

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
Barrow Shaver Resources Company LLC ¹	§	Case No. 24-33353
	§	
	§	
Debtor.	§	

**EMERGENCY MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO PAY OR
APPLY PAYMENTS ATTRIBUTABLE TO MINERAL INTERESTS IN
THE ORDINARY COURSE AND (II) GRANTING RELATED RELIEF**

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 4:00 P.M. (PREVAILING CENTRAL TIME) ON AUGUST 20, 2024. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 20, 2024 AT 4:00 P.M. (PREVAILING CENTRAL TIME) IN COURTROOM 400, 515 RUSK, HOUSTON, TEXAS 77002. PARTICIPATION AT THE HEARING WILL ONLY BE PERMITTED BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 832-917-1510. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE PEREZ'S CONFERENCE ROOM NUMBER IS 282694. VIDEO COMMUNICATION WILL BE BY USE OF THE GOTOMEETING PLATFORM. CONNECT VIA THE FREE GOTOMEETING APPLICATION OR CLICK THE LINK ON JUDGE PEREZ'S HOME PAGE. THE MEETING CODE IS "JUDGEPEREZ". CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND

¹ The last four digits of the Debtor's federal tax identification number are 0510. The Debtor's corporate headquarters is located at 977 Pruitt Place, Tyler, TX 75703.

ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF BOTH ELECTRONIC AND IN-PERSON HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE “ELECTRONIC APPEARANCE” LINK ON JUDGE PEREZ’S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS, AND CLICK “SUBMIT” TO COMPLETE YOUR APPEARANCE.

Barrow Shaver Resources Company LLC (“**BSR**” or the “**Debtor**”), debtor and debtor-in-possession in the above captioned chapter 11 case (the “**Bankruptcy Case**”), hereby files this *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay or Apply Payments Attributable to Mineral Interests in the Ordinary Course and (II) Granting Related Relief* (the “**Motion**”). In support of the Motion, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT²

1. On August 19, 2024, James A. Katchadurian assumed operational and financial control of the Debtor as Chief Restructuring Officer (in such capacity, “**CRO**”). Such appointment was precipitated by an involuntary bankruptcy petition (the “**Involuntary Petition**”) filed against the Debtor on July 23, 2024 (the “**Involuntary Petition Date**”) and a subsequent investigation overseen by Mr. Katchadurian (the Debtor’s “**Investigation**”), which is further described in the First Day Declaration. The Investigation remains ongoing.

2. As further described in the First Day Declaration, the Debtor is an independent oil and natural gas company focused on the exploration, development, production and acquisition of crude oil and natural gas from properties in Southeast, East, and West Texas. The Debtor is, further, the lessee under certain oil and gas leases and operator under certain joint operating

² Capitalized terms used in this *Preliminary Statement* and the *Relief Requested* sections of this Motion are defined elsewhere in this Motion or, as appropriate, shall have the meanings ascribed to such terms in the *Declaration of James A. Katchadurian in Support of Chapter 11 Petition and First Day Pleadings* (the “**First Day Declaration**”) that is being filed contemporaneously herewith.

agreements pertaining to oil and gas operations in the Hidden Rock Field in and around Cass County, Texas (such operations being the “**Hidden Rock Operations**”). The Debtor is also the lessee and operator under certain oil and gas operations associated with fields other than the Hidden Rock Field (such operations being the “**Legacy Operations**” and together with the Hidden Rock Operations, the “**Total Operations**”).

3. As further discussed herein and in the First Day Declaration, the Debtor’s Total Operations involve a number of mineral interests (collectively the “**Mineral Interests**”, each a “**Mineral Interest**”, and each holder of the same being a “**Mineral Interest Holder**”). As used herein, the term Mineral Interests collectively refers to (i) traditional royalty interests as reserved in the applicable oil and gas lease (each a “**Royalty Interest**” and each holder of the same being a “**Royalty Interest Holder**”), (ii) overriding royalty interests (each an “**ORRI**” and each holder of the same being an “**ORRI Holder**”), and (iii) working interests (each a “**Working Interest**” and each holder of the same being a “**Working Interest Holder**”). A key distinction exists between Royalty Interests and ORRIs, on the one hand, and Working Interests, on the other, is that Royalty Interests and ORRIs are non-cost bearing interests while Working Interests are cost-bearing. Holders of Working Interests pay their proportionate share of costs through monthly joint interest billings (or “**JIBs**”).

4. The Debtor’s ongoing Investigation has revealed a fundamental issue (for purposes of this Motion, the “**Mineral Interest Title Issue**”) specifically affecting Working Interests and ORRIs conveyed in connection with the Hidden Rock Operations—namely, that, in certain instances, conveyances from the Debtor’s leasehold interest were either (i) not properly documented and/or (ii) not properly recorded.

5. At this juncture, the Debtor understands that the Mineral Interest Title Issue only affects Working Interests and ORRIs conveyed in connection with the Hidden Rock Operations. While the Investigation is ongoing, the Debtor understands that the Mineral Interest Title Issue does not affect any Royalty Interests (whether pertaining to Hidden Rock Operations or Legacy Operations). The Debtor also understands that the Mineral Interest Title Issue does not affect ORRIs or Working Interests pertaining to the Debtor's Legacy Operations.

6. What is more, the Debtor's ongoing investigation has revealed that a number of purported insiders of the Debtor have received ORRIs and/or have not been paying their JIBs prior to the appointment of Mr. Katchadurian as CRO. To put it plainly, the Debtor does not intend to make payments to insiders unless and until it is comfortable that such amounts are justified.³ However, the Debtor has relied on and will continue to rely on certain key employees to run the Debtor's business. As such, the Debtor is in the process of structuring and formulating (i) a key employee incentive program (a "KEIP") and, (ii) as appropriate and as permissible under the Bankruptcy Code,⁴ a key employee retention program (a "KERP") in order to support the Debtor's restructuring efforts. Such KEIP and/or KERP shall be the subject of a future motion by the Debtor.⁵

7. As it relates to this Motion, however, the Mineral Interest Title Issue—especially against the background of the filing of the Involuntary Petition—has created several landmines for the Debtor to navigate while seeking relief under the Bankruptcy Code. Complicating the Debtor's path further, Plains Marketing, L.P. ("Plains") filed a Complaint for Interpleader (such

³ As the late Judge Friendly once commented, "[t]he conduct of bankruptcy proceedings not only should be right but must seem right." *See In re Ira Haupt & Co.*, 361 F.2d 164, 168 (2d Cir. 1966). The Debtor further reserves all rights regarding prior payments to purported insiders.

⁴ *See* 11 U.S.C. § 503(c).

⁵ Even more, this Motion seeks that relief initially be granted on an interim basis so that any Official Committee of Unsecured Creditors (a "Committee") appointed in this Bankruptcy Case may be heard on the issues raised by this Motion.

interpleader action being the “**Interpleader**”)⁶ on August 17, 2024 alleging that Force Pressure Control, LLC (“**Force**”) and Axis Energy Services, LLC (“**Axis**”) served notices of liens in the amount of \$2,506,506.81 (the “**Withheld Funds**”) on Plains in May and June 2024 thereby causing Plains to deduct the Withheld Funds from certain revenue payments owed to the Debtor. The Debtor reserves all rights regarding the Interpleader but, for purposes of this Motion, the Interpleader—if not resolved quickly—could hinder the Debtor’s ability to remit revenue distributions to Working Interest Holders and/or make payments to ORRI Holders.

8. Addressing the Mineral Interest Title Issue and the potential insider issues will be threshold issues in the Debtor’s bankruptcy case. For purposes of this Motion, however, the Debtor seeks relief narrowly tailored to preserve the estate’s going concern value.

RELIEF REQUESTED

9. By this Motion, the Debtor hereby seeks entry of (i) an interim order (substantially in the form attached hereto, an “**Interim Order**”) and (ii) a final order (a form of which shall be filed with the Bankruptcy Court prior to any final hearing on this Motion, the “**Final Order**” and collectively with the Interim Order, the “**Orders**”), authorizing but not directing the Debtor:

- a. to pay, in the ordinary course of business and in the Debtor’s discretion and business judgment, any payment attributable to a **Royalty Interest**, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period;
- b. subject to the Interim Order Limitation (as defined and further described below), to pay, in the ordinary course of business and in the Debtor’s discretion and business judgment, any payment attributable to an **ORRI**,

⁶ The Interpleader is captioned as *Plains Marketing, L.P. v. Barrows Shaver Resources Company, LLC, Force Pressure Control, LLC, and Axis Energy Services, LLC*, Adv. No. 24-03167.

whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period;

- c. subject to the Interim Order Limitation (as defined and further described below), to pay, distribute, or apply against any outstanding JIBs, in the ordinary course of business and in the Debtor's discretion and business judgment, any revenue attributable to a **Working Interest** whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

10. Unless and until the entry of the Final Order, the Debtor respectfully submits that the following limitation (the "**Interim Order Limitation**")⁷ should apply in the Interim Order—no payment shall be made on account of an ORRI and/or a Working Interest to any potential insider of the Debtor (such persons or entities being, the "**Restricted Persons**" and each a "**Restricted Person**").

JURISDICTION AND VENUE

11. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution.

12. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent

⁷ The Debtor intends to address what limitations are appropriate in the Final Order after conferring with other parties in interest and with a Committee (if appointed).

of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

13. The bases for the relief requested herein are sections 105(a) and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Bankruptcy Rules 6003 and 6004, Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

A. Procedural Background

14. On July 23, 2024 (the “**Involuntary Petition Date**”), Axis Energy Services, LLC, DOC Energy Services, Inc., Cudd Pressure Control, Inc., Thru Tubing Solutions, Inc., Genesis Fluids, LLC, and Force Pressure Control, LLC (collectively, the “**Petitioning Creditors**”) filed an involuntary petition (the “**Involuntary Petition**”) under chapter 7 of the Bankruptcy Code. The basis for the Involuntary Petition was outstanding trade claims owed to the Petitioning Creditors in the total amount of \$8,454,981.01.

15. On August 19, 2024 (the “**Voluntary Petition Date**”), the Debtor consented to an order for relief under chapter 11 by filing its voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. During the period between the Involuntary Petition Date and the Voluntary Petition Date (the “**Gap Period**”), the Debtor operated its business in the ordinary course of business pursuant to section 303(f) of the Bankruptcy Code. The Debtor continues to manage and operate its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Bankruptcy Case, and no committees have been appointed.

16. The Debtor is an independent oil and natural gas company focused on the exploration, development, production, and acquisition of crude oil and natural gas from properties in Southeast Texas, East Texas, and West Texas.

17. Additional information on the Debtor, its business, and events leading up to the Bankruptcy Case can be found in the First Day Declaration, which was filed concurrently herewith and is incorporated herein by reference.

B. The Debtor's Operations and the Preliminary Findings of the Investigation

18. As further described in the First Day Declaration and as mentioned above, the Debtor's operations are composed of the Hidden Rock Operations and the Legacy Operations (collectively, the Total Operations).

(i) Mineral Interest Obligations Pertaining to the Debtor's Total Operations

19. In connection with the Total Operations, the Debtor is obligated under the applicable oil and gas leases to make certain royalty payments to Royalty Interests Holders. Such obligations are pursuant to obligations contained and reserved under the oil and gas leases pursuant to which the Debtor is the lessee. In total, the Debtor has paid an average of \$890,027 per month to Royalty Interest Holders over the past twelve months with a range of \$549,387 to \$1,461,369 per month. This Motion requests that these payments continue, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

20. In connection with the Total Operations, the Debtor is obligated under certain conveyance documents—but subject to the Mineral Interest Title Issue discussed herein—to make certain royalty payments to ORRI Holders. In total, the Debtor has paid an average of \$369,503 per month to ORRI Holders over the past twelve months with a range of \$242,623 to \$551,486 per month. This Motion requests authority to make these payments on a going forward basis, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

21. In connection with the Total Operations, the Debtor is obligated under certain conveyance documents—but subject to the Mineral Interest Title Issue discussed herein—to make certain payments to Working Interest Holders. In total, the Debtor has paid an average of \$3,620,754 per month to Working Interest Holders over the past twelve months with a range of \$2,382,603 to \$5,430,583 per month. This Motion requests authority to make these payments on a going forward basis, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

22. As it relates to Total Operations, the Debtor understands that no payments were made pertaining to Working Interests during the Gap Period.

23. JIBs are generally current across Total Operations, except that certain insiders appear to have failed to pay their JIBs. At this juncture, the Debtor understands that this nonpayment issue appears to be isolated to Hidden Rock Operations (as discussed further below).

(ii) Mineral Interest Obligations Pertaining to the Hidden Rock Operations

24. As discussed above, the Debtor's approach to Mineral Interest Holders with obligations stemming from the Hidden Rock Operations is complicated by the Mineral Interest Title Issue. The Debtor's internal record keeping and division orders indicate that the Debtor has purported to convey a number of ORRIs and Working Interests, the conveyances of which were never recorded and, in some instances, were not properly documented. To be sure, the Debtor understands that the Mineral Interest Title Issue does not affect Royalty Interests pertaining to the Hidden Rock Operations.

25. Given the recent appointment of the CRO, the Debtor has not yet been able to perform a conveyance-by-conveyance assessment of the Mineral Interest Title Issue.

26. Against this background, the Debtor has operated the oil and gas leases and the applicable wells in the Hidden Rock Field for a number of years and the various Working Interest Holders have relied on their assertion of title. Upon information and belief, the Working Interest Holders received revenue distributions and, in most cases, paid JIBs. Likewise, the ORRI Holders, upon information and belief, provided services to the Debtors in exchange for their ORRIs.

27. In connection with the Hidden Rock Operations, the Debtor is obligated under the applicable oil and gas leases to make certain royalty payments to Royalty Interests Holders. Such obligations are pursuant to obligations contained and reserved under the oil and gas leases pursuant to which the Debtor is the lessee and thus are not affected by the Mineral Interest Title Issue. Regarding the Hidden Rock Operations only, the Debtor has paid an average of \$849,970 per month to Royalty Interest Holders over the past twelve months with a range of \$533,140 to \$1,417,159 per month. This Motion requests that these payments continue, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

28. In connection with the Hidden Rock Operations, the Debtor is obligated under certain conveyance documents—but subject to the Mineral Interest Title Issue discussed herein—to make certain royalty payments to ORRI Holders. In connection with the Hidden Rock Operations, the Debtor has paid an average of \$332,916 per month to ORRI Holders over the past twelve months with a range of \$231,811 to \$519,317 per month. This Motion requests authority to make these payments on a going forward basis, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

29. In connection with the Hidden Rock Operations, the Debtor is obligated under certain conveyance documents—but subject to the Mineral Interest Title Issue discussed herein—to make certain payments to Working Interest Holders. In connection with the Hidden Rock

Operations, the Debtor has paid an average of \$3,341,676 per month to Working Interest Holders over the past twelve months with a range of \$2,204,162 to \$5,155,448 per month. This Motion requests authority to make these payments on a going forward basis, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period.

30. As referenced above, the Debtor understands—based on the ongoing Investigation—that a number of potential insiders has failed to pay their outstanding JIBs associated with the Hidden Rock Operations. By this Motion, the Debtor seeks authority to apply these JIBs to any further revenue distributions. Moreover, pursuant to Interim Order Limitation, the Debtor shall not make a payment to any Restricted Person on account of an ORRI and/or a Working Interest pursuant to the Interim Order.

BASIS FOR RELIEF

31. By this Motion, the Debtor requests authority (but not direction) to make and apply payments pertaining to the Mineral Interests (i.e., Royalty Interests, ORRIs, and Working Interests). Authority to make such payments that pertain to the Debtor's Legacy Operations and that pertain to Royalty Interests should be granted without reservation as the Debtor understands that such interests are not affected by the Mineral Interest Title Issue. Moreover (and as further discussed below), such interests are generally treated as real interests in property under applicable Texas law. The Debtor's failure to make such payments could lead to loss of leases, in the case of payments owed on Royalty Interests, and/or material administrative claims.

32. Yet this Motion must also address payments pertaining to interests that may be affected by the Mineral Interest Title Issue. In such regard, this Motion takes a measured approach. At this juncture (and given the recent appointment of the CRO), the Debtor—facing material liquidity issues that have been further exasperated by the filing of the Interpleader and the withholding of the \$2,506,506.81 in Withheld Funds—simply is not in a position to litigate the

plethora of legal issues that will surely emanate from the Mineral Interest Title Issue. The Debtor is hopeful that these issues may be resolved on a consensual basis, in consultation with a Committee, in connection with the confirmation of a chapter 11 plan or, as appropriate, through compromises reviewed and approved by this Court pursuant to Bankruptcy Rule 9019. *See Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. by & Through Mabey (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 354 (5th Cir. 1997) (“[C]ompromises are a normal part of the process of reorganization, oftentimes desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated, and costly.” (internal quotation omitted)). The Debtor is hopeful that it can resolve such issues consensually but, if necessary, through litigation.

A. Absent the Mineral Interest Title Issue, the Mineral Interests Would Likely Not be Treated as Property of the Estate

33. The filing of bankruptcy does not create or define rights in property. *E.g., Salisbury v. Ameritrust Tex, N.A. (In re Bishop College)*, 151 B.R. 394, 398 (Bankr. N.D. Tex. 1993). Instead, such rights and interests are to be determined by state law or applicable non-bankruptcy law. *Butner v. United States*, 440 U.S. 48, 54-55 (1979); *Patterson v. Shumate*, 504 U.S. 753, 758 (1992). In this case, the Mineral Interests are located in Texas. As such, they are governed by Texas law.

34. “In Texas, a working interest owner as a lessee under an oil and gas lease is granted the right to possess all of the oil, gas, and other minerals underlying the leased estate, subject to the payment of royalties to the lessor.” *PBEX II, LLC v. Dorchester Minerals, L.P.*, 670 S.W.3d 374, 381 (Tex. App.—Amarillo 2023, pet. filed). On the other hand, a royalty interest—including an overriding royalty interest—is “an interest in oil and gas produced at the surface, free of the expenses of production.” *Alamo Nat’l Bank v. Hurd*, 485 S.W.2d 335, 339 (Tex. Civ. App. 1972) (quoting 1 WILLIAMS & MEYERS, OIL AND GAS LAW § 418.1 (2024)).

35. Texas ascribes to an “ownership in place” approach to mineral interests. *See Stephens Cty. v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 167, 254 S.W. 290, 292 (1923) (“We do not regard it as an open question in this State that gas and oil in place are minerals and realty, subject to ownership, severance and sale, while embedded in the sands or rocks beneath the earth's surface, in like manner and to the same extent as is coal or any other solid mineral.”); 1 WILLIAMS & MEYERS, OIL AND GAS LAW § 203 (2024) (collecting cases).

36. Accordingly, working interests and royalty interests are generally considered to be interests in real property in Texas. *Wolfe v. Devon Energy Prod. Co., LP*, 382 S.W.3d 434, 445 (Tex. App.—Waco 2012, pet. denied) (“Interests in oil and gas rights—such as working interests and royalty interests in oil and gas leases—are considered interests in real property.”); *PBEX II, LLC v. Dorchester Minerals, L.P.*, 670 S.W.3d 374, 381 (holding that working interests are interests in real property and subject to adverse possession); *Exxon Corp. v. Breezvale Ltd.*, 82 S.W.3d 429, 436 (Tex. App.—Dallas 2002, pet. denied) (holding that “[u]nder Texas law, a conveyance of a working interest in oil and gas is a real property interest that subjects the agreement conveying the interest to the statute of frauds.”); *cf. In re Topco, Inc.*, 894 F.2d 727, 739 n.17 (5th Cir. 1990) (recognizing that, in Texas, an oil and gas lease conveys interests in real property); *Terry Oilfield Supply Co., Inc. v. Am. Sec. Bank, N.A.*, 195 B.R. 66, 70 (S.D. Tex. 1996) (same).

37. The Debtor’s estate succeeds to no more interest than the Debtor had on the Involuntary Petition Date and the estates takes its interest subject to any conditions or burdens existing thereon, that is, cum onere.⁸ Absent the previously-described Mineral Interest Title Issue,

⁸ *See Bd. of Trade v. Johnson*, 264 U.S. 1, 13 (1924) (sale of seat on board of trade could only be made in accordance with the rules of the exchange); *In re Magness*, 972 F.2d 689, 696 (6th Cir. 1992) (chapter 7 trustee could not assume and assign country club membership in violation of rules of the club regarding transfer of memberships).

it is clear that the Mineral Interest Holders would claim that the Mineral Interests belong to the Mineral Interest Holders and, thus, are not property of the Debtor's estate.

B. Authorizing (But Not Directing) the Debtor to Make Payments Attributable to the Working Interests is Necessary to Preserve the Debtor's Going Concern Value

38. The relief sought in this Motion, however, is being sought against the background of the Mineral Interest Title Issue—namely, that, in many cases (as discussed throughout this Motion), any conveyances from the Debtor's original leasehold interest either (i) were not properly documented and/or (ii) not properly recorded.

39. The implications of the Mineral Interest Title Issue are not yet clear. On the one hand, Mineral Interest Holders may take the position that, at most, the Debtor holds bare legal title while the Mineral Interest Holders hold equitable title. Property in which a debtor holds only bare legal title is not property of the estate, and Courts have held that a debtor should turn such property over to its owners. *See* 11 U.S.C. § 541(d); *see also, e.g., In re MCZ, Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) (“Where Debtor merely holds bare legal title to property as agent or bailee for another, Debtor's bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner.”); *Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not ‘property of the estate.’”) (internal citation omitted); *see also United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n. 10 (1983) (noting that “Congress plainly excluded property of others held by the debtor at the trust at the time of the filing of the petition” from the bankruptcy estate) (internal citations omitted)).

40. On the other hand, Texas courts have held that, “[u]nder Texas law, a conveyance of a working interest in oil and gas is a real property interest that subjects the agreement conveying the interest to the statute of frauds.” *E.g., Exxon Corp. v. Breezvale Ltd.*, 82 S.W.3d 429, 436)

(Tex. App.—Dallas 2002, pet. denied). The initial findings from the Investigation indicate that a substantial majority of the conveyances supporting the Mineral Interests would likely fail to satisfy the statute of frauds. However, the Investigation is only in its infancy and is ongoing.

41. Likewise, a Texas appeals court has recently held that the holder of an unrecorded working interest could obtain title through adverse possession. *PBEX II, LLC v. Dorchester Minerals, L.P.*, 670 S.W.3d 374, 381 (Tex. App.—Amarillo 2023, pet. granted).⁹ However, the requisite time period for obtaining a working interest is 25 years. *Id.* at 391 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 16.027). Based on the Investigation, the Debtor understands that none of the Mineral Interest Holders have held their Mineral Interest for at least 25 years as required to support a claim for adverse possession. *Id.*

42. Put simply, if the relief granted herein is not granted, the Debtor would be immediately thrust into litigation on the issues pertaining to the Mineral Interest Title Issue. In the Debtor’s business judgment, it is necessary to allow the Debtor to pay certain of the Mineral Interest Holders in accordance with the expectations implicit in the Debtor’s prior business practices and to, likewise, authorize the Debtor to offset any unpaid joint interest billings.

43. Courts have recognized the payment of obligations, even prepetition claims, may be appropriate where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 487 (Bankr. N.D. Tex. 2002); (“Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *cf. In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of pre-

⁹ The case is currently under review before the Texas Supreme Court under the caption, *PBEX II et al. v. Dorchester Minerals, L.P.*, Case No. 23-0423.

petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

44. What is more, failure to make the payments associated with the Mineral Interests could cause Mineral Interest Holders to allege that the failure to make such payments results in the automatic termination of the underlying leases and/or a reversion of the rights to the lessor or could create exorbitant administrative expenses depending on the results of any litigation stemming from the Mineral Interest Title Issue.

C. The Relief Requested by this Motion Includes Appropriate Safeguards

45. Recognizing the sensitivities pertaining to this Motion and, also, in observing the circumstances that led to the filing of the Involuntary Petition—the Debtor has narrowly tailored the relief sought in this Motion. First, as previously mentioned, the Debtor has appointed James Katchadurian as CRO effective as of August 19, 2024. In his capacity as CRO, Mr. Katchadurian has been vested with all decision-making authority concerning the operational and financial control of the Debtor.

46. Second, this Motion seeks to authorize (but not direct) the Debtor to make payments attributable to Mineral Interests. Moreover, this Motion seeks authority for the Debtor to apply any unpaid JIBs to the accounts of Working Interest Holders when revenue is disbursed. Put simply, if a Working Interest Holder has not been paying its JIBs, such Working Interest Holder will not receive a revenue distribution.

47. Finally, the Proposed Order includes a specific limitation on the ability of an insider (or as referenced herein, a Restricted Person) from receiving a payment on account of a Royalty Interest and/or a Working Interest until entry of the Final Order.

EMERGENCY CONSIDERATION

48. Pursuant to Local Rule 9013-1(i), the Debtor respectfully requests emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” The Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and the success of the Bankruptcy Case. As discussed in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. Failure to receive the applicable relief during the first twenty-one (21) days of the Bankruptcy Case may cause Mineral Interest Holders to immediately resort to litigation based on an understanding that the Debtor lacks authority to make payments attributable to the Mineral Interests. Finally, the Debtor’s cash management depends on the regular payment of JIBs. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 as well as the requirements of Local Rule 9013-1(i) and, therefore, respectfully requests that the Court approve the relief requested in this Motion on an emergency basis.

BANKRUPTCY RULES 6004(A) AND 6004(H) SHOULD BE WAIVED

49. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtor requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtor requests in this Motion is immediately necessary in order for the Debtor to be able to continue to operate its business and preserve the value of its estate. The Debtor respectfully requests that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

50. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtor, the existence of any lien against the Debtor's properties, or the existence of any obligation on the part of the Debtor; (b) a waiver of the Debtor's rights to dispute any claim, lien, or obligation on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 365 of the Bankruptcy Code; or (f) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Orders once entered. Nothing contained in the Orders shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

51. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the parties included on the Debtor's list of the holders of the 30 largest unsecured claims against the Debtor; (c) the Utility Companies; (d) the United States Attorney's Office for the Southern District of Texas; (e) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtor conducts business; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no other or further notice is required or needed under the circumstances.

52. A copy of this Motion is available on (i) the Court's website: www.txs.uscourts.gov, and (ii) the website maintained by the Debtor's proposed Claims and Noticing Agent, Kroll Restructuring Administration LLC.

WHEREFORE, the Debtor respectfully requests that the Court enter the proposed Orders, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 19, 2024

Respectfully Submitted,

/s/ Sean T. Wilson

Joseph E. Bain (TX Bar No. 24085187)
Mark A. Mintz (SDTX No. 1140193)
Sean T. Wilson (TX Bar No. 24077962)
Olivia K. Greenberg (TX Bar No. 24127683)
Elizabeth De Leon (TX Bar No. 24127215)

JONES WALKER LLP

811 Main Street, Suite 2900

Houston, Texas 77002

Telephone: (713) 437-1800

Facsimile: (713) 437-1810

Email: jbain@joneswalker.com

mmintz@joneswalker.com

swilson@joneswalker.com

ogreenberg@joneswalker.com

edeleon@joneswalker.com

*Proposed Counsel to the Debtor and Debtor-
in-Possession*

CERTIFICATE OF SERVICE

I certify that on August 19, 2024, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Sean T. Wilson

Sean T. Wilson

CERTIFICATE OF ACCURACY

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Local Rule 9013-1(i).

/s/ Sean T. Wilson

Sean T. Wilson

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
Barrow Shaver Resources Company LLC ¹⁰	§	Case No. 24-33353
	§	
	§	
Debtor.	§	

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO PAY OR APPLY
PAYMENTS ATTRIBUTABLE TO MINERAL INTERESTS
IN THE ORDINARY COURSE AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)¹¹ of the Debtor for entry of an interim order (this “**Interim Order**”) authorizing but not directing the Debtor to pay or apply, in the ordinary course of business and in the Debtor’s discretion and business judgment, any payment attributable to a Mineral Interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry this Interim Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Interim Order; **IT IS HEREBY ORDERED THAT:**

¹⁰ The last four digits of the Debtor’s federal tax identification number are 0510. The Debtor’s corporate headquarters is located at 977 Pruitt Place, Tyler, TX 75703.

¹¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1. A final hearing (the “**Final Hearing**”) on the Motion shall be held on _____, 2024 at _____ (prevailing Central Time). Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m. (prevailing Central Time) on _____, 2024. In the event that no objections to entry of the final order on the Motion are timely received, the Court may enter a final order (such order being the “**Final Order**”) on the Motion without a Final Hearing.

2. Any payments actually made by the Debtor pursuant to this Interim Order (such payments being the “**Authorized Payments**” and each an “**Authorized Payment**”) are deemed authorized pursuant to section 549 and may not otherwise be avoided pursuant to the Bankruptcy Code; *provided that*, any Authorized Payment may be avoided if (i) such Authorized Payment is made under false pretenses and/or (ii) such Authorized Payment is made to an insider as such term is defined pursuant to section 101(31) of the Bankruptcy Code; *provided further that (and for the avoidance of doubt)*, this paragraph shall not apply to any payment actually made during the Gap Period].

3. The Debtor is authorized, but not directed to pay, in the ordinary course of business and in the Debtor’s discretion and business judgment, any payment attributable to a Royalty Interest, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period in an aggregate amount up to \$2.2 million.

4. Subject to paragraphs 6 of this Interim Order, the Debtor is authorized, but not directed to pay, in the ordinary course of business and in the Debtor’s discretion and business judgment, any payment attributable to an ORRI, whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period in an aggregate amount up to \$1.1 million.

5. Subject to paragraphs 6 of this Interim Order, the Debtor is authorized, but not directed to pay, distribute, or apply against any outstanding JIBs, in the ordinary course of business and in the Debtor's discretion and business judgment, any revenue attributable to a Working Interest whether such amounts accrued before or after the Involuntary Petition Date or during the Gap Period. Pursuant to this Interim Order, the Debtor shall not pay or distribute in an aggregate amount up to \$4.4 million under this paragraph. The Debtor is further authorized, but not directed, to setoff any disbursement pertaining to a Working Interest against joint interest billings pursuant to agreement or applicable law in the ordinary course of business, and the automatic stay under section 362 of the Bankruptcy Code is modified accordingly. Notwithstanding the foregoing language in this paragraph, nothing in this Interim Order authorized the Debtor to setoff any disbursement in contravention of the applicable operating agreements or applicable law and no rights of third-party Working Interest Holders are waived, modified, or affected by this paragraph.

6. Subject to further order from the Court and entry of the Final Order, (a) no payment shall be made on account of an ORRI and/or a Working Interest to any Restricted Person; and (b) as circumstances warrant and solely within its discretion, the Debtor shall be authorized to add or delete any entity or person to the Restricted Person Schedule by filing a notice regarding the same to the Court's docket.

7. All banks and other financial institutions are authorized to receive, process, honor, and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtor related to payments authorized by this Interim Order, regardless of whether the checks presented or fund transfer requests were submitted before or after the Involuntary Petition Date to the extent that funds are available in the Debtors' accounts to cover the checks or fund transfers. Banks and other financial institutions may rely on the representations of the Debtor with respect

to whether any check, item or other payment order drawn or issued by the Debtor prior to the Involuntary Petition Date should be honored pursuant to this or any other order of this Court, and such bank or financial institutions shall not have any liability to any party for relying on such representations by the Debtor as provided herein. For the avoidance of doubt, checks issued to Royalty Interest Holders, ORRI Holders, and/or Working Interest Holders prior to the Involuntary Petition Date may be honored in accordance with the Debtor's instruction.

8. The Debtor is authorized to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests in respect of the payments authorized by this Interim Order that are dishonored or rejected as a consequent of the commencement of the Bankruptcy Case, and take all other steps reasonably necessary to implement and effectuate the relief sought in the Motion.

9. In the event Debtor will exceed the aggregate amounts in any category as detailed herein during the interim period, Debtor shall file a notice with the Court describing the category and overage amount.

10. The Debtor shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; and (c) the category or type of payment, as further described and classified in the Motion. The Debtor shall provide a copy of such matrix/schedule to the U.S. Trustee, and any statutory committee appointed in the Bankruptcy Case every 30 days beginning upon entry of this Order.

11. Nothing in the Motion or this Interim Order, or the Debtor's payment of any claims pursuant to this Interim Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtor, the existence of any lien against the Debtor's properties, or the existence

of any obligation on the part of the Debtor; (b) a waiver of the Debtor's rights to dispute any claim, lien, or obligation on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Court's Local Rules.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

15. The Debtor is hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

16. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Signed: _____, 2024.

UNITED STATES BANKRUPTCY JUDGE