Docket #0020 Date Filed: 11/12/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
8 North, LLC, [1]	Case No. 20-11550 (CSS)
Reorganized Debtor.	(Formerly Jointly Administered under Lead Case: Extraction Oil & Gas, Inc., Case No. 20-11548 (CSS))
	Hearing Date: December 7, 2021 at 2:00 p.m. (ET)
	Re: Docket Nos. 298, 1505, 1509, 2061 in Case No. 20-11548 (CSS)

REORGANIZED DEBTORS' OBJECTION TO MOTION FOR ORDER RESOLVING CONTROVERSIES AND DISPUTES REGARDING INTERPRETATION AND ENFORCEMENT OF PLAN AND MATTERS RELATED TO THE ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS

The reorganized debtors (before the effective date of their chapter 11 plan, collectively, the "Debtors" and, after the effective date of their chapter 11 plan, collectively, the "Reorganized Debtors") respectfully state as follows in support of their objection (the "Objection") to PDC Energy, Inc.'s ("PDC") *Motion for Order Resolving Controversies and Disputes Regarding Interpretation and Enforcement of Plan and Matters related to the Assumption or Rejection of Executory Contracts* [Docket No. 2061 in Case No. 20-11547 (CSS)] (the "Motion"):[2]

[1] The last four digits of each Reorganized 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 Reorganized Debtors' principal place of business is 370 17th Street, Suite 5200, Denver, Colorado 80202. On October 25, 2021, the Court entered an order [Docket No. 2070] closing the chapter 11 cases of the Reorganized Debtors other than Case No. 20-11550 (CSS).

[2] Terms used but otherwise not defined herein shall have the meaning proscribed to them in the Plan or Motion, as applicable.

PRELIMINARY STATEMENT

1. On June 14, 2020, the Debtors filed voluntary petitions for relief under the Bankruptcy Code. In conjunction with filing their petitions, the Debtors filed the *Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief* [Docket No. 14] (the "Rejection Motion"). The Rejection Motion sought to reject a number of executory contracts (the "Executory Contracts") between the Debtors and the Midstream Parties, including contracts between the Debtors and Grand Mesa Pipeline LLC ("Grand Mesa"). The Rejection Motion was the subject of a number of hotly contested adversary proceedings[3] that, due to their potential implications on future energy bankruptcy cases, were widely covered by various legal publications and professionals in the restructuring industry at large.[4] Ultimately, these adversary proceedings culminated in a trial held by the Court throughout in October 2020. On October 14, 2020, the Bankruptcy Court published the *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* [Docket No. 834], which ultimately held that the Executory Contracts that the Debtors sought to reject pursuant to the Rejection Motion were eligible for rejection under section 365 of the Bankruptcy Code. On

[3] The Debtors were party to various adversary proceedings to determine whether certain agreements are subject to section 365 of the Bankruptcy Code. Accordingly, the Debtors filed various adversary proceedings to determine the nature of the agreements. On August 14, 2020, the Debtors filed an adversary proceeding against REP Processing, LLC [Ad. Pr. No. 20-50813]. On August 19, 2020, the Debtors filed an adversary proceeding against Grand Mesa Pipeline, LLC [Ad. Pr. No. 20-50816]. On August 25, 2020, the Debtors filed an adversary proceeding against Platte River Midstream, LLC and DJ South Gathering, LLC [Ad. Pr. No. 20-50833]. On September 4, 2020, the Debtors filed an adversary proceeding against Elevation Midstream, LLC [Ad. Pr. No. 20-50839]. On September 8, 2020, the Debtors filed an adversary proceeding against Rocky Mountain Midstream LLC [Ad. Pr. No. 20-50840] (the foregoing defendants in the adversary proceedings, collectively with DCP Operating Company, LP, the "Midstream Parties").

[4] *See, e.g.*, Greg Avery, *Extraction Oil & Gas, former subsidiary fight over pipelines in Broomfield and canceling contracts* (Sept. 30, 2020, https://www.bizjournals.com/denver/news/2020/09/30/extraction-oil-pipelines-chapter-11-merger-deal.html).

November 2, 2020, the Bankruptcy Court approved the Rejection Motion and authorized rejection of the Executory Contracts as of the Petition Date. *See Bench Ruling* [Docket No. 942].

2. The Debtors provided notice of the Court's approval of the Rejection Motion in the Debtors' *Revised Third Amended Disclosure Statement for the Third Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1023] (the "Rejection Order"). Many third-party news sources also summarized and wrote about Rejection Order and its impact on future energy cases.[5] In connection with entry of the Rejection Order, the Debtors served potential holders of claims against the Debtors, including PDC, with the Bar Date Notice that, among other things, indicated the general bar date for filing all claims, the rejection bar date for filing claims on account of the rejected executory contracts and unexpired leases, and the administrative bar date for filing administrative claims.[6] Ultimately, all parties in interest were provided with extensive actual and constructive notice of the Court's decision and the bar date for filing proofs of claim in the chapter 11 cases.

3. As discussed further herein, the Debtors were party to the Line Fill Letter Agreement with PDC, which is annexed hereto as **Exhibit A**. The Line Fill Letter Agreement specified that the payment thereunder would accrue upon termination of the Crude Oil Sale and Exchange Agreement dated September 30, 2016 between Bayswater Blehnheim Holdings, LLC, Bayswater Blenheim Holdings II, LLC (later assumed by PDC) and the Debtors (the "Exchange Agreement"), which is annexed hereto as **Exhibit B**. The Exchange Agreement provides that it

---

[5] *See, e.g.*, Allison Good, *Extraction Oil & Gas can reject midstream contracts, bankruptcy court says*, S&P GLOBAL (Oct. 15, 2020, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/extraction-oil-gas-can-reject-midstream-contracts-bankruptcy-court-says-60747959)

[6] On July 22, 2020, the Debtors served the Bar Date notice to PDC. See *Certificate of Service* [Docket No. 362].

would terminate upon termination of the transportation services agreement between the Debtors and Grand Mesa (the "Grand Mesa TSA") and that, upon termination, the Debtors would be required to remit the Line Fill Receivable Amount to PDC.[7] The Debtors rejected the Grand Mesa TSA—effective as of the Petition Date—pursuant to the Rejection Motion. The Grand Mesa TSA was subsequently terminated pursuant to the settlement between the Debtors and Grand Mesa that was approved by the Court on December 20, 2020[8]—*prior* to entry of the Confirmation Order. Accordingly, a potential claim for the Line Fill Receivable Amount arose as of the Petition Date in favor of PDC and the assumption of the Line Fill Letter Agreement is irrelevant as the assumption of an already terminated contract no longer exists and is not afforded relief pursuant to the Confirmation Order.

4. The Debtors' chapter 11 cases included a claims resolution process sanctioned by this Court.[9] Upon adequate notice to creditors,[10] a claims bar date was established by this Court,

---

7 *See* Line Fill Letter Agreement, 2; Exchange Agreement, 3.

8 *See Order Order Shortening Notice and the Time to Object with Respect to Its Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors and Grand Mesa Pipeline, LLC, (II) Authorizing the Debtors to Enter into and Assume the Supply Agreement with NGL Crude Logistics, LLC, and (III) Granting Related Relief* [Docket No. 1437].

9 On July 20, 2020, the Court entered the *Amended Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code, (II) Setting a Bar Date for the Filing of Proofs of Claim by Governmental Units, (III) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (IV) Approving the Form of and Manner for Filing Proofs of Claim, and (V) Approving Notice of Bar Dates*[Docket No. 298] (the "Bar Date Order").

10 On July 30, 2020, the Debtors served the *Notice of Hearing to Consider Approval of Disclosure Statement for the Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and its Debtor Affiliates to Chapter 11 of the Bankruptcy Code* [Docket No. 339] to PDC. See Certificate of Service [Docket No. 374].

On September 2, 2020, the Debtors served the *Notice of Hearing to Consider Approval of (I) Disclosure Statement for Joint Chapter 11 Plan of Extraction Oil & Gas, Inc., and its Debtor Affiliates, (II) the Solicitation Motion and (III) Backstop Motion* [Docket No. 575] to PDC. See Certificate of Service [Docket No. 602].

On October 5, 2020, the Debtors served the *Amended Notice of Hearing to Consider Approval of the Disclosure Statement, Solicitation Motion and Backstop Motion* [Docket No. 767] to PDC. See Certificate of Service [Docket No. 806].

which provided the framework for an orderly process in which the Debtors could address their prepetition liabilities and structure their Plan, including by barring any creditor's claim that was not filed in advance of the applicable date. Despite the Debtors' detailed disclosure of the rejection of the Executory Contracts, the numerous related notices served to PDC, and the industry-wide coverage of the Court's approval of the Rejection, PDC failed to file a proof of claim in connection with the accrual of the Line Fill Letter Agreement upon termination of the Grand Mesa TSA and Exchange Agreement.

5. The Debtors successfully reorganized their business through chapter 11 and obtained the discharge of their debts under 11 U.S.C. § 1141(d) upon confirmation of the Plan nearly 11 months ago. Since then, the Debtors have focused on implementing their post-emergence business plan and, as of the last few months, consummating a merger with Bonanza Creek Energy. PDC comes forward now to seek relief from the Court for legacy claims that it was required to file over a year ago. PDC, like all other creditors, received proper (actual and constructive) notice and should have filed a proof of claim by the General Bar Date on August 14, 2020. PDC did not even file a claim prior to the confirmation of the Plan some four months later. PDC only has itself to blame. The law is settled that a party subject to a court's injunction does not have the option simply to proceed as if the injunction had not been issued. The relief sought in the Motion is a violation of the injunctions provided in the Bankruptcy Code, the Bar Date Order, and the Plan and, accordingly, should be denied. Further, the Reorganized Debtors request that the Court enjoin PDC from further pursuing the relief sought in the Motion.

Jurisdiction and Venue

6. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order*

of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. The Reorganized 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 objection to the extent it is later determined that the Court, absent party consent, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

8. The bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 3003 and 3007, and Bankruptcy Local Rule 3007-1.

Background

A. The Chapter 11 Filing and Bar Date.

9. On June 14, 2020 (the "Petition Date"), Extraction and the other above-captioned debtors (the "Debtors") filed voluntary petitions for relief under the Bankruptcy Code. *See* Voluntary Petition [Docket No. 1].

10. On August 11, 2020, the Court entered an order appointing Kurtzman Carson Consultants LLC ("KCC") as the claims, noticing, and solicitation agent for the Debtors in these chapter 11 cases [Docket No. 81]. On July 20, 2020, the Court entered the Bar Date Order, which established August 14, 2020 as the deadline for any non-governmental entity to file all claims against the Debtors. The Bar Date Order also set the Rejection Damages Bar Date as (i) the Claims Bar Date or the Governmental Bar Date, as applicable; (ii) 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days following service of an order approving the rejection of any

executory contract or unexpired lease of the Debtors; and (iii) any such other date that this Court may fix in the applicable order approving such rejection. Moreover, the Bar Date Order at paragraph 3 provided that:

> All Proofs of Claim must be filed so as to be actually received by Kurtzman Carson Consultants LLC ("KCC"), the notice and claims agent retained in these chapter 11 cases, on or before the applicable Bar Date. If Proofs of Claim are not received by KCC on or before the applicable Bar Date, except in the case of certain exceptions explicitly set forth herein, the holders of the underlying claims shall be barred from asserting such claims against the Debtors and precluded from voting on any chapter 11 plans filed in these chapter 11 cases and/or receiving distributions from the Debtors on account of such claims in these chapter 11 cases.

11. On July 21, 2020, KCC serviced a copy of the Bar Date Notice (as defined in the Bar Date Order) to PDC Energy. *See Certificate of Service* [Docket No. 362]. In addition, on July 27, 2020, the Debtors published notice of the General Bar Date in *The Denver Post* and the national edition of *The New York Times*. *See Aff. of Publication* [Docket No. 321].

B. Confirmation of the Debtors' Chapter 11 Plan and the Discharge Injunction.

12. On December 23, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1509] (the "Confirmation Order"), confirming the *Debtors' Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1505] (the "Plan"). The Reorganized Debtors provided notice of the Confirmation Order and the occurrence of the Plan's effective date to PDC.[11]

[11] *Certificate of Service*, at Exhibit H [Docket No. 1678] (the Notice of Confirmation Order and Effective Date was served on PDC via First Class Mail on January 25, 2021.).

13. The Confirmation Order expressly incorporated the discharge and injunction provisions of Article VIII of the Plan (the "Discharge Injunction"), which provide, in relevant part, that:

> Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action against any Debtor of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Causes of Action accrued before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt or right is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. Unless expressly provided in the Plan, the Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

14. On January 20, 2021, the Debtors substantially consummated the Plan and emerged from chapter 11 in accordance with the terms of the Plan and the Confirmation Order (the "Effective Date"). On January 21, 2021, the Reorganized Debtors filed the *Notice of (A) Entry of Findings of Fact, Conclusions of Law, and Order Confirming the Sixth Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, and (B) Occurrence of Effective Date* [Docket No. 1652] (the "Notice of Confirmation Order and Effective Date").

Objection

15. PDC's Motion should be denied because (a) PDC's claim arose as of the Petition Date and PDC failed to file any proof of claim, or take any action on account of their claim, in advance of entry of the Confirmation Order and Effective Date of the Debtors' Plan; and (b) PDC's Motion to enforce the Confirmation Order is not applicable because the Line Fill Letter Agreement was terminated in advance of entry of the Confirmation Order.

I. PDC's Alleged Claim Existed as of the Petition Date and PDC's Failure to File a Proof of Claim Forever Bars It from Pursuing the Relief Sought in the Motion.

16. A threshold issue is the validity of PDC's claim. A "claim" is clearly defined in the Bankruptcy Code to mean a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . ." 11 U.S.C. § 101(5). The phrase "right to payment" is not defined in the Bankruptcy Code. The Supreme Court has held that "[t]he plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558, 110 S.Ct. 2126, 109 L.Ed.2d 588 (1990); *see also In re Nat'l Gypsum Co.*, 139 B.R. 397, 405 (N.D. Tex. 1992).

17. The Debtors do not concede that PDC has a right to payment as of the date hereof, nor do they concede that PDC had a claim at any point during the chapter 11 cases, as PDC has yet to file a proof of claim. However, assuming that PDC did have a claim, the claim existed as of the Petition Date due to the Debtors' rejection of the Grand Mesa TSA. Thus, the claim was a prepetition debt that was discharged upon confirmation of the Plan. *In re McJonathan*, 533 B.R. 440, 446 (Bankr. M.D. Pa. 2015) ("[T]he focus should be on whether a claim exists pre-petition, not when the claim accrues.") (citation omitted); *In re Gullone*, 301 B.R. 683, 690 (Bankr. D.N.J.

2003) (holding that a claim that arose pre-petition, but that "was not yet fixed or liquidated," was discharged).

C. PDC Did Not Comply with the Claims Bar Date and Should be Enjoined from the Relief Sought in the Motion.

18. As adequately disclosed through the Debtors' Disclosure Statement, and pursuant to the terms of the Bar Date Notice, PDC was aware, or should have been aware, that its claim arose as of the Petition Date. Therefore, PDC should have filed a proof of claim in advance of the August 14, 2020 Bar Date as its claim—regardless of its validity—was in existence as of June 14, 2020. PDC also failed to comply with the Rejection Damages Bar Date. The Court entered the order authorizing rejection of the Grand Mesa TSA on November 2, 2020. Construing the facts in the most favorable light for PDC, PDC had until December 2, 2020 to file a claim. Grand Mesa complied with the Rejection Damages Bar Date, but PDC did not.

19. A claims bar date operates as a strict "drop-dead date" that prevents a creditor from asserting prepetition claims when service of a bar date notice is proper. *See, e.g., In re New Century TRS Holdings, Inc.*, 465 B.R. 38, 46 (Bankr. D. Del. 2012) ("For creditors who receive the required notice, the bar date is a 'drop dead date' that prevents a creditor from asserting prepetition claims unless he can demonstrate excusable neglect.") (internal citation omitted). The purpose of establishing a strict deadline for filing proofs of claim is "to provide the debtor and its creditors with finality," and "courts look upon the bar date as being [in] the nature of a statute of limitations [which] must be strictly observed." *In re Norris Grain Co.*, 131 B.R. 747, 749 (M.D. Fla. 1990) (internal citations omitted). In fact, the bar date is "essential" to the chapter 11 process because it lays the foundation upon which a debtor may begin to formulate a reorganization plan. *See In re Trump Taj Mahal Assocs.*, 156 B.R. 928, 938 (Bankr. D.N.J. 1993), *aff'd*, 1993 WL 534494 (D. Del. Dec. 13, 1993) ("Without a final claims deadline, participants in the

reorganization process would be hindered by undue caution in their negotiations and in voting on the plan."). The Third Circuit is no exception, where it is "well-established law. . . that bar dates for filing Proofs of Claim are strictly construed." *Id.* at 936. At the latest, PDC received notice of the bar date on July 22, 2010, and had more than enough knowledge (and time) to assert a claim by August 14, 2020 or, at the latest, December 2, 2020. But PDC knew that the Debtors had sought to reject the Grand Mesa TSA well before that (the Debtors filed the Motion to Reject on June 15, 2020) and was on notice that a potential claim existed in favor of PDC existed and should be filed. The Bankruptcy Code, the Plan, and the Confirmation Order enjoin PDC's attempt to seek the relief sought in the Motion. Given this, the Court should deny the Motion.

20. Even if, in the alternative, PDC's claim was an administrative claim, PDC did not comply with the administrative claim bar date. The Plan provides that an "'Administrative Claim' means a Claim for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims; (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code; (d) Consenting Senior Noteholder Fees and Expenses; (e) Revolving Credit Agreement Lender Fees and Expenses; (f) all DIP Claims; (g) Backstop Commitment Premium (if paid in cash); and (h) the Exit Facility Agent/Lender Fees and Expenses." Plan, Art. I.10. The Plan provides that "'Administrative Claims Bar Date' means the deadline for filing requests for payment of Administrative Claims other than the Consenting Senior Noteholder Fees and Expenses, the Revolving Credit Agreement Lender Fees and Expenses, the Backstop Commitment

Premium (if paid in cash), and the Exit Facility Agent/Lender Fees and Expenses, except as otherwise set forth in the Plan or a Final Order, which: **(a) with respect to Administrative Claims other than Professional Fee Claims, shall be 30 days after the Effective Date;** and (b) with respect to Professional Fee Claims, shall be 45 days after the Effective Date; ***provided*** **that Filing requests for payment of Administrative Claims is not required, where the Plan, Bankruptcy Code, or a Final Order does not require such Filing."** Plan, Art .I.11 (emphasis added).

21. Even if PDC's alleged claim did not exist until later on during the pendency of the cases, which the Reorganized Debtors do not contend, PDC failed to comply with the Administrative Claims Bar Date. For the foregoing reasons, the Motion should be denied.

D. The Discharge Provisions of the Bankruptcy Code and the Debtors' Plan Governs and PDC Should be Enjoined from Pursuing the Relief Sought in the Motion.

22. Section 1141(d) of the Bankruptcy Code provides that confirmation of a chapter 11 plan of reorganization "discharges the debtor from any debt that arose before the date of such confirmation." 11 U.S.C. § 1141(d)(1)(A). Article VIII of the Plan implements the Bankruptcy Code's discharge. The Confirmation Order expressly approved these provisions.

23. In addition, section 524(a) of the Bankruptcy Code provides that the discharge provided by a chapter 11 plan of reorganization operates as a permanent injunction against the commencement or continuation of any action to collect, recover, or offset any debt that is discharged by such plan. 11 U.S.C. § 524(a)(2) ("A discharge in a case under this title operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor."). Article VIII of the Plan, which was expressly approved by the Confirmation Order, also effectuates the Bankruptcy Code's permanent injunction.

24. The debtor is discharged from all "claims" as defined in the Bankruptcy Code. The Code defines "claim" broadly to include any:

> right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

11 U.S.C. § 101(5)(A). This definition is "designed to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" *Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 929-30 (9th Cir. 1993) (inner citation omitted). This broad definition:

> performs a vital role in the reorganization process by requiring, in conjunction with the bar date, that all those with a potential call on the debtor's assets, provided the call in at least some circumstances could give rise to a suit for payment, come before the reorganization court so that those demands can be allowed or disallowed and their priority and dischargeability determined.

Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp., 266 B.R. 575, 580 (S.D.N.Y. 2001) (citation omitted). This broad definition also helps fulfill Congress' intent to provide debtors a fresh start "by maximizing the scope of a discharge." *U.S. v. LTV Corp. (In re Chateaugay Corp.)*, 944 F.2d 997, 1002 (2d Cir. 1991). Accordingly, any right to payment arising from any claim PDC possessed on account of the Line Fill Letter Agreement was discharged by the Confirmation Order, and PDC does not possess any right to payment on account of such claim today.

II. The Relief Sought in the Motion to Enforce the Confirmation Order Is Not Applicable as any Payment required under Line Fill Letter Agreement was due and owing in Advance of Entry of the Confirmation Order.

25. Any claim under the Line Fill Letter Agreement accrued as of the Petition Date in conjunction with the rejection of the Grand Mesa TSA and subsequent termination of the Grand Mesa TSA and Exchange Agreement as provided under the terms of the Line Fill Letter

Agreement.[12] The Debtors could not assume a contract that is no longer in existence at the time of assumption or rejection (or is non-executory). *See, e.g., Ctys. Contracting & Const. Co. v. Const. Life Ins. Co*., 855 F.2d 1054, 1061 (3d Cir. 1988); *In re G. Force Invs., Inc.*, 442 B.R. 646, 649 (Bankr. N.D. Ohio 2010) ("[A] lease which has been terminated or which has expired is not capable of being assumed under § 365(a). This limitation is statutory, with § 365(c)(3) specifically providing that a debtor-in-possession 'may not assume or assign any ... unexpired lease of the debtor ... if ... such lease is of nonresidential real property and had been terminated under applicable nonbankruptcy law prior to the order for relief.'"); *In re Stiletto Mfg., Inc.*, 588 B.R. 762, 766 (Bankr. E.D.N.C. 2018);*Gloria Mfg. Corp. v. Int'l Ladies' Garment Workers' Union*, 734 F.2d 1020, 1022 (4th Cir. 1984) (citing 2 *Collier on Bankruptcy* ¶ 365.02 (15th ed. 1983)) ("Once a contract has expired on its own terms, there is nothing left for the trustee to reject or assume.").

26. Here, any payment under the Line Fill Letter Agreement would have been triggered pursuant to the Grand Mesa TSA and the Exchange Agreement, leaving nothing left for the Debtors to assume or reject (as the agreements were either terminated or non-executory). Therefore, the enforcement of the Confirmation Order sought in the Motion is not applicable as any payment under the Line Fill Letter Agreement arose as of the Petition Date and the Grand Mesa TSA and Exchange Agreement were terminated in advance of entry of the Confirmation Order and the Effective Date. Accordingly, the Court should deny the Motion.

CONCLUSION

27. For the reasons stated, the Reorganized Debtors respectfully request that the Court deny the Motion and enjoin PDC from pursuing the relief sought therein.

[12] Line Fill Letter Agreement, 2; Exchange Agreement, 3.

Dated: November 12, 2021
Wilmington, Delaware

/s/ Richard W. Riley

WHITEFORD, TAYLOR & PRESTON LLC[13]
Marc R. Abrams (DE No. 955)
Richard W. Riley (DE No. 4052)
Stephen B. Gerald (DE No. 5857)
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Facsimile: (302) 661-7950
Email: mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

- and -

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

Co-Counsel to the Reorganized Debtors

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

EXHIBIT A

The Line Fill Letter Agreement

May 30th, 2018

Bayswater Exploration & Production, LLC; Bayswater Blenheim Holdings LLC; Bayswater Blenheim Holdings II, LLC
730 17th Street, Suite 500
Denver, CO 80202

PDC Energy, Inc.
1775 Sherman St., Suite 3000
Denver, CO 80203

Extraction Oil & Gas, Inc.
370 17th Street, Suite 5300
Denver, CO 80202

RE: Letter Agreement
Line Fill Receivable related to Grand Mesa System

Ladies and Gentlemen:

This letter agreement (the "Letter") serves to identify certain rights and obligations of Extraction Oil & Gas, Inc. ("Extraction"), Bayswater Exploration & Production, LLC, Bayswater Blenheim Holdings LLC and Bayswater Blenheim Holdings II, LLC (collectively, "Bayswater"), and PDC Energy, Inc. ("PDC") arising under the various contracts described below.

Pursuant to that July 29, 2016 Purchase and Sale Agreement between Extraction (as successor in interest to Extraction Oil & Gas, LLC ("XOG")) and Bayswater, Bayswater assigned all of its interest in that certain Amended and Restated Transportation Services Agreement, dated June 21, 2016, between Grand Mesa Pipeline, LLC and Bayswater (the "Grand Mesa Agreement") to Extraction.

Pursuant to the Grand Mesa Agreement, Extraction provided all of the required line fill into the Grand Mesa System ("Required Line Fill").

Pursuant to that Crude Oil Sale and Exchange Agreement, dated September 30, 2016 ("Exchange Agreement"), between Bayswater and Extraction (as successor in interest to XOG), in October 2017 Bayswater paid Extraction an amount equal to $2,795,707 (the "Line Fill Receivable Amount") for Bayswater's 30.5% share of the initial Required Line Fill on the Grand Mesa System.

Pursuant to that certain Assignment and Bill of Sale between Bayswater and PDC, dated January 5, 2018 and effective June 1, 2017, attached hereto (the "PDC Assignment"), Bayswater assigned to PDC all of its right, title, and interest in certain oil and gas properties and associated contracts including, but not limited to, the Exchange Agreement.

In order to properly account for the Line Fill Receivable Amount, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, XOG, PDC and Bayswater (together, the "Parties") agree to the following:

1. PDC agrees to credit Bayswater with the Line Fill Receivable Amount on the Final Settlement Statement arising under that certain Purchase and Sale Agreement, as amended, by and between PDC and Bayswater, dated September 25, 2017;

2. Extraction agrees to credit the Line Fill Receivable Amount to PDC and, upon earlier of (i) termination of the Exchange Agreement and (ii) such time as 4,454,830 barrels have been delivered under the Exchange Agreement, XOG shall remit the Line Fill Receivable Amount to PDC; and

3. PDC agrees to assume and to discharge the duties and obligations of Bayswater under the Exchange Agreement.

This Letter Agreement shall not be deemed to constitute an amendment or modification to the terms and conditions of the Exchange Agreement, which shall remain in full force and effect.

This Letter Agreement may be executed in any number of counterparts, each of which shall be binding on the party executing, and all of which shall constitute one agreement. Electronic execution or electronic delivery of the executed Letter Agreement shall be binding.

The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

(signature page to follow)

Please indicate your agreement to the foregoing by executing in the spaces provided below.

Bayswater Exploration & Production, LLC

By: _____
Name: Lynn S. Belcher
Title: Executive Vice President
Date: May 25, 2018

Bayswater Blenheim Holdings LLC

By: _____
Name: Guy J. Castranova
Title: Managing Director
Date: May 24, 2018

Bayswater Blenheim Holdings II, LLC

By: _____
Name: Guy J. Castranova
Title: Managing Director
Date: May 24, 2018

PDC Energy, Inc.

By: Nicole Martinet
Name: Nicole L. Martinet
Title: VP & Associate General Counsel
Date: May 30, 2018

Extraction Oil & Gas, Inc.

By: _____
Name: Matt Owens
Title: President
Date: May __, 2018

EXHIBIT B

The Exchange Agreement

Crude Oil Sale and Exchange Agreement

This Crude Oil Sale and Exchange Agreement (this "Agreement"), dated September 30, 2016, is by and between Bayswater Exploration & Production, LLC, a Colorado limited liability company, Bayswater Blenheim Holdings, LLC, a Delaware limited liability company, and Bayswater Blenheim Holdings II, LLC, a Delaware limited liability company (collectively "Bayswater"), 730 17th Street, Suite 610, Denver, Colorado 80202, and Extraction Oil & Gas, LLC, a Delaware limited liability company ("Extraction"), 370 17th Street, Suite 5300, Denver, Colorado 80202. Bayswater and Extraction are individually referred to as a "Party" and collectively, the "Parties".

RECITALS:

A. Pursuant to a Purchase and Sale Agreement dated July 29, 2016, between the Parties (the "Purchase Agreement"), Bayswater sold and conveyed and Extraction purchased certain properties, including wells capable of producing crude oil.

B. Among the assets assigned to Extraction pursuant to the Purchase Agreement are (i) that certain Amended and Restated Transportation Services Agreement dated June 21, 2016 between Grand Mesa Pipeline, LLC, ("Grand Mesa") and Bayswater (the "Grand Mesa TSA"), and (ii) that certain Transportation Services Agreement dated September 8, 2015, as amended July 28, 2016, between Platte River Midstream, Inc., ("Platte River") and Bayswater (the "Platte River TSA"). Collectively, the Grand Mesa TSA and the Platte River TSA are referred to as the "TSAs".

C. Under the Purchase Agreement, the Parties have agreed to apportion certain rights and obligations under the TSAs, and desire to enter into this Agreement to implement those apportionments.

In consideration of the covenants and agreements herein, the Parties agree as follows:

DELIVERIES: The following two deliveries will be deemed to be simultaneous, as an exchange, as and when barrels are delivered under "Delivery 1" below.

Delivery 1: Bayswater will deliver barrels to Extraction:

Product:	Crude Oil meeting the specifications under the TSAs ("Product").
Quantity:	A volume equal to the following, by Contract Years, as defined in the Grand Mesa TSA. The following is referred to as "Bayswater's Commitment":

Grand Mesa TSA	
Contract Year	Barrels Per Day
1	-0-
2-6	2,200
7	1,200
Platte River TSA	
Contract Year	Barrels Per Day
1	-0-
2-5	1,200

Bayswater's Commitment multiplied by the number of days in such month is "Bayswater's Monthly Commitment". Bayswater's Monthly Commitment less the actual deliveries by Bayswater during such month is "Bayswater's Deficiency". Bayswater will be responsible to Extraction for Bayswater's Deficiency, if any, under the TSAs. Bayswater's Deficiency shall be determined separately for each of the Grand Mesa TSA and the Platte River TSA, and Bayswater will pay Extraction for Bayswater's Deficiency as follows (calculated separately):

The volumes of Bayswater's Deficiency shall be multiplied by the then applicable per-barrel tariff rate paid by Extraction pursuant to, as applicable, either Grand Mesa's FERC Tariff or Platte River's FERC Tariff, collectively, the "FERC Tariffs" ("Bayswater's Deficiency Payment").

Bayswater's Deficiency Payment shall be reduced to the extent that the total deliveries by both Parties under the applicable TSA result in a deficiency in meeting the applicable Fixed Monthly Payment (as defined in the applicable TSA) is less than Bayswater's Deficiency Payment calculated above.

Title: Title shall pass from Bayswater to Extraction at the inlet flange of the interconnection facilities connecting Platte River and Bayswater ("Bayswater Facilities") located on the lands described on Exhibit A, attached hereto, or when delivered through the tank load line to the trucks provided by Platte River, as applicable.

Price to be paid by Extraction to Bayswater: The daily average (excluding weekends and holidays) of Phillips 66 daily posting for West Texas Intermediate crude oil for the calendar month in which quantities are sold; deemed 40.0 API gravity, ***less*** the aggregate of the then applicable per-barrel tariff rate for both Grand Mesa and Platte River, *and* truck unloading fees, if any, as incurred at the applicable delivery point at Lucerne paid by Extraction to Grand Mesa and Platte River pursuant to

each respective FERC Tariff. Such price shall be applied to a volume equal to the volume of crude oil that is actually delivered from the Bayswater Facilities under Delivery 1, ***less*** any pipeline loss assessed under the TSAs, or applicable FERC Tariffs.

Delivery 2: Extraction will deliver barrels to Bayswater:

Product:	Product as defined in Delivery 1 above.
Quantity:	A volume equal to the volume of crude oil that is actually delivered from the Bayswater Facilities under Delivery 1, above, ***less*** any pipeline loss assessed under the TSAs, or applicable FERC Tariffs.
Title:	Title shall pass from Extraction to Bayswater, or its designated agent or representative, at the inlet flange of NGL Energy Partners LP's terminal in Cushing, Oklahoma.
Price to be paid by Bayswater to Extraction:	The daily average (excluding weekends and holidays) of Phillips 66 daily posting for West Texas Intermediate crude oil for the calendar month in which quantities are sold; deemed 40.0 API gravity.

Term: This Agreement shall be effective October 1, 2016, and continue for the duration of the Initial Term as defined in the Grand Mesa TSA; provided, this Agreement may be earlier terminated by Bayswater upon Bayswater delivering an aggregate volume of 4,454,830 barrels hereunder.

Financial Assurances: Bayswater and Extraction shall have the obligations under the Grand Mesa TSA and the Platte River TSA for providing their proportionate share of the financial assurances (guarantees or letters of credit) as required under those agreements. The proportionate share of Bayswater under each TSA shall be the portion that the aggregate of Bayswater's Commitment over the term of this Agreement, bears to the total volume commitments under the applicable TSA ("Bayswater's Share"). Bayswater's Share under the Platte River TSA is 19.20%; and under the Grand Mesa TSA is 30.5%. If either Grand Mesa or Platte River is unwilling to accept the proportionate obligations for financial assurances from Bayswater and Extraction, and if Extraction is fully responsible for providing the financial assurances, then the Bayswater's Share of the financial assurances shall be provided by Elgin Energy, LLC, Bayswater Blenheim Holdings LLC and Bayswater Blenheim Holdings II, LLC, to Extraction, in the same form as required under the applicable TSA. The obligations of each of Elgin Energy, LLC, Bayswater Blenheim Holdings LLC, and Bayswater Blenheim Holdings II, LLC, under this provision, are several as to each of their respective interests and are not joint and several obligations.

Line Fill: Bayswater has already provided the line fill required under the Platte River TSA and adjustments for Extraction's share of that line fill were provided for in the Purchase Agreement.

At the time that Extraction is required to provide line fill under the Grand Mesa TSA, Bayswater shall pay Extraction for Bayswater's Share of any line fill Extraction actually provides pursuant to the Grand Mesa TSA, in an amount equal to Bayswater's Share, of all crude oil provided as line fill *multiplied by* the price for which production from the wells supplying line fill was sold immediately prior to the date that the line fill was provided (net of all royalties, overriding royalties, net profits interests, production payments or similar payment burdens).

True-Up: Pursuant to Section 7.4 of the Platte River TSA, Platte River will determine the Annual Volume True-Up. If for any year, the Annual Volume True-Up is positive, then as between Extraction and Bayswater the credit granted by Platte River under the Platte River TSA ("Annual Credit") shall be allocated as follows:

a. If there is an Annual Credit for a Contract Year, but if Bayswater did not deliver the Bayswater Commitment multiplied by the number of days in that Contract Year ("Bayswater Annual Commitment"), all of the Annual Credit will be allocated to Extraction.

b. If there is an Annual Credit for a Contract Year, but if Extraction did not deliver an amount equal to the Committed Volume (as defined in the Platte River TSA minus the Bayswater Annual Commitment ("Extraction Annual Commitment"), all of the Annual Credit will be allocated to Bayswater.

c. If there is an Annual Credit and both Bayswater delivered more than the Bayswater Annual Commitment and Extraction delivered more than the Extraction Annual Commitment, Bayswater will be allocated an amount equal to the Annual Credit times a fraction where the numerator equals the actual deliveries by Bayswater during the Contract Year minus the Bayswater Annual Commitment and the denominator equals the total deliveries under the Platte River TSA for the Contract Year minus the Committed Volume for the Contract Year.

d. The Annual Credit, if any is allocated to Bayswater, shall be credited to Bayswater and applied, on a barrel-for-barrel basis, at the then applicable rate set forth on Schedule "B" of the Platte River TSA, against any deficiency in Bayswater's Monthly Commitment during the Contract Year immediately following the Contract Year in which it was accrued. If not used during the immediately following Contract Year, such Annual Credit shall expire.

Notices: All notices and other communications between the Parties to this Agreement shall be in writing and shall be deemed to have been duly given when (i) delivered in person, (ii) five (5) days after posting in the United States mail having been sent registered or certified mail return receipt requested or (iii) delivered by facsimile with delivery confirmed. Notices shall be sent as follows:

If to Bayswater:

Bayswater Exploration & Production, LLC
730 17th Street, Suite 610
Denver, Colorado 80202
Facsimile: (303) 893-2508
Attention: Don W. Barbula

If to Extraction:

Extraction Oil & Gas , LLC
370 17th Street, Suite 5300
Denver, Colorado 80202
Facsimile: (720) 557-8301
Attention:

Risk of Loss: The risk of loss of the barrels exchanged in this Agreement shall be borne by the Party who has title to the barrels at the time of the loss pursuant to Delivery 1 or Delivery 2 set forth in this Agreement.

Statements Payments: It is agreed that a net settlement (or net payment) arrangement set forth herein shall be used for the purpose of effecting payment and thereby settling the Parties' respective accounts for all purchases, sales and/or exchanges under this Agreement each month, subject to the following terms and conditions. For each month Extraction shall determine the sales price for the crude oil sold to Extraction and the crude oil delivered to Cushing for Bayswater's account, in accordance with the pricing terms of this Agreement. The difference resulting after offsetting the total amount each Party owes to the other Party, for the applicable month, shall be paid by the Party owing the greater amount by paying such difference to the Party owing the lesser amount within fifteen (15) days after its receipt of such invoice.

Measurement: The volumes of Product exchanged hereunder shall be based upon the measurement provisions in the TSAs.

Audits: Either Party, on 30 days prior written notice, shall have the right at its expense, at reasonable times during business hours, to audit the books and records of the other Party to the extent necessary to verify the accuracy of any statement, allocation, measurement, computation, charge, or payment made

under or pursuant to this Agreement. The scope of any audit shall be limited to the 24 month period immediately prior to the month in which the audit is requested.

Governing Law: State of Colorado, without respect to conflict of laws.

Prior Agreements Terminated: On the effective date of this Agreement, all previous contracts and agreements between Bayswater (and its affiliates) and Extraction (and its affiliates) pertaining to the purchase and sale, or exchange of Products shall terminate and be superseded by this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Bayswater Exploration & Production, LLC

By: _____
Name: Lynn S. Belcher
Title: Executive Vice President

Bayswater Blenheim Holdings LLC

By: _____
Name: Guy J. Castranova
Title: Managing Director

Bayswater Blenheim Holdings II, LLC

By: _____
Name: Guy J. Castranova
Title: Managing Director

Extraction Oil & Gas, LLC

By: _____
Name: Matt Owens
Title: President

EXHIBIT A

Township	Range	Section
5N	64W	All
5N	65W	All
5N	66W	All
6N	64W	All
6N	65W	All
6N	66W	All
6N	67W	Section 1: All
7N	64W	All
7N	65W	All
7N	66W	All
7N	67W	Section 24: S/2 Section 25: All Section 36: All