

COURT FILE NUMBER 25-2332583 / 25-2332610 / 25-2335351

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDING **IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANITOK ENERGY INC., RAIMOUNT ENERGY CORP. AND CORINTHIAN OIL CORP.**

DOCUMENT **THIRD REPORT OF THE PROPOSAL TRUSTEE**

FEBRUARY 19, 2018

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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INTRODUCTION

1. On January 10, 2018, Manito Energy Inc. (“**Manitok**”) and Raimount Energy Corp. (“**Raimount**”) filed Notices of Intention to File a Proposal (“**NOI**”) pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). On January 19, 2018, an additional subsidiary of Manito known as Corinthian Oil Corp. (“**Corinthian**”) filed an NOI. The proceedings under the BIA shall be known as the proposal proceedings (“**Proposal Proceedings**”). For purposes of this report Manito, Raimount and Corinthian are collectively referred to as the “**Debtors**” or the “**Companies**”.
2. FTI Consulting Canada Inc. (“**FTI**”) consented to act as the proposal trustee (the “**Proposal Trustee**”) in this matter.
3. An application was heard on January 12, 2018 (the “**January 12th Application**”) where the Debtors sought, among other things, an Order (“**Interim Financing Order**”) approving an interim financing arrangement (the “**Interim Financing**”) as well as various court ordered charges including an interim financing charge, an administration charge and a directors and officers charge.
4. At the January 12th Application, the Debtors’ senior secured lender, National Bank of Canada (“**NBC**”) argued against the Proposal Proceedings and brought a competing application (“**Receivership Application**”) seeking to effectively terminate the Proposal Proceedings and appoint a receiver and manager over the assets, properties and undertakings of Manito and Raimount. The Receivership Application was adjourned *sine die* and the Court granted the Interim Financing Order and allowed the Proposal Proceedings to continue.
5. The second affidavit of Mr. Massimo Geremia (the “**Geremia Second Affidavit**”), the President and Chief Executive Officer of Manito, sworn February 7, 2018 set out details related to the various restructuring efforts that occurred since the commencement of these Proposal Proceedings.

6. On February 13, 2018, a third affidavit of Mr. Geremia (The “**Geremia Third Affidavit**”) was filed which advised that, subsequently to the filing of the Geremia Second Affidavit, the Companies were advised by Stream Asset Financial Manitoak Corp. / Stream Asset Financial Manitoak LP (collectively referred to as “**Stream**”) that Stream was not prepared to execute the new Stream Credit Facility as contemplated under the Proposal Framework. However, Stream provided an alternative transaction to the Companies that would comprise a purchase of all of the Companies’ assets and operations. The proposed transaction was referred to as the “**Stream APA**” in the Proposal Trustee’s Second Report.
7. The Second Report of the Proposal Trustee advised that, due to the inability to secure the Stream Credit Facility, the Proposal Framework could not proceed. The Second Report also provided the Proposal Trustee’s overview of the draft Stream APA and the various stakeholder’s positions with respect to the Stream APA.
8. A court application was heard on February 14, 2018 (the “**February 14th Application**”), where the Companies presented the Stream APA, and sought an extension of these Proposal Proceedings. NBC raised various concerns at the February 14th Application including:
 - (a) its view that the cash purchase price under the Stream APA (totaling \$42 million) would not be sufficient to repay the indebtedness owed to NBC;
 - (b) the remaining various conditions precedent would considerably increase closing risk; and
 - (c) the continuation of these proceedings would continue to erode its collateral value.
9. At the conclusion of oral submissions at the February 14th Application, the Court granted a brief extension to the stay of proceedings to allow:
 - (a) the Companies and Stream a short period of time to address/clarify certain alleged deficiencies with respect to the Stream APA; and

- (b) continued discussions with NBC regarding its various concerns and questions in respect of the Stream APA.
10. At the time the Proposal Trustee issued its Second report on February 12, 2018, the Stream APA was in draft form and the purchaser had not been identified. The Stream APA was subsequently executed on February 13, 2018 and the purchasing party was identified as Renergy Resources (Canada) Co. Ltd. (“**Renergy**” or the proposed “**Stalking Horse Bidder**”). The Stream APA executed on February 13, 2018 is now referred to as the “**Renergy APA**” or the “**Stalking Horse Agreement**”.
11. Prior reports of the Proposal Trustee and other information in respect of this proceeding are posted on the Proposal Trustee’s website at <http://cfcanada.fticonsulting.com/Manitok>.

PURPOSE

12. The purpose of this Third Report is to provide this Honourable Court with the Proposal Trustee’s:
- (a) Analysis of the sources and uses of the purchase price in relation to the Renergy APA, including the payment of priority payables, cure costs and amounts owed to NBC, along with a summary of those liabilities being assumed by Renergy;
 - (b) Review of the status of the Renergy APA including an update with respect to the condition precedents or other matters that could affect closing of the transaction; and
 - (c) Summary comments on the Renergy APA.

TERMS OF REFERENCE

13. In preparing this report, the Proposal Trustee has relied upon unaudited financial information, other information available to the Proposal Trustee and, where appropriate, the Companies' books and records and discussions with various parties (collectively, the "**Information**").
14. Except as described in this report:
 - (a) The Proposal Trustee 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 Canadian Institute of Chartered Accountants Handbook; and
 - (b) The Proposal Trustee 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.
15. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

REENERGY APA / STALKING HORSE AGREEMENT

Purchase Price Allocation

17. As previously reported, the composition of the purchase price set out in the Renergy APA includes a payment of cash (the “**Cash Component**”) and an assumption of liabilities.
18. The Cash Component of the purchase price was to be used to repay, in full, the total indebtedness owed by the Companies’ to NBC (including accrued interest and outstanding legal and advisory fees) as well as funding certain priority payables and ‘Cure Costs’ as defined in the Renergy APA. In addition, the Renergy APA contemplated the assumption of various liabilities, including amounts owing to Stream under a joint venture agreement with the Companies.
19. The Proposal Trustee understands that NBC had concerns that the Cash Component of the purchase price (which totaled \$42 million) would not be sufficient to repay its indebtedness as well as the cure costs and priority payables, including the approximately \$1.7 million in property taxes that were escrowed from the proceeds from the Asset Sales.
20. Since the February 14th Application, the Proposal Trustee has worked with Manitoq and Renergy to clarify certain items within the Renergy APA and specifically assessing those liabilities that would be paid from the Cash Component and those liabilities being assumed. The updated analysis included the receipt of a pay-out statement from NBC, a revised analysis of the estimated closing balance of the Interim Loan at March 31, 2018 (the assumed closing date of the transaction), the updated property taxes owing (including both linear, non-linear and penalties) and the inclusion of a contingency amount for potential unknown items.

21. After the above analysis, the Companies and the Proposal Trustee concluded that the Cash Component would need to be increased from \$42 million to \$43.5 million to facilitate a repayment, in full, of the indebtedness owed to NBC as well as a reserve for other priority payables, including a \$250,000 contingency. The majority of the \$1.5 million increase in the Cash Component (from \$42 million to \$43.5 million) related to the inclusion of linear property taxes (which totaled approximately \$1.0 million as this amount was not previously included in the Cash Component) and a \$250,000 contingency amount.
22. For illustrative purposes, the total purchase price of the Renergy APA (including the revised Cash Component and assumed liabilities) is approximately \$62.5 million as illustrated below:

Cash consideration	\$ 43,500,000
Less: Asset Sales	<u>(5,251,724)</u>
Total Adjusted Cash Consideration	<u>\$ 38,248,276</u>
Plus: Assumed liabilities	24,200,000
Total Estimated Purchase Price	<u>\$ 62,448,276</u>

23. Note the above estimated purchase price is presented for illustrative purposes and various assumptions were required to determine the value of assumed liabilities.

24. The table below illustrates the estimated required Cash Component needed to repay, in full, the anticipated outstanding indebtedness of the NBC upon assumed closing of the Renergy APA on about March 31, 2018, including the anticipated amounts drawn under the Interim Loan Facility and outstanding fees. The Proposal Trustee notes that the full amount of property taxes have been included in the cash distribution analysis below. At this preliminary juncture, neither the Companies nor the Proposal Trustee have formed the view that the full amount of the property taxes are a priority claim. However, for conservatism the full amount of the property taxes were included.

Cash Distribution Analysis	
Total Adjusted Cash Consideration	38,248,276
Expected cash on as at March 31, 2018	<u>1,149,000</u>
Total cash available for distribution	<u>39,397,276</u>
Cure Costs	
Surface/Mineral Leases	(494,061)
Prairie Sky Royalties	(1,000,000)
Priority Claims	
Employee WEPPA Equivalent Claims	(15,920)
Property Taxes	
Non-linear	(695,470)
Linear	(1,020,097)
Interest & Penalties	(200,759)
Amount held currently held in trust	1,625,554
Contingency amount	(250,000)
NBC Claim (after paydown of asset sales)	(37,201,237)
Net Cash Remaining	<u>145,285</u>

25. The details of the revised purchase price allocation illustrating the revised Cash Component calculation of \$43.5 million was provided to NBC and its advisors on February 16, 2018 and to Renergy on February 15, 2018.

26. The original Cash Component amount of \$42 million demonstrated a repayment of the amounts owing to NBC in full, however, this calculation was based on various estimates and the assumption that linear property taxes and related penalties were unsecured liabilities. The revised Cash Component includes the linear property tax liabilities as these funds are currently being held in trust pending further order of the court. As both the original and revised Cash Component were based on estimated cure and other priority payables, language was suggested to be added to the vesting order whereby, at the completion of a sale, the Companies' assets would not vest to Renergy (or any successful bidder) until all indebtedness to NBC is repaid in full (including the Interim Loan).
27. Over the past several days, the Proposal Trustee and the Companies have had numerous conference calls with Renergy and its advisors regarding the revised Cash Component amount. Ultimately, on February 19, 2018, the Proposal Trustee was advised by Renergy's legal counsel, that it was not prepared to increase the Cash Component above \$42 million. Furthermore, the Proposal Trustee has been advised by the Companies' counsel that vesting language discussed above was also not acceptable by Renergy

Other Matters

28. As set out in its Second Report, the Proposal Trustee indicated that its support of the Renergy APA would be conditional upon the agreement not being subject to any material conditions or conditions precedents. The Proposal Trustee's primary concerns with respect to the Renergy APA (as was attached to the Third Geremia Affidavit) were the following condition precedents (the "CPs"):
- (a) The financing condition (the "**Stream CP**") set out at paragraph 12.4 of the Renergy APA that states "Stream shall have entered into the Stream Credit Facility with Buyer and advanced the full non-revolving loan available thereunder to Buyer prior to Closing."

- (b) The condition of an agreement being reached with PrairieSky (as defined in the Renegy APA) at 12.5 of the Renegy APA (the “**PrairieSky CP**”) that states “The Joint Venture Agreement and such other Assigned Contracts as Buyer may require shall have been assigned and novated to Buyer with effect at Closing. PrairieSky Shall have agreed to provide Buyer with Replacement PrairieSky Arrangements effected at Closing”; and
 - (c) the condition that a new joint venture agreement be entered into between Manitok and Stream (the “**Revised Stream JV Agreement**”).
29. The Proposal Trustee was prepared to support the transaction, on balance, when it understood that NBC would be paid in full and that ultimately negotiations could result in the conditionality of the deal being eliminated or in place for only a short-term. Since the February 14th Application, parties have had numerous discussions to attempt to address the various CPs; however, while attempts were made by all parties to address the Proposal Trustee’s concerns over the CPs and the need for the Stalking Horse Bid to be free of any material conditions, the Proposal Trustee advises that all of the CPs remain in the Renegy APA. Further discussions were continuing with respect to the removal of the Stream CP and the Revised Stream JV Agreement; however, due to the inability to agree on the revised Cash Component amount (an increase from \$42 million to \$43.5 million), further discussions to resolve the CPs were discontinued.

Sale Process

30. Attached to the Renegy APA was a summary of procedures (the “**Bidding Procedures**”) outlining the Sales Process to be undertaken to market-test the Stalking Horse Agreement. The Proposal Trustee has reviewed the Bidding Proceedings including the reasonableness of the terms including the Break Fee; however, given the unresolved concerns of the Proposal Trustee with the Renegy APA as discussed above, the Proposal Trustee does not believe it necessary to provide any further comments on the Bidding Procedures at this time.

STAY EXTENSION

31. The current stay of proceedings expires on February 20, 2018.
32. In the Proposal Trustee's view, the Debtors' have continued to act in good faith and with due diligence in these Proposal Proceedings. This is evidenced by the significant steps that were completed in the Proposal Framework and the completion of the Asset Sales which recently closed with an approximate \$3.4 million repayment to NBC (with an additional \$1.6 million of the Asset Sales proceeds currently held in trust pending resolution of property tax claims) which occurred on February 16, 2018.
33. The Proposal Trustee previously indicated that it would support the Debtors' motion to extend the stay of proceedings and the Renergy APA if it was not subject to any material conditions, included a significant non-refundable deposit and the requirement to run an expediated sale process to market-test the Stalking Horse Bid. Furthermore, the underlying transaction was to provide for a full repayment of the indebtedness to NBC as well as the repayment of the Interim Loan.
34. Despite the significant efforts made to finalize an acceptable Stalking Horse Bid and related Sale Process, the Proposal Trustee cannot support a further extension of these Proposal Proceedings given the following:
 - (a) The Renergy APA is still subject to material conditions including the Stream CP, the PrairieSky CP and completion of the Revised Stream JV Agreement. While certain progress has been made with the negotiations of the CPs, and parties believe that such issues could be resolved, at the time of this report and despite of the brief extension to the stay of proceedings, material conditions remain in the Renergy APA;

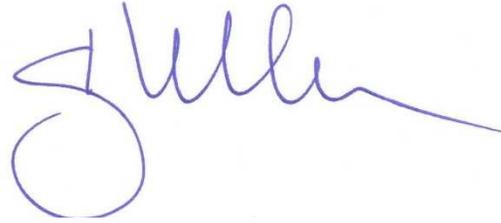
- (b) Renergy could not agree to an increase in the Cash Component of the purchase price from \$42 million to \$43.5 million which is the estimated cash amount required to repay the indebtedness to NBC, the Interim Loan as well as the estimated priority creditors and cure costs. Furthermore, no agreement could be reached regarding language in the vesting order that would also address this issue. Without agreement in the Cash Component portion of the purchase price or the proposed vesting order language, there is uncertainty that sufficient closing funds would be available to repay the indebtedness to NBC; and
- (c) There is no other viable restructuring option available to the Companies at this time.

RECOMMENDATION

- 35. The Proposal Trustee understands that certain discussions may be continuing between the parties with respect to the Renergy APA. However, at the time of this report, since the Renergy APA does not provide for certainty of repayment of the NBC indebtedness and contains material conditions, the Proposal Trustee cannot support the approval of such agreement. As there does not appear to be any viable restructuring alternatives available to the Companies, the Proposal Trustee believes these Proposal Proceedings should be terminated.

All of which is respectfully submitted this 19th day of February 2018.

FTI Consulting Canada Inc.,
in its capacity as Proposal Trustee under the
notice of intention to make a proposal filed by
Manitok Energy Inc., Raimount Energy Corp.
and Corinthian Oil Corp.



Name: Deryck Helkaa
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FTI Consulting Canada Inc.