

IN RE: § IN THE PROBATE COURT  
§  
§ OF  
§  
TEL OFFSHORE TRUST § TRAVIS COUNTY, TEXAS

**INDIVIDUAL TRUSTEES OF THE TEL OFFSHORE TRUST’S ORIGINAL ANSWER  
TO RNR PRODUCTION LAND AND CATTLE’S  
ORIGINAL PETITION AS REALIGNED PLAINTIFF AND COUNTERCLAIM**

Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr, as Individual Trustees (“Individual Trustees”) of the TEL Offshore Trust (“Trust”), file this its Original Answer to RNR Production Land and Cattle (“Plaintiff”)’s Original Petition As Realigned Plaintiff (“Petition”), and would respectfully show the Court the following:

**I. GENERAL DENIAL**

1. As provided for and allowed under the Texas Rules of Civil Procedure 92, the Individual Trustees deny generally each and every, all and singular, of the allegations in the Petition filed by Plaintiff and demand strict proof thereof by a preponderance of the credible evidence, as required by the Constitution and the laws of the State of Texas.

**II. DEFENSES**

2. The Plaintiff’s claims are barred, in whole or in part, because the Plaintiff lacks standing to bring this suit, or alternatively lacks standing to assert each of the claims asserted.

3. The Plaintiff’s claims are barred, in whole or in part, by the statutes of limitations. The discovery rule does not apply to Plaintiff’s claims.

4. The Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.

5. The Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, including without limitation quasi-estoppel, equitable estoppel, judicial estoppel, and promissory estoppel.

6. The Plaintiff's claims are barred, in whole or in part, by ratification.

7. The Plaintiff's claims are barred, in whole or in part, by waiver.

8. The Plaintiff's claims are barred, in whole or in part, by unclean hands.

9. The Plaintiff's claims are barred, in whole or in part, by the doctrines of payment, offset, credit, and/or recoupment.

10. The Individual Trustees plead the defense of actual, apparent, and/or implied consent.

11. The Plaintiff's claims are barred by acquiescence.

12. The allegations in the Petition fail to state a claim upon which relief can be granted.

13. The Individual Trustees plead the defense of the vice principal rule.

14. The Plaintiff's claim for an accounting fails because Plaintiff can obtain adequate relief through the use of standard discovery and because Plaintiff's underlying grounds for obtaining an accounting fail.

15. The Individual Trustees specifically deny responsibility for punitive or exemplary damages. If this Court finds that such damages are recoverable, such exemplary damages are limited by Texas Civil Practice and Remedies Code section 41.008, and in addition, Plaintiff cannot recover any punitive damages that are constitutionally excessive. The Individual Trustees invoke all limitations, requirements, and protections provided in Texas Civil Practice and Remedies Code chapter 41, including without limitation, the requirement that Plaintiff prove by

clear-and-convincing evidence the right to recover and the elements of exemplary damages. The Individual Trustees contend that the correct burden of proof under constitutional principles is “beyond a reasonable doubt,” but at a minimum, the standard is clear-and-convincing evidence, as required by chapter 41.

16. Awarding punitive damages would violate the Individual Trustees’ constitutional rights, including their rights to equal protection and due process under Article I, Sections 3, 13, and 19 of the Texas Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Awarding punitive damages would also be an unconstitutional taking under Article I, Section 17 of the Texas Constitution. In addition, awarding punitive damages would violate the prohibitions against excessive fines and cruel or unusual punishment under Article I, Section 13 of the Texas Constitution and the Eighth Amendment to the United States Constitution. Among other things, awarding punitive damages would be a constitutional violation, because:

- a. Texas law regarding punitive damages is unconstitutionally vague and does not provide sufficient notice of the conduct that could be punished and the severity of the punishment;
- b. The unconstitutional vagueness of Texas law results in arbitrary and discriminatory awards;
- c. Texas law does not provide adequate substantive and procedural safeguards to prevent arbitrary, excessive, and unconstitutional awards;
- d. Texas law does not provide adequate and meaningful guidance to fact finders when they award punitive damages, leaving such awards to arbitrary determinations by the fact finders;
- e. Texas law does not require that liability for and the amount of punitive damages be proven beyond a reasonable doubt;
- f. Punitive damages are a windfall to plaintiffs, making such damages an unconstitutional taking; and
- g. Punitive damages are not available for lawful conduct inside of Texas, for conduct outside of Texas, for conduct that has already been punished, for the conduct of another party, or for harm to others besides the plaintiff.

17. The Individual Trustees plead that all of their actions were specifically authorized by the Trust Agreement made as of January 1, 1983, including conducting royalty sales, obtaining loans to pay the Trust's expenses, paying the Trustees' compensation, and obtaining D&O insurance. The Individual Trustees plead the provisions of the Trust Agreement, including, without limitation, the following:

- a. Pursuant to Section 2.02 of the Trust, one of the purposes of the Trust is to "pay or provide for the payment of any liabilities incurred in carrying out the purposes of the Trust, and thereafter to distribute the remaining amounts received by the Trust pro rata to the owners of the Units."
- b. Pursuant to Section 3.03, the unit holders "take and hold the Unit subject to all the terms and provisions of this Trust Agreement."
- c. Pursuant to Section 6.01, the Trustees are "authorized" to ... take such actions as in their judgment are necessary, desirable or advisable to achieve the purpose of the Trust."
- d. Pursuant to Section 6.06, the Trust Agreement provides that the Trustees "shall use all money received by the Trust for the payment of all liabilities of the Trust, including but not limited to all expenses, taxes, and liabilities incurred of all kinds, compensation to the Trustees for their services..."
- e. Pursuant to Section 6.08, in the event of borrowing money to cover Trust's costs, "the Trustees shall suspend further Trust distributions ... until the indebtedness created by such borrowing has been paid in full."
- f. Pursuant to Section 6.11, "[t]he Trustees are authorized to maintain and defend, and to settle, in the Trust's name any claim or controversy by or against the Trust without the joinder or consent of any Certificate Holder or owner of a Unit."
- g. Pursuant to Section 6.13 of the Trust Agreement, "[t]he powers granted the Trustees under this Trust Agreement may be exercised upon such terms as the Trustees deem advisable and may affect the Trust properties for any length of time regardless of the duration of the Trust."
- h. Pursuant to Section 6.14 of the Trust Agreement, "[t]he Trustees shall be under no obligation to ... dispose of any wasting assets." The Trust Agreement specifically relieved the Trustees of any duty to dispose of any Trust assets at any particular time.

- i. Pursuant to Section 7.01 of the Trust Agreement, “[t]he Trustees are empowered to act in their discretion and shall not be personally or individually liable for any act or omission except in the case of gross negligence, bad faith or fraud.”
- j. Pursuant to Section 7.03 of the Trust Agreement, “[t]he Trustees shall be indemnified by, and receive reimbursement from, the Trust Estate against ... any and all liability, expense (including counsel fees and expenses incurred in preparing for and defending claims or suits), ... or loss incurred by them individually or as Trustees in the administration of the Trust [except for] gross negligence, bad faith or fraud....” Moreover, this Section provides the Trustees “shall have a lien upon the Trust Estate to secure them for such indemnification and reimbursement and for compensation to be paid to the Trustees.”
- k. Pursuant to Sections 7.04 and 7.05 of the Trust Agreement, the Corporate Trustee and the Individual Trustees are entitled to compensation for their services, as set forth in the Trust Agreement.
- l. Section 7.06 of the Trust Agreement provides: “To perform any act required or permitted by this Trust Agreement, the Trustees may ... be required to ... consult with counsel, ... accountants, geologists, engineers and other parties deemed by the Trustees to be qualified as experts on the matters submitted to them ... and the opinion ... of any such parties on any matter submitted to them by the Trustees shall be full and complete authorization and protection in respect to any action taken or suffered by them hereunder in good faith and in accordance with the opinion ....
- m. Pursuant to Section 9.01, the Trust Agreement’s termination provisions were not triggered.

The Individual Trustees would show this Court that the claims asserted by the Plaintiff are all barred by the language quoted above.

18. The Individual Trustees rely upon Texas Property Code, Section 112. 054, which sets forth the limited circumstances in which modification or termination of a trust should be sought. The Trustees’ decision to seek judicial termination of the Trust in 2014 was an extraordinary measure.

19. The Individual Trustees plead the defense of mitigation of damages.