IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
BONANZA CREEK ENERGY, INC.	Case No. 17-10015 (KJC)
Debtors.[1]	(Joint Administration Requested)
	Hearing Date: January 5, 2017 at 2:30 p.m. EST
	Re: D.I. 10, 13, 14, 23

PRELIMINARY OMNIBUS OBJECTION OF SILO ENERGY, LLC TO (A) THE DEBTORS' MOTIONS FOR ORDERS (I) SCHEDULING A COMBINED DISCLOSURE STATEMENT AND CONFIRMATION HEARING AND (II) APPROVING RIGHTS OFFERING PROCEDURES AND ASSUMPTION OF THE BACKSTOP COMMITMENT AGREEMENT AND (B) THE DEBTORS' MOTIONS FOR RELIEF RELATED TO CERTAIN "FIRST DAY" PLEADINGS

Silo Energy, LLC ("Silo") by and through its undersigned counsel, hereby submits this Preliminary Omnibus Objection (the "Objection") to (A) The Debtors' Motions for Orders (I) Scheduling a Combined Disclosure Statement and Confirmation Hearing [ECF No. 14] (the "Scheduling Motion") and (II) Approving Rights Offering Procedures and Assumption of the Backstop Commitment Agreement [ECF No. 13] (the "Rights Offering Motion") and (B) the Debtors' Motions for Relief Related to First Day Pleadings [ECF Nos. 10 & 23] (the "First Day Motions").[2] In support hereof, Silo respectfully states as follows:

[1] The Debtors and debtors in possession in these cases and the last four digits of the respective Employer Identification Numbers are: Bonanza Creek Energy, Inc. (0631), Bonanza Creek Operating Company, LLC (0537), Bonanza Creek Energy Resources, LLC (6378), Holmes Eastern Company, LLC (5456), Rocky Mountain Infrastructure, LLC (6659), Bonanza Creek Energy Upstream LLC (6378) and Bonanza Creek Energy Midstream, LLC (6378). The Debtors' mailing address is 410 17th Street, Suite 1400, Denver Colorado 80202.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motions as applicable.

PRELIMINARY STATEMENT

1. The Debtors' proposed Plan, which they seek to confirm in one month, is set up so that the entity holding 70% of the Debtors' oil and gas properties, Bonanza Creek Opco (defined below) receives just 17.6% of the New Common Stock and its creditors, just a 3.6% recovery. That fact alone—although it is not the lone fact— demands scrutiny, and scrutiny requires time.[3]

2. The Debtors filed sixteen First Day Motions yesterday. *See* ECF No. 25 (listing motions). Two of those motions—the Scheduling Motion and the Rights Offering Motion—are not proper "First Day" motions. "First Day" relief is meant to address emergencies and urgent relief necessary to enable a debtor to operate, preserve assets and to carry a debtor to the second day hearings once parties-in-interest have had adequate notice and the debtor is otherwise able to comply with procedural rules.[4] "First Day" relief is not designed to circumvent procedural rules and safeguards to permit a debtor to obtain substantive relief against non-debtor parties. Here, the Debtors articulate no emergency or urgency in either the Scheduling Motion or the Rights Offering Motion, or through any required formal request for shortened notice, to justify the extraordinary relief sought in those Motions, which are scheduled to be heard less than 24 hours after their filing. Instead, the Debtors identify one exigency for the expedited relief – their arbitrary and self-created milestones.

3. Silo understands the Debtors' desire to restructure and to do so efficiently and timely. Silo is not seeking to derail or impede a fair process. But the proposed accelerated thirty-five (35) day Combined Hearing schedule is unworkable and significantly impairs Silo's

[3] Silo is not seeking to delay the Debtors' rapid emergence from chapter 11, but issues present in this bankruptcy will require more than twenty-nine days to investigate, test, litigate or, if possible, resolve.

[4] *See* Local Rule 9013-1(m)(i)-(ii) of the United States Bankruptcy Court for the District of Delaware ("Local Rules").

and other creditors' ability to adequately address real and critical issues and infirmities with the Plan, Disclosure Statement, and Solicitation Procedures. Creditors should not be deprived of their right to prosecute their objections and to have their issues fairly considered and adjudicated by this Court, particularly where there is no emergency.[5]

4. Moreover, based on its limited review, Silo believes that the proposed Plan is unconfirmable. The Plan as proposed improperly treats Silo (the Debtors' largest unsecured creditor outside of the unsecured noteholders) and violates the Bankruptcy Code. The Plan's structure is designed to strip value from the Debtors' primary operating company, Bonanza Creek Opco, and reallocate it to other Debtors for the benefit of holders of Notes Claims and to improperly enable insiders and holders of Existing Equity Interests to retain equity interests in the Reorganized Debtors.[6] In essence, the Debtors have reshuffled assets and values among Debtors to reverse engineer distributions.

5. First, the proposed Plan's allocation of value of distributions to creditors of each Debtor is materially inconsistent with the Debtors' own valuation of the separate entities. This rearranging of value results in creditors of Bonanza Creek Opco, which accounts for 70% of the Debtors' oil and gas assets, receiving a disproportionate and substantially lower amount of New Common Stock than the creditors of the other Debtor entities (entities whose sole creditor constituency not coincidentally consist of the unsecured noteholders) and none of the valuable Subscription Rights. Such a structure improperly commingles the Debtors' assets, allows noteholders to capture nearly all of the value of the Reorganized Debtors and prevents other

[5] There is no proverbial "melting ice cube" here; the Debtors by their own admission have sufficient cash to operate and, in fact, project positive cash flow for several weeks.

[6] Given these circumstances, Silo is considering filing a motion for an examiner under Bankruptcy Code § 1104.

general unsecured creditors of Bonanza Creek Opco from receiving their fair share of New Common Stock and participating in the Rights Offering.

6. Second, substantive consolidation may be appropriate. The Debtors vaguely state that pre-petition, the Debtors' financial advisors "*fully deconsolidated* the Debtors' enterprise." Disclosure Statement § IV.A (emphasis added). Therefore, it appears that the Debtors' advisors also *reconstructed* the financials to ascribe values to each Debtor and account for intercompany claims. The bases and assumptions used to deconstruct and reconstruct the Debtors' financials are unknown and it is entirely unclear how (if at all) the value of the intercompany claims affects the valuation attributed to each Debtor.[7] And, the resulting "ascribed values to recoveries of creditors of each Debtor" are highly questionable on their face because they differ so drastically from the Debtors' liquidation analysis and the Debtors' books and records. Based upon the Debtors' prepetition conduct, operations and accounting, substantive consolidation may be required.

7. Third, the Plan violates the absolute priority rule. The Plan "preserves material value for existing equity." *See* Declaration of Scott Fenoglio in Support of Debtors' Chapter 11 Proceedings and First Day Pleading [ECF No. 16] (the "Fenoglio Decl.") at ¶ 47. Incredibly, holders of Existing Equity Interests receive 4.5% of New Common Stock and Warrants worth up to 7.5% of total New Common Stock. Similarly, despite unsecured creditors receiving minimal value from the Bonanza Creek Opco, its direct parent retains the equity interest in Opco. This structure is designed to benefit equity holders and creditors of the Bonanza Creek parent at the expenses of creditors at the operating entity.

[7] For example, Intercompany Claims are Unimpaired under the Plan and receive no distribution yet are the largest asset of the Bonanza Creek Parent which is receiving far more value under the Plan than Bonanza Creek Opco.

8. Fourth, the Plan provides disparate and discriminatory treatment by providing the Subscription Rights only to certain eligible holders (the noteholders) and unjustifiably excluding Silo. The Rights Offering and Backstop Agreement enable noteholders to capture more value. Consideration of the Rights Offering Motion in furtherance of the disparate treatment in the Plan is unnecessary and a waste of estate resources. In any event, there is no support for treating such a motion as a "First Day" pleading and, absent notice or a motion on shortened notice, it should be denied.

9. Silo has identified numerous other issues concerning confirmation of the proposed Plan and the case at large that illustrate additional support for the need to proceed at an appropriate pace and allow careful scrutiny of the case and confirmation issues, such as[8]:

- Failure to address fraudulent conveyance claims relating to the formation of RMI in early 2015 to whom Bonanza Creek Opco transferred over $45 million in gathering system assets;
- The placement of $70 million unencumbered cash drawn down pre-petition in a newly created account in the name of a Debtor with few assets rather than the operating company; and
- Allowance of pre-payment premiums to bondholders in the amount of $51 million on account of the Note Claims which may be contrary to and in derogation of existing law.

10. The Restructuring Support Agreement (the "RSA") contains arbitrary, accelerated milestones; these milestones cannot be so cumbersome as to render the Bankruptcy Code and Bankruptcy Rules meaningless. A thirty-five day process with confirmation on February 8, 2016, is aggressive, even in a fully consensual scenario. Notably, the RSA contemplates April 19, 2017, as the outside date for confirmation. Thus, an extension of time does not even jeopardize confirmation of a chapter 11 plan under the existing RSA. Nor does this Court's

[8] The issues described in this Objection merely illustrate that the accelerated schedule and proposed process are unreasonable, prejudicial and not workable. The list is not exhaustive.

adjudication of the serious issues described in this Objection.[9] Parties are entitled to a reasonable timeframe that allows for appropriate discovery, expert testimony, briefing, negotiations, mediation (if desired) and litigation at confirmation. Silo respectfully requests that the Court preserve a fair process and require the Debtors to comply with the Bankruptcy Rules and Bankruptcy Code.

RELEVANT BACKGROUND

A. *Silo Contract*

11. Silo and Bonanza Creek Energy Operating Company, LLC ("Bonanza Creek Opco") are parties to an Agreement Regarding the Terms Purchase of Crude Oil to Silo Energy LLC dated October 8, 2014 (the "Silo Agreement") whereby Bonanza Creek Opco agreed to sell and Silo agreed to purchase certain volumes of crude oil as specified therein.

12. The Silo Contract expires in April 2020, with a right to extend for an additional five (5) years.[10]

[9] The RSA already contemplates that the Court may need to address the very issues raised herein as a "Required Modification." Section 7.01(a)(vii) of the RSA prohibits Supporting Noteholders from terminating the RSA in the event the Bankruptcy Court rules or orders that a "Required Modification" is necessary to enter a Confirmation Order. A "Required Modification" means modifying (a) the allocation of Subscription Rights and New Common Stock among holders of Claims in Class 2D to equal the allocation of Subscription Rights and New Common Stock among Holders of Claims in Classes 1D and 3D-7D; (b) the conditions upon which holders of Existing Equity Interests may receive their distribution provided for in the Plan; or (c) the amount of Subscription Rights and New Common Stock distributed to holders of General Unsecured Claims against Bonanza Creek Operating, if necessary solely as a result of the allowance, estimation, voting, recharacterization or classification of General Unsecured Claims against Bonanza Creek Operating (other than Notes Claims) by Final Order of the Court.

[10] A description of the Silo Contract is included for context only. For purposes of this Preliminary Objection, Silo does not address whether the Silo Contract (a) is non-executory; (b) was breached or terminated prepetition; (c) contains covenants that run with the land or subject to the doctrine of equitable servitude; or (d) is a forwards contract afforded certain protections under the Bankruptcy Code. Silo reserves all rights with respect to these and all other contractual issues and no admission should be inferred or implied.

B. *Silo Contract Claim*

13. Pursuant to the RSA, the Debtors negotiated the New NGL Agreement to sell to NGL 100% of the Debtors' crude oil capacity, leaving the Debtors unable to satisfy the obligations under the Silo Contract.

14. Silo's Claim (as defined under Bankruptcy Code § 101(5)) is in excess of $107 million.

15. The ballot sent to Silo as part of the pre-petition solicitation package (the "Ballot") notes that the Debtors value Silo's unsecured claim as "undetermined" and provides that Silo will have an opportunity to be heard with respect to the amount of Silo's unsecured claim. At this point it is unclear how the Debtors plan to proceed in addressing the allowance of Silo's claim for voting purposes and for Plan reserve determinations.

C. *Silo's Treatment Under the Plan*

16. Based on available information, although unclear and not definitive, it appears the Debtors intend to classify the Silo claim in Class 2D which, according to the Ballot, will receive its Ratable Share of 18.2% of the New Common Stock subject to dilution of the Management Incentive Plan, Warrants and the Rights Offering and according to the Plan will receive its Ratable Share of 17.6% of the New Common Stock subject to dilution of the Management Incentive Plan, Warrants and the Rights Offering.[11]

17. The Disclosure Statement implies that the approximately $1.025 billion of General Unsecured Claims in Class 2D are comprised of approximately $866 million in Notes

[11] The Ballot does not specifically set forth which Class Silo's claim falls under. The Ballot provides generally that Silo's claim is in Class 1D-7D as a General Unsecured Claim and that the claim is against Bonanza Creek Opco. Because only Class 2D includes claims against Bonanza Creek Opco, Silo has presumed its claim falls within Class 2D.

Claims, the NGL FT Agreement Claim in the amount of approximately $98 million, Silo's claim and potentially other unidentified claims. *See* Disclosure Statement, § I.D.2 at p.5-7.

18. Class 2D is the only class of General Unsecured Claims not entitled to participate in the Rights Offering and obtain Subscription Rights. The Debtors provide no justification for such distinction.

19. According to the Debtors, holders of General Unsecured Claims in Class 2D are expected to receive a 3.6% recovery on account of their claims. *See* Disclosure Statement, § I.D.2 at p.6.

OBJECTION

I. The Scheduling Motion and Rights Offering Motion are Not Proper First Day Motions and Should Not be Considered or Approved

20. The Debtors fail to demonstrate that the Scheduling Motion and Rights Offering Motions are emergent in nature, are required to preserve the assets of the estate, and are required to maintain ongoing business operations as required under Local Rule 9013-(m)(i). Curiously, the Debtors have failed to bring these Motions by shortened notice. The sole basis for the relief sought in these Motions is the upcoming arbitrary and self-created milestones under an RSA, which are not binding on this Court. The RSA provides for a confirmation order to be entered 102 days from the Petition Date (April 19, 2017), which is evidence that the Debtors recognize that this process may not go as quickly as they otherwise hope it will. And, the Debtors have sufficient cash to operate during that time and purportedly pay the various professionals of the Ad Hoc Committee of unsecured noteholders and of NGL. *See* Interim Cash Collateral Order ¶ 11

A. *The Relief Sought in the Scheduling Motion is Prejudicial, Unworkable and Unreasonable*

21. The Debtors' proposed schedule for a Combined Hearing on February 8, 2016, presumes an uncontested confirmation process and limited and narrow, if any, objections to the proposed Plan. That presumption is wrong. Given the proposed Plan's structure and terms, and its improper treatment of Silo, this will not be an uncontested confirmation process unless the parties can reach a resolution with Silo. Silo is prepared to work in good faith with the Debtors to achieve a negotiated and consensual resolution. To the extent the Court enters a schedule that affords parties sufficient time to address these issues and others, Silo would be amenable to mediating any open disputes. If a consensual resolution cannot be reached, however, a contested plan confirmation process looms.

22. The Combined Hearing and related confirmation schedule will deprive Silo of its rights and abilities to properly prosecute its objections. The Court should not allow the Debtors to use an aggressive and accelerated schedule to impair Silo and side step adjudication of the Plan and the confirmation infirmities.[12]

(i) Reshuffling of Assets and Values Among Debtors and Improper Allocation of Distributions Among Classes Based on Value of Debtor Entity.

23. The proposed Plan allocation scheme is designed to maximize recoveries to noteholders at the expense of Silo by stripping value from Bonanza Creek Opco and reallocating it to other Debtor entities. The Plan provides the smallest distribution to Class 2D for claims against Bonanza Creek Opco - 17.6% of New Common Equity and no Subscription Rights - notwithstanding that the Debtors' books and records demonstrate that Opco holds *more than*

[12] Prior to scheduling a Combined Hearing, the Debtors and Silo will need work out deadlines for document discovery, depositions, expert reports and briefing. The Debtors fail to explain how this can be accomplished or why it needs to accomplished in twenty-nine days by an objection deadline of February 3, 2017.

73%[13] *of the Debtors' Oil and Gas Properties*. Class 2D is the only Class with non-Notes Claims, including Silo's claim. On the other hand, Class 1D holding Claims against parent Bonanza Creek Energy Inc. (the "Bonanza Creek Parent") and Classes 3D-7D consisting of Claims against the other Subsidiary Debtors other than Bonanza Creek Opco are comprised only of Notes Claims and each receive substantially higher distributions even though together, they hold *less than 27%*[14] *of the Debtors' Oil and Gas Properties*. Specifically, notwithstanding that the Debtors' books and records show the Parent has just *1.8% of the Debtors' Oil and Gas Properties*, Class 1D receives (a) 29.4% of the New Common Stock subject to dilution of the Management Incentive Plan, Warrants and he Rights Offering and (b) 37.8% of the Subscription Rights. Similarly, although the other subsidiary Debtors hold 25%[15] *of the Oil and Gas Properties*, creditors in Classes 3D-7D will receive (a) 48.5% of New Common Stock subject to dilution of the Management Incentive Plan, Warrants and the Rights Offering and (b) 62.2% of the Subscription Rights. Because the Rights Offering is only available to holders of Notes Claims in Classes 1D and 3D-7D, it allows noteholders to receive almost 50% of the total New Common Stock. Ultimately, noteholders will receive 97.8% of the New Common Stock after the Rights Offering but before the Management Incentive Plan and exercise of the Warrants. *See* Disclosure Statement I.D. at p.8.

(ii) Substantive Consolidation may be Appropriate.

24. The Debtors' conclusory statements about substantive consolidation are questionable and conflict with the Debtors' valuations and plan structure. Substantive consolidation may be appropriate. The Debtors make a conclusory statement that the Debtors undertook a diligence process to ascertain whether substantive consolidation would be

[13] Per the Debtors' liquidation analysis, Opco owns more than 57% of the Debtors' Oil and Gas Properties.
[14] Per the Debtors' liquidation analysis, they hold only 43% of the Debtors' Oil and Gas properties.
[15] Per the Debtors' liquidation analysis, the other Debtors hold only 41% of the Debtors' Oil and Gas properties.

appropriate and deconsolidated the enterprise to ascribe "accurate" values to recovers to creditors of each Debtor. *See* Disclosure Statement IV.A. at p.21. But the values "ascribed" bear no relation to the underlying values of each Debtor. *See supra* ¶ 22(a). Further, the basis and validity for any reconstruction of intercompany claims performed by the Debtors has not been disclosed or investigated by a third party. Nor is it clear if these claims affect the Debtors' valuations. And yet, it is this purported "analysis" upon which creditors must rely that forms the entire basis for their distributions under the Plan.

(iii) Material Distributions to Equity and Insiders Without Justification and in Violation of Absolute Priority Rule.

25. The Plan states that holders of Existing Equity according to the Debtors receive "no distribution" and are deemed to reject the Plan. Plan § 3.1. Notwithstanding, holders of Existing Equity Interests receive their Ratable Share of the Settlement Consideration consisting of (i) 4.5% of the New Common Stock, subject to dilution by the Management Incentive plan, warrants and the Rights Offering and (ii) the Warrants entitled holders upon exercise thereof, on a pro-rata basis, up to 7.5% off the total outstanding New Common Stock at a per share price based upon a total equity value of $1.45 billion. Post-confirmation and after the Rights Offering, Management Incentive Plan and Warrants, Existing Equity Holders and insiders will hold more than 13% of the New Common Shares. There is no justification for such a violation of the absolute priority rule or disparate and discriminatory treatment.

26. Importantly, the "Required Modification" described in section 7.01(a)(vii) of the RSA identifies the above deficiencies and contemplates that the Court may adjudicate the issues and require appropriate modifications without causing termination of the RSA. Preserving Silo's right to be heard on these issues will therefore not harm or jeopardize these chapter 11 cases.

B. *The Rights Offering is Premature*

27. The Rights Offering Motion is premature, is premised on a Plan with an improper distribution scheme and furthers the disparate treatment among creditors. It is therefore a waste of time and resources for the Court to entertain this motion. There is no urgent reason for the Debtors to ask this Court now, on less than one day notice and without any motion requesting a hearing on shortened notice, to consider and approve a Motion that enables unsecured noteholders to obtain 50% of the New Common Stock valued at what appears to be approximately $345 million for $200 million. However, if the Rights Offering Motion is approved, the Debtors are likely to use the solicitation of the Subscription Rights to bolster any argument to avoid changing the propose Plan, notwithstanding its flaws. There is no basis to grant a motion disguised to lock in the Plan value at this early stage

II. The Relief Sought in Certain First Day Motions Must Be Modified[16]

28. While Silo does not object to the use of Cash Collateral, Silos has concerns with certain of the terms of the proposed Interim Cash Collateral Order[17] and respectfully requests the provisions be modified as follows:

- The proposed Adequate Protection to the Prepetition Secured Parties includes, among other things, the payment of the fees and expenses the professionals for the ad hoc group of holders of unsecured notes (the "Supporting Noteholders") payable pursuant to the Restructuring Support Agreement. *See* Interim Cash Collateral Order ¶ 11. The payment of professional fees for an ad hoc group of noteholders acting in the interests of their unsecured notes holdings is an inappropriate form of adequate protection for the Prepetition Secured Parties. Further, the Supporting Noteholders' professionals, as a representative of *unsecured* creditors, are not entitled to adequate protection for the use of Cash Collateral or the payment of fees under the section 506(b) of the Bankruptcy Code. Accordingly, such fees and expenses are not properly the subject

[16] For the avoidance of doubt, Silo submits that any relief granted on the First Day Motions should be on an interim basis only until the official committee of unsecured creditors appointed in these cases and other parties have an opportunity to be heard.

[17] Silo reserves all rights, claims, defenses and remedies, including, without limitation, the right to amend, modify, or supplement this Objection, to seek discovery, and to raise additional objections during the final hearing on the Cash Collateral Motion.

of the Proposed Cash Collateral Order and any provision for the payment of such fees in paragraph 3(e) should be deleted.[18]

- The proposed Interim Cash Collateral Order provides, if adequate protection payments made pursuant to paragraph 3(c) are not permissible under Bankruptcy Code 506(b), parties reserve the right to seek recharacterization of such payments to be applied to and permanently reduce the principal owed under the Prepetition Secured Indebtedness. *See* Interim Cash Collateral Order ¶ 3(c). This provision should be expanded to permit the disgorgement and/or recharacterization of all adequate protection payments, including fees and expenses paid pursuant to paragraphs 3(c) and 3(e).

- The proposed Interim Cash Collateral Order contemplates, subject only to the passing of the Supporting Noteholder Challenge Deadline, an irrevocable waiver by the Debtors of their right to surcharge the Prepetition Collateral or Adequate Protection Collateral pursuant to Bankruptcy Code section 506(c) for the costs of preserving or disposing of such collateral. *See* Interim Cash Collateral Order ¶ 11. Additionally, the proposed Interim Cash Collateral Order provides for a waiver of the equitable doctrine of marshalling. *See* Interim Cash Collateral Order ¶ 12. Silo believes that both waivers are premature and requests that waivers be subject to the entry of Final Order.

29. Additionally, the Cash Management Order must be revised to ensure that the Debtors' unsecured creditors are not harmed as a result of the Debtors' postpetition continuance of their cash management system. Specifically, Silo believes that the placement of $70 million in unencumbered cash at Debtor Holmes Eastern Company, LLC's ("Holmes") warrants further investigation. The Cash Management Order provides that to the extent cash of one Debtor is used by another Debtor, "the Debtor funding the cash will have an allowed superpriority administrative expense claim pursuant to section 503(b) and 507(a) of the Bankruptcy Code junior in priority only to the Adequate Protection Claims." *See* Cash Management Order ¶ 4. Silo requests that the granting of such administrative claim be without prejudice of parties in interest to challenge such claim.

[18] To the extent that the Court is inclined to permit the payment of the Supporting Noteholders' professionals' fees and expenses pursuant to the Interim Cash Collateral Order, such fees and expenses should be subject to disgorgement if the plan proposed under the RSA is not consummated.

CONCLUSION

WHEREFORE, Silo respectfully requests the Court (a) deny the relief sought in the Scheduling Motion and Rights Offering Motion; (b) deny the First Day unless the modifications described in this Objection; (c) grant relief on the First Day Motions on an interim basis only; and (d) grant other and further relief as is just and proper.

Dated: January 5, 2017

Respectfully Submitted,

/s/ Christopher A. Ward

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