

COMSTOCK RESOURCES INC
Form DEFA14A
April 23, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the registrant ☒ x

Filed by a Party other than the registrant ☐ "

Check the appropriate box:

☐ Preliminary proxy statement.

☐ **Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2)).**

☐ Definitive proxy statement.

☒ x Definitive additional materials.

☐ Soliciting material pursuant to Rule 14a-11(c) or Rule 14a-12.

COMSTOCK RESOURCES, INC.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (check the appropriate box):

☒ x No fee required.

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.. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- 1) Title of each class of securities to which transaction applies:

- 2) Aggregate number of securities to which transaction applies:

- 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth amount on which filing fee is calculated and state how it was determined):

- 4) Proposed maximum aggregate value of transaction:

- 5) Total fee paid:

.. Fee paid previously with preliminary materials.

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

- 1) Amount previously paid:

- 2) Form, Schedule or Registration Statement No.:

- 3) Filing party:

- 4) Date filed:

April 22, 2013

Dear Comstock Stockholder:

At the annual meeting of Comstock Resources, Inc. (the "Company") to be held on Tuesday, May 7, 2013, stockholders will vote on several important matters, including the election of two director nominees and an advisory vote on the compensation for the Company's named executive officers. We strongly urge you to support each board recommendation.

Last week Institutional Shareholder Services Inc. ("ISS") issued a report in which it recommends (i) withholding support for director nominee Cecil E. Martin, who is a member of our compensation committee and executive committee, as well as the chairman of our audit committee (including the audit committee financial expert) and our lead independent director and (ii) voting against the compensation for the Company's named executive officers. These recommendations are based on certain criticisms of the Company's executive compensation program.

Over the last two years the compensation committee has made extensive changes to the Company's compensation programs to modernize our practices and to meet our stockholders' expectations. Our compensation committee is committed to meeting our stockholders' expectations and will continue to make adjustments until this goal is achieved. **As outlined below, the compensation committee has agreed to make further changes to the compensation program, addressing certain criticisms raised by ISS.**

In its report, ISS states that the Company's new annual bonus program is still significantly discretionary and that the discretionary portion was awarded at above-target levels despite below-target achievement of financial goals. The Company's new long-term incentive programs introduce performance-based awards tied to the achievement of objective pre-determined measures, but ISS claims that the goals do not appear to be sufficiently rigorous. It also cites ongoing concerns regarding the Company's above-median benchmarking and use of a larger peer group than ISS deems appropriate. **We want to address these criticisms and describe additional changes we are making in our compensation practices to address them.**

A substantial portion of the bonus remains discretionary. Stockholders would further benefit from a program entirely based on the achievement of objective pre-determined measures.

The compensation committee has reviewed ISS's comments related to the 50% discretionary component of the annual incentive bonus, and understands the concerns that have been raised. We would point out that some form of discretion is utilized in annual incentive programs at over 75% of the companies identified by ISS as our peers. Nevertheless, the compensation committee wants stockholders to understand the importance the Company places on ensuring the achievement of pay-for-performance. **Therefore, the compensation committee has committed to award a 2013 discretionary bonus to our CEO and SVP only to the extent that the 2013 formula-driven bonus is earned.** The Company will base 100% of the 2013 annual incentive bonus on the results of the formula-driven plan.

Performance metrics for long-term incentives are not rigorous. LTI pays out at elevated targets for median performance.

Performance share plans have been increasing in prevalence over the past few years as a result of the need to create a closer link between pay and performance; however, fewer than 30% of companies have implemented this change. The compensation committee is committed to ensuring that pay is strongly linked with stockholder value creation. The compensation committee understands ISS's concern related to the relative TSR ranking performance goals for target vesting of the 2013 awards. **Future awards will require that absolute TSR performance be positive in order for performance share awards to vest. This will ensure that we are delivering value to our stockholders, not simply performing well against our peers.**

Above-median benchmarking.

The compensation committee believes the position ISS has taken regarding our benchmarking process disregards the competitive market for talent in our industry. To retain executives of the caliber of our Chief Executive Officer, Mr. Allison, and our Senior Vice President, Mr. Burns, the committee assesses the market at levels which are comparable to their tenure, experience, and historical performance. As our stockholders are aware, our CEO and SVP are highly qualified, experienced executives with 25 years' tenure and successful track records. As generally accepted compensation principles (GACP) dictate, when benchmarking executives, one must differentiate between value creators (such as Messrs. Allison and Burns) and value maintainers. The committee feels, and GACP supports, that Messrs. Allison and Burns are value creators who are critical to the Company's success in stockholder value creation over the long-term. Therefore, we believe that the compensation of Messrs. Allison and Burns should be set at a level above similarly titled executives at other companies who are not similarly qualified or experienced.

Nevertheless, the compensation committee acknowledges that changes to our benchmarking process may be necessary to attain our stockholders support for our executive compensation program. Therefore, the compensation committee is committing to stockholders that a change in benchmarking philosophy will be undertaken going forward. **Future compensation decisions and awards to the CEO and SVP will be benchmarked at the 50th percentile, assuming future TSR performance merits it.**

2013 Peer Group: remains skewed larger than the Company. Concerns are somewhat mitigated due to modifications for 2013.

As noted by ISS, the Company implemented significant changes to the 2012 peer group selection process following ISS's concerns regarding the inclusion of companies that were considered too large by ISS standards. The ISS report makes note of the positive changes in the 2013 peer group. ISS's 2013 peer selection process yielded a group that we feel better represents similarly-situated companies in our market. However, the ISS selected peers include multiple oil-dominant companies, as well as other companies that for a number of reasons we believe are poor peer comparisons, including:

ATP Oil & Gas in bankruptcy

Breitburn Energy Partners an MLP with a non-traditional compensation structure

EPL Oil & Gas an offshore-focused company

Clayton Williams a closely-held company which does not award equity

McMoRan Exploration recently proposed merger with a much larger company

W&T Offshore a closely-held company that is offshore-focused

The compensation committee strongly believes that the changes made in the 2013 peer group results in peer companies which are similarly sized and competitively aligned with the Company. The ISS-selected peer group includes seven companies that are included in the Company's 2013 self-selected peer group of 18 companies. We agree that size and industry similarity are key inputs into the peer selection process;

however, the compensation committee also attempts to select peers exhibiting similar reserve/production characteristics, similar operational plays, good compensation practices, and similar human capital competition characteristics. It is our belief that our peer group positions the Company to best retain top level talent, competitively align compensation, and measure relative performance annually and long-term. The compensation committee will continue to monitor the composition of the Company's peer group and give careful consideration to ISS's size parameters for the Company's peer group going forward.

Given the changes already made to the Company's executive compensation program and the commitments of the compensation committee to further align pay with performance, we urge you to vote FOR Mr. Martin in the election of directors and FOR the advisory vote on executive compensation at the Company's annual meeting of stockholders.

/s/ David W. Sledge
Chairman of Compensation Committee

- (e)
[X] An investment adviser in accordance with 240.13d-1(b)(1)(ii)(E);
- (f)
[] An employee benefit plan or endowment fund in accordance with 240.13d-1(b)(1)(ii)(F);
- (g)
[X] A parent holding company or control person in accordance with 240.13d-1(b)(1)(ii)(G);
- (h)
[] A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);
- (i)
[] A church plan that is excluded from the definition of an investment company under Section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3);
- (j)
[] A non-U.S. institution in accordance with 240.13d-1(b)(1)(ii)(J);
- (k)
[] Group, in accordance with 240.13d-1(b)(1)(ii)(K). If filing as a non-U.S. institution in accordance with 240.13d-1(b)(1)(ii)(J), please specify the type of institution:
Brown Advisory Incorporated ("BAI") is a parent holding company or control person in accordance with 240.13d-1(b)(1)(ii)(G);

Brown Investment Advisory & Trust Company ("BIATC") is a bank as defined in Section 3(a)(6) of the Act (15 U.S.C. 78c);

Brown Advisory LLC ("BALLC") is an investment adviser in accordance with 240.13d-1(b)(1)(ii)(E).

ITEM 4. OWNERSHIP(a) Amount beneficially owned:2,202,867(b) Percent of class:6.03%(c) Number of shares as to which the person has:(i) sole power to vote or to direct the vote:Brown Advisory Incorporated ("BAI") - 1,845,777

Brown Investment Advisory & Trust Company ("BIATC") - 26,812

Brown Advisory LLC ("BALLC") - 1,818,965

(ii) shared power to vote or to direct the vote:Brown Advisory Incorporated ("BAI") - 0

Brown Investment Advisory & Trust Company ("BIATC") - 0

Brown Advisory LLC ("BALLC") - 0

(iii) sole power to dispose or direct the disposition of:Brown Advisory Incorporated ("BAI") - 0

Brown Investment Advisory & Trust Company ("BIATC") - 0

Brown Advisory LLC ("BALLC") - 0

(iv) shared power to dispose or to direct the disposition of:Brown Advisory Incorporated ("BAI") - 2,202,867

Brown Investment Advisory & Trust Company ("BIATC") - 26,812

Brown Advisory LLC ("BALLC") - 2,176,055

ITEM 5. OWNERSHIP OF FIVE PERCENT OR LESS OF A CLASS:

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [].

ITEM 6. OWNERSHIP OF MORE THAN FIVE PERCENT ON BEHALF OF ANOTHER PERSON:

The total securities being reported are beneficially owned by investment companies and other managed accounts of direct/indirect subsidiaries of BAI (listed above). These subsidiaries may be deemed to be beneficial owners of the reported securities because applicable investment advisory contracts provide voting and/or investment power over securities.

ITEM 7. IDENTIFICATION AND CLASSIFICATION OF THE SUBSIDIARY WHICH ACQUIRED THE SECURITY BEING REPORTED ON BY THE PARENT HOLDING COMPANY:

Brown Advisory Incorporated (“BAI”) is a parent holding company filing this schedule on behalf of the following subsidiaries pursuant to Rule 13d-1(b)(1)(ii)(G) under the Securities Exchange Act of 1934:

Brown Investment Advisory & Trust Company (“BIATC”) – BK (Bank)

Brown Advisory LLC (“BALLC”) – IA (Investment Adviser)

ITEM 8. IDENTIFICATION AND CLASSIFICATION OF MEMBERS OF THE GROUP:

ITEM 9. NOTICE OF DISSOLUTION OF GROUP:

ITEM 10. CERTIFICATION:

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

CUSIP No.: 14574X104

SIGNATURE

After reasonable 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.

February 11 2019 Brown Advisory Incorporated ("BAI")

By:

/s/

Name:

Brett D. Rogers

Title:

General Counsel & Chief Compliance Officer

Attention — Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

CUSIP No.: 14574X104

Joint Filing Agreement

Party signing this filing agrees that this statement is submitted as a joint filing on behalf of the undersigned:

Brown Advisory Incorporated ("BAI") – Controlling Entity

Brown Investment Advisory & Trust Company ("BIATC")

Brown Advisory LLC ("BALLC")