

Mark A. Weisbart  
Texas Bar No. 21102650  
James S. Brouner  
Texas Bar No. 03087285  
THE LAW OFFICE OF MARK A. WEISBART  
12770 Coit Road, Suite 541  
Dallas, Texas 75251  
Telephone: (972) 628-4903  
[mark@weisbartlaw.net](mailto:mark@weisbartlaw.net)  
[jbrouner@weisbartlaw.net](mailto:jbrouner@weisbartlaw.net)

*and*

Thomas G. Foley (admitted *pro hac vice*)  
California Bar No. 65812  
FOLEY BEZEK BEHLE & CURTIS, LLP  
15 West Carrillo Street  
Santa Barbara, California 93101  
Telephone: (805) 962-9495  
Facsimile: (805) 962-0722  
[tfoley@foleybezek.com](mailto:tfoley@foleybezek.com)

Counsel for the LP Plaintiffs  
as defined herein

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

IN RE:

Rockies Region 2006 Limited Partnership and  
Rockies Region 2007 Limited Partnership,

*Debtors.*

Case No. 18-33513  
Chapter 11

Jointly Administered

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

Robert R. Dufresne, as Trustee of the Dufresne Family Trust; Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; Jeffrey M. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated

April 16, 1991 (collectively, the “LP Plaintiffs”) file this objection to the Debtors’ Objection to Document Subpoena to Graves & Co. Consulting LLC and Motion to Quash (“Motion”), and respectfully state as follows:

### **INTRODUCTION**

1. On October 30, 2018, chapter 11 bankruptcy petitions were filed on behalf of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership (together, the “Partnerships” or “Debtors”) by Karen Nicolaou (“Nicolaou”), the purported “Responsible Party” appointed by PDC Energy, Inc. (“PDC”), the Partnerships’ managing general partner. In support of those petitions, and the other “First Day Motions,” Nicolaou submitted a declaration setting forth the due diligence she purportedly conducted in forming her decision to file the bankruptcy petitions. (Doc. 10.)

2. As part of this due diligence Nicolaou contends that she required a determination of the value of the Partnerships’ assets. To that end, Nicolaou states that:

In connection with my appointment as Responsible Party, I engaged a third party reserve engineering firm, Graves & Co. Consulting (“Graves”), to value the Debtors’ wells and independently confirm and update the analysis in the Debtors’ latest Ryder Scott reserve report dated effective January 1, 2018. Graves confirmed that the value of Debtors’ wells were negative when taking into account the associated P&A liabilities. Given the reduction in production that has occurred and will continue to escalate as time passes, and in light of the lack of distributions to Partners and the inevitable P&A liability, I believe it is in the best interests of the Debtors to liquidate their wells and make a final distribution to the Investor Partners. I asked Graves to review recent asset sales in the Codell and Niobrara formations. ...

(Doc. 10 at 7.) Thus, Ms. Nicolaou herself states that her decision to file the bankruptcy petitions

on behalf of the Debtors was informed by the *pre*-petition work done by Graves.<sup>1</sup>

3. On December 3, 2018, the LP Plaintiffs moved to dismiss these cases on the grounds that they were filed in bad faith and that Nicolaou did not have the authority necessary to properly file the Debtors' petitions. (Doc. 85.) The LP Plaintiffs subsequently amended their Motion to Dismiss. (Doc. 140.) The LP Plaintiffs further objected to the application to approve Nicolaou's retention as Responsible Party on the grounds that, among other things, the retention is not in the Debtors' estate's best interest and that Nicolaou has a conflict of interest and is, therefore, not a disinterested party. (Doc. 61.)

4. On April 11, 2019, the LP Plaintiffs served a subpoena on Graves for the production of documents that are relevant to the issues raised in the LP Plaintiffs' Motion to Dismiss, as well as their objection to the retention of Nicolaou as Responsible Party ("Subpoena"). Attached hereto as **Exhibit A** is a true and correct copy of the Subpoena. Importantly, the Subpoena seeks Graves' compliance within the Southern District of Texas, not the Northern District of Texas. All of the document requests contained in the Subpoena are specifically targeted at obtaining (1) the underlying information that informed the analysis Graves's conducted pre-petition, which Nicolaou has represented to the Court served as a basis for her decision to file the bankruptcy petitions, and (2) Graves' communications with Nicolaou, her agents, and other interested parties with regard to the Partnerships, its engagement and services, and its analysis of the scope and value of the Partnerships' oil and gas interests.

5. The Debtors now seek to quash the LP Plaintiffs' Subpoena or, more accurately,

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<sup>1</sup> See Debtors' Emergency Application for Order Authorizing the Retention of Graves & Co. Consulting LLC to Provide Engineering Consulting and Expert Testimony Services [Doc. 96] (the "Graves Application"), ¶ 12 ("Prior to the Petition Date, the Debtors engaged Graves to value the Debtors' wells and independently confirm and update the analysis in the Debtors' latest Ryder Scott reserve reports dated effective January 1, 2018.")

to have the Court issue a protective order preventing the LP Plaintiffs from obtaining the documents they seek from Graves. (Doc. 153.) The Debtors contend that the documents sought from Graves: (1) are undiscoverable because Graves is a consulting expert; (2) are protected from discovery by the work-product doctrine; and (3) are irrelevant to the hearing on the LP Plaintiffs' Motion to Dismiss. (*Id.*)

6. As set forth in the objection below, the Debtors' are wrong on all three of these assertions and, accordingly, the Court should deny their Motion in its entirety and compel compliance with the Graves Subpoena.

### **ARGUMENT**

#### **A. Legal Standard**

7. Pursuant to Federal Rule of Civil Procedure 45, a party may serve a subpoena commanding a nonparty "to whom it is directed to ... produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control." FED. R. CIV. P. 45(a)(1)(A)(iii). This rule "explicitly contemplates the use of subpoenas in relation to non-parties' and governs subpoenas served on a third party, such as [Graves], as well as motions to quash or modify or to compel compliance with such a subpoena." *Am. Fed'n of Musicians of the United States & Canada v. SKODAM Films, LLC*, 313 F.R.D. 39, 42 (N.D. Tex. 2015) (internal quotations and citations omitted).

8. Under Rule 45, "[a] subpoena may command: ... production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person." FED. R. CIV. P. 45(c)(2)(A); *see also* FED. R. CIV. P. 45(a)(1)(C) ("A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises ...



may be set out in a separate subpoena.”). Rule 45(a)(1)(C) further provides that “[a] subpoena may specify the form or forms in which electronically stored information is to be produced.”

FED. R. CIV. P. 45(a)(1)(C).

9. Rule 45(d)(2)(B) requires that “[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”—and that “[t]he objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.”

10. In addition, for a party to have standing to challenge a subpoena issued to a non-party, the party must either have “possession of the materials subpoenaed” or a “personal right or privilege with respect to the materials subpoenaed.” *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979).

#### **B. This Court Has No Authority to Grant Debtors’ “Motion to Quash” and the Debtors Lack Standing to Object**

11. The Debtors’ Motion is styled as a motion to quash but, under the Federal Rules of Civil Procedure and clear Fifth Circuit authority, only “the court for the district where compliance is required” may quash or modify a subpoena. FED. R. CIV. P. 45(d)(3). Rule 45(d)(3)(A) and Rule 45(d)(3)(B) both require that a motion to quash or modify be filed with “the court for the district where compliance is required.” *Id.* Based on this language, courts have concluded that a court *outside of* the district where compliance is required does not have the authority to hear or grant a motion to quash. *See, e.g., SynQor, Inc. v. Vicor Corp.*, 2014 U.S. Dist. LEXIS 75723, at \*3 (N.D. Tex. Jun. 3, 2014); *Nasufi v. King Cable, Inc.*, 2017 U.S. Dist. LEXIS 123088, at \*12–15 (N.D. Tex. Aug. 4, 2017); *MetroPCS v. Thomas*, 327 F.R.D. 600, 606

(N.D. Tex. 2018).

12. The Subpoena provides that the place of compliance is Houston, Texas, which is indisputably within the Southern District of Texas. (*See* Ex. A at 1.) Thus, it necessarily follows that this Court does not have the authority to hear or grant a motion to quash the Graves Subpoena.

13. Moreover, the Debtors' are not the subpoenaed party and therefore do not have standing to provide formal objections to the particular document requests contained in the Subpoena on behalf of Graves (the type of objections that Debtors' provide in their Motion [Doc. 153 at 13–18]). Rule 45 provides that “[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.” Fed. R. Civ. P. 45(d)(2)(B) (emphasis added). Hence the Rules only empowers the nonparty from whom production is sought to object to the specific document requests contained in the Subpoena. While the Debtors have to right to raise concerns over the production of privileged materials (*see Brown*, 595 F.2d at 967), all of the other objections that the Debtors' raise in their Motion (e.g., over-breadth, relevance, etc.) should not be considered by the Court.

14. Moreover, since it is Graves' obligation to submit objections, and it has not done so, any potential objections have been waived. A non-party subpoenaed witness waives objections if it fails either to serve timely objections on the party seeking discovery or to file a timely motion with the court. *See, e.g., In re Application of Grupo Mex. Sab De CV*, 2015 U.S. Dist. LEXIS 177694, at \*8–9 (N.D. Tex. Mar. 10, 2015); *In re United States*, 864 F.2d 1153,

1156 (5th Cir. 1989) (“[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”); *Isenberg v. Chase Bank USA*, 661 F. Supp. 2d 627, 629 (N.D. Tex. 2009) (““The failure to serve written objections to a subpoena within the time specified by [Rule 45(d)(2)(B)] typically constitutes a waiver of such objections.””) (quoting *Concord Boat Corporation v. Brunswick Corporation*, 169 F.R.D. 44, 48 (S.D.N.Y. 1996)); *Edgefield Holdings v. Gilbert*, 2018 U.S. Dist. LEXIS 34239, at \*26 (N.D. Tex. Mar. 2, 2018).

### **C. Graves Is Not a Consulting Expert**

15. The Debtors’ primary contention is that Graves was retained by Nicolaou as a “consulting expert” and that the LP Plaintiffs’ Subpoena is therefore outside the scope of permissible discovery under FED. R. CIV. P. 26(b)(4). (*See* Doc. 153 at 7–9.) While it is generally the case that a party may not obtain discovery from an expert who is hired to provide analysis and opinions “in anticipation of litigation or to prepare for trial and who is *not expected to be called as a witness* at trial,” this general prohibition does not apply here.

16. As the Debtors’ admit, a court’s determination of whether an expert was retained in anticipation of litigation or for trial is based on “the total factual situation in the particular case.” (Doc. 153 at 7, citing to *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, 175 F.R.D. 34, 43 (S.D.N.Y. 1997); *Hartford Fire Ins. v. Pure Air on the Lake, Ltd.*, 154 F.R.D. 202, 207 (N.D. Ind. 1993).) Yet the Debtors only support their assertion that Graves is a consulting expert by quoting their *post*-petition request for the authority to retain Graves. (Doc. 153 at 7 (quoting Doc. 96 and 103).)

17. Even if the Court concludes that Graves is a consulting expert, the Court should still order Graves to comply with the Subpoena. Here, “exceptional circumstances” exist because

it is “impractical [for the LP Plaintiffs] to obtain facts or opinions on the same subject by other means.” FED. R. CIV. P. 26(b)(4)(D). The materials sought from Graves is essential to assessing the due diligence that Nicolaou conducted leading up to the filing of the Partnerships’ bankruptcy petitions—due diligence that she now seeks to shroud from view by claiming that her retention of Graves was not a business decision on behalf of the Partnerships but was, instead, a decision made in anticipation of litigation. If Nicolaou retained Graves to help her make the best decision to maximize the benefit to the Partnerships and their limited partners, then why does she oppose to production of the materials that she admits informed her decision to file the Debtors’ petitions?

18. The LP Plaintiffs seek information related to Graves’ *pre*-petition work—the work that Nicolaou states informed her decision to file the bankruptcy petitions. As to these materials, Graves’ retention was not primarily (or even substantially) made in anticipation of litigation but was, instead, made as a business decision to purportedly provide information to Nicolaou to assist her in determining the best course of action for the Partnerships. The information being sought is only in the possession of Graves and the LP Plaintiffs have no means of obtaining this information from another source.

19. In sum, the issue of Nicolaou’s due diligence is central to the current dispute. If the Debtors’ arguments are to be accepted, any “Responsible Party” could include in its agreement with any professional consultant the language that they may be asked to testify in upcoming bankruptcy proceedings and thereby prevent any discovery into the work done by those consultants. This is a grotesque abuse of the federal rules concerning consulting experts and should be rejected by this Court.

#### **D. The Graves Subpoena Does Not Seek Attorney Work-Product**

20. Relatedly, the Debtors assert that the Subpoena seeks information covered by the attorney work-product doctrine and therefore cannot be produced. (Doc. 153 at 9–11.) While seeking a consulting expert’s materials and opinions generally runs afoul of the work-product doctrine, the LP Plaintiffs’ Subpoena does not do so.

21. Work conducted by Graves *pre*-petition, the work upon which Ms. Nicolaou purportedly relied in forming her decision to file the Debtors’ petitions, is not and cannot be covered by the work-product privilege. Attached hereto as **Exhibit B** is a true and correct copy of agreement entered into between Ms. Nicolaou and Graves.

22. The Debtors have not met their burden to show that this is a basis to quash or modify the Subpoena under Rule 45(d)(3)(A)(iii). Federal Rule of Civil Procedure 45(e)(2) governs a non-party’s withholding of information on the grounds of privilege and is substantively identical to Federal Rule of Civil Procedure 26(b)(5)’s requirements as to a responding party. *See Am. Fed’n*, 313 F.R.D. at 46. Compare FED. R. CIV. P. 26(b)(5) (“When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”), with FED. R. CIV. P. 45(e)(2)(A) (“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.”). The Debtors have the burden to make the required showing to establish the claimed privilege as to particular requests in support of a modification or quash an order, but, here, they have not provided the required level of detail and information to do so.

**E. The Subpoena Seeks Documents Relevant to the LP Plaintiffs’ Motion to Dismiss**

23. Contrary to the Debtors’ assertions, the information sought from Graves is certainly relevant to the LP Plaintiffs’ contention that Nicolaou is not a disinterested party and should not be approved as the Responsible Party to work on the Partnerships’ behalf. The Debtors’ Motion fails to recognize that the trial on the LP Plaintiffs’ Motion to Dismiss also involves the LP Plaintiffs’ objection to the appointment of Nicolaou. In that objection, the LP Plaintiffs contend that Nicolaou is not a disinterested party but is, instead, working “... to benefit PDC by obtaining control and settling the derivative portion of [the Civil Action] to the detriment of the [LP Plaintiffs].” (Doc. 61 at 5.) Nicolaou’s First Day Declaration details a proposed “PDC Transaction” through which these derivative claims are to be settled and PDC is to acquire the Debtors’ properties. (*Id.*) How did Nicolaou determine that the “PDC Transaction” was fair to the Debtors (and the LP Plaintiffs)? In her declaration, Nicolaou states that she engaged Graves “to value the Debtors’ wells and independently confirm and update the analysis in the Debtors’ latest Ryder Scott reserve reports dated effective January 1, 2018.” (Doc. 61.) Nicolaou uses the purported valuation conducted by Graves to support her decision that the “PDC Transaction” is fair to the Debtors and the LP Plaintiffs.

24. The Graves Subpoena seeks discovery on the limited due diligence conducted by Nicolaou in reaching her decision to support and submit the “PDC Transaction” and is undeniably relevant to the Court’s determination of whether Nicolaou should serve as a neutral, independent Responsible Party for the Debtors. In other words, Nicolaou purportedly formed her

decision to file these cases, at least partially, based on Graves' *pre*-petition analyses. Documents Graves considered and its communications concerning its services are clearly relevant to the decision-making process.

25. Finally, these documents are admissible to show conflict of interest even if not otherwise admissible. *See, e.g., Jez v. Dow Chem. Co.*, 402 F. Supp. 2d 783, 785–86 (S.D. Tex. 2005).

### **CONCLUSION**

26. For all of the foregoing reasons, the LP Plaintiffs respectfully request that the Debtors' Objection to Document Subpoena to Graves & Co. Consulting LLC and Motion to Quash be denied in its entirety.

Respectfully submitted,

/s/ Thomas G. Foley \_\_\_\_\_  
Thomas G. Foley  
California Bar No. 65812  
FOLEY BEZEK BEHLE & CURTIS, LLP  
15 West Carrillo Street  
Santa Barbara, California 93101  
Telephone: (805) 962-9495  
Facsimile: (805) 962-0722  
[tfoley@foleybezek.com](mailto:tfoley@foleybezek.com)

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12770 Coit Road, Suite 541  
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Telephone: (972) 628-4903  
[mark@weisbartlaw.net](mailto:mark@weisbartlaw.net)  
[jbrouner@weisbartlaw.net](mailto:jbrouner@weisbartlaw.net)

Counsel for the LP Plaintiffs as defined herein

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served on the 23rd day of May 2019 via the Court's CM/ECF notification system on all those who have so subscribed.

/s/ Thomas G. Foley

Thomas G. Foley, Jr.



# **EXHIBIT A**

# **EXHIBIT A**

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 PMIn 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

## 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	DATE AND TIME
<b>Worldwide Court Reporters 3000 Wesleyan St, Ste 235, Houston TX 77027</b>	<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**

# **EXHIBIT B**



**Graves & Co. Consulting LLC**  
*Oil and Gas Reserves and Valuations*

December 13, 2018

Rockies Region 2006 Limited Partnership  
Rockies Region 2007 Limited Partnership  
c/o Ms. Karen G. Nicolaou  
777 S. Post Oak Lane, Suite 1700  
Houston, Texas 77056

RE: Consulting/Expert Testimony Agreement

Ms. Nicolaou:

When accepted by you in the manner set forth below, this letter will set forth the understanding and agreement between Graves & Co. Consulting, LLC, a Texas limited liability company, whose address is 2777 Allen Parkway, Suite 1200, Houston, Texas 77019, (hereinafter referred to as "Graves"), and Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership (hereinafter referred to as "Client").

Graves understands that on October 30, 2018, Client filed petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") seeking relief under chapter 11 of the United States Bankruptcy Code (Case No. 18-33513) (the "Bankruptcy Proceeding"), and that the filing of the Bankruptcy Proceeding requires court approval of Graves' retention and the terms of engagement outlined in this letter.

1. TERM. The term of this Agreement will commence effective December 13, 2018, subject to Bankruptcy Court approval, and continue thereafter until Graves' completion of the services described below, or until either party cancels this Agreement by giving the other party twenty-four (24) hours written notice.

2. SERVICES. Graves shall provide reserve engineering consulting services and expert testimony, if requested, for Client with respect to, among other things, the value of their oil & gas properties in Weld County, Colorado. In addition, Graves agrees to provide a report (the "Report") in rebuttal, or response, to the expert report of Edwin C. Moritz filed in the Bankruptcy Proceeding at Docket No. 87. If requested, Graves shall provide live testimony for deposition or trial to defend the Report. If requested by Client, Graves will attend mediations related to the Bankruptcy Proceeding in which Graves provided a report.

Draft reports will be distributed to the Client in a timely manner for review and discussion. Additional time and materials requested by Client after the draft report has been prepared, including any involvement with the presentation or review of the report with appropriate personnel and/or companies, will be at Graves' customary fee structure set forth herein.

Consulting Agreement  
Rockies Region 2006 Limited Partnership, et al

Graves & Co. Consulting LLC  
December 13, 2018  
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3. COMPENSATION. Graves understands that it is necessary for Client to obtain bankruptcy court approval before paying Graves for services rendered and fees incurred. For services rendered hereunder, Client agrees to pay Graves as per the following payment schedule:

Graves & Co. Consulting, LLC

President	\$350/hr
Officers: Petroleum Engineer or Geoscientist	\$325/hr
Senior Petroleum Engineers	\$300/hr
Senior Geologists	\$300/hr
Petroleum Engineers	\$225 - \$275/hr
Geologists	\$200 - \$250/hr
Technical Assistants	\$125 – \$185/hr
Administrative Assistant	\$60 – \$85/hr

In the event Graves personnel are called to testify either in court or via deposition (in either case “Testimony”), that professional’s hourly rate will be increased by 50% for all Testimony and any direct preparation related thereto.

Reasonable and documented out-of-pocket expenses that may be incurred directly in connection with the Services, including travel expense, will be included on each invoice. A one-time \$600.00 software usage expense fee will be applied to Client’s invoice.

4. PAYMENT. It is Graves’ practice to issue invoices every month. However, Graves understands that payment of its fees and expenses shall be subject to approval by the Bankruptcy Court in the Bankruptcy Proceeding pursuant to applications for compensation and reimbursement filed with the Bankruptcy Court. Graves shall be paid promptly upon approval of such fees and expenses and, in any event, not later than fourteen (14) days following such approval.

5. NO EMPLOYMENT/AGENCY RELATIONSHIP. Client and Graves agree that Graves is and shall at all times remain an independent contractor, and that no employment, agency, partnership, joint venture, or similar relationship is established, intended, or inferred between Client and Graves under this Agreement.

6. CONFIDENTIALITY OF INFORMATION. The parties recognize that Client will furnish information to Graves from time to time that Client considers to be its “Confidential Information.” Graves agrees to protect, and not to disclose to any third parties not involved in the rendering of services under this Agreement, any information that Client designates in writing as constituting Client’s “Confidential Information.” Still further, Graves agrees to use Client’s Confidential Information solely for purposes relating to the performance of services under or reasonably relating to this Agreement. Notwithstanding the foregoing, the parties agree that the term “Confidential Information” shall not include information that: (a) is published or becomes generally available in the public domain from a source other than by or through Graves; (b) was available to Graves prior to its disclosure by Client; (c) is or becomes available to Graves on a

Consulting Agreement  
Rockies Region 2006 Limited Partnership, et al

Graves & Co. Consulting LLC  
December 13, 2018  
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non-confidential basis from a source other than Client, provided that such source was not under a duty or obligation to protect or prevent the disclosure of such information; or (d) is developed or discovered by Graves independent of Graves' receipt of Confidential Information from Client. Graves agrees that all Confidential Information provided to Graves by Client is and shall remain the exclusive property of Client.

7. LIMITATION OF GRAVES' AUTHORITY. It is expressly agreed that Graves shall have no right or authority at any time to make any contract or binding promise of any nature on behalf of Client, whether oral or written, without the express written authorization of Client.

8. LIMITATION OF GRAVES' LIABILITY. Client acknowledges and agrees that the services to be performed by Graves and reported to Client may be limited by the information and materials made available to Graves for review, the amount of time allowed to Graves to conduct its work, and/or by Client's desire to contain costs. Client also acknowledges and agrees that Graves will render services under this Agreement that Graves believes to be reasonably complete and accurate given the nature, degree, and timing of information and materials provided to Graves by Client, and given other limitations or restrictions placed upon Graves relating to such services.

Client agrees to indemnify and hold harmless Graves, to the full extent lawful, against any and all losses, actions, claims, damages, liabilities or costs including reasonable legal fees and expenses (collectively, "Loss"), whether or not in connection with a matter in which Graves is a party, as and when incurred, directly or indirectly, caused by, relating to, based upon or arising out of Graves acting for Client pursuant to this Agreement. Graves shall not be held liable for errors in judgment. Notwithstanding the foregoing, Client shall have no duty to indemnify or to hold harmless Graves for any loss, action, claim, damage, liability or cost to the extent such Loss is found, in a final judgment by a court of competent jurisdiction to have resulted primarily and directly from the gross negligence, willful misconduct or unlawful activities of Graves as determined by a Court of law. No amounts shall be payable by Client, pursuant to any indemnification obligation, without prior approval of the Bankruptcy Court.

9. NO WARRANTIES. To the fullest extent permitted by applicable law, Graves disclaims all warranties, express, statutory, or implied, with regard to any services, reports, or products provided by Graves to Client, including any warranty of merchantability, fitness for a particular purpose, and/or of good and/or workmanlike performance, and Client hereby waives, releases, and covenants not to prosecute any claim or cause of against Graves for breach of any warranty.

10. ASSIGNMENT. Client agrees that this Agreement may be assigned in whole or in part by Graves, at Graves' discretion, to any entity that is a successor of Graves or to any entity that is affiliated with Graves' owners, provided that (i) Client provides prior written consent, which consent shall not be unreasonably withheld and (ii) the assignee agrees to be bound by all of the terms and conditions applicable to Graves in this Agreement.



Consulting Agreement  
Rockies Region 2006 Limited Partnership, et al

Graves & Co. Consulting LLC  
December 13, 2018  
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11. TEXAS LAW. The parties agree that Texas law shall govern and be applicable in all respects to the interpretation and enforcement of this Agreement, and to all services performed by Graves pursuant to this Agreement. Client and Graves stipulate and agree that any claim or cause of action, and all litigation, arising from or relating to this Agreement and/or any of the services provided or to be provided under this Agreement shall be brought before the Bankruptcy Court.

12. SEVERABILITY. If any provision of this Agreement is determined to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the force and effect of the remaining provisions of this Agreement, and the remaining provisions of the Agreement shall be construed and enforced as if the Agreement did not contain the invalid or unenforceable provision.

The execution of this Agreement and the exchange of signed originals in counterpart by facsimile, or electronically in pdf format shall be sufficient to evidence this Agreement and to bind the parties hereto.

IN WITNESS WHEREOF, this Agreement is entered into by the parties and executed this 13th day of December, 2018.

**ROCKIES REGION 2006 LIMITED PARTNERSHIP**  
by Karen Nicolaou, Responsible Party

By: \_\_\_\_\_

**ROCKIES REGION 2007 LIMITED PARTNERSHIP**  
by Karen Nicolaou, Responsible Party

By: \_\_\_\_\_

**GRAVES & CO. CONSULTING LLC**



John L. Graves, President



Consulting Agreement  
Rockies Region 2006 Limited Partnership, et al

Graves & Co. Consulting LLC  
December 13, 2018  
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**ROCKIES REGION 2006 LIMITED PARTNERSHIP**

by Karen Nicolaou, Responsible Party


By: 

**ROCKIES REGION 2007 LIMITED PARTNERSHIP**

by Karen Nicolaou, Responsible Party

By: 

**GRAVES & CO. CONSULTING LLC**

  
John L. Graves, President

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Rockies Region 2006 Limited Partnership, et al

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WIRE TRANSFER INFORMATION

Company Name: Graves & Co. Consulting LLC  
Bank Name: Bank of America  
Bank Address: 1905 West Gray,  
Houston, TX 77019  
Bank Tel. No.: 713/831-1700  
ABA No.: 026009593  
Account No.: 5860 3806 4749  
ACH Routing No.: 111000025 (domestic transactions)  
SWIFT Code: USD BOFAUS3N (international transactions)