

COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 2101-0021AC

TRIAL COURT FILE NUMBER: 1801-10960

REGISTRY OFFICE: CALGARY

PLAINTIFF: PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP., and not in its personal capacity

STATUS ON APPEAL: APPELLANT
STATUS ON APPLICATIONS: RESPONDENT

DEFENDANTS: PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE

STATUS ON APPEAL: RESPONDENTS
STATUS ON APPLICATIONS: RESPONDENTS

APPLICANTS ORPHAN WELL ASSOCIATION, CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD.

STATUS ON APPEAL: PROPOSED INTERVENORS

STATUS ON APPLICATIONS: APPLICANTS

DOCUMENT: **CONSENT ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Co-counsel for the Perpetual Respondents

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File No. 59140-43

Co-counsel for the Perpetual Respondents

DATE ON WHICH ORDER WAS PRONOUNCED: _____

LOCATION OF HEARING: _____

Calgary, Alberta

NAME OF JUDGE WHO GRANTED THIS ORDER: _____

BRIANO FERRALL


UPON THE APPLICATION of the Orphan Well Association (**OWA**); AND UPON THE JOINT APPLICATION of Canadian Natural Resources Limited, Cenovus Energy Inc. and Torxen Energy Inc. (collectively, the **Industry Applicants**);

AND UPON noting the consent of counsel for the Respondents Perpetual Energy Inc., Perpetual Operating Trust, and Perpetual Operating Corp. (collectively, the **Perpetual Respondents**), the Respondent Susan Riddell Rose (**Ms. Rose**), the Appellant PricewaterhouseCoopers Inc., LIT, in its capacity as Trustee in Bankruptcy of Sequoia Resources Corp, and not in its' personal capacity (the **Trustee**), and the OWA and the Industry Applicants;

IT IS ORDERED THAT:

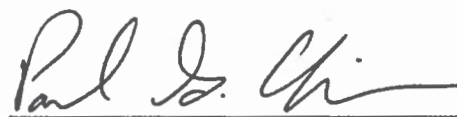
1. The Applications of the OWA and Industry Applicants for leave to intervene in Court of Appeal File No. 2101-0021AC are granted.
2. The submissions of the OWA shall relate to the distinct legal issue of the interaction between s. 96 of the *Bankruptcy and Insolvency Act* (the **BIA**) and regulatory obligations with regard to the Supreme Court of Canada's decision in *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, and in particular, whether regulatory obligations are an obligation that can render a person insolvent pursuant to s. 96 of the *BIA* based on the treatment of regulatory obligations by the OWA.
3. The submissions of the Industry Applicants shall relate to the Chambers Judge's findings on the characterization and analysis of abandonment and reclamation obligations, and matters incidental thereto.
4. Each of the OWA and the Industry Applicants may file a factum to a maximum of ten (10) pages by no later than July 16, 2021 (the **Intervenor Factums**).
5. Each of the Perpetual Respondents and Ms. Rose may file a factum in response to the Intervenor Factums to a maximum of ten (10) pages by no later than September 17, 2021.
6. The OWA and the Industry Applicants may file, with their facta, the Affidavits of Lars de Pauw sworn June 29, 2020, Ron Laing sworn August 12, 2020, Antonio Jackson sworn August 17, 2020, and John Brannan sworn August 12, 2020 (collectively, the **Intervenor Affidavits**), as redacted pursuant to the Order of the Chambers Judge granted September 11, 2020, and the Intervenor Affidavits will form part of the record for this Appeal. Otherwise, no new evidence shall be presented by the OWA or the Industry Applicants.

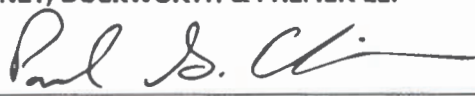
7. Each of the OWA and the Industry Applicants are permitted a maximum of ten (10) minutes of oral argument at the hearing of the Appeal.
8. Each of the Perpetual Respondents and Ms. Rose are permitted a maximum of ten (10) minutes of oral argument to respond to the oral arguments of the OWA and the Industry Applicants.
9. There shall be no costs for this Order.


 Registrar, Court of Appeal
Judge of the Court of Appeal

CONSENTED TO THIS 4th DAY OF JUNE, 2021


CONSENTED TO THIS 4th DAY OF JUNE, 2021

Per: 
 D.J. McDonald, Q.C.
 Co-counsel for the Perpetual Respondents

BURNET, DUCKWORTH & PALMER LLP
 Per: 
 Paul G. Chiswell / Michael S. Deyholos
 Co-counsel for Perpetual Respondents

CONSENTED TO THIS 4th DAY OF JUNE, 2021


CONSENTED TO THIS ___ DAY OF JUNE, 2021

NORTON ROSE FULBRIGHT CANADA LLP
 Per: 
 Steven Leitl, Q.C. / Gunnar Benediktsson
 Counsel for Ms. Rose

DE WAAL LAW
 Per: _____
 Rinus de Waal / Luke Rasmussen
 Counsel for the Trustee

CONSENTED TO THIS 4 DAY OF JUNE, 2021

CONSENTED TO THIS ___ DAY OF JUNE, 2021

PARLEE MCLAWS LLP
 Per: 
 G. Scott Watson / Charles W. Ang
 Counsel for the Industry Applicants

BENNETT JONES LLP
 Per: _____
 Kenneth T. Lenz, Q.C. / Andrea Stempien
 Counsel for the OWA

7. Each of the OWA and the Industry Applicants are permitted a maximum of ten (10) minutes of oral argument at the hearing of the Appeal.
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9. There shall be no costs for this Order.

Registrar, Court of Appeal

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BURNET, DUCKWORTH & PALMER LLP

Per: _____
D.J. McDonald, Q.C.
Co-counsel for the Perpetual Respondents

Per: _____
Paul G. Chiswell / Michael S. Deyholos
Co-counsel for Perpetual Respondents

CONSENTED TO THIS ___ DAY OF JUNE, 2021

CONSENTED TO THIS 4 DAY OF JUNE, 2021

NORTON ROSE FULBRIGHT CANADA LLP

DE WAAL LAW

Per: _____
Steven Leitzl, Q.C. / Gunnar Benediktsson
Counsel for Ms. Rose

Per: _____
Rinus de Waal / Luke Rasmussen
Counsel for the Trustee

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PARLEE MCLAWS LLP

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Per: _____
G. Scott Watson / Charles W. Ang
Counsel for the Industry Applicants

Per: _____
Kenneth T. Lenz, Q.C. / Andrea Stempien
Counsel for the OWA