

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS**

The State of Louisiana
Department of Natural Resources
Office of Mineral Resources
State Mineral and Energy Board

represented herein by:
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Louisiana Department of Justice
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RAAM GLOBAL ENERGY	§	
COMPANY [2973]	§	CHAPTER 11
CENTURY EXPLORATION NEW	§	
ORLEANS, LLC [4948]	§	CASE NO. 15-35615
CENTURY EXPLORATION	§	(Jointly Administered)
HOUSTON, LLC [9624]	§	
CENTURY EXPLORATION	§	
RESOURCES, LLC [7252]	§	
	§	
Debtors	§	

THE STATE OF LOUISIANA’S OBJECTION TO MOTION OF CHAPTER 11 DEBTORS TO AUTHORIZE AND APPROVE THE (A) STALKING HORSE PURCHASE AGREEMENT, (B) SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF CLAIMS, LIENS, ENCUMBRANCES AND OTHER INTERESTS, (C) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (D) BIDDING PROCEDURES, (E) PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) RELATED RELIEF

MAY IT PLEASE THE COURT:

The State of Louisiana, through the Office of Mineral Resources, Department of Natural Resources (“State”), by and through its undersigned counsel, hereby files this objection to the

Motion of the Chapter 11 Debtors to authorize and approve the (a) Stalking Horse Purchase Agreement, (b) Sale of substantially all assets free and clear of claims, liens, encumbrances and other interests, (c) Assumption and assignment of executory contracts and unexpired leases, (d) Bidding procedures, (e) Procedures for determining cure amounts for executory contracts and unexpired leases, and (f) Related relief. In support of its Objection, the State respectfully represents as follows:

PRELIMINARY STATEMENT

On Friday, November 6, 2015, RAAM Global Energy Company, Century Exploration New Orleans, LLC, Century Exploration Houston, L.L.C., and Century Exploration Resources, L.L.C. (collectively, the “Debtors”), the debtors in possession in the above-captioned bankruptcy cases, sought Orders from the Court approving the sale of substantially all of their assets to a Stalking Horse Bidder or such other Successful Bidder(s) free and clear of all claims, encumbrances, liens and other interests (except as set forth in the Stalking Horse Purchase Agreement or other definitive agreement to effectuate an Alternative Transaction), and also approving the assumption and assignment of executory contracts and/or unexpired leases and rights thereunder, and other relief pursuant to §§ 363, 365, 503(b), 507(a)(2) and 105 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure. The Debtors propose to conduct the sale of assets via a Stalking Horse purchase agreement. These assets are comprised of interests in various oil and gas properties situated in several states, and which include certain interests in leases covering lands owned by the State of Louisiana. In connection with the sale of the Debtor’s assets, the Debtor seeks a Motion authorizing and approving the assumption and assignment of executory contracts and unexpired leases and rights thereunder.

Based on the foregoing, the State hereby objects to the assignment of any contracts, agreements, or interests, including any executory contracts, working interests or unexpired leases, which bear upon leases covering lands owned by the State of Louisiana free and clear. The State specifically requests that the Court reject the assignment of any executory contracts wherein the State of Louisiana is a party, as this type of “free and clear” assignment would be contrary to both Louisiana statute and prior bankruptcy court opinions. Because of this, any assignments of interests bearing on properties owned by the State of Louisiana should be either disallowed outright or limited so as to comply with applicable Louisiana statutes.

BACKGROUND

The Louisiana Department of Natural Resources manages the State’s mineral assets and advises the State Mineral and Energy Board in the granting and administration of leases on State-owned lands. The Debtor, under two of its associated companies, is a payor on numerous leases covering lands owned by the State of Louisiana (*see* R. Doc. 77-2). The Debtors are now seeking authority to assume and assign interests in these executory contracts and unexpired leases in accordance with its Stalking Horse purchase agreement.

OBJECTION

The State of Louisiana objects to the free assumption and assignment of these leases and the operating agreement. The State has mandated procedures for the assignment of leases or agreements that cover land owned by the State. These procedures ensure that the State has the most current and complete information on potential assignees, and that any potential assignees that may explore for or produce minerals from State-owned property are licensed or approved to operate within the State and that such entities are responsible and answerable for any liabilities owed to the State. In addition, Louisiana has implemented an annual registration process for

operators and requires annual registration for any company exploring for or producing minerals in the State. Because revenues generated by the lease of State-owned lands contribute to State and local governments on so many levels, the State of Louisiana has a significant interest in ensuring that potential assignees are able to meet the requirements of the underlying contract with the State, are not in arrears for royalty payments due to the State for other agreements or leases of State lands, and that any potential assignees have complied with any statutory responsibilities regarding environmental regulation of other wells drilled on State property.

Under normal procedure, a party who wishes to assign or transfer a contract where the State is the lessor will forward the assignment to the Louisiana Department of Natural Resources. The parties must also complete and forward a statement of conveyance that outlines the specific interests and percentages to be conveyed, and the contact information for all potential assignees. The parties must also complete forms addressing the continuing responsibilities of the parties to an assignment or other transfer of an interest in a State lease to comply with all lease requirements. The parties must also designate a joint account lessee for purposes of the lease. These forms must be accompanied by a statutory fee of one-hundred dollars (\$100.00) for reviewing, researching, and processing requested transfers and assignments of leases of minerals or mineral rights owned by the State, and this fee is applied to each lease requested to be transferred or assigned.

Once the potential transfer or assignment is reviewed and the parties have been researched and all necessary information gathered, the matter is placed on the agenda for consideration by the State Mineral & Energy Board. If everything is in order, at that point the State Mineral & Energy Board considers the proposed transfers and, in its discretions, may adopt a formal resolution approving the assignment. This resolution states that approval for the

assignment is conditioned on a number of factors, including that the assignee will fulfill of all terms and conditions of the underlying lease, including full payment of all rentals and royalties, that the obligations contained in the lease are indivisible and that multiple lessees are jointly liable for performance, and that certified copies of the resolution by the Board be attached and recorded with the assignment.

Further, and most importantly, the assignment of contracts bearing on lands belonging to the State of Louisiana is governed Title 30 of the Louisiana Revised Statutes. Section 128 states as follows:

§128. Transfers; approval by board; fees; penalties

A. No transfer or assignment in relation to any lease of minerals or mineral rights owned by the state shall be valid unless approved by the State Mineral and Energy Board. The mineral board may charge a fee of one hundred dollars to cover the cost of preparing and docketing transfers or assignments of leases of mineral or mineral rights. All parties to transfers or assignments in relation to any lease of mineral or mineral rights from the state shall be registered prospective leaseholders with the office of mineral resources. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with the office of mineral resources.

B.(1) Failure to obtain approval of the board of any transfer or assignment of a lease within sixty days of execution of the transfer or assignment shall subject the transferor or assignor to a civil penalty of one hundred dollars per day beginning on the sixty-first day following the execution of the transfer or assignment. The penalty shall continue to accrue on a daily basis until the date on which the transfer or assignment is received by the office of mineral resources for submission to the board for approval or to a maximum amount of one thousand dollars.

(2) The penalties shall be paid into the Mineral and Energy Operation Fund on behalf of the board. The board may waive all or any part of the penalties provided in this Section.

C. A transfer for purposes of this Section shall not be deemed to occur by the granting of a mortgage in, collateral assignment of production from, or other security interest in a mineral lease or sublease or the transfer of an overriding royalty interest, production, payment, net profits interest, or similar interest in a mineral lease or sublease.

As noted above, the Debtor states in its Motion that it intends the potential assumption and assignment of executory contracts and unexpired leases and rights thereunder. This assumption and assignment is governed under the Section 365 of the Bankruptcy Code, which provides that, subject to court approval and certain limitations, debtors can assume or reject any executory contract or unexpired lease. 11 U.S.C. §365. However, the section goes on to state that “[t]he trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and such party does not consent to such assumption or assignment. 11 U.S.C. §365 (c)(1)(A),(B).

Courts have held that state leases are executory within the meaning of Section 365(a). *Texaco Inc. v. Louisiana Land & Exploration Co.*, 136 B.R. 658, 668 (M.D. La. 1992). Further, the court in *Texaco* held that La. R.S. 30:128 applies to “state leases in general and would apply in the event of assignment of the leases.” *Id.* The “applicable law” in this case allows assignment only in one specific circumstance: if the State Energy Mineral Board consents to the assignment. Therefore, La. R.S. 30:128 is an “applicable law” that “excuses” the State of Louisiana from accepting performance from “an entity other than the debtor” thereby barring assumption and assignment of the leases by the Trustee under § 365(c), unless consent to the assignment is explicitly granted by the State Mineral and Energy Board. This has been upheld in subsequent cases, such as *In re Supernatural Foods, LLC*, 268 B.R. 759, 791 (Bankr. M.D. La.

2001), in which the court, in discussing La. R.S. 30:128, noted that the statute's restriction on transfer is,

applicable to all contracts, regardless of the contracts' inclusion of such a restriction, causes the contract to be rendered strictly personal by means of the statutory prohibition upon assignment. The strictly personal nature of the contract requires that it be applicable to prohibit assignment under §365(c).

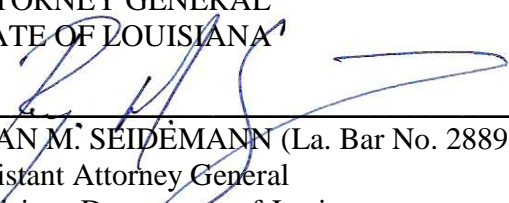
Id. It is also important to note that this notion has been reflected in the First Circuit Court of Appeals in *In re Pioneer Ford Sales, Inc.*, 729 F.2d 27, 29 (1st Cir. 1984) (11 U.S.C. § 365(c)(1)(A) refers generally to contracts that are not assignable under nonbankruptcy law, and specifically excepts state laws that forbid assignment even when the contract is silent). *See also Matter of W. Electronics Inc.*, 852 F.2d 79, 83 (3rd Cir. 1988) and *Matter of Midway Airlines, Inc.*, 6 F.3d 492, 496 (7th Cir. 1993).

CONCLUSION

Louisiana has a constitutional mandate to regulate the State's natural resources and stewardship of State-owned lands in order to ensure compliance with environmental, monetary and contractual obligations. La. Const. Art. IX, Secs. 1, 3, 4. Further, La. R.S. 30:128 has been held to be an "applicable law" by bankruptcy courts, which would excuse the State from accepting performance from anyone other than the debtor. For the foregoing reasons, the State of Louisiana respectfully requests the court to deny the Motion of the Chapter 11 Debtors to authorize and approve the (a) Stalking Horse Purchase Agreement, (b) Sale of substantially all assets free and clear of claims, liens, encumbrances and other interests, (c) Assumption and assignment of executory contracts and unexpired leases, (d) Bidding procedures, (e) Procedures for determining cure amounts for executory contracts and unexpired leases, and (f) Related relief with respect to any leases and operating agreements that cover land owned by the State of Louisiana.

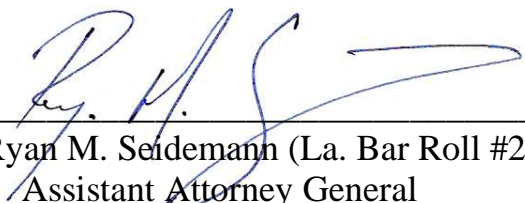
Dated: November 13, 2015
Baton Rouge, Louisiana

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been electronically filed with the Clerk of Court – United States Bankruptcy Court for the Southern District of Texas and all appropriate counsel and parties via the ECF system this 13th day of November, 2015.


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