

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

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| In re: |) | Chapter 11 |
| |) | |
| EXTRACTION OIL & GAS, INC., <i>et al.</i> , |) | Case No. 20-11548 (CSS) |
| |) | |
| Debtors. |) | (Jointly Administered) |
| _____ |) | |
| |) | |
| EXTRACTION OIL & GAS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Adv. Pro. No. 20-50816 (CSS) |
| |) | |
| GRAND MESA PIPELINE, LLC, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**GRAND MESA PIPELINE, LLC'S DESIGNATION OF
RECORD ON APPEAL AND STATEMENT OF ISSUES**

Appellant, Grand Mesa Pipeline, LLC ("Grand Mesa"), pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure and Local Rule 8009-1, respectfully submits this designation of items to be included in the record on appeal and statement of issues with respect to the appeal docketed in the United States District Court for the District Court of Delaware No. 20-CV-1458.

I. Designation of Record on Appeal.

Grand Mesa designates the following items to be included in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items.



Items from *In re Extraction Oil & Gas, Inc., et al.*, Case No. 20-11548 (CSS):

| DATE | DOCKET ENTRY | DESCRIPTION |
|-------------|---------------------|--|
| 6/15/2020 | 14 | Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief |
| 8/4/2020 | 363 | Objection of Grand Mesa Pipeline, LLC to Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief |
| 9/24/2020 | 681 | [Sealed] Debtors' Combined Reply in Support of (1) Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Date Specified Herein and (II) Granting Related Relief; (2) Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases; and (3) Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief |
| 10/5/2020 | 766 | Transcript of Hearing Held on September 30, 2020 |
| 10/5/2020 | 779 | Notice of Filing of Proposed Redacted Version of Debtors' Combined Reply in Support of: (1) Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Date Specified Herein and (II) Granting Related Relief; (2) Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases; and (3) Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief |
| 10/6/2020 | 778 | Amended Notice of Filing of Proposed Redacted Version of Debtors' Combined Reply in Support of: (1) Debtors' Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Date Specified Herein and (II) Granting Related Relief; (2) Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases; and (3) Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief |
| 10/8/2020 | 803 | Supplemental Brief of Grand Mesa Pipeline, LLC in Support of Objection of Grand Mesa Pipeline, LLC to Debtors' Omnibus Motion |

| DATE | DOCKET ENTRY | DESCRIPTION |
|------------|--------------|--|
| | | for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Therein and (II) Granting Related Relief |
| 10/9/2020 | 812 | Transcript Regarding Hearing Held October 7, 2020 re: Motion to Reject |
| 10/30/2020 | 933 | Transcript for Hearing Held on October 28, 2020 re: Leases and Contracts Motions |
| 11/2/2020 | 942 | Bench Ruling |
| 11/4/2020 | 973 | Transcript Regarding Hearing Held November 2, 2020 re: Leases Motion Ruling and Stay Relief Motion |

Items from *Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline, LLC*, Adversary Case No. 20-50816 (CSS):

| DATE | DOCKET ENTRY | DESCRIPTION |
|-----------|--------------|--|
| 8/19/2020 | Adv. 1 | Complaint for Declaratory Judgment by Extraction Oil & Gas, Inc. Against Grand Mesa Pipeline, LLC |
| 8/19/2020 | Adv. 2 | [Sealed] Complaint for Declaratory Judgment by Extraction Oil & Gas, Inc. Against Grand Mesa Pipeline, LLC |
| 8/19/2020 | Adv. 4 | Plaintiff's Motion for Summary Judgment |
| 8/19/2020 | Adv. 5 | [Sealed] Brief in Support of Plaintiff's Motion for Summary Judgment |
| 8/21/2020 | Adv. 7 | Plaintiff's Motion for Entry of an Order Authorizing Plaintiff to File Under Seal Debtors' Complaint and Brief in Support of Plaintiff's Motion for Summary Judgment |
| 8/21/2020 | Adv. 8 | Notice of Filing of Proposed Redacted Versions of Plaintiff's Complaint and Brief in Support of Motion for Summary Judgment |
| 9/14/2020 | Adv. 14 | Letter to the Court by Richard W. Riley re: Status Conference Held on September 14, 2020 |
| 9/14/2020 | Adv. 15 | Letter to the Court by Hal S. Shaftel re: Status Conference Held on September 14, 2020 |
| 9/16/2020 | Adv. 18 | Transcript for Hearing Held on September 14, 2020 re: Status Conference |
| 9/17/2020 | Adv. 19 | Defendant's Motion for Permissive Abstention |
| 9/17/2020 | Adv. 20 | [Sealed] Brief in Support of Defendant's Motion for Abstention and Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment |
| 9/23/2020 | Adv. 22 | [Sealed] Reply in Support of Plaintiff's Motion for Summary Judgment |
| 9/23/2020 | Adv. 23 | Response in Opposition to Defendant's Motion for Abstention Document |

| DATE | DOCKET ENTRY | DESCRIPTION |
|------------|--------------|---|
| 9/28/2020 | Adv. 28 | Plaintiff's Motion for Entry of an Order Authorizing Plaintiff to File Under Seal Reply in Support of Plaintiff's Motion for Summary Judgment |
| 9/29/2020 | Adv. 29 | Transcript Regarding Hearing Held on September 25, 2020 re: Status |
| 10/2/2020 | Adv. 38 | Transcript Regarding Hearing Held September 30, 2020 re: Omnibus Hearings |
| 10/5/2020 | Adv. 40 | Notice of Filing of Proposed Redacted Versions of Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment |
| 10/8/2020 | Adv. 42 | [Sealed] Proposed Findings of Fact and Conclusions of Law |
| 10/8/2020 | Adv. 43 | Exhibit(s) Proposed Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for Summary Judgment and Grand Mesa Pipeline, LLC's Motion for Abstention |
| 10/9/2020 | Adv. 44 | Transcript regarding Hearing Held 10/07/20 RE: Motion to Reject. |
| 10/14/2020 | Adv. 45 | Findings of Fact and Conclusions of Law on Plaintiff's Motion for Summary Judgment Against Defendant, Grand Mesa Pipeline, LLC; and Defendant's Motion for Permissive Abstention |
| 10/14/2020 | Adv. 46 | Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Permissive Abstention |
| 10/14/2020 | Adv. 47 | Judgment for Findings of Fact and Conclusions of Law on Plaintiff's Motion for Summary Judgment Against Defendant, Grand Mesa Pipeline, LLC; and Defendant's Motion for Permissive Abstention |
| 10/20/2020 | Adv. 51 | Order Authorizing the Debtors to File Under Seal Debtors' Complaint and Brief in Support of Plaintiff's Motion for Summary Judgment |
| 10/20/2020 | Adv. 52 | Order Authorizing the Debtors to File Under Seal Reply in Support of Plaintiff's Motion for Summary Judgment |
| 10/27/2020 | Adv. 53 | Notice of Appeal of Grand Mesa Pipeline, LLC |
| 10/30/2020 | Adv. 59 | Transcript for Hearing Held on October 28, 2020 re: Leases and Contracts Motions |

II. Statement of Issues.

1. Whether the bankruptcy court erred in holding that the Amended and Restated Transportation Services Agreements dated June 21, 2016 between Grand Mesa Pipeline, LLC and Extraction Oil & Gas, Inc.¹ (the “Bayswater TSA”), which includes dedications of lands and reserves and commitments in favor of Grand Mesa, does not establish a real covenant running with the land under Colorado law.

2. Whether the bankruptcy court erred in holding that Colorado law requires privity of estate between covenanting parties in order to establish a real covenant running with the land.

3. Whether the bankruptcy court erred in holding that the Bayswater TSA did not create an equitable servitude that runs with the land under Colorado law.

Grand Mesa reserves the right to supplement or amend the statement of issues to be presented on appeal and to designate additional items for inclusion in the record in the appeal.

¹ Assigned by Bayswater Exploration & Production, LLC to Extraction Oil & Gas, Inc. pursuant to an Assignment, Bill of Sale and Conveyance dated October 3, 2016 effective July 1, 2016.

Dated: November 10, 2020

Respectfully submitted,

GREENBERG TRAURIG, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 10, 2020, I electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the service list below, via transmission of Notices of Electronic Filing generated by CM/ECF, electronic mail, and/or first-class U.S. mail.

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)

SERVICE LIST

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| <p><u>Interested Party</u></p> <p>U.S. Trustee</p> | <p>Richard L. Schepacarter Office of the United States Trustee U. S. Department of Justice 844 King Street, Suite 2207 Lockbox #35 Wilmington, DE 19801 Telephone: 302-573-6491 Email: richard.schepacarter@usdoj.gov</p> |

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