

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

		In re:	CHAPTER 11
		WHITE ENERGY, INC., et al.,¹	Case No. 09-11601 (CSS)
		Debtors,	(Jointly Administered)

**CERTIFICATION OF COUNSEL REGARDING STIPULATION BY AND AMONG
THE DEBTORS, WESTLB AG, NEW YORK BRANCH, AS LENDER AND
ADMINISTRATIVE AGENT AND FAGEN, INC. GRANTING FAGEN, INC. THE
ABILITY TO VOTE**

I, David B. Stratton, a partner at Pepper Hamilton LLP, counsel for WestLB AG, New York Branch, as lender and administrative agent (the “Agent”), under the Amended and Restated Credit Agreement, dated as of July 31, 2006, as amended, modified or supplemented from time to time and all documents and instruments relating thereto, hereby certify as follows:

1. On May 7, 2009, the debtors in the above-captioned cases (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et. seq.* as amended, the “Bankruptcy Code”).

2. On September 3, 2009, Fagen, Inc. (“Fagen” and together with the Debtors and the Agent, the “Parties” and each, individually, a “Party”) filed proof of claim number 171 (the “Plainview Claim”) against debtor Plainview BioEnergy LLC for \$6,016,749.55 alleged to be owed to Fagen under that certain Lump Sum Design-Build Agreement dated July 27, 2006 between Plainview BioEnergy LLC and Fagen (the “Plainview Contract”).

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: White Energy, Inc. (1083); White Energy Holding Company, LLC (3034); US Energy Partners, L.L.C. (1177); WE Hereford, LLC (9408); and Plainview BioEnergy, LLC (5553). The corporate headquarters for each of the Debtors is 5005 LBJ Freeway, Suite 1400, Dallas, TX 75244.

3. On September 3, 2009, Fagen also filed proof of claim number 172 (the “Hereford Claim”) against debtor WE Hereford LLC for \$8,883,919.84 alleged to be owed to Fagen under that certain First Amended and Restated Lump-Sum Design-Build Agreement dated April 14, 2006 between WE Hereford LLC and Fagen (the “Hereford Contract” and together with the Plainview Contract, the “Contracts”).

4. Fagen asserts that, under Texas law, the amounts owed to Fagen under the Contracts are secured by liens over certain of the Debtors’ property (the “Fagen Liens”).

5. On December 15, 2009, the Debtors and Agent jointly filed a Chapter 11 Plan of Reorganization (as may be amended from time to time, the “Plan”) in these chapter 11 cases and a related disclosure statement (the “Disclosure Statement”).

6. On December 28, 2009, debtor WE Hereford LLC commenced Adversary Proceeding No. 09-53283 against Fagen and debtor Plainview BioEnergy, LLC commenced Adversary Proceeding No. 09-53284 (together, the “Adversary Proceedings”) against Fagen, disputing, among other things (i) the amounts asserted by Fagen in the Plainview Claim and the Hereford Claim; and (ii) the validity, enforceability and priority of the Fagen Liens.

7. On January 7, 2010, the Agent filed objections to the Plainview Claim and the Hereford Claim (the “Claim Objections”).

8. On January 19, 2010, this Court entered in each Adversary Proceeding a stipulation by and among the Parties hereto granting the Agent right to intervene as a party-plaintiff in such Adversary Proceeding.

9. On January 19, 2010, this Court entered an Order (the “Disclosure Statement Order”) in the above-captioned cases approving the Disclosure Statement and, among other

things, approving certain procedures for the allowance or disallowance of claims for purposes of voting to accept or reject the Plan (the “Disputed Claims Procedures”).

10. As a result of the Adversary Proceedings and the Claim Objections, the Plainview Claim and Hereford Claim are not “allowed claims” for purposes of section 502(a) of the Bankruptcy Code.

11. As a result of the Adversary Proceedings and the Claim Objections, Fagen is not eligible to vote on the Plan and is subject to the Disputed Claims Procedures.

12. On January 25, 2010, in accordance with the Disputed Claims Procedures, Fagen moved this Court for the entry of an order temporarily allowing its claims for voting purposes (the “Motion”).

13. The Parties have engaged in good faith, arm’s-length negotiations in entering into the Stipulation By and Among the Debtors, WestLB AG, New York Branch, as Lender and Administrative Agent and Fagen, Inc. Granting Fagen, Inc. the Ability to Vote (the “Stipulation”), attached hereto as **Exhibit A**.

14. Pursuant to the Stipulation, each of the Plainview Claim and the Hereford Claim shall be temporarily allowed claims in Class 3 of the Plan solely for the purpose of permitting Fagen to vote to accept or reject the Plan.

15. Further, pursuant to the Stipulation, the Parties agree that, except in respect of Fagen’s ability to vote on the Plan as expressly set forth in the Stipulation (i) the Stipulation is entirely without prejudice to any and all rights of each Party hereto with respect to the Plan, the Adversary Proceedings or otherwise; (ii) each Party reserves all of its rights of any kind or nature whatsoever with respect to the Plan, the Adversary Proceedings or otherwise; and (iii) by

entering into the Stipulation, no Party waives any claim, defense or right of any kind or nature with respect to the Plan, the Adversary Proceedings or otherwise.

16. The Agent respectfully requests that the Court enter the order attached hereto as **Exhibit B** approving the Stipulation at the Court's convenience.

Dated: February 12, 2010
Wilmington, Delaware

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