UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	)	
EnCap Investments L.P. a limited partnership,	)	
EnCap Energy Capital Fund XI, L.P., a limited partnership,	)	**DECISION AND ORDER** **Docket No. C-4760**
Verdun Oil Company II LLC, a limited liability company,	)	
XCL Resources Holdings, LLC, a limited liability company,	)	
EP Energy Corporation, a corporation, and	)	
EP Energy LLC, a limited liability company.	)	

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition by Respondent Verdun Oil Company II LLC and Respondent XCL Resources Holdings, LLC, each a subsidiary of Respondent EnCap Energy Capital Fund XI, L.P., whose general partner is Respondent EnCap Investments L.P., of Respondent EP Energy LLC, a subsidiary of Respondent EP Energy Corporation (collectively, "Respondents"). The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said

agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent EnCap Investments L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Texas with its executive offices and principal place of business located at 9651 Katy Freeway, Suite 600, Houston, Texas 77024.

2. Respondent EnCap Energy Capital Fund XI, L.P.is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Texas with its executive offices and principal place of business located at 9651 Katy Freeway, Suite 600, Houston, Texas 77024.

3. Respondent Verdun Oil Company II LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Texas with its executive offices and principal place of business located at 55 Waugh Drive, Suite 400, Houston, Texas 77007.

4. Respondent XCL Resources Holdings, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 600 N Shepherd Drive, Suite 390, Houston, Texas 77007.

5. Respondent EP Energy Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 601 Travis Street, Suite 1400, Houston, Texas 77002.

6. Respondent EP Energy LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 601 Travis Street, Suite 1400, Houston, Texas 77002.

7. Crescent Energy Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 600 Travis Street, Suite 7200, Houston, Texas, 77002.

8. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "EnCap" means EnCap Investments L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by EnCap Investments L.P. (including Respondent EnCap Fund XI, L.P., Respondent Verdun, and XCL Resources Holdings, LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "EnCap Fund XI" means EnCap Energy Capital Fund XI, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by EnCap Energy Capital Fund XI, L.P. (including Respondent Verdun and Respondent XCL), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Verdun" means Verdun Oil Company II LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Verdun Oil Company II LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "XCL" means XCL Resources Holdings, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by XCL Resources Holdings, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

E. "EPE Corporation" means EP Energy Corporation, its officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by EP Energy Corporation (including Respondent EP Energy), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

F. "EP Energy" means EP Energy LLC, its officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by EP Energy LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

G. "Crescent" means Crescent Energy Company, its officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Crescent Energy Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

H. "Respondents" means EnCap, EnCap Fund XI, Verdun, XCL, EPE Corporation, and EP Energy, collectively.

I. "Commission" means the Federal Trade Commission.

J. "Acquirer" means:

1. Crescent; or

2. Any other person that the Commission approves to acquire any of the Divestiture Assets pursuant to this Order.

K. "Acquisition" means the proposed acquisition by Verdun of EP Energy pursuant to the terms set forth in the transaction agreement by and among Respondents dated as of July 26, 2021, as may be amended.

L. "Acquisition Date" means the date Respondents consummate the Acquisition.

M. "Business Information" means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes books, records, data, and information relating to production, exploration, sales, marketing, logistics, operations, products, pricing, personnel, transportation, distribution, accounting, business strategy, information technology systems, customers, suppliers, vendors, research and development, Contracts, and Governmental Authorizations.

N. "Confidential Information" means all Business Information and knowledge of employees not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.

O. "Consent" means an approval, consent, ratification, waiver, or other authorization.

P. "Contract" means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking with one or more third parties, whether written or oral and whether express or implied, and whether or not legally binding.

Q. "Direct Cost" means the cost of labor, goods and materials, travel, and other expenditures. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.

R. "Divestiture Agreement" means:

1. The Membership Interest Purchase Agreement by and among Respondents and Crescent dated as of February 15, 2022, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Nonpublic Appendix A; or

2. Any agreement between Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) and an Acquirer to purchase the Divestiture Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.

S. "Divestiture Assets" means all of Respondents' rights, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to the Divestiture Business, including:

1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, rights of way, and appurtenances, together with all buildings and other structures, facilities, wells, mineral interests, surface interests, gathering and transportation systems, and improvements located thereon, owned, leased, or otherwise held;

2. All tangible personal property, whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computers, supplies, materials, vehicles, and gathering and transportation systems, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals;

3. All inventories;

4. All accounts receivable;

5. All Intellectual Property;

6. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

7. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;

8. All Business Information; and

9. All intangible rights and property, including going concern value, goodwill, and telephone and telecopy listings;

Provided, however, that the Divestiture Assets need not include (x) Excluded Assets or (y) Retained Intellectual Property.

T. "Divestiture Business" means all business activities of EP Energy in or relating to the state of Utah, including the business of oil and gas exploration, production, research, development, gathering, transportation, distribution, marketing, and sales in or from the Uinta Basin.

U. "Divestiture Business Employee" means each full-time, part-time, or contract individual employed by EP Energy whose job responsibilities relate or related to the Divestiture Business at any time after July 1, 2021.

V. "Divestiture Date" means the date on which Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) consummate the divestiture of the Divestiture Assets as required by Section II of this Order.

W. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Section IX of this Order.

X. "Employee Information" means for each Divestiture Business Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. The employee's base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for the last fiscal year, and current target or guaranteed bonus, if any;

5. Written performance reviews for the past three years, if any;

6. Employment status (*i.e.,* active or on leave or disability; full-time or part-time);

7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

Y. "Excluded Assets" means those assets listed on Appendix B.

Z. "Governmental Authorization" means a Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

AA. "Intellectual Property" means all intellectual property, including: (1) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (2) all patents, patent applications and inventions and discoveries that may be patentable; (3) all registered and unregistered copyrights in both published works and unpublished works; (4) all rights in mask works; (5) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (6) and all rights in internet web sites and internet domain names presently used.

BB. "Monitor" means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.

CC. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

DD. "Relevant Area" means the following counties in Utah: Duchesne, Uintah, Utah, Grand, Emery, Carbon, and Wasatch.

EE. "Relevant Area Producer" means any Person (other than Respondents) engaged in the development, production, or sale of Uinta Basin waxy crude in the Relevant Area.

FF. "Retained Intellectual Property" means any owned or licensed (as licensor or licensee) Intellectual Property (not included in the Excluded Assets) relating to both the operation of the Divestiture Business and any other business owned by Respondents prior to the Acquisition.

GG. "Transitional Assistance" means services and support as required by the Acquirer to facilitate the transfer of the Divestiture Business and operation of the Divestiture Assets, including services and support related to human resources, payroll, employee benefits, accounting and finance, information technology systems, production, exploration, transportation, logistics, distribution, storage, supply chain management, vendor relations, customer relations, marketing, research and development, engineering, quality control, environmental issues, customers, warehousing, Contracts, Governmental Authorizations, and use of trademarks or trade names for transitional purposes.

II. Divestiture

IT IS FURTHER ORDERED that:

A. No later than 10 days after the Acquisition Date, Respondents shall divest the Divestiture Assets, absolutely and in good faith, as an ongoing business, to Crescent,

Provided, however, that, if within 12 months after issuing the Order, the Commission determines, in consultation with the Acquirer and the Monitor, should one be appointed, that the Acquirer needs one or more Excluded Assets to operate the Divestiture Assets in a manner that achieves the purposes of this Order, Respondents shall divest, absolutely and in good faith, such needed Excluded Assets to the Acquirer; and

Provided further, however, that if Business Information relating to the Divestiture Assets includes information (1) relating to any other business owned by Respondents prior to the Acquisition that cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Divestiture Assets or (2) where Respondents have a legal obligation to retain the original copies, then Respondents may provide copies of the Business Information (with redactions as appropriate) and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.

B. If Respondents have divested the Divestiture Assets to Crescent prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Crescent is not acceptable as the acquirer of the Divestiture Assets, then Respondents shall rescind the divestiture within 5 days of notification, and shall divest the Divestiture Assets no later than 180 days from the date this Order is issued, as an ongoing business, absolutely and in good faith, no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to Crescent was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to modify the manner of divestiture of the Divestiture Assets as the Commission may determine is necessary to satisfy the requirements of this Order.

C. Respondents shall grant a royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sub-licensable license to the Acquirer to use any Retained Intellectual Property.

D. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the Divestiture Assets to the Acquirer and for the Acquirer to operate any aspect of the Divestiture Business;

Provided, however:

1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and

2. With respect to any Governmental Authorization that is not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the Divestiture Assets under Respondents' Governmental Authorization pending the Acquirer's receipt of its own Governmental Authorization, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorization.

E. Respondents shall assist each potential Acquirer to conduct a due diligence investigation of the Divestiture Business and Divestiture Assets, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the Divestiture Business, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order;

Provided, however, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transitional Assistance

IT IS FURTHER ORDERED that:

A. Until Respondents have transferred all Business Information included in the Divestiture Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.

B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) assist the Acquirer in operating the Divestiture Business in a manner that is equivalent in all material respects to the manner in which it was operated prior to the Acquisition.

C. Respondents shall provide Transitional Assistance:

1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);

2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and

3. For a time period sufficient to meet the requirements of this Section IV, which shall be, at the option of the Acquirer, for up to 180 days after the applicable Divestiture Date;

   Provided, however, that within 15 days after a request by the Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance for up to an additional 90 days.

D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.

E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents breach of the Divestiture Agreement.

V. Employees

IT IS FURTHER ORDERED that:

A. Until 6 months after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Divestiture Assets to evaluate independently and offer employment to any Divestiture Business Employee.

B. Respondents shall:

1. No later than 10 days after a request from the Acquirer, provide a list of all Divestiture Business Employees and provide Employee Information for each;

2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Divestiture Business Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Divestiture Business Employees;

3. Remove any impediments within the control of Respondents that may deter Divestiture Business Employees from accepting employment with the Acquirer, including, but not limited to, removal of any noncompete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a Divestiture Business Employee who receives an offer of employment from the Acquirer;

   Provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Divestiture Business Employees with compensation and benefits through the Divestiture Date, including regularly scheduled raises and bonuses and the vesting of benefits;

5. Provide reasonable financial incentives for Divestiture Business Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Divestiture Business Employees by the Acquirer; and

6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Divestiture Business Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Divestiture Business Employee by the Acquirer.

C. Respondents shall not, for a period of 6 months following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by the Acquirer

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

1. Hire any such Person whose employment has been terminated by the Acquirer;

2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or

3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.

D. Respondents shall not enforce any noncompete or non-solicit provision or agreement against any individual who seeks or obtains a position with the Divestiture Business.

VI. Asset Maintenance

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

A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business and related Divestiture Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).

B. Not sell, transfer, encumber, or otherwise impair the Divestiture Business and related Divestiture Assets (other than in the manner prescribed in this Order and the Order to Maintain Assets) or take any action that lessens their full economic viability, marketability, or competitiveness;

C. Not terminate the operations of the Divestiture Business and related Divestiture Assets, and shall conduct or cause to be conducted the operations of the Divestiture Business and related Divestiture Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Divestiture Business and related Divestiture Assets; and

D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Divestiture Business and related Divestiture Assets.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to

facilitate the Acquirer's acquisition of the Divestiture Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

VII. Confidentiality

IT IS FURTHER ORDERED that:

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

1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or a Divestiture Agreement; or

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting, or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Assets or Divestiture Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.

B. If Respondents disclose or use any Confidential Information in a manner permitted by Paragraph VII.A of this Order, Respondents shall only use or disclose the Confidential Information (1) to the extent required, (2) to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A, and (3) after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Section VII and take necessary actions to ensure that their employees and other Persons receiving Confidential Information comply with the terms of this Section VII, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

A. The Commission appoints Larry Helm to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in this Order.

B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:

1. Shall be subject to the approval of the Commission;

2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII or Section VII of the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and

3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with this Order.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in this Order;

2. Act in consultation with the Commission or its staff;

3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;

4. Serve without bond or other security;

5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;

7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;

8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and

9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II and IV of this Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under this Order, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information, and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;

2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to this Order;

3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under this Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;

4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to this Order; and

5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with this Order.

F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of this Order. The Commission shall select the substitute Monitor, subject to the consent of the Respondents. Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;

2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and

3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B; or (b) receives Commission approval.

G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee,

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

D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section IX, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;

2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

   Provided, however, the Commission may extend the divestiture period only 2 times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section IX in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is

submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer that receives the prior approval of the Commission as required by this Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

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

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

F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section IX.

H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Approval

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

A. Any ownership, leasehold, stock, share capital, equity, or other interest in any Relevant Area Producer that has produced or sold, on average over the six months prior to the acquisition, more than 2,000 barrels per day of waxy crude in the Relevant Area; or

B. Any ownership or leasehold interest in lands located in the Relevant Area (including through swap or trade transaction) where the transaction (or sum of transactions with the same counterparty during any 180-day period, inclusive of transactions involving that counterparty's parents, subsidiaries, partnerships, joint ventures or affiliates) results in an increase (or net increase, in the case of an acreage swap) in Respondent's land interests in the Relevant Area of more than 1,280 acres.

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

XI. Prior Approval for Acquirer

IT IS FURTHER ORDERED that:

A. For a period of 3 years after the Divestiture Date, Crescent or any other Acquirer shall not sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the Divestiture Assets divested pursuant to Section II to any Person; and

B. For a period of 7 years after the term of Paragraph XI.A ends, Crescent or any other Acquirer shall not sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the assets divested pursuant to Section II to any Relevant Area Producer;

Provided, however, Crescent is not required to obtain prior approval of the Commission under this Paragraph XI for a change of control, merger, reorganization, or sale of all or substantially all of its business.

XII. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondent EnCap shall:

1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and

2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

B. Respondents shall file verified written reports ("Compliance Reports") in accordance with the following:

1. Respondent EnCap shall file interim Compliance Reports 30 days after this Order is issued and every 30 days thereafter until Respondents have fully complied with the provisions of Sections II and IV of this Order;

2. Respondent EnCap and Respondent XCL shall each file annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and

3. Respondents shall file additional Compliance Reports as the Commission or its staff may request.

4. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have

complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order.

5. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.

C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondents

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

A. The proposed dissolution of EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, or XCL Resources Holdings, LLC;

B. The proposed acquisition, merger, or consolidation of EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, or XCL Resources Holdings, LLC; or

C. Any other changes in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of this Order.

XIV. Access

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

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to ensure the Acquirer can operate the Divestiture Business in a manner equivalent in all material respects to the manner in which Respondent EP Energy operated the Divestiture Business prior to the Acquisition.

XVI. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED:

Nonpublic Appendix A

Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference

Appendix B

Excluded Assets

- Cash and cash equivalents as identified in the Divestiture Agreement.
- Deposit, demand, savings, passbook, security or similar accounts with any bank or financial institution as identified in the Divestiture Agreement.
- Bonds, letters of credit, guarantees, indemnity agreements and other sureties relating to retained entities as identified in the Divestiture Agreement.
- Indebtedness of retained entities as identified in the Divestiture Agreement.
- All hedges not included for purchase by the Acquirer.
- Except as provided in the Divestiture Agreement, all trade credits, accounts, receivables and other proceeds, income, or revenues attributable to the Divestiture Assets with respect to any period of time prior to the Divestiture Agreement Effective Date.
- Filed and pending claims against insurers under contracts or policies held by EP, to the extent pending on or prior to the Effective Date and set forth in the Divestiture Agreement.
- Minute books and organizational documents and financial and business records relating to the retained businesses.
- Sponsorship of and all rights arising under or with respect to any benefit plan or any other benefit or compensation plan, program, agreement, policy, contract or arrangement of seller.
- Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings).
- Enterprise software that Respondents also use to manage and account for businesses other than the Divestiture Business.
- Corporate headquarters of Respondents.