

Clerk's stamp:

COURT FILE NUMBER: 2301 – 10358

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C-8, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF MANTLE MATERIALS GROUP, LTD.

APPLICANTS: MANTLE MATERIALS GROUP, LTD.

DOCUMENT: **AFFIDAVIT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PERSON FILING THIS
DOCUMENT:

Field LLP
Barristers and Solicitors
400, 444 – 7th Avenue SW
Calgary, AB T2P 0X8
Attention: Doug Nishimura
Ph: (403) 260-8500 Fax: (403) 264-7084
File No.

**AFFIDAVIT OF HEATHER DENT
SWORN ON AUGUST __, 2023**

I, HEATHER DENT, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SAY
THAT:

1. I am a Compliance Manager with the Government of Alberta, Department of Environment and Protected Areas ("AEP"). As such I have personal knowledge of the facts and matters in this Affidavit except those made upon information and belief, in which case I believe them to be true.

BACKGROUND

2. AEP first became involved in court proceedings involving Mantle Materials Group LTD ("Mantle") in 2021, in applications under the Company's Creditors Arrangement Act (" CCAA") by Mantle, JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd ("216"). (Collectively, the CCAA Applicants). The CCAA Applicants sought to remove certain Reclamation Obligations imposed by AEP from the normal regulatory scheme and, instead, place those obligations under court supervision. AEP opposed this relief.

3. In the CCAA Application, I swore an Affidavit on March 29, 2021, a copy of which is attached hereto and marked as **“Exhibit A”**. This Affidavit was sworn in respect of public lands and public land dispositions subject to AEP supervision. In addition, my colleague Maxwell Harrison, also a Compliance Manager with AEP, swore an Affidavit on the same date with respect to private lands upon which the Applicants operated and which were subject to AEP administration and regulation. Mr. Harrison's Affidavit (less the Exhibits) is attached hereto and marked as **“Exhibit B”**. I adopt the facts and statements set forth in my March 29, 2021 Affidavit and that of Mr. Harrison as if set out in full herein insofar as they relate to the present Application by Mantle. Exhibits A and B do not include exhibits, however, they may be found on the website of the Monitor at <http://cfcanada.fticonsulting.com/jmb/motions.htm>.
4. The Court in the CCAC Application declined a portion of the relief sought by the Applicants with respect to the oversight of its Reclamation Obligations and directed that all of the Reclamation Obligations and Procedures be carried out as usual following the reorganization of the Applicants. More particularly, paragraph 16 of the Reverse Vesting Order granted in the CCAA Application states:

Nothing in this Order shall:

- a. affect the respective obligations of JMB, 216 or any director of JMB or 216, at all times, including following the Effective Time
 - i. to resolve Compliance Issues;
 - ii. to perform Reclamation Obligations on the Lands in accordance with the Regulatory Legislation ; or
 - iii. to comply with their respective obligations under the 216 Dispositions, the JMB Dispositions, the EPEA Registrations and Regulatory Legislation.
 - b. affect any liabilities of any director of JMB or 216 that may arise from any failure of JMB or 216 to comply with their respective obligations under the 216 Dispositions, the JMB Dispositions, the EPEA Registrations and the Regulatory Legislation at all times, including after the Effective Time; or
 - c. limit the exercise of any power, right or remedy by a Regulatory Body against JMB, 216 or any director to enforce the obligations and liabilities referred to in paragraph 16(a) and 16(b).
5. Accordingly, it is the view of AEP that the Court recognized and gave effect to the ability of AEP to administer and regulate the activities of Mantle (which became the successor to JMB and 216 as a result of the CCAA Application and to ensure compliance with the existing Reclamation Obligations.

PRESENT APPLICATION

- 6. AEP understands, from the materials filed by Mantle as well as communications to AEP from Mantle and its counsel, that Mantle intends to comply with all existing Reclamation Obligations that are in place. AEP further understands that the interim relief sought by Mantle within the Application for an extension of the stay under the BIA and for approval of interim financing will assist Mantle in performing reclamation work. AEP’s satisfaction with Mantle’s compliance is important to ensure that the land in question is sufficiently remediated so as to enable landowners and the public to subsequently use the land for other purposes.
- 7. It is the view of AEP that this reclamation work would be best conducted by Mantle, as it is the operator on-site, has familiarity with the compliance process and the work which needs to be done and is best suited to perform the work on an economical basis. This will be to the benefit of all stakeholders, since any other party performing the reclamation work will have to expend more resources and funds to accomplish the same result.
- 8. Further, it is AEP's view that time is of the essence, given the short window before winter freeze up to perform reclamation work.
- 9. Should Mantle’s proposal proceedings fail and Mantle is assigned into bankruptcy, AEP will continue to enforce the Reclamation Obligations now in place and will also take all steps necessary in order to protect the interest of the Province and its citizens with respect to public lands which are involved, as well as the private landowners whose land is also subject to the AEP Reclamation Obligations as more particularly described in paragraphs 12 – 24, 56 - 57 of my May 21, 2021 Affidavit and paragraphs 5 – 17 and 51 of Mr. Harrison’s Affidavit.
- 10. Given that the AEP views Mantle as being the most suitable party to undertake reclamation operations, for the reasons noted above, the AEP is supportive of Mantle’s application.

| | | |
|--|---|--------------|
| SWORN BEFORE ME at the City of |) | |
| Edmonton, in the Province of Alberta, this |) | |
| 11 th day of August, 2023. |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | _____ |
| A Commissioner for Oaths in and for |) | HEATHER DENT |
| Alberta |) | |

EXHIBIT "A"

This is Exhibit "A" referred to in the
Affidavit of **HEATHER DENT**
Sworn before me this 11th day
of August A.D. 2023

A Commissioner for Oaths in and for
Alberta

Clerk's Stamp

COURT FILE NUMBER 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985 c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF JMB CRUSHING
SYSTEMS INC. and 2161889 ALBERTA LTD.

AND IN THE MATTER OF A PLAN OF
ARRANGEMENT OF JMB CRUSHING
SYSTEMS INC., MANTLE MATERIALS
GROUP LTD. and 2324159 ALBERTA INC.

DOCUMENT

AFFIDAVIT

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
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DOCUMENT

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Our File No. LIT-11583

AFFIDAVIT OF HEATHER DENT

Sworn on March 29, 2021

I, Heather Dent, of the City of Edmonton, in the Province of Alberta, MAKE OATH
AND SWEAR THAT:

1. I am Compliance Manager with the Government of Alberta, Department of Environment and Parks. I have personal knowledge of the facts and matters in this Affidavit, except those made on information and believe, in which case I believe them to be true.

Background

2. Alberta Environment and Parks (“**AEP**”) (and in certain, unrelated circumstances, the Alberta Energy Regulator) administers, manages, and regulates Crown land, i.e., “public land” and public lands dispositions in Alberta.

3. Administration of public lands includes controlling “Rights of Access”, “Surface Rights”, and “Subsurface Rights”. AEP manages the use of public lands through the issuance of dispositions.

4. Public land dispositions are regulated by the *Public Lands Act* (the “**Act**”) and the *Public Lands Administration Regulation* (the “**Regulation**”). A disposition must be obtained under the Act for any access to, or activity on, public lands, and must comply with the Regulation.

5. A disposition is an instrument that conveys an interest, right or privilege in respect of public land. There are three classes of dispositions defined in the Regulation:

- (a) Formal Disposition
- (b) Authorization
- (c) Approval

6. Dispositions under the Act and the Regulation include, among other things:

- (a) Surface Materials Leases (“**SML**”);
- (b) Miscellaneous Leases (“**DML**”);
- (c) Licence of Occupations (“**DLO**”);
- (d) Access Permits (“**TFA**”); and
- (e) Surface Materials Licences (“**SMC**”).

7. SMLs (formal dispositions) are statutory instruments that grant exclusive rights to use public lands for the purpose of extracting surface materials (e.g., gravel, sand, clay, marl, etc.) and are subject to pay royalties. SMLs may be issued for an initial term of up to 10 years and may be renewed, assigned, mortgaged, transferred, sublet or reinstated. Applications for SMLs must be supported by a detailed Conservation and Reclamation Business Plan (“**CRBP**”).

8. DMLs (formal dispositions) are statutory instruments that grant exclusive rights to use public lands for various industrial and commercial purposes. DMLs may be issued an initial term of up to 4 years and may be renewed, assigned, mortgaged, transferred, sublet, and reinstated.
9. DLOs (formal dispositions) grant the right to occupy public land for an approved purpose. DLOs may be issued for an initial term of up to 4 years and may be renewed, assigned, mortgaged, transferred or reinstated (if the requirements are met) but cannot be sublet.
10. TFAs are statutory instruments that permit temporary entry and occupation of vacant public land for recreational or commercial purposes.
11. SMCs are statutory instruments that grant the right to use public land for the removal of surface materials. They are issued for a maximum of one year.

Granting, Refusal, and Cancellation of Dispositions

12. Sections 15 and 20 of the Act empower the director to authorize dispositions on public land.
13. Section 15.1 of the Act empowers the director to refuse a disposition for, among other things, non-compliance with the Act and the Regulation.
14. Section 26(1) of the Act empowers the director to cancel, suspend or amend a disposition for, among other things, non-compliance with the Act and the Regulation.
15. Appeals of the director's decisions on dispositions are addressed in Part 10 of the Regulation and are made to the Public Lands Appeal Board.

Abandonment and Reclamation Obligations on Public Lands

16. When the AEP grants a disposition, the applicant must satisfy any abandonment, reclamation and remediation obligations for the purpose of restoring the surface of the property to equivalent land capability.
17. The Regulation contains certain provisions that confirm a disposition holder's requirement to comply with abandonment and reclamation obligations:
 - (a) Section 22 permits the Minister or the director to require security to ensure acceptable reclamation and compliance; and
 - (b) Section 21(1)(f) requires the disposition holder to reclaim the subject land on the expiry, cancellation, surrender or abandonment of the formal disposition to an equivalent land capability.

18. “Equivalent land capability” in the Regulation means a condition in which the ecosystem processes on the land are capable of producing goods and services of a quality and in a quantity that is at least equivalent to that which existed before the disposition was issued to the holder.

19. In addition to the Act and the Regulation, the *Environmental Protection and Enhancement Act* (“EPEA”) imposes reclamation obligations with respect to surface material operations on public lands.

20. Under EPEA, a “pit” is an operation on or excavation from the surface of the land, including by stripping off the overburden, for the purposes of removing, opening up or providing sand, gravel, clay or marl, and includes any associated infrastructure, but does not include a mine or quarry.

21. Pits on public lands are subject to the general environmental provisions of EPEA and the *Conservation and Reclamation Regulation* under EPEA.

22. Under EPEA, inspectors may issue environmental protection orders (“EPO”) to an operator regarding conservation and reclamation. Appeals of EPOs can be made to the Environmental Appeal Board (the “EAB”).

23. Certain pits on public lands may also require approval under the *Water Act* if water is used (as for gravel washing) or diverted (as for pit dewatering) or if the pit is within the floodplain, a watercourse or waterbody.

24. Under the *Water Act*, the director may issue an enforcement order (“EO”) if, in the director’s opinion, there has been contravention of the legislation. Appeals of EOs can also be made to the EAB.

Dispositions held by JMB and 216

25. The following table outlines the public land dispositions currently and most recently held by JMB Crushing Systems Inc. (“JMB”) (the “JMB Dispositions”) and 2161889 Alberta Ltd. (“216”) (the “216 Dispositions”):

| <u>Registration #</u> | <u>Type of Disposition</u> | <u>Registrant</u> | <u>Date obtained</u> |
|-----------------------|----------------------------|-------------------|----------------------|
| SML 060060 | SML | 216 | March 15, 2019 |
| SML 080085 | SML | 216 | April 26, 2012 |
| SML 100085 | SML | 216 | June 24, 2016 |
| SML 110025 | SML | 216 | February 11, 2014 |
| SML 110026 | SML | 216 | April 11, 2012 |
| SML 110045 | SML | 216 | March 18, 2015 |
| SML 110046 | SML | 216 | March 18, 2015 |
| SML 110047 | SML | 216 | March 18, 2015 |
| SML 120005 | SML | 216 | October 5, 2017 |
| SML 120006 | SML | 216 | October 5, 2017 |

| | | | |
|------------|-----|-----|---|
| SML 120100 | SML | 216 | October 5, 2017 |
| SML 120027 | SML | JMB | January 13, 2020 |
| SML 930040 | SML | JMB | Assigned December 15, 2008 |
| SML 980116 | SML | JMB | February 16, 1999 / expired February 15, 2009 |
| DLO 170011 | DLO | 216 | August 15, 2017 |
| DML 120032 | DML | JMB | January 7, 2013 |
| SME 200009 | SME | JMB | March 20, 2020 |
| SMC 110019 | SMC | JMB | January 13, 2020 |
| TFA 123579 | TFA | JMB | January 13, 2020 |
| TFA 194837 | TFA | JMB | October 16, 2019 / expired October 16, 2020 |
| TFA 201094 | TFA | 216 | January 13, 2020 / expired January 24, 2020 |
| TFA 201290 | TFA | 216 | February 5, 2020 / expired July 7, 2020 |
| TFA 202260 | TFA | 216 | May 29, 2020 / expired November 30, 2020 |
| CRB 100024 | CRB | 216 | May 28, 2014 |
| CRB 100032 | CRB | 216 | April 26, 2012 |
| CRB 120004 | CRB | 216 | February 11, 2014 |
| CRB 120005 | CRB | 216 | April 11, 2012 |
| CRB 120037 | CRB | 216 | March 6, 2015 |
| CRB 120039 | CRB | 216 | March 18, 2015 |
| CRB 120047 | CRB | 216 | January 13, 2020 |
| CRB 140022 | CRB | 216 | October 4, 2017 |
| CRB 140069 | CRB | 216 | June 24, 2016 |
| CRB 150020 | CRB | 216 | October 5, 2017 |
| CRP 000104 | CRP | JMB | October 25, 1999 |

The RVO and the SAVO

26. I understand that, on October 16, 2020, the Court issued, among other things, the following orders:

- (a) The Reverse Vesting Order (the “**RVO**”); and
- (b) The Mantle Sale Approval and Vesting Order (the “**SAVO**”).

27. From my review of both the RVO and the SAVO, I understand that:

- (a) Subject to the approval of AEP, certain 216 Dispositions would be assigned to, and vested in, the Purchaser, Mantle Group Materials, Ltd. (“**Mantle**”); and
- (b) Subject to the approval of AEP, certain JMB Dispositions would be assigned to, and vested in, 216.

28. On October 19, 2020, counsel for the Plan Parties submitted assignments for the following 216 Dispositions:

- (a) SML 080085;
- (b) SML 100085;
- (c) SML 110025;
- (d) SML 110026;
- (e) SML 110045;
- (f) SML 110046;
- (g) SML 110047;
- (h) SML 120005;
- (i) SML 120006; and
- (j) SML 120100

(collectively, the “**Proposed Mantle Assignments**”).

29. Counsel for the Plan Parties submitted assignments for SML 120027 and DML 120032 on October 29, 2020 (the “**Proposed JMB to 216 Assignments**”).

Compliance issues involving 216 and JMB

30. In or around early November, 2020, as part of its consideration of the Proposed Mantle Assignments, AEP conducted a file review of the JMB and 216 Dispositions.

31. As a result of that review, AEP determined that certain of the JMB and 216 Dispositions were inactive, at various stages of development, and had associated outstanding reclamation obligations.

32. By letter dated November 16, 2020, AEP advised counsel for JMB and 216, as well as JMB and 216 of the results of the file review (the “**Notice of Outstanding Reclamation Obligations**”). A copy of the Notice of Outstanding Reclamation Obligations is attached as **Exhibit “A”**.

33. In particular, the Notice of Outstanding Reclamation Obligations directed JMB to immediately take measures to complete all end of life obligations for the lands subject to the following dispositions:

| |
|------------|
| DML 120032 |
| SME 200009 |
| SML 120027 |
| SML 930040 |
| SML 980116 |

34. 216 was directed to take measures to complete all end of life obligations for the lands subject to SML 060060.

35. AEP requested a response by no later than November 30, 2020.

36. On November 23, 2020, AEP advised 216 of certain outstanding steps that were required to be completed before its application to assign the Proposed Mantle Assignments would be considered. A copy of AEP's letter is attached as **Exhibit "B"**.

37. On March 12, 2021, AEP wrote to Tyler Pell advising that it had not received a response to its letter of November 23 letter. A copy of AEP's letter is attached as **Exhibit "C"**.

Letter of Non-Compliance

38. On February 23, 2021, AEP issued Notices of Non-Compliance to both JMB and 216. Copies of the Notices are attached as **Exhibits "D"** and **"E"**.

39. Both Notices of Non-Compliance required JMB and 216 to submit a written plan by no later than February 26, 2021, among other things:

- (a) Detailing their assessment of the dispositions against the terms and conditions of the disposition, the Act, and the Regulation; and
- (b) Describing how each planned to bring each disposition into compliance with the Act, the Regulation, and the terms and conditions of the disposition, including a timeline to completion.

40. Additionally, the JMB Notice of Non-Compliance required JMB to state, by no later than February 26, 2021, its immediate plans to operate the pit on the lands contained in SML 120027.

41. Copies of emails from Tyler Pell, on behalf of JMB and 216, to AEP are attached as **Exhibit "F"**.

42. Written plans were submitted on behalf of JMB and 216 in response to the Notices of Non-Compliance on February 26, 2021. Copies of the written plans are attached as **Exhibits “G”** and **“H”**.

43. AEP advised Mr. Pell that the plans were insufficient on March 10, 2021. Copies of AEP’s response are attached as **Exhibits “I”, “J”, “K”, and “L”**.

Environmental Protection Orders and Enforcement Orders

44. As a result of each of JMB’s and 216’s failure to submit a written plan in response to the Notices of Non-Compliance that was acceptable to AEP, they each became subject to enforcement action under the Act and the Regulation.

45. The following EPOs and EO were issued on the 216 Dispositions and JMB Dispositions:

| <u>Disposition #</u> | <u>EPO / EO</u> | <u>Date / Status</u> | <u>Exhibit</u> |
|-------------------------------------|-------------------------------------|----------------------------------|--|
| SML930040 | EPO-EPEA-35659-08 | March 19, 2021 | Exhibit “M” |
| SML980116 | EPO-EPEA-35659-09 | March 19, 2021 | Exhibit “N” |
| SML060060 | EPO-EPEA-35659-07 EO-WA-35659-01 | March 12, 2021 March 12, 2021 | Exhibit “O” Exhibit “P” |
| TFA123579 SMC110019 SML120027 | EPO-EPEA-35659-10 | March 19, 2021 | Exhibit “Q” |

46. EO-WA-35659-01 directs, among other people, 216 and its current and former directors to, among other things:

- (a) immediately cease all unauthorized activities on the Lands, including any work on, in or around the Amisk Lake;
- (b) submit to the Director, for the Director’s approval, the name and qualifications of a Professional who is a member in good standing with a Professional Regulatory Organization, with experience in preparing a remedial plan and managing groundwater by March 19, 2021;
- (c) submit to the Director, the Director’s approval, a written remedial plan signed and stamped by the Professional by March 31, 2021;
- (d) implement the remedial plan as approved in writing by the Director in accordance with the schedule of implementation approved by the Director;

- (e) submit progress updates to the Director on July 15, 2021, November 15, 2021, May 15, 2022, and July 31, 2022 that include a detailed summary of all remedial activities undertaken pursuant to the EO; and
- (f) submit a final report prepared and signed by the approved professional describing the work undertaken to comply with the EO by October 30, 2022.

47. While each EPO is specific to the public land that it was issued for, each of the EPOs order JMB and 216 to take various steps, including, but not limited to:

- (a) immediately suspend any and all work at the Pit and shall not remove any stockpiled materials;
- (b) submit to the Inspector, for the Inspector's review and approval, a written reclamation and remedial plan;
- (c) submit a reclamation plan including, at minimum:
 - (i) particulars of the characteristics and properties of the land;
 - (ii) a historical synopsis of the surface, subsurface and groundwater disturbance;
 - (iii) a description of the adjacent land uses;
 - (iv) an accounting of the remaining marketable aggregate at the pit and its present value;
 - (v) a description of the reclamation work including the equipment, methods and materials to be used for plan implementation;
 - (vi) a description of the proposed reclaimed land use including elevations, soil replacement and re-vegetation;
 - (vii) a description of how ground water infiltrating open excavations will be addressed and justification for any surface and water related improvements to be left in place;
 - (viii) a proposed schedule of implementation; and
 - (ix) a 6 month monitoring and maintenance program commencing on a specified date following the completion of the reclamation plan

(the "**Reclamation Steps**").

48. Each EPO specifies specific timelines for the completion of the Reclamation Steps (the “**Reclamation Timelines**”).
49. Both the EO and the EPOs set out affected parties’ statutory right of appeal to the EAB. Furthermore, both the EO and EPOs warn that failure to comply with the orders may result in further enforcement proceedings.
50. To date, 216 has not taken any steps to comply with the EO and neither JMB nor 216 have taken any steps to comply with the EPOs.
51. I understand that a Notice of Appeal of EO-WA-35659-01 was filed on behalf of 216, Byron Levkulich, and Aaron Patsch to the EAB. A copy of the letter the Notice of Appeal of the EO is attached as **Exhibit “R”**.
52. I do not believe that any of 216, JMB, Mr. Levkulich, or Mr. Patsch filed a Notice of Appeal with the respect to any of the EPOs issued under EPEA.

Effect of the proposed Revised RVO

53. I understand, from discussions with counsel for AEP, that JMB and 216 are seeking, among other things, a Revised SAVO and a Revised RVO.
54. I understand that the Revised RVO no longer contemplates assignments or transfers of the JMB or 216 Dispositions to Mantle, but includes an Environmental Reclamation Protocol that will operate outside of the current regulatory reclamation regime.
55. The Act, the EPEA, the *Water Act*, all as amended, and their associated regulations (collectively, the “**Regulatory Legislation**”) have an established regulatory regime which governs the environmental reclamation obligations of a disposition holder (the “**Regulatory Regime**”).
56. In particular, the Regulatory Regime ensures that a disposition holder’s reclamation obligations will continue to be fulfilled when the holder becomes subject to insolvency proceedings.
57. As noted above, the following outlines the key framework provided for in the Regulatory Legislation:
- (a) Under the Act and the Regulation, the issuance, assignment, cancellation, etc. of a disposition is in the discretion of the director;
 - (b) Under the Act, the director may refuse to issue, mortgage, assign, transfer, sublet or renew a disposition if the applicant is: (a) indebted to the Crown; or (b) otherwise in non-compliance with the Act or the Regulation;

- (c) Section 21 of the Regulation sets out the duties of disposition holders and includes an obligation to reclaim the subject lands;
- (d) Included in the non-compliance consideration, the Director can assess whether the disposition holder is observing their reclamation obligations as set out in the Regulatory Legislation;
- (e) An affected party can dispute a decision by the Director regarding a disposition to the Public Lands Appeal Board;
- (f) EPEA imposes reclamation obligations with respect to surface material operations on public lands;
- (g) Inspectors can issue EPOs regarding conservation and reclamation;
- (h) In certain circumstances, the *Water Act* may also apply;
- (i) The director can issue EOs where there has been contravention of the legislation;
- (j) Both EPOs and EOs may be appealed to the EAB;
- (k) The EAB is a specialized tribunal with specific expertise in the area of environmental protection and reclamation; and
- (l) Where an affected party remains unsatisfied with the outcome of an appeal the Appeal, they are entitled to seek a judicial review of the EAB's decision.

58. The Revised RVO seeks to bind the AEP to a specific Environmental Reclamation Protocol (the "**Protocol**"). If implemented, the Protocol will have the effect of eliminating the director's discretion and will undermine the Regulatory Legislation that governs public land dispositions.

59. Additionally, the Revised RVO will create inequality and confusion within the regulatory system as, after emerging from the CCAA proceedings, JMB/216/Mantle/ResidualCo would be adhering to one court imposed set of rules, while all other disposition holders, including those in financial distress, would be observing the appropriate regulatory scheme.

60. Granting the Revised RVO in the form as requested will significantly encroach upon the AEP's role as regulator of public lands and contemplates the Plan Parties being able to circumvent the public lands regulatory regime by avoiding the Public Lands Appeal Board and/or the Environmental Appeal Board as applicable.

61. This has already been demonstrated by the decision made by 216, JMB, Levkulich, and Patsch filing a Notice of Appeal with respect to the single EO, but choosing not to file a Notice of Appeal with respect to the EPOs.

EXHIBIT “B”

This is Exhibit “B” referred to in the
Affidavit of **HEATHER DENT**
Sworn before me this 11th day
of August A.D. 2023

A Commissioner for Oaths in and for
Alberta



COURT FILE NUMBER 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
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IN THE MATTER OF THE COMPANIES'
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1985 c. C-36, as amended

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DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Email: melissa.burkett@gov.ab.ca / natasha.sutherland@gov.ab.ca
Our File No. LIT-11583

AFFIDAVIT OF MAXWELL HARRISON
Sworn on March 29, 2021

I, Maxwell Harrison, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SWEAR THAT:

- 1. I am a Compliance Manager with the Government of Alberta, Department of Environment and Parks. I have personal knowledge of the facts and matters in this Affidavit, except those made on information and believe, in which case I believe them to be true.

Background

2. Alberta Environment and Parks (“**AEP**”) is responsible for the administration and regulation of certain activities on private lands within the Province of Alberta. These activities include the extraction and processing of gravel and other aggregates (the “**Activities**”).
3. AEP regulates the use of private lands, of 5 hectares or greater, for Activities through the issuance of approvals or registrations.
4. The construction, operation and reclamation relating to Activities on privately owned lands is regulated by the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, (“**EPEA**”), the *Approvals and Registrations Procedure Regulation* AR 113/93 (the “**Approvals Regulation**”), the *Activities Designation Regulation*, AR 276/2003 (the “**Activities Regulation**”), the *Conservation and Reclamation Regulation*, AR 115/93 (the “**Reclamation Regulation**”) and the *Code of Practice for Pits* (the “**Code**”) (collectively the “**Regulatory Legislation**”).
5. The Approvals Regulation sets out a procedure for the issuance of approvals and registrations.
6. In particular, sections 4, 9 and 11 of the Approvals Regulation mandates that the Director shall not review an application for the issuance, transfer, assignment, sale or lease of an approval or registration until it is a complete application, and, if required, the necessary security or insurance has been provided.
7. The Activities Regulation identifies which activities require an approval or registration under EPEA, and includes, but is not limited to, the creation of pits for the extraction of sand, gravel, clay or marl.
8. No party may carry out any of the Activities at a pit unless they have been granted an approval or registration by the AEP and are thereby deemed an operator.
9. An applicant for an approval or registration must supply an Activities Plan that details the construction, operation, and reclamation plans for the pit, together with security for the pit in an amount and form acceptable to AEP.
10. An approval or registration is a statutory instrument that grants exclusive rights to use private lands for the purpose of the Activities and are subject to the payment of royalties.
11. Access to a private pit, as defined under the EPEA, is typically governed by a royalty agreement as between the land owner and the successful registrant known as an “operator” (the “**Private Royalty Agreements**”). AEP is not a party to the Private Royalty Agreements.

Abandonment and Reclamation Obligations on Private Lands

12. When the AEP grants a disposition, the applicant must satisfy any abandonment, reclamation and remediation obligations for the purpose of restoring the surface of the property to equivalent land capability.

13. The EPEA contains certain provisions that exist for the purpose of ensuring a registration holder's compliance with abandonment and reclamation obligations:

- (a) Sections 84 and 135 requires a holder to supply security to ensure acceptable reclamation and compliance;
- (b) Section 137 requires a holder to reclaim the subject land in accordance with, among other things, the terms and conditions of any environmental protection order regarding the conservation and reclamation of those lands.

14. The Conservation Regulation provides additional guidance on reclamation termed as the return of specified lands to an equivalent land capability as defined in the Conservation Regulation.

15. The security provided is to be in an amount determined by the Director to be sufficient to ensure the completion of conservation and reclamation on the specified lands based on:

- (a) The estimated costs of conservation and reclamation submitted by the operator;
- (b) The nature, complexity and extent of the activity; workaround
- (c) The probable difficulty of conservation and reclamation, giving consideration to such factors as topography, soils, geology, hydrology and revegetation; and
- (d) Any other factors that the Director considers relevant.

16. The security may be adjusted in accordance with the Code.

17. An operator must conserve and reclaim the lands in accordance with the standards, criteria, guidelines and directives established by the Director and pursuant to the terms of any environmental protection orders in respect of conservation and reclamation.

Registrations held by JMB

18. The following table outlines the private land registrations currently held by JMB Crushing Systems Inc. ("JMB") (the "JMB Registrations"):

| <u>EPEA Registration #</u> | <u>Registrant</u> | <u>Landowner</u> | <u>Date of Registration</u> |
|----------------------------|-------------------|------------------|-----------------------------|
| 308161-00-00 | JMB | Jerry Shankowski | August 1, 2012 |

| | | | |
|---------------------------------|-----|--|--------------------|
| (Shankowski Pit) | | | |
| 17395-01-00 (Havener Pit) | JMB | Lynne Havener and Gail Havener | July 23, 2010 |
| 15048-03-02 (Buksa Pit) | JMB | 302016 Alberta Ltd, Havey Buksa, Susan Buksa, Rose Short and Lynda Tomlinson | March 15, 2012 |
| 306490-00-00 (Kucy Pit) | JMB | Robert Niedzielski, John Kwiatkowski, Leo Kwiatkowski, Ron Kucy, and Rita Kucy | July 26, 2012 |
| 293051-00-00 (MacDonald Pit) | JMB | Allan MacDonald | August 31, 2011 |
| 149949-00-00 (Megley Pit) | JMB | Sharon Cook, Cheryl Megley, Douglas Megley, and Bill Kryzanoski | May 25, 2007 |
| 263318-00-00 (O’Kane Pit) | JMB | Aarbo Ranching Ltd and Harvey Aarbo | September 17, 2012 |

(collectively the “**Private Pits**”).

Compliance Issues

19. On January 20, 2020, AEP sent an e-mail to JMB in relation to various of the Private Pits advising that their security bonds relating to their reclamation obligations was due to expire:

| PIT | BOND NO. | AMOUNT | EXPIRY |
|------------|-----------------|---------------|-------------------|
| Shankowski | BND0015967 | \$180,120.57 | November 13, 2020 |
| Havener | BND0015361 | \$41,872.00 | March 9, 2020 |
| Kucy | BDN0015364 | \$31,872.25 | March 9, 2020 |

| | | | |
|-----------|------------|-------------|---------------|
| MacDonald | BDN0015363 | \$16,695.00 | March 9, 2020 |
| Megley | BDN0015359 | \$74,683.81 | March 9, 2020 |
| O’Kane | BDN0015362 | \$39,805.00 | March 9, 2020 |

20. Attached and marked as **Exhibit “A”** is a copy of the January 20, 2020 e-mail.
21. Attached and marked as **Exhibit “B”** are copies of the above noted Performance Bonds.
22. On October 20, 2020 AEP sent an e-mail to JMB advising that the Buksa Pit Security, being Security Bond No. BND0015360 in the amount of \$50,442.00 was due to expire December 12, 2020. Attached and marked as **Exhibit “C”** is a copy of the October 20, 2020 e-mail. Attached and marked as **Exhibit “D”** is a copy of the Buksa Performance Bond.
23. At all material times, the registration holder is responsible for ensuring that the security, in this case the security bonds, remains current. AEP is not a party to the security bonds.
24. On November 18, 2020, AEP sent a letter to JMB indicating that they had failed to replace the financial security on each of the Private Pits and as such were non-compliant with the EPEA and relevant Regulations. Attached and marked as **Exhibit “E”** is a copy of the November 18, 2020 letter.
25. On February 12, 2021, AEP issued a Notice of Non-Compliance to JMB advising that JMB was in contravention of the Code of Practice for Pits, and the *Conservation and Reclamation Regulation* at each of the Private Pits, and contravention of the *Water Act*, RSA 2000, c. W-3 on the Kucy and Megley Pits. Attached and marked as **Exhibit “F”** is a copy of the Notice of Non-Compliance.
26. The Notice of Non-Compliance advised that on one or more of the Private Pits, JMB had:
- (a) Failed to restore the required security;
 - (b) Failed to submit the required 5-year report;
 - (c) Failed to follow the Activities Plan mining sequence with absence of reclamation noted at all pits;
 - (d) Failed to comply to the boundary approved in the Registration; and
 - (e) Failed to report these non-compliance issues to the Director
27. The Notice of Non-Compliance required JMB to submit written plans to AEP no later than February 18, 2021, outlining the following:

- (a) Detailing JMB’s assessment of each respective pit against the terms and conditions of the Regulation and the Code;
- (b) Describing how JMB plans to bring each respective pit into compliance with the Regulation and Code; and
- (c) Describing how JMB plans to address the Water Act contraventions.

28. In response to the Notice of Non-Compliance, on February 16, 2021 JMB requested an extension of time to submit the written plans to February 22, 2021, which extension was allowed by AEP. Attached and marked as **Exhibit “G”** is a copy of the February 16, 2021 correspondence.

29. On February 23, 2021, JMB requested a further extension of time to submit the written plans to February 24, 2021, which extension was again allowed by AEP. Attached and marked as **Exhibit “H”** is a copy of the February 23, 2021 correspondence.

30. On February 24, 2021 JMB submitted proposed plans for the Private Pits entitled Written Plan to Resolve Non-Compliances (the “**Compliance Plan**”). Attached and marked as **Exhibit “I”** is a copy of the Compliance Plan.

31. On March 10, 2021, AEP sent an e-mail in response to the Compliance Plan submitted advising that the Compliance Plan did not sufficiently satisfy the criteria set out in the Notice of Non-Compliance. Attached and marked as **Exhibit “J”** is a copy of the March 10, 2021 e-mail.

32. As a result the following Environmental Protection Orders were issued:

| PIT | ORDER | DATE | EXHIBIT |
|------------|-------------------|----------------|--------------------|
| Havener | EPO-EPEA-35659-04 | March 11, 2021 | Exhibit “K” |
| Buksa | EPO-EPEA-35659-05 | March 11, 2021 | Exhibit “L” |
| Kucy | EPO-EPEA-35659-03 | March 11, 2021 | Exhibit “M” |
| MacDonald | EPO-EPEA-35659-01 | March 2, 2021 | Exhibit “N” |
| Megley | EPO-EPEA-35659-02 | March 11, 2021 | Exhibit “O” |
| O-Kane | EPO-EPEA-35659-06 | March 11, 2021 | Exhibit “P” |

(collectively the “**EPOs**”).

33. On March 16, 2021, AEP issued Amendment No. 1 to EPO-EPEA-35659-01, as requested by JMB. Attached and marked as **Exhibit “Q”** is a copy of Amendment No. 1.

34. While each EPO is specific to the pit that it was issued for, each of the EPOs, and in the case of the MacDonald Pit Amendment No.1, order JMB and its former and current directors to, among other things:

- (a) immediately suspend any work at the respective pit and not remove any stockpiled materials;
- (b) submit to the Inspector, for the Inspector's review and approval, the name and qualifications of a reclamation consultant who JMB intends to retain for the preparation of a reclamation plan;
- (c) submit a reclamation plan including, at minimum:
 - (i) particulars of the characteristics and properties of the land;
 - (ii) a historical synopsis of the surface, subsurface and groundwater disturbance;
 - (iii) a description of the adjacent land uses;
 - (iv) an accounting of the remaining marketable aggregate at the pit and its present value;
 - (v) a description of the reclamation work including the equipment, methods and materials to be used for plan implementation;
 - (vi) a description of the proposed reclaimed land use including elevations, soil replacement and re-vegetation;
 - (vii) a description of how ground water infiltrating open excavations will be addressed and justification for any surface and water related improvements to be left in place;
 - (viii) a proposed schedule of implementation; and
 - (ix) a 6 month monitoring and maintenance program commencing on a specified date following the completion of the reclamation plan.

(the "**Reclamation Steps**").

35. The EPOs also provide specific timelines for the completion of each of the Reclamation Steps (the "**Reclamation Timelines**").

36. The EPOs set out the affected parties' statutory right of appeal to the Environmental Appeals Board. Furthermore, the EPOs warn that failure to comply with the EPOs may result in further enforcement proceedings.

37. I do not believe that JMB, or any of its directors, current or former, have filed a Notice of Appeal on any of the EPOs.

38. Instead, JMB has begun to take steps in compliance with the EPOs, and on March 12, 2021 sent an e-mail proffering Tyler Pell as the reclamation consultant. Attached and marked as **Exhibit “R”** is a copy of the March 12, 2021 e-mail.

39. Further, JMB has submitted a proposed Reclamation Plan in relation to the MacDonald Pit (the “**MacDonald Plan**”). Attached and marked as **Exhibit “S”** is a copy of the MacDonald Plan.

Initial RVO and SAVO

40. I understand that on October 16, 2020 the Court issued, among other things, the following orders:

- (a) The Reverse Vesting Order (the “**RVO**”); and
- (b) The Mantle Sale Approval and Vesting Order (the “**SAVO**”).

41. From my review of both the RVO and the SAVO, I understand that:

- (a) Subject to the approval of AEP, four of the JMB EPEA Registrations would be assigned to, and vested in the sister company of JMB, 2161889 Alberta Ltd. (“**216**”); and
- (b) Subject to the approval of AEP the remaining three JMB EPEA Registrations would be assigned to, and vested in the purchaser, Mantle Group Materials Ltd. (“**Mantle**”).

42. On October 30, 2020, Tyler Pell, Aggregate Resources Manager with JMB, submitted an email request for the transfer of the following EPEA registrations:

- (a) 15048-03-00 (Buksa Pit)
- (b) 17395-01-00 (Havener Pit)
- (c) 308161-00-00 (Shankowski Pit)

(collectively, the “**Proposed Transfers**”).

Attached hereto and marked as **Exhibit “T”** is a copy of the October 30, 2020 email with attachments.

43. On that same date, AEP replied to the October 30, 2020 e-mail attaching the Consent to Transfer forms and setting out further requirements for the requested transfers (“**AEP October 30**”).

Response”). Attached hereto and marked as **Exhibit “U”** is a copy of the AEP October 30 Response.

44. Notwithstanding AEP’s attempt to assist Mr. Pell and JMB through the EPEA Registration Transfer process, AEP did not receive executed copies of the Consent to Transfer forms.

45. Further, neither JMB nor Mantle took any steps to provide the requisite security deposits necessary for the EPEA Registration Transfers to be completed.

46. As noted at paragraph 18 of my Affidavit, on November 18, 2020, AEP sent a follow up letter to JMB advising that AEP required the security to be in good standing on all of the Private Pits prior to any approval of the Proposed Transfers. Ultimately, the Proposed Transfers were not completed due to JMB’s inability to comply with their security obligations.

Effect of the proposed Revised RVO

47. I understand, from my review of the Application and Revised Reverse Vesting Order (“**Revised RVO**”) circulated by counsel for JMB and 216 on March 21, 2021, that JMB and 216 are seeking, among other things, a Revised SAVO and a Revised RVO.

48. I understand that the Revised RVO no longer contemplates the Proposed Transfers, but instead includes an Environmental Reclamation Protocol that will operate outside of the current regulatory reclamation regime.

49. The Regulatory Legislation, defined above, has an established regulatory regime which governs the environmental reclamation obligations of a registration holder (the “**Regulatory Regime**”).

50. In particular, the Regulatory Regime ensures that a holder’s reclamation obligations will continue to be fulfilled when the holder becomes subject to insolvency proceedings.

51. The following outlines the key framework provided for in the Regulatory Legislation:

- (a) Under EPEA and the Approvals Regulation, the issuance, transfer, assignment, amendment or cancellation, of a Private Land Registration is in the discretion of the Director;
- (b) The Director may refuse to issue, mortgage, assign, transfer, sublet or renew a registration if the applicant is: (a) indebted to the Crown; or (b) otherwise in non-compliance with the Act or the Regulations (the “**Director’s Discretion**”);
- (c) Included in the non-compliance consideration, the Director can assess whether the registration holder is observing their reclamation obligations as set out in the Regulatory Legislation;

- (d) An affected party can dispute any decision made by the Director or an Inspector, to the Environmental Appeals Board (the “**Board**”).
- (e) The Board is a specialized panel with specific expertise in the area of environmental protection and reclamation.
- (f) Matters that can be Appealed to the Board include, but are not limited to:
 - (i) Where the Director refuses to issue an approval or refuses to make an amendment, addition or deletion in respect of an approval;
 - (ii) Where the Director cancels or suspends an approval;
 - (iii) Where the Director issues an enforcement order;
 - (iv) Where an inspector issues an environmental protection order regarding conservation and reclamation;
 - (v) Where the Director issues an environmental protection order; and
 - (vi) Where the Director refuses to accept an application for a remediation certificate or refuses to issue a remediation certificate.
- (g) Where an affected party remains unsatisfied with the outcome of an appeal, they are entitled to seek a judicial review of the Board’s decision.

52. The Amended RVO seeks to bind the AEP to a specific Environmental Reclamation Protocol (the “**Protocol**”). If implemented, the Protocol will have the effect of eliminating the director’s discretion and will undermine the Regulatory Legislation that governs public land dispositions.

53. Additionally, the Amended RVO will create inequality and confusion within the regulatory system as, after emerging from the CCAA proceedings, JMB/216/Mantle/ResidualCo would be adhering to one court imposed set of rules, while all other disposition holders would be observing the appropriate regulatory scheme.

54. Granting the Amended RVO in the form as requested will significantly encroach upon the AEP's role as regulator of public lands and contemplates the Plan Parties being able to circumvent the public lands regulatory regime by avoiding the Public Lands Appeal Board and/or the Environmental Appeal Board as applicable.

55. I understand, from my review of the proposed Amended RVO, that the Plan Parties, along with Levkulich and Patsch are seeking relief from the Court with respect to the EPOs and the EO.

56. AEP remains concerned that JMB and 216 will not take responsibility for its abandonment and reclamation obligations to AEP's satisfaction with respect to the dispositions prescribed by both the Regulatory Legislation.

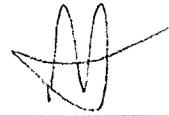
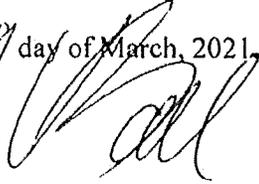
57. AEP does not anticipate performing and does not intend to perform any abandonment or reclamation of the lands that are subject to the 216 and JMB Dispositions.

58. I make this Affidavit in opposition to the Plan Parties' application for the Amended RVO in the form proposed and, in particular, the imposition of the Environmental Reclamation Protocol.

SWORN BEFORE ME at the City of)

, in the Province of Alberta,)

this ^{20th} day of March, 2021,)



A Commissioner of Oaths in and for)
the Province of Alberta

Maxwell Harrison

Vivienne M. Ball
Barrister & Solicitor
Alberta Justice and Solicitor General