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December 2, 2015

Legend

X =

Y =

State =

Dear \_\_\_\_\_ :

This responds to your letter dated August 12, 2014, and subsequent correspondence, submitted on behalf of X, requesting a ruling under section 7704(d)(1)(E) of the Internal Revenue Code (Code).

**FACTS**

According to the information submitted, X is a limited partnership organized under the laws of State. Y is a publicly traded corporation formed in State. Y is an independent oil and gas company engaged in the acquisition, exploration and development of natural gas and oil products. Through direct and indirect subsidiaries, Y conducts midstream activities including the construction and operation of freshwater distribution pipeline systems, saltwater disposal systems, gas gathering and processing facilities, and oil gathering facilities. Y also conducts pressure pumping services. Y formed X to own, operate, and separately finance some or all of its midstream activities. As part of an initial public offering (IPO) of X, Y intends to contribute assets related to its midstream

activities to X. After completion of the IPO, X will be a publicly traded partnership within the meaning of § 7704(b).

X, directly or through subsidiaries, will provide fluid delivery, handling, treatment, processing, recycling and disposal services to oil and gas producers. X will also provide freshwater distribution to exploration and production operators through pipelines between freshwater delivery points and oil and gas producing wells and future drill sites. Pipelines may also deliver water into storage ponds operated by X. Personnel of X will work closely with the operator's production and planning teams and will conduct detailed hydraulic analysis before designing, creating, and installing pipelines that can meet the flow rates demanded by specific groups of oil and gas wells. After the system is operational, X personnel will optimize, monitor, and maintain the system in order to ensure that water is delivered to the desired location at required flow rates.

X, utilizing its personnel or by hiring independent contractors, will also transport, store, process, treat, and dispose of waste fluids associated with the exploration and production of oil and gas. X will install, maintain, and operate pipelines to transport produced water and flowback to salt water disposal wells (SWDs) owned and operated by X. Where pipelines are not available, waste fluids will be picked up by tank trucks and transported to a SWD for processing and disposal.

Recycling facilities would be connected to X's produced water pipelines. Treated water would be re-delivered to well sites via (i) recycling the treated water into X's freshwater distribution systems, (ii) separate pipelines, or (iii) trucking water to the site.

X, directly or through subsidiaries, will also provide pressure pumping services to oil and gas producers. Pressure pumping services include the activity of conducting the completion of the well and pumping water, sand, and chemicals down the well with sufficient pressure to fracture the underlying rock formation to release the crude oil and natural gas. In conjunction with pressure pumping services, X personnel will provide production support services including working with vendors to procure, store, and deliver proppants and chemicals that are injected into wells. At each site, an inventory control assistant will provide 24/7 support to the fracturing crew including (i) recording the quantity of products used, (ii) monitoring the type and amount of chemicals used downhole, (iii) ensuring a steady supply of chemicals, and (iv) consulting with the well-site supervisor regarding the chemical supply and effectiveness.

On occasion, X may provide production support services for wells at which a third party is providing the pressure pumping services. In such a case, X will provide produced water disposal services for the well in question, including the filtering of flowback and produced water to eliminate the chemicals supplied as part of the production support services.

X and Y make the following representations:

1. The services to be provided by X will require substantial assets and equipment that are dedicated exclusively to use in the exploration and production of oil and gas.
2. The services to be provided by X will require personnel with specialized knowledge, training, and experience.
3. The production of oil and gas using the hydraulic fracturing process would not be commercially viable without fluid handling services.
4. For each well that X provides freshwater sourcing and distribution as a qualifying activity, X will also provide produced water transportation and recycling or disposal activities.
5. For each well that X provides production support services where a third party is providing pressure pumping services, X will also provide produced water transportation and recycling or disposal activities.

### **LAW & ANALYSIS**

Section 7704(a) provides that, except as provided in section 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term “publicly traded partnership” means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that section 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of section 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of section 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(d)(1)(E) provides that the term “qualifying income” includes income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber).

### **CONCLUSION**

Based solely on the facts submitted and the representations made, we conclude that gross income derived by X from freshwater sourcing and distribution services; produced water transportation, recycling, and disposal services; marketing of skim oil and other recoverable minerals other than to end users at the retail level; pressure pumping services; and production support services as described herein will constitute qualifying income for purposes of section 7704(d)(1)(E). This ruling is not applicable to any income derived by X from the delivery of water or other injectants, including recycled produced water, to affiliates or third parties where X does not also collect and clean, recycle, or otherwise dispose of the resulting produced water after use.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of X under § 708(b)(1)(B), the resulting partnership may continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(E). Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Laura C. Fields*

Laura C. Fields  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
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