

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

<p><b>In re</b></p> <p><b>W Resources, L.L.C.,</b></p> <p align="center"><b>Debtor.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 18-10798</b></p>
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**MOTION FOR THE ENTRY OF AN ORDER (I) APPROVING THE SALE OF ASSETS UNDER U.S.C. § 363(b) AND (f) FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS WITH LIENS, CLAIMS AND INTERESTS ATTACHING TO THE PROCEEDS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES AND APPROVING THE PROCEDURES TO BE EMPLOYED WITH ASSUMPTION AND ASSIGNMENT, (III) APPROVING THE MODIFICATION TO THE EMPLOYMENT OF HALL AND HALL PARTNERS, LLP AS BROKERS AND AUCTIONEERS, (IV) FINDING THE PURCHASER TO BE IN GOOD FAITH, (V) ABROGATING THE RULE 6004(h) STAY, AND (VI) GRANTING RELATED RELIEF**

To maximize the funds available for the distribution to creditors in a bankruptcy proceeding, Bankruptcy Code sections 363 and 365 allow the debtor-in-possession to sell and assign its property outside of the ordinary course of its business if it demonstrates a sound business purpose for the sale and assignment. Through this motion, the debtor-in-possession seeks to sell its Warren Peak Ranch property in Montana through a credit-bid to its secured creditors First Interstate Bank and United Mississippi Bank, thereby significantly reducing the amount of its secured debt, and associated interest, and generating a \$55,000 return for the estate. As the ranch property includes grazing and water rights, the Debtor also seeks to assume and assign the associated leases. This is the second motion that has been filed seeking authority to sell this property. The first attempt resulted in a November auction and associated bidder that failed to consummate the transaction. This motion essentially seeks to mimic the recovery that the estate would have received through the earlier auction, had the bidder closed the sale after the auction.

### **Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief sought in this motion include Bankruptcy Code §§ 105, 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9019.

### **General Background**

3. This case was commenced on July 23, 2018 (the "Petition Date") by the filing of a voluntary chapter 11 petition by W Resources, L.L.C. (the "Debtor"). The Debtor continues to manage its property as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been requested or appointed, and no official committee of creditors or equity interest holders has been established.

4. The Debtor is a holding company with a diverse set of raw and recreational land, farming and hunting operations, an aircraft hangar, oil and gas interests, and equity-based interests. The Debtor's assets include the "Warren Peak Ranch" located in Granite County, Montana. The Warren Peak Ranch includes three tracts of land and improvements: (a) the "Lord Ranch" tract, with roughly 2,690 deeded acres, (b) the "Buchanan Ranch" tract, with roughly 3,058 deeded acres, and (c) the "Ranch House" tract, with less than 40 acres and a residence, all as more specifically described in the legal descriptions attached here as **Exhibit A** to **Exhibit 1** (the proposed order).

5. The Debtor intends to sell the Lord and Buchanan Ranches to First Interstate Bank ("FIB") in exchange for complete remission of the FIB claim against this estate, with a current payoff of roughly \$9.1 million dollars (Claim No. 6-1) (the "FIB Claim") and other good and valuable consideration as set forth herein.

6. The Debtor intends to sell the Ranch House tract to United Mississippi Bank (“UMB”) in exchange for complete remission of that certain UMB claim against this estate, with a current payoff of roughly \$550,000 (Claim No. 9-1, as amended) (the “UMB Claim”) and other good and valuable consideration as set forth herein.

7. Also, that certain State grazing lease on Section 16, Township 5N, Range 14W (permit #3060364), which is subject to the mortgage of FIB (see ¶ 25 below), will be assumed by the Debtor and assigned to FIB.

8. The totality of property described in ¶¶ 4-5 above constitutes the “Purchased Assets.”

9. This is the second motion for authorization to sell the Purchased Assets. As the Court is aware, the Debtor previously filed a motion seeking authority to auction the Purchased Assets and associated property.<sup>1</sup> The Court approved that motion.<sup>2</sup>

10. The auction was held in Montana on November 19, 2018. Only one entity bid at the auction, in the final amount of \$10,395,000.00 for all three tracts of the Warren Peak Ranch, which bid was accepted by the auctioneer. In reliance on this cash bid, neither FIB nor UMB (collectively the “Banks”) exercised their rights under the Auction Order to credit bid their claims on their collateral. However, the cash bidder has failed and refused to tender a deposit or to close the sale.<sup>3</sup>

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<sup>1</sup> Motion for Entry of Order (I) Approving the Sale of Assets Under U.S.C. § 363(b) and (f) at Public Auction Free and Clear of Liens, Claims and Interests with Liens, Claims and Interests Attaching to the Proceeds, (II) Approving the Assumption and Assignment of Certain Contracts and Leases and Approving the Procedures to be Employed with Assumption and Assignment, (III) Approving the Employment of Hall and Hall Partners, LLP as Brokers and Auctioneers (IV) Authorizing the Debtor’s Entry into a Future Stalking Horse Purchase Agreement in the Exercise of Its Business Judgment, (V) Finding the Purchaser to be in Good Faith, (VI) Abrogating the Rule 6004(h) Stay, and (VII) Granting Related Relief (Doc. No. 136) (the “Auction Motion”), which Auction Motion is incorporated herein by this reference.

<sup>2</sup> Order Approving Sale of Assets and Granting Related Relief (Doc. No. 165) (the “Auction Order”).

<sup>3</sup> The Debtor reserves any and all rights, claims and causes of action which it has or may have against the bidder for those breaches, including without limitation, the right of specific performance.

11. Given the foregoing, the Debtor, in the exercise of its business judgment, has agreed to sell the Purchased Assets to the Banks in exchange for releases of the FIB and UMB Claims (as specifically defined in ¶¶ 5 and 6) against the estate, for the payment to the estate of \$55,000.00 cash and other costs associated with the closing of the transaction, for the payment of the estate's obligation to reimburse the auctioneer the sum of up to \$25,000.00 for out-of-pocket fees and expenses incurred by the auctioneer in connection with the failed November 19, 2018 auction, and to retain the auctioneer to market the Lord and Buchanan Ranches after their acquisition by FIB.<sup>4</sup>

12. While the Auction Order authorized the Debtor to enter into such agreements with the Banks, and to close such a sale to the Banks if they were the successful bidders or back-up bidders at the auction, the Debtor and the Banks did not enter into such agreements or close such sales. Accordingly, in an abundance of caution, the Debtor seeks an order specifically approving a credit-bid sale to each Bank, irrespective of the auction.

### **Relief Requested**

13. The Debtor seeks the entry of an Order (the "Order"), substantially in the form attached to this motion as Exhibit 1: (a) authorizing the Debtor to sell the Purchased Assets to the Banks, free and clear of any and all liens, claims, encumbrances and interests of any nature or kind whatsoever; (b) approving the assumption and assignment of State grazing lease on Section 16, Township 5N, Range 14W (permit #3060364) by FIB, as well as additional Assumed Contracts and Leases, if any; (c) approving the modification of the terms of employment of Hall and Hall Partners, LLP ("Hall and Hall") in that certain Agreement for Sale of Real Estate at Public Auction (which was approved by the Court and is attached to the Auction Order as **Exhibit A**); (d)

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<sup>4</sup> As explained in more detail below, no sales commission will be due to Hall and Hall as a result of the sales sought under this Motion.

determining that each Bank is a good faith purchaser pursuant to 11 U.S.C. § 363(m); (e) abrogating the Rule 6004(h) stay; and (f) other related relief.

**I. The Sale Free and Clear**

**A. Approval of Sale under § 363(b)(1)**

14. This Motion contemplates that the Banks will buy the Purchased Assets through a “deed-in-lieu” transaction. This purchase will be accomplished pursuant to 11 U.S.C. § 363, which provides that the Debtor, “after notice and a hearing, may [...] sell [...], other than in the ordinary course of business, property of the estate.”<sup>5</sup>

15. The Court should approve the Sale of the Purchased Assets to the Banks if it finds that the Debtor demonstrates a sound business reason for the sale and the parties acted in good faith to sell the Purchased Assets at a fair and reasonable price.<sup>6</sup> Section 105(a) 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.”<sup>7</sup>

16. Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale, (b) whether adequate and reasonable notice of the sale was given to interested parties, (c) whether

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<sup>5</sup> 11 U.S.C. § 363(b)(1). See *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (“bankruptcy court can authorize a sale of all a Chapter 11 debtor’s assets under [Section] 363(b)(1) when a sound business purpose dictates such action.”); *In re Gucci*, 126 F.3d 380, 387 (2d Cir. 1997) (“A sale of a substantial part of a Chapter 11 estate may be conducted if a good business reason exists to support it.”); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”).

<sup>6</sup> See *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983) (holding that the proper standard to use when considering a proposed motion to sell is the business judgment test); *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986) (following *Lionel* in requiring a “business justification for using, selling, or leasing the property outside the ordinary course of business”). See also *In re 240 N. Brand Partners*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996) (citing to *Lionel* for proposition that “debtors who wish to utilize section 363(b) to dispose of property of the estate must demonstrate that such disposition has a valid business justification.”).

<sup>7</sup> 11 U.S.C. § 105(a).

the sale will produce a fair and reasonable price for the property, and (d) whether the parties have acted in good faith.<sup>8</sup>

17. Once a Debtor articulates a valid business reason for a sale, the business judgment rule acts as a presumption that the Debtor has acted on an informed basis, in good faith, and in the honest belief that the sale is in the best interests of the estate.<sup>9</sup>

18. The Debtor's decision to sell the Purchased Assets to the banks is based on its sound business judgment. The Debtor seeks to liquidate the estate so that it may justly and equitably compensate creditors. The sale of the Purchased Assets will generate value for the estate, and the sale will help expedite payment to the holders of allowed claims. Further, the proposed sale follows the exposure of the Purchased Assets to the public market thereby providing evidence of their value and marketability.

19. It is an unfortunate fact that the yearly "selling season" in Montana for ranch property draws ended in late October and does not pick back up until late-spring of 2019. This being the case, the Debtor seeks approval of the sale to the Banks that will close before December 31, 2018.

20. The Purchased Assets have been exposed to the market for a considerable length of time through the estate's brokers, Hall and Hall. In addition, Hall and Hall marketed the Purchased Assets during the time period leading up to the auction. Through this process, the Debtor attempted to achieve the maximum value for the Purchased Assets. Further, the highest and best bid at the auction (indeed, the only bid at the auction), if closed, would have retired the Banks' Claims and

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<sup>8</sup> See, e.g., *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

<sup>9</sup> See *In re Gulf States Steel Inc. of Ala.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) ("The Trustee is responsible for the administration of the estate and his or her judgment on the sale and the procedure for the sale is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.").

returned roughly \$50,000 to the estate through the approved one-half of one percent carveout. Thus, the sale is roughly equivalent to that of the prior expected recovery from the closing of the auction sale.

21. As previously mentioned, the prior sale order authorized the Debtor to enter into, and close, a stalking horse agreement with the Banks that is similar to the transaction proposed through this motion.<sup>10</sup> The salient difference in the instant proposal is that Hall and Hall is agreeing to forego its four percent commission on the proposed transaction as a result of the failed auction.

22. The parties have acted in good faith. Hall and Hall has listed the Purchased Assets for sale since April of 2016. During that time, Hall and Hall has aggressively marketed the property and, at the request of management, steadily reduced the asking price from in excess of \$13 million to \$11.5 million dollars. At a price of \$11.5 million dollars, the Purchased Assets generated significant attention, leading to the Auction Motion.

23. Here, given the failure of the auction bidder to perform, and given the secured claim of the Banks against the Purchased Assets, each of the preceding four factors has been satisfied. The Debtor currently has inadequate liquidity to operate. The orderly sale of the Purchased Assets proposed herein will benefit the Debtor's creditors.

24. Finally, Hall and Hall will continue to market the property seeking a non-credit bid transaction pending approval of this motion.

## **B. Approval of the Sale Under § 363(f)**

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<sup>10</sup> See, P-165, ¶ 4.

25. Pursuant to this motion, the Debtor also requests authorization to sell the Purchased Assets free and clear of any liens, claims, encumbrances, or other interests that may be asserted against the Purchased Assets (described with particularity in **Exhibit C** to the Auction Order). Section 363(f) provides for the sale of property of the estate by the debtor “free and clear of any interest in such property of any entity other than the estate.”<sup>11</sup> Such “free and clear” provision permits a sale free and clear of interests beyond liens and permits a sale free and clear of claims,<sup>12</sup> contractual rights,<sup>13</sup> and statutory interests.<sup>14</sup>

26. Section 363(f) permits a debtor to sell “free and clear” of an interest if any one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- b. the lienholder or claimholder 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. the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.<sup>15</sup>

In addition, a court may authorize the sale of a debtor’s assets free and clear of any liens, claims, or encumbrances under Section 105 of the Bankruptcy Code.<sup>16</sup>

27. While Section 363(f) permits the sale of assets “free and clear of any interests,” the term “any interest,” as used in section 363(f), is not defined anywhere in the Bankruptcy Code.<sup>17</sup>

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<sup>11</sup> 11 U.S.C. § 363(f).

<sup>12</sup> *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d Cir. 2003).

<sup>13</sup> *See Unsecured Creditors’ Comm. of Robert L. Helms Constr. & Development v. Southmark Corp.*, 139 F.3d 702 (9th Cir. 1998).

<sup>14</sup> *See Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543-548 (7th Cir. 2003)).

<sup>15</sup> 11 U.S.C. § 363(f).

<sup>16</sup> *See In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

<sup>17</sup> *Folger Adam Security v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000).



In *Folger Adam*, the Third Circuit specifically addressed the scope of the term “any interest.”<sup>18</sup> The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only *in rem* interests in property,” the trend in modern cases is towards “a broader interpretation which includes other obligations that may flow from ownership of the property.”<sup>19</sup> As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in *Folger Adam*, the scope of 11 U.S.C. § 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in *Folger Adam* stated that *Leckie* held that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.”<sup>20</sup>

28. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Estate’s Sale of the Purchased Assets free and clear of all interests and claims, except with respect to any interests and claims that may be assumed liabilities under the applicable Purchase Agreement.<sup>21</sup>

29. The Debtor’s search of the mortgage records affecting the real property being sold through this Motion can be summarized as follows:

a. Encumbering the Lord and Buchanan Ranch tracts:

- i. An encumbrance in the nature of a mortgage, recorded on December 18, 2014, in favor of First Interstate Bank, securing an original indebtedness of \$9,115,000.00 and with a current indebtedness of \$8,998,198.66 as of October 1, 2018, exclusive of attorney fees and costs, with interest accruing daily at the rate of \$2,223.75. The Trustee has analyzed this secured claim and has no objection to its allowance under § 506.
- ii. An encumbrance in the nature of a mortgage, recorded on September 12, 2017, in favor of United Mississippi Bank, securing an original indebtedness of \$2,000,000.00. While the Debtor has not completed its

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<sup>18</sup> *Id.* at 258.

<sup>19</sup> *Id.* at 258 (citing 3 COLLIER ON BANKRUPTCY 363.06[1]).

<sup>20</sup> *Folger Adam*, 209 F.3d at 258.

<sup>21</sup> See *Citicorp Homeowners Services, Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

analysis of this mortgage and secured claim, or its potential avoidability, it will endeavor to do so prior to the sale.

- iii. An encumbrance in the nature of a judicial lien, recorded on June 18, 2018, in favor of Callais Capital Management, LLC, 401 Focus Street, Thibodaux, LA 70301, securing indebtedness of roughly \$4,800,000. As this judgment was recorded within the ninety (90) days of bankruptcy it is facially avoidable under Bankruptcy Code section 547 and is, therefore, “subject to bona fide dispute” under Bankruptcy Code section 363(f).

b. Encumbering the Ranch House tract:

- i. An encumbrance in the nature of a mortgage, recorded on March 9, 2017, in favor of United Mississippi Bank, securing an original indebtedness of \$500,000.00. The Debtor has analyzed this secured claim and has no objection to its allowance under § 506.
- ii. An encumbrance in the nature of a judicial lien, recorded on June 12, 2018, in favor of Callais Capital Management, LLC, 401 Focus Street, Thibodaux, LA 70301, securing indebtedness of roughly \$4,800,000. As this judgment was recorded within the ninety (90) days of bankruptcy it is facially avoidable under Bankruptcy Code section 547 and is, therefore, “subject to bona fide dispute” under Bankruptcy Code section 363(f).

30. In this case, sale under Section 363(f) “free and clear” of the above interests is appropriate because:

- a. applicable nonbankruptcy law permits the sale of such property free and clear of such interest,
- b. such interest is in bona fide dispute; and/or
- c. the lienholder or claimholder will consent.

31. Attached hereto as **Exhibit 2** is the Debtor’s Mennonite notice list of entities asserting perfected security interests against the Purchased Assets.

32. The Debtor requests that the Court approve the Sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances and interests of any nature or kind whatsoever, whether now known or unknown.

## **II. Assumption and Assignment**

33. By this motion, the Debtor requests the assumption of the executory contracts pursuant to 11 U.S.C. § 365 and FED. R. BANKR. P. 6006 and 9014, and the assignment to the Successful Bidder in association with the purchase of the Purchased Assets. In association therewith, the Debtor seeks approval of the Assignment Procedures, which will govern the determination any cure payments and objections.

34. Part and parcel of the sale of the Purchased Assets is the assumption and assignment of that certain State grazing lease on Section 16, Township 5N, Range 14W (permit #3060364), that is subject to the mortgage of FIB, attached to the Sale Order as **Exhibit D** (the “Grazing Lease”). The Debtor submits that the assumption and assignment of the Grazing Lease is in the best interests of the estate. Upon information and belief, the Grazing Lease rent has been paid through the year and there will be, therefore, no cure payment due.

35. Pursuant to Section 365 of the Bankruptcy Code, the Debtor can assume or reject any unexpired lease or executory contract. But if there has been a default, the Debtor can only assume: after curing any default or providing adequate assurances of promptly curing any default; and (ii) providing adequate assurances of future performance. 11 U.S.C. §§ 365(a), 365(b) and 365(b)(C). The Debtor’s decision to assume or reject agreements under § 365 is governed by the business judgment test.<sup>22</sup>

36. The business judgment standard mandates that a court approve a Debtor’s business decision unless the decision is the product of bad faith, whim or caprice with approval withheld if the “judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code.”<sup>23</sup>

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<sup>22</sup> *Richmond Leasing Company v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985).

<sup>23</sup> See *Lubrizol Enters. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Allied Technology, Inc. v. R.B. Brueman & Sons*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982).

37. The Debtor submits that the assumption and assignment of any additional Contracts and Leases is in the best interests of the estate. The Contracts and Leases were all utilized in the Debtor's operations. The assumption and assignment to the FIB is appropriate under the circumstances.

### **III. Modification of Employment of Hall and Hall Partners, LLP**

38. As discussed above, Hall and Hall served as auctioneer for the estate. The Debtor believed it could achieve the best and highest net recovery to the estate by employing a qualified auctioneer to conduct a public auction of the property in Montana. The need to retain Hall and Hall was of paramount importance, as the marketing and sale of the Property should have maximized benefits to the estate. In particular, Montana law allows the division of the Purchased Assets into no less than 160 acre parcels and Hall and Hall has particular expertise in the planning, effecting and marketing such divisions at auction. As such, Hall and Hall's services were appropriate and necessary to assist the Debtor.

39. The Debtor proposed that Hall and Hall, a licensed and bonded auctioneer with extensive experience and success with auctioning property in bankruptcy matters, liquidate the Property at an absolute auction sale as per the terms of the *Agreement for Sale of Real Estate at Public Auction* attached to the Auction Order as **Exhibit "A"** (the "Auction Listing Agreement"), which includes, among other things, that Hall and Hall will receive a four (4%) percent commission on the sale.

40. Hall and Hall's duties included, without limitation: handling all potential bidder information requests, internet marketing, web sites, print advertising placement, media requests, purchase agreements, receiving bids, holding deposits, and assisting / conducting the auction.

41. As part of the sale transaction contemplated in this Motion, the Banks will pay to Hall and Hall up to \$25,000.00 that Hall and Hall advanced on behalf of the estate for marketing and related expenses. Hall and Hall also will relieve the estate from its obligations under the Auction Listing Agreement to pay the 4% commission. In exchange, FIB will retain Hall and Hall to market the Lord and Buchanan Ranches after the sale to FIB at the same 4% commission rate. Other than the 4% commission, the remaining terms of the retention agreement will be negotiated and agreed to between FIB and Hall and Hall.

#### **IV. Determining that the Purchaser is a Good Faith Purchaser**

42. A condition to the consummation of the sale of the Purchased Assets is that the Court find that the Banks have acted in “good faith” within the meaning of 11 U.S.C. § 363(m). Section 363(m) provides that “[t]he reversal or modification on appeal of an authorization under [section 363(b) or (c)] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith.”<sup>24</sup>

43. The good-faith requirement in § 363(m) is not specifically defined. Many courts turn to “traditional equitable principles and [hold] that the phrase encompasses one who purchases in good faith and for value.”<sup>25</sup> “Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the debtor, or an attempt to take grossly unfair advantage of other bidders.”<sup>26</sup> “The requirement that a purchaser act in good faith, of course, speaks to the integrity of his conduct in the course of

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<sup>24</sup> 11 U.S.C. § 363(m).

<sup>25</sup> *Hytken v. Williams*, 2007 U.S. Dist. LEXIS 27671, \*14 (S.D. Tex. Mar. 30, 2007) (quoting *In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997), *aff’d*, 2008 U.S. App. LEXIS 12240 (5th Cir. June 6, 2008) (per curiam)).

<sup>26</sup> *Hytken*, 2007 U.S. Dist. LEXIS 27671 at \*\*14-15 (quoting *Dick’s Clothing & Sporting Goods, Inc. v. Phar-Mor, Inc.*, 212 B.R. 283, 290 (N.D. Ohio 1997) (quoting *In re Rock Indus. Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))).

the sale proceedings.”<sup>27</sup> The good-faith requirement prohibits “fraudulent, collusive actions specifically intended to affect the sale price or control the outcome of the sale.”<sup>28</sup>

44. A bankruptcy court is not required to make an explicit finding of good faith in order to authorize a sale under the Bankruptcy Code.<sup>29</sup> Although the Bankruptcy Code does not define “good faith purchaser,” courts interpreting Section 363(m) of the Bankruptcy Code have held that “to show lack of good faith [a party] must show fraud, collusion... or an attempt to take grossly unfair advantage of other bidders.”<sup>30</sup> Yet, because there is no bright line test, courts examine the facts of each case by concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.”<sup>31</sup>

45. Under these standards – and by any other – the Banks have acted in good faith. The public sale was the very definition of an open market sale. The consideration sought to be received by the estate from the auction was to be substantial, fair and reasonable and the product of an arms-length sale process. Unfortunately, the bidder at the auction defaulted. The Debtor, the Banks and Hall and Hall all have agreed that the best course of action is the “deed-in-lieu” sale sought herein.

## **V. Approving the Disposition of All Amounts Received in Connection with the Sale**

46. The following amounts will be paid by the Banks and without further order of the court, as a surcharge under § 506(c):

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<sup>27</sup> *Id.* at \*15 (quoting *Rock Indus.*, 572 F.2d at 1198).

<sup>28</sup> *Id.* (quoting *In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005)).

<sup>29</sup> See *In re Zinke*, 97 B.R. 155, 156 (E.D.N.Y. 1989) (finding that a duty to make an explicit finding of good faith before permitting a sale “has not been imposed by the Second Circuit or the United States Supreme Court”).

<sup>30</sup> *In re Coated Sales, Inc.*, No. 89 Civ. 37-4 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990). See also *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Asocs., Ltd.*, 706 F. 2d 301, 305 (10th Cir. 1983)).

<sup>31</sup> *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus.*, 572 F.2d at 1198). See also *In re Abbotts Dairies of Pa., Inc.*, 788 F. 2d 143, 147 (3d Cir. 1986) (“The requirement that a purchaser act in good faith...speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”) (citations omitted).

- I. All 2018 property taxes and any and all other unpaid taxes and assessments existing as of the date of closing shall be assumed and paid by the Banks;
- II. \$25,000.00 for out-of-pocket fees and expenses incurred by the auctioneer in connection with the failed November 19, 2018 auction shall be assumed and paid by the Banks pro-rata;
- III. other ordinary and necessary costs of closing, including title insurance (collectively I - III, the "Closing Costs," with such Closing Costs split between the Banks pro rata according to each Bank's debt and/or collateral; and
- IV. \$55,000 to be paid to the Estate at closing (\$50,000 for FIB and \$5,000 for UMB).

**VI. Relief from Bankruptcy Rule 6004(h) is Appropriate**

47. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, lease of property... is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise." FED. R. BANKR. P. 6004(h).

48. All creditors and interested parties will receive notice of the original auction motion, as well as this motion and will be provided with an opportunity to be heard. The Debtor submits that such notice is adequate for entry of an order approving this motion and waiving the fourteen (14) days waiting period under Bankruptcy Rule 6004(h).

49. The Debtor intends to notice a full copy of this motion and exhibits on (a) the United States, (b) all potential holders of liens, claims, encumbrances and interests against property of the estate of which the Debtor is aware according to a review of current available information records,

(c) all creditors on the Debtor's mailing matrix, (d) all parties that have requested notice in this case and (e) all counterparties to any executory contracts to be assumed and assigned.

**WHEREFORE**, the Debtor requests the entry of an order, substantially in the form attached to this motion as **Exhibit 1**: (a) authorizing the Debtor to sell the Purchased Assets to First Interstate Bank and United Mississippi Bank on the terms specified herein, free and clear of any and all liens, claims, encumbrances and interests of any nature or kind whatsoever; (b) approving the assumption and assignment of State grazing lease on Section 16, Township 5N, Range 14W (permit #3060364) as well as additional Assumed Contracts and Leases, if any; (c) approving the modification of the terms of employment of Hall and Hall Partners, LLP, as specified herein; (d) approving the \$55,000 carveout to be received by the estate free and clear of all liens, claims, encumbrances and interests of any nature or kind whatsoever, (e) determining that FIB is a good faith purchaser pursuant to 11 U.S.C. § 363(m); (f) abrogating the Rule 6004(h)stay, and (g) other related relief.



Respectfully Submitted,

**STEWART ROBBINS & BROWN LLC**

301 Main Street, Suite 1640

P. O. Box 2348

Baton Rouge, LA 70821-2348

(225) 231-9998 Telephone

(225) 709-9467 Fax

By: /s/ Paul Douglas Stewart, Jr.

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*Counsel for W Resources, L.L.C.*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

	)	
In re	)	Chapter 11
	)	
W Resources, L.L.C.,	)	Case No. 18-10798
	)	
Debtor .	)	
	)	
	)	

ORDER (I) APPROVING THE SALE OF ASSETS UNDER U.S.C. § 363(b) AND (f) FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS UNDER THE RELEVANT PURCHASE AND SALE AGREEMENT WITH LIENS, CLAIMS AND INTERESTS ATTACHING TO THE PROCEEDS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES AND APPROVING THE PROCEDURES TO BE EMPLOYED WITH ASSUMPTION AND ASSIGNMENT, (III) APPROVING THE MODIFICATION TO THE EMPLOYMENT OF HALL AND HALL PARTNERS, LLC AS BROKERS AND AUCTIONEERS, (IV) FINDING THE PURCHASER TO BE IN GOOD FAITH, (V) ABROGATING THE RULE 6004(h) STAY, AND (VI) GRANTING RELATED RELIEF

BEFORE THE COURT on December 19, 2018, came on for hearing the motion (the “Sale Motion”) (ECF No. \_\_)<sup>32</sup> filed by W Resources, L.L.C. (the “Debtor”). Upon careful review of the record of the case, the Sale Motion, any objections to the Sale Motion, the arguments of counsel, the record of the case, and for reasons rendered orally at the December 19, 2018, hearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Debtor’s assets include the “Warren Peak Ranch” located in Granite County, Montana. The Warren Peak Ranch includes three tracts of land and improvements: (a) the “Lord Ranch” tract, with roughly 2,690 deeded acres, (b) the “Buchanan Ranch” tract, with roughly 3,058

<sup>32</sup> Capitalized terms not otherwise defined herein are as defined in the Sale Motion.

deeded acres, and (c) the “Ranch House” tract, with less than 40 acres and a residence, all as more specifically described in the legal descriptions attached here as Exhibit A.

2. The Debtor is authorized to sell, transfer and assign the Lord and Buchanan Ranches to First Interstate Bank (“FIB”) in exchange for complete remission of the FIB claim against this estate, (Claim No. 6-1) (the “FIB Claim”) and other good and valuable consideration as set forth herein.

3. The Debtor is authorized to sell, transfer and assign the Ranch House tract to United Mississippi Bank (“UMB”) in exchange for complete remission of that certain UMB claim against this estate, (Claim No. 9-1, as amended) (the “UMB Claim”) and other good and valuable consideration as set forth herein.

4. The sale of the Lord and Buchanan Ranches and the Ranch House (collectively the “Purchased Assets” to FIB and UMB, respectively (collectively the “Purchasers”), upon closing, shall be a legal, valid and effective transfer of such property, and shall vest the Purchasers with all right, title and interest of the Debtor and its bankruptcy estate (the “Estate”) in and to the Purchased Assets; and the sale shall be and is free and clear of any and all: (a) mortgages, security interests, notes, security agreements, privileges, conditional sale or other title retention agreements, pledges, liens (including, without limitation, any statutory lien on real and personal property and any and all “liens” as that term is defined and used in the Bankruptcy Code), licenses, deeds of trust, equity interests, rights of first refusal, consent rights, judgments, demands, encumbrances, easements, restrictions, interests and/or charges of any kind or nature whatsoever, if any, whether known or unknown, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing collectively referred to herein as “Liens”), including without limitation the Liens set forth in

Exhibit B hereto; and (b) debts arising in any way in connection with any acts of the Debtor or the Estate, claims, as that term is defined in the Bankruptcy Code, interests, obligations, demands, guaranties, options, rights, contractual commitments, executory contracts, unexpired leases, employment agreements, any other employee, workers' compensation, occupational diseases or unemployment or temporary disability related claims, restrictions, rights of lesion beyond moiety, tort claims, product liability claims, environmental rights and claims, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to herein as "Claims").

5. Upon the closing of the sale, the FIB claim shall be satisfied, in full, and extinguished from the Claims Register in this case.

6. Upon the closing of the sale, the UMB claim shall be satisfied, in full, and extinguished from the Claims Register in this case.

7. From the Purchase Price will be paid by the Banks at closing and without further order of the court, as a surcharge under § 506(c):

- I. the Debtor's portion of the prorated 2018 property taxes, any and all other unpaid taxes and assessments existing as of the date of closing;
- II. \$25,000.00 for out-of-pocket fees and expenses incurred by the auctioneer in connection with the failed November 19, 2018 auction, as per ¶ 8, *infra*;
- III. other ordinary and necessary costs of closing, including title insurance (collectively I - III, the "Closing Costs," with such Closing Costs split between the Banks pro rata according to each Bank's debt; and

IV. a \$55,000 carveout in favor of the Estate from the Purchase Price of the particular property which shall be received by the estate free and clear of liens, claims and encumbrances (payable \$50,000 for FIB and \$5,000 for UMB);

8. Upon the closing of the sale, and in exchange for the retention of Hall and Hall by FIB as its broker after the closing, and the agreement of FIB and UMB to pay Hall and Hall a pro rata amount up to \$25,000.00 for the out-of-pocket fees and expenses incurred in connection with the failed November 19, 2018, auction, Hall and Hall shall not be entitled to the four (4%) commission from the Estate as set forth in the Auction Listing Agreement or otherwise and the estate shall be released from any further obligation with Hall and Hall arising from, or that could have arisen from, this sale.

9. Following the sale of the Purchased Assets as set forth herein: (a) the Clerk of Court of Granite County and/or other public officials are hereby authorized to completely cancel and erase from the records of his parish each of the mortgages, liens, privileges and other items listed in Exhibit B; (b) counsel for the Debtor and/or Purchasers are authorized to file UCC-3 terminations with respect to any and all UCC fixture filings; (c) counsel for the Debtor and/or Purchasers are authorized to file UCC-3 amendments deleting the Purchased Assets from other filed financing statements; and (d) the Clerk of Court of Granite County and/or other public officials are hereby authorized to cancel and release the Purchased Assets from the effect of any and all other Liens and Claims shown in the public records ONLY INSOFAR AS THEY ATTACH TO THE PURCHASED ASSETS.

10. All transactions and instruments contemplated under the terms of the sale shall be enforceable specifically against and binding upon, and not subject to rejection or avoidance by,

the Debtor, creditors of the estate, and any other parties-in-interest, and any successors of the Estate, including any trustee appointed in any subsequent or converted case of the Debtor under Chapter 7 of the Bankruptcy Code.

11. At the closing of the sale, that certain State grazing lease on Section 16, Township 5N, Range 14W (permit #3060364) for the State of Montana, attached to this Order as Exhibit C, be and is hereby assumed by the Debtor, and is assigned to FIB free and clear of any and all Liens and Claims, with no cure payment.

12. This Sale Order shall be effective and executory immediately upon entry on the docket of the record of this case, and the fourteen (14) day stay provided by FED. R. BANKR. P. 6004(h) shall be abrogated and waived by this Sale Order, so as to allow the Debtor and the Purchasers to proceed immediately to effectuate the closing and transfers contemplated by and within the Sale Motion and this Sale Order.

13. The closing of the sale shall occur no later than December 31, 2018, unless extended pursuant to the terms of a document or instrument executed by the Debtor and each Purchaser.

14. Nothing in this Sale Order shall affect any of rights of the Debtor or Purchasers except as specifically set forth herein.

15. The Debtor and Purchasers are in good faith, and they are entitled to and are hereby granted the protections afforded by 11 U.S.C. § 363(m).

16. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the sale, this Sale Order, and any other documents executed and delivered in connection with the sale and this Sale Order.

17. The Debtor is authorized, pursuant to 11 U.S.C. §§ 363(b), 363(f), 363(m), and 362: (a) to execute and deliver, to perform under, and to consummate and implement the terms of the sale, pursuant to the terms of this Sale Order, together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale; (b) to take all further actions as may reasonably be requested by Purchasers for the purpose of assigning, transferring, granting, conveying and conferring the Purchased Assets to Purchaser as may be necessary or appropriate to the performance of the obligations contemplated by the sale; and (c) to execute any and all documents on behalf of the Debtor and/or the Estate to effectuate the terms and conditions of the sale.

18. The provisions of this Sale Order, including any related findings of fact and conclusions of law and the liens granted pursuant to this Order against the sale proceeds of the Purchased Assets, shall be binding upon all parties in interest in the Case, including without limitation, the Debtor and its respective successors and assigns (including without limitation any Trustee hereinafter appointed or elected for the estate of the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) and will continue in full force and effect notwithstanding the dismissal of this case or its conversion to a different chapter of the Bankruptcy Code.

19. It is further ordered that, upon the closing of the sale of the Purchased Assets, counsel for the Debtor shall immediately file a notice in the record of the Bankruptcy Court stating that the closing of the sale of the Property has occurred and specifying the date of the closing.

**EXHIBIT A – SALE ORDER  
REAL PROPERTY DESCRIPTION**



**Lord Ranch and Buchanan Ranch:**

All of W Resources' right, title and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Granite County, State of Montana:

Lands Lying in Township 5 North, Range 14 West, M.P.M., Granite County, Montana:

Section 7: That portion lying South of the Right-of-Way of Montana State Highway No. 38

Section 15: ALL; LESS AND EXCEPTING THEREFROM that portion deeded to Eccleston, Connors, Peterson and Harris on Roll 2 of Microfilm, Page 552

LESS AND EXCEPTING THEREFROM that portion deeded to Robert Elliott and Sandra Elliott on Roll 35 of Microfilm, Page 381

LESS AND EXCEPTING THEREFROM Certificate of Survey No. 368 -

Roll 34 of Microfilm, Page 7

LESS AND EXCEPTING THEREFROM Certificate of Survey No. 407- Roll 42 of Microfilm, Page 828, 859 and Roll 37 of Microfilm, Page 405

LESS AND EXCEPTING THEREFROM Lots 1A and 1B of Minor Subdivision Survey No. 4-M - Roll 38 of Microfilm, Page 32 and Roll 42 of Microfilm, Page 123

Section 17: ALL

Section 18: N½

Section 21: All

ALSO

Lands Lying in Township 5 North, Range 15 West, M.P.M., Granite County, Montana:

Section 12: That portion lying South of the Right-of-Way of Montana State Highway No. 38;

LESS AND EXCEPTING THEREFROM Lot 1 of Minor Subdivision No. 15-M - Roll 41 of Microfilm, Page 592

Section 13: N½; LESS AND EXCEPTING THEREFROM that portion deeded to the State of Montana recorded in Book 28 of Deeds, Page 559 and Book 41 of Deeds, Page 222

Lands lying in Township 5 North, Range 14 West, P.M.M., Granite County, Montana

Section 18: SW1/4; N1/2 SE1/4; SW1/4 SE1/4; N1/2 SE1/4 SE/14

Section 19: All

Section 20: All

Section 28: W1/2

Section 29: All

Section 30: NE1/4

ALSO

Lands lying in Township 5 North, Range 15 West, P.M.M., Granite County, Montana

Section 13: S1/2; Less and Excepting Therefrom Certificate of Survey Nos. 184 and Certificate of Survey No. 394.

ALSO

A tract of land located in and being a portion of Section 13, Township 5 North, Range 15 West, and in Section 24, Township 5 North, Range 15 West P.M.M., Granite County, Montana and being more particularly described as Tract 8 of Certificate of Survey No. 394.

ALSO

State Lease #3060364 lying in Township 5 North, Range 14 West, P.M.M., Granite County, Montana

Section 16: All

And all of W Resources' right, title, and interest in and to all leases of the Property, all Rents from the Property and the Personal Property:

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property attached or affixed to the Real Property: together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. For the avoidance of any doubt, the tractor owned by W Resources and located on the Real Property is not Personal Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interest and rights, as further described above.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Ranch House:**

**WITNESSETH:** That GRANTOR hereby irrevocably GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, nevertheless, WITH POWER OF SALE that certain real property, which does not exceed forty (40) acres in area, situated in the County of Granite, State of Montana, particularly described as follows:

A parcel of land located in the Southeast Quarter (SE1/4) of Section 12, Township 5 North, Range 15 West, P.M.M., Granite County, Montana; being more particularly described as Lot 1 of Minor Subdivision 15-M, filed for record January 19, 1995, as Instrument No. 31068.

**TOGETHER WITH:** (1) All buildings, fixtures and improvements thereon and all water rights, rights-of-way, tenements, hereditament, privileges and appurtenances thereunto belonging, now owned or hereafter acquired, however evidenced, used or enjoyed with said premises or belonging to the same; (2) All right, title and interest hereafter acquired in or to any of said premises, hereby also releasing, relinquishing and waiving all exemptions, rights of dower and homestead, in or to said premises, vested or inchoate; (3) All heating, air conditioning, plumbing and lighting facilities, equipment and fixtures now or hereafter installed upon or within said premises, used or proper or necessary to constitute the said premises a habitable, usable or operating unit—all of said property being designated and decerned for the purposes of this instrument a part of the realty; and (4) All of the rents, issues and profits of said premises, **SUBJECT, HOWEVER,** to the right, power and authority hereinafter conferred upon **BENEFICIARY** to collect and apply such rents, issues and profits;

**EXHIBIT B – SALE ORDER  
LISTING OF LIENS  
AND ENCUMBRANCES**

Liens and encumbrances affecting:

Lot 1 of MINOR SUBDIVISION PLAT NO. 15-M, a platted subdivision in Granite County, Montana, according to the official recorded plat thereof:

**1. Montana Trust Indenture, to secure an original indebtedness of \$500,000.00, dated March 9, 2017 and any other amounts and/or obligations secured thereby**

**Recorded: March 9, 2017, Roll 74 Microfilm, Page 191, Instrument No. 68910**

**Grantor: W Resources LLC**

**Trustee: Stewart Title Company of Missoula County, Inc.**

**Beneficiary: United Mississippi Bank**

**Modification Agreement recorded September 12, 2017, Roll 74 Microfilm, Page 729, Instrument No.**

**69614.**

**2. Mortgage, to secure an original indebtedness of \$2,000,000.00, dated August 31, 2017 and any other amounts and/or obligations secured thereby.**

**Recorded: September 12, 2017, Roll 74 Microfilm, Page 728, Instrument No. 69613**

**Mortgagor: W Resources LLC**

**Mortgagee: United Mississippi Bank**

**3. Notice of Judgment for amounts due thereunder as disclosed by Affidavit recorded June 18, 2018 in Roll 75 Microfilm, Page 426, Instrument No. 70537..**

**Debtor: Callis Capital Management, LLC**

**Creditor: W Resources LLC**

**Amount: \$3,000,000.00 plus interest and \$840,000.00 plus interest**

**Filed: June 12, 2018**

**Case No: C 664,124, in the Judicial District Court for the Parish of East Baton Rouge.**

Liens and Encumbrances affecting:

Lands Lying in Township 5 North, Range 14 West, M.P.M., Granite County, Montana:  
Section 7: That portion lying South of the Right-of-Way of Montana State Highway No. 38  
Section 15: ALL; LESS AND EXCEPTING THEREFROM that portion deeded to Eccleston, Connors, Peterson and Harris on Roll 2 of Microfilm, Page 552  
LESS AND EXCEPTING THEREFROM that portion deeded to Robert Elliott and Sandra Elliott on Roll 35 of Microfilm, Page 381  
LESS AND EXCEPTING THEREFROM Certificate of Survey No. 368 - Roll 34 of Microfilm, Page 7  
LESS AND EXCEPTING THEREFROM Certificate of Survey No. 407- Roll 42 of Microfilm, Page 828, 859 and Roll 37 of Microfilm, Page 405  
LESS AND EXCEPTING THEREFROM Lots 1A and 1B of Minor Subdivision Survey No. 4-M - Roll 38 of Microfilm, Page 32 and Roll 42 of Microfilm, Page 123  
Section 17: ALL  
Section 18: N½  
Section 21: All

ALSO

Lands Lying in Township 5 North, Range 15 West, M.P.M., Granite County, Montana:  
Section 12: That portion lying South of the Right-of-Way of Montana State Highway No. 38; LESS AND EXCEPTING THEREFROM Lot 1 of Minor Subdivision No. 15-M - Roll 41 of Microfilm, Page 592  
Section 13: N½; LESS AND EXCEPTING THEREFROM that portion deeded to the State of Montana recorded in Book 28 of Deeds, Page 559 and Book 41 of Deeds, Page 222  
Lands lying in Township 5 North, Range 14 West, P.M.M., Granite County, Montana  
Section 18: SW1/4; N1/2 SE1/4; SW1/4 SE1/4; N1/2 SE1/4 SE/14  
Section 19: All  
Section 20: All  
Section 28: W1/2  
Section 29: All  
Section 30: NE1/4

ALSO

Lands lying in Township 5 North, Range 15 West, P.M.M., Granite County, Montana  
Section 13: S1/2; Less and Excepting Therefrom Certificate of Survey Nos. 184 and Certificate of Survey No. 394.

ALSO

A tract of land located in and being a portion of Section 13, Township 5 North, Range 15 West, and in Section 24, Township 5 North, Range 15 West P.M.M., Granite County, Montana and being more particularly described as Tract 8 of Certificate of Survey No. 394.

ALSO

State Lease #3060364 lying in Township 5 North, Range 14 West, P.M.M., Granite County, Montana  
Section 16: All

**1. Mortgage, to secure an original indebtedness of \$9,115,000.00, dated December 16, 2014 and any other amounts and/or obligations secured thereby.  
Recorded: December 18, 2014, Roll 71 Microfilm, Page 1001, Instrumnet No. 65740  
Mortgagor: W Resources, LLC, a Louisiana Limited Liability Company**

**Mortgagee: First Interstate Bank**

**2. Mortgage, to secure an original indebtedness of \$2,000,000.00, dated August 31, 2017 and any other amounts and/or obligations secured thereby.**

**Recorded: September 12, 2017, Roll 74 Microfilm, Page 728, Instrument No. 69613**

**Mortgagor: W Resources LLC**

**Mortgagee: United Mississippi Bank**

**3. Subject to Lis Pendens filed June 11, 2018, as Instrument No. 70529.**

**4. Notice of Judgment for amounts due thereunder as disclosed by Affidavit recorded June 18, 2018 in**

**Roll 75 Microfilm, Page 426, Instrument No. 70537.**

**Debtor: Callis Capital Management, LLC**

**Creditor: W Resources LLC**

**Amount: \$3,000,000.00 plus interest and \$840,000.00 plus interest**

**Filed: June 12, 2018**

**Case No: C 664,124, in the Judicial District Court for the Parish of East Baton Rouge.**

**EXHIBIT C – SALE ORDER  
GRAZING LEASE TO BE  
ASSUMED AND ASSIGNED**



DS-102  
4-14

PERMIT NO. 3060364

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
STATE FOREST LAND USE AUTHORIZATION

This agreement made and entered into by and between the State of Montana, as licensor, and the person(s) herein named, as the licensee.

Name of Licensee: W RESOURCES LLC County: GRANITE  
Address or Box No.: 11468 RUE CONCORD Customer # 147479  
City/State/Zip: BATON ROUGE, LA 70810

In consideration of the mutual covenants hereinafter stated, the parties hereto agree as follows:

The licensor hereby grants to the licensee a license to occupy and use, subject to all of the terms and conditions hereinafter stated, the following described premises:

LEGAL DESCRIPTION	SECTION	TWP	RANGE	ACRES
ALL	16	5N	14W	640

Purpose for which the land is licensed: GRAZING Grant: Common Schools

Rental Rate: MINIMUM

Term of license: 10 years, beginning MARCH 1, 2018, and expiring FEBRUARY 28, 2028 or until this agreement is terminated as hereinafter provided.

This license has a Carrying Capacity of 152 Animal Unit Months, and the licensee shall not exceed such carrying capacity. The licensee may only graze the lands contained in this agreement during the period JUNE 1st through SEPTEMBER 30th. The State reserves the right to raise or lower the above carrying capacity when grazing surveys indicate such a change is warranted.

The parties to this license mutually agree to the following terms and conditions:

- In consideration of the issuance of this agreement, the licensee shall pay the licensor an animal unit monthly rate to be specified each year for the period from the execution of this agreement to and including the 28th of February of the next succeeding year. It is further agreed that the rental rate for the remainder of the term covered by this agreement shall be that rate established by the State Board of Land Commissioners. Any revision of said rate by the State Board of Land Commissioners shall be applicable to this permit for the next succeeding year following such revision. The first payment shall be due and payable on the date of execution of this agreement. Subsequent payments under this agreement shall be due by March 1 each year and failure to pay by April 1 automatically cancels the entire license. A notice of rental due or any other correspondence or notice from the licensor will be sent to the above address only, unless a change of address is requested in writing, signed by the licensee and recorded by the licensor.
- The licensee shall pay the grazing fee as set by the Board of Land Commissioners each year provided that no lease issued as a result of competitive bidding shall be subject to this provision, unless the rental set by competitive bidding is less than the authorized minimum rental.
- The licensee shall comply with all regulations governing the use of state forest land including all state sanitary laws and regulations applicable to these premises.
- The licensee shall take all reasonable precautions to prevent forest fires.
- The licensee shall report immediately to the licensor any trespassing livestock or timber cutting observed upon these premises.
- The licensee shall refrain from cutting or destroying any state forest timber or using any of said timber for the construction of improvements unless written permission has first been obtained from the licensor.
- The licensee shall refrain from using any State property without first obtaining permission of the licensor.
- The licensee shall peaceably yield possession of these premises upon termination of this license for any cause.
- The licensor will allow the licensee to construct improvements which will increase the use for which this license was granted; however, the licensee must file plans and specifications for such improvements with, and obtain the approval of the licensor prior to the actual construction of such improvements.
- The licensor will allow the licensee to remove all improvements constructed by him on these premises upon the termination of the agreement, provided that the licensee removes such improvements within sixty days after the termination of the agreement, and that such removal will not damage the premises. Upon the failure to remove said improvements within the specified sixty day period, all right, title and interest in such improvements will become vested in the licensor. The licensee shall not remove such improvements without first obtaining the permission of the licensor and permission will not be granted as long as licensee has failed to make payment of any money due the licensor under any of the terms of this agreement.
- The licensor will allow this license to be transferred by the licensee to any other person after proper application has been made to and the written approval secured from the licensor. Any attempt to transfer this license without the licensor's written approval will result in the automatic termination of this agreement.

- 12. The licensor has the power to cancel this license for any of the following causes: misrepresentation, fraud or concealment of facts relating to the issuance of this license where such facts if known would have prevented the issuance of this license; use of the premises for purposes other than those herein authorized; overgrazing or any other misuse or abuse of the premises; or for any other reason which in the judgment of the licensor is necessary for the protection of the best interests of the licensor. Cancellation of this license for reasons stated in this section will not entitle the licensee to any refund of or exemption in the payment of license fee stated in this agreement.
- 13. The licensor reserves the right to withdraw all or any part of these premises from grazing to promote the best interests of the licensor. In the event of such withdrawal, grazing fees will be adjusted on the basis of the adjusted carrying capacity of the premises.
- 14. The licensee shall permit state officials, users of State Forest Lands, and purchasers of State Forest Products, free ingress and egress across the premises herein described, when so authorized by the licensor. The licensor reserves the right to enter upon these premises to prospect for coal, oil, gas and minerals, and to grant permits for other uses not in conflict with this permit.
- 15. Where this license is granted for the purpose of grazing livestock, the licensee agrees that all bedding and salting of livestock shall be at a distance of ¼ mile from streams, lakeshores, and other water, or on divides between drainages where streams are closer together than ¼ mile.
- 16. The licensee agrees not to use the lands under this agreement for the purpose of encroaching on adjacent range lands or in such a manner as to cause overgrazing or soil and range deterioration on adjacent lands.
- 17. The licensee shall not permit any noxious weeds to propagate or go to seed. In the event any portion of the area described in the license is included in a "Noxious Weed Control District", the license must comply with the provisions of §77-6-114, Montana Code Annotated, and pay all taxes and assessments levied by the county commissioners for such district.
- 18. The making, execution and delivery of this agreement by the licensee has been induced by no representations, statements warranties, or agreements other than those herein expressed. This agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof except as may be hereto attached. This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.
- 19. Any appropriations of water developed on the premises by the licensee pursuant to the Montana Water Use Act will be applied for and the permits or certificates held in the name of the Board of Land Commissioners. The licensee shall obtain the advice and consent of the licensor prior to initiating any such appropriations.
- 20. The licensee is not to sublease any portion of the area described in this license without prior written approval from the licensor. In addition, the licensee shall not sublease at rates in excess of those rates charged by the State. Violation of these terms may be cause for cancellation of the lease.
- 21. The licensee may be required to develop and implement a grazing management plan approved by the licensor, and construct & maintain fences as directed by the licensor to promote better range management, to prevent unauthorized use of the above described area by trespass stock, and to prevent damage to trees in areas being put under intensified forest management.
- 22. The licensee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user, except that he or she shall make reasonable efforts to suppress the fire or report it to the proper fire fighting authority, or both, as circumstances dictate.
- 23. The licensee may not close the land under license at any time to the public for "general recreational use", as defined in A.R.M. 36.25.145 without advanced written permission of the licensor. Permission to close lands categorically closed under A.R.M. 36.25.145 is hereby granted and no further permission is required.
- 24. SPECIAL CONDITIONS:
  - The lessee must develop and implement a grazing management plan that has been approved by the Department's Anaconda Unit Office.

IN WITNESS WHEREOF, the State of Montana and the licensee have caused this license to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the Board of Land Commissioners dated MAY 23 2018

  
 \_\_\_\_\_  
 Signature of Licensee

11468 RUE CONCORD 5/22/18 AT  
 Address  
BATON ROUGE, LA 70810  
 City State Zip Code  
504-908-1200  
 Phone Number

**JOHN E. TUBBS**  
 Director, Department of Natural Resources & Conservation  
 by: Amanda Taylor

