

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice ("DOJ") and on behalf of the United States Department of Interior, Office of Natural Resources Revenue ("ONRR") (collectively the "United States"), and Hilcorp San Juan, L.P. ("Company") (hereafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. The Company is an oil and natural gas exploration and production company with offices in Aztec, New Mexico and Houston, Texas. The Company has numerous federal oil and gas leases in the San Juan Basin in northwest New Mexico and southwest Colorado.

B. The United States undertook an investigation into certain of the Company's leases in the San Juan Basin and royalty payments associated with those leases.

C. The United States contends that it has certain civil claims against the Company arising from its underpayment of royalties to ONRR during the period from August 2017 through December 2018 ("Time Period"). Specifically, the United States contends that during this time, the Company paid federal royalties on oil, natural gas, and natural gas liquids for the leases listed in Exhibit A based on estimated volumes and prices instead of on actual volumes and prices. Under 30 U.S.C. § 1721(h), when an estimated payment is made to ONRR, actual royalties are payable at the end of the month following the month in which the estimated payment is made. The United States

contends that for the Time Period and for the leases set forth in Exhibit A (“Leases”), the Company made payments to ONRR based on estimated volumes and prices without indicating that the payments were based on estimates and without subsequently making payments in the following month based on actual volumes and values. As a result, the United States contends that the Company knowingly and improperly avoided its obligation to pay ONRR full royalty payments for the Leases. This conduct is referred to below as the “Covered Conduct.”

D. The Company cooperated with the United States’ investigation by assisting in the determination of losses and repaying funds. In July 2021, the Company paid ONRR \$20,640,957 (\$17,358,065, plus \$3,282,892 interest) for royalty underpayments arising from the Covered Conduct. The Company received credit under DOJ’s guidelines taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual § 4-4.112.

E. This Settlement Agreement is neither an admission of liability by the Company nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Company shall pay to the United States \$34,640,957 (“Settlement Amount”), and simple interest on the unpaid portion of the Settlement Amount at a rate of 3% per annum starting on November 9, 2023, until and including the date of final payment, by electronic funds transfer pursuant to written instructions to be provided by

DOJ's Civil Division. \$20,640,957 of the Settlement Amount is restitution. The Company shall pay the Settlement Amount in accordance with the following payment schedule:

A. The Company shall receive a credit for its prior payment to ONRR of \$20,640,957 in July 2021.

B. No later than 15 days after the Effective Date (defined below) of this Agreement, the Company shall make a payment to the United States in the amount of \$7,000,000.00, plus simple interest at a rate of 3%.

C. No later than 120 days after the Effective Date of this Agreement, the Company shall make a payment to the United States in the amount of \$7,000,000.00, plus simple interest at a rate of 3%, on the theretofore unpaid amounts.

D. The payments specified in this Paragraph 1 may be prepaid, in whole or in part, without penalty or premium.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus simple interest at a rate of 3%, the United States releases the Company from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. The Company waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. The Company fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Company has asserted, could have asserted, or may assert in the future against the United States, its

agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the Company, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) the Company's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment the Company makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the Company, and the Company shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, the Company shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the Company or any of its subsidiaries or affiliates from the United States. The Company agrees that the United States, at a minimum, shall be entitled to recoup from the Company any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including DOJ and/or the affected agencies, reserves its rights to audit, examine, or re-examine the Company's books and records and to disagree with any calculations submitted by the Company or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the Company, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Texas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and

shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement between the Parties.

This Agreement may not be amended except by written consent of the Parties.

12. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

14. This Agreement is binding on the Company's successors, transferees, heirs, and assigns.

15. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "***Effective Date***"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 1/18/2024

BY: 

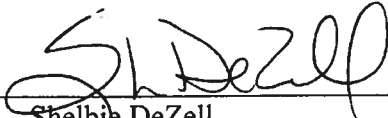
Sara McLean &
Jonathan T. Thrope, Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 1/18/2024

BY: 

Kenneth Shaitelman
Assistant United States Attorney & Senior
Litigation Counsel
Southern District of Texas

HILCORP SAN JUAN, L.P.

DATED: 1/17/24 BY: 
Shelbie DeZell
Senior Vice President and Chief Financial Officer
Hilcorp Energy Company, General Partner of the Company


DATED: 1/17/24 BY: 
Gregory E. Goldberg
Robert Sutphin
Tina Van Bockern
Holland & Hart LLP
Counsel for the Company

EXHIBIT A

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