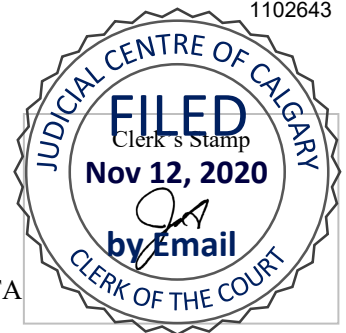


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JUDICIAL CENTRE

CALGARY

COM  
Nov. 17, 2020  
Justice D.B. NixonAND IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF GREENFIRE OIL AND GAS  
LTD.AND IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF GREENFIRE  
HANGINGSTONE OPERATING CORPORATION

DOCUMENT

**SECOND REPORT OF ALVAREZ & MARSAL  
CANADA INC.  
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER  
THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL****NOVEMBER 11, 2020**ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT**PROPOSAL TRUSTEE**  
ALVAREZ & MARSAL CANADA INC.  
Bow Valley Square IV  
Suite 1110, 250 – 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3H7  
Orest Konowalchuk/Duncan MacRae  
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[dmacrae@alvarezandmarsal.com](mailto:dmacrae@alvarezandmarsal.com)**COUNSEL TO PROPOSAL TRUSTEE**McMillan LLP  
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File 277019

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TRUSTEE**

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## INTRODUCTION

1. On October 8, 2020, Greenfire Oil and Gas Ltd. (“**HoldCo**”) and Greenfire Hangingstone Operating Corporation (“**OpCo**”), each filed Notices of Intention to Make a Proposal (“**NOI**” or the “**Filing**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”). Alvarez & Marsal Canada Inc. consented to act as Trustee under the Proposal (“**A&M**” or the “**Proposal Trustee**”). For purposes of this second report of the Proposal Trustee (the “**Second Report**” or “**this Report**”), HoldCo and OpCo are together referred to as the “**Company**” or “**Greenfire**”.
2. On October 16, 2020, this Honourable Court granted an order that the NOI proceedings for Greenfire (together, the “**NOI Proceedings**”) be administratively consolidated and continued under Estate No. 25-2679073 and that a charge be granted on the assets, property and undertaking of the Company not to exceed \$500,000 (the “**Administration Charge**”) as security for the fees and costs of the Proposal Trustee, its independent legal counsel and the legal counsel to the Company, such charge to be in priority to all other security interests, liens and other encumbrances.
3. Pursuant to section 50.4(8) of the BIA, the Company was required to file a proposal under the NOI proceedings by November 9, 2020, unless this Court granted an order extending the time to file a proposal. On November 6, 2020, on application by the Company, this Honourable Court granted an order extending that timeframe for the Company to file a proposal to its creditors until November 20, 2020.
4. On November 9, 2020, the Company served a notice of application (“**November 9<sup>th</sup> Motion Materials**”) to this Honourable Court, to seek among other things, an Order declaring that:
  - a) Greenfire validly terminated the April 15, 2019 Marketing Agreement (the “**Warner Marketing Agreement**”) between Greenfire and Warner Petroleum Corporation (“**Warner**”) pursuant to a notice of

termination sent by Greenfire’s counsel dated September 3, 2020 (the “**Termination Notice**”); or

b) in the alternative, declaring that:

- i. the disclaimer notice in respect of the Warner Marketing Agreement pursuant to section 65.11 of the BIA (the “**Warner Disclaimer**”) will be valid and effective 30 days from the date thereof; and
- ii. the Warner Marketing Agreement is not an “eligible financial contract” (“**EFC**”) within the meaning of the BIA; and

c) in either instance, an Order:

- i. abridging the time for service of the application and supporting materials;
- ii. declaring that the Marketing Agreement is an executory contract which does not grant Warner an interest in land; and
- iii. declaring that Warner’s claim(s) in the Greenfire NOI Proceedings, if any, is that of an unsecured creditor.

5. Further background regarding the Company and its operations is contained in the materials filed in support of the application for a stay extension, including the affidavits of Mr. Robert Logan. The November 9<sup>th</sup> Motion Materials, along with the first report filed by the Proposal Trustee and various other Court-filed documents and notices, together with other information regarding the NOI Proceedings, have been posted on the Proposal Trustee’s website at [www.alvarezandmarsal.com/greenfire](http://www.alvarezandmarsal.com/greenfire).

## **PURPOSE**

6. The purpose of this Second Report of the Proposal Trustee is to provide this Honourable Court and the Company's stakeholders with its reasons for approving the Warner Disclaimer pursuant to section 65.11 of the BIA.

## **TERMS OF REFERENCE**

7. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information and other information provided by the Company and other third-parties. The Proposal Trustee has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the *Chartered Professional Accountants of Canada Handbook* has not been performed.
8. Future oriented financial information relied upon in this Report is based on the Company's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.
9. All references to dollars are in Canadian currency unless otherwise noted.

## **LIMITATION IN SCOPE OF REVIEW**

10. The Report has been prepared by the Proposal Trustee pursuant to the rules and regulations set out in the BIA. The BIA provides that the Proposal Trustee shall incur no liability for any act or omission pursuant to its appointment or fulfillment of its duties, save and except for gross negligence or wilful misconduct on its part.
11. This Report is not and should not be construed or interpreted as an endorsement, comment or recommendation to any creditor, prospective investor, or any persons to advance credit and/or goods and services or to continue to provide credit and/or goods and services or to lend monies to the Company during these proceedings and/or at any other time.

12. The Proposal Trustee has not audited or reviewed the assets of the Company, and with respect to such assets, has relied to a significant degree upon information provided by the Company.
13. The Trustee is specifically not directed or empowered to take possession of the assets of the Company or to manage any of the business and affairs of the Company.

## **WARNER DISCLAIMER**

### **Background**

14. Prior to its financial difficulties, Greenfire was a party to the Warner Marketing Agreement, whereby Warner agreed to market and sell Greenfire's production. Warner would then apply certain deductions and remit the proceeds of sale in accordance with the agreed upon allocation. The Warner Marketing Agreement is attached as Exhibit "B" to the third affidavit of Robert Logan sworn on November 9, 2020 (the "**Third Logan Affidavit**").
15. The Proposal Trustee understands the Warner Marketing Agreement came into effect on or around April 15, 2019. Below is a brief summary of the main terms of the Warner Marketing Agreement:
  - a) the delivered price of the production, less certain deductions, would be allocated 75% to Greenfire and 25% to Warner, with Warner receiving a minimum \$3.10 USD/bbl and a maximum \$10.10 USD/bbl;
  - b) Greenfire and Warner would discuss logistics of Warner's selling process from time to time; and
  - c) Warner would enter into contracts with third-parties with a specified contracted price and Warner was to use reasonable commercial efforts to obtain competitive pricing for Greenfire's production and Greenfire acknowledged the volatility in commodity prices.

## **Pre-NOI Termination**

16. As described in the Third Logan Affidavit, Mr. Logan alleges that Warner failed to perform its duty to deliver product and failed to pay Greenfire any money for over 280,000 bbls of production. Based on the calculation of Greenfire, Warner is said to owe Greenfire an amount exceeding \$4 million USD (Greenfire's calculation is attached as Exhibit "J" to the Third Logan Affidavit). As a result, and among other reasons, Greenfire purported to terminate the Warner Marketing Agreement pursuant to the Termination Notice (attached as Exhibit "N" to the Third Logan Affidavit).
17. Warner's position is discussed in the first affidavit of Harry Warner sworn on November 4, 2020 (the "**First Warner Affidavit**"). The First Warner Affidavit indicates that Warner's counsel responded to the Termination Notice between September 30, 2020 and October 14, 2020 and took the position that Greenfire had not validly terminated the Warner Marketing Agreement and that Warner insisted on strict performance. Warner denies the allegations of non-payment and non-performance and instead insists that Greenfire owes Warner approximately \$2.2 million USD.
18. The First Warner Affidavit also indicates that Warner's counsel understands the Warner Marketing Agreement to be an EFC and an interest in land.

## **Warner Disclaimer**

19. Although Greenfire claims that it properly terminated the Warner Marketing Agreement prior to the commencement of the NOI Proceedings, Greenfire indicates that it decided, out of an abundance of caution, to issue a Notice by Debtor to Disclaim or Resiliate an Agreement pursuant to section 65.11 of the BIA in the NOI Proceedings. Greenfire has taken the position that the Warner Marketing Agreement is not an EFC and may be disclaimed. A copy of Form 44.1 was issued on November 6, 2020 and is attached hereto as Appendix "A" to this Report.

20. Pursuant to section 65.11(5) of the BIA, the Proposal Trustee reviewed the Warner Disclaimer and considered whether it:
- a) would enhance the prospects of a viable proposal being made in respect of Greenfire; and
  - b) would likely cause significant financial hardship to Warner.
21. In consideration of section 65.11(5)(b) of the BIA, the Proposal Trustee offers the following comments:
- a) the Warner Disclaimer should enhance the prospects of a viable proposal, as:
    - i. Greenfire has affirmed its ability to source third-party marketers at more favourable rates and terms; and
    - ii. the overhang of the Warner Marketing Agreement (and the business terms therein) could limit or significantly reduce the likelihood of closing potential interim financing and/or other strategic alternatives.
22. The Proposal Trustee requested an analysis from Greenfire to provide evidence as to the economic benefit to Greenfire should the Warner Marketing Agreement be disclaimed. Attached hereto as Appendix “B” to this Report, is an analysis provided by Greenfire respecting the anticipated monthly savings that could be realized from a disclaimer of the Warner Marketing Agreement, should Greenfire enter into and accept one of the two marketing fee proposals it had received from arm’s length third-party midstream and marketing providers.
23. The Company received proposals from two separate midstream and marketing providers that are referenced in the Third Logan Affidavit (par. 57 to 60). These confidential proposals, one received in July 2020 and the other in October 2020,



- outline the proposed quantity of Greenfire production accepted and sold and their proposed marketing fee structure.
24. When comparing the two marketing proposals to that of the Warner Marketing Agreement, the forecast average monthly savings (based on minimum fees) range from \$206,000 to \$896,000, under the Greenfire assumed daily production forecast range between 2,000 bbl/d and 7,500 bbl/d. While the proposals are draft in nature and may be subject to additional terms and/or fees during final negotiations, the minimum fee structure proposed (from two separate third-party marketers) appear to indicate that there may be more competitive rates and terms available on the open market.
  25. The Proposal Trustee reviewed Greenfire's analysis and assumptions in Appendix "B", alongside the proposals received by Greenfire and considered other factors that either a purchaser of Greenfire or potential interim lender may consider should the Warner Marketing Agreement remain in place going forward. Based on its review, the Proposal Trustee believes that disclaiming the Warner Marketing Agreement, pursuant to section 65.11(5)(b) of the BIA would enhance the prospects of Greenfire achieving a viable proposal to its creditors.
  26. With respect to whether the Warner Disclaimer would cause a significant hardship to Warner, the Proposal Trustee reviewed publicly available information respecting Warner's financial and operational capabilities. While the amount of publicly available information relating to Warner is limited, the Proposal Trustee reviewed information on Warner's website as well as information provided in marketing materials from Warner in 2019.
  27. Based on its review of available information on Warner, although there could be some financial prejudice to Warner as a result of the Warner Disclaimer, the Proposal Trustee has no reason to believe that the Warner Disclaimer will cause significant financial hardship to Warner.

28. The Proposal Trustee requested its independent legal counsel, McMillan LLP (“**McMillan**”), to perform a review of the Warner Marketing Agreement and whether the Warner Marketing Agreement is an EFC. Based on its review of the Warner Marketing Agreement, McMillan believes that there is a strong argument that the Warner Marketing Agreement is not an EFC. However, in light of current uncertainty in the law around what constitutes an EFC and the unique terms of the Warner Marketing Agreement, McMillan is not able to provide a definitive legal opinion as to whether the Warner Marketing Agreement is or is not an EFC.

## **CONCLUSIONS**

29. In consideration of section 65.11(5)(a) of the BIA, the Proposal Trustee approved the Warner Disclaimer on the merits of the enhancement of viability of a successful restructuring and the low probability that Warner would suffer significant financial hardship if the Warner Marketing Agreement is disclaimed.

All of which is respectfully submitted this 11<sup>th</sup> day of November, 2020

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Proposal Trustee of  
Greenfire Oil and Gas Ltd. and Greenfire Hangingstone  
Operating Corporation and  
not in its personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President



Duncan MacRae, CPA, CA, CIRP, LIT  
Vice President

## APPENDIX A

**FORM 44.1**

**Notice by Debtor to Disclaim or Resiliate an Agreement**

(Section 65.11 of the Act; Rule 94.1)

To: Alvarez & Marsal Canada Inc. and Warner Petroleum Corporation

Take notice that:

1. By letter dated September 3, 2020, the Debtors (defined below) validly terminated the Marketing Agreement (defined below) effective noon on September 14, 2020 (the "**Original Termination**"). A copy of the September 3, 2020 letter is attached hereto as **Schedule "A"**.
2. A notice of intention to make a proposal in respect of each of Greenfire Hangingstone Operating Corporation and Greenfire Oil & Gas Ltd. (the "**Debtors**") was filed under subsection 50.4 of the *Bankruptcy and Insolvency Act* on the 8<sup>th</sup> day of October, 2020.
3. Without prejudice to the Debtor's position that the Original Termination is valid and effective, and in addition to and in the alternative to that position, pursuant to subsection 65.11(1) of the Act, the Debtors give you notice of their intention to disclaim or resiliate the following agreement:

Marketing Agreement dated April 15, 2019 among Greenfire Hangingstone Operating Corporation, Greenfire Oil & Gas Ltd. and Warner Petroleum Corporation (the "**Marketing Agreement**")

3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the Marketing Agreement may, with notice to the other parties to the Marketing Agreement and the trustee, apply to the Court for an order that the Marketing Agreement is not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the Agreement will become effective on the 29<sup>th</sup> day of November (being 30 days after the date on which this notice has been given).

Dated at Calgary, this 30<sup>th</sup> day of October, 2020.

**GREENFIRE OIL & GAS LTD.**

**GREENFIRE HANGINGSTONE  
OPERATING CORPORATION**

Per:

  
Robert Logan  
Director & Chairman

Per:

  
Robert Logan  
Director & Chairman

The trustee approves the proposed disclaimer or resiliation.

Dated at Calgary, Alberta this 30<sup>th</sup> day of October, 2020.

**ALVAREZ & MARSAL CANADA INC.,  
LICENSED INSOLVENCY TRUSTEE, IN  
ITS CAPACITY AS THE PROPOSAL  
TRUSTEE OF GREENFIRE OIL & GAS  
LTD.**



Per:

\_\_\_\_\_  
Orest Konowalchuk, CPA,  
CA, CIRP, LIT  
Senior Vice President

**ALVAREZ & MARSAL CANADA INC.,  
LICENSED INSOLVENCY TRUSTEE, IN  
ITS CAPACITY AS THE PROPOSAL  
TRUSTEE OF GREENFIRE  
HANGINGSTONE OPERATING  
CORPORATION**



Per:

\_\_\_\_\_  
Orest Konowalchuk, CPA, CA,  
CIRP, LIT  
Senior Vice President

## **APPENDIX B**

## APPENDIX B

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