

COURT FILE NUMBER 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC.
AND 2161889 ALBERTA LTD.

DOCUMENT SIXTEENTH REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS MONITOR OF
JMB CRUSHING SYSTEMS INC. AND 2161889
ALBERTA LTD.

March 30, 2021

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SIXTEENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On May 1, 2020 (the “**Filing Date**”), JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**” and together with JMB, the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an order granted by this Honourable Court which was subsequently amended and restated on May 11, 2020 (the “**ARIO**”).
2. The ARIO appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until July 31, 2020. On March 5, 2021, this Honourable Court most recently granted an order, which due to the satisfaction of certain conditions, extended the Stay of Proceedings to April 2, 2021.
3. On October 16, 2020, this Honourable Court granted the following orders:
 - a. an order (the “**Original SAVO**”) approving a transaction (the “**Mantle Transaction**”) for the sale to Mantle Materials Group, Ltd. (“**Mantle**”) of certain assets and vesting such assets free and clear of any security interests or other claims other than certain permitted encumbrances;
 - b. an order (the “**Original RVO**”) vesting all of JMB’s remaining assets and liabilities that are excluded from the Mantle Transaction in 216;
 - c. an order (the “**Original Assignment Order**”) assigning certain of the Applicants’ agreements to Mantle; and
 - d. an order (the “**Original Sanction Order**”) sanctioning a joint plan of arrangement under the Business Corporations Act, SBC 2002, c 57, as amended and the CCAA.

4. On March 4, 2021, the Applicants served a Notice of Application, initially returnable on March 5, 2021 (the “**March 5th Application**”) for several amended orders (the “**Amended Orders**”) related to a revised Mantle Transaction (the “**Revised Mantle Transaction**”). Additional details concerning the Revised Mantle Transaction and the Amended orders are set out in the Monitor’s Fourteenth Report, dated March 4, 2021.
5. While certain details of the Amended Orders were heard by this Honourable Court on March 5, 2021, the parties mutually agreed to postpone the relief sought to a later date, pending further discussions and review by key stakeholders, including, among others, the Alberta Environment and Parks (the “**AEP**”).
6. A brief description of the Amended Orders, in their current form, is as follows:
 - a. an order amending and restating the Original SAVO, approving an amended and restated asset purchase agreement between JMB and Mantle and vesting in Mantle all of the right, title and interest of JMB and 216 in the acquired assets, free and clear of all claims and liens other than the permitted encumbrances;
 - b. an order (the “**Amended RVO**”) amending and restating the Original RVO, adding 2324159 Alberta Inc. (“**ResidualCo**”) as an applicant in the CCAA Proceedings and appointing the Monitor as the monitor of ResidualCo, vesting all of the right, title and interest of the remaining assets and liabilities of JMB and 216 in ResidualCo and declaring that the Regulatory Bodies (as defined in the Amended RVO) are creditors in respect of certain past non-compliances concerning the payments of various fees, royalties, and similar liabilities by the Applicants (the “**AEP Fee Arrears**”) and that the AEP Fee Arrears are Claims for the purposes of section 19(1) of the CCAA. The AEP Fee Arrears include the non-payment of rent, royalties, dues, fees, rates, charges or other money accrued under the public lands dispositions held by the Applicants, prior to the Filing Date, together with interest or penalties thereon. The AEP Fee Arrears exclude the Applicants’ remediation obligations and any requirements to post remediation security with the applicable regulatory authorities. Additionally, the Amended

RVO also: (i) stays the exercise of any power, right or remedy against the Current Directors (as defined below) by a Regulatory Body in respect of any failure by JMB or 216 to perform reclamation obligations or rectify any compliance issues which occurred at any time prior to the Effective Time (as defined in the Amended RVO); and, (ii) stays the exercise of any power, right or remedy against JMB or 216 as a result of regulatory non-compliance prior to Effective Time, the solvency of the Applicants, the commencement of the CCAA Proceedings, or the vesting in ResidualCo of the AEP Fee Arrears, as described in further detail below. Finally, the Amended RVO provides that this Honourable Court will reserve its discretion to hear any application by the Applicants or Mantle (collectively, the “**Plan Parties**” and each a “**Plan Party**”) under section 11.1(3) of the CCAA to stay the exercise of powers, rights and remedies of a Regulatory Body. However, for clarity, the RVO is not intended to affect, compromise, or otherwise alter the Applicants of the Current Director’s reclamation obligations or their go forward compliance with regulatory obligations, following the Effective Time;

- c. an order amending and restating the Original Assignment Order assigning the rights and obligations of the Applicants under certain agreements which contain provisions restricting their assignment to Mantle under section 11.3 of the CCAA; and
 - d. an order amending and restating the Original Sanction Order, sanctioning an amended and restated joint plan of arrangement (the “**Plan**”) under the *Business Corporations Act, SBC 2202, c 57, as amended* (British Columbia), the *Alberta’s Business Corporations Act, RSA 2000, c B-9* and the CCAA.
7. The purpose of this report is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to:
- a. an update on the status of the Revised Mantle Transaction and certain provisions proposed to be included in the Amended Orders; and

- b. the Monitor's conclusion and recommendation.

TERMS OF REFERENCE

8. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including information provided by JMB concerning the various assets subject to the various transactions and JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (collectively, "**Management**").
9. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
10. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
11. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

STATUS OF THE REVISED MANTLE TRANSACTION

Amended APA

13. Since the filing of the application materials concerning the Revised Mantle Transaction, the Applicants have further revised the Amended APA in connection with the following material changes:

- a. the “Atlas Shares”, being all of the shares in the capital of Atlas Aggregates Inc. held by JMB, are now included as Retained Assets under the Amended APA. The Atlas Shares were to be transferred to Mantle under the previous draft of the Amended APA;
- b. the Purchase Price and allocation thereof have been amended to account for the Atlas Shares now being retained assets. No change to the cash consideration to be received by the Applicants and transferred to ResidualCo has been made; and
- c. the quantum of the assumed liabilities has been updated to account for the amount of indebtedness currently owed to ATB and Fiera.

Amended RVO

14. Subsequent to the Applicants filing a Notice of Application for the Amended Orders, ten environmental protection orders (each an “**EPO**”) and one enforcement order (the “**Enforcement Order**”, and together with the EPOs, the “**AEP Orders**”) have been issued by the AEP with respect to gravel pits included in the Revised Mantle Transaction.
15. The Applicants have advised the Monitor that, in order to address the AEP Orders and otherwise preserve the Revised Mantle Transaction, they have revised the proposed form of the Amended RVO being sought to include the following:
 - a. declarations that: (i) the AEP Fee Arrears are “Claims” for the purposes of section 19(1) of the CCAA and that the Regulatory Bodies, including the AEP, are unsecured creditors with respect to the AEP Fee Arrears; and (ii) the Regulatory Bodies shall be creditors of ResidualCo with respect to the AEP Payment Arrears, and shall be Excluded Creditors (as defined in the RVO) in respect of same;
 - b. the stay and suspension of all powers, rights and remedies of a Regulatory Body in respect of or affecting in any way the Plan Parties, disposition, registration or permit whether current or later transferred or assigned to a Plan Party hereafter, to

enforce the payment of the AEP Fee Arrears, or arising from the non-payment thereof;

- c. the stay and suspension of any power, right or remedy of a Regulatory Body against the current directors, Byron Levkulich and Aaron Patsch (the “**Current Directors**”), in respect of any failure by the Applicants to perform reclamation obligations or rectify compliance issues at any time prior to Effective Time. For clarity, the proposed stay against the Current Directors is limited in scope to any prior regulatory breaches and is in no way intended to compromise, affect, or amend the Current Directors’ remediation obligations and go forward compliance with the various applicable regulations following the Effective Time;
- d. the stay and suspension of any power, right or remedy of a Regulatory Body against the Applicants as a result of the following:
 - i. any failure to comply with the regulatory legislation prior to the Effective Time;
 - ii. the Applicants having sought or obtained relief under these CCAA Proceedings;
 - iii. the financial condition or insolvency of the Applicants prior to the Effective Time; and
 - iv. the vesting in and assumption of the AEP Fee Arrears by ResidualCo.
- e. the ability to apply to this Honourable Court, notwithstanding that Plan implementation may have occurred, or the CCAA Proceedings may have been terminated, in order to:
 - i. give full force and effect to the Amended RVO;

- ii. assist and aid the Plan Parties and the Monitor in closing the Mantle Transaction; and
 - iii. in the event a landowner does not allow reasonable access to inactive royalty lands in order to permit JMB or its representatives or contractors to perform the reclamation obligations or take possession of and dispose of inventory to which JMB is entitled.
- f. that nothing in the Amended RVO shall affect:
 - i. the respective obligations of JMB and 216, following the Effective Time: (A) to resolve the physical manifestations of any compliance issues; (B) to perform their reclamation obligations in accordance with the regulatory legislation; or (C) to comply with their respective regulatory obligations;
 - ii. any liabilities of any director of JMB or 216 that may arise from any failure of JMB or 216 to comply with their respective regulatory obligations after the Effective Time; or
 - iii. limit the exercise of any power, right or remedy by any Regulatory Body, including the AEP, against JMB, 216 or any director to enforce the unaffected obligations and liabilities referred to in f(i) or f(ii) above.
- g. the obligations of JMB and 216 after Effective Time to perform their obligations in accordance with the applicable regulatory legislation, and to perform such work or take such steps, as is required to bring the Applicants into compliance with the applicable regulatory legislation, or any liabilities of a director of JMB or 216 which may arise as a result of any failure to do so;
- h. a release in favour of JMB, 216, Mantle, the Current Directors, 216, and Mantle as of the Effective Time, the Monitor, the Chief Restructuring Advisor, and the legal counsel of such persons (collectively, the “**Released Parties**”), in

connection with all Claims (the “**Release**”). However, it should be noted that such Release is not intended to release or discharge a Released Party from: (i) any obligation created by or existing under the Amended Plan or any related document; (ii) any claim against a Released Party arising from criminal acts, fraud or wilful misconduct; (iii) any claim which is not permitted to be released pursuant to sections 5.1(2) or 19(2) of the CCAA; or (iv) with respect to JMB, 216, Byron Levkulich and Aaron Patsch, any liability for reclamation obligations, compliance issues, or any other obligations under the regulatory legislation that do not constitute Claims; and

- i. the reservation of this Honourable Court’s discretion to hear any application by a Plan Parties under section 11.1(3) of the CCAA concerning the exercise of powers, rights and remedies of a Regulatory Body, notwithstanding that Plan implementation may have occurred, or the CCAA Proceedings may have been terminated. In the current circumstance, this portion of the relief, under a come-back provision of the Amended RVO, is being sought by the Plan Parties, as the AEP Orders require that 216 and JMB submit remediation and reclamation plans to the AEP, for the AEP’s approval, which due to the Applicant’s current cash flows will likely have to occur after the anticipated closing date, and if such approvals are denied or conditions to such approvals render the Revised Mantle Transaction unviable, section 11.1(3) of the CCAA may provide the Applicants with their sole recourse to address such future issues. As the Monitor understands, the Plan Parties consider this portion of their relief to be a critical component to the Revised Mantle Transaction and the Amended RVO.
16. Generally speaking, the Amended RVO no longer seeks further specific relief under section 11.1(3) of the CCAA, than that set out above, as was originally contemplated in the form of order attached to the March 5th Application, nor does the latest proposed form of order contemplate the approval of a binding Environmental Reclamation Protocol.
17. The Monitor’s comments with respect to the revisions to the Amended Orders are as follows:

- a. the proposed amendments will allow the Applicants to close the Mantle Transaction, preserving value for JMB's stakeholders and allowing the business to continue as a going concern;
- b. all of the Applicants' dispositions, registrations and permits will be preserved and JMB and 216 will continue to be responsible for performing all reclamation obligations in accordance with existing regulatory regime. No compromise of any reclamation obligation is contemplated by the Amended Orders;
- c. although the Current Directors are protected through the stay and suspension of past non-compliances, they are subject to ongoing abandonment and reclamation obligations after the Plan has been implemented. The Monitor has been advised that the purpose of the stay provisions is to allow the Current Directors the time necessary to resolve the existing regulatory issues, without facing personal liability in respect of same (except to the extent of non-compliances arising after the Effective Time). The provisions are not intended to provide for a permanent stay against the Current Directors, with respect to remediation obligations or regulatory compliance after Effective Time;
- d. key stakeholders including Fiera and ATB are supportive of the approval of the Amended Orders; and
- e. overall, the relief sought in the Amended Orders is fair and reasonable and is in the best interests of the Applicants' stakeholders.

CONCLUSION AND RECOMMENDATION

18. The Amended Orders will enable the Applicants to conclude the Revised Mantle Transaction to preserve the business as a going concern while complying with ongoing regulatory and reclamation obligations.

19. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the Amended Orders.

All of which is respectfully submitted this 30th day of March, 2021.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants



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