

COURT FILE NUMBER 2001-13391  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT ORPHAN WELL ASSOCIATION  
DEFENDANT BOW RIVER ENERGY LTD.  
DOCUMENT **FIRST REPORT OF BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
BOW RIVER ENERGY LTD.**

**NOVEMBER 23, 2020**

ADDRESS FOR  
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**FIRST REPORT OF THE RECEIVER AND MANAGER  
BDO CANADA LIMITED  
NOVEMBER 23, 2020**

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## **INTRODUCTION**

1. On June 1, 2020, upon the application by Bow River Energy Ltd. (“**Bow River**” or the “**Company**”), an Alberta based oil and gas company with assets in Alberta and Saskatchewan, to the Court of Queen’s Bench of Alberta (the “**Court**”) pursuant to the *Companies Creditors Arrangement Act*, RSC 1985 c. C-36, as amended (the “**CCAA**”), the Honourable Madam Justice A. D. Grosse granted an initial order (the “**CCAA Initial Order**”).
2. Pursuant to the CCAA Initial Order, the Court appointed BDO Canada Limited (“**BDO**”) as monitor (the “**Monitor**”) in the CCAA proceedings (the “**CCAA Proceedings**”) and granted Bow River certain relief including but not limited to the imposition of an initial stay of proceedings (the “**Stay**”) in favour of the Company and its assets through to June 11, 2020.
3. On June 10, 2020, the Court granted an *Amended and Restated CCAA Initial Order* which included certain relief, *inter alia*:
  - a. An extension of the Stay through to July 31, 2020; and
  - b. The approval of a super-priority afforded to the Administration Charge and the Director’s Charge as against the property, assets and undertakings of the Company (the “**Assets**”) as follows:
    - i. Administration Charge (\$300,000) – first ranking; and
    - ii. Directors’ Charge (\$400,000) – second ranking.
4. On July 24, 2020, the Court granted two Orders as follows:
  - a. an Order:
    - i. further extending the Stay to October 16, 2020;
    - ii. approving a settlement agreement entered into between the Company and Husky Oil Operations Limited (the “**Husky Settlement**”); and

- iii. approving an interim financing agreement (the “**Interim Facility**”) with 2270943 Alberta Ltd. (“**227**”) and the granting of a charge against the Assets to a maximum of \$1.1 Million in relation to borrowings thereunder (the “**Interim Lender’s Charge**”) ranking immediately behind the Administration Charge; and
- b. an Order (the “**SISP Order**”):
- i. approving a sales and investment solicitation process (the “**SISP**”) and the engagement of Sayer Energy Advisors (“**Sayer**”) to administer same;
  - ii. approving an asset purchase and sale agreement between Bow River and 227 in respect of certain of Bow River’s assets as a stalking horse offer (the “**Stalking Horse APA**”) in conjunction with the SISP; and
  - iii. The sealing of certain materials filed in respect of the July 24<sup>th</sup> Application.
5. Bow River in cooperation with Sayer and the Monitor carried out the sales process in accordance with the SISP, which included marketing the Alberta and Saskatchewan assets from July 24, 2020 until August 24, 2020.
6. As a result of Sayer's efforts, 52 parties executed confidentiality agreements and gained access to the data room and fourteen parties submitted offers by the August 24, 2020 deadline, one party submitted a late offer on the evening of August 24, 2020 that was accepted into the process.
7. In total, the SISP resulted in offers on 98% and 95% of Bow River's producing properties in Alberta and Saskatchewan respectively. No offers were received that constituted a Superior Bid (as defined in the SISP) to the Stalking Horse APA.

8. On September 10, 2020, the Company met with and presented the Alberta Energy Regulator (the “**AER**”) and the Orphan Well Association (the “**OWA**”) with a summary of the offers received for certain of the Company’s assets located in Alberta arising from the SISP, explained which offers the Company intended to pursue by way of three separate transactions including the Stalking Horse APA (the “**Alberta Proposal**”) and discussed what environmental liabilities would remain as a result. At that time, the AER raised several concerns with the Alberta Proposal including the Stalking Horse APA.
9. Subsequent to that date, there were numerous communications and discussions amongst the Company, 227, the AER and the OWA.
10. On September 21, 2020, the AER advised that it would object for various reasons to an application by Bow River seeking approval of the Stalking Horse APA.
11. On September 29, 2020, counsel for Bow River wrote to the Saskatchewan Minister of Energy and Resources (the “**MER**”) to outline the following:
  - a. The parameters of the offers received for certain of Bow River’s assets located in Saskatchewan through the SISP that the Company considered potentially viable subject to certain financial concessions being made;
  - b. The Company’s status vis a vis the AER and the OWA; and
  - c. The financial position of the Company.
12. On October 2, 2020, the Company, the AER, the OWA and the Monitor participated in a call to discuss a path forward in respect of care and custody of all of the Company’s assets located in Alberta in light of the Company being unable to move the Alberta Proposal forward and the Company’s dissipating financial position. At the conclusion of the discussion, the AER advised that it required formal notification of the Company’s intentions prior to being able to formulate its position. At that time, all parties agreed that the Company’s upcoming application to seek a short extension of the Stay through to October 30, 2020 was appropriate in the circumstances.

13. On October 6, 2020, the Court granted an Order further extending the Stay to October 30, 2020.
14. On October 13, 2020, the Saskatchewan Ministry of Justice and Attorney General wrote to the Company advising that the MER would not be able to support any potential transaction in respect of Saskatchewan assets arising from the SISP in light of the concessions required in respect of the offers not being agreeable to the SER.
15. On October 15, 2020, Bow River's counsel wrote to the AER, the OWA, the MER and Indian Oil and Gas Canada, advising of the following:
  - a. That the decision of the AER and the OWA to not support the Alberta Proposal had left the Company in a difficult situation;
  - b. The Company did not have the financial resources available to administer a further sales process or to attempt to consummate any transactions in Saskatchewan;
  - c. Efforts to source alternative funding have been exhausted;
  - d. The Company would be forced to cease operations on October 29, 2020;
  - e. The Company would continue to maintain care and custody of its assets in the interim period through to October 29, 2020; and
  - f. The Company would continue to work cooperatively with the AER, the OWA and the SER in respect of a transition plan in respect of its assets.
16. On October 28, 2020, the MER made application to the Court of Queen's Bench For Saskatchewan for the appointment of a receiver and manager over the Company's asset, undertakings and properties located in Saskatchewan (the "**Saskatchewan Assets**"), pursuant to which an Order was granted appointing BDO as the receiver and manager of the Saskatchewan Assets (the "**Saskatchewan Proceedings**").

17. On October 29, 2020, the Company made an application to Court seeking the following relief:
- a. approval to repay the outstanding balance of approximately \$264,000 due to 227 under the Interim Facility that was utilized to facilitate with the Husky Settlement. With the support of the Monitor and the agreement of the AER and the OWA, on October 29, 2020 the Court granted an Order authorizing the Company's repayment of the Interim Facility; and
  - b. the discharge of the Monitor and the termination of the CCAA proceedings upon the filing of a Certificate by the Monitor (the "**Monitor's Certificate**"). On October 29, 2020, the Court granted an Order discharging the Monitor. The Monitor executed the Monitor's Certificate on November 9, 2020.
18. On October 29, 2020, the OWA made application to the Court for the appointment of a receiver and manager over the Company's current and future asset, undertakings and properties of any kind located in Alberta (the "**Alberta Assets**"), pursuant to which an Order (the "**Alberta Receivership Order**") was granted appointing BDO as the receiver and manager of the Alberta Assets (the "**Alberta Proceedings**").
19. References to (the "**Receiver**") shall collectively refer to BDO in its capacities as receiver and manager in both the Alberta Proceedings and the Saskatchewan Proceedings.

### **PURPOSE**

20. The purpose of this report (the "**First Report**") is to provide this Honourable Court with:
- a. information in respect of the Company's operations;
  - b. an account of the initial activities of the Receiver;
  - c. a summary of Bow River's known creditors;
  - d. the Receiver's intended plan of action as it relates to the Alberta Assets;

- e. details regarding the Receiver's recommended proposed engagement of Sayer as its sales advisor in respect of the Alberta Assets, subject to the approval of this Honourable Court;
- f. details of the sales process proposed by the Receiver in relation to the Alberta Assets; and
- g. the Receiver's recommendations as appropriate.

### **TERMS OF REFERENCE AND DISCLAIMER**

21. In preparing this First Report, the Receiver has relied upon unaudited financial information, discussion with former management of the Company, discussions with former Company employees and contract staff, available books and records of the Company, information provided by the Receiver's legal counsel and discussions with and information provided by Veracity Energy Services Inc. ("**Veracity**"), the Receiver's operational consultant (collectively referred to as the "**Information**"). The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Information.

### **OPERATIONAL STATUS**

22. With the support of the OWA and the MER, the Receiver has continued to operate Bow River's oil and gas production activities in Alberta and Saskatchewan.
23. A summary of the Company's oil and gas interests and current production levels is as follows:

#### *Alberta*

- Bow River holds approximately 746 well licenses, 57 facility licenses and 835 pipeline licenses located primarily in the Provost and Wainwright areas. Current production levels in Alberta are approximately 680 boe/day of which approximately 95% is represented by oil production.



### *Saskatchewan*

- Bow River holds approximately 764 well licenses, 35 facility licenses and 546 pipeline licenses located primarily in the Maclin and Pierceland areas. Current production levels in Saskatchewan are approximately 625 boe/day of which approximately 85% is represented by gas production.

### **INITIAL ACTIVITIES OF THE RECEIVER**

24. Since the Receivership Date, the Receiver's activities have included, but are not limited to, the following:
- a. The Receiver engaged Veracity as its operational consultant.
  - b. Bow River had approximately 20 field employees and contract staff working across Alberta and Saskatchewan and approximately a dozen head office staff based out of a rental office in downtown Calgary (the "**Calgary Office**"). The Company had taken steps to terminate its employees as of October 29, 2020. The Receiver issued notices to all former employees confirming the terminations and providing preliminary information in respect to their ability to advance a claim pursuant to the *Wage Earner Protection Program Act*.
  - c. Veracity has arranged to engage substantially all the Bow River's former field staff on a full-time basis to continue operations and has engaged the majority of the former head office staff on an hourly basis as required.
  - d. The Receiver is attempting to make mutually agreeable arrangements with the landlord to maintain the Calgary Office on a month-to-month basis, failing which the Receiver will arrange to vacate the Calgary Office. The Receiver has made mutually agreeable arrangements with the landlord of the Company's field office in Provost to occupy the office on a month-to-month basis. There is no field office located in Saskatchewan.
  - e. Arrangements were made to update Bow River's emergency response numbers to include Veracity's contact information.

- f. Contacted the Company's insurance broker (the "**Broker**") to advise of the appointment of the Receiver and to confirm the existence and continuity of insurance coverage. The Company's insurance coverage is up for renewal in the near future so the Receiver and Veracity are liaising with the Broker to provide the necessary information to secure coverage renewal.
- g. Froze the Company's bank accounts, secured the existing funds in the accounts and arranged to establish the accounts as "for deposit only". As of the date of this First Report, the Receiver continues to await the transfer of approximately \$2 Million of residual funds from the Company's accounts from Scotiabank to the Receiver.
- h. The Receiver and Veracity have responded to and continue to address numerous inquiries from landowners, municipalities, working interest partners and parties interested in acquiring certain of Bow River's assets.
- i. The Receiver and Veracity have met with the AER and OWA and the MER to provide an update as to the status of the initial steps of the Receiver as it relates to the care and custody of the Alberta Assets and the Saskatchewan Assets respectively.
- j. Veracity continues to liaise with the respective regulators to address any field related concerns as they arise.
- k. The Receiver prepared and issued the *Notice of Receiver and Manager* and *Receiver and Manager's Statement* as prescribed by the *Bankruptcy and Insolvency Act* to known creditors of Bow River.
- l. Subject to the approval of this Honourable Court, the Receiver has arranged with Sayer to undertake a sales process in respect of the Alberta Assets, which is discussed in greater detail later in this First Report.

## **CREDITORS**

25. A summary of the approximate obligations based on the available books and records of Bow River is as follows:
- a. Secured – approximately \$4.5 Million pursuant to a series of secured debentures to 12 parties; and
  - b. Accounts payable – approximately \$13 Million to vendors, royalty holders, joint venture partners, municipalities and lessors.

## **SALES AND SOLICITATION PROCESS**

### ***Sales Agent***

26. Paragraphs 3(l) and 3(m) of the Alberta Receivership Order authorize the Receiver to market and sell any and all of Bow River’s Alberta Assets.
27. As mentioned earlier in this First Report, the Court had previously approved the Company’s engagement of Sayer to administer the SISF during the CCAA Proceedings. The Receiver is of the view that the engagement of Sayer to administer a sales process in respect of the Alberta Assets on behalf of the Receiver is an appropriate and efficient course of action to pursue in light of Sayer’s knowledge of the Alberta Assets having just recently marketed the Alberta Assets under the SISF.
28. Sayer is well known in the local industry, specializes in coordinating disposition programs in the oil and gas industry and has significant experience working on insolvency engagements. Sayer has worked on engagements with BDO and in conjunction with Veracity in the past in an efficient and effective manner.
29. The Receiver, with the support of the OWA and the AER, has subject to the approval of the Court, entered into an agreement with Sayer to act as its sales advisor (the “**Sales Agent**”) to coordinate the marketing efforts on behalf of the Receiver. A copy of the proposed engagement letter (the “**Engagement Letter**”) with Sayer is being provided to the Court concurrently with this First Report as **Confidential Appendix “A”**. Both the Receiver and the OWA are satisfied that the terms of the Engagement Letter are commercially reasonable in the circumstances and consistent with the terms associated with similar mandates for which BDO has been involved.

30. The Receiver will be seeking the Court's approval to retain Sayer as the Sales Agent pursuant to the terms of the Engagement Letter, including the Receiver's payment of amounts incurred pursuant to the Engagement Letter.
31. The Receiver is recommending that Confidential Appendix "A" be sealed by the Court until three months after the Receiver's discharge and will be seeking a sealing order with respect to the Engagement Letter because Sayer has requested the Receiver maintain the confidentiality of its commercially sensitive market data for as long as reasonably practicable.

### ***Sales Solicitation Process***

32. The proposed sales solicitation process (the "**SSP**") is attached as **Appendix "B"** to this First Report. The SSP was prepared with input from Sayer and in consultation with the AER and the OWA, the salient features of which are summarized as follows:
  - a. The Alberta Assets are to be offered for sale on an "*as-is, where-is*" basis with no representations or warranties to be provided by the Receiver. To the extent permitted by law and this Court, the property will be sold free and clear of all encumbrances. Any valid encumbrances will instead attach to the net proceeds of a successful sale of the property pursuant to a sale approval and vesting order ("**Approval Order**") made by the Court upon application by the Receiver for approval of a transaction ("**Transaction**");
  - b. The Sales Agent will prepare marketing materials, including a non-confidential teaser letter ("**Teaser**") to be posted on the Receiver's and the Sales Advisor's website, as well as to be sent directly to the Sales Agent's database of purchasers and to any parties who expressed an interest in Bow River's assets during the SISP ("**Known Potential Bidders**");
  - c. The Sales Agent, with the assistance of the Receiver and Veracity, will prepare a private data room (the "**Data Room**") and confidential information memorandum (the "**CIM**") containing detailed confidential information regarding Bow River's Alberta Assets.

- d. Prospective purchasers will be asked to sign a confidentiality agreement (“CA”) in order to obtain additional information regarding the SSP and Bow River’s Alberta Assets and access to the private data room upon request. To the extent that prospective purchasers who have signed a non-disclosure agreement request further information to assist in their due diligence, the Sales Advisor will provide such information as the Receiver and the Sales Agent deem appropriate;
- e. Prospective purchasers wishing to make a bid for all or part of Bow River’s Alberta Assets will be required to provide non-binding letters of intent (“LOI’s”) by January 28, 2021 (the “LOI Deadline”).
- f. The Receiver and the Sales Agent will review all LOI’s received by the LOI Deadline to assess whether an LOI shall be determined to be a qualified LOI (each, a “Qualified LOI”) that the Receiver wishes to attempt to pursue a binding offer with such party (each, a “Potential Bidder”).
- g. To qualify as a Qualified LOI, an LOI shall:
  - i. be submitted on or before the LOI Deadline by a Potential Bidder;
  - ii. it is submitted in a format that identifies any and all changes made from the form of template purchase and sale agreement (the “PSA”) supplied by the Receiver;
  - iii. include a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
  - iv. it identifies:
    - a) the purchase price in Canadian Dollars (including any liabilities to be assumed by the Potential Bidder and any credit bid);

- b) whether the Asset Bid is *en bloc*, the Alberta Assets included, any of the Alberta Assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;
- c) confirmation that the Potential Bidder has sufficient funds to complete the Transaction;
- d) the proposed treatment of any leases and other material contracts;
- e) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- f) it contains a statement that the Potential Bidder is a licensee in good standing with the AER, or has eligibility to obtain or hold AER licenses, permits or approvals with respect to the Assets or has submitted an application to the AER for license eligibility, and will have a Liability Management Rating of 1.0 or greater should the offer be accepted and the AER approve the transfer;
- g) the offer must be accompanied by a 20% deposit payable to "BDO Canada Limited - in trust" by way of bank draft or certified cheque;
- h) must not be subject to any conditions other than approval by the Court and the PSA must acknowledge that it is subject to Court approval;
- i) contemplates a schedule for closing the Transaction set out therein which is on or before February 19, 2021 (the "**Closing Date**"); and
- j) contains such other information as reasonably requested by the Selling Agent or the Receiver from time to time.

- h. The Receiver may waive the strict compliance of one or more of the requirements specified above and deem any LOI to be a Qualified LOI, notwithstanding any noncompliance with the terms and conditions of this SSP.
- i. The Receiver will attempt to formalize the terms of a Transaction (each, a “**Final Agreement**”) with one or more Qualified Bidders by February 19, 2021 (the “**Final Agreement Deadline**”) and in doing so may give preference to the Qualified LOI or combination of Qualified LOI’s that results in the largest amount of environmental liabilities being addressed in terms of liabilities assumed and/or cash provided.
- j. The highest Qualified LOI may not necessarily be accepted by the Receiver. The Receiver reserves the right not to enter into a Final Agreement with any Qualified LOI or otherwise terminate the SSP.
- k. In the event that Receiver enters into a Final Agreement(s), on or before the Final Agreement Deadline, the Receiver shall apply as soon as reasonably practicable thereafter, for an Approval Order(s) from the Court, in form and substance satisfactory to the Receiver, approving the Transaction(s) contemplated by the Final Agreement(s).

33. The following represents a summary the proposed timeline of the SSP set out above, subject to amendment by the Receiver in its discretion in consultation with the Sales Agent, acting reasonably:

<u>Event</u>	<u>Date</u>
Sales Agent to create list of Known Potential Bidders and distribute Teaser Letter and CA’s to Known Potential Bidders	As soon as practical and no later than December 7 2020
Sales Agent to prepare and have available for Potential Bidders the CIM and VDR	As soon as practical and no later than December 7, 2020
LOI Deadline (delivery of offers by Qualified Bidders in accordance with paragraphs 17 and 19 of the SSP)	By January 28, 2021
Final Agreement Deadline	February 19, 2021

Application to the Court for Approval Order(s)	As soon as reasonably practicable after the Final Agreement Deadline
Closing of the Transaction	Within ten (10) days of the Approval Order(s) becoming Final Order(s)

34. The Receiver will be addressing the Saskatchewan Assets as part of the Saskatchewan Proceedings.

**RECOMMENDATIONS**

35. For the reasons set out in this First Report, the Receiver recommends to this Honourable Court the following:

- a. approval of the engagement of Sayer as the Sales Advisor and the adoption of the Engagement Letter;
- b. the sealing of Confidential Appendix “A” to the First Report which contains a copy of the Engagement Letter; and
- c. approval of the SSP as set out in this First Report.

All of which is respectfully submitted this 23<sup>rd</sup> day of November 2020.

BDO Canada Limited  
in its capacity as Receiver and Manager of Bow River Energy Ltd.  
and not in its personal or corporate capacity

Per:

\_\_\_\_\_  
Marc Kelly  
Senior Vice President



**CONFIDENTIAL**  
**APPENDIX “A”**

# **APPENDIX “B”**

**SALES SOLICITATION PROCESS - (ALBERTA ASSETS)**  
**Bow River Energy Ltd., in receivership**

**INTRODUCTION**

1. On October 29, 2020, the Court of Queen's Bench of Alberta (the "**Court**") granted an order appointing BDO Canada Limited ("**BDO**") as the receiver and manager of Bow River Energy Ltd.'s ("**Bow River**") Alberta assets (the "**Alberta Assets**").
2. Pursuant to the Order of the Court dated December 2, 2020 (the "**SSP Order**"), the Court approved the sale solicitation process set out herein (the "**SSP**").
3. Pursuant to the SSP Order, Sayer Energy Advisors was appointed to act as sales agent in accordance with the SSP Order and the SSP (the "**Sales Agent**").
4. The Sales Agent will develop a list of Known Potential Bidders (as defined below), communicate and meet with interested parties, prepare and distribute marketing materials, and manage the Data Room (as defined below).

**SSP OVERVIEW**

5. The purpose of the SSP is to solicit interest in a sale or liquidation of all, or substantially all, of the Alberta Assets.
6. The SSP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a "**Person**") may gain access to or continue to have access to due diligence materials concerning the Alberta Assets, and how bids involving the Alberta Assets will be submitted to and dealt with by the Receiver and the Sales Agent, and how Court approval will be obtained in respect of any Transaction (as defined below).
7. As described below, the various deadlines herein may be extended by and at the discretion of the Receiver. The Receiver will consider extending the various deadlines herein, in the event that the Receiver determines that such an extension will generally benefit Bow River's creditors and other stakeholders. The Receiver shall generally oversee the SSP and in particular shall oversee the Sales Agent in connection therewith. In the event that there is a disagreement as to the interpretation or application of the SSP, the Court will have jurisdiction to hear and resolve such dispute.

**"AS IS, WHERE IS" BASIS**

8. Any transaction involving all or any portion of the Alberta Assets (each a "**Transaction**") will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Sales Agent, the Receiver, or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).

The key dates pursuant to the SSP are as follows (capitalized terms in the chart below have the meaning ascribed in the SSP):

<u>Event</u>	<u>Date</u>
Sales Agent to create list of Known Potential Bidders and distribute Teaser Letter and Confidentiality Agreements to Known Potential Bidders	As soon as practical and no later than December 7, 2020
Sales Agent to prepare and have available for Potential Bidders the CIM and VDR	As soon as practical and no later than December 7, 2020
LOI Deadline (for delivery of offers by Qualified Bidders in accordance with the requirements of paragraphs 17 and 19 of the SSP)	By January 28, 2021
Final Agreement Deadline	February 19, 2021
Application to the Court for Approval Order(s)	As soon as reasonably practicable after the Final Agreement Deadline
Closing of the Transaction	Within ten (10) days of the Approval Order(s) becoming Final Order(s)

## THE SSP PROCESS

### A. Initial Solicitation of Interest

9. The Sales Agent may contact any Persons to solicit expressions of interest in a Transaction either before or after the granting of the SSP Order.
10. As soon as reasonably practicable after the granting of the SSP Order and in any event by no later than December 7, 2020, in consultation with the Receiver, the Sales Agent will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have interest in the Alberta Assets pursuant to an asset purchase transaction (an "**Asset Bid**"). Concurrently, the Sales Agent will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders and any other interested persons of the SSP and inviting them to express interest in making an Asset Bid. The Teaser Letter shall be posted on the Receiver's Website and that of the Sales Agent.
11. By no later than December 7, 2020, the Sales Agent shall distribute to the Known Potential Bidders and any other interested Persons the Teaser Letter, as well as a form of confidentiality agreement (the "**Confidentiality Agreement**") that shall inure to the benefit of the Person or Persons who make the Winning Bid(s) (as defined herein) pursuant to this SSP. Copies of the Teaser Letter and Confidentiality Agreement shall be provided to any appropriate Persons who becomes known to the Sales Agent after the initial distribution of such documents.
12. Any Person (a) who executes a Confidentiality Agreement in form and substance satisfactory to the Sales Agent and the Receiver, and (b) provides written confirmation of the identity of the potential bidder, including its direct and indirect principals and financial disclosure or credit quality support sufficient to allow the Sales Agent, in consultation with the Receiver, to make a reasonable determination as to its capabilities to conclude a transaction, shall be deemed to be a potential bidder (each, a "**Potential Bidder**").

**B. Due Diligence**

13. The Sales Agent shall provide each Potential Bidder with information, including access to an electronic data room established by the Sales Agent by no later than December 7, 2020 (the "**Data Room**"), that the Sales Agent in its reasonable business judgment determines to be necessary for the Potential Bidder to evaluate a transaction involving an Asset Bid. The Data Room will include, among other things, a form of purchase agreement for use by Qualified Bidders in the case of an Asset Bid.
14. The Sales Agent will prepare a confidential information memorandum ("**CIM**") by no later than December 4, 2020, describing the opportunity to make a SSP Bid and shall deliver the CIM to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SSP.
15. The Receiver and the Sales Agent shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Sales Agent will be obliged to furnish any information relating to the Alberta Assets other than to a Potential Bidder.
16. The Sales Agent, the Receiver and their respective advisors make no representation or warranty as to the information made available pursuant to the SSP, including any information contained in the Data Room.

**C. LOI Process**

17. Any Potential Bidder who wishes to submit an Asset Bid must deliver a written, non-binding letter of intent (each, a "**LOI**") to the Receiver and the Sales Agent at the address specified in and in accordance with Schedule "A" hereto so as to be received by the Receiver and Sales Agent not later than **12:00 p.m. (Mountain time) on January 28, 2021**, or such other date or time as the Receiver may determine (the "**LOI Deadline**").
18. Following the LOI Deadline, all LOIs shall be reviewed by the Receiver and the Sales Agent.
19. An LOI shall be a qualified LOI (each, a "**Qualified LOI**") provided that:
  - (a) it is submitted on or before the LOI Deadline by a Potential Bidder;
  - (b) it is submitted in a format that identifies any and all changes made from the PSA form supplied by the Receiver;
  - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
  - (d) it identifies:
    - (i) the purchase price in Canadian Dollars (including any liabilities to be assumed by the Potential Bidder and any credit bid);

- (ii) whether the Asset Bid is *en bloc*, the Alberta Assets included, any of the Alberta Assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;
  - (iii) confirmation that the Potential Bidder has sufficient funds to complete the Transaction;
  - (iv) the proposed treatment of any leases and other material contracts;
  - (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
  - (vi) it contains a statement that the Potential Bidder is a licensee in good standing with the AER, or has eligibility to obtain or hold AER licenses, permits or approvals with respect to the Assets or has submitted an application to the AER for license eligibility, and will have a Liability Management Rating of 1.0 or greater should the offer be accepted and the AER approves the transfer;
  - (vii) the offer must be accompanied by a 20% deposit payable to "BDO Canada Limited - in trust" (the "**Deposit**") by way of bank draft or certified cheque;
  - (viii) must not be subject to any conditions other than approval by the Court of Queen's Bench of Alberta (the "**Court**") and the PSA must acknowledge that it is subject to Court approval;
  - (ix) contemplates a schedule for closing the Transaction set out therein which is on or before February 19, 2021 (the "**Closing Date**"); and
  - (x) contains such other information as reasonably requested by the Selling Agent or Receiver from time to time.
20. Any Potential Bidder who submits a Qualified LOI on or before the LOI Deadline shall be designated a "**Qualified Bidder**".
21. The Receiver, may waive the strict compliance of one or more of the requirements specified above and deem any LOI to be a Qualified LOI, notwithstanding any noncompliance with the terms and conditions of this SSP.
22. In the event that no Person submits an LOI, or that no LOI qualifies as or is deemed to qualify as a Qualified LOI, or that no Qualified LOI is deemed commercially reasonable to the Receiver, the Receiver may terminate the SSP. If no Qualified LOIs are received by the LOI Deadline, the Receiver may consider other forms of bids for the Alberta Assets. At any time during the SSP, the Receiver may determine that any LOI is a Winning Bid and seek Approval Orders in respect of such Winning Bid(s) from the Court.
23. The Sales Agent may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the Data Room, arrange for inspections and site visits at Bow River's premises, as determined by the Sales Agent.

#### **D. Selection of Winning Bid**

24. The Receiver shall review all Qualified LOIs in consultation with the Sales Agent. The Receiver may, but shall have no obligation to enter into a definitive agreement or agreements (each a "**Final Agreement**") with the Person or Persons who submitted the highest, best or otherwise most favourable Qualified LOIs.
25. The Receiver may give preference to the Qualified LOI or combination of Qualified LOIs that results in the largest amount of environmental liabilities being addressed in terms of liabilities assumed and/or cash provided.
26. In the event that the Receiver enters into one or more Final Agreements by February 19, 2021 ("**Final Agreement Deadline**"), any Qualified LOI so selected shall be a "**Winning Bid**". Any Qualified Bidder that makes a Winning Bid shall be a "**Successful Bidder**".
27. This SSP shall terminate in the event that: (a) no Qualified Bidder submits or is deemed to have submitted a Qualified LOI; (b) the Receiver determines that none of the Qualified LOIs should be accepted; or (c) a Final Agreement has not been entered into before the Final Agreement Deadline.
28. The highest Qualified LOI may not necessarily be accepted by the Receiver. The Receiver reserves the right not to accept any Qualified LOI or to otherwise terminate the SSP. The Receiver further reserves the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified LOI for some or all of the Alberta Assets or to accept multiple Qualified LOIs and enter into multiple Final Agreements.

#### **APPROVAL ORDERS**

29. In the event that Receiver enters into a Final Agreement(s), on or before February 19, 2021, the Receiver shall apply as soon as reasonably practicable thereafter, for order(s) (the "**Approval Order**") from the Court, in form and substance satisfactory to the Receiver, approving the transaction contemplated by the Winning Bid(s) and any necessary related relief required to consummate the Transaction contemplated by the Winning Bid(s), subject to the terms of the Final Agreement(s).
30. An Approval Order shall become a "**Final Order**" upon satisfaction of the following conditions: (a) it is in full force and effect; (b) it has not been reversed, modified or vacated and is not subject to any stay; and (c) all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving the Approval Order wholly operable.

#### **CLOSING**

31. Closing of the transactions contemplated in any Final Agreement shall occur within ten (10) days of the date upon which the Approval Orders have become Final Orders, or as may be extended with the approval of the Receiver.

## **DEPOSITS**

32. All Deposits paid pursuant to this SSP shall be held in trust by the Receiver. The Receiver shall hold Deposits paid by each of the Successful Bidder in accordance with the terms outlined in this SSP. In the event that a Deposit is paid pursuant to this SSP and the Receiver elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Receiver shall return the Deposit and any interest accrued thereon to that Person.
33. In the event that a Successful Bidder defaults in the payment or performance of any obligations owed to the Receiver or the Sales Agent pursuant to any Final Agreement, the Deposit paid by the Successful Bidder as applicable, shall be forfeited to such party as liquidated damages and not as a penalty.

## **CONFLICTS OF INTEREST**

34. Until such time as any secured creditor of Bow River has: (i) irrevocably declared his or her intention not to submit a bid; (ii) his or her LOI has been irrevocably disqualified under the SSP; or (iii) his or her LOI has been irrevocably determined not to be the Winning Bid), such secured creditor:
  - (a) shall only receive information regarding the SSP in keeping with his or her capacity as a Potential Bidder in these proceedings; and
  - (b) shall receive no information whatsoever regarding other bids in the SSP.
35. If any secured creditor determines that he or she will submit a bid in the SSP, such secured creditor shall advise the Receiver of such intent as soon as reasonably practicable, and no later than seven (7) days before the LOI Deadline.

## **COVID-19**

36. This SSP shall be interpreted so as to comply and be consistent with any applicable laws, regulations or public health directives related to the COVID-19 pandemic, and may be amended at any time with the approval of the Receiver to the extent necessary or advisable to comply with same.



## SCHEDULE "A"

### Addresses for Deliveries

Any notice or other delivery made to the Receiver pursuant to this SSP shall be made to:

**BDO Canada Limited**

110, 5800 – 2nd Street SW

Calgary, AB T2H 0H2

Attention: Marc Kelly

Tel: 403-536-8510

Email: [makelly@bdo.ca](mailto:makelly@bdo.ca)

with copy to:

**Bennett Jones LLP**

4500 Bankers Hall East, 855 - 2nd Street SW

Calgary, AB, T2P 4K7

Attention: Keely Cameron

Tel: 403-298-3324

Email: [cameronk@bennettjones.com](mailto:cameronk@bennettjones.com)

Any notice or delivery made to the Sales Agent pursuant to this SSP shall be made to:

**Sayer Energy Advisors**

1620, 540 5 Ave SW

Calgary, AB T2P 0M2

Attention: Tom Pavic

Tel: (403) 266-6133

Email: [TPavic@sayeradvisors.com](mailto:TPavic@sayeradvisors.com)

Deliveries pursuant to this SSP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SSP shall be deemed to be received when delivered to the relevant address, as identified above.