

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 indemnity.

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

11. The Corporate Trustee pleads the defense of actual, apparent, and/or implied consent.

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

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

14. The Corporate Trustee pleads the defense of the vice principal rule.

15. 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.

16. The Corporate Trustee specifically denies 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 Corporate Trustee invokes 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 Corporate Trustee contends 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.

17. Awarding punitive damages would violate the Corporate Trustee’s 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.

18. The Corporate Trustee pleads that all of its 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 Corporate Trustee pleads 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 ... 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 Corporate Trustee would show this Court that the claims asserted by the Plaintiff are all barred by the language quoted above, with the clarification that with respect to Section 7.06 of the Trust Agreement, the Corporate Trustee is not at this time asserting the defense of advice of counsel.

19. The Corporate Trustee relies 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.

20. The Corporate Trustee pleads the defense of mitigation of damages.

21. The Corporate Trustee pleads that it is likely to succeed on the merits of this case and has a probable right to the relief it seeks. Pursuant to Section 7.03 of the Trust Agreement, the Corporate Trustee has a lien on the Trust Estate's assets, which it seeks to enforce. The Corporate Trustee pleads that it is entitled to reimbursement of its expenses, including attorney's fees, from the Trust Estate; that third-parties who have been retained by the Trustees are also entitled to reimbursement of their expenses from the Trust Estate; and that RNR Production Land and Cattle is not entitled to the Trust Estate's remaining funds.

22. The Corporate Trustee pleads that it is entitled to recover attorney's fees and reimbursement of costs as are equitable and just pursuant to Section 114.064 of the Texas Trust Code.

23. The Corporate Trustee files this Original Answer in good faith and with just cause. The Corporate Trustee respectfully reserves the right to file an Amended Answer in this case in the manner authorized by the Texas Rules of Civil Procedure.

III. THE CORPORATE TRUSTEE'S COUNTERCLAIM

24. The Corporate Trustee, as Counter-Plaintiff, asserts the following Counterclaim against RNR Production Land and Cattle (Counter-Defendant), and in support thereof, respectfully shows as follows:

IV. BACKGROUND FACTS

A. The Trust

25. 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.

26. 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.

27. 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.

28. 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 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.

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

30. 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

31. 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).

32. 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.

33. 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.

34. 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.

35. 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. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. Although the Trust may be terminated pursuant to Section 9.01(b) of the Trust Agreement, this procedure—which requires a proxy solicitation of the Unit Holders and the affirmative vote of the Unit Holders representing a majority of the Units—is both costly (the proxy would exhaust the Trust's funds) and unlikely to garner any response from most Unit Holders (let alone a majority vote in favor of termination).

41. 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.

42. 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

43. 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.

44. 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 in the near future.

45. 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 of paying liabilities and distributing remaining funds to the Unit Holders is to terminate the Trust.

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

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 Unites; 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; or
- d. **by approval of a court of competent jurisdiction for termination of the Trust.**

47. 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.

V. REQUEST FOR REIMBURSEMENT OF EXPENSES AND FEES TO THE CORPORATE TRUSTEE

48. 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...."

49. 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.”

50. 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.

51. 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.

VI. ATTORNEYS’ FEES

52. 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.

53. The Corporate Trustee has retained the law firm of Thompson & Knight, LLP to represent it in this proceeding and has agreed to pay Thompson & Knight 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.

54. 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. As noted above, the Corporate Trustee is not at this time asserting reliance on the advice of counsel.

55. 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.

56. 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.

IV. PRAYER

WHEREFORE, Defendant and Counter-Plaintiff The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, prays that the Plaintiff RNR Production Land and Cattle 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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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 December 5, 2016, a true and correct copy of the foregoing has been served via Texas e-filing and email on Ad Litem, counsel for Ad Litem, Albert Speisman, counsel for RNR Production Land and Cattle, and counsel for Individual Trustees Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr.. 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

