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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Reorganized Debtors.	)	(Jointly Administered)

MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN ADMINISTRATOR, FOR PROTECTIVE ORDER

A HEARING WILL BE CONDUCTED ON THIS MATTER ON THURSDAY, JUNE 18, 2020, AT 9:00 A.M. (PREVAILING CENTRAL TIME) BEFORE THE HONORABLE MARVIN ISGUR, BOB CASEY UNITED STATES COURTHOUSE, 515 RUSK STREET, COURTROOM 404, HOUSTON, TEXAS 77002.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT

Nader Tavakoli, solely in his capacity as the Plan Administrator of Cobalt International Energy, Inc., *et al*. (the "Plan Administrator"), files this *Motion of Nader Tavakoli, Acting Solely as Plan Administrator, for Protective Order* (the "Motion"), and in support thereof, respectfully moves pursuant to Rules 26 and 30 of the Federal Rules Civil Procedure and Rules 7026, 7030,

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Reorganized Debtors' service address is: 945 Bunker Hill Road, Suite 625, Houston, Texas 77024.

and 9014 of the Federal Rules of Bankruptcy Procedure for entry of a Protective Order ("Protective Order") limiting the scope of the corporate representative deposition as follows:

I. PRELIMINARY STATEMENT

1. Prior and subsequent to the filing of this bankruptcy case, Total E&P USA, Inc. ("Total") entered into business transactions with Cobalt International Energy, Inc. and certain of its affiliates (collectively, the "Debtors") (Debtors and Total are collectively referred to as the "Parties") where, among other things, the Parties had owned working interests in oil leases operated by Debtor Cobalt International Energy, L.P. ("Cobalt LP") and where Total purchased from Debtors certain of those leases. In the purchase of the North Platte Assets (discussed below), Total was joined by Statoil Gulf of Mexico LLC, now known as Equinor Gulf of Mexico LLC ("Equinor"). These transactions have spawned disputes which have given rise to two contested matters that are as yet unresolved.

2. The first contested matter arises out of claims made by Total that it had an ownership interest in inventory the Court authorized the Plan Administrator to sell (the "Remaining Inventory Ownership Dispute") [Docket Nos. 894, 925, 976]. The second contested matter involves administrative claims by Total and Equinor for post-closing adjustments to the purchase price arising from the post-petition sale of the North Platte Assets (the "Post Closing Adjustment Dispute") [Docket Nos. 846, 847, 1036].

3. Before Total served the deposition notices that are the focus of this motion, Total sent drafts to counsel for the Plan Administrator. The parties engaged in lengthy discussion about the topics in Total's 30(b)(6) notice but were unable to resolve their disagreements regarding numerous topics.

4. Despite the reality that there are only two issues between the Plan Administrator and Total before the Court, on May 5, 2020, Total served a Rule 30(b)(6) notice of deposition of a corporate representative requesting testimony on many topics that are far beyond the scope of issues at dispute here. Therefore, the Plan Administrator seeks an order limiting the 30(b)(6) topics to the live issues in this case.

II. JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

III. STATEMENT OF FACTS

A. The Purchase Price Adjustment Contested Matter

6. On March 6, 2018, the Debtors held an auction for certain of Debtors' Gulf of Mexico assets. Following the auction, Total and Equinor, under a joint bid, were declared the successful bidder for the North Platte ("North Platte") prospect, and Total was declared the successful bidder for the Anchor prospect and numerous of the Debtors' offshore exploration leases on which Debtors had not drilled wells (the "Explo Leases").

7. Pursuant to the Plan and Confirmation Order, the Debtors entered into Asset Purchase Agreements ("APAs") for their North Platte Assets,[2] Anchor Discovery Assets,[3] and Explo Assets.[4]

[2] The North Platte APA was executed by and between Cobalt L.P., as seller, and Total and Equinor, as buyers, in which Equinor and Total acquired the Debtors' North Platte "Assets." *See* North Platte APA § 2.1 [Docket No. 594-2, at 18–20].

[3] The Anchor APA was executed by and between Cobalt L.P., as seller, and Total, as buyer, in which Total acquired the Debtors' Anchor "Assets." *See* Anchor APA § 2.1 [Docket No. 594-1, at 18–20].

[4] The Explo APA was executed by and between Cobalt L.P., as seller, and Total, as buyer, in which Total acquired the Debtors' Explo "Assets." *See* Explo APA § 2.1 [Docket No. 594-4, at 18–20].

8. On April 5, 2018, the Court entered the Confirmation Order confirming the Plan. [Docket No. 784]. The effective date of the Plan was April 10, 2018. Pursuant to the terms of the Plan and the Confirmation Order, the Court approved the sale transactions for the Gulf of Mexico assets and instructed the Debtors to transfer the North Platte Assets to Total E&P and Equinor. Confirmation, *id.* at ¶ 78.

9. The North Platte APA between the Debtors as sellers and Total and Equinor as buyers (the "Buyers") provides that Total purchased one third (1/3) and Equinor purchased two thirds (2/3) of the Debtors' "Assets," as the term is defined in the North Platte APA, in exchange for $339,000,000. *See* [Docket No. 594-2] at 18–20 & 26, APA, § 2.1, § 3.1.

10. The North Platte APA defined the phrase "Effective Time" as 12:00 a.m. Central Time on January 1, 2018. *See* [*id.*] at 9, APA, § 1.1. The "Closing Date" for the North Platte APA was on or about April 6, 2018. *See* [*id.*] at 10 & 29, APA, §§ 1.1 & 4.1.

11. The North Platte APA provided that the purchase price could be increased by certain amounts:

> 8.9 Accounting Adjustments for Revenues and Expenses.
>
> > (a) The Base Purchase Price shall be increased by the following (without duplication): … (ii) the aggregate amount of all Operating Expenses in connection with the ownership, operation and maintenance of the [North Platte] Assets which are paid by or on behalf of Seller, are not subject to reimbursement to Seller pursuant to a joint interest billing and are attributable to the period on or after the Effective Time (including any pre-paid charges); … [.]

See [Docket No. 594-2] at 50, APA, § 8.9. Pursuant to Section 8.9(a)(iv), the Buyers pre-paid $3,099,603.15 to reimburse the Debtors for amounts paid by them associated with the North Platte Assets on and after the Effective Time. [*Id.*] The North Platte APA further provided that after the

closing date the parties would attempt to agree on the post-closing adjustment to the purchase price under Section 8.9. *Id.* at 51–52, § 8.11.

12. On May 9, 2018, Total filed a motion for allowance of administrative expense priority claims requesting the Court order the Debtors to pay "any and all post-closing adjustments in favor of [Total]." *See* [Docket No. 846] at ¶ 9. The same day, Equinor filed a motion requesting an order "allowing the Administrative Claims for any and all post-closing adjustments in favor of [Equinor] under the North Platte APA." *See* [Docket No. 847] at ¶ 18.

13. Equinor is the non-operating, working-interest owner of two-thirds of the North Platte Assets purchased from Cobalt LP under the North Platte APA. As the co-buyer under the North Platte APA with Total, Equinor's administrative claim related to the North Platte APA purchase price adjustment involves identical factual and legal issues as Total's administrative claim regarding the same.

14. On September 7, 2018, the Plan Administrator responded to the May 9th administrative expense motions and notified the Court that the Plan Administrator, Total, and Equinor had agreed that the Court should resolve the remaining issues regarding the post-closing adjustments. *See* [Docket No. 1036] at ¶ 1.

B. The Remaining Inventory Contested Matter

15. On June 1, 2018, the Plan Administrator filed an emergency motion [Docket No. 894] (the "Remaining Inventory Motion") to authorize the sale of certain inventory (the "Remaining Inventory") and distribute the proceeds in accordance with the Plan. Total opposed the Remaining Inventory Motion, alleging it held an ownership interest in the Remaining Inventory.

16. Thereafter, on June 25, 2018, the Court entered its *Order Authorizing Plan Administrator to Sell Remaining Inventory* [Docket No. 925] (the "Sale Order"), which limits this dispute to Total's claim of an ownership interest in the Remaining Inventory. The Sale Order provides in pertinent part:

> To the extent [Total] asserts an ownership interest in the Remaining Inventory or the proceeds thereof, as the case may be (other than under the [North Platte APA]), [Total] shall file a statement with the Court on or before July 9, 2018 disclosing such ownership theories under which [Total] claims such an ownership interest in the Remaining Inventory.

Id. at ¶ 7. The Sale Order expressly held that Total waived any claim upon the Remaining Inventory based on the North Platte APA, but recognized Total reserved its right to assert any other claim of ownership not based on the North Platte APA. *Id.* at ¶ 4.

17. The Sale Order also contained a reservation of rights against the Plan Administrator which provides:

> [Total] and Equinor's rights, if any, against the Plan Administrator or the Cobalt Committee are preserved and not affected by this Order, including their rights, if any, to assert inadequacy of price or breach of duty in the sale; provided, no such rights shall be asserted against any purchaser of the Remaining Inventory.

Id. at ¶ 6.

18. At the telephonic status conference on June 18, 2018, the scope of the issues that could be raised and the damages that could be sought in connection with this dispute was specifically addressed:

> MS. METZGER: And your Honor, is that with respect to price as well because I would hate for us to proceed in that manner, the inventory get[s] sold, Total despite how small we may feel their chance is for prevailing that they had an ownership interest, that they'd be able to come back and say they sold it for too low of an amount and now you're going to cover damages greater than –
>
> THE COURT: **No, all they look at is the money in the Registry. We're going to fight over who gets Registry money, period**.

Transcript of June 18 Status Conference ("6/18/2018 Transcript"), at pg. 13, lns 16–25 (emphasis added).

> Total's counsel confirmed that the dispute was limited to these amounts:
>
> THE COURT: Right, but you would only look to the proceeds allocable to the equipment that you claim ownership on and if it turns out that he sells a rig for $250,000 and you say it's really worth a million, you're client is going to be stuck at 250, right?
>
> MR. HARRIS: That's right.

6/18/2018 Transcript, at pg. 14, lns 9–14.

19. On July 9, 2018, Total filed a two-page Statement of Ownership [Docket No. 976] (the "Total Statement"), stating five conclusory theories of ownership:

i. [P]ursuant to a 2009 Simultaneous Exchange Agreement (the "SEA"), [Total] paid $12 million to acquire, and thereby explicitly did acquire, a 40% ownership interest in the Debtors' entire inventory of equipment.

ii. [T]he Debtors periodically confirmed, including in 2017, that the value of [Total]'s ownership interests in the Debtors' "tangible equipment inventory" was $12 million.

iii. [Total] paid an aggregate $206 million to acquire substantially all of the Debtors' interests in the Anchor discovery and certain exploratory leases . . . in the US Gulf of Mexico, including all Equipment "used or held for use in connection with" Anchor and Explo [(the "Anchor and Explo Theory")].

iv. [T]o the extent the Plan Administrator asserts that the SEA or the Anchor and Explo [APAs] fail to expressly include any of the Equipment as a purchased asset, [Total] owns such Equipment pursuant to the covenant of good faith and fair dealing, particularly in light of the Debtors' stated intention to dispose of all of their assets through the bankruptcy sales, and the corresponding expectations of all interested parties [(the "Good Faith and Fair Dealing Claim")].

v. [Total] owns any Equipment to the extent the Debtors' books and records show that [Total] owns such Equipment, and similarly to the extent that the Debtors previously invoiced [Total]— and [Total] thereafter paid—for such Equipment.

IV. LEGAL STANDARD

20. Bankruptcy Rule 9014, which applies to contested matters, incorporates Bankruptcy Rule 7026. Fed. R. Bankr. P. 9014(c). In turn, Bankruptcy Rule 7026 incorporates Federal Rule of Civil Procedure 26. Fed. R. Bankr. P. 7026. Federal Rule of Civil Procedure 26 states in part "Parties may obtain discovery regarding any nonprivileged matter that is *relevant to any party's claim or defense* and proportional to the needs of the case . . . ." Fed. R. Civ. P. 26(b)(1) (emphasis added). On the motion of a party, the Court is required to limit proposed discovery if it determines it "is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(iii). Additionally, the Court may:

> [F]or good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> > (A) forbidding the disclosure or discovery;
> > . . .
> > (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters[.]

Fed. R. Civ. P. 26(c)(1). It is the movant's burden to demonstrate that providing the discovery sought will cause "annoyance, embarrassment, oppression, or undue burden or expense." *In re Trevino*, 564 B.R. 890, 903 (Bankr. S.D. Tex. 2017). The Court has "broad discretion in fashioning protective orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* (internal quotation marks and citations omitted).

V. ANALYSIS

21. Good cause exists to enter a protective order here because Total's deposition notice is unduly burdensome.

A. The 30(b)(6) Notice is Unduly Burdensome

22. Total's 30(b)(6) deposition notice is unduly burdensome for two primary reasons. It seeks information on irrelevant topics and fails to identify topics with reasonable particularity.

i. Irrelevant Topics

23. As set forth below, numerous topics identified in the Total's 30(b)(6) deposition notice have nothing to do with the contested matters before the Court. This renders the 30(b)(6) notice unduly burdensome on its face because it seeks to force the Plan Administrator to expend his limited resources to prepare a corporate representative on a host of irrelevant topics. Courts have observed that "[d]iscovery targeted at matters not relevant to the case imposes a *per se* undue burden that may by itself justify issuance of a protective order." *Schwab v. AAA Fire & Cas. Ins. Co.*, No. 1:14-cv-00183-CMA-NYW, 2015 U.S. Dist. LEXIS 52118, at *6 (D. Colo. 2015); *see also Cook v. Howard*, 484 Fed. Appx. 805, 812 n. 7 (4th Cir. 2012) (a subpoena that seeks information irrelevant to the case is unduly burdensome); *Harrison v. Kennedy*, No. 3:18-cv-0057-RMG, 2019 U.S. Dist. LEXIS 132154, at *4 (D.S.C. 2019) ("A subpoena that seeks information irrelevant to the case is a per se undue burden."). The irrelevant topics about which Total seeks to inquire may be grouped into following categories:

a. **Inventory and Assets That are Not at Issue –** Based on the scope of contested matters, the only inventory and assets that are relevant to this dispute are: (i) the Remaining Inventory existing as of the date of the Sale Order, and (ii) any North Platte inventory or assets involved in the Post Closing Adjustment Dispute. Topics 1–3, 8–11,13–14, 20–27 and 34 seek information about inventory or other assets not at issue which was used, held, or sold at points in time that are not relevant to the contested matters.

b. **Drilling Programs That are Not at Issue –** Topic Numbers 4–7 seek information related to the Debtors' drilling programs that are not at issue. The only prospects at issue in the Remaining Inventory Ownership Dispute are the Anchor and Explo leases, but the Debtors did not operate the Anchor leases and therefore had no drilling program on them. That leaves only the Explo leases, and the associated drilling program(s) are only relevant to the extent they reference Remaining Inventory that existed on the date of the Sale Order (not everything since 2010).

c. **The Marketing of Assets and Related Representations are Not at Issue –** Topic Numbers 8–12, 23–26, and 37–38 seek information related to the marketing of assets (including inventory) and related representations. That information is simply not relevant to the question of who owns the Remaining Inventory, the proceeds thereof, or any other issue pending before the Court.

First, the marketing of North Platte Assets and related representations are not relevant because Total waived its rights (if any) to Remaining Inventory and proceeds under the North Platte APA. [Docket No. 925 at ¶ 4].

Second, to the extent Total suggests these topics are relevant to the Good Faith and Fair Dealing Claim in Total's Statement of Ownership [Docket No. 976 at ¶ 4], such questioning should not be permitted. The 2009 Simultaneous Exchange Agreement and the Anchor and Explo APAs are each governed by Texas law.[5] Under Texas law, a breach of the common law duty of good faith and fair dealing is a tort for which *damages* – not a conveyance of ownership – are the remedy, *see Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 665–66 (Tex. 1995).

Third, to the extent Total is seeking discovery about marketing efforts to establish claims of breach of duty against the Plan Administrator, that issue is not before the Court. A reservation of rights, frequently found in DIP financing orders, is just that—it only allows for the assertion of rights in some subsequent filing. There has never been such a filing nor has the Plan Administrator consented to the assertion of such claims in this contested matter.

d. **SEA Leases are Not at Issue –** Topic 14 seeks information regarding ownership of leases related to the SEA, but there is no dispute regarding the ownership of any leases in this matter.

e. **APA Negotiations and Executions That are Not at Issue –** Topics 17[6] and 18 broadly seek information regarding APA negotiations and executions even though those topics encompass dozens if not hundreds of issues that are not relevant to Remaining Inventory Ownership Dispute or the Post Closing Adjustment Dispute.

f. **Settlement Negotiations are Not at Issue –** Topic No. 33 seeks information about settlement negotiations between the parties. The parties' settlement negotiations are not at issue in this case and any inquiry into those negotiations is facially inappropriate. *See* Fed. R. Bankr. P. 9017; Fed. R. Evid. 408. Further, there is no filing against the Plan Administrator for his negotiations or settlement positions, nor has he consented to the assertion of such claims in this contested matter.

[5] *See* Simultaneous Exchange Agreement § 7.15, excerpts attached hereto as "**Exhibit B**"; Anchor APA § 13.10(a) [Docket No. 594-1, at 64]; Explo APA § 13.10(a) [Docket No. 594-4, at 64].

[6] Topic 17 identifies the date of the Explo APA as March 6, 2018, but it was actually dated March 12, 2018. The Plan Administrator assumes the reference to March 6, 2018 was a typographical error.

g. **Sale Proceeds That are Not at Issue –** Topic 34 seeks information about proceeds from the sale of any equipment or inventory since the filing for bankruptcy, even though the only sale proceeds at issue in this case are the proceeds from the sale of the Remaining Inventory that occurred after the Sale Order.

h. **Rental Payments for Leases That are Not at Issue –** Topics 35 and 36 seek information about rental payments on leases in the Gulf of Mexico even though the only rental payments that possibly could be relevant would be rental payments (if any) made *after the Effective Date of the North Platte APA* and only to the extent those rental payments are *claimed as part of the Post Closing Adjustment Dispute*.

24. For the reasons set forth in paragraphs 23(a)–(h) above, the Court should protect the Plan Administrator from being required to prepare a corporate representative on the topics identified in those paragraphs. In addition, the Court should enter a protective order on these topics to protect the Plan Administrator and the estates from the annoyance, embarrassment, oppression, and undue expense associated with responding to these topics. *See* Fed. R. Civ. P. 26(c)(1).

ii. Reasonable Particularity

25. "Rule 30(b)(6) places substantial responsibilities and burdens on the responding corporate party[.]" *Memory Integrity, LLC v. Intel Corp.*, 308 F.R.D. 656, 661 (D. Or. 2015). Therefore, Rule 30(b)(6) requires that topics be designated with "reasonable particularity." In interpreting that phrase, courts have observed: "to allow [Rule 30(b)(6)] to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute." *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 638 (D. Minn. 2000); *see also EEOC v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D. Kan. 2007).

26. Here, Total's Topics 1–3, 13–14, 23, 25, 26–27 and 34 address various assets and inventory, but they lack the reasonable particularity required by Rule 30(b)(6). For example, they fail to identify specifically the assets and inventory addressed in those topics and the presenting a representative on the ill-defined topics would force the Plan Administrator to prepare a corporate

representative on inventory and assets that have nothing to do with this present dispute. Drilling programs are also extremely broad topics, but Topics 4–7 fail to to identify specific aspects of the drilling programs. Preparing a corporate representative on all aspects of the drilling programs identified will require a tremendous expenditure of resources. Topics 17–18 fail to identify specific issues under the voluminous APAs that address a host of issues that have no bearing on the contested matters. Therefore, the Court should protect the Plan Administrator from the undue burden of preparing a corporate representative on these ill-defined topics.

VI. Conclusion

27. For the reasons stated above, the Plan Administrator requests the Court issue a protective order that permits the Plan Administrator to not produce a corporate representative on the topics identified above as unduly burdensome or otherwise objectionable.

Date: May 27, 2020

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Counsel for Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc. et al.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that I have in good faith conferred extensively with Ryan Hackney, counsel for Total E&P USA, Inc., on multiple occasions in an attempt to resolve this discovery dispute without Court action.

By: */s/ Karl G. Dial*
Karl G. Dial

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 27, 2020, I caused a copy of the foregoing Motion to be served on all parties eligible to receive service through the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas by electronic mail.

By: */s/ Shari L. Heyen*
Shari L. Heyen

EXHIBIT A

Proposed Protective Order

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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Reorganized Debtors.	)	(Jointly Administered)

ORDER GRANTING MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN ADMINISTRATOR, FOR PROTECTIVE ORDER
[RELATES TO DOCKET NO. _____]

Upon consideration of the *Motion of Nader Tavakoli, Acting Solely as Plan Administrator, for Protective Order* (the "Motion");[2] and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and that no other or further notice is required under the circumstances; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief; and it appearing that the relief requested under the Motion is in the best interests of the Reorganized Debtors' estates and creditors:

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Reorganized Debtors' service address is: 945 Bunker Hill Road, Suite 625, Houston, Texas 77024.

[2] Capitalized but undefined terms herein shall have the same meanings as ascribed to them in the Motion.

2. Total E&P USA, Inc. ("Total") is hereby prohibited from taking the deposition of the Plan Administrator and/or the corporate representative of the Reorganized Debtors, requiring the production of documents and/or communications from the Plan Administrator and/or the Reorganized Debtors, or otherwise requiring any other discovery from the Plan Administrator and/or the Reorganized Debtors regarding Topic Nos. 1 through and including 14, Topic Nos. 17 through and including 18, Topic Nos. 20 through and including 27, and Topic Nos. 33 through and including 38. For the avoidance of doubt, the Plan Administrator and the Reorganized Debtors are not required to respond in any manner to the aforementioned topics in Total's 30(b)(6) notice or any amendments, modifications, or supplements thereto.

3. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2020

_____
HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Excerpts from Simultaneous Exchange Agreement

EXECUTION VERSION

SIMULTANEOUS EXCHANGE AGREEMENT

between

COBALT INTERNATIONAL ENERGY, L.P.

and

TOTAL E&P USA, INC.

Cobalt

Total

7.12 Entire Agreement. This Agreement (including the exhibits to this Agreement and forms of assignment) and any applicable Operating Agreement (subject to Section 4.02(f)), which incorporates all prior understandings relating to the subject matter hereof, sets forth the entire agreement of the Parties with respect to the matters set forth herein and shall not be modified except by written instrument executed by all Parties.

7.13 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of applicable Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

7.14 Binding Effect. Subject to the other provisions of this Agreement and the applicable Operating Agreement, all of the terms and provisions hereof shall be binding upon and inure to the use and benefit of the Parties and their respective heirs, successors, legal representatives and assigns.

7.15 GOVERNING LAW. THE PROVISIONS OF THIS AGREEMENT AND THE RELATIONSHIP OF THE PARTIES SHALL BE GOVERNED AND INTERPRETED ACCORDING TO FEDERAL LAWS AND LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REFER THE MATTER TO THE LAWS OF ANOTHER JURISDICTION.

7.16 Dispute Resolution. Any dispute, controversy or claim between the Parties arising out of or in connection with this Agreement, including but not limited to any question as to its existence, enforceability, validity, interpretation or termination, shall be resolved pursuant to the dispute resolution procedures set forth in Exhibit I.

7.17 Disclaimer. EACH PARTY ACKNOWLEDGES THAT NO OTHER PARTY NOR ANY AFFILIATE OF ANY OTHER PARTY HAS MADE, AND EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND EACH OTHER PARTY HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY NATURE, EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO (A) ANY LEASE OTHER THAN THE SPECIAL WARRANTY OF TITLE TO BE GRANTED AS PROVIDED IN SECTION 3.07, (B) THE ACCURACY OF COST ESTIMATES CONTAINED HEREIN OR MADE IN CONNECTION HEREWITH, (C) THE HYDROCARBON POTENTIAL OF THE LEASEHOLD INTERESTS OR ANY WELL PROPOSED HEREUNDER, (D) THE ACCURACY OR QUALITY OF ANY SEISMIC DATA ACQUIRED, PROCESSED OR OTHERWISE USED HEREUNDER, (E) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF

Cobalt

Total

WITNESS, the execution hereof as of the date first set forth above.

COBALT INTERNATIONAL ENERGY, L.P.

By: _____
Name: Joseph H. Bryant
Title: Chairman + CEO

TOTAL E&P USA, INC.

By: _____
Name: JEAN-Michel LAVERGNE
Title: PRESIDENT & CEO