

Form 27
[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1701-03460

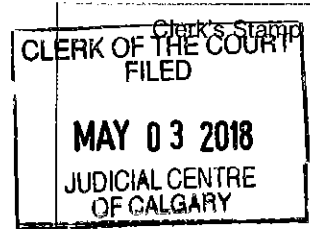
COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ALBERTA ENERGY REGULATOR

DEFENDANT LEXIN RESOURCES LTD.

DOCUMENT **APPLICATION BY MIDSTREAM CANADA LTD.**



ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MacDONALD HANLEY
Barristers & Solicitors
Attention: James G. Hanley
2050, 736 – 6 Avenue SW
Calgary, AB T2P 3T7
Phone: 403-668-5428
Fax: 403-233-2033
File No.: 53397.001JGH
jhanley@macdonaldhanley.com

NOTICE TO RESPONDENTS: LEXIN RESOURCES LTD.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: **Friday, June 8, 2018**

Time: **10:00 a.m.**

Where: **Calgary Courts Centre**

Before Whom: **Madam Justice Romaine**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. For an Order substantially in the form attached as Schedule "A" hereto as follows:
 - a) Abridging the time for service and hearing of this Application, if necessary, and deeming the service of the Application and related material good and sufficient;
 - b) For an Order lifting the stay of proceedings in the Receivership Order granted by this Court March 22, 2017 and the stay, if any that may apply to the assets and estate of Lexin Resources Ltd. ("Lexin") as a result of the Bankruptcy Order dated October 25, 2017, to allow Midstream Canada Ltd. ("Midstream") to take such steps as is necessary pursuant to certain Operating Agreements to give notice to Lexin, the Receiver and Trustee in relation to assuming Operatorship of those Wells and Facilities, more particularly described in the Affidavit of Neeky Noor-Ali ("the Wells and Facilities");
 - c) And further to allow Midstream to take any steps necessary to pursue the transfer and assumption of Operatorship for the Wells and Facilities;
 - d) For leave of this Court to commence and continue any proceedings as may be necessary against the property and assets of the Defendant/Respondent Lexin Resources Ltd. as may be necessary to give effect to the transfer of Operatorship for the Wells and Facilities;
 - e) Declaring that the Applicant Midstream shall be named Operator of those oil and gas Wells and Facilities more particularly described in the Noor-Ali Affidavit;
 - f) Directing the Receiver to deliver to Midstream any and all records pertaining to the Wells and Facilities for which Operator is sought to be transferred pursuant to this Application, including but not limited to all well files, land files, processing, marketing, transportation and production agreements, all copies of contracts, names of contacts and field and contract operator information; and
 - g) Such further and other relief as this Court may seem just.

All in substantially in the form of order attached as Schedule A to this Application.

Grounds for making this application:

1. The Applicant, Midstream, is a party with Lexin to CO&O Agreements relating to gas facilities and gathering systems more particularly set out in the Noor-Ali Affidavit. Midstream is also a party to agreements relating to oil and gas wells which adopt as the Operating Procedure the 1990 CAPL Operating Procedure.
2. The parties have various interests in the Wells and Facilities for which Operatorship is sought by Midstream. To date, Lexin has been the Operator in accordance with the terms of the agreements.
3. The CO&O Agreements relating to the Gas Gathering Systems and pipelines contain a provision 303 as follows:

303. Replacement of Operator

Operator shall immediately cease to be Operator in the circumstances described in Subclauses (a) and (b) below and in all circumstances described in this Clause a replacement Operator be appointed pursuant to Clause 304, if:

- a. Operator becomes bankrupt or insolvent, commits or suffers any act of bankruptcy or insolvency, is placed in receivership or a receiver/manager or Person filling that role is appointed with respect to its property, seeks debtor relief protection under applicable legislation (including, without restricting the generality of the foregoing, the Bankruptcy and Insolvency Act of Canada and the Companies' Creditor Arrangement Act of Canada) or permits any judgment to be registered against its interest in the Facility or any portion thereof, and without restricting the generality of the foregoing, an Operator shall be deemed insolvent for the purposes of this Clause if it is unable to pay its debts as they fall due in the usual course of business;

4. Section 2.02 of the 1990 CAPL Operating Procedure states,

"202. Replacement of Operator

- (a) The Operator shall be replaced immediately and another Operator appointed forthwith pursuant to Clause 206 upon notice to such effect being served by any party to the other parties if:
 - (i) the Operator becomes bankrupt or insolvent, commits or suffers any act of bankruptcy or insolvency, is placed in receivership, seeks debtor relief protection under applicable legislation (including, without restricting the generality of the foregoing, the *Bankruptcy Act of Canada* and the *Companies' Creditor Arrangement Act of Canada*) or permits any judgment to be registered against its working interest, and without restricting the generality of the foregoing, an Operator shall be deemed insolvent for the purposes of this Clause if its unable to pay its debts as they fall due in the usual course of business or if it does not have sufficient assets to satisfy its cumulative liabilities in full; or
 - (ii) the Operator assigns or purports or attempts to assign its general powers and responsibilities of supervision and management as Operator hereunder."
5. The installation of a Receiver and Trustee in Lexin confirms the insolvency of Lexin. All of the Wells and Facilities for which Midstream seeks Operatorship have been shut-in since the Receivership appointment.
6. In addition to the Wells and Facilities for which Lexin was the Operator, Midstream owns working interest in 32 other wells, for which the pipeline and gathering system is necessary to move production from those wells to market.
7. With the shut-in pipelines and gathering systems, due to the pipelines and gathering systems being shut-in. Midstream is unable to commence production from any of its' wells or move any production from any wells market.

8. The stay of proceedings which exists in the template Receivership Order and the Bankruptcy Order as a result of the operation of the *Bankruptcy and Insolvency Act*, prevents Midstream from taking any steps to enhance or protect its assets or production.
9. Midstream seeks an Order lifting the stay so as to allow it to assume Operatorship, or alternatively, to pursue any steps required by the agreements to affect the change of Operatorship from Lexin to Midstream on the Wells and Facilities.

Material or evidence to be relied on:

10. The Receivership Order granted by this Court March 22, 2017, and the Affidavit of Neeky Noori-Ali, sworn April 30, 2018.

Applicable rules:

11. Part 6 of the Rules of Court of Alberta and Rule 13.5

Applicable Acts and regulations:

12. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3
13. *Judicature Act of Alberta*, R.S.A. 2000, c J-2

Any irregularity complained of or objection relied on:

14. None

How the application is proposed to be heard or considered:

15. The application is to be heard orally in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule A

COURT FILE NUMBER 1701-03460

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ALBERTA ENERGY REGULATOR

DEFENDANT LEXIN RESOURCES LTD.

DOCUMENT **ORDER**

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jhanley@macdonaldhanley.com

DATE ON WHICH ORDER WAS PRONOUNCED: **June 8, 2018**

NAME OF JUSTICE WHO MADE THIS ORDER: **Justice Romaine**

LOCATION OF HEARING: **Calgary, Alberta**

UPON application by the Applicant Midstream Canada Ltd. ("Midstream");

AND UPON hearing counsel for Midstream and Grant Thornton Limited, the court appointed Receiver of Lexin Resources Ltd. ("Lexin");

AND UPON reading the Affidavit of Neeky Noor-Ali ("the Affidavit of Noor-Ali"), and the Receivership Order granted by this Court March 22, 2017 ("the Receivership Order"), and the Bankruptcy Order granted by this Court October 25, 2017;

AND UPON hearing counsel,

IT IS HEREBY ORDERED THAT:

1. The time for service and hearing of this application shall be abridged, as necessary, and service of the application and related material is deemed to be good and sufficient.
2. The stay of proceedings in the Receivership Order is lifted to allow Midstream to take any steps necessary to pursue the transfer and assumption of Operatorship for the Wells and Facilities described in the Affidavit of Noor-Ali ("the Wells and Facilities").
3. Midstream shall be entitled to commence and continue any proceedings against the property and assets of Lexin to pursue the transfer and assumption of Operatorship and any steps necessary to give effect to the transfer of Operatorship for the Wells and Facilities.
4. Midstream shall be named Operator of those oil and gas Wells and Facilities for which Operatorship is sought in the Affidavit of Noor-Ali.
5. The Receiver is directed to deliver to Midstream any and all records pertaining to the Wells and Facilities which are subject to this Order, including but not limited to all the well files, land files, processing, marketing, transportation and production agreements, all copies of contracts, names of contacts and field and contract operator information.

Justice of the Court of Queen's Bench of Alberta