

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

In re: GBG RANCH, LTD., Debtor.	§ § § § §	Case No. 14-50155 Chapter 11
--------------------------------------------------------------------	-----------------------	---------------------------------------------------

**PRELIMINARY RESPONSE TO DEBTOR’S MOTION FOR AUTHORITY TO
SELL REAL ESTATE---CORAZON RANCH—FREE AND CLEAR OF LIENS
UNDER 11 U.S.C. § 363(f)**
(Doc. No. 286)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Now comes Quita Wind Energy Co., L.L.C. (“Quita Wind”), joined by Guillermo Benavides, Z. (“Memo Benavides”) and Guillermo R. Benavides (“Will Benavides”) as managers thereof, and Guillermo Benavides Z., individually, (collectively the “Respondents”), and file their Preliminary Response to Debtor’s Motion to Sell Real Estate—Corazon Ranch—Free and Clear of Liens under 11 U.S.C. § 363(f). In support of their Response they would respectfully show the following:

I. Summary of Preliminary Response

1. On December 19, 2014, the Court entered an Order approving a stipulation signed by counsel for the Debtor G.B.G. Ranch, Ltd., and interested parties Guillermo Benavides Z, Quita Wind Energy Co., LLC, Guillermo R. Benavides and the Court appointed Chapter 11 Examiner, Ronald Hornberger. **(Doc. No. 171).**¹
2. The Stipulation required the Debtor to include in its Chapter 11 Plan that all of the acreage of the Corazon Ranch would be conveyed to a long term trust, along with the acreage of the Oilton Ranch and the mineral classified tract (Tract 5) of the Hill Ranch.

¹ The Order approving the stipulation of the parties was signed by the Hon. Marvin Isgur, sitting for the Hon. David R. Jones.

3. The Debtor's Motion for Authority to Sell the Corazon Ranch is in direct contravention to and in violation of the Stipulation.² The Stipulation was entered into as a result of negotiation and compromise of a contested matter, *i.e.* the Debtor's Motion to Reject Correction Wind Lease and Easement Agreement. **(Doc. No. 106)**. This was the contested matter that produced the agreements memorialized in the Stipulation. The Stipulation is enforceable and there is no legally compelling reason why it should be set aside.

4. The Debtor's motion is nothing more than a thinly disguised (second) attempt to reject the Quita Correction Wind Lease under 11 U.S.C. § 365(a), a contested matter that was compromised and settled in December 2014. The Motion for Authority to Sell should be denied for that, as well as other reasons. However, pending the Court's ruling, Quita Wind reserves the right to make the election allowed a lessee by 11 U.S.C. § 365 (h)(1)(A). Further, without waiving its rights to argue that the unexpired wind lease is not an executory contract, or any other defense, should the court determine that the lease may be rejected, then Quita Wind elects to retain its rights under the lease.

5. Respondents expect to show that it is feasible to place the Corazon Ranch into the long term trust mandated by the Stipulation, contrary to the assertions made by the Debtor in this Motion and in its Amended Disclosure Statement.

6. Respondents also expect to show that a sale of the Corazon Ranch is not necessary, does not further any of the goals of the proposed plan and is not in the best interests of the equity interest owners of the Debtor or the members of Quita Wind. In fact, Respondents expect to show that such a sale would penalize both.

² Unsurprisingly, the Debtor's Motion fails to mention the Stipulation or articulate a reason why the Stipulation is not enforceable.

II. Admissions and Denials

7. Respondents ADMIT the allegations of jurisdiction and venue in paragraphs 1 and 2 of the Motion.
8. Respondents DENY the allegations in paragraph 2.01, except they ADMIT the statement that the Debtor has accepted the Rancho Loma Linda offer as the stalking horse offer on the Corcobada Pasture.
9. Respondents DENY the allegations in paragraph 2.02 except that they ADMIT that the Debtor has accepted Rancho Loma Linda as the stalking horse bidder.
10. Respondents DENY the assertions in paragraph 2.03.
11. Respondents ADMIT the allegations in paragraph 3.01.
12. Respondents DENY the allegations in paragraph 3.02, except they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding surveys of the Corazon Ranch.
13. Paragraph 3.03 summarizes the subject matter of the Debtor's motion which speaks for itself, and no response is required. Respondents DENY the allegation or assertion in paragraph 3.03 that the proposed sale of the Corcobada Pasture will maximize the value of this asset and facilitate the reorganization of the Debtor. The Debtor appears to have sufficient cash to pay all claims.
14. Paragraph 3.04 summarizes provisions of the contract that Debtor is presenting as the stalking horse offer. Respondents make the following response:
 - a. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.04 (b) that no hydrocarbon extraction on the Corcobada Pasture or the mineral classified lands on the Corazon Ranch during the ownership of those properties by the Benavides Family or GBG Ranch.

- b. Respondents DENY the allegations or assertions in 3.04 (c).
 - c. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.04 (d).
 - d. Respondents DENY the allegations or assertions in 3.04 (e).
 - e. Paragraph 3.04 (f) contains recitations that speak for themselves and do not require a response, but Respondents DENY that the sale of the Corazon Ranch should be approved.
 - f. Paragraph 3.04 (g) contains recitations that speak for themselves and do not require a response, but Respondents DENY that the sale of the Corazon Ranch should be approved.
15. Respondents DENY the allegations in paragraph 3.05.
16. Respondents DENY the allegations in paragraph 3.06.
17. Paragraph 4.01 sets out the Debtor's proposed allocation of any sales proceeds of the Corcobada Pasture and Respondents do not believe it requires a response. To the extent this paragraph contains allegations or assertions that the proposed sale and the allocation of proceeds is fair, just and/or reasonable, and in the best interests of the Debtor and Quita Wind, Respondents DENY them.
18. Respondents DENY the allegations or assertions in paragraph 4.02.
19. Respondents DENY the allegations or assertions in paragraph 5.01.
20. Respondents DENY the allegations or assertions in paragraph 5.02.
21. Respondents DENY the allegations or assertions in paragraph 5.03.
22. Paragraph 5.04 contains Debtor's legal argument and conclusions and does not require a response. To the extent a response is required, Respondents DENY that a sale of the Corazon Ranch is proper because of the entry of the Stipulation that the Corazon Ranch would be conveyed to a long term trust.
23. Respondents ADMIT that the mathematical calculations of acreage are correct,

but DENY that Debtor is not proposing to sell substantially all of the assets of the Debtor.

24. Respondents ADMIT that the Debtor has filed Document No. 285 as stated in paragraph 5.06. Respondents DENY the allegations or assertions in paragraph 5.06 that the sale of all or part of the Corazon Ranch represents a prudent and proper exercise of Debtor's business judgment and is supported by articulated business reasons.

25. Respondents DENY the allegations and assertions in paragraph 5.07.

26. Paragraph 5.08 contains Debtor's legal argument and conclusions, but to the extent a response is required Respondents DENY that that the proposed sale has been negotiated in good faith and at arms length between Debtor and Loma Linda, or that Loma Linda satisfies the good faith standard of 11 U.S.C. § 363(m).

27. Respondents DENY the allegations and assertions in paragraph 5.09.

28. Respondents DENY the allegations and assertions in paragraph 5.10.

III. Argument and Authorities

A. The Stipulation approved by Court Order on December 19, 2015 is an enforceable Agreement and it precludes the Sale of the Corazon Ranch

29. When parties enter into an agreed order or agreed stipulation, the agreement is enforceable as a contract and is construed under rules of contract construction. *Neirbo Co. et al. v. Bethlehem Shipbuilding Corp., Ltd.*, 308 U.S. 165, 60 S.Ct. 153, 84 L.Ed. 167 (1939); *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*, 610 F.3d 249, 262 (5th Cir.2010); *In Re: General Homes, Corp.*, 134 B.R. 853, 864 (Bankr. S.D. Tex. 1991); *In re Bettis*, 97 B.R. 344, 347 (Bankr.W.D.Tex.1989). Because they are usually reached after negotiation and compromise and allow parties to avoid costly and protracted litigation, agreed orders or stipulations are highly favored by courts in bankruptcy matters. *Alberti v. Klevenhagen*, 46 F.3d 1347, 1364 (5th Cir.1995); *In re: Rolsafe*

Intern, LLC, 477 B.R. 883, 903 (Bankr. M.D. Fla. 2012).

30. Agreed orders and stipulations that are entered into freely and fairly and which, like the stipulation at issue here, are approved by the Court, should not be set aside lightly. *In re Argose, Inc.*, 372 B.R. 705,708 (Bankr. D. Del 2007). In fact, an agreed order or stipulation should not be set aside unless the Court determines: (a) the order or stipulation was entered into as a result of fraud, misrepresentation, mistake of fact, or excusable neglect; (b) that the facts have changed; or (c) that there is some other special circumstance that would make it unjust to enforce the stipulation. *In re: O'Neil*, 468 B.R. 308, 337 (Bankr. E.D. Ill. 2012).

31. The Stipulation entered on December 19, 2015 requires the Debtor to submit a Plan that places the Corazon Ranch in a long term trust for the benefit of specifically identified beneficiaries. The Stipulation was the result of extensive negotiation and was a compromise of a hotly contested matter, *i.e.* the Debtor's Motion to Reject Correction Wind Lease and Easement Agreement. **(Doc. No. 106)**. The terms of that Wind Lease Agreement have not changed since the Stipulation was entered just six months ago.

32. The Stipulation was not the product of fraud or misrepresentation nor did it result from a mistake of fact. Instead, it was reached after the development of the facts as they then existed concerning the enforceability of the wind lease and value of the wind rights held by Quita Wind. The underlying circumstances have not materially changed since the Stipulation was entered in such a way that would make enforcement of the terms of the Stipulation unjust or inequitable. To the contrary, enforcement of the Stipulation is necessary to protect the rights of both the Debtor and Quita Wind.

33. The expert testimony Respondents will present at the hearing will demonstrate

that it is feasible to place the Corazon Ranch in the agreed upon long term trust and to develop both wind and solar energy on it. The future revenue stream that can reasonably be anticipated to flow from wind and solar energy leases, coupled with the income generated by the lease of grazing and hunting rights, would be in the best interest of both the equity interest owners of the Debtor and the members of Quita Wind. The income would fund the Trust, maximize the value of this important asset, and ensure a long term source of income for the Trust beneficiaries.

34. The schedules filed by the Debtor and the positions taken by the Debtor during the pendency of the bankruptcy proceeding clearly illustrate that the Debtor sought bankruptcy protection, not because it could not pay its debts on time and in full, but to facilitate the resolution of the family litigation encompassed in the consolidated state court case that is now the adversary proceeding. The Stipulation was intended to initiate the process of resolving the underlying family disputes and reduce the associated costs of litigation. The Debtor's attempt to violate the Stipulation by filing this Motion simply prolongs the dispute and will produce more costly and protracted litigation.

35. The Stipulation, which was approved by Court order, was reached through negotiation and compromise after the Respondents changed their position in reliance upon and with the expectation that the Stipulation would be honored by the Debtor; and if not honored, that it would be enforceable in accordance with well established principles of law.

B. The Quita Correction Wind Lease should not be rejected, which would necessarily result from the requested authorization to sell the Corazon Ranch

36. As noted before, the Stipulation which the Court approved was the result of a compromise reached by the Debtor and Respondents on the Debtor's Motion to Reject

the Correction Wind Lease and Easement Agreement with Quita Wind. **(Doc. No. 106).**

37. The Respondents filed a detailed Response to that Motion **(Doc. No. 141).**

Rather than repeat the response in its entirety, Respondents adopt the arguments made therein in opposition to the Debtor's motion to reject. Those arguments in summary form are:

- a. The Correction Wind Lease and Easement Agreement (the "Wind Lease") is not an executory contract and it cannot be rejected because the Wind Lease does not impose reciprocal, post-petition obligations on both the "Debtor and Quita Wind."
- b. The Wind Lease is supported by adequate consideration. The Wind Lease contains a recitation of consideration which constitutes *prima facie* evidence of sufficient consideration to support the Wind Lease.
- c. The Wind Lease is still enforceable because the Debtor, as well as its current directors and President expressly ratified the Wind Lease on multiple occasions.
- d. By accepting benefits under the Lease, Debtor is estopped under the doctrine of quasi-estoppel from taking the inconsistent position that the Wind Lease should be rejected.
- e. The Wind Lease is not illusory because implied covenants will supply the obligation to perform that the Debtor claims is lacking.
- f. Under Texas law, a lease does not have to describe its purpose in order to be enforceable. A statement of purpose would merely be a recital and would not form part of the agreement.

g. Failure to develop wind energy—which Quita emphatically denies has occurred---is not a basis for canceling or rejecting the Wind Lease.

h. The Wind Lease does not materially impair the marketability of the Corazon Ranch, and the Court should hear evidence on the value of the wind rights in relation to the value of the surface estate.

38. To the extent that this Motion seeks to reject the Quita Correction Wind Lease, it should be denied for the reasons set forth above.

For the reasons stated herein, Respondents request that Debtor's Motion for Authority to Sell Real Estate---Corazon Ranch---Free and Clear of Liens should be denied. Respondents request any other relief to which they may be justly entitled.

Respectfully submitted,

CLEMENS & SPENCER
112 E. Pecan St. Suite 1300
San Antonio 78205
(210) 227-7121
(210) 227-0732 (Fax)

By: /s/ James A. Hoffman
James A. Hoffman
Texas State Bar No. 09781725
Southern District No. 16172

***LEAD COUNSEL FOR
QUITA WIND ENERGY, LLC***

DAVIS & SANTOS
The Weston Centre
112 E. Pecan Street – Ste. 900
San Antonio, Texas 78205
(210) 853-5882
(210) 200-8395 FAX

By: /s/ Santos Vargas

Jason Davis
State Bar No. 00793592
Santos Vargas
State Bar No. 24047026

***CO- COUNSEL FOR
MEMO BENAVIDES***

TREVINO, VALLS & HAYNES, LLP
6909 Springfield Ave., Ste. 200
P.O. Box 450989 (78045)
Laredo, Texas 78041
(956) 722-1417
(956) 791-0220 FAX

By: /s/ Kenneth A. Valls

Kenneth A. Valls
State Bar No. 20435615
Stephen L. Dittlinger
State Bar No. 05900500

***LEAD COUNSEL FOR
GUILLERMO R. ("WILL") BENAVIDES***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF filing system on this ____ day of June, 2015:

Parties in Interest and Counsel Filing Appearances:		
<u>Debtor:</u> GBG Ranch, LTD 1019 Chihuahua Laredo, TX 78040-5244 <u>Via First Class Mail</u>	<u>Debtor's Counsel:</u> Carl M. Barto LAW OFFICES OF CARL M. BARTO 817 Guadalupe St. Laredo, TX 78040 <u>Via Email: cmblaw@netscorp.net</u>	<u>Special Counsel for Debtor:</u> Leslie M. Luttrell LUTTRELL + VILLARREAL LAW GROUP 400 N. Loop 1604 E, Ste. 208 San Antonio, TX 78232 <u>Via Email: Luttrell@LVLawgroup.net</u>
Hugo Flores Rancho Loma Linda c/o Baldemar Garcia, Jr. PERSON, WHITWORTH, BORCHERS & MORALES, LLP 602 E. Calton Rd., 2 nd Floor Laredo, TX 78041 <u>Via Email: bgarcoa@personwhitworth.com</u>	Torrecillas Wind Energy, LLC c/o Patricia B. Tomasco JACKSON WALKER LLP 100 Congress Avenue, Suite 1100 Austin, TX 78701 <u>Via Email: ptomasco@jw.com</u>	Torrecillas Wind Energy, LLC c/o Matthew D. Cavanaugh JACKSON WALKER LLP 1401 McKinney Ave, Suite 1900 Houston, TX 77010 <u>Via Email: mcavanaugh@jw.com</u>
Hector Duran Office of the U.S. Trustee 515 Rusk, Suite 3516 Houston, TX 77002 <u>Via Email: Hector.Duran.Jr@usdoj.gov</u>	Scott Statham Office of the United States Trustee 515 Rusk, Suite 3516 Houston, TX 77002	Ronald Hornberger Plunkett & Griesenbeck, Inc. 1635 N. E. Loop 410 San Antonio, TX 78209 <u>Via Email: RHornberger@pg-law.com</u>
Eric J. Tabue Mark Curtis Taylor Taube Summers Taylor Meinzer LLP 100 Congress, Ste. 1600 Austin, TX 78701 Email: markt@hts-law.com		

Creditors: Via First Class Mail and/or Via Email		
Anam Management, L.C. 318 Bordeaux Laredo, TX 78041-9103 Email: <u>guillermorbenavides@gmail.com</u>	Anam, LTD 318 Bordeaux Laredo, TX 78041-9103 Email: <u>guillermorbenavides@gmail.com</u>	Benavides Family Minerals, LTD c/o Manuel A. Benavides, President of GBGIC, General Partner of GBG Ranch, Ltd. 1019 Chihuahua Laredo, TX 78040-5244 Email: <u>guerobenavides@gmail.com</u>

<p>Carl J. Kolb PC 916 Chulie San Antonio, TX 78216 Email: carl@carlkolblaw.com</p>	<p>City of Laredo c/o Flores & Saucedo, PLLC 5517 McPherson Rd. Ste. 14 Laredo, TX 78041-6687 Email: ffccpl14@gmail.com</p>	<p>Cliff Davis PO Box 439 Carrizo Spring, TX 78834-6439 Email: rafterdcattleco@yahoo.com</p>
<p>Corrected Quita Wind Lease Email: guillermorbenavides@gmail.com</p>	<p>Dan Hanke 2161 NW Military HWY, Ste. 103 San Antonio, TX 78213-1844 Email: dan@hankecpa.com</p>	<p>Dan King Bordas Wind Energy 3650 Locklane Houston, TX 77027-4004 Email: dan@enerverse.net</p>
<p>Diane W. Sanders Linebarger Goggan Blair & Sampson, LLP P.O. Box 17428 Austin, TX 78760-7428 Email: diane.sanders@lgbs.com Attorney for WEBB CISD</p>	<p>GBG Cattle & Hunting Co. LLC c/o Manuel A. Benavides, President of GBGIC, General Partner of GBG Ranch, Ltd. 1019 Chihuahua Laredo, TX 78040-5244 Email: guerobenavides@gmail.com</p>	<p>GBG Minerals, Ltd. c/o GBG Ranch, Ltd. c/o Luttrell + Villarreal Law Group 400 N. Loop 1604E, Suite 208 San Antonio, TX 78232</p>
<p>Golden West Oil PO Box 6127 Austin TX 78762-6127 Email: cdouglas@alliedsalesco.com</p>	<p>Guillermo Benavides Garza Investment Company c/o GBG Ranch, Ltd. c/o Luttrell + Villarreal Law Group 400 N. Loop 1604E, Suite 208 San Antonio, TX 78232</p>	<p>Guillermo Benavides Z. 318 Bordeaux Laredo, TX 78041-9103 Email: memobenavides@gmail.com</p>
<p>Guillermo R. Benavides Email: guillermorbenavides@gmail.com</p>	<p>Gutierrez Martinez & Co., LLP 9114 McPherson Road Suite 2517 Laredo, TX 78045-2514 Email: jorge@cpa-gmc.com</p>	<p>Huisache Cattle Co. LTD. HCR 1 Box 5 Aguilares, TX 78369-9701 Email: vaqui@mac.com</p>
<p>Raul Vasquez 7718 McPherson Ste. f-105 Laredo, TX 78045-2816 Email: royvsqz2004@att.net</p>	<p>Quita Wind Energy Company LLC Email: guillermorbenavides@gmail.com</p>	<p>Rafael Morales 1301 Chacon Laredo, TX 78040-8944</p>
<p>Marcel Frey 3200 Southwest Freeway Ste. 1900 Houston, TX 77027-7611 Email: marcel@freyfinancialgroup.com</p>	<p>Residuary Trust under the Will of Guillermo Benavides Garza c/o Manuel A. Benavides c/o Guillermo Benavides Z. 1019 Chihuahua Laredo, TX 78040-5244 Email: guerobenavides@gmail.com Email: memobenavides@gmail.com</p>	<p>Kandy Walker 5210 San Bernardo Ste. 101 Laredo, TX 78041 Email: kandywalker@hotmail.com</p>

Robert C. Cadena d/b/a 3C Cattle Co. 800 E. Mann Rd. Ste. 103 Laredo, TX 78041-2666 Email: rcadena62@ymail.com	United I S D c/o Guillermo Alarcon Alarcon & Saenz, PLLC 1302 Washington St. Laredo, TX 78040-4445 Email: hqagalarcon@yahoo.com	Webb County c/o Law Offices of Javier Montemayor, Jr., 7718 McPherson Rd. Ste. #F105 Laredo, TX 78045-2815 Email: legal@lawjm.org
---------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

/s/ Stephen L. Dittlinger

STEPHEN L. DITTLINGER