



# Declaration Pursuant to Section 106 of the *Oil and Gas Conservation Act*

Daniel Blair Grant

May 3, 2005

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2005-040: Declaration Pursuant to Section 106 of the *Oil and Gas Conservation Act*  
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# ALBERTA ENERGY AND UTILITIES BOARD

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Calgary Alberta

## DECISION TO ISSUE A DECLARATION NAMING DANIEL BLAIR GRANT PURSUANT TO SECTION 106 OF THE *OIL AND GAS CONSERVATION ACT*

Decision 2005-040  
Proceeding No. 1374728

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### 1 DECISION

The Alberta Energy and Utilities Board (EUB/Board) has determined to issue a Declaration naming Daniel Blair Grant as a person directly or indirectly in control of Kyjo Resources Ltd. (Kyjo), pursuant to Section 106(1) of the *Oil and Gas Conservation Act* (OGCA).

### 2 BACKGROUND

A division (the Notice panel) of the Board comprising Presiding Member T. M. McGee and Board Members J. I. Douglas, F.C.A., and R. G. Lock, P.Eng., was appointed to determine whether to issue a Notice of Intention to Issue a Declaration Naming Daniel Blair Grant pursuant to Section 106(1) of the OGCA.

The Notice panel reviewed documents relating to Kyjo's contraventions and failures to comply with Board Orders, as shown in Table 1.

The Notice panel also reviewed documents indicating that Daniel Blair Grant was a person directly or indirectly in control of Kyjo and found that these documents constituted *prima facie* evidence of the contraventions of Kyjo and of Daniel Blair Grant being a person directly or indirectly in control of Kyjo.

Based on these findings, the Notice panel decided to issue a Notice of Intention to Issue a Declaration Naming Daniel Blair Grant under Section 106 of the OGCA on December 6, 2004. Attached to the Notice as Attachment A were copies of the 62 documents reviewed by the Notice panel relating to Kyjo's contraventions and failures to comply and documents indicating that Daniel Blair Grant was a person directly or indirectly in control of Kyjo. These included Surface Rights Board letters and Notices of Termination Orders respecting surface leases for well sites, EUB letters relating to Abandonment Orders, and the Orders, as well as Notices of Enforcement Actions, Refer Status, LLR Program Security Deposit Requirements, and correspondence from Kyjo and Mr. Grant. The correspondence from the Surface Rights Board commenced in 2001 and from the EUB in 2002. The documents stated that Kyjo owed \$467 300.00 for unpaid LLR Program Security Deposit Requirements.

Table 1. Contraventions and failures of Kyjo

Order Type	Order No.	Date	Licence No.	Surface Location	Description
Abandonment	AD 2002-01	22-Mar-02	0068637	10-35- 40-25W4	Failing to maintain valid surface lease
Abandonment	AD 2002-09	17-Jun-02	0172532	5-3- 41-25W4	Failing to maintain valid surface lease
Abandonment	AD 2002-14	28-Aug-02	0202427	16-26-49-27W4	Failing to maintain a valid mineral lease
Abandonment	AD 2002-18	5-Nov-02	0202427	16-26-49-27W4	Failing to maintain a valid surface lease
Abandonment	AD 2002-26	27-Dec-02	0077600	6-33-40-25W4	Failing to maintain a valid surface lease
Abandonment		8-Jan-03	0096473	6-12-38-28W4	Failing to maintain a valid surface lease
Abandonment	AD 2003-18	8-Apr-03	0093970	16-1-35-4W5	Failing to maintain a valid surface lease
Abandonment	AD 2003-36	2-Sept-03	0096473	6-12-38-28W4	Failing to maintain valid surface leases
			0071227	10-33-40-25W4	
			0077600	6-33-40-25W4	
			0068637	10-35-40-25W4	
			0093970	16-01-35-4W5	
			0172532	5-3-41-25W4	
			0202427	16-26-49-27W4/2	
Abandonment	AD 2003-37	2-Sept-03	0158318	8-35-49-27W4	Failure to submit required action plan
Miscellaneous	MISC 01023	1-Oct-02	Unpaid security deposits - Failure to comply with Section 1.100(2) of the <i>Oil and Gas Conservation Regulation</i> and pay the \$467 300.00 security deposit owed		
Closure Order	C 976	3-Feb-03	0068637	10-35-40-25W4	Failure to comply with Section 1.100(2) of the <i>Oil and Gas Conservation Regulation</i> and pay the security deposit owed
			0071227	10-33-40-25W4	
			0077600	6-33-40-25W4	
			0079660	12-34-40-25W4	
			0093970	16-1-35-4W5	
			0096473	6-12-38-28W4	
			0126318	6-34-40-25W4	
			0158318	8-35-49-27W4	
			0172532	5-3-41-25W4	
			0202427	16-26-49-27W4	

The Notice further stated that if any Declaration were issued, the Board may impose such restrictions and sanctions as set out in Section 106(3) of the OGCA against Daniel Blair Grant and any companies directly or indirectly controlled by Daniel Blair Grant as may be appropriate, including

- a) suspension of any operations of a licensee or approval holder under the OGCA or a licensee under the *Pipeline Act*,

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

In accordance with Subsection 106 (2) of the OGCA, the Notice and Attachment A to the Notice were served personally on Mr. Grant on December 11, 2004, as attested to by Jim Smith, Process Server. The Notice stated that Mr. Grant had until December 29, 2004, to file a written submission with the Board to show because why such a Declaration should not be issued and include all supporting evidence. The Board did not receive any communication from Mr. Grant or from counsel representing him by the due date.

A division of the Board (the Declaration panel) comprising Presiding Member A. J. Berg, P.Eng., and Board Members J. D. Dilay, P.Eng., and G. Miller was appointed to conduct this proceeding and determine whether to issue a Declaration naming Mr. Grant pursuant to Section 106 of the OGCA.

Counsel for Mr. Grant advised the Board by letter dated January 5, 2005, and received by the Board on January 13, 2005, that he was representing Mr. Grant in this matter. This letter stated that Mr. Grant would consent to an order being granted under Section 106 of the OGCA on two conditions:

- a) The Order as provided would not prevent Daniel Blair Grant from employment as a bona fide employee as a consultant with a corporation in which he holds no ownership (direct or indirect).
- b) The Order is for a finite period (proposed two years).

Otherwise, counsel for Mr. Grant requested that a hearing be conducted. Counsel for the Corporate Compliance Group of the EUB, acting as a party to this proceeding, responded to the letter from counsel for Mr. Grant opposing the conditions.

Counsel for Mr. Grant submitted a letter dated February 1, 2005, stating that the documents received from the Board indicated to Mr. Grant that the Board in this matter was acting not only as the hearing body but also the prosecutor and as an interested party, contrary to the rules of natural justice.

Legal counsel to the Declaration panel responded by reiterating the powers of the Board under Section 106 of the OGCA and that the Board had acted in accordance with that section.

In order to assist Mr. Grant in the Board's process, Mr. Grant was provided with another opportunity to make written submission as to why the Declaration should not be issued. Mr. Grant was given until February 23, 2005, to file his submission.

A response dated February 23, 2005, was received from counsel for Mr. Grant stating that Mr. Grant still questioned the independence of the Board in this matter and that Mr. Grant's objection related to the effect it may have on his ability to earn a living working as a consultant in the industry, although counsel for Mr. Grant added that Mr. Grant's position is that of a contractor and he is not "directly or indirectly in control of the licensee, approval holder, applicant, transferor or transferee," as specified in Section 106(3) of the OGCA. The request for a hearing was reiterated.

Accordingly, the Board considers that the close of evidence for this proceeding is February 23, 2005.

### 3 VIEWS OF THE BOARD

The Declaration panel reviewed Section 106 of the OGCA, which states:

#### **Actions re principals**

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

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

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

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

(3) 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 licence or approval under this Act or a licence under the *Pipeline Act*,

(d) require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval or transfer to an applicant, transferor or transferee under 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 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).

(4) This section applies in respect of a contravention, failure to comply or debt whether the contravention, failure to comply or debt arose before or after the coming into force of this section.

The Declaration panel finds that, although requested by Mr. Grant, a show cause hearing is not warranted in this matter for the following reasons:

- Mr. Grant was afforded every opportunity to file a written submission in this proceeding.
- Mr. Grant did not make a submission by the December 29, 2004, deadline specified in the Notice. This written submission was to show because why the Declaration should not be issued and was to include supporting evidence.
- Mr. Grant was given additional time to file, should he not have understood the Notice.
- In addition, Mr. Grant was told in the Notice that a hearing would not be held unless he filed a written submission showing cause why the Declaration should not be issued and that even if a submission were filed, the Board could determine that a hearing was not warranted in this proceeding and could issue a Declaration.

Mr. Grant did not file a written submission showing cause why the Declaration should not be issued naming him. Mr. Grant, through his counsel, made submissions on the conditions to be attached to the Declaration and questioned the Board's independence, without substantiating the allegation.

However, Mr. Grant did not take issue with or contest the written evidence before the Board, as set out in Attachment A to the Notice, relating to Kyjo's contraventions and failures to comply with Board Orders or the documents indicating that Daniel Blair Grant was a person directly or indirectly in control of Kyjo.

Mr. Grant indicated that he would consent to the Order as provided, as long it did not prevent him from being able to gain employment as a *bona fide* consultant with a corporation in which he holds no ownership (direct or indirect) and if the Order was in effect for a finite period (proposed two years).

With respect to the allegations regarding compliance with the rules of natural justice, the Declaration panel considers that the rules were adhered to. The Declaration panel notes the following:

- 1) As stated in the Notice, the Notice panel made the determination to issue the Notice based on written documents before it.
- 2) Copies of the written documents were provided to Mr. Grant, along with the Notice.
- 3) As noted above, Mr. Grant had an opportunity to dispute the written documents considered by the Notice panel.
- 4) The EUB Corporate Compliance Group has had separately assigned counsel to assist them.
- 5) The Declaration panel was appointed to conduct this proceeding. It has not received any advice and has not met with the EUB's Corporate Compliance Group, which is acting as a party in this matter, other than by written correspondence from legal counsel to this panel, copies of which were provided to Mr. Grant through his counsel.
- 6) The Declaration panel has separate counsel from both the Corporate Compliance Group and the Notice panel.

The Declaration panel finds that the uncontested evidence before it contained in Attachment A to the Notice is proof that Kyjo contravened and failed to comply with the Board Orders listed above and that Mr. Grant was a person directly or indirectly in control of Kyjo.

Based on these findings, this Declaration panel issues a Declaration naming Mr. Daniel Blair Grant pursuant to Section 106 of the OGCA and imposes the restrictions set out below, as authorized by Subsection 106(3) of the OGCA.

The Declaration panel notes the concern expressed by Mr. Grant about earning his livelihood as a consultant in the energy industry. A Declaration made under Section 106 of the OGCA is to identify a person who has been in control of a company that has contravened or failed to comply with EUB requirements and orders to protect the safety of the public and the protection of the environment. The Board will take the Declaration into account when making decisions about applications from or licenses and approvals for such a company.

In naming a person under Section 106 of the OGCA, the Board is regulating that person's conduct and business with the Board in relation to a company that the named person controls and not necessarily his employment with an energy company.

The Board's intent in developing restrictions is to avoid unnecessary restrictions on Mr. Grant's ability to gain employment, while at the same time protecting the public interest. The Board, in this Declaration, restricts the ability of Mr. Grant to conduct business with the EUB. The Declaration does not necessarily affect Mr. Grant's ability to deal with other third parties. However, the Board considers that the following restrictions should be placed on Mr. Grant's ability to conduct business with the EUB.

Relating to the question as to whether the Declaration should be for a finite term, as proposed by Mr. Grant, the Declaration Panel notes that Section 106 of the OGCA does not limit the time that a Declaration naming a person in control of a company is in force. Unless there is evidence before the Board to the contrary, the Declaration panel is of the view that the intent of Section 106 of the OGCA is that a Declaration should be issued for an indefinite period, to ensure that



the contraventions are addressed and to prevent any future contraventions by a company controlled by the named person.

The Declaration panel finds that Mr. Grant has not provided any evidence in support of his contention that the Declaration should be for a term of two years. As a result, the Declaration panel will issue the Declaration for an indefinite period, as it is up to Mr. Grant to ensure that Kyjo remedy its contraventions and comply with Board Orders.

Accordingly, the Board orders that the Declaration included as the appendix be issued forthwith to Mr. Daniel Blair Grant.

Dated in Calgary, Alberta, on May 3, 2005.

**ALBERTA ENERGY AND UTILITIES BOARD**

*<original signed by>*

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

*<original signed by>*

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

*<original signed by>*

G. Miller  
Board Member

**APPENDIX    DECLARATION NAMING DANIEL BLAIR GRANT PURSUANT TO  
SUBSECTION 106(3) OF THE *OIL AND GAS CONSERVATION ACT*  
(OGCA)**

For the reasons set out in the decision in this matter, the Board has determined that Daniel Blair Grant is the person in control, direct or indirect, of Kyjo Resources Ltd. and that Kyjo Resources Ltd. has contravened EUB requirements and failed to comply with Board Orders while Daniel Blair Grant has been in control of this company. Therefore, the Board names Daniel Blair Grant under Section 106 of the *Oil and Gas Conservation Act* and places the following restrictions on him:

- 1) Daniel Blair Grant and any company directly or indirectly controlled by Daniel Blair Grant must inform the EUB that a Section 106 Declaration is in effect against Daniel Blair Grant and that he has direct or indirect control of the company applying to the Board for an identification code, licence, or approval or the transfer of a licence or approval under the OGCA or the *Pipeline Act*.
- 2) Daniel Blair Grant cannot act as an agent of a company as defined in the OGCA or the *Pipeline Act* for any company.
- 3) The EUB may refuse to consider any application from Daniel Blair Grant and any company over which that he has direct or indirect control for an identification code, licence, or approval or a transfer of a licence, or approval under the OGCA or the *Pipeline Act*.
- 4) If the EUB were to consider an application from Daniel Blair Grant and any company directly or indirectly controlled by Daniel Blair Grant, the EUB may require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the OGCA.
- 5) Daniel Blair Grant must submit a sworn declaration by June 1, 2005, that he is not in direct or indirect control of any company, other than Kyjo Resources Ltd., that is an applicant to the EUB, a licensee, or an approval holder under the OGCA or the *Pipeline Act*, or if he is, a declaration stating the name of the company or companies and specifying the applications it has before the EUB and the EUB licences and approvals the company holds.
- 6) This declaration is in force at the date of this decision and will remain in force until Kyjo Resources Ltd. has complied with the abovementioned Board Orders and rectified its contraventions or until the Board orders otherwise.

Dated: May 3, 2005