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

15 KRYSTAL ENERGY CO., INC., 16 17 18 19	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 22 23 24 25 26	<b>NOTICE OF FILING DEFENDANT'S:</b>  <b>OBJECTIONS TO BANKRUPTCY COURT'S</b> <b>PROPOSED FINDINGS OF FACT AND</b> <b>CONCLUSIONS OF LAW</b>  <b>-AND-</b>  <b>REQUEST FOR <i>DE NOVO</i> REVIEW AND</b> <b>INDEPENDENT DETERMINATION BY</b> <b>DISTRICT COURT</b>

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

7 DATED: April 17, 2012.

8 **NAVAJO NATION DEPARTMENT OF JUSTICE**  
9 Harrison Tsosie, Attorney General

10 /s/MRG

11 By: \_\_\_\_\_  
12 Marcelino R. Gomez

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By \_\_\_\_\_

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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  
Another District

Judge: GBN

Lead Case: 2-01-bk-166

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

**Docket Text:**

*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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**2:01-ap-00171-GBN Notice will be electronically mailed to:**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

15 KRYSTAL ENERGY CO., INC.,  
16 Debtor

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

19 KRYSTAL ENERGY CO. INC.

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

22 | NAVAJO NATION

**Plaintiff**

23

**Defendant**

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

**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**

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, ln. 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 ln. 11-12.

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

---

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

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

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

- 16 1. The *Proposed Findings and Conclusions* misstate the  
 17 applicable standard of review;
- 18 2. The Bankruptcy Court's valuation findings were inconsistent  
 19 with the damages measure that had been previously  
 20 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
- 21 22 3. Krystal did not present sufficient and admissible evidence to  
 23 support any proposed finding by the Bankruptcy Court as to  
 24 what specific personal property and equipment existed at the  
 25 Sites at the time of Krystal's ejection, nor did Krystal  
 establish what rights (if any) Krystal held in any such property  
 or equipment;

26  
 27 <sup>2</sup> The proceedings were delayed for several years by litigation over whether Congress  
 28 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 (9<sup>th</sup> 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 proceeding  
 7           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 (7<sup>th</sup> Cir. 1984) ("de  
 29          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 (9<sup>th</sup> Cir. 1990)  
 15 (review of Bankruptcy Court findings and conclusions); *United States v. Remsing*,  
 16 874 F.2d 614, 618 (9<sup>th</sup> Cir. 1989) (review of magistrate's findings and recom-  
 17 mendations: 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**  
**RIGHTS IN MUCH OF THE PROPERTY FOR WHICH VALUE HAS BEEN**  
**ASSESSED.**

27 Krystal may assert that the language in prior rulings which, strictly read,  
 28 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 interpre-  
 5 tation, 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 personality 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.

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

13       For the foregoing reasons, the Navajo Nation objects to the admission at  
 14 Hearing of the valuation opinions and reports of Krystal's valuation witnesses,  
 15 Messrs. Padilla and Cunningham, and objects to the valuation conclusion at page  
 16 18. ¶ 8, of the *Proposed Findings and Conclusions*.

17 **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.**

20       A. **The Correct Measure.**

21       The Navajo Nation does not presently dispute the Bankruptcy Court's  
 22 liability determination – that the Navajo Nation improperly denied Krystal the  
 23 "opportunity to remove its equipment" when Krystal was ejected from the Sites.  
 24 [*Proposed Findings and Conclusions*, p. 3, ln. 2]. As the Bankruptcy Court  
 25 previously ruled in its summary judgment order regarding liability [Docket No. 88],  
 26  
 27

28       

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<sup>3</sup> 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.**  
**Cunningham, as to The Value of Property in "Continued Use"**  
**was also Irrelevant and Provided No Support for the Proposed**  
**Findings and Conclusions.**

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

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 ejection.

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 ejection 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]<sup>4</sup>. 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 <sup>4</sup> 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).

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

12 DATED: February 10, 2012.

13 **NAVAJO NATION**  
14 **DEPARTMENT OF JUSTICE**  
15 Harrison Tsosie, Attorney General

16 /s/MRG

17 By: \_\_\_\_\_  
18 Marcelino R. Gomez  
19 Co-Counsel for Defendant

20 **MARISCAL, WEEKS, McINTYRE**  
21 **& FRIEDLANDER, P.A.**

22 WN/4239

23 By: \_\_\_\_\_  
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## **EXHIBIT A**

**ORDERED ACCORDINGLY.**

Dated: January 6, 2012

George Culver

**George B. Nielsen, Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

18                   This adversary proceeding seeks, *inter alia*, to  
19 adjudicate a demand for damages by the Chapter 11 bankruptcy  
20 estate of Krystal Energy Co., Inc. against the Navajo Nation, a  
21 sovereign Indian tribe.<sup>1</sup> Plaintiff filed a Chapter 11 bankruptcy  
22 case in the District of Arizona on January 5, 2001. On April 8,  
23 2003, the case was dismissed by stipulated order between the  
24 Chapter 11 bankruptcy trustee and the United States Trustee,  
25 effective as of February 14, 2003 and reserving to this court

27       <sup>1</sup>The Ninth Circuit Court of Appeals has expressly ruled that Congress has  
28 abrogated the tribe's sovereign immunity in regard to this litigation. *Krystal  
Energy Co. v. Navajo Nation* (In re Krystal Energy Co.) 375 F.3rd 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.

## 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

1 finder.

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

5                   CONCLUSIONS OF LAW

6                   1. To the extent that any of the above findings of fact  
7 should be considered conclusions of law, they are hereby incorpo-  
8 rated by reference.

9                   2. Jurisdiction of the Chapter 11 bankruptcy case to  
10 which this adversary proceeding is related is vested in the United  
11 States District Court for the District of Arizona. 28 U.S.C.  
12 §1334(a). That court has referred all cases under Title 11 of the  
13 United States Code, all adversary proceedings and all contested  
14 matters arising under Title 11 or related to a bankruptcy case to  
15 the United States Bankruptcy Court for the District of Arizona.  
16 28 U.S.C. §157(a), District General Order 01-15(1). The Nation  
17 has denied this court has core bankruptcy jurisdiction to resolve  
18 this proceeding by entering a final order or judgment. Answer to  
19 second amended complaint at ¶ 4, dkt. 64. The Nation was  
20 scheduled as a disputed unsecured creditor, but did not file a  
21 bankruptcy claim against the estate. Schedule F at p. 2.

22                   3. While plaintiff alleges this court has core  
23 bankruptcy jurisdiction to liquidate the damages claim as an  
24 estate asset<sup>2</sup>, see 28 U.S.C. §157(b)(2)(O), care should be taken  
25 to not transgress the limits of bankruptcy court jurisdiction.  
26 *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.* 102 S.Ct.  
27

28                   

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<sup>2</sup>Second 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 officers<sup>3</sup>. 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,

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27         

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

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.

## 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:

3 Adam B. Nach  
4 LANE & NACH, P.C.  
5 2025 N. Third Street  
6 Suite 157  
7 Phoenix, AZ 85004  
8 Email: adam.nach@azbar.org  
9 Attorney for Plaintiff

10 Lisa Perry Banen  
11 LANE & NACH, P.C.  
12 2025 N. Third Street  
13 Suite 157  
14 Phoenix, AZ 85004  
15 Email: lisa.banen@LANE-NACH.com  
16 Attorney for Plaintiff

17 Marcelino R. Gomez  
18 Assistant Attorney General  
19 Navajo Nation Department of Justice  
20 P.O. Box 2010  
21 Window Rock, AZ 86515  
22 Email: mrgomez1952@yahoo.com  
23 Attorney for Defendant

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

26

27

28

29

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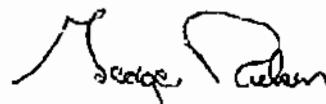
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**EXHIBIT B**

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SIGNED.

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. ) 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:  
3 Adam B. Nach  
4 LANE & NACH, P.C.  
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9 Attorney for Plaintiff  
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17 Marcelino R. Gomez  
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21 Window Rock, AZ 86515  
22 Email: mraomez1952@yahoo.com  
23 Attorney for Defendant  
24 By: /s/Rachael M. Stapleton  
25 Judicial Assistant  
26  
27  
28

**EXHIBIT C**

IT IS SO ORDERED.



Dated: January 15, 2008

  
GEORGE B. NIELSEN, JR

U.S. Bankruptcy Judge

1 Adam B. Nach - 013622  
2 Lisa Perry Banen -- 010412  
3 **LANE & NACH, P.C.**  
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5 Phoenix, Arizona 85004  
6 Telephone No.: (602) 258-6000  
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8 adam.nach@lane-nach.com  
9 lisa.banen@lane-nach.com

10 Attorneys for KRYSTAL ENERGY CO., INC., Debtor

11 **IN THE UNITED STATES BANKRUPTCY COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 **KRYSTAL ENERGY CO., INC.,**  
15 Debtor,

16 **KRYSTAL ENERGY CO., INC.**  
17 Plaintiff,

18 vs.

19 **THE NAVAJO NATION, a domestic**  
20 **sovereign nation**

21 **Defendant.**

(Chapter 11 Case)

No. 2:01-bk-00166-SSC

Adv. 2:01-ap-00171-GBN

**ORDER GRANTING PARTIAL  
MOTION FOR SUMMARY  
JUDGMENT**

22 Debtor Krystal Energy Co., Inc. ("Krystal" or "Plaintiff") filed this adversary in 2001 against  
23 the Navajo Nation, a domestic sovereign nation ("Defendant"), arising out of disputes concerning  
24 assignments of leases for oil well sites located near Aneth, Utah and Farmington, New Mexico.  
25 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 (9<sup>th</sup> Cir. 2004).

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

27 **Lane & Nach, P.C.**

28 The Brookstone, Suite 157  
2025 North Third Street  
Phoenix, Arizona 85004

1 2006. On February 1, 2007, the Court entered its Order granting the Motion for Leave to File a  
 2 Second Amended Complaint and also entered its Order allowing Krystal to inspect the oil well sites  
 3 located in Utah and New Mexico. On March 5, 2007, Defendant filed its Motion to Dismiss the  
 4 Second Amended Complaint, and on May 23, 2007, the Court entered its Order dismissing Counts I  
 5 (Breach of Contract), II (Unjust Enrichment/Estopel) and III (Violation of Due Process) without  
 6 prejudice. However, the Court denied the Motion to Dismiss with regards to the following counts:  
 7

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

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

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

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

26  
 27 Linn & Nash, P.C.  
 The BookStone, Suite 157  
 2025 North Third Street  
 Phoenix, Arizona 85004

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

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

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

13 SIGNED AND DATED AS SET FORTH ABOVE

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Laini R. Nash, P.C.  
The BrookStone, Suite 157  
2025 North Third Street  
Phoenix, Arizona 85004

**EXHIBIT D**

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

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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).

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

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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

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

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,

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

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

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

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(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

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

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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 reseinded its agreement)).

<sup>\*6</sup> 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,

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

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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 uncontested 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 uncontested 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)**

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DATED this 26th day of September,  
2008.

**End of Document**

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**EXHIBIT E**

CARL PADILLA  
President  
BARBARA PADILLA  
Secretary/Treasurer



505 Road 350  
Farmington, NM 87401  
505/632-0977  
FAX / 632-9120

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 to 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, Calimes 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-treators, 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



605 Road 350  
Farmington, NM 87401  
505/632-0977  
FAX / 632-9120

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.

Used 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 pumpjacks (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

34,867 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

3 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 and all set-up ready to turn on): \$120,000

March 6, 2009

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Secretary/Treasurer



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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-Eimco): \$ 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 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 360  
Farmington, NM 87401  
505/832-0977  
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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 5-257  
November 1947Contract No.  
14-20-603-708UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

## OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

Navajo \_\_\_\_\_ TRIBE, STATE OF \_\_\_\_\_ Utah

THIS INDENTURE OF LEASE, made and entered into in ~~quadruplicate~~ this 6th day of October, 1954, by and between Sam Ahkeah, Chairman,  
Navajo Tribal Council

of Window Rock, State of Arizona, for and  
 on behalf of the Navajo Tribe of Indians, designated herein as  
 lessor, and Honolulu Oil Corporation  
PO Box Drawer 1321

of Midland, State of Texas, herein designated as  
 lessee:

## WITNESSETH

1. Lessor, in consideration of a cash bonus of \$7,936.00, 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 of

San 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, 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 officer in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the parties hereby agree:

(a) Bond.—To furnish such bonds as may be required by the regulations of the Secretary of the Interior, with surety or United States bonds as surety, 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 rents 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 (a) 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 monthly 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 located. See Stat. 343.

16 Act of June 14, 1924 (48 Stat. 543).

(b) 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:

*Jamesine M. Lynch* Sam Akbeh, [SEAL]  
Chairman, Navajo Tribal Council

P. O. MARCH 1954, ARIZONA

*Thomas Lynch* [SEAL]

P. O. MARCH 1954, ARIZONA

Two witnesses to execution by lessee:

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

*C. S. F.* Attest: *Jamesine M. Lynch*  
P. O. 215 Market St., San Francisco, Calif.

Honolulu Oil Corporation

By: *C. S. F.* [SEAL]

ACKNOWLEDGMENT OF LESSOR

STATE OF Arizona

} ss:

COUNTY OF Apache

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

Sam Akbeh

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 therin set forth:

J. MAURICE McCABE, NOTARY PUBLIC

IN AND FOR APACHE COUNTY, ARIZONA

My commission expires MY COMMISSION EXPIRES JAN. 1958.

*J. Maurice McCabe*  
Notary public

UNITED STATES  
DEPARTMENT OF THE INTERIOR

*C. S. F.* DEC 22 1954  
10

The within lease is hereby ..... approved.

*J. Maurice McCabe*  
Commissioner of Internal Revenue  
Per 19 FR 4544

Filed for record this ..... day of ..... 19....., at ..... o'clock ..... m.

Rental received, \$3,200.

By ..... 10-4613-1

ENTAL LIQUID OIL AND GAS LEASE CONTRACT NO. 17-20-000-78  
Honolulu Oil Corporation, Plaintiff, *v.*

Swet. Co., USA

4. 10. 2. 26. 22. 2. 7. 11.

### actions 31 and 32

## 3.1.2. *Constitutive equations*

AC 10725-245

containing a total of approximately 2500 acres.

1. The land is offered on a tract basis and the title shall not be on an acreage basis. The premium to be charged is for the sole purpose of one acre. Premiums will be charged in excess of one acre. Thereafter the rental shall be on an acreage basis by the acreage to be referred or adjusted. Premiums of one acre shall be required to be paid because of a difference in the acreage offered and that offered by the surveyor. Neither shall such a difference in acreage be permitted for the adjustment of the premium.

2. Prior to the commencement of the drilling of a well the lessee shall take the leased land in a suitable and safe condition, free from all obstructions to the well, and the well situated with the greatest possible safety. The well must be located on the leased land for which the lessee is responsible, and must be located in a place convenient with a sufficient supply of water, and the well must be located in a place where it can be easily and conveniently maintained, repaired, and cleaned, and in a location where it is not likely to be damaged by the action of the weather, or by any other cause. The well must be located in a place where it can be easily and conveniently maintained, repaired, and cleaned, and in a location where it is not likely to be damaged by the action of the weather, or by any other cause.

Mr. Johnson should consider Nevada before in all positions for which they are  
considered qualified. He is a man, Mr. Hall, without the smallest fault, and  
I would like to see him in a position of responsibility.

7. The author is not known, the book is not in the library, and the author is not known, the book is not in the library, and the author is not known, the book is not in the library.

高盛高盛高盛高盛高盛高盛高盛

**EXHIBIT G**

Form 5-167  
November 1947UNITED STATES *Cost. No. 14-20-603-2085*  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

## OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

RECEIVED

JAN 31 1957  
U. S. GOVERNMENT

SUPERVISOR

FEDERAL SURVEY

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

of 1956, by and between

ACTING CHIEF

NAVAJO TRIBAL COUNCIL

WYOMING, WYOMING, WYOMING

of \_\_\_\_\_, State of \_\_\_\_\_, for and

on behalf of the Navajo \_\_\_\_\_ Tribe of Indians, designated herein as

lessor, and

1214 Gulf Oil Corp. & Pan American Petroleum Corp.of 1214, 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 3000 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. 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 into 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 the leased 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 (34 Stat. 984).

16-9411

(h) 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 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.

As witnesses whereunto, 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:

R.C. Clark  
NAVAJO TRIBAL  
P. O. LINCOLN, NEW MEXICO

M. Shong  
NAVAJO TRIBAL  
P. O. FINE M. BLDG. LINCOLN

Two witnesses to execution by lessee:

P. O. Dorothy L. Woodbury  
P. O. Patricia L. Johnson

Scott Peterson  
CLERK  
NAVAJO TRIBAL, LINCOLN

[SEAL]

APPROVED  
[Signature]  
[SEAL]

Attest:

ACKNOWLEDGMENT OF LESSOR

STATE OF Arizona }  
COUNTY OF Apache } ss:

Before me, a notary public, on this 7 day of January, 1957, personally appeared

Scott Peterson,  
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 4-17-57

Laurene L. Alvarado

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Washington, D.C., JAN 24 1957, 10.

The within lease is hereby approved.

John D. Nichols  
AREA DIRECTOR  
Commissioner of Indian Affairs  
PER 21PA1905

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m.

Rental received, 3700.00

By \_\_\_\_\_

TRACT 53

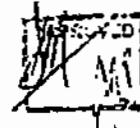
A. The point of origin to which the following, unsurveyed tracts are referred and described is the southwest corner of Township 25 North, Range 13 West, and the northwest corner of Township 24 North, Range 13 West, said corner being on the east boundary line of the Navajo Reservation and marked by a 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., G.L.O.M.  
(Unsurveyed)  
Section 1 - All  
Section 4 - All  
Section 9 - All  
Section 10 - All

REC

Totaling approximately ..... 2560 acres



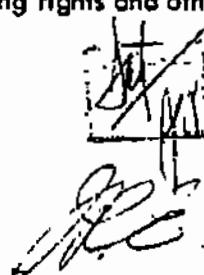
J.R.V.

Tribal Land Oil and Gas Lease Contract No. 14-20-603- 76,55

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 block of handwritten signatures, including initials and a surname, written in black ink.

## **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 5 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 JUN 23 AM 9:35

U.S. DISTRICT COURT  
CLERK'S OFFICE  
FEDERAL DISTRICT  
CLERK'S OFFICE  
FEDERAL DISTRICT

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, D, 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 Schedules 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

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

REAL PROPERTY

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 Claim 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: Kryystal 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) Hearing apparel.

None

7) Furs and jewelry.

None

In RE: Krystal Energy Co. Inc.

Case Number: 01-00166 ECFSSC

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 ECPSSC

**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 of each.

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

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, furnishings, and supplies.

**None**

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

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

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

In RE: Krystal Energy Co., Inc.

Case Number: 01-00166 ECPSSC

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

Total: Schedule B : Personal Property : \$ 8420000.00

UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

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.

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

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 "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.)

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 \$1000 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, FDIC, 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 Fleiberman.

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 Appeal Unit	Amount:\$	0.00
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 ECF&SC

**Schedule E : Creditors Holding Unsecured Priority Claims (continued)**

1) Alimony, Maintenance, or Support.

None

5) 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

UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF Arizona

Case Number 01-00166 ECFSSC

In re: Krystal Energy Co. Inc.

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

Schedule F - SCHEDULE OF  
CREDITORS HOLDING  
UNSECURED NONPRIORITY  
CLAIMSNone 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 WGRU-San Juan Asset	Amount:\$	100000.00
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 ECFSSC**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		
<b>Subtotal (Total of this page) :</b>			\$	714203.00
<b>Total: Schedule F : Unsecured Nonpriority Claims</b>			\$	865324.00

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 ECFSSC

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 ECFSSC

In re: Krystal Energy Co. Inc.

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

Schedule I - SCHEDULE OF  
CURRENT INCOME OF  
INDIVIDUAL DEBTORS

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. Pro rata 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
<b>TOTAL MONTHLY EXPENSES</b>	<b>\$</b>	<b>0.00</b>

## (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