



Decision to Issue a Declaration Naming
James W. Glover Pursuant to Section 106 of
the *Oil and Gas Conservation Act*

October 24, 2006

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2006-103: Declaration Naming James W. Glover Pursuant to Section 106 of the *Oil and Gas Conservation Act*

October 24, 2006

Published by

Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311
E-mail: eub.info_services@eub.gov.ab.ca
Fax: (403) 297-7040
Web site: www.eub.ca

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

DECISION TO ISSUE A DECLARATION NAMING JAMES W. GLOVER PURSUANT TO SECTION 106 OF THE *OIL AND GAS CONSERVATION ACT*

Decision 2006-103
Proceeding No. 1462292

1 DECISION

The Alberta Energy and Utilities Board (EUB/Board) has decided to issue a Declaration naming James W. Glover as a person directly or indirectly in control of Big Valley Energy Corporation (Big Valley), pursuant to Section 106(1) of the *Oil and Gas Conservation Act (OGCA)*.

2 BACKGROUND

A division (the Notice panel) of the Board comprising Presiding Member G. Miller and Acting Board Members E. Shirley, P.Geol., and D. A. Larder, Q.C., was appointed to determine whether to issue a Notice of Intention to Issue a Declaration Naming James W. Glover pursuant to Subsection 106(1) of the *OGCA*.

The Notice panel reviewed documents relating to Big Valley's contraventions or failures to comply with Board Orders, as shown in Table 1. The Notice panel also reviewed documents indicating that James W. Glover was a person directly or indirectly in control of Big Valley and found that these documents constituted *prima facie* evidence of the contraventions of Big Valley and of James W. Glover being a person directly or indirectly in control of Big Valley.

Based on these findings, on April 10, 2006, the Notice panel decided to issue a Notice of Intention to Issue a Declaration Naming James W. Glover under Section 106 of the *OGCA*. Attached to the Notice as Attachment A were copies of the 35 documents reviewed by the Notice panel relating to Big Valley's contraventions or failures to comply and documents indicating that James W. Glover was a person directly or indirectly in control of Big Valley. These included Abandonment Orders, Abandonment Costs Order, Alberta Corporate Registry Searches, letters from Big Valley signed by James W. Glover to the EUB, and a copy of Environmental Protection Order No. 99-02.

Table 1. Contraventions and failures of Big Valley

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment (52 wells)	AD 97-3	14-Feb-97	0005621	14-07-048-20W4M	Failing to address outstanding operational concerns with the wells
			0005724	15-07-048-20W4M	
			0005662	03-08-048-20W4M	
			0005748	05-08-048-20W4M	
			0005811	04-17-048-20W4M	
			0005484	03-18-048-20W4M	
			0005657	04-18-048-20W4M	
			0005681	05-18-048-20W4M	
			0005548	06-18-048-20W4M	
			0005658	08-18-048-20W4M	
			0005660	10-18-048-20W4M	
			0005661	11-18-048-20W4M	
			0005487	12-18-048-20W4M	
			0005483	13-18-048-20W4M	
			0005541	14-18-048-20W4M	
			0005656	15-18-048-20W4M	
			0006287	02-19-048-20W4M	
			0005588	03-19-048-20W4M	
			0005486	04-19-048-20W4M	
			0006523	10-19-048-20W4M	
			0005341	14-19-048-20W4M	
			0005751	01-13-048-21W4M	
			0005796	15-13-048-21W4M	
			0120461	07-25-034-21W4M	
			0125322	16-02-036-28W4M	
			0004755	15-31-047-20W4M	
			0004405	16-31-047-20W4M	
			0128306	14-32-047-20W4M	
			0004470	04-05-048-20W4M	
			0128320	07-05-048-20W4M	
			0058325	02-06-048-20W4M	
			0128305	04-06-048-20W4M	
			0092837	08-06-048-20W4M	
			0004830	09-06-048-20W4M	
			0004891	10-06-048-20W4M	
			0004952	12-06-048-20W4M	
			0005442	13-06-048-20W4M	
			0005444	15-06-048-20W4M	
			0005002	16-06-048-20W4M	
			0005314	01-07-048-20W4M	
			0005399	02-07-048-20W4M	
			0005440	04-07-048-20W4M	
			0005402	07-07-048-20W4M	
			0005274	08-07-048-20W4M	
			0005723	09-07-048-20W4M	
			0005684	10-07-048-20W4M	
			0005576	11-07-048-20W4M	
			0005517	16-13-048-21W4M	
			0007245	01-24-048-21W4M	
			0007246	08-24-048-21W4M	
			0005257	10-24-048-21W4M	
			0005244	15-24-048-21W4M	

(continued)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment (18 pipeline licences)	AD 97-13 as amended by AD 97-13A	21-May-97	4190	16-24-048-21W4M to 16-24-048-21W4M	Environmental and public safety reasons cited for abandonment of the pipelines
		10-Jun-99		09-13-048-21W4M to 11-18-048-20W4M	
			4923	16-06-048-20W4M to 15-06-048-20W4M	
			5180	09-06-048-20W4M to 15-06-048-20W4M	
			6132	01-24-048-21W4M to 16-13-048-21W4M	
				16-13-048-21W4M to 09-13-048-21W4M	
				09-24-048-21W4M to 01-24-048-21W4M	
				16-24-048-21W4M to 09-24-048-21W4M	
				02-07-048-20W4M to 15-06-048-20W4M	
				15-06-048-20W4M to 10-06-048-20W4M	
				02-19-048-20W4M to 11-18-048-20W4M	
			6224	13-06-048-20W4M to 12-06-048-20W4M	
				13-06-048-20W4M to 04-07-048-20W4M	
			16476	09-13-048-21W4M to 10-18-048-20W4M	
				10-18-048-20W4M to 15-18-048-20W4M	
	15-06-048-20W4M to 13-06-048-20W4M				
	8059	09-07-048-20W4M to 15-07-048-20W4M			
	16479	14-07-048-20W4M to 15-07-048-20W4M			

(continued)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
				15-07-048-20W4M to 03-18-048-20W4M	
				03-18-048-20W4M to 11-18-048-20W4M	
				15-07-048-20W4M to 15-07-048-20W4M	
			10135	12-13-050-12W5M to 02-24-050-12W5M	
				04-13-050-12W5M to 12-13-050-12W5M	
				02-14-050-12W5M to 12-13-050-12W5M	
				10-14-050-12W5M to 12-13-050-12W5M	
				12-24-050-12W5M to 02-24-050-12W5M	
				04-24-050-12W5M to 02-24-050-12W5M	
				10-24-050-12W5M to 02-24-050-12W5M	
				04-19-050-11W5M to 02-24-050-12W5M	
				12-18-050-11W5M to 02-24-050-12W5M	
			14604	04-19-048-20W4M to 01-24-048-21W4M	
				03-19-048-20W4M to 04-19-048-20W4M	
			16424	15-13-048-21W4M to 09-13-048-21W4M	
			16475	01-24-048-21W4M to 01-24-048-21W4M	
				08-24-048-21W4M to 01-24-048-21W4M	
			16480	11-07-048-20W4M to 11-07-048-20W4M	

(continued)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
				14-07-048-20W4M to 11-07-048-20W4M	
				10-07-048-20W4M to 16-07-048-20W4M	
				15-07-048-20W4M to 10-07-048-20W4M 15-07-048-0W4M to 10-07-048-20W4M	
				02-07-048-20W4M to 02-07-048-20W4M	
			16481	04-07-048-20W4M to 02-07-048-20W4M	
				07-07-048-20W4M to 02-07-048-20W4M	
				08-07-048-20W4M to 02-07-048-20W4M	
				01-07-048-0W4M to 02- 07-048-20W4M	
				03-18-048-20W4M to 11-18-048-20W4M	
				04-18-048-20W4M to 11-18-048-20W4M	
				05-18-048-20W4M to 11-18-048-20W4M	
				06-18-048-20W4M to 11-18-048-20W4M	
				08-18-048-20W4M to 11-18-048-20W4M	
			16484	10-18-048-20W4M to 11-18-048-20W4M	
				12-18-048-20W4M to 11-18-048-20W4M	
				13-18-048-20W4M to 11-18-048-20W4M	
				14-18-048-20W4M to 11-18-048-20W4M	

(continued)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
				10-06-048-20W4M to 15-06-048-20W4M	
				12-06-048-20W4M to 15-06-048-20W4M	
				13-06-048-20W4M to 15-06-048-20W4M	
				15-06-048-20W4M to 15-06-048-20W4M	
				02-07-048-20W4M to 15-06-048-20W4M	
			16487	08-06-048-20W4M to 08-06-048-20W4M	
				07-05-048-20W4M to 14-32-047-20W4M	
				14-32-047-20W4M to 14-32-047-20W4M	
			25057	14-32-047-20W4M to 15-06-048-20W4M	
			29725	10-24-048-21W4M to 16-24-048-21W4M	
				15-24-048-21W4M to 16-24-048-21W4M	
				16-24-048-21W4M to 16-24-048-21W4M	
				09-07-048-20W4M to 16-07-048-20W4M	
				14-27-056-20W5M to 06-13-056-20W5M	
				07-27-056-20W5M to 10-27-056-20W5M	
				13-36-055-20W5M to 10-12-056-20W5M	
				07-07-056-19W5M to 10-12-056-20W5M	
				10-12-056-20W5M to 06-13-056-20W5M	

(continued)

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment (4 facilities associated with two batteries)	AD 97-14	21-May-97		15-06-048-20W4M	Environmental and Public safety reasons cited for abandonment of the facilities
				14-32-47-20W4M	
				02-07-048-20W4M	
				09-13-048-21W4M	
				11-18-048-20W4M	
Abandonment (a well)	AD 98-393	11-Sept.- 98		16-02-036-28W4M	Failing to maintain a valid mineral lease
Abandonment Costs Order	ACO 99-02	1-Feb-99			Amount owed \$259,274.06 for partial abandonment of facilities

The Notice further stated that if any Declaration were issued, the Board may impose such restrictions and sanctions as set out in Subsection 106(3) of the *OGCA* against James W. Glover and any companies directly or indirectly controlled by James W. Glover as may be appropriate, including

- 1) suspension of any operations of a licensee or approval holder under the *OGCA* or a licensee under the *Pipeline Act*,
- 2) refusal to consider applications for identification code, licence, or approval from an applicant under the *OGCA* or the *Pipeline Act*,
- 3) refusal to consider applications to transfer a licence or approval under the *OGCA* or a licence under the *Pipeline Act*,
- 4) requirement for submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee, under the *OGCA*, or
- 5) requirement for the submission of abandonment and reclamation deposits in an amount determined by the Board for any wells or facilities of any licensee or approval holder.

In accordance with Subsection 106(2) of the *OGCA*, the Notice and Attachment A to the Notice were served personally on Mr. Glover on May 5, 2006, as attested to by Rene D'Haese, Process Server. The Notice stated that Mr. Glover had until May 11, 2006, to file a written submission with the Board to show why such a Declaration should not be issued and include all supporting evidence. The Board received a request for an extension from counsel for Mr. Glover on May 9, 2006, and granted an extension to June 16, 2006, as the Notice was served on May 5, 2006. A submission was received from counsel for Mr. Glover on June 16, 2006.

A division of the Board (the Declaration panel) comprising Presiding Member A. J. Berg, P.Eng., Board Member J. D. Dilay, P.Eng., and Acting Board Member F. Rahnama, Ph.D., was appointed to conduct this proceeding and determine whether to issue a Declaration Naming Mr.

Glover Pursuant to Section 106 of the *OGCA*. The Declaration panel reviewed the Notice, including Attachment A, and Mr. Glover's submission dated June 16, 2006.

The Declaration panel noted that the Notice stated that Big Valley had an outstanding debt to the Board of \$51 584.81 and an outstanding debt to the Board on account of the Orphan Fund (administered by the Orphan Well Association [OWA]) of \$207 419.25. However, the submission of the Corporate Compliance Group (CCG) dated January 19, 2006, contained in Attachment A, stated that Big Valley owed the Board the amount of \$51 854.81 and the Board on account of the OWA the amount of \$4 968 960.93, as of December 2005. In addition, CCG stated that the estimated total costs to the Board and to the Board on account of the OWA was expected to be over \$6 million, as reclamation work on the Big Valley sites was ongoing. The Declaration panel requested, by way of letter dated June 29, 2006, from its counsel, clarification from CCG regarding the amount of the outstanding debt of Big Valley to the Board and the Board on account of the OWA. Counsel for Mr. Glover was sent a copy of this letter. On June 30, 2006, counsel for Mr. Glover informed the Declaration panel that she wanted to discuss the letter with Mr. Glover and have an opportunity to respond before the information was considered by the panel.

CCG replied on July 6, 2006, that Big Valley owed the following amounts:

- \$51 854.81 to the Board—the penalty associated with the abandonment costs invoiced in 1998 for the partial abandonment of the Big Valley licensed properties,
- \$444 660.76 to the Board on account of the OWA—actual out-of-pocket expenses reimbursed to the Board by the OWA for the partial abandonment of Big Valley licensed properties, and
- \$5 289 882.78, as of June 13, 2006, to the Board on account of the OWA for abandonment and reclamation costs for the remaining Big Valley licensed properties.

By letter dated July 12, 2006, further clarification respecting the difference in the amounts stated in the Notice as the outstanding debt for Big Valley and the amounts in CCG's submission of January 19, 2006, was sought. On July 13, 2006, CCG provided a copy of a letter from counsel for the Notice panel dated February 6, 2006, and a copy of CCG's reply dated April 3, 2006. On the same day, counsel for Mr. Glover wrote objecting to the Declaration panel considering any material submitted by CCG that was not included in the Notice and Attachment A to the Notice. Counsel for CCG responded to these submissions on July 24, 2006. Counsel for Mr. Glover replied to the CCG submissions on August 8, 2006. The Declaration panel decided to rule on the question of the relevance and admissibility of the information related to the amounts owed by Big Valley as a preliminary question based on the written submissions of the parties.

The date of the close of the evidentiary portions of this proceeding was August 8, 2006.

3 PRELIMINARY QUESTION

3.1 Submissions of Mr. Glover

The basis for Mr. Glover's objection to the Declaration panel considering CCG's response to its information request of June 29, 2006, was that he was entitled to notice and full particulars of the

case being alleged against him before he responded to those allegations. Mr. Glover argued that it appeared that the Declaration panel was being invited to consider that Big Valley owed not only the amount set out in the Notice but an additional \$5.5 million plus further unsubstantiated future costs. Also, Mr. Glover submitted that the Declaration panel should not review the information that was before the Notice panel for the following reasons:

- Accessing the correspondence between the Notice panel and CCG obliterated any distinction between the Notice panel and the Declaration panel and created a reasonable apprehension of bias arising out of a failure to separate the role of prosecutor and judge.
- The Declaration panel was limited to the allegations made in the Notice and cannot revisit the decision of the Notice panel.
- The information before the Notice panel was inadmissible before the Declaration panel and was irrelevant to the issuance of the Section 106 declaration.

In reply to CCG's response to Mr. Glover's submissions of July 13, 2006, Mr. Glover added that he could not find in the Notice and Attachment A to the Notice references to roughly \$5 million in costs. Also, Mr. Glover reiterated his submission that the constitution of separate Notice and Declaration panels related to concerns about reasonable apprehension of bias and cited in support 2747-3174 *Québec Inc. v. Québec(Régie des permis d'alcool)* [1996] 3 S.C.R. 919. He again argued that the Board had put in place a structure that adhered to the Supreme Court standard in this decision and, as a result, the Declaration panel should not go behind the Notice panel's decision and disregard the "form of separation among [Board members] that the Court and the Board's own practice require." Mr. Glover submitted that once the Notice panel issued the Notice, that Notice became in effect a final Order and that CCG was trying to appeal that Order to the Declaration panel; he further submitted that such an appeal was not permitted by the *OGCA* and that the Board's procedures did not permit the Declaration panel to amend the Notice panel's Notice.

3.2 Submissions of CCG

CCG submitted that the Declaration panel may seek additional information and consider it in making a determination under Section 106 of the *OGCA*, since Mr. Glover had already been given notice of it by way of copies of all information and submissions before the Declaration panel and he could request an opportunity to be heard with respect to the information. CCG pointed out that Mr. Glover was not requesting such an opportunity. CCG submitted that Mr. Glover had been afforded procedural fairness.

CCG further argued that the Declaration panel noticed a discrepancy between two documents already filed and requested information to ensure that it had the full picture before making a determination. CCG submitted that Mr. Glover's argument that the Declaration panel was recasting the case against Mr. Glover was incorrect, as CCG's submission of January 19, 2006, citing roughly \$5 million in costs incurred at the time of the submission was already before the panel and Mr. Glover took no issue with that submission. Also, CCG, in response to the Declaration panel's request of June 29, 2006, obtained some updated estimates as to amounts expected to be incurred to clean up the Big Valley properties. CCG submitted that given the scope of Section 106 and that the public interest is fundamental to a determination under Section 106, the information provided by CCG was both relevant and admissible. The amount of costs

left behind by Big Valley, whether or not they crystallized and invoiced as a debt prior to the company being struck, was to be considered in deciding whether it is in the public interest to issue a Declaration against Mr. Glover and the nature of sanctions to be imposed.

Furthermore, CCG submitted that no reasonable apprehension of bias arises, as the Notice panel does not have the role of prosecutor, as suggested by Mr. Glover. Rather CCG has that role. In CCG's view, the role of the Notice panel was to consider whether there was *prima facie* evidence to issue a Notice of Intent to Issue a Declaration, and the role of the Declaration panel was to consider that evidence in detail, along with any show cause evidence from the individual, and determine whether a Declaration should be made and, if so, the nature of the sanctions imposed.

In CCG's view, Section 106 does not limit the Declaration Panel's jurisdiction, as suggested by Mr. Glover. Section 106 states that a declaration cannot be made without the Board giving notice of its intent to do so and an opportunity to the affected individual to show cause why it should not be made. The Board was entitled to establish its own procedures. Also, CCG pointed out that it had no opportunity to address the discrepancy as to the amount owed when the matter was before the Notice panel. CCG did not expect the Notice panel to discount any costs incurred after Big Valley was struck from the Corporate Registry, notwithstanding its inquires, due to the statutory nature of the liability (as opposed to one that requires suing in debt), the intent of Section 106, and the fact that many if not most noncompliant companies are struck from the Corporate Registry prior to reclamation costs being incurred by the OWA (reclamation takes a few years, can only be done after abandonment, and generally such companies have failed to keep up corporate filings).

3.3 Ruling of the Declaration Panel

To address the question of the admissibility and relevance of the information respecting the difference in the amount owed by Big Valley, the Declaration panel will review Section 106 of the *OGCA*. Then, the Declaration panel will discuss the nature of the Section 106 proceeding and the role of the Notice panel and the Declaration panel in a Section 106 proceeding. In light of this discussion, the Declaration panel will determine whether procedural fairness has been afforded to Mr. Glover in this proceeding.

Section 106 of the *OGCA*, in part, states:

106(1) Where a licensee, approval holder or working interest participant

- (a) contravenes or fails to comply with an order of the Board, or
- (b) has an outstanding debt to the Board, or to the Board to the account of the orphan fund, in respect of suspension, abandonment or reclamation costs,

and where the Board considers it in the public interest to do so, the Board may make a declaration setting out the nature of the contravention, failure to comply or debt and naming one or more directors, officers, agents or other persons who, in the Board's opinion, were directly or indirectly in control of the licensee, approval holder or working interest participant at the time of the contravention, failure to comply or failure to pay.

(2) The Board may not make a declaration under subsection (1) unless it first gives written notice of its intention to do so to the affected directors, officers, agents or other persons and gives them at least 10 days to show cause as to why the declaration should not be made.

On a plain reading of Subsection 106(1), for a declaration to issue naming a person, the Board

- has to determine that a licensee contravened or failed to comply with an order of the Board or a licensee has an outstanding debt to the Board or to the Board on account of the OWA for suspension, abandonment, or reclamation costs,
- has to form the opinion that the person was in control of the licensee at the time the contravention or failure to comply occurred or the debt was incurred, and
- has to consider that it is in the public interest to issue the declaration.

The Declaration panel interprets the third element, the consideration of the public interest, as being broad in scope. Therefore, the Declaration panel may consider any relevant information in relation to the contravention or failure of the licensee or the debt owed by the licensee, as well as matters relating to whether the person intended to be named was in control of the licensee at time. Also, in determining the appropriate restrictions or sanctions that may be imposed on the named person when issuing a declaration, the Board must consider all relevant information before it.

However, before the declaration is issued, the Board must give written notice to the affected person and afford that person the opportunity to show cause why the declaration should not be issued. As a result of this provision, Section 106 proceedings are show cause proceedings. Once the notice is given, the burden shifts on the person intended to be named to make submissions and file evidence that the declaration should not be issued and provide evidence in support of such submissions.

As Section 106 contemplates a show cause proceeding to ensure procedural fairness, the Board decided to establish two separate panels for such proceedings. As explained above, the role of the Notice panel is to determine whether a notice of the intention to name should be issued. The Notice panel considers documentary evidence and written submissions of CCG to determine if there is *prima facie* evidence of a licensee contravening or failing to comply with Board Orders or of a licensee owing a debt to the Board for suspension, abandonment, or reclamation costs and that the person intended to be named was a person directly or indirectly in control of the licensee at the time of the occurrences. If the Notice panel issues a notice, the *prima facie* evidence that was considered by the Notice panel is served on the person to be named with the notice, which informs the person to be named that he or she may make submissions and provide evidence within the timeframe specified and may request a hearing.

At this point, the Declaration panel is charged with the conduct of a show cause proceeding. Based on the submission of the person to be named, the Declaration panel determines whether a hearing is warranted. If the Declaration panel does not grant a hearing, it decides whether to issue a declaration, after considering the evidence before it from the parties and the factors set out in Section 106 of the *OGCA*. For these reasons, the Declaration panel is not limited to considering only the information contained in the notice. As described above, the Declaration

panel considers all relevant information—the Notice, the information in Attachment A to the Notice, and any submissions of the person to be named or evidence filed.

Therefore, the two panels of the Board were not established to separate the functions of prosecutor and judge, as submitted by Mr. Glover, but to ensure that the person to be named has the opportunity to make his or her case as to whether a declaration should be issued before an impartial decision maker who had not previously considered any part of the matter to avoid a reasonable apprehension of bias on the part of the person to be named. In requesting information from CCG, a party to this proceeding, the Declaration panel was seeking information relevant to the issues properly before it and was not attempting to review the decision of the Notice panel to issue the Notice.

Furthermore, the Notice states that the Board intends to issue a Declaration under Section 106 naming James W. Glover as the person directly or indirectly in control of Big Valley who has breached Board Orders and has an outstanding debt of \$51,854.81 to the Board and of \$207,419.25 to the Board to the account of the OWA. However, the Declaration panel notes that the CCG submission of January 19, 2006, formed part of Attachment A to the Notice and was served on Mr. Glover. At page 4 of this submission, CCG stated:

As previously stated, Big Valley has yet to satisfy the debt owed for the abandonment of six of its wells, as well as the penalty costs in the amount of \$51,854.81 as per Abandonment Costs Order No ACO 99-02 (**Appendix 11**).

The EUB incurred further costs abandoning Big Valley's pipelines and decommissioning batteries in response to landowner concerns. Big Valley owed \$444,660.76 plus the penalty amount to the EUB for costs incurred through decommissioning and abandonment of Big Valley properties (wells, batteries and pipelines); however, the \$444,660.76 has since been reimbursed to the EUB from the Orphan Fund (**Appendix 12**, letter of request only included, attachments referred to therein are not included). Big Valley still owes the EUB \$51,854.81 in penalty costs since the Orphan Fund is only obliged to reimburse the EUB for actual costs expended to abandon.

As of December 2005, the OWA had incurred a debt of \$4,524,300.17 abandoning, reclaiming and monitoring the Big Valley sites. This amount is in addition to the \$444,660.76 repaid to the EUB for the abandonment operations it undertook and puts the total amount owing to the account of the Orphan Fund from Big Valley at \$4,968,960.93. Of note, it is due to the fact that reclamation work on Big Valley sites is ongoing that a subsequent costs order has not been issued. As reclamation of some of the sites is ongoing further costs will continue to be incurred by the OWA for the Big Valley licensed properties. The estimated total cost to the EUB and Orphan Fund (through the OWA) to abandon and reclaim all of Big Valley's properties is expected to be over \$6,000,000.00.

The fact that the Declaration panel noted the difference in the amounts owed set out in the Notice and set out in the portion of the CCG submission cited above does not in and of itself change the case to be met by Mr. Glover. The Declaration panel requested clarification from CCG regarding the difference. Mr. Glover should have been aware of both amounts prior to filing his June 16 submission. The Declaration panel finds that the information referred to in CCG's correspondence of July 6, 2006, relates to the above-mentioned amounts and is not new information. Also, as noted above, a copy of the Declaration panel information request, as well

as subsequent correspondence and replies, were served on counsel for Mr. Glover. The Declaration panel finds that Mr. Glover was afforded procedural fairness with respect to the information out of which the Declaration panel's information requests arose and was afforded an opportunity to respond.

As a result of the above, the Declaration panel finds that the information submitted by CCG in response to the panel's information requests is relevant to the determination of whether a declaration should be issued against Mr. Glover. The Declaration panel denies Mr. Glover's request to exclude the information in question.

4 VIEWS OF DECLARATION PANEL ON ISSUANCE OF DECLARATION

The Declaration panel notes that in his submission dated June 16, 2006, and subsequent submissions, Mr. Glover did not dispute that he was a person directly or indirectly in control of Big Valley at the relevant time the above-mentioned Board Orders were issued against Big Valley, that these Orders were breached, and that Big Valley owed a debt to the Board. Mr. Glover asked the Board to consider his individual circumstances, as well as the public interest, in exercising its discretion to issue a declaration under Section 106 of the *OGCA*. More specifically, Mr. Glover sought that if the Board issued a declaration and orders restrictions, any restrictions should not, while protecting the public interest, unduly penalize him in respect of his ability to earn a living in the oil and gas industry. Also, Mr. Glover did not request a hearing so long as the case against him consisted only of the material contained in Attachment A of the Notice. Further, Mr. Glover in a letter of July 13, 2006, requested that the Declaration panel only consider the information contained in "the s.106 Notice, Appendix A to the s. 106 Notice, Mr. Glover's Affidavit sworn June 16, 2006 and the written submission submitted by Mr. Glover's counsel."

The Declaration panel finds that the information contained in the Notice and Attachment A to the Notice is not disputed by Mr. Glover. The uncontested evidence is that Mr. Glover was in control of Big Valley at the relevant time the above-mentioned Board Orders were issued against Big Valley, that Big Valley failed to comply with the Orders at the time he was in control of Big Valley, and that Big Valley has an outstanding debt owed to the Board and to the Board on account of the OWA. The amount of the outstanding debt is at issue.

4.1 Amount of Outstanding Debt of Big Valley for Costs

The Declaration panel notes that the Board issued a Cost Abandonment Order dated February 1, 1999, for \$259 274.06 respecting partial abandonment of Big Valley facilities. However, as noted above, the Board had issued in 1997 and 1998 Abandonment Orders to Big Valley in relation to 52 wells, 4 facilities, and numerous pipelines. There is no dispute that Big Valley breached these Abandonment Orders and did not abandon any of these wells, facilities, or pipelines in question.

On May 1, 1999, Big Valley was struck off the Corporate Registry because it failed to file annual returns, as required by the *Business Corporations Act*. As Mr. Glover was the only director of Big Valley, he failed to act to ensure that Big Valley continued as an active corporation. In law, the striking of a corporation from the Corporate Registry has the same effect as a dissolution of the corporation. Generally, a corporation that is struck is not considered to be a legal entity and

cannot act after the date that it was struck. However, the *Business Corporations Act* provides that a struck corporation may be revived. As a result, after May 1, 1999, Big Valley's wells, facilities, and pipelines were deemed orphans, as Big Valley was unable and previously had been unwilling to carry out its abandonment liabilities. The action of deeming the wells, facilities, and pipelines as orphans resulted in the OWA incurring the costs to suspend, abandon, and reclaim these wells, facilities, and pipelines.

The Declaration panel notes that the OWA reimbursed the Board its abandonment costs resulting from the Abandonment Costs Order and that for the last six years the OWA has continued to incur the costs of monitoring, abandoning, and reclaiming Big Valley wells, facilities, and pipelines. The costs paid by the OWA have crystallized over this period of time. This is clearly set out in the documents that constitute Attachment A in which CCG stated that the abandonment and reclamation work was ongoing and that costs to the OWA were expected to exceed \$6 million. Therefore, as of June 13, 2006, Big Valley has an outstanding debt to the Board on account of OWA of \$5 289 882.78 and to the Board of \$51 854.81. The Declaration panel is of the view that it is important to highlight that these are the actual costs arising from Big Valley's breach of the Abandonment Orders and have been paid by the OWA to address the liabilities left behind by Big Valley.

The Declaration panel finds that the conduct of Big Valley in failing to meet corporate filing requirements and its noncompliance with EUB requirements and Orders resulted in its wells, facilities, and pipelines being deemed orphans, with ensuing costs, and that this conduct must be considered when determining if it is in the public interest to issue a declaration naming Mr. Glover. The Declaration panel is of the view that the public interest is at risk if the panel discounts the costs that have been incurred by the OWA to meet the liabilities of a licensee that arose when the licensee was an active corporation.

Based on these findings, the Declaration panel has decided to issue a Declaration Naming James W. Glover Pursuant to Section 106 of the *OGCA*.

The Declaration panel notes that Mr. Glover seeks an order that will protect the public interest by limiting his activities in the industry while not unduly penalizing him in respect of his ability to earn a living in the oil and gas industry. The decision of the Declaration panel to issue a Declaration is to prevent Mr. Glover from being in control of a licensee that may breach EUB requirements or Board orders or incur abandonment costs that it cannot pay, is unwilling to pay, or is unable to pay. The Declaration panel is not convinced by Mr. Glover's submissions that the order proposed by Mr. Glover is protective of the public interest, as it would not prevent Mr. Glover from being a person in control of a licensee that may repeat the conduct of Big Valley of not meeting EUB requirements and creating liabilities. The restrictions in the Declaration aim to limit Mr. Glover's ability to conduct business with the Board and do not govern his dealings with third parties. The Declaration panel will not place a finite term on the Declaration, as Section 106 does not contemplate it and Mr. Glover has not provided any evidence in support of a five-year limit. Also the Declaration panel is of the view that the intent of Section 106 of the *OGCA* is that a Declaration should be issued for an indefinite period, to ensure that the contraventions are addressed and to prevent any future contraventions by a company controlled by the named person. The Declaration panel imposes on Mr. Glover the restrictions set out below, as authorized by Subsection 106(3) of the *OGCA*.

Accordingly, the Declaration panel orders that the Declaration included as the Appendix be issued without delay to James W. Glover.

Dated in Calgary, Alberta, on October 24, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

A. J. Berg, P.Eng.
Presiding Member

(Original signed by)

J. D. Dilay, P.Eng.
Board Member

(Original signed by)

F. Rahnama, Ph.D.
Acting Board Member

**APPENDIX DECLARATION NAMING JAMES W. GLOVER PURSUANT TO
SUBSECTION 106(3) OF THE *OIL AND GAS CONSERVATION ACT***

For the reasons set out in the decision in this matter, the Board has determined that James W. Glover is the person in control, direct or indirect, of Big Valley Energy Corporation and that Big Valley Energy Corporation has contravened EUB requirements and failed to comply with Board Orders and has an outstanding debt to the Board and to the Board on account of the Orphan Fund (OWA) while James W. Glover has been in control of this company. Therefore, the Board names James W. Glover under Section 106 of the *Oil and Gas Conservation Act (OGCA)* and places the following restrictions on him:

- 1) James W. Glover and any company directly or indirectly controlled by James W. Glover must inform the EUB that a Section 106 Declaration is in effect against James W. Glover and that he has direct or indirect control of the company applying to the Board for an identification code, licence, or approval or the transfer of a licence or approval under the *OGCA* or the *Pipeline Act*.
- 2) James W. Glover cannot act as an agent of a company as defined in the *OGCA* or the *Pipeline Act* for any company.
- 3) The EUB may refuse to consider any application from James W. Glover and any company over which that he has direct or indirect control for an identification code, licence, or approval or a transfer of a licence, or approval under the *OGCA* or the *Pipeline Act*.
- 4) If the EUB were to consider an application from James W. Glover and any company directly or indirectly controlled by James W. Glover, the EUB may require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.
- 5) James W. Glover must submit a sworn declaration by December 1, 2006, that he is not in direct or indirect control of any company that is an applicant to the EUB, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or if he is, a declaration stating the name of the company or companies and specifying the applications it has before the EUB and the EUB licences and approvals the company holds.
- 6) This declaration is in force at the date of this decision and will remain in force until Big Valley Energy Corporation has complied with the Board Orders described in the decision and rectified its contraventions or noncompliances and paid any outstanding debts owed to the Board or to the Board on account of the Orphan Well Association arising from its noncompliance with the Orders for abandonment and reclamation costs, or until the Board orders otherwise.

Dated: October 24, 2006