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COURT FILE NUMBER 1301-01600

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS AGRICULTURE FINANCIAL SERVICES CORPORATION AND FARM CREDIT CANADA

DEFENDANT WESTERN BIODIESEL INC.

DOCUMENT **FIRST REPORT OF THE RECEIVER,  
HARDIE & KELLY INC.  
FEBRUARY 14, 2014**

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**FIRST REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
FEBRUARY 14, 2014**

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## **INTRODUCTION**

1. On February 26, 2013, Agriculture Financial Services Corporation and Farm Credit Canada (collectively referred to as the “Secured Lenders”) made an application to the Court of Queen’s Bench of Alberta (the “Court”) for the appointment of an interim receiver and receiver and manager (the “Receiver”) of the current and future assets, property and undertakings of Western Biodiesel Inc. (“WBI” or the “Company”).
2. The Court granted an Order (the “Receivership Order”) on February 26, 2013, (the “Receivership Date”) appointing Hardie & Kelly Inc. as the Receiver.
3. The purpose of this report (the “First Report”) is to provide information to the Court in respect of:
  - a. An overview of the business of WBI;
  - b. The Receiver’s initial activities including the Receiver’s efforts to realize on the assets of the Company; and
  - c. The Receiver’s recommendation in respect to the sale of substantially all of the Company’s assets.

## **TERMS OF REFERENCE**

4. In preparing this First Report, the Receiver has relied upon unaudited financial information, records of the Company and discussions with the Company’s former management (“Management”). The Receiver has not performed an audit, review or other verification of such information.

## **BACKGROUND**

5. WBI is a private company that was incorporated in 2005 for the purpose of producing and marketing biodiesel fuel.
6. In 2007, the Company received approval from Alberta Environment to construct and operate a biodiesel facility. In late 2006, the Company acquired a 2.45 acre parcel of land in Aldersyde, Alberta (the "Property"). WBI constructed a 7,200 sq./ft. combination office building/plant (the "Building") on the Property along with the equipment necessary to run the biodiesel operation both within the plant and in a tank farm also located on the Property.
7. As a result of a working capital deficiency and the elimination of government funding, the Company ultimately found itself in a position where it was unable to satisfy its ongoing obligations leading to the cessation of operations several months prior to the Receivership Date.

## **INITIAL ACTIVITIES OF THE RECEIVER**

8. The Property had been vacated and sat dormant for an extended period of time prior to the Receivership Date. Upon being appointed, the Receiver changed the locks to the Building and notified the local Royal Canadian Mounted Police detachment of the Receiver's appointment. The Receiver arranged for the placement of insurance coverage and for ongoing periodic inspections of the Building.
9. Given the inherent nature of the Company's operations, there were numerous chemicals located throughout the Building and the Property. Prior to the Date of Receivership there had been a flood within the plant area as a result of a broken pipe which had also run out of the Building. Despite its proximity to High River, Alberta, the Property was not impacted by the flooding that occurred in Southern Alberta in June 2013.

10. The Receiver determined that a staged approach would be appropriate to first identify and attend to the chemicals and liquids on the Property and in the Building prior to being in a position to market the Company's assets.
11. The Receiver initially commissioned a Phase 1 Environmental Site Assessment from Levelton Consultants Ltd. ("Levelton") who was familiar with the Property as they had previously been engaged by WBI.
12. Levelton recommended that the stagnant water remaining in the plant and in the catch basin area of the tank farm as well as the chemicals/fluids in the various containers, tanks and silos should be identified and disposed of by a licensed contractor.
13. The Receiver then solicited quotes from three licensed contractors to undertake the identification of the stagnant water, chemicals and fluids. Ultimately, the Receiver engaged Newalta Corporation ("NewAlta") to carry out the operation.
14. Given the flooding that took place in Southern Alberta in June 2013, the process leading to the ultimate removal of the liquids and chemicals was delayed due to the resultant busy schedules of environmental companies in the area. However, the Receiver ultimately engaged NewAlta to attend to the removal of the stagnant water, chemicals and fluids from the site which was completed in November 2013.

#### **MARKETING OF ASSETS**

15. The Receiver launched a sales tender process on November 19, 2013. In addition to advertising the opportunity on the Receiver's website, advertisements were published in each of the Calgary Herald, Globe and Mail and on [www.biodieselmagazine.com](http://www.biodieselmagazine.com), an industry website, advertising the sale of the Company's right, title and interest in the following physical assets (collectively referred to as the "Assets"):
  - a) The Property;
  - b) The Building;

- c) Production equipment and tank farms;
  - d) Lab equipment, tools and parts;
  - e) Case W20C Loader and 2001 Freightliner;
  - f) Two stainless steel Polar tank trailers; and
  - g) Three sea cans and miscellaneous office furniture and fixtures.
16. The deadline for offers was December 18, 2013 (the "Bid Deadline").
17. As a result of the marketing process undertaken by the Receiver, numerous interested parties ultimately submitted offers to the Receiver by the Bid Deadline. After seeking further clarification in respect of the terms of certain offers, the Receiver ultimately accepted an offer submitted by XR Resources Ltd. ("XR Resources") for all the Assets subject to the approval of this Honourable Court.
18. The Purchase and Sale Agreement entered into between the Receiver and XR Resources (the "PSA"), the details of all the offers received and an overall analysis of same will be contained in the Receiver's Confidential Supplemental Report (the "First Confidential Report").
19. The Receiver is concerned that in the event the pending sale to XR Resources does not close for any reason, the disclosure of the details of the offers may affect the Receiver's efforts to remarket the Assets. The Receiver will be seeking the Court's approval to have the First Confidential Report sealed.

### **CREDITOR CLAIMS**

20. The Secured Lenders are owed a combined amount in excess of \$2.3 Million. Upon closing of the sale, the Receiver will direct its legal counsel to undertake an independent review of the security of the Secured Lenders to confirm the validity and enforceability of same. In the interim, the Receiver proposes to pay the outstanding costs of administration of the estate from the sales proceeds and maintain the balance pending further order of the Court.

**RECOMMENDATIONS**

21. The Receiver is seeking and recommends to this Honourable Court the approval of the offer submitted by XR Resources for the reasons set out in the First Confidential Report.
22. The Receiver recommends that the First Confidential Report be sealed for purposes of maintaining the integrity of the sales process in the event the contemplated sale to XR Resources does not close for any reason.

All of which is respectfully submitted this 14<sup>th</sup> day of February 2014.

**Hardie & Kelly Inc.,**  
in its capacity as Receiver of Western Biodiesel Inc.  
and not in its personal capacity

Per:



Marc E. Kelly, CA-CIRP  
Senior Vice President