

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

MATRIX RESOURCES LTD. APPLICATION TO TRANSFER WELL AND PIPELINE LICENCES

**Decision 99-3
Application No. 980143**

1 INTRODUCTION

1.1 Application, Background, Interventions, and Hearing

On 10 July 1997, Matrix Resources Ltd. (Matrix) applied to the Alberta Energy and Utilities Board (Board) to transfer, pursuant to section 18 of the Oil and Gas Conservation Act, the well licences from Legacy Petroleum Ltd. (Legacy) to Matrix. On 6 October 1998, Matrix applied to the Board pursuant to section 24 of the Pipeline Act to include as part of its application the transfer of Legacy's pipeline licences and related facilities to Matrix. The resulting application (Application) included the request to transfer 237 well licences, 28 pipeline licences, and 6 facilities held in the name of Legacy. The wells, pipelines, and facilities which are the subject of the Application are located in the following fields:

- Atlee-Buffalo
- Bindloss
- Medicine Hat
- Red Willow
- Verger
- Viking-Kinsella.

In addition to hearing the transfer applications, Matrix requested that, pursuant to section 43 of the Energy Resources Conservation Act, the Board also hear argument respecting Closure Order No. C 770 (Closure Order). The EUB issued the Closure Order to Legacy on 2 March 1998 pursuant to section 13(3) of the Oil and Gas Conservation Act because Matrix, which was operating but which was not the licensee for the subject wells, had no valid right to produce until the Board consented to or directed a transfer of the licences.

Shortly after the request for transfer of the subject wells, pipelines, and facilities, letters of objection were submitted to the Board from both Alberta Treasury and Alberta Justice. Alberta Treasury and Alberta Justice on behalf of the Alberta Surface Rights Board (SRB) and Special Areas Board (SAB), respectively, stated that substantial debts were owed them by Legacy and they opposed the requested transfer until appropriate arrangements were made to resolve the debts. The Board accordingly directed Matrix/Legacy to work with the SRB and SAB towards a resolution of their concerns and delayed processing the Application until those negotiations took place.

After several months it became evident that no progress was being made towards the resolution of the objectors' concerns. For the reasons noted above, the Closure Order was then issued to Legacy, affecting Matrix's continued production of the subject wells. Matrix subsequently requested that the Board lift the Closure Order. The Board denied the request but agreed to conduct a hearing to determine the fate of the Closure Order and the Application.

In response to Notice of Hearing, the Board received several submissions from interested parties. A public hearing was held in Calgary, Alberta on 20 January 1999 before Board Members

F. J. Mink, P.Eng. (Presiding Member), N. M. McCrank, Q.C., and J. D. Dilay, P.Eng. Those who appeared at the hearing are listed in the following table:

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives	(Abbreviations used in Report)
Matrix Resources Ltd M. Dame	
Canadian Association of Petroleum Producers / Small Explorers and Producers Association of Canada S. Meyerhoffer	(CAPP/SEPAC)
Alberta Special Areas Board M. Talaga	(SAB)
Alberta Environmental Protection G. Van Nes	(AEP)
Cypress County Municipal District L. Perschon	Cypress County
Gas & Oil Accounting Ltd. D. Lundeen	(Gas & Oil Accounting)
M. Pidherney's Trucking Ltd. C. MacDonald	(Pidherney's Trucking)
Alberta Energy and Utilities Board Corporate Compliance Group D. Brezina	(CCG)
KPMG Inc. S. Livingston	(KPMG)
Alberta Department of Energy D. Coombs	(DOE)

THOSE WHO APPEARED AT THE HEARING (cont'd)

Principals and Representatives

(Abbreviations used in Report)

Alberta Energy and Utilities Board staff

T. Donnelly, Board Counsel

R. King

H. Knox, P. Eng

B. Schmidt

K. Leussink

Although Kay & Riggins made a submission on behalf of E. O. Lund, J. L. Lund, D. and D. Endersby, and 569347 Alberta Ltd., neither they nor their clients appeared at the hearing. Due to circumstances preceding the hearing, Alberta Justice (SRB) was not represented; KPMG was present as the court appointed trustee of the estate of the now bankrupt Legacy.

2 PRELIMINARY MATTERS

Two preliminary matters were raised at the opening of the hearing by interveners:

- a motion to dismiss the Application, and
- a request that the Board issue abandonment orders in respect of the subject wells and facilities.

At the outset of the hearing, KPMG presented the Board with an ex parte order issued by the Court of Queen's Bench of Alberta (In Bankruptcy), dated 20 January 1999, which orders that "The assets of Legacy Petroleum Ltd., including well licences, pipeline licences and facilities, are not to be transferred without the written approval of KPMG Inc., Trustee in Bankruptcy of Legacy Petroleum Ltd." (Order). KPMG argued that the hearing ought not to proceed in the face of the Order, given that KPMG had not given its consent to the transfer of the subject licences and facilities.

The CCG stated that the Order constitutes a material change in circumstances of the Application because KPMG is a new interested party to the Application which has legal ownership and control of all of Legacy's assets, including the licences at issue. Accordingly, the CCG argued that the transfer documents upon which the Application is based are void and the Board can go no further with the hearing unless and until KPMG consents to the transfer and signs a new transfer document on behalf of Legacy. Also, the bankruptcy of Legacy has materially changed the Application such that there are now new considerations that the Board ought to take into account. Therefore, the CCG stated that the Board must deny or dismiss the Application.

In addition, the CCG asserted that the Board should follow its standard procedure in the case of a bankrupt licensee and immediately issue abandonment orders to KPMG for the wells and facilities at issue in order to protect its position in the bankruptcy. In support of this proposition, the CCG noted that the underlying concerns that the Board must address when a licensee

becomes bankrupt are that it must ensure public safety and protection of the environment, as well as protect the public purse and the Industry Abandonment Fund (Fund). Issuance of the abandonment orders is meant to ensure that the trustee is obliged to apply the proceeds of sale of any of the subject assets to abandonment and reclamation before distribution of the funds to competing creditors. Therefore, the CCG maintained there is some urgency for the Board to grant the requested relief in this situation.

CAPP/SEPAC made a joint submission supporting the CCG's submission, stating that protection of the Fund is imperative and this material change in circumstances will place the Fund at risk if the Board does not grant the requested relief. These parties also agreed that the Board should follow its policy and issue abandonment orders immediately, keeping in mind that the Board could grant relief from those orders if warranted.

AEP supported the CCG's analysis of the law and was similarly concerned that in bankruptcy, certain obligations must be placed on KPMG to address outstanding reclamation liabilities of Legacy to ensure the reclamation obligations are addressed.

The SAB supported the motion to dismiss the Application and urged the Board to defer to the Order. The SAB indicated it was working with KPMG towards resolution of the substantial debt owed to the SAB by Legacy.

Pidherney's Trucking agreed with the other interveners that the Application should be dismissed.

In response to the motion to dismiss and request to issue abandonment orders, Matrix explained that it was willing to take full responsibility for the abandonment and environmental liabilities associated with the assets it purchased from Legacy in 1996. Matrix asserted that it has demonstrated its ability to properly manage the subject assets with the engineering and other work it has performed on the wells. Matrix further commented that if it walks away from this transaction, it is likely that a good majority of the wells will fall into the Fund and the people of Alberta will have to pay the price of abandonment. Finally, Matrix reasoned that the Order only has the effect of temporarily restraining a transfer from occurring, and that KPMG must prove to the Court that the transfer of assets from Legacy to Matrix is invalid before the transaction between the two companies can be nullified. Accordingly, Matrix believed that it should still be given the chance to be heard.

KPMG responded that Matrix ought not to be discussing the merits of the Application when the issue to be determined is the effect of the Order which states that no assets may be transferred. The CCG agreed with this submission. KPMG stated that it does not currently have control or possession of Legacy assets, but would like to meet with Matrix to determine the status of the properties before abandonment orders are issued.

The DOE presented the Board with evidence that 34 of the mineral leases affecting 152 of the subject wells had expired and had not been re-acquired by either Legacy or Matrix, but some had been re-acquired by other parties. Therefore, the DOE submitted that abandonment orders ought to be issued on the 152 affected wells in order to protect the Crown's interests under

section 33 of the Mines and Minerals Act.

2 DECISION

Pursuant to section 18 of the Oil and Gas Conservation Act and section 24 of the Pipeline Act, well/pipeline licences may be transferred either by application by the transferee in the prescribed form (as set out in ID 93-2) or by direction of the Board if the Board determines that there is a party which has the right to receive the transfer. In this case, Matrix submitted transfer documents as part of the Application which were signed by an officer of Legacy as transferor. The Board agrees that the effect of the Order is to negate the validity of the original transfer documents executed by Legacy and Matrix which constitute the Application in the absence of written consent of KPMG, which the Board does not have. Because of the Order, Legacy is no longer a party which may transfer the subject licences and facilities of its own accord.

With respect to the second method by which a transfer may be effected, that is by direction of the Board, the Board believes that the same conclusion must be reached as a result of the Order. In other words, the Order has the effect of negating Matrix's right to receive the transfers because no written consent to the transfers has been given by KPMG.

As noted at the hearing, the Board dismissed the Application.

Dated at Calgary, Alberta on 24 February 1999.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by>

F. J. Mink, P.Eng.

N. M. McCrank, Q.C.*

<Original signed by>

J. D. Dilay, P.Eng.

* N. M. McCrank, Q.C. was unavailable for signature but concurs with the contents and

with the issuing of this report.