

NO. CV04-0040-43

DEVON ENERGY OPERATING
COMPANY, L.P.

v.

CITY OF RENO, TEXAS

§ IN THE DISTRICT COURT
§
§
§ PARKER COUNTY, TEXAS
§
§ 43 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Devon Energy Operating Company, L.P. ("Devon"), files this its Original Petition complaining of the City of Reno, Texas, and for cause of action would show unto the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rules of Civil Procedure 190.1.

II. PARTIES

2. Devon is a limited partnership organized under the laws of the State of Delaware and maintains its principal place of business in Oklahoma City, Oklahoma.

3. Defendant, the City of Reno ("Defendant") is a political subdivision of the State of Texas, and is located in Parker County, Texas. Defendant, through its City Council, controls all final decisions regarding land use for the city, including the decision to deny Devon its request for rezoning and approval of a Specific Use Permit ("SUP") for drilling. Service of process may be completed by serving the City Secretary for the City of Reno, Ms. Patty Neal, at 195 West Reno Road, Azle, Texas 76020.

RECEIVED AND FILED
FOR RECORD
AT 10:30 O'CLOCK a M

JAN 09 2004

ELVERA M. JOHNSON, District Clerk
PARKER COUNTY, TEXAS
By [Signature] Deputy

III. VENUE

4. Venue of this action is proper in this county in that it is the county in which Defendant is located. Venue is also proper in that all or part of the Plaintiff's cause of action accrued in Parker County, Texas. Finally, venue is proper in this county in that this action concerns a taking of real property without just compensation in violation of the 5th Amendment, as applied through the 14th Amendment to the States, to the United States Constitution and article I, Section 17 of the Texas Constitution.

IV. FACTUAL BACKGROUND

5. On or about November 8, 2000, C.A. Morrow, Sr., Georgie Ann Morrow, Johnny F. Morrow, Connie Ann Morrow, Clarence Alva Morrow, Jr., Gilbert K. Francis Morrow and Melanie Ann Morrow (the "Lessors") signed and delivered an Oil, Gas and Mineral Lease (the "Lease") to Mitchell Energy Corporation. A true and correct copy of the Lease is attached hereto as Exhibit "A" and is incorporated herein for all purposes. Upon executing the Lease, the Lessors conveyed to Mitchell Energy Corporation fee simple determinable ownership of the mineral estate of 454.518 acres of land located in Parker County, Texas and, thus, severed the mineral estate from the surface estate. Said acreage is, as of this date, also located within the city limits of Defendant.

6. Upon execution of the Lease, the Lessors also granted unto Mitchell Energy Corporation the right, which has been recognized under Texas law for more than 100 years, to utilize the surface covering the mineral estate to explore for and produce oil, gas, and other minerals from the subject acreage. Based on the common law of the State of Texas, the mineral estate is the dominate estate and the surface estate is subserviant. Accordingly, the lessee (which owns the minerals in fee) has an implied easement to utilize the surface for the exploitation of

oil, gas or other minerals, being limited only to the extent necessary to accommodate any reasonable surface use. Any action by the surface owner or any regulatory authority that bars the utilization of the surface, renders the mineral estate wholly worthless, is in violation of the long recognized principles of oil and gas law in the State of Texas and is in contradiction to the stated public policy of Texas.

7. Following the execution of the Lease, Mitchell Energy Corporation and Devon merged. At all relevant times prior to the filing of this Petition, Devon is, and has been, the title owner of the Lease and, hence, the mineral estates for the acreage set forth in the Lease. Devon, therefore, is the owner of all rights and privileges granted under the Lease and the laws of the State of Texas. On the date of the taking of the mineral estate in question, January 5, 2004, the Lease was valid and existing, and the taking deprived Devon of its unquestionable right of access to the mineral estate.

8. The acreage conveyed under the Lease is in an undeveloped area within the city limits of Defendant. Except for 300 feet from the center line of a local farm to market roadway, Defendant has zoned the acreage covered by the lease as “residential,” meaning the surface cannot be used for commercial purposes. Pursuant to City of Reno municipal ordinances, but despite the fact that there are existing wells within the city limits of Reno, the Defendant has prohibited the use of surface land within its residentially zoned areas from all drilling for the purposes of oil and gas production. By doing so, Defendant has occupied the surface of the residentially zoned areas for public use. Defendant does, however, allow property owners to request a SUP for any drilling activities within the commercially zoned areas of the city. The granting or denial of the SUP for drilling within the commercially zoned areas of Defendant, however, is within the discretion of the Defendant.

9. Prior to the expiration to the primary term of the Lease, Plaintiff began operations on the Lease (as defined therein) for the purposes of producing natural gas. Plaintiff, as a reasonably prudent operator, determined that the first well under the Lease should be drilled in the residentially zoned portion of Tract 1 of the acreage set forth in the Lease. The determination to drill within the residentially zoned areas was due to the fact that it is not practical or prudent to drill within 300 feet of the center line of a farm to market roadway, which is the only commercially zoned acreage under the lease. Based upon all available data, substantial quantities of natural gas are recoverable in paying quantities under the Lease and the location of Tract 1, topographically, rendered it the best location for drilling.

10. In furtherance of its plans to commence drilling on Tract 1, and in addition to the operations being conducted on Tract 1, Plaintiff obtained a drilling permit from the Texas Railroad Commission.

11. Due to the residential zoning of the drillsite, Plaintiff requested that Defendant re-zone certain portions of the acreage contained within Tract 1 as “commercial.” Plaintiff also applied for a SUP to allow Plaintiff to drill for natural gas. As stated above, the acreage covered in the Lease, though within the city limits of Defendant, is undeveloped and, for all intent and purposes, is rural. To Plaintiff’s knowledge, the site location of the well will not interfere with the operations of Defendant, nor will it interfere with the public health, safety, or welfare of the citizens of Defendant. The drillsite and the location of the well will accommodate all reasonable surface use. Finally, without the granting of a permit to utilize the surface for the purposes of exploiting the mineral estate covered by the Lease, the mineral estate would be wholly worthless.

12. Despite having complied with all of the requests by the Defendant for a re-zoning of the necessary acreage in Tract 1, and all the requirements for obtaining a SUP for the purpose of drilling a natural gas well, Defendant denied Plaintiff's request on January 5, 2004. This denial constitutes a regulatory taking of the mineral estate covered by the Lease for public use. At no time has Defendant justly compensated Plaintiff for the property that has been taken by the Defendant's regulatory actions.

13. All administrative remedies have been satisfied and the Defendant's decision to deny the zoning variance requested by Plaintiff and the SUP is final.

14. All conditions precedent to filing of suit have been satisfied.

V. CAUSE OF ACTION NO. 1

15. Plaintiff hereby incorporates Paragraphs 1-14 herein as set forth verbatim.

16. Plaintiff hereby asserts a cause of action for inverse condemnation against Defendant as a result of the regulatory taking of the mineral estate to the acreage, described more fully in Exhibit A, in violation of the 5th Amendment, as applied to the states under the 14th Amendment, to the United States Constitution and article I, Section 17 of the Texas Constitution. Defendant's actions have completely barred Plaintiff from access to the minerals conveyed to it pursuant to the Lease. Defendant's actions have denied Plaintiff of all economically viable use of the property and acreage more fully described in Exhibit A, and have rendered it wholly worthless in contradiction to the long established laws of Texas and against the public policy of this State. At no time has Defendant justly compensated Plaintiff for this unlawful taking. Hence, the Defendant has violated the constitutions of the United States and Texas.

17. The Defendant's regulatory taking of the Plaintiff's property has proximately caused Plaintiff to suffer damages in excess of the minimal jurisdictional limits of the Court for which Plaintiff now sues. Said damages being the market value of minerals in the acreage described in Exhibit A.

VI. RESERVATION OF FEDERAL CAUSES OF ACTION

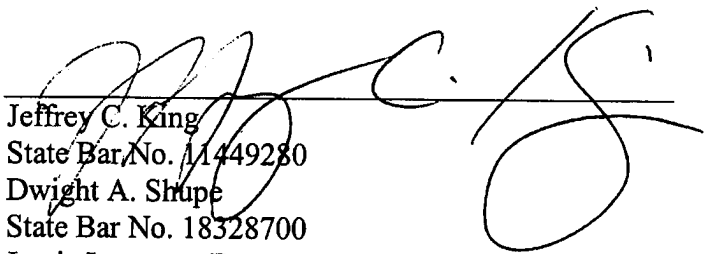
18. Plaintiff hereby informs this Court that it has Causes of Action based upon federal law for an unlawful taking in violation of the 5th Amendment, as applied through the 14th Amendment to the States, to the United States Constitution, violations of the due process clause set forth in the 5th Amendment to the United States Constitution, and for violating Plaintiff's civil rights under 42 U.S.C. § 1983. Pursuant to United States Supreme Court precedent, Plaintiff is required to seek just compensation for an unlawful taking of its property through adequate state procedures. Only after an exhaustion of the state procedure, here an inverse condemnation claim, can Plaintiff assert its federal law causes of action in federal court. Plaintiff is an unwilling State Court litigant and is fulfilling its exhaustion requirement as required by the United States Supreme Court. Plaintiff is hereby informing the State Court of its reservation of all federal claims for further consideration by United States federal courts depending upon the results obtained in this litigation.

WHEREFORE, Plaintiff Devon Energy Operating Company, L.P., prays that Defendant be cited and ordered to appear before this Court and that upon final trial that Plaintiff be awarded judgment for:

- A. Damages in the amount of the fair market value of its property taken as a result of the regulatory prohibition of use of the surface estate covering the acreage set forth in Exhibit A;
- B. Pre-judgment interest as required by law;

- C. Post-judgment interest as allowed by law;
- D. Any and all further relief to which Plaintiff may show itself to be justly entitled to receive.
- E. Costs of court;
- F. Attorneys fees;
- G. That no judgment rendered by this Court shall act as a bar and/or *res judicata* of any federal claims Plaintiff may later seek in an appropriate federal court.

Respectfully submitted,



Jeffrey C. King
State Bar No. 11449280
Dwight A. Shupe
State Bar No. 18328700
Jamie Lavergne Bryan
State Bar No. 24026983
HUGHES & LUCE, L.L.P.
1717 Main Street, Suite 2800
Dallas, Texas 75201
214-939-5500
214-939-6100 – fax

ATTORNEYS FOR PLAINTIFF

by the Railroad Commission of Texas or other Governmental Agencies having jurisdiction over such matters. Operations on or production of oil and/or gas from any part of the unitized area which includes all or a portion of said Land, regardless of whether such operations were commenced or such production was secured before or after the date of this lease or the date of the instrument designating the unitized area, shall be considered for all purposes, except the payment of royalties, as operations on or production of oil or gas from said Land whether or not the well or wells be located on said Land. Royalties payable from the unitized area shall be computed on the basis of the production allocated to the portion of the above described land included within such unitized area after excluding therefrom any oil or gas used in the operations thereon.

6. Lessee may at any time or times execute and deliver to Lessor or to the depository above named or place of record, a release or releases covering any portion of said Land and/or portion of subsurface strata or stratum and thereby surrender this lease as to such portion and/or portion of subsurface strata or stratum and be relieved of all obligations as to the acreage, strata or stratum surrendered. Lessee shall retain rights of ingress and egress across and through any released portion and/or strata of the lease in order to have necessary access to that portion and/or strata of the leased premises which remains in force and on which Lessee continues to conduct operations.

7. If, at any time or times after the expiration of the primary term, operations or production of oil, gas or other minerals on said Land or on acreage pooled therewith should cease from any cause and this lease is not then being otherwise maintained, this lease shall not terminate if Lessee commences or resumes operations within ninety (90) days thereafter and continues such operations or commences any other operations with no cessation of operations of more than ninety (90) consecutive days, and if such operation or other operations result in the production of oil, gas or other minerals, this lease shall remain in full force and effect for so long thereafter as oil, gas or other mineral is produced from said Land or acreage pooled therewith. It is understood and agreed that if, during the primary term hereof, all operations or production ceases on said Land or land on leases pooled therewith, this lease shall nevertheless remain in full force and effect during the paid-up primary term hereof. If, at the expiration of the primary term, oil, gas or other minerals is not being produced on said Land or on acreage pooled therewith and there are no operations on said Land or on acreage pooled therewith but operations or production ceased within 90 days of the expiration of the primary term, this lease shall not terminate if Lessee commences or resumes operations within ninety (90) days of said cessation of production or operations. If after the expiration of the primary term, Lessee completes either (a) an oil well on land other than said Land and which other land and all or a portion of said Land has been included in a gas unit that was formed prior to the expiration of the primary term of this lease, or (b) a gas well on land other than said Land and which other land and all or a portion of said Land has been included in an oil unit that was formed prior to the expiration of the primary term of this lease, this lease shall remain in force so long as operations on said well or operations on any additional well on said Land or acreage pooled therewith are prosecuted with no cessation of more than ninety (90) consecutive days and if they result in the production of oil, gas or other mineral, so long thereafter as oil, gas or other mineral is produced from said Land or acreage pooled therewith. For all purposes herein, if an oil well on an oil unit, which includes all or a portion of said Land is reclassified as a gas well, or if a gas well on a gas unit, which includes all or a portion of the leased premises, is reclassified as an oil well, the effective date of such reclassification shall be considered as the date of cessation of production from said well. If during the term of this lease, a well or wells should be drilled and completed as a producer of oil or gas in paying quantities and such well or wells are located on adjacent land and within 330 feet of and draining said Land, Lessee agrees, at its option to either (a) drill such offset well or wells, as an ordinary prudent operator would do under similar circumstances, or (b) release the affected acreage or stratum in accordance with the provisions of paragraph 6 herein; and, in this connection, it shall be considered that no drainage exists. However, there shall be no express or implied duty of Lessee, with respect to the above options, unless such offset well or wells drilled by Lessee would be sufficiently productive to pay Lessee a profit over and above drilling, completing and operating expenses.

8. Lessee shall have the right, at any time during or after the expiration of this lease, to remove all property and fixtures placed by Lessee on said Land, including the right to draw and remove all casing. Upon Lessor's request and when reasonably necessary for utilization of the surface for some intended use by the Lessor, Lessee will bury all pipelines below ordinary plow depth. No well shall be drilled within two hundred (200) feet of any residence or barn now on said Land without Lessor's consent.

9. The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, successors and assigns; but no change or division in such ownership of said Land or royalties, however accomplished, shall operate to enlarge the obligation or diminish the right of Lessee, and no change or division in such ownership shall be binding on Lessee until thirty (30) days after Lessee shall have been furnished, by registered U. S. mail at Lessee's principal place of business, with a certified copy of recorded instrument or instruments evidencing same or evidence satisfactory to Lessee. If any such change in ownership occurs by reason of the death of the owner, Lessee may nevertheless, pay or tender royalties, or part thereof, to the credit of the decedent in a depository bank provided for above. In the event of assignment hereof in whole or in part, liability for breach of any obligation hereunder shall rest exclusively upon the owner of this lease or of a portion thereof who commits such breach. If six or more parties become entitled to royalty hereunder, Lessee may withhold payment thereof unless and until furnished with a recordable instrument, executed by all such parties, designating an agent to receive payment for all.

10. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this lease, nor cause a termination or reversion of the estate created hereby, nor be grounds for cancellation hereof in whole or in part. In the event Lessor considers that operations are not at any time being conducted in compliance with this lease, Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach hereof, and Lessee, if in default, shall have ninety (90) days after receipt of such notice in which to commence the compliance with the obligations imposed by virtue of this instrument. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of ninety (90) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. After the discovery of oil, gas or other minerals in paying quantities on said premises, Lessee shall reasonably develop the acreage retained hereunder, but, in discharging this obligation, it shall in no event be required to drill more than one well per eighty (80) acres, plus an acreage tolerance not to exceed 10% of 80 acres, of the area retained hereunder and capable of producing oil in paying quantities and one well per ³²⁰ ~~80~~ acres, plus an acreage tolerance not to exceed 10% of ~~80~~ acres, of the area retained hereunder and capable of producing gas or other minerals in paying quantities.

11. Lessor hereby warrants and agrees to defend the title to said Land and agrees that Lessee may, at its option, discharge any tax, mortgage or other lien upon said Land, either in whole or in part; and, in the event Lessee does so, it shall be subrogated to such lien with the right to enforce same and apply royalties accruing hereunder toward satisfying same. When required by state, federal or other laws, Lessee may withhold taxes with respect to royalty and other payments hereunder and remit the amounts withheld to the applicable taxing authority for credit to Lessor. Without impairment of Lessee's rights under the warranty in event of failure of title, it is agreed that if Lessor owns an interest in the oil, gas or other minerals on, in or under said Land less than the entire fee simple estate, then the shut-in royalties and royalties to be paid Lessor shall be reduced proportionately.

12. (a) Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting operations thereon, or from producing oil or gas therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, any Federal or State law, or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended and Lessee shall not be liable for damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting operations on or from producing oil or gas from said Land; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

(b) The specification of causes of force majeure herein enumerated shall not exclude other causes from consideration in determining whether Lessee has used reasonable diligence whenever required in fulfilling any obligations or conditions of this lease, express or implied, and any delay of not more than six (6) months after termination of force majeure shall be deemed justified.

(c) All terms and conditions of this lease, whether express or implied, shall be subject to all Federal and State Laws, Executive Orders, Rules, or Regulations; and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

13. This lease states the entire contract between the parties, and no representation or promise, verbal or written, on behalf of either party shall be binding unless contained herein; and this lease shall be binding upon each party executing the same and their successors, heirs, and assigns, regardless of whether or not executed by all persons above named as "Lessor".

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

see attached for signatures and acknowledgments

LESSOR LESSOR
S.S. No./Tax ID No. S.S. No./Tax ID No.
LESSOR LESSOR
S.S. No./Tax ID No. S.S. No./Tax ID No.

STATE OF §
COUNTY OF §
This instrument was acknowledged before me on by

Notary Signature:
Printed Name:
Notary Public, State of
My Commission Expires:

STATE OF §
COUNTY OF §
This instrument was acknowledged before me on by

Notary Signature:
Printed Name:
Notary Public, State of
My Commission Expires:

**SIGNATURES AND ACKNOWLEDGMENTS
TO OIL, GAS AND MINERAL LEASE
BETWEEN, C. A. MORROW, SR, ET AL, AS LESSORS,
AND MITCHELL ENERGY CORPORATION, AS LESSEE,
DATED NOVEMBER 8, 2000**

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

By: Clarence A Morrow Sr
C. A. Morrow, Sr. AKA C. A. Morrow
AKA Clarence A. Morrow
AKA Clarence A. Morrow, Sr.

By: Georgie Ann Morrow
Georgie Ann Morrow

By: Johnny F Morrow
Johnny F Morrow

By: Connie M. Morrow
Connie M. Morrow

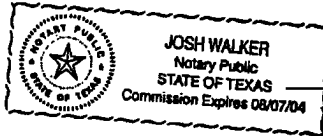
By: Clarence Alva Morrow Jr
Clarence Alva Morrow, Jr.

By: Gilbert K. Francis Morrow
Gilbert K. Francis Morrow

By: Melanie A. Morrow
Melanie Ann Morrow

STATE OF TEXAS §
COUNTY OF Parker §

This instrument was acknowledged before me on November 9, 2000 by, C. A. Morrow, Sr. AKA C. A. Morrow AKA Clarence. A. Morrow AKA Clarence A. Morrow, Sr. and wife, Georgie Ann Morrow.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Parker §

This instrument was acknowledged before me on November 9th, 2000 by, Johnny F. Morrow and wife, Connie M. Morrow.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Parker §

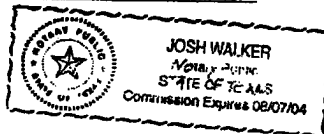
This instrument was acknowledged before me on November 9th, 2000 by, Clarence Alva Morrow, Jr.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Parker §

This instrument was acknowledged before me on November 10, 2000 by, Gilbert K. Francis Morrow and wife, Melanie Ann Morrow.



[Signature]
Notary Public, State of Texas

SIGNATURES & ACKNOWLEDGEMENTS TO OIL, GAS AND MINERAL LEASE

TRACT 6: 2.73 acres of land, more or less, situated in the T & P RR Company Survey No. 19, Abstract No. 1376, being the same land described in a Deed from Hestlean America Melvina Browder Morrow to C. A. Morrow, dated December 6, 1983 and recorded in Volume 1219, Page 428, Deed Records of Parker County, Texas.

TRACT 7: 0.50 acres of land, more or less, situated in the T & P RR Company Survey No. 19, Abstract No. 1376, being the same land described in a Deed from Hestlean Morrow, a widow to Clarence A. and Georgie A. Morrow, Executed June 17, 1986 and recorded in Volume 1352, Page 85, Deed Records of Parker County, Texas.

TRACT 8: 0.65 acres of land, more or less, being all of that certain tract of land described as 1.84 acres of land, more or less, situated in the W. A. Slover Survey, Abstract No. 1246, being the same land described in a deed from Clarence A. Morrow, Sr., et ux to William G. Thompson, et ux, Executed October 15, 1984 and recorded in Volume 1264, Page 266, Deed Records of Parker County, Texas. SAVE AND EXCEPT 1.19 acres of land, more or less, situated in the W. A. Slover Survey, Abstract No. 1246, being the same land described in a Deed from Agnes Browder, a widow to Clarence A. Morrow, Sr., dated February 5, 1958, and recorded in Volume 298, Page 540, Deed Records of Parker County, Texas.

TRACT 9: 1.19 acres of land, more or less, situated in the W. A. Slover Survey, Abstract No. 1246, being the same land described in a Deed from Agnes Browder, a widow to Clarence A. Morrow, Sr., dated February 5, 1958, and recorded in Volume 298, Page 540, Deed Records of Parker County, Texas.

SIGNED FOR IDENTIFICATION:

By: Clarence A. Morrow Sr.
C. A. Morrow, Sr. AKA C. A. Morrow
AKA Clarence A. Morrow AKA Clarence
A. Morrow, Sr.

By: Georgie A. Morrow
Georgie A. Morrow

By: Johnny F. Morrow
Johnny F. Morrow

By: Connie M. Morrow
Connie M. Morrow

By: Clarence Alva Morrow, Jr.
Clarence Alva Morrow, Jr.

By: Gilbert K. Francis Morrow
Gilbert K. Francis Morrow

By: Melanie Ann Morrow
Melanie Ann Morrow

EXHIBIT "B"

ATTACHED TO AND MADE A PART OF THAT
CERTAIN OIL, GAS AND MINERAL LEASE
BETWEEN, C. A. MORROW, SR, ET AL, AS LESSORS,
AND MITCHELL ENERGY CORPORATION, AS LESSEE,
DATED NOVEMBER 8, 2000

14. Notwithstanding anything contained in this lease to the contrary, wherever the fraction "one-eighth" (1/8th) appears in the printed portion of this lease the same is hereby amended to read "three-sixteenth" (3/16th).
15. Lessee shall remove all its trash, drilling mud and chemicals from the leased premises and shall level all ruts, ditches and pits or excavations dug by it in its operations hereunder, and will restore the surface of the leased premises as nearly as possible to its original condition within six months after termination of its use thereof, and will construct and maintain fences surrounding all pits and excavations sufficient to turn livestock until such pits and excavations are so leveled. Also, Lessee shall pay all damages done or caused to be done and arising out of the operations of Lessee to all livestock, buildings, fences, roads, ditches, culverts, trees, turf, terraces and other improvements, including but not limited to cultivated land and growing crops thereon. Lessee agrees to build and maintain an adequate firebreak if operations hereon create a fire hazard. After production is established, Lessee will fence all machinery and equipment from the operation of which livestock or persons may be injured. It is also agreed that Lessee shall not have the use of surface water or well water from said land without the prior written consent of the Lessors herein.
16. Notwithstanding anything stated heretofore in the printed portion of this Lease, Tracts described herein may not be pooled or unitized with Tracts not described herein, without the express written consent of the Lessors herein.
17. Notwithstanding anything contained herein to the contrary, if Lessee does not commence operations for the drilling of a well on the acreage described herein or on lands pooled therewith on or before one (1) year from the date hereof, this lease shall expire, unless Lessee tenders payment to lessors an amount of seventy-five dollars (\$75.00) per net mineral acre for the acreage described herein.
18. If, at the expiration of the primary term of this lease, Lessee is conducting drilling, reworking or recompletion operations, or shall have completed drilling, reworking or recompletion operations within one hundred eighty (180) days prior to the expiration of the primary term, then this lease shall continue in force and effect as to all of the acreage covered by this lease so long as said drilling, reworking or recompletion operations are continually prosecuted, and such operations shall be considered to be continuously prosecuted if not more than one hundred eighty (180) days shall elapse between the completion as a well capable of production or dry hole or abandonment of drilling, reworking or recompletion operations on one well and the commencement of operations to drill a subsequent well on the property covered by this lease. If such continuous drilling, reworking or recompletion operations result in a well capable of production, then this lease shall continue in force and effect so long thereafter as oil or gas or either of them is produced in paying quantities under the terms of this lease. At such time as Lessee no longer drills, reworks or re-completes under this paragraph, each well will then continue this lease only as to the number of acres as hereinabove specified after the end of the primary term.
19. It is understood and agreed that the Lessors herein do not by the execution hereof intend to communitize any interest, whether mineral or royalty, which they now own, or may hereafter own, in any portion of the land covered by this lease with any other interest owned by the lessors, or any of them, in any portion of the land covered by this lease or with other parties owing interests in any portion of the land covered by this lease or in the event this lease covers separate tracts, defined to mean any tract with royalty ownership differing, now or hereafter, either as to parties or amount, from that as to any other part of the leased, either as to parties or amount, from that as to any other part of the leased premises, no pooling, unitization or communitization of royalty interests as between any such tracts is intended or shall result from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in the other portions of this lease.

J.F.M.
D.M.
C.M.
C.M.M.
D.M.
M.M.

20. Any of Lessor's service roads now located on the leased premises may be used by Lessee, but they shall be kept in good repair by Lessee during operations on the leased premises. If production of oil or gas in paying quantities is obtained, Lessee agrees to construct new roads leading to such producing wells from the nearest point on existing service roads, which are on the leased premises. Lessee will comply with the terms mentioned above in this lease, and will maintain all service roads and keep all service roads in good passable condition. At such time as Lessee completes his operations on the leased premises, he shall cause any roads so used by him to be graded and smoothed over and left in a good passable condition.
21. Hunting, Fishing or chopping of wood for personal use on the leased premises or Lessor's adjoining lands is prohibited, and Lessee agrees to see to it that none of its employees or sub-contractors hunts, fishes, chops wood for personal use, or carries firearms on the lands covered by this lease.
22. The Lessors and Lessee agree to withhold this lease from record, however, this Lease will be identified in a Memorandum of Oil, Gas and Mineral Lease that is being executed contemporaneously herewith and will be filled in the Parker county records.
23. It is understood and agreed, between Lessors and Lessee, that there will be no drilling operations for oil or gas upon that certain tract of land described as TRACT 5 of Exhibit "A" herein, and being 5.514 acres of land, more or less, situated in the Robert T Short Survey, Abstract No. 1222, being the same land described in a deed from Clarence Alva Morrow, Jr., to Gilbert K. Francis Morrow, executed July 18, 1997, and recorded in Volume 1728, Page 400, Real Records of Parker County, Texas, without the express written consent of the Lessors herein.

SIGNED FOR IDENTIFICATION:

By: Clarence A Morrow
 C. A. Morrow, Sr. AKA C. A. Morrow
 AKA Clarence A. Morrow AKA Clarence
 A. Morrow, Sr.

By: Georgie Ann Morrow
 Georgie Ann Morrow

By: Johnny F. Morrow
 Johnny F. Morrow

By: Connie M. Morrow
 Connie M. Morrow

By: Clarence Alva Morrow, Jr.
 Clarence Alva Morrow, Jr.

By: Gilbert K. Francis Morrow
 Gilbert K. Francis Morrow

By: Melanie Ann Morrow
 Melanie Ann Morrow



EXHIBIT "B" TO OIL, GAS AND MINERAL LEASE

State of Texas	}
County of Parker	
I certify that the foregoing, consisting of <u>14</u> pages, is a true, correct and complete copy of the instrument of record in my possession. This <u>20</u> day of <u>May</u> 20 <u>10</u>	
ELVERA M. JOHNSON, DISTRICT CLERK	
By: <u>[Signature]</u>	Deputy