

Clerk's Stamp:

COURT FILE NUMBER 25-2965622

COURT COURT OF KING BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDING IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

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

DOCUMENT **SUPPLEMENTARY SUBMISSIONS OF ALBERTA ENVIRONMENT AND PROTECTED AREAS**

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To: The Honourable Justice Colin C. Feasby

The following are the written submissions of Alberta Environment and Protected Areas ("**AEP**") pursuant to your direction on August 15, 2023. Please note that references to cases herein all refer to citations in the Brief of Mantle Materials Group, Ltd. ("**Mantle**"), filed previously.

1. At the outset, it is fundamental to note that AEP (and other regulators contemplated in *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 ("**Redwater**") are not creditors seeking payment or security enforcement. AEP and other regulators are granted legislative authority to administer and enforce laws and regulations designed to protect both public and private lands for the benefit of all citizens. They therefore have requisite powers to enforce remedies against corporate and individual persons to achieve those ends. It is that distinction which drives the *Redwater* decision and those decisions that follow it. As a result, arguments which are more in keeping with a priority contest amongst creditors, which was rejected by the fundamental reasoning in the *Redwater* decision. The *Redwater* decision and those decisions which follow it contemplate enforcement against the persons obligated to comply with environmental orders, not any particular assets.
2. Travelers Capital Corp.'s ("**Travelers**") argument is centered on the superficial attractiveness of deeming only assets associated with environmental obligations to be subject to *Redwater*. For the reasons stated above, this approach is not compatible with the underlying basis of *Redwater* - that enforcement of statutory environmental obligations is against the obligee and not particular funds or assets. Moreover, Travelers' argument, if followed to its conclusion, gives

rise to additional complexity and uncertainty in determining which assets are subject to the *Redwater* decision and which are not. This leads to further uncertainty in the regulatory application and approval process. Neither the legislation or this process currently takes into account different types of assets nor is it appropriate to expect AEP and other regulators to do so.

3. The *Trident* decision, at paragraph 67, establishes that all assets in an estate subject to statutory environmental obligations and those enforced through environmental orders are included in the scope of the *Redwater* decision. Further, even if one was to attempt to limit the *Redwater* decision to assets associated with the project giving rise to environmental orders, that analysis leads to great uncertainty. For example, in the present case, it is submitted that, based on Personal Property Registry descriptions and equipment descriptions in Travelers' loan documents, the equipment financed by Travelers was directly involved in the gravel pit operations of Mantle.¹
4. Equipment such as compressors on an oil well site are included in the scope of regulatory authority.² There is no logical distinction to be made between such compressors and gravel pit equipment leased by Travelers. Indeed, the *Redwater* and *Manitok* cases were both about attempts to differentiate pools of assets subject to reclamation obligations, and the Court rejected that approach.
5. Not only would Travelers' argument lead to uncertainty with respect to the effect of *Redwater* on various lenders and their collateral, it would give rise to uncertainty even with one lender who has general personal property security. A bank holding an "all present in after-acquired personal property" security interest has, for example, security over bank accounts. Travelers' argument would exclude bank accounts from the scope of *Redwater* which is clearly not in keeping with the rationale behind that decision.
6. Travelers also argued that the application of *Redwater* to its collateral would have a new "chilling" effect on equipment financiers. This cannot be the case. *Redwater* was decided in 2019 and the industry has since operated under the assumption its effect was over the entirety of an entity's estate. Any "chilling" effect has happened already. Notably, *Redwater* was decided prior to Travelers granting its equipment financing to Mantle. Travelers cannot be assured to have financed on an interpretation of *Redwater* which was never reflected in subsequent decisions.
7. In fact, discussing of "chilling effects" works in an opposite way. *Redwater* and subsequent cases has defined the scope of assets which are subject to the regulatory process (namely, all assets in the estate of the obligee). Lenders must have therefore taken this into account since the date of that decision, so a decision in keeping with that interpretation would have no new chilling effect whatsoever. Instead, a whittling away of the effect of *Redwater* over some undefined assets might in fact give rise to a chilling effect on future regulatory approval applications as discussed above. In assessing a company's ability to handle necessary reclamation obligations, regulators at the moment can look at the entire financial health of the company.

¹ Affidavit of Byron Levkulich sworn August 7, 2023, Exhibits C and I

² [Alberta Energy Regulator v Lexin Resources Ltd., 2017 ABQB 219 \(CanLII\)](#)

8. Travelers also argued that environmental orders such as those in the present case could somehow be used as a “tool” or “weapon” in restructuring. Travelers raised the spectre of a debtor incurring significant secured equipment loans over various pieces of equipment just prior to entering into insolvency and thus having those assets available to remedy the environmental obligations. With respect, this argument is an unfounded scare tactic which is both highly unlikely and hypothetical. Debtors and their principals would in fact risk criminal charges of fraud in appropriate cases if such a scheme was attempted.
9. In the present case, the environmental orders were well known and documented in public, given their central role in the CCAA proceedings of Mantle's predecessors. These environmental orders existed long before Travelers obtained its security and even a cursory due diligence effort would have revealed their existence. It is notable that Travelers does not deny knowledge of the environmental orders at the time of granting financing.
10. For the foregoing reasons, AEP respectfully submits that Travelers’ collateral is, like all other assets of Mantle, part of Mantle’s overall estate and subject to the effects of the *Redwater* decision.

Submitted this 18th day of August, 2023.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

FIELD LLP



Per: _____
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solicitor for Alberta Environment and Protected Areas