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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’ OBJECTION TO DOCUMENT SUBPOENA TO  
GRAVES & CO. CONSULTING LLC AND MOTION TO QUASH**

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for their Objection to Document Subpoena to Graves & Co. Consulting LLC (“Graves”) and Motion to Quash (the “Motion”), respectfully represent:

**PRELIMINARY STATEMENT**

1. On April 11, 2019, the LP Plaintiffs<sup>2</sup> served a subpoena (the “Subpoena”) on Graves seeking the production of documents purportedly in relation to their Amended Motion for

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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).

Dismissal of Chapter 11 Case [Docket No. 140] (the “Motion to Dismiss”). A true and correct copy of the Subpoena is attached hereto as **Exhibit A**. The Debtors object to the Subpoena because it seeks documents that are (i) undiscoverable because Graves is a consulting expert, (ii) protected from discovery by the work-product doctrine, and (iii) irrelevant to the hearing on the Motion to Dismiss. To the extent that the Subpoena seeks documents that are relevant to the issues raised by the Motion to Dismiss, the Debtors have previously produced responsive, non-privileged documents relating to the pre-petition valuations performed by Graves in response to requests for production served upon the Debtors. As a result, the Court should quash the Subpoena as outside the scope of permissible discovery.

### **JURISDICTION AND VENUE**

2. 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).
3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

4. 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.
5. 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.
6. 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.)

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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.

(“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”).

7. Prior to the Petition Date, the Debtors engaged Graves to value their wells and independently confirm and update the analysis in the latest Ryder Scott reserve report, dated effective January 1, 2018. Graves made additional diligence requests to PDC in order to conduct its analysis. On or around August 31, 2018, Graves produced its preliminary report (the “Preliminary Report”), which confirmed that the value of the Debtors’ wells were negative when taking into account the associated plugging and abandonment liabilities. The Debtors have produced all documents and communications in their possession relating to the Preliminary Report in response to the requests for production served by the LP Plaintiffs.

8. On December 3, 2018, the LP Plaintiffs filed their original motion to dismiss these chapter 11 cases, as subsequently amended by the Motion to Dismiss. In support of the Motion to Dismiss, the LP Plaintiffs filed the Declaration of Edwin C. Moritz (the “Moritz Declaration”) [Docket No. 87], which contained a damages model for the derivative claims asserted in the lawsuit filed by the LP Plaintiffs 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”).

9. On December 18, 2018, the Court authorized the Debtors to retain Graves on a post-petition basis to provide them with engineering consulting and valuation services and if necessary, expert testimony. *See* Docket No. 103.

10. The Debtors have not designated Graves as a testifying expert witness for the hearing on the Motion to Dismiss.

### **RELIEF REQUESTED**

11. By this Motion, the Debtors object to the Subpoena and respectfully request entry of an order quashing same.

### **ARGUMENT AND AUTHORITIES**

12. Federal Rule of Civil Procedure 45, made applicable to this proceeding by virtue of Federal Rule of Bankruptcy Procedure 9016, governs subpoenas to obtain discovery from non-parties. *See* Fed. R. Bankr. P. 9016. Under Rule 45(d), “the court for the district where compliance is required must quash or modify a subpoena” that “requires disclosure of privileged or other protected matter, if no exception or waiver applies, or subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iii)–(iv). A party has standing to challenge a subpoena issued to a non-party if the party either has “‘possession of the materials subpoenaed’ or a ‘personal right or privilege with respect to the material subpoenaed.’” *Jez v. Dow Chem. Co.*, 402 F. Supp. 2d 783, 784–85 (S.D. Tex. 2005) (quoting *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979)). Evidentiary privileges that may be asserted by the Debtors to the subpoenaed documents are sufficient for standing. *See id.*

13. In addition, “a party has standing to move for a protective order pursuant to Rule 26(c) seeking to limit the scope of discovery, even if the party does not have standing pursuant to Rule 45(d) to quash a third-party subpoena.” *Bounds v. Capital Area Family Violence Intervention Ctr., Inc.*, 314 F.R.D. 214, 218 (M.D. La. 2016) (collecting cases); *Viener v. Casano*, Civil Action No. 1:16cv18-HSO-MTP, 2016 WL 10675905, at \*1 (S.D. Miss. June 10, 2016) (holding that “the procedurally proper avenue for a party to oppose a subpoena served on a

third party is via a motion for protective order”); *see also* Fed. R. Bankr. P. 9014(c) (stating that Rule 26, as incorporated by Federal Rule of Bankruptcy Procedure 7026, generally applies in contested matters). Under Rule 26(c), to curb discovery abuse and protect a party “from annoyance, embarrassment, oppression, or undue burden or expense,” the court may enter a protective order “forbidding the disclosure or discovery,” “forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters.” Fed. R. Civ. P. 26(c)(1)(A), (D).

14. The Court should quash the Subpoena and issue a protective order for three reasons. First, Graves is a consulting expert whose information, materials, and opinions are undiscoverable except in exceptional circumstances, which the LP Plaintiffs cannot show. Second, the work-product doctrine shields Graves’s materials and communications from discovery. Third, the documents sought in the Subpoena are irrelevant to the Motion to Dismiss.

***A. Because Graves Is a Consulting Expert, Graves’s Materials and Communications Are Not Discoverable.***

15. Because Graves is a consulting expert, the facts known and opinions held by Graves are not discoverable except in exceptional circumstances, which are not applicable here. Federal Rule of Civil Procedure 26(b)(4), which governs expert discovery, differentiates between testifying and consulting experts and severely restricts discovery regarding the latter:

*Expert Employed Only for Trial Preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But, a party may do so only:

- (i) as provided in Rule 35(b);
- (ii) on showing exceptional circumstances under which it is impractical for the party to obtain facts or opinions on the same subject by other means.

FED. R. CIV. P. 26(b)(4)(D). Though Rule 26(b)(4)(D) refers only to “interrogatories or deposition,” *id.*, courts have uniformly extended its protections to subpoenas duces tecum, such as the one served by the LP Plaintiffs in this case. *See, e.g., U.S. Inspection Servs., Inc. v. NL Engineered Sols., LLC*, 268 F.R.D. 614, 617 n.3 (N.D. Cal. 2010) (collecting cases); *Plymovent Corp. v. Air Tech. Sols., Inc.*, 243 F.R.D. 139, 143 (D.N.J. 2007); *In re Painted Aluminum Prods. Antitrust Litig.*, No. CIV.A. 95-CV-6557, 1996 WL 397472, at \*1 (E.D. Pa. July 9, 1996).

16. Rule 26(b)(4)(D) has multiple rationales. First, the Rule recognizes that a party has no need to prepare to cross-examine an expert who will not testify. *Plymovent Corp.*, 243 F.R.D. at 143; *In re Shell Oil Refinery*, 132 F.R.D. 437, 441 (E.D. La. 1990); *see also Hoover v. U.S. Dep’t of the Interior*, 611 F.2d 1132, 1142 (5th Cir. 1980) (stating that the “primary purpose” of the required disclosure of testifying experts is “to permit the opposing party to prepare for cross-examination”). Second, Rule 26(b)(4)(D) “promote[s] fairness by precluding unreasonable access to an opposing party’s diligent trial preparation.” *Durlinger v. Artiles*, 727 F.2d 888, 891 (10th Cir. 1984); *Plymovent Corp.*, 243 F.R.D. at 143; *see also Rubel v. Eli Lilly & Co.*, 160 F.R.D. 458, 460 (S.D.N.Y. 1995) (stating that the Rule “allow[s] counsel to obtain the expert advice they need to evaluate and present their clients’ positions without fear that every consultation with an expert may yield grist for the adversary’s mill). Third, the Rule prevents a chilling effect on free consultation between counsel and consulting experts. *See Plymovent Corp.*, 243 F.R.D. at 143; *see also* 8A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2032 (3d ed. Westlaw Apr. 2019 Update) (stating that “counsel may, absent the threat of discovery, feel free to discuss strategy and trial preparation” with consulting experts).

**1. Graves Is a Consulting Expert, Because It Was Retained by the Debtors for Litigation But Will Not Testify at the Hearing on the Motion to Dismiss.**

17. Graves qualifies as a consulting expert. A consulting expert is one who: (1) has been consulted, retained, or specifically employed by a party in anticipation of litigation or to prepare for trial; and (2) will not testify at trial. *See* FED. R. CIV. P. 26(b)(4)(D); *Crouse Cartage Co. v. Nat'l Warehouse Inv. Co.*, No. IP02-071CTK, 2003 WL 32142182, at \*3 (S.D. Ind. Jan. 13, 2003). Graves satisfies both of those requirements.

18. Courts determine when the expert was retained in anticipation of litigation or for trial by examining “the total factual situation in the particular case.” *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, 175 F.R.D. 34, 43 (S.D.N.Y. 1997) (quoting *Harford Fire Ins. v. Pure Air on the Lake, Ltd.*, 154 F.R.D. 202, 207 (N.D. Ind. 1993)). After the Petition Date, the Debtors requested authority to retain Graves to (1) provide “engineering consulting services and expert testimony, if required, for the Debtors with respect to, among other things, the value of their oil and gas properties,” (2) prepare a report in response to the LP Plaintiffs’ expert, and (3), if requested, testify to defend that rebuttal report. *See* Docket No. 96. On December 18, 2018, the Court approved the Debtors’ retention of Graves “to provide engineering consulting and expert testimony services . . . .” *See* Docket No. 103. Thus, the Debtors indisputably retained Graves to prepare for trial.

19. Graves, however, will not testify at the hearing on the Motion to Dismiss. An expert is not designated as a testifying expert unless and until a party discloses his identity and produces a report, if one is required by Rule 26(a)(2)(B). *See* *Davis v. Carmel Clay Schs.*, No. 1:11-CV-00771-SEB-MJD, 2013 WL 2159476, at \*7 (S.D. Ind. May 17, 2013); *see also* FED. R. CIV. P. 26 advisory committee notes to the 1970 amendment (“Discovery [of experts] is limited

to trial witnesses, and may only be obtained at a time when the parties know who their trial witnesses will be”). Until that time, the parties retain the strategic choice of converting a consulting expert into a testifying expert and vice versa. *See, e.g., Davis*, 2013 WL 2159476, at \*3–4 (collecting cases); *Vanguard Sav. & Loan Ass’n, VSL Servs. Corp. v. Banks*, No. CIV. A. 93-4627, 1995 WL 71293, at \*3 (E.D. Pa. Feb. 17, 1995) (“[I]f plaintiff later designates [a] witness to testify, the information becomes discoverable”); *In re Shell Oil Refinery*, 132 F.R.D. 437, 441 (E.D. La. 1990) (“Prior to the court imposed deadline for exchange of witness lists, a party is free to make strategic decisions changing an anticipated witness to a non-witness”).

20. The Debtors have not designated Graves as a testifying expert in connection with the hearing on the Motion to Dismiss, nor has Graves produced an expert report other than its pre-petition valuation of the Debtors’ wells. Although the deadline to identify rebuttal experts is not until May 6, 2019, the Debtors do not presently intend to designate Graves or call him to testify at the hearing on the Motion to Dismiss. *See Banks*, 1995 WL 71293, at \*3 (stating that the party’s “designation of a witness as ‘nontestifying’ controls (citing *Ross v. Burlington N. R.R. Co.*, 136 F.R.D. 638 (N.D. Ill. 1991)). Thus, Graves is a consulting expert.

**2. Because the LP Plaintiffs Cannot Show “Exceptional Circumstances,” They Cannot Discover the Facts Known or Opinions Held by Graves.**

21. As the party seeking discovery from a consulting expert, the LP Plaintiffs face a “heavy burden” of establishing “exceptional circumstances” under Rule 26(b)(4)(D).<sup>3</sup> *Hoover v. U.S. Dep’t of the Interior*, 611 F.2d 1132, 1142 n.13 (5th Cir. 1980). “Exceptional circumstances” are present when “it is impractical to obtain facts or opinions on the same subject by other means.” FED. R. CIV. P. 26(b)(4)(D). To satisfy that burden, the party seeking

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<sup>3</sup> Rule 26(b)(4)(D) also states that a party may discover the facts known and opinions held by a consulting expert “as provided in Rule 35(b).” FED. R. CIV. P. 26(b)(4)(D). Rule 35, which concerns court-ordered medical examinations, is inapplicable here. *See* FED. R. CIV. P. 35(a)(1).



discovery must show one of the following: (1) an object or condition at issue was destroyed or deteriorated after the consulting expert observed it but before an opposing expert had the opportunity to do so; (2) replicating the consulting expert's efforts would force the party to incur "judicially prohibitive" costs; or (3) there are no alternative experts in the same field or subject matter. *In re Shell Oil Refinery*, 132 F.R.D. at 442; *Crouse Cartage Co. v. Nat'l Warehouse Inv. Co.*, No. IP02-071CTK, 2003 WL 32142182, at \*3 (S.D. Ind. Jan. 13, 2003) (quoting *Spearman Indus. v. St. Paul Fire & Marine Ins. Co.*, 128 F. Supp. 2d 1148, 1152 (N.D. Ill. 2001)); *Brussel Bank Lambert v. Chase Manhattan Bank, N.A.*, 175 F.R.D. 34, 44 (S.D.N.Y. 1997). Here, the LP Plaintiffs have not—and cannot—make the requisite showing. In fact, the LP Plaintiffs have already retained an expert on the value of the Debtors' derivative claims, and he has completed his analysis. Accordingly, this Court should quash the Subpoena to Graves.

***B. The Work-Product Doctrine Shields Graves's Materials and Communications from Discovery.***

22. The Subpoena should also be quashed because it seeks documents subject to the work-product doctrine. That doctrine shields from discovery "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representatives (including the other party's attorney, *consultant*, indemnitor, insurer or agent)." FED. R. CIV. P. 26(b)(3)(A) (emphasis added). The doctrine was recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947), and then codified in Rule 26(b)(3).

23. The work-product doctrine is "distinct from and broader than the attorney-client privilege"; it protects materials prepared by an attorney or his agents, whether or not they were disclosed to the client. *United States v. Nobles*, 422 U.S. 225, 238 n.11 (1975); *In re Grand Jury Proceedings*, 601 F.2d 162, 171 (5th Cir. 1979). At its core, the doctrine "shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare

his client's case." *Nobles*, 422 U.S. at 238; *see also* FED. R. CIV. P. 26(b)(3)(B) (stating that court should protect against disclosure of the attorney's "metal impressions, conclusions, opinions, or legal theories"). As the Supreme Court has recognized, "[p]roper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories, and plan his strategy without undue and needless influence." *Nobles*, 422 U.S. at 237 (quoting *Hickman*, 329 U.S. at 511). The work-product doctrine ensures that parties do not litigate on "wits borrowed from their adversary." *Hickman*, 329 U.S. at 517 (Jackson, J., concurring); *see also Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 116 F.R.D. 533, 538 (N.D. Cal. 1987) (stating that work product attacks the temptation "to let opposing counsel do the investigatory homework, then force him to disgorge it").

24. Seeking a consulting expert's materials, opinions, and communications implicates the work-product doctrine. *See Shields v. Strum Roger & Co.*, 864 F.2d 379, 382 (5th Cir. 1982) (recognizing that reports are protected by the doctrine if they are "prepared in anticipation of litigation by a consulting expert who was specifically employed by . . . attorneys in preparation for trial and who was not expected to be called as a witness"); *Dresser-Rand Co. v. Schutte & Koerting Acquisition Corp.*, 242 F. Supp. 3d 576, 577 (S.D. Tex. 2014) ("The work-product privilege . . . protects the work of consulting experts").

25. Here, the Subpoena seeks documents that were prepared for, or in anticipation of, trial by the Debtors and their representatives. For example, Requests 1–2 and 5–10 seek all communications between Graves and the Debtors' responsible party (Karen Nicolaou), and between Graves and the Debtors' attorneys.<sup>4</sup> Requests 13–17 and 23 are broader still, seeking

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<sup>4</sup> Even if Graves were a testifying expert, the work-product doctrine would shield most of its communications with the Debtors' attorneys. *See* FED. R. CIV. P. 26(b)(4)(C); *see also* FED. R. CIV. P. 26 advisory committee's notes to

*all* of Graves’s communications with *any* person concerning its engagement by the Debtors or Graves’s analysis of the Debtors’ “Oil & Gas Properties.” In addition, Requests 18–20 and 25 demand that Graves produce all documents evidencing the services that it has provided to the Debtors (*i.e.*, expert analysis) and all documents relating to the Debtors’ “Oil & Gas Properties.” Because those requests encompass materials prepared by Graves to assist the Debtors and their attorneys in preparing for trial, the work-product doctrine applies.

26. The LP Plaintiffs, however, have not made the showing necessary to overcome work-product protection. As opinion work product, the Debtors’ attorneys’ communications with Graves receive “near absolute protection.” *SEC v. Brady*, 238 F.R.D. 429, 442 (N.D. Tex. 2006) (quoting *In re Int’l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1240 (5th Cir. 1982)). Because Graves’s documents relating to the Debtors’ “Oil & Gas Properties” are ordinary work product, the LP Plaintiffs must show “a substantial need for the materials to prepare [their] case and cannot, without undue hardship, obtain their substantial equivalent by other means.” *See* FED. R. CIV. P. 26(b)(3)(A)(ii). The LP Plaintiffs have not—and cannot—make that showing. Accordingly, the Court should quash the Subpoena.

***C. The LP Plaintiffs’ Subpoena Seeks Irrelevant Documents, Imposing an Undue Burden on Graves.***

27. Moreover, the Subpoena seeks irrelevant documents and, hence, imposes an undue burden. “[D]iscovery from a third party as permitted through a subpoena issued under Rule 45 is limited to the scope of discovery permitted under Rule 26(b)(1) in the underlying action, and ‘discovery outside of this scope is not permitted.’” *MetroPCS v. Thomas*, 327 F.R.D. 600, 609–10 (N.D. Tex. 2018) (quoting *Garcia v. Prof’l Contract Servs., Inc.*, No. A-15-cv-585-LY, 2017 WL 187577, at \*2 (W.D. Tex. Jan. 17, 2017)); *see also Williams v. City of Dallas*, 178

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the 2010 amendment (stating that the Rule “is designed to protect counsel’s work product and ensure that lawyers may interact with retained experts without fear of exposing those communications to searching discovery”).

F.R.D. 103, 110 (N.D. Tex. 1998) (stating that “when a subpoena is issued as a discovery device, relevance for purposes of the undue burden test is measured according to the standard of Rule 26(b)(1)”). Rule 26(b)(1) only permits discovery of non-privileged matters that are relevant to a party’s claims or defenses and proportional to the needs of the case. FED. R. CIV. P. 26(b)(1).

28. Here, the documents sought in the Subpoena relating to Graves’s analysis of the claims asserted in the Colorado Action and its preparation of a rebuttal expert report are irrelevant to the Motion to Dismiss. The alleged damages suffered by the Debtors as a result of the claims asserted against PDC in the Colorado Action have no bearing on whether these chapter 11 cases were filed in bad faith or without the requisite authority. If the Debtors believed that such valuation had any bearing on the Motion to Dismiss, they would have designated Graves as a testifying expert witness. Rather, valuation of the claims only comes into play in the event the Court denies the Motion to Dismiss, and the Court is asked to approve a settlement of those claims (either in connection with a proposed chapter 11 plan or otherwise). Whether and to what extent the Debtors, or the LP Plaintiffs, individually, were harmed by PDC’s alleged acts or omissions are questions for another day, and even for another court if the Motion to Dismiss is granted.

29. That said, as stated above, the Debtors have produced all relevant, non-privileged documents and communications in their possession concerning Graves’s preparation of its Preliminary Report, which Ms. Nicolaou reviewed as part of her determination to file these chapter 11 cases. The Subpoena should be quashed with respect to all other irrelevant documents.

**OBJECTIONS AND RESPONSES TO REQUESTS**

30. Subject to and without waiving the foregoing, the Debtors respond to the document requests contained in the Subpoena as follows.

**Request No. 1.** All Communications between You and Nicolaou relating to, referring to or concerning RR 2006.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 2.** All Communications between You and Nicolaou relating to, referring to or concerning RR 2007.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 3.** All Communications between You and PDC relating to, referring to or concerning RR 2006.

**Response:** Responsive communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 4.** All Communications between You and PDC relating to, referring to or concerning RR 2007.

**Response:** Responsive communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 5.** All Communications between You and Gray Reed relating to, referring to or concerning RR 2006.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 6.** All Communications between You and Gray Reed relating to, referring to or concerning RR 2007.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 7.** All Communications between You and Harney relating to, referring to or concerning RR 2006.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 8.** All Communications between You and Harney relating to, referring to or concerning RR 2007.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 9.** All Communications between You and Bridgepoint relating to, referring to or concerning RR 2006.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable

protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 10.** All Communications between You and Bridgepoint relating to, referring to or concerning RR 2007.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 11.** All Communications between You and Hunton relating to, referring to or concerning RR 2006.

**Response:** Responsive communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 12.** All Communications between You and Hunton relating to, referring to or concerning RR 2007.

**Response:** Responsive communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 13.** All Communications between You and any Person relating to, referring to or concerning RR 2006.

**Response:** Debtors object to this Request as overly broad. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 14.** All Communications between You and Person relating to, referring to or concerning RR 2007.

**Response:** Debtors object to this Request as overly broad. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 15.** All Communications between you and any Person concerning or relating to Your engagement in relation to the Oil & Gas Properties.

**Response:** Debtors object to this Request as overly broad. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 16.** All Communications between you and any Person concerning or relating to Your engagement in relation to RR 2006.

**Response:** Debtors object to this Request as overly broad. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 17.** All Communications between you and any Person concerning or relating to Your engagement in relation RR 2007.

**Response:** Debtors object to this Request as overly broad. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report, if any, have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 18.** All Documents evidencing or relating to Your services with regard to the Oil & Gas Properties.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 19.** All Documents evidencing or relating to Your services with regard to RR 2006.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been



produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 20.** All Documents evidencing or relating to Your services with regard to RR 2007.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 21.** All Documents which You reviewed in providing services to or for the benefit of RR 2006.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 22.** All Documents which You reviewed in providing services to or for the benefit of RR 2007.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 23.** All Communications relating to and/or concerning Your analysis of the extent and/or scope of the Partnerships' interests in the Oil & Gas Properties.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged communications relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

**Request No. 24.** All Communications relating to and/or concerning the dispute over the extent and/or scope of the Partnerships' Oil & Gas Properties as raised in the Denver Action.

**Response:** Debtors object to this Request to the extent such communications are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks communications that are not relevant to the Motion to Dismiss.

**Request No. 25.** All Documents relating to and/or concerning the Oil & Gas Properties, including, without limitation to (i) Your valuation of the Oil & Gas Properties, (ii) Your analyses of the Reserve Reports; and (iii) Your review and/or analyses of any asset sales in the Codell and Niobrara formations.

**Response:** Debtors object to this Request to the extent such documents are protected from disclosure by the work product doctrine and/or any other applicable protection, privilege, or immunity. Debtors further object to this Request to the extent it seeks documents that are not relevant to the Motion to Dismiss. Subject to the foregoing, responsive, non-privileged documents relating to the Preliminary Report have been produced in connection with the Debtors' Responses and Objections to First Request for Production of Documents.

### CONCLUSION

31. For the foregoing reasons, the Court should grant this Motion, quash the Subpoena, and enter a protective order precluding discovery of Graves's materials, opinions, and communications.

### NOTICE

32. 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) all other parties who have subscribed for electronic notification 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 B** attached hereto (i) quashing the Subpoena and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 2nd day of May, 2019.

**GRAY REED & McGRAW LLP**

By: /s/ Jason S. Brookner

Jason S. Brookner

Texas Bar No. 24033684

Lydia R. Webb

Texas Bar No. 24083758

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**COUNSEL TO THE DEBTORS**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on multiple occasions prior to the filing of this Motion, he conferred with counsel to the LP Plaintiffs about withdrawing the Subpoena to Graves. Opposing counsel declined to withdraw the Subpoena, thus precipitating this Motion.

/s/ Jason S. Brookner

Jason S. Brookner

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 2nd day of May, 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**

**Subpoena**

B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

# UNITED STATES BANKRUPTCY COURT

NORTHERN

District of

TEXAS

RECEIVED  
4/11/2019  
3:54 PM

In re Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership

Debtor

Case No. 18-33513

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

DATE: 4/11/19  
BY: UH # 14217

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Graves & Co. Consulting, LLC c/o John L. Graves, registered agent, 2777 Allen Pkwy, Ste 1200, Houston, TX 77019-2193  
(Name of person to whom the subpoena is directed)

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: \*See Exhibit "B" attached hereto

PLACE <b>Worldwide Court Reporters 3000 Wesleyan St, Ste 235, Houston TX 77027</b>	DATE AND TIME <b>May 2, 2019 at 5:00 p.m.</b>
---	--

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
-------	---------------

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/11/19

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

  
\_\_\_\_\_  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)  
Mark A. Weisbart, who issues or requests this subpoena, are:

The Law Office of Mark A. Weisbart, 12770 Coit Road, Suite 541, Dallas, Texas 75251 mark@weisbartlaw.net

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

*(1) For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

*(2) For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

*(1) Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

*(2) Command to Produce Materials or Permit Inspection.*

*(A) Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

*(B) Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

*(3) Quashing or Modifying a Subpoena.*

*(A) When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

*(B) When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

*(C) Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

*(1) Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

*(A) Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

*(B) Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

*(C) Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

*(D) Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

*(2) Claiming Privilege or Protection.*

*(A) Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

*(B) Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## EXHIBIT "A"

### I. INSTRUCTIONS

1. Pursuant to Federal Rule of Civil Procedure 45, made applicable hereto by Fed.R.Bankr.P. 9016, Graves & Co. Consulting LLC is instructed to produce any and all documents and electronically stored information requested in Part II of Exhibit "B" which are in its possession, custody, or control no later than the twenty-first (21<sup>st</sup>) day after service of the subpoena to which this document is attached to **Worldwide Court Reporters** located at **3000 Wesleyan St, Ste 235, Houston, TX 77027**. Possession, custody, or control includes constructive possession whereby You have a right to compel the production of a document from a third party (including an agent, attorney, accountant, bookkeeper, authority, relative, or representative). These instructions apply to this request.

2. In producing documents, you are to produce the Documents as they are kept within the normal course of your business.

3. All documents produced in response to this subpoena shall be produced in accordance with these Instructions using the Definitions contained in Part I of Exhibit "B".

4. Each Document Request set forth in Exhibit "B" shall operate and be responded to independently and, unless otherwise indicated, no Document Request limits the scope of any other Document Request.

5. The Document Requests of Exhibit "B" are continuing in nature and require further and supplemental production if you become aware of, acquire or locate any further information or Documents responsive to these Document Requests following the time of initial production to the fullest extent required by the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure.

6. All words, terms and phrases not specifically defined in the Definitions or specific Document Requests are to be given their normal and customary meaning in the context in which they are used herein.

7. In the event that you seek to withhold any document, thing, or information on the basis that it is purportedly privileged or entitled to some other limitation of discovery, you shall supply a numerical list of the documents and things for which a privilege or other limitation of discovery is claimed, indicating:

- (i) the name of each author, writer, sender, or initiator of such document or thing, if any;
- (ii) the name of each recipient, addressee, or party to whom such document or thing was intended, if any;
- (iii) the date of such document or thing, if any, or an estimate thereof and so indicated as an estimate if no date appears on said document;



- (iv) the general subject matter as described in the document; and
- (v) the claimed grounds for privilege or other limitation of discovery.

8. With respect to any communications and documents maintained or stored electronically, produce such communications and documents in a manner that maintains the integrity and readability of all data, including all metadata. Such documents are to be produced in native electronic format with all relevant metadata intact and in the appropriate and useable manner to be agreed upon by the parties. Encrypted or password protected documents should be produced in a form permitting them to be reviewed.

9. Any electronic communications and documents produced for inspection should be produced in the manner in which they are stored (e.g., if maintained by custodian, such as email residing on an email server, organize documents for production by custodian). If responsive documents reside on databases or similar systems, produce the relevant database in a useable form or extract the relevant information in a useable format. At the time of the production, You should provide a written list setting forth in detail each specific source and location searched. The list must also identify, by name and position, all persons conducting the search and their areas of search responsibility. You should also provide a list describing the specific source for each produced item as well as for each item withheld on a ground of privilege, using unique identifying numbers to specify documents or ranges. All materials produced in discovery, including those in native format, shall bear unique identifying control numbers. To the maximum extent feasible, all party files and records should be retained and produced in their original form and sequence including any hardcopy or electronic file folders, and the originals should remain available for inspection by any counsel on reasonable notice.

10. Documents maintained or stored in paper, hard-copy form can be produced as either searchable PDF (i.e., portable document format files with embedded text) in a useable manner, or as photocopies of the hard-copy documents. Such paper documents should be produced in the same form and manner in which they are maintained, organized, and labeled, such that titles, file folders, binders, indices, or other organizational names for a given set of documents are to be left intact and provided.

11. Each Document Request shall be deemed to include requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the documents.

12. If, in responding to these requests, You claim any ambiguity in a request for production of documents, or in a definition or instruction applicable thereto, we request that you contact the above counsel to resolve the ambiguity.

13. Unless otherwise specified herein, the relevant time period of these requests is from **December 20, 2017, to the present.**

## EXHIBIT “B”

### I. DEFINITIONS

Unless otherwise indicated, the following terms shall have the meanings provided for purposes of the requests set forth in Part II below:

1. “*Arising out of,*” “*relating to,*” or “*evidencing*” refers to any act, work, meeting, oral or written communication, or document, referring, directly or indirectly, in any way to the described facts, or embodying, mentioning, concerning, referring to, connected with, commenting on, responding to, showing, describing, analyzing, or reflecting, directly or indirectly, such facts.
2. “*Bankruptcy Code*” means title 11 of the United States Code.
3. “*Bankruptcy Estate(s)*” means the estate(s) created pursuant to Section 541(a) of the Bankruptcy Code upon commencement of the Chapter 11 Cases.
4. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure.
5. “*Bridgepoint*” means Bridgepoint Consulting LLC and its officers, members, managers, partners, representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on their behalf, whether authorized to do so or not.
6. “*Chapter 11 Cases*” means the cases under chapter 11 of title 11 of the U.S. Code commenced by the Debtors upon the filing of a petition under Section 301 of the Bankruptcy Code on the Petition Date that are being jointly administered.
7. “*Chapter 11 Plan*” means the *Debtors’ Joint Chapter 11 Plan* [Doc. No. 57], as amended, filed in the Chapter 11 Cases on November 21, 2018.
8. “*Communication(s)*” means any Documents that record or represent a communication.
9. “*Debtor(s)*” refers to RR 2006 and RR 2007 in their respective capacity as a debtor-in-possession under the Bankruptcy Code.
10. “*Denver Action*” means that certain civil action styled *Dufresne et al. v. PDC Energy, Inc., et al.*, Case No. 1:17-cv-03079-RBJ, pending in the United States District Court for the District of Colorado.
11. “*Document*” and “*Documents*” as used in these Document Requests shall be given the broadest meanings possibly and shall include, without limitation, the following:
  - (a) all non-identical pieces of written, printed, or electronic matter that provide information, including, without limitation, emails, text messages, chats, instant messages, facsimiles, websites, social media entries, databases, calendar entries,

spreadsheets, notes, jottings, diaries, communications, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing; and

- (b) graphic or aural records or representations of any kind, including, without limitation, photographs, charts, graphs, microfiches, microfilm, videotape, recordings, motion pictures, voice mails, video files, tapes, cassettes, disks, recordings, and all transcriptions, in whole or in part, of any of the foregoing. A draft or non-identical copy is a separate document within the meaning of this term. A document with handwritten notes, markings, comments, "blind" copy notes, editing marks, facsimile transmission "legends" or "slugs," etc. shall not be deemed identical to one without such modifications, additions or deletions. Each document shall be produced in its entirety, without abbreviation or expurgation, including all attachments or other matter affixed thereto.

12. "**Gray Reed**" means Gray Reed McGraw LLP and its officers, partners, representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on their behalf, whether authorized to do so or not.

13. "**Harney**" means Red Owl Interests LLC d/b/a Harney Management Partners its officers, members, managers, partners, representatives, employees, agents, attorneys, and all Persons acting or purporting to act on their behalf, whether authorized to do so or not.

14. "**Hunton**" means Hunton Andrews Kurth, LLP, and its officers, partners, representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on their behalf, whether authorized to do so or not.

15. "**Nicolaou**" means Karen Nicolaou and her representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on her behalf, whether authorized to do so or not.

16. "**Oil & Gas Properties**" means any and all interests owned or in which the Partnerships have a legal or equitable interest which relate to hydrocarbons, mineral, oil and/or gas, including, without limitation, the Partnerships' Wells.

17. "**Partnerships**" means RR 2006 and RR 2007, collectively, other than in their respective capacity as Debtors.

18. "**Partnerships' Wells**" means those oil and gas wells drilled for the benefit of the Partnerships.

19. "**PDC**" means PDC Energy, Inc. f/k/a Petroleum Development Corporation and its officers, directors, representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on their behalf, whether authorized to do so or not.

20. “**Person(s)**” means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors-in-interest.

21. “**Petition Date**” means October 30, 2018.

22. “**Possession, custody, or control**” of any item means that the person either has physical possession of the item or has a right to possession that is equal or superior to the person who has physical possession of the item. Each of the requests contained herein are directed to documents in your possession, custody or control.

23. “**Reserve Reports**” means any and all reserve reports prepared and/or issued by Ryder Scott in relation to or concerning the Oil & Gas Prospects.

24. “**Referring to,**” “**referencing,**” “**pertaining to,**” or “**concerning**” (or any variation thereof), as used herein, shall mean comprising, addressing, referring to (whether by name or not, whether directly or indirectly), discussing, describing, reflecting, supplementing, supporting, negating, amending, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, mentioning, applying to, containing, reproducing, paraphrasing, or in any way factually, legally, or logically connected to the matter inquired thereof.

25. “**RR 2006**” means Rockies Region 2006 Limited Partnership.

26. “**RR 2007**” means Rockies Region 2007 Limited Partnership.

27. “**Tangible things**” includes everything that is not a document.

28. “**You**” or “**Graves**” means Graves & Co. Consulting LLC and its officers, members, managers, representatives, employees, agents, attorneys, and all natural Persons acting or purporting to act on their behalf, whether authorized to do so or not.

29. “**Your**” means of, associated with or relating to You.

30. The conjunctions “**and**” and “**or**” shall each be individually interpreted in every instance as meaning “and/or” and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any specification.

31. The terms “**all,**” “**any,**” and “**each**” shall each be construed as encompassing any and all.

32. The singular form of a word includes the plural form of that word and the plural form of a word includes the singular form.

## **II. DOCUMENTS REQUESTED**

1. All Communications between You and Nicolaou relating to, referring to or concerning RR 2006.
2. All Communications between You and Nicolaou relating to, referring to or concerning RR 2007.
3. All Communications between You and PDC relating to, referring to or concerning RR 2006.
4. All Communications between You and PDC relating to, referring to or concerning RR 2007.
5. All Communications between You and Gray Reed relating to, referring to or concerning RR 2006.
6. All Communications between You and Gray Reed relating to, referring to or concerning RR 2007.
7. All Communications between You and Harney relating to, referring to or concerning RR 2006.
8. All Communications between You and Harney relating to, referring to or concerning RR 2007.
9. All Communications between You and Bridepoint relating to, referring to or concerning RR 2006.
10. All Communications between You and Bridgepoint relating to, referring to or concerning RR 2007.
11. All Communications between You and Hunton relating to, referring to or concerning RR 2006.
12. All Communications between You and Hunton relating to, referring to or concerning RR 2007.
13. All Communications between You and any Person relating to, referring to or concerning RR 2006.
14. All Communications between You and Person relating to, referring to or concerning RR 2007.
15. All Communications between you and any Person concerning or relating to Your engagement in relation to the Oil & Gas Properties.

16. All Communications between you and any Person concerning or relating to Your engagement in relation to RR 2006.

17. All Communications between you and any Person concerning or relating to Your engagement in relation RR 2007.

18. All Documents evidencing or relating to Your services with regard to the Oil & Gas Properties.

19. All Documents evidencing or relating to Your services with regard to RR 2006.

20. All Documents evidencing or relating to Your services with regard to RR 2007.

21. All Documents which You reviewed in providing services to or for the benefit of RR 2006.

22. All Documents which You reviewed in providing services to or for the benefit of RR 2007.

23. All Communications relating to and/or concerning Your analysis of the extent and/or scope of the Partnerships' interests in the Oil & Gas Properties.

24. All Communications relating to and/or concerning the dispute over the extent and/or scope of the Partnerships' Oil & Gas Properties as raised in the Denver Action.

25. All Documents relating to and/or concerning the Oil & Gas Properties, including, without limitation to (i) Your valuation of the Oil & Gas Properties, (ii) Your analyses of the Reserve Reports; and (iii) Your review and/or analyses of any asset sales in the Codell and Niobrara formations.

**Exhibit B**

**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 (I) SUSTAINING DEBTORS’ OBJECTION TO DOCUMENT SUBPOENA TO GRAVES & CO. CONSULTING LLC AND (II) GRANTING MOTION TO QUASH**

Upon the Objection to Document Subpoena to Graves & Co. Consulting LLC (“Graves”) and Motion to Quash (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 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

---

<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.



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 Subpoena is hereby quashed.

### END OF ORDER ###

Submitted by:

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