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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MANITOK ENERGY INC.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
RAIMOUNT ENERGY CORP.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CORINTHIAN OIL CORP.

**BENCH BRIEF OF THE RECEIVER/TRUSTEE | SALE APPROVAL AND VESTING
ORDERS (TANTALUS ENERGY CORPORATION)**

A. Introduction

1. This Bench Brief is submitted by Alvarez & Marsal Canada Inc. in its capacities as the Court-appointed Receiver and Manager of Manitok Energy Inc. and Raimount Energy Corp. (**Receiver, Manitok and Raimount, respectively**) and the Trustee in Bankruptcy of Corinthian Oil Corp. (**Trustee and Corinthian, respectively**).

B. Sale Process

2. The Receiver marketed and is now selling certain assets of Manitok and Raimount in accordance with a Court-approved sale process (**Sale Process**).¹
3. Ninety prospective purchasers signed Confidentiality Agreements and forty-one non-binding offers were received on various packages of assets from thirty different bidders.
4. Four Sale Approval and Vesting Orders (**SAVOs**) were granted by the Court previously in relation to the sales of Manitok assets. The proposed sales to Tantalus Energy Corporation (**Tantalus**), if approved, will result in the acquisition by Tantalus of substantially all of Manitok's remaining marketable assets.
5. The Receiver understands that Tantalus intends to file affidavit evidence setting out the relationship between former Manitok management and a secured lender to Tantalus for the Court's information.
6. Most of the remaining properties of Manitok and Raimount have no value or negative value, and such properties are likely to be disclaimed by the Receiver.

¹ Sale Process Order at Appendix A of the Receiver's Fourth Report.

7. Corinthian is not in receivership and its assets are not expressly subject to the Sale Process. Its assets were marketed (and are now being sold) by the Trustee.

C. Approval of the ManitoK-Tantalus PSA

8. Through the Sale Process, the Receiver negotiated a sale of certain of ManitoK's core and non-core properties to Tantalus pursuant to a purchase and sale agreement (**ManitoK-Tantalus PSA**).

AER License Transfers

9. The Receiver was unwilling to accept the approval of licence transfers by the Alberta Energy Regulator (**AER**) as a condition precedent to closing and Tantalus was interested in obtaining control of the purchased assets at the earliest reasonable opportunity. Section 8.6 of the ManitoK-Tantalus PSA was therefore drafted to contemplate a post-closing trust whereby ManitoK would hold the licences as bare trustee for Tantalus for 150 days, during which time the Receiver may bring an application to compel the licence transfers. If the licenses are not transferred within 150 days, the Receiver may require Tantalus to apply to replace the Receiver as receiver over any licenses not transferred.
10. The SAVO for the ManitoK-Tantalus PSA that was circulated initially included a licence transfer process to ensure that "Debtor Characteristics" (as defined in the SAVO) would not be used by the AER to unjustifiably interfere with the licence transfers. That licence transfer process was modelled on the Court-approved licence transfer process from *Sydco*.²
11. Counsel for the AER sent a letter on January 11, 2019 wherein it objected to the initially-proposed licence transfer process. Counsel for the Receiver shared the letter with counsel for Tantalus, who agreed to work with the AER to formulate alternative language. Counsel for Tantalus has since advised that Tantalus and the AER were prepared to agree to the removal of the license transfer process from the SAVO so long as the "come back" provision was revised to more clearly authorize any party to return to the Court if issues arise with respect to "implementing" the ManitoK-Tantalus PSA (including issues relating to AER license transfers). Although the Receiver believes the previously-proposed license transfer process was appropriate, it is content to proceed as proposed by Tantalus and the AER – and the Receiver has revised the proposed form of SAVO accordingly.

Stream Asset Financial ManitoK LP

² *Sydco Energy Inc (Re)*, 2018 ABQB 75 at App. A.

12. Certain National Bank of Canada (**NBC**)-secured oil and gas interests within some of ManitoK's core areas are reliant on processing facilities that are either secured in favour of Stream Asset Financial ManitoK LP (**Stream**) or are beneficially owned by Stream. Those processing facilities (**Stream Facilities**) were marketed by the Receiver as part of the Sale Process with Stream's consent.
13. Stream has now (or will by closing have) assigned its interest in the Stream Facilities to Tantalus, and Tantalus will acquire ManitoK's interest in the Stream Facilities pursuant to the ManitoK-Tantalus PSA. As part of the transaction, Stream acknowledges that, upon payment of \$500,000 by the Receiver to Stream at closing, all obligations owing by ManitoK to Stream will be satisfied.

Freehold Royalties Partnership

14. Certain properties in three of ManitoK's core areas are subject to a production volume royalty (**PVR**) in favour of Freehold Royalties Partnership (**Freehold**). The PVR was earlier held to constitute an interest in land.³
15. The PVR is paid first from Stolberg properties, and then once depleted, from Carseland and Wayne properties. This "waterfall" effect limited interest among bidders, particularly in the Carseland and Wayne properties.
16. The Receiver, Tantalus and Freehold embarked on negotiations to restructure the PVR. An agreement was reached on confidential terms. The agreements with Freehold in this regard are attached as Confidential Appendices 2 and 3 to the Receiver's Sixth Report.

PrairieSky Royalty Ltd.

17. PrairieSky Royalty Ltd. (**PSK**) claims that ManitoK has no interest in ten PSK-issued mineral leases in the Carseland area (**Disputed PSK Assets**). More particularly, PSK claims that such leases expired on April 30, 2018 pursuant to their terms, and that PSK had no obligation to grant lease continuation applications from the Receiver.
18. Section 2.15 of the ManitoK-Tantalus PSA provides that the Receiver is only selling, and Tantalus is only purchasing, ManitoK's interest in the Disputed PSK Assets. Tantalus is therefore effectively purchasing the dispute with PSK regarding the Disputed PSK Assets.
19. After the initially-proposed form of SAVO was circulated by the Receiver, the Receiver was contacted by PSK about revising the language to clarify, to PSK's satisfaction, that the Receiver was not selling more than ManitoK's interest in the Disputed PSK Assets and was not otherwise prejudicing PSK's

³ *ManitoK Energy Inc. (Re)*, 2018 ABQB 488.

right to have the issue determined by the Court. The Receiver has proposed language to PSK that it believes should address any concerns over the Disputed PSK Assets; PSK has advised the Receiver that it does not agree with the Receiver's proposed language, because it is of the view that Manitoak's interest in the Disputed PSK Assets should not vest until the issue with respect to the Disputed PSK Assets is finally determined.

20. PSK filed and served an Affidavit regarding the Disputed PSK Assets on January 15, 2019. The Receiver understands that PSK did so to provide further information to the Court. The Receiver also understands that PSK does not oppose the Receiver's Application, nor the granting of the revised SAVO, other than with respect to Manitoak's interest in the Disputed PSK Assets.
21. PSK has advised the Receiver that it no longer intends to pursue a different issue relating to pre-receivership breaches of a contractual obligation to provide reimbursement for freehold mineral taxes.

Ember Resources Inc.

22. Norton Rose Fulbright Canada LLP is conflicted with respect to disputes between the Receiver and Ember Resources Inc. (**Ember**). The Receiver therefore retained McCarthy Tetrault LLP as conflict counsel.
23. Ember maintains that it acquired certain pipeline segments from Encana Corporation (**Disputed Ember Assets** and **Encana**). The Receiver maintains that Manitoak acquired those same pipeline segments from Encana in a different transaction.
24. Ember filed an Application on September 11, 2018 to have the ownership of the Disputed Ember Assets determined. That Application was subsequently adjourned.
25. Section 2.15 of the Manitoak-Tantalus PSA provides that the Receiver is only selling, and Tantalus is only purchasing, Manitoak's interest in the Disputed Ember Assets. Tantalus is therefore effectively purchasing the dispute with Ember regarding the Disputed Ember Assets.
26. The initially-circulated form of SAVO included language to clarify that the Receiver was selling no more than Manitoak's interest in the Disputed Ember Assets. It also included language that would prohibit Tantalus, post-closing, from making various operational decisions in relation to the Disputed Ember Assets that might prejudice Ember's operations.
27. There is also a dispute regarding amounts that Ember claims are owing to it in respect of unpaid gas processing and related charges, and amounts that the Receiver claims are owing by Ember to

Manitok in respect of unpaid gas transportation and related charges. Each side disputes the other's claim.

28. On January 9, 2018, Ember applied on short notice to adjourn this SAVO Application pending the determination of who owns the Disputed Ember Assets. On the following day, Jones J declined the adjournment but granted leave to Ember to request an adjournment from the presiding Justice at the hearing of this Application on January 18, 2019.
29. Ember then filed an Application on January 14, 2019, in part, seeking payment of the total amount claimed by Ember (without taking the Receiver's cross-claim into account), or alternatively the establishment of a holdback. As these are post-filing costs of the receivership, the Receiver does not view the establishment of a holdback as necessary.
30. The most recently circulated version of the SAVO continues to provide that the Receiver is selling no more than Manitok's interest in the Disputed Ember Assets, and it continues to prohibit Tantalus, post-closing, from making various operational decisions in relation to the Disputed Ember Assets that might prejudice Ember's operations. To address all parties' concerns about having this dispute determined expeditiously, the proposed SAVO now includes a litigation schedule.

Builders' Liens

31. There are two builders' liens registered against the assets of Manitok, by Riverside Fuels Ltd. (**Riverside**) and Prentice Creek Contracting Ltd. (**Prentice**). The Riverside and Prentice liens are filed against properties included in the SAVO.
32. Riverside registered a builders' lien against five Petroleum and Natural Gas Leases/Licenses.
33. Riverside filed a Statement of Claim in which it claims to be owed \$105,636.66 plus interest under the *Judgment Interest Act* in respect of amounts owing for fuels and lubricants that were used and furnished preparatory to, and in connection with, the recovery of minerals from the liened interests.
34. Riverside did not allocate the total amount owing among the five liened Petroleum and Natural Gas Leases/Licenses. It instead registered in the amount of \$108,266.43 against each, resulting in duplication.
35. Receiver's counsel advised Riverside's counsel on December 18, 2018, in part, about concerns regarding the lien's validity and also the duplication. The letter from Receiver's counsel also indicated that the Receiver intended to establish a holdback in relation to Riverside's lien in the amount of \$108,266.43 – however, the form of SAVO has now been revised by the Receiver to establish a

holdback in the greater amount of \$119,093.08 (\$108,266.43 plus 10%) pending a determination, either by agreement or court order, of the validity, priority and quantum of Riverside's lien.

36. Prentice filed three builders' liens against a total of five Petroleum and Natural Gas Licenses/Leases.
37. Prentice filed an Amended Statement of Claim in which it claims to be owed \$392,106.27 plus interest at a rate of 2% per month, or alternatively under the *Judgment Interest Act*, in respect of work, equipment, labour and materials. The Receiver understands from the Statements of Lien that such work, equipment, labour and materials relate to the clean-up of well sites.
38. Two of Prentice's three liens were each registered against two separate Petroleum and Natural Gas Leases/Licenses, resulting in duplication.
39. Receiver's counsel advised Prentice's counsel on December 18, 2018 about concerns relating to Prentice's interest claim, including the duplication of Prentice's lien registrations. The letter from Receiver's counsel also indicated that the Receiver intended to establish a holdback in relation to Prentice's lien in the amount of \$392,106.27 – however, the form of SAVO has now been revised by the Receiver to establish a holdback in the greater amount of \$462,685.40 (\$392,106.27 plus 10% plus interest at 2% for four months, representing the time between the completion of work and the receivership date) pending a determination, either by agreement or court order, of the validity, priority and quantum of Prentice's liens.

Municipal Taxes

40. A SAVO was granted during Manitoak's Notice of Intention proceedings, on February 14, 2018 (**Ferrier SAVO**). At the request of eleven municipalities, the Ferrier SAVO established a holdback in the amount of \$1,625,553.51 (**Ferrier Holdback**) pending agreement or further order of the Court as to the distribution of those funds.
41. The Ferrier Holdback was transferred to the Trustee and Receiver in accordance with an order granted on June 22, 2018.
42. The municipalities' position is that unpaid municipal taxes give rise to a special lien under s. 348 of the *Municipal Government Act* that attaches to all of the taxpayer's properties in Alberta.
43. Yamauchi J determined in *Virginia Hills* (unreported) that linear tax arrears are unsecured claims, and the special lien only arises in relation to non-linear tax arrears. An appeal of Yamauchi J's decision was heard by the Court of Appeal – but a decision has not yet been issued.

44. The geographic bounds of the special lien were considered by Horner J in *Regent Resources Ltd. (Re)*.⁴ She determined that a special lien relating to unpaid municipal taxes in a given municipality did not attach to the taxpayer's properties in other municipalities, without deciding whether the special lien only attaches to individual properties, or alternatively whether it attaches to all of the taxpayer's properties within that municipality. *Regent* was not appealed; however, the Receiver understands that *Regent* is being challenged by various municipalities in a forthcoming application to be heard in the COGI receivership.
45. The Receiver will maintain the Ferrier Holdback and will supplement it from the net sale proceeds of the sales to Tantalus, such that it will hold sufficient funds to satisfy all unpaid pre-receivership and post-receivership (up to December 31, 2018) municipal taxes in Alberta with respect to the assets of Manitok, Raimount and Corinthian. All or some portion of the Ferrier Holdback will be released to municipalities after an agreement is reached or a determination is made by the Court as to what unpaid municipal taxes give rise to a special lien, the relative priorities of any special liens as against other security interests, and whether special liens attach to all of the taxpayer's properties in Alberta, all of the taxpayer's properties in that municipality, or only to individual properties.

Discharge of Registrations

46. The SAVO contains provisions to deal with encumbrances that are registered both against the assets being purchased by Tantalus, and against other assets of Manitok not being purchased by Tantalus, but in a way that could affect the ability of Tantalus to obtain title to the Purchased Assets free and clear of encumbrances other than Permitted Encumbrances (as defined in the Manitok-Tantalus PSA).
47. In that regard, paragraphs 13-15 of the SAVO provide for the discharge of registrations against the assets being sold to Tantalus on the entry of the Receiver's certificate, notwithstanding the appeal periods provided for by the *Land Titles Act*, except for
- a. Permitted encumbrances (listed at Schedule "C" to the SAVO);
 - b. Encumbrances registered with PPR against both assets of Manitok and assets purchased by Tantalus (listed at Part 4 of Schedule "D" to the SAVO); and
 - c. The Encumbrances listed at Part 5 of Schedule "D" to the SAVO, in respect of which any party may return to Court to apply for an order requiring the holder of such an encumbrance to show cause why it should not be discharged.

⁴ *Regent Resources Ltd. (Re)*, 2018 ABQB 669.

48. With the exception of Parts 4 and 5 of Schedule “D” to the SAVO, the encumbrances listed on Schedule “D” are to be discharged by the relevant governmental authority, and notice of this application has been given to the holders thereof.
49. The encumbrances listed at Part 4 of Schedule “D” to the SAVO are in large part registrations at the PPR against Manitok, and thus affect both assets being conveyed by Manitok and also assets that are not part of the sale to Tantalus. These registrations include registrations in favour of NBC, Stream, and PrairieSky; given the resolution of the issues with Stream described above, the NBC registrations represent prior perfected security interests in the assets of Manitok and rank in priority to the other registrations set out in that schedule. These encumbrances will not be discharged, but in accordance with paragraph 18 of the SAVO they are deemed not to affect or attach to the Purchased Assets.
50. The encumbrances listed at Part 5 of Schedule “D” to the SAVO do not need to be discharged in order to convey clear title to the Purchased Assets to Tantalus. In some cases, these are encumbrances registered against assets that are not owned by Manitok but by a lessor who holds underlying freehold rights, and has granted a lease to Manitok, which is part of the sale to Tantalus. In other cases, the Receiver has been advised by the registered title holder that the encumbrances are no longer current or valid, and should be discharged. These encumbrances will not be discharged, but in accordance with paragraph 14 of the SAVO are deemed (for the purpose of clarity) not to affect the Purchased Assets. In the event that a party wishes to bring an application later to discharge these encumbrances, paragraph 15 of the SAVO permits any party to do so on notice to the holder thereof. Holders of these encumbrances were served with notice of this application.

D. Raimount-Tantalus PSA

51. The assets of Raimount were marketed together with the Manitok assets in the Sale Process, however, Manitok and Raimount are separate sellers. Certain Raimount assets are therefore to be sold to Tantalus under a separate purchase and sale agreement (**Raimount-Tantalus PSA**).
52. The Raimount-Tantalus PSA contemplates that the Receiver will apply to this Court for a SAVO with respect to the assets being sold by Raimount to Tantalus. As the Raimount assets do not have the same issues as the Manitok assets described above, the SAVO for the Raimount-Tantalus PSA largely follows the Alberta template, and provides that Tantalus will obtain title to the Raimount assets free and clear of encumbrances other than Permitted Encumbrances (as defined in the Raimount-Tantalus PSA), including by requiring that any such encumbrances affecting the Raimount assets (as applicable) be discharged on the filing of a Receiver’s certificate.

E. Corinthian-Tantalus PSA

53. The Corinthian assets are being sold by the Trustee, with the approval of the inspector of the Corinthian bankrupt estate. Accordingly, the sale of the Corinthian assets to Tantalus is authorized by s. 30(1) of the *Bankruptcy and Insolvency Act*.
54. The purchase and sale agreement between Corinthian and Tantalus (**Corinthian-Tantalus PSA**) contemplates that the Trustee will apply for a SAVO with respect to the assets being sold by Corinthian to Tantalus. The SAVO for the Corinthian-Tantalus PSA largely follows the Alberta template, with many of the same modifications that were made for the Raimount SAVO.
55. The Corinthian-Tantalus PSA consideration is modest, but it is related to the larger Manitok and Raimount transactions.

Conclusion

56. The Receiver respectfully requests the granting of the proposed forms of SAVO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JANUARY, 2019.

NORTON ROSE FULBRIGHT CANADA LLP



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