduced to the assignors' leasehold ownership in the lands.

At the end of the primary term the assignment will be extended as long as operations are commenced and prosecuted with a cessation of no more than 180 days between the completion of one well (the earlier of the completion date filed with the New Mexico Oil Conservation Division or 30 days after rig release) and commencement of the drilling of the next well with a rig capable of reaching total depth (the date the rig is placed on location). At the end of the primary term or continuous development, the assignment will terminate as to each undrilled proration unit (evidently all and except that within a proration unit allocated to a well) and as to all horizons below the base of the deepest depth drilled under the assignment. There is a savings clause in the event of cessation of production in that the assignment will not terminate if the assignee commences additional drilling or reworking within 90 days after cessation and restores production. Shut-in gas wells capable of production are regarded for all purposes to maintain the assignment in effect. The assignment includes several other provisions, such as well information that must be provided to the

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assignors and an obligation to offer the assignors the option to take over wells before abandonment.

(ii) From Gretchen Nearburg, a single person, to Eagle-K Production Co., assigning all of the assignor's right, title and interest in the captioned lands under the same leases and agreements as those described in the assignment to Eagle-K noted immediately above. This assignment is for the same term and contains provisions substantially identical to those of the assignment by Bonnie Resler Karlsrud et al. to Eagle-K Production Co. noted above, except that the overriding royalty reservation to Gretchen Nearburg on gas and condensate produced and sold from the unitized Yates Formation is 28.5% of 8/8 less current burdens, proportionately reduced.

(x) Eagle-K - Arch: You have submitted an assignment from Eagle-K Production Co., by David G. Rose, "sole proprietor," also executed and acknowledged by Kay W. Rose, wife of David G. Rose, assigning all of the right, title and interest owned by Eagle-K Production Co. (apparently an assumed name of David G. Rose) in and to the captioned lands and the leases described on Exhibit "A". The assignment describes in Exhibit "A" all of the oil and gas leases covering the captioned lands as well as the agreements described in the assignments to Eagle-K noted above and also the two term assignments from Bonnie Resler Karlsrud et al. and Gretchen Nearburg.

3. Farmout Agreements, Operating Agreements and Pooling Declaration: Our examination includes the following agreements affecting the oil and gas leasehold estate in the captioned lands:

(a) The prior title examiner reports in his opinion the contents of two farmout agreements:

(i) Dated June 14, 1956, between Cities Service Oil Company and William E. Anthony. This agreement required Anthony to drill a well in SW $\frac{1}{4}$ Section 20 to test the Penrose Formation at approximately 3600 feet, which evidently earned the lease described as Lease 12 above. Thereafter the farmee was required to drill without more than 90 days between the completion of one well and the commencement of another. Rights under the agreement are assignable only with the farmor's written consent.

(ii) Dated July 10, 1956, between Dalport Oil Corporation and William E. Anthony. Anthony was required to commence the drilling of a well in SW $\frac{1}{4}$ Section 20 and to drill to a depth sufficient to test the Penrose Formation at approximately 3600 feet. The well was drilled, earning the assignment from Dalport of its rights in SW $\frac{1}{4}$ Section 20 under Lease 1 down to 3768 feet. The agreement provides for continuous drilling thereafter with a lapse of no more than 90 days between completion of one well and commencement of another.

(b) Agreement dated August 21, 1956, recorded in Book 115, Page 135 of the Miscellaneous Records, between Resler & Sheldon, as operator, and Eugene E. Nearburg, Tom L. Ingram and Charles C. Loveless, Jr. Under this agreement the

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parties agreed that all rights under the leases assigned to them by William E. Anthony and wife and under the farmout lease being acquired from Amerada Petroleum Corporation (Lease 14 described above) would be owned as follows:

Resler & Sheldon	86-2/3%
Eugene E. Nearburg	3-1/3%
Tom L. Ingram	3-1/3%
Charles C. Loveless, Jr.	6-2/3%

The agreement provided for a test well to be drilled in SW $\frac{1}{4}$ Section 20, with Resler & Sheldon carrying the others in the cost of drilling the well and receiving 10% of the others' interests until 1/8 of the well cost had been recouped. The parties agreed that a formal operating agreement would be entered into when production was established, contemplating that Peerless Oil & Gas Company would join with its unleased 1/16 mineral interest. The parties also agreed that any additional leasehold rights acquired by any party in S $\frac{1}{2}$ Section 20 would be owned in the above proportions.

(c) Operating Agreement dated August 29, 1956, recorded in Book 116, Page 312, Lea County Miscellaneous Records, between Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon, as operator, and Peerless Oil and Gas Company, as nonoperator, covering S $\frac{1}{2}$ Section 20 down to 4,000 feet below the surface. This is a fairly typical form of operating agreement governing operations as between the parties in S $\frac{1}{2}$ Section 20 down to 4,000 feet, providing that ownership would be .93875 in Resler & Sheldon and .06125 in Peerless. (The Peerless interest was corrected to .0625 in an "Operating Agreement Correction" dated January 28, 1957, a copy of which has been submitted to us.) Peerless's unleased mineral interest is to be treated as if covered by a lease on a form providing for 1/8 royalty, with lesser interest clause; each party is to bear its own overriding royalty and other burdens. After the initial well drilled under the agreement, either party may drill a well at its own cost, and the other party may participate after completion by paying 150% of its share of drilling and completion costs, failing in which it will assign the drilling party the well and its spacing unit. The agreement includes other typical provisions such as an operator's lien. Exhibit "B" to the agreement is an accounting procedure on Mid-Continent Oil & Gas Association Form No. 2-B (1938). The term of the agreement is for one year and so long as oil and/or gas is being produced in paying quantities. The agreement provides that no assignment affecting the leasehold estates covered by the agreement may be made except by mutual consent of all parties, the intent being to maintain unit operation, development and ownership. We doubt that this provision has been complied with, but it is immaterial in view of the fact that you have acquired all of the working interest in the captioned lands.

By Mutual Release and Waiver dated November 16, 1962, Peerless Oil & Gas Company, Dale Resler and wife, Nona Resler, and Vilas P. Sheldon agreed to release any rights that one of them might have against the other under any joint operating agreement to exercise any preferential right to purchase or any right to consent to the sale of any property, and waived the application of any such provisions as though no such provisions were contained in any such operating agreement. The 1962 instrument specifically provides that it does not affect the rights of any of the

parties as against other parties to any joint operating agreement or other agreement.

(d) Operating Agreement dated June 14, 1957, recorded in Book 123, Page 146, Lea County Miscellaneous Records, between Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon, as operator, and Amerada Petroleum Corporation, as nonoperator, covering SE $\frac{1}{4}$ of the captioned Section 20 from the surface down to 3,750 feet subsurface. Attached to the recorded agreement are a Ratification dated July 23, 1957, by Eugene E. Nearburg, Tom L. Ingram and Charles C. Loveless, Jr., and a Ratification dated July 29, 1957 by Peerless Oil and Gas Company. It provides that costs and production from the lands and depths covered by the agreement will be shared as follows:

Peerless Oil and Gas Company	.0625000
Amerada Petroleum Corporation	.2500000
Eugene E. Nearburg	.0229167
Tom L. Ingram	.0229167
Charles C. Loveless, Jr.	.0458333
Resler & Sheldon	.5958333

Any unleased interest committed to the agreement is treated as covered by an oil and gas lease providing for a 1/8 royalty with a lesser interest clause. A well was required to be drilled in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20 to test the Queen Sand estimated to be encountered above 3,750 feet; if the well were not commenced within 30 days, the operating agreement would terminate. It is evident that the operating agreement is perpetuated in view of the lease described as Lease 15 above. For subsequent wells the agreement provides for a 100%-200% nonconsent penalty. The term of the agreement is for one year and so long thereafter as oil or gas is produced in paying quantities. The agreement also contains typical provisions of operating agreements, such as an operator's lien and an accounting procedure in the same form as the accounting procedure attached to the operating agreement of August 29, 1956 described above.

Under Lease 15 described above, the rights leased (i.e., the gas rights down to a depth of 3,100 feet in SE $\frac{1}{4}$ Section 20) were withdrawn from the operating agreement of June 14, 1957. The June 14, 1957 operating agreement therefore now covers only oil rights from the surface to 3,750 feet in SE $\frac{1}{4}$ Section 20 and gas rights from 3,100 feet to 3,750 subsurface.

(e) Declaration of Pooling or Unitization dated February 7, 1958, effective February 1, 1958, recorded in Book 131, Page 350, Lea County Miscellaneous Records, executed by Dale Resler and Vilas P. Sheldon, dba Resler & Sheldon, Eugene E. Nearburg and Tom L. Ingram, dba Nearburg and Ingram, and Charles C. Loveless, Jr., with ratification by Peerless Oil & Gas Company, designating a pooled unit consisting of S $\frac{1}{4}$ of Section 20 for the production of gas from all horizons from the surface down to 3,100 feet beneath the surface under the above described Leases 12-15 and the operating agreement of August 29, 1956.

4. Production History: According to Oil Conservation Division well records, Resler & Sheldon's Steeler "A" Well No. 1 was commenced on August 20, 1956 at a location in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20. The well was drilled to a total depth of 3,668 feet and was completed on September 5, 1956 as a dual completion, apparently

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producing oil from depths between 3,568 and 3,668 feet and producing gas from the Yates Formation between 3,000 and 3,097 feet subsurface. We are not aware of any other wells drilled in the captioned lands. We have assumed that gas production from depths above 3,100 feet has been continuous in paying quantities down to the present so as to maintain all of the leases and the operating agreements in effect, but we cannot verify this from the materials we have examined.

REQUIREMENT A: Satisfy yourself that there has been gas production in paying quantities from depths above 3,100 feet in the captioned lands since the establishment of production down to the present.

V. EXCEPTIONS TO TITLE AND REMARKS:

1. **Unrecorded Agreements:** Interests in the captioned lands are made subject to various unrecorded agreements by references to the agreements in instruments in the chain of title. These are as follows:

(a) Letter Agreement between Cities Service Oil Company and William E. Anthony, dated June 14, 1956, referred to in the above described Lease 12, affecting that portion of the leasehold estate attributable to the 1/4 mineral interest in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20 covering by Lease 12. (The prior title examiner examined this agreement, although we have not.)

(b) Farmout Letter Agreement dated July 10, 1956, between Dalport Oil Corporation and William E. Anthony, referred to in the assignment from Dalport to Anthony of the above described Lease 1 as to SW $\frac{1}{4}$ Section 20. (The prior title examiner examined this agreement, although we have not.)

(c) Letter Agreement dated February 18, 1957 between Cities Service Oil Company and Resler & Sheldon, referred to in the above described Lease 13, affecting the 1/4 of the leasehold estate in SE $\frac{1}{4}$ Section 20 attributable to that lease.

(d) Amendment dated February 24, 1958, amending the above referenced operating agreement of April 29, 1956, between Resler & Sheldon and Peerless Oil and Gas Company.

(e) Amendment dated February 24, 1958, amending the above referenced operating agreement of June 14, 1957, between Resler & Sheldon and Amerada Petroleum Corporation.

(f) Purchase and Sale Agreement between Amerada Hess Corporation and AH 1980 Program, Inc., as sellers, and Collins & Ware, Inc., as purchaser, dated April 26, 1996, affecting the interests credited herein to Apache Corporation.

(g) Purchase and Sale Agreement dated May 23, 2000, between Collins & Ware, Inc. and Longhorn Disposal, Inc., as sellers, and Apache Corporation, as purchaser, affecting the interests credited herein to Apache Corporation.

(h) Gas Purchase Agreement dated March 1, 1958, between Peerless Oil & Gas Company, as seller, and El Paso Natural Gas Company, as purchaser. (This is the only gas contract of which we find a reference of record, but we are

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certain that this or other contracts have governed gas sales by parties other than Peerless.)

REQUIREMENT B: We should be submitted copies of each of the foregoing agreements in order to advise you of their effect, if any, on title as we have reported it herein; or you should obtain and review copies of the agreements and satisfy yourself as to their contents and effect.

COMMENT: We are particularly concerned about the possible effect of the amendments to the operating agreements that we have not examined. Instruments in the chain of title to the interest credited herein to Geodyne Nominee Corporation, and the 1/16 of the leasehold attributable to that unleased interest, refer to the operating agreements as covering oil rights down to 4,000 feet and 3,750 feet, respectively, and gas rights down to 3,100 feet. It appears to us that these agreements cover both oil and gas rights from 3,100 feet to 4,000 feet under the operating agreement of August 29, 1956, and from 3,100 feet down to 3,750 feet under the operating agreement of June 14, 1957. Possibly the February 24, 1958 amendment or amendments excluded gas rights below 3,100 feet from the operating agreements. If gas production below 3,100 feet is a possibility, this may be important.

REQUIREMENT C: If it develops that the February 24, 1958 amendments to the operating agreements did not exclude gas rights below 3,100 feet from the operating agreements, you should seek an explanation from Geodyne Nominee Corporation as to why the instruments in its chain of title refer to the operating agreements as covering only oil rights, and not gas rights, below 3,100 feet. We reserve possible further requirement pending the results of such an investigation.

2. Chain of Title from Resler & Sheldon: Most of the working interest leasehold in the captioned lands was formerly owned by Dale Resler and Vilas P. Sheldon, either in their individual names or in the name of Resler & Sheldon. Resler & Sheldon is sometimes referred to as a partnership name, but it may have merely been an assumed name under which Dale Resler and Vilas P. Sheldon did business, without an actual partnership. If there was a partnership, it appears that it was dissolved on the death of Dale Resler in 1976, if not before. With respect to interests held by Resler & Sheldon at that time, whether in the partners' individual names or as Resler & Sheldon, any question of ownership appears to have been resolved by way of an assignment dated October 5, 1978, recorded in Book 314, Page 686 of the Lea County Oil and Gas Records, from the State National Bank of El Paso, Texas, as Ancillary Executor of the Estate of Dale Resler, deceased, and Nona Resler, the surviving wife of Dale Resler, in favor of the State National Bank of El Paso, as Trustee of two trusts created under the will of Dale Resler. This instrument was joined by Vilas P. Sheldon and by James L. Evans, to whom Sheldon had assigned his interests, to confirm that the properties owned in the name of Resler & Sheldon had been owned 80% by Dale and Nona Resler and 20% by Sheldon. Thereafter, however, by Assignment and Bill of Sale dated May 19, 1995, effective December 1, 1994, recorded in Book 515, Page 838 of the Oil and Gas Records, Penroc Oil Corporation assigned to "Resler & Sheldon" all of its interest in leases covering the captioned lands, Penroc's interest consisting of the 1/16 "leasehold" interest attributable to the interest now credited to Geodyne Nominee Corporation subject to the operating agreement of August 29, 1956 described above. With respect to this 1/16 of the working interest, we do not know the nature of the entity, if

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any, known as "Resler & Sheldon," nor exactly who does business under that name if it is an assumed name of individuals. In reporting title we have assumed that "Resler & Sheldon" was an assumed name under which Bonnie Resler Karlsrud and Wayne Resler, the children of Dale and Nona Resler, and James L. Evans and wife, Billie J. Evans (and now Jimmy D. Evans and wife, Linda Evans), the successors to the interests of Vilas P. Sheldon, did business, inasmuch as they subsequently all joined in an assignment to Arch Petroleum Inc. that we have assumed included this 1/16 working interest. We have nothing, however, to verify our assumption, nor any assignment out of Resler & Sheldon if it actually was a partnership or other entity as of 1995.

REQUIREMENT D: We should be submitted an affidavit or other evidence of the identity of the person or persons, or entity or entities, doing business under the name of "Resler & Sheldon" at the time of its acquisition from Penroc Oil Corporation in 1995. We reserve possible further requirement pending receipt of such an affidavit.

3. Nonjoinder of Spouse in Ingram Assignment: Under New Mexico law, interests in real property, including oil and gas leasehold interests, are strongly presumed to be community property of a husband and wife if acquired during marriage. Purported conveyances of community real property without joinder of both spouses are absolutely void. These rules are relevant to an assignment from Tom Ingram, who owned 3-1/3% of the working interest in the captioned lands, exclusive of unleased interests, to James L. Evans and wife, Billie J. Evans, dated December 9, 1986, effective December 1, 1986, recorded in Book 405, Page 214 of the Lea County Oil and Gas Records. This assignment, which purported to convey all of the grantor's right, title and interest in the captioned lands and depths, makes no mention of Tom Ingram's marital status. We know, however, that he was married to Joan L. Ingram at the time he acquired his interest. It has been a number of years since this assignment was made, of course, and you may be willing to waive any requirement on the basis that it is unlikely that any claim might now be made based on the invalidity of the assignment. Because the assignment was apparently absolutely void (assuming that Tom L. Ingram and his wife, Joan L. Ingram, were still married to each other at the time of the 1986 assignment), we must make the following requirement.

REQUIREMENT E: A correction assignment or quitclaim to the current owners of record should be obtained from Tom L. Ingram and his wife, Joan L. Ingram, and recorded in Lea County. If it develops that either Tom L. Ingram or his wife is now deceased, we should be submitted evidence of the passage of title to their interests, and such an instrument should be obtained from their heirs or devisees.

4. Nearburg Divorce: Eugene E. Nearburg was the owner of 3-1/3% of the working interest, exclusive of unleased mineral interests, apparently as community property with his wife, Anna A. Nearburg, now Anna A. Reischman. An instrument entitled "Division of Mineral Properties," dated January 1, 1963, effective February 1, 1963, recorded in Book 198, Page 525 of the Miscellaneous Records, executed by Eugene E. Nearburg and Anna A. Nearburg, recites that the parties were divorced on April 16, 1962 in Cause No. 25622 in the District Court of Chaves County, New Mexico. In the instrument the properties described in Exhibit "A" thereto, including a 1/2 of 1/32 mineral interest in the captioned lands, were divided equally between them. The instrument also included blanket language in which the parties

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divided any other property held in the name of Eugene E. Nearbrug as shown of record, but the division was specifically not to affect interests in "Nearburg & Ingram," a partnership between Eugene E. Nearburg and Tom L. Ingram. Eugene E. Nearburg had, by assignment dated May 30, 1962, recorded in Book 186, Page 415 of the Miscellaneous Records, purported to assign his working interest in the captioned lands to Nearburg & Ingram. Anna Nearburg did not join in the assignment to Nearburg & Ingram, however, and we find no assignment out of Anna Nearburg (now Reischman) of the community property interest to which she was presumptively entitled on her divorce from Eugene E. Nearburg. We suspect that the decree in the divorce proceedings between Eugene E. Nearburg and Anna A. Nearburg or a property settlement agreement between them apportioned the working interest in the captioned lands to Eugene E. Nearburg, free of any interest in Anna Nearburg, but this is merely an assumption on our part and apparently not reflected of record. Of course, it has been over 40 years since the Nearburg divorce, during which this interest has been treated as though it had been owned by Eugene E. Nearburg alone. You may be willing to waive any curative action on the basis of the passage of time, but we must make the following requirement in order to verify that Anna A. Reischman could not claim an interest in the leasehold estate.

REQUIREMENT F: We should be submitted a copy of the divorce decree and any property settlement agreement in the divorce proceedings between Eugene E. Nearburg and Anna A. Nearburg, Cause No. 25622 in the District Court of Chaves County, New Mexico. If the decree or property settlement agreement vests the Nearburg working interest in the captioned lands in Eugene E. Nearburg, a certified copy should be recorded in Lea County. If not, a quitclaim to the current owners of record should be obtained from Anna A. Reischman, formerly Nearburg, and recorded in Lea County.

5. Identification of Assignors in Eagle-K Assignment: We have credited Arch Petroleum Inc. with the entire working interest in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20 and a 75% working interest leasehold in SE $\frac{1}{4}$ Section 20 under an assignment from Eagle-K Production Co. The assignment by Eagle-K Production Co. was executed by David G. Rose, "sole proprietor," and by Kay W. Rose, wife of David G. Rose. This indicates, we suppose, that Eagle-K Production Co. is the assumed name of David G. Rose. The manner in which the assignment was prepared and executed creates some difficulty. In its body the assignment states that the assignor is Eagle-K Production Co., and at the signature lines and in the acknowledgment it indicates that David G. Rose is the sole proprietor of Eagle-K. Thus, even though Kay W. Rose signed and acknowledged the instrument, she does not appear on the face of the assignment to have been named as an assignor. The general rule is that a person is not bound by an instrument merely by signing it unless identified as a party in the body of the instrument. This creates a problem in that the interests acquired by Eagle-K Production Co. are presumed to have been community property between David G. Rose and his wife, Kay W. Rose, and an assignment without joinder of both spouses must be considered void. We are not seriously concerned about this matter if our assumption is correct that David G. Rose was actually acting as an agent for Arch Petroleum Inc. in acquiring the interests in the captioned lands, in which event the interests would not have been community property. However, the matter should be clarified of record.

REQUIREMENT G: You should acquire a replacement or correction assignment from David G. Rose and wife, Kay W. Rose,

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dba Eagle-K Production Co. in which they are both named as assignors in the body of the assignment (or in which they are identified at the end of the assignment as both being proprietors of, or doing business as, Eagle-K Production Co.), and the correction or replacement assignment should be recorded in Lea County.

6. Decedents' Estates: Interests in the captioned lands have passed through the estates of several decedents, as follows:

(a) Dale Resler: This man was the owner of 80% of 66-2/3% of the leasehold estate in the captioned lands, covering all except unleased mineral interests. He died on May 7, 1976, and his will was originally admitted to probate on May 25, 1976 in Cause No. 24855-3 in County Court at Law No. 3 of El Paso County, Texas. Ancillary probate proceedings were conducted in Lea County Probate Court Cause No. 4015. In his will Dale Resler, after making specific bequests, devised the residue of his estate to the State National Bank of El Paso, as Trustee, to be divided into "Trust A," consisting of 1/2 of the community estate of Dale Resler and his wife, Nona Resler, and "Trust B," consisting of the remainder of the testator's property. Trust A was to be held for the life of Nona Resler and then distributed as she appointed, or upon her failure to appoint distributed to Trust B. Trust B was also to be held for the life of Nona Resler and distributed upon her death to the testator's children, Joseph Wayne Resler and Bonnie Jean Resler Karlsrud. As indicated above, the successor to the State National Bank of El Paso, as Trustee under the Will of Dale Resler, distributed the interests in Trust A to Nona E. Resler, who then conveyed them to Bonnie Resler Karlsrud and Wayne Resler, evidently the same person as Joseph Wayne Resler. It subsequently conveyed the interests held in Trust B to the same distributees. The probate proceedings in the estate of Dale Resler appear to have been conducted regularly, except that the abstract does not include the required notices of the hearing on the Final Account and Report filed by the executor; and, in any event, the Order Approving Final Account and Report, entered on January 10, 1979, does not include a determination of heirship. Without a determination of heirship, any unknown heirs of Dale Resler would not be barred from claiming an interest. In view of the passage of time and the apparent unlikelihood that any unknown heirs might claim an interest, you may be willing to waive the following requirement.

REQUIREMENT H: The probate proceedings in the estate of Dale Resler should be reopened and a proper determination made that Nona E. Resler, the wife of Dale Resler, and his two children, Bonnie Jean Resler Karlsrud and Joseph Wayne Resler, aka Wayne Resler, were his only heirs.

(b) Joe A. Warren: Joe A. Warren was the owner of an undivided 10% of 3-1/3% of the working interest in the captioned lands, exclusive of unleased interests. As indicated in our discussion of assignments above, Emma Jean Warren, who apparently was his surviving wife, acting individually and as independent executrix of the estate of Joe A. Warren appointed in Cause No. 7313 in the County Court of Comal County, Texas, and purportedly as sole heir of Joe A. Warren, conveyed his interest to Eugene E. Nearburg by assignments and correction assignments made between 1985 and 1992. Emma Jean Warren had no apparent authority to have conveyed Joe A. Warren's leasehold

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interest as executrix of his estate, and we cannot verify that she was actually his sole heir or devisee. The interest of Joe A. Warren will not be marketable, in any event, until New Mexico probate proceedings have been conducted.

REQUIREMENT I: Subject to your possible waiver, New Mexico probate proceedings should be conducted in the Estate of Joe A. Warren, deceased, resulting in distribution of his interest to his surviving wife, Emma Jean Warren, or to the current record owners of the interests formerly owned by him.

REQUIREMENT J: If you elect to waive the requirement for probate proceedings in the Estate of Joe A. Warren, we should, at a minimum, be submitted copies of the probate proceedings in his estate in Cause No. 7313 in the County Court of Comal County, Texas, and we reserve possible further requirement.

(c) Sol Kelly and Lyle Kelly: Sol Kelly was the record owner of an undivided 1/8 mineral interest in the captioned lands, subject to the above described Lease 11. He died on December 1, 1960, and his will was originally admitted to probate on January 11, 1961 in Cause No. 2439 in the County Court of Midland County, Texas. Ancillary probate proceedings were conducted in Lea County Probate Court Cause No. 2379. In his will Sol Kelly devised substantially all of his estate to his wife, Lyle Kelly, and Jan Kelly Woodworth, as Trustees. The trust estate was to be held for the life of Lyle Kelly and then for the benefit of her daughter and grandchildren, ultimately to be distributed on Jan Kelly Woodworth's death to Cynthia Harper, LeMoyné Harper and Nancy Kay Jones, the grandchildren of Lyle Kelly, once they had reached the age of 25. Lyle Kelly died on August 1, 1969, and her will was originally admitted to probate on August 25, 1969 in Cause No. 3900 in the County Court of Midland, Texas. Ancillary probate proceedings were conducted in the estate of Lyle Kelly in Lea County District Court Cause No. 33974. In her will Lyle Kelly devised the residue of her estate, including any interest in the captioned lands, to Jan Kelly Woodworth and Risher M. Thornton, III, as Co-Trustees, to be distributed at the death of Jan Kelly Woodworth to Jan Kelly Woodworth's children and to Nancy Kay Jones, per capita, once they had reached the age of 40. The New Mexico probate proceedings in the estate of Sol Kelly were closed by Final Decree entered on May 6, 1964, which included a determination that the sole heirs of Sol Kelly were his wife, Lyle Kelly, and daughter, Jan Kelly Woodworth (who apparently was actually a stepdaughter). The probate proceedings in the Estate of Lyle Kelly were closed by Final Decree dated January 28, 1975, including a determination that her heirs were Jan Kelly Williamson, formerly Jones and formerly Woodworth, a daughter, and Nancy Kay Jones Hargrove, formerly Akin, a granddaughter, son of a predeceased son. Jan Kelly Woodworth apparently died on November 2, 1990, and the interests held in trust for the grandchildren of Lyle Kelly have been distributed to Nancy Kay Hargrove, Cynthia H. Murchison, formerly Harper, and LeMoyné H. Odell, formerly Harper, to whom we have credited the interests of Sol and Lyle Kelly. This is advisory.

(d) T. J. Horsley: T. J. Horsley was the record owner of an undivided 1/32 mineral interest in the captioned lands, subject to Lease 7. His wife, Maude Horsley, died on May 7, 1971, so that her community property interest passed

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to T. J. Horsley without administration. T. J. Horsley, aka Thomas J. Horsley, died on February 18, 1972, and his will and a codicil were originally admitted to probate in Cause No. P-72-21 in the District Court of Seminole County, Oklahoma. Ancillary probate proceedings were conducted in Lea County Probate Court Cause No. 4122, and a certified copy of the Oklahoma proceedings are recorded in Book 333, Page 805 of the Lea County Miscellaneous Records. In his will T. J. Horsley, if his wife predeceased him, left his estate in trust for the benefit of a nephew, Dubert Dennis, to be distributed on his death to the Oklahoma Medical Research Foundation of Oklahoma City. Dubert Dennis died on April 4, 2000, and the interest of T. J. Horsley in the captioned lands had been distributed to the Oklahoma Medical Research Foundation. This is advisory.

(e) Curran K. Jones and Wanda Grace Jones: Curran K. Jones, whose wife was Wanda Grace Jones, owned an undivided 1/64 mineral interest in the captioned lands, apparently as separate property. He died intestate on February 6, 1958, and his estate was administered in Lea County Probate Court Cause No. 1823. A Final Decree was entered in the administration on March 4, 1959, determining that the heirs of Curran K. Jones were his widow, Wanda Grace Jones, and seven children, Gladys Petrilla, Ottis Alice Gray, Ursula Mae Goss, Otis L. Jones, Albert C. Jones, Ralph Shelby Jones and Russell King Jones. Under the laws of descent and distribution, Wanda Grace Jones became entitled to 1/4 of the interest of Curran K. Jones, and each of the seven children became entitled to an undivided 3/28. Wanda Grace Jones has apparently now died, but we have no information concerning the passage of title to her interest.

REQUIREMENT K: In the event of production we should be submitted a copy of any probate proceedings conducted in the estate of Wanda Grace Jones, or if none an affidavit of heirship, and we reserve further requirement. (For the interest of Wanda Grace Jones to be considered marketable, it would be necessary for New Mexico probate proceedings to be conducted.)

*Production
Requirement*

(f) Woodlan P. Saunders and Virginia Lee Saunders: Woodlan P. Saunders was the record owner of an undivided 1/64 mineral interest in the captioned lands, subject to Lease 9 described herein. He apparently died on December 7, 1956, survived by his wife, Virginia Lee Saunders, and two children, Woodlan Perry Saunders and Mary Lee Saunders (now Reese). According to a certified copy of the will of Woodlan P. Saunders, apparently probated in Cause No. 2809 in the Probate Court of Santa Fe County, New Mexico, recorded in Book 922, Page 681 of the Lea County Records, he devised all of his estate to his surviving wife and two children, to be apportioned and distributed in accordance with the New Mexico statute of descent and distribution relating to community property of husband and wife, i.e., 5/8 to Virginia Lee Saunders and 3/8 to the two children. By Personal Representative's Mineral Deed dated August 7, 1980, recorded in Book 383, Page 98, Lea County Deed Records, E. R. Wood, personal representative of the Last Will and Testament of Virginia Lee Saunders, Deceased, purported to convey all of Virginia Lee Saunders's right, title and interest in the captioned lands to Mary Lee Reese and Woodlan P. Saunders, in equal shares. The deed recites that Virginia Lee Saunders died on December 11, 1999, a resident of Santa Fe County, New Mexico, and that the personal representative had been appointed December 17,

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1979. The will of Virginia Lee Saunders apparently was probated in Cause No. SF 79-109 Probate in the District Court of Santa Fe, New Mexico.

REQUIREMENT L: In order to verify the regularity of the probate proceedings in the Estate of Woodlan P. Saunders and that the personal representative of the Estate of Virginia Lee Saunders had authority to execute the above referenced Distribution Deed, we should be submitted copies of the probate proceedings conducted in the estates of Woodlan P. Saunders and Virginia Lee Saunders, respectively, in Santa Fe, New Mexico.

*Production
Requires*

(g) Elyse S. Patterson: This woman was the owner, as separate property, of an undivided 1/64 mineral interest in the captioned lands, subject to Lease 10. According to a Notice of Probate recorded in Book 469, Page 282, Lea County Miscellaneous Records, she died on February 3, 1986, and Commerce Bank of Kansas City, N.A., was appointed personal representative of her estate in Cause No. PB-86-39 in the District Court of Chaves County, New Mexico. By Deed of Distribution dated effective December 31, 1987, recorded in Book 440, Page 714 of the Lea County Deed Records, Commerce Bank of Kansas City, N.A., Domiciliary Foreign Personal Representative of the Estate of Elyse S. Patterson, deceased, distributed all of the decedent's property in New Mexico, including her interest in the captioned lands, to Edward T. Matheny, Jr. and Commerce Bank of Kansas City, N.A., as Trustees under the Last Will and Testament of Elyse S. Patterson, deceased. We have credited the interest of Elyse S. Patterson to the Trustees under her will, but we cannot verify the authority of the personal representatives of the estate.

REQUIREMENT M: We should be submitted copies of the probate proceedings conducted in the Estate of Elyse S. Patterson in Cause No. PB-86-39 in the District Court of Chaves County, New Mexico, and we reserve possible further requirement.

*Production
Requirement*

(h) Ronald K. DeFord and Mary Amma DeFord: Ronald K. DeFord, whose wife was Mary Amma DeFord, was the record owner of a 1/64 mineral interest in the captioned lands, subject to Lease 8 described herein. He died on May 7, 1994, and his will and a codicil were originally admitted to probate on May 23, 1994 in Cause No. 63,057 in Probate Court No. 1 of Travis County, Texas. Marion Wier DeFord, the personal representative of his estate appointed in the Texas proceedings, filed proof of her authority to become qualified as domiciliary foreign personal representative in New Mexico on February 14, 1995 in Lea County District Court Cause No. PB 95-10. In his will, Ronald K. DeFord recited that his first wife, Mary Amma DeFord, had died on June 7, 1976 and that he had no children. He devised an amount equal to the exemption equivalent for federal taxation purposes to Marion Wier DeFord, as Trustee, to be held for the life of Marion Wier DeFord, his second wife, and distributed on her death as she appoints, or on her failure to exercise the power of appointment to Stephen Geoffrey Rich (1/10), Lisa Lyneve Rich Beck (3/10), John H. DeFord (1/4), Nell Hill Gillespie (1/4) and Judy Terese Nesloney St. Marie (1/10); and he devised the residue to his wife. By Deed dated June 30, 1995, recorded in Book 514, Page 115, Marion Wier DeFord, Domiciliary Foreign Personal Representative of the Estate of Ronald K. DeFord, deceased, purported to convey Ronald K. DeFord's 1/64 mineral interest in the captioned lands to Marion Wier DeFord individually.

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We do not know the disposition of the community property interest of Marion Amma DeFord, Ronald K. DeFord's first wife. We suspect that her interest passed to Ronald K. DeFord by her will or by intestacy, but we do not know.

REQUIREMENT N: In the event of production we should be submitted copies of any probate proceedings in the Estate of Mary Amma DeFord, or if none an affidavit of heirship, and we reserve possible further requirement. (If no New Mexico probate proceedings have been conducted in the Estate of Mary Amma DeFord, such proceedings would be necessary in order for her interest to be considered marketable.)

Production Required

(i) William E. Anthony: William E. Anthony was the record owner of an undivided 1/64 mineral interest in the captioned lands, subject to Lease 2, and an overriding royalty interest under Leases 2-10, apparently as community property with his wife, Vernell C. Anthony. According to an affidavit by Vernell C. Anthony, corroborated by Paola D. Breneman, dated June 4, 1987, recorded in Book 483, Page 39 of the Lea County Miscellaneous Records, William E. Anthony, aka W. E. "Bill" Anthony, died intestate on November 3, 1986, a resident of Midland County, Texas. He was married three times, the last having been to Vernell C. Anthony on January 12, 1951. He had four children, according to the affidavit, all by his marriage to Vernell C. Anthony, namely William Joseph Gordon Anthony, Shelley Florence Anthony, Judith Vernell Anthony and Antoinette Anthony. By Mineral Conveyance dated June 5, 1987, effective November 3, 1986, recorded in Book 436, Page 709, William J. G. Anthony, Judith Vernell Wilson, Shelley Florence Anthony and Antoinette Anthony all conveyed their interests in oil, gas and other minerals in the captioned lands to Vernell C. Anthony. Assuming the affidavit was correct in stating that he died intestate, William E. Anthony's interests in the captioned lands, being presumptively community property, passed by intestate succession to his wife in any event. It is reasonably safe to assume that the interest of William E. Anthony passed to Vernell C. Anthony at this point, it would seem, and we make the following requirement subject to your possible waiver.

REQUIREMENT O: In the event of production ancillary probate proceedings should be conducted in New Mexico in the Estate of William E. Anthony, deceased.

Production Required (Waiver)

(j) Andrew Bert Steeler: This man was the owner of the surface estate of the captioned lands. He died intestate on July 7, 1990, at age 96, apparently never having been married and not survived by any children. James Davis filed a petition for appointment as personal representative of his estate on July 27, 1990 in Lea County District Court Cause No. PB 90-81, stating that he had not been able to locate any heirs. He withdrew the application on September 19, 1990. James Alvin Davis then was appointed administrator of the Estate of Andrew Bert Steeler in Cause No. 2617 in the County Court of Dawson County, Texas, and on March 12, 1992, he filed a "Petition for Proof of Authority," with authenticated copies of the "Order Authorizing Letters Testamentary" in the Texas proceedings, dated February 17, 1992, in Lea County District Court Cause No. PB 92-30. In the petition, James Alvin Davis, purportedly the "domiciliary" foreign personal representative of the estate of Andrew Bert Steeler, states

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that the decedent was domiciled in Lea County, New Mexico at the time of his death on July 7, 1990, and that the applicant had been appointed "executor" of the Estate of Andrew Bert Steeler on December 12, 1991 in the Texas proceedings. By Domiciliary Foreign Personal Representative's Deed and Instrument of Distribution dated May 11, 1992, recorded in Book 482, Page 726 of the Lea County Deed Records, James Alvin Davis, Domiciliary Foreign Personal Representative of the Estate of Andrew Bert Steeler, deceased, purported to convey the captioned lands to James Alvin Davis.

We have credited surface title to James Alvin Davis. However, in our opinion the purported qualification of James Alvin Davis as domiciliary foreign personal representative of the Estate of Andrew Bert Steeler, deceased, is probably void on its face. A personal representative may only qualify as domiciliary foreign personal representative to act as such in New Mexico if the appointment was from the jurisdiction of the decedent's domicile. The New Mexico proceedings disclose that Andrew Bert Steeler was domiciled in Lea County, New Mexico, and his personal representative appointed in Texas could not gain authority in New Mexico merely by the filing of his Texas appointment. We believe that even after several years the heirs of Bert Steeler, should they appear, could challenge the purported distribution to James Alvin Davis. (Of course, if James Alvin Davis is in possession of the premises, it is possible that he may have acquired title by adverse possession.) We will not make a requirement for drilling purposes, but if surface title should become important, it would be necessary for a quitclaim from the heirs of Andrew Bert Steeler to be obtained or for quiet title proceedings to be conducted.

*Surface
Requirement*

(k) R. H. Gill: The prior title opinion reports that R. H. Gill formerly owned the 1/16 mineral interest in the captioned lands collectively covered by Leases 1 and 2. He had died testate on July 17, 1943, according to the opinion, and his will was probated in Tom Green County, Texas but apparently not in New Mexico. Jane S. Gill, who apparently was the surviving wife of R. H. Gill, was his sole devisee, and the children of R. H. Gill, according to the opinion, subsequently quitclaimed their interests, if any, to Jane S. Gill. The matter is probably safe after the passage of many years, but title to these mineral interests and the leasehold under Leases 1 and 2 will not be marketable until New Mexico probate proceedings have been conducted.

(waive)

REQUIREMENT P: Subject to your possible waiver, ancillary probate proceedings should be conducted in New Mexico in the Estate of R. H. Gill, deceased.

7. Jones Guardianship: The prior title opinion reports the existence of the oil and gas lease of May 19, 1956, from Wanda Grace Jones, Guardian of the Estate of Curran K. Jones, incompetent, and Wanda Grace Jones, wife of Curran K. Jones, described hereinabove, but states that the lease was defected because no guardian of the estate of Curran K. Jones had then been appointed in New Mexico. We surmise that Wanda Grace Jones was thereupon appointed guardian in New Mexico and subsequently executed the lease of September 12, 1956, under the same terms as the earlier lease, after such New Mexico appointment. That lease is identified as Lease 2 herein. Wanda Grace Jones also executed a mineral deed, as guardian of Curran K. Jones, as well as individually, to William E. Anthony, dated September ____, 1956,

*Reference to
2 OGL's of
Curran K.
Jones,
Incompet.*

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recorded in Book 202, Page 365, conveying 1/2 of her 1/32 mineral interest. The abstract does not include the guardianship proceedings under which Wanda Grace Jones acted in leasing her interest and in conveying 1/2 of her mineral interest.

REQUIREMENT Q: We should be submitted copies of the guardianship proceedings in the Estate of Curran K. Jones, including those in which Wanda Grace Jones was appointed guardian and in which she was granted authority to execute the oil and gas lease and convey the mineral interest to William E. Anthony. We reserve possible further requirement.

Production Requirement

8. Elizabeth W. Mendez Marital Status: Neil H. Wills, the owner of an undivided 1/64 mineral interest in the captioned lands, subject to Lease 3, executed a Conveyance and Assignment dated March 12, 1976, effective December 1, 1975, recorded in Book 332, Page 651 of the Miscellaneous Records, in which he conveyed an undivided 47/184 of his mineral interest to Elizabeth W. Mendez. Elizabeth W. Mendez thereafter joined in a conveyance, dated March 24, 1986, effective March 1, 1986, recorded in Book 463, Page 274 of the Miscellaneous Records, conveying this 1/64 mineral interest to Wills Royalty Inc. We believe that Elizabeth W. Mendez was married at the time she acquired her interest, so that it must be presumed to have been community property. The 1986 conveyance to Wills Royalty Inc. without joinder of the spouse of Elizabeth W. Mendez is questionable.

REQUIREMENT R: In the event of production we should be submitted an affidavit of the marital history of Elizabeth W. Mendez. If she was married on March 12, 1976 and/or December 1, 1975, when she acquired her interest, a quitclaim in favor of Wills Royalty Inc. by her and her husband (or ex-husband) should be obtained and recorded in Lea County. This requirement may be waived for drilling purposes, as it only affects the royalty under Lease 3.

Production Requirement

9. Character of Interests as Community or Separate Property: There are several instances in which the character of certain owners' interests as community or separate property might be questionable, as follows:

(a) Bonnie Resler Karlsrud and Wayne Resler: We have credited Bonnie G. Resler Karlsrud and Wayne Resler with overriding royalty interests, reserved in their term assignment to Arch Petroleum Inc. The source of most of the interests of Bonnie Resler Karlsrud and Wayne Resler is their parents, from whom they derived their interests by devise and gift. A small portion of their interests, however, was acquired by purchase from Geodyne Nominee Corporation and should be considered community property with their spouses. This is merely advisory, as their spouses joined in the assignment to Arch. We mention it merely for possible future reference.

(b) Children of Sue Saunders Graham: By Mineral Deed dated January 7, 1990, recorded in Book 459, Page 22 of the Lea County Deed Records, Sue Saunders Graham conveyed her 1/192 mineral interest in the captioned lands to Robert L. Graham, Jr., Jimi S. Gadzia, Curtis S. Graham and Brook H. Graham, each recited to be a married person, purportedly as their sole and separate property. The deed recites that it was executed for consideration and therefore may not be presumed to have been executed as a gift. Therefore, although we suspect that the grantees were the grantor's

children, you are not entitled under New Mexico law to rely on the recital that the conveyance made to the grantees as their separate property. Although we need not make a requirement for your present purposes, we note that any future conveyance by any of the grantees should be joined by his or her spouse in order to be presumed effective.

With respect to Curtis S. Graham, one of the grantees of Sue Saunders Graham, the abstract reflects divorce proceedings in Cause No. DR 95-360 in the District Court of Lea County between Curtis Stanley Graham and his wife, Carol Estes Graham, who were married in November 1985 and were divorced on July 17, 1995. The Decree of Dissolution does not address any mineral interests owned by either party, and it is possible that Carol Estes Graham could claim a community 1/2 interest in the interest of Curtis S. Graham.

REQUIREMENT S: In the event of production, assuming that Curtis Stanley Graham, who was divorced from Carol Estes Graham in 1995, is the same person as Curtis S. Graham, the grantee of Sue Saunders Graham, he should obtain and record a quitclaim from Carol Estes Graham as to any interest that she may own or claim in the captioned lands. *Production Requirement*

10. Trusts: Interests in the captioned lands are held in, or have passed through, various trusts as follows:

(a) Morse Willis Trust: By Mineral Deed dated October 20, 1972, recorded in Book 331, Page 592, and Quitclaim Deed dated November 17, 1972, recorded in Book 333, Page 99, S. Morse Willis and wife, Verda Lee Willis, conveyed their 1/32 mineral interest in the captioned lands, subject to Lease 6, to S. Morse Willis and Rita Louise Willis, as Trustees under Trust Agreement dated October 9, 1972. By Assignment and Mineral Deed dated September 28, 1977, recorded in Book 344, Page 456, Miscellaneous Records, and Book 361, Page 446, Deed Records, Bank of Oklahoma, N.A. and Rita Louise Willis, as Co-Trustees under Trust Agreement dated October 9, 1972, distributed this interest to Rita Louise Willis. An affidavit of a trust officer of Bank of Oklahoma, N.A., recorded in Book 343, Page 655, Miscellaneous Records, recites that S. Morse Willis died in Tulsa, Oklahoma on July 12, 1975, and that Bank of Oklahoma, N.A. was named successor trustee and continued as such until the termination of the trust on November 10, 1976. Without having examined a copy of the trust agreement, we cannot advise you of the propriety of the distribution of the trust estate to Rita Louise Willis, although it is probably reasonably safe to assume that the distribution was proper after the passage of more than 25 years.

REQUIREMENT T: In the event of production, subject to your possible waiver, we should be submitted a copy of the trust agreement of October 9, 1972, between S. Morse Willis, as settlor, an S. Morse Willis and Rita Louise Willis, as trustees. *Production Requirement*

(b) Rita Louise Willis Trust: Shortly after the distribution to her noted immediately above, Rita Louise Willis executed a Mineral Deed and an Assignment, both dated January 31, 1978, recorded in Book 364, Page 259 of the Deed Records and in Book 346, Page 841 of the Miscellaneous Records, in which she conveyed her interests in the captioned lands to Bank of Oklahoma, N.A. and Rita Louise Willis, Co-Trustees U/T/A dated June 18, 1977. We have credited this interest to the trustees, but we have not

examined a copy of the trust agreement and cannot advise you of the authority of the trustees.

REQUIREMENT U: We should be submitted a copy of the trust agreement of June 18, 1977, under which Bank of Oklahoma, N.A. and Rita Louise Willis are co-trustees, and we reserve possible further requirement. We should also be submitted evidence of the succession of any successor to Bank of Oklahoma, N.A. as one of the trustees.

Production Requirement

(c) Light/Christensen Trust: By Conveyance and Assignment dated March 12, 1976, effective December 1, 1975, recorded in Book 332, Page 651, Lea County Miscellaneous Records, Neil H. Wills, joined by his wife, Maxine R. Wills, conveyed his 1/64 mineral interest in the captioned lands, subject to Lease 3, to several grantees, including the Carlsbad National Bank, as Trustee for Bradley T. Light, Robert M. Light, Stanley W. Light, Neil T. Christensen and Thayer P. Christensen, with a 10/184 interest in such 1/64 mineral interest being conveyed to the bank as trustee for each beneficiary. Subsequently, by Conveyance dated March 24, 1986, effective March 1, 1986, recorded in Book 463, Page 274 of the Miscellaneous Records, Bradley T. Light, Robert M. Light, Stanley W. Light, Neil T. Christensen and Thayer P. Christensen joined in conveying this 1/64 mineral interest to Wills Royalty Inc. The conveyance was also joined by Carlsbad National Bank as Trustee. We surmise that the trust had terminated and that the individual beneficiaries had become entitled to convey their interests, but we cannot verify this assumption; nor can we verify the authority of Carlsbad National Bank, as trustee, without having examined a copy of the trust agreement under which it held its interest.

REQUIREMENT V: In the event of production we should be submitted a copy of the trust agreement under which the Carlsbad National Bank held its interests as trustee for the Light and Christensen beneficiaries, and we reserve possible further requirement.

Production Requirement

(d) James N. Dunlavey and Juliette F. Dunlavey Revocable Trust: By Mineral Deed dated October 21, 1983, recorded in Book 408, Page 380, Lea County Deed Records, Juliette F. Dunlavey, purportedly successor in interest to Roswell Securities Company, conveyed an undivided 1/16 mineral interest in S $\frac{1}{4}$ Section 20 to Juliette F. Dunlavey and Arthur J. Meiering, Co-Trustees of the James N. Dunlavey and Juliette F. Dunlavey Revocable Trust dated May 8, 1969. By Assignment and Conveyance dated March 26, 1993, effective March 1, 1993, recorded in Book 487, Page 16 of the Oil and Gas Records, Arthur J. Meiering, Trustee of the James N. and Juliette F. Dunlavey Revocable Trust, aka the James N. Dunlavey and Juliette F. Dunlavey Revocable Trust, dated May 8, 1969, as amended by Amendments dated July 17, 1978 and April 6, 1987, conveyed this interest to First Roswell Company, a New Mexico corporation. We have not examined a copy of the trust agreement creating this trust, or its amendments, and we cannot advise you of the authority of the trustee. See also our comments with respect to this interest under Exception to Title No. 11 below.

REQUIREMENT W: We should be submitted a copy of the trust agreement of May 8, 1969, creating the James N. Dunlavey and Juliette F. Dunlavey Revocable Trust, and the amendments thereto

Production Requirement

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dated July 17, 1978 and April 6, 1987, and we reserve possible further requirement.

(e) Richard Blotter Revocable Trust: By Mineral Deed dated April 28, 1995, recorded in Book 513, Page 693, and Mineral Deed dated October 10, 1995, recorded in Book 706, Page 221, Woodlan Perry Saunders, a single man, conveyed all of his mineral interests in Lea County to the trustee(s) of the Richard Blotter Revocable Trust under Trust Agreement dated June 24, 1991, as amended. We have credited the grantor's 1/128 mineral interest, subject to Lease 9, to the trustee or trustees of the Richard Blotter Revocable Trust, but we have not examined a copy of the trust agreement and cannot advise you of the authority of the trustee or trustees.

REQUIREMENT X: In the event of production we should be submitted a copy of the trust agreement creating the Richard Blotter Revocable Trust, apparently dated June 24, 1991, and any amendments thereto, and we reserve possible further requirement.

*Production
Requirement*

(f) W. L. and Virginia Todd Revocable Trust: By Assignment, Bill of Sale and Conveyance dated April 19, 1994, effective January 1, 1994, recorded in Book 500, Page 442 of the Oil and Gas Records, Dalport Oil Corporation assigned 45.7219% of its overriding royalty interest under Lease 1 to "The W. L. and Virginia Todd Revocable Trust U/A dated June 25, 1993." Subsequently, "the W. L. and Virginia Todd Revocable trust," acting by W. L. Todd and Virginia Todd, assigned all of its right, title and interest in the oil and gas lease covering the captioned lands to James L. Evans and wife, Billie J. Evans, by Assignment dated August 1, 1994, effective June 1, 1994, recorded in Book 505, Page 1. Although the assignment to the Evanses does not so state, we assume that W. L. Todd and Virginia Todd were the trustees of the W. L. and Virginia Todd Revocable Trust, but we cannot verify their authority without having examined a copy of the trust agreement.

REQUIREMENT Y: In the event of production we should be submitted a copy of the trust agreement, apparently dated June 25, 1993, establishing the W. L. and Virginia Todd Revocable Trust, and we reserve possible further requirement.

*Production
Requirement*

(g) Mattie K. Carter Trust: Ben J. Fortson, Jr., as trustee of the Mattie K. Carter Trust, was the owner of 5.18035% of the nonparticipating royalty interests reported hereinabove as burdening the mineral interest of Apache Corporation in the captioned lands. By Assignment dated July 8, 2002, effective May 1, 2002, recorded in Book 463, Page 1065, Ben J. Fortson, Jr., as Trustee of the Mattie K. Carter Trust, conveyed this interest to MAP00-NET a Texas general partnership. We have previously been submitted, in connection with the examination of title to other lands, a copy of the will of Mattie K. Carter, creating the trust known as the Mattie K. Carter Trust, together with an order dated April 10, 1984, in Cause No. 23263 in Probate Court No. 1 of Tarrant County, Texas, appointing Ben J. Fortson (apparently the same person as Ben J. Fortson, Jr.) as successor trustee of the trust. The powers of the trustee are not substantially limited, and in our opinion you are safe in relying on the authority of Ben J. Fortson, Jr., as trustee, to have executed the assignment to MAP00-NET.

Advisory

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(h) MWB, CCB and DCB Trusts: We have reported that nonparticipating royalty interests burdening the mineral interest of Apache Corporation are held by Ben J. Fortson, Jr., Trustee of the MWB 1998 Trust, the CCB 1998 Trust, and the DCB 1998 Trust. We have previously been submitted, in connection with examination of title to other lands, a copy of a Trust Agreement executed effective December 28, 1998, by William K. Burton and Lisa F. Burton, as grantors, and Ben J. Fortson (apparently also known as Ben J. Fortson, Jr.) creating trusts known as the DCB 1998 Trust, for the benefit of David Carter Burton, the CCB 1998 Trust, for the benefit of Christopher Coleman Burton, and the MWB 1998 Trust, for the benefit of Michael William Burton. Each trust is to extend until the respective beneficiary reaches age 35. The trustee has broad powers, including the power to sell and convey trust property and to receive and receipt for oil and gas production. This is advisory.

Advisory

(i) Ben J. Fortson III Children's Trust: We have reported above that a nonparticipating royalty interest burdening the mineral interest of Apache Corporation is owned by Ben J. Fortson III, as Trustee of the Ben J. Fortson III Children's Trust. We have previously, in connection with examination of title to other lands, been submitted a copy of the Trust Agreement, dated December 30, 1987, executed by Ben J. Fortson III, creating a trust for the benefit of his son, Ben J. Fortson IV, and any children thereafter borne to or adopted by the grantor. The trustee's powers are broad and would include the power to sell and convey trust property and to receive and receipt for the proceeds of oil and gas production. Generally, the trust estate is to be distributed to each child of the grantor, 1/3 at age 30, 1/2 of the remainder at age 35, and all of the remainder at age 40. This is merely advisory.

Advisory

11. Passage of Title to Roswell Securities Interest: The 1/16 mineral interest in the captioned lands, subject to Lease 5, credited herein to First Roswell Company was formerly owned of record by Roswell Securities Company. By Mineral Deed dated October 21, 1983, recorded in Book 408, Page 380 of the Lea County Deed Records, Juliette F. Dunlavey, purporting to be the successor in interest to Roswell Securities Company, assigned this interest to Juliette F. Dunlavey and Arthur J. Meiering, Co-Trustees of the James N. Dunlavey and Juliette F. Dunlavey Revocable Trust dated May 8, 1969; and Arthur J. Meiering, as Trustee of the James N. Dunlavey and Juliette F. Dunlavey Revocable Trust, conveyed the interest to First Roswell Company in 1993. (We have made a requirement, in the event of production, in connection with the authority of the trustee above.) We find no conveyance from Roswell Securities Company to Juliette F. Dunlavey. Instead, an affidavit of Jack K. Nichols, dated March 25, 1993, recorded in Book 568, Page 541 of the Miscellaneous Records, recites certain facts concerning Roswell Securities Company and J. N. Dunlavey and his wife, Juliette F. Dunlavey, who were clients of the affiant as a certified public account in Roswell, New Mexico. According to the affidavit, J. N. and Juliette F. Dunlavey were the sole shareholders of Roswell Securities, Inc., a New Mexico corporation, which was liquidated, according to the affidavit, on July 31, 1980. The Dunlaveys had established the James N. and Juliette F. Dunlavey Revocable Trust dated May 8, 1969, and most of their mineral interests were conveyed to the trust before the death of J. N. Dunlavey. The affiant states that he knows it was the intent of Juliette F. Dunlavey, individually and as sole surviving shareholder of Roswell Securities, Inc., to convey all of her

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minerals into the trust. If in fact James N. Dunlavey and Juliette F. Dunlavey were the sole shareholders of Roswell Securities Company, and if any interest of James N. Dunlavey passed at his death to Juliette F. Dunlavey, the matter is apparently satisfactory. However, we do not know how reliable you may consider the affidavit of the certified public accountant, who may have been familiar with the corporation but does not purport to have been the custodian of its records or state exactly how his information comes about. It may be virtually impossible to completely clear this gap in the title without a quiet title suit.

*Advisory:
Quiet Title*

REQUIREMENT Z: In the event of production we should be submitted the affidavit of a person having access to the records of Roswell Securities Company verifying that James N. Dunlavey and Juliette F. Dunlavey were in fact its sole shareholders, and copies of the probate proceedings, if any, or if none an affidavit of heirship, in the estate of James N. Dunlavey. We reserve possible further requirement.

*Production
Requirement*

12. Execution of Todd Overriding Royalty Assignment: The "W. L. and Virginia Todd Revocable Trust U/A dated June 25, 1993" was the record owner of 45.7219% of an overriding royalty interest in Lease 1 reserved to Dalport Oil Corporation. By Assignment dated August 1, 1994, effective June 1, 1994, recorded in Book 505, Page 1, the "W. L. and Virginia Todd Revocable Trust" purported to convey all of its right, title and interest in the oil and gas lease covering the captioned lands to James L. Evans and wife, Billie J. Evans. This assignment is defective in several ways. In the first place, a "trust" is not a legal entity, although we would construe its ownership to be that of its trustees. The assignment was executed by W. L. Todd and Virginia Todd, but nowhere in the assignment is their capacity given. From all appearance, their execution and acknowledgment of the assignment is individually rather than as trustees or in any other capacity.

REQUIREMENT AA: In the event of production a correction assignment should be made by W. L. Todd and Virginia Todd, as Trustees of the W. L. Todd and Virginia Todd Revocable Trust, in favor of Jimmy D. Evans and wife, Linda B. Evans, successors to the interest of James L. Evans and Billie J. Evans, and the correction assignment should be recorded in Lea County. (Note that we have made a requirement hereinabove, in the event of production, that we be submitted a copy of the trust agreement creating this trust.)

*Production
Requirement*

13. Defects in Nonparticipating Royalty Interest Conveyances: We have reported hereinabove the record ownership of nonparticipating royalty interests burdening the interest of Apache Corporation in the captioned lands. There are defects in certain conveyances in the chain of title to these interests, as follows:

(a) **Ben J. Fortson, Jr. Marital Status:** Ben J. Fortson, Jr. was the record owner of 10.3607% of this nonparticipating royalty interest. By Assignment, Bill of Sale and Conveyance dated July 8, 2002, effective May 1, 2002, recorded in Book 1158, Page 366, Ben J. Fortson, Jr., individually and as Trustee of the Mattie K. Carter Trust, conveyed his interests to MAP00-NET, a Texas general partnership. This conveyance does not mention the marital status of Ben J. Fortson, Jr. If he was married, so that his interest is presumed community property, the assignment in his individual capacity may have been void.

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REQUIREMENT BB: In the event of production, we should be submitted an affidavit of the marital history of Ben J. Fortson, Jr., as of August 1, 1999, when he apparently became entitled to his interest, and as of July 8, 2002, when he conveyed it. We reserve further requirement if he was married at that time.

Production Requirement

(b) Roach Foundation Assignment: We credit the Roach Foundation with 8.77053% of this nonparticipating royalty interest pursuant to a "Stipulation of Interest" in which its interest was acquired, recorded in Book 1242, Page 617. There are several defects in this conveyance, as follows:

(i) The stipulation of interest was executed on behalf of Roach LA Enterprises, Ltd., the owner of 7.77053% of the nonparticipating royalty interest, by the manager of Roach LA Enterprises I L.C. The instrument does not state the capacity of Roach LA Enterprises I L.C. either in its execution or in the acknowledgment. Although we assume that Roach LA Enterprises I L.C. was the general partner of Roach LA Enterprises, Ltd., this should be verified.

REQUIREMENT CC: In the event of production we should be submitted evidence that Roach LA Enterprises I L.C. was the general partner of Roach LA Enterprises, Ltd., with authority to have executed on behalf of the limited partnership.

Production Requirement

(ii) Taylor Marital Status: The stipulation of interest in favor of the Roach Foundation was joined by Brett G. Taylor and Courtenay A. Taylor, each of whom was the record owner of a 0.5% interest in the nonparticipating royalty interest. We suspect that these persons were husband and wife, but the assignment does not so state. If they were not husband and wife, correction conveyances from them and their spouses would be necessary.

REQUIREMENT DD: In the event of production we should be submitted an affidavit or other verification that Brett G. Taylor and Courtenay A. Taylor are husband and wife. If they are not husband and wife, we reserve further requirement.

Production Requirement

(iii) The stipulation of interest in favor of the Roach Foundation purports to stipulation ownership of an 8.77053% interest in the properties described in Exhibit "A" thereto. The above reported nonparticipating royalty interests are described in a schedule attached to the assignment entitled Exhibit B, but there is no reference to an Exhibit B in the body of the assignment.

REQUIREMENT EE: In the event of production a correction assignment should be made by Roach LA Enterprises, Ltd., Brett G. Taylor and Courtenay A. Taylor, accurately identifying the interests intended to be conveyed.

Production Requirement

(c) Discrepancy in Percentages of Ownership: Fortson Oil Company originally acquired the nonparticipating royaty interests, as "agent and nominee," from Collins & Ware, Inc. by Assignment, Bill of Sale and Conveyance dated December 20, 1999, effective August 1, 1999, recorded in Book 997, Page 417 of the Lea County Records. By "Stipulation of Interest" dated effective August 1, 1999, filed for record on July 3, 2002, recorded in Book 1156, Page 682, Fortson Oil Company conveyed the interests

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acquired from Collins & Ware to those for whom they were held. The decimal fractions attributed to the respective owners in the Stipulation total 100.000001% rather than exactly 100%. This discrepancy is extremely minute, and we therefore do not consider it to merit a title requirement. To make our ownership schedule total 100%, however, we note that we have deducted 0.000001% from the interest of MAPOONET, successor to the individual interest of Ben J. Fortson, Jr. If the parties intend different ownership among them, they should all execute and record a correction stipulation of their interests.

Advisory

14. Consent to Assignments: According to the prior title opinion, the farmout agreement that resulted in Lease 12, from Cities Service Oil Company (now OXY USA WTP Limited Partnership) included a provision that no assignment of rights under the agreement could be made without Cities' written consent. We do not know whether this was intended to apply to the leasehold earned under the farmout agreement. If so, the effect of failure to obtain OXY's consent is uncertain.

REQUIREMENT FF: So that you will be certain you are not in violation of the provisions of the Cities farmout agreement requiring its consent to any assignment, you should obtain the written consent or waiver of OXY USA WTP Limited Partnership with respect to the recent assignments to Arch and to Eagle-K and prior assignments of interests in the Cities Service leases.

Waive for Drilling

15. Wild Claim: The abstract under examination includes the probate proceedings in the estate of Otis L. Jones, who died on October 1, 1975, Lea County Probate Court Cause No. 3962. The inventory filed in the proceedings includes an undivided 1/32 mineral interest in S $\frac{1}{2}$ Section 20, although Otis L. Jones had conveyed all of his interest to William E. Anthony in 1956. In his will, dated September 2, 1961, Otis L. Jones purported to devise his 1/32 mineral interest in S $\frac{1}{2}$ Section 20 to his wife, Opal M. Jones, for life, remainder to his daughters Beatrice Jones Hyde, Pauline Jones Young, Kathleen Jones Hayes and Leotis Jones Johnston. By deed dated April 30, 2001, recorded in Book 1077, Page 165, Opal M. Jones purported to convey her life estate to another daughter, Beverly Jean Bull.

REQUIREMENT GG: In the event of production, inquire of the above named daughters of Otis L. Jones whether they actually claim an interest in the captioned lands. If so, they should be requested to provide evidence of the source of their claim. If not, they should be requested to execute and record a disclaimer.

Production Requirement

16. Missing Abstract Page: The interest credited to Apache Corporation herein was conveyed by Amerada Hess Corporation to Collins & Ware, Inc. in an Assignment, Bill of Sale and Conveyance dated June 26, 1996, effective January 1, 1996, recorded in Book 736, Page 210 of the Lea County Records. This instrument conveyed all of the assignors' interests in numerous leases and interests described in Exhibit A-1 thereto. The Amerada Hess interest in the captioned lands is described on Page 10 of Exhibit A-1, but this page is not shown in the abstract under examination. We have obtained a copy and verified that the captioned lands are described, but the abstract should be corrected.

REQUIREMENT HH: The abstract under examination should be returned to the abstracter for correction to include the missing pertinent page of Exhibit A-1 to the foregoing assignment. (We have taken the liberty of returning the pertinent volume of the

Waive

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abstract for correction, and we will forward it to you when it has been returned us.)

17. Depth Limitation: Note that our opinion is limited to depths between the surface and 3,750 feet subsurface. We understand that you do not intend to drill deeper than 3,750 feet. Working interest title is significantly different from title as reported herein for depths deeper than 3,750 feet. In particular, most of the oil and gas leases cover only depths down to 3,768 feet, and some assignments of leasehold interests are limited to depths down to 3,750 feet, particularly with respect to SE $\frac{1}{4}$ of Section 20, even where the assignor owned interests down to 3,768 feet under most of the leases and down to 3,790 feet under Lease 13. Leasehold title may be very complex, therefore, for depths lying between 3,750 feet and 3,790 feet, and again, most interests are unleased as to deeper depths. This opinion should not be relied upon for any depths deeper than 3,750 feet. This is advisory.

Advisory

18. Surface Possession: We have no information concerning the possession of the surface of the captioned lands. Because the land has been producing for many years and because the surface and mineral estates were entirely severed sometime before, it is very unlikely that surface possession might have an effect on ownership of any interest in the mineral estate. You are nevertheless on notice of the rights of anyone in actual possession, and our examination cannot cover the rights of parties in possession.

*Jim Davitt
Contacted*

19. Ownership of Other Minerals: According to the prior title opinion upon which we have relied, an undivided 1/2 interest in minerals other than oil and gas is owned by the surface owner. It is unclear which interests reported above include minerals other than oil and gas, although it appears that the interests credited to Apache Corporation, Gordon Donald Gayle and First Roswell Company probably include other minerals. (The prior opinion appears to state that the "1/2 interest in which the oil and gas only is owned" are those of various named mineral owners whose interests total more than 1/2.) Without further examination, this opinion should not be relied upon as reporting title to minerals other than oil and gas.

Advisory

20. Rights-of-Way: There are a number of recorded rights-of-way for pipelines and other purposes crossing the captioned lands, and it appears that a public highway and a railroad may cross the land, although rights-of-way are not mentioned in the prior title opinion. We will not attempt to report all of the rights-of-way crossing the captioned lands but would be able to provide you information on the creation and apparent ownership of the rights-of-way should you request that we do so. Rights-of-way should be located on the ground, and your operations should be conducted so as not to interfere with any of them.

Advisory

21. Taxes: The abstract under examination includes a tax statement indicating that ad valorem taxes have been paid for all years up to and including 2002. We do not know whether 2003 taxes have been paid. Nonpayment of ad valorem taxes would not affect the mineral estate in any event under current taxing practices.

Advisory

22. Limited Opinion: This opinion is limited as follows:

(a) This opinion does not cover such matters as area, boundaries, location on the ground or other matters which can be determined only by an actual ground survey, nor does

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it cover any matters not revealed by the materials examined, such as unsubmitted and unrecorded agreements and undisclosed understandings among parties.

(b) This opinion does not cover the question of possible dedication of natural gas deposits under prior contracts subject to the jurisdiction of governmental regulatory agencies. Such dedication may survive the expiration of oil and gas leases owned by the party making the dedication.

(c) This opinion does not deal with any questions of state or federal securities and environmental laws and regulations or the possible effect thereof on title to, or operations on, this property or interests assigned or to be assigned therein.

(d) Without our written consent, this opinion may be relied upon only by the addressee hereof.

(e) As noted above, we have relied in part on the title opinion of an attorney other than those in our law firm. We have no reason to doubt the accuracy of the prior title opinion, but we must rely only on materials actually examined by us and take no responsibility for any errors in or omissions from the prior opinion of another attorney.

Respectfully submitted,

HINKLE, HENSLEY, SHANOR
& MARTIN, L.L.C.



William B. Burford

WBB:c1

The above mentioned abstract returned herewith, except Part VII, which has been returned to abstracter for correction.

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