



ENTERED

TAWANA C. MARSHALL, CLERK
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The following constitutes the ruling of the court and has the force and effect therein described.

Barbara J. Houser

United States Bankruptcy Judge

Signed May 30, 2012

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

H & M OIL & GAS LLC,

Debtor.

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Chapter 11

Case No. 12-32785-BJH

INTERIM AGREED ORDER PARTIALLY GRANTING (I) DEBTOR'S MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED LENDER, (III) SCHEDULING A SUBSEQUENT HEARING AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated May 10, 2012 (the "Motion"), of H & M Oil & Gas, LLC ("HMOG" or the "Debtor") as debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Chapter 11 Case") commenced on April 30, 2012 (the "Petition Date") for an interim order seeking authorization for the Debtor to (a) use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code ("Cash Collateral") and (b) provide adequate protection to Prospect Capital Corporation ("PSEC" or "Lender") as lender under that certain Credit Agreement, dated June 28, 2007, and owner of the note in favor of David B. Jones dated

effective January 14, 2011 (as amended, supplemented or otherwise modified as of the Petition Date, the “Prepetition Loan Agreement,” and together with any other security, pledge or guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified as of the Petition Date, the “Prepetition Loan Documents”); and upon the agreement of Lender and the Debtor announced at the hearing on May 23, 2012 and after due deliberation and consideration, and good cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

A. Petition Date. On April 30, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. The Debtor has continued in the management and operation of its business and property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No official committee (“Committee”), trustee or examiner has been appointed in the Case.

B. Jurisdiction and Venue. This Court has core jurisdiction over the Case, the Motion, and the parties and property affected thereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the Motion and the relief requested therein was served by the Debtor on its twenty largest unsecured creditors, the Lender and the Office of the United States Trustee (the “U.S. Trustee”). Under the circumstances, such notice constitutes due and sufficient notice.

D. Debtor’s Stipulations. The Debtor admits, stipulates, acknowledges and agrees (“Debtor’s Stipulations”) that:

(i) Prepetition Liens and Collateral: Pursuant to the Prepetition Loan Documents, the Debtor granted to the Lender, to secure its obligations under the Prepetition

Loan Documents (the “Prepetition Loan Obligations”), a first priority security interest in and continuing lien on (the “Prepetition Liens”) all or substantially all of the Debtor’s assets and property (the “Prepetition Collateral”). As of the Petition Date, the Prepetition Liens (a) are legal, valid, binding, enforceable, non-avoidable and perfected liens, (b) were granted to, or for the benefit of, the Lender for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (d) are subject and subordinate only to valid, perfected and unavoidable liens permitted under the Prepetition Loan Documents, to the extent such permitted liens are senior to the liens securing the Prepetition Loan Obligations (“Permitted Prior Liens”);¹ and

(ii) Cash Collateral. The Debtor represents that all of its cash, including the cash in its deposit accounts, wherever located, whether Prepetition Collateral or proceeds thereof, constitutes the Cash Collateral of the Lender.

E. Need to Use the Prepetition Collateral (including, without limitation, the Cash Collateral). The Debtor has an immediate need to use the Prepetition Collateral, including, without limitation, the Cash Collateral, to permit the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, and to satisfy other operational needs.

F. Adequate Protection for the Lender. The Lender is entitled to the adequate protection set forth herein pursuant to sections 361, 362 and 363 of the Bankruptcy Code for any diminution in value of the Prepetition Collateral, including without limitation Cash Collateral.

¹ For purposes of this Interim Order, Permitted Prior Liens shall include any liens that were valid, senior, enforceable, perfected and non-avoidable under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such liens are actually valid, senior, enforceable, perfected or non-avoidable.

Based on the Motion, the terms of the proposed adequate protection arrangements and use of the Prepetition Collateral, including, without limitation, the Cash Collateral, contemplated hereby are fair and reasonable and reflect the Debtor's sound and prudent exercise of its business judgment.

G. Limited Consent. The Lender has consented to the Debtor's use of the Prepetition Collateral, including the Cash Collateral, pursuant to (and solely pursuant to) the terms of this Interim Order. Nothing in this Interim Order shall constitute, or be deemed to constitute, a finding that the interests of the Lender are or will be adequately protected with respect to any non-consensual use of Prepetition Collateral including, without limitation, the Cash Collateral.

H. Section 552(b). As a result of the granting of permission for the use of its Cash Collateral for payments made in accordance with the Initial Approved Budget (as defined below), the Lender is entitled to all of the rights and benefits of section 552(b).

I. Relief Essential; Best Interests. For the reasons stated above, the Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtor's business, assets and estate will be immediately and irreparably harmed. Authorization to use the Prepetition Collateral including, without limitation, the Cash Collateral, in accordance with this Interim Order is therefore in the best interests of the Debtor's estate and consistent with its fiduciary duties.

NOW, THEREFORE, on the Motion, and with the consent of the Debtor and the Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The Motion is hereby partially granted in accordance with the terms and conditions set forth in this Interim Order. For the avoidance of doubt, Lender reserves the right to object to the use of Cash Collateral sought in the Motion but not granted in this Interim Order.

2. Use of the Prepetition Collateral. The Debtor is authorized to use the Cash Collateral solely (i) in accordance with the terms and conditions of this Interim Order and (ii) for payment of the items listed on the Initial Approved Budget (as defined below). Attached hereto as Exhibit "A" is a chart (the "Initial Approved Budget") which reflects certain operating expenses of the Debtor.

3. Adequate Protection for Lender. In consideration for the use of the Cash Collateral set forth on the Initial Approved Budget, the Lender shall receive the following adequate protection (collectively, the "Adequate Protection"):

(a) Replacement Liens. Pursuant to sections 361 and 363 of the Bankruptcy Code, to the extent of any diminution in value of the interest of the Lender in the Prepetition Collateral including, without limitation, the Cash Collateral, from and after the Petition Date, the Lender is hereby granted replacement liens upon all property of the Debtor, including, without limitation, all Cash Collateral, all other Prepetition Collateral and all other "property of the estate" (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements and cash and non-cash proceeds of all of the foregoing (all of the foregoing collateral collectively referred to as the "Adequate Protection Collateral") and such adequate protection replacement liens, the "Adequate Protection Replacement Liens"). Adequate Protection Replacement Liens on such Adequate Protection Collateral shall be subject and subordinate only to the extent applicable, the Permitted Prior Liens and liens on any action under Chapter 5 of the Bankruptcy Code.

(b) Administrative Expense Claim. Pursuant to sections 361 and 363 of the Bankruptcy Code, to the extent of any diminution in value of the interest of the Lender in the Prepetition Collateral including, without limitation, the Cash Collateral, from and after the Petition Date, the Lender is hereby granted an administrative expense claim pursuant to section 503(b) of the Bankruptcy Code.

(c) Reporting Requirements. As further adequate protection, the Debtor shall deliver to the Lender all information, reports, documents and other material that the Lender may reasonably request, either directly or through its professionals.

(d) Right to Seek Additional Adequate Protection. Nothing herein shall be deemed to be a finding by the Court or an admission by the Lender that the Lender is adequately protected for the use of its Cash Collateral as provided by the Interim Order. The Lender may request Court approval for additional or alternative adequate protection, without prejudice to any objection of the Debtor or any other party in interest to the grant of any such additional or alternative adequate protection.

(e) Binding Nature of Adequate Protection. No obligation, payment, transfer or grant of security under this Interim Order shall be (i) stayed, restrained, voidable, avoidable or recoverable under any section of the Bankruptcy Code or any other applicable law or (ii) subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaim, cross-claim, defense or any other challenge under any section of the Bankruptcy Code or any other applicable law by any person or entity

4. Automatic Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the Adequate Protection Replacement Liens without the necessity for (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the

Adequate Protection Replacement Liens or to entitle such Adequate Protection Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the Lender may, in its sole discretion, file financing statements, mortgages, security agreements, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded on the Petition Date.

5. Preservation of Rights Granted Under the Interim Order.

(a) Dismissal. If any order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide that (i) the Adequate Protection shall continue in full force and effect and shall maintain the priorities as provided in this Interim Order until all of the Prepetition Loan Obligations have been indefeasibly paid in full in cash or are otherwise satisfied in full and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Adequate Protection.

(b) Survival of Interim Order. To the extent not superseded by the Final Order, the provisions of this Interim Order, any actions taken pursuant hereto, the Adequate Protection and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to the Lender shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming a plan of reorganization in the Case, converting the Case to a case under chapter 7, dismissing the Case, withdrawing the reference of the Case or any Successor Case or providing for abstention from handling or retaining of jurisdiction of the Case in this Court, or by any other act or omission.

(c) Binding Effect. The provisions of this Interim Order shall be binding upon all parties in interest in this Case, including, without limitation, the Lender and the Debtor and its respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter

appointed or elected, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary or responsible person appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor). The Debtor's Stipulations shall be binding on the Debtors only.

(d) No Waiver. The failure of the Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the Prepetition Loan Documents or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of the Lender's rights hereunder, thereunder, or otherwise.

(e) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to permit the use of Prepetition Collateral, including, without limitation, the Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, the Lender shall not (i) be deemed to be in control of the operations of the Debtor, or (ii) owe any fiduciary duty to the Debtor, its creditors, shareholders or estate.

(f) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052. Notwithstanding Bankruptcy Rules 4001(a)(3), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(g) The automatic stay imposed pursuant to Bankruptcy Code section 362(a) is hereby modified pursuant to the terms of this Interim Order as necessary to (i) permit the Debtor to grant the Adequate Protection Replacement Liens and to incur all liabilities and obligations to the Lender under this Interim Order and (ii) otherwise to the extent necessary to implement and effectuate the provisions of this Interim Order.

6. Further Hearings.

(a) A final hearing (the “Final Hearing”) to consider entry of the Final Order shall be scheduled at a later date by the Court after consultation with the Debtor and the Lender. Such Final Hearing shall be noticed on parties-in-interest by the Debtor. The Debtor shall serve notice of entry of this Interim Order and a copy of this Interim Order on all parties-in-interest within three (3) days of entry of this Interim Order.

7. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

See docket number 49 for the proposed exhibit.

END OF ORDER