

FROM : ENCINITOS RANCH

FAX NO. : 5126643327

Jan. 29 2001 10:27PM P2

THE STATE OF TEXAS §  
  §  
COUNTY OF BROOKS §

KNOW ALL MEN BY THESE PRESENTS:

**SURFACE USE AGREEMENT**

THIS AGREEMENT is made and entered into this day by and between MCGILL RANCH, LTD. hereinafter referred to as "MRL", and Presley-Burns, Inc., hereinafter referred to as "PBI".

1. MRL, being the owner of the property described on Exhibit A, attached hereto and made a part hereof for all purposes, hereinafter referred to as the "Property", for the consideration and agreements hereinafter set forth and subject to the obligations and limitations contained in this Agreement, does hereby grant and demise unto PBI the following profits, rights, and privileges in, upon, across and from the Property: the exclusive right to convert wind energy on or above the Property to electricity, together with the right to collect and transmit such electrical power and related activities; the exclusive right to sell ground and surface water in and from the Property, together with the right to collect and transmit such ground and surface water and related activities; the exclusive right to all game and fish which may be caught or found upon the Property; and the exclusive right to use the Property for roundups and ecotourism. These profits, rights and privileges together with (a) the rights of ingress and egress on and over the Property for such purposes; (b) the right to conduct studies, extract soil samples, and perform subsurface analysis of formations and sands; (c) the right to construct, install, use, replace, relocate, remove, maintain and operate wind turbines, overhead and underground electrical transmission and communication lines related

FROM : ENCINITOS RANCH

FAX NO. : 5126643327

Jan. 29 2001 10:26PM P3

the operation of wind turbines, electric transformers, energy storage facility, telecommunications equipment, power generation facilities to be operated in conjunction with the turbine installations, meteorological towers and wind measuring equipment (collectively, the "wind power facilities"); (d) the right to construct, install, use, replace, relocate, remove, maintain and operate water wells and water transmission lines, water storage facilities, co-generation power generation facilities operated in conjunction with the water wells and water transmission facilities, roads, water monitoring and measuring equipment, control buildings, maintenance yards, and related facilities and equipment (collectively, the "water sales facilities"); (e) the right to construct, install, use replace, relocate, remove, maintain and operate hunting, fishing and ecotourism facilities, blinds, feeders, and water impoundments; and (f) the right to undertake any such other activities, whether accomplished by PBI or a third party, that PBI reasonably determines is necessary, useful or appropriate to accomplish any of the foregoing. PBI shall have the exclusive right to convert all of the wind resources of the Property into electricity for sale to third parties, subject to the terms, provisions and conditions hereof. MRI expressly reserves the right to use the Property for all other purposes, providing the same does not interfere with PBI's operations hereunder, and specifically retains the right to use the wind and water resources on or from the Property for its cattle operation and for its buildings, cattle water tanks, and other improvements.

FROM : ENCINITOS RANCH

FAX NO. : 5126643327

Jan. 29 2001 10:28PM P4

2. Term. The term of this Agreement shall be for a period commencing as of August 1, 1999 and continued until April 29, 2009, unless terminated as provided in this Agreement. In the event this Agreement is terminated, the rights assigned or subleased to one or more third parties pursuant to paragraph 8, herein, shall remain unaffected by the termination of this Agreement as between MRL and FBI.

3. Payments. In consideration of the rights granted hereunder, FBI agrees to pay MRL on or before August 31 during each year of this Agreement the sum of \$200,000.00 and twenty-five (25%) percent of the net proceeds from the sales of water, after allowance for costs of such sales.

4. Ownership of facilities. MRL shall have no right of ownership or other interest in any of the wind power facilities or water sales facilities or other facilities installed on the Property by FBI or FBI's assignees or sublessees, and FBI may remove any or all of such facilities at any time. Upon the termination of this Agreement as to all or any portion of the Property, FBI, or its assignees and sublessees, as the case may be, shall restore the Property as near the same condition as the same was prior to this Agreement, and shall leave the same in a neat and clean condition.

5. Ad Valorem Taxes. FBI, or its assignees and sublessees, as the case may be, shall pay all ad valorem property taxes and standby fees levied against the wind power facilities installed on the Property, water sales facilities installed on the Property, and

any acre of the Property that is not subject to an agricultural use exemption, game management exemption or viewing easement exemption because of such facilities or due to PBI's, or its assignees' or sublessees', operations and use of the Property.

6. Indemnity. PBI hereby covenants, agrees and obligates itself, its agents, servants or employees, or independent contractors, or successors, or sublessees and assigns, to indemnify and hold MRL harmless with respect to any and all liability occasioned by or arising out of, or resulting from use of the Property pursuant to this Agreement.

7. MRL Liens. PBI shall keep the Property free and clear of all liens in conjunction with PBI's uses of the Property pursuant to this Agreement.

8. Assignment. PBI shall have the right, without need for MRL's consent, to assign or sublease any and all of the rights and obligations accruing to PBI under this Agreement with respect to all or any portion of the Property, whether for purposes of financing, transfer of an ownership interest, or otherwise. Such assignments or subleases can be to one or more third parties and to the extent any such third party assumes an obligation of PBI herein, PBI shall be relieved of such obligation assumed.

9. Additional documentation. At PBI's request, MRL shall execute in recordable form and deliver to PBI such documents as are necessary to fulfill the purposes of this Agreement including, but

not limited to, the obligation of MRL to execute easements on or across the Property to document all or any of the rights contained in this Agreement or a short form of this Agreement for purposes of notification of third parties.

10. Maintenance. As part of the consideration of this agreement, PBI, and its assignees and sublessee, agree to maintain the existing and future roads and buildings, and agree to support the game and fish by providing sufficient feed and water to maintain at least the existing herd sizes and quality.

IN WITNESS WHEREOF, MRL and PBI have caused this Agreement to be executed and delivered by their duly authorized representatives as of this the 27th day of August, 1999.

PRESLEY-BURNS, INC.

McGILL RANCH, LTD.

By Mary Drue Burns  
MARY DRU BURNS, President

By Mary Drue Burns  
MARY DRU BURNS, General Partner

FROM : ENCINITOS RANCH

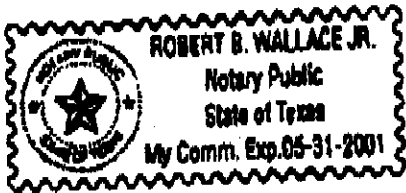
FAX NO. : 5126643327

Jan. 29 2001 10:29PM P6

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on the 27 day of August, 1999, by Mary Dru Burns, President of Presley-Burns, Inc.

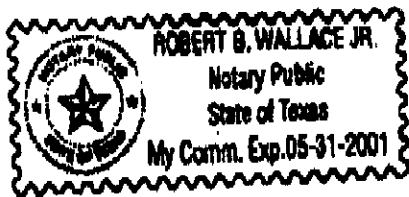


[Signature]  
Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on the 27 day of August, 1999, by Mary Dru Burns, President of McGill Ranch, Ltd.



[Signature]  
Notary Public in and for the State of Texas