NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3084

In re Nuverra Environmental Solutions, Inc.,
a/k/a Heckmann Corporation
a/k/a Rough Rider Escrow, Inc., et al.,

Debtor

David Hargreaves,

Appellant.

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1:17-cv-01024)
District Judge: Hon. Richard G. Andrews

Argued
November 17, 2020

Before: JORDAN, KRAUSE, and RESTREPO,
Circuit Judges

(Filed: January 6, 2021)

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OPINION*

JORDAN, Circuit Judge.

David Hargreaves objected to the reorganization plan for Nuverra Environmental Solutions, Inc. and its affiliated reorganized debtors (collectively, the "Reorganized Debtors" or, prior to the effective date of their plan of reorganization, the "Debtors"), arguing that there was unfair discrimination between classes of creditors, but the District Court rejected his arguments when he appealed to that Court. He now appeals to us. We conclude that the District Court

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* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

correctly determined that Hargreaves's appeal is equitably moot. The relief he seeks, a personal payout, is disallowed by the Bankruptcy Code, and any other form of relief would require unwinding the confirmed plan.

I. BACKGROUND

This dispute arises out of the Debtors' reorganization plan (the "Plan") under Chapter 11 of the Bankruptcy Code. They petitioned for Chapter 11 relief on May 1, 2017 and proposed a prepackaged plan of reorganization. Following amendments, the Plan was filed on June 23, 2017. Certain secured creditors supported the Plan (the "Supporting Creditors"), holding 86% of the $356 million secured 2021 notes (the "2021 Secured Notes"), an $80 million term loan facility, and a $12.5 million post-petition debtor-in-possession ("DIP") credit facility. The Debtors' enterprise value at confirmation was approximately $302.5 million, while the total secured indebtedness was approximately $500 million. As ultimately negotiated, the Plan involved holders of the 2021 Secured Notes receiving equity, recovering up to approximately 54.5% on their secured claims, and losing $190 million in deficiency claims related to their notes. It also converted the Supporting Creditors' prepetition term loans and DIP credit facility into discounted equity.

On a more detailed level, the Plan consisted of three parts, with classes A1-12 associated with a joint plan for a subset of the Debtors, the "Nuverra Group

Debtors," and classes B1-10 and C1-10 associated with individualized plans for two debtors, Appalachian Water Services, LLC and Badlands Power Fuels, LLC (DE).[1] Hargreaves is a member of Class A6, which includes holders of unsecured 2018 Notes issued by Nuverra Group Debtors in the amount of $40,436,000. Hargreaves holds $450,000 of such notes. The Plan provided A6 creditors with securities and cash equal to six percent of the face value of their notes. Nearly 80% of voting Class A6 noteholders voted in favor of confirmation, but, by value of ownership stakes, 61% of Class A6 voted against confirmation.

In contrast to the treatment of Class A6, Class A7, which includes "certain trade and other creditors, whose debts arise out of the debtor's day to day operations, [] receive[d] payment in full." (JA0085.) The parties characterize this payment to Class A7 as a "gift" to be paid by secured creditors. It is considered a gift because, as the Bankruptcy Court explained, the unsecured creditors "sit behind over $500 million dollars of secured debt in the company that has an uncontroverted value of approximately $300 million dollars[,]" but, "[a]s part of the negotiated plan, certain trade and other creditors . . . receiv[e] value that would, otherwise, inure to the benefit of the secured creditors who will own the debtors' post emergence." (JA0085.) The Bankruptcy Court approved of this "payment in full" because "the debtors clearly explain

[1] The "Nuverra Group Debtors" consist of 12 entities, which include all Debtors except Appalachian Water Services, LLC and Badlands Power Fuels, LLC (DE).

that separate classification is necessary to maintain ongoing business relationships that the debtors need to ensure the continuance of operations." (JA0087.)

Hargreaves filed an objection to the Plan on the grounds that "it engages in improper classification of claims and unfair discrimination among claims of equal rank" (JA1345), and he asked that the Plan not be confirmed. The Bankruptcy Court held a hearing to consider confirmation, at which point there was discussion of Class A7 receiving payment in full. The Bankruptcy Court confirmed the Plan over Hargreaves's objection, holding that, "despite the disparate treatment between [C]lass A6 and other unsecured creditors, there is no unfair discrimination here where the gift by secured creditors to other unsecured creditors constitutes no unfair discrimination as [C]lass A6 is indisputably out of the money and not, otherwise, entitled to any distribution under the Bankruptcy Code's priority scheme and provided further that the proposed classification and treatment of other unsecured creditors fosters a reorganization of these debtors." (JA0089-90.) The Bankruptcy Court further explained that the classification of the A7 claims was reasonable because those claims "aris[e] out of day-to-day operations of the companies." (JA0087.)

Several important things then happened in rapid succession: On July 25, 2017, the same day the Bankruptcy Court confirmed the Plan, Hargreaves filed his notice of appeal to the District Court; one day later, on July 26, 2017, Hargreaves filed an emergency

motion for a stay of the Confirmation Order; on August 3, 2017, the District Court denied the stay request; and on August 7, 2017, the Debtors implemented the Plan. Some two months later, on October 16, 2017, the Reorganized Debtors filed a motion to dismiss Hargreaves's appeal for equitable mootness, arguing that the Plan was substantially consummated and could not practically be unwound. The District Court heard oral argument on May 14, 2018 and, ruling the appeal equitably moot, dismissed it on August 21, 2018.

Hargreaves had conceded before the District Court, as he does before us, that the Plan has been substantially consummated, as that concept is defined in 11 U.S.C. § 1101(2).[2] That meant the Plan could not be practically unwound, or, in other words, "the prudential factors weigh in favor of dismissal."[3] (JA0022 (citing *In re One2One Commc'ns, LLC*, 805 F.3d 428, 436 (3d Cir. 2015)).) Given that the Plan could

[2] "'[S]ubstantial consummation' means – (A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan." 11 U.S.C. § 1101(2).

[3] "[P]rudential considerations [ ] address concerns unique to bankruptcy proceedings. These concerns relate to the adverse effects of the unraveling of a confirmed plan that could result from allowing the appeal to proceed. The equitable mootness doctrine recognizes that if a successful appeal would be fatal to a plan, prudence may require the appeal be dismissed because granting relief to the appellant would lead to a perverse outcome." *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 168 (3d Cir. 2012) (internal citations and quotation marks omitted).

not be unwound, the District Court turned to a consideration of whether Hargreaves's only proposed relief – full individual recovery – could be granted while leaving the plan in place. The Court decided that relief could not be granted because it "would result in disparate treatment of [his] claim as compared with all other bondholder claims in Class A6 – precisely the issue that predicates the appeal[.]" (JA0021-22.) It rejected the argument that Hargreaves repeats to us, that there is no disparate treatment because his fellow A6 creditors "ha[d] an equal opportunity to recover on their claims" (JA0022 (quoting D.I. 36 at 15, n.5)), if they had chosen to "object to the Plan and appeal the Confirmation Order" (Opening Br. at 52) as he did.

Hargreaves has timely appealed to us.

II. DISCUSSION[4]

Hargreaves contends that the Plan unfairly discriminates against the class of creditors into which he falls and that his requested relief does not render the appeal equitably moot. He believes that he should receive an individual $450,000 payout, equal to a 100% recovery on his Class A6 claim, to remedy the allegedly unfair discrimination of the Plan against the entirety

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[4] We have jurisdiction over this appeal under 28 U.S.C. §§ 158(d) and 1291. We exercise plenary review of the District Court's conclusions of law, including its interpretation of the Bankruptcy Code. *See In re Goody's Family Clothing Inc.*, 610 F.3d 812, 816 (3d Cir. 2010). "We review the Court's equitable mootness determination for abuse of discretion." *In re Tribune Media Co.*, 799 F.3d 272, 278 (3d Cir. 2015) ("*Tribune I*").

of Class A6. The Reorganized Debtors respond that such relief would be contrary to the Code, and that any relief Hargreaves could seek is practically impossible, leaving his appeal equitably moot. The Reorganized Debtors have it right. The District Court appropriately, and within its discretion, rejected Hargreaves's arguments.[5]

We have described equitable mootness as "a narrow doctrine[, distinct from constitutional mootness,] by which an appellate court deems it prudent for practical reasons to forbear deciding an appeal when to grant the relief requested will undermine the finality and reliability of consummated plans of reorganization." *In re Tribune Media Co.*, 799 F.3d 272, 277 (3d Cir. 2015) ("*Tribune I*"). There is a "strong presumption that appeals from confirmation orders of reorganization plans . . . need to be decided[,]" *id.* at 278, and "a court may fashion whatever relief is practicable instead of declining review simply because full relief is not available" *In re Blast Energy Servs., Inc.*, 593 F.3d 418, 425 (5th Cir. 2010). We have described the analytical steps under the doctrine as asking: "(1) whether a confirmed plan has been substantially consummated; and (2) if so, whether

[5] The District Court also rejected Hargreaves's appeal as equitably moot because, as a practical matter, "it is unclear which party the Court may order to fund such a recovery[,]" as the payment to A7 was a gift from the secured creditors. (JA0059.) Hargreaves claims that the original gifted distributions were funded by the collective, so his relief could come from the Reorganized Debtor. We do not reach that issue because an individualized payout is not permitted in any event.

granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *Tribune I*, 799 F.3d at 278 (citing *In re SemCrude, L.P.*, 728 F.3d 314, 321 (3d Cir. 2013)). The third-party analysis is particularly focused on equity investors, but can also include, to a lesser extent, lenders, customers, suppliers, and other creditors. *See SemCrude*, 728 F.3d at 325; *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 171 (3d Cir. 2012); *In re Cont'l Airlines*, 91 F.3d 553, 562 (3d Cir. 1996). "The theme is that the third parties with interests protected by equitable mootness generally rely on the emergence of a reorganized entity from court supervision." *Tribune I*, 799 F.3d at 280.

Here, the contending parties frankly state, and we agree, that the Plan has been substantially consummated under part one of the equitable mootness test. There also appears to be agreement under part two that the only relief that might not fatally scramble the Plan would be an individual payout of a relatively small sum, like the $450,000 that Hargreaves seeks. The question thus becomes whether such relief is permitted by the Bankruptcy Code, and the short answer is it is not.

As the Reorganized Debtors rightly note, awarding such relief would violate the Code's restriction on preferring certain individuals over others in the same class. Under 11 U.S.C. § 1123(a)(4), a reorganization plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a

particular claim or interest agrees to a less favorable treatment[.]" Awarding the relief Hargreaves wants would also contravene the purpose of the unfair discrimination provision, 11 U.S.C. § 1129(b)(1), which "applies only to classes of creditors[,]not the individual creditors that comprise them[.]" *In re Tribune Co.*, 972 F.3d 228, 242 (3d Cir. 2020) ("*Tribune II*"); *see also In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) ("[E]quality of distribution among creditors is a central policy of the Bankruptcy Code that is furthered by several different Code provisions." (internal quotation marks and citations omitted)).

Hargreaves's first response to the problems with his proposed relief is to dwell on an irrelevancy. He emphasizes how small the sum he wants is, relative to the Reorganized Debtors' value, saying that "[f]ull payment of his claim would represent approximately 0.45% of the Debtors' estimated $173 million enterprise value." (Opening Br. at 49-50.) And he relies on cases in which we have held that awarding of a small percentage of a company's value would not fatally scramble a plan. *See In re SemCrude, L.P.*, 728 F.3d at 324; *In re Phila. Newspapers, LLC*, 690 F.3d at 170-71; *In re Cont'l Airlines*, 203 F.3d 203, 210 (3d Cir. 2000). Along the same lines, he argues that no third party would be injured because he is asking for so little. But his arguments miss the mark: they do not address the problem of one creditor receiving more than the other creditors in the same class. The size of his request is simply beside the point; it ignores that

such an individual payout to one member of a class is not permitted by the Code.

Hargreaves tries to get around that problem by saying his receiving more than other A6 creditors would not violate the principle that like creditors must be treated alike because the other A6 creditors "had an equal opportunity to object to the Plan and appeal the Confirmation Order" but chose not to.[6] (Opening Br. at 52 (citing *In re Dana Corp.*, 412 B.R. 53, 62 (S.D.N.Y. 2008); *In re W.R. Grace & Co.*, 729 F.3d at 327 (citing *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992), *modified on reh'g*, 993 F.2d 7 (2d Cir. 1993))).) That "equal opportunity" argument is unavailing, since § 1129(b)(1) (restricting unfair discrimination against classes of creditors) and § 1123(a)(4) (requiring equal treatment within classes of creditors) of the Code effectively prohibit payouts to a creditor who seeks an individual benefit in derogation of the treatment accorded other class members. We recently

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[6] He relies on *In re SemCrude, L.P.*, where we allowed the appellant objectors to pursue relief on appeal while others who had not initially objected could not pursue the same relief. *See* 728 F.3d at 324. Our *SemCrude* decision, however, has no bearing on this case because *SemCrude* involved claims of certain "statutory lien rights" in property, which claims, if successful, might have resulted in the applicants being effectively assigned to a different class. *Id.* at 318. They could not, however, become entitled to a higher return than other creditors in the same class. Such a result would not comply with Section 1123 of the Code. *See In re W.R. Grace & Co.*, 729 F.3d at 327 (describing Section 1123 equal opportunity as not requiring "precise equality," and providing the example of asbestos health claimants being "paid whatever amounts the jury awarded, until funds were no longer available" (citations omitted)).

noted this very principle when we said "that unfair discrimination applies only to classes of creditors (*not the individual creditors that comprise them*), and then only to classes that dissent. Thus, a disapproving creditor within a class that approves a plan cannot claim unfair discrimination, and the standard does not 'apply directly with respect to other classes unless they too have dissented.'" *Tribune II*, 972 F.3d at 242 (emphasis added) (citation omitted); *see also In re Genesis Health Ventures, Inc.*, 280 B.R. 339, 346 (D. Del. 2002). That statement makes clear that the sole relief an objecting party can pursue when alleging unfair discrimination is relief for the class of creditors unfairly discriminated against, consistent with 11 U.S.C. § 1123(a)(4).

To be clear, Hargreaves's class did not vote to accept the Plan (and thus it may be deemed to have dissented, though it fell just short of the required votes for approval), so Hargreaves was free to object to the Plan on unfair discrimination grounds. What he could not properly do is propose that the appropriate remedy is to pay only him and no one else in his class. He never asked for individualized relief before the Bankruptcy Court. Nor could he have at the confirmation hearing, because § 1123(a)(4) bars individualized treatment. If we agreed with Hargreaves, we would effectively be encouraging litigants to take one

position in bankruptcy court and an inconsistent position later on appeal.[7]

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[7] In his Reply, Hargreaves appears to suggest that the Bankruptcy Code's restrictions, including Section 1123(a)(4), only govern the confirmation process, not our fashioning of relief after the fact. [Reply Br. at 4-6.] That argument is unsupported and unpersuasive. Our concurring-in-the-judgment colleague contends that we are "assum[ing] that Hargreaves's request for individualized relief conflicts with the Bankruptcy Code, leaving the only relief available class-wide relief that may, indeed, scramble the plan." (Concur. op. at 2.) But we are not assuming anything; we are recognizing a fundamental problem with the position that Hargreaves has advanced. Our job is to decide cases and controversies in which we can offer a measure of lawful relief. *See In re Pub. Serv. Co. of New Hampshire*, 963 F.2d 469, 471 (1st Cir. 1992) ("Mootness in bankruptcy appellate proceedings, as elsewhere, is premised on jurisdictional and equitable considerations stemming from the impracticability of fashioning fair and effective judicial relief. Jurisdictional concerns may arise from the constitutional limitations imposed on the exercise of Article III judicial power in circumstances where no effective remedy can be provided[.]" (internal citations omitted)); *see also Bank Rhode Island v. Pawtuxet Valley Prescription & Surgical Ctr., Inc.*, 386 B.R. 1, 2 (D.R.I. 2008) (noting the "narrow exception for claims that are 'capable of repetition [by the parties in-suit] yet evading review.'" (quoting *Horizon Bank & Trust Co. v. Massachusetts*, 391 F.3d 48, 54 (1st Cir. 2004))). Here we cannot offer any such relief, and that concludes the matter.

Our colleague's further concern that we are "making our authority to address bankruptcy questions contingent on whether a lower court issues a stay" is likewise one that we do not share. (Concur. op. at 3 n.1.) Rulings of the bankruptcy court are subject to immediate review in district court. *See* Fed. R. Bankr. P. 8007 (authorizing stay requests to the district court assuming such relief was first requested of the bankruptcy court or a request to the bankruptcy court would be impractical); *In re Nuverra Envtl. Sols., Inc.*, No. 17-10949, 2017 WL 3326453, at *4 (D. Del. Aug. 3, 2017) (denying Hargreaves's motion for a stay of the confirmation

III. CONCLUSION

As the only way to give Hargreaves the money he wants is to give all A6 creditors a 100% refund on their $40.4 million in unsecured 2018 notes, which would fatally scramble the Plan and significantly harm third parties, his claim must fail.[8] His appeal is equitably moot, and the District Court properly exercised its discretion to deny it on that basis.

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order pending appeal). And while we have not spoken directly to the issue, if a district court's decision on a stay motion would have the practical effect of ending a case, our precedents indicate that an immediate appeal could be brought to us. *See*, *e.g.*, *In re Revel AC, Inc.*, 802 F.3d 558, 567 (3d Cir. 2015) ("finality must be viewed more pragmatically in bankruptcy appeals under § 158(d) than in other contexts" (quoting *In re Trans World Airlines, Inc.*, 18 F.3d 208, 215 (3d Cir. 1994))); *United States v. Nicolet, Inc.*, 857 F.2d 202, 205 (3d Cir. 1988) ("We have found a pragmatic and less technical approach to finality to be more appropriate in bankruptcy proceedings[.]"); *In re Comer*, 716 F.2d 168, 171 (3d Cir. 1983) (holding a district court's lifting of a stay was a final decision because "effective review of the order lifting the stay cannot await final disposition of the case in the bankruptcy court"). That route to review is a fair and appropriate one, given the manifold interests in play in complex bankruptcy cases like this.

[8] Hargreaves estimates that the Reorganized Debtors' enterprise value is $173 million. This means that Class A6's $40.4 million in 2018 Notes would withdraw 23.3% of the Reorganized Debtors' value.

KRAUSE, Circuit Judge, concurring.

I have previously warned that our equitable mootness doctrine is "legally ungrounded and practically unadministrable," and I have urged my colleagues to "reconsider whether it should exist at all." *In re One2One Commc'ns, LLC*, 805 F.3d 428, 438 (3d Cir. 2015) (Krause, J., concurring). Although I continue to question the doctrine's wisdom, I write today not to reiterate my longstanding concerns, but to call attention to the consequences of our ill-advised expansion of the doctrine, as exemplified in this case. Even in decisions embracing equitable mootness, we have been careful to describe it as a "narrow" doctrine that is more akin to "a scalpel . . . than an axe." *In re Tribune Media Co.*, 799 F.3d 272, 277-78 (3d Cir. 2015). But in practice, as today, it is wielded with anything but surgical precision.

What undergirds our equitable mootness jurisprudence is the premise that granting post-confirmation relief sometimes threatens to "fatally scramble [a reorganization] plan" or "significantly harm the interests of third parties who have justifiably relied on plan confirmation." *Id.* at 278. In this case, however, Hargreaves requests a form of relief – individualized payment – that implicates neither of those concerns. In other words, if the District Court were to award Hargreaves the compensation he seeks, that would not endanger the reorganized debtors' solvency or unwind other aspects of the Plan. That should end our equitable mootness inquiry and require us, in the normal course, to analyze the merits of Hargreaves's claims.

Too often, however, we and other courts have allowed the doctrine itself to short-circuit the merits analysis, and this case is illustrative. In declaring this case moot, the Majority assumes that Hargreaves's request for individualized relief conflicts with the Bankruptcy Code, leaving the only relief available class-wide relief that may, indeed, scramble the plan. *See* 11 U.S.C. § 1123(a)(4). Central to that assumption, however, is the first of many merits questions that we gloss over in the name of "equitable mootness." After all, the availability of individualized relief for unfair discrimination is not a mootness issue; it's a merits determination that depends on our construction of the Code. And it's not at all clear that the Code precludes individualized relief in this situation.

The Majority is correct that the Code mandates "the same treatment for each claim or interest of a particular class," *id.*, but it imposes that requirement only when "the holder of a particular claim or interest" will not "agree[] to a less favorable treatment," *id.* And by declining to object to the Plan, the rest of Hargreaves's class arguably did "agree[]" to receive less than him. *Id*; *cf. Agree*, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/agree ("[T]o consent to."). Hargreaves also has a colorable argument that, by failing to appeal, the rest of the class waived the unfair discrimination claim, while he preserved it. So rather than leapfrogging these issues, I would exercise our jurisdiction and afford them the careful consideration they deserve. *See Tribune*, 799 F.3d at 278 (instructing courts to "fashion whatever relief is

practicable instead of declining review simply because full relief is not available").

By instead vaulting ahead and assuming the answer to the question of individualized relief, the Majority precludes the development of bankruptcy law not only as to the remedies available under § 1123(a)(4), but also as to other merits questions we would then need to reach. For example, Hargreaves's appeal implicates a series of open issues around the nature of unfair discrimination under § 1129(b)(1): Does the Supreme Court's decision in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017), foreclose preferential treatment of a sub-class through horizontal gifting? Is the unfair discrimination test focused on a plan's results or the process that produced those results? And what are the limits on a plan's ability to divide creditors into classes? If unfair discrimination claims – like the one at issue here – must be brought as a class, and if awarding class-wide relief generally requires us to scramble a plan, the invocation of equitable mootness may prevent us from ever weighing in on these questions.[1]

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[1] To be clear, these questions might reach us if a bankruptcy court stays implementation of a plan pending appeal. But, as I have previously explained, making our authority to address bankruptcy questions contingent on whether a lower court issues a stay raises serious constitutional and practical concerns. *See One2One Commc'ns*, 805 F.3d at 445 (cataloging the dangers of allowing lower courts to "insulate their decisions from review"). And, although today's opinion states that a bankruptcy court's decision declining a stay is appealable to a district court, and then "subject to immediate appeal to us," our authority to review stay

With yet another case, this problematic doctrine has lured us into abdicating our jurisdiction when we should be exercising it, and "stunt[ing] the development" of our bankruptcy jurisprudence when it's our duty to promote it. *One2One Commc'ns*, 805 F.3d at 447. Because I would confine equitable mootness to the narrow role envisioned by our precedents, reach the merits questioned outlined above, and ultimately resolve this appeal in favor of the reorganized debtors, I respectfully dissent.

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denials is more tenuous than the Majority admits. *See* Maj. Op. at 12 n.7 (citing *In re Revel AC, Inc.*, 802 F.3d 558, 566 (3d Cir. 2015)). Indeed, far from confirming that "we have jurisdiction to review a stay denial where the underlying appeal could become equitably moot," the case relied on by the Majority expressly left that question "for another day." *In re Revel AC*, 802 F.3d at 567.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3084

In re: Nuverra Environmental Solutions, Inc.,
a/k/a Heckmann Corporation
a/k/a Rough Rider Escrow, Inc., et al.,

Debtor

David Hargreaves,

Appellant

(D. Del. No. 1-17-cv-01024)

Present: JORDAN, KRAUSE, and RESTREPO, Circuit Judges

ORDER

(Filed Feb. 2, 2021)

The opinion issued on January 6, 2021 is hereby amended as follows. On page 3 of the concurring opinion, the final sentence is amended to read: "Because I would confine equitable mootness to the narrow role envisioned by our precedents, reach the merits questions outlined above, and ultimately resolve this appeal in favor of the reorganized debtors, I concur only in the judgment."

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: February 2, 2021
SLC/cc: Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	: Chapter 11
NUVERRA ENVIRONMENTAL SOLUTIONS, INC., *et al.*,	: Case No. 17-10949-KJC : (Jointly Administered)
Debtors.	:
DAVID HARGREAVES,	: Civ. No. 17-1024-RGA
Appellant,	:
v.	:
NUVERRA ENVIRONMENTAL SOLUTIONS, INC., e*t al.*,	:
Appellees.	:

MEMORANDUM

Steven K. Kortanek, Esq., Drinker Biddle & Reath LLP, Wilmington, DE; James H. Millar, Esq. (argued), Clay J. Pierce, Esq., and Stacy A. Lutkus, Esq., Drinker Biddle & Reath LLP, New York, NY, attorneys for Appellant David Hargreaves.

Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., and Jaime Luton Chapman, Esq., Young Conaway Stargatt & Taylor, LLP, Wilmington, DE; Frederic Sosnick, Esq. (argued), and Sara Coelho, Esq., Shearman & Sterling LLP, New York, NY, attorneys for Appellees, Reorganized Debtors.

August 21, 2018

/s/ Richard G. Andrews
ANDREWS, UNITED STATES DISTRICT JUDGE:

Presently before the Court is the appeal (D.I. 1) of David Hargreaves with respect to the Bankruptcy Court's Order Confirming the Amended Prepackaged Plans of Reorganization of Nuverra Environmental Solutions, Inc. and its Affiliated Debtors, dated July 25, 2017 (B.D.I. 366)[1] ("Confirmation Order"). The merits of the appeal are fully briefed. Also before the Court is the Reorganized Debtors' motion to dismiss the appeal (D.I. 31) ("Motion to Dismiss") on the basis of equitable mootness. For the reasons set forth below, the appeal meets the criteria for equitable mootness, and the Court rules in the alternative that the Confirmation Order is affirmed.

I. BACKGROUND

The appeal arises from Debtors' plan of reorganization, pursuant to which secured creditors, who would not receive 100% recovery on their secured claims, made a gift to general unsecured creditors, who would otherwise receive no distribution under the Bankruptcy Code's priority scheme, in order to enable the

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[1] The docket of the Chapter 11 cases, captioned *In re Nuverra Environmental Solutions, Inc.*, No. 17-10949 (KJC) (Bankr. D. Del.), is cited herein as "B.D.I. ___." The transcript of the confirmation hearing, at B.D.I. 362, is cited herein as "7/21/17 Hr'g Tr. at ___," and the transcript of the Bankruptcy Court's oral decision, at B.D.I. 363, is cited herein as "7/24/17 Hr'g Tr. at ___." The *Appendix of Appellant David Hargreaves* (D.I. 33-35) is cited herein as "A ___."

Debtors to reorganize. Even though unsecured creditors would receive no distribution absent the gift, Appellant has appealed the Confirmation Order based on the fact that the plan placed general unsecured claims of the same priority into separate classes and provided disparate treatment.

The relevant facts are uncontested. In the months leading up to the bankruptcy filing, Debtors struggled with liquidity and negotiated with certain creditors toward a prepackaged plan of reorganization. On April 28, 2017, Debtors commenced a prepetition solicitation of votes on the negotiated plan. (*See* B.D.I. 14). On May 1, 2017, Debtors commenced their chapter 11 cases ("Petition Date"), at which time Debtors had approximately $500 million in secured debt and an uncontroverted value of approximately $302.5 million. (*See* B.D.I. 14 at Art. VIII). On the Petition Date, Debtors filed an initial plan of reorganization, which was amended on June 21, 2017 (B.D.I. 366) ("Plan").

According to Reorganized Debtors, to ensure that the Debtors' businesses remain viable and positioned for growth, the Plan eliminated approximately $500 million of funded debt through the conversion to equity of certain 12.5%/10% senior secured second lien notes due 2021 (the "2021 Notes"), the Debtors' 9.875% unsecured senior notes due 2018 ("2018 Notes"), a term loan facility provided for under the term loan agreement dated April 15, 2016 (the "Term Loan Facility"), and a $12.5 million senior secured, super-priority debtor in possession term credit facility (the "DIP Term Loan

Facility"). Significant concessions by senior creditors[2] funded gifted distributions to holders of out-of-the-money general unsecured claims under the Plan.

The Reorganized Debtors argue that the Plan treated unsecured creditors in distinct ways based upon their respective legal rights, their importance to the ongoing operation and the profitability of the Debtors' businesses, and the practical limitations impeding the Debtors' ability to provide such creditors with a recovery. (*See* D.I. 37 at 8; 7/21/17 Hr'g Tr. 60:1-62:5). Creditors holding claims derived from the purchase of 2018 Notes, which were classified in Class A6, received a combination of stock and cash by virtue of the gifted distributions from senior creditors, with an aggregate recovery to holders in Class A6 valued at approximately 4-6%. (*See* 7/21/17 Hr'g Tr. at 30:23-25). In contrast, trade and certain other creditors related to the Debtors' business and operations ("Trade and Business-Related Claims"), classified in Class A7, B7, and

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[2] Specifically, holders of 2021 Notes and lenders under the Term Loan Facility and DIP Term Loan Facility voluntarily agreed to accept a lower recovery on their secured claims than they were entitled to receive. The DIP Term Loan Facility and Term Loan Facility converted to equity at a discount, receiving distributions of equity worth less than the face value of the debt converted. (*See* 7/21/17 Hr'g Tr. 7:21-8:13). The 2021 Notes also converted into equity, receiving recoveries of less than 54.5% of their claims, and voluntarily agreeing to forgo any Plan distributions on account of approximately $190 million in unsecured deficiency claims relating to the 2021 Notes, claims that otherwise would have ranked equally with all other unsecured claims. (*See* B.D.I. 338 at ¶ 37).

C7,[3] were reinstated under the Plan, and, therefore, holders of such claims were entitled to receive a 100% recovery by virtue of the gifted distributions. (*See* B.D.I. 14 at 12).

Class A6 voted to reject the Plan.[4] Because the Plan was nonconsensual, Debtors had the burden of "show[ing] that the plan meets the additional requirements of § 1129(b), including the requirements that the plan does not unfairly discriminate against dissenting classes and the treatment of the dissenting classes is fair and equitable." *In re Exide Techs.*, 303 B.R. 48, 58 (Bankr. D. Del. 2003). These requirements were addressed in the Debtors' confirmation brief and declaration in support. (*See* B.D.I. 302, 338).

Appellant, who held approximately $450,000 of the 2018 Notes that had been classified in Class A6, objected to confirmation of the Plan (B.D.I. 290) on the grounds that (i) Appellant would receive a distribution of less value than certain of the Debtors' other

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[3] Included among the Trade and Business-Related Claims were certain contingent litigation claims related to the Debtors' business operations, including tort and personal injury suits that the Debtors believed would be covered under insurance as well as litigation claims to which the Debtors had counterclaims. (*See* 7/21/17 Hr'g Tr. at 59:14-17; 57:23-58:9).

[4] Despite having approximately 80% in number of holders vote to accept the plan, the plan failed to gain the support of 50% in dollar amount. (*See* B.D.I. 154, A746 (voting declaration)). Under § 1126(c) of the Bankruptcy Code, "[a] class of claims has accepted a plan if such plan has been accepted by creditors that hold . . . at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan." 11 U.S.C. § 1126(c).

unsecured creditors who also held unsecured claims (i.e., Trade and Business-Related Claims); and (ii) the classification scheme contemplated in the Plan was improper. Appellant was the sole objector to confirmation of the Plan. (7/24/17 Hr'g Tr. at 3:24-4:3). At the confirmation hearing on July 21, 2017, Appellant made arguments and examined and presented witnesses. (*See* 7/21/17 Hr'g Tr.). Appellant offered no evidence to controvert assertions with respect to the existing debt and value of Debtors' businesses. (*See id.*) Following the evidentiary hearing and argument on July 21, 2017, the Bankruptcy Court took the matter under advisement and made a bench ruling via telephonic hearing on July 24, 2017, overruling Appellant's objection and confirming the Plan. (*See* 7/24/17 Hr'g Tr.).

The Bankruptcy Court made the specific finding that "[u]nsecured creditors, including among others, trade creditors and holders of 2018 [N]otes are out of the money because they sit behind over $500 million dollars of secured debt in the company that has an uncontroverted value of approximately $300 million dollars." (7/24/17 Hr'g Tr. at 4:4-10). Addressing Appellant's classification objection, the Bankruptcy Court determined that separate classification of trade creditors and noteholders was reasonable on the basis that trade creditors were critical to the success of the reorganized debtors. (*See id.* at 5:5-6:24). Addressing Appellant's unfair discrimination objection, the Bankruptcy Court determined that, while the disparate treatment of Class A6 gave rise to a rebuttable presumption of unfair discrimination (*id.* at 9:12-14), that

presumption was rebutted because Class A6 is "indisputably out of the money and not, otherwise, entitled to any distribution under the bankruptcy code's priority scheme and provided further that the proposed classification and treatment of the unsecured creditors fosters a reorganization of these debtors." (*Id.* at 8:24-9:3). The Bankruptcy Court determined that its decision was consistent with leading cases governing the issue of gifting (9:14-12:12) and rejected Appellant's argument that the gift was from estate property, violated the absolute priority rule, and thus the Plan was not "fair and equitable." (*See id.*) The Bankruptcy Court overruled the objection, confirmed the Plan (*id.* at 13:24-14:5), and further held that any request for a stay of the Confirmation Order beyond the 10-day period included therein "would serve no purpose" as a stay was not warranted. (*See id.* at 14:19-15:3).

Appellant filed a timely notice of appeal on July 25, 2017. (D.I. 1). Contemporaneously, Appellant filed an emergency motion for stay of the Confirmation Order pending appeal (D.I. 3) ("Stay Motion") and a related motion for expedited consideration (D.I. 4). On August 3, 2017, the Court denied the Stay Motion on the basis that Appellant was unlikely to succeed on the merits of the appeal and had failed to establish irreparable harm absent a stay. (D.I. 20). On October 16, 2017, Debtors filed the Motion to Dismiss. (D.I. 31). The parties have fully briefed the Motion to Dismiss (D.I. 31, 32, 36, 40) and the merits of the appeal (D.I. 29, 37, 41). On May 14, 2018, the Court held oral argument on

both the Motion to Dismiss and the merits of the appeal. (D.I. 44).

II. CONTENTIONS

Appellant raises the following issues on appeal: (i) whether the Bankruptcy Court erred by concluding that the Plan did not discriminate unfairly in finding that the "gift" under the Plan made by secured creditors to unsecured creditors providing varying levels of claim recovery did not constitute unfair discrimination under § 1129(b)(1) of the Bankruptcy Code; and (ii) whether the Bankruptcy Court erred by concluding that the Plan properly classified 2018 Note claims separately from other general unsecured claims. (*See* D.I. 22 at ¶ 1-3).[5]

With respect to equitable mootness, Reorganized Debtors argue that the Plan has been substantially consummated. Reorganized Debtors assert that, if I agree with Appellant that the Plan unfairly discriminated against and/or improperly classified Class A6 claims, correcting those errors would require a wholesale reversal of the Plan, restoration of the Reorganized Debtors' estates to the *status quo ante* prior to the Effective Date, and disgorgement of the gifted

[5] Appellant identified the following additional issue on appeal but failed to address it in merits briefing: "whether the Bankruptcy Court erred by concluding that the Plan was fair and equitable even though it allows the Debtors to retain equity interests in their subsidiaries despite all unsecured creditors not being paid in full." (*Compare* D.I. 22 & 29). Accordingly, I do not consider this issue.

distributions, which is not possible as a practical matter and which would necessarily harm third parties who reasonably relied on plan confirmation. (*See* D.I. 31 at 3).

According to Appellant, this argument fails, as "[t]he Debtors can easily pay [him] the full amount of his claim if his appeal is successful" as such "additional recovery by [Appellant] does not present a risk of fatally scrambling the Plan; nor does it present a risk of significant harm to third parties." (*See* D.I. 36 at 1, 12). Appellant urges the Court to use its remedial powers to fashion the relief he proposes: an order directing Reorganized Debtors to pay 100% of Appellant's claim, plus several months' interest, so he may "receive the same treatment of holders of general unsecured creditors in Class A7." (*See id.* at 12-13).

With respect to the merits, Appellant argues that the Bankruptcy Court erred in concluding that the Plan did not improperly classify Class A6 Claims separately from other general unsecured claims. Appellant argues the separate classification was motivated "solely for the discriminatory purpose of not having to pay holders of the 2018 Notes Claims in full." (*See* D.I. 29 at 14; 31-35). Appellant argues that even if the Plan's separate classification of general unsecured claims was proper, the Plan unfairly discriminates in its treatment of 2018 Note claims, and that the Bankruptcy Court erred in its application of the Markell test (discussed below). (*See id.* at 15-18). Appellant argues that the Bankruptcy Court failed to properly consider whether Debtors had rebutted the presumption

of unfair discrimination and relied instead merely on gifting. (*See id.* at 16-18). Appellant argues that such a gift cannot rebut the presumption of unfair discrimination under the Markell test, and that the entire concept of gifting has been flatly rejected by the Third Circuit. (*See id.* at 28-29).

Conversely, Reorganized Debtors argue that Appellant relies on cases that prohibit the use of gifts in contravention of the absolute priority rule, which is not at issue in this appeal. (*See* D.I. 37 at 14). "That body of law prohibits the gifting of a distribution from a senior class of creditors in a manner that skips over an intermediary junior class of dissenting creditors – "vertical gifting" – because it violates the strict requirements of the absolute priority rule." (*Id.*) The distribution in this case concerns unequal gifts by a secured creditor to two classes of junior creditors – horizontal gifting – which is not foreclosed under Third Circuit law. (*See id.* at 25). According to Reorganized Debtors, courts in this circuit have held that such a horizontal gift is not unfair discrimination against the class that does not receive the larger gift when (i) the creditor that does not receive the larger gift is not entitled to a distribution under a plan, and (ii) no class junior to the creditor receives a distribution under the plan. (*See id.* at 12-13). Debtors argue that confirmation of the Plan is consistent with controlling caselaw on the issue as well as the legislative history of § 1129(b), which makes clear that unfair discrimination is not an absolute rule, but is instead evaluated case by case from the dissenting "class's own

perspective." (*See id.* at 12 (citing H.R. Rep. No. 595, 1st Sess. 417 (1977)). Finally, the Reorganized Debtors contend that the Bankruptcy Court correctly concluded that the Plan's classification complied with legal standards in this circuit, which permit separate classification of trade and bondholder claims based on their legal attributes. Reorganized Debtors argue the uncontroverted record supports the Bankruptcy Court's finding that separate classification of Trade and Business-Related Claims serves the rational purpose of fostering the Debtors' reorganization. (*See id.* at 35-43).

III. JURISDICTION

The Court has jurisdiction to hear an appeal from a final judgment of the Bankruptcy Court pursuant to 28 U.S.C. § 158(a)(1). In reviewing the bankruptcy court's determinations, this Court "review[s] the bankruptcy court's legal determinations *de novo*, its factual findings for clear error and its exercise of discretion for abuse thereof." *See In re Trans World Airlines, Inc.*, 145 F.3d 124, 130 (3d Cir. 1998) (noting that both the Third Circuit and the district court "exercise the same standard of review") (internal quotations and citations omitted).

IV. DISCUSSION

A. The Appeal Meets the Criteria for Equitable Mootness

"'Equitable mootness' is a narrow doctrine by which an appellate court deems it prudent for practical reasons to forbear deciding an appeal when to grant the relief requested will undermine the finality and reliability of consummated plans of reorganization." *Tribune*, 799 F.3d at 277. A court assesses equitable mootness through the application of "prudential" considerations that address "concerns unique to bankruptcy proceedings." *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 168 (3d Cir. 2012). The Third Circuit's recent decisions have synthesized the test for equitable mootness as "proceed[ing] in two analytical steps: (1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *In re Tribune Media Co.*, 799 F.3d 272, 278 (3d Cir. 2015) (quoting *In re SemCrude*, 728 F.3d 314, 321 (3d Cir. 2013)). Reorganized Debtors, as the proponents of an equitable mootness dismissal, "bear[] the burden of overcoming the strong presumption that appeals from confirmation orders of reorganization plans – even those not only approved by confirmation but implemented thereafter (called 'substantial consummation' or simply 'consummation') – need to be decided." *Id.* at 278.

1. Whether the Plan Has Been Substantially Consummated

The Bankruptcy Code defines "substantial consummation" to mean:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
>
> (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
>
> (C) commencement of distribution under the plan.

11 U.S.C. § 1101(2). Appellant concedes that the Plan has been substantially consummated. (*See* D.I. 36 at 12 (conceding that "the Plan has been substantially consummated"); *see also* D.I. 44 at 17:20-18:2). The record supports this conclusion.[6]

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[6] The Reorganized Debtors filed a declaration of their Chief Restructuring Officer ("CRO") Robert Albergotti (D.I. 32) ("Albergotti Decl."), in which he attests, *inter alia*, that, beginning on the Effective Date, Reorganized Debtors entered into certain financing exit facilities and security agreements in order to repay obligations under the Debtors' pre-Effective Date asset based lending facility and debtor-in possession lending facility; make certain required payments under the Plan; pay costs and expenses incurred in connection with the Plan; and for working capital, transaction expenses, and other general corporate expenses. (*See* Albergotti Decl. at ¶¶ 6-9). Additionally, on the Effective Date, (i) Reorganized Debtors issued approximately 12 million shares of reorganized Nuverra common stock (that is freely tradable on a national stock

If it is established that substantial consummation has occurred, the next step for a court considering equitable mootness is to "look to whether granting relief will require undoing the plan as opposed to modifying it in a manner that does not cause its collapse." *SemCrude*, 728 F.3d at 321. A court "should also consider the extent that a successful appeal, by altering the plan or otherwise, will harm third parties who have acted reasonably in reliance on the finality of plan confirmation." *Id.*

2. Granting Appellant Higher Individual Recovery than Class A6

Appellant apparently does not seek revocation of the Plan and the imposition of a new chapter 11 plan in its place. (D.I. 44 at 17:19-18:2). Although Appellant's confirmation objection sought denial of Plan confirmation only, Appellant argues "that does not mean that the only relief available after the substantial consummation of the Plan is a complete unwinding of the Plan and a return to bankruptcy for the Debtors."[7] (D.I.

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market) and 118,137 warrants to purchase shares, with an exercise term expiring 5 years from the Effective Date, or, in certain instances, as specified in the Plan; and (ii) all shares of the Debtors pre-Effective Date common stock and outstanding equity interests in the Debtors were cancelled and discharged. (*See id.* at ¶ 10). Additionally, cash distributions were made under the Plan and all prepetition debt was either repaid or cancelled. (*See id.* at ¶ 11).

[7] Reorganized Debtors argue that Appellant never sought full payment of his claim below, and only sought denial of plan confirmation, and cannot be heard to make such a request now:

36 at 13). Rather than apply equitable mootness and dismiss his appeal, however, Appellant contends that the Court should exercise its remedial powers and fashion relief in a way that would not upset the Plan – *i.e.*, "by ordering payment of his claim in full" so Appellant may "receive the same treatment as the holders of general unsecured creditors in Class A7." (*See id.* at 12-13).

The Third Circuit instructs that the "starting point is the relief an appellant specifically asks for." *Tribune*, 799 F.3d at 278 (citations omitted). The only specific relief Appellant proposes is "full recovery" which is a much higher individual recovery than other holders of claims in Class A6. (*See* D.I. 44 at 23:22-24:9) Thus, in considering available relief to cure unfair discrimination, the Court's "starting point" is an order directing Reorganized Debtors to "provide [Appellant] with the same treatment as general unsecured creditors – payment of 100 cents on the dollar plus interest" – as compared with the 4-6% recovery provided to

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> Appellant takes a 180-degree turn from the substantive position that he raises in the Appeal by suggesting that a claim of unfair discrimination could be satisfied by discriminating in favor of him relative to other holders of claims in his class. Appellant now identifies the sole remedy he seeks on appeal as the payment in full of his claims, and only his claims . . . By re-casting the issue in that manner, Appellant has abandoned his contention that the Plan's distribution scheme could be changed to address his unfair discrimination and classification arguments, effectively conceding that doing so would fatally scramble the Plan.

(*See* D.I. 40 at 1-2).

other members of Class A6. (*Id.*) According to Appellant, "because no bondholder other than Mr. Hargreaves filed a timely objection to the Plan, there is no danger that paying Mr. Hargreaves would require additional payments to any other bondholder." (*See id.*) That such relief would result in disparate treatment of Appellant's claim as compared with all other bondholder claims in Class A6 – precisely the issue that predicates the appeal – is of little concern to Appellant and of much concern to the Court. Appellant offers no support for his position that a remedy exists that allows him to receive, on appeal, treatment better than other creditors in the same class. (*See* D.I. 44 at 20:23-21:1).

However, it is not Appellant's burden to show that his success on appeal will not require undoing the plan; rather, it is the burden of the Reorganized Debtors, as the moving party, to demonstrate that the prudential factors weigh in favor of dismissal. *In re One2One Commc'ns, LLC*, 805 F.3d 428, 436 (3d Cir. 2015). Reorganized Debtors argue that the higher individual relief proposed by Appellant would necessarily upset the Plan. As Reorganized Debtors argue, there is no mechanism under the Bankruptcy Code by which Appellant's claim can be paid in full outside of the confirmed Plan without paying in full the other members of Class A6. (*See* D.I. 31 at 16-17). Having placed the 2018 Noteholders in the same class, Reorganized Debtors argue, it would violate § 1123(a)(4) of the Bankruptcy Court to provide Appellant alone with a full recovery. Section 1123(a)(4) requires that "a plan shall . . . provide the

same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment. . . ." 11 U.S.C. § 1123(a)(4). This section prohibits preferential treatment of a single bondholder who holds the exact same claims based upon the exact same instrument as other bondholders. Appellant's argument that § 1123(a)(4) of the Bankruptcy Code does not prohibit disparate treatment, so long as creditors "ha[d] an equal opportunity to recover on their claims" is unpersuasive and not supported by the cases cited. (*See* D.I. 36 at 15, n.5).

The Court agrees with the conclusion reached in *In re Genesis Health Ventures, Inc.*, 280 B.R. 339 (D. Del. 2002) ("*Genesis II*"). There, appellant was a bondholder who appealed plan confirmation on the basis that his small percentage recovery, in the form of new common shares and warrants, was the result of the debtors' incorrect application of valuation methodologies which understated the enterprise value of the reorganized entity and the securities issued to senior secured lenders under the plan. *See id.* at 342. Debtors moved to dismiss the appeal as equitably moot, and the Court granted the dismissal, finding, *inter alia*:

> [T]he Plan in this case was consented to by all of the creditors except for Class G5 bondholders like Appellant. Class G5 creditors have allowed claims in the amount of $387 million. Appellant is a creditor holding $20 million of Genesis bonds. Under the Bankruptcy Code, creditors of the same class are to be treated

> in the same manner unless they consent to receive less favorable treatment. 11 U.S.C. § 1123(a)(3)-(4); 11 U.S.C. § 1129(b)(1) (prohibiting unfair discrimination among creditors when plan is confirmed over objection of non-consenting creditors). The relief Appellant proposes, i.e., the issuance of additional shares to him, would be unfair to the other creditors in Appellant's own class, and thus, prohibited under the Bankruptcy Code.

Id. at 346. Moreover, even assuming the Court could grant the higher individual recovery to Appellant without violating the Bankruptcy Code, it is unclear which party the Court may order to fund such a recovery. Appellant clearly seeks payment from the Reorganized Debtors' business. (*See* D.I. 44 at 23:18-21). However, the gifted distributions were funded by the collective, agreed concessions of various senior lenders, and the Court cannot order those creditors to supplement a gift made voluntarily. The only way to accomplish this would include a regifting by the former holders of 2021 Notes, which would require their vote in chapter 11.

Appellant argues that a higher individual recovery may be granted, but the cases cited by Appellant do not support such relief. Appellant argues, "The Third Circuit has repeatedly found that payments of small percentage amounts of a reorganized debtors' enterprise value would not fatally scramble a plan." (*See* D.I. 36 at 13-14). Appellant argues that in *Philadelphia Newspapers*, the court found that appellants' claim would not unravel plan as it accounted for only 1.7% of amount buyer paid to acquire debtors' assets.

See In re Philadelphia Newspapers, LLC, 690 F.3d 161, 170-71 (3d Cir. 2012). In that case, appellant sought payment of administrative expense claims, which, if ultimately allowed in a successful appeal, would be paid from an account established under the plan for the payment of such claims and the payment would represent only a small percentage of the money coming into the estate by virtue of the asset sale consummated under the plan. *See id.* at 167. As that appeal concerned the allowance of administrative expenses, however, success on appeal would not entitle appellant to a greater recovery than other holders of administrative expense claims.

Appellant also cites *Zenith*, where the court similarly noted that appellant sought "the disgorgement of $76,500 in professional fees, a tiny sum in the context of the reorganization of a company valued at $300 million." *See United States Tr. v. Official Comm. of Equity Sec. Holders (In re Zenith Elecs. Corp.)*, 329 F.3d 338, 346 (3d Cir. 2003). In *Zenith*, the United States Trustee appealed the award, and sought the disgorgement of $76,500 in professional fees awarded to counsel to an unofficial committee. The District Court dismissed the Trustee's appeal as equitably moot, and the Third Circuit reversed, observing that "far from causing the reorganization plan to unravel, the Trustee's appeal, if successful, would return money to the estate." *Id.* at 346. As Reorganized Debtors correctly observe, the appeals in both *Philadelphia Newspapers* and *Zenith* each concerned whether appellant's claim should have been allowed. Here, there is no dispute over the allowance

of Appellant's claim – all of the claims of holders of 2018 Notes, including Appellant's, were allowed, but received limited recoveries under the Plan. These cases do not support a higher individual recovery by Appellant than other members of Class A6.

At oral argument, *Tribune* was cited as Appellant's "best case" in support of his request for full recovery. (*See* D.I. 44 at 20:4-18). The *Tribune* court declined to dismiss one of two appeals as equitably moot and suggested that disgorgement to satisfy appellant-trustee's claim was an available remedy. *See Tribune*, 799 F.3d at 283. The court observed that there was no chance the plan modification would unravel the plan, as the dispute concerned class entitlement to a $30 million recovery in the context of a $7.5 billion reorganization. *See id.* However, the appeal in that case concerned an intercreditor dispute over whether one of two classes of creditors was entitled to funds under the relevant contract.[8] *Tribune* was not a case where one member of a class sought relief on appeal in the form of a higher individual recovery than the recovery provided to other members of the same class, as here. If successful on appeal, the relief sought in *Tribune* would have gone to the entire class: "disgorgement could be ordered against those Class 1F holders who

[8] "[T]he Trustees contend that they are beneficiaries of a subordination agreement that guarantees that they will receive any recovery that goes to the holders of the PHONES and EGI Notes ahead of a class of trade and other creditors (Class 1F) . . . The merits question presented by the Trustees' appeal is straightforward: does the Plan unfairly allocate Class 1E's recovery to 1F?" *Tribune*, 799 F.3d at 282-83.

have received more than their fair share, and the Litigation Trust's waterfall can be restructured to make sure that [Class] 1E gets its recovery to the exclusion of Class 1F." *Id.* at 282-83.

These decisions do not support the higher individual relief Appellant requests. While the cases support the notion that granting relief on a successful appeal is unlikely to unravel the plan where the relief would represent only a small percentage of the overall reorganization, those cases say nothing about a case like this one, where granting appellant relief that is a small percentage of the overall reorganization would violate § 1123(a)(4) of the Bankruptcy Code.

Finally, Appellant cites *SemCrude* in support of his argument that he is entitled to higher individual recovery than the rest of Class A6 because he alone objected to the plan and appealed. (*See* D.I. 36 at 16; D.I. 44 at 16:22-17:8). In *SemCrude*, appellants argued that the plan improperly discharged their claims arising from statutory liens and property rights and sought an opportunity to assert those claims in an adversary proceeding. *See SemCrude*, 728 F.3d at 320. The court found no reason to believe that granting relief would cause the plan to collapse. *See id.* at 324. "Even if Appellants are successful on their claims, . . . the amounts involved will not require a sufficient redistribution of assets to destabilize the financial basis of the settlement." *Id.* Although *SemCrude* did draw a distinction between granting individual relief to appellant (versus parties who failed to appeal), that distinction is inapposite under these facts. As Reorganized Debtors

correctly argue, any creditor may elect to consent to a release of its claims, which is effectively what the Third Circuit concluded the nonappealing creditors did in *SemCrude*.[9] There is no analogue in the Bankruptcy Code for an individual creditor to withhold consent to a distribution in order to get a higher distribution under a plan than other creditors in the same class.

3. Other Practicable Relief

The Third Circuit instructs that "even when a court applies the doctrine of equitable mootness, it does so with a scalpel rather than an axe. To that end, a court may fashion whatever relief is practicable instead of declining review simply because full relief is not available." *Tribune*, 799 F.3d at 278 (internal citations and quotations omitted). Assuming Appellant is successful on appeal, however, it is unclear what other practicable relief I may grant at this point. To meet their burden, the Reorganized Debtors assert that there is no practicable relief that can be granted with respect to the unfair discrimination and improper

[9] As the *SemCrude* court observed: "We also fail to see any indication that allowing Appellants to proceed with their claims would result in a deluge of other Producers filing their own adversary proceedings. Unlike with Appellants, we are unaware of any evidence in the record showing that other Producers objected to the discharge of their claims or asserted the right to an adversary proceeding. In return for the distributions they received under the plan, other Producers were required to dismiss with prejudice any adversary proceedings they had filed. Absent their objecting at the time of plan confirmation to this dismissal requirement (as well as to the discharge of their claims), they cannot now attempt to restart those actions." *SemCrude*, 728 F.3d at 324.

classification arguments at issue in this appeal that would not collapse the Plan and harm third parties who justifiably relied on plan confirmation. (*See* D.I. 31 at 12-18; D.I. 32).

Debtors argue that to address the unfair discrimination issue, the only possible remedy would be to provide equal recoveries to all unsecured creditors. (*See* D.I. 31 at 13). Reorganized Debtors argue that they do not have $40 million in cash that would be required to pay claims of former holders of the 2018 Notes in full. (*See id.*) Even if sufficient cash were available, there would be no practical way to distribute it, according to Reorganized Debtors, as the 2018 Notes were cancelled under the Plan, and the indenture trustee for the 2018 Notes discharged of its duties and obligations under the governing indenture. (*See id.* at 14). As Reorganized Debtors lack sufficient cash to pay bondholders in full, the only other relief would be to recover funds and balance recoveries among general unsecured creditors. In *Tribune*, the Third Circuit noted that "if funds can be recovered from third parties without a plan coming apart, it weighs heavily against barring an appeal as equitably moot, both in our Court and other circuits." *Tribune*, 799 F.3d at 279. Reorganized Debtors argue that this is not such a case. According to Reorganized Debtors, ordering disgorgement and recovery of the gifted distributions, and redistributing those distributions evenly among Classes A6 and A7, "would involve a massive, and likely impossible, disgorgement exercise:"

> Although it is possible to conceive of a disgorgement scenario to recover all Gifted Distributions that had been provided to all unsecured creditors in order to redistribute them among former holders of Class A6 Claims and General Unsecured Claims, such a recovery effort would be virtually (if not actually) impossible to accomplish. The exercise would involve seeking the disgorgement of Reorganized Nuverra Common Stock, which is freely trading on NYSE American. Courts in this Circuit have recognized that there is no practical way to retrieve distributions from public security holders . . . It is for that reason that the Third Circuit has "most frequently found that a plan could not be retracted when the reorganized debtor issued [publicly] traded debt or securities."

(D.I. 31 at 14 (quoting *One2One*, 805 F.3d at 436)). Additionally, Reorganized Debtors assert that a disgorgement of payments from customers and vendors who have continued doing business with the Reorganized Debtors "would irreparably damage [those] relationships . . . and disrupt ongoing operations, jeopardizing stakeholder recoveries:"

> The Reorganized Debtors operate in a variety of remote areas where the vendor base is limited, and many are small businesses. [F]ailing to pay vendors in some of these locations would have led those vendors to refuse to do business with the Reorganized Debtors, creating significant operational problems in areas where those vendors are not replaceable. [A]

> disgorgement exercise that involves the claw-back of payments to vendors and suppliers would in turn lead to the loss of credit, vendors, and suppliers, which would cause significant harm to all stakeholders, especially senior creditors who own the Reorganized Debtors' equity and depend on the success of the Reorganized Debtors' businesses to achieve a recovery in these cases.

(*See* D.I. 32 at 8, ¶ 14 (affidavit of CRO)). Thus, disgorgement would require the claw back, not only of cash payments made to hundreds of individual creditors, but also the claw back of stock that is trading on the national stock exchange, and which now may be held by third parties who purchased those securities in the ordinary course. (*See id*). This case is therefore unlike the *Tribune* case in which the Third Circuit suggested disgorgement as a possible remedy. *Tribune*, 799 F.3d at 282. There, the court notably observed that the money at issue "has gone to a readily identifiable set of creditors against whom disgorgement can be ordered." *Id.* Unlike *Tribune*, the disgorgement required in this case to grant equal recovery to Class A6 will require undoing the Plan and necessarily result in harm to third parties.

With respect to the second issue on appeal, as the Bankruptcy Court observed, Appellant "objects to the debtors' classification scheme for the same reason [as his unfair discrimination objection] arguing that classification of unsecured claims in more than one class is improper and calls for disparate treatment." (7/24/17

Hr'g Tr. at 5:1-4). To address the improper classification issue, Reorganized Debtors argue that the only possible remedy would require "having the Reorganized Debtors go back into chapter 11 in order to develop an amended plan that classifies all unsecured claims in the same class and provides all creditors in the single class with the same treatment." (*See* D.I. 31 at 16-17). Reorganized Debtors argue that, having repaid the DIP Loans on the Effective Date, they no longer have access to liquidity to fund a second trip through chapter 11, which makes a forced liquidation through chapter 7 a likely outcome. (*See id.* at 4). "If the Reorganized Debtors were forced to re-enter bankruptcy to revise their plan, I believe liquidation is a likely possibility, given that the Reorganized Debtors lack financing for a second Chapter 11 case, and had an extremely difficult time obtaining financing for the case they just emerged from." (D.I. 32 at 8, ¶ 15 (affidavit of CRO)). As with the remedy of providing equal recovery to general unsecured creditors, reclassifying the claims to balance distributions and to achieve the same result would "require undoing the plan as opposed to modifying it in a manner that does not cause its collapse," and would result in harm to third parties who have justifiably relied on the Plan. *SemCrude*, 728 F.3d at 321.

The Bankruptcy Court recognized the overall harm to the Debtors and other third parties that may result on appeal: "the consequences of an adverse ruling on appeal of a reversal of this confirmation order on appeal, frankly, the risks lie with the other

constituents in this case, not with [Appellant] . . . " (7/24/17 Hr'g Tr. at 14:24-15:3). The Court is unable grant Appellant higher individual recovery than other members of his class within the confines of the Bankruptcy Code. Because correcting unfair discrimination and improper classification issues would require undoing the Plan and would necessarily harm third parties, and because it is unclear what other practicable relief the Court may grant, the appeal meets the criteria for equitable mootness.

B. The Confirmation Order Is Affirmed

Although I find the appeal meets the criteria for equitable mootness, the Court can "readily resolve the merits of [the] appeal against the appealing party," so I hold, in the alternative, that the Confirmation Order is affirmed. *See Tribune*, 799 F.3d at 278.

Under § 1129(b)(1) of the Bankruptcy Code, a plan may be "crammed down" on a dissenting impaired class only if it "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired class. *See* 11 U.S.C. § 1129(b)(1); *see also In re Armstrong World Indus., Inc.*, 320 B.R. 523 (D. Del. 2005) ("*Armstrong I*"), *aff'd*, 432 F.3d 507 (3d Cir. 2005) ("*Armstrong II*"). "[T]he pertinent inquiry is not whether the plan discriminates but whether the proposed discrimination is 'unfair.'" *In re Tribune Co.*, 472 B.R. 223, 242 (Bankr. D. Del. 2012) (quoting *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) ("*Armstrong III*")). The main issue on appeal is

whether the Plan "discriminates unfairly" in a manner that would prevent the Plan from being confirmed in accordance with § 1129(b)(1).

The concept of unfair discrimination is not defined in the Bankruptcy Code. *See Armstrong III*, 348 B.R. at 121. Courts typically examine the facts and circumstances of the particular case to determine whether unfair discrimination exists.[10] Various tests have emerged in the caselaw, with the hallmarks being "whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination." *Id.* at 121 (internal quotation omitted). The Third Circuit has not yet discussed the standard that should apply when assessing unfair discrimination, but courts within this jurisdiction have applied the test set forth by Bruce A. Markell, *A New Perspective on Unfair Discrimination in Chapter 11*, 72 Am. Bankr. L.J. 227, 249 (1998). Under the Markell test, a rebuttable presumption of unfair discrimination arises when there is:

> (1) a dissenting class; (2) another class of the same priority; and (3) a difference in the plan's treatment of the two classes that results in either (a) a materially lower percentage recovery for the dissenting class (measured in terms

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[10] *See In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan," and that "the limits of fairness in this context have not been established"), *aff'd*, 195 B.R. 692 (N.D. Ill. 1996), *aff'd*, 126 F.3d 955 (7th Cir. 1997), *rev'd on other grounds*, 526 U.S. 434 (1999).

> of the net present value of all payments), or (b) regardless of percentage recovery, an allocation under the plan of materially greater risk to the dissenting class in connection with its proposed distribution.

See, e.g., *Tribune*, 472 B.R. at 241 (adopting and applying Markell test); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 612 (Bankr. D. Del. 2001) ("*Genesis I*") (applying Markell test). As Reorganized Debtors correctly point out, in applying the Markell test, "the analysis for determining whether the discriminatory treatment is unfair should be viewed by its effect on the dissenting class." *Tribune*, 472 B.R. at 244. This is consistent with the legislative history of § 1129(b)(1), which makes clear that "[t]he criterion of unfair discrimination is not derived from the fair and equitable rule or from the best interest of creditors test. Rather it preserves just treatment of a dissenting class from the class's own perspective." H.R. Rep. No. 595, 1st Sess. 417 (1977).

1. The Bankruptcy Court Correctly Determined that the Plan Did Not Unfairly Discriminate

Appellant argues that the Bankruptcy Court improperly applied the Markell test and blindly relied on the gifting doctrine in determining that the presumption of unfair discrimination was rebutted in this case. (*See* D.I. 29 at 15-18). I note that the Markell test did not address a situation in which the classes in which disparate treatment was occurring both were receiving

their recoveries solely on account of a gift from a senior class.[11] Indeed, Markell says nothing about gifting. Notwithstanding this distinction, the Court finds no error in the Bankruptcy Court's application of the Markell test. Its application is consistent with the decisions of other courts in this circuit which have examined gifted distributions.

Looking to percentage recovery between Classes A6 and A7, the Bankruptcy Court determined that the Plan's treatment "gives rise to a rebuttable presumption of unfair discrimination that the [D]ebtors must overcome." (7/24/17 Hr'g Tr. at 9:12-14). The Bankruptcy Court found the presumption rebutted. Specifically, the Bankruptcy Court found that the gift here "constitute[d] no unfair discrimination" (*id.* at 8:23-24) because "class A6 was indisputably out of the money and not, otherwise, entitled to any distribution under the Bankruptcy Code's priority scheme and provided further that the proposed classification and treatment of other unsecured creditors fosters a reorganization of these debtors." (*Id.* at 8:24-9:9). As noted above, in applying the Markell test, and identifying unfair discrimination, the analysis for determining whether the discriminatory treatment is unfair should be viewed by its effect on the dissenting class. *See* H.R. Rep. No. 595, 1st Sess. 417 (1977). For example, in *Tribune*, the

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[11] Reorganized Debtors argue that the Markell test was intended to fill in the blanks on how a court should assess disparate treatment of claims outside of a scenario where distributions are based solely on gifts. (*See* D.I. 44 at 38:20-25). The Court expresses no opinion on this argument.

bankruptcy court applied the Markell test to a plan that involved classes that benefitted from differing treatment, receiving an increase in their recovery of between 47.8% and 53% on a dollar basis, which was caused by the forced sharing of a "Disputed Allocation." *See Tribune*, 472 B.R. at 244. The Bankruptcy Court held that, in applying the Markell test, "the analysis for determining whether the discriminatory treatment is unfair should be viewed by its effect on the dissenting class." *Id.* In reaching its conclusion that there was no unfair discrimination, the *Tribune* court only focused on the amount that the reallocation decreased the recovery to the dissenting class, and did not consider the large increase in recoveries to the other similarly-situated classes. *See id.* at 244.[12]

Similarly, here, distributions to holders of Trade and Business-Related Claims have no impact on the distributions to holders of unsecured claims in Class A6. The record is clear that unsecured creditors are entitled to nothing under the Bankruptcy Code's priority scheme, and an increased distribution to unsecured creditors holding Trade and Business-Related Claims does not diminish the distribution to holders of claims in Class A6. If holders of Trade and Business-Related Claims did not receive this increased recovery, the

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[12] *See also LaSalle*, 126 F.3d at 969 (factually predating Markell, and finding, in part, that, "the disparity between [the trade claims and the nonrecourse deficiency claims], with the trade creditors receiving 100 percent and Bank America receiving sixteen percent, is not unfair [because] Bank America does better than it would have under chapter 7, and the trade creditors do no worse.")

surplus distribution would revert to secured creditors, not holders of claims in Class A6. As Appellant and his class were not entitled to a distribution in the first place, providing a greater distribution to a different class of unsecured creditors does not alter the distribution to which Appellant is entitled.

Appellant argues that the Bankruptcy Court erred by failing to address whether the two bases for rebuttal specifically mentioned by Markell were satisfied. Rebuttal of the presumption is discussed briefly by Markell:

> The unfair discrimination in these situations is only presumptive. The plan proponent may overcome the presumption based on different percentage recoveries by showing that a lower recovery for the dissenting class is consistent with the results that would obtain outside of bankruptcy, or that a greater recovery for the other class is offset by contributions from that class to the reorganization. The presumption of unfairness based on differing risks may be overcome by a showing that the risks are allocated in a manner consistent with the pre-bankruptcy expectations of the parties.

Markell, 72 Am. Bankr. L.J. at 228.

> In either case – disparity of recovery or disparity of risk – the plan proponent can rebut the presumption of unfairness by proving that the difference in treatment is attributable to differences in the prepetition status of the creditors. In the case of a difference in the present value of the recovery, the presumption

> may also be overcome by a demonstration that contributions will be made by the assenting classes to the reorganization, and that these contributions are commensurate with the different treatment. In such cases, while discrimination exists, it is not unfair.

Id. at 250. Appellant argues that if the Bankruptcy Court had considered Markell's bases for rebuttal, neither prong would have been met here, as (i) all unsecured creditors would be entitled to exactly the same percentage recovery outside of the Plan, and (ii) there is no proof that the holders of [Trade and Business-Related Claims] will infuse any new value into the reorganization.") (*See* D.I. 29 at 17).

While Appellant argues these are the "only" bases for rebutting the presumption of unfair discrimination (*see id.* at 16), neither Markell nor any of the cases cited by Appellant suggest any limitations on the case-specific facts and circumstances which might rebut the presumption of unfair discrimination. As Reorganized Debtors correctly argue, "the Markell test is not the only basis for rebutting a presumption of unfair discrimination, and the Bankruptcy Court was not required to evaluate these bases for rebuttal. . . ." (*See* D.I. 37 at 23). As noted above, Markell did not address a situation where, as here, the classes in which disparate treatment was occurring both were receiving their recoveries solely on account of a gift from a senior class. A reading of Markell does not support the limitations on the Bankruptcy Court's analysis that Appellant asserts, nor would such limitations be consistent with the

Bankruptcy Court's broad discretion to consider case-specific facts in the context of plan confirmation.[13]

In *Genesis I*, a case with virtually identical facts, the court found the presumption of unfair discrimination was rebutted in the horizontal gifting context. *See Genesis I*, 266 B.R. at 612. As in this case, the plan in *Genesis I* provided a gift to certain, but not ad, classes of unsecured creditors out of the recoveries of secured creditors. *See id.* at 600-01. In that case, the unsecured creditors holding punitive damage litigation claims classified in classes G7 and M7 were to receive no recovery, while the other classes of general unsecured creditors (classes G4 and M4) received the gift. *Id.* Holders of claims in classes G7 and M7 objected, arguing, among other things, that the plan unfairly discriminated against them in light of the recovery to unsecured creditors in classes G4 and M4. In assessing unfair discrimination, the court in *Genesis I* applied the Markell test and concluded that, while the disparate treatment gave rise to the presumption of unfair discrimination, the presumption was rebutted:

> [T]he recovery by Classes G4 and M4 of a dividend in the form of New Common Stock and Warrants is based on the agreement of the Senior Lenders to allocate a portion of the value they would have otherwise received to Classes G4 and G5. The disparate treatment

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[13] "[I]t remains clear that Congress intended to afford bankruptcy judges broad discretion to decide the propriety of plans in light of the facts of each case." *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987).

> . . . is a permissible allocation by the secured creditors of a portion of the distribution to which they would otherwise be entitled, rather than unfair discrimination against Classes G7 and M7 by the proponents of the plan.

Id. at 612. Thus, *Genesis I* found that the presumption of unfair discrimination was rebutted where the distribution was based on the agreement of senior lenders to allocate a portion of the value to which they would have otherwise been entitled under the Bankruptcy Code. *See id.* Although gifting is not a basis for rebuttal specifically mentioned by Markell, the *Genesis I* court found this permissible allocation sufficient to rebut the presumption of unfair discrimination. The Bankruptcy Court's ruling here is consistent with *Genesis I*.[14]

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[14] Reorganized Debtors further argue that, despite not being required to evaluate Markell's specific bases for rebuttal, the Bankruptcy Court's ruling does address them, including "factual findings that support rebuttal of any presumption of unfair discrimination under the Markell framework." (*See* D.I. 37 at 23). Reorganized Debtors argue that Markell's first basis for rebuttal – that a lower recovery for the dissenting class is consistent with the results that would obtain outside of bankruptcy – is present here, as there was no value in the Debtors' businesses to make any payment to unsecured creditors. The Bankruptcy Court found as much when it concluded that unsecured creditors "sit behind over $500 million dollars of secured debt in the company that has an uncontroverted value of approximately $300 million dollars." (7/24/17 Hr'g Tr. at 4:4-8). Appellant does not challenge the Bankruptcy Court's factual determination regarding the Appellant's entitlements to proceeds of the Debtors' estates, nor does he offer any explanation of how, from the perspective of the 2018 Notes, recoveries could be any better outside of bankruptcy. Reorganized Debtors argue that Markell's second basis for rebuttal – that a greater recovery for the other class is offset by contributions from

As unfair discrimination is not defined in the Bankruptcy Code, courts must examine the facts and circumstances of the particular case to determine whether unfair discrimination exists. The Third Circuit has yet to mandate application of the Markell test in determining whether a plan discriminates unfairly, and Markell's useful analysis is not exhaustive of the facts and circumstances that may rebut a presumption of unfair discrimination. Under the facts of this case, the holders of Class A6 were not harmed by the disparate recovery provided to Trade and Business-Related Claims, and ad unsecured creditors did significantly better than they would have outside of chapter 11 or under a plan of liquidation. To the extent the Bankruptcy Court did not specifically address the Markell bases for rebuttal in its bench ruling, Appellant cites no case law in support of such a limited, formulaic application. The Bankruptcy Court's analysis is consistent with the Markell analysis undertaken in *Genesis I*. I find no error in the Bankruptcy Court's conclusion that the Plan did not unfairly discriminate, which is based on uncontroverted, case-specific facts and consistent with applicable case law and legislative history concerning unfair discrimination.

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that class to the reorganization – is also present here. The Bankruptcy Court made findings indicating that the ongoing business relationships provided by business creditors created value which justified the Plan's classification and treatment of unsecured creditors. (*Id.* at 6:6-24).

2. The Third Circuit Has Not Foreclosed Horizontal Gifting, and the Vertical Gifting Cases Cited by Appellant Are Inapposite

In determining that the Plan did not unfairly discriminate, the Bankruptcy Court relied on *Genesis I*, a case with virtually identical facts, which examined whether a horizontal gift – like the one at issue in this case – unfairly discriminated against other classes. (7/24/17 Hr'g Tr. at 10:12-12:12). As noted above, in *Genesis I*, senior creditors who were not being paid in full shared a portion of their distributions with junior classes (Classes G4 and M4) but not with creditors holding punitive damages claims (Classes G7 and M7). *See Genesis I*, 266 B.R. at 612. There, the Bankruptcy Court held that "the disparate treatment between Classes G4 and G7 and Classes M4 and M7 is a permissible allocation by the secured creditors of a portion of the distribution to which they would otherwise be entitled, rather than unfair discrimination against [dissenting classes] by the proponents of the plan." *Id.* Here, the Bankruptcy Court found "this situation [i.e., the Plan] to be consistent with the gift contained in the plan proposed in *Genesis*, which the *Armstrong* court viewed favorably." (7/24/17 Hr'g Tr. at 10:16-19).

Appellant argues that the Bankruptcy Court's approval of the Plan was erroneous, as "multiple appellate courts have held that a plan may not use gifting to circumvent § 1129(b)'s express provisions" in rulings following *Genesis I*, including the *Armstrong* decisions in this circuit. (*See* D.I. 29 at 22-30). Reorganized

Debtors distinguish "vertical gifting" from "horizontal gifting." They argue that any "[n]egative treatment of gifting in the caselaw applies [only] to vertical gifting, which violates the absolute priority rule, a different provision of the Bankruptcy Code implicating different concerns." (D.I. 37 at 25-28). "The absolute priority rule, as codified, ensures that 'the holder of any claim or interest that is junior to the claims of [an impaired dissenting] class will not receive or retain under the plan on account of such junior claim or interest any property.'" *Armstrong II*, 432 F.3d at 513 (quoting 11 U.S.C. § 1129(b)(2)(B)(ii)). Reorganized Debtors argue that the absolute priority rule is not implicated here, as "there is no higher priority dissenting creditor being deprived of a gift (*i.e.*, no class skipping) because equity, which is the class junior to Class A6, received no distribution under the Plan." (D.I. 37 at 25). Contrary to Appellant's contention that gifting has been "flatly rejected" in this circuit, Reorganized Debtors argue that the Third Circuit in *Armstrong II* purposefully carved out *Genesis I's* horizontal gift ruling from its decision prohibiting vertical gifting in violation of the absolute priority rule. (*See id.*)

The Court agrees with Reorganized Debtors that *Armstrong II* did not "flatly reject" the concept of gifting. *Armstrong II* considered whether vertical gifting violated the "fair and equitable" requirement for cramdown, which invokes the absolute priority rule of 11 U.S.C. § 1129(b)(2)(B)(ii). The Third Circuit concluded – based upon its consideration of the absolute priority rule, not any consideration of whether there was

"unfair discrimination" – that the distribution of warrants to equity holders, which skipped over an objecting class of unsecured creditors, violated the absolute priority rule. *See Armstrong II*, 432 F.3d at 513. "Under the statute, a plan is fair and equitable with respect to an impaired, dissenting class of unsecured claims if (1) it pays the class's claims in full, or if (2) it does not allow holders of any junior claims or interests to receive or retain any property under the plan 'on account of' such claims or interests." *Id.* at 512 (citing 11 U.S.C. § 1129(b)(2)(B)(i)-(ii)). The Third Circuit concluded that the plain language of the statute makes clear that a plan cannot give property to junior claimants over the objection of a more senior class that is impaired, and noted that "section 1129 was at least designed to address 'give-up' situations where a senior class gave property to a class junior to the dissenting class." *Id.* at 513.

Unlike that case, the gift at issue here does not involve vertical class skipping as it does not provide a distribution to a class junior to the dissenting Class A6. As the Bankruptcy Court noted,[15] *Armstrong I* also distinguished *Genesis I* on the facts as involving a distribution of property subject to the senior creditor's liens that was "carved out" voluntarily for junior claimants. *See Armstrong I*, 320 B.R. at 539. The Third Circuit

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[15] The Bankruptcy Court noted in its bench ruling that *Armstrong* had distinguished the very similar "arrangement in *Genesis [I]* as an ordinary carve-out of the senior creditor's lien for the junior claimant's benefit" but did not reject it. (*See* 7/27/17 Hr'g Tr. at 11:8-12:9).

adopted this reading of that case in *Armstrong II*, characterizing the *Genesis I* decision as having allowed a secured creditor to "(1) give up their proceeds under the reorganization plan to holders of unsecured and subordinated claims, without including the holders of punitive damages in the arrangement, and (2) allocate part of their value under the plan to the debtor's officers and directors as an employment incentive package." *Armstrong II*, 432 F.3d at 513-14; *see also In re World Health Alternatives, Inc.*, 344 B.R. 291, 298-99 (Bankr. D. Del. 2006) (discussing *Armstrong II* and *Genesis I* and concluding that *Armstrong II* distinguished, but did not disapprove of, *Genesis I*, and that secured creditors may give up a portion of their lien for the benefit of junior creditors without violating the Bankruptcy Code). *Armstrong I* reviewed relevant case law, including *Genesis I*, *In re MCorp. Financial, Inc.*, 160 B.R. 941 (S.D. Tex. 1993), and *In re SPM Mfg. Corp.*, 984 F.2d 1305 (1st Cir. 1993), and rejected a blanket rule that all gifting is permissible. *Armstrong I*, 320 B.R. at 539-40. The Third Circuit agreed:

> We adopt the District Court's reading of [the *MCorp-Genesis I* line of] cases, and agree that they do not stand for the unconditional proposition that creditors are generally free to do whatever they wish with the bankruptcy proceeds they receive. Creditors must also be guided by the statutory prohibitions of the absolute priority rule, as codified in 11 U.S.C. § 1129(b)(2)(B).

Armstrong II, 432 F.3d at 514. Reorganized Debtors do not advance a blanket rule that all gifting is permissible. Reorganized Debtors' position is merely that "courts in this circuit have held that such a horizontal gift is not unfair discrimination against the class that does not receive the larger gift when (i) the creditor that does not receive the larger gift is not entitled to a distribution under a plan, and (ii) no class junior to the creditor receives a distribution under the plan." (D.I. 37 at 12-13). The horizontal gifting in *Genesis I* does not violate the absolute priority rule and remains good law.

Appellant cites several cases in support of his argument, but because they are vertical gifting cases, they do not change the outcome here. Appellant cites *In re ICL Holding Co., Inc.*, 802 F.3d 547 (3d Cir. 2015), but that case addressed priority skipping payments in violation of the absolute priority rule and did not address issues of unfair discrimination. (*See* D.I. 29 at 24). Appellant also relies on the *DBSD* case from the Second Circuit. *See Dish Network Corp. v. DBSD N. Am., Inc.* (*In re DBSD)*, 634 F.3d 79, 86-87 (2d Cir. 2011). That case also involved a class-skipping gift to a class junior to the dissenting creditor in violation of the absolute priority rule. The Second Circuit held that the gifting of shares and warrants by second lien secured creditors to the debtor's sole shareholder was impermissible where the company's general unsecured creditors did not receive full satisfaction of their claims. *See id.* at 87. In short, these decisions focus on vertical class skipping in violation of the absolute priority rule

and do not support Appellant's argument that the gifted distributions in this case are impermissible.

Appellant cites just one case addressing horizontal gifting, *In re Sentry Operating Co. of Texas*, 264 B.R. 850 (Bankr. S.D. Tex. 2001), which as Reorganized Debtors correctly argue, is nonbinding and factually distinguishable. There, the plan sought to pay trade claims in full, while providing only a *de minimis* distribution to other general unsecured creditors. *See id.* at 851. In finding unfair discrimination, the *Sentry* court also emphasized that the secured lender was controlled by a competitor of the debtors, and that a large portion of the trade claims to be paid were to parties with "whom [the secured lender's] parent does substantial business." *Id.* at 856. Although the *Sentry* court concluded that there was a presumption of unfair discrimination, and stated that a secured creditor should not be permitted to "decide which creditors get paid and how much those creditors get paid" (*id.* at 865), the presence of a possible conflict of interest was evident. The *Sentry* court noted that the class of trade claims to be paid included creditors who "appear to be paid for reasons other than preservation of value." *Id.* at 864.

3. The Bankruptcy Court Did Not Err in Finding a Rational Basis for Separate Classification of Class A6 Claims

Section 1122(a) of the Bankruptcy Code provides that, except as otherwise provided in § 1122(b) of the Bankruptcy Code, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). "Section 1122 of the Code provides that claims that are not 'substantially similar' may not be placed in the same class; it does not expressly prohibit placing 'substantially similar' claims in separate classes." *In re Coram Healthcare Corp.*, 315 B.R. 321, 348 (Bankr. D. Del. 2004). Courts have held that there is significant flexibility in classifying claims and interests into different classes as long as a rational legal or factual basis for separate classification exists and all claims or interests within a particular class are substantially similar. *See, e.g.*, *Jersey City*, 817 F.2d at 1060-61 (approving classification of general unsecured creditors into separate classes of doctors' indemnification claims, medical malpractice claims, employee benefit claims, and trade claims). "[I]n analyzing whether claims within a given class are substantially similar, the focus of the classification should be on the legal character of the claim as it relates to the assets of the debtor." *In re W.R. Grace & Co.*, 475 B.R. 34, 109-10 (D. Del. 2012), *aff'd*, 729 F.3d 332 (3d Cir. 2013) (internal citations and quotation marks omitted). The "primary analysis centers upon

the legal attributes of the claims and not upon the status or circumstances of the claimant. Emphasis is not upon the holder so much as it is upon that which is held." *In re FF Holdings Corp.*, 1998 U.S. Dist. LEXIS 10741, *13 (D. Del. Feb. 17, 1998) (quoting *In re Northeast Dairy Cooperative Fed., Inc.*, 73 B.R. 239, 250 (Bankr. N.D.N.Y. 1987)). In determining whether the separate classification of substantially similar claims is permissible. "[i]t is a well-recognized principle that the classification of claims or interests must be 'reasonable' and cannot be grouped together for arbitrary or fraudulent purposes." *W.R. Grace*, 475 B.R. at 110.

Addressing Appellant's argument that the Plan improperly classified his claims separately from other general unsecured claims, the Bankruptcy Court noted that the proper analysis "focused on how the legal character of the claim relates to the assets of the debtor and whether the claims exhibit a similar effect on the bankruptcy estate." (7/24/17 Hr'g Tr. at 5:23-25). Based on the character and effect of the claims, the Bankruptcy Court found the Plan's separate classification of those claims to be reasonable and based on a "justifiable rationale:"

> [T]he debtors are entitled to flexibility in classifying claims [and] interests into different classes so long as a rational[ ], legal, or factual basis for separate classifications exists and all claims or interest[s] within a particular class are substantially similar.
>
> On[e] such justifiable rationale for separately classifying certain trade creditors from

> others is the debtors' intention of a continuing business relationship with such trade creditors as here. In its submissions, the debtors clearly explain that separate classification is necessary to maintain ongoing business relationships that [t]he debtors need to ensure the continuance of operations.
>
> In *Coram*, the Bankruptcy Court determined that separate classification of unsecured noteholders and trade creditors was reasonable because each group represented a voting interest that was sufficiently distinct from one another to merit a separate voice in the reorganization.
>
> Here, I similarly find that the plan reasonably classifies the 2018 noteholders separately from the other unsecured claims including intercompany claims, other general unsecured claims, and [what] I'll refer to as litigation claims including tort and disputed contract claims, all related to activities arising out of day-to-day operations of the companies.

(*Id.* at 6:1-24).

Appellant argues on appeal that "[t]he purported justification for separate classification [of those substantially similar claims] – that is, note claims on the one hand versus claims 'arising out of day-to-day operations,' on the other – does not pass muster under the law." (D.I. 29 at 31-32). Appellant argues that litigation claims being paid in full include liabilities arising out of "negative outcomes," including "lawsuits involving

employment, commercial, and environmental issues, other claims for injuries and damages, and various shareholder and class action litigation, among other matters." (*See* D.I. 29 at 34 (citing 7/21/17 Hr'g Tr. 40:1-42:6)). "Other than saying that those claims arose from 'day-to-day operations,' the Bankruptcy Court failed to identify any business reason for paying those litigation claims in full, while simultaneously paying holders of the 2018 Notes Claims received less than 10 cents on the dollar." (*Id.*) According to Appellant, "It is difficult to fathom what possible business reason could exist." (*Id*). Conversely, Reorganized Debtors argue that the Bankruptcy Court correctly found that fostering the Debtors' reorganization formed a rational basis for separate classification of the Trade and Business-Related Claims. (*See* D.I. 37 at 14-15). "Creditors holding Trade and Business-Related Claims were paid in full in recognition of the impossibility of partially impairing them during an expedited case, the relatively small amount that this body of creditors represents, and their importance to the smooth operation and success of the Debtors' business." (*Id.* at 36-37).

Numerous cases permit separate classification of trade claims from noteholder claims on the grounds that such claims have different legal attributes. In *Coram*, the chapter 11 plan separately classified trade creditors from other unsecured claims, including noteholder claims, and the noteholders argued that such separate classification of substantially similar claims was improper. *See Coram*, 315 B.R. at 348-49. The court found that the legal attributes of the noteholder claims

were different from the trade claims because the noteholder claims "arose from the purchase of notes, not the provision of services to the [d]ebtors" like the trade claims. *See id.* at 349. Accordingly, the court concluded that the claims were not substantially similar and that separate classification was proper. *Id.* at 351 ("[W]e are convinced that the Noteholders do represent a voting interest that is sufficiently distinct from the trade creditors to merit a separate voice in this reorganization case."). As in *Coram*, the Plan here permissibly classified claims arising from the purchase of the 2018 Notes separately from claims arising from the Debtors' operations and businesses, Classes A7, B7, and C7. Claims in Class A6 (2018 Note Claims) are legally distinct in nature from claims in the other classes of general unsecured claims. Creditors in Class A6 derive their claims from the 2018 Note indenture, a single debt instrument governing the 2018 Notes. In contrast, the holders of claims in Classes A7, B7 and C7, containing Trade and Business-Related Claims, all have claims that arose in connection with the Debtors' business operations, not indentures or similar financial instruments, including certain contingent litigation claims related to the Debtors' operations and businesses.

Reorganized Debtors further cite decisions by "[n]umerous courts [that] have held that separate classification and treatment of trade claims is acceptable if the separate classification is justified because they are essential to a reorganized debtor's

ongoing business."[16] Appellant disputes this argument, arguing that the separate classification was motivated "solely for the discriminatory purpose of not having to pay holders of the 2018 Notes Claims in full." (D.I. 29 at 14). However, Appellant's only argument in support of discriminatory purpose is circular: essentially, that the separate classification otherwise "makes no sense." (*See id.* at 33). "The origin of a given unsecured claim has nothing to do with whether a business reason exists for providing that claim with better treatment going forward." (*Id.*). Appellant's argument regarding discriminatory purpose is unavailing. The Bankruptcy Court's decision rested on its finding that the separate classification of trade creditors from noteholders fosters the reorganization. This finding is supported by the record, including Debtors' CRO's

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[16] *See, e.g.*, *Coram*, 315 B.R. at 349 (approving separate classification of trade creditors from other unsecured claims, including noteholder claims); *Jersey City Med. Ctr.*, 817 F.2d at 1061 (upholding separate classification of trade creditors as reasonable because of the differences between physician claims, medical malpractice claims, employee benefit claims, and trade creditor claims); *FF Holdings*, 1998 U.S. Dist. LEXIS 10741, at *16 (finding that separate classification of trade claims is permitted "if the separate classification is justified by a 'reasonable purpose,' legitimate basis, or necessary business objective."); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 247 (Bankr. S.D.N.Y. 2007) (finding it was within the debtor's discretion to separately classify the trade claims from other unsecured claims because the trade claims reserves would be shielded from the risk of certain of the unliquidated claims in the other unsecured claims class); *In re Richard Buick, Inc.*, 126 B.R. 840, 852 (Bankr. E.D. Pa. 1991) (upholding full payment of trade claims but only 5% recovery for other unsecured claims because full payment of the trade claims was necessary to the future success of the debtor's business).

confirmation hearing testimony that the separate classification and treatment of the Trade and Business-Related Claims was necessary (i) to "preserve what little trade credit the company did have remaining," (ii) because the businesses are typically operated in smaller towns with limited vendors, and (iii) because not paying any particular vendor would likely tarnish the reputation of the Debtors and harm relationships with other current or future potential vendors. (7/21/17 Hr'g Tr. 60:24-62:5; *see also* B.D.I. 338 at ¶ 37). Nothing in the record indicates that Appellant's claims were placed in Class A6 for arbitrary or fraudulent purposes, which is also belied by the Class A6 vote.[17] The Court finds no error in the Bankruptcy Court's determination that a rational basis for separate classification exists and that the classification was reasonable.

V. CONCLUSION

The Plan has been substantially consummated, and there is no practical relief that could be granted to Appellant that would not violate express provisions of the Bankruptcy Code, fatally scramble the Plan, and significantly harm third parties who have justifiably relied on plan confirmation. Therefore, the appeal meets the criteria for equitable mootness. Alternatively, the Bankruptcy Court's ruling is consistent with

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[17] The record reflects that, of the holders of Class A6 claims who voted on the Plan, approximately 80% in number voted to accept the Plan. (*See* B.D.I. 154, A746 (voting declaration)).

existing precedent, and the Confirmation Order is affirmed.

A separate order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: NUVERRA ENVIRONMENTAL SOLUTIONS, INC., *et al.*, Debtors.	:	Chapter 11 Case No. 17-10949-KJC (Jointly Administered)
DAVID HARGREAVES, Appellant, v. NUVERRA ENVIRONMENTAL SOLUTIONS, INC., *et al.*, Appellees.	:	Civ. No. 17-1024-RGA

ORDER

For the reasons set forth in the accompanying Memorandum, this 21 day of August, 2018, IT IS HEREBY ORDERED that:

1. The Motion to Dismiss (D.I. 31) is GRANTED.
2. Alternatively, the Confirmation Order (B.D.I. 366) is AFFIRMED.
3. The Clerk is directed to CLOSE Civ. No. 17-1024-RGA.

/s/ Richard G. Andrews
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: NUVERRA ENVIRONMENTAL SOLUTIONS, INC., *et al.*, Debtors.	:	Chapter 11 Case No. 17-10949-KJC (Jointly Administered)
DAVID HARGREAVES, Appellant, v. NUVERRA ENVIRONMENTAL SOLUTIONS, INC., *et al.*, Appellees.	:	Civ. No. 17-1024-RGA

MEMORANDUM ORDER

(Filed Aug. 3, 2017)

Before the Court is Appellant's Emergency Motion for Stay of Order Confirming the Amended Prepackaged Plans of Reorganization of Nuverra Environmental Solutions, Inc. and its Affiliated Debtors Pending Appeal (D.I. 3) and related Motion to Expedite (D.I. 4), seeking a stay pending appeal of a July 25, 2017 order by the Bankruptcy Court (D.I. 1-1) ("Confirmation Order"), Debtors and the Official Committee of Unsecured Creditors have each filed briefs in opposition. (D.I. 18, 19). For the reasons set forth below, the Motion for Stay is denied.

1. **Background.** The following facts appear to be undisputed. The Confirmation Order approved a plan of reorganization pursuant to which the Debtors' secured creditors will not receive 100% recovery on their secured claims. Unsecured creditors are "out of the money" with respect to any recovery in this case because their claims sit behind over $500 million of secured claims in a company that has an uncontroverted value of $300 million. (B.D.I. 363 at 4:4-8).[1] To enable the business to reorganize, secured creditors made a "gift" under the plan to general unsecured creditors who would otherwise receive no distribution under the Bankruptcy Code's priority scheme.

2. Despite the fact that unsecured creditors would receive no distribution absent the gift, Appellant has appealed the Confirmation Order based on the fact that the plan places general unsecured claims of the same priority into two separate classes and provides disparate treatment. Class A6, comprised of holders of 9.875% unsecured senior notes due 2018 ("2018 Notes"), will receive an approximate 4%-6% recovery on account of their claims by virtue of the gift. Class A7, on the other hand, comprised of trade and other creditors whose claims arise from the Debtors' day to day operations, will receive a 100% recovery by virtue of the gift. Appellant is a holder of approximately $450,000 of the 2018 Notes, or 1% of the claims in Class

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[1] The docket of the Chapter 11 cases, captioned *In re Nuverra Environmental Solutions, Inc.*, No. 17-10949 (KJC) (Bankr. D. Del.), is cited herein as "B.D.I. ___."

A6. Class A6 voted to reject the plan,[2] while Class A7 voted to accept it. Because the plan is nonconsensual, Debtors had the burden of "show[ing] that the plan meets the additional requirements of § 1129(b), including the requirements that the plan does not unfairly discriminate against dissenting classes and the treatment of the dissenting classes is fair and equitable." *In re Exide Techs.*, 303 B.R. 48, 58 (Bankr. D. Del. 2003). These requirements were addressed in the Debtors' confirmation brief and declaration in support. (B.D.I. 302, 338).

3. Appellant was the sole objector at the hearing on plan confirmation and argued, *inter alia*, that the plan: improperly classified his claim separately from other general unsecured claims (*see* B.D.I. 290 at 6-7); unfairly discriminated against Class A6 (*see id.* at 7-11); and violated the requirement that a nonconsensual plan be fair and equitable (*see id* at 11-12). Following argument on July 21, 2017 (B.D.I. 362), the Bankruptcy Court took the matter under advisement and made a bench ruling via telephonic hearing on July 24, 2017, overruling the objection and confirming the plan (B.D.I. 363). The Bankruptcy Court determined that separate classification of trade creditors

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[2] Despite having approximately 80% in number of holders vote to accept the plan, the plan failed to gain the support of 50% in dollar amount. Under section 1126(c) of the Bankruptcy Code, "[a] class of claims has accepted a plan if such plan has been accepted by creditors that . . . hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan." 11 U.S.C. § 1126(c).

and noteholders was reasonable on the basis that trade creditors were critical to the success of the reorganized debtors. (B.D.I. 363 at 5:5-6:24). Judge Carey applied the Markell test[3] and determined that, while the disparate treatment of the two classes raised a presumption of unfair discrimination, that presumption was rebutted because class A6 is "indisputably out of the money and not, otherwise, entitled to any distribution under the bankruptcy code's priority scheme and provided further that the proposed classification and treatment of the unsecured creditors fosters a reorganization of these debtors." (*Id.* at 8:25-9:3). The Bankruptcy Court also rejected Appellant's argument that the gift was from estate property, violated the absolute priority rule, and thus the plan was not "fair and equitable." (*Id.* at 10:8-12:12). The Bankruptcy Court ultimately determined that its decision was consistent with leading cases and approved the plan. Appellant filed a timely notice of appeal on July 25, 2017. (D.I. 1).

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[3] Under the Markel] test (named for a professor, not for a case), a rebuttable presumption of unfair discrimination arises:

> when there is (1) a dissenting class; (2) another class of the same priority; and (3) a difference in the plan's treatment of the two classes that results in either (a) a materially lower percentage recovery for the dissenting class (measured in terms of the net present value of all payments), or (b) regardless of percentage recovery, an allocation under the plan of materially greater risk to the dissenting class in connection with its proposed distribution.

In re Tribune Co., 472 B.R. 223, 241-42 (Bankr. D. Del. 2012) (adopting Markell test).

4. **Jurisdiction.** Appeals from the Bankruptcy Court to this Court are governed by 28 U.S.C. § 158. District courts have mandatory jurisdiction to hear appeals "from final judgments, orders, and decrees." 28 U.S.C. § 158(a)(1).

5. **Discussion.** "The granting of a motion for stay pending appeal is discretionary with the court." *See In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *2-3 (Banks. D. Del. Mar. 27, 2001). Appellant bears the burden of proving that a stay of the Confirmation Order is warranted based on the following criteria: (1) whether the movant has made "a strong showing" that it is likely to succeed on the merits; (2) whether the movant will be irreparably injured absent a stay; (3) whether a stay will substantially injure other interested parties; and (4) where the public interest lies. *Republic of Phil. v. Westinghouse Electric Corp.*, 949 F.2d 653, 658 (3d Cir. 1991). The most critical factors, according to the Supreme Court, are the first two: whether the stay movant has demonstrated (1) "a strong showing" of the likelihood of success, and (2) that it will suffer irreparable harm – the latter referring to harm that cannot be prevented or fully rectified by a successful appeal. *In re Revel AC, Inc.*, 802 F.3d 558, 568 (3d Cir. 2015) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal citations omitted). The Court's analysis should proceed as follows:

> Did the applicant make a sufficient showing that (a) it can win on the merits (significantly better than negligible but not greater than 50%) *and* (b) will suffer irreparable harm

> absent a stay? If it has, we balance the relative harms considering all four factors using a sliding scale approach. However, if the movant does not make the requisite showings on either of these first two factors, the inquiry into the balance of harms and the public interest is unnecessary, and the stay should be denied without further analysis.

Revel AC, 802 F.3d at 571 (emphasis in text) (internal quotations and citations omitted).

6. ***Likelihood of success on the merits.*** As to the first factor, Appellant has not met his burden of making "a strong showing" that he is likely to succeed on the merits. According to the Motion for Stay, Appellant's argument on appeal is that, having determined under the Markel] test that the disparate treatment of Classes A6 and A7 gave rise to a presumption of unfair discrimination, the Bankruptcy Court erred in finding that the presumption was rebutted and the gift "constitute[d] no unfair discrimination" because "class A6 was indisputably out of the money and not, otherwise, entitled to any distribution under the Bankruptcy Code's priority scheme and provided further that the proposed classification and treatment of other unsecured creditors fosters a reorganization of these debtors." (D.I. 3 at 6). Appellant argues that the Bankruptcy Court's reliance on the gifting doctrine was error because "[g]ifting is simply wrong as a matter of *law.*" (*Id.* at 7). In support, Appellant argues that, in *Armstrong World Industries, Inc.*, 432 F.3d 502 (3d Cir. 2005), the Third Circuit held that "vertical class skipping" – the

gifting of a distribution from a senior class of creditors in a manner that skips over an intermediary junior class, such that it violates the absolute priority rule – "is not allowed if the gift is property of the estate." (*Id.*) "By the same token," Appellant argues, horizontal class skipping – preferring one class of creditors over another class of creditors with claims of the same priority, as here – should be impermissible also: "gifting in violation of the requirement that a class not be unfairly discriminated against should not be allowed if the 'gift' is property of the estate." (*Id.*) Appellant is unlikely to succeed on the merits of this argument for several reasons.

7. First, although the Bankruptcy Court cited relevant case law from this district in support its ruling, Appellant fails to address those cases in his Motion for Stay or explain how the Bankruptcy Court erred in relying on those cases. In determining that the plan did not unfairly discriminate, the Bankruptcy Court relied on *In re Genesis Health Ventures, Inc.*, 266 B.R. 591 (Bankr. D. Del. 2001). (*See* B.D.I. 363 at 10:12-12:12). The bankruptcy court in *Genesis* confirmed a similar plan, under which secured lenders made a gift from their own recovery to certain, but not all, classes of general unsecured creditors, premised upon the assumption that even if senior lenders received all the debt and equity distributed under the plan, the senior lenders' claims still would not be satisfied in full. *See Genesis*, 266 B.R. at 602. Under the plan in that case, secured creditors did not make a gift to certain classes of general unsecured creditors (*e.g.*, creditors holding

punitive damages claims), and those creditors objected to plan confirmation on the basis of unfair discrimination. While the disparate treatment gave rise to presumption of unfair discrimination under the Markell test, the *Genesis* court ultimately concluded that the presumption was rebutted:

> [T]he recovery by Classes G4 and M4 of a dividend in the form of New Common Stock and Warrants is based on the agreement of the Senior Lenders to allocate a portion of the value they would have otherwise received to Classes G4 and G5. The disparate treatment . . . is a permissible allocation by the secured creditors of a portion of the distribution to which they would otherwise be entitled, rather than unfair discrimination against Classes G7 and M7 by the proponents of the plan.

Id. at 612. Thus, *Genesis* held that the presumption of unfair discrimination is rebutted where the distribution is based on the agreement of senior lenders to allocate a portion of the value to which they would have otherwise been entitled under the Bankruptcy Code. The Bankruptcy Court's ruling here is consistent with *Genesis*, and Appellant points to no differences between these cases that requires a different outcome or would make his success on appeal likely.

8. Appellant's reliance on the Third Circuit's holdings in *Armstrong* and *ICL* is misplaced. Under the proposed plan in *Armstrong*, an unsecured creditor class would receive and automatically transfer warrants to purchase common stock (property of the

estate) to a class of equity holders, despite the fact that the plan did not provide full recovery for all unsecured creditors in classes senior to the equity holders. *See Armstrong*, 432 F.3d at 514. The Third Circuit determined that vertical class skipping gifts like these violated the absolute priority rule, which is codified as part of the "fair and equitable" requirements of section 1129(b). "Under the statute, a plan is fair and equitable with respect to an impaired, dissenting class of unsecured claims if (1) it pays the class's claims in full, or if (2) it does not allow holders of any junior claims or interests to receive or retain any property under the plan 'on account of' such claims or interests." *Id.* at 512 (citing 11 U.S.C. § 1129(b)(2)(B)(i)-(ii). The *Armstrong* court concluded that the plain language of the statute makes clear that a plan cannot give property to junior claimants over the objection of a more senior class that is impaired. *Id.* at 513. In the context of gifts, the Third Circuit noted that "section 1129 was at least designed to address 'give-up' situations where a senior class gave property to a class junior to the dissenting class." *Id.* Unlike *Armstrong*, the gift at issue here is a voluntary carve out from the senior lender's liens, and the plan does not involve vertical class skipping as it does not provide a distribution to a class junior to the dissenting class – Class A6.

9. Appellant further cites the Third Circuit's ruling in *ICL* – a case decided in the context of a settlement agreement in connection with an asset sale, not a plan of reorganization – for the rule that gifts are permissible only if they are not made from estate

property. *In re ICL Holding Co., Inc.*, 802 F.3d 547 (3d Cir. 2015). While Appellant appears to argue that the gift in this case was made from estate property and was thus impermissible (*see* D.J. 3 at 7), Appellant provides no support for his argument. As noted above, a similar gift from senior lenders to certain, but not all, classes of general unsecured creditors was approved in *Genesis*. As the Bankruptcy Court noted in its ruling, *Armstrong* distinguished the very similar "arrangement in *Genesis* as an ordinary carve-out of the senior creditor's lien for the junior claimant's benefit" but did not reject it. (*See* B.D.I. 363 at 11:8-12:9).[4] The Bankruptcy Court's ruling is consistent with these cases, and Appellant offers no reason why he is likely to succeed on appeal in establishing that the gift in this case was from estate property or otherwise offends the absolute priority rule.

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[4] In *Armstrong*, this Court distinguished *Genesis* on the facts as involving a distribution of property subject to the senior creditor's liens that was "carved out" voluntarily for junior claimants. *See In re Armstrong World Indus.*, 320 B.R. 523, 539 (D. Del. 2005). The Third Circuit adopted this reading of that case, characterizing the *Genesis* decision as having allowed a secured creditor to "(1) give up their proceeds under the reorganization plan to holders of unsecured and subordinated claims, without including the holders of punitive damages in the arrangement, and (2) allocate part of their value under the plan to the debtor's officers and directors as an employment incentive package." *See id.* at 513-14. *See also In re World Health Alternatives, Inc.*, 344 B.R. 291, 298-99 (Bankr. D. Del. 2006) (discussing *Armstrong* and *Genesis* and concluding "[s]uch a carve out does not offend the absolute priority rule or the Bankruptcy Code's distribution scheme because the property belongs to the secured creditor – not the estate").

10. Finally, Appellant relies on *Sentry*, a case outside this circuit, in which the Bankruptcy Court for the Southern District of Texas held that a secured creditor should never be permitted to "decide which creditors get paid and how much those creditors get paid." *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001). Because Appellant has failed to address case law in this district to the contrary, his reliance on a case outside this circuit does not establish a likelihood of success on appeal.

11. ***Irreparable harm.*** Appellant has failed to establish that he would suffer irreparable harm in the absence of a stay. To do so, Appellant must establish a resulting injury "that cannot be redressed by a legal or equitable remedy." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). Appellant merely argues that if no stay is granted, and the plan is consummated, he may be barred from arguing the merits of his appeal based on equitable mootness. (*See* D.I. 3 at 3, 8). The possibility that an appeal may become moot does not alone constitute irreparable harm for purposes of obtaining a stay.[5] If the plan goes effective, Appellant will be entitled to the same distribution

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[5] This alleged harm would be purely economic, and, as such, it also would not satisfy the requirement *See e.g.*, *Regal Ware, Inc. v. Global Home Prods., LLC*, 2006 WL 2381918, at *1 (D. Del. Aug. 17, 2006) ("[T]he fact that [the movant's] appeal could be rendered moot . . . does not in and of itself constitute irreparable harm."); *In re Tribune Co.*, 477 B.R. 465, 477 n.12 (Bankr. D. Del. 2012) ("[t]he possibility of equitable mootness, while a factor here for irreparable harm, is not dispositive of the ultimate question of whether to grant a stay pending appeal.")

as other Class Ab creditors, and Appellant does not argue that he ultimately is entitled to the full payment of his claim.[6] Debtors argue the company's valuation is uncontroverted, and it is undisputed that unsecured creditors are entitled to no distribution under the Bankruptcy Code. (*See* D.I. 19 at 15). Thus, it appears that even if Appellant succeeded on appeal, unsecured creditors would receive no value under a new proposed plan or in a liquidation. (*See id.*) The court agrees with Debtors that "because there is no value that Appellant is entitled to seek or likely to obtain in this appeal, Appellant cannot establish that he will suffer irreparable harm." (*Id.*)

12. Having evaluated Appellant's likelihood of success on the merits and irreparable harm absent a stay, and having determined that Appellant has failed to carry his burden as to either element, the Court is satisfied no further analysis is required. *See Revel AC*, 802 F.3d at 571.

13. **Conclusion.** The Bankruptcy Court's ruling is consistent with existing precedent, and Appellant has failed to establish that he will suffer irreparable harm in absence of a stay.

NOW, THEREFORE, it is HEREBY ORDERED that the Motion for Stay (D.I. 3) and Motion to Expedite (D.I. 4) are DENIED.

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[6] *See Revel AC*, 802 F.3d at 572 ("[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement" unless "the potential economic loss is so great as to threaten the existence of the movant's business.")

Entered this 3 day of August, 2017.

/s/ Richard G. Andrews
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
Nuverra Environmental Solutions, Inc., *et al.*,[1]	:	**Case No. 17-10949 (KJC)**
	:	**(Jointly Administered)**
Debtors	:	**RE: Docket Nos. 11, 14, 90, 226, 301, and 337[, 364]**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER APPROVING (I) THE ADEQUACY OF THE DISCLOSURE STATEMENT; (II) PREPETITION SOLICITATION PROCEDURES; AND (III) CONFIRMATION OF THE PREPACKAGED PLAN

(Filed Jul. 25, 2017)

Recitals

A. On April 28, 2017 (the "**Launch Date**"), Nuverra Environmental Solutions, Inc. ("**Nuverra**")

[1] The Debtors in these cases (including the last four digits of their respective taxpayer identification numbers) are: Nuverra Environmental Solutions, Inc. (7117), Appalachian Water Services, LLC (0729), Badlands Leasing, LLC (2638), Badlands Power Fuels, LLC (DE) (8703), Badlands Power Fuels, LLC (ND) (1810), Heckmann Water Resources Corporation (1194), Heckmann Water Resources (CVR), Inc. (1795), Heckmann Woods Cross, LLC (9761), HEK Water Solutions, LLC (8233), Ideal Oilfield Disposal, LLC (5796), Landtech Enterprises, L.L.C. (9022), NES Water Solutions, LLC (3421), Nuverra Total Solutions, LLC (6218), and 1960 Well Services, LLC (5084). The Debtors' corporate headquarters is located at 14624 N. Scottsdale Rd., Suite 300, Scottsdale, Arizona 85254.

and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") commenced a prepetition solicitation (the "**Solicitation**") of votes to accept or reject the Debtors' Prepackaged Plans of Reorganization Under Chapter 11 of the Bankruptcy Code. Specifically, on the Launch Date, the Debtors caused Prime Clerk LLC (the "**Solicitation Agent**") to commence service of (1) the Solicitation and Disclosure Statement, dated April 28, 2017 (as supplemented, the "**Disclosure Statement**") and all exhibits thereto, including, among others, the Prepackaged Plans of Reorganization under Chapter 11 of the Bankruptcy Code, dated April 28, 2017 (the "**Original Plan**");[2] (ii) ballots (the "**Ballots**") to Holders of Claims in Voting Classes (as defined below); and (iii) a pre-addressed, postage paid return envelope (collectively, the "**Solicitation Materials**") on the Depository Service List, the Term Loan Lender Service List, the Bond Nominees Service List, the Nominees and Depository Service List, and the Supplemental Bond Nominees Service List, all as more fully described on Exhibits F through Exhibit J to the *Affidavit of Service of Solicitation Materials* (the "**Solicitation Service Affidavit**") [Docket No. 67].

B. The Ballots, and a postage paid return envelope, were distributed to each person or entity (or to its applicable nominee) that was a beneficial holder

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[2] As used herein, the term "**Plan**" shall mean the Original Plan and the Amended Plan (as defined below), as applicable. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

of record (a "**Holder**") as of April 28, 2017 (the "**Voting Record Date**") of Claims against (i) the Nuverra Group Debtors related to, arising out of, or in connection with, (a) the term loan credit agreement (the "**Term Loan Facility Claims**") (Class A4), (b) the 12.5%/10.0% Notes due 2021 the "**2021 Note Claims**") (Class A5), or (c) the 9.875% Notes due 2018 (the "**2018 Note Claims**") (Class A6); (ii) the AWS Debtor related to, arising out of, or in connection with (a) Term Loan Facility Claims (Class B4), or (b) 2021 Note Claims (Class B5); or (iii) the Badlands (DE) Debtor related to (a) the Term Loan Facility Claims (Class C4) or (b) 2021 Note Claims (Class C5) (Classes A4, A5, A6, B4, B5, C4 and C5 being the "**Voting Classes**"). The Debtors established May 26, 2017 at 5:00 p.m., prevailing Eastern time, as the deadline by which Holders of Claims entitled to vote to accept or reject the Plan were required to have returned their completed Ballots to the Solicitation Agent (the "**Voting Deadline**").

C. The Debtors did not solicit votes to accept or reject the Original Plan from holders of Claims or Equity Interests classified in Classes A1-A3, A7-A12, B1-133, B6-B10, C1-C3 and C6-C10 (collectively, the "**Non-Voting Classes**"), each of which was deemed under the Original Plan either to have accepted or rejected the Plan pursuant to sections 1126(f) or (g) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

D. On May 1, 2017 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

E. On May 2, 2017, this Court entered its Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Prepackaged Plan; (II) Fixing Deadline to Object to Disclosure Statement and Prepackaged Plan; (III) Approving Prepetition Solicitation Procedures and Form and Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Conditionally (A) Directing the United States Trustee Not to Convene Section 341 Meeting of Creditors and (B) Waiving Requirement of Filing Statements of Financial Affairs and Schedules of Assets and Liabilities; and (V) Granting Related Relief [Docket No. 59] (the "**Scheduling Order**"). In the Scheduling Order, the Court established (i) June 12, 2017 at 4:00 p.m. as the deadline by which objections to the Disclosure Statement or Plan (as defined below) were to be filed (the "**Objection Deadline**") and (ii) June 21, 2017 at 10:00 a.m. as the time and date for the hearing to consider approval of the Disclosure Statement, the Solicitation and the solicitation procedures described in the Scheduling Motion (the "**Solicitation Procedures**"), and confirmation of the Plan (the "**Combined Hearing**"). In accordance with the Scheduling Order, the Debtors were required to serve and publish a notice (the "**Notice**") of, among other things, (i) the Combined Hearing, (ii) the

Objection Deadline, and (iii) the Solicitation Procedures.

F. The Original Plan, filed on the Petition Date, was the result of rigorous negotiations with, and ultimately, an agreement resulting in significant concessions from, the Supporting Noteholders, which was memorialized in the Restructuring Support Agreement, dated April 9, 2017 (together with all exhibits, attachments, and amendments thereto, the "**Restructuring Support Agreement**"). Pursuant to the Restructuring Support Agreement, the Debtors' major creditors—the Supporting Noteholders—agreed to support the Plan and the restructuring contemplated thereunder.

G. As evidenced by Affidavits of Service and a Certification of Publication filed in these Cases (collectively, the "**Combined Hearing Notice Affidavits**"),[3] in accordance with the terms of the Scheduling Order, the Debtors (i) served the Notice upon all of the Debtors' known creditors (or nominees therefor), indenture trustees, equity interest holders, the Office of the United States Trustee (the "**U.S.**

[3] The Combined Hearing Notice Affidavits include: (i) Affidavit of Service of Nicholas Duncan Regarding Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Prepackaged Plan; (II) Fixing Deadline to Object to Disclosure Statement and Prepackaged Plan, May 11, 2017 Pocket No. 811; (ii) Affidavit of Service of Christine Porter Regarding Notice of Commencement of cases Under Chapter 11 of the Bankruptcy Code, May 17, 2017 [Docket No. 87]; and Certification of Publication in *USA Today* of the Notice of Commencement, June 13, 2017 [Docket No. 206].

Trustee"), all parties requesting notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and certain other parties in interest, including counterparties to executory contracts and unexpired leases as required by the Scheduling Order and (ii) caused notice of the Combined Hearing and Objection Deadline to be published in the national edition of *USA Today* on June 7, 2017.

H. On May 19, 2017, the Debtors filed the *Plan Supplement to the Debtors' Prepackaged Plans of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 90] containing the following documents: (i) the list of the known members of the Reorganized Nuverra Board and the nature and compensation for any director who is an "insider" under the Bankruptcy Code, (ii) the Schedule of Rejected Contracts, (iii) the employment agreement for Mark D. Johnsrud, (iv) the Exit Financing Term Sheet, (v) the Registration Rights Agreement, (vi) the Reorganized Nuverra Constituent Documents,[4] (vii) a term sheet setting forth the material terms and conditions of the Management Incentive Plan, (viii) the Rights Offering Procedures, (ix) the Schedule of Preserved Claims and Causes of Action, and (x) all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing. On July 6, 2017, the Debtors filed the

[4] The term "**Reorganized Nuverra Constituent Documents**" means, collectively, the Reorganized Nuverra By-Laws and the Reorganized Nuverra Certificate of Incorporation.

Supplements and Amendment to Plan Supplement [Docket No. 301), which included: (i) a revised list of known members of the Reorganized Nuverra Board and the nature and compensation for any director who is an "insider" under the Bankruptcy Code, (ii) the employment agreement for Joseph M. Crabb, (iii) revised Rights Offering Procedures, (iv) the Warrant Agreement, which governs the warrants to be issued pursuant to the Plan (the "**Unsecured Claim Warrants**"), (v) a commitment letter for exit financing, (vi) the PSA (as defined below), (vii) an amended Schedule of Rejected Contracts, and (viii) a schedule of a contract to be rejected upon the Effective Date if a motion to assume is not granted. On July 18, 2017, the Debtors filed the Further Supplement and Amendment to the Plan Supplement [Docket No. 337], which included: (i) an amended Schedule of Rejected Contracts, (ii) a revised employment agreement for Joseph M. Crabb, and (iii) commitment and fee letters for exit financing (the plan supplement at Docket No. 90 as supplemented and amended by Docket Nos. 301 and 337, the "**Plan Supplement**").

I. On May 19, 2017, the U.S. Trustee filed a notice of appointment [Docket No. 88] of the Official Committee of Unsecured Creditors (the "**Committee**"). On June 2, 2017, the U.S. Trustee appointed an additional member to the Committee following the resignation of one of the original members [Docket No. 136]. The additional member subsequently resigned from the Committee [Docket No. 313].

J. In the Declaration of Christina Pullo of Prime Clerk LLC Regarding Solicitation of Votes and Tabulation of Ballots Cast on the Debtors' Prepackaged Plans of Reorganization under Chapter 11 of the Bankruptcy Code, dated June 3, 2017 (the "**Voting Affidavit**"), the Solicitation Agent certified the results of the Solicitation and confirmed that the Solicitation was carried out in accordance with the Solicitation Procedures [Docket No. 154].

K. On June 1, 2017, the Committee filed the *Motion of the Official Committee of Unsecured Creditors for Reconsideration of Order (I) Scheduling Combined Hearing On (A) Adequacy of Disclosure Statement and (B) Confirmation of Prepackaged Plan; (II) Fixing Deadline to Object to Disclosure Statement and Prepackaged Plan; (III) Approving Prepetition Solicitation Procedures and Form and Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; (IV) Conditionally (A) Directing the United States Trustee Not to Convene Section 341 Meeting of Creditors and (B) Waiving Requirement of Filing Statements of Financial Affairs and Schedules of Assets and Liabilities; and (V) Granting Related Relief* [Docket No. 127] (the "**Committee Reconsideration Motion**"), which, among other things, sought reconsideration of the Scheduling Order and an adjournment of the Confirmation Hearing for 75 days. Subsequent to the filing of the Committee Reconsideration Motion, at the Debtors' request, the Court rescheduled the Combined Hearing to July 11, 2017, at 10:00 a.m., and the Court adjourned the Objection

Deadline to June 30, 2017 (the "**Objection Deadline**").

L. After a series of negotiations among the Debtors, the Supporting Noteholders, the Committee, and their respective professionals, an agreement was reached, which was embodied in a plan support agreement (the "**PSA**"), dated June 22, 2017, that settled any potential Committee objections to the Original Plan. Among other things, the PSA provides for certain amendments to the Plan that were embodied in the Amended Plan that was filed by the Debtors on June 23, 2017 [Docket No. 226] (the "**Amended Plan**," and together with the Original Plan, the "**Plan**"), and served, along with a blackline of the Amended Plan reflecting the amendments, upon the Debtors' core and Bankruptcy Rule 2002 list. Pursuant to the PSA, the Committee agreed to support and aid in the confirmation of the Plan.

M. On June 30, 2017, subsequent to the Objection Deadline, the *Unsecured Bondholder's Objection to Confirmation of the Debtors' Amended Prepackaged Plans of Reorganization* [Docket No. 290] was filed on the docket in the Chapter 11 Cases (as defined below).

N. On July 6, 2017, the Debtors filed the *Debtors' Memorandum of Law in Support of an Order Approving (I) the Adequacy of the Disclosure Statement; (II) Prepetition Solicitation Procedures; and (III) Confirmation of the Prepackaged Plan* [Docket No. 302] (the "**Confirmation Memorandum**").

O. On July 18, 2017, the Debtors filed (i) the proposed confirmation order and (ii) the *Declaration of Robert D. Albergotti in Support of the Memorandum of Law in Support of an Order Approving (I) the Adequacy of the Disclosure Statement; (II) Prepetition Solicitation Procedures; and (III) Confirmation of the Prepackaged Plan* (the "**Confirmation Declaration**," together with the Confirmation Memorandum and the proposed confirmation order, the "**Confirmation Submissions**").

P. At the Combined Hearing, this Court considered the Confirmation Submissions and heard the arguments of counsel supporting confirmation of the Plan and approval of the Solicitation Materials, including the Disclosure Statement and the Solicitation Procedures.

WHEREFORE, this Court, having reviewed the Solicitation Materials, the Plan, the Solicitation Procedures, the Voting Affidavit and the Confirmation Submissions; having held the Combined Hearing to consider the approval of the adequacy of the information contained in the Disclosure Statement, the Solicitation Procedures, and confirmation of the Plan; having considered all evidence submitted or presented at the Combined Hearing; having found that the legal and factual bases set forth in the Confirmation Submissions and the Voting Affidavit and presented at the Combined Hearing establish just cause for the relief granted herein; and having considered any and all objections to the Plan and its confirmation, the Disclosure Statement, and the

Solicitation Procedures, and all such objections being consensually resolved or withdrawn, or overruled on the merits; and after due deliberation thereon and good cause appearing therefor, this Court hereby makes and issues the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

IT IS HEREBY FOUND AND DETERMINED THAT:

1. Findings and Conclusions. The findings and conclusions set forth herein, in the recitals, and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, or vice versa, they are adopted as such.

2. Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157, 1334(a), 1408 and 1409). This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2) and this Court has jurisdiction to approve the Disclosure Statement and the Solicitation Procedures and to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. Venue is

proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Venue in the District of Delaware was proper as of the Petition Date and continues to be proper.

3. Chapter 11 Petitions and Joint Administration of Cases. On May 1, 2017 (the "**Petition Date**"), each Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. In accordance with the *Order Granting the Motion for Joint Administration* [Docket No. 50], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

4. Judicial Notice. This Court takes judicial notice of all orders entered, and all evidence and arguments made, proffered or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Cases.

5. Objections Overruled. All parties have had a full and fair opportunity to be heard on all issues raised by objections to confirmation of the Plan. All unresolved objections, statements, informal objections, and reservations of rights, if any, related to the Solicitation Procedures, the Disclosure Statement, or the confirmation of the Plan, are OVERRULED on the merits.

6. Adequacy of the Solicitation Procedures and Adequacy of the Information Contained in the Disclosure Statement (11 U.S.C. §§ 1125, 1126(b)). Sections 1125(g) and 1126(b) of the Bankruptcy Code apply to the solicitation of acceptances and rejections of the Plan prior to the commencement of the Chapter 11 Cases. The Disclosure Statement contains "adequate information" as such term is defined in section 1125 of the Bankruptcy Code, thereby satisfying sections 1125 and 1126(b) of the Bankruptcy Code. Votes for acceptance and rejection of the Plan were solicited in good faith and the Solicitation complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, all other applicable provisions of the Bankruptcy Code and all other applicable rules, laws and regulations. In soliciting votes, the Debtors properly relied on the exemption from the registration requirements pursuant to section 3(a)(9) of the Securities Act of 1933 (as amended, and including the rules and regulations promulgated thereunder, the "**Securities Act**"). Accordingly, the Debtors, the Reorganized Debtors, the Committee, the Supporting Noteholders and any and all affiliates, members, managers, shareholders, partners, employees, attorneys and advisors of the foregoing are entitled to the protection of section 1125(e) of the Bankruptcy Code.

7. Transmittal and Mailing of Materials, Notice. As evidenced by the Combined Hearing Notice Affidavits, the Voting Affidavit, and the other affidavits

of service, mailing, and publication filed with this Court prior to the Combined Hearing (collectively, the "**Notice Affidavits**"),[5] the transmittal and service of the Plan, the Disclosure Statement, the Ballots, and notice of the Combined Hearing were adequate and sufficient under the circumstances, and all parties have been given due, proper, timely, and adequate notice, and an opportunity to appear and be heard with respect thereto. The Notice informed creditors and other parties in interest that the Combined Hearing could be adjourned, and informed them of how to access an electronic website with up to date information regarding the scheduling of the Combined Hearing. Creditors also had the ability to request that they be placed on the list of parties regarding notice pursuant to Bankruptcy Rule 2002. Accordingly, due and proper notice has been given with respect to the Combined Hearing and the deadlines and procedures for filing objections to the Disclosure Statement and confirmation of the Plan in accordance with the Scheduling Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules (the "**Local Rules**").

8. Plan Modification. As set forth in the *Affidavit of Service* of Nicholas Duncan, dated June 28, 2017 [Docket No. 2801, on June 23, 2017, notice of the Amended Plan and a redline of the Amended Plan to the Original Plan were served on the Debtors' 2002

[5] The Notice Affidavits, other than the Combined Hearing Notice Affidavits, are located at Docket Nos. 67, 97, 113, 114, 185, 199, 229, 233.

Service List. Adequate and sufficient notice of the modifications to the Original Plan has been given, no other further notice, or re-solicitation of votes on the Plan, including the amendments set forth in the Amended Plan, is required, and such modifications are approved in full. The votes cast to accept the Original Plan are deemed to have been cast with respect to the Amended Plan, as so modified.

9. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

10. Plan Compliance with the Applicable Provisions of the Bankruptcy. Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code:

> (a) Proper Classification of Claims and Equity Interests (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan designates 32 Classes of Claims and Equity Interests, aside from Claims that need not be classified, including Claims against any Debtor for costs and expenses of administration under section 503(b)(1) or 507(b) of the Bankruptcy Code, including for (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors, (ii) compensation for services and reimbursement of expenses under section 330(a) or 331 of the Bankruptcy Code, including Professional fees and expenses, (iii) any indebtedness or obligations incurred or assumed

by the Debtors during the Chapter 11 Cases, (iv) all fees and charges assessed against the Estates under 28 U.S.C. §§ 1911-1930 (collectively, "**Administrative Claims**") and (v) all Claims against any Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code ("**Priority Tax Claims**"). The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between or among holders of Claims or Equity Interests. The classification is reasonable and necessary to implement the Plan and is proper under the Bankruptcy Code. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies that Classes A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 and C10 are Unimpaired within the meaning of section 1124 of the Bankruptcy Code, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan designates each of Classes A4-A6, A8, A10, A11, B4-B6, B9, C4-C6 and C9 as Impaired within the meaning of section 1124 of the Bankruptcy Code and specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in a particular Class, unless a holder of a particular Claim or Interest has agreed to less favorable treatment, which satisfies section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the Plan Supplement provide adequate and proper means for implementation of the Plan, thereby satisfying section 1123(a)(5) of the Bankruptcy Code, including, without limitation, (i) the continued corporate existence of the Reorganized Debtors, (ii) all action set forth in Article IV of the Plan, (iii) the funding of the Plan, (iv) the cancellation of certain securities and agreements, (v) the cancellation of certain existing security interests, (vi) the composition of the board of directors and officers of Reorganized Nuverra to the extent such information is available, (vii) the adoption of the Management Incentive Plan, (viii) the authorization, issuance, and delivery of Reorganized Nuverra Common Stock (which the Reorganized Debtors shall use best efforts to have listed on a nationally recognized exchange as soon as practicable subject to meeting applicable listing requirements following the Effective Date), (ix) the implementation of the Rights Offering, (x) the entry into the Registration Rights Agreement, (xi) the entry into the Warrant Agreement, and (xii) taking of all necessary and appropriate actions by the Debtors or Reorganized Debtors, as applicable, to effectuate the transactions under and in connection with the Plan.

(f) Charter Provisions (11 U.S.C. § 1123(a)(6)). In accordance with section 1123(a)(6) of the Bankruptcy Code, the amended and restated certificate of incorporation and by-laws of Reorganized Nuverra contain provisions prohibiting the issuance of non-voting equity securities, and provide for the appropriate distribution of voting power among all classes of equity securities authorized for issuance under the Plan [Docket No. 90—Ex. G ¶ 3], thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

(g) Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Section 4.13 of the Plan provides that on the Effective Date, the Reorganized Nuverra Board shall consist of five members, four of which are to be appointed by the two largest creditors in the Chapter 11 Cases (including the two identified in the Plan Supplement) and the Debtors' chief executive officer. Any subsequent Reorganized Nuverra Board shall be elected, classified, and composed in a manner consistent with the Reorganized Nuverra Constituent Documents and applicable non-bankruptcy law. The provisions of the Plan for the selection of directors and officers are consistent with the interests of creditors, the new equity security holders and public policy. The Debtors have identified the directors and officers of each Reorganized Debtor in the Plan Supplement to the extent such information is available. Consequently, the requirements of section 1123(a)(7) of the Bankruptcy Code have been met.

(h) Impairment/Unimpairment (11 U.S.C. § 1123(b)(1)). In accordance with section 1123(b)(1)

of the Bankruptcy Code, Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests.

(i) Assumption and Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Article V of the Plan addresses the assumption and rejection of executory contracts and unexpired leases, and meets the requirements of section 365(b) of the Bankruptcy Code. In accordance with Section 5.2 of the Plan, the Debtors have filed and served the notice of proposed Cure Claims with respect to the executory contracts and unexpired leases to be assumed by the Debtors pursuant to the Plan (the "**Cure Claim Notice**") [Docket No. 276] to applicable parties to executory contracts or unexpired leases to be assumed, as set forth in the *Affidavit/ Declaration of Mailing of Christine Porter Regarding, Notice of Filing of List of Executory Contracts and Unexpired Leases Potentially Being Assumed under the Debtors' Prepackaged Plans of Reorganization* [Docket No. 288]. There have been no objections to the Debtors' assumption of executory contracts and unexpired leases contained in the Cure Claim Notice.

(j) Settlement and Preservation of Claims and Causes of Action (11 U.S.C. § 1123(b)(3)). The Plan is consistent with Bankruptcy Code section 1123(b)(3). In consideration of the distributions, settlements, and other benefits provided under the Plan, the provisions of the Plan constitute a good-faith compromise of all Claims, Equity Interests, and controversies relating to the contractual, legal. and subordination rights that a holder of a

Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The compromise and settlement of such Claims and Equity Interests embodied in the Plan is in the best interest of the Debtors, the Estates, and all holders of Claims and Equity Interests, and are fair, equitable, and reasonable. Section 9.8 of the Plan provides that the Reorganized Debtors will retain and have the exclusive right to enforce, after the Effective Date, any claims, rights and Causes of Action that the Debtors or the Estates may hold against any Entity, except for those that have been expressly released under the Plan. The provisions regarding the preservation of Causes of Action in the Plan are appropriate, fair, equitable, and reasonable, and are in the best interest of the Debtors, the Estates, and holders of Claims and Equity Interests.

(k) Modification of Rights (11 U.S.C. § 1123(b)(5)). In accordance with section 1123(b)(5) of the Bankruptcy Code, Article III of the Plan modifies or leaves unaffected, as the case may be. the rights of certain holders of Claims and Equity Interests.

(l) Additional Plan Provisions (11 U.S.C. 1123(b)(6)). In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code.

(m) Cure of Defaults (11 U.S.C. § 1123(d)). In accordance with section 1123(d) of the Bankruptcy Code, Article V of the Plan provides for the satisfaction of Cure Claims associated with executory contracts or unexpired leases to be assumed pursuant to the Plan in accordance with Bankruptcy Code section 365(b). As described above, the Debtors timely filed and served their Cure Claim Notice, and received no timely objections to the proposed Cure Claims.

11. Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors and their agents have complied in good faith with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically: (i) the Debtors are eligible to be debtors under section 109 of the Bankruptcy Code and are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code; (ii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court; and (iii) the. Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126(b), the Bankruptcy Rules and applicable non-bankruptcy rules and regulations and the Scheduling Order in transmitting the Solicitation Materials and in soliciting and tabulating votes to accept or reject the Plan. The Debtors complied with applicable provisions of the Bankruptcy Code in transmitting Combined Hearing notices and otherwise satisfied 1129(a)(2) of the Bankruptcy Code.

12. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Plan is the culmination of significant arm's-length negotiations with a group composed of certain unaffiliated Holders of Impaired Claims (the "**Supporting Noteholders**"), the Committee, and other key constituents and is proposed with the honest purposes of substantially reducing the Debtors' debt obligations and expeditiously making the distributions provided for in the Plan.

13. Payments for Services or Costs and Expenses (11 U.S.C. §1129(a)(4)). Except as otherwise provided or permitted by the Plan, or orders of this Court, any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter II Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

14. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed to the extent such information is available, and the appointment to, or the continuation in, such offices of such persons is consistent with the interests

of the Debtors' creditors and equity security holders and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation also have been fully disclosed.

15. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any change in rates subject to governmental regulation. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

16. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis contained in Article IX of the Disclosure Statement and other evidence proffered or adduced at the Combined Hearing: (i) are persuasive and credible; (ii) have not been controverted by other evidence or challenged; and (iii) establish that each holder of a Claim or Equity Interest in an Impaired Class either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

17. Acceptance or Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)). Holders of Claims in the Voting Classes were the only holders of Claims entitled to vote to accept or reject the Plan pursuant to the provisions of the Bankruptcy Code. Holders of

Claims in Classes A4, B4, C4, A5, B5 and C5 have accepted the Plan pursuant to section 1126(c) of the Bankruptcy Code. Holders of Claims in Classes A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 and C10 are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Claims in Classes A8, A10, A11, B6, B9, C6 and C9 are conclusively deemed to have rejected the Plan (collectively, the "**Deemed Rejecting Classes**"). Notwithstanding that Holders of Claims in Classes A8, B6, and C6 receive distributions under the Amended Plan pursuant to the settlement embodied in the PSA, Classes A8, B6, and C6 are deemed to reject the Plan and are not entitled to vote thereon. Holders of Claims in Class Ad have voted to reject the Plan. The Plan, therefore, does not satisfy section 1129(a)(8) of the Bankruptcy Code. Notwithstanding the lack of compliance with section 1129(b)(8) of the Bankruptcy Code with respect to the rejecting Class and Deemed Rejecting Classes, the Plan is confirmable because, as set forth below, it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such Classes. As set forth in the Voting Affidavit, the percentages of Holders of Claims in Classes entitled to vote on the Plan that voted to accept or reject the Plan are as follows:

Plan Class of Impaired Creditors	**Amount Accepting Plan** (% of Amount Voted)	**Amount Rejecting Plan** (% of Amount Voted)	**Number Accepting Plan** (% of Number Voted)	**Number Rejecting Plan** (% of Number Voted)
CLASS A4	$79,975, 245.53 (100.00%)	$0.00 (0.00%)	5 (100.00%)	0 (0.00%)
CLASS A5	$337,431, 372 (99.89%)	$372,778 (.11%)	64 (85.33%)	11 (14.67%)
CLASS A6	$3,153, 000 (38.74%)	4,985,000 (61.26%)	171 (79.17%)	45 (20.83%)
CLASS B4	$79,975, 245.53 (100.00%)	$0.00 (0.00%)	5 (100.00%)	0 (0.00%)
CLASS B5	$335, 214,052 (99.88%)	$402,183 (.12%)	43 (78.18%)	12 (21.82%)
CLASS C4	$79,975, 245.53 (100.00%)	$0.00 (0.00%)	5 (100.00%)	0 (0.00%)
CLASS C5	$335, 210,783 (99.86%)	$458,814 (.14%)	44 (78.57%)	12 (21.43%)

18. Treatment of Priority Claims (11 U.S.C. § 1129(a)(9)). Article II of the Plan provides for the treatment of Administrative Claims, Priority Tax Claims and other claims afforded specific treatment under section 1129(a)(9) of the Bankruptcy Code that satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

19. Acceptance of At Least One Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Affidavit, Holders of Claims in Classes A4, AS, B4, B5, C4 and C5, each of which are Impaired under the Plan, have voted to accept the Plan in requisite numbers and amounts without including any acceptance of the Plan by any insider. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

20. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code. The evidence submitted regarding feasibility (i) was reasonable, persuasive, accurate and credible; (ii) has not been controverted by other evidence; (iii) utilizes reasonable and appropriate methodologies and assumptions; (iv) establishes that the Reorganized Debtors will have sufficient funds available to meet obligations under the Plan; and (v) establishes that confirmation of the Plan is not likely to be followed by a liquidation or need for a further financial reorganization of the Reorganized Debtors. Accordingly, the Debtors have established a reasonable assurance of the Plan's prospect for success. Furthermore, the financing and other transactions contemplated under the Plan will enable the Debtors to continue their current operations and will eliminate a substantial portion of their long-term debt. By easing the burden of servicing their existing debt, the Debtors will be better positioned to increase profits, service debt obligations and create value for equity holders. The Plan is feasible, and, therefore, satisfies section 1129(a)(11) of the Bankruptcy Code.

21. Payment of Certain Fees (11 U.S.C. § 1129(a)(12)). The Plan satisfies section 1129(a)(12) of the Bankruptcy Code. Section 2.7 of the Plan provides for payment of all fees payable by the Debtors under 28 U.S.C. § 1930.

22. Continuation of Retiree Benefits (11 U.S.C. 1129(a)(13)). To the extent section 1129(a)(13) of the Bankruptcy Code applies to the Debtors, as set forth in Section 5.5 of the Plan, the Reorganized Debtors shall pay all retiree benefits of the Debtors (within the meaning of Bankruptcy Code section 1114) at the level established in accordance with Bankruptcy Code section 1114, for the duration of the period for which the Debtors are obligated to provide such benefits. Therefore the Debtors have complied with section 1129(a)(13) of the Bankruptcy Code.

23. Confirmation of Plan Over Nonacceptance of Impaired Classes (11 U.S.C. § 1129(b)). As described above, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8). Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding the fact that not all Impaired Classes have voted to accept the Plan. Requisite numbers and amounts of Holders of Claims in Classes A4, A5, B4, B5, C4 and C5, have voted to accept the Plan. Of the Classes entitled to vote, only Class A6, containing unsecured 2018 Note Claims, voted to reject the Plan. Classes A8, A10, A11, B6, B9, C6 and C9 are Classes of unsecured Claims that are deemed to reject. No holders of Claims or Equity

Interests junior to the holders of the unsecured Claims in the Classes rejecting or deemed to reject will receive or retain any property under the Plan. Accordingly, the requirements of section 1129(b)(2)(B)(ii) of the Bankruptcy Code are satisfied with respect to the rejecting Classes of unsecured creditors (*i.e.*, Classes A6, A8, A10, B6, B9, C6 and C9) and the Plan is fair and equitable with respect to such Classes and does not unfairly discriminate against such Classes. Class A11 contains equity interests in Nuverra. With respect to Class A11, no holders of Equity Interests junior to the holders of the Equity Interests in Class A11 will receive or retain any property under the Plan. Accordingly, the requirements of sections 1129(b)(2)(C)(ii) of the Bankruptcy Code is satisfied with respect to the rejecting Classes of Equity Interest holders (*i.e.*, Class A11), the Plan is fair and equitable with respect to such Class and the Plan does not unfairly discriminate against such Class. Accordingly, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to all rejecting or Deemed Rejecting Classes and shall be confirmed notwithstanding the requirements of section 1129(a)(8) of the Bankruptcy Code.

24. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of reorganization for each Debtor considered by this Court for confirmation, in accordance with section 1129(c) of the Bankruptcy Code.

25. Principal Purpose (11 U.S.C. § 1129(d)). The principal purpose of the Plan is neither the avoidance

of taxes nor the avoidance of section 5 of the Securities Act, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

26. Good Faith Solicitation (11 U.S.C. § 1125(c)). Based upon the record before this Court, the Debtors, the Debtors' other non-Debtor Affiliates; the Reorganized Debtors, the Supporting Noteholders, the Committee, the Standby Exit Facility Lenders, the ABL Agent, the ABL Lenders, the Term Loan Agent, the Term Loan Lenders, the DIP Agents, the DIP Lenders, the 2018 Note Indenture Trustee, the 2021 Note Indenture Trustee, and any and all predecessors, successors, assigns, subsidiaries, present and former Affiliates, managed accounts and funds, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals (including any professionals retained by such entities), and all of the foregoing entities' respective heirs, executors, estates, servants, and nominees of the foregoing (collectively, and in each case, excluding the Excluded Parties,[6] the

[6] As defined in the Plan, the term "**Excluded Parties**" means, collectively, any Holder of a Claim against, or Equity Interests in, Nuverra or any Affiliate or subsidiary (other than, as Holders of Equity Interests, Nuverra and any direct or indirect subsidiary thereof), or current or former officer, director, principal, member, employee, agent, or advisory board member

"**Released Parties**") participated in the formation of, and the solicitation of votes on the Plan and activities related thereto, in each case, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and any applicable non-bankruptcy rules or regulations. In addition, the Released Parties participated in good faith and in compliance with applicable provisions of the Bankruptcy Code, Local Rules and applicable non-bankruptcy law in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. The Released Parties, therefore, are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent applicable, the exculpatory and injunctive provisions set forth in Article IX of the Plan.

27. Satisfaction of Confirmation Requirements. Based on the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon all holders of Claims and Equity

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thereof, that (a) seeks any relief materially adverse to the restructuring transactions contemplated by the Plan or objects to or opposes any material relief sought by (including any request for relief by any other party that is joined by any of the foregoing) the Debtors, which request, objection or opposition is not withdrawn by June 27, 2017, (b) is entitled to vote on any Plan and does not vote to accept a Plan for which it is entitled to vote or opts out of any third-party releases sought in connection with any Plan, or (c) objects to any Plan or supports an objection to any Plan, which objection or support thereof is not withdrawn by June 27, 2017.

Interests, including holders of Claims that voted to reject the Plan and the Deemed Rejecting Classes.

28. Bankruptcy Rule 3016. The Plan is dated, and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement and the Confirmation Declaration with the Clerk of this Court satisfies Bankruptcy Rule 3016(b).

29. Bankruptcy Rule 3017. The Debtors have given proper and sufficient notice of the hearing to approve the adequacy of information contained in the Disclosure Statement and the Solicitation Procedures as required by the Scheduling Order and have thereby satisfied Bankruptcy Rule 3017(a). The Debtors also have given proper and sufficient notice of the Combined Hearing as required by Bankruptcy Rule 3017(d), as modified by the Scheduling Order. The Solicitation Procedures, pursuant to which the Solicitation Materials were provided to the Holders of Impaired Claims, were adequate, thereby satisfying Bankruptcy Rule 3017(e).

30. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan solely from the Holders of impaired Claims satisfies Bankruptcy Rule 3018(a). The Plan was transmitted to all parties in interest entitled to vote thereon, sufficient time was prescribed for such entities to accept or reject the Plan, and the Solicitation Procedures complied with sections 1125 and 1126 of the Bankruptcy Code, thereby satisfying Bankruptcy Rule 3018(b).

31. Rule 9019(a) Settlement. Except as otherwise provided in the Plan and this Confirmation Order, the Plan, by implementing the Restructuring Support Agreement and the PSA, is a settlement between and among the Debtors and their creditors and equity holders of all claims against the Debtors, pending or threatened, or that were or could have been commenced against the Debtors prior to the date of entry of this Confirmation Order (other than the Reorganized Debtors' ability to prosecute objections to Claims and other retained Causes of Action to the extent preserved under the Han). Such settlement, as reflected in the relative distributions and recoveries or other benefits provided to holders of Claims under the Plan, benefits the Debtors' estates and creditors and is fair and reasonable.

32. Rights Offering. The Plan contemplates the consummation of the Rights Offering in order to raise $105 million in funding for the Debtors, which will be used to fund the Debtors' business operations. The Rights Offering Procedures were attached to the Plan Supplement as Exhibit E. The Rights Offering was negotiated at arms'-length and in good faith, including in connection with the offer, issuance and sale of Reorganized Nuverra Common Stock pursuant thereto. The Debtors and the Reorganized Debtors' compliance with provisions of the Rights Offering Procedures, performance of their obligations thereunder and the consummation of the transactions contemplated thereby, will not result in any violation of applicable law. Reorganized Nuverra Common Stock

issued pursuant to the Rights Offering will be exempt from registration under the Securities Act pursuant to section 1145 of the Bankruptcy Code.

33. Exit Financing. In conjunction with the Effective Date, the Reorganized Debtors (i) expect to utilize (a) a first lien, senior secured credit facility to be provided by the Supporting Noteholders in accordance with the terms and conditions set forth in the Plan Supplement (the "**Backstop Exit Facility**") or by another party or parties in *lieu* of the Backstop Exit Facility and (b) an additional working capital facility (the "**Working Capital Facility**") with a third-party lender or lenders, including from a single lender or lenders that also could provide financing in *lieu* of the Backstop Exit Facility (the credit facilities (and any facilities in *lieu* thereof) described in (a) and (b) together with any other credit facility that the Debtors in their discretion, with the consent of the Supporting Noteholders, may agree to enter into on or before the Effective Date, the "**Exit Facility**"), (ii) will convert up to $12.5 million of senior secured, super-priority debtor-in-possession term credit facility (the "**DIP Term Loan Facility**") into shares of Reorganized Nuverra Common Stock as set forth in the Plan, and (iii) will pay in full the $31.5 million senior secured, super-priority debtor-in-possession revolving facility (the "**DIP Revolving Facility**" and together with the DIP Term Loan Facility, the "**DIP Facilities**") with proceeds from the Exit Facility. The Exit Facility is an essential element of the Plan, is necessary for confirmation and consummation of the Plan and is

critical to the overall feasibility of the Plan. Entry into the Exit Facility is in the best interest of the Debtors, their estates and all holders of Claims or Interests. The Debtors have exercised reasonable business judgment in determining to enter into the Exit Facility. The terms and conditions of the Exit Facility are, or will be, fair and reasonable, were, or will be, negotiated in good faith and at arm's length, and any credit extended to the Reorganized Debtors by the lenders pursuant to the Exit Facility shall be deemed to have been extended, made, assumed and assigned or issued in good faith. The Debtors and Reorganized Debtors are authorized without further approval of the Court to execute and deliver all agreements, guarantees, instruments, mortgages, control agreements, certificates, and other documents relating to the Exit Facility and to perform their obligations thereunder, including, without limitation, the payment or reimbursement of any fees, expenses, losses, damages or indemnities. On the Effective Date, all of the Liens and security interests to be created under the Exit Facility shall be deemed approved. In furtherance of the foregoing, the Reorganized Debtors are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of state, provincial, federal or other law (whether domestic or foreign) that would be applicable in the absence of this Confirmation Order, and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security

interests to third parties. The Plan, together with the commitment for the Exit Facility, was negotiated between the Debtors and the counterparties thereto in good faith and at arm's-length. The terms of the Plan, including the Debtors' conversion of the DIP Term Loan Facility into shares of Reorganized Nuverra Common Stock, the Debtors' entry into the Exit Facility and the payment of fees and expenses in connection therewith, and the payment in full of the DIP Revolving Facility, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The terms of the Plan, including the Exit Facility, are in the best interest of the Reorganized Debtors, the Debtors, and their estates, creditors and other parties in interest.

34. Releases, Exculpations and Injunctions. Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the settlements, compromises, releases, discharges, exculpations and injunctions set forth in the Plan and implemented by this Confirmation Order are fair, equitable, reasonable and in the best interests of the Debtors, the Reorganized Debtors and their Estates, creditors and equity holders. The releases of non-Debtors under the Plan are fair to holders of Claims and are necessary to the proposed reorganization, thereby satisfying the requirements of *in re Continental Airlines, Inc.*, 203 F.3d 203, 214 (3d Cir. 2000), *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013), and *In re*

Zenith Electronics Corp., 241 B.R. 92, 110-11 (Bankr. D. Del. 1999). The record of the Combined Hearing and the Chapter 11 Cases is sufficient to support the releases, exculpations and injunctions provided for in Article IX of the Plan

35. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court, except as otherwise provided in the Plan or herein, shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, but not limited to, the matters set forth in Article X of the Plan.

36. Waiver of Stay. Under the circumstances, it is appropriate that the 14-day stay imposed by the Bankruptcy Rules 3020(e) and 7062(a) be waived.

Decrees

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:

37. Findings of Fact and Conclusions of Law. The above-referenced recitals, findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the Extent that any finding of fact is

determined to be a conclusion of law, it is deemed so, and vice versa.

38. Disclosure Statement. For the reasons set forth herein, the Disclosure Statement (i) contains sufficient information of a kind generally consistent with the disclosure requirements of applicable non-bankruptcy laws, rules and regulations, including the Securities Act; (ii) contains "adequate information" (as such term is defined in Bankruptcy Code section 1125(a)(1) and used in Bankruptcy Code section 1126(b)(2)) with respect to the Debtors, the Plan and the transactions contemplated therein; and (iii) is approved in all respects. Accordingly, the Disclosure Statement hereby is approved.

39. Solicitation. The solicitation of Votes on the Plan complied with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory, and is approved in all respects.

40. Ballots. The Ballots utilized in the Solicitation, substantially in the forms filed on the docket in the Chapter 11 Cases [Docket No. 306], are approved in all respects.

41. Rights Offering and Rights Offering Procedures. The Rights Offering Procedures are approved and the Debtors and the Reorganized Debtors' compliance with provisions of the Rights Offering Procedures, performance of their obligations thereunder

and the consummation of the transactions contemplated thereby, will not result in any violation of applicable law. Accordingly, this order constitutes a "Rights Offering Order," approving the Rights Offering and Rights Offering Procedures, as such term is defined, and used, in the Plan. Reorganized Nuverra Common Stock issued pursuant to the Rights Offering will be exempt from registration under the Securities Act pursuant to section 1145 of the Bankruptcy Code.

42. Plan Classification Controlling. The classification of Claims and Equity interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications and amounts of Claims, if any, set forth on the Ballots returned by the Holders of Impaired Note Claims in connection with voting on the Plan: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent, and in no event shalt be deemed to modify or otherwise affect, the actual amount or classification of such Claims under the Plan for distribution purposes; and (iii) shall not be binding on the Debtors or the Reorganized Debtors, except with respect to voting on the Plan.

43. Notice of the Combined Hearing. Notice of the Combined Hearing complied with the terms of the Scheduling Order, was appropriate and satisfactory, was in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and is approved in all respects.

44. Confirmation. The Plan, as supplemented by the Plan Supplement (which is incorporated by reference into, and forms an integrated part of, the Plan), is confirmed under section 1129 of the Bankruptcy Code.

45. Objections to the Plan and Confirmation. Any objections or responses to confirmation of the Plan and any reservation of rights contained therein that have not been withdrawn, waived or settled prior to the entry of this Confirmation Order are hereby OVERRULED on the merits and in the entirety, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice.

46. Modifications to Plan. Modifications made to the Plan following the solicitation of votes thereon satisfied the requirements of Bankruptcy Code section 1127 and Bankruptcy Rule 3019, and no further solicitation is required.

47. Deemed Acceptance of the Plan as Modified. In accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified in the Amended Plan. No holder of a Claim shall be permitted to change its vote as a consequence of such modifications.

48. Plan Supplement and other Essential Documents and Agreements. The form of documents comprising the Plan Supplement, any other agreements. instruments, certificates or documents related thereto

and the transactions contemplated by each of the foregoing are approved, and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties (and the satisfaction of applicable terms and conditions to their effectiveness), shall be in full force and effect and valid, binding and enforceable in accordance with the their terms without the need for any further action, order or approval of this Court, or other act or action under applicable law, regulation, order or rule.

49. Disputed Claims. On and after the Confirmation Date, the Reorganized Debtors shall have the sole authority to litigate, compromise, settle, otherwise resolve or withdraw objections to all Claims against the Debtors and to compromise and settle any such Claims without notice to or approval by the Court or any other party; *provided*, *however*, that consent of the Supporting Noteholders shall be required for settlement of any Claims with agreed settlement payments in excess of $100,000.

50. Disallowance of Claims. Except as otherwise specifically provided for in the Plan or this Confirmation Order or otherwise agreed, Holders of Claims need not file Proofs of Claim (other than, without limitation, Proofs of Claim filed on account of (i) Administrative Claims pursuant to Section 2.1 of the Plan or (ii) Rejection Damage Claims) and any and all other Proofs of Claim shall be deemed expunged from the claims register on the Effective Date without any further notice to or action, order, or approval of the Court.

51. Administrative Claim Bar Date. Except as set forth in the Plan, all requests for payment of Administrative Claims that accrued on or before the Effective Date (other than Professional Fee Claims, which are subject to the provisions of Section 2.3 of the Plan) must be filed and served on the Reorganized Debtors pursuant to the procedures specified in this Confirmation Order and the notice of entry of the Confirmation Order no later than 45 Business Days after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claim by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors or Reorganized Debtors or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on the Reorganized Debtors and the requesting party no later than 75 Business Days after the Effective Date or such later date as the Bankruptcy Court may approve.

52. Professional Compensation and Reimbursement Claims. All final applications for Professional Fee Claims for services rendered in connection with the Chapter 11 Cases prior to the Effective Date shall be filed with the Bankruptcy Court on or before the 35th Business Day following the Effective Date. Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors and counsel to the Reorganized Debtors no later than 60 Business Days after the Effective Date. On or before the Effective

Date, the Debtors or Reorganized Debtors, as the case may be, shall establish an escrow account for the payment of Professional Fee Claims (the "**Professional Fee Claim Reserve**"), which may be maintained in the account established for the reserve of professional fees in connection with the DIP Facilities, based upon the estimate of Professional Fee Claims to be asserted by professionals holding Professional Fee Claims set forth in the DIP Budget (as such term is defined in the DIP Financing Order) or contemplated to be paid with proceeds of the Exit Facility, provided that, if, after the payment of all Allowed Professional Fee Claims, there remains any amounts in the Professional Fee Claim Reserve, such amounts shall revert to, and become the sole property of the Debtors; *provided*, *however*, that, if there were to be a shortfall of amounts necessary to satisfy Allowed Professional Fee Claims from the Professional Fee Claim Reserve, the Debtors shall remain obligated to pay such Allowed Professional Fee Claims and the amount of Allowed Professional Fee Claims shall not be limited by the amount funded into the Professional Fee Claim Reserve.

53. Reimbursement of Supporting Noteholders' Professionals. As set forth in section 5(f) of the Restructuring Support Agreement and in sections 2.6 and 5.7 of the Amended Plan, on the Effective Date, the Debtors shall pay all the reasonable and documented fees and expenses of the Supporting Noteholders' Professionals, or, with the consent of the Supporting Noteholders, as soon as reasonably practicable thereafter. Nothing herein or in the Plan shall require

the Supporting Noteholders' Professionals to file applications with, or otherwise seek approval of, the Bankruptcy Court as a condition to the payment of such fees and expenses.

54. Reimbursement of Exit Facility Lenders' Professionals. On the Effective Date, or, with the consent of the applicable Exit Facility Lender (as defined below), as soon as reasonably practicable thereafter, the Debtors shall pay all the reasonable and documented fees and expenses incurred by professionals retained by a lender to any Exit Facility (an "**Exit Facility Lender**") that relate to the applicable Exit Facility, so long as such lender remains a lender of an Exit Facility. Nothing herein or in the Plan shall require such Exit Facility Lender's professionals to file applications with, or otherwise seek approval of, the Bankruptcy Court as a condition to the payment of such fees and expenses.

55. Withholding and Reporting Requirements. The Debtors and Reorganized Debtors and any other distributing party shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions under the Plan shall be subject to any such withholding or reporting requirements, including any distributions of Reorganized Nuverra Common Stock to current or former employees of the Debtor. The Reorganized Debtors shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition of receiving any distribution

under the Plan, the Reorganized Debtors may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan complete and return a Form W-8 or W-9, as applicable, or such other information and certification as may be deemed necessary for the Reorganized Debtors to comply with applicable tax reporting and withholding laws. Any amounts withheld pursuant to this provision shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. In connection with a distribution under the Plan, the Reorganized Debtors may take whatever actions are necessary to comply with applicable U.S. federal, state, local and non-U.S. tax withholding obligations, including either withholding from distributions a portion of the Reorganized Nuverra Common Stock and selling such securities or requiring such Holder of an Allowed Claim to contribute the necessary Cash to satisfy the tax withholding obligations. With respect to any distribution to the Supporting Noteholders, the Reorganized Debtors may take the actions described in the preceding sentence only after consultation with such Supporting Noteholders. Notwithstanding the foregoing, each Holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

56. Management Incentive Plan. Pursuant to the Plan, up to 12.5% of the Reorganized Nuverra Common Stock will be reserved for issuance as incentive awards under a Management Incentive Plan, as described in the Plan, and as set forth in further detail in the Plan Supplement. Awards issued under the Management Incentive Plan will be dilutive of all other Reorganized Nuverra Common Stock issued pursuant to the Plan.

57. Exemption from Certain Transfer Taxes. To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, no Stamp or Similar Tax shall result from, or be levied on account of, (i) the issuance, transfer or exchange of notes, bonds or equity securities; (ii) the creation of any mortgage, deed of trust, lien, pledge or other security interest; (iii) the making or assignment of any lease or sublease; or (iv) the making or delivery of any deed or other instrument of transfer, under, in furtherance of, or in connection with, the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, and transfers of tangible property. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

58. Documentation. The Debtors and the Reorganized Debtors, as applicable, are authorized to execute and deliver (i) all documents, including

exhibits, schedules and annexes thereto in connection with the Exit Facility (collectively, the "**Exit Facility Documents**"); (ii) any documents, including exhibits, schedules and annexes in connection with the Plan Supplement [Docket Nos. 90, 301]; and (iii) any other agreements, documents and instruments to be entered into as of the Effective Date as contemplated by. and in furtherance of, the Plan (collectively, the "**Plan Documents**"), and to take all steps deemed necessary by the Debtors or the Reorganized Debtors to consummate the transactions contemplated thereby.

59. Binding Effect. Pursuant to section 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, and except as expressly provided in the Plan or this Confirmation Order, the provisions of the Plan (including the exhibits to, and all documents and agreements executed pursuant to, the Plan) and this Confirmation Order shall be binding on (i) the Debtors; (ii) the Reorganized Debtors; (iii) all parties in interest, holders of Claims against and Equity Interests in the Debtors, whether or not such Claims or Equity Interests are Impaired under the Plan and whether or not, if Impaired, such holders of Claims or Equity Interests accepted the Plan; (iv) each person acquiring property under the Plan; (v) each counterparty to an executory contract or unexpired lease of any of the Debtors; (vi) any Person or Entity making an appearance in the Chapter 11 Cases or any other Person in the Chapter 11 Cases; and (vi) the successors and assigns of all of the above-listed entities.

60. Discharge of Debtors. Upon the Effective Date and in consideration of. the distributions to be made under the Plan, except as otherwise provided in the Plan or in the Confirmation Order, the confirmation of the Plan shall discharge the Debtors and the Reorganized Debtors from any Claim that arose before the Effective Date, whether or not such Claim is Allowed and whether or not the Holder of such Claim has voted on the Plan, and each such Holder (as well as any trustee or agent on behalf of such Holder) of a Claim or Equity Interest and any Affiliate of such Holder shall be deemed forever to have waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, upon the Effective Date, all such Holders of Claims and Equity Interests and their Affiliates forever shall be precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or cancelled Equity Interest in any Debtor or any Reorganized Debtor; *provided*, *however*, that, notwithstanding the foregoing, nothing in the Plan is intended to release any insurer from having to provide coverage under any policy to which the Debtors or the Reorganized Debtors and or their current or former officers, directors, employees, representatives or agents are parties or beneficiaries.

61. Reservation of Rights in Favor of Governmental Units. Notwithstanding any provision in the Plan, this Confirmation Order or the related Plan Documents, nothing discharges or releases the Debtors, the Reorganized Debtors or any non-debtor from any Claim, liability or cause of action of the United States or any State, or impairs the ability of the United States or any State to pursue any claim, liability or cause of action against any Debtor, Reorganized Debtor or non-debtor. Contracts, leases, covenants, operating rights agreements or other interests or agreements with the United States or any State shall be, subject to any applicable legal or equitable rights or defenses of the Debtors or Reorganized Debtors under applicable non-bankruptcy law, paid, treated, determined and administered in the ordinary course of business as if the Debtor's bankruptcy cases were never filed and the Debtor and Reorganized Debtor shall comply with all applicable non-bankruptcy law. All Claims, liabilities, or causes of action of or to the United States or any State shall survive the bankruptcy case as if the case had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which such rights or claims would have been resolved or adjudicated if the bankruptcy case had not been commenced; *provided*, that nothing in the Plan or this Confirmation Order shall alter any legal or equitable rights or defenses of the Debtors or the Reorganized Debtors with respect to any such claim, liability or cause of action under non-bankruptcy law, or be construed as

an admission as to the existence of any fact or the validity of any Claim with respect to or in connection with any Claim, liability or cause of action. Without limiting the foregoing, for the avoidance of doubt: (i) the United States and any State shall not be required to file any Claims in the Debtor's bankruptcy case in order to be paid on account of any Claim, liability or cause of action; (ii) nothing shall affect or impair the exercise of United States' or any State's police and regulatory powers against the Debtors or the Reorganized Debtors; (iii) nothing shall be interpreted to set cure amounts or to require the government to novate or otherwise consent to the transfer of any federal or state interests; (iv) nothing shall affect or impair the United States' or any State's rights to assert setoff and recoupment against the Debtors or the Reorganized Debtors and such rights are expressly preserved; and (v) nothing shall constitute an approval or consent by the United States without compliance with all applicable legal requirements and approvals under non-bankruptcy law.

62. Injunction.

(a) General. All entities who have held, hold or may hold Claims or Equity Interests (other than the Claims reinstated or Unimpaired under the Plan) and all other parties in interest in the Chapter 11 Cases, along with their respective current and former employees, agents, officers, directors, principals and affiliates, permanently are enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against

the Debtors or the Reorganized Debtors; (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Debtors or Reorganized Debtors; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or Reorganized Debtors; or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors, on account of such Claims or Equity Interests; *provided*, *however*, that nothing contained herein shall preclude such entities from exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases, indentures and other agreements and documents delivered or assumed under or in connection with the Plan.

(b) Injunction Against Interference with the Plan. Upon entry of the Confirmation Order, al] holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan; *provided*, that the foregoing shall not enjoin any party to the Restructuring Support Agreement from exercising any of its rights or remedies under the Restructuring Support Agreement in accordance with the terms thereof.

63. Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created

pursuant to the Plan or this Confirmation Order, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released, settled, discharged and compromised, and all rights, titles and interests of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall revert to the Reorganized Debtors and their successors and assigns. To the extent that any Secured Claim has been satisfied or discharged in full pursuant to the Plan, and such holder or agent for such holder of a Secured Claim has filed or recorded publicly any Liens or security interests to secure such holder's Secured Claim, as soon as practicable on or after the Effective Date such holder (or the agent for such holder) shall take any and all steps requested by the Reorganized Debtors that are necessary to cancel or extinguish such Liens or security interests. The Reorganized Debtors shall be authorized to file any necessary or desirable documents to evidence such release in the name of the party secured by such pre-Effective Date mortgages, deeds of trust, Liens, pledges or other security interests.

64. Preservation of All Causes of Action Not Expressly Settled or Released. Except as otherwise provided in the Plan or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized

Debtors shall retain (and have the exclusive right to enforce after the Effective Date) any claims, rights and Causes of Action that the Debtors or the Estates may hold against any Entity, including, without limitation, all claims relating to transactions under section 549 of the Bankruptcy Code, all transfers recoverable under section 550 of the Bankruptcy Code, all Causes of Action identified in the Schedule of Preserved Claims and Causes of Action attached to the Plan Supplement, all Causes of Action against any Entity on account of indebtedness, and any other Causes of Action in favor of the Reorganized Debtors or their Estates. The Reorganized Debtors shall be permitted to pursue such retained claims, rights or Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors.

65. Cancellation of Notes, Instruments, Debentures, Common Stock and Stock Options. On the Effective Date, except to the extent provided elsewhere in the Plan or in this Confirmation Order, each of (i) the ABL Facility, (ii) the Term Loan Facility, (iii) the 2021 Notes, (iv) the 2018 Notes, (v) the indentures governing the 2021 Notes and 2018 Notes, (vi) Equity Interests in the Debtors, (vii) the warrants issued in connection with the Out-of-Court Restructuring, (viii) any other notes, bonds, indentures, certificates or other instruments or documents evidencing or creating any Claims or Equity Interests and (ix) and all other items listed in Section 4.5 of the Plan, shall be cancelled and deemed terminated and shall represent only the right to receive the distributions, if any, to which

the holders thereof are entitled under the Plan; *provided*, *however*, that the indentures governing the 2021 Notes and 2018 Notes. and the Term Loan Credit Agreement shall continue solely to the extent necessary to (i) allow Holders of Claims under such agreements to receive applicable Plan distributions; (ii) allow the Reorganized Debtors, the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, and the Term Loan Agent to make applicable distributions pursuant to the Plan on account of the 2021 Note Claims, the 2018 Note Claims, and the Term Loan Facility Claims, as applicable, and deduct therefrom such reasonable compensation, fees, and expenses (a) due to the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, or the Term Loan Agent under the 2021 Note Indenture, the 2018 Note Indenture, or the Term Loan Credit Agreement, as applicable, or (b) incurred by the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, or the Term Loan Agent in making such distributions pursuant to the Plan; and (iii) allow the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, and the Term Loan Agent to (a) be compensated and reimbursed for fees and expenses, in Cash, in accordance with the 2021 Note Indenture, the 2018 Note Indenture, or the Term Loan Credit Agreement, as applicable, (b) maintain and exercise their respective charging liens against applicable Plan distributions, (c) appear and be heard in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, (d) enforce any obligation owed to them under the Plan, and (e) enforce their rights, claims, and interests vis-à-vis any parties

other than the Released Parties. Except as provided pursuant to the Plan, each of the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, and the Term Loan Agent and their respective agents, successors, and assigns shall be fully discharged of all of their duties and obligations associated with the 2021 Note Indenture, the 2018 Note Indenture, or the Term Loan Credit Agreement.

66. Continued Corporate Existence and Vesting of Assets in Reorganized Debtors. Each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the applicable Reorganized Debtors Constituent Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with applicable law. On and after the occurrence of the Effective Date, the Reorganized Debtors shall be authorized to operate their respective businesses, and to use, acquire or dispose of Assets without supervision or approval by the Bankruptcy Court and free from any restrictions of the Bankruptcy Code or the Bankruptcy Rules. Except as otherwise provided in this Confirmation Order, the Plan or any Plan Document, on or after the Effective Date, all property of the estates of the Debtors, and any property acquired by the Debtors or the—Reorganized Debtors under the Plan, shall vest in the Reorganized Debtors, free and clear of all Claims, Liens, charges or other encumbrances and interests.

67. Subordination. Except as otherwise expressly provided in the Plan, this Confirmation Order or a separate order of this Court, the classification and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. All subordination rights that a holder of a Claim or Equity Interest may have with respect to any distribution to be made under the Plan shall be discharged and terminated and all actions related to the enforcement of such subordination rights shall be enjoined permanently. Accordingly, distributions under the Plan to holders of Allowed Claims will not be subject to payment of a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights.

68. Releases.

(a) Releases by the Debtors. Upon the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Plan Documents, the Debtors, the Reorganized Debtors and the Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives and any and all other entities who may purport to assert any cause of action derivatively, by or through the foregoing entities, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the

efforts of the Released Parties to facilitate the reorganization of the Debtors and the implementation of the Plan and the transactions contemplated therein and thereby, shall forever release, waive and discharge, to the maximum extent permitted by law, all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or the Estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against the Released Parties that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or before the Effective Date, and in any way relating to (i) the Debtors and any Affiliates or subsidiaries of the Debtors, (ii) the Reorganized Debtors, (iii) the Estates, (iv) the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, (v) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, (vi) the Chapter 11 Cases, (vii) the Plan, including the solicitation of votes on the Plan, (viii) the Solicitation and Disclosure Statement, (ix) the restructuring of any Claim or Equity Interest before or during the Chapter 11 Cases, including the Out-of-Court Restructuring, (x) the Rights Offering, (xi) the Restructuring Support Agreement, (xii) the Exit Facility Credit Agreement, and (xiii) the negotiation, formulation or

preparation of the foregoing agreements and transactions described in Article IX of the Plan (the foregoing, the "**Debtor Released Claims**"); *provided*, *however*, that (i) no Released Party shall be released hereunder from any Debtor Released Claim as a result of any act, omission, transaction, event or other occurrence by a Released Party that has been or is hereafter found by any court or tribunal by final order to constitute gross negligence, fraud, or willful misconduct and (ii) the foregoing release shall not apply to or release any express contractual or financial obligations owed to the Debtors or the Reorganized Debtors or any right or obligation arising under or that is part of the Plan or any agreement entered into pursuant to, in connection with or contemplated by, the Plan.

(b) Releases by Holders of Claims. To the fullest extent permitted by applicable law, upon the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the efforts of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the Plan and the transactions, contracts and instruments contemplated therein and thereby, each holder of a Claim in a Voting Class who (i) does not opt out of the release provisions in the Plan on their Ballot or (ii) votes to accept the Plan (the "**Releasing Parties**"), agrees to the release provisions in the Plan and shall forever release, waive and discharge, to the maximum extent permitted by law, all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities

whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or the Estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against the Released Parties that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or before the Effective Date and in any way relating to or arising from, in whole or in part, (i) the Debtors and any Affiliates or subsidiaries of the Debtors; (ii) the Reorganized Debtors; (iii) the Estates; (iv) the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors; (v) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan; (vi) the contractual arrangements between the Debtors and any Released Party; (vii) the Chapter 11 Cases; (viii) the Plan, including the solicitation of votes on the Plan; (ix) the Solicitation and Disclosure Statement; (x) the Rights Offering; (xi) the Exit Facility Credit Agreement; (xii) the restructuring of any Claim or Equity Interest before or during the Chapter II Cases, including the Out-of-Court Restructuring; and (xiii) the negotiation, formulation or preparation of the foregoing agreements and transactions described in Article IX of the Plan (the foregoing, the "**Releasing Party Released Claims**"); *provided*, *however*, that (i) no Released Party shall be released hereunder from any Releasing Party Released Claim as a result of any act, omission, transaction, event or

other occurrence by a Released Party that has been or is hereafter found by any court or tribunal by final order to constitute gross negligence, fraud, or willful misconduct; (ii) the foregoing release shall not apply to or release any express contractual or financial obligations or any right or obligation arising under or that is part of the Plan or any agreement entered into pursuant to, in connection with or contemplated by, the Plan; and (iii) the foregoing release shall not apply to or release any Surviving Obligations under the ABL Credit Agreement or DIP Revolving Facility.

69. Exculpation. To the fullest extent permitted by applicable law, except with respect to any acts or omissions expressly set forth in and preserved by the Plan, the Plan Supplement, or definitive documents, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Claim, Equity Interest, obligation, suit, judgment, damage, demand, debt, right, cause of action, loss, remedy, or liability for any claim in connection with or arising out of the administration of the Chapter 11 Cases; the formulation, negotiation, preparation, dissemination, or termination of the DIP Facilities, the Reorganized Debtors Constituent Documents, the Management Incentive Plan, the New Employment Agreements, the Exit Facility Credit Agreement, the Rights Offering, Rights Offering Procedures, the Registration Rights Agreement, the Solicitation and Disclosure Statement, the Restructuring Support Agreement, PSA, the Warrant Agreement, the Plan Supplement, and the Plan (including the Plan

Documents), or the solicitation of votes for, or confirmation of, the Plan; any contract, instrument, release or other agreement or documents (including providing any legal opinion requested by any entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan; the filing of the Chapter 11 Cases; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan or the property to be distributed under the Plan; the issuance of securities under or in connection with the Plan; or the transactions in furtherance of any of the foregoing; except for gross negligence, fraud, or willful misconduct as determined by a Final Order, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties and each of their respective affiliates, agents, directors, officers, employees, advisors, and attorneys have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of securities pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan, including the issuance of securities thereunder. This exculpation shall be in

addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

70. Unimpaired Claims. Notwithstanding anything to the contrary in the Plan or Plan Documents or in this Confirmation Order, until a Claim in Class A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 or C10 of the Plan that arises prior to the Effective Date has been (i) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the Debtor or Reorganized Debtor, or in accordance with the terms and conditions of the particular transaction giving rise to such Claim or (ii) is otherwise satisfied or disposed of as determined by a court of competent jurisdiction, (a) the provisions of Plan Sections 9.2 (Discharge of Claims), 9.3 (Releases) or 9.5 (Injunction) shall not apply or take effect with respect to such Claim and (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, or enjoined by any provision of the Plan or the Plan Documents. Holders of Claims in Classes A1-A3, A7, A9, A12, B1-133, B7, B8, B10, C1-C3, C7, C8 or C10 of the Plan shall not be required to file a Proof of Claim with the Bankruptcy Court. Holders of Claims falling under Classes A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 or C10 shall retain all their rights under applicable non-bankruptcy law to pursue their Class A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 or C10 Claims against the Debtors or Reorganized Debtors in any forum with jurisdiction over the parties. The Debtors

and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Claims classified in Classes A1-A3, A7, A9, A12, B1-133, B7, B8, B10, C1-C3, C7, C8 or C10 of the Plan. If the Debtors or the Reorganized Debtors dispute any Claim falling under Classes A1-A3, A7, A9, A12, B1-B3, B7, B8, B10, C1-C3, C7, C8 or C10 of the Plan, and do not object to such Claims in the Bankruptcy Court, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced.

71. Continuation of Automatic Stay. Except as otherwise expressly provided in the Plan, this Confirmation Order or a separate Order of this Court, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through and including the Effective Date.

72. Assumed Contracts and Leases. Immediately prior to the Effective Date, all executory contracts and unexpired leases of the Debtors and any other agreement that otherwise may have required the consent of the counterparty to its assumption that (i) are not rejected by the Debtors prior to the Effective Date (including by designating such contract or unexpired lease for rejection in the Plan Supplement), (ii) are not subject to a motion seeking assumption or rejection as of the Effective Date or (iii) were not identified in the Plan Supplement as executory contracts or unexpired leases for which the Debtors

expressly reserved the right to seek to reject, shall be deemed to have been assumed by the Debtors as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code without further notice or order of this Court and the non-debtor counterparties who have not objected to the assumption of their executory contracts or unexpired leases are deemed to have consented thereto. Each executory contract and unexpired lease assumed pursuant to Article V of the Plan shall revest in, and be fully enforceable by, the respective Reorganized Debtor in accordance with the terms thereof, except as otherwise modified by the provisions of the Plan, or by any order of this Court. The Reorganized Debtors, except as otherwise agreed by the parties or ordered by this Court, will, pursuant to the Plan, cure any and all undisputed defaults under any executory contract or unexpired lease assumed pursuant to the Plan.

73. Adequate Assurance of Future Performance. Except as otherwise provided in this Confirmation Order, the only adequate assurance of future performance of any executory contract or unexpired lease that is assumed in connection with the Plan shall be the promise of the applicable Reorganized Debtor to perform all obligations under any executory contract or unexpired lease under the Plan.

74. Cure Claims. Any counterparty to an executory contract or unexpired lease that failed to object timely to the proposed assumption or Cure Claim amount shall be deemed to have consented to such assumption or Cure Claim amount. In the event

of a dispute regarding (i) the amount of any payments to cure such a default or (ii) any other matter pertaining to assumption, the payment of Cure Claims required by Bankruptcy Code section 365(b)(1) shall be made no later than 10 Business Days following the entry of a Final Order or orders resolving the dispute and approving the assumption. If the Debtors are unable to resolve an objection to a proposed assumption or Cure Claim amount in a manner that is satisfactory to the Debtors and the Supporting Noteholders, the Debtors (with the consent of the Supporting Noteholders), or the Reorganized Debtors, as applicable, expressly reserve the right to reject the executory contract or unexpired lease on or before 10 Business Days following the entry of a Final Order regarding the proposed assumption and Cure Claim amount.

75. Rejection of Executory Contracts and Unexpired Leases. This Order shall constitute the Court's approval of the rejection of all the executory contracts and unexpired leases identified on the Schedule of Rejected Contracts included in the Plan Supplement or otherwise identified as rejected in the Plan or this Order. This Order shall constitute an order of the Court under sections 365 and 1123(b) of the Bankruptcy Code approving such contract and lease rejections. Except as otherwise provided herein or on the Schedule of Rejected Contracts, the rejection of executory contracts and unexpired leases rejected by the Debtors pursuant to this Order shall be effective as of the Effective Date. In the event that a rejection of

an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, any Claims resulting therewith shall be governed by the procedures set forth in Article V of the Plan. Allowed Claims arising from the rejection of executory contracts or unexpired leases (i) against the Nuverra Group Debtors are treated in Class A8—Nuverra Group Rejection Damage and Other Debt Claims, (ii) against the AWS Debtor are treated in Class B6—AWS Debtor Unsecured Debt Claims, and (iii) against the Badlands (DE) Debtor are treated in Class C6—Badlands (DE) Debtor Unsecured Debt Claims.

76. Bar Date for Rejection Damage Claims. Claims based on the rejection of executory contracts or unexpired leases ("**Rejection Damage Claims**") must be filed and served on the Reorganized Debtors so as to be *actually received* by the Debtor or Reorganized Debtor no later than 30 days after the date of entry of the Confirmation Order (the "**Rejection Bar Date**"). Holders of Rejection Damage Claims that are required to, but do not, file and serve a request for payment of such Rejection Damage Claim by the Rejection Bar Date shall be disallowed automatically, forever barred, estopped, and enjoined from asserting such Rejection Damage Claim against the Debtors or Reorganized Debtors or their property, and such Rejection Damage Claim shall be deemed discharged as of the expiration of the Rejection Bar Date without the need for any action by the Debtors or Reorganized Debtors or further notice or action, order,

or approval of the Court. The Debtors and Reorganized Debtors reserve the exclusive right to object to any Rejection Damage Claims.

77. Insurance Policies. All insurance policies and insurance policy-related agreements pursuant to which any Debtor has any obligations in effect as of this Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect thereafter in accordance with their respective terms. All other insurance policies and insurance policy-related agreements shall vest in the Reorganized Debtors.

78. Surety Bonds.

(a) Each of the Debtors' surety bonds shall be deemed assumed effective as of the Effective Date and each Reorganized Debtor party thereto shall pay any and all premium and other obligations due (including, but not limited to, any outstanding claims against the bonds) or that may become due on or after the Effective Date; *provided that*, in lieu of the assumption of a surety bond, a surety provider may elect to issue a name-change rider to any such surety bond or to issue new surety bonds naming the applicable Reorganized Debtor as permittee/principal on the same terms as are provided in the existing surety bond.

(b) Each Reorganized Debtor shall be deemed to have assumed as of the Effective Date,

and shall continue to perform under, any of its indemnity agreements in place with such surety provider immediately prior to the Petition Date (the "**Indemnity Agreements**"), subject to the terms and conditions thereof; *provided that*, in lieu of the assumption of an Indemnity Agreement, a Reorganized Debtor may enter into a new indemnity agreement, which agreement shall be on the same terms and conditions as the existing Indemnity Agreement with such surety provider except as otherwise agreed by the Reorganized Debtors in their sole discretion. Notwithstanding any other provision of the Plan, all letters of credit, proceeds from drawn letters of credit, if any, or other collateral issued to the surety providers as security for a Debtor's and Reorganized Debtor's obligations under an existing or new surety bond or Indemnity Agreement shall remain in place to secure against any "loss" or "default" (as defined in the applicable Indemnity Agreement) incurred by the respective surety provider in accordance with the applicable assumed indemnity Agreement, and the surety provider's respective rights to draw on such letters of credit pursuant to the applicable Indemnity Agreement shall remain unaffected. For the avoidance of doubt: (i) the obligations of the Debtors under the surety bonds are contractual and financial obligations and are being assumed and, as applicable, entered into, pursuant to and in connection with the Plan; and (ii) the obligations of any non-Debtor indemnitors under the surety bonds are not being released or discharged under the Plan.

79. Authorization to Take Acts Necessary to Implement Plan. Each of the Debtors and the Reorganized Debtors hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable or appropriate to comply with or implement the Plan, the Rights Offering, the Exit Facility Credit Agreement, the Registration Rights Agreement, the Warrant Agreement, the Reorganized Debtors Constituent Documents, the Restructuring Support Agreement, the PSA, and any other Plan documents, including the election or appointment, as the case may be, of directors and officers of the Reorganized Debtors as contemplated in the Plan, and all documents, instruments and agreements related thereto and all annexes, exhibits, and schedules appended thereto, and the obligations thereunder shall constitute legal, valid, binding and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms without the need for any stockholder or board of directors' approval. Each of the Debtors and the Reorganized Debtors hereby is authorized and empowered to take such actions, to perform all acts, to make, execute and deliver all instruments and documents, to make payments, and to pay all fees and expenses as set forth in the documents relating to the Plan and the Exit Facility, including without limitation, the Registration Rights Agreement, the Rights Offering, the Reorganized Debtors Constituent Documents and that may be required or necessary for its performance thereunder without the need for any stockholder or board of directors' approval. On the

Effective Date, the appropriate officers of the Reorganized Debtors and members of the boards of directors of the Reorganized Debtors are authorized and empowered to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan and the Exit Facility in the name of and on behalf of the Reorganized Debtors. Each of the Debtors, the Reorganized Debtors and the officers and directors thereof are authorized to take any such actions without further corporate action or action of the directors or stockholders of the Debtors or the Reorganized Debtors. On the Effective Date, or as soon thereafter as is practicable, Reorganized Nuverra shall file its amended certificates of incorporation with the Secretary of State of the state in which Reorganized Nuverra is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

80. Exit Facility. On the Effective Date, the Debtors and/or Reorganized Debtors are authorized, but not directed, to (i) enter into an Exit Facility (including the Backstop Exit Facility, the Working Capital Facility, or any one or more facilities entered into in *lieu* of the Backstop Exit Facility and/or the Working Capital Facility), (ii) borrow under the Exit Facility, (iii) enter into the other Exit Facility Documents, including any notes, guarantees, collateral agreements, mortgages, or other documents or agreements delivered, executed or entered in connection therewith, (iv) to grant liens and security interests to the applicable agents under the Exit Facility, or any

successor agents thereunder (collectively, the "**Exit Facility Agent**") in substantially all of the Reorganized Debtors' assets, and such documents, Liens and security interests are approved and ratified, and (v) make such other modifications or amendments to the Exit Facility Documents as the Debtors, with the consent of the Supporting Noteholders, and/or Reorganized Debtors and Exit Facility Agent may deem necessary or desirable in connection with the closing of the Exit Facility and the implementation thereof. Any other Exit Facility Documents signed by the Debtors shall be binding and enforceable against the Debtors and the Reorganized Debtors and their assets upon and after the Effective Date. All fees, costs and expenses to be paid or reimbursed by the Debtors and/or the Reorganized Debtors in connection with the Exit Facility are ratified and approved. As of the Effective Date, (i) the security interests and liens granted to the Exit Facility Agent pursuant to the Exit Facility shall constitute legal, valid and duly perfected Liens against the Reorganized Debtors' assets with the priority provided for in the Exit Facility Documents and (ii) neither the obligations created under the Exit Facility Documents nor the liens granted in favor of the Exit Facility Agent under the Exit Facility Documents shall constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law and shall not otherwise be subject to avoidance. Notwithstanding any provision in the Plan or this Confirmation Order to the contrary, from and after the Effective Date, the choice of law and jurisdiction provisions contained in

the Exit Facility Documents shall be applied to the Exit Facility and any disputes relating thereto.

81. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date of the Plan, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law, and (d) the Reorganized Debtors granting such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and

recordings that otherwise would be necessary under applicable law or desirable to give notice of such Liens and security interests to third parties.

82. On the Effective Date, all of the guarantees to be made or granted by any of the Reorganized Debtors in accordance with the Exit Facility Documents (a) shall be legal, binding, and enforceable guarantees by each such Reorganized Debtor in accordance with the terms of the Exit Facility Documents, and (b) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

83. On the Effective Date, and subject to the terms and conditions of the Exit Facility Documents, all of the mortgages and deeds of trust granted thereunder, if any, shall be in full force and effect and (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, and (b) shall be deemed automatically attached and perfected on the Effective Date of the Plan, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents.

84. Exemption from Securities Laws; Issuance of Securities. The Debtors and Reorganized Debtors are

authorized to issue the securities necessary to effectuate the Plan and any distributions thereunder, including the issuance of Rights, which were issued in connection with the Rights Offering, the Unsecured Claim Warrants and the Reorganized Nuverra Common Stock, pursuant to and in accordance with section 1145 of the Bankruptcy Code. Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under section 5 of the Securities Act and state securities laws if three principal requirements are satisfied: (i) the securities are offered and sold under a plan of reorganization and are securities of the debtor, of an Affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan; (ii) the recipients of the securities must hold a claim against, or an interest in, the debtor or such Affiliate; and (iii) the securities are issued entirely in exchange for the recipient's claims against or interests in the debtor, or are issued "principally" in such exchange and "partly" in exchange for cash or property. In addition, section 1145(a)(2) exempts from the registration under section 5 of the Securities Act and state securities laws, the offer of a security through any warrant, option, right to subscribe, or conversion privilege that was sold in the manner specified in section 1145(a)(1). The distribution of the Reorganized Nuverra Common Stock, Unsecured Claim Warrants and the Rights, if any, under the Plan satisfy the requirements of sections 1145 of the Bankruptcy Code and are, therefore, exempt from registration under the Securities Act and state securities laws.

85. Execution By Third Parties. Each and every federal, state and local governmental agency or department is hereby authorized to accept, and lessors and holders of liens are directed to execute, any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Plan including, without limitation, documents and instruments for recording in county and state offices where the Reorganized Debtors' certificates of incorporation or any other Plan Document may need to be filed in order to effectuate the Plan.

86. Preparation, Delivery and Execution of Additional Documents by Third Parties. Each holder of a Claim receiving a distribution pursuant to the Plan and all other parties in interest shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

87. Governmental Approvals Not Required. Subject to paragraph 61 of this Confirmation Order, this Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

88. Notice of Entry of Confirmation Order. On or before the 10th day following the date of entry of this Confirmation Order, the Debtors shall serve notice of entry of this Confirmation Order pursuant to Rules 2002(f)(7), 2002(k) and 3020(c) of the Bankruptcy Rules on the Office of the United States Trustee and other parties in interest, including, without limitation, creditors, equity holders, and any party subject to the injunction provisions in Article IX of the Plan, by causing a notice of entry of this Confirmation Order to be delivered to such parties by first class mail, postage prepaid, or by electronic delivery, if so consented by receiving parties.

89. Dissolution of the Committee of Unsecured Creditors. Effective as of the Effective Date, the Committee appointed in the Chapter 11 Cases is hereby dissolved and its members are deemed released of any duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of their attorneys, financial advisors, and other agents shall terminate. Notwithstanding the foregoing, the retained professionals for the Committee shall continue to have standing and the right to be heard with respect to (i) filing and prosecuting applications for compensation pursuant to the Orders authorizing the retention of such professionals [Docket Nos. 239, 238, 237], (ii) any applications for compensation filed by any other professionals retained in the Chapter 11 Cases, (iii) the enforcement of the Plan; and (iv) any appeals with respect to the foregoing.

90. References to Plan Provisions. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be confirmed in its entirety.

91. Confirmation Order Controlling. If there is any conflict between the Plan and this Confirmation Order, the terms of this Confirmation Order shall control.

92. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated or stayed by subsequent order of this Court or any other court of competent jurisdiction, such reversal, modification or vacatur shall not affect the validity or enforceability of any acts, or obligations, indebtedness, liability, priority or Lien incurred or undertaken by the Debtors and the Reorganized Debtors under or in connection with the Plan prior to the Debtors' or the Reorganized Debtors' (as applicable) receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the Debtors or Reorganized Debtors, as applicable, receipt of written notice of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all Plan Documents or any amendments or modifications thereto in effect prior to the date the

Debtors or Reorganized Debtors, as applicable, received such actual written notice.

93. Post-Confirmation Modifications. Subject to the limitations set forth in the Plan, and subject to the terms of the Restructuring Support Agreement, after entry of this Confirmation Order, the Debtors may, upon order of the Court, amend or modify the Plan, in accordance with Bankruptcy Code section 1127(b). Notwithstanding the foregoing, the Debtors are authorized to make appropriate technical adjustments, remedy any defect or omission, or reconcile any inconsistencies in the Plan, the documents included in the Plan Supplement, any and all exhibits to the Plan, and this Confirmation Order.

94. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan and the Plan Documents or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

95. Effectiveness of Order. Notwithstanding Bankruptcy Rules 3020(e) and 6004(h), or any other provision of the Bankruptcy Code or the Bankruptcy Rules, this Confirmation Order shall be effective at 12:01 a.m. (prevailing Eastern Time) on August 4, 2017; *provided*, *however*, that the Debtors shall be authorized, pursuant to paragraphs 33, 80, and 81 hereof, and subject to consent of the Supporting Noteholders, to pay fees and reimburse expenses in

connection with the Exit Facility and enter into commitment agreements associated therewith, immediately upon entry of this Confirmation Order. This Confirmation Order is and shall be deemed to be a separate order with respect to each of the Debtors for all purposes. This Confirmation Order is intended to be a final order and the period in which an appeal must be filed shall commence upon entry hereof.

96. Substantial Consummation. Substantial consummation of the Plan under section 1101(2) of the Bankruptcy Code shall be deemed to occur on the Effective Date.

97. The Record. The record of the Combined Hearing is closed.

Dated: Wilmington, Delaware
July 25, 2017

/s/ Kevin J. Carey
KEVIN J. CAREY
UNITED STATES
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	• Chapter 11
NUVERRA NEVIRONMENTAL SOLUTIONS, INC.,	• Case No. 17-10949 (KJC)
Debtor.	• Courtroom No. 5 • 824 N. Market St • Wilmington, Delaware • 19801
	• July 24, 2017 • 10:00 A.M.

• • • • • • • • • • • • • • •

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:
On Listen Only.

Audio Operator: AL LUGANO

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Proceedings recorded by electronic sound recording: transcript produced by transcription service.

[2] INDEX

[3] (Telephonic Hearing commence at 10:00 a.m.)

THE COURT: Good morning, this is Judge Carey. We are on the record in the Nuverra Environmental Solutions, related Chapter 11 proceedings.

I set this time aside on Friday for the purposes of ruling on the objection in connection with the combined disclosure and confirmation hearing that was held Friday, July 21st. I'm prepared now to give that ruling.

The parties have resolved all the objections, but one. The only remaining contested matter involves the objection by Mr. Hargraves, who is an unsecured bondholder, to confirmation of the amended prepackaged plans of reorganization.

There is no objection, as the debtor pointed out, at the confirmation hearing to the adequacy of disclosure or plan solicitation to the enterprise valuation of the debtors, satisfaction of the best interest test, or feasibility of the proposed plan, which has received, but for one objection, one objecting class, A6, overwhelming creditor support.

The plan is supported by the official committee of unsecured creditors appointed in these cases and

received acceptance from six of the seven classes that were entitled to vote.

Mr. David Hargraves, now the sole objector to confirmation of the plan, is a holder of approximately [4] $450,000 of what's referred to the 2018 notes, a member of class A6 under the proposed plan and a former member of the committee on which he served ever so briefly.

Unsecured creditors, including among others, trade creditors and holders of 2018 notes are out of the money because they sit behind over $500 million dollars of secured debt in the company that has an uncontroverted value of approximately $300 million dollars. It is undisputed that class A6 is out of the money and would not, otherwise, be entitled to any distribution.

As part of the negotiated plan, certain trade and other creditors, whose debts arise out of the debtor's day to day operations, will receive payment in full, receiving value that would, otherwise, inure to the benefit of the secured creditors who will own the debtors' post emergence.

For the plan to be confirmed, the debtors must demonstrate by a preponderance of the evidence that the plan satisfies the standard set forth in 1129 of the Bankruptcy Code.

The primary allegation raised by Mr. Hargraves, who does not accept the global settlement among the debtors and secured creditors and the committee, he

says the plan is not confirmable because as a holder of 2018 secured notes and member of class A6, he's receiving a distribution of less value than certain of the debtors other unsecured creditors [5] who also hold unsecured claims. He objects to the debtors' classification scheme for the same reason arguing that classification of unsecured claims in more than one class is improper and calls for disparate treatment.

Section 1122(a) of the Bankruptcy Code provides that except as otherwise provided in Section 1122(b) of the code, a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class.

In my ruling in Tribune, I made note that 1122(a) is mandatory in one respect. Only substantially similar claims may be classified together; yet, Section 1122(a) is permissive in this respect. It does not provide that all similar claims must be placed in the same class.

Although plan proponents have discretion to classify claims, the third circuit has recognized that the code does not allow plan proponent complete freedom to place substantially similar claims in separate classes; instead a classification scheme must be reasonable. In addition, courts in this circuit have interpreted substantially similar as a reflection of the legal attributes of the claim, not who holds them.

This analysis focuses on how the legal character of the claim relates to the assets of the debtor and

whether the claims exhibit a similar effect on the bankruptcy estate. [6] Therefore, the debtors are entitled to flexibility in classifying claims in interest into different classes as long as a rationale, legal, or factual basis for separate classification exists and all claims or interest within a particular class are substantially similar.

Once such justifiable rationale for separately classifying certain trade creditors from others is the debtors' intention of a continuing business relationship with such trade creditors as here. In its submissions, the debtors clearly explain that separate classification is necessary to maintain ongoing business relationships that he debtors need to ensure the continuance of operations.

In Coram, the Delaware Bankruptcy Court determined that separate classification of unsecured noteholders and trade creditors was reasonable because each group represented a voting interest that was sufficiently distinct from one another to merit a separate voice in the reorganization.

Here, I similarly find that the plan reasonably classifies the 2018 noteholders separately from the other unsecured claims including intercompany claims, other general unsecured claims, and I'll refer to as litigation claims including tort and disputed contract claims, all related to activities arising out of day-to-day operations of the companies.

Mr. Hargraves maintains that even if the 2018 note [7] claims can be classified separately from the

general unsecured claims, the amended plan proposes to treat the various classes of general unsecured creditors drastically differently.

Section 1129(b)(1) of the Bankruptcy Code provides that to confirm a plan that has not been accepted by all impaired classes, the plan proponent must show that the plan does not discriminate unfairly and is fair and equitable with respect to the non-accepting impaired class.

Generally speaking, this standard ensures that an accepting class will receive relative value equal to the value given to all other similarly situated classes. Thus, a plan proponent may not segregate to similar claims or groups of claims into separate classes and provide disparate treatment for those classes.

The plan here proposes that as part of the global settlement with the committee and the debtors' secured creditors, certain classes of unsecured claim holders receive distributions of reorganized Nuverra equity interest and warrants to purchase additional equity under certain conditions.

The debtors maintain that if the unimpaired unsecured creditors are required to share in those distributions, the debtors will not be able to satisfy their obligations under the plan support agreement. As such, the [8] debtors submit that treating holders of 2018 notes differently from other holders of unsecured claims should be permitted.

In Tribune, I adopted and applied the Markell test for the basis of determining whether unfair discrimination exists in considering the distributions a plan proposes. Under the Markell test, the rebuttable presumption of unfair discrimination arises when there is,

1) a dissenting class;

2) another class of the same priority and;

3) a difference in the plan's treatment of the two classes those results in either:

a) a material lower percentage recovery for the dissenting class measured in terms of the net present value of all payments or;

b) regardless of a percentage recover, an allocation under the plan of materially greater risk to the dissenting class in connection with its proposed distribution.

I conclude that despite the disparate treatment between class A6 and other unsecured creditors, there is no unfair discrimination here where the gift by secured creditors to other unsecured creditors constitutes no unfair discrimination as class A6 is indisputably out of the money and not, otherwise, entitled to any distribution under the [9] Bankruptcy Code's priority scheme and provided further that the proposed classification and treatment of other unsecured creditors fosters a reorganization of these debtors.

Mr. Hargraves argues that under the Markell test the debtors' proposed plan is unconfirmable because the 2018 notes claims class has voted to reject the plan; that the classes of 2018 notes intercompany claims and general unsecured creditors have the same priority and the plan proposes to pay the general unsecured creditors and the intercompany claims in full, but proposes to pay the 2018 notes claims pennies on the dollar.

I agree with Mr. Hargraves that the proposed plan gives rise to a rebuttal presumption of unfair discrimination that the debtors must overcome. The third circuit has allowed for the confirmation of plan that enables secured creditors to gift distributions to unsecured creditors as the plan proposes to do here.

A number of courts have confirmed such plans finding that such sharing arrangements do not violate the prohibition against unfair discrimination or the absolute priority rule.

Carve-out and give plans have been criticized as violating the absolute priority rule, the fair and equitable requirement, and the unfair discrimination prohibition of 1129(b).

[10] Court have been more permissive outside of the confines of a plan to prevent carve-outs and gifts from senior to junior classes and have approved sharing arrangements in the context of sale motions or compromises of controversy, although courts do continue to disagree on the propriety of sharing arrangements when intervening creditors are prejudiced.

Mr. Hargraves makes the argument that the gifts to plan proposes to distribute to certain classes of unsecured creditors is property of the estate and should, therefore, not be allowed.

In support of this argument, he analogized the facts before me to the facts in the third circuit's decision in Armstrong arguing that the proposed distributions are property of the estate. However, my decision to confirm this plan is consistent with the holding in Armstrong. In fact, I find this situation to be consistent with the gift contained in the plan proposed in Genesis, which the Armstrong court viewed favorably.

In Armstrong World Industries, the plan at issue provided that an unsecured creditor class would receive and automatically transfer warrants to the holder of equity interest in the event that its co-equal class rejects the reorganization plan. That case of third circuit concluded that the absolute priority rule applied and was violated by [11] such a distribution scheme.

The court analyzed the holding in the prior case of Genesis which allowed a secured creditor to give up a portion of what would otherwise have been its proceeds under the reorganization plan to holders of unsecured and subordinated claims without including holders of putative damage claims in the arrangement.

The court in Armstrong distinguished the arrangement in Genesis as an ordinary carve-out of the senior creditor's lien for the junior claimant's benefit. In Genesis, the debtors classified putative damage claims in

the separate class from other general unsecured claims. The senior lenders agreed to share the distribution that they would have, otherwise, been entitled to only with certain classes and chose to omit putative damage claimants from the agreement.

In that case, the court found that the classified and treatment of putative damage claims do not constitute equitable subordination and are not an improper classification, because the distribution to general unsecured creditors was attributable to the agreement by the senior lenders to give up a portion of value they would otherwise receive to unsecured creditors.

The court in Armstrong did not reject the court's ruling in Genesis. In fact, it distinguished the situation [12] in Genesis, which is like the situation I have in this case before me today, saying also distinguishable on the facts is In Re Genesis Health Ventures where a distribution to management on account of its equity interest was carved out voluntarily from the senior lender's liens.

The Bankruptcy Court recognized that to the extent that the distribution to the junior class involved debtors' property subject to the senior lender's liens, the principals underpinning the absolute priority rule were not offended.

As such, I find my conclusion to be consistent with the leading cases governing the issues of gifting in this circuit and will allow the gift as the plan proposes.

The debtors make note that in these cases the equity interest of the Nuverra debtors' subsidiaries are the collateral of the prepetition secured creditors, accordingly, even if Nuverra would have liquidated its subsidiaries to confirm the plan, that value would have gone to the secured creditors not to Mr. Hargraves.

Mr. Hargraves' argument that absolute priority is violated by reinstatement of what are terms surviving equity interest of the Nuverra group debtors, the AWS debtor, and the Badlands' debtor, classes A12, B10 and C10, is unfounded. The reinstatement of surviving equity interest in the debtors' subsidiaries is a commonly used technical device for preserving the debtors' corporate structure.

[13] Because the plan fully transfers the equity interest of the parent company in the corporate structure to creditors, the plan provisions preserving the subsidiary level equity structures have no economic substance and do not enable any junior creditor or interest holder to retain or recover any value under the plan.

The plans retention of intercompany equity interest allows the debtors to maintain their organizational structure without the unnecessary cost that would be incurred if the debtors had to cancel the equity interest and reconstitute the structure.

In its submissions, the debtors further explain that the separate classification allows for them to provide recoveries to all creditors that they would not

otherwise be able to provide. I find that gift that the secured creditors have opted to provide to certain classes does not render the plan unconfirmable.

Mr. Hargraves argues in part that the Supreme Court's decision in Jevic is also a basis for objection. Jevic here is not implicated. There the situation involved a so-called structured dismissal. Here, in contrast, the Chapter 11 plan received overwhelming creditor support and allows the reorganization of an ongoing business.

So based upon the record before me and upon careful consideration of the proposed plan, Mr. Hargraves' [14] objection, debtors' memorandum of law in support of confirmation, and after considering the testimony and arguments presented at the hearing, I will overrule Mr. Hargraves' objection and confirm the plan proposed by the debtor.

The debtor has requested a waiver of the 14-day stay of the confirmation order provided by Bankruptcy Rule 3020(e). At last Friday's hearing, Mr. Hargraves opposed waiver of the stay indicating his intention to appeal an adverse ruling by this court, the debtor points out that any delay in implementation of the plan would occasion administrative and professional cost including loss of a $5 million dollar concession from its lenders.

To balance and accommodate the interest of each, I will stay this order effective for 10 days until August 3rd, 2017. So I ask the parties to confer and present a

revised confirmation order that includes my decision about the 14-day stay waiver request.

Mr. Hargraves' counsel at the confirmation hearing then suggests that he may appeal an adverse ruling and wanted the stay – said he would be seeking a stay. And if that were the case, I would say it would serve no purpose to file a motion requesting a stay of the order in this court.

Frankly, the consequences of an adverse ruling on appeal of a reversal of this confirmation order on appeal, [15] frankly, the risks lie with the other constituents in this case, not with Mr. Hargraves, so I don't think a stay would be warranted.

But if there is an appeal filed and if a motion is filed with the district court that will be left for the district court to make its own decision.

That concludes my ruling. Let me ask, do the parties have any questions?

(No verbal response)

THE COURT: I hear no response. Everyone pretty much on the phone on listen only.

I will expect submission then of a revised proposed order under certification at the earliest possible moment. And if for any reason the parties do not believe they can get that to me today, please contact chambers and let me know.

With that, this hearing is concluded and court will stand in recess.

(Proceedings conclude at 10:21 a.m.)

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[16] CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Mary Zajaczkowski July 24, 2017
Mary Zajaczkowski, CET**D-531

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3084

In re: Nuverra Environmental Solutions, Inc.,
a/k/a Heckmann Corporation
a/k/a Rough Rider Escrow, Inc., et al.,

Debtor

David Hargreaves,

Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1:17-cv-01024)
District Judge: Hon. Richard G. Andrews

SUR PETITION FOR REHEARING

(Filed Feb. 4, 2021)

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHlPPS, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the

circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: February 4, 2021
SLC/cc: Counsel of Record

IMPORTANT: THE SOLICITATION MATERIALS ACCOMPANYING THIS PLAN OF REORGANIZATION HAVE NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF 11 U.S.C. § 1125(a). THE DEBTORS EXPECT TO SEEK AN ORDER OR ORDERS OF THE BANKRUPTCY COURT, AMONG OTHER THINGS: (1) APPROVING THE SOLICITATION OF VOTES AS HAVING BEEN IN COMPLIANCE WITH 11 U.S.C. § 1126(b); AND (2) CONFIRMING THE PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1129.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
Nuverra Environmental Solutions, Inc., et al.,[1]	:	**Case No. 17–10949 (KJC)**
Debtors.	:	**(Jointly Administered)**

[1] The Debtors in these cases (including the last four digits of their respective taxpayer identification numbers) are: Nuverra Environmental Solutions, Inc. (7117), Appalachian Water Services, LLC (0729), Badlands Leasing, LLC (2638), Badlands Power Fuels, LLC (DE) (8703), Badlands Power Fuels, LLC (ND) (1810), Heckmann Water Resources Corporation (1194), Heckmann Water Resources (CVR), Inc. (1795), Heckmann Woods Cross, LLC (9761), HEK Water Solutions, LLC (8233), Ideal Oilfield Disposal, LLC (5796), Landtech Enterprises, L.L.C. (9022), NES Water Solutions, LLC (3421), Nuverra Total Solutions, LLC (6218), and 1960 Well Services, LLC (5084). The Debtors' corporate headquarters is located at 14624 N. Scottsdale Rd., Suite 300, Scottsdale, Arizona 85254.

DEBTORS' AMENDED PREPACKAGED PLANS OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

(Filed Jun. 23, 2017)

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DEBTORS' PREPACKAGED PLANS OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The Debtors (as defined herein) propose this joint prepackaged plan of reorganization (the "**Plan**") for the resolution of the outstanding claims against, and interests in, the Debtors pursuant to the Bankruptcy Code. The Plan comprises the Nuverra Group Plan, the AWS Plan and the Badlands (DE) Plan (as all defined herein).

Each of Nuverra Environmental Solutions, Inc., Badlands Leasing, LLC, Badlands Power Fuels, LLC (ND), Heckmann Water Resources Corporation, Heckmann Water Resources (CVR), Inc., Heckmann Woods Cross, LLC, HEK Water Solutions, LLC, Ideal Oilfield Disposal, LLC, Landtech Enterprises, L.L.C., NES Water Solutions, LLC, Nuverra Total Solutions, LLC, and 1960 Well Services, LLC (each a "**Nuverra Group Debtor**" and collectively the "**Nuverra Group Debtors**" propose the joint Nuverra Group Plan under chapter 11 of the Bankruptcy Code. Only Holders, as of the Record Date, of (i) Class A4 – Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors, (ii) Class A5 – 2021 Note Claims against the Nuverra Group Debtors and (iii) Class A6 – 2018 Note Claims against the Nuverra Group Debtors are entitled to vote on the Nuverra Group Plan.

Appalachian Water Services, LLC (the "**AWS Debtor**") proposes the AWS Plan under chapter 11 of the Bankruptcy Code and Badlands Power Fuels, LLC

(DE) (the "**Badlands (DE) Debtor**," together with the AWS Debtor and the Nuverra Group Debtors, the "**Debtors**") proposes the Badlands (DE) Plan under chapter 11 of the Bankruptcy Code. Only Holders, as of the Record Date, of (i) Class B4 – Supporting Noteholder Term Loans Claims against the AWS Debtor and (ii) Class B5 – 2021 Note Claims against the AWS Debtor are entitled to vote on the AWS Plan. Only Holders, as of the Record Date, of (i) Class C4 – Supporting Noteholder Term Loans Claims against the Badlands (DE) Debtor and (ii) Class C5 – 2021 Note Claims against the Badlands (DE) Debtor are entitled to vote on the Badlands (DE) Plan.

The Chapter 11 Cases have been consolidated for procedural purposes only and the Debtors will request that they be jointly administered pursuant to an order of the Bankruptcy Court. The Plan constitutes a separate plan of reorganization for each of the Debtors and notwithstanding anything herein, the Plan may be confirmed and consummated as to each of the Debtors separate from, and independent of, confirmation and consummation of the Plan as to any other Debtor.

Prior to voting to accept or reject the Nuverra Group Plan, AWS Plan and Badlands (DE) Plan, such Holders eligible to vote to accept or reject the, as applicable, Nuverra Group Plan, AWS Plan and Badlands (DE) Plan, are encouraged to read the Plan, the accompanying Solicitation and Disclosure Statement, and their respective exhibits and schedules, in their entirety. No materials other than the

Plan, the Solicitation and Disclosure Statement, and their respective exhibits and schedules have been authorized by the Debtors for use in soliciting acceptances or rejections of the Plan.

[2] ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

Section 1.1 *Defined Terms.*

The following terms shall have the respective meanings specified below when used in capitalized form in the Plan:

"***2018 Notes***" means the 9.875% unsecured senior notes due 2018 issued under the 2018 Note Indenture.

"***2018 Note Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, the 2018 Notes and the 2018 Note Indenture.

"***2018 Note Indenture***" means the indenture, dated as of April 10, 2012 between the Heckmann Corporation (as predecessor to Nuverra), the 2018 Note Indenture Trustee, and the other Debtor guarantors party thereto, together with all other agreements entered into and documents delivered in connection therewith (in each case, as amended, modified or supplemented from time to time).

"***2018 Note Indenture Trustee***" means Wilmington Trust, National Association (as successor to Wilmington Savings Fund Society, FSB), as indenture trustee under the 2018 Note Indenture, or any successor indenture trustee thereunder.

"***2018 Noteholder Rights***" means the rights of Holders of 2018 Note Claims against the Nuverra Group Debtors to subscribe for and purchase $30 million of the Rights Offering Shares at the Rights Exercise Price, under the terms and conditions of the Rights Offering in accordance with the Rights Offering Procedures.

"***2021 Notes***" means the 12.5%/10% senior secured second lien notes due 2021 issued under the 2021 Note Indenture.

"***2021 Note Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, the 2021 Notes and the 2021 Note Indenture.

"***2021 Note Indenture***" means the indenture, dated as of April 15, 2016 between Nuverra, the 2021 Note Indenture Trustee, and the other Debtor guarantors party thereto, together with all other agreements entered into and documents delivered in connection therewith (in each case, as amended, modified or supplemented from time to time).

"***2021 Note Indenture Trustee***" means Wilmington Savings Fund Society, FSB, as trustee under the

2021 Note Indenture, or any successor indenture trustee thereunder.

"***2021 Noteholder Rights***" means the rights of Holders of 2021 Note Claims to subscribe for and purchase $75 million of the Rights Offering Shares at the Rights Exercise Price, under the terms and conditions of the Rights Offering in accordance with the Rights Offering Procedures.

[3] "***ABL Agent'*** means Wells Fargo Bank, National Association, as administrative agent for the ABL Lenders under the ABL Credit Agreement Documents, or any successor agent.

"***ABL Credit Agreement'*** means the Amended and Restated Credit Agreement, dated as of February 3, 2014, by and among Nuverra, the ABL Agent, and the ABL Lenders, as amended, modified or supplemented from time to time.

"***ABL Credit Agreement Documents***" means the ABL Credit Agreement together with all documentation executed in connection therewith (in each case, as amended, modified or supplemented from time to time).

"***ABL Credit Facility Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, the ABL Facility and the ABL Credit Agreement Documents.

"***ABL Facility***" means the revolving loan and letter credit facility provided for under the ABL Credit Agreement.

"***ABL Lenders***" means the lender parties to the ABL Credit Agreement Documents.

"***Administrative Claims***" means any and all Claims for administrative costs or expenses of the kind specified in Bankruptcy Code section 503(b) and entitled to priority under Bankruptcy Code section 507, including, but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors, (b) compensation of Professionals for legal, financial advisory, accounting, and other services and reimbursement of expenses allowed pursuant to Bankruptcy Code sections 328, 330(a), 331, or 363 or otherwise for the period commencing on the Petition Date and through the Effective Date, and (c) Bankruptcy Fees.

"***Affiliate***" shall have the meaning set forth in section 101(2) of the Bankruptcy Code and shall include non-Debtor entities.

"***Allowed***" means with respect to any Claim or Equity Interest (or a portion thereof), a Claim or Equity Interest arising before the Effective Date against any Debtor (a) listed by such Debtor in its books and records as liquidated in an amount and not disputed or contingent, (b) proof of which is timely Filed, provided that such filing is required by order of the Bankruptcy Court or pursuant to the Plan, (c) that is compromised, settled or otherwise resolved pursuant to the authority of the Debtors or Reorganized Debtors, as applicable, in a Final Order or (d) expressly allowed in a specified

amount pursuant to this Plan, the Confirmation Order or a Final Order; *provided, however*, that with respect to any Claim or Equity Interest described in clauses (a) or (b) above, such Claim or Equity Interest will be an allowed Claim or Equity Interest only if (i) no objection to the allowance thereof has been interposed or Filed within any applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Court or applicable law or (ii) such an objection is so interposed and such objection has been withdrawn or settled to provide for allowance of the Claim or Equity Interest, the Claim or Equity Interest shall have been allowed by a Final Order (but only if such allowance was not solely for the purpose of voting to accept or reject this Plan) and such Claim or Equity Interest is [4] not otherwise subject to continuing dispute by any of the Debtors or the Reorganized Debtors in accordance with the Plan or applicable law; *provided, further*, that, except as otherwise specified in this Plan, to the extent an Allowed Claim or Equity Interest is Disputed, the determination of whether such Claim or Equity Interest shall be Allowed and or the amount of any such Claim or Equity Interest may be determined, resolved or adjudicated, as the case may be, in the manner in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced; *provided, further*, that the Reorganized Debtors, in their discretion, may bring an objection or other motion before the Bankruptcy Court with respect to a Disputed Claim for resolution; *provided, further* that notwithstanding the foregoing, the Reorganized Debtors shall retain all

claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired by this Plan. Except as otherwise specified in this Plan or a Final Order, the amount of an Allowed Claim or Allowed Equity Interest of any Impaired Claim under this Plan shall not include interest on such Claim or Equity Interest after the Petition Date.

"***Assets***" means, with respect to any Debtor, all of such Debtor's right, title and interest of any nature in property of any kind, wherever located, as specified in section 541 of the Bankruptcy Code.

"***Assumed Ideal Oilfield Claims***" means Claims related to, arising out of, arising under, or arising in connection with, the Ideal Oilfield Documents that are assumed pursuant to Section 365 of the Bankruptcy Code or otherwise reinstated or paid by the Badlands (DE) Debtor pursuant to an order of the Bankruptcy Court, which may be the Confirmation Order.

"***Assumed Shallenberger/Skywater Claims***" means Claims related to, arising out of, arising under, or arising in connection with the Shallenberger/Skywater Documents that are assumed pursuant to Section 365 of the Bankruptcy Code or otherwise reinstated or paid by the AWS Debtor pursuant to an order of the Bankruptcy Court, which may be the Confirmation Order.

"***AWS 2018 Note Guaranty Claims***" means any and all Claims against the AWS Debtor related to, arising out of, arising under, or arising in connection with, the 2018 Notes and 2018 Note Indenture.

"***AWS 2021 Note Guaranty Claims***" means any and all Claims against the AWS Debtor related to, arising out of, arising under, or arising in connection with, the 2021 Notes and 2021 Note Indenture.

"***AWS Debtor***" has the meaning set forth in the introductory paragraph to the Plan.

"***AWS Debtor General Unsecured Claims***" means the Assumed Shallenberger/Skywater Claims and any and all unsecured Claims against the AWS Debtors that are not DIP Claims, Administrative Claims, Professional Fee Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, ABL Credit Facility Claims, Term Loan Facility Claims, AWS 2021 Note Guaranty Claims, AWS Debtor Unsecured Debt Claims, Subordinated Claims or Intercompany Claims.

[5] "***AWS Debtor Unsecured Debt Claims***" means any and all (i) AWS 2018 Note Guaranty Claims and (ii) the Shallenberger/Skywater Other Loss Claims.

"***AWS Lease***" means the Lease Agreement dated June 9, 2015, among Shallenberger Construction, Inc., Skywater Development, LLC and the AWS Debtor.

"***AWS Plan***" means the prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code for the AWS Debtor, all exhibits and schedules to the AWS Plan, including the Plan Supplement, which is incorporated into the AWS Plan by reference, as it may be amended, supplemented or modified from time to time in accordance with the terms hereof, and in

accordance with the terms of the Bankruptcy Code and the Bankruptcy Rules.

"***AWS Promissory Note***" means the approximately $4.0 million promissory note pertaining to the acquisition of the remaining interest in Debtor Appalachian Water Services, LLC.

"***Badlands (DE) 2018 Note Guaranty Claims***" means any and all Claims against the Badlands (DE) Debtor related to, arising out of, arising under, or arising in connection with, the 2018 Notes and 2018 Note Indenture.

"***Badlands (DE) 2021 Note Guaranty Claims***" means any and all Claims against the Badlands (DE) Debtor related to, arising out of, arising under, or arising in connection with, the 2021 Notes and 2021 Note Indenture.

"***Badlands (DE) Debtor***" has the meaning set forth in the introductory paragraph to the Plan.

"***Badlands (DE) General Unsecured Claims***" means the Assumed Ideal Oilfield Claims and any and all unsecured Claims against the Badlands (DE) Debtor that are not DIP Claims, Administrative Claims, Professional Fee Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, ABL Credit Facility Claims, Term Loan Facility Claims, Badlands (DE) 2021 Note Guaranty Claims, Badlands (DE) Unsecured Debt Claims, Subordinated Claims or Intercompany Claims.

"***Badlands (DE) Plan***" means the prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code for the Badlands (DE) Debtor, all exhibits and schedules to the Badlands (DE) Plan, including the Plan Supplement, which is incorporated into the Badlands (DE) Plan by reference, as it may be amended, supplemented or modified from time to time in accordance with the terms hereof, and in accordance with the terms of the Bankruptcy Code and the Bankruptcy Rules.

"***Badlands (DE) Unsecured Debt Claims***" means any and all (i) Badlands (DE) 2018 Note Guaranty Claims, and (ii) Ideal Oilfield Other Loss Claims.

"***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the Petition Date, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.

[6] "***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

"***Bankruptcy Fees***" means any and all fees or charges assessed against the Debtors' estates under section 1930 of title 28 of the United States Code.

"***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, promulgated under section

2075 of title 28 of the United States Code, the Official Bankruptcy Forms or the local rules of the Bankruptcy Court, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.

"***Business Day***" means any day, other than a Saturday, Sunday or a "legal holiday" (as such term is defined in Bankruptcy Rule 9006(a)).

"***Cash***" means legal tender of the United States of America.

"***Causes of Action***" means any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, rights to legal remedies, rights to equitable remedies, rights to payment and claims, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances and trespasses of, or belonging to, the Estates, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity or otherwise.

"***Chapter 11 Cases***" means, collectively, (i) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and (b) when used with reference to all Debtors, the jointly-administered cases pending for the Debtors in the Bankruptcy Court.

"***Claim***" means a claim as defined in section 101(5) of the Bankruptcy Code against any Debtor, whether or not asserted.

"***Class***" means a category of Holders of Claims or Equity Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code, as set forth in Article III hereof.

"***Class A6 Ratio***" means the ratio (expressed as a percentage) of the amount of Allowed Claims in Class A6 bears to the aggregate amount (without duplication) of all Allowed Claims in Classes A6, A8, B6, and C6. For the avoidance of doubt, for purposes of determining the Class A6 Ratio, the AWS 2018 Note Guaranty Claims, Badlands (DE) 2018 Note Guaranty Claims, and all other Allowed Claims in Classes A6, A8, B6, and C6 arising from a guarantee by a Debtor of the obligations of another Debtor shall be excluded from such calculation.

"***Class A6 Reorganized Nuverra Common Stock***" means Reorganized Nuverra Common Stock in an amount of Unsecured Claim Reorganized Nuverra Common Stock multiplied by the Class A6 Ratio.

[7] "***Class A6 Unsecured Claim Warrants***" means Unsecured Claim Warrants in an amount equal to the aggregate Unsecured Claim Warrants multiplied by Class A6 Ratio.

"***Class A8 Ratio***" means the ratio (expressed as a percentage) of the amount of Allowed Claims in Class A8 bears to the aggregate amount (without

duplication) of all Allowed Claims in Classes A6, A8, B6, and C6. For the avoidance of doubt, for purposes of determining the Class A8 Ratio, the AWS 2018 Note Guaranty Claims, Badlands (DE) 2018 Note Guaranty Claims, and all other Allowed Claims in Classes A6, A8, B6, and C6 arising from a guarantee by a Debtor of the obligations of another Debtor shall be excluded from such calculation.

"***Class A8 Reorganized Nuverra Common Stock***" means Reorganized Nuverra Common Stock in an amount of Unsecured Claim Reorganized Nuverra Common Stock multiplied by the Class A8 Ratio.

"***Class A8 Unsecured Claim Warrants***" means Unsecured Claim Warrants in an amount equal to the aggregate Unsecured Claim Warrants multiplied by Class A8 Ratio.

"***Class B6 Ratio***" means the ratio (expressed as a percentage) of the amount of Allowed Claims in Class B6 bears to the aggregate amount (without duplication) of all Allowed Claims in Classes A6, A8, B6, and C6. For the avoidance of doubt, for purposes of determining the Class B6 Ratio, the AWS 2018 Note Guaranty Claims, Badlands (DE) 2018 Note Guaranty Claims, and all other Allowed Claims in Classes A6, A8, B6, and C6 arising from a guarantee by a Debtor of the obligations of another Debtor shall be excluded from such calculation.

"***Class B6 Reorganized Nuverra Common Stock***" means Reorganized Nuverra Common Stock

in an amount of Unsecured Claim Reorganized Nuverra Common Stock multiplied by the Class B6 Ratio.

"***Class B6 Unsecured Claim Warrants***" means Unsecured Claim Warrants in an amount equal to the aggregate Unsecured Claim Warrants multiplied by Class B6 Ratio.

"***Class C6 Ratio***" means the ratio (expressed as a percentage) of the amount of Allowed Claims in Class C6 bears to the aggregate amount (without duplication) of all Allowed Claims in Classes A6, A8, B6, and C6. For the avoidance of doubt, for purposes of determining the Class C6 Ratio, the AWS 2018 Note Guaranty Claims, Badlands (DE) 2018 Note Guaranty Claims, and all other Allowed Claims in Classes A6, A8, B6, and C6 arising from a guarantee by a Debtor of the obligations of another Debtor shall be excluded from such calculation.

"***Class C6 Reorganized Nuverra Common Stock***" means Reorganized Nuverra Common Stock in an amount of Unsecured Claim Reorganized Nuverra Common Stock multiplied by the Class C6 Ratio.

"***Class C6 Unsecured Claim Warrants***" means Unsecured Claim Warrants in an amount equal to the aggregate Unsecured Claim Warrants multiplied by Class C6 Ratio.

"***Committee***" means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

[8] "***Confirmation Date***" means the date upon which the Confirmation Order is entered on the docket maintained by the Bankruptcy Court pursuant to Bankruptcy Rule 5003.

"***Confirmation Hearing***" means the hearing to be held by the Bankruptcy Court to consider confirmation of the Plan under section 1129 of the Bankruptcy Code.

"***Confirmation Order***" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

"***Covered Persons***" means any and all directors, officers and other employees of the Debtors, as of the Petition Date, other than such directors, officers and other employees who are expelled or terminated for cause between the Petition Date and the Effective Date.

"***Cure Claim***" means a Claim based upon any and all amounts payable to a counterparty of an executory contract or unexpired lease at the time such contract or lease is assumed by such Debtor pursuant to Bankruptcy Code section 365(b).

"***Debtor***" has the meaning set forth in the introductory paragraph of the Plan. As used herein, the term "Debtor" shall refer to the Nuverra Group Debtors when referencing the Nuverra Group Debtors Plan, shall refer to the AWS Debtor when referencing the AWS Plan, and shall refer to the Badlands (DE) Debtor when referencing the Badlands (DE) Plan.

"***Debtor Released Claims***" has the meaning set forth in Section 9.3(a) hereof.

"***DIP Agents***" means the DIP Revolving Agent and the DIP Term Loan Agent.

"***DIP Claims***" means the DIP Revolving Facility Claims and DIP Term Loan Facility Claims.

"***DIP Facilities***" means the DIP Revolving Facility and the DIP Term Loan Facility, each as approved by the Bankruptcy Court pursuant to the DIP Financing Order, including any amendments, supplements, and modifications thereto.

"***DIP Financing Order***" means the orders to be entered by the Bankruptcy Court in these Chapter 11 Cases approving the DIP Facilities.

"***DIP Lenders***" means the DIP Term Loan Lenders and the DIP Revolving Lenders.

"***DIP Revolving Agent***" means Wells Fargo Bank, National Association, as administrative and syndication agent under the DIP Revolving Facility, or any successor administrative agents thereunder.

"***DIP Revolving Facility***" means that certain super-priority, senior secured $31,500,000 debtor-in-possession revolving credit facility, by and among Nuverra, as borrower, each of the Debtors as guarantors, the DIP Revolving Agent, and the DIP Revolving Lenders, approved in the DIP Financing Order.

[9] "***DIP Revolving Facility Claims***" means any and all Claims against any Debtor related to, arising

out of, arising under, or arising in connection with, the DIP Revolving Facility.

"***DIP Revolving Lenders***" means the lenders party to the DIP Revolving Facility.

"***DIP Term Loan Agent***" means Wilmington Savings Fund Society, FSB, as administrative and syndication agent under the DIP Term Loan Facility, or any successor administrative agents thereunder.

"***DIP Term Loan Facility***" means that certain super-priority, senior secured $12,500,000 debtor-in-possession term loan facility, by and among Nuverra, as borrower, each of the Debtors as guarantors, the DIP Term Loan Agent, and the DIP Term Loan Lenders, approved in the DIP Financing Order.

"***DIP Term Loan Facility Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, the DIP Term Loan Facility.

"***DIP Term Loan Lenders***" means one or more of the lenders party to the DIP Term Loan Facility.

"***Disallowed***" means, with respect to any Claim or Equity Interest, such Claim or Equity Interest or portion thereof that has been disallowed or expunged by a Final Order.

"***Disbursing Agent***" means the Debtors or the Reorganized Debtors, or any Person designated by the Debtors or the Reorganized Debtors, in the capacity as disbursing agent under the Plan.

"***Disputed***" means, with respect to any Claim, such Claim or portion thereof as to which any Debtor has interposed an objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules or that otherwise is disputed by any Debtor at any time, including after the Effective Date, through notice to the Holder of the Claim or otherwise in accordance with applicable law, which objection has not been withdrawn by the Debtor or determined by a Final Order.

"***Distribution Record Date***" means the Confirmation Date; *provided, however*, that no Distribution Record Date shall apply to publicly held securities if distributions to such securities will be effectuated through DTC.

"***DTC***" means The Depository Trust Company.

"***Effective Date***" means the date that is the first Business Day selected by the Debtors, with the consent of the Supporting Noteholders, on which (a) all conditions to the effectiveness of the Plan set forth in Section 8.1 hereof have been satisfied or waived in accordance with the terms of the Plan, (b) no stay of the Confirmation Order is in effect.

"***Entity***" means an "entity" as defined in section 101(15) of the Bankruptcy Code.

[10] "***Estates***" means, as to each Debtor, the estate created for the Debtor pursuant to section 541 of the Bankruptcy Code upon the commencement of the Debtor's Chapter 11 Cases.

"***Equity Interest***" means any and all equity securities (as defined in section 101(16) of the Bankruptcy Code) of a Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in any Debtor, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor, whether or not transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.

"***Excess Rights Offering Proceeds***" means all Rights Offering Proceeds in excess of $50,000,000 after the satisfaction of the DIP Revolving Facility Claims, the ABL Credit Facility Claims and Allowed Administrative Claims.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

"***Excluded Parties***" means, collectively, any Holder of a Claim against, or Equity Interests in, Nuverra or any Affiliate or subsidiary (other than, as Holders of Equity Interests, Nuverra and any direct or indirect subsidiary thereof), or current or former officer, director, principal, member, employee, agent, or advisory board member thereof, that (a) seeks any relief materially adverse to the restructuring transactions contemplated by the Plan or objects to or opposes any material relief sought by (including any request for relief by any other party that is joined by any of the foregoing) the Debtors, which request, objection or

opposition is not withdrawn by June 27, 2017, (b) is entitled to vote on any Plan and does not vote to accept a Plan for which it is entitled to vote or opts out of any third-party releases sought in connection with any Plan, or (c) objects to any Plan or supports an objection to any Plan, which objection or support thereof is not withdrawn by June 27, 2017.

"***Exculpated Parties***" means collectively, and in each case (a) excluding the Excluded Parties and (b) in their capacities as such during the Chapter 11 Cases, each of the Debtors, the Committee, and their respective predecessors, successors, assigns, current and former officers and directors, principals, shareholders, members, partners, managers, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals (including any professionals retained by such entities), and all of the foregoing entities' respective heirs, executors, estates, servants, and nominees, in each case in their capacity as such.

"***Existing Securities Law Claim***" means any and all Claims, regardless of whether such Claim is the subject of an existing lawsuit: (a) arising from rescission of a purchase or sale of any Securities of any Debtor or an Affiliate of any Debtor prior to the Effective Date; (b) for damages arising from the purchase or sale of any such Security prior to the Effective Date; (c) for violations of the securities laws, misrepresentations, or any similar Claims that occurred or arose prior to the Effective Date, including, to the extent related to the foregoing or otherwise subject to

subordination under section 510(b) of the Bankruptcy Code, any attorneys' fees, other charges, or costs incurred on account of the foregoing Claims; or (d) for reimbursement, [11] contribution, or indemnification allowed under section 502 of the Bankruptcy Code on account of any such Claim.

"***Exit Facility***" means the first lien, senior secured credit facility to be provided on the Effective Date by the Exit Facility Lenders (or the Standby Exit Facility Lenders) in accordance with the terms and conditions set forth in the Exit Facility Term Sheet, pursuant to the Exit Facility Credit Agreement, which provides Cash to fund, together with the Rights Offering Proceeds, distribution requirements under the Plan, including the repayment in full in Cash of the DIP Revolving Facility Claims and the ABL Credit Facility Claims.

"***Exit Facility Agent***" means administrative and collateral agent under the Exit Facility Credit Agreement Documents, or any successor agent.

"***Exit Facility Credit Agreement***" means the senior secured credit agreement in an amount and on terms satisfactory to the Debtors and the Supporting Noteholders, to be made available to the Debtors or the Reorganized Debtors on the Effective Date on terms and conditions substantially similar to those contained in the Exit Financing Term Sheet.

"***Exit Facility Credit Agreement Documents***" means the Exit Facility Credit Agreement, and all other related agreements, notes, certificates, documents and

instruments, and all exhibits, schedules and annexes thereto entered into in connection with the Exit Facility Credit Agreement to be executed or delivered in connection therewith, with terms and conditions and in form and substance satisfactory to the Debtors and the Supporting Noteholders (in each case, as amended, modified or supplemented from time to time).

"***Exit Facility Lenders***" means the lender or lenders from time to time under the Exit Facility Credit Agreement.

"***Exit Financing Commitment Fee***" means any fee that is payable to, as applicable, the Exit Facility Lenders or Standby Exit Facility Lenders in whole or in part in Cash or Reorganized Nuverra Common Stock at the election of the Exit Facility Lenders or Standby Exit Facility Lenders, as applicable, and which may be incorporated as part of an Exit Financing Term Sheet and Exit Facility Credit Agreement, as applicable.

"***Exit Financing Term Sheet***" means, to the extent filed in the Plan Supplement, the term sheet setting forth the material terms and conditions of the Exit Facility Credit Agreement committed to by an Exit Facility Lender, in form and substance satisfactory to the Debtors and the Supporting Noteholders.

"***File***", "***Filed***" or "***Filing***" means file, filed or filing with the Bankruptcy Court (or agent thereof) in connection with the Chapter 11 Cases.

"***Final Order***" means, as applicable, an order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction, as applicable, which has not been reversed, vacated or stayed and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing will then be pending, or as to which any right to appeal, [12] petition for certiorari, reargue, or rehear will have been waived in writing in form and substance satisfactory to the Debtors or, on and after the Effective Date, the Reorganized Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court, or other court of competent jurisdiction (as applicable) will have been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing will have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing will have expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state or provincial court rules of civil procedure, may be filed with respect to such order will not cause such order not to be a Final Order.

"***Governmental Unit***" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

"***Holder***" means the beneficial holder of any Claim or Equity Interest.

"***Ideal Oilfield Documents***" means that certain Purchase and Sale Agreement by and among Badlands Power Fuels, LLC, Ideal Oilfield Disposal, LLC, TDL Resources, LLC, 9 Z's LLC and Chax Holdings, LLC dated as of May 19, 2013 and any related documents or agreements in connection therewith.

"***Ideal Oilfield Other Loss Claims***" means Claims arising under the Ideal Oilfield Documents, including any guarantee claims against the Badlands (DE) Debtor comprising, related to, arising under or in connection with the Ideal Oilfield Documents, other than any Assumed Ideal Oilfield Claims.

"***Impaired***" means, with respect to a Claim or Equity Interest, such Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

"***Intercompany Claims***" means any and all Claims held by any Debtor against any other Debtor.

"***Johnsrud Employment Agreement***" means that certain employment agreement with Mark D. Johnsrud as Chief Executive Officer, dated April 28, 2017.

"***Lien***" means a lien as defined in section 101(37) of the Bankruptcy Code on or against any of the Debtors' property or the Estates.

"***Management Incentive Plan***" means the management equity incentive compensation plan, the terms of which shall be included in the Plan Supplement and adopted by the Reorganized Nuverra Board on the Effective Date, pursuant to which up to 12.5% of the Reorganized Nuverra Common Stock, on a fully diluted basis, will be reserved for issuance to the Reorganized Debtors' management and employees.

"***New Employment Agreements***" means the employment agreements that the Reorganized Debtors shall enter into on the Effective Date with certain individuals in the Debtors' senior management, which shall be in form and substance satisfactory to the Debtors [13] and the Supporting Noteholders; *provided*, that Reorganized Nuverra shall assume the Johnsrud Employment Agreement on the Effective Date.

"***Nuverra***" means Nuverra Environmental Solutions, Inc., a Delaware corporation (formerly known as Heckmann Corporation), a debtor and debtor in possession in the Chapter 11 Cases.

"***Nuverra Equity Interests***" means any and all Equity Interests in Nuverra.

"***Nuverra Group Debtors***" is as defined in the introductory paragraph to the Plan.

"***Nuverra Group General Unsecured Claims***" means any and all unsecured Claims against any of the Nuverra Group Debtors that are not DIP Claims, Administrative Claims, Professional Fee Claims, Priority Tax Claims, Other Priority Claims, Other

Secured Claims, ABL Credit Facility Claims, Term Loan Facility Claims, 2021 Note Claims, 2018 Note Claims, Subordinated Claims, Nuverra Group Rejection Damage and Other Debt Claims or Intercompany Claims.

"***Nuverra Group Plan***" means the joint prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code for the Nuverra Group Debtors, all exhibits and schedules to the Nuverra Group Plan, including the Plan Supplement, which is incorporated into the Nuverra Group Plan by reference, as they may be amended, supplemented or modified from time to time in accordance with the terms hereof, and in accordance with the terms of the Bankruptcy Code and the Bankruptcy Rules.

"***Nuverra Group Rejection Damage and Other Debt Claims***" means all Claims against the Nuverra Group Debtors comprising, related to, arising under or in connection with (i) the rejection of any executory contracts and unexpired leases of the Nuverra Group Debtors by the Nuverra Group Debtors prior to the Effective Date, (ii) the Shallenberger/Skywater Other Loss Claims, (iii) the Ideal Oilfield Other Loss Claims, and (iv) any guarantee claims against the Nuverra Group Debtors comprising, related to, arising under or in connection with the foregoing items (i) through (iii).

"***Other Priority Claims***" means any and all Claims against any Debtor entitled to priority in right of payment under section 507(a) of the Bankruptcy

Code that are not Administrative Claims or Priority Tax Claims.

"***Other Secured Claims***" means any and all Secured Claims against any Debtor that are not DIP Claims, ABL Credit Facility Claims, Term Loan Facility Claims, or 2021 Note Claims.

"***Out-of-Court Restructuring***" means all transactions and agreements related to a restructuring of the Debtors' indebtedness contemplated by, and taken in connection with, that certain restructuring support agreement, dated as of March 11, 2016, by and among the Debtors and the Holders, as of March 11, 2016, of more than 80% of the 2018 Notes, as described in any of the Debtors' public filings with the Securities and Exchange Commission since March 2016.

[14] "***Payment in Fulf'*** means, with respect to the ABL Credit Facility Claims or DIP Revolving Facility Claims, termination of any commitments to make loans or advances or any other extensions of credit and indefeasible repayment in full in Cash of all amounts owing on account of such Claims; provided that (a) in the case of any such Claims with respect to outstanding letters of credit issued under the ABL Credit Agreement or DIP Revolving Facility, as applicable, in lieu of the payment in full in cash, delivery of Letter of Credit Collateralization (as defined in the ABL Credit Agreement or DIP Revolving Facility, as applicable) shall constitute payment in full of such Claims, (b) in the case of any Claims with respect to Bank Product Obligations (as defined in the ABL Credit Agreement

or DIP Revolving Facility, as applicable), in lieu of the payment in full in cash, delivery of Bank Product Collateralization (as defined in the ABL Credit Agreement or DIP Revolving Facility, as applicable) in respect thereof shall constitute payment in full of such Claims and (c) in the case of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages as of the Effective Date for which ABL Agent, ABL Lenders, DIP Revolving Agent or DIP Revolving Lenders may be entitled to indemnification by any Debtor pursuant to the indemnification provisions in the ABL Credit Agreement or DIP Revolving Facility Credit Agreement, as applicable, in lieu of the payment in full in cash, delivery of cash collateral to ABL Agent or DIP Revolving Agent, as applicable, in such amount as ABL Agent or DIP Revolving Agent determines is reasonably necessary to secure ABL Agent, ABL Lenders, DIP Revolving Agent or DIP Revolving Lenders in respect of such claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages asserted or threatened (in writing) as of the Effective Date shall constitute payment in full of such Obligations. "***Paid in Full***" shall have a correlative meaning.

"***Person***" means a "person" as defined in section 101(41) of the Bankruptcy Code.

"***Petition Date***" means the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

"***Plan***" means this joint prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code, all exhibits and schedules to the Plan, including the Plan Supplement, which is incorporated herein by reference, as they may be amended, supplemented or modified from time to time in accordance with the terms hereof, and in accordance with the terms of the Bankruptcy Code and the Bankruptcy Rules, including, for the avoidance of doubt, as the context requires, one or more of the Nuverra Group Plan, the AWS Debtor Plan and the Badlands (DE) Debtor Plan or all of them.

"***Plan Document***" means any and all of the documents, other than the Plan, to be executed, delivered, or performed in connection with the occurrence of the Effective Date, including, without limitation, insofar as such documents are not incorporated into the Plan through inclusion in the Plan Supplement, the Exit Facility Credit Agreement Documents and the Management Incentive Plan, subject to any consent rights set forth in the Restructuring Support Agreement and in the Plan and as may be modified consistent with the Restructuring Support Agreement.

"***Plan Supplement***" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan to be filed by the Debtors no later than three (3) Business [15] Days prior to the Confirmation Hearing, as the same may be amended, modified, or supplemented, which shall be in form and substance satisfactory to the Debtors and the Supporting Noteholders, and including, without limitation, the

following: (a) the identity of the known members of the Reorganized Nuverra Board and the nature and compensation for any director who is an "insider" under the Bankruptcy Code, (b) the Schedule of Rejected Contracts, (c) the New Employment Agreements, (d) the Exit Financing Term Sheet (if any), (e) the Rights Offering Procedures, (f) the Registration Rights Agreement, (g) the Reorganized Nuverra Constituent Documents, (h) the Warrant Agreement, and (i) all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing.

"***Plan Value***" means the assumed $350 million enterprise valuation of the Reorganized Debtors on the Effective Date, at which the Reorganized Nuverra Common Stock issued in connection with the Rights Offering, will be sold at.

"***Priority Tax Claims***" means any and all Claims against any Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

"***Professionals***" means (a) any and all professionals employed in the Chapter 11 Cases pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) any and all professionals or other entities seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

"***Professional Fee Claim***" means any and all Claims of a Professional seeking an award by the Bankruptcy Court of compensation for services

rendered or reimbursement of expenses incurred through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code.

"***Proof of Claim***" means a proof of Claim, as defined in Bankruptcy Rule 3001, filed against any of the Debtors in the Chapter 11 Cases.

"***Pro Rata Share***" means with respect to any distribution on account of any Allowed Claim in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in such Class.

"***Registration Rights Agreement***" means that certain registration rights agreement to be included in the Plan Supplement and entered into by Reorganized Nuverra and the Registration Rights Parties on the Effective Date.

"***Registration Rights Parties***" means Reorganized Nuverra, each Supporting Noteholder (and any Affiliates thereof that receive Reorganized Nuverra Common Stock under the Plan), and each recipient of Reorganized Nuverra Common Stock that, together with its Affiliates, receives 10% or more of the Reorganized Nuverra Common Stock.

"***Reinstated***" means, with respect to Claims and Equity Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

[16] "***Released Parties***" means, collectively, and in each case excluding the Excluded Parties, each of: (i) the Debtors; (ii) the Debtors' other non-Debtor Affiliates; (iii) the Supporting Noteholders; (iv) the Standby Exit Facility Lenders; (v) the ABL Agent; (vi) the ABL Lenders; (vii) the Term Loan Agent, (viii) the Term Loan Lenders, (ix) the DIP Agents; (x) the DIP Lenders; (xi) the 2018 Note Indenture Trustee, (xii) the 2021 Note Indenture Trustee; and (xiii) the Committee; and with respect to each of the foregoing entities, such entities' predecessors, successors, assigns, subsidiaries, present and former Affiliates, managed accounts and funds, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals (including any professionals retained by such entities), and all of the foregoing entities' respective heirs, executors, estates, servants, and nominees, in each case in their capacity as such.

"***Releasing Parties***" means, collectively, each Holder of a Claim who (i) does not opt out of the release provisions in the Plan on their Ballot or (ii) votes to accept the Plan.

"***Releasing Party Released Claims***" has the meaning set forth in Section 9.3(b).

"***Remaining Reorganized Nuverra Common Stock***" means shares of Reorganized Nuverra Common

Stock (subject to dilution by the Management Incentive Plan) issued and outstanding on the Effective Date after giving effect to the distribution of (a) Rights Offering Shares, if any, subscribed to prior to the Effective Date, (b) Reorganized Nuverra Common Stock distributed to Holders of Supporting Noteholder Term Loan Claims in accordance with Section 3.3(d) of this Plan, (c) any Reorganized Nuverra Common Stock distributed in satisfaction of the Exit Financing Commitment Fee and (d) Reorganized Nuverra Common Stock distributed to Holders of Allowed Nuverra Group General Unsecured Claims in accordance with Section 3.3(g) of this Plan.

"***Reorganized AWS Debtor***" means the AWS Debtor and any successor thereto, by merger, consolidation or otherwise, as reorganized, on or after the Effective Date as reorganized as of the Effective Date in accordance with this Plan.

"***Reorganized Badlands (DE) Debtor***" means the Badlands (DE) Debtor and any successor thereto, by merger, consolidation or otherwise, as reorganized, on or after the Effective Date as reorganized as of the Effective Date in accordance with this Plan.

"***Reorganized Debtor***" means, as applicable, the Reorganized Nuverra Group Debtors, the Reorganized AWS Debtor and the Reorganized Badlands (DE) Debtor.

"***Reorganized Debtors Constituent Documents***" means, on or after the Effective Date, collectively, the Reorganized Nuverra Constituent Documents and (a) the amended and restated by-laws or similar

governing document of each Reorganized Debtor other than Reorganized Nuverra, and (b) the amended and restated certificate of incorporation or other formation document of each Reorganized Debtor other than Reorganized Nuverra, each in form and substance satisfactory to the Debtors and the Supporting Noteholders.

[17] "***Reorganized Nuverra***" means Nuverra and any successor thereto, by merger, consolidation or otherwise, as reorganized, on or after the Effective Date as reorganized as of the Effective Date in accordance with this Plan.

"***Reorganized Nuverra Board***" means the board of directors of Reorganized Nuverra.

"***Reorganized Nuverra By-Laws***" means, on or after the Effective Date, the amended and restated bylaws of Reorganized Nuverra, a substantially final form of which, in form and substance satisfactory to the Debtors and the Supporting Noteholders, shall be contained in the Plan Supplement.

"***Reorganized Nuverra Certificate of Incorporation***" means, on or after the Effective Date, the amended and restated certificate of incorporation of Reorganized Nuverra, a substantially final form of which, in form and substance satisfactory to the Debtors and the Supporting Noteholders, shall be contained in the Plan Supplement.

"***Reorganized Nuverra Common Stock***" means the shares of common stock of Reorganized Nuverra

authorized under the Reorganized Nuverra Certificate of Incorporation and issued pursuant to the Plan.

"***Reorganized Nuverra Constituent Documents***" means, collectively, the Reorganized Nuverra By-Laws and the Reorganized Nuverra Certificate of Incorporation, each in form and substance satisfactory to the Debtors and the Supporting Noteholders.

"***Reorganized Nuverra Group Debtor***" means any Nuverra Group Debtor (other than any Debtor that is dissolved prior to the Effective Date pursuant to Section 4.3) and any successor thereto, by merger, consolidation or otherwise, as reorganized, on or after the Effective Date in accordance with this Plan.

"***Restructuring Support Agreement***" means the agreement, dated as of April 9, 2017, entered into by and among the Debtors and each Supporting Noteholder, as it may be amended, supplemented or modified from time to time in accordance with the terms thereof.

"***Rights***" means, collectively, the 2021 Noteholder Rights and the 2018 Noteholder Rights.

"***Rights Exercise Price***" means the price at which shares of Reorganized Nuverra Common Stock may be purchased by a holder of Rights in the Rights Offering and in accordance with the Rights Offering Procedures.

"***Rights Offering***" means the Rights Offering to be conducted in accordance with Section 4.14 hereof, through which (i) the 2018 Noteholder Rights will be

offered to Holders of Allowed 2018 Note Claims against the Nuverra Group Debtors and (ii) the 2021 Noteholder Rights will be offered to Holders of Allowed 2021 Note Claims, which in the aggregate, comprise Rights to subscribe for and purchase $105 million of Reorganized Nuverra Common Stock at the Rights Exercise Price in accordance with the Rights Offering Procedures.

[18] "***Rights Offering Order***" means the order of the Bankruptcy Court authorizing the commencement of the Rights Offering and approving the Rights Offering Procedures.

"***Rights Offering Procedures***" means, as applicable, the procedures set forth in the Rights Offering Order for the implementation of the Rights Offering approved in the Rights Offering Order.

"***Rights Offering Proceeds***" means the proceeds of the Rights Offering as of the Effective Date.

"***Rights Offering Shares***" means shares of Reorganized Nuverra Common Stock issued pursuant to the Rights Offering.

"***Schedule of Rejected Contracts***" means the schedule of executory contracts and unexpired leases to be rejected by the Debtors pursuant to the Plan and included in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time by the Debtors with the consent of the Supporting Noteholders.

"***Secured Claims***" means any and all Claims against any Debtor that are secured by a Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the Holder's interest in such Debtor's interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security***" has the meaning ascribed to such term in section 101(49) of the Bankruptcy Code.

"***Shallenberger/Skywater Claims***" means the Claims of any of the Shallenberger/Skywater Parties under the Shallenberger/Skywater Documents, including any guarantee claims against the AWS Debtor comprising, related to, arising under or in connection with the Shallenberger/Skywater Documents.

"***Shallenberger/Skywater Documents***" means (i) the AWS Lease, (ii) the AWS Promissory Note, (iii) the settlement agreement dated June 9, 2015 among Nuverra, the AWS Debtor, certain other Nuverra Group Debtors and certain Shallenberger/Skywater Parties, (iv) the option agreement dated June 9, 2015 among the AWS Debtor and certain Shallenberger/Skywater Parties and (v) any other documents and agreements related to the foregoing.

"***Shallenberger/Skywater Other Loss Claims***" means any Claims related to, arising out of, arising under, or arising in connection with, the Shallenberger/Skywater Documents that are not Assumed Shallenberger/Skywater Claims.

[19] "***Shallenberger/Skywater Parties***" means (i) Shallenberger Construction, Inc, (ii) Skywater Development, LLC, (iii) S&D Holdings, LLC, (iv) Shallenberger Enterprises, Inc., (v) Terrance C. Shallenberger, Jr. and (vi) any affiliates of the foregoing that are party to, or have an interest in, any of the Shallenberger/Skywater Documents.

"***Solicitation and Disclosure Statement***" means the solicitation and disclosure statement relating to the Plan (including any exhibits and schedules thereto) in form and substance satisfactory to the Debtors and the Supporting Noteholders, as such solicitation and disclosure statement may be amended, supplemented, or modified from time to time.

"***Stamp or Similar Tax***" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

"***Standby Exit Facility Lenders***" means the Term Lenders.

"***Subordinated Claim***" means any Existing Securities Law Claims and any Claim that is subject to (a) subordination under section 510(b) of the Bankruptcy Code or (b) equitable subordination as determined by the Bankruptcy Court in a Final Order, including, without limitation, any Claim for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of any Debtor; for damages arising from the purchase or sale of such a Security; or for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claims.

"***Supporting Noteholders***" means the Holders of 2021 Notes and the Term Loan Lenders who have executed the Restructuring Support Agreement, and such other Holders of 2021 Notes and Term Loan Lenders that may enter into the Restructuring Support Agreement from time to time.

"***Supporting Noteholder Professionals***" means, collectively, Fried, Frank, Harris, Shriver & Jacobson LLP and Pachulski, Stang, Ziehl & Jones LLP, as legal advisors to the Supporting Noteholders.

"***Supporting Noteholder Term Loan Claims***" means, collectively, (i) the DIP Term Loan Facility Claims, (ii) the Term Loan Facility Claims, and (iii) the Term Loan Conversion Fee.

"***Surviving Equity Interests***" means any and all Equity Interests that are not Nuverra Equity Interests.

"***Surviving Obligations***" means (i) the obligations of Debtors under the DIP Revolving Facility (including indemnification obligations) that by the terms of the DIP Revolving Facility survive the termination of the DIP Revolving Facility, and (ii) to the extent any Letters of Credit or Bank Product Obligations under and as defined in the ABL Credit Agreement or DIP Revolving Facility remain issued and outstanding, the obligations of the Debtors under the ABL [20] Credit Agreement or DIP Revolving Facility, as applicable, in respect of Letters of Credit, Bank Product Obligations and fees, charges, costs and expenses with respect thereto.

"***Term Loan Agent***" means Wilmington Savings Fund Society, FSB, as administrative agent for the Term Loan Lenders under the Term Loan Documents or any successor agent thereof.

"***Term Loan Conversion Fee***" means the equity conversion fee in the amount of $3,750,000 earned by the Supporting Noteholders as consideration for agreeing to support the treatment of the Supporting Noteholder Term Loan Claims pursuant to the Plan.

"***Term Loan Credit Agreement***" means the Term Loan Credit Agreement, dated as of April 15, 2016 by and among Nuverra, the Term Loan Agent (as successor to Wilmington Savings Fund Society, FSB), the

Term Loan Lenders and the other parties thereto, as amended, modified or supplemented from time to time.

"***Term Loan Documents***" means the Term Loan Credit Agreement together with all documentation executed in connection therewith (in each case, as amended, modified or supplemented from time to time).

"***Term Loan Facility***" means the term loan facility provided for under the Term Loan Credit Agreement.

"***Term Loan Facility Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, Term Loan Facility and the Term Loan Documents.

"***Term Loan Lenders***" means the lender parties to the Term Loan Documents.

"***Unimpaired***" means, with respect to any Claim or Equity Interest, such Claim or Equity Interest that is not Impaired.

"***Unsecured Claim Reorganized Nuverra Common Stock***" means an amount of Reorganized Nuverra Common Stock equal to 1.25% of the Remaining Reorganized Nuverra Common Stock.

"***Unsecured Claim Warrants***" means warrants, issued in accordance with this Plan and as more fully set forth in the Warrant Agreement, to purchase an amount of Reorganized Nuverra Common Stock equivalent to 1% of the Remaining Reorganized

Nuverra Common Stock at an exercise price set assuming an enterprise value for Reorganized Nuverra of $507 6 million and with an exercise term expiring upon the later of (i) five (5) years from the Effective Date and (ii) any exercise term granted to Mark D. Johnsrud as Chief Executive Officer of Reorganized Nuverra; *provided, that*, in no event shall the term of such warrants exceed seven (7) years from the Effective Date.

"***U.S. Trustee***" means the United States Trustee for the District of Delaware.

[21] "***Vehicle Financing Obligations***" means the vehicle financing obligations of the Debtors under agreements for the leasing, purchase or other financing of vehicles used in the Company's business, as of March 30, 2017.

"***Voting Deadline***" means the deadline to submit votes to accept or reject the Plan, May 26, 2017, which may be extended by the Debtors, subject to the terms of the Restructuring Support Agreement.

"***Warrant Agreement***" means the agreement governing the Unsecured Claim Warrants, which shall contain customary terms and conditions and be in form and substance reasonably satisfactory to the Debtors, the Supporting Noteholders and the Committee, the form of which shall be contained in the Plan Supplement.

Section 1.2 *Rules of Interpretation and Computation of Time.*

(a) For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document substantially shall be in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (d) unless otherwise specified, all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (e) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form in the Plan that is not defined in the Plan but is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning

assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

(b) In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

Section 1.3 *Reference to Monetary Figures.*

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America unless otherwise expressly provided.

Section 1.4 *Consent Rights of the Supporting Noteholders.*

Notwithstanding anything herein to the contrary, any and all consent rights of the Supporting Noteholders set forth in the Restructuring Support Agreement including with respect to the form and substance of this Plan, the Plan Supplement, any Plan Document, and any other Definitive Documents (as defined in the Restructuring Support Agreement), including any [22] amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Section 1.1 hereof) and fully enforceable as if stated in full herein.

ARTICLE II.

UNCLASSIFIED CLAIMS

Section 2.1 *Administrative Claims.*

(a) Each Holder of an Allowed Administrative Claim, other than DIP Claims, shall receive, in full satisfaction and discharge thereof, Cash equal to the unpaid amount of such Allowed Administrative Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date that is 10 Business Days after the date on which such Administrative Claim becomes Allowed, (c) the date on which such Administrative Claim becomes due and payable pursuant to any agreement between a Debtor and the Holder, and (d) such other date as mutually may be agreed to by such Holder and the Debtors with the consent of the Supporting Noteholders. Notwithstanding the foregoing, any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto.

(b) *Administrative Claim Bar Date.* Except with respect to requests for allowance of compensation and reimbursement of Professional Fee Claims and as otherwise provided in this Article II, requests for payment of Administrative Claims, if required, must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order

and the notice of entry of the Confirmation Order no later than 45 Business Days after the Effective Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claim by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors or Reorganized Debtors or their property, and such Administrative Claim shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Reorganized Debtors and the requesting party no later than 75 Business Days after the Effective Date or such later date as the Bankruptcy Court may approve. Notwithstanding the foregoing, no request for payment of an Administrative Claim shall be required with respect to: (a) any DIP Claims, or (b) any other Administrative Claims determined to be an Allowed Administrative Claim by Final Order, including all Administrative Claims expressly made Allowed Administrative Claims under this Plan.

Section 2.2 *Priority Tax Claims.*

Each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction and discharge thereof, Cash equal to the unpaid amount of such Allowed Priority Tax Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date that is 10 Business Days after [23] the date on which such Priority Tax Claim becomes Allowed, (c) the date on which such Priority Tax

Claim becomes due and payable and (d) such other date as mutually may be agreed to by and among such Holder and the Debtors with the consent of the Supporting Noteholders, acting reasonably and in good faith; *provided, however*, that the Debtors shall be authorized, at their option, with the consent of the Supporting Noteholders, and in lieu of payment in full of an Allowed Priority Tax Claim, to make deferred Cash payments on account thereof in the manner and to the extent permitted under section 1129(a)(9)(C) of the Bankruptcy Code.

Section 2.3 *Professional Fee Claims.*

(a) Each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Cases prior to the Effective Date shall File an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases no later than 35 Business Days following the Effective Date and any Holder of a Professional Fee Claim that does not File and serve such application by such date shall be forever barred from asserting such Claim against the Debtors, Reorganized Debtors, or their respective properties, and such Claims shall be deemed discharged as of the Effective Date. Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors and counsel to the Reorganized Debtors no later than 60 Business Days after the Effective Date (unless otherwise agreed by

the party requesting compensation of a Professional Fee Claim).

(b) Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate and any Debtor or Reorganized Debtor, as the case may be, may pay the charges incurred by the Debtors or Reorganized Debtors, as the case may be, on and after the Effective Date for any Professional Fee Claim, without application to or approval by the Bankruptcy Court.

Section 2.4 *DIP Revolving Facility Claims.*

In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Revolving Facility Claim, each such Allowed DIP Revolving Facility Claim shall be Paid in Full by the Debtors on the Effective Date in an amount equal to the Allowed amount of such DIP Revolving Facility Claim. DIP Revolving Facility Claims shall be Allowed Claims pursuant to the terms of the DIP Financing Order and the Plan. Upon the Payment in Full of the DIP Revolving Facility Claims in accordance with the terms of this Plan, all Liens granted to secure such obligations shall be terminated and of no further force and effect (other than any cash collateral retained by the DIP Revolving Agent pursuant to the definition Payment in Full).

Section 2.5 *DIP Term Loan Facility Claims.*

In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Term Loan Facility Claim, each such Allowed DIP Term Loan Facility Claim shall receive the treatment set forth in Section 3.3(d). The DIP Term Loan Facility Claims shall be Allowed in the aggregate amount outstanding under the DIP Term Loan Facility as of the [24] Effective Date. Upon satisfaction in full of the DIP Term Loan Facility Claims and Payment in Full of the DIP Revolving Facility Claims in accordance with the terms of this Plan, all Liens granted to secure the obligations under the DIP Term Loan Facility shall be terminated and of no further force and effect.

Section 2.6 *Payment of Fees and Expenses.*

The fees and expenses of the DIP Agents, the DIP Lenders, the Standby Exit Facility Lenders, Term Loan Agents, the 2021 Note Indenture Trustee, and their respective professionals, and the Supporting Noteholders' Professionals shall be paid in connection with this Plan or any applicable orders entered by the Bankruptcy Court, on the Effective Date, or, with the consent of the DIP Agents, the DIP Lenders, the Standby Exit Facility Lenders, Term Loan Agents, the 2021 Note Indenture Trustee, and the Supporting Noteholders (as applicable), as soon as reasonably practicable thereafter. Nothing herein shall require the professionals for the DIP Lenders, the DIP Agents, the Standby Exit Facility Lenders, Term Loan Agents, the 2021

Note Indenture Trustee or the Supporting Noteholders to file applications with, or otherwise seek approval of, the Bankruptcy Court as a condition to the payment of such fees and expenses.

Section 2.7 *U.S. Trustee Statutory Fees.*

Notwithstanding anything to the contrary contained herein, on the Effective Date, the Debtors shall pay, in full, in Cash, any and all Bankruptcy Fees due and owing to the U.S. Trustee at the time of Confirmation Date. On and after the Effective Date, the Reorganized Debtors shall be responsible for filing required post-confirmation reports and paying quarterly Bankruptcy Fees due to the U.S. Trustee for the Reorganized Debtors until the entry of a final decree in the Chapter 11 Cases or until the Chapter 11 Cases are converted or dismissed.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

Section 3.1 *Classification.*

The categories of Claims and Equity Interests listed below (other than Administrative Claims and Priority Tax Claims, which are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code) classify Claims and Equity Interests for all purposes, including for purposes of voting, confirmation and distribution pursuant to the Plan and pursuant to

sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that such Claim or Equity Interest qualifies within the description of such Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest has not been paid or otherwise settled prior to the Effective Date. Certain of the Debtors may not have any Holders of Claims or Equity Interests in a particular Class or Classes, and such Classes shall be treated as set forth in Section 3.3. All Nuverra Equity Interests shall be cancelled, extinguished and discharged on the Effective Date, and all Surviving [25] Equity Interests shall remain outstanding on and after the Effective Date, subject to the terms hereof.

The classification and the manner of satisfying all Claims under this Plan take into consideration (a) the existence of guarantees or alleged guarantees by the Debtors of obligations of other Debtors or Entities, and (b) that Debtors may be joint obligors with other Debtors or Entities with respect to the same obligation. The Holders of Claims will be entitled to only one distribution with respect to any given obligation of the Debtors under the Plan, including in circumstances where more than one Debtor is liable for the Claim.

Section 3.2 *Class Identification*

(a) *Class Identification for the Nuverra Group Debtors.*

The Nuverra Group Plan constitutes a separate chapter 11 plan of reorganization for each Nuverra Group Debtor, each of which shall include the classifications set forth below. The following chart represents the classification of Claims and Interests for each Nuverra Group Debtor pursuant to the Nuverra Group Plan.

Class	**Claims and Equity Interests**	**Status**	**Voting Rights**
Class A1	Other Priority Claims against the Nuverra Group Debtors	Unimpaired	No (deemed to accept)
Class A2	Other Secured Claims against the Nuverra Group Debtors	Unimpaired	No (deemed to accept)
Class A3	ABL Credit Facility Claims against the Nuverra Group Debtors	Unimpaired	No (deemed to accept)
Class A4	Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors	Impaired	Yes

Class A5	2021 Note Claims against the Nuverra Group Debtors	Impaired	Yes
Class A6	2018 Note Claims against the Nuverra Group Debtors	Impaired	Yes
Class A7	Nuverra Group General Unsecured Claims	Unimpaired	No (deemed to accept)
Class A8	Nuverra Group Rejection Damage and Other Debt Claims	Impaired	No (deemed to reject)
Class A9	Intercompany Claims against the Nuverra Group Debtors	Unimpaired	No (deemed to accept)
Class A10	Subordinated Claims against the Nuverra Group Debtors	Impaired	No (deemed to reject)
Class A11	Nuverra Equity Interests	Impaired	No (deemed to reject)
Class A12	Surviving Equity Interests of the Nuverra Group Debtors	Unimpaired	No (deemed to accept)

[26] (b) *Class Identification for AWS Debtor.*

The AWS Debtor Plan constitutes a separate chapter 11 plan of reorganization for the AWS Debtor. The following chart represents the classification of Claims

and Interests for the AWS Debtor pursuant to the AWS Debtor Plan.

Class	**Claims and Equity Interests**	**Status**	**Voting Rights**
Class B1	Other Priority Claims against the AWS Debtor	Unimpaired	No (deemed to accept)
Class B2	Other Secured Claims against the AWS Debtor	Unimpaired	No (deemed to accept)
Class B3	ABL Credit Facility Claims against the AWS Debtor	Unimpaired	No (deemed to accept)
Class B4	Supporting Noteholder Term Loan Claims against the AWS Debtor	Impaired	Yes
Class B5	2021 Note Claims against the AWS Debtor	Impaired	Yes
Class B6	AWS Debtor Unsecured Debt Claims	Impaired	No (deemed to reject)
Class B7	AWS Debtor General Unsecured Claims	Unimpaired	No (deemed to accept)
Class B8	Intercompany Claims against the AWS Debtor	Unimpaired	No (deemed to accept)

Class B9	Subordinated Claims against the AWS Debtor	Impaired	No (deemed to reject)
Class B10	Surviving Equity Interests of the AWS Debtor	Unimpaired	No (deemed to accept)

(c) Class Identification for Badlands (DE) Debtor.

The Badlands (DE) Debtor Plan constitutes a separate chapter 11 plan of reorganization for the Badlands (DE) Debtor. The following chart represents the classification of Claims and Interests for the Badlands (DE) Debtor pursuant to the Badlands (DE) Debtor Plan.

Class	**Claims and Equity Interests**	**Status**	**Voting Rights**
Class C1	Other Priority Claims against the Badlands (DE) Debtor	Unimpaired	No (deemed to accept)
Class C2	Other Secured Claims against the Badlands (DE) Debtor	Unimpaired	No (deemed to accept)
Class C3	ABL Credit Facility Claims against the Badlands (DE) Debtor	Unimpaired	No (deemed to accept)

[27] **Class**	**Claims and Equity Interests**	**Status**	**Voting Rights**
Class C4	Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor	Impaired	Yes
Class C5	2021 Note Claims against the Badlands (DE) Debtor	Impaired	Yes
Class C6	Badlands (DE) Debtor Unsecured Debt Claims	Impaired	No (deemed to reject)
Class C7	Badlands (DE) Debtor General Unsecured Claims	Unimpaired	No (deemed to accept)
Class C8	Intercompany Claims against the Badlands (DE) Debtor	Unimpaired	No (deemed to accept)
Class C9	Subordinated Claims against the Badlands (DE) Debtor	Impaired	No (deemed to reject)
Class C10	Surviving Equity Interests of the Badlands (DE) Debtor	Unimpaired	No (deemed to accept)

Section 3.3 *Treatment and Voting Rights of Claims and Equity Interests.*

(a) *Class A1—Other Priority Claims against the Nuverra Group Debtors.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Priority Claims against the Nuverra Group Debtors are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Priority Claim against the Nuverra Group Debtors agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive Cash in an amount sufficient to leave unaltered the legal, equitable and contractual rights to which such Claim entitles such Holder, on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date that is 10 Business Days after the date on which such Other Priority Claim becomes Allowed, (c) the date on which such Other Priority Claim otherwise is due and payable, and (d) such other date as mutually may be agreed to by and among such Holder and the Nuverra Group Debtors with the consent of the Supporting Noteholders.

(ii) *Impairment and Voting:* Allowed Other Priority Claims against the Nuverra Group Debtors are Unimpaired. Holders of Allowed Other Priority Claims against the Nuverra Group Debtors are conclusively

presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Other Priority Claims against the Nuverra Group Debtors.

[28] (b) *Class A2—Other Secured Claims against the Nuverra Group Debtors.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Secured Claims against the Nuverra Group Debtors are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Secured Claim against the Nuverra Group Debtors agrees to less favorable treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Secured Claim against the Nuverra Group Debtors becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Other Secured Claim against the Nuverra Group Debtors shall, at the option of the Reorganized Nuverra Group Debtors, either (a) receive, on account of such Allowed Claim, Cash in an amount equal to the Allowed amount of such Claim, or (b) have such Claim Reinstated. The failure of the Debtors or any other party in interest to File an objection, prior

to the Effective Date, with respect to any Other Secured Claim against the Nuverra Group Debtors that is Reinstated hereunder shall be without prejudice to the rights of the Reorganized Nuverra Group Debtor or any other party in interest to contest or otherwise defend against such Claim in an appropriate forum (including the Bankruptcy Court, if applicable, in accordance with Article X of the Plan) when and if such Claim is sought to be enforced.

(ii) *Impairment and Voting:* Allowed Other Secured Claims against the Nuverra Group Debtors are Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Other Secured Claims against the Nuverra Group Debtors.

(c) *Class A3—ABL Credit Facility Claims against the Nuverra Group Debtors.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed ABL Credit Facility Claims against the Nuverra Group Debtors are unaltered by the Plan. Except to the extent that a Holder of an ABL Credit Agreement

Claim against the Nuverra Group Debtors agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive, in full and final satisfaction of its Allowed ABL Credit Agreement Claim against the Nuverra Group Debtors (except in respect of the Surviving Obligations), Cash on the Effective Date in an amount sufficient for the Payment in Full of such Allowed Claim, including all interest, fees, costs and other charges that may have accrued on account of such Claim.

(ii) *Impairment and Voting:* ABL Credit Facility Claims against the Nuverra Group Debtors are Unimpaired. Holders of ABL Credit Facility Claims against the Nuverra Group Debtors are conclusively presumed to have [29] accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Claims.

(iii) *Allowance:* The ABL Credit Facility Claims against the Nuverra Group Debtors shall be deemed Allowed on the Effective Date in the aggregate principal amount outstanding on the Petition Date (A) plus, to the extent permitted under the ABL Credit Agreement Documents and the DIP Financing Order, (1) any accrued and unpaid fees, costs and other charges

thereon through the Effective Date, (2) any accrued and unpaid interest thereon immediately prior to the Petition Date, (3) any accrued and unpaid interest thereon payable at the non-default rate from and after the Petition Date through the Effective Date, and (B) minus, to the extent permitted under the ABL Credit Agreement Documents and the DIP Financing Order, any and all amounts paid by the Debtors to the Holders of ABL Credit Facility Claims during the Chapter 11 Cases and applied to reduce the ABL Credit Facility Claims.

(d) *Class A4—Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors.*

(i) *Treatment:* The Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors will be treated as follows: (a) $78,750,000 of the Supporting Noteholder Term Loan Claims, in the aggregate, shall convert into shares of Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management Incentive Plan) and (b) the remaining Supporting Noteholder Term Loan Claims, if any, shall first be paid in Cash from the Excess Rights Offering Proceeds, and any remaining balance shall be converted into Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management

Incentive Plan). On the Effective Date, the Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors shall be cancelled and discharged.

(ii) *Impairment and Voting:* The Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors are Impaired and Holders of Term Loan Facility Claims are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The Supporting Noteholder Term Loan Claims against the Nuverra Group Debtors shall be deemed Allowed on the Effective Date, in the aggregate principal amount of (a) the DIP Term Loan Facility Claims and (b) approximately $80 million of Term Loan Facility Claims, *plus* any accrued and unpaid interest thereon payable at the non-default rate through the Effective Date.

(e) *Class A5-2021 Note Claims against the Nuverra Group Debtors.*

[30] (i) *Treatment:* Each Holder of Allowed 2021 Note Claims against the Nuverra Group Debtors shall receive, in full and final satisfaction of its Allowed 2021 Note Claims against the Nuverra Group Debtors, its Pro-Rata Share of (i) 98.75% of the Remaining Reorganized Nuverra Common Stock and (ii) 2021 Noteholder Rights, subject to the terms of Section 4.14 hereof. On the Effective Date, all of

the 2021 Notes shall be cancelled and discharged.

(ii) *Impairment and Voting:* 2021 Note Claims against the Nuverra Group Debtors are Impaired and Holders of such Allowed Claims are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The 2021 Note Claims against the Nuverra Group Debtors shall be deemed Allowed on the Effective Date in the aggregate principal amount of approximately $356 million, plus any accrued and unpaid interest thereon payable at the non-default rate through the Petition Date.

(f) *Class A6—2018 Note Claims against the Nuverra Group Debtors.*

(i) *Treatment:* Each Holder of Allowed 2018 Note Claims against the Nuverra Group Debtors shall receive, in full and final satisfaction of its Allowed 2018 Note Claims against the Nuverra Group Debtors, but subject to the charging lien of the 2018 Note Indenture Trustee, its Pro-Rata Share of (i) the Class A6 Reorganized Nuverra Common Stock, (ii) the Class A6 Unsecured Claim Warrants and (iii) 2018 Noteholder Rights, subject to the terms of Section 4.14 hereof, and (iv) Cash in the amount of $350,000. On the Effective Date, all of the 2018 Notes shall be

cancelled and discharged as set forth in Section 4.5 hereof.

(ii) *Impairment and Voting:* 2018 Note Claims against the Nuverra Group Debtors are Impaired and Holders of such Claims are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The 2018 Note Claims against the Nuverra Group Debtors shall be deemed Allowed on the Effective Date in the aggregate principal amount of approximately $40,436,000, plus any accrued and unpaid interest thereon payable at the non-default rate through the Petition Date.

(g) *Class A7—Nuverra Group General Unsecured Claims.*

(i) *Treatment:* Except to the extent that a Holder of a Nuverra Group General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Nuverra Group General Unsecured Claim, (a) the legal, equitable and contractual rights to which the Allowed Nuverra Group General Unsecured Claim entitles the Holder of such Claim will remain unaltered, or (b) if such Allowed Nuverra Group General Unsecured Claim is due and payable in Cash on or before the [31] Effective Date, the Holder of such Allowed Nuverra Group General Unsecured Claim shall receive, payment

in Cash or otherwise treated in a mariner to render Unimpaired such Nuverra Group General Unsecured Claim, on the later of (a) the Effective Date (or as soon as is reasonably practical thereafter) or (b) the date that is 10 Business Days after the date such Nuverra Group General Unsecured Claim becomes an Allowed Nuverra Group General Unsecured Claim. For avoidance of doubt, if an Allowed Nuverra Group General Unsecured Claim is not due and payable before the Effective Date, the Holder of such Allowed Claim may be paid in the ordinary course of business consistent with past practices. Notwithstanding the foregoing, if an Allowed Nuverra Group General Unsecured Claim is, by the terms of such Claim, payable in stock, such Allowed Claim may, with the consent of the Supporting Noteholders, be paid with Reorganized Nuverra Common Stock in an amount sufficient to render Unimpaired such Nuverra Group General Unsecured Claim.

(ii) *Impairment and Voting:* Nuverra Group General Unsecured Claims are Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such

Allowed Nuverra Group General Unsecured Claims.

(h) *Class A8—Nuverra Group Rejection Damage and Other Debt Claims.*

(i) *Treatment:* On the Effective Date, all of the Nuverra Group Rejection Damage and Other Debt Claims shall be cancelled and discharged. Each Holder of Allowed Nuverra Group Rejection Damage and Other Debt Claims shall receive, in full and final satisfaction of its Allowed Nuverra Group Rejection Damage and Other Debt Claims, its Pro-Rata Share of (i) the Class A8 Reorganized Nuverra Common Stock and (ii) the Class A8 Unsecured Claim Warrants.

(ii) *Impairment and Voting:* Nuverra Group Rejection Damage and Other Debt Claims are Impaired. Holders of Nuverra Group Rejection Damage and Other Debt Claims conclusively are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Nuverra Group Rejection Damage and Other Debt Claims.

(i) *Class A9—Intercompany Claims against the Nuverra Group Debtors.*

(i) *Treatment:* Unless otherwise agreed by the Debtors and the Supporting Noteholders, in full and final satisfaction, settlement, release, and discharge of, and exchange for such Allowed Intercompany Claim against the Nuverra Group Debtors, on the Effective Date the legal, equitable and [32] contractual rights to which the Allowed Intercompany Claim against the Nuverra Group Debtors entitles the Holder of such Claim will remain unaltered and treated in the ordinary course of business consistent with past practices.

(ii) *Impairment and Voting:* All Intercompany Claims against the Nuverra Group Debtors are deemed Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims against the Nuverra Group Debtors.

(j) *Class A10—Subordinated Claims against the Nuverra Group Debtors.*

(i) *Treatment:* Subordinated Claims against the Nuverra Group Debtors are subordinated pursuant to this Plan and section

510 of the Bankruptcy Code. On the Effective Date, all Subordinated Claims against the Nuverra Group Debtors shall be cancelled and discharged and the Holders of such Claims shall not receive or retain any property under this Plan on account of such Subordinated Claims against the Nuverra Group Debtors.

(ii) *Impairment and Voting:* Subordinated Claims against the Nuverra Group Debtors are Impaired and Holders of such Claims are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Subordinated Claims against the Nuverra Group Debtors.

(k) *Class A11—Nuverra Equity Interests.*

(i) *Treatment:* On the Effective Date, all of the Nuverra Equity Interests shall be cancelled and discharged. Holders thereof shall not receive a distribution on account of such Nuverra Equity Interests.

(ii) *Impairment and Voting:* Nuverra Equity Interests are Impaired. Holders of Nuverra Equity Interests conclusively are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the

votes of such Holders will not be solicited with respect to such Nuverra Equity Interests.

(l) *Class A12—Surviving Equity Interests of the Nuverra Group Debtors.*

(i) *Treatment:* On the Effective Date, Surviving Equity Interests of the Nuverra Group Debtors shall be Reinstated.

[33] (ii) *Impairment and Voting:* Surviving Equity Interests of the Nuverra Group Debtors are Unimpaired and Holders of such Equity Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Surviving Equity Interests of the Nuverra Group Debtors.

(m) *Class B1—Other Priority Claims against the AWS Debtor.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Priority Claims against the AWS Debtor are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Priority Claim against the AWS Debtor agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive Cash in an amount sufficient to leave unaltered the legal,

equitable and contractual rights to which such Claim entitles such Holder, on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date that is 10 Business Days after the date on which such Other Priority Claim against the AWS Debtor becomes Allowed, (c) the date on which such Other Priority Claim against the AWS Debtor otherwise is due and payable, and (d) such other date as mutually may be agreed to by and among such Holder and the AWS Debtor with the consent of the Supporting Noteholders.

(ii) *Impairment and Voting:* Allowed Other Priority Claims against the AWS Debtor are Unimpaired. Holders of Allowed Other Priority Claims against the AWS Debtor conclusively are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Other Priority Claims against the AWS Debtor.

(n) *Class B2—Other Secured Claims against the AWS Debtor.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Secured Claims against the AWS Debtor are unaltered by the Plan. Except

to the extent that a Holder of an Allowed Other Secured Claim against the AWS Debtor agrees to less favorable treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Other Secured Claim against the AWS Debtor shall, at the option of the Reorganized AWS Debtor, either (a) receive, on account of such Allowed Claim, Cash in an amount equal to the Allowed amount of such Claim, or (b) have such Claim Reinstated. The failure of the AWS Debtor or any other party in interest to File an objection, prior to the Effective Date, with respect to any Other Secured Claim against the AWS Debtor that is Reinstated hereunder [34] shall be without prejudice to the rights of the Reorganized AWS Debtor or any other party in interest to contest or otherwise defend against such Claim in an appropriate forum (including the Bankruptcy Court, if applicable, in accordance with Article X of the Plan) when and if such Claim is sought to be enforced.

(ii) *Impairment and Voting:* Allowed Other Secured Claims against the AWS Debtor are Unimpaired and Holders of such Allowed Claims are conclusively presumed to have accepted the Plan pursuant to

section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Other Secured Claims.

(o) *Class B3—ABL Credit Facility Claims against the AWS Debtor.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed ABL Credit Facility Claims against the AWS Debtor are unaltered by the Plan. Except to the extent that a Holder of an ABL Credit Agreement Claim against the AWS Debtor agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive, in full and final satisfaction of its Allowed ABL Credit Agreement Claim against the AWS Debtors (except in respect of the Surviving Obligations), Cash on the Effective Date in an amount sufficient for the Payment in Full of such Allowed Claim, including all interest, fees, costs and other charges that may have accrued on account of such Claim.

(ii) *Impairment and Voting:* ABL Credit Facility Claims against the AWS Debtor are Unimpaired Holders of ABL Credit Facility Claims against the AWS Debtor are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of

the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Claims.

(iii) *Allowance:* The ABL Credit Facility Claims against the AWS Debtor shall be deemed Allowed on the Effective Date in the aggregate principal amount outstanding on the Petition Date (A) plus, to the extent permitted under the ABL Credit Agreement Documents and the DIP Financing Order, (1) any accrued and unpaid fees, costs and other charges thereon through the Effective Date, (2) any accrued and unpaid interest thereon immediately prior to the Petition Date, (3) any accrued and unpaid interest thereon payable at the non-default rate from and after the Petition Date through the Effective Date, and (B) minus, to the extent permitted under the ABL Credit Agreement Documents and the DIP Financing Order, any and all amounts paid by the Debtors to the Holders of ABL Credit Facility Claims during the Chapter 11 Cases and applied to reduce the ABL Credit Facility Claims.

[35] (p) *Class B4—Supporting Noteholder Term Loan Claims against the AWS Debtor.*

Treatment: The Supporting Noteholder Term Loan Claims against the AWS Debtor will be treated as follows: (a) $78,750,000

of the Supporting Noteholder Term Loan Claims, in the aggregate, shall convert into shares of Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management Incentive Plan) and (b) the remaining Supporting Noteholder Term Loan Claims, if any, shall first be paid in Cash from the Excess Rights Offering Proceeds, and any remaining balance shall be converted into Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management Incentive Plan). On the Effective Date, the Supporting Noteholder Term Loan Claims against the AWS Debtor shall be cancelled and discharged.

(i) *Impairment and Voting:* The Supporting Noteholder Term Loan Claims against the AWS Debtor are Impaired and Holders of Term Loan Facility Claims are entitled to vote to accept or reject the Plan.

(ii) *Allowance:* The Supporting Noteholder Term Loan Claims against the AWS Debtor shall be deemed Allowed on the Effective Date, in the aggregate principal amount of (a) the DIP Term Loan Facility Claims and (b) approximately $80 million of Term Loan Facility Claims, *plus* any accrued and unpaid interest thereon payable at the non-default rate through the Effective Date.

(q) *Class B5—2021 Note Claims against the AWS Debtor.*

(i) *Treatment:* Each Holder of Allowed 2021 Note Claims against the AWS Debtor shall receive, in full and final satisfaction of its Allowed 2021 Note Claims against the AWS Debtor, its Pro-Rata Share of (i) 98.75% of the Remaining Reorganized Nuverra Common Stock and (ii) 2021 Noteholder Rights, subject to the terms of Section 4.14 hereof. On the Effective Date, all of the 2021 Notes shall be cancelled and discharged.

(ii) *Impairment and Voting:* 2021 Note Claims against the AWS Debtor are Impaired and Holders of such Allowed Claims are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The 2021 Note Claims against the AWS Debtor shall be deemed Allowed on the Effective Date in the aggregate principal amount of approximately $356 million, plus any accrued and unpaid interest thereon payable at the non-default rate through the Petition Date.

(r) *Class B6—AWS Debtor Unsecured Debt Claims.*

[36] (i) *Treatment:* On the Effective Date, all of the AWS Debtor Unsecured Debt Claims shall be cancelled and discharged. Each Holder of Allowed AWS Debtor

Unsecured Debt Claims, other than AWS 2018 Note Guaranty Claims, shall receive, in full and final satisfaction of its AWS Debtor Unsecured Debt Claims, its Pro-Rata Share of (i) the Class B6 Reorganized Nuverra Common Stock and (ii) the Class B6 Unsecured Claim Warrants.

(ii) *Impairment and Voting:* AWS Debtor Unsecured Debt Claims are Impaired. Holders of AWS Debtor Unsecured Debt Claims conclusively are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such AWS Debtor Unsecured Debt Claims.

(s) *Class B7—AWS Debtor General Unsecured Claims.*

(i) *Treatment:* Except to the extent that a Holder of an AWS Debtor General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed AWS Debtor General Unsecured Claims, (a) the legal, equitable and contractual rights to which the Allowed AWS Debtor General Unsecured Claim entitles the Holder of such Claim will remain unaltered, or (b) if such Allowed AWS Debtor General Unsecured Claim is due and payable in Cash

on or before the Effective Date, the Holder of such Allowed AWS Debtor General Unsecured Claim shall receive, payment in Cash or otherwise treated in a manner to render Unimpaired such AWS Debtor General Unsecured Claim, on the later of (a) the Effective Date (or as soon as is reasonably practical thereafter) or (b) the date that is 10 Business Days after the date such AWS Debtor General Unsecured Claim becomes an Allowed AWS Debtor General Unsecured Claim. For avoidance of doubt, if an Allowed AWS Debtor General Unsecured Claim is not due and payable before the Effective Date, the Holder of such Allowed Claim may be paid in the ordinary course of business consistent with past practices.

(ii) *Impairment and Voting:* AWS Debtor General Unsecured Claims are Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed AWS Debtor General Unsecured Claims.

(t) *Class B8—Intercompany Claims against the AWS Debtor.*

(i) *Treatment:* Unless otherwise agreed by the Debtors and the Supporting Noteholders, in full and final satisfaction, settlement, release, and discharge of, and exchange for such Allowed Intercompany Claim against [37] the AWS Debtor, on the Effective Date the legal, equitable and contractual rights to which the Allowed Intercompany Claim against the AWS Debtor entitles the Holder of such Claim will remain unaltered and treated in the ordinary course of business consistent with past practices.

(ii) *Impairment and Voting:* All Intercompany Claims against the AWS Debtor are deemed Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims against the AWS Debtor.

(u) *Class B9—Subordinated Claims against the AWS Debtor.*

(i) *Treatment:* Subordinated Claims against the AWS Debtor are subordinated pursuant to this Plan and section 510 of the Bankruptcy Code. On the Effective Date,

all Subordinated Claims against the AWS Debtor shall be cancelled and discharged and the Holders of such Claims shall not receive or retain any property under this Plan on account of such Subordinated Claims against the AWS Debtor.

(ii) *Impairment and Voting:* Subordinated Claims against the AWS Debtor are Impaired and Holders of such Claims are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Subordinated Claims against the AWS Debtor.

(v) *Class B10—Surviving Equity Interests of the AWS Debtor.*

(i) *Treatment:* On the Effective Date, Surviving Equity Interests of the AWS Debtor shall be Reinstated.

(ii) *Impairment and Voting:* Surviving Equity Interests of the AWS Debtor are Unimpaired and Holders of such Equity Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Surviving Equity Interests of the AWS Debtor.

(w) *Class C1—Other Priority Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Priority Claims against the Badlands (DE) Debtor are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Priority Claim against the Badlands (DE) Debtor agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive [38] Cash in an amount sufficient to leave unaltered the legal, equitable and contractual rights to which such Claim entitles such Holder, on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date that is 10 Business Days after the date on which such Other Priority Claim against the Badlands (DE) Debtor becomes Allowed, (c) the date on which such Other Priority Claim against the Badlands (DE) Debtor otherwise is due and payable, and (d) such other date as mutually may be agreed to by and among such Holder and the Badlands (DE) Debtor with the consent of the Supporting Noteholders.

(ii) *Impairment and Voting:* Allowed Other Priority Claims against the Badlands (DE) Debtor are Unimpaired. Holders of Allowed Other Priority Claims against the Badlands (DE) Debtor conclusively are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy

Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Other Priority Claims against the Badlands (DE) Debtor.

(x) *Class C2—Other Secured Claims against the* Badlands (DE) Debtor.

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed Other Secured Claims against the Badlands (DE) Debtor are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Secured Claim against the Badlands (DE) Debtor agrees to less favorable treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Other Secured Claim against the Badlands (DE) Debtor shall, at the option of the Reorganized Badlands (DE) Debtor, either (a) receive, on account of such Allowed Claim, Cash in an amount equal to the Allowed amount of such Claim, or (b) have such Claim Reinstated. The failure of the Debtors or any other party in interest to File an objection, prior to the Effective Date, with respect to any Other Secured Claim against the Badlands (DE) Debtor that is Reinstated hereunder shall be without prejudice to the rights of the

Reorganized Debtors or any other party in interest to contest or otherwise defend against such Claim in an appropriate forum (including the Bankruptcy Court, if applicable, in accordance with Article X of the Plan) when and if such Claim is sought to be enforced.

(ii) *Impairment and Voting:* Allowed Other Secured Claims against Badlands (DE) Debtor are Unimpaired and Holders of such Allowed Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be [39] solicited with respect to such Allowed Other Secured Claims against the Badlands (DE) Debtor.

(y) *Class C3—ABL Credit Facility Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* The legal, equitable, and contractual rights of the Holders of Allowed ABL Credit Facility Claims against the Badlands (DE) Debtor are unaltered by the Plan. Except to the extent that a Holder of an ABL Credit Agreement Claim against the Badlands (DE) Debtor agrees to less favorable treatment, each Holder of such an Allowed Claim shall receive, in full and final satisfaction of its Allowed ABL Credit Agreement Claim against the Badlands (DE) Debtor (except

in respect of the Surviving Obligations), Cash on the Effective Date in an amount sufficient for the Payment in Full of such Allowed Claim, including all interest, fees, costs and other charges that may have accrued on account of such Claim.

(ii) *Impairment and Voting:* ABL Credit Facility Claims against the Badlands (DE) Debtor are Unimpaired. Holders of ABL Credit Facility Claims against the Badlands (DE) Debtor are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Claims.

(iii) *Allowance:* The ABL Credit Facility Claims against the Badlands (DE) Debtor shall be deemed Allowed on the Effective Date in the aggregate principal amount outstanding on the Petition Date (A) plus, to the extent permitted under the ABL Credit Agreement Documents and the DIP Financing Order, (1) any accrued and unpaid fees, costs and other charges thereon through the Effective Date, (2) any accrued and unpaid interest thereon immediately prior to the Petition Date, (3) any accrued and unpaid interest thereon payable at the non-default rate from and after the Petition Date through the Effective Date, and (B) minus, to the extent permitted under the ABL Credit

Agreement Documents and the DIP Financing Order, any and all amounts paid by the Debtors to the Holders of ABL Credit Facility Claims during the Chapter 11 Cases and applied to reduce the ABL Credit Facility Claims.

(z) *Class C4—Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* The Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor will be treated as follows: (a) $78,750,000 of the Supporting Noteholder Term Loan Claims, in the aggregate, shall convert into shares of Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management Incentive Plan) and (b) the remaining Supporting Noteholder Term Loan Claims, if any, shall first be paid in Cash from the Excess Rights Offering Proceeds, [40] and any remaining balance shall be converted into Reorganized Nuverra Common Stock on a dollar for dollar basis at the Plan Value (subject to dilution by the Management Incentive Plan). On the Effective Date, the Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor shall be cancelled and discharged.

(ii) *Impairment and Voting:* The Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor are Impaired and Holders of Term Loan Facility Claims

are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The Supporting Noteholder Term Loan Claims against the Badlands (DE) Debtor shall be deemed Allowed on the Effective Date, in the aggregate principal amount of (a) the DIP Term Loan Facility Claims and (b) approximately $80 million of Term Loan Facility Claims, *plus* any accrued and unpaid interest thereon payable at the non-default rate through the Effective Date.

(aa) *Class C5—2021 Note Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* Each Holder of Allowed 2021 Note Claims against the Badlands (DE) Debtor shall receive, in full and final satisfaction of its Allowed 2021 Note Claims against the Badlands (DE) Debtor, its Pro-Rata Share of (i) 98.75% of the Remaining Reorganized Nuverra Common Stock and (ii) 2021 Noteholder Rights, subject to the terms of Section 4.14 hereof. On the Effective Date, all of the 2021 Notes shall be cancelled and discharged.

(ii) *Impairment and Voting:* 2021 Note Claims against the Badlands (DE) Debtor are Impaired and Holders of such Allowed Claims are entitled to vote to accept or reject the Plan.

(iii) *Allowance:* The 2021 Note Claims against the Badlands (DE) Debtor shall be deemed Allowed on the Effective Date in the aggregate principal amount of approximately $356 million, plus any accrued and unpaid interest thereon payable at the non-default rate through the Petition Date.

(bb) *Class C6—Badlands (DE) Debtor Unsecured Debt Claims.*

(i) *Treatment:* On the Effective Date, all of the Badlands (DE) Debtor Unsecured Debt Claims shall be cancelled and discharged. Each Holder of Allowed Badlands (DE) Debtor Unsecured Debt Claims, other than Badlands (DE) 2018 Note Guaranty Claims, shall receive, in full and final satisfaction of its Badlands (DE) Debtor Unsecured Debt Claims, its Pro-Rata Share of (i) the Class C6 Reorganized Nuverra Common Stock and (ii) the Class C6 Unsecured Claim Warrants.

[41] (ii) *Impairment and Voting:* Badlands (DE) Debtor Unsecured Debt Claims are Impaired. Holders of Badlands (DE) Debtor Unsecured Debt Claims conclusively are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such

Badlands (DE) Debtor Unsecured Debt Claims.

(cc) *Class C7—Badlands (DE) Debtor General Unsecured Claims.*

(i) *Treatment:* Except to the extent that a Holder of a Badlands (DE) Debtor General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Badlands (DE) Debtor General Unsecured Claim, (a) the legal, equitable and contractual rights to which the Allowed Badlands (DE) Debtor General Unsecured Claim entitles the Holder of such Claim will remain unaltered, or (b) if such Allowed Badlands (DE) Debtor General Unsecured Claim is due and payable in Cash on or before the Effective Date, the Holder of such Allowed Badlands (DE) Debtor General Unsecured Claim shall receive, payment in Cash or otherwise treated in a manner to render Unimpaired such Badlands (DE) Debtor General Unsecured Claim, on the later of (a) the Effective Date (or as soon as is reasonably practical thereafter) or (b) the date that is 10 Business Days after the date such Badlands (DE) Debtor General Unsecured Claim becomes an Allowed Badlands (DE) Debtor General Unsecured Claim. For avoidance of doubt, if an Allowed Badlands (DE) Debtor General Unsecured Claim is not due and payable before the Effective Date, the Holder of such Allowed Claim may be paid in the

ordinary course of business consistent with past practices.

(ii) *Impairment and Voting:* Badlands (DE) Debtor General Unsecured Claim are Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Badlands (DE) Debtor General Unsecured Claim.

(dd) *Class C8—Intercompany Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* Unless otherwise agreed by the Debtors and the Supporting Noteholders, in full and final satisfaction, settlement, release, and discharge of, and exchange for such Allowed Intercompany Claim against the Badlands (DE) Debtor, on the Effective Date the legal, equitable and contractual rights to which the Allowed Intercompany Claim against the Badlands (DE) Debtor entitles the Holder of such Claim will remain unaltered and treated in the ordinary course of business consistent with past practices.

[42] (ii) *Impairment and Voting:* All Intercompany Claims against the Badlands (DE) Debtor are deemed Unimpaired and Holders of such Claims are conclusively presumed to have accepted the Plan

pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims against the Badlands (DE) Debtor.

(ee) *Class C9—Subordinated Claims against the Badlands (DE) Debtor.*

(i) *Treatment:* Subordinated Claims against the Badlands (DE) Debtor are subordinated pursuant to this Plan and section 510 of the Bankruptcy Code. On the Effective Date, all Subordinated Claims against the Badlands (DE) Debtor shall be cancelled and discharged and the Holders of such Claims shall not receive or retain any property under this Plan on account of such Subordinated Claims against the Badlands (DE) Debtor.

(ii) *Impairment and Voting:* Subordinated Claims against the Badlands (DE) Debtor are Impaired and Holders of such Claims are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Subordinated Claims against the Badlands (DE) Debtor.

(ff) *Class C10 Surviving Equity Interests of the Badlands (DE) Debtor.*

(i) *Treatment:* On the Effective Date, Surviving Equity Interests of the Badlands (DE) Debtor shall be Reinstated.

(ii) *Impairment and Voting:* Surviving Equity Interests of the Badlands (DE) Debtor are Unimpaired and Holders of such Equity Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Surviving Equity Interests of the Badlands (DE) Debtor.

Section 3.4 *Elimination of Vacant Classes.*

Any Class of Claims or Equity Interests that does not have a Holder of any Allowed Claim or Allowed Equity Interest or Claim or Equity Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

[43] Section 3.5 *Voting; Presumptions; Solicitation.*

(a) *Acceptance by Certain Impaired Classes.* Only Holders of Allowed Claims in Class A4, Class A5, Class A6, Class B4, Class B5, Class C4 and Class C5 are entitled to vote to accept or reject the applicable Plan. An Impaired Class of Claims shall have accepted this Plan if (a) the Holders of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class have voted to accept this Plan and (b) the Holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept this Plan. Holders of Claims in Class A4, Class A5, Class A6, Class B4, Class B5, Class C4 and Class C5 will receive ballots containing detailed voting instructions.

(b) *Deemed Acceptance by Unimpaired Classes.* Holders of Claims and Equity Interests in Classes A1, A2, A3, A7, A9, A12, B1, B2, B3, B7, B8, B10, C11, C2, C3, C7, C8 and C10 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject this Plan.

(c) *Deemed Rejection by Certain Impaired Classes.* Holders of Claims and Equity Interests in Classes A8, A10, A11, B6, B9, C6 and C9 are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject this Plan.

Section 3.6 *Cram Down.*

If any Class of Claims or Equity Interests entitled to vote on an applicable Plan shall not vote to accept the Plan, the Debtors may (a) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (b) amend or modify the Plan in accordance with Section 11.3 hereof. With respect to any Class of Claims or Equity Interests that conclusively is presumed to reject the Plan, the Debtors may request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, any Class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

Section 3.7 *No Waiver.*

Nothing contained in this Plan shall be construed to waive a Debtor's or other Entity's right to object on any basis to any Claim, including after the Effective Date and in any forum.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

Section 4.1 *Compromise of Controversies.*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the

Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies [44] resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

Section 4.2 *Sources of Cash for Plan Distribution.*

Except as otherwise provided in the Plan or Confirmation Order, all Cash required for the payments to be made hereunder shall be obtained from the Debtors' and the Reorganized Debtors' operations and Cash balances, the Rights Offering Proceeds and, if necessary, the Exit Facility Credit Agreement proceeds.

Section 4.3 *Continued Corporate Existence.*

Except as otherwise provided in this Plan, each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the Reorganized Debtor's Constituent Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with such applicable law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable

law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (a) a Reorganized Debtor to be merged into another Reorganized Debtor or an Affiliate of a Reorganized Debtor; (b) a Reorganized Debtor to be dissolved; (c) the legal name of a Reorganized Debtor to be changed; (d) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (e) the reincorporation of a Reorganized Debtor under the law of jurisdictions other than the law under which the Debtor currently is incorporated.

Section 4.4 *Corporate Action.*

(a) Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and directed in all respects, including: (1) selection of the directors and officers of the Reorganized Debtors, (2) the distribution of the Reorganized Nuverra Common Stock as provided herein, (3) the execution and entry into the Exit Facility Credit Agreement and Exit Facility Credit Agreement Documents, and (4) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date) and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have

timely occurred and shall be in effect and shall be authorized and approved in all respects, without any requirement of further action by the security Holders, directors, or officers of the Debtors or the Reorganized Debtors or otherwise.

(b) On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, securities, certificates of [45] incorporation, operating agreements, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, including the Reorganized Nuverra Common Stock, the Exit Facility Credit Agreement, and any and all agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Section 4.4 shall be effective notwithstanding any requirements under nonbankruptcy law.

Section 4.5 *Cancellation of Existing Securities and Agreements.*

On the Effective Date, except as otherwise specifically provided for in the Plan: (a) the obligations of the Debtors under any certificate, share, note, bond, agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of

or ownership interest in the Debtors giving rise to any Claim or Equity Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan, if any) shall be cancelled, terminated and of no further force or effect, without further act or action, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder, and (b) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated or assumed pursuant to the Plan, if any) shall be released and discharged.

Notwithstanding such cancellation and discharge, each of the 2021 Note Indenture, the 2018 Note Indenture, the ABL Credit Agreement, the Term Loan Credit Agreement, the DIP Term Loan Facility and the DIP Revolving Facility shall continue in effect to the extent necessary to: (a) allow Holders of Claims under such agreements to receive applicable Plan distributions; (b) allow the Reorganized Debtors, the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, the Term Loan Agent and the ABL Agent to make applicable distributions pursuant to this Plan on account of

the 2021 Note Claims, the 2018 Note Claims, the Term Loan Facility Claims, the ABL Credit Facility Claims, the DIP Term Loan Facility Claims, and the DIP Revolving Facility Claims, as applicable, and deduct therefrom such reasonable compensation, fees, and expenses (i) due to the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, the Term Loan Agent or the ABL Agent under the 2021 Note Indenture, the 2018 Note Indenture, the Term Loan Credit Agreement or the ABL Credit Agreement, as applicable, or (ii) incurred by the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, the Term Loan Agent or the ABL Agent in making such distributions pursuant to this Plan; and (c) allow the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, the Term Loan Agent and the ABL Agent to (i) be compensated and reimbursed for fees and expenses, in Cash, in accordance with the 2021 Note Indenture, the 2018 Note Indenture, the Term Loan Credit Agreement or the ABL Credit Agreement, (ii) maintain and exercise their respective charging liens against applicable Plan distributions, (iii) appear and be heard in the Chapter 11 Cases or in any proceedings in the Bankruptcy Court or any other court, (iv) enforce [46] any obligation owed to them under the Plan, and (v) enforce their rights, claims, and interests vis-à-vis any parties other than the Released Parties.

Except as provided pursuant to this Plan, each of the 2021 Note Indenture Trustee, the 2018 Note Indenture Trustee, the Term Loan Agent, the ABL Agent and their respective agents, successors, and assigns shall

be fully discharged of all of their duties and obligations associated with the 2021 Note Indenture, the 2018 Note Indenture, the Term Loan Credit Agreement or the ABL Credit Agreement, respectively.

On the Effective Date, subject only to the reinstatement provisions set forth in section 2.15 of the Pari Passu Intercreditor Agreement and section 6.8 of the Second Lien Intercreditor Agreement (as those terms are defined in the DIP Financing Order), all subordination provisions in the DIP Facilities, the ABL Credit Agreement Documents, the Term Loan Documents and the 2021 Note Indenture and related documents are compromised and settled by the Plan and neither the DIP Agents, the ABL Agent, Term Loan Agent nor the DIP Lenders, ABL Lenders or Term Lenders shall have any Claim to any Class A4, Class A5, Class A6, Class B4, Class B5, Class C4 or Class C5 distribution under the Plan by reason of any such subordination provisions.

Section 4.6 *Release of Liens.*

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is an Allowed Secured Claim as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any

property of the Estates shall be fully released and discharged and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtor and its successors and assigns. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court, or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

Section 4.7 *Cancellation of Certain Existing Security Interests.*

Upon the full payment or other satisfaction of an Allowed Other Secured Claim, or promptly thereafter, the Holder of such Allowed Other Secured Claim shall deliver to the Debtors or Reorganized Debtors, as applicable, any Collateral or other property of a Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Other Secured Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or lis pendens, or similar interests or documents.

[47] Section 4.8 *Vesting of Assets.*

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estates, including all claims, rights, and Causes of Action and any property acquired by the Debtors under or in connection with the Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. Subject to the terms of the Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

Section 4.9 *Issuance of Reorganized Nuverra Common Stock.*

Shares of Reorganized Nuverra Common Stock shall be authorized under the Reorganized Nuverra Certificate of Incorporation, and shares of Reorganized Nuverra Common Stock shall be issued on the Effective Date and distributed as soon as practicable

thereafter in accordance with the Plan. All of the Reorganized Nuverra Common Stock issuable in accordance with the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance of the Reorganized Nuverra Common Stock is authorized without the need for any further corporate action and without any further action by any Holder of a Claim or Equity Interest.

Section 4.10 *Section 1145 Exemption from Registration.*

The issuance of and the distribution under this Plan of the Reorganized Nuverra Common Stock and the Rights shall be exempt from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code. These Securities may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the Holder is an "underwriter" with respect to such Securities, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such section 1145 exempt Securities generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.

Section 4.11 *SEC Reporting Requirements and Listing of Reorganized Nuverra Common Stock.*

As of the Effective Date, Reorganized Nuverra shall be a reporting company under the Exchange Act, 15 U.S.C. §§ 78(a)-78(pp). Reorganized Nuverra will use best efforts to cause the listing of Reorganized Nuverra Common Stock on the New York Stock Exchange, the NASDAQ Stock Market, or another nationally recognized exchange as soon as practicable subject to meeting applicable listing requirements following the Effective Date.

[48] Section 4.12 *Reorganized Debtors Constituent Documents.*

On, or as soon as practicable after, the Effective Date, the Reorganized Debtors shall (a) make any and all filings that may be required in connection with the Reorganized Debtors Constituent Documents with the appropriate governmental offices and or agencies and (b) take any and all other actions that may be required to render the Reorganized Debtors Constituent Documents effective.

Section 4.13 *Directors and Officers of the Reorganized Debtors.*

(a) Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of the Reorganized Nuverra Board shall be disclosed in the Plan Supplement. On the Effective Date, the Reorganized

Nuverra Board shall consist of five (5) members: the chief executive officer, two (2) individuals designated by Ascribe Capital LLC and two (2) individuals designated by Gates Capital Management, Inc. The composition of the Reorganized Nuverra Board shall fully comply with the standards and rules of the SEC and the New York Stock Exchange or another applicable nationally recognized exchange that apply to boards of public companies. Each member of the Reorganized Nuverra Board shall assume such position upon the Effective Date. Any subsequent Reorganized Nuverra Board shall be elected, classified, and composed in a manner consistent with the Reorganized Debtors Constituent Documents and applicable non-bankruptcy law.

(b) Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of each of the officers of Reorganized Nuverra identifiable as of the Effective Date shall be disclosed in the Plan Supplement. Such officers shall serve in accordance with applicable non-bankruptcy law and, as applicable, the New Employment Agreements, which shall replace any existing employment agreements for such employees in effect prior to the Effective Date; *provided*, that Mark D. Johnsrud shall serve as Chief Executive Officer pursuant to the Johnsrud Employment Agreement, which shall be assumed by the Debtors on the Effective Date.

(c) The existing officers and directors of the Debtors other than Nuverra shall initially serve in their respective capacities as officers and directors of

the applicable Reorganized Debtors unless otherwise provided in the Plan Supplement.

Section 4.14 *Rights Offering.*

(a) Following the Confirmation Date, the Debtors will commence the Rights Offering in accordance therewith. The Rights Offering shall be conducted, and the Rights Offering Shares shall be issued to Holders of 2021 Note Claims, and Holders of 2018 Note Claims against the Nuverra Group Debtors, that exercise their respective Rights pursuant to the Rights Offering Procedures to be filed with the Plan Supplement. **Notwithstanding anything to the contrary in the Plan, the Debtors may determine at any time, with the consent of the Supporting Noteholders, to not conduct the Rights Offering.**

(b) On or as soon as practical after the Effective Date, the Reorganized Debtors shall issue the Rights Offering Shares, in exchange for payments previously received therefor, to those [49] Holders of 2021 Note Claims, and 2018 Note Claims against the Nuverra Group Debtors, that, in accordance with the Rights Offering Procedures and the Plan, validly exercised their respective Rights to participate in the Rights Offering.

(c) The Rights Offering shall be commenced and completed in accordance with the dates set forth in the Rights Offering Procedures; ***provided, however*, that the Debtors may modify the Rights Offering, or cancel, withdraw or terminate the**

Rights Offering at any time, with the consent of the Supporting Noteholders.

(d) On the Effective Date, the proceeds of the Rights Offering shall be used: (a) to provide the Reorganized Debtors with additional liquidity for working capital and general corporate purposes; and (b) to fund distributions on or after the Effective Date and pursuant to the Plan.

Section 4.15 *Exit Facility Credit Agreement.*

(a) On the Effective Date, the Reorganized Debtors shall be authorized to enter into the Exit Facility Credit Agreement without the need for any further corporate action. The Confirmation Order shall be deemed approval of the Exit Facility Credit Agreement (including the transactions contemplated thereby, such as any supplementation or additional syndication of the Exit Facility Credit Agreement, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein) and authorization for the Reorganized Debtors to enter into and execute the Exit Facility Credit Agreement, and such other Exit Facility Credit Agreement Documents as the Exit Facility Lenders may reasonably require, subject to such modifications as the Reorganized Debtors may deem to be reasonably necessary to consummate the Exit Facility Credit Agreement. The Reorganized Debtors may use the Exit Facility Credit Agreement

for any purpose permitted thereunder, including the funding of obligations under the Plan.

(b) Upon the date the Exit Facility Credit Agreement becomes effective: (i) the Debtors and the Reorganized Debtors are authorized to execute and deliver the Exit Facility Credit Agreement Documents and perform their obligations thereunder, including, without limitation, the payment or reimbursement of any fees, expenses, losses, damages, or indemnities, and (ii) the Exit Facility Credit Agreement Documents shall constitute the legal, valid, and binding obligations of the Reorganized Debtors that are parties thereto, enforceable in accordance with their respective terms and (iii) no obligation, payment, transfer, or grant of security under the Exit Facility Credit Agreement Documents shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law or subject to any defense, reduction, recoupment, setoff, or counterclaim. The Debtors and the Reorganized Debtors, as applicable, and the other persons granting any Liens and security interests to secure the obligations under the Exit Facility Credit Agreement Documents are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary or desirable to establish and further evidence perfection of such Liens and security interests under the provisions of any applicable federal, state, provincial, or other law (whether domestic or foreign) (it being understood that perfection shall occur automatically by virtue of the occurrence of the Effective Date, and any such filings,

recordings, approvals, and consents shall not be required), and will thereafter [50] cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

Section 4.16 *Management Incentive Plan.*

On and after the Effective Date, the Management Incentive Plan shall be adopted by the Reorganized Nuverra Board to provide designated members of management and employees of the Reorganized Debtors with equity-based incentive grants (including, without limitation, options and restricted stock units) for (12.5%) of the fully-diluted shares of Reorganized Nuverra Common Stock. Management Incentive Plan awards of equity-based incentives not granted on the Effective Date or shortly thereafter will remain in the Management Incentive Plan reserve pool for future grants. The specific identities of recipients, amounts and timing of Management Incentive Plan grants and other terms and conditions of the Management Incentive Plan will be determined by the Reorganized Nuverra Board.

Section 4.17 *Registration Rights Agreement.*

On the Effective Date, the Registration Rights Parties shall enter into the Registration Rights Agreement satisfactory to the Debtors and the Supporting Noteholders, acting reasonably and in good faith. The Registration Rights Agreement shall provide the

Registration Rights Parties with certain demand registration rights and with piggyback registration rights. The Registration Rights Agreement shall provide that as soon as practicable after the Effective Date, Reorganized Debtor shall file, and shall thereafter use its best efforts to cause to be declared effective as promptly as practicable, a registration statement on Form S-1 (or other appropriate form) for the offer and resale of the Reorganized Nuverra Common Stock held by the Registration Rights Parties. The Registration Rights Agreement shall contain customary terms and conditions, including, without limitation, provisions with respect to blackout periods. The Registration Rights Agreement shall also provide for the Reorganized Debtors, promptly following the Effective Date, to use best efforts to take all necessary actions to enhance the public float of the Reorganized Nuverra Common Stock, including the filing of applicable registration statements and resale shelves as soon as practicable, and to pursue all transactions (strategic or otherwise) to enhance the liquidity of holders of the Reorganized Nuverra Common Stock.

Section 4.18 *Separability.*

Notwithstanding the combination of separate plans of reorganization for the Debtors set forth in this Plan for purposes of economy and efficiency, this Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm the Plan with respect to one or more Debtors, it may still confirm the Plan with respect to any other Debtor

that satisfies the confirmation requirements of section 1129 of the Bankruptcy Code with the consent of the Supporting Noteholders.

Section 4.19 *Effectuating Documents; Further Transactions.*

On and after the Effective Date, the Reorganized Debtors and the officers and members of the boards of directors thereof, are authorized to and may issue, execute, deliver, file or record [51] such contracts, securities, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, and without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

[52] ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 5.1 *Assumption of Executory Contracts and Unexpired Leases.*

(a) All executory contracts and unexpired leases of the Debtors that are not (a) rejected by the Debtors prior to the Effective Date, (b) subject to a motion seeking such rejection as of the Effective

Date, (c) specifically deemed rejected by the Debtors pursuant to the Plan or Plan Supplement, (d) specifically designated as a contract or lease to be rejected on the Schedule of Rejected Contracts, shall be deemed to have been assumed by the Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code without further notice or order of the Bankruptcy Court. Each executory contract and unexpired lease assumed pursuant to this Article V but not assigned to a third party shall revest in, and be fully enforceable by, the applicable contracting Reorganized Debtor(s) in accordance with the terms thereof, except as otherwise modified by the provisions of the Plan, or by any order of the Bankruptcy Court.

(b) Entry of the Confirmation Order shall constitute approval of the assumptions, rejections, and, to the extent applicable, the assumptions and assignments of such executory contracts or unexpired leases as set forth in the Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. The Confirmation Order shall constitute an order of the Bankruptcy Court: (a) approving the assumption, assumption and assignment or rejection, as the case may be, of executory contracts and unexpired leases, as described above, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2); (b) providing that the Reorganized Debtors have properly provided for any applicable Cure Claims; (c) providing that each assumption, assignment, or rejection, as the case may be, is in the best interest of the Reorganized Debtors, their Estates, and all parties in interest in the Chapter 11

Cases; and (d) providing that the requirements for assumption or assumption and assignment of any executory contract or unexpired lease to be assumed have been satisfied. Unless otherwise indicated, all assumptions or rejections of executory contracts and unexpired leases pursuant to the Plan are effective as of the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors (with the consent of the Supporting Noteholders) or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Schedule of Rejected Contracts at any time before the Effective Date.

Section 5.2 *Cure of Defaults for Executory Contracts and Unexpired Leases Assumed.*

(a) Any monetary amount by which any executory contract or unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, in accordance with section 365(b)(1) of the Bankruptcy Code by payment of the default amount in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree.

(b) At least 14 days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties, which notices shall include procedures for

objecting to proposed assumptions of executory contracts and unexpired leases and any amounts of Cure Claims to be [53] paid in connection therewith and resolution of disputes by the Bankruptcy Court. Any objection by a counterparty to an executory contract or unexpired lease to a proposed assumption or related Cure Claim amount must be filed, served, and actually received by the Debtors at least five (5) days before the Confirmation Hearing. Any counterparty to an executory contract or unexpired lease that fails to object timely to the proposed assumption or Cure Claim amount will be deemed to have assented to such assumption or Cure Claim amount.

(c) In the event of a dispute regarding (a) the amount of any payments to cure such a default or (b) any other matter pertaining to assumption, the payment of Cure Claims required by Bankruptcy Code section 365(b)(1) shall be made no later than ten (10) Business Days following the entry of a Final Order or orders resolving the dispute and approving the assumption. If the Debtors are unable to resolve an objection to a proposed assumption or Cure Claim amount in a manner that is satisfactory to the Debtors and the Supporting Noteholders, the Debtors (with the consent of the Supporting Noteholders), or the Reorganized Debtors, as applicable, expressly reserve the right, to reject the executory contract or unexpired lease on or before 10 Business Days following the entry of a Final Order regarding the proposed assumption and Cure Claim amount.

(d) Except as otherwise provided in the Confirmation Order, the only adequate assurance of future performance with respect to assumed contracts shall be the promise of the applicable Reorganized Debtor to perform all obligations under any executory contract or unexpired lease under this Plan. The Debtors reserve the right (with the consent of the Supporting Noteholders) to file a motion on or before the Confirmation Date to assume or reject any executory contract and unexpired lease.

(e) Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full cure and 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 effective date of the assumption and all Claims arising from any pre-assumption breach or default will forever be barred from assertion against the Debtors or the Reorganized Debtors, the Estates and their property, unless otherwise ordered by the Bankruptcy Court. Any Proof of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order or approval of the Bankruptcy Court.

Section 5.3 *Claims Based on Rejection of Executory Contracts or Unexpired Leases.*

Allowed Claims arising from the rejection of executory contracts or unexpired leases (i) against the Nuverra Group Debtors are treated in Class A8 – Nuverra Group Rejection Damage and Other Debt Claims, (ii) against the AWS Debtor are treated in Class B6 – AWS Debtor Unsecured Debt Claims, and (iii) against the Badlands (DE) Debtor are treated in Class C6 – Badlands (DE) Debtor Unsecured Debt Claims. Notwithstanding section 502(a) of the Bankruptcy Code, since the Holders of such Claims shall not receive a distribution on account of such Claims pursuant to the Plan, except as otherwise set forth in this Plan, such Holders of Claims shall not be required to file Proofs of Claim.

[54] Section 5.4 *Indemnification of Directors, Officers and Employees.*

Any obligations or rights of the Debtors or Reorganized Debtors to defend, indemnify, reimburse, or limit the liability of Covered Persons pursuant to any applicable certificates of incorporation, by-laws, policy of providing employee indemnification, state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Covered Persons based upon any act or omission related to such Covered Persons' service with, for, or on behalf of the Debtors prior to the Effective Date, excluding claims resulting from willful misconduct, or intentional tort, shall be treated as if they were

executory contracts that are assumed under the Plan and shall survive the Effective Date and remain unaffected hereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability is owed in connection with an occurrence before or after the Petition Date. No such assumption shall in any way extend the scope or term of any such indemnification provision beyond that contemplated in the underlying contract or document as applicable.

Section 5.5 *Employee Benefit Programs.*

Except as otherwise provided herein and except for any employee equity or equity-based compensation or incentive plan, on and after the Effective Date, the Reorganized Debtors may (a) honor, in the ordinary course of business, any contracts, agreements, policies, programs, and plans for, among other things, compensation (other than equity based compensation related to Equity Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity at any time, and (b) honor, in the ordinary course of business, Claims of employees for accrued vacation time arising before the Petition Date; *provided, however*, that the Debtors' or Reorganized Debtors' performance under any employment agreement will not entitle any person to any

benefit or alleged entitlement under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such benefit or alleged entitlement under any such policy, program, or plan. Nothing herein shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans; *provided, further, however*, that, to the extent that the Debtors enter into New Employment Agreements, the terms of such New Employment Agreements shall govern the Debtors' responsibilities with respect to the employees entering such agreements. Notwithstanding anything herein to the contrary, the New Employment Agreements to be entered into on the Effective Date shall supersede any other existing employment agreements, severance plans or agreements, incentive plans or other compensation agreements with or for the benefit of the applicable officer party to the New Employment Agreement, and all existing employment agreements, severance plans or agreements, incentive plans and other compensation arrangements with any officers or members of senior management to whom an offer to enter into a New Employment Agreement has been made, shall be deemed rejected by the Debtors pursuant to this Plan.

Notwithstanding the foregoing, the change of control provisions (including without limitation any right of such a participant to terminate employment for "good reason" and any [55] Company funding obligation) shall not be triggered under any employment

agreement, severance plan or agreement, benefit plan, or deferred compensation plan, in each case solely as a result of (a) the Debtors' emergence from chapter 11 of the Bankruptcy Code as contemplated by this Plan, (b) the execution and delivery of the Restructuring Support Agreement or (c) the consummation of the transactions provided in the Restructuring Support Agreement and or this Plan (or otherwise contemplated by the Restructuring Support Agreement and or this Plan to occur prior to or on or about the Effective Date). Any Claims arising from the rejection of any employment agreement, severance plans or agreements, incentive plans, or other compensation agreement shall be deemed waived by the holder thereof and discharged pursuant to this Plan.

On and after the Effective Date, pursuant to Bankruptcy Code section 1129(a)(13), the Reorganized Debtors shall pay all retiree benefits of the Debtors (within the meaning of Bankruptcy Code section 1114), if any, at the level established in accordance with Bankruptcy Code section 1114, at any time prior to the Confirmation Date, for the duration of the period for which the Debtors are obligated to provide such benefits.

Section 5.6 *Insurance Policies.*

All insurance policies pursuant to which any Debtor has any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized

Debtors and shall continue in full force and effect thereafter in accordance with their respective terms. All other insurance policies shall vest in the Reorganized Debtors.

Section 5.7 *Reimbursement Agreements Concerning Professional Fee Claims.*

On the Effective Date, the Company shall assume all of the agreements with the Supporting Noteholders that contain reimbursement obligations with respect to the Supporting Noteholders' Professional Fee Claims including (a) that certain letter agreement dated March 11, 2016 among Fried, Frank, Harris, Shriver & Jacobson LLP, the Supporting Noteholders and Nuverra on behalf of itself and its direct and indirect subsidiaries and (b) that certain letter agreement among local counsel to the Supporting Noteholders, the Supporting Noteholders and Nuverra on behalf of itself and its direct and indirect subsidiaries, and all amounts owed under such agreements shall be Allowed and paid by the Debtors in full in Cash on the Effective Date without the necessity to file a Proof of Claim or file any application or receive any approval from the Bankruptcy Court.

Section 5.8 *Reservation of Rights.*

Nothing contained in the Plan shall constitute an admission by the Debtors that any contract or lease is in fact an executory contract or unexpired lease or that any Reorganized Debtor has any liability thereunder.

[56] ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

Section 6.1 *Date of Distributions.*

Except as otherwise provided in the Plan, any distribution to be made hereunder shall be made on the Effective Date, or as soon as practicable thereafter. Any payment or act required to be made or done hereunder on a day that is not a Business Day shall be made on the next succeeding Business Day.

Section 6.2 *Distribution Record Date.*

(a) As of the close of business on the Distribution Record Date, the various lists of Holders of Claims in each Class, as maintained by the Debtors or their agents, shall be deemed closed, and there shall be no further changes in the record Holders of any Claims after the Distribution Record Date. Neither the Debtors nor the Reorganized Debtors shall have any obligation to recognize any transfer of Claims or Equity Interests occurring on or after the Distribution Record Date.

(b) Notwithstanding anything in this Plan to the contrary, in connection with any distribution under this Plan to be effected through the facilities of DTC or at a transfer agent to be determined (whether by means of book-entry exchange, free delivery, or otherwise), the Debtors and the Reorganized Debtors, as applicable, will be entitled to recognize and deal for all purposes under this Plan with Holders of Reorganized

Nuverra Common Stock to the extent consistent with the customary practices of DTC used in connection with such distributions. All shares of Reorganized Nuverra Common Stock to be distributed under this Plan shall be issued in the names of such Holders or their nominees in accordance with DTC's procedures; *provided*, that such shares of Reorganized Nuverra Common Stock are permitted to be held through DTC's book-entry system; and *provided, further*, that to the extent the Reorganized Nuverra Common Stock is not eligible for distribution in accordance with DTC's customary practices, Reorganized Nuverra will take all such reasonable actions as may be required to cause distributions of the Reorganized Nuverra Common Stock under this Plan.

Section 6.3 *Disbursing Agent.*

(a) Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Reorganized Debtors, as Disbursing Agent. The Reorganized Debtors shall be permitted, without further order of the Bankruptcy Court, to appoint, employ or contract with any Entities to assist in or make the distributions required hereunder.

(b) The Reorganized Debtors, as Disbursing Agent, designate the following:

(i) all distributions on account of ABL Credit Facility Claims will be made to the ABL Agent by wire transfer, which will serve as the Reorganized Debtors' designee for

purposes of making distributions under this Plan to Holders of ABL Credit Facility Claims;

[57] (ii) all distributions on account of the DIP Claims will be made to the respective DIP Agents by wire transfer, which will serve as the Reorganized Debtors' designee for purposes of making distributions under this Plan to the respective Holders of DIP Claims;

(iii) all distributions on account of Supporting Noteholder Term Loan Claims will be made to the Term Loan Agent, which will serve as the Reorganized Debtors' designee for purposes of making distributions under this Plan to Holders of Supporting Noteholder Term Loan Claims; and

(iv) all distributions on account of the 2018 Notes and 2021 Notes will be made to (or in coordination with) the 2018 Note Indenture Trustee and 2021 Note Indenture Trustee, respectively, which will serve as the Reorganized Debtors' designee for purposes of making distributions under the Plan to Holders of the 2018 Note Claims and 2021 Note Claims.

Section 6.4 *Delivery of Distributions and Undeliverable or Unclaimed Distributions.*

(a) *General.* Subject to Section 6.2(b) of this Plan, any distribution to be made hereunder to a Holder of

an Allowed Claim shall be made to the address of such Holder as of the Distribution Record Date as set forth in the books and records of the Debtors or their agents, or in a letter of transmittal, unless the Debtors have been notified in writing of a change of address, including by the Filing of a Proof of Claim by such Holder that contains an address for such Holder that is different from the address reflected on such books and records or letter of transmittal. None of the Debtors, the Reorganized Debtors or the applicable Disbursing Agent shall incur any liability whatsoever on account of any distributions under the Plan, except for willful misconduct, or fraud.

(b) *Undeliverable Distributions.* In the event that any distribution or notice provided in connection with the Chapter 11 Cases to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or otherwise is unclaimed, the Disbursing Agent shall make no further distribution to such Holder unless and until such Disbursing Agent is notified in writing of such Holder's then current address. On, or as soon as practicable after, the date on which a previously undeliverable or unclaimed distribution becomes deliverable and claimed, the Disbursing Agent shall make such distribution without interest thereon. Any Holder of an Allowed Claim that fails to assert a Claim hereunder for an undeliverable or unclaimed distribution within one year after the Effective Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall forever be barred and enjoined from asserting such Claim against

any of the Debtors, the Estates, or the Reorganized Debtors or their property. Any Cash amounts in respect of undeliverable or unclaimed distributions for which a Claim is not made within such one-year period shall be forfeited to the Reorganized Debtors. Any securities issued by the Debtors in respect of undeliverable or unclaimed distributions for which a Claim is not made within such one-year period shall be cancelled and extinguished and any interests therein shall revert to the Reorganized Debtors. Nothing contained herein shall require, or be construed to require, the Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

[58] Section 6.5 *Surrender of Cancelled Instruments or Securities.*

On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a certificate or instrument evidencing a Claim or Equity Interest that is discharged by the Plan shall be deemed to have surrendered such certificate or instrument to the Reorganized Debtors. Such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-a-vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim, which shall continue in effect as set forth in Section 4.5 hereof. Notwithstanding anything to the contrary herein, this paragraph shall not apply to

certificates or instruments evidencing Claims that are Unimpaired under the Plan.

Section 6.6 *Fractional Distributions.*

Notwithstanding anything contained herein to the contrary, no distributions of fractional shares of Reorganized Nuverra Common Stock or fractions of dollars shall be made hereunder on account of Claims or Equity Interests, and for purposes of distribution hereunder on account of such Claims or Equity Interests, fractional shares and fractions of dollars (whether in the form of Reorganized Nuverra Common Stock or Cash) shall be rounded to the nearest whole unit (with any amount equal to or less than one-half share or one-half dollar, as applicable, to be rounded down).

Section 6.7 *Manner of Payment under Plan.*

Except as specifically provided herein, at the option of the Debtors or the Reorganized Debtors, as applicable, any Cash payment to be made under this Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

Section 6.8 *No Distribution in Excess of Amount of Allowed Claim.*

Notwithstanding anything to the contrary in this Plan, no Holder of an Allowed Claim shall receive, on

account of such Allowed Claim, distributions under the Plan in excess of the Allowed amount of such Claim.

Section 6.9 *Claims Paid or Payable by Third Parties.*

(a) *Claims Paid by Third Parties.* The Debtors or the Reorganized Debtors, as applicable, shall reduce in part or in full a Claim to the extent that the Holder of such Claim receives payment in part or in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

[59] (b) *Claims Payable by Third Parties.* No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to any of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policies. To the extent that one or more of the Debtors' insurers satisfies or agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim

objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) *Applicability of Insurance Policies.* Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

Section 6.10 *Post-petition Interest.*

Unless expressly provided in the Plan, the Confirmation Order, the DIP Financing Orders, or any contract, instrument, release, settlement, or other agreement entered into in connection with the Plan or required by the Bankruptcy Code (including without limitation Bankruptcy Code sections 506(b) and 1129(b)), post-petition interest shall not accrue on or after the Petition Date on account of any Claim. Without limiting the generality of the foregoing, interest shall not be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon if, and after, such Disputed Claim becomes an Allowed Claim.

Section 6.11 *No Proofs of Claim Required.*

Except as otherwise provided in Sections 2.1 and 2.3, Holders of Claims against the Debtors shall not be required to file Proofs of Claim.

Section 6.12 *Setoffs and Recoupments.*

Each Reorganized Debtor, or such entity's designee as instructed by such Reorganized Debtor, may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, offset or recoup against any Allowed Claim, and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any and all claims, rights, and Causes of Action that a Reorganized Debtor or its successors may hold against the Holder of such Allowed Claim after the Effective Date to the extent such setoff or recoupment is either (a) agreed in amount among the relevant Reorganized Debtor(s) and Holder of the Allowed Claim, or (b) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided*, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder will constitute a waiver or release by a Reorganized Debtor or its successor of any claims, rights, Causes of Action or rights of setoff that a Reorganized Debtor or it successor or assign may possess against such Holder.

[60] Section 6.13 *Withholding and Reporting Requirements.*

In connection with this Plan and all instruments issued in connection therewith and distributed thereon, the Reorganized Debtors and any other distributing party shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions under this Plan shall be subject to any such withholding or reporting requirements, including any distributions of Reorganized Nuverra Common Stock to current or former employees of the Debtor. The Reorganized Debtors shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition of receiving any distribution under the Plan, the Reorganized Debtors may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan complete and return a Form W-8 or W-9, as applicable, or such other information and certification as may be deemed necessary for the Reorganized Debtors to comply with applicable tax reporting and withholding laws. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. In connection with a distribution under the Plan, the Reorganized Debtors may take whatever actions are necessary to comply with applicable U.S. federal, state, local and non-U.S. tax withholding obligations, including either withholding from distributions a portion of the Reorganized Nuverra

Common Stock and selling such securities or requiring such Holder of an Allowed Claim to contribute the necessary Cash to satisfy the tax withholding obligations. With respect to any distribution to the Supporting Noteholders, the Reorganized Debtors may take the actions described in the preceding sentence only after consultation with such Supporting Noteholders.

Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

Section 6.14 *Hart-Scott-Rodino Compliance.*

Any Reorganized Nuverra Common Stock to be distributed under this Plan to an entity required to file a premerger notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall not be distributed until the notification and waiting periods applicable under such Act to such entity have expired or been terminated.

Section 6.15 *Special Provision Regarding Unimpaired Claims.*

Except as otherwise provided in this Plan, the Confirmation Order, any other order of the Bankruptcy Court, or any document or agreement entered into and

enforceable pursuant to the terms of this Plan, nothing herein shall affect the Debtors' or Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims or to request disallowance or subordination of any such Claim. In addition, Unimpaired Claims are subject to all applicable provisions of the Bankruptcy Code, including Bankruptcy Code section 502(b); *provided, however*, that Holders of Unimpaired Claims shall not be required to file a Proof of Claim.

[61] ARTICLE VII.

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

Section 7.1 *Disputed Claims Process.*

Except to the extent Allowed (or deemed Allowed) pursuant to an order of the Bankruptcy Court or the Plan, on and after the Confirmation Date, the Debtors or the Reorganized Debtors, as the case may be, shall have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, and shall be permitted to compromise any Disputed Claim without approval of the Bankruptcy Court; *provided, however*, that consent of the Supporting Noteholders shall be required for settlement of any Disputed Claims with agreed settlement payments in excess of $100,000. On and after the Effective Date, except as otherwise provided herein, all Unimpaired Claims will

be paid in the ordinary course of business of the Reorganized Debtors and, as provided in Section 6.11 of the Plan, Holders of Claims shall not be required to file Proofs of Claim, unless the Debtors later seek to establish a bar date for parties to file Proofs of Claim and such bar date is approved by the Bankruptcy Court.

If the Debtors dispute any Claim, such dispute may be determined, resolved or adjudicated, as the case may be, in a manner as if the Chapter 11 Cases had not been commenced and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced; *provided*, that the Reorganized Debtors, in their discretion, may bring an objection or other motion before the Bankruptcy Court with respect to a Disputed Claim for resolution. Notwithstanding section 502(a) of the Bankruptcy Code or that Holders of Nuverra Group General Unsecured Claims (Class A7), AWS Debtor General Unsecured Claims (Class B7) and Badlands (DE) Debtor General Unsecured Claims (Class C7) are Unimpaired under the Plan, unless a Final Order of the Bankruptcy Court provides otherwise, all Proofs of Claim filed in these Chapter 11 Cases shall be considered objected to and disputed without further action by the Debtors. Upon the Effective Date, unless a Final Order of the Bankruptcy Court provides otherwise, and except with respect to Proofs of Claim to which the Debtors have Filed an objection with the Bankruptcy Court, all Proofs of Claim Filed against the Debtors, regardless of the time of Filing, and including claims Filed after the Effective Date, shall automatically be deemed withdrawn and

expunged. To the extent not otherwise provided in the Plan, the deemed withdrawal of a Proof of Claim is without prejudice to such claimant's rights, if any, under this Section 7.1 of the Plan to assert their claims in any forum as though the Debtors' cases had not been commenced.

Section 7.2 *Estimation of Claims.*

The Debtors, with the consent of the Supporting Noteholders, (or the Reorganized Debtors, as the case may be), shall be permitted, at any time, to request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors (or the Reorganized Debtors, as the case may be) previously had objected to such Claim or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during any litigation concerning any objection to such Claim, including during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court [62] estimates any contingent or unliquidated Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If such estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors (or the Reorganized Debtors, as the case may be) may elect to pursue any supplemental proceedings to object to the allowance of such Claim. All of the aforementioned

objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

Section 7.3 *Payments and Distributions on Disputed Claims.*

Notwithstanding any other provision to the contrary herein, no payments or distributions shall be made hereunder with respect to all or any portion of any Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by Final Order, and such Disputed Claim has become an Allowed Claim.

ARTICLE VIII.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

Section 8.1 *Conditions Precedent to the Effective Date.*

The Effective Date shall not occur unless and until each of the following conditions have occurred or been waived in accordance with the terms herein:

(a) the Plan Supplement has been filed in form and substance satisfactory to the Debtors and the Supporting Noteholders;

(b) the Plan Documents, containing terms and conditions consistent in all material respects with the Plan and the Restructuring Support Agreement, are in form and substance satisfactory to the Debtors and the Supporting Noteholders and have been executed;

(c) any amendments to the Plan and Plan Documents are in form and substance satisfactory to the Debtors and the Supporting Noteholders;

(d) the Bankruptcy Court has entered the Confirmation Order in form and substance satisfactory to the Debtors and the Supporting Noteholders and such Confirmation Order has become a Final Order and has not been stayed, modified, or vacated on appeal. The Confirmation Order will provide that, among other things, (a) the Debtors or the Reorganized Debtors, as appropriate, are authorized to take all actions necessary or appropriate to consummate the Plan and the restructuring transactions contemplated by the Plan, including, without limitation, (i) entering into, implementing and consummating the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with or described in the Plan, (ii) distributing the Reorganized Nuverra Common Stock pursuant to the exemptions from registration under section 3(a)(9) and or section 4(a)(2) of the Securities Act, Rule 701 et [63] seq. under the Securities Act or section 1145 of the Bankruptcy Code or other exemption from such registration or pursuant to one or more registration statements, (iii) making all distributions and issuances as required under the Plan, including Cash and the Reorganized Nuverra

Common Stock; and (iv) entering into any agreements, transactions, and sales of property as set forth in the Plan Supplement, including the Exit Facility and the Management Incentive Plan and the awards contemplated thereunder; (b) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (c) the implementation of the Plan in accordance with its terms is authorized; and (d) pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax;

(e) the Restructuring Support Agreement has not been terminated and remains in full force and effect and binding on all parties thereto;

(f) the conditions to effectiveness of the Exit Facility Credit Agreement have been satisfied or waived in accordance with the terms thereof, and the Exit Facility Credit Agreement is in full force and effect and binding on all parties thereto;

(g) all governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions provided for in this Plan have been obtained, are not subject to unfulfilled conditions, and are in full force and effect, and all applicable waiting periods have expired

without any action having been taken by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

(h) the Reorganized Nuverra Certificate of Incorporation has been filed with the appropriate governmental authority;

(i) any payment or Claim triggered by any "change of control," acceleration payment provision, termination payment provision or like or similar payment provision or Claim, that may be asserted by any party, including, without limitation, any employee, officer, manager, director or any Affiliate thereof, including any family member of any employee, officer, manager or director, in any such case arising as a result of the restructuring transactions contemplated under the Plan, arising from, in connection with, or related to any contract, lease or agreement under the Plan, including without limitation, existing employment agreements to which any such person and any Debtor is a party, shall have been released and fully and finally waived and shall not be due and owing by any of the Debtors;

(j) all of the Supporting Noteholders Professionals' fees and out-of-pocket expenses incurred in connection with the Restructuring or any other matter in connection thereto up to the Effective Date, including, without limitation, those fees and expenses incurred during the Chapter 11 Cases, shall be paid by the Debtors;

[64] (k) all amounts (whether in Cash or Reorganized Nuverra Common Stock) that are required to be paid to the Standby Exit Facility Lenders shall be available for payment by the Debtors;

(l) the aggregate amount of all projected prepetition, non-contingent undisputed Claims against the Debtors, including, without limitation, all trade and other general unsecured claims, other than Claims with respect to, without limitation, Claims for amounts owed under the DIP Facilities, the ABL Credit Agreement, the Term Loan, the 2021 Notes and 2018 Notes, the Vehicle Financing Obligations, the Ideal Oilfield APA, and the AWS Promissory Note, projected by the Debtors to become Allowed Claims (including such Claims that at such date are already reasonably determined to be Allowed Claims) do not exceed in the aggregate $11 million;

(m) The aggregate amount of all Claims in Classes A6, A8, B6, and C6 shall not exceed $45 million;

(n) The Rights Offering has commenced and been completed in accordance with the terms of the Rights Offering Procedures; and

(o) the Debtors shall have delivered to the Supporting Noteholders a copy of the fully executed New Employment Agreements and shall have assumed the Johnsrud Employment Agreement.

Section 8.2 *Waiver of Conditions.*

The conditions to the occurrence of the Effective Date set forth in Section 8.1 may, in each case, be waived at any time without any other notice to parties in interest or the Bankruptcy Court and without a hearing or order by the Debtors with the consent of the Supporting Noteholders; *provided, however*, that the Debtors may not waive entry of the Confirmation Order and provided further, however, that the Debtors may not waive the conditions set forth in Section 8.1(m) without the consent of the Committee.

The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) may be waived by and upon the entry of the Confirmation Order, and the Confirmation Order may take effect immediately upon its entry.

Section 8.3 *Effect of Failure of Condition.*

If all the conditions to effectiveness and the occurrence of the Effective Date have not been satisfied or duly waived in accordance with Section 8.2 on or before the first Business Day that is more than 75 Business Days after the Petition Date, or by such later date as is satisfactory to the Debtors and the Supporting Noteholders, then, upon motion by the Debtors (with the consent of the Supporting Noteholders) made before the time that all of the conditions have been satisfied or duly waived, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that notwithstanding the filing of such a motion, the Confirmation Order will not be vacated if each of the conditions

precedent to the occurrence of the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief [65] requested in such motion. The Debtors may request that the Bankruptcy Court vacate the Confirmation Order at any time when the Restructuring Support Agreement has been terminated.

If the Effective Date does not occur or the Confirmation Order is vacated pursuant to this Section 8.3, this Plan will be null and void in all respects, and nothing contained in this Plan will (a) constitute a waiver or release of any Claims against or Equity Interests in the Debtors, (b) prejudice in any manner the rights of the Debtors or the Holder of any Claim or Equity Interest in the Debtors or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Equity Interests or any other Entity in any respect.

Section 8.4 *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Confirmation Order is entered. Prior to the Effective Date, none of the Filing of the Plan, any statement or provision contained in the Plan, or action taken by the Debtors with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Equity Interests or any other matter.

Section 8.5 *Substantial Consummation of Plan.*

Substantial consummation of the Plan under Bankruptcy Code section 1101(2) shall be deemed to occur on the Effective Date.

[66] ARTICLE IX.

EFFECT OF PLAN CONFIRMATION

Section 9.1 *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of this Plan shall bind and inure to the benefit of the Debtors, the Reorganized Debtors, and each Holder of a Claim against or Equity Interest in any Debtor or Reorganized Debtor and inure to the benefit of and be binding on such Debtor's, Reorganized Debtor's, and Holder's respective successors and assigns, regardless of whether the Claim or Equity Interest of such Holder is Impaired under this Plan and whether such Holder has accepted this Plan or is deemed to have accepted this Plan.

Section 9.2 *Discharge of Claims.*

Upon the Effective Date and in consideration of the distributions to be made under this Plan, except as otherwise provided in this Plan or in the Confirmation Order, the confirmation of this Plan shall discharge the Debtors and the Reorganized Debtors from any Claim that arose before the Effective Date, whether or not such Claim is Allowed and whether or not the Holder

of such Claim has voted on this Plan, and each such Holder (as well as any trustee or agent on behalf of such Holder) of a Claim or Equity Interest and any Affiliate of such Holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in this Plan, upon the Effective Date, all such Holders of Claims and Equity Interests and their Affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or cancelled Equity Interest in any Debtor or any Reorganized Debtor; *provided, however*, that notwithstanding the foregoing, nothing in this Plan is intended to release any insurer from having to provide coverage under any policy to which the Debtors or the Reorganized Debtors and or their current or former officers, directors, employees, representatives or agents are parties or beneficiaries.

Section 9.3 *Releases.*

(a) ***RELEASES BY THE DEBTORS.*** **UPON THE EFFECTIVE DATE, EXCEPT FOR THE RIGHTS THAT REMAIN IN EFFECT FROM AND AFTER THE EFFECTIVE DATE TO ENFORCE THIS PLAN AND THE PLAN DOCUMENTS, THE DEBTORS, THE REORGANIZED DEBTORS AND THE ESTATES, IN EACH CASE ON BEHALF OF**

THEMSELVES AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AND REPRESENTATIVES AND ANY AND ALL OTHER ENTITIES WHO MAY PURPORT TO ASSERT ANY CAUSE OF ACTION DERIVATIVELY, BY OR THROUGH THE FOREGOING ENTITIES, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING, WITHOUT LIMITATION, THE EFFORTS OF THE RELEASED PARTIES TO FACILITATE THE REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE [67] **PLAN AND THE TRANSACTIONS CONTEMPLATED HEREIN AND HEREBY, SHALL FOREVER RELEASE, WAIVE AND DISCHARGE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, LOSSES, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE AGAINST THE RELEASED PARTIES THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE**

EFFECTIVE DATE, AND IN ANY WAY RELATING TO (A) THE DEBTORS AND ANY AFFILIATES OR SUBSIDIARIES OF THE DEBTORS, (B) THE REORGANIZED DEBTORS, (C) THE ESTATES, (D) THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, (E) THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, (F) THE CHAPTER 11 CASES, (G) THE PLAN, INCLUDING THE SOLICITATION OF VOTES ON THE PLAN, (H) THE SOLICITATION AND DISCLOSURE STATEMENT, (I) THE RESTRUCTURING OF ANY CLAIM OR EQUITY INTEREST BEFORE OR DURING THE CHAPTER 11 CASES, INCLUDING THE OUT-OF-COURT RESTRUCTURING, (J) THE RIGHTS OFFERING, (K) THE RESTRUCTURING SUPPORT AGREEMENT, (L) THE EXIT FACILITY CREDIT AGREEMENT, AND (M) THE NEGOTIATION, FORMULATION OR PREPARATION OF THE FOREGOING AGREEMENTS AND TRANSACTIONS DESCRIBED IN THIS PARAGRAPH (THE FOREGOING, THE "*DEBTOR RELEASED CLAIMS*"); *PROVIDED, HOWEVER*, THAT (I) NO RELEASED PARTY SHALL BE RELEASED HEREUNDER FROM ANY DEBTOR RELEASED CLAIM AS A RESULT OF ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE BY A RELEASED PARTY THAT HAS BEEN OR IS HEREAFTER

FOUND BY ANY COURT OR TRIBUNAL BY FINAL ORDER TO CONSTITUTE GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT AND (II) THE FOREGOING RELEASE SHALL NOT APPLY TO OR RELEASE ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OWED TO THE DEBTORS OR THE REORGANIZED DEBTORS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENT ENTERED INTO PURSUANT TO, IN CONNECTION WITH OR CONTEMPLATED BY, THE PLAN.

(b) ***RELEASES BY HOLDERS OF CLAIMS.*** **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UPON THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING, WITHOUT LIMITATION, THE EFFORTS OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE PLAN AND THE** [68] **TRANSACTIONS, CONTRACTS AND INSTRUMENTS CONTEMPLATED HEREIN AND HEREBY, EACH OF THE RELEASING PARTIES AGREES TO THE RELEASE PROVISIONS IN THIS PLAN AND SHALL FOREVER RELEASE, WAIVE AND DISCHARGE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND**

LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE AGAINST THE RELEASED PARTIES THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE AND IN ANY WAY RELATING TO OR ARISING FROM, IN WHOLE OR IN PART, (A) THE DEBTORS AND ANY AFFILIATES OR SUBSIDIARIES OF THE DEBTORS, (B) THE REORGANIZED DEBTORS, (C) THE ESTATES, (D) THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, (E) THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, (F) THE CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, (G) THE CHAPTER 11 CASES, (H) THE PLAN, INCLUDING THE SOLICITATION OF VOTES ON THE PLAN, (I) THE SOLICITATION AND DISCLOSURE STATEMENT, (J) THE RIGHTS OFFERING, (K) THE EXIT FACILITY

CREDIT AGREEMENT, (L) THE RESTRUCTURING OF ANY CLAIM OR EQUITY INTEREST BEFORE OR DURING THE CHAPTER 11 CASES, INCLUDING THE OUT-OF-COURT RESTRUCTURING, AND (M) THE NEGOTIATION, FORMULATION OR PREPARATION OF THE FOREGOING AGREEMENTS AND TRANSACTIONS DESCRIBED IN THIS PARAGRAPH (THE FOREGOING, THE "*RELEASING PARTY RELEASED CLAIMS*"); *PROVIDED, HOWEVER*, THAT (I) NO RELEASED PARTY SHALL BE RELEASED HEREUNDER FROM ANY RELEASING PARTY RELEASED CLAIM AS A RESULT OF ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE BY A RELEASED PARTY THAT HAS BEEN OR IS HEREAFTER FOUND BY ANY COURT OR TRIBUNAL BY FINAL ORDER TO CONSTITUTE GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (II) THE FOREGOING RELEASE SHALL NOT APPLY TO OR RELEASE ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENT ENTERED INTO PURSUANT TO, IN CONNECTION WITH OR CONTEMPLATED BY, THE PLAN; AND (III) THE FOREGOING RELEASE SHALL NOT APPLY TO OR RELEASE ANY SURVIVING OBLIGATIONS UNDER THE ABL CREDIT AGREEMENT OR DIP REVOLVING FACILITY.

(c) EACH PERSON PROVIDING RELEASES UNDER THE PLAN, INCLUDING THE DEBTORS, THE REORGANIZED DEBTORS AND THE [69] **RELEASING PARTIES, SHALL HAVE GRANTED THE RELEASES SET FORTH HEREIN NOTWITHSTANDING THAT SUCH PERSON MAY HEREAFTER DISCOVER FACTS IN ADDITION TO, OR DIFFERENT FROM, THOSE WHICH IT NOW KNOWS OR BELIEVES TO BE TRUE, AND WITHOUT REGARD TO THE SUBSEQUENT DISCOVERY OR EXISTENCE OF SUCH DIFFERENT OR ADDITIONAL FACTS, AND SUCH PERSON EXPRESSLY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE UNDER ANY STATUTE OR COMMON LAW PRINCIPLE WHICH WOULD LIMIT THE EFFECT OF SUCH RELEASES TO THOSE CLAIMS OR CAUSES OF ACTION ACTUALLY KNOWN OR SUSPECTED TO EXIST AT THE TIME OF EXECUTION OF SUCH RELEASE.**

Section 9.4 *Exculpation and Limitation of Liability.*

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT, OR DEFINITIVE DOCUMENTS, NO EXCULPATED PARTY SHALL HAVE OR INCUR, AND EACH EXCULPATED PARTY IS HEREBY RELEASED AND EXCULPATED FROM,

ANY CLAIM, EQUITY INTEREST, OBLIGATION, SUIT, JUDGMENT, DAMAGE, DEMAND, DEBT, RIGHT, CAUSE OF ACTION, LOSS, REMEDY, OR LIABILITY FOR ANY CLAIM IN CONNECTION WITH OR ARISING OUT OF THE ADMINISTRATION OF THE CHAPTER 11 CASES; THE FORMULATION, NEGOTIATION, PREPARATION, DISSEMINATION, OR TERMINATION OF THE DIP FACILITIES, THE REORGANIZED DEBTORS CONSTITUENT DOCUMENTS, THE MANAGEMENT INCENTIVE PLAN, THE NEW EMPLOYMENT AGREEMENTS, THE EXIT FACILITY CREDIT AGREEMENT, THE REGISTRATION RIGHTS AGREEMENT, THE SOLICITATION AND DISCLOSURE STATEMENT, THE RESTRUCTURING SUPPORT AGREEMENT, THE PLAN SUPPLEMENT, AND THIS PLAN (INCLUDING THE PLAN DOCUMENTS), OR THE SOLICITATION OF VOTES FOR, OR CONFIRMATION OF, THIS PLAN; ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENTS (INCLUDING PROVIDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY EXCULPATED PARTY ON THE PLAN OR THE CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION) CREATED OR ENTERED INTO IN CONNECTION WITH THE DISCLOSURE STATEMENT OR THE PLAN; THE FILING OF THE CHAPTER 11 CASES; THE

FUNDING OF THIS PLAN; THE OCCURRENCE OF THE EFFECTIVE DATE; THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN; THE ISSUANCE OF SECURITIES UNDER OR IN CONNECTION WITH THIS PLAN; OR THE TRANSACTIONS IN FURTHERANCE OF ANY OF THE FOREGOING; EXCEPT FOR GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER, BUT IN ALL RESPECTS SUCH ENTITIES SHALL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES PURSUANT TO THIS [70] **PLAN. THE EXCULPATED PARTIES AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, ADVISORS, AND ATTORNEYS HAVE ACTED IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE WITH REGARD TO THE SOLICITATION AND DISTRIBUTION OF SECURITIES PURSUANT TO THIS PLAN AND, THEREFORE, ARE NOT, AND ON ACCOUNT OF SUCH DISTRIBUTIONS SHALL NOT BE, LIABLE AT ANY TIME FOR THE VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THIS PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THIS PLAN, INCLUDING THE ISSUANCE OF SECURITIES THEREUNDER.**

THIS EXCULPATION SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS, AND ANY OTHER APPLICABLE LAW OR RULES PROTECTING SUCH EXCULPATED PARTIES FROM LIABILITY.

Section 9.5 *Injunction.*

(a) ***GENERAL.*** **ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR EQUITY INTERESTS (OTHER THAN THE CLAIMS REINSTATED UNDER THIS PLAN) AND ALL OTHER PARTIES IN INTEREST IN THE CHAPTER 11 CASES, ALONG WITH THEIR RESPECTIVE CURRENT AND FORMER EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PRINCIPALS AND AFFILIATES, PERMANENTLY ARE ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS, (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS OF ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE DEBTORS OR REORGANIZED DEBTORS, (C) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS OR REORGANIZED DEBTORS, OR (D) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION OR**

RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE THE DEBTORS OR REORGANIZED DEBTORS OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF THE DEBTORS OR REORGANIZED DEBTORS, ON ACCOUNT OF SUCH CLAIMS OR EQUITY INTERESTS; *PROVIDED, HOWEVER*, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE SUCH ENTITIES FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS HEREOF AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED OR ASSUMED UNDER OR IN CONNECTION WITH THE PLAN.

(b) ***INJUNCTION AGAINST INTERFERENCE WITH PLAN.*** **UPON ENTRY OF THE CONFIRMATION ORDER, ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS AND THEIR RESPECTIVE CURRENT AND FORMER EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PRINCIPALS AND AFFILIATES SHALL BE ENJOINED FROM TAKING ANY ACTIONS TO INTERFERE WITH THE** [71] **IMPLEMENTATION OR CONSUMMATION OF THE PLAN; *PROVIDED*, THAT THE FOREGOING SHALL NOT ENJOIN ANY PARTY TO THE RESTRUCTURING SUPPORT AGREEMENT FROM EXERCISING ANY OF ITS RIGHTS OR REMEDIES UNDER THE RESTRUCTURING SUPPORT AGREEMENT IN ACCORDANCE WITH THE TERMS THEREOF.**

Section 9.6 *Term of Bankruptcy Injunction or Stays.*

All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the Confirmation Date, shall remain in full force and effect until the Effective Date.

Section 9.7 *Ipso Facto and Similar Provisions Ineffective.*

Any term of any prepetition policy, prepetition contract, or other prepetition obligation applicable to a Debtor shall be void and of no further force or effect with respect to any Debtor to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any entity based on any of the following: (a) the insolvency or financial condition of a Debtor; (b) the commencement of the Chapter 11 Cases; or (iii) the confirmation or consummation of this Plan, including any change of control occurring as a result of such consummation.

Section 9.8 *Preservation of Rights of Action.*

In accordance with section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released, the Reorganized Debtors shall retain and have the exclusive right to enforce, after the Effective Date, any claims, rights and Causes of Action that the Debtors or the Estates may hold

against any Entity, whether arising before or after the Petition Date, including, without limitation: all claims relating to transactions under section 549 of the Bankruptcy Code, all transfers recoverable under section 550 of the Bankruptcy Code and all Causes of Action against any Entity on account of indebtedness and any other Causes of Action in favor of the Reorganized Debtors or their Estates.

The Reorganized Debtors shall be permitted to pursue such retained claims, rights or Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement or the Solicitation and Disclosure Statement to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action. Except with respect to Causes of Action as to which the Debtors, with the consent of the Supporting Noteholders, or Reorganized Debtors have expressly released any Person or Entity on or prior to the Effective Date, the Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of

res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable [72] or otherwise), laches, or any doctrine or rule that would require the filing of any claim or counterclaim, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of the Plan.

ARTICLE X.

RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Plan, the Confirmation Order and the Chapter 11 Cases to the fullest extent permitted by law, including jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority, nature, validity, amount or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(c) Hear, determine and resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtors are party or with respect to which any Debtor or Reorganized Debtor may be liable, and hear, determine and, if necessary, liquidate, any Claims arising therefrom, including, if necessary, determine the nature and amount of required Cure Claims;

(d) Hear and determine any and all motions to subordinate Claims or Equity Interests at any time and on any basis permitted by applicable bankruptcy and nonbankruptcy law;

(e) Effectuate performance of and ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(f) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(g) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan or the Confirmation Order;

(h) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release, or other agreement

or document that is executed or created pursuant to the Plan, or any Entity's rights arising from or obligations incurred in connection with the Plan or such other documents;

[73] (i) Modify the Plan before or after the Effective Date under section 1127 of the Bankruptcy Code or modify the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Solicitation and Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(j) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(a) of the Bankruptcy Code; *provided, however*, that from and after the Effective Date, the payment of fees and expenses of the Reorganized Debtors, including fees and expenses of counsel, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(k) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity

with the consummation, implementation, or enforcement of the Plan or the Confirmation Order;

(l) Hear and determine any rights, claims or Causes of Action held or reserved by, or accruing to, the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code, the Confirmation Order or, in the case of the Debtors, any other applicable law;

(m) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

(n) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(o) Determine any other matters that may arise in connection with or relate to the Plan, the Solicitation and Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Confirmation Order;

(p) Enter one or more orders of final decree closing the Chapter 11 Cases;

(q) Hear and resolve all matters concerning U.S. state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(r) Hear and resolve all matters involving the nature, existence or scope of the Debtors' discharge;

(s) Hear and resolve all matters related to the property of the Estates from and after the Confirmation Date;

(t) Recover all Assets of the Debtors and property of the Estates wherever located; and

[74] (u) Hear and resolve such other matters as may be provided in the Confirmation Order or as may be authorized by or not inconsistent with the Bankruptcy Code.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

Section 11.1 *Immediate Binding Effect.*

Subject to the occurrence of the Effective Date, the terms of the Plan and the Plan Documents and the instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the Reorganized Debtors and any and all Holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests have accepted or are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, or injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors.

Section 11.2 *Payment of Statutory Fees.*

All fees payable under section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date.

Section 11.3 *Amendments.*

(a) *Plan Modifications.* Subject to the terms of the Restructuring Support Agreement, this Plan may be amended, modified, or supplemented by the Debtors, with the consent of the Supporting Noteholders, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of Holders of Allowed Claims pursuant to this Plan, the Debtors, with the consent of the Supporting Noteholders, may remedy any defect or omission or reconcile any inconsistencies in this Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes or effects of this Plan, and any Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented. Notwithstanding the foregoing and in addition to any other consent rights in this section, the Debtors, without the consent of the Committee, may

not make any amendments to the Plan that (i) negatively impact the economic recovery to Classes A6, A8, B6, and C6, (ii) increases the 2021 Noteholder Rights above $75 million, (iii) reduces the 2018 Noteholder Rights below $30 million or (iv) sets the exercise price for 2021 Noteholder Rights at less than the Plan Value; *provided, however*, that the Debtors, with the consent of the Supporting Noteholders, may cancel the Rights Offering at any time without the consent of the Committee in accordance with Section 4.14 hereof.

[75] (b) *Certain Technical Amendments.* Consistent with the Restructuring Support Agreement, prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; *provided*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Claims or Equity Interests under this Plan.

Section 11.4 *Revocation or Withdrawal of Plan.*

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors (with the consent of the Supporting Noteholders). If, with respect to a Debtor, the Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date as to such Debtor does not occur, then, with respect to such Debtor: (a) the Plan shall be null and void

in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claim by or against, or any Equity Interest in, such Debtor or any other Person; (ii) prejudice in any manner the rights of such Debtor or any other Person; or (iii) constitute an admission of any sort by any Debtor or any other Person.

Section 11.5 *Governing Law.*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law, rule or regulation is applicable, or to the extent that an exhibit or supplement to the Plan provides otherwise, the Plan shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof that would require application of the law of another jurisdiction.

Section 11.6 *Successors and Assigns.*

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, Affiliate, assign, officer, director,

agent, representative, attorney, beneficiaries, or guardian, if any, of each such Entity.

Section 11.7 *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, with the consent of the Supporting Noteholders, shall have the power to alter and interpret such term or provision to render it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remaining terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration or interpretation. The [76] Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Section 11.8 *Controlling Document.*

In the event of an inconsistency between the Plan and Solicitation and Disclosure Statement, the terms of the Plan shall control in all respects. In the event of

an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document). The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, that* if there is determined to be any inconsistency between any Plan provision and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern and any such provision of the Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

Section 11.9 *Filing of Additional Documents.*

The Debtors (or the Reorganized Debtors, as the case may be) shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

Section 11.10 *Service of Documents.*

All notices, requests and demands to or upon the Debtors or the Reorganized Debtors, to be effective, shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered (or, in the case of

notice by facsimile transmission, when received and telephonically confirmed) addressed as follows:

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.
14624 N. Scottsdale Rd., Suite 300
Scottsdale, AZ 85254
Attn: Joseph Crabb, Esq.

with copies to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attn: Douglas P. Bartner, Esq.,
Fredric Sosnick, Esq.,
Sara Coelho, Esq.,
Stephen M. Blank, Esq.

Attorneys for the Debtors

[77] and

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attn: Pauline K. Morgan, Esq.,
Kenneth J. Enos, Esq.,
Jaime Luton Chapman, Esq.

Attorneys for the Debtors

Section 11.11 *Section 1125(e) of the Bankruptcy Code.*

As of the Confirmation Date, (a) the Debtors shall be deemed to have solicited acceptances of the Plan in

good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code, and any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation and (b) the Debtors, Holders of 2021 Note Claims, Holders of 2018 Note Claims, and Holders of Supporting Noteholder Term Loan Claims, and each of their respective Affiliates, agents, directors, officers, employees, advisors and attorneys shall be deemed to have participated in good faith, and in compliance with the applicable provisions of the Bankruptcy Code, in the offer and issuance of any securities under the Plan, and, therefore, are not, and on account of such offer, issuance and solicitation shall not be, liable at any time for any violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan.

Section 11.12 *Exemption from Certain Transfer Taxes.*

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, no Stamp or Similar Tax shall result from, or be levied on account of, (a) the issuance, transfer or exchange of notes, bonds or equity securities, (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest, (c) the making or assignment of any lease or sublease, or (d) the making or delivery of any deed or other instrument of transfer, under, in furtherance of

or in connection with, the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, and transfers of tangible property. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

Section 11.13 *Tax Reporting and Compliance.*

The Reorganized Debtors shall be authorized to request an expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Debtors for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

[78] Section 11.14 *Schedules and Exhibits.*

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if fully set forth herein.

Section 11.15 *Entire Agreement.*

Except as otherwise indicated in an order of the Bankruptcy Court, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings,

and representations on such subjects, subject to Section 11.8 hereof.

Section 11.16 *Allocation of Payments.*

To the extent that any Allowed Claim entitled to distribution hereunder is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for all U.S. federal income tax purposes, be allocated to the principal amount of such Claim first, and then, to the extent that the consideration exceeds such principal amount, to the portion of such Claim representing accrued but unpaid interest (but solely to the extent that interest is an allowable portion of such Allowed Claim).

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[79] Dated: June ___, 2017

Respectfully Submitted,

NUVERRA ENVIRONMENTAL SOLUTIONS, INC.

By: /s/ Joseph M. Crabb

Name: Joseph M. Crabb
Title Executive Vice President, Chief Legal Officer and Corporate Secretary

Nuverra Environmental Solutions, Inc.
Apopalachian Water Services, LLC
Badlands Leasing, LLC
Badlands Power Fuels, LLC (DE)

Badlands Power Fuels, LLC (ND)
Heckmann Water Resources Corporation
Heckmann Water Resources (CVR)
Heckmann Woods Cross, LLC
HEK Water Solutions, LLC
Ideal Oilfield Disposal, LLC
Landtech Enterprises, L.L.C.
NES Water Solutions, LLC
Nuverra Total Solutions, LLC
1960 Well Services, LLC

NUVERRA ENVIRONMENTAL SOLUTIONS, INC., as agent and attorney-in-fact for each of the foregoing entities

By: /s/ Joseph M. Crabb

Name: Joseph M. Crabb
Title Executive Vice President, Chief Legal Officer and Corporate Secretary