IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
	RE: D.I. 809
EXTRACTION OIL & GAS, INC.,	
Plaintiff,	Adv. Proc. No. 20-50833 (CSS)
v.	**RE: Adv. D.I. 50**
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC,	
Defendants.	

NOTICE OF FILING OF PROPOSED REDACTED VERSION OF PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

PLEASE TAKE NOTICE that, on October 8, 2020, Platte River Midstream, LLC ("PRM"), and DJ South Gathering, LLC ("DJ South", and with PRM, the "Companies"), creditors and parties-in-interest in the above-captioned cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors in possession (collectively, the "Debtors" or the "Plaintiffs") and defendants in the above-captioned adversary proceeding brought by the Debtors, filed under seal *Platte River*

[1] The Debtors in the 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.

Midstream, LLC and DJ South Gathering, LLC's Proposed Findings of Fact and Conclusions of Law [Adv. D.I. 50] (the "Proposed Findings of Fact and Conclusions of Law").

PLEASE TAKE FURTHER NOTICE that, pursuant to paragraph 16 of Exhibit A to the *Order Approving Agreed Confidentiality Stipulation and Protective Order* [D.I. 809] (the "Protective Order"), entered in the Chapter 11 Cases on October 9, 2020, the Companies hereby file the attached proposed redacted version of the Proposed Findings of Fact and Conclusions of Law, attached hereto as **Exhibit 1**.

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Dated: October 19, 2020
Wilmington, Delaware

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EXHIBIT 1

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
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC	Adv. Proc. No. 20-50833 (CSS)
Defendants.	

PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the following: (1) Plaintiff Extraction Oil & Gas's ("Extraction's") *Motion for Summary Judgment* (A. D.I. 3) and Extraction's *Brief in Support of Plaintiff's Motion for Summary Judgment* (A. D.I. 4) filed August 25, 2020 (the "*Extraction MSJ*" or "Motion"); (2) Extraction's *Notice of Filing Exhibits to Brief in Support of Plaintiff's Motion for Summary Judgment* ("*Extraction MSJ*") (D.I 5), filed on August 25, 2020; (3) Defendants Platte River Midstream, LLC ("Platte River") and DJ South Gathering, LLC's ("DJ South's") *Response in Opposition to Extraction Oil & Gas Inc.'s Motion for Summary Judgment* (A. D.I. 21), filed on

[1] The Debtors in the 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.

September 18, 2020, and the exhibits attached thereto (the "*Platte River Response*"); Extraction's Reply in Support of Plaintiff's Motion for Summary Judgment (the "*Extraction Reply*"); and (4) the arguments presented by counsel at the hearing on September 30, 2020; and after due deliberation thereon and good cause appearing therefor, this Court hereby makes and issues the following Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

1. This proceeding concerns two agreements for the transportation of crude oil from wells owned and operated by Extraction north of Denver, Colorado. *Extraction MSJ* (A. D.I. 4) at p. 1-2. Extraction owns leasehold interests in the crude oil and related hydrocarbons, and has contracted with Platte River and DJ South to transport the oil downstream for eventual sale. *Extraction MSJ* (A. D.I. 5-1), Ex. A; (A. D.I. 5-2), Ex. B. The issue presented by the Motion is whether these agreements create covenants running with the land under Colorado law. *Extraction MSJ* (A. D.I. 4) at p. 1.

2. In late 2016, Extraction began negotiating with Platte River and its manager, ARB Midstream, LLC ("ARB"), for the installation and operation of an oil pipeline transportation system that would connect to Extraction's current and planned wells in Larimer and Weld Counties. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 18.

3. Extraction's wells are located close to urban areas, such as the town of Greeley, Colorado. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 15, 19. Local residents voiced concerns about Extraction's drilling plans and the effect its wells would have on the community. *Id*. These concerns included Extraction's method of transporting oil production. *Platte River Response* (A. D.I. 21-2), Ex. B at p. 3.

4. Specifically, Extraction planned to drill several wells from a site near the Triple Creek residential area. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 20. Extraction had no pipeline connection to transport oil produced from these wells, and residents objected to the use of tanker trucks to transport oil. *Id.* Tanker trucks can be noisy, increase traffic, and transport a hazardous product on the road. *Id*. at ¶ 14. Extraction represented to these residents that it would transport its production by pipeline, rather than use trucks. *Platte River Response* (A. D.I. 21-2), Ex. B. at p. 3.

5. Extraction entered its negotiations with Platte River in need of a pipeline to transport production from its current and future wells in and around Greeley, such as the wells near Triple Creek. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 17-19. Based on Extraction's public filings and statements during negotiations, Platte River understood that the Triple Creek wells were critical to the business plan and success of Extraction. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 20.

6. Platte River was prepared to contract with Extraction to provide a pipeline transportation solution. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 18-20. Specifically, Platte River offered to build what is known in the oil and gas industry as an "in-field" transportation system. *Id*. at ¶¶ 7, 18. These pipelines are called "in-field" systems because they transport oil within a specific production area, rather than larger pipelines that transport production of long distances. *Id*. at ¶ 4.

7. Building an in-field system requires the installation of up to hundreds of miles of pipelines buried several feet underground, which in turn requires the transporter to obtain rights of ways or easements from property owners, purchase surface lands for facilities, and obtain permits

from local and state governments. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 6. Producers also must grant access to their surface and mineral estates to connect the transportation pipelines. *Id*.

8. In-field systems require a substantial upfront financial investment, because the pipelines must be installed before they can deliver production. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 7. Buying rights of ways, easements, surface locations, purchasing and building a network of steel pipelines, and installing other facilities costs many millions of dollars. *Id*. Transportation companies recover that investment years later through the producer's payment of monthly charges. *Id*.

9. Transportation companies commonly require producers to dedicate their acreage to the pipelines for the term of the agreement to ensure the producer delivers production into the pipelines so the transportation company recovers the cost of installing an in-field system. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 8.

10. A dedication that binds the producer and its successors allow transportation companies to obtain financing and build the in-field system. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 10.

11. During the parties' negotiations, Extraction explained that it needed a transportation company with the resources and commitment necessary to quickly connect to Extraction's planned new wells. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 19. Platte River believed it was evident that Extraction required pipelines for its wells in Triple Creek and the northern production area to advance its stated goals. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 20. A committed pipeline would allow Extraction to drill new wells in a populated area and

lessen community resistance. *Id.* at ¶¶ 19-20; *Platte River Response* (A. D.I. 21-2 21-4), [redacted] Ex. D. Email communications between the parties show [redacted]

12. [redacted]

Without this dedication and commitment, Platte River would not have entered into the agreement. *See Platte River Response* (A. D.I. 21), at 20 and (A. D.I. 21-1), Ex. A at ¶¶ 10, 23. Without receiving that dedication, Platte River would not have installed the pipeline system, [redacted]

13. On April 15, 2017, Extraction and Platte River entered into the First Amended and Restated Transportation Services Agreement (the "PRM TSA"). *Extraction MSJ* (A. D.I. 5-1), Ex. A. Pursuant to the PRM TSA, Extraction [redacted] to PRM [redacted] *Extraction MSJ* (A. D.I. 5-1) at §§ 1.1(bb) (emphasis added), 2.1.

14. The dedicated "Interests" also include all of Extraction's [redacted]

Extraction MSJ (A. D.I. 5-1) at § 1.1(bb) (emphasis added). The PRM Dedication Area includes

certain locations in Larimer and Weld Counties, and was identified in the LLC Agreement. *Id*. at § 1.1(t); LLC Agreement at § 10 (A. D.I. 21-6) (defining "AMI").

15. The dedication covers all of Extraction's crude oil interests in the ground within the PRM Dedication Area. *Extraction MSJ* (A. D.I. 5-1) at §§ 1.1(bb), 2.1; *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 23, 24(b). The dedication identifies the real property interests included in the Dedication Area by legal description. *Extraction MSJ* (5-1) at § 1.1(t), Ex. A. The PRM TSA provided that Extraction would dedicate its working interests in the PRM Dedication Area for at least ten years. *Extraction MSJ* (5-1), Ex. A at § 4.1.

16. The PRM TSA expressly states it [redacted] and restricts the assignment of the contract without the other party's consent. *Extraction MSJ* (A. D.I. 5-1), Ex. A at § 13.9.

17. Because Extraction was dedicating and committing its interests in the PRM Dedication Area, [redacted] Extraction also sought a voice in controlling the pipeline's operations. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 22.

18. Consequently, the parties formed a new limited liability company, Platte River Holdings, LLC ("PRH"), in which both ARB owned a majority interest and Extraction's wholly owned subsidiary, XTR Midstream, LLC ("XTRM") owned a minority interest. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 21. PRH's express purpose was [redacted]

[redacted]

19. Contemporaneous with entering the PRM TSA, [redacted]

20. [redacted]

21. Indeed, Extraction publicly announced on May 22, 2017, that it had completed all "steps necessary to confirm that a crude oil pipeline solution" would be "implemented at its Triple Creek oil and gas development site . . . in Greeley, Colorado." *Platte River Response* (A. D.I. 21-4), Ex. D at p. 2. The press release boasted that "[a]ll oil volumes will be transported utilizing a federally regulated Department of Transportation-compliant pipeline that meets the highest safety standards for crude oil transportation." *Id.*

22. Platte River began performing under the PRM TSA, building and installing miles of pipeline in order to connect to Extraction's wells and transport oil production. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 25. The PRM Transportation System [redacted] *Extraction MSJ* (A. D.I. 5-1) at § 2.4; [redacted]

[redacted] This requires Extraction to prepare each well pad for connection to the pipeline, and for PRM to install well-specific connections at each well pad. *Extraction MSJ* (A. D.I. 5-1) at § 2.4; *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 26.

23. In order to facilitate the connection of its wells to the pipeline system, Extraction executed right of way agreements giving Platte River access rights to install its connections, [redacted] *Platte River Response* (D.I. 21-1), Ex. A at ¶ 26; [redacted]

24. [redacted]

25. [redacted]

26. In October 2017, Extraction and ARB began negotiations on a new pipeline system to transport Extraction's crude oil produced from wells that would be drilled in five Colorado counties (the "DJ South Transportation System"). *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 29.

27. Unlike the PRM Transportation System, which is directly connected to Extraction's wells, the DJ South Transportation System would connect to central facilities that collect production from multiple wells. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 35.

28. Because the new system was not directly connected to Extraction's well sites, the parties agreed to include express language in their contract that it created a covenant running with the land. *Platte River Response* (A. D.I. 21-1, [redacted] Ex. A at ¶ 36 [redacted]

29. On January 17, 2018, ARB formed a new company, DJ South, to build and operate the new transportation system. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 31. DJ South is wholly owned by PRH. *Id.*

30. [redacted] Elevation was a wholly owned subsidiary of Extraction. *Platte River* Response (D.I. 21-15), Ex. O. [redacted]

31. On May 16, 2018, Extraction and DJ South also entered into the Transportation Services Agreement (the "DJ South TSA"). *Extraction MSJ* (A. D.I. 5-2), Ex. B. The PRM TSA and the DJ South TSA are together referred to as the "TSAs."

32. Pursuant to the DJ South TSA, Extraction [redacted] to DJ South [redacted] defined as [redacted] *Extraction MSJ* (A. D.I. 5-2), Ex. B at §§ 1.1(dd) (emphasis added), 2.1, 2.4.

33. [redacted] *Id*. § 1.1(dd) (emphasis added). The DJ South Dedication Area is defined to include certain locations in five Colorado

counties, which are identified by a legal description of real property. *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 1.1(u).

34. As with the PRM TSA, DJ South would not have entered into the DJ South TSA without the dedication of Extraction's interests. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 32, 33(b). The DJ South TSA provided that Extraction would dedicate its interests in the DJ South Dedication Area for at least ten years. *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 5.1.

35. The dedication language and the definition of [redacted] in the DJ South TSA is identical in scope as the language in the PRM TSA. *Compare Extraction MSJ* (A. D.I. 5-1), Ex. A at §§ 1.1(bb), 2.1 with *Extraction MSJ* (A. D.I. 5-2), Ex. B at §§ 1.1(dd), 2.1.

36. The parties agreed that [redacted] *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 2.5 (emphasis added); [redacted]

37. The DJ South TSA expressly states it [redacted] and restricts the assignment of the contract without the other party's consent. *Extraction MSJ* (A. D.I. 5-1), Ex. B at § 14.9.

38. The DJ South TSA restricts Extraction's ability to sell or transfer certain acreage within the DJ South Dedication Area without obtaining a release of that acreage from DJ South. *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 2.6.

39. As required by the DJ South TSA, [redacted] *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 2.5; [redacted]

40. [redacted] The PRM Transportation System and DJ South Transportation System are referred to together as the "Transportation Systems."

41. The DJ South Transportation System is connected to two central gathering facilities ("CGFs"), where oil enters into DJ South's system. *Platte River Response* (A. D.I. 21-1, [redacted] Ex. A at ¶ 35 [redacted]

42. Extraction only has drilled wells connecting to the "Badger CGF." *Platte River Response* (A. D.I. 21-1), Ex. A at ¶ 37. [redacted] Extraction is subject to an agreement with Broomfield that requires the use of pipelines to transport its production. *Platte River Response* (A. D.I. 21-20), Ex. T. [redacted]

43. DJ South was granted a right of way agreement for the Badger CGF. *Platte River Response* (A. D.I. 21-1, [redacted] Ex. A at ¶ 37 [redacted] This right of way agreement gives DJ South permission to access the property to build the necessary infrastructure to connect to the

Badger CGF. *Platte River Response* (A. D.I. 21-1, [redacted] Ex. A at ¶ 37; [redacted] The right of way agreement was entered into in connection with, and in furtherance of, the DJ South TSA, and was recorded in the counties' records. *Id*.

44. Extraction is required to pay the Companies a monthly tariff approved by FERC for the volumes it delivers into the Transportation Systems. *Extraction MSJ* (A. D.I. 5-1, 5-2), Ex. A at § 5.1 and Ex. B at § 6.1.

45. Extraction is obligated to make a fixed monthly payment to the Companies, regardless of the volumes it delivers. *Extraction MSJ* (A. D.I. 5-1, 5-2), Ex. A at § 6.1 and Ex. B at § 7.1. The fixed monthly payment sets a minimum that the Companies will be paid, although it is offset, and usually exceeded, by tariff payments. *Extraction MSJ* (A. D.I. 5-1, 5-2), Ex. A at § 6.1 (A. D.I. 5-1) and Ex. B at § 7.1.

46. [redacted] The fixed monthly payment represents the monthly amount of the contractually defined "total financial commitment" that Extraction agreed to pay the Companies. *Extraction MSJ* (A. D.I. 5-1, 5-2), Ex. A at § 6.2; *and* Ex. B at § 7.2.

47. The "total financial commitments" do not reflect the value of Extraction's commitment to transport all of its dedicated production using the Transportation Systems. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 8-9, 40-43. The value of Extraction's dedications is much greater than the "total financial commitments," which reflects only a small percentage of

expected production throughout the agreement term. *Id.* ¶¶ 8-9, 42; [redacted]

48. The "total financial commitments" are intended to service and secure the debt financing associated with constructing the Transportation Systems, not to reflect their value to PRM and DJ South. *Platte River Response* (A. D.I. 21-1), Ex. A at ¶¶ 8-9, 40-43.

PROPOSED CONCLUSIONS OF LAW

49. On June 14, 2020, the Debtors filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

50. On August 25, 2020, Extraction commenced an Adversary Proceeding Complaint for Declaratory Judgment against Platte River and DJ South. *Complaint for Declaratory Judgment* (A. D.I. 1) ("*Extraction Complaint*") at ¶¶ 31-49. Specifically, Extraction seeks a declaration that Transportation Service Agreements between Extraction and the Companies do not "run with the land." *Id.*

51. This Court 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. This is a core proceeding under 28 U.S.C. § 157(b)(2)

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

53. Extraction consents to entry of a final order or judgment by this Court in this proceeding; however, pursuant to Local Rule 7012-1, Platte River and DJ South do not consent to the entry of a final order or judgment by this Court.

Legal Standard

54. To succeed on summary judgment, the movant must show that "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *In re Maxus Energy Corp.*, 615 B.R. 62, 68 (Bankr. D. Del. 2020) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

55. The movant "bears the burden of proving that no genuine issue of material fact exists." *In re Quintas Corp.*, 397 B.R. 710, 714 (Bankr. D. Del. 2008) (citation omitted).

56. In determining whether summary judgment is appropriate, the court accepts all evidence presented by the non-movant as true and draws all inferences in the non-movants' favor and against summary judgment. *See In re LTC Holdings, Inc.*, 597 B.R. 554, 559 (Bankr. D. Del. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

57. "[W[here the record could leave reasonable minds to draw conflicting inferences, summary judgment is improper and the action must proceed to trial." *In re Maxus Energy Corp.*, 615 B.R. at 69 (citations and internal quotations omitted).

Governing Law

58. The TSAs by their terms are governed and construed by the laws of the State of Colorado. PRM TSA (A. D.I. 5-1), at § 13.14; DJ South TSA (A. D.I. 5-2), at § 14.14. Additionally, since "[p]roperty interests are created and defined by state law," the Court turns to Colorado law concerning real covenants. *Butner v. United States*, 440 U.S. 48, 55 (1979).

Requirements to Create a Real Covenant

59. Under Colorado law, "[u]nlike personal covenants, which operate like a general contract provision and bind only the actual parties to the covenant, real covenants "run with the land" and burden or benefit successors in interests." *Cloud v. Ass'n of Owners,* 857 P.2d 435, 440 (Colo. App. 1992).

60. A real covenant, or covenant running with the land, creates "an equitable property interest in the burdened land." 9 Powell, Powell on Real Property § 60.01; *see also* Restatement (Third) of Property (Servitudes) § 7.9 (2000) (servitudes, such as covenants running with the land, are not a lien or executory contract but rather, "an interest in land"); *id.* at § 1.4 (abolishing distinction between the terms "real covenant" and "equitable servitude" as they both "describe servitudes encompassed within the term 'covenant that runs with the land'"). Colorado courts long have recognized that a covenant running with the land is a burden on real property. *See Farmers High Line Canal & Reservoir v. N.H. Real Estate Co.*, 92 P. 290, 294 (Colo. 1907) ("A covenant which runs with the land is a promise, the effect of which is to bind the promisor and his lawful successors to the burdened land for the benefit of the promisee and his lawful successors to the benefited land. According to this the covenant binds the person of the owner of the burdened land, provided he comes by his title legally, and benefits the owner of the benefited land, provided he comes by his title legally.") (citation and internal quotations omitted); *see also In re Lonesome Pine Holdings, LLC*, 2011 Bankr. LEXIS 5775, at *9 (Bankr. D. Colo. Sept. 1, 2011) ("restrictions that run with the land create equitable interests") (citation and internal quotations omitted).

61. Under Colorado law, two elements are required to create a covenant running with the land: "the parties must intend for the covenant to run with the land and bind successors in

interest, and the covenant must 'touch and concern' the land." *Reishus*, 409 P.3d at 440 (citing *Cloud v. Ass'n of Owners*, 857 P.2d 435, 440 (Colo. App. 1992). As explained below, there are sufficient facts to create a triable issue that the TSAs satisfy these elements.

I. Intent

62. To create a covenant running with the land, "the parties must intend for the covenant to run with the land and bind successors in interest." *Reishus*, 409 P.3d at 440.

63. The parties' intent is determined by considering the agreements "as a whole, keeping in mind their underlying purpose." *B.B. & C. P'ship v. Edelweiss Condominium Ass'n*, 218 P.3d 310, 315 (Colo. 2009) (citation and internal quotations omitted); *see also Reishus*, 409 P.3d at 441 ("[W]e do not read individual provisions in isolation when deciding whether a covenant is real or personal; instead, we look at the covenant as a whole.").

64. Under Colorado law, an express statement in the document creating the covenant that the parties intend to create a covenant running with the land is usually dispositive of the intent issue." *In re Badlands*, 608 B.R. 854, 870 (Bankr. D. Colo. 2019) (citations and internal quotations omitted); *see also Cloud*, 857 P.2d at 440 (express language demonstrated intent).

A. The Parties Intended for the DJ South TSA to Create a Real Covenant.

65. The DJ South TSA expressly states that [redacted] *Extraction MSJ* (A. D.I. 5-2), Ex. B at § 2.5. Thus, by express language, the covenant was intended to run with the land. *See Cloud*, 857 P.2d at 440 (express language demonstrated intent).

66. [redacted]

[redacted]

B. There is a Genuine Issue of Material Fact Regarding Whether the PRM TSA was Intended to Create a Real Covenant.

67. The parties dispute whether the PRM TSA was intended to create a covenant running with the land. Extraction argues that the absence of express language in the PRM TSA evidences the parties' lack of intent. *See Extraction MSJ* (A. D.I. 4) at p. 11-12. Although Extraction argues that the Court may only look to the four corners of the contract, Extraction relies on extrinsic evidence, specifically the DJ South TSA and a separate letter agreement, to argue that the parties knew how to show intent to create a covenant running with the land. *See id.*; *see also Extraction Reply* (A. D.I. 23), at p. 3. The Companies argue that although there is no express language, the contract as a whole, as well as the underlying purpose of the TSA, demonstrate an intent to create a covenant running with the land and bind successors in interest. *See Platte River Response* (A. D.I. 21), at p. 16-22.

68. The absence of language in the PRM TSA expressly stating that it creates a covenant running with the land is not dispositive under Colorado law, as a covenant running with the land need not "be expressed in specific or magical terms." *TBI Expl. v. Belco Energy Corp.*, 2000 WL 960047, at *4 (5th Cir. June 14, 2000) (conducting a survey of Colorado case law). Rather, Colorado courts look at agreements "as a whole…, giving effect to all provisions contained therein." *Lookout Mtn.*, 867 P.2d at 75 (citation omitted).

69. There is a genuine issue of fact regarding whether the provisions of the PRM TSA demonstrate an intent to create a covenant running with the land. Under the PRM TSA, Extraction

expressly dedicated [redacted] *Extraction MSJ* (A. D.I. 5-1), Ex. A at §§ 1.1(bb), 2.1. The dedication references and applies to Extraction's mineral interests [redacted] *Id.* Moreover, the dedication includes all of Extraction's production from the PRM Dedication, including future production. *See id.* There would be no need for Extraction to dedicate its real property if it did not intend to bind successors and assigns to the covenant to transport all current and future production on the PRM Transportation System. *See Bill Barrett Corp. v. Lembke*, 2018 WL 4225030, at *5 (Colo. App. Sept. 6, 2018) (real property includes non-extracted minerals) (citation omitted); *see also Hagood v. Heckers*, 513 P.2d 208, 214 (Colo. 1973) (a lessee's interest in oil and gas leases is real property); *Maralex Res., Inc. v. Chamberlain*, 320 P.3d 399, 403 (Colo. App. 2014) ("[A]n oil and gas lessee has an interest in real property").

70. The PRM TSA also identifies the dedicated interests by a legal description of the real property, not simply by production. The PRM Dedication Area is defined as four specific Townships in Larimer and Weld Counties. *See Extraction MSJ* (A. D.I. 5-1) Ex. A at § 1.1(t). This is a legal description of property. *See Griffin v. United Bank of Denver*, 599 P.2d 866, 868 (Colo. 1979) ("[A] complete legal description of real estate constitutes a clear and accurate identification of the property.") (citations omitted).

71. Extraction's "interests" are leasehold mineral interests, in other words, real property interests under Colorado law. *See Hagood*, 513 P.2d at 214) (a lessee's interest in oil

and gas leases is real property); *Maralex Res., Inc.*, 320 P.3d at 403 ("[A]n oil and gas lessee has an interest in real property"). The dedication of these interests, while not a conveyance of real property, nevertheless burdens Extraction's real property akin to an equitable servitude or real covenant, creating "an equitable property interest in the burdened land." 9 Powell, Powell on Real Property § 60.01; *see also* Restatement (Third) of Property (Servitudes) § 7.9 (servitudes, such as covenants running with the land, are not a lien or executory contract but rather, "an interest in land"). Accordingly, under a dedication clause, an oil and gas producer dedicates specified reserves, *i.e.*, unextracted minerals, to a particular customer. *See Moncrief v. Williston Basin Interstate Pipeline Co.*, 174 F.3d 1150, 1169-70 (10th Cir. 1999) (quoting 8 Howard R. Williams *et al.*, *Oil & Gas Law* 253 (1997)); *see also* Williams & Meyers, *Oil & Gas Law*, Manual of Terms: R Terms, Lexis Advance (database updated Oct. 2019) ("Reserves" means "[t]he unproduced but recoverable oil and/or gas in place in a formation which has been proven by production"). Thus, where a dedication clause dedicates the underlying minerals, and meets the requisite elements under state law, the dedication is considered a real covenant. *See* 9 Powell, Powell on Real Property § 60.01 (defining "real covenants" as contractual agreements regarding the use of land that create "an equitable property interest in the burdened land"); *see also Bill Barrett Corp. v. Lembke*, 2018 WL 4225030, at *5 (Colo. App. Sept. 6, 2018) ("real property" under Colorado law includes non-extracted minerals).

72. Colorado courts long have recognized that a covenant running with the land is a burden on real property. *See Farmers High Line Canal & Reservoir v. N.H. Real Estate Co.*, 92 P. 290, 294 (Colo. 1907) ("A covenant which runs with the land is a promise, the effect of which is to bind the promisor and his lawful successors to the burdened land for the benefit of the

promisee and his lawful successors to the benefited land. According to this the covenant binds the person of the owner of the burdened land, provided he comes by his title legally, and benefits the owner of the benefited land, provided he comes by his title legally.") (citation and internal quotations omitted); *see also See In re Lonesome Pine Holdings, LLC*, 2011 Bankr. LEXIS 5775, at *9 ("restrictions that run with the land create equitable interests" in the real property).

73. The PRM TSA also provides that the agreement [redacted] including successors to the real property interests. *Extraction MSJ* (A. D.I. 5-1), Ex. A at § 13.9. The parties also restricted the ability to assign their interests [redacted] *Id.*

74. Although these provisions alone may not be sufficient to create a covenant running with the land, their inclusion in the PRM TSA cannot be ignored. *See Reishus*, 409 P.3d at 441 ("[W]e do not read individual provisions in isolation when deciding whether a covenant is real or personal; instead, we look at the covenant as a whole."). Accordingly, the Court finds that there is a genuine issue of fact regarding whether the provisions of the PRM TSA as a whole demonstrate an intent to create a covenant running with the land.

75. There is also a genuine issue of material fact regarding whether the purpose and surrounding circumstances of the PRM TSA demonstrate an intent to create a real covenant. In determining whether a covenant runs with the land, Colorado courts consider whether the parties intended to create a covenant running with the land based on the contract's purpose. *See Reishus*, 409 P.3d at 435, 441 (finding hunting restriction contained in ownership agreement was a covenant

running with the land where the agreement's purpose was "to have an agricultural property that would also provide a quality hunting experience").

76. Here, the Companies presented evidence that Extraction's purpose in entering the PRM TSA was [redacted]

77. The Companies also presented evidence that Extraction [redacted]

78. Extraction's response to the evidence presented by the Companies is that none of the documentary evidence presented [redacted] Extraction's response, however, is both factually and legal misplaced. Factually, Extraction's response ignores the language in the PRM TSA expressly stating that parties agreed [redacted] *Extraction MSJ* (A. D.I. 5-1), Ex. A at § 13.9. This is evidence of intent to create a covenant running with the land. *See Badlands*, 608 B.R. at 870 (restriction on assignment was suggestive of intent to bind successor and assigns). Legally, a conveyance is not

necessary to create a covenant running with the lands under Colorado law. *See Reishus*, 409 P.3d at 440 (only two elements are required to create a covenant running with the land, intent and the covenant must touch and concern the land).

79. At a minimum, the language of the PRM TSA and its surrounding circumstances only highlight the genuine dispute regarding whether the parties intended for the PRM TSA to create a covenant running with the land, such that a "reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Accordingly, the Court finds that there is a genuine issue of fact regarding whether the purpose and surrounding circumstances of the PRM TSA demonstrate an intent to create a covenant running with the land.

II. Touch & Concern

80. Colorado courts generally hold that "[a] covenant touches and concerns the land if it 'closely relates to the land, its use, or its enjoyment.'" *Reishus*, 409 P.3d at 440 (quoting *Cloud*, 857 P.2d at 440). The "'touch and concern' requirement is fulfilled when the covenant operates to benefit the physical use of the land." *Bigelow v. Nottingham*, 833 P.2d 764 (Colo. App. 1991), *rev'd in part on other grounds*, *Haberl v. Bigelow*, 855 P.2d 1368 (Colo. 1993); *see also Lookout Mtn.*, 867 P.2d at 75 (holding building restriction created covenant running with the land where benefits and burdens were closely related to property's use and enjoyment).

81. Extraction urges the Court to impose a test set forth in a law review article written in 1914. *See Extraction MSJ* (A. D.I. 4), at p. 21 (citing Harry Bigelow, *The Content of Covenants in Leases*, 12 Mich. L. Rev. 639, 652 (1914)). Extraction further claims the inquiry "turns on whether a covenant materially affects the promisor's legal relationship to the land itself." *Id.* The Court finds no support for the application of these additional requirements in Colorado law, and

Extraction cites no caselaw suggesting that Colorado courts have imposed, or even considered, this legal test. Regardless, as explained below, applying the legal relationship test would not change the Court's outcome.

A. There is a Genuine Issue of Material Fact Regarding Whether the TSAs Touch and Concern the Land.

82. The parties dispute whether the TSAs touch and concern the land. Extraction argues that the TSAs do not touch and concern the land because the dedications only identify crude petroleum from particular lands that are subject to the agreements and because they affect only personal property. *Extraction MSJ* (A. D.I. 4), at p. 24. The Companies argue the TSAs touch and concern the land because they both benefit and burden Extraction's real property interests. *Platte River Response* (A. D.I. 21), at p. 22-24.

83. Extraction argues that to create real covenants, the TSAs must touch and concern Extraction's mineral interests. *See Extraction Reply* (A. D.I. 23), at p. 10. However, Extraction's interests in its minerals are derived from its oil and gas leases within the Dedication Areas. Extraction's leases constitute real property. *Hagood v. Heckers*, 513 P.2d at 214 (a lessee's interest in oil and gas leases is real property); *Maralex Res.*, 320 P.3d at 403 ("[A]n oil and gas lessee has an interest in real property"). An oil and gas lease is distinguishable from a fee simple mineral estate as it "creates an interest in land to search for and reduce to possession such [oil] as might be found beneath the land," and therefore "[a]ll of the property interests associated with an oil and gas lease," including the interests for production and marketing "are necessary for the lessee to successfully explore and produce his reserves." *Alta Mesa*, 613 B.R. at 102-03 (citation and internal quotations omitted).

84. There is a genuine dispute of material fact regarding whether the TSAs benefit Extraction's real property. At oral argument, Extraction's counsel argued that Extraction's mineral interests receive no benefit from the TSAs. *See* Hearing Tr. 196:7-10 (Sept. 30, 2020). The Companies, however, argue that the TSAs benefit Extraction's mineral estate by ensuring its production can access downstream markets. Bankruptcy courts in other jurisdictions have found this benefit to be sufficient to create a covenant running with the land. *See Alta Mesa*, 613 B.R. at 103-04 (benefit of dedicated transportation created covenant running with the land). At a minimum, it presents an issue of disputed material fact.

85. The parties presented sufficient evidence to show that the Transportation Systems [redacted]. This means that Extraction, and any subsequent producer, would have no means of transporting production from the Dedication Areas downstream absent the Transportation Systems. Accordingly, there is a genuine issue of fact regarding whether Extraction's real property interests benefit from the TSAs.

86. The parties also dispute whether the TSAs burden Extraction's real property interests. Under the TSAs, Extraction [redacted]

[redacted]

Extraction MSJ (A. D.I. 5-1, 5-2), Ex. A at §§ 1.1(bb), 2.1 and Ex. B at §§ 1.1(dd), 2.1, 2.4. Although Extraction claims the dedication relates only to personal property in the form of produced crude oil, the TSAs clearly dedicate more than Extraction's current production. Rather,

[redacted]

Id.

87. The U.S. Bankruptcy Court for the District of Colorado has previously determined that a production dedication with similar language touch and concerned the land under Utah law. *See Badlands*, 608 B.R. at 869. The court explained because the "dedicated reserves" under the gathering agreement were defined broadly to include "the interest of Producer in all Gas reserves in and under" the dedicated area, the gathering agreement encompassed real property. *Id.* (emphasis in original). As in Utah, "real property" under Colorado law includes non-extracted minerals. *See Bill Barrett Corp.*, 2018 WL 4225030, at *5 (citation omitted). Accordingly, there is a disputed issue of material fact regarding whether, by committing to transport both current *and future* production on the Transportation Systems, Extraction "commit[ed] itself to the gathering agreements," and "gave up its right to pursue other gathering strategies." *Alta Mesa*, 613 B.R. at 104; *see also See Moncrief*, 174 F.3d at 1169-70 (under a dedication contract, "the producer 'contracts to furnish the purchaser all the gas produced from specified reserves, thus 'dedicating' those reserves to the customer'") (quoting 8 Howard R. Williams *et al.*, *Oil & Gas Law* 253 (1997)).

88. The Companies additionally argue that the TSAs further restrict Extraction's use of its real property by requiring Extraction to grant Easements to the Companies to install, construct,

and operate the Transportation Systems on Extraction's leaseholds. Extraction responds that the easements do not suggest that the TSAs touch and concern the land because they are not interests in the mineral estate. *Extraction Reply* (A. D.I. 23), at p. 13. However, as discussed above, the relevant real property at issue is Extraction's oil and gas leases, not only Extraction's interest in the minerals. These agreements "carve out a portion of [Extraction's] lease easements and grant those portions to [the Companies]." *Alta Mesa*, 613 B.R. at 104.

89. Moreover, by its express terms, the DJ South TSA required Extraction to execute Memoranda of Dedication that were recorded in the county real property records to place successors and assigns on notice of the dedication. *See Extraction MSJ* (A. D.I. 5-2), Ex. B at § 2.5. Further, the DJ South TSA provision concerning DJ South's consent rights to any transfer of acreage provides a restraint on Extraction's right of alienation. *See id.* at § 2.6. Extraction's reliance on *Sabine* in dismissing this restriction is misplaced, as *Sabine* simply explained that there was no such restraint present in the agreements at issue. *In re Sabine Oil & Gas Corp.*, 567 B.R. at 876 ("[T]he [*Energytec*] requirement that Newco consent to any assignment of the use of the pipeline provides a restraint on the owner's right of alienation *that is not present in the Agreements here*.") (emphasis added).

90. The parties further dispute whether the TSA's total financial commitments make the covenants personal. Extraction argues that it can simply refuse to provide any minerals and satisfy the agreements through payment of the total financial commitments, which is a personal commitment, burdening and benefitting the parties individually. *Extraction Reply* (A. D.I. 23), at p. 15. Extraction misreads the legal effect of its financial commitment. Under the TSAs, Extraction agreed to a minimum volume commitment, *in addition to* dedicating all of its current

and future production from the Dedication Areas. [redacted] However, regardless of whether Extraction fails to provide any minerals for delivery, those minerals remain dedicated to the Companies until the agreements are terminated. *Moncrief*, 174 F.3d at 1169-70 (under a dedication contract, "the producer 'contracts to furnish the purchaser all the gas produced from specified reserves, thus 'dedicating' those reserves to the customer") (quoting 8 Howard R. Williams *et al.*, *Oil & Gas Law* 253 (1997)).

91. *Badlands* considered a similar argument. See 608 B.R. at 868. There, the producer argued its gathering agreement created only a personal covenant, and did not burden real property, because it could pay the gatherer a deficiency payment in lieu of delivering gas. See id. Rejecting this argument, the court explained the payment was meant "to compensate [the gathering company] for the burdens associated with acquiring and operating the [gathering system]," but had no effect on the dedication or its covenant. *Id*.

92. Extraction asks this Court to read the total financial commitments in isolation, however, the Court must "read the covenant as a whole." In *Cloud*, the Colorado court of appeals found that a covenant granting a 10 percent reservation of rental payments to the declarant was a covenant running with the land where it was coupled with a 90 percent reservation of payments to the homeowner's association. 857 P.2d at 440-41. The court explained. "[a] covenant granting 10% reservation of receipts standing alone would be personal, because the payment would not be a benefit or burden to the land." *Id.* Read as a whole, however, "[t]he proceeds of 90% of the gross receipts by the Association is a benefit to the Association which runs with the land, and we

cannot separate it from the 10% reservation to the declarant." *Id.* Here, the total financial commitments cannot be divorced from the remainder of the TSAs, including the dedications and the obligations imposed on the Companies to construct the Transportation Systems to transport Extraction's minerals downstream. *See id.*

93. Accordingly, the Court finds that there is a genuine issue of fact regarding whether the TSAs touch and concern the land.

III. Privity

94. Extraction contends that horizontal privity of estate also is required to create a real covenant under Colorado law. To support its argument, Extraction relies on two Colorado Supreme Court cases, *Farmers' High Line Canal & Reservoir Co. v. New Hampshire Real Estate Co.*, 92 P. 290 (Colo. 1907), and *Taylor v. Melton*, 274 P.2d 977 (Colo. 1954). *See Extraction MSJ* (A. D.I. 5), at p. 10. These cases, however, concerned the creation of a covenant through vertical privity, not horizontal privity. For example, *Farmers* concerned whether a written agreement by a canal owner to furnish water created a covenant that bound the current canal owner. *See* 92 P. at 293. Similarly, in *Taylor*, the issue was whether the defendant was bound by a restriction that was not in the defendant's deed, and was only in the deed of his predecessor in title. *See* 274 P.2d at 981-82. Moreover, neither *Farmers* nor *Taylor* identify privity as a requirement to create a covenant running with the land. Rather, they simply noted the existence of privity between the parties.

95. No Colorado court has referenced the concept of privity of estate or horizontal privity since 1954. Indeed, the year after *Taylor* was decided, the Colorado Supreme Court held a restrictive covenant ran with the land, even though it was never in the defendant's chain of title,

and that it could be enforced even between parties that had no direct contractual relations. *See Pagel v. Gisi*, 286 P.2d 636, 638-39 (Colo. 1955). Privity was unnecessary to create the covenant then, and it is unnecessary now. *See id.*

96. Every subsequent Colorado decision regarding covenants running with the land—including the cases cited by Extraction—has expressly stated the only requirements to create a real covenant are (1) the parties' intent, and (2) the covenant touches and concerns the land. *See, e.g.*, *Reishus*, 409 P.3d at 440 (containing no reference to horizontal privity requirement); *DeJean v. Grosz*, 412 P.3d 733, 739 (Colo. App. 2015) (same); *In re Banning Lewis Ranch Co.*, 532 B.R. 335, 345 n.11 (Bankr. D. Co. 2015) (same); *MidCities Metro. Dist. No. 1. v. U.S. Bank Nat'l Ass'n*, 2013 WL 3200088, at *3 (D. Colo. June 24, 2013) (same); *Lookout Mtn.*, 867 P.2d at 74 (same); *Cloud*, 857 P.2d at 440 (same); *Bigelow*, 833 P.2d at 767-68 (same). The Fifth Circuit reached the same conclusion after conducting a "survey of Colorado case law." *TBI Expl.*, 2000 WL 960047, at *4 (only elements required under Colorado law are "intent by the parties to the covenant that the covenant runs with the land" and "the covenant must 'touch and concern' the land.") (collecting cases).

97. Both parties rely on the Colorado court of appeals' opinion in *Reishus*, which underscores that privity is not a required element under Colorado law. There, the owners of a 560-acre ranch conveyed it to eleven individuals in 1983 to build mountain homes on 35-acre parcels. 409 P.3d at 437. Twenty-four years later, in 2007, the then co-owners signed an Amended and Restated Ownership Agreement, "expressly stat[ing] that its provisions run with the land and are binding on all owners, their legal representatives, heirs, successors, and assigns." *Id.* The Amended Agreement also changed the intended purpose of the property to provide a "quality

hunting experience," and included a number of hunting restrictions. In its analysis, the court explained that it "need not decide whether the original agreement was a real covenant" because the Amended Agreement superseded the original agreement, and that the Amended Agreement met the requirements of a covenant running with the land because there was intent and it "touch and concerned" the land. *Id.* at 441. Despite the conveyance of land occurring twenty-four years prior to the creation of the covenant, the court nevertheless found that the Amended Agreement was a covenant running with the land. At the time the covenant was created, there was no conveyance of *any* real property interest, only restrictions on the use of the property previously conveyed in order to provide a "quality hunting experience." *Id.* Horizontal privity did not exist, but the court still found that the covenant ran with the land. *See id.*

98. This sentiment aligns with the Restatement (Third) of Property, which explicitly states, "No privity relationship between the parties is necessary to create a servitude." Restatement (Third) Property: Servitudes § 2.4 (2000) (emphasis added). The Restatement explains:

> In American law, the horizontal-privity requirement serves no function beyond insuring that most covenants intended to run with the land will be created by conveyances. Formal creation of covenants is desirable because it tends to assure that they will be recorded. However, the horizontal privity requirement is no longer needed for this purpose. In modern law, the Statute of Frauds and recording acts perform that function.

Id. Colorado courts generally follow the Restatement (Third) of Property. *See, e.g.*, *Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 8 (Colo. 2003) ("We find the Restatement and case law from other states persuasive in analyzing the issue before us today."); *Lobato v. Taylor*, 71 P.3d 938, 953 (Colo. 2002) ("[T]he aim of honoring parties' intentions and avoiding injustice that the Restatement expresses has long been the goal of Colorado law."); *Roaring Fork Club, L.P. v. St.*

Jude's Co., 36 P.3d 1229, 1237 (Colo. 2001) ("[W]e accept section three of the Restatement (Third) of Property as the correct statement of controlling legal principle.").

99. Extraction's reliance on C.R.S. § 38-30-121 also is misplaced. The statute simply provides that when a deed concerning real property is conveyed, any existing covenants run with the land. *See* C.R.S. § 38-30-121. The statute does not state that a conveyance of real property is necessary to create a covenant, and as explained above, a conveyance is unnecessary to create a covenant.

100. Even if horizontal privity is required under Colorado law, it is satisfied here. As explained above, the covenants run with Extraction's oil and gas leases, [redacted] First, when entering the PRM TSA, [redacted]. These right of way agreements conveyed property rights and interests, and thereby create privity sufficient to satisfy the element Extraction claims is required under Colorado law. *See Booker v. Cherokee Water Dist.*, 651 P.2d 452, 453-54 (Colo. App. 1982) (a contractual license becomes a property right when coupled with an interest); *see also Private Right of Way*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "private right of way" as an easement); Jon W. Bruce & James W. Ely, Jr., *The Law of Easements & Licenses in Land* § 11:8 (June 2020) ("A license may be coupled with an interest when the licensee owns personal property on the servient land related to the purpose of the license.") (collecting cases).

101. Notably, the courts in both *Alta Mesa* and *Badlands* noted that similar conveyances of easements created privity between the debtor-producer and its midstream provider. *See* 613 B.R. at 106; 608 B.R. at 874. While the producers argued, like Extraction argues here, that the easements related only to the surface estate, and not the underlying minerals, the *Alta Mesa* court noted that the producer's "surface easements spring directly from its leasehold mineral interests. Because a surface easement is a crucial component on an oil and gas lease, the Court does not view this conveyance as creating privity only with respect to the surface estate." 613 B.R. at 106. The *Badlands* court came to the same conclusion. 608 B.R. at 874. Additionally, the court in *Badlands* found that horizontal privity was also satisfied through a simultaneous asset transfer. *Id*. The court explained, "unlike in *Sabine*, the covenants burden Producers' real property interests (the Dedicated Reserves and the Producers' interests in the Leases) in the context of a simultaneous conveyance of real property interests (the Gas Gathering and Saltwater Disposal Systems) to [the midstream company], both of which are located in the same geographic area (the [Area of Mutual Interest])." *Id.* The same result obtains here.

102. Although horizontal privity is not required under Colorado law, the facts demonstrate that horizontal privity exists between the Companies and Extraction in connection with the TSAs.

CONCLUSION

103. The Court finds that there are genuine issues of material fact that preclude summary judgment whether the TSAs create covenants running with the land under Colorado law.

THEREFORE, IT IS HEREBY ORDERED, based on the foregoing findings of fact and conclusions of law that:

Extraction's Motion for Summary Judgment is **DENIED**.

The Court, therefore, recommends that the Motion for Summary Judgment be denied and that judgment be entered in favor of Platte River and DJ South and against Extraction.

For the reasons stated above, the Court recommends that the U.S. District Court for the District of Delaware adopt the Findings of Fact and Conclusions of Law.

Dated: Wilmington, Delaware
_____, 2020 at __:__ _.m., prevailing Eastern Time

THE HONORABLE CHRISTOPHER S. SONTCHI
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated: October 8, 2020
Wilmington, Delaware

/s/ Curtis S. Miller

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CERTIFICATE OF SERVICE

I, Brett S. Turlington, certify that I am not less than 18 years of age, and that service of the foregoing *Platte River Midstream, LLC and DJ South Gathering, LLC's Proposed Findings of Fact and Conclusions of Law* was caused to be made on October 8, 2020, in the manner indicated upon the entities identified below.

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CERTIFICATE OF SERVICE

I, Brett S. Turlington, certify that I am not less than 18 years of age, and that service of the foregoing *Notice of Filing of Proposed Redacted Version of Platte River Midstream, LLC and DJ South Gathering, LLC's Proposed Findings of Fact and Conclusions of Law* was caused to be made on October 19, 2020, via CM/ECF upon those parties registered to receive such electronic notifications.

Date: October 19, 2020

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