IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: EXTRACTION OIL & GAS, INC., *et al.*,[1] Debtors.	
GRAND MESA PIPELINE, LLC, Appellant, v. EXTRACTION OIL & GAS, INC., Appellee. FEDERAL ENERGY REGULATORY COMMISSION, Appellant, v. EXTRACTION OIL & GAS, INC., Appellee.	CIVIL ACTION NO. 20-cv-01411 CIVIL ACTION NO. 20-cv-01521 CIVIL ACTION NO. 20-CV-01412 CIVIL ACTION NO. 20-cv-01506 CIVIL ACTION NO. 20-cv-01564 Bankruptcy Case No. 20-11548 (CSS) Bankruptcy BAP No. 20-53

JOINT MOTION TO CONSOLIDATE BANKRUPTCY APPEALS AND CONFORM BRIEFING SCHEDULES AND INCORPORATED MEMORANDUM OF LAW

Appellants, Grand Mesa Pipeline, LLC ("Grand Mesa") and the Federal Energy Regulatory Commission ("FERC") (collectively, "Appellants"), pursuant to Federal Rule of Civil Procedure 42(a)(2), respectfully move the Court for consolidation of the five related bankruptcy appeals in

[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.

20115482012080000000000007

this matter, docketed as: No. 20-cv-01411 (the "Grand Mesa Lift-Stay Appeal"); No. 20-cv-01521 (the "Grand Mesa Rejection Appeal"); No. 20-cv-01412 (the "FERC Lift-Stay Appeal"); Nos. 20-cv-01506 and 20-cv-01564 (collectively, the "FERC Rejection Appeals").[2] As will be set forth below, consolidation of the Appeals is appropriate because it would create no risk of inconvenience, delay, or expense. Given the common factual and legal issues predominant in the Appeals, consolidation would avoid significant repetitive briefing and argument involving overlapping factual and legal issues, and preserve the resources of both the Court and the parties. In support of this motion, Appellants state as follows:

1. Debtor-Appellee Extraction Oil & Gas, Inc. ("Extraction") moved to reject transportation service agreements ("TSAs") between it and Grand Mesa in the bankruptcy court. (D.I. 14). The TSAs relate to an interstate crude oil pipeline—the Grand Mesa Pipeline—that is regulated by FERC under the Interstate Commerce Act, 49 U.S.C. §§ 1 *et seq.* (the "ICA"). (D.I. 363). Grand Mesa opposed this motion, in significant part on the grounds that FERC's consideration of whether rejection of the TSAs would advance the "public interest," as evaluated by FERC, is required because rejection, as Extraction seems to understand it, would involve non-compliance with FERC-approved rates, terms and conditions, and the public-interest test under the ICA accordingly applies. (D.I. 363). Ultimately, the bankruptcy court granted rejection. (D.I. 942; D.I. 1038). The bankruptcy court's bench ruling and order granting the motion to reject, *id.*, are the basis of the Grand Mesa Rejection Appeal and the FERC Rejection Appeals, docketed in this Court as Nos. 20-cv-01521, 20-cv-01506 and 20-cv-01564.

2. Relatedly, prior to the bankruptcy court's granting of the rejection of the TSAs, Grand Mesa filed the Motion for Order Confirming that the Automatic Stay Does Not Apply or,

[2] All five appeals shall collectively be referred to herein as "the Appeals."

in the alternative, For Relief from the Automatic Stay, in which Grand Mesa requested the bankruptcy court to enter an order: (i) confirming that the declaratory proceeding that Grand Mesa seeks to commence at FERC to conduct a public interest analysis with regard to Debtors' non-compliance with the TSAs does not implicate the automatic stay or is subject to the police and regulatory exception of 11 U.S.C. § 362(b)(4); or, in the alternative, (ii) granting relief from the automatic stay to allow Grand Mesa to petition for an order from FERC regarding whether rejection of the TSAs is consistent with the public interest and ICA. (D.I. 364). FERC joined Grand Mesa's motion, and provided a separate statement to the bankruptcy court seeking similar relief. (D.I. 653). Extraction opposed Grand Mesa's motion (D.I. 507), and the bankruptcy court denied it. (D.I. 831). The bankruptcy court's order denying Grand Mesa's motion, *id.*, is the basis of the Grand Mesa Lift-Stay Appeal and the FERC Lift-Stay Appeal, docketed in this Court as Nos. 20-cv-01411 and 20-CV-01412.

3. Under Federal Rule of Civil Procedure 42(a), a district court may consolidate actions that "involve a common question of law or fact." Fed. R. Civ. P. 42(a); *accord In re Mock*, 398 F. App'x 716, 718 (3d Cir. 2010) (noting application of Rule 42(a) to bankruptcy appeals before the district court); *Waste Distillation Tech., Inc. v. Pan Am. Res., Inc.*, 775 F. Supp. 759, 761 (D. Del. 1991). Indeed, this Court has "broad discretion" to grant consolidation. *In re Mock*, 398 F. App'x at 718.

4. Similarly, under Federal Rule of Bankruptcy Procedure 8003(b)(2), "[w]hen parties have separately filed timely notices of appeal, the district court . . . may join or consolidate the appeals." Fed. R. Bankr. P. 8003(b)(2). Indeed, this rule "allows the district court . . . to consolidate appeals taken separately by two or more parties." Fed. R. Bankr. P. 8003(b) advisory committee's note to 2014 amendments.

5. Here, the Appeals involve substantially interrelated appellate issues from the same bankruptcy case, which results in a near-identical factual and legal basis for both appeals. Specifically, the Appeals relate to the statutory role and jurisdiction of FERC, among other related issues. In turn, the orders on appeal (D.I. 942; D.I. 1038; D.I. 831) implicate overlapping legal precedent and principles concerning administrative agency procedures and jurisdiction. Indeed, in its bench ruling granting Extraction's rejection motion, the bankruptcy court cross-referenced the letter clarifying its bench ruling denying Grand Mesa's lift-stay motion. (D.I. 942 at 20 & n.63). Against this backdrop, the burden on the parties and judicial resources would be greatly lessened by consolidation of the Appeals. Moreover, because the Appeals arise from identical bankruptcy proceedings, the risk of inconsistent adjudications of identical factual and legal issues is great, should consolidation not occur. These factors outweigh any slim risk of prejudice.[3]

6. Because "[t]he proper administration of justice requires that issues be resolved without unnecessary cost or delay," this Court must weigh "savings of time and effort gained through consolidation" as "balanced against the inconvenience, delay or expense that might result from simultaneous disposition of the separate actions." *Waste Distillation Tech., Inc.*, 775 F. Supp. at 761. Consolidation is appropriate to "save . . . time and expense, avoid duplicitous filings, and eliminate the risk of inconsistent results between two proceedings." *Id.*

7. Thus, under Federal Rule of Civil Procedure 42(a)(2), consolidation of the Appeals should occur. Additionally, Appellants request that the consolidated appeal's briefing schedule be conformed to that of the Grand Mesa Lift-Stay Appeal.

[3] *See also In re FirstEnergy Sols. Corp.*, 945 F.3d 431, 436-37 (6th Cir. 2019) (in an appeal implicating similar issues to the present appeal, where FERC was an appellant, the Sixth Circuit—after granting certification—consolidated several appeals that arose from the rejection and injunction orders in that case).

WHEREFORE, for the foregoing reasons, Appellants respectfully request that the Court consolidate the appeals in Nos. 20-cv-01411, 20-cv-01521, 20-cv-01412, 20-cv-01506, and 20-cv-01564,[4] conform the briefing schedules therewith, and the grant of such other and further relief as it deems just and proper.

Dated: December 7, 2020

Federal Energy Regulatory Commission

/s/ *Daniel M. Vinnik*
Daniel M. Vinnik (DC Bar No. 1672729)
888 First Street NE
Washington, DC 20426
Telephone: 202-502-6460
Email: daniel.vinnik@ferc.gov

Counsel for Appellant,
Federal Energy Regulatory Commission

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ *Dennis A. Meloro*
Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
Telephone: 302-661-7000
Facsimile: 302-661-7360
Email: melorod@gtlaw.com

-and-

Elliot H. Scherker (*pro hac vice*)
Brigid F. Cech Samole (*pro hac vice*)
Katherine M. Clemente (*pro hac vice*)
Greenberg Traurig, P.A.
333 Southeast Second Avenue
Suite 4400
Miami, FL 33131
Telephone: 305-579-0500
Facsimile: 305-579-0717
Email: scherkere@gtlaw.com
cechsamoleb@gtlaw.com
clementek@gtlaw.com
miamiappellateservice@gtlaw.com

Counsel for Appellant,
Grand Mesa Pipeline, LLC

[4] All five appeals shall collectively be referred to herein as "the Appeals."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 2020, I electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the service list below, via transmission of Notices of Electronic Filing generated by CM/ECF, electronic mail, and/or first-class U.S. mail.

/s/ Daniel M. Vinnik
Daniel M. Vinnik (DC Bar No. 1672729)

SERVICE LIST

Debtor-Appellee Extraction Oil & Gas, Inc.	Marc Abrams Whiteford Taylor Preston LLC The Renaissance Centre, Suite 500 405 North King Street Email: mabrams@wtplaw.com William E. Arnault Kirkland & Ellis LLP 300 North LaSalle Chicago, IL 60654 Email: william.arnault@kirkland.com Jamie Aycock Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: jamie.aycock@kirkland.com Stephanie Cohen Kirkland & Ellis LLP 300 N. LaSalle Chicago, IL 60654 Email: stephanie.cohen@kirkland.com Ross Fiedler Kirkland & Ellis LLP 601 Lexington Ave. New York, NY 10022 Email: ross.fiedler@kirkland.com

	Ciara Foster Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022 Email: ciara.foster@kirkland.com Stephen Brett Gerald Whiteford Taylor Preston LLC The Renaissance Centre, Suite 500 405 North King Street Wilmington, DE 19801 Email: sgerald@wtplaw.com Kevin G. Hroblak Whiteford, Taylor & Preston, LLP 7 St. Paul Street Suite 1400 Baltimore, MD 21202 Email: khroblak@wtplaw.com Kevin Liang Kirkland & Ellis LLP 601 Lexington Ave. New York, NY 10022 Email: kevin.liang@kirkland.com Christopher Marcus PC Kirkland & Ellis LLP Kirkland & Ellis INTL LLP 601 Lexington Avenue New York, NY 10022 Email: christopher.marcus@kirkland.com Christian Menefee Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: christian.menefee@kirkland.com Richard W. Riley Whiteford Taylor Preston LLC The Renaissance Centre, Suite 500 405 North King Street Wilmington, DE 19801 Email: rriley@wtplaw.com

	Anna Rotman Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: anna.rotman@kirkland.com Rebekah Sills Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: rebekah.mcentire@kirkland.com Evan Swager Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: evan.swager@kirkland.com Allyson Smith Weinhouse Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022 Email: allyson.smith@kirkland.com Kenneth A Young Kirkland & Ellis LLP 609 Main St. Houston, TX 77002 Email: kenneth.young@kirkland.com
Interested Party U.S. Trustee	Richard L. Schepacarter Office of the United States Trustee U. S. Department of Justice 844 King Street, Suite 2207 Lockbox #35 Wilmington, DE 19801 Email: richard.schepacarter@usdoj.gov
Claims Agent Kurtzman Carson Consultants LLC	Albert Kass Kurtzman Carson Consultants, LLC 222 N Pacific Coast Highway Suite 300 El Segundo, CA 90245 Email: ECFpleadings@kccllc.com

Interested Party	G. David Dean Cole Schotz P.C. 500 Delaware Avenue, Suite 1410 Wilmington, DE 19801 Email: ddean@coleschotz.com Erez Gilad Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038 Email: egilad@stroock.com Kristopher M. Hansen Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038 Email: khansen@stroock.com Frank A. Merola Stroock & Stroock & Lavan LLP 2029 Century Park East Los Angeles, CA 90067 Email: fmerola@stroock.com Kenneth Pasquale Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038 Email: kpasquale@stroock.com Jason M. Pierce Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038-4982 Email: jpierce@stroock.com Andrew John Roth-Moore Cole Schotz P.C. 500 Delaware Avenue, Suite 1410 Wilmington, DE 19801 Email: aroth-moore@coleschotz.com Gabriel Sasson Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038-4982
Official Committee of Unsecured Creditors	

	Email: gsasson@stroock.com
Interested Party Platte River Midstream, LLC, DJ South Gathering, LLC, and Platte River Holdings, LLC	Taylor M. Haga Morris, Nichols, Arsht & Tunnell LLP 1201 Market Street, 16th Floor Wilmington, Delaware 19801 Email: thaga@mnat.com Curtis S. Miller Morris, Nichols, Arsht & Tunnell LLP 1201 Market Street, 16th Floor Wilmington, Delaware 19801 Email: cmiller@mnat.com Brett S. Turlington Morris, Nichols, Arsht & Tunnell LLP 1201 Market Street, 16th Floor Wilmington, Delaware 19801 Email: bturlington@mnat.com Matthew J. Ochs Holland & Hart LLP 555 17th Street, Suite 3200 Denver, CO 80202 Email: mjochs@hollandhart.com Christopher A. Chrisman Holland & Hart LLP 555 17th Street, Suite 3200 Denver, CO 80202 Email: cachrisman@hollandhart.com