

## **Saltwater Disposal Well Leasing: High Waters Float All Boats**

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### **SECTION I. INTRODUCTION**

1.1. With more than 216,000 active oil and gas wells statewide, Texas remains the number one oil and gas producing state in the nation. *Saltwater Disposal Wells Frequently Asked Questions (FAQ)* (June 19, 2013), <http://www.rrc.state.tx.us/about/faqs/saltwaterwells.php>. With the ongoing development of the Eagle Ford, Granite Wash, and Cline shales, not to mention the already existing or new development in the Barnett and Haynesville shales, the number of wells being fraced and the resulting amount of flowback and produced water is showing no signs of slowing down. This has resulted in over 50,000 permitted oil and gas injection wells in the state; a number that is rising steadily and includes somewhere between 8,000 and 10,000 Class II disposal wells. *Id.* According to the Texas Tribune, the amount of wastewater being disposed of in Texas wells has skyrocketed with the spread of fracing. Kate Galbraith and Terrence Henry, *As Fracking Proliferates in Texas, So Do Disposal Wells*, The Texas Tribune (March 29, 2013) <http://www.texastribune.org/2013/03/29/disposal-wells-fracking-waste-stir-water-concerns/>. In 2005, approximately 46 million barrels of wastewater from the industry was disposed of in disposal wells. This number jumped to 3.5 billion barrels in 2011. *Id.*

1.2. All of the industry activity, all of the money being made, and, unfortunately, the few bad actors and operators have also led to an omnipresent and sometimes frenzied media covering the industry. From possible contamination to flaming water faucets to earthquakes, injection wells have taken on a bad light in the popular media. However, injection wells, like producing wells, can be a boon for landowners, and it can be difficult for landowners to parse the good information in the media from the bad and do what is best to protect themselves while still taking full advantage of the industry's presence in Texas. Despite what you might read in The New York Times, on blogs, or hear on CNN, the injection process is quite safe if done properly.

1.3. A disclaimer: our practice consists primarily of representing landowners. This article and the form attached as an example of a lease agreement is written from the perspective of a lawyer representing landowners.

### **SECTION II. BASICS**

2.1. The difference between what is commonly referred to as an injection well and a disposal well is that an injection well re-injects fluids into the reservoir from which they came in order to promote secondary recovery, while a disposal well does exactly what it sounds like-- it disposes of wastewater into underground intervals that are not productive of oil or gas. Frac fluid does not come from the ground, and so cannot be "re-injected" for secondary recovery and must be disposed of or recycled (as is becoming more common). This is why the disposal well industry is seeing such a rise in activity; as more and more wells are fraced, the amount of

wastewater grows exponentially. (Note that while also a rapidly growing industry in Texas, and a viable alternative to disposal wells, recycling of frac water is not the focus of this article).

2.2. The right to dispose of wastewater under someone's land is a right that is incident to surface ownership. As part of an oil and gas lessee's right to use the surface estate to explore for and produce oil and gas, the lessee has the right (unless prohibited by the lease) to drill a disposal well on that lease to dispose of the wastewater produced from wells located on that lease. However, if an operator desires to dispose of wastewater from other leases or from other operators for a fee, the operator must reach a separate agreement with the surface owner. An owner of the mineral estate who owns no interest in the surface does not have the right to lease the land for disposal. *See Emeny v. U.S.*, 188 Ct.Cl. 1024 (1969). Likewise, operators of commercial disposal wells (as opposed to lease disposal wells) must have an agreement with the surface owner for the use of the property and the underground space. It should be noted that there is one case, *Mapco v. Carter*, which did not follow the rule from *Emeny* and instead suggested that ownership of the empty cavern of a salt dome could be an incident of the mineral estate. *See Mapco, Inc. v. Carter*, 786 S.W.2d 368 (Tex.App.-Beaumont 1989, *rev'd on other grounds*). *Mapco* represents an outlier that has not been followed in this respect to our knowledge and the circumstances of the holding are largely fact-specific. The common understanding in Texas, and what the industry relies on, is that the right to use land for subsurface disposal is an incident of ownership of the surface estate.

2.3. A disposal well site typically does not take up much space (approximately 2 acres is common) and usually includes unloading facilities, storage tanks, separators, pumps, equipment, and the wellbore itself. The wellbore can be newly drilled or a recompleted, formerly producing well, but in either case, a new permit is required. The fluid injected into the ground by a disposal well is mostly saltwater, but if frac water is being disposed of, it also contains a cocktail of chemicals that are typically proprietary to each company or operator. If this fluid is spilled on the ground it can contaminate groundwater, kill plants and cattle, and make the land generally unsightly and unusable for a lengthy period of time. It is the handling of the water between the delivery truck and the wellbore, through the storage tank and separator, that is the most crucial in terms of protection to a landowner.

### SECTION III. SUBSURFACE TRESPASS

3.1. Suppose that the fluids injected into a disposal well migrate beyond the boundary of the land owned by the surface owner with whom the operator has an agreement; does that incursion of fluids into and under the neighbor's property constitute a trespass? Until recently, this question had never been addressed by a Texas appellate court, and the assumption in the disposal industry was that such incursion was not actionable. The Beaumont Court of Appeals, in *FPL Farming Ltd. ("FPL") v. Environmental Processing Systems, L.C. ("EPS")*, concluded that the neighbor does have a trespass claim. The Beaumont Court of Appeals has issued two opinions in the case; the first was appealed to the Supreme Court which reversed and remanded to the Court of Appeals, and the second has also been appealed to the Supreme Court, where it is now pending. *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*, 305 S.W.3d 739

(Tex.App.-Beaumont), *reversed and remanded* 351 S.W.3d 306 (Tex. 2011), on remand 383 S.W.3d 274 (Tex.App.-Beaumont May 24, 2012, *pet. filed 1/18/13*).

3.2. The facts in *FPL* are these: EPS operates an injection well for non-hazardous waste on land adjacent to the land owned by FPL. FPL previously objected to an amendment of EPS's permit that increased the rate and volumes allowed to be injected. The Austin Court of Appeals affirmed the permit amendment over FPL's objections, ruling that "the amended permits do not impair FPL's existing or intended use of the deep subsurface." *FPL Farming Ltd. v. Tex. Natural Res. Conservation Comm'n*, 2003 WL 247183 (Austin 2003, *pet. denied*). FPL then sued EPS for trespass and negligence, alleging that injected substances had migrated under FPL's tract causing damage. FPL lost a jury trial and appealed. The Beaumont Court affirmed, holding that because EPS held a valid permit for its well, "no trespass occurs when fluids that were injected at deep levels are then alleged to have later migrated at those deep levels into the deep subsurface of nearby tracts." *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*, 305 S.W.3d 739, 744-745 (Tex.App.-Beaumont). The Supreme Court reversed, holding that Texas laws governing injection well permits "do not shield permit holders from civil tort liability that may result from actions governed by the permit." *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*, 351 S.W.3d 306, 314 (Tex. 2011). But the court was careful to say it was not deciding that owners of injection wells could be guilty of trespass if their injected fluids migrated onto other lands. "We do not decide today whether subsurface wastewater migration can constitute a trespass, or whether it did so in this case." *Id.* The court remanded to the court of appeals for it to consider the other issues raised by the appeal.

3.3. In its second opinion, the Beaumont court held that FPL did have a cause of action for trespass: "[T]he Texas Supreme Court has, by implication, recognized that the law of trespass applies to invasions occurring on adjacent property but at a level beneath the surface." *Id.* Also See *Gregg v. Delhi-Taylor Oil Corp.*, 162 Tex. 26, 344 S.W.2d 411, 415-16 (1961) (holding that trial court had jurisdiction to hear landowner's suit seeking to enjoin the defendant from creating subsurface fractures that would extend below the property lines of the surface owned by the landowner); *Hastings Oil Co. v. Tex. Co.*, 149 Tex. 416, 234 S.W.2d 389, 396-97 (1950) (upholding injunction against production from well that bottomed on lands owned by the Texas Company)." 383 S.W.3d at 280. Testimony was presented that the waste plume affected the briny water in place under FPL's property, "even though it was not presently using the briny water." *Id.* The court said that the briny water belongs to the surface owner, and that EPS's permits "did not give EPS an ownership interest in the formations below FPL's property that are at issue in this case.

*Id.* at 281. The Beaumont court reversed and remanded the case for a new trial, holding that the trial court's jury instruction erroneously put the burden on the landowner to prove that he had not consented to the injection under his property. Additionally, the court noted that the fact that EPS is using the deep subsurface for commercial purposes indicates that the subsurface levels at issue have economic potential for storing waste, which otherwise, absent its safe storage, has the potential to adversely affect the environment. Thus, without a trespass remedy, a party—in this

case, FPL—does not have all of the legal remedies typically available to owners to protect the owner's right to the exclusive use of its property. *Id.* at 282.

3.4. EPS also claimed that its trespass onto FPL's property did no actual harm. The court said that EPS had failed to show as a matter of law that no injury had occurred, and that FPL was entitled to a jury trial on that issue. *Id.*

3.5. So the Beaumont court of appeals' opinion, if it stands, recognizes a trespass claim for subsurface migration of injected fluids. The fear for the industry is not necessarily a suit for damages, which may be too difficult to prove. If subsurface trespass is found to be a viable claim, potential plaintiffs could seek an injunction to stop a well from injecting fluids underground.

3.6. The Supreme Court grappled with a similar issue in *Coastal Oil & Gas Corp. v. Garza Energy Trust*, where the court held that an adjacent landowner has no cause of action for trespass if fluids enter his subsurface from fracturing operations in a well on adjacent lands. *Coastal Oil & Gas Corp. v. Garza Energy Trust*, 368 S.W.3d 1 (Tex. 2008). The court in *FPL v. EPS* distinguished its ruling in *Garza*: it said that *Garza* was founded in part on the rule of capture - the owner of the offending wells in *Garza* had the right to produce oil and gas from his well, even if drained from adjacent lands by the fracturing operation. *FPL v. EPS*, 351 S.W.3d at 314. The rule of capture has no application to the operation of injection wells: "Mineral owners can protect their interests from drainage through means such as pooling or drilling their own wells. ... That is not necessarily the case when a landowner is trying to protect his or her subsurface from migrating wastewater." *Id.*

3.7. Given the effect that allowing a claim for subsurface trespass would have on the industry and all of the existing injection wells in Texas, we think it is likely that the Texas Supreme Court will grant EPS's petition (as of this writing, the court has requested briefs on the merits from the parties) and will seek to find some middle ground where the industry can continue in much the same fashion while possibly providing a limited path to relief for neighboring landowners in extreme circumstances. That being said, it is worth thinking about potential lease remedies in the event subsurface trespass by way of injection is upheld as a viable claim of action. One possibility is for owners of larger tracts of land to locate the disposal well in the center of the property and grant a subsurface easement to the operator over the lessor's entire tract for migration of injected water. For smaller tracts, the operator may have to negotiate subsurface easements with adjacent landowners to avoid trespass claims. The indemnity provision in the lease form provided with this paper includes coverage for claims of trespass or contamination brought by an adjacent landowner.

#### SECTION IV. REGULATION/STATUTES

4.1. Like any other well in the oil and gas industry, the Texas Railroad Commission issues permits and oversees injection and disposal wells in the state. The permitting process for a Class II oil and gas disposal well involves numerous requirements and safeguards including:

public notice, hearing opportunities, a review of area geology, and a review of the area around the proposed well in order to determine the existence of other wells penetrating the same geologic formation(s) proposed for disposal. *What are the Permitting Processes for a Class II Oil and Gas Disposal Well?* Texas Groundwater Protection Committee, [http://www.tgpc.state.tx.us/subcommittees/POE/FAQs/OG\\_PermittingProc\\_FAQ.pdf](http://www.tgpc.state.tx.us/subcommittees/POE/FAQs/OG_PermittingProc_FAQ.pdf) (last visited July 31, 2013). These requirements for the permitting of injection operations are located in Chapter 27 of the Texas Water Code, Title 3 of the Texas Natural Resources Code, and the Railroad Commission's Statewide Rules for Oil, Gas, and Geothermal Operation (Rules 9, 46, 95, 96, and 97).

4.2. Statewide Rule 9 governs the disposal of salt water or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources. This is the statewide rule that governs the disposal wells that are the subject of this article. This rule is codified in Title 16, Part 1, Chapter 3, Rule 3.9 of the Texas Administrative Code and addresses the filing of applications, notice and opportunity for hearing, protested applications, geological requirements, special equipment requirements, and modification, suspension, or termination of permits as well as instructions regarding records maintenance, monitoring and reporting, testing, plugging, and penalties for noncompliance.

4.3. The Railroad Commission is considering a set of proposed rule changes related to disposal wells. The proposed changes would broaden public notice requirements associated with disposal wells, require operators to demonstrate that all unplugged wells within the "Area of Review" have been properly cemented across the disposal interval or above the injection interval, and require the top of cement in the disposal well to be above the underground source of drinking water. For a summary of all of the proposed changes, see <http://www.rrc.state.tx.us/rules/2013-08-12-SWR9-36-46-summary-of-rule-changes.pdf>. It is apparent that the Commission is working toward alleviating some of the concerns of landowners and the media with these proposed rule changes. While a step in the right direction, these changes will not take the place of a good, protective lease with a reputable operator.

## **SECTION V. DISPOSAL UNDER MINERAL LEASE RIGHTS**

5.1. Before we get into the details of the lease itself, it is important to note that in many situations, a lease is not necessary for an operator to drill and operate a disposal well. Under the reasonable use doctrine, an operator who has an oil and gas lease on the minerals underlying a tract has the right (unless limited by the lease) to drill a disposal well on that lease to dispose of the wastewater produced *from that lease*. This means that an operator wanting to drill and operate a disposal well on a landowner's property may not need the lease that is the subject of this paper.

5.2. In order to apply for a permit, operators are required by Rule 9 to give notice to the surface owner as well as adjoining surface owners and allow them an opportunity to protest the permit. While Rule 9 addresses the threat posed by disposal wells to both subsurface and surface freshwater sources, Railroad Commission review of applications is focused almost exclusively on groundwater. As part of the application process, operators have to demonstrate

that there are no improperly completed, improperly plugged or unplugged and abandoned oil and gas wells of public record within the one quarter-mile “Area of Review” of the proposed injection well. It has been our experience that the only ground for protest of a permit application that has been successful is for the protestant to hire an engineer to find a well within the Area of Review around the proposed wellbore that has not been properly plugged or cemented, or lacks documentation of that fact. Unsurprisingly, privately hired engineers sometimes are able to find wells that certain operators may have missed.

5.3. Many surface owners will protest a permit solely because the groundwater is their only source of water and they are concerned it is at risk or because the operator has had compliance issues at other locations in the past. These types of protests have largely been unsuccessful. Also, keep in mind that surface concerns are not items of “public interest” that will be considered by the Railroad Commission in determining whether to issue a permit. The Texas Supreme Court has ruled that issues such as traffic safety, dust maintenance and other “subsidiary issues” are not of public interest and therefore not appropriate to be taken into account in the permitting process of a disposal well. *See R.R. Comm'n of Texas v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619 (Tex. 2011, *reh'g denied*) (holding that, in neighbors’ protest of Railroad Commission's grant of permit to operate a commercial injection well, the Commission's construction of the term “public interest,” as used in the statute setting forth required findings for grant of an injection well permit, as a narrow term that did not include a subsidiary issue like traffic safety but was limited to matters related to oil and gas production, was reasonable and in alignment with the statute's meaning, and thus entitled to deference).

5.4. A concerned landowner may be able to successfully protest the volume that the operator is permitted to dispose of in the well or the proposed maximum operating pressure. One of the Commission’s considerations is the amount of water the proposed injection interval is capable of storing without risking migration of the injected fluids into fresh-water-bearing formations.

## SECTION VI. LOCAL ISSUES

6.1. Some areas of Texas are beginning to see a slowdown in the development of disposal wells for largely regulatory reasons. For example, in certain areas of East Texas, primarily near the old East Texas oil field in Shelby and Panola Counties, the Railroad Commission has stopped issuing permits altogether for fear of potential groundwater contamination. With thousands of old wellbores, the Commission is concerned that the number of current disposal wells in these East Texas areas may pose risk to groundwater. As this situation develops, it will be interesting to see if the Commission continues to enforce this unofficial moratorium over the objections of operators claiming they can no longer produce their wells for lack of an economic method of disposal.

6.2. Local governments have also come into play. The County Commissioner of Frio County, Richard Graf, stated in an article found on NPR’s webpage that they County itself is now taking the lead on well protests. Dave Fehling, *More Than Their Fair Share? Texas County*

*Questions Frack Water Disposal Wells*, StateImpact, A Reporting Project of NPR Member Stations (May 7, 2013) <http://stateimpact.npr.org/texas/2013/05/07/more-than-their-fair-share-texas-county-questions-frack-water-disposal-wells/>. Frio County has a large number of disposal wells due to the favorable geology of the underlying Pearsall formation. The residents and politicians of Frio County are concerned that the neighboring counties are seeing all of the benefits of recent drilling activity in the Eagle Ford just to the south of Frio County, while Frio County is incurring the increased traffic and risk to its groundwater from the drilling of disposal wells there. In a conversation with Mr. Graf, however, he reported to the author that the protests have had only limited success.

## **SECTION VII. LEASE ANATOMY**

This section includes a paragraph-by-paragraph discussion of each clause in the lease form included with this article and the purpose of each provision. It is advisable to read this section of the article side by side with a copy of the provided form of lease.

### **7.1. Recitals.**

Always use a good description of property sufficient to satisfy the Statute of Frauds so as to make the lease agreement enforceable. It is also important to put others on notice via a memorandum of lease (discussed below) that the lease is in existence and in effect. The description should cover the tract to be occupied by the disposal facility and the road to the facility. Also, always ensure that the entity you are contracting with is an actual entity in the State of Texas and the entity that will hold the well permit and operate the disposal well. Secondly, check the proposed operator's compliance history with the Railroad Commission. You can obtain this information via the Railroad Commission website or call them directly. It is always better to know who you are allowing on (and under) your land before it is too late. Do your due diligence.

### **7.2. Well Entry and Disposal.**

This section of the lease should precisely describe what the grantee or lessee is allowed to do on the leased premises. Be exact. In our form lease we have included language that spells out the types of facilities that usually accompany a disposal well, including what can be disposed of in the well. Please note that a description of where the fluids can originate from (as is in our form) may be appropriate for a lease with an operator who is going to be using the well for disposal from his leases only. This is not appropriate in a commercial agreement where the grantee will be disposing of whatever water is hauled to him.

### **7.3. Surface Use.**

We endorse limiting the actual "Leased Premises" to an area that only covers the actual well bore and related facilities. There is no reason for a blanket lease covering the Lessor's entire property. The lease should also grant rights of ingress and egress in order to allow access, but for purposes of this lease, the immediate area around the well bore and facilities should be the

only exclusively leased property. This section also deals with surface use including the laying of pipelines and the building of roads. Consideration should be paid by the lessee for these items. Note again that the appropriateness of these terms can vary from agreement to agreement. If you are leasing to a commercial well operator and are located directly on the county road, damages for pipelines and roads will likely not be an issue. It is important to require the lessee to put in the kinds of roads that the landowner wants and properly maintain them, to allow the lessor to use them, and, finally, to give the landowner the option to either keep the roads or have them removed and the land returned to its former state on termination of the lease.

Also, as a reminder, as discussed in Section V above, allegations or evidence of surface issues or even past misbehavior of a specific operator will generally not be sufficient to defeat an otherwise well-supported application for a disposal permit. *See R.R. Comm'n of Texas v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619 (Tex. 2011, *reh'g denied*).

#### **7.4. Consideration.**

Compensation to a landowner for a disposal well can be done numerous ways. The most common are either a percentage of the revenue of the grantee from the wastewater disposed of (for commercial wells) or a per barrel fee (for lease disposal wells, although this means of compensation can be used for a commercial well). We have also included a space for an annual rental. For an operator using the well only for disposal of his produced water, the per barrel fee with a minimum annual or monthly rental is the proper method to use. For a commercial well, the lease could provide a monthly rental of the greater of (i) a percentage of revenue, (ii) a per-barrel fee or (iii) a minimum monthly rental. If the lease is based solely on a percentage of revenue, a grantee who is also a water hauler could take advantage of this provision by allocating the majority of his disposal fee to hauling and charging a lower fee for the disposal, leaving the lessor with a percentage of a smaller amount. Having both payment methods also provides protection for the lessor against being short-changed by sweetheart deals or in-kind exchanges between the lessee and an operator.

#### **7.5. Skim Oil.**

Most disposal well operators now “skim” or separate suspended oil from the wastewater prior to disposing of it in the well, especially with oil prices at their current levels. The operator then sells this “skim oil,” and may or may not have to share the revenues from oil sales with the party who provided the salt water for disposal. Most disposal well leases now provide that the lessor-landowner is entitled to a share of the lessee’s revenue from the sale of skim oil. Royalty rates can vary, but we recommend starting at the going rate for an oil and gas lease (1/4<sup>th</sup>).

#### **7.6. Escalation.**

We use a specific oil and gas escalation adjustment found online to adjust the prices of any set fees agreed to in the disposal lease. This escalator can also be any formula commonly used to adjust prices for inflation.



### 7.7. **Term.**

The term of disposal leases is typically five to ten year periods with renewal options. Some are renewed automatically. In our form, we included an option for one year renewals at a new negotiated rate after the expiration of the initial term. We also included a ten percent cap on the negotiated rate from the preceding year to entice the use of this provision. Also, similar to a continuous operations clause in an oil and gas lease, there should be an automatic termination of the disposal lease if the well is unused for a negotiated period of time. Finally, it is appropriate to allow the operator to discontinue the use of the well and unilaterally terminate the lease with notice. Upon termination of the lease, the lessee should be required to plug and abandon the well, remove all property, equipment, fixtures and facilities (other than has been agreed will remain for use and ownership by the lessor), and restore the surface to the condition that existed prior to the lease.

### 7.8. **Accounting and Audit.**

It is important, as it is in an oil and gas lease, to give the lessor the right to audit the accounting of both the produced water disposed of and payments made by the lessee. To avoid an unnecessary burden on the lessee, it is also appropriate to limit such an audit to once per year.

### 7.9. **Inspection and Remediation.**

The clause in our form of lease requires a lessee to perform a Phase I environmental inspection on the leased premises prior to construction and allows the lessor to conduct a Phase I at any time to determine if further testing or remediation is necessary. If the Phase I reveals any cause for further testing, the lessee is required to pay for a Phase II if requested by the lessor and develop a plan to remediate the site in accordance with federal and state laws and any other applicable environmental regulations, statutes, or ordinances.

### 7.10. **Test Well.**

Our lease form requires the lessee to drill a water well adjacent to the disposal well with a pump so that the lessor can retrieve water from the water table for testing at its option. Generally, operators can also use this water well for cleaning and sanitary purposes for their operation. Water wells like this could be expensive in areas with a deep water table, and in such circumstances a good compromise may be to only require the lessee to periodically test all of the water in existing water wells within a certain radius of the leased premises in order to provide a baseline. Most of the operators we have spoken with like to test as much water from wells in the surrounding area as they can get permission to test to protect them in the future in the event a lessor or any neighbors claim that their water wells have been contaminated. The cost of a tech to take the sample from an existing well and the resulting lab work is usually only about \$500.00 per well, which is money well spent.

#### 7.11. **Containment.**

Most problems around disposal wells are not caused by the injection process, but by spills at the injection site. Concrete containment methods can be costly for an operator, but we recommend that the lessor require concrete containment under any unloading pads, tanks, filtration equipment, and injection pumps. Further steps required to avoid groundwater contamination could include installation of impermeable plastic lining under the concrete with gravel to act as a filter between the concrete and the plastic. As good containment methods can vary depending on soil type, threat to groundwater, or other localized characteristics, the landowner should consult with a local geologist, environmental firm, or engineer to determine the necessary specifics for containment in the area and build minimum requirements into the lease. A reasonable operator should be willing to agree to good containment around its facilities.

#### 7.12. **Insurance.**

An operator should be required to maintain liability insurance to a minimum standard. This is also a good gauge as to the economic position of the operator. If a lessee balks at a minimum amount of insurance, it may not be someone a lessor should be leasing to. Our form does allow self-insurance, so there is some flexibility to this provision.

#### 7.13. **Permits.**

The lease should require the lessee to provide the lessor advance copies of all permit applications, copies of any protests of the permit and notices of hearing, and proof that the requirements of the rules are being met, including copies of required reports and pressure tests.

#### 7.14. **Indemnification.**

Every lawyer's favorite clause. It is important for the landowner to have a strong indemnification provision. The inherent nature of the fluids and damage that could be caused by chemicals or the equipment means there is substantial risk to be allocated.

#### 7.15. **Assignment.**

We think it wise for the lessor to retain the right to consent to any assignment of the lease. Disposal wells, when used improperly or carelessly, can be dangerous, as can the wastewater being disposed of.

#### 7.16. **Taxes/Compliance with Laws.**

The lessor retains the responsibility for the ad valorem taxes on the property, but the lessee pays all taxes incurred as a consequence of structures, materials, or equipment. Depending on the size of the leased premises, it may be appropriate to require the lessee to pay the taxes on the property

itself as well. We also use this clause to require the lessee to comply with all laws, obtain all required permits and exercise good practices to protect the groundwater.

**7.17. Minerals under the Land/Governing Law.**

A disposal lease does not grant any leasehold interest in the minerals underlying the leased premises. In fact, as we have discussed, since the lessor is the holder of the surface estate, he or she may not even have the authority to grant an interest in the minerals. This provision just makes it clear.

**7.18. No Warranty.**

This clause puts any risk as to mistakes in title work on the lessee. Many of our clients are leasing properties that have come to them through ownership channels of which they may have no or very little knowledge.

**7.19. Exclusivity.**

We have labeled this provision as optional because it depends on the nature of the lessee. If the lessee is an operator who will be disposing of wastewater from nearby wells that it operates, then this provision is appropriate. It requires the operator to dispose of the wastewater located within a certain radius of the well into the disposal well that is the subject of the lease rather than finding another alternative. The reason the lessor is entering into this lease in the first place is to create a stream of income that has not yet been realized. This clause serves to maximize the income stream without the risk of getting undersold by someone else. If this is a commercial operator, then this clause is not appropriate; however, if the commercial operator accepts the wastewater elsewhere and hauls it to the location, then a simple modification of this provision could provide that any wastewater hauled by the operator from wells in a specified geographic area has to be disposed of in the subject disposal well.

**7.20. Memorandum of Recording.**

It is usually not to the benefit of either the lessor or the lessee to record the entire lease, but a memorandum should be filed in order to put others on notice of the existence of the lease.

**7.21. Prohibitions.**

This provision is pretty self-explanatory. The lessor might also want to consider liquidated damages or other measures (such as exclusion of specific employees) if this covenant is broken. In addition, the lessee might consider requiring the operator to give all employees, agents, invitees, or anyone else who might be on the property a form of rules including this provision.

**7.22. Other Provisions to Consider.**

**(a) Noise.**

Disposal operations can be noisy. If a lessor has a house, barn, or other area they frequent nearby, they may want to require noise dampening devices or time limits for certain operations.

(b) **Light.**

Similar to noise, disposal operations can cause significant light pollution. Consideration should be given to require shades or covers to direct lighting downward or away from dwellings, and light timers to turn off lighting when the site is not being occupied.

(c) **Truck traffic.**

One of the biggest complaints of disposal operations is the increased truck traffic. The impact of truck traffic can vary greatly depending on the location of the well, the quality of the road and the capacity of the well. There is an obvious cost/benefit tradeoff with requiring a limited number of truck trips per day, but the advantages might be worth the cost to some lessors. An alternative to truck trips would be to limit a lessee's permitted capacity to a certain number of barrels per day, or limit hours of operation.

(d) **Dust maintenance.**

Trucks constantly traveling in and out can cause a dust nuisance. If a lessor is concerned, they could require paving or a certain grade of compactness on the road (either newly built by the lessee or upgrades to an existing road) or perhaps maintaining a certain level of dampness on the road to prevent dust.

(e) **Fumes/smells.**

Lessee should use best management practices for reducing fumes and or smells if it is a concern.

(f) **No Known Faults.**

Seismicity in the land beneath disposal wells has become an increasing concern in recent years and months. In January of 2012, an earthquake in Youngstown, Ohio occurred that has been linked to disposal well activity in the area. There has also been suspected linkage to seismic activity in the Barnett Shale and near Tulsa, Oklahoma. The theory is that the injected wastewater provides a lubricant to an already existing fault and causes it to slip. Seismic testing around a disposal well site can be very expensive and not necessarily completely reliable to detect a potential earthquake concern. Until technology catches up with this specific problem, the best a landowner may be able to do is ask for a representation in the lease that there are no known faults and perhaps a requirement of the lessee to conduct a certain amount of research regarding local seismicity and available seismic data prior to drilling the well.

## **SECTION VIII. CONCLUSION**

8.1. Disposal wells can benefit both lessors and lessees if the proper provisions are put in place that protect both parties. With a good lease in place to ensure that the operator will properly tend to its operation, both parties to the agreement should be able to profit without damage to the environment or undue aggravation of neighbors.

**SURFACE LEASE AND  
SALTWATER DISPOSAL AGREEMENT**

This Surface Lease and Saltwater Disposal Agreement (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“**Effective Date**”), by and between

\_\_\_\_\_

("Grantor," whether one or more), whose address is

\_\_\_\_\_

and

\_\_\_\_\_

("Grantee"), whose address is

\_\_\_\_\_

**WHEREAS**, Grantor is the owner of the surface of the following described lands located in [\_\_\_\_\_] County, Texas ("**Land**"):

**[Property Description]**

**WHEREAS**, Grantee desires to drill [**recomplete**] the [**named**] well (“**Well**”), located on the Land for use as a well for the disposal of salt water produced from the Land and/or for the disposal of flowback water from hydraulic fracturing operations on the Land [and from other lands located in the vicinity of the Land]; and

**WHEREAS**, Grantor and Grantee desire to enter into this Agreement whereby Grantee is granted the right to dispose of produced and/or flowback water into the Well, in accordance with the terms and conditions as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **Entry of Well; Disposal of Water.** Grantor hereby grants to Grantee the right to drill [**recomplete**] the Well and to attempt to complete the Well as a salt water disposal well, all at Grantee's sole cost, risk and expense. Grantor further grants to Grantee the right, during the term hereof, to dispose of water produced from the oil and gas well(s) located on the Land [and on other lands located in the vicinity of the Land] into the Well. In addition to the foregoing rights, Grantee is granted the right to construct, repair, maintain, alter, operate and remove a salt water injection station or stations on the Land consisting of tanks, pumps and other structures and equipment necessary or convenient to save, take care of, treat, collect, store, transport and dispose of produced and/or flowback water for disposal into the Well ("**Facilities**"). The disposal of produced and/or flowback water shall be into subsurface formations or strata other than fresh water sands and shall be in compliance with the rules and regulations of the Texas Railroad Commission and any other governmental authority having jurisdiction over such matters. .

2. **Lease/Use of Surface of the Land.** Grantor hereby grants, leases and lets unto Grantee, the exclusive right to use a tract of land located on the Land ("**Leased Premises**"), more particularly described in Exhibit A and shown on the plat attached hereto as Exhibit B, for the purpose of locating and operating the Well and Grantee's Facilities. Grantee shall have the right of ingress and egress to and from the Leased Premises using the road shown on the Plat attached as Exhibit B. In addition, for the same consideration recited above, Grantee shall also have the right to install, operate, maintain and remove salt and/or flowback water pipelines, communication lines and poles, and electric lines on the Land for the purpose of conducting Grantee's operations on the Land; provided, however, that Grantee shall consult with Grantor prior to placing any such pipelines, lines and poles on the Land so that the parties hereto can mutually agree on to the location thereof. In this regard, Grantor shall not unreasonably withhold permission for the routes of such pipelines, lines and poles proposed by Grantee. Grantee shall pay Grantor the amount of [\_\_\_\_\_ (**\$\_.00**)] per rod per pipeline, line or pole. All personal property, equipment, pipelines, poles and lines placed on the Land by Grantee shall remain the property of Grantee. Grantee's use of the Land is subject to the following conditions and agreements:

- a. Grantee shall not use the surface of the Land for the storage of unused or obsolete equipment, or for any other use not expressly provided for herein.
- b. No fences shall be cut without the prior approval of Grantee.
- c. Grantee agrees to keep the Land and the Leased Premises clean and free from all debris, rubbish, garbage and trash that are caused by Grantee's operations. Grantee shall not discharge any oil, saltwater, brine, or other noxious liquids onto the surface of the Land.

- d. Saltwater shall not be injected, nor shall the Well be operated in a manner to cause damage to the fresh water zones under the Land.
- e. OPTIONAL: Grantee shall not dispose of or inject into the Well any saltwater, brine, water or other fluids that are produced from any source other than [\_\_\_\_\_].
- f. OPTIONAL: [Further surface provisions (roads, gates, fences, light, noise, etc.)]

3. **Consideration.** As consideration for the rights granted to Grantee under this Agreement, Grantee shall pay an annual rental of [\_\_\_\_\_] (\$\_.00), with the first such rental to be paid on or before \_\_\_\_\_, \_\_\_\_\_, and subsequent rentals to be paid at twelve month intervals thereafter during the term hereof. In addition to the annual rental, Grantee shall pay a monthly rental equal to the greater of (a) [\_\_\_\_\_] (\$\_.00) per month or (b) a fee of [\_\_\_\_\_] (\$\_.00) per forty-two (42) gallon barrel for each barrel of produced water and/or flowback water disposed of into the Well during each month during the term hereof [or (c) an amount equal to \_\_\_% of the gross revenue received by Lessee from disposal of water into the Well]. The disposal fee shall be paid monthly by Grantee's normal business check on or before thirty (30) days after the last day of each month during the term of this Agreement for water disposed of during the preceding month. If Grantee fails to pay any rental when due, Grantor may give written notice of such default to Grantee, and if Grantee fails to remedy such default within thirty (30) days of receipt of such notice, Grantor shall have the right, in addition to any other remedies available to Grantor, to terminate this Agreement.

4. **Skim Oil.** Grantee shall pay Grantor a monthly royalty equal to [\_\_\_\_\_] percent (\_\_\_%) of the gross amounts received by Grantee, net of all severance and production taxes, during the applicable month from the sale of skim oil generated or obtained from the operation of the Well (the "Skim Oil Royalty"). The Skim Oil Royalty shall be payable to Grantor by cash or check on or before the last day of the second month following the month of sale of skim oil to which the Skim Oil Royalty applies. For example, the Skim Oil Royalty for operations of the Well in May will be payable on or before the last day of July, and the Skim Oil Royalty for operations of the Well in August will be payable on or before the last day of October.

5. **Escalation of Consideration.** The annual rental and per-barrel fee provided for in paragraph 3 shall increase on the first day of \_\_\_\_\_ of each year during the term of this Agreement by the COPAS Overhead Adjustment Factor published by the council of Petroleum Accountants Societies for adjustments to fixed overhead rates in operating agreements, found at <http://www.copas.org/node/4102> . If the Overhead Adjustment Factor is negative, the per-barrel fee shall not decrease from the fee in effect for the previous year, but any subsequent increase in the per-barrel fee shall take account of previous decreases in the Overhead Adjustment Factor.

6. **Term.** The term of this Agreement shall be for a period of [\_\_\_\_\_] years and shall commence on [\_\_\_\_\_, \_\_\_\_]. [Optional: Grantee shall have the option to renew

**this Agreement for additional one (1) year periods at a price to be negotiated by the parties. In no event shall the annual rental, monthly rental, or per-barrel fee increase such more than Ten percent (10%) from the price paid for the immediately preceding year. Grantee shall give Grantor written notice of its intention to exercise this option at least ninety (90) days prior to the expiration of the initial term of this Agreement and, thereafter, at least ninety (90) days prior to the expiration of the then current term.]** In the event that Grantee has failed to dispose of produced water into the Well for a period in excess of [ ] consecutive months, then and thereupon this Agreement shall automatically terminate. In addition, Grantee shall have the right to unilaterally terminate this Agreement at any time during the term hereof, including any extensions thereof, by giving Grantor at least thirty (30) days' advance written notice of such termination.

7. **Restoration.** Within six (6) months after termination of this Agreement, Grantee shall plug and abandon the Well, remove all property, equipment, fixtures and Facilities placed on the Land by Grantee and to restore the surface of the Leased Premises and any portion of the Land disturbed by Grantee's operations hereunder to the condition that existed immediately prior to the execution of this Agreement by both parties.

8. **Accounting and Audit.** Grantee shall furnish Grantor with an accounting of the produced water disposed of into the Well monthly at the time payment is made. Grantor shall have the right, at Grantor's sole cost and expense, to examine, copy and audit, at reasonable times and during Grantee's normal business hours, the books and records of Grantee associated with and directly relating to the volumes of produced water disposed of and skim oil sold under this Agreement and the payment of all fees in connection therewith; provided, however, Grantor shall not conduct more than one such audit in any calendar year during the term hereof. All such audits shall take place at Grantee's offices located in [\_\_\_\_\_].

9. **Inspection and Remediation.** Prior to any construction operations on the Leased Premises, Grantee shall conduct or cause to be conducted a Phase I environmental inspection on the Leased Premises. The Phase I environmental inspection shall be conducted in accordance with the rules, regulations, and standards of the United States Environmental Protection Agency. A copy of the Phase I environmental inspection will be provided to Grantor immediately upon completion of the report. Additionally, at any time during the term of this lease, but no more often than once in any calendar year of this lease, Grantor shall have the right to cause a Phase I environmental inspection to be conducted of the Leased Premises by a qualified environmental engineering firm acceptable to Grantor, at Grantor's cost and expense. A copy of the Phase I environmental report shall be furnished to Grantee. If such reports reveal any cause for further testing or examination of the Leased Premises, Grantor may cause a Phase II environmental inspection to be conducted by a qualified environmental engineering firm acceptable to Grantor, at Grantee's cost and expense, and a copy of the report of such Phase II inspection shall be provided to Grantee. If such inspections reveal that remediation of soil or groundwater on or about the Land is necessary in order to comply with any Environmental Law, Grantee shall proceed with diligence to develop a plan for conducting such remediation, which plan shall be submitted to Grantor. Grantee shall implement such remediation plan with due diligence, to the



end that such remediation shall be completed and remediated in accordance with such plan and with all Environmental Laws. "Environmental Laws," for purposes of this lease, shall mean any law relating to environmental conditions and industrial hygiene, including, without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sec. 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sec. 9601.9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 6901. et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq., the Clean Air Act, 42 U.S.C. Sec. 741 et seq., the Clean Water Act, 33 U.S.C. Sec. 7401, the Toxic Substances Control Act, 15 U.S.C. Sec. 2601-2629, the Safe Drinking Water Act. 42 U.S.C. Sec. 300f-300j, and all similar federal, state, and local environmental statutes, ordinances, and the regulations, orders, and decrees now or hereafter promulgated thereunder.

10. **Test Well.** Prior to operating the Well, Grantee shall drill one water well to the depth of the deepest potable water aquifer under the Land adjacent to and within one hundred (100) feet of the Well and shall install a submersible pump in such well so that Grantor can obtain a sample of the water in such well and test the water for possible contamination. Upon abandonment of the Well, such water well and the submersible pump therein shall become the property of Grantor. Prior to drilling **[recompleting]** the Well, Grantee shall cause all of Grantor's water wells within one mile of the Well (including the test well contemplated by this Paragraph) to be tested for water quality in a method consistent with the National Field Manual for the Collection of Water Quality Data published by the United States Geological Survey and found at <http://water.usgs.gov/owq/FieldManual/> in order to provide a baseline for further testing.

11. **Containment.** Grantee shall use concrete containment methods under the Facilities and around the Well to prevent possible contamination or spills. **[This Section should include specifications as suggested by a local engineer or environmental consultant].**

12. **Insurance.** Grantee shall submit to Grantor certificates evidencing that insurance of the types and the amounts specified below has been obtained by Grantee, and Grantee shall maintain such insurance at all times during the term of this Agreement and at all times during which Grantee or its agents, officers, or employees shall be present on the Land.

- (a) Workers' Compensation and Employer's Liability. Statutory Workers' Compensation coverage for the state where the Land is located, and Employer's Liability Insurance with minimum limits of liability of Five Hundred Thousand and No/100 Dollars (\$500,000.00). The Workers' Compensation policy shall be endorsed to waive any rights of subrogation against Grantor.
- (b) Automobile Liability. Comprehensive Automobile Liability Insurance insuring all owned, non-owned and hired automobiles, with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage combined. The policy shall be endorsed to waive any rights of

subrogation against Grantor. Additionally, the policy shall also name Grantor as additional insured, but only with respect to the liabilities assumed hereunder.

- (c) Public Liability. Public Liability Insurance in the amount of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 (\$2,000,000.00) in the aggregate, covering the same perils as those which are associated with standard commercial general liability insurance policy forms and specifically including coverage for products/completed operations, personal and advertising injury, blanket contractual liability, fire legal liability and medical payments.
- (d) Operator's Extra Expense. Operator's Extra Expense Insurance covering Control of Well, Underground Blowout, and Seepage and Pollution.
- (e) Umbrella. Umbrella Insurance coverage of at least \$5 million in excess of the coverages set forth above.
- (f) General. Said policies shall be endorsed to provide that the coverages provided in said policies shall be primary and shall be non-contributory to any other insurance carried by Grantor. Said policies shall name Grantor as an additional insured. All certificates shall provide that the insurance will not be cancelled during the term of this Agreement without 30 days prior written notice to Grantor. The above provisions with respect to Grantee providing insurance are solely for the benefit of Grantee and Grantor and third parties have no rights under or by reason of such provisions. Failure to obtain and maintain such insurance during the term of this Agreement shall be grounds for termination of this Agreement.
- (g) Self Insurance. The insurance requirements set forth herein, except (a) above, may be fulfilled by a regularly maintained program of self-insurance by Grantee.]

13. **Permits**. Grantee shall provide Grantor with copies of any and all permits, applications for permits, modifications of permits, applications to amend any permits, protests of any permits, or any documents and correspondence related thereto. Grantor hereby retains the right to appear and protest and permit received or applied for by Grantee.

134. **Indemnification**. Grantee shall indemnify, defend, and hold harmless Grantor, its partners, trustees, beneficiaries, directors, officers, employees, agents, heirs, successors, representatives, agents, successors and assigns ("Indemnitees") from and against any and all of the following, to the extent that same arise out of Grantee's breach of its obligations set forth in this Section: (a) any loss, liability, damage, cost, expense, or claim arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up, or detoxification and removal under any Environmental Law, (b) any other loss, liability, damage, expense, or claim including court costs, attorney's fees and expenses, paralegal fees, expert fees and expenses, consultant fees and expenses, interest expenses and all other costs and expenses of any kind or nature which may be incurred by or asserted against Grantor directly or indirectly arising from

the presence on or under, or the discharge, emission, or Release from the Leased Premises into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water, or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, cleanup, discharge or disposal of any Hazardous Material or other material covered by any Environmental Law, (c) loss of value of the Leased Premises as a result of any such lien, release, discharge, emission, cleanup, detoxification, loss, liability, damage, expense, or claim or a failure or defect in title occasioned by any Hazardous Material or claim made under any Environmental Law, any claims of trespass as a result of subsurface migration of fluids or any other trespass as a result of Grantee's operations; and (e) all foreseeable and unforeseeable incidental and consequential damages. The indemnification provided in this Section shall also apply to and include claims or actions brought by or on behalf of employees of Grantee or Grantor. In the event Grantor shall suffer or incur any such costs, Grantee shall pay to Grantor the total of all such costs suffered or incurred by Grantor upon demand therefor by Grantor. Without limiting the generality of the foregoing, the indemnification provided in this Section shall specifically cover costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any cleanup, containment, remedial action, removal, or restoration work required or performed by or for any federal, state or local governmental agency or political subdivision or performed by or for any nongovernmental entity or Person because of the presence, suspected presence, Release, or suspected Release of any Hazardous Material or other material covered by any Environmental Law in or into the air, soil, ground water, or surface water at, on, about, under, or within the Leased Premises or any portion thereof, or elsewhere caused by or arising out of operations conducted by or for Grantee on the Leased Premises and any claims of third parties for loss or damage due to such Hazardous Materials. **GRANTEE'S OBLIGATION TO INDEMNIFY INDEMNITEES SHALL APPLY WHETHER OR NOT INDEMNITEES MAY BE GUILTY OF ANY NEGLIGENT OR GROSSLY NEGLIGENT ACT OR OMISSION WHICH RESULTED IN OR CONTRIBUTED TO THE COST, EXPENSE OR LIABILITY AGAINST WHICH GRANTEE IS OBLIGATED TO INDEMNIFY INDEMNITEES HEREUNDER, AND WHETHER OR NOT INDEMNITEES' LIABILITY IS IMPOSED BY ANY STATUTORY OR COMMON-LAW THEORY OF STRICT LIABILITY.**

**[ALTERNATE LANGUAGE] EVEN IF SUCH LIABILITIES ARE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OR BY THE STRICT LIABILITY OF ANY INDEMNITEE.]**

In addition, Grantee waives any right of contribution or indemnity from Grantor which may arise under any Environmental Law.

15. **Assignment; Notices.** Grantee may not assign this Agreement or any of its rights hereunder without the prior written consent of Grantor. Any permitted assignment shall relieve the assigning party of any liabilities or obligations arising after the date of the assignment, but shall not release such party from any liabilities that have arisen or accrued prior to the date of such assignment. Subject to the foregoing, this Agreement, the rights granted, and obligations

provided for hereunder are deemed covenants running with the Land and shall inure to the benefit of and be binding on the Grantor and Grantee, and their respective heirs, legal representatives, successors, and assigns.

Notices to Grantor or Grantee shall be in writing and mailed to the addresses stated above. Notices and payments shall be deemed given when deposited with the United States Postal Service in a properly addressed postage paid envelope. Either party may change its address for notice purposes at any time and from time to time during the term hereof, provided that no change of address shall be binding upon the other party until such party has received the written notice announcing the change of address.

16. **Taxes.** Grantor agrees to pay the ad valorem taxes on the Land, but Grantee shall pay all taxes assessed against any structure, material and equipment placed thereon by Grantee pursuant to this Agreement.

17. **Compliance with Laws.** Grantee agrees to comply with all laws, rules, and regulations of governmental authorities having jurisdiction over the operations which Grantee conducts under this Agreement. Grantee shall obtain and maintain, at its sole cost and expense, any and all required permits to dispose of produced and/or flowback water as herein provided. Grantee agrees to exercise its rights under this Agreement in such a manner so as to protect the subsurface of the Land from, and prevent injury to, fresh water strata.

18. **Minerals under the Land; Governing Law.** This Agreement shall in no way affect ownership of the oil, gas, or other minerals in, on or under the Land. This Agreement shall be governed and construed under the laws of the State of Texas, except for any conflict of laws rule or principle that would refer to the laws of another jurisdiction.

19. **No Warranty.** This agreement is made without warranty of any kind or recourse against Grantor whatsoever, not even for the return of the consideration recited above. Grantor does not warrant or represent the correctness of any survey, maps, or plats attached hereto purporting to show the location of Grantor's land or any improvements shown thereon, and nothing herein contained shall operate as an estoppel against Grantor's establishing the correct location of the boundaries of or the improvements on Grantor's land, in the event same are not correctly shown on the maps attached hereto.

20. **Exclusivity.** [OPTIONAL FOR OPERATOR WELL.] As a part of the consideration delivered to Grantor in connection with the negotiation and entering into this Agreement, Grantee hereby agrees any water produced from such Grantee's wells within \_\_\_\_\_ ( ) miles of the Well will be injected into the Well under the terms of this Agreement.

20. **Memorandum for Recording.** A memorandum may be executed by Grantor and Grantee giving public notice of this Agreement, which may be filed for record in the Official Public Records of [ \_\_\_\_\_ ] County, Texas.

21. **Prohibitions.** Grantee and Grantee's employees, agents or invitees are expressly prohibited from hunting or fishing on the Land. Grantee and Grantee's employees, agents or invitees are expressly prohibited from possessing fire arms, alcohol or illegal drugs on the Land.

22. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding of Grantor and Grantee with respect of the subject matter contained herein. There are no contemporaneous oral agreements, and there are no restrictions, promises, warranties, covenants or undertakings not set forth in this Agreement. This Agreement supersedes all prior agreement and understandings between Grantor and Grantee with respect to the subject matter of this Agreement. No amendment, modification, or alteration of the terms of this Agreement, or waiver by Grantor or Grantee of any failure to satisfy any term or provision contained herein, shall be binding unless it is in writing and duly executed by the party to be charged thereby.

**EXECUTED** by Grantor and Grantee to be effective as of the Effective Date.

**GRANTOR:**

\_\_\_\_\_  
By: [ \_\_\_\_\_ ]

**GRANTEE:**

[ \_\_\_\_\_ ]

\_\_\_\_\_  
By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

**EXHIBIT A**

**[Well Location]**