Decision to Issue a Declaration Naming Marc R. Dame and Murray F. Craig Pursuant to Section 106 of the *Oil and Gas Conservation Act*

Proceeding 1648308

December 20, 2011

Energy Resources Conservation Board

ENERGY RESOURCES CONSERVATION BOARD
Decision 2011 ABERCB 037: Proceeding No. 1648308

December 20, 2011

Energy Resources Conservation Board
Suite 1000, 250 – 5 Street SW
Calgary, Alberta
T2P 0R4

Telephone: 403-297-8311
Toll free: 1-855-297-8311
E-mail: infoservices@ercb.ca
Website: www.ercb.ca

CONTENTS

ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

DECISION TO ISSUE A DECLARATION NAMING MARC R. DAME AND MURRAY F. CRAIG PURSUANT TO SECTION 106 OF THE OIL AND GAS CONSERVATION ACT

2011 ABERCB 037

Proceeding No. 1648308

DECISION

[1] Having carefully considered all the evidence in this matter, the Energy Resources Conservation Board (ERCB/Board) hereby issues a Declaration under Section 106 of the *Oil and Gas Conservation Act (OGCA)* naming Marc R. Dame as a person directly in control of Legacy Petroleum Ltd. and Matrix Resources Ltd., subject to the terms and conditions set out in Appendix 3. The Board has decided that the declaration is in force as of the date of this decision and will remain in force until December 31, 2019.

[2] Having carefully considered all the evidence, the ERCB hereby issues a declaration under Section 106 of the *OGCA* naming Murray F. Craig as a person directly or indirectly in control of Legacy Petroleum Ltd., subject to the terms and conditions set out in Appendix 4. The Board has decided that the declaration is in force as of the date of this decision and will remain in force until December 31, 2016.

INTRODUCTION

Background

[3] By submission dated March 31, 2010, the Corporate Enforcement Section (CES) of the ERCB recommended to the Board that it issue a declaration under Section 106 of the *OGCA* (the March 31, 2010, CES submission) naming Marc R. Dame (Dame) and Murray F. Craig (Craig). CES based its recommendation on the facts that Legacy Petroleum Ltd. (Legacy) and Matrix Resources Ltd. (Matrix) had outstanding abandonment orders issued by the Alberta Energy and Utilities Board (EUB), and that Dame and Craig occupied positions of control in Legacy and/or Matrix when contravention of the orders occurred. The March 31, 2010, CES submission included the abandonment orders and numerous documents in support of the CES position. A summary of the abandonment orders is in Appendix 2.

The Notice Panel and the Notice Proceeding

[4] The Board appointed a single-member notice panel, J.D. Dilay, P.Eng, Board Member, to determine whether to issue a Notice of Intention to Issue a Declaration Naming Dame and a Notice of Intention to Issue a Declaration Naming Craig (collectively, "the notices"), pursuant to Section 106 of the *OGCA*.

[5] The notice panel reviewed the March 31, 2010, CES submission and attachments and found that these documents constituted prima facie evidence of contravention of the abandonment orders by Legacy and Matrix, and prima facie evidence that Dame and Craig were

persons directly or indirectly in control of Legacy and/or Matrix when the contraventions occurred.

[6] Based on these findings, on April 19, 2010, the notice panel issued a Notice of Intention to Issue a Declaration Naming Dame, in accordance with Section 106 of the *OGCA*. On Wednesday, April 21, 2010, the notice of intention, along with the March 31, 2010, CES submission and attachments, was served on Dame. On April 19, 2010, the notice panel also issued a Notice of Intention to Issue a Declaration Naming Craig, in accordance with Section 106 of the *OGCA*. On Tuesday, April 27, 2010, the notice of intention, along with the March 31, 2010, CES submission and attachments, was served on Craig.

The Declaration Panel and Declaration Proceeding

[7] In response to the notifications to show cause as to why they should not be named as set out in the notices, Craig and Dame filed separate submissions on May 17, 2010, and June 29, 2010, respectively, each objecting to the declaration against him. The Board considered the response submissions from Dame and Craig to the notices and decided to hold a show cause hearing to make a determination on the matters related to the possible issuance of the ERCB's declarations. Both Dame and Craig would need to show cause as to why a declaration should not be issued.

[8] The Board appointed the declaration panel, composed of G. Eynon, P.Geol. (presiding member) and Board Members B.T. McManus, Q.C. and T.L. Watson, P.Eng., , to conduct a hearing into whether to issue declarations naming Dame and Craig under Section 106 of the *OGCA*.

[9] On July 30, 2010, the ERCB scheduled a public hearing as part of Proceeding No. 1648308 (Proceeding), to commence on September 28, 2010. On August 5, 2010, the Board received a request from Dame to reschedule the hearing. The Board considered the request and on August 25, 2010, issued a notice of rescheduling to hold a hearing at the ERCB offices in Calgary, Alberta, beginning January 18, 2011. Those who appeared at the hearing are listed in Appendix 1. The hearing opened on that date and adjourned on January 19, 2011, to permit the parties to prepare written arguments.

[10] The parties filed written arguments on February 11, 2011. The Board, by letter, requested and received further information from the parties. In response to requests from the Board made on July 8, 2011, Craig stated that he had no further information to provide, and on August 12, 2011, Dame said he had no further information to provide. As a result, the declaration panel closed the hearing on August 12, 2011.

ISSUES

[11] To name a person, the Board must find that Section 106 (1) of the *OGCA* is met. This section reads as follows:

> 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,
>
> 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 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 to failure to pay.

[12] The declaration panel considers the issues respecting the proceeding to be

- contravention of or failure to comply with Board orders,
- control of a company, and
- the public interest.

[13] In reaching the determinations contained in this decision, the declaration panel has considered all relevant materials constituting the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to help the reader understand the declaration panel's reasoning relating to a particular matter and should not be taken as an indication that the declaration panel did not consider all relevant portions of the record with respect to that matter.

[14] The panel, in writing its decision, has separated much of its discussion of the evidence into sub-titled sections. However, the panel recognizes that the evidence frequently overlaps these somewhat arbitrary categories. This separation is purely for ease of reading and understanding and should not be taken as in any way meaning that the evidence, reasoning, and findings are to be interpreted completely separately; the evidence has been considered in its totality.

CONTRAVENTION OR FAILURE TO COMPLY BY LEGACY

Evidence

1995 Abandonment Orders

[15] From August 1995 to November 1998, the Alberta Energy and Utilities Board (EUB) (now the ERCB) issued 91 abandonment orders to Legacy for the loss of the right to produce as a result of the termination of Crown mineral leases.

[16] On August 11, 1995, 14 well abandonment orders were issued to Legacy. The orders required that the wells be abandoned on or before October 10, 1995. CES agreed with Dame that six of the well abandonment orders were complied with in 1996, but submitted that eight orders remained outstanding. CES issued 77 abandonment orders to Legacy in late 1998, which it submits were not complied with by Legacy. For the purpose of substantiating its recommendation of the Section 106 declaration under the *OGCA*, CES relied upon the fact that Legacy failed to comply with 85 abandonment orders issued by the EUB prior to going into bankruptcy on January 19, 1999. A detailed list of the abandonment orders issued to Legacy, including date of issuance and deadlines to abandon, is set out in Appendix 2.

[17] In a letter dated March 20, 1996, from Hal Knox of the EUB to Dame (the Knox letter), Knox confirmed his understanding that six wells subject to abandonment orders had been abandoned by Legacy. Knox acknowledged receipt of payment for abandonment security trust deposits for five wells and receipt of copies of a Petroleum and Natural Gas Rights Conveyance Agreement with Beau Canada showing the acquisition of mineral rights by Legacy for six wells (the Beau Canada wells). The Knox letter further stated that, as a result, the EUB was prepared to rescind the abandonment orders for the Beau Canada wells and closure orders for certain unrelated wells. The following four of the Beau Canada wells relate to abandonment orders being considered in this proceeding: Legal Subdivision (LSD) 16, Section 6, Township 12, Range 1, West of the 4th Meridian LSD (16-6 well), LSD 13-27-12-1W4M (13-27 well), LSD 5-28-12-1W4M (5-28 well) and LSD 6-4-12-2W4M (6-4 well).

[18] The Knox letter also identified five wells still under abandonment orders at the time: at LSD 10-28-39-15W4M (10-28 well), LSD 10-32-11-2W4M (10-32 well), LSD 10-33-12-1W4M (10-33 well), LSD 6-9-12-2W4M (6-9 well), and LSD 7-12-12-2W4M (7-12 well). Knox noted that Legacy had advised it would be abandoning the 10-28 well and would be asking the Department of Energy (DOE) to re-post the lands for the other wells in order for Legacy to reacquire the mineral rights. Legacy received an extension from the EUB to August 15, 1996 to complete these actions. However, if Legacy did not reacquire the mineral rights for the four wells, it was to abandon them immediately.

[19] The Knox letter also referenced Abandonment Order AD 95-97, issued to Legacy on December 12, 1995, requiring that it abandon certain pipelines on or before February 5, 1996, and asked Legacy to provide the EUB with information about those abandoned pipelines. During the proceeding, CES submitted that Legacy did not comply with Abandonment Order AD 95-97 until March 12, 1998, when the required pipeline information was submitted by Matrix.

[20] Knox further wrote that the EUB was pleased with Legacy's efforts and progress to move back into compliance; however, it remained concerned that the EUB had to issue the orders in the first place. With the objective of ensuring "lasting improvements" in its handling of mineral expiries and abandonment liabilities associated with its properties, Knox requested Legacy to provide an overview, by May 30, 1996, of how it intended to ensure compliance and address its abandonment liabilities.

[21] In March 1996, Legacy and EUB staff member Ron Paulson discussed the need to "link" 12 wells through the DOE; subsequently on April 3 1996, Legacy asked the DOE to link 12 identified wells to agreements.

[22] On August 15, 1996, Paulson sent an internal e-mail to EUB staff saying he had spoken to Dame that day about three compliance items that EUB staff had confirmed remained outstanding. The three items were: well abandonment orders relating to the 10-28 well, the 10-32 well, the 10-33 well, the 6-9 well, and the 7-12 well; abandonment orders relating to various pipelines; and a submission about how Legacy would address the "lasting improvement" with respect to compliance with Board orders.

[23] Paulson's e-mail also stated that Dame had confirmed to him that all outstanding compliance issues had been resolved and that he (Paulson) requested that EUB staff follow up to confirm Dame's assertion. EUB staff advised in an e-mail later that same day that no downhole reports were received from the 10-28 well abandonment and no valid mineral leases were found

for the 10-32 well and the 7-12 well, but that there were valid leases for the 6-9 well and the 10-33 well. Handwritten notes made on Paulson's e-mail, including notation that the 6-9 well and the 10-33 well had not been linked, reflected this information.

[24] By letter dated January 30, 1997, Paulson advised Dame of several remaining compliance matters that Legacy had not addressed: reports for the abandonment of the 10-28 well were still outstanding; there was no valid Crown lease on record for the 10-32 well and the 7-12 well and therefore the abandonment orders remained in breach; Legacy had not complied with or responded to the EUB regarding the status of each pipeline subject to Abandonment Order AD 95-97; and Legacy had not met the requirement to address how it would create a "lasting improvement" in its compliance record. Paulson noted in his letter that Legacy had been given an extension until August 15, 1996, to comply with the abandonment orders. Paulson also noted that Dame had previously mentioned abandoning an additional 10 wells and creating a $200,000 abandonment fund. Paulson advised that he had not recently checked these items, so recent actions by Legacy may not have been acknowledged in the letter.

[25] By fax dated July 31, 1997, Paulson advised Legacy's Gail Beck of 16 abandonment orders that remained outstanding. Some of the identified outstanding orders related to wells that were to be rescinded as per the Knox letter, including the Beau Canada wells and wells that had been abandoned. The 10-32 well and 7-12 well were included in the list of outstanding abandonment orders, but the 10-28 well was not.

[26] According to Dame's testimony and chronology, he believed that all compliance issues were addressed between March and June 1997. The EUB raised concerns about outstanding abandonment orders in a letter dated March 17, 1998, from EUB staff member Valerie Vogt (Vogt) of CES to Dame, in which she advised, amongst other things, that there were 11 outstanding well abandonment orders due to loss of mineral rights and one outstanding abandonment order related to various pipelines.

[27] Dame maintained, in letters to Vogt dated March 19 and 20, 1998, that as of the end of 1996, there were no outstanding compliance issues with regard to either Legacy or Matrix. Dame provided a status report schedule noting, among other things, that the 10-28 well and the pipelines had been abandoned and that the other four wells (10-32, 7-12, 10-33, and 6-9) had active mineral agreements.

[28] CES submitted that, contrary to the Knox letter, no abandonment orders were rescinded. The abandonment orders remained outstanding because certain wells were not linked by the DOE, certain required information about Legacy's pipelines had not been received, and no "lasting improvement" had been submitted by Legacy. As outlined above, the pipeline information was provided by Dame in March 1998.

[29] With regard to the statement of "lasting improvement" requirement, Dame submitted that in letters to the EUB sent on June 1 and November 11, 1998, he provided details of Matrix's plans to address unfunded abandonment liabilities and details of an optimization and production enhancement program that would decrease Matrix's abandonment liabilities in the near term. Although CES referred to a "lasting improvement plan" and Dame to an "optimization and production enhancement program," Dame submitted that the parties were talking about the same thing and that Dame had met his commitments in this regard.

[30] CES submitted that full compliance with respect to the mineral rights expiry issue required that the licensee either abandon the properties or reacquire the mineral rights. CES provided an e-mail dated March 14, 2011, in which the Department of Energy (DOE) stated that a historical records search showed that the mineral agreements for the 10-33 well and the 6-9 well were not linked by the DOE to the wellbores, and that active mineral agreements had not been tied to the 10-32 and 7-12 wells since September 27, 1992. CES further provided a letter dated January 15, 1999, in which the DOE outlined that the requirement to have a wellbore linked to a mineral agreement came from Section 33(1) of the *Mines and Minerals Act*, which at the time stated that, after mineral expiry, ownership of a wellbore vests with the Crown until it is linked by the DOE. CES explained that this situation resulted in the licensee no longer holding the right to the use of the wellbore until it was linked to a Crown lease by the DOE or until the licensee changed the well, through approval, to other purposes. CES said that Section 16 of the *OGCA* requires that the licensee holds the right to produce from a well and, therefore, that a licensee would not be considered to have the right to use the well unless it were linked to an active Crown mineral agreement. CES submitted that Legacy was, therefore, in noncompliance because it did not have the right to produce the minerals.

[31] Dame stated that, from the outset, Legacy had tried to meet its responsibilities regarding linking, as shown by Beck's April 3, 1996, letter to the DOE, and that, at the very least, the process to verify linking was not clear.

[32] Dame relied on his March 20, 1998, letter, in which he advised that both the 10-32 well and the 7-12 well had their abandonment orders lifted and that the wells were active and rentals had been paid or were coming due. Dame pointed to the e-mail from Paulson to EUB staff dated August 15, 1996, to support his position that the mineral rights were reacquired for the wells associated with the 1995 abandonment orders. Dame submitted that the Paulson e-mail stated that he (Paulson) had been in contact with Dame regarding the Knox letter and had confirmed that all but three items were outstanding. Paulson also noted that Dame believed Legacy had reacquired the mineral rights for four wells and that the 10-28 well was abandoned. Dame noted Paulson's statement that the abandonment orders for the four wells would need to be rescinded and requested that, in order to do so, EUB staff conduct a search to confirm Dame's assertion. Dame submitted that the EUB staff search was only a quick one, and that it did not prove that valid mineral leases did not, in fact, exist at that time. Similarly, the Crown's historical search only found that no mineral agreement was tied to a well, not that no mineral agreement existed.

[33] With regard to the 10-32 and 7-12 wells, Dame further submitted that land searches through Digitech Information Services Ltd. (Digitech), performed in December 1996 for a "Reserve and Economic Evaluation: Oil and Gas Properties" for Matrix Resources Ltd., show these wells as "Active". The land searches list specific well numbers associated with specific government lease numbers. Dame advised that these land searches indicated that each of the wells associated with an abandonment order, including the 10-32 well and the 7-12 well, was related to a then current, valid, and subsisting mineral lease that was shown as having unexpired terms.

[34] With respect to the "linking" issue, Dame argued that while CES stated it had no information to indicate the wells were linked, the Digitech searches suggest they were. Dame advised that Digitech data was widely available and that CES could readily have confirmed at the time whether the mineral interests had been reacquired or not. He argued that the Digitech

searches should be preferred over the CES evidence, as CES evidence is either inconclusive or was provided years after the fact. It was Dame's position that the abandonment orders for these two wells should have been rescinded, as suggested in Paulson's e-mail dated August 15, 1996.

Transfer Application and 1998 Abandonment Orders

[35] From 1996 through 1999, Dame worked to transfer Legacy's assets to Matrix. Dame submitted that Alberta Treasury had requested that Matrix take over Legacy's properties as it was concerned about Legacy's financial ability to meet its property obligations and about the orphan well fund incurring huge costs to abandon the Legacy fields. Dame maintained that it was Matrix's plan to acquire the properties and revitalize them in accordance with its optimization and stabilization program. Dame argued that plans for Legacy were provided consistently to the EUB and that, at the commencement of meetings between Legacy and EUB staff, the parties were working toward a stabilization plan for the properties to ensure the long-term viability of the wells, including mutually acceptable amounts for abandonment deposits.

[36] On August 31, 1996, Legacy signed over the petroleum and natural gas rights for its properties to 693040 Alberta Ltd., a company owned by Dame. Those rights were transferred to 660492 Alberta Ltd., another company owned by Dame, the next day (September 1, 1996) and were subsequently transferred to Matrix the very same day.

[37] Dame contended that the EUB supported the idea that a new party take over Legacy's properties and offered to cooperate with Matrix toward this objective. Matrix, however, did not contact the EUB until January 1997 to begin the process of transferring Legacy's well licences.

[38] Matrix eventually applied for the transfers of well licences and pipeline, and facility approvals from Legacy to Matrix on July 10, 1997. According to Dame, one of the key requirements for the transfer applications to be approved by the EUB was for Matrix, in its abandonment program for the Legacy wells, to pay an abandonment trust deposit. In a letter dated March 25, 1997, from Ken Hunt (the Hunt letter) of the EUB's Liability Management Section (LMS) to Matrix, Hunt said an abandonment trust deposit for $30 000 was required. The abandonment trust deposit was a condition for the transfer of the licences from "Legacy to Newbridge."[1] The deposit and a first-time licensee fee of $10 000 were conditions for approval of an application to transfer wells. The abandonment trust deposit for each well was refundable with interest when a well was abandoned, transferred, or placed back on production for six consecutive months.

[39] On July 21 and 24, 1997, respectively, Alberta Treasury and the Special Areas Board filed objections to the transfer application. According to Dame's chronology, Tashi Sheka of the EUB's LMS sent a letter to Matrix dated September 12, 1997, advising that the objections to the transfer application would need to be resolved before the transfer application could be completed. Resolution could occur through a voluntary settlement between Matrix and the objectors or, should that fail, with a Board decision using the EUB's formal process.

[40] A subsequent letter from Sheka, dated January 16, 1998, noted that Matrix had not satisfactorily resolved the objections to the well licence transfer application and that, therefore, a debt action had been initiated by the objectors. Matrix also had failed to address the Hunt Letter

[1] Newbridge was a junior investment company started by Dame to raise money for Matrix to fund the project.

requesting establishment of an abandonment trust deposit, and Sheka advised that the EUB no longer considered the $30 000 deposit to be applicable. An updated abandonment deposit amount accurately reflecting current economic production rates would be determined. If Matrix had intended to pursue the well licence transfer application, the EUB would have needed to receive confirmation on or before February 18, 1998, that the issues with the objectors had been resolved and that Matrix intended to establish an abandonment trust deposit as a criterion for approval of this transfer application. Failure to comply with this deadline would result in the transfer application being closed and the filing fees being kept.

[41] According to Dame's chronology, Matrix responded on February 12, 1998, stating that discussions were continuing with the objectors and that it would be inappropriate for the EUB to close the transfer application and keep the filing fees.

[42] A February 23, 1998, letter to Matrix from Vogt noted that although it was uncertain what deposit amount the EUB would require from Matrix, it would be at least 10 times the original amount, or about $300 000. The letter indicated that, as a result of the outstanding objections to the transfer application, the EUB was unable to routinely grant the application. The letter also said that Matrix had been operating the wells for a number of months without appearing to move forward on the application requirements and that the licences remained in the name of Legacy, which no longer had the right to produce the wells. Vogt advised that the EUB was no longer prepared to continue to allow Matrix to produce the wells under those conditions and that, should Matrix not satisfy the objectors and indicate its willingness to pay the revised abandonment deposit by February 27, 1998, the EUB would close the transfer application, keep the transfer fees, and issue a closure order for the Legacy wells.

[43] CES explained that from September 1, 1996, the licences had been held by Legacy but that Matrix had owned the mineral rights as a result of the transfer from Legacy, and that Legacy, therefore, did not have a working interest in the wells.

[44] On March 2, 1998, the EUB issued Closure Order C770 for the Legacy licensed wells because the licensee of record, Legacy, did not hold any working interest in the wells and did not satisfy the EUB that it had a valid entitlement to the right to produce the wells.

[45] According to his chronology, by letter dated March 12, 1998, Dame objected to the closure order and provided a summary of the history of the properties including Matrix's involvement. The summary outlined the agreement with the EUB on the abandonment issues noted in the Hunt letter. Dame expressed his belief that all outstanding compliance issues had been satisfied.

[46] By letter dated March 17, 1998, Vogt responded explaining, among other things, that the EUB considered the closure order to have been appropriately issued and that the security trust deposit amount had been recalculated according to EUB requirements. Vogt also requested information about outstanding abandonment orders.

[47] After a meeting with Vogt on March 18, 1998, regarding the closure order and the well licence transfers, Dame sent a letter to the EUB the following day on behalf of Matrix restating his belief that all compliance issues had been met and that no deficiencies remained. He asserted that Closure Order C770 had been issued in error and that the order should be immediately lifted. Counsel for Matrix subsequently sent a letter to the EUB requesting a review of the decision to issue Closure Order C770.

[48] Dame testified that there was no mention of outstanding compliance issues in the letters from the EUB regarding the transfer application, and that there had been no correspondence about unresolved compliance or abandonment orders submitted by any of the parties since the initial meeting with EUB staff in early 1997. Dame noted his letter to the EUB dated March 20, 1998, which included a status report of compliance orders, indicating that he believed there had been no outstanding compliance issues with regard to Legacy or Matrix since the end of 1996. Dame argued, therefore, that the noncompliance must have been rectified, either through the issuance or by Legacy's re-acquisition of mineral rights for the lands in 1996, and that the abandonment orders should have been rescinded.

[49] On March 23, 1998, the EUB replied to the letter from Matrix's counsel that it had considered Matrix's requests and it had decided to schedule a public hearing of the transfer application. The EUB explained that Closure Order C770 would remain in place pending the hearing, but that the transfer application would be reinstated. The hearing was postponed twice, once at the request of the EUB and later at the request of Matrix (Dame), and was finally scheduled to begin on January 20, 1999.

[50] In October and November 1998, the EUB issued a series of abandonment orders.

- On October 16, 1998, 58 well abandonment orders, AD 98-416 through AD 98- 473, were issued to Legacy for not having the right to produce. These orders were to be complied with on or before December 15, 1998.

- On October 23, 1998, three well abandonment orders, AD 98-476 through AD 98-478, were issued to Legacy for not having the right to produce. These orders were to be complied with on or before December 22, 1998.

- On November 13, 1998, 13 well abandonment orders, AD 98-485 through AD 98-497, were issued to Legacy for not having the right to produce. These orders were to be complied with on or before January 12, 1999.

- On November 20, 1998, three well abandonments orders, AD 98-506, AD98-507 and AD 98-509 were issued to Legacy for not having the right to produce. These orders were to be complied with on or before January 19, 1999.

[51] Included in the well abandonment orders issued in 1998 were new orders issued for the 6-9 well, the 10-33 well, and some of the Beau Canada wells—namely, the 5-28 well, the 13-27 well and the 16-6 well. These same wells had abandonment orders issued against them in 1995. No abandonment orders were issued in 1998 against the 7-12 well and the 10-32 well following the original orders of 1995. CES maintained this indicated that the minerals had never been reacquired. With respect to the 6-4 well, CES submitted that there was no record of a 1998 abandonment order being issued for the well, although it said one should have been issued.

[52] CES provided information, supplied by the DOE to the EUB for the hearing into the transfer application, showing that Legacy's various mineral rights agreements with the Crown had been cancelled because of nonpayment of rent in 1998. This led to the issuance of the 1998 abandonment orders to Legacy.

[53] On January 19, 1999, Legacy was petitioned into bankruptcy and KPMG Inc. was appointed the trustee for Legacy. When the EUB hearing opened January 20, 1999, the trustee advised the EUB panel that Legacy had been petitioned into bankruptcy the previous day, and the trustee requested that no properties be transferred from Legacy. As a result, the EUB panel cancelled the hearing.

[54] Craig testified that no abandonment orders were issued to Legacy during the time he was there.

Analysis and Findings

[55] The declaration panel finds that Legacy was the licensee of the wells listed in Appendix 2, according to the records of the EUB. In their submissions, neither Dame nor Craig disputed that the wells subject to the 85 abandonment orders were licensed to Legacy.

[56] The CES application under Section 106 of the *ERCA* deals with contravention of orders issued by the EUB. The declaration panel accepts that a contravention occurs when a licensee, approval holder, or working interest participant fails to comply with a Board order by the date set by the EUB.

1995 Abandonment Orders

[57] With regard to the 14 abandonment orders issued in 1995, the declaration panel understands that Legacy could have complied with these orders by abandoning the wells or by reacquiring the mineral rights. The declaration panel accepts the agreed position of the parties that six abandonment orders were complied with by downhole abandonment. With regard to the abandonment orders for wells 6-4, 13-27, 16-6, and 5-28, the declaration panel finds that Legacy complied with these abandonment orders through the transfer of mineral rights from Beau Canada to Legacy.

[58] With respect to the remaining four wells: 10-32-11-2W4M, 10-33-12-1W4M, 6-9-12-2W4M, and 7-12-12-2W4M, the declaration panel notes correspondence back and forth between CES and Legacy about whether the orders related to these wells were complied with, and competing evidence submitted in this hearing supports both compliance with and contravention of these orders.

[59] Both Dame and CES filed evidence indicating that Legacy was working toward compliance with the abandonment orders as stated in the Knox letter. The declaration panel notes that Paulson's letter of January 30, 1997, stated that all but three issues remained outstanding—the orders for the 10-32 and 7-12 wells and the requirement for a "lasting improvement" statement—and that the orders should be rescinded once confirmation of compliance was obtained. However, in subsequent correspondence, EUB staff outlined more than the three items as outstanding; for example, Paulson's letter of July 31, 1997, lists several additional wells that had outstanding abandonment orders.

[60] The declaration panel notes that the evidence explains neither the discrepancies in the EUB correspondence nor why CES was inconsistent regarding the status of compliance with abandonment orders. The declaration panel also notes that while the petroleum and natural gas agreement between Beau Canada and Legacy was supplied to the EUB in 1996, the EUB

continued to request this information in 1997 and 1998. The panel finds some inconsistency on the part of EUB staff with respect to which orders were outstanding at various times.

[61] The declaration panel notes that Dame spoke with the EUB about outstanding compliance items on August 15, 1996, and that shortly thereafter the EUB conducted a search which found that two wells, the 7-12 well and the 10-32 well, did not have valid crown mineral leases. Although Dame's evidence, including the Digitech reports, could be interpreted to indicate that Legacy reacquired these mineral rights, the declaration panel is persuaded by CES documentary evidence from 1996, and by records from the DOE (the mineral owner and a third party to this application), that Legacy did not reacquire these mineral rights after they expired in 1992. Finally, the declaration panel notes that no further abandonment orders were issued for the 7-12 well and the 10-32 well for loss of mineral rights. Based on the foregoing, the declaration panel finds it reasonable to conclude that the rights were not reacquired and Legacy did not comply with the abandonment orders issued against the wells.

[62] The declaration panel notes that, according to an internal e-mail dated March 27, 1996, regarding linking crown mineral leases to wells, Paulson advised Beck to link 12 wells, which Legacy did on April 3, 1996. There is no documentary evidence suggesting that the EUB made any further requests for Legacy to link any other wells to achieve compliance, even though the handwritten notes on Paulson's e-mail suggest that the EUB was aware of this issue. Furthermore, there was no mention of needing to link these wells in Paulson's January 30, 1997, letter outlining the outstanding compliance issues. Finally, the declaration panel notes that new abandonment orders were issued in 1998 for these wells, supporting the conclusion that Legacy had reacquired these rights and lost them due to non-payment of surface rentals. In these particular circumstances, the declaration panel is prepared to find that Legacy complied with the abandonment orders relating to the 10-33 well and the 6-9 well.

[63] With respect to a statement of "lasting improvement" that CES submits Legacy was required to complete before any of the abandonment orders could be rescinded, as outlined in the Knox letter, the declaration panel notes that Knox wrote, "you are requested to provide an overview of how Legacy intends to ensure compliance and address its abandonment liabilities." The declaration panel notes that the abandonment orders do not contain a specific requirement to file a statement of "lasting improvement." The declaration panel further notes that the wording used by Knox could have been construed as a request rather than a requirement, and as such might not have been evident as an order of the EUB for the purposes of Section 106 of the *OGCA*.

[64] For the reasons given above, the declaration panel finds that Legacy contravened and failed to comply with the following two 1995 abandonment orders: AD 95-233 issued for the 7-12 well and AD 95-245 issued for the 10-32 well.

1998 Abandonment Orders

[65] The declaration panel notes that the 1998 abandonment orders are additional orders issued to Legacy after March 1998 but before its bankruptcy. The 77 orders were issued for the loss of the right to produce for contravening the *Oil and Gas Conservation Act*. The declaration panel understands that the right to produce was lost when the DOE cancelled Legacy's mineral rights for non-payment of rent.

[66] The declaration panel notes that Dame did not provide evidence in support of Legacy's compliance with the 1998 abandonment orders. While it understands that Dame took the position that the closure order had serious financial (cash flow) consequences for Legacy and its restructuring plan, the declaration panel finds that position does not justify non-compliance with the orders.

[67] The declaration panel notes that, as a result of objections to the transfer application, the EUB scheduled a public hearing at which any outstanding deficiencies, including any outstanding 1995 abandonment orders and the issuance of Closure Order C770, were to be reviewed. The declaration panel notes that Legacy took no steps to comply with the 1998 abandonment orders while waiting for the hearing to commence. The options available to Legacy were to either abandon the wells as required by the orders, reacquire the mineral rights for the wells, or, as a minimum, ask the EUB for an extension of the 1998 abandonment orders until after the hearing decision was issued. The fact that Legacy chose to do nothing is troubling to the declaration panel, especially since the EUB had previously given Legacy an extension of the 1995 abandonment orders and Legacy knew that seeking an extension was a viable option. The fact that Legacy took no steps following the issuance of the abandonment orders shows a blatant disregard of EUB orders.

[68] The declaration panel finds that Legacy contravened and failed to comply with all of the 1998 abandonment orders outlined in Appendix 2.

CONTRAVENTION OR FAILURE TO COMPLY BY MATRIX

Background

[69] In June 1996, Matrix was registered as 700211 Alberta Ltd. The name of the company changed to Matrix Resources Ltd. in August 1996. The company applied for and received an ERCB business code in 1997, which allowed it to hold EUB licences.

[70] In October 1997, Matrix acquired licences for two wells, located at 14-3-22-5W4 (14-3 well) and 6-3-22-5W4 (6-3 well), through a transfer from Ranchmen's Resources Ltd.

[71] Matrix was struck from the Alberta Corporate Registry on December 1, 1999, for failing to file annual returns. The company was revived on October 20, 2006, only to be struck from the Alberta Corporate Registry once again on December 2, 2008, again for failing to file annual returns.

Evidence

[72] The 14-3 well was ordered to be abandoned by Abandonment Order AD 99-49 on April 20, 1999, for failure to pay the 1997 abandonment fund levy of $125. AD 99-49 was to be complied with on or before June 21, 1999. Subsequent orders AD 2000-32 and AD 2000-33 were also issued for the 14-3 well on March 15, 2000, after Matrix lost the right to produce because its Crown mineral leases had expired and because it failed to provide the security trust deposit for the well. AD 2000-32 and AD 2000-33 were to be complied with on or before May 16, 2000. CES advised that the Orphan Well Association (OWA) ultimately accepted the 14-3 well for abandonment and reclamation.

[73] These two wells were acquired by Matrix on December 27, 1996, as part of an overall business plan that included the acquisition of strategic assets located in the same area as the Legacy wells. Dame argued that Matrix would not have acquired these wells if it did not believe it could also acquire the Legacy wells, as it would have made no business sense to have ownership in two isolated wells.

[74] Dame submitted that the notice to abandon was issued on February 11, 1999, about three weeks after the receiving order for the bankruptcy of Legacy was granted and received by the EUB. Dame said that the timing is significant given that the EUB understood the relationship between Legacy and Matrix.

[75] Craig did not provide submissions on contraventions and the failure to comply with orders by Matrix.

Analysis and Findings

[76] Dame does not dispute that the 14-3 well, which was subject to Abandonment Orders 99-49, 2000-32, and 2000-33, was licensed to Matrix. Based on the evidence, the declaration panel finds that Matrix was the licensee of the 14-3 well.

[77] The declaration panel notes that Dame submitted no evidence that Matrix ever complied with the three orders.

[78] The declaration panel notes that Matrix acquired the 14-3 well in order to complete the restructuring plan for Legacy. The abandonment orders were issued in 1999, at a time when Dame knew that Legacy was bankrupt and that Legacy's well licences would not be transferred to Matrix. Given this situation, the only course of action available to Matrix to bring it into compliance with the orders would have been either to abandon the well or re-acquire the mineral rights and pay both a security trust deposit and the outstanding fund levy.

[79] Based on the evidence, the declaration panel finds that Matrix did nothing to bring itself into compliance with the orders. To the declaration panel this exhibits a blatant disregard of Board orders by Matrix.

[80] The declaration panel finds that Matrix contravened and failed to comply with Abandonment Orders 99-49, 2000-32, and 2000-33.

CONTROL OF LEGACY

Definition of Control

[81] The requirement for control is set out in the latter part of Section 106(1) of the *OGCA*:

> 106(1**)** …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. (underlining added)

[82] All three parties relied on *Decision 2000-51: South Alberta Energy Corp., Greg Justice, 693040 Alberta Ltd. and Marc Dame, Review of Abandonment Cost Order No. ACO 98-1* (SAEC decision) as articulating the test that the declaration panel should use when determining control under Section 106 of the *OGCA*. The SAEC decision reads,

> Real, effective, and practical control over a company's business affairs will amount to control as contemplated in Section 20.1 and may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by a company. Each case must be reviewed on its own facts and circumstances in order to determine the entity effectively exercising this authority.

[83] This test was applied in *Decision 2006-006: Decision to Issue a Declaration Naming Richard Yu* and *Decision 2007-083: Decision to Issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois.* CES argued that in both these decisions the Board did not accept the evidence of the individuals that they merely held a consultant or caretaker role in the corporation or were only there to assist in restructuring or refinancing.

[84] Dame submitted that the underlying logic of the ERCB's findings in the SAEC decision was sufficient to establish control and that those indicia should be used by the declaration panel. Dame further submitted that the ERCB would have arrived at the same decision in the SAEC decision regardless of the existence of Section 20.1 of the *OGCA* (now Section 106), which at that time referenced Section 2(2) of the *Alberta Business Corporations Act* (*ABCA*), which reads,

> **(2)** For the purposes of this Act, a body corporate is controlled by a person if
>
> (a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person, and
>
> (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

Dame submitted that the declaration panel should follow the judicial principle of *stare decisis*[2] and adopt the reasoning of the SAEC decision in this proceeding.

[85] Dame submitted that shareholding is the only test in determining "control" of a corporation, as directors derive their authority from the shareholders, and the officers derive their authority to manage the corporation from the directors. Dame argued that Section 2(2) of the *ABCA* is a statement of pervading corporate law principles on the issue of "control," and that it should be taken into account when considering the issue of "control." Dame submitted that at no time did he own any shares in Legacy, citing as the reason the fact that the company was subject to a cease trade order.

[86] CES argued that shareholding is not necessary to a finding under Section 106. CES further noted that Section 20.1 was fully repealed, including its reference to Section 2(2) of the *ABCA* (with its reference to shareholding), when the *OGCA* was amended to add Section 106. Accordingly, Section 2(2) is neither applicable nor relevant to the interpretation of "control." Section 106 lists several positions that a person in control might hold, and shareholder is absent

[2] *Stare decisis* [Latin: let the decision stand] Refers to the policy of courts to abide by or adhere to principles established by decisions in earlier cases, unless they contravene the ordinary principles of justice.

from that list. While the legislation sets out who those persons might be (directors, officers, agents), it also clearly and expressly includes "other persons who, in the Board's opinion, were directly or indirectly in control of the company" at the time of the default.

[87] CES contended that Section 106 requires the Board to identify who, in a very real, practical way, made decisions on behalf of the company at the time of default. It expressly contemplates a de facto test. CES noted that de facto control was distinguished from de jure (legal) control in the case of *A. Zimet Ltd. (Trustee of) v. Woodbine Summit Ltd*.[3] (*Zimet*), a decision of the Ontario Supreme Court - High Court of Justice In Bankruptcy:

> … *de facto c*ontrol can arise in many ways… *De facto* control is not necessarily dependent upon share ownership or upon powers derived from share ownership. It can arise as a result of family or personal influence of a benign sort or, on the other hand, from fear of reprisals, or from extortion or blackmail, among other causes… a conception of *de facto* control as control arising only directly or indirectly from ownership of shares or from control based on contractual or trust provisions in turn based on such ownership… is much closer to the meaning of de jure control. *De facto* control could arise from many things, including extraneous factors and is in that sense an open-ended concept.
>
> The essence of *de facto* control is that it does not depend upon legal control of the majority of votes, where "legal" control means control based on or derived from ownership of a majority of the voting shares, or, more accurately, of shares carrying a majority of the total votes. [Para. 51]

[88] Dame argued that *Zimet*, as relied upon by CES in support of its position that control of a corporation can be de facto*,* is not binding in Alberta, that the relevant portions of *Zimet* are *obiter dicta*[4] and that, in any case, those portions involved trust indentures.

[89] Dame referenced the decision in *Harvard International Resources Ltd. v. Alberta (Provincial Treasure)*, 1992 CanLII 6199 (*Harvard*), and the excerpt in *Harvard* from the Supreme Court in *R. v. Imperial General Properties (1985) 2 S.C.R. 288*, and argued that, for courts to find the existence of de facto control, there must exist, outside the incorporating or "constating" documents and bylaws of a company, a separate agreement and shareholding. Dame argued that there was no evidence that either of these two components were present. Dame further argued that the limitations on de facto control, as outlined in *Harvard,* limit the comments in *Zimet* about "fear of reprisals, extortion or blackmail." Dame submitted that *Zimet* could only make sense in the context of a contractual arrangement where there was evidence of shareholding. Otherwise, a person who has no connection with a company and who threatens or extorts a shareholder could be considered a person who "controls" a company.

[90] Dame stated some general principles of the role of the board of directors and officers of a company, and argued that there was a distinction between the concepts of "control" and "to manage." Dame submitted that management's responsibility is "to manage" the affairs of the corporation in conformity with the instructions of the board of directors. A board reviews and approves major strategies and then charges management with the responsibility to execute the strategy. Further, management is answerable to the board of directors, and a board has the power to "hire and fire" management. Dame submitted that CES does not dispute that Dame managed Legacy and was authorized by its board to manage the business and finances of the company and

[3] (1986) 31 B.L.R. 277 (S.C. Ont.)
[4] *obiter dicta* [Latin: said in passing] An observation on a matter not specifically before the court or not necessary to determining the issue.

dispose of the assets. Dame argued that CES failed to cite even one example of "influence" that Dame exerted over his fellow directors. Dame submitted that he was only one of six directors at the time the restructuring plan for Legacy was presented by management and approved by its board; and that one of the other directors was Murray Craig.

[91] Dame submitted that, in a corporate setting, ultimate control resides with the members of the board of directors of a company who hold their offices at the pleasure of the shareholders of the company. Dame argued that, unless specific restrictions or powers are set out in the incorporating documents or the bylaws of the company, all directors of a company share co-equal and co-extensive powers. Dame further submitted that no one director exercises greater power than his fellow directors, although, within the dynamics of the board, even when one individual may be more influential in terms of his business experience, such influence does not translate into control.

[92] Craig submitted that he did not believe he owned any shares in Legacy. Craig further noted that, in any event, the fact that he may have held shares did not affect who controlled the company; those shares would not have constituted a controlling voting interest that would have potentially brought him within the definition of "control" under the former Section 20.1 of the *OGCA* (now Section 106 of the *OGCA*).

Control of Legacy

[93] CES submitted that all 85 abandonment orders were issued to Legacy during periods when either Dame, Craig, or both, were in positions of control at Legacy as directors, president, chairman, or CEO, and were signing documents on behalf of Legacy to transfer assets from the company.

[94] CES argued that Dame became the president, chairman of the board of directors, and a director of Legacy on September 27, 1995, and remained president and chairman of Legacy until March 20, 1997. Dame remained a director of Legacy continuously from September 27, 1995, onward.

[95] Dame stated that he was not a director of Legacy during all the relevant times and that he was never the CEO. Dame claimed that, as a consultant through Gibraltar Management Ltd. (Gibraltar), he did not direct the operations of the company; instead that role fell to Craig, who was the de facto president, even during his absences due to illness. Dame argued that there was no clear evidence that he (Dame) executed any contracts or signed or cosigned cheques on behalf of Legacy, or that he was a director of the company when a number of the orders were issued. Dame submitted that when meeting with the EUB, it was invariably in his capacity as president of Matrix. Dame clarified that he was president and acting chairman of the board of Legacy from October 1995 to November 1996 only, and that from November 1996 to March 30, 1999, he was merely a director of Legacy.

[96] CES also argued that Craig was the president of Legacy until December 1994 and remained a director of Legacy until September 27, 1995. Craig became a director of Legacy again on April 16, 1996, and remained a director from that date on. CES submits that Craig represented himself as CEO of Legacy in a document dated September 1, 1996. Craig became the president and chairman of the board of Legacy again on March 20, 1997.

[97] CES submitted various documents as evidence that clearly indicated both Dame and Craig held positions, acted on behalf of, and directed actions of Legacy for significant periods of time from 1995, when the first Board order was issued, until Legacy was petitioned into bankruptcy on January 19, 1999. As part of that documentation, CES submitted a prospectus for Newbridge Resources dated February 4, 1997, referring to Dame as president of Legacy and indicating that he had held the position since 1995. Corporate registry documents were submitted showing that Craig held the positions of director and president of Legacy.

[98] Dame submitted that the fact that certain documents signed by him refer to him as president of Legacy, such as the notice of directors and notice of change of directors, was hardly conclusive proof that he held any real authority within Legacy. With respect to the Newbridge Prospectus that refers to him as the president of Legacy, Dame submitted that the reference was "mere puffery," and the information provided for the prospectus was undoubtedly current at the time of the draft of the document. However, upon questioning by the declaration panel, Dame confirmed that there were no statements in the prospectus that were not true.

[99] CES argued that there was ample evidence—through filings at Corporate Registry, corporate meeting minutes, corporate resolutions, annual reports, sworn evidence in affidavits, and his own testimony at the hearing—that Dame personally held the positions of director and president of Legacy during the times relevant to this proceeding.

[100] Dame argued that

> …if at the end of the day, the Panel asks the question as to who then was *in control* of Legacy, the Panel will have no problem in arriving at the conclusion that the entire board of directors was, not one or two individuals.

[101] Dame submitted that by any test, one vote on a board of directors, especially in light of the composition and number of directors on the Legacy board, would hardly translate into "control," either direct or indirect, of the affairs of the company. Further, Dame argued that since he was not a shareholder in Legacy, it would seem likely that he could hardly be characterized as being a controlling director.

[102] CES submitted that Dame's own evidence paints a completely different picture with respect to his submission that he was merely one of a number of directors who made decisions for the company and, as such, had no more control than any other director. CES noted Dame's oral statement that he headed up a management team that created a restructuring plan, and that he personally presented it to the board of directors, encouraging them to accept it. CES further noted that the subsequent directors' resolution gave Dame the full authority to manage the business and finances of the company and to dispose of assets. CES noted that, in fact, it gave so much authority to Dame that he signed over all of Legacy's petroleum and natural gas assets and its valuable gas plant assets to another of his own companies.

[103] CES argued that the fact that he received approval and ratification for these actions from the board of directors is ample evidence of the level of influence he had with the other directors. CES further noted Dame's oral testimony that he variously prepared all agreements for Legacy, that the paperwork flowed through him since he either drafted or approved it, that he instructed Legacy's legal counsel, that he had authority to write cheques from the Legacy account, and that he drew money out of the Legacy account to pay himself.

[104] Dame argued there is no suggestion from the documents cited by CES that somehow he exerted extraordinary influence or was acting in isolation from the other directors. Dame argued there was evidence provided, that was not contradicted, whereby the directors indicated that they freely approved the plan and instructed Dame and Craig to execute it. Dame argued that the mere fact that he (Dame) stood to benefit is not sufficient to either condemn him or to consider him to be in control.

[105] Craig submitted that he was not a person who controlled Legacy after his resignation as president in 1994 and as CEO in 1995. Craig noted that Dame testified to being president of the company from 1995 to 1997, and to managing it after that. Craig said that Dame stepped down from being president in 1997 because he felt it would look better if he was not signing on behalf of both Legacy and the company he controlled, Matrix, when signing agreements for the transfer of assets and licences from Legacy to Matrix.

[106] Craig submitted that no Board orders were received in the period before Dame assumed control, and that it was Dame who took responsibility for dealing with the abandonment orders. Craig submitted that he was never informed that any abandonment orders had been issued. He further noted that CES could not confirm the abandonment orders were sent to his correct address in Penticton, British Columbia, or that they were received by him.

[107] Craig testified that he had no recollection of signing any transfer agreements. He noted that at that stage he was merely doing as Dame directed in order to assist Dame. Craig noted that Dame admitted during the hearing that he was in control of Legacy.

[108] Dame submitted that Craig "participate(d) in the affairs of Legacy in the execution of corporate documents and agreements as is witnessed by the submissions of CES."

[109] Dame argued that once the closure order was issued against Legacy on March 2, 1998, both Legacy and Matrix were essentially deprived of any ability to generate cash flow or revenues from the assets, thereby reducing Legacy's ability to mitigate its abandonment and reclamation abilities and execute on the restructuring plan. Dame indicated that the closure order was the essential element leading to the bankruptcy of Legacy, and once the receiving order was issued on January 19, 1999, Legacy and its board of directors and management consultants effectively lost control of the assets to the trustee. Dame submitted that, at that point, even if the directors of Legacy wanted to abandon and reclaim the wells, they were powerless to do so.

Dame's Role of Consultant to Legacy

[110] Dame said that he was not in control of Legacy at the relevant times, and argued that his company, Gibraltar, provided interim management services to Legacy through the services of designated personnel of Gibraltar, namely, himself and Bob Abbott, in the positions of officers of Legacy.

[111] Dame said that his rationale for using Gibraltar as the vehicle for providing management services to Legacy was to be able to serve at "arm's length" with the corporate client, to ensure favourable tax treatment of income earned, and to avoid liability issues. Dame submitted that many individuals within the oil and gas industry hold senior management positions through their consulting businesses. Dame said that he has extensive experience in the oil and gas industry,

that he was aware of the financial difficulties of Legacy at the time of his initial involvement, and that, as an experienced businessman, he would not put himself in a position where he was personally liable or exposed his assets to risk. He submitted that he used his consulting business as a "firewall" to protect himself.

[112] Dame asserted that he was at all times acting as a consultant to Legacy through his company Gibraltar. The fact that Dame assumed the role of president of Legacy through Gibraltar had its precedent in the SAEC decision, in which the ERCB found that the evidence fell short of establishing that Dame exercised real authority over SAEC's business during this time.

[113] Dame submitted that the fact situation of the SAEC decision is almost identical to that of the Legacy situation, and noted that, while CES argued for de facto control in the SAEC decision, the EUB found no basis for finding de facto control by Dame. Dame submitted, using words similar to the SAEC decision, that while Legacy and its board might have relied on Dame's advice and initiatives in several areas, the evidence, in this case too, falls short of establishing that Dame exercised the real authority over Legacy's business during this time. In Dame's view, the evidence in this case does not constitute either de jure or de facto control. Dame submitted that the reason for finding in his favour in the SAEC decision was that he was not a shareholder in SAEC.

[114] Craig submitted that he was no longer a "control person" once Dame and his company, Gibraltar, took over management of Legacy in 1995, as evidenced by the fact that all dealings with the EUB and creditors were conducted by Dame and that Dame directed the company employees.

[115] In response to Dame's claim that he only ever acted as a consultant to Legacy through Gibraltar, CES argued that there was no evidence that Gibraltar, as opposed to Dame himself, held the position of president and director of Legacy. CES stated that there is ample physical evidence, including his own testimony at the hearing, that Dame personally held the positions of director and president of Legacy. Furthermore, CES argued that it is legally impossible for a corporation to hold the position of president or director. CES cites Section 105 of the *ABCA* as indicating that a person must be an individual to be a director of a corporation, and it cites Section 121 of the *ABCA*, which also states that an officer of a corporation must be an individual.

Analysis and Findings

[116] With regard to the definition of "control," the parties submitted the SAEC decision as being relevant to the determination of control in this case. The declaration panel notes that the SAEC decision dealt with control in the context of liability to pay monies owing in accordance with an abandonment cost order. At the time, the Board's authority to order payment of these costs was limited to licensees and working interest participants that met the definition under Section 20.1 of the *OGCA*, which read:

> **20.1** For the purposes of sections 20.2, 20.3 and 20.4 "licensee" and "working interest participant" include a person who has actual control of the corporation, including a person referred to in section 2(2) of the Business Corporations Act.

[117] In considering the element of control for the purposes of Section 20.1, the Board stated that:

> Real, effective, and practical control over a company's business affairs will amount to control as contemplated in Section 20.1 and may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by a company. Each case must be reviewed on its own facts and circumstances in order to determine the entity effectively exercising this authority.

[118] Both CES and Dame favourably quoted this passage as establishing the test for control in the context of Section 106. However, the parties differed as to whether Section 2(2) of the *ABCA*, which requires shareholding to establish control, is relevant to Section 106. The declaration panel notes that when the *OGCA* was amended to add Section 106, Section 20.1 was repealed and the legislature did not include the reference to Section 2(2) of the *ABCA*. The declaration panel finds that it is clear that the legislature did not intend to restrict Section 106 to shareholding, as opposed to the wording of the legislation at the time of the SAEC decision. Given this, the declaration panel finds that the factual finding in the SAEC decision is not determinative of this case regardless of any similarities between the two situations.

[119] The declaration panel is of the view that shareholding is not a requirement for having control over a licensee for the purposes of Section 106, but that it may be a factor to be considered by the Board. This view accords with the current wording of Section 106, which contemplates a wide range of positions that a person in control may occupy, and it reflects the intention of the legislation to focus on the person's actual control of the licensee's actions rather than on the title of that person. None of the cases put forth by the parties dealt with the oil and gas industry or considered legislation with substantially similar wording to Section 106. The declaration panel finds that these cases are not particularly helpful in interpreting Section 106 given the clear wording of the section.

[120] The declaration panel confirms that the test to establish control under Section 106 and as set out in previous ERCB decisions requires real, effective, and practical control over a company's business affairs, and further confirms that such control could exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by a company. The declaration panel affirms that each case must be reviewed on its own facts and circumstances in order to identify the person effectively exercising this authority. Central to this test is the view that, at all times, one or more persons associated with a licensee must be exercising practical control over the actions of the licensee.

[121] With respect to the evidence, Dame said in his testimony that he met with Craig in early 1995 to discuss applying certain production techniques to Legacy's wells. In February 1995, Dame wrote to the EUB advising that he had been retained as a consultant to restructure Legacy and requested lifting of certain outstanding abandonment orders. The declaration panel notes that at the end of September 1995, Dame became a director of Legacy, and that by the beginning of October 1995, Dame's team had taken over the restructuring of Legacy and Dame was signing documents as president of Legacy. Through the subsequent years he executed agreements on behalf of Legacy, signed cheques on behalf of Legacy, and, beginning with his first letter on behalf of Legacy to the EUB in February 1995, Dame held himself out to the EUB as the primary person in charge of Legacy. In his sworn testimony, Dame stated that all communication

to the EUB was prepared and approved by him and that anything done by counsel would have been done under his direction and approved by him. Dame also confirmed that he developed the plan to stabilize and optimize the assets in order to increase their value and make them appealing to investors so the assets could be transferred to Matrix. He testified that any operational issues at the well sites would have been directed to him, and he made business decisions such as creating "shelf" companies to raise money to fund the plan. Finally, in his testimony Dame confirmed his view that directors are liable and in control of a company because they approve the plans set out by management. The declaration panel notes that when Legacy was struck from the corporate registry in April 2001, Dame and Craig were listed as directors.

[122] Based on the evidence of his involvement in Legacy, the declaration panel finds as a fact that Dame had real, effective, and practical control over Legacy's affairs and had the ability to direct the actions of Legacy. Although Legacy's board of directors approved his plans, Dame's actions went beyond managing Legacy to include planning, directing, and approving the actions of Legacy. Accordingly, the declaration panel finds that he had control as required under Section 106 of the *OGCA* and, although it appears that Dame had some involvement with Legacy prior to this date, the declaration panel finds it is clear that he had direct control as of October 1, 1995, when he became president as well as a director of Legacy. Furthermore, and importantly, the declaration panel finds that Dame had direct control over Legacy at the times when Legacy's contraventions and failures to comply with the orders occurred.

[123] With regard to Craig, the declaration panel notes that the recollections of Dame and Craig of the date on which Craig stopped participating in Legacy are inconsistent. The declaration panel notes the difficulty in recalling details of events that occurred 15 years ago, but finds that the documentary evidence is sufficient for the declaration panel to make findings about Craig's control of Legacy. Craig initially argued that his signature on several documents had been forged. However, during oral testimony Craig said that he had no recollection of signing certain documents, and tendered no evidence in support of forgery. The declaration panel notes that Craig is listed as one of three Legacy shareholders who owned more than 10% of the shares. According to minutes of shareholder meetings, he participated in those meetings and exercised the ability to elect directors. The declaration panel notes that, according to the notice of change of director, Craig ceased acting as a director of Legacy in September 1995, which accords with Craig's 1999 affidavit submitted during the bankruptcy proceedings. Further, based on minutes of the annual shareholders meeting it appears that Craig returned as a director on April 16, 1996, then executed the transfer of the gas plant assets to Matrix on behalf of Legacy in September 1996. This is also confirmed by Craig's affidavit. Minutes of the board meeting on March 20, 1997, stated that Craig returned as president and chairman of Legacy, and his signature appears on the well licence transfer application dated July 10, 1997, and on a pipeline licence transfer dated October 6, 1998, on behalf of Legacy. Based on this evidence, the declaration panel finds that except for a period between September 1995 and April 1996, Craig held positions as a director and officer within Legacy and actively participated in actions and decisions of the company. This constitutes control for the purposes of Section 106. Furthermore, the declaration panel finds that Craig had direct control of Legacy at various times, and was always in indirect control at the times when Legacy's contraventions and failures to comply with the orders occurred.

[124] The declaration panel notes that the parties agree that effective control over Legacy resided with the trustee in bankruptcy after Legacy was petitioned into bankruptcy on January 19, 1999. The declaration panel accepts this position.

CONTROL OF MATRIX

Evidence

[125] CES submitted that from 1996 on, Dame held various roles as president, director, and 100% voting shareholder of Matrix. CES provided documentation from the Alberta Corporate Registry to show that Dame was and always has been the sole director and 100% voting shareholder of Matrix. CES also provided documentation in which Dame identified himself as the president of Matrix, including transfer documents bearing Dame's signature. CES argued that the documents provide abundant evidence to show that Dame was the directing mind of Matrix and was the person in control of Matrix during the material time. CES submits that in his position of president, director, and 100% voting shareholder of Matrix, Dame had the power to direct the business, make decisions, and act on behalf of the company.

[126] Dame does not dispute that he was president of Matrix from September 1996 on, nor that he was a director and sole shareholder of Matrix.

Analysis and Findings

[127] The declaration panel finds that Dame, as the sole shareholder, director, and president of Matrix, was in direct control of Matrix at the time of the contraventions and failures to comply with the abandonment orders issued to Matrix.

PUBLIC INTEREST

[128] The declaration panel reiterates the following discussion of the purpose of Section 106, as set out in previous EUB decisions:[5]

> The Declaration Panel is of the opinion that the purpose of a Section 106 Declaration is to prevent a licensee or a person in control of a licensee from continuing to breach Board requirements and Board Orders and from incurring abandonment costs or incurring new breaches or additional debts, thereby safeguarding the public interest.
>
> The Declaration Panel is also of the view that continued confidence in the Board regulatory scheme for oil and gas is best assured when licensees comply with Board requirements and Board Orders. Without compliance with Board requirements, the protection of the public and the environment may be jeopardized and the public interest may be at risk. Licensees should not be permitted to conduct noncompliant activities with impunity, as that would be contrary to the mandate of the Board to ensure the orderly and efficient development of energy resources. A licensee that cannot pay its debts to the Board or the Orphan Well Association or pay its security deposit should not be permitted to continue to operate.

[5] *Decision 2007-083: Decision to Issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois Pursuant to Section 106 of the Oil and Gas Conservation Act* and *Decision 2006-006: Decision to Issue a Declaration Naming Richard Yu Pursuant to Section 106 of the Oil and Gas Conservation Act.*

[129] The declaration panel notes the deterrent purposes of Section 106, specifically, to deter the recurrence of noncompliance by the named persons and of future misconduct by others who might be inclined to act similarly. The declaration panel also notes the importance of protecting the public, the environment, and the integrity of the regulatory scheme through effective and meaningful compliance with Board orders and payment of debts.

[130] Section 106(3) of the *OGCA* sets out the authority of the ERCB where it makes a declaration. This section reads:

> Where the Board makes a declaration under subsection (1), the Board may, subject to any terms and conditions it considers appropriate,
>
> (a) suspend any operations of a licensee or approval holder under this Act or a licensee under the Pipeline Act,
>
> (b) refuse to consider an application for an identification code, licence or approval from an applicant under this Act or the Pipeline Act,
>
> (c) refuse to consider an application to transfer a license or approval under this Act or a license under the Pipeline Act,
>
> (d) require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any license, approval or transfer to an applicant, transferor or transferee under this Act, or
>
> (e) require 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,
>
> where the person named in the declaration is the licensee, approval holder, applicant, transferor or transferee referred to in the clauses(a) to (e) or is a director, officer, agent or other person who, in the Board's opinion, is directly or indirectly in control of the licensee, approval holder, applicant, transferor or transferee, referred to in clauses (a) to (e).

[131] In addition to the above considerations, the declaration panel is of the view that a panel exercising the discretion it is granted under Section 106(3) of the *OGCA*, may include a term or condition in a declaration setting a definite period that the declaration is in effect. However, as set out in EUB Decision 2005-040[6], a declaration should be for an indefinite period of time unless there is evidence before the Board to the contrary. It appears to the declaration panel that, unless there are mitigating circumstances, 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.

[6] Decision 2005-040: Declaration Pursuant to Section 106 of the Oil and Gas Conservation Act Daniel Blair Grant

IS IT IN THE PUBLIC INTEREST TO NAME DAME?

Evidence

[132] CES submitted that at the time of the hearing, Dame was involved in four different oil and gas companies, one of which held an ERCB licence. CES asserted that it is not in the public interest for persons with a history of demonstrated disregard of regulatory requirements to be in a position of control in an oil and gas company. CES also noted that the public relies on the ERCB to ensure its protection, the industry depends on the ERCB to ensure a level playing field by enforcing its requirements and minimizing costs to the orphan fund, and "the public purse depends upon timely reclamation to avoid excessive costs being passed on to the people of Alberta through payment of surface rentals." CES argued that companies cannot be allowed to choose to divert money away from addressing regulatory responsibilities into other business ventures.

[133] CES provided a list of wells licensed to Legacy that were the subjects of the abandonment orders and that were subsequently abandoned by the OWA, as well as the costs to date for those abandonment activities. CES advised that five of the eight wells cited in the 1995 abandonment orders were subsequently abandoned by the OWA, and that the remaining three were transferred to licensees other than Legacy or Matrix as a result of the bankruptcy proceedings. These documents show that for the remaining wells, many millions of dollars in costs have devolved to the orphan well fund for abandonment and reclamation work, and until that reclamation work is completed the Province will continue to incur costs for surface rental payments. CES argued that the magnitude of the problem left behind by Legacy's defaults supports a declaration in the public interest. During oral testimony, Dame stated that he does not intend to pay the costs associated with the abandonment by the OWA of wells licensed to Legacy or Matrix.

[134] Dame submitted that the EUB encouraged Matrix to invest hundreds of thousands of dollars, and its principals' time, to salvage oil and gas properties, then undermined the process by failing to live up to its commitments in regard to the abandonment trust deposit. In midstream, the EUB advised that the deposit would be 10 times the amount originally indicated by EUB staff. Dame argued that the amount of the trust deposit had been a moving target, starting at $200 000 agreed to by Paulson, then $30 000 agreed to by Hunt, then up to about 10 times that amount suggested by Vogt. Dame suggested that this does not instill confidence in the Board or its regulatory scheme. Dame argued that he "inherited" a bad situation when he became involved in Legacy and that he and Craig attempted to preserve the assets and avoid any risk of the abandonment obligation and liability.

[135] CES produced a copy of an e-mail string (dated February 19, 1998) between Alberta Treasury and Vogt in which the latter inquired about the naming of a trustee for Legacy and whether Treasury objected to that information being passed on to Dame. Dame asserted that Vogt was "implicitly encouraging" Alberta Treasury to petition Legacy into bankruptcy. Dame submitted that CES knew that issuing the closure order against Legacy would lead inevitably to petitioning Legacy's bankruptcy.

[136] Dame submitted that the inconsistent conduct of CES, its lack of diligence in the timing of these proceedings, and its failure to provide the entire record have been, in their entirety, extremely prejudicial to him.

[137] Dame asserted that he should be released from any liability associated with Legacy's wells because he had been released from liability by the trustee in bankruptcy. He argued that the balance of the abandonment orders were rescinded, as the assets were disposed of through the bankruptcy by transfer to other parties, and that rescission of the orders meant that there were only 22 outstanding after the bankruptcy proceedings were completed. Dame argued that the trustee in bankruptcy, KPMG, by virtue of its powers under Section 30(1)(i) of the *Bankruptcy and Insolvency Act,*[7] had compromised the claims in relation to Dame, and that this was binding on all creditors of Legacy, including the EUB given that its claims were of the nature of provable claims in the bankruptcy.

[138] Dame submitted that CES was aware of the settlement agreement between Dame and the trustee and by its conduct "tacitly consented" to the settlement agreement. Dame submitted that the subsequent EUB amended orders deleting the trustee but continuing to name Dame should, therefore, be of no effect. Further, when the EUB released the trustee it did so knowing that the trustee had released Dame from any and all liability and that the EUB, therefore, was stopped from proceeding against Dame. CES argued to the contrary that when the "EUB accepted the trustee's discharge from the estate by court order, including protection from liability for abandonment and reclamation costs, that was a discharge of the trustee personally, not a discharge of Legacy as a licensee from its regulatory obligations, nor of Dame personally."

[139] With respect to Dame's submission that he acted as an agent of KPMG in the bankruptcy and therefore was released from any liability, CES stated that there is no evidence whatsoever to indicate that Dame was retained by KPMG to act as its agent in the bankruptcy. Furthermore, there is no evidence that Dame was released from any liabilities or obligations with respect to Legacy or its properties, Matrix or its properties, or any of Dame's numbered companies, or any of their properties following the bankruptcy proceedings.

[140] CES argued that the protection provided by the court order was provided specifically to the trustee of the estate, KPMG. Moreover, CES submitted that the court file of the Legacy bankruptcy proceedings revealed that Dame was litigious and even obstructionist as opposed to cooperative, and that the trustee brought an action against Dame personally and a number of companies to try to recover Legacy assets and transfer them back into the estate.

Analysis and Findings

[141] Once an order or direction is issued by the ERCB, it is the company's responsibility to ensure compliance in a timely manner. Despite the fact that Dame was given a lengthy extension by Knox, from October 1995 to August 1996, to comply with the 1995 outstanding abandonment orders, Dame admitted that the earliest he would have achieved compliance was March 1997. Similarly, the information required under Abandonment Order AD 95-7 regarding certain pipelines was not complied with until March 1998, well after the February 5, 1996, deadline. Further, even according to Dame's chronology, the earliest response to Paulson's letter dated January 30, 1997, advising of the matters that remained outstanding was March 1997.

[142] Persistent disregard of noncompliance issues is a cost to the industry, government, the public, and the ERCB, as it involves time, effort, and resources from all the entities involved. In

[7] Section 30 (1) (i) of the Bankruptcy and Insolvency Act R.S. 1985 states "The Trustee may, with the permission of the inspectors, do all or any of the following things: (i) compromise any claim made by or against the estate;"

response to noncompliance issues, the ERCB has a wide array of tools to address the situation, including actions to "help" the company. Although the ERCB may try to help companies bring themselves back into compliance, the declaration panel notes that the ERCB has no responsibility or obligation to do this, nor is the ERCB prevented from taking enforcement action for the noncompliance.

[143] It is important the ERCB has a consistent enforcement process that encourages compliance in a timely manner and takes enforcement actions where required. A part of this process should be a clear understanding of expectations and deadlines as well as the outcome for any breaches of those deadlines. With respect to the Knox letter, the declaration panel notes that Knox requested a statement of "lasting improvement" from Legacy, although it was not clearly stated that this was a requirement. The declaration panel also notes that the Knox letter (March 1996) set a deadline of May 30, 1996, for the statement of lasting improvement and a deadline of August 15, 1996, for other compliance issues. However, there is no mention of action to be taken if Legacy did not comply with these deadlines. In the Paulson letter of January 30, 1997, EUB staff continued to request information regarding the same outstanding issues, but there is nothing in the letter to suggest that any action was or would be taken for the noncompliance, even though EUB staff was aware that Legacy had not complied with the deadline.

[144] The normal process, when an abandonment order is breached, is to have the ERCB undertake the abandonment operations. It appears that this was not done by the EUB, nor was Dame advised of this potential action. This suggests to the declaration panel that the EUB staff was involved in trying to help Legacy achieve compliance. The declaration panel is of the view that this, in turn, permitted Dame to delay the process in order to achieve his business objective of moving the assets from Legacy to Matrix. Had EUB staff pursued a stricter adherence to the normal process, the result might have been quite different.

[145] The declaration panel notes the number of different EUB staff members on the file over the years 1995-1999, as they appeared in the EUB correspondence, and finds a lack of consistency and clarity as to what the outstanding non-compliances and regulatory requirements were. These include what orders were still outstanding, the information that had been submitted about the non-compliances, and the amount of the security trust deposit. Furthermore, there was a lack of both firm deadlines and clear identification of what enforcement actions would be taken should non-compliance not be rectified. The declaration panel also notes that while ownership of mineral interests, a requirement for Legacy to be the licensee of the Legacy wells, was transferred from Legacy to Matrix on September 1, 1996, the well licence remained with Legacy, but there is no evidence that EUB staff raised this issue with Legacy before February 23, 1998.

[146] Companies involved in the oil and gas industry at large bear the cost of corporate failure and the noncompliance of certain operators. However, large costs to the industry may also adversely affect all stakeholders in the oil and gas industry. Every year, industry is charged a levy to the orphan fund to pay for the costs of abandoning and reclaiming properties with defunct operators. To mitigate these costs, it is imperative that the ERCB ensure timely abandonment and reclamation of properties before operators become defunct. The legislature, in setting out regulatory requirements and providing the ERCB with the authority to enforce them, intended that enforcement would be taken for noncompliance, and, ultimately, that Section 106 declarations would be brought against the individuals in control at the time of contravention.

[147] The declaration panel notes Dame's assertion that he "inherited" Legacy's problems when he became involved with the company and that he and Craig "attempted to preserve Legacy's assets and avoid any risk of the abandonment obligation and liability." The declaration panel does not accept Dame's characterization. The evidence suggests that Dame identified assets to acquire for his own purposes, and that Dame actively sought out and pursued the opportunity to become involved with Legacy. Dame suggested that Legacy was going to be a holding company in order to give value to Legacy's shareholders; however, he provided no evidence to support this position. It appears that Dame was not primarily interested in preserving Legacy's assets; his goal was acquiring the assets as cheaply as possible for his own companies.

[148] With respect to the delay in bringing forward the Section 106 declaration application against Dame, the declaration panel notes that the compliance issues were first raised in 1995. The declaration panel notes that Dame's testimony in the hearing was clear and he did not seem to have trouble recalling the events that occurred during the relevant periods. There were many instances during the hearing where Dame was able to provide documents from the period of 1995-1998; he obviously had access to files that he had kept. The documents he had retained and the chronology he provided were accepted by the declaration panel as providing the background to the file. Dame was able to provide unsigned copies of documents, and CES provided signed versions of those documents in addition to numerous other documents from its file. The declaration panel finds that, although about 15 years had elapsed, Dame did not establish that he has been prejudiced by the amount of time CES has taken to apply for a Section 106 declaration.

[149] The declaration panel also notes that the situation with Legacy was complicated by the fact that Dame, as acknowledged in his testimony, was working both sides of the equation. He was acting as an officer and director of Legacy, as well as being the sole person in control of Matrix. Dame was concerned primarily with the application to transfer the Legacy wells to Matrix and making sure that it could reduce the debts of Legacy so that Matrix could have a better deal at the very time when Legacy should have been working on ensuring that it was in compliance. As Dame was a person in control of both entities, he had both obligations and responsibilities. It appears to the declaration panel that he focused his efforts on diligently pursuing the interests of Matrix, not on ensuring that the Legacy obligations were addressed. Responding to ERCB orders must be given the highest priority by those persons in control of a licensee. The declaration panel finds that this was not the case here.

[150] The declaration panel notes that Dame attempted to place the blame for the contraventions and the ultimate bankruptcy of Legacy at the feet of the EUB and, in particular, on the actions of EUB staff member Vogt.

[151] The declaration panel notes that Dame associates the decision to issue the closure order with an intent by Vogt to bankrupt Legacy. The panel notes that the closure order was not signed by Vogt, but by the section leader of enforcement, R.J. Willard. Further, the issuance of the closure order was considered at the EUB Board meeting on March 23, 1998, in which the EUB decided to include the issuance of the closure order in the hearing of the transfer application. The declaration panel notes that the EUB reinstated the transfer application and application fee and is of the view that if the EUB thought the closure was unwarranted or unjustified it would have rescinded that order pending the outcome of the hearing.

[152] A licensee must have the rights both to the well and to the related minerals in order to hold a well licence. Legacy had transferred its mineral rights to Matrix; therefore the declaration panel does not agree with Dame that the closure order was unwarranted and unjustifiable. The Board's normal process is to issue a closure order for a well or facility for which a licensee does not have the requisite interest. The declaration panel notes that, according to Dame's own chronology, a response to his inquiry about the reason for the closure order was provided by R.J. Willard, the signee of the closure order, on March 10, 1998, including reference that the closure order was overdue and that the group was not prepared to reverse its position. The declaration panel finds that it was not the actions of Vogt that caused the closure order to be issued, but the inaction of Legacy to ensure that it held the requisite interests in order to be a licensee.

[153] The declaration panel notes that the two main events that Dame alleges caused the bankruptcy of Legacy—the change in the amount of security trust deposit and the closure order—were not decisions made by Vogt. According to Dame's own chronology, the change to the security trust deposit was first communicated by Sheka on January 16, 1998. Further, Vogt's section, CES, did not handle security trust deposit questions. It is clear that she was simply advising Dame of the position of the EUB's LMS that the required deposit would be greater than the amount ($30,000) that had previously been communicated to Dame.

[154] According to Dame's own chronology, he was advised by LMS on March 25, 1997, that the required security trust deposit was $30,000. According to the chronology, a letter from Sheka was sent on January 16, 1998, advising that Matrix had failed to establish the abandonment trust deposit and that the amount would be determined to reflect current economic production rates. Matrix responded almost a month later, on February 12, 1998, stating that it was waiting for the EUB to give notice that it was willing to issue the transfers before paying the deposit. The declaration panel notes that the requirement to pay the security trust deposit is an obligation independent of the transfer application. Dame had more than nine months to establish the stated trust deposit. The declaration panel notes that all requirements, including payment of security trust deposits, were to be met before the transfer of the licences from Legacy to Matrix would be approved.

[155] Dame stated that he would not pay the security trust deposits until notice that the transfer application was approved. Provision of a security trust deposit is an ongoing requirement for licensees to ensure that sufficient funds are held in trust to offset liabilities. The declaration panel notes that Dame had provided security trust deposits on some of the Legacy wells in 1996 and, therefore, was aware of this requirement. The declaration panel does not agree with Dame's position that he did not have to provide a security trust deposit until after the transfer, and that such a statement simply displays disregard of the Board's authority and its requirements.

[156] Regarding the requirement to pay the security trust deposit, the declaration panel notes that the Hunt letter identifies the deposit as a condition of the transfer application. The EUB required that all noncompliance issues be addressed prior to transferring licences from a licensee, which means that the outstanding security trust deposit was to be paid before the transfer could be approved. The declaration panel notes that this requirement was independent of the transfer application and that Dame had submitted a security trust deposit for some of Legacy's wells, as reflected in the Knox letter. The declaration panel notes Dame's argument that he was waiting for the EUB to give notice of the transfer application approval before paying the security trust deposit, but also notes that there was no transfer application at the time that Dame paid the

earlier deposit. The declaration panel finds Dame's argument disingenuous given his earlier actions. Although the EUB staff could have been clearer as to the amount, the declaration panel is troubled that Legacy did not pay the security trust deposit when required to by the Hunt letter and considers this inaction to be further disregard of the Board's noncompliance issues.

[157] With regard to the closing of the transfer application by Vogt, although the usual practice of the Board is to set a matter down for a hearing when there are objections, the declaration panel notes that the EUB Board itself reinstated the transfer application and application fee, and therefore cured this irregularity. Further, there does not appear to be any prejudice by the transfer application being closed on March 2, 1998, and being reinstated on March 23, 1998.

[158] The declaration panel finds that the bankruptcy of Legacy did not release Legacy from its obligation to comply with its regulatory requirements; in this case, the abandonment orders. The time to comply with the abandonment orders had long since passed when the bankruptcy occurred. The declaration panel finds that Legacy's outstanding abandonment orders were not a debt outstanding, and therefore the bankruptcy proceedings, including Dame's argument regarding the applicability of Section 30(1)(i) of the *Bankruptcy and Insolvency Act,* are not relevant to this proceeding. Financial issues are not an excuse for noncompliance with Board orders. The declaration panel further notes that Dame continues to refuse to pay the costs of abandoning the wells, including those licensed to Matrix. CES provided evidence showing that other working interest participants in the wells are willing to pay the costs incurred by the OWA.

[159] With respect to the abandonment orders issued by the EUB to Matrix, and as has already been determined above, Dame was in control of Matrix at the time of the contraventions, and Matrix did nothing to bring itself into compliance with the orders. The declaration panel notes that the well was initially ordered abandoned because Matrix had failed to pay its abandonment fund levy, which was a nominal amount of $125. This blatant disregard by Matrix of ERCB requirements, and the inaction of Dame as the sole person in control of Matrix, undermines public confidence in the ERCB's regulatory function.

[160] Based on the above, the declaration panel finds that, given the Section 106 purposes of protection and deterrence, it is in the public interest to issue a declaration naming Dame.

[161] Having made this determination the panel will now consider whether it is in the public interest to issue a declaration for a definite or an indefinite period of time. The declaration panel notes that the abandonment of Legacy's and Matrix's wells is proceeding under the auspices of the OWA, and this Section 106 proceeding only relates to contravention of abandonment orders and not to failure to pay outstanding debts. The declaration panel finds that this Section 106 proceeding is distinguishable from other Section 106 proceedings held by the ERCB in that Legacy and Matrix are now unable to comply with all abandonment orders that were issued against them. The declaration panel also notes that Legacy complied with most of the 1995 abandonment orders. The declaration panel further notes the above discussion in Paragraph 145 about consistency and clarity in the EUB enforcement process regarding Legacy. The declaration panel notes that the contraventions took place between 10 and 15 years ago and is concerned about the timeliness of the CES application under Section 106 of the *OGCA*, notwithstanding that the delay did not appear to prejudice Dame in any particular way. Furthermore, as the OWA is proceeding or has completed abandonment of certain Legacy and Matrix wells, compliance with all of the abandonment orders is impossible. Finally, Dame has been active in the industry

since that time, and no evidence was provided to suggest that his companies have been in contravention of Board orders.

[162] While the declaration panel finds that a declaration naming Dame is clearly appropriate, the declaration panel believes that there are extenuating circumstances, in this particular case, to warrant issuing the declaration naming Dame for a definite, rather than indefinite, period of time. The declaration panel concludes, on the balance of the evidence, that the declaration naming Dame should be in force as of the date of this decision and should remain in force until December 31, 2019.

IS IT IN THE PUBLIC INTEREST TO NAME CRAIG?

Evidence

[163] Craig argued that the declaration was unnecessary and noted that CES had submitted that due to Craig's age and retirement from the industry, a declaration naming him would not serve the public interest.

Analysis and Findings

[164] The declaration panel notes that the above discussion about the public interest and Legacy's actions and inaction with regard to its compliance with Board orders is relevant to its consideration of naming Craig. The declaration panel is of the view that, although Craig was not the driving force behind the actions of Legacy after September 1995, he occupied certain positions within the company that required more due diligence and active participation in the affairs of Legacy than the evidence shows he provided. The declaration panel notes that the law regards corporate directors and officers as fiduciaries[8] of their corporation. They are expected to meet high standards of conduct, as well as use care, diligence, and skill when carrying out their responsibilities to the corporation and when exercising their business judgement. Both Dame and Craig had these expectations as directors and officers.

[165] The declaration panel finds that it is unlikely that Craig, given his age and health, would resume activities as a person in control of a licensee, approval holder, or working interest participant. However, given that one of the purposes of Section 106 is general deterrence, and that Craig was found to be in control of Legacy during times when a contravention and failure to comply with a Board order occurred, the declaration panel finds that it is in the public interest to name Craig in a declaration. Although it is clear to the declaration panel that Dame was the major force behind the decisions and actions of Legacy, as an officer, director, and shareholder, Craig had an obligation to understand the consequences of his actions, including understanding the documents he was signing, and to ensure that the company that he was helping direct acted in compliance with its regulatory obligations. There is no evidence to suggest that Craig opposed the direction that Dame and his management team proposed for Legacy. Therefore, due to his inaction he abdicated his responsibility and obligations as a director and officer of Legacy.

[166] While the declaration panel finds that a declaration naming Craig is clearly appropriate, the declaration panel believes that there are extenuating circumstances in this particular case in

[8] The term "fiduciary" derives from the Latin noun, *fiducia*, which means trust.

relation to Legacy, as discussed above in Paragraphs 161 and 165, to warrant issuing the declaration naming Craig for a definite, rather than indefinite, period of time. The declaration panel concludes on the balance of the evidence that the declaration naming Craig should be in force as of the date of this decision and remain in force until December 31, 2016.

CONCLUSIONS

[167] Based on the above, the declaration panel is of the opinion that a declaration naming Marc R. Dame and Murray F. Craig is in the public interest, and the declaration panel orders that the declarations included in Appendix 3 and Appendix 4 be issued forthwith.

Dated in Calgary, Alberta, on December 20, 2011.

ENERGY RESOURCES CONSERVATION BOARD

<Original signed by>

George Eynon, P.Geol.
Presiding Member

<Original signed by>

Brad T. McManus, Q.C.
Board Member

<Original signed by>

Theresa L. Watson, P.Eng.
Board Member

APPENDIX 1 HEARING PARTICIPANTS

Principals and Representatives (Abbreviations used in report)	Witnesses
M. F. Craig M. C. Welsh	M. F. Craig G. Beck
M. R. Dame D. N. Larson	M. R. Dame
Corporate Enforcement Section (CES) D. F. Brezina R. J. Mueller	V. Vogt of CES R. Paulson of CES
Energy Resources Conservation Board staff B. S. Kapel Holden, Board Counsel D. A. Burns, Board Counsel D. A. Campbell B. D. Hurst M. R. Schuster	

APPENDIX 2 ABANDONMENT ORDERS ISSUED TO LEGACY AND MATRIX

ABANDONMENT ORDERS ISSUED TO LEGACY

Abandonment Order	Well Location	Date Issued	Abandonment Deadline
AD 95-233	100/07-12-012-02W4/0	August 11/1995	October 10/1995
AD 95-234	100/06-09-012-02W4/0	August 11/1995	October 10/1995
AD 95-235	100/06-04-012-02W4/0	August 11/1995	October 10/1995
AD 95-236	100/10-33-012-01W4/0	August 11/1995	October 10/1995
AD 95-241	100/05-28-012-01W4/0	August 11/1995	October 10/1995
AD 95-242	100/13-27-012-01W4/0	August 11/1995	October 10/1995
AD 95-243	100/16-06-012-01W4/0	August 11/1995	October 10/1995
AD 95-245	100/10-32-011-02W4/0	August 11/1995	October 10/1995
AD 98-416	100/16-13-022-05W4/0	October 16/1998	December 15/1998
AD 98-417	100/14-13-022-05W4/0	October 16/1998	December 15/1998
AD 98-418	100/08-13-022-05W4/0	October 16/1998	December 15/1998
AD 98-419	100/11-12-022-05W4/0	October 16/1998	December 15/1998
AD 98-420	100/08-12-022-05W4/0	October 16/1998	December 15/1998
AD 98-421	100/06-12-022-05W4/0	October 16/1998	December 15/1998
AD 98-422	100/03-06-022-05W4/0	October 16/1998	December 15/1998
AD 98-423	100/01-06-022-05W4/0	October 16/1998	December 15/1998
AD 98-424	100/03-05-022-05W4/0	October 16/1998	December 15/1998
AD 98-425	100/01-05-022-05W4/0	October 16/1998	December 15/1998
AD 98-426	100/16-02-022-05W4/0	October 16/1998	December 15/1998
AD 98-427	100/14-02-022-05W4/0	October 16/1998	December 15/1998
AD 98-428	100/06-02-022-05W4/0	October 16/1998	December 15/1998
AD 98-429	100/16-01-022-05W4/0	October 16/1998	December 15/1998
AD 98-430	100/14-01-022-05W4/0	October 16/1998	December 15/1998
AD 98-431	100/08-01-022-05W4/0	October 16/1998	December 15/1998
AD 98-432	100/06-01-022-05W4/0	October 16/1998	December 15/1998
AD 98-433	100/16-18-022-04W4/0	October 16/1998	December 15/1998
AD 98-434	100/14-18-022-04W4/0	October 16/1998	December 15/1998
AD 98-435	100/06-18-022-04W4/0	October 16/1998	December 15/1998
AD 98-436	102/11-17-022-04W4/0	October 16/1998	December 15/1998
AD 98-437	100/08-17-022-04W/0	October 16/1998	December 15/1998
AD 98-438	100/14-08-022-04W4/0	October 16/1998	December 15/1998
AD 98-439	102/16-07-022-04W4/0	October 16/1998	December 15/1998
AD 98-440	100/14-07-022-04W4/0	October 16/1998	December 15/1998
AD 98-441	100/08-07-022-04W4/0	October 16/1998	December 15/1998
AD 98-442	100/06-07-022-04W4/0	October 16/1998	December 15/1998
AD 98-443	100/16-06-022-04W4/0	October 16/1998	December 15/1998
AD 98-444	100/14-06-022-04W4/0	October 16/1998	December 15/1998
AD 98-445	100/08-06-022-04W4/0	October 16/1998	December 15/1998
AD 98-446	100/06-06-022-04W4/0	October 16/1998	December 15/1998
AD 98-447	100/14-05-022-04W4/0	October 16/1998	December 15/1998
AD 98-448	100/06-05-022-04W4/0	October 16/1998	December 15/1998
AD 98-449	100/14-35-021-05W4/0	October 16/1998	December 15/1998
AD 98-450	100/08-35-021-05W4/0	October 16/1998	December 15/1998
AD 98-451	100/06-35-021-05W4/0	October 16/1998	December 15/1998

Abandonment Order	Well Location	Date Issued	Abandonment Deadline
AD 98-452	100/16-34-021-05W4/0	October 16/1998	December 15/1998
AD 98-453	100/14-34-021-05W4/0	October 16/1998	December 15/1998
AD 98-454	100/08-34-021-05W4/0	October 16/1998	December 15/1998
AD 98-455	100-06-34-021-05W4/0	October 16/1998	December 15/1998
AD 98-456	100/14-33-021-05W4/0	October 16/1998	December 15/1998
AD 98-457	100/10-33-021-05W4/0	October 16/1998	December 15/1998
AD 98-458	100/08-33-021-05W4/0	October 16/1998	December 15/1998
AD 98-459	100/06-33-021-05W4/0	October 16/1998	December 15/1998
AD 98-460	100/14-32-021-05W4/0	October 16/1998	December 15/1998
AD 98-461	100/06-32-021-05W4/0	October 16/1998	December 15/1998
AD 98-462	100/14-31-021-05W4/0	October 16/1998	December 15/1998
AD 98-463	100/08-31-021-05W4/0	October 16/1998	December 15/1998
AD 98-464	100/06-31-021-05W4/0	October 16/1998	December 15/1998
AD 98-465	100/06-16-012-02W4/0	October 16/1998	December 15/1998
AD 98-466	100/06-09-012-02W4/0	October 16/1998	December 15/1998
AD 98-467	100/10-33-012-01W4/0	October 16/1998	December 15/1998
AD 98-468	100/08-32-012-01W4/0	October 16/1998	December 15/1998
AD 98-469	100/15-28-012-01W4/0	October 16/1998	December 15/1998
AD 98-470	100/05-28-012-01W4/0	October 16/1998	December 15/1998
AD 98-471	100/13-27-012-01W4/0	October 16/1998	December 15/1998
AD 98-472	100/16-06-012-01W4/0	October 16/1998	December 15/1998
AD 98-473	100/14-28-011-02W4/0	October 16/1998	December 15/1998
AD 98-476	100/10-29-012-02W4/0	October 23/1998	December 22/1998
AD 98-477	100/10-25-012-02W4/0	October 23/1998	December 22/1998
AD 98-478	100/10-24-012-02W4/0	October 23/1998	December 22/1998
AD 98-485	100/16-01-023-05W4/0	November 13/1998	January 12/1999
AD 98-486	100/06-01-023-05W4/0	November 13/1998	January 12/1999
AD 98-487	100/16-06-023-04W4/0	November 13/1998	January 12/1999
AD 98-488	100/06-06-023-04W4/0	November 13/1998	January 12/1999
AD 98-489	100/16-05-023-04W4/0	November 13/1998	January 12/1999
AD 98-490	102/07-05-023-04W4/0	November 13/1998	January 12/1999
AD 98-491	100/16-04-023-04W4/0	November 13/1998	January 12/1999
AD 98-492	100/06-04-023-04W4/0	November 13/1998	January 12/1999
AD 98-493	100/16-36-022-05W4/0	November 13/1998	January 12/1999
AD 98-494	100/06-36-022-05W4/0	November 13/1998	January 12/1999
AD 98-495	100/16-31-022-04W4/0	November 13/1998	January 12/1999
AD 98-496	100/08-31-022-04W4/0	November 13/1998	January 12/1999
AD 98-497	102/06-31-022-04W4/0	November 13/1998	January 12/1999
AD 98-506	100/11-20-049-12W4/0	November 20/1998	January 19/1999
AD 98-507	100/13-16-049-12W4/0	November 20/1998	January 19/1999
AD 98-509	100/06-18-12-01W4/0	November 20/1998	January 19/1999

ABANDONMENT ORDERS ISSUED TO MATRIX

Abandonment Order	Well Location	Date Issued	Abandonment Deadline
AD 99-49	14-03-022-05 W4	April 20/1999	June 21/1999
AD 2000-32	14-03-022-05W4	March 15/2000	May 16/2000
AD 2000-33	14-03-022-05W4	March 15/2000	May 16/2000

APPENDIX 3 DECLARATION NAMING MARC R. DAME PURSUANT TO SECTION 106(3) OF THE OIL AND GAS CONSERVATION ACT

For the reasons set out in the decision in this matter, the Energy Resources Conservation Board (ERCB/Board) has determined that Marc R. Dame was a person in direct control of Legacy Petroleum Ltd. (Legacy) and Matrix Resources Ltd. (Matrix) and that Legacy and Matrix have contravened Board requirements and failed to comply with Board orders while Marc R. Dame had been in control of Legacy and Matrix. Therefore, the Board names Marc R. Dame under Section 106 of the *Oil and Gas Conservation Act* (*OGCA*) and places the following restrictions on him:

1) The ERCB may suspend operations of a licensee or approval holder under the *OGCA* or a licensee under the *Pipeline Act* over which Marc R. Dame is, in the opinion of the Board, a director, officer, agent or other person in direct or indirect control.

2) The ERCB may refuse to consider any application from Marc R. Dame or any company over which Marc R. Dame is, in the opinion of the Board, a director, officer, agent, or other person in 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*.

3) If the ERCB were to consider an application from Marc R. Dame or any company over which Marc R. Dame is, in the opinion of the Board, a director, officer, agent, or other person in direct or indirect control, the Board may require the submission of abandonment and reclamation deposits of an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.

4) Any company that holds or is 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* and in which Marc R. Dame is a director, officer, agent, or other person involved with that company, must inform the Board of his status within the company and that a Section 106 declaration is in effect against Marc R. Dame.

5) Marc R. Dame must submit a sworn declaration by January 20, 2012, declaring that he is not a director, officer, agent, or other person involved in a company that is an applicant to the Board, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or if he is, declaring the name of the company or companies and specifying the applications it has before the Board and the Board licences and approvals the company holds.

6) Marc R. Dame cannot act as an agent of a company as defined under Section 1(1)(c) of the *OGCA* or Section 1(1)(c) of the *Pipeline Act* for any company for the purposes of those Acts.

7) This declaration is in force as of the date of this decision and will remain in force until December 31, 2019.

Dated: December 20, 2011

APPENDIX 4 DECLARATION NAMING MURRAY F. CRAIG PURSUANT TO SECTION 106(3) OF THE OIL AND GAS CONSERVATION ACT

For the reasons set out in the decision in this matter, the Energy Resources Conservation Board (ERCB/Board) has determined that Murray F. Craig was a person in control, direct or indirect, of Legacy Petroleum Ltd. (Legacy) and that Legacy has contravened Board requirements and failed to comply with Board orders while Murray F. Craig had been in control of Legacy. Therefore, the Board names Murray F. Craig under Section 106 of the *Oil and Gas Conservation Act* (*OGCA*) and places the following restrictions on him:

1) The ERCB may suspend operations of a licensee or approval holder under the *OGCA* or a licensee under the *Pipeline Act* over which Murray F. Craig is, in the opinion of the Board, a director, officer, agent or other person in direct or indirect control.

2) The ERCB may refuse to consider any application from Murray F. Craig, or any company over which Murray F. Craig is, in the opinion of the Board, a director, officer, agent or other person in 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*.

3) If the ERCB were to consider an application from Murray F. Craig or any company over which Murray F. Craig is, in the opinion of the Board, a director, officer, agent or other person in direct or indirect control, the Board may require the submission of abandonment and reclamation deposits of an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.

4) Any company that holds or is 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* and in which Murray F. Craig is a director, officer, agent or other person involved with that company, must inform the Board of his status within the company and that a Section 106 declaration is in effect against Murray F. Craig.

5) Murray F. Craig must submit a sworn declaration by January 20, 2012, declaring that he is not a director, officer, agent or other person involved in a company that is an applicant to the Board, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or if he is, declaring the name of the company or companies and specifying the applications it has before the Board and the Board licences and approvals the company holds.

6) Murray F. Craig can not act as an agent of a company as defined under section 1(1)(c) of the *OGCA* or section 1(1)(c) of the *Pipeline Act* for any company for the purposes of those acts.

7) This declaration is in force as of the date of this decision and will remain in force until December 31, 2016.

Dated: December 20, 2011