

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

In re:

EXTRACTION OIL & GAS, INC., et al.,¹

Reorganized Debtors.

Chapter 11

Case No. 20-11548 (CSS)

Jointly Administered

Re: Docket Nos. 1979 & 2025

**AGREED ORDER DIRECTING EXAMINATION OF BARCLAYS PURSUANT TO
BANKRUPTCY RULE 2004**

Upon the motion (the “Motion”)² of the XOG Litigation Trust (the “Trust”) for entry of an order (this “Order”), pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2004 and Bankruptcy Local Rule 2004-1, seeking the entry of an order directing the examination of Barclays Investment Bank or its applicable affiliate (“Barclays”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; 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 Trust’s 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 reviewed the Motion, the statements in support of the relief requested therein and the *Certification Of Counsel*

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtors’ 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 Reorganized Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

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



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Regarding Motion For An Order Pursuant To Section 105(A) Of The Bankruptcy Code, Bankruptcy Rule 2004, And Bankruptcy Local Rule 2004-1 Authorizing And Directing The Examination Of Barclays; and this Court having determined that the legal and factual bases set forth in the Motion 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. Subject to the terms of this Order, Barclays is directed to produce all documents responsive to the Trust's Document Requests attached as Exhibit B to the Motion, and to use good faith, commercially reasonable efforts to deliver such documents or other responses to counsel for the Trust, Kevin G. Hroblak, at Whiteford, Taylor & Preston L.L.P., 7 Saint Paul Street, Baltimore, Maryland 21202 beginning no later than thirty (30) days after entry of this Order and to be completed sixty (60) after entry of this Order, or at such other place and time as may be agreed upon by the parties or directed by this Court.
3. Subject to the terms of this Order, and not earlier than thirty (30) days after entry of this Order, upon request from the Trust, Barclays and the Trust shall meet and confer to agree upon a mutually acceptable date and time for an oral examination. In the event Barclays and the Trust are unable to agree upon a mutually acceptable date and time, the Trust may, upon not less than fourteen (14) days advance written notice, require Barclays to appear for oral examination. Any such oral examinations or, to the extent agreed upon by the parties, written responses in lieu of oral examination, pursuant to Bankruptcy Rule 2004 shall be on the topics set forth on Exhibit C to the Motion (the "Rule 2004 Topics"), as may be necessary, to permit the Trust to determine the nature and extent of the causes of action it has been assigned by the Reorganized Debtors

against Kelley arising from breaches of fiduciary duty, including with respect to the SRP (the “Rule 2004 Investigation”).

4. Barclays and the Trust shall be deemed to have reserved their rights to seek intervention and relief from this Court upon a showing of good cause not capable of being known at the time of this Order with regard to any dispute arising as to the Trust’s Discovery Requests (whether for production of documents or oral testimony) with respect to (i) timing of production; (ii) undue burden; and (iii) the length, number and timing of any oral examinations.

5. The Trust’s rights are reserved to request additional discovery and/or examinations in connection with this matter, including, without limitation, requests based on any information that may be revealed as a result of the examinations authorized pursuant to this Order.

6. Except as may be otherwise set forth in Fed. R. Bankr. P. 2004, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Scope of Order

7. This Order applies to all information, documents and things exchanged in or subject to the Trust’s investigation that are produced pursuant to this Rule 2004 Order by Barclays, formally or informally, in response to or in connection with any informal or formal requests by the Trust (collectively, the “Discovery Requests”), including without limitation deposition testimony, documents, information and things produced, as well as any and all copies, abstracts, digests, notes, summaries, and excerpts thereof (collectively referred to as “Discovery Material”).

8. Barclays may designate Discovery Material as “Confidential Material” or “Highly Confidential Material” (any such designated Discovery Material, “Designated Material”) in accordance with the following provisions:

a. Barclays may designate Discovery Material as “Confidential” if Barclays believes in good faith (or with respect to documents received from another person, has been reasonably advised by such other person) that: (i) such Discovery Material (A) constitutes or contains nonpublic proprietary or confidential technical, business, financial, personal or other information of a nature that can be protected under Bankruptcy Rules or the Federal Rules or (B) is subject by law or by contract to a legally protected right of privacy; or (ii) Barclays (A) is under a preexisting obligation to a third-party to treat such Discovery Material as confidential or (B) has in good faith been requested by another party or non-party to so designate such Discovery Material on the grounds that such other party or non-party considers such Discovery Material to contain information that is confidential or proprietary to such party or non-party. It may not make a “blanket” designation of Discovery Material and must use good faith efforts to redact Confidential Discovery Material where practical.

9. Barclays may designate Discovery Material as “Highly Confidential” if Barclays believes in good faith (or with respect to documents received from another person, has been reasonably advised by such other person) that such Discovery Material is of such a nature that a risk of competitive injury could be created if such Discovery Material were disclosed to persons other than the Trust and its professionals. It may not make a “blanket” designation of Discovery Material and must use good faith efforts to redact Highly Confidential Discovery Material where practical. Barclays may redact any such portion of Highly Confidential Discovery Material that is not otherwise responsive to Discovery Requests. Any such redactions shall be detailed in Barclay’s privilege log.

10. Manner of Designating Discovery Material: Where reasonably practicable, any Designated Material other than oral deposition testimony shall be redacted and designated by

Barclays as such by marking each such page “Confidential” or “Highly Confidential” as applicable. Native file documents may be designated as “Confidential” or “Highly Confidential” by including such terms (or similar terms) in the file name thereof or on a slip sheet attached thereto.

11. Late Designation of Discovery Material: The failure to designate particular Discovery Material as “Confidential” or “Highly Confidential” at the time of production shall not operate to waive Barclays’ right to later designate such Discovery Material as Designated Material or later apply another designation pursuant to this Order (“Misdesignated Material”). At such time, arrangement will be made for the destruction of the Misdesignated Material or for the return to Barclays of all copies of the Misdesignated Material and for the substitution, where appropriate, of properly labeled copies of such Discovery Material. Upon receipt of replacement copies of such Misdesignated Material with the proper designation, the Trust shall take all commercially reasonable steps to return or destroy all previously produced copies of such Misdesignated Material. If requested by Barclays, the Trust shall verify in writing that it has taken all commercially reasonable steps to return or destroy such Misdesignated Material. The Trust shall not be deemed to have violated this Order if, prior to notification of any later designation, such Discovery Material is disclosed or used in any manner consistent with its original designation but inconsistent with its later designation. Once such later designation has been made, however, any Discovery Material shall be treated in accordance with that later designation.

Use and Disclosure of Undesignated Discovery Material, Confidential and Highly Confidential Material

12. General Limitations on Use and Disclosure of All Discovery Material: All Discovery Material shall be used by the Trust solely for the purposes of the Rule 2004 Investigation and in any judicial or alternative dispute resolution proceedings arising out of, or relating to, the

Rule 2004 Investigation (including before this Court) and not for any other purpose, including any other litigation or judicial proceedings, or any business, competitive, governmental, commercial, or administrative purpose or function.

13. Confidential Material: Confidential Material and Highly Confidential Material, and any and all information contained therein, shall not be given, shown, made available to or communicated in any way, except to the Trust and Trustee, and the following specified persons:

a. counsel, and staff working under the express direction of such counsel or the Trustee, for the Trust;

b. industry advisors, financial advisors, accounting advisors, experts and consultants (and their respective staff) that are retained by the Trust in connection with the Rule 2004 Investigation or any judicial or alternative dispute resolution proceedings arising out of, or relating to, the Rule 2004 Investigation;

c. any person who is indicated on the face of a document to have been an author, addressee or copy recipient thereof, an actual recipient thereof, or in the case of meeting minutes, an attendee of the meeting, and employees of Extraction Oil & Gas, Inc. and any successor;

d. for purposes of witness preparation and use at a deposition or during testimony, any deponent or witness who is noticed for a deposition, or is on a witness list for hearing or trial, in preparation for his or her noticed deposition, hearing, or trial testimony where such Confidential or Highly Confidential Material is determined by counsel in good faith to be necessary to the anticipated subject matter of testimony, provided, however, that such Confidential or Highly Confidential Material can only be shared with such person in connection with preparation for the anticipated testimony and as an exhibit during depositions and testimony, and

the persons identified in this paragraph shall not be permitted to retain copies of such Confidential or Highly Confidential Material;

e. outside photocopying, graphic production services, or litigation support services, as necessary for use in connection with the Rule 2004 Investigation or any judicial or alternative dispute resolution proceedings arising out of, or relating to, the Rule 2004 Investigation;

f. court reporters, stenographers, or videographers who record deposition or other testimony in connection with the Rule 2004 Investigation or any judicial proceedings arising out of, or relating to, the Rule 2004 Investigation;

g. the Court, officers and clerical staff in any judicial or alternative dispute resolution proceeding that may result from the Rule 2004 Investigation or any judicial proceedings or alternative dispute resolution arising out of, or relating to, the Rule 2004 Investigation;

h. Any mediators or arbitrators, and their staff, retained in connection with the Rule 2004 Investigation or any judicial or alternative dispute resolution proceedings arising out of, or relating to, the Rule 2004 Investigation;

i. Russell T. Kelley, Jr. and his counsel; and

j. any other person or entity with respect to whom Barclays may consent in writing.

14. Prerequisite to Disclosure of Designated Material: Before any person or their representative identified in subparagraphs (b) or (j) of Paragraph 13 hereof is given access to Designated Material, such person or their representative shall be provided with a copy of this Order and shall execute **Exhibit A** annexed hereto. Each such executed Exhibit A shall be retained in the files of counsel for the Trust who gave access to the Designated Material to the person

executing Exhibit A. Such executed Exhibit A shall not be subject to disclosure under the Federal Rules or the Bankruptcy Rules unless a showing of good cause is made and the Court so orders.

15. Sealing of Designated Material Publicly Filed With or Submitted to Court: Unless otherwise agreed by Barclays, all Designated Material filed publicly with the Court, and all portions of pleadings, motions or other papers filed publicly with the Court that disclose Highly Confidential or Confidential Material, shall be filed under seal in accordance with the Federal Rules, the Bankruptcy Rules, the Local Rules, and the individual practice rules of the Judge.

16. Use of Discovery Material in Open Court: The limitations on disclosure in this Order shall not apply to any Discovery Materials offered or otherwise used by the Trust at trial or any hearing held in open court or in an alternative dispute resolution proceeding except as provided in this paragraph. Discovery Material may be used in a confidential private arbitration. As part of any pretrial conference for a court proceeding, or any meet and confer, regarding the use in any evidentiary hearing of any Designated Material, and where practicable at least 24 hours prior to the use of any Designated Material at trial or any hearing to be held in open court at which counsel for the Trust proposes to offer or use such Designated Material, counsel for the Trust shall meet and confer in good faith with counsel for Barclays to discuss ways to redact the Designated Material so that the material may be offered or otherwise used in accordance with the provisions of the Bankruptcy Code and Bankruptcy Rules. If the parties are unable to resolve a dispute related to such Designated Material, then Barclays bears the burden of requesting relief from the Court and, in the absence of such relief, there shall be no limitations on the ability of the Trust to offer or otherwise use such Designated Material at trial or any hearing held in open court. Until expiration of the aforesaid designation period, as applicable, following receipt of the transcript by Barclays, all deposition and oral examination transcripts and recordings of a Barclays

representative shall be considered and treated as Confidential unless otherwise designated by counsel to Barclays on the record at the deposition or oral examination.

Deposition Testimony

17. Manner of Designation: In the case of depositions, if counsel for Barclays believes that a portion of the testimony given at a deposition should be Designated Material, such testimony may be designated as appropriate by: (a) Stating so orally on the record and requesting that the relevant portion(s) of testimony is so designated; or (b) Providing written notice within ten (10) days of Barclays's receipt of the final transcript from the court reporter that the relevant portion(s) of such transcript or recording of a deposition thereof is so designated, except in the event that a hearing on related issues is scheduled to occur within ten (10) days, in which case the foregoing ten (10) day period will be reduced to four (4) business days. In the event a hearing on related issues is scheduled to occur in such close proximity to a deposition that a four-day period is not practical, notice shall be given at the deposition. Such designation and notice shall be made in writing to the court reporter, with copies to all other counsel, identifying the portion(s) of the transcript that is so designated, and directing the court reporter to treat the transcript as provided in Paragraph 20 below.

18. Designated Material Used as Exhibits During Depositions: Nothing in Paragraph 16 shall apply to or affect the confidentiality designations on Discovery Material entered as exhibits at depositions.

19. Witness Review of Deposition Testimony: Nothing in Paragraph 16 hereof shall preclude the witness from reviewing his or her deposition transcript.

20. Presence of Persons During Deposition Testimony: When Designated Material is elicited during a deposition, persons not entitled to receive such information under the terms of this Order shall, upon request, be excluded from the portion of the deposition so designated.

21. Responsibilities and Obligations of Court Reporters: In the event that testimony is designated as Confidential or Highly Confidential, the court reporter, who shall first have agreed to abide by the terms of this paragraph, shall be instructed to include on the cover page of each such transcript the legend, “This transcript portion contains information subject to a Protective Order and shall be used only in accordance therewith,” and each page of the transcript shall include the legend “Confidential” or “Highly Confidential,” as appropriate. If the deposition is recorded, the recording shall also be subject to the same level of confidentiality as the transcript and include the legend “Confidential” or “Highly Confidential,” as appropriate, if any portion of the transcript itself is so designated.

General Provisions

22. Nothing contained herein shall be deemed a waiver or relinquishment by any party of any objection, including but not limited to, any objection concerning the alleged confidentiality or proprietary nature of any documents, information, or data requested by the Trust, any right to object to any discovery request, or any right to object to the admissibility of evidence on any ground, or to seek any further protective order, or to seek relief from the Court or any other applicable court from any provision of this Order by application on notice on any grounds.

23. Unauthorized Disclosure of Designated Material: In the event of a disclosure by Trust of Designated Material to persons or entities not authorized by this Order to receive such Designated Material, the Trust shall, upon learning of the disclosure: (i) immediately notify the person or entity to whom the disclosure was made that the disclosure contains Designated Material

subject to this Order; (ii) immediately make reasonable efforts to recover the disclosed Designated Material as well as preclude further dissemination or use by the person or entity to whom the disclosure was made; and (iii) immediately notify Barclays of the identity of the person or entity to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to recover the disclosed Designated Material and ensure against further dissemination or use thereof. Disclosure of Designated Material other than in accordance with the terms of this Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

24. Manner of Objecting to Designated Material: If the Trust objects to the designation of any Designated Material, it shall first raise the objection with Barclays in writing, and confer in good faith to attempt to resolve any dispute respecting the terms or operation of this Order. The Trust may seek relief from the Court if it and Barclays cannot resolve their dispute. Until the Court rules on such an issue, the Designated Material shall continue to be treated according to its designation. Upon motion, the Court may order the removal of the “Confidential” or “Highly Confidential” designation from any Discovery Material so designated that is subject to the provisions of this Order. In connection with any request for relief concerning the propriety of a “Confidential” or “Highly Confidential” designation, Barclays shall bear the burden of proof.

25. Timing of Objections to Designated Material: The Trust shall not be obliged to challenge the propriety of a “Confidential” or “Highly Confidential” designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto.

26. Production of Privileged Discovery Material: This Order is entered pursuant to Rule 502(d) of the Federal Rules of Evidence. If Barclays produces materials that Barclays later discovers to be privileged or subject to other protection, such as work-product protection, the

production of that material shall not be deemed to constitute the waiver of any applicable privileges or protections. In such circumstances, as soon as Barclays becomes aware that privileged or protected material was produced, it must notify the Trust and request, at Barclays's election, either the return or the destruction of the produced material. Immediately after receiving such notification, the Trust shall, as instructed, return or destroy and confirm destruction of all such produced material, including all copies, notes, and/or summaries thereof in any work product of the Trust. The Trust shall not use the contents of such material for any purpose, including in connection with any effort seeking to compel production of the produced material. The Trust must take reasonable steps to retrieve the produced material if the Trust disclosed it before being notified. Such return or destruction and confirmation of destruction shall not preclude the Trust from seeking to compel production of the produced material for reasons other than its production or any information about the contents of the material that was gained due to its production. Moreover, this Order shall not prevent the Trust from challenging the designation of such material as privileged or protected and moving to compel production of allegedly privileged or protected documents. If the Trust becomes aware during the review of any material that is likely to be privileged or subject to other protection, the Trust shall immediately notify Barclays and sequester the material until Barclays has had a reasonable opportunity to respond.

27. Challenging Privilege Determinations: The Trust shall not be obliged to challenge the propriety of privilege determinations at the time asserted, and a failure to do so shall not preclude a subsequent challenge thereto. If, after review of Barclays's privilege log, the Trust wishes to challenge one or more of the privilege designations made in the privilege log, the parties shall first meet and confer in a good faith effort to resolve any dispute concerning any challenged privilege designations. If the parties are unable to agree on the appropriateness of one or more

privilege designations, either party may present such dispute to the Court. Neither party shall contend that the meet and confer process set forth in this paragraph constitutes a waiver of attorney-client privilege or attorney work product for any document claimed to be protected from disclosure.

28. Use of Non-Discovery Material: To the extent that the Trust has documents or information that (i) are received or become available to the Trust on a non-confidential basis not in violation of an obligation of confidentiality to any other person; (ii) were independently developed by the Trust without violating its obligations hereunder; or (iii) are published or become publicly available in a manner that is not in violation of this Order or of any obligation of confidentiality to any other person (collectively “Non-Discovery Material”), nothing in this Order shall limit the Trust’s ability to use Non-Discovery Material for any purpose, including in a deposition, hearing, trial or otherwise in connection with the Rule 2004 Investigation or any judicial proceedings arising out of, or relating to, the Rule 2004 Investigation.

29. Obligations Following Conclusion of the Rule 2004 Investigation: Within 90 days of the later of the conclusion of the Rule 2004 Investigation and any judicial or alternative dispute resolution proceedings arising out of, or relating to, the Rule 2004 Investigation, including all appeals as to the parties, the Trust shall take all commercially reasonable steps to return to counsel for Barclays, or to destroy, all Discovery Material, and all copies thereof in the possession of any person, except that: (i) counsel may retain for its records their work product and a copy of court filings, deposition transcripts, deposition recordings, deposition exhibits, expert reports, and exhibits introduced at any hearing; and (ii) counsel and other professionals subject to this Order may retain Discovery Material that is auto-archived or otherwise “backed up” on electronic management and communications systems or servers, or as may be required for regulatory

recordkeeping purposes; provided that such retained documents will continue to be treated as provided in this Order. If the Trust chooses to take all commercially reasonable steps to destroy, rather than return, documents in accordance with this paragraph, the Trust shall, if requested by Barclays, verify such destruction in writing to counsel for Barclays. Notwithstanding anything in this paragraph, to the extent that the information in the Discovery Material remains confidential, the terms of this Order shall remain binding.

30. Continuing Applicability of Confidentiality Agreement and Stipulated Protective Order: The provisions of this Order shall survive the final termination of the Rule 2004 Investigation and any judicial proceedings arising out of, or relating to, the Rule 2004 Investigation for any retained Discovery Material. The final termination of the Rule 2004 Investigation or any judicial proceedings arising out of, or relating to, the Rule 2004 Investigation shall not relieve counsel or other persons obligated hereunder from their responsibility to maintain the confidentiality of Discovery Material pursuant to this Order, and the Court shall retain jurisdiction to enforce the terms of this Order.

31. Amendment of Confidentiality Agreement and Stipulated Protective Order: Upon good cause shown, and on notice to all necessary parties, including shortened notice on the parties hereto if circumstances warrant, Barclays or the Trust may move to amend the provisions of this Order at any time or may agree by written stipulation, subject to further order of the Court if applicable, to amend the provisions of the Order.

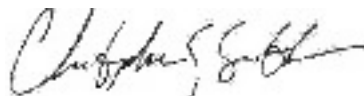
32. Disclosure of Discovery Material in Other Proceedings: To the extent the Trust becomes subject to a motion or other form of legal process or any regulatory process, demand or request seeking the disclosure of Barclays' Discovery Material: (i) it shall promptly notify Barclays (unless such notice is prohibited by applicable law) to enable it to have an opportunity to

appear and be heard on whether that information should be disclosed, and (ii) in the absence of a court order preventing such legally required disclosure, the Trust shall be permitted to disclose only that portion of the information that is legally required to be disclosed and shall inform in writing any person to whom such information is so disclosed of the confidential nature of such information.

33. Use of Discovery Material by Barclays: Nothing in this Order affects the right of Barclays to use or disclose its own Discovery Material in any way. Such disclosure will not waive the protections of this Order and, subject to Paragraph 28, will not otherwise entitle other parties, non-parties, or their attorneys to use or disclose such Discovery Material in violation of this Order.

34. Enforcement: The provisions of this Order constitute an Order of this Court and violations of the provisions of this Order are subject to enforcement and the imposition of legal sanctions in the same manner as any other Order of the Court.

Dated: September 1st, 2021
Wilmington, Delaware



CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

1. My name is _____ .
2. I reside at _____ .
3. My present employer is _____ .
4. My present occupation or job description is _____ .
5. I have been engaged on behalf of the XOG Litigation Trust in the following capacity:

6. I acknowledge that I have read and understand the terms of the *Agreed Order Directing Examination of Barclays Pursuant to Bankruptcy Rule 2004* (the "Order"). I agree to comply with and be bound by all the provisions of the Order. I agree that I will not use Discovery Material for any purpose other than the Rule 2004 Investigation or any judicial proceedings arising out of, or relating to, the Rule 2004 Investigation and will not disclose or cause Discovery Material to be disclosed to anyone not expressly permitted by the Order to receive Discovery Material. By acknowledging these obligations under the Order, I understand that I am submitting myself to the jurisdiction of the United States Bankruptcy Court for the District of Delaware for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Order could subject me to punishment for contempt of Court.

By: _____ Executed on: _____