

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

)	
In re:)	Chapter 11
)	
EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹)	Case No. 20-11548 (CSS)
)	
Debtors.)	(Jointly Administered)
)	
)	Hearing Date: September 24, 2020 at 3:00 p.m. (ET)
)	Objection Deadline: September 17, 2020 at 4:00 p.m. (ET)
)	

**DEBTORS’ MOTION FOR ENTRY OF AN
ORDER AUTHORIZING THE DEBTORS TO FILE
UNDER SEAL CERTAIN PORTIONS OF THE DEBTORS’ STATEMENTS
OF FINANCIAL AFFAIRS AND SCHEDULES OF ASSETS AND LIABILITIES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

Relief Requested

1. The Debtors seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to file certain portions of their Statements of Financial Affairs (collectively, the “Statements”) under seal in accordance with section 107(b) of the Bankruptcy Code, and directing that the Confidential Information (as defined below) shall remain under seal and confidential and not be made available to anyone without the consent of the Debtors or further order of the Court.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



Jurisdiction

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) 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 District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local 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.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Bankruptcy Rule 9018.

5. On June 14, 2020 (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 Matthew R. Owens, Co-Founder, President and Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the “First Day Declaration”), incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 79]. On June 30, 2020, the United States Trustee for the

District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 155].

Confidential Information

7. Section 521(a)(1)(B) of the Bankruptcy Code and Bankruptcy Rule 1007 require that a debtor submit its Schedules of Assets and Liabilities (the “Schedules”) and Statements. As part of their preparation of the Schedules and Statements, the Debtors identified certain sensitive commercial information that, absent specific relief to the contrary, the Debtors would be required to make publicly known on their Statements. For this reason, the Debtors file this Motion seeking limited relief to file this sensitive commercial information under seal.

8. Specifically, the Debtors seek to file under seal versions of the Statements that contain commercial information regarding the recipients of certain political contributions (the “Contributions” or the “Confidential Information”). The Debtors propose to file redacted versions of the Statements that redact certain limited portions of the Statements relating to such Confidential Information. The Debtors also seek leave to file unredacted copies of the Statements under seal, and ask the Court to direct that the Confidential Information shall remain under seal and confidential and not be made available to anyone without the Debtors’ consent. Moreover, and notwithstanding the foregoing, the Debtors propose to provide unredacted versions of the Schedules and Statements, including all Confidential Information, to: (a) the U.S. Trustee; (b) counsel to the Committee; and (c) counsel to the agents or lenders, as applicable, under the Debtors’ postpetition and prepetition secured financing facilities.

Basis for Relief

9. Section 107(b) of the Bankruptcy Code provides courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b). Importantly, once the Court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b), “the court must grant the requested relief (or such other relief that protects the moving party).” *In re Altegrity, Inc.*, No. 15-10226 (LSS), 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) (citing *In re Anthracite Capital, Inc.*, 492 B.R. 162, 177 (Bankr. S.D.N.Y. 2013)).

10. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides, in part:

On motion or its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

11. Courts in this district have defined “commercial information” as “information which would result in an ‘unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)). “Commercial information” does not need to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion Pictures*, 21 F.3d at 28 (stating that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and that under this exception, an interested party has to show only that the information they wish to seal is “confidential and commercial” in nature). If a movant wishes to seal commercial information, the disclosure of such information must “unfairly benefit [the

movant's] competitors." See *Alterra*, 353 B.R. at 76 (quoting *In re Barney's, Inc.*, 201 B.R. 703, 708-709 (Bankr. S.D.N.Y. 1996)).

12. Pursuant to section 107(b) of the Bankruptcy Code, courts have limited open access to publicly filed documents where parties have demonstrated good cause. See, e.g., *In re Nunn*, 49 B.R. 963, 964-65 (Bankr. E.D. Va. 1985) (order authorizing that the debtor's schedules conceal a customer list to prevent disclosure to a competitor); *In re Epic Assoc. V*, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985) (order sealing court records containing identities of saving institutions holding debtors' mortgages or mortgage-backed certificates to prevent massive bank withdrawals in area in question).

13. The Debtors submit that the Confidential Information falls well within the scope of commercial information that may be protected pursuant to section 107(b)(1). Historically, like many other E&P companies in Colorado, the Debtors have made Contributions in the ordinary course of business as part of their business strategy. Such Contributions are made to protect both the current interests of the Debtors as well as the Debtors' long-term interests. It is likely that the disclosure of the specific recipients of the Debtors' Contributions would jeopardize many of the Debtors' business relationships, which in turn would adversely affect the Debtors' business. The public disclosure of certain Contributions (or the lack thereof) would also adversely affect the Debtors' longstanding relationships with both state and local governments.

14. Moreover, good cause exists to seal the Confidential Information because the Debtors' competitors are not subject to the same disclosure requirements. The U.S. Securities and Exchange Commission (the "SEC") does not require that private nor even public companies disclose the recipients of many political donations. Rather, such political donations are made by corporations anonymously. Competitors of the Debtors would disproportionately benefit from

such disclosure; by retaining anonymity in many of their donations, competitors would be able to exploit the Debtors' lost business relationships while continuing their own political contributions in the ordinary course of business, even if they donate to the same recipients as the Debtors.

15. Finally, further disclosure regarding the Debtors' Contributions would cause more harm than benefit to the Debtors' estate. The Debtors previously disclosed the amounts, dates, and purposes of the Debtors political contributions — any further disclosure would unnecessarily burden the estate and harm the Debtors' chances at a successful reorganization, especially given the lower level of disclosure required of the Debtors' competitors.

16. The Debtors believe that the only means of precluding the Debtors' competitors from accessing the Confidential Information relating to their Contributions is for the Court to authorize the sealing of this information. The Debtors believe that the proposed format for disclosure of information, in which the Debtors will publicly file redacted versions of the Statements that include all but the most sensitive Confidential Information, and provide full versions of the Schedules and Statements, including all Confidential Information, to the Court and key parties in interest in these chapter 11 cases, is carefully tailored to provide appropriate levels of information in these cases while still maintaining confidentiality of commercial information where truly necessary.

17. Courts in this and other jurisdictions have recognized the importance in maintaining the confidential and sensitive nature of material similar to the Confidential Information and have authorized relief similar to the relief requested herein. *See, e.g., In re Lomas Fin. Corp.*, No. 90 CIV. 7827 (LLS), 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (redacting material that would have “. . . a chilling effect on negotiations, ultimately affecting the viability of the [d]ebtors”); *In re Dreier LLP*, 485 B.R. 821, 824 (Bankr. S.D.N.Y. 2013) (granting the motion to seal

information “. . . that involves the type of strategic decision making that could rightly be categorized as ‘commercial information’”); *In re Farmland Indus., Inc.*, 290 B.R. 364, 368 (Bankr. W.D. Mo. 2003) (holding that a retailer’s confidential commercial information “may include short and long-term marketing strategies”); *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (sealing investor procurement lists that were critical to an oil and gas company’s business).²

18. Based upon the foregoing, and the fact that disclosure of the Confidential Information would detrimentally disadvantage the Debtors’ restructuring efforts, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of the Debtors’ estates and creditors, and should be granted in all respects.

Notice

19. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee; (c) the administrative agent under the Debtors’ prepetition senior credit facility or, in lieu thereof, counsel thereto; (d) the lenders under the Debtors’ prepetition senior credit facility or, in lieu thereof, counsel thereto; (e) the indenture trustee for the Debtors’ prepetition senior notes or, in lieu thereof, counsel thereto; (f) the holders of the Debtors’ prepetition senior notes or, in lieu thereof, counsel thereto; (g) the ad hoc group of holders of the

² Due to 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 of the Debtors’ proposed counsel.

Debtors' preferred equity or, in lieu thereof, counsel thereto; (h) the United States Attorney's Office for the District of Delaware; (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; and (l) 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 need be given

No Prior Request

20. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: August 31, 2020
Wilmington, Delaware

/s/ Richard W. Riley

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³ Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

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

In re:)	
)	Chapter 11
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EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹)	Case No. 20-11548 (CSS)
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Debtors.)	(Jointly Administered)
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**NOTICE OF DEBTORS’ MOTION FOR ENTRY OF AN
ORDER AUTHORIZING THE DEBTORS TO FILE
UNDER SEAL CERTAIN PORTIONS OF THE DEBTORS’ STATEMENTS
OF FINANCIAL AFFAIRS AND SCHEDULES OF ASSETS AND LIABILITIES**

PLEASE TAKE NOTICE that, on August 31, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed *Debtors’ Motion for Entry of an Order Authorizing the Debtors to File Under Seal Certain Portions of the Debtors’ Statements of Financial Affairs and Schedules of Assets and Liabilities* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion, if any, must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 4th Floor, 824 Market Street, Wilmington, Delaware, 19801, on or before **September 17, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Christopher

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

S. Sontchi, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware, 19801 on **September 24, 2020 at 3:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: August 31, 2020
Wilmington, Delaware

/s/ Richard W. Riley

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Co-Counsel to the Debtors and Debtors in Possession

² Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

Exhibit A

Proposed Order

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

In re:)	
)	Chapter 11
EXTRACTION OIL & GAS, INC. <i>et al.</i> , ¹)	Case No. 20-11548 (CSS)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. __

**ORDER APPROVING DEBTORS’ MOTION FOR ENTRY
OF AN ORDER AUTHORIZING THE DEBTORS TO FILE
UNDER SEAL CERTAIN PORTIONS OF DEBTORS’ STATEMENTS OF
FINANCIAL AFFAIRS AND SCHEDULES OF ASSETS AND LIABILITIES**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) to file under seal certain portions of the Debtors’ Schedules and Statements; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; 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 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 and no other notice need be provided; and this Court having reviewed the Motion and having heard the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors’ principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

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 as set forth herein.
2. The Debtors are authorized to file certain portions of their Statements under seal that contain commercial information related to Confidential Information. The material filed under seal shall not be made available to anyone without the consent of the Debtors or further order of this Court; *provided, however*, that the Debtors shall provide unredacted copies of the Statements to (a) the U.S. Trustee; (b) counsel to the Committee; and (c) counsel to the agents or lenders, as applicable, under the Debtors’ postpetition and prepetition secured financing facilities.
3. This Order is without prejudice to the rights of any party in interest to seek to declassify and make public any portion of the material filed under seal.
4. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.