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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

DEBTORS' *EMERGENCY* MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING THE PAYMENT OF WORKING INTEREST EXPENDITURES, JOINT INTEREST BILLINGS, ROYALTY PAYMENTS, DELAY RENTAL PAYMENTS, AND PRODUCTION SALE EXPENDITURES

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER ON DECEMBER 14, 2017, AT 3:30 P.M. (CENTRAL TIME) BEFORE THE HONORABLE MARVIN ISGUR, 515 RUSK STREET, COURTROOM 404, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

[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.

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

Relief Requested

1. The Debtors hereby seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, authorizing, but not directing, the Debtors to pay in the ordinary course of business all prepetition and postpetition amounts owing on account of (a) Working Interest Expenditures, (b) Joint Interest Billings, (c) Royalty Payments, (d) Delay Rental Payments, and (e) Production Sale Expenditures (each as defined below). In addition, the Debtors request that the court schedule a final hearing within 21 days after the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas 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 Southern District of Texas*, dated May 24, 2012 (the "Amended Standing Order"). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the court in connection with this motion 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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362, 363, 1107, and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 6003 and 6004, and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

Background

4. The Debtors are a publicly held offshore oil exploration and production company with headquarters in Houston, Texas and operations primarily located off the coast of the United States in the deepwater Gulf of Mexico and offshore Angola and Gabon in West Africa. The Debtors have four named discoveries in the Gulf of Mexico, which include North Platte, Shenandoah, Anchor, and Heidelberg. Heidelberg began initial production in January of 2016 while North Platte, Shenandoah, and Anchor have been fully appraised and are now in development. Additionally, the Debtors have made seven aggregate discoveries offshore Angola and maintain a non-operated interest offshore Gabon, where the Debtors have one discovery.

5. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of David D. Powell, Chief Financial Officer of Cobalt International Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously with this motion.[2]

6. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

The Debtors' Oil and Gas Interests

7. As set forth above, the Debtors' U.S. operations are focused on the exploration, development, and production of oil and gas in the Gulf of Mexico. Through a written agreement (a "Lease"), the United States Department of the Interior, Bureau of Ocean Energy Management leases, grants, or otherwise conveys the right to enter and capture oil and gas through exploration, drilling, and production operations (a "Working Interest") to a third party (a "Working Interest Holder").

8. The efficient capture of oil and gas often requires use of an area of land or depths that implicates the Working Interest of one or more than one Working Interest Holder of a given Lease. Accordingly, the rights and responsibilities associated with the capture of oil and gas are allocated by and between the Working Interest Holders either by mutual agreement, commonly documented in a joint operating agreement (a "JOA"), unit operating agreement (a "UOA"), or by the application of contractual precedent.

9. Working Interest Holders, either through a JOA, UOA, or otherwise, will typically designate one Working Interest Holder (or its designee) as the operator of the Lease (the "Operator"). The Operator conducts the exploration, development, and production associated with capturing oil and gas on behalf of itself and the other non-operating Working Interest Holders in the Lease (each, a "Non-Operating Party"). The Debtors are the Operator of one oil and gas field located in the Gulf of Mexico, North Platte, and are a Non-Operating Party in three fields in the Gulf of Mexico—Heidelberg, Shenandoah, and Anchor. The Debtors also hold approximately 111 other leasehold interests in the Gulf of Mexico. The Debtors are designated Operator for 107 of these leases, and the Non-Operating Party in the remainder.

The Debtors' Oil and Gas Obligations

10. In order to maintain their Leases and Working Interests in the Gulf of Mexico, the Debtors' must pay certain obligations, namely: (a) the upfront expenditures associated with exploration, development, and production on account of themselves as Operator and, where applicable, the Non-Operating Parties (the "Working Interest Expenditures"); (b) the *pro rata* share of Working Interest Expenditures owed by the Debtors as Non-Operating Parties under JOAs, UOAs, or other applicable contractual or budgetary arrangements (each, a "Joint Interest Billing"); (c) payments in lieu of a share of production owed to the United States Office of Natural Resources Revenue ("ONRR") pursuant to the terms of the Debtors' respective Leases ("Royalty Payments"); (d) minimum rental payments owed to the ONRR to delay initial exploration and development of certain Leases (the "Delay Rental Payments"); and (e) payments owed by the Debtors for gathering, transportation, storage, and marketing of oil, gas, and natural gas liquids, as well as other similar services necessary or desirable to get such production to market in a condition ready for sale, including treating, dehydration, compression, processing, and fractionation (such charges, collectively, the "Production Sale Expenditures" and, together with the Working Interest Expenditures, the Joint Interest Billings, the Royalty Payments, and the Delay Rental Payments, the "Oil and Gas Obligations").

A. Working Interest Expenditures.

11. In the typical arrangement, the Operator remits substantially all of the Working Interest Expenditures associated with a project, including payments to third parties such as vendors, contractors, drillers, haulers, and other suppliers of oil and gas related services, and submits associated invoices to the Non-Operating Parties for Joint Interest Billings. Large capital expenditures are commonly preceded by circulation of an "Authorization for Expenditure" (an "AFE") by the Operator to the Non-Operating Parties. An AFE is a budgetary document usually

prepared by the Operator listing estimated expenditures of a given project, which may include expenditures for geophysical studies, appraisals, and drilling wells, among others. This estimate of expenditures is typically provided to Working Interest Holders for approval prior to commencement of a particular operation. Depending on the project, Working Interest Holders will have anywhere from 30 to 120 days to sign and participate in a given AFE. The Operator subsequently will issue Joint Interest Billings to Non-Operating Parties under the applicable JOA, UOA, AFE, or other agreement.

12. Regardless of when an Operator is reimbursed by Non-Operating Parties pursuant to a JOA, UOA, or AFE through the Joint Interest Billing process, the Operator must continue to pay Working Interest Expenditures in a timely fashion. Failure to pay Working Interest Expenditures when due could result in the Operator's removal as Operator under the applicable JOA, UOA, and/or, as discussed in greater detail below, the perfection or enforcement of liens on the Debtors' assets, among other remedies.[3] The Debtors serve as the Operator for only one of the active projects in which they own a Working Interest, North Platte.

B. Joint Interest Billings.

13. The Debtors are also a Non-Operating Party in three of the projects in which they own a Working Interest (i.e., Heidelberg, Shenandoah, and Anchor), for which the Debtors are obligated for their *pro rata* share of the Working Interest Expenditures upon receipt of any Joint Interest Billings. In such circumstances, a third party, such as Chevron Corporation ("Chevron") (in the case of Anchor), acts as Operator and is charged with the daily operations and related Working Interest Expenditures. The Debtors' Joint Interest Billings are not uniform and are not

[3] For the avoidance of doubt, the Debtors do not concede that the assertion of any such liens would constitute a valid basis for removing the Debtors as Operator of any Lease, and the Debtors expressly reserve the right to contest any such contention.

predictable on a month-to-month basis. The Debtors' primary responsibility with respect to their Working Interests where they are a Non-Operating Party is to timely pay the Operators their *pro rata* share of the Working Interest Expenditures following a Joint Interest Billing.

14. In the ordinary course of business, the Debtors commit to paying future Working Interest Expenditures by entering into AFEs with other Working Interest Holders. If the AFE is for a unit saving operation, such as drilling a well, failure to participate will result in the forfeiture of the Debtors' interests in the Leases. Alternatively, failure to timely elect to participate in an AFE may result in the imposition of underinvestment penalties ranging from two to six times the amount the Debtors would have paid if they participated in the AFE, depending on the type of expenditure and the terms of the governing JOA or UOA.

15. Further, the Operator of an oil and gas property is often granted a contractual lien on Non-Operating Parties' interests in the oil and gas property to secure the payment of obligations owed to the Operator. As such, the Debtors' failure to timely pay the Joint Interest Billings will likely result in Operators asserting liens under applicable state and federal law against the Debtors' interests in their Leases or any production therefrom. If asserted, such liens could restrict the Debtors' ability to dispose, transfer, or otherwise assign their property, potentially severely impairing the Debtors' businesses.

C. Royalty Payments.

16. In connection with the Debtors' Working Interests in Heidelberg, the Debtors are responsible for Royalty Payments to the ONRR pursuant to the terms of the Debtors' respective Leases. The monthly amount of Royalty Payments paid by the Debtors are subject to variation due to many factors. Because the Royalty Payments are made in cash, and due to the time required to market and sell the oil and gas production and the significant accounting process required each month to accurately disburse the resulting proceeds, the Debtors have historically made Royalty

Payments approximately 60 days in arrears, which is consistent with industry standards. The Debtors generally remit Royalty Payments to the ONRR during the last week of each month.

17. Failure to make Royalty Payments to the ONRR could result in a material adverse effect to the Debtors and their Working Interests in their Leases, including exposing the Debtors to statutory remedies, regulatory actions, or civil fines and penalties. Moreover, the ONRR may exercise additional remedies pursuant to the terms of the applicable Leases.[4] Thus, failure to pay the Royalty Payments would expose the Debtors to enforcement actions that may result in the forfeiture, cancellation, or termination of their Leases and Working Interests.

D. Delay Rental Payments.

18. The Debtors are also required to make Delay Rental Payments to the ONRR during the term of their Leases. Payment of the Delay Rental Payments postpones the Debtors' obligations under a Lease for exploration and development of such Lease for the entire period for which they are paid. Thus, if Delay Rental Payments are paid on or before the anniversary date each year during the primary term of a Lease, such Lease will not be cancelled even if the Debtors do not engage in exploration or development on such Lease. Typically, the Debtors remit Delay Rental Payments to the ONRR during the last week of the month immediately preceding the anniversary date. If the Delay Rental Payments are not paid, and the Debtors do not otherwise engage in exploration and development, the Leases will terminate. Accordingly, failure to pay the Delay Rental Payments could have a material adverse effect upon the Debtors and their operations, including the loss of the Debtors' related Leases.

[4] The Debtors reserve the right to dispute any such remedies irrespective of whether the relevant Working Interest disbursements are made.

E. Production Sale Expenditures.

19. In connection with their Working Interest in Heidelberg, the Debtors make contractual arrangements (the "Production Sale Arrangements") under which third parties purchasing oil, gas, and natural gas liquids production will request payment from the Debtors for Production Sale Expenditures. Production Sale Expenditures include the cost of transporting and distributing oil, gas, and natural gas liquids through pipelines, which is the most common method by which the Debtors deliver production to market, and any take or pay obligations under the relevant contractual agreements. The Debtors' Production Sale Expenditures are generally not uniform and are not predictable on a month-to-month basis.

20. The Debtors' compliance with the Production Sale Arrangements and timely payment of the Production Sale Expenditures is critical to the Debtors' ability to receive revenue from production (the "Marketed Production"). Failure to receive such revenue would directly threaten and may prevent the Debtors' from making timely payments to third parties holding an interest in production, such as pipeline companies and the ONRR.

21. Moreover, like shippers, warehouses, and materialmen relied on by companies in other industries, counterparties to Production Sale Arrangements often have possession of, and may assert liens on, or title to, Marketed Production.[5] This includes, for example, any oil, gas, and natural gas liquids presently in a third-party pipeline system. Accordingly, failure to pay Production Sale Expenditures when due could result in such counterparties refusing to release Marketed Production or the associated revenues or refusing to accept delivery of additional Marketed Production.

[5] For the avoidance of doubt, the Debtors do not concede the validity of any such liens or titles and the Debtors expressly reserve the right to contest any such contention.

22. In many instances, the Production Sale Expenditures of gas and natural gas liquids are deducted from the purchase price received by the Debtors for Marketed Production and are incurred directly by the purchasers of the Marketed Production. The Debtors do, however, make cash payments on account of Production Sale Expenditures of oil.

Specific Oil and Gas Obligations Sought to Be Paid

A. North Platte.

23. The North Platte field is located approximately 190 miles south of Port Fourchon off the Louisiana coast in 4,500 feet of water in the "Garden Banks" area. North Platte is the only field in which the Debtors serve as Operator. In 2012, the Debtors announced the North Platte discovery well, and subsequently drilled five additional penetration wells to appraise the field. Currently, the Debtors are in the process of submitting a Suspension of Production ("SOP") to the Bureau of Safety and Environmental Enforcement ("BSEE") for approval. The SOP provides a schedule of key deliverables to develop the North Platte unit. The SOP eliminates the requirement of the Operator to conduct further unit saving drilling operations under the terms of the applicable Leases. In the event the SOP is not approved by BSEE, a unit saving drilling operation will need to commence by June 2018. Therefore, as a contingency, the Operator is in the planning stages of an additional well—North Platte #5—as a unit saving operation. The Debtors own a 60-percent Working Interest in the North Platte unit, with the remaining 40-percent held by Total E&P USA, Inc. ("Total E&P") as a Non-Operating Party. The estimated gross recoverable resource range for North Platte is 500 to 650 million barrels of oil equivalent.

24. Around the middle of each month, the Debtors generate a Joint Interest Billing to Total E&P. The timing of payments from Total E&P on account of Joint Interest Billings can vary, but outstanding balances for Joint Interest Billings are typically paid by Total E&P within 30 days of receiving the Joint Interest Billing. As of the Petition Date, the Debtors estimate that

they have approximately $3.6 million of accrued but unpaid Working Interest Expenditures relating to North Platte, of which approximately $2.5 million will become due and owing during the first 21 days of these chapter 11 cases. The Debtors will be reimbursed approximately $335,000 by Total E&P for these unpaid Working Interest Expenditures.

25. In addition, in the twelve months following the Petition Date, the Debtors have already committed to pay a gross total of approximately $35 million pursuant to outstanding AFEs in connection with developing the North Platte unit. In addition, prior to the Petition Date the Debtors issued a formal proposal and AFE (gross total of approximately $131 million) to drill the North Platte #5 well as part of a unit saving operation in the event an SOP is not approved by BSEE. If the BSEE does not approve an SOP, failure to drill a well will result in automatic termination of the Leases and the elimination of the Debtors' Working Interests therein. The Debtors' net share of these committed expenditures is approximately $112 million,[6] with the balance to be reimbursed by Total E&P on account of Joint Interest Billings if Total E&P elects to participate.

26. The Debtors also expect to incur additional expenditures with respect to North Platte in the twelve months following the Petition Date that are not currently committed through an AFE. The Debtors anticipate that a total of $65 million (gross) in such additional uncommitted expenditures will become necessary within the twelve months following the Petition Date on account of developing the North Platte unit. These expenditures are required to fulfill the commitments outlined in the SOP. Failure to authorize these expenditures will likely result in BSEE not approving the SOP, thereby triggering the requirement that the Operator drill North

[6] This figure consists of the Debtors' $33 million net share of outstanding AFEs relating to the development of the North Platte Unit, combined with the Debtors' $79 million net share of the AFE relating to the drilling of North Platte #5.

Platte #5 as a unit saving operation. The Debtors' net share of these uncommitted expenditures is approximately $41 million, with the balance to be reimbursed by Total E&P on account of Joint Interest Billings. Failure to make these payments will result in economic losses to the Debtors and their bankruptcy estates by diminishing the value of the Debtors' interests in their Leases to the detriment of all parties in interest, including potential purchasers.

27. In 2017, the Debtors paid approximately $220,000 (gross) in annual Delay Rental Payments in connection with the North Platte Leases. The Debtors' net share of these Delay Rental Payments is approximately $135,000, with the balance reimbursed by Total E&P on account of Joint Interest Billings. As of the Petition Date, the Debtors do not have any outstanding Delay Rental Payments on account of the North Platte Leases.

28. By this motion the Debtors seek authority, but not direction, to continue paying the Oil and Gas Obligations on account of North Platte in the Debtors' reasonable business judgment consistent with past practice, including payment of certain prepetition obligations related thereto.

B. Heidelberg.

29. The Heidelberg field is located approximately 140 miles south of Port Fourchon off the Louisiana coast in 5,300 feet of water in the "Green Canyon" area. Anadarko Petroleum Corporation ("Anadarko") is the Operator, and the Debtors own a 9.375-percent Working Interest as a Non-Operating Party. The Heidelberg field began initial production in early 2016. Heidelberg is currently producing approximately 36,000 barrel of oil equivalents per day (gross) from five wells (the fifth production well was completed in early 2017). Of the Leases in which the Debtors hold a Working Interest, Heidelberg is the only one currently producing oil and gas. Anadarko plans to drill an additional production well in 2018.

30. Historically, the Debtors have paid approximately $1.9 million in Joint Interest Billings on a monthly basis in connection with Heidelberg. Typically, the Debtors are required to

pay their Joint Interest Billings relating to Heidelberg within 15 days of receipt. As of the Petition Date, the Debtors estimate that they have approximately $190,000 accrued but unpaid Joint Interest Billings relating to Heidelberg, all of which will become due and owing during the first 21 days of these chapter 11 cases.

31. The Debtors expect to incur additional expenditures with respect to Heidelberg in the twelve months following the Petition Date that are not currently committed through an AFE. In particular, the Debtors anticipate that it will be economically beneficial to drill a well and perform subsurface studies, among other expenditures, in order to maximize the value of their Heidelberg Leases. The Debtors anticipate that a total of $21.1 million in such additional uncommitted expenditures will become due and payable within the twelve months following the Petition Date. Failure to make these payments will likely result in severe economic losses to the Debtors and their bankruptcy estates by diminishing the value of the Debtors' interests in their Leases, to the detriment of all parties in interest, including potential purchasers. Specifically, failure to participate in any well AFEs in connection with Heidelberg will force the Debtors to forfeit their share of production from that well. Further, failure to participate in any other AFEs will result in the imposition of underinvestment penalties under the Heidelberg UOA.

32. Additionally, the Debtors make approximately $515,000 in Royalty Payments per month in connection with Heidelberg. The Debtors estimate that, as of the Petition Date, there is approximately $590,000 in accrued but unpaid Royalty Payments relating to Heidelberg, all of which will become due and owing in the first 21 days of these chapter 11 cases.

33. Further, the Debtors pay approximately $635,000 in Production Sale Expenditures each month in connection with Heidelberg. Typically, the Debtors are required to pay their Production Sale Expenditures relating to Heidelberg within 15 days of receipt. As of the Petition

Date, the Debtors estimate that they have approximately $605,000 accrued but unpaid Production Sale Expenditures, all of which will become due and owing during the first 21 days of these chapter 11 cases.

34. By this motion the Debtors seek authority, but not direction, to continue paying the Oil and Gas Obligations on account of Heidelberg in the Debtors' reasonable business judgment consistent with past practice, including payment of certain prepetition obligations related thereto.

C. Shenandoah.

35. The Shenandoah field is located approximately 170 miles south of Port Fourchon off the Louisiana coast in 5,800 feet of water in the "Walker Ridge" area. The Debtors own a 20-percent Working Interest in Shenandoah as a Non-Operating Party. In 2009 the Shenandoah discovery well was drilled and subsequently seven additional penetration wells were completed to appraise the field, with the most recent in April 2017. Prior to the Petition Date, the Debtors agreed to participate in a proposal and AFE to drill a well in the first half of 2018 as part of a unit saving operation. Failure to participate and commit the funds necessary under the AFE would have caused the Debtors to lose their interests in certain Leases. The estimated gross recoverable resource range for Shenandoah is 165 to 300 million barrels of oil equivalent.

36. Historically, the Debtors have paid approximately $3.5 million in Joint Interest Billings on a monthly basis in connection with Shenandoah. Typically, the Debtors are required to pay their Joint Interest Billings relating to Shenandoah within 15 days of receipt. As of the Petition Date, the Debtors estimate that they have approximately $5 million accrued but unpaid Joint Interest Billings relating to Shenandoah, of which $1.6 million will become due and owing during the first 21 days of these chapter 11 cases.

37. In the twelve months following the Petition Date, the Debtors have already committed to pay $36 million under existing AFEs relating to Shenandoah. The Debtors also may

incur additional expenditures with respect to Shenandoah in the twelve months following the Petition Date that are not currently committed through an AFE. Specifically, expenditures may include studies, surveys, integrated project teams, and long leads, among others. The Debtors anticipate that a total of $9 million in such additional uncommitted expenditures may become due and payable within the twelve months following the Petition Date. Similar to Heidelberg, failure to participate in any well AFE will force the Debtors to forfeit their share of production from that well. Further, failure to participate in any other AFEs will result in the imposition of underinvestment penalties under the Shenandoah JOA.

38. By this motion the Debtors seek authority, but not direction, to continue paying the Oil and Gas Obligations on account of Shenandoah in the Debtors' reasonable business judgment consistent with past practice, including payment of certain prepetition obligations related thereto.

D. Anchor.

39. The Anchor field is located approximately 150 miles south of Port Fourchon off the Louisiana coast in 5,183 feet of water in the "Green Canyon" area. Chevron is the Operator, and the Debtors own a 20-percent Working Interest as a Non-Operating Party. The initial discovery well was drilled in 2014, with three additional penetration wells completed in 2015 and 2016 to appraise the field. Currently, there are no plans to drill a well at Anchor in 2018. The estimated gross recoverable resource range for Anchor under depletion is 330 to 600 million barrels of oil equivalent, while the estimated gross recoverable resource range with water injection support is 600 to 900 million barrels of oil equivalent, based on preliminary reservoir simulation modeling results.

40. Historically, the Debtors have paid approximately $2.6 million in Joint Interest Billings on a monthly basis in connection with Anchor. Typically, the Debtors are required to pay their Joint Interest Billings relating to Anchor within 15 days of receipt. As of the Petition Date,

the Debtors estimate that they have approximately $2.5 million accrued but unpaid Joint Interest Billings relating to Anchor, of which up to $2.5 million will become due and owing during the first 21 days of these chapter 11 cases.

41. In addition, in the twelve months following the Petition Date, the Debtors have already committed approximately $19 million under existing AFEs relating to Anchor. The Debtors also expect to incur additional expenditures with respect to Anchor in the twelve months following the Petition Date that are not currently committed through an AFE. Specifically, the Debtors anticipate that expenditures may include studies, surveys, integrated project teams, and long leads, among others. The Debtors anticipate that a total of $20 million in such additional uncommitted expenditures will become due and payable within in the twelve months following the Petition Date. Failure to make these payments will result in severe economic losses to the Debtors and their bankruptcy estates by diminishing the value of the Debtors' interests in their Leases, to the detriment of all parties in interest, including potential purchasers. Moreover, failing to participate in any AFEs in connection with Anchor will result in the imposition of underinvestment penalties under the Anchor UOA.

42. By this motion the Debtors seek authority, but not direction, to continue paying the Oil and Gas Obligations on account of Anchor in the Debtors' reasonable business judgment consistent with past practice, including payment of certain prepetition obligations related thereto.

E. Other Leasehold Interests.

43. The Debtors also hold approximately 111 other leasehold interests in the Gulf of Mexico that are not otherwise affiliated with their North Platte, Shenandoah, Anchor, or Heidelberg assets. The Debtors are designated Operator for 107 of these leases, and the Debtors are a Non-Operating Party in the remainder.

44. The Debtors will pay approximately $2.9 million in Delay Rental Payments in 2018 in connection with these other leasehold interests. As of the Petition Date, the Debtors do not have any outstanding Delay Rental Payments in connection with these other leasehold interests. By this Motion, the Debtors seek authority, but not direction, to continue paying the Delay Rental Payments on account of these other leaseholder interests in the ordinary course of business on a postpetition basis, consistent with past practice.

Basis for Relief

I. Payment of the Oil and Gas Obligations Is a Sound Exercise of the Debtors' Business Judgment Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.

45. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor's request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g.*, *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale."); *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

46. Furthermore, section 105(a) of the Bankruptcy Code further provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, pursuant to the "doctrine of necessity." 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the "doctrine of necessity"); *see also In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

47. Moreover, the doctrine of necessity is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of

prepetition unsecured claims of toolmakers as "necessary to avert a serious threat to the Chapter 11 process"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

48. As more particularly described below, based on the dire consequences that potentially could arise if the Debtors fail to honor the prepetition Oil and Gas Obligations, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

II. Failure to Make Timely Payment of the Oil and Gas Obligations Could Threaten the Debtors' Ability to Operate and Subject the Debtors' Assets to the Assertion of Liens.

49. If the Debtors fail to satisfy the Oil and Gas Obligations, the Debtors' drilling and production operations will be severely impacted, their right to receive production from certain wells or projects may be impeded, and their Leases may be lost. *See, e.g.*, *Trigg v. United States (In re Trigg)*, 630 F.2d 1370, 1374 (10th Cir. 1980) (affirming bankruptcy court's finding that debtor's mineral leases terminated automatically for failure to pay delay rental payments); *Good Hope Refineries, Inc. v. Benavides*, 602 F.2d 998, 1003 (1st Cir. 1979) (affirming the district court's holding that the debtor's mineral lease terminated automatically upon failure to pay delay rental payments and nothing in the Bankruptcy Code enabled the debtor in possession to cure such failure).

50. In instances where the Debtors are a Non-Operating Party in their Leases, the JOAs or UOAs often grant the Operator a contractual lien upon the Debtors' interest in a field and the underlying Lease that may include: (a) all equipment installed on the Lease; (b) all hydrocarbons or other minerals severed and extracted from or attributable to the Lease; (c) all accounts and

proceeds of sale, contract rights, and general intangibles arising in connection with the sale; (d) fixtures; and (e) any and all accessions, additions, and attachments thereto and the proceeds and products therefrom. The lien may purport to secure the payment of all charges, fees, court costs, and other directly related collection costs. If the Debtors do not pay the Oil and Gas Obligations when due, the Operator may also attempt to assert additional rights to collect from the Debtors. Similarly, in the case of North Platte (where the Debtors serve as Operator), failure to pay the Oil and Gas Obligations when due could result in the Operator's removal as Operator under the UOA and/or the perfection or enforcement of liens on the Debtors' assets, among other remedies.[7]

51. In addition, governing federal law in the offshore waters in which the Debtors operate generally protects the rights of certain third party contractors by granting them statutory liens to secure payment for their services. For example, U.S. federal law grants statutory liens in vessels to "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner." *See* 46 U.S.C. § 31342. The definition of "necessaries" has been interpreted broadly. *See, e.g.*, *id.* § 31301(4) (providing that necessaries includes repairs, supplies, towage, and use of a dry dock or marine railway); *Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 603 (5th Cir. 1986) ("The term 'necessary' under the [federal statute] includes most goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function."); *In re Muma Servs., Inc.*, 322 B.R. 541, 554–55 (Bankr. D. Del. 2005) (stating that liens for necessaries are entitled to maritime lien status). Similarly, the laws of many foreign jurisdictions grant maritime or statutory lien rights to certain vendors. *See, e.g.*, International Convention Relating to the Arrest of Sea-Going Ships, Brussels 1952, art. 1(1);

[7] For the avoidance of doubt, the Debtors do not concede that the assertion of any such liens would constitute a valid basis for removing the Debtors as Operator of any Lease, and the Debtors expressly reserve the right to contest any such contention.

International Convention on the Arrest of Ships, Geneva 1999, art. 1(1). As such, failure of the Debtors to timely pay the Oil and Gas Obligations when due could result in the assertion of unavoidable maritime or statutory liens.

III. The Royalty Payments Are Not Property of the Debtors' Estates.

52. The ONRR may also argue that the Royalty Payments owed by the Debtors on account on their Leases are property of the ONRR, and are therefore outside the scope of property of the estate. Pursuant to section 541 of the Bankruptcy Code, property of the estate includes all property in which the debtor has legal or equitable interests upon the commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1). This includes any interest in property that the estate acquires after commencement of the chapter 11 cases. 11 U.S.C. § 541(a)(7).

53. However, section 541 does not by itself create new legal or equitable interests in property; instead, "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (noting that "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"). Further, Congress was clear that section 541(a)(1) of the Bankruptcy Code "is not intended to expand the debtor's rights against others more than they existed at the commencement of the case." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 367–68 (1977); *see also Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) (holding that the "rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less"). Thus, if a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor's estate under section 541 and the debtor is prohibited from distributing such property to its creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) ("The Bankruptcy Act simply does not authorize a [debtor] to distribute other people's property among a bankrupt's creditors . . .

[S]uch property rights existing before bankruptcy in persons other than the bankrupt must be recognized and respected in bankruptcy.").

54. Further, section 541(d) of the Bankruptcy Code provides that a debtor who holds only bare legal title to property but not equitable interest in such property as of the commencement of the case does not obtain equitable interest in such property pursuant to section 541 of the Bankruptcy Code. Specifically, it states:

> Property in which the debtor holds, as of the commencement date of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

55. Courts have interpreted section 541(d) to "expressly" provide that when a debtor holds only bare legal title in property, such property is not property of the estate. *In re Lenox Healthcare, Inc.*, 343 B.R. 96, 100 (Bankr. D. Del. 2006). When a debtor holds legal title but not equitable interest in property, the debtors must turn such property over to the holders of such property. *See In re MCZ, Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) ("Where Debtor merely holds bare legal title to property as agent or bailee for another, Debtor's bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner."). A debtor who holds proceeds attributable to real property owned by another holds only bare legal title to such property. *See, e.g.*, *In re Columbia Pac. Mortgage, Inc.*, 20 B.R. 259, 262–64 (Bankr. W.D. Wash. 1981) (holder of participation ownership interest brought successful action against bankruptcy trustee for proceeds of a sale of real property because holder was beneficial owner and debtor having only legal title held the proceeds in trust).

56. To the extent applicable nonbankruptcy law does not treat Royalty Payments as real property interests, the ONRR may assert that section 541 expressly excludes certain Royalty Payments from the definition of property of the estate. Section 541(b)(4)(B) states that:

> Property of the estate does not include any interest of the debtor in liquid or gaseous hydrocarbons to the extent that the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred.

11 U.S.C. § 541(b)(4)(B).[8]

57. The ONRR may further assert that, because Royalty Payments are not property of the estate either by application non-bankruptcy law or pursuant to section 541(b) of the Bankruptcy Code, any proceeds or profits that the Debtors may take possession of during the pendency of these chapter 11 cases earned on account of the Royalty Payments are not property of the estate under section 541(a)(6) of the Bankruptcy Code. *See* 11 U.S.C. § 541(a)(6) (providing that proceeds, products, offspring, rents, or profits *of or from property of the estate* constitute property of the estate under section 541 of the Bankruptcy Code) (emphasis added).

58. Additionally, to the extent the Debtors hold proceeds that are subject to the Royalty Payments, the ONRR may assert that the Debtors at most hold bare legal title to such funds and hold *no* legal title to the percentage of the oil and gas production attributable to the ONRR under the applicable Leases. *See, e.g.*, *Vess Oil Corp. v. SemCrude, L.P. (In re SemCrude, L.P.)*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) (holding that funds in debtors' possession held on behalf of holders of royalty interests were held in a resulting trust for such parties, debtors only held bare legal title to such property, and thus such funds were not property of the estate). The Supreme

[8] Production payment means "a term overriding royalty satisfiable in cash or in kind contingent on the production of a liquid or gaseous hydrocarbon from particular real property . . . determined without regard to production costs." 11 U.S.C. § 101(42A).

Court has held that property held by debtors for a third-party (such as funds held on account of a resulting trust) is not property of the estate. *Begier v. Internal Revenue Service*, 496 U.S. 53, 59 (1990) ("Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.'"); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) (noting that "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition" from the bankruptcy estate). Thus, any property held by the Debtors on account of nonpayment of the ONRR's Royalty Payments is arguably not property of the Debtors' estates.[9]

59. Because the Royalty Payments are not property of the estate, the ONRR may assert that the automatic stay does not prevent any action by the ONRR to obtain possession or exercise control over the Royalty Payments, as applicable. *See* 11 U.S.C. § 362(a)(3) (providing that the automatic stay is applicable to all entities for "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"). Failure to grant the relief requested by this motion could subject the Debtors to unnecessary litigation, either in or outside of the Bankruptcy Court, at a time when their resources are already subject to enormous strain. As such, the Debtors believe payment of the Royalty Payments in the ordinary course of business is in the best interests of the Debtors and their creditors, and should be authorized by the court.

60. Courts have routinely authorized payment to royalty payees and other third-party interest holders under similar circumstances. *See, e.g.*, *In re SandRidge Energy, Inc.*, No. 16-32488 (DRJ) (Bankr. S.D. Tex. May 18, 2016); *In re Midstates Petrol. Co.*, No. 16-32237

[9] The Debtors reserve the right to dispute that the Working Interests, Royalty Payments, or the proceeds thereof are real property interests, are not property of the estate, or are held in any form of trust.

(DRJ) (Bankr. S.D. Tex. May 2, 2016); *In re RAAM Glob. Energy Co.*, No. 15-35615 (MI) (Bankr. S.D. Tex. Dec. 22, 2015); *In re Luca Int'l Grp. LLC*, No. 15-34221 (DRJ) (Bankr. S.D. Tex. Oct. 19, 2015); *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D. Tex. Aug. 24, 2012); *see also In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Jan. 11, 2016).[10]

IV. Payment of the Oil and Gas Obligations Is in Furtherance of the Debtors' Fiduciary Duties Under Bankruptcy Code Sections 1107(a) and 1108.

61. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. at 497. Implicit in the duties of chapter 11 debtors in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

62. Courts have noted that there are instances in which debtors in possession can fulfill their fiduciary duties "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" and also when the payment was to "sole suppliers of a given product." *Id.* at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

> First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there

[10] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

> is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

63. Payment of the prepetition Oil and Gas Obligations meets each of these elements because each of the creditors holding prepetition Oil and Gas Obligations may have lien rights or provides critical services. Additionally, any disruption in the Debtors' network of suppliers, service providers, and vendors would significantly disrupt the Debtors' businesses and restructuring process, which could cost the Debtors' estate a substantial amount in lost revenue.

64. Accordingly, the harm and economic disadvantage that would stem from failure to pay any of the prepetition Oil and Gas Obligations is grossly disproportionate to the amount of the prepetition claim that would have to be paid. Finally, with respect to each of the holders of the prepetition Oil and Gas Obligations, the Debtors have determined that, to avoid significant disruption of the Debtors' business operations, there exists no practical or legal alternative to payment of the prepetition Oil and Gas Obligations. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code through payment of the prepetition Oil and Gas Obligations.

V. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Funds Transfer.

65. The Debtors expect to have sufficient funds to pay the amounts described in this motion in the ordinary course of business during the pendency of the chapter 11 cases by virtue of anticipated access to cash collateral. In addition, under the Debtors' cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Oil and Gas Obligations. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests the court has not authorized will be made inadvertently. Therefore, the Debtors respectfully request that the court authorize and direct all applicable

financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

Emergency Consideration

66. In accordance with Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the court approve the relief requested in this motion on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

67. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Reservation of Rights

68. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an assumption,

adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity.

Notice

69. The Debtors will provide notice of this motion to: (a) the Office of the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the indenture trustee for the Debtors' first lien notes; (d) the indenture trustee for the Debtors' second lien notes; (e) the indenture trustee for the Debtors' 2.625% senior convertible notes; (f) the indenture trustee for the Debtors' 3.125% senior convertible notes; (g) counsel to the parties referenced in clauses (c) to (f); (h) the United States Attorney's Office for the Southern District of Texas; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Working Interest Holders; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice is required.

No Prior Request

70. No prior request for the relief sought in this motion has been made to this or any other court.

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Debtors respectfully request entry of the interim order and the final order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and granting such other relief as is just and proper.

Houston, Texas
Dated: December 14, 2017

/s/ Zack A. Clement

Zack A. Clement (Texas Bar No. 04361550)
ZACK A. CLEMENT PLLC
3753 Drummond Street
Houston, Texas 77025
Telephone: (832) 274-7629

-and-

James H.M. Sprayregen, P.C. (*pro hac vice* admission pending)
Marc Kieselstein, P.C. (*pro hac vice* admission pending)
Chad J. Husnick, P.C. (*pro hac vice* admission pending)
Brad Weiland (*pro hac vice* admission pending)
Laura Krucks (*pro hac vice* admission pending)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Proposed Co-Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on December 14, 2017, 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.

/s/ Zack A. Clement
Zack A. Clement

Exhibit A

Proposed Interim Order

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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Debtors.	)	(Joint Administration Requested)
	)	**Re: Docket No.**

INTERIM ORDER
AUTHORIZING THE PAYMENT OF WORKING INTEREST EXPENDITURES, JOINT INTEREST BILLINGS, ROYALTY PAYMENTS, DELAY RENTAL PAYMENTS, AND PRODUCTION SALE EXPENDITURES

Upon the motion (the "Motion"),[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), authorizing, but not directing, the Debtors to pay in the ordinary course of business all prepetition and postpetition amounts owing on account of (i) Working Interest Expenditures, (ii) Joint Interest Billings, (iii) Royalty Payments, (iv) Delay Rental Payments, and (v) Production Sale Expenditures, all as more fully set forth in the Motion; and this court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this court having found that it may enter a final order consistent with Article III of the United States Constitution; and this court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this court having found that the relief requested in the Motion is in the best

[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 otherwise defined herein have the meanings ascribed to them in the Motion.

interests of the Debtors' estates, their creditors, and other parties in interest; and this court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this court (the "Hearing"); and this court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth in this Interim Order.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 201__, at__:__ _.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on _____, 2017, and shall be served on: (a) the Debtors, Cobalt International Energy, Inc., 920 Memorial City Way, Suite 100, Houston, Texas 77024, Attn: Jeffrey A. Starzec; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Chad J. Husnick, P.C. and Brad Weiland; (c) proposed co-counsel for the Debtors, Zack A. Clement PLLC, 3753 Drummond Street, Houston, Texas 77025, Attn: Zack A. Clement; (d) counsel to any statutory committee appointed in these cases; and (e) the Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002. In the event no objections to entry of the Final Order on the Motion are timely received, this court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to pay prepetition Oil and Gas Obligations; *provided* that before entry of the Final Order, the Debtors shall not pay any obligations

under this Interim Order unless they are due or are deemed necessary to be paid in the Debtors' business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

4. The Debtors are authorized, but not directed, to pay postpetition Oil and Gas Obligations in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor postpetition amounts related thereto; provided, however, that nothing in this Interim Order shall be deemed to authorize the payment of any amounts which are subject to section 503(c) of the Bankruptcy Code.

5. Any party that accepts payment from the Debtors on account of an Oil and Gas Obligation shall be deemed to have agreed to the terms and provisions of this Interim Order.

6. If any party accepts payment(s) on behalf of a claim for Working Interest Expenditures, Joint Interest Billings, or Production Sale Expenditures under this Interim Order, and such claim is determined by the Court after notice and a hearing (a) not to give rise to (i) a statutory, contractual, or other lien under applicable law or (ii) an enforceable right to recoupment or setoff, (b) not to constitute valid amounts due and owing by the Debtors, or (c) is not otherwise entitled to priority under the Bankruptcy Code, as applicable, the Debtors are authorized, but not directed, to take any and all appropriate steps to cause the party who had accepted such payment(s) to repay payment(s) made to it under this Interim Order to the extent the aggregate amount of such payment(s) exceeds the then-outstanding postpetition obligations due and owing on its behalf. Upon recovery of such payment(s) by the Debtors, the obligation shall be reinstated as a prepetition claim in the amount so recovered.

7. If any party accepts payment(s) on behalf of a claim for Royalty Payments under this Interim Order, and the Debtors' interest in such Royalty Payments subsequently are

determined by the Court after notice and a hearing to constitute property of the Debtors' estates, then the Debtors are authorized, but not directed, to take any and all appropriate steps to cause such party to repay payment(s) made to it under this Interim Order to the extent the aggregate amount of such payment(s) exceed the then-outstanding postpetition obligations due and owing on its behalf. Upon recovery of such payment(s) by the Debtors, the obligation shall be reinstated as a prepetition claim in the amount so recovered.

8. Notwithstanding anything contained in the Motion or this Interim Order, any payment authorized to be made by the Debtor herein shall be subject to the terms and conditions contained in any orders entered by this Court authorizing the use of cash collateral (the "Cash Collateral Orders"). To the extent there is any conflict between this Interim Order and the Cash Collateral Orders, the terms of the Cash Collateral Orders shall control.

9. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on

the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Oil and Gas Obligation.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

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

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

Dated: _____, 2017
Houston, Texas

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,[1]	)	Case No. 17-36709 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No.**

FINAL ORDER
AUTHORIZING THE PAYMENT OF WORKING INTEREST EXPENDITURES, JOINT INTEREST BILLINGS, ROYALTY PAYMENTS, DELAY RENTAL PAYMENTS, AND PRODUCTION SALE EXPENDITURES

Upon the motion (the "Motion"),[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), authorizing, but not directing, the Debtors to pay in the ordinary course of business all prepetition and postpetition amounts owing on account of (i) Working Interest Expenditures, (ii) Joint Interest Billings, (iii) Royalty Payments, (iv) Delay Rental Payments, and (v) Production Sale Expenditures, all as more fully set forth in the Motion; and this court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this court may enter a final order consistent with Article III of the United States Constitution; and this court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their

[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 otherwise defined herein have the meanings ascribed to them in the Motion.

creditors, and other parties in interest; and this court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this court (the "Hearing"); and this court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.

2. The Debtors are authorized, but not directed, to pay prepetition Oil and Gas Obligations.

3. The Debtors are authorized, but not directed, to pay postpetition Oil and Gas Obligations in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor postpetition amounts related thereto; provided, however, that nothing in this Interim Order shall be deemed to authorize the payment of any amounts which are subject to section 503(c) of the Bankruptcy Code.

4. If any party accepts payment(s) on behalf of a claim for Working Interest Expenditures, Joint Interest Billings, or Production Sale Expenditures under this Final Order, and such claim is determined by the Court after notice and a hearing (a) not to give rise to (i) a statutory, contractual, or other lien under applicable law or (ii) an enforceable right to recoupment or setoff, (b) not to constitute valid amounts due and owing by the Debtors, or (c) is not otherwise entitled to priority under the Bankruptcy Code, as applicable, the Debtors are authorized, but not directed, to take any and all appropriate steps to cause the party who had accepted such payment(s) to repay

payment(s) made to it under this Final Order to the extent the aggregate amount of such payment(s) exceeds the then-outstanding postpetition obligations due and owing on its behalf. Upon recovery of such payment(s) by the Debtors, the obligation shall be reinstated as a prepetition claim in the amount so recovered.

5. If any party accepts payment(s) on behalf of a claim for Royalty Payments under this Final Order, and the Debtors' interest in such Royalty Payments subsequently are determined by the Court after notice and a hearing to constitute property of the Debtors' estates, then the Debtors are authorized, but not directed, to take any and all appropriate steps to cause such party to repay payment(s) made to it under this Final Order to the extent the aggregate amount of such payment(s) exceed the then-outstanding postpetition obligations due and owing on its behalf. Upon recovery of such payment(s) by the Debtors, the obligation shall be reinstated as a prepetition claim in the amount so recovered.

6. Any party that accepts payment from the Debtors on account of an Oil and Gas Obligation shall be deemed to have agreed to the terms and provisions of this Final Order.

7. Notwithstanding anything contained in the Motion or this Final Order, any payment authorized to be made by the Debtor herein shall be subject to the terms and conditions contained in any orders entered by this Court authorizing the use of cash collateral (the "Cash Collateral Orders"). To the extent there is any conflict between this Final and the Cash Collateral Orders, the terms of the Cash Collateral Orders shall control.

8. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition

claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Oil and Gas Obligation.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

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

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

Dated: _____, 2017
Houston, Texas

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE