

**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 (LSS)
)	
Debtors.)	Jointly Administered
)	
)	Hearing Date: October 5, 2023 at 11:00 a.m. (ET)
)	Obj. Deadline: September 14, 2023 at 4:00 p.m. (ET)

**LIQUIDATION TRUSTEE’S MOTION TO AMEND
THE LIQUIDATION TRUST AGREEMENT AND EXTEND
THE TERMINATION DATE OF THE LIQUIDATION TRUST**

Eugene I. Davis, in his capacity as the liquidation trustee (the “Liquidation Trustee”) for the KWK Liquidation Trust (the “Liquidation Trust”) established pursuant to the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors* (the “Plan”),² seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (a) amending the Liquidation Trust Agreement (as defined below) and (b) extending the termination date (the “Termination Date”) for the Liquidation Trust for one year from August 31, 2023 through and including August 31, 2024. In support of the motion, the Liquidation Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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].

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The predicates for the relief requested herein are section 105 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Sections 9.12 of the Plan, and Sections 9.1 and 10.1 of the Liquidation Trust Agreement.

BACKGROUND

A. General Background

4. 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. Throughout their chapter 11 cases, the Debtors operated their business and managed their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1. No request for the appointment of a trustee has been made in these chapter 11 cases. On March 25, 2015, the Acting United States Trustee, Region 3 (the “U.S. Trustee”) appointed the statutory committee of unsecured creditors [D.I. 119].

5. On January 27, 2016, the Court entered an order [D.I. 1095] approving the sale of substantially all of the Debtors’ U.S. assets to BlueStone Natural Resources II, LLC (“Bluestone”) for \$254 million in cash (the “Sale”). The Sale to BlueStone closed on April 6, 2016, effective as of April 1, 2016.

6. On August 16, 2016, the Court entered an order [D.I. 1633] confirming the Plan. The effective date of the Plan occurred on August 31, 2016 (the “Effective Date”). On the Effective Date, the Liquidation Trust was established pursuant to the Plan and the KWK Liquidation Trust Agreement, dated as of August 31, 2016, by and among the Debtors and the Liquidation Trustee

(the “Liquidation Trust Agreement”). Pursuant to the Plan and the Liquidation Trust Agreement, the primary purpose of the Liquidation Trust is to liquidate and administer the Liquidation Trust Assets. The duties of the Liquidation Trustee include, among other things, (a) receive, protect, and liquidate the Liquidation Trust Assets, (b) prosecute objections to, compromise and settle Disputed Claims, and (c) calculate and implement distributions of the Liquidation Trust Assets as contemplated by the Plan. See Plan Arts. 6 and 9; Trust Agreement Art. 3.

7. The Liquidation Trustee has substantially completed his duties pursuant to the Plan and Liquidation Trust Agreement and is preparing to make final distributions in these chapter 11 cases. To that end, the Liquidation Trustee has consensually resolved or objected to the remaining Disputed Claims and recently filed the *Liquidation Trustee’s Tenth Omnibus Objection (Substantive) to Certain Claims* [Docket No. 2338] (the “Final Claim Objection”). The Final Claim Objection is scheduled for a hearing on October 5, 2023 and the Liquidation Trustee expects to make final distributions and move to close the chapter 11 cases shortly after such hearing. However, the Liquidation Trustee requires the relief requested in this Motion to extend the Termination Date of the Liquidation Trust beyond the current Termination Date of August 31, 2023.

B. Prior Extensions of the Liquidation Trust Termination Date and Amendment of the Liquidation Trust Agreement

8. The Liquidation Trust Agreement provides:

The Liquidation Trust shall be dissolved, in accordance with this section and at such time as (i) all of the Liquidation Trust Assets have been distributed pursuant to the Plan and this Agreement, (ii) the KWK Trustee determines that the administration of any remaining Liquidation Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all distributions required to be made by the KWK Trustee under the Plan and this Agreement have been made; provided, however, that in no event shall the Liquidation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court determines that a

fixed period extension (*not to exceed two (2) years, including any prior extensions*) is necessary to facilitate or complete the recovery and liquidation of the Liquidation Trust Assets.

Liquidation Trust Agreement, Section 9.1 (emphasis added). As set forth above, the Liquidation Trust was established with an initial term of five years, subject extension for two years upon approval of the Court.

9. Since the Effective Date of the Plan, the Liquidation Trustee has successfully liquidated the assets of the Liquidation Trust. The time necessary to complete the liquidation process, however, was significantly longer than anticipated due to the global pandemic and its impact on the Liquidation Trustee's ability to collect a final federal tax refund in the amount of approximately \$21.4 million. The COVID-19 pandemic caused significant delays in tax return processing at the IRS and the Liquidating Trustee had to seek its first extension of the Termination Date through August 31, 2022 to prosecute a motion pursuant to Bankruptcy Code section 505 for prompt payment of the tax refund (the "Section 505 Motion"). As a result of the Section 505 Motion, the Liquidation Trustee successfully recovered the tax refund from the IRS, made distributions to the Second Lien Trust Beneficiaries in accordance with the terms of the Plan, and began the process of winding down the Liquidation Trust.

10. In August 2022, a second extension of the Termination Date was necessary as the Liquidation Trustee commenced state dissolution proceedings on behalf of the Debtors and continued addressing the final remaining Disputed Claims in the chapter 11 cases. For reasons unknown, the state dissolution has not proceeded in a timely manner and the state of Delaware has failed to remit tax credits owing to the Liquidation Trust in the approximate amount of \$90,000. However, because the Liquidation Trustee has completed its other duties and will have resolved the remaining Disputed Claims following the hearing on the Final Claim Objection, the Liquidation

Trustee intends to promptly commence final distributions and move to close the chapter 11 cases. To do so, the Liquidation Trustee seeks to amend the Liquidation Trust Agreement to permit a third one-year extension of the Termination Date, which is warranted under the circumstances.

11. Section 10.1(b) of the Liquidation Trust Agreement provides the following with respect to amendments to the Liquidation Trust Agreement:

Any substantive provision of this Agreement may be amended or waived by the KWK Trustee, subject to the prior approval of a majority of the members of the Trust Advisory Board, and upon consent of the Unsecured Advisory Group, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Agreement that would adversely affect the distributions to be made under this Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. Federal income tax status of the Liquidation Trust as two separate “liquidating trusts.”

12. The Liquidation Trustee seeks approval of the Court, with the approval of the Trust Advisory Board and consent of the Unsecured Advisory Group, to amend the Liquidation Trust Agreement to provide for a third one-year extension. The amendment is being sought for the purpose of completing final distributions and closing the chapter 11 cases. As such, the amendment will not adversely affect distributions to be made to Liquidation Trust Beneficiaries and will instead facilitate final distributions and dissolving the Liquidation Trust.

RELIEF REQUESTED

13. By this Motion, the Liquidation Trustee seeks an order (a) amending the Liquidation Trust Agreement and (b) extending the Termination Date of the Liquidation Trust for one year from August 31, 2023, through and including August 31, 2024.³

³ Pursuant to Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the filing of this motion prior to the expiration of the Termination Date automatically extends such period until such time as the Court rules on this Motion. See Del. Bankr. L.R. 9006-2

BASIS FOR RELIEF

14. As stated above, the Liquidation Trust Agreement authorizes the Liquidation Trustee to seek an order of the Court amending the Liquidation Trust Agreement and extending the Termination Date of the Liquidation Trust. See Trust Agreement Art. 9, 10. In addition, Bankruptcy Rule 9006(b)(1) provides that “when an act is required or allowed to be done at or within a specified period . . . by order of the court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed”

15. In addition, Bankruptcy Code section 105(a) provides that: “[t]he court may issue any order or process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) has been interpreted to expressly empower bankruptcy courts with broad equitable powers to “craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.” *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (en banc). Although not limitless, this section has also been construed to give bankruptcy courts authority to provide equitable relief appropriate to assure the orderly conduct of bankruptcy proceedings. *See, e.g., In re Combustion Engineering, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004); *see also Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934) (“[C]ourts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity.”).

16. The requested relief in this Motion will allow the Liquidation Trustee to complete his duties under the Liquidation Trust Agreement. The Liquidation Trustee is preparing to make final distributions and file a motion for final decree closing the chapter 11 cases shortly after the hearing on this motion and the Final Claim Objection. An extension of one year is

warranted under the circumstances because, although the Liquidation Trustee intends to commence final distributions within two months of the current Termination Date, it is possible that undeliverable distributions and/or uncashed checks may be outstanding for as long as six months pursuant to the terms of the Plan and Liquidation Trust Agreement.

17. Further, the rights of any other party or beneficiary of the Liquidation Trust will not be prejudiced by the requested extension. The extension sought is not for delay, but to ensure that the Liquidation Trust is properly and timely administered.

18. Courts in this district have granted similar relief to that requested herein in other chapter 11 cases. *See, e.g., In re Physiotherapy Holdings, Inc.*, Case No. 13-12965 (KG) (Bankr. D. Del. Dec. 6, 2018) [Docket No. 566] (granting three-year extension of post-confirmation litigation trust); *In re Evergreen Solar, Inc.*, Case No. 11-12590 (MFW) (Bankr. D. Del. Jan. 4, 2016) [Docket No. 1272] (granting extension of one year for termination date of liquidating trust); *In re IMMC Liquidating Estate*, Case No. 08-11178 (KJC) (Bankr. D. Del. June 23, 2014) [Docket No. 614] (granting extension of one year for termination date of liquidating trust); *In re Advanta Corp.*, Case No. 09-13931 (KJC) (Bankr. D. Del. Feb. 20, 2014) [Docket No. 1605] (granting extension of 18 months for termination date of liquidating trust).

NO PRIOR REQUEST

19. No prior request for the relief sought herein has been made by the Liquidation Trustee to this or any other court.

NOTICE

20. The Liquidation Trustee will provide notice of this motion to (a) the U.S. Trustee, Attn.: Jane Leamy, Esq.; (b) members of the Trust Advisory Board; (c) members of the Unsecured Advisory Group; and (d) any parties entitled to notice pursuant to Local Rule 2002-1(b).

In view of the nature of the relief requested in this motion, the Liquidation Trustee respectfully submits that no further notice is necessary.

CONCLUSION

WHEREFORE, the Liquidation Trustee respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, (a) amending the Liquidation Trust Agreement and (b) extending the Termination Date of the Liquidation Trust through and including August 31, 2024, and (c) granting such other and further relief as the Court deems just and proper.

Wilmington, Delaware
Date: August 31, 2023

/s/ Amanda R. Steele

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COUNSEL FOR LIQUIDATION TRUSTEE

Selber Silverstein at the Bankruptcy Court, 824 N. Market Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801 on **October 5, 2023 at 11:00 a.m. (ET)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Date: August 31, 2023
Wilmington, Delaware

/s/ Amanda R. Steele

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COUNSEL FOR LIQUIDATION TRUSTEE

EXHIBIT A

Proposed 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 (LSS)
)	
Debtors.)	Jointly Administered
)	
)	Re: Docket No. _____
)	

**ORDER GRANTING MOTION OF THE LIQUIDATION
TRUSTEE TO AMEND THE LIQUIDATION TRUST AGREEMENT
AND EXTEND THE TERMINATION DATE OF THE LIQUIDATION TRUST**

Upon consideration of the motion (the “Motion”)² of the Liquidation Trustee on behalf of the estates of the above-captioned debtor and its subsidiaries (the “Debtors”), for entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, (a) amending the Liquidation Trust Agreement the and (b) extending Termination Date for the Liquidation Trust through and including August 31, 2024, and the Court having jurisdiction to consider the 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 found and determined

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].

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Plan, as applicable.

that the relief sought in the Motion is in the best interests of the Debtors' 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 after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED:

1. The Motion is granted to the extent provided herein.
2. The first sentence of Section 9.1 of the Liquidation Trust Agreement is amended as

follows:

The Liquidation Trust shall be dissolved, in accordance with this section and at such time as (i) all of the Liquidation Trust Assets have been distributed pursuant to the Plan and this Agreement, (ii) the KWK Trustee determines that the administration of any remaining Liquidation Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all distributions required to be made by the KWK Trustee under the Plan and this Agreement have been made; provided, however, that in no event shall the Liquidation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (**not to exceed three (3) years, including any prior extensions**) is necessary to facilitate or complete the recovery and liquidation of the Liquidation Trust Assets.

3. The Termination Date for the Liquidation Trust is extended through and including August 31, 2024.
4. This Court shall retain jurisdiction over all matters arising from or related to the implementation and interpretation of this Order.