

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 **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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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, affirmed on August 13, 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;
- (l) take such steps as are necessary to dissolve E&R CANADA and to file such corporate documents with the Registrar of Corporations in the name of or on behalf of E&R CANADA for that Purpose; and
- (m) perform such other duties as are required by this Order or by this Court from time to time.

16. The Canada Revenue Agency and the Registrar of Corporations for Alberta are hereby authorized and directed to deal with the Proposal Trustee in respect of all 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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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

All security interests, grants, pledges, liens, trusts, rights, remedies, and claims, of any nature or kind, whatsoever, granted or contemplated under any and all agreements, contracts, documents, or instruments between GS E&R Canada, Inc. and Northriver Midstream Operations LP or its affiliates concerning, forming part of, or which otherwise relate to the Assets, including, but not limited to, the Gas Processing Agreement, dated effective as of November 1, 2020, between Northriver Midstream Operations LP and GS E&R Canada Inc., as may be subsequently amended or restate from time to time.