



ENTERED
02/04/2019

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE SOUTHERN DISTRICT OF
TEXAS HOUSTON DIVISION**

In re:

Westmoreland Coal Company, et al.,¹

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

Re: Docket No. 1101

ORDER (A) ESTABLISHING BIDDING AND SALE PROCEDURES WITH RESPECT TO THE SALE OF THE KEMMERER MINE AND SUBSTANTIALLY ALL ASSETS RELATED THERETO, (B) AUTHORIZING THE ENTRY INTO A STALKING HORSE AGREEMENT AND THE PROVISION OF STALKING HORSE PROTECTIONS, (C) SCHEDULING AN AUCTION AND SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF

This matter coming before the Bankruptcy Court on the *Expedited Motion of Westmoreland Resource Partners, LP and Its Subsidiaries for Entry of (I) An Order (A) Establishing Bidding and Sale Procedures with Respect to the Sale of the Kemmerer Mine and Substantially All Assets Related Thereto, (B) Authorizing the Entry Into a Stalking Horse Agreement and to Provide Stalking Horse Protections, (C) Scheduling an Auction and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (D) Granting Related Relief and (II) an Order Approving the Sale of Such Assets and Granting Related Relief* (the

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.

"Motion")² (Docket No. 1101) filed by Westmoreland Resource Partners, LP ("WMLP") and WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"), as debtors and debtors in possession in the above-captioned cases, seeking, pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 5 and Exhibit C of the United States Bankruptcy Court for the Southern District of Texas Procedures for Complex Chapter 11 Cases (the "Complex Case Procedures"), an order (a) approving proposed bidding and sale procedures attached as Annex 1 to this Order (the "Bidding Procedures") and related Bid Deadline (as defined below) in connection with the sale (the "Sale Transaction") of the mining properties and related assets owned by WMLP Debtor Westmoreland Kemmerer, LLC (a wholly-owned subsidiary of WMLP) and WMLP Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC (collectively, the "Kemmerer Assets"); (b) authorizing the WMLP Debtors to enter into a potential stalking horse agreement (any such agreement, a "Stalking Horse Agreement") and provide a break-up fee (the "Break-Up Fee") and expense reimbursement (the "Expense Reimbursement Amount" and, together with the Break-Up Fee, the "Stalking Horse Protections") related thereto; (c) approving the date, and form and manner of notice of an auction of the Kemmerer Assets (the "Auction") and related Sale Hearing, including the form and manner of notices attached to the Motion as Exhibit C (the "Auction and Hearing Notice") and Exhibit D (the "Publication Notice") respectively; (d) establishing procedures for the assumption and assignment of executory contracts and unexpired leases (the "Assigned Contracts") in connection with the Sale Transaction, including notice of proposed cure amounts (the "Assignment Procedures"), and approving the form and manner of

² Capitalized terms used but not defined herein have the meanings given to them in the Motion.

notice of the proposed assumption and assignment of Assigned Contracts in the form attached to the Motion as Exhibit E (the "Assumption/Assignment Notice"); and (e) granting certain related relief as described in the Motion; and the Bankruptcy Court having considered the statements of counsel and the evidence presented at the hearing on the Motion;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Bankruptcy Court has jurisdiction over this matter (the Motion and the Sale Transaction) and over the property of the WMLP Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157 and 1334 and may enter a final order on the Motion consistent with Article III of the United States Constitution. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The WMLP Debtors have demonstrated a compelling and sound business justification for the Bankruptcy Court to enter this Order and thereby (i) approve of the Bidding Procedures; (ii) set the dates of the Bid Deadline, Auction (if needed) and Sale Hearing; (iii) establish notice procedures and approve the forms of notice; and (iv) approve the procedures related to assumption and assignment of the Assigned Contracts.

C. The WMLP Debtors have demonstrated and proven to the satisfaction of this Court that providing the Stalking Horse Protections to a Stalking Horse Bidder represents a prudent exercise of the WMLP Debtors' business judgment.

D. The Bidding Procedures and the Assignment Procedures are reasonable and appropriate. The Bidding Procedures are reasonably designed to maximize the value to be

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See FED. R. BANKR. P. 7052. This order shall be deemed to incorporate any findings of fact and conclusions of law made on the record at the February 4, 2019 hearing on the Motion pursuant to Bankruptcy Rule 7052.

achieved for the Kemmerer Assets. As such, the Bidding Procedures are supported by, and constitute a proper exercise of, the WMLP Debtors' business judgment.

E. The Stalking Horse Protections, as approved by this Order, are fair and reasonable and provide a benefit to the WMLP Debtors' estates and creditors.

F. If necessary, the payment of the Stalking Horse Protections, under this Order and upon the conditions set forth in the Bidding Procedures, is: (i) an actual and necessary cost of preserving the WMLP Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code; (ii) reasonably tailored to encourage, rather than hamper, bidding for the Kemmerer Assets, and, therefore, a benefit to the WMLP Debtors' estates and creditors and all parties in interest herein; and (iii) reasonable and appropriate under the circumstances.

G. The proposed notice of the Auction, the Sale Hearing, the Bidding Procedures (including, without limitation, the Stalking Horse Protections) and the proposed treatment of the Assigned Contracts, as set forth in the Motion and this Order, are appropriate and sufficient and are reasonably calculated to provide all interested parties with timely and proper notice thereof, and no other or further notice shall be required in connection with these matters or the proposed Sale Transaction.

H. Good and sufficient notice of the relief sought in the Motion and granted herein has been given under the circumstances, and no further notice of such matters is required. A reasonable opportunity to object, or to be heard, regarding the relief requested in the Motion and granted herein was afforded to all interested persons and entities.

I. The Assumption/Assignment Notice and the Successful Bid Notice are reasonably calculated to provide each counterparty to the Assigned Contracts with proper notice of its

potential assumption and assignment, any cure amounts, if any, relating thereto, and the Assignment Procedures.

J. Entry of this Order is in the best interests of the WMLP Debtors and their estates, creditors and interest holders and all other parties-in-interest.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. All objections to the entry of this Order or to the relief provided herein that have not been withdrawn with prejudice, waived, resolved or settled are hereby denied and overruled on the merits with prejudice.
3. The Bidding Procedures, attached hereto as Annex 1, are hereby approved in all respects and will govern all bids and bid proceedings relating to the Kemmerer Assets. The WMLP Debtors and their professionals and agents are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order will not diminish or impair the effectiveness of such provision.
4. The deadline for submitting a Qualified Bid shall be **February 15, 2019 at 4:00 p.m., prevailing Central Time** (the "Bid Deadline"). The Bid Deadline may be modified as set forth in the Bidding Procedures.
5. Any Auction, if necessary, shall take place at the offices of conflicts counsel to the WMLP Debtors, **Jones Day, 717 Texas, Suite 3300, Houston, Texas 77002 at 9:00 a.m. (prevailing Central Time) on February 19, 2019**, or such other time and place as the WMLP Debtors, after consultation with the Consultation Parties, may determine. The Auction shall be

conducted openly and shall be transcribed as described in greater detail in the Bidding Procedures. The Auction may be rescheduled as set forth in the Bidding Procedures.

6. At the request of the WMLP Debtors, each bidder participating at the Auction shall be required to confirm in writing that (a) it has not engaged in any conduct of the type described in section 363(n) of the Bankruptcy Code with respect to the bidding process and (b) its bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

7. The Bankruptcy Court will conduct the Sale Hearing on **February 28, 2019 at 1:00 p.m. (prevailing Central Time)** or as soon thereafter as counsel and interested parties may be heard, at which time the Bankruptcy Court shall consider approval of the Sale Transaction to the Successful Bidder and the entry of the Sale Order. The WMLP Debtors in their discretion, and in consultation with the Consultation Parties, may adjourn or reschedule the Sale Hearing without notice, including by (a) an announcement of such adjournment at the Sale Hearing or at an Auction or (b) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing (which may be included in a hearing agenda letter).

8. Within three business days after entry of this Order, the WMLP Debtors shall serve the proposed Auction and Hearing Notice substantially in the form attached to the Motion as Exhibit C by overnight mail on the following parties or their counsel (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (c) the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (d) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (e) the administrative agent under the WLB Debtors'

bridge loan facility due 2019; (f) the administrative agent under the WMLP Debtors' term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018; (h) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (i) the lenders under the WLB Debtors' debtor- in-possession financing facility; (j) the Creditors' Committee and any other statutory committee appointed in these cases; (k) the United States Attorney's Office for the Southern District of Texas; (l) all taxing authorities having jurisdiction over any of the Kemmerer Assets, including the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the WMLP Debtors conduct business; (n) the offices of the attorneys general for the states in which the WMLP Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Stalking Horse Bidder (if any); (q) all sureties that have issued bonds relating to the Kemmerer Assets; (r) all parties that are known or reasonably believed to have expressed an interest in acquiring the Kemmerer Assets; (s) all parties that are known or reasonably believed by the WMLP Debtors to have asserted any lien, encumbrance, claim or other interest in the Kemmerer Assets; (t) governmental agencies that are known or reasonably believed by the WMLP Debtors to be an interested party with respect to any Sale Transactions; (u) nondebtor counterparties to the Assigned Contracts; (v) the Pension Benefit Guaranty Corporation; (w) the United Mine Workers of America; (x) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (y) all other parties (if any) identified by the WMLP Debtors as having a particular interest in the Kemmerer Assets. Further, within three days of the entry of the Bidding Procedures Order, the WMLP Debtors will serve all of the WMLP Debtors' remaining creditors via first class mail.

9. Within five business days of the entry of this Order or as soon as thereafter as practicable, the WMLP Debtors shall (a) cause the Publication Notice to be published for one day in the National Edition of USA Today, the Kemmerer Gazette, the Salt Lake Tribune and the Denver Post and (b) post the notice on the Restructuring Website (as defined in the Motion). The WMLP Debtors are authorized to revise the Publication Notice as necessary or appropriate to prepare the notice for publication.

10. The WMLP Debtors will have until February 7, 2019 (the "Stalking Horse Deadline") to select a Stalking Horse Bidder and enter into an Asset Purchase Agreement with, and provide Stalking Horse Protections to, such Stalking Horse Bidder (the "Stalking Horse Agreement"), subject to the terms below. No later than one business day after entering into a Stalking Horse Agreement, the WMLP Debtors shall file any such Stalking Horse Agreement with the Bankruptcy Court and serve a copy of any Stalking Horse Agreement, by overnight delivery, on (a) all parties that have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (b) any other parties that have been identified by the WMLP Debtors, in their discretion, as a party who should receive such notice.

11. In connection with entering into a Stalking Horse Agreement, the WMLP Debtors are hereby granted the authority to provide a Break-Up Fee in an amount not to exceed 2.5 percent of the cash consideration to be paid thereunder, to provide an Expense Reimbursement Amount not to exceed \$500,000 and to establish minimum initial and overbid increments in appropriate amounts, in the WMLP Debtors' discretion, subject to consultation with the Consultation Parties. In the event that a sale is consummated pursuant to a transaction other than with any Stalking Horse Bidder (an "Alternate Transaction"), then the WMLP Debtors shall pay the Stalking Horse Protections to the Stalking Horse Bidder, if there is one, by wire transfer of

immediately available funds from the proceeds of the applicable Alternate Transaction immediately upon the consummation thereof.

12. All general objections to approval of the Sale Transaction, including the sale of the WMLP Debtors' assets free and clear of liens, claims, encumbrances and interests pursuant to section 363(f) of the Bankruptcy Code, and the form of the Sale Order must be in writing, state the basis of such objection with specificity, comply with the Bankruptcy Rules and Complex Case Procedures and be filed with this Court and served so as to be received by the following parties (collectively, the "Objection Notice Parties") on or before **February 21, 2019** (the "Objection Deadline"): (a) the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC, 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112 (Attn: Gerald A. Tywoniuk); (b) the WMLP Debtors, c/o Westmoreland Resource Partners, LP, 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112 (Attn: Samuel N. Hagreen); (c) counsel to the Conflicts Committee and conflicts counsel to the WMLP Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Heather Lennox and T. Daniel Reynolds) and (ii) Jones Day, 77 West Wacker, Chicago, Illinois 60601 (Attn: Timothy W. Hoffmann); (d) the investment banker for the WMLP Debtors and the Conflicts Committee, Lazard Frères & Co. LLC, 300 North LaSalle Street, Chicago, Illinois 60654 (Attn: Tyler W. Cowan and Adam Green); (e) counsel to the Official Committee of Unsecured Creditors, (i) Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019 (Attn: Lorenzo Marinuzzi, Jennifer L. Marines and Todd Goren) and (ii) Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 6000, Washington, DC 20006 (Attn: Dimitra Doufekias); (f) co-counsel to the Official Committee of Unsecured Creditors, Cole Schotz P.C., 301 Commerce Street, Suite 1700, Fort Worth, Texas 76102 (Attn: Michael D. Warner and

Benjamin L. Wallen); (g) counsel to the *ad hoc* committee of certain lenders under the WMLP Debtors' term loan facility, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: David M. Hillman and Kristine Manoukian); (h) co-counsel to the *ad hoc* committee of certain lenders under the WMLP Debtors' term loan facility, Jones Walker LLP, 811 Main Street, Suite 2900, Houston, Texas 77002 (Attn: Joseph E. Bain); and (i) any other parties entitled to notice under the Complex Case Procedures as approved by the *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* (Docket No. 178).

13. Following the designation of a Successful Bid, the WMLP Debtors shall file a notice of the Successful Bid, along with copies of the asset purchase agreement associated with the Successful Bid and Sale Order (a "Successful Bid Notice"). The Successful Bid Notice shall be (a) filed with the Court after designation of a Successful Bid, and (b) made available for viewing on the Restructuring Website. Parties may object to the proposed Sale Transaction for any specific issues raised by the Successful Bid Notice (i.e., by any revised (i) asset purchase agreement or (ii) proposed Sale Order) by no later than **February 25, 2019** (the "Supplemental Objection Deadline").

14. A party that fails to timely file an objection to a proposed sale by the Objection Deadline or the Supplemental Objection Deadline, as applicable, shall be (a) forever barred from asserting any objection to entry of the Sale Order or consummation of the applicable Sale Transaction and (b) deemed to have consented to entry of the Sale Order and consummation of the Sale Transaction, including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

15. As soon as practicable, but no later than three business days following entry of this Order, the WMLP Debtors shall file a schedule of cure obligations (the "Cure Schedule") for

executory contracts and unexpired leases that they have identified as potential Assigned Contracts. The Cure Schedule shall include (a) a summary description containing the name of the contract counterparty of each executory contract and unexpired lease that the WMLP Debtors may assume and assign to potential buyer; and (b) the amount, if any, the WMLP Debtors believe would be necessary to cure defaults under such agreements pursuant to sections 365(b)(1) and 365(f)(2)(A) of the Bankruptcy Code (the "Cure Costs"). Listing an Executory Contract on the Cure Schedule does not mean that the Successful Bidder ultimately will identify such agreement as an Assigned Contract in an asset purchase agreement. In addition, inclusion of any document in the Cure Schedule does not constitute, and is not deemed to be, a determination or admission by the WMLP Debtors or any Successful Bidder that such document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Cure Schedule may be amended or supplemented by the WMLP Debtors from time to time.

16. The WMLP Debtors shall serve a copy of the Cure Schedule (or amended Cure Schedule, as applicable), together with the Assumption/Assignment Notice in substantially the form attached to the Motion as Exhibit E, on each of the nondebtor counterparties to the agreements listed on the Cure Schedule by first class mail on the date that the Cure Schedule is filed with the Bankruptcy Court. If the WMLP Debtors amend the Cure Schedule to remove or add additional executory contracts and unexpired leases or amend a particular Cure Cost, the WMLP Debtors shall serve a copy of the amended Cure Schedule, together with the Assumption/Assignment Notice, on each of the nondebtor counterparties to the agreements listed on the amended Cure Schedule by first class mail.

17. Objections to the Cure Costs set forth in the Cure Schedule, or the assumption and assignment of the Assigned Contracts, must be in writing, state the basis of such objection with

specificity and be filed with the Bankruptcy Court, and be actually received by the Objection Notice Parties on or before **February 21, 2019**.

18. Unless a nondebtor counterparty to an Assigned Contract has timely and properly filed and served an objection to the assumption and assignment of its Assigned Contract or the Cure Costs, the Cure Costs set forth in the Cure Schedule shall be binding upon the nondebtor counterparties to the Assigned Contracts for all purposes in these chapter 11 cases and shall constitute a final determination of the total Cure Costs required to be paid by the WMLP Debtors in connection with the assumption and assignment of the Assigned Contracts (unless a portion of such costs are paid or satisfied in any manner, in which case the Cure Costs shall be reduced). Absent a timely and properly filed and served objection, all nondebtor counterparties to the Assigned Contracts shall be forever (a) barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assigned Contracts, and the WMLP Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; and (b) barred, estopped and permanently enjoined from asserting or claiming against the WMLP Debtors, any Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assigned Contract or that there is any objection or defense to the assumption and assignment of such Assigned Contract.

19. If a nondebtor counterparty to an Assigned Contract files an objection asserting a cure amount higher than the proposed Cure Costs (any such amount, a "Disputed Cure Amount"), the following procedures will govern the resolution of the Disputed Cure Amount: (a) to the extent that the parties (including, if applicable, a Successful Bidder) are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, the WMLP Debtors

shall promptly provide the Consultation Parties with notice and an opportunity to object to such proposed resolution; or (b) to the extent that the parties are unable to consensually resolve the dispute prior to the Sale Hearing or any of the Consultation Parties raises an objection, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount shall be determined at the Sale Hearing or at such other date and time as may be fixed by this Court (subject in all respects to the rights of the Successful Bidder under the proposed asset purchase agreement with respect to such Assigned Contract). All other objections to the proposed assumption and assignment of an Assigned Contract shall be heard at the Sale Hearing.

20. Parties may raise objections solely to the assignment of the Assigned Contracts to a particular Successful Bidder as identified in the Successful Bid Notice (including on the basis of adequate assurance of future performance as required by section 365(f)(2)(B) of the Bankruptcy Code) no later than **February 25, 2019**.

21. The form of the Auction and Hearing Notice, the Publication Notice and the Assumption/Assignment Notice, attached to the Motion as Exhibits C, D and E respectively, and the manner of service or publication described herein (a) are hereby approved in all respects and (b) are determined to be appropriate and sufficient for all purposes. The WMLP Debtors shall be permitted to make non-substantive revisions to the Auction and Hearing Notice, the Publication Notice and the Assumption/Assignment Notice, consistent with the Bidding Procedures and this Order.

22. No other or further notice of the Motion, this Order, the Bidding Procedures, the sale of the Kemmerer Assets, the Auction, the Successful Bidders, the assumption and assignment of Assigned Contracts or the Sale Hearing shall be required.

23. All parties (whether or not Qualified Bidders) that participate in the bidding process (including any Auction) shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the bidding process, the Auction and/or the Sale Transaction) to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

24. Nothing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any party (including the sureties, the WMLP Debtors, the WMLP Debtors' lenders, or any prospective purchaser) has or may have under applicable bankruptcy and non-bankruptcy law, under any indemnity agreements, surety bonds or related agreements or any letters of credit relating thereto, or any rights, remedies or defenses of the Debtors with respect thereto.

25. The Debtors and Rock Springs Royalty Company ("RSRC") reserve all rights with respect to the 1983 Purchase Agreement between Gulf Oil Corporation and RSRC (the "1983 Purchase Agreement"), including, without limitation, whether (a) such agreement is an executory contract or unexpired lease and (b) the WMLP Debtors may transfer any rights under the 1983 Purchase Agreement free and clear of the royalty reserved by RSRC in the 1983 Purchase Agreement.

26. This Order shall be immediately effective and enforceable upon its entry, and nothing in Bankruptcy Rules 6004(h), 6006(d), 7062 or 9014 (to the extent applicable) shall cause a stay hereof.

27. The WMLP Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

28. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

SIGNED: February 4, 2019.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

ANNEX 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

Westmoreland Coal Company, et al.,¹

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

BIDDING PROCEDURES FOR THE SALE OF THE WMLP DEBTORS' ASSETS²

By a motion dated January 18, 2019 (the "Motion"), Westmoreland Resource Partners, LP ("WMLP") and WMLP's direct and indirect subsidiaries (collectively with WMLP, the "WMLP Debtors"), as debtors and debtors in possession in jointly administered chapter 11 cases (the "Chapter 11 Cases") currently pending in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") requested approval of (i) a process and procedures for, and authority to implement, a sale of certain mining property and related assets (the "Kemmerer Assets") and (ii) the authority to enter into a Stalking Horse Agreement and to provide Stalking Horse Protections.

On February 4, 2019 the Bankruptcy Court entered an order (the "Bidding Procedures Order"), which, among other things, authorized the WMLP Debtors to market and sell the Kemmerer Assets pursuant to the Bidding Procedures set forth below.

**Any interested bidder should contact, as soon as practical, the
WMLP Debtors' investment banker ("Lazard") as set forth below:**

**Lazard Frères & Co.
LLC 300 North LaSalle
Street Chicago, Illinois**

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 Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order (as defined below).

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(Attn: Tyler W. Cowan and Adam Green)

These Bidding Procedures describe, among other items, (a) the Kemmerer Assets offered for sale, (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, (c) the conduct of the Auction (as defined below), if necessary, (d) the selection of Successful Bidder and (e) the Bankruptcy Court approval of the sale of the Kemmerer Assets to the Successful Bidder.

1. **Important Dates**

The WMLP Debtors will:

- (a) have until February 7, 2019 (the "Stalking Horse Deadline") to select a Stalking Horse Bidder and enter into an asset purchase agreement with, and provide Stalking Horse Protections to, the Stalking Horse Bidder (the "Stalking Horse Agreement"), subject to the terms below, and
 - (i) promptly will file any such Stalking Horse Agreement with the Bankruptcy Court; and
 - (ii) serve a copy of any Stalking Horse Agreement, by overnight delivery, on (a) all parties that have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (b) any other parties that have been identified by the WMLP Debtors, in their discretion, as a party who should receive such notice;
- (b) continue soliciting interest from and assisting Potential Bidders (as defined below) in conducting their respective due diligence investigations and accept bids seeking qualification as Qualified Bids (as defined below) until 4:00 p.m., prevailing Central Time on **February 15, 2019** (the "Bid Deadline") or thereafter as permitted herein, including, for the avoidance of doubt, in the event the WMLP Debtors do not designate a Stalking Horse Bidder prior to the Stalking Horse Deadline; and
- (c) also do the following if they receive more than one Qualified Bid – negotiate with the Qualified Bidders (as defined below) in preparation for the Auction; (ii) conduct the Auction, beginning at **9:00 a.m., prevailing Central Time on February 19, 2019 at the offices of the WMLP Debtors' conflicts counsel, Jones Day, 717 Texas, Suite 3300, Houston, Texas 77002** or such other time or such other place as the WMLP Debtors, after consultation with the Consultation Parties, may determine; and (iii) select, at the conclusion of the Auction, in their sole discretion,

but after consultation with the Consultation Parties, which bidder or bidders have provided the highest and best offer(s) for the Kemmerer Assets in a single or multiple lots (each, a "Successful Bidder").

2. Authority to Enter Into Stalking Horse Agreement

The Bidding Procedures Order provides the WMLP Debtors with the authority to accept a stalking horse bid (the "Stalking Horse Bid") and execute a Stalking Horse Agreement with a Stalking Horse Bidder in connection with the proposed sale of the Kemmerer Assets. The WMLP Debtors may enter into a Stalking Horse Agreement at any time up to the Stalking Horse Deadline, or thereafter with leave of the Bankruptcy Court after notice and a hearing.

Upon the mutual execution and delivery of a Stalking Horse Agreement with a Stalking Horse Bidder, such Stalking Horse Agreement will be a Qualified Bid, and the Stalking Horse Bidder will be a Qualified Bidder. The WMLP Debtors will provide notice of such Stalking Horse Bidder and Stalking Horse Agreement as described above.

3. Potential Stalking Horse Protections if a Stalking Horse Bidder Is Designated

The Bidding Procedures Order provides the WMLP Debtors with the authority, if they execute a Stalking Horse Agreement, to provide thereunder or otherwise such Stalking Horse Bidder with the following typical Stalking Horse Protections:

- (a) a break-up fee of 2.5 percent of any cash consideration under a Stalking Horse Agreement (the "Break-Up Fee");
- (b) reimbursement, not to exceed \$500,000 of actual and reasonable third-party expenses ("Expense Reimbursement Amount") that such Stalking Horse Bidder spent in connection with entering into the Stalking Horse Agreement; and
- (c) the establishment, by the commencement of the Auction, of minimum initial and overbid increments in appropriate amounts, in the WMLP Debtors' discretion, subject to consultation with the Consultation Parties.

4. Participation Requirements

- (a) **Interested Parties:**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process, each interested person or entity (each an "Interested Party") must deliver the following (unless previously delivered) to counsel to the WMLP Debtors and Lazard so as to be received no later than 4:00 p.m. (prevailing Central Time) on **February 13, 2019**:

- (i) an executed confidentiality agreement in form and substance reasonably satisfactory to the WMLP Debtors;
- (ii) a statement and other factual support demonstrating to the WMLP Debtors' reasonable satisfaction, that the Interested Party has a bona fide interest in purchasing the Kemmerer Assets (or some subset thereof);
- (iii) sufficient information, as defined by the WMLP Debtors, to allow the WMLP Debtors to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal or other authorizations to close the Sale Transaction, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the WMLP Debtors in their discretion);
- (iv) preliminary proof by the Interested Party of its ability to receive any and all necessary governmental, licensing, regulatory, and other approvals; and
- (v) details regarding the ownership and capital structure of the Interested Party, including detail related to the Interested Party's beneficial owners, ultimate beneficial owners, and controlling entities, and any of the principals, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Interested Party with respect to the contemplated transaction.

If the WMLP Debtors determine, after receipt of the items identified above, that an Interested Party has a bona fide interest in the Kemmerer Assets, no later than two business days after the WMLP Debtors make that determination and have received all of the materials required above, such Interested Party will be deemed a "Potential Bidder" and the WMLP Debtors will deliver to such Potential Bidder the following items: (i) an electronic copy of either the Form APA (as defined in and attached to the Motion) or any Stalking Horse Agreement, if one exists, and (ii) access information for the WMLP Debtors' confidential electronic data room concerning the Kemmerer Assets (the "Data Room"). The WMLP Debtors reserve the right (in their sole discretion after consultation with the Consultation Parties) to determine whether an Interested Party has satisfied the above participation requirements such that it is eligible to be a Potential Bidder.

(b) **Due Diligence**

Until the Bid Deadline (as defined below), in addition to access to the Data Room, the WMLP Debtors will provide any Potential Bidder such due diligence access or additional information a Potential Bidder requests and that the WMLP Debtors determine to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to Lazard. The WMLP Debtors, with the assistance of Lazard, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the WMLP Debtors will simultaneously provide such materials to all Potential Bidders and any Stalking Horse Bidder, if one exists.

Unless otherwise determined by the WMLP Debtors, the availability of additional due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder, from and after the Bid Deadline; or (ii) the bidding process is otherwise terminated.

5. Qualified Bids

Each offer, solicitation or proposal by a Potential Bidder must satisfy each of the following conditions to be deemed a "Qualified Bid," and for the Potential Bidder to be deemed a "Qualified Bidder."

(a) **Bid Deadline**

A Potential Bidder who desires to be a Qualified Bidder must deliver the Required Bid Documents (as defined below) so as to be received **not later than 4:00 p.m. (prevailing Central Time) on February 15, 2019** (the "Bid Deadline"), to Lazard (at the address listed above), with copies to (i) Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Heather Lennox and T. Daniel Reynolds) and (ii) Jones Day, 77 West Wacker, Chicago, Illinois 60601 (Attn: Timothy W. Hoffmann). The WMLP Debtors (in consultation with the Consultation Parties) may extend the Bid Deadline. If the WMLP Debtors extend the Bid Deadline, the WMLP Debtors will promptly notify all Potential Bidders who have signed a confidentiality agreement of such extension.

(b) **Bid Requirements**

All bids must include the following (the "Required Bid Documents"):

- (i) a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving any other bidder for the Kemmerer Assets identified in such offer;

- (ii) a duly authorized and executed purchase agreement, including the purchase price for the Kemmerer Assets, together with all exhibits and schedules marked to show those amendments and modifications to the Stalking Horse Agreement (if any) and to the proposed Sale Order; and
- (iii) written evidence of a firm commitment for financing, or other evidence of ability to consummate the proposed transaction without financing, that is satisfactory to the WMLP Debtors.

A bid will be considered only if the bid:

- (i) identifies the Kemmerer Assets to be purchased and the executory contracts and unexpired leases to be assumed and assigned;
- (ii) states that all necessary filings under applicable regulatory, antitrust and other laws or regulations will be made, pursuant to the terms and conditions in the applicable asset purchase agreement or other bid documents, and that payment of the fees associated with such filings will be made by the Potential Bidder;
- (iii) provides that the Potential Bidder will: (a) take transfer of or obtain permits for the mining operations to be acquired, (b) assume all associated reclamation obligations with respect to the mines subject to the bid to the extent required under applicable non-bankruptcy law, and (c) obtain assignment of or replace the reclamation surety bonds associated with such permits, and (ii) provide evidence of: (a) the Potential Bidder's ability to satisfy the conditions set forth in (i) of this paragraph (including verification that the Potential Bidder is not, and will not be as of the time of the transfer, "permit blocked" under the federal Surface Mining Control and Reclamation Act by application of the federal Applicant Violator System), and (b) the Potential Bidder's financial resources necessary to obtain assignment of or replace the reclamation surety bonds associated with such permits, which evidence may include a letter from a surety company confirming that the bidder is a "qualified buyer" (as such term is used in the surety industry). The applicable Potential Bidder shall also provide all such evidence submitted (subject to any applicable confidentiality agreements that may be entered into) to surety providers of the relevant mines to be acquired, and the WMLP Debtors shall consult with such surety companies with respect to such Potential Bidder's ability to obtain or take transfer of the

permits and obtain assignment of or replace surety bonds, each as required by the applicable regulators;

- (iv) includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale Transaction, together with evidence satisfactory to the WMLP Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;
- (v) sets forth the consideration for the assets to be purchased and the contracts and leases to be assumed and assigned;
- (vi) provides for consideration that is higher or better than the consideration provided for by a Stalking Horse Agreement, if any, taking into account the Break-Up Fee and Expense Reimbursement Amount (if any);
- (vii) is not conditioned on obtaining financing or on the outcome of unperformed due diligence or corporate, stockholder or internal approval;
- (viii) provides evidence satisfactory to the WMLP Debtors, in their sole discretion, of the bidder's financial wherewithal and operational ability to consummate the transaction and satisfy its adequate assurance of future performance requirement with respect to any executory contract or unexpired lease to be assigned to the bidder;
- (ix) is irrevocable until the WMLP Debtors have consummated a transaction with the Successful Bidder(s) (as defined below) or the Alternate Bidder(s) (as defined below), as applicable;
- (x) to the extent the bid is for all of the Kemmerer Assets, is accompanied by a deposit by wire transfer to an escrow agent selected by the WMLP Debtors (the "Deposit Agent") equal to \$2.5 million, and to the extent the bid is for any subset of the Kemmerer Assets, is accompanied by a deposit by wire transfer to the Deposit Agent of an amount equal to 20 percent of the consideration set forth in connection with such bid (any such deposit, a "Good Faith Deposit");

- (xi) sets forth the representatives who are authorized to appear and act on behalf of the contemplated transactions;
- (xii) indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement amount, or similar type of payment;
- (xiii) includes evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future under the executory contracts and unexpired leases proposed in its bid to be assumed by the WMLP Debtors and assigned to the Qualified Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;
- (xiv) includes an acknowledgment that the Potential Bidder has not engaged in any collusion with respect to the bidding process and its bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder; and
- (xv) is received on or before the Bid Deadline.

A bid received from a Qualified Bidder will constitute a Qualified Bid only if it includes all of the Required Bid Documents and meets all of the above requirements. Notwithstanding the foregoing, a Stalking Horse Bidder, if any, shall be deemed a Qualified Bidder, and its Stalking Horse Agreement shall be deemed a Qualified Bid for all purposes in connection with the Bidding Procedures. By submitting a bid, a Potential Bidder authorizes the WMLP Debtors to provide all documents that comprise the Qualified Bid to the Consultation Parties on a confidential basis.

All Qualified Bids will be considered, but the WMLP Debtors reserve the right to reject any and all bids other than the highest or otherwise best bid as determined in consultation with the Consultation Parties, but otherwise in the WMLP Debtors' sole discretion. The WMLP Debtors may, in their discretion (and in consultation with the Consultation Parties), evaluate bids on numerous grounds including, but not limited to, any delay, additional risks (including closing risks) and added costs to the WMLP Debtors including, without limitation, payment of any Stalking Horse Protections. Bids other than Qualified Bids will not be considered.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Kemmerer Assets that are the subject of the Auction prior to making any such bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the

Kemmerer Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, the asset purchase agreement with such Successful Bidder.

6. Auction

In the event that the WMLP Debtors timely receive more than one Qualified Bid, the WMLP Debtors shall conduct an auction (the "Auction") of the Kemmerer Assets. The Auction shall be in accordance with these Bidding Procedures and upon notice to all Qualified Bidders who have submitted Qualified Bids. The Auction will be conducted at the offices of **Jones Day, 717 Texas, Suite 3300, Houston, Texas 77002 on February 19, 2019 at 9:00 a.m. (prevailing Central Time)**.

Only representatives or agents of the WMLP Debtors, the Stalking Horse Bidder, if any, the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "Creditors' Committee"), the WMLP Debtors' secured lenders (the "MLP Secured Parties") and any Qualified Bidder that has submitted a Qualified Bid (and the legal and financial advisors to each of the foregoing), will be entitled to attend the Auction, and only the Stalking Horse Bidder, if any, and Qualified Bidders will be entitled to make any subsequent bids at the Auction. At least one business day prior to the Auction, the WMLP Debtors will provide copies of the Qualified Bid or combination of Qualified Bids that the WMLP Debtors believe is the highest or otherwise best offer (the "Baseline Bid") to all Qualified Bidders that have informed the WMLP Debtors of their intent to participate in the Auction and, if requested, will provide an explanation of how the Baseline Bid is valued and a list containing the identification of all Qualified Bidders.

The WMLP Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids (as defined below)) for conducting the Auction, provided that such rules are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code or any Order of the Bankruptcy Court entered in connection herewith and (b) disclosed to each Qualified Bidder; and provided further than all bids shall be made openly, in the presence of all parties at the Auction.

Bidding at the Auction will begin with the Baseline Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder(s) that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (b) the WMLP Debtors determine that such Subsequent Bid is

- (i) for the first round, a higher or otherwise better offer than the Baseline Bid and
- (ii) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Kemmerer Assets. The WMLP Debtors, in their sole discretion but

in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, the WMLP Debtors shall announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (as applicable, the "Leading Bid").

A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge and written confirmation of the Leading Bid. For the purpose of evaluating the value of the consideration provided by Subsequent Bids, the WMLP Debtors may take into account the Break-Up Fee and the Expense Reimbursement Amount that may be payable under any Stalking Horse Agreement, if one exists. For the purpose of evaluating Subsequent Bids, the WMLP Debtors may require a Qualified Bidder submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the WMLP Debtors in their sole discretion) demonstrating such Qualified Bidder's ability to close the proposed transaction.

7. Selection of Successful Bid

The WMLP Debtors reserve the right to (i) determine in their reasonable discretion which Qualified Bid is the highest or otherwise best and (ii) reject at any time prior to entry of a Court order approving an offer, without liability, any bid or offer, other than a Stalking Horse Bid, if one exists, that the WMLP Debtors in their reasonable discretion deem to be (x) inadequate or insufficient, (y) not a Qualified Bid or not otherwise in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Complex Case Procedures or procedures set forth therein or herein or (z) contrary to the best interests of the WMLP Debtors and their estates.

The WMLP Debtors, in consultation with the Consultation Parties, may take the following considerations into account when evaluating Qualified Bids: (a) the purchase price and valuation of non-cash consideration; (b) the overall value to be provided to the WMLP Debtors under the bid, including payment of Cure Costs, assumption of liabilities and the net economic effect upon the WMLP Debtors' estates; (c) the ability to obtain any and all necessary applicable regulatory approvals for the proposed Sale Transaction; (d) other contingencies and the ability to close the proposed Sale Transaction on a basis acceptable to the WMLP Debtors, and any incremental costs to the WMLP Debtors as a result of potential closing delays; (e) whether a bid on all or substantially all of the Kemmerer Assets is more beneficial to the WMLP Debtors' estates than individual bids on subsets of Kemmerer Assets (either separately or collectively), or vice versa; and (f) any other factors that the WMLP Debtors, after consultation with the Consultation Parties, may deem relevant. The WMLP Debtors and the MLP Secured Parties shall confer to determine the valuation of any non-cash consideration offered in connection with a Qualified Bid. If the WMLP Debtors and the MLP Secured Parties

cannot reach an agreement with respect to the valuation of such non-cash consideration, the Bankruptcy Court shall determine the valuation of such consideration.

Prior to the conclusion of the Auction, the WMLP Debtors will: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (b) identify the highest or otherwise best offer or collection of offers (the "Successful Bid"); (c) determine which Qualified Bid is the Successful Bid and which is the next highest or otherwise best offer or collection of offers (the "Alternate Bid") for the Kemmerer Assets; and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder (the "Successful Bidder"), the amount and other material terms of the Successful Bid and the identity of the party or parties that submitted the Alternate Bid (the "Alternate Bidder"). Within two business days of the completion of the Auction, the Successful Bidder and the applicable WMLP Debtors shall complete and execute all agreements, instruments or other documents necessary to consummate the applicable Sale Transaction or otherwise contemplated by the applicable Successful Bid.

Upon the selection of the Successful Bidder, to the extent that the WMLP Debtors and a Successful Bidder determine that the closing of the Sale to the Successful Bidder may occur prior to the transfer of any of the WMLP Debtors' existing mining permits that are being transferred to such Successful Bidder, the WMLP Debtors and the Successful Bidder will consult with the WMLP Debtors' surety providers at the relevant mine(s) being acquired by such Successful Bidder regarding entering into an agreement that would allow the Successful Bidder to conduct business at such mine(s) under the WMLP Debtors' existing mining permits, pending the transfer of the relevant mining permits to the Successful Bidder. The WMLP Debtors' surety providers have indicated that they will require each such Successful Bidder to enter into an agreement with the applicable surety provider, which agreements shall provide, among other things, that the Successful Bidder (a) is liable for correcting any violations or defaults relating to the mine(s) with the pending permit transfers, (b) indemnifies the WMLP Debtors and their surety providers in the event of any default, claim, or loss that occurs at the mine(s) with the pending permit transfers while the permit transfers are pending, and (c) agrees to such other terms and provisions as may be required by such surety providers and such Successful Bidder in their sole and absolute discretion, including, without limitation, terms requiring the Successful Bidder to post collateral for such surety providers' bonds relating to such permits pending transfer; provided that nothing in this paragraph alters any legal requirements under applicable police and regulatory law. Nothing herein shall be deemed to require any party to enter into any such agreement or any surety provider to consent to any operations under a permit relating to any surety bond.

The WMLP Debtors will sell the Kemmerer Assets for the highest or otherwise best Qualified Bid to the Successful Bidder upon the approval of such Qualified Bid by the Bankruptcy Court after the Sale Hearing. The presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the WMLP Debtors' acceptance of the Qualified Bid. The WMLP Debtors will be deemed to have accepted a Qualified Bid only when

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the bid has been approved by the Bankruptcy Court at the Sale Hearing. Only a Stalking Horse Bidder, if one exists, or an entity or entities constituting the Successful Bidder shall be entitled to purchase the Kemmerer Assets pursuant to these Bidding Procedures.

If for any reason, the entity or entities that submit the highest or otherwise best Qualified Bid fails to consummate the purchase of the Kemmerer Assets, or any part thereof, the WMLP Debtors and the Alternate Bidder are authorized to effect the sale of the Kemmerer Assets to such Alternate Bidder as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, the WMLP Debtors reserve the right to seek all available remedies from the defaulting Successful Bidder, subject to the terms of the applicable purchase agreement. Furthermore, if a Successful Bidder fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of such Successful Bidder, the WMLP Debtors shall be entitled to retain the Good Faith Deposit thereof as part of its damages resulting from such breach or failure to perform.

8. The Sale Hearing

The Sale Hearing will be held before the Honorable David R. Jones on **February 28, 2019 at 1:00 p.m. (prevailing Central Time)** in the United States Bankruptcy Court for Southern District of Texas, 515 Rusk Ave., Courtroom 400, Houston, TX 77002. The Sale Hearing may be adjourned without further notice by an announcement of the adjourned date at the Sale Hearing. At the Sale Hearing, the WMLP Debtors will seek approval of the offer or offers constituting the Successful Bid and, at the WMLP Debtors' election, the offer constituting the Alternate Bid.

The WMLP Debtors' presentation to the Bankruptcy Court of the offer or offers constituting the Successful Bid and Alternate Bid will not constitute the WMLP Debtors' acceptance of either of any such bid, which acceptance will only occur upon approval of such bid by the Bankruptcy Court at the Sale Hearing. Following approval of the Sale Transaction to the Successful Bidder, if the Successful Bidder fails to consummate the sale because of (a) failure of a condition precedent beyond the control of either the WMLP Debtors or the Successful Bidder upon which occurrence the WMLP Debtors have filed a notice with the Bankruptcy Court advising of such failure or (b) a breach or failure to perform on the part of such Successful Bidder upon which occurrence the WMLP Debtors have filed a notice with the Bankruptcy Court advising of such breach or failure to perform, then the Alternate Bid will be deemed to be the Successful Bid and the WMLP Debtors will be authorized, but not directed, to effectuate a sale to the Alternate Bidder subject to the terms of the Alternate Bid of such Alternate Bidder without further order of the Bankruptcy Court.

9. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be held in escrow and will not become property of the WMLP Debtors' bankruptcy estates unless released from escrow

pursuant to further order of the Bankruptcy Court. The WMLP Debtors will retain the Good Faith Deposits of the Successful Bidder and the Alternate Bidder until the closing of the Sale Transaction unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned within five business days of the entry of the Sale Order. At the closing of the Sale Transaction contemplated by the Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit. The Good Faith Deposit of the Alternate Bidder will be released by the WMLP Debtors five business days after the closing of the Sale Transaction.

10. Credit Bidding³

At the direction of the MLP Required Lenders and on behalf of the MLP Secured Parties, the MLP Agent or its designee, assignee or successor may submit a bid for any or all of the Kemmerer Assets (such a bidder, the "Lender Bidder"). The Lender Bidder shall automatically be deemed a Qualified Bidder and shall have the right to credit bid, subject to section 363(k) of the Bankruptcy Code, on a dollar-for-dollar basis (a) up to the full amount of the outstanding MLP Secured Obligations, (b) the Adequate Protection Obligations, including the Adequate Protection Superpriority Claim and (c) any unpaid amounts due and owing under the Final Cash Collateral Order, including paragraphs 7(c) and 7(d) thereof (collectively, the "MLP Obligations"). Any credit bid shall be treated as the equivalent of a cash bid.

The Lender Bidder shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the MLP Secured Parties or any acquisition entity or joint venture formed in connection with such bid.

Pursuant to Bankruptcy Code section 363(k), the Lender Bidder may submit subsequent and increased credit bids or overbids at the Auction in compliance with the Bidding Procedures.

Unless the proceeds of the Kemmerer Assets are sufficient to pay the MLP Obligations in full in cash and such proceeds are indefeasibly paid to the MLP Agent (on behalf of the MLP Lenders), (a) nothing in these Bidding Procedures shall be deemed to be consent of the MLP Secured Parties to entry of the Sale Order and (b) the MLP Secured Parties expressly reserve all rights to object or otherwise contest any such sale, including, but not limited to, objections based on the valuation of non-cash consideration or other applicable factors.

Notwithstanding anything else set forth in the Bidding Procedures, the Bidding Procedures Order or otherwise, in connection with any credit bid by the Lender Bidder, the

³ Capitalized terms used in this section not otherwise defined herein shall have the meanings ascribed to them in the "Final Cash Collateral Order," which term refers to the *Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Certain Protections to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 499], as amended.

Lender Bidder shall not be required to provide a cash deposit for the Good Faith Deposit, but shall instead be required to include in the Asset Purchase Agreement evidencing such credit bid a binding and irrevocable agreement that a portion of the MLP Obligations equal to the Good Faith Deposit that would otherwise be provided hereunder shall be forfeited and waived if the Lender Bidder (a) is the Successful Bidder and (b) fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of the Lender Bidder.

11. As Is, Where Is

The sale of the Kemmerer Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the WMLP Debtors, their agents or their estates except as provided in any agreement with respect to the sale or sales approved by the Bankruptcy Court.

12. Free and Clear of Any and All Interests

Except as otherwise provided in a Successful Bidder's purchase agreement, all of the WMLP Debtors' rights, title and interest in and to the Kemmerer Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "Interests") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Kemmerer Assets with the same validity and priority as such Interests applied against the Kemmerer Assets.

13. Modification of Bidding Procedures

The WMLP Debtors may amend these Bidding Procedures at any time, and from time to time, in any manner that they determine in good faith will best promote the goals of the bidding process, including, without limitation, extending or modifying any of the dates described herein or the information and materials required from Qualified Bidders.