

Form 13-31
(Rule 13-31)

COURT FILE NUMBER Q.B.G 1705 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE REGINA

APPLICANT R.M. OF EYE HILL NO. 382

RESPONDENT HER MAJESTY THE QUEEN, SASKATCHEWAN (AS REPRESENTED BY THE MINISTER OF ENERGY AND RESOURCES); BDO CANADA LIMITED IN ITS CAPACITY AS RECEIVER OF BOW RIVER ENERGY LTD.

IN THE MATTER OF THE RECEIVERSHIP OF BOW RIVER ENERGY INC.

AFFIDAVIT OF CANDY DOMINIQUE

I, Candy Dominique, of the City of Regina, in the Province of Saskatchewan, MAKE OATH AND SAY THAT:

1. I am an Environmental Engineer with a P. Eng. Designation and am employed as the Liability Regulations Manager in the Liability Management Branch at the Ministry of Energy and Resources (the "**Ministry**"). I have personal knowledge of the facts and matters referred to in this Affidavit, except where such facts and matters are stated to be on information and belief. Where matters are stated by me to be on information and belief, in each case unless I indicate to the contrary, I do verily believe that such facts are true.

2. I make this Affidavit as it is the Ministry's position and it is my understanding that the Ministry has priority over the residual proceeds in the Receivership of Bow River Energy Inc. ("**Bow River**") pursuant to the Supreme Court of Canada's decision in *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5. It is my understanding that the R.M. of Eye Hill No. 382

disagrees with the Ministry's position based on previous proceedings wherein Bow River was granted protection under *The Companies' Creditors Arrangement Act* (the "CCAA"). The Ministry opposed Bow River's CCAA proposal on the grounds that the proposed purchase agreements would not have transferred all of Bow River's Saskatchewan licences. This would have left the majority of the licences moving to the Ministry's orphan program. Additionally, with the proposed CCAA transfers, none of the sale proceeds were going to be directed to address the environmental obligations of the Bow River (that is, abandonment and reclamation work of the remaining licences going into the orphan program with an estimated deemed liability under the Licensee Liability Rating (LLR) Program of approximately \$19.3 million). In accordance with its statutory obligations, the Ministry made it clear that any proposal under the Bow River CCAA process needed to address outstanding environmental obligations.

3. On October 15, 2020, the Ministry received a letter from legal counsel for Bow River advising that Bow River was going to cease operations on October 29, 2020. Along with Bow River ceasing operations, counsel for Bow River advised that all of Bow River's officers and directors were resigning effective October 29, 2020 and all of Bow River's employees and contractors would be terminated. In addition, the letter indicated that Bow River had no funds left to continue the CCAA process. Attached as Exhibit "A" is a copy of the October 15, 2020 letter from Bow River's counsel.

4. Upon receiving the October 29, 2020 letter, the Ministry was statutorily obligated to deem Bow River, as the licensee, an orphan on October 29, 2020 because the company was insolvent, no longer had the financial means to meet its regulatory obligations under *The Oil and Gas Conservation Act* (the "OGCA"), and had no officers, directors or employees. By deeming Bow River an orphan, the Ministry ensured that the orphan program would be able to step in and address any emergencies that arose at Bow River's operational sites in Saskatchewan, on Bow River's behalf, until the well and facility licences could be transferred or brought to closure under the orphan program. In doing so the orphan program did not assume the liabilities of Bow River who continued to hold the licences and environmental obligations.

5. The Ministry initiated the present Receivership by application dated October 28, 2020 to transfer any and all of Bow River's Saskatchewan well and facility licences in an attempt to

reduce the number of licences liability in the orphan program and to ensure the environmental obligations were addressed in the most efficient manner. It was the Ministry's statutory obligation as regulator to protect the public by taking all measures to address the environmental obligations of Bow River. In Saskatchewan, there is no industry safeguard beyond the orphan program to address the abandonment and reclamation of sites left behind by insolvent licensees. Without the orphan program, responsibility for such abandonment and reclamation activities would fall to the Saskatchewan government and ultimately to the Saskatchewan taxpayer.

6. The Receivership allowed for the continued operation of the well and facility licences until the sales process (as approved by this Honourable Court) could be completed. The Receivership also ensured that the proceeds from the sales could be used to address the environmental obligations of the licensee. The Receiver used a portion of the residual proceeds from the CCAA process to fund some of the costs of the present Receivership process. It was the initial intention of the Ministry that the Receivership would be paid for by proceeds from the Orphan Fund. Ultimately, that did not occur as the Receiver independently determined that the Receivership would be funded out of the residual proceeds from the Bow River CCAA process.

7. As mentioned in my March 19, 2021 Affidavit, section 44 of *The Oil and Gas Conservation Regulations* (Saskatchewan) requires licensees to abandon wells if the well is no longer used for the purpose for which it was drilled. The Ministry did not issue an abandonment order when the Receivership commenced because Bow River's wells and facilities were continuing to operate until they could be sold and transferred under the Receivership. An abandonment order under the OGCA would have prevented the Receiver from operating the well and facility licences, requiring the Receiver to borrow funds to carry out the work and impair the ability to sell the assets. An abandonment order to Bow River was only appropriate once the inventory of well and facility licences was known after the sales process was concluded as this established the remaining well and facility licences and Bow River's obligation to bring to closure.

8. The Ministry fully intends to carry out Bow Rivers closure work and environmental obligations as required under the OGCA; however, the Ministry is subject to constraints such as available service providers to carry out the work, available funds and potential future insolvencies of other licensees. As at the date of this Affidavit, the Saskatchewan Oil and Gas

Orphan Fund (the “**Orphan Fund**”) has approximately 500 wells in the queue for abandonment work (of which Bow River wells make up 383 of those wells) and the orphan program typically has the capacity to abandon between 40 to 80 wells per fiscal year. Given current constraints, it will take several years to carry out the orphan well abandonment related to Bow River. The Orphan Fund is financed through the collection of an orphan levy from industry. The levy cannot be so large that it threatens the solvency of producers. The amount currently collected does not cover all of the costs which requires the Ministry to assess the risk of the inventory of abandoned wells and facilities to ensure public safety and environmental protection.

9. The licensee is responsible for the abandonment and reclamation work, even after being deemed an orphan, and the Ministry can seek reimbursement from a licensee for these costs. Due to the insolvency of Bow River and the resignation of all directors and officers, there is no means to collect these environmental costs. Accordingly, the Ministry is making a claim for reimbursement by asserting priority over the residual funds of the Receivership to partially cover Bow River’s environmental obligations (cost of the well and facility abandonment and reclamation work).

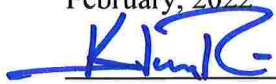
10. The Ministry acknowledges that the 2020 Orphan Fund levy (orphan deeming package) is a debt owed by Bow River as a licensee. However, the environmental obligation of Bow River is different than the Orphan Fund levy. To put into perspective, there are currently 95 orphaned licensees in Saskatchewan with associated closure work costs of approximately \$39 million; however, the Orphan Fund as of January 31, 2021 only holds \$5,304,351.00. Therefore, to address the shortfall in the Orphan Fund for upcoming fiscal work and budget requirements, each upstream oil and gas industry (not deemed orphan) will be issued an Orphan Fund levy which is used to supplement the shortfall in the Orphan Fund and allow the Ministry to carry out the environmental obligations of the existing orphaned and insolvent licensees. Such fiscal scheduling and budgeting occurs annually during the first week of March. Now that Bow River is part of the Orphan Fund and the transfers have been completed, Bow River’s orphaned wells and facilities will be included in the Ministry’s 2022 budgeting and scheduling process.

11. Finally, I want to again emphasize that the Ministry’s claim for priority is not seeking to enforce a creditor claim but a regulatory obligation that goes to the core of the regulatory regime

under the OGCA. The duty to clean up oil and gas sites is for the protection of the environment and public, including landowners who have wells and facilities on their land (including, but not limited to the R.M. of Eye Hill 382).

12. I swear this Affidavit on behalf of, and at the request of the Minister of Energy and Resources and in opposition to the Application of the RM of Eye Hill 382 asserting priority over the residual proceeds of the Receivership.

SWORN BEFORE ME by Electronic Means)
of communication at the City of Regina, in the)
Province of Saskatchewan, this 18th day of)
February, 2022)



A Notary Public in and for the Province of
Saskatchewan.
Being a Solicitor

Candy Dominique

Candy Dominique

Cassels

This is Exhibit "A" referred to in the Affidavit of Candy Dominique, sworn before me by electronic means of communication at the City of Regina, in the Province of Saskatchewan, this 18th day of February, 2022.



Being a solicitor

October 15, 2020

Via Email

Alberta Energy Regulator
1000, 250 5 Street SW
Calgary AB, T2P 0R4

joliver@cassels.com

tel: +1 403 351 2921

fax: +1 403 648 1151

file # 55035-1

Attention: Ms. Maria Lavelle

Orphan Well Association
1005, 850 2nd Street SW
Calgary, AB T2P 0R8

Saskatchewan Ministry of Energy and Resources
1000, 2103 11th Avenue
Regina, SK S4P 3Z8

Attention: Lars DePauw

Attention: Candy Dominique

Saskatchewan Ministry of Justice
2405 Legislative Dr.
Regina, SK S4S 0B3

Indian Oil and Gas Canada
100, 9911 Chilla Boulevard
Tsuut'ina, AB T3T 0E1

Attention: Leanne Lang

Attention: Lori Williams / Jordan Milne

Dear Sirs and Madam:

Re: In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended (the "CCAA") proceedings of Bow River Energy Ltd. ("Bow River" or the "Company")

Please be advised that we have been retained as new counsel to Bow River in the above-referenced matter. A Notice of Change of Representation evidencing the same is in the process of being filed and will be served in due course.

We write further to BLG's letters to the Alberta Energy Regulator ("AER") and to Indian Oil and Gas Canada ("IOGC"), the Saskatchewan Ministry of Justice, in its capacity as counsel for various Ministries within the Government of Saskatchewan (the "Saskatchewan Ministries"), and the Saskatchewan Ministry of Energy and Resources ("SMER"), dated September 24, 2020 and September 29, 2020, respectively.

As has been expressed in those letters, the decision by the AER and the Orphan Well Association ("OWA") to oppose the Company's proposed transactions respecting its Alberta properties has put Bow River in an impossible position. Having already expended considerable funds to conduct the Court-approved sales and investment solicitation process ("SISP"), the Company does not have the financial resources to conduct an additional sales process and has exhausted its

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alternative sources of funding. While the Company is disappointed with the position maintained by the AER and the OWA, namely that neither will support anything less than an *en bloc* transaction in CCAA proceedings, the Company appears to be out of options. In the circumstances, the Company wishes to work co-operatively to ensure a safe and responsible transition of assets occurs to the AER/OWA.

In terms of the situation facing the Company in Saskatchewan, I am advised that the Company never received a reply to Bow River's proposed transactions respecting properties situated there. At this juncture and given the decision the Company has made respecting continuing operations in Alberta, quite simply Bow River is out of time and out of money and no longer in a position to consummate transactions respecting its Saskatchewan properties.

With no viable sales transactions in either Alberta or Saskatchewan, the Company simply cannot continue. As a result, Bow River has made the incredibly difficult decision to cease operations in both Alberta and Saskatchewan. Effective as of October 29, 2020, please be advised that all of Bow River's present directors and officers will resign, and all Bow River employees and contractors will be terminated.

Up until October 29, 2020, we confirm that Bow River will maintain care and custody of its properties and will comply with all applicable legislative and regulatory obligations, including providing emergency response if necessary. However, following that date, Bow River does not have the financial resources to continue to do so.

The Company intends to work cooperatively with the AER and the OWA to develop a transition plan to ensure the orderly transition of its assets to a party as designated by the regulator, and believes that value will be maximized if production continues on such assets prior to and after a transition. The Company would also like to begin similar discussions with SER and invites SER to contact the undersigned to do so.

Yours truly,

Cassels Brock & Blackwell LLP



Jeffrey Oliver
Partner

JO/rk

CC: Bonni Pierce and Kaitlin Szacki, Alberta Energy Regulator – via email

Marc A. Kelly, BDO Canada Limited (Monitor) – via email

Keely Cameron, Bennett Jones LLP (Counsel to the Monitor) – via email

Matti Lemmens, Borden Ladner Gervais LLP (Counsel to 2270943 Alberta Ltd.) – via email

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Terry Czechowskyj, Miles Davison LLP (Counsel to the Orphan Well Association) – via email

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Affidavit of Candy Dominique

Final Audit Report

2022-02-18

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"Affidavit of Candy Dominique" History

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