

assumed under the Plan, many of which are Joint Operating Agreements.² The Exxon Entities do not oppose assumption of these executory contracts (the Executory Contracts”), but object to the specific terms for assumption under the Plan. First, the effective date of assumption is not clear under the Plan, so the Exxon Entities cannot determine whether and to what extent the Debtors are in default and what cure payments are required. Second, the Plan proposes to release all “Claims” under the assumed contracts, as such term is broadly used in section 101(5) of the Bankruptcy Code. This result goes well beyond the intent of section 365, which allows assumption if, among other things, monetary defaults are cured, but which does not purport to insulate the Debtors from continuing obligations under the assumed contracts. It is also unclear under the Plan whether setoff and recoupment rights will be preserved with respect to the assumed contracts.

Factual Background

2. The Exxon Entities are involved in many mineral properties with the Debtors. In many of these properties, one of the Debtors owns a working interest in the property and one of the Exxon Entities acts as the operator of the mineral property. In such cases, operations are generally conducted pursuant to a Joint Operating Agreement (JOA) which defines the parties’ rights in relation to the operation of the applicable property. Pursuant to the terms of the JOAs, the owners of working interests, including the Debtors, are obligated to reimburse the operator for expenses incurred in the development or operation of the mineral properties. Generally, the JOAs also grant an operators’ lien against the interests of the other parties in the mineral properties which are subject to the JOA to secure the performance of the non-operator parties.

3. In addition, the Exxon Entity, as the operator, enjoys rights of offset and recoupment, both pursuant to contractual terms of the JOAs and other contracts and under applicable common

² The Exxon Entities have filed proofs of claim in the Debtors’ bankruptcy cases, including for claims based on executory contracts to be assumed under the Plan. See, e.g. Case No. 15-11937 (POC No. 726); Case No. 15-11941 (POC No. 727); Case No. 15-11942 (POC No. 728); Case No. 15-11935 (POC No. 729).

law. This allows the operator to offset reciprocal obligations and to net obligations under the applicable contract or as among common transactions. This right of offset and recoupment constitutes an important component of the operator's claim.

4. Similarly, there may be other mineral properties on which one of the Debtors acts as operator of the mineral properties and one of the Exxon Entities owns working interests. In these instances, as a working interest owner, the Exxon Entity also enjoys rights of offset and recoupment, both pursuant to the terms of the applicable contract and pursuant to applicable law.

5. On January 25, 2017, Samson Resources Corporation and its affiliated debtors (the "Debtors") filed their *Plan Supplement* [Docket No. 1927] (the "Plan Supplement") with respect to the Plan. In the Plan Supplement, the Debtors include approximately 220 entries involving one of the Exxon Entities in Exhibit B-1 to the Plan Supplement which is a list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan. In addition, an Exxon Entity is included as a counterparty to an Operating Agreement to be assumed and assigned pursuant to the Supplemental Central Anadarko Sale. For the avoidance of doubt, the Exxon Entities additionally object to the cure claim proposed for the Exxon Entity's agreement with respect to such Supplemental Sale.

6. The Plan provides, "On the Final Effective Date" of the Plan, the executory contracts will be deemed assumed. However, the Plan does not specify what date will serve as the effective date of assumption for purposes of determining the cure amount. This is problematic in that the Debtors' monetary obligations under virtually all of the Executory Contracts are paid in arrears.

7. The Plan further provides:

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease.

Plan, Article V. C. By this provision, the Debtors apparently intend to discharge all pre-assumption

bankruptcy “Claims”, whether or not such obligations are actually in default.

Objection to Plan and Cure Amounts

A. The Plan provides inadequate means for evaluating cure amounts.

8. The Plan Supplement includes approximately 220 references to one of the Exxon Entities and provides that all contracts to be assumed have Cure Amounts of \$0.00. This includes at least one Executory Contract with an Exxon Entity that is subject to assignment to Fairway Resources III, LLC. The Exxon Entities cannot reasonably evaluate the large number of accounts they have with the Debtors in relation to the exceedingly short twelve (12) day period between the filing of the Plan Supplement (January 25, 2017) and deadline to object to cure amounts (February 6, 2017). Moreover, the Plan does not specify the effective date of assumption for determining cure claims. The Plan states that certain executory contracts will be assumed upon the Final Effective Date of the Plan but does not make clear whether that date or another date will serve as the “as of” date of assumption for determining the cure amount.

9. The relevant date of assumption is crucial to determining whether a monetary default exists (or will exist) under the contracts to be assumed. Joint interest billings under JOAs, for example, are sometimes paid several months following the production month. If the Debtors propose to use the bankruptcy Petition Date as the date of assumption, the Exxon Entities should be able to determine fairly efficiently whether the Debtors are currently in default under such contracts. However, if the Debtors propose to use a more recent date, the Exxon Entities will require several months following such date for the billing processes to run their course and to determine whether any accounts have or will later become past-due. Further, if the relevant date of assumption is intended to be the Final Effective Date of the Plan, the Exxon Entities have no means at this time to determine whether any of their contracts will be in default on such future date. Consequently, in its current form, the Plan does not provide adequate means for establishing and paying the Cure Amounts required to assume the Exxon Entities’ executory contracts.

B. The Plan improperly proposes to disallow continuing obligations under assumed executory contracts.

10. As noted above, the Plan proposes to effect the release and satisfaction of all “Claims” held by the Exxon Entities under the assumed executory contracts, as such term is broadly defined in section 101(5) of the Bankruptcy Code. Plan, Article I. A (20) and Article V. C. The Exxon Entities object to the Plan to the extent that it seeks to limit or discharge the Debtors’ continuing obligations under the Executory Contracts as assumed.

11. Section 365(b)(1) requires only that “defaults” be cured as a condition to assumption. It does not purport to strip the assumed contract of all rights and claims held by counterparties. The Debtors cannot void liability on such obligations merely by asserting that no cure amounts are presently owed. *See, e.g., In re MF Global Holdings Ltd.*, 466 B.R. 239 (Bankr. S.D.N.Y. 2012)(“The trustee must either assume the entire contract, *cum onere*, or reject the entire contract, shedding obligations as well as benefits.”); 3 COLLIER ON BANKRUPTCY §365.03.

12. The Debtors have continuing obligations under the executory contracts even though the Debtors may not currently be in “default” with respect to those obligations. For instance, the Debtors are obligated on a continuing basis to pay their respective share of joint interest billing (JIBs) to the Exxon Entities as they accrue and are billed. Such amounts may not yet be due or currently payable, or even known, and thus may not be in “default”, but the receivable is still a valid bankruptcy “Claim” held by the Exxon Entities. As currently proposed, the Plan will improperly disallow and expunge all such continuing obligations.

13. In addition, the various executory contracts may require some future action by the Debtors, such as to repair surface damage or to indemnify the counterparties. While such action may not yet be required under an executory contract, and thus not be “in default”, it will remain an obligation of the Debtors under the assumed contract and a contingent and/or unliquidated bankruptcy “Claim” held by the Exxon Entities. Moreover, the Plan does not clearly indicate

whether the Exxon Entities' offset and recoupment rights under the assumed Executory Contracts will be properly preserved.

14. Consequently, the Debtors' attempt to effect the released satisfaction of all Claims through the assumption of the Executory Contracts is improper and beyond the scope of the relief available pursuant to section 365.

PRAYER FOR RELIEF

ACCORDINGLY, the Exxon Entities respectfully request that the Court deny the Plan in its current form or else condition confirmation on the inclusion of language in the confirmation order acceptable to the Exxon Entities, and grant any such other and further relief to which they may be entitled.

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Respectfully submitted,

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