

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>ENDURO RESOURCE PARTNERS LLC, et al.,</p> <p style="text-align: center;">Debtors.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>: Chapter 11</p> <p>: Case No. 18-11174 KG</p> <p>: Hearing Date: July 20, 2018, at 10:00 AM</p> <p>: Objections Due: July 2, 2018, at 5:00 PM</p>
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS BY THE UNITED STATES
TO THE DEBTORS' PROPOSED SALE TRANSACTIONS**

The United States, on behalf of its Department of Interior (“DOI”), by and through the undersigned attorneys, hereby objects to the Debtors’ Motion for Entry of (A) Order (I) Approving Bidding Procedures in Connection with Sale of Assets of the Debtors and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreements, and (II) Authorizing Sale Free and Clear of all Liens, Claims, Encumbrances, and Other Interests (“Sale Motion”). [DI 20]. In support of its limited objection, the United States respectfully states as follows:

BACKGROUND

1. On May 15, 2018, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Delaware. [DI 1].
2. On May 16, 2018, the Debtors filed the Sale Motion. On June 12, 2018, the Debtors filed a Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale (“Notice”). [DI 184].



3. It is unclear whether the assets to be sold pursuant to the Sale Motion include federal interests. The Notice contains the name of the contract counterparty, the contract type, the asset package assignment and the cure amount. The Notice does not include any contract numbers or any other specific contract information. The only federal entity listed as a counterparty in the Notice is the “Office of Natural Resources Revenue” (“ONRR”) which is not a counterparty to any leases or contracts with the Debtors. The United States has requested information from the Debtors about whether the sale includes federal interests. The DOI’s research indicates that the Debtors have an interest in at least 106 federal leases and 31 agreements (collectively, “Agreements”). DOI records indicate that the Debtors owe the DOI approximately \$362,195.32. This objection is based on the best information presently available.

4. At all relevant times, DOI was and is the agency of the United States charged, *inter alia*, with discretionary authority over the management of oil and gas rights on federal land pursuant to the Mineral Leasing Act of 1920 (“MLA”), 30 U.S.C. § 181 et. seq. and other applicable Acts.

ASSUMPTION AND ASSIGNMENT OF INTERESTS IN FEDERAL LANDS

5. Paragraph 57 of the Sale Motion provides: “To assist in the assumption, assignment, and sale of the Assumed Contracts, the Debtors also request that the Sale Order provide that anti-assignment provisions in the Assumed Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.” To the extent the Sale Motion directs the transference of federal interests, the Sale Motion is objectionable because it does not acknowledge or address the requirement that the Debtors obtain the consent of the United States to transfer such interest.

6. Section 365(b) of the Bankruptcy Code provides that a debtor-in-possession may not assume an executory contract or unexpired lease in default unless the debtor-in-possession: (1) cures the default or provides adequate assurance of a prompt cure; (2) compensates the non-debtor party to the contract or lease for the pecuniary loss suffered from the default or provides adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1)(A)-(C). Further, a debtor may not assume or assign any executory contract or unexpired lease of the debtor if applicable law excuses the other party from accepting performance from other than the debtor and such party does not consent to such assumption or assignment. 11 U.S.C. § 365(c)(1)(A) & (B). Finally, “[n]otwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property . . . proposed to be . . . sold . . . the court shall . . . prohibit or condition such sale . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

7. Consistent with the Bankruptcy Code, the MLA provides that no federal lease may be assigned or sublet or otherwise transferred without the consent of the Secretary of Interior. 30 U.S.C. § 187. The regulations require specific approval for assumption and assignment of federal oil and gas interests. The DOI Bureau of Land Management regulations, 43 C.F.R. § 3106.1 and 43 C.F.R. § 3106.7-2, also require approval of assignments or transfers of leases and agreements. Prerequisites to such approval include, but are not limited to, the payment of the actual cure amounts, the cure of existing contract and lease defaults, the assumption of decommissioning obligations, and the posting of appropriate bonds or other security and the qualification of the assignee to hold a lease or other agreement. The United States objects to the Sale Motion because it is not consistent with federal law. The Assignment of Contracts Act provides that a party to a federal contract may not transfer the contract or any

interest in the contract. 41 U.S.C. § 6305. Under this Act, Debtors may not assign or assume a contract with the United States without first obtaining its consent. *In re West Electronics, Inc.*, 852 F.2d 79, 83 (3d Cir. 1988).

8. Accordingly, the Debtors may not assign any of their interests in the Agreements without the specific approval of the Secretary of Interior. Such approval is contingent upon the Debtors meeting all of the regulatory criteria for such consent, *inter alia*, cure of any and all lease/contract defaults, adequate financial assurances relating to bonds, etc., and assumption of all obligations, including audit and decommissioning obligations. If the Agreements are being sold, the Debtors have not met the requirements for the Secretary's approval and assignment of the Agreements.

DEBTORS' POTENTIAL DECOMMISSIONING OBLIGATIONS

9. Pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (MLA), and the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351 *et seq.*, the regulations enacted pursuant thereto, notices to lessees, the terms of the leases and other applicable provisions of the law, the Debtors are obligated to protect and conserve the natural resources of the federal lands, as well as private lands where mineral rights have been retained by the federal government. These obligations include, but are not limited to, the obligations to: (1) timely and completely plug all wells; (2) environmentally reclaim the lease area(s); (3) restore any water or lands that are adversely affected by the lease operations; (4) remedy all environmental problems in existence at the lease area(s); and (5) to submit a surety bond or personal bond accompanied by negotiable Treasury securities, cashier's check, certified check, certificate of deposit, or irrevocable letter of credit in an amount deemed adequate by the United States to ensure compliance with the law; MLA; 43 C.F.R. § 3104.1, 43 C.F.R. § 3104.2, 43

C.F.R. § 3104.3, 43 C.F.R. § 3104.5(b); 43 C.F.R. § 3106.6-1. These obligations to ensure compliance with the lease terms, including protection of the environment, are known as decommissioning or plugging and abandonment obligations.

10. Decommissioning obligations arise when there is an approved application to drill on the lease or there is an unplugged well on the lease. 43 C.F.R. § 3106.6-7-2; 43 C.F.R. 3106.7-6. Lessees, owners of operating rights, and all holders of a right-of-way are responsible for meeting these obligations as the obligations accrue and until each obligation is met. 43 C.F.R. § 3106.6-1. Pursuant to the terms of the lease instruments and the regulations, performance of these obligations, however, is generally not due until production is abandoned or the lease expires. 43 C.F.R. § 3106.7-6.

11. The Agreements are executory contracts and/or leases subject to section 365 of the Bankruptcy Code. See 11 U.S.C. § 365; 30 U.S.C. § 223 (describing oil and gas leases); Section 365 of the Bankruptcy Code applies to the federal oil and gas leases and contracts, and therefore, the Debtors, or any other buyer or assignee, must assume all obligations, including, *inter alia*, the decommissioning obligations under oil and gas leases and contracts.

DEBTOR'S MONETARY DEFAULTS AND CURE AMOUNTS

12. The Debtors may seek to assign various federal oil and gas interests and to do so, must cure its outstanding debts with the United States. The United States objects to the Sale Motion to the extent any of its interests are assigned without payment of the appropriate cure amount. Pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1966 (RSFA), 30 U.S.C. § 1701 et. seq., the regulations enacted pursuant thereto, terms of the leases and contracts, and other applicable provisions of law, the Debtors are liable for payment of royalties,

rents, fees and other obligations, and for the maintenance of records relating to their oil and gas leases for six years unless the Secretary directs otherwise. *Id.* § 1712 -13. Correspondingly, the Secretary is required to audit and reconcile leases of oil and gas. *Id.* at § 1711. This duty has been delegated to ONRR.

13. The United States objects to the Sale Motion to the extent it fails to recognize the rights of the United States to: (1) require consent and adequate cure prior to the assignment of the Agreements under section 365 of the Bankruptcy Code; and (2) requires compliance with financial assurance, decommissioning, audit and other associated obligations of the federal leases and contracts and other non-bankruptcy law.

BANKRUPTCY RULE 6004 PROTECTIONS SHOULD NOT BE WAIVED

14. Paragraph 58 of the Sale Motion provides: “To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.” If the Debtors are purporting to transfer federal interests, the United States objects to the waiver of notice requirements under Bankruptcy Rule 6004(a) because it did not get adequate notice of the relief sought in the Sale Motion. The United States further objects to the waiver of the fourteen-day stay imposed under Bankruptcy Rule 6004(h) because this waiver negatively affects its appeal rights. The Debtors are requesting that the Court shorten the time for appeal afforded by the federal bankruptcy rules. Pursuant to Rule 6004(h) of the Federal Rules of

Bankruptcy Procedure, unless otherwise ordered by the Court, there is an automatic fourteen-day stay imposed from the date of entry of the order. Under the Debtors' proposed scheme, if the United States is unable to immediately obtain a hearing before the appropriate Court to seek a stay, its appeal may be contended to be moot. Particularly in light of the fact that the appellant in this case would be a government agency, with a chain of command to be consulted, this unilateral ability of the Debtors and the purchaser to truncate the stay period would be unfair and prejudicial to the government.

WHEREFORE, the United States respectfully requests that the Court deny the Sale Motion to the extent the Debtors purport to transfer any federal interests without complying with applicable non-bankruptcy laws and grant such other and further relief as the Court deems necessary and just.

DAVID C. WEISS
United States Attorney

BY: /s/ Ellen Slights
Ellen W. Slights (DE Bar No. 2782)
Assistant United States Attorney
Telephone 302-573-6277
Facsimile 302-573-6431
Ellen.Slights@usdoj.gov

Dated: July 2, 2018

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FOR THE DISTRICT OF DELAWARE**

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ENDURO RESOURCE PARTNERS LLC, et al.,	: Case No. 18-11174 KG
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Debtors.	: Hearing Date: July 20, 2018, at 10:00 AM
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AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on July 2, 2018 a copy of the **LIMITED OBJECTION AND RESERVATION OF RIGHTS BY THE UNITED STATES TO THE DEBTORS' PROPOSED SALE TRANSACTIONS** was served on the following in the manner indicated

below:

Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Attn: Caroline A. Reckler, Matthew L. Warren and Jason B. Gott
VIA EMAIL: caroline.reckler@lw.com; matthew.warren@lw.com;
and jason.gott@lw.com

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
Attn: Michael R. Nestor and Kara Hammond Coyle
VIA EMAIL: mnestor@ycst.com and kcoyle@ycst.com

Office of the United States Trustee for the District of Delaware
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801
Attn: Linda Casey
VIA EMAIL: linda.casey@usdoj.gov

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attn: Damian Schaible and Aryeh Falk
damian.schaible@davispolk.com; aryeh.falk@davispolk.com

Sherill & Gibson PLLC
3711 Maplewood Avenue, Suite 200
Wichita Falls, Texas 76308
Attn: R. Caven Crosnoe and D. Todd Davenport
VIA EMAIL: ccrosnoe@sgpllc.law; tdavenport@sgpllc.law

Conner & Winters, LLP
4000 One Williams Center
Tulsa, OK 74172
Attn: J. Ryan Sacra
VIA EMAIL: rsacra@cwlaw.com

Locke Lord LLP
JPMorgan Chase Tower
600 Travis, Suite 2800
Houston, Texas 77002
Attn: David Patton and Philip Eisenberg
VIA EMAIL: dpatton@lockelord.com; peisenberg@lockelord.com

/s/ Sharon Bernardo
Sharon Bernardo