IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
THE HEARTLAND GROUP VENTURES, LLC; HEARTLAND PRODUCTION AND RECOVERY LLC; HEARTLAND PRODUCTION AND RECOVERY FUND LLC; HEARTLAND PRODUCTION AND RECOVERY FUND II LLC; THE HEARTLAND GROUP FUND III, LLC; HEARTLAND DRILLING FUND I, LP; CARSON OIL FIELD DEVELOPMENT FUND II, LP; ALTERNATIVE OFFICE SOLUTIONS, LLC; ARCOOIL CORP.; BARRON PETROLEUM LLC; JAMES IKEY; JOHN MURATORE; THOMAS BRAD PEARSEY; MANJIT SINGH (AKA ROGER) SAHOTA; and RUSTIN BRUNSON,	§	**No. 4-21CV-1310-O-BP**
	§	
Defendants,	§	
	§	
and	§	
	§	
DODSON PRAIRIE OIL & GAS LLC; PANTHER CITY ENERGY LLC; MURATORE FINANCIAL SERVICES, INC.; BRIDY IKEY; ENCYPHER BASTION, LLC; IGROUP ENTERPRISES LLC; HARPRIT SAHOTA; MONROSE SAHOTA; SUNNY SAHOTA; BARRON ENERGY CORPORATION; DALLAS RESOURCES INC.; LEADING EDGE ENERGY, LLC; SAHOTA CAPITAL LLC; and 1178137 B.C. LTD.,	§	
	§	
Relief Defendants.	§	
	§	
	§	

NOTICE OF FILING RECEIVER'S NOTICES OF ABANDONMENT OF CERTAIN OIL AND GAS PROPERTIES

PLEASE TAKE NOTICE OF THE FOLLOWING MATTER:

Deborah D. Williamson, in her capacity as the Court-appointed Receiver (the "Receiver") for the Receivership Parties (as defined in the Receivership Order) and the receivership estates (collectively, the "Receivership Estates") in the above-captioned case (the "Case"), hereby files this *Notice of Filing Receiver's Notices of Abandonment of Certain Oil and Gas Properties* (the "Notice").

The Receiver sought and obtained Court approval to abandon interests in certain oil and gas properties. *See* ECF Nos. 288, 296, 404. Attached to this Notice as **Exhibit A** are copies of the Receiver's *Notices of Abandonment* recorded in Hardeman, Jack, Palo Pinto, Stephens, Sutton, Wichita, and Young counties.

Dated: November 1, 2023

Respectfully submitted,

By: */s/ Danielle Rushing Behrends*

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235 N.E. Loop 820, Suite 310
Hurst, Texas 76053
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COUNSEL TO RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2023, the foregoing document was served via CM/ECF on all parties appearing in this case and on the following unrepresented parties on this Court's docket and interested person via email:

James Ikey
james.ikeyrcg@gmail.com

Bridy Ikey
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IGroup Enterprises LLC
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/s/ Danielle Rushing Behrends
Danielle Rushing Behrends

EXHIBIT A

State of Texas

County of Hardeman

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

HARDEMAN COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund H LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 4th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
	§	
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

HARDEMAN COUNTY

Operator: Arcooil Corp.

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
19731556	9	30370	MCLENNAN-KENNEDY	1	KADANE CATO (CONGL)	HARDEMAN

State of Texas

County of Jack

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

JACK COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund H LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 27th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
	§	
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

JACK COUNTY

Operator: Arcooil Corp.

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
23740508	9	33878	SAHOTA RED HOUSE	2	JACK COUNTY REGULAR	JACK
23740514	9	33878	SAHOTA RED HOUSE	3	JACK COUNTY REGULAR	JACK

Operator: Panther City Energy LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
23731321	9	16301	FLO-COOP EASTER UNIT	2	SAM EASTER (CADDO)	JACK
23730173	9	218572	FLO-COOP EASTER UNIT	1	SAM EASTER (CADDO)	JACK

State of Texas

County of Palo Pinto

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

PALO PINTO COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund H, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon (1) the interest of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline…" *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Palo Pinto Pipeline being abandoned pursuant to the September 5, 2023 Order is more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of any Receivership Party, including, without limitation, Receivership Party Dodson Prairie Oil & Gas LLC, in the Palo Pinto Pipeline and any right to operate that pipeline detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 1st day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
	§	
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

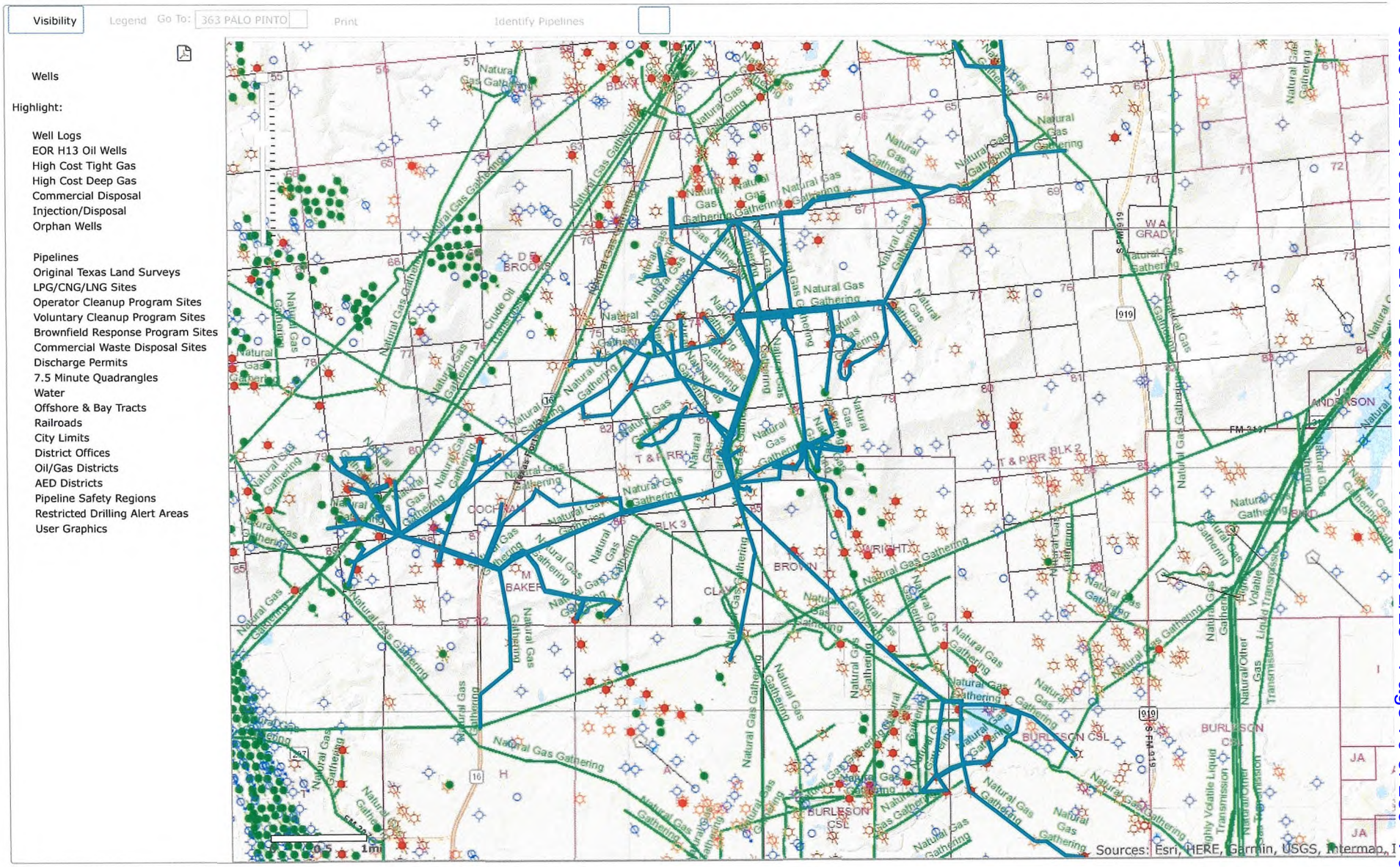
immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C



Palo Pinto Pipeline a/k/a

C.B. Long "A" 1 Pipeline Map

T-4 Permit #: 03712

pipeline route is presented in light blue

source: tx rrc public gis viewer

State of Texas

County of Palo Pinto

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

PALO PINTO COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 9th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

PALO PINTO COUNTY

Operator: Dodson Prairie Oil & Gas LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
36335639	9	237012	ANDREATTA	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36333031	9	261496	ANDREATTA A	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334682	9	31055	BAKER	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335619	9	247772	BILL HINKSON "A"	A5	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334037	9	261835	ELIZABETH	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335481	9	219178	HINKSON	7703	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335623	9	241518	HINKSON	21	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334714	9	256474	HINKSON	16	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36333123	9	257586	HINKSON	9	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334737	9	262933	HINKSON	17	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334607	9	264246	HINKSON	7702	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334704	9	256752	HINKSON 79	3	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36334732	9	262928	HINKSON 79	4	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335468	9	219177	KIRK	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335970	9	261051	KIRK A	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335927	9	255222	MARINER "C"	1	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335641	7B	229093	ANDREATTA, J.	2	SANTO, S.E. (CONGL)	PALO PINTO
36334758	7B	169206	ANKENBAUER	1	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334028	7B	25937	CRAWFORD "B"	1	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334276	7B	28033	HALIFAX	1	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334010	7B	133589	HINKSON	1	LONG RANCH (BEND CONGL.)	PALO PINTO
36334094	7B	141020	HINKSON	2	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334218	7B	147901	HINKSON	7	LONG RANCH (BEND CONGL.)	PALO PINTO
36334337	7B	153581	HINKSON	8	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334576	7B	161177	HINKSON	14	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334693	7B	166330	HINKSON	15	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334862	7B	176298	HINKSON	18	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334900	7B	177559	HINKSON	19	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36335014	7B	186245	HINKSON	7905	PALO PINTO CO. REG. (GAS)	PALO PINTO
36335191	7B	199957	HINKSON	20	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334378	7B	26688	HINKSON	10	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334533	7B	26688	HINKSON	13	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334737	7B	26688	HINKSON	17	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334202	7B	26688	HINKSON	6	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36331004	7B	283083	HINKSON	3	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36331003	7B	283318	HINKSON	4	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334403	7B	285164	HINKSON	11	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334467	7B	285165	HINKSON	12	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36335481	7B	286270	HINKSON	7703	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334469	7B	28704	HINKSON	7701	MAXWELL TRUST (CONGL.)	PALO PINTO
36334687	7B	27797	HINKSON "79"	7902	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334732	7B	27797	HINKSON "79"	7904	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36335056	7B	280941	HINKSON "79"	7906	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36335157	7B	197329	HINKSON, BILL "A"	A3	MIDDLE CREEK (CONGL.)	PALO PINTO
36335202	7B	200219	HINKSON, BILL "A"	A4	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334156	7B	143541	HINKSON, LAURA	1	STUART HEIRS (STRAWN SAND)	PALO PINTO
36334328	7B	192334	HINKSON, LAURA	2	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334328	7B	27451	HINKSON, LAURA	A1	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36333985	7B	283339	HINKSON-CALDWELL	1	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334053	7B	136922	JIANT-HINKSON	1	IRSFIELD (CONGL)	PALO PINTO
36335127	7B	194309	JIANT-HINKSON "A"	2	STRAWN, N. (BEND CONGL.)	PALO PINTO
36333153	7B	260336	KIRK A	2	PALO PINTO COUNTY REGULAR	PALO PINTO
36333658	7B	121023	LONG,C.B. "A"	1	COALVILLE (BEND CONGL.)	PALO PINTO
36333945	7B	132675	LONG,LOLITA	3	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36334017	7B	134041	LONG,LOLITA	5	LONG RANCH (BEND CONGL.)	PALO PINTO
36334270	7B	151703	MARINER	2	MARINER (CONGL.)	PALO PINTO
36334409	7B	155357	MARINER "A"	1	MARINER (CONGL.)	PALO PINTO
36334548	7B	159700	MARINER "A"	2	MARINER (CONGL.)	PALO PINTO
36334670	7B	166184	MARINER "B"	1	MARINER (CONGL.)	PALO PINTO
36301043	7B	32138	NOLAND, E. T.	6	NOLAND (MARBLE FALLS)	PALO PINTO
36334390	7B	154605	PONTREMOLE	2	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36334625	7B	163955	REEDER	1	PALO PINTO CO. REG. (GAS)	PALO PINTO
36332841	7B	26251	RIEBE, G.	1	BILLIE J. HALL (CONGLOMERATE)	PALO PINTO
36334449	7B	156798	SLEMMONS, HELEN	1	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334959	7B	181662	SLEMMONS, HELEN	2	PALO PINTO CO. REG. (GAS)	PALO PINTO
36336354	7B	32451	SLEMMONS, HELEN	4	WILDCAT	PALO PINTO
36334008	7B	133568	STEPHEN, PAUL	12	MIDDLE CREEK (CONGL.)	PALO PINTO
36333778	7B	141614	STEPHEN, PAUL	4WD	STUART HEIRS (STRAWN SAND)	PALO PINTO
36333869	7B	147502	STEPHEN, PAUL	5	MIDDLE CREEK (CONGL.)	PALO PINTO
36333873	7B	147504	STEPHEN, PAUL	6	MIDDLE CREEK (CONGL.)	PALO PINTO
36334138	7B	147506	STEPHEN, PAUL	14	MIDDLE CREEK (CONGL.)	PALO PINTO
36333976	7B	147626	STEPHEN, PAUL	10	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36333779	7B	283085	STEPHEN, PAUL	3	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36333869	7B	283800	STEPHEN, PAUL	5U	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36333662	7B	121231	STEPHEN,PAUL	2	MIDDLE CREEK (CONGL.)	PALO PINTO

Operator: Panther City Energy LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
36335330	9	213442	BETTY	1H	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36335287	9	208536	BORCHERS-WILBAR	3	NEWARK, EAST (BARNETT SHALE)	PALO PINTO
36333918	7B	132937	BORCHER-WILBAR	1	MINGUS (STRAWN)	PALO PINTO
36333918	7B	129451	BORCHERS-WILBAR	1	RECTOR (MARBLE FALLS)	PALO PINTO
36335034	7B	188075	BORCHERS-WILBAR	2	PALO PINTO CO. REG. (GAS)	PALO PINTO
36335287	7B	286243	BORCHERS-WILBAR	3	STRAWN, NW. (MARBLE FALLS)	PALO PINTO
36335093	7B	192928	CLARK, GRAHAME	1	STRAWN, N. (BEND CONGL.)	PALO PINTO
36335637	7B	267535	CRAWFORD	1H	STRAWN, N. (BEND CONGL.)	PALO PINTO
36333845	7B	126943	GARY STALLINGS ET AL	1	LONG RANCH (BEND CONGL.)	PALO PINTO
36333591	7B	121083	HOLLAND, MIKE "B"	3	STRAWN, N. (DUFFER)	PALO PINTO
36333465	7B	121064	HOLLAND, MIKE ETAL	1	RANCHO DE PAZ (CONGL.)	PALO PINTO
36333940	7B	129164	LIVINGSTON	1L	MIDDLE CREEK (CONGL.)	PALO PINTO
36333765	7B	175404	LONG, C. B. "C"	1	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36333994	7B	134040	LONG, LOLITA	4	MINGUS (STRAWN)	PALO PINTO
36334967	7B	184734	LONG, LOLITA	6	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334967	7B	282823	LONG, LOLITA	6	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36333911	7B	283081	LONG, LOLITA	1	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36333912	7B	283082	LONG, LOLITA	2	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36334963	7B	180515	SLEMMONS, HELEN	3	PALO PINTO CO. REG. (GAS)	PALO PINTO
36333657	7B	282160	WILBAR, HAZEL	1	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36333815	7B	285466	WILBAR, HAZEL	2	C.B. LONG, (MARBLE FALLS)	PALO PINTO
36331964	7B	282156	WOODWARD TRUST	2	STRAWN, NW. (MARBLE FALLS)	PALO PINTO

Operator: Barron Petroleum LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
36336356	7B	32495	BARRON SAHOTA	1	POSIDIAN (ELLEN.)	PALO PINTO
36380110	7B	18389	CONWAY, J. W.	5	STRAWN, N. (BEND CONGL.)	PALO PINTO
36301031	7B	18390	CONWAY, J. W.	6	STRAWN, N. (BEND CONGL.)	PALO PINTO
36380151	7B	34922	CONWAY, J. W.	12	STRAWN, N. (BEND CONGL.)	PALO PINTO
36334869	7B	176864	CONWAY, J. W.	11A	STRAWN, N. (BEND CONGL.)	PALO PINTO
36335227	7B	203465	CONWAY, J. W.	15	PALO PINTO CO. REG. (GAS)	PALO PINTO
36334889	7B	277483	CONWAY, J. W.	13	STRAWN, NW. (CONGLOMERATE)	PALO PINTO
36335211	7B	29396	CONWAY, J. W.	14	PALO PINTO COUNTY REGULAR	PALO PINTO
36336357	7B	290994	DALLAS SAHOTA	1	PALO PINTO COUNTY REGULAR	PALO PINTO
36336358	7B	32505	SAHOTA ATHENA	7S	PALO PINTO COUNTY REGULAR	PALO PINTO
36336349	7B	32393	SAHOTA CONWAY	5	POSIDIAN (ELLEN.)	PALO PINTO
36336352	7B	32417	SAHOTA CONWAY SHALLOW	6S	PALO PINTO COUNTY REGULAR	PALO PINTO

State of Texas

County of Stephens

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

STEPHENS COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund H LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund H, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 9th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

STEPHENS COUNTY

Operator: Leading Edge Energy LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
42931875	7B	14434	WHITTENBURG	1	LUCKY LANE (STRAWN)	STEPHENS
42900334	7B	14434	WHITTENBURG	1R	LUCKY LANE (STRAWN)	STEPHENS
42931881	7B	14434	WHITTENBURG	3	LUCKY LANE (STRAWN)	STEPHENS
42931925	7B	14434	WHITTENBURG	4	LUCKY LANE (STRAWN)	STEPHENS
42931926	7B	14434	WHITTENBURG	5	LUCKY LANE (STRAWN)	STEPHENS
42931924	7B	14434	WHITTENBURG	6	LUCKY LANE (STRAWN)	STEPHENS

Operator: Arcooil Corp.

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
42934262	7B	31911	EDDLEMAN	7	CADDO (DUFFER)	STEPHENS
42933021	7B	18492	EDDLEMAN #1	1	FRANKEL, NE (CADDO)	STEPHENS
42982347	7B	23453	NEWNHAM	1	STEPHENS COUNTY REGULAR	STEPHENS
42937033	7B	32381	SAHOTA UNIT	1	STEPHENS COUNTY REGULAR	STEPHENS
42980579	7B	3752	STUARD, J. B.	1	STEPHENS COUNTY REGULAR	STEPHENS
42900718	7B	75259	STUARD, J. B.	6	STEPHENS COUNTY REGULAR (GAS)	STEPHENS
42980380	7B	75904	STUARD, J.B.	7	STEPHENS COUNTY REGULAR (GAS)	STEPHENS
42900790	7B	3740	STUARD, MARTIN	2	STEPHENS COUNTY REGULAR	STEPHENS
42980547	7B	3740	STUARD, MARTIN	3	STEPHENS COUNTY REGULAR	STEPHENS
42901529	7B	3740	STUARD, MARTIN	4	STEPHENS COUNTY REGULAR	STEPHENS
42901088	7B	3740	STUARD, MARTIN	5	STEPHENS COUNTY REGULAR	STEPHENS

Operator: Barron Petroleum LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
42980541	7B	3728	EDDLEMAN	2	STEPHENS COUNTY REGULAR	STEPHENS
42980542	7B	3728	EDDLEMAN	3	STEPHENS COUNTY REGULAR	STEPHENS
42980543	7B	3728	EDDLEMAN	4	STEPHENS COUNTY REGULAR	STEPHENS
42982242	7B	3728	EDDLEMAN	5	STEPHENS COUNTY REGULAR	STEPHENS
42934068	7B	3728	EDDLEMAN	6	STEPHENS COUNTY REGULAR	STEPHENS
42934262	7B	3728	EDDLEMAN	7	STEPHENS COUNTY REGULAR	STEPHENS
42934261	7B	3728	EDDLEMAN	8	STEPHENS COUNTY REGULAR	STEPHENS

State of Texas

County of Sutton

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

SUTTON COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund H LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund H, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 27th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

SUTTON COUNTY

Operator: Barron Petroleum LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
43532291	7C	87052	SHURLEY	103	SAWYER (CANYON)	SUTTON
43532290	7C	87215	SHURLEY	203	SAWYER (CANYON)	SUTTON
43532277	7C	89983	SHURLEY	204	SAWYER (CANYON)	SUTTON
43533053	7C	110876	SHURLEY	C1	SAWYER (CANYON)	SUTTON
43533055	7C	110877	SHURLEY	D1	SAWYER (CANYON)	SUTTON
43533123	7C	111426	SHURLEY	F1	SAWYER (CANYON)	SUTTON
43532754	7C	103457	SHURLEY "149"	1	SAWYER (CANYON)	SUTTON
43532264	7C	87053	SHURLEY "35"	1	SAWYER (CANYON)	SUTTON
43532537	7C	98389	SHURLEY "36"	1	SAWYER (CANYON)	SUTTON
43530137	7C	52540	SHURLEY 'A'	1	SAWYER (CANYON)	SUTTON
43530151	7C	53102	SHURLEY 'B'	1	SAWYER (CANYON)	SUTTON
43532538	7C	96444	SHURLEY 148	1	SAWYER (CANYON)	SUTTON
43530261	7C	54326	SHURLEY C-1	1	SAWYER (CANYON)	SUTTON
43530262	7C	54327	SHURLEY C-2	1	SAWYER (CANYON)	SUTTON
43533054	7C	110654	SHURLEY RANCH	A1	SAWYER (CANYON)	SUTTON
43533056	7C	110655	SHURLEY RANCH	B1	SAWYER (CANYON)	SUTTON
43533124	7C	111432	SHURLEY RANCH	E1	SAWYER (CANYON)	SUTTON
43533142	7C	111442	SHURLEY RANCH	G1	SAWYER (CANYON)	SUTTON

State of Texas

County of Wichita

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

WICHITA COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 12th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

WICHITA COUNTY

Operator: Leading Edge Energy LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
48564433	9	5499	BURNETT	10	WICHITA COUNTY REGULAR	WICHITA
48564436	9	5499	BURNETT	11	WICHITA COUNTY REGULAR	WICHITA
48564437	9	5499	BURNETT	14	WICHITA COUNTY REGULAR	WICHITA
48501570	9	5499	BURNETT	3	WICHITA COUNTY REGULAR	WICHITA
48564427	9	5499	BURNETT	4	WICHITA COUNTY REGULAR	WICHITA
48564428	9	5499	BURNETT	5	WICHITA COUNTY REGULAR	WICHITA
48564429	9	5499	BURNETT	6	WICHITA COUNTY REGULAR	WICHITA
48564430	9	5499	BURNETT	7	WICHITA COUNTY REGULAR	WICHITA
48564431	9	5499	BURNETT	8	WICHITA COUNTY REGULAR	WICHITA
48564432	9	5499	BURNETT	9	WICHITA COUNTY REGULAR	WICHITA
48564447	9	31183	SAUDER, J. M.	3	K-M-A	WICHITA
48586638	9	28958	WAGGONER "D"	56	K-M-A	WICHITA
48564370	9	28958	WAGGONER "D"	58	K-M-A	WICHITA
48564386	9	28958	WAGGONER "D"	59	K-M-A	WICHITA
48580896	9	5028	WAGGONER, J & J	1A	WICHITA COUNTY REGULAR	WICHITA
48580895	9	5028	WAGGONER, J & J	1C	WICHITA COUNTY REGULAR	WICHITA
48580903	9	5028	WAGGONER, J & J	20	WICHITA COUNTY REGULAR	WICHITA
48580904	9	5028	WAGGONER, J & J	22	WICHITA COUNTY REGULAR	WICHITA
48580905	9	5028	WAGGONER, J & J	23	WICHITA COUNTY REGULAR	WICHITA
48580906	9	5028	WAGGONER, J & J	24	WICHITA COUNTY REGULAR	WICHITA
48580908	9	5028	WAGGONER, J & J	26	WICHITA COUNTY REGULAR	WICHITA
48580910	9	5028	WAGGONER, J & J	35	WICHITA COUNTY REGULAR	WICHITA
48580911	9	5028	WAGGONER, J & J	36	WICHITA COUNTY REGULAR	WICHITA
48531006	9	5028	WAGGONER, J & J	38A	WICHITA COUNTY REGULAR	WICHITA
48531003	9	5028	WAGGONER, J & J	4	WICHITA COUNTY REGULAR	WICHITA
48580914	9	5028	WAGGONER, J & J	40	WICHITA COUNTY REGULAR	WICHITA
48531521	9	5028	WAGGONER, J & J	42	WICHITA COUNTY REGULAR	WICHITA
48580915	9	5028	WAGGONER, J & J	44	WICHITA COUNTY REGULAR	WICHITA
48531695	9	5028	WAGGONER, J & J	46	WICHITA COUNTY REGULAR	WICHITA
48531696	9	5028	WAGGONER, J & J	47	WICHITA COUNTY REGULAR	WICHITA
48532733	9	5028	WAGGONER, J & J	48	WICHITA COUNTY REGULAR	WICHITA
48536911	9	5028	WAGGONER, J & J	49	WICHITA COUNTY REGULAR	WICHITA
48531158	9	5028	WAGGONER, J & J	5	WICHITA COUNTY REGULAR	WICHITA
48536912	9	5028	WAGGONER, J & J	50	WICHITA COUNTY REGULAR	WICHITA
48536913	9	5028	WAGGONER, J & J	51	WICHITA COUNTY REGULAR	WICHITA
48536914	9	5028	WAGGONER, J & J	52	WICHITA COUNTY REGULAR	WICHITA
48536915	9	5028	WAGGONER, J & J	53	WICHITA COUNTY REGULAR	WICHITA
48536917	9	5028	WAGGONER, J & J	55	WICHITA COUNTY REGULAR	WICHITA
48537119	9	5028	WAGGONER, J & J	56	WICHITA COUNTY REGULAR	WICHITA
48538626	9	5028	WAGGONER, J & J	62	WICHITA COUNTY REGULAR	WICHITA
48541025	9	5028	WAGGONER, J & J	63	WICHITA COUNTY REGULAR	WICHITA
48580898	9	5028	WAGGONER, J & J	8	WICHITA COUNTY REGULAR	WICHITA
48580918	9	5028	WAGGONER, J & J	D2	WICHITA COUNTY REGULAR	WICHITA
48580919	9	5028	WAGGONER, J & J	D3	WICHITA COUNTY REGULAR	WICHITA
48532483	9	17619	WAGGONER, T. J. & J. L.	1	WICHITA COUNTY REGULAR	WICHITA
48533133	9	17619	WAGGONER, T. J. & J. L.	11	WICHITA COUNTY REGULAR	WICHITA
48534628	9	17619	WAGGONER, T. J. & J. L.	12	WICHITA COUNTY REGULAR	WICHITA
48541509	9	17619	WAGGONER, T. J. & J. L.	13	WICHITA COUNTY REGULAR	WICHITA
48532484	9	17619	WAGGONER, T. J. & J. L.	2	WICHITA COUNTY REGULAR	WICHITA
48532657	9	17619	WAGGONER, T. J. & J. L.	3	WICHITA COUNTY REGULAR	WICHITA
48532654	9	17619	WAGGONER, T. J. & J. L.	6	WICHITA COUNTY REGULAR	WICHITA
48532653	9	17619	WAGGONER, T. J. & J. L.	7	WICHITA COUNTY REGULAR	WICHITA
48545646	9	17619	WAGGONER, T. J. & J. L.	E1	WICHITA COUNTY REGULAR	WICHITA
48546036	9	17619	WAGGONER, T. J. & J. L.	514	WICHITA COUNTY REGULAR	WICHITA
48530640	9	16543	WAGGONER, T. J. & J. L. -C-	1	WICHITA COUNTY REGULAR	WICHITA
48532115	9	16543	WAGGONER, T. J. & J. L. -C-	10	WICHITA COUNTY REGULAR	WICHITA
48530745	9	16543	WAGGONER, T. J. & J. L. -C-	11A	WICHITA COUNTY REGULAR	WICHITA
48532366	9	16543	WAGGONER, T. J. & J. L. -C-	12	WICHITA COUNTY REGULAR	WICHITA
48532367	9	16543	WAGGONER, T. J. & J. L. -C-	13	WICHITA COUNTY REGULAR	WICHITA
48580770	9	16543	WAGGONER, T. J. & J. L. -C-	13A	WICHITA COUNTY REGULAR	WICHITA
48532498	9	16543	WAGGONER, T. J. & J. L. -C-	15	WICHITA COUNTY REGULAR	WICHITA
48531038	9	16543	WAGGONER, T. J. & J. L. -C-	15A	WICHITA COUNTY REGULAR	WICHITA
48691419	9	16543	WAGGONER, T. J. & J. L. -C-	16	WICHITA COUNTY REGULAR	WICHITA
48534656	9	16543	WAGGONER, T. J. & J. L. -C-	18	WICHITA COUNTY REGULAR	WICHITA
48534691	9	16543	WAGGONER, T. J. & J. L. -C-	19	WICHITA COUNTY REGULAR	WICHITA
48530394	9	16543	WAGGONER, T. J. & J. L. -C-	1A	WICHITA COUNTY REGULAR	WICHITA
48542972	9	16543	WAGGONER, T. J. & J. L. -C-	1G	WICHITA COUNTY REGULAR	WICHITA
48534897	9	16543	WAGGONER, T. J. & J. L. -C-	20	WICHITA COUNTY REGULAR	WICHITA
48534898	9	16543	WAGGONER, T. J. & J. L. -C-	21	WICHITA COUNTY REGULAR	WICHITA
48540772	9	16543	WAGGONER, T. J. & J. L. -C-	22A	WICHITA COUNTY REGULAR	WICHITA
48540773	9	16543	WAGGONER, T. J. & J. L. -C-	23A	WICHITA COUNTY REGULAR	WICHITA
48535755	9	16543	WAGGONER, T. J. & J. L. -C-	24	WICHITA COUNTY REGULAR	WICHITA
48540774	9	16543	WAGGONER, T. J. & J. L. -C-	24A	WICHITA COUNTY REGULAR	WICHITA
48540775	9	16543	WAGGONER, T. J. & J. L. -C-	25A	WICHITA COUNTY REGULAR	WICHITA
48535747	9	16543	WAGGONER, T. J. & J. L. -C-	26	WICHITA COUNTY REGULAR	WICHITA
48536036	9	16543	WAGGONER, T. J. & J. L. -C-	29	WICHITA COUNTY REGULAR	WICHITA
48543016	9	16543	WAGGONER, T. J. & J. L. -C-	2C	WICHITA COUNTY REGULAR	WICHITA
48539829	9	16543	WAGGONER, T. J. & J. L. -C-	34	WICHITA COUNTY REGULAR	WICHITA
48542262	9	16543	WAGGONER, T. J. & J. L. -C-	38	WICHITA COUNTY REGULAR	WICHITA
48530588	9	16543	WAGGONER, T. J. & J. L. -C-	3A	WICHITA COUNTY REGULAR	WICHITA
48530431	9	16543	WAGGONER, T. J. & J. L. -C-	4A	WICHITA COUNTY REGULAR	WICHITA
48530822	9	16543	WAGGONER, T. J. & J. L. -C-	5	WICHITA COUNTY REGULAR	WICHITA
48530458	9	16543	WAGGONER, T. J. & J. L. -C-	5A	WICHITA COUNTY REGULAR	WICHITA
48531853	9	16543	WAGGONER, T. J. & J. L. -C-	6	WICHITA COUNTY REGULAR	WICHITA
48531922	9	16543	WAGGONER, T. J. & J. L. -C-	7	WICHITA COUNTY REGULAR	WICHITA
48530554	9	16543	WAGGONER, T. J. & J. L. -C-	7A	WICHITA COUNTY REGULAR	WICHITA
48531941	9	16543	WAGGONER, T. J. & J. L. -C-	8	WICHITA COUNTY REGULAR	WICHITA
48530634	9	16543	WAGGONER, T. J. & J. L. -C-	8A	WICHITA COUNTY REGULAR	WICHITA
48532073	9	16543	WAGGONER, T. J. & J. L. -C-	9	WICHITA COUNTY REGULAR	WICHITA
48530646	9	16543	WAGGONER, T. J. & J. L. -C-	9A	WICHITA COUNTY REGULAR	WICHITA

Operator: Arcool Corp.

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
48582853	9	5298	BURNETT RANCH OIL CO.	10	WICHITA COUNTY REGULAR	WICHITA
48582856	9	5298	BURNETT RANCH OIL CO.	13	WICHITA COUNTY REGULAR	WICHITA
48582850	9	5298	BURNETT RANCH OIL CO.	5	WICHITA COUNTY REGULAR	WICHITA
48582851	9	5298	BURNETT RANCH OIL CO.	8	WICHITA COUNTY REGULAR	WICHITA
48582962	9	5298	BURNETT RANCH OIL CO.	A1	WICHITA COUNTY REGULAR	WICHITA
48532684	9	5298	BURNETT RANCH OIL CO.	A10	WICHITA COUNTY REGULAR	WICHITA
48532685	9	5298	BURNETT RANCH OIL CO.	A11	WICHITA COUNTY REGULAR	WICHITA
48582964	9	5298	BURNETT RANCH OIL CO.	A4	WICHITA COUNTY REGULAR	WICHITA
48532041	9	5298	BURNETT RANCH OIL CO.	A5	WICHITA COUNTY REGULAR	WICHITA
48582965	9	5298	BURNETT RANCH OIL CO.	A6	WICHITA COUNTY REGULAR	WICHITA
48582966	9	5298	BURNETT RANCH OIL CO.	A7	WICHITA COUNTY REGULAR	WICHITA
48532389	9	5298	BURNETT RANCH OIL CO.	A8	WICHITA COUNTY REGULAR	WICHITA
48532390	9	5298	BURNETT RANCH OIL CO.	A9	WICHITA COUNTY REGULAR	WICHITA
48582227	9	5218	BURNETT, T. L. -A-	17	WICHITA COUNTY REGULAR	WICHITA
48582228	9	5218	BURNETT, T. L. -A-	19	WICHITA COUNTY REGULAR	WICHITA
48582229	9	5218	BURNETT, T. L. -A-	20	WICHITA COUNTY REGULAR	WICHITA
48582231	9	5218	BURNETT, T. L. -A-	22	WICHITA COUNTY REGULAR	WICHITA
48582232	9	5218	BURNETT, T. L. -A-	23	WICHITA COUNTY REGULAR	WICHITA
48582233	9	5218	BURNETT, T. L. -A-	24	WICHITA COUNTY REGULAR	WICHITA
48582234	9	5218	BURNETT, T. L. -A-	25	WICHITA COUNTY REGULAR	WICHITA
48582235	9	5218	BURNETT, T. L. -A-	26	WICHITA COUNTY REGULAR	WICHITA
48582236	9	5218	BURNETT, T. L. -A-	27	WICHITA COUNTY REGULAR	WICHITA
48582237	9	5218	BURNETT, T. L. -A-	28	WICHITA COUNTY REGULAR	WICHITA
48582238	9	5218	BURNETT, T. L. -A-	31	WICHITA COUNTY REGULAR	WICHITA
48582239	9	5218	BURNETT, T. L. -A-	32	WICHITA COUNTY REGULAR	WICHITA
48582240	9	5218	BURNETT, T. L. -A-	33	WICHITA COUNTY REGULAR	WICHITA
48582241	9	5218	BURNETT, T. L. -A-	34	WICHITA COUNTY REGULAR	WICHITA
48532214	9	5218	BURNETT, T. L. -A-	35	WICHITA COUNTY REGULAR	WICHITA
48582242	9	5218	BURNETT, T. L. -A-	36	WICHITA COUNTY REGULAR	WICHITA
48582243	9	5218	BURNETT, T. L. -A-	37	WICHITA COUNTY REGULAR	WICHITA
48582244	9	5218	BURNETT, T. L. -A-	38	WICHITA COUNTY REGULAR	WICHITA
48530263	9	5218	BURNETT, T. L. -A-	40	WICHITA COUNTY REGULAR	WICHITA
48531364	9	5218	BURNETT, T. L. -A-	41	WICHITA COUNTY REGULAR	WICHITA
48535536	9	5218	BURNETT, T. L. -A-	42	WICHITA COUNTY REGULAR	WICHITA
48535046	9	5218	BURNETT, T. L. -A-	43	WICHITA COUNTY REGULAR	WICHITA
48502662	9	10602	BURNETT-TIDEWATER	11	WICHITA COUNTY REGULAR	WICHITA
48534685	9	10602	BURNETT-TIDEWATER	15	WICHITA COUNTY REGULAR	WICHITA
48588119	9	10602	BURNETT-TIDEWATER	2	WICHITA COUNTY REGULAR	WICHITA
48500644	9	10602	BURNETT-TIDEWATER	5	WICHITA COUNTY REGULAR	WICHITA
48502658	9	10602	BURNETT-TIDEWATER	6	WICHITA COUNTY REGULAR	WICHITA
48500650	9	10602	BURNETT-TIDEWATER	7	WICHITA COUNTY REGULAR	WICHITA
48502659	9	10602	BURNETT-TIDEWATER	8	WICHITA COUNTY REGULAR	WICHITA
48548123	9	10602	BURNETT-TIDEWATER	9	WICHITA COUNTY REGULAR	WICHITA
48539763	9	23966	WAGGONER, J & J "B"	2	WICHITA COUNTY REGULAR	WICHITA
48538818	9	23966	WAGGONER, J & J "B"	3	WICHITA COUNTY REGULAR	WICHITA
48539721	9	23966	WAGGONER, J & J "B"	4	WICHITA COUNTY REGULAR	WICHITA
48540215	9	23966	WAGGONER, J & J "B"	5	WICHITA COUNTY REGULAR	WICHITA
48540542	9	23966	WAGGONER, J & J "B"	6	WICHITA COUNTY REGULAR	WICHITA
48543235	9	23966	WAGGONER, J & J "B"	7	WICHITA COUNTY REGULAR	WICHITA
48513384	9	5758	WAGGONER, J. & J.	1	WICHITA COUNTY REGULAR	WICHITA
48591810	9	5758	WAGGONER, J. & J.	1A	WICHITA COUNTY REGULAR	WICHITA
48586213	9	5758	WAGGONER, J. & J.	2	WICHITA COUNTY REGULAR	WICHITA
48586214	9	5758	WAGGONER, J. & J.	3	WICHITA COUNTY REGULAR	WICHITA
48586215	9	5758	WAGGONER, J. & J.	4	WICHITA COUNTY REGULAR	WICHITA
48586216	9	5758	WAGGONER, J. & J.	5	WICHITA COUNTY REGULAR	WICHITA
48586217	9	5758	WAGGONER, J. & J.	6	WICHITA COUNTY REGULAR	WICHITA
48537946	9	20119	WAGGONER, T. J. "C"	12	WICHITA COUNTY REGULAR	WICHITA
48538644	9	20119	WAGGONER, T. J. "C"	15	WICHITA COUNTY REGULAR	WICHITA
48539299	9	20119	WAGGONER, T. J. "C"	16	WICHITA COUNTY REGULAR	WICHITA
48539611	9	20119	WAGGONER, T. J. "C"	17	WICHITA COUNTY REGULAR	WICHITA
48539696	9	20119	WAGGONER, T. J. "C"	18	WICHITA COUNTY REGULAR	WICHITA
48539781	9	20119	WAGGONER, T. J. "C"	19	WICHITA COUNTY REGULAR	WICHITA
48539783	9	20119	WAGGONER, T. J. "C"	20	WICHITA COUNTY REGULAR	WICHITA
48540117	9	20119	WAGGONER, T. J. "C"	22	WICHITA COUNTY REGULAR	WICHITA
48540242	9	20119	WAGGONER, T. J. "C"	23	WICHITA COUNTY REGULAR	WICHITA
48540420	9	20119	WAGGONER, T. J. "C"	24	WICHITA COUNTY REGULAR	WICHITA
48582253	9	5221	WAGGONER, T. J. & J. L.	22	WICHITA COUNTY REGULAR	WICHITA
48530979	9	5221	WAGGONER, T. J. & J. L.	27	WICHITA COUNTY REGULAR	WICHITA
48533826	9	5221	WAGGONER, T. J. & J. L.	29	WICHITA COUNTY REGULAR	WICHITA
48540044	9	5221	WAGGONER, T. J. & J. L.	32	WICHITA COUNTY REGULAR	WICHITA
48536086	9	5221	WAGGONER, T. J. & J. L.	33	WICHITA COUNTY REGULAR	WICHITA
48536469	9	5221	WAGGONER, T. J. & J. L.	34	WICHITA COUNTY REGULAR	WICHITA
48537364	9	5221	WAGGONER, T. J. & J. L.	36	WICHITA COUNTY REGULAR	WICHITA
48537478	9	5221	WAGGONER, T. J. & J. L.	37	WICHITA COUNTY REGULAR	WICHITA
48536884	9	5221	WAGGONER, T. J. & J. L.	38	WICHITA COUNTY REGULAR	WICHITA
48536645	9	5221	WAGGONER, T. J. & J. L.	39	WICHITA COUNTY REGULAR	WICHITA
48582250	9	5221	WAGGONER, T. J. & J. L.	5	WICHITA COUNTY REGULAR	WICHITA

State of Texas

County of Young

NOTICE OF ABANDONMENT and AFFIDAVIT OF THE RECEIVER in *United States Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al.* in Civil Action No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

YOUNG COUNTY

The undersigned, being first duly sworn on oath, certifies, vows, and affirmatively represents affiant is over 18 years of age, fully competent to make this affidavit and that the following is true and correct:

1. In Civil Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division, the **United States Securities and Exchange Commission, Plaintiff,** (the "SEC") brought suit in the matter against **The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp.; Barron Petroleum LLC; James Ikey; John Muratore; Thomas Brad Pearsey; Manjit Singh (aka Roger) Sahota; and Rustin Brunson, Defendants, and Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD., Relief Defendants** (the "Heartland Receivership").

2. Pursuant to the *Order Appointing Receiver* in the Heartland Receivership entered on December 2, 2021 (the "Receivership Order") the Court found that, based upon the record in the proceedings, that the appointment of a receiver was necessary and appropriate for the purposes of marshalling and preserving all assets of Defendants (the "Receivership Assets") and those of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of Defendants; (b) are held in constructive trust of Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the "Recoverable Assets").

3. Further in the Receivership Order, the Court took exclusive jurisdiction over the Recoverable Assets, of whatever kind and wherever situated of the Defendants The Heartland Group Ventures, LLC; Heartland Production and Recovery LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC

The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; Alternative Office Solutions, LLC; Arcooil Corp; and Barron Petroleum LLC, and Relief Defendants Dodson Prairie Oil & Gas LLC; Panther City Energy LLC; Encypher Bastion, LLC; Barron Energy Corporation; Dallas Resources Inc.; Leading Edge Energy, LLC; Sahota Capital LLC; and 1178137 B.C. LTD. (collectively, the "Receivership Parties").

4. The Receivership Order appointed me, Deborah D. Williamson, Dykema Gossett PLLC, as the Receiver in the Heartland Group Case for the estates of the Receivership Parties (the "Receiver") with the powers and duties set forth in the December 2, 2021 Receivership Order which includes, at para. 8 (E), the right, subject to Court approval: To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the Receivership Estate.

5. On August 15, 2023, United States Magistrate Judge Hal R. Ray, Jr. entered *Amended Findings, Conclusions, and Recommendation of the United States Magistrate Judge* (the "Magistrate's Recommendation"), which recommended that United States District Court should grant the *Receiver's Motion to Confirm Receiver Has No Right, Obligations, or Interest in the Palo Pinto Pipeline* [ECF No. 288] and the *Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support* [ECF No. 296]. Judge Ray specifically recommended that "the Court should authorize the Receiver to immediately abandon the interest of any Receivership Party in "the Oil and Gas Properties at issue." *See* Magistrate's Recommendation, at p. 13.

6. On September 5, 2023, United States District Judge Reed O'Connor entered the *Order Accepting Amended Findings, Conclusions and Recommendations of the United States Magistrate Judge* [ECF No. 404] (the "September 5, 2023 Order") determining that the "Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court". A certified copy of the Court's September 5, 2023 Order is attached hereto as **Exhibit A**, and a true and correct copy of the Magistrate's Recommendation is attached hereto as **Exhibit B**.

7. To my knowledge, after reasonable investigation, no appeal of the September 5, 2023 Order was filed, and the September 5, 2023 Order is final.

8. The Oil and Gas Properties being abandoned pursuant to the September 5, 2023 Order in this county include the properties more fully described in **Exhibit C** attached hereto.

9. Pursuant to the September 5, 2023 Order, solely in my capacity as Court-appointed Receiver in the Heartland Receivership, I hereby abandon the interest, if any, of each Receivership Party in the Oil and Gas Properties detailed on **Exhibit C** to the fullest extent provided in the September 5, 2023 Order.

Further affiant sayeth not.

Deborah D. Williamson, Solely in her Capacity as Court-appointed Receiver in Cause No. 4:21-cv-01310-O-BP in the United States District Court for the Northern District of Texas-Fort Worth Division

State of Texas

County of Bexar

SUBSCRIBED AND SWORN to before me on this 9th day of October, 2023 by Deborah D. Williamson, Receiver.

(Seal)

Mary A Araiza
Notary Public, State of Texas
My Commission Expires
12/28/2026
Notary ID #1015631-4

Notary Public, State of Texas

My commission expires:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

ORDER ACCEPTING AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Amended Findings, Conclusions, and a Recommendation in this case. No objections were filed, and the Magistrate Judge's Recommendation is ripe for review. The District Judge reviewed the proposed Amended Findings, Conclusions, and Recommendation for plain error. Finding none, the undersigned District Judge believes that the Amended Findings and Conclusions of the Magistrate Judge are correct, and they are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the Court **GRANTS** the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" (ECF No. 288) and the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support (ECF No. 296).

SO ORDERED on this **5th day** of **September, 2023**.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
Defendants.	§	

AMENDED FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Receiver's "Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, In the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline" ("Pipeline Motion") (ECF No. 288), a Brief Amicus Curiae in Opposition to Receiver's Motion to Abandon the Palo Pinto Pipeline filed by the Railroad Commission of Texas ("RRC" or "Commission") with Brief/Memorandum in Support (ECF Nos. 298, 300), and the Receiver's Reply to the Amicus Brief with supplemental documents (ECF Nos. 306, 307).

Also before the Court are the Receiver's Motion and Authority to Abandon Interests in Oil and Gas Properties with Brief/Memorandum in Support ("O&G Motion") (ECF No. 296), the RRC's "Brief Supplemental Amicus Curiae in Opposition to [the] Receivers Motion To Abandon Interests In Oil And Gas Properties" (ECF Nos. 351, 359), and the Receiver's Reply and Supplemental Documents (ECF Nos. 353, 354). After reviewing the pleadings and applicable legal authorities and considering the arguments of counsel at the hearings on February 9 and May 4, 2023, concerning the Motions, the undersigned recommends that United States District Judge Reed

O'Connor **GRANT** the Pipeline and the O&G Motions (collectively "the Motions"). ECF Nos. 288, 296, respectively.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC"), filed its Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief, which included an application for the appointment of a Receiver for the Receivership Parties. ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Deborah D. Williamson as the Receiver over the Receivership Estate. ECF No. 17 at 2.

As of December 16, 2022, the Receivership Estate included 403 oil and gas wells and gathering and transportation systems used in connection with specific mineral leases ("the Oil and Gas Properties"). ECF No. 296 at 3. Various entities related to The Heartland Group Ventures, LLC ("Heartland") own certain interests in some or all of the Oil and Gas Properties, directly or indirectly. The "Receivership Entities" include Heartland; The Heartland Group Ventures, LLC, these entities (collectively referred to as the "Receivership Entities, including Heartland Production and Recovery, LLC; Heartland Production and Recovery Fund LLC; Heartland Production and Recovery Fund II LLC; The Heartland Group Fund III, LLC; Heartland Drilling Fund I, LP; Carson Oil Field Development Fund II, LP; ArcoOil Corp; Barron Petroleum LLC; Dodson Prairie Oil and Gas ("Dodson Prairie"); Panther City Energy LLC; and Leading Edge Energy, LLC. *Id.* At the hearing on May 4, 2023, the Receiver informed the Court that approximately 336 of the wells in the Oil and Gas Properties are no longer producing. ECF No. 360.

The natural gas gathering system generally identified as the C.B. "A" Long, 1, 4," System Id. No. 967677 (the "Palo Pinto Pipeline"), consists of approximately 110 miles of gathering and

transportation lines. ECF No. 300 at 3. The RRC asserts that the pipeline "may have been conveyed to a party in the Receivership Estates." ECF No. 300 at 3. According to RRC rules, "each operator of a pipeline or gathering system . . . subject to the jurisdiction of the [RRC], shall obtain a pipeline permit, to be renewed annually, from the [RRC]." 16 Tex. Admin. Code § 3.70(a). Such a permit is known as a T-4 permit. ECF No. 300 at 3. The RRC acknowledges that "no receivership party registered with the [RRC] for a T-4 permit." *Id.* The Receiver contends that Dodson Prairie did not possess a T-4 permit to operate the Palo Pinto Pipeline or any other pipeline and that the Palo Pinto Pipeline was not part of the Receivership Estate. ECF No. 288 at 4. The evidence offered at the hearing on the Motions on February 9, 2023 supports this conclusion.

The Receiver asks the Court to confirm that she has no right, obligation, or interest to operate the Palo Pinto Pipeline, or, in the alternative, allow her to abandon any interest in it. ECF No. 288. The Receiver also seeks to abandon any oil and gas wells, along with the applicable well equipment, where the RRC has not already approved her request to transfer the interests in the wells through a Form P-4 or the wells have not been sold. ECF No 296. This request does not include the wells included in the Val Verde and Crockett County leases. ECF Nos. 296 at 4, 360. The RRC has filed amicus briefs in opposition to the Receiver's requests. ECF Nos. 300, 359.

II. LEGAL STANDARD

"A receiver appointed in any civil action involving property (real, personal, or mixed) [ ] gains complete jurisdiction, control, and a right to take possession over any such property." *S.E.C. v. Harris*, No. 3:09-cv-1809-B, 2016 WL 1555773, at *8 (N.D. Tex. Apr. 18, 2016) (citing *In the Matter of H.L.S. Energy Co., Inc.*, 151 F.3d 434, 438 (5th Cir. 1998)); 28 U.S.C. § 754. But upon taking possession of property, the receiver shoulders the burden of managing and operating the property "according to the requirements of the valid laws of the State in which such 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); *Harris*, 2016 WL 1555773 at *8.

"The Court may authorize a Receiver to abandon property pursuant to its broad equitable powers." *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2011 WL 4973870, at *2 (W.D. Mich. Sept. 30, 2011). A court imposing a receivership assumes custody and control of all assets and property of the subject entity and may issue all orders necessary for the proper administration of the receivership estate. *Id.* (citing *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995)). The Receiver may not abandon the receivership property without first requesting leave of the court. *Id.*; *Branch Banking & Tr. Co. v. Gerner & Kearns Co., L.P.A.*, No. CV 19-161-DLB-CJS, 2021 WL 5414319, at *1 (E.D. Ky. Sept. 16, 2021), *rec. adopted*, 2021 WL 5414324 (E.D. Ky. Sept. 28, 2021).

III. ANALYSIS

A. There is limited authority regarding a Receiver's ability to abandon property.

Few federal courts have considered receivers' equitable power to abandon receivership property, "probably because federal bankruptcy procedures have, in great part, supplanted federal equity receiverships." *See Janvey v. Alguire*, No. 3:09-cv-0724-N, 2014 WL 12654910, at *3 (N.D. Tex. July 30, 2014), *aff'd*, 847 F.3d 231 (5th Cir. 2017) (citing 12 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2981 (2d ed. 1987) ("Wright & Miller") (holding that "the scope of federal equity receivership in this country has diminished sharply as the scope of bankruptcy practice and other statutory receiverships have enlarged")).

Federal court receiverships first became widely used in the late 1800s and early 1900s to oversee railroad reorganization. *Id.* (citing Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. Of Bankr. Law 6, Part I.A.1-2 (2011)).

However, additions in 1933 and 1934 to the Bankruptcy Act of 1898 caused bankruptcy practice to become a more common source of control. *Id.* (citing Wright & Miller § 2981). Despite this overall change, the SEC and federal courts in recent years "have [ ] rel[ied] upon federal equity receiverships in SEC enforcement actions." *Id.* (citing 12 Wright & Miller § 2981; G. Ray Warner & Keith Sharfman, *The SEC in Bankruptcy*, 18 Am. Bankr. Inst. L. Rev. 569, 569 (2010) ("[T]he SEC's involvement in bankruptcy has intensified in recent years with the ascendancy of equity committees and with the increased use of receiverships and corporate monitors in Ponzi scheme and other cases both inside and outside of chapter 11"). The resurgence of receiverships means that receivership jurisprudence is still developing. *Id.*

Thus, much of the "caselaw on federal equity receivers [ ] is quite old." *Id.* Bankruptcy courts, however, have visited many of the common law principles and rules that apply to both equity receiverships and bankruptcies. *Id.* Accordingly, the Court relies on the much larger body of bankruptcy caselaw, while noting any relevant differences with the receivership questions at issue here that could affect the outcome. *Id.*; *see also S.E.C. v. Temme,* No. 4:11-CV-00655-ALM, 2019 WL 13077501, at *4 (E.D. Tex. Oct. 2, 2019) (noting that federal courts commonly look to bankruptcy law in equity receivership proceedings, especially when authority governing federal equity receiverships is sparse or non-existent).

B. The Receiver can abandon the Palo Pinto Pipeline and the oil and gas wells.

Federal receivers must "comply with state law and cannot abandon property if doing so would violate it." *Harris*, 2016 WL 1555773 at *8 (citing *H.L.S. Energy Co*, 151 F.3d at 438 (holding that a bankruptcy trustee may not abandon property in contravention of a state law reasonably designed to protect public health or safety)); *see also Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 507 (1986) (a trustee may not abandon property

in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards).

However, in footnote nine in *Midlantic,* the Supreme Court stated that this prohibition on abandonment is a narrow one and "is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Midlantic*, 474 U.S. at 507 n.9; *see also Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1185 (5th Cir. 1986). Thus, most courts following the footnote in *Midlantic* have held that a trustee may abandon a property if it does not constitute an imminent and identifiable harm to the public. *Commonwealth*, 805 F.2d at 1185 (holding that the Court in *Midlantic* limited a trustee's abandonment power to the "imminent and identifiable harm" standard); *see also In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (holding that full compliance with all environmental laws is not required prior to abandonment, but abandonment is not authorized when there is an immediate threat to the public health and safety and an imminent danger of death or illness); *N.M. Env't Dep't v. Foulston* (*In re L.F. Jennings*), 4 F.3d 887, 890 (10th Cir.1993); *In re Nat'l Gypsum Co.*, 139 B.R. 397, 413 (N.D. Tex. 1992); *In re Shore Co., Inc.*, 134 B.R. 572, 578 (Bankr. E.D. Tex. 1991).

"[T]he party opposing abandonment under *Midlantic* has the burden to prove that [ ] the property [in question] creates an imminent and identifiable harm to the public which will be aggravated by the abandonment." *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999), *aff'd*, 248 B.R. 734 (D.N.J. 2000) (citing *In re Smith-Douglass*, 856 F.2d at 16 (absence of any enforcement action by the state environmental protection agency indicated that there was no threat of immediate harm); *In re L.F. Jennings Oil*, 4 F.3d at 890-91 ("absence of the subject property from the state's list of contaminated sites and the existence of insufficient data by the

state's own expert to opine that there was a present threat led to the [Court's] conclusion that the property did not pose an immediate threat to public health or safety")); *In re Howard*, 533 B.R. 532, 547 (Bankr. S.D. Miss. 2015) (holding that the debtor had the burden of proving that the condition of the property created an imminent and identifiable harm to the public).

Courts have conducted a case-by-case analysis to determine what conditions constitute an imminent and identifiable harm. *In re FCX, Inc.*, 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (holding that burial of five tons of pesticides in uncontrolled condition presents an immediate threat to health of those living in area); *In re Conroy*, 153 B.R. 686, 690 (W.D. Pa. 1993), *aff'd sub nom. Com. of Pa., Dep't of Env't Res. v. Conroy*, 24 F.3d 568 (3d Cir. 1994) (abandoning printing business with drums and cans in various stages of deterioration, including a leaking can, near a residential area and served by public water was an imminent danger to public health); *compare In re Howard*, 533 B.R. at 549 (holding that no known harm occurred to public from property for fifteen years, thus any contamination that may exist on the property not an imminent public threat); *In re Mahoney-Troast Const. Co.*, 189 B.R. 57, 61 (Bankr. D.N.J. 1995) (abandoning oil tanks in excellent condition and not apparently leaking did not pose an imminent threat to public health); *In re Anthony Ferrante & Sons, Inc.*, 119 B.R. 45, 50 (D.N.J. 1990) (holding that abandoning public water supply system not an imminent and identifiable harm because no increased public threat from already contaminated water and public already notified of threat); *In re Oklahoma Ref. Co.*, 63 B.R. 562, 563 (Bankr. W.D. Okla. 1986) (holding that fear of eventual problem at indeterminate time in future not enough for imminent public harm).

Many Courts have required evidence to show that abandoning the property is harmful to public health to meet the imminent and identifiable harm burden. *See In re Shore Co*, 134 B.R. at 578-79 (holding that though Court was convinced that oil refinery probably contained some

hazardous substances and violated Texas law, EPA presented no evidence of extent of environmental hazards present); *In re Guterl Special Steel Corp.*, 316 B.R. 843, 859 (Bankr. W.D. Pa. 2004) (permitting abandonment in absence of persuasive evidence of radioactive contamination at the site posing imminent threat to public health and safety); *In re St. Lawrence*, 248 B.R. at 742 (holding that evidence did not show risk of imminent and identifiable harm to public health and safety).

1. Palo Pinto Pipeline

The Receiver alleges that she is not the operator of the Palo Pinto Pipeline and, therefore, seeks an order finding that she has no right, interest, or obligation to operate it as part of the Receivership Estate. ECF No. 288 at 2. Alternatively, the Receiver asks to abandon all interests, without limitations, in the pipeline. *Id.* The RRC responds that the Receiver's denial that she is the "operator" of the Palo Pinto Pipeline is not before the Court as only the RRC can make that decision. ECF No. 300 at 4. Accordingly, the RRC argues that the Court must refrain from finding that the Receiver has no rights, obligations, or interest in the pipeline as any finding under Commission rules would be an impermissible advisory opinion. *Id.* However, the RRC 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. *Id.* at 5. The RRC requests that if the Court approves the Receiver's abandonment of the Palo Pinto Pipeline, that the Receiver do so in compliance with all applicable state laws and regulations. *Id.* at 5.

The Court need not decide whether it has the authority to issue a ruling stating that the Receiver has no obligations, rights, or interest in the pipeline or whether the Receiver is the operator of the pipeline as the Receiver may abandon the Palo Pinto Pipeline regardless of her

status as an operator under Texas law. The issue to determine is whether abandoning the pipeline would result in imminent and identifiable harm to the public under *Midlantic*. 474 U.S. at 507 n.9

The RRC states that *Midlantic* does not apply to this case, or receiverships in general, because the "case involved a different statute that governs abandonment of property in a bankruptcy estate." ECF No. 300 at 6. Additionally, it argues that *Midlantic*'s abandonment analysis is limited to bankruptcy trustees, and the Court must apply the broader rule stated in 28 U.S.C. § 959(b) when determining if the Receiver may abandon the pipeline. *Id.* In essence, the RRC urges the Court to require the Receiver to abandon the pipeline in accordance with state's pipeline abandonment laws, even if the abandonment would not result in imminent and identifiable harm to the public. *Id.* at 6-7. The Court should decline to do so.

While the RRC is correct that *Midlantic* involved a specific bankruptcy abandonment statute, the Court's analysis and reasoning is more broadly applicable. The Court's decision to limit the abandonment of certain property in the bankruptcy context stems from the fact that "where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety." *Midlantic*, 474 U.S. at 502.

To reach this decision the Supreme Court relied on the historical limits of a trustee's abandonment power, analogizing to the statutory exceptions to the automatic stay, and citing congressional intent, as evidenced by 28 U.S.C. § 959(b) and various environmental laws. Based on this analysis, the Court held that "a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards." *Midlantic*, 474 U.S. at 507. And while *Midlantic* dealt with a specific

bankruptcy abandonment statue, subsequent bankruptcy courts have relied on the case and § 959(b) to limit abandonments generally. *See, e.g.*, *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 810 (Bankr. S.D. Tex. 2009); *Matter of Scott Hous. Sys., Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987).

Like bankruptcy trustees, receivers serving under § 959(b) "operate property in accordance with the valid laws of the State in which the property is situated, in the same manner that its owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). However, the Court must read the limitations on a receivership's powers to abandon property with the Court's requirement in *Midlantic* that those limitations apply only when there is evidence of "imminent and identifiable harm" to "public health or safety." *Midlantic*, 474 U.S. at 502; *see also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 n.7 (7th Cir. 2010) (holding that § 959(b) requires a liquidating receiver to comply with state laws regulating public health, safety, and welfare when liquidating receivership property). The Court should conclude that the abandonment principles that the Court applied in *Midlantic* apply equally in the context of receiverships, such as the one here.

Next, the RRC argues that if the Court does find that *Midlantic* applies to this case, the Court must order the Receiver to abandon the pipeline in a way that complies with state laws and regulations. ECF No. 300 at 6-7. It also states that RRC regulations are reasonably designed to protect public safety since an improperly purged and sealed pipeline may cause fatal explosions. *Id.* at 7. To prove its point, the RRC cited to two articles, published in Colorado and Ohio, that recounted that an unsealed pipeline exploded. *Id.* However, as shown above, belief that something bad may happen at an indeterminate time in the future is not enough to show an imminent harm to the public. *In re Oklahoma Ref. Co.*, 63 B.R. at 563. Moreover, the only violations cited by the RRC at the Executive Closing of the Palo Pinto Pipeline on September 2, 2022, related to improper

signage, a lack of records, and the lack of written records. ECF No. 307 at 26-29. These violations do not evidence violations that constitute an imminent and identifiable harm to public health or safety. ECF No. 307 at 26-29.

Thus, assuming without deciding that the Receiver has a legal obligation regarding operation of the Palo Pinto Pipeline, in the absence of any evidence showing that abandoning the pipeline will cause an imminent and identifiable harm to the public, the Court should permit the Receiver to abandon the Palo Pinto Pipeline. *See In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742.

2. Oil and Gas Wells

The Receivership Estate includes 336 wells that have remained unplugged for over a year after they stopped producing. ECF No. 360. The Receiver argues that the majority of these wells should have been plugged and abandoned in accordance with the applicable state law months, if not years, prior to her appointment and, therefore, she is not liable for plugging them. ECF No. 353 at 8.

Under Texas law, the owner of an operating interest in a well must plug the well if it has remained unproductive for a year. *H.L.S. Energy*, 151 F.3d at 438; *see also* 16 Tex. Admin. Code § 3.9 (1998) (Tex. R. R. Comm'n, Plugging). Operators must commence plugging within a year of the cessation of production. *See* Tex. Nat. Res. Code Ann. § 89.011; 16 Tex. Admin. Code E § 3.9. Accordingly, after the passage of one year, a receiver who is an operator and has not plugged a nonproducing well is violation of the Texas Administrative Code. *See* 16 Tex. Admin. Code E § 3.9; *H.L.S. Energy*, 151 F.3d at 438.

The Fifth Circuit has not determined the extent of pre-petition liabilities in a bankruptcy case. *In re Grimland, Inc.*, 243 F.3d 228, 232 n.5 (5th Cir. 2001) (open question on whether post-

petition expenses for remediation of pre-petition environmental liabilities are administrative expenses). However, the Southern District of Texas has held that a debtor's obligation to expend funds to bring the estate into compliance with a state health and safety law is not contingent upon whether the obligation arose before or after the bankruptcy filing. *In re Am. Coastal Energy Inc.*, 399 B.R. at 811. In that case, Texas law imposed a continuing duty to plug the wells at issue. *Id.* "That continuing state-law-health-and-safety duty makes the plugging obligation a post-petition obligation that has pre-petition antecedents." *Id.* Accordingly, with respect to these environmental liabilities, "whether the liability arose pre-petition or post-petition produces an analysis that is superficial." *Id.* The analysis must focus not on just when the obligation arose, but "whether the obligation continues to arise anew with the passage of each day." *Id.*; *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 302 (Bankr. S.D. Tex. 2020); *see generally In re Nat'l Gypsum Co.*, 139 B.R. at 413 (holding that costs incurred post-petition resulting from pre-petition conduct entitled to administrative priority if caused by conditions that posed an imminent and identifiable harm to the environment and public health). This reasoning is persuasive, and the same analysis and obligations of a debtor in bankruptcy logically should apply to the Receiver in this case. Therefore, regardless of when the violations occurred, the Receiver undertook ongoing obligations to comply with the applicable state law and plug the wells once she became an operator of them.

Nonetheless, the Receiver asserts that regardless of her duty to comply with state law, the Court should permit her to abandon the wells because she already has addressed all known environmental that the RRC raised, and abandonment would not result in an imminent and identifiable harm to the public. ECF No. 366 at 10. The evidence that the Receiver offered at the hearing in this matter supports her argument that the oil and gas wells at issue do not present a present, imminent harm to public health and safety or the environment. The evidence shows that

the Receiver emptied associated tanks presenting risks based on equipment conditions to avoid potential spills, removed vegetation to mitigate fire hazard to tank batteries and production equipment as directed by RRC enforcement action settlements, reviewed all gas gathering systems and pipelines to ensure line pressure was not an immediate environmental threat, repaired flowlines, and ensured well pressure was controlled to mitigate environmental risks. ECF Nos. 296 at 15; 355-1 at 7. As noted in her brief, the only actions that the Receiver has not taken are those addressing conditions and requirements that do not pose a risk to public safety. ECF No. 296 at 4.

In response, the RRC has not stated how abandoning the oil and gas wells would result in imminent and identifiable harm to public health or safety. ECF No. 359. Moreover, it has not offered any evidence of such a present and identifiable harm. *Id.* Thus, the RRC has not met its burden in showing the Court that abandoning the oil and gas wells would result in an imminent and identifiable harm to public health. *In re Shore Co*, 134 B.R. at 578-79; *In re Guterl Special Steel*, 316 B.R. at 859; *In re St. Lawrence*, 248 B.R. at 742. While the Court recognizes that abandoning unplugged oil and gas wells may create future environmental hazards, this belief and fear of a future problem does not present evidence of an imminent harm to the public. *See In re Oklahoma*, 64 B.R. at 563. Thus, there is no imminent or identifiable harm from abandoning the wells.

IV. CONCLUSION

Because the evidence does not show that abandoning the Palo Pinto Pipeline and the Oil and Gas Properties would result in an imminent and identifiable harm to public health or safety, the undersigned **RECOMMENDS** that Judge O'Connor **GRANT** the Receiver's Pipeline Motion (ECF No. 288) and O&G Motion (ECF No. 296). The Court should authorize the Receiver to

immediately abandon (1) the interests of any Receivership Party in the Palo Pinto Pipeline and any right to operate that pipeline; and (2) the Oil and Gas Properties at issue.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on August 15, 2023.

Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

YOUNG COUNTY

Operator: Panther City Energy LLC

API No.	District	Lease No.	Lease Name	Well No.	Field Name	County
50340554	9	28824	CLIFTON, NADINE	1	YOUNG COUNTY REGULAR	YOUNG
50384489	9	18198	GAHAGAN "B"	1	YOUNG COUNTY REGULAR	YOUNG
50340916	9	29576	HAMILTON	2	YOUNG COUNTY REGULAR	YOUNG
50340808	9	31091	LEIGH ANNE 1661	1	WARREN (CADDO)	YOUNG