

**Case #: 3:16-cv-01735-D, SEC vs. Breitling Energy/Christopher Faulkner et al:  
Petition in Opposition to Receiver's Proposed Distribution Plan filed 2/25/2019**

**Personal Background**

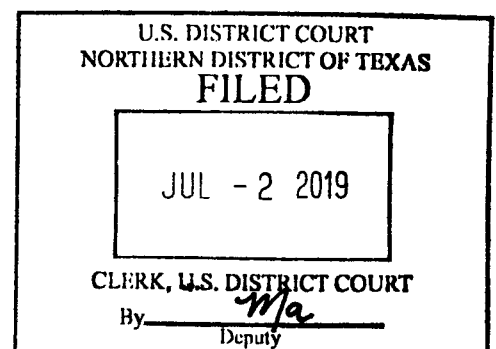
I am a private investor in the Babylon Royalty Group, and I am submitting this as a Pro Se Party.

On July 7, 2014, my family trust invested \$140,000 in the Crude Babylon LLC investment vehicle. My objective in selecting this investment was to acquire a 'low risk, reliable' cash flow from an oil and gas investment. In purchasing an interest in this I relied on representations made by Crude Energy executives: Bob Baker, Michael Bowen and Parker Hallam, including:

1. The investment was one of 'deeded interests' in 1094 existing, performing wells, located on 33,000+ gross acres
2. The wells were located in 7 different states, run by 37 different operators (including such companies as Shell, ConocoPhillips and Chevron).
3. In the event that additional wells were to be drilled on the acquired parcels, the costs for drilling would be paid by operators, not by royalty investors such as myself.

Previously, I had invested in entities that were focused on drilling for oil and gas. That experience taught me how risky these investments are. Although I acknowledge that no investment is risk free, I am aware that safer, more secure investment opportunities exist with the tradeoff that they produce lower financial yields.

As a result of the poor performance of the previous 'drilling investments', I specifically and strategically changed my investment philosophy to one that minimized speculation and maximized security. I am retired and at my age, capital preservation is more important to me than is increasing my asset base.



### **Relevant Case Background**

I have elected to omit background information available to the Court in previously filed Petitions in Opposition to this plan.

The Receiver's proposal, as I understand it, is to merge two separate, distinct classes of investors for purpose of distributing the asset pool.

"Drilling Investors", those who knowingly bought into highly speculative, unsecured, high-yield investments specifically focused on drilling new, unproven wells

"Royalty Investors", those who bought secured, deeded interests in real estate, along with an interest in the cash flow from existing, proven wells

### **Request**

**I am requesting that the Court reject the Receiver's plan, specifically that portion wherein Royalty Investors are grouped with Drilling Investors. The reasons are set forth below.**

### **Reasoning**

**Risk:** The two groups of investor classes assumed wildly different risks and widely different associated return projections. The Royalty Investors accepted a moderate return, and few tax benefits, on invested dollars, in exchange for the benefit of predictability of cash flow. On the other hand, the Drilling Investors expected a high rate of return, (if the investment paid off), but knew and accepted the substantial risk that of receiving nothing (except a sizeable tax write off).

**Tax Treatment:** The two classes of investors are further distinguished by substantial and material differences in tax benefits.

Historically, Congress has held that increasing domestic oil and gas production is in the security and economic interest of the United States and therefore encouraged this high-risk investment (such as those of the Drilling Investors) via tax incentives that are not available to investors in 'non-exploratory' 'low-risk passive' investment vehicles (such as those of Royalty Investors).

Therefore, Drilling Investors were entitled to take immediate deductions in the tax year their investments were made. It is my understanding that they were entitled to deduct the majority of their invested amounts, up to 80%. Royalty Investors received absolutely no immediate deduction. Therefore, Drilling Investors have already received substantial benefit from their investment in contrast with Royalty investors.

**Unjust Enrichment:** To permit Drilling Investors to share equally in recovered assets, even though they purchased unsecured, speculative investments with much higher potential return, gives them the benefit of an agreement that they neither bargained nor paid for. Hence, the Drilling Investors are being unjustly enriched at the expense of the Royalty Investors.

**Fiduciary Duty of Receiver:** The Receiver has a fiduciary duty to treat all involved investors fairly. To treat both types of investor classes equally is analogous to treating equally both secured and unsecured creditors in a bankruptcy. Allowing all investors to share equally in an asset pool gives to the Drilling Investor class, a benefit to which they are not entitled. Under these circumstances, equal treatment constitutes patently unfair treatment. The plan's strategy is in breach of the Receiver's fiduciary duty.

**Obligation to Trace Funds:** The Receiver states ----- that it is difficult to trace investor's dollars in light of the ----- commingling of funds. The Receiver's position substitutes ease for fairness.

The Receiver should be obligated to demonstrate that

(1) under the specific facts and circumstances of this case, tracing funds in order to distinguish between the two distinct investor classes is required under the law or by general equitable principals of fairness. This is particularly relevant in light of the fact that Royalty Investors purchased deeded interests, whereas the Drilling Investors did not, and

(2) in the event that such tracing is required, the Receiver should be also be required to prove that to do so is impossible, not merely difficult or inconvenient. Of particular significance in this situation is Receiver's admission that a very high percentage (up to 100%) of the money invested in Drilling offerings, was never put towards its intended use. Instead, it was absconded with by the defendants. In contrast, the funds provided by Royalty Investors, were used to purchase deeded titles to the existing wells as identified in the Royalty Offering.

**Vested Real Property Rights:** The fact that Royalty Investors purchased vested, recorded real property interests entitles them to preferential treatment. The law has a long history of deferential and highly protective treatment of individuals' real property rights. (Consider: Bankruptcy, Eminent Domain, Constitution and so forth) In order to combine both investor classes, the Receiver is in essence, revoking a vested real property right. The Receiver has, or should have, the very heavy burden of establishing grounds for such a substantial interference with these rights, including showing that there is no other reasonable way to distribute the asset pool.

**Reasonable Expectations:** The proposed plan violates the reasonable expectations of both classes of investors. Given the vast differences between the investments as described above, it can be inferred that Drilling Investors knew of the highly speculative nature of this investment vehicle and therefore had limited expectations of compensation if for any reason, the investment failed. To accord them equal rights with Royalty Investors gives them an unpurchased recovery benefit that exceeds their reasonable contractual expectations. On the other hand, the Royalty Investors reasonably expected that, at minimum, they would

retain a deeded interest in real property along with other investors that purchased and paid for a deeded investment. They had no reason to expect that individuals with no real property interests would acquire unpaid for rights to any ultimate settlement.

### Conclusion

**Based on the facts and reasons set forth above, the Receiver's proposed plan to merge two distinct classes of investors is unwarranted.**

A handwritten signature in black ink, appearing to read 'Daniel Schwimmer', written in a cursive style.

Daniel Schwimmer, Trustee

Schwimmer Family Trust, Investor

[danielschwimmer@gmail.com](mailto:danielschwimmer@gmail.com)

619-813-6613

# The Crude-Babylon Property

The Crude-Babylon Property features wells located in several of the most prolific oil and natural gas producing fields in the continental United States. With wells drawing from multiple fields and reservoirs, the Crude-Babylon Property provides a stable base of production.

The Crude-Babylon Property is our most diversified royalty offering to date. Crude-Babylon consists of 1,094 producing wells on 33,000+ gross on-shore acres in Colorado, Louisiana, Montana, North Dakota, Texas, Wyoming and West Virginia. The oil and gas wells are spread across 22 counties in these 7 states making this the most diversified royalty property Crude Energy has ever assembled. The wells are producing over 277,000 barrels of oil and 8 billion cubic feet of natural gas every month. Gross sales consist of a mix of 78% oil and 22% natural gas and total production exceeds \$78 million per month.

The Crude-Babylon Property has immediate upside activity, potential enhanced oil recovery events, PUD opportunities, additional identified drilling locations, and behind-the-pipe resources. This upside potential may stabilize cash flow and counteract natural field declines over the next several decades to promote a longer property life.

Crude-Babylon Property investors may receive income from new production on their acreage by future development paid for by working interest owners and operators.

With oil and gas at historic highs, Crude Royalties anticipates that the Crude-Babylon Property operators including publically-traded BP, ConocoPhillips, Chevron, EOG Resources, XTO, Shell, Devon and 30 other operators that will continue to pursue rapid development of our acreage to capitalize on favorable market conditions.

*\*Monthly cash flow projection is provided by third party engineer and based on NYMEX prices for April 2014. Well county and acreage could vary and is an approximation.*

PAST PERFORMANCE IS NO GUARANTEE OF FUTURE RESULTS. THIS ECONOMIC ANALYSIS IS PROVIDED FOR ILLUSTRATION PURPOSES ONLY. OIL AND GAS INVESTMENTS ARE HIGHLY SPECULATIVE AND INVOLVE SUBSTANTIAL RISKS. RETURNS WILL FLUCTUATE AS COMMODITY PRICES VARY.

"With 50 billion barrels of oil equivalent in recoverable reserves to date, Wolfcamp is bigger than the Bakken in North Dakota and South Texas's Eagle Ford shale."

*Scott Sheffield, CEO at Pioneer Natural Resources*

## ASSET TYPE

Royalty Interest  
Overriding Royalty Interest

## OFFERING SIZE

\$14,000,000

## MINIMUM INVESTMENT

\$140,000  
100 Units available

## PROJECTED NET MONTHLY CASH FLOW TO INVESTORS

10.10% (\$117,836 per month  
Assuming NYMEX April 2014 pricing)

## WELL COUNT

1,094 Wells

## PURCHASERS

33 diversified purchasers

## ACREAGE

33,000+ gross acres;  
22% undeveloped

## LAND TRACTS

39

## UPSIDE POTENTIAL

- Additional drill sites
- Additional cash flow may be realized by operator development of new wells, behind-the-pipe resources and uphole zones

## OPERATORS

37 operators  
BP, Chevron, EOG Resources, Shell, XTO, ConocoPhillips and 31 others

## PARTICIPATION

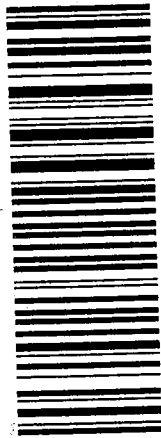
Direct Investments  
1031 Exchange  
Qualified Plans

## EFFECTIVE DATE

April 1, 2014

Schwimmer  
1116 Diamond St  
San Diego, Ca 92109

**CERTIFIED MAIL**



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U.S. POSTAGE PAID  
FORM LETTER  
SAN DIEGO, CA  
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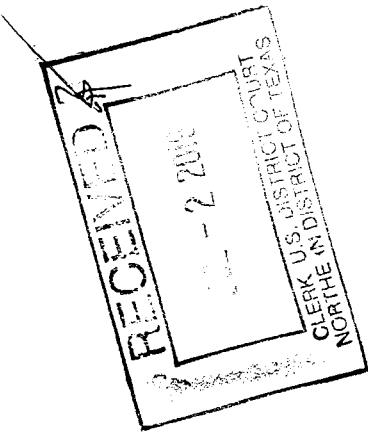
**\$7.00**

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U.S. DISTRICT COURT  
NORTHERN Dallas Texas Division  
1100 Commerce St RM 1452  
DALLAS TX 75242



75242-191052