

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

IN RE:

WHISTLER ENERGY II, LLC,

DEBTOR.

CASE NO. 16-10661

SECTION B

CHAPTER 11

**ORDER CONFIRMING JOINTLY PROPOSED CHAPTER 11 PLAN OF
REORGANIZATION OF WHISTLER ENERGY II, LLC DATED OCTOBER 19, 2016
WITH IMMATERIAL MODIFICATIONS (ECF DOC. 529)**

The Court held the confirmation hearing on December 29, 2016 at 9:00 a.m. C.S.T. (the “Confirmation Hearing”), (ECF Doc. 528), and considered confirmation of the *JOINTLY PROPOSED CHAPTER 11 PLAN OF REORGANIZATION OF WHISTLER ENERGY II, LLC DATED OCTOBER 19, 2016 WITH IMMATERIAL MODIFICATIONS* (ECF Doc. 529) (the “Plan”) filed by Whistler Energy II, LLC (the “Debtor”), debtor and debtor-in-possession, Apollo Global Management, LLC or one or more of its Affiliates including Apollo Franklin Partnership, L.P., Apollo Centre Street Partnership, L.P., Apollo Credit Opportunity Fund III AIV I LP, ANS Holdings (WE), Ltd., and Apollo Special Opportunities Managed Accounts, L.P. (collectively “Apollo”), Commerce Oil, LLC (“Commerce”), and the Official Committee of the Holders of Unsecured Claims (the “UCC”, together with the Debtor, Apollo and Commerce, the “Plan Proponents”).

For oral reasons assigned in open Court on December 29, 2016, the record of this Chapter 11 case, including, without limitation, the testimony offered by Messrs. Rich DiMichele and Bob Bethancourt, the evidence admitted at the Confirmation Hearing, and the absence of any objections to confirmation, the Court determined to confirm the Plan.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

AS FOLLOWS:

1. **Confirmation.** Pursuant to 11 U.S.C. § 1129, the Plan, attached hereto (without exhibits), is hereby **CONFIRMED**. The terms of the Plan are incorporated by reference into, and are an integral part of, this Confirmation Order. In the event of conflict between the Plan and this Confirmation Order this Confirmation Order shall control.

2. **Binding Effect.** Except as otherwise provided in 11 U.S.C. § 1141(d), on and after the Effective Date, the provisions of the Plan and this Confirmation Order, shall bind any and all Holders of Claims against or Equity Interests in the Debtor and its successors and assigns whether or not the Claim or Equity Interests of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan. Pursuant to Sections 1123(a), 1141(a), and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents shall be, and hereby are, valid, binding, and enforceable notwithstanding any otherwise applicable non-bankruptcy law.

3. **Notice.** The Disclosure Statement,¹ the order approving the Disclosure Statement, the form of ballot and the Plan were transmitted and served in compliance with the Bankruptcy Rules and this Court's orders, and service thereof was adequate and sufficient to satisfy due process. All parties, including, without limitation, those taxing authorities, attorneys general, and other governmental units entitled to notice of the hearing to consider confirmation of the Plan and the deadline for submitting ballots and filing and serving objections to confirmation of the Plan, received adequate notice of the Plan and the Confirmation Hearing in accordance with the Bankruptcy Rules and have had an ample opportunity to appear and be heard with respect thereto. No other or further notice is necessary or required.

4. **Judicial Notice.** This Court takes judicial notice of the docket maintained in the Chapter 11 Case by the Clerk, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Court in the Chapter 11 Case.

5. **Compliance with the Applicable Provisions of the Bankruptcy Code.** As set forth herein, the Debtor has met its burden of proving the elements required under the Bankruptcy Code for Confirmation of the Plan by a preponderance of the evidence.

6. **The Plan Complies with Section 1129(a)(1).** The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(1).

7. **Proper Classification of Claims and Equity Interests.** The Plan designates seven (7) Classes of Claims and Equity Interests against the Debtor. 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

¹ Capitalized terms not otherwise defined in this Confirmation Order shall have the same meaning as in the Plan.

Classes do not unfairly discriminate among Holders of Claims or Equity Interests. Thus, the Plan satisfies 11 U.S.C. §§ 1122 and 1123(a)(1).

8. **Specification of Unimpaired Classes.** The Plan specifies that Class 6 (Argo Secured Claim) is Unimpaired under the Plan and is deemed to have accepted the Plan, thereby satisfying 11 U.S.C. § 1123(a)(2) of the Bankruptcy Code.

9. **Specification of Treatment of Impaired Classes.** Article III of the Plan designates each of Class 1 (Secured Credit Facility Claims), Class 2 (Other Secured Claims), Class 3 (Convenience Claims), Class 4 (General Unsecured Claims), Class 5 (Commerce Unsecured Claims) and Class 7 (Equity Interests) as Impaired and specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying 11 U.S.C. § 1123(a)(3).

10. **Equal Treatment Within Classes.** The Plan provides for the same treatment for each Claim or Equity Interests in a particular Class unless the Holder of a particular Claim or Equity Interests in such Class has agreed to a less favorable treatment of its Claim or Equity Interests, thereby satisfying 11 U.S.C. § 1123(a)(4).

11. **Treatment of Class 2 Claims.** Pursuant to the Plan and by Order of this Court (ECF Doc. 526), Claims filed as Class 2 Other Secured Claims are adjudged to be general unsecured claims and are hereby reclassified as General Unsecured Claims to be treated as Class 4 Claims (unless any such Claim would be a Class 3 Claim, in which case such claim will be so treated as a Class 3 Claim) for purposes of voting and allowance under the Plan.

12. **Implementation of Plan.** The Plan provides adequate and proper means for implementation of the Plan, thereby satisfying 11 U.S.C. § 1123(a)(5).

13. **Non-Voting Securities.** The Plan provides that the charter documents of the Debtor shall be amended to prohibit the issuance of non-voting equity securities.

14. **Identity and Compensation of Officers and Directors.** The Plan provides, the identity and compensation of and for the officers, directors and any insider as of the Confirmation and as of the Effective Date and the identity and compensation is consistent with public policy and properly described. Accordingly, the Plan satisfies the requirements of 11 U.S.C. § 1123(a)(7) and 1129(a)(5).

15. **Rule 3016(a).** The Plan is dated and identifies the entity submitting it, thereby satisfying Bankruptcy Rule 3016(a).

16. **Additional Plan Provisions.** The provisions of the Plan are appropriate and not inconsistent with all other applicable provisions of the Bankruptcy Code.

17. **The Plan Complies with Section 1129(a)(2).** The Debtor has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(2).

18. **Compliance With Applicable Bankruptcy Code Provisions.** The Debtor has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court.

19. **Compliance With Solicitation Requirements.** The Debtor has complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules in transmitting the solicitation materials and in soliciting and tabulating votes on the Plan.

20. **Plan Proposed in Good Faith.** The Plan Proponents have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying 11 U.S.C. § 1129(a)(3). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case and the arms-length negotiation related to the formulation of the Plan. The Chapter 11 Case was filed and the Plan was proposed with the legitimate and honest purposes of reorganizing the Debtor and expeditiously making distributions to the Debtor's Creditors and a restructuring of the equity ownership of the Debtor. The Plan reflects the results of these negotiations and is reflective of the interests of all of the Estate's constituencies.

21. **Payments for Services or Costs and Expenses.** Except as otherwise provided or permitted by the Plan, any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying 11 U.S.C. § 1129(a)(4), or is payable only at the discretion of the Reorganized Debtor after the Effective Date.

22. **Best Interests of Creditors.** The Plan satisfies 11 U.S.C. § 1129(a)(7) as 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 Interests, 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 Debtor was liquidated under chapter 7 of the Bankruptcy Code.

23. **Treatment of Administrative Claims.** The Plan's treatment of Allowed Administrative Expense Claims set forth within Article II(A) satisfies the requirements of 11 U.S.C. § 1129(a)(9).

24. **Acceptance of at Least One Impaired Class.** The Plan satisfies 11 U.S.C. § 1129(a)(10), as evidenced by the Ballot Tabulation and ballots introduced at hearing.

25. **Feasibility.** The Plan satisfies 11 U.S.C. § 1129(a)(11) because, as evidenced by the financial statements, cash flow projections, and the testimony offered by Messrs. Rich DiMichele and Bob Bethancourt, confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Thus, the Plan presents a workable framework of reorganization and there is a reasonable probability that the provisions of the Plan will be performed. The Plan is found and determined to be feasible.

26. **Payment of Certain Fees.** All fees payable on or before the Effective Date under 28 U.S.C. § 1930 either have been paid or will be paid on the Effective Date and thereafter until the issuance of a final decree and order closing this case. Accordingly, the Plan satisfies 11 U.S.C. § 1129(a)(12).

27. **Principal Purpose.** The principal purpose of the Plan is neither the avoidance of taxes nor of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, *et seq.* The Plan, therefore, satisfies the requirements of 11 U.S.C. § 1129(d).

28. **Authorization to Implement Plan.** Upon the entry of the Confirmation Order, the Reorganized Debtor shall be authorized to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into, or otherwise make effective all documents arising in connection therewith, including the Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan) prior to, on, and after the Effective Date. The approvals and authorizations specifically set forth in the Confirmation Order are not intended to limit the authority of the Reorganized Debtor to take any and all actions necessary or appropriate to implement, effectuate, and consummate any and all documents or transactions contemplated by the Plan or the Confirmation Order.

29. **General Injunction.** Except as otherwise specifically provided by the Plan, this Confirmation Order shall constitute an injunction to the full extent allowed under sections 1141 and 524 of the Bankruptcy Code, and all Holders of Claims, Other Securities Claims, and Equity Interests shall be enjoined from pursuing any action on account of or related to any Claim or Equity Interest through any conduct or proceeding whatsoever, with respect to discharged, released, enjoined or exculpated claims, and as against any person subject to or deriving rights from the discharge and/or any release or exculpation arising under the Plan, against the Debtor or Reorganized Debtor.

30. **Term of Injunction or Stays.** Unless otherwise provided, all injunctions or stays set forth in 11 U.S.C. §§ 105 and 362 shall remain in full force and effect until the Effective Date rather than the Confirmation Date. Nothing in the Plan or this Confirmation Order, however, shall be construed as a limitation of the permanent injunctions provided for in the Plan and this Confirmation Order.

31. **Exculpations.** The Debtor, the Reorganized Debtor, Apollo, Commerce, TDF Partners LLC, the UCC, and each of their respective representatives (including any attorneys, and restructuring professionals), shall have no liability to any Holder of any Claim, for any act or omission occurring during the course of this Chapter 11 Case occurring up to the Effective Date, including acts or omissions in connection with, or arising out of, the filing of the petition, the preparation of motions, memoranda, or other documents, preparation and/or negotiation of the Disclosure Statement and the Plan, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court, which shall possess exclusive jurisdiction over all such determinations, and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

32. **Indemnification Obligations.** Subject to the occurrence of the Effective Date, the obligations of the Debtor to indemnify, defend, reimburse or limit the liability of those Persons who were actual serving members, directors, officers or employees of the Debtor as

of and after the Order for Relief against any liabilities, claims or causes of action as provided in any of the articles of incorporation or governance documents of the Debtor, or under applicable state or federal law, shall not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Petition Date. The indemnification obligations of the Debtor not subject to discharge are limited to those authorized or permitted under state or federal law as the same is now or may become applicable at the time any claim for indemnification is made.

33. **Releases by Holders of Claims and Interests.** Except as otherwise provided in the Plan, and to the fullest extent authorized by applicable law, on and after the Effective Date, each Consenting Party shall be deemed to have unconditionally released (i) the Debtor, (ii) the Reorganized Debtor (iii) those officers of the Debtor employed as of the Effective Date, (iv) persons who are employed by the Debtor as of the Effective Date, (v) members of the Debtor's Board of Managers as of the Confirmation Date and the Effective Date, (vi) Apollo, (vii) Commerce, (viii) the UCC, (ix) Freepoint Commodities, LLC, and (x) TDF Partners LLC, and each of their respective advisors, agents, affiliates, and representatives (including any attorneys, accountants, financial advisors, investment bankers and other professionals retained by such persons or entities), from any and all Claims, claims, obligations, rights, suits, damages, Causes of Action, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Consenting Party would have been legally entitled to assert (whether individually, collectively or derivatively) on behalf of the Debtor either before or after commencement of the Bankruptcy Case, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date in any way relating or pertaining to (a) the Debtor, (b) Claims against or Interests in the Debtor, (c) the circumstances giving rise to the occurrence of the Chapter 11 Case, and (d) the negotiation, formulation and preparation of the Plan, or any related agreements, instruments or other documents.

34. **United States, ExxonMobil and W&T Offshore Release Reservations.** Nothing in this Order or the Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5) ("Claim"); (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors. Nor shall anything in this Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Nothing in this Order or the Plan shall affect or grant any setoff or recoupment rights of any Governmental Unit. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or the Plan or to adjudicate any defense asserted under this Order or the Plan.

Nothing in the Plan or this Confirmation Order shall alter, release, or otherwise affect any rights, claims, causes of action, or defenses of Mobil Oil Exploration & Producing Southeast Inc., its affiliates, successors, or assigns (“ExxonMobil”), the Debtor or the Reorganized Debtor, arising under or in connection with (a) the Purchase and Sale Agreement dated effective as of October 1, 2011 between ExxonMobil and the Debtor (as amended or modified from time to time, the “ExxonMobil PSA”), and documents and agreements executed pursuant thereto; or (b) any instruments of financial security associated with the ExxonMobil PSA, including without limitation surety bonds, issued in favor of ExxonMobil for the purpose of securing obligations related to assets conveyed to the Debtor pursuant to the ExxonMobil PSA.

Nothing in the Plan or this Confirmation Order shall alter, release, or otherwise affect any rights, claims, causes of action, or defenses of W&T Offshore Inc., its affiliates, successors, or assigns (“W&T”), the Debtor or the Reorganized Debtor, arising under or in connection with (a) Purchase and Sale Agreement between W&T Offshore, Inc. and Whistler Energy II, LLC, effective October 1, 2011, as amended (the “W&T PSA”) and documents and agreements executed pursuant thereto or (b) any instruments of financial security associated with the W&T PSA, including without limitation surety bonds, issued in favor of W&T for the purpose of securing obligations related to assets conveyed to the Debtor pursuant to the W&T PSA, and with respect to (a) the Participation Agreement dated June 27, 2013 (b) the Operating Agreement dated July 1, 1983, covering Ewing Bank Block 944/988, (c) the Offshore Operating Agreement dated June 1, 1989, by and between Marathon Oil Company, Sun Operating Limited Partnership and Kerr-McGee Corporation covering All of Block 1006, Ewing Bank as well as the agreements referenced in this paragraph, to the extent and if any of such agreements are considered executory contracts, they are assumed as set forth in the Plan Supplement (ECF Doc. 542).

35. **Notice of Entry of Confirmation Order.** On or before the seventh (7th) day following entry of this Confirmation Order, Debtor’s counsel shall serve via first-class, prepaid United States mail notice of entry of this Confirmation Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all Creditors, Existing Equity Interest Holders, and other parties-in-interest.

36. **Reversal.** If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, or vacated by subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtor’s 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 effective date of such reversal, modification, or vacatur shall be governed in all respects by the provisions of the Plan and any amendments or modifications thereto.

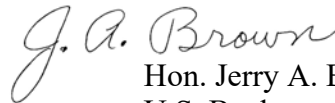
37. **Retention of Jurisdiction.** The Court shall retain and shall have exclusive jurisdiction over any matter to the fullest extent provided under 11 U.S.C. §§ 105(a) and 1142 and 28 U.S.C. §§ 1334 and 157, including, without limitation those matters set forth in Article XI of the Plan and subject to paragraph 13 of this Confirmation Order.

38. **Objections Overruled.** Except as otherwise expressly provided in this Confirmation Order, objections, if any, to the Plan, to the extent not withdrawn, are denied and overruled.

39. **Stay Abrogated.** The stay of effectiveness of this Confirmation Order provided for by FRBP Rule 3020(e) be and is hereby abrogated, under and as provided for by Rule 3020(e).

40. **Narrative Status Report.** The Reorganized Debtor shall file a narrative post-confirmation report within ninety (90) days of entry of this Confirmation Order detailing the steps taken toward consummation of the Plan. Additional narrative post-confirmation reports are to be filed annually thereafter until a motion for final decree is filed.

New Orleans, Louisiana, January 25, 2017.



Hon. Jerry A. Brown
U.S. Bankruptcy Judge