

DATE FILED: July 20, 2018 5:37 PM
FILING ID: 4A1D1B507EB70
CASE NUMBER: 2017CV30030

Exhibit A

<p>DISTRICT COURT, RIO BLANCO (MEEKER) COUNTY, COLORADO Court Address: P.O. Box 1150, 455 Main Street, Meeker, Colorado 81641</p>	<p style="text-align: center;">COURT USE ONLY</p> <p>Case Number: 2017CV30030</p> <p>Division: B</p>
<p>Plaintiff: BISHOP RANCH LLC</p> <p>v.</p> <p>Defendants: ENCANA OIL & GAS (USA) INC. HUNTER RIDGE ENERGY SERVICES LLC CAERUS PICEANCE LLC</p>	
<p>Mark E. Haynes, #12312 James R. Silvestro, #43982 Ireland Stapleton Pryor & Pascoe, P.C. 717 17th Street Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Fax: (303) 623-2062 MHaynes@irelandstapleton.com</p> <p>Mark A. Mason, SC#3676, admitted <i>Pro Hac</i> Gabrielle Z. Lee, #48542 The Mason Law Firm, P.A. 465 W. Coleman Boulevard, Suite 302 Mount Pleasant, South Carolina Telephone: (843) 884-1444 Fax: (843) 884-3595 mark@masonlawfirm.com gabby@masonlawfirm.com</p>	<p style="text-align: center;">BISHOP RANCH'S SECOND AMENDED COMPLAINT</p>

Bishop Ranch LLC, through its attorneys, Ireland Stapleton Pryor & Pascoe, P.C. and The Mason Law Firm, P.A., for its Second Amended Complaint, states as follows:

Nature of Action

1. Plaintiff Bishop Ranch LLC (“Bishop” or “Bishop Ranch”) files this civil action to recover damages against Defendants for continuing environmental torts committed by

Defendants causing permanent injury to Bishop's real property in Rio Blanco County. The Encana Defendants released massive quantities of hazardous waste known as "condensate" and/or "produced water" (defined in more detail below as the "Incident") onto Bishop Ranch - and onto Piceance Creek Ranch, Ltd. a/k/a the Johnson property ("PCR" or the "Johnson property"), a ranch that is contiguous to the Bishop Ranch and has been successively owned, operated, maintained and controlled by the Encana Defendants and thereafter by Defendant Caerus. Pollutants from the Defendants' property are present upon the Bishop Ranch. Pollutants emanating from the Defendants' property continue to migrate from the Defendants' property onto Bishop Ranch, giving rise to the trespass, continuing trespass, nuisance, continuing nuisance and negligence claims raised against Defendants in this Second Amended Complaint.

The Parties

2. Plaintiff Bishop Ranch, LLC is a Colorado limited liability company with its principal place of business in Rifle, Colorado. Bishop owns real property in Rio Blanco County that is the subject of this action.

3. Defendant Encana Oil & Gas (USA) Inc. ("Encana USA") is a Delaware corporation authorized to transact business in Colorado as a foreign corporation. Its principal place of business is in the City and County of Denver, Colorado.

4. Defendant Hunter Ridge Energy Services LLC ("Hunter Ridge" or "HRES") is a Delaware limited liability company authorized to transact business in Colorado as a foreign limited liability company. Its principal place of business in Colorado is in the City and County of Denver, Colorado.

5. Defendants Encana USA and HRES are hereafter jointly referred to as the "Encana Defendants."

6. Caerus Piceance LLC ("Caerus") is a Colorado limited liability company with its principal place of business in the City and County of Denver, Colorado.

7. This Second Amended Complaint is filed with the consent of Defendants. Further, at a status conference held on June 22, 2018 the Court ruled that if Defendants consented to the filing of an Amended Complaint, Plaintiff was authorized to file the same without further order of the Court.

Jurisdiction and Venue

8. Venue is proper in this Court pursuant to Colo. R. Civ. P. 98 because this is an action for injury to real property situated in the Rio Blanco County.

9. This Court has jurisdiction over the claims asserted herein pursuant to Colo. Rev. Stat. §13-1-124 (1) (a), (b) and (c) and other applicable law.

General Allegations

10. Bishop owns a 320-acre hunting ranch in Rio Blanco County with an address of 16845, CO Road 5, Meeker, Colorado, identified as tax map Parcel 191502300002, legally identified as Township 4 South, Ranch 96 West, 6th P.M., Section 2: W1/2SW1/4; Section 10: E1/2SE1/4; Section 11 W1/2NW1/4, W1/2SW1/4 (the “Bishop Ranch”).

11. Michael Lynn Bishop purchased Bishop Ranch in 2002 from MTW Ranch, LLC. He conveyed the land to Bishop Ranch LLC in 2012. Bishop Ranch is a unique tract of land. It consists of a hunting lodge that sleeps 20 persons, a skinning shed, a backcountry airstrip utilized for high altitude mountain flight training, a six place airplane hanger, and a spring and a well, both of which provided potable water. Prior to the Encana Defendants’ massive release of hazardous waste, which continues to migrate onto Bishop Ranch from real property and facilities now owned, operated, maintained and/or controlled by Defendant Caerus, Bishop Ranch was marketable as a pristine, world-class big game hunting ranch in Northwest Colorado known for having a large migratory trophy mule deer and elk herd. Bishop Ranch offered exceptional hunting opportunities for deer, elk, bear, mountain lion, coyote, and blue grouse, just to name a few. Mr. Bishop initially chose this location over 20 years ago due to his family’s sacrosanct connection to the land, its untouched, pristine beautiful setting, picturesque views, diverse topography, seclusion and wildlife. Over the years he painstakingly completed extensive improvements to make Bishop Ranch a sporting and aviator’s paradise.

12. Bishop Ranch is located within the Piceance Basin portion of the Colorado physiographic province in northwest Colorado, within the East Fork Stewart Gulch of Parachute Mountain.

13. In approximately 2003, Encana began widespread exploration and drilling operations to extract natural gas in the Piceance Basin by hydraulic fracturing which ultimately led to land and water contamination, air and noise pollution, and the consequential hazards to public health and the environment as hereafter alleged.

14. As of December 31, 2016, Encana had installed in the Piceance Basin approximately 3,967 gross producing natural gas wells, and took control over 693,000 net acres, in what Encana referred to as “the play” related to its natural gas operations in the Piceance Basin.

15. Encana Defendants have a long history of substantially similar environmental regulatory violations and chemical releases that predictably and foreseeably led up to Encana Defendants’ massive release of tons of hazardous waste that impacted and damaged the Bishop Ranch in 2016.

16. On April 1, 2004, Encana allowed an estimated 100 million cubic feet of gas and associated hydrocarbons to seep from its well into West Divide Creek. The seep was found to

contain the carcinogenic chemical benzene. It was determined by the Colorado Oil and Gas Conservation Commission (“COGCC”) that Encana: (a) failed to prevent the contamination of fresh water by gas; (b) failed to notify the COGCC Director when public health or safety was in jeopardy; (c) impacted water quality; and (d) failed to report a release to the Director. The COGCC fined Encana *a record* \$371,000.

17. Upon information and belief, following the West Divide Creek Seep disaster, the Encana Defendants did not institute a corporate policy where any employee or contractor could stop operations due to safety concerns. Rather, upon information and belief, Encana fostered a corporate culture of cover-up, secrecy and silence encouraged by confidential private settlements of environmental damage claims and company compensation plans tied primarily to production goals.

18. Upon information and belief, in those instances where it was discovered that the Encana Defendants’ natural gas development operations contaminated a water supply, it carried out a corporate policy of entering into confidential settlement agreements with affected private landowners, some of which did not have legal representation, the express purpose of which was to keep secret from the public, its regulator and the issuer of its permits to operate, the true extent to which public health and safety was placed in jeopardy by the willful and wanton manner in which it carried out its ultra-hazardous hydraulic fracturing, production and hazardous waste disposal activities. These confidential settlements clearly signaled to company employees that corporate procedure for dealing with a release of hazardous materials was to deny responsibility and cover it up.

19. Upon information and belief, a purpose of the Encana Defendants’ willful concealment was to make it difficult for scientists studying the effects of its release toxic chemicals into the environment to statistically correlate the Encana Defendants’ operations to the evident harm, and to avoid regulatory scrutiny.

20. Upon information and belief, the Encana Defendants repetitively engage in an intentional corporate environmental damage cover-up scheme following a hazardous material release, such as occurred in this case.

21. This Court should determine, in the context of this action, that the private settlement agreements do not prevent Plaintiff from obtaining discoverable information about the other substantially similar incidents in which the Encana Defendants contaminated land, soil, sediment, water and air and thereby depressed real property values in the Piceance Basin.

22. Plaintiff gives notice that it hereby seeks to identify through investigation in this action former employees and contractors of the Encana Defendants who, upon information and belief, are witnesses to said Defendants violation of the safety and environmental regulations alleged by the COGCC to have taken place in relation to the massive A27 Central Distribution Point (“CDP 27”) hazardous waste release Incident that is the subject of this action, and/or witnesses to other substantially similar hazardous waste release incident(s), if any, as permitted

by *Colorado Ethics Opinion 69* which authorizes Plaintiff's attorneys to engage in private interviews with former employees in the manner set forth in the said Opinion.

23. In 2006, various operational failures led Encana USA to be assessed \$542,000 for 9 different violations in Colorado.

24. In 2007, various operational failures led Encana USA to be assessed \$663,000 for 19 different violations in Colorado.

25. In 2008, hearings were held after Encana allegedly installed a pipeline across a Canadian ecological preserve without a permit.

26. In 2008, various operational failures led Encana USA to be assessed \$306,000 for 19 different violations in Colorado.

27. In 2009, Encana pipelines in Northern British Columbia experienced six explosions.

28. In 2009, various operational failures led Encana USA to be assessed \$3,000 on 10 different violations in Colorado.

29. On April 20, 2010, the BP Deepwater Horizon oil spill began in the Gulf of Mexico. At the time of the Horizon spill, Encana's current President & CEO, Douglas J. Suttles, was the chief operating officer at BP Exploration & Production. Mr. Suttles was the BP executive who led the energy giant's response to the largest marine oil spill in history.

30. In 2011, the United States Environmental Protection Agency definitively linked groundwater contamination in Pavilion, Wyoming to Encana's hydraulic fracturing activity taking place in the area of the aquifer. Encana USA refuted the study's conclusions, saying the EPA itself may have contaminated the water with its test wells.

31. In 2012, residents near Encana's hydraulic fracturing sites near Erie, Colorado, reported negative health effects from the wells' fumes. A study by the Colorado School of Public Health found that residents living within a half-mile of a fracking well had a 66 percent greater risk of cancer than those living a mile away.

32. On September 6, 2012, Defendant Hunter Ridge Energy Services LLC, a Delaware corporation, was authorized to transact business as a foreign limited liability company in Colorado.

33. On June 11, 2013, Encana named Douglas J. Suttles as President & Chief Executive Officer of Encana and Encana USA.

34. On October 1, 2013, Encana announced a new organizational structure and senior management team at which time President & CEO Suttles stated, “The new organizational structure aligns with the core competencies needed to get Encana back to winning.”

35. In 2013, Encana made changes to its retirement, stock option and incentive plans, which, upon information and belief, valued earnings ahead of safety.

36. In December 2013, Encana USA stopped drilling altogether in the Piceance Basin, and it has not drilled in the Piceance Basin since.

37. From 2013 forward, Encana lost hundreds and hundreds of millions of dollars annually, drastically reduced its workforce and administrative expenses, and made other corporate budget decisions that upon information and belief directly, negatively and substantially impacted the safety of Defendants’ operations in the Piceance Basin.

38. In October 2015, Encana announced it would sell its Colorado oil and gas assets for \$900 million.

39. In December 2015, Encana reported a net loss of \$5,165 million.

40. In February 2016, Encana announced additional workforce reductions.

41. In its financial reports Encana refers to its assets in the Piceance Basin as “non-core” - meaning not central to its operations.

42. In February 2016, Encana’s President & CEO Douglas J. Suttles stated, “It’s a tough time to be someone who works in the oil and gas industry. The job reductions, not only in Encana but across the industry, have been as severe as I’ve ever seen in 33 years.”

43. Upon information and belief, with Encana’s workforce reductions came the loss of institutional safety knowledge and training such that the scant number of employees actually working on the gas lands were not skillfully directed as to the safety protocols that got cut along with the employees who knew them.

44. Upon information and belief, by February 2016, Encana’s manpower in the Piceance Basin was skeletal at best and its operations were largely unmonitored for safety or security.

45. On February 18, 2016, Moody’s downgraded its rating on Encana debt to junk grade Ba2 from an investment grade Baa2, noting it expects a “material decline in Encana’s cash flow” in 2016 and 2017, potentially affecting its leverage metrics.

46. In March 2016, Encana USA was exploring the sale of all its non-core assets, including its operations in the Piceance Basin.

47. Encana participated in and controlled its subsidiaries day-to-day environmental operations and it made the decision as to what corporate resources would be made available to its subsidiaries.

48. Upon information and belief, Encana Defendants failed to comply with environmental disclosure requirements placed on publicly traded companies such that upon information and belief its shareholders were not advised of the enterprise-wide environmental risk and liabilities that should guide prudent investment decisions.

49. Upon information and belief, the Encana Defendants failed to coordinate corporate governance practices with proper risk management.

50. Upon information and belief, Encana's President & CEO Douglas J. Suttles is the responsible corporate officer charged with the duty of compliance with environmental laws and regulations in the Piceance Basin.

51. The Encana Defendants owned, operated and controlled the land and facilities that impacted and damaged the Bishop Ranch and the contiguous PCR. Defendant Caerus presently owns the contaminated PCR, which continues to migrate pollutants onto Bishop Ranch. The Defendants are jointly liable to Plaintiff on the claims hereafter alleged.

52. Upon information and belief, effective January 1, 2017, the Encana Defendants transferred the ownership and control of the contaminated PCR real property and its associated water rights to Defendant Caerus.

53. Upon information and belief, the Encana Defendants assigned and/or delegated the legal duty to operate and maintain the remediation facilities constructed by the Encana Defendants on the contaminated PCR land conveyed by the Encana Defendants to Defendant Caerus.

54. The contaminated PRC Ranch land and water rights, now owned by Defendant Caerus, and the remediation facilities, now operated and maintained by Defendant Caerus, continue to migrate pollutants onto the contiguous, down gradient Bishop Ranch.

55. Upon information and belief, the Encana Defendants and Defendant Caerus are jointly liable for such judgment as Plaintiff may obtain in these proceedings, based upon their successive ownership of the PCR contaminated land and water rights and other contaminated land and water that continues to discharge pollutants that migrate onto the Plaintiff's land, the express assumption by Defendant Caerus of the duty to operate and maintain the remediation facilities that continues to discharge pollutants that migrate onto Plaintiff's land, and the intentional discharge of pollutants onto the surface of the land, said damages sustained by

Plaintiff arise both from the original massive release and the intentional continuing discharge of pollutants and migration of those pollutants onto the Plaintiff's land.

Specific Allegations

56. Plaintiff hereby repeats and realleges the foregoing allegations of the Second Amended Complaint as if set forth herein verbatim.

57. Upon information and belief, beginning in May of 2016, or before, hazardous waste known as "condensate" and/or "produced water" began to seep, leak, spill or be released from a pipeline or flowline or gathering line and/or other facilities owned by, installed by, managed by, controlled by, and/or jointly operated by the Encana Defendants in the vicinity of the A27 Central Distribution Point (Spill/Release Point 446199) situated on Defendants leased and/or owned and/or controlled and/or operated property and facilities, and massive quantities of hazardous waste known as "condensate" and/or "produced water" flowed a great distance from the point of release under the ground and over the surface of the land onto the Bishop Ranch for an extended period of time, which migration of pollutants from the contiguous contaminated PCR land and water, and other contaminated property, successively owned by the Encana Defendants and then Defendant Caerus continues to impact Plaintiff through the migration on to and presence of toxic chemicals on Plaintiff's property. Defendant Caerus purchased the contaminated PCR from Encana with full knowledge of its condition and the continuing migration of pollutants from the PCR property onto the Bishop Ranch. Defendants presently intentionally discharge pollutants onto the surface of the land. This ongoing and continuing event is hereafter referred to as the "Incident."

58. The Incident was proximately caused by the Defendants failure to maintain the structural integrity of its pipelines and facilities at or near the Spill/Release Point(s) and elsewhere to prevent failure and/or its failure to pressure test the pipeline, and/or its failure to take reasonable precautions to prevent failure, leakage and corrosion of the pipeline, and/or its failure to assure the pipeline was in good mechanical condition, and/or its failure to remediate to abate the continued migration of pollutants onto Plaintiff's property. Defendants failed to establish policies so that whenever there is a change of product in a pipeline, or a significant change in flow rates, action must be taken to evaluate the potential risks. The seepage, leak, spill or release from the said Spill/Release Point(s) continued undetected, flowing onto the Bishop Ranch for a dangerous and extended period of time, and the presence of and migration of said pollutants continues to date, due to Defendants' willful and wanton conduct and neglect, and the damaging effects continue to accrue.

59. Upon information and belief, the Encana Defendants operated the section of pipeline involved in the Incident.

60. Upon information and belief, Defendant Caerus now owns the pipeline involved in the Incident; Defendant Caerus now owns the contaminated PCR property; Defendant Caerus now owns the contaminated springs and associated water rights; and Defendant Caerus now

operates and maintains the remediation facilities located on the PCR property; Defendant Caerus causes, authorizes and permits pollutants to be intentionally discharged onto the surface of the PCR property which pollutants continually migrate down gradient onto the Bishop Ranch.

61. On June 8, 2016, Encana USA filed a “Spill Release Report (Initial /w Supplemental)” (Document Number 401059925) relating to a produced water spill discovered June 7, 2016 involving a flowline at Facility/Location ID No 316323 with a reported spill volume of more than 5 and less than 100 barrels which contained the following description of the spill/release event: “A pressure drop was noted in the 3” flowline between the injection well and the pump. The line was pressurized with gas and a leak point was detected. The line will be excavated and soil sampling will occur to determine the extent of the release.”

62. On June 16, 2016, Hunter Ridge filed a “Spill Release Report (Initial)” (Document Number 401064094) with the COGCC. It stated that on June 14, 2016 it discovered that a flowline operated by Hunter Ridge (as to which no existing facility or location ID could then be assigned) had spilled or released an estimated condensate volume of more than 5 barrels and less than 100 barrels. Hunter Ridge identified the event as a “recent spill” and described the spill/release event as follows: “During an annual water sampling event on 6/14/2016, a discharge of hydrocarbon impacted water was identified within the East Stewart Spring. Condensate was identified to be seeping into the drainage at the spring’s discharge point. Two private properties have been impacted by this release and Encana is currently working with the Property Owners in regards to this incident ...” Production associated with the A27 CDP has been shut in/diverted until the flowline can be repaired.” The report listed the impacted land was owned by “Piceance Creek Ranch & Mike Bishop.” (Document Number 401064192).

63. Upon information and belief, the Encana Defendants have not provided the COGCC with the names of the employees and/or contractors that can verify Defendants report as to how the release was discovered, or the date of discovery.

64. Upon information and belief, the Incident was a massive undetected release of hazardous waste involving an extended seep that increased in its flow and volume until it emerged from underground, not a “recent spill” as reported by Encana.

65. In June 2016, the Encana Defendants were subject to the annual pressure testing requirements of Rule 1101 for all Piceance Basin flowlines.

66. The Encana Defendants did not have the subject flowlines annually pressure tested.

67. The Encana Defendants do not have pressure test results for the subject flowlines for the three (3) years prior to the Incident.

68. On June 24, 2016, a Spill/Release Report (Supplemental) was filed that reported the impacted property was owned by “Piceance Creek Ranch & Mike Bishop.” (Document Number 401068217).

69. On June 28, 2016, the Encana Defendants reported to the COGCC that it located the point of release, which it described as a “Pin-hole leak found in A27 pump discharge line at high angle point coming off ridge line – 400’ from A27 CDP.” (Document Number 2526463). The Encana Defendants further reported that the “Johnson stock pond continues to act as collection point for skimming oil off spring water.” Wildlife has free access to this contaminated water.

70. Upon information and belief, Encana has not provided the COGCC with the names of the employee(s) and/or contractors that discovered the alleged “Pin-hole leak.”

71. Upon information and belief, no photographs of the alleged “Pin-hole leak” at point of release were filed with COGCC.

72. Upon information and belief, Encana did not make the damaged, corroded and/or defective pipeline section where the alleged “Pin-hole leak” was found immediately available for inspection by any regulatory authority.

73. Upon information and belief, there presently exists pervasive pipeline integrity defects, as well as pipeline corrosion and leaking problems with a substantial portion of the pipelines / flowlines previously owned and operated by the Encana Defendants which are now owned and operated by Defendant Caerus.

74. Upon information and belief, the Encana Defendants failed to document a chain of custody and/or properly preserve as evidence the pipeline section that was the claimed point of release.

75. Upon information and belief, the Encana Defendants claim that isolated pitting on the interior of the pipeline attributable to bacterial corrosion was the cause of the leak.

76. On July 5, 2016, the Encana Defendants reported “Bishop – Encana to provide analytical results of pond effluent which ultimately makes its course to Bishop property.” (Document Number 2526523).

77. On July 14, 2016, the Encana Defendants reported “Impact limited to two privately owned properties.” (Document Number 2526580)

78. Upon information and belief, on October 28, 2016, the Encana Defendants claimed that the pipeline involved in the release was a gathering line, not a *flowline* as stated by the Encana Defendants in all of its previous reports to the COGCC.

79. On August 17, 2016, nine (9) weeks after the condensate-impacted spring water was discovered, the Encana Defendants completed the installation of a new head gate at the Johnson stock pond. (Document Number 2526785).

80. Prior to the installation of the new head gate at the Johnson stock pond hazardous waste flowed freely onto the Bishop Ranch. It took the Encana Defendants nine weeks (after allegedly discovering the release on June 14, 2016) to repair the allegedly faulty head gate at the up gradient contaminated stock pond which the Encana Defendants commandeered as a holding area for the massive toxic condensate discharge thereby intentionally causing known hazardous waste from the contaminated stock pond on the PCR property to flow freely onto the Bishop Ranch property.

81. The Encana Defendants' remediation activities failed to contain the contaminated water containing hazardous waste from reaching and intruding upon the Bishop Ranch, and it flowed freely onto the Bishop Ranch for at least nine (9) weeks after discovery of the release, and it continues to migrate down gradient from the contaminated PCR land and water onto the Bishop Ranch property at the base of the East Stewart Gulch. Presently, Defendants are intentionally discharging pollutants onto the surface of the PCR land (now owned by Defendant Caerus) that migrate onto Bishop Ranch.

82. The Encana Defendants intentionally discharged hazardous waste from the contaminated stock pond on to the Bishop Ranch.

83. The Encana Defendants intentionally used the Bishop Ranch property as a down gradient location to disburse and aerate hazardous waste, and did not employ proper and reasonably practicable methods of containment.

84. Bishop Ranch is the nearest property to the release that uses groundwater for potable purposes.

85. The Encana Defendants have made no effort to determine the volume of the released condensate / produced water, nor do they possess any records from which the volume of the released condensate / produced water may be derived.

86. When reporting the release, the Encana Defendants did not specifically identify the compounds or the chemicals released.

87. The Encana Defendants intentionally withheld and continue to withhold from Bishop the nature of the compounds or chemicals they released onto Bishop Ranch and the Encana Defendants did not timely share with Bishop the entirety of the results from the environmental testing Defendants conducted upon his property.

88. Upon information and belief, the Encana Defendants have a corporate policy that the public is not entitled to know the compounds or chemicals used (or released into the environment) during their hydraulic fracturing or other operations.

89. An unknown quantity, but minimally thousands of barrels (more than 100 tons) of hazardous waste known as condensate and/or produced water released from the Encana Defendants' pipeline impacted and contaminated the springs, surface water, ground water, vegetation, land, soil and sediment from the point of the release down gradient onto the Bishop Ranch by way of a massive release of hazardous waste that took place over an extended period of time and which continues to be present on and migrate onto the Bishop Ranch.

90. Upon information and belief, following the release the Encana Defendants then sought to minimize or conceal the environmental damage to the Bishop Ranch property by, among other things, failing to conduct, or minimally conducting appropriate monitoring, sampling, containment or remediation activities down gradient of the contaminated stock pond; and by coordinating biased, selective sampling using financially conflicted captive experts who made incredible absolute statements verifying the condition of a substantial area of land, soil, sediment, water and air based on very limited, selective analysis on behalf of their repeat client, and by withholding from Bishop the entirety of results of the testing conducted on Bishop Ranch property, or on monitoring wells adjacent thereto. Further, Defendants failed to study and understand the characteristics of the area involved in the release which understanding would be a pre-requisite to devise an appropriate remediation strategy.

91. The Encana Defendants made no good faith effort to fully and accurately document the true extent of the environmental damage they caused to the Bishop Ranch, or to other private landowners negatively affected by their operations, notwithstanding they were legally subject to a statutory mandate to fully and truthfully report any environmental incident potentially dangerous to public health or safety.

92. In the minimal selective sampling performed by the Encana Defendants' chosen captive experts TPH-GRO was repeatedly detected above the COGCC Cleanup Concentration Level in samples collected at the Bishop Ranch. The Encana Defendants did not timely notify Bishop of the elevated readings though Defendants had actual knowledge of the elevated readings impacting the Bishop Ranch property.

93. Sampling and testing commissioned by the Encana Defendants at the Bishop Ranch detected elevated levels of TPH-DRO – which exceeded the COGCC Cleanup Concentration levels in surface soils and sediments by seven times - in the limited, selected places the Encana Defendants sampled. Elevated levels of other harmful compounds were also detected on the Bishop Ranch property.

94. TPH-DRO is associated with various adverse health consequences, including kidney and liver damage.

95. TPH-DRO is harmful to humans, wildlife and livestock.

96. On September 16, 2016, a Notice of Alleged Violation (the "NOAV") was issued by COGCC against Hunter Ridge arising from the Incident. On or about September 11, 2017, the NOAV was resolved by Consent Order No. 1V-641/ Docket No. 161200489, by the Encana Defendants paying a \$225,000 fine and agreeing to seek to remediate environmental damage.

97. When the Encana Defendants were cited for violation of COGCC rules for the release onto the Bishop Ranch they did not inform Bishop of the citation, and when Bishop asked questions about the impacts to his property the Encana Defendants called him a "nuisance".

98. The NOAV alleged Hunter Ridge failed to install pipeline with materials, design, and cover sufficient to maintain structural integrity and prevent failure, and/or failed to complete pressure testing prior to operating this segment of flowline, resulting in the June 14, 2016 release, violating Rule 1101.

99. The NOAV alleged Hunter Ridge failed to take reasonable precautions to prevent failures, leakage and corrosion of pipelines resulting in the release on June 14, 2016, violating Rule 1102a.

100. The NOAV alleged Hunter Ridge failed to insure the pipeline was in good condition resulting in the release on June 14, 2016, violating Rule 605d.

101. The NOAV alleged Hunter Ridge failed to manage E&P Waste in a manner protective of the waters of the state, causing or threatening to cause significant adverse impacts, violating Rule 907a.

102. The NOAV ordered Hunter Ridge to submit the past three (3) years' worth of pressure testing results for the involved segment of pipeline. Hunter Ridge failed to comply with that order.

103. On July 19, 2016, in an effort to mitigate its damages, Bishop authorized the Encana Defendants to attempt to remediate the environmental damage to Bishop Ranch for 1 year. The Encana Defendants acknowledged the Bishop Ranch was "impacted by the release of hydrocarbons and other compounds, chemicals and substances as a result of the A27 pump discharge line release..."

104. The Encana Defendants failed to remediate the damage and the minimal selective testing it did conduct detected contaminants (harmful compounds) in amounts that far exceed COGCC cleanup levels.

105. Environmental contamination has a long latency period.

106. In over 2 years from the event, the Encana Defendants have not remediated the environmental damage to the Bishop Ranch, and such the damage, and the stigma from the Incident, is present, continuing and permanent.

107. Upon information and belief, the Encana Defendants were not forthright in their response to the investigation of the Incident and affirmatively took a minimal approach to remediation, so as not to open up a true examination into the overall safety of its operations as a result of the Incident.

108. In response to the NOAV, Defendant Hunter Ridge boldly proclaimed it had “a demonstrated history of compliance with the Act, Rules, order, and permits” – even though Hunter Ridge is managed and operated by *Encana*, an actor with an extensive history of non-compliance that received the largest environmental fine in Colorado history. Encana was the captain of the Hunter Ridge ship at the time of the Incident.

109. As of June 1, 2017, the Encana Defendants had *recovered* 1182 barrels (49,644 gallons) of toxic condensate and/or produced water from the contaminated springs, surface and ground waters in the path of the release, and they continue to recover 0-2 barrels of toxic condensate and/or produced water per day as a result of the Incident, the effects of which are ongoing.

110. If 1182 barrels of hazardous waste material was recovered - an unknown amount of hazardous waste, many, many times more was likely released into the environment - a substantial quantity of which traveled down gradient onto the Bishop Ranch.

111. Defendants do not know how much hazardous waste was released into the environment as a result of the Incident.

112. COGCC ordered that the Encana Defendants install and maintain a year-round remediation system for collecting, treating and disposing of the contaminants for an indefinite period of time, with the facilities being located on the contiguous PCR up gradient property.

113. The remediation facility is not operating effectively.

114. Upon information and belief, the Encana Defendants acquired the contaminated PCR land and rights to the contaminated springs, to settle claims asserted by the owner of the PCR as a result of the massive contamination, and thereafter transferred said contaminated land and water rights to Defendant Caerus.

115. The inability of Bishop (or anyone) to definitively know the nature of, or the volume of, the hazardous waste that impacted and continues to impact the Bishop Ranch renders the property unmarketable to a buyer aware of publicly known or discoverable facts relating to the Bishop Ranch, and the availability of opportunities to purchase similar properties not tainted by continuing environmental contamination.

116. A permanent public record of the environmental damage to the Bishop Ranch is maintained on an online database for any potential buyer or lender to access. This record permanently damages, clouds and diminishes the value of the Bishop Ranch property rendering it unmarketable.

117. In a transaction involving the Bishop Ranch property, Bishop would be required to provide and disclose all environmental reports and test results related to the Bishop Ranch.

118. An attorney providing a title advisory relative to the Bishop Ranch would likely be required to advise a purchaser or lender on “environmental matters” pertaining to the Bishop Ranch.

119. It is probable a lender would not make a mortgage loan on the Bishop Ranch due to its environmental condition. Banks and insurers have guidelines that forbid mortgage loans or insurance coverage on properties affected by drilling. Bishop is now confronted with uninsurable property damage.

120. It is a part of Defendants’ corporate practice to purchase properties it contaminates as a cost of doing business.

121. Under Colorado law Bishop has the right as the owner of real property with personal knowledge to testify as to its fair market value. Prior to the Incident, Bishop was in the final stages of negotiations to sell the unique Bishop Ranch property for \$5,000,000. But for the environmental contamination, Bishop would have sold the Bishop Ranch for \$5,000,000. As a result of the Incident, the transaction did not complete. Bishop Ranch is now not marketable as the permanent ongoing environmental damage and permanent stigma arising from the Incident would spook any potential buyer.

122. Upon information and belief, the Encana Defendants have entered into confidential settlement agreements with multiple private property owners of other contaminated properties in the Piceance Basin some of which contain a promise from Defendants to provide impacted property owners with clean water for an indefinite period of time.

123. Upon information and belief, in March of 2017, the Encana Defendants entered into a confidential settlement agreement with the owner of PCR relating to the A27 Central Distribution Point (Spill/Release Point 446199) Incident.

124. Upon information and belief, as of June 28, 2017, the soil sampling performed by or on behalf of the Encana Defendants at the locations on Bishop Ranch designated as 5AS4, 54S3, 5AS2, 5AS1, 5A, 6N3 and 6 “all had Hydrocarbon Exceedences from previous samples.”

125. On July 3, 2017 the Encana Defendants acknowledged receipt of an unfiled draft copy of the original Complaint from Bishop’s attorneys.

126. Upon information and belief, the Encana Defendants and Defendant Caerus entered into a Purchase and Sale Agreement dated June 8, 2017 (the “PSA”), which closed on July 25, 2017, with an effective date of January 1, 2017. In connection with said transaction:

(a) Encana Oil & Gas (USA) Inc. transferred the contaminated PCR land and contaminated water and other land with the remediation facilities located thereon to Defendant Caerus, along with the oil and gas rights. Hunter Ridge retained ownership of the remediation facilities that are permanently affixed to the land. Toxic chemicals from the contaminated land and water are presently intentionally discharged onto the surface of the PCR land and continue to migrate onto the Bishop Ranch, and they are present thereon, as heretofore alleged, giving rise to the *direct* continuing trespass and continuing nuisance claims asserted against all Defendants, which new causes of action accrue each day that the contamination continues, under the authority of *Hoey v. United States*, 64 P.3d 214 (Colo. 2003).

(b) Defendant Caerus assumed the obligation to provide routine O&M services on the A27 system (that being the remediation facilities owned by Hunter Ridge) based on affirmative representations pertaining to the divestiture made to the COGCC.

(c) On July 25, 2017, Defendant Caerus acquired all of the assets of Defendant Hunter Ridge Energy Services LLC in the Piceance Basin. HRES retained only Remediation Project No. 9748 associated with the A27 Liquid Line release and all liability associated with the Release.

(d) On July 25, 2017, Caerus also acquired the former Johnson Property, along with the other assets of Encana in the Piceance Basin, as part of the Caerus Acquisition. HRES has entered into an access agreement with Careus to allow continued access to the former Johnson property for purposes of remediation.

127. The Encana Defendants contracted in the PSA to retain, pay, perform, fulfill and discharge all losses related to the “Retained Liabilities” which include the “Retained Environmental Matter.” The “Retained Environmental Matter” includes “any actions, suits or proceedings related to” Spill No. 446199 – which is the Incident alleged in this Second Amended Complaint.

128. After the sale of the contaminated PCR land by the Encana Defendants to Defendant Caerus, and subsequent to the filing of the original Complaint in this action, massive, continuing, ongoing pollution, and failures in the operation and maintenance of the remediation facilities, has been documented as hereafter alleged.

129. As of December 2017, there was a “free-product plume” that was “moving down gradient to the north” – which is the direction of the Bishop Ranch. “The benzene plume (dissolved phase hydrocarbon plume)” was “advancing down gradient, to the north, past the

springs.” The free-phase hydrocarbon and dissolved phase plumes are migrating to the north, down-gradient.

130. Delays in an aggressive approach to remediation of the free phase and dissolved phase hydrocarbons will contribute to continued migration of the plumes onto the surface and subsurface of Bishop Ranch.

131. As of December 2017, the Encana Defendants were instructed by COGCC to develop a comprehensive remediation plan – one that addressed the groundwater impact (free-product and dissolved hydrocarbons) in the whole valley, not only near the point of release.

132. Documents submitted by the Encana Defendants to COGCC show that the benzene plume is extending north, rather than receding.

133. As of December 2017, in spite of information collected with the network of more than 45 monitoring wells, the Encana Defendants have not initiated an aggressive active remediation program that addresses the free phase hydrocarbon plume and the dissolved phase hydrocarbon plume.

134. The Hydrocarbon Recovery System installed by the Encana Defendants “has had limited success and will do very little to help remediate the site in a timely manner, if at all.”

135. The Encana Defendants are attempting to devise a new remediation plan to deal with the massive free phase hydrocarbon plume and the dissolved phase hydrocarbon plume.

136. The contamination of the seeps on Defendant Caerus’ property is due to groundwater contamination from an oil and gas spill. At present the contaminated seeps must be managed in a manner that is complementary to the remediation of the plume and contact of the contaminated seeps with the surface water must be minimized.

137. In February of 2018, the Encana Defendants, with the consent of Defendant Caerus, sought a CDPS General Permit for Remediation Activities Discharging to Surface Water (the “Permit”). Condensate from a leaking pipeline (A27 CDP Liquids Pipeline) impacted groundwater which feeds seeps that flow into the East Fork Stewart Gulch. The Permit is for the discharge of collected and treated seep water back into the East Fork Stewart Gulch. The Permit authorizes Defendants to discharge contaminants to the East Fork Stewart Gulch where Bishop Ranch is located.

138. The highest concentrations of detected analytes were found in the monitoring wells to the north of the remediation facility.

139. As a direct result of the remediation-related well drilling activities by the Encana Defendants on Defendant Caerus’ land reduced ground water elevation findings were detected at MW-29, which is the monitoring well located near the PCR / Bishop Ranch property line. As a

result, Bishop Ranch has experienced loss of water availability. Defendants actions caused water to be redirected to deep well inject rather than discharging water to the aquifer system.

140. The groundwater elevation at MW-29 consistently decreased between the dates of June 14, 2017 and December 31, 2017.

141. The Enanca Defendants have documented that MW-29 (located near the Careus / Bishop Ranch property line) contains measurable LNAPL.

142. MW-29 has documented down-gradient migration of petroleum-impacted groundwater.

143. MW-29 has documented a benzene concentration. Benzene can cause cancer in humans.

144. On or about March 22, 2018, the COGCC documented that “after more than a year and a half since the discovery of the spill, Encana doesn’t have yet a proper understanding of the Site. The result will be that remediation will be mostly ineffective, will take much longer than expected, and will result in unnecessarily high costs to comply with COGC Rules and Regulations.” (Document Number 401531063).

145. In May 2018, COGCC conducted an environmental inspection of the site. New impacted seeps were identified. The newly observed impacted seeps suggest that the LNAPL plume has progressed well beyond the springs. At present, impacted groundwater continues down the valley onto Bishop Ranch.

146. In May of 2018, COGCC documented that “two years later, condensate and impacted water is still flowing from the springs”, that “condensate [was] flowing into the creek”, that “condensate [was] flowing from the hillside” and that “the collection system need[ed] maintenance to allow condensate to discharge into the pipeline.”

147. The Encana Defendants have used suppositions and speculation in their remediation reports, rather than sound scientific analysis based on field investigation.

148. Bishop seeks a ruling that the Encana Defendants and Defendant Caerus are jointly and severally liable to Bishop for such damages as he may recover in these proceedings based on the causes of action hereafter alleged.

For a First Cause of Action

(Trespass and Continuing Trespass)

149. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

150. Bishop Ranch LLC is the entity entitled to possession of the Bishop Ranch property.

151. Defendants physically intruded upon the Bishop Ranch property without permission of Bishop Ranch LLC and said intrusion is a continuing intrusion as toxic chemicals continue to migrate from property owned by, controlled by, operated by, leased by, or maintained in whole or in part by Defendants, and the toxic chemicals are present upon the Bishop Ranch property.

152. Defendants trespassed upon the Bishop Ranch property by continually entering upon, under and above the surface of the real estate of Bishop without the permission or invitation of Bishop, the entity entitled to possession of the real estate.

153. Defendants set in motion a force – a release of hazardous waste – and ongoing activities to remediate the pollution caused by the release, that, in the usual course of events, damaged Bishop Ranch, and continues to damage Bishop Ranch, making Defendants guilty of trespass and continuing on such property. Further, employees, agents and consultants of the Encana Defendants entered upon the Bishop property without permission following the release, making the Defendants guilty of trespass on such property.

154. Defendants having set the forces in motion, and continued those forces in motion, that lead to the presence of the hazardous waste on to the Bishop property is sufficient to establish Defendants acted intentionally. Defendants are presently intentionally discharging pollutants onto the surface of the land and said pollutants migrate onto the Bishop property.

155. Defendants intended to handle hazardous chemicals, or own property upon which hazardous chemicals were present, that if released or if they migrated, would inevitably cause hazardous chemicals to intrude onto the nearby Bishop Ranch property.

156. Defendants intentionally caused hazardous waste to enter the Bishop Ranch property.

157. Defendants initial release of hazardous waste, and its continuing intentional post-release discharge of hazardous waste onto the Bishop Ranch property, were acts done with knowledge that they would, to a substantial certainty, result in the continuing entry of harmful foreign matter onto the Bishop Ranch.

158. Said intrusion included indirect and physical conditions created by Defendants that caused harm and continue to cause harm to the Bishop Ranch property.

159. As a direct and proximate cause of the trespass and continuing trespass, Bishop sustained actual monetary damages in the sum of \$5,000,000 in that Bishop Ranch property sustained and continues to sustain permanent environmental damage and is burdened by a

permanent continuing environmental stigma thereby diminishing Bishop's property value causing irreparable harm that renders the Bishop Ranch property unmarketable to a buyer aware of publicly known or discoverable facts relating to the Bishop Ranch, and the availability of opportunities to purchase similar properties not tainted by continuing environmental contamination.

For a Second Cause of Action

(Nuisance and Continuing Nuisance)

160. Plaintiff hereby repeats and realleges the foregoing allegations of the Second Amended Complaint as if set forth herein verbatim.

161. Defendants substantially invaded and continue to invade Bishop's individual interest in the use and enjoyment of the Bishop Ranch Property.

162. Defendants continuing invasion was intentional.

163. Alternatively, Defendants continuing invasion was negligent.

164. Defendants continuing invasion arose from conduct so dangerous to life or property and so abnormal or out-of-place in its surroundings as to fall within the principles of strict liability.

165. Defendants conduct constituting a nuisance included indirect or physical continuing conditions created by Defendants that caused harm to the Bishop Ranch property.

166. Defendants engaged in an intentional, negligent and/or unreasonably dangerous activity resulting in the unreasonable and substantial continuing interference with Bishop's use and enjoyment of his property.

167. Defendants conduct was an unreasonable interference, as it was so significant that a normal person in the community would find it offensive, annoying and inconvenient.

168. Plaintiff's land has been diminished in value by the acquisition and use of the adjoining contaminated land or rights by Defendants, a private party, which use causes and allows toxic chemicals to migrate from the said contaminated land onto the Bishop Ranch property where they remain present.

169. As a direct and proximate cause of the nuisance and continuing nuisance, Bishop sustained actual monetary damages in the sum of \$5,000,000 in that Bishop Ranch property sustained continuing permanent environmental damage and is burdened by a permanent continuing environmental stigma thereby diminishing Bishop's property value causing irreparable harm that renders the Bishop Ranch property unmarketable to a buyer aware of

publicly known or discoverable facts relating to the Bishop Ranch, and the availability of opportunities to purchase similar properties not tainted by continuing environmental contamination.

For a Third Cause of Action

(Negligence and Negligence *Per Se*)

170. Plaintiff hereby repeats and realleges the foregoing allegations of the Second Amended Complaint as if set forth herein verbatim.

171. Defendants had a duty to conduct their ultra-hazardous hydraulic fracturing, natural gas development and production activities, and the handling, transport and disposal of hazardous waste activities, and their ownership of land held for that purpose, and their operation and maintenance of remediation facilities, with the degree of care that a reasonably careful person would use under the same or similar circumstances.

172. Defendants were negligent, careless, grossly negligent, reckless and engaged in willful and wanton conduct, and they breached their duty to Plaintiff and upon information and belief violated the standard of care, in the following particulars, to wit:

(a) Defendants failed to maintain the structural integrity of the pipeline at the Spill/Release Point(s) to prevent failure;

(b) Defendants failed to pressure test the pipeline involved in the Incident;

(c) Defendants failed to take reasonable precautions to prevent the failure, leakage and corrosion of the pipeline involved in the Incident;

(d) Defendants failed to assure that the pipeline involved in the Incident was in good mechanical condition;

(e) Defendants failed to establish policies that whenever there is a change of product in a pipeline, or a significant change in flow rates, that action must be taken to evaluate the potential risks;

(f) Defendants failed to detect the seepage, leak, spill or release from the said Spill/Release Point(s) and prevent it from flowing onto the Bishop Ranch for a dangerous and extended period of time;

(g) Defendants failed to employ proper containment procedures to prevent hazardous materials from continually flowing onto Bishop Ranch;

(h) Defendants intentionally caused contaminants to continually flow onto the Bishop Ranch property;

(i) Defendants failed to prevent contamination of fresh water, soil and sediment by gas, produced water or condensate and by allowing said contamination to continue to migrate from their property onto the Bishop Ranch property where the toxic chemicals remain present;

(j) Defendants failed to promptly notify the COGCC Director when public health or safety was in jeopardy;

(k) Defendants continually impacted water quality by allowing toxic chemicals to migrate from their property onto the Bishop Ranch property where they remain present;

(l) Defendants continually impacted soil and sediment quality by allowing toxic chemicals to migrate from their property onto the Bishop Ranch property where they remain present;

(m) Defendants negligently operated and negligently failed to properly maintain the remediation facilities;

(n) Defendants failed to timely report a release to the COGCC Director;

(o) Defendants violated applicable laws, rules, regulations and permit conditions;

(p) Defendants violated the provisions of the COGCC Act, Rules, orders and permits adopted for the public's safety, the Plaintiff was a member of the class the said laws were intended to protect, and the violations caused Plaintiff's injuries, rendering Defendants liable to Plaintiff for negligence *per se*; and

(q) Defendants failed to act with the degree of care that a reasonably careful person would use under the same or similar circumstances.

ALL in violation of the statutes and laws of the State of Colorado, in such cases made and provided.

173. Defendants owed a duty of the highest standard of care to Plaintiff because Defendants were engaged in an activity that posed a high risk of injury to others.

174. There was a risk of harmful consequences to Bishop Ranch sufficiently great to lead a reasonable person in the position of Defendants to anticipate them, and to guard against them.

175. Defendants engaged in intentional, willful, wanton, reckless and negligent wrongful conduct committed with a conscious indifference to the rights and safety of others.

176. Defendants intentional, willful, wanton, reckless and negligent conduct was the proximate cause of the Incident and Plaintiffs injuries, damages and losses.

177. As a direct and proximate result, Bishop sustained actual monetary damages in the sum of \$5,000,000 in that Bishop Ranch property sustained continuing permanent environmental damage and is burdened by a continuing permanent environmental stigma thereby diminishing Bishop's property value causing irreparable harm that renders the Bishop Ranch property unmarketable to a buyer aware of publicly known or discoverable facts relating to the Bishop Ranch, and the availability of opportunities to purchase similar properties not tainted by continuing environmental contamination.

Demand for Jury Trial

178. Plaintiff demands a trial by jury.

Claim for Relief

WHEREFORE, Bishop Ranch prays that it have judgment jointly and severally against the Encana Defendants and Defendant Caerus:

- A. For actual and compensatory damages in the sum of \$5,000,000;
- B. For leave of court to amend this Complaint to add a claim for punitive damages at the appropriate juncture in these proceedings pursuant to §13-21-102(1.5)(a), C.R.S.;
- C. For pre-judgment interest as allowed by applicable law;
- D. For post-judgment interest as allowed by applicable law;
- E. For attorneys' fees and costs of court;
- F. For a trial by jury; and
- G. For such other and further additional legal and equitable relief the Court deems just and proper.

Respectfully submitted this 20th day of July, 2018.

IRELAND STAPLETON PRYOR & PASCOE, P.C.

By: /s/ Mark E. Haynes
Mark E. Haynes
James R. Silvestro

THE MASON LAW FIRM, P.A.

By: /s/ Mark A. Mason
Mark A. Mason
Gabrielle Z. Lee

Attorneys for Plaintiff Bishop Ranch LLC

Address of Plaintiff:
Bishop Ranch LLC
Post Office Box 1994
Rifle, Colorado 81650