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 CLARENCE J. BENNETT

16 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

17
 18 LINNCO, LLC and LINN ENERGY, LLC,
 Delaware corporations,
 19 Plaintiffs,
 20 v.
 CLARENCE J. BENNETT, an individual,
 21 Defendant.
 22 CLARENCE J. BENNETT, an individual,
 23 Counter-Claimant,
 24 vs.
 LINNCO, LLC, a Delaware corporation;
 25 LINN ENERGY, LLC, a Delaware
 corporation, and BERRY PETROLEUM
 26 COMPANY, a Delaware limited liability
 company,
 27 Counter-Defendants.
 28

Case No. 1:14-CV-01881-KJM-EPG

**STIPULATED PROTECTIVE
 ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3 below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Local Rule 141 sets forth the procedures that must be
12 followed when a party seeks permission from the Court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored, or maintained) or tangible things that qualify for protection under Federal
18 Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel
20 (as well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that
22 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other
25 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
26 or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
2 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or
3 as a consultant in this action.

4 2.7 In-House Counsel: attorneys who are employees of a party to this action. In-
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other
7 legal entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
9 action but are retained to represent or advise a party to this action and have appeared in this
10 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
11 that party.

12 2.10 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.12 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL.”

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 3. SCOPE

25 The protections conferred by this Order cover not only Protected Material (as defined
26 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
27 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Order do not cover the following information: (a)
2 any information that is in the public domain at the time of disclosure to a Receiving Party or
3 becomes part of the public domain after its disclosure to a Receiving Party as a result of
4 publication not involving a violation of this Order, including becoming part of the public record
5 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
6 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
7 the information lawfully and under no obligation of confidentiality to the Designating Party.
8 Any use of Protected Material at trial shall be governed by a separate agreement or order.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed by
11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court
12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
15 action, including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
19 or Non-Party that designates information or items for protection under this Order must take
20 reasonable care to limit any such designation to specific material that qualifies under the
21 appropriate standards. The Designating Party must designate for protection only those parts of
22 material, documents, items, or oral or written communications that qualify – so that other
23 portions of the material, documents, items, or communications for which protection is not
24 warranted are not swept unjustifiably within the ambit of this Order.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
26 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
27 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
28 so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
4 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
5 a portion or portions of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins).

8 A Party or Non-Party that makes original documents or materials available for
9 inspection need not designate them for protection until after the inspecting Party has indicated
10 which material it would like copied and produced. During the inspection and before the
11 designation, all of the material made available for inspection shall be deemed
12 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
13 and produced, the Producing Party must determine which documents, or portions thereof,
14 qualify for protection under this Order. Then, before producing the specified documents, the
15 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected
16 Material. If only a portion or portions of the material on a page qualifies for protection, the
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
18 markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before or within 14 days of the close of the deposition,
21 hearing, or other proceeding, all protected testimony.

22 (c) for information produced in some form other than documentary and for any other
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the
24 container or containers in which the information or item is stored the legend
25 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
26 the Producing Party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the material is
3 treated in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process by providing written notice of each designation it is challenging and describing the basis
13 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
14 notice must recite that the challenge to confidentiality is being made in accordance with this
15 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
16 good faith and must begin the process by conferring directly. In conferring, the Challenging
17 Party must explain the basis for its belief that the confidentiality designation was not proper and
18 must give the Designating Party an opportunity to review the designated material, to reconsider
19 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
20 designation. A Challenging Party may proceed to the next stage of the challenge process only if
21 it has engaged in this meet and confer process first or establishes that the Designating Party is
22 unwilling to participate in the meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
24 intervention, the Challenging Party may file and serve a motion challenging confidentiality.
25 Such motion shall be heard by the Magistrate Judge assigned to the case. Each such motion
26 must be accompanied by a competent declaration affirming that the movant has complied with
27 the meet and confer requirements imposed in the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Until the Court rules on a challenge, all parties shall continue to afford the material in
3 question the level of protection to which it is entitled under the Producing Party's designation.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
6 or produced by another Party or by a Non-Party in connection with this case only for
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
8 disclosed only to the categories of persons and under the conditions described in this Order.
9 When the litigation has been terminated, a Receiving Party must comply with the provisions of
10 section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and
12 in a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
17 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
18 information for this litigation;

19 (b) the officers, directors, and employees (including In-House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation;

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
26 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
28 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit

1 A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
2 Material must be separately bound by the court reporter and may not be disclosed to anyone
3 except as permitted under this Order.

4 (g) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
7 LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that
9 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”
10 that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall include a
12 copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
14 other litigation that some or all of the material covered by the subpoena or order is subject to
15 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
16 and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
18 Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the
20 subpoena or court order shall not produce any information designated in this action as
21 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
22 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
23 shall bear the burden and expense of seeking protection in that court of its confidential material
24 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
25 Party in this action to disobey a lawful directive from another court.

26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
27 THIS LITIGATION

1 (a) The terms of this Order are applicable to information produced by a Non-Party in
2 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
3 connection with this litigation is protected by the remedies and relief provided by this Order.
4 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
5 additional protections.

6 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
7 Party’s confidential information in its possession, and the Party is subject to an agreement with
8 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- 9 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
10 all of the information requested is subject to a confidentiality agreement with a
11 Non-Party;
- 12 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
13 in this litigation, the relevant discovery request(s), and a reasonably specific
14 description of the information requested; and
- 15 (3) make the information requested available for inspection by the Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this Court within 14
17 days of receiving the notice and accompanying information, the Receiving Party may produce
18 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party
19 timely seeks a protective order, the Receiving Party shall not produce any information in its
20 possession or control that is subject to the confidentiality agreement with the Non-Party before a
21 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the
22 burden and expense of seeking protection in this court of its Protected Material.

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
24 Material to any person or in any circumstance not authorized under this Stipulated Protective
25 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
26 unauthorized disclosures, (b) use its best reasonable efforts to retrieve all unauthorized copies of
27 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
28

1 made of all the terms of this Order, and (d) request such person or persons to execute the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an e-discovery
9 order that provides for production without prior privilege review. Pursuant to Federal Rule of
10 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
11 a communication or information covered by the attorney-client privilege or work product
12 protection, the parties may incorporate their agreement in the stipulated protective order
13 submitted to the Court.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
16 seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
18 Order no Party waives any right it otherwise would have to object to disclosing or producing
19 any information or item on any ground not addressed in this Stipulated Protective Order.
20 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
21 material covered by this Protective Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party
23 or a Court order secured after appropriate notice to all interested persons, a Party may not file in
24 the public record in this action any Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Local Rule 141.

26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
28 Receiving Party must return all Protected Material to the Producing Party or destroy such

1 material and represent in writing to the Producing Party that such destruction has taken place.
2 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected Material.
4 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
5 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
6 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such archival copies that
8 contain or constitute Protected Material remain subject to this Protective Order as set forth in
9 Section 4 (DURATION).

10
11
12 DATED: October 27, 2015

BAKER BOTTS L.L.P.

13
14 By: /s/ Kevin M. Sadler

Kevin M. Sadler
Attorneys for Plaintiffs / Counter-Defendants
LINNCO, LLC, LINN ENERGY, LLC, and
BERRY PETROLEUM COMPANY, LLC

15
16
17 DATED: October 27, 2015

WANGER JONES HELSLEY PC

18
19 By: /s/ Kurt F. Vote

Kurt F. Vote
Attorneys for Defendant / Counter-Claimant
CLARENCE J. BENNETT

20
21
22
23 **ORDER**

24 The Court has reviewed the stipulation outlined above and adopts the stipulation *except*
25 that the terms related to judicial intervention outlined in paragraph 6.3 will not be automatic,
26 rather, the Court will determine on a case-by-case basis whether judicial intervention is
27 warranted. In order to file a motion under this paragraph, counsel must receive permission from
28 the Court following an informal telephone conference. A party wishing to schedule such a

1 conference should contact chambers at (559) 499-5962 to receive available dates. The Court
2 will schedule the conference as soon as possible, taking into consideration the urgency of the
3 issue. Before contacting the Court, the parties must meet and confer by speaking with each
4 other in person, over the telephone, or via video in an attempt to resolve the dispute
5 independently without Court involvement.

6 Prior to the conference, the Court will require the parties to submit a short letter no more
7 than 3 pages in length to chambers for review. Telephonic conferences will not be on the record
8 and the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to
9 provide guidance to the parties to narrow or dispose of the dispute. If no resolution is reached,
10 the Court will consider whether the filing of a formal motion is appropriate.

11
12 Dated : October 27, 2015

/s/ Erica P. Grosjean
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court
6 for the Eastern District of California on _____ in Case No. 1:14-cv-01881-KJM-EPG,
7 *LinnCo, LLC & LINN Energy, LLC v. Clarence J. Bennett*. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
9 that failure to so comply could expose me to sanctions and punishment in the nature of
10 contempt. I solemnly promise that I will not disclose in any manner any information or item that
11 is subject to this Stipulated Protective Order to any person or entity except in strict compliance
12 with the provisions of this Order.
13

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.
17

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.
22

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____
27
28