

COURT FILE NUMBER Q.B.G. No. 1705 of 2020

COURT COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE REGINA

APPLICANT HER MAJESTY THE QUEEN, SASKATCHEWAN (AS
REPRESENTED BY THE MINISTRY OF ENERGY AND
RESOURCES)

RESPONDENT BOW RIVER ENERGY LTD.

DOCUMENT **THIRD REPORT OF BDO CANADA LIMITED,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
BOW RIVER ENERGY LTD.**

MARCH 8, 2022

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**THIRD REPORT OF THE RECEIVER AND MANAGER
BDO CANADA LIMITED
MARCH 8, 2022**

I N D E X

INTRODUCTION 1

TERMS OF REFERENCE AND DISCLAIMER 5

EYE HILL APPLICATION 6

ADMINISTRATIVE STATUS UPDATE 6

INTRODUCTION

1. On October 28, 2020, the Saskatchewan Ministry of Energy and Resources (the “**MER**”) made application (the “**SK Receivership Application**”) to the Saskatchewan Court of Queen’s Bench in Bankruptcy and Insolvency (the “**Court**”) for the appointment of a receiver and manager over Bow River Energy Ltd.’s (“**Bow River**” or the “**Company**”) assets, undertakings and properties located in Saskatchewan (the “**Saskatchewan Assets**”).
2. The SK Receivership Application was made following the Company’s unsuccessful restructuring efforts (the “**CCAA Proceedings**”) that were undertaken pursuant to the *Companies Creditors Arrangement Act*, RSC 1985 c. C-36, as amended. The CCAA Proceedings are described in greater detail in the First Report of the Receiver dated March 18, 2021 (“**First Report**”).
3. On October 29, 2020, the Court of Queen’s Bench of Alberta (the “**Alberta Court**”) granted an Order discharging BDO Canada Limited (“**BDO**”) as the Monitor under the CCAA Proceedings and terminating the CCAA Proceedings upon the filing of a Certificate by the Monitor (the “**Monitor’s Certificate**”). The Monitor executed the Monitor’s Certificate on November 9, 2020.
4. On October 29, 2020, the Orphan Well Association made application to the Alberta Court for the appointment of a receiver and manager over the Company’s current and future assets, undertakings and properties of any kind located in Alberta (the “**Alberta Assets**”), pursuant to which an Order was granted appointing BDO as the receiver and manager of the Alberta Assets (the “**Alberta Proceedings**”). As Receiver in both proceedings, recognizing the cross-border interest of some stakeholders, the Receiver has maintained a single service list for both the Alberta and Saskatchewan proceedings.
5. On March 29, 2021, the Receiver brought an application (the “**March Application**”) seeking, *inter alia*:
 - a. approval of the *Asset Purchase and Sale Agreements* (the “**APA’s**”) entered into between the Receiver and each of Heartland Oil Corporation

(“**Heartland**”) and Tallahassee Exploration Inc. (“**Tallahassee**”) in relation to certain of the Saskatchewan Assets;

- b. approval of the one account rendered by the Receiver through to February 28, 2021 and the four accounts rendered by the Receiver’s legal counsel, Bennett Jones LLP (“**Bennett Jones**”) through to January 31, 2021, as well as the respective final accounts to be rendered in due course (collectively referred to as the “**Professional Accounts**”);
 - c. authorization for the Receiver to transfer the books and records related to the Saskatchewan Assets sold to Heartland and Tallahassee as applicable, with the remainder being provided to the MER, as necessary, as part of the transition of the unsold regulated sites (the “**Residual Assets**”) to the care and custody of the MER’s Orphan Program;
 - d. the immediate discharge of the Receiver in relation to the Residual Assets;
 - e. approval of the distribution of the net proceeds (the “**Residual Proceeds**”) realized from the Saskatchewan receivership proceedings (the “**Saskatchewan Proceedings**”) to the MER in due course in partial satisfaction of the Company’s outstanding environmental obligations;
 - f. a sealing order with respect to the Receiver’s Confidential Supplement to the First Report dated March 18, 2021 (the “**Confidential Supplement**”); and
 - g. the full discharge of the Receiver in respect of the Saskatchewan Proceedings conditional upon the filing of a certificate (the “**Receiver Certificate**”) evidencing it has completed its residual administrative duties.
6. In further support of the March Application, the Receiver also prepared the following reports:
- a. the Confidential Supplement containing unredacted copies of the APA’s with which the Receiver was concerned that the public disclosure of the details of the APA’s may affect any future marketing efforts if the proposed transactions (the “**Saskatchewan Transactions**”) were not approved by the Court or otherwise do not close; and

- b. Supplement to the First Report dated March 25, 2021 (the “**Supplemental Report**”) providing this Honourable Court with additional background information and context in relation to the concerns raised by certain municipalities in respect of the proposed distribution of the Residual Proceeds to the MER in its capacity as regulator to address outstanding environmental obligations.

7. At the March Application, the Court granted the following Orders:

- a. Sale Approval and Vesting Orders approving the contemplated transactions with each of Heartland (the “**Heartland Transaction**”) and Tallahassee (the “**Tallahassee Transaction**”); and
- b. an Order (the “**Distribution and Discharge Order**”) providing for, *inter alia*:
 - i. the sealing of the Confidential Supplement;
 - ii. immediately discharging the Receiver in respect of the Residual Assets;
 - iii. the approval of the Professional Accounts without the necessity of a formal passing of accounts;
 - iv. approving and ratifying the activities and actions of the Receiver to date;
 - v. authorizing the Receiver to distribute the Residual Proceeds to the MER provided no application in opposition is filed with the Court by April 28, 2021; and
 - vi. the full discharge of the Receiver upon the filing of the Receiver Certificate.

8. On April 28, 2021, R.M. Eye Hill No. 382 (“**Eye Hill**”) filed an application (the “**Eye Hill Application**”) with the Court seeking an Order contemplating, *inter alia*:
 - a. directing a cross-examination of Ms. Candy Dominique, of the MER, in respect of the Affidavit sworn by Ms. Dominique on March 19, 2021 and filed in the Saskatchewan Proceedings (the “**Dominique Affidavit**”);
 - b. directing the Receiver to provide:
 - i. a full accounting of Bow River’s assets and liabilities as it relates to the Company’s Saskatchewan business and operations as at June 1, 2020;
 - ii. a full accounting of the production income and liabilities paid from June 1, 2020 to October 30, 2020 (the “**CCAA Period**”); and
 - iii. a full accounting of the production income and liabilities paid from October 30, 2020 to March 29, 2021 (the “**Receivership Period**”).
 - c. declaring that Saskatchewan municipal taxes (“**SK Municipal Taxes**”) owed by Bow River in respect of the CCAA Period and the Receivership Period are payable in priority to the MER or any other party.
9. References to (the “**Receiver**”) shall collectively refer to BDO in its capacities as receiver and manager in both the Saskatchewan Proceedings and the Alberta Proceedings.
10. On June 24, 2021, in advance of the initial hearing in relation to the Eye Hill Application, the Receiver prepared a report (the “**Second Report**”) to provide the Court with:
 - a. an update as to the status of the administration of the Saskatchewan Proceedings;
 - b. additional information to assist the Court with its adjudication of the Eye Hill Application; and

- c. the Receiver's comments in relation to the Eye Hill Application where applicable.
11. The initial Eye Hill Application hearing was held on June 28, 2021. Resulting therefrom, on July 5, 2021, Madam Justice McCreary issued a FIAT (the "**FIAT**") ordering the following:
 - a. that Ms. Dominique submit to cross examination by Eye Hill on the Dominique Affidavit;
 - b. that the MER and/or Ms. Dominique provide relevant accounting data that the MER relied upon in making its determination that Bow River was an "orphan well"; and
 - c. the Receiver provide Eye Hill with an accounting covering the Receivership Period.
12. The purpose of this report (the "**Third Report**") is to provide the Court with:
 - a. the Receiver's subsequent activities in relation to the Eye Hill Application and the FIAT; and
 - b. an update as to the status of the administration of the Saskatchewan Proceedings.

TERMS OF REFERENCE AND DISCLAIMER

13. In preparing this Third Report, the Receiver has relied upon unaudited financial information, available books and records of the Company, information provided by the Receiver's legal counsel and discussions with and information provided by Veracity Energy Services Inc. ("**Veracity**"), the Receiver's operational consultant and TriAcc Group Inc. ("**TriAcc**") (collectively referred to as the "**Information**"). The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Information.

EYE HILL APPLICATION

14. In relation to the Eye Hill Application:
- a. the Receiver has provided legal counsel for Eye Hill with an accounting of the Saskatchewan Proceedings pursuant to the FIAT;
 - b. the Receiver provided Eye Hill's legal counsel with updated Statements of Receipts and Disbursements as at September 8, 2021 and January 28, 2022 and had a subsequent call with Eye Hill's legal counsel to review same; and
 - c. the Receiver's legal counsel has had multiple discussions and communications with Eye Hill's legal counsel surrounding the Eye Hill Application.

ADMINISTRATIVE STATUS UPDATE*The Saskatchewan Transactions*

15. As noted in the Second Report, Heartland and Tallahassee previously assumed care and custody of the Saskatchewan Assets contemplated pursuant to the respective APA's.
16. The Tallahassee Transaction has fully closed.
17. Until very recently, the following matters had remained outstanding with respect to the Heartland Transaction since the date of the Second Report:
- a. agreement with Indian Oil and Gas Canada ("**IOGC**") as to the cure costs (outstanding pre and post-receivership royalty and rental payments) required to be satisfied in order for IOGC to transfer the respective Agreements to Heartland. \$164,000 was paid by the Receiver to IOGC on February 18, 2022; and
 - b. on March 2, 2022, IOGC provided confirmation that the Assignment of Contract Rights and Approval for the 78 Agreements being transferred from Bow River to Heartland were now executed with an effective date of February 11, 2022.

18. In light of the above, the Receiver is now in a position to prepare a final statement of adjustments to finalize the Heartland Transaction which it anticipates will occur in the near future.

Fuel Charges

19. The Receiver was notified by Canada Revenue Agency that Bow River had not filed the required monthly Fuel Charge Return Schedules and Fuel Charge Returns dating back to April 2019.
20. Over the last several months, the Receiver has been working with its legal counsel, Veracity and TriAcc, emissions accounting consultants, to determine the filing requirements and the greenhouse gas pricing financial obligations (“**Fuel Charge**”) within each of the Saskatchewan Proceedings and the Alberta Proceedings pursuant to the federal *Greenhouse Gas Pollution Pricing Act* (the “**GGPPA**”).
21. The Receiver also discovered that Bow River had previously registered for the Saskatchewan Output-Based Performance Standards (the “**OBPS**”) program that the Receiver understands was designed by the Government of Saskatchewan to lessen the effects of the federally imposed fuel charge pricing system on Saskatchewan businesses; however, the Saskatchewan Ministry of Environment (the “**MOE**”) subsequently deregistered Bow River from the OBPS for Bow River’s failure to provide the necessary baseline information to the MOE. Consequently, Bow River’s production in Saskatchewan reverts to being addressed under the federal fuel charge regime.
22. The Receiver and TriAcc each had preliminary discussions with the MOE to discuss the possibility of reinstating Bow River under the OBPS; however, the Receiver, in conjunction with TriAcc and Veracity, ultimately determined that the incremental costs to attempt to obtain the required baseline information and the risk of ultimately being unable to compile the necessary information did not warrant formally pursuing the potential for reinstatement under the OBPS when compared to the federal fuel charge program.

23. TriAcc has estimated that the net obligation pursuant to the federal fuel charge program associated with Saskatchewan production during the post-receivership period is approximately \$250,000 which the Receiver views as an operating obligation of the estate to be paid from the funds in the Receiver's possession. The Receiver anticipates filing the relevant Fuel Charge Return Schedules and Fuel Charge Returns by the end of March.
24. TriAcc also estimates that the fuel charge obligation associated with Bow River's pre-receivership production in Saskatchewan is approximately \$831,000. The Receiver's position is that any such obligation represents an unsecured claim against the Bow River estate.

Bidell Lien

25. In November 2021, Bidell Gas Compression Ltd. contacted the Receiver asserting a claim in respect of a Builders' Liens in the amount of \$40,694.79 arising in connection with services and materials for maintenance and repair of well site equipment. The liens are registered against two natural gas leases that were included in the Heartland Transaction. The Receiver estimates the portion of the net sales proceeds attributable to these leases to be \$3,503.

Claims Process

26. The Receiver wishes to note that unlike the procedure utilized in the administration of a bankruptcy proceeding, in order to avoid incurring unnecessary costs, a formal claims process is generally not administered as a matter of course in a receivership proceeding, unless it appears necessary in order to determine the entitlement to funds available for distribution.
27. At this time, the Receiver has not undertaken, or recommended, a claims process in respect of the Saskatchewan Proceeding based on its recommendation that the Residual Proceeds should be distributed to the MER. In the event this Honourable Court determines that the MER is not entitled to the Residual Proceeds, the Receiver anticipates recommending that a formal claims process be initiated as there are multiple Crown claimants in addition to secured claims.

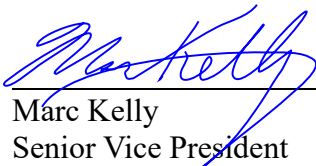
Statement of Receipts and Disbursements

28. Attached as **Appendix “A”** is a copy of the updated Receiver’s Statement of Receipts and Disbursements as at March 8, 2022 (the “**March 2022 R&D**”) in relation to the Saskatchewan Proceedings indicating the Receiver currently maintains approximately \$959,000 in its operational trust account.
29. For the sake of clarity, the Receiver wishes to highlight for this Honourable Court that the receipt line item denoted on the March 2022 R&D as “Cash in bank” of \$648,305.04 represents the allocation of the funds secured from Bow River’s bank accounts to the Saskatchewan Proceedings. After much delay, Scotiabank ultimately forwarded the Receiver \$2,091,306.57 on account of the cash in Bow River’s bank accounts as of the date of receivership. Bow River did not distinguish or segregate funds between its Alberta and Saskatchewan operations such that all funds were comingled. Consequently, it was not possible to specifically assign the “pre-receivership cash” by province. Therefore, in an effort to allocate these funds between the two receivership estates in a reasonable and supportable manner, the Receiver apportioned the money on a pro rata basis between the two proceedings based on the percentage of production revenues Bow River generated from each province over the months preceding the receiverships. The result being that 31% (\$648,305.04) was allocated to the Saskatchewan Proceeding and 69% (\$1,443,001.53) was allocated to the Alberta Proceeding.
30. Scotiabank finally arranged to transfer all of the money into the Alberta receivership bank account on December 17, 2020 and the Receiver then transferred \$648,305.04 to the Saskatchewan estate account on January 14, 2021. This amount was previously disclosed in the Receiver’s Statement of Receipts and Disbursements as at March 8, 2021 included as Appendix “C” of the First Report.

31. The final balance of the Residual Proceeds is still to be determined pending:
- a. the calculation and satisfaction of final accounting adjustments in respect of the Heartland Transaction;
 - b. the completion of the Fuel Charge Return Schedules and Fuel Charge Returns, the subsequent receipt of the related Notices of Assessment from CRA and payment of the corresponding fuel tax obligation associated with post-receivership production;
 - c. any further requirements of the Receiver in relation to the Eye Hill Application;
 - d. whether the Receiver may be required to administer a formal claims process; and
 - e. rendering and payment of the final accounts of the Receiver, its legal counsel, Veracity and TriAcc.
32. In the event that the remaining required activities of the Receiver prove to be limited in nature, the Receiver at this time estimates that the Residual Proceeds available for distribution will be approximately \$510,000 as outlined in the March 2022 R&D.

All of which is respectfully submitted this 8th day of March 2022.

BDO Canada Limited
in its capacity as Receiver and Manager of Bow River Energy Ltd.
and not in its personal or corporate capacity

Per: 

Marc Kelly
Senior Vice President

APPENDIX “A”

Bow River Energy Ltd., in receivership (SASKATCHEWAN)
Statement of Receipts and Disbursements
as at March 8, 2022

Receipts

Revenues	\$ 2,003,870.81
Cash in bank	648,305.04
Accounts receivable	359,491.48
Sales of assets	303,930.00
Wage subsidy refunds	127,553.90
GST/HST collected	111,390.06
GST refund	16,076.36
Residual retainer funds	6,955.95
Miscellaneous refund	11,511.75

3,589,085.35

Disbursements

Operational consultants/field operators	761,990.67
Operating expenses	555,759.69
Royalties	309,045.08
Leases	178,839.79
Receiver's fees and expenses	146,325.00
Legal fees and expenses	125,736.20
Insurance	121,162.95
GST/HST paid	112,296.99
Operational software	97,864.35
Commission	72,500.00
Utilities	50,945.29
GST remittance	42,496.01
Rent	36,893.75
Miscellaneous	18,367.21

2,630,222.98

Cash on hand

958,862.37

Estimated Outstanding Disbursements

Federal fuel charge - post-receivership	250,000.00
Final Statement of Adjustments re: Heartland transaction	110,000.00
Legal fees and expenses	30,000.00
Receiver's fees and expenses	25,000.00
Fuel charge consultant	15,000.00
Veracity Energy Services	10,000.00
Miscellaneous	5,000.00
GST	4,250.00

449,250.00

Estimated residual proceeds

* \$ 509,612.37

* Assumes minimal residual requirements of Receiver in advance of filing Receiver's Certificate.