

Louis R. Strubeck, Jr. (SBT 19425600)
louis.strubeck@nortonrosefulbright.com
Greg M. Wilkes (SBT 24047105)
greg.wilkes@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201-7932
Telephone: (214) 855-8000

Steve A. Peirce (SBT 15731200)
(admitted *pro hac vice*)
steve.peirce@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
111 West Houston Street, Suite 1800
San Antonio, TX 78205
Telephone: (210) 224-5575

ATTORNEYS FOR CANADIAN RECEIVER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Case No. 19-33868-15
EAGLE ENERGY INC.¹	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Jointly Administered

RECEIVER’S EXPEDITED MOTION FOR APPROVAL OF SALE PROCESS

FTI Consulting Canada Inc. (“**FTI**”) solely in its capacity as court-appointed receiver and foreign representative of the Debtors (the “**Receiver**”) files this its Expedited Motion for Approval of Sale Process and states:

**I.
INTRODUCTION**

1. The Debtors are a group of Canadian-based companies that have been placed into a receivership proceeding under Canadian law. Movant FTI is the Canadian court-appointed Receiver for the Debtors. In this Chapter 15 case, the Court has found that the Canadian

¹ The Debtors are: (1) Eagle Energy Inc., (2) Eagle Energy Trust, (3) Eagle Energy Holdings Inc., and (4) Eagle Hydrocarbons Inc.

receivership proceeding is a foreign main proceeding and that the Receiver is a foreign representative. As such, this Court may grant comity to orders from the Canadian receivership proceeding, and section 363 of the Bankruptcy Code applies with respect to the Debtors' assets that are within the territorial jurisdiction of the United States.

2. The Receiver is attempting to sell the Debtors' assets through a court-supervised process in Canada (with respect to Canadian assets) and in the United States (with respect to United States assets). The Receiver has engaged the services of sale agents based in Canada and in Texas for these endeavors. The Receiver has filed an application for approval of a sale process and for approval of the sale agent contract in Canada, and the hearing before the Canadian Court is currently scheduled for February 19, 2020. In this Motion, the Receiver seeks an order from this Court granting comity to the anticipated Canadian sale process order and approving a companion US sale process.

II.
JURISDICTION, VENUE, AND CORE ALLEGATIONS

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 11 U.S.C. § 1501 of the Bankruptcy Code. Venue is proper in this district pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

III.
EXPEDITED RELIEF REQUESTED

4. The Receiver seeks expedited relief because the Receiver anticipates that the Canadian Court will sign a Canadian sale process order on or about February 19, 2020. Once the Canadian and US sale process orders are entered, the Receiver can pursue the approved sale process. The Receiver understands that this Court has reserved time for the hearing on this Motion for **February 24, 2020 at 1:30 p.m.**

IV.
SUPPORT FOR THIS MOTION

5. The Receiver attaches the following Exhibits to this Motion.

Exhibit	Description	Comment
R-1	Application Approval of Sale Process and Order Sealing Confidential Supplement [EX R-1-000001-21]	Order in substantially the form as described at EX R-1-000008-10 expected by February 19, 2020
R-2	Excerpts from February 11, 2020 Receiver Report filed with the Canadian Court	Contains redacted Engagement Agreements

6. The Receiver also requests that the Court take judicial notice of its files in this case. *Wilson v. Huffman (Matter of Missionary Baptist)*, 712 F.2d 206, 211 (5th Cir. 1983)(court may take judicial notice of its own files and records and draw reasonable inferences from those documents); FED. R. EVID. 201.

V.
BACKGROUND

A. The Debtors

7. Debtors Eagle Energy Inc. and Eagle Energy Holdings Inc. are corporations incorporated under the laws of the Province of Alberta. Eagle Energy Trust is an unincorporated open-ended limited purpose trust formed under the laws of the Province of Alberta. Eagle Energy Inc., Eagle Energy Holdings Inc. and Eagle Energy Trust will be referred to collectively as the “**Canadian Entities.**”

8. Debtor Eagle Hydrocarbons Inc. is a company incorporated under the laws of the State of Delaware, United States, and will be referred to as the “**US Entity.**” Together, the Canadian Entities and the US Entity will be referred to as the “**Companies.**”

B. Canadian Proceedings and Chapter 15 Cases

9. On November 19, 2019, White Oak Global Advisors, LLC as the administrative agent (in such capacity, the “**Agent**”) under that certain Loan and Security Agreement dated as

of March 13, 2017 (as amended, modified, or supplemented, the “**Loan Agreement**”), for itself and for and on behalf of a group of lenders on whose behalf White Oak Global Advisors, LLC signed (collectively, and in such capacity, the “**Lenders**”), filed an Application (Receivership Order) in the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada, Court File No. 1901-16293 (“**Canadian Proceedings**”) against the Debtors seeking the appointment of a receiver under section 243 of the Canadian Bankruptcy and Insolvency Act (the “**BIA**”), RSC 1985 c B-3 and section 13(2) of the Judicature Act, RSA 2000 c J-2. ECF 35, p. 2, ¶B. White Oak Global Advisors, LLC (“**White Oak**”) is the agent for major lenders to the Debtors, asserting liens on virtually all assets of the Debtors.

10. On November 19, 2019, the Canadian Court, Honorable Justice R.A. Neufeld, granted a Receivership Order in Alberta Court of Queen’s Bench File No. Court File No. 1901-16293 (the “**Receivership Order**”) appointing FTI as the Receiver and manager of the Debtors. ECF 35, p. 2, ¶C.

11. On November 20, 2019 (the “**Petition Date**”), the Receiver filed Official Form No. 401 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. §§ 1504, 1509(a) and 1515(a), commencing the above Chapter 15 Cases. ECF 35, p. 2, ¶D.

12. On December 5, 2019, this Court entered *Order (I) Granting Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief And (II) Authorizing Receiver’s Limited Use Of Cash Collateral* (“**Recognition Order**”). ECF 35.

13. Among other things, the Recognition Order provides::

That the Receiver is the duly appointed foreign representative of the Debtors within the meaning of Section 101(24) of the Bankruptcy Code. ECF 35, p. 3 ¶H

That the Canadian Proceedings are entitled to recognition as foreign main proceedings pursuant to Sections 1502(4) and 1517(b)(1) of the Bankruptcy Code with respect to each of the Debtors. ECF 35, p. 3 ¶L.

That Sections 363, 549 and 552 of the Bankruptcy Code apply to a transfer of an interest of the Debtors in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate. ECF 35, p. 4 ¶3(b).

That the Receiver may, but is not obligated to, operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by 11 U.S.C. §§ 363 and 552. ECF 35, p. 4 ¶3(c)

C. The Property

14. The Companies' property primarily consists of oil and gas assets located near Dixonville, Alberta, and Hardeman County, Texas. The Canadian Entities' interest in all or substantially all of their assets located near Dixonville, and elsewhere in Alberta shall be called the "**Canadian Property**." The US Entity's interest in all or substantially all of its assets located near Hardeman County, and elsewhere in Texas shall be called the "**US Property**." The Canadian Property and US Property are referred to collectively as the "**Property**."

D. Engagement of Sale Agents in Canada and the US

15. The Receiver has determined that a sale solicitation process ("**Sale Process**") is the best and most effective way to realize on the Companies' assets. On February 5, 2020, the Receiver entered into the "**CB Engagement Agreement**" with CB Securities Inc. (the "**Canadian Sale Agent**") for the Canadian Sale Agent to act as the Receiver's exclusive sale agent of the Canadian Property in the proposed Sale Process. A redacted copy of the CB Engagement Agreement is attached as EX R-2-000026-34. On February 6, 2020, the Receiver entered into the "**EnergyNet Engagement Agreement**" with EnergyNet.com, Inc. (the "**US Sale Agent**") for the US Sale Agent to act as the exclusive sale agent of the US Property in a proposed Sale Process. A redacted copy of the EnergyNet Engagement Agreement is attached as

EX R-2-000035-48. The CB Engagement Agreement and EnergyNet Engagement Agreement are referred to collectively as the “**Engagement Agreements.**”

E. Canadian Application

16. On February 11, 2020, the Receiver filed *Application Approval of Sale Process and Order Sealing* (“**Canadian Application**”). Appendix 1 to the Canadian Application is the proposed *Procedures For The Solicitation And Sale Process* (“**Sale Process**”) found at EX R-1-000011-21. Schedule B to the Canadian Application is a proposed *Order: Approval of Engagement and Sale Process* (“**Proposed Canadian Sale Process Order**”) at EX R-1-000008-10.² A hearing on the Canadian Application is currently scheduled for February 19, 2020 at 2:00 p.m. Mountain Time in the Canadian Court. The Receiver expects that the Canadian Court will enter an Order in substantially the form of the Proposed Canadian Sale Process Order on about February 19, 2020. The Receiver will offer into evidence the signed Canadian Sale Process Order at the hearing on this Motion, assuming that such Canadian Sale Process Order is signed by the Canadian Court.

VI.
PROPOSED SALE PROCESS

A. Approval of the Sale Agent Engagement Agreements

17. Although sections 327, 328 and 330 of the Bankruptcy Code do not apply in chapter 15, the Receiver seeks approval of the Engagement Agreements as out-of-the-ordinary course transactions and as part of the approval of the Sale Process.

² Schedule A to the Canadian Application is a proposed Order: Sealing Confidential Supplement to Receiver’s First Report. EX R-1-000006. This concerns a request to the Canadian Court to seal the Confidential Supplemental Report to the First Report of the Receiver dated February 11, 2020. This Confidential Supplemental Report is not being filed in the US Court at this time, but if it is to be filed or submitted at a hearing, the Receiver would similarly request that such Confidential Supplemental Report be similarly sealed.

B. Sale Process

18. This Motion merely summarizes the Sale Process. The Sale Process is described in detail in the *Procedures For The Solicitation And Sale Process* found at EX R-1-000011-21, and such Sale Process should be consulted for details.

19. The Sale Process is expected to launch on February 25, 2020 (“**Commencement Date**”), if the Canadian Court and this Court approve the Sale Process. Following is a summary of the Sale Process:

- **Virtual Data Room Established.** The Sale Agents, with the assistance of the Receiver, will gather and review all required due diligence material to be provided to interested parties and shall each establish a confidential virtual data room (“**VDR**”), which will be maintained and administered by each respective Sale Agent during the Sale Process.
- **Pre-Marketing:** The Sale Agents will each prepare: (i) a teaser letter (the **Teaser Letter**) describing the opportunity, outlining the Sale Process and inviting recipients to express their interest pursuant to the Sale Process; (ii) a non-disclosure agreement (**NDA**); and (iii) a confidential information memorandum (the **CIM**).
- **Drafting of a Purchase and Sale Agreement.** The Receiver will develop a draft form of non-binding Letter of Intent (“**LOI**”) and a purchase and sale agreement for use during the Sale Process (the **PSA**).
- **Publication of Sale Process Notice and Distribution of Teaser Letter.** The Sale Agent shall (a) cause a Sale Process Notice to be published in the Daily Oil Bulletin, in the case of CB Securities, and the Houston Chronicle, in the case of EnergyNet, with CB Securities utilizing Canada Newswire to designate dissemination in major financial centres in Canada and the United States, and (b) send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice as soon as reasonably practicable after such identification or request, as applicable.
- **Access to Virtual Data Room and Confidential Information Memorandum.** The Sale Agent will send the CIM and grant access to the VDR to all those parties who have executed and delivered the NDA to the Sale Agent as soon as reasonably practicable after such execution and delivery. Potential Bidders that have delivered an NDA and letter providing contact information of the Potential Bidder, and disclosure of the direct and indirect principals and owners of the Potential Bidder will

be deemed a “**Qualified Bidder**” and will be promptly notified of such by the Sale Agent.

- **Phase 1 Bid Deadline: March 27, 2020.** The Qualified Bidder wishing to make a bid must deliver an executed LOI, identifying each specific asset the Qualified Bidder is interested in, to the Sale Agent, with a copy to the Receiver, so as to be received no later than March 27, 2020 (**Phase 1 Bid Deadline**). The Qualified Bidder must submit a Qualified LOI, containing information such as purchase price, assets to be purchased, financial capability, and other terms and conditions, all as more particularly described in the Sale Process.
- **Selection of Phase 2 Qualified Bidders.** Following the Phase 1 Bid Deadline, the Receiver will assess the Qualified LOIs in consultation with the Sale Agents and Secured Creditor, and select Phase 2 Qualified Bidders. The Receiver and Sale Agents will prepare a bid process letter for Phase 2 (the Bid Process Letter), which will include a draft PSA. The Sale Agents will send the Bid Process Letter to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.
- **Binding Offers Due April 17, 2020.** Phase 2 Qualified Bidders shall submit to the Sale Agent a sealed binding offer, so as to be received by the Sale Agent not later than 12:00 PM (MST) on April 17, 2020 (the Phase 2 Bid Deadline). The requirements for the binding offer are set forth in detail in the sale Process, but include, among other things, (a) a blacklined PSA, (b) description of key economic terms, such as Purchase Price, (c) a deposit, and (d) corporate approvals.
- **Selection of Phase 2 Qualified Bids.** Following the Phase 2 Bid Deadline, the Receiver will assess the Phase 2 sale proposals received with respect to the Property, in consultation with the Sale Agents and Secured Creditor, where appropriate. The Receiver will designate the most competitive bids that comply with the foregoing requirements to be Phase 2 Qualified Bids. Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).
- **Selection of Successful Bid.** The Receiver will: (i) review and evaluate each Phase 2 Qualified Bid with the applicable Phase 2 Qualified Bidder, and such bid may be amended, modified or varied as a result of such negotiations; and (ii) identify the best bid or bids (the Successful Bid), and the Phase 2 Qualified Bidder making such Successful Bid (the Successful Bidder) for any Property in whole or in part.
- **Sale Approval.** Under the current schedule, the Receiver expects that an application for a Sale Approval And Vesting Order (“SAVO”) will be filed with the Canadian Court around May 1, 2020, with a SAVO entered

by the Canadian Court shortly thereafter, and that a companion motion for recognition of the SAVO and for sale approval under 11 U.S.C. § 363 sale will be sought on a similar schedule.

C. Other Features of the Sale Process

20. Other features of the Sale Process include, without limitation:

- **Credit Bid.** The Secured Creditor (White Oak) may make a Credit Bid. A Credit Bid put forward by the Secured Creditor shall meet the requirements of Qualified LOIs and shall not be in excess of the following threshold amounts: CAD \$21,000,000 for the Canadian Property; and/or USD \$11,000,000 for the US Property. A Credit Bid put forward by the Secured Creditor must include a cash component sufficient to pay any credit bid success fees of either or both of the Sale Agents that would be due and owing to the Sale Agents in the event the Credit Bid transaction closed, as applicable.
- **As Is, Where Is.** Any sale of Property shall be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver or any of its agents, except to the extent otherwise agreed to by the Receiver in accordance with the terms of a PSA with a Successful Bidder. Without limiting the generality of the foregoing, the Receiver makes no representations or warranties as to the accuracy or completeness of information in the Teaser Letter or the VDR, except to the extent otherwise provided under a PSA with a Successful Bidder.
- **Free and Clear Sales.** In the event of a sale of Property, to the extent permitted by law, all of the rights, title and interests of the Receiver in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests on or against the Property (collectively, Claims and Interests) and such Claims and Interests shall attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in a PSA with a Successful Bidder.
- **Flexibility.** The Receiver shall have no obligation to select a Successful Bid, and the Receiver reserves the right to reject any or all Phase 2 Qualified Bids. The Receiver shall have the right to modify the Sale Process and deadlines set out therein (including, without limitation, pursuant to the Bid Process Letter) if it believes, in its judgment and discretion, that such modification will enhance or better achieve the objectives of the Sale Process. At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties thereunder.

VII.
ARGUMENT AND AUTHORITIES

A. Sections 361, 362, and 363 Apply

21. Since the Court has entered the Recognition Order finding the Canadian Proceedings to be foreign main proceedings, certain relief is automatic. 11 U.S.C. § 1520(a). Upon recognition of a foreign proceeding that is a foreign main proceeding, among other things--

(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate.

11 U.S.C. § 1520(a).

22. Therefore, with respect to the Debtors' assets in the United States, this Court's approval is needed for an out-of-the ordinary course sale of those assets. 11 U.S.C. § 363(b). The instant Motion is not a motion to approve of a sale of assets, but a motion to approve a process to conduct a sale of assets.

B. Extension of Comity for Canadian Sale Process Order Requested

23. Since this Court has found that the Canadian Proceedings are foreign main proceedings, the Receiver respectfully requests that this Court extend comity to the Canadian Sale Process Order that is expected to be entered by the Canadian Court. Section 1509 states:

If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter . . . (3) a court in the United States **shall grant comity or cooperation to the foreign representative.**

11 U.S.C. § 1509(b)(3)(emphasis added).

24. A central tenet of Chapter 15 is the importance of comity in cross-border insolvency proceedings. *Ad Hoc Group of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012).

The Supreme Court defined comity as follows:

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 143 (1895); *see also Vitro*, 701 F.3d at 1043-44.

25. The extension of comity to Canadian orders has continued since the 2005 enactment of Chapter 15. *See In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010)(extending comity to Canadian CCAA order providing for a third party release and citing numerous cases where American courts have extended comity to Canadian judgments); *Raymond Chabot, Inc. v. Serge Côté Family Trust*, 2014 U.S. Dist. LEXIS 117128, 6 (D.S.C. Aug. 22, 2014)(entering temporary restraining order assisting Canadian bankruptcy receiver and noting “the widely-accepted view that Canadian judgments are entitled to recognition and enforcement here”); *Collins v. Oilsands Quest, Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012)(bankruptcy court enforced Canadian court stay from in CCAA noting “the question here is not whether this Court should grant a stay in the first instance, but whether should accord comity and deference to the stay orders entered by the Alberta Court. The Court concludes that in light of the comity principles laid out above, the Court must defer to the procedures set forth in the Canadian Proceedings and enforce the stay.”).

C. Section 363 and Sale Process

26. The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 U.S.C. § 363(b)(1). All sales not in the ordinary course of business may be by private sale or by public auction. Fed. R. Bankr. P. 6004(f)(1). This is a Motion to approve and establish a sale process, not a motion to approve a sale under Section 363. Accordingly, relief is requested pursuant to 11 U.S.C. § 105(a) to approve of the sale process.

D. No Section 365/Executory Contracts Application

27. Recognition of a foreign main proceeding does not result in the application of Section 365 to the Chapter 15 case. See 11 U.S.C. §§ 1520(a)(describing bankruptcy code sections applicable upon recognition of a foreign main proceeding); and 103(a)(describing bankruptcy code sections that apply in chapter 15). Accordingly, although contracts may be assigned as part of the sale, the sale process herein does not contemplate assumption and/or assignment of executory contracts pursuant to the requirements of Section 365.

VIII.
PRAYER

WHEREFORE, the Receiver respectfully requests that the Court enter the proposed Sale Process Order submitted with this Motion, approve of the Engagement Agreements, and for all other relief, at law or in equity, to which the Receiver is justly entitled.

Dated: February 12, 2020
Dallas, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/Steve A. Peirce

Steve A. Peirce (SBT 15731200)
(admitted *pro hac vice*)
steve.peirce@nortonrosefulbright.com

111 West Houston Street, Suite 1800
San Antonio, TX 78205
Telephone: (210) 224-5575
Facsimile: (210) 270-7205

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greg.wilkes@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201-7932
Telephone: (214) 855-8000
Facsimile: (214) 855-8200

COUNSEL FOR CANADIAN RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that contemporaneously with the filing of the foregoing, I directed noticing agent Stretto to serve a copy of the foregoing on parties in interest in this case. The Receiver will supplement this certificate of service with proof of service and a copy of such service list.

/s/Steve A. Peirce