

ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**TRILOGY BLUE MOUNTAIN LTD.
APPLICATIONS FOR A WELL AND
A PIPELINE LICENCE
PEMBINA FIELD**

**Decision 2009-072 Errata
Applications No. 1548356,
1574425, 1604040, and 1613367**

The Energy Resources Conservation Board (ERCB/Board) issued *Decision 2009-072* arising from the hearing that commenced on September 2, 2009, in Westeros, Alberta. The Board has since discovered an error in this document in Section 5.3: Findings of the Board, page 7, last paragraph. The paragraph in error reads: “The Board notes that the 0.44 per cent value is not from the target reservoir horizon—the Banff Formation—but from the shallower Ellerslie Formation and that Trilogy should be prepared to commence sour operations above that zone, as indicated by the ERCB staff.”

This paragraph is corrected to read as follows:

“As stated, the Board agrees that the use of the 0.44 per cent H₂S concentration for the target reservoir horizon—the Banff Formation—is correct. However, the panel disagrees with Trilogy’s discounting of the Ellerslie Formation and regards that zone as potentially being of reservoir quality. The panel directs that Trilogy should be prepared to commence sour operations above that zone, as indicated by the ERCBH₂S Release Rate Pre-Approval letter.”

The Board considers that the correction to the paragraph noted above reflects the Board’s intention in *Decision 2009-072*. Therefore, the Board approves the above-noted correction to *Decision 2009-072*.

Dated in Calgary, Alberta, on December 16, 2009.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

M. J. Bruni, Q.C.
Presiding Member



Trilogy Blue Mountain Ltd.

**Applications for a Well and a Pipeline Licence
Pembina Field**

December 15, 2009

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Decision 2009-072: Trilogy Blue Mountain Ltd., Applications for a Well and a Pipeline Licence,
Pembina Field

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**TRILOGY BLUE MOUNTAIN LTD.
APPLICATIONS FOR A WELL AND
A PIPELINE LICENCE
PEMBINA FIELD**

**Decision 2009-072
Applications No. 1548356,
1574425, 1604040, and 1613367**

1 DECISION

The Energy Resources Conservation Board (ERCB/Board) has carefully considered all of the evidence and hereby, first, accepts the withdrawal of Applications No. 1548356 and 1604040 and, second, denies Applications No. 1574425 and 1613367.

While the latter Applications No. 1574425 and 1613367 are denied, this is done without prejudice to the applicant's right to reapply for these facilities at the same location as part of a future application.

2 INTRODUCTION

2.1 Well Applications

Trilogy Blue Mountain Ltd. (Trilogy) applied to the ERCB, pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a well from a surface location at Legal Subdivision (LSD) 14, Section 23, Township 46, Range 2, West of the 5th Meridian, to a projected bottomhole location at LSD 16-22-43-2W5M.

The purpose of the proposed well would be to produce gas from the Banff Formation.

Trilogy currently has three applications before the Board for this proposed well. They were filed on November 28, 2007 (Application No. 1548356), January 27, 2009 (Application No. 1604040), and May 6, 2009 (Application No. 1613367). Each successive application was filed to update the calculated maximum hydrogen sulphide (H₂S) concentration and H₂S release rate. These changes in H₂S calculations also affected the emergency planning zone (EPZ) for the proposed well.

2.2 Pipeline Application

Trilogy also submitted an application, in accordance with Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting gas to a tie-in point in the same LSD 14-23-46-2W5M.

The proposed pipeline would be about 140 metres (m) in length, have a maximum outside diameter of 114.3 millimetres (mm), and transport gas with a maximum H₂S concentration of 3.5 moles per kilomole (mol/kmol), or 0.35 per cent.

The proposed well surface location is located about 1.6 kilometres (km) north of Battle Lake and about 10 km northwest of Westeros, Alberta.

2.3 Interventions

Several area landowners filed objections to the proposed project, and submissions were received for this hearing from

- Bob Whiteside
- Lily Whiteside
- Brent Norris
- Tim Belec
- Michael Black
- Mike Todorow
- Charlene Steinke

The interveners raised issues concerning location, environment, emergency response planning, and public consultation. Some landowners objected to alternatives proposed by other landowners, which resulted in two landowner groups with separate legal representation participating in the hearing.

The Board also provided an opportunity for parties who reside outside of the immediate area of the proposed sour gas well to provide brief comments.

2.4 Background

The proposed well and related pipeline are in the vicinity of Battle Lake.

In *Decision 2005-129: Review of Well Licence No. 0313083 and Applications for Associated Battery and Pipeline, Pembina Field* (the *Ketch Decision*), the Board made note of the fact that local bylaws were in place to protect Battle Lake and its watershed. The bylaws reflected the community's desire to minimize tree clearing and prevent disruption of surface water.

In the *Ketch Decision*, the Board also noted concerns regarding significant renewed oil and gas development in the area that the community perceived to be proceeding on an *ad hoc* basis. The Board, concerned that guidelines on planning and proliferation were not being followed, recommended a pilot project to initiate an area development plan for the Battle Lake Water Management Area.

Subsequent to the *Ketch Decision*, the ERCB engaged Battle Lake area stakeholders in just such a pilot project to address upstream oil and gas development issues. The resulting *Battle Lake Watershed Development Planning Pilot Project—Report of the Multistakeholder Pilot Project Team* (*Battle Lake Report*) recommended a three-tiered approach to identify protection priorities for lands within the Battle Lake Watershed.

Tier 1 lands are key environmentally sensitive areas where new disturbance should be avoided. Operators are expected to investigate alternative approaches for oil and gas development, and select those that avoid Tier 1 areas. If new Tier 1 development is deemed necessary, operators should use a protocol for area consultation and mitigation practices.

Tier 2 lands are natural cover areas outside the Tier 1 designation. Operators are expected to assess and implement options to avoid or minimize disturbance of Tier 2 sites.

Tier 3 lands are disturbed (agricultural and industrial) lands not covered by Tiers 1 and 2. Current practices and regulations continue to apply to these areas.

The *Battle Lake Report* also set out a plan for further work and planning in the area, some of which would be conducted through the Battle Lake Watershed Synergy Group.

The Trilogy applications raised a number of issues regarding the interpretation of the *Battle Lake Report*, the critical one being how companies should balance the many and varied interests involved when selecting a site in an environmentally sensitive area.

2.5 Hearing

The Board opened and adjourned the public hearing in Westeros, Alberta, on October 29, 2008, before Board Members J. D. Dilay, P.Eng. (Presiding Member) and M. J. Bruni, Q.C., and Acting Board Member R. J. Willard, P.Eng.

On September 1, 2009, the panel and ERCB staff and counsel conducted a site visit to view the area of the proposed well and pipeline, alternative sites, and the locations of interveners' residences.

The hearing was reopened on September 2, 2009, before Board Members M. J. Bruni, Q.C. (Presiding Member) and G. Eynon, P.Geol., and Acting Board Member R. J. Willard, P.Eng. The oral portion of the hearing was completed on September 3, 2009, and the hearing was closed following written submissions of final arguments on September 18, 2009.

Those who appeared at the hearing are listed in [Appendix 1](#).

3 ISSUES

As noted above, these applications forced parties to actively engage on the question of how companies should go about selecting a site in this environmentally sensitive area. In considering this question, the Board heard evidence regarding

- the need and location for the well and pipeline,
- public safety—H₂S content of the gas and emergency response planning,
- land-use concerns with respect to the environment and future development plans, and
- public consultation and alternative locations for the well and pipeline.

In reaching the findings contained in this decision, the Board considered all relevant materials constituting the record of this proceeding, including the evidence and arguments provided by each party.

4 NEED AND LOCATION FOR THE WELL AND PIPELINE

4.1 Views of the Applicant

Need for the Well

Trilogy confirmed that it held the mineral rights for the proposed well and submitted that it based its bottomhole location on extensive geological and geophysical mapping. It argued that the bottomhole location at LSD 16-22-43-2W5M was the structurally highest position in the reservoir and would provide Trilogy with the best chance of drilling a successful well.

Trilogy stated its belief that reserves in the pool were being depleted by a competitor well (bottomhole location at LSD 13-23-46-2W5M drilled from a surface location at LSD 1-27-46-2W5M [1-27]) producing gas from the same Banff Formation reservoir. Trilogy submitted that its applied-for well was needed to recover and obtain its share of the Banff reservoir in this area.

Choice of Location

Trilogy stated that the LSD 14-23-46-2W5M (14-23) location was superior to the available alternatives in that it would create the least environmental impact by using an existing surface lease outside the Tier 1 environmentally sensitive areas described in the *Battle Lake Report*. It also indicated that the pipeline tie-in would be about 150 m long and would be constructed along the existing access road without impacting Tier 1 lands.

Trilogy provided a comparison of the 14-23 site and the alternatives in its Project Proposal report prepared in July 2007. It submitted that this report conformed with the Board's direction in the *Ketch Decision* by considering the impact on and proximity to Tier 1 areas. Trilogy argued that the 14-23 surface location and tie-in route would protect the watershed and mitigate the potential adverse effects of oil and gas development on area residents, other land users, and wildlife habitats.

4.2 Views of the Interveners

The Norris, Belec, and Black families did not dispute the need for the well, although they emphasized the need to avoid facility proliferation when possible and practical by using existing infrastructure. All parties in this intervener group were opposed to the 14-23 location.

Most interveners raised concerns regarding their ability to evacuate along Township Road 464 in the event of an emergency, given that they might need to pass through the protective action zone (PAZ) for the well and pipeline.

4.3 Findings of the Board

The Board is charged with determining whether these applications provide for the orderly, economic, and efficient development of Alberta's oil and gas resources and whether these applications are in the public interest. In this case, a balancing of environmental, social, and economic impacts of the proposed project is required, having regard to the potential for locating the well at other sites in the area. The Board accepts that Trilogy owns mineral rights with potentially recoverable reserves and accepts that Trilogy is entitled to develop those minerals.

The Board's findings with respect to evacuation routes and the PAZ are provided later in this decision.

5 PUBLIC SAFETY—HYDROGEN SULPHIDE AND EMERGENCY RESPONSE PLANNING

The Board heard much evidence regarding these issues at various points throughout the hearing; they are considered together here, as they are intimately related.

5.1 Views of the Applicant

H₂S Concentrations and Release Rates

Trilogy made three sequential applications, the second and third amending the H₂S information in the previous ones.

Application No. 1548356, filed by Trilogy, indicated that the maximum expected H₂S concentration would be 25.7 mol/kmol (2.57 per cent), with a release rate of 0.0382 cubic metres per second (m³/s).

The subsequent Application No. 1604040, filed to replace Application No. 1548356, indicated that the maximum expected H₂S concentration would be 1.1 mol/kmol (0.11 per cent), with a release rate of 0.0048 m³/s. The change was the result of focusing on the Banff Formation in the immediate area, rather than on unrelated pools.

Application No. 1613367 was submitted, using new information to amend the H₂S concentration and release rate, to replace Application No. 1604040. Trilogy indicated that the maximum H₂S concentration expected to be encountered in this well would be 4.4 mol/kmol (0.44 per cent) and that the maximum cumulative H₂S release rate would be 0.0192 m³/s.

EPZs and Emergency Response Planning

The corresponding EPZs for the proposed well in the third application, No. 1613367, would be 130 m during drilling, 90 m during completion/servicing, and 10 m during suspension/production. (The radii of the EPZs in the two prior applications were respectively 320 m and 30 m during drilling, 30 m and 20 m during completion/servicing, and 30 m and 10 m during suspension/production.)

Trilogy stated that Application No. 1613367, with a drilling and completion EPZ of 130 m, would not require a site-specific emergency response plan (ERP), in accordance with *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* (latest release: November 18, 2008) requirements.

Trilogy stated that an ERP might be required for the well and pipeline when on production if the Whitesides were permitted to use the lease road for access to their property. Trilogy noted that the production EPZ of the well would be 10 m and the pipeline EPZ was expected to be 20 m, both of which were smaller than for an existing pipeline along Township Road 464. Trilogy also

noted that there would be no additional setback imposed by the proposed well, as there was already a 100 m setback on the Whitesides' land from the existing Baytex Energy Ltd. well.

Trilogy advised that it had a corporate ERP in place that would be used in the event of an emergency during drilling and completions phases for the well. Trilogy stated there was an agreement in place with ConocoPhillips Canada Resources Corp. (ConocoPhillips) to operate the well and associated pipeline when on production.

Trilogy stated that since there were no surface developments in the calculated EPZ for the well, no evacuation would be necessary during an emergency. Given the distance from interveners' residences to the well, Trilogy would advise sheltering in place during an emergency. Trilogy also noted that the EPZ did not extend to Township Road 464, so there would be no restriction on driving it during an emergency.

Trilogy noted that concerns had been raised with respect to the PAZ. Trilogy stated that a PAZ would not exist in advance of an incident and then would only represent an area in which particular attention should be focused. The extent of the PAZ would be based on air monitoring results during an incident immediately downwind of a release.

Trilogy stated that it would provide notice of drilling operations to any interested parties who requested it. All interested parties would be notified prior to Trilogy entering the sour zone.

Trilogy provided potential evacuation options and stated that, if required, it could provide a helicopter. Trilogy also stated that it could provide 4 x 4 trucks on standby for residents to evacuate westward along the road allowance or north over lease roads and pipeline rights-of-way.

Trilogy noted that during drilling it would have notice of a well control issue far in advance of any potential release to surface, providing ample time to notify local residents. Trilogy also stated that in the event of an incident during production, the well site would have an alarm system to warn anyone driving past the lease. Automatic shut-ins would be installed and would trigger the alarm and notify Trilogy if readings reached 5 parts per million (ppm), and the entire site would shut in at a 10 ppm concentration. Trilogy also stated that if necessary it would ignite a release at the well site to remove the H₂S hazard.

5.2 Views of the Intervenors

Several intervenors raised concerns regarding the changes from 2.57 per cent H₂S to 0.11 per cent H₂S and finally to 0.44 per cent H₂S, and they questioned why Trilogy had discounted the Ellerslie Formation.

All parties raised concerns about having to evacuate down Township Road 464 past the well site and proposed pipeline, and some suggested that if Trilogy were to drill on an alternative location they would not have the same issues. They were also concerned about the alternative evacuation routes suggested by Trilogy, stating that the routes to the west or north were on private land, were overgrown with trees, and could be impassable during the winter or rainy weather.

Many interveners believed that they might have to evacuate through the PAZ in the event of an emergency and raised concerns about the understanding of PAZs both on the part of Trilogy and residents.

Some interveners expressed their concern about the lack of a site-specific ERP for the drilling and completion, production, and associated pipeline, which could mean that Trilogy might have no information on residents and might therefore have difficulty contacting them during an emergency.

The Whitesides noted that the proposed well would be close to the home they planned to build and indicated their desire to use the existing lease road to access their home, which would require driving past the proposed well and pipeline every day. Given such potential proximity on a daily basis, they questioned how Trilogy would ensure that they were notified and evacuated during an emergency. The Whitesides also commented on their recreational use of the property, stating that there were frequently large numbers of young people on the acreage on long weekends in the summer, and their concerns about the safety of guests in the event of a release during production.

Mr. Norris also expressed concern that the proposed well would be too close to his property and mobile home and that Trilogy might not be able to protect the safety of his family during a release.

5.3 Findings of the Board

H₂S Concentrations and Release Rates

The Board finds the use of a 0.44 per cent H₂S concentration and the associated release rates used in the ERCBH₂S calculations both appropriate and conservative.

The Board notes that the 0.44 per cent value is not from the target reservoir horizon—the Banff Formation—but from the shallower Ellerslie Formation and that Trilogy should be prepared to commence sour operations above that zone, as indicated by the ERCB staff.

EPZs and Emergency Response Planning

With respect to emergency response, the Board agrees that there is no requirement for Trilogy to create a site-specific ERP for the drilling and completion of this well. Trilogy has stated that it will create a production ERP, if required at that stage. Trilogy's commitment to put site-specific information in its corporate ERP, including resident contact information and service company contacts, is beyond ERCB emergency planning requirements for this site.

The Board notes that there were a number of concerns expressed at this hearing regarding the PAZ and evacuation. The PAZ is a tool used to focus response efforts where most needed *once an event has occurred*.

6 LAND USE: THE ENVIRONMENT, INDUSTRY PROLIFERATION, AND FUTURE DEVELOPMENT PLANS

The Board heard much evidence regarding these issues at various points throughout the hearing, including opinion and evidence with respect to the *Battle Lake Report*. These issues are considered together, as they are intimately related.

6.1 Views of the Applicant

The Environment and Industry Proliferation

Trilogy acknowledged that the primary goal of the *Battle Lake Report* was to protect the watershed from adverse and cumulative effects of industrial development, specifically that of the oil and gas sector. It indicated that there were significant benefits to locating the well on an existing lease site, as opposed to constructing a new lease.

Trilogy stated that prior to applying for the well and pipeline, it had evaluated all existing surface leases and potential new surface locations within 800 m of the proposed bottomhole location, as it believed this was the distance it could directionally drill the well effectively. It noted that most of the land within that radius was located in Tier 1 areas, classified as the most environmentally sensitive land in the watershed. Trilogy stated that it consulted with residents, landowners, and the Battle Lake Watershed Synergy Group.

Trilogy submitted that the well site at 14-23 was superior to the available alternatives and that it would have the least environmental impact for several reasons. First, it would use an existing surface lease outside the Tier 1 area. Second, there would be only a short (about 150 m) pipeline connection along an existing access road.

Trilogy submitted the *Environmental Project Report* prepared by Wildside Environment and Land Services, which concluded that with proper planning, the proposed project would have minimal impact on the area. Trilogy confirmed that other sites were not visited or evaluated as part of this study.

Trilogy advised that interveners had previously acknowledged the 14-23 well site to be the best site from an environmental perspective, although they opposed it on other grounds.

Future Development Plans

Trilogy acknowledged that the Whitesides had plans to subdivide their property. However, Trilogy argued that the subdivision was a conditional proposition and questioned whether the Whitesides could meet the condition of 80 per cent tree coverage, given the fact that one-third of the property was covered by surface disposition for oil and gas operations *before* they bought the land. Trilogy submitted the 20-acre parcel on which the Whitesides wished to build was covered by 6.54 acres of surface dispositions, about 32 per cent of the area.

Trilogy argued that the well and the Whitesides' future plans could coexist. Trilogy maintained that it could make the facilities blend into the rural surroundings. It indicated that the access road to the Whitesides' future home could be located outside the 10 m production EPZ and that tree-planting could provide a visual barrier for the facility. It also submitted that it could bore its

pipeline adjacent to the road without taking out more trees. Trilogy committed to working with the Whitesides to ensure that the site would be as visually appealing as possible.

Trilogy indicated it believed that subdivision plans had greater impacts on the environment than oil and gas development, pointing out that when a residence was established, there was a constant human presence, creating a greater environmental impact; by contrast, the well and pipeline would not require a constant human presence.

6.2 Views of the Interveners

The Environment and Industry Proliferation

Mr. Belec and Mr. Black provided their views both as residents of the area and as individuals who took an active role in the process that led to the *Battle Lake Report*. They argued that Trilogy's choice of site was not in keeping with the spirit and intent of the *Battle Lake Report*. They pointed out that while it was vital to avoid Tier 1 areas where possible, it was also important to examine existing and potential uses of property, as well as the potential for mitigative measures if Tier 1 lands were disturbed.

Future Development Plans

The Whitesides submitted that they purchased the land with the objective of creating a lifestyle for themselves and an inheritance for their three children. They stated that in the future, Mr. Whiteside would like to run a home-based business from the property and Ms. Whiteside would like to be able to use their residence as a foster home.

The Whitesides acknowledged that they purchased their property with existing oil and gas infrastructure, but it was their understanding that the Baytex well was nearing the end of its lifespan and the land would be remediated. They stated that their intent when they purchased the land was to subdivide the property into three parcels, and they provided evidence of conditional subdivision approval from the County of Wetaskiwin for a 20 acre parcel, including the existing 14-23 lease site. They indicated one of the caveats on the approval required the parcel to reach an 80 per cent tree or wetland coverage. The Whitesides noted that they made a commitment to the County of Wetaskiwin that they would return the land to a more natural state. They indicated that they intended to use existing access roads to avoid cutting down trees. Mr. Whiteside stated that the tree coverage along the pipeline route on the north portion of the property and on the Baytex lease was regenerating well. He expressed concern about the proximity of the flare stack to the trees and the potential for forest fires. Mr. Whiteside also advised that if trees had to be cleared to meet proper safety clearances, it would affect the conditions of his subdivision approval from the County of Wetaskiwin.

The Whitesides noted that they had a building permit registered for their proposed house; if the well were approved, they would have difficulties building their home, since all the contractors they contacted refused to use an access road in close proximity to a sour gas well.

6.3 Findings of the Board

The Environment and Industry Proliferation

The Board accepts that Trilogy attempted to meet the intent of the *Battle Lake Report* by choosing the site that it believed would have the least environmental impact. The 14-23 site is not on Tier 1 lands and would require only a short pipeline.

However, in this case more detailed evaluation of other sites is required. This evaluation would include the confirmation of water body proximity (confirm Tier 1 boundaries)—including peat lands and seasonal drainage, the relationship of the land to the watershed, disturbance to native vegetation, including tree clearing and options for mitigation—and would address both the well and pipeline. It is not clear to the Board, after hearing all of the evidence, that other sites in the area are less suitable than the 14-23 location from an environmental perspective. While Trilogy provided an overview of its screening of other sites and its reasons for rejecting them, it would have been helpful to the Board if the company had provided, as a minimum, a detailed investigation and comparison of all alternatives that were identified by interveners and had detailed its process in accepting or rejecting each alternative.

Future Development Plans

In considering any application for oil and gas facilities proposed on privately held lands, the Board must balance the rights of the surface holder and the rights of the mineral holder and account for the public interest associated with economic development of Alberta's energy resources.

The Board expects the applicant to consider all available options in establishing that the location proposed is the most appropriate, having regard for the social, economic, and environmental circumstances. If a surface holder has legitimate concerns regarding potential impacts of the proposed development, the Board expects the applicant to take reasonable steps to mitigate impacts.

7 PUBLIC CONSULTATION AND ALTERNATIVE LOCATIONS

Most of the discussion from the interveners was with respect to the pros and cons of alternatives to the 14-23 surface location. The Board acknowledges the importance of examining such alternatives when there is so much concern among the local residents.

The alternative sites discussed by the parties included LSDs 1-27-46-2W5M (1-27), 2-27-46-2W5M (2-27), 7-27-46-2W5M (7-27), and 4-26-46-2W5M (4-26).

7.1 Views of the Applicant

Public Consultation

Trilogy stated that its public consultation exceeded the requirements of *Directive 056: Energy Development Applications and Schedules* and that it had conducted a significantly greater amount on this application than for other applications with which it has been involved. Trilogy

noted that its public consultation program included communications by letter and e-mail, as well as meetings with the various parties. Trilogy stated that it had attended the Battle Lake Watershed Synergy Group meetings to review and discuss its plans in the area, including details regarding alternative well locations, starting in December 2006.

Trilogy stated that it had evaluated potential surface locations and conducted significant area scrutiny and consultation with residents and landowners prior to applying for the 14-23 well location and that it notified and consulted with landowners, residents, and interested parties within the EPZ for the original Application No. 1548356, submitted in November 2007.

Trilogy stated that an appropriate dispute resolution (ADR) meeting was held in 2008 with the Whiteside, Forand, and Norris families, although no agreement was reached. Trilogy indicated that it had renotified the parties in December 2008 regarding Application No. 1604040, and although the notification radius had dramatically dropped, it had consulted with the same individuals from the previous application. Trilogy stated that following its request for an adjournment of the April 2009 hearing of the applications, it had immediately notified and consulted with all parties previously contacted regarding the submission of the new Application No. 1613367.

Alternative Well Site Location LSD 1-27-46-2W5M

The 1-27 location is located northwest of the 14-23 location applied for by Trilogy and is the site that was the subject of the *Ketch Decision*. While it is located within the area designated as Tier 1 in the *Battle Lake Report*, it is classified as Tier 3 because it is a disturbed industrial area.

Trilogy argued that the 1-27 location was not superior to the applied-for 14-23 location for the following reasons:

- The 1-27 site was located in a Tier 1 area, pursuant to the *Battle Lake Report* and *Directive 056*.
- The 1-27 location was strongly opposed by the interveners and the community.
- Additional clearing and ground disturbance would be required to use the 1-27 well site.

Trilogy stated that companies should be extremely cautious when a Tier 3 area was an island surrounded by Tier 1 lands. It submitted that it did not make sense to create more disturbance by operating adjacent to a Tier 1 area when there were alternatives outside. Although early in its consultation process Trilogy had determined that the 1-27 was the optimal site, given that it would not require any additional pipelines and there would be minimal disturbance from another facility, it changed this position in part due to community objections.

Alternative Well Site Locations LSD 2-27-46-2W5M (2-27) and LSD 7-27-46-2W5M (7-27)

The 2-27 and the 7-27 locations are farther northwest of 14-23 and farther from Township Road 464. The two sites are immediately adjacent to or partly within the Tier 1 area. The two locations are connected by a single access road.

Trilogy argued that neither of these locations was superior to 14-23 for the following reasons:

- The landowners did not consent to the 2-27 or 7-27 location being used and did not want additional disturbance to their lands.

- The 2-27 site had a low-lying slough within it, and Trilogy would need to create a borrow pit off lease to supply the necessary fill material for lease construction.
- The leases were either partially within or immediately adjacent to Tier 1 environmental protection areas.
- The locations would require a pipeline right-of-way across Tier 1 lands to the 1-27 location, as well as the cutting of a 2 m swath of trees for equipment access.
- The existing corridor was not necessarily a viable option for a new pipeline, as it already had a number of pipelines within it.
- Baytex required Trilogy to assume all liability related to the well site, which was unacceptable to Trilogy.

Alternative Well Site Location LSD 4-26-46-2W5M

Trilogy discounted the 4-26 location as being immediately adjacent to Tier 1 lands and having landowner opposition to its use for another well.

7.2 Views of the Interveners

Public Consultation

The interveners generally expressed some dissatisfaction with Trilogy's consultation program, as they felt the company did not come to the table with the community to resolve the location issue. They believed that Trilogy chose the 14-23 well location after only a brief period of consultation.

The interveners noted that Trilogy did not hold any separate public open house sessions to provide an opportunity for the community to engage with the company to resolve the well location issue. They felt Trilogy's attendance at Battle Lake Watershed Synergy Group meetings did not constitute conducting open house sessions. The interveners further noted the Battle Lake Natural Area Preservation Society was not contacted for advice regarding the location of the well.

Most interveners confirmed that they were notified by mail about the project, but some maintained Trilogy did not respond to their questions and concerns. Many of the interveners felt Trilogy should have applied for all four alternative sites so that the Board could make a determination as to which was superior. Some argued that *Directive 056* directed the applicant to provide an explanation as to why alternatives were not technically feasible, and that the alternatives were to be compared with the application case in terms of the potential land disturbance and watershed effects, impacts on the public, resource recovery, and feasibility.

Alternative Well Site Location LSD 1-27-46-2W5M

Mr. Belec stated that the 1-27 lease, with mitigative conditions, would be preferable to the 14-23 location, as it would not interfere with his neighbours' enjoyment of their property. Notwithstanding this, he felt it would be a poor choice of location for more infrastructure because of its location within the Tier 1 area. He believed it would be better than the 14-23 location, but not superior to the 2-27 and 7-27 locations.

Mr. Todorow and Ms. Steinke were concerned about this site, as they might have to evacuate east past the well in the event of an emergency, and they were concerned about being stranded at their residence during a release.

Alternative Well Site Locations LSD 2-27-46-2W5M (2-27) and LSD 7-27-46-2W5M (7-27)

The interveners indicated that the southeast portion of Section 27 was already spoiled and did not have any redeeming value in terms of recreation and residential use. They advised that the low wet area present between the 2-27 and 7-27 sites was not a natural feature and may have been created when the lease was developed. The interveners stated that the landowners of the property did not use it recreationally and argued that not as many people would be potentially affected by this site. Some interveners noted that using the 1-27 facilities would require boring for a pipeline of only some 30 to 50 m and that the 2-27 location would not require a new road, borrow pit, power, or pipeline access. They further stated that if compression were required, the 2-27 location would have the least impact on residents with respect to noise and there might be no evacuation issue, as the site was a significant distance from Township Road 464.

The interveners acknowledged that Trilogy indicated that conserving the tree cover and the environment was the reason for its choice of the 14-23 location, agreeing that conserving tree cover was an important issue. However, they suggested that the Battle Lake Watershed Enhancement Association, with the assistance of Trilogy, could plant more trees than the project would consume if it were located at the 2-27 location.

Alternative Location LSD 4-26-46-2W5M

There was little discussion by the interveners on this alternative well site except by Mr. Norris and Mr. Zajes, a spokesperson for the landowners.

Mr. Norris submitted that the 4-26 was an abandoned well site outside of Tier 1, and it was his understanding that the property was not used recreationally or otherwise. He submitted that the 4-26 location was preferable to the 14-23, because it would not have the same level of impacts on people living in the area.

Mr. Zajes advised he was authorized to speak for Mr. Neilson, landowner of 4-26. He advised that the landowners had plans to subdivide their 80 acre parcel into 20 acre parcels. He further advised that the landowners were waiting for the abandonment of the facility on the 4-26, together with a reclamation certificate, before they proceeded with their subdivision plans. He suggested that Trilogy might be interested in purchasing the 20 acres that the 4-26 location was on for Trilogy's future industrial development in the area.

8 FINDINGS OF THE BOARD

Public Consultation

Directive 056 sets out requirements with respect to notification and personal consultation with potentially affected parties. The Board emphasizes that it expects companies to meet or exceed these participant involvement requirements. The Board is satisfied Trilogy met the consultation requirements set out in *Directive 056* for the proposed well and pipeline.

The Board notes the level of dissatisfaction expressed by the interveners and believes Trilogy could have attempted to provide a greater level of personal contact with the stakeholders. Given the level of local interest, the Board encourages Trilogy to provide further opportunities for the community to participate in discussions on this project. The Board notes that the Battle Lake Watershed Synergy Group is a legitimate avenue for community involvement, but also notes that involvement more generally with the community is an important part of public consultation.

The Board emphasizes the responsibility of stakeholders in the consultation process. The Board is of the view that for meaningful communication to occur, landowners must also make efforts to contact and meet with companies, to continue to exchange information, and to develop a collaborative approach to dealing with their concerns.

Alternative Locations

The Board notes that it is technically feasible to drill to the proposed 16-22 bottomhole location from several surface locations. The Board believes the onus is on the applicant to provide sufficient evidence to establish that its proposed well location is appropriate.

The Board notes that in the normal course of business, companies are encouraged to bring forward applications for a single location, thereby minimizing the number of local landowners who may be inconvenienced by the applications and a subsequent hearing. The Board is also mindful of the fact that proposing multiple locations may have the effect of pitting members of a community against one another, as parties take positions that may be contrary to those of their neighbours. However, in this case, applications for alternative competing sites would have been helpful to the Board.

When it is clear that the location of a site will be a principal issue at a hearing, companies should consider bringing forward applications for alternative locations, so that those alternatives can be fully explored during the course of the hearing.

The Board is not satisfied that alternative well sites were sufficiently considered by Trilogy. After hearing all the evidence, the Board is not convinced the 14-23 location is the more appropriate location for the proposed well and pipeline. It appears from the evidence provided that there may be other locations where environmental disturbance could be minimized and where there might be less impact on the landowners as well. Notwithstanding this, the Board will not make a definitive finding that the 14-23 location is an inappropriate location for this well.

The Board notes that while it heard a great deal of evidence regarding the suitability of other sites, the landowners and some potentially affected parties were not at this hearing to speak about those alternatives. Such evidence might lead a future panel to conclude that the 14-23 site is the best of all alternative locations.

9 CONCLUSIONS

After reviewing the evidence, the Board concludes that there is insufficient information to determine whether Trilogy's proposed well site location is appropriate. The Board is therefore not prepared to recommend approval of Trilogy's application.

After weighing the evidence and arguments of all parties, the Board concludes that the well and the pipeline be denied, without prejudice to any future applications for a facility on the same site.

Dated in Calgary, Alberta, on December 15, 2009.

ENERGY RESOURCES CONSERVATION BOARD

<Original signed by>

M. J. Bruni, Q.C.
Presiding Member

<Original signed by>

G. Eynon, P.Geol.
Board Member

<Original signed by>

R. J. Willard, P.Eng.
Acting Board Member

APPENDIX 1 HEARING PARTICIPANTS

Principals and Representatives (Abbreviations used in report)

Witnesses

Trilogy Blue Mountain Ltd.
S. M. Munro

B. Dawson
D. Whelen
L. Whitlock
T. Wood
P. Kip, of
Kiewit Construction
M. Hovrisko, of
Black Gold Emergency Planners
D. Pye, of
United Safety

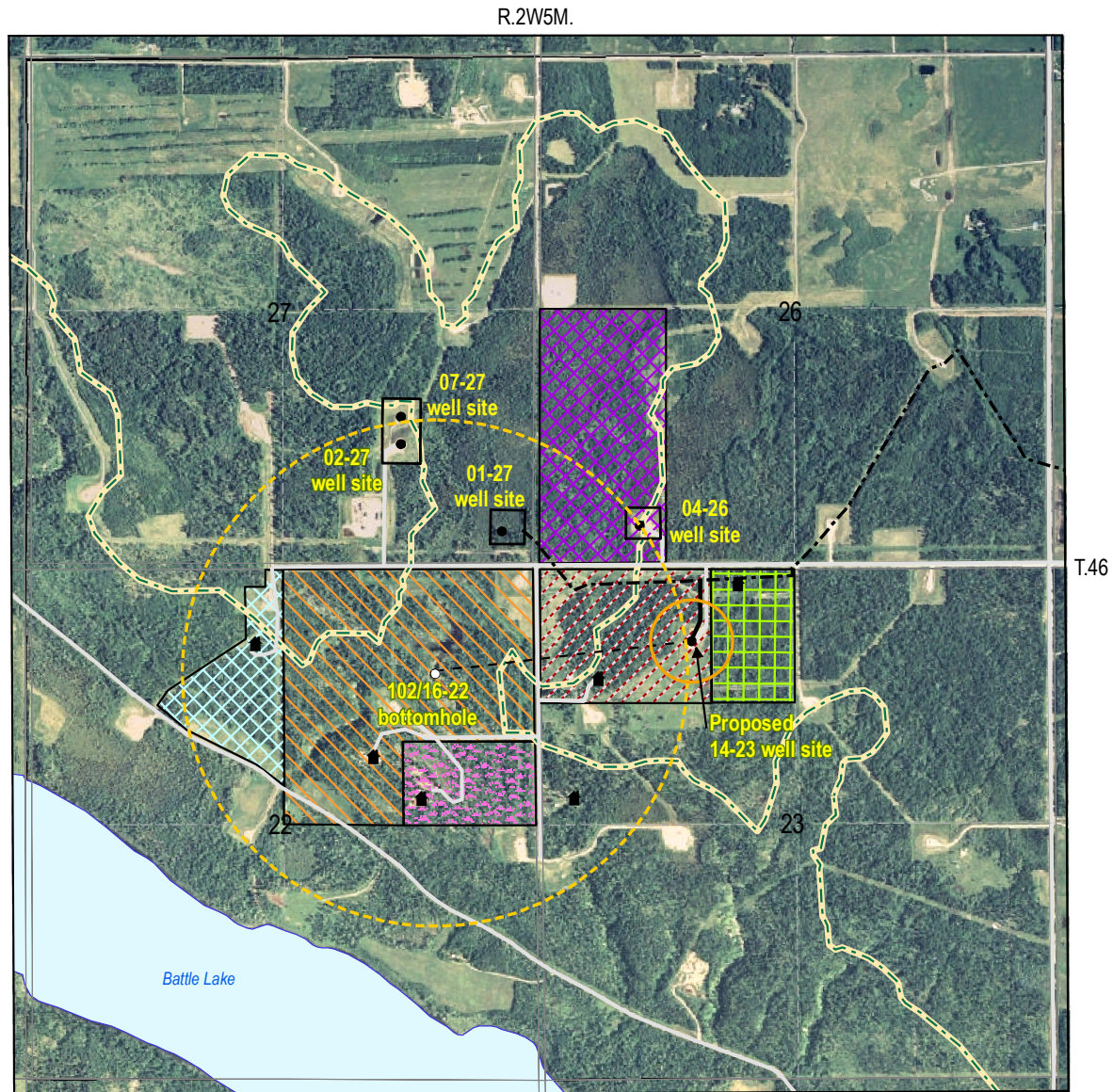
M. Todorow and C. Steinke
J. Klimek

B. Norris, the Belecs, the Blacks, and the
Whitesides
R. Secord
E. Chipiuk

R. Thul, of
In-Line Pigging Solutions

Craig Neilson
K. Zajes

Energy Resources Conservation Board staff
L. M. Berg, Board Counsel
A. Allum
J. Fulford
A. Taksas
J. Schlager



Legend











● Surface well	— Road	 Steinke property
○ Well - bottomhole	--- Battle Lake Tier 1	 Black property
- - - Directional line	- - - Existing pipeline	 Belec property
 Well site	— Proposed pipeline	 Whiteside property
 Residence	 130 m EPZ	 Norris property
	 800 m bottomhole radius	 Neilson property

Figure 1. Area map