

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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In re: : Chapter 11
 :
COBALT INTERNATIONAL ENERGY, INC. *et al.*, : Case No. 17-36709 (MI)
 :
Debtors.¹ : (Jointly Administered)
 :
 : **Re: Docket No. 561**
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF TOTAL E&P USA,
INC., IN CONNECTION WITH FOURTH AMENDED JOINT CHAPTER 11 PLAN OF
COBALT INTERNATIONAL ENERGY, INC. AND ITS DEBTOR AFFILIATES**

TOTAL E&P USA, INC. (“TEP USA”), a creditor and party-in-interest in these chapter 11 cases, and the Successful Bidder for certain of the Debtors’ assets, hereby submits this limited objection and reservation of rights (the “Reservation of Rights”) with respect to confirmation of the *Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and its Debtor Affiliates* [Docket No. 561] (as may be amended or modified from time to time, the “Plan”)² and respectfully represents as follows:

PRELIMINARY STATEMENT

1. TEP USA strongly supports confirmation of the Plan. TEP USA and the Debtors continue to work constructively to resolve all of TEP USA’s concerns with the Plan and Plan Supplement as currently drafted. TEP USA files this Reservation of Rights out of an abundance of caution, to preserve all rights and objections should TEP USA and the Debtors not resolve the open issues between them in respect of the Plan prior to the Confirmation Hearing.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors’ service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.



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BACKGROUND

2. Pursuant to the Auction completed on March 6, 2018, and as set forth in the Notice of Successful Bidders and Backup Bidders, filed March 7, 2018 [Docket No. 542] (the “Successful Bidder Notice”), TEP USA is the Successful Bidder (i) for certain of the Debtors’ exploratory lease assets (the “Explo Blocks”) (ii) for certain of the Debtors’ assets in respect of the Anchor discovery (“Anchor”) and, (iii) together with Statoil Gulf of Mexico LLC, certain of the Debtors’ assets in respect of the North Platte discovery (“North Platte”). In addition, TEP USA currently holds working interests in certain additional Explo Blocks, Anchor (through subsidiary TEP Anchor LLC), and North Platte.

3. On March 8, 2018, the Debtors filed the Plan, and on March, 21, 2018, the Debtors filed the Plan Supplement. The Plan Supplement contains, among other things, (i) a list of executory contracts that the Debtors intend to assume (and in some cases assign) (the “Assumed Contract List”), (ii) a list of causes of action the Plan Administrator will retain (the “RCA List”), and (iii) a wind-down budget (the “Wind-Down Budget”). *See* Plan Supplement Exs. A (Assumed Contract List), C (RCA List), F (wind-down budget).

4. The Assumed Contract List includes numerous Explo Block leases in which TEP USA shares an interest, together with the joint operating agreements between TEP USA and the Debtors that govern their shared interests (collectively, the “Other Explo Block Contracts”). Among other obligations in the Other Explo Block Contracts, the Explo Block leases are subject to certain rental payment obligations shared by TEP USA and the Debtors. In addition, personnel are required to monitor and manage the periodic decisions and payments required under the joint operating agreements. The Wind-Down Budget contains no detail on whether sufficient funds will be held for the payment obligations; and no detail is provided on

how (or through whom) the Plan Administrator will monitor and manage contractual obligations generally.

5. The RCA List includes numerous unspecified causes of action against TEP USA (and in one case against “TOTAL” and in another case against “TOTAL GABON”). The attempted retention of such causes of action is of special relevance to TEP USA to the extent the Plan, the Confirmation Order, or any other agreement or order otherwise releases TEP USA from claims prior to the Effective Date.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

6. Out of an abundance of caution, and although TEP USA is confident it will resolve all open issues with the Debtors prior to the Confirmation Hearing, TEP USA hereby reserves all rights and preserves all objections to the Plan.

7. In addition, TEP USA specifically reserves rights and preserves objections to the Debtors’ purported assumption of the Other Explo Block Contracts. The Other Explo Block Contracts impose meaningful obligations on the Debtors, including the obligation to fund periodic rental payments for the relevant leases. The Wind-Down Budget contains no detail on whether or how the Plan Administrator will budget for and meet such obligations. Instead, the Wind-Down Budget provides summary estimated expenses for four quarterly periods. In addition to providing insufficient detail for such periods, the Wind-Down Budget provides no indication how the Debtors will meet their obligations for the significantly longer life of many of the Other Explo Block Contracts. The Debtors also provide no detail on who will monitor and manage the Debtors’ contractual obligations generally. TEP USA is entitled to adequate assurance of payment and other performance for the life of such contracts. *See* 11 U.S.C. § 365(f)(2) (assumption requires adequate assurance of future performance). The Debtors should be required

to provide adequate assurance of future performance before the Court approves assumption of the Other Explo Block Contracts.

8. In addition, TEP USA specifically reserves rights and preserves objections to the Debtors' purported retention of unspecified causes of action against TEP USA and/or any affiliates, as set forth on the RCA List. TEP USA, as a prospective asset Purchaser, expects to reach an agreement with the Debtors providing for a general mutual release of claims arising prior to the Effective Date of the Plan. To the extent such an agreement is reached, the retention of any causes of action, including those identified on the RCA List, will be contrary to the agreement. Even assuming no such agreement is reached, the actions identified on the RCA List have such a lack of detail that TEP USA cannot evaluate them in any way. The Debtors should be required to strike the purported retained causes of action from the RCA List as inconsistent with the expected release or, in the absence of such release, should be required to provide significantly more detail on all such purportedly retained actions.

9. Finally, TEP USA also specifically objects to the approval of any bidder other than TEP USA for any Debtor assets in which TEP USA currently holds contractual interests unless and until any such other bidder provides adequate assurance of future performance of said contracts, all of which relate to the highly complex and capital-intensive process of developing offshore oil and gas assets. To date, TEP USA is unaware of any such adequate assurance having been offered or provided by any other potential purchaser.

10. While TEP USA remains confident that it will timely resolve all open issues with the Debtors, TEP USA hereby reserves all of its rights, objections, remedies, and interests, including, without limitation, with respect to the Other Explo Block Assets, the

retained causes of action against TEP USA, adequate assurance issues, the Plan and the Plan Supplement.

Dated: March 27, 2018

Respectfully submitted,

By: /s/ David A. Hammerman

David A. Hammerman (admitted *pro hac vice*)

Hugh K. Murtagh (admitted *pro hac vice*)

LATHAM & WATKINS LLP

885 Third Avenue

New York, NY 10022

Tel: (212) 906-1200

Fax: (212) 751-4864

Email: david.hammerman@lw.com

Email: hugh.murtagh@lw.com

Richard A. Levy (admitted *pro hac vice*)

LATHAM & WATKINS LLP

330 North Wabash Avenue

Chicago, IL 60611

Tel: (312) 876-7700

Fax: (312) 993-9767

Email: richard.levy@lw.com

Counsel to TOTAL E&P USA, INC.

Certificate of Service

I certify that on March 27, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all registered ECF users appearing in these cases.

/s/ David A. Hammerman
David A. Hammerman