

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER ESTABLISHING A  
RECORD DATE FOR NOTICE OF POTENTIAL SELL-DOWN PROCEDURES  
FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS’ ESTATES**

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

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Record Date Order”), establishing the date the Court enters the Record Date Order as the effective date (the “Record Date”) for notice of potential sell-down procedures for trading in certain claims against the Debtors’ estates in order to preserve the Debtors’ ability to formulate a plan of reorganization that maximizes the use of their Tax Attributes (as defined below).<sup>2</sup>

**Jurisdiction and Venue**

1. 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*

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<sup>1</sup> 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.

<sup>2</sup> The Debtors filed contemporaneously herewith the *Debtors’ Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Shares, and (II) Granting Related Relief* (the “Equity Trading Motion”).



*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.

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

3. The bases for the relief requested herein are sections 362 and 541 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 3002 and 9014, and Bankruptcy Local Rule 9013-1.

4. 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.

5. 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.

### **The Tax Attributes**

6. The Debtors have and anticipate that they will continue to incur significant net operating losses (“NOLs”) and substantial tax basis in their assets (together, the “Tax Attributes”). The Debtors may utilize the Tax Attributes to offset their future taxable income, thereby reducing their future aggregate tax obligations.<sup>3</sup> Vitality, such Tax Attributes may also be utilized by the Debtors to offset any taxable income generated by transactions consummated during these chapter 11 cases. The Debtors’ ability to use their Tax Attributes may, however, be lost (or extremely limited) if they experience an “ownership change” for tax purposes and are unable to take advantage of certain favorable rules that apply to ownership changes that occur pursuant to a bankruptcy plan of reorganization (as described more fully below). Thus, to protect their ability to utilize the Tax Attributes (and, specifically, to rely on the favorable rule described below), the Debtors may ultimately need to seek an order (a “Sell-Down Order”) requiring any persons or entities that have initiated a transaction to acquire debt claims against the Debtors on or after the Record Date, in such an amount that the holders of such claims would be entitled to receive more than 4.5 percent of the equity of the reorganized Debtors (collectively, the “Substantial Claimholders”) to sell down their claims below the 4.5 percent threshold amount.

7. At this stage, it is too early to determine whether it is (or will be) necessary for the Debtors to obtain a Sell-Down Order. Accordingly, this Motion does not seek entry of a Sell-Down Order. Instead, this Motion merely seeks to establish the Record Date through entry of the

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<sup>3</sup> In addition, under certain circumstances, certain NOLs may be “carried back” to offset taxable income in prior years. The specific rules regarding carrybacks and carryforwards depend on when a particular NOL was generated.

proposed Record Date Order. The Record Date Order will provide notice of the Record Date to persons and entities that trade claims against the Debtors that their claims ultimately may be subject to sell-down. This notice will communicate: (a) that, subject to further Court order, such creditor's claims may ultimately be subject to sell-down; and (b) the date after which purchased claims could be subject to sell-down (*i.e.*, on or after the Record Date). Thus, the *only* purpose of the Record Date Order is to set and provide notice of the Record Date, which will serve as a placeholder should the Debtors later determine that a Sell-Down Order is necessary to preserve the Tax Attributes. And, if the Debtors later determine that a Sell-Down Order is necessary, the Debtors will file a separate motion requesting entry of a Sell-Down Order applicable to all claims traded *on or after* the Record Date.

**I. The Significance of the Debtors' Valuable Tax Attributes.**

8. As of December 31, 2019, the Debtors estimate they had approximately \$1.1 billion of federal NOL carryforwards, \$400 million of capitalized intangible drilling costs, and \$1.6 billion of tax basis in their oil and gas assets. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Debtors can carry forward certain Tax Attributes to offset their future taxable income in future years. In addition, such Tax Attributes may be utilized by the Debtors to offset any taxable income generated by transactions consummated during these chapter 11 cases. Failure to preserve such assets could cause the Debtors' estates to suffer a significant tax liability to the detriment of stakeholder interests.

**II. Limitations on Use of the Tax Attributes.**

9. Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "IRC"), limit the amount of taxable income and tax liability, respectively, that can be offset by a corporation's tax attributes in taxable years (or portions thereof) following an "ownership change." Generally, an "ownership change" occurs if the percentage (by value) of the stock of a

corporation owned by one or more five-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the three-year testing period ending on the date of the ownership change. *See* IRC § 382.

10. Although sections 382 and 383 of the IRC impose annual limitations on a taxpayer's use of its Tax Attributes, a special provision of section 382 also provides significant relief to a debtor if an ownership change occurs in the context of a confirmed chapter 11 plan and certain requirements are satisfied. Under section 382(l)(5) of the IRC, a debtor corporation is not subject to the general limitation imposed by sections 382 and 383 of the IRC with respect to an ownership change if, as a result of the transactions contemplated by a bankruptcy plan, historic stockholders and/or the debtor corporation's "qualified creditors" own at least 50 percent of the total value and voting power of the reorganized debtor's stock (the "Section 382(l)(5) Exception"). *See* IRC § 382(l)(5)(A).<sup>4</sup>

11. In order to qualify for the Section 382(l)(5) Exception, "qualified creditors" (together with historic stockholders) must hold at least 50 percent of their stock immediately after emergence to preserve the majority of the Tax Attributes. A key aspect of the "qualified creditor" analysis is the length of time that creditors have held their claims, together with a favorable presumption regarding that holding period that applies to certain creditors who receive less than 5 percent of the stock of a reorganized company. The proposed order is designed to ensure that

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<sup>4</sup> A "qualified creditor" is generally one who (a) has held its claim continuously since at least 18 months prior to the petition date or (b) has, at all times, held a claim incurred in the ordinary course of the debtor's trade or business since the claim was incurred. *See* IRC § 382(l)(5)(E); Treas. Reg. § 1.382-9(d). For these purposes Treasury Regulations section 1.382-9(d)(3) permits taxpayers to treat certain claim holders as *always* having held such claim if such claim holder owns less than 5 percent of the corporation's stock immediately following the ownership change, unless such claim holder's participation in formulating a plan of reorganization makes evident to the taxpayer (whether or not the taxpayer had previous knowledge) that the claim holder has not owned such claim for the requisite period.

the Debtors preserve their ability to request Sell-Down Procedures (as defined below) if doing so is necessary and sufficient to satisfy this “qualified creditor” rule to preserve the Tax Attributes.

12. If an ownership change occurred in the context of a confirmed chapter 11 plan and the Debtors were unable to take advantage of the Section 382(l)(5) Exception, sections 382 and 383 of the IRC could significantly limit the amount of taxable income and tax liability, respectively, that the Debtors could offset by their “pre-change losses” in taxable years (or a portion thereof) following an “ownership change.” *See* IRC § 382(b). The Debtors’ “pre-change losses” would include the NOLs and any so-called “recognized built-in losses” (including certain depreciation attributable to a “net unrealized built-in loss”).<sup>5</sup>

#### **Notice and Summary of Potential Sell-Down Procedures**

13. The Debtors anticipate that they may need to seek entry of a Sell-Down Order that will enable them to (a) determine whether the Debtors will qualify for the Section 382(l)(5) Exception and, if necessary, (b) require certain Substantial Claimholders to “sell-down” claims to the extent necessary to allow the Debtors to qualify for the Section 382(l)(5) Exception (the “Sell-Down Procedures”).

14. Any potential Sell-Down Procedures would require a person or entity holding an amount of claims entitling that holder to receive more than 4.5 percent of the equity of the reorganized Debtors (the “Threshold Amount”) to provide the Debtors with limited information such as the size of those holdings and the date those holdings were acquired. The amount of all claims held by a claimholder as of the Record Date would constitute the “Protected Amount.”

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<sup>5</sup> The rules relating to potential limitations on the ability to offset taxable income with so-called recognized built-in losses are highly complex and depend on, among other things, the extent (if any) of a debtor’s “net unrealized built-in loss.” A net unrealized built-in loss is equal to the excess of the aggregate adjusted basis of all of a corporation’s application assets over their fair market value (as determined for purposes of section 382 of the IRC) immediately prior to the ownership change. IRC § 382(h)(3)(A).

Claimholders would never be required to sell down their claims below the Threshold Amount or the Protected Amount, whichever is greater. In other words, the Sell-Down Order (if sought by the Debtors and entered by the Court) would apply only to entities that acquire claims in excess of the Threshold Amount *on or after* entry of the proposed Record Date Order and with full notice of the possibility that the claims they acquire could be subject to sell-down *if* the Debtors later determine that the Sell-Down Procedures are necessary.

15. If the Sell-Down Procedures prove to be necessary, the Debtors would seek to require claimholders with claims greater than the Threshold Amount to provide updated holdings information shortly after the date on which the Court approves a disclosure statement for a plan of reorganization that endeavors to utilize the Section 382(l)(5) Exception. Based on the updated holdings information, the Debtors would then determine whether it would be necessary to require claimholders holding claims in excess of the Threshold Amount and its Protected Amount to sell down a portion of their holdings to preserve the Tax Attributes. The Debtors would only require a sell-down if it were deemed necessary for the Debtors to qualify for the Section 382(l)(5) Exception, and in no event would the Debtors seek to require a claimholder to sell-down claims below its Protected Amount, or the Threshold Amount, whichever is greater. In the event that the Debtors seek entry of a Sell-Down Order, the Debtors would seek to provide adequate notice and opportunity for claimholders to sell down their claims without triggering an unreasonable adverse impact on the value of such claims.

16. The Debtors will provide notice, substantially in the form annexed as **Exhibit 1** to **Exhibit A** attached hereto, of the entry of the proposed Record Date Order to each of the Debtors' creditors (the "Record Date Order Notice"), and will supplement such notice if and when new creditors make themselves known to the Debtors by requesting service pursuant to Bankruptcy

Rule 2002 or filing a proof of claim. The Record Date Order Notice will be provided within five (5) business days of the Record Date Order. Thus, entry of the proposed Record Date Order at the early stages of these chapter 11 cases will provide all claimants affected thereby with advance notice prior to any opportunity to trade in claims against the Debtors purchased after entry of the Record Date Order may ultimately be subject to the Sell-Down Procedures. As a result, if a claimholder were required to sell down its holdings, the claimholder would have adequate notice and opportunity to effectuate the sell-down until shortly before the Debtors consummate a plan of reorganization.

**The Proposed Record Date Order Is Narrowly Tailored**

17. Approval of the proposed order does not constitute approval of any Sell-Down Procedures, or even endorse the notion of Sell-Down Procedures. Moreover, the proposed order will not impose a burden on any party since the proposed order alone—without a Sell-Down Order—will not affect the rights of any party. As stated above, the proposed order merely establishes the Record Date as the effective date for any Sell-Down Procedures established in the future, and provides notice to claimholders and claims traders that if the Debtors eventually request and the Court ultimately approves the Sell-Down Procedures, the Protected Amounts will be measured as of the Record Date and the claimholders may be subject to a required sell-down of any claims purchased on or after the Record Date.

18. The relief requested herein is similar to relief granted in this and other jurisdictions. *See, e.g., In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 24, 2019) (establishing a record date for notice of potential sell-down procedures); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (same); *In re Sanchez Energy Corporation*, No. 19-34508 (MI) (Bankr. S.D. Tex. October 4, 2019) (same); *In re Windstream Holdings, Inc.*, No. 19-22312



(RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (same); *In re GenOn Energy, Inc.*, No. 17-33695 (DRJ) (Bankr. S.D. Tex. Jun. 16, 2017) (same).<sup>6</sup>

19. For the avoidance of doubt, entry of the proposed order would in no way be deemed a determination of any kind that entry of a Sell-Down Order is necessary or warranted in these chapter 11 cases and the Court's review of any request for entry of a Sell-Down Order would stand on its own merits notwithstanding the Court's entry of the proposed order as requested herein.

### **Basis for Relief**

#### **I. The Tax Attributes are Property of the Debtors' Estate.**

20. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541. The Tax Attributes are property of the Debtors' estates. *See, e.g., Official Comm. of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines, Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) ("We hold that the right to a carryforward attributable to its . . . NOL was property of [the debtor's] bankruptcy estate."), *cert. denied*, 502 U.S. 821 (1991); *In re Delta Air Lines, Inc.*, No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (finding that NOLs are property of the debtors' estates); *In re Forman Enters., Inc.*, 273 B.R. 408, 416 (Bankr. W.D. Pa. 2002) (same); *In re White Metal Rolling & Stamping Corp.*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (same). Section 362(a)(3) of the Bankruptcy Code, moreover, stays "any act [of an entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Because the Tax Attributes are property of the Debtors' estates, the Debtors have a duty to take steps to preserve such attributes, and this Court

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<sup>6</sup> 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.

has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by taking steps to restrict the transfer of claims that could jeopardize the existence of these valuable assets.

**II. The Requested Relief Is Necessary to Avoid Immediate and Irreparable Harm to the Debtors.**

21. Entry of the Record Date Order will not affect the rights of any party in interest; instead, it will set and preserve the Record Date should Sell-Down Procedures eventually become necessary to avoid the imposition of an irrevocable limitation on the Debtors' utilization of the Tax Attributes. Whether or not the Debtors request—and the Court ultimately implements—the Sell-Down Procedures, entry of the Record Date Order protects the Debtors' option to choose to preserve the Tax Attributes without prejudicing any party in interest. To preserve the Debtors' ability to request and implement the Sell-Down Procedures, the Debtors seek to notify claims traders prospectively that claims acquired on or after the Record Date may be subject to sell-down. Entry of the Record Date Order will preserve the Debtors' flexibility to seek to implement the Sell-Down Procedures if they determine that proposing a plan of reorganization that would take advantage of the Section 382(l)(5) Exception is in the best interest of their estates. Without the Record Date Order fixing the Record Date on or about the commencement of these chapter 11 cases, it is unlikely that the Debtors would ever be able to implement the Sell-Down Procedures and thereby avoid limitations on, and possibly the loss of, the Tax Attributes.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

22. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, authorizing the Debtors to establish the Record Date to protect the Debtors against the possible loss or limitation of the Tax Attributes, as well as granting the other relief requested herein, is integral to the Debtors' ability to preserve the value of their estates.

Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would increase the risk that the Debtors would lose the benefits of their Tax Attributes. For the reasons discussed herein, the relief requested is necessary for the Debtors to preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. 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.

### **Reservation of Rights**

23. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any 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 or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this

Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

24. 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).

**Notice**

25. 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**

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

*[Remainder of the page intentionally left blank.]*

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, 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*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>1</sup>**

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

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

**Exhibit A**

**Proposed Order**

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

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

**ORDER ESTABLISHING A RECORD  
DATE FOR NOTICE OF POTENTIAL SELL-DOWN PROCEDURES  
FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS’ ESTATES**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Record Date Order”) establishing an effective date for notification of potential sell-down procedures for trading in claims against the Debtors’ estates, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference; 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 relief requested in the Motion 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

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<sup>1</sup> 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.

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



hearing on the Motion were appropriate under the 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 as set forth herein.
2. Within five (5) business days after the entry of this Record Date Order, the Debtors shall provide notice, substantially in the form attached hereto as **Exhibit 1**, to each of the Debtors' known creditors of the terms of this Record Date Order.
3. The Record Date Order Notice is deemed adequate and sufficient so that, if the Court ultimately approves a Sell-Down Order, claimholders that acquired debt claims on or after the Record Date, for an amount that would entitle them to receive more than 4.5 percent of the equity of the reorganized Debtors, may be subject to a required sell-down of any claims that were purchased as part of a transaction initiated on or after the Record Date to the extent authorized by the Court after appropriate opportunity for notice and a hearing, *provided* that any Sell-Down Order shall not require any claimholder to sell down claims below its Protected Amount or the Threshold Amount, whichever is greater
4. Entry of this Record Date Order shall in no way be deemed a determination of any kind that entry of a Sell-Down Order is necessary or warranted in these cases and this Court's review of any request for entry of a Sell-Down Order shall be without regard to entry of this Record Date Order.

5. The entry of this Record Date Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and all parties' rights are expressly preserved hereby.

6. The requirements set forth in this Record Date Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

7. All time periods set forth in this Record Date Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

8. 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.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

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

**Exhibit 1**

**Proposed Record Date Order Notice**

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

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

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**NOTICE OF ENTRY OF AN ORDER ESTABLISHING A  
RECORD DATE FOR NOTICE OF POTENTIAL SELL-DOWN PROCEDURES  
FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

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PLEASE TAKE NOTICE that on June 14, 2020 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed a petition with the United States Bankruptcy Court for the District of Delaware (the "Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE that on June 15, 2020, the Debtors filed the *Debtors' Motion Seeking Entry of an Order Establishing a Record Date for Notice of Potential Sell-Down Procedures for Trading in Certain Claims Against the Debtors' Estates* [Docket No. \_\_] (the "Motion").

PLEASE TAKE FURTHER NOTICE that on [●], 2020, the Court entered the *Order Establishing a Record Date for Notice of Potential Sell-Down Procedures for Trading in Certain Claims Against the Debtors' Estates* [Docket No. \_\_] (the "Record Date Order") establishing an

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<sup>1</sup> 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.

effective date for notice of potential Sell-Down Procedures (as defined in the Motion) for trading in claims against the Debtors' estates. The "Record Date" is [●], 2020.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Record Date Order, claimholders and potential purchasers of claims against the Debtors are hereby notified that, if the Court ultimately approves a Sell-Down Order, claimholders that acquired debt claims on or after the Record Date, for an amount that would entitle them to receive more than 4.5 percent of the equity of the reorganized Debtors under the Debtors' plan of reorganization, may be subject to a required sell-down of any claims purchased as part of a transaction initiated on or after the Record Date, *provided* that any Sell-Down Order shall not require any claimholder to sell down claims below its Protected Amount or the Threshold Amount, whichever is greater

**PLEASE TAKE FURTHER NOTICE** that all persons or entities that initiated a trade for debt claims against the Debtors on or after the Record Date and currently hold such claims in such an amount that the persons or entities holding such claims would be entitled to receive more than 4.5 percent of the equity of the reorganized Debtors under the Debtors' plan of reorganization may be required to identify themselves to the Debtors before the deadline to object to confirmation of the Debtors' plan of reorganization [Docket No. [●]], which is **[●], 2020, at 5:00 p.m., prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that complete copies of the Motion and Record Date Order, with additional information about the Record Date and possible Sell-Down Order, are available via PACER on the Court's website at <https://ecf.deb.uscourts.gov> for a fee, or free of charge by accessing the Debtors' restructuring website at <http://www.kccllc.net/extractionog>.

**PLEASE TAKE FURTHER NOTICE** that the entry of the Record Date Order shall in no way be deemed a determination that entry of a Sell-Down Order is necessary or warranted in

these cases, the entry of the Record Date Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and all parties' rights are expressly preserved in the Record Date Order.

**PLEASE TAKE FURTHER NOTICE** that the requirements set forth in this notice are in addition to the requirements of applicable law and do not excuse compliance therewith.

*[Remainder of page intentionally left blank]*

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

*/s/ DRAFT*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>1</sup>**

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