



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 12, 2012

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

AMERICAN WEST
DEVELOPMENT, INC., a Nevada
corporation,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

**INTERIM ORDER (1) PROHIBITING
UTILITY PROVIDERS FROM
ALTERING, REFUSING OR
DISCONTINUING SERVICE; (2)
AUTHORIZING ORDINARY COURSE
PAYMENTS TO UTILITY PROVIDERS;
(3) DEEMING UTILITY PROVIDERS
ADEQUATELY ASSURED OF FUTURE
PERFORMANCE; AND (4)
ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR
ADDITIONAL ADEQUATE ASSURANCE**

Hearing Date: March 6, 2012
Hearing Time: 2:00 p.m.

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1 The Court, having reviewed and considered Debtor’s Motion [Docket No. 16] (the “Motion”),¹
2 for an Order (1) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service; (2)
3 Authorizing Ordinary Course Payments to Utilities Providers; (3) Deeming Utility Providers
4 Adequately Assured of Future Performance; and (4) Establishing Procedures for Determining
5 Requests for Additional Adequate Assurance (the “Interim Order”) and the Omnibus Declaration of
6 Robert M. Evans filed in support of Debtor’s First Day Motions [Docket Nos. 56 and 57] (the
7 “Omnibus Declaration”); all pleadings and evidence submitted in connection with the Motion; and the
8 oral arguments made at the hearing held on March 6, 2012; with appearances as noted in the record; it
9 appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§157 and
10 1334; it appearing that venue of this Chapter 11 Case in this District is proper pursuant to 28 U.S.C.
11 §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. §
12 157(b); notice of the Motion being good and sufficient and appropriate under the circumstances; and
13 for good cause appearing,

14 **IT IS HEREBY ORDERED**, as to Debtor’s existing utility accounts, that:

- 15 1. The Motion is GRANTED;
- 16 2. The utility providers (the “Utility Providers”), as listed on **Exhibit A** attached hereto,
17 are hereby prohibited from altering, refusing and discontinuing service relationships or terms on
18 account of prepetition invoices;
- 19 3. Debtor is authorized to (a) provide the Utility Providers, upon request, sums equal to
20 fifty percent (50%) of Debtor’s estimated monthly costs for utility services for each of the Utility
21 Providers (each sum, a “Utility Deposit”), based upon an average of Debtor’s monthly utility costs for
22 the six (6) months immediately preceding the Petition Date; and (b) pay in the ordinary course of
23 business amounts due to the Utility Providers for Utility Services (as defined in the Motion) provided
24 to Debtor prepetition (the “Ordinary Course Payments,” and together with the Utility Deposit, the
25 “Adequate Assurance Payments”);

26
27 _____
28 ¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the Motion.

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1 4. Upon Debtor’s payment of the Adequate Assurance Payments, the Utility Providers
2 shall be deemed adequately assured of Debtor’s future performance pursuant to 11 U.S.C. § 366;

3 5. If any Utility Provider believes additional assurance is required, it may request such
4 additional assurance pursuant to the procedures set forth herein as follows:

5 5.1. If a Utility Provider is not satisfied with the assurance of future
6 payment provided by Debtor pursuant to the proposed Utility Deposit, the Utility
7 Provider must serve a written request (the “Request”) upon Debtor setting forth
8 the locations for which Utility Services are provided, the account numbers for
9 such locations, the outstanding balance for each account, a summary of Debtor’s
10 monthly historical utility use over the past six months on each account, and an
11 explanation of why the Utility Deposit is inadequate assurance of payment;

12 5.2. The Request must be actually received by Debtor and Debtor’s
13 counsel, Micaela Rustia Moore, Esq., Fox Rothschild LLP, 3800 Howard Hughes
14 Parkway, Suite 500, Las Vegas, Nevada 89169, within 45 days of the date of this
15 Interim Order granting the Motion (the “Request Deadline”);

16 5.3. Without further order of the Court, Debtor may enter into
17 agreements granting additional adequate assurance to a Utility Provider serving a
18 timely Request, if Debtor, in its discretion, determines that the Request is
19 reasonable;

20 5.4. If Debtor believes that a Request is unreasonable, then Debtor
21 shall, within 30 days after the Request Deadline date, file a motion pursuant to
22 section 366(c)(2) of the Bankruptcy Code (a “Determination Motion”), seeking a
23 determination from the Court that the Utility Deposit, plus any additional
24 consideration offered by Debtor, constitutes adequate assurance of payment.
25 Pending notice and a hearing on the Determination Motion, the Utility Provider
26 that is the subject of the unresolved Request may not alter, refuse, or discontinue
27 services to Debtor nor recover or setoff against a prepetition date deposit; and
28

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1 5.5. Any Utility Provider that fails to make a timely Request shall be
2 deemed to be satisfied that the Utility Deposit provided to it constitutes adequate
3 assurance of payment.

4 **IT IS FURTHER ORDERED** that:

5 6. If Debtor supplements the list on **Exhibit A** attached hereto, Debtor will serve a copy
6 of the Motion and the signed order granting the Motion on any Utility Provider that is added to the list
7 by such a supplement (the “Supplemental Service”);

8 7. Concurrently with the Supplemental Service, Debtor will file with the Court a
9 supplement to **Exhibit A** adding the name of the Utility Provider so served. The added Utility
10 Provider shall have 30 days from the date of service of the Motion and the signed order to make a
11 Request. In addition, Debtor may also provide a Utility Deposit to the Utility Provider that is added to
12 the list by such supplement without further order from the Court;

13 8. Debtor may terminate the services of any Utility Provider by providing written notice
14 (a “Termination Notice”). Upon receipt of a Termination Notice by a Utility Provider, the Utility
15 Provider shall immediately refund any Utility Deposit and/or prepetition deposit to Debtor, without
16 giving effect to any rights of setoff or any claims the Utility Provider may assert against Debtor. The
17 immediate refund of a Utility Deposit or prepetition deposit by a Utility Provider whose services are
18 terminated is fair and appropriate under the circumstances because the Utility Provider would no
19 longer require adequate assurance of future payment by Debtor;

20 **IT IS FURTHER ORDERED**, as to new accounts opened by Debtor as debtor-in-possession,
21 that:

22 9. Utility Providers and any other company providing Utility Services to Debtor shall
23 treat Debtor like any other customer under applicable public utility regulations;

24 10. If a Utility Provider or any other company providing Utility Services to Debtor
25 discriminates against Debtor on account of its bankruptcy filing by seeking to impose an additional or
26 higher deposit or other requirements, the Court will consider a request for relief by Debtor with notice
27 to the utility provider on an expedited basis;

28 **IT IS FURTHER ORDERED** that:

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1 11. Debtor is authorized and empowered to take all actions necessary to implement the
2 relief granted in this Interim Order;

3 12. This Court shall retain jurisdiction to hear and determine all matters arising from the
4 implementation of this Interim Order;

5 13. The terms and conditions of this Interim Order shall be immediately effective and
6 enforceable upon its entry;

7 14. Except to the extent expressly provided herein and any actions taken pursuant hereto,
8 nothing herein shall be deemed: (i) an admission as to the validity of any claim against Debtor; (ii) a
9 waiver of Debtor's right to dispute any claim on any grounds; (iii) a promise or requirement to pay
10 any claim; (iv) an implication or admission that any particular claim is of a type specified or defined
11 hereunder; (v) a request or authorization to assume any agreement, contract or lease pursuant to
12 section 365 of the Bankruptcy Code; or (vi) a waiver of Debtor's rights under the Bankruptcy Code or
13 any other applicable law;

14 15. Except to the extent expressly provided herein and any actions taken pursuant hereto,
15 nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of,
16 any claim held by any person;

17 16. Debtor's banks and financial institutions are authorized and directed to process, honor
18 and pay, to the extent of funds on deposit, any and all prepetition checks, wire transfer requests or
19 intercompany transfer requests issued by Debtor, whether pre or postpetition, subject to, and in
20 accordance with, the terms of this Interim Order, with respect to Utility Services. Debtor is authorized
21 to reissue checks, wire transfer requests or intercompany requests where such method of payment has
22 been dishonored;

23 **IT IS FURTHER ORDERED** that:

24 17. U.S. TelePacific Corp. (aka TelePacific Communications) shall be provided with a
25 cash deposit in the amount of \$1,850 and, upon Debtor's payment of such cash deposit, U.S.
26 TelePacific Corp. shall be deemed adequately assured of Debtor's future performance pursuant to 11
27 U.S.C. § 366.

28 **IT IS FURTHER ORDERED** that:

18. A hearing to consider entry of an order granting the relief set forth in this Interim Order on a final basis (the “Final Order”) shall be held on April 10, 2012 at 9:30 a.m. (the “Final Hearing”) in the Foley Federal Building, 300 Las Vegas Boulevard South, Courtroom No. 2, Las Vegas, Nevada 89101; with any objections (the “Objections”) to entry of a Final Order due to be timely filed electronically with the Court and served on Debtor’s counsel: Fox Rothschild, LLP, 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169, Attn: Micaela Rustia Moore, Esq. (with a courtesy copy delivered directly to the Chambers of the Honorable Mike K. Nakagawa) by March 27, 2012. Replies to timely-filed Objections, if any, shall be filed with the Bankruptcy Court electronically and served by April 3, 2012 (with a courtesy copy delivered directly to the Chambers of the Honorable Mike K. Nakagawa) on the objecting party.

Prepared and Respectfully Submitted by:

FOX ROTHSCHILD LLP

By /s/Micaela Rustia Moore

BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859

MICAELA RUSTIA MOORE, ESQ.
Nevada Bar No. 9676

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Las Vegas, Nevada 89169

[Proposed] Counsel for American West Development, Inc.

APPROVED/DISAPPROVED:

OFFICE OF THE UNITED STATES TRUSTEE

BY: /s/Athanasios Agelakopoulos

Athanasios Agelakopoulos, Trial Attorney
300 Las Vegas Boulevard South, Suite 4300
Las Vegas, NV 89101

APPROVED/DISAPPROVED:

BOVITZ & SPITZER

BY: /s/J. Scott Bovitz

J. Scott Bovitz, Esq.
880 West First Street
Suite 502
Los Angeles, California
90012-2430

Counsel for U.S. TelePacific Corp.

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS
AGELAKOPOULOS, OFFICE OF
THE UNITED STATES TRUSTEE

J. SCOTT BOVITZ
BOVITZ & SPITZER

Approved

Approved

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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EXHIBIT A
Utility Providers

FOX ROTHSCHILD LLP
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| <u>Account #</u> | <u>Debtor</u> | <u>Utility Provider</u> | <u>Service</u> |
|---------------------|---------------------------------|---------------------------|----------------|
| 211 - 7954026 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7954149 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7954810 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7955367 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7955475 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7955480 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7956158 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7956463 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7956797 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7957588 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7957982 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7960117 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7960390 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7960807 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7960845 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7961335 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7962592 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7963152 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7963772 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7966164 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7934254 - 001 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 211 - 7966943 - 002 | American West Development, Inc. | Southwest Gas Corporation | Natural Gas |
| 3-0620-1149730 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1149858 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1149860 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150001 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150004 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150009 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150011 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150013 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-1150016 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2415969 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2415976 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2415974 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2415972 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2454449 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2415980 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2454451 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2454450 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2454453 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 3-0620-2454452 | American West Development, Inc. | Republic Services (REPUS) | Trash |
| 287015181411 | American West Development, Inc. | A T & T Mobility | Cell Phone |
| 001000253 | American West Development, Inc. | Nevada Power | Power |
| 154620345 | American West Development, Inc. | Sprint | Cell Phone |
| 765683414 | American West Development, Inc. | T-Mobile | Cell Phone |
| 18126 | American West Development, Inc. | Telepacific Comm | Cell Phone |
| 9005664001 | American West Development, Inc. | Valley Electric | Electric |
| 403350651 | American West Development, Inc. | Verizon | Cell Phone |