

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: CASE NO. 18-11174(KG)

ENDURO RESOURCE PARTNERS
LLC, et al,

Chapter 11
Jointly Administered

DEBTORS.

Hearing: July 20, 2018 at 10:00 a.m.

**TARRANT COUNTY’S OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF AN
ORDER AUTHORIZING SALE FREE AND CLEAR OF ALL LIENS, CLAIMS
ENCUMBREANCES, AND OTHER INTERESTS**

TO THE HONORABLE COURT:

NOW COMES Tarrant County and files its Objection 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 (Filed by Enduro Resource Partners LLC) (hereinafter the “Sale Motion”). In support of its Objection, Tarrant County would show the Court the following:

I.

Tarrant County is a political subdivision of the State of Texas authorized to assess and collect ad valorem taxes pursuant to the laws of the State. Tarrant County has filed a secured claim



totaling approximately \$4,000 for ad valorem taxes owed on the Debtors' personal property for the 2018 tax year.

II.

Tarrant County's claim is secured by unavoidable liens that are superior to that of any other secured claimant pursuant to the Texas Constitution, Article VIII, Section 15, and the Texas Property Tax Code §§ 32.01 and 32.05(b). The priority of the tax claims and related liens is determined under applicable non-bankruptcy law. 11 U.S.C. § 506; Butner v. U.S., 440 U.S. 48, 55 (1979). The tax lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code §32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's senior statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien on all personal property of the Debtor. See In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See In re Winns Stores, 177 B.R. 253 (Bankr. W.D. Tex. 1995).

III.

It is unclear whether the terms of the Sale Motion provide for the tax liens to attach to the sale proceeds, but even if it does, this does not adequately protect the tax liens and claims as required by 11 U.S.C. § 363(e). The proceeds from the sale of Tarrant County's collateral constitute its cash collateral, and it objects to the use of the collateral to pay any other creditors of this estate.

Pursuant to 11 U.S.C. § 363(c) (4), absent consent by Tarrant County or an order of the Court permitting use of its cash collateral, the Debtors “shall segregate and account for any cash collateral” in their possession. The Debtors have not filed a motion seeking to use the cash collateral of Tarrant County, nor has there been notice or a hearing on the use of the collateral. Accordingly, absent consent, a segregated account must be established from the sale proceeds to comply with the requirements of § 363(c)(4). These proceeds from the sale Tarrant County’s collateral should not be distributed to any other party unless and until its claims, including any interest thereon as allowed under 11 U.S.C. § § 506(b), 511 and 1129, are paid in full.

Although no credit bid is anticipated at this time, in such event, there may be no sale proceeds to which the liens can attach or which may be used to pay the claims of Tarrant County. If there is a credit bid by a junior lienholder, the property should be sold subject to the senior tax liens or the liens should be paid at closing. A credit bid by a junior lienholder is an attempt to avoid the consequences of foreclosing/seizing the property under applicable non-bankruptcy law which would require it to take the property subject to the tax liens. There is no legal or equitable basis for thus subordinating or avoiding the tax liens. Absent provisions for the adequate protection of the tax liens, Tarrant County objects to the approval of a sale on a credit bid.

IV.

WHEREFORE, Tarrant County objects to the Debtors’ Sale Motion and requests this Court to order appropriate provisions to assure the protection of the position of its secured tax claims and further requests other and such relief as is just and proper.

Dated: July 5, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 5th day of July, 2018, I caused a true and exact copy of the foregoing to be served upon all parties to the Court's electronic noticing system and upon the parties set forth below via electronic mail as indicated.

/s/ Elizabeth Weller
Elizabeth Weller

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