

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , ¹)	Case No. 15-10585 ()
)	
Debtors.)	Joint Administration Requested
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO PAY OR HONOR PRE-PETITION
AND POST-PETITION ROYALTY OBLIGATIONS, WORKING INTEREST
OBLIGATIONS AND OTHER OBLIGATIONS RELATED TO OIL AND GAS LEASES**

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully submit this *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors To Pay or Honor Pre-Petition and Post-Petition Royalty Obligations, Working Interest Obligations and Other Obligations Related to Oil and Gas Leases* (the “Motion”). In support of this Motion, the Debtors represent and set forth as follows:²

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b).³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 3700, Unit 19, Fort Worth, Texas 76102.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ restructuring, are set forth in greater detail in the Declaration of Vanessa Gomez LaGatta in Support of First Day Pleadings (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

³ Under rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to the

2. The predicates for the relief requested herein are sections 105, 363 and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

A. General Background

3. On March 17, 2015 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. No committees have been appointed or designated.

4. This Motion incorporates by reference the facts set forth in the First Day Declaration as if fully set forth herein. Additional facts specific to this Motion are set forth below.

B. Specific Background

(i) Mineral and Other Interests

5. In connection with their oil and gas assets, the Debtors are obligated, pursuant to their oil and gas leases and other agreements, to remit to the lessors of the oil and gas leases and potentially other parties their share of revenue from the producing wells located on the respective leases pursuant to the terms of their oil and gas lease (the “Royalties”). In addition, overriding royalties (the “ORRI”) must be remitted to the owners of those interests, and the holders of non-executive mineral interests (the “Non-Executive Interests”) as well as the holders of non-

entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection therewith consistent with Article III of the United States Constitution.

participating royalty interests (the “NPRI” and, together with the Royalties, ORRI and Non-Executive Interests, the “Mineral and Other Interests”) must receive the proceeds due to them pursuant to the applicable agreement.⁴ Failure to forward all required amounts would have a material adverse effect upon the Debtors, including, without limitation, penalties and interest, turnover actions, conversion and constructive trust claims, litigation, and, in some instances, potential forfeiture and removal as operator. As of the Petition Date, the Debtors estimate that they owe approximately \$12.3 million to the holders of the Mineral and Other Interests.⁵

(ii) *Lease Expenses*

6. The Debtors are the operators for a number of the oil and gas wells in which the Debtors hold an interest, many under joint operating agreements with other parties. In connection with the daily operation of those wells, the Debtors incur numerous lease operating expenses (the “LOEs”). Many of the invoices for LOEs will cover both pre-petition and post-petition expenses. Given the number of such invoices, and the Debtors’ limited accounting staff, separating the pre-petition portions from the post-petition portions of each individual invoice will be impractical or even impossible for the Debtors to timely accomplish. Failure by the Debtors to satisfy their LOE obligations as they arise would have material adverse consequences, including, without limitation, being removed as operator and the assertion of significant secured claims (statutory and/or contractual) against property of the estates by holders of Non-Executory Interests and/or LOE claims.

⁴ For the avoidance of doubt, the Debtors are also obligated to remit a portion of the revenue from producing wells that remains after deducting the amounts attributable to the foregoing interests to the owners of the working interests in those wells.

⁵ Included in the foregoing is approximately \$2.3 million attributable to suspended funds (the “Suspended Funds”). The Suspended Funds represent amounts that are due and owing to certain holders of Mineral and Other Interests but are otherwise unpayable for a variety of reasons, including, among others, incorrect contact information, ongoing disputes over ownership of the underlying interest, and failure to meet minimum payout requirements. To the extent that the issue preventing payment of Suspended Funds to a particular interest holder is resolved, the Debtors release the Suspended Funds in question.

7. Often the Debtors are also required to make rental payments during the term of a lease (the “Delay Rentals”). Failure to pay Delay Rentals would have a material adverse effect upon the Debtors, including, without limitation, the loss of the underlying lease.

8. Where the Debtors hold non-operating working interests in wells under various joint operating agreements (“JOAs”), the Debtors receive payments representing their share of production revenues. The Debtors then reimburse the operator for their share of the relevant costs – production expenses, taxes, etc. – through the payment of joint-interest billings (“JIBs”). The failure to timely pay JIBs may provide grounds for the operator to assert contractual or statutory lien rights against the Debtors’ interest in a well and the underlying oil and gas lease.

9. In addition to the various expenses owed in connection with existing wells, the Debtors incur liabilities through their efforts to secure additional oil and gas leases and extend certain others. The Debtors often solicit potential and current lessors by sending a letter expressing a desire to enter into (or extend) a lease arrangement and enclosing a proposed lease or lease amendment, as applicable. To entice the potential and current lessors to execute and return the appropriate documentation, the Debtors may also include an Offer for Purchase (an “OFF” and, together with the LOEs, Delay Rentals, and the JOA and JIB obligations, the “Lease Expenses”). An OFF is the mechanism by which cash and additional cash consideration will be provided to the lessor if the lease (or lease amendment) and OFF are both signed and returned to the Debtors. Once both executed documents are received, the Debtors have thirty days in which to conduct the necessary diligence and send a check in the amount required under the OFF. As of the Petition Date, the Debtors estimate that they may have as much as \$101,453 in outstanding OFF liabilities, including amounts attributable to both returned OFFs and those that accompanied

proposed leases which have not yet been returned, and request authority to continue honoring those obligations in the ordinary course of business.⁶

(iii) *Marketing Obligations*

10. The Debtors are also obligated under various agreements to market the oil and gas production (the “Marketed Production”) of certain owners of working interests (the “Working Interests”) to potential purchasers and remit the amounts due to the appropriate parties (the “Marketing Obligations” and, together with the Mineral and Other Interests and the Lease Expenses, the “Obligations”).⁷ Specifically, following the sale of Marketed Production and the receipt of proceeds attributable thereto, the Debtors are obligated to remit the amount of those proceeds belonging to the owner of the Working Interest, net of all applicable Mineral and Other Interests, gathering costs, processing and transportation expenses and production taxes. The Marketing Obligations also require that the Debtors process and forward to the appropriate parties, from funds otherwise belonging to third parties, the amounts due on account of the Mineral and Other Interests, gathering costs, processing and transportation expenses and production taxes. Failure to forward all required amounts would have a material adverse effect upon the Debtors, including, without limitation, penalties and interest, turnover actions, conversion and constructive trust claims, assertion of significant secured claims against property of the estate, litigation, and, in some instances, removal as operator. As of the Petition Date, the Debtors estimate that they have approximately \$14.0 million in Marketing Obligations outstanding.

⁶ While OFPs executed and returned post-petition may arguably constitute administrative expenses of the Debtors’ estates, out of an abundance of caution the Debtors are requesting authority to continue honoring amounts due in connection with the OFPs that are signed and returned after the Petition Date.

⁷ For the avoidance of doubt, the hydrocarbons marketed by the Debtors for the owners of various Working Interests, including, among others, TG Barnett Resources LP and Eni Petroleum US LLC, are owned separately by such owners in the ground and are therefore not the assets of the Debtors, but rather are the assets of the owner of the relevant Working Interest.

RELIEF REQUESTED

11. The Debtors submit this Motion pursuant to Bankruptcy Code sections 105(a), 363(b) and 541 and Bankruptcy Rules 6003 and 6004 requesting entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively) authorizing (a) the Debtors in their business judgment to (i) deliver the funds owed to the holders of Mineral and Other Interests and amounts due under the Marketing Obligations as required by the applicable leases and other agreements; and (ii) continue to satisfy and honor their Lease Expenses in the ordinary course of business, and (b) all financial institutions to honor pre-petition checks and electronic payment requests for payment of the Obligations.

12. The Debtors further request that the Court authorize their banks and other financial institutions to honor checks and/or other funds transfer requests issued prior to the Petition Date for payment of the Obligations. The Debtors also request that the Court schedule a hearing (the “Final Hearing”) on the entry of the Final Order within thirty (30) days of the date hereof or as soon thereafter as practicable; *provided, however*, that, in the event that no objections to entry of the Final Order are timely received, the Debtors request that the Court enter the Final Order without need for the Final Hearing.

SUPPORTING AUTHORITY

A. The Mineral and Other Interests and Marketing Obligations Are Not Property of the Debtors’ Estates.

13. With certain exceptions, Bankruptcy Code section 541 provides that all property that a debtor has legal or equitable interest to becomes property of the estate upon commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1). Section 541 does not, however, create new interest in property; rather, property interests are created by and defined according to

state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). Therefore, if the debtor does not hold any legal or equitable interest in property as of the petition date, such property does not become property of the estate pursuant to Bankruptcy Code section 541 and such property is not available for distribution to the debtor's creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135-36 (1962).

14. Under Texas law, which governs the Debtors' operations with respect to the oil and gas leases in the United States, landowner's royalty interests, overriding royalty interests non-executive mineral interests, and non-participating royalty interests are real property interests in land. See *Jett v. Kahn*, 273 S.W.2d 431, 433 (Tex. 1954); *Thompson v. Thompson*, 236 S.W.2d 779, 783-84 (Tex. 1951); *Trutec Oil & Gas, Inc. v. W. Atlas Int'l, Inc.*, 194 S.W.3d 580, 583 (Tex. App.—Houston [14th Dist.] 2006); *Kelly Oil v. Svetlik*, 975 S.W.2d 762, 764 (Tex. App.—Corpus Christi 1998), *pet. denied*. A “royalty interest” is a non-possessory interest in the oil or gas produced under a lease. An “overriding royalty interest” is a non-possessory interest in the gross production of oil or gas produced under a lease, created by the lessee or working interest owner and paid out of the lessee's or working interest owner's revenue. A “non-participating royalty interest” is a non-possessory interest that is created directly out of the mineral estate that includes a right to share in a percentage of any production, free of the production costs, but affords no rights to develop or participate in any bonuses or rentals received by the landowner or the mineral owner. A “non-executive mineral interest” is an interest in the mineral estate that has no right to lease or otherwise develop the minerals.

15. Courts recognize the interest holder's equitable interest in the oil and gas sales proceeds held by the debtor. When the Debtors act as operator of their wells, non-operating working interest owners may assert that the Debtors, as operator, merely hold bare legal title to

the accrued prepetition amounts due to them as bailees. *In re MCZ, Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) (ordering the debtor-operator to turnover amounts due to the interest owners because the debtor-operator had no interest in such amounts beyond a “bare possessory interest as a bailee or agent”). Thus, because the Mineral and Other Interests are not the Debtors’ property, they should be turned over as they arise in the ordinary course of business.

16. Courts in this district have held that Bankruptcy Code section 541(d) expressly provides that if a debtor holds only a legal, but not an equitable, interest in property as of the petition date, such property is not property of the estate. *See, e.g., In re Lenox Healthcare, Inc.*, 343 B.R. 96, 100 (Bankr. D. Del. 2006). Because the Debtors have only legal title, and not an equitable interest, in the Mineral and Other Interests, any property held by the Debtors on account of the Mineral and Other Interests is not property of the Debtors’ estates, and thus the Debtors are not entitled to distribute any such funds to their creditors.

17. Similarly, the Debtors hold no legal or equitable interests in the Marketing Obligations and are simply a conduit that receives a fee in exchange for marketing and ensuring that other parties receive the amounts due to them (i.e., the amounts received on account of the Marketed Production is not property of the estate). As a result, no creditors will be prejudiced by the relief requested in this Motion. Accordingly, for the reasons set forth above, the Debtors respectfully request that the Court (a) hold that the Mineral and Other Interests and Marketing Obligations are not property of the Debtors’ estates and (b) authorize the Debtors to satisfy their pre-petition and post-petition obligations on account of the Mineral and Other Interests as well as the Marketing Obligations in the ordinary course of business.

B. Satisfaction of the Lease Expenses Is In the Best Interests of the Debtors and Their Estates.

18. If the Debtors fail to satisfy the pre-petition Lease Expenses as they become due, the Debtors' operations will be severely impacted, production may completely cease for certain wells and leases may be lost. These occurrences would directly, immediately and negatively impact the Debtors' creditors and other parties in interest. Accordingly, the Debtors believe that satisfaction of the Lease Expenses as they become due is in the best interests of the Debtors and their estates.

19. Further, if the Debtors do not continue to pay or otherwise honor the Lease Expenses as they become due, it may give rise to litigation and numerous statutory liens, which would burden the Debtors' assets and diminish the value of those assets to potential purchasers. For example, Article 9.343 of the Texas Business and Commerce Code (Uniform Commercial Code) provides a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price.⁸ Additionally, under applicable law, certain parties may assert claims for costs and/or attorneys' fees relating to their lien rights. If the Debtors are unable to pay these expenses, as requested herein, there may be numerous administrative costs incurred by the Debtors' estates, as well as

⁸ Texas law grants an automatically perfected statutory lien to "interest owners" to secure the obligations of the "first purchaser of oil and gas production, as debtor, to pay the purchase price." TEX. BUS. & COM. CODE ANN. § 9.343(a) & (r). The operator may qualify as the "first purchaser" under the statute where the "operator . . . receives production proceeds from a third-party purchaser who acts in good faith under a division order or other agreement authenticated by the operator under which the operator collects proceeds of production on behalf of other interest owners." TEX. BUS. & COM. CODE ANN. § 9.343(r)(3); *see also In re Tri-Union Dev. Corp.*, 253 B.R. 808, 815 (S.D. Tex. 2000) (finding an automatically perfected security interest in the oil and gas production and its proceeds in the debtor's possession). The Debtors must avoid the potential expenses and burdens associated with these rights and associated issues by continuing to pay such claimants in the ordinary course of business. Otherwise, under applicable non-bankruptcy law, the unpaid Mineral and Other Interests encumber the Debtors' assets with statutory liens and the Debtors become confronted by claims for enhanced damages and interest. Because payment of such claims is not a question of if, but only when, these controversies can and must be avoided to preserve the Debtors' value.

lien claims on the production and underlying oil and gas interests. The ongoing and regular payment of these expenses will protect the Debtors' assets and will obtain the greatest possible value for the Debtors' creditors and other parties in interest.

20. In the instances where the Debtors hold a non-operating working interest in their leases, the JOAs often grant the operator a contractual lien upon the Debtors' interest in a well and the underlying lease that may include (a) all equipment installed on the lease; (b) all hydrocarbons or other minerals severed and extracted from or attributable to the lease; (c) all accounts and proceeds of sale, contract rights, and general intangibles arising in connection with the sale; (d) fixtures; and (e) any and all accessions, additions and attachments thereto and the proceeds and products therefrom. The lien sometimes purports to secure the payment of all charges, fees, court costs, and other directly related collection costs. If the Debtors do not pay charges when due, the operator may also attempt to assert additional rights to collect from the purchaser of the Debtors' hydrocarbon production until the amount owed has been paid.

21. Satisfaction of the Lease Expenses at this early stage in these chapter 11 cases is warranted because the harm to the estates that may result from non-payment of such claims will most likely exceed the amount of such claims by a significant margin. The Debtors' ongoing operations depend, to a significant degree, on their relationship with the parties to whom Lease Expenses are owed. If these relationships are harmed, either through the non-payment of Lease Expenses as they become due or through the perceived difficulties of dealing with chapter 11 debtors, the Debtors will likely encounter particularized controversies with each counterparty, unnecessary costs and distractions and corresponding harm to their businesses with the possible loss of the Debtors' going concern value.

C. Payment of the Lease Expenses Is Warranted Under the Doctrine of Necessity.

22. Courts in this jurisdiction and others generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain pre-petition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that “[i]f payment of a pre-petition claim ‘is essential to the continued operation of [the debtor], payment may be authorized’”)); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding sound business justification for payment of certain pre-petition claims); *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (holding that “section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks”). When authorizing such payments, courts have relied upon several legal theories rooted in Bankruptcy Code sections 1107(a), 1108, 363(b), and 105(a).

23. Pursuant to Bankruptcy Code sections 1107(a) and 1108, a debtor-in-possession is a fiduciary charged with “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Inherent in a debtor-in-possession’s fiduciary duties is the obligation to “protect and preserve the estate, including an operating business’s going-concern value,” which, in certain instances, can be fulfilled “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* Indeed, the *CoServ* court specifically noted that the pre-plan satisfaction of pre-petition claims would be a valid exercise of the debtor’s fiduciary duty when the payment

“is the only means to effect a substantial enhancement of the estate” *Id.* Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of pre-petition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *In re Ionosphere Clubs, Inc.* 98 B.R. at 175 (finding that a sound business justification existed to pay pre-petition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying upon section 363 as a basis to allow a contractor to pay the pre-petition claims of suppliers who were potential lien claimants).

24. Courts have also authorized payment of pre-petition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Bankruptcy Code section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of pre-petition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a pre-petition obligation would trigger a withholding of services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay pre-petition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor).

25. In addition to the authority granted a debtor-in-possession under Bankruptcy Code sections 1107(a), 1108, 363(b), and 105(a), courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286, 310 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, including the United States Court of Appeals for the Third Circuit which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581–82 (3d Cir. 1981). See also *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations).

26. In *In re Lehigh & New England Ry. Co.*, the Third Circuit held that a court could authorize the payment of pre-petition claims if such payment was essential to the continued operation of the debtor. See *id.* at 581 (noting that courts may authorize payment of pre-petition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (noting that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. at 824–25 (noting that, in the Third Circuit, debtors may pay pre-petition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

27. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *In re*

Ionosphere Clubs, Inc., 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (finding that payment of pre-petition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of pre-petition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation . . .”); 2 COLLIER ON BANKRUPTCY ¶ 105.02[4][a] (16th ed. rev. 2011) (discussing cases in which courts have relied upon the doctrine of necessity or the necessity of payment rule to pay pre-petition claims immediately).

28. Here, satisfaction of the Lease Expenses is necessary to the Debtors’ successful reorganization. Failure to satisfy those commitments would have a material and devastating impact on the Debtors’ operations and would undoubtedly force the Debtors to spend significant time and resources focusing on particularized disputes with the very parties on whom they depend. If the relationships established by the Debtors with the parties that are owed the Lease Expenses are harmed, whether through non-payment or perceived difficulties of working with a chapter 11 debtor, the Debtors may be unable to secure future opportunities with those parties and other third-parties may be unwilling to engage in new business with the Debtors going forward. If that were to occur, the negative impact on the Debtors’ business, their estates and creditors would be substantial.

29. The Debtors expect to pay, and should have the funds available to pay, the Obligations in the ordinary course of business post-petition. The Debtors submit that the requested relief allows the Debtors to conduct their businesses in a manner already within the

ordinary course of business and, with respect to the Mineral and Other Interests and Marketing Obligations, does not affect property of the estates. Because the Debtors anticipate distributing payments to those parties required under the Obligations on a regular basis and because the initial payments may relate to pre-petition time periods, the Debtors request that this Court authorize the satisfaction of the Obligations out of an abundance of caution.

D. Request for Authority for Banks To Honor and Pay Checks Issued and Electronic Funds Transferred To Satisfy the Obligations

30. The Debtors request that the Court authorize all financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to satisfy the Obligations, whether such checks were presented prior to or after the Petition Date. The Debtors also seek authority to issue new post-petition checks, or effect new electronic fund transfers, on account of such claims to replace any pre-petition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

31. For a debtor to obtain relief to make pre-plan payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003—namely, the relief requested is necessary to avoid “immediate and irreparable harm.” If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely, absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re WorldSpace, Inc.*, No. 08–12412-PJW, 2008 WL 8153639, at *2 (Bankr. D. Del. Oct. 20, 2008) (granting emergency motions for post-petition financing, adequate protection, and modification of the stay where the court found that the relief was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operations of the debtors’ businesses); *In re New World Pasta Co.*,

No. 04-02817-MDF, 2004 WL 5651052, at *5 (Bankr. M.D. Pa. July 9, 2004) (same); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize). The relief sought herein is critical to preserving the Debtors’ going concern value and asset value, and interim relief is appropriate. *See also, In re First NLC Fin. Svcs., LLC*, 382 B.R. 547 (S.D. Fl. 2008).

32. Immediate and irreparable harm would result if the relief requested herein were not granted. As described above, failure to satisfy the Obligations in the ordinary course of business would severely impact the Debtors’ operations and may cause production to completely cease for certain wells.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

33. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the fourteen-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable.

DEBTORS’ RESERVATION OF RIGHTS

34. Nothing contained herein is intended or shall be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

NOTICE

35. No trustee, examiner, or creditors’ committee has been appointed in the Debtors’ chapter 11 cases. The Debtors have provided notice of this Motion to (a) the Office of the

United States Trustee for the District of Delaware, Attn: Jane Leamy, Esq.; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agents under the Debtors' pre-petition credit facilities; (d) counsel to the Ad Hoc Group of Second Lienholders; (e) counsel to the indenture trustees under the Debtors' pre-petition indentures; (f) the United States Securities and Exchange Commission; (g) the United States Internal Revenue Service; and (h) any parties entitled to notice pursuant to Local Rule 9013-1(m). In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form annexed as **Exhibit A** hereto, granting the relief requested in the Motion, (b) schedule a final hearing on the Motion within thirty days of the Petition Date or as soon as is otherwise practicable thereafter to consider entry of the Final Order substantially in the form annexed as **Exhibit B** hereto, and (c) grant such other and further relief as may be just and proper.

Wilmington, Delaware
Date: March 17, 2015

/s/ Paul N. Heath

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**PROPOSED COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION**

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , ¹)	Case No. 15-10585 ()
)	
Debtors.)	Joint Administration Requested
)	

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY OR HONOR
PRE-PETITION AND POST-PETITION ROYALTY
OBLIGATIONS, WORKING INTEREST OBLIGATIONS
AND OTHER OBLIGATIONS RELATED TO OIL AND GAS LEASES**

Upon the Motion² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of this Interim Order pursuant to Bankruptcy Code sections 105, 363 and 541 and Bankruptcy Rules 6003 and 6004 authorizing (a) the Debtors in their business judgment to (i) deliver the funds owed to the holders of Mineral and Other Interests and amounts due under the Marketing Obligations as required by the applicable leases and other agreements; and (ii) continue to satisfy and honor their Lease Expenses in the ordinary course of business, and (b) all financial institutions to honor pre-petition checks and electronic payment requests for payment of the Obligations; and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 3700, Unit 19, Fort Worth, Texas 76102.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having held a hearing to consider the relief requested in the Motion; and upon the First Day Declaration, the record of the hearing, and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to satisfy the Obligations in the ordinary course of business; *provided that* payments on account of pre-petition Obligations shall not exceed \$25.9 million pursuant to this Interim Order.
3. The Debtors are authorized, subject to the terms of any cash collateral or financing order entered by the Court, to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, provided that sufficient funds are on deposit in the applicable accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the

Debtors' designation of any particular check or electronic payment request as being approved by this Interim Order.

5. The Debtors are authorized, but not directed, to issue post-petition checks or to affect post-petition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to pre-petition amounts authorized to be paid herein.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Interim Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the pre-petition obligations sought to be paid, or the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

7. Notwithstanding the applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Interim Order shall be immediately effective and enforceable upon its entry.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

9. The Final Hearing on the Motion shall be held on _____, 2015 at ____:____ __.m. (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before seven calendar days before the Final Hearing and served on the following parties: (a) Akin Gump Strauss Hauer & Feld LLP, 1700 Pacific Avenue, Suite 4100, Dallas, TX 75201, Attn: Charles R. Gibbs, Esq. and Sarah Link Schultz, Esq., proposed counsel to the Debtors; (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Paul N. Heath, Esq., proposed Delaware counsel to the Debtors; (c) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York,

NY 10017, Attn: Steven M. Fuhrman, Esq., counsel to the First Lien Agent; (d) Latham & Watkins LLP, 885 Third Avenue, Suite 1000, New York, NY 10022, Attn: Mitchell A. Seider, Esq., counsel to the Second Lien Agent; (e) Emmet, Marvin & Martin LLP, 120 Broadway, 32nd Floor, New York, NY 10271, Attn: Edward P. Zujkowski, counsel to the Second Lien Indenture Trustee; (f) Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005, Attn: Dennis F. Dunne, Esq. and Samuel A. Khalil, Esq., counsel to the Ad Hoc Group of Second Lienholders; and (g) the Office of the United States Trustee for Region 3, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane Leamy, Esq., no later than ____:____ __.m. (prevailing Eastern Time) on _____, 2015.

10. In the event that no objections are timely received, the Court may enter the Final Order without need for the Final Hearing.

11. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Interim Order.

Wilmington, Delaware

Date: _____, 2015

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , ¹)	
)	Case No. 15-10585 ()
)	
Debtors.)	Joint Administration Requested
)	

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY OR HONOR
PRE-PETITION AND POST-PETITION ROYALTY
OBLIGATIONS, WORKING INTEREST OBLIGATIONS
AND OTHER OBLIGATIONS UNDER THE OIL AND GAS LEASES**

Upon the Motion² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of this Final Order pursuant to Bankruptcy Code sections 105, 363 and 541 and Bankruptcy Rules 6003 and 6004 authorizing (a) the Debtors in their business judgment to (i) deliver the funds owed to the holders of Mineral and Other Interests and amounts due under the Marketing Obligations as required by the applicable leases and other agreements; and (ii) continue to satisfy and honor their Lease Expenses in the ordinary course of business, and (b) all financial institutions to honor pre-petition checks and electronic payment requests for payment of the Obligations; and the Court having entered the *Interim Order Authorizing the Debtors To Pay or Honor Pre-petition and Post-petition Royalty Obligations, Working Interest Obligations and Other Obligations Under the Oil and Gas Leases* [Docket No. ___]; and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 3700, Unit 19, Fort Worth, Texas 76102.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having held the Final Hearing to consider the relief requested in the Motion; and upon the First Day Declaration, the record of the Final Hearing, and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on a final basis to the extent provided herein.
2. The relief provided in the Interim Order is approved on a final basis.
3. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to satisfy the Obligations in the ordinary course of business, *provided that* payments on account of pre-petition Obligations shall not exceed \$39.9 million during these chapter 11 cases.
4. The Debtors are authorized, subject to the terms of any cash collateral or financing order entered by the Court, to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.
5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized

to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, provided that sufficient funds are on deposit in the applicable accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Final Order.

6. The Debtors are authorized, but not directed, to issue post-petition checks or to affect post-petition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to pre-petition amounts authorized to be paid herein.

7. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Final Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the pre-petition obligations sought to be paid, or the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

9. Notwithstanding the applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Final Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Final Order.

Wilmington, Delaware

Date: _____, 2015

United States Bankruptcy Judge