

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

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In re:) Chapter 11
)
EXTRACTION OIL & GAS, INC., ¹) Case No. 20-11548 (CSS)
)
Debtors.) (Jointly Administered)
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EXTRACTION OIL & GAS, INC.,)
) Adversary Proceeding
Plaintiff,) Adv. Pro. No. 20-50833 (CSS)
)
v.) RE: A.D.I. 79, 80, & 86
)
PLATTE RIVER MIDSTREAM, LLC AND DJ)
SOUTH GATHERING, LLC,)
Defendants.)
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**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMS**

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-AND-

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.



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Dated: December 16, 2020

ARGUMENT

Platte River Midstream, LLC and DJ South Gathering, LLC (collectively “Defendants”) repeatedly attempt to reframe the obligations of Extraction Oil & Gas, Inc. (“Extraction”) under the Transportation Agreements¹ as their “rights.” In so doing, Defendants hope to cloak Extraction’s obligations to exclusively use Defendants for services to certain produced oil from the consequences of rejection, and, as a result, circumvent the rejection process set forth by Congress. As this Court has twice held² however, rejection relieves Extraction from *all* future performance obligations under the Transportation Agreements, including any obligations imposed by the dedications. The Court should grant Extraction’s Motion for Summary Judgment.

The Supreme Court is clear: “[B]ecause rejection ‘constitutes a breach,’ . . . the same consequences follow in bankruptcy. The debtor can stop performing its remaining obligations under the agreement.” *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1662 (2019). The Court’s ruling recognizes the same thing. *See Bench Ruling* [D.I. 942] at 17 (holding rejection “relieve[s] the Debtors of all future performance obligations to deliver its oil to [the Defendants] for transportation services (or pay any fee)”).

The dedications are not “things” or “rights” conveyed to Defendants; they are contract terms that identify the oil subject to the parties’ obligations. *See, e.g., Platte River Midstream, LLC v. Extraction Oil & Gas, Inc.*, No. 20-1532 (CFC), 2020 U.S. Dist. LEXIS 228697, at *9 (approvingly citing this Court’s conclusion that the dedications identify the oil subject to the parties’ obligations). Rejection neither rescinded nor revoked anything because Defendants were

¹ This term has the meaning given in Extraction’s *Brief in Support of Plaintiff’s Motion for Summary Judgment on Counterclaims* [A.D.I. 80] at 2–3.

² *Bench Ruling* [D.I. 942] at 17 (“Rejection will relieve the Debtors of *all future performance obligations* to deliver its oil to the Rejection Counterparties for transportation services”) (emphasis added); *Platte River Midstream, LLC*, 2020 U.S. Dist. LEXIS 228697, at *9 (concluding Defendants “offer[ed] little support in opposition” to the Court’s ruling that the ‘dedicated and committed interests are used to identify the particular minerals that are subject to, set apart for, pledged or committed to the *parties’ contractual obligations*’) (emphasis added).

conveyed nothing. *See id.* If anything, this case resembles the rejection of an ordinary output contract in the sense that Defendants were once the exclusive contractual provider of services to all quantities of minerals produced from certain areas.³ Output contracts, and the obligations therein, are subject to rejection (and the consequences of rejection)—even if they exclusively governed all minerals thereunder. *See In re Wheeling-Pittsburgh Steel Corp.*, 59 B.R. 129, 136 (Bankr. W.D. Pa. 1986) (authorizing rejection of a coal output contract).

Defendants cannot force Extraction to perform its future obligations under the rejected contracts, which is what they admittedly seek. *See Platte River Midstream, LLC and DJ South Gathering, LLC’s Response in Opposition to Extraction Oil & Gas, Inc.’s Motion for Summary Judgment on Counterclaims* [A.D.I. 86] [hereinafter “Response”] at 13 (“[The] first counterclaim seeks a declaration that Extraction remains obligated to adhere to the dedication provisions of the TSAs.”); *id.* at 14 (“[T]he Companies’ second counterclaim seeks a declaration that Extraction remains obligated to adhere to the DJ South TSA’s dedication provisiosn with respect to Rinn Valley Wells.”); *id.* (“[I]f Extraction produces oil within the Dedication Areas, it must deliver that oil into the Transportation Systems.”); *id.* at 15 (“[T]he counterclaim seeks a declaration that Extraction is not entitled to transport oil from the Rinn Valley Wells by tanker truck because that oil is dedicated and committed to the DJ South Transportation System.”).

Indeed, Defendants’ inability to separate their claimed “rights” from Extraction’s obligations is highlighted by Defendants’ inability to sensibly explain what enforcement of the purported dedication “right” would entail once divorced from Extraction’s other performance

³ Compare CONTRACT, Black’s Law Dictionary (11th ed. 2019) (defining an output contract as “[a] contract in which a seller promises to supply and a buyer to buy all the goods or services that a seller produces during a specified period and at a set price. The quantity term is measured by the seller’s output. An output contract assures the seller of a market or outlet for the period of the contract.”) with *Response* at 5 (“Under the TSAs, unless expressly stated otherwise, Extraction expressly committed to deliver all of its crude oil produced within the Dedication Areas to the Companies for transportation on the Transportation Systems.”).

obligations. Defendants' position appears to be that Extraction must deliver its oil to them for transportation services, but does not have to pay them for those services.⁴ In other words, Defendants have the "right" to service Extraction's oil free of charge. Although charitable, Extraction doubts Defendants intended this inevitable result of their conflicting positions. *See, e.g., Response* at 15 ("Extraction must deliver that oil Accordingly, the Companies' counterclaim does not affect Extraction's future performance."). Defendants' repackaging of failed arguments cannot undo the consequences of rejection.

CONCLUSION

Extraction rejected the Transportation Agreements and was, thereby, freed from its obligations to Defendants. Simply reframing Extraction's obligations as the rights of Defendants does not shield them from the consequences of rejection. Under Supreme Court precedent, and this Court's prior rulings, *all* future obligations (including the obligation to deliver oil to Defendants) are relieved through rejection. The Court should, therefore, grant Extraction's Motion for Summary Judgment, declaring Extraction is no longer obligated to perform under the rejected contracts.

⁴ *See, e.g., Response* at 15–16 ("[A]lthough Extraction is not required to produce any oil from the DJ South Dedication Area, ***or make any future payments to DJ South***, if Extraction produces oil within the DJ South Dedication Area . . . Extraction must deliver that oil into the DJ South Transportation System and cannot transport that oil by tanker truck.") (bold emphasis added).

Dated: December 16, 2020
Wilmington, Delaware

/s/ Richard W. Riley

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⁵ Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.