

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

In re:

Westmoreland Coal Company, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**ORDER (I) APPROVING THE SALE OF  
THE KEMMERER MINE AND SUBSTANTIALLY ALL ASSETS  
RELATED THERETO FREE AND CLEAR OF ALL NON-ASSUMED  
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (II) APPROVING  
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF**

Upon 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 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; and (II) an Order Approving the Sale of Such Assets and Granting Related Relief (the "Sale Motion")*<sup>2</sup> [Docket No. 1101] dated January 18, 2019, of Westmoreland Resource Partners, LP ("WMLP") and WMLP's direct and indirect subsidiaries (collectively, with WMLP, the "WMLP Debtors"), as debtors and debtors-

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<sup>1</sup> 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 WMLP Debtors' claims and noticing agent in these chapter 11 cases at [www.donlinrecano.com/westmoreland](http://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.

<sup>2</sup> Capitalized terms used, but not defined, herein have the meaning ascribed to them in the Sale Motion. This order shall be deemed to incorporate any findings of fact and conclusions of law made on the record at the Sale Hearing (as defined herein) pursuant to Fed. R. Bankr. P. 7052.

in-possession, pursuant to sections 105(a), 363 and 365 of chapter 11 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 of Exhibit C to the United States Bankruptcy Court for the Southern District of Texas Procedures for Complex Chapter 11 Cases (the "Complex Case Procedures"), for, among other things, (i) approval of the sale (the "Sale Transaction") of the mining properties of WMLP Debtor Westmoreland Kemmerer, LLC and related assets (the "Kemmerer Assets") free and clear of all liens, interests, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature; (ii) approval of the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts"), and (iii) approval of related relief; and the Court having previously entered its *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* [Docket No. 1287] (the "Bidding Procedures Order"); and the Bankruptcy Court having conducted a hearing on the Sale Motion on February 28, 2019 (the "Sale Hearing") and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale Motion; and the Bankruptcy Court having reviewed and considered the Sale Motion, and the arguments of counsel made, and the evidence adduced, at the hearing to approve the Bidding Procedures (the "Bidding Procedures Hearing") and the Sale Hearing; and upon the record of the Bidding Procedures Hearing and the Sale Hearing, and these chapter 11 cases and proceedings, and after due deliberation thereon, and good cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Sale Motion and the Sale Transaction pursuant to 28 U.S.C. §§ 157 and 1334 and may enter a final order on the Sale 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. **Statutory Predicates.** The statutory predicates for the relief requested in the Sale Motion are sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014 and Rule 5 of Exhibit C to the Complex Case Procedures.

C. **Notice.** Proper, timely, adequate and sufficient notice of the Sale Motion, including, without limitation, the Sale Transaction, the assumption and assignment of the Assigned Contracts, the Auction, the Sale Hearing and the Bidding Procedures (as defined in the Bidding Procedures Order) have been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007 and Rule 5 of Exhibit C to the Complex Case Procedures. Such notice was good and sufficient and appropriate under the circumstances. No other or further notice of the Sale Motion, including, without limitation, the Sale Transaction, the WMLP Debtors' assumption and assignment of the Assigned Contracts, the Auction or the Sale Hearing, is necessary or shall be required.

D. An Assumption/Assignment Notice has been provided to each of the non-WMLP Debtor counterparties to the Assigned Contracts identified on the list(s) the WMLP Debtors have filed on the docket, all in accordance with the Bidding Procedures provided in the Sale Motion. The service of the Assumption/Assignment Notice was sufficient under the

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<sup>3</sup> 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.

circumstances, and no further notice need be given in respect of the WMLP Debtors' assumption and assignment of the Assigned Contracts or the establishment of associated Cure Costs (as defined below). Nondebtor parties to the Assigned Contracts have had an adequate opportunity to object to the Debtors' assumption and assignment of the Assigned Contracts and the associated Cure Costs.

E. **Opportunity to Object.** A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities.

F. **Business Justification.** The WMLP Debtors have demonstrated an adequate business justification supporting their entry into the Sale Transaction, the WMLP Debtors' assumption and assignment of the Assigned Contracts and the sale of the Kemmerer Assets. Such action is an appropriate exercise of the WMLP Debtors' business judgment and in the best interests of the WMLP Debtors, their estates and their creditors. The reasons underlying the WMLP Debtors' sound exercise of their business judgment reasons include, but are not limited to, the facts that (i) the Kemmerer Assets have been aggressively marketed and the asset purchase agreement (the "Buyer's APA") among the WMLP Debtors and Western Coal Acquisition Partners, LLC (the "Buyer") constitutes the highest or otherwise best offer for the Kemmerer Assets; (ii) the continued operation of the Kemmerer Assets and corresponding costs will continue to deplete the WMLP Debtors' assets, so there is a "need for speed" to consummate the Sale Transaction; (iii) the Sale Transaction will present the best opportunity to realize the value of the Kemmerer Assets on a going concern basis and to avoid decline and devaluation of the related business; (iv) the Bidding Procedures utilized were designed to yield the highest or otherwise best bids for the Kemmerer Assets; and (v) the WMLP Debtors and the Buyer engaged in good faith, arm's-length negotiations in order to achieve the Sale Transaction contemplated in

the Buyer's APA. Entry of this Order and all provisions hereof is a necessary condition precedent to the Buyer consummating the Sale Transaction.

G. **Opportunity to Bid.** The WMLP Debtors and their professionals robustly marketed the Kemmerer Assets and conducted the marketing and sale process as set forth in the Sale Motion and in accordance with the Bidding Procedures included in the Sale Motion. The Auction process included in the Bidding Procedures afforded a full and fair opportunity for any entity to make an offer to purchase the Kemmerer Assets. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Kemmerer Assets.

H. **No Auction.** Pursuant to the Bidding Procedures, the WMLP Debtors solicited bids for the Kemmerer Assets until the Bid Deadline and the Buyer submitted the highest and best Qualified Bid. Accordingly, the WMLP Debtors provided notice that there would be no Auction for the Kemmerer Assets [Docket No. 1401].

I. **Highest or Otherwise Best Offer.** The total consideration provided by the Buyer for the Kemmerer Assets is the highest or otherwise best offer received by the WMLP Debtors. The Buyer is the successful bidder for the Kemmerer Assets in accordance with the Bidding Procedures.

J. **Good Faith Purchaser.** The Sale Transaction has been negotiated by the WMLP Debtors and the Buyer (and their respective affiliates and representatives) in good faith, at arm's length and without collusion or fraud. The terms and conditions of the Sale Transaction, including the total consideration to be realized by the WMLP Debtors pursuant to the Buyer's APA, are fair and reasonable, and the Sale Transaction is in the best interest of the WMLP Debtors, their creditors and their estates.

K. The Buyer is a "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code with respect to the sale and assignment of the Kemmerer Assets and the Sale Transaction.

L. The Buyer's APA was not controlled by an agreement between potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The WMLP Debtors and the Buyer have not engaged in any conduct that would cause or permit the Buyer's APA or the consummation of the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. The Buyer's APA, which constitutes reasonably equivalent value and fair consideration, was not entered into, and the Sale Transaction is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the WMLP Debtors under the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the WMLP Debtors nor the Buyer has entered into the Buyer's APA or is consummating the Sale Transaction with any fraudulent or otherwise improper purpose. Nothing in this paragraph shall constitute a finding of fact or conclusion of law with respect to violations on the applicant/violator system list maintained by the Department of Interior's Office of Surface Mining Reclamation and Enforcement and the Buyer's ability to consummate the Sale Transaction on account thereof. Buyer has represented that the violations will be cured prior to consummation of the Sale Transaction.

M. Cause has been shown as to why this Order should not be stayed pursuant to Bankruptcy Rules 6004(h) and 6006(d). The Buyer is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

N. **Transfer of Kemmerer Assets and Assumed Liabilities.** The transfer of the Kemmerer Assets and Assumed Liabilities (as such term is defined in the Buyer's APA) in accordance with the terms of this Order is integral to the Buyer's APA and is in the best interests of the WMLP Debtors, their estates and their creditors, and the WMLP Debtors have an adequate business justification therefor.

O. **Assumption and Assignment in Best Interests.** The WMLP Debtors' assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the Sale Transaction and is in the best interests of the WMLP Debtors, their estates and their creditors, and represents the WMLP Debtors' exercise of reasonable business judgment. Pursuant to section 365(f) of the Bankruptcy Code, the Assigned Contracts shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Buyer notwithstanding any provision of the Assigned Contracts or other restriction prohibiting their assignment or transfer.

P. **Cure/Adequate Assurance.** The WMLP Debtors have met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Contracts. The WMLP Debtors have provided adequate assurance (within the meaning of section 365(b)(1) of the Bankruptcy Code) of cure of any default existing prior to the Closing Date under any of the Assigned Contracts. The Buyer has provided adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code (including to the extent, if any, modified by section 365(b)(3) of the Bankruptcy Code).

Q. **Free and Clear.** The sale and assignment of the Kemmerer Assets to the Buyer will be, as of the Closing Date, a legal, valid and effective transfer of such assets, and each such transfer and assignment shall, upon the Closing Date, vest the Buyer with all right, title and interest of the WMLP Debtors to the Kemmerer Assets free and clear of all Liens, interests and Excluded Liabilities (as such terms are defined in the Buyer's APA), with any such Liens, interests or Excluded Liabilities to attach to the net proceeds to be received by the WMLP Debtors in the same priority and subject to the same defenses and avoidability, if any, as were in existence on the Closing Date. The Buyer would not enter into the Sale Transaction if the sale of the Kemmerer Assets were not free and clear of all Liens, interests and Excluded Liabilities, or if the Buyer would, or in the future could, be liable for any such Liens, interests or Excluded Liabilities.

R. **Satisfaction of 363(f) Standards.** The WMLP Debtors may sell and assign the Kemmerer Assets free and clear of all Liens, interests and Excluded Liabilities in the Kemmerer Assets, because, with respect to each creditor asserting a Lien, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens or interests who did not object or who withdrew their objections to the Sale Transaction or any Assumption/Assignment Notice are deemed to have consented to the Sale Motion and the sale and assignment of the Kemmerer Assets to the Buyer under section 363(f)(2) of the Bankruptcy Code. Those holders of liens or other interests in the Kemmerer Assets who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their liens or other interests (if any) attach to the net proceeds of the Sale Transaction ultimately attributable to the Kemmerer Assets in which such holders allege a lien or other interest, in the same order of priority, with the same

validity, force and effect that such holder had prior to the Sale Transaction, and subject to any claims and defenses the WMLP Debtors and their estates may possess with respect thereto.

S. **No Successor Liability.** The Buyer and its affiliates and their respective predecessors, successors, assigns, members, partners, principals, directors, officers and shareholders (or equivalent) shall have no obligations with respect to any liabilities of the WMLP Debtors other than the Assumed Liabilities.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. **Relief Granted.** The relief requested in the Sale Motion is granted as set forth herein.
2. **Objections Overruled.** All objections and responses to the Sale Motion, this Order or the relief granted herein that have not been overruled, withdrawn, waived, settled or otherwise resolved, are hereby overruled and denied on their respective merits with prejudice.
3. **Notice.** Notice of the Sale Motion, including without limitation, the transactions set forth in the Buyer's APA and the assumption and assignment of the Assigned Contracts, the Auction, the Sale Hearing and the Sale Transaction, was fair and reasonable under the circumstances and complied in all respects with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007 and Rule 5 of Exhibit C to the Complex Case Procedures. See Docket No. 1184 (affidavit of service of Sale Motion to parties listed therein); Docket No. 1326 (affidavit of publication notice in the Salt Lake Tribune); Docket No. 1327 (USA Today); Docket No. 1328 (Denver Post); Docket No. 1329 (Kemmerer Gazette).
4. **Approval of Buyer's APA.** The Buyer's APA and the Sale Transaction are hereby approved and authorized in all respects, and the WMLP Debtors are hereby

authorized and empowered to enter into, and to perform their obligations under, the Buyer's APA and to execute and perform such agreements or documents, and take such other actions as are necessary or desirable to effectuate the terms of the Buyer's APA.

5. **Good Faith Buyer.** The Buyer is a good faith purchaser of the Kemmerer Assets and is hereby granted and is entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification or vacatur shall not affect the validity and enforceability of any sale, transfer or assignment under the Buyer's APA or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal prior to the Closing Date) and, notwithstanding any reversal, modification or vacatur, any sale, transfer or assignment, shall be governed in all respects by the original provisions of this Order or the Buyer's APA, as the case may be.

6. **Section 363(n) of the Bankruptcy Code.** The sale approved by this Order is not subject to avoidance or any recovery of damages pursuant to section 363(n) of the Bankruptcy Code.

7. **Authorization of Performance by the WMLP Debtors.** The WMLP Debtors are authorized to fully perform under, consummate and implement the terms of the Buyer's APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Buyer's APA, this Order and the Sale Transaction, including, without limitation, deeds, assignments, stock powers, transfers of membership interests and other instruments of transfer and to take all further actions as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting,

conveying and conferring to the Buyer, or reducing to possession any or all of the Kemmerer Assets, as may be necessary or appropriate to the performance of the WMLP Debtors' obligations as contemplated by the Buyer's APA, without any further corporate action or orders of the Bankruptcy Court.

8. The WMLP Debtors are authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements or amendments necessary or appropriate to effectuate the transactions contemplated by the Buyer's APA, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment and all such other actions, filings or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the WMLP Debtors may determine are necessary or appropriate.

9. **Valid Transfer.** Effective as of the Closing (as defined in the Buyer's APA), the sale and assignment of the Kemmerer Assets and the Assigned Contracts by the WMLP Debtors to the Buyer shall constitute a legal, valid and effective transfer of the Kemmerer Assets and the Assigned Contracts notwithstanding any requirement for approval or consent by any person, and will vest the Buyer with all right, title and interest of the WMLP Debtors in and to the Kemmerer Assets, free and clear of all liens and other interests (other than those liens or interests assumed under the Buyer's APA), pursuant to section 363(f) of the Bankruptcy Code; provided, however, that nothing in this Order or the Buyer's APA shall be deemed to release any environmental covenants recorded on properties purchased by the Buyer.

10. For the avoidance of doubt, nothing contained in the Buyer's APA shall be deemed to constitute an agreement to sell, transfer, assign or convey any assets, properties or

rights of Westmoreland Coal Company and its affiliates (other than the WMLP Debtors), none of which shall be deemed to be a Purchased Asset (as defined in the Buyer's APA).

11. **The Debtors Shall Not Retain Liability for Assigned Contracts and Assumed Liabilities.**<sup>4</sup> Effective on the Closing but subject to 43 C.F.R. § 3453.2-4 (with respect to the Federal Leases (defined below) subject to such regulation), (a) the assumption of the Assigned Contracts and the Assumed Liabilities by the Buyer constitutes a legal, valid, effective, complete and absolute sale, conveyance and transfer from the Sellers to the Buyer of any and all Liabilities relating to, in connection with or arising under the Assigned Contracts and Assumed Liabilities and (b) the WMLP Debtors shall have no liability to the Buyer, any governmental agency, surety or any other person for any Liabilities with respect to the Assigned Contracts and such Assumed Liabilities (which shall, for the avoidance of doubt, include, among other things, all Liabilities arising under or relating to (x) any Environmental Laws and (y) the Transferred Permits/Licenses, including such liabilities thereunder arising out of or relating to all Reclamation and post-mining Liabilities of the Business and Assets).

12. Further, but subject to 43 C.F.R. § 3453.2-4 (with respect to the Federal Leases (defined below) subject to such regulation), it is the Parties' express intention that the Sale Transaction be, and be treated for all purposes as, an absolute sale, conveyance and transfer of all Liabilities relating to, in connection with or arising under the Assigned Contracts and Assumed Liabilities.

13. **Free and Clear.** Except to the extent specifically provided in the Buyer's APA, upon the Closing, the WMLP Debtors shall be, and hereby are, authorized, empowered and directed, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell the

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<sup>4</sup> All terms used in this paragraph but not defined in this Order or the Sale Motion have the meaning ascribed to them in the Buyer's APA.

Kemmerer Assets and assign the Assigned Contracts to the Buyer. The sale and assignment of the Kemmerer Assets and the assignment of the Assigned Contracts to the Buyer vests the Buyer with all right, title and interest of the WMLP Debtors to the Kemmerer Assets free and clear of any and all Liens, Excluded Liabilities and other liabilities or interests of any kind or nature whatsoever, whether imposed by agreement, understanding, law, equity or otherwise, with all such Liens to attach only to the net proceeds of the sale with the same priority, validity, force and effect as they now have in or against the Kemmerer Assets. The Sale Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Kemmerer Assets free and clear of all Liens, interests and Excluded Liabilities in accordance with the Bankruptcy Code, Bankruptcy Rules and Complex Case Procedures. Following the Closing, no holder of any Lien on the Kemmerer Assets may interfere with the Buyer's use and enjoyment of the Kemmerer Assets based on or related to such Lien or any actions that the WMLP Debtors may take in their chapter 11 cases. For the avoidance of doubt, unless set forth in the Buyer's APA, the Buyer shall not be responsible for any Liens, interests and Excluded Liabilities, including in respect of the following: (i) any labor or employment agreements; (ii) any mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between one or more of the WMLP Debtors and any other Debtor; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA")), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any of the WMLP Debtors or any multiemployer plan to which the WMLP Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim,

including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Coal Industry Retiree Health Benefit Act of 1992, (l) the Western Coal Agreement of 2012 between WLB and the International Union, United Mine Workers of America dated May 1, 2012 or (m) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) subject to paragraph 21 of this Order, liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the WMLP Debtors or any corporate predecessor of any of the WMLP Debtors at any time prior to the Closing Date; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) the Federal Coal Mine Health and Safety Act of 1969 (the "Coal Act"); (x) the Black Lung Benefits Act; and (xi) any Excluded Liabilities.

14. The provisions of this Order authorizing the sale and assignment of the Kemmerer Assets free and clear of Liens, interests and the Excluded Liabilities shall be self-executing, and neither the WMLP Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

15. **Direction to Creditors.** On the Closing Date (as defined in the Buyer's APA), each of the WMLP Debtors' creditors is authorized and directed to execute such

documents and take all other actions as may be reasonably necessary to release its Liens or other interests on the Kemmerer Assets, if any, as such Liens or interests may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanics liens, lis pendens or other documents, instruments, notices or agreements evidencing any Lien against or in the Kemmerer Assets shall not have delivered to the WMLP Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction that the person or entity has with respect to the Kemmerer Assets, then with regard to the Kemmerer Assets, (a) the WMLP Debtors and/or the Buyer are authorized to execute and file such termination statements, releases, instruments of satisfaction or other documents on behalf of the person or entity with respect to the Kemmerer Assets; and (b) the WMLP Debtors and/or Buyer are authorized to file, register or otherwise record a certified copy of this Order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens or other interests against the Kemmerer Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, local, tribal or foreign government agency, department or office.

16. **Direction to Government Agencies.** Subject to paragraph 21 of this Order, each and every filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state and local official and any other persons or entities that may be required by operation of law or the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Kemmerer Assets, is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the

transactions contemplated by the Buyer's APA and this Order. All such entities described above in this paragraph are authorized and specifically directed to strike all recorded Liens or other interests against the Kemmerer Assets from their records.

17. **Direction to Surrender Possession or Control.** All persons or entities, presently or on or after the Closing Date, in possession or control of some or all of the Kemmerer Assets are directed to surrender possession or control of the Kemmerer Assets to the Buyer on the Closing Date or at such time thereafter as the Buyer may request.

18. **Licenses and Permits.** Subject to paragraph 21 of this Order, to the extent provided in the Buyer's APA and available under applicable law, the Buyer may, as of the Closing Date, operate under any license, permit, registration and any other governmental authorization or approval of the WMLP Debtors with respect to the Kemmerer Assets and the Assigned Contracts. To the extent any license or permit necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, the Buyer shall apply for and obtain any necessary license or permit promptly after the Closing Date, and such licenses or permits of the WMLP Debtors shall remain in place for the Buyer's benefit until new licenses and permits are obtained. Nothing in this paragraph 18 shall impair the police or regulatory authority of any governmental unit set forth in paragraph 21; provided, however, that the Buyer may operate the applicable Kemmerer Assets on an interim basis until permits are transferred if in compliance with applicable law.

19. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Kemmerer Assets sold, transferred or conveyed to the Buyer on account of the filing or

pendency of these chapter 11 cases or the consummation of the transactions contemplated by the Buyer's APA.

20. **No Successor Liability.** The Buyer and its affiliates and their respective predecessors, successors, assigns, members, partners, officers, directors, principals and shareholders (or equivalent) are not and shall not be (a) deemed a "successor" in any respect to the WMLP Debtors or their estates as a result of the consummation of the Sale Transaction contemplated by the Buyer's APA or any other event occurring in these chapter 11 cases under any theory of law or equity, including, without limitation, with respect to any collective bargaining agreements and any benefit plans, under the Coal Industry Retiree Health Benefit Act of 1992, or any common law successorship liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability, (b) deemed to have, de facto or otherwise, merged or consolidated with or into the WMLP Debtors or their estates, (c) deemed to have a common identity with the WMLP Debtors, (d) deemed to have a continuity of enterprise with the WMLP Debtors or (e) deemed to be a continuation or substantial continuation of the WMLP Debtors or any enterprise of the WMLP Debtors. The Buyer shall not assume, nor be deemed to assume or in any way be responsible for any liability or obligation of any of the WMLP Debtors and/or their estates including, but not limited to, any Excluded Liabilities, any bulk sales law, successor liability, liability or responsibility for any claim against the WMLP Debtors or against an insider of the WMLP Debtors, or similar liability except as otherwise expressly provided in the Buyer's APA, and the Sale Motion contains sufficient notice of such limitation in accordance with applicable law. Without limiting the generality of the foregoing, except for the Assumed Liabilities, the transfer of the Kemmerer Assets and the Assigned Contracts to the Buyer under the Buyer's APA shall not result in (x) the Buyer and its affiliates and their respective

predecessors, successors, assigns, members, partners, officers, directors, principals and shareholders (or equivalent) or the Kemmerer Assets, having any liability or responsibility for any claim against the WMLP Debtors or against an insider of the WMLP Debtors or any of the respective predecessors or affiliates (including, without limitation, Excluded Liabilities); (y) the Buyer and its affiliates and their respective predecessors, successors, assigns, members, partners, officers, directors, principals and shareholders (or equivalent) or the Kemmerer Assets, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Liens, interests or Excluded Liability; or (z) the Buyer and its affiliates and their respective predecessors, successors, assigns, members, partners, officers, directors, principals and shareholders (or equivalent) or the Kemmerer Assets, having any liability or responsibility to the WMLP Debtors except as is expressly set forth in the Buyer's APA.

21. Nothing in this Order or the Buyer's APA releases, nullifies, precludes, or enjoins the enforcement of any obligation or liability arising from the enforcement of a police or regulatory power of a governmental unit that any entity would be subject to as the owner or operator of property after the closing of the sale of the Assets; provided, however, that, except as is provided by the Buyer's APA, nothing herein shall subject the Buyer to liability to a governmental unit for penalties for days of violation prior to Closing, response costs incurred by a governmental unit prior to Closing, or liability relating to offsite disposal that occurred prior to Closing. In addition, nothing in this Order or the Buyer's APA authorizes the transfer or assignment of any governmental license, permit, registration, authorization or approval or the discontinuation of any obligation thereunder without compliance with all applicable legal requirements under police or regulatory law.

22. Notwithstanding any provisions in the Sale Motion, this Order, the Buyer's APA, the Auction and Hearing Notice or the Assumption/Assignment Notice relating to any contracts, leases, covenants, operating rights agreements, rights-of-use and easements, and rights-of-way or other interests or agreements (a) with the federal government or the State of Wyoming or (b) involving federal or state land or minerals (collectively, the "Federal/Wyoming Leases") and/or any provision of any agreements entered into by the WMLP Debtors pursuant to this Order (collectively the "Federal/Wyoming Assumption Documents") to the contrary, any assumption, sale, assignment and/or transfer of any interests in the Federal/Wyoming Leases will be ineffective with respect thereto absent the consent of the Department of the Interior ("Interior") or the State of Wyoming (as applicable) as provided for in applicable non-bankruptcy laws and regulations; provided, however, that notwithstanding the foregoing, the Interior or the State of Wyoming (as applicable) have consented to Buyer exercising any and all of its rights as the assignee under the Federal/Wyoming Leases solely during (a) ten business days after the entry of this Order, and (b) thereafter, the period that an application for approval is pending (together, the "Interim Period"), and the Buyer shall only be prevented from exercising such rights if the Interior or the State of Wyoming (as applicable) expressly provides the Buyer with written notice of disapproval of an application for approval of assignment of a Federal/Wyoming Lease; provided, further, however, that nothing in the Sale Motion, the Buyer's APA or this Order shall impair or limit the liability of the Buyer under any Federal/Wyoming Lease during the Interim Period or the validity of any financial assurance or surety bonding during the Interim Period. During the Interim Period, the Buyer and its affiliates shall exercise their rights and obligations under the Federal/Wyoming Leases in full compliance therewith and applicable regulations. In order to assume the Federal/Wyoming Leases and, where applicable, obtain the

consent of the Interior or Wyoming (as applicable) to any assignment and/or transfer of the Federal/Wyoming Leases, the Buyer, must, among other things, cure, or provide adequate assurance that they will promptly cure, any and all existing defaults under the applicable Federal/Wyoming Leases as required by bankruptcy law.

23. Notwithstanding any other provision in the Federal/Wyoming Assumption Documents, the Office of Natural Resources Revenue (the "ONRR") will retain the right to audit and/or perform any compliance review and, if appropriate, collect from the Buyer under any contracts, leases, covenants, operating rights agreements, rights-of-use and easements, and rights-of-way or other interests or agreements (a) with the federal government or (b) involving federal land or minerals (collectively, the "Federal Leases"), any additional money that was owed by the WMLP Debtors prior to the assumption and/or assignment of the Federal Leases without those rights being adversely affected by these bankruptcy proceedings; provided, that, the rights set forth in this paragraph must be based on new information consisting of: (a) findings, based on new information not reported by the WMLP Debtors to ONRR prior to the applicable deadline set forth in the Assumption/Assignment Notice (the "Cure Deadline"), of any audit and/or compliance review performed in the future by ONRR or its delegee that the WMLB Debtors had underpaid royalties they had self-reported to ONRR prior to and as of the Cure Deadline; (b) any amended reporting submitted to ONRR subsequent to the Cure Deadline; and/or (c) any request(s) for refunds submitted to ONRR subsequent to the Cure Deadline. The Buyer will retain all defenses and/or rights, other than defenses and/or rights arising from the bankruptcy, to challenge any such determination. The Buyer, ONRR and the WMLP Debtors each reserve their rights regarding whether such challenge should be heard by the Bankruptcy Court or another forum, provided, however, that the initial determination of which forum or

forums have jurisdiction over any such challenge and the proper venue for any such challenge (subject to all parties appellate rights) shall be made by the Bankruptcy Court; provided, however, that the Buyer shall file a motion seeking such determination by the Bankruptcy Court no less than thirty (30) days after the receipt of an order (an "Audit Order") by ONRR, or its designee, finding, pursuant to an audit, that additional amounts are due and owing as a result of mining activities that occurred prior to the Cure Deadline. The Buyer and ONRR agree that in the event that Buyer seeks such determination from the Bankruptcy Court: (a) the Buyer will also file an administrative appeal, pursuant to ONRR's regulations, within thirty (30) days or receipt of the Audit Order; and (b) the Buyer and ONRR agree that such administrative appeal will be stayed until the Buyer withdraws its motion or the Bankruptcy Court: (i) decides whether it has or does not have jurisdiction; (ii) declines to exercise any such jurisdiction over the matter; (iii) makes a determination of concurrent jurisdiction but requires the exhaustion of administrative remedies through ONRR's administrative appeal process before exercising its jurisdiction; or (iv) denies the Buyer's motion. The United States reserves its right to move the Bankruptcy Court for an order modifying or vacating any such stay of the administrative proceeding. The audit and/or compliance review period shall remain open for the full statute of limitations period established by federal law.

24. **Kemmerer Bonds and Related Indemnity Obligations.** Upon the (a) termination and/or release of all of the existing bonds (after regulatory authority approval) Zurich American Insurance Company and its affiliate Fidelity & Deposit Company of Maryland (collectively, "Zurich") have issued on behalf of the WMLP Debtors (the "Kemmerer Bonds"), (b) satisfaction of all the WMLP Debtors' obligations under the related indemnity agreement (the "Kemmerer Indemnity Agreement"), including, without limitation, the payment and/or

reimbursement of all premiums, fees and expenses, including reasonable attorneys' fees, and (c) replacement or supplementation by the Purchaser (as referred to in the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 1459]) or Prairie Mines & Royalty ULC of any additional collateral or other security as may be requested by Zurich as part of its ongoing underwriting process, (x) Zurich shall release that certain collateral in the approximate amount of \$30,259,188.11 (as of December 31, 2018), which is held in Bank of New York Account No. 858733 (the "Kemmerer Collateral"), to the Buyer or such other entity agreed upon by Zurich and the Buyer and (y) the WMLP Debtors will have no further obligation to Zurich under the Kemmerer Indemnity Agreement.

25. **Interim Operations by Purchaser.** To the extent that the WMLP Debtors and the Buyer determine that the Closing of the Sale Transaction may occur prior to the transfer of any of the WMLP Debtors' existing mining permits that are being transferred to the Buyer, the WMLP Debtors and the Buyer will enter into an agreement with Zurich (an "Interim Agreement"), subject to regulatory authority approval, that would, among other provisions acceptable to Zurich, the Buyer and the WMLP Debtors, allow the Buyer to operate the Kemmerer Assets and conduct business at such mine under the WMLP Debtors' existing mining permits, until the Buyer obtains replacement permits. An Interim Agreement shall require, among other provisions acceptable to Zurich, the Buyer and the WMLP Debtors, that the Buyer (a) assume all obligations relating to the mine with respect to the pending permit transfers; (b) assume all obligations under the Kemmerer Bonds relating to the permits to be transferred and for any work performed by the Buyer or its affiliates while a permit transfer is pending and prior to completion of such transfer; and (c) indemnifies the WMLP Debtors and Zurich from, and against, any and all claims, liability, loss or default that occurs at the mine with the pending

permit transfers while the permit transfers are pending. For the avoidance of doubt, all rights of Zurich and bond obligees with respect to the Kemmerer Bonds, the Kemmerer Indemnity Agreement and applicable suretyship and other common law are expressly reserved. Nothing herein shall obligate Zurich to enter into an Interim Agreement.

26. **Zurich's Rights as to Third Parties Unaffected; No Waiver.** Nothing contained in this Order shall be interpreted to alter, diminish or enlarge the rights or obligations of Zurich in regard to state and federal agencies, third parties or otherwise under any surety bonds, any indemnity agreements or applicable law nor shall any of the foregoing be deemed to enjoin Zurich from asserting any rights, claims or defenses, in regard to or against any state and federal agencies, third parties including, without limitation, any of Zurich's indemnitors, insurers or otherwise under any surety bonds, any indemnity agreements, coal bond reclamation agreements or applicable law.

27. Nothing in this Order or in the Buyer's APA shall be deemed to provide Zurich's consent to the involuntary substitution of any principal under the Kemmerer Bonds or the Kemmerer Indemnity Agreement.

28. Except as set forth in an Interim Agreement, the Buyer shall not be (a) liable for the Kemmerer Bonds and/or obligations arising under the Kemmerer Indemnity Agreement to the extent they relate to any assets that are not transferred to the Buyer or (b) deemed a substitute principal under the Kemmerer Bonds or an indemnitor under the Kemmerer Indemnity Agreement.

29. **Existing Zurich Bonds and Collateral.** Nothing in this Order, the Buyer's APA or otherwise shall be deemed to (a) alter, limit, expand, modify, release, waive or prejudice any rights, remedies and/or defenses of Zurich or the WMLP Debtors or bond

obligees under the Kemmerer Bonds relating to any assets, obligations or liabilities to be transferred to Buyer, including, without limitation, mining permits, surface and coal leases and mine-related facilities and other contractual obligations; (b) authorize or permit the assignment or assumption of the Kemmerer Bonds or the Kemmerer Indemnity Agreement, including, without limitation, any coal bond reclamation agreement, collateral agreement or other agreements of the WMLP Debtors with Zurich; (c) alter, limit, expand, modify, prejudice, release or waive any rights of Zurich or the WMLP Debtors or bond obligees under the Kemmerer Bonds or the Kemmerer Indemnity Agreement; (d) alter, limit, expand, modify, prejudice, waive or release any rights of Zurich in any and all collateral of Zurich that secures any and all obligations of the WMLP Debtors under the Kemmerer Bonds or the Kemmerer Indemnity Agreement; or (e) alter, limit, expand, modify, prejudice, waive or release any rights of Zurich or the WMLP Debtors or bond obligees in connection with these chapter 11 cases. Nothing herein shall obligate Zurich to enter into any replacement bonds or replacement indemnity agreements with respect to the Kemmerer assets with Buyer or any other third party.

30. **Zurich Premiums.** Consistent with previous Orders of the Court, the WMLP Debtors will pay premiums on those Zurich Bonds relating to the WMLP Debtors' assets, until those bonds are released.

31. **Chubb.** Notwithstanding anything to the contrary in the Sale Motion, the Buyer's APA, this Order or any document related to any of the foregoing, (i) none of the insurance policies or any related agreements (collectively, the "Chubb Insurance Contracts") issued by ACE American Insurance Company, Westchester Surplus Lines Insurance Company, ACE Property & Casualty Insurance Company, Westchester Fire Insurance Company, Illinois Union Insurance Company, ACE Insurance Company of Texas, Federal Insurance Company,

Great Northern Insurance Company, Chubb Insurance Company of Canada and/or their respective affiliates (collectively, and with each of their successors, "Chubb") or any rights, benefits, claims, rights to payments and/or recoveries under the Chubb Insurance Contracts, shall be included among the Assigned Contracts or the Kemmerer Assets; and (ii) nothing shall alter, modify or otherwise amend the terms or conditions of the Chubb Insurance Contracts, and any proceeds due under the Chubb Insurance Contracts shall be paid only to the applicable WMLP Debtors (as opposed to the Buyer) or other insured or claimant thereunder; provided, however, that to the extent any claim arises under the Chubb Insurance Contracts with respect to any Kemmerer Assets, the WMLP Debtors or other insured or claimant thereunder may pursue such claims in accordance with the terms of the Chubb Insurance Contracts, and, if applicable, turn over to the Buyer any proceeds in accordance with the terms of the Buyer's APA; provided further, however, that, Chubb Insurance Contract policy number M00982556 issued by ACE Property & Casualty Insurance Company for the period of July 1, 2018, to July 1, 2019 (the "Umbrella Policy"), shall be modified such that the Umbrella Policy shall no longer provide any insurance coverage with respect to any of the Kemmerer Assets as of the Closing Date, and the automatic stay imposed by section 362(a) of the Bankruptcy Code, to the extent applicable, is lifted to effectuate such modification, in a form agreed-upon by ACE Property & Casualty Insurance Company and the WMLP Debtors.

32. **Chevron**. The Chevron Entities (defined as Chevron U.S.A. Inc., Chevron Products Company, Chevron Mining, Inc. and their affiliates) may timely object to the proposed cure amount of any assigned contracts with the Chevron Entities at any time before two (2) calendar days before the Closing Date. The Buyer and the WMLP Debtors will provide e-mail notice to all counsel for the Chevron Entities no less than five (5) business days before the

Closing Date of the proposed cure amount assumed or assigned contracts. If the Chevron Entities object, either (a) this Court will conduct a hearing on an expedited basis or (b) the parties may agree to escrow the amount in dispute pending a hearing in the ordinary course. Pending a ruling from this Court, the WMLP Debtors may not assign the contract without escrowing the disputed cure amount. Nothing in this order shall prejudice the WMLP Debtors right to seek, or the Chevron Entities' rights to object to, the rejection of a contract.

33. **Monsanto**. The contracts referred to in the *Objection of Monsanto Company to Proposed Assumption of Certain Executory Contracts* [Docket No. 1410] (the "Monsanto Objection") shall not be Assigned Contracts. Nothing in this Order shall be considered a release of any obligation, if any, of Monsanto Company pursuant to the contracts referred to in the Monsanto Objection.

34. **Intercompany Settlement**. In the event of any inconsistency between this Order, the Buyer APA and the Intercompany Settlement Order, the Intercompany Settlement Order shall govern.

35. **No Bulk Sales; No Brokers**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction. No brokers were involved in consummating the Sale Transaction, and no brokers' commissions are due to any person or entity in connection with the Sale Transaction. The Buyer is not, and will not become, obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the Sale Transaction based upon any arrangement made by, or on behalf of, the WMLP Debtors.

36. **Assumption and Assignment of Assigned Contracts**. Under sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the

closing of the Sale Transaction, the WMLP Debtors' assumption and assignment of the Assigned Contracts to the Buyer free and clear of all Liens, interests and Excluded Liabilities pursuant to the terms set forth in the Buyer's APA, as modified by the terms of any amendments reached directly by the Buyer with the respective counterparty, is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code (including to the extent, if any, modified by section 365(b)(3) of the Bankruptcy Code) with respect thereto are hereby deemed satisfied. Each counterparty to the Assigned Contracts is hereby forever barred, estopped and permanently enjoined from raising or asserting against the WMLP Debtors or the Buyer, or the property of any of them, any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinate) arising under or out of, in connection with, or in any way related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Closing.

37. **Adequate Assurance.** The Buyer has provided adequate assurance of its future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code (including to the extent, if any, modified by section 365(b)(3) of the Bankruptcy Code). All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the WMLP Debtors' assumption and assignment to the Buyer of the Assigned Contracts have been satisfied.

38. **Anti-Assignment Provisions Unenforceable.** No sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict or condition WMLP Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the nondebtor party to such Assigned Contracts; (b) authorize the

termination, cancellation or modification of the Assigned Contracts based on the filing of a bankruptcy case, the financial condition of the WMLP Debtors or similar circumstances;

(c) declare a breach or default as a result of a change in control in respect of the WMLP Debtors;

or (d) provide for additional payments, penalties, conditions, renewals, extensions, charges or other financial accommodations in favor of the nondebtor third party to the Assigned Contracts, or modification of any term or condition upon the assignment of an Assigned Contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code. The entry of this Order constitutes the consent of the nondebtor parties to the Assigned Contracts to the WMLP Debtors' assumption and assignment of such agreements to the Buyer. All Assigned Contracts shall remain in full force and effect, without existing default(s), subject only to payment of the appropriate cure amount, if any, by the Buyers.

39. **No Fees for Assumption and Assignment.** There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyer, its successors or assigns or the WMLP Debtors as a result of the assumption and assignment of the Assigned Contracts.

40. **Cure Costs.** All defaults or other obligations shall be deemed cured by the Buyer's payment or other satisfaction of the cure amounts, if any, associated with the Assigned Contracts (the "Cure Costs"). Payment of the Cure Costs pursuant to the Buyer's APA is hereby authorized. To the extent any objections to proposed cure amounts were filed (a "Cure Objection"), there will be a separate hearing to resolve such Cure Objections, if any such objection has not been resolved as of the date hereof. To the extent the Closing of the Sale

Transactions has occurred prior to the resolution of any outstanding Cure Objections, the applicable Assigned Contracts will be conditionally assumed and assigned as of the date of the Closing of the Sale Transactions, subject to the consent of the Buyer, pending a resolution of the Cure Objection after notice and a hearing. If a Cure Objection is not resolved to the satisfaction of the Buyer, the Buyer may determine that such Assigned Contract should be rejected and not assigned, in which case the Buyer will not be responsible for any Cure Costs in respect of such contract. Consistent with the Buyer's APA, until the Closing of the Sale Transactions, the Buyer may add or remove any contract or lease from the schedule of Assigned Contracts under the Buyer's APA for any reason.

41. **Notice of Assumption and Assignment.** The WMLP Debtors have served all of the nondebtor counterparties to the Assigned Contracts, identified on the lists the WMLP Debtors have filed with the Bankruptcy Court, by first class mail, an Assumption/Assignment Notice that included (a) the title of the Assigned Contract, (b) the name of the counterparty to the Assigned Contract, (c) any applicable Cure Costs and (d) the deadline by which any such Assigned Contract counterparty must file a Cure Objection to the proposed assumption and assignment. No other or further notice is required. See Docket No. 1365 (affidavit of services of *Notice of (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts*).

42. **Objections to Assumption and Assignment.** Except as provided herein, all Cure Objections have been overruled, withdrawn, waived, settled or otherwise resolved. Any Cure Objections as to applicable Cure Costs that have not been resolved by the parties may be heard at a later date as set by the Bankruptcy Court. The pendency of a dispute relating to a

particular Assigned Contract shall not prevent or delay the assumption and assignment of any other Assigned Contract or the Closing of the Sale Transaction.

43. Any nondebtor counterparty to the Assigned Contract designated for the WMLP Debtors' assumption and assignment to the Buyer that has not filed an objection on or before the deadline as set forth in the relevant Assumption/Assignment Notice shall thereafter be barred from objecting or asserting monetary or non-monetary defaults with respect to any such Assigned Contract, and such Assigned Contract shall be deemed assumed by the WMLP Debtors and assigned to the Buyer on the Closing Date.

44. **Direction to Assigned Contracts Counterparties.** All counterparties to the Assigned Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Buyer, and shall not charge the Buyer for, any instruments, applications, consents or other documents that may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale Transaction.

45. **Rock Springs Royalty Company.** The WMLP Debtors, the Buyer and Rock Springs Royalty Company ("RSRC") hereby stipulate, and the Court hereby orders, that nothing in this Order shall terminate, modify or amend the rights and obligations under the 1983 Purchase Agreement between Gulf Oil Corporation and RSRC (the "1983 Purchase Agreement"). The WMLP Debtors, the Buyer and RSRC agree, and the Court hereby orders, that nothing in this Order or the Buyer's APA approved hereunder shall be construed as authorizing the WMLP Debtors or the Buyer to assume or reject the 1983 Purchase Agreement as an executory contract or unexpired lease under section 365(a) of the Bankruptcy Code, nor shall anything in this Order or the Buyer's APA be construed as authorizing the WMLP

Debtors to transfer any Kemmerer Assets free and clear of any royalty interest reserved by RSRC in the 1983 Purchase Agreement pursuant to section 363(f) of the Bankruptcy Code or any other applicable law. The WMLP Debtors, the Buyer and RSRC shall reserve all rights, claims and defenses regarding the 1983 Purchase Agreement, any related agreements and under applicable law. The stipulations and agreements approved under this paragraph 45 resolve the *Objection of Rock Springs Royalty Company to the Expedited Motion of Westmoreland Resource Partners, LP and its Subsidiaries for Entry of (i) an Order (a) Establishing Bidding 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; and (ii) an Order Approving the Sale of Such Assets and Granting Related Relief* [Docket No. 1432].

46. **PacifiCorp**. The WMLP Debtors shall assume that certain Coal Supply Agreement dated July 1, 2010, between Westmoreland Kemmerer, LLC and PacifiCorp, as amended in accordance with its terms from time to time (as amended, the "**PacifiCorp CSA**"), and assign the PacifiCorp CSA to the Buyer, which assumption and assignment shall be effective at the time of the Closing of the Sale Transaction; provided, however, that any deadlines related to the purchase price reset to be negotiated by the parties to the PacifiCorp CSA and to be effective as of January 1, 2019 in accordance with section 5.07 of the PacifiCorp CSA (the "**2019 Price Reset**") shall be tolled for a period of sixty (60) days after the Closing of the Sale Transaction so that the Buyer may participate in and complete such negotiations; and provided further, that the Buyer agrees that, by assuming the PacifiCorp CSA, the Buyer is assuming any obligations of the WMLP Debtors thereunder with respect to the 2019 Price Reset. Except for

(i) any obligations the Buyer is assuming with respect to the 2019 Price Reset and (ii) any post-petition claims that PacifiCorp may have against any of the WMLP Debtors that arise between February 28, 2019 and the Closing Date and that must be cured in connection with assumption and assignment of the PacifiCorp CSA, PacifiCorp stipulates that, as of February 28, 2019, there are no known cure costs that must be satisfied by the Buyer in connection with the assumption and assignment of the PacifiCorp CSA. Pending the effectiveness of the assumption and assignment of the PacifiCorp CSA, PacifiCorp reserves all rights under applicable law.

47. **Adequate Assurance of Future Performance of PacifiCorp CSA.**

Notwithstanding anything to the contrary in this Order, Buyer has agreed to provide, and PacifiCorp has agreed to accept, in satisfaction of Buyer's obligation to demonstrate adequate assurance of future performance, performance assurance from Buyer that includes, but is not limited to, a corporate parent payment and performance guaranty of Buyer's obligations under the PacifiCorp CSA, which performance assurance is memorialized by that letter agreement by and between PacifiCorp and Buyer, dated February 28, 2019.

48. **UGM ADDCAR.** For the avoidance of doubt, the Kemmerer Assets and the Sale Transaction exclude property held by Debtor Westmoreland Kemmerer, LLC for UGM ADDCAR Systems, LLC ("ADDCAR"), as such property is identified in Debtor Westmoreland Kemmerer LLC's Statement of Financial Affairs [Docket No. 426] (the "ADDCAR Property"). ADDCAR agrees to, and shall, remove the ADDCAR Property within ninety (90) days after the entry of this Order. The Buyer, in its reasonable discretion, must approve any removal plan for the ADDCAR Property. At a minimum, any removal plan must: (a) comply with all MSHA, Kemmerer mine safety requirements, and other applicable law; and (b) not adversely affect

ongoing mining operations. ADDCAR is responsible for all costs of removal and any damages resulting from such removal.

49. **GT Nix Construction, Inc.** To the extent that, as of the date hereof, GT Nix Construction, Inc. ("GT Nix") has a valid and enforceable lien under Wyoming law on certain of the Kemmerer Assets as asserted in the Amended Notice of Perfection (Docket No. 1469) and/or in any proof of claim filed by GT Nix (collectively, the "GT Nix's Claim"), upon Closing, such lien shall attach to the proceeds in the same amount and priority as the lien asserted in the GT Nix Proof of Claim. The WMLP Debtors and GT Nix reserve all of their rights with respect to the GT Nix lien and nothing in this paragraph shall impair or prejudice the WMLP Debtors' ability to object to the existence, perfection, priority and value of any purported lien or impair or prejudice GT Nix's rights to respond to any such objection. For the avoidance of doubt, GT Nix's lien continues, to the same extent, validity and priority, against the sale proceeds as it applied to the property until further order of the Court.

50. **Avoidance Actions.** For the avoidance of doubt, and notwithstanding anything to the contrary in Section 2.1(b)(xii)(B) of the Asset Purchase Agreement, the Buyer shall not acquire any of the WMLP Debtors' causes of action arising under chapter 5 of the Bankruptcy Code, relating to the Purchased Assets that are against or otherwise involving any counterparty to any Assigned Contract. The Buyer reserves all other rights, claims and defenses with respect to the Purchased Assets and any counterparty to any Assigned Contract including, without limitation, all rights of setoff, recoupment, and to demand and recover possession of Purchased Assets.

51. **Amendments.** Subject to the terms of the Buyer's APA, the Buyer's APA and any related agreements may be waived, modified, amended or supplemented by agreement

of the WMLP Debtors and the Buyer and the MLP Secured Lenders (to the extent the MLP Secured Lenders are affected by such agreement), without further action or order of the Bankruptcy Court; provided, however, that any such waiver, modification, amendment or supplement does not have a material and adverse effect on the WMLP Debtors and their estates; provided, further, however, that (a) any such waiver, modification, amendment or supplement shall not adversely affect any of the rights of governmental entities, agencies or units provided herein, unless such affected governmental entity consents to such waivers, modifications, amendments or supplements; (b) the Buyer and WMLP Debtors will consult with the unsecured creditors' committee before entering into any amendments, modifications or waivers to the Buyer's APA; and (c) any amendment, restatement, supplement, modification or waiver of or under the Buyer APA or this Order that materially, adversely affects the WLB Debtors, the WLB Purchaser (including its Canadian subsidiaries) or the WLB Secured Lenders (as such terms are defined in the Intercompany Settlement Term Sheet), as determined by each such party, requires the consent of such party (such consent not to be unreasonably withheld). The WMLP Debtors and the Buyer are expressly authorized, without further order of the Bankruptcy Court, to execute an amendment to Buyer's APA to provide for the Closing to occur on one or more Closing Dates. Any material modification, amendment or supplement to the Buyer's APA that has an adverse effect on the WMLP Debtors and their estates must be approved by order of the Bankruptcy Court following a motion on notice to all interested parties.

52. **MLP Secured Lender Rights.** For the avoidance of doubt, nothing included in this Order shall affect any of the rights of the MLP Secured Lenders under the Buyer's APA, including that the Senior Note and Junior Note shall be reasonably satisfactory to the MLP Secured Lenders in accordance with Section 8.8 of the Buyer's APA.

53. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Buyer's APA or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the WMLP Debtors and the Buyer that the Buyer's APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

54. **Binding Order.** This Order and the Buyer's APA shall be binding upon and govern the acts of all persons and entities, including without limitation, the WMLP Debtors and the Buyer, their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the WMLP Debtors' estates or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of any WMLP Debtor (whether known or unknown), all nondebtor parties to any Assigned Contracts, filing agents, filing officers, title agents, recording agencies, governmental departments, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Kemmerer Assets. The Buyer's APA and Sale Transaction shall not be subject to rejection or avoidance under any circumstances. This Order and the Buyer's APA shall inure to the benefit of the WMLP Debtors, their estates, their creditors, the Buyer and its respective successors and assigns.

55. **Allocation of Consideration.** Except as provided in the Buyer's APA, all rights of the respective WMLP Debtors' estates with respect to the allocation of consideration

received from the Buyer in connection with the Sale Transaction (including, without limitation, the value of the assumption of the Assumed Liabilities) are expressly reserved for later determination by the Bankruptcy Court and, to the extent consideration is received by any WMLP Debtor that is determined to be allocable to another WMLP Debtor, the recipient WMLP Debtor shall be liable to such other WMLP Debtor for a claim with the status of an expense of administration in the case of the recipient WMLP Debtor under section 503(b) of the Bankruptcy Code.

56. **MLP Secured Lenders' Credit Bid.** The MLP Secured Lenders have submitted a back-up credit bid for the Kemmerer Assets (the "MLP Secured Lender Bid"). In the event that (a) the Buyer's APA is terminated in accordance with Section 4.4 of the Buyer's APA or otherwise fails to close (the "Termination Event"), and (b) the WMLP Debtors determine that they will seek approval of the MLP Secured Lender Bid, then within five (5) days of the Termination Event, the WMLP Debtors shall file a notice of the MLP Secured Lender Bid seeking Bankruptcy Court approval of the MLP Secured Lender Bid (as may be modified with the consent with WMLP Debtors and the MLP Secured Lenders), and the WMLP Debtors shall request a hearing on approval of the MLP Secured Lender Bid to be held within fourteen (14) calendar days after the Termination Event or as soon thereafter as the Court's calendar will allow.

57. **Unsecured Creditors' Committee's Reservation of Rights with Respect to Credit Bid.** Subject to the terms of the settlement among the unsecured creditors' committee, the WMLP Debtors, Westmoreland Resources GP, LLC and the MLP Secured Lenders attached as Exhibit 1 to the proposed order filed at Docket No. 1497, the unsecured creditors' committee reserves all rights to challenge the MLP Secured Lender Bid, in the event the Sale Transaction fails to close for any reason.

58. **Payment of Consideration.** At the Closing of the Sale Transaction, all cash and non-cash proceeds shall be paid directly to U.S. Bank National Association, as administrative and collateral agent for the MLP Secured Lenders, and such cash and non-cash consideration shall not be subject to disgorgement.

59. **No Stay of Order.** Notwithstanding Bankruptcy Rules 6004 and 6006, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Time is of the essence in closing the Sale Transaction referenced herein, and the WMLP Debtors and the Buyer intend to close the Sale Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal, pursuing a stay and obtaining a stay prior to the Closing or risk its appeal being foreclosed as moot.

60. **Lift of Automatic Stay.** The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the WMLP Debtors to the extent necessary, without further order of the Bankruptcy Court, to allow the Buyer to deliver any notice provided for in the Buyer's APA and allow the Buyer to take any and all actions permitted under the Buyer's APA, including, without limitation, terminating the Buyer's APA, in each case in accordance with the terms and conditions thereof.

61. **Retention of Jurisdiction.** The Bankruptcy Court shall retain jurisdiction to: (a) interpret, implement and enforce the terms and provisions of this Order and the Buyer's APA, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects; and (b) to decide any disputes concerning this Order and the Buyer's APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Buyer's APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature

and extent of the Kemmerer Assets and any Assigned Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning (i) the transfer of the Kemmerer Assets free and clear of all Liens and other interests and (ii) the absolute conveyance of the Assumed Liabilities and Assigned Contracts.

62. **Further Assurances.** From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale Transaction, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in the Buyer its right, title and interest in and to the Kemmerer Assets and the Assigned Contracts.

63. **Governing Terms.** To the extent this Order is inconsistent with any prior order or pleading in these chapter 11 cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Buyer's APA (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

Dated: \_\_\_\_\_, 2019  
Houston, Texas

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THE HONORABLE DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE