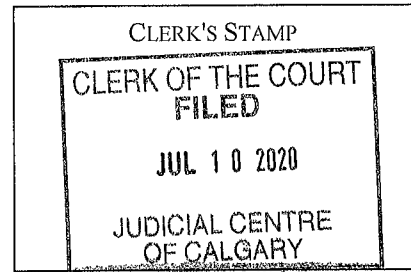


FORM 27  
[RULES 6.3 AND 10.52(1)]



COURT FILE NUMBER 1801-10960

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

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

APPLICANT (Not a Party) ORPHAN WELL ASSOCIATION

DOCUMENT APPLICATION BY THE PROPOSED INTERVENOR, ORPHAN WELL ASSOCIATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East, 855-2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Kenneth T. Lenz, Q.C. / Andrea Stempien  
Telephone No.: 403-298-3317 / 3148  
Fax No.: 403-265-7219  
Client File No.: 56977.17

**NOTICE TO RESPONDENTS:** PRICEWATERHOUSECOOPERS INC., LIT in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity, PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: July <sup>28</sup> 21, 2020 (or such other date as the Court directs)  
Time: 2:00 P.M.  
Where: Calgary Courts Centre, 601-5<sup>th</sup> Street SW, Calgary, Alberta  
Before Whom: The Honourable Mr. Justice D.B. Nixon

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Orphan Well Association ("**OWA**") seeks an Order granting leave to intervene in Court of Queen's Bench Action No. 1801-10960 with the right to participate in all proceedings related to this action and all matters incidental thereto on such terms as this Honourable Court deems just.
2. Such further and other relief incidental to the above as requested and as this Honourable Court deems appropriate.

**Grounds for making this application:**

3. Terms not hereinafter defined shall have the same meaning as set out in the Statement of Claim.

*Background*

4. The OWA abandons and reclaims wells, facilities, and pipelines that do not have a solvent and responsible owner to protect people and the environment.
5. The OWA has a limited budget and is focused on maximizing its available funding. This requires risk-assessing and prioritizing the inventory of orphaned and abandoned wells, facilities, and pipelines to ensure public safety and environmental protection. The OWA is primarily funded by the Orphan Fund Levy (the "**Levy**"), rather than Albertans, which is paid by energy companies across Alberta. The Levy payable by any individual company is determined in part on the total abandonment and reclamation liabilities of all wells, facilities, and pipelines across Alberta.

*Concerns with the Transactions*

6. Upon learning of the details of the Transactions, the OWA became concerned, for, *inter alia*, the following reasons:
  - (a) the Transactions appear to have been concluded for the express purpose of avoiding municipal taxes, and shedding abandonment and reclamation obligations associated with the Goodyear Assets;
  - (b) the Transactions appear to be carefully engineered to avoid the requirement of AER approval;
  - (c) the effect of the Transactions was to create a significant liability that Sequoia Resources Corp., a company with limited assets, would have no ability to pay, therefore, leaving the Goodyear assets to be abandoned and reclaimed by the OWA meaning that the Transactions were concluded to the benefit of PEOC, at the expense of the OWA and the entire energy industry that funds the OWA; and
  - (d) allowing the Transactions to stand has the possibility of threatening the entire Regulatory Regime and mandate of the OWA by sanctioning the selling of assets, at undervalue, simply to avoid abandonment and reclamation obligations.
7. At present, the cost to abandon and remediate the Goodyear Assets is estimated by the Trustee to be approximately \$229,000,000. The entire cost associated with the abandonment and reclamation of the Goodyear Assets will be paid by the OWA, which in turn is funded by the Levy paid by energy companies.
8. The OWA's perspective is necessary to this Action in order for this Court to properly consider the interests of the OWA as the ultimate payor of the abandonment and reclamation obligations associated with the Goodyear Assets, as well as that of the energy industry more broadly and that of the public.
9. The OWA is directly and specifically affected by the outcome of this Action because it is certain that the OWA will face significant harm if the Transactions are not declared void as sought in the Statement of Claim, in the form of approximately \$229,000,000 of

abandonment and reclamation costs associated with the Goodyear Assets, which the OWA will be required to assume.

10. The OWA proposes to assist the Court in this Action by providing submissions in the following areas:
  - (a) The interaction between section 96 of the *BIA* and the regulatory obligations with regard to Supreme Court of Canada's decision in *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, and specifically that the existence of a regulatory obligation, compliance with which would render a company insolvent, can be considered a liability and render a person insolvent for the purposes of the *BIA*.
  - (b) The determination of whether parties' are non-arm's length, in the context of section 96 of the *BIA*, in circumstances, of multiple, sequential transactions, with a stated purpose to avoid abandonment, reclamation, and other obligations.
  - (c) The impact of transactions made for the purposes of avoiding abandonment and reclamation obligations on the OWA and industry; such transactions threaten the integrity of the regulatory system by sending a message to producers that they need not be responsible for their own abandonment and reclamation obligations.
  - (d) Such further and other submissions in respect of matters incidental to the above, as counsel may advise and this Honourable Court may permit.
11. Granting the OWA leave to intervene in the Action will not:
  - (a) unduly delay the proceedings;
  - (b) cause prejudice to either of the parties; or
  - (c) widen the *lis* between the parties.

**Material or evidence to be relied on:**

12. The pleadings and materials previously filed in this Action;

13. Affidavit of Lars de Pauw, sworn on June 29, 2020; and
14. Such further and other material as counsel may advise and this Honourable Court may allow.

**Applicable rules:**

15. The inherent jurisdiction of this Honourable Court to control its own process;
16. Rules 1.3, 1.4, and 2.10 of the *Alberta Rules of Court*; and
17. Such further and other material, legislation, and rules as counsel may advise and this Honourable Court may allow.

**Applicable Acts and regulations:**

18. None.

**Any irregularity complained of or objection relied on:**

19. None.

**How the application is proposed to be heard or considered:**

20. In-person before the Honourable Justice D.B. Nixon.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.