

Argent Trust Company, as Trustee of the Permian Basin Royalty Trust,	§	In the District Court
	§	
	§	
Plaintiff,	§	
v.	§	Tarrant County, Texas
	§	
Blackbeard Operating, LLC,	§	
	§	
Defendant.	§	342 <sup>nd</sup> Judicial District

**Defendant Blackbeard Operating, LLC’s Original Answer and Counterclaim**

**I.  
Original Answer**

**A. General Denial**

1. Pursuant to Texas Rule of Civil Procedure 92, Blackbeard Operating, LLC (“Blackbeard”) denies each and every allegation contained in the Original Petition and demands strict proof thereof by a preponderance of the evidence or as otherwise required by law.

**B. Affirmative Defense**

Subject to and without waiver of the foregoing, Blackbeard asserts the following affirmative defenses:

2. Blackbeard pleads that Plaintiff’s claims are barred, in whole or in part, by the applicable statute of limitations.

3. Blackbeard pleads that Plaintiff’s claims are barred, in whole or in part, by the doctrines of laches, waiver, and/or estoppel.

**II.  
Counterclaim**

4. Pursuant to Texas Rule of Civil Procedure 97, Blackbeard brings the following counterclaim against Plaintiff.

### **A. Parties**

5. Defendant/Counter-Plaintiff Blackbeard Operating, LLC is a Delaware company.

6. Plaintiff/Counter-Defendant Argent Trust Company, as Trustee of the Permian Basin Royalty Trust is a Tennessee corporation. Plaintiff has appeared in this suit.

### **B. Jurisdiction and Venue**

7. This Court has personal jurisdiction over the parties. Further, it has subject matter jurisdiction over the claims brought by Blackbeard because they exceed the minimum jurisdiction limits of this Court and arise out of the same facts in Plaintiff's claims.

8. Venue is proper in Tarrant County pursuant to Texas Civil Practice & Remedies Code § 15.062.

### **C. Rule 47 Statement**

9. Through its counterclaim, Blackbeard seeks only non-monetary relief.

### **D. Facts**

10. Blackbeard operates acreage subject to a Net Overriding Royalty Conveyance ("Conveyance") executed with Plaintiff and several Joint Operating Agreements<sup>1</sup> to which Plaintiff is a party.

11. Through the Conveyance, Blackbeard agreed to pay Plaintiff as a royalty, 75% of Net Proceeds from production from the affected acreage. Conveyance § 3.01.

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<sup>1</sup> These Joint Operating Agreements include (1) the May 1, 1991 Operating Agreement covering the Waddell West Ranch as more fully described on the "Exhibit A" attached thereto as amended by the Amendment and Ratification of Operating Agreement and Substitution of COPAS Accounting Procedures Waddell West Ranch dated February 10, 2011 ("JOA 1"); (2) the May 1, 1991 Operating Agreement covering the Waddell East Ranch as more fully described on the "Exhibit A" attached thereto ("JOA 2"); (3) the May 15, 1997 Operating Agreement covering N/2NW/4 Section 2 and N/2N/2 Section 3, both in Block 31, University Lands Surveys, and SW/4SE/4 and S/2SW/4 Section 26, and SE/4SW/4 and S/2SE/4 Section 27, both in Block B-25, Public School Lands in Crane County ("JOA 3"); and (4) the July 15, 1975 Operating Agreement covering the acreage described on the "Exhibit A" attached thereto ("JOA 4").

12. Pursuant to the Conveyance and Joint Operating Agreements, Blackbeard is entitled to charge certain costs to Plaintiff, including those for technical labor.<sup>2</sup> Under JOAs 1 and 3, Blackbeard is entitled to charge Plaintiff for the salaries, wages, and Personal Expenses of Technical Employees and/or the cost of professional consultant and contract services of technical personnel directly employed on the Joint Property. JOA 1, COPAS III.1(A)(i); JOA 3, COPAS III.1(ii). Under JOAs 2 and 4, Blackbeard is entitled to charge Plaintiff any expense incurred for “the necessary and proper conduct of the Joint Operations.” JOA 2, COPAS II.15; JOA 4, COPAS II.11.

13. In addition, Blackbeard is entitled to pass through oil and water gathering and transportation charges charged by Blackbeard vendor Nile Midstream. Conveyance § 1.15(a)(v).

14. Despite the clear language of the Conveyance and Joint Operating Agreements, Plaintiff denies that Blackbeard may charge Plaintiff these costs, and, through its breach of contract action, has sought repayment of past amounts for these categories from Blackbeard. Plaintiff’s suit does not address how these costs are to be treated on a go-forward basis. As a result, Blackbeard requests a declaration from the Court that, moving forward, it may charge these costs to Plaintiff under the applicable agreements.

15. Furthermore, the Conveyance provides limited information-sharing provisions. Blackbeard is required to (1) permit a books and records inspection at its office during normal business hours, and (2) provide quarterly statements showing the computation of Net Proceeds attributable to such quarter. Plaintiff complains about these information sharing requirements, suggesting that Blackbeard should provide more data with increased frequency. As such,

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<sup>2</sup> Section 1.10 defines “Net Proceeds” as “the excess of Gross Proceeds realized during such period over the sum of (a) Production Costs incurred during such period and (b) Excess Production Costs as of the end of the immediately preceding period.”

Blackbeard seeks a declaration from the Court confirming that Blackbeard need only provide to Plaintiff the information identified in the Conveyance in order to comply with the Conveyance.

### **E. Causes of Action**

#### **Count 1: Declaratory Judgment**

16. Blackbeard incorporates the foregoing paragraphs by reference.

17. Blackbeard requests a declaratory judgment that it may charge Plaintiff for technical labor costs under the Joint Operating Agreements.

18. Blackbeard also requests a declaratory judgment that it may charge Plaintiff for oil and water gathering and transportation charges incurred from Nile Midstream under the Conveyance.

19. Finally, Blackbeard requests a declaratory judgment that, under the Conveyance, it is required only to (1) permit a books and records inspection at its office during normal business hours, and (2) provide quarterly statements showing the computation of Net Proceeds attributable to such quarter. With respect to the books and records, Blackbeard is only required to maintain true and correct records sufficient to determine the amounts payable to Plaintiff under the Conveyance, including, but not limited to, a Net Proceeds account to which Gross Proceeds and Production Costs are credited and charged.

20. Blackbeard requests an award of its reasonable attorneys' fees under Section 37 of the Texas Civil Practice and Remedies Code.

### **III.** **Prayer**

Blackbeard respectfully requests that this Court enter judgment in favor of Blackbeard and award the following relief:

(a) A declaration as set forth in Paragraphs 17, 18, and 19 above;

- (b) Reasonable and necessary attorneys' fees;
- (c) Costs of court; and
- (d) General relief.

Dated: June 10, 2024

/s/ Robert C. Vartabedian  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon all counsel of record by the Court's e-file system on all counsel of record in accordance with the Texas Rules of Civil Procedure on this 10th day of June, 2024.

/s/ Robert C. Vartabedian  
Robert C. Vartabedian

### Automated Certificate of eService

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Alix Allison on behalf of Alix Allison

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Envelope ID: 88636265

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Action/Interpleader/Intervention/Third Party

Filing Description: Defendant Blackbeard Operating, LLCs Original Answer and Counterclaim

Status as of 6/10/2024 4:17 PM CST

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