

NM OIL CONSERVATION
ARTESIA DISTRICT

JUN 06 2017

SC 6-6-17
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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

NMOCD Case No. 15582

IN THE MATTER OF GIANT OPERATING LLC.

**AGREEMENT CONCERNING OCD RECOVERY
FROM ESTATE OF GIANT OPERATING LLC**

THIS AGREEMENT, effective December 14, 2016, is made and entered into by and between Karen L. Cook, as Court-appointed Receiver ("Receiver") in the matter *SEC v. Harris, et al.*, Case No. 3:09-cv-01809-M (USDC, ND Tex., Dallas Div.) ("Receivership Estate"), and the Director of the Oil Conservation Division of New Mexico, Energy, Minerals and Natural Resources Department ("OCD").

WHEREAS, OCD is the New Mexico State Agency charged with administration and enforcement of the New Mexico Oil and Gas Act, NMSA 1978, § 70-2-1, et seq.; and

WHEREAS, Receiver is the serving Federal Receiver for the Receivership Estate, including Giant Operating LLC, duly appointed by the United States District Court, Northern District of Texas ("Court"), in Case No. 3:09-cv-01809-B; and

WHEREAS, the Receiver is administering the Receivership Estate created at the time of her appointment; and

WHEREAS, OCD is a party interested in the administration of the Receivership Estate; and

WHEREAS, the Receivership Estate does not dispute that the OCD records reflect that the Receivership Estate is the operator of record of the below-listed oil and gas wells in the State of New Mexico:

30-015-04746 HANAGAN STATE #001
30-015-03701 MALAGA UNIT #001
30-015-03702 MALAGA UNIT #002
30-015-03695 MALAGA UNIT #003

30-015-04753 R AND B FEDERAL #001Y;

collectively, the “Wells”; and

WHEREAS, OCD maintains, and the Receiver does not dispute, that the Wells have been continuously inactive for a period of more than one year; and

WHEREAS, 19.15.25.8 NMAC provides that the operator of a well that has been continuously inactive for a period of more than one year shall either properly plug and abandon the well or place the well in approved temporary abandonment status within 90 days; and

WHEREAS, the Receiver has completed administration of the Receivership Estate to the extent feasible, converted its marketable assets to cash, and determined that placing the Wells into approved temporary abandonment status is not feasible; and

WHEREAS, OCD and the Receiver are in agreement that the Wells should be properly plugged and abandoned; and

WHEREAS, the Court on April 18, 2016 filed its Memorandum Opinion and Order, Document 315, setting out the Court’s plan for an equitable distribution of the assets of the Estate; and

WHEREAS, the Court has made provision in its Memorandum Opinion and Order for the cost of compliance with the Estate’s obligation to properly plug and abandon the Wells; and

WHEREAS, the Receiver has no discretion to distribute the assets of the Estate other than in accordance with the direction of the Court as reflected in the Memorandum Opinion and Order; and

WHEREAS, the Receiver has cash available for distribution to OCD under the Court’s distribution plan in the amount of THIRTY SEVEN THOUSAND, TWO HUNDRED, FIFTY EIGHT AND 56/100 DOLLARS (\$37,258.56); and

WHEREAS, the Receiver has provided to OCD as financial assurance for the Receivership Estate’s compliance with all applicable statutes of the State of New Mexico and with all rules and orders of the Oil Conservation Commission and Oil Conservation Division, including requirements to cause wells in the State of New Mexico owned or operated by the Receivership Estate to be properly plugged and abandoned, four (4) Irrevocable Letters of Credit issued by Pegasus Bank, of Dallas, Texas, to wit:

Letter of Credit No. 1117, in the amount of \$8,775.00,
Letter of Credit No. 1119, in the amount of \$7,779.00,
Letter of Credit No. 1120, in the amount of \$7,737.00,
Letter of Credit No. 1121, in the amount of \$7,797.00,

together, collectively, with any interest accrued by the Certificate of Deposit that secures them, altogether having a value in the approximate amount of \$32,140.79, the "Letters of Credit"; and

WHEREAS, in accordance with the Memorandum Opinion and Order the Receiver is desirous of paying over to OCD the \$37,258.56 in partial fulfillment of the Estate's Obligation to properly plug and abandon the Wells, and OCD is desirous of receiving the \$37,258.56; and

WHEREAS, the Receiver has agreed that OCD should be permitted to make demand for funds under the terms of the Letters of Credit, and does not oppose either the demand by OCD or the honoring of that demand by Pegasus Bank; and

WHEREAS, OCD contends and the Receiver does not dispute that the \$37,258.56 to be paid over by the Receiver, together with the funds to be received by OCD after demand on the Letters of Credit are insufficient to fully pay the costs of properly plugging and abandoning the Wells;

WHEREAS, the Receiver agrees that the Receivership Estate will not be entitled to any refund or return of monies paid over to OCD; and

WHEREAS, OCD and the Receiver each acknowledge that the \$37,258.56 to be paid over by the Receiver, together with the funds to be received by OCD after demand on the Letters of Credit are the maximum amount to which OCD is entitled under the terms of the Court's Memorandum Opinion and Order, and that the Receiver has no obligation to cause to be paid over to OCD more than the total of those monies; and

WHEREAS, OCD and the Receiver desire to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Karen L. Cook, as Court-appointed Receiver for the Receivership Estate, and by the Director of the OCD, it is agreed as follows:

1. The foregoing recitals are incorporated herein by reference.

2. As soon as practicable after effective date of this Agreement, but in no event longer than fourteen (14) days, the Receiver shall pay to OCD THIRTY SEVEN THOUSAND, TWO HUNDRED, FIFTY-EIGHT AND 56/100 DOLLARS (\$37,258.56).

3. The check or negotiable instrument directing payment of those funds shall be made payable to the State of New Mexico, Oil and Gas Reclamation Fund, and delivered to the attention of Allison Marks, Deputy Director, OCD, at 1220 South St. Frances Drive, Santa Fe, New Mexico 87505.

4. As soon as practicable after execution of this Agreement, the Receiver shall notify Pegasus Bank, in such form as Pegasus Bank may require, that Pegasus Bank is to honor the demand by OCD on the Letters of Credit, and that the Bank is to remit to OCD the amounts set out on the face of the individual Letters of Credit, together with any interest accrued on the Receivership Estate's Certificate of Deposit securing the Letters of Credit to which the Receivership Estate would otherwise be entitled.

5. Upon receipt of the \$37,258.56 and the funds in the approximate amount of \$32,140.79 from the Letters of Credit, OCD will deem itself to have received a full, complete and final distribution from the Receiver of all amounts to which OCD is entitled from the Receivership Estate, and acknowledge that OCD will have no further right to distributions from, or claim against, the Receivership Estate, the Receiver, individually or in her capacity as Receiver, or any of Receiver's agents, attorneys and all others serving on her behalf, nor any right to appeal or contest the Memorandum Opinion and Order. This acknowledgement that OCD's claim against the Receivership Estate is resolved shall not extend to Giant Operating LLC or any other individual, person or entity that may be responsible for properly plugging and abandoning the Wells.

6. Upon receipt of the \$37,258.56 and notice from Pegasus Bank that the Bank is honoring the demand by OCD on the Letters of Credit, OCD will dismiss NMOCD Case No. 15582. The dismissal will be without prejudice to OCD bringing a compliance action against Giant Operating LLC or any other individual, person or entity that may be responsible for properly plugging and abandoning the Wells.

7. The Receiver agrees that, at the conclusion of all wind-up procedures for the Receivership Estate, the Receiver will tender to OCD any and all amounts that remain in the Receivership Estate—if any—after all fees and expenses are paid. Any such funds tendered at that time shall be subject to all of the provisions of this Agreement.

8. The occurrence of any one of the following after ten (10) days written notice, which may be transmitted electronically, and failure to cure within that ten (10) day period, shall constitute a default under the terms of this Agreement:

- A. Failure to make any payment when due.
- B. Failure to perform any condition, provision or obligation under the terms of this Agreement.
- C. The determination that any representation made in this Agreement is false or materially untrue.

9. If any default is not cured, either party may seek redress from the Court. OCD consents to the jurisdiction of the U.S. District Court, Northern District of Texas over it in relation to disputes under this Agreement, and only to disputes under this Agreement.

10. Any notice required or permitted to be given under this Agreement shall be in writing, and may be hand-delivered, sent by recognized overnight courier for next day delivery, or transmitted electronically with proof of successful transmission, addressed to the party as follows:

RECEIVER:
Karen L. Cook
1717 McKinney Avenue, Suite 700
Dallas, Texas 75202
karen@karencooklaw.com

S. Michael McColloch
Counsel for Receiver
1717 McKinney Avenue, Suite 700
Dallas, Texas 75202
smm@mccolloch-law.com

OCD:
David Catanach
Director, OCD
1220 South St. Frances Drive
Santa Fe, New Mexico 87505
david.catanach@state.nm.us

If notice is hand-delivered, it shall be deemed given upon delivery. If a notice is transmitted electronically, it will be deemed given when successfully transmitted. If a notice is sent by recognized overnight courier, it shall be deemed given upon delivery by the courier. A party may change its address for notice by sending a notice to the other party pursuant to the terms of this paragraph.

11. Each party signing this Agreement represents and warrants to the other party that it has full legal power, authority and right to execute, deliver and perform the obligations under this Agreement. Each party represents and warrants to the other party that the transactions contemplated hereby and all persons signing have been duly authorized by all requisite actions and that no remaining action or third-party is required to make this Agreement binding.

12. This Agreement cannot be amended except by a written document executed by both parties.

13. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together constitute one document. A facsimile signature will be deemed an original signature.

14. The parties to this Agreement acknowledge that this is a public document, subject to disclosure under the New Mexico Inspection of Public Records Act.

15. The parties to this Agreement agree to execute such other and further documents, instruments and agreements as are reasonably necessary to carry out or facilitate the intent of this Agreement.

16. This Agreement shall be governed by the law of the State of New Mexico. This Agreement shall be construed equally against the parties hereto and no party shall be considered the party responsible for the drafting of this Agreement.

17. No waiver or failure by any party to enforce any breach or deviation from any provision of this Agreement shall be considered to be a waiver or any subsequent breach, regardless of the time, nature or form of the subsequent breach. All waivers must be in writing to be effective.

18. This Agreement is a fully integrated document and represents the entire understanding and agreement between OCD and the Receiver. All prior discussions, events or representations, warranties and agreements are hereby superseded and replaced by this Agreement. The parties

to this Agreement affirm that the terms and provisions of this Agreement accurately reflect their intent.

19. This Agreement is only for the benefit of the parties hereto and not any third party.

20. Time is of the essence under this Agreement.

THIS AGREEMENT is executed and delivered as of the date set forth above.

RECEIVER:

Karen L. Cook
Federal Receiver for the Receivership Estate in the
matter SEC v. Harris, et al., in Case No. 3:09-cv-
01809M (USDC, ND Tex., Dallas Div.)

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

by: David Catanach
David Catanach, Director

APPROVED FOR LEGAL SUFFICIENCY
HECTOR H. BALDERAS
New Mexico Attorney General

by: _____
James C. Jacobsen
Assistant Attorney General

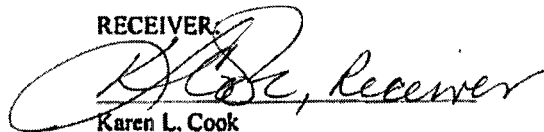
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by:

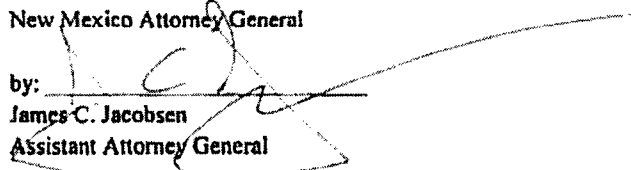

David Catanach, Director

APPROVED FOR LEGAL SUFFICIENCY

HECTOR H. BALDERAS

New Mexico Attorney General

by:


James C. Jacobsen

Assistant Attorney General