

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, <i>et al.</i> ,	§	Case No. 20-42002-ELM-11
	§	
Debtors. ¹	§	(Jointly Administered)
	§	

EOG RESOURCES, INC.'S OBJECTION TO NOTICE OF CURE PROCEDURES
(Related to Docket No. 407)

Comes now EOG Resources, Inc. ("EOG"), a counter-party to multiple contracts and party in interest in the above-referenced cases, and files this objection (the "Objection") to the Debtors' *Notice of Cure Procedures* [Docket No. 407] (the "Cure Notice"). In support of the Objection, EOG states as follows:

1. On August 29, 2020, the Debtors filed the Cure Notice listing five (5) separate contracts with EOG at numbers 33 through 37, each with a proposed cure of \$0.00:

#	Counterparty Name	Counterparty Address	Debtor Counterparty	Contract Description	Contract Date	Proposed Cure
33	EOG Resources, Inc.	421 West 3rd Street, Suite 150, Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Purchase Agreement	2/13/2017	\$0.00
34	EOG Resources, Inc.	421 West 3rd Street, Suite 150, Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Sand Supply Agreement	1/1/2017	\$0.00
35	EOG Resources, Inc.	421 West 3rd Street, Suite 150, Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Sand Supply Agreement	1/1/2018	\$0.00
36 ²	EOG Resources, Inc.	421 West 3rd Street, Suite 150, Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Transportation Services Agreement	1/9/2018	\$0.00
37 ³	EOG Resources, Inc.	421 West 3rd Street, Suite 150, Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Purchase Agreement	6/24/2013	\$0.00

¹ The Debtors in these chapter 11 cases are: Vista Proppants and Logistics, LLC (7817) ("VISTA OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT").

² EOG has been unable to locate contract 36 in its records and therefore asserts a limited objection on the basis that it may not be a party to such agreement and therefore not subject to assumption of such agreement.

³ Contract 37 is no longer in effect due to EOG and the Debtors entering into contract 34 and EOG therefore objects to the assumption of such agreement on the basis that such agreement is assumed.



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2. For the reasons set forth in this Cure Objection, EOG objects to the proposed assumption of contract numbers 33, 34, and 35 (contracts 33, 34, and 35 are collectively referred to as the “Sand Supply Agreement”) identified above on the basis that there remains outstanding an approximate \$500,000 price reduction obligation under the Sand Supply Agreement and because the Debtors have not provided adequate assurance of future performance as required by 11 U.S.C. § 365(b)(1)(C) in light of their stated intention—and contractual obligation upon Plan approval—to shut down crucial components of their operations.⁴

Objection

3. Bankruptcy Code section 365(a) provides, in relevant part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). In connection with any such assumption, where there has been a default in in contract or lease to be assumed, Bankruptcy Code section 365(b)(1)(C) mandates in part that the debtor “provides adequate assurance of future performance under such contract or lease.” 11 U.S.C. § 365(b)(1)(C). The debtor bears the burden of proving adequate assurance of future performance in connection with the potential assumption of a lease or contract. *In re F.W. Restaurant Assoc., Inc.*, 190 B.R. 143 (Bankr. D. Conn. 1995); *In re Rachels Indus. Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990).

4. Contract numbers 33, 34, and 35 relate to the ongoing terms of EOG’s purchase of sand from the Debtors. Specifically, under contract 34 (the 2017 Sand Purchase Agreement dated as of January 1, 2017) which was subsequently amended by (i) contract 33 (a letter agreement dated as of February 13, 2017) and (ii) contract 35 (the First Amendment to 2017 Sand Purchase Agreement dated as of January 1, 2018), the Debtors have two significant

⁴ EOG also objects to the Cure Notice as to whether the identified agreements between EOG and the Debtors are separate or unitary, and any categorization and/or description of such agreements herein shall not constitute or be deemed to be a determination or admission by EOG that such agreements are separate or unitary, and all rights with respect thereto are expressly reserved.

obligations which remain outstanding: (1) at least \$500,000 of savings yet to be realized under the February 13, 2017 letter agreement which amended the pricing agreement under contract 34 and (2) certain sale and transportation obligations identified herein. The Debtors' sale obligations are set out in detail in Section 1 of the Sand Supply Agreement.⁵ Generally, the Debtors are required to produce and sell not less than 10,500,000 tons of sand. There are approximately 5,000,000 to 6,000,000 tons of obligation remaining under the terms of the agreement. Assuming the Debtors can produce 3,500,000 tons per year, it will take a minimum of 17 to 20 months to meet the obligation.

5. The Debtors have not established adequate assurance of future performance under the terms of the Sand Supply Agreement, and upon information and belief, they cannot because they will be in a "state of minimal operations for a period of up to 18 months after the Effective Date." *Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* at IV.D. Specifically, due to their pre-petition financial issues, the Debtors engaged in a number of "cost saving initiatives" such that "the Debtors are no longer engaging in trucking operations, have substantially reduced transloading operations, and have temporarily shut down their mining operations, other than the minimal operations necessary to preserve equipment and infrastructure." *Id.* at IV.A.1.

6. Moving forward, upon information and belief, the Debtors do not intend to maintain the storage and transloading facility in Dilley, Texas, which is vital to the Debtors' performance under the Sand Supply Agreement. EOG entered into the Sand Supply Agreement because of the Dilley, Texas facility and the benefit of reduced transportation costs obtained by purchasing sand from that facility. *See, e.g.*, Sand Supply Agreement at § 4 (specific provisions

⁵ Due to the proprietary nature of the Sand Supply Agreement, a copy is not attached to this Objection.

regarding the Dilley, Texas facility). The Debtors' constriction of their operations to the absolute minimum, including the shuttering and dismantling of their transportation infrastructure and closure of the Dilley facility, render it impossible for the Debtors to satisfy their obligations under the Sand Supply Agreement.

7. A plan of reorganization binds the debtor to contractual obligations. 11 U.S.C. § 1141; *see also FOM P.R. S.E. v. Dr Barnes Eyecenter Inc.*, 255 Fed. Appx. 909 (5th Cir. 2007) (stating that when interpreting a reorganization plan the appellate court uses traditional tools of contractual interpretation); (*In re Appliance Now, Inc.*, 568 B.R. 843, 849 (Bankr. M.D. Fla. 2017) ("Confirmation of a Chapter 11 plan of reorganization binds debtors and creditors to the plan, vests all property of the estate in the debtor free and clear of all claims and interests, and discharges the debtor of pre-confirmation debt. Courts follow 'principles of contract interpretation [when interpreting] a confirmed plan of reorganization.'") (citing *Iberiabank v. Bradford Geisen (In re FFS Data, Inc.)*, 776 F.3d 1299, 1304 (11th Cir. 2015)). The terms of the proposed *Second Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") as further described in the *Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* which call for the *Bankruptcy Code* contractually obligate the Debtors to minimal operations. The contractual terms of the Plan result in the breach of the Sand Supply Agreement by denying EOG the benefit of its bargain, which is access to purchase a certain tonnage of sand and the savings of transportation costs obtained by purchasing the sand from the Dilley facility. It is unclear from the Plan as to when the Debtors will recommence operations sufficient to meet the terms of the agreements with EOG in the future.

8. Therefore, in order to provide adequate assurance of future performance, EOG

demands evidence that the Debtors will be able to timely comply with their obligations under contract numbers 33, 34, and 35, including specific projections about available sand under the terms of such agreements, whether such sand will be available at the Dilley, Texas facility, the transportation capabilities of the Debtors now and going forward, and their ability to satisfy the outstanding price reduction obligation.

RESERVATION OF RIGHTS

9. EOG reserves its rights to amend and/or supplement this Objection and to raise any additional objections to the Cure Notice. In addition, this Objection is without prejudice to EOG's ability to raise further objections at any hearing on the proposed assumption.

WHEREFORE, in addition to its reservation of rights with respect to the underlying agreements at issue and its rights to further amend this response, EOG respectfully requests that (i) the Court require the Debtors to furnish sufficient evidence of adequate assurance of future performance as detailed herein and, if the Debtors are unable to furnish such evidence, deny assumption of the agreements with EOG and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: September 10, 2020

Respectfully submitted,

/s/ Joshua N. Eppich

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2020 a true and correct copy of the Objection was served via ECF to all registered users appearing in this case and via email to:

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