

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

SOLICITATION PROCEDURES

On March 18, 2019, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered an order [Docket No. 1620] (the “Disclosure Statement Order”) that, among other things: (a) conditionally approved the adequacy of the Amended Disclosure Statement with Respect to Joint Plan of Liquidation for the WMLP Debtors [Docket No. 1617] (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the “WMLP Disclosure Statement”) filed in support of the Joint Plan of Liquidation for the WMLP Debtors [Docket No. 1612] (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the “WMLP Plan”); and (b) authorized the WMLP Debtors² to solicit acceptances or rejections of the WMLP Plan from Holders of Impaired Claims (as defined herein) who are (or may be) entitled to receive distributions under the WMLP Plan.

Definitions

- A. “Ballot” means the ballots included in the Solicitation Package upon which certain Holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the WMLP Plan in accordance with the Plan and Solicitation Procedures, and which must be actually received by the WMLP Debtors on or before the Voting Deadline.**

- B. “Court” means the United States Bankruptcy Court for the Southern District of Texas having Notice and Solicitation jurisdiction over the Chapter 11 Cases.**

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors’ claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² The “WMLP Debtors” consist of the following entities: Westmoreland Resources GP, LLC; Westmoreland Resource Partners, LP; Westmoreland Kemmerer, LLC; Westmoreland Kemmerer Fee Coal Holdings, LLC; Oxford Mining Company, LLC; Harrison Resources, LLC; Oxford Mining Company-Kentucky, LLC; Daron Coal Company, LLC; and Oxford Conesville, LLC.

- C. “Combined Hearing” means the hearing conducted by the Court pursuant to § 1128(a) of the Bankruptcy Code to consider confirmation of the WMLP Plan and final approval of the adequacy of the WMLP Disclosure Statement, as such hearing may be adjourned or continued from time to time and which currently is scheduled for April 24, 2019 at 9:30 a.m. (prevailing Central Time).
- D. “Combined Hearing Notice” means that certain notice of the Combined Hearing approved by the Court pursuant to the Disclosure Statement Order.
- E. “Deemed to Reject Notice” means the notice that the Holders of Claims or Interests who are deemed to reject the WMLP Plan will receive, in addition to the Combined Hearing Notice, in lieu of a Solicitation Package.
- F. “General Tabulation Procedures” means the procedures set forth herein for the purposes of tabulating votes to accept or reject the Plan.
- G. “Plan Objection Deadline” means April 17, 2019, at 5:00 p.m. (prevailing Central Time), the date set by the Court as the deadline to file and serve objections to the WMLP Plan.
- H. “Presumed to Accept Notice” means the notice of non-voting status that the Holders of Claims who are presumed to accept the WMLP Plan will receive, in addition to the Combined Hearing Notice, in lieu of a Solicitation Package.
- I. “Solicitation Package” consists of the documents identified in Section III.1 of the Solicitation Procedures.
- J. “Solicitation Procedures” means the procedures set forth herein.
- K. “Voting Deadline” means April 17, 2019, at 4:00 p.m. (prevailing Central Time), the date set by the Court as the deadline for receipt of Ballots by the Debtors.

Solicitation Procedures

I. The Voting Record Date.

The Court has approved **March 15, 2019**, as the voting record date (the “Voting Record Date”) for purposes of determining: (a) which Holders of Claims are entitled to vote on the WMLP Plan; and (b) whether Claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the Holder of the Claim.

II. The Voting Deadline.

The Court has approved **April 17, 2019, at 4:00 p.m. (prevailing Central Time)**, as the Voting Deadline for the delivery of Ballots voting to accept or reject the WMLP Plan. To be counted as votes to accept or reject the WMLP Plan, all Ballots must be properly executed,

completed, and delivered to the Noticing and Solicitation Agent³ by using the return envelope provided or by delivery by: (a) first class mail; (b) overnight courier; (c) personal delivery, or (d) via electronic, online transmission through a customized electronic ballot section on the Debtors' restructuring website maintained by Notice and Solicitation Agent, available at <http://www.donlinrecano.com/westmoreland>, so that they are actually received no later than the Voting Deadline. The Ballots will clearly indicate the appropriate return address. Ballots should be sent or hand delivered to the Notice and Solicitation Agent: Donlin, Recano & Company, Inc., Re: Westmoreland Coal Company, 6201 15th Avenue, Brooklyn, New York 11219, or submitted electronically to WestmorelandVote@DonlinRecano.com.

III. Solicitation Procedures.

1. *The Solicitation Package*: The Solicitation Package shall contain copies of the following:

- a. the WMLP Disclosure Statement, as approved by the Court (with all exhibits thereto, including the WMLP Plan);
- b. the Solicitation Procedures;
- c. the Combined Hearing Notice;
- d. the Contract and Lease notice (if applicable);
- e. an appropriate Ballot with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope for mailing to the Notice and Solicitation Agent; and
- f. any supplemental documents that the WMLP Debtors may file with the Court or that the Court orders to be made available.

2. *Distribution of the Solicitation Packages*: The Solicitation Package shall be served on the following Entities in the Voting Classes on or before **March 20, 2019**:

- a. all Entities that, on or before the Voting Record Date, have timely filed, or on whose behalf was timely filed, a Proof of Claim (or an untimely Proof of Claim which has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that (i) has not been expunged, disallowed, disqualified, or suspended prior to the Voting Record Date; (ii) is not disallowed pursuant to the WMLP Plan; and (iii) is not the subject of a pending objection on the Voting Record Date; provided that the Holder of a Claim that is the subject of a pending objection on a "reduce" basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection;

³ No ballots shall be sent to the WMLP Debtors or their counsel or financial advisors, and any ballots so sent shall not be counted in connection with confirmation of WMLP Plan.

- b. Holders of Claims that are listed in the Schedules, with the exception of those Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled Claims that have been superseded by a timely filed Proof of Claim and any scheduled Claim that was paid, expunged, disallowed, or disqualified prior to the Voting Record Date); and
- c. Holders of Claims that arise pursuant to an agreement or settlement with the WMLP Debtors, as reflected in a document filed with the Court, in an order of the Court, or in a document executed by the WMLP Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed.

The WMLP Debtors will endeavor to the extent possible to make sure that Holders of more than one Claim in a single Voting Class receive no more than one Solicitation Package on account of such Claims.

3. ***Distribution of Materials:*** The Solicitation Package and the applicable Ballots shall be sent in either paper or electronic form, as applicable, to the Holders entitled to vote to accept or reject the WMLP Plan. Any Holder of a Claim or Interest, including any Holders who are presumed to accept the WMLP Plan or are deemed to reject the WMLP Plan, may request a paper or an electronic copy, as applicable, of the documents (other than Ballots unless such Entity is entitled to receive a Ballot) by (a) accessing the Notice and Solicitation Agent's website at <http://www.donlinrecano.com/westmoreland>, (b) writing to the Notice and Solicitation Agent at Donlin, Recano & Company, Inc., Re: Westmoreland Coal Company, 6201 15th Avenue, Brooklyn, New York 11219, (c) calling the Notice and Solicitation Agent's toll-free information line with respect to the Debtors at (800) 499-8519 (U.S. and Canada) or (212) 771-1128 (International), and/or (d) visiting the website maintained by the Court at <http://www.txs.uscourts.gov/bankruptcy>. The Office of the United States Trustee for the Southern District of Texas shall be served with the Solicitation Package (other than Ballots unless such Entity is entitled to receive a Ballot). The Disclosure Statement Order and Combined Hearing Notice shall be served on all those persons and entities that have formally requested notice, pursuant to Bankruptcy Rule 2002.

IV. Voting and General Tabulation Procedures.

- 1. Only the following Holders of Claims in the Voting Class shall be entitled to vote with regard to such Claims:
 - a. Holders of Claims who, on or before the Voting Record Date, have timely filed, or on whose behalf was timely filed, a Proof of Claim (or an untimely Proof of Claim which has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that (i) has not been expunged, disallowed, disqualified, or suspended prior to the Voting Record Date; (ii) is not disallowed pursuant to the WMLP Plan; and (iii) is not the subject of a pending objection on the Voting Record Date;

- b. Holders of Claims that are listed in the Schedules, with the exception of those Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled Claims that have been superseded by a timely filed Proof of Claim and any scheduled Claim that was paid, expunged, disallowed, or disqualified prior to the Voting Record Date);
 - c. Holders whose Claims arise pursuant to an agreement or settlement with the WMLP Debtors, as reflected in a document filed with the Court, in an order entered by the Court, or in a document executed by the WMLP Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed; and
 - d. the assignee of a timely filed Claim or a Claim listed in the Schedules shall be permitted to vote such Claim only if the transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.
2. ***Establishing Claim Amounts.*** In tabulating votes, the following hierarchy will be used to determine the amount of the Claim associated with each vote.
- a. the amount of the Claim settled and/or agreed upon by the WMLP Debtors, as reflected in a court pleading, stipulation, agreement, or other document filed with the Court, in an order of the Court, or in a document executed by the WMLP Debtors pursuant to authority granted by the Court;
 - b. the amount of the Claim contained in a Proof of Claim that has been timely filed by the applicable claims bar date (or deemed timely filed by the Court under applicable law) except for any amounts in such Proofs of Claim asserted on account of any interest accrued after the Petition Date; provided that Ballots cast by (i) any Holder of a Claim who timely files a Proof of Claim in respect of a contingent, unliquidated, or disputed Claim, or in a wholly-unliquidated or unknown amount that is not the subject of an objection, or (b) any counterparty that is a party to an Executory Contract or Unexpired Lease that may be subject to rejection pursuant to the WMLP Plan, will count for satisfying the numerosity requirement of § 1126(c) of the Bankruptcy Code and will, in each case, count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of § 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; provided, further, that to the extent the amount of the Claim contained in the Proof of Claim is different from the amount of the Claim set forth in a document filed with the Court and agreed to by the WMLP Debtors as referenced in the Solicitation Procedures, the amount of the Claim in the document filed with the Court will supersede the amount of the Claim set forth on the respective Proof of Claim;
 - c. the Claim amount listed in the Schedules; provided that such Claim is not scheduled as contingent, disputed, or unliquidated and has not been paid; and

- d. in the absence of any of the foregoing, zero.

The amount of the Claim established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the WMLP Debtors are not binding for any purpose, including for purposes of voting and distribution.

3. **General Ballot Tabulation.** The following voting procedures and standard assumptions will be used in tabulating Ballots:

- a. except as otherwise provided herein or unless waived by the WMLP Debtors or permitted by order of the Court, unless the Ballot being furnished is timely submitted to the Notice and Solicitation Agent on or before the Voting Deadline, the WMLP Debtors may reject such Ballot as invalid and, therefore, decline to count it in connection with Confirmation;
- b. the Notice and Solicitation Agent will: (i) date and time-stamp all Ballots when received; and (ii) retain all original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the WMLP Plan, unless otherwise ordered by the Court;
- c. except with respect to Ballots submitted via electronically to WestmorelandVote@DonlinRecano.com, an original executed Ballot is required to be submitted by the Entity submitting such Ballot. Delivery of a Ballot to the WMLP Debtors, their counsel or financial advisors, through any means, shall not be valid and shall not be counted in connection with confirmation of the WMLP Plan;
- d. the WMLP Debtors shall file a Voting Report with the Court on or before **April 19, 2019, at 5:00 p.m. (prevailing Central Time)**. The Voting Report shall, among other things, delineate every irregular Ballot including those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or necessary information, damaged, or received via facsimile or e-mail, or any other impermissible means. The Voting Report shall indicate the WMLP Debtors' intentions with regard to such irregular Ballots;
- e. the method of delivery of Ballots to the Notice and Solicitation Agent is at the election and risk of each Holder of a Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Notice and Solicitation Agent actually receives the originally executed Ballot;
- f. unless specifically instructed to do so, Ballots shall only be submitted via electronic, online transmission through a customized electronic ballot section on the WMLP Debtors' restructuring website maintained by Notice and Solicitation Agent, and no Ballot should be sent to the WMLP Debtors, or their counsel or financial advisors and if so sent, will not be counted in connection with the Confirmation of the WMLP Plan;

- g. the WMLP Debtors expressly reserve the right, in consultation with the Creditors' Committee and with the consent of the WMLP Secured Lenders, in accordance with the WMLP Plan, to make non-substantive or immaterial changes to the WMLP Plan and related documents without further order of the Court (subject to compliance with the requirements of § 1127 of the Bankruptcy Code and the terms of the WMLP Plan regarding modifications). The Bankruptcy Code requires the WMLP Debtors to disseminate additional solicitation materials if the WMLP Debtors make material changes to the terms of the WMLP Plan or if the WMLP Debtors waive a material condition to Plan Confirmation. In that event, the solicitation will be extended to the extent directed by the Court;
- h. if multiple Ballots are received from the same Holder of a Claim with respect to the same Claim prior to the Voting Deadline, the last dated valid Ballot received prior to the Voting Deadline will supersede and revoke any prior dated Ballot;
- i. separate Ballots received from the same Holder of Claims on account of separate Claims shall be counted separately for purposes of determining acceptances or rejections of the WMLP Plan pursuant to § 1126(c) of the Bankruptcy Code; provided that to the extent that a Holder has multiple Claims within the same Class, the WMLP Debtors may, in their discretion, aggregate the Claims of any particular Holder within a Class for the purpose of counting votes;
- j. Holders must vote all of their Claims within a particular Class either to accept or reject the WMLP Plan and may not split any such votes. Accordingly, a Ballot that partially rejects and partially accepts the WMLP Plan will not be counted;
- k. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity when signing and, if required or requested by the applicable Holder or its agent, the WMLP Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Holder;
- l. the WMLP Debtors, subject to contrary order of the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report;
- m. neither the WMLP Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- n. unless waived by the WMLP Debtors, or subject to contrary order of the Court, any defects or irregularities in connection with deliveries of Ballots must be cured before the Voting Deadline or such Ballots will not be counted;
- o. in the event a designation for lack of good faith is requested by a party in interest under § 1126(e) of the Bankruptcy Code, the Court will determine whether any vote

to accept and/or reject the WMLP Plan cast with respect to such Claim will be counted for purposes of determining whether the WMLP Plan has been accepted or rejected by such Claim;

- p. subject to any contrary order of the Court, the WMLP Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the WMLP Debtors would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided that any such rejections shall be documented in the Voting Report;
- q. if a Claim has been estimated or otherwise Allowed for voting purposes by an order of the Court pursuant to Bankruptcy Rule 3018(a), such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only and not for purposes of allowance or distribution;
- r. if an objection to a Claim is filed, such Claim shall be treated in accordance with these Solicitation Procedures and the terms of the WMLP Plan;
- s. the following Ballots shall not be counted in determining the acceptance or rejection of the WMLP Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of the Claim; (ii) any Ballot cast by a party that does not hold a Claim in a Class that is entitled to vote on the WMLP Plan; (iii) any unsigned Ballot; (iv) any Ballot not marked to accept or reject the WMLP Plan or any Ballot marked both to accept and reject the WMLP Plan; (v) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures; or (vi) any Ballot submitted to the Debtors or their counsel or financial advisors instead of to the Notice and Solicitation Agent as required herein;
- t. if no Holders of Claims eligible to vote in a particular Class vote to accept or reject the WMLP Plan, the WMLP Plan shall be deemed accepted by the Holders of such Claims in such Class; and
- u. any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Interest or a Claim temporarily Allowed by the Court as of the date of the Combined Hearing shall be deemed eliminated from the WMLP Plan for purposes of voting to accept or reject the WMLP Plan and for purposes of determining acceptance or rejection of the WMLP Plan by such Class pursuant to § 1129(a)(8) of the Bankruptcy Code.

4. ***Forms of Notices to Unimpaired Consenting Classes.*** Certain Holders of Claims that are not entitled to vote because they are Unimpaired or are otherwise conclusively presumed to accept the WMLP Plan under § 1126(f) of the Bankruptcy Code, will receive only the Combined Hearing Notice, the Presumed to Accept Notice, and the Opt Out Form, substantially in the form annexed hereto as Exhibit 7. The Presumed to Accept Notice, substantially in the form attached to the Disclosure Statement Order as Exhibit 4, will instruct the Holders how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

5. *Forms of Notices to Impaired Rejecting Classes.* Certain Holders of Claims and Interests that are not entitled to vote because they are deemed to reject the WMLP Plan under § 1126(g) of the Bankruptcy Code, will receive only the Combined Hearing Notice, the Deemed to Reject Notice, and the Opt Out Form, substantially in the form annexed hereto as Exhibit 7. The Deemed to Reject Notice, substantially in the form attached to the Disclosure Statement Order as Exhibit 5, will instruct the Holders how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

V. Amendments to the WMLP Plan and the Solicitation Procedures.

The WMLP Debtors further reserve the right, subject to the consent of the Creditors' Committee and the WMLP Secured Lenders to make changes to the WMLP Disclosure Statement, WMLP Plan, the Solicitation Package and related documents without further order of the Court, including changes to correct typographical and grammatical errors and to make conforming changes among the WMLP Disclosure Statement, the WMLP Plan, the Solicitation Package and related documents including the appendices thereto) before their distribution.

VI. Release, Exculpation, and Injunction Language in the WMLP Plan

The release, exculpation, and injunction provisions contained in Article VII of the WMLP Plan are included in the WMLP Disclosure Statement and the Combined Hearing Notice, and the release by Holders of Claims or Interests are included in the Ballots. Entities are advised to carefully review and consider the WMLP Plan, including the release, exculpation, and injunction provisions set forth in Article VII of the WMLP Plan, as their rights may be affected.