

COURT FILE NUMBER 1601-11552
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT NATIONAL BANK OF CANADA, IN ITS
CAPACITY AS ADMINISTRATIVE AGENT
UNDER THAT CERTAIN AMENDED AND
RESTATED CREDIT AGREEMENT DATED
JANUARY 15, 2016, AS AMENDED

Clerk's Stamp



RESPONDENT TWIN BUTTE ENERGY LTD.

IN THE MATTER OF THE RECEIVERSHIP
OF TWIN BUTTE ENERGY LTD.

APPLICANT FTI CONSULTING CANADA INC. in its
capacity as Court-appointed Receiver of the
current and future assets, undertakings and
properties of TWIN BUTTE ENERGY LTD.

DOCUMENT **APPLICATION**
(Interim Distribution and Holdback)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8222
Fax: +1 403.264.5973
Email: howard.gorman@nortonrosefulbright.com /
aditya.badami@nortonrosefulbright.com

Attention: Howard A. Gorman, Q.C. / Aditya M. Badami
File No.: 01020497-0005

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: September 20, 2017
Time: 10:00 a.m.
Where: Calgary Courts Centre
Before Whom: The Honourable Justice K. Yamauchi

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. FTI Consulting Canada Inc. in its capacity as Court-appointed Receiver (the **Receiver**) of the current and future assets, undertakings and properties of Twin Butte Energy Ltd. (**Twin Butte**) seeks the following relief:
 - a. abridging, if necessary, the time for service of this Application and supporting materials, and declaring service of same to be good and sufficient; and
 - b. an Order, substantially in the form attached hereto as **Schedule "A"**, authorizing the Receiver to make an interim distribution (the **Interim Distribution**) out of the assets of Twin Butte in the approximate amount of \$68,214,223 to certain unsecured creditors of Twin Butte having Proven Claims as such term is defined the Claims Procedure Order dated May 1, 2017 in the within proceedings.

Grounds for making this application:

Interim Distribution and Holdback of Funds

2. The unsecured creditors of Twin Butte to whom distributions are proposed to be made all have Proven Claims as against the Twin Butte estate.
3. The Interim Distribution is just, appropriate, and in the best interests of the administration of the receivership estate.
4. The Receiver intends on retaining a holdback of funds in the amount of approximately \$14,535,371 in respect of:
 - a. the claim asserted by GeoCap Energy Corporation and Sutton Energy Ltd. (**GeoCap/Sutton**), which is presently being assessed by the Receiver;
 - b. the claim asserted by CEP LP Investment Corp;
 - c. the claim asserted by a former executive and a former employee whose claims are the subject of applications before this Honourable Court;
 - d. claims that remain under review by the Receiver, including the tax claims of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue and the Alberta Treasury Board and Minister of Finance; and
 - e. contingencies and other unforeseen expenses that may arise in respect of the administration of the receivership estate.
5. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Declaration Regarding "Interest Stops" Rule

6. One of the unsecured creditors of Twin Butte is Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue (**CRA**) in respect of unpaid income taxes.
7. The CRA's claim as filed includes claims for penalties and interest. The "interest stops" rule under section 122(2) of the *Bankruptcy and Insolvency Act* precludes any claim for interest from the date of the receivership, and applies to unsecured claims in non-bankruptcy insolvency proceedings.

8. The non-payment of post-receivership interest amounts for unsecured tax claims would be consistent with the Receiver's distributions to other unsecured creditors.

Material or Evidence to be relied on:

9. The Receivership Order;
10. The Tenth Report of the Receiver;
11. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

12. Rules 6.3(1), 6.9(1), and 6.28 - 6.36 of the Alberta *Rules of Court*.
13. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

14. The Alberta *Rules of Court*.
15. Section 122 of the *Bankruptcy and Insolvency Act*.
16. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

17. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

18. Oral submissions by counsel.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is heard or considered.

SCHEDULE "A"

COURT FILE NUMBER 1601-11552 Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA in its capacity as Administrative Agent under that certain amended and restated credit agreement dated January 15, 2016, as amended

DEFENDANT TWIN BUTTE ENERGY LTD.

IN THE MATTER OF THE RECEIVERSHIP OF TWIN BUTTE ENERGY LTD.

APPLICANT FTI CONSULTING CANADA INC. in its capacity as Court-appointed Receiver of the current and future assets, undertakings and properties of TWIN BUTTE ENERGY LTD.

DOCUMENT **ORDER (Interim Distribution)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8222
Fax: +1 403.264.5973
Email: howard.gorman@nortonrosefulbright.com / aditya.badami@nortonrosefulbright.com

Attention: Howard A. Gorman, Q.C. / Aditya M. Badami
File No.: 01020497-0005

DATE ON WHICH ORDER WAS PRONOUNCED: September 20, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice K. Yamauchi

UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as Court-appointed Receiver (**Receiver**) of the current and future assets, undertakings and properties of Twin Butte Energy Ltd. (the **Debtor**); **AND UPON HAVING READ** the Receivership Order dated September 1, 2016 (the **Receivership Order**), the Tenth Report of the Receiver filed September 7, 2017 (**Tenth Report**); **AND UPON** hearing counsel for the Receiver and any other interested parties that may be present; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application; **AND UPON** having read the pleadings, proceedings, orders and other materials filed in this action;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

INTERIM DISTRIBUTION

2. The Receiver is hereby authorized and directed to make distributions in the amount of \$68,344,233 in accordance with the proposed initial distributions described in paragraphs 27-36 of the Tenth Report.

DECLARATION REGARDING INTEREST STOPS

3. Section 122(2) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, applies to all unsecured creditors of Twin Butte including Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue (CRA), such that claims for payment of interest accrued and owing after September 1, 2016, including the claim for unpaid interest asserted by the CRA, are disallowed.

MISCELLANEOUS

4. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
5. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.