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<b>COURT</b>	<b>COURT OF QUEEN'S BENCH OF ALBERTA</b>
<b>JUDICIAL CENTRE</b>	<b>CALGARY</b>
<b>PLAINTIFF</b>	<b>CANADIAN WESTERN BANK</b>
<b>DEFENDANT</b>	<b>WHITEMUD RESOURCES INC.</b>
<b>DOCUMENT</b>	<b>THIRD REPORT OF THE COURT APPOINTED RECEIVER AND MANAGER OF WHITEMUD RESOURCES INC.</b>
	<b>DATED June 23, 2011</b>
	<b>PREPARED BY DELOITTE &amp; TOUCHE INC.</b>

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## INTRODUCTION AND BACKGROUND

### Introduction

1. Pursuant to a Consent Order granted by the Court of Queen's Bench of Alberta (the "Court") on December 15, 2010 (the "Receivership Order"), Deloitte & Touche Inc. ("Deloitte") was appointed as receiver and manager (the "Receiver") of Whitemud Resources Inc. ("Whitemud" or the "Company"). A copy of the Receivership Order and other information on these proceedings can be accessed on Deloitte's website at [www.deloitte.ca](http://www.deloitte.ca) under the Insolvency and Restructuring link.
2. The Receivership Order was the result of an application by Canadian Western Bank ("CWB"), which held registered security over all of the Company's assets, undertakings, and properties that were acquired for, or used in relation to Whitemud's business, including all proceeds thereof (the "CWB Security"). Kasten Energy Inc. ("Kasten") subsequently purchased the CWB Security.
3. In addition to the CWB Security, Whitemud had issued 12% convertible secured subordinated debentures (the "Debentures") pursuant to a trust indenture dated August 6, 2009 (the "Indenture"). Olympia Trust Company ("Olympia") acted as Trustee pursuant to the Indenture and held registered security over all of Whitemud's present and after acquired personal property.

### Background

4. The first report of the Receiver dated March 23, 2011 (the "First Report") and the Receiver's confidential supplement to the First Report (the "Confidential Report") dated March 28, 2011 were both filed in support of the Receiver's application to this Honourable Court on March 31, 2011 (the "March 31 Application"). At the March 31 Application, the Court granted an Order authorizing the Receiver to file a proposal, on behalf of Whitemud, pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act* (the "Proposal"). The Proposal was being funded by and had the full support of Kasten. The Proposal was filed with the Office of the Superintendent of Bankruptcy on April 1, 2011, with Deloitte acting in a dual capacity as both Receiver and as Proposal Trustee (the "Trustee").
5. The meeting of creditors to consider the Proposal (the "Creditors' Meeting") was held on April 21, 2011. At the Creditors' Meeting, Kasten put forward numerous amendments (the "Amendments") to the Proposal, which would substantially increase the recovery to Whitemud's creditors. The Creditors' Meeting was adjourned in order that the Trustee could receive a copy of and file the Proposal including the Amendments (the "Amended Proposal"). The Amended Proposal was filed with the Office of the Superintendent of Bankruptcy on April 29, 2011. Also at the Creditors' Meeting, Kasten provided the Receiver with a bank draft in the amount of \$12.995 million, which was anticipated to be an amount sufficient to pay the Debentures in full.

6. The second report of the Receiver was filed in support of the Receiver's application to this Honourable Court on May 10, 2011 (the "May 10 Application"). At the May 10 Application, the Court granted an Order approving a distribution to Olympia representing payment in full of the Debentures (the "Debenture Payment") and granting to Kasten a second-place secured charge over Whitemud's assets in the amount of the Debenture Payment. The Receiver subsequently made the Debenture Payment, which totaled \$12.959 million, with the funds advanced by Kasten.
7. The Creditors' Meeting was reconvened on May 18, 2011 (the "Reconvened Creditors' Meeting"). Pursuant to the terms of the Amended Proposal, the Regional Municipality of Old Post No. 43 (the "Affected Creditor"), who has an outstanding claim for property taxes, was the only creditor affected by and eligible to vote on the Amended Proposal. The Amended Proposal contemplated that the Affected Creditor would be paid in full upon Court approval of the Amended Proposal ("Court Ratification"). The Amended Proposal further contemplated that the claims of the Crown, preferred creditors and ordinary unsecured creditors (collectively the "Unsecured Claims") would be unaffected by the Amended Proposal and would be paid in full by the Receiver pursuant to a claims process in the Receivership (the "Receivership Claims Process"). At the Reconvened Creditors Meeting the Amended Proposal was accepted by the Affected Creditor.
8. The Trustee's Form 40 – Report of Trustee on Proposal was filed on May 19, 2011 in support of the Trustee's application on June 6, 2011 seeking Court Ratification (the "Ratification Application"). The Receiver filed a concurrent application seeking Court approval of the Receivership Claims Process (the "Claims Process Application").

#### **STATUS OF THE AMENDED PROPOSAL**

9. The Ratification Application was opposed by two of Whitemud's unsecured creditors, Trimac Transportation Services LP ("Trimac") and Bulk Plus Logistics Limited Partnership ("Bulk Plus"). Prior to the receivership, Trimac had entered into a Transportation Agreement with Whitemud and Bulk Plus had entered into a Transload Agreement with Whitemud (collectively the "Agreements"). The Agreements were disclaimed by the Receiver on April 14, 2011. Bulk Plus and Trimac filed proofs of claim with the Trustee, which included pre-receivership claims, claims related to the receivership period and termination claims resulting from the Receiver's disclaimer of the Agreements (the "Termination Claims"). At the Creditors' Meeting, Kasten indicated that it intended to continue Whitemud's operations following Court Ratification and, as such, would be seeking to revive the Agreements, thereby mitigating, at least in part, the claims of both Trimac and Bulk Plus.
10. Both Trimac and Bulk Plus objected to the Ratification Application on the basis that they believed they were not unaffected in the context of the Amended Proposal due to the fact that their Termination Claims had not yet been determined. Trimac and Bulk Plus also indicated that they believed, that they, and all other unsecured creditors, were entitled to vote on and participate in the Amended Proposal, rather than having their claims dealt with pursuant to the Receivership Claims Process.

11. Based on the objections of Trimac and Bulk Plus, the Court Ratification Application and the Claims Process Application were adjourned until June 17, 2011 in order to allow Trimac, Bulk Plus and Kasten additional time to negotiate with respect to the Termination Claims. On June 17, 2011, Kasten reported that, although, negotiations were ongoing, Kasten had yet to reach a settlement with either of Trimac or Bulk Plus. Given the objections of both Trimac and Bulk Plus, Kasten indicated that it intended to file a further Amended Proposal (the "Second Amended Proposal"), which would include the Unsecured Claims and enable all unsecured creditors to vote on the Second Amended Proposal. As such, the Court Ratification Application was adjourned to August 12, 2011 to allow for the filing of the Second Amended Proposal and to allow for the Creditors' Meeting to be reconvened a second time (the "Second Reconvened Creditors' Meeting"). The Claims Process Application was adjourned *sine die*.

## TRUST FUNDS

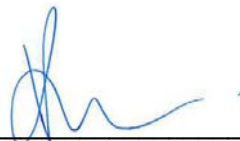
12. In conjunction with the filing of the Amended Proposal, Kasten entered into a trust agreement (the "Trust Agreement") with the Receiver and the Proposal Trustee to confirm the terms pursuant to which Deloitte was holding in trust the amounts required to pay the Debentures in full and the amount required to pay the Unsecured Claims in full. As noted above, the Debentures have now been paid in full; however, the Receiver continues to hold letters of credit totaling \$2.3 million in trust, which is the estimated amount required to pay the Unsecured Claims in full (the "Unsecured Trust Property").
13. The Trust Agreement contemplates that the Unsecured Trust Property is to be returned to Kasten should one of the following events occur:
- a. Whitemud's creditors vote against or are deemed to have voted against the Amended Proposal at the Reconvened Creditors' Meeting;
  - b. The Amended Proposal is not approved by the Court;
  - c. Whitemud becomes bankrupt; or
  - d. Any creditor or other person makes an application to the Court for injunctive or other relief, which in Kasten's opinion, frustrates or alters the terms of the Amended Proposal or otherwise prevents the Amended Proposal from being carried out.
14. In addition to the Unsecured Trust Property, the Receiver holds \$200,000 in trust, which was provided by Kasten as part of a \$1.0 million working capital loan, which was to be used to pay the administrative fees and disbursements in both the proposal and the receivership, to provide working capital to allow Whitemud to operate following Court Ratification and to allow the Company to take steps necessary to allow it to have lifted the cease trade order issued against it by the Alberta Securities Commission on December 3, 2010 (the "Working Capital Advance"). Pursuant to the terms of the Amended Proposal, the Working Capital Advance was to be held in trust by the Receiver and was not available to the Receiver or to Whitemud until following Court Ratification.

15. We note that, although Whitemud has ceased to operate, costs continue to be incurred for both administrative fees and disbursements and for items such as the ongoing security and maintenance of Whitemud's plant, equipment leases, insurance and utilities (the "Operating Costs"). Funding for both the administrative fees and disbursements and the Operating Costs is currently being provided through borrowings advanced pursuant to Receiver's Certificates (as defined in the Receivership Order). The Receiver's Certificates are secured by a first charge on Whitemud's assets, as approved in paragraph 19 of the Receivership Order and the corresponding Amending Order filed on December 15, 2010.
16. As a result of the delays that will be caused by the drafting, filing and distribution of the Second Amended Proposal and the calling of the Second Reconvened Creditors' Meeting to consider the Second Amended Proposal, Kasten has requested that Deloitte return to it the Unsecured Trust Property and the Working Capital Advance. Kasten has confirmed that, prior to the Second Reconvened Creditors' Meeting, it will provide the Receiver with the amounts necessary to fully fund the payments required pursuant to the terms of the Second Amended Proposal. Deloitte is of the view that Kasten is entitled to the return of the Unsecured Trust Property and the Working Capital Advance and that it is appropriate for Deloitte to return those funds to Kasten.

## **CONCLUSION**

17. This report is being filed for the following reasons:
- a. To provide an update to the Court regarding the Amended Proposal; and
  - b. To seek authorization from the Court to take the procedural steps associated with the filing of the Second Amended Proposal and the return of the Unsecured Trust Property and the Working Capital Advance as described in the Receiver's application.

**DELOITTE & TOUCHE INC.,**  
in its capacity as Receiver and Manager  
of Whitemud Resources Inc.  
and not in its personal capacity



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Senior Vice President