

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

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In re:	:	Chapter 11
	:	
BARRETTS MINERALS INC., <i>et al.</i> , ¹	:	Case No. 23-90794 (MI)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**DECLARATION OF DAVID J. GORDON IN SUPPORT OF ORDER
(I) AUTHORIZING (A) THE SALE OF THE DEBTORS' ASSETS,
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS AND (B) THE DEBTORS' ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES
AND (II) GRANTING RELATED RELIEF**

Under 28 U.S.C. § 1764, I, David J. Gordon, declare as follows under the penalty of perjury:

1. I serve as the Chief Restructuring Officer ("**CRO**") of Barretts Minerals Inc. ("**BMI**") and Barretts Ventures Texas LLC ("**BVT**", and together with, BMI, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"). I own and operate a management and consulting services business, DJG Services, LLC, through which I began working with BMI as a consultant in April 2023 prior to my retention as CRO in July 2023. I was subsequently retained as CRO of BVT in September 2023.

2. I submit this declaration (this "**Declaration**") in support of the *Order (I) Authorizing (A) the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests and (B) the Debtors' Assumption and Assignment of Certain*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors' address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

Executory Contracts and Unexpired Leases; and (II) Granting Related Relief (the “**Sale Order**”), which seeks authorization for the sale of substantially all of BMI’s assets (the “**Purchased Assets**”).²

3. In my role as CRO, I was primarily responsible with overseeing the work undertaken in connection with a potential sale of the Purchased Assets as part of the Chapter 11 Cases, worked closely with the Debtors’ advisors in connection with the Sale Process (as defined below), and was present for nearly all of the meetings of the Debtors’ Board of Directors (the “**Board**”) at which decisions in connection with the Sale Process were made.³ I also am generally familiar with the Debtors’ business, financial condition, policies and procedures, day-to-day operations, and books and records.⁴

4. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, discussions with the Debtors’ management and advisors, review of the relevant documents, or my opinion based on my experience, knowledge, and information concerning the Debtors’ operations and financial condition. If called to testify, I would testify competently to the facts set forth in this Declaration.

The Debtors’ Marketing Efforts & Sale Process

5. With the assistance of its retained professionals and in an effort to address its disputed and contingent talc-related liabilities, in the months leading up to the filing of the Chapter 11 Cases, BMI explored strategic alternatives. Even prior to my work with BMI beginning in

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Order or Bidding Procedures, as applicable.

³ The only meeting for which I was not present was held on March 6, 2024. During this meeting the Board unanimously granted BMI representatives, including myself, authority to proceed with the Sale Process.

⁴ Additional information regarding my qualifications and factual background regarding the Debtors, including their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of David J. Gordon, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 13] (the “**First Day Declaration**”).

April 2023, BMI engaged Jefferies LLC (“**Jefferies**”) to, among other things, assist it with evaluation of strategic alternatives and contingency planning, including running a marketing and sales process to sell BMI’s talc-related assets (the “**Sale Process**”). On June 26, 2023, BMI announced that it intended to exit the talc business and disclosed the ongoing Sale Process.

6. The Board, after consultation with its advisors, authorized the filing of the Chapter 11 Cases, including because it determined that continuing the Sale Process in bankruptcy would be the best way to maximize value for the benefit of all creditors. Accordingly, on October 2, 2023, the Debtors filed the Chapter 11 Cases. The Debtors, in conjunction with Jefferies and their other advisors, continued their prepetition marketing efforts through a robust postpetition marketing process that was part of a larger plan to address the Debtors’ talc-related liabilities.

7. I understand the Debtors’ Bidding Procedures, which were approved by this Court on December 11, 2023 [Docket No. 434], set forth the manner by which the Debtors were to solicit, receive, and evaluate bids to purchase substantially all or any portion of the Purchased Assets. I was actively involved in the Sale Process and the oversight of the Sale Process by the Board. I attended substantially all of the Board meetings regarding the Sale Process. The Board was provided with regular updates regarding the Sale Process by Debtors’ counsel and Jefferies. Additionally, the Board was involved in a number of decisions related to the Sale Process, including multiple decisions to extend bidding process deadlines and milestones to ensure that all potential bidders had a full and fair opportunity to submit their best proposals.⁵

⁵ The Debtors filed: (a) *Notice of Extension of Certain Sale-Related Dates and Deadlines* [Docket No. 520] on December 29, 2023; (b) *Notice of Extension of Certain Sale-Related Dates and Sale Hearing* [Docket No. 541] on January 5, 2024; (c) *Notice of Extension of Certain Sale-Related Dates and Sale Hearing* [Docket No. 601] on February 5, 2024; (d) *Notice of Auction for the Sale of the Debtors’ Assets Free and Clear of Any and All Claims, Interests and Encumbrances* [Docket No. 687] on March 7, 2024; (e) *Notice of Adjournment of Auction for the Sale of the Debtors’ Assets Free and Clear of Any and All Claims, Interests and Encumbrances* [Docket No. 696] on March 8, 2024; and (f) *Notice of Adjournment of Auction for the Sale of the Debtors’ Assets Free and Clear of Any and All Claims, Interests and Encumbrances* [Docket No. 709] on March 11, 2024.

8. The Bidding Procedures established December 1, 2023 as the deadline for interested bidders to submit non-binding indications of interest regarding the sale of substantially all of the Purchased Assets or a sale of various subsets of the Purchased Assets. Jefferies received eight non-binding indications of interest, among which two indications of interest were received after the deadline. The Debtors, in conjunction with the Board, Jefferies, and their other advisors, worked closely with these parties to review and diligence the submitted non-binding indications of interest in order to determine whether a Stalking Horse Bidder could be selected. Ultimately, the Debtors, in conjunction with the Board, Jefferies, and their other advisors, determined that no non-binding indication of interest contained terms sufficient to constitute a Stalking Horse Bid, and that it would not be a sound exercise of the Debtors' business judgment to select a Stalking Horse Bid at that time. Instead, the Board determined to extend the Sale Process to allow for additional time to develop potential bids and for parties to further their diligence efforts.

9. In 2024, the Debtors extended the Sale Process six times. In advance of the March 4, 2024 deadline for interested parties to submit final bids for the sale of substantially all of the Purchased Assets or a sale of various subsets of the Purchased Assets, Jefferies received proposals to purchase substantially all of the Purchased Assets from (a) Riverspan Partners, LP ("**Riverspan**") and Mooney Group LLC ("**Mooney**"),⁶ and (b) IMI Fabi Montana, LLC ("**IMI Fabi**"). Jefferies engaged with both buyers to further develop the proposals to ensure that each satisfied the conditions of a Qualified Bid pursuant to the Bidding Procedures. Jefferies also discussed each of the proposals with the Board and the Debtors' advisors. After extensive negotiations and discussion with the Unsecured Creditors Committee (the "**UCC**"), the DIP

⁶ Elevation NewCo, LLC (the "**Buyer**") is an acquisition entity formed by Riverspan and is the contemplated purchaser under the Asset Purchase Agreement (as defined below). I understand that Mooney will provide strategic assistance to the Buyer following consummation of the Sale and that Mooney may co-invest alongside Riverspan and receive certain equity interests in an affiliate of the Buyer.

Lender, and the Future Claimants Representative (the “**FCR**” together with the DIP Lender and the UCC, the “**Consultation Parties**”), both bids were determined to be Qualified Bids. At this stage, the UCC did not notify the Debtors or their advisors of any issues with either bidder’s decision to continue mining operations.

10. On March 8, 2024, the Debtors commenced the Auction for the sale of substantially all of the Purchased Assets in accordance with the Bidding Procedures.⁷ Due to my travel schedule, I attended the Auction remotely, but was involved in all material discussions and consulted with the Debtors’ advisors and counsel in making all decisions in connection with the Sale. After engaging in extensive negotiations with the two bidders at the Auction, the Debtors, in their reasonable, good-faith business judgment, after discussion with the Consultation Parties, ultimately declared the bid submitted by Mooney and Riverspan with a cash purchase price of \$32 million (the “**Purchase Price**”) in cash consideration to be the provisional winning bid and adjourned the Auction to progress negotiations around definitive documents. Following such negotiations and the execution of the Asset Purchase Agreement (the “**Asset Purchase Agreement**”) with the Buyer, an acquisition vehicle owned by Riverspan Partners Fund I LP, on or about March 14, 2024, the Debtors (1) declared the Buyer the successful bidder, (2) declared the bid submitted by IMI Fabi for an aggregate cash purchase price of \$30 million to be the backup bid (the “**Backup Bid**”), and (3) on March 14, 2024, concluded the Auction and filed the *Notice of Successful and Backup Bidders with Respect to the Auction of the Debtors’ Assets* [Docket No. 725].

⁷ See *Notice of Auction for the Sale of the Debtors’ Assets Free and Clear of Any and All Claims, Interests and Encumbrances* [Docket No. 687].

11. The Purchase Price yields necessary liquidity for the Debtors' estates and is the result of extensive marketing of the Purchased Assets, on both a pre- and post-petition basis, and an Auction. In addition to the Purchase Price, the Sale of substantially all of the Purchased Assets is of additional benefit to the Debtors' estates, including the assumption of certain liabilities by the Buyer. And moreover, through the Sale, BMI no longer has to bear certain future costs, including approximately \$2 million in employee severance and \$10 million in reclamation costs that would be expected as portions of the mine become non-operational.

Involvement of the Consultation Parties

12. The UCC, the FCR, and the DIP Lender⁸ were designated as Consultation Parties under the Bidding Procedures. Upon its appointment, the UCC received the confidential information memorandum and access to the same data room that bidders were reviewing. As Consultation Parties, advisors to the UCC, FCR, and DIP Lender received routine updates regarding the Sale Process, were consulted in connection with material decisions as contemplated under the Bidding Procedures, including to extend deadlines relevant to the Sale Process, and were part of the review and determination of Qualified Bids. The Debtors' advisors provided such updates and ensured that the Consultation Parties were involved in the Sale Process consistent with the Bidding Procedures. Through their respective advisors, the Consultation Parties, including the UCC, participated in the Auction and were provided with drafts of all definitive documents related to the Sale.

13. I am aware that on March 12, 2024, the UCC filed an objection to the Debtor's Sale. To my knowledge, at no time during the course of the postpetition Sale Process did any of the Consultation Parties, including the UCC or its advisors, question the propriety of the Debtors'

⁸ The DIP Lender became a Consultation Party once it determined that it would not exercise its right to credit bid.

pursuit of a sale of the Purchased Assets, suggest in any way that the Debtors should not proceed with the Sale Process, object to the involvement of any party in the Sale Process, bring forth any suggestions of potential buyers for alternative uses of the Purchased Assets, indicate that the Debtors or any buyer of the Purchased Assets should be restricted in its use or operation of the Purchased Assets, or otherwise raise any issue with respect to the sale of the Purchased Assets.

Approval of the Sale Is in the Best Interests of the Debtors' Estates

14. Based on my knowledge of the Debtors' business and assets, and in consultation with the Debtors' advisors, I believe that approval of the Asset Purchase Agreement and consummation of the Sale are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

15. The Debtors conducted a robust marketing process for the Purchased Assets, involved the Consultation Parties in the Sale Process consistent with the terms of the Bidding Procedures, and conducted a competitive Auction that ultimately yielded an increase of \$7 million in cash consideration from the opening Qualified Bid. In addition, the Debtors and the Buyer engaged in extensive arm's-length and good faith negotiations that ultimately resulted in the Debtors agreeing to the Purchase Price and the terms and conditions of the Asset Purchase Agreement.

16. In addition to the cash consideration generated from the Sale, as referenced above, if the Debtors were to close BMI's mine and cease mining operations, the estates would need to bear associated costs, including severance and reclamation, which are estimated to be upwards of \$10 million. Moreover, I understand that the Buyer intends to continue operations of the mine and related facilities, which is expected to secure the continued employment of all or a substantial majority of the Debtors' approximately 68 employees. Each of these factors was considered by the Debtors and the Board in reaching the decision to proceed with the Sale.

17. Overall, in my judgment, the Sale represents the highest and best bid for the Purchased Assets achievable at this time. After careful consideration and discussion with their advisors, the Debtors have determined that the prompt sale of the Purchased Assets represents a value-maximizing transaction while reducing costs to the Debtors' estates, and will bring necessary liquidity into the estates. In my business judgment and consistent with the Debtors' stated objective to preserve and maximize the value of their estates, I believe it is in the best interest of the Debtors' estates and stakeholders to proceed with the Sale.

Dated: March 19, 2024

/s/ David J. Gordon

David J. Gordon

Chief Restructuring Officer

Barretts Minerals Inc. and Barretts Ventures

Texas LLC