

agreement is for settlement purposes only and does not constitute an admission by Respondents

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement or the Decision and Order issued in this matter;
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall ensure that the Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business and related Divestiture Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).
- B. Not sell, transfer, encumber, or otherwise impair the Divestiture Business and related Divestiture Assets (other than in the manner prescribed in this Order and the Order to Maintain Assets) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operation2 (i)-2 (or(s)-1 (,)TJ0 Tw 5.7 0 Td(a)4 (nd)TJ-n

III. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Divestiture Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) assist the Acquirer in operating the Divestiture Business in a manner that is equivalent in all material respects to the manner in which it was operated prior to the Acquisition.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and
 - 3. For a time period sufficient to meet the requirements of this Section, which shall be, at the option of the Acquirer, for up to 180 days after the applicable Divestiture Date;

IV. Employees

to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:

1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.
- D. Respondents shall not enforce any noncompete or non-solicit provision or agreement against any individual who seeks or obtains a position with the Divestiture Business.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Divestiture Business or Divestiture Assets; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:

2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VII or Section VIII of the Decision and Order (“Monitor Sections”), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents’ compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor’s option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor’s duties and require that each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents’ compliance with the Orders on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and

Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of the Orders.
- If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VIII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by the Decision and Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

Provided, however, the Commission may extend the divestiture period only 2 times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section VIII in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is

submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VIII.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by the Decision and Order.

IX. Prior Approval

IT IS FURTHER ORDERED that Respondents EnCap, EnCap Fund XI, Verdun, and XCL shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, joint ventures, affiliated or controlled funds, or otherwise:

- A. Any ownership, leasehold, stock, share capital, equity, or other interest in any Relevant Area Producer that has produced or sold, on average over the six months prior to the acquisition, more than 2,000 barrels per day of waxy crude in the Relevant Area; or
- B. Any ownership or leasehold interest in lands located in the Relevant Area (including through swap or trade transaction) where the transaction (or sum of transactions with the same counterparty during any 180-day period, inclusive of transactions involving that counterparty's parents, subsidiaries, partnerships, joint ventures or affiliates) results in an increase (or net increase, in the case of an acreage swap) in Respondent's land interests in the Relevant Area of more than 1,280 acres.

Provided, however, that Respondents are not required to obtain prior approval to enter into surface use or right of way agreements or to increase their ownership or leasehold interests in drilling spacing units already operated by Respondents.

X. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondent EnCap shall:

1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and
2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

B. Respondent EnCap shall file verified written reports (“Compliance Reports”) in accordance with the following:

1. Compliance Reports shall be submitted 30 days after this Order to Maintain Assets is issued and every 30 days thereafter until the Commission issues a Decision and Order in this matter, and additional Compliance Reports as the Commission or its staff may request;
2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures

XI. Change in Respondents

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, or XCL Resources Holdings, LLC;
- B. The proposed acquisition, merger, or consolidation of EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, or XCL Resources Holdings, LLC; or
- C. Any other changes in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Orders.

XII. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with the Orders, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XV. Purpose

XVI. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws