

CAUSE NO. 8292

SOUTHWESTERN HOLDINGS, INC.,  
dba CIBOLO CREEK RANCH,  
*Plaintiff,*

v.

HUNTER JRW HOLDINGS, L.L.C.,  
*Defendant.*

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IN THE DISTRICT COURT

394th JUDICIAL DISTRICT

PRESIDIO COUNTY, TEXAS

**DEFENDANT, HUNTER JRW HOLDINGS, L.L.C.'S PLEA IN ABATEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant HUNTER JRW HOLDINGS, L.L.C. ("HJRW") files this *Plea in Abatement* and would respectfully show unto this Court the following:

**I. Abatement Standard**

1.1 Texas Rule of Civil Procedure 39(a) (TRCP 39) requires the joinder of a person who is subject to service of process if: (1) in his absence, complete relief cannot be accorded among those already parties; or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.<sup>1</sup> There is no arbitrary standard or precise formula for determining whether a particular person falls within its provision even though TRCP 39 contemplates mandatory joinder.<sup>2</sup> Nonetheless, TRCP 39, like the Declaratory Judgment Act, mandates joinder of persons whose interests would be affected by the judgment.<sup>3</sup> TRCP 39, which governs the joinder of persons needed for just adjudication, requires the presence of *all persons* who have an interest in the litigation so that any relief awarded will effectively and completely adjudicate the dispute and provides a pragmatic rather than mechanical approach to dealing with a defect in parties.<sup>4</sup> All persons having or claiming a direct interest in the object and subject matter of a suit, and whose interest will necessarily be affected by any judgment rendered therein, are not only proper parties but are also necessary, and may be indispensable, parties. Necessary parties are those persons who have such an interest in the controversy that a final judgment or decree cannot be made without affecting their interests or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience.<sup>5</sup>

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<sup>1</sup> Tex.R.Civ.P 39a (Joinder of Persons Needed for Just Adjudication)

<sup>2</sup> Kodiak Res., Inc. v. Smith, 361 S.W.3d 246, 249-250 (Tex. App.-Beaumont 2012, no pet.)

<sup>3</sup> Id.

<sup>4</sup> Wilchester W. Concerned Homeowners LDEF, Inc. v. Wilchester W. Fund, Inc., 177 S.W.3d 552, 559–60 (Tex. App. 2005) (emphasis added) citing Brooks v. Northglen Ass'n, 141 S.W.3d 158,162 (Tex.2004)

<sup>5</sup> Royal Petroleum Corp. v. Dennis, 332 S.W.2d 313 (Tex. 1960)

1.2 A plea in abatement/motion to abate is the proper procedural tool used to raise an issue of a defect in the parties<sup>6</sup>. This plea in abatement/motion to abate challenges the Plaintiff's pleadings by alleging facts showing that this lawsuit cannot and should not proceed without the joinder of other parties<sup>7</sup>.

## **II. Factual Allegations in Support of Motion to Abate**

2.1 HJRW purchased approximately 70,000 acres of land in Presidio County in September, 2024, which was formerly known as the Lely Ranch and which is referred to in *Plaintiff's Original Petition and Application for Temporary and Permanent Injunction* (the "Petition") as the Flying "W" ranch (hereinafter the "Flying 'W'").

2.2 Plaintiff, SOUTHWESTERN HOLDINGS, INC. d/b/a CIBOLO CREEK RANCH (hereinafter "SHI") filed suit on June 2, 2025 alleging the following: (i) HJRW is tortiously interfering with SHI's property rights, (ii) SHI is entitled to a prescriptive easement over a segment of Morita Road that runs through HJRW's property, and referred to herein as the Flying "W" Ranch, (iii) intentional conduct by HJRW causing nuisance and injury; and (iv) request for declaratory relief that SHI, its agents and invitees, are entitled to use Morita Road for ingress and egress to and from SHI's three ranches, namely La Cienga, La Morita and Harper (collectively the "Cibolo Creek Properties"). HJRW has denied all such allegations.

2.3 SHI has requested that the Court declare that SHI and its agents and invitees are entitled to use Morita Road for ingress and egress to and from the Cibolo Creek Properties, ***including*** through the Flying "W." Moreover, SHI is only claiming a prescriptive easement *over a segment* of Morita Road that runs through the Flying "W" in this lawsuit. The road at issue in this lawsuit, "Morita Road," runs from Shafter through at least five other distinct properties before reaching SHI-owned land at the Morita Fort of the Cibolo Creek ranch<sup>8</sup>. Multiple owners of sections of land through which this road travels provide no legal access to SHI, yet these four other owners are not parties to this lawsuit. Specifically, in order for SHI to use Morita Road as requested, SHI must also go through property believed to be owned by the Rinehart family, namely Glenn Rinehart, Troy Rinehart, and Samuel Rinehart (hereinafter the "Rinehart Family"), the Fuentes family (multiple undivided interest owners through several generations)(hereinafter the "Fuentes Family"), the General Land Office (the "GLO") John Boerschig ("Boerschig") and Big Ranch/Texas Parks and Wildlife ("TPWD Big Bend")<sup>9</sup>.

2.4 SHI has no legal easement to cross the Fuentes Family ranch along that portion of Morita Road that traverses the Fuentes Family ranch. The Fuentes Family ranch is owned by multiple descendants through at least 6 ancestors, with ownership vested in undivided interests to approximately 50 heirs. While

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<sup>6</sup> Truong v. City of Houston, 99 S.W.3d 204, 216 (Tex. App.—[Houston 1<sup>st</sup> Dist.] 2002) citing Texas Highway Dept. v. Jarrell, 418 S.W.2d 486, 488 (Tex.1967); Martin v. Dosohs I Ltd., 2 S.W.3d 350, 354 (Tex.App.-San Antonio 1999, pet. denied)

<sup>7</sup> Id.

<sup>8</sup> See map attached as Exhibit A depicting Morita Road and affected properties.

<sup>9</sup> Id. HJRW further incorporates herein by reference as if fully set forth herein at length Paragraph II, the Statement of Facts, in its *Original Answer, Affirmative Defenses and Counterclaims* and all affidavits attached thereto for which HJRW requests the Court take judicial notice.

SHI claims to have obtained an easement across the Fuentes Family ranch, agreed to by David Loustenau, who purportedly is acting on behalf of the entire Fuentes Family, no legal easement may be granted across the Fuentes Ranch. Without the consent of all co-owners or subsequent ratification by them, one co-owner may not grant an easement burdening jointly owned land to a third party<sup>10</sup>.

2.5 Moreover, SHI's lawsuit against HJRW **only** requesting declaratory relief that SHI, its agents and invitees, are entitled to use Morita Road for ingress and egress to and from SHI's three ranches, namely La Cienga, La Morita **and Harper** is nothing but an attempt by SHI to perform an end run around the Honorable 8<sup>th</sup> Court of Appeals and its holding in *Boerschig v. Southwestern Holdings, Inc.*, 322 S.W.3d 752, 767 (Tex. App.–El Paso 2010, no pet.) (hereinafter the “Boerschig Decision”). Contrary to SHI's claim that it has a right to legal access to its Harper ranch as a result of the Boerschig Decision, the Boerschig Decision held that SHI had an easement through the Boerschig ranch only to access appurtenant properties, namely its La Cienga and La Morita ranches. The Court in the Boerschig Decision expressly ruled that SHI (and its invitees) **may not** use the easement to access non-appurtenant properties, namely the Harper ranch<sup>11</sup>.

2.6 In its Petition, SHI has failed to properly identify and describe Morita Road for which SHI seeks ingress and egress rights, has failed to identify all the property owners along Morita Road, has failed to show that it has legal access rights to travel Morita Road from the other landowners, and has failed to obtain a title report, which would further identify the property owners whose interests would be affected by the relief requested by SHI. Thus, SHI seeks a prescriptive easement across the Flying “W” for a road that has no legal easement to SHI across: (i) Rinehart Family ranch; (ii) the Fuentes Family ranch; (iii) the GLO; (iv) the Flying “W”; (v) the Cienega Easement Road, use of which is barred to access Harper Ranch and (vi) Big Bend Ranch/ Texas Parks and Wildlife.

### **III. Legal Argument**

3.1 Whether a person is a necessary party is determined by his interest in the subject matter and outcome of the suit. All persons who have or claim a direct interest in the object and subject matter of the suit and whose interests will necessarily be affected by any judgment that may be rendered therein, are not only proper parties, but are necessary and indispensable parties<sup>12</sup>. SHI has requested that the Court declare that SHI and its agents and invitees are entitled to use all of Morita Road for ingress and egress to and from the Cibolo Creek Properties, **including** through the Flying “W.” In order for SHI to use Morita Road as requested, SHI, in addition to going through the Flying “W,” must also go through property owned by the Rinehart Family, the Fuentes Family, the General Land Office, Texas Parks and Wildlife Department (Big Bend Ranch State Park) and Boerschig. As such, their interests will necessarily be

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<sup>10</sup> See *Elliott v. Elliott*, 597 S.W.2d 795 (Tex. App. – Corpus Christi 1980) (“Absent consent or subsequent ratification by the other co-tenants, the general rule is that one co-tenant cannot impose an easement upon the common property in favor of third persons.”). See also *Texas Mtg. Co. v. Philips Petroleum Co.*, 470 F. 2nd 497 (5th Cir. 197\_\_ (applying Texas law)

<sup>11</sup> *Boerschig v. Southwestern Holdings, Inc.*, 322 S.W.3d 752, 763-64 (Tex. App.–El Paso 2010, no pet.)

<sup>12</sup> *Scott v. Graham*, 156 Tex. 97, 101, 292 S.W.2d 324, 327 (1956) citing *Veal v. Thomason*, 138 Tex. 341, 159 S.W.2d 472 (Tex. 1942) superseded on other grounds.

implicated and affected by any judgment or declaration by the Court that SHI is entitled to use Morita Road for ingress and egress to the Cibolo Creek Properties<sup>13</sup>. Therefore, Rule 39(a) requires the joinder of the owners of the properties between Shafter (beginning of Morita Road) and the Cibolo Creek Properties, namely the Rinehart Family, the Fuentes Family, the General Land Office, Texas Parks and Wildlife Department (Big Bend Ranch State Park) and Boerschig.

3.2 Abatement is proper because one or more necessary parties are absent from the proceeding. It is settled law that the Court must request that parties whose interest is subject to the declaration of the Court be joined.<sup>14</sup> In this case, the interests of the Rinehart Family, Fuentes Family, the GLO, Boerschig and TPWD Big Bend are subject to SHI's request for the Court to declare that SHI is entitled to access to the Cibolo Creek Properties from Shafter along the entire Morita Road, not just through the Flying "W." This proceeding should be abated, and as a matter of judicial economy, and to avoid the potential for inconsistent holdings, including but not limited to a holding inconsistent with the Boerschig Decision. The Court should order SHI to obtain an opinion of title and survey of Morita Road and alleged easement at issue in this action to ensure that all necessary parties whose interests will be affected by the determination of the easement are present before the Court.

#### **IV. Relief Requested**

WHEREFORE, PREMISES CONSIDERED, Defendant, HJRW prays that this Court abate this proceeding for the grounds specified herein until SHI obtains surveys of the Morita Road and alleged easement at issue as pled herein and an opinion of title to identify all persons whose interest will be affected by a declaration of this Court, and who should be joined as parties. Defendant, HJRW, also requests that SHI be taxed with HJRW's costs in bringing this Motion to correct its failure to properly plead this lawsuit. Defendant, HJRW requests such other and further relief, general and special, at law or in equity to which it is otherwise entitled.

Respectfully submitted,

**LAW OFFICE OF ROD PONTON**

By: /s/ Rod Ponton

Rod Ponton

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<sup>13</sup> Moreover, such a ruling by the Court would be in direct contravention to the Court's holding in the Boerschig Decision.

<sup>14</sup> Tex. Civ. Prac. & Rem. Code § 37.006; Brooks v. Northglenn Ass'n, 141 S.W.3d 15, 162 (Tex. ; Kodiak Res., Inc., 361 S.W.3d at 248-49.

\*\*\* AND\*\*\*

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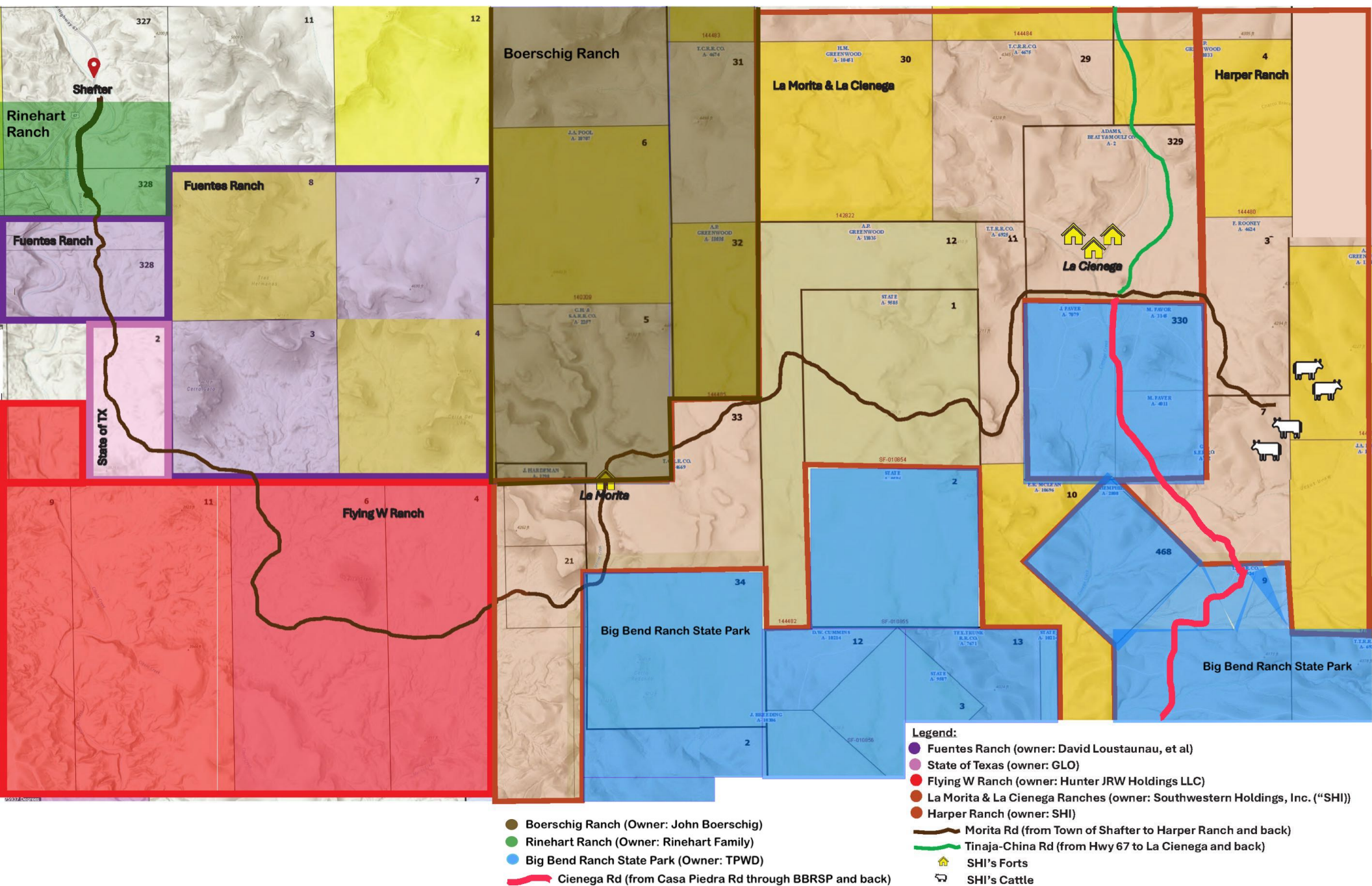
**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of July 2025, a true and correct copy of the foregoing document was served on counsel of record for all parties entitled to service in this matter in accordance with the Texas Rules of Civil Procedure via EFile services.

/s/ Rod Ponton  
Rod Ponton  
*Attorney for Hunter JRW Holdings, LLC*

# EXHIBIT “A”





### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Envelope ID: 103122907  
Filing Code Description: Answer/Response  
Filing Description: Defendant Plea in Abatement  
Status as of 7/15/2025 10:44 AM CST

Associated Case Party: Hunter JRW Holdings, LLC

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