Docket #0020 Date Filed: 9/15/2020

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1] Debtors.	)	Case No. 20-11548 (CSS)
	)	Jointly Administered
EXTRACTION OIL & GAS, INC.,	)	Adversary Proceeding
Plaintiff,	)	Case No. 20-50839 (CSS)
v.	)	**Re: Adv. D.I. 10, 19**
ELEVATION MIDSTREAM, LLC,	)	
Defendant.	)	

NOTICE OF FILING OF PROPOSED REDACTED VERSION OF THE DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

PLEASE TAKE NOTICE that, pursuant to Rule 9018-(d)(ii) of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware, Elevation Midstream, LLC ("Elevation") has today filed the attached proposed redacted version of the *Defendant's Answer to Complaint for Declaratory Judgment*[2] with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

[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 ("8 North") (0904); Axis Exploration, LLC ("Axis") (8170k); 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 ("XTR") (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

[2] In connection herewith, Elevation filed the *Motion of Elevation Midstream, LLC for Entry of an Order Authorizing Elevation Midstream, LLC to File Under Seal Certain Confidential Information in the (I) Defendant's Answer to Complaint for Declaratory Judgment; (II) Brief in Support of Defendant's Cross-Motion for Summary Judgment; and (III) Objection of Elevation Midstream, LLC and GSO EM Holdings LP to the Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases* [D.I. 19].

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Dated: September 15, 2020
Wilmington, Delaware

Respectfully submitted,

By: */s/ Travis J. Cuomo*

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UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1] Debtors.	)	Case No. 20-11548 (CSS) Jointly Administered
EXTRACTION OIL & GAS, INC. Plaintiff,	)	Adversary Proceeding Case No. 20-50839(CSS)
v.	)	
ELEVATION MIDSTREAM, LLC Defendant.	)	

DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

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Dated: September 10, 2020

[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 (8170k); 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 ("XTR") (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

Defendant Elevation Midstream, LLC ("Elevation" or "Defendant"), by and through undersigned counsel, based on personal knowledge as to itself and its own actions and upon information and belief as to all other persons and events, hereby files its Answer to Plaintiff Extraction Oil & Gas, Inc.'s ("Extraction") Complaint for Declaratory Judgment dated September 4, 2020 (the "Complaint"). For its Answer, Elevation sets forth Extraction's allegation in each paragraph, followed by its answer to the allegations in each paragraph:

STATEMENT REGARDING CONSENT

Pursuant to Federal Rule of Bankruptcy Procedure 7012(b) and Local Rule 7012-1, Elevation consents to the entry of a final order or judgment by this Court.

ANSWER

Nature of the Action

1. On June 14, 2020, the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under Chapter 11 of title 11 Of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their properties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

ANSWER: The allegations of Paragraph 1 pertain to Extraction's filings and actions about which Elevation lacks knowledge. Upon information and belief, Elevation admits that Debtors filed a voluntary petition for relief under Chapter 11 on June 14, 2020, and purport to be operating their businesses and managing their properties as debtors-in-possession.

2. On August 10, 2020, Debtors filed the *Notice of Rejection of Certain Executory Contracts And/Or Unexpired Leases* [Docket No. 377] (the "Rejection Notice").

ANSWER: The allegations of Paragraph 2 pertain to Extraction's filings and actions about which Elevation lacks precise knowledge. Elevation admits that the Court's docket provides that Debtors filed the Rejection Notice on August 10, 2020.

3. In connection with the Debtors' chapter 11 cases, this adversary proceeding seeks a declaration that certain covenants contained in the agreements between Elevation and certain of the Debtors do not "run with the land."

ANSWER: The allegations of Paragraph 3 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that Debtors filed this adversary proceeding in the consolidated chapter 11 cases and seeks a declaration regarding the agreements between Elevation and Extraction. Elevation denies the remaining allegations in Paragraph 3, including but not limited to the allegation that certain covenants in the agreements between Elevation and Extraction do not "run with the land."

Jurisdiction and Venue

4. The United States Bankruptcy Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334, and 2201. The proceeding arises from the above-captioned chapter 11 cases and seeks a declaratory judgment that certain covenants (if any) contained in the agreements between Elevation and certain of the Debtors do not run with the land. This is a core proceeding under 28 U.S.C. § 157(b)(2).

ANSWER: The allegations of Paragraph 4 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the Court has jurisdiction over this matter, the adversary proceeding arises from the consolidated chapter 11 cases, and Extraction seeks a declaration regarding the agreements between Elevation and Extraction. Elevation denies the remaining allegations in Paragraph 4, including but not limited to the allegation that certain covenants in the agreements between Elevation and Extraction do not "run with the land."

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

ANSWER: The allegations of Paragraph 5 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that venue is proper in this Court.

6. Extraction consents to the entry of a final order or judgment by this Court.

ANSWER: The allegations of Paragraph 6 state a legal conclusion regarding Extraction's consent, to which no answer is required. To the extent any response is required, Elevation denies that Extraction is entitled to any final order or judgment in its favor.

Parties

7. Extraction is a debtor in the above-captioned bankruptcy proceedings by virtue of filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, on June 14, 2020.

ANSWER: The allegations of Paragraph 7 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the docket indicates Extraction filed a voluntary petition for relief under chapter 11 on June 14, 2020, but Elevation lacks information sufficient to admit or deny the allegations in Paragraph 7 and therefore denies them on that basis.

8. Defendant Elevation, upon information and belief, is a Delaware limited liability company with its principal place of business at 1225 17th Street, Suite 1750, Denver, CO 80202.

ANSWER: Elevation admits it is a Delaware limited liability company but denies the remainder of the allegations in Paragraph 8, and states that its current principal place of business is located at 1512 Larimer St., Suite 540, Denver, CO 80202.

Factual Allegations

9. On July 3, 2018, Extraction and Elevation entered the Gas Gathering and Compression Agreement (the "Gas Agreement"). A true and correct copy of the Gas Agreement is attached as **Exhibit A**.

ANSWER: Elevation admits that Extraction and Elevation entered into the Gas Agreement on July 3, 2018. The remaining allegations in Paragraph 9 purports to describe a document attached as an Exhibit to the Complaint, which does not require a response. To the extent any response is required, Elevation admits that Exhibit A is a true and correct copy of the Gas Agreement as executed on July 3, 2018.

10. On July 3, 2018, Extraction and Elevation entered the Crude Oil Gathering and Stabilization Agreement (the "Oil Agreement"). A true and correct copy of the Oil Agreement is attached as **Exhibit B**.

ANSWER: Elevation admits that Extraction and Elevation entered into the Oil Agreement on July 3, 2018. The remaining allegations in Paragraph 10 purports to describe a document attached as an Exhibit to the Complaint, which does not require a response. To the extent any response is required, Elevation admits that Exhibit B is a true and correct copy of the Oil Agreement as executed on July 3, 2018.

11. On July 3, 2018, Extraction and Elevation entered the Produced Water Gathering Agreement (the "Water Agreement"). A true and correct copy of the Water Agreement is attached as **Exhibit C**.

ANSWER: Admitted that Extraction and Elevation entered into the Water Agreement on July 3, 2018. The remaining allegations in Paragraph 11 purports to describe a document attached as an Exhibit to the Complaint, which does not require a response. To the extent any response is required, Elevation admits that Exhibit C is a true and correct copy of the Water Agreement as executed on July 3, 2018.

12. When referenced collectively herein, the Gas Agreement, Oil Agreement, and Water Agreement shall be referred to as the "Commercial Agreements."

ANSWER: Paragraph 12 does not contain factual allegations. To the extent necessary, Elevation admits that Extraction uses the defined term "Commercial Agreements" in Paragraph 12, but reserves the right to refer to the Gas Agreement, Oil Agreement, and Water Agreement collectively as the "Gathering Agreements," and uses the defined terms "Gathering Agreements" in this Answer.

13. Each of the Commercial Agreements became effective on July 3, 2018 and each remains [redacted] and continues year to year thereafter unless terminated under the contract. Ex. A § VII; Ex. B § VII; Ex. C § VII.

ANSWER: Paragraph 14 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits the allegations in Paragraph 14.

14. Each of the Commercial Agreements' obligations largely mirror one another.

ANSWER: Paragraph 14 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation denies the allegations in Paragraph 14.

15. Under the Gas Agreement, [redacted] Ex. A § 2.5. The Delivery Points [redacted] as identified on Exhibit B to the Gas Agreement. *Id.* § 4.1. Meanwhile, Gas [redacted] *Id.* (Ex. A) § I(kkk).

ANSWER: Paragraph 15 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Gas Agreement.

16. Similarly, under the Oil Agreement, [redacted] Ex. B § 2.5. The Delivery Points [redacted] as identified on Exhibit B to the Oil Agreement. *Id.* § 4.1. Meanwhile, Crude Oil [redacted] *Id.* (Ex. A) § I(nn).

ANSWER: Paragraph 16 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the

document. Otherwise, Elevation admits that the quoted statements are contained in the Oil Agreement.

17. Finally, under the Water Agreement, [redacted] Ex. C § 2.5. The Delivery Points [redacted] as identified on Exhibit B to the Water Agreement. *Id.* § 4.1. Meanwhile, Water [redacted] *Id.* (Ex. A) § I(xxxxx).

ANSWER: Paragraph 17 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Water Agreement.

18. Each of the Commercial Agreements includes dedications and commitments of certain interests.

ANSWER: Paragraph 18 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits the allegations in Paragraph 18.

19. As part of the Gas Agreement, the parties agreed to dedicate and commit certain interests to the performance of the Gas Agreement—Ex. A § 2.1—stating in relevant part:

[redacted]

ANSWER: Paragraph 19 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the

document. Otherwise, Elevation admits that the quoted statements are contained in the Gas Agreement.

20. As part of the Oil Agreement, the parties agreed to a nearly identical dedication and commitment—Ex. B § 2.1—stating in relevant part:

[redacted]

ANSWER: Paragraph 20 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Oil Agreement.

21. As part of the Water Agreement, the parties agreed to another dedication and commitment—Ex. C § 2.1—stating in relevant part:

[redacted]

ANSWER: Paragraph 21 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Water Agreement.

22. Under the Gas Agreement, the Dedicated Interests are Extraction's [redacted]

[redacted] and Extraction's [redacted] Ex. A (Ex. A) § I(vv).

ANSWER: Paragraph 22 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Gas Agreement.

23. The Dedicated Interests in the Oil Agreement are nearly identical, simply swapping the word "Gas" for "Crude Oil." *See* Ex. B (Ex. A) § I(ss). The Dedicated Interests in the Water Agreement also simply swaps the word "Gas" for "Water." *See* Ex. C (Ex. A) § I(qq).

ANSWER: Paragraph 23 purports to describe the terms of written documents, the best evidence of which is the documents itself. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Oil Agreement and Water Agreement.

24. Under the Gas Agreement, the Other Interests are [redacted] but excluding [redacted] Ex. A (Ex. A) § I(zzzz).

ANSWER: Paragraph 24 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Gas Agreement.

25. The definition of "Other Interests" in the Oil Agreement is nearly identical, simply swapping the word "Gas" for "Crude Oil." *See* Ex. B (Ex. A) § I(uuuu). Likewise, in the Water Agreement, which swaps the word "Gas" for "Water." *See* Ex. C (Ex. A) § I(rrrr).

ANSWER: Paragraph 25 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Oil Agreement and Water Agreement.

26. Under each of the Commercial Agreements, the Dedicated Area is [redacted] Ex. A (Ex. A) § I(uu); Ex. B (Ex. A) § I(rr); Ex. C (Ex. A) § I(pp).

ANSWER: Paragraph 26 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits the allegations in Paragraph 26.

27. Each of the Commercial Agreements reserved important rights from the scope of the dedications. *See* Ex. A § 2.2; Ex. B § 2.2; Ex. C § 2.2.

ANSWER: Paragraph 27 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the Gathering Agreements reserve certain rights from the dedications, but otherwise denies the allegations in Paragraph 27.

28. In each Commercial Agreement, the reservations include the following:[2]

[redacted]

ANSWER: Paragraph 28 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Gathering Agreements.

[2] Ex. A § 2.2; Ex. B § 2.2; Ex. C § 2.2.

29. The Drilling Commitment [redacted] Ex. A (Ex. A) § I(aaa); Ex. B (Ex. A) §I(xx); Ex. C (Ex. A) § I(vv).

ANSWER: Paragraph 29 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Gathering Agreements.

30. Under each of the Commercial Agreements, Elevation was [redacted] s needed for its surface facilities. Ex. A (Ex. A) § XVI(d); Ex. B (Ex. A) § XVI(d); Ex. C (Ex. A) § XVI(d).

ANSWER: Paragraph 30 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Gathering Agreements but denies the remainder of Paragraph 30.

31. However, Extraction granted [redacted] for the construction, operation, and maintenance of the Delivery Point facilities. Ex. A (Ex. A) § XVI(d); Ex. B (Ex. A) § XVI(d); Ex. C (Ex. A) § XVI(d).

ANSWER: Paragraph 31 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits that the quoted statements are contained in the Gathering Agreements.

32. Each Commercial Agreement purports to create covenants running with the land.

ANSWER: The allegations of Paragraph 32 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the Gathering Agreements create covenants running with the land and deny any implication that they do not.

33. In the Gas Agreement, the parties included a provision that purported to render certain contractual promises into covenants running with the Dedicated Interests. Ex. A § 2.4. Specifically, the parties stated that:[3]

[redacted]

ANSWER: Paragraph 33 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Gas Agreement.

34. In the Oil Agreement, the parties stated:[4]

[redacted]

ANSWER: Paragraph 34 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Oil Agreement.

[3] Ex. A § 2.4.

[4] Ex. B § 2.4.

35. In the Water Agreement, the parties stated:[5]



ANSWER: Paragraph 35 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Water Agreement.

36. Meanwhile, on July 3, 2018, the parties entered the Ratification Agreement. A true and correct copy of the Ratification Agreement is attached as Exhibit D.

ANSWER: Admitted.

37. The parties "desire[d] to enter into [the] [Ratification] Agreement to clarify certain responsibilities and obligations" respecting the Commercial Agreements. Ex. D at Recital 2. The Ratification Agreement was "executed solely for the purpose of the ratification contemplated [t]herein and shall not amend or modify the Commercial Agreements in any way. In the event of a conflict between this this [sic] [Ratification] Agreement and the Commercial Agreements, the Commercial Agreements shall govern in all respects." *Id.* § 5.

ANSWER: Paragraph 37 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the quoted statements are contained in the Ratification Agreement.

38. First, the Ratification Agreement ratified and confirmed the dedications of the Commercial Agreements. Ex. D § 2(a). Next, the Ratification Agreement restated the parties' intent and language concerning covenants running with the land. *Id.* § 2(b). The Ratification Agreement is governed by Colorado law. *Id.* § 3.

[5] Ex. C § 2.4.

ANSWER: Paragraph 38 purports to describe the terms of a written document, the best evidence of which is the document itself. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits that the ratifying parties to the Ratification Agreement ratified and confirmed the dedication of their interests of the Gathering Agreements, independently agreed and covenanted to the dedications to Elevation and to the performance of the Gathering Agreements, and agreed and covenanted to the creation of covenants running with the land. Elevation also admits that the Ratification Agreement is governed by Colorado law. Elevation denies the remaining allegations in Paragraph 38

> 39. Sections of the Commercial Agreements were amended throughout the years. The amendments do not impact the provisions discussed above or the covenant running with the land analysis. True and correct copies of each of the amendments are attached as Exhibit E.

ANSWER: Paragraph 39 purports to describe the terms of written documents, the best evidence of which is the documents themselves. Elevation denies any allegation inconsistent with the terms of the documents. Otherwise, Elevation admits the first and third sentences of Paragraph 39 and denies the second sentence of Paragraph 39.

> 40. The Commercial Agreements are construed in accordance with the laws of Colorado, without regards to Colorado's conflict of laws rules. Ex. A (Ex. A) § XIII; Ex. B (Ex. A) § XIII; Ex. C (Ex. A) § XIII. The real property interests implicated by the Commercial Agreements are also located in Colorado. *See* Ex. A at Recital 1 (reciting that Extraction owns certain lands in Colorado); Ex. B at Recital 1 (same); Ex. C at Recital 1 (same).

ANSWER: Paragraph 40 purports to describe the terms of written documents, the best evidence of which is the document themselves. Elevation denies any allegation inconsistent with the terms of the document. Otherwise, Elevation admits the allegations in Paragraph 40.

Claims for Relief

41. The allegations set forth above are incorporated herein by reference.

ANSWER: Elevation incorporates herein by reference its answers to Paragraphs 1-40.

42. Under Colorado law, a covenant runs with the land only when the parties intend the covenant to run with the land and the covenant touches and concerns the land. *Reishus v. Bullmasters, LLC*, 409 P.3d 435, 440 (Colo. App. 2016). Privity of estate is also required. *See Taylor v. Melton*, 274 P.2d 977, 982 (Colo. 1954); *Farmers' High Line Canal & Reservoir Co. v. New Hampshire Real Estate Co.*, 92 P. 290, 293 (Colo. 1907).

ANSWER: The allegations of Paragraph 42 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits the first sentence of Paragraph 42 but denies that privity of estate is required under Colorado law.

43. Although intent that the covenant run with the land is necessary, it is not sufficient. *See Cloud v. Ass'n of Owners, Satellite Apartment Bldg., Inc.*, 857 P.2d 435, 440 (Colo. App. 1992) ("Even if there is an intent to make a covenant run with the land, the covenant must still 'touch and concern' the land, that is, it must closely relate to the land, its use, or its enjoyment.") (citing *Bigelow v. Nottingham*, 833 P.2d 764 (Colo. App. 1991))

ANSWER: The allegations of Paragraph 43 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that Colorado law requires the two elements of intent and touch and concern for a covenant to run with the land. Otherwise Elevation denies the allegations in Paragraph 43.

44. Courts assess whether a particular covenant runs with the land on a particularized covenant-by-covenant basis. *See MidCities Metro. Dist. No. 1 v. U.S. Bank Nat. Ass'n*, 12-CV-03322-LTB, 2013 WL 3200088, at *6 (D. Colo. June 24, 2013) (applying Colorado law and concluding certain covenants ran with the land but that the covenant at issue in the same deed did not); *see also Pennaco Energy, Inc. v. KD Co. LLC*, 363 P.3d 18, 34 (Wyo. 2015) (applying Wyoming law and noting an older case held that a particular royalty covenant did not run with the land because, in part, "other provisions of the deed contained 'successors and assigns' language, indicating the parties deliberately omitted those words in the royalty clause") (citing *Mathisen v. Thunder Basin Coal Co., LLC*, 169 P.3d 61, 66 (Wyo. 2007)).

ANSWER: The allegations of Paragraph 44 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 44.

COUNT I
(Gas Agreement – Declaratory Judgment under 28 U.S.C. § 2201(a))

45. The allegations in paragraphs 1 through 44 are incorporated herein by reference.

ANSWER: Elevation incorporates herein by reference its answers to Paragraphs 1-45.

46. The parties dispute whether the Gas Agreement creates any covenants that run with the land.

ANSWER: The allegations of Paragraph 46 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits the allegations in Paragraph 46, but denies any implication that Extraction has a valid argument contesting that the Gas Agreement creates any covenants that run with the land.

47. The Gas Agreement does not create covenants that run with the land under Colorado law. In particular, Extraction's purely contractual promise to deliver to Elevation certain amounts of produced gas is not a covenant that runs with the land.

ANSWER: The allegations of Paragraph 47 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 47.

48. First, the covenants in the Gas Agreement—other than the Drilling Commitment— do not "touch and concern" the land. Instead of benefitting or burdening Extraction's mineral estate, the Gas Agreement benefits or burdens the parties personally. The Gas Agreement's covenants relate solely to Extraction's produced gas and not Extraction's land. *See generally* Ex. A. Accordingly, none of the covenants—other than the Drilling Commitment—touch and concern the land and, thus, fail to run with the land on this basis.

ANSWER: The allegations of Paragraph 48 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the Drilling Commitment touches and concerns the land, but otherwise denies the allegations in Paragraph 48.

49. Second, the Gas Agreement does not grant Elevation an interest in Extraction's real property sufficient to satisfy privity of estate under Colorado law. Indeed, the Gas Agreement does not actually grant any interest in Extraction's allegedly burdened mineral estate. *See* Ex. A § 2 (concerning dedication reservations). Instead, the Gas Agreement merely "identif[ies] and delineat[es] the [parties'] contractual rights and obligations." *In re Sabine Oil & Gas Corp.*, 547 B.R. 66, 76 (Bankr. S.D.N.Y. 2016), aff'd, 567 B.R. 869 (S.D.N.Y. 2017), aff'd, 734 Fed. Appx. 64 (2d Cir. 2018). Thus, the parties were never in privity of estate, and none of the covenants— including the Drilling Commitment—run with the land.

ANSWER: The allegations of Paragraph 49 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 49.

50. As a result of the facts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

ANSWER: The allegations of Paragraph 50 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 50.

51. A judicial declaration is necessary and appropriate so that Extraction may ascertain its rights and obligations regarding the Gas Agreement.

ANSWER: The allegations of Paragraph 51 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that a judicial declaration that the Gas Agreement runs with the land is necessary and appropriate, but denies the remaining allegations in Paragraph 51.

52. For the foregoing reasons, Extraction is entitled to a judicial declaration that the covenants contained in the Gas Agreement fail to run with the land.

ANSWER: The allegations of Paragraph 52 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 52.

53. Such a declaration will serve the twin interests of judicial efficiency and cost-effectiveness by terminating the substantial and actual controversy between the parties, or resolving some part of it.[6] It will also serve a useful purpose by enabling the Court to determine whether the Gas Agreement and all obligations thereunder may be rejected under section 365 of the Bankruptcy Code.

ANSWER: The allegations of Paragraph 53 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 53.

COUNT II
(Oil Agreement – Declaratory Judgment under 28 U.S.C. § 2201(a))

54. The allegations set forth in paragraphs 1 through 44 are incorporated herein by reference.

[6] On August 10, 2020, the Debtors filed the Rejection Notice to reject the Gas Agreement pursuant to section 365 of the Bankruptcy Code and have adjourned adjudication of such to date. Bankruptcy courts have expressed a preference for the simultaneous adjudication of the issues raised in this adversary proceeding with a motion to reject the underlying executory contract. In re Sabine Oil & Gas Corp., 547 B.R. at 73 ("[B]ifurcating the motion to reject and further proceedings to finally resolve the underlying property law dispute is an inefficient use of judicial and private resources; it would have been far preferable for the Court to hear the two together.").

ANSWER: Elevation incorporates herein by reference its answers to Paragraphs 1-44.

55. The parties dispute whether the Oil Agreement creates any covenants that run with the land.

ANSWER: The allegations of Paragraph 55 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits the allegations in Paragraph 55, but denies any implication that Extraction has a valid argument contesting that the Oil Agreement creates any covenants that run with the land.

56. The Oil Agreement does not create covenants that run with the land under Colorado law. In particular, Extraction's purely contractual promise to deliver to Elevation certain amounts of produced oil is not a covenant that runs with the land.

ANSWER: The allegations of Paragraph 56 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 56.

57. First, the covenants in the Oil Agreement—other than the Drilling Commitment—do not "touch and concern" the land. Instead of benefitting or burdening Extraction's mineral estate, the Oil Agreement benefits or burdens the parties personally. The Oil Agreement's covenants relate solely to Extraction's produced oil and not Extraction's land. *See generally* Ex. B. Accordingly, none of the covenants—other than the Drilling Commitment—touch and concern the land and, thus, they fail to run with the land on this basis.

ANSWER: The allegations of Paragraph 57 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the Drilling Commitment touches and concerns the land, but otherwise denies the allegations in Paragraph 57.

58. Second, the Oil Agreement does not grant Elevation an interest in Extraction's real property sufficient to satisfy privity of estate under Colorado law. Indeed, the Oil Agreement does not actually grant any interest in Extraction's allegedly burdened mineral estate. *See* Ex. B § 2 (concerning dedication reservations). Instead, the Gas Agreement merely "identif[ies] and delineat[es] the [parties'] contractual rights and obligations." *In re Sabine Oil & Gas Corp.*, 547 B.R. at 76. Thus, the parties were never in privity of estate, and none of the covenants—including the Drilling Commitment—run with the land.

ANSWER: The allegations of Paragraph 58 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 58.

59. As a result of the facts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

ANSWER: The allegations of Paragraph 59 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 59.

60. A judicial declaration is necessary and appropriate so that Extraction may ascertain its rights and obligations regarding the Oil Agreement.

ANSWER: The allegations of Paragraph 60 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that a judicial declaration that the Oil Agreement runs with the land is necessary and appropriate, but denies the remaining allegations in Paragraph 60.

61. For the foregoing reasons, Extraction is entitled to a judicial declaration that the covenants contained in the Oil Agreement fail to run with the land.

ANSWER: The allegations of Paragraph 61 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 61.

62. Such a declaration will serve the twin interests of judicial efficiency and cost-effectiveness by terminating the substantial and actual controversy between the parties, or resolving some part of it.[7] It will also serve a useful purpose by enabling the Court to determine whether the Oil Agreement and all obligations thereunder may be rejected under section 365 of the Bankruptcy Code.

ANSWER: The allegations of Paragraph 62 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 62.

COUNT III
(Water Agreement – Declaratory Judgment under 28 U.S.C. § 2201(a))

63. The allegations set forth in paragraphs 1 through 44 are incorporated herein by reference.

[7] On August 10, 2020, the Debtors filed the Rejection Notice to reject the Oil Agreement pursuant to section 365 of the Bankruptcy Code and have adjourned adjudication of such to date. Bankruptcy courts have expressed a preference for the simultaneous adjudication of the issues raised in this adversary proceeding with a motion to reject the underlying executory contract. In re Sabine Oil & Gas Corp., 547 B.R. at 73 ("[B]ifurcating the motion to reject and further proceedings to finally resolve the underlying property law dispute is an inefficient use of judicial and private resources; it would have been far preferable for the Court to hear the two together.").

ANSWER: Elevation incorporates herein by reference its answers to Paragraphs 1-44.

64. The parties dispute whether the Water Agreement creates any covenants that run with the land.

ANSWER: The allegations of Paragraph 64 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits the allegations in Paragraph 64, but denies any implication that Extraction has a valid argument contesting that the Water Agreement creates any covenants that run with the land.

65. The Water Agreement does not create covenants that run with the land under Colorado law. In particular, Extraction's purely contractual promise to deliver to Elevation certain amounts of produced water is not a covenant that runs with the land.

ANSWER: The allegations of Paragraph 65 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 65.

66. First, the covenants in the Water Agreement—other than the Drilling Commitment—do not "touch and concern" the land. Instead of benefitting or burdening Extraction's mineral estate, the Water Agreement benefits or burdens the parties personally. The Water Agreement's covenants relate solely to Extraction's produced water and not Extraction's land. *See generally* Ex. C. Accordingly, none of the covenants—other than the Drilling Commitment—touch and concern the land and, thus, they fail to run with the land on this basis.

ANSWER: The allegations of Paragraph 66 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that the Drilling Commitment touches and concerns the land, but otherwise denies the allegations in Paragraph 66.

67. Second, the Water Agreement does not grant Elevation an interest in Extraction's real property sufficient to satisfy privity of estate under Colorado law. Indeed, the Water Agreement does not actually grant any interest in Extraction's allegedly burdened mineral estate. *See* Ex. C § 2 (concerning dedication reservations). Instead, the Water Agreement merely "identif[ies] and delineat[es] the [parties'] contractual rights and obligations." *In re Sabine Oil & Gas Corp.*, 547 B.R. at 76. Thus, the parties were never in privity of estate, and none of the covenants—including the Drilling Commitment—run with the land.

ANSWER: The allegations of Paragraph 67 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 67.

68. As a result of the facts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

ANSWER: The allegations of Paragraph 68 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 68.

69. A judicial declaration is necessary and appropriate so that Extraction may ascertain its rights and obligations regarding the Water Agreement.

ANSWER: The allegations of Paragraph 69 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation admits that a judicial declaration that the Water Agreement runs with the land is necessary and appropriate, but denies the remaining allegations in Paragraph 69.

70. For the foregoing reasons, Extraction is entitled to a judicial declaration that the covenants contained in the Water Agreement fail to run with the land.

ANSWER: The allegations of Paragraph 70 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 70.

71. Such a declaration will serve the twin interests of judicial efficiency and cost-effectiveness by terminating the substantial and actual controversy between the parties, or resolving some part of it.[8] It will also serve a useful purpose by enabling the Court to determine whether the Water Agreement and all obligations thereunder may be rejected under section 365 of the Bankruptcy Code.

ANSWER: The allegations of Paragraph 71 state a legal conclusion, to which no answer is required. To the extent any response is required, Elevation denies the allegations in Paragraph 71.

Prayer for Relief

WHEREFORE, Extraction respectfully request that the Court enter judgment in Extraction's favor as follows:

[8] On August 10, 2020, the Debtors filed the Rejection Notice to reject the Water Agreement pursuant to section 365 of the Bankruptcy Code and have adjourned adjudication of such to date. Bankruptcy courts have expressed a preference for the simultaneous adjudication of the issues raised in this adversary proceeding with a motion to reject the underlying executory contract. *In re Sabine Oil & Gas Corp.*, 547 B.R. at 73 ("[B]ifurcating the motion to reject and further proceedings to finally resolve the underlying property law dispute is an inefficient use of judicial and private resources; it would have been far preferable for the Court to hear the two together.").

(a) Declaring that the covenants contained in the Gas Agreement do not run with the land.

(b) Declaring that the covenants contained in the Oil Agreement do not run with the land.

(c) Declaring that the covenants contained in the Water Agreement do not run with the land.

(d) Granting Extraction such other relief as the Court deems appropriate under the circumstances.

ANSWER: Elevation denies that Extraction is entitled to any relief.

AFFIRMATIVE AND OTHER DEFENSES

Elevation sets forth its affirmative defenses below. By setting forth these affirmative defenses, Elevation does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Extraction. Moreover, nothing stated below is intended to be construed as an acknowledgement that any particular issue or subject matter is relevant. Elevation reserves its right to amend or supplement this Answer with additional defenses upon particularization of the claims by Extraction, or upon further investigation or discovery of the facts related to this case.

1. The Complaint fails to state a claim upon which relief may be granted.

2. Extraction's claims are barred, in whole or in part, due to failure to mitigate the alleged damages.

3. Extraction's claims are barred, in whole or in part, by the equitable doctrine of waiver, laches, unclean hands and/or estoppel.

4. Extraction's claims are barred, in whole or in part, by the business judgment rule.

5. Elevation's claims are barred, in whole or in part, because the Gathering Agreements run with the land and therefore cannot be rejected under 11 U.S.C. 365(a).

WHEREFORE, Elevation respectfully requests (i) judgment denying Extraction a declaration that the Gathering Agreements do not run with the land; (ii) judgment in favor of Elevation that the Gathering Agreements do run with the land; and (iii) such other and further relief to which it is entitled.

Dated: September 10, 2020
Wilmington, Delaware

Respectfully submitted,

By: */s/ Paul N. Heath*

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