Docket #0009 Date Filed: 9/11/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
EXTRACTION OIL & GAS, INC.,	
Plaintiff,	Adversary Proceeding
v.	Cass No. 20-50840 (CSS)
ROCKY MOUNTAIN MIDSTREAM LLC,	
Defendant.	

PLAINTIFF'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING PLAINTIFF TO FILE UNDER SEAL DEBTORS' COMPLAINT AND BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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

Relief Requested

1. The Debtors seek entry of an order (the "Order"), substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 9018-1(d) of the Local Rules of Bankruptcy Practice

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

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and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Local Rules"): authorizing the Debtors to file under seal (a) the *Complaint for Declaratory Judgment* and the exhibits attached thereto and (b) the *Brief in Support of Plaintiff's Motion for Summary Judgment* and the exhibits attached thereto. In support of this Motion to Seal, the Debtors respectfully state as follows:

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the "Amended Standing Order"). The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008 and Bankruptcy Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to Seal to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rule 9018-1.

Basis for Relief

5. Contemporaneously herewith, the Debtors filed their Notice of Filing of Proposed Redacted Versions of the *Complaint for Declaratory Judgment* and the *Brief in Support of Plaintiff's Motion for Summary Judgment* (the "Notice of Proposed Redacted Versions").

6. Pursuant to section 107(b) of the Bankruptcy Code, a bankruptcy court must protect entities from potential harm that may result from the disclosure of certain confidential information.

See 11 U.S.C. § 107(b). Specifically, section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> > (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information;

Id. Section 105(a) of the Bankruptcy Code, in turn, codifies the inherent equitable powers of bankruptcy courts and empowers them to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

7. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. *See* Fed. R. Bankr. P. 9018. Bankruptcy Rule 9018 provides, in relevant part, that "[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information[.]" *Id.* Further, Bankruptcy Local Rule 9018-1(d) provides, in relevant part, that "[a]ny party who seeks to file documents under seal must file a motion to that effect." Del. Bankr. L.R. 9018-1(d).

8. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, "the court is *required* to protect a requesting party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); *accord In re Alterra Healthcare Corp.*, 353 B.R. 66, 75–76 (Bankr. D. Del. 2006) (citing *Orion Pictures*); *In re Altegrity, Inc.*, 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) ("[I]f it is established that the documents sought to be sealed fall within the enumerated statutory exception, the Court

must grant the requested relief (or such other relief that protects the moving party)."). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate "good cause." *Orion Pictures*, 21 F.3d at 28. "Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose." *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005); *see also In re A C & S Inc.*, 775 Fed. Appx. 78, 79 (3d Cir. 2019) (mem.) (finding that "every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes"). Courts are required to provide such protections "generally where open inspection may be used as a vehicle for improper purposes." *Orion Pictures*, 21 F.3d at 27; *accord In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733, 753 (Bankr. D. Del. 2018) (citing *Orion Pictures*). Indeed, the "authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice." *In re Global Crossing Ltd*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

9. "Commercial information"—"information which would result in an unfair advantage to competitors by providing them information as to the commercial operations of the debtor"—is one category of information within the scope of section 107(b) of the Bankruptcy Code. *Alterra Healthcare*, 353 B.R at 75 (quoting *Orion Pictures*); *Altegrity*, 2015 WL 10963572, at *3; *see also Global Crossing*, 295 B.R. at 725 (holding that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury"). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Orion Pictures*, 21 F.3d at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested

party has to show only that the information it wishes to seal is "confidential" and "commercial" in nature); *accord Altegrity,* 2015 WL 10963572, at *3 (citing *Orion Pictures*).

10. Sufficient cause exists for the Court to grant the relief requested in this Motion to Seal as the *Complaint for Declaratory Judgment* and the *Brief in Support of Plaintiff's Motion for Summary Judgment* contain confidential information. Attached as exhibits to these pleadings are the East Greely Agreement and the Broomfield Agreement, as defined in the pleadings, the terms of which are referenced throughout the pleadings. Pursuant to section 15 of the East Greely Agreement and section 15 of the Broomfield Agreement, the Debtors are required to maintain the confidentiality of the terms of the agreements. Accordingly, Debtors respectfully request that the *Complaint for Declaratory Judgment* and the exhibits attached thereto and the *Brief in Support of Plaintiff's Motion for Summary Judgment* and the exhibits attached thereto be sealed.

Compliance with Bankruptcy Local Rule 9018-1(d)

11. In accordance with Bankruptcy Local Rule 9018-1(d), Debtors certify that they have conferred with Rocky Mountain Midstream LLC, who is a Holder of Confidentiality Rights (as defined in Bankruptcy Local Rule 9018-1(d)). Rocky Mountain Midstream LLC and the Debtors have agreed on (i) the information contained in the *Complaint for Declaratory Judgment* and the *Brief in Support of Plaintiff's Motion for Summary Judgment* and the respective exhibits thereto that must remain sealed from public view and (ii) proposed forms of the redacted *Complaint for Declaratory Judgment*, the redacted *Brief in Support of Plaintiff's Motion for Summary Judgment* and the redacted respective exhibits thereto.

12. Contemporaneously herewith, the Debtors filed their "Notice of Proposed Redacted Versions."

Notice

13. Notice of the hearing on the relief requested in this Motion to Seal will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the United States Trustee for the District of Delaware and (b) counsel for Rocky Mountain Midstream LLC. Debtors submit that under the circumstances no other or further notice is necessary.

No Prior Request

14. No prior request for the relief sought in this Motion to Seal has been made to this or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion to Seal and granting such other and further relief as is appropriate under the circumstances.

Dated: September 11, 2020
Wilmington, Delaware

/s/ *Richard W. Riley*

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

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
EXTRACTION OIL & GAS, INC.,	
Plaintiff,	Adversary Proceeding
v.	
ROCKY MOUNTAIN MIDSTREAM LLC,	Adv. Proc. No. 20-50840 (CSS)
Defendant.	

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL DEBTORS' COMPLAINT AND BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Upon the motion (the "Motion to Seal") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) authorizing the Debtors to file under seal Debtors' *Complaint* and Debtors' *Brief in Support of Plaintiff's Motion for Summary Judgment* (the "Pleadings"); and this Court having jurisdiction to consider the Motion to Seal pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and

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adequate notice of the Motion to Seal has been provided under the circumstances; and after due deliberation thereon; and there being good and sufficient cause;

IT IS HEREBY ORDERED THAT:

1. The Motion to Seal is granted as set forth herein.

2. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Bankruptcy Local Rule 9018-1(d), Debtors are authorized to file unredacted copies of the Pleadings under seal.

3. Unredacted copies of the Pleadings shall not be made available to anyone except for this Court, the Office of the United States Trustee, Rocky Mountain Midstream LLC ("RMM"), any person or entity upon consent of the Debtors and RMM and others upon further Court order.

4. Debtors are authorized to file on this Court's docket and to serve on all parties a redacted copy of the Pleadings.

5. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Bankruptcy Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

6. This Order is without prejudice to the rights of any party in interest to seek to unseal and make public any portion of the material filed under seal.

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

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