

PetroHunter Energy Corp
Form 10-K/A
January 02, 2014

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

Form 10-K/A
(Amendment No. 1)

(Mark One)

☒

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended September 30, 2012

or

☐

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number: 000-51152

PETROHUNTER ENERGY CORPORATION
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

98-0431245
(I.R.S. Employer
Identification No.)

910-16th Street, Suite 208
Denver, Colorado
(Address of principal executive offices)

80202
(Zip Code)

Registrant's telephone number, including area code:
(303) 859-6666

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, \$0.001 par value
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.
Yes ☒ No ☐

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

☐ Yes ☒ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: \$2,996,108 as of March 31, 2012.

As of December 16, 2013, the registrant had 439,373,853 shares of common stock outstanding.

EXPLANATORY NOTE

The purpose of this Amendment No. 1 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2012, filed with the Securities and Exchange Commission on December 18, 2013 (the "Form 10-K"), is solely to amend the disclosures contained in Item 13 and to furnish Exhibit 101 to the Form 10-K. Exhibit 101 provides the financial statements and related notes from the Form 10-K formatted in XBRL (Extensible Business Reporting Language).

No other changes have been made to the Form 10-K. This Amendment No. 1 to the Form 10-K continues to speak as of the original filing date of the Form 10-K, does not reflect events that may have occurred subsequent to the original filing date, and does not modify or update in any way disclosures made in the original Form 10-K, except for Item 13, as amended.

Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files in Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

PART III

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Our “Code of Conduct and Standard of Ethics” addresses our policy for dealing with transactions with affiliates and as a matter of procedure we obtain Board of Director approval for any transaction with a director, executive officer or other affiliate of PetroHunter. A complete description of the transaction including the services or products to be provided, the financial components related to the services or products, the nature of the relationship of the entity involved in the transaction, and any other contractual obligations related to the transaction is presented to the Board of Directors for their review. The Board of Directors indicates their approval of the transaction with a written resolution.

Other than the transactions described below, none of our present directors, officers or principal shareholders, nor any family member of the foregoing, nor, to the best of our information and belief, any of our former directors, officers or principal shareholders, nor any family member of such former directors, officers or principal shareholders, has or had any material interest, direct or indirect, in any transaction, or in any proposed transaction which has materially affected or will materially affect us.

Marc A. Bruner

As of September 16, 2011, Sweetpea entered into a Joint Venture and Operating Agreement (“JVOA”) with Paltar Petroleum Limited (“Paltar”), pursuant to which Paltar agreed to provide funding as stated in the JVOA for the permits and the initial work program expenses required under EPs 136 and 143 in exchange for a 50% ownership interest in the EPs. Paltar is controlled by Marc Bruner, a significant shareholder of the Company. In addition, one of our directors, Carmen Lotito, is an officer of Paltar.

Bruner Family Trust

At September 30, 2012, we have seven notes outstanding from the Bruner Family Trust totaling \$2,828,059. Mr. Bruner’s adult son is one of the trustees of the Bruner Family Trust. Mr. Bruner is not a beneficiary of the Trust.

Global Project Finance AG

On January 9, 2007, we entered into a Credit and Security Agreement (the “January 2007 Credit Facility”) with Global Project Finance AG (“Global”), a company controlled by Christian Russenberger, a significant shareholder, in the amount of \$15,000,000. As of September 30, 2012 and 2011, amounts drawn against this facility were \$15,000,000.

On May 21, 2007, we entered into a second Credit and Security Agreement with Global (the “May 2007 Credit Facility”) and we extended all the economic terms from the May 2007 Credit Facility retroactively to the January 2007 Credit Facility. Under the May 2007 Credit Facility, Global agreed to use its best efforts to advance up to \$60,000,000 to us over the following 18 months. As of September 30, 2012 and 2011, amounts drawn against this facility were \$24,800,000.

In connection with the May 2007 Credit Facility, Global received warrants to purchase 2,000,000 of our common shares at the date of execution and was to receive 400,000 warrants for each \$1,000,000 advanced under the Facility. We agreed to pay an advance fee of 2% on all amounts drawn under the May 2007 Credit Facility. Payments were to have been made in such amounts as may be agreed upon by us and Global on the then outstanding principal balance in order to repay the principal balance by the maturity date, November 21, 2009. The loans are collateralized by a first perfected security interest on certain oil and gas properties and other of our assets. In

the event that we sell any interest in the oil and gas properties that comprise the collateral, a mandatory payment is due in the amount equal to such sales proceeds.

As of September 30, 2012 and 2011, the cash portion of the advance fees payable incurred in connection with the two lines of credit in the amount of \$716,045 and \$770,241 respectively incurred proportionately at 2% of each respective draw, has been accrued.

In March 2010, in exchange in exchange for 5,000,000 shares of our common stock, Global executed an amendment to an existing \$850,000 note payable bearing interest at 15%. The amendment granted us a relief of \$286,664 in accrued interest related to the underlying note. In addition all other defaults under the terms of the initial note dated October 10, 2007 were waived through December 31, 2014. The due date of the note, and all scheduled interest payments were extended through December 31, 2014. We will continue to accrue interest on the note at 8.5% per annum. We recorded a \$150,000 charge to interest expense related to the issuance of common stock in connection with this amendment.

In March 2010, in exchange for 48,391,420 shares of our common stock, Global executed an amendment to the existing \$39,800,000 credit facilities bearing interest at the prime rate plus 6.75%. The amendment granted us a relief of \$5,762,276 in accrued interest related to the underlying credit facilities. In addition all other defaults under the terms of the January 2007 Credit Facility and May 2007 Credit Facility were waived through December 31, 2014. The maturity date of the facilities, and all scheduled interest payments were extended through December 31, 2014. We will continue to accrue interest on the credit facilities at 8.5% per annum. We have recorded a \$6,145,548 charge to additional paid in capital related to the issuance of common stock in connection with the relief of accrued interest, including \$145,000 allocable to the \$850,000 promissory note as discussed above and \$6,000,548 related to the credit facilities. In accordance with FASB ASC 470-50-40-2, "Debt Modifications and Extinguishments," no gain has been recognized due to the related party nature of the transaction.

The terms of the amendment agreement allow for conversion of \$6,500,000 of principal amounts owed under the existing credit facilities into shares of our common stock at \$0.125 per share through December 31, 2011. In January 1, 2012 through December 31, 2014, this conversion price will decreased to \$0.10 per share. We have considered FASB ASC-470-20, "Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion," in connection with this conversion feature, and have not recorded any impact to our financial statements as of the date of issuance. The amendment also provided that in the event of an initial public offering of Sweetpea or the sale of Sweetpea's Falcon Australia shares, Global would be entitled to request that 25% of the net proceeds therefrom be used to repay the indebtedness owed to Global.

Future Transactions

All future affiliated transactions will be made or entered into on terms that are no less favorable to us than those that can be obtained from any unaffiliated third party. A majority of the independent, disinterested members of our board of directors will approve future affiliated transactions.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

Regulation

S - K

Exhibit

Number

- | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 | Stock Exchange Agreement dated February 10, 2006 by and among Digital Ecosystems Corp., GSL Energy Corporation, MABio Materials Corporation and MAB Resources LLC (incorporated by reference to Exhibit 10.8 to the Company's quarterly report on Form 10-QSB for the quarter ended December 31, 2005, filed February 16, 2006) |
| 2.2 | Amendment No. 1 to Stock Exchange Agreement dated March 31, 2006 (incorporated by reference from Exhibit 10.1 to the Company's current report |

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on Form 8-K dated March 31, 2006, filed April 7, 2006)

- 2.3 Amendment No. 5 to Stock Exchange Agreement dated May 12, 2006
(incorporated by reference from Exhibit 10.1 to the Company's current report
on Form 8-K dated May 12, 2006, filed May 15, 2006)
- 3.1 Articles of Incorporation (incorporated by reference to Exhibit A to the
Information Statement filed July 17, 2006)

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Regulation
S - K
Number

Exhibit

- | | |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.2 | Bylaws (incorporated by reference to Exhibit B to the Information Statement filed July 17, 2006) |
| 10.1 | 2005 Stock Option Plan (incorporated by reference from Exhibit 4.1 to the Company's annual report Form 10-KSB for the fiscal year ending March 31, 2006, filed July 14, 2006) |
| 10.2 | Credit and Security Agreement dated as of January 9, 2007 between PetroHunter Energy Corporation and PetroHunter Operating Company and Global Project Finance AG (incorporated by reference to Exhibit 10.2 to the Company's current report on Form 8-K dated January 9, 2007, filed January 11, 2007) |
| 10.3 | Credit and Security Agreement dated as of May 21, 2007 between PetroHunter Energy Corporation and PetroHunter Operating Company and Global Project Finance AG (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated May 21, 2007, filed May 22, 2007) |
| 10.4 | Subordinated Unsecured Promissory Note dated July 31, 2007 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated July 31, 2007, filed August 1, 2007) |
| 10.5 | Subordinated Unsecured Promissory Note dated September 21, 2007 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated September 21, 2007, filed September 27, 2007) |
| 10.6 | Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated November 13, 2007, filed November 15, 2007) |
| 10.7 | Form of Debenture (incorporated by reference to Exhibit 10.2 to the Company's current report on Form 8-K dated November 13, 2007, filed November 15, 2007) |
| 10.8 | Registration Rights Agreement (incorporated by reference to Exhibit 10.3 to the Company's current report on Form 8-K dated November 13, 2007, filed November 15, 2007) |
| 10.9 | Form of Warrant (incorporated by reference to Exhibit 10.4 to the Company's current report on Form 8-K dated November 13, 2007, filed November 15, 2007) |

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- 10.10 Collateral Pledge and Security Agreement (incorporated by reference to Exhibit 10.5 to the Company's current report on Form 8-K dated November 13, 2007, filed November 15, 2007)
- 10.11 Promissory Note dated February 12, 2008 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated February 12, 2008, filed February 19, 2008)
- 10.12 Promissory Note dated March 14, 2008 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated March 14, 2008, filed March 17, 2008)
- 10.13 Promissory Note dated March 18, 2008 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated March 18, 2008, filed March 24, 2008)
- 10.14 Promissory Note dated August 12, 2008 to Bruner Family Trust UTD March 28, 2005 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated August 12, 2008, filed August 18, 2008)
- 10.15 Purchase and Sale Agreement between PetroHunter Energy Corporation, PetroHunter Operating

Regulation
S-K Number

Exhibit

	Company and Sweetpea Petroleum Pty Ltd. And Falcon Oil & Gas Ltd., Falcon Oil & Gas USA, Inc. and Falcon Oil & Gas Australia Pty Ltd. dated May 26, 2009 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated May 26, 2009, filed May 27, 2009)
10.16	Amendment to Credit and Security Agreements and Promissory Note between PetroHunter Energy Corporation and Global Project Finance AG dated March 5, 2010 (incorporated by reference to Exhibit 10.19 to the Company's annual report on Form 10-K for the fiscal year ended September 30, 2010, filed December 23, 2010)
10.17	Form of Waiver and Amendment Agreement between PetroHunter Energy Corporation and holders of convertible debentures (incorporated by reference to Exhibit 10.20 to the Company's annual report on Form 10-K for the fiscal year ended September 30, 2010, filed December 23, 2010)
10.18	Share Sale Agreement between Sweetpea Petroleum Pty Ltd and Falcon Oil & Gas Ltd dated May 23, 2013 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated May 23, 2013, filed May 30, 2013)
10.19	Escrow Agreement among Falcon Oil & Gas Ltd., Sweetpea Petroleum Pty Ltd and Computershare Trust Company of Canada dated July 17, 2013 (incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K dated July 17, 2013, filed July 18, 2013)
21.1	Subsidiaries of the registrant (incorporated by reference to Exhibit 21.1 to the Company's annual report on Form 10-K for the fiscal year ended September 30, 2007, filed January 15, 2008)
31.1	Rule 13a-14(a) Certification of Martin B. Oring
32.1	Certification of Martin B. Oring pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	Interactive Data Files*

*In accordance with Rule 406T of Regulation S-T, the information in these exhibits shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liability under that section, and shall not be incorporated by reference into any registration statement of other document filed under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PETROHUNTER ENERGY CORPORATION

Date: January 2, 2014

By: /s/ Martin B. Oring
Martin B. Oring
Chief Executive Officer

EXHIBIT INDEX

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