



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ENTERED
02/10/2016

In re:

BLACK ELK ENERGY OFFSHORE
OPERATIONS, LLC

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§
§

Chapter 11

Case No.: 15-34287 (MI)

**INTERIM ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 363(m),
364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) AND 507 AND BANKRUPTCY
RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTORS TO OBTAIN
POST-PETITION FINANCING, AND (II) SCHEDULING FINAL HEARING**

Upon the motion, dated February 7, 2016 (the “Motion”), of Black Elk Energy Offshore Operations, LLC (“Black Elk”) as debtor and debtor-in-possession (collectively, the “Debtor”) in the above-captioned case (the “Case”) for interim and final orders under sections 105, 361, 362, 363(c), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”) seeking:

- (1) authorization for Black Elk to obtain post-petition financing in the aggregate principal amount of \$7,750,000, on an interim basis on the terms and conditions set forth in this interim order (this “Interim Order”)¹ and the DIP Credit Agreement by and between Black Elk and OW DIP, LLC (the “Lender” or “DIP Lender”), as lender;

¹ Unless otherwise specified, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Term Sheet (which such Term Sheet is attached to the Motion as Exhibit E thereto).

- (2) authorization for the Debtor to execute and deliver the DIP Credit Agreement, together with all agreements, documents and instruments executed and delivered in connection therewith (as hereafter amended, supplemented or otherwise modified from time to time, the “DIP Documents”), and to perform such other and further acts as may be necessary or appropriate in connection therewith, to the extent of the DIP Loan as authorized in this Order;
- (3) authorization for the Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default;
- (4) authorization to grant liens to the Lender on the proceeds of the Debtor’s claims and causes of action (but not on the actual claims and causes of action) arising under Bankruptcy Code sections 544, 545, 547, 548, 549 and 550 (collectively, the “Avoidance Actions”);
- (5) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined in paragraph 10 below) pursuant to Bankruptcy Code section 506(c) upon entry of a final order;
- (6) approval of the Debtors’ entry into the Amended and Restated Turnkey Service Agreement (as may hereafter be further amended, modified or supplemented from time to time, for approval in the Final Order, and including the pricing and scope of work attached thereto as Exhibit A, the “Montco Services Agreement”) by and between the Debtor and Montco Oilfield Contractors, LLC (“Montco”), which such approval of the Montco Services Agreement shall be reserved for the final hearing; and

(7) the Court's scheduling a final hearing (the "Final Hearing") to consider entry of a final order granting the relief requested in the Motion on a final basis and authorizing the balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and DIP Documents filed with this Court, and seeking approval of the Montco Services Agreement.

An interim hearing having been held by this Court on February 10, 2016 (the "Interim Hearing") and due and proper notice of the Interim Hearing on the Motion having been given by the Debtor and upon the record made by the Debtor at the hearing, including the *Declaration of Lance Gurley, of Blackhill Partners* (the Debtor's financial advisor), and all objections to the entry of this Interim Order having been overruled, withdrawn or resolved pursuant to the terms of this Interim Order, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion and the relief requested therein was served by the Debtor on (i) counsel for the Committee; (ii) the U.S. Trustee; (iii) all parties who have requested notice in this Case; (iv) all parties who have asserted liens against the Debtor's assets as part of this Case, (v) all parties reflected in the Debtor's books and records as having and/or asserting a lien against the Debtor's assets; and (vi) all registered ECF users appearing in the Case as of February 7, 2016. The notice given by the Debtor of the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy

Rules 4001(b) and (c), and the Local Rules, and no further notice of the relief sought at the Interim Hearing is necessary or required.

3. *Approval of Motion.* The relief requested is approved as described herein. Except as otherwise expressly provided in this Interim Order, any objection to the entry of this Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits; provided, however, that such objections shall be preserved for a hearing on a final order.

4. *Findings Regarding the DIP Loan.*

- (a) Good cause has been shown for the entry of this Interim Order.
- (b) The Debtor requires the DIP Loan to, among other things, permit the orderly continuation of its business, the finalization and implementation of an approved P&A plan (the “P&A Plan”) and to allow for a successful liquidation pursuant to a chapter 11 plan.
- (c) The Debtor did not obtain financing on more favorable terms from sources other than the Lender pursuant to, and for the purposes set forth in, the DIP Documents and is unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtor did not obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2) and 364(c)(3) without granting priming liens under Bankruptcy Code section 364(d)(1) and the Superpriority Claims (as defined in paragraph 9(a) below) on the terms and conditions set forth in this Interim Order and the DIP Documents.
- (d) The Debtor represents that the terms of the DIP Loan, DIP Documents, pursuant to this Interim Order are fair and reasonable on an interim basis.
- (e) The DIP Documents have been the subject of extensive negotiations conducted in good faith and at arm’s length among the Debtor, the DIP Lender, and all of the Debtor’s obligations and indebtedness arising under or in connection with the DIP Documents, this Interim Order and the DIP Loan (collectively, the “DIP Obligations”) shall be deemed to have been extended by the DIP Lender in “good faith” as such term is used in Bankruptcy Code sections 363(m) and 364(e), and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of Bankruptcy Code sections 363(m) and 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

- (f) The entry of a P&A Plan is necessary for the Debtor to satisfy those certain plugging and abandonment obligations and liabilities of the Debtor and/or its subsidiaries, in connection with the plugging and abandonment of wells and decommissioning oil and gas platforms, pipelines, other facilities and site clearances (the “P&A Obligations”) and cooperate fully with local, state and federal laws that require it to decommission certain oil and gas installations.
- (g) Absent granting the final relief set forth in this Interim Order, the Debtor’s estate and business operations will be immediately and irreparably harmed. In particular, the Debtor requires immediate post-petition financing in order to, among other things, permit the orderly continuation of its business, fulfill its P&A Obligations, and to allow for a successful liquidation and/or sale of the Debtor’s assets on a going concern basis. The borrowing of the DIP Loan, in accordance with this Interim Order and the DIP Documents are, therefore, in the best interest of the Debtor’s estate.
- (h) Nothing herein shall prevent any party in interest from challenging the Motion for a final order or any of these findings in connection with a final order approving the DIP Loan and all objections filed in connection with the Interim Order shall be preserved for the hearing to consider entry of the Final Order.

5. *Authorization of the DIP Loan and the DIP Documents.*

- (a) The Debtor is hereby authorized to enter into and perform under the DIP Documents and to borrow, on an interim basis and subject to the terms of the DIP Credit Agreement an aggregate principal amount of \$750,000 for working capital and other general corporate purposes of the Debtor, all as set forth in Section 2.1 of the DIP Credit Agreement (the “DIP Loan”).
- (b) In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized and directed to perform all acts (and to the extent such acts have already occurred, such acts are hereby ratified) and to execute and deliver all instruments and documents that the Lender determines to be reasonably required or necessary for the Debtor’s performance of their obligations under the DIP Documents, including without limitation:
 - (1) the execution, delivery and performance of the DIP Documents;
 - (2) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in accordance with the terms of the DIP Documents and in such form as the Debtor and the Lender may agree, and no further approval of this Court shall be required

for any amendment, waiver, consent or other modification to and under the DIP Documents (and any fees paid in connection therewith, including without limitation, the Origination Fee (which, for purposes of this Interim Order shall be \$50,000)) that do not materially and adversely affect the Debtor or which do not (A) shorten the maturity of the DIP Loan, (B) increase the principal amount of, or the rate of interest payable on, the DIP Loan, or (C) change any Event of Default (as such term is defined in Section 6.1 of the DIP Credit Agreement, an "Event of Default"), add any covenants or amend the covenants therein, in any such case to be materially more restrictive;

- (3) the non-refundable payment to the DIP Lender, as the case may be, of the fees set forth in the DIP Documents, including without limitation, the Origination Fee and reasonable attorneys' fees and other professional fees and disbursements as provided in the DIP Documents as may be due from time to time as provided in this Interim Order;
- (4) the performance of all other acts required under or in connection with the DIP Documents.

- (c) The DIP Documents constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms of this Interim Order and the DIP Documents. No obligation, payment, transfer or grant of security by the Debtor under the DIP Documents or this Interim Order shall be voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under Bankruptcy Code sections 502(d) or 548 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *DIP Budget.* Attached as Exhibit A hereto and incorporated by reference herein is the short-period budget (which has been approved by the DIP Lender) setting forth the Debtor's projected receipts and disbursements (the "DIP Budget"). The Debtor shall deliver (i) the DIP Budget consisting of weekly Thirteen Week Forecasts delivered to the DIP Lender commencing on the Effective Date and each week thereafter, detailing the Debtor's weekly cash flow forecasts on a rolling 13-week basis, in form and substance satisfactory to the Lender and in accordance with the DIP Credit Agreement; (ii) weekly budget-to-actual variance reports,

including a line item for all cash disbursed for P&A Obligations, in form and substance satisfactory to the DIP Lender in its sole discretion, delivered no later than each Wednesday for the preceding week's activity and (iii) detailed explanations in form and substance satisfactory to the DIP Lender in its sole discretion for unfavorable budget-to-actual variances on a line item basis exceeding the lesser of (x) 5% of the budgeted line item, on a cumulative basis and (y) \$50,000. The Debtor's use of DIP Loan shall be consistent with the types of expenses set forth in the DIP Budget. The DIP Lender shall have no obligation with respect to the Debtor's use of the DIP Loan and shall not be obligated to ensure or monitor the Debtor's compliance with the DIP Budget or to pay any expenses incurred or authorized to be incurred pursuant to the DIP Budget. Notwithstanding anything to the contrary contained herein, no payment shall be made pursuant to this Interim Order to any professional retained pursuant to an order of the Court (each, a "Professional") to the extent that it would cause the aggregate amount paid to such Professional to exceed the aggregate amount of fees and expenses set forth in the DIP Budget with respect to such Professional through the end of the applicable period for which payment is being requested (the "Budgeted Fees and Expenses"), it being understood that amounts unpaid as a result of the preceding limitation may be accrued and, subject to the Court's approval and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders of this Court, paid in any subsequent period(s) to the extent that actual fees and expenses incurred in such subsequent period(s) are less than the Budgeted Fees and Expenses in such subsequent period(s); provided, however, that nothing in this Interim Order shall limit any Professional's right to request, or the Court's power to authorize, the allowance of fees and expenses pursuant to Bankruptcy Code sections 330 and 331.

7. *Funding of DIP Lender.* On or as soon as practicable after the entry of this Interim Order, the DIP Lender shall fully fund the \$750,000, upon satisfaction of the following conditions: (a) Debtor is not otherwise in default and no Event of Default as described below exists; (b) there is no material impairment of DIP Lender's liens and superpriority administrative treatment, or, in the alternative, there is a resolution of any claim by the Indenture Trustee for adequate protection satisfactory to DIP Lender its sole discretion; and (c) administrative expense claims (excluding any claims asserted by Montco) are consistent with schedules prepared by the Debtor.

8. *DIP Lender Fees and Expenses.* Consistent with the DIP Credit Agreement, the Debtor shall pay to the Lender the Origination Fee and all reasonable and documented fees and expenses related to the Debtor incurred by the Lender or Montco, in its respective capacities as Lender or as post-petition plugging and abandonment service provider under the Montco Services Agreement including, without limitation, the reasonable and documented fees and disbursements of counsel, incurred in connection with (i) the negotiation and documentation of the DIP Documents, including the DIP Credit Agreement, this Order, the Montco Services Agreement and any and all associated documents; and (ii) any and all other matters and issues that arise during the course of the Case, in an aggregate amount not to exceed \$500,000 incurred solely in connection with its status as DIP Lender or as post-petition plugging and abandonment service provider under the Montco Services Agreement. None of the fees and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), provided, however, that upon entry of this Interim Order, the Origination Fee shall accrue in an amount equal to \$50,000, with the remaining balance of the Origination Fee to accrue upon entry of a final order.

No recipient of any such payment shall be required to file any interim or final fee application with respect thereto. The Debtor shall pay the reasonable and documented fees and expenses provided for in this paragraph within ten (10) days, subject to available funds in the DIP Budget, following receipt of invoices therefor by the Debtor with a copy to the Creditors' Committee, but in no event later than the maturity date of the DIP Loan. Upon any objection to the reasonableness of such fees, the Debtor shall pay all amounts that are not the subject of such objection within the ten (10) day period and shall pay the balance following the resolution of such objection or upon an order of the Court.

9. *Superpriority Claims.*

- (a) Except to the extent expressly set forth in this Interim Order in respect of the Carve-Out and the lien granted pursuant to the 9019 Order and priority administrative claims granted under the 9019 Order, pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "Superpriority Claims") against the Debtor with priority over any and all administrative expenses, adequate protection claims and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment.
- (b) For purposes hereof, the "Carve-Out" shall mean (a) any fees payable to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code and (b) up to \$50,000 of allowed and unpaid fees and expenses, (regardless of when such fees and expenses become allowed by order of the Bankruptcy Court but consistent with the DIP Budget) of professionals retained by order of the Bankruptcy Court, incurred after the occurrence of a Carve-Out Event (as defined below), (c) allowed, accrued and unpaid fees and out-of-pocket expenses (regardless of when such fees and expenses become allowed by order of the Bankruptcy Court) of professionals retained by order of the Bankruptcy Court (or whose application for retention is then pending provided such application is ultimately approved), incurred on or prior to the occurrence of a Carve-Out Event and are consistent with the DIP

Budget and (d) any and all reasonable fees and expenses incurred by a trustee under Bankruptcy Code section 726(b) not to exceed \$50,000. For the purposes hereof, a “Carve-Out Event” shall occur upon the occurrence and during the continuance of an Event of Default and upon delivery of a written notice thereof to the Debtor (a “Carve-Out Notice”). So long as no Carve-Out Event shall have occurred and be continuing, the Carve-Out shall not be reduced by the payment of fees, expenses and disbursements of professionals retained by order of this Court allowed by this Court and payable under Bankruptcy Code sections 328, 330 and 331, which allowed fees, expenses and disbursements shall be paid in accordance with and subject to the DIP Budget. Notwithstanding anything herein to the contrary, the Debtor shall first direct all professionals subject to the Carve-Out to fully utilize the retainers held by such professionals and fully utilize unrestricted cash and cash equivalents held at Black Elk and its subsidiaries to pay allowed fees and expenses comprising the Carve-Out prior to utilizing any DIP Collateral (as defined in paragraph 10 below) or proceeds of either that secure the obligations arising under the DIP Documents. Upon the delivery of a Carve-Out Notice, the right of the Debtor to pay professional fees incurred under clause (b) above without reduction of the Carve-Out in clause (b) above shall terminate and upon receipt of such notice, the Debtor shall provide immediate notice by facsimile and email to all retained professionals informing them that a Carve-Out Event has occurred and that the Debtor’s ability to pay professionals is subject to the Carve-Out; provided that (A) the Carve-Out shall not be available to pay any professional fees and expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lender; provided that (A) the Carve-Out shall not be available to pay any professional fees and expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lender. A waiver of an Event of Default triggering a Carve-Out Event shall constitute the cancellation of such Carve-Out Event allowing the Debtor to pay compensation and reimbursement of expenses authorized to be paid under Bankruptcy Code sections 330 and 331 or otherwise pursuant to an order of the Bankruptcy Court, as the same may be due and payable, without reducing the Carve-Out.

10. *DIP Liens.* As security for the DIP Obligations approved under this Interim Order, effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the following security interests and

liens are hereby granted by the Debtor to the DIP Lender (all property of the Debtor identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”), subject and subordinate only to the Carve-Out and as provided herein (all such liens and security interests granted to the DIP Lender pursuant to this Interim Order, the “DIP Liens”):

- (a) First Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible pre-petition and post-petition property of the Debtor that is not subject to either (i) valid, perfected, non-avoidable and enforceable liens in existence on or as of the Conversion Date, or (ii) a valid lien perfected subsequent to the Conversion Date as permitted by Bankruptcy Code section 546(b) (collectively, the “Unencumbered Property”); such lien shall include, but not be limited to, the P&A Recovery, the Northstar Recovery, any litigation rights, the Chapter 5 Causes of Action and any proceeds or property recovered in respect of any Chapter 5 Causes of Action.
- (b) Liens Junior to Certain Existing Liens. Pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and post-petition property of the Debtor (other than the property described in paragraph 12(c) below, as to which the DIP Liens will have the priority as described in such paragraph 12(c)), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Conversion Date or to valid and unavoidable liens in existence immediately prior to the Conversion Date that are perfected after the Conversion Date as permitted by Bankruptcy Code section 546(b) (collectively, the “Non-Primed Liens”), which security interests and liens in favor of the DIP Lender, shall be junior to the Non-Primed Liens.
- (c) Liens Priming the Pre-petition Liens. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming liens (the “DIP Priming Liens”) on, and security interest in, the P&A Recovery, Northstar Recovery, the Debtor’s residual interest in any P&A Escrows, P&A bond escrows, proceeds of surety bonds securing or any cash collateral collateralizing the P&A Obligations, including, without limitation, any proceeds of surety bonds securing the Debtor’s decommissioning liabilities and all cash in any accounts held by a surety which hold cash collateral collateralizing such obligations (collectively, the “P&A Cash Collateral Accounts”), any litigation rights, the Chapter 5 Causes of Action and any proceeds or property recovered in respect of any Chapter 5 Causes of Action, to the

extent any other liens exist encumbering or purporting to encumber these specific assets. The DIP Priming Liens on the specific collateral described herein shall be senior in all respects to the Pre-petition Liens. For the avoidance of doubt, all predecessors and surety escrows and collateral shall remain first priority security for the predecessors and sureties.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under Bankruptcy Code section 551 or (B) any liens arising after the Conversion Date or (ii) subordinated to or made pari passu with any other lien or security interest under Bankruptcy Code sections 363 or 364 or otherwise. In the Case, the DIP Lender will be granted in each of the Interim Order and Final Order a superpriority administrative claim under Bankruptcy Code section 364(c)(1) for the payment of the obligations under the DIP Loan with priority above all other administrative claims, subject to the Carve- Out.

11. *Adequate Protection.* In exchange for the relief contained herein and the consent to authorize use of cash collateral (the “Operating Funds”), the Indenture Trustee as the holder of alleged liens on the Operating Funds: (a) will be paid \$544,912.38 in cash, payable by the Debtor to the Indenture Trustee, which funds may be utilized to pay the Indenture Trustee’s fees or the ad hoc Committee of Noteholder’s attorney’s fees; provided, that the application of the funds may be recharacterized after notice and hearings, provided further that the funds will in no event be subject to disgorgement, (b) are granted replacement liens which are valid and perfected adequate protection liens in the amount of \$750,000.00 to protect against losses occasioned by the use of the Operating Funds to the same extent, validity and priority as existed at the Petition Date; provided, however, that no lien is granted against the funds collateralizing the Debtor’s P&A obligations; and (c) are granted a valid, super-priority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code, for the diminution in value of their collateral since the Petition Date, in an amount not less than \$500,000.

12. *Milestones.* In accordance with Section 5.1(k) of the DIP Credit Agreement, the failure of the Debtor to comply with the following milestones (unless extended or waived by the DIP Lender) shall be an Event of Default:

- (a) on or prior to March 1, 2016, the Debtor shall obtain an order of the Bankruptcy Court approving the Final Order;
- (b) on or prior to March 8, 2016, the Debtor shall file a chapter 11 liquidation plan (the “Plan”) and accompanying disclosure statement in form and substance satisfactory to the Lender in its sole discretion;
- (c) on or prior to April 15, 2016, the Debtor shall obtain an order of the Bankruptcy Court approving a disclosure statement, which order shall be in form and substance satisfactory to the Lender in its sole discretion;
- (d) on or prior to May 31, 2016, the Bankruptcy Court shall have entered the order confirming a chapter 11 liquidation Plan (the “Confirmation Order”), in form and substance satisfactory to the Lender in its sole discretion; and
- (e) in no event later than May 31, 2016, the effective date of the chapter 11 liquidation Plan in form and substance satisfactory to the Lender in its sole discretion shall have occurred.

13. *Events of Default.* In accordance with Section 6.1 of the DIP Credit Agreement, one or more of the events shall constitute an Event of Default:²

- (a) the Debtor shall fail to pay any interest on or principal of the DIP Loan or any fee or other amount when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise;
- (b) any representation or warranty made or deemed made by or on behalf of the Debtor in or in connection with any Transaction Document or any amendment or modification of any Transaction Document or waiver under such Transaction Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Transaction Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed made in any material respect;

² Solely for purposes of this paragraph 12, capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Credit Agreement.

- (c) the Debtor shall fail to observe or perform any covenant, condition or agreement contained in the DIP Credit Agreement, after such opportunity to cure has gone unremedied as respectively provided therein;
- (d) the Debtor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Indebtedness, when and as the same shall become due and payable, if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such debt (or a trustee or agent on behalf of such holder or holders) to cause such debt to become due prior to its stated maturity which is not stayed by the filing of the Case;
- (e) the Transaction Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against the Debtor or shall be repudiated, or cease to create a valid and perfected Lien of the priority required thereby on any of the collateral purported to be covered thereby, except to the extent permitted by the terms of the DIP Credit Agreement, or the Debtor shall so state in writing;
- (f) a Material Adverse Effect has occurred or is occurring;
- (g) the Case concerning the Debtor shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or Debtor shall file a motion or other pleading or support a motion or other pleading filed by any other Person seeking the dismissal or conversion of the Case under Bankruptcy Code section 1112 or otherwise; a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Bankruptcy Code section 1106(a)(3) and (4)) under Bankruptcy Code section 1106(b) shall be appointed in the Case; or Debtor shall file a motion or other pleading or shall consent to a motion or other pleading filed by any other Person seeking any of the foregoing;
- (h) an order of the Bankruptcy Court shall be entered granting any superpriority claim (other than the Carve-Out) in any of the Chapter 11 Case which is pari passu with or senior to the claims of Lender against Debtor hereunder or any Lien or security interest that is pari passu with or senior to the Liens and security interest securing the DIP Loan, or Debtor takes any action seeking or supporting the grant of any such claim, Lien or security interest, in each case except as expressly permitted hereunder;
- (i) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Bankruptcy Code section 362 to the holder or holders of any security interest to proceed against, including foreclosure (or the granting of a deed in lieu of foreclosure or the like) on,

any assets of the Debtor that have a value in excess of \$50,000 in the aggregate;

- (j) an order of the Bankruptcy Court (or any other court of competent jurisdiction) shall be entered (A) reversing, staying for a period in excess of 10 days or vacating either of the DIP Orders, (B) without the written consent of the DIP Lender, amending, supplementing or modifying either of the DIP Orders;
- (k) the entry of the Final Order shall not have occurred on or prior to March 1, 2016;
- (l) the entry of a final order approving the final version of the Montco Services Agreement shall not have occurred on or prior to March 1, 2016;
- (m) the Bankruptcy Court shall terminate or reduce the period pursuant to Bankruptcy Code section 1121 during which the Debtor has the exclusive right to file a chapter 11 liquidation Plan and solicit acceptances thereof;
- (n) the Debtor shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the DIP Lender relating to the DIP Loan or any Transaction Document, unless such suit or other proceeding is stayed pursuant to Bankruptcy Code section 362 or an order of the Bankruptcy Court and is released upon the “Effective Date” of a chapter 11 liquidation Plan, as defined therein, and the order confirming such chapter 11 liquidation Plan provides that any such suit or proceeding shall be dismissed with prejudice;
- (o) a chapter 11 liquidation Plan that is not in form and substance satisfactory to the DIP Lender (and which shall conform with other plan support provisions as provided herein) shall be confirmed in the Case, or any order shall be entered which dismisses the Case and which order does not provide for the payment in full in cash of the Obligations under the Transaction Documents or the Debtor shall seek confirmation of any such plan of reorganization or entry of any such order;
- (p) after the Confirmation Order shall have been entered by the Bankruptcy Court, Debtor shall fail to satisfy in full all Obligations under the Transaction Documents on or after the effective date of such plan of liquidation or fail to comply in any material respect with the Confirmation Order, or the Confirmation Order shall have been revoked, remanded, vacated, reversed, rescinded, modified or amended in any manner that is materially adverse to the DIP Lender’s interests or inconsistent with the Transaction Documents;
- (q) the Debtor’s financial advisor is no longer serving as the chief restructuring officer of the Debtor and the Debtor fails to retain a

replacement chief restructuring officer satisfactory to the DIP Lender in its sole discretion within 20 days; or

- (r) any other Default or Event of Default that has occurred or is occurring under the Transaction Documents.

14. *Remedies After an Event of Default.* Upon an Event of Default (as defined in the DIP Credit Agreement):

- (a) the automatic stay under Bankruptcy Code section 362 shall be vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies under the DIP Documents;
- (b) at any time thereafter during the continuance of such Event of Default, the DIP Lender may, by notice to the Debtor, take either or both of the following actions, at the same or different times: (i) terminate the DIP Loan, and thereupon the DIP Loan shall terminate immediately, and (ii) declare the DIP Loan then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the DIP Loan so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Debtor accrued hereunder and under the DIP Documents, shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Debtor; and in the case of an Event of Default described in Sections 6.1(b)(i), (iv), (v), (vii), (viii), (ix), (x), (xi) (xii), (xiv), (xv), (xvi), (xix) or (xxi) of the DIP Credit Agreement, the DIP Loan shall automatically terminate and the principal of the DIP Loan then outstanding, together with accrued interest thereon and all fees and the other obligations of the Debtor accrued under the Transaction Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Debtor;
- (c) the DIP Lender will have all other rights and remedies available at law and equity; and
- (d) all proceeds realized from the liquidation or other disposition of collateral or otherwise received after maturity of the DIP Loan, whether by acceleration or otherwise, shall be applied: first, to reimbursement of expenses and indemnities provided for in the DIP Credit Agreement; second, to accrued interest on the DIP Loan; third, to fees; fourth, to any other DIP Obligations; and any excess shall be paid to the Debtor.

Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing on any request by the Debtor or other party in interest to re-impose or continue the automatic stay under Bankruptcy Code section 362(a) or to obtain any other injunctive relief. In no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. The DIP Lender's delay or failure to exercise rights and remedies under the DIP Documents or this Interim Order shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Credit Agreement.

15. *Application of DIP Collateral Proceeds.* To the extent required by this Interim Order and the DIP Documents, the Debtor is hereby authorized and directed to pay the DIP Lender, one hundred percent (100%) of all collections on, and proceeds of, the DIP Collateral, which shall at any time on or after the Conversion Date come into the possession or control of the Debtor, or to which the Debtor shall become entitled at any time, and the automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit the DIP Lender to retain and apply all collections, remittances, and proceeds of the DIP Collateral subject to and in accordance with this Interim Order and the DIP Documents to the DIP Obligations in accordance with the provisions of the DIP Documents (including the Carve-Out).

16. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

17. *Perfection of the DIP Liens.*

(a) The DIP Lender and/or its agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings,

mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action to validate and perfect the DIP Liens granted to them under this Interim Order. Whether or not the DIP Lender shall, in its sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the DIP Liens, such DIP Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Interim Order.

- (b) A certified copy of this Interim Order may, in the discretion of the DIP Lender and/or its agent, as the case may be, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.
- (c) The Debtor shall execute and deliver to the DIP Lender and/or its agent, all such agreements, financing statements, instruments and other documents as the DIP Lender and/or its agent, as the case may be, may reasonably request to evidence, confirm, validate or perfect the DIP Liens.
- (d) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for the Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other DIP Collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code, and any such provision shall have no force and effect with respect to the granting of the DIP Liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the Lender in accordance with the terms of the DIP Documents or this Interim Order.

18. *Preservation of Rights Granted Under the Interim Order.*

- (a) No claim or lien (other than the DIP Liens or the lien granted pursuant to the 9019 Order) having a priority senior to or *pari passu* with those granted by this Interim Order to the DIP Lender shall be granted or allowed while any portion of the DIP Obligations remain outstanding, and the DIP Liens shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under Bankruptcy Code section 551 or subordinated to or made *pari passu* with any other lien or security interest, whether under Bankruptcy Code section 364(d) or otherwise.

- (b) Unless all DIP Obligations shall have been indefeasibly paid in full in cash, in the case of clause (i) below, the Debtor shall not seek, and in the case of clauses (i) and (ii) below, it shall constitute an Event of Default under the DIP Credit Agreement, or if there is entered, (i) any modification of this Interim Order without the prior written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender, or (ii) an order converting or dismissing the Case.
- (c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall, to the extent provided in Bankruptcy Code sections 363(m) and 364(e), not affect (i) the validity, priority or enforceability of any DIP Obligations incurred prior to the effective date of such reversal, stay, modification or vacatur or (ii) the validity, priority or enforceability of the DIP Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of the DIP Obligations incurred by the Debtor to the DIP Lender, prior to the effective date of such reversal, stay, modification or vacatur shall, to the extent provided in Bankruptcy Code sections 363(m) and 364(e), be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits granted in Bankruptcy Code section 364(e), this Interim Order and the DIP Documents.
- (d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender granted by this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code, dismissing the Case, or (ii) the entry of an order confirming a plan of reorganization in the Case and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtor has waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Case, in any successor case(s), or in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the DIP Obligations, the Superpriority Claims, the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender granted by this Interim Order and the DIP Documents shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash or otherwise as provided in this Interim Order.

19. *Limitation on Use of the DIP Loan and the DIP Collateral.* The Debtor shall use the DIP Loan solely as provided in this Interim Order, the DIP Budget and the DIP Documents.

The Debtor may not vary the budget by more than five percent (5%) on a cumulative basis without the prior, written, express approval of the DIP Lender. Notwithstanding anything herein or in any other order of this Court to the contrary, neither the DIP Loan, the DIP Collateral, the Carve-Out nor any cash or cash equivalents may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents, or the liens or claims granted under this Interim Order or the DIP Documents, (b) assert any claims and defenses or any other causes of action against the DIP Lender, Montco, or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Lender hereunder or under the DIP Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Conversion Date unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Documents and the DIP Budget.

20. *Cooperation.* Commencing immediately and continuing through confirmation of the Plan, the Debtor agrees to cooperate with DIP Lender in due diligence, without limitation, as follows:

- (a) Debtor and its professionals will fully cooperate with DIP Lender and its agents and contractors to provide information relevant to its operations and P&A liability;
- (b) Debtor and its professionals will fully cooperate with the Creditors' Committee, the Indenture Trustee and others designated by DIP Lender to evaluate Chapter 5 Causes of Action. In that regard, Debtor will provide requested documents and information, provide information regarding all transfers made in the preference period, provide information regarding transfers to insiders, and respond to such other requests as may be necessary to pursue and evaluate the Chapter 5 Causes of Action;

- (c) Debtor and its professionals will fully cooperate in drafting, filing and providing testimony and evidentiary support for a disclosure statement, the Plan and such other filings as may be necessary to carry out the terms of this Interim Order; and
- (d) Debtor will use commercially reasonable best efforts to negotiate the sale of or withdrawal agreements related to its non-operated interests.

21. *P&A Escrows.* Any escrow account established by any predecessor-in-title, including those established by Merit, W&T, and Maritech (the “P&A Escrows”), shall remain in place as long as allowed under the applicable contracts and escrow agreements. Any security rights and other interests in the escrow accounts remain unimpaired except as otherwise agreed to by such predecessor-in-title. The Debtor’s rights under all predecessor escrow agreements shall be unimpaired.

22. *Insurance.* The DIP Lender is deemed to be the loss payee under the Debtor’s insurance policies and shall act in that capacity and subject to the terms of the DIP Documents, distribute any proceeds recovered or received in respect of any such insurance policies to the payment in full of the DIP Obligations.

23. *Proofs of Claim.* The DIP Lender will be not required to file proofs of claim in the Case or any successor case(s) on account of the DIP Obligations. Any proof of claim filed by the DIP Lender or Montco shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the DIP Lender or Montco.

24. *Order Governs.* In the event of any inconsistency between the provisions of this Interim Order, and the DIP Documents, the provisions of this Interim Order shall govern.

25. *Final Hearing.* The Final Hearing to consider approving the relief sought in the Motion on a final basis shall be held on March 1, 2016 at 1:30 p.m. (CT) before Judge Marvin Isgur, at the United States Bankruptcy Court for the Southern District of Texas, Courtroom 404, 515 Rusk, Houston, TX 77002. The notice given by the Debtor of the Interim Hearing was given

in accordance with Bankruptcy Rules 2002 and 4001(c)(2), and the Local Rules, and was adequate and sufficient. Under the circumstances, no further notice of the request for the relief granted at the Final Hearing is required.

26. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties-in-interest in the Case, including without limitation, the DIP Lender and the Debtor and each of their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor, an examiner with expanded powers appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) and shall inure to the benefit of the DIP Lender, and the Debtor and their respective successors and assigns; provided that, except to the extent expressly set forth in this Interim Order, the DIP Lender shall have no obligation to permit the use of the DIP Loan, or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of the Debtor.

27. *Reservation of Rights of Department of Interior.* Notwithstanding any other provision of this Order or any of its implementing documents including, without limitation, the DIP Credit Agreement and the related summary of proposed terms, nothing in this Order shall limit or affect in any way, the rights of the Department of the Interior with respect to the Debtor's decommissioning obligations, including bonding obligations, associated with its interests in all of its federal oil and gas leases and any rights of use and easement on the outercontinental shelf except as may be expressly agreed to by the Department of the Interior. Nothing in this Order shall limit or affect in any way the Debtor's ability to meet its decommissioning obligations except as may be expressly agreed to by the Department of the

Interior. The issuance of any final order from the Department of the Interior shall not constitute a default under the DIP Loan.

28. *Reservation of Rights of Co-Owners.* Notwithstanding anything contained in this Order or the DIP Credit Agreement, the right of any operator or co-owner of any property in which the Debtor claims an interest to assert a common law or contractual right of recoupment, set-off, or off-set against the Debtor or any property of the Debtor, and the rights of the Debtor, any secured party or the Creditors' Committee to oppose any such assertion or argument, are in each case fully preserved. Further, nothing contained in this Order or the DIP Credit Agreement shall alter or prime any pre-petition, valid, enforceable, perfected, and non-avoidable liens or security interests of Shell Offshore, Inc. or its affiliates or related entities, Fieldwood Energy LLC, Fieldwood Energy Offshore LLC, W&T Offshore Inc., Merit Energy Company, L.L.C., McMoRan Alta Mesa Holdings, LP, Cairn Energy USA, LLC and Marubeni Oil & Gas (USA), Inc (collectively, the "Co-Owners"). Notwithstanding anything contained in this Order or DIP Credit Agreement, the Co-Owners shall have a security interest in the Debtor's post-petition assets in the same collateral with the same validity and priority as the pre-petition security interest held by such respective entities.

29. *P&A Work.* Notwithstanding anything to the contrary contained herein, and excluding the Clear Horizon Work, Montco shall not be authorized or required to perform any work under any approved P&A Plan without having received the prior approval and/or consent of Argonaut Insurance Company or an Order of this Court.

30. *Limitation of Liability.* The DIP Lender and Montco shall not (i) have liability to any third party nor shall the DIP Lender be deemed to be in control of the operations of the Debtor or to be acting as a "controlling person," "responsible person" or "owner or operator"

with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive, Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), or owe any fiduciary duty to the Debtor, its creditors or its bankruptcy estates, and (ii) the DIP Lender's relationship with the Debtor shall not constitute nor be deemed to constitute a joint venture or partnership the Debtor. Furthermore, nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the pre-petition or post-petition activities of the Debtor.

31. *Effectiveness.* This Interim Order shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

Dated:

2/10/16



MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE