

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
	)
Enduro Resource Partners LLC, <u>et al.</u> , <sup>1</sup>	) Case No. 18-11174 (KG)
	)
Debtors.	) Joint Administration Requested
	)
	) <b>RE: Docket No. 202</b>
	) <b>response deadline: July 23, 2018 at 5:00 p.m.</b>
	) <b>hearing date: July 30, 2018 at 10:00 a.m.</b>
	)

**LIMITED OBJECTION OF U.S. SPECIALTY INSURANCE COMPANY TO THE PLAN**

U.S. Specialty Insurance Company (the “Surety”), through its undersigned attorneys, hereby submits this limited objection (the “Limited Objection”) to the *Joint Plan of Liquidation of Enduro Resource Partners LLC and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [D.I. 202] (as may be amended from time to time, the “Plan”):

1. The Surety and the Debtors have been engaged in negotiations with regard to the Surety’s concerns with the Plan and following language has been agreed to between parties to be put into a confirmation order approving the Plan:

Notwithstanding any provision in the Revised Disclosure Statement, Revised Plan and/or any other related Plan or Confirmation Documents (collectively “Plan Documents”) to the contrary, no Plan Documents shall release any claims, perfected liens or other rights or interests of Surety with respect to any of the Surety’s collateral (including, but not limited to, any prepetition or post-petition letter(s) of credit or cash collateral), whether pursuant to agreement(s), applicable law or otherwise, or any rights to set-off, recoupment or the right to amend any claim. In addition, no Plan Documents shall serve as a release by Surety of any claims against the Released Parties. Further, to the extent that Surety pays any claim of any obligee or beneficiary of a bond issued by the Surety on behalf of the Debtors, and the Surety subrogates to the rights of such obligee or beneficiary, the

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: Enduro Resource Partners LLC (6288); Enduro Resource Holdings LLC (5571); Enduro Operating LLC (7513); Enduro Management Company LLC (5932); Washakie Midstream Services LLC (7562); and Washakie Pipeline Company LLC (7798). The debtors’ mailing address is 777 Main Street, Suite 800, Fort Worth, Texas 76102



Surety's subrogation claim shall not be disallowed or affected pursuant to any provision of the Plan Documents, and all of the claims, perfected liens, rights and perfected security interests, if any, including any set-off or recoupment rights of any party to which Surety is or may in the future be subrogated, shall survive with equal force as the liens, rights and/or claims of Surety referenced above. Nothing in any Plan Document shall create any obligation for Surety to (a) satisfy any claim of Surety, or any claim against the Debtor to which Surety is subrogated, from Surety's collateral or the proceeds thereof, if any (including, but not limited to, any prepetition or post-petition letter(s) of credit or cash collateral), or (b) repay or return Surety's collateral; provided, however, Surety's obligation to return any excess proceeds from collateral after application of such collateral pursuant to the Indemnity or Collateral Agreements shall survive the effective date of the Plan Documents; provided, further, that the Debtors' rights in connection with such obligation shall be assigned to the Plan Administration Trust after the Effective Date in accordance with the Plan.

2. In abundance of caution, however, Surety files this Limited Objection to preserve its rights in the event that the above language is not approved in any confirmation order.

3. On May 15, 2018, the Debtors filed petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code (the "Petition Date").

4. Prior to the Petition Date, Surety issued certain bonds in various states on behalf of the Debtors (collectively, the "Bonds"). Surety issued the Bonds as consideration for Debtors' execution of that certain Payment and Indemnity Agreement, No. 0879 executed effective as of October 26, 2010, as may be amended and/or supplemented (collectively, the "Indemnity Agreements"). The Indemnity Agreements create a contractual right of indemnification and/or right to exoneration (in the form of collateral) on behalf of Surety.

5. Pursuant to the Indemnity Agreements, one or more Debtors jointly and severally have agreed to indemnify Surety and save Surety harmless from and against any and all liability, claim, demand, loss, damage, expense, cost, attorney's fees and expenses, including without limitation, fees and expenses and disbursements of counsel incurred by Surety in any action or proceeding between the Debtors and Surety or between Surety and any third party, which Surety

shall at any time incur by reason of its execution of any Bond or its payment of or Surety's liability to pay any claim, irrespective of whether a claim is made against Surety as a joint or several obligor and whether one or more Debtors is then liable to make such payment.

6. Moreover, Surety as additional security for Surety pursuant to the Indemnity Agreements, Surety is holding \$3,383,056.00 in cash collateral pursuant to that certain Collateral Security Agreement and Receipt, No. 23080 dated September 14, 2017.

**LIMITED OBJECTION**

7. Surety reserves its right to object to issues in the Plan that are currently resolved by the parties' proposed language in the event that this language is not approved of in any final confirmation order.

8. The submission of this Limited Objection by Surety is not intended as, and shall not be construed as: (a) Surety's admission of any liability or waiver of any defenses or limitation of any rights of Surety with respect to any claims against any one or more of the Bonds or under the Indemnity Agreement; (b) Surety's waiver or release of any right to exoneration it may have against anyone with respect to its obligations pursuant to the Bonds; (c) Surety's waiver or release of its right to be subrogated to the rights of one or more of the parties paid pursuant to the Bonds; (d) an election of remedy; or (e) consent to the determination of the Debtors' liability to Surety by any particular court, including, without limitation, the Bankruptcy Court.

9. Surety reserves the right to raise any arguments raised by any other party in their pleadings at the hearing on confirmation of the Plan.

10. Surety expressly reserves, and does not waive, any and all of its rights, claims, defenses, limitations, and/or exclusions in connection with its and the Debtors' rights and

obligations under the Bonds, applicable law, or otherwise. Surety further reserves all rights to assert any and all such rights, claims, defenses, limitations and/or exclusions in any appropriate manner or forum whatsoever (including, without limitation, any of its rights to have any non-core matter relating to the interpretation of its contractual rights and Debtors' contractual obligations adjudicated by the United States District Court).

11. Surety further reserves all of its rights to raise any issues contained in its Limited Objection and any other related issues in any procedurally-appropriate contested matter and/or adversary proceeding, including, without limitation, (i) a separate adversary proceeding requesting any appropriate declaratory and/or injunctive relief; (ii) or an objection to any subsequent motion seeking approval of a plan or an asset sale to any prospective asset purchaser with respect to any contractual rights that may be adversely affected by a sale motion or the confirmation of any plan.

**WHEREFORE**, for the reasons set forth herein, Surety respectfully requests that the foregoing objections be addressed in any Order approving the Plan.

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

Dated: July 23, 2018

/s/ David P. Primack

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Chapter 11  
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Enduro Resource Partners LLC, et al.,<sup>2</sup> ) Case No. 18-11174 (KG)  
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Debtors. ) Joint Administration Requested

**CERTIFICATE OF SERVICE**

I, David P. Primack, Esq. hereby certify that on July 23, 2018, I caused to be served a copy of the foregoing document electronically upon all parties entered on the Court's Electronic Case Filing System for this case and on the parties in the manner indicated on the attached list.

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

Dated: July 23, 2018

/s/ David P. Primack

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