Docket #1221 Date Filed: 12/01/2020

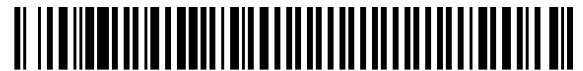
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EXTRACTION OIL & GAS, INC. *et al.*,[1]	)	Case No. 20-11548 (CSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Re: D.I. 14, 363, 681, 942, 1038, 1048, 1158**

DEBTORS' RESPONSE IN OPPOSITION TO MOTION OF GRAND MESA PIPELINE, LLC FOR STAY PENDING APPEAL OF ORDER GRANTING MOTIONS TO REJECT CERTAIN EXECUTORY CONTRACTS

Extraction Oil & Gas, Inc. ("Extraction") and its above-captioned debtor affiliates (with Extraction, "Debtors") respectfully submit this response in opposition to the Motion of Grand Mesa Pipeline, LLC for Stay Pending Appeal of Order Granting Motions to Reject Certain Executory Contracts [D.I. 1158] (the "Motion"). The Court should deny Grand Mesa Pipeline, LLC's ("Grand Mesa") Motion. In support, Debtors respond as follows:

[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.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PRELIMINARY STATEMENT

1. The Court already rejected the merits of Grand Mesa's arguments. The Court should also reject Grand Mesa's meritless request for a stay pending appeal. Indeed, as Grand Mesa notes, the Court already denied a motion to stay from a similarly-situated midstream party. *See Motion* at ¶ 11. The Court should deny Grand Mesa's request for the same reasons. *See* Ex. A (Nov. 2, 2020 Hearing Tr. Excerpt) at 43:20–44:23. Specifically, "the likelihood of success on the merits prong . . . weighs heavily in favor of the [D]ebtors, at least in connections with stay pending appeal." *Id.* at 44:8–11. Similarly, "the irreparable harm is covered by money damages, as [the Court] said a couple times in the ruling." *Id.* at 44:14–16. Finally, "[a] balance of the equities . . . weigh in favor of the [D]ebtors [and the Court] also considered the public interest and [the Court] say[s] that that weighs in favor of the [D]ebtors." *Id.* at 44:18–23.

2. Accordingly, none of the factors considered when analyzing a motion for a stay favor granting the Motion. ***First***, Grand Mesa has not demonstrated a likelihood of success on the merits, let alone a strong likelihood of success. Grand Mesa's argument boils down to the contention that the Court got its rejection decision wrong. The Court, however, was not wrong; it correctly applied the law to the facts of this case. ***Second***, Grand Mesa will not suffer irreparable harm. Grand Mesa's attempt to avoid the obvious flaw in its argument—the availability of monetary damages as an adequate legal remedy—is based on a faulty premise that this Court already rejected: that rejection of the transportation agreements "eviscerated" its "real property rights . . . ." *Motion* at ¶ 3. ***Third***, Debtors will be substantially injured by a stay that would result in the loss of millions of dollars in savings from moving to alternative service providers. ***Fourth***, the public interest favors allowing Debtors to restructure their businesses under the Bankruptcy Code without a stay's delay of the restructuring process.

PROCEDURAL BACKGROUND

3. "Debtors are in the 'upstream' business of extracting hydrocarbons from land in the State of Colorado." *Findings of Fact and Conclusions of Law on Plaintiff's Motion for Summary Judgment Against Defendant, Grand Mesa Pipeline, LLC; and Defendant's Motion for Permissive Abstention* [A.D.I. 45] at 1 ("the Adversary Findings"). Grand Mesa is a midstream company "which transport[s] the Debtors' hydrocarbons to" downstream locations by pipeline. *Id.* at 2.

4. "On June 21, 2016, [Extraction], [Grand Mesa] and Bayswater Exploration & Production, LLC . . . entered into the Amended and Restated Transportation Services Agreement" (the "Bayswater Contract"). *Id.* at 3. On February 19, 2016, Extraction and Grand Mesa entered the Amended and Restated Transportation Services Agreement (the "Grand Mesa Contract"). *See Bench Ruling* [D.I. 942] at 1 n. 1. Herein, the Bayswater Contract and the Grand Mesa Contract are the "Transportation Agreements." The Transportation Agreements' rates were approved by the Federal Energy Regulatory Commission ("FERC"). *See id.* at 3.

5. On June 14, 2020, Debtors filed their petitions under Chapter 11 of the Bankruptcy Code, and subsequently sought to reject the Transportation Agreements. *See id.* at 2.

6. In an adversary proceeding, Debtors sought a declaratory judgment that the Bayswater Contract[2] did not create covenants that run with the land. *See Complaint* [A.D.I. 1]. The Court held that the Bayswater Contract did not create such real covenants. *See generally Adversary Findings*. On October 27, 2020, Grand Mesa filed a notice of appeal of the Court's decision. *Notice of Appeal* [A.D.I. 53].

[2] Grand Mesa did not argue that the Grand Mesa Contract created a covenant running with the land. Thus, all covenant running with the land arguments in the Motion are limited to the Bayswater Contract.

7. In objection to Debtors' rejection of the Bayswater Contract, Grand Mesa again argued the Bayswater Contract could not be rejected because it contained real covenants. Grand Mesa also argued that FERC must be allowed to weigh in on the rejection of the Transportation Agreements. The Court rejected these arguments and authorized Debtors' rejection of the Transportation Agreements on November 2, 2020. *See Bench Ruling* at 3. On November 11, 2020, Grand Mesa filed a notice of appeal of the Court's decision. *Notice of Appeal* [D.I. 1048].

LEGAL STANDARDS

8. When debtors are parties to executory contracts—those with material performance obligations outstanding on both sides—the Bankruptcy Code permits debtors to reject the contracts and "repudiat[e] any further performance of [their] duties." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1658 (2019). Rejection "constitutes a breach" of an executory contract. *See* 11 U.S.C. § 365(g). Consequently, counterparties receive "a claim against the estate for damages resulting from the debtor's nonperformance." *Mission Prod.*, 139 S. Ct. at 1658. "By thus giving the counterparty a pre-petition claim, [s]ection 365(g) places that party in the same boat as the debtor's unsecured creditors, who in a typical bankruptcy may receive only cents on the dollar." *Id.* Courts evaluate a debtor's rejection decision "under the deferential 'business judgment' rule" that merely requires the debtors to demonstrate that rejection of the contract will benefit its estate. *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982) *aff'd*, 465 U.S. 513 (1984). Courts approve rejection unless it is a product of "bad faith, or whim, or caprice." *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

9. When considering a motion to stay pending appeal, courts consider

> (1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

In re Revel AC, Inc., 802 F.3d 558, 568 (3d Cir. 2015) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 1776 (1987)). The first two factors are "the most critical," and the first factor is "the more important piece of the stay analysis." *See S.S. Body Armor I., Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 772 (3d Cir. 2019) (citations omitted). Also, a stay "is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citation omitted). Thus, the issuance of a stay is always a matter of judicial discretion. *Id.* at 433.

ARGUMENT

I. GRAND MESA DID NOT MAKE A STRONG SHOWING THAT IT IS LIKELY TO SUCCEED ON THE MERITS

10. In its ongoing effort to force the Debtors to assume uneconomic contracts, Grand Mesa regurgitates several arguments the Court already rejected. Grand Mesa's arguments boil down to arguing the Court was wrong on two issues: (1) the Bayswater Contract cannot be rejected because it contains real covenants and (2) FERC has jurisdiction to weigh in on the Court's authorization of contract rejection under the Bankruptcy Code. As this Court has held, each argument fails as a matter of law.

A. The Court Correctly Authorized the Rejection of the Bayswater Contract Because It Did Not Contain Real Covenants as a Matter of Law, and, Even If It Did, Rejection Is Appropriate

11. Despite arguing rejection was improper because the Transportation Agreements contain covenants that run with the land, Grand Mesa does not show why a court is likely to hold so on appeal or support its bald assertions of such alleged real property rights.

12. As a threshold matter, there are two contracts and Grand Mesa only argued that one of them (the Bayswater Contract) created real covenants; thus, this argument does not justify a stay of all proceedings.

13. Similarly, Grand Mesa ***does not cite a single case*** supporting its claim that the Court's ruling—that rejection is appropriate even if the Transportation Agreements did contain real covenants—was wrong. *See Motion* at ¶ 20. Instead, Grand Mesa alleges without support that "the Rejection Order rejects the body of bankruptcy case law holding that a real property covenant is not subject to rejection under the Bankruptcy Code." *Id.*

14. The Court's decision, however, is consistent with those of other courts that have considered this issue. *See, e.g.*, *In re Southland Royalty Co. LLC*, No. 20-10158 (KBO), 2020 WL 6685502, at *15 (Bankr. D. Del. Nov. 13, 2020) ("However, assuming *in arguendo* that the L63 Dedication is a real covenant, Southland may still reject the L63 Agreement. Real covenants are contractual obligations, albeit exceptional forms that bind landowners regardless of their consent."); *accord In re Arden & Howe Assocs., Ltd.*, 152 B.R. 971, 975 (Bankr. E.D. Cal. 1993) ("Section 365(h) makes no mention of, and imparts no significance to, the concept of running with the land in connection with what constitutes the leasehold."). Indeed, the Court's decision is in perfect harmony with the Bankruptcy Code, which allows for the rejection of ***any*** executory contract subject to express exceptions. *See* 11 U.S.C. § 365(a).

15. Additionally, the central pillar of Grand Mesa's argument has since collapsed. Grand Mesa largely relied on one case from the Southern District of Texas bankruptcy court to support its argument that contracts containing real covenants cannot be rejected in bankruptcy. *See In re Alta Mesa Res., Inc.*, 613 B.R. 90 (Bankr. S.D. Tex. 2019). Recently, that court wrote:

> ETC repeatedly asserts that the ETC Purchase Agreement cannot be an executory contract if it contains a covenant that runs with the land. ETC does not cite nor is the Court able to locate any authority for such a proposition. Likewise, [section] 365 of the Bankruptcy Code contains no such exclusion and no known rule or law prohibits the mutual existence of both concepts within a single document. It does not stretch the imagination to envision a contract that both contains a covenant that runs with the land and is executory. In such a circumstance, the appropriate analysis is what benefit was previously bestowed by the debtor on the non-rejecting

> party that remains post-rejection and what future performance by the debtor is excused by the rejection.

In re Chesapeake Energy Corp., No. 20-33233, 2020 WL 6325535, at *5 (Bankr. S.D. Tex. Oct. 28, 2020). The bankruptcy court also noted that the argument that an executory contract containing a real covenant may not be rejected was not raised in *Alta Mesa*. *Id.* at *5 n. 3 ("The Court's review of the record in the identified cases does not reflect that any party asserted that the agreement at issue could be rejected notwithstanding that a real property covenant would continue to burden the subject land post-rejection.").

16. This is unsurprising. Bankruptcy courts ***routinely*** allow the rejection of agreements that create covenants that run with the land. For example, debtors may reject unexpired leases, even though leases are both conveyances of estates in real property and contracts. *See In re Arden & Howe Assocs., Ltd.*, 152 B.R. at 974. Indeed, debtors may reject unexpired leases even though leases ***always*** contain covenants that run with the land. *See Excel Willowbrook, LLC v. JP Morgan Chase Bank, Nat. Ass'n*, 758 F.3d 592, 602 (5th Cir. 2014) (concluding a covenant to pay rent in a lease is a covenant that runs with the land); *Shaffer v. George*, 171 P. 881, 882 (Colo. 1917) ("[C]ovenants to pay rent . . . are covenants which run with the land.").

17. If Extraction had breached the Bayswater Contract prior to entering bankruptcy, Grand Mesa's recourse would have been to sue for damages for ***breach of contract or covenant***. The same outcome is true in bankruptcy. At core, real covenants are simply promises respecting the use of real property that are enforceable via privity of estate; real covenants are not magic incantations to ward off rejection in bankruptcy. Once rejected, Grand Mesa receives a pre-petition claim for breach of the Transportation Agreements, and the Debtors are relieved of all ongoing future obligations contained in the breached agreement (including those covenants that could have

been enforced against successors-in-interest to Debtors' real property). Grand Mesa has not made a strong showing that it is likely to succeed on the merits.

B. The Court Correctly Applied the Business Judgment Rule

18. Grand Mesa also argues the Court erred when it did not invite FERC to assess the public interest and to weigh in on whether Debtors could reject the Transportation Agreements under the Bankruptcy Code. The Court's analysis, however, was correct and FERC does not have concurrent jurisdiction to pass on the rejection of executory contracts.

19. The relevant portions of the Bankruptcy Code, "[s]ections 365(a) and (g) speak broadly to 'any executory contract[s].'" *Mission Prod.*, 139 S. Ct. at 1662. The Bankruptcy Code's plain language does not provide for courts to apply different standards to different types of executory contracts. *Cf. United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240–41 (1989) ("[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."). Where Congress intended to deviate from default principles, it expressly and unambiguously did so. *See, e.g.*, 11 U.S.C. § 365(n) (intellectual property rights); *id.* § 365(h) & (i) (certain leases and timeshare interests); *id.* § 365(o) (maintenance of capital requirements of a Federal insured depository); *id.* § 1113 (collective bargaining agreements); *id.* § 1169 & 1170 (railway leases). There are not special rules applicable to contracts with rates regulated by FERC.

20. Indeed, the *Mobile-Sierra* doctrine upon which Grand Mesa relies has not been extended to FERC-jurisdictional ***oil pipeline*** transportation service agreements under the ICA. *See, e.g.*, *B.P. Prods. N.A. v. Sunoco Pipeline L.P.*, 166 FERC ¶ 61, 197, at P 16 (2019) (noting approval of the settlement at issue did "not constitute approval of, or precedent regarding, any principle or issue" in the proceedings).

21. Simply put, rejection in bankruptcy is no different than a material breach outside of bankruptcy and there is no statutory basis for applying special treatment to oil pipeline transportation contracts. *See Mission Prod.*, 139 S.Ct. at 1661 ("[A] rejection is a breach . . . neither a defined nor a specialized bankruptcy term. It means in the Code what it means in contract law outside bankruptcy."). If Extraction can breach the Transportation Agreements outside of bankruptcy (subject to ordinary, monetary damages for breach of contract), and if Grand Mesa can unilaterally terminate the contracts outside of bankruptcy (subject to whatever financial consequences there may be)—where both actions are governed by commercial relationships, state law contracts, and debtor-creditor laws—there is no good justification to subject Extraction, now as debtor-in-possession, to broader scrutiny with respect to its rational business judgment to reject the Transportation Agreements in bankruptcy.

22. Regardless, consistent with current case law, FERC was allowed to participate in the proceedings. Additionally, the Court even considered the public interest as an alternative to the ordinary business judgment standard. *See Bench Ruling* at 24. Specifically, the Court said it did "not believe that a heightened scrutiny, including consideration of the public interest, [was] warranted. However, assuming *arguendo* that it [was], the Court [found] that the balance tips in favor of the Debtors. And, as this is a Court of equity, the Court [considered] and evaluate[d] the balance of equities to each of the parties and the impact on the public at large." *Id.*

II. GRAND MESA HAS NOT SHOWN IT WILL BE IRREPARABLY HARMED

23. Grand Mesa has failed to demonstrate it will be irreparably harmed absent a stay. Grand Mesa's harm—if any—is compensable via monetary damages.

24. Generally, "a purely economic injury, compensable in money, cannot satisfy" the irreparable injury requirement. *Deluna v. Delaware Harness Racing Comm'n*, No. CV 19-1788 (MN), 2019 WL 5067198, at *3 (D. Del. Oct. 9, 2019) (quoting *Minard Run Oil Co. v. U.S. Forest*

Serv., 670 F.3d 236, 255 (3d Cir. 2011)). "Rather, the injury must be of such a 'peculiar nature . . . that compensation in money alone cannot atone for it.'" *Id.* (quoting *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994)). "Additionally, [applicants] must present evidence of the injuries suffered or impending – argument paired with conclusory allegations alone is insufficient." *Id.* (citing *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 92 (3d Cir. 1992)).

25. Here, Grand Mesa's claims related to breach or rejection of the Transportation Agreements are compensable via monetary damages. The Court already held "the Debtors' commitments can be satisfied in full by either: (i) shipping certain amounts of crude petroleum within certain timeframes or (ii) 'by satisfaction of [the Debtors'] Total Financial Commitment.'" *Bench Ruling* at 19. "[A]t the Debtors' option, they may accelerate the satisfaction of the Total Financial Commitment, and their obligations under the [Transportation Agreements] through payment." *Id.* Thus, "monetary damages are easily calculable." *Id.*[3]

26. Grand Mesa's only real argument[4]—that proceeding without a stay jeopardizes Grand Mesa's alleged real property right—fails for many reasons. *See Motion* at ¶ 22. ***First***, covenants running with the land are not real property rights under Colorado law.[5] ***Second***, as

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[3] Indeed, to the extent Grand Mesa insists on relitigating the merits of its real property right assertions, the Transportation Agreements' provision for money damages "further supports that the covenants running with the land are contractual in nature; thus allowing these contracts to be rejected pursuant to [s]ection 365 of the Bankruptcy Code even if they contain covenants running with the land, which they do not." *Bench Ruling* at 19.

[4] Grand Mesa also argues the Court's legal analysis is an irreparable harm because it impacts Grand Mesa's supposed right to seek FERC's interference with rejection rulings. *See Motion* at ¶ 21. If allegations of error in legal analysis justified a stay, however, a stay would be appropriate in almost every appeal. Grand Mesa does not cite a single case suggesting that the possibility of reversal alone creates an irreparable harm—there is none.

[5] *See, e.g.*, *Thornton v. Schobe*, 243 P. 617, 618 (Colo. 1925) ("[A]n agreement not to build a certain sort of building on certain land is not a transfer of an estate or interest therein nor a trust or power over it.") (citation omitted); *Smith v. Clifton Sanitation Dist.*, 300 P.2d 548, 550 (Colo. 1956) (holding a restrictive covenant "is not a positive easement or right in the land itself which would permit of the physical use or occupation of the Peterson land by the other property owners who signed the covenant"); *Forest View Co. v. Town of Monument*, 464 P.3d 774, 778 (Colo. 2020) ("[A] restrictive covenant of the type at issue in this case is not a compensable property interest in an eminent domain proceeding."); *Easements contrasted with*

Grand Mesa recognizes, this court held that the Bayswater Contract does not contain covenants that run with the land, and Grand Mesa does not seek to stay that ruling pending its separate appeal. *See Motion* at ¶ 20 n. 6. ***Third***, Grand Mesa never argued that ***both*** Transportation Agreements created real covenants; even if assumed true, Grand Mesa's alleged irreparable harm would justify staying only rejection of the Bayswater Contract (not the Grand Mesa Contract). ***Fourth***, the Bayswater Contract does not create covenants running with the land. *See Bench Ruling* at 12. ***Fifth***, breaches of covenants running with the land are not irreparable because money damages are the ordinary and adequate remedy. *See id.* at 19.

27. Grand Mesa has not shown it will be irreparably harmed if the Court does not enter a stay. If reversed on appeal, any harm to Grand Mesa due to breach of the Transportation Agreements could be remedied through monetary damages.

III. DEBTORS WILL BE SUBSTANTIALLY INJURED BY A STAY

28. Debtors will be "substantially injure[d]" by a stay. *In re Revel AC, Inc.*, 802 F.3d at 568 (quoting *Hilton*, 481 U.S. at 776). A stay will prevent Debtors from fully implementing their business plan "to seek alternative providers, whether by walk-up rates, trucking, or new pipeline contracts," during the pendency of appeal. *See Bench Ruling* at 6. Indeed, the Court credited testimony that the Transportation Agreements "are projected to cost the Debtors approximately $100 million in annual spending." *See id.* at 10 (footnote omitted). Thus, a stay would delay Debtors' access to "three possible alternatives to the [Transportation Agreements]" and the alternatives "would result in millions of dollars in savings." *Id.* (footnote omitted).

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other interests, 2 Colo. Prac., Methods Of Practice § 65:4 (7th ed.) (noting a "covenant is not an interst in land, and there, in Colorado, a covenant need not be created in accordance with the statute of fraud") (citing *Thornton*, 243 P. at 617); 9 *Powell on Real Property* § 60.02 (2020) (listing Colorado among those states that "have found that a covenant creates 'only a contract right' rather than an 'interest in land,' and hence that no writing is needed") (citing *Thornton*, 243 P. at 617).

29. Moreover, Grand Mesa's sole case is inapposite. *See Motion* at ¶ 24 (quoting *St. John v. Affinia Grp., Inc.*, No. CIV.A. 09-2501 (WJM), 2009 WL 1586503, at *3 (D.N.J. June 8, 2009)). In *St. John*, "the ***only harm*** to Plaintiff" was a short delay. *Id.* (emphasis added). As discussed above, Debtors face substantial financial injury if unable to avail themselves of alternative service providers pending Grand Mesa's appeal.

30. Grand Mesa's cursory reasoning is insufficient; it has not shown that this factor favors a stay pending appeal. Debtors will lose the opportunity to save millions of dollars while the appeals process plays out for months or years. This harm to the Debtors is substantial.

IV. THE PUBLIC INTEREST DISFAVORS GRANTING A STAY

31. As this Court has already held, the public interest weighs in favor of rejection of the Transportation Agreements as part of the Debtors' restructuring. *See, e.g.*, *Bench Ruling* at 24 ("In fact, allowing rejection in order for companies in bankruptcy to reorganize *is in the public interest*.") (emphasis in original). Indeed, "the Court, in its balance of equities consideration, [looked] at whether the rejection of the [Transportation Agreements] 'threatens the public health, safety or welfare.'" *Id.* at 24–25 (citation omitted). The Court reviewed evidence, made factual findings, and concluded "the public, as a whole, will not be harmed by the rejection" and, instead, "the public will benefit from the Debtors' continued production, their workers remaining employed, and potentially additional jobs and contracts from the Debtors having to re-route its oil." *Id.* at 30. In the face of all of this, Grand Mesa—again—did not cite any case in the Motion showing the public interest favors FERC resolving the rejection issues instead of the Court.

32. Furthermore, the Court's ruling is consistent with the public policy underlying the Bankruptcy Code. Third Circuit courts have recognized "there is a 'great public policy in having bankruptcy proceedings continue to an orderly, efficient resolution to maximize and preserve the estate's assets for the sake of the creditors.'" *In re Frascella Enterprises, Inc.*, 388 B.R. 619, 629

(Bankr. E.D. Pa. 2008) (citation omitted). A stay pending appeal would arrest part of the restructuring process and restrain Debtors from restructuring their businesses and using alternative service providers for the benefit of the estate and other creditors—results contrary to policies set in place by Congress in the Bankruptcy Code.

CONCLUSION

Grand Mesa has not satisfied a single factor to justify a stay pending appeal. Grand Mesa did not make a strong showing it is likely to succeed on the merits of its appeal. Grand Mesa did not show that absence of a stay will cause it irreparable harm. Grand Mesa did not show that entry of a stay will not substantially injure the Debtors. Grand Mesa did not show that the public interest favors entry of a stay. Accordingly, the Court should deny the Motion.

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Dated: December 1, 2020
Wilmington, Delaware

/s/ Stephen B. Gerald

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

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: EXTRACTION OIL & GAS, INC., *et al.*, Debtors.	Chapter 11 Case No. 20-11548 (CSS) Courtroom No. 6 824 North Market Street Wilmington, Delaware 19801
EXTRACTION OIL & GAS, INC., Plaintiff, v. REP PROCESSING, LLC, Defendant.	Adv. Proc. No. 20-50813
EXTRACTION OIL & GAS, LLC, Plaintiff, v. PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC, Defendants.	Adv. Proc. No. 20-50833
EXTRACTION OIL & GAS, INC., Plaintiff. v. ROCKY MOUNTAIN MIDSTREAM, LLC, Defendant.	Adv. Proc. No. 20-50840 November 2, 2020 9:00 A.M.

BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

1 recess to wet my whistle and then, of course, I will take any
2 questions in connection with the ruling and then we can
3 proceed with the balance of the agenda. So, we will take a
4 short recess.
5 (Recess taken at 10:00 a.m.)
6 (Proceedings resumed at 10:05 a.m.)
7 THE COURT: I also want to thank the parties, in
8 particular, of course, the lawyers and that goes for
9 everybody Grand Mesa, Platte, Elevation, the debtors, for,
10 really what was a remarkably well-presented trial, you know,
11 light speed. So, well done to you as professionals.
12 I know half of you or more than half of you aren't
13 happy with me right now, but that is part of the job, I
14 suppose.
15 Does anybody have any questions?
16 MR. MILLER: Your Honor, Curtis Miller from Morris
17 Nichols on behalf of Platte River and DJ South. I do have one
18 questions, Your Honor.
19 THE COURT: Yes.
20 MR. MILLER: I expect to know the response to this
21 based on Your Honor's extensive ruling that you just
22 provided, but under the rules I'm required to ask the
23 Bankruptcy Court first and that is a request for a stay
24 pending appeal. Obviously, there is no order entered. There
25 will be something that will be circulated and that will be

1 entered soon enough, but I think a request for the stay under
2 the rules can still be requested prior to an order actually
3 being issued.
4 THE COURT: No. I will deny that and allow you,
5 you know, obviously, to go through your appeal processes. Is
6 this -- well, I don't know if this a final order or not, but
7 you will figure that out.
8 No. I think the likelihood of success on the
9 merits prong, obviously given the nature of my ruling, weighs
10 heavily in favor of the debtors, at least in connections with
11 stay pending appeal. It's a balancing test where a stronger
12 likelihood of success means you don't have to make quite the
13 showing of irreparable harm and vice versa, but I don't think
14 you can make a likelihood of success argument at all. I
15 think the irreparable harm is covered by money damages, as I
16 said a couple times in the ruling. So, you lack both of
17 those prongs.
18 A balance of the equities already in the context
19 of my hearing and said that they weigh in favor of the
20 debtors. I have also considered the public interest and say
21 that that weighs in favor of the debtors. So, I will deny
22 the motion for stay pending appeal for failure to meet any of
23 the four criteria and wish you all the best.
24 MR. MILLER: Thank you, Your Honor.
25 THE COURT: You're welcome.