

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹	)	Case No. 20-11548 ()
)	
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING PAYMENT OF
(A) MINERAL PAYMENTS, (B) WORKING INTEREST DISBURSEMENTS,
AND (C) JOINT INTEREST BILLINGS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

Relief Requested

1. The Debtors seek entry of interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (a) authorizing the Debtors to pay or apply in the ordinary course of business any and all amounts owed to mineral payees and working interest holders in the ordinary course, whether such obligations were incurred prepetition or will be incurred postpetition, in an aggregate amount up to \$23,160,000 on an interim basis and \$169,480,000 on a final basis, and (b) granting related relief.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



2. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a), 363(b), 541(a), 1107(a), and 1108 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Bankruptcy Local Rule 9013-1(m).

6. On June 14, 2020 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Matthew R. Owens, Co-Founder, President and Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with this Motion and incorporated by reference herein.

7. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

Obligations to be Paid

I. Royalties and Non-Op Working Payments.

8. The Debtors operate or have working interests in approximately 1,500 oil and gas wells. In connection with these interests, the Debtors are obligated, pursuant to their oil and gas leases and certain other agreements, to remit to the lessors of the oil and gas leases and holders of certain other interests, claims, or rights to payment (collectively, the “Mineral and Other Interests”) the amounts to which such parties may be entitled under the oil and gas lease or other operative documents (the “Royalties”).

9. Additionally, in their capacity as operator, the Debtors are obligated to market oil and gas production on behalf of certain owners of non-operating working interests (the “Non-Op Working Interests”). Following the sale of the marketed production and the receipt of proceeds attributable thereto, the Debtors are obligated to remit to holders of Non-Op Working Interests their share of the proceeds net of all applicable deductions pursuant to the applicable operating agreement or similar agreement (the “Non-Op Working Payments”).

10. The Royalties and the Non-Op Working Payments are governed by the terms of oil and gas leases or other documents pursuant to which such rights to payment were created, and, commonly, state statutory frameworks that set strict payment deadlines and contain enforcement mechanisms, including interest, fines, recovery of costs and attorney’s fees, and, in

some cases, punitive damages. Failure to pay the Royalties or the Non-Op Working Payments when due could expose the Debtors to enforcement actions and actions by the owners of the Royalties and the Non-Op Working Payments for breach of contract, conversion, or other claims for damages for breach of the relevant oil and gas lease or other document creating such payment. Such enforcement actions could result in the assertion of significant secured or unsecured claims against the property of the estate. Further, for certain oil and gas leases, including those granted by the United States or agencies of individual states, the non-Debtor counterparty may have a statutory or contractual right to seek termination of the lease as a remedy for a breach, such as failure to pay the Royalties. This could expose the Debtors to the forfeiture, cancellation, or termination of oil and gas leases. Clearly, failure to pay the Royalties and the Non-Op Working Payments as and when due could have a material adverse effect upon the Debtors and their operations.

11. The amount of Royalties owed to holders of Mineral and Other Interests in a given month is subject to variation due to many factors, including the specific terms of the Mineral and Other Interests, changes in ownership, and changes in the amount or type of minerals captured. Similarly, the amount of Non-Op Working Payments owed to holders of the Non-Op Working Interests is not entirely predictable on a month-to-month basis. The Debtors generally pay the Royalties and the Non-Op Working Payments in an aggregate amount of approximately \$24,509,255 per month. In the twelve months before the Petition Date, the Debtors paid the Royalties and the Non-Op Working Payments in an aggregate amount of approximately \$294,111,062. These payments are remitted by the Debtors throughout the course of a given month. As a result of the time required to market and sell the production and the significant accounting process required each month to accurately disburse the resulting proceeds,

the Royalties and the Non-Op Working Payments generally are paid approximately 30 to 60 days in arrears.

12. The Debtors estimate that, as of the Petition Date, there is approximately \$161,500,000² outstanding on account of the Royalties and the Non-Op Working Payments owed to holders of Mineral and Other Interests and Non-Op Working Interests, approximately \$20,640,000 of which will become due and owing within the first 25 days of these chapter 11 cases. Accordingly, the Debtors request authority to pay prepetition amounts due and owing to holders of Mineral and Other Interests and Non-Op Working Interests and to continue honoring Royalties and Non-Op Working Payments in the ordinary course of business on a postpetition basis, in each instance subject to the Debtors' rights to dispute asserted amounts and to withhold payment pending resolution of any such dispute.

II. Joint-Interest Billings.

13. The efficient capture of minerals from an area of land or depths (a "Contract Area") often involves the sharing of the economic risk of development among multiple working interest owners party to multiple oil and gas leases. Accordingly, the rights and responsibilities associated with the capture of minerals are allocated by and between such working interest owners according to their respective working interests subject, in most cases, to a contractual arrangement governing operations on the Contract Area ordinarily referred to as a joint operating agreement (each, a "JOA," and together, "JOAs"), or, absent a JOA or similar agreement, subject to the application of well-established real property and contractual precedents.

² This amount includes approximately \$100 million in "suspense," consisting of Royalties due and owing to certain holders of Mineral and Other Interests and Non-Op Working Payments, but which amounts are otherwise unpayable for a variety of reasons, including incorrect contact information, unmarketable title, and ongoing disputes over ownership of the underlying interest.

14. The Debtors hold Non-Op Working Interests in approximately 200 wells under various JOAs to which the Debtors are party. In such instances, the Debtors receive payments representing their share of production revenues and then reimburse the operators for their share of production costs through payment of joint-interest billings (the “JIBs” and together with Royalties and Non-Op Working Payments, the “Mineral Obligations”). Rights to payment of JIBs often are secured under contractual lien rights or statutory lien rights in favor of the operator against the Debtors’ interest in the respective wells or are subject to recoupment and setoff. Specifically, the rights to payment of the JIBs are secured under the JOAs. The Debtors typically make JIB payments 30 days after receiving an invoice which is typically received within the first 10 days of the month.

15. As of the Petition Date, the Debtors estimate that there is approximately \$7,980,000 on account of JIB payments outstanding, approximately \$2,520,000 of which will become due and owing in the first 25 days of these chapter 11 cases. The Debtors request authority to remit prepetition JIB payments and to continue remitting JIB payments in the ordinary course of business on a postpetition basis, in each instance subject to the Debtors’ rights to dispute asserted amounts and to withhold payment pending resolution of any such dispute.

Basis for Relief

I. The Debtors Should Be Authorized to Pay the Royalties and the Non-Op Working Payments.

A. Proceeds Attributable to the Mineral and Other Interests Are Not Property of the Debtors’ Estates.

16. Section 541 of the Bankruptcy Code generally provides that all property in which a debtor has a legal or equitable interest, including any interest in property that a debtor acquires postpetition, becomes property of the estate upon the commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1), (a)(7). Importantly, section 541 of the Bankruptcy Code does not by itself

create new legal or equitable interests in property; instead, “[p]roperty interests are created and defined by state law.” *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (noting that “Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law”). Indeed, Congress was clear that section 541(a)(1) of the Bankruptcy Code “is not intended to expand the debtor’s rights against others more than they existed at the commencement of the case.” H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 367–68 (1977); *see also Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) (holding that the “rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less”). Thus, if a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor’s estate under section 541 and the debtor is prohibited from distributing such property to its creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) (“The Bankruptcy Act simply does not authorize a [debtor] to distribute other people’s property among a bankrupt’s creditors . . . [S]uch property rights existing before bankruptcy in persons other than the bankrupt must be recognized and respected in bankruptcy.”).

17. Further, section 541(d) of the Bankruptcy Code provides that a debtor who holds only bare legal title to, but no equitable interest in, such property as of the commencement of the case does not obtain an equitable interest in such property pursuant to section 541 of the Bankruptcy Code. Specifically:

Property in which the debtor holds, as of the commencement date of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

18. Courts in this district have interpreted section 541(d) to “expressly” provide that “property in which a debtor holds only bare legal title is not property of the estate.” *Golden v. Guardian (In re Lenox Healthcare, Inc.)*, 343 B.R. 96, 100 (Bankr. D. Del. 2006). When a debtor holds legal title to but does not have equitable interest in certain property, the debtor must turn such property over to the holders with such equitable interest in the property. *See MCZ, Inc. v. Andrus Res., Inc. (In re MCZ, Inc.)*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) (“[w]here Debtor merely holds bare legal title to property as agent or bailee for another, Debtor’s bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner.” (citations omitted)). A debtor who holds proceeds attributable to property owned by another holds only bare legal title to such property, and thus must turnover such proceeds to the interest holder of such property. *See, e.g., In re Columbia Pac. Mortg., Inc.*, 20 B.R. 259, 262–64 (Bankr. W.D. Wash. 1981) (awarding holder of participation ownership interest proceeds of a property sale because holder was beneficial owner, and debtor only held legal title to the proceeds).

19. Additionally, courts have held that section 541 of the Bankruptcy Code expressly provides that if a debtor holds only a legal, but not an equitable, interest in property as of the petition date, such property is not property of the estate. *See, e.g., In re Contractor Tech., Ltd.*, 343 B.R. 573, 583 (Bankr. S.D. Tex. 2006) (finding that a claimant with equitable title had a right to assert a beneficial interest to those funds held in the estate). Because the Debtors arguably have only legal title, not an equitable interest, in the proceeds of the oil and gas sales attributable to the Mineral and Other Interests, any funds held by the Debtors on account of such interest owners may not be property of the Debtors’ estates. Thus, the Debtors may not be entitled to distribute any such funds to their general creditors. Similarly, the holders of Mineral

and Other Interests may assert that the Debtors hold no legal or equitable interests in the proceeds of marketed production and that the Debtors are simply a conduit that receives a fee in exchange for marketing and ensuring that other parties receive the amounts due to them (i.e., the amounts received on account of the marketed production is not property of the estate). *See, e.g.*, 52 OK. Stat. § 52-549.3 (“to secure the obligations of a first purchaser to pay the sales price, each interest owner is hereby granted an oil and gas lien to the extent of the owner’s interest in oil and gas rights”); Tex. Bus. & Com. Code § 9.343 (providing a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price).

20. If the Debtors merely hold bare legal title to the accrued prepetition proceeds of oil and gas sales that are due to be remitted to holders of Mineral and Other Interests, no creditors will be prejudiced by the relief requested in this Motion. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to satisfy their prepetition and postpetition obligations to holders of Mineral and Other Interests in the ordinary course of business.

21. Additionally, to the extent the Debtors have proceeds of the holders of Mineral and Other Interests in their possession, the Debtors may only hold bare legal title to such funds and hold no legal title to the percentage of the oil and gas production attributable to such Mineral and Other Interests. Indeed, the Debtors only take possession of the holders of Mineral and Other Interests’ share of oil and gas production, or the proceeds therefrom, because they market and sell the oil and gas production on behalf of the holders of Mineral and Other Interests and Non-Op Working Interests before remitting the Royalties and Non-Op Working Payments. Courts in this district have held that in such situations, a resulting trust is established on behalf of

the holders of oil and gas royalty interests. *See Vess Oil Corp. v. SemCrude, L.P. (In re SemCrude, L.P.)*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) (holding that funds in debtors' possession held on behalf of royalty interest holders were held in a resulting trust for such parties, debtors only held bare legal title to such property, and thus such funds were not property of the estate). The Supreme Court has held that property held by debtors for a third party (such as funds held on account of a resulting trust) is not property of the estate. *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990) ("Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.'"); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) (noting that "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition" from the bankruptcy estate). Thus, any property held by the Debtors on account of the holders of Mineral and Other Interests may be not property of the Debtors' estates.

22. Courts in this district have routinely authorized payment to working interest holders and mineral payees under similar circumstances. *See, e.g., In re Enduro Resource Partners, LLC*, No. 18-11174 (KG) (Bankr. D. Del. June 8, 2018) (authorizing payment of prepetition obligations to working interest holders and mineral payees and authorizing the debtors to continue making such payments postpetition in the ordinary course); *In re EV Energy Partners, L.P.*, No. 18-10814 (CSS) (Bankr. D. Del. Apr. 25, 2018) (same); *In re Chapparral Energy Inc.*, No. 16-11144 (LSS) (Bankr. D. Del. June 7, 2016) (same); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. Apr. 19, 2016) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Jan. 11, 2016) (same).³

³ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

B. Payment Is Authorized by Sections 105(a) and 363(b) of the Bankruptcy Code.

23. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

24. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also James A. Phillips*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

25. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code

codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

26. The relief requested herein is appropriate and warranted under both sections 363(b) and 105(a) of the Bankruptcy Code. The authority to satisfy the Royalties and the Non-Op Working Payments in the initial days of these chapter 11 cases without disrupting the Debtors' operations will send a clear signal to the marketplace, including holders of Mineral and Other Interests and Non-Op Working Interests, that the Debtors are willing, and,

importantly, able to conduct business as usual during these chapter 11 cases. If the relationships established by the Debtors with the holders of Mineral and Other Interests and Non-Op Working Interests are harmed, whether through non-payment or perceived difficulties of working with a chapter 11 debtor, the Debtors may be unable to secure future opportunities with those parties and other third parties may be unwilling to engage in new business with the Debtors going forward. If that were to occur, the negative impact on the Debtors' business, their estates, and creditors would be severe.

27. Based on the potentially dire consequences that would result if the Debtors fail to honor the Royalties and the Non-Op Working Payments, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code

28. Additionally, satisfaction of the prepetition JIBs is necessary to the Debtors' business operations. If the Debtors fail to satisfy the prepetition JIBs as they become due, the Debtors' drilling and production operations will be severely impacted, production may completely cease for certain wells, or leases may be lost. Rights to JIB payments are often secured under statutory lien rights, and failure to timely pay JIBs owing by the Debtors is likely to lead to instances of attempted setoff or recoupment. Because the Debtors intend to assume substantially all of their JOAs and to continue to honor all pooling orders, granting the requested relief will merely affect the timing of the payment and operating interest owners will not receive more than they are otherwise entitled to under applicable state law and the Bankruptcy Code. Moreover, failure to satisfy JIB commitments would undoubtedly force the Debtors to spend

significant time and resources focusing on particularized disputes with the very parties on whom they depend to operate their interests.

29. Courts in this district have routinely authorized payment to working interest holders and mineral payees under similar circumstances. *See, e.g., In re Enduro Resource Partners, LLC*, No. 18-11174 (KG) (Bankr. D. Del. June 8, 2018) (authorizing payment of prepetition obligations to working interest holders and mineral payees and authorizing the debtors to continue making such payments postpetition in the ordinary course); *In re EV Energy Partners, L.P.*, No. 18-10814 (CSS) (Bankr. D. Del. Apr. 25, 2018) (same); *In re Chapparral Energy Inc.*, No. 6-11144 (LSS) (Bankr. D. Del. June 7, 2016) (same); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. Apr. 19, 2016) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Jan. 11, 2016) (same).

II. Payment of the Mineral Obligations Is in Furtherance of the Debtors' Fiduciary Duties Under Bankruptcy Code Sections 1107(a) and 1108.

30. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *CoServ*, 273 B.R. at 497. Implicit in the duties of chapter 11 debtors in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

31. Courts have noted that there are instances in which debtors in possession can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to “sole suppliers of a given product.” *Id.* at 498. The court provided a three-pronged test for determining whether a

preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

32. Payment of the Royalties and the Non-Op Working Payments meets each element of the *CoServ* court's standard. **First**, as described above, each of the holders of Mineral and Other Interests and Non-Op Working Interests hold real property interests in the Debtors' oil and gas interests. **Second**, failing to make the Royalties and the Non-Op Working Payments when due could result in liens being placed on the Debtors' oil and gas interests, including proceeds therefrom, and could result in the Debtors being replaced as Operator under certain JOAs, pooling orders or oil and gas leases. The time and cost attendant to multiple liens being perfected on the Debtors' assets could significantly disrupt the Debtors' businesses and chapter 11 process, which could cost the Debtors' estates a substantial amount in lost revenue. Accordingly, the harm and economic disadvantage that would stem from failure to pay any of the Royalties and the Non-Op Working Payments is grossly disproportionate to the amount of the prepetition obligations that would have to be paid. And, **third**, with respect to each of the holders of Mineral and Other Interests and Non-Op Working Interests, the Debtors have determined that, to avoid significant disruption of the Debtors' business operations, there is no practical or legal alternative to payment of the prepetition Royalties and the Non-Op Working Payments. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession

under sections 1107(a) and 1108 of the Bankruptcy Code by paying the Royalties and the Non-Op Working Payments.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

33. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Mineral Obligations. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

34. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. For the reasons discussed above, authorizing the Debtors to pay the Royalties or Non-Op Working Payments that accrued prior to the Petition Date and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

35. To implement the foregoing successfully, the Debtors request that the Court enter an Order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

36. Nothing contained in this Motion or any actions taken by the Debtors pursuant to any order granting the relief requested by this Motion is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

Notice

37. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (d) the lenders under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (e) lenders under the Debtors' debtor-in-possession financing facilities or, in lieu thereof, counsel thereto; (f) the administrative agent under the Debtors' debtor-in-possession financing facilities or, in lieu thereof, counsel thereto; (g) the indenture trustee for the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (h) the holders of the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (i) the ad hoc group of holders of the Debtors' preferred equity or, in lieu thereof, counsel thereto; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the United States Securities and Exchange Commission; (m) the state attorneys general for states in which the Debtors conduct business; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

38. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: June 15, 2020
Wilmington, Delaware

/s/ Richard W. Riley

WHITEFORD, TAYLOR & PRESTON LLC¹

Marc R. Abrams (DE No. 955)
Richard W. Riley (DE No. 4052)
Stephen B. Gerald (DE No. 5857)
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Facsimile: (302) 661-7950
Email: mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

- and -

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Christopher Marcus, P.C. (*pro hac vice* pending)
Allyson Smith Weinhouse (*pro hac vice* pending)
Ciara Foster (*pro hac vice* pending)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: christopher.marcus@kirkland.com
allyson.smith@kirkland.com
ciara.foster@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

¹ Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹	)	Case No. 20-11548 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

**INTERIM ORDER (I) AUTHORIZING PAYMENT OF
(A) ROYALTIES, (B) NON-OP WORKING PAYMENTS,
AND (C) JOINT INTEREST BILLINGS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an interim order (this “Interim Order”), (a) authorizing the payment or application of funds attributable to the Royalties and the Non-Op Working Payments, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020 at __: __.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the Debtors, Extraction Oil & Gas, Inc., 370 17th Street, Suite 5300, Denver, Colorado 80202, Attn: Eric Christ; (b) proposed counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Christopher Marcus, P.C., Allyson Smith Weinhouse, and Ciara Foster and (ii) Whiteford, Taylor & Preston LLC, The Renaissance Centre, Suite 500, 405 North King Street, Wilmington, Delaware 19801, Attn: Marc R. Abrams, Richard W. Riley, and Stephen B. Gerald; (c) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Richard L. Schepacarter; (d) counsel to the administrative agent under the Debtors' prepetition senior credit facility, Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attn: Dewey J. Gonsoulin Jr., William A. (Trey) Wood III, and Heather Brown; (e) counsel to the ad hoc group of lenders under the Debtors' prepetition senior notes, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, Attn: Andrew Rosenberg, Alice Belisle Eaton, Christopher Hopkins, Douglas Keeton and Omid

Rahnama and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan & Sean T. Greecher; (f) counsel to the ad hoc group of holders of the Debtors' preferred equity, Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010, Attn: Benjamin Finestone; and (g) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized to pay, in an aggregate interim amount not to exceed \$23,160,000, prepetition amounts owed to holders of Mineral and Other Interests and Non-Op Working Interests and on account of JIBs in the ordinary course of business.

4. The Debtors shall remit, pay, apply, or setoff, as applicable, the Royalties and the Non-Op Working Payments when due as they deem appropriate in the exercise of their business judgment.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Interim Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim

Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Mineral and Other Interests, Non-Op Working Interests and JIBs.

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹	)	Case No. 20-11548 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

**FINAL ORDER (I) AUTHORIZING PAYMENT OF
(A) ROYALTIES, (B) NON-OP WORKING PAYMENTS
AND (C) JOINT INTEREST BILLINGS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of final order (this “Final Order”) (a) authorizing the payment or application of funds attributable to Mineral Obligations and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized to pay, in an aggregate final amount not to exceed \$169,480,000, prepetition amounts owed to holders of Mineral and Other Interests and Non-Op Working Interests and on account of JIBs in the ordinary course of business.
3. The Debtors shall remit, pay, apply, or setoff, as applicable, the Royalties and the Non-Op Working Payments when due as they deem appropriate in the exercise of their business judgment.
4. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest

the extent, validity, or perfection, or to seek avoidance of all such liens. Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Mineral and Other Interests, Non-Op Working Interests and JIBs.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.