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COURT FILE
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25-2719774



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Justice Dunlop
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Aug 16, 2021



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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTERS

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT

GS E&R CANADA INC.

DOCUMENT

**APPLICATION FOR SALE APPROVAL AND VESTING ORDER and
ENHANCED TRUSTEE'S POWERS**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

This application will be heard as shown below:

DATE: August 16, 2021
TIME: 2:00 PM
WHERE: Edmonton Courthouse, via WebEx
BEFORE WHOM: The Honourable Justice Dunlop

1. The Applicant, GS E&R Canada Inc. ("**E&R CANADA**"), applies for the following Orders pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"):
 - (a) an Order substantially in the form attached hereto as **Schedule "A"** (the "**Sale Approval and Vesting Order**" or "**SAVO**");

- (i) abridging the time for service of this application and supporting materials (the "**Application**") to the time actually given and deeming service of the Application to be good and sufficient;
- (ii) approving and authorizing the transaction contemplated by the Asset Purchase Agreement dated July 30, 2021 (the "**Transaction**") between Bench Creek Resources Ltd. (the "**Purchaser**") and E&R CANADA (as vendor) (the "**APA**"), an unredacted copy of which will be attached as an appendix to the Confidential Supplement to the Fourth Report of the Proposal Trustee (the "**Confidential Supplement**"); and
- (iii) ordering that, upon delivery by the proposal trustee, MNP Ltd. (the "**Proposal Trustee**") to the Purchaser of the certificate contemplated in the proposed form of Sale Approval and Vesting Order, all of the Applicant's right, title and interest in and to the Assets shall vest in the Purchaser, free and clear of all encumbrances, liens, security interests, mortgages, charges or claims, other than the Permitted Encumbrances (as defined in the SAVO);
- (iv) authorizing and empowering, but not obligating, the Proposal Trustee, upon the resignation of E&R CANADA's directors and officers, to exercise certain rights and powers, including, without limitation, and among other things, to take any steps necessary or advisable in connection with completing the APA and carrying out any post-closing obligations of E&R CANADA under the APA, to deal with any surplus cash remaining after implementation of the Proposal, to have access to and deal with E&R CANADA's books and records, to file tax returns and deal with the Canada Revenue Agency, and to perform such other duties as are required by the order granted or the Court; and
- (v) directing certain third parties to deal with the Proposal Trustee in connection with its expanded powers, and granting certain protections to the Proposal Trustee in light of its expanded powers.

A blackline of **Schedule "A"** against the Alberta Template Approval and Vesting Order is attached as **Schedule "B"**;

(b) an Order substantially in the form attached hereto as Schedule "C":

granting a sealing order with respect to the Confidential Supplement to the Fourth Report of the Proposal Trustee until three months after the closing of the Transaction contemplated in the APA; and

(c) such further and other relief as this Honourable Court deems appropriate.

Grounds for making this Application:

I. Background

2. E&R CANADA is a privately-owned company based in Calgary, Alberta.
3. On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal ("NOI") pursuant to subsection 50.4(1) of the BIA (the "NOI Proceedings") and appointed MNP Ltd. as the Proposal Trustee.
4. On March 24, 2021, this Court pronounced an initial order (the "Initial Order") which, *inter alia*, (i) extended the Stay Period until May 25, 2021 (the "Stay Period") and (ii) authorized E&R CANADA to engage in a sale investment solicitation process ("SISP") assisted by Sayer Energy Advisors ("Sayer") and the Proposal Trustee.
5. Acting in accordance with the Court-authorized SISP, E&R CANADA negotiated and executed the APA on July 30, 2021 with the Purchaser, an arm's length party not related to E&R CANADA, as more fully described in the Fourth Affidavit of Jungho Park and filed concurrently with the within Application.
6. The Stay Period was extended by subsequent orders of this Court pronounced by Justice Dunlop on May 21, 2021 and Justice Ho on July 2, 2021. The Stay Period is currently extended to August 23, 2021.

II. Approval of Sale and Vesting Order

7. It is a condition of the APA, *inter alia*, that the Sale Approval and Vesting Order in relation to the Transaction be granted by this Court.

8. The Proposal Trustee and E&R CANADA, with the assistance of Sayer, completed the Court-supervised SISP as outlined in the Third Report of the Proposal Trustee, whereby prospective purchasers had the opportunity to submit an offer to purchase all or part of E&R CANADA's assets, undertakings and property or the shares of E&R CANADA.
9. The SISP elicited several offers, with the offer from Purchaser being selected by E&R CANADA as the best offer received in the circumstances.
10. The APA provides for the sale of all of E&R Canada's Assets into the hands of a solvent purchaser, who has agreed to assume the abandonment and reclamation obligations associated therewith (the "**ARO**") and to complete an abandonment program as a condition of the British Columbia Oil and Gas Commission (the "**BCOGC**") approval of the Transaction. E&R CANADA intends to proceed with a closing following the granting of the SAVO, and to use funds left in the Company post-closing to fund a proposal to its creditors before the expiration of the Stay Period.
11. The Transaction allows the oil and gas Assets to continue operating as a going concern, which is a positive outcome for E&R CANADA's stakeholders and other parties with which E&R CANADA has commercial relationships, including service providers, suppliers and vendors.
12. The BCOGC is not only the government Regulator with respect to these Assets, it is also the primary secured creditor of E&R Canada, both with respect to the ARO, and also with respect to LMR deposits and other amounts owing. The BCOGC has been heavily involved in the negotiation of the APA, and, supports the Transaction.
13. The Transaction represents the culmination of a Court-sanctioned SISP, in which the Assets were thoroughly exposed to the market. The Transaction represents the best available result for the stakeholders, given the circumstances, and requires BCOGC approval in order to effect the licence and permit transfers associated with the Assets.
14. If the Transaction is not approved, E&R Canada will be unable to make a proposal to its creditors, and will be deemed bankrupt at the expiration of the Stay Period. At that point, the Trustee may choose to disclaim the Assets which would result in properties being deemed orphan sites.

III. Enhancement of the Proposal Trustee's Powers

15. Upon completion of the Transaction, E&R CANADA intends to make a proposal to its creditors under the BIA (the "**Proposal**") prior to the expiry of the Stay Period. After the Proposal is voted upon and sanctioned, the directors and officers of E&R Canada plan to resign. Accordingly, E&R CANADA seeks from this Court an Order granting the Proposal Trustee certain enhanced powers to enable it do any of the following in the name of and on behalf of E&R CANADA, where the Proposal Trustee considers it necessary or desirable:
 - (a) Upon the resignation of E&R CANADA's directors and officers, in addition to its powers and obligations set out in the Initial Order, the Proposal Trustee shall be authorized and empowered, but not obligated, to exercise certain rights and powers, including, without limitation, the power to take any steps necessary or advisable in connection with completing the APA and carrying out any post-closing obligations of E&R CANADA under the APA, to deal with any surplus cash remaining after implementation of the Proposal, to have access to and deal with E&R CANADA's books and records, to file tax returns and deal with the Canada Revenue Agency, and to perform such other duties as are required by the order granted or the Court.
16. In light of the expanded powers of the Proposal Trustee, it is necessary and reasonable to direct certain third parties to deal with the Proposal Trustee in relation to certain of those expanded powers, and to grant to the Proposal Trustee certain protections in addition to those already conferred on the Proposal Trustee under the BIA.

IV. Cash Flow Projections

17. E&R CANADA's cash flow forecast projects that it will have sufficient cash to fund its projected operating costs through the week of September 30, 2021 to allow for closing of the Transaction and for E&R CANADA and the Proposal Trustee to attend to any post-closing matters including making a Proposal to its creditors.

V. Sealing Order

18. The Confidential Trustee Report will contain a redacted copy of the APA. The APA will contain information of a highly sensitive commercial nature, namely the Purchase Price and personal information.
19. Publication of the Purchase Price and details of the arrangements in relation to the funds in escrow in support of the reclamation plan before the approval and closing of the Transaction could result in serious commercial damage to the Applicant as it could prejudice any future sales process, in the event that the Transaction does not close, to the detriment of E&R CANADA's stakeholders.
20. The sealing order being sought (sealing the Confidential Trustee Report until three months after the closing of the Transaction contemplated by the APA) is the least restrictive and prejudicial alternative to prevent dissemination of commercially sensitive information regarding the Transaction and personal information contained therein.

Affidavits or other evidence to be used in support of this application:

21. The pleadings and materials filed in the within action;
22. The Fourth Affidavit of Jungho Park sworn August 9, 2021, filed;
23. The Fourth Report of the Proposal Trustee, to be filed; and
24. Such further and other evidence as counsel may advise and this Court may permit.

Applicable Acts and regulations:

25. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 11.27 and 13.5 of the *Alberta Rules of Court*, Alta Reg 124/2010;
26. The *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended; and
27. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

28. None.

How the application is proposed to be heard or considered:

29. Via WebEx videoconference before the presiding Justice on the Commercial List.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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 to be heard or considered.

SCHEDULE "A"

COURT FILE NUMBERS B201-719774

25-2719774

CLERK'S STAMP:

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT GS E&R CANADA INC.

DOCUMENT **SALE APPROVAL AND VESTING ORDER and ENHANCED TRUSTEE'S POWERS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

STIKEMAN ELLIOTT LLP
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888 – 3rd Street S.W.
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Solicitor: Karen Fellowes, Q.C.
Phone Number: (403) 724-9469
Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

DATE ON WHICH ORDER WAS PRONOUNCED: August 16, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice Dunlop

LOCATION OF HEARING: Edmonton Courthouse via Webex

UPON THE APPLICATION of GS E&R CANADA INC. (the "**Applicant**" or "**E&R CANADA**") for an order approving the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement between the Applicant and Bench Creek Resources Ltd. (the "**Purchaser**") dated July 30, 2021 (the "**APA**"), and appended as the Confidential Supplement to the Fourth Report of MNP Ltd. (the "**Proposal Trustee**") (the "**Fourth Report**"), vesting in the

Purchaser all of the Applicant's right, title and interest in and to the assets described in the APA (the "**Assets**");

AND UPON READING the Fourth Affidavit of Jungho Park sworn on August 9, 2021 (the "**Fourth Park Affidavit**"); the Order of Justice Mah, dated March 24, 2021 (the "**Initial Order**"); the Fourth Report; the application of the Applicant and supporting materials (the "**Application**"); and the Affidavit of Service of Stephanie Harrison, sworn on August __, 2021;

AND UPON HEARING submissions by counsel for the Applicant, counsel for the Proposal Trustee and any other counsel or other interested parties present; and no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service, filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application is hereby declared to be good and sufficient, 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.

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved and execution of the APA by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Assets to the Purchaser.

VESTING OF PROPERTY

3. Subject only to approval by the British Columbia Oil and Gas Commission ("**BCOGC**") of the transfer of any applicable licences, permits and approvals pursuant to section 29 of the *Oil and Gas Activities Act*, SBC 2008, c 36, and approval by a Governmental Authority (as defined below) of the transfer of any applicable agreement, licence, permit,

approval, certificate, lease or other instrument or authorization, upon delivery of a closing certificate from the Proposal Trustee to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Closing Certificate**"),

- (a) With respect to the Assets listed in **Schedule "B"** hereto, all of the Applicant's right, title and interest in and to such Assets shall vest absolutely in the name of the Purchaser in each case free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
- (i) any encumbrances or charges created by the Initial Order; and
 - (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system.

(all of which are collectively referred to as the "**Encumbrances**");

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances as set out in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), affecting or relating to the Assets are hereby expunged, discharged and terminated as against the Assets.

4. Upon delivery of the Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (individually a "**Governmental Authority**" and collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to

the Purchaser clear title to the Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of the Alberta and British Columbia Personal Property Registry (the “**PPR Registrars**”) shall and are hereby directed to forthwith cancel and discharge any registrations at the Alberta and British Columbia Personal Property Registries (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Applicant in any of the Assets which are of a kind prescribed by applicable regulations as serial-number goods.
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any Governmental Authorities or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by E&R CANADA of the APA.
7. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Assets (to be held in an interest bearing trust account by the Proposal Trustee) shall stand in the place and stead of the Assets from and after delivery of the Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Assets and may be asserted against the net proceeds from sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. No distributions of net proceeds from sale of the Assets shall be made other than in accordance with further orders of this Court.

8. Except as expressly provided for in the APA or by section 5 of the *Alberta Employment Standards Code*, the Purchaser shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Applicant.
9. Upon completion of the Transaction, the Applicant and all persons who claim by, through or under the Applicants in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchaser.
10. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Assets for their own use and benefit without any interference of or by the Applicant, or any person claiming by, through or against the Applicant.
11. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Applicant, other than as described in the APA.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Applicant or the Proposal Trustee.
13. The Proposal Trustee is directed to file with the Court a copy of the Closing Certificate forthwith after delivery thereof to the Purchaser.
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain

and protect the privacy of such information and shall be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use (of such information) to which the Applicant was entitled.

ENHANCED POWERS OF THE PROPOSAL TRUSTEE

15. Upon the resignation of the Applicant's directors and officers, in addition to its powers and obligations set out in the Initial Order issued by this Court on March 24, 2021 and its prescribed rights and obligations under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the Proposal Trustee is hereby authorized and empowered, but not obligated, to:
- (a) take possession of and exercise control over E&R CANADA's property and any and all proceeds, receipts and disbursements arising out of or from E&R CANADA's property;
 - (b) take any and all actions and steps, and execute any and all documents and writings on behalf of and in the name of E&R CANADA in order to carry out the powers conferred on it by this Order;
 - (c) operate on behalf of E&R CANADA any of E&R CANADA's existing accounts at any financial institution, in such manner as the Proposal Trustee, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Proposal Trustee's powers set out herein;
 - (d) receive and collect all monies and accounts now owed or hereafter owing to E&R CANADA and to exercise all remedies of E&R CANADA in collecting such monies, including, without limitation, to enforce any security held by E&R CANADA;
 - (e) pay any post-filing creditors of E&R CANADA, provided that the Proposal Trustee shall not be, or deemed to be, responsible for E&R CANADA's post-filing obligations, and that if such post-filing obligations exceed the funds remaining in E&R CANADA, the Proposal Trustee is hereby authorized and

empowered, but not required, to pay such post-filing obligations on a pro rata basis;

- (f) settle, extend or compromise any indebtedness owing to or by E&R CANADA;
- (g) take any steps necessary or advisable to fulfil any post-closing obligations and deal with any post-closing issues arising in connection with the APA;
- (h) deal with any surplus cash remaining in E&R CANADA after implementation of E&R CANADA's proposal to its creditors (the "**Proposal**");
- (i) file tax returns on behalf of E&R CANADA and deal with the Canada Revenue Agency in respect of any issue relating to E&R CANADA;
- (j) have full and complete access to the books, records, data, including data in electronic form, and other financial documents of E&R CANADA (the "**Records**") , to the extent that the same are necessary to perform its duties under this Order, and to destroy any Records as deemed necessary or advisable by the Trustee in its sole discretion;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to E&R CANADA, E&R CANADA's property or the Proposal Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Proposal Trustee to defend or settle the action in which this Order is made unless otherwise directed by this Court; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

16. The Canada Revenue Agency is hereby authorized and directed to deal with the Proposal Trustee in respect of all taxation matters involving or relating to E&R

CANADA from the date on which the Proposal Trustee's enhanced powers come into effect in accordance with this Order.

17. No provision of this Order is intended to appoint the Proposal Trustee as an officer, director or employee of the Applicant, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Applicant, nor shall the Proposal Trustee be deemed to be an officer, director or employee of the Applicant. Additionally, nothing in this Order shall constitute or be deemed to constitute the Proposal Trustee as (i) a receiver, assignee, liquidator or manager of the Applicant, or (ii) a successor employer of any of the Applicant's employees, and any distribution made to the creditors of the Applicant will be deemed to have been made by the Applicant.
18. Subject to other orders of this Court, nothing herein contained in this Order shall require the Proposal Trustee to occupy or to take control, or to otherwise manage all or any part of the Assets or any other assets of the Applicant, including any assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination. The Proposal Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Assets or any other assets of the Applicant within the meaning of any environmental legislation, the whole pursuant to the terms of the BIA.
19. In addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee (whether in its capacity as trustee under the Notice of Intention to Make a Proposal of E&R CANADA or as trustee under the Proposal, or in its personal capacity) shall incur no liability, including, without limitation, any liability under the APA for any obligations, or in relation to any representations or warranties, or otherwise, as a result of its appointment or acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Proposal Trustee, and no action lies against the Proposal Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Proposal Trustee

or belonging to the same group as the Proposal Trustee shall benefit from the protection arising under the present paragraph.

20. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee by the BIA or any applicable legislation, or prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of E&R CANADA or any of its property or assets.

MISCELLANEOUS MATTERS

21. The Applicant is authorized and empowered, in respect of the Assets, to execute and deliver:

- (a) such additional, related and ancillary documents and assurances governing or giving effect to the conveyance of the Assets which, in the Applicant's discretion, are reasonably necessary or advisable to conclude the Transaction or in furtherance of the transfer of the Assets and/or this Order; and
- (b) any and all instruments and documents in respect of the Assets as may be deemed necessary by the Applicant.

22. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Applicant, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicant; and
- (d) the provisions of any federal or provincial statute;

the vesting of the Assets (other than real property leases) in the Purchaser pursuant to this Order and the assignment of any real property leases, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be

a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

23. The Applicant, Proposal Trustee, Purchaser and any other interested party, shall be at liberty to apply to this Court for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
24. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicant, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Applicant and to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Proposal Trustee, and their respective agents in carrying out the terms of this Order.
25. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the Application for this Order;
 - (iii) any other parties attending or represented at the Application for this Order;
 - (iv) the Purchaser or the Purchaser's solicitors; and
 - (b) posting a copy of this Order on the Proposal Trustee's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/gs-eandr-canada>.

and service on any other person is hereby dispensed with.

26. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

Form of Proposal Trustee's Certificate

COURT FILE NUMBERS B201-719774
25-2719774
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

CLERK'S STAMP:

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

DOCUMENT **PROPOSAL TRUSTEE'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Solicitor: Karen Fellowes, Q.C.
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Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

RECITALS

A. Pursuant to a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") filed by GS E&R Canada Inc. (the "**Applicant**" or "**E&R CANADA**") on March 11, 2021, MNP Ltd. was appointed as the proposal trustee under the NOI (the "**Proposal Trustee**");

B. Pursuant to the Order of the Honourable Justice Dunlop of the Court of Queen's Bench of Alberta, Judicial District of Edmonton (the "**Court**") dated August 16, 2021, the Court approved the asset purchase agreement made as of July 30, 2021, (the "**APA**") between the Applicant and Bench Creek Resources Ltd. (the "**Purchaser**") and provided for the vesting in

the Purchaser of all of the Applicant's right, title and interest in and to the Assets (as defined in the APA), which vesting is to be effective with respect to the Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in the APA have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the APA.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid or has otherwise satisfied in full the Purchase Price for the Assets in accordance with the APA;
2. The conditions to Closing as set out in the APA have been satisfied or waived by the Applicant and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
4. This Certificate was delivered by the Proposal Trustee at **[Time]** on **[Date]**.

**MNP Ltd., in its capacity as the Proposal
Trustee of the Applicant, and not
in its personal capacity.**

Per: _____

Name: [●]

Title: [●]

SCHEDULE “B”

Assets – Bench Creek Resources Ltd.

All capitalized terms not otherwise defined herein, Schedule and Section references shall bear the meanings given them in the asset purchase agreement (the “**APA**”) between the Applicant and Purchaser dated July 30, 2021, as amended.

All of the Vendor’s right, title and interest in and to all of the Vendor’s property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate including the following:

1. The Assets;
2. The Unscheduled Assets.

in each case, for greater certainty, excluding the Excluded Assets and all Assets referred to in Schedule “C” to this Order.

SCHEDULE "C"

Permitted Encumbrances

As defined in the APA.

SCHEDULE "B"

COURT FILE
NUMBER NUMBERS

Clerk's Stamp

B201-719774

25-2719774

CLERK'S STAMP:

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTERS

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

PLAINTIFF APPLICAN
I

GS E&R CANADA INC.

DEFENDANT

DOCUMENT

SALE APPROVAL AND VESTING ORDER and ENHANCED TRUSTEE'S POWERS

(Sale by Receiver)

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP
4300 Bankers Hall West
888 – 3rd Street S.W.
T2P 5C5

Solicitor: Karen Fellowes, Q.C.
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Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

DATE ON WHICH ORDER WAS PRONOUNCED: _____

LOCATION WHERE ORDER WAS PRONOUNCED: _____

NAME OF JUSTICE WHO MADE THIS ORDER: _____

<u>DATE ON WHICH ORDER WAS PRONOUNCED:</u>	<u>August 16, 2021</u>
<u>NAME OF JUDGE WHO MADE THIS ORDER:</u>	<u>The Honourable Justice Dunlop</u>
<u>LOCATION OF HEARING:</u>	<u>Edmonton Courthouse via Webex</u>

UPON THE APPLICATION by ~~[Receiver's Name]~~ in its capacity as the Court-appointed ~~[receiver/receiver and manager]~~ of GS E&R CANADA INC. (the "Receiver") of the undertakings, property and assets of ~~[Debtor]~~ (the "~~Debtor~~Applicant" or "E&R CANADA") for an order approving the sale transaction (the "**Transaction**") contemplated by an ~~agreement of purchase and sale (the "Sale Agreement")~~ between the Receiver and ~~[Name of Purchaser]~~ Asset Purchase Agreement between the Applicant and Bench Creek Resources Ltd. (the "**Purchaser**") dated ~~[Date]~~ July 30, 2021 (the "APA"), and appended as the Confidential Supplement to the ___ Fourth Report of the ~~Receiver dated [Date]~~ MNP Ltd. (the "Proposal Trustee") (the "Fourth Report"), and vesting in the Purchaser ~~(or its nominee)~~¹~~the Debtor's all of the Applicant's~~ right, title and interest in and to the assets described in the ~~Sale Agreement~~ APA (the "~~Purchased~~ **Assets**");

¹ - Ensure that there are no legal obstacles to the vesting of assets in a nominee (for example competition and anti-trust law). Should land be transferred and vested in a nominee, the Registrar of Land Titles requires the Purchaser to complete a Certificate of Nomination (which needs to be signed under seal if the Purchaser is a corporation. If the Purchaser is an individual, the signature needs to be witnessed with an affidavit of execution completed.)

AND UPON READING the Fourth Affidavit of Jungho Park sworn on August 9, 2021 (the “Fourth Park Affidavit”); the Order of Justice Mah, dated March 24, 2021 (the “Initial Order”); the Fourth Report; the application of the Applicant and supporting materials (the “Application”); and the Affidavit of Service of Stephanie Harrison, sworn on August __, 2021;

~~AND UPON HAVING READ~~ the Receivership Order dated ~~[Date]~~ (the “~~Receivership Order~~”), the Report and the Affidavit of Service; **AND UPON HEARING** the submissions of by counsel for the Receiver, the Purchaser ~~[Names of other parties appearing]~~, Applicant, counsel for the Proposal Trustee and any other counsel or other interested parties present; and no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service, filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this ~~application and supporting materials~~ Application is hereby declared to be good and sufficient, no other person is required to have been served with notice of this ~~application~~ Application and time for service of this ~~application~~ Application is abridged to that actually given.²

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved³ and execution of the ~~Sale Agreement~~ APA by the ~~Receiver~~ Applicant is hereby authorized and approved, with such minor amendments as the ~~Receiver~~ Applicant may deem necessary. The ~~Receiver~~ Applicant is hereby authorized

² ~~Ensure that the application and supporting materials are served on all affected parties including those whose interests will be vested off.~~

³ ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding. If supported by evidence, the following sentence could be added at the beginning of paragraph 2: “The Transaction and Sale Agreement are commercially reasonable and in the best interest of the Debtor and its stakeholders.”~~

and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser ~~(or its nominee)~~.

VESTING OF PROPERTY

3. ~~[Subject only to approval by the Alberta Energy Regulator (“Energy Regulator~~British Columbia Oil and Gas Commission (“BCOGC”) of the transfer of any applicable ~~licenses~~licences, permits and approvals pursuant to section ~~24 of the Oil and Gas Conservation Act (Alberta) and section 18 of the Pipeline Act (Alberta)]~~⁴ upon delivery of a Receiver’s certificate~~29 of the Oil and Gas Activities Act, SBC 2008, c 36, and approval by a Governmental Authority (as defined below) of the transfer of any applicable agreement, licence, permit, approval, certificate, lease or other instrument or authorization, upon delivery of a closing certificate from the Proposal Trustee~~ to the Purchaser ~~(or its nominee)~~ substantially in the form set out in **Schedule “A”** hereto (the **“Receiver’s Closing Certificate”**), ~~all of the Debtor’s right, title and interest in and to the Purchased Assets [listed in Schedule “B”~~⁵ ~~hereto] shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected,~~

⁴ ~~This bracketed clause, paragraph 4(b) and the bracketed words at the end of paragraph 6 are included when the Purchased Assets include mineral interests in land.~~

⁵ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule B.~~

~~registered or filed and whether secured, unsecured or otherwise (collectively, "Claims")⁶including, without limiting the generality of the foregoing:~~

(a) With respect to the Assets listed in Schedule "B" hereto, all of the Applicant's right, title and interest in and to such Assets shall vest absolutely in the name of the Purchaser in each case free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "Claims") including, without limiting the generality of the foregoing:

(i) ~~(a)~~ any encumbrances or charges created by the ~~Receivership~~ Initial Order; and

(ii) ~~(b)~~ any-all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;~~;~~

~~(c) — any liens or claims of lien under the *Builders' Lien Act* (Alberta); and~~

⁶ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims may, in some cases, continue as against the net proceeds from sale of the claimed assets. In other cases, the ownership claimant may object to its ownership interest being vested out of the claimed assets. For example, it not clear that vesting orders can vest out overriding royalties or restrictive covenants which are interests in land. (In *Third Eye Capital Corp. v Dianor Resources Inc.*, 2018 ONCA 253 at paragraphs 108-130 the Ont. C.A. requested further argument regarding whether an overriding royalty which is an interest in land may nevertheless be vested out.) Similarly, other claimed rights, titles or interests may potentially be vested out if the Court is advised what rights are being affected and the affected persons are served. The Committee agrees with the view of the Ontario Committee that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~(d) those Claims listed in Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "D" (collectively, "Permitted Encumbrances"));~~

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances as set out in Schedule "C" hereto (the "Permitted Encumbrances"), affecting or relating to the ~~Purchased~~ Assets are hereby expunged, discharged and terminated as against the ~~Purchased~~ Assets.

4. Upon delivery of the ~~Receiver's~~ Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (individually a "Governmental Authority" and collectively, "Governmental Authorities") are hereby authorized, requested and directed to accept delivery of such ~~Receiver's~~ Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser ~~or its nominee~~ clear title to the ~~Purchased~~ Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

~~(a)⁷ the Registrar of Land Titles ("Land Titles Registrar") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:~~

~~(i) cancel existing Certificates of Title No. * for those lands and premises municipally described as *, and legally described as:~~

~~_____*~~

~~_____ (the "Lands")~~

⁷ Paragraph 4(a) is included when the Purchased Assets include titled lands.

- ~~(ii) — issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee), namely, *;~~
 - ~~(iii) — transfer to the New Certificate of Title the existing instruments listed in Schedule “D”, to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in Schedule “D”; and~~
 - ~~(iv) — discharge and expunge the Encumbrances listed in Schedule “C” to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands;~~
- ~~(b)⁸ — Alberta Energy (“Energy Ministry”) shall and is hereby authorized, requested and directed to forthwith:~~
- ~~(v) — cancel and discharge those Claims including builders’ liens, security notices, assignments under section 426 (formerly section 177) of the *Bank Act* (Canada) and other Encumbrances (but excluding Permitted Encumbrances) registered (whether before or after the date of this Order) against the estate or interest of the Debtor in and to any of the Purchased Assets located in the Province of Alberta; and~~
 - ~~(vi) — transfer all Crown leases listed in Schedule “E” to this Order standing in the name of the Debtor, to the Purchaser (or its nominee) free and clear of all Claims including Encumbrances but excluding Permitted Encumbrances;~~
- ~~(a) (c)the Registrar of the Alberta~~ the Registrar of the Alberta and British Columbia Personal Property Registry (the “~~PPR Registrar~~Registrars”) shall and ~~is~~are hereby directed to forthwith cancel and discharge any registrations at the Alberta and British Columbia Personal Property ~~Registry~~Registries (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the ~~Debtor~~Applicant

⁸ Paragraph 4(b) is included when the Purchased Assets include mineral interests in land.

in any of the ~~Purchased~~-Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the ~~Sale Agreement~~[APA](#). Presentment of this Order and the ~~Receiver's~~-Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the ~~Purchased~~-Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any ~~governmental authority~~[Governmental Authorities](#) or regulatory body exercising jurisdiction over the ~~Purchased~~-Assets is required for the due execution, delivery and performance by ~~the Receiver of the Sale Agreement, [other than any required approval by the Energy Regulator referenced in paragraph 3 above.]~~⁹[E&R CANADA of the APA](#).
- ~~7. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the Land Titles Act, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.~~
7. ~~8.~~For the purposes of determining the nature and priority of Claims, net proceeds¹⁰ from sale of the ~~Purchased~~-Assets (to be held in an interest bearing trust account by the ~~Receiver~~[Proposal Trustee](#)) shall stand in the place and stead of the ~~Purchased~~-Assets from and after delivery of the ~~Receiver's~~-Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber

⁹~~The bracketed words in this paragraph are included when the Purchased Assets include mineral interests in land.~~

¹⁰~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

or otherwise form a charge, security interest, lien, or other Claim against the ~~Purchased~~ Assets and may be asserted against the net proceeds from sale of the ~~Purchased~~ Assets with the same priority as they had with respect to the ~~Purchased~~ Assets immediately prior to the sale, as if the ~~Purchased~~ Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. ~~Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any~~ No distributions ~~to creditors~~ of net proceeds from sale of the ~~Purchased~~ Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order. Assets shall be made other than in accordance with further orders of this Court.

8. ~~9.~~ Except as expressly provided for in the ~~Sale Agreement~~ APA or by section 5 of the Alberta *Employment Standards Code*, the Purchaser ~~(or its nominee)~~ shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the ~~Debtor~~ Applicant. ¹¹

9. ~~10.~~ Upon completion of the Transaction, the ~~Debtor~~ Applicant and all persons who claim by, through or under the ~~Debtor~~ Applicants in respect of the ~~Purchased~~ Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the ~~Purchased~~ Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the ~~Purchased~~ Assets, and to the extent that any such persons or entities remain in the possession or control of any of the ~~Purchased~~ Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title,

¹¹ ~~Successor employer liability is governed by section 5 of the *Employment Standards Code*, RSA 2000 c. E-9 as amended. Inclusion of the words "or by statute" in paragraph 9 ensures that paragraph 9 does not purport to abrogate statutory successor employee liability.~~

estate, or interest in and to the ~~Purchased~~ Assets, they shall forthwith deliver possession thereof to the Purchaser ~~(or its nominee)~~.¹²

10. ~~11.~~ The Purchaser ~~(or its nominee)~~ shall be entitled to enter into and upon, hold and enjoy the ~~Purchased~~ Assets for ~~its~~ their own use and benefit without any interference of or by the ~~Debtor~~ Applicant, or any person claiming by, through or against the ~~Debtor~~ Applicant.

11. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Applicant, other than as described in the APA.

12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the ~~Receiver~~ Applicant or the Proposal Trustee.¹³

13. The ~~Receiver~~ Proposal Trustee is directed to file with the Court a copy of the ~~Receiver's~~ Closing Certificate forthwith after delivery thereof to the Purchaser ~~(or its nominee)~~.

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the ~~Receiver~~ Applicant is authorized and permitted to disclose and transfer to the Purchaser ~~(or its nominee)~~ all human resources and payroll information in the ~~Debtor's~~ Applicant's records pertaining to the ~~Debtor's~~ Applicant's past and current employees. The Purchaser ~~(or its nominee)~~ shall maintain and protect the privacy of such

¹² ~~Not all sale agreements require, nor do the terms of the Debtor's possession of human resources and payroll information always permit, disclosure and transfer of such information to the Purchaser. If disclosure and transfer of such information to the Purchaser is not required or permitted, then Section 10 of this Order should be deleted.~~

¹³ ~~The terms of the Permitted Encumbrance and Sale Agreement should be reviewed to determine whether an encumbrance also constitutes a charge against other assets not being sold (in addition to the Purchased Assets.) In that circumstance, absent agreement of the encumbrancer to the contrary, the Debtor may not be fully discharged so the encumbrancer does not lose its charge over the other assets it holds as security. Do not add the words "or the Debtor" to the end of paragraph 12 if an encumbrancer's claim against the Debtor should be reserved.~~

information and shall be entitled to use the personal information provided to ~~it-~~them in a manner which is in all material respects identical to the prior use (of such information) to which the ~~Debtor-~~Applicant was entitled.

ENHANCED POWERS OF THE PROPOSAL TRUSTEE

15. Upon the resignation of the Applicant's directors and officers, in addition to its powers and obligations set out in the Initial Order issued by this Court on March 24, 2021 and its prescribed rights and obligations under the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**"), the Proposal Trustee is hereby authorized and empowered, but not obligated, to:
- (a) take possession of and exercise control over E&R CANADA's property and any and all proceeds, receipts and disbursements arising out of or from E&R CANADA's property;
 - (b) take any and all actions and steps, and execute any and all documents and writings on behalf of and in the name of E&R CANADA in order to carry out the powers conferred on it by this Order;
 - (c) operate on behalf of E&R CANADA any of E&R CANADA's existing accounts at any financial institution, in such manner as the Proposal Trustee, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Proposal Trustee's powers set out herein;
 - (d) receive and collect all monies and accounts now owed or hereafter owing to E&R CANADA and to exercise all remedies of E&R CANADA in collecting such monies, including, without limitation, to enforce any security held by E&R CANADA;
 - (e) pay any post-filing creditors of E&R CANADA, provided that the Proposal Trustee shall not be, or deemed to be, responsible for E&R CANADA's post-filing obligations, and that if such post-filing obligations exceed the funds remaining in E&R CANADA, the Proposal Trustee is hereby authorized and

empowered, but not required, to pay such post-filing obligations on a pro rata basis;

- (f) settle, extend or compromise any indebtedness owing to or by E&R CANADA;
- (g) take any steps necessary or advisable to fulfil any post-closing obligations and deal with any post-closing issues arising in connection with the APA;
- (h) deal with any surplus cash remaining in E&R CANADA after implementation of E&R CANADA's proposal to its creditors (the "Proposal");
- (i) file tax returns on behalf of E&R CANADA and deal with the Canada Revenue Agency in respect of any issue relating to E&R CANADA;
- (j) have full and complete access to the books, records, data, including data in electronic form, and other financial documents of E&R CANADA (the "Records") , to the extent that the same are necessary to perform its duties under this Order, and to destroy any Records as deemed necessary or advisable by the Trustee in its sole discretion;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to E&R CANADA, E&R CANADA's property or the Proposal Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Proposal Trustee to defend or settle the action in which this Order is made unless otherwise directed by this Court; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

16. The Canada Revenue Agency is hereby authorized and directed to deal with the Proposal Trustee in respect of all taxation matters involving or relating to E&R

CANADA from the date on which the Proposal Trustee's enhanced powers come into effect in accordance with this Order.

17. No provision of this Order is intended to appoint the Proposal Trustee as an officer, director or employee of the Applicant, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Applicant, nor shall the Proposal Trustee be deemed to be an officer, director or employee of the Applicant. Additionally, nothing in this Order shall constitute or be deemed to constitute the Proposal Trustee as (i) a receiver, assignee, liquidator or manager of the Applicant, or (ii) a successor employer of any of the Applicant's employees, and any distribution made to the creditors of the Applicant will be deemed to have been made by the Applicant.
18. Subject to other orders of this Court, nothing herein contained in this Order shall require the Proposal Trustee to occupy or to take control, or to otherwise manage all or any part of the Assets or any other assets of the Applicant, including any assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination. The Proposal Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Assets or any other assets of the Applicant within the meaning of any environmental legislation, the whole pursuant to the terms of the BIA.
19. In addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee (whether in its capacity as trustee under the Notice of Intention to Make a Proposal of E&R CANADA or as trustee under the Proposal, or in its personal capacity) shall incur no liability, including, without limitation, any liability under the APA for any obligations, or in relation to any representations or warranties, or otherwise, as a result of its appointment or acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Proposal Trustee, and no action lies against the Proposal Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Proposal Trustee

or belonging to the same group as the Proposal Trustee shall benefit from the protection arising under the present paragraph.

20. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee by the BIA or any applicable legislation, or prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of E&R CANADA or any of its property or assets.

MISCELLANEOUS MATTERS

21. The Applicant is authorized and empowered, in respect of the Assets, to execute and deliver:

- (a) such additional, related and ancillary documents and assurances governing or giving effect to the conveyance of the Assets which, in the Applicant's discretion, are reasonably necessary or advisable to conclude the Transaction or in furtherance of the transfer of the Assets and/or this Order; and
- (b) any and all instruments and documents in respect of the Assets as may be deemed necessary by the Applicant.

22. ~~15.~~ Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the ~~Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, as amended (the "BIA"), in respect of the Debtor~~ BIA, in respect of the Applicant, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~ Applicant; and
- (d) the provisions of any federal or provincial statute;

the vesting of the ~~Purchased~~ Assets (other than real property leases) in the Purchaser ~~(or its nominee)~~ pursuant to this Order and the assignment of any real property leases, shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~

[Applicant](#) and shall not be void or voidable by creditors of the ~~Debtor~~[Applicant](#), nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

23. ~~16.~~The ~~Receiver~~[Applicant](#), ~~the Proposal Trustee~~, Purchaser (~~or its nominee~~) and any other interested party, shall be at liberty to apply [to this Court](#) for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

24. ~~17.~~This ~~Honourable~~ Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the ~~Receiver and its~~ [Applicant, the Proposal Trustee and their respective](#) agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the ~~Receiver~~[Applicant and to the Proposal Trustee](#), as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~ [Applicant, the Proposal Trustee, and their respective](#) agents in carrying out the terms of this Order.

25. ~~18.~~Service of this Order shall be deemed good and sufficient by:

- (a) ~~Serving~~[serving](#) the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the ~~application~~[Application](#) for this Order;
 - (iii) any other parties attending or represented at the ~~application~~[Application](#) for this Order;

- (iv) the Purchaser or the Purchaser's solicitors; and
- (b) ~~Posting~~ posting a copy of this Order on the ~~Receiver's~~ Proposal Trustee's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/gs-eandr-canada>.

and service on any other person is hereby dispensed with.

26. ~~19.~~ Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

~~Schedule~~ SCHEDULE "A"

Form of ~~Receiver's~~ Proposal Trustee's Certificate

COURT FILE
NUMBER NUMBERS

Clerk's Stamp

B201-719774

25-2719774

CLERK'S STAMP:

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTERS

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

~~PLAINTIFF~~

~~DEFENDANT~~

DOCUMENT

~~RECEIVER'S~~ PROPOSAL TRUSTEE'S CERTIFICATE

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP

4300 Bankers Hall West

888 – 3rd Street S.W.

T2P 5C5

Solicitor: Karen Fellowes, Q.C.

Phone Number: (403) 724-9469

Email: kfellowes@stikeman.com

Fax Number: (403) 266-9034

File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

RECITALS

~~A. Pursuant to an Order of the Honourable Justice [Name] of the Court of Queen's Bench of Alberta, Judicial District of _____ (the "Court") dated [Date of Order], [Name of Receiver] was appointed as the receiver (the "Receiver") of the undertakings, property and assets of [Debtor] (the "Debtor").~~

A. Pursuant to a Notice of Intention to Make a Proposal ("NOI") under the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the "BIA") filed by GS E&R Canada Inc. (the "Applicant" or "E&R CANADA") on March 11, 2021, MNP Ltd. was appointed as the proposal trustee under the NOI (the "Proposal Trustee");

~~B. Pursuant to an Order of the Court dated [Date], the Court approved the agreement of purchase and sale made as of [Date of Agreement] (the "Sale Agreement") between the Receiver and [Name of Purchaser]. Pursuant to the Order of the Honourable Justice Dunlop of the Court of Queen's Bench of Alberta, Judicial District of Edmonton (the "Court") dated August 16, 2021, the Court approved the asset purchase agreement made as of July 30, 2021, (the "APA") between the Applicant and Bench Creek Resources Ltd. (the "Purchaser") and provided for the vesting in the Purchaser of all of the Debtor's Applicant's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~ Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section * of the Sale Agreement~~ APA have been satisfied or waived by the ~~Receiver~~ Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee.~~

~~C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement~~ APA.

THE ~~RECEIVER~~ PROPOSAL TRUSTEE CERTIFIES the following:

- ~~1. The Purchaser (or its nominee) has paid and the Receiver has received or has otherwise satisfied in full the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement~~ Assets in accordance with the APA;
- ~~2. The conditions to Closing as set out in section * of the Sale Agreement~~ APA have been satisfied or waived by the ~~Receiver~~ Applicant and the Purchaser ~~(or its nominee); and;~~

3. The Transaction has been completed to the satisfaction of the ~~Receiver.~~ Proposal Trustee; and
4. This Certificate was delivered by the ~~Receiver~~ Proposal Trustee at **[Time]** on **[Date]**.

~~[Name of Receiver]~~ MNP Ltd., in its
capacity as ~~Receiver of the~~
~~undertakings, property and assets of~~
~~[Debtor]~~ the Proposal Trustee of
the Applicant, and not in its
personal capacity.

Per; :

Name:

Title:

SCHEDULE "B"

Assets – Bench Creek Resources Ltd.

All capitalized terms not otherwise defined herein, Schedule and Section references shall bear the meanings given them in the asset purchase agreement (the "APA") between the Applicant and Purchaser dated July 30, 2021, as amended.

All of the Vendor's right, title and interest in and to all of the Vendor's property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate including the following:

1. The Assets;
2. The Unscheduled Assets.

in each case, for greater certainty, excluding the Excluded Assets and all Assets referred to in Schedule "C" to this Order.

SCHEDULE "C"

Permitted Encumbrances

As defined in the APA.

Summary Report	
Title	compareDocs Comparison Results
Date & Time	8/9/2021 6:16:05 PM
Comparison Time	1.79 seconds
compareDocs version	v5.0.100.42

Sources	
Original Document	revised-alberta-template-approval-and-vesting-order-and-receivers-certif.docx
Modified Document	DocumentDraft Sale Approval and Vesting Order and Enhanced Trustee's Powers of SAVO(113734839.11).docx

Comparison Statistics	
Insertions	87
Deletions	84
Changes	101
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	272

Word Rendering Set Markup Options	
Name	Office 2016
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Comments	Word	True
Include Field Codes	Word	True
Flatten Field Codes	Word	True
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	False
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)

Document View	Word	Print
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SCHEDULE "C"

COURT FILE NUMBERS B201-719774
25-2719774

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT GS E&R CANADA INC

DOCUMENT **SEALING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
4300 Bankers Hall West
888 – 3rd Street S.W.
T2P 5C5

Solicitor: Karen Fellowes, Q.C.
Phone Number: (403) 724-9469
Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.: 148767.1001

Counsel for the Applicant GS E&R CANADA INC.

DATE ON WHICH ORDER WAS PRONOUNCED: August 16, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Hon. Justice G. Dunlop

LOCATION OF HEARING: Edmonton, Alberta via Webex

UPON THE APPLICATION GS E&R Canada Inc. (the "**Applicant**" or "**E&R CANADA**"); **AND UPON** reading the Application of the Applicant, the Fourth Affidavit of Jungho Park sworn August 9, 2021, the Fourth Report of MNP Ltd. in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") of the Applicant (the "**Fourth Report**") and the Confidential Supplement to the Fourth Report (the "**Confidential Supplement**") and the Affidavit of Service of Stephanie Harrison sworn on August __, 2021;

AND UPON hearing the submissions of counsel for the Applicant and counsel for the Proposal Trustee, and any other parties present:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials (the “**Application**”) is hereby declared to be good and sufficient, 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.
2. The Confidential Supplement shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the Alberta *Rules of Court*, until three months after the closing of the Transaction contemplated in the Asset Purchase Agreement between the Applicant and Bench Creek Resources Ltd., dated July 30, 2021.
3. The Clerk of this Honourable Court shall file the Confidential Supplement in a sealed envelope attached to a notice that sets out the style of cause in these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS
FILED BY GS E&R CANADA INC. THE CONFIDENTIAL
MATERIALS ARE SEALED PURSUANT TO THE SEALING
ORDER ISSUED BY THE HON. JUSTICE G. DUNLOP ON
AUGUST 16, 2021.

4. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the Application for this Order;
 - (iii) any other parties attending or represented at the Application for this Order;
 - (iv) the Purchaser or the Purchaser’s solicitors; and

(b) posting a copy of this Order on the Proposal Trustee's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/gseandr-canada>

and service on any other person is hereby dispensed with.

5. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta