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**COUNSEL TO THE DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: § Chapter 11  
§  
ROCKIES REGION 2006 LIMITED § Case No. 18-33513-sgj-11  
PARTNERSHIP and ROCKIES REGION §  
2007 LIMITED PARTNERSHIP,<sup>1</sup> § (Jointly Administered)  
§  
Debtors. §

**DEBTORS' EMERGENCY MOTION TO (i) EXCLUDE EXPERT REPORT AND  
TESTIMONY OF EDWIN C. MORITZ, (ii) EXCLUDE PORTIONS OF EXPERT  
REPORT AND TESTIMONY OF GREGORY E. SCHEIG, AND (iii) LIMIT SCOPE OF  
EVIDENCE FOR HEARING ON MOTION TO DISMISS**

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership,  
the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for their  
Emergency Motion to (i) Exclude Expert Report and Testimony of Edwin C. Mortiz, (ii) Exclude  
Portions of Expert Report and Testimony of Gregory E. Scheig, and (iii) Limit Scope of  
Evidence for Hearing on Motion to Dismiss (the "Motion"), respectfully represent:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

### **PRELIMINARY STATEMENT**

1. On April 22, 2019, the LP Plaintiffs<sup>2</sup> served two expert reports in connection with the hearing on their Amended Motion for Dismissal of Chapter 11 Case [Docket No. 140] (the “Motion to Dismiss”): (i) the Expert Report of Edwin C. Moritz of Gustavson Associates (the “Moritz Report”) and (ii) the Expert Report of Gregory E. Scheig of ValueScope, Inc. (the “Scheig Report”). True and correct copies of the Moritz Report and the Scheig Report are attached hereto as **Exhibits B and C**, respectively.

2. The Moritz Report purports to calculate the alleged damages suffered by the Debtors as a result of the derivative claims asserted by the LP Plaintiffs in the lawsuit filed against PDC in the United States District Court for the District of Colorado captioned *Dufresne, et al. v. PDC Energy, Inc., et al.*, Case No. 1:17-cv-03079-RBJ (the “Colorado Action”).

3. The Scheig Report contains two categories of valuation opinions: (i) opinions regarding the solvency of the Debtors and PDC (opinions 1-3) (the “Solvency Opinions”) and (ii) opinions regarding the potential profitability of the Debtors’ vertical wells had PDC charged lease operating expenses differently (opinions 4 and 5) (the “Profitability Opinions”).

4. The Moritz Report and the Profitability Opinions contained in the Scheig Report, and testimony related thereto, should be excluded because such evidence is irrelevant to the matters at issue in the Motion to Dismiss—(i) whether the Debtors commenced these chapter 11 cases in bad faith; and (ii) whether the Debtors were authorized to file bankruptcy in accordance

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<sup>2</sup> The LP Plaintiffs are (i) Robert R. Dufresne, as Trustee of the Dufresne Family Trust; (ii) Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; (iii) Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; (iv) Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and (v) William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991.

with the limited partnership agreements and applicable West Virginia law.<sup>3</sup> By attempting to present evidence of alleged damages at the dismissal phase, the LP Plaintiffs propose to put the cart before the horse. There has been no liability finding against PDC in the Colorado Action; rather, the case is still in its infancy and the putative class has not been certified, and may never be certified.

5. This Motion should not be construed as an attempt to exclude the Moritz Report and the Scheig Report from these chapter 11 cases as a whole. Those opinions may become relevant at a later date should the Court deny the Motion to Dismiss, and the Debtors are allowed to proceed to confirmation of a chapter 11 plan that contains a compromise of the estates' claims against PDC. However, because these opinions are not relevant to the contested matters presently before the Court, the Debtors should not have to bear the burden and expense of conducting expert discovery and preparing to examine the LP Plaintiffs' experts at the hearing on the Motion to Dismiss.

6. As a result, the Debtors request that the Court limit the scope of evidence for the hearing on the Motion to Dismiss by excluding the Moritz Report and the Scheig Profitability Opinions, and related testimony.

#### **JURISDICTION AND VENUE**

7. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

8. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> The Motion does not address at length the relevance of the Moritz Report or the Scheig Report to the other contested matter before this Court: the *Application for Order (i) Authorizing the Retention of Harney Management Partners to Provide the Debtors a Responsible Party and Certain Additional Personnel, (ii) Designating Karen Nicolaou as Responsible Party for the Debtors Effective as of the Petition Date, and (iii) Granting Related Relief* [Docket No. 12] (the "Harney Retention"). The Debtors cannot fathom what relevance the Moritz Report or the Scheig Report would have to the Harney Retention. To the extent the LP Plaintiffs' attempt to argue that a nexus exists, the Debtors reserve all rights to address such arguments in a reply.

## **BACKGROUND**

9. On October 30, 2018 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

10. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed.

11. The Debtors are West Virginia limited partnerships that own undivided working interests in oil and natural gas wells. PDC Energy, Inc. (f/k/a Petroleum Development Corp.) (“PDC”) is the managing general partner of each of the Debtors and owns approximately 39% of the Debtors’ equity interests. In the aggregate, the Debtors have over 3,700 limited partnership unit holders (the “Investor Partners”). Additional background information may be found in the Declaration of Karen Nicolaou in Support of Chapter 11 Petitions [Docket No. 10] (the “Nicolaou Declaration”).

### **A. The Motion to Dismiss**

12. On December 3, 2018, the LP Plaintiffs filed the Motion to Dismiss. The LP Plaintiffs contend that cause exists to dismiss these cases under section 1112(b) of the Bankruptcy Code because the Debtors: (i) commenced these chapter 11 cases in bad faith; and (ii) were not authorized to file bankruptcy in accordance with the limited partnership agreements and applicable West Virginia law. As set forth more fully in the *Debtors’ Objection to Motion for Dismissal of Chapter 11 Case* [Docket No. 141], the Debtors vehemently dispute the allegations in the Motion to Dismiss.

13. In support of their position that this is a bad faith filing, the LP Plaintiffs make the following allegations: (i) these chapter 11 cases were filed as a litigation tactic and for the

purpose of compromising the claims in the Colorado Action for the benefit of PDC; (ii) PDC is an insider of the Debtors and is the only creditor that could have pressured the Debtors to file chapter 11; (iii) there was no pressure from external creditors to file bankruptcy; (iv) no Investor Partners were consulted prior to the filing; (v) the Debtors are solvent when PDC's assets are considered; (vi) this is a two-party dispute between PDC and the Investor Partners; (vii) the venue of these chapter 11 cases demonstrates that these cases are intended as takeovers by PDC; (viii) the Debtors' proposed plan is unconfirmable and is further evidence of PDC's litigation strategy; and (ix) the Debtors have sought to limit notice on the Investor Partners in order to eliminate their participation in these chapter 11 cases.

14. The LP Plaintiffs also make the following allegations in connection with their position that these were unauthorized filings: (i) PDC did not have the authority to file bankruptcy for the Debtors under either the partnership agreements or West Virginia law because PDC failed to obtain consent from a majority of the Investor Partners; and (ii) Ms. Nicolaou did not have authority to file the petitions because PDC could not delegate its duties and responsibilities owed to the Debtors to a third party.

15. Contemporaneously with the filing of the Motion to Dismiss, the LP Plaintiffs filed the Declaration of Edwin C. Moritz (the "Moritz Declaration") [Docket No. 87], which sets forth a preliminary damages model for the derivative claims asserted in the Colorado Action. *See* Moritz Declaration ¶ 8 ("Attached hereto . . . is a true and correct copy of Gustavson Associates' preliminary report valuing the 32-acre Spacing Units that the plaintiffs in the [Colorado] Action maintain *should have been assigned to the Partnerships*") (emphasis added). The LP Plaintiffs rely on the Moritz Declaration to argue the Debtors were solvent on the petition date taking into consideration alleged derivative damages in the range of \$135 million to \$160

million. *See* Motion to Dismiss ¶ 61. The Motion to Dismiss makes no other reference to the Moritz Declaration or its alleged conclusions.

**B. The New Moritz Report**

16. The Moritz Report (served on April 22, 2019) substantially revises and supplements the Moritz Declaration submitted in connection with the Motion to Dismiss. The Moritz Report presents two different damage models for the Debtors' potential claims against PDC: one for breach of contract and one for breach of fiduciary duty. The breach of contract damage model contains five categories of alleged damages: (i) past and future income potential from refracking the Debtors' vertical wells; (ii) past and future income potential of the Debtors' alleged interest in horizontal wells drilled on the spacing units; (iii) projected value of future production from horizontal wells not yet drilled on the spacing units; (iv) value of the 32-acre spacing unit that could later be developed; and (v) the remaining value of the Debtors' existing vertical wells. The breach of fiduciary duty damage model contains two categories of alleged damages: (i) income potential from refracking the Debtors' vertical wells; and (ii) the remaining value of the Debtors' existing vertical wells.<sup>4</sup>

17. The Moritz Report calculates the alleged damages at the partnership level, not on an individual Investor Partner basis nor for the LP Plaintiffs as a group, confirming the derivative nature of the underlying claims. In recognition of the fact that PDC owns a substantial equity interest in each Debtor, the Moritz Report includes a calculation of the "Limited Partners' Share" of the alleged damages, which simply reduces the alleged damages to 63% of the damages allegedly suffered by the Debtors.

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<sup>4</sup> The alleged damages for breach of fiduciary duty are included in the alleged damages for breach of contract, but Mr. Moritz opines the alleged fiduciary duty damages should be limited by a shorter statute of limitations.

18. The Moritz Report assumes, before any adjudication on the merits, that PDC was required by the terms of the Debtors' partnership agreements and applicable regulations to assign 32-acre spacing units to the Debtors. *See* Moritz Report at p. 16.

**C. The Scheig Report**

19. The Scheig Report sets forth five opinions:

1. PDC was solvent on October 30, 2018,
2. The RR 2006 LP was solvent on the Bankruptcy Date (considering the value of the claims and the value of the GP, PDC),
3. The RR 2007 LP was solvent on the Bankruptcy Date (considering the value of the claims and the value of the GP, PDC),
4. PDC realized a significantly higher marginal profit in producing one BOE from its wells in the Wattenberg, as compared to PDC's profit realized from a single BOE produced by the Partnerships in which PDC had only a 37% interest,
5. Had PDC charged to the Partnerships lease operating expenses in line with its own lease operating expenses in the Wattenberg, on a dollars per BOE basis, the wells in the Partnership would have been much more profitable for the limited partners.

*See* Scheig Report at p. 10. At this time, the Debtors do not seek to exclude the Solvency Opinions (opinions 1 to 3) for purposes of the hearing on the Motion to Dismiss.<sup>5</sup> The Profitability Opinions (opinions 4 and 5), however, are irrelevant and should not be admitted at the hearing on the Motion to Dismiss.

20. For opinion 4, Mr. Scheig calculated the marginal profits for a single barrel of oil equivalent (“BOE”) produced from PDC wells in the Wattenberg Field as compared to the Debtors' wells. After making said calculation, Mr. Scheig offers the unremarkable opinion that PDC makes more money from its own wells than from production from the Debtors' wells: “[t]he calculations . . . demonstrate that PDC and its shareholders benefit significantly from PDC

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<sup>5</sup> The Debtors are presently considering whether the Solvency Opinions can be the subject of a stipulation that obviates the need for the Scheig Report in its entirety. The Debtors reserve all rights in that respect.

producing hydrocarbons from its wells in this field, as compared to production from the Partnerships.” Scheig Report at p. 8.

21. For opinion 5, Mr. Scheig calculated the marginal profit per BOE for the Debtors’ wells, assuming that PDC charged the Debtors differently for lease operating expenses. Scheig Report at p. 9. As detailed herein, however, Mr. Scheig’s Profitability Opinions are not relevant to the issues made the subject of the Motion to Dismiss.

### **RELIEF REQUESTED**

22. By this Motion, pursuant to Rule 702 of the Federal Rules of Evidence, the Debtors seek to limit the scope of evidence for the hearing on the Motion to Dismiss by excluding the Moritz Report and the Scheig Profitability Opinions as irrelevant.<sup>6</sup>

### **ARGUMENT AND AUTHORITIES**

#### **A. The Court must act as gatekeeper and abide by the well-established rule that expert testimony that is not relevant is inadmissible and must be excluded**

23. The Supreme Court’s landmark case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* provides the analytical framework for determining whether expert testimony is admissible under Rule 702 of the Federal Rules of Evidence. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *see also Seatrax, Inc. v. Sonbeck Int’l, Inc.*, 200 F.3d 358, 371-72 (5th Cir. 2000). Under *Daubert*, the trial court must act as a gatekeeper and make a preliminary determination of whether expert testimony is admissible. *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 243-44 (5th Cir. 2002) (citing *Daubert*, 509 U.S. at 592-93); *see also* FED. R. EVID. 702 (advisory committee notes (2000)). In short, expert testimony is admissible only if it is both relevant and reliable. *Id.* (citing *Daubert*, 509 U.S. at 589). This gatekeeping obligation applies

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<sup>6</sup> The Debtors reserve all rights to object to the testimony, opinions, or reports of Mr. Moritz or Mr. Scheig on all other applicable bases, either at the hearing on the Motion to Dismiss or by further motion to this Court.



to all types of expert testimony, not just scientific testimony. *Id.* (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999)).

24. Admissibility is a threshold issue under *Daubert*, which must be assessed without regard to the witness's credibility. *See, e.g., Pineda v. Ford Motor Co.*, 520 F.3d 237, 247 (3d Cir. 2008) (recognizing that admissibility decision must focus on the expert's methods and reasoning, and credibility decisions should not be considered until after admissibility has been determined). As such, courts should not confuse admissibility with sufficiency. *Huss v. Gayden*, 571 F.3d 442, 460 (5th Cir. 2009); *see also In re Joint E. & S. Dist. Asbestos Litigation*, 52 F.3d 1124, 1132 (2d Cir. 1995) ("The 'admissibility' and 'sufficiency' of scientific evidence necessitate different inquiries and involve different stakes. Admissibility entails a threshold inquiry over whether a certain piece of evidence ought to be admitted at trial. The *Daubert* opinion was primarily about admissibility"). Therefore, if the LP Plaintiffs fail to satisfy the threshold requirement of relevance under Rule 702 and *Daubert*, Mr. Mortiz's and Mr. Scheig's testimony is inadmissible, regardless of their credibility. In other words, allowing Mr. Mortiz's and Mr. Scheig's testimony to be admitted and treating the relevancy of their testimony as a credibility issue would be error.

25. The LP Plaintiffs have the burden of establishing the admissibility of Mr. Mortiz's and Mr. Scheig's testimony "by a preponderance of proof." *Daubert*, 509 U.S. at 592 n.10.

**B. The LP Plaintiffs' proposed expert testimony on alleged damages is irrelevant and, therefore, inadmissible under *Daubert* and Rule 702**

26. Expert testimony is admissible only if the proponent of the testimony demonstrates that the testimony is relevant to the suit. FED. R. EVID. 702; *Daubert*, 509 U.S. 579, 589 (1993); *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 988-89 (5th Cir. 1997). The relevancy requirement ensures that the expert testimony will actually "assist the trier of fact to understand

the evidence or to determine a fact in issue.” *Pipitone*, 288 F.3d at 245 (quoting *Daubert*, 509 U.S. at 591). Rule 401 of the Federal Rules of Evidence defines relevant evidence as that which has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FED. R. EVID. 401. “Expert testimony which does not relate to any issue on the case is not relevant and, ergo, non-helpful.” *Daubert*, 509 U.S. at 591; *see also First American Bank v. First American Transp. Title Ins. Co.*, 759 F.3d 427, 434-35 (5th Cir. 2014) (trial court properly excluded expert testimony that was irrelevant to the issues); *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 351-55 (5th Cir. 2007) (same); *Pipitone*, 288 F.3d at 243-45 (same).

27. The entirety of the Moritz Report and associated testimony are inadmissible because Mr. Moritz’s damages opinions are irrelevant to the issues pending before the Court – that is, the Motion to Dismiss. The same conclusion must be drawn for the Profitability Opinions contained in the Scheig Report.

**1. Mr. Moritz’s testimony and opinions are irrelevant because potential derivative damages have no bearing on this Court’s ruling on the Motion to Dismiss**

28. Mr. Moritz purports to offer an opinion about the alleged damages suffered by the Debtors, which by definition are for derivative claims. *See Motion Pursuant to Section 541(a) of the Bankruptcy Code for Determination that Certain Claims and Causes of Action are Property of the Estate* [Docket No. 137].<sup>7</sup> In any event, Mr. Moritz’s opinions and damage calculations are irrelevant to the LP Plaintiffs’ arguments in the Motion to Dismiss.

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<sup>7</sup> As discussed above, Mr. Moritz calculates alleged damages at the partnership level. He is not calculating damages potentially owing to an individual Investor Partner or for any group of Investor Partners like the LP Plaintiffs. Rather, Mr. Moritz’s damages opinions assume a derivative recovery by the Debtors, and further assume any derivative recovery may simply be allocated to the entire group of Investor Partners as a proxy for a putative class that has not been certified and may never be certified. As it stands, the claims asserted in the Colorado Action are derivative claims that belong to the estate. This only underscores the irrelevance of the Moritz Report.

29. First, alleged damages arising out of the Debtors' potential derivative claims against PDC have nothing to do with whether the Debtors were authorized to file bankruptcy in accordance with the limited partnership agreements and applicable West Virginia law.

30. Second, the Moritz Report would not assist the Court in making its determination about whether these chapter 11 cases were filed in bad faith. The crux of the LP Plaintiffs' argument on bad faith filing is that these chapter 11 cases are an attempt by PDC to wrest control of the derivative claims asserted in the Colorado Action away from the LP Plaintiffs. While filing for bankruptcy solely as a litigation tactic may be a basis for dismissing a case, the Moritz Report does not have any tendency to make the existence of such fact more or less probable that it would be without the evidence. The Court does not need expert testimony on alleged damages to analyze whether these chapter 11 cases were filed solely as a litigation tactic. As a result, Mr. Moritz's proposed testimony as to the value of the claims asserted in the Colorado Action are superfluous and will not assist this Court in determining the ultimate issue of whether dismissal of these cases is appropriate.

31. Rather, the Debtors submit that the LP Plaintiffs propounded the Moritz Report in an effort to convince the Court that (i) the claims asserted in the Colorado Action are very valuable, and (ii) the Debtors are potentially settling those claims for far less than they are worth in the eyes of the LP Plaintiffs and their counsel. As an initial matter, there has been no determination, either in the Colorado Action or in these chapter 11 cases, that PDC is liable for the claims asserted in the Colorado Action. Thus, any presentation of damages evidence is premature. Further, the reasonableness of any settlement of the claims asserted in the Colorado Action is not presently before the Court. Should the Court deny the Motion to Dismiss, the Debtors expect to reach an enhanced settlement of the estates' claims with PDC, which will be

baked into an amended plan. At that point, the LP Plaintiffs would be entitled to present evidence that calls into question the reasonableness of that settlement. The Moritz Report is simply not helpful at this phase of the case.

32. To the extent the LP Plaintiffs attempt to shoehorn the Moritz Report into their analysis of the Debtors' solvency, as implied by their sole reference to the Moritz Declaration in the Motion to Dismiss, the Debtors submit that the LP Plaintiffs are already presenting expert testimony on the Debtors' alleged solvency through the Solvency Opinions contained in the Scheig Report. Thus, any attempt to present Mr. Moritz or his opinions as evidence of the Debtors' solvency is duplicative, unnecessary, and unhelpful to the Court.<sup>8</sup>

33. Based on the foregoing, the Court should exclude the Moritz Report in its entirety and any related testimony for the hearing on the Motion to Dismiss.

**2. Mr. Scheig's Profitability Opinions are irrelevant because they are an alternative attempt to quantify the Debtors' potential damages against PDC**

34. Similarly, the Profitability Opinions set forth in the Scheig Report are irrelevant to the LP Plaintiffs' arguments in the Motion to Dismiss. The marginal profits for a single BOE produced either by the Debtors or PDC have no bearing on either (i) the Debtors' authority to file these chapter 11 cases, or (ii) whether these chapter 11 cases were filed in bad faith. Rather, the Profitability Opinions appear to be another attempt by the LP Plaintiffs to present the Court with evidence of potential derivative damages against PDC. As with the Moritz Report, such evidence is not helpful and does not otherwise assist this Court in determining whether these chapter 11 cases should be dismissed.

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<sup>8</sup> It should be noted that Mr. Scheig does not include the value of the estates' alleged claims against PDC, as calculated in the Moritz Report, in his analysis of the Debtors' solvency, although he does reference the value of the potential settlement of the estates' claims in the Debtors' proposed joint plan. See Scheig Report at footnotes 7 & 8.

35. Accordingly, this Court should exclude the Profitability Opinions in Scheig Report and any related testimony for purposes of the hearing on the Motion to Dismiss.

### **CONCLUSION**

36. For the foregoing reasons, the Court should grant this Motion, exclude the Moritz Report in its entirety, exclude the Scheig Report as it relates to the Profitability Opinions, and otherwise limit the scope of related testimony for purposes of the hearing on the Motion to Dismiss.

### **NOTICE**

37. Notice of this Motion has been provided to: (i) counsel to PDC; (ii) counsel to the LP Plaintiffs; (iii) the U.S. Trustee; and (iv) the other parties appearing on the Limited Service List maintained in these chapter 11 cases. The Debtors respectfully submit that such notice is appropriate and that no other or further notice be provided.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form of **Exhibit A** attached hereto (i) excluding the expert report and testimony of Edwin C. Mortiz in its entirety; (ii) excluding the expert report and testimony of Gregory E. Scheig as it relates to the Profitability Opinions; and (iii) granting such other and further relief as may be just and proper.

Respectfully submitted this 29th day of April, 2019.

**GRAY REED & McGRAW LLP**

By: /s/ Jason S. Brookner

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**COUNSEL TO THE DEBTORS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 29th day of April, 2019, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these cases via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Lydia R. Webb

Lydia R. Webb

**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|   |                            |
|---|----------------------------|
| In re:  | § Chapter 11               |
|   | §                          |
| ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP, <sup>1</sup> | § Case No. 18-33513-sgj-11 |
|   | §                          |
|   | § (Jointly Administered)   |
|   | §                          |
| Debtors.  | §                          |

**ORDER GRANTING DEBTORS’ EMERGENCY MOTION TO (i) EXCLUDE EXPERT REPORT AND TESTIMONY OF EDWIN C. MORITZ, (ii) EXCLUDE PORTIONS OF EXPERT REPORT AND TESTIMONY OF GREGORY E. SCHEIG, AND (iii) LIMIT SCOPE OF EVIDENCE FOR HEARING ON MOTION TO DISMISS**

Upon the Emergency Motion to (i) Exclude Expert Report and Testimony of Edwin C. Mortiz, (ii) Exclude Portions of Expert Report and Testimony of Gregory E. Scheig and (iii) Limit Scope of Evidence for Hearing on Motion to Dismiss (the “Motion”) filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”);<sup>2</sup> and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

<sup>2</sup> Capitalized terms used but not defined herein have the meanings set forth in the Motion.



a core proceeding pursuant to 28 U.S.C. § 157(b); and venue before this Court being proper pursuant to 28 U.S.C. § 1408 and 1409; and the Court being satisfied that the relief requested in the Motion is appropriate; and it appearing that sufficient notice of the Motion has been given, and that no other or further notice is required; and after due deliberation and good cause appearing therefor, it is

ORDERED AS FOLLOWS:

1. The Motion is granted.
2. The expert report and testimony of Edwin C. Mortiz is excluded in its entirety for purposes of the hearing on the Motion to Dismiss.
3. The expert report and testimony of Gregory E. Scheig, as it relates to the Profitability Opinions, is excluded for purposes of the hearing on the Motion to Dismiss.

### END OF ORDER ###

Submitted by:

**GRAY REED & MCGRAW LLP**

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