

COMSTOCK RESOURCES INC
Form SC TO-I
April 02, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

COMSTOCK RESOURCES, INC.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

7 3/4% CONVERTIBLE SECURED PIK NOTES DUE 2019 (CUSIP NO. 205768 AM6)

AND

9 1/2% CONVERTIBLE SECURED PIK NOTES DUE 2020 (CUSIP NO. 205768 AN4)

(Title of Class of Securities)

M. Jay Allison

Chairman of the Board of Directors and Chief Executive Officer

Comstock Resources, Inc.

5300 Town and Country Blvd., Suite 500

Frisco, Texas 75034

(972) 668-8800

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of the Filing Person)

Copy to:

Jack E. Jacobsen

Locke Lord LLP

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

(214) 740-8000

CALCULATION OF FILING FEE

TRANSACTION VALUATION*

\$482,526,741

AMOUNT OF FILING FEE**

\$60,074.58

- * Calculated solely for purposes of determining the filing fee. This amount is based on the purchase of \$295,464,697 and \$187,062,044 in aggregate principal amount of outstanding 7 3/4% Convertible Secured PIK Notes due 2019 and 9 1/2% Convertible Secured PIK Notes due 2020, respectively, as described herein at a tender offer price of \$1,000 per \$1,000 principal amount outstanding, plus accrued and unpaid interest, if any, up to, but not including the date of purchase.
- ** The amount of the filing fee was calculated at a rate of \$124.50 per \$1,000,000 of transaction value.

Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: Not applicable
Form or Registration No.: Not applicable

Filing party: Not applicable
Date Filed: Not applicable

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1
issuer tender offer subject to Rule 13e-4

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going-private transaction subject to Rule 13e-3
amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Tender Offer Statement on Schedule TO relates to the offer by Comstock Resources, Inc., a Nevada corporation (the Company) to holders (the Holders) of the Company's (i) 7 3/4% Convertible Secured PIK Notes due 2019 (the 2019 Notes) and (ii) 9 1/2% Convertible Secured PIK Notes due 2020 (the 2020 Notes), and together with the 2019 Notes, the Notes) to purchase all of the aggregate outstanding principal amount of the Notes, upon the terms and subject to the conditions set forth in the Offer to Purchase and Consent Solicitation dated April 2, 2018 (the Offer to Purchase) and in the accompanying Consent and Letter of Transmittal (the Consent and Letter of Transmittal) (the Tender Offer).

Holders who tender their 2019 Notes will be agreeing to convert \$652.50 of each \$1,000 principal amount of their 2019 Notes so tendered into shares of the Company's common stock, par value \$0.50 per share (the Shares) and Holders who tender their 2020 Notes will be agreeing to convert \$750.00 of each \$1,000 principal amount of their 2020 Notes so tendered into Shares (the Conversion Agreement; the Shares to be issued upon such conversion, the Conversion Shares), effective at the Settlement Date (as defined below) at a conversion price of \$7.50 per Share, plus, in each case, cash in lieu of any fractional Shares. The Company is offering to purchase the balance of the Notes that are validly tendered and not validly withdrawn prior to the Withdrawal Time (as defined below) (and that are not converted pursuant to the Conversion Agreement), at a purchase price equal to 100% of the principal amount thereof (the Cash Consideration).

The Tender Offer will expire at 11:59 p.m., New York City time, on April 27, 2018, unless extended by the Company in its sole discretion (such time and date, as the same may be extended, the Expiration Date). The Company is concurrently soliciting consents (the Consents) from Holders to amend the indentures governing the Notes to make certain changes to the conversion features and redemption provisions of the Notes. Holders who validly tender their Notes pursuant to the Tender Offer must also validly tender Consents related to such Notes. Validly tendered Notes may be validly withdrawn and the related Consents may be validly revoked at any time prior to the Expiration Date (such time and date, the Withdrawal Time), but not thereafter. The settlement date (the Settlement Date) for the Tender Offer will be promptly following the Expiration Date and is expected to be on or prior to the fifth business day after the Expiration Date.

This Tender Offer Statement on Schedule TO is being filed in satisfaction of the reporting requirements of Rules 13e-4(b)(1) and (c)(2) promulgated under the Securities Exchange Act of 1934, as amended. Information set forth in the Offer to Purchase is incorporated herein by reference in response to Items 1 through 13 of this Schedule TO, except those items as to which information is specifically provided herein.

Item 1. Summary Term Sheet.

The information set forth under Summary in the Offer to Purchase is incorporated herein by reference.

Item 2. Subject Company Information.

(a) *Name and Address.* The name of the Company is Comstock Resources Inc. and the address of its principal executive office is 5300 Town and Country Blvd., Suite 500, Frisco, Texas 75034. The telephone number at that address is (972) 668-8800. The information set forth in under Information about the Company in the Offer to Purchase is incorporated herein by reference.

(b) *Securities.* The subject classes of securities are the 7 3/4% Convertible Secured PIK Notes due 2019 and the 9 1/2% Convertible Secured PIK Notes due 2020. As of the date hereof, there is approximately \$295,464,697 and \$187,062,044 in aggregate principal amount of the 2019 Notes and 2020 Notes outstanding, respectively.

(c) *Trading Market and Price.* The information set forth under Market and Trading Information in the Offer to Purchase is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.

The Company is both the filing person and the subject company. The information set forth under Item 2(a) above is incorporated herein by reference. The information set forth in the Offer to Purchase under Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes is incorporated herein by reference.

Item 4. Terms of the Transaction.

(a) *Material Terms.* The information set forth in the Offer to Purchase under the headings Summary, The Tender Offer and the Consent Solicitation, Proposed Amendments, Certain Significant Considerations, Procedures for Tendering Notes and Delivering Consents, Acceptance of Outstanding Notes for Purchase; Payment for Notes, and Certain Federal Income Tax Considerations is incorporated herein by reference.

(b) *Purchases.* The information set forth in the Offer to Purchase under the heading Interests of Directors and Executive Officers; Transaction and Arrangements Concerning the Notes is incorporated herein by reference.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

(e) *Agreements Involving the Issuer's Securities.* The information set forth in the documents referred to under the heading Incorporation of Documents by Reference in the Offer to Purchase is incorporated herein by reference. The information set forth in the Offer to Purchase under the headings Recent Developments, Proposed Amendments, Dealer Managers and Solicitation Agents; Depository and Information Agent, and Interests of Directors and Executive Officers; Transaction and Arrangements Concerning the Notes is incorporated herein by reference. The Company has entered into the following agreements in connection with the Company's securities:

Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 7³/₄% Convertible Secured PIK Notes due 2019 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K dated September 8, 2016).

First Supplemental Indenture dated November 17, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 7³/₄% Convertible Secured PIK Notes due 2019 (incorporated by reference to Exhibit 4.9 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).

Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 9¹/₂% Convertible Secured PIK Notes due 2020 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K dated September 8, 2016).

First Supplemental Indenture dated November 17, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 9¹/₂% Convertible Secured PIK Notes due 2020 (incorporated by reference to Exhibit 4.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).

Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the Senior Secured Toggle Notes due 2020 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K dated September 8, 2016).

Warrant Agreement dated September 6, 2016, between Comstock Resources, Inc. and American Stock Transfer & Trust Company, LLC, as warrant agent (incorporated by reference to Exhibit 4.9 to the Company's Current Report on Form 8-K dated September 8, 2016).

Amendment No. 1 to Warrant Agreement between Comstock Resources, Inc. and American Stock Transfer & Trust Company, LLC, dated November 7, 2016 to be effective as of September 6, 2016 (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q dated November 9, 2016).

Item 6. Purposes of the Transaction and Plans or Proposals.

- (a) *Purposes.* The information set forth in the Offer to Purchase under the heading "Purpose and Background of the Tender Offer and the Consent Solicitation" is incorporated herein by reference.
- (b) *Use of Securities Acquired.* Any Notes accepted for purchase by the Company pursuant to the Tender Offer will be cancelled.
- (c) *Plans.* The information set forth in the Offer to Purchase under the headings "Recent Developments" and "Proposed Amendments" is incorporated herein by reference.

Item 7. Source and Amount of Funds or Other Consideration.

- (a) *Source of Funds.* The information set forth in the Offer to Purchase under the headings "Summary," "Recent Developments" and "Conditions to the Consummation of the Tender Offer" is incorporated herein by reference.

(b) *Conditions*. The information set forth in the Offer to Purchase under the heading *Conditions to the Consummation of the Tender Offer* is incorporated herein by reference.

(d) *Borrowed Funds*. The information set forth in the Offer to Purchase under the heading *Recent Developments* is incorporated herein by reference.

Item 8. Interest in Securities of the Subject Company.

(a) *Securities Ownership*. The information set forth in the Offer to Purchase under *Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes* is incorporated herein by reference.

(b) *Securities Transactions*. Not applicable.

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.

(a) *Solicitations and Recommendations*. The information set forth in the Offer to Purchase under *Dealer Managers and Solicitation Agents; Depositary and Information Agent* is incorporated herein by reference. None of the Company, the Dealer Managers and Solicitation Agents (as defined in the Offer to Purchase) or the Depositary and Information Agent (as defined in the Offer to Purchase) is making any recommendation to the Holders whether to tender or refrain from tendering all or any portion of their Notes.

Item 10. Financial Statements.

(a) *Financial Information*. The information set forth in the documents referred to under the heading *Incorporation of Documents by Reference* in the Offer to Purchase is incorporated herein by reference. The information set forth in the Company's Annual Report on Form 10-K for the year ended December 31, 2017 under Item 6 *Selected Financial Data* and Item 8 *Financial Statements and Supplementary Data* is incorporated herein by reference.

The Company's book value (deficit) per share at December 31, 2017 is \$(26.49). The following table sets forth the Company's ratio of earnings to fixed charges for each of the two fiscal years ended December 31, 2017 and 2016.

| | Fiscal Year ended December 31, 2017 | Fiscal Year ended December 31, 2016 |
|------------------------------------|--|--|
| Ratio of earnings to fixed charges | | |
| Coverage deficiency (in millions) | \$ (128.0) | \$ (129.3) |

(b) *Pro Forma Information*. Not applicable.

Item 11. Additional Information.

(a) *Agreements, Regulatory Requirements and Legal Proceedings*. The information set forth in the Offer to Purchase under *Interests of Directors, Executive Officers; Transactions and Arrangements Concerning the Notes* and *Conditions to the Consummation of the Tender Offer* is incorporated herein by reference.

(c) *Other Material Information*. The information set forth in the Offer to Purchase and the Consent and Letter of Transmittal is incorporated herein by reference.

Item 12. Exhibits.

- (a)(1)(i) * Offer to Purchase and Consent Solicitation, dated April 2, 2018.
- (a)(1)(ii) * Form of Consent and Letter of Transmittal.
 - (a)(2) * Press Release, dated April 2, 2018 announcing Tender Offers for Outstanding Secured Notes.
 - (a)(3) * Press Release dated April 2, 2018 announcing Comprehensive Refinancing Transactions.
- (b) Not applicable.
- (d)(1) Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 7 ³/₄% Convertible Secured PIK Notes due 2019 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K dated September 8, 2016).
- (d)(2) First Supplemental Indenture dated November 17, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 7 ³/₄% Convertible Secured PIK Notes due 2019 (incorporated by reference to Exhibit 4.9 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).
- (d)(3) Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 9 ¹/₂% Convertible Secured PIK Notes due 2020 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K dated September 8, 2016).
- (d)(4) First Supplemental Indenture dated November 17, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the 9 ¹/₂% Convertible Secured PIK Notes due 2020 (incorporated by reference to Exhibit 4.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).
- (d)(5) Indenture dated September 6, 2016, among Comstock Resources, Inc., the Subsidiary Guarantors party thereto, and American Stock Transfer & Trust Company, LLC, Trustee for the Senior Secured Toggle Notes due 2020 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K dated September 8, 2016).
- (d)(6) Warrant Agreement dated September 6, 2016, between Comstock Resources, Inc. and American Stock Transfer & Trust Company, LLC, as warrant agent (incorporated by reference to Exhibit 4.9 to the Company's Current Report on Form 8-K dated September 8, 2016).
- (d)(7) Amendment No. 1 to Warrant Agreement between Comstock Resources, Inc. and American Stock Transfer & Trust Company, LLC, dated November 7, 2016 to be effective as of September 6, 2016 (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q dated November 9, 2016).
 - (g) Not applicable.
 - (h) Not applicable.

* Filed electronically herewith

Item 13. Information Required by Schedule 13E-3.

Not applicable.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: April 2, 2018

COMSTOCK RESOURCES, INC.

By: /s/ Roland O. Burns

Name: Roland O. Burns

Title: President and Chief Financial Officer