

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)	TORXEN ENERGY LTD.
DOCUMENT	<b>AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO INTERVENE</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Parlee McLaws LLP 3300, 421 - 7th Ave SW Calgary, Alberta T2P 4K9  Attention: G. Scott Watson/Charles W. Ang Telephone: (403) 294-7038 / 3457 Facsimile: (403) 767-8875 File No. 22-921

**AFFIDAVIT OF JOHN K. BRANNAN**  
**Sworn on JULY \_\_ , 2020**

I, John K. Brannan, of the City of Calgary, in the Province of Alberta, MAKE OATH  
AND SAY THAT:

## **POSITION OF DEPONENT**

1. I am the President and CEO of Torxen Energy Ltd. (“Torxen”), and I am authorized to swear this Affidavit on behalf of Torxen. I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case, I believe the same to be true.
2. I graduated from Texas A&M University in 1979 with a Bachelor of Science in Mechanical Engineering. I am a professional engineer and a member in good standing of the Association of Professional Engineers and Geoscientists of Alberta. Prior to founding Torxen, I spent 15 years in various leadership roles with PanCanadian Petroleum Corporation and its successor entities EnCana Corporation and Cenovus Energy Inc., including 5 years as Chief Operation Officer of Cenovus. Prior thereto, I worked with ExxonMobil for 22 years, including as President and General Manager of their Sable offshore project.
3. My education and professional background in the oil and gas industry, in particular the Alberta oil and gas industry, have qualified me to provide opinions with respect to transactions that impact the industry in general.
4. Capitalized terms used herein shall have the meaning set forth in the Statement of Claim unless otherwise defined herein.

## **BACKGROUND ON TORXEN**

5. Torxen is an exploration and production company focused on the development and optimization of conventional oil and gas assets in Southern Alberta. The Torxen team has a proven track-record operating upstream oil and gas properties in the Western Canadian Sedimentary Basin and is committed to high standards of safety, environmental responsibility and stakeholder relationships
6. Torxen is headquartered locally, in Calgary, Alberta, and employs hundreds of individuals in Alberta’s oil and gas sector.

## **PURPOSE OF TORXEN'S INTERVENOR APPLICATION**

7. Torxen seeks to assist the Court strictly on the issues concerning section 96 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("*BIA*"), and as they relate to the Application to Strike and for Summary Dismissal (the "*BIA* Application").

## **CONCERNS WITH THE ASSET TRANSACTION**

8. Orphan wells are a growing concern for Albertans and for the solvent industry members charged with funding the abandonment and reclamation process.
9. I understand that through multiple, sequential, transactions, PEOC was able to assign to Sequoia, the abandonment and reclamation obligations and municipal tax liabilities associated with the Goodyear Assets. I further understand Sequoia to be an entity with limited or no assets, thus incapable of fully complying with its compelled regulatory obligations.
10. I understand that as a result of Sequoia's financial inability to satisfy its abandonment and reclamation obligations, these liabilities will become the responsibility of the OWA, which is primarily funded by the Orphan Fund Levy (the "Levy"). The Levy is maintained by the Alberta Energy Regulator (the "AER"), and funded by industry contributors, including Torxen.
11. I understand that if the Transactions are permitted to endure, the approximately \$200,000,000.00 cost to abandon and reclaim the Goodyear Assets, as estimated by the Trustee, will be unfairly and unjustly borne by the third party industry members of Alberta's oil and gas regulatory regime, including Torxen.
12. Torxen expects these financial consequences to persist beyond the principal year as the liabilities are expected to substantially increase the Levy in future years.

## **DIRECT AND SIGNIFICANT IMPACT**

13. Torxen maintains the second most AER licenses for wells located in the Province of Alberta, only behind Canadian Natural Resources Limited.

14. If the Transactions are permitted, and the estimated \$200,000,000.00 cost to abandon and reclaim the Goodyear Assets is consequently transferred to the OWA, then, as a contributor to the Levy, Torxen will bear a significant financial impact.
15. Furthermore, while Torxen is responsible for one of the top-three largest objective contributions to the Levy, the proportional impact of the abandonment and reclamation liabilities anchored to the Goodyear Assets, will be comparatively more significant to Torxen, due to its relative size in the industry.
16. The estimated direct financial impact to Torxen of the Transactions is approximately \$6,500,000.00.

### **TORXEN'S EXPERTISE AND FRESH PERSPECTIVE**

17. As a private operator in Alberta's oil and gas industry, Torxen is capable of speaking to the consequential effects of the outcome of the *BIA* Application, on small and mid-sized industry participants.
18. Torxen proposes to assist the Court in understanding the Transactions' significant and material departure from industry standards, as well as the serious apprehension of all industry members in permitting the purposeful evasion of abandonment and reclamation obligations through multiple, sequential, transactions.
19. Torxen seeks to make submissions regarding the Court's potential sanction of similar duty-evading schemes, and the consequential pressure that will be placed on all industry members to adopt similar strategies. Insolvency will be incentivized, the environment will suffer, and the regulatory regime will potentially be crippled, as costs will no longer be allocated pursuant to the polluter-pay principle, but rather to solvent third party industry members.
20. Furthermore, if such transactions to avoid regulatory liabilities become routine, contributors to the Levy will be unfairly and disproportionately pushed towards a financial tipping point, where operations become unsustainable. Private operators that rely on working efficiently will reach this financial tipping point sooner.

**OTHER CONSIDERATIONS FOR THE APPLICATION**

- 21. Torxen will act to minimize any risk of delay or disruption in this Action, or any pending applications before the Court in this Action.
- 22. I do not believe that Torxen’s intervention in this Action will aggravate the dispute as between the parties as Torxen’s proposed submissions relate entirely to issues already before the Court.
- 23. Torxen’s intention is to assist the Court to better comprehend the matter before it.
- 24. I make this Affidavit in support of the Application for leave to intervene in the *BIA* Application, as submitted by Canadian Natural Resources Limited, Cenovus Energy Inc. and Torxen Energy Ltd., and for no improper purpose.
- 25. I am affirming this Affidavit without being physically present before the Commissioner for Oaths, but was linked with the said Commissioner for Oaths utilizing video technology in accordance with the Court of Queen’s Bench of Alberta’s March 25, 2020 Notice to the Profession & Public: Remote Commissioning of Affidavits for use in Civil and Family Proceedings during the Covid-19 Pandemic.

SWORN BEFORE ME at the City of Calgary, )  
 in the Province of Alberta, this \_\_\_\_ day of )  
 July, 2020. )

\_\_\_\_\_  
 A Commissioner for Oaths in and for Alberta )

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 JOHN K. BRANNAN )