

#58006

WHAT FOLLOWS IS INTENDED TO PROVIDE SOME INSIGHT INTO VARIOUS CONTEXT IN WHICH A TITLE OPINION MAY BE PROVIDED AND SPECIFIC TOPICS THAT MIGHT BE ADDRESSED IN THOSE VARYING CONTEXTS. IT IS NOT INTENDED TO EXPRESS AN OPINION ON ANY TOPIC AND SHOULD NOT IN ANY EVENT BE RELIED UPON TO PROVIDE YOU A RELIABLE ANSWER TO ANY SPECIFIC LEGAL OR FACTUAL QUESTION.

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[client]	[other]
Attn:	Attn:

Re: [Acquisition/Financing/Activity, e.g. Drilling/Division of Revenue]  
 Title Opinion  
 \_\_\_\_\_ Well  
 \_\_\_\_\_ Prospect  
 \_\_\_\_\_ Lands/Other Assets or Interests  
 (Projected) Section \_\_\_\_\_  
 Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ Base & Meridian  
 \_\_\_\_\_ County, California

Ladies and Gentlemen:

You *[not your lender or any other; explain inclusion of any other addressee]* have requested our opinion concerning title to \_\_\_\_\_ *[certain lands or leases; specific interests or other real property assets]*

for purposes of your contemplated *[because should be discussed, and in what detail, may depend on why you are asking]*

acquisition of ("Transaction")

financing secured by ("Financing" "Security Assets" "Lender" "Debtor")

drilling or other operations, improvements or other activity ("Well" "Contemplated Operations/Improvement(s)/Activity")

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division of revenue obtained from or under ("Well" "Lease" "Unit" "Agreement").

**DESCRIPTION OF LAND UNDER STUDY  
AND COVERED BY THIS OPINION**

The land under study ("LUS") which is the subject of this opinion consists of the following portions of (projected) Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ Base & Meridian (hereinafter referred to as "Section \_\_\_\_\_"), \_\_\_\_\_ County, California (and more or less as depicted in the material attached to this letter at Tab 1): *[insert description]*

**INFORMATION REVIEWED  
AND EFFECTIVE DATE OF OPINION**

We have reviewed and enclose the documents affecting title to the LUS, assembled at your request by \_\_\_\_\_ ("Title Examiner"), and the Title Examiner's chain sheets of those documents, dated as of \_\_\_\_\_, 20\_\_\_\_, which is the "Effective Date" of this letter].

//if any// We also have reviewed the following further materials received (at your request) from \_\_\_\_\_ ("Source Co."). The "Effective Date" of this letter is \_\_\_\_\_, 20\_\_\_\_.

**THE CURRENT LEASE[S]/UNIT/AGREEMENT**

The LUS is a portion of the lands that are subject to \_\_\_\_\_ ("Current Lease[s]" "UNIT" "AGREEMENT").

We express no opinion concerning whether or not conditions or requirements for the continued validity and effect of [the Current Lease(s)/Unit/Agreement] have been satisfied. However, [other than as expressed in this letter] nothing has come to our attention which would lead us to conclude that [(any/either of) the Current Lease(s), Unit Agreement, reflected in documents TEXT is not at present in full force and effect in accordance with its terms.

**RECORD OWNERSHIP**

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*[Acquisition/Activity (drilling)]*

On the basis of the documents reviewed, and subject to the Exceptions, Comments and Requirements described below, it is our opinion that, as of the Effective Date, present *[record]* title to the LUS is vested as follows.

**[MINERAL ENCUMBERED] FEE SIMPLE (so-called "SURFACE") TITLE:**

**MINERAL FEE ("OIL AND GAS RIGHTS") TITLE:**

<b>OIL AND GAS LEASE INTERESTS:</b>	<i>[Lessor Interest] or [Landowner's/Overriding Royalty]</i>	<i>Working Interest</i>
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**UNLEASED OIL AND GAS INTEREST(S):**

Except as otherwise discussed in this letter, no currently unleased oil and gas rights interest in any portion of the LUS has been disclosed from our review of the materials provided for our review.

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*[Division of Revenue]*

On the basis of the materials reviewed, and subject to the Exceptions, Comments and Requirements described below, it is our opinion that, as of the Effective Date, the appropriate division of production and revenue obtained from \_\_\_\_\_ is as follows:

<i>Name</i>	<i>Tract 1<sup>1</sup></i>	<i>Tract 2<sup>2</sup></i>	<i>Royalty Share</i>	<i>WI</i>	<i>NRI</i>
Total Lessor Share					
Total ORRI Share					
Total WI Share					
TOTAL					100%

<sup>1</sup> Tract allocation factor for Tract 1: \_\_\_\_\_  
<sup>2</sup> Tract allocation factor for Tract 2: \_\_\_\_\_

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*[Secured Financing]*

On the basis of the documents reviewed, and subject to the Exceptions, Comments and Requirements described below, it is our opinion that, as of the Effective Date, the present interest of the Debtor in the Security Assets is as follows.

**itemize Security Assets and Debtor's interests, and/or:**

Based solely upon examination of the documents described above and having regard for such legal considerations as we deem relevant, and subject to the qualifications set forth below, we are of the opinion that:

1. The form of the Deeds of Trust, including the form of acknowledgments thereto and the form of the descriptions of the real property subjected thereto, complies with the laws of the State concerning recording in public real property records, and is adequate and legally sufficient for such recording with respect to the Security Assets located in the State as therein defined and described. The Deeds of Trust (a) create a lien upon and a security interest in all of the Security Assets described therein and located in the State to secure the Obligations and (b) provide for non-judicial foreclosure remedies customarily used in the State.
2. Fully executed and acknowledged counterparts of the Deeds of Trust, each of them including the relevant portions of Exhibit A, descriptions of the Security Assets, should be filed for record in each county in the State where any portion of the Security Assets is located (each of them a "**Recording Jurisdiction**"). Other than the foregoing, no authorization, consent, approval, license or exemption of, and no registration or filing in, any public office or records in the State is necessary for the perfection of the liens intended to be created by the Deeds of Trust on the portion of the Security Assets constituting real property and fixtures located in the State, and on the portion of the Security Assets constituting as-extracted collateral from a wellhead located in the State.
3. We note a difference between the provisions of the California UCC, on one hand, and those of the California Civil Code and decisional authority, on the other, with respect to the consequences of improper indexing of documents filed for the perfection of a security

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interest. California UCC section 9517 provides, "The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record," thus imposing the risk of filing-office error on a person subsequently searching the record. However, California Civil Code section 1213, which limits the effect of instruments recorded in county real property records to such as are "acknowledged or proved and certified and recorded as prescribed by law," has been consistently interpreted to make the county recorder, in effect, the agent of the grantee (i.e., Lender, in the present context). (*Lewis v. Superior Court* (1994) 30 Cal.App.4<sup>th</sup> 1850.)

The California Supreme Court has held that a recorded mortgage of land erroneously indexed only as a "note and pledge as security" did not impart constructive notice to a subsequent purchaser of the real property who is not obligated to examine the record of an instrument that is shown by the recorder's index to affect only personal property. (*Rice v. Taylor* (1934) 220 Cal. 629.) It remains an unsettled question which of these rules applies, and thus where this risk resides, when the filing office under the California UCC is the county recorder, as in the case of fixture filings and filings against as-extracted collateral.

4. For your information, we note the following in regard to communication with Colusa County, Kern County and Yolo County, which we understand to be the sole appropriate and intended Recording Jurisdictions in the State:

Colusa County Clerk-Recorder

Kern County Recorder

Yolo County Clerk-Elections-Recorder

5. Other than statutory filing and recording fees to be paid upon the recording of the Deeds of Trust in each Recording Jurisdiction, no state or local recording tax, stamp tax or other similar fee, tax or governmental charge is required to be paid in connection with the recording of the Deeds of Trust in the Recording Jurisdictions.

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6. After the recordings discussed above have occurred, the liens created by the Deeds of Trust on the portion of the Security Assets located in the State and constituting real property and fixtures, and on the portion of the Security Assets constituting as-extracted collateral to be produced from a wellhead located in the State, will be perfected. The priority of the liens and security interests created by the Deeds of Trust with respect to Indebtedness incurred by the Debtor on or before or after the date on which the relevant Deed of Trust is filed in the appropriate recording offices referred to in Paragraph 3 above (assuming proper indexing) will be determined by the date of filing of the relevant Deed of Trust.
  7. After the recordings discussed above have occurred, no further instruments need be recorded, registered or filed or re-recorded, re-registered or re-filed in any public office in the State in connection with the execution and delivery of the Deeds of Trust in order to maintain the perfection of the liens created thereby.
  8. The execution and delivery by the Debtor (as Trustor) of the Deeds of Trust, compliance with the provisions thereof, and the consummation of the transactions contemplated thereby will not conflict with or result in a violation of any law or governmental rule or regulation of the State or any subdivision thereof.
  9. It is not necessary for the Agent (or Lender) to qualify to do business in the State or file in the State any designation for service of process or reports solely by reason of the interests conveyed or assigned to it (or for its benefit) under the Deeds of Trust, nor will such conveyances or assignments alone result in the imposition upon the Agent (or any Lender) of any taxes by the State or by any subdivision thereof, including, without limitation, franchise, license, tax on interest received or income taxes, other than recording and filing fees in connection with the filings discussed above and taxes which the Agent (or any Lender) may owe in the event it becomes the actual and record owner of any Security Assets situated in the State.
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**EXCEPTIONS**

1. Documents Not Reviewed:

We have not independently reviewed the records of the \_\_\_\_\_ County Recorder, or other public or private records, relying solely on the material provided for our review, as described above. Our opinion is subject to the effect of any document not included in the material provided to us, and we assume that the material provided to us includes an accurate and complete record concerning the LUS for the period prior to the Effective Date insofar as relevant to the opinions expressed in this letter. We also assume that each of the documents provided for our review was duly executed by authorized signatories on behalf of all parties thereto, and our opinion is subject to the accuracy of those assumptions. Other than as indicated in this letter, nothing has come to our attention from which we conclude either (i) that the material provided to us is not an accurate and complete record concerning the LUS for the period prior to the Effective Date insofar as relevant to the opinions expressed in this letter or (ii) that any document in the material provided to us was not duly executed by authorized signatories on behalf of all parties thereto.

2. Rights Or Claims Based Upon Matters  
Not Included Within Documents Reviewed:

We except from our opinion (a) rights or claims arising under unpatented mining claims and rights or claims of persons in possession of the LUS which are not shown in the documents reviewed, (b) claims or rights (and discrepancies or errors in surveys, descriptions or locations) that could be ascertained by making a physical inspection or survey of the LUS, or by making inquiry of the persons in possession of the LUS, and (c) matters of which you, or your agent, have actual or constructive notice but which are not disclosed to us by the documents reviewed.

3. Access, Extralateral Rights; Use In Support Of Outside Operations:

Our opinion is confined to the current right, title and interest in and to the LUS as determined from the materials provided for our review and, except as discussed immediately below, we exclude from our opinion: (i) any right of access to the LUS over, on or beneath the surface of other lands, (ii) any right to prosecute operations from the LUS into the subsurface of other lands, and (iii) any right to the possession, use or improvement of the LUS in support of operations within other lands, and we express no opinion concerning any of those subjects.



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4. Taxes, Assessments And Related Liens:

The documents reviewed contain no information reflecting a current default or delinquency in the payment of any tax or other assessment upon any part of or interest in the LUS. However, we render no opinion concerning the current status of any tax or other assessment or liens related thereto.

5. Land Use, Zoning And  
Environmental Laws And Regulations:

(With the exception of the matters discussed in Requirement \_\_\_\_\_, below,) we have not reviewed, and except from this opinion, the effect of (a) land use, zoning and environmental laws and regulations, including laws and regulations based upon or concerning the setting or character of the LUS (e.g., as wetlands, submerged lands, coastal lands, etc.), or the character of its flora and fauna (e.g., as threatened or endangered species, etc.) and of (b) other laws and regulations restricting, regulating or prohibiting the use or occupancy of the LUS for oil and gas operations or other purposes, and of (c) any violation of, or lien arising under any of, the same except only violations and liens which both (i) are existing and known and (ii) are explicitly disclosed within the documents reviewed.

6. Conditions Precedent To  
(Limited) Effect Of Patent(s):

TEXT

7. Crop And Chattel Mortgages:

Crop and chattel mortgages, either in their traditional form under that name or in the current form of UCC-1 financing statements (in either event, "**Financing Statements**"), do not themselves directly affect title to real property or minerals, including oil and gas, prior to extraction, but only to crops and chattels upon the property. However, Financing Statements may be filed to perfect interests in minerals, including oil and gas, upon extraction or severance. ***None of the Financing Statements included within the documents reviewed purports to affect oil and gas within or upon extraction from the LUS.*** Financing Statements are often entered into by tenants of the record owner under a recorded or unrecorded surface lease. However, crop and chattel

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mortgages by a stranger to title may suggest an otherwise undisclosed claim to an interest in the real property itself through either adverse possession or a vesting document not included within those provided for our review. We except from our opinion any claim of a crop and chattel mortgagor who is otherwise a stranger to title, and the claim of any person claiming by, through or under such a mortgagor.

8. Undocumented Name Changes:

The documents reviewed reflect the following undocumented name changes. That is, apparent changes in name without conclusive indication that the differing names do, in fact, refer to the same individual.

TEXT

California Civil Code section 1096 provides that a person who after acquiring title to real estate "shall afterwards, from any cause, have his or her name changed, must, in any conveyance of said estate so held, set forth the same in which he or she derived title to said real estate." This section also provides that a conveyance, even though recorded, which does not satisfy the requirements of that section "shall not impart constructive notice of the contents thereof to subsequent purchasers and encumbrancers [e.g., subsequent lessees]." A lease of real property, including a mineral lease, is included within the term 'conveyance' for purposes of this section, and its provisions have been held applicable to a corporation. (*Puccetti v. Girola* (1942) 20 Cal.2d 574, 576-577.) Section 1096, however, also provides that a conveyance which does not satisfy its requirements "is valid as between the parties thereto and those who have notice thereof." Our opinion of title as expressed above is subject to any failure of title resulting from these matters or from the lack of identity of the individuals involved.

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**COMMENTS**

1. No Record Of Interest  
Within Documents Reviewed:

TEXT (potential constructive notice; might also be an exception or requirement)

2. Revenue Interest Matters:

TEXT

3. Purported Contingent  
Mineral Exception In Patent:

Document TEXT is a patent of TEXT , by the United States in favor of the \_\_\_\_\_ Railroad Company with respect to the LUS and other lands. The patent includes language nominally "excluding and excepting all mineral lands should any such be found in the [lands patented]." This exception is intended to comply with the Act of June 27, 1866 which authorized such railroad grants. However, in *Burke v. Southern Pacific Railroad Company* (1913) 234 U.S. 669, the Supreme Court held such prospective contingent exceptions of lands which might later be found mineral in nature to be void. The Court held that title, therefore, passed under such patents free of the exception but subject to the right of the United States to attack the patent by direct suit for annulment if the land had been known to be mineral in character when the patent was issued. By Act of March 2, 1896, Congress provided that a suit by the United States for that purpose with regard to a patent issued before its passage could be brought only within the ensuing five years. (43 U.S.C. Sec. 900.) The title of the mineral interest owners reflected above is therefore not subject to challenge on this subject at this time.

4. Deed/s/ Of Trust Affecting Mineral Encumbered  
Fee Simple (so-called "Surface") Interest Only:

TEXT

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**REQUIREMENTS**

1. Unsurrendered Prior Oil And Gas Lease(s):

TEXT

Requirement No. 1:

Obtain and record a quitclaim or other appropriate surrender of the lessee's interest under this/these leases(s).

[Refer to and discuss Civil Code section 883.140 (expiration or abandonment of oil and gas lease; lessor's rights)]

Confirm to your satisfaction that this oil and gas lease—along with all of the right, title and interest of the original and any successor lessee thereunder—has ended whether through expiration of the term, abandonment by the lessee, or otherwise.

2. Compliance With California Civil Code Section 848:

The provisions of California Civil Code section 848 concerning advance notice of contemplated entry into real property by an owner of mineral rights have been substantially revised effective January 1, 2013. As discussed in turn below, the revised section addresses: (a) the persons to whom such notice must be provided when required, (b) the required substance of such notice in varying circumstances, (c) the circumstances in which notice is required, (d) the time of giving required notice, (e) the manner of giving required notice, and (f) the penalty or consequences for failure to give required notice. (The entire revised section 848 is attached for your convenient reference at Tab \_\_\_\_.)

***a. Persons to whom notice must be provided***

When required, the notice in question must be given either to the owner of the real property (the assessee listed on the current local assessment roll), the owner's representative, or the lessee of the real property if different from the mineral rights owner. Notice is also required to be given to any public utility that has a recorded interest in the real property—if *there is to be excavation of the utility interest*. As discussed below, no further separate detail is provided

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concerning either the substance of such public utility notice, the time and manner in which it must be given, or circumstances, if any, in which it is “excused” or “waived.”

***b. Required substance of notice in varying circumstances***

The substance of the required notice depends upon the specific purpose or character of the planned entry, namely, if the entry is to be “non-surface-disrupting” versus “surface-disrupting.” Those two concepts are described in the revised section as follows:

(i) Non-Surface-Disrupting Entry—the planned entry is for the purpose of undertaking non-surface-disrupting activities such as surveying, water and mineral testing, and removal of debris and equipment not involving use of an articulated vehicle on the real property. With respect to a “non-surface-disrupting” entry, the prior notice must specify the: (A) date of entry, (B) estimated length of time the property will be occupied, and (C) general nature of the work.

(ii) Surface-Disrupting Entry—the planned entry is for the purpose of excavation or other surface-disrupting activities such as drilling new wells, constructing structures, bringing articulated vehicles or excavation equipment on the real property, or reclamation of the real property after the surface has been disturbed. With respect to a “surface-disrupting” entry, the prior notice must specify both: (A) the extent and location of the prospecting, mining, or extraction operation, and (B) the approximate time or times of entry and exit upon the real property.

Please note that the specific language of section 848 variously refers to “non-surface-disrupting” activities, “surface-disrupting” activities, and “surface-disturbing” activities, as well as activities “after the surface has been disturbed.” Considering the examples given, we believe that that “surface disrupting activities” and “surface disturbing activities” should be interpreted (in the context of this code section) to mean any more than insignificant interference with the landowner’s entry into, use or improvement of the surface of the real property in question. We also believe that the insignificance of such interference would depend for the most part upon its character or magnitude, although its duration might also be a factor in close cases.

***c. When notice required***

(i) Notice to the owner/assesse, representative or lessee is required in the following circumstances: (A) “prior to the first entry” by the mineral rights owner, or (B) if the

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mineral rights owner's entry to the real property has ceased for a period of one year or more, and the mineral rights owner now intends to enter the property for surface-disrupting activities.<sup>3</sup> However, if the mineral rights owner intends to enter the property to conduct activities that include the "excavation" of property in which there is a recorded public utility interest, which we understand to mean "surface-disrupting" activities within the area of the public utility's interest, then notice must be given to the public utilities with recorded interests in that area.

(ii) The notice requirements under section 848 do not apply if: (A) the real property owner/assessee has a current surface use, access use, or similar agreement with the mineral rights owner, lessee, agent, or operator, (B) there is no known owner on the assessment roll or any public utility which has a recorded interest in the real property, or (C) the Division of Oil, Gas, and Geothermal Resources, its agent or the mineral rights owner (under authorization of the DOGGR) drills or is ordered to drill a relief well, or takes or is ordered to take immediate actions in response to an emergency situation. ("Emergency" means immediate action is necessary to protect life, health, property, or natural resources.) There is no express provision excusing public utility notification if either there is a surface use agreement or an emergency operation is ordered by the DOGGR. Given the evident purposes and overall framework of the section, we would think that public utility notice would not be excused merely by the existence of a surface use agreement with the landowner. On the other hand, with the same considerations in mind, we would think that public utility notification would be excused when an emergency operation is ordered by the DOGGR.

***d. Time of giving required notice***

A non-surface-disrupting entry requires that notice be given five days prior to entrance on the property. A contemplated surface-disrupting entry requires a minimum of 30 days' notice. No

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<sup>3</sup> Since, by its terms, section 848 only requires notice for a "first entry" (i.e., unless a year or more has elapsed without entry), it may be that after giving notice prior to a first entry for non-surface-disturbing activities no subsequent notice is required for an entry for surface-disturbing activities—at least so long as a period of one year or more has not elapsed without entry. We would encourage you, however, to consider giving notice of a first entry for surface-disturbing activities even if notice of entry for non-surface disturbing activities has already been given, unless the first such notice actually included notice of entry for both surface-disturbing and non-surface disturbing activities. Furthermore, from the point of view of establishing a sound and mutually respectful relationship, you might want to consider giving reasonable advance notice of every entry that is anything more than routine.

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specific separate provision is made about the time for giving public utility notification, which should not in any event be required in connection with a planned “non-surface-disrupting entry” (since public utility notice is only required if there is to be “excavation of the utility interest”). When required, we believe the safest course would be to provide the same minimum 30-day notice to a public utility.

***e. Manner of giving required notice***

The provisions for notice of a “non-surface-disrupting” entry require that “[r]easonable attempts shall be made to deliver the [minimum five-day] notice by *acknowledged personal delivery*,<sup>4</sup> but if that cannot occur, the notice shall be delivered by registered letter and be received a minimum of five days prior to the entrance on the property.” The notice provisions for surface-disrupting activities do not include the manner in which such notice is to be provided. However, we believe that the best reading of revised section 848 is that notice of entry with respect to surface-disrupting activities should be given in the same manner as notice of entry with respect to non-surface-disrupting activities (i.e., reasonable attempts should be made to deliver the minimum 30-day notice by *acknowledged personal delivery*, but if that cannot occur, by registered letter to be received a minimum of 30 days prior to the entrance on the property.) In the case of a required public utility notice, the safest course would be to follow the same procedures (reasonable attempts to deliver the minimum 30-day notice by *acknowledged personal delivery*, but if that cannot occur, by registered letter received a minimum of 30 days prior to entry).

***f. Consequences or penalty for failure to give required notice***

If the mineral rights owner fails to comply with the requirements of section 848 when notice is required, “the owner of the real property listed on the current assessment roll or any public utility which has a recorded interest in the real property may request a court to enjoin the prospecting, mining, or extracting operation until the mineral rights owner has complied.”

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<sup>4</sup> Subsection (e) provides that “For purposes of this section, an ‘*acknowledged personal delivery*’ means that the written notice is personally delivered to the owner, the owner’s representative, or lessee, and the owner, the owner’s representative, or lessee acknowledges, in writing, receipt of the notice.” (Emphasis added.)

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Requirement No. 2:

The specific requirements of the notice, if any, required for an intended entry by you into the LUS will depend upon the specific factors discussed in section 848 and above.

It appears from the information provided by the Title Examiner that the owner(s) of the LUS listed as the assessee(s) on the current local assessment roll is/are \_\_\_\_\_. (We are not aware that [any of those/this] owner(s) has designated an "owner's representative" to whom notice under section 848 might be made in lieu of notice to the assessee-owner.) (We are not aware of any lessee of the property to whom to notice under section 848 might be made in lieu of notice to the assessee-owner.) ([There are no] [P]ublic utilities with recorded interests in the LUS [include \_\_\_\_\_][disclosed by the materials provided for our review].)

3. Surface Rights Of Others:

The documents provided for our review reflect the existence of surface use rights of other persons within the LUS in connection with which improvements may have been constructed or installed within or immediately adjacent to the LUS.

- (a)
- (b)
- (c)

Requirement No. 3:

Locate the areas affected by these rights and avoid any improvements constructed or installed in connection with such rights in your operations within the LUS.

4. Land Use (Conservation) Contract(s):

Document TEXT is a so-called "Williamson Act" land use, or conservation, contract concerning the LUS [and other lands]. Such contracts are governed by the provisions of the California Government Code and local land use regulations. They generally limit the use of affected lands



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to defined "agricultural" and enumerated "compatible" uses, in return for prescribed property tax benefits. It is our experience that oil and gas related operations (with the usual exception of "refinery" operations and facilities) are commonly included among the "compatible" uses allowed within such lands under local land use regulations.

Requirement No. 4:

Determine from the appropriate TEXT County planning authorities whether and on what basis your contemplated operations are permitted within the LUS. Comply with the applicable provisions of the TEXT County zoning code or ordinance and obtain any land use permits and approvals required for your contemplated operations within the LUS.

5. Mineral Lessor(s) Has/Have  
No Record Interest In LUS:

TEXT

Requirement No. 5:

TEXT

6. Current Oil And Gas Lease Unrecorded:

TEXT

Requirement No. 6:

TEXT

7. Recorded Short Form Lease Does Not Impart Notice of Lease Terms or of Potential Use Or of (specify or describe) Operations:

TEXT

Requirement No. 7:

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TEXT

8. No Record Of Death Of Joint Tenant:

TEXT

Requirement No. 8:

TEXT

9. Break In Title Chain/Out Of Sequence  
Recording/No Record Of Succession To Interest(s):

TEXT

Requirement No. 9:

TEXT

10. Ambiguous Effect Of Document:

TEXT

Requirement No. 10:

TEXT

11. Current Deeds Of Trust Affecting  
(Surface and) Oil and Gas Rights Interest/s/ :  
(Superior to Lease Amendment):

TEXT

This deed of trust was TEXT subsequent in time and TEXT subordinate to the current oil and gas lease upon the TEXT mineral interest (document TEXT ). However, by amendment subsequent to the recordation of this deed of trust the primary years to TEXT years and then to TEXT years.

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(Documents TEXT and TEXT , respectively.) Under California law, unless qualifying operations were commenced before the end of the original TEXT -year primary term and continued thereafter, the current lease has been subordinate to this deed of trust since the expiration of the original TEXT -year term. (*Trust National Bank v Coast Consolidated Oil Company* (1948) 84 Cal.App.2d 250, 254-256.)

Requirement No. 11:

For each of the deeds of trust reflected in documents TEXT , obtain and record either a subordination of the trustee's interest under the deed of trust to the interest of the oil and gas lessee under document[s] TEXT or a reconveyance of such trustee's interest.

With respect to deeds of trust as to which such a subordination is obtained and recorded, rather than a reconveyance, you may also wish to record requests for notice of default with respect to the obligations of the trustor under each of these deeds of trust pursuant to California Civil Code Section 2924b.

12. Uncertain Status Of "Prior" Deeds Of Trust:

Effect of Potential Expiration of Deed of Trust (Civil Code section 882.020, et seq.

Effect of Satisfaction of Debt:

TEXT

The [amounts secured by the above deeds of trust are relatively small. However, the] absence of a record of an appropriate reconveyance of a deed of trust is significant because California follows the "title theory" as contrasted with the "lien theory" concerning the effect of a deed of trust. —*Ancient Mortgages and Deeds of Trust*— Under California law, a deed of trust actually establishes title in the trustee and not merely lien in his favor upon the affected property. In accordance with this reasoning, while the statute of limitations may operate to bar an action upon the debt involved, the mere passage of time cannot affect either the title of the trustee or

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the power of extrajudicial sale provided for in the deed of trust. (See, e.g., *Hohn v. Riverside County Flood Control District* (1946) 228 Cal.App.2d 605, 614-615.)

However, with the adoption of the “Ancient Mortgages and Deeds of Trust” provisions in section 882.020 of the California Civil Code, a deed of trust may expire through the passage of time and become thereafter “unenforceable by any means.” The period of time required for such expiration, the possibility of an extension of that period, and other specifics concerning the application and enforcement of these provisions appear in the cited sections of the Civil Code.

Moreover, as stated in *Sacramento Bank v. Murphy* (1910) 158 Cal. 390, 395-396, payment of the debt divests the beneficiary of its equitable title and provides a defense to an action by the trustee (and a basis for an action against the trustee) if it should attempt to act on the basis of its record title.

Requirement No. 12:

If the debt or other performance secured by a deed of trust has been satisfied or performed, then a reconveyance of the interest of the trustee thereunder should be requested and recorded. Refer to California Civil Code section 2941(b).

Even if the debt or other performance secured by a deed of trust has not been satisfied or performance, you may nevertheless obtain and place of record as to any such deed of trust either: (i) a substitution of the beneficiary as trustee under the deed of trust and reconveyance from the beneficiary/trustee, (ii) a reconveyance of the deed of trust in the name of the original trustee, or (iii) a document reflecting the substitution in place of the original trustee of the parties identified as trustee in the purported reconveyances. If this latter course is pursued, such recorded document should include express reference to the previously recorded reconveyances by that substituted trustee.

If you are unable to determine whether the debt or other performance secured by a deed of trust has been satisfied or performed, and you are otherwise unable to satisfy either of the preceding alternatives, you should consult the provisionsk

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of California Civil Code, and ascertain whether a deed of trust has “expired” through the passage of time and thereby become “unenforceable by any means.”

**CONCLUSION**

\_\_\_\_\_ is our only client in connection with the preparation of this letter. The opinion expressed above is given solely for your use with respect to the referenced matter and operations. That opinion and this letter as a whole should not be relied upon by you in connection with any other matter or operations, and should not be relied upon by another person or entity for any purpose.

This opinion is furnished for the benefit of the Agent, any successor to the Agent in such capacity, each Lender and any transferee or assignee of any Lender in connection with the transactions contemplated by the Credit Agreement. This opinion may not be relied upon by any of those persons for any other purpose, and it may not be furnished to, assigned to, quoted in whole or in part or otherwise referred to or disclosed to, or relied upon by any other person for any purpose, or in any other transaction, without our prior written consent, which may be given or withheld in our discretion.

If you have any questions concerning any of the foregoing, the attached, or the enclosed, please feel free to contact us at your convenience.

Very truly yours,

Attachments (Tabs \_\_\_\_\_)

Enclosures

cc: \_\_\_\_\_ (w/attachments; w/o enclosures)