IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
SAND HILLS METROPOLITAN	)	Case No. 18-13078 JGR
DISTRICT,	)	Chapter 9
	)	
Debtor.	)	

DISCLOSURE STATEMENT FOR THE SECOND AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF SAND HILLS METROPOLITAN DISTRICT

I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the chapter 9 bankruptcy case of Sand Hills Metropolitan District (referred to hereinafter as "Sand Hills"). This Disclosure Statement contains information about Sand Hills and describes the Second Amended Plan for the Adjustment of Debts (the "Plan") filed by Sand Hills on October 17, 2018. A full copy of the Plan is provided with this Disclosure Statement.

Pursuant to the terms of the United States Bankruptcy Code, this Disclosure Statement has been presented to and approved by the Bankruptcy Court. Approval of the Bankruptcy Court is required by statute but does not constitute a judgment by the Court as to the desirability of the Plan or as to the value or suitability of any consideration offered under the Plan.

A. Purpose of this Document

Sand Hills prepared this Disclosure Statement to provide information sufficient to permit a creditor to make a reasonably informed decision in exercising the right to vote upon the Plan. The material here presented is intended solely for that purpose and solely for the use of known creditors of Sand Hills, and, accordingly, may not be relied upon for any purpose other than determination of how to vote on the Plan.

This Disclosure Statement describes:

- Sand Hills' background and need for bankruptcy relief;
- How the Plan proposes to treat claims of the type you hold (i.e., what you will receive on your claim or equity interest if the Plan is confirmed);
- Who can vote on or object to the Plan;
- What factors the Bankruptcy Court (the "Court") will consider when deciding

whether to confirm the Plan;

- Why Sand Hills believes the Plan is feasible and in the best interests of creditors; and,

- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Confirm the Plan*

The hearing at which the Court will determine whether to confirm the Plan will take place on **November 28, 2018 at 10:00 a.m**., in Courtroom B, at the Federal Customs House, 721 19th Street, Denver, Colorado.

2. *Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Wadsworth Warner Conrardy, P.C., attn. David V. Wadsworth, Esq., 2580 West Main Street, Suite 200, Littleton, CO 80120 (counsel for Sand Hills). See **section VII.A**. below for a discussion of voting eligibility requirements.

Your ballot must be received by **5:00 p.m. on November 21, 2018** or it will not be counted.

3. *Deadline for Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon counsel for Sand Hills by **November 21, 2018**.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact David V. Wadsworth, counsel for Sand Hills, at (303) 296-1999 or dwadsworth@wwc-legal.com.

II. DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein have the meanings ascribed thereto in the Plan (see Article II of the Plan entitled “Definitions and Rules of Interpretation”).

III. BACKGROUND

A. 2004-2013

Sand Hills was originally known as the Altamira Metropolitan District No. 6 ("AMD6"). AMD6 was formed in 2004 pursuant to C.R.S. § 32-1-101 *et seq.* (the "Special District Act" or "Act"). When formed, all the land within AMD6 was located within the borders of the Town of Lochbuie ("Lochbuie"). Lochbuie is a "municipality" as that term is used in the Act.

Because its boundaries were wholly contained within Lochbuie, AMD6's organization required approval by Lochbuie pursuant to § 1-204.5 of the Act. The information required and criteria applicable to the approval was a "service plan" submitted by AMD6 to Lochbuie. AMD6 submitted its original service plan to Lochbuie on August 26, 2004 and a revised service plan on October 6, 2014 (as revised, the "Service Plan"). The Service Plan provided that AMD6 would be formed in conjunction with five other special districts to "finance, construct and install local and regional public improvements, including streets and traffic signals, and water, sewer, storm drainage and park, open space and recreation facilities" for the Altamira development in Lochbuie. *Service Plan*, at 1.

The Altamira development is a "planned unit development" ("PUD") that is platted for 1,185 single-family detached homes. As a PUD, the development will also include commercial, retail, recreational and other uses when built out.

Lochbuie adopted a resolution approving the Service Plan and the organization of AMD6 on October 6, 2004, together with five other districts created to serve Altamira with local and regional improvements. The Weld County, Colorado District Court entered an Order and Decree Organizing AMD6 on November 12, 2004. The Order was recorded in the Weld County real property records on December 13, 2004.

Construction of the Altamira development did not commence as anticipated. In 2015, the land with entitlements was sold to a Canadian company with expertise in residential land development, the Walton Group. The development remains an integral part of Lochbuie's comprehensive future plan, but ground has not yet been broken on the project.

The land comprising the Altamira development is still in need of additional residential water supplies for full build-out. The 70 Ranch, LLC ("70 Ranch") owns property adjacent to the South Platte River that is well-situated for developing water resources and water infrastructure for not only the Altamira development, but also the surrounding region of Lochbuie and other parts of Weld County. Robert Lembke is one of the owners of 70 Ranch and he has served on the Sand Hills' board of directors since its inception.

70 Ranch is not located in Lochbuie. 70 Ranch consists of approximately 13,000 acres in rural Weld County approximately 30 miles from Lochbuie. While having few residents, the 70 Ranch property is and has been the site of significant oil and gas exploration and production for many years. In early 2009, 70 Ranch determined that inclusion of the 70 Ranch property into AMD6 was in both the best interest of the ranch and the best interest of AMD6.

Part 4 of the Act sets forth two procedures for the inclusion of real property into a special district. One such procedure is the one followed by 70 Ranch: the fee owners of the real property seeking inclusion may file a petition with the special district's board of directors requesting inclusion. On March 30, 2009, 70 Ranch submitted a petition for inclusion to AMD6's board. Thereafter, a properly noticed public meeting of the inclusion petition was held by the AMD6's board. At the public meeting, AMD6's board approved the inclusion petition.

AMD6 did not seek Lochbuie's or Weld County's approval in connection with the inclusion of the 70 Ranch Property. AMD6 believed that the mere act of including additional property within AMD6 did not constitute a "material modification" of its Service Plan requiring the approval of either Lochbuie or Weld County. C.R.S. § 32-1-207(2)(a) provides that approval for "changes in the boundary" of a special district is not required "except that the inclusion of property that is located in a county or municipality with no other territory within the district may constitute a material modification" requiring notice to the governing body. Because both the Altamira property and the 70 Ranch property are in Weld County, AMD6 believed this exception inapplicable.

On April 28, 2009, the Weld County District Court ordered the 70 Ranch property included in AMD6. After the inclusion, Altamira No. 6 changed its name to Sand Hills Metropolitan District.

From 2004 through the inclusion of the 70 Ranch property, AMD6 had no expenses and no revenues. On November 24, 2009, and after the name change, Sand Hills approved a mill levy certification of 55.000 mills and thereafter began collecting taxes from residents, oil & gas companies extracting resources from the 70 Ranch property, and all others required by Colorado law to pay such taxes. This tax certification was expressly permitted upon the inclusion of the 70 Ranch Property. *See* C.R.S. § 32-1-402(1)(b) ("After the date of its inclusion in a special district, such property shall be subject to all of the taxes and charges imposed by the special district").

The inclusion of the 70 Ranch property was seen at the time of inclusion as mutually beneficial. With the inclusion, Sand Hills had access to water resources for the proposed Altamira development; at the same time, Sand Hills was able to provide services and construct improvements for the benefit of the 70 Ranch and its taxpayers.

However, given the slow pace of development caused by the 2009 recession, there was no immediate need to construct the Altamira infrastructure contemplated in Sand Hills' original 2004 Service Plan. Further, all the tax revenue generated after inclusion came from the 70 Ranch and its taxpayers. By 2011, the Sand Hills' board determined that excluding the original Altamira property from Sand Hills was in the best interests of the Altamira and 70 Ranch properties, Sand Hills, and Weld County. The board followed the procedure for exclusion set forth in part 5 of the Act. On April 28, 2011, the Weld County District Court ordered the Altamira property excluded from Sand Hills.

Sand Hills did not seek Lochbuie's or Weld County's approval in connection with exclusion of the Altamira property because the exclusion was merely a "change in boundary" that Sand Hills believed, pursuant to the language of C.R.S. § 32-1-207(2)(a), was not a material modification.

After the exclusion, and although the original Service Plan contemplated a regional role for the district, the Sand Hills board concluded that the original Service Plan should be amended to describe the expanded regional water infrastructure. Thus, after the 70 Ranch inclusion and the Altamira property exclusion, Sand Hills began revising its plans for construction and installation of local and regional public improvements.

In April 2013, Sand Hills submitted a first revised service plan to Lochbuie. There is no question that as of the 2011 exclusion of the Altamira property, Sand Hills no longer had any property within the borders of Lochbuie. However, Sand Hills submitted the revised service plan to Lochbuie because C.R.S. § 32-1-207(2)(a) provides that service plan modifications must be submitted to and approved only by the "governing body" that originally approved the organization of the special district. Here, that governing body was Lochbuie. Neither C.R.S. § 32-1-207(2)(a) nor any other provision in the Act describes a procedure for changing the original governing body of a special district or for seeking modification approval from a governing body different from the original governing body.

In September 2013, after negotiations, Sand Hills submitted its 2013 Updated and Revised Service Plan ("Revised Plan") to Lochbuie.

On September 16, 2013, while approval of the Revised Plan was pending, Sand Hills filed a notice pursuant to C.R.S. § 32-1-207(3)(b) with the Weld County District Court declaring its intention to undertake the planning, design, construction and financing of various facilities and improvements in Weld County. The improvements described in the notice were consistent with the activities described in the Revised Plan. Section 207(3)(b) provides that if a special district provides proper notice of an intention to levy taxes, construct facilities, issue bonds, or undertake a similar activity, actions to enjoin the activity must be brought within forty-five days after publication of the notice.

The Revised Plan allowed for more specific regional improvements for water storage and infrastructure to facilitate water exchanges upstream on the South Platte River and to provide a consistent, reliable water supply for water users in and near Sand Hills. Much of the infrastructure proposed in the Revised Plan was to be constructed on the 70 Ranch, including water storage facilities, water truck depots, and water pipeline infrastructure. The water supply that was to be created with this infrastructure in connection with infrastructure built by another special district, the United Water and Sanitation District, was to not only be available to users in Lochbuie, it was also intended to provide water for regional agricultural, municipal and industrial purposes for lands within the Sand Hill's boundaries and service area. In addition, given the exponential oil and gas development by the mineral leaseholders at 70 Ranch, the water infrastructure to be constructed by the Sand Hills was intended to aid in restoring the land for viable use when oil production inevitably ceases.

The Revised Plan was approved by Lochbuie on December 23, 2013.

Approximately two weeks earlier, on December 5, 2013, in compliance with C.R.S. § 32-1-402, the Weld County District Court entered an order for inclusion of a parcel of real property located within Lochbuie into Sand Hills and therefore, as of December 2013, Sand Hills was again partially located in Lochbuie. The Lochbuie parcel remains within Sand Hills.

B. The Weld County District Court Case, 13CV30928

1. Background

70 Ranch owns some of the mineral interests beneath the surface of its property. As pertinent to Sand Hills' bankruptcy case, from 2009 through the present, 70 Ranch also leased and leases its mineral interests to many of the entities included in the list of creditors filed with the bankruptcy petition, including Bonanza Creek Energy, Inc. ("Bonanza"), Bill Barrett Corporation ("Barrett"), and Noble Energy, Inc. ("Noble").

As stated above, after inclusion of 70 Ranch property, Sand Hills began annually certifying a mill levy for general operating expenses. Through the mill levy certification, Sand Hills collected substantial property taxes from owners and lessees of subsurface mineral interests at 70 Ranch including Bonanza, Barrett and Noble.

On August 23, 2013, Bonanza and Noble notified Sand Hills that they opposed further action by Sand Hills, requested Sand Hills prepare and file a petition for dissolution pursuant to C.R.S. § 32-1-701 *et seq.*, and declared an intent to seek a refund of taxes paid pursuant to applicable statutes.

On November 1, 2013, Barrett and Bonanza (referred to hereinafter together as the "Oil Companies") filed a lawsuit in the Weld County District Court (the "State Court"), Case No. 2013CV30928, challenging Sand Hills' ability to assess ad valorem taxes on their mineral leaseholds and seeking a refund from the Sand Hills, Lochbuie and United Water and Sanitation District ("United") of taxes paid to Sand Hills. In their amended complaint, filed January 3, 2014, the Oil Companies asserted six claims for injunctive relief against Sand Hills, one claim for injunctive relief against Lochbuie and United, and one claim for declaratory relief.

In their injunctive relief claims against Sand Hills, the Oil Companies alleged that all tax collection after 2009 was improper based upon the following assertions: (a) the 70 Ranch property was improperly included in Sand Hills because the petition for inclusion was signed by only the surface owner, 70 Ranch, LLC, and not the owners of the subsurface mineral interests; (b) Sand Hills failed to conform to its original 2004 Service Plan; (c) Lochbuie lost jurisdiction over Sand Hills when the 70 Ranch property was included in Sand Hills; (d) the Revised Plan could not be approved after the Oil Companies filed an objection thereto because they owned property worth more than 50% of the total valuation of all property within Sand Hills; (e) Lochbuie's approval of the Revised Plan was arbitrary, capricious and unreasonable; and, (f) tax revenues were collected in violation of various provisions of the Colorado constitution, including the Colorado Taxpayer Bill of Rights ("TABOR").

In their declaratory relief claim, the Oil Companies reiterated the same arguments made in support of injunctive relief and added a request that the State Court declare Sand Hills dissolved pursuant to C.R.S. § 32-1-701 *et seq.*

In their injunctive relief claim against Lochbuie and United, the Oil Companies asked the State Court to impose a constructive trust on tax monies transferred by Sand Hills to Lochbuie and United based upon a theory of unjust enrichment.

Four observations must be made with respect to the Oil Companies' amended complaint:

- First, the Oil Companies did not contend that their mineral interests were not taxable property; rather, their arguments all related to whether the taxation was properly imposed.

- Second, the Oil Companies sought relief not just for themselves (and Noble, who was joined as involuntary plaintiff), but for all of Sand Hills' taxpayers.

- Third, the Oil Companies only challenged the taxes paid specifically to Sand Hills after 2009 – they did not challenge their taxes paid to other taxing authorities such as the Platte Valley Fire District (which had also included the 70 Ranch into its taxing boundaries using the same statutory procedures as Sand Hills during this same period). To be sure, 55 mills were levied against and collected from Sand Hills' taxpayers pursuant to Sand Hills' annual mill levy certification after 2009. However, during that same period, an additional approximately 47 mills were levied by other taxing authorities against and collected from Sand Hills' taxpayers. Those other taxing authorities included Weld County, School District RE7, Northern Colorado Water, Central Colorado Water, North Weld County Water, Central Colorado Water Subdistrict, Platte Valley Fire, AIMS Junior College, and High Plains Library.

- Fourth, while the Weld County Case was pending, the Oil Companies pursued a petition for abatement or refund of taxes with Weld County seeking similar relief, i.e. a determination that they not be required to pay the 55 mills levied by Sand Hills. In 2014, Weld Count denied the petition.

2. The Order Regarding Outstanding Motions for Partial Summary Judgment

Multiple motions and cross-motions for partial summary judgment were filed by the parties in the Weld County Case. On March 19, 2015, the State Court (Judge Hoskins) issued her Order Regarding Outstanding Motions for Partial Summary Judgment (the "Summary Judgment Order"). Judge Hoskins ordered as follows:

> IT IS THEREFORE ORDERED that Plaintiff's Motion for Partial Summary Judgment be granted as to actions taken by the Special District commencing at the time the district was removed from Lochbuie, April 28, 2011. At that time, the Special District lost its legal authority to collect taxes.
>
> Plaintiffs are entitled to a tax refund for those taxes paid for tax years 2011, 2012, and 2013 as previously determined by this Court in its order dated June 26, 2014.
>
> The Defendants' Motion for Partial Summary Judgment as to the authority to tax Plaintiffs from April 29, 2009 to April 28, 2011 is hereby granted.

Summary Judgment Order, at 12. Judge Hoskins based her conclusion regarding Sand Hills' "legal authority to collect taxes" on her determination that once Sand Hills excluded the Altamira property in 2011 and no Sand Hills property was located in Lochbuie, "Lochbuie lost its authority to be the governing authority" of Sand Hills. *Id.* at 11. Judge Hoskins went on to state the following:

> "This loss of authority cannot be cured, more than two years after the fact, including after the filing of suit regarding this specific issue. Lochbuie cannot be the governing authority as this would result in an unconstitutional result under Section 32-1-207(2)(a) as applied here because – under the [Act] – the entity with approval authority acts as a check on the district."

Id. Judge Hoskins further held that once there was no Sand Hills property in Lochbuie, the "only legally available governing authority was Weld County." *Id.* Judge Hoskins clarified her ruling two months later in an order disposing of competing motions for reconsideration of the Summary Judgment Order:

> "This Court has . . . found, that after [Sand Hills] moved completely outside of the boundaries of Lochbuie, its purported governing authority, that it no longer had a governing authority, and therefore lost the legal authority to tax pursuant to the authority that it had when it was organized."

May 5, 2015 Order Regarding Motions for Reconsideration, at 3.

Judge Hoskins also observed in the Summary Judgment Order that the "District is currently operating with no legal authority, it has no ability to conduct business, including the collection of taxes" and that, as of the date of the exclusion of the Altamira property, "Sand Hills was no longer a viable District in that it has no legal governing authority, and therefore any actions would be null and void." *Summary Judgment Order*, at 8.

Significantly, Judge Hoskins rejected all of the other arguments asserted by the Oil Companies. First, Judge Hoskins held that the consent of mineral interest owners was not required for the inclusion of 70 Ranch in 2009. Second, Judge Hoskins held that there was no TABOR violation and, except for the lack of authority post-2011 described above, no unconstitutional

taxing. Third, Judge Hoskins rejected the argument that approval of the 2013 Revised Plan required the consent of subsurface mineral interest holders.

Judge Hoskins also found that (a) the court lacked authority to dissolve Sand Hills because special district dissolution is governed by C.R.S. § 32-1-701 *et seq.* (which requires action by the Colorado Attorney General), and (b) "it appears for the now stated purpose of Sand Hills, a new district will need to be formed with the proper governing authority." *Id.*

3. The Exclusion of 70 Ranch

During the period immediately following entry of the Summary Judgment Order, on March 31, 2015, 70 Ranch filed a petition to exclude the 70 Ranch from Sand Hills and a second petition to include the property in another special district, the South Beebe Draw Metropolitan District ("South Beebe").[1]

On April 10, 2015, the Sand Hills board voted to exclude the 70 Ranch property from Sand Hills. South Beebe later approved the petition for inclusion and the Adams County District Court approved the motion for inclusion of the 70 Ranch property on April 29, 2015.

4. Post-Summary Judgment Relief/Tax Revenues

Judge Hoskins' Summary Judgment Order left many open questions for both sides in the dispute. In early April 2015, the Oil Companies filed motions seeking orders (a) directing Sand Hills to "withdraw its certification of ad valorem taxes for tax year 2014," relying on the "null and void" language set forth in the Summary Judgment Order and (b) directing Sand Hills to segregate 2014 tax revenues if decertification was denied. Sand Hills opposed the motions.

Judge Hoskins rejected the Oil Companies' decertification request. On April 14, 2015, she ruled that "the taxes received by [Sand Hills] for tax year 2014 going forward be held in a segregated account."

Competing proposed orders were submitted to the Court. In Sand Hills' proposed order, the segregation applied only to the Oil Companies. In the Oil Companies' proposed order, the segregation applied to the Oil Companies and "to any other taxpayer." The Oil Companies even submitted a notice with their proposed order in which they argued that the ruling that "Sand Hills lost its legal authority to tax as of April 2011 means that Sand Hills is not entitled to the use of *any* taxes paid by any entity since that time—not just those paid by Plaintiffs." The Oil Companies' notice further provided "[t]he order to preserve funds must encompass all taxes that Sand Hills receives from Weld County collected from taxpayers." *Plaintiffs Notice of Alternative Proposed Order Regarding Preservation of Tax Revenues*, at 2 (emphasis in original).

[1] Sand Hills, United and South Beebe share some but not all board members.

Judge Hoskins rejected the Oil Companies' proposal, entered the order proposed by Sand Hills (the "Segregation Order") and expressly limited the Segregation Order to the Oil Company plaintiffs. Indeed, in another order in December 2015, the Judge Hoskins held that the Segregation Order did not even apply to involuntary plaintiff Noble.[2]

The Oil Companies also filed a motion in early April 2015 seeking an order relating to preservation of tax revenues received from 2011 and 2013. The relief sought by the Oil Companies was extremely broad. Not only did the companies seek an order compelling Sand Hills to place all revenues in its possession in a segregated account, but they also sought an order compelling Sand Hills, United, and the Platte River Water Development Authority ("PRWDA") to (a) account for monies transferred by Sand Hills to United and PRWDA pursuant to various intergovernmental agreements ("IGAs") between the entities and (b) "[t]ake any and all lawful actions and exercise all rights and authority Defendants possess to recover from any third parties, including from [PRWDA], any and all revenues for tax years 2011 through 2013. . ." Sand Hills also opposed this motion. PRWDA was at no times a party to the Weld County Case and the Summary Judgment Order was entered only as to Sand Hills, not as to United.

On July 14, 2015, Judge Hoskins entered her order with respect to preservation of tax revenues received for the years 2011-13. Judge Hoskins rejected the extraordinary relief requested by the Oil Companies and instead provided simply that "[t]o the extent the funds collected from Plaintiffs exist, and have not been used previously by Defendants, the Court orders that the funds be preserved." *See Order Re: Preservation of Funds/Assets from Tax Years 2001 through 2013,* at 1.

As the appeal of the Summary Judgment Order began in the summer of 2015, the parties were thus left with several conflicting rulings. Despite finding that Sand Hills had "no ability to conduct business, including the collection of taxes" and that any actions taken after 2011 "would be null and void", Judge Hoskins not only directed Sand Hills to continue certifying and collecting taxes from the Oil Companies pending entry of final judgment and to hold that revenue in a segregated account, she also explicitly rejected the Oil Companies request that the order be made applicable to "any taxpayer" in Sand Hills.

Despite the same "null and void" language, Judge Hoskins also rejected the Oil Companies' request to effectively unwind IGAs entered by Sand Hills during this period because she rejected the Oil Companies' request to compel Sand Hills to recover monies transferred pursuant to these IGAs by Sand Hills to United and PRWDA.

Sand Hills was thus faced on the one hand with an order stating that it had no authority to operate while, on the other hand, other orders from the same court (a) directing Sand Hills to continue operating and collecting taxes; (b) expressly providing that the Summary Judgment Order

[2] *See December 9, 2015 Order Re: Involuntary Plaintiff Noble Energy's Motion for Clarification*, at 2-3 ("The court further notes that two proposed orders were submitted with respect to the April Order, the order adopted by the court and the alternative order rejected by the court. The order rejected by the court as not comporting with what was ordered from the bench included ad valorem tax revenue paid by Plaintiffs *or any other taxpayer*. The order adopted by the court refers only to tax revenue collected from Plaintiffs. As a result, the court must find that its order applied specifically to Plaintiffs Bill Barrett Corporation and Bonanza Creek Energy, Inc., and not to Noble.").

only applied to the Oil Companies and Sand Hills; (c) implicitly authorizing Sand Hills to keep and use non-Oil Company tax revenues going forward, including revenues collected from Noble; and, (d) refusing to disturb contracts entered by Sand Hills that involved the transfer of tax revenues received after 2011.

5. The Appeal of the Summary Judgment Order

The Oil Companies and Sand Hills appealed the Summary Judgment Order. On appeal, the Colorado Court of Appeals analyzed the matter somewhat differently than the State Court. Rather than focusing on governing authority, the Court of Appeals focused on whether the changes to Sand Hills, beginning with the inclusion of the 70 Ranch property in 2009, constituted "material modifications" to its Service Plan requiring "a petition to and approval from the board of county commissioners" of Weld County. *October 6, 2016 Opinion*, at 9.

In its opinion, the Court of Appeals concluded that both the 2009 inclusion of the 70 Ranch Property and the 2011 exclusion of the Altamira property were "material modifications." Thus, after the inclusion of the 70 Ranch property, "[i]n order to adopt the belated 2013 [service] plan . . . the district needed approval from the board of county commissioners of each county within the district." *Id.* at 12. The Court of Appeals also stated that "as soon as the district exceeded Lochbuie's boundaries, the [Lochbuie] Town Council ceased to have authority to approve purpose or location changes to the [service] plan." *Id.*, at n. 3.

As described in more detail above, Sand Hills did not seek approval from the Weld County Board of County Commissioners for either the 2009 inclusion of the 70 Ranch property or the 2011 Altamira property exclusion. Because approval from Weld County was not sought, the Court of Appeals concluded that both actions violated the Act. The Court of Appeals then stated that "[b]ecause of this, the district did not have taxing authority either between 2009 and 2011 or after 2011." *Id.* at 19. The Court of Appeals affirmed Judge Hoskins' ruling as to post-2011 taxes but reversed the ruling as to taxes collected between 2009 and 2011.

In addition, the Court of Appeals concluded that the relief granted to the Oil Companies, i.e. a refund of taxes, should be applied to Noble as well because Noble was joined as an involuntary plaintiff and participated in the proceedings "as a party similarly situated to taxpayers." *Id.* at 23. However, the Court of Appeals continued, "nothing in the record indicates that other taxpayers agreed to be represented in this litigation" and therefore the rulings only applied to the Oil Companies and Noble, not to any other taxpayers.

Sand Hills' petition for a writ of certiorari to the Colorado Supreme Court was denied on September 11, 2017.

6. Proceedings After Remand.

In April 2017, while the parties sought certiorari, the Oil Companies filed a motion with the State Court seeking to modify the Segregation Order and impose sanctions, including contempt. The basis for the motion was the Oil Companies' assertion that the exclusion of the 70 Ranch property from Sand Hills in 2015 violated the order directing Sand Hills to segregate future

collected tax revenues. Sand Hills opposed the motion, noting that nothing in the Segregation Order precluded 70 Ranch from seeking exlusion from Sand Hills or inclusion in another district. Sand Hills also noted that Judge Hoskins' Summary Judgment Order expressly contemplated the formation of a "new district" and the exclusion of 70 Ranch from Sand Hills and inclusion in a different, pre-existing special district with proper legal authority such as South Beebe was the functional equivalent of forming a new district to include that property.

The State Court (now Judge Kopcow) initially rejected the Oil Companies request for sanctions, holding as follows:

> The very purpose of the Segregation Order was to ensure that the disputed tax revenue would remain preserved in the event that Sand Hills prevailed on its appeal. The reason the tax revenue was in dispute was because Sand Hills had collected revenue when it lacked the proper authority to do so. The court sees no similar deficiency in Beebe Draw's organization, obviating the need to apply the Segregation Order to Beebe Draw. Unless Taxpayers can demonstrate that Beebe Draw, like Sand Hills, collected tax revenue illegally, then the court has no legal basis to exercise its discretion to modify the Segregation Order to include Beebe Draw.

Order Re: Plaintiff's Motion to Modify the Segregation Order, For Order of Contempt, and for Sanctions, at 4-5.

The Oil Companies then submitted a motion to reconsider the State Court's denial, arguing that the Summary Judgment Order stated that Sand Hills "lacked 'legal governing authority' from 2011 onward, including the power to alter its territorial makeup or materially modify its service plan."

It deserves note that the Oil Companies misapplied the phrase "governing authority" from the Summary Judgment Order. The Oil Companies interpret the phrase as referring to Sand Hills' authorization to govern going forward. However, a careful reading of the Summary Judgment Order supports the conclusion that Judge Hoskins used the phrase "governing authority" interchangeably with "approving authority," i.e. either Lochbuie or Weld County. Thus, when Judge Hoskins found that Sand Hills lacked "governing authority" after 2011, she meant Lochbuie could no longer be Sand Hills' governing authority – not that Sand Hills lacked the authority to perform its other public duties pursuant to statute. The phrase is not used to mean that Sand Hills itself lacked the authority to govern. Indeed, Judge Hoskins emphasized that she was not dissolving Sand Hills and the only two instances in the Summary Judgment Order where Judge Hoskins suggested Sand Hills could not govern were the "no legal authority" and "null and void" phrases previously discussed

Judge Kopcow was nevertheless persuaded by Oil Companies' argument and issued a contempt citation to Sand Hills. The State Court based its ruling, in part, on the following conclusion: "the Court rejects Sand Hills' argument that Judge Hoskins' refusal to dissolve Sand Hills means that it retained other capabilities. Judge Hoskins and the Court of Appeals both held that Sand Hills lost all governing authority, and with it, all ability to conduct any business, period."

Order Re: Plaintiff's Motion for Reconsideration, at 5.

On September 11, 2017, prior to any contempt hearing, the Court of Appeals issued its mandate. On January 16, 2018, the State Court entered its Judgment and Order re Principal, based upon the parties' stipulation, providing for a principal judgment amount in favor of the Oil Companies and Noble in an aggregate amount in excess of $19,000,000. On March 29, 2018, the State Court entered its award of prejudgment interest from April 29, 2009 through January 16, 2018. The aggregate amount of prejudgment interest exceeds $6,000,000. Sand Hills is presently holding $9,000,000 in the segregated account (the "Sand Hills Segregated Funds"). In addition, pursuant to a January 2014 agreement between Lochbuie, Barretta and Bonanza, Lochbuie is presently holding approximately $1,350,000 in revenues it received from Sand Hills in a segregated account (the "Lochbuie Segregated Funds").

The contempt hearing scheduled for May 3, 2018 was vacated as a result of the bankruptcy filing.

IV. NECESSITY OF CHAPTER 9 RELIEF

Pre-bankruptcy, Sand Hills found itself in an impossible position. On the one hand, it had to take some action: Sand Hills had to address the judgments; it had to come up with a plan for dissolution; and, it had to defend itself in the litigation with the Oil Companies. On the other hand, the Oil Companies began aggressively asserting that Sand Hills was incapable *of any action at all* and sought contempt sanctions for various conduct that occurred after entry of the Summary Judgment Order.

This impossible position stemmed from the inherent contradictions contained in the Summary Judgment Order as compounded by the further contradictions in the implementation and interpretation of that order. There is no doubt that the Summary Judgment Order includes findings by Judge Hoskins that Sand Hills "has no ability to conduct business" and that any Sand Hills actions after 2011 "would be null and void." However, in seeming immediate contradiction of these findings, in her conclusions of law and award of relief in the Summary Judgment Order, Judge Hoskins limited her conclusion to Sand Hills' "legal ability to collect taxes" and it limited the relief granted to a tax refund. The Summary Judgment Order includes no explicit injunctive relief.

In the months that followed entry of the Summary Judgment Order, Judge Hoskins clarified the limited nature of her order; she wrote in her denial of the motions seeking reconsideration that her ruling was that Sand Hills "lost the legal authority to tax" in 2011.

Further, in seeming total contradiction of its prior finding that Sand Hills "has no ability to conduct business", Judge Hoskins (a) denied the Oil Companies' request and authorized Sand Hills to continue certifying taxes; (b) denied the Oil Companies' and Noble's request regarding segregating taxes collected from taxpayers other than the Oil Companies, including Noble, *and placed no restriction on Sand Hills' use of those funds*; (c) did not invalidate any contract entered by Sand Hills after 2011 and denied all relief requested by the Oil Companies with respect to the IGAs with United and PRWDA; (d) found that the court lacked authority to dissolve Sand Hills;

(e) did not enjoin Sand Hills from defending the various motions filed by Plaintiff or prosecuting the appeal, both of which would appear to be contrary to the finding of an inability to conduct business; and, (f) did not enjoin the Sand Hills from holding meetings, filing required reporting, or otherwise carrying on day-to-day affairs.

Indeed, Judge Hoskins took no action after entry of the Summary Judgment Order that might suggest Sand Hills did not have the authority to perform its other statutory duties as a district. More important, by rejecting the Oil Companies' request that tax revenues collected from other taxpayers be segregated, Judge Hoskins explicitly rejected the argument that the Summary Judgment Order was applicable to or binding upon anyone other than the parties to the Weld County Case. This explicit rejection was an implicit acknowledgement that Sand Hills could continue operating, continue collecting tax revenues, and continue utilizing non-Oil Company tax revenue going forward.

If anything, the Court of Appeals' ruling supports this interpretation. At no point in the appellate ruling does the court suggest or intimate that Sand Hills was incapable of acting. Rather, the Court of Appeals limited its ruling to findings and conclusions regarding Sand Hills' authority to tax. Further, the Court of Appeals agreed that the outcome of the action was only binding upon the parties to the action, not non-parties.

Sand Hills asserts and believes that all of its actions, from organization in 2004, through the filing of this bankruptcy case have been made in good faith and in compliance with the express provisions of the Act and the orders of the state courts. As set forth in detail above, Sand Hills believed that all of its actions prior to the Weld County Case were made in full compliance with the Act (and, with the exception of the property inclusion and exclusion, that belief was confirmed). For all of the reasons just explained, Sand Hills believed that its actions after entry of the Summary Judgment Order were consistent with that and subsequent rulings.

Nevertheless, the Oil Companies would not relent. Sand Hills proposed a settlement in March 2018 that would have resolved the judgments and not required a bankruptcy filing. The Oil Companies and Noble did not even respond to the proposal.

In April 2018, believing other options were exhausted, Sand Hills sought chapter 9 relief. Bankruptcy relief is necessary given the inconsistent rulings of the state courts, the tactics of the Oil Companies, and the impossibility, without a confirmed plan of adjustment, of complying with both the state court orders and the dissolution provisions of the Act. The Bankruptcy Court is also the only forum in which the Debtor is safe to make rational decisions regarding how to comply with the various rulings without the specter of contempt sanctions. Outside of bankruptcy, Sand Hills is unable to take any action without fear that the Oil Companies will seek such sanctions. At the same time, however, inaction is impossible. Sand Hills must address the judgments and it must ultimately dissolve.

The bankruptcy filing makes an untenable position tenable. With the protections and provisions of the Bankruptcy Code, as informed by C.R.S. § 32-1-1401 *et seq*., including the automatic stay, Sand Hills may propose a path forward that addresses—indeed, fixes—the actions the state courts found violated the Act.

There are at least three additional reasons that chapter 9 relief is necessary. The first is dissolution. No one, including the Oil Companies, disputes that Sand Hills must be dissolved. Reading the "null and void" language as the Oil Companies do, however, renders such an action impossible outside of bankruptcy because of the threat of contempt.[3]

Not only is bankruptcy relief necessary to avoid the threat of contempt with respect to dissolution, but dissolution is only possible with a confirmed chapter 9 plan because a special district cannot be dissolved under Colorado law with outstanding debt. C.R.S. § 32-1-702(3) provides three alternative requirements for dissolution by the district where a district has outstanding debt and each of the alternatives requires full payment. C.R.S. § 32-1-701 provides a means by which a district may be dissolved by administrative action by the state Division of Local Government, but such dissolution explicitly requires that "[t]he district has no outstanding financial obligations." In short, unless Sand Hills' debts are paid in full outside of bankruptcy or paid in compliance with a confirmed chapter 9 plan, Sand Hills cannot dissolve.

Second, the uncertainty resulting from the Oil Companies' assertion that the "null and void" language means Sand Hills has had no authority to do anything since 2009 potentially opens the door to every taxpayer and every contract counterparty coming back to Sand Hills and demanding refunds or seeking to alter contract obligations. The door also would appear to be open to the Oil Companies and other taxpayers challenging and seeking refunds of the 47 mills paid over the same time period to other entities such as School District RE7 and the Platte Valley Fire Protection District that provides fire protection to the Oil Companies. [4] There is no other forum capable of resolving any and all such potential disputes. Sand Hills believes that every individual and entity that might assert a claim relating to post 2009 action is included in the list of creditors filed with the bankruptcy petition. The Plan, discussed in more detail below, provides for a complete resolution of all actual and potential claims in an orderly fashion and it does so in compliance with Colorado law.

Third, the chapter 9 filing is necessary to prevent the Oil Companies' unlawful attempts to collect the judgments from and interference with other entities such as South Beebe, United and PRWDA. Despite the State Court's rejection of the Oil Companies' efforts to draw these entities into the Oil Companies' dispute with Sand Hills, the Oil Companies persist and seek remedies against these entities to satisfy their judgment, such as unjust enrichment and constructive trust, that have no basis in governmental law. C.R.S. § 13-60-101 provides the only means by which a judgment against a governmental entity may be collected where the entity lacks the ability to immediately pay the judgment: the judgment creditor may file a transcript of judgment with the board of county commissioners of the appropriate county and the county must thereafter add a

[3] It is worth mentioning that the Oil Companies have only invoked the "null and void" language when it suits their purposes. When District action suits their purposes, they do not complain. In 2015, in the contest over segregation of tax revenues, the Oil Companies suggested that they would be more than happy to have their judgments satisfied by tax revenues collected post-2015 from other taxpayers. *See e.g. Plaintiff's Motion for Order to Preserve Tax Revenues*, at ¶ 13 ("Sand Hills will need *all* of its revenues and assets to satisfy a judgment in Plaintiffs' favor") (emphasis in original).

[4] Notably, the Platte Valley Fire Protection District also included the 70 Ranch into its taxable service area during this timeframe using the same statutory provisions by which Sand Hills included the ranch into its boundaries.

special levy upon the entity's taxpayers in an amount not greater than ten mills. This is the only relief allowed by statute. Judgments cannot be executed on, and Sand Hills property cannot be levied against, to satisfy a judgment. The only means of involuntary collection under Colorado law is the ten mills tax levy. For all of these reasons, the bankruptcy filing was necessary.

V. SIGNIFICANT EVENTS DURING THE CHAPTER 9 CASE

No challenges to eligibility were made and, on May 29, 2018, the Bankruptcy Court entered its Order for Relief under Chapter 9.

On July 10, 2018, Barrett, Bonanza and Noble filed a Motion for Relief from Stay, seeking relief from the automatic stay imposed by 11 U.S.C. § 362(a) to return to the Weld County Case, obtain an adjudication regarding final judgment amounts, litigate whether escrowed funds should be disbursed, and prosecute the contempt citation. Barrett and Bonanza contended that the Lochbuie Segregated Funds and the Sand Hills Segregated Funds were either subject to a perfected "equitable lien" in their favor or were held by the Weld County District Court in "custodia legis" for their benefit.

Sand Hills opposed the Motion and the assertions regarding "equitable liens" and the "custodia legis" doctrine. A preliminary hearing was held on August 9, 2018, at which time the parties made extensive offers of proof. The Bankruptcy Court found a reasonable likelihood that Sand Hills would prevail at a final hearing and therefore scheduled a final hearing to commence on September 7, 2018.

Thereafter, Sand Hills, Barrett and Bonanza engaged in substantive settlement negotiations and successfully reached a consensual resolution of their many disputes. The parties' settlement agreement (the "BBB Settlement Agreement") was submitted to the Bankruptcy Court for approval on September 14, 2018. The BBB Settlement Agreement provides for (a) a mutual release of all claims by and between Sand Hills, Barrett and Bonanza; (b) disbursement of the Lochbuie Segregated Funds and the Sand Hills Segregated Funds to Barrett and Bonanza in full settlement of their claims; (c) Plan support by Barrett and Bonanza; (d) dismissal of the Weld County Case; and (e) withdrawal of the Motion for Relief from Stay.

The Plan filed with this Disclosure Statement includes terms consistent with the BBB Settlement Agreement.

VI. SUMMARY OF THE PLAN FOR THE ADJUSTMENT OF DEBTS AND TREATMENT OF CLAIMS

A. What is the Purpose of the Plan for the Adjustment of Debts?

As required by the Bankruptcy Code, the Plan places claims in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Plan Overview

The Plan is a liquidating plan that will enable Sand Hills to dissolve as required by Colorado statute. The Plan provides for the disbursement of the Lochbuie Segregated Funds and the Sand Hills Segregated Funds to Barrett and Bonanza, a refund of certain taxes paid by Noble, a refund of all 2017 taxes, the liquidation of Sand Hills' Non-Cash Assets, and the pro rata distribution to other creditors of the remaining monies held in the Sand Hills' general fund and the net sale proceeds of the asset liquidation. All debts will be deemed discharged after Sand Hills fulfills its payment obligations under the confirmed Plan. The Confirmation Order will therefore be deemed an adjudication that Sand Hills' financial obligations will be adequately provided for prior to dissolution by means of escrow funds as required for dissolution under C.R.S. § 32-1-704(3)(a) and, upon entry of said order, Sand Hills will petition for dissolution pursuant to C.R.S. § 32-1-701(1).

C. Projected Recovery of Avoidable Transfers

Sand Hills does not believe grounds exist to seek avoidance of any transfers as preferential or fraudulent.

D. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, Sand Hills reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article X of the Plan.

E. Administrative Claims

The only priority claims incorporated into chapter 9 through Section 901 of the Bankruptcy Code are Administrative Claims allowed under Section 503(b) and entitled to priority under Section 507(a)(2). No other kinds of priority claims set forth in Section 507 of the Bankruptcy Code are recognized in chapter 9 cases and claims that are not Administrative Claims herein and that would constitute administrative expenses in a case under another chapter of the Bankruptcy Code are treated in chapter 9 and in the Plan as Unsecured Claims.

Administrative expenses are costs or expenses of administering Sand Hills' chapter 9 case which are allowed under Section 507(a)(2) of the Code. The Code requires that all administrative expenses be paid on the Effective Date of the Plan unless a particular claimant agrees to a different treatment. Pursuant to Section 1123(a)(1) of the Code, Administrative Claims may not be designated as classes of claims for purposes of the Plan.

The following chart lists all anticipated Administrative Claims and the proposed treatment of such Claims under the Plan:

Administrative Claims		
Type	**Estimated Amount Owed**	**Proposed Treatment**
Expenses arising in the ordinary course of business after the Petition Date	None	Paid in full in the ordinary course of Sand Hills' business
Other administrative expenses	None	Paid in full on the Effective Date of the Plan or according to separate written agreement
TOTAL AMOUNT DUE ON THE EFFECTIVE DATE:	$0.00	

F. Classes of Claims

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

Class 1	
Creditors:	Bill Barrett Corporation and Bonanza Creek Energy, Inc.
Collateral Description / Value:	None
Priority of Lien:	N/A – Compromise
Total Claim as of Petition Date:	$3,116,654.47 (Barrett) and $17,209,261.03 (Bonanza)
Allowed Secured Amount:	N/A – Compromise
Unsecured/Deficiency Amount:	N/A - Compromise
Insider?	No
Impaired?	Yes
Treatment	
Class 1 consists of the Allowed Claims of Bill Barrett Corporation and Bonanza Creek Energy, Inc. arising from the order and judgment entered in the Weld County Case. The treatment of Class 1 is the subject of and controlled by the terms of the BBB Settlement Agreement approved by the Bankruptcy Court pursuant to Fed.R.Bankr.P. 9019. The treatment is a compromise of disputes including, without limitation, disputes regarding whether Barrett and Bonanza have perfected liens on Lochbuie Segregated Funds and the Sand Hills Segregated Funds. Pursuant to the BBB Settlement Agreement, the Class 1 Claimants shall receive all of the Lochbuie Segregated Funds and all of the Sand Hills Segregated Funds, in the total amount of approximately $10,350,000, in full satisfaction of their respective known claims against Sand Hills. The disbursement of the Lochbuie Segregated Funds was made to the Class 1 Claimants prior to Confirmation. The Sand Hills Segregated Funds shall be disbursed to the Class 1 Claimants as directed in writing by the Class 1 Claimants upon the earlier of (i) on or within two (2) business days of the Confirmation Order or (ii) December 21, 2018. Pursuant to the BBB Settlement Agreement, the Class 1 Claimants are accepting the treatment in full	

satisfaction of their Allowed Claims and waive the right to receive (i) any additional payment and (ii) any deficiency claim entitled to treatment under another Class. To the extent the Plan or Disclosure Statement are inconsistent with the BBB Settlement Agreement, the BBB Settlement Agreement shall control.

Class 2	
Creditor:	Noble Energy, Inc.
Collateral Description / Value:	None
Priority of Lien:	N/A
Total Claim as of Petition Date:	$5,994,754.14
Allowed Secured Amount:	N/A
Unsecured/Deficiency Amount:	N/A
Insider?	No
Impaired?	Yes
Treatment	

Class 2 consists of the Allowed Claim of Noble Energy, Inc. arising from (a) the order and judgment entered in the Weld County Case and (b) Noble Energy, Inc.'s payment of 2017 taxes paid to Sand Hills in 2018. On the Effective Date, the Class 2 Claimant shall receive a refund of its 2015-2017 taxes paid to Sand Hills in 2016-2018 in the aggregate amount of $175,505.00, in full satisfaction of its claims against Sand Hills. No interest or penalties shall be paid to the Class 2 Claimant.

Class 3	
Creditor:	Taxpayers – 2017 Taxes Paid in 2018
Collateral Description / Value:	None
Priority of Lien:	N/A
Total Claim as of Petition Date:	$145,858.90
Allowed Secured Amount:	N/A
Unsecured/Deficiency Amount:	N/A
Insider?	No
Impaired?	Yes
Treatment	

Class 3 consists of the Allowed Claims for Reimbursement of 2017 taxes paid to Sand Hills in 2018, with the exception of the Class 1 and Class 2 Claimants. The identities of the Class 3 Claimants with refund amounts are set forth in Exhibit 1 hereto. On the Effective Date, Class 3 Claimants shall receive a full refund of the principal amount of their 2017 taxes paid to Sand Hills in 2018. No interest or penalties shall be paid to the Class 3 Claimants.

Class 4	
Creditor:	Taxpayers – All Others
Collateral Description / Value:	None
Priority of Lien:	N/A
Total Claim as of Petition Date:	Unknown
Allowed Secured Amount:	N/A
Unsecured/Deficiency Amount:	N/A
Insider?	No
Impaired?	Yes
Treatment	
Class 4 consists of the Allowed Claims of all taxpayers other than Bill Barrett Corporation, Bonanza Creek Energy, Inc., and Noble Energy, Inc. and for tax years other than 2017. The Class 4 Claims shall receive a Pro Rata share of all remaining funds held by Sand Hills after payment of Classes 1, 2 and 3, the chapter 9 administrative expenses, the post-confirmation wind up expenses, and the costs of dissolution. The estimated amount for distribution to the Class 4 Claimants is approximately $150,000-$200,000. The identities of the Class 4 Claimants and the estimated distribution amounts are set forth in Exhibit 2 hereto. The distribution to Class 4 Claimants shall be made on or before June 30, 2019. No interest or penalties shall be paid to the Class 4 Claimants.	

Class 5	
Creditor:	Late Filed Claims
Collateral Description / Value:	None
Priority of Lien:	N/A
Total Claim as of Petition Date:	None
Allowed Secured Amount:	N/A
Unsecured/Deficiency Amount:	N/A
Insider?	No
Impaired?	Yes
Treatment	
Class 5 consists of all Late Filed Claims. Class 5 claims shall be disallowed and shall receive no distribution under the Plan.	

G. Means of Implementing the Plan

Distribution to the Class 1 Claimants from the Lochbuie Segregated Funds shall be made prior to Confirmation. Distribution to the Class 1 Claimants from the Sand Hills Segregated Funds shall be made on or within two (2) business days of the Confirmation Order. Distributions to the Class 2 Claimant and Class 3 Claimants shall be made from Sand Hills' general fund on the Effective Date. After Confirmation, Sand Hills will liquidate its Non-Cash Assets. Distributions to the Class 4 Claimants shall be made from Sand Hills' general fund and the net sale proceeds of the asset liquidation or before June 30, 2019. Sand Hills will file a petition for dissolution promptly after the Effective Date.

H. Exculpation

The Plan includes an exculpation provision providing that, except with respect to obligations specifically arising pursuant to or preserved in the Plan or the BBB Settlement Agreement, no Exculpated Party shall have or incur, and each Exculpated Party shall be released and exculpated from, any claim, obligation, cause of action or liability for any claim in connection with or arising prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, (i) the administration of the Bankruptcy Case, (ii) the negotiation, pursuit, confirmation, solicitation of votes for, consummation or implementation of the Plan, (iii) the administration of the Plan or property to be distributed under the Plan, (iv) any document, release, contract, or other instrument entered into in connection with, or relating to, the Plan or the settlements referenced within the Plan or (v) any other transaction contemplated by, or entered into, in connection with the Plan; *provided, however*, that nothing in the Plan's exculpation provision shall be deemed to release or exculpate any Exculpated Party for its willful misconduct or gross negligence. In all respects, each Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities pursuant to the Plan.

I. Risk Factors

Parties in interest should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein) before deciding whether to accept or reject the Plan.

Risk factors are minimal because the Plan is a liquidating plan. In the unlikely event that dissolution expenses are higher than anticipated, the distribution to Class 4 Claimants may be less than estimated.

J. Executory Contracts and Unexpired Leases

All unexpired leases and executory contracts between the Debtor and any other Person (if any) which have not prior to the Effective Date of the Plan been affirmatively assumed by Sand Hills will be rejected.

K. Tax Consequences of Plan

Creditors concerned with how the Plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors.

VII. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in Section 943(b) of the Bankruptcy Code. These include the following requirements: (1) the Plan must be proposed in good faith; (2) at least one impaired class of claims must accept the plan, without counting votes of insiders; and (3) the Plan must be feasible and in the best interests of creditors. These requirements are not the only requirements listed in Section 943(b), and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, Sand Hills believes that all classes are impaired and therefore all claimants are entitled to vote to accept or reject the Plan.

1. *What Is an Allowed Claim?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the debtor has scheduled the claim on the debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was August 31, 2018.

2. *What Is an Impaired Claim?*

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in Section 1124 of the Bankruptcy Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote?*

The holders of the following five types of claims are *not* entitled to vote:

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not "allowed claims" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims in unimpaired classes;
- holders of claims in classes that do not receive or retain any value under the Plan; and,
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed in Section V.B.3, below.

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

2. *Impaired Classes in Which No Votes Are Cast*

If no member of an impaired Class votes, the Class will be deemed to have accepted the Plan.

3. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the

requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a "cram down" confirmation will affect your claim, as the variations on this general rule are numerous and complex.

C. Feasibility

The Court must find that the Plan is feasible. Sand Hills asserts the Plan is feasible because it is a liquidating Plan and involves the distribution of funds already in Sand Hills' possession or under its control.

VIII. EFFECT OF CONFIRMATION OF PLAN

A. Prosecution of Litigation Claims After Confirmation

In accordance with Section 1123(b) of the Bankruptcy Code, Sand Hills shall become vested with and may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any cause of action or litigation claim, including avoidance and recovery Actions under chapter 5 of the Bankruptcy Code. Sand Hills shall be the owner of all such actions and claims and shall have standing and the exclusive right and authority to prosecute, defend, compromise, settle and otherwise deal with all such actions and claims, whether commenced before or after Confirmation. Settlements or compromises of any claims or causes of action asserted in the amount of $50,000 or more shall be subject to notice and opportunity for hearing in compliance with Fed.R.Bankr.P. 9019.

B. Default

In the event of any default by Sand Hills of any payment to any claimants due under the terms of the Plan on the Effective Date, Sand Hills shall have thirty (30) days within which to cure such default after the date of issuance of written notice from any Claim holder. Written notice shall be provided to Sand Hills and to Sand Hills' counsel. In the event that Sand Hills fails to cure any default in the requirements to make payment under the Plan, within thirty (30) days from the date that written notice is sent, Sand Hills shall be in default under the terms of the Plan.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, Sand Hills shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

IX. CONCLUSION

The materials provided in this Disclosure Statement are intended to assist you in voting on the Plan for the Adjustment of Debts in an informed fashion. Since, if the Plan is confirmed, you will be bound by its terms, you are urged to review this material and make such further inquiries as you may deem appropriate and then cast an informed vote on the Plan.

DATED the 19th day of October, 2018.

WADSWORTH WARNER CONRARDY, P.C.

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