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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15 KRYSTAL ENERGY CO., INC.,
16 Debtor.

Case No. 2:12-cv-00079-FJM
Case No. 2:12-cv-00079-FJM
(Consolidated)

Bankruptcy Case: No. 2:01-bk-00166-SSC

Adversary Proceeding: No. 2:01-ap-00171-GBN

20 KRYSTAL ENERGY CO., INC.,

21 Plaintiff,

22 vs.

23 NAVAJO NATION,

24 Defendant.

NOTICE OF FILING DEFENDANT'S:

**OBJECTIONS TO BANKRUPTCY COURT'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

-AND-

**REQUEST FOR *DE NOVO* REVIEW AND
INDEPENDENT DETERMINATION BY
DISTRICT COURT**

Pursuant to this Court's Order of April 16, 2012 [Docket No. 10], the Defendant, the Navajo Nation, by and through its counsel, hereby gives notice of the filing of the attached *Objections to the Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law and Request for De Novo Review and Independent Determination by the District Court*, which were previously filed by the Defendant in the Bankruptcy Court as Adversary Docket No. 241.

DATED: April 17, 2012.

NAVAJO NATION DEPARTMENT OF JUSTICE
Harrison Tsosie, Attorney General

/s/MRG

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File an Answer/Response/Objection:

2:01-ap-00171-GBN KRYSTAL ENERGY CO. INC. v. THE NAVAJO NATION

Type: ap Chapter: v Office: 2 (Phoenix)
Disposition: Transfer to Judge: GBN Lead Case: 2-01-bk-166
Another District
Case Flag: Exhibits

U.S. Bankruptcy Court

District of Arizona

Notice of Electronic Filing

The following transaction was received from WILLIAM NOVOTNY entered on 2/10/2012 at 4:51 PM AZ and filed on 2/10/2012

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Case Number: 2:01-ap-00171-GBN
Document Number: 241

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Objection to Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law and Request for De Novo Review and Independent Determination by District Court filed by WILLIAM NOVOTNY of MARISCAL, WEEKS, MCINTYRE, & FRIEDLANDER on behalf of THE NAVAJO NATION (related document(s) [227] Memorandum/Opinion Decision, [228] Generic Order). (NOVOTNY, WILLIAM)

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

KRYSTAL ENERGY CO., INC.,

Debtor.

Chapter 11
Case No. 2:01-00166-GBN

District Court No. CIV 12-00079-PHX-
FJM

KRYSTAL ENERGY CO., INC.,

Plaintiff,

Adversary No. 2:01-ap-00171-GBN

vs.

**OBJECTIONS TO BANKRUPTCY
COURT'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

NAVAJO NATION,

-AND-

Defendant.

**REQUEST FOR *DE NOVO* REVIEW AND
INDEPENDENT DETERMINATION BY
DISTRICT COURT**

1 **I. INTRODUCTION.**

2 On January 6, 2012, the United States Bankruptcy Court for the District of
3 Arizona (Judge George B. Nielsen, Jr.) submitted its *Proposed Findings of Fact,*
4 *Conclusions of Law and Order* [Docket No. 227] ("*Proposed Findings and*
5 *Conclusions*") (copy attached hereto as Exhibit A), with a *Recommendation to*
6 *United States District Court for Issuance of a Final Judgment and Order* [Docket
7 No. 228] ("*Recommendation*") (copy attached hereto as Exhibit B) in the above-
8 referenced adversary proceeding brought by Krystal Energy Co., Inc. ("Krystal"),
9 as Plaintiff, against the Navajo Nation ("Navajo Nation"), as Defendant. The
10 Bankruptcy Court had previously ruled that the Navajo Nation was liable to Krystal
11 for the value of Krystal's personal property and equipment which had been
12 removed by the Navajo Nation or others from two leased oil and gas well drilling
13 sites on the Navajo Reservation in Utah and New Mexico (the "Sites"). Krystal has
14 asserted rights and interests in personal property and equipment at the Sites,
15 which were located at or under the Sites, after a proposed assignment of lease
16 rights from the then-current lessee, Cross Creek Corp., to Krystal had been
17 disapproved and Krystal had been ordered off the Sites.

18 The subject of the *Proposed Findings and Conclusions* is the personal
19 property and equipment, and the value thereof, in which Krystal has claimed rights
20 and interests, and which Krystal was denied the opportunity to remove, when
21 Krystal was ejected from the Sites. Based on the opinions of Krystal's valuation
22 witnesses, the Bankruptcy Court's *Proposed Findings and Conclusions* adopted a
23 valuation of Krystal's alleged property at \$4 million.

24 Because the adversary proceeding was conducted and treated by the
25 Bankruptcy Court as a "non-core" proceeding, the resulting *Proposed Findings and*
26 *Conclusions* and the *Recommendation* are not final, because the Bankruptcy
27 Court, as a non-Article III Court, lacked constitutional and statutory authority and
28 jurisdiction to enter a final judgment or order in favor of Krystal and against the

1 Navajo Nation. Instead, the Bankruptcy Court was limited to making the *Proposed*
2 *Findings and Conclusions* and the *Recommendation* to the District Court, which
3 possesses the sole authority and jurisdiction to enter a final judgment or order.
4 Furthermore, pursuant to 28 U.S.C. § 157(c)(1) and Bankruptcy Rule 9033, the
5 District Court shall review de novo any aspect of those *Proposed Findings and*
6 *Conclusions* as to which the Navajo Nation has "timely and specifically objected."
7 The scope of that de novo review is addressed further below. Accordingly, the
8 Navajo Nation now submits to the District Court its Objections to the Bankruptcy
9 Court's *Proposed Findings and Conclusions* and *Recommendation*, as detailed
10 below, for de novo review by the District Court.

11 **II. FACTUAL BACKGROUND.**

12 The following summary description of the factual background of this case is
13 not meant to be exhaustive. Instead, it is intended to provide a context for the
14 Navajo Nation's objections to the *Proposed Findings and Conclusions* and the
15 *Recommendation*, as set forth more specifically below. A more complete factual
16 background is reflected in the Bankruptcy Court's record of this adversary
17 proceeding, including the transcript of the evidentiary hearing of the valuation-of-
18 property issues as conducted before the Bankruptcy Court on June 27, 2011
19 [Docket No. 216] ("Transcript").

20 In 1997, Krystal entered into an agreement with Cross Creek Corp., the
21 then-lessee under Leases for two oil and gas well Sites on the Navajo Indian
22 Reservation in Aneth, Utah and in Farmington, New Mexico, pursuant to which
23 Cross Creek Corp. proposed to assign its interests under the Leases to Krystal.
24 The lessor under the Leases was the Navajo Nation. Under Federal Indian law,
25 because the Sites were on Reservation land, the proposed assignments of the
26 leases to Krystal required consent of the Navajo Nation and approval by the
27 Bureau of Indian Affairs. The approval process was slow, and it was not until
28

1 December 1999 that a decision denying the assignment of the Leases to Krystal
2 was made.

3 In the interim, Krystal had taken over operation of the Sites and apparently
4 had made some expenditures to repair or replace equipment or improvements at
5 the Sites. However, Krystal's financial records had been seized by federal
6 authorities in connection with an unrelated criminal investigation, and, as a result,
7 Krystal had no records of what specific expenditures it had made for the Sites,
8 what particular equipment it had brought to the Sites, or what its operating
9 expenses had been during that period. [*Proposed Findings and Conclusions*, p.
10 16, ¶5].

11 Once the proposed assignment of the Leases to Krystal had been
12 disapproved, Krystal was ejected from the Sites in December, 1999, and
13 possession was returned to Amoco, the operator. Cross Creek remained the
14 lessee under the Leases. Access was denied to Krystal to retrieve any personal
15 property or equipment from the Sites that may have belonged to Krystal.

16 Krystal has alleged that the disapproval of the lease assignments by the BIA
17 and/or the Navajo Nation, and the resultant ejectment of Krystal from the Sites,
18 was wrongful. However, the Bankruptcy Court has expressly reserved any ruling
19 on whether the Navajo Nation's "refusal to approve the lease transfer was
20 wrongful." *Proposed Findings and Conclusions*, p. 16, In. 8-9. Instead, the
21 Bankruptcy Court in effect found that, regardless whether the refusal to approve
22 the lease assignment and the ejectment of Krystal from the Sites was proper, the
23 Navajo Nation was liable to Krystal "for the Nation's refusal to return or allow
24 Plaintiff to retrieve its equipment from the terminated leaseholds." *Id.* at In. 11-12.

25 Krystal filed for Chapter 11 bankruptcy relief in 2001;¹ and the instant
26 adversary proceeding by Krystal against the Navajo Nation was filed as a separate
27

28 ¹ The Chapter 11 bankruptcy case was dismissed as of February 14, 2003 (Administrative
Docket No. 48).

adversary proceeding adjunct to the bankruptcy case.² Following a partial summary judgment ruling as to the Navajo Nation's liability to Krystal for the value of whatever property of Krystal it was denied the opportunity to retrieve upon ejectment [Docket No. 88] (copy attached hereto as Exhibit C), subsequently affirmed by the District Court [Docket No. 123] (copy of District Court decision attached hereto as Exhibit D, 2008 WL 4446703), the matter was set for a separate evidentiary hearing on the sole issue of damages/valuation relating to Krystal's alleged personal property and equipment at the Sites.

The evidence presented at that June 27, 2011, hearing regarding the identification of Krystal's personal property and its valuation was the basis for the Bankruptcy Court's *Proposed Findings and Conclusions* and the *Recommendation*. That evidence (or lack of evidence) also constitutes the basis for the Navajo Nation's specific objections to those *Proposed Findings and Conclusions*, and the *Recommendation*, summarized as follows and discussed in greater detail below:

1. The *Proposed Findings and Conclusions* misstate the applicable standard of review;
2. The Bankruptcy Court's valuation findings were inconsistent with the damages measure that had been previously determined in the liability ruling by the Bankruptcy Court [Docket 88] and in the District Court's affirmance of that ruling [Docket No. 123]; and
3. Krystal did not present sufficient and admissible evidence to support any proposed finding by the Bankruptcy Court as to what specific personal property and equipment existed at the Sites at the time of Krystal's ejectment, nor did Krystal establish what rights (if any) Krystal held in any such property or equipment;

² The proceedings were delayed for several years by litigation over whether Congress had waived the Navajo Nation's otherwise applicable sovereign immunity to such a claim. The Ninth Circuit resolved that issue, finding a Congressional waiver of sovereign immunity, which allowed the case to proceed. Krystal Energy Co. v. Navajo Nation, 375 F.3d 1055 (9th Cir. 2004).

- 1 4. The testimony of the valuation witnesses offered by Krystal
2 was based upon erroneous measures of value and therefore
3 provided no support for the Bankruptcy Court's valuation
4 determinations in the *Proposed Findings and Conclusions*.

5 **III. THE STANDARD OF REVIEW.**

6 The decision of the Bankruptcy Court in the underlying adversary proceed-
7 ing is before the District Court for review of the "proposed findings of fact and
8 conclusions of law" submitted by the Bankruptcy Court to the District Court. 28
9 U.S.C. § 157(c)(1). The Bankruptcy Court could not -- and did not purport to --
10 enter a final judgment from which an appeal would be the avenue for further
11 review under an appellate standard. Instead, the Bankruptcy Court treated the
12 underlying proceeding as a "non-core" proceeding, culminating only in "proposed"
13 findings of fact and conclusions of law, accompanied by a "Recommendation " that
14 the District Court enter a final judgment, matters which are not final and which
15 require further action by the District Court in order to become final.

16 Under such circumstances, the District Court reviews de novo "any portion
17 of the bankruptcy judge's findings of fact or conclusions of law to which specific
18 written objection has been made." Rule 9003(d) of the Federal Rules of
19 Bankruptcy Procedure; see also 28 U.S.C. § 157(c)(1) ("any final order or
20 judgment shall be entered by the district judge after considering the bankruptcy
21 judge's proposed findings and conclusions and after reviewing de novo those
22 matters to which any party has timely and specifically objected").

23 On such de novo review, the District Court is not required, but may decide,
24 to receive "further evidence," and may "accept, reject or modify" the Bankruptcy
25 Court's proposed findings and conclusions. Bankruptcy Rule 9033(d). Indeed, the
26 District Court "is required to make an independent assessment of the issues." *In*
27 *re Lion Capital Group*, 63 B.R. 199, 203 (S.D.N.Y. 1985) (emphasis supplied).
28 See also *Moody v. Amoco Oil Company*, 734 F.2d 1200, 1210 (7th Cir. 1984) ("de
 novo review requires the district court to make an independent judgment of the

1 issues," affording "no deference to the bankruptcy court's findings and
2 conclusions") (emphasis supplied). In other words, the District Court need not
3 determine that the Bankruptcy Court was wrong on the law or the facts, only that
4 the District Court would reach a different conclusion on the same record,
5 supplemented with any additional evidence that the District Court deems
6 appropriate.

7 Bankruptcy Rule 9033(b) and (d) regarding de novo review of a Bankruptcy
8 Judge's proposed findings of fact and conclusions of law is "derived" from F. R.
9 Civ. P. Rule 72(b) regarding District Court review of recommendations of a magi-
10 strate judge, and Rule 9033 "adopts the de novo review provisions" of Rule 72(b).
11 (Advisory Committee Notes to Rule 9033). While "new hearings" are not required
12 before the District Court (although they are clearly authorized and permitted),
13 review of the record by the District Court (i.e. consideration of the "actual
14 testimony") is mandated. *Castro v. Perez*, 919 F.2d 107, 108 (9th Cir. 1990)
15 (review of Bankruptcy Court findings and conclusions); *United States v. Remsing*,
16 874 F.2d 614, 618 (9th Cir. 1989) (review of magistrate's findings and recommen-
17 dations: District Court must review pertinent portions of transcript, may consider
18 additional evidence, may hold additional hearings, and is constitutionally obligated
19 to "arrive at its own independent conclusion").

20 Accordingly, the Navajo Nation objects to Paragraph 6 of the *Proposed*
21 *Findings and Conclusions* (p. 17), which incorrectly describes the standard of
22 review by the District Court (with the sole exception of the first sentence of said
23 Paragraph 6, to which the Navajo Nation does not object).

24 **IV. THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**
25 **ARE INCONSISTENT WITH THE PRIOR ORDERS UPON WHICH THE**
26 **VALUATION HEARING WAS BASED.**

27 As noted in the *Proposed Findings and Conclusions*, the valuation hearing
28 was set in order to determine the damages portion of Krystal's claim for turnover of
property, insofar as the liability issue had already been resolved by the prior partial

1 summary judgment order of January 8, 2008, previously affirmed by the District
2 Court on appeal. According to the January 8, 2008 Order, damages were to be
3 assessed "for the value of the property removed from the well sites." [Order, p. 3;
4 Docket No. 88, Exhibit C hereto] (emphasis supplied). Similarly, the Order
5 required the Navajo Nation to provide an accounting "for the property taken from
6 the well sites." [Id]. (emphasis supplied).

7 This damages concept and measure were affirmed by the District Court in
8 its decision affirming the Bankruptcy Court's liability ruling. The District Court
9 similarly described the damages measure as "the value of the property that was
10 removed from the well sites." [Docket No. 123, Exhibit D hereto].

11 At the damages/valuation hearing before the Bankruptcy Court, however,
12 Krystal presented evidence of claimed damages which were not limited to the
13 personal property which was allegedly "removed" or "taken" from the well Sites by
14 others. Most significantly, the testimony of Krystal's expert appraisal witness,
15 George Cunningham, upon whose opinions the Bankruptcy Court principally relied
16 (see Findings, ¶¶ 11-13, and Conclusions, ¶ 8) included a valuation of \$2.9 million
17 (more than 3/4ths of the total valuation described in his testimony) for the six wells
18 and well casings which had been sunk over a mile deep at the Sites before Krystal
19 was involved in the Sites, and which remained in place and were never removed,
20 insofar as they were plugged and abandoned in 2000. [Transcript, pp. 8, 9, 91,
21 93]. On this basis alone, the Bankruptcy Court's *Proposed Findings and*
22 *Conclusions* are fatally inconsistent with its own prior liability ruling and with the
23 District Court's decision affirming the liability ruling and describing the damages
24 issue for further proceedings.

25 **V. THE RECORD FAILS TO SUPPORT ANY FINDING OF KRYSTAL'S**
26 **RIGHTS IN MUCH OF THE PROPERTY FOR WHICH VALUE HAS BEEN**
27 **ASSESSED.**

28 Krystal may assert that the language in prior rulings which, strictly read,
would limit its damages claim to the value of personal property "removed" or

1 “taken” from the Sites was in error and was intended instead to extend to all
2 personal property at the Sites which had been installed or improved by Krystal or
3 in which Krystal otherwise had ownership rights. Apart from the fact that the
4 language in question is clear, unambiguous, and does not permit this interpretation,
5 Krystal's position, and the Proposed Findings and Conclusions, are fatally
6 flawed for other independent reasons.

7 Krystal's “turnover” claim and the Bankruptcy Court's *Proposed Findings*
8 *and Conclusions* are based upon the threshold premise that Krystal held property
9 rights in all of the valued property. Indeed, the foundation of any “turnover” claim
10 under 11 U.S.C. § 542 is that the debtor must be established to have had rights in
11 the property, an issue on which the debtor (Plaintiff here) bears the burden of
12 proof. See, e.g., Victoria Alloys, Inc. v. Fortis Bank, SA/NV, 261 B.R. 424, 428,
13 429 (Bankr. N.D. Ohio 2001) (failure to meet burden of proof of ownership of
14 claimed property); *Creative Data Forms, Inc. v. Pennsylvania Minority Business*
15 *Dev. Auth.*, 41 B.R. 334, 336 (Bankr. E.D. Pa. 1984) (“if the debtor does not have
16 the right to possess or use the property at the commencement of the [bankruptcy]
17 case, a turnover action cannot be a tool to acquire such rights”).

18 In the instant case, however, there was a failure of proof/lack of any
19 evidence as to Krystal's rights, if any, in the majority (by value) of the property on
20 which its claims are based. For example, the testimony of Krystal's appraisal
21 witness, Mr. Cunningham, attributed \$2.9 million of his total \$4.25 million value
22 opinion to approximately 35,000 feet of well casing in six wells at the two Sites.
23 [Transcript, pp. 91, 93]. Similarly, Krystal's “replacement cost” witness, Mr.
24 Padilla, attributed nearly \$3 million to the well casings. [Transcript, pp. 48, 49;
25 Report admitted as Hearing Exhibit 1 (copy attached hereto as Exhibit E)].

26 There was no evidence, however, that Krystal installed, repaired or
27 otherwise had any rights to those well casings. To the contrary, the evidence was
28 clear that the wells and well casings were already in the ground and in use before

1 any involvement of Krystal with the Sites; and there was no evidence that Cross
2 Creek (the lessee under the Leases) had assigned Krystal any ownership rights in
3 the wells or well casings, especially in the event the proposed assignments of the
4 Leases failed, as they did. Indeed, basic property law would suggest that upon
5 installation, the wells and casings _____ become fixtures annexed to the real
6 property interests at the Sites, held by the Navajo Nation as the lessor. *Calpine v.*
7 *Arizona Dept. of Revenue*, 221 Ariz. 244, 248, 211 P.3d 1228, 1232 (App. 2009)
8 (absent express agreements to the contrary, permanent improvements placed on
9 leased tribe lands by lessee and "attached to the realty" become "real property
10 belonging to the lessor").

11 Similarly with respect to the balance of the personal property which had
12 been located at the lease Sites, there was no evidence presented to establish that
13 Krystal had any continuing rights in the property, especially after the proposed
14 assignments were rejected and the Leases reverted to the last approved lessee,
15 Cross Creek. There was, for example, no evidence of any provisions in any
16 assignment agreement between Krystal and Cross Creek as to those parties'
17 respective rights in improvements and personalty in the event the proposed lease
18 assignments to Krystal were not approved. Most notably, there was no evidence
19 that Krystal, upon ejectment from the Sites, had any rights in the buried well
20 casings, that it should have been allowed to remove them, or that it had any right
21 to sell them to anyone else.

22 The failure of proof as to the issue of Krystal's ownership rights, if any, in the
23 personal property and equipment at and under the Sites in 1999 is sufficient, on a
24 de novo review of the record, for the District Court to make its own determination
25 that Krystal did not meet its burden of proof and that judgment should be for the
26 Navajo Nation. Alternatively, as noted above, the District Court may consider
27 additional evidence, and/or may order further proceedings in the District Court or
28 the Bankruptcy Court, on the property-ownership issues.

Accordingly, the District Court may require or permit further evidence, briefing and/or hearing on the rights, if any, of Krystal in the various items of property/improvements which are the subject of Krystal's claims. In that regard, the Navajo Nation submits the original lease agreements which were the subject of the proposed lease assignments from Cross Creek to Krystal. True and correct copies are attached hereto as Exhibits F and G regarding the Aneth, Utah and Farmington, New Mexico Sites, respectively.³ Paragraph 7 of each of the Leases addresses the property rights of the lessee and the lessor (the Navajo Nation) in particular categories of property and improvements placed on the Sites. Specifically with respect to well casings, the Leases expressly provide that those items are the property of the Navajo Nation, and not the lessee, upon lease termination or surrender.

For the foregoing reasons, the Navajo Nation objects to the admission at Hearing of the valuation opinions and reports of Krystal's valuation witnesses, Messrs. Padilla and Cunningham, and objects to the valuation conclusion at page 18. ¶ 8, of the *Proposed Findings and Conclusions*.

VI. KRYSTAL'S VALUATION WITNESSES USED IMPROPER MEASURES OF VALUE OF EQUIPMENT AND IMPROVEMENTS AT THE SITES AND THEREFORE PROVIDED NO SUPPORT FOR THE BANKRUPTCY COURT'S PROPOSED FINDINGS AND CONCLUSIONS.

A. The Correct Measure.

The Navajo Nation does not presently dispute the Bankruptcy Court's liability determination – that the Navajo Nation improperly denied Krystal the “opportunity to remove its equipment” when Krystal was ejected from the Sites. [*Proposed Findings and Conclusions*, p. 3, In. 2]. As the Bankruptcy Court previously ruled in its summary judgment order regarding liability [Docket No. 88],

³ Admittedly, these documents are not yet part of the record and are presented here as an offer of proof in connection with additional evidence which the District Court may consider in its discretion.

1 the Navajo Nation was therefore obligated to turn over any such property, if any, of
2 Krystal's or would be liable on a judgment for its then value, if any.

3 Accordingly, the purpose of the valuation hearing was to determine the
4 value of the particular personal property which Krystal was entitled to remove at
5 the time of ejectment in December 1999. However, there was simply no evidence
6 to establish the particular personal property in which Krystal held rights at that time
7 (see Section V hereof, supra). Moreover, there was no evidence presented of any
8 damages which were incurred by Krystal as a result of being unable to remove its
9 property or equipment from the Sites, which is the measure the Court should have
10 applied. Instead, the evidence presented by Krystal's valuation witnesses, and
11 upon which the *Proposed Findings and Conclusions* improperly rest, was premised
12 on two very different but equally improper measures of "value," both of which are
13 inapplicable in this case as a matter of law and logic.

14 **B. Krystal's Valuation Witness Carl Padilla Testified Solely to an**
15 **Irrelevant Measure of "Replacement Cost" of All Equipment and**
16 **Improvements Necessary to Operate the Wells at the Sites.**

17 Carl Padilla's testimony was offered by Krystal at the evidentiary hearing
18 and appears at pp. 36-79 of the Transcript. Mr. Padilla testified to a "value" of all
19 of the equipment, facilities and improvements he believed had been located at the
20 Sites, including all six of the mile-deep wells themselves, at an aggregate value of
21 approximately \$4 million. [See Hearing Exhibit 1, Exhibit A hereto]. However, Mr.
22 Padilla did not purport to testify, nor was there any other evidence, that all of the
23 items he included in his valuation were property of Krystal which Krystal would
24 have had a right to remove at the time of its ejectment from the Sites in 1999.

25 Far more problematic, Mr. Padilla, who is in the business of selling and
26 installing oil and gas equipment, freely admitted that his report and opinions did
27 not attempt to value the actual equipment at the Sites. Instead, he testified solely
28 as to the cost of replacing all of the equipment and facilities, including the well
casings themselves, with all new equipment, including costs of equipment, labor

1 and transportation, as if he were selling it new to a customer in 2011. [Transcript,
2 pp. 52, 54, 58, 59, 63]. Mr. Padilla also acknowledged that if he were acquiring
3 existing, used equipment from an operator who was selling it off the Sites, he
4 would not pay prices similar to the replacement costs he provided [Transcript, p.
5 62, 75].

6 In short, Mr. Padilla's testimony, while perhaps useful if the issue were the
7 cost to replace the entire facilities in the summer of 2011, is completely irrelevant
8 to the issue here as to the value of Krystal's property (if any) to Krystal if Krystal
9 had been permitted to remove it from the Sites in 1999. Although the Bankruptcy
10 Court's *Proposed Findings and Conclusions* as to value were not based solely
11 upon Mr. Padilla's testimony, the Court did rely on his testimony to "support"
12 Krystal's other valuation witness, Mr. Cunningham, and to support the Bankruptcy
13 Court's \$4 million recommended valuation. In any event, Mr. Padilla's opinions
14 and report provided no evidence whatsoever in support of the proper
15 damage/valuation measure in this case, which would have nothing to do with
16 current replacement cost new for the entire well facilities.

17 For these reasons, the Navajo Nation objects to the Bankruptcy Court's
18 admission and consideration of Mr. Padilla's valuation testimony and objects to the
19 valuation Finding at Page 18, Paragraph 8 of the *Proposed Findings and*
20 *Conclusions*.

21 **C. The Opinion Testimony of Krystal's Other Valuation Witness, Mr.**
22 **Cunningham, as to The Value of Property in "Continued Use"**
23 **was also Irrelevant and Provided No Support for the Proposed**
Findings and Conclusions.

24 The testimony of Krystal's other valuation witness, appraiser George
25 Cunningham, appears at pp. 81-122 of the Transcript. Mr. Cunningham testified to
26 an opinion as to "what the fair market value would have been in continued use,
27 already installed in that location," of the equipment and improvements he assumed
28 to have been at the Sites in 1999 [Transcript, p. 87, ln. 11-13]. As Mr.

1 Cunningham acknowledged, his valuation methodology "automatically assumes
2 that [the property] is going to remain on that site." [Transcript, p. 101]. That
3 assumption, however, is contrary to the proper evaluation approach as described
4 above for this case – i.e., to assess the damages (if any) incurred by Krystal when
5 it was not allowed to remove equipment from the Sites upon ejectment.

6 Furthermore, Mr. Cunningham acknowledged [Transcript, pp. 97-98] that his
7 "value in continued use" approach assumes that the wells would continue to
8 operate and to generate income sufficient to sustain the value that he had
9 attributed to the personal property and equipment. In this case, however, the
10 record clearly established that the lease assignments were not approved by the
11 Bureau of Indian Affairs, that Krystal was ejected from the Sites, and that Krystal
12 would not continue to operate them. Indeed, shortly thereafter the wells were
13 plugged and abandoned. Mr. Cunningham had not considered these
14 circumstances, and he admitted that they would make his valuation approach
15 inappropriate [Transcript, p. 106]. In those circumstances, he acknowledged, the
16 equipment would no longer have a "value in continued use," but only a "market
17 value," which he did not attempt to determine. [Transcript, pp. 106-108].

18 In addition, as noted above, Krystal failed to establish that it would have had
19 any rights in the wells or the well casings upon Krystal's disapproval as lease
20 assignee and its ejectment from the Sites. However, Mr. Cunningham's "value in
21 continued use" opinion attributed \$2.9 million of his aggregate \$4.25 million value
22 opinion to the wells themselves, including "all of the stuff below ground"
23 [Transcript, pp. 91, 108].

24 In any event, Krystal's claim of a property value of more than \$4,000,000 for
25 the equipment and improvements at the Sites is simply not credible and is contrary
26 to the Debtor's sworn statements made in the bankruptcy case. Bruce Nicholson,
27 vice president of Krystal, testified that Krystal had paid approximately \$400,000 to
28 Cross Creek for both Leases [Transcript at p. 127, line 4-15; Exh. VV]. In its

1 under-oath bankruptcy Schedules, Krystal stated that the value of the crude oil
 2 equipment in Utah and New Mexico was \$400,000 [Schedule B – Schedule of
 3 Personal Property; Administrative Case Docket No. 9]⁴. In its Second Amended
 4 Complaint, Krystal again indicated that it paid around \$400,000 for both Leases
 5 [Docket No. 52 at ¶15].

6 For the foregoing reasons, the Navajo Nation objects to the Bankruptcy
 7 Court's admission of and reliance upon Mr. Cunningham's "value in continued use"
 8 opinion and accordingly also objects to Findings of Fact and Conclusions of Law,
 9 Paragraphs 11-13, in which Mr. Cunningham's testimony is summarized, and
 10 Conclusions 5 and 7-8, in which Mr. Cunningham's valuation testimony is
 11 discussed and relied upon in support of the Court's valuation conclusion.

12 The failure of proof as to the value of Krystal's alleged personal property and
 13 equipment at the Sites in 1999 is sufficient, on a de novo review of the record, for
 14 the District Court to make its own determination that Krystal did not meet its
 15 burden of proof and that no judgment for damages may be entered in favor of
 16 Krystal. Alternatively, as noted above, the District Court may consider additional
 17 evidence, and/or may order further proceedings in the District Court or the
 18 Bankruptcy Court, on the valuation issue.

19 VII. CONCLUSION

20 Based on the foregoing objections to the Bankruptcy Court's *Proposed*
 21 *Findings and Conclusions and Recommendation*, the Navajo Nation respectfully
 22 submits that the District Court may and should reach its own independent
 23 determination that Krystal has failed to meet its burden of proof to establish either

24 ⁴ Krystal is bound, by judicial estoppel, to the statements made under oath in its Schedules
 25 filed in the bankruptcy case [Administrative Docket No. 9; Exhibit H hereto]. *In re Hamilton*,
 26 270 F.3d 778 (9th Cir. 2002). A court may take judicial notice of facts "capable of accurate
 27 and ready determination by resort to sources whose accuracy cannot reasonably be
 28 questioned." Fed. R. Evid. 201(b). Judicial notice is mandatory "if requested by a party and
 [the Court is] supplied with the necessary information." Fed. R. Evid. 201(d). Court records
 are appropriate documents for judicial notice. *United States v. Author Servs., Inc.*, 804
 F.2d 1520, 1523 (9th Cir. 1986) ("It is well established that a court may take judicial notice
 of its own records."), as amended, 811 F.2d 1264 (9th Cir. 1987).

(a) that it held rights in particular equipment or property for which it claims damages, and/or (b) that it incurred damages at all under any measure or method relevant to this case. Alternatively, the Navajo Nation submits that the District Court should order further proceedings and admit further evidence, either in the District Court or on remand to the Bankruptcy Court, consistent with the Objections asserted by the Navajo Nation herein, requiring Krystal to prove its rights in the personal property for which it claims damages and to prove those damages, if any. Any such damages must be established under the proper measure: the value which Krystal allegedly lost in 1999 when it was denied the opportunity to remove from the Sites any equipment or personal property in which Krystal is able to establish that it held legal rights.

DATED: February 10, 2012.

NAVAJO NATION
DEPARTMENT OF JUSTICE
 Harrison Tsosie, Attorney General

MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.

WN/4239

/s/MRG

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By _____
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EXHIBIT A

ORDERED ACCORDINGLY.

Dated: January 6, 2012



George B. Nielsen, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:	)	Chapter 11
KRYSTAL ENERGY CO. INC.,	)	Case No. 2:01-00166-GBN
Debtor.)	
KRYSTAL ENERGY CO. INC.,	)	Adversary No. 01-ap-00171-GBN
Plaintiff,)	
vs.)	
THE NAVAJO NATION,	)	PROPOSED FINDINGS OF FACT,
Defendant.	)	CONCLUSIONS OF LAW AND
	)	ORDER

This adversary proceeding seeks, inter alia, to adjudicate a demand for damages by the Chapter 11 bankruptcy estate of Krystal Energy Co., Inc. against the Navajo Nation, a sovereign Indian tribe.¹ Plaintiff filed a Chapter 11 bankruptcy case in the District of Arizona on January 5, 2001. On April 8, 2003, the case was dismissed by stipulated order between the Chapter 11 bankruptcy trustee and the United States Trustee, effective as of February 14, 2003 and reserving to this court

¹The Ninth Circuit Court of Appeals has expressly ruled that Congress has abrogated the tribe's sovereign immunity in regard to this litigation. *Krystal Energy Co. v. Navajo Nation (In re Krystal Energy Co.)* 375 F.3d 1055, 1056-61 (9th Cir. 2004).

1 jurisdiction over this adversary proceeding.

2 After the defendant tribe ("Nation") answered the
3 amended complaint, plaintiff sought approval for filing a second
4 amended complaint and request for injunctive relief. Adversary
5 docket items ("dkt.") 38 and 39. The court granted the motion to
6 further amend the complaint. Injunctive relief was granted in
7 part and denied in part. The court authorized plaintiff's agents
8 to visit two oil well sites located on the Nation's reservation
9 upon notice, but would not authorize resumption of oil producing
10 activities by plaintiff. Dkt. 50 at p. 2; Order at dkt. 54.
11 After briefing of a motion to dismiss, the court dismissed without
12 prejudice second amended complaint counts one (Breach of Con-
13 tract), two (unjust enrichment) and three (violation of due
14 process). See Dkts. 52, 65.

15 Following briefing and oral argument, the court on
16 January 8, 2008, granted summary judgment to plaintiff on
17 complaint count four (turnover of property) and reserved ruling on
18 count five (violation of the automatic stay). Dkts. 76-78, 81-86,
19 88. Transcript at dkt. 106. The court ruled in part that Krystal
20 had obtained assignments of oil leases near Aneth, Utah and
21 Farmington, New Mexico with the knowledge of the Nation and made
22 substantial investments to acquire operating equipment. The
23 Bureau of Indian Affairs never approved the oil lease assignments
24 to Krystal. Through the declarations of an eye witness and a
25 principal of Krystal, plaintiff established that defendant's
26 employees appeared at the Utah site in 1999, escorted Krystal's
27 employee off the premises, locked it, removed oil from storage
28 tanks and warned the employee not to return. Defendant's physical

1 ejectment and exclusion of Krystal from both sites without the
2 opportunity to remove its equipment was found to create liability
3 for return of the property or its value. Dkts. 86, 88 at p. 2.

4 The court stated in part: "The problem I'm having is
5 that there was an ejectment. The Nation had some role in that
6 ejectment. There might be other parties liable, but the Nation
7 has not sought to bring them into this proceeding.... I don't have
8 a clear explanation why ... the Nation believes that the debtor
9 didn't own this personal property.... I don't have a clear
10 explanation from the Nation why it didn't have an obligation to
11 see that some opportunity be given for the safe keeping of that
12 equipment.... [A]s long as it's proper you can eject someone from
13 your property, but that doesn't mean you get to keep the property
14 that... person has brought onto the property. That's the
15 explanation that seems to be lacking in the response." Dkt. 106
16 at p. 7.

17 The United States District Court for the District of
18 Arizona has affirmed the liability ruling. *The Navajo Nation v.*
19 *Krystal Energy Co., Inc.* Civ. 08-0178-Phx-MHM. Dkt. 123. An
20 evidentiary hearing on damages concluded with post trial briefing
21 and closing argument. The court has considered sworn witness
22 testimony, admitted exhibits, briefs and the facts and conclusions
23 of this case. An interim order was issued on December 20, 2011,
24 advising the parties of court's decision. Dkt. 223. The
25 following findings and conclusions are now proposed to the
26 district court:

27 **FINDINGS OF FACT**

28 1. Johnny Bennett, Jr. is a college educated New Mexico

1 crude oil loader who worked for approximately eight years as an
2 oil and gas inspector for the Nation in Arizona, Utah and New
3 Mexico. He was required by the Nation to inspect at least
4 annually, all well sites located on the reservation, including
5 Krystal's sites near Farmington, New Mexico and Aneth, Utah. The
6 witness has a clear recollection of the Aneth lease. Debtor's
7 predecessor as leaseholder in Utah was an entity known as Cross
8 Creek. Approximately 11 years ago, the Aneth well was operated by
9 Krystal, but the formal transfer of the lease from Cross Creek was
10 still in transition. Mr. Bennett issued non compliance notices
11 regarding signage and leakage at the site. The signage citation
12 was issued because a posted sign listed Cross Creek as operator.
13 Bennett knew Krystal was really the operator. Nonetheless, the
14 signage citation had to be issued to Cross Creek as the lease
15 assignment was delayed at the Bureau of Indian Affairs. This was
16 not an unusual violation, but had the citation been issued to
17 Krystal, it would have been rejected by the Nation's administra-
18 tive process, since the Krystal assignment was still pending. Oil
19 leakage was also a common citation. The witness has no memory of
20 Krystal not addressing the citations. He had an obligation to
21 follow up on them.

22 From 1997 through 1999 Krystal operated a well in Utah
23 that appeared to be producing. He witnessed Krystal make both
24 repairs and improvements to the sites. He doesn't have a specific
25 recollection whether New Mexico produced oil. The Utah site was
26 a mile deep and New Mexico was shallower. Utah had three pumping
27 jacks while New Mexico had one. There were also large water and
28 oil storage tanks. During this time he worked with a number of

1 Krystal's representatives, but never himself was a Krystal
2 employee. In his experience, it would take "forever" for the
3 federal government to approve lease assignments.

4 2. His Navajo Nation employment occurred between 1990
5 or 1991 and 2000, with a break for a few months to work on pipe
6 line operations. His recollection of the New Mexico Krystal lease
7 is more vague, but he does recall the New Mexico equipment, such
8 as flow lines and tanks was not new. The Nation was aware Krystal
9 was operating the wells through Bennett himself and his reports to
10 Nation petroleum engineers, Tribal Committees, the Director of the
11 Minerals Department and to other inspectors. While the witness
12 does not recall directly speaking to the Director, this officer
13 would receive the witness' written reports.

14 3. The federal approval delay occurred just as to the
15 Utah lease. The Nation's practice was to allow operation during
16 the delay, but the witness can't recall if the interim operation
17 was normally by the assignor or assignee. He can't recall the
18 last time he was physically present at either site. Although he
19 was aware of some dispute between the Nation and Krystal, he did
20 not pay attention to it. He would just inspect the equipment.
21 The Utah equipment was adequate for operational purposes and Mr.
22 Bennett saw it operating. He wrote citations for both of
23 Krystal's sites. The witness cannot recall how often he would
24 inspect the Krystal sites, but he would revisit within 30 days of
25 issuing a citation. The court finds witness Bennett to be a
26 knowledgeable, impartial and credible witness. June 27, 2011
27 testimony ("test.") of Johnny Bennett, Jr.

28 4. Carl Padilla has been an oil equipment manufacturer

1 in Farmington, New Mexico since 1990 or 1991. He has been a
2 certified oil pipe welder since 1977 and has extensive experience
3 working with a large variety of oil production equipment. He has
4 a number of competitors and is often required to submit competi-
5 tive equipment bids. He holds master mechanic and licensed
6 contractor designations. Although he has never before qualified
7 as an expert witness in a judicial proceeding, the court overruled
8 an objection and accepted his tender as an expert in oil equipment
9 valuation for this case.

10 5. He recalls being on the Utah site in the late 1990's
11 to assess a leaking oil tube. At the time the site equipment
12 included tank batteries, gas separators, a pump house, pump jacks
13 and a heat treater used to separate water from the oil. Debtor's
14 site also included equipment to separate natural gas from oil.
15 The witness believes Krystal utilized the natural gas to power on
16 site machinery. Mr. Padilla was contacted in 2009 and requested
17 to do a market valuation of the equipment. His appraisal consists
18 of a four-page letter, utilizing current values rather than 1999
19 values, which he understands to be the year Krystal was evicted.
20 Exhibit ("Ex.") 1 at p. 2. Page one identifies his experience in
21 Utah, his company and client information. It indicates he works
22 with many large producers throughout the San Juan Basin, which is
23 essentially the "Four Corners" area. Page two discusses a 42,000
24 gallon tank, approximately 21 feet in diameter and 20 feet tall
25 located at the Utah site. His company manufactures such equip-
26 ment. He has never before submitted a report for use in litiga-
27 tion or such a valuation report. He did not consult with anyone,
28 but just obtained prices from the vendors he works with and

1 estimated the labor costs of originally installing the items onto
2 the site.

3 6. In 2009, he traveled to Krystal's former site near
4 Farmington, New Mexico for purposes of the valuation. He had not
5 previously been on this property. Certain items absolutely have
6 to be located at an oil drilling site to allow operations. The
7 New Mexico equipment appeared to not have been recently used and
8 was in a fair to poor condition. His valuation represents what it
9 would cost to put the Farmington site into operation. He has
10 engaged in the manufacture or re manufacture of surface oil
11 pumping equipment since 1991. Before starting his own company, he
12 was the employee of others in the industry since 1976, principally
13 his father. He holds no formal appraisal certifications and
14 essentially appraised equipment he never saw. His values are for
15 new or nearly new equipment. He received information verbally
16 from Krystal's representative, such as well depth. He did not
17 previously know Krystal's representative.

18 7. Transportation and installation costs were added to
19 equipment values. No written documents or list of property was
20 provided by Krystal. The witness had not visited the Utah site
21 when Cross Creek was the lessee. He has never before worked for
22 Krystal. He has experience in purchasing used equipment from a
23 plugged or abandoned well. He wouldn't pay the prices he quotes
24 for market value since he is in business to make money and must
25 acquire property at less than normal market value. He doesn't
26 consider his letter to be an appraisal and is not familiar with
27 professional appraisal practices. Instead, he believes his four
28 page letter is a proposal from him to sell equipment to a buyer.

1 He did not consider the costs of abandoning the site, plugging the
2 well or environmental clean up costs.

3 8. The costs of new, as compared to nearly new
4 equipment is within ten to fifteen per cent of each other.
5 Customers don't request old or equipment that "sort of" works.
6 Instead, Padilla used values for equipment that meets established
7 operating requirements. He obtained the well depth for the
8 Farmington site during his visit, as it was listed on signage.
9 The Utah depth was provided verbally by Krystal. No other
10 information was provided verbally. All other information, other
11 than the Utah well depth was acquired by the witness personally.
12 He didn't travel to Utah. The witness provided the New Mexico
13 values based on what he recalled seeing on site or what would be
14 needed for operations.

15 9. While he has not previously done business directly
16 with Krystal, he has had business dealings previously with
17 Krystal's principal owners, the Nicholson brothers. In the mid
18 1990's he moved equipment for the brothers and built oil tanks for
19 them. He last did business with the Nicholson brothers two to
20 three years ago. He did not receive compensation for his four
21 page letter. Padilla will be paid his out of pocket travel
22 expenses and \$50 per hour for his time in testifying. If he was
23 attempting to purchase the New Mexico equipment he valued for
24 resale, he would agree to pay more than salvage value, perhaps
25 \$100 to \$150 per ton. A single tank weighs 9,000 pounds. He
26 would personally pay approximately the same values for the Utah
27 items. His proposal letter represents replacement values.

28 10. His prior work for the Nicholson brothers in the

1 1990's involved repairing a fire box, disassembling and reassem-
2 bling a Lupton, Arizona plant and a 60-day maintenance job that
3 cost \$12,000 to \$15,000. He has never been involved in plugging
4 a well and provided no-cost information on such action. He
5 considers that cost a property owner expense. Currently Padilla's
6 Farmington business, CIP, Inc. is trending downward. When
7 business is better, his company's gross revenues run between two
8 to three million dollars per year. In slow times, he feels
9 fortunate to gross a million dollars yearly. Test. of Carl
10 Padilla, Ex. 1. The fact finder's assessment is that Mr. Padilla
11 is a credible, experienced and fair witness who admits when he
12 lacks knowledge. The court finds his testimony and opinions
13 credible, but they do not rise to the level of an experienced,
14 licenced appraiser.

15 11. George Cunningham is a certified appraiser who owns
16 his own firm and has done two to four appraisals a week since the
17 1990's. He visited the New Mexico site on March 16, 2007 to make
18 an inspection and take photographs. Mr. Cunningham also visited
19 the Utah site on the same day for an inspection and photographs.
20 He contacted two suppliers to the New Mexico site and appraised
21 the assets he could view. He didn't calculate the exact pipeline
22 dimensions, but based his estimate on a supplier's information.
23 He used equipment valuations from 2009, but adjusted for an
24 assumed better condition earlier. He estimates approximately the
25 same well depth for each location. He concedes he erred by using
26 an incorrect figure for tubing values. Mr. Cunningham learned
27 what had been on the Utah site by interviewing others. According
28 to Mr. Nicholson, Padilla had erred by assuming one too many pump

1 jacks. He adjusted for this error by reducing value by \$12,000.
2 At the time he testified, his estimated hypothetical fair market
3 value for the missing equipment was 4.25 million dollars.

4 12. The witness cannot recall if he previously has
5 appraised oil and gas equipment. While he appraised the equipment
6 he actually saw in New Mexico, his hypothetical valuations for
7 missing machinery would not qualify as a formal appraisal. For
8 purposes of the valuations, he assumed a valid lease was in effect
9 and that the equipment was operating and producing income. For
10 the New Mexico valuation, he assumed the equipment would be in
11 better condition than what he observed. His assumption of
12 equipment condition was based on an equipment list provided by
13 John Deets, which the witness verified through two vendors. He
14 was told there were three pump jacks operating in Utah with
15 another about to be placed into service. It would be a signifi-
16 cant factor had he received definitive information that the jacks
17 had actually been in place for 30 years. The appraisal's
18 effective date was December of 1999. It reflects fair market
19 value for equipment in continuous use.

20 13. Cunningham reviewed no financial documents, except
21 for the drilling leases. If operational leases were not in place,
22 the items would have received a lower valuation. His instructions
23 were to value the equipment at fair market value in continuous
24 operation at its present location. If some of the machinery was
25 actually 30 years old and operating, it would have to have
26 received appropriate maintenance including newer replacement
27 parts. His total appraised value, including \$75,000 for the New
28 Mexico machinery and installation costs is 4.25 million dollars.

1 He didn't inquire regarding what Krystal originally paid for the
2 equipment. This would not be relevant. This valuation reflects
3 what it would cost to replace the missing property and does not
4 necessarily require all new items. Hypothetical valuations are
5 not considered a formal appraisal, but are commonly utilized in
6 loss situations, such as an insurance fire loss. Such valuations
7 are approximately five to ten per cent of the witness' work.
8 Test. of George Cunningham, Ex. 2. The court finds this witness'
9 testimony and opinions to be direct, honest, credible and
10 professional.

11 14. Bruce Nicholson is Krystal's vice president. The
12 Gallup, New Mexico family business consisted of retail gasoline
13 stations, including some located on the Nation's reservation land.
14 He was raised on the Monument Valley reservation and spent most of
15 his life there. His girl friend, an enrolled member of the
16 Nation, signed the debtor's bankruptcy filings. The witness
17 attended a 1997 meeting with officials of the Bureau of Indian
18 Affairs ("BIA"), the Amoco Production Company and officials of the
19 Nation. The meeting was driven by Amoco's desire to obtain
20 assurances from the Nation for approval of the transfer of
21 operating rights from the Cross Creek Corporation to Krystal. The
22 Nation did not want Cross Creek to continue on the reservation.
23 Mr. Nicholson's father handled negotiations for the family
24 business. Debtor paid Cross Creek more than \$300,000 for the Utah
25 rights and \$100,000 for the New Mexico rights. The witness is
26 unsure why his father wanted to enter the drilling business.
27 Neither he nor his father knew much about gas and oil production.
28 The Cross Creek application for assignment of the Utah well is

1 dated May 28, 1997. Krystal felt it was appropriate to start
2 operations, as they believed the Nation had approved the transfer.
3 No difficulties occurred with the Tribe until 1999.

4 15. A report was generated for the Utah site, listing
5 Krystal as operator. Other paperwork and a bond were also created
6 for the transfer. This included a tax document submitted to the
7 Nation by Krystal. The Utah well was operating at this time. A
8 \$150 receipt to pay for the public filing of the Utah and New
9 Mexico leases reflects the public nature of the transfer. Both
10 locations operated in 1997 through 1998 by Krystal, using its
11 employees. However, the family retail store office employees
12 administered Krystal employee records.

13 16. In April or May of 1999, business operations were
14 greatly disrupted by an FBI seizure of essentially all business
15 records. While the debtor was never indicted, other business were
16 prosecuted concerning non payment of government fuel taxes. The
17 State of Texas shut down the family stores. Mr. Nicholson, whose
18 father was Navajo, made the mistake of not paying fuel taxes.
19 Following plea bargaining in September or October of 2001, the
20 witness plead guilty and was sent to prison for two years. He
21 also agreed to stay out of the service station business. His
22 brother received a one year sentence. The seized business records
23 were sent to a location in Lubbock, Texas, where they remained for
24 years. The witness was released in 2004 and has completed his
25 probation obligations. Attempts were made to locate the documents
26 through correspondence with the United States Attorney for the
27 Northern District of Texas and the State of Texas, to no avail.
28 Although on some date the records were made available, no one from

1 the family obtained them. Once the records were seized, all
2 operations stopped. In a December 8, 1999 letter, the BIA advised
3 Nicholson that at the Nation's request, the federal government
4 would not approve transfer of the Cross Creek leases to Krystal,
5 due to Krystal's ineligibility under Navajo law " . . . and due
6 to other concerns of the Navajo Nation." Unlike Cross Creek,
7 debtor was directed to stop all drilling operations and immedi-
8 ately leave the reservation. The witness complained that Cross
9 Creek was allowed to remain in possession and transfer its leases
10 when it ran into difficulty with the Nation.

11 17. Amoco was instructed to immediately take over
12 operation of the lease. The witness was informed the Nation would
13 not approve future lease transfers to his family members.
14 Nicholson did not return to see the Utah site again until 2007.
15 By then, all machinery had been removed. He estimates he visited
16 the Utah location 30 to 40 times prior to the ejectment and
17 verified that the Utah equipment listed on page two of Mr.
18 Padilla's valuation was actually installed there. The Utah well
19 had a depth of between 5,000 and 6,000 feet. Less of an invest-
20 ment was made in the Farmington, New Mexico lease, but the witness
21 saw the Farmington equipment installed and operating between 1997
22 and 1999. Krystal obtained a 1998 bond for the Utah leasehold
23 which the BIA did not sign. The Nation and BIA did not sign the
24 oil and gas lease assignments that the witness signed on May 28,
25 1997. Nicholson was not concerned about the delay as he had been
26 advised formal approval took time. Test. of Bruce Nicholson, exs.
27 1, 4-9, 11-12, 16, 26, 34-36, 38. The court finds the witness to
28 be credible on the subject of his company's dealings with the

1 Nation.

2 18. Donald E. Ross is a geologist and certified general
3 appraiser with 40 years experience with expertise in mines and
4 minerals. His assignment was to determine the forced liquidation
5 value of the equipment as of March 6, 2008 for the Nation, "as is"
6 and "where is." His final value estimate is \$8,300 with a 12
7 month marketing period for the Farmington equipment. He did a
8 field visit, talked with individuals and examined comparable
9 values. One of the people he consulted was Barbara Padilla, the
10 wife of plaintiff's witness Carl Padilla. A tribal official
11 informed Ross that the property contained a 210-barrel tank. He
12 denied that he is mistaken and Farmington had a 380-barrel tank,
13 although he did not see signage indicating a 210-barrel tank. The
14 witness doubts the tank size would impact his opinion. His report
15 does not discuss underground piping as he was unable to view it.
16 The well had been abandoned and plugged. He has previously worked
17 for the Nation and hopes to receive future assignments from them.
18 His valuation is not a fair market valuation, which values
19 property on an ongoing producing basis. He did not do a hypothet-
20 ical valuation regarding missing machinery. He summarized that
21 the appraised items were " . . . old idle equipment sitting out on
22 the desert." Ross' appraisal contemplates disposition by auction
23 or for salvage. He has no opinion regarding the value as of
24 December of 1999. Test. of Donald E. Ross, ex. QQ at p. ii and at
25 pgs. 17, 25. The court finds the witness knowledgeable, but
26 argumentative on cross examination. Since this expert witness did
27 not key his value opinion to the date of plaintiff's exclusion
28 from the sites, his opinion is of limited value to the fact

finder.

19. To the extent any of the following conclusions of law should be considered findings of fact, they are hereby incorporated by reference.

CONCLUSIONS OF LAW

1. To the extent that any of the above findings of fact should be considered conclusions of law, they are hereby incorporated by reference.

2. Jurisdiction of the Chapter 11 bankruptcy case to which this adversary proceeding is related is vested in the United States District Court for the District of Arizona. 28 U.S.C. §1334(a). That court has referred all cases under Title 11 of the United States Code, all adversary proceedings and all contested matters arising under Title 11 or related to a bankruptcy case to the United States Bankruptcy Court for the District of Arizona. 28 U.S.C. §157(a), District General Order 01-15(1). The Nation has denied this court has core bankruptcy jurisdiction to resolve this proceeding by entering a final order or judgment. Answer to second amended complaint at ¶ 4, dkt. 64. The Nation was scheduled as a disputed unsecured creditor, but did not file a bankruptcy claim against the estate. Schedule F at p. 2.

3. While plaintiff alleges this court has core bankruptcy jurisdiction to liquidate the damages claim as an estate asset², see 28 U.S.C. §157(b)(2)(O), care should be taken to not transgress the limits of bankruptcy court jurisdiction. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.* 102 S.Ct.

²Second amended complaint at p. 2,

1 2858,2862-80 (1982) (Unconstitutional for bankruptcy court to
2 decide a state law contract claim against an entity not otherwise
3 part of the bankruptcy case), *Stern v. Marshall*, 131 S.Ct. 2594,
4 2611-13 (2011) (Bankruptcy Court lacks Constitutional authority to
5 enter a final judgment on estate's state law counterclaim to
6 bankruptcy claim). Accordingly, the court will enter proposed
7 findings and conclusions. §157(C)(1).

8 4. This court has not adjudicated whether the Nation's
9 refusal to approve the lease transfer was wrongful. Rather, this
10 court is determining what damages are to be awarded for the
11 Nation's refusal to return or allow plaintiff to retrieve its
12 equipment from the terminated leaseholds. *Navajo Nation v.*
13 *Krystal Energy Co. Inc.* 2008 WL 2477084 at pgs. 2-3 (D. Az.
14 2008) (Partially granting leave to appeal). This court's ruling,
15 finding the Nation liable has been affirmed. *Navajo Nation v.*
16 *Krystal Energy Co., Inc.* 2008 WL 4446703 at p. 6 (D. Az. 2008) ("In
17 contrast, the uncontroverted facts, as set forth in the record
18 through depositions by eye witnesses, establish that in December
19 1999, Navajo Nation officials evicted Krystal employees from the
20 well sites, took equipment that belonged to Krystal for transport
21 from the site, and chained and locked the well sites, telling
22 Krystal's employees that they could not return.").

23 5. It is troubling that plaintiff could not produce its
24 own internal records to establish exactly what equipment was
25 located on which site, its condition and dates and costs of
26 acquisition. However, the uncontroverted testimony is that the
27 entirety of plaintiff's business records were removed by law
28 enforcement. Given the incarceration of two family members, it is

1 understandable that no one else apparently followed up on the
2 records' return, given that the family entities ceased operation
3 by the combination of the Nation's exclusion and criminal
4 prosecution of officers³. Efforts years later to locate the
5 documents were unsuccessful. Exs. 34-38. Accordingly, the court
6 will accept credible testimony regarding missing assets and their
7 hypothetical valuation by recognized experts. Nonetheless,
8 plaintiff ultimately bears the risk of non persuasion through
9 uncertainty.

10 6. This court's conclusions of law are reviewed *de*
11 *novo*. *California Franchise Tax Board v. Kendall (In re Jones)*, 657
12 F.3d 921, 924 (9th Cir. 2011). Its factual findings are reviewed
13 for clear error. *Hanf v. Summers (In re Summers)*, 332 F.3d 1240,
14 1242 (9th Cir. 2003). Findings of fact, whether based on oral or
15 documentary evidence will not be set aside unless clearly
16 erroneous. Due regard is given to the bankruptcy court's
17 opportunity to judge the credibility of witnesses. Rule 8013,
18 F.R.B.P. The appellate court accepts the bankruptcy court
19 findings, unless upon review, it has the definite, firm conviction
20 a mistake was committed. *Ganis Credit Corp. v. Anderson (In re*
21 *Jan Weilert RV, Inc.)*, 315 F.3d 1192, 1196 (9th Cir.), amended by
22 326 F.3d 1028 (9th Cir. 2003). The appellate court may affirm on
23 any ground supported by the record. *Jones, Id.*, *Stevens v. NW*
24 *Nat'l Ins. Co. (In re Siriani)*, 967 F.2d 302, 304 (9th Cir. 1992).

25 7. Defendant's expert appraisal is of lesser utility,
26

27 ³Apparently, family member Brian L. Nicholson received contact regarding
28 the record's return but either never followed up or did not retain them.
Nicholson test., Ex. 35.

1 as it has an effective date years after defendants' forced shut
2 down of two operating well sites. Further, it is calculated at
3 salvage value, based on equipment that sat for years unused in
4 the desert. Those are not the facts of this case. Plaintiff's
5 experts appraised for replacement value equipment that until
6 December of 1999 was actively utilized in two producing sites.
7 Had the Nation accepted its responsibility and either let the
8 operating equipment be removed or sold in place, precisely the way
9 plaintiff originally acquired its interests, value would have been
10 maximized. This the Nation did not do. It should not benefit for
11 this failure through a valuation technique.

12 8. Plaintiff's Cunningham appraisal, prepared by an
13 independent professional, supported by the extensive personal
14 industry experience of Carl Padilla, is far more valuable in
15 establishing the value for the operating assets as existing in
16 place during December of 1999. Given the uncertainty caused by a
17 necessary hypothetical appraisal for missing assets and plain-
18 tiff's complete failure to produce contemporaneous business
19 records to document the loss, the appraised value for both
20 locations will be reduced to four million dollars.

21 **ORDER**

22 The court will recommend that the United States District
23 Court issue a final judgment, supported by these proposed findings
24 and conclusions of four million dollars in favor of plaintiff and
25 against defendant. Plaintiff may apply to the Bankruptcy Court
26 Clerk for an award of costs and, if appropriate, apply to this
27 court for an award of attorneys fees.

1 Copies emailed this 6th day
2 of January, 2011, to:

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23 Attorney for Defendant

24 By: /s/Rachael M. Stapleton
25 Judicial Assistant
26
27
28

EXHIBIT B

SIGNED.

Dated: January 8, 2012



George B. Nielsen, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:	)	Chapter 11
KRYSTAL ENERGY CO. INC.,	)	Case No. 2:01-00166-GBN
Debtor.)	
<hr/>		
KRYSTAL ENERGY CO. INC.,	)	Adversary No. 01-ap-00171-GBN
Plaintiff,)	
vs.	)	RECOMMENDATION TO UNITED
THE NAVAJO NATION,	)	STATES DISTRICT COURT FOR
Defendant.	)	ISSUANCE OF A FINAL JUDGMENT
	)	AND ORDER

IT IS RECOMMENDED that the United States District Court, after conducting the review procedure it deems appropriate, enter a final judgment in favor of plaintiff and against defendant in an amount of not less than four million dollars, based on the attached proposed findings of fact and conclusions of law.

IT IS ORDERED that the Clerk of Bankruptcy Court transmit this recommendation with attached proposed findings and conclusions to the Phoenix Division of the United States District Court for the District of Arizona.

RECOMMENDED AND ORDERED ACCORDINGLY.

1 Copies emailed this 21st day
2 of December, 2011, to:

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24 By: /s/Rachael M. Stapleton
25 Judicial Assistant
26
27
28

EXHIBIT C

IT IS SO ORDERED.



Dated: January 15, 2008

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GEORGE B. NIELSEN, JR.
U.S. Bankruptcy Judge

Attorneys for KRYSTAL ENERGY CO., INC., Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

KRYSTAL ENERGY CO., INC.,

Debtor,

KRYSTAL ENERGY CO., INC.

Plaintiff,

vs.

THE NAVAJO NATION, a domestic
sovereign nation

Defendant.

(Chapter 11 Case)

No. 2:01-bk-00166-SSC

Adv. 2:01-ap-00171-GBN

**ORDER GRANTING PARTIAL
MOTION FOR SUMMARY
JUDGMENT**

Debtor Krystal Energy Co. Inc., ("Krystal" or "Plaintiff," filed this adversary in 2001 against the Navajo Nation, a domestic sovereign nation ("Defendant"), arising out of disputes concerning assignments of leases for oil well sites located near Aneth, Utah and Farmington, New Mexico. The Ninth Circuit Court of Appeals determined that this Court has jurisdiction to hear Plaintiff's bankruptcy claims against the Defendant. In re Krystal Energy Company v. Navajo Nation, Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004).

Plaintiff filed its Motion for Leave to File a Second Amended Complaint on December 7,

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2006. On February 1, 2007, the Court entered its Order granting the Motion for Leave to File a Second Amended Complaint and also entered its Order allowing Krystal to inspect the oil well sites located in Utah and New Mexico. On March 5, 2007, Defendant filed its Motion to Dismiss the Second Amended Complaint, and on May 23, 2007, the Court entered its Order dismissing Counts I (Breach of Contract), II (Unjust Enrichment/Estoppel) and III (Violation of Due Process) without prejudice. However, the Court denied the Motion to Dismiss with regards to the following counts:

Count IV—Turnover of Property (11 U.S.C. §542[A])
 Count V—Violation of the Automatic Stay (11 U.S.C. §362[A])
 Count VI—Tax Determination (11 U.S.C. §505) and
 Count VII—Injunctive Relief

Following its initial discovery in the adversary, Plaintiff filed its Motion for Partial Summary Judgment on November 8, 2007 regarding Count IV – Turnover of Property and Count V – Violation of the Automatic Stay, and presented evidence that with the approval of the Defendant, Plaintiff obtained assignments of oil leases in 1997, and made a substantial investment to acquire equipment and operate the Utah well site. The Bureau of Indian Affairs never approved the oil lease assignments, and Krystal has asserted that the Defendant wrongfully requested that BIA approval be denied, a claim that Defendant contests.

Through the declarations of an eye-witness and a principal of Krystal, Plaintiff established that Defendants' employees drove to the Utah site in 1999, escorted an employee of Krystal's off the premises, locked it, took the oil from the tanks, warned him not to return, and through the Defendant's actions, ejected Plaintiff from the premises to the detriment of Plaintiff and Plaintiff's property.

Based on the pleadings and this record, there are no material issues of fact in dispute and as a matter of law, Defendant is liable to Plaintiff for the Turnover of Property under Count IV. The Court will reserve ruling on Count V – Violation of the Automatic Stay after further briefing of the parties.

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1 The Court's findings of fact and conclusions of law were placed on the record at the January 8,
2 2008 hearing.

3 WHEREFORE, good cause appearing,

4 IT IS ORDERED that the Motion for Summary Judgment as to Count IV – Turnover of
5 Property is granted and the Defendant shall turnover all of the property and provide an accounting by
6 February 7, 2008 for the property taken from the well sites.
7

8 IT IS FURTHER ORDERED that Plaintiff is entitled to judgment against Defendant for the
9 value of the property removed from the well sites, and judgment will be entered accordingly.

10 IT IS FURTHER ENTERED that the Court will entertain further proceedings on Plaintiff's
11 claim for sanctions for violating the automatic stay.

12 IT IS FURTHER ORDERED that a continued hearing in this matter is set for March 10, 2008
13 at 9:30 a.m.

14 SIGNED AND DATED AS SET FORTH ABOVE
15
16
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21
22
23
24
25
26

27 Laito P. Nash, P.C.
28 The Brookstone, Suite 157
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Phoenix, Arizona 85004

EXHIBIT D

In re Krystal Energy Co., Inc., Not Reported In F.Supp.2d (2008)

2008 WL 4446703
Only the Westlaw citation
is currently available.
United States District Court,
D. Arizona.

In re KRYSTAL ENERGY
CO., INC., Debtor.
The Navajo Nation, a domestic
sovereign nation, Appellant,
v.
Krystal Energy Co., Inc., Appellee.

No. CV 08-178-PHX-MHM. |
Bk. No. 01-166-GBN. | Adv.
No. 01-171. | Sept. 30, 2008.

Attorneys and Law Firms

J. Kent Mackinlay, Mesa, AZ, for Debtor.

Opinion

ORDER

MARY H. MURGUIA, District Judge.

*1 Currently pending before the Court is Appellant Navajo Nation's ("Navajo Nation") Interlocutory Appeal from a January 15, 2008 Order entered by the Honorable George B. Nielsen, Jr., Bankruptcy Judge, United States Bankruptcy Court for the District of Arizona, granting Appellee Krystal Energy Company's ("Krystal") Partial Motion for Summary Judgment. (Dkt.# 16). Judge Nielsen ordered the Navajo Nation to turn over property located on well sites and provide an accounting

for any property taken from those sites. The Court possesses jurisdiction over this matter under 28 U.S.C. § 158(a). After reviewing the pleadings and the record excerpts submitted for purposes of this interlocutory appeal, and having determined that oral argument is unnecessary, the Court issues the following order.

I. BACKGROUND

In May 1997, Krystal Energy, Inc. allegedly entered into an "Assignment of Oil and Gas Lease Operating Right" concerning oil wells located near Gallup, New Mexico (the "New Mexico Assignment") and a similar Assignment located near Aneth, Utah (the "Utah Assignment"). (Appellant's App. No. 6; Krystal's Compl. ¶¶ 8-9; Appellee's App. No. 2, pp. 14-15, ¶¶ 2-3). Both lease assignments concern oil wells located on lands within the Navajo Nation. (Appellee's App. No. 2, p. 15, ¶ 5). Krystal alleges that the Navajo Nation and Bureau of Indian Affairs initially approved the proposed assignments at a May or June 1997 meeting in Farmington, New Mexico. (*Id.*, ¶ 6). Following that meeting, the occurrence of which appears undisputed by the Navajo Nation, and allegedly with the full knowledge, consent, and approval of both the Navajo Nation and the United States Department of the Interior, Krystal went into possession of both the Utah and New Mexico Assignments, made substantial investments in the well sites and equipment, and began operations. (Appellee's App. No. 2, p. 16, ¶¶ 9-10).

On May 29, 1998, the Bureau of Land Management ("BLM") of the U.S. Department of the Interior advised the Navajo Nation Minerals Department that it had no objection to the assignment of the Utah Oil lease. (*Id.*, ¶ 7). On August 10, 1998, the Navajo Nation Minerals Department received a formal application from Bruce Nicholson on behalf of Krystal Energy, Inc. for the Utah Assignment. (Dkt. # 16, p. 1; Appellant's App. No. 4). However, on July 26, 1999, the BLM sent a letter to the assignor of the leases, Amoco Production Co., stating that "[t]he Navajo Nation has declined to approve Krystal Energy's assignments from Amoco Production Co. for the subject lease due to a disagreement between the two entities." (Appellant's App. No. 4, p. 101). The letter also stated that Amoco Production Co. ("Amoco") was required to plug and abandon the wells, as the BLM had first directed on May 6, 1997 (the procedures for which had been approved on April 28, 1998), prior to the proposed assignments to Krystal, which allegedly also took place in May 1997. (*Id.*, pp. 99, 101). Subsequently, on December 8, 1999, the Bureau of Indian Affairs informed Krystal that it would not process the proposed assignments "because Krystal Energy is currently not eligible to obtain a lease under the Navajo Nation law and due to other concerns of the Navajo Nation." (*Id.*, p. 103). In that same letter, the Bureau directed Krystal "to immediately cease all operation" on the well sites, and instructed "the current lessee, Amoco Production Company, ...

to immediately take over operation of the subject lease." (*Id.*).

*2 On December 20, 1999, Navajo Nation officials arrived at the Utah well site and forcibly evicted Hubert Dayzie, a Krystal employee, from the site. (Appellee's App. No. 2, p. 26, ¶ 7). The Navajo Nation officials loaded generators and other equipment that belonged to Krystal for transport from the site; storage tanks containing crude oil were emptied and loaded into trailers. (*Id.*). The Navajo Nation officials then chained and padlocked the gate surrounding the well site, and informed Mr. Dayzie that he could not re-enter the site; the New Mexico well site was also chained and padlocked. (*Id.*). Approximately two months later, Mr. Dayzie returned to the Utah well site and saw that "much additional Krystal personal property had been removed from the site." (*Id.*, ¶ 10). On March 28, 2000, John Dietz, an attorney representing Krystal, wrote to Amoco advising them that Krystal was asserting claims against the Navajo Nation for the acts described above. (Appellee's App. No. 4, pp. 59-60).

Due to the unresolved issues, Amoco waited until September 2000 to begin its process of plugging and abandoning the well sites (Appellant's App. No. 4, p. 105). The "P[lug] & A[bandon] Operation Cement Service Report[s]" indicate that Amoco continued the plug and abandon process through November 2000. (*Id.*, pp. 105-07, 113-24). Those reports make no mention of Krystal's property. (*Id.*). In March 2001, Akhtar Zaman, Director of

the Navajo Nation Minerals Department, apparently wrote a memorandum to Amy Alderman, a tax attorney for the Navajo Tax Commission, and stated that "[t]here are no equipments, including pump jacks, storage vessels, or flow line system, left on the lease. According to an employee of the servicing company which was contracted by Amoco to plug the wells, all flow lines were given to the servicing company by Amoco. Pump jacks or storage vessels were apparently taken by Amoco." (Dkt. # 16, Appellant's App. No. 4, pp. 87-90). The value of the equipment that Krystal had at the well sites has been appraised at a "forced liquidation value" of \$1,075,000.00. (Dkt. # 17, p. 12).

On January 5, 2001, Krystal filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Arizona. (Dkt. # 7, p. 2; Dkt. # 13, p. 2). On March 5, 2001, Krystal filed an adversary proceeding against the Navajo Nation, seeking (1) a turnover of assets under 11 U.S.C. § 542(a); (2) a determination of tax due to the Navajo Nation under 11 U.S.C. § 505; and (3) damages arising out of the seizure of Krystal's assets by the Navajo Nation. (*Id.*). The Navajo Nation filed a motion to dismiss the adversary complaint; the Bankruptcy Court granted the motion on September 28, 2001, and this Court subsequently upheld that ruling on September 30, 2002. (Dkt. # 11, 2:01-cv-1970-MHM). Krystal appealed the Court's order to the Ninth Circuit, during which time the bankruptcy administrative case was dismissed. (Dkt. # 7, p. 2; Dkt. # 13, p. 2). However, the "Stipulated Order

Dismissing Case Effective February 14, 2003 and Reserving Jurisdiction over Adversary Proceeding" reserved exclusive jurisdiction over the adversary proceeding in order to allow appeal to the Ninth Circuit. (Dkt. # 7, p. 2).

*3 The Ninth Circuit reversed this Court's September 30, 2002 order and held that Congress had abrogated the sovereign immunity of Indian tribes under 11 U.S.C. § 106(a). (*Id.*); *Krystal Energy Co. v. Navajo Nation*, 257 F.3d 1055 (9th Cir.2004) (holding that Congress has abrogated Indian tribes' sovereign immunity for purposes of bankruptcy matters under 11 U.S.C. § 106(a)). As a result, on August 2, 2004, this Court reversed the Bankruptcy Court's September 28, 2001 Order dismissing Krystal's adversary complaint against the Navajo Nation and remanded the case to the Bankruptcy Court for further proceedings. (Dkt. # 15, Case No. 2:01-cv-1971-PHX-MHM).

Krystal filed an amended complaint in the Bankruptcy Court on July 25, 2006 (Dkt. # 13, p. 2), and a second amended complaint on December 7, 2006 (Dkt. # 7, p. 3). The second amended complaint added five new counts: (1) breach of contract; (2) unjust enrichment / estoppel; (3) violation of due process; (4) violation of automatic stay; and (5) injunctive relief. (Dkt. # 7, p. 3; Dkt. # 13, pp. 2-3). On March 5, 2007, the Navajo Nation filed a motion to dismiss, which the Bankruptcy Court granted in part on May 23, 2007, dismissing Krystal's claims of breach of contract, unjust enrichment / estoppel,

and violation of due process. (*Id.*). Then, on January 15, 2008, the Bankruptcy Court granted Krystal's motion for partial summary judgment on Krystal's claim for a turnover of assets under 11 U.S.C. § 542, ordering the Navajo Nation to turn over all of Krystal's property and provide an accounting for the property taken. (Dkt. # 16, Appellant's App. No. 1). In addition, the Bankruptcy Court ordered that "[Krystal] is entitled to judgment against [the Navajo Nation] for the value of the property removed from the well sites, and judgment will be entered accordingly." (*Id.*, p. 3). Three counts remain pending before the Bankruptcy Court—(1) violation of automatic stay under 11 U.S.C. § 362(a); (2) tax determination under 11 U.S.C. § 505; and (3) injunctive relief. On January 15, 2008, the Navajo Nation filed a motion for leave to bring an interlocutory appeal under 28 U.S.C. § 158(a); the Court granted the motion on June 18, 2008. (Dkt.# 2).

II. ISSUES

This is an interlocutory appeal under 28 U.S.C. § 158(a). The Navajo Nation appeals the Bankruptcy Court January 15, 2008 Order granting Krystal's motion for partial summary judgment on Krystal's claim for turnover of property under 11 U.S.C. § 542(a). The Bankruptcy Court ordered the Navajo Nation to turn over all of Krystal's property and account for any property that was taken from the two well sites at issue in this case. (Appellant's App. No. 1). The Bankruptcy Court further ordered that Krystal is entitled to

judgment against the Navajo Nation for the value of the property that was removed from the well sites. (*Id.*).

The Navajo Nation presents two issues on appeal: (1) whether the Bankruptcy Court erroneously determined that Krystal's property was in the possession, custody or control of the Navajo Nation under 11 U.S.C. § 542(a); (2) whether the Bankruptcy Court erroneously determined that Krystal possessed a legal or equitable interest in the property to be turned over and accounted for. (Dkt.# 16, p. 3).

III. STANDARD OF REVIEW

*4 A district court may hear appeals from "final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges." 28 U.S.C. § 158(a). A bankruptcy court's findings of fact are reviewed under the "clearly erroneous" standard, and its conclusions of law are reviewed *de novo*. *In re Compton Impressions, Ltd.*, 217 F.3d 1256, 1260 (9th Cir.2000); Fed. R. Bankr.P. 8013 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."). "[R]eview under the 'clearly erroneous standard' is significantly deferential, requiring a 'definite and firm conviction that a mistake has been committed.'" *Granite State Ins. Co. v. Smart Modular Technologies, Inc.*, 76 F.3d 1023, 1028

(9th Cir.1996) (quoting *Concrete Pipe & Prods. v. Construction Laborers Pension Trust*, 508 U.S. 602, 623, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993)).

"On appeal, a district court may affirm, modify, or reverse a bankruptcy judge's judgment, Order, or decree or remand with instructions for further proceedings." Fed. R. Bankr.P. 8013. A district court, acting as the appellate court for purposes of appeals from the bankruptcy court, "may affirm the lower court on any ground fairly supported by the record." *In re Leavitt*, 171 F.3d 1219, 1223 (9th Cir.1999). In general, a party appealing from a bankruptcy court order may not raise issues that were not raised at the trial level. *In re Marvin Properties, Inc.*, 76 B.R. 150, 153 (9th Cir.1987). Nevertheless, a district court has the authority to consider any issue presented by the record, even if not addressed by the bankruptcy court. *Matter of Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1379 (9th Cir.1985).

IV. ANALYSIS

Section 542(a) of the Bankruptcy Code enables a debtor to recover property that belongs to the estate. 11 U.S.C. § 542(a). Specifically, section 542(a) provides:

[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account

for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

See In re Del Mission Ltd., 98 F.3d 1147, 1151 (9th Cir.1996) ("11 U.S.C. § 542(a) provides that an entity in possession of estate property 'shall' deliver such property to the trustee. This is a mandatory duty arising upon the filing of the bankruptcy petition."). "[A] creditor's knowing retention of property of the estate constitutes a violation" of 11 U.S.C. § 362(a)(3). *In re Abrams*, 127 B.R. 239, 242 (9th Cir.1991) (creditor's continued retention of repossessed vehicle after receiving notice of bankruptcy violated automatic stay); *accord Knaus v. Concordia Lumber Co.*, 889 F.2d 773, 775 (8th Cir.1989) ("The failure to [turn over], regardless of whether the original seizure was lawful, constitutes a prohibited attempt to 'exercise control over the property of the estate' in violation of the automatic stay."). Section 362(a)(3) "proscribe[s] the mere knowing retention of estate property." *Del Mission*, 98 F.3d at 1151; *see also In re Colortran, Inc.*, 210 B.R. 823, 826-27 (9th Cir.1997) ("A creditor who fails to return the estate's property after it knows of the debtor's bankruptcy is subject to sanction for willful violation of the automatic stay."), *aff'd in part and vacated in part on other grounds*, 165 F.3d 35 (9th Cir.1998).

A. Federal Regulatory Scheme

*5 The Navajo Nation contends that 11 U.S.C. § 542(a) can not be applied

against the Navajo Nation because the "comprehensive federal regulatory scheme of oil and gas development and production in Indian Country" prevents a determination that Krystal's property is in the possession, custody or control of the Navajo Nation. (Dkt.# 16, p. 4). After thoroughly discussing the federal regulations and procedures covering oil and gas lease assignments in Indian Country, the Navajo Nation contends that "[t]he Bankruptcy Court's determination that the Navajo Nation took the property on the leases completely ignores the pervasive federal regulatory supervision of oil and gas production on the Navajo Nation." (Dkt.# 16, p. 5).

Sections 1 through 3 of the Indian Mineral Leasing Act of 1938 (the "Act"), 25 U.S.C. § 396(a) *et seq.*, establish procedures for leasing oil and gas interests on tribal lands. Section provides that "[a]ll operations under any oil, gas, or other mineral lease issued pursuant to the [Act] shall be subject to the rules and regulations promulgated by the Secretary of the Interior." 25 U.S.C. § 396d. "Under this grant of authority, the Secretary has issued comprehensive regulations governing the operation of oil and gas leases." *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 199, 105 S.Ct. 1900, 85 L.Ed.2d 200 (1985) (citing 25 CFR pt. 211 (1984)). Regardless, the Federal Government remains "firmly committed to the goal of promoting tribal self-government." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983); *see e.g.*, Indian Financing

Act of 1974, 25 U.S.C. § 1451 *et seq.*, *Kerr-McGee*, 471 U.S. at 200 (tribes maintain dual roles as "commercial partners" and sovereigns—"The tribe acts as a commercial partner when it agrees to sell the right to the use of its land for mineral production, but the tribe acts as a sovereign when it imposes a tax on economic activities within its jurisdiction.").

"Only the Tribe has authority to lease its lands. The Secretary's authority extends only to approving or disapproving leases entered into by the Tribe." *Wilson v. U.S. Dept. of Interior*, 799 F.2d 591, 592 (9th Cir.1986) (citing *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365, 372, 88 S.Ct. 982, 19 L.Ed.2d 1238 (1968) (Secretary not lessor in oil and gas leases on Indian land and cannot grant leases on his own authority); 25 U.S.C. § 396a (1982) (an Indian tribe may lease its land with approval of the Secretary). A Tribe may obtain approval of the Secretary of the Interior for a lease pursuant to 25 U.S.C. § 415, authorizing commercial leases of Indian lands. *Yavapai-Prescott Indian Tribe v. Watt*, 707 F.2d 1072, 1073 (9th Cir.1983) ("Congress adopted section 415 to encourage long-term commercial leases of Indian land and thereby to enhance its profitable development."). If a tribe will not enter into a lease, then the Secretary has no authority to approve the lease application. *Wilson*, 799 F.2d at 592 (citing *Quantum Exploration, Inc. v. Clark*, 780 F.2d 1457, 1459-60 (9th Cir.1986) (nothing for the Secretary to approve if the Indian tribe has reseeded its agreement).

*6 Although the record indicates that Krystal received initial approval for the Utah and New Mexico assignments from both the Navajo Nation and the Bureau of Land Management, the Navajo Nation later declined to approve the leases, and the BLM accordingly informed Krystal that it was returning the proposed leases to Amoco, the original lessor. As such, the BLM directed Krystal to cease operations and instructed Amoco to take over operations of the lease. The Navajo Nation argues that this fact, i.e., the fact that Krystal never obtained final approval of the lease assignments, establishes that Krystal can not assert a valid claim against the Navajo Nation) for the return of Krystal's personal property under 11 U.S.C. § 542(a). However, the Court fails to see how the issues surrounding whether Krystal obtained valid leases under the applicable federal regulatory scheme have any bearing on whether the Navajo Nation may be held liable for the turnover of Krystal's property pursuant to 11 U.S.C. § 542(a). The validity or invalidity of the subject leases has no bearing on the nature of any of Krystal's personal property that is or had been located on the Utah and New Mexico well sites. Indeed, it does not even appear that the Navajo Nation argues as much; rather, the Navajo Nation appears to contend that the federal regulatory scheme, and the alleged failure of Krystal to satisfy all of the requisite leasing requirements, somehow absolves the Navajo Nation of any sort of liability for turnover of property under 11 U.S.C. § 542(a).

The Navajo Nation's arguments boil down to an assertion that the Navajo Nation should not be held liable for the loss or return of any of Krystal's property that had been located on the Utah and New Mexico well sites because it was the BLM that ordered Krystal to cease operations and then directed Amoco to take over operation of the lease and plug and abandon the well sites. However, the record indicates the BLM merely informed Krystal that it could not approve the leases because the Navajo Nation did not consent to them. As such, the BLM directed Amoco, the original lessor, to take over the operations of the well sites, and, pursuant to the BLM and Amoco's previous plans, plug and abandon the wells. The BLM's involvement here is limited, and it certainly does not shield the Navajo Nation from liability arising out its actions in connection with Krystal's property located on the well sites. Indeed, there is no indication in the record that the BLM ever exercised any control over the well sites or the property located on them.

The Navajo Nation also asserts that it can not be held liable for the return of Krystal's property because Amoco and the servicing company that it contracted with to plug the wells allegedly took equipment from the well sites when they plugged and abandoned the wells. (Dkt.# 16, p. 5). The support for that assertion comes from the affidavit of Amy Alderman, which states that in March 2001, Akhtar Zaman, Director of the Navajo Nation Minerals Department, told her that "[t]here are no equipments, including pump jacks,

In re Krystal Energy Co., Inc., Not Reported In F.Supp.2d (2008)

storage vessels, or flow line system, left on the lease. According to an employee of the servicing company which was contracted by Amoco to plug the wells, all flow lines were given to the servicing company by Amoco. Pump jacks or storage vessels were apparently taken by Amoco." (Dkt. # 16, Appellant's App. No. 4, pp. 87-90). However, Amoco did not begin to plug an abandon the subject well sites until September 2000. In contrast, the uncontroverted facts, as set forth in the record through depositions by eye-witnesses, establish that in December 1999, Navajo Nation officials evicted Krystal employees from the well sites, took equipment that belonged to Krystal for transport from the site, and chained and locked the well sites, telling Krystal's employees that they could not return. (Appellee's App. No. 2, p. 26, ¶ 7). Also uncontroverted is an eyewitness statement that approximately two months thereafter, "much additional Krystal personal property had been removed from the [Utah] site." (*Id.*, ¶ 10). The Navajo Nation's only response to these declarations are bare assertions that its officials would not have been directed to take Krystal's property. (Dkt.# 17, p. 21). As the Bankruptcy Judge correctly noted, such assertions, without more, are insufficient to survive summary judgment. (Appellant's App. No. 2, pp. 16-17). In addition, the Bankruptcy Judge addressed the Navajo Nation's contention that Amoco may have taken some of Krystal's property after they plugged and abandoned the wells. *See id.*, pp. 9-10. The Judge noted that the Navajo Nation

was not arguing as a defense that it assigned to Amoco the responsibility for returning Krystal's equipment. Further, the Judge noted that the Navajo Nation did not seek to bring Amoco into the bankruptcy proceeding. Indeed, as the Judge remarked at the January 8, 2008 oral argument, "as long as it's proper you can eject someone from your property, but that doesn't mean you get to keep the property that that person has brought onto the property. That's the explanation that seems to be lacking in the response." (*Id.*, p. 10). This Court continues to find that explanation lacking, and finds unpersuasive the Navajo Nation's arguments concerning the effect of the applicable federal regulatory scheme on the application of 11 U.S.C. § 542(a). The Bankruptcy Judge thoroughly addressed these issues at the January 8, 2008 oral argument; his findings of facts are not clearly erroneous, and after reviewing the applicable law, the Court finds no reason to question his conclusions of law.

***7 Accordingly,**

IT IS HEREBY ORDERED that the January 15, 2008 Order and Judgment of the Honorable George B. Nielsen, Jr., Bankruptcy Judge, United States Bankruptcy Court for the District of Arizona, is **AFFIRMED**.

IT IS FURTHER ORDERED directing the Clerk of the Court to enter judgment accordingly.

In re Krystal Energy Co., Inc., Not Reported In F.Supp.2d (2008)

DATED this 26th day of September,
2008.

End of Document

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Works.

EXHIBIT E

CARL PADILLA
President
BARBARA PADILLA
Secretary / Treasurer



505 Road 350
Farmington, NM 87401
505/832-0877
FAX / 832-8120

Lisa Banen, Attorney

March 5, 2009

Lane & Nach Law Firm
2025 North Third Street, # 157
Phoenix, Arizona 85004

Dear Ms. Banen:

I am providing this report regarding the Krystal Energy Company, Inc. personal property involved with the well sites in Utah and New Mexico.

I will first provide a summary of my professional work experience in the oil and gas industry in the Four Corners area and will then provide the values of all the equipment which was previously involved in the Utah operation but is now lost and also the New Mexico operation with the subject equipment still on site.

I also wanted to note that I personally did contract field work at the site of the Utah wells and remember the operating pump jacks, tanks, and all the associated equipment involved with the production operation at the site at that time. With regard to the New Mexico site, I never did work there, but I did recently visit the site and observed the equipment there prior to preparing this report.

Presently, I am President of CIP, Inc., a company which provides a full range of services to both the majors and the smaller independents in the oil and gas business throughout the San Juan Basin oil and gas fields, which includes production in New Mexico, Colorado, Utah, and some in Arizona. Some of the companies CIP is doing work for now or has done work for recently include Kinder Morgan Energy Partners, Williams Field Services, XTO, Jicarilla Apache Energy, Antoco, High Plains Operating, Colorado Gas, Calkins Oil, and Synergy. The work which CIP performs includes, but is not limited to, the manufacture, re-manufacture, servicing, repair, and installation of product storage tanks, separators, dehydrators, heater-treaters, other custom oil and gas field equipment, and general field construction, including field fabrication, field repairs, and field installation. CIP also buys used equipment and then refurbishes and re-sells such. CIP further is routinely involved with cost estimating and bidding on field work for the noted companies, and I am the person with CIP who handles such. CIP, the company, was formed in 1991 by two partners and myself, and, I bought out one partner in 1994 and the other in 1996.

Prior to starting CIP with my partners in 1991, I had worked in the Four Corners and entire Rocky Mountain oil and gas fields full-time since 1977. I began as a pipe welder, moved up to certified welder, then started bidding and managing field construction projects in relation to well sites, pipelines, pressure plants, and all of the component pieces of equipment, such as separators, heater-treaters, tanks, and associated piping, fittings, valves, controls, and gauges.

I also wanted to note that CIP's focus and expertise is with above-ground oil and gas field equipment. Although, I am personally familiar with the pricing involving some below-ground equipment because of all

March 6, 2009

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CARL PADILLA
President
BARBARA PADILLA
Secretary / Treasurer



505 Road 350
Farmington, NM 87401
505/832-0977
FAX / 832-8120

the bidding and cost estimating I am regularly involved with, CIP generally does deal in below ground equipment.

All the values I place on the following equipment would be as of the current time, not the value around 1999, which, at least I am told, is when Krystal Energy was taken out of possession and control of the two well sites.

Utah Property and Equipment:

4 - 1,000 barrel tanks installed with ladder and landing (\$25,000 per tank, plus \$1,000 for ladder and landing, plus \$3,500 for transport and set-up): \$118,000

2 - 480 barrel tanks installed with ladder and landing (\$12,000 per tank, plus \$1,000 for ladder and landing, plus \$3,500 for transport and set-up): \$33,000

4 derrickheads (Lufkin C228D or approx. equivalent) (4 at \$65,000): \$260,000

17,621 feet of tubing (2 7/8 inch) (for the three producing wells only; (well 1: 6,031 feet) (well 2: 5,632 feet) (well 3: 5,958 feet)) (\$15 per foot x 17,621 feet): \$264,315

17,621 feet of sucker rods (3/4 inch (but wells could have been 1 inch, which is significantly more expensive)) (30 foot lengths = about 587 joints) (\$90.00 per 3/4 inch - (wells may have been 1 inch): \$12,830

34,862 feet of 12 to 14 inch well casing ((well 1: 6,031 feet) (well 2: 5,632 feet) (well 3: 5,958 feet) (well 4: 5,743 feet) (well 5: 5,549 feet) (well 6: 5,949 feet) (\$6.00 per inch - \$72.00 per linear foot): \$2,510,064

2 heater treaters (about \$12,000 to \$15,000 per unit) (2 units at \$13,500): \$27,000

2 separators (\$12,000 to \$20,000 depending on exact capabilities) (2 at \$16,000): \$32,000

2 generators (50 kw) (\$15,000 to \$20,000) (2 at \$17,250): \$34,500

Miscellaneous required connections, etc. for 4 wells (piping, fittings, controls, valves, nipples) (\$14,000 per well (plus labor including plumbing and additional hook-up work \$16,000) (therefore, about \$30,000 per well for well and all set-up ready to turn on): \$120,000

March 6, 2009

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New Mexico Property and Equipment:

1 - 380 barrel tanks installed with ladder and landing (per tank) (\$11,000 per tank, plus \$1,000 for ladder and landing, plus \$3,500 for transport and set-up): \$15,500

1 pumpjack (Continental-Emeco): \$60,000

5,280 feet of tubing (2 7/8 inch) (\$15 per foot x 5,280 feet): \$79,200

5,280 feet of sucker rods (3/4 inch (but wells could have been 1 inch, which is significantly more expensive)) (30 foot lengths - about 176 joints) (\$90.00 per 3/4 inch - (wells may have been 1 inch): \$15,840

5,280 feet of 12 to 14 inch well casing (well: est. 5,280) (\$6.00 per inch - \$72.00 per linear foot): \$380,160

Miscellaneous required connections, etc. for 4 wells (piping, fittings, controls, valves, nipples) (\$14,000 per well (plus labor including plumbing and additional hook-up work \$16,000) therefore - about \$30,000 per well for well all set-up ready to turn on / Mr. Trujillo total (1 well equipment (\$14,000) and installation (\$16,000)): \$30,000

There are a number of items of lost property for which I have not provided the current value because I have not recently dealt with such. This includes, for the Utah well site, the 3 bottom-hole pumps, the triplex injection pump, and the 4 pump-jack motors and, for the New Mexico site, the bottom-hole pump and the pump-jack motor.

I wanted to mention that all of the above-listed equipment, including the equipment for which I have not provided a value estimate, would be required for the production that was occurring at the Utah and New Mexico sites.

In addition, for the two operating systems there also was 2 and 7/8 inch piping which ran from the producing wells to the storage tanks, a total of about one mile of 2 and 7/8 inch piping for the Utah system and about one-half of a mile of 2 and 7/8 inch piping for the New Mexico site. The current price of such piping would be about \$1.50 to \$2.00 per foot for used piping and possibly about \$10.00 per foot for new. Assuming used pipe could be located and utilized, the present cost for such would be \$9,240 for the Utah site (5,280 feet x \$1.75 per foot) and \$4,620 for the New Mexico site (2,640 feet x \$1.75 per foot).

March 6, 2009

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CARL PADILLA
President
BARBARA PADILLA
Secretary/Treasurer



505 Road 350
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If there are any questions you have or I may otherwise be able to be of assistance, please contact me at your convenience.

Sincerely,

Carl Padilla
President CIP, Inc.

March 6, 2009

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EXHIBIT F

Form 5-157
November 1947UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRSContract No.
14-20-603-708

OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

Navajo TRIBE, STATE OF UtahTHIS INDENTURE OF LEASE, made and entered into in ^{sextuplicate}~~quintuplicate~~ this 6th day of
October, 1954, by and between Sam Ahkeah, Chairman,
Navajo Tribal Councilof Window Rock, State of Arizona, for and
on behalf of the Navajo Tribe of Indians, designated herein as
lessor, and Honolulu Oil CorporationPO Box Drawer 1391of Midland, State of Texas, herein designated as
lessee:

WITNESSETH

1. Lessor, in consideration of a cash bonus of \$7,935.00, paid to the Treasurer of said Tribe where the tribe is organized under the act of June 18, 1934 (48 Stat. 984), or to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, where the tribe is not organized under said act of June 18, 1934, receipt of which is hereby acknowledged and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-described tracts of land situated in the county ofSan Juan, State of Utah, and more particularly described as follows:

"See attached rider for land description"

containing 2567 acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, water-ways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the lessee hereby agrees:

(a) Bond.—To furnish such bonds as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety thereon, conditioned upon compliance with the terms of this lease.

(b) Wells.—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed \$1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified.

(c) Rental and royalty.—To pay, beginning with the date of approval of the lease by the Secretary of the Interior or his duly authorized representative, a rental of \$1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor: *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in section 4 (e) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the treasurer of said tribe* or the superintendent. All such rental and royalty payments shall be mailed to the oil and gas supervisor for transmittal to the treasurer of said tribe or to the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) Monthly statements.—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the treasurer of said tribe or the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) Log of well.—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) Diligence, prevention of waste.—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) Regulations.—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: *Provided*, That no regulation hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

*All payments under this lease shall be made to the superintendent where the tribe affected is an Indian tribe.

U. S. Act of June 16, 1904 (33

(A) Assignment of lease.—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for any school or other buildings belonging to the tribe on said lands by making connection at its own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 80 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of the sum of one dollar and all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancellation and forfeiture.—When, in the opinion of the Secretary of the Interior and the Tribal Council, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior shall have the right at any time after 80 days notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land; *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 80 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

9. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

10. Helium—public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

11. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

12. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

13. No lease, assignment thereof, or interest therein, will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise and no employee of the Interior Department shall be permitted to acquire any interest in any mineral lease covering restricted Indian lands by ownership of stock in corporations having such leases or in any other manner.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned:

Two witnesses to execution by lessor:

Sam Ahkech [SEAL]
Chairman, Navajo Tribal Council

P. O. WINNEMUN ROCK, ARIZONA

Thomas Lynch

P. O. WINNEMUN ROCK, ARIZONA

Honolulu Oil Corporation

By: [Signature] [SEAL]

Two witnesses to execution by lessee:

Helen G. Boyle, N.P.
Helen G. Boyle, N.P.
P. O. 215 Market St., San Francisco, Calif.

G. B. Fry
G. B. Fry
P. O. 215 Market St., San Francisco, Calif.

Attest: [Signature]

ACKNOWLEDGMENT OF LESSOR

STATE OF Arizona
COUNTY OF Apache ss:

Before me, a notary public, on this 22 day of December, 1954, personally appeared Sam Ahkech

to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth:

J. MAURICE MCCABE, NOTARY PUBLIC
IN AND FOR APACHE COUNTY, ARIZONA
My commission expires MY COMMISSION EXPIRES 6 JAN. 1958

Maurice McCabe
Notary Public

UNITED STATES
DEPARTMENT OF THE INTERIOR

Oil and Gas DEC 22 1954

The within lease is hereby approved.

[Signature]
General Land Office
Per 19 FR 4514

Filed for record this 22 day of December, 1954, at Winnecon Rock o'clock PM

Rental received, \$ 3.20.00

By [Signature]

UNITED STATES OIL AND GAS LEASE CONTRACT NO. 14-20-60-708
- Honolulu Oil Corporation, Midland, Texas-100001

Point of origin to which most of the unsurveyed portion of the following tracts are referred and described is the corner of the State of Utah, Colorado, New Mexico and Arizona, which is marked by a General Land Office monument. Some tracts consisting of partially surveyed and partially unsurveyed lands are described from a survey township corner.

1990

4-10-68

injections 31 and 32

CC 1072 5 - 224, 6)

Contains a total of approximately 250 names.

1. This land is offered on a tract basis and the title shall not be an adverse title. The purchase is made in full for the sole purpose of acquisition and is prior to survey of the land. Thereafter the rental shall be our claim on the adverse claim by the survey. No refund or additional survey of rent shall be required to be made in case of a difference in the acreage stated and the actual survey. Neither shall such a difference in acreage be payable for the benefit of the owner.

[illegible]

2. If no evidence for the Indian "ridge," the latter shall not follow under the direction of the members of the U. S. Geological Survey, but shall be left to the responsibility of the local authorities. The latter shall, however, be made of productive water satisfactory for domestic, stock, and fire use. The wall shall be built of stone or concrete, and shall be of sufficient height to prevent water from flowing over the top. The wall shall be built of stone or concrete, and shall be of sufficient height to prevent water from flowing over the top. The wall shall be built of stone or concrete, and shall be of sufficient height to prevent water from flowing over the top.

4. Licensee shall employ Nevada labor in all positions for which there is a minimum wage established in Nevada. Licensee shall protect the rights of all employees in accordance with the provisions of Nevada law.

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... ..
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EXHIBIT G

Form 5-157
November 1947

UNITED STATES *Cont. No. 14-20-603-2285*
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

Navajo TRIBE, STATE OF *New Mexico*

RECEIVED
JAN 31 1957
U. S. GEOLOGICAL SURVEY
ROSWELL, N. M.

THIS INDENTURE OF LEASE, made and entered into in quintuplicate this

25 day of *April*, 19*56*, by and between

ACTING COMMISSIONER

NAVAJO TRIBAL LANDS

YUWIPUTU, ARIZONA

of _____, State of _____, for and
on behalf of the *Navajo* Tribe of Indians, designated herein as
lessor, and

1714 *Gulf Oil Corp. / Pan American Petroleum Corp.*
of *New Mexico*, State of *New Mexico*, herein designated as
lessee:

WITNESSETH

1. Lessor, in consideration of a cash bonus of \$_____, paid to the Treasurer of said Tribe where the tribe is organized under the act of June 18, 1934 (48 Stat. 934); or to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, where the tribe is not organized under said act of June 18, 1934, receipt of which is hereby acknowledged and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-described tracts of land situated in the county of

San Juan, State of *New Mexico*, and more particularly described as follows:

Tract No. 33

For legal description see attachment

containing _____ acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the lessee hereby agrees:

(a) Bond.—To furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

10-4613-1

COPY TO FARMINGTON

(1)

NOTED - STAUFFER

(b) Wells.—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed \$1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified.

(c) Rental and royalty.—To pay, beginning with the date of approval of the lease by the Secretary of the Interior or his duly authorized representative, a rental of \$1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. This actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor: *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in section 4 (e) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the treasurer of said tribe* or the superintendent. All such rental and royalty payments shall be mailed to the oil and gas supervisor for transmittal to the treasurer of said tribe or to the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) Monthly statements.—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the treasurer of said tribe or the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) Log of well.—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) Diligence, prevention of waste.—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee — the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation — conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing the lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) Regulations.—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: *Provided*, That no regulation hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

*All payments under this lease shall be made to the superintendent where the tribe affected is not organized under the act of June 18, 1934 (48 Stat. 984).

(k) Assignment of lease.—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for any school or other buildings belonging to the tribe on said lands by making connection at its own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of the sum of one dollar and all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancellation and forfeiture.—When, in the opinion of the Secretary of the Interior and the Tribal Council, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

9. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

10. Helium—public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

11. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

12. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

13. No lease, assignment thereof, or interest therein, will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise and no employee of the Interior Department shall be permitted to acquire any interest in any mineral lease covering restricted Indian lands by ownership of stock in corporations having such leases or in any other manner.

AS WITNESSES WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned:

Two witnesses to execution by lessor:

RC Clark
NAVAJO AGENT
P. O. WINSTON ROCKY, ARIZONA

McGraw
NAVAJO AGENT
P. O. WINSTON ROCKY, ARIZONA

Two witnesses to execution by lessee:

P. O. Ronald W. Woodruff

P. O. Fort Worth, Texas

Scott P. Pinta
ACTING CHAIRMAN
NAVAJO TRIBAL COUNCIL

[SEAL]

APPROVED
[SEAL]

APPROVED
[SEAL]

Attest: Lawrence E. Huerta

ACKNOWLEDGMENT OF LESSOR

STATE OF Arizona
COUNTY OF Apache ss:

Before me, a notary public, on this 17 day of January, 1957, personally appeared

to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires 1-17-57

UNITED STATES
DEPARTMENT OF THE INTERIOR

Washington, D. C. JAN 24 1957, 1957

The within lease is hereby approved.

Commissioner of Indian Affairs
AREA DIRECTOR
PER 21FAL 805

Filed for record this 17 day of January, 1957, at Winrock, Arizona, o'clock PM.

Rental received, \$ 2.30

By Lawrence E. Huerta

TRACT 53

1. The point of origin to which the following unsurveyed tracts are referred and described is the southwest corner of Township 25 North, Range 13 West, and the northwest corner of Township 24 North, Range 13 West, said corner being on the east boundary line of the Navajo Reservation and marked by a General Land Office marker.

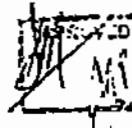
Beginning at a point 10 miles north and 2 miles west of the point of origin, thence west 2 miles, thence north 2 miles, thence east 2 miles, thence south 2 miles to the point of beginning. Tract 53 when surveyed, probably will be described as follows:

T. 26 N., R. 14 W., N.M.L.P.M.
(Unsurveyed)

Section 1 - All
Section 4 - All
Section 9 - All
Section 10 - All

see

Totaling approximately2560 Acres



REV

Tribal Land Oil and Gas Lease Contract No. 14-20-603- 2655

1. The acreage herein stated is for the sole purpose of computing the annual rental. If a survey of the land is made acceptable to the Commissioner of Indian Affairs or his authorized representative, thereafter, the rental shall be computed on the acreage as shown by the survey. No refund or additional payment of past rental shall be required to be made because of the difference in the acreage stated and that shown by the survey. Neither shall such a difference in acreage be grounds for any adjustment of the bonus. Prior to the commencement of the drilling of a well, the lessee shall have the leased premises surveyed by a registered land surveyor, boundaries posted with substantial monuments, and a tie established with the nearest United States Public Land Survey, Certified copies of the survey plats must be filed in duplicate with the General Superintendent, and in duplicate with the Supervisor, U. S. Geological Survey. Failure to comply with this provision will render the lease subject to cancellation in the discretion of the Commissioner of Indian Affairs. Permission to drill will not be granted by Supervisor prior to receipt of certified copy of survey plat. (If lands are already surveyed the foregoing requirement does not apply.)

2. If so required by the Commissioner or his authorized representative, the lessee shall condition under the direction of the Supervisor of the U. S. Geological Survey, any wells drilled, which do not produce oil or gas in paying quantities as determined by said Supervisor, but which are capable of producing water satisfactorily for domestic agriculture or livestock use by the lessor. Adjustment of costs for conditioning of the well and for value of casing and equipment left in or on the well will be made in said cases where it is determined that the well will produce water satisfactorily as aforesaid.

3. Lessees shall employ Navajo labor in all positions for which they are qualified, including truck drivers, and shall protect the Indian grazing rights and other Indian rights to the surface of the lands.

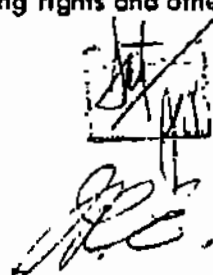
A handwritten signature, possibly "J. H. H.", is written over a rectangular stamp. The stamp contains some illegible text and a checkmark.

EXHIBIT H

In RE: Krystal Energy Co. Inc.

Case Number: 01-00166 ECFSSC

DECLARATION CONCERNING DEBTOR'S SCHEDULES

I, Yolanda Denetchee the President, of the corporation named as petitioner in the foregoing petition, declare under penalty of perjury under the laws of the United States that I have read the following summary and schedules consisting of 8 sheets, and that they are true and correct to the best of my knowledge, information and belief.

Date 1/22/01

Signature Yolanda Denetchee

Signature

FILED

2001 JAN 23 A 9 35

CLERK OF COURT
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

SUMMARY OF SCHEDULES

Debtor's Employer's Tax Id. Number : 85-0445511

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, C, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedule D, E, and F to determine the total amount of the debtor's liabilities.

Schedule	Attached?	No. of Sheets	Assets	Liabilities	Other
A-Real Property	Yes	1	0.00		
B-Personal Property	Yes	4	8420000.00		
C-Property Claimed as Exempt	Yes	1			
D-Creditors Holding Secured Claims	Yes	1		260000.00	
E-Creditors Holding Unsecured Priority Claims	Yes	4		6000.00	
F-Creditors Holding Unsecured Nonpriority Claims	Yes	2		865324.00	
G-Executory Contracts and Unexpired Leases	Yes	1			
H-Codebtors	Yes	1			
I-Current Income of Individual Debtor(s)	Yes	1			0.00
J-Current Expenditures of Individual Debtor(s)	Yes	2			0.00
Total Number of sheets in ALL Schedules>		18.00			
		Total Assets>	8420000.00		
		Total Liabilities>		1131324.00	

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule A - SCHEDULE OF
REAL PROPERTY

Debtor's Employer's Tax Id. Number : 85-0445511

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interests, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by stating so. If the debtor holds no interest in real property, write "none".

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim.

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Market is defined as : Current Market Value of Debtor's Interest in Property Without Deducting any Secured Claims or Exemption.

Total: Schedule A : Real Property (Market) : \$ 0.00

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECPSSC

In re: Krystal Energy Co. Inc.

Schedule B - SCHEDULE OF
PERSONAL PROPERTY

Debtor's Employer's Tax Id. Number : 85-0445511

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more categories, write "None" in the appropriate position below the category.

If the property is being held for the debtor by someone else, state that person's name and address.

Market is defined as : Current Market Value of Debtor's Interest in Property Without Deducting any Secured Claim or Exemption.

1) Cash on hand.

None

2) Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.

None

3) Security deposits with public utilities, telephone companies, landlords, and others.

None

4) Household goods and furnishings, including audio, video and computer equipment.

None

5) Books, pictures and other art objects, antiques, stamp, coin, record, tape compact disk, and other collections or collectibles.

None

6) Wearing apparel.

None

7) Furs and jewelry.

None

In RE: Krystal Energy Co. Inc.

Case Number: 01-00166 ECF99C

8) Firearms and sports, photographic, and other hobby equipment.

None

9) Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.

None

10) Annuities. Itemize and name each issuer.

None

11) Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.

None

12) Stock and interests in incorporated and unincorporated business. Itemize.

None

13) Interests in partnerships or joint ventures. Itemize.

None

14) Government and corporate bonds and other negotiable and non-negotiable instruments.

None

15) Accounts receivable.

None

16) Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.

None

17) Other liquidated debts owing debtor including tax refunds. Give particulars.

None

18) Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.

In RE: Krystal Energy Co. Inc.Case Number: 01-00166 ECPSEC**Schedule B - 18 : Personal Property (continued)**

None

19) Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.

None

20) Other contingent and unliquidated claims of every nature including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value if each.

Description of Prop.	: Claims for damages for wrongful	Market :\$	0.00
Description (continued)	: seizure of oilfield-v. BP Amoco		
Description (continued)	: and Navajo Nation		
Street Address	: (Amount not determined)		

21) Patents, copyrights, and other intellectual property. Give particulars.

None

22) Licenses, franchises, and other general intangibles. Give particulars.

None

23) Automobiles, trucks, trailers, and other vehicles.

None

24) Boats, motors, and accessories.

None

25) Aircraft and accessories.

None

26) Office equipment, furnishing, and supplies.

None

27) Machinery, fixtures, equipment and supplies used in business.

Description of Prop.	: Crude oil equipment	Market :\$	400000.00
City, State, Zip Code	: Utah and New Mexico		

Description of Prop.	: Refining equipment	Market :\$	4000000.00
Note: This item is continued on the following page.			

In RE: Krytal Energy Co. Inc.Case Number: 01-00166 HCPSSC

Schedule B - 27 : Personal Property (continued)

Note: This item is a continuation from the previous page.

City, State, Zip Code : Arizona

18) Inventory.

Description of Prop.	: Crude oil inventory	Market :\$	20000.00
Description (continued)	: in tanks		

29) Animals.

None

30) Crops - growing or harvested. Give particulars.

None

31) Farming equipment and implements.

None

32) Farm supplies, chemicals, and feed.

None

33) Other personal property of any kind not already listed. Itemize.

Description of Prop.	: Oil well leases	Market :\$	4000000.00
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Total: Schedule B : Personal Property :		\$	8420000.00
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UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECF99C

In re: Krystal Energy Co. Inc.

Schedule C - SCHEDULE OF

EXEMPT PROPERTY

Debtor's Employer's Tax Id. Number : 85-0445511

Debtor elects the exemption to which debtor is entitled under

| 11 U.S.C. Sec. 522(b)(1) Exemptions provided in 11 U.S.C. Section 522(d).
Note: These exemptions are available only in certain states.

|X| 11 U.S.C. Sec. 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Prop. : Crude oil equipment
Description (continued) :
Statute Creating Exempt.: A.R.S. 33-1130(1)

Claimed :\$ 2500.00
Market :\$ 400000.00

Total: Schedule C : Property Claimed as Exempt :

\$ 2500.00
=====

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule D - SCHEDULE OF
CREDITORS HOLDING
SECURED CLAIMS

Debtor's Employer's Tax Id. Number : 85-0445511

None of the following claims is contingent, unliquidated or disputed unless otherwise stated. Unless otherwise indicated, property is located at debtor(s) personal residence.

(Legend of amount titles: Amount= Amount of Claim, Market= Market value without deduction collateral, Un-Sec=Amount unsecured if any, Total=amount claimed.

Name of creditor	: Dale A. Nicholson	Amount :\$	260000.00
Street addr of creditor	: 2406 E. Encanto	Market :\$	0.00
City, state, zip code	: Mesa, AZ 85213	Un-Sec. :\$	0.00
Codebtor?	: No		
Nature of Lien	: Security in oil well		
Description of property	: equipment, refinery, leases, inv.		

Total: Schedule D : Creditors Holding Secured Claims	\$	260000.00
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UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule E - SCHEDULE OF

Debtor's Employer's Tax Id. Number : 85-0445511

CREDITORS HOLDING
UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of this petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, please state so as a "Co-debtor". Include the entity on the appropriate schedule of creditors, and complete Schedule H - Creditors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by stating so.

If the claim is "Contingent," state so. If the claim is "Unliquidated," state so. If the claim is "Disputed" state so. (You may need to state combinations of conditions.)

Report the total of the claims listed on each sheet in the line labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E on the line labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY

☐ Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. Sec. 507(a)(2).

☐ Wages, salaries and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum of \$2000 per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. Sec. 507(a)(3).

☐ Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. Sec. 507(a)(4).

☐ Certain farmers and fishermen

Claims of certain farmers and fishermen, up to a maximum of \$2000 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. Sec. 507(a)(5).

☐ Deposits by individuals

Claims of individuals up to a maximum of \$900 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. Sec. 507(a)(6).

☒ Taxes and Other Certain Debts Owed to Governmental

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. Sec. 507(a)(7).

In RE: Krystal Energy Co. Inc.

Case Number: 01-00166 ECFSSC

Schedule E : Creditors Holding Unsecured Priority Claims (continued)

TYPES OF PRIORITY (continued)

| | Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. Sec. 507 (a)(8).

| | Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, etc. Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. Sec. 507 (a)(9).

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule E - SCHEDULE OF

Debtor's Employer's Tax Id. Number : 85-0445511

CREDITORS HOLDING
UNSECURED PRIORITY CLAIMSNone of the following claims is contingent, unliquidated or disputed unless
otherwise stated.

1) Extensions of Credit in an Involuntary Case.

None

2) Wages, Salaries, and Commissions.

None

3) Contributions to Employee Benefit Plans.

None

4) Certain Partners and Fishermen.

None

5) Deposits by Individuals.

None

6) Taxes and Other Certain Debts Owed to Governmental.

Name of creditor	: San Juan County Treasurer	Amount:\$	6000.00
Street addr of creditor	: P.O. Box 817	Priority:\$	0.00
City, state, zip code	: Monticello, UT 84535		
Codebtor?	: No		
Consideration for Claim	: 1999 and 2000 property taxes		
Contingent, unliq, disp?	: Disputed		

Name of creditor	: Utah State Tax Commission	Amount:\$	0.00
	: Appeal Unit		
Street addr of creditor	: 210 N 1950 W	Priority:\$	0.00
City, state, zip code	: Salt Lake City, UT 84134		
Codebtor?	: No		
Consideration for Claim	: 1999 and 2000 pers. prop. taxes		
Contingent, unliq, disp?	: Disputed		

Subtotal (Total of this page) :	\$	6000.00
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In RE: Krystal Energy Co. Inc. Case Number: 01-00165 ECF43C

Schedule E : Creditors Holding Unsecured Priority Claims (continued)

7) Alimony, Maintenance, or Support.

None

8) Commitments to Maintain the Capital of an Insured Depository Inst.

None

Subtotal (Total of this page) : \$ 0.00

Total: Schedule E : Creditors Holding Unsecured Priority Claims \$ 6000.00
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UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule F - SCHEDULE OF
CREDITORS HOLDING
UNSECURED NONPRIORITY
CLAIMS

Debtor's Employer's Tax Id. Number : 85-0445511

None of the following claims is contingent, unliquidated or disputed unless
otherwise stated.State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without
priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed
in Schedules D and E.If any entity other than a spouse in a joint case may be jointly liable on a claim, please state so as a "Codebtor", include the
entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether
husband, wife, both of them, or the marital community may be liable on each claim by stating so.If the claim is "Contingent," state so. If the claim is "Unliquidated," state so. If the claim is "Disputed" state so. (You may
need to state combinations of conditions.)

| | Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

Name of creditor	: BP Amoco Production	Amount:\$	100000.00
	WGRU-San Juan Asset		
Street addr of creditor	: 501 Westlake Park Blvd.		
City, state, zip code	: Houston, TX 77079		
Codebtor?	: No		
Date claim was incurred	: 1997		
Consideration for Claim	: Prior lease payments		
Contingent, unliq, disp?	: Disputed		
Name of creditor	: Black Mesa Construction	Amount:\$	37621.00
Street addr of creditor	: P.O. Box 2410		
City, state, zip code	: Window Rock, AZ 86515		
Codebtor?	: No		
Name of creditor	: Longhouse Valley Construction	Amount:\$	13500.00
Street addr of creditor	: P.O. Box 31416		
City, state, zip code	: Flagstaff, AZ 86003		
Codebtor?	: No		

Subtotal (Total of this page) : \$ 151121.00

In RE: Krystal Energy Co. Inc.

Case Number: 01-00166 ECF88C

Schedule F : Creditors Holding Unsecured Nonpriority Claims (continued)

Name of creditor : Navajo Minerals Dept. Amount:\$ 20000.00
 Street addr of creditor : P.O. Box 1903
 City, state, zip code : Window Rock, AZ 86515
 Codebtor? : No
 Date claim was incurred : 2000
 Consideration for Claim : Royalties
 Contingent, unliq, disp?: Disputed

Name of creditor : Navajo Nation Amount:\$ 691000.00
 Street addr of creditor : P.O. Box 1903
 City, state, zip code : Window Rock, AZ 86515
 Codebtor? : No
 Date claim was incurred : 1999
 Consideration for Claim : Penalties-alleged operation
 Contingent, unliq, disp?: Disputed

Name of creditor : U.S. Department of Interior Amount:\$ 3203.00
 Street addr of creditor : P.O. Box 6570
 City, state, zip code : Farmington, NM 87499
 Codebtor? : No
 Date claim was incurred : 2000
 Consideration for Claim : Royalties

Subtotal (Total of this page) : \$ 714203.00

Total: Schedule F : Unsecured Nonpriority Claims \$ 865324.00
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UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule G - SCHEDULE OF
EXECUTORY CONTRACTS
AND
UNEXPIRED LEASES

Debtor's Employer's Tax Id. Number : 85-0445511

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests.

State nature of debtor's interest in contract, i.e. "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete mailing address of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name of other party : Navajo Nation and
Name of other party (continued) : Bureau of Land Management
Street address of other party : P.O. Box 1903
City, state, zip code : Window Rock, AZ 86515
Description of contract or lease : Oil well lease

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 BCFSSC

In re: Krystal Energy Co. Inc.

Schedule H - SCHEDULE OF
CODEBTORS

Debtor's Employer's Tax Id. Number : 85-0445511

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that may also be liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by nondebtor spouse during the six years immediately preceding the commencement of this case.

☒ Check this box if debtor has no codebtors

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 BCFSSC

In re: Krystal Energy Co. Inc.

Schedule I - SCHEDULE OF
CURRENT INCOME OF
INDIVIDUAL DEBTORS

Debtor's Employer's Tax Id. Number : 85-0445511

Name	Age	Relationship
Dependent 1: NOT APPLICABLE	0	
Dependent 2:	0	
Dependent 3:	0	
Dependent 4:	0	
Dependent 5:	0	
Dependent 6:	0	

Debtor's Marital Status :

	Debtor	Spouse
Occupation :		
Employer Name :		
Employer Addr :		
How Long Emp. :		

	Debtor	Spouse
Income (Estimate Average Monthly Income):		
Current monthly gross wages, salary, commissions :	0.00	0.00
Estimated monthly overtime :	0.00	0.00
Subtotal :	0.00	0.00
Payroll Deductions:		
Payroll taxes and social security. :	0.00	0.00
Insurance. :	0.00	0.00
Union dues :	0.00	0.00
Other (specify): :	0.00	0.00
Subtotal of Payroll Deductions :	0.00	0.00
Total Net Monthly Take Home Pay. :	0.00	0.00
Regular income from operation of business (farm) :	0.00	0.00
Income from real property :	0.00	0.00
Interest and dividends. :	0.00	0.00
Alimony, maintenance, support payments. :	0.00	0.00
Soc Sec/Gvt Asst: :	0.00	0.00
Pension or retirement income. :	0.00	0.00
Other : :	0.00	0.00
Monthly : :	0.00	0.00
Income : :	0.00	0.00
Total Monthly Income :	0.00	0.00
Total Combined Monthly Income. :	0.00	0.00

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

Schedule J - SCHEDULE OF
CURRENT EXPENDITURES
OF INDIVIDUAL DEBTORS

Debtor's Employer's Tax Id. Number : 85-0445511

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annual, or annually to show monthly rate.

Is a joint petition filed where the spouse maintains separate household? No

Rent or home mortgage payment (include lot for mobile home) :\$	0.00
Are real estate taxes included?	Yes
Is property insurance included?	Yes
Utilities: Electricity and heating fuel	0.00
Water and sewer.	0.00
Telephone.	0.00
Other.	0.00
Home Maintenance (Repairs and upkeep)	0.00
Food.	0.00
Clothing.	0.00
Laundry and dry cleaning.	0.00
Medical and dental expenses	0.00
Transportation (not including car payments)	0.00
Recreation, clubs and entertainment, newspapers, mags, etc.	0.00
Charitable contributions.	0.00
Insurance (not deducted from wages or included in mortgage) :	0.00
Homeowner's or renter's.	0.00
Life	0.00
Health	0.00
Auto	0.00
Other.	0.00
Taxes (not deducted from wages or included in mortgage pmt) (specify)	0.00
Installment payments (do not list plan payments for 12 & 13)	
Auto	0.00
Other.	0.00
Other.	0.00
Alimony, maintenance, and support paid to others.	0.00
Payments for support of additional dependents not at resid. :	0.00
Regular expenses from operation of business, profess., farm :	0.00
Other	0.00
Other	0.00
TOTAL MONTHLY EXPENSES	\$ 0.00

(FOR CHAPTER 12 AND 13 DEBTORS ONLY)

Provide the information below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$ 0.00
B. Total projected monthly Expenses	0.00
C. Excess Income (A minus B)	0.00
D. Total amount to be paid into plan each :	0.00