



David M. Hundley
Vice President and General Counsel
Board Certified – Oil, Gas and
Mineral Law
Texas Board of Legal Specialization

August 16, 2005

Mr. Andrew Weber
Clerk, Texas Supreme Court
201 W. 14th Street, Room 104
Austin, Texas 78701

Re: Cause No. 05-0466, *Coastal Oil & Gas Corporation and
Coastal Oil & Gas USA, LP., v. Garza Energy Trust, et al.*,
In the Supreme Court of Texas

Dear Mr. Weber:

This letter is respectfully submitted as *amicus curiae* in support of the Petition for Review filed by the Petitioners in the referenced case. Please file the letter appropriately and provide copies to the Justices.

I am a Vice President and the General Counsel of Chief Oil & Gas LLC (“Chief”), an exploration and production company in Dallas. Chief was formed in 1994 and drilled wells in mature fields in the Ft. Worth basin of North Texas. In 1999 Chief began to focus its efforts in the Barnett Shale Field of North Texas, not long after Mitchell Energy (now Devon Energy) had perfected a successful hydraulic fracture treatment for Barnett Shale gas wells. As of today, Chief has drilled over 300 Barnett Shale wells, 275 of which have been completed and are now producing roughly 120 million cubic feet of gas per day. Chief is presently the third largest gas producer in the Barnett Shale Field, behind only Devon and XTO Energy. Chief maintains a five rig drilling program, and we expect to drill approximately 80 wells in 2005. It is safe to say that without the development of the hydraulic fracture treatment and its application to the field, many operators, including Chief, would not have had near the success each has enjoyed. The hydraulic fracture treatment utilized to complete over 99% of the Barnett Shale Field wells is quite similar to that utilized by the operator in the *Mission Resources, Inc. v. Garza Energy Trust* case.

The Barnett Shale Field in North Texas is now recognized as potentially the largest gas field in the United States. The United States Geological Survey estimates the reserves in place at over 30 trillion cubic feet of gas. This single gas field presently has

wells producing in eleven North Texas counties. As of this writing, there are over 90 drilling rigs in operation and there are over 4,000 producing wells in the field. It is no exaggeration to state that millions of Texans feel the economic impact of the Barnett Shale Field in some form or another, whether it is royalties from production, salaries from jobs that are somehow related to the field, tax revenues for schools, cities and hospitals, etc. Again, none of this would be possible without the development of a hydraulic frac procedure.

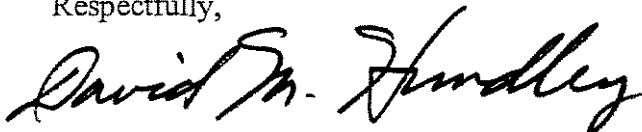
Here at Chief we are greatly concerned about the Corpus Christi Court of Appeals recent holding in *Mission Resources*. The case has dangerous ramifications for operators in the Barnett Shale Field, primarily because, as noted above, a hydraulic frac procedure is used to complete virtually all of the wells in this field.

The Court of Appeals' holding in *Mission Resources* arguably creates a new type of subsurface trespass cause of action and disregards numerous well-settled principles in oil and gas law that operators have come to rely on in negotiating leases and designing their drilling and completion programs, most notably the rule of capture. Frankly, if a royalty owner can sue an offset operator for subsurface trespass for a frac job as held in *Mission Resources*, why would he be limited to frac treatments? It is entirely foreseeable that a royalty owner will sue an offset operator for subsurface trespass due to a specific perforation procedure, or for a downhole acidization procedure that allegedly trespassed across a lease line. In short, if *Mission Resources* is upheld operators would likely spend an inordinate amount of time and resources justifying whatever was done to stimulate production from a particular well in an effort to anticipate and combat the inevitable subsurface trespass lawsuit. Lastly, on a public policy note, the subsurface trespass cause of action and the remedy of punitive damages as permitted in *Mission Resources*, will likely have a significant chilling effect on oil and gas development in a huge Texas gas field at a time when oil and gas are already in short supply.

Over the past fifty years Texas courts have heard hundreds of royalty litigation cases, and these cases have resulted in the creation of numerous legitimate causes of action and theories of recovery for royalty owners. I urge the Court to grant the Petition for Review in the referenced action and apply such law to reverse the Court of Appeals in *Mission Resources* and to confirm that the subsurface trespass cause of action for fracture treatment is not part of Texas law.

Thank you for your consideration.

Respectfully,



David M. Hundley

cc: Counsel of Record