No. S-266288
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF WESTERN POTASH CORP.,
WESTERN POTASH HOLDINGS CORP. AND 0907414 B.C. LTD.

AND

WPC (JERSEY) LIMITED

PETITIONER

APPLICATION RESPONSE

Application response of: Western Potash Holdings Corp., Western Potash Corp. and 0907414 B.C. Ltd. (the "**application respondents**")

THIS IS A RESPONSE TO the notice of application of FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor filed August 27, 2026.

The application respondents estimate that the application will take 2.5 Hours.

Part 1: ORDER CONSENTED TO

The application respondents consent to the granting of the orders set out paragraphs NONE of Part 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in paragraphs 1 and 2 of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in paragraphs NONE of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. On August 21, 2026, the Court granted an order made after application, duly endorsed by the Honourable Justice Stephens (the "**Initial Order**").

2. The Initial Order, among other things, places Western Potash Holdings Corp. ("**Holdings**"), Western Potash Corp. (the "**Company**") and 0907414 B.C. Ltd. ("**090**" and together with Holdings, and the Company, the "**Debtors**") under CCAA protection and appoints FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**") as monitor with various enhanced powers set forth therein. Further, the Initial Order approves an interim financing facility advanced by the Lender up to the amount of USD$1,000,000 (the "**Interim Financing Facility**").

3. The ultimate parent company of the Debtors is Western Resources Corp. (the "**Parent Company**"), which was formerly traded on the Toronto Stock Exchange.

4. The Company and 090 are the operating companies holding the Debtors' interest in the Milestone potash project (the "**Milestone Project**"), located in Southern Saskatchewan.

5. As is disclosed in the Parent Company's Management Discussion and Analysis for the year ended September 30, 2023 (the "**2023 MD&A**"), the construction of Phase I of Milestone Project was completed in August 2023. Thereafter, the Company moved into the commissioning phase of the Milestone Project.

6. Despite completing the construction of Phase I of the Milestone Project, the Debtors did not advance beyond the commissioning stage to bring the Milestone Project into full operational status as a result of financial constraints.

7. As is stated in a press release of the Parent Company dated May 21, 2024, the Parent Company's board of directors decided to suspend the operations of the Milestone Project on May 17, 2024 (the "**Suspension Date**").

8. Prior to the Suspension Date, Appian issued two (2) reservation of rights letters, dated February 9, 2024, and April 23, 2024, respectively. Such letters detailed various defaults of the Company and the other Debtors in connection with their loan and security agreements with Appian.

9. The Company's initial default in connection with its agreements with Appian occurred on or about January 31, 2024 (the "**Initial Default Date**"), by failing to achieve certain operational milestones in respect of the Milestone Project provided for in its agreements with Appian.

10. Recognizing the need for additional funding following the Initial Default Date, the Parent Company's directors opted to cease operations on the Suspension Date so that the Parent Company could refocus its efforts on discussions around raising additional financing.

11. Following the Suspension Date, the Company has actively been pursuing new sources of capital and has held discussions with a broad range of strategic investors and potential transaction partners regarding refinancing, equity investment, strategic partnerships, joint ventures and other potential transactions.

12. Efforts that the Company's management have taken include:

    (a) Engaging in discussions with several potential investors in Asian markets, including China, Indonesia, and Vietnam, to discuss potential investments, partnerships and other agreements;

    (b) Engaging with US-based investors for potential SPAC investments; and

    (c) Engaging with Canadian and US-based investors and other potash producers for potential joint venture or investment opportunities.

13. The Debtors retained FTI in or about October 2025, at the suggestion of Appian, to, among other things, assist with facilitating a process for potential strategic transactions.

14. Following the Suspension Date, the Debtors also received various notices of builders liens and other claims from several of its vendors during the construction phase of the Milestone Project.

15. The Debtors' management have monitored such claims as received, and confirmed they relate to services rendered in the construction process of the Milestone Project. However, given the Debtors' liquidity constraints, they were unable to make payments to address these various claims since the Suspension Date or take steps to oppose the claimants' commenced proceedings.

16. Despite their liquidity constraints, the Debtors' management has sought to maintain regular communications with stakeholders regarding their efforts to obtain new sources of financing.

17. The Debtors have generally sought to resolve these matters through informal standstill arrangements and negotiated extensions rather than through contested litigation. Given the Debtors' extremely limited cash resources, management considered that preserving available cash for the Milestone Project and for a potential restructuring or refinancing was preferable to using those funds for legal costs in relation to disputing any of the filed

claims against the Debtors, and the Debtors' management did not identify any grounds to dispute such claims.

18. Management's expectation has been that, subject to a successful refinancing, restructuring or other transaction, valid outstanding claims and related builders' liens would be addressed through the applicable closing and restructuring process.

19. As is discussed in the 2023 MD&A, the Company holds a 100% interest in the Milestone Project located under various property leases from the Government of Saskatchewan. Specifically, the Company's rights to these properties are subject to a renewable Subsurface Mineral Lease KLSA 008 issued by the Saskatchewan Ministry of Energy and Resources (the "**Mineral Lease**") and other renewable freehold leases.

20. The Company failed to make payments in connection with the Mineral Lease due May 18 2025 and 2026.

21. However, the Company has proactively initiated discussions with the Saskatchewan government to maintain the Mineral Lease and defer the missed payments, and has an agreement with the Saskatchewan government to extend such payments to September 30, 2026.

22. The aforementioned activities demonstrates management's good faith efforts to identify a viable refinancing or investment plan for the Debtors. Further, during the period following the Suspension Date to the onset of these CCAA proceedings, the Debtors have been facing significant liquidity constraints, and have focused efforts on searching for viable financing and investment opportunities.

Part 5: LEGAL BASIS

1. CCAA proceedings have historically been debtor-driven processes, with the monitor taking a supervisory role. However, there are various cases wherein creditors bring applications to play a more active role in CCAA proceedings, such as by applying to appoint chief restructuring officers or monitors with enhanced powers. Courts have extended the powers of the monitor in CCAA proceedings in certain circumstances such as when it can be demonstrated that either (i) management has resigned, leaving no directors and officers in place, (ii) management is unfit to conduct a restructuring process in a manner that would be in the best interest of all stakeholders, (iii) any potential restructuring path available would be doomed to fail, and/or that (iv) management is conflicted, notably because it is participating in the SISP under a CCAA.

Luc Morin and Arad Mojtahedi, Luc Morin and Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven

CCAAs", Annual Review of Insolvency Law, Toronto 14, at page 19.

2. In considering an application to expand the powers of a monitor in a CCAA proceeding, the Court in In Re Hudson's Bay Company, 2025 ONSC 5998 ["***Hudsons Bay***"] notes the following:

> 217. In my view, it is also not appropriate at this time to grant an order expanding the powers of the Monitor to act as a "super-monitor" and replace management of the Applicants in respect of all of their affairs and operations.
>
> 218. Indeed, and while the FILO Agent does not seek the appointment of a receiver or the removal of the directors, it does seek an order granting expanded powers to the Monitor so that "it is capable of assuming all the functions currently performed by HBC's management and board". It submits that it is not seeking the removal of the directors who are not being paid in any event.
>
> 219. However, <u>the relief being sought would have practically the same effect as the removal of directors since the directors would remain in office but have no powers. Section 11.5(1) of the CCAA permits the court to remove any director where the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made, or is acting or is likely to act inappropriately as a director in the circumstances</u>. I am not satisfied that any director has so acted here.
>
> 220. <u>Such relief is extraordinary</u>, and while it can be appropriate in certain cases, in my view, it is neither necessary nor appropriate at this time. While super-monitor powers have been granted in numerous cases, <u>they remain the exception and not the rule</u>, <u>and the determination of whether or not such relief is appropriate in any particular case is inherently fact specific</u>.

Hudson's Bay **at paras 217-220 (emphasis added).**

3. The Court in *Quest University Canada (Re),* 2020 BCSC 318, considers the applicability of S. 11.5(1) of the CCAA, and notes the following with respect to its decision to reject the approval of a party's application to remove the debtor's directors:

> 64: "Having considered the entirety of the evidence, I do not consider that VF has met its burden in establishing, on a balance of probabilities, that Quest's Board is unreasonably impairing the possibility of achieving a successful restructuring in this proceeding. At bottom, VF points to the ongoing deficits which the Board has made good faith efforts to address over the years. The fact that the governors have not yet been successful does not mean that they are incompetent; nor does it translate into a finding that they are now

unreasonably impairing the restructuring efforts. Indeed, Mr. Bromley himself was part of those efforts in years past, when some of those unsuccessful efforts were made."

***Quest University Canada (Re),* 2020 BCSC 318, at para 64.**

4. Further, the burden is on the party applying to expand the monitor's powers to establish that the proposed approach will be more effective.

***Mantle Materials Group, Ltd (Re)*, 2024 ABKB 19, at para 74.**

5. In deciding not to grant all powers of a chief restructuring officer proposed by petitioning creditors, the Court in *Pascan Aviation inc. (Arrangement relatif à*), 2015 QCCS 4227 notes the following:

> [77] The Court is of the opinion that, at this stage, collaboration is required, not coercion, especially since the Court will ensure the independence of the candidate selected.
>
> [78] The Court does not challenge the Petitioners' decision to use the mechanisms provided by the Act, especially since the Petitioners firmly believe in the Pascan Group's capacity for financial rehabilitation.
>
> [79] This being the case, the Petitioners must live with the consequences of their choices; stripping the directors of their powers in favour of a CRO, however, is not the standard applied by the courts.
>
> [80] This decision is not set in stone and may be reviewed by the Court if it becomes obvious that the directors are not cooperating with the CRO. In such a scenario, the Court would not hesitate to consent to increased powers for the CRO, as in the form used by Schrager J. in Aveos.

***Pascan Aviation inc. (Arrangement relatif à*), 2015 QCCS 4227 at paras 77-80.**

6. The Debtors respectfully submit that the Applicant and the Petitioner have not established that the current management of the Debtors is unfit to continue participation in these proceedings. As outlined above, the Debtors have been working to address their liabilities in the months leading up to these proceedings, and have consistently communicated with stakeholders. While such efforts have not yet led to a successful restructuring, the Debtors have acted in good faith and with due diligence.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Bill Xue, to be filed

2. Such other materials as counsel may advise.

☒ The application respondents have filed in this proceeding a document that contains the application respondent’s address for service.

Date: 29/AUG/2026

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Signature of Jordan Schultz
Lawyer for application respondents