

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY’S SUPPLEMENTAL APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM**  
(Related to Docket No. 1306)

**THIS MOTION SEEKS 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. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. 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. REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

Montana Department of Environmental Quality (“MDEQ”), by and through its undersigned counsel, supplements its Application for Allowance and Payment of Administrative Claim pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1) (this “Supplemental Application”), and hereby seeks entry of an order for allowance and payment of a supplemental administrative claim in the amount of \$11,499.25. In support of this Supplemental Application, MDEQ respectfully states as follows:

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

3. On October 9, 2018 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. MDEQ is a governmental agency charged with protecting the environment in Montana and implementing measures to ensure a clean and healthy environment for the citizens of Montana. MDEQ is made up of multiple divisions including the Air, Energy and Mining Division and the Water Quality Division.

6. MDEQ's Air, Energy and Mining Division serves the citizens by regulating air quality, hard rock mining, and coal and open cut mining through, among other things, administering permitting programs that require control of pollutants and compliance with standards. To fund the air permitting program, MDEQ assesses and collects fees for air quality permits.

7. MDEQ's Water Quality Division issues permits to operators of certain activities to authorize the discharge of pollutants into state waters.

8. Certain amounts have accrued since the Petition Date that are due and owing pursuant to certain Memorandums of Agreement Contract Nos. 113003 and 118004 between MDEQ and the Debtors (the “Contract Amounts”).

9. On April 8, 2019, this Court entered an order allowing the payment of MDEQ’s administrative expense claim [Docket No. 1692].

10. As of the date of this Supplemental Application, Debtors have accrued but have not paid additional Contract Amounts that have arisen since the Petition Date. The additional Contract Amounts are described in detail in the invoices attached hereto as **Exhibit A**. While these fees are not past due, MDEQ files this Supplemental Application out of an abundance of caution.

#### **RELIEF REQUESTED**

11. MDEQ respectfully requests that the Court enter an order for allowance and payment of its supplemental administrative priority claims in the amount of \$11,499.25 for the additional Assessments and Contract Amounts due and owing by the Debtors and arising since the Petition Date, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1).

#### **BASIS FOR RELIEF**

12. The Debtors have an affirmative obligation to pay for actual and necessary costs and expenses of preserving the estate. *See* 11 U.S.C. § 503(b)(1)(A).

13. The Debtors are required to pay the amounts due and owing for the additional Contract Amounts. The additional Contract Amounts have accrued since the Petition Date and represent amounts due or that will be due soon under contracts assumed by the Debtors that Debtors are required to pay pursuant to Montana law. Accordingly, all post-petition amounts owing to MDEQ for said additional Contract Amounts should be allowed as an administrative expense claim and immediately paid by the Debtors pursuant to 11 U.S.C. § 503(b)(1).

14. The Debtors' estate benefited, and will continue to benefit, from the Debtors' operations in the State of Montana and, because of such operations, Debtors are required to pay the additional Contract Amounts.

15. Based upon the foregoing, MDEQ respectfully requests that the Court enter an order allowing its supplemental administrative expense claim in the amount of \$11,499.25 as set forth in Exhibit A, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1).

### **RESERVATION OF RIGHTS**

16. MDEQ hereby reserves the right to amend this Supplemental Application should additional information become available warranting such action. MDEQ also reserves all of its rights, claims, defenses, and remedies under the Bankruptcy Code and other applicable law. In case the sale does not close or there are additional amounts due and owing under Montana law, MDEQ expressly reserves the right to supplement this Supplemental Application.

### **CONCLUSION**

WHEREFORE, MDEQ respectfully requests that this Court (i) grant the allowance and payment of its supplemental administrative claim in the amount of \$11,499.25; and (ii) grant MDEQ such other and further relief as this Court deems just and appropriate under the circumstances.

DATED: April 15, 2019

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ Lynn H. Butler

Lynn H. Butler  
Texas Bar No. 03527350  
Lynn.butler@huschblackwell.com  
111 Congress Avenue, Suite 1400  
Austin, Texas 78701  
Telephone: 512-472-5456  
Facsimile: 512-479-1101

COUNSEL FOR MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2019, a true and correct copy of the foregoing document is being served via this Court's ECF notification system to all parties registered to receive such notice.

/s/ Lynn H. Butler  
Lynn H. Butler