

COURT FILE NO.

COURT

COURT OF KING'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 MANTLE MATERIALS GROUP, LTD

APPLICANT

MANTLE MATERIALS GROUP, LTD.

DOCUMENT

**AFFIDAVIT (Conversion to CCAA)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

**Gowling WLG (Canada) LLP**

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File No. A171561

**Attention: Tom Cumming / Sam Gabor / Stephen Kroeger**

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**AFFIDAVIT OF BYRON LEVKULICH**

**SWORN ON DECEMBER 18, 2023**

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I, Byron Levkulich, of the City of Denver, in the State of Colorado, **MAKE OATH AND SAY THAT:**

1. I am a director of the applicant, Mantle Materials Group, Ltd. (“**Mantle**”) and have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true. I am also a Principal with Resource Land Holdings, LLC (“**RLH LLC**”), which manages private equity funds that invest in land resources and is based in Denver, Colorado. Mantle is an indirect, wholly owned subsidiary of one of these funds.

2. I am authorized to swear this Affidavit as a corporate representative of Mantle.
3. In preparing this Affidavit, I consulted with Mantle's management and its legal, financial and other advisors. I also reviewed the business records of Mantle relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
4. This Affidavit is supplemental to my Affidavit sworn November 27, 2023 (the "**November 27 Affidavit**") in support of an application to, *inter alia*, take up and convert the proposal proceedings of Mantle (the "**Proposal Proceedings**") commenced by a notice of intention to make a proposal dated July 14, 2023 under section 50.4 in Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") into proceedings under the *Companies' Creditors Arrangement Act*, RSC, 1985, c. C-36, as amended (the "**CCAA**") pursuant to section 11.6 of the CCAA (the "**CCAA Proceedings**"), and to appoint FTI Consulting Canada Inc. ("**FTI**"), the proposal trustee in the Proposal Proceedings, as monitor in the CCAA Proceedings.
5. Unless otherwise defined in this Affidavit, capitalized terms will have the meanings given to them in my November 27 Affidavit. All references to dollar amounts contained herein are to Canadian Dollars unless otherwise stated.

#### **Applications by Travelers Capital Corp.**

6. I am informed by Mantle's legal counsel, Gowling WLG (Canada) LLP ("**Gowling WLG**") that Travelers Capital Corp. ("**Travelers**") has filed two applications on December 14, 2023 (the "**December 14 Applications**"):
  - (a) should this Honourable Court provide the relief sought in this Application and summarized in paragraph 4 of this Affidavit, an application by Travelers seeking, *inter alia*, the following relief (the "**Travelers' Enhanced Monitor Application**"):
    - (i) to enhance the Monitor's powers to entirely supplant Mantle's directors and management and to act as a receiver in all but name;
    - (ii) to exclude Mantle's counsel from the administration charge securing its fees in the CCAA Proceedings; and

- (iii) to remove from the Initial Order the provision indemnifying directors and officers of Mantle, and the D&O Charge to secure that indemnity; and
  - (b) an application to compel me to answer questions that my counsel instructed me not to answer, as they were not relevant to this Application or these proceedings (the **“Travelers’ Application to Compel Answers”**).
7. I am further aware, based upon my review of the materials filed in the Proposal Proceedings and in connection with this application, that Travelers has opposed most of the relief sought to date in the Proposal Proceedings. This opposition has involved numerous applications and the filing of voluminous materials by Travelers, and the filing of responding materials by Mantle, which are briefly summarized as follows:
- (a) Travelers contested Mantle’s application of August 8, 2023 to extend the time within which a proposal must be filed, to approve the Interim Facility<sup>1</sup> to fund Mantle’s restructuring activities and Reclamation Work,<sup>2</sup> to grant the Interim Financing Charge<sup>3</sup> to secure the Interim Facility, to grant an Administration Charge<sup>4</sup> to secure the fees and expenses of the Proposal Trustee, of counsel for the Proposal Trustee, and counsel for Mantle, and to grant an indemnity in favour of the officers and directors of Mantle secured by the D&O Charge;<sup>5</sup>
  - (b) Mantle’s application was adjourned to August 15, 2023, and in the interim period Mantle filed supplemental affidavits and a supplemental brief, the Proposal Trustee filed a supplemental report, and Travelers filed a supplemental brief;
  - (c) at the end of the hearing of the application on August 15, 2023, the Honourable Justice Feasby invited the parties to file by August 18, 2023 written submissions of up to three pages to address new issues argued by Travelers in the application that were not reflected in its materials, and counsel for Mantle, the AEPA and Travelers filed supplemental submissions;

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<sup>1</sup> The term “Interim Facility” is defined in paragraph 6(k) of the November 27 Affidavit.

<sup>2</sup> The term “Reclamation Work” is defined in paragraph 28 of the November 27 Affidavit.

<sup>3</sup> The term “Interim Financing Charge” is defined in paragraph 6(l)(ii) of the November 27 Affidavit.

<sup>4</sup> The term “Administrative Charge” is defined in paragraph 6(l)(i) of the November 27 Affidavit.

<sup>5</sup> The term “D&O Charge” is defined in paragraph 6(l)(iii) of the November 27 Affidavit.

- (d) following the release of the decision of the Honourable Justice Feasby on August 28, 2023, Travelers applied to the Court of Appeal for an order confirming they had an appeal of Justice Feasby's decision as of right under section 193(c) of the *BIA* or in the alternative for leave to appeal the decision under section 193(e);
  - (e) on October 23, 2023, Justice de Wit released his decision dismissing Travelers' application and on November 2, 2023, Travelers applied to the Justice de Wit for leave to appeal his decision before a panel of the Court of Appeal; and
  - (f) on November 27, 2023, Justice de Wit released his decision dismissing Travelers' application.
8. I have reviewed all of the materials that Mantle has had to file in the Proposal Proceedings in connection with Travelers' applications (collectively, the "**Travelers' Applications**"), including affidavits, supplemental affidavits, briefs, supplemental briefs, memoranda of argument. I am informed by Gowling WLG that Travelers' Applications resulted in one additional hearing by webex before this Honourable Court, one hearing by webex before the Court of Appeal, and one desk application before the Court of Appeal. In addition, Travelers' counsel questioned me of affidavits for a total of approximately 8 hours. In addition to spending this time, accompanied by my counsel, significant time was required to prepare for the question and to address undertakings. Between August 9, 2023 and November 27, 2023, the total professional fees of Gowling WLG attributable to Travelers' Applications was approximately \$230,000, which does not include the questioning. I have also been informed by my counsel that the Proposal Trustee and its counsel also had professional fees attributable to Travelers' Applications, including attending the questionings.
9. In addition, Travelers's opposition to the August 8, 2023 application resulted in delays in putting the Interim Facility in place. Because Mantle had insufficient cash without the Interim Facility to fund the Reclamation Work, the payment of employees during the Proposal Proceedings or the payment of contractors, all of these activities were delayed by Travelers' opposition. The negative consequences to the Proposal Proceedings, Mantle and its stakeholders included the following:

- (a) the commencement of Reclamation Work was delayed, with the effect that, as described in paragraph 17(b) of this Affidavit, some Reclamation Work could be completed in 2023 and will need to be completed in spring 2024;
- (b) important activities such as the collection of accounts receivable, the sale of inventory and the collection of the equipment subject to Travelers' security (the "**Travelers Equipment**") in one safe location were all delayed; and
- (c) Mantle was also unable to take steps to market and sell the Travelers Equipment and the Active Aggregate Pits.<sup>6</sup>

10. I have reviewed the brief filed by Travelers in support of Travelers' Enhanced Monitor Application, where Travelers alleges that there only remains a small amount of Reclamation Work in respect of the Inactive Aggregate Pits,<sup>7</sup> that the Monitor can manage and control both that Reclamation Work and all other activities that remain to be performed, and that this will be more cost effective. These allegations are not correct.

- (a) Since the completion of the Reclamation Work in November of 2023, Mantle has sought cost estimates from its contractors with respect to the remaining Major Reclamation Work that must be completed in the spring of 2024, and the Assessment Period Reclamation Work.<sup>8</sup> The remaining Major Reclamation Work and Assessment Period Reclamation Work for the Inactive Agreement Pits includes erosion repair, seeding and fertilizing, planting vegetation for lack, spraying and weeding, and consulting. Cory Pichota, the President and Chief Operating Officer of Mantle, has significant industry knowledge, experience in managing the reclamation of gravel and aggregate pits, and has the specific knowledge of Mantle's Active Aggregate Pits and Inactive Aggregate Pits that is necessary in order to manage the reclamation process in an efficient and cost effective manner.

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<sup>6</sup> The term "Active Aggregate Pits" is defined in paragraph 31 of the November 27 Affidavit.

<sup>7</sup> The term "Inactive Aggregate Pits" is defined in paragraph 32 of the November 27 Affidavit.

<sup>8</sup> The terms "Major Reclamation Work" and "Assessment Period Reclamation Work" are defined in paragraph 28 of the November 27 Affidavit.

- (b) It is misleading to characterize the Assessment Period Reclamation Work in respect of the Inactive Aggregate Pits as “minor” in nature. That Reclamation Work is only required where issues such as erosion, excessive weeds contaminating the planting, or failures in the planting and re-vegetation process arise. The reason for a two year Assessment Period<sup>9</sup> is that while such issues often arise in that period, their scope and the difficulty in addressing them varies widely, which directly impacts the amount of management time and Reclamation Work, and the cost of the latter, that is required. Following the completion of the majority of the Major Reclamation Work in November of 2023, Mr. Pichota sought updated cost estimates from contractors and consultants for the remaining Major Reclamation Work and Assessment Period Reclamation Work in respect of the Inactive Aggregate Pits. Those estimates are set out on **Exhibit “C”** of the Confidential Affidavit. Mr. Pichota is in the process of reviewing and negotiating the estimates with the contractors and consultants.
- (c) If Mr. Pichota is not prepared to continue to make himself available to manage the completion of the remaining Major Reclamation Work and Assessment Period Reclamation Work for the Inactive Agreement Pits, the costs will increase significantly because environmental consultants will have to provide those management services and essentially replicate Mr. Pichota’s knowledge with respect to the Aggregate Pits.
- (d) Mantle has also obtained estimates of the cost of reclaiming the Active Aggregate Pits. The cost estimates are set out in **Exhibit “C”** of the Confidential Affidavit (the “**Active Pit Reclamation Costs**”). The amount of the Active Pit Reclamation Costs exceed the costs set out in Mantle’s financial statements and summarized in paragraph 30 of the November 27 Affidavit because the latter are based on a net present value calculation since the obligations were assumed to occur at a future point of time once the mining and extraction of Aggregate is complete.

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<sup>9</sup> The term “Assessment Period” is defined in paragraph 28 of the November 27 Affidavit.

- (e) If the Active Aggregate Pits cannot be sold, the estate of Mantle will be responsible for the Active Pit Reclamation Costs. Since the Active Pit Reclamation Costs exceed the cash in Mantle's estate, as reflected in the Cash Flow Projections attached as Appendix C to the Fourth Report of FTI dated December 11, 2023 (the "**Fourth Report**"), and the Interim Facility is currently fully drawn, the Active Pit Reclamation Costs can only be funded if the Interim Facility provided by RLF Canada Lender Limited ("**RLF Lender**") is increased.
- (f) Mr. Pichota has been negotiating the terms of the sale of the Active Aggregate Pits to two bidders and two definitive asset purchase agreements are being discussed. Negotiations are at a sensitive stage and displacing management of Mantle would not be helpful to such negotiations, especially given the issues described in paragraph 25. While FTI is being consulted with respect to these negotiations, FTI is not directly involved in those negotiations.
- (g) Mantle has been reducing the number of its employees throughout the Proposal Proceedings as it has gradually wound down its business operations. However, the operations of Mantle include the performance of Reclamation Work and it is not correct to allege that those operations are "minor" have also ceased. While the level of time commitment from a management perspective will reduce, that time commitment, with Mantle's and particularly Mr. Pichota's knowledge and experience, will be critical to its successful, efficient and economic completion.
- (h) Mr. Pichota has informed me that he is in discussions to obtain other employment, and in that context, Mantle is in discussions with Mr. Pichota as to accessing his continuing management services on a consulting basis during the CCAA Proceedings, which he has been willing to discuss on the basis of his professional relationship with Aaron Patsch and I. However, he has informed me that because this commitment will be potentially burdensome, and he does not have a similar professional relationship with FTI, he is only prepared to provide those services where Aaron Patsch and I are involved in Mantle's management.

11. The Order sought by Travelers pursuant to Travelers' Enhanced Monitor Application also has impacts the Interim Facility under which Mantle has been financed by RLF Lender during the Proposal Proceedings:
  - (a) Under section 7.1(h) of the Interim Financing Agreement, it is an Event of Default if an Order is made which is not in form and substance acceptable to RLF Lender, acting reasonably. Under section 7.1(i), it is an Event of Default if there is any event or occurrence that has a Material Adverse Effect on Mantle, its business or property.
  - (b) The Order sought by Travelers in Travelers' Enhanced Monitor Application is not acceptable to RLF Lender because it will be significantly more expensive for FTI to carry out the Reclamation Work than Mantle, given that FTI does not have the requisite familiarity with the Aggregate Pits, will not be able to utilize the expertise, experience and knowledge of Mr. Pichota, and will have to rely heavily upon environmental consultants.
  - (c) Further, based upon the Cash Flow Projections attached as Appendix C to the Fourth Report, Mantle does not currently have the ability to repay the Interim Facility. Mantle has cash in the amount of \$1,592,248 and the \$2,200,000 Interim Facility has been fully drawn. While the sale of the Travelers Equipment described in paragraph 78 of the November 27 Affidavit should permit the repayment of the Interim Facility, that assumes that the sales of the Active Aggregate Pits are completed, which as will be described below, remains uncertain.
  - (d) As such, based on the current cash situation, the only fulcrum creditor in these proceedings is RLF Lender.
12. The brief filed by Travelers in support of Travelers' Enhanced Monitor Application also alleges that the directors of Mantle, namely Aaron Patsch and I, have a conflict of interest because directors have potential liabilities for environmental liabilities under Alberta's environmental protection legislation. In the Proposal Proceedings, which Mantle is seeking to have continued and taken up in the CCAA Proceedings, Mantle and its directors have

been focussed on maximizing the realizations from Mantle's assets, reducing operating costs as quickly as possible, and addressing the liabilities and debts for which Mantle is responsible to the extent possible and in accordance with Canadian law. To my knowledge, during the Proposal Proceedings all payments and actions taken by Mantle have been in accordance with the cash flow projections which were prepared during those proceedings and reviewed by FTI in its capacity as Proposal Trustee. No amounts were paid by Mantle, or will be paid by Mantle, that were or are not necessary in the Proposal Proceedings and contemplated by the cash flow projections.

13. The brief filed by Travelers in support of Travelers' Enhanced Monitor Application suggests that Mantle may intend to seek the approval of a plan of compromise and arrangement and a reverse vesting order, and seek a number of other orders from this Honourable Court. While it is correct that Mantle had been considering those options in order to allow it to complete the Assessment Period Reclamation Work over the next two years, and to provide for the proceeds of realization of its assets to be held in trust by the Monitor and the net amounts distributed to creditors, the potential economies of that option are only available where the majority of the creditors and stakeholders are working collaboratively and constructively. Given the Travelers' Applications described above, the directors of Mantle have concluded that it was unrealistic to expect that Travelers would not continue to oppose any relief sought by Mantle, and that it was therefore necessary to limit Travelers' opportunities to oppose steps taken in the CCAA Proceedings.
14. In order to simplify the CCAA Proceedings to the extent possible, Mantle has been developing an administrative process which is described in paragraph 109 of the November 27 Affidavit. Counsel for FTI, Travelers and the AEPA have been provided with draft copies of the administrative process, and Mantle anticipates seeking an order approving it in January of 2024. The administration process contemplates that Mantle will remain in the CCAA Proceedings, Mantle will complete the required Reclamation Work, the Monitor will hold the majority of proceeds realized in the estate in trust, and the net proceeds remaining will be distributed to the creditors. While this does not entirely eliminate the ability of Travelers to interfere in the process, my hope is that it will limit its potential targets.

15. I have been informed by my counsel, and verily believe, that during the Travelers' Applications, former counsel for Travelers' argued that Travelers had no opportunity to conduct environmental due diligence in connection with its loan to Mantle, and did not have an appraisal of the Travelers Equipment. I have the following comments:
- (a) I also informed by my counsel that the Honourable Justice Feasby in paragraph 42 of his reasons for decision released on August 28, 2023, noted that Travelers had available during its due diligence process indicating the existence of Mantle's Reclamation Liabilities and the security posted with the AEPA, and prior to the financing had an opportunity to assess the risk of doing business with Mantle, make an informed decision whether to do business with Mantle, and to negotiate a cost of borrowing that reflected the risk inherent in Mantle's business. This information is in the Affidavit of Cory Pichota sworn August 8, 2023; and
  - (b) Rouse Services Canada Ltd. prepared an appraisal of the Travelers Equipment for Travelers which was submitted to Travelers on September 30, 2022. Mantle was provided with a copy of this appraisal.
16. Attached as **Exhibit "D"** to the Confidential Affidavit is a cash projection prepared by Mantle for the CCAA Proceedings. Subject to a number of assumptions, the projection indicates that there will be cash available for distribution to secured creditors.

### **Reclamation Obligations and Actions by the AEPA**

17. I have reviewed the Affidavit of Heather Dent sworn December 14, 2023 (the "**December 14 Dent Affidavit**") together with Mantle's records, and have had discussions with Cory Pichota in respect of the status of the Reclamation Work. The following Major Reclamation Work and Assessment Period Reclamation Work for the Inactive Aggregate Pits remains outstanding:
- (a) Mantle has to complete erosion repair, seeding and planting of vegetation with respect to the Inactive Aggregate Pit known as SML 060060. The Reclamation Work for this pit was delayed because the AEPA only provided permission to drain a water body located at the pit and other work on September 14, 2023,

notwithstanding that the Revised Remediation Plan that contemplated the required work was provided to AEPA on January 27, 2023. Until that permission was granted, Mantle could not start the Reclamation Work.

- (b) Mantle has to complete the seeding for the Inactive Aggregate Pit known as the Macdonald pit. This was not completed prior to November 1, 2023 because of the delay in getting the Interim Facility in place as described above.
  - (c) Mantle must carry out any Assessment Period Reclamation Work that during the Assessment Period in respect of the Inactive Aggregate Pit. As related above, the scope of that work is inevitable uncertain at this point, as the amount of such work required depends on future events. However, for the reasons described above, Mantle is best placed to manage and conduct that work in an efficient and cost effective manner given its experience and knowledge.
18. Canadian Western Bank (“**CWB**”) provided letters of credit in favour of the AEPA which forms approximately half of the AEPA Security<sup>10</sup> which has been posted with Alberta Environment and Protected Areas (the “**AEPA**”) as security for Mantle’s Reclamation Liabilities. CWB has given notice that it will not renew the letters of credit when they expire in January of 2024. Mantle’s counsel has requested confirmation that the guaranteed investment certificates pledged by Mantle as security for its obligation to indemnify CWB for any draws under the letters of credit will be returned to Mantle when the letters of credit expire. Once the guaranteed investment certificates are returned, they will be provided to the AEPA as replacement security.
19. Since the Proposal Proceedings were commenced, the AEPA served Mantle with five environmental protection orders (each an “**EPO**”) in respect of the Active Aggregate Pits. These EPOs consist of the following (collectively, the “**New EPOs**”):
- (a) on September 12, 2023, the AEPA served:

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<sup>10</sup> The term “AEPA Security” is defined in paragraph 30 of the November 27 Affidavit.

- (i) EPO-EPEA-35659-11 (“**EPO-11**”) in respect of the Active Aggregate Pit known as the Havener pit; and
    - (ii) EPO-EPEA-35659-12 (“**EPO-12**”) in respect of the Active Aggregate Pit known as the Shankowski pit;
  - (b) on October 18, 2023, the AEPA served:
    - (i) EPO-EPEA-35639-15 (“**EPO-15**”) in respect of the Active Aggregate Pit known as SML110047; and
    - (ii) EPO-EPEA-35639-17 (“**EPO-17**”) in respect of the Active Aggregate Pit known as SML110026; and
  - (c) on November 14, 2023, the AEPA served EPO-EPEA-35639-14 (“**EPO-14**”) in respect of the Active Aggregate Pit known as SML110025.
20. EPO-11 and EPO-12 required the Havener and Shankowski pits to be fully reclaimed by October 31, 2023, and EPO-15, EPO-17 and EPO-14 required SML110047, SML110026 and SML110025 to be fully reclaimed by November 24, 2023. Each of these Active Aggregate Pits were subject to the Pit Sale Process described in paragraphs 79, 80 and 82 of the November 27 Affidavit.
21. Mantle has appealed the New EPOs to the Environmental Appeals Board (the “**EAB**”) and applied to the EAB for orders staying the New EPOs. Mantle sought the stay of the New EPOs at least until the Pit Sale Process was complete because of the serious adverse implications of the New EPOs, namely:
- (a) the AEPA was informed that these Active Aggregate Pits were subject to the Pit Sale Process, that any purchaser would have to be acceptable to the AEPA and assume all of the Reclamation Liabilities associated with these Active Aggregate Pits;
  - (b) if the Active Aggregate Pits subject to the New EPOs had been fully reclaimed, it is unlikely that they would be sellable given that potential purchasers would likely intend to purchase them in order to carry out mining and processing operations at those pits;

- (c) the period of time provided in the New EPOs was not sufficient to retain consultants and contractors and plan and carry out the required Reclamation Work;
  - (d) the Interim Facility provided the necessary funding to carry out the Reclamation Work for the Inactive Aggregate Pits. However, Mantle does not have the cash or funding available under the Interim Facility required to perform the Reclamation Work for the Active Aggregate Pits. Given that Mantle has intended all along to sell the Active Aggregate Pits during the Pit Sale Process, there was no reason to provide for the funding of the Reclamation Work for the Active Aggregate Pits under the Interim Facility. However, if Mantle was required to perform that Reclamation Work, it would require an increase in the Interim Facility Work; and
  - (e) as indicated in paragraph 109(d) of the November 27 Affidavit, if an Active Aggregate Pit cannot be sold, Mantle and RLF Lender intended to increase the Interim Facility in order to fund the Reclamation Work required to address its Reclamation Liabilities.
22. The AEPA has opposed Mantle's application for a stay of the New EPOs, notwithstanding that they are aware that there are potential purchasers for the Active Aggregate Pits and draft asset purchase agreements being discussed with those potential purchasers. Copies of the letters of intent and draft asset purchase agreements for the Active Aggregate Pits are attached to the Confidential Affidavit as **Exhibits "A" and "B"** (collectively, the **"LOIs and draft APAs"**). One potential purchaser wishes to purchase the Havener and Shankowski Active Aggregate Pits, and the other potential purchaser wishes to purchase the Active Aggregate Pits known as the Long Lake pit and Smoky Lake pits which are subject to SML100085, SML 110025, SML 110026, SML 110045, SML 110046, SML 110047, SML 120005, SML 120006 and SML 120100 (the **"Long Lake and Smoky Lake Pits"**).
23. In the December 14 Dent Affidavit, Heather Dent states that AEPA also issued EPO-EPEA-35659-13, in respect of the Active Aggregate Pit known as SML10045, and EPO-EPEA-35659-16, in respect of the Active Aggregate Pit known as SML120005. Until reading Ms. Dent's Affidavit, neither Mantle, Mr. Patsch nor I were aware these EPOs

were issued, as there is no record Mantle was ever served with those EPOs by AEPA. Had these EPOs been served on Mantle, Mantle would have appealed those EPOs to the EAB and would have applied for orders staying them.

24. The professional costs incurred by Mantle in reviewing, appealing and seeking stays of the New EPOs have been significant, to date amounting to approximately \$103,000.
25. On December 15, 2023, Alberta Forestry and Parks (the “**AFP**”), issued a letter cancelling four of the surface material leases included in the Long Lake and Smoky Lake Pits, being SML100085, SML 110046, SML 120006 and SML 120100. Mantle intends to seek to reverse or overturn this decision because if it remains in place, I do not believe that Mantle will be able to sell the remaining Active Aggregate Pits included in the Long and Smoky Lake Pits. Attached as **Exhibit “A”** to this Affidavit is a true copy of AFP’s December 15, 2023 letter.
26. Counsel for AFP is on the Service List, is working with AEPA’s external counsel. On December 8, 2023, counsel for Mantle sent to counsel for the AEPA by email copies of the draft asset purchase agreements for the Active Aggregate Pits. Attached as **Exhibit “B”** to this Affidavit is a true copy of that email.
27. On December 17, 2023, counsel for Mantle sent a letter to counsel for the AEPA and AFP responding to the AFP’s December 15, 2023 letter. Attached as **Exhibit “C”** to this Affidavit is a true copy of the December 17, 2023 letter of Mantle’s counsel.
28. I am very concerned that the actions of the AEPA in issuing the New EPOs, and of the AFP in cancelling SML100085, SML 110046, SML 120006 and SML 120100, at best has a chilling effect on the Pit Sale Process and potential sales, and at worst will prevent the sale of some or all of the Active Aggregate Pits.

### **Sealing of Confidential Affidavit**

29. As related above, the Confidential Affidavit includes cost estimates for the Reclamation Work and Assessment Period Reclamation Work in respect of the Inactive Aggregate Pits, the estimated Active Pit Reclamation Costs, and the LOIs and draft APAs. All of this

information is confidential its disclosure is potentially harmful to Mantle and its stakeholders. In particular:

- (a) the cost estimates for the remaining Major Reclamation Work and Assessment Period Reclamation Work in respect of the Inactive Aggregate Pits is sensitive because Mantle is still negotiating these costs with contractors and consultants and those negotiations could be prejudiced if these estimates were made public;
- (b) the estimated Active Pit Reclamation Costs are also still subject to negotiation and the disclosure of these could prejudice both those negotiations and the Pit Sale Process; and
- (c) Travelers has requested that copies of the LOIs and draft APAs be provided to this Court, but definitive agreements have not been signed, and the LOIs and draft APAs contain sensitive economic information relating to the Active Aggregate Pits, the disclosure of which could prejudice the finalization of definitive asset purchase agreements or any subsequent attempt to sell the Active Aggregate Pits if those transactions do not close.

30. Mantle is applying to this Honourable Court for an order sealing the confidential information described in paragraph 29 (the “**Sealing Order**”). Under the draft Sealing Order, the confidential information described in paragraphs 29(a) and (b) would become releasable upon the termination of the CCAA Proceedings, and the confidential information described in paragraph 29(c) would be releasable upon the sale of the Active Aggregate Pits.

Sworn before me at the City of Denver, in  
the State of Colorado, on this 18<sup>th</sup> day of  
December, 2023

\_\_\_\_\_  
A Commissioner of Oaths

}  
\_\_\_\_\_  
Byron Levkulich

This is **Exhibit “A”** referred to in the Affidavit of  
Byron Levkulich sworn before me this 18<sup>th</sup> day of December, 2023

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A Notary Public for the State of Colorado

File No 1. SML 120100  
2. SML 120006  
3. SML 100085  
4. SML 110046

December 15, 2023

Sent via [cory.pichota@mantlegroup.ca](mailto:cory.pichota@mantlegroup.ca)

Mantle Materials Group, Ltd.  
Box 6977  
Bonnyville, Alberta  
T9N 2H4

Dear Sir:

**RE: Cancellation of Disposition No.: SML 120100, SML 120006, SML 100085, SML 110046**

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In the department's October 11, 2023, letter, Mantle was given notice of the department's intention to cancel the listed Surface Material dispositions for failure to develop.

According to the Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land and conditions of these dispositions, Lessees must commence operations on the site within the first four years or the time specified in the plan if this time is less than four years. Failure to meet performance requirements will result in cancellation of the lease. Inspection of these dispositions established that no operations occurred on site.

Additionally, JMB Crushing Systems Inc. ("JMB"), 2161889 Alberta Ltd. ("216") and Mantle Materials Group, Ltd. amalgamated on May 1, 2021, and continued as Mantle Materials Group, Ltd. The Department amalgamated the dispositions only by a change of name to Mantle for each of the dispositions. The terms and conditions did not change. As a result of the amalgamation, Mantle has been the holder of the dispositions from the date on which either JMB or 216 first became the disposition holders and are subject to the same terms and conditions as JMB or 216.

Your letter of October 31, 2023, does not provide satisfactory reasons to justify the department's continuing of your disposition.

I have cancelled dispositions SML 120100, SML 120006, SML 100085, and SML 110046.

The security deposit held for these dispositions will be refunded/released, provided you are not indebted to the department.

If you have any questions regarding this matter, please contact me by email, or at (780) 446-4450.

Yours Truly,

Brendan Hemens  
Public Lands Disposition Management

cc: Joanne Sweeney, Team Lead, Aggregates  
Dave Pochailo, Senior Manager, Prairie/Parkland Lands Manager  
Darrell Kentner, Senior Manager, Northeast Lands Manager  
Heather Dent, Compliance Manager, Alberta Environment and Protected Areas

This is **Exhibit “B”** referred to in the Affidavit of  
Byron Levkulich sworn before me this 18<sup>th</sup> day of December, 2023

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A Notary Public for the State of Colorado

## Kroeger, Stephen

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**From:** Cumming, Tom  
**Sent:** December 8, 2023 3:04 PM  
**To:** Ryan Zahara  
**Cc:** Kyriakakis, Pantelis; Kroeger, Stephen  
**Subject:** Mantle - Administration Process; Active Pit Sales  
**Attachments:** CCAA Administration Process - Mantle Materials Group, Ltd.(59652196.9).docx

Ryan,

I understand that you have requested a copy of the administration process document, which we propose to attach to an order. The draft, as it stands now, is subject to further comment from FTI and my client. It requires that there be three funds, to the extent that there are moneys available: (1) first a reclamation fund, and then, to the extent of availability, (2) a restructuring costs fund, and then, to the extent of availability, a (3) creditor distribution fund. At the moment, there is sufficient funding for the 1<sup>st</sup>, and partially for the 2<sup>nd</sup>. At this time, it is not intended to set up the third until there is money to work with. You will note that it bears some resemblance to the form of the plan you were previously provided, but in addition to certain adaptations, we stripped out the plan components. You will also note that if the sales of the active pits cannot be accomplished, Mantle is committed to reclaiming them, assuming that the reason they could not be sold was an actual breach by another party of a legal obligation.

We came to this approach because it limits what has to be done procedurally in the CCAA, at least initially, to the bare minimum. There will be no claims process or meeting order, or any plan put to the creditors, unless circumstances change. We do this because we are cognizant of the staggering professional costs that Travelers and the AEPA have put the estate to, and the apparent likelihood of this continuing. We are simplifying the process procedurally to the extent humanly possible with the aim of completing the major reclamation work, quantifying the assessment period reclamation work to the extent possible, and then provided sufficient reserves can be set aside, making distributions. Quantifying assessment period reclamation work is not entirely straightforward, as it is designed to address things like erosion and weeds, which by their nature are not entirely predictable. However, there are people with expertise who should be able to make reasonable estimates.

We are also negotiating purchase agreements with respect to the active pits identified as (1) Smoky Lake and Long Lake; and (2) Havener and Shankowski. If we are able to complete those transactions, that will make a fundamental difference to the level of remaining reclamation liabilities. You will note from the affidavit that the AEPA issued EPOs in respect of these pits. Appeals have been filed, and Mantle is requesting stays of these Orders. It is not clear why they chose to take these steps, as their evidence is inconsistent and their arguments difficult to follow. However, the potential purchasers are, we understand, parties in good standing from a regulatory view point, and we are optimistic that if we can enter into APAs, we should be able to address the AEPA's concerns.

Should have any questions with respect to the forgoing, please do not hesitate to contact me.

Best regards,

Tom

Tom Cumming (he/him)

*Partner*

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This is **Exhibit “C”** referred to in the Affidavit of  
Byron Levkulich sworn before me this 18<sup>th</sup> day of December, 2023

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A Notary Public for the State of Colorado

December 17, 2023

**Delivered by email**

Field Law  
400 – 444 7th Avenue SW  
Calgary, AB T2P 0X8

**Thomas Cumming**  
Direct +1 403 298 1938  
tom.cumming@gowlingwlg.com  
File no. A171561

**Attention: Doug Nishimura**  
Email: dnishimura@fieldlaw.com

Alberta Justice  
Environmental Law Team  
8<sup>th</sup> Floor, Oxbridge Place  
9820 – 106 Street  
Edmonton, AB T5K 2J6

**Attention: Vivienne M. Ball**  
Email: vivienne.ball@gov.ab.ca

Dear Mr. Nishimura and Ms. Ball:

**Re: Proceedings of Mantle Materials Group, Ltd. under the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* (the "Restructuring Proceedings")**

On December 15, 2023, Mantle Materials Group, Ltd. ("**Mantle**") received a letter from Alberta Forestry and Parks (the "**AFP**") cancelling SML 100085, SML 110046, SML 120006 and SML 120100 (collectively, the "**Cancellations**"). These surface material leases are included in the assets subject to the asset purchase agreement (the "**Draft APA**") between Mantle and PEA Holdings Incorporated ("**PEA**") relating to the Long Lake and Smoky Lake Pits identified as SML100085, SML 110025, SML 110026, SML 110045, SML 110046, SML 110047, SML 120005, SML 120006 and SML 120100 (collectively, the "**SMLs**").

A copy of the Draft APA was sent to Mr. Nishimura on December 12, 2023. Under the Draft APA, PEA would assume all of the environmental reclamation liabilities (the "**Reclamation Liabilities**") in respect of the SMLs. The transaction was conditional upon the withdrawal by Alberta Environment and Protected Areas (the "**AEPA**") of any environmental protection orders issued in respect of the SMLs, and AFP approving the transfer of the SMLs. The effect of the Cancellations is likely to terminate negotiations with PEA in respect of the Draft APA, rendering the SMLs unsellable. This in turn means that rather than the Reclamation Liabilities being assumed by a solvent company that has other surface material leases and/or registrations in respect of gravel and aggregate pits, the Reclamation Liabilities will remain with Mantle.

In the last few weeks, Mantle obtained cost estimates for reclamation of the pits subject to the SMLs, which confirm that the Reclamation Liabilities exceed the amount of cash available in the estate of Mantle. As indicated in paragraph 109(d) of the Affidavit of Byron Levkulich sworn November 27, 2023

(the “**November 27 Affidavit**”), it was intended that in the event that a purchaser for the Active Aggregate Pits (which, as defined in that Affidavit, include the SMLs) was not found, RLF Canada Lender Limited (“**RLF Lender**”) (which is providing Mantle with the interim financing facility in the Restructuring Proceedings (the “**Interim Facility**”)), would have increased the Interim Facility in order to fund that reclamation work.

I note the following, so that we are clear on how this matter has developed:

1. On October 18, 2023, the AEPA issued two EPOs against two of the SMLs, which required the pits to be fully reclaimed by November 24, 2023 EPO-EPEA-35659-15 (“**EPO 15**”) and EPO-EPEA-35659-17 (“**EPO 17**”).
2. On November 14, 2023, the AEPA served on Mantle EPO-EPEA-35659-14 (“**EPO 14**”), which also required that the pit be fully reclaimed by November 24, 2023. The AEPA had not previously delivered this EPO.
3. According to Heather Dent’s affidavit sworn December 14, 2023, five EPOs were issued on October 18, 2023, even though only two were received by Mantle on or about October 18, 2023. As indicated in the last paragraph, a third was received on November 14, 2023.
4. Mantle has never seen the fourth and fifth EPOS. According to the Heather Dent’s affidavit, these were EPO-EPEA-35659-13 (“**EPO 13**”) and EPO-EPEA-25659-16 (“**EPO 16**”).
5. Mantle appealed EPO 15, EPO 17 and EPO 14, and has sought a stay of the three EPOs. Had Mantle actually received EPO 13 and EPO 16, and these EPOs were on similar terms to the others, it would also have appealed them requested they be stayed.

As a stakeholder on the Service List, AEPA has been served with all of the materials in these proceedings and is aware of Mantle’s plans to proceed with a sale and solicitation process (**SSP**) with respect to its Active Aggregate Pits, which are those pits that still had economic value and could generate revenue for a future pit holder. The SSP that was launched on September 20, 2023 was communicated to AEPA on September 22, 2023 in an email to Collette Strap of AEPA, which attaches a copy of the SSP Teaser, which shows the bid deadline of October 25, 2023 and that the SMLs are included in the SSP. The SSP was also communicated on September 25, 2023 in a meeting with Heather Dent and Maxwell Harrison.

The fact of the SSP and its importance to ensuring any Reclamation Liabilities associated with the Active Aggregate Pits are provided for has been repeatedly communicated as part of the Environmental Appeal Board process, especially as part of Mantle’s applications to stay the Environmental Protection Orders being appealed. At no point in these or any other proceedings did AEPA and/or AFP advise Mantle or the Court of King’s Bench of Alberta (the “**Court**”) that it had concerns with the SSP or would not permit SMLs to be included in the SSP. In fact, it was not until October 11, 2023 that AFP advised Mantle it intended to issue the Cancellations, which Cancellations Mantle contested in a letter dated October 31, 2023. Despite knowing the bid deadline for the SSP was October 25, 2023, and that bids had been received for all included pits as set out in the Fourth Report of the Proposal Trustee of December 11, 2023, the Cancellations were issued on December 15, 2023. This was three days after a copy of the Draft APA was sent to Mr. Nishimura.

We have a number of concerns with respect to the actions of the AEPA and AFP:

- (a) It is, in our view, clearly in the public interest that a sale transaction be concluded with PEA which results in PEA assuming Mantle's Reclamation Liabilities in respect of the pits subject to the SMLs. PEA is a solvent entity that has the industry experience and sophistication to operate the pits in compliance with Alberta's environmental regulatory regime.
- (b) The effect of issuing the EPOs in respect of the Active Aggregate Pits, which required their full reclamation within approximately five weeks, was disruptive to the SSP. Had Mantle not appealed the EPOs and sought a stay, but rather fully reclaimed the Active Aggregate Pits, those Active Aggregate Pits would not have been sellable. It is clear that the AEPA intended to disrupt the SSP because it was unwilling to agree to a stay of the EPOs pending the completion of the sale process, and has vigorously opposed Mantle's stay applications.
- (c) If the sale transaction with PEA cannot be concluded because of AFP's actions, or because the AEPA has issued the EPOs described above, then the Reclamation Liabilities will remain with Mantle, which is insolvent.
- (d) Since Mantle does not have the available cash to fund the reclamation work on the pits subject to the SMLs, and has fully drawn under the Interim Facility, the only way that reclamation work can be performed is through an increase by RLF Lender of the Interim Facility and the approval of that increase by the Court.
- (e) By issuing the Cancellations notwithstanding that it was aware those SMLs were subject to the potential sale to PEA, the AFP has taken yet another and perhaps final act to disrupt that potential sale and leave the Reclamation Liabilities stranded in Mantle. This action is entirely unreasonable and could not possibly be in the public interest, as it leaves the Reclamation Liabilities in an insolvent entity (Mantle) when the alternative of having them assumed by a solvent entity (PEA) was readily available. The potential sale to PEA was the only reasonable way of in which the Reclamation Liabilities of Mantle in respect of the pits subject to the SMLs could be addressed.
- (f) By contrast, throughout the Restructuring Proceedings, Mantle has acted in good faith and with due diligence to ensure that the Inactive Aggregate Pits (as defined in the November 27 Affidavit) will be fully reclaimed, notwithstanding the costly applications of Travelers Capital Corp. ("**Travelers**"), who have done everything in their power to oppose the Restructuring Proceedings and the funding of the reclamation work within those proceedings. For clarity, had Travelers been successful, the Reclamation Liabilities would have been left stranded in Mantle, and it is not clear that Travelers would have been prevented from simply taking and selling the equipment subject to its security.
- (g) In virtually all of the affidavits and other materials filed by Mantle in the Restructuring Proceedings, Mantle has acknowledged its responsibility for the Reclamation Liabilities and indicated that it would take the requisite action necessary to address them. It also arranged the Interim Financing, under which \$2.2 million has been advanced, and the reclamation work in respect of the Inactive Aggregate Pits has been funded. The

commitment of Mantle, and indeed RLF Lender, however, was based on the assumption that the AEPA and AFP would act in the public interest, and would assess a potential sale transaction on its merits.

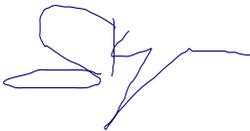
- (h) In these circumstances, it is questionable whether RLF Lender will be required to fund the reclamation work required to address the Reclamation Liabilities associated with the SMLs. The reason for this is that RLF Lender ought not to be funding Reclamation Liabilities that were unnecessarily left in Mantle as a result of the decisions of the AEPA and AFP. We do not think the Court will have any difficulty reaching this conclusion, with the result that any environmental liabilities associated with the SMLs will be abandoned and become the responsibility of AEPA and AFP.
- (i) In our view, the directors of Mantle have fully discharged their due diligence obligations to take all reasonable steps to address Mantle's Reclamation Liabilities.

We are considering what steps Mantle can take against the AEPA and AFP, including an application to the Court for relief under sections 11 and 11.2 of the CCAA. However, we would urge the AEPA and AFP to consider a more constructive approach in these circumstances and support the potential sale transaction with PEA.

There is no reason that the interests of Mantle, the AEPA and AFP could not be aligned on this matter. All of Mantle's actions in the Restructuring Proceedings have been to ensure its Reclamation Obligations are met. It would be regrettable if, after all of the efforts expended by Mantle to ensure its Reclamation Liabilities are addressed, the issues described in this letter could not be resolved in manner that ensures the public interest in seeing the Reclamation Liabilities provided for is met.

Sincerely,

Gowling WLG (Canada) LLP



For: Thomas Cumming

TSC