

Corporate Trustee leave to file this Amended Counterclaim, and it does not operate as a surprise to the Plaintiffs. Therefore, the Corporate Trustee asks the Court to grant it leave to file its Amended Counterclaim for Modification and Termination of Trust as to Attorney Ad Litem, RNR Production Land and Cattle, and Albert and Joyce E. Speisman. The Corporate Trustee is concurrently filing its Amended Counterclaim. The Corporate Trustee requests such other and further relief, both at law and in equity, to which it may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A., as

CORPORATE TRUSTEE OF THE TEL
OFFSHORE TRUST

CERTIFICATE OF SERVICE

I hereby certify that, on May 5, 2017, a true and correct copy of the foregoing has been served via Texas e-filing and email on the Ad Litem, counsel for Ad Litem, counsel for Albert E. and Joyce Speisman, and counsel for RNR Production Land and Cattle. I hereby certify that all other interested parties in this matter will be served in accordance with the Court's Order Directing Method of Service dated January 21, 2016.

/s/ Rachelle H. Glazer

Rachelle H. Glazer

Exhibit A

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

CORPORATE TRUSTEE’S AMENDED COUNTERCLAIM FOR MODIFICATION AND TERMINATION OF TRUST AS TO ATTORNEY AD LITEM, RNR PRODUCTION LAND AND CATTLE, AND ALBERT AND JOYCE E. SPEISMAN

The Bank of New York Mellon Trust Company, N.A., (“BNYM”) as Corporate Trustee (“the Corporate Trustee”) of the TEL Offshore Trust (“Trust”) files this its Amended Counterclaim for Modification and Termination of Trust as to Attorney Ad Litem, RNR Production Land and Cattle, and Albert and Joyce E. Speisman (“Amended Counterclaim”). This Amended Counterclaim supersedes the Counterclaims in Corporate Trustee’s Third Amended Answer to Attorney Ad Litem’s Petition and Counterclaim; Fourth Amended Answer to RNR Production Land and Cattle’s Petition and Counterclaim; and Third Amended Answer to Albert Speisman and of Joyce E. Speisman’s Petition and Counterclaim. The Corporate Trustee would respectfully show the Court the following:

I. BACKGROUND FACTS

A. The Trust

1. The Trust was created by Tenneco Offshore Company, Inc. (“Tenneco Offshore”) effective January 1, 1983, pursuant to a Plan of Dissolution (“Plan”) approved by Tenneco Offshore’s stockholders on December 22, 1982. In accordance with the Plan, the TEL Offshore Trust Partnership (“Partnership”) was formed, in which the Trust owns a 99.99% interest and Tenneco Oil Company, as managing general partner of the Partnership, owned a .01% interest.

Chevron USA, Inc. (“Chevron”) as the successor-in-interest to Tenneco Oil Company, currently serves as the managing general partner of the Partnership and holds a .01% interest in the Partnership.

2. The Plan was effected by transferring an overriding royalty interest (“Royalty”) equivalent to a 25% net profits interest in certain oil and gas properties (“Royalty Properties”) of Tenneco Exploration, Ltd. located offshore of Louisiana and Texas to the Partnership and by ultimately issuing units of beneficial interest in the Trust (“Units”) to the holders of Tenneco Offshore’s common stock in liquidation and cancellation of Tenneco Offshore’s common stock.

3. On January 14, 1983, Tenneco Offshore distributed Units to holders of Tenneco Offshore’s common stock on the basis of one Unit for each common share owned on such date. The Units traded on the Nasdaq Capital Market (“NASDAQ”) from August 31, 2001 through January 2, 2011. In an effort to reduce expenses, the Units were delisted from NASDAQ on January 3, 2011. Since January 3, 2011, the Units have been quoted on the OTCQB Marketplace, which is an electronic quotation service operated by Pink OTC Markets Inc. for securities traded over-the-counter.

4. The purposes of the TEL Offshore Trust Agreement (“Trust Agreement”) are to (a) protect and conserve the Royalty for the benefit of the Unit Holders, (b) receive cash, and (c) pay Trust liabilities and distribute remaining amounts to the Unit Holders. TEL Offshore Trust Agreement, ¶ 2.02. The Trust is an express trust, intended to be a passive entity whose activities are limited to the receipt of revenues attributable to the Trust Partnership Interest and the Tenneco Offshore II Stock, and the distribution of such revenues, after payment of a provision for Trust expenses and liabilities, to the owners of the Units. The Trustees are authorized to

take such actions as in their judgment are necessary, desirable or advisable to achieve the purposes of the Trust. *Id.* at ¶ 6.01.

5. The terms of the Trust Agreement, provide, among other things, that:

6. Termination. The Trust shall terminate upon the first to occur of the following events or times:

- a. at such time the total future revenues attributable to the Overriding Royalty Interest, as determined by independent petroleum engineers as of the end of the any year, is less than \$2 million;
- b. a decision to terminate the Trust by the affirmative vote at a meeting duly called and held in accordance with Article V hereof of the Record Date Certificate Holders holding Certificates representing a majority of the Units; or
- c. the expiration of twenty-one (21) years after the death of the last to die of all of the Issue living at the date of execution of this Trust Agreement of JOHN D. ROCKEFELLER, JR., late father of the late former Vice President of the United States, NELSON A. ROCKEFELLER.

See TEL Offshore Trust Agreement, ¶ 9.01.

B. Circumstances Affecting the Trust's Purposes

7. Pursuant to Section 6.04 of the Trust Agreement, in order to raise funds to pay the expenses of the Trust, the Trustees directed the Partnership to sell percentages of the Royalty in both October 2011 and October 2013 ("Royalty Sales"). Following the Royalty Sales, the Partnership retained a 60% interest in the original Royalty (or a 15% royalty interest).

8. There were 19 oil and gas leases originally included in the Royalty Properties. At the time of filing the Trustees' Original Petition in this cause, there were only 5 producing properties included in the Royalty Properties. The remaining leases had expired and the wells had been plugged and abandoned.

9. The two Royalty Properties generating the majority of the Trust's income were located in Eugene Island Block 339 and Ship Shoal Blocks 182/183 in the Gulf of Mexico, off the coast of Louisiana.

10. Due to damages inflicted by Hurricane Ike in September 2008, production at both of these blocks ceased pending repairs. As a result of the damage caused by Hurricane Ike, the resulting interruption in production and the costs incurred relating to such damage, the Trust had not received any net proceeds from the Royalty Properties since December 2008 and had not been able to make a distribution to Unit Holders since January 2009.

11. The platforms and wells at Eugene Island 339 were completely destroyed by the hurricane. Since the time of the damage in 2008, Chevron had been working on plugging and abandoning the wells, clearing the infrastructure and associated debris, and evaluating the possibility of redeveloping the Eugene Island Royalty Properties. Chevron expressed an intent to redevelop Eugene Island 339 but it was never under any obligation to do so.

12. In December 2009, Chevron entered into a participation agreement (as amended, the "Participation Agreement") for the redevelopment of Eugene Island 339 with a third party pursuant to which the third party could earn 65% of Chevron's working interest in Eugene Island 339 following completion of certain drilling and development operations. Following completion of these drilling and development operations in the fourth quarter of 2012, Chevron assigned 65% of its working interest in Eugene Island 338 and Eugene Island 339 to the third party, effective as of December 15, 2009. In accordance with the original Conveyance of Overriding Royalty Interests executed in connection with the formation of the Trust, the working interest conveyed to the third party was not burdened by the Royalty. As a result, the Royalty held by the Partnership on Eugene Island 339 was reduced by 65%. While production at Eugene Island 339

resumed on a limited basis, the Trust had not received any distributions since Hurricane Ike as a result of the cost carryforwards incurred as a result of damages suffered from the hurricane.

13. The surface damage at Ship Shoal 182/183 was limited, but all of the related wells were shut-in following hurricane damage to a third-party transporter's natural gas pipeline. Production at Ship Shoal 182/183 was restored for a few months in 2009 after repairs to the third-party's pipeline, but then was intermittently shut-in for other repairs in 2009 and 2010. Ship Shoal 182/183 was re-opened in May 2010, although production has been shut-in on multiple occasions for various facility improvement projects. Although production at Ship Shoal 182/183 has resumed on a reduced basis, this production did not result in sufficient income to cover the cost carryforwards for the repairs and plugging and abandonment costs resulting from the hurricane damage. As a result, no distributions have been received by the Trust.

14. While oil and gas production of Eugene Island 339 and Ship Shoal 182/ 183 had been partially restored, at the time of filing the Trustees' Original Petition in this cause there were not likely to be sufficient net proceeds from the Royalty Properties for the Trust to make a regularly scheduled quarterly distribution to Unit Holders for the foreseeable future. Future net proceeds from the Royalty Properties took into account the Trust's share of project costs and other related expenditures that were not covered by the insurance of the operators of the Royalty Properties.

15. To the extent development and production costs of the Royalty Properties exceeded the proceeds of production from the Royalty Properties for any quarter, such excess costs would be carried forward and the Trust would not receive net proceeds until future proceeds from production exceeded the total of such cost carryforwards plus accrued interest. Chevron completed the work required to clear the remaining infrastructure and abandon

existing wells, with the estimated costs to the entire original Royalty of approximately \$19.8 million, of which \$19.76 million had been incurred through March 31, 2014. However, primarily as a result of these expenditures and the interruption of production as a result of Hurricane Ike, the aggregate development and production costs for the Royalty Properties since November 2008 exceeded the related proceeds of production from the Royalty Properties by approximately \$4.9 million, net to the entire original Royalty, or \$3.0 million net to the Trust. As a result of these costs carryforwards, as well as the ongoing administrative costs of the Trust described below, as of the time of filing the Trustees' Original Petition in this cause, there were not sufficient net proceeds from the Royalty Properties to make distributions for some period of time in the future.

16. As the Trust remains open, it continues to incur expenses related to its federal securities law obligations, financial audits, tax filings, and fees for professional services necessary for Trust administration, as well as the Trustees' compensation. Since the damage suffered by Hurricane Ike in 2008, the Trust was only able to pay its expenses by utilizing proceeds from the Royalty Sales and by obtaining loans from a third party. As of the time of filing the Trustees' Original Petition, the Trust had approximately \$380,000 in cash reserves from the proceeds of the 2013 sale of a partial interest in the Royalty, and it was estimated that the Trust's expenses for 2014 would exceed this amount. Absent the receipt of net proceeds — which was not likely to happen given constraints outside of the control of the Trustees, as discussed herein — or termination of the Trust, it was anticipated that in the fourth quarter of 2014, the Trust would not have sufficient funds to pay its liabilities.

17. The Trustees requested that the Court judicially modify the Trust pursuant to TEX. PROP. CODE § 112.054 to permit the Trustees to direct the Partnership to sell all of the

Overriding Royalty Interest. On January 15, 2016, the Court found that selling all of the Overriding Royalty Interest was in the best interest of the Trust and Unit Holders.

18. The Court ruled in its Final Judgment and Order in Cause No. C-1-PB-16-00096 that it will further the purposes of the Trust for the Trust's share of the proceeds of the sale of the Overriding Royalty Interest to be held by the Trustees in a separate fund, until otherwise ordered by the Court in this proceeding.

C. Request for Modification and Termination

19. On April 18, 2017, the Corporate Trustee, the Attorney Ad Litem, RNR Production Land and Cattle ("RNR") and Albert and Joyce E. Speisman (the "Speismans") entered a Mediation Settlement Agreement, which provides in part that the Corporate Trustee will pay \$4,000,000 into the TEL Offshore Trust Qualified Settlement Fund (the "QSF") established under Cause No. C-1-PB-17-000132, styled *In re TEL Offshore Trust Qualified Settlement Funds*, and seek to modify and terminate the Trust in accordance with the provisions of the settlement.

20. Section 112.054 of the Texas Trust Code allows a court to order the modification and termination of a trust when, as here, the purposes of the trust have become impossible to fulfill or if circumstances have changed since the drafting of the trust agreement, and termination will further the purposes of the trust. Both reasons exist here.

21. Due to damage from Hurricane Ike and increased costs associated with federal securities, financial audits, and tax filings, the purposes of this Trust have become impossible to fulfill. As noted, the Trust's purposes are to conserve the Royalty, receive cash, pay Trust liabilities, and then distribute any remaining amounts to the Unit Holders. TEL Offshore Trust Agreement, ¶ 2.02. Yet the Trust is no longer receiving sufficient proceeds to pay its liabilities,

let alone make distributions to the Unit Holders, nor is it anticipated that the Trust will be able to do so.

22. The circumstances caused by the hurricane damage — which were not in existence at the time of the drafting of the Trust Agreement and could not have been known or anticipated by the parties — have negatively impacted the Trust to such an extent that the best way to achieve the Trust’s purpose is to terminate the Trust.

23. The Trustees therefore ask the Court to judicially modify the Trust Agreement as follows:

a. Article I of the Trust Agreement is amended by adding Sections 1.29, 1.30 and 1.31 to read as follows:

1.29 The “Court” means the Probate Court No. 1 of Travis County, Texas.

1.30 The “QSF” means the TEL Offshore Trust Qualified Settlement Fund established by the Court in Cause No. C-1-PB-17-000132 in the Probate Court No. 1 of Travis County, Texas.

1.31 “Record Date” means the date specified in Article IX on which the Trust terminates.

b. Section 4.02 of the Trust Agreement is deleted in its entirety and amended to read as follows:

4.02 *Distributions.* No assets remain in the Trust. Therefore, there shall be no further distributions from the Trust to Certificate Holders. Certificate Holders may have the right to make a claim to funds held in the QSF as described in Article IX.

c. Article IX of the Trust Agreement is deleted in its entirety and amended to read as follows:

ARTICLE IX

TERMINATION OF TRUST

9.01. *Termination.* The Trust shall terminate on _____ (the "Record Date"). All rights of the Certificate Holders in and under the Trust Agreement shall terminate upon the Record Date and all Units, and any Beneficial Interests therein, shall be terminated and shall cease to exist. Each Certificate Holder shall cease to have any rights with respect to any Units or the Beneficial Interest therein and shall be limited to its rights with respect to the QSF as provided in Section 9.03.

9.02. *No Trading After Record Date.* The purchase, sale or transfer of Units shall not be permitted after the Record Date. The Trustees shall file the appropriate securities filings to give notice to Certificate Holders that trading of Units shall end on the Record Date. Any person purporting to acquire Units of the Trust after the Record Date shall have no rights with respect to those Units and will not be a beneficiary of the Trust.

9.03. *Qualified Settlement Fund.* No property remains in the Trust. In the final judgment of the Court in Cause No. C-1-PB-17-_____ in the Probate Court No. 1 of Travis County, Texas, the Court ordered the Corporate Trustee to transfer all property remaining in the Trust, if any, to the trustee of the QSF, and Corporate Trustee has transferred any and all of the property remaining in the Trust to the trustee of the QSF. The Trustees shall have no liability for the transfer of all property remaining in the Trust to the QSF. Therefore, the Trustees shall make no distributions from the Trust to any Certificate Holder. Holders of Units of the Trust as of the end of the Record Date shall have the rights, if any, of Certificate Holders at the termination of the Trust. Any Certificate Holder as of the end of the Record Date shall be required to follow the claims procedure established by the Court to make a claim to funds in the QSF. Only those Certificate Holders, or holders of Beneficial Interests therein, who timely make claims in accordance with the procedures established by the Court will be entitled to receive any funds from the QSF. The Trustees of the Trust have no involvement with or duties with respect to the QSF, and the Trustees of the Trust have no liability to any Certificate Holder regarding the administration of the QSF or the distribution of funds from the QSF, whatsoever.

24. Termination of the Trust will allow the Trust's expenses to end, as opposed to continuing indefinitely without sufficient income. In addition, the termination of the Trust is more likely to result in a distribution to the Unit Holders than keeping the Trust open in its

current financial state. The Trustees have considered all of the options available to the Trust and in their judgment, termination of the Trust at this time best achieves the Trust's purposes.

D. Request for Reimbursement of Expenses and Fees to the Corporate Trustee

25. The Trust Agreement provides in Section 6.06 that the "Trustees are authorized to and 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 ... and compensation to such parties as may be consulted pursuant to Section 7.06 hereof...."

26. Section 6.08 of the Trust Agreement provides that "[i]f at any time the cash on hand is not sufficient to pay liabilities of the Trust then due ... the Trustees are authorized, but not required, to borrow from the Corporate Trustee in its capacity as a bank, or from another Person, on a secured or unsecured basis, such amounts as are required after use of any available Trust funds to pay such liabilities as have become due...." Section 6.08 also provides that "[i]n the event of such borrowings, the Trustees shall suspend further Trust distributions ... until the indebtedness created by such borrowing has been paid in full."

27. Section 7.06 of the Trust Agreement provides that to "perform any act required or permitted by this Trust Agreement, the Trustees may, but shall not be required to, consult with ... accountants, geologists, engineers, and other parties deemed by the Trustees to be qualified as experts on the matters submitted to them The Trustees are authorized to make payments of all reasonable fees for services or expenses thus incurred out of the Trust Estate."

28. Pursuant to Sections 7.04 and 7.05 of the Trust Agreement, the Corporate Trustee is entitled to compensation for its services, as set forth in the Trust Agreement.

29. The Trust continues to engage accounting experts to review the financial information of the Trust for submissions to the SEC. The Trustees continue to administer the

Trust and the Trust continues to engage experts and consultants to assist in the administration of the Trust. The Trust continues to engage experts to provide document composition services, proofing services, and printing and distribution services for the SEC submissions. The Trust continues to engage consultants to keep the records of all the registered holders and handle the mailings. The Trust also engages consultants for audits and for compliance with the Sarbanes-Oxley Act and internal controls. All of these expenses and fees owed to the Corporate Trustee should be reimbursed to the Corporate Trustee in accordance with the Trust Agreement.

30. The Corporate Trustee asks for the money out of the Trust Estate that is necessary to discharge its debts to creditors of the Trust and that is due and owing to the Corporate Trustee under the Trust Agreement.

E. Request for Attorneys' Fees

31. In accordance with Section 114.064 of the Texas Trust Code and Chapter 38.007(8) of the Texas Civil Practice & Remedies Code, the Corporate Trustee is entitled to recover its attorneys' fees and reimbursement of costs.

32. The Corporate Trustee retained the law firm of Andrews Kurth Kenyon, LLP, and then Thompson & Knight, LLP to represent it in this proceeding and agreed to pay these firms their reasonable and necessary attorneys' fees, costs, and expenses. An award of reasonable and necessary attorneys' fees and expenses to the Corporate Trustee would be equitable and just pursuant to Section 114.064 of the Texas Trust Code.

33. Additionally, the Corporate Trustee is entitled to recover for the fees for services or expenses incurred out of the Trust Estate pursuant to Section 7.06 of The Trust Agreement.

34. Further, the Trustees are entitled to indemnification and full reimbursement from the Trust Estate against and from any and all liability, expense (including counsel fees and

expenses incurred in preparing for and defending claims or suits), claim, damage, or loss incurred by the Trustees individually or as Trustees in the administration of the Trust and the Trust Estate or any part or parts thereof, or in their performance under the Trust Agreement, pursuant to 7.03 of the Trust Agreement.

35. Moreover, the Corporate Trustee asserts a lien pursuant to Section 7.03 of the Trust Agreement to the monies in the segregated account holding the proceeds of the sale of the Trust's overriding royalty interest that was created pursuant to the Final Judgment and Order of the Court dated January 15, 2016 in Cause No. C-1-PB-16-000096. The Corporate Trustee is entitled to first priority to the monies in the segregated account pursuant to its lien.

III. PRAYER

WHEREFORE, Defendant and Counter-Plaintiff, The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, prays that the Attorney Ad Litem take nothing; that the Trust Agreement be modified as requested herein and the Trust be terminated; that the Corporate Trustee be awarded its reasonable attorneys' fees, costs, and expenses, and pre- and post-judgment interest thereon; that the Corporate Trustee be awarded its fees for services or expenses incurred out of the Trust Estate; that the Corporate Trustee be indemnified and fully reimbursed for all liabilities, expense, claims, damages, or loss incurred by the Corporate Trustee; that the Corporate Trustee have first priority to the monies in the segregated Trust Account pursuant to its lien; that the Corporate Trustee be discharged with its costs; and that the Corporate Trustee recover general relief.

Respectfully submitted,

/s/ Craig A. Haynes

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