



jurisdiction. *Id.* § 81.052.

The Commission’s rules provide that “each operator of a pipeline or gathering system . . . subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed annually, from the Commission.” 16 Tex. Admin. Code § 3.70(a). The Commission designates these as T-4 permits. An “operator” required to obtain a T-4 permit is “[a] person, acting for himself or as an agent for others and designated to the commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the commission.” *Id.* § 3.79(19). The T-4 permitting program serves to identify regulated pipelines to the Commission. A permit issued by the Commission is regulatory in nature; it is not an adjudication of rights. *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 363 S.W.3d 192, 199 (Tex. 2012) (“[I]n accepting an entity’s [T-4] paperwork, the Commission performs a clerical rather than an adjudicative act.”).

As part of its authority over gas pipelines, the Commission enforces pipeline safety regulations by a delegation from the Pipeline and Hazardous Materials Safety Administration (PHMSA) under 49 U.S.C. § 60105. PHMSA has adopted rules on the abandonment or deactivation of gas pipelines at 49 C.F.R. § 192.727. PHMSA’s abandonment rule provides that “[e]ach operator shall conduct abandonment or deactivation of pipelines in accordance with the requirements of this section.” 49 C.F.R. § 192.727(a). For abandonment, “[e]ach pipeline abandoned in place must be disconnected from all sources and supplies of gas; purged of gas; in the case of offshore pipelines, filled with water or inert materials; and sealed at the ends.” *Id.* § 192.727(b). An “operator” under these rules “means a person who engages in the transportation of gas.” *Id.* § 192.3. As the delegated pipeline enforcement agency in Texas, the Commission adopted PHMSA’s pipeline safety rules, including the rule on abandonment. 16 Tex. Admin. Code

§ 8.1(b). The Commission may enforce pipeline safety rules by initiating suits for civil penalties and injunctive relief. Tex. Nat. Res. Code §§ 81.053, 0531, 0534, 054.

The Palo Pinto Pipeline is identified in Commission records as C.B. “A” Long, 1, 4”. The pipeline is a 110-mile gathering line in Palo Pinto County. The Receiver is correct that the Palo Pinto Bond Company (PPBC) registered with the Commission as the operator of the Palo Pinto Pipeline under a Commission T-4 permit. *See* Commission Exhibit 1. That permit expired in 2021. Communications with the Commission, some of which are attached to the Receiver’s motion, suggest that the pipeline may have been conveyed to a party in the Receivership Estates. For example, in response to a Commission request to renew the T-4, Toben Scott wrote to the Commission in August 2021: “Saguaro Petroleum transferred all Palo assets to Amen Oil out of Graham, TX effective June 1st, 2020. Those assets have since been transferred to The Heartland Group from Ft. Worth . . .” Receiver’s Motion, Document 288, Exhibit E. In February 2022, Mr. Scott again sent an email to the Commission stating:

The former owners of Palo Pinto Bond Company, including myself and Andrew Day, sold the stock in PPBC and executed a Stock Purchase Agreement with Garry Starr of Amen Oil in Graham, TX . . . along with an assignment of all of the respective oil and gas assets in Palo Pinto County. These assets would have included the pipelines referred to in your letter. It is my understanding that Garry Starr/Amen Oil then subsequently entered into a separate agreement with The Heartland Group from Ft. Worth, TX, under operating entities Dodson Prairie and Panther Creek to take over the same subject assets.”

*Id.*, Exhibit I. However, no receivership party registered with the Commission for a T-4 permit.

In September 2021, a Commission investigator inspected the Palo Pinto Pipeline and found violations of PHMSA and Commission regulations. *Id.*, Exhibit F. The following year, the Commission found that violations remained uncorrected. *Id.*, Exhibit J. Based on representations made to the Commission on the transfer of PPBC assets, the Commission issued violation notices to the Receiver as manager of Dodson Prairie Oil & Gas LLC. *Id.*, Exhibit G and K.

### **The Commission's Interest in the Litigation**

The Commission has a significant interest in this litigation. The Commission regulates the Palo Pinto Pipeline and enforces rules related to the abandonment of a pipeline. The Receiver's regulatory obligations with respect to the pipeline are within the Commission's jurisdiction and are not properly raised in this lawsuit. Furthermore, the Commission has an interest in enforcing its rules on pipeline abandonment.

### **Argument**

#### **I. The Court lacks jurisdiction to declare the Receiver's regulatory obligations under Commission rules.**

The Receiver seeks an order finding that she has no right, interest, or obligation to operate the Palo Pinto Pipeline as part of the Receivership Estates. Specifically, her proposed order seeks a finding that "Receiver has no obligation to comply with any demand to operate or otherwise act as operator of the Palo Pinto Pipeline." *Id.*, Exhibit L. Accordingly, the relief sought is plainly against the Commission and requires the application of its rules governing gas pipelines. The Court lacks jurisdiction to issue such an order.

The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy. Federal courts lack the power to render advisory opinions. *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993). Rendering a decision on a matter where the adverse parties are not before the court would constitute an impermissible advisory opinion. *Princeton Univ. v. Schmid*, 455 U.S. 100, 102 (1982) (per curiam). The Commission is not a party to this suit. The Receiver's dispute with the Commission on whether a receivership party is the "operator" of the Palo Pinto Pipeline is thus not before the Court. Any finding on the Receiver's interests, rights, and obligations under Commission rules would be an impermissible advisory opinion. The Court should deny the Receiver's request.

**II. The Receiver must abandon the Palo Pinto Pipeline in compliance with Commission rules.**

The Receiver alternatively requests the Court to enter an order approving abandonment of the Palo Pinto Pipeline. The Commission agrees that the Court may authorize the abandonment of receivership assets pursuant to its general equity powers and the receivership order entered in this case. *See* Receivership Order, Document No. 17, ¶ 8. If the Court authorizes the Receiver to abandon the Palo Pinto Pipeline, the Receiver must comply with Commission rules on abandonment. These rules serve a critical function in protecting the public from hazards associated with abandoned pipelines.

As acknowledged in the Receiver’s motion, the Receiver is obligated by statute to manage and operate the Receivership Estates in compliance with Texas laws:

[A] trustee, receiver, or manger appointed in any cause pending in any court of the United States ... shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which the property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959(b). The Court’s order appointing the Receiver expressly incorporates § 959 as a limit on the Receiver’s authority. *See* Order Appointing Receiver, Document No. 17, ¶ 5. The mandate of §959 is clear. The Receiver is obligated to manage and operate receivership assets, “in the same manner that the owner or possessor thereof.”

Under § 959(b), a receiver’s compliance with state regulation is required, even if it is costly or burdensome. The leading case applying the statute is *Gillis v. California*, 293 U.S. 62 (1934). In *Gillis*, the Supreme Court held under a prior version of the statute that a receiver must maintain a state-required license and bond for the manufacture and distribution of gasoline. *Id.* at 65. The receiver in *Gillis* contended that he could not continue receivership operations and comply with the California licensing and bond requirements. *Id.* The Court rejected that excuse for non-

compliance, stating that “if the receiver cannot continue to carry on the Company’s business according to the plain direction of Congress, he must pursue some other course permitted by law.”

*Id.* at 66.

The Receiver in this case wrongly suggests that her request is not covered by § 959(b) because it is a proposed abandonment of the asset. The Receiver looks instead to *Midlantic Nat. Bank v. New Jersey Dep’t of Env’t Prot.*, 474 U.S. 494 (1986). This case involved a different statute that governs abandonment of property in a bankruptcy estate. *Id.* at 496. The statute allows a bankruptcy trustee “to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.” 11 U.S.C. § 554(a). The Court held that the abandonment statute should be construed in light of long-standing case law that prohibited a bankruptcy trustee from abandoning property in contravention of a state statute or regulation reasonably designed to protect public safety. *Id.* at 507. But *Midlantic* does not apply here. There is no equivalent abandonment statute for receiverships. In the absence of a similar statute for receivers, § 959(b) controls all aspects of a receiver’s management and operation of the Receivership Estates. Where, as here, procedures to abandon a gas pipeline are an express part of a regulatory scheme for which operators are responsible, such procedures plainly apply to a receiver operating the pipeline.

Even if *Midlantic* did apply, under its standard, the Commission’s rules on pipeline abandonment are reasonably designed to protect public safety. On this point, the Receiver conflates the Commission’s notices of violation of other regulatory requirements and the proposed abandonment. The Receiver argues that none of the Commission’s alleged violations associated with the Palo Pinto Pipeline constitute “an active environmental hazard.”<sup>1</sup> Receiver’s Motion,

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<sup>1</sup> The Commission disagrees with the Receiver’s view that there is no active environmental hazard created by non-compliance with the rules referenced in the notices of violation. The purpose of PHMSA’s regulatory scheme enforced by the Commission is “to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities . . .” 49 U.S.C. § 60102(a)(1). PHMSA’s rules are designed to *prevent* an active environmental

Document No. 288, p. 14. The alleged violations are important for the safe operation of the pipeline, but they do not concern the Receiver's proposed abandonment of the pipeline. An abandoned gas pipeline that has not been properly purged and sealed is indisputably an active safety hazard. Improperly abandoned pipelines have caused fatal explosions.<sup>2</sup>

Furthermore, the Receiver has a duty to comply with Commission rules under general principles of equity. While the Receiver is correct that the Court has broad powers to administer a receivership under its equitable jurisdiction, the Court should look to long-standing equity principles for guidance. A fundamental principle of equity jurisprudence is that "equity follows the law." *In re Shoreline Concrete Co., Inc.*, 831 F.2d 903, 905 (9th Cir. 1987) (citing *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893)). Thus, if the Court grants the Receiver's request for alternative relief and authorizes abandonment of the Palo Pinto Pipeline, the Court should require compliance with all applicable rules of the Commission.

### **Conclusion**

The Court should deny the Receiver's request to find that "Receiver has no obligation to comply with any demand to operate or otherwise act as operator of the Palo Pinto Pipeline." If the Court grants the Receiver's alternative request to abandon the pipeline, the Court should require the Receiver to follow all applicable rules for proper abandonment.

Respectfully submitted,

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GRANT DORFMAN

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hazard.

<sup>2</sup> ["Small, abandoned gas pipeline blamed for fatal Colorado home explosion"](#) *Aspen Times* (May 2, 2017); ["PUCO report: Unsealed original gas line led to explosion"](#) *The Columbus Dispatch* (July 28, 2015).

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### CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, the foregoing document was served via CM/ECF on all parties appearing in this Case.

/s/ Mark A. Steinbach  
MARK A. STEINBACH  
Assistant Attorney General



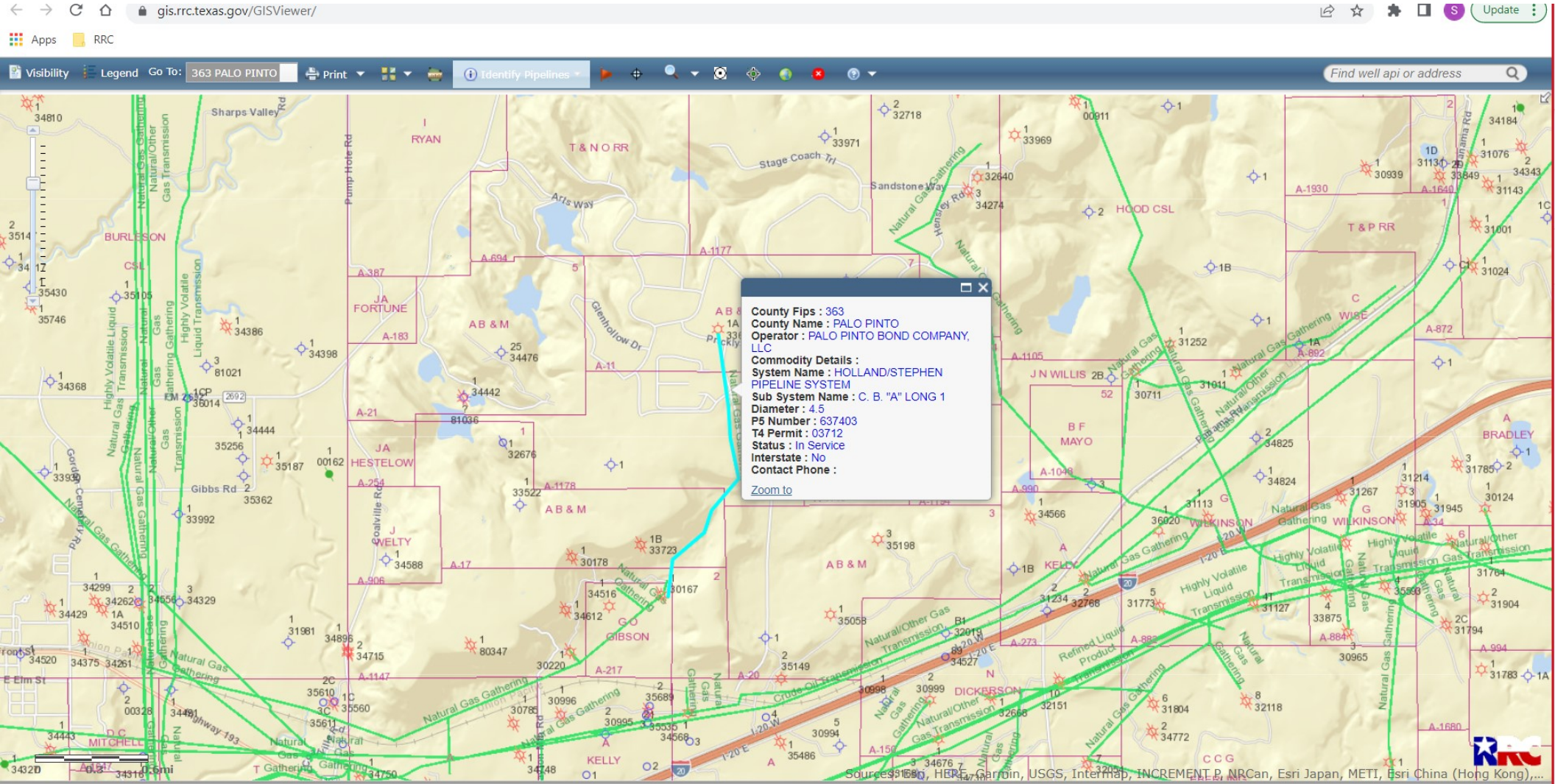


EXHIBIT 1



# RAILROAD COMMISSION OF TEXAS

## OVERSIGHT AND SAFETY DIVISION - PIPELINE SAFETY

### PIPELINE PERMITTING AND MAPPING SECTION

#### PERMIT TO OPERATE A PIPELINE IN TEXAS

11/08/2019

Permit Number: 03712

Commodity transported: Gas

Classification: Private

Payment Trace Number: 455RM004HYM4WIU

PALO PINTO BOND COMPANY, LLC  
Attn: Zayman Villegas  
1509 W Wall St., Ste. 100  
Midland, TX 79701

This is to certify that PALO PINTO BOND COMPANY, LLC has complied with Railroad Commission rule 16 Tex. Admin. Code §3.70 governing pipelines in accordance with Texas Natural Resources Code, §81.051, and is granted this permit by the Commission to operate the following pipeline or pipelines located in the following county or counties:

PALO PINTO

Total Permitted Miles: 104.99

Regulated Miles: 1.56

Unregulated Miles: 103.42

Pipeline Operator:

PALO PINTO BOND COMPANY,  
LLC

Economic Operator:

PALO PINTO BOND COMPANY,  
LLC

Pipeline Owner:

PALO PINTO BOND COMPANY,  
LLC

This permit is valid until 11/01/2020

If additional information is needed, please contact the Pipeline Permitting Section by phone at 512-463-7058, or by email at [pops@rrc.texas.gov](mailto:pops@rrc.texas.gov).