

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

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*In re* : Chapter 11  
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 MAXUS ENERGY : Case No. 16-11501 (CSS)  
 CORPORATION, *et al.*, :  
 : (Jointly Administered)  
 Debtors.<sup>1</sup> :  
 : **Hearing Date: April 6, 2017 at 11:00 a.m. (ET)**  
 : **Obj. Deadline: March 30, 2017 at 4:00 p.m. (ET)**  
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**MOTION OF THE DEBTORS FOR AUTHORITY TO ESTABLISH CERTAIN  
PROCEDURES FOR THE SALE OR ABANDONMENT OF DE MINIMIS ASSETS  
PURSUANT TO SECTIONS 105(a), 363 AND 554 OF THE BANKRUPTCY CODE  
AND BANKRUPTCY RULE 2002 AND FOR RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”), submit this motion (the “Motion”), pursuant to sections 105(a), 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order, substantially in the form attached hereto as Exhibit C (the “Proposed Order”) authorizing the Debtors to (i) implement the De Minimis Sale Procedures and Abandonment Procedures (each as defined below), (ii) consummate sales and transfers of the De Minimis Assets (as defined below) free and clear of any liens, claims, or encumbrances (“Liens”) without further notice or order from the Court, or abandon such De Minimis Assets and (iii) pay any necessary fees and expenses incurred in connection with the disposition of such assets. In support of the Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

### **Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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

3. The Debtors confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

### **Background**

4. On June 17, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases (the "Chapter 11 Cases") are being jointly administered pursuant to rule 1015(b) of the Bankruptcy Rules. On July 7, 2016, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee") pursuant to section 1102 of the Bankruptcy Code. On December 16, 2016, the U.S. Trustee appointed an official committee of retirees pursuant to section 1114 of the Bankruptcy Code (the "Retiree Committee"). No party has requested the appointment of a trustee or examiner in the Chapter 11 Cases.

5. A detailed description of the Debtors and their business is set forth in detail in the *Declaration of Javier J. González in Support of Chapter 11 Petitions and Requests for First Day Relief* filed on June 18, 2016 [Docket No. 2].

**The De Minimis Assets**

6. The Debtors maintain various assets, which are currently, or in the foreseeable future may become, unnecessary or cannot be used profitably in their operations. The Debtors will attempt to sell or otherwise dispose of a number of these nonessential or burdensome assets, including, without limitation: (a) office equipment and furniture; (b) certain undeveloped, non-revenue producing oil and gas mineral interests; (c) three annuity contracts established in 1986 to supplement the Debtors' prepetition obligations related to supplemental executive retirement plans pursuant to which the Debtors receive, in aggregate, approximately \$22,000 per month; and (d) other minor assets that, in some cases, are of relatively *de minimis* value as compared to the Debtors' total asset base (collectively, the "De Minimis Assets").

7. The Debtors believe that obtaining Court approval of each individual disposition of a De Minimis Asset would be administratively burdensome to the Court and costly to the Debtors' estates. In some cases, the cost and delay associated with seeking individual Court approval for each disposition could eliminate or substantially undermine the economic benefit to the Debtors' estates realized from the sale of De Minimis Assets. Additionally, the Debtors are mindful of their duty to maximize the value of their estates and are working to obtain the highest consideration for all of their assets but are concerned that, among other things, unnecessary delays will decrease the net income to their estates and/or interfere with the conduct of their businesses in the ordinary course.

8. Accordingly, to alleviate the cost and delay of having to file a separate motion for each proposed disposition, the Debtors seek approval of the sale procedures (the "De

Minimis Sale Procedures”) and abandonment procedures (the “Abandonment Procedures” and, together with the De Minimis Sale Procedures, the “Procedures”) described herein. These Procedures are intended to minimize and, in some instances, eliminate the process for obtaining court approval with respect to the sale or abandonment of particular assets falling within certain specified economic parameters. The Debtors propose to utilize the Procedures to obtain more expeditious and cost-effective review by interested parties of certain dispositions involving De Minimis Assets.

### **De Minimis Sale Procedures**

9. The Debtors propose that the De Minimis Sale Procedures only apply to the sale of De Minimis Assets involving, in each case, the transfer of \$500,000 or less in total consideration for such asset, as measured by the amount of cash received by the Debtors on account of the assets being sold. Pursuant to the De Minimis Sale Procedures, if the Debtors sell assets that are encumbered by Liens, such Liens will attach to the proceeds of the sale with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto. In addition, pursuant to the De Minimis Sale Procedures, the Debtors will be permitted to sell De Minimis Assets co-owned by the Debtors and a third party only to the extent that such sale does not violate section 363(h) of the Bankruptcy Code. The De Minimis Sale Procedures are described in detail below.

#### **A. Sale Price Less than or Equal to \$250,000**

10. The Debtors seek authority to sell any asset for an amount that is less than or equal to \$250,000 (a “Non-Noticed De Minimis Sale”) without further Court approval and without providing notice of the Non-Noticed De Minimis Sale to any party (other than to YPF

Holdings, Inc. (“YPF”), as the Lender under the Debtor-In-Possession Secured Credit Agreement [see Docket No. 268-1] (the “DIP Credit Agreement”), counsel to YPF, counsel to the Creditors’ Committee, counsel to the Retiree Committee, and any other creditors holding Liens on the De Minimis Assets to be sold, if any, each of which shall receive a Sale Notice (as defined below) and may file an objection in accordance with the procedures set forth below for a Noticed De Minimis Sale (as defined below); *provided, however*, that any Non-Noticed De Minimis Sale must be in accordance with the DIP Credit Agreement and the final order approving the Debtors’ postpetition financing [Docket No. 268] (the “Final DIP Order”).

11. The Debtors also seek authority to take any action that is reasonable and necessary to close a Non-Noticed De Minimis Sale and obtain sale proceeds thereof, including, without limitation, paying reasonable fees to third-party sale agents in connection with the Non-Noticed De Minimis Sale, subject to the procedures described in section C below.

**B. Sale Price Greater than \$250,000 but Less than or Equal to \$500,000**

12. The Debtors propose to sell any asset for an amount that is greater than \$250,000 but less than or equal to \$500,000 (a “Noticed De Minimis Sale”) without further Court approval and after providing notice of the Noticed De Minimis Sale to certain parties in accordance with the De Minimis Sale Procedures. Any Noticed De Minimis Sale will be in accordance with the terms of the DIP Credit Agreement and Final DIP Order.

13. In the event of a proposed Noticed De Minimis Sale, the Debtors will file a notice of such sale (a “Sale Notice”) with the Court, substantially in the form attached hereto as Exhibit A, and serve the Sale Notice by electronic mail, facsimile, overnight courier, or hand delivery on the following parties: (a) the Office of the United States Trustee; (b) counsel for the Creditors’ Committee; (c) counsel for the Retiree Committee; (d) YPF; (e) Occidental Chemical

Corporation; (f) the Internal Revenue Service; (g) the U.S. Environmental Protection Agency; (h) the U.S. Department of Justice; and (i) the New Jersey Department of Environmental Protection and other applicable state environmental agencies (collectively, the “Interested Parties”).

14. The Debtors propose that Interested Parties will have seven (7) calendar days after service of a Sale Notice to file and serve any objections to a Noticed De Minimis Sale (the “Notice Period”). The Debtors further propose that any objections to a Noticed De Minimis Sale (each, an “Objection”) must: (a) be in writing; (b) set forth the name of the objecting party; (c) provide the basis for the objection and the specific grounds therefor; (d) be filed with the Court; and (e) be served on the Interested Parties and on Morrison & Foerster LLP, 250 West 55<sup>th</sup> Street, New York, New York 10019 (Attn: Jordan A. Wishnew, Esq.) as counsel to the Debtors, and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington Delaware 19801 (Attn: M. Blake Cleary, Esq.) as co-counsel to the Debtors (collectively, the “Objection Parties”), so as to be received by all such parties on or before 4:00 p.m. (Prevailing Eastern Time) on the last day of the Notice Period.

15. If an Objection to a Noticed De Minimis Sale is properly filed and served, then: (a) the Objection shall be deemed a request for a hearing on the Objection and Noticed De Minimis Sale at the next scheduled hearing that is at least fourteen (14) calendar days after service of the Objection, and (b) the Noticed De Minimis Sale may not proceed absent (i) written withdrawal of the Objection or (ii) entry of an order by the Court specifically approving the Noticed De Minimis Sale.

16. If no Objection to a Noticed De Minimis Sale is filed and served by an Interested Party consistent with the De Minimis Sale Procedures described herein, such Noticed De Minimis Sale will be deemed final and fully authorized by the Court under the terms of the

order approving this Motion, and no further notice or Court approval to consummate the Noticed De Minimis Sale will be required; *provided, however*, that the Debtors shall be permitted to submit a proposed form of sale order for entry by the Court under certification of counsel if the Debtors, in their sole discretion, deem it to be necessary or desirable to effectuate any sale.

17. The Sale Notice will include the following information with respect to the proposed Noticed De Minimis Sale:

- (a) A description of the asset proposed to be sold and its location;
- (b) The identity of the purchaser under the Noticed De Minimis Sale and any relationship such party has with the Debtors;
- (c) The identities of any parties known to the Debtors as holding Liens on the asset subject to the Noticed De Minimis Sale;
- (d) The material economic terms and conditions of the Noticed De Minimis Sale;<sup>2</sup> and
- (e) Instructions regarding the procedures to assert an Objection to the Noticed De Minimis Sale.

18. The Debtors may consummate a Noticed De Minimis Sale prior to expiration of the Notice Period only if they obtain written consent to such Noticed De Minimis Sale from each Interested Party.

19. If any material economic term of a Noticed De Minimis Sale is amended after transmittal of the Sale Notice, but prior to the expiration of the Notice Period, the Debtors will serve a revised Sale Notice to all Interested Parties describing the proposed Noticed De Minimis Sale, as amended. If a revised Sale Notice is required, the Debtors propose to extend the Notice Period for seven (7) calendar days from the date of service of the revised Sale Notice.

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<sup>2</sup> This information may be provided by attaching the applicable contract or contracts to the Sale Notice.

### **Abandonment Procedures**

20. To the extent the Debtors determine, in the reasonable exercise of their business judgment, that (a) any De Minimis Assets cannot be sold or otherwise transferred for value,<sup>3</sup> and (b) such De Minimis Assets are no longer necessary to the Debtors' business operations, the Debtors seek authority to abandon such De Minimis Assets in accordance with the following Abandonment Procedures:

- a. The Debtors shall provide written notice of the proposed abandonment (the "Abandonment Notice") to the Interested Parties in the Form annexed hereto at Exhibit B;
- b. The Abandonment Notice shall contain (i) a reasonably detailed description of the De Minimis Assets to be abandoned by the Debtors, (ii) the Debtors' reasons for such abandonment, (iii) any payments to be made by the Debtors in connection with such abandonment including, but not limited to, commission fees to agents, brokers, auctioneers and liquidators, and (iv) whether the proposed abandonment is to a specific person or entity;
- c. Interested Parties will have until 5:00 p.m. (Eastern) on the fifth (5th) day after the date of service of the Abandonment Notice to file and serve on the Objection Parties a written objection to the proposed abandonment;
- d. If no written objections from any of the Interested Parties are filed with the Court within five (5) business days after the date of receipt of such Abandonment Notice, then the Debtors shall be authorized to immediately proceed with the abandonment; and
- e. If a written objection from any Interested Party is filed with the Court within five (5) business days after receipt of such Abandonment Notice, then the relevant De Minimis Asset shall only be abandoned by the Debtors upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing.

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<sup>3</sup> For the sake of clarity, the Abandonment Procedures proposed herein are not intended to, and do not, apply to any environmentally contaminated real property currently owned by the Debtors.



**C. Retention of Professionals to Assist in Disposing of De Minimis Assets**

21. Because the value of the De Minimis Assets is modest in the context of these Chapter 11 Cases, it is not cost-effective and efficient to separately retain agents, brokers, auctioneers, liquidators, and other third parties that the Debtors may employ to implement the Procedures (each, a “Professional”). Accordingly, the Debtors are requesting authority to retain Professionals to assist in disposing of the De Minimis Assets pursuant to the following procedures:

- a. Each Professional, within thirty days following the date on which the Professional commences services for the Debtors in connection with the Procedures, shall provide the Debtors with a declaration (the “Declaration”), substantially in the form attached to the Proposed Order as Exhibit 1, certifying that such Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the Professional is to be employed.
- b. Debtors’ counsel shall, within a reasonable time after receipt thereof, file the Declaration with this Court and serve a copy upon the Interested Parties.
- c. The Interested Parties shall have ten days following service of a Declaration (the “Retention Objection Deadline”) to notify the Debtors, the other Interested Parties, and the relevant Professional, in writing, of any objection (a “Retention Objection”) to the retention based upon the Declaration. If, upon the Retention Objection Deadline, no Retention Objection is filed, the Debtors shall file a certification of no objection and the retention, employment, and compensation of such Professional shall be deemed approved, pursuant to sections 327(a), 328(a) and 330 of the Bankruptcy Code without further order from the Court. If a Retention Objection is filed on or before the Retention Objection Deadline and such Retention Objection cannot be resolved within 20 days of the filing date of the Retention Objection, the Retention Objection shall be considered at the next scheduled hearing before the Court.

22. The Debtors anticipate that each Professional will be compensated pursuant to the specific terms of a respective engagement letter. Each Professional’s compensation will be result-oriented and directly related to benefits received by the Debtors’ estates in each transaction. With respect to sales, the Professionals will be employed by the

Debtors to perform highly specialized tasks and will not be compensated upon time and effort expended, but instead, on a per-transaction or contingent-fee basis. Accordingly, the Debtors seek authority to compensate professionals out of the proceeds of any sale of De Minimis Assets.

23. Therefore, requiring the Professionals to file detailed interim and final fee applications in compliance with Bankruptcy Rule 2016 and Local Bankruptcy Rule 2016-2 is unnecessary. The Debtors submit that recording and submitting detailed time entries for services rendered in these cases would be unduly burdensome to the Professionals. Accordingly, the Debtors request that the requirements of Local Rule 2016-2 be waived pursuant to Local Rule 2016-2(h).

**D. Effects of Sale**

24. All buyers will take assets sold by the Debtors pursuant to the De Minimis Sale Procedures “as is” and “where is,” without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended purpose or any particular purpose. Buyers will, however, take title to the assets free and clear of Liens, pursuant to section 363(f) of the Bankruptcy Code, including, without limitation, any Liens granted pursuant to the Final DIP Order. All such Liens will attach to the proceeds of the sale with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto.

**E. The Monthly Report**

25. The Debtors will provide a report listing the De Minimis Assets abandoned or sold and, in the case of a sale, the purchase price for each such asset in the monthly operating reports filed with the Court (the “Monthly Report”).

**F. Sale Proceeds**

26. Subject to the exceptions noted herein relating to compensation of Professionals, the net proceeds from both Non-Noticed De Minimis Sales and Noticed De Minimis Sales will be utilized by the Debtors in accordance with the terms of the DIP Credit Agreement and Final DIP Order governing the use of such proceeds.

**Relief Requested**

27. By this Motion, pursuant to sections 105(a), 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 2002, the Debtors seek entry of the Proposed Order authorizing the Debtors to (i) implement the Procedures, (ii) consummate sales of De Minimis Assets free and clear of all Liens without the need for further Court approval, or abandon such De Minimis Assets, and (iii) pay any necessary fees and expenses incurred in connection with the disposition of such assets.

**Basis for Relief Requested**

28. This Court should grant the relief requested and approve the proposed Procedures because they: (a) constitute an exercise of the Debtors' sound business judgment; (b) satisfy the notice and hearing requirements of sections 363(b)(1) and 554 of the Bankruptcy Code; and (c) satisfy the requirements of section 363(f) and, therefore, allow the Debtors to sell property free and clear of any Liens.

**A. The Proposed De Minimis Sale Procedures Are an Exercise of the Debtors' Sound Business Judgment**

29. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105 of the Bankruptcy Code

provides, in relevant part, that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

30. Relevant case law provides that the decision to use and sell property of the estate outside the ordinary course of business is entrusted to the business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (holding that to obtain court approval to sell property under section 363(b), a court must find there is a “sound business reason” for the proposed action); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (same).

31. The Debtors submit that the sale of De Minimis Assets upon the terms set forth herein is both an exercise of sound business judgment and in the best interests of the Debtors’ estates and their creditors. Disposing of De Minimis Assets in the manner proposed herein is the most efficient and cost-effective means of maximizing the value to be realized. Obtaining Court approval for each De Minimis Asset sale would result in unnecessary administrative costs attendant to drafting, serving, and filing pleadings, as well as time incurred by attorneys for Court appearances, which could drastically reduce the ultimate net value of these assets. The proceeds generated by many of the aforementioned sales transactions do not warrant the incurrence of such expenses. The Debtors and their advisors have significant experience with these types of sales and, as a result, are very well versed in obtaining the best sales prices possible.

32. In light of the size of the Debtors' estates, the proposed sale price limitations are relatively modest and appropriate. The estates are further protected by the opportunity for the U.S. Trustee, YPF, and any known Lien holder to review and object to Noticed De Minimis Sales.

**B. The Proposed De Minimis Sale Procedures Satisfy Notice and Hearing Requirements Under Section 363(b)(1)**

33. The notice and hearing requirements contained in section 363(b)(1) are satisfied if appropriate notice and an opportunity for a hearing are given in light of the particular circumstances of a proposed sale.<sup>4</sup> Such sales may be authorized without an actual hearing, however, if no party in interest timely requests such a hearing. *See* 11 U.S.C. § 102(1)(B)(i) (notwithstanding the statutory requirement for "notice and a hearing," the Bankruptcy Code "authorizes an act without an actual hearing if such notice is given properly and if such a hearing is not requested timely by a party in interest").

34. Furthermore, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of twenty-one (21) days' notice of proposed sales of property outside the ordinary course of business be provided by mail to "the debtor, the trustee, all creditors and indenture trustees" and any committee appointed under section 1102 of the Bankruptcy Code, unless a debtor shows "cause." FED. R. BANKR. P. 2002(a)(2) and (i). This Court is, however, authorized to limit notice of asset sales outside of the ordinary course of a debtor's business, even without a prior showing of cause, to any official committee appointed under section 1102 of the Bankruptcy Code and any creditor or equity holder requesting notice. *See* FED. R. BANKR. P. 2002(i).

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<sup>4</sup> *See* 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and opportunity for a hearing "as [are] appropriate in the particular circumstances").

35. The Debtors believe that the proposed De Minimis Sale Procedures comport with the hearing requirements of the Bankruptcy Code, as well as due process, by providing the Interested Parties with an opportunity to present Objections on each proposed Noticed De Minimis Sale and then holding a hearing with respect to the proposed Noticed De Minimis Sale and related Objection. Under the De Minimis Sale Procedures, a Noticed De Minimis Sale may be approved without a hearing only if no Interested Party has filed an Objection with respect thereto. Furthermore, under the De Minimis Sale Procedures, any known holder of a Lien on any De Minimis Asset proposed to be sold pursuant to a Noticed De Minimis Sale will also receive adequate notice and an opportunity to object to such sale.

36. Based on the foregoing, the Debtors submit that sufficient cause exists to implement the De Minimis Sale Procedures proposed herein and that such procedures will improve the efficiency of the sale process for De Minimis Assets and maximize the value of the assets to the Debtors' estates.

**C. The Proposed De Minimis Sale Procedures Satisfy the Requirements of Section 363(f) and Allow the Debtors to Sell Property Free and Clear**

37. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property under Bankruptcy Code section 363(b) free and clear of any liens, claims, encumbrances, and other interests of an entity other than the estate if one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or

(e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, when selling property of the estate, it is only necessary to meet one of the five conditions listed in that section. *See Folger Adam Sec. Inc. v. De Matteis/MacGregor, JV*, 209 F.3d 252, 257 (3d Cir. 2000) (noting that a debtor is authorized to sell property free and clear of “any interest” if any one of the five prescribed conditions under section 363(f) is met); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”) (citing *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988)); *In re DVI, Inc.*, 306 B.R. 496, 504 (Bankr. D. Del. 2004) (approving sale free and clear of interests where debtors met only the conditions of 363(f)(4)).

38. The Debtors submit that the De Minimis Sale Procedures satisfy the requirements of section 363(f) of the Bankruptcy Code. To the extent that there are any creditors with Liens on the De Minimis Assets, the Debtors will provide such creditors with a Sale Notice prior to the disposition of the applicable De Minimis Asset as provided in the De Minimis Sale Procedures above. Absent an objection to any particular sale pursuant to the De Minimis Sale Procedures, a holder of a Lien shall be deemed to consent to the proposed sale of the De Minimis Asset, and such asset may be sold free and clear of the holder’s Lien with such Lien attaching to any net proceeds of the sale with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto.

39. Based on the foregoing, the Debtors submit that the relief requested is in the best interest of the Debtors and their estates.

**D. The Abandonment Procedures Are Appropriate Under Section 554(a)**

40. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The Debtors expect to take all reasonable steps to sell the De Minimis Assets that are not needed for their operations. The costs associated with sales of certain De Minimis Assets, however, may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of De Minimis Assets would indicate that these De Minimis Assets have no meaningful monetary value to the Debtors’ estates. Further, the costs of storing and maintaining such De Minimis Assets may burden the Debtors’ estates. Accordingly, the Debtors submit that, in such circumstances, the abandonment of a De Minimis Asset pursuant to the Abandonment Procedures would be in the best interest of the Debtors’ estates. The Debtors will provide notice of such proposed abandonment to the Interested Parties, who will have the opportunity to object to the abandonment of a De Minimis Asset if they believe that it would not be appropriate.

41. In light of the demonstrable benefits of streamlined procedures to sell, transfer or abandon the De Minimis Assets, courts within this district and in other districts have approved similar procedures in other large chapter 11 cases. *See, e.g., In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del. June 3, 2016) (de minimis sale procedures authorized for sales of less than \$5,000,000 and abandonment procedures authorized); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 25, 2015) (de minimis sale procedures authorized for sales of less than \$5,000,000 and abandonment procedures authorized); *In re Edison Mission Energy*, No. 12-49219 (JPC) (Bankr. N.D. Ill. Jan.



17, 2013) (de minimis sale procedures authorized for sales of less than \$5,000,000 and abandonment procedures authorized); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. July 16, 2009); (authorizing sales up to \$10 million); *In re Smurfit Stone Container Corp.*, Case No. 09-10235 (BLS) (Bankr. D. Del. Mar. 11, 2009) (de minimis sale procedures authorized for sales of less than \$5,000,000 and abandonment procedures authorized); *In re Flying J Inc.*, Case No. 08-13384 (MFW) (Bankr. D. Del. Feb. 18, 2009) (de minimis sale procedures authorized for sales of less than \$5,000,000 and abandonment procedures authorized). The Debtors respectfully submit that similar relief is warranted in the Chapter 11 Cases.

**E. Waiver of the Stay Period Under Bankruptcy Rule 6004(h)**

42. Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property of the estate “is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtors respectfully seek a waiver of the 14-day stay period in order to be able to consummate sales of the De Minimis Assets immediately following their compliance with the applicable De Minimis Sale Procedures.

**F. The Procedures for Retaining Professionals Are Appropriate**

43. Section 327(a) of the Bankruptcy Code provides that “the trustee, with the court’s approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties under this title.” Section 327(e) of the Bankruptcy Code further provides that “with the court’s approval” a debtor may employ:

for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold

any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

44. Section 328(a) of the Bankruptcy Code provides, in pertinent part, that the trustee, “with the court’s approval, may employ or authorize the employment of a professional person under section 327 . . . of this title . . . on any reasonable terms and conditions of employment.” Section 330(a) of the Bankruptcy Code further provides, in relevant part, that:

[a]fter notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a . . . professional person employed under section 327 or 1103—

- (A) reasonable compensation for actual, necessary services rendered . . . by the professional person, or attorney and by any paraprofessional person employed by any such person; and
- (B) reimbursement for actual, necessary expenses.

45. Therefore, subject and pursuant to sections 327, 328, and 330 of the Bankruptcy Code, the Debtors may, with the approval of the Court, retain and compensate all of the Professionals upon any reasonable terms and conditions. Further, the Court has the authority, pursuant to section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

46. The Debtors submit that, in light of the additional costs associated with the preparation of multiple employment applications for the Professionals who will assist in the disposition of the De Minimis Assets, it is impractical and inefficient for the Debtors to submit individual retention applications for each Professional pursuant to Bankruptcy Rules 2014 and 2016.

47. Accordingly, the Debtors request that the Court dispense with the requirement of separate employment applications and retention orders with respect to each

Professional to be retained in connection with the disposition of De Minimis Assets and instead authorize the adoption of the procedures proposed herein. The proposed procedures will provide the U.S. Trustee and parties in interest with an opportunity to object after the filing of a Professional's Declaration and will enable the estates to efficiently and effectively market, maintain and sell the De Minimis Assets for their maximum value.

48. It is also appropriate to permit the Debtors to compensate the Professionals out of the proceeds of any sale, lease or disposition of a De Minimis Asset or otherwise for services relating to abandonment. Many of the Professionals, like brokers and agents, do not customarily bill on an hourly basis, but rather are compensated on a commission or per-sale basis. This compensation structure will incentivize the Professionals to achieve the highest possible price while at the same time expediting the process.

**Waiver of Bankruptcy Rules 6004(a) and (h)**

49. To implement the requested relief successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) for all Non-Noticed and Noticed De Minimis Sales authorized pursuant to the terms of an order of the Court granting this motion.

**Notice**

50. Notice of this Motion has been provided (a) the Office of the United States Trustee; (b) counsel for the Creditors' Committee; (c) counsel for the Retiree Committee; (d) YPF; (e) Occidental Chemical Corporation; (f) the Internal Revenue Service; (g) the U.S. Environmental Protection Agency; (h) the U.S. Department of Justice; (i) the New Jersey Department of Environmental Protection and other applicable state environmental agencies; (j) the offices of the attorneys general for the states in which the Debtors operate; (k) the Pension

Benefit Guaranty Corporation; and (l) all parties that have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that such notice is sufficient under the circumstances.

**No Previous Request**

51. No previous request for the relief sought herein has been made to this or any other Court.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

WHEREFORE the Debtors respectfully request that the Court (a) enter the Proposed Order, granting the relief requested herein and (b) grant such other and further relief as the Court may deem just and proper.

Dated: March 16, 2017  
Wilmington, Delaware

/s/ Travis G. Buchanan

M. Blake Cleary (No. 3614)

Joseph M. Barry (No. 4221)

Justin P. Duda (No. 5478)

Travis G. Buchanan (No. 5595)

**YOUNG CONAWAY STARGATT & TAYLOR,  
LLP**

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

-and-

James M. Peck (admitted *pro hac vice*)

Lorenzo Marinuzzi (admitted *pro hac vice*)

Jennifer L. Marines (admitted *pro hac vice*)

Jordan A. Wishnew (admitted *pro hac vice*)

**MORRISON & FOERSTER LLP**

250 West 55<sup>th</sup> Street

New York, New York 10019

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Counsel for Debtors and Debtors-in-Possession*

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

	)	Chapter 11
In re:	)	
	)	Case No. 16-11501 (CSS)
MAXUS ENERGY CORPORATION, <i>et al.</i> , <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
	)	<b>Objection Deadline: March 30, 2017, at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: April 6, 2017, at 11:00 a.m. (ET)</b>

**NOTICE OF MOTION**

TO: (A) THE U.S. TRUSTEE; (B) THE CREDITORS’ COMMITTEE; (C) THE RETIREES’ COMMITTEE; (D) YPF S.A. AND YPF HOLDINGS, INC.; (E) OCCIDENTAL CHEMICAL CORPORATION; (F) THE INTERNAL REVENUE SERVICE; (G) THE ENVIRONMENTAL PROTECTION AGENCY; (H) THE U.S. DEPARTMENT OF JUSTICE; (I) THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE OTHER APPLICABLE STATE ENVIRONMENTAL AGENCIES; (J) THE OFFICES OF THE ATTORNEYS GENERAL FOR THE STATES IN WHICH THE DEBTORS OPERATE; (K) THE PENSION BENEFIT GUARANTY CORPORATION; AND (L) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002

**PLEASE TAKE NOTICE** that Maxus Energy Corporation and the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) have filed the attached *Motion of the Debtors for Authority to Establish Certain Procedures for the Sale or Abandonment of De Minimis Assets Pursuant to Sections 105(a), 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 2002 and for Related Relief* (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be filed on or before **March 30, 2017, at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON APRIL 6, 2017, AT 11:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF**

<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 6,  
WILMINGTON, DELAWARE 19801.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN  
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF  
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: March 16, 2017  
Wilmington, Delaware

/s/ Travis G. Buchanan  
M. Blake Cleary (No. 3614)  
Joseph M. Barry (No. 4221)  
Justin P. Duda (No. 5478)  
Travis G. Buchanan (No. 5595)  
**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

James M. Peck (admitted *pro hac vice*)  
Lorenzo Marinuzzi (admitted *pro hac vice*)  
Jennifer L. Marines (admitted *pro hac vice*)  
Jordan A. Wishnew (admitted *pro hac vice*)  
**MORRISON & FOERSTER LLP**  
250 West 55th Street  
New York, New York 10019  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Counsel for Debtors and  
Debtors-in-Possession*

**Exhibit A**

**Form of Sale Notice**



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

	X		
	:		
<i>In re</i>	:		Chapter 11
	:		
MAXUS ENERGY	:		Case No. 16-11501 (CSS)
CORPORATION, <i>et al.</i> ,	:		
	:		Jointly Administered
Debtors. <sup>1</sup>	:		
	:		
	:		
	X		

**NOTICE OF PROPOSED SALE OF DE MINIMIS  
ASSETS PURSUANT TO DE MINIMIS SALE PROCEDURES**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to the *Order Establishing Certain Procedures for the Sale or Abandonment of De Minimis Assets Pursuant to Sections 105(a), 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 2002*, dated [        ] [    ], 2017 [Docket No. \_\_\_\_] (the “Sale Order”), propose to sell certain *de minimis* assets (the “Assets”) to \_\_\_\_\_ (the “Purchaser”) pursuant to an agreement, dated \_\_\_\_\_, \_\_\_\_\_ (the “Purchase Agreement”). This Notice is being provided in accordance with and sets forth the information required under the Sale Order.

Description of the Assets. The Assets consist of \_\_\_\_\_ and are located at \_\_\_\_\_.

Relationship of Purchaser to the Debtors. The Purchaser’s relationship, if any, with the Debtors is as follows: \_\_\_\_\_.

<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

Liens and Encumbrances on the Assets. The Debtors are aware of the following liens and/or encumbrances on the Assets: \_\_\_\_\_. To the extent that any party has liens or encumbrances on the Assets, the Debtors submit that any such lien or encumbrance will attach to the proceeds of the sale with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto.

Material Economic Terms and Conditions of the Proposed De Minimis Sale. The Debtors propose to sell the Assets to Purchaser on an “as is” basis, free and clear of all liens, claims or encumbrances therein, pursuant to section 363(f) of the Bankruptcy Code (the “De Minimis Sale”). The Purchaser has agreed to pay a purchase price of \$\_\_\_\_\_ for the Assets.

Procedures to Object to the Proposed De Minimis Sale. Any objection to the proposed De Minimis Sale (an “Objection”) must: (a) be in writing; (b) state with specificity the nature of the objection; and (c) be filed with the Bankruptcy Court and served on the parties identified on the exhibit attached hereto (the “Interested Parties”) on or before \_\_\_\_\_, \_\_\_\_\_ (the “Objection Deadline”).

If no Objections are filed with the Bankruptcy Court and served on the Interested Parties by the Objection Deadline in accordance with the terms of the Sale Order described above, then the Debtors may proceed with the De Minimis Sale in accordance with the terms of the Sale Order. The Debtors may consummate a De Minimis Sale prior to expiration of the applicable Objection Deadline if the Debtors obtain each Interested Party's written consent to the De Minimis Sale.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

---

M. Blake Cleary (No. 3614)  
Joseph M. Barry (No. 4221)  
Justin P. Duda (No. 5478)  
Travis G. Buchanan (No. 5595)  
**YOUNG CONAWAY STARGATT & TAYLOR,  
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1000 North King Street  
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Telephone: (302) 571-6600  
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Jordan A. Wishnew (admitted *pro hac vice*)  
**MORRISON & FOERSTER LLP**  
250 West 55<sup>th</sup> Street  
New York, New York 10019  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Counsel for Debtors and Debtors-in-Possession*

**Exhibit B**

**Form of Abandonment Notice**

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

	X		
	:		
<i>In re</i>	:		Chapter 11
	:		
MAXUS ENERGY	:		Case No. 16-11501 (CSS)
CORPORATION, <i>et al.</i> ,	:		
	:		Jointly Administered
Debtors. <sup>1</sup>	:		
	:		
	X		

**NOTICE OF PROPOSED ABANDONMENT OF DE MINIMIS  
ASSETS PURSUANT TO ABANDONMENT PROCEDURES**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to the *Order Establishing Certain Procedures for the Sale or Abandonment of De Minimis Assets Pursuant to Sections 105(a), 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 2002*, dated [        ] [    ], 2017 [Docket No. \_\_\_\_] (the “Order”), propose to abandon certain *de minimis* assets (the “Assets”). This Notice is being provided in accordance with and sets forth the information required under the Order.

Description of the Assets. The Assets consist of \_\_\_\_\_ and are located at \_\_\_\_\_.

Reason for Abandonment. \_\_\_\_\_.

Payment to be Made Related to Abandonment. \_\_\_\_\_.

Procedures to Object to the Proposed Abandonment. Any objection to the proposed Abandonment (an “Objection”) must: (a) be in writing; (b) state with specificity the nature of the objection; and (c) be filed with the Bankruptcy Court and served on the parties

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<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

identified on the exhibit attached hereto (the “Interested Parties”) on or before \_\_\_\_\_, \_\_\_\_\_ (the “Objection Deadline”).

If no Objections are filed with the Bankruptcy Court and served on the Interested Parties by the Objection Deadline in accordance with the terms of the Sale Order described above, then the Assets will be deemed abandoned in accordance with 11 U.S.C § 554.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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M. Blake Cleary (No. 3614)  
Joseph M. Barry (No. 4221)  
Justin P. Duda (No. 5478)  
Travis G. Buchanan (No. 5595)  
**YOUNG CONAWAY STARGATT & TAYLOR,  
LLP**  
Rodney Square  
1000 North King Street  
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Telephone: (302) 571-6600  
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-and-

James M. Peck (admitted *pro hac vice*)  
Lorenzo Marinuzzi (admitted *pro hac vice*)  
Jennifer L. Marines (admitted *pro hac vice*)  
Jordan A. Wishnew (admitted *pro hac vice*)  
**MORRISON & FOERSTER LLP**  
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New York, New York 10019  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Counsel for Debtors and Debtors-in-Possession*

**Exhibit C**

**Proposed Order**

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

	X		
	:		
<i>In re</i>	:		Chapter 11
	:		
MAXUS ENERGY	:		Case No. 16-11501 (CSS)
CORPORATION, <i>et al.</i> ,	:		
	:		Jointly Administered
Debtors. <sup>1</sup>	:		
	:		Ref. Docket No. _____
	X		

**ORDER ESTABLISHING CERTAIN PROCEDURES FOR THE  
SALE OR ABANDONMENT OF DE MINIMIS ASSETS PURSUANT  
TO SECTIONS 105(a), 363 AND 554 OF THE BANKRUPTCY CODE  
BANKRUPTCY RULE 2002 AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 2002 authorizing the Debtors to (i) implement the Procedures, (ii) consummate sales and transfers of De Minimis Assets free and clear of all Liens without the need for further Court approval, or abandon such De Minimis Assets, and (iii) pay any necessary fees and expenses incurred in connection with the sale, transfer or abandonment of such assets, all as further described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the

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<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is GRANTED to the extent provided herein.
2. Pursuant to Bankruptcy Code 363(b), the Debtors are authorized, but not directed, to sell or transfer the De Minimis Assets without any further order of the Court in accordance with the De Minimis Sale Procedures as follows:
  - a. The De Minimis Sale Procedures shall apply only to the sale of De Minimis Assets involving, in each case, the transfer of \$500,000 or less in total consideration for such asset, as measured by the amount of cash or other consideration received by the Debtors on account of the asset being sold;
  - b. The Debtors shall be permitted to sell assets encumbered by liens or encumbrances only if those liens or encumbrances attach to the sale proceeds or the holders of those liens or encumbrances consent to the sale;
  - c. The Debtors shall be permitted to sell assets co-owned by a Debtor and a third party only to the extent that the sale does not violate section 363(h) of the Bankruptcy Code;
  - d. If the Debtors propose to sell an asset for an amount that is less than or equal to \$250,000, the Debtors shall consummate such Non-Noticed De Minimis Sale without further Court approval, and without providing notice of the Non-Noticed De Minimis Sale to any party

(other than to YPF as Lender under the DIP Credit Agreement, counsel to YPF, counsel to the Creditors' Committee, counsel to the Retiree Committee, and any other creditors holding Liens on the De Minimis Assets to be sold, if any, each of which shall receive a Sale Notice and may file an objection in accordance with the procedures for a Noticed De Minimis Sale, as described below);

- e. The Debtors may take any actions that are reasonable and necessary to close a sale and obtain the sale proceeds, including paying reasonable fees to third-party sales agents in connection with the Non-Noticed De Minimis Sale;
- f. If the Debtors propose to sell an asset for an amount that is greater than \$250,000 but less than or equal to \$500,000, the Debtors shall file a Sale Notice, substantially in the form attached to the Motion as Exhibit A, and serve a copy of such Sale Notice by facsimile, overnight delivery or hand delivery on: (a) the Office of the United States Trustee; (b) counsel for the Creditors' Committee; (c) counsel for the Retiree Committee; (d) YPF; (e) Occidental Chemical Corporation; (f) the Internal Revenue Service; (g) the U.S. Environmental Protection Agency; (h) the U.S. Department of Justice; and (i) the New Jersey Department of Environmental Protection and other applicable state environmental agencies (collectively, the "Interested Parties").
- g. The Interested Parties shall have seven (7) calendar days (the "Notice Period") to object to a Noticed De Minimis Sale. Any objections to a Noticed De Minimis Sale shall comply with the instructions set forth on the Sale Notice;
- h. If an objection to a Noticed De Minimis Sale is properly filed and served: (a) the objection shall be deemed a request for a hearing on the objection and Noticed De Minimis Sale at the next scheduled hearing that is at least fourteen (14) calendar days after service of the objection; and (b) the Noticed De Minimis Sale may not proceed absent (i) written withdrawal of the objection; or (ii) entry of an order by the Court specifically approving the Noticed De Minimis Sale;
- i. If no objection to a Noticed De Minimis Sale is filed and served by an Interested Party consistent with the De Minimis Sale Procedures, such Noticed De Minimis Sale shall be deemed final and fully authorized by the Court under the terms of this Order, and no further notice or Court approval to consummate the Noticed De Minimis Sale shall be required or necessary;

- j. The Debtors may consummate a Noticed De Minimis Sale prior to expiration of the applicable Notice Period if the Debtors obtain each Interested Party's written consent to the Noticed De Minimis Sale;
- k. If any material economic terms of a Noticed De Minimis Sale are amended after transmittal of the Sale Notice, but prior to the expiration of the Notice Period, the Debtors shall serve a revised Sale Notice to all Interested Parties describing the proposed Noticed De Minimis Sale, as amended. If a revised Sale Notice is required, the Notice Period shall be extended for an additional seven (7) calendar days from service of the revised Sale Notice; and
- l. All Non-Noticed De Minimis Sales and Noticed De Minimis Sales must be in accordance with the terms of the DIP Credit Agreement including, without limitation, any provisions of the DIP Credit Agreement and Final DIP Order governing the use of proceeds from the Debtors' sale of assets.

3. The Sale Notice and Abandonment Notice, substantially in the forms attached to the Motion as Exhibits A and B, respectively, are approved.

4. All buyers shall take assets sold by the Debtors pursuant to the De Minimis Sale Procedures "as is" and "where is," without any representations or warranties from the Debtors as to quality or fitness of such assets for either their intended or any particular purpose.

5. All buyers shall take assets sold by the Debtors pursuant to the procedures approved by this Order free and clear of liens, claims and encumbrances, pursuant to section 363(f) of the Bankruptcy Code. All such liens, claims and encumbrances shall attach to the proceeds of the sale with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto.

6. The Debtors are authorized to retain Professionals to assist in disposing of the De Minimis Assets pursuant to the following procedures:

- a. Each Professional, within thirty days following the date on which the Professional commences services for the Debtors in connection with the Procedures, shall provide the Debtors with a declaration (the "Declaration"), substantially in the form attached to this Order as Exhibit 1, certifying that such Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the Professional is to be employed.
- b. Debtors' counsel shall, within a reasonable time after receipt thereof, file the Declaration with this Court and serve a copy upon the Interested Parties.
- c. The Interested Parties shall have ten days following service of a Declaration (the "Retention Objection Deadline") to notify the Debtors, the other Interested Parties, and the relevant Professional, in writing, of any objection (a "Retention Objection") to the retention based upon the Declaration. If, upon the Retention Objection Deadline, no Retention Objection is filed, the Debtors shall file a certification of no objection and the retention, employment, and compensation of such Professional shall be deemed approved, pursuant to sections 327(a), 328(a) and 330 of the Bankruptcy Code without further order from the Court. If a Retention Objection is filed on or before the Retention Objection Deadline and such Retention Objection cannot be resolved within 20 days of the filing date of the Retention Objection, the Retention Objection shall be considered at the next scheduled hearing before the Court.

7. The requirements of Local Rule 2016-2 are waived with respect to each Professional retained in accordance with the De Minimis Sale Procedures.

8. The Debtors are authorized to compensate each Professional, to the extent applicable, from the proceeds of any De Minimis Asset sale.

9. To the extent the Debtors determine, in the reasonable exercise of their business judgment, that (a) any De Minimis Assets cannot be sold or otherwise transferred for value and (b) such De Minimis Assets are no longer necessary to the Debtors' business operations, the Debtors are authorized, but not directed, to abandon such De Minimis Assets<sup>3</sup>

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<sup>3</sup> For the avoidance of doubt, the Abandonment Procedures proposed herein are not intended to, and do not, apply to any environmentally contaminated real property currently owned by the Debtors.

without any further order of the Court in accordance with the Abandonment Procedures as follows:

- a. The Debtors shall provide written notice of the proposed abandonment (the "Abandonment Notice"), substantially in the form attached to the Motion as Exhibit B, to the Interested Parties;
- b. The Abandonment Notice shall contain (i) a reasonably detailed description of the De Minimis Assets to be abandoned by the Debtors; (ii) the Debtors' reasons for such abandonment; (iii) any payments to be made by the Debtors in connection with such abandonment including, but not limited to, commission fees to agents, brokers, auctioneers and liquidators; and (iv) whether the proposed abandonment is to a specific person or entity;
- c. Interested Parties will have until 5:00 p.m. (Eastern) on the fifth (5th) day after the date of service of the Abandonment Notice to file and serve on the Objection Parties a written objection to the proposed abandonment;
- d. If no written objections from any of the Interested Parties are filed with the Court within five (5) business days after the date of receipt of such Abandonment Notice, then the Debtors shall be authorized to immediately proceed with the abandonment; and
- e. If a written objection from any Notice Party is filed with the Court within five (5) business days after receipt of such Abandonment Notice, then the relevant De Minimis Asset shall only be abandoned by the Debtors upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing.

10. The Debtors will provide a report listing the De Minimis Assets abandoned or sold and, in the case of a sale, the purchase price for each such asset in the monthly operating reports filed with the Court (the "Monthly Report");

11. To the extent applicable, the fourteen (14) day stay of Federal Rule of Bankruptcy Procedure 6004(h) is hereby waived, and this Order shall be effective immediately. Furthermore, Non-Noticed De Minimis Sales and Noticed De Minimis Sales shall be deemed authorized pursuant to the terms of this Order and no further or additional waivers of the fourteen

(14) day stay of Federal Rule of Bankruptcy Procedure 6004(h) shall be required for the Debtors to consummate a Non-Noticed De Minimis Sale and/or a Noticed De Minimis Sale, subject to compliance with the procedures set forth in the De Minimis Sale Procedures.

12. With respect to all Noticed or Non-Noticed De Minimis Sales consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular purchaser, and a Noticed or Non-Noticed De Minimis Sale consummated pursuant to this Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby; *provided, however*, that the Debtors shall be permitted to submit a proposed form of sale order for entry by the Court under certification of counsel if the Debtors, in their sole discretion, deem it to be necessary or desirable to effectuate any sale.

13. Nothing in this Order shall be construed to prevent the Debtors, in their sole discretion, from seeking this Court's approval at any time of any proposed sale after notice and an opportunity for a hearing.

14. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

15. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1 TO ORDER**

**Form of Declaration**



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

-----X	:	
	:	
<i>In re</i>	:	Chapter 11
	:	
MAXUS ENERGY	:	Case No. 16-11501 (CSS)
CORPORATION, <i>et al.</i> ,	:	
	:	Jointly Administered
Debtors. <sup>1</sup>	:	
	:	
-----X		

**PROFESSIONAL DECLARATION**

**TO BE COMPLETED BY PROFESSIONALS EMPLOYED BY THE DEBTORS AND DEBTORS-IN-POSSESSION (COLLECTIVELY, THE “DEBTORS”).**

**DO NOT FILE THIS DECLARATION WITH THE COURT.  
RETURN IT FOR FILING BY THE DEBTORS, TO:**

**MORRISON & FOERSTER LLP  
250 West 55<sup>th</sup> Street  
New York New York 10019  
Attn: Jordan Wishnew, Esq.**

All questions **must** be answered. Please use “none,” “not applicable,” or “N/A,” as appropriate. If more space is needed, please complete on a separate page and attach.

<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

**PROFESSIONAL DECLARATION**

**DECLARATION AND DISCLOSURE STATEMENT OF \_\_\_\_\_, ON BEHALF OF \_\_\_\_\_**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, upon his oath, deposes and says:

1. I am a \_\_\_\_\_ of [\_\_\_\_\_[name of company]\_\_\_\_\_] , located at \_\_\_\_\_ (the "Company").

2. Maxus Energy Corporation and its affiliated debtors as debtors and debtors-in-possession (collectively, the "Debtors") have requested that the Company provide [**specific description of services**] to the Debtors in connection with the following matter(s): [**description of matter(s)**] and the Company has consented to provide such professional services on the terms set forth on the engagement agreement attached as Exhibit 1 to this Declaration.

3. The Company may have performed professional services in the past, may currently perform services, and may perform professional services in the future in matters unrelated to the Debtors' voluntary cases commenced under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), for persons that are parties in interest in the Debtors' chapter 11 cases. However, the Company does not perform services for any such person in connection with these chapter 11 cases. In addition, the Company does not have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

4. As part of its customary practice, the Company is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

5. In the ordinary course of its business, the Company maintains a database for purposes of performing “conflict checks.” The Company database contains information regarding the Company’s present and past representations. Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), I obtained a list of the entities identified in Bankruptcy Rule 2014(a) from counsel to the Debtors for purposes of searching the aforementioned database and determining the connection(s) which the Company has with such entities. The Company’s search of the database identified the following connections: **[Disclose Connections Here]**.

6. Neither I nor **[any principal, partner, director, officer, etc.]** of, or professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Company.

7. Neither I, nor **[any principal, partner, director, officer, etc.]** of, or professional employed by, the Company insofar as I have been able to ascertain upon reasonable inquiry, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Company is to be employed.

8. As of the Petition Date, the Debtors owed the Company \$\_\_\_\_\_ for prepetition services and expenses, the payment of which is subject to limitations contained in the Bankruptcy Code.

9. As of June 18, 2016, which was the date on which the Debtors commenced these chapter 11 cases, the Company **[was/was not]** party to an engagement or services agreement with the Debtors. **[A copy of such agreement is attached as Exhibit 2 to this Declaration].**

10. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors and upon conclusion of that inquiry, or at any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration, as necessary.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on \_\_\_\_\_, 2017.

Name: \_\_\_\_\_

Title: \_\_\_\_\_