




CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 25, 2016


United States Bankruptcy Judge

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

IN RE: §
§ **CASE NO. 15-33460-sgj-11**
SABLE OPERATING COMPANY §
D/B/A NYTEX PETROLEUM, INC., § **Chapter 11**
§
Debtor. §

AGREED FINAL ORDER APPROVING POST-PETITION FINANCING, GRANTING LIENS AND ADMINISTRATIVE CLAIMS, AND GRANTING RELATED RELIEF

Upon the Motion to Approve Post-Petition Financing [Doc. No. 94] (the “*Motion*”)¹ pursuant to Sections 105, 363, 364 and 503 of Title 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) and Federal Rule of Bankruptcy Procedure 4001, filed by Sable Operating Company d/b/a Nytex Petroleum, Inc. (“*Sable*” or the “*Debtor*”), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and

¹ All capitalized terms not defined or limited herein shall have the meaning ascribed in the Motion.

claims for the benefit of the Secured Lenders² post-petition and (ii) grant of administrative claims as more fully set forth herein, and upon the proceedings held before this Court and good and sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

A. On August 28, 2015 (the “*Petition Date*”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, but has requested the employment of a third-party operator to operate the Property³. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. An immediate and critical need exists for the Debtor to borrow funds from the Secured Lenders in order to continue to operate the Property or employ (upon Court approval) a third party to operate the Property. Without such funds, the Debtor will not be able to remediate the Property to bring it into compliance with applicable regulatory authorities, which would have detrimental consequences to the Debtor and, by extension, its creditors. At this time, the Debtor’s ability to borrow additional funds from the Secured Lenders is vital to the value of the Debtor’s Property.

² The term “Secured Lenders” used herein shall *exclude* Cory Hall and Jennifer Hall.

³ The “Property” shall mean and refer to the approximate 20,000 acres of oil and gas leases in Palo Pinto County, Texas that were purchased by the Debtor in October of 2014.

D. Secured Lenders may claim that substantially all of the Debtor's assets are subject to the Prepetition Liens of the Secured Lenders including liens on accounts receivable relevant to this Motion, subject only to certain statutory liens for work performed prior to the Secured Lender's pre-petition advances.

E. This Court concludes that entry of this Agreed Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, as follows:

1. The Debtor is hereby authorized to borrow up to \$75,000 (the "*Initial Amount*") via advance requests from the Secured Lenders on the same or substantially similar terms as set forth in the Secured Lenders' pre-petition Loan Documents. Nothing herein shall bind or obligate any of the Secured Lenders to fund the initial amount or any advance request. Any amounts advanced under this Order shall be secured by liens granted under section 364(d) of the Bankruptcy Code without the Secured Lenders having to make additional filings. Notwithstanding the foregoing, the automatic stay is hereby modified to allow the Secured Lenders to make such filings as they deemed necessary to perfect their liens and security interests granted hereunder. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action. Nothing herein shall prime the liens of the taxing authorities. The Debtor is permitted to pay U.S. Trustee fees incurred during this case.

2. As additional adequate protection for the advances made hereunder, the Secured Lenders are hereby granted administrative claims under section 503(b)(1) of the Bankruptcy Code, pursuant to section 364(c) the Secured Lenders' administrative claims shall prime and be priority to any other Section 503(b) administrative claim and shall be paid or otherwise satisfied

upon the effective date of any plan of reorganization, or as otherwise ordered by this Court, except the Secured Lenders' Section 503(b)(1) priority administrative claim shall not prime an administrative claim approved by this Court prior to the date of this Order or administrative claims of approved and retained professionals. The administrative claims of approved and retained professionals shall have priority over all other administrative claims that shall share pro-rata with the Section 503(b)(1) administrative claims granted herein to the Secured Lenders.

3. The Debtor shall account as provided herein to the Secured Lenders for all funds received. For purposes of this Order, "proceeds" of any of the Secured Lenders' collateral shall mean Proceeds (as defined in the Uniform Commercial Code) of such collateral security for all Cash Collateral permitted to be used hereunder by the Debtor. The replacement liens granted to the Secured Lenders in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State's Office or any other such act of perfection.

4. From and after the entry of this Order, the proceeds of the advances made by the Secured Lenders hereunder shall not, directly or indirectly, be used to pay expenses of the Debtor or otherwise disbursed except for those expenses and/or disbursements that are necessary for the operation of the Property and expressly permitted by the Secured Lenders via the funding of an advance request. In order to obtain funds constituting all or part of the Initial Amount the Debtor must send an advance request to the Secured Lenders in writing, such advance request shall itemize the task, good, service, expense, payee and amount for all monies requested; the advance request may be delivered to the Secured Lenders via email to Mark Andrews (mandrews@dykema.com), Aaron Kaufman (akaufman@dykema.com) and Brandon Jones

(bjones@shannongracey.com). The Debtor shall not use any advanced funds other than as set forth in an advance request and approved by the Secured Lenders;

5. During the pendency of this order, the Debtor will maintain insurance on the Secured Lenders' collateral. The Debtor shall execute and deliver to the Secured Lenders all such agreements, financing statements, instruments and other documents as the Secured Lenders may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report to the Secured Lenders' counsel by the 20th day of each month for the prior month, and such other written reports as the Secured Lenders may reasonably request

6. The Debtor's authorization to use the fund advanced by the Secured Lender hereunder is expressly conditioned on the Debtor's compliance with the terms of this Order including, without limitation, the timely provision of reports described in the preceding paragraph to the Secured Lenders and compliance with the advance requests.

7. Nothing in this Order shall prejudice the Secured Lenders' rights to seek allowance of an administrative claim under section 507(b) of the Bankruptcy Code, nor shall this Order prevent the Secured Lenders from seeking any additional or alternative form of relief under the Bankruptcy Code.

8. In addition to the Initial Amount, the Secured Lenders may make subsequent advances to the Debtor under the terms of this Order on the following terms, without further order of this Court:

- a. The Debtor must request any subsequent advance from the Secured Lenders in writing, indicating the amount of the advance and the proposed budget for use of the subsequent advances;

- b. If the Secured Lenders are willing to make the subsequent advance requested, the Debtor shall file a notice with the Court, the U.S. Trustee, the parties requesting notice in this case and any other parties who received copies of the Motion. Such notice shall clearly indicate the amount of the proposed subsequent advance and the proposed budget for the proposed subsequent advance.
- c. Parties in interest shall have three (3) business days from the filing of the notice described in the preceding paragraph to file and serve their objections upon the Debtor and the Secured Lender. If an objection is timely, the Debtor may request an emergency hearing, subject to the Court's availability, on two-day notice. If no timely objection is filed and served, the Secured Lender may make such subsequent advance, and the protections afforded in this Order shall apply to such subsequent advance the same as they had been made in the Initial Advance.

9. The provisions of this Order shall be binding upon and inure to the benefit of the Secured Lenders and the Debtor.

10. This Court shall retain jurisdiction to interpret and implement this Order.

END OF ORDER

Agreed to in form and substance by:

FOR THE DEBTOR

/s/ Joyce W. Lindauer
Joyce Lindauer (State Bar No. 21555700)
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FOR THE SECURED LENDERS

/s/ Mark Andrews
Mark Andrews (State Bar No. 01253520)
Dykema Cox Smith
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