

COURT FILE NUMBER **2001-06997**
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF BOW RIVER ENERGY LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR Matti Lemmens / Tiffany Bennett
 SERVICE AND Borden Ladner Gervais LLP
 CONTACT 1900, 520 3rd Ave. S.W.
 INFORMATION OF Calgary, AB T2P 0R3
 PARTY FILING THIS Telephone: (403) 232-9511 / (403) 232-9199
 DOCUMENT Facsimile: (403) 266-1395
 Email: MLemmens@blg.com / TiBennett@blg.com
 File No. 446071.000002

AFFIDAVIT OF ROBERT DUMAINE

SWORN ON OCTOBER 14, 2020

I, Robert Dumaine, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

- I am a consultant of the Applicant, 2270943 Alberta Ltd. ("227"). I have also been the Vice President, Engineering and Operations, of Bow River Energy Ltd. ("Bow River") since November 2017. I have been employed by Bow River since November 2016 and was promoted to Vice President in 2017. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I have stated the source of my information and, in all cases, I believe such information to be true.

2. I am an APEGGA registered petroleum engineer with more than 25 years' experience. This experience includes the valuation of assets for both sales and acquisition processes. During my employment at Bow River, my work has involved both engineering and economic evaluations on a number of different assets. For example:
 - (a) I was responsible for the engineering and economic evaluation of the original purchase of the Black Creek and Fleeing Horse (plus others) assets from Husky in early 2017;
 - (b) I was involved in the selection, design, and drilling of wells located in the Black Creek and Fleeing Horse areas, including the economic valuation thereof;
 - (c) I am responsible for Bow River's annual reserve report; and
 - (d) I have been involved in the evaluation of the seismic licenses and data in connection with Bow River's agreement with Husky Oil Operations Limited ("**Husky**"), and determined the valuation thereof.
3. Due to this experience, and in light of 227's interest in the Black Creek and Fleeing Horse areas, 227 has retained me, with the approval of Bow River and the Monitor, as a consultant to assist in evaluating those areas for the purposes of its stalking horse bid in this proceeding (the "**Stalking Horse Bid**").
4. I am authorized to swear this Affidavit by 227. I swear this Affidavit in support of 227's Application, as set out in paragraph 28 herein, and not in my capacity as an employee of Bow River.
5. All monetary references in this Affidavit are in Canadian Dollars, unless otherwise stated.

The Stalking Horse Bid

6. The Stalking Horse Bid provided for the purchase by 227 of certain of Bow River's oil and gas assets in the Black Creek and Fleeing Horse areas, including, without limitation, seismic data and licenses related thereto.

7. The Stalking Horse Bid provided that, upon the closing of the sale transaction contemplated therein (the “**Transaction**”), 227 would assume responsibility for related abandonment and reclamation costs associated with the purchased assets, which costs are valued at approximately \$9.5 million, constituting approximately \$6.3 million worth of liabilities associated with producing assets and \$3.2 million of liabilities associated with inactive assets. 227 sought a target LMR of 2.5 and the liabilities that share surface leases with assets that 227 wished to bid on were included in the Stalking Horse Bid.
8. The Transaction would result in payments being made to various affected stakeholders, including municipalities (for property taxes), royalty-holders, and mineral lessors.
9. The anticipated LMR of 227, based on the Transaction, is 2.5.
10. In my experience, the valuation of oil and gas properties is a complex process that takes into consideration many factors, including, but not limited to, engineering, geological and technical analysis, optimization and drilling inventory, strategic infrastructure, seismic data and licenses, current cash flow and discounted projected future cash flow, current market value analogues, reserve reports, integration costs and savings, production and cash flow metrics, the liabilities associated with the properties, and finally but most important, the bidding company’s internal price forecast for the commodities.
11. An *en bloc* offer for the entirety of Bow River’s Alberta assets would result in a potential purchaser’s assumption of deemed liabilities valued at approximately \$45 million for only 118 active wellbores and 615 inactive wellbores, and negative annual cash flow ranging between \$1 million and \$3 million per year at the current / forward curve WCS price range of \$35 to \$45 per barrel. The LMR in such circumstances would be below 1.0. Current regulations would require suspension and abandonment activities to start immediately, and the additional uncertainty of changes to asset retirement regulations creates additional risk and uncertainty to retirement costs and schedules. Further, there is also risk associated with the likelihood that a deposit would be required by the AER. An *en bloc* bid would also need to provide approximately \$1.8 million of cash consideration to satisfy the applicable cure costs. For these reasons, and in light of current market uncertainties, an *en*

bloc offer for the Alberta assets is highly uneconomic in current market conditions and would have a challenging short-term and long-term outlook.

12. On or about February 20, 2020, at a time when the monthly average price for the WCS was \$36.43, Bow River received an all cash, “white-mapped” offer from Rifle Shot Oil Corp (“**Rifle Shot**”) for Bow River’s Fleeing Horse assets for \$5.5 million. Attached hereto and marked as **Exhibit “A”** is a copy of Rifle Shot’s offer, which was provided by Bow River to 227 on October 1, 2020 and the assumption of all active and inactive liabilities with a deemed cost of approximately \$4.3 million.
13. The monthly average price for the WCS in the month of August 2020, when the Stalking Horse Bid was deemed the successful bid under the SISP, was higher, at \$45.67, than in February 2020, when Rifle Shot’s offer was made. To compare the two offers, Rifle Shot’s offer would have transferred more liabilities than the Stalking Horse Bid and was for more money than the Stalking Horse Bid.
14. The Rifle Shot bid was for the Fleeing Horse assets only and did not include the Black Creek assets.
15. 227’s analysis of the asset values for purposes of the Stalking Horse Bid was based on various factors. Attached hereto and marked as **Confidential Exhibit “1”** is a summary which provides some of the factors and the assumptions upon which 227 has made its assessments and forecasts.
16. In early 2020, Bow River obtained third-party reserve evaluations from GLJ Petroleum Consultants Ltd. of both Bow River’s base-producing assets and the drilling development inventory for the Fleeing Horse and Black Creek assets. Attached hereto and marked as **Confidential Exhibit “2”** is a summary which provides GLJ’s reserve valuations for the Fleeing Horse and Black Creek assets, which valuations were included in the data room that was available to all bidders.
17. 227 believes that the purchase price set out in the APA represents a fair market valuation of the assets that form the subject of the Transaction. Despite the AER purporting to quote 227’s legal counsel in its correspondence dated September 28, 2020, 227 does not recall

such statement being made to the AER and believes that the AER misinterpreted comments made by me during such meeting relating to the valuation metrics for the Stalking Horse Bid. The AER is selectively referring to my comments that based on current pricing the cash flow has little or no current cash flow value. This is only one of the criteria considered by 227 in making its assessment.

18. The seismic data and licenses that form part of the assets under the Transaction were acquired by Bow River pursuant to a seismic license agreement between Bow River and Husky dated May 16, 2017 (the “**Husky Seismic Agreement**”). Bow River has provided 227 with an unsigned copy of the Husky Seismic Agreement, which is a license to Bow River valued at \$7 million. Based on my experience, the current market value of the seismic license included in the Stalking Horse Bid is estimated to be between \$7 million and \$8 million, and the value of licensing afresh or creating similar seismic data as the seismic data included in the Stalking Horse Bid would be in excess of \$10 million.
19. Given the protracted deterioration of market conditions and uncertainty related to the COVID-19 pandemic, 227 believes that the costs and delays associated with any further marketing efforts are highly unlikely to generate any *en bloc* offers, and there is no evidence that a receivership would result in any further maximization of value to Bow River’s creditors, and could actually result in less realization of value to Bow River’s creditors.

Discussions with the AER and the OWA

20. On September 15, 2020, following the inquiry of 227’s legal counsel, Bow River’s legal counsel advised that the cure costs associated with Bow River’s Alberta assets totalled \$1,835,906.64, consisting of the following:
 - (a) \$1,680.00 for mineral leases;
 - (b) \$738,785.64 for surface leases;
 - (c) \$100,000.00 for royalties;
 - (d) \$995,441.00 for property taxes.

21. On September 16, 2020, the Monitor, Bow River and 227 met with the AER to explain the rationale for the APA and to address the AER's concerns with respect thereto. I was in attendance at that meeting. The AER later misquoted 227's legal counsel from this meeting in its correspondence dated September 28, 2020, as described at paragraph 17 above.
22. After the AER advised Bow River that it would object to a vesting application in respect of Bow River's transactions, 227's legal counsel wrote to the AER to advise that, among other things, 227 would be prejudiced by a further sale process sought by the AER as its DIP Charge would be jeopardized by further delays. Attached hereto and marked as **Exhibit "B"** is a copy of a correspondence of September 24, 2020 from 227's legal counsel to the AER.
23. On September 28, 2020, the AER provided its response to Bow River's legal counsel's correspondence of September 24, 2020, with a copy to 227's legal counsel. Attached hereto and marked as **Exhibit "C"** is a copy of the AER's correspondence of September 28, 2020 to Bow River's legal counsel.
24. On September 28, 2020, the AER also provided its response to 227's legal counsel's correspondence of September 24, 2020. Attached hereto and marked as **Exhibit "D"** is a copy of the AER's correspondence of September 28, 2020 to 227's legal counsel.

227 Directive 067 Application

25. On October 6, 2020, the AER formally advised 227 that it was closing 227's application for the relevant regulatory licenses and approvals as the application was considered incomplete, and that the AER was "not in a position to evaluate unreasonable risk in [the application] until the insolvency process is exhausted". AER also invited 227 to reapply. Attached hereto and marked as **Exhibit "E"** is a correspondence dated October 6, 2020 from the AER to 227 respecting same.

Sealing Order

26. The Confidential Exhibits provide certain commercially sensitive information relating to 227 or the assets that are subject to the Stalking Horse Bid. In particular:

- (a) Confidential Exhibit "1" contains information respecting 227's financial assessments and metrics; and
- (b) Confidential Exhibit "2" contains information relating to a third-party valuation of the reserve value of the Fleeing Horse and Black Creek assets as of the end of 2019.


27. I honestly believe that the dissemination of the information set out in the Confidential Exhibits could adversely affect the SISP and any subsequent sales process that may be undertaken respecting Bow River's assets, and result in prejudice against the stakeholders' ability to recover value therefrom, as well as 227's ability to further participate in any such sales process.

28. I make this Affidavit in support of an Application by 227 for a Sale Approval and Vesting Order seeking, *inter alia*, (a) to require Bow River to perform its obligations under the APA, (b) to complete the Transaction, and (c) to vest title to the relevant assets in favour of 227, as well as an application for a sealing order in respect of the Confidential Exhibits attached hereto, and for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta,
this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta



ROBERT DUMAINE

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

TAB 1

This is Confidential Exhibit "1"
Referred to in the Affidavit of Robert Dumaine
Sworn before me this 14th day of October, 2020

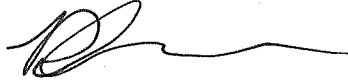


A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

TAB 2

This is Confidential Exhibit "2"
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Sworn before me this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

TAB A

This is Exhibit "A"
Referred to in the Affidavit of Robert Dumaine
Sworn before me this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

Suite 900, 555-4th Avenue SW
 Calgary, AB T2P 3E7



February 20, 2020

Bow River Energy
 # 500, 321 – 6th Ave. SW
 Calgary, Alta
 T2P 3H3

Attn: Kellie D'Hondt

Re: Offer to Purchase
Fleeing Horse Area, Alberta

Further to our recent conversations, and your guidance - Rifle Shot Oil Corp. respectfully makes the following solicited offer to purchase the entirety of the "Fleeing Horse Core" assets from Bow River, inclusive of all wells, for your consideration:

Vendor: Bow River Energy

Purchaser: Rifle Shot Oil Corp.

Effective Date: February 1, 2020

Closing Date: April 1, 2020

Assets: Land Plat for Lands as depicted in yellow on the attached Schedule A
 As to Lands in Secs 29 & 32 of Twp. 38-1W4, P&NG to base Mannville,
 Excluding P&NG in Waseca Fm, and excluding the wells
 Wells as depicted in red on Schedule A, and on Well List Schedule B
 All active mineral leases and P&NG rights, interest in the listed wells,
 facilities, pipelines, regional seismic, and miscellaneous interests

Offer is for Purchase of 100% working interest (WI) in the Assets

Consideration: **\$5,500,000 CDN** (five million, five hundred thousand dollars)

This offer is subject to:

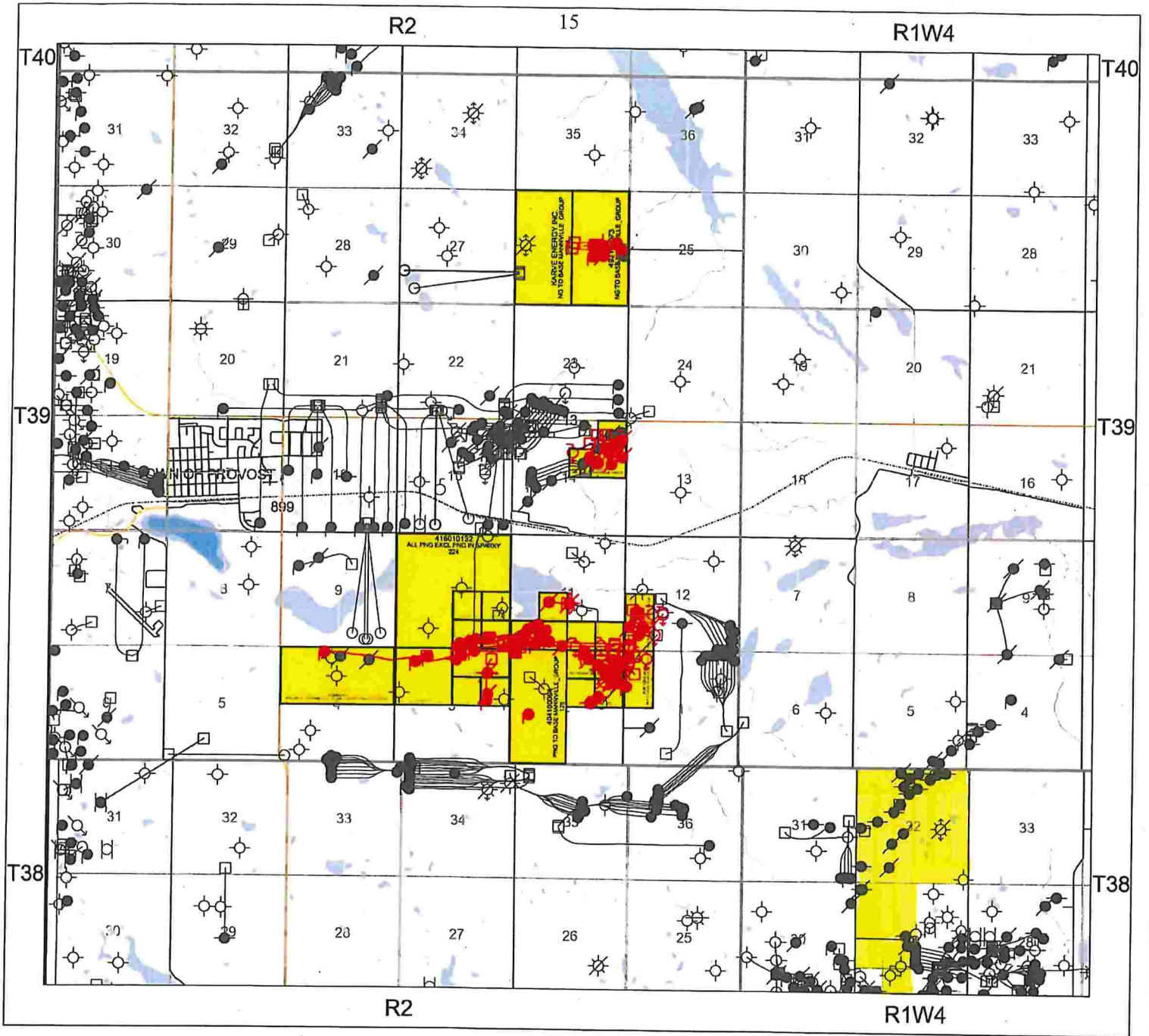
- The opportunity to review current land records, financial data, production reports and lease operating statements
- The execution of a mutually agreeable Agreement of Purchase and Sale, which will include representations, warranties and indemnifications as between the parties
- Rifle Shot performing a due diligence process that is customary in these circumstances
- Rifle Shot performing a full environmental review of the Assets
- Approval of the transaction by the Rifle Shot Board of Directors
- Pursuant to the said Agreement of Purchase and Sale - the entire Purchase Price consideration will not be released out of trust until the wells are transferred to Rifle Shot as the registered Licencee as recognized by the AER

This offer is open for your consideration until February 28, 2020.

Regards,

A handwritten signature in black ink that reads "Ken Buckley". The signature is written in a cursive style with a large, prominent "K" and "B".

Ken Buckley
VP Land
Rifle Shot Oil Corp.
(587) 233-7729



Schedule A
Lands (Yellow) & Wells (Red)

Schedule¹⁶B

Fleeing Horse Core Well List, as provided to Rifle Shot Feb. 19, 2020

100/05-01-039-02W4/0	103/03-11-039-02W4/0
100/12-01-039-02W4/0	104/03-11-039-02W4/0
100/13-01-039-02W4/0	105/03-11-039-02W4/0
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100/03-11-039-02W4/0	102/09-26-039-02W4/0
102/03-11-039-02W4/0	100/10-26-039-02W4/0

TAB B

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Sworn before me this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

Matti Lemmens
 T 403.232.9511
 F 403.266.1395
MLemmens@blg.com

Borden Ladner Gervais LLP
 Centennial Place, East Tower
 1900, 520 - 3rd Ave SW
 Calgary, AB, Canada T2P 0R3
 T 403.232.9500
 F 403.266.1395
blg.com



File No. 445210.000002

September 24, 2020

Delivered by Email: maria.lavelle@aer.ca

Alberta Energy Regulator
 1000, 250 – 5th Street SW
 Calgary, AB T2P 0R4
Attention: Maria Lavelle

Dear Madam:

**Re: In the Matter of the *Companies Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and In the Matter of the Compromise or Arrangement of Bow River Energy Ltd. (“Bow River”)
 Court of Queen’s Bench of Alberta Action No. 2001-06997**

We write in response to the Alberta Energy Regulator’s (“AER”) correspondence dated September 21, 2020, and further to the correspondence of Bow River dated September 24, 2020.

We noted the AER’s comments regarding the directors of 2270943 Alberta Ltd. (“227”). We view those comments as prejudicial against individuals who have conducted themselves with integrity throughout their careers. Although we disagree with the AER’s comments, we advise that 227 has changed its directors from Ralph Scurfield and Randy Eresman to Reginald Pattenmore and Amy Keith, and will be updating its application for a license imminently to reflect same.

We also note that, should an additional sales process be sought by the AER, 227 has been prejudiced by these events, given that the repayment of the DIP financing will be jeopardized by the ongoing and delayed process despite the sales process and stalking horse bid having been approved by the Court on July 24, 2020. Those were approved by the Court without substantive comment, let alone objection, from the AER. To the extent that 227 is prejudiced by a further sales process, it reserves its rights, as DIP lender, to seek recovery of the DIP financing in priority to all other claims, as confirmed by the Court Order on July 24, 2020.

Yours truly,

BORDEN LADNER GERVAIS LLP

Per: Matti Lemmens

cc: Client (via email)

TAB C

This is Exhibit "C"
Referred to in the Affidavit of Robert Dumaine
Sworn before me this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

Via Email

September 28, 2020

Borden Ladner Gervais LLP (BLG)
Centennial Place, East Tower,
1900, 520 – 3rd Ave. SW,
Calgary, AB, Canada T2P 0R3

Attention: Jessica Cameron, Senior Associate

Dear Ms. Cameron:

RE: Bow River Energy Ltd. *Companies Creditors Arrangements Act* (CCAA)

We acknowledge receipt of your correspondence dated September 24, 2020. While we recognize that your client is disappointed in our response, as a regulator, we have a duty to the public to ensure that environmental obligations are addressed. As we stated, our concern with the Proposal is that it would result in significant unfunded liability and would prioritize the debt of a secured creditor over those obligations. This result is contrary to the principle established by the Supreme Court of Canada in *Redwater* that, in an insolvency proceeding, environmental obligations are to take priority over the claims of other creditors. Our position on this has been clear from the outset and should come as no surprise to Bow River or its creditors. Furthermore, the Proposal, if accepted, would result in industry partners, whose levy payments make up the Orphan Fund, funding the cost of cleaning up those sites.

Before responding to your enumerated questions, I would like to correct some of the inaccuracies in your letter. First, we take serious issue with your characterization that the AER was “lying in the weeds” and only took issue with the sales process at this stage as we are dissatisfied with the outcome. On the contrary, we did not learn that the Stalking Horse Bid was above the market value of the assets until we received the Stalking Horse Bidder’s follow up response to our questions. On September 17, 2020, Ms. Lemmens advised, “The Stalking Horse Bid value is the entirety of the debt owed to the debenture holders of Bow River. It is not reflective of the value of the assets being purchased, which is much lower than the amount of the bid.” We voiced our concerns as soon as we became aware of this fact. Had there been greater transparency around the valuation of the credit bid earlier in the process, we would have raised our concerns then.

Second, the AER does not object to the use of credit bids in CCAA proceedings *per se*, although we do have concerns where this type of bid results in a lack of transparency. As you note we did not object to a credit bid in another recent CCAA proceeding (ACCEL Energy Canada Ltd), however, that file is distinguishable from the current situation in that the result of that sales process was that all of the environmental obligations were addressed. As we stated at the outset, the issue with the Bow River Proposal is one of priority. We object to the current Proposal in that the claim of a secured creditor is being prioritized, while leaving substantial unfunded environmental obligations to be borne by industry partners.

Finally, in response to your enumerated questions:

1. As we previously advised by letter dated September 21, 2020, the AER is not able to support the Proposal. For the reasons articulated in that letter, we would object to a court application to approve the sales that form the basis of that Proposal.
2. The AER is not in position to fund an additional CCAA sales process. We cannot speak for the OWA who is an independent organization. It is our understanding that the OWA will be responding directly to Bow River in response to these enumerated questions.
3. Again, the AER cannot speak for the OWA whether or not they are prepared to fund a receivership process. However, were they do to so, then the AER is prepared to work with Bow River and the OWA to ensure an orderly transition of the assets from Bow River to the Receiver.

Sincerely,

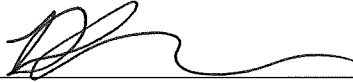


Maria Lavelle
Legal Counsel, AER

cc: Robyn Gurofsky, BLG
Matti Lemmens, BLG
Keely Cameron, Bennett Jones
Kaitlin Szacki, AER
Bonni Pierce, AER
Lars de Pauw, OWA

TAB D

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Referred to in the Affidavit of Robert Dumaine
Sworn before me this 14th day of October, 2020



A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

Via Email

September 28, 2020

Borden Ladner Gervais LLP (BLG)
Centennial Place, East Tower,
1900, 520 – 3rd Ave. SW,
Calgary, AB, Canada T2P 0R3

Attention: Matti Lemmens

Dear Ms. Lemmens:

RE: Bow River Energy Ltd. *Companies Creditors Arrangements Act* (CCAA)

We acknowledge receipt of your correspondence dated September 24, 2020. With all due respect, your assertion that our response was prejudicial to your clients is unfounded. We are not aware of any factual inaccuracies in our September 21, 2020 letter nor is it clear from your correspondence what exactly your clients view as prejudicial. Rather than speculate, however, we will simply point out that we do not question the personal integrity of your clients. However, as we stated, we do have serious concerns with the Proposal as it would achieve a result that is contrary to principle established by the Supreme Court of Canada in *Redwater* that environmental obligations are to be prioritized over repayment of other creditors.

In your correspondence you advise of the change of Directors in 227. As you indicate, this is a matter to be updated in your licence eligibility application. A decision on eligibility will be made by a statutory decision maker considering all of the relevant information and applicable requirements.

We also note your client's position on the priority of its dip financing should another CCAA sales process be conducted. The AER is generally supportive of prioritizing dip financing in a CCAA sales process. As you will have seen from our correspondence with Bow River, however, the AER is not in a position to fund a CCAA sales process.

Sincerely,

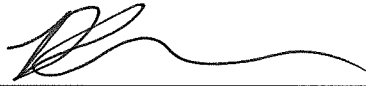


Maria Lavelle
Legal Counsel, AER

cc: Robyn Gurofsky, BLG
Matti Lemmens, BLG
Keely Cameron, Bennett Jones
Kaitlin Szacki, AER
Bonni Pierce, AER
Lars De Pauw, OWA

TAB E

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A Commissioner for Oaths in and for Alberta

DANA O'SHEA
A Commissioner for Oaths
in and for Alberta
Student-At-Law, Notary Public

October 6, 2020

By e-mail only

Amy Keith
2270943 Alberta Ltd. (A8F3)
1900, 520 – 3rd Ave SW
Calgary, AB T2P 0R3

E-Mail: amy.rose.keith@gmail.com

Cc: corpcgy@blg.com

Application by 2270943 Alberta Ltd. (A8F3) under Directive 067

The Alberta Energy Regulator (AER) confirms receipt of an application by 2270943 Alberta Ltd. (the Applicant) under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* (Application) pursuant to which the Applicant seeks eligibility to hold AER licences for wells, facilities, and/or pipelines.

The Applicant shareholders are currently affiliated with Bow River Energy Ltd. Based on the intent of the Applicant, as described in correspondence, the AER is not in a position to evaluate unreasonable risk in a Directive 067 application until the Bow River Energy Ltd. insolvency process is exhausted.

The application is hereby closed as it is considered incomplete. This would not prejudice any new application that you may wish to make under Directive 067 in the future.

If you have questions or concerns, please feel free to e-mail LiabilityManagement@aer.ca.

Sincerely,



Trista Dorscher
Specialist, Corporate Eligibility
Regulatory Applications

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