

**MEMORANDUM OF DECISION
PREHEARING MEETING
APPLICATIONS FOR A LICENCE TO DRILL
A SOUR GAS WELL, COMPULSORY POOLING, AND
SPECIAL WELL SPACING ORDERS
POLARIS RESOURCES LTD.
LIVINGSTONE FIELD**

**Decision 2003-030
Applications 1276521 and 1276489**

1 APPLICATIONS

Application 1276521

Polaris Resources Ltd. (Polaris) has applied to the Alberta Energy and Utilities Board (EUB/Board) pursuant to Section 2.020 of the Oil and Gas Conservation Regulations for a licence to drill a vertical level-3 critical sour gas well from a surface location in Legal Subdivision (LSD) 11 of Section 32, Township 10, Range 2, West of the 5th Meridian (11-32 well). The maximum hydrogen sulphide (H₂S) content would be approximately 287.6 moles per kilomole (28.76 per cent), the cumulative drilling H₂S release rate would be 11.30 cubic metres per second (m³/s), the producing release rate would be 3.06 m³/s, and the corresponding emergency planning zone (EPZ) would be 13.54 kilometres (km). The purpose of the well is to obtain gas production from the Palliser Formation. The proposed well would be located approximately 32 km north of the Hamlet of Lundbreck near the Maycroft community. The attached figure shows the proposed well location, the EPZ, an area two times (27.08 km) the size of the EPZ, and certain features of the area.

Application No. 1276489

Polaris has applied to the EUB pursuant to Section 4.040 of the Oil and Gas Conservation Regulations for an order to establish a special drilling spacing unit (DSU) comprising Sections 32 and 33 of Township 10, Range 2, West of the 5th Meridian, with the target area being within the DSU and having sides 300 m from and parallel to the sides of the DSU, for the production of gas from all zones below the top of the Mississippian System.

Polaris has also applied pursuant to Section 80 of the Oil and Gas Conservation Act for an order prescribing that all tracts within the special DSU comprising Sections 32 and 33 of Township 10, Range 2, West of the 5th Meridian, be operated as a unit for the production of gas from all zones below the top of the Mississippian System through the 11-32 well.

Polaris is requesting, among other things, that costs and revenues under the pooling order be allocated on a tract area basis and that Polaris be named the operator of the subject well. Polaris has also requested that the maximum penalty allowed under the Oil and Gas Conservation Act be applied to a tract's share of the costs of drilling and completing the well if the tract owner does

not pay its share of those costs within 30 days of whichever is later: the pooling order being issued, the tract owner being given written notice of its share of costs, or the well in question being placed on production.

2 PREHEARING MEETING

Residents and landowners in the Maycroft community in the vicinity of Polaris's project, as well as other interested parties, corresponded with Polaris and the EUB expressing concerns about the proposed project. These concerns were expressed during Polaris's public consultation and notification process from January 2002 to receipt of the applications by the EUB on August 21, 2002, and throughout to March 31, 2003. Having regard for the numerous unresolved concerns, the Board directed that the subject applications be considered at a public hearing. The Board decided further that before scheduling a hearing, it would be useful to obtain additional information from the interested parties and Polaris to ensure that the public hearing would be conducted in the most efficient and effective manner possible. The EUB held a prehearing meeting in Maycroft, Alberta, on April 16, 2003, before Presiding Board Member M. N. McCrank, Q.C., and Board Member T. M. McGee. Board Member J. D. Dilay, P.Eng., is part of the Board panel assigned to consider these applications but was unable to attend the prehearing meeting.

The Board received input from the applicant and interested parties on a number of issues, including

- the scope and purpose of the hearing,
- relevant issues to be examined,
- timing and location of the hearing,
- procedures,
- participant roles,
- funding, and
- other matters.

The Board did not hear evidence, submissions, or arguments pertaining to the merits of the applications or objections. Parties will be given an opportunity to present evidence, cross-examine witnesses, and make arguments regarding the merits of the applications at the public hearing.

Those who registered and participated at the prehearing meeting and individuals who filed written submissions with the Board prior to April 23, 2003, are listed in Appendix A.

3 PRELIMINARY MATTERS

Prior to the convening of the prehearing meeting, several parties had written to the Board requesting an adjournment of the meeting on the basis that more time was required to review and understand the applications. The Board responded to these parties by letter dated April 9, 2003, indicating that the prehearing meeting would proceed and explaining that the prehearing meeting would focus on procedural matters and the scope of the public hearing, not the merits of the

applications. In order to accommodate the concerns expressed by some individuals about an early afternoon sitting, the Board held two sessions on April 16, 2003, to discuss the prehearing agenda, one commencing at 1:00 p.m. and the other at 6:00 p.m. In addition, the Board extended the date for any written, faxed, or electronic submissions relating to prehearing matters to April 23, 2003.

At the prehearing meeting, some participants reiterated their request for an adjournment of the prehearing meeting, citing their inability to properly prepare and participate given the supply of information and the timing of the meeting during calving season. It was acknowledged by those who made the request that since the Board, the applicant, and a large number of residents were in attendance, it was impractical not to proceed with the meeting, but they reiterated their desire for more time to make additional submissions. The Board ruled that the meeting would proceed as scheduled and confirmed that parties could provide submissions to the prehearing as set out in the Board's letter of April 9, 2003.

The Board also heard concerns from several parties who were initially notified by the applicant that they were within a 28.91 km calculated EPZ and then later advised that the calculated EPZ would be 13.54 km. The Board notes that during its review of the application, Polaris originally conducted its public notification and consultation in January 2002, on the basis of its initial H₂S assessment using its originally proposed casing and cementing design. This assessment predicted an H₂S release rate of 28.82 m³/s and a calculated EPZ radius of 28.91 km.

Prior to submitting its well licence application on August 21, 2002, Polaris filed an H₂S pre-submission with the EUB's Resources Appraisal Group on August 2, 2002. The Resource Appraisal Group concluded that, based on the casing and cementing design, a revised H₂S release rate of 11.30 m³/s was reasonable. The corresponding EPZ was recalculated as 13.54 km for the 11-32 well.

The Board notes that information in the applicant's file confirms that Polaris renotified the public of the newly calculated release rate and EPZ radius. Although the Board believes that this may have caused some confusion with the public, the Board agrees that the renotification of the revised H₂S release rate and calculated EPZ was appropriate and was consistent with the requirements of *Guide 56: Energy Development Applications*. The information detailing the amended H₂S assessment is part of the well licence application and is included in the public record available on these applications.

4 ISSUES CONSIDERED AT AND ARISING FROM THE PREHEARING MEETING

The Board identified a number of issues concerning the applications from correspondence it received from area landowners and from the meetings in the area. It listed these issues in its April 9, 2003, letter. Some participants expanded on those issues and presented additional ones at the prehearing meeting. It is the Board's view that all of the issues raised are relevant for consideration at the upcoming public hearing. The Board has organized the issues as follows:

- Need for the Applied-for Well, Compulsory Pooling, and Special Well Spacing Orders

- Location of the Proposed Well
- Environmental Impacts of the proposed well
 - ◀ Well completions, testing, and flaring
 - ◀ Potential for contamination of air, water, and soil
 - Measures for air monitoring, water well testing, and drilling fluid management
 - ◀ Cumulative effects
 - ◀ Abandonment and reclamation
- Health and Safety Impacts of the proposed well
 - ◀ Emergency response planning
 - ◀ Human health, animal health, and wildlife impacts with respect to the drilling and completion of the proposed well
- Land-Use Impacts of the proposed well
 - ◀ Quality of life
 - ◀ Aesthetics
 - ◀ Property values
 - ◀ Potential for future oil and gas development
- Resource Recovery and Benefits of the proposed well
- Adequacy of Public Consultation Efforts for the proposed well
- Financial Security and Technical/Operational Ability of Polaris

The Board makes the general observation that while all the enumerated issues may have relevance to the applications, the weight to be accorded each issue in making a decision will be assessed in light of the scale and nature of the proposed Polaris development.

5 PARTICIPATION AT THE PUBLIC HEARING

5.1 Standing

As evident from the correspondence received by the Board and the number of people (approximately 80) who came to the prehearing meeting, the community has a strong desire to participate at the public hearing. In identifying who may participate at a public hearing, the Board is governed, first, by Section 26 of the Energy Resources Conservation Act, which provides that those persons whose rights may be directly and adversely affected by the approval of an energy facility are entitled to an opportunity to lead evidence, cross-examine, and give argument—in short, full participation at a hearing, or “standing.”

Others who may not be able to meet the standing test (for example, those persons who are not situated in close proximity to a proposed facility) are not afforded these participation rights by the statute. It is the long-standing practice of the Board to allow those persons who would otherwise not have standing to participate to some extent at a public hearing provided they offer relevant information. However, funding to cover costs, as described below, is not available to persons who may participate but do not have standing.

In the present case, Polaris has acknowledged that there are indeed a number of residents who qualify as interveners under Section 26 of the Energy Resources Conservation Act. These persons either own or occupy a residence in the vicinity of the proposed well or are close enough geographically to the site to trigger hearing participation rights. The Board agrees with Polaris.

The Board is of the view that residents located within the 13.54 km calculated EPZ radius of the well and landowners within 1.5 km of the well have standing for the purposes of participating at the public hearing under Section 26 of the Energy Resources Conservation Act.

The Board cautions that participation at the public hearing is also predicated on persons complying with the Board's *Rules of Practice* regarding the presentation of evidence and procedural matters. For example, persons who do not file their own evidence and that of their experts by the prescribed deadlines (as more particularly outlined in the next section) may be denied the opportunity to give that evidence at the hearing.

Those parties who have registered their interest and who fall outside of the 13.54 km radius may participate at the hearing but, depending on whether they have joined a group with standing, their participation may be limited to presenting a short statement of their position. They would not have full participation rights, such as leading evidence, cross-examining witnesses, and giving final argument.

5.2 Local Intervener Costs

Parties who are entitled to participate at a public hearing under Section 26 of the Energy Resources Conservation Act may also qualify for funding so that they may effectively and efficiently present their interventions. Such funding is referred to as "local intervener costs" and is provided for under Section 28 of the Energy Resources Conservation Act. This section grants the Board the discretion to award costs to participants who have an "interest in land" that may be directly and adversely affected by the approval of an energy project. When such awards are given, the applicant company is directed to pay the monies. Any party wishing to confirm its status as a "local intervener" must make an application to the Board for such a determination prior to the hearing.

It is extremely important to note that a finding of local intervener status does not automatically mean that the Board will approve all or any costs incurred by local interveners. Costs must be shown to be reasonable and necessary to the intervention, as well as meet the requirements of Part 5 of the *Rules of Practice*. The Board must also find that the intervention added to its understanding and appreciation of the relevant issues before costs or a part of them are approved. Duplication of effort on common issues by two or more interveners or excessive representation on issues that are clearly common to a number of participants will not likely result in more than one set of costs being approved in the absence of special circumstances. Parties must review Part 5 of the *Rules of Practice* and *Guide 31A: Guidelines for Energy Cost Claims* to acquaint themselves with the cost regime administered by the Board.

The Board strongly encourages individuals who share a common purpose and concerns to pool their resources and present a collective intervention. Such interventions are usually effective and efficient, as they eliminate duplication of effort and costs that may occur when several individual

residents present essentially the same intervention. At the prehearing meeting, the Board noted that a number of individuals with similar interests had formed into groups and the Board encourages this approach.

It has been the Board's policy to award an advance of costs when it is shown that an advance payment of forecast expenditures is essential in preparing and presenting a submission. Parties must also show that they do not have the financial resources to initially retain necessary consultants and bear other related costs. An award of advance funding is subject to the Board's posthearing assessment of whether an individual's or group's costs are reasonable and directly and necessarily related to the intervention. Costs awarded in advance of a hearing are paid by the applicant company and form part of the overall costs of an intervention. If the Board approves overall costs in an amount that is less than the sum advanced prior to the hearing, the individual or group must repay the difference. An application for an advance of costs must be made pursuant to section 50 (demonstrate need for financial assistance to address relevant issues) and section 51 (file budget of anticipated costs in the proceeding) of the Board's *Rules of Practice*.

Parties who wish to have their status confirmed as local interveners for costs purposes as well as for an advance of costs, must submit an application to that effect to the Board by June 6, 2003. A copy of the application must also be sent to Polaris.

6 TIMING

Polaris noted that an applicant has the right to have its applications heard on a timely basis and as such submitted that a June 2003 hearing was appropriate. The interveners submitted that a June hearing was unrealistic given their need to retain experts and instruct counsel and the demands on their time due to their occupations. Therefore, while Polaris urged that the hearing be in June or at least during the summer months, the interveners suggested hearing dates that ranged between October 2003 and February 2004.

The Board must consider both points of view in regard to scheduling and attempt to find a balance that recognizes both Polaris's right to an efficient, a timely disposition and the interveners' abilities to review all relevant information and properly prepare coherent responses. Having considered the views expressed at the prehearing meeting, the Board finds that the applications will be considered at a hearing in Maycroft, Alberta, commencing on September 9, 2003. The Board supports ongoing consultation and negotiation of the issues and believes that setting the hearing date in September will provide the parties sufficient time to conduct such discussions and prepare for the hearing. The Board notes that the applications were filed on August 21, 2002, and that the community was aware of them as early as January 2002. It is the Board's experience that setting the hearing date provides the parties with the incentive to conduct both meaningful and timely discussions if a mutual desire to do so exists.

In order to help parties gain a greater understanding of one another's positions, the Board may allow that written questions and answers be exchanged by the parties. This is referred to as the information request/response, or IR, process. IRs are intended to clarify evidence already filed with a view to making the actual hearing more efficient, as the IRs form part of the evidence at the hearing. Sections 27, 28, and 29 of the *Rules of Practice* outline the procedure for making an

IR. In this case, the Board will allow participants with standing, if they wish, to issue IRs to Polaris. Polaris will have the opportunity to file a response to the intervening submissions before the hearing commences. The Board directs that the following schedule regarding IRs and submissions be followed:

June 6, 2003 – Applications filed for advance of costs

June 20, 2003 – Polaris's final submissions

July 11, 2003 – Interveners issue IRs

July 28, 2003 – Polaris responds to IRs

August 12, 2003 – Interveners file submissions

August 22, 2003 – Polaris files a response to the interveners' submissions

September 9, 2003 – Hearing commences

The Board will issue a formal notice of hearing in due course and send a copy of the notice directly to each party who participated at the prehearing meeting, those who provided written submissions to the applications to the EUB but did not attend the prehearing meeting, and all of the others identified in the applications as being potentially affected by the proposed developments. The notice will also be published in the local newspapers.

DATED at Calgary, Alberta, on April 30, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

M. N. McCrank, Q.C.
Presiding Member

<original signed by>

T. M. McGee
Board Member

APPENDIX A

THOSE WHO PARTICIPATED AT THE PREHEARING MEETING OR FILED WRITTEN SUBMISSIONS BY APRIL 23, 2003

Principals	Representatives
Polaris Resources Ltd. (Polaris) J. B. Maher B. Luft	B. K. O'Ferrall, Q.C.
The Oldman River Coalition C. and L. Bateman J. and N. Horejsi T. and M. Moulson E. and J. Nelson T. and H. Smith T. and M. Swinton Dr. P. Wilkins Waldron Grazing Co-op	G. S. Fitch
The Whaleback Coalition J. Tweedie The Alberta Wilderness Association	R. C. Secord
The Nature Conservancy of Canada	L. Simpson
The Pekisko Land Owners Association	M. Blades
A. Nikiforuk and D. Docherty	M. Bronaugh A. Nikiforuk
J. Huntley	J. Huntley
B. and M. Mowat	B. Mowat
J. and J. Lawson	J. Lawson
Federation of Alberta Naturalists	H. Gardner
D. Friesen	M. Bronaugh D. Friesen
S. Marty	M. Bronaugh S. Marty

(continued)

**THOSE WHO PARTICIPATED AT THE PREHEARING MEETING OR FILED
WRITTEN SUBMISSIONS BY APRIL 23, 2003 (continued)**

Principals

Representatives

The Municipal District of Ranchlands

R. Davis, Reeve

C. Strikes With A Gun

C. Strikes With A Gun

D. Gilbert

D. Gilbert

G. Bell

G. Bell

Dr. A. Garbutt

Dr. A. Garbutt

P. Dwyer

P. Dwyer

K. Poulsen

K. Poulsen

D. Bitango

D. Bitango

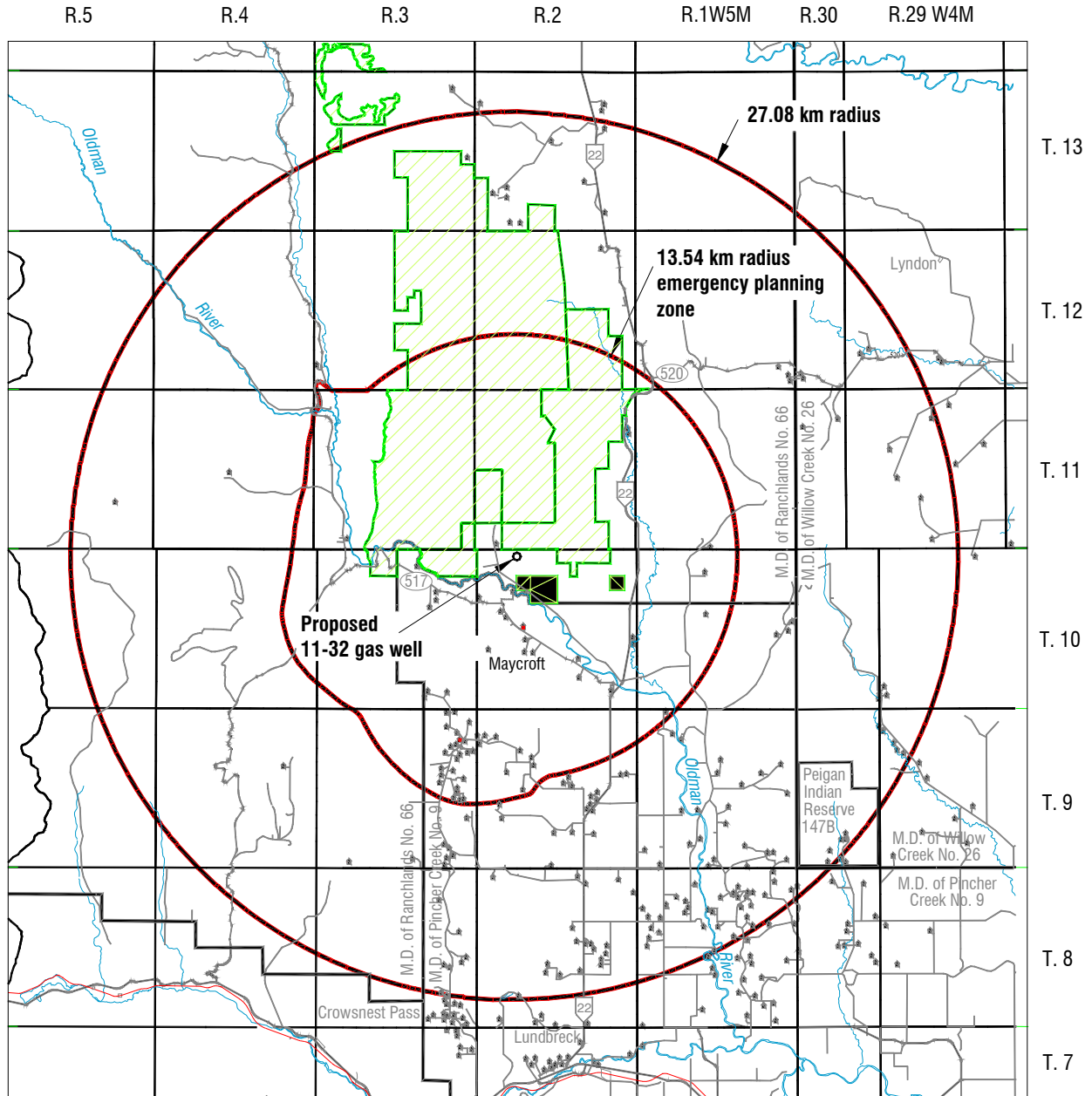
F. Bitango

F. Bitango

Alberta Energy and Utilities Board (EUB) staff

R. McKee, Board Counsel

P. R. Forbes, C.E.T.



- Legend**
- Proposed gas well
 - ▨ Whaleback region
 - * Residence

Livingstone Field
 Applications No. 1276521 and 1276489
 Polaris Resources Ltd.

Decision 2003-030