

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

**WMLP DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF AN ORDER (I) CONDITIONALLY  
APPROVING THE ADEQUACY OF THE WMLP DISCLOSURE  
STATEMENT, (II) APPROVING THE SOLICITATION AND NOTICE  
PROCEDURES WITH RESPECT TO CONFIRMATION OF THE WMLP PLAN,  
(III) APPROVING THE FORM OF VARIOUS BALLOTS AND NOTICES IN  
CONNECTION THEREWITH; AND (IV) APPROVING THE SCHEDULING OF  
CERTAIN DATES IN CONNECTION WITH CONFIRMATION OF THE WMLP PLAN**

**THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

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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 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.

**TO THE HONORABLE CHIEF U.S. BANKRUPTCY JUDGE DAVID R. JONES:**

The WMLP Debtors,<sup>2</sup> as debtors and debtors in possession herein, respectfully state the following in support of this motion (this “Motion”).

**Introduction**

1. The WMLP Debtors filed their chapter 11 cases with the goal of selling substantially all of their assets in a way that would maximize creditor recoveries. Toward that goal, in these cases, the WMLP Debtors obtained significant achievements through securing approval of the Oxford Sale (which closed on February 11, 2019) and the Kemmerer Sale.<sup>3</sup>

2. In addition, following months of negotiations among the WLB Debtors,<sup>4</sup> the WMLP Debtors, the WLB Debtors’ secured lenders, and the WMLP Secured Lenders, the Intercompany Settlement was reached, which resolves all disputes between the WLB Debtors and the WMLP Debtors. The Court has already approved the Intercompany Settlement. In addition, after months of negotiations among the Creditors’ Committee, the WMLP Debtors, and the WMLP Secured Lenders, the parties entered into the WMLP Committee Settlement to resolve all their particular disputes, which the Court has also approved.

3. The *Joint Plan of Liquidation for the WMLP Debtors* (as may be further modified, amended, or supplemented from time to time and including all exhibits and supplements, the “WMLP Plan”) represents the final step necessary for the WMLP Debtors to resolve their chapter 11 cases. The WMLP Plan proposes a liquidation of the WMLP Debtors and the remaining assets

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

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the WMLP Plan.

<sup>4</sup> The term “WLB Debtors” refers to WLB and its Debtor-subsiaries other than the WMLP Debtors. The term “Debtors” refers to, collectively, the WMLP Debtors and the WLB Debtors.

in their estates, toward the goal of maximizing stakeholder recoveries. The WMLP Plan, if consummated, will:

- satisfy all allowed administrative and priority claims asserted against the WMLP Debtors' estates;
- fund an orderly wind down of the WMLP Debtors' chapter 11 cases and effectuate an orderly dissolution of each of the WMLP Debtors;
- provide for payment in full in Cash with respect to, or delivery of collateral securing, all Allowed Other Secured Claims;
- provide a recovery to the WMLP Secured Lenders consistent with the terms of the WMLP Committee Settlement; and
- establish a Liquidation Trust for liquidating the Liquidation Trust Assets, determining which Claims are Settlement Claims in accordance with the WMLP Plan, resolving all Disputed Claims, making all Distributions in accordance with the WMLP Plan, and otherwise implementing the WMLP Plan.

4. The WMLP Debtors seek to proceed as expeditiously and efficiently as possible to obtain approval of a disclosure statement (as may be further modified, amended, or supplemented from time to time and including all exhibits and supplements, the "WMLP Disclosure Statement") and confirm the WMLP Plan. To that end, the WMLP Debtors request emergency relief for, among other things, the solicitation of votes on the WMLP Plan and a joint hearing to consider the adequacy of the WMLP Disclosure Statement and confirmation of the WMLP Plan (the "Combined Hearing"). The Combined Hearing will streamline and expedite the confirmation process, and save the WMLP Debtors from additional administrative expenses that a two-stage process would require. Notably, in tandem with confirmation of the WLB plan, the WMLP Plan has the support of the WMLP Debtors' key stakeholders, including the Creditors' Committee. Thus, the WMLP Debtors are confident that the costs to be saved and value thus preserved for creditors outweigh any concerns about proceeding with the approval of the Combined Hearing.

5. For the convenience of the Court and parties-in-interest, below is a summary of the key dates and deadlines proposed in this Motion, various exhibits for which the WMLP Debtors seek approval, and proposed classes in the WMLP Plan (the “Plan Confirmation Schedule”):

<u>Event</u>	<u>Deadline</u>
Voting Record Date	March 15, 2019
Solicitation Commencement	March 18, 2019
Solicitation Deadline	March 20, 2019
Cure Objection Deadline	April 17, 2019
Plan Supplement Date	April 17, 2019
Plan and Disclosure Statement Objection Deadline	April 17, 2019, at 5:00 p.m. (prevailing Central Time)
Voting Deadline	April 17, 2019, at 4:00 p.m. (prevailing Central Time)
Deadline to File Voting Report	April 19, 2019, at 5:00 p.m. (prevailing Central Time)
Deadline to File Confirmation Brief and/or Omnibus Reply to Any Plan or Disclosure Statement Objection	April 22, 2019
Combined Hearing on Disclosure Statement and Plan	April 24, 2019, at 9:30 a.m. (prevailing Central Time)

6. In accordance with § 1123 of the Bankruptcy Code, the WMLP Plan classifies Holders of Claims and Interests into certain Classes for all purposes, including with respect to voting on the WMLP Plan, as follows:

<u>Class</u>	<u>Claims and Interests</u>	<u>Status</u>	<u>Voting Rights</u>
Class 1	Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	WMLP Secured Lender Claims	Impaired	Entitled to Vote
Class 3	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)

<u>Class</u>	<u>Claims and Interests</u>	<u>Status</u>	<u>Voting Rights</u>
Class 4	General Unsecured Claims	Impaired	Not Entitled to Vote (Presumed to Reject)
Class 5	WMLP Intercompany Claims	Impaired	Not Entitled to Vote (Presumed to Reject)
Class 6	WMLP Interests and WMGP Interests	Impaired	Not Entitled to Vote (Presumed to Reject)
Class 7	Subsidiary Interests	Unimpaired	Not Entitled to Vote (Presumed to Accept)

7. Only those Holders of Claims in Class 2 (WMLP Secured Lenders Claims) (the “Voting Class”), as the only class entitled to vote on the WMLP Plan, will receive Solicitation Packages. Those Holders of Claims in Class 1 (Priority Claims), Class 3 (Other Secured Claims), Class 4 (General Unsecured Claims), Class 5 (WMLP Intercompany Claims), Class 6 (WMLP Interests and WMGP Interests), and Class 7 (Subsidiary Interests) will not receive a Solicitation Package. The Holders of Claims in Class 1 (Priority Claims), Class 3 (Other Secured Claims), Class 4 (General Unsecured Claims), Class 5 (WMLP Intercompany Claims), Class 6 (WMLP Interests and WMGP Interests), and Class 7 (Subsidiary Interests) will receive a Presumed to Accept Notice or Deemed to Reject Notice, as applicable.

### **Jurisdiction and Venue**

8. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

9. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are §§ 105(a), 502, 1123(a), 1124, 1125, 1126, and 1128 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 3003, 3016, 3017, 3018, 3019, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Relief Requested**

11. The WMLP Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the “Disclosure Statement Order”): (a) conditionally approving the WMLP Disclosure Statement; (b) approving the Combined Hearing Notice, substantially in the form attached as Exhibit 1 to the Disclosure Statement Order; (c) approving the solicitation and notice procedures with respect to the WMLP Plan as set forth in Exhibit 2 annexed to the Disclosure Statement Order (the “Solicitation Procedures”); (d) approving the forms of various ballots and notices to be distributed in connection therewith, substantially in the forms attached as Exhibit 3 through Exhibit 7 to the Disclosure Statement Order, as applicable (collectively, the “Solicitation Package”); and (e) scheduling certain dates in connection with the Plan Confirmation Schedule.

### **Basis for Relief**

#### **A. It is Appropriate for the Court to Conditionally Approve the WMLP Disclosure Statement.**

12. Pursuant to § 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide holders of impaired claims and interests entitled to vote on the plan “adequate information” regarding that plan. “Adequate information” means information that is “reasonably practicable” to permit “informed judgment” by impaired creditors and interest holders entitled to vote on the plan. *See* 11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by creditors and interest holders, if applicable, to vote on a plan. *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401-2 (Bankr. S.D. Tex. 2009) (citing *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984)).

13. The WMLP Disclosure Statement contains an adequate description of the WMLP Debtors’ business operations, assets and liabilities, and circumstances leading to these chapter 11 cases. In addition, the WMLP Disclosure Statement includes a thorough description of: (a) the

WMLP Plan (Disclosure Statement Section V); (b) the statutory requirements for confirmation of the WMLP Plan (Disclosure Statement Section VI); and (c) the recommendation of the WMLP Debtors regarding the WMLP Plan (Disclosure Statement Section IX). Additionally, the WMLP Disclosure Statement contains information allowing Holders of Claims to make an informed decision about whether to vote to accept or reject the WMLP Plan, including, among other things, information regarding:

- The events leading to the filing of the bankruptcy, including WMLP Debtors' corporate history and corporate structure, business operations, and prepetition capital structure and indebtedness;
- the classification and treatment of Claims and Interests under the WMLP Plan;
- the chapter 11 plan and a summary thereof;
- the provisions governing distributions under the WMLP Plan;
- the procedures for resolving contingent, unliquidated, and disputed Claims (including possible Claims on account of rejection of an Executory Contract or Unexpired Lease pursuant to the WMLP Plan);
- treatment of Unexpired Leases and Executory Contracts;
- a description of the settlement, release, exculpation, injunction, and related provisions of the WMLP Plan;
- a description of the conditions precedent to consummation of the WMLP Plan;
- the estimated return to creditors under chapter 7 liquidation;
- risk factors related to the WMLP Plan and alternatives to confirming and consummating the WMLP Plan; and
- certain U.S. federal income tax consequences arising from implementation of the WMLP Plan.

14. Accordingly, the WMLP Debtors respectfully submit that the WMLP Disclosure Statement contains more than sufficient information for a hypothetical reasonable investor to make an informed judgment about the WMLP Plan and complies in all respects with § 1125 of the Bankruptcy Code. *Divine Ripe, L.L.C.*, 554 B.R. 395, 401-2 (Bankr. S.D. Tex. 2009) (citing *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984)). Thus, the WMLP Debtors respectfully request that the Court conditionally approve the WMLP Disclosure Statement as containing “adequate information” within the meaning of § 1125 of the Bankruptcy Code, for solicitation purposes only. The WMLP Debtors also request that the Court determine, on a final basis, that the WMLP

Disclosure Statement provides “adequate information” within the meaning of § 1125 of the Bankruptcy Code, at the Combined Hearing. As part of the brief in support of confirmation of the WMLP Plan, the WMLP Debtors will provide the necessary support for the Court to determine the adequacy of the WMLP Disclosure Statement and that the WMLP Debtors have met the disclosure requirements of § 1125 of the Bankruptcy Code.

**B. The Court Should Approve the Setting of Certain Dates and Deadlines Set Forth in the Plan Confirmation Schedule.**

**1. The Combined Hearing.**

15. Section 1128 of the Bankruptcy Code provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan” and that “[a] party in interest may object to confirmation of a plan.” 11 U.S.C. § 1128; *see also* Fed. R. Bankr. P. 3017(c) (“[o]n or before approval of the disclosure statement, the court . . . may fix a date for the hearing on confirmation.”).

16. Section 105(d)(2)(B)(vi) of the Bankruptcy Code expressly authorizes a court to “issue an order . . . that . . . provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan” where the court deems a combined hearing to be “appropriate to ensure that the case is handled expeditiously and economically.” *See* 11 U.S.C. § 105(d)(2)(B)(vi); *see also In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D. Tex. 2009) (holding that § 105(d) authorizes the court to hold combined hearings for disclosure statements and plans).

17. The WMLP Debtors request that the Court grant their request to conduct a combined hearing on both the adequacy of the WMLP Disclosure Statement and confirmation of the WMLP Plan and schedule the Combined Hearing for April 24, 2019, at 9:30 a.m. (prevailing Central Time). The WMLP Debtors propose that the Combined Hearing may be continued from time to time by the Court or the WMLP Debtors, in consultation with the Creditors' Committee

and the WMLP Secured Lenders, without further notice other than by such continuance being announced in open court or by a notice of reset being filed with the Court and served on parties entitled to notice under Bankruptcy Rule 2002 or otherwise and any other parties entitled to notice.

**2. The Combined Hearing Notice.**

18. The WMLP Debtors' proposed form of notice for the Combined Hearing (the "Combined Hearing Notice") is attached as Exhibit 1 to the Disclosure Statement Order. Among other things, the Combined Hearing Notice sets forth a summary of the time and place of the Combined Hearing, the procedures associated with objections to the adequacy of the WMLP Disclosure Statement, which Class under the WMLP Plan is entitled to vote, the procedures for voting creditors to vote to accept or reject the WMLP Plan, the procedures for the resolution of Disputed Claims (including possible Claims on account of rejection of an Executory Contract or Unexpired Lease pursuant to the WMLP Plan) pursuant to Bankruptcy Rule 3018(a), and options for obtaining and reviewing electronic or paper copies of the WMLP Plan, the WMLP Disclosure Statement and any other documents contained in the Solicitation Packages, for interested parties who have not received full Solicitation Packages.

19. The proposed Combined Hearing Notice also informs Holders of Claims and Interests of the procedures for objecting to Confirmation of the WMLP Plan and/or requesting modifications to the WMLP Plan. Specifically, the Combined Hearing Notice provides that any objection must: (a) be in writing; (b) conform to the Bankruptcy Rules; (c) state the name and address of the objecting party and the amount and nature of the Claim or Interest; (d) state with particularity the basis and nature of any objection to the WMLP Plan; (e) propose a modification to the WMLP Plan that would resolve such objection (if applicable); and (f) be filed, contemporaneously with a proof of service, with the Court, and served so that it is actually received

by each of the notice parties identified in the Combined Hearing Notice by the Plan Objection Deadline.

20. The WMLP Debtors propose to post the Combined Hearing Notice on the restructuring website maintained by the Debtors' claims, notice and solicitation agent, Donlin, Recano & Company, Inc. (the "Notice and Solicitation Agent"), available at [www.donlinrecano.com/westmoreland](http://www.donlinrecano.com/westmoreland).

21. On or before the Solicitation Deadline, the WMLP Debtors shall provide service of the Combined Hearing Notice to all parties required to be notified under Rule 2002 of the Bankruptcy Rules and Rule 2002-1 of the Bankruptcy Local Rules (the "2002 List") as of the Voting Record Date. In addition, the WMLP Debtors request that, where the WMLP Debtors have confirmed valid electronic mail addresses for the above-mentioned service parties, the Court authorize the WMLP Debtors to serve any notices for which the WMLP Debtors seek approval in this Motion through such electronic mail service and find that such service constitutes adequate notice under the Bankruptcy Rules. Due to the significant costs that the WMLP Debtors would incur in serving the entire creditor matrix, the WMLP Debtors seek to limit the service of the Combined Hearing Notice to the 2002 List and counterparties to Executory Contracts and Unexpired Leases with the WMLP Debtors. Limiting service in this manner will provide material savings to the WMLP Debtors' estates while ensuring that known creditors receive notice. The WMLP Debtors respectfully submit that limiting notice in this manner is justified and appropriate under the circumstances of these chapter 11 cases. In addition, the WMLP Debtors request that, where the WMLP Debtors have confirmed valid electronic mail addresses for the above-mentioned service parties, the Court authorize the WMLP Debtors to serve any notices for which the WMLP

Debtors seek approval in this Motion through such electronic mail service and find that such service constitutes adequate notice under the Bankruptcy Rules.

22. With respect to addresses from which the Combined Hearing Notice, Solicitation Package, and/or any other notices for which the WMLP Debtors seek approval in this Motion are returned as undeliverable, the WMLP Debtors respectfully request that they be excused from redistributing such notices and/or Solicitation Packages to those entities listed at such addresses unless the WMLP Debtors are provided with accurate addresses for such entities at least two business days prior to the Voting Deadline; *provided* that the WMLP Debtors will use reasonable commercial efforts to locate a current, valid address for the entities for whom such documentation was returned. The WMLP Debtors respectfully request that the Court determine that, subject to the WMLP Debtors' reasonable commercial efforts to locate current valid addresses, the failure to distribute documents to such entities does not constitute inadequate notice of the Combined Hearing Notice, the Solicitation Package, the Voting Deadline and/or a violation of the Bankruptcy Rules. Further, if a Holder of a Claim or Interest has changed its mailing address after the Petition Date, the WMLP Debtors respectfully submit that the burden should be on the Holder of the Claim or Interest—not the WMLP Debtors—to advise the WMLP Debtors of the new address. *See In re Marshall*, 219 B.R. 687 (Bankr. M.D. N.C. 1997) (notice sent to last known address reasonable where sender knew recipient had moved but recipient had not provided new address to sender).

**3. Reduction of the Time for Service of the Combined Hearing Notice.**

23. Bankruptcy Rule 2002(b) provides that “the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days’ notice by mail of the time fixed . . . for filing objections and the hearing to consider approval of a disclosure statement.” FED. R. BANKR. P. 2002(b). Bankruptcy Rule 9006(c), however, provides that the court for cause shown may, in its discretion and without motion or notice, order

the period reduced when an act is required or allowed to be done at or within a specified time by the Bankruptcy Rules, or by a notice given thereunder. *See* FED. R. BANKR. P. 9006(c). Although Bankruptcy Rule 9006(c) prohibits the Court from reducing the time period under certain Bankruptcy Rules, Bankruptcy Rule 2002(b) is not among them. *In re Bison Bldg. Holdings, Inc.*, No. 09-34452 (WWS), 2010 WL 7362847 (Bankr. S.D. Tex. May 28, 2010) (stating in order approving amended disclosure statement that “the Court has previously determined that the notice requirements under Rule 2002(b) of the Federal Rules of Bankruptcy Procedure should be reduced for cause pursuant to Rule 9006(c).”).

24. The WMLP Debtors propose to commence service of the Combined Hearing Notice by no later than March 18, 2019 (the “Solicitation Commencement Date”), with service completed no later than March 20, 2019 (the “Solicitation Deadline”). This will provide creditors with at least 34-days’ notice of the proposed date of the Combined Hearing and 28-days’ notice of the Plan Objection Deadline. Therefore, the WMLP Debtors respectfully request that the Court reduce the period under Bankruptcy Rule 2002(b) for notice of the time to object to the WMLP Disclosure Statement and for confirmation of the WMLP Plan.<sup>5</sup>

#### **4. Publication of the Combined Hearing Notice.**

25. A bankruptcy court may order notice by publication “if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” FED. R. BANKR. P. 2002(l). Courts authorize debtors to provide notice by publication where notice by mail is impracticable because a debtor cannot ascertain the identity of potential claimants. *See, e.g., Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995) (holding that constructive notice is adequate as to a debtor’s unknown creditors).

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<sup>5</sup> In addition, copies of the WMLP Plan and WMLP Disclosure Statement have been filed on the date hereof (*i.e.* 33-days prior to the proposed Plan Objection Deadline and 40 days prior to the proposed date of the of Combined Hearing).

26. The WMLP Debtors propose to publish, pursuant to Bankruptcy Rule 2002(l), the Combined Hearing Notice, not later than March 25, 2019, in the *USA Today* (national edition), the *Kemmerer Gazette*, and the *Columbus Dispatch*. The WMLP Debtors respectfully submit that the proposed form of Combined Hearing Notice, the notice period provided after service of the Combined Hearing Notice, the publication of the Combined Hearing Notice, and the service of the notice for the Motion, which will be served on the 2002 List and on all counterparties to Executory Contracts and Unexpired Leases with the WMLP Debtors, will provide creditors with sufficient notice of the Combined Hearing, given the facts and circumstances of these chapter 11 cases.

**C. The Plan Confirmation Schedule.**

**1. The Voting Record Date.**

27. Bankruptcy Rule 3017(d) provides that upon approval of a disclosure statement, except to the extent that the Court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders, a debtor shall mail to all creditors and equity security holders, and the U.S. Trustee, a copy of the plan, the disclosure statement, notice of the voting deadline, and such other information as the court may direct. *See* FED. R. BANKR. P. 3017(d). For purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the Court, for cause, after notice and a hearing.” *Id.*

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

the Claim. As set forth in greater detail herein, the WMLP Debtors respectfully submit that cause exists under Bankruptcy Rule 3018(a) to establish as the Voting Record Date.

**2. The Voting Deadline.**

29. Bankruptcy Rule 3017(c) provides, in relevant part, “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan . . . .” FED. R. BANKR. P. 3017(c). The WMLP Debtors request that the Court establish April 17, 2019, at 4:00 p.m. (prevailing Central Time), as the deadline for voting on the WMLP Plan (the “Voting Deadline”). The WMLP Debtors anticipate commencing the solicitation period immediately following the Court’s entry of the order conditionally approving the Disclosure Statement. The WMLP Debtors propose that for votes to be counted, all Ballots must be properly executed (either electronically or in ink, as applicable), completed, and delivered via electronic submission or by first class mail, overnight courier, or personal delivery, so that they are *actually received no later than the Voting Deadline* by the Notice and Solicitation Agent. The Combined Hearing Notice will prominently state the Voting Deadline.

**3. The Plan Objection Deadline.**

30. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the Court.” FED. R. BANKR. P. 3020(b)(1). The WMLP Debtors respectfully request that the Court establish April 17, 2019 at 5:00 p.m. (prevailing Central Time), as the deadline (the “Plan Objection Deadline”) by which objections to the WMLP Plan and WMLP Disclosure Statement, if any, must be filed and served in accordance with the Combined Hearing Notice. The WMLP Debtors believe that the Plan Objection Deadline will afford the Court and all parties-in-interest reasonable time to consider the objections and proposed modifications prior to the Combined Hearing. Accordingly, the Court should establish April 17, 2019, at 5:00 p.m. (prevailing Central Time), as the Plan Objection Deadline, which is six (6)

calendar days before the Combined Hearing. The WMLP Debtors also respectfully request that they be permitted to file a reply, if any, and brief in support of confirmation of the WMLP Plan and adequacy of the WMLP Disclosure Statement, in either a single document or multiple documents, by April 22, 2019.

**D. The Court Should Approve the Solicitation Procedures and the Solicitation Package.**

31. To efficiently solicit votes in connection with the WMLP Plan in a manner consistent with the Bankruptcy Code and the Bankruptcy Rules, the WMLP Debtors seek approval of the Solicitation Procedures described herein and set forth in Exhibit 2 to the Disclosure Statement Order. The Solicitation Procedures are tailored to allow the WMLP Debtors to solicit votes to accept or reject the WMLP Plan effectively.<sup>6</sup> Further, the Solicitation Procedures provide all Holders of Claims and Interests with adequate notice of the solicitation process and the relevant dates set forth in the Plan Confirmation Schedule.

**E. The Balloting Process.**

32. The WMLP Debtors, through the Notice and Solicitation Agent, will: (a) distribute the Solicitation Packages and solicit votes on the WMLP Plan; (b) receive, tabulate, and report on Ballots; and (c) respond to inquiries relating to the solicitation and voting process, including all matters related thereto. Further, the WMLP Debtors intend to prepare and file with the Court a voting report (the "Voting Report") by April 19, 2019 at 5:00 p.m. (prevailing Central Time), which is four (4) calendar days before the Combined Hearing.

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<sup>6</sup> To the extent that circumstances require further modifications of, or amendments to, the Solicitation Procedures, the WMLP Debtors reserve the right, in consultation with the Creditors' Committee and the WMLP Secured Lenders, to supplement or amend the Solicitation Procedures to further facilitate the solicitation of the WMLP Plan.

**F. Contents and Distribution of the Solicitation Package.**

33. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests, as applicable, for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a chapter 11 plan. *See* FED. R. BANKR. P. 3017(d) (providing that, after approval of a disclosure statement, a debtor must transmit the plan or a court—approved summary of the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the Court may direct to certain holders of claims).

34. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Bankruptcy Rule 2002(b) and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the chapter 11 plan.

35. Subject to the Court’s approval of the relief requested in this Motion, the WMLP Debtors will cause the Solicitation Packages to be distributed on or before the Solicitation Deadline, which is 28 calendar days before the Voting Deadline. Specifically, the Solicitation Package shall contain copies of the following materials:

- the WMLP Disclosure Statement, as conditionally approved by the Court (with all exhibits thereto, including the WMLP Plan);
- the Disclosure Statement Order (excluding all exhibits thereto, other than the Solicitation Procedures set forth in Exhibit 2 to the Disclosure Statement Order);
- the Combined Hearing Notice;
- the Contract and Lease Notice;
- an appropriate Ballot, with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope; and
- any supplemental documents the WMLP Debtors may file with the Court or that the Court orders to be made available.

The distribution of the Solicitation Packages by the Solicitation Date will provide all Holders of Claims entitled to vote on the WMLP Plan with the requisite materials and sufficient time to make

an informed decision with respect to the WMLP Plan. *See* FED. R. BANKR. P. 3017(d) (providing that, after approval of a disclosure statement, a debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the Court may direct to certain holders of claims).

**G. The Court Should Approve the Form of the Ballots.**

36. The WMLP Debtors propose to solicit votes from Holders of Claims in the Voting Class. All votes to accept or reject the WMLP Plan must be cast on an appropriate ballot (each, a “Ballot”). In accordance with Bankruptcy Rule 3018(c), the WMLP Debtors have prepared and customized Ballots for Holders of Claims in the Voting Class, substantially in the form attached to the Disclosure Statement Order as Exhibit 3 to tabulate acceptances and rejections of the WMLP Plan.

37. The forms of the Ballots are based on Official Form No. 314 and have been modified to: (a) address the particular circumstances of these chapter 11 cases; and (b) include certain additional information that the WMLP Debtors believe to be relevant and appropriate for the Class of Claims entitled to vote on the WMLP Plan. *See* FED. R. BANKR. P. 3017(d) (a debtor shall mail a form of ballot conforming to the appropriate Official Form to creditors and equity security holders). Accordingly, the WMLP Debtors submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c). As such, the WMLP Debtors request authority to distribute the Ballots to Holders of Claims entitled to vote on the WMLP Plan.

**H. The Court Should Approve the Form of Notices to Classes Presumed to Accept or Reject the WMLP Plan.**

38. In compliance with § 1123(a)(1) of the Bankruptcy Code, and as reflected in Articles II and III of the WMLP Plan, Administrative Claims and Priority Tax Claims have not been classified and will be Unimpaired under the WMLP Plan except as otherwise agreed to by

the Holder of any such Claim (collectively, the “Unclassified Claims”). *See* 11 U.S.C. § 1123(a)(1) (providing for classification of claims other than administrative and priority tax claims). As such, Holders of Unclassified Claims are not entitled to vote on the WMLP Plan and will not be solicited to vote on the WMLP Plan. Additionally, Class 1 (Priority Claims), Class 3 (Other Secured Claims), and Class 7 (Subsidiary Interests) are Unimpaired under the WMLP Plan and are conclusively presumed to have accepted the WMLP Plan (the “Unimpaired Accepting Classes”). *See* 11 U.S.C. § 1126(f). As such, Holders of Claims in the Unimpaired Accepting Classes are also not entitled to vote on the WMLP Plan and will not be solicited to vote on the WMLP Plan.

39. In light of the non-voting status attributed to Holders of Unclassified Claims and Holders of Claims in the Unimpaired Accepting Classes, the WMLP Debtors intend to provide such Holders a non-voting status notice substantially in the form attached to the WMLP Disclosure Statement Order as Exhibit 4 (the “Presumed to Accept Notice”) in lieu of the Solicitation Package, and in addition to the Combined Hearing Notice. The Presumed to Accept Notice will explain to such Holders their non-voting status and also provide instructions regarding how to obtain certain materials with respect to the Solicitation Package (excluding Ballots) from the WMLP Debtors. In addition, Holders of Claims in the Unimpaired Accepting Classes will receive an Opt Out form substantially in the form as Exhibit 7, which sets forth the releases under the WMLP Plan and provides instructions and a form to opt out. The WMLP Debtors respectfully submit that the Presumed to Accept Notice complies with the Bankruptcy Code and, therefore, should be approved.

40. Additionally, Class 4 (General Unsecured Claims), Class 5 (WMLP Intercompany Claims) and Class 6 (WMLP Interests and WMGP Interests) are Impaired under the WMLP Plan and are deemed to have rejected the WMLP Plan (collectively, the “Impaired Rejecting Classes”).

As such, Holders of Claims in the Impaired Rejecting Classes are not entitled to vote on the WMLP Plan and will not be solicited to vote on the WMLP Plan. The WMLP Debtors will, however, send to such Holders a non-voting status notice substantially in the form attached to the Disclosure Statement Order as Exhibit 5 (the “Deemed to Reject Notice”), in lieu of the Solicitation Package, and in addition to the Combined Hearing Notice. The Deemed to Reject Notice will explain to Holders of Claims in Impaired Rejecting Classes their non-voting status and also provide instructions regarding how to obtain certain materials with respect to the Solicitation Package (excluding Ballots) from the WMLP Debtors. In addition, Holders of Claims in the Impaired Rejecting Classes will receive an Opt Out form substantially in the form as Exhibit 7, which sets forth the releases under the WMLP Plan and provides instructions and a form to opt out. Pursuant to Bankruptcy Rule 3017(d), the Court may order that the WMLP Debtors need only provide Holders of Claims in Unimpaired Classes with notice of their non-voting status, in addition to the Combined Hearing Notice and the notice of the name and address of the agent from whom they may request a Solicitation Package. The WMLP Debtors respectfully submit that the Deemed to Reject Notice complies with the Bankruptcy Code and, therefore, should be approved.

41. The WMLP Disclosure Statement, the WMLP Plan, the Combined Hearing Notice, the Ballots, the Presumed to Accept Notice, and the Deemed to Reject Notice provide all parties-in-interest with sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the WMLP Plan in compliance with Bankruptcy Rule 3016(c).

**I. Executory Contracts and Unexpired Leases.**

42. On or before the Solicitation Deadline, the WMLP Debtors will provide notices to applicable counterparties of Executory Contracts and Unexpired Leases with the WMLP Debtors that were not rejected pursuant to an order of the Court prior to the Solicitation Deadline regarding the possible rejection, assumption, or assumption and assignment of their Executory Contract or

Unexpired Lease substantially in the form attached to the Disclosure Statement Order as Exhibit 6 (the “Contract and Lease Notice”). The Contract and Lease Notice will include instructions for objecting to the assumption or assumption and assignment of an Executory Contract of Unexpired Lease, including the deadline for any non-WMLP Debtor party to an Executory Contract or Unexpired Lease to object to the proposed Cure Amount(s) set forth on Schedule 1 to the Contract and Lease Notice, which shall be at 11:59 p.m. (prevailing Central Time) on April 17, 2019 (the “Cure Objection Deadline”). If no objection to the Cure Amount(s) or the proposed assignment and assumption of any Executory Contract or Unexpired Lease is filed by the Cure Objection Deadline, then such party will be deemed to have stipulated that the Cure Amount as determined by the WMLP Debtors is correct and such party will be forever barred, estopped, and enjoined from asserting any additional cure amount under the proposed assigned Executory Contract or Unexpired Lease or from objecting to the proposed assignment and assumption; provided that the foregoing shall not relieve any such counterparty to an Executory Contract or Unexpired Lease of its obligation to file a proof of claim to the extent that its Executory Contract or Unexpired Lease is rejected pursuant to the WMLP Plan. In addition, the Contract and Lease Notice will include instructions for filing a Claim (if any) for rejection damages resulting from the rejection of an Executory Contract or Unexpired Lease. Further, to ensure that counterparties to Executory Contracts and Unexpired Leases receive notice of the Combined Hearing, the WMLP Debtors will serve such parties with the Combined Hearing Notice. The WMLP Debtors respectfully submit that the Contract and Lease Notice complies with the Bankruptcy Code and, therefore, should be approved.

**J. The Court Should Approve the Voting and General Tabulation Procedures.**

43. The WMLP Debtors respectfully request that the Court approve the voting and tabulation procedures described in Section IV of the Solicitation Procedures, which are in

accordance with § 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a) (the “Voting and Tabulation Procedures”). Section 1126(c) of the Bankruptcy Code provides: “A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.” 11 U.S.C. § 1126(c).

44. In tabulating votes, the WMLP Debtors propose that Section IV.2 of the Solicitation Procedures shall be used to determine the amount of the Claim associated with each Holder’s vote. The amount of the Claim established pursuant to Section IV.2 of the Solicitation Procedures shall control for voting purposes only and shall not constitute the Allowed amount of any Claim for purposes of distribution under the WMLP Plan or the amount of any Claim for any other purpose. The WMLP Debtors also propose to use the voting procedures and standard assumptions in tabulating the Ballots set forth in Section IV.3 of the Solicitation Procedures, including that if no Holders of Claims eligible to vote in a particular Class vote to accept or reject the WMLP Plan, the WMLP Plan shall be deemed accepted by the Holders of such Claims in such Class.

**K. Non-Substantive or Immaterial Modification.**

45. The WMLP Debtors reserve the right to make, in consultation with the Creditors’ Committee and with the consent of the WMLP Secured Lenders, non-substantive or immaterial changes to the WMLP Disclosure Statement, WMLP Plan, Ballots, Combined Hearing Notice, and related documents without further order of the Court, including changes to correct typographical and grammatical errors and to make conforming changes among the WMLP Disclosure Statement, the WMLP Plan, and any other materials in the Solicitation Package before their distribution.

**L. Reservation of Rights**

46. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against any entity; (b) a waiver of any entity's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of any entity's rights under the Bankruptcy Code or any other applicable law.

WHEREFORE, the WMLP Debtors respectfully request that the Court enter the Disclosure Statement Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: March 16, 2019

*/s/ Matthew D. Cavanaugh*

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*Conflicts Counsel to the WMLP Debtors and Counsel  
to the Conflicts Committee of the WMGP Board of  
Directors*

**Certificate of Service**

I certify that on the 16th day of March 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Matthew D. Cavanaugh*

\_\_\_\_\_  
Matthew D. Cavanaugh