

**Decision to Issue a Declaration
Naming Bryce Lee Karl
Pursuant to Section 106 of the
*Oil and Gas Conservation Act***

September 9, 2015

Alberta Energy Regulator

Decision 2015 ABAER 005: Decision to Issue a Declaration Naming Bryce Lee Karl Pursuant to Section 106 of the *Oil and Gas Conservation Act*

September 9, 2015

Published by

Alberta Energy Regulator

Suite 1000, 250 – 5 Street SW

Calgary, Alberta

T2P 0R4

Telephone: 403-297-8311

Inquiries (toll free): 1-855-297-8311

E-mail: inquiries@aer.ca

Website: www.aer.ca

Contents

Decision.....	1
Introduction.....	1
Issues	4
Contravention of AER Orders.....	5
Control of Licensees	6
Public Interest	9
Terms of the Declaration.....	12
Conclusion.....	13
Appendix 1 Summary of Orders.....	15
Appendix 2 Declaration Naming Bryce Lee Karl Pursuant to Section 106(3) of the <i>Oil And Gas Conservation Act</i>	17
Table 1. Procedural History	3

2015 ABAER 005

Decision to Issue a Declaration Naming Bryce Lee Karl Pursuant to Section 106 of the *Oil and Gas Conservation Act*

Proceeding No. 1820248

Decision

[1] The AER hereby issues a declaration under section 106(1) of the *Oil and Gas Conservation Act (OGCA)* naming Bryce Lee Karl as a person in direct or indirect control of companies that contravened or failed to comply with orders of the AER or that have outstanding debts to the regulator or the Orphan Well Fund. The declaration, with its terms and conditions, is found in appendix 2.

Introduction

[2] On June 17, 2013, the *Responsible Energy Development Act (REDA)* came into force in Alberta. *REDA* repealed the *Energy Resources Conservation Act*, dissolved the Energy Resources Conservation Board (ERCB) and created the AER. In accordance with the *REDA*'s terms, the AER assumed all of the ERCB's powers, duties, and functions. Many of the events that are relevant to this proceeding occurred prior to June 17, 2013. For simplicity, we use "the AER" throughout, even when referring to events that happened under the ERCB. References to the ERCB have been retained in direct quotes and in other situations where the distinction is relevant.

[3] In January 2015, liability management (LM) staff of the Alberta Energy Regulator (AER) submitted a recommendation that the regulator issue a declaration naming Bryce Lee Karl pursuant to section 106 of the *OGCA*.

[4] The decision to issue a section 106 declaration is not made lightly. LM's recommendation was initially reviewed by an internal committee (independent of LM) to determine whether there was enough evidence to go before a hearing panel. That committee determined that there was *prima facie*¹ evidence sufficient to meet the section 106 test. LM's application was then referred to a panel of hearing commissioners consisting of B.T. McManus (presiding), C.A. Low, and H. Kennedy to conduct a proceeding and make a decision on behalf of the AER whether to issue a declaration as recommended by LM.

¹ *Prima facie* [Latin]: Sufficient to establish a fact or raise a presumption, unless disproved or rebutted.

[5] LM's submission alleges that Mr. Karl was in control of three different companies (collectively referred to from this point as the licensees)—Copper Creek Petroleum Inc. (Copper Creek), Reid Resources Inc. (Reid Resources), and Savant Energy Ltd. (Savant)—when they failed to comply with a total of 18 orders of the regulator (the orders). The orders included outstanding abandonment orders, miscellaneous orders, and abandonment cost orders. They were issued over a period of three years beginning in 2010. Appendix 1 contains a summary of the orders.

[6] The AER's compliance assurance program is designed to ensure compliance with the AER's regulatory scheme and is set out in *Directive 019: Compliance Assurance*. *Directive 019* requires that notice be given to an operator at the time the AER identifies a noncompliance so that the operator can address the situation. If the operator fails to address the situation to the AER's satisfaction, the initial notice is followed by escalating enforcement actions designed to achieve compliance. Enforcement action may include fees/penalties, suspensions, and ultimately closure and abandonment orders. The action taken depends on the risk to health and safety, the environment, resource conservation, and stakeholder confidence in the regulatory process. In this case, LM followed the compliance assurance program, beginning with notification to the licensees, including reminder phone calls, and ultimately escalating to abandonment orders.

[7] The test established by section 106 of the *OCGA* is a two-step test. If the threshold test set out in subsection 106(1) is met, then the AER must consider whether it is in the public interest to issue the declaration. Section 106(2) requires the AER to give a person who may be named at least ten days to show cause why they should not be named. Overall, section 106 requires the AER to balance the public interest in an expeditious decision and the need to ensure procedural fairness. Section 106 is a reverse onus provision. Once LM established a prima facie case, the burden shifted to Mr. Karl to show why the declaration and associated order should not be made.

[8] Unlike all but one previous section 106 process, Mr. Karl provided no evidence to show cause why the declaration should not be made. This in spite of the fact that he was given ample time, including an extension of time at his request, and multiple opportunities to demonstrate a genuine intention to respond to LM's allegations.

[9] On January 28, 2015, LM's application and the Notice of Intent to Issue a Declaration were served personally on Mr. Karl. After being granted an extension to the deadline to reply so that he could retain counsel, Mr. Karl filed a response to the notice. In that response he indicated an intention to file evidence and submissions showing why he should not be named and asked that a hearing be scheduled. On April 17, 2015, the panel issued a notice of hearing.

[10] In addition, letters dated April 17, June 3, June 17, and June 19, 2015, were sent to Mr. Karl in which the panel made it clear that if he failed to file evidence and submissions by a specific date, it could cancel the hearing and proceed to issue a declaration on the basis of the evidence submitted by LM.

[11] On June 30, 2015, the panel cancelled the hearing because Mr. Karl did not file evidence or submissions showing why the order should not be granted. The procedural history is set out in some detail below.

Table 1. Procedural history

Date	Event
January 28, 2015	Mr. Karl was personally served with a copy of the Notice of Intent to Issue a Declaration and LM's application materials.
March 17, 2015	In response to the notice, Mr. Karl filed a letter in which his counsel raised issues regarding the nature of some of LM's evidence and identified legal arguments relating to control and to the public interest that he intended to make. In particular, his counsel made several references to the importance of evidence and the "proper" facts to the decision-making process and requested a hearing date be set.
March 6, 2015	In a letter to LM and to Mr. Karl, the panel raised concerns with some materials included in LM's application and whether certain information should remain on the record of this proceeding. LM responded on March 17, 2015. No response was received from Mr. Karl, although he had requested and been granted an extension to file such a submission. His counsel did provide some preliminary comments on the information in an e-mail dated March 25, 2015, to counsel for the panel. In that e-mail, Mr. Karl indicated his intention to contact LM in order to explore resolution of this matter. LM subsequently advised that no such contact was made.
April 17, 2015	By letter the panel conveyed its decision to go to a hearing and set out deadlines for each stage of the hearing process. Mr. Karl was directed to file his submissions and evidence by 4 p.m. June 2, 2015. Because Mr. Karl expressed concern regarding other information that had been included in LM's materials, the panel set a date for Mr. Karl to file a motion to exclude such information. In addition, he was given the opportunity to ask information requests of LM. Mr. Karl's evidence and submissions to show why a declaration should not be issued were due on June 2, 2015.
April 24, 2015	The panel directed LM to redact the information that was the subject of the March 6 letter from the panel from the record of this proceeding. LM did so and refiled its materials.
May 19, 2015	LM responded to information requests filed by Mr. Karl and the panel.
June 2, 2015 (submission deadline)	Mr. Karl filed a letter in which he requested that certain other information be removed from LM's application and requested an extension to file his submission in this proceeding. The motion to exclude the information was denied by the panel on June 8, 2015, and a short extension was granted to permit Mr. Karl to file a submission by 4 p.m. on June 12, 2015.

Date	Event
June 12, 2015 (extended deadline)	No evidence or submission was filed by Mr. Karl at this point, nor did he provide any explanation for his failure to do so.
June 17, 2015	By letter the panel indicated to LM and Mr. Karl that it was concerned about the public interest implications of allowing the matter to drag on without resolution. It suspended the remainder of the hearing submission process that was outlined in its letter of April 17, 2015, and said it would provide further direction after completing a review of materials filed to that point. The panel also requested that LM advise whether there had been any discussion between the parties regarding resolution of the matters that were the subject of the orders. The panel made that request because Mr. Karl had indicated that such discussions would occur. As previously noted, LM advised that it had no contact from Mr. Karl or his counsel.
June 19, 2015	The panel advised the parties that it was prepared to cancel the hearing and deliberate on LM's materials based on the materials submitted to date. The parties were given until 4 p.m. June 24, 2015, to raise any concerns. Mr. Karl did not respond.

[12] The procedural history clearly shows that Mr. Karl has been provided with more than ample opportunity to know the case against him and to respond as contemplated by section 106(2). Mr. Karl has repeatedly failed to meet deadlines set by the panel. He has repeatedly failed to respond in any meaningful way to the allegations made by LM. It appears that he was represented by counsel throughout this process, and all correspondence outlined above was sent to Mr. Karl or his counsel or both. There is no indication that Mr. Karl did not receive the correspondence sent directly to him or through his counsel. As a result, it would not be in the public interest to let this matter proceed further without resolution.

[13] Having determined that the section 106 balance between procedural fairness and the public interest in an expeditious decision had tipped in favour of a decision, the panel deliberated on the basis of the evidence filed by LM with the exception of the evidence that was ordered redacted on June 8, 2015. This panel also took into consideration the various comments by and on behalf of Mr. Karl.

Issues

[14] In *Decision 2011 ABERCB 037: Decision to Issue a Declaration Naming Marc R. Dame and Murray F. Craig Pursuant to Section 106 of the Oil and Gas Conservation Act* (the Dame and Craig decision), the AER quoted previous AER decisions and affirmed the purposes of section 106:

...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 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. (paras. 128–129)

[15] In order for LM’s application to succeed, the test established by section 106(1) of the *OGCA* must be met. The relevant portion of section 106 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 Regulator, or (b) has an outstanding debt to the Regulator, or to the Regulator to the account of the orphan fund, in respect of suspension, abandonment or reclamation costs, and where the Regulator considers it in the public interest to do so, the Regulator 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 Regulator’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.

[16] In this case, the elements of the test or issues that must be determined are the following:

- Were there contraventions of or failures to comply with AER orders?
- If there was a contravention or failure, was Mr. Karl a director, officer, or other person in direct or indirect control of the relevant company at the relevant time?
- If there was a contravention or failure, and Mr. Karl was in control, is the requested declaration and order in the public interest?

[17] Because Mr. Karl has not filed any evidence to rebut the prima facie case established by LM, the panel considered whether, on a balance of probabilities, the evidence filed by LM and accepted by the panel satisfies the section 106 test. In its deliberations, the panel did not take into account the redacted evidence (see the procedural history). The panel did consider LM’s evidence and submissions in light of the comments made on Mr. Karl’s behalf by his counsel in the various correspondence that was filed in the course of this proceeding.

Contravention of AER Orders

[18] LM filed copies of multiple regulatory orders, including abandonment orders, that had been issued to the licensees. The failures to comply occurred between 2010 and 2013 and are detailed in appendix 1.

[19] Mr. Karl has raised no issue with respect to the orders. Indeed, not only did he not contest that the orders were contravened, but in a letter dated March 17, 2015, his counsel clearly indicated that the issues

that Mr. Karl would want the panel to consider in light of evidence he would submit were issues of control and the public interest. No mention was made of the validity of LM's assertions of multiple instances of noncompliance by each of the licensees, in that or any other correspondence from Mr. Karl.

[20] As a result, the panel finds that LM has established on a balance of probabilities that there were 18 orders of the regulator that were not complied with: 6 issued to Copper Creek; 10 issued to Savant; and 2 issued to Reid.

[21] Finally, with respect to the issue of contravention, a number of the orders (such as AD 2010-27) appear to provide no time to comply with the order—they “lapse upon issuance.” In a response to an information request, LM explained to the panel that was because, by the time those particular orders were issued, the licensee would have already received notice, usually multiple notices, of the specific instance of noncompliance and had opportunities to correct the noncompliance. In addition, the licensee would also have received at least one or more orders to close or abandon the well or facility in question with time to comply.

[22] Since the lapsed orders highlight various noncompliances that relate to properties that were already ordered abandoned, and since they were each the final order in a series of orders giving time to comply, the panel finds that the lapsed orders are properly included in the application materials to demonstrate the entirety of the compliance assurance processes. These processes provided each of the licensees with multiple opportunities for compliance.

[23] In this case, the Orphan Well Association (OWA) has or will have to abandon and reclaim ten wells, one facility, and seven pipeline segments. In addition, all of the licensees' properties must be reclaimed, and the entire cost will be borne by the OWA. Even if the licensees are not held accountable for failure to comply with the lapsed orders, the panel concludes that there were multiple failures to comply with AER orders by each of the licensees.

Control of Licensees

[24] The relevant words of section 106 are “...naming one or more directors, officers, agents or other persons who, in the Regulator's opinion were directly or indirectly in control of the licensee...” Read in the context of the *OCGA* as a whole and of *REDA*, the control in question must be the authority to cause the licensee to meet its financial obligations to or administered by the AER and to comply with AER orders, regardless of title or position. The specific reference to directors, officers, and agents, in addition to the more general “other persons” in section 106, indicates that the legislature intended that individuals in those positions are presumed to be in direct or indirect control for the purposes of that section.

[25] This is consistent with the position of directors in corporate law in Alberta. The *Alberta Business Corporations Act* (RSA 2000, Chapter B-9) provides in section 101(1) that “Subject to any unanimous

shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation...”

[26] Each of the licensees is an Alberta corporation. LM submitted evidence showing that Mr. Karl was the sole director of each of the licensees as well as being the president of Copper Creek at the time of the failures to comply. Unless there were unanimous shareholder agreements to the contrary, or that limited his authority to manage or supervise, Mr. Karl was required to manage or supervise the management of the business and affairs of the licensees.

[27] In the Dame and Craig decision, an issue argued before the panel hearing the matter was that to be found to be in control, a person had to be a shareholder of the company. That panel found it was not necessary and went on to describe what would be sufficient to find control under section 106:

... 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.* (para. 120, emphasis added)

[28] Although the person may not need to be a shareholder to be found to exercise control, shareholding may be one indicator of a person’s control over a company. In the case before us, the shareholdings of the licensees as shown in the corporate registry search results submitted by LM show a clear interrelationship between the licensees and Mr. Karl and, absent any evidence to the contrary, support the proposition that he was in a position of control. For example, the sole shareholder of Savant was Reid Resources. The Karl Family Trust and Diana Karl owned 100 per cent of the shares of Reid Resources. Mr. Karl was the sole shareholder of Copper Creek. Evidence submitted by LM indicates that Mr. Karl is related to Diana Karl. Evidence submitted by LM suggests that Mr. Karl is involved with the Karl Family Trust.

[29] Mr. Karl is listed in the public records for Copper Creek, Reid Resources, and Savant as being in positions where he would be expected to have the ability to control or direct the control of the business of each. There is no evidence before us to suggest that Mr. Karl did not have the power to make decisions that would be complied with and acted on by each of the licensees.

[30] The panel does not interpret the provisions of section 106 to mean that a person who is named as the sole director or as a director or officer on the corporate records is by virtue of that fact alone responsible for regulatory noncompliance by the company; it is evidence of control. The requirement that

individuals be given the opportunity to show cause why they should not be named enables them to file evidence to show they were not in fact in a position of control, whatever their title. Mr. Karl did not do that.

[31] In Mr. Karl's letter of March 17, 2015, he made reference to "control" in the context of the ability to control corporate revenues in a time of "unforeseen and precipitous, global collapse in commodity prices." Leaving aside the question of whether oil prices had in fact "collapsed" at the relevant times, if Mr. Karl meant to argue that because he could not control commodity prices he could not be found to be in a position to cause the companies to comply with the AER's orders, the panel disagrees.

[32] It is essential to the safe and responsible development of Alberta's energy resources and for the protection of the environment that companies undertaking energy resource activities plan their operations and manage their finances so that they are able to meet their regulatory obligations, especially abandonment and reclamation obligations. Indeed, that is the purpose behind the Limited Liability Rating and Orphan Well Fund Programs. When companies do find themselves challenged, they are encouraged to take proactive steps to manage risks and mitigate potential liability issues. Those steps include working with the regulator. The intention of the compliance enforcement scheme of escalating enforcement is to create a system that enables companies to succeed in meeting their obligations to the regulator.

[33] LM established a prima facie case for control of the licensees at the relevant times. It filed corporate registry search results showing Mr. Karl listed as

- sole director and president of Copper Creek on September 13, 2012, remaining sole director as of September 19, 2014;
- one of two directors of Reid as of March 11, 2010; and
- sole director of Savant as of April 16, 2013.

[34] In addition, the searches show that

- the other listed director for Reid as of March 11, 2010 was a Dan Karl; Bryce Karl was listed as sole director of Reid as of January 10, 2013; Diana Karl and the Karl Family Trust are each listed as 50 per cent voting shareholders of Reid; and
- Reid Resources is listed as the 100% voting shareholder of Savant.

[35] Mr. Karl describes the corporate registry searches as "uncontentious" in his counsel's letter of March 17, 2015. The panel agrees that the information contained in the searches is reliable and indicates Mr. Karl held positions of control.

[36] In addition, LM filed a copy of Copper Creek's application to the AER to acquire a business associate code and for approval to become a licence holder. Part of that application is the following declaration by Mr. Karl:

I am aware of and have the authority and responsibility to ensure compliance with the requirements imposed by the statutes and regulations of the Province of Alberta and the directives, guides, interim directives and information letters issued by the Alberta Energy and Utilities Board that are pertinent to EUB licence holders.

[37] The name printed under the declaration is Bryce L. Karl, and the position noted is president. The application was dated March 11, 2011. It is evidence that Mr. Karl understood and accepted the obligation to ensure compliance.

[38] Finally, LM submitted other evidence of control of the licensees. That evidence consists of records of telephone conversations and e-mails between the AER, Mr. Karl, and others. Mr. Karl objected to the admission of that evidence by way of a motion filed on June 2, 2015. That motion was denied on June 8, 2015. While the evidence objected to may not be sufficient on its own to establish the element of control, the evidence taken as a whole supports the assertion that Mr. Karl was in control of the licensees. Even leaving the evidence to which Mr. Karl had objected aside, there is no evidence at all to rebut the prima facie case made by LM that Mr. Karl was in control.

[39] As noted above, section 106(1) of the *OGCA* is a reverse onus provision. A justification for reverse onus provisions is that the person who bears the reverse onus is in the best position to prove a particular fact or set of facts. In this case, LM has provided the best evidence available to it to prove that Mr. Karl was in control of the licensees at the relevant times. It then fell to Mr. Karl to provide evidence to show that he was not, if that were the case. He did not provide any evidence in spite of being given multiple opportunities to do so. As a result, the panel finds that LM has established on a balance of probabilities that Mr. Karl was in control of the licensees at the relevant times and within the meaning of section 106.

Public Interest

[40] Since the threshold test for a section 106 declaration has been met, it is necessary to consider whether it is in the public interest to name Mr. Karl as requested and, if so, what the terms of the declaration should be. As noted by LM, the AER has articulated its view of the public interest element of section 106 in past decisions, including *Decision 2006-006: Decision to Issue a Declaration Naming Richard Yu Pursuant to Section 106 of the Oil and Gas Conservation Act* and *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*:

...the purpose of a Section 106 Declaration is to prevent a licensee or person in control of a licensee from continuing to breach EUB requirements or Board orders or from incurring abandonment costs or incurring new breaches or additional debts, thereby safeguarding the public interest. (*Decision 2006-006*, p. 8)

...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. (*Decision 2007-083*, p. 24)

[41] In addition, as referenced in paragraph 14, previous decisions have confirmed that the public interest purposes of a section 106 declaration include

- to protect the public and the environment,
- to ensure confidence in the regulatory scheme,
- to deter like-minded individuals from engaging in similar conduct, and
- to serve as a warning to others who may engage in business with the named individuals.

[42] In light of the evidence and submissions before us, the panel finds that it is in the public interest to name Mr. Karl. The relevant factors for our decision and for the specific terms of the order are as follows:

- The ongoing failures to comply clearly give rise to a financial risk and risk to the public and the environment. For example, the AER and the OWA are left with the responsibility and cost to abandon and reclaim 10 wells, 7 pipeline segments, and 1 facility. Specifically, as set out in LM's submission at page 3, section 3.1, "As of October 2014, \$430,389.80 has been spent ... to abandon three of those wells and five of those pipeline segments. The remaining seven wells, one facility and two pipeline segments remain suspended and await abandonment. In addition, all of the Licensees' properties require reclamation. ...the entire cost of those activities will be borne by the OWA."
- Failure to sanction Mr. Karl's behaviour would undermine the credibility of the regulatory system and enforcement processes of the AER. This is so in light of the evidence summarized above and the fact that, despite declaring it his intention to do so, Mr. Karl failed to take advantage of opportunities he had to work with LM to bring the licensees into compliance.
- Conduct such as that here should be deterred because, as submitted by LM: "It is in the overall public interest that principles [sic] of oil and gas companies not be permitted to develop oil and gas properties, and then leave liabilities for abandonment and reclamation of the sites to be absorbed by the Province of Alberta or the oil and gas industry through the Orphan Well Fund."
- It is in the public interest for companies, through the individuals that control them, to anticipate and plan for challenging times. It is also in the public interest for companies, through the individuals that control them, to work with the regulator to mitigate risks of noncompliance and to come into compliance if challenges arise, rather than simply leaving financial liabilities and other consequences for others to bear.

- By issuing the requested order naming Mr. Karl, LM will be in a position to be able to adequately assess the compliance risk involved in future applications from companies in which Mr. Karl is or may be involved.

[43] The following factors were also important to the panel's decision:

- Mr. Karl simply did not engage in this process in any way that gave the panel any confidence that he takes the matter seriously and is concerned about companies controlled by him being in compliance. For example, while Mr. Karl's counsel filed correspondence in which Mr. Karl took issue with the admissibility of some of LM's evidence, Mr. Karl filed no evidence to rebut the prima facie case. In addition, Mr. Karl filed correspondence in which he referred to evidence he planned to file and submissions he planned to make. However, no evidence or submissions were filed by or on behalf of Mr. Karl. In addition, Mr. Karl said he would contact LM to discuss ways to resolve the issues of noncompliance, but the evidence available to us shows he took no steps to do so.
- In response to the panel's information request, LM provided documentary evidence of the communications from LM to the licensees regarding the specific failures to comply that lead to the orders. What is particularly troubling about the picture painted by those documents taken as a whole is that companies controlled by Mr. Karl failed to comply with the most straightforward regulatory requirements. For example, a series of correspondence commencing February 8, 2012, shows that Copper Creek was required but failed to pay an orphan fund levy in the amount of \$94.09. The correspondence clearly set out the consequence for failure to pay as required (the imposition of a 20% penalty, bringing the amount of the orphan fund levy owing by Copper Creek to \$112.91). Copper Creek failed to pay the \$112.91 and was then provided with a clear warning that failure to pay the \$112.91 would result in suspension of its well licences. Finally, a December 14, 2012, letter was very explicit in identifying the issues, the consequences, and the steps required for Copper Creek to return to compliance. Those steps were in no way onerous; they were the payment of the \$112.91 and an explanation in writing acceptable to the AER addressing the failure to respond and the steps to be taken to prevent future noncompliance with the orphan fund levy.

[44] The evidence submitted by LM clearly demonstrates a persistent failure to comply by companies controlled by Mr. Karl. The evidence also demonstrates that Mr. Karl was then and is now either unable or unwilling (it does not matter which for this analysis) to ensure that the licensees meet the most basic, yet important, regulatory obligations. In particular, the evidence clearly demonstrates that companies controlled by Mr. Karl demonstrated a complete lack of care and attention to basic elements of the regulatory framework intended to ensure that the public, the environment, and compliant companies who fund the Orphan Well Fund are not negatively impacted by their failure to comply. It is not in the public interest to permit such behaviour to continue.

[45] Further, the evidence suggests that Mr. Karl controls other oil and gas companies. For example, court documents, which the panel finds to be credible and reliable evidence and which were in no way

objected to or rebutted, show that Mr. Karl controls Karl Energy Trust Inc. and Bradley Oil and Gas. Both were petitioned into receivership, and in the course of managing the affairs of those companies, the receiver noted that they both had well and facility sites that had been neglected for a “prolonged period of time,” and one required remediation as a result of a spill. In addition, the receiver identified the fact that there was a one million dollar limited liability rating deposit owed to the AER.

[46] Finally, evidence filed by LM also suggests that when Mr. Karl became aware that the AER would not approve an application under *Directive 067:Applying for Approval to Hold EUB Licences* for a company in which he would be involved because of the ongoing noncompliance issues with the licensees, he took steps which appear to be designed to conceal from the regulator his involvement with the new entity. This was despite the fact that he was identified by and apparently holding himself out to others as being in a position of control.

[47] For all of these reasons, the panel finds it is in the public interest to issue an order naming Mr. Karl.

Terms of the Declaration

[48] LM requested that the following terms be included in the declaration:

- Declare Bryce Lee Karl under section 106 of the *Oil and Gas Conservation Act* for an indefinite time.
- Direct the AER to publish notice of the section 106 declaration in the *Daily Oil Bulletin* and any other place deemed appropriate.
- Require Bryce Lee Karl to immediately and continually disclose to the AER any companies which are licensees of oil and gas companies and approval holders of oil and gas authorizations in which Bryce Lee Karl has any involvement, and describe that involvement for the AER to determine whether he is in a position of direct or indirect control.
- Require Bryce Lee Karl to immediately and continually disclose to the AER all oil and gas properties and the working interest participation in each property in which Bryce Lee Karl, or a company controlled by Bryce Lee Karl, is a working interest participant, and have Bryce Lee Karl disclose to the AER his relationship to the licensees and approval holders of these properties, specifically as it relates to control of the licensees and approval holders.
- Require the AER to collect security from companies where the AER concludes Mr. Karl has control, and on those properties in which a company where the AER concludes Mr. Karl has control is a working interest participant.
- Require Bryce Lee Karl to disclose that he has been named in a section 106 declaration to any licensee and approval holder who is acquiring licences in which either Mr. Karl, or a company he controls is a working interest participant. The licensee and approval holder in turn should be advised

by Mr. Karl that the licensee and approval holder will be required to disclose to the AER in the licence application the working interest that he, or companies he is involved with, have in each property and an explanation as to Mr. Karl's relationship to the licensee and approval holder, specifically as it relates to control of the licensee and approval holder.

[49] The potential terms under section 106 provide the AER with tools to manage the risk the named person poses when the person is in control of a licensee, an approval holder, or a working interest participant. The terms of previous declarations dealt with the following matters: (a) suspension of operations of licensees, (b) refusal to consider applications for an identification code, licence, or approval, or to transfer a licence or approval; and (c) submission of security deposits for any well or facility, or before granting any licence or approval.

[50] Certain previous section 106 decisions included a complete ban on the named person's involvement in or with companies that hold, require, or seek to acquire any licence or other approval from the regulator. This is the effect of what LM requested. Another approach has been to preclude the named individual's involvement until noncompliances have been fully addressed. It bears repeating that, in the panel's view, it is in the public interest for companies that encounter challenges to work with the regulator to mitigate risks of noncompliance and to come into compliance if challenges arise. In this case, the panel would prefer to incent Mr. Karl to address impacts resulting from the noncompliance and demonstrate his ability to be a responsible operator. If Mr. Karl addresses impacts and his ability, the restrictions imposed by this decision could be suspended by the AER on recommendation by LM to the AER. This may not necessitate full rectification.

[51] The terms of the order set out in appendix 2 are intended to

- advance the public interest purposes set out in paragraph 41,
- incent Mr. Karl to address impacts resulting from the noncompliance of the licensees under his control,
- publicly name Mr. Karl so that others in the business or who may consider doing business with him can make an informed decision whether to involve him or not and in what way, and
- enable the AER to manage the risk posed by Mr. Karl being in control of an entity involved in regulated energy resource activities.

Conclusion

[52] In conclusion, the evidence filed by LM and accepted by the panel, considered in light of comments made on behalf of Mr. Karl, establishes on a balance of probabilities that Mr. Karl was in control of each of the licensees when they failed to comply with the orders. The evidence and Mr. Karl's apparent lack of respect for the regulator's processes, including this process, leads to the conclusion that it

is in the public interest to name Mr. Karl as recommended by LM. In addition, restrictions and conditions will be imposed on licensees, approval holders, and working interest participants in which it appears that Mr. Karl may be in control, in accordance with the specific terms of the order set out in appendix 2.

Dated in Calgary, Alberta, on September 9, 2015.

Alberta Energy Regulator

<original signed by>

B. T. McManus, Q.C.
Presiding Hearing Commissioner

<original signed by>

C. A. Low, LL.M
Hearing Commissioner

<original signed by>

H. Kennedy, P.Eng.
Hearing Commissioner

Appendix 1 Summary of Orders

Property	Orders	Reason for Orders
COPPER CREEK PETROLEUM INC.		
Wells		
11-14-041-20W4 Licence W 0293604	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
16-04-063-26W5 Licence W0298322	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
01-23-001-20W4 Licence W0426417	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
13-01-001-20W4 Licence W0427392	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
01-06-001-19W4 Licence W0429321	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
01-32-062-24W5 Licence W0432119	Misc 2012-11 Misc 2012-28 AD 2012-34 AD 2012-45	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
Facilities		
00/13-01-001-24W4 Licence F43034	Misc 2012-11 Misc 2012-28 AD 2012-35 AD 2012-46	Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to provide security deposit Failure to pay Orphan Fund Levy
REID RESOURCES INC.		
Pipelines		
Licence P 41669	AD 2013-01 (Misc 2012-39)	Failure to pay Administration Fee
Licence P44590	AD 2013-01 (Misc 2012-39)	Failure to pay Administration Fee
SAVANT ENERGY LTD.		
Wells		
06-08-052-06W4 Licence W0085916	Misc 2010-09 AD 2010-03 AD 2010-27 AD 2010-52 (Misc 2010-37) ACO 2013-04	Failure to provide security Failure to confirm right to produce Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to pay abandonment costs
14-07-052-06W4 Licence W0115689	Misc 2010-09 AD 2010-30 AD 2010-52 (Misc 2010-37) AD 2010-79 ACO 2013-04	Failure to provide security Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to confirm right to access Failure to pay abandonment costs

Property	Orders	Reason for Orders
14-06-052-06W4 Licence W0245231	Misc 2010-09 AD 2010-30 AD 2010-52 (Misc 2010-37) AD 2010-79 ACO 2013-04	Failure to provide security Failure to provide security deposit Failure to pay Orphan Fund Levy Failure to confirm right to access Failure to pay abandonment costs
Pipelines		
Licence P20506	Misc 2010-09 AD 2010-31 AD 2010-53 AD 2010-80 ACO 2013-04	Failure to provide security Associated wells ordered abandoned Associated wells ordered abandoned Associated wells ordered abandoned Failure to pay abandonment costs

Appendix 2 Declaration Naming Bryce Lee Karl Pursuant to Section 106(3) of the *Oil And Gas Conservation Act*

For the reasons set out in the decision in this matter, the Alberta Energy Regulator (AER) has determined that Bryce Lee Karl was a person in direct control of Copper Creek Petroleum Inc., Reid Resources Ltd., and Savant Energy Ltd. and that these licensees contravened AER requirements and failed to comply with AER orders while Bryce Lee Karl has been in control of the licensees. Therefore, the AER names Bryce Lee Karl under section 106 of the *Oil and Gas Conservation Act (OGCA)* and orders the following:

- 1) Bryce Lee Karl must submit a sworn declaration by November 9, 2015, declaring either
 - a) that he is not a director, officer, agent, or other person involved in a company that is an applicant to the AER, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or
 - b) the names of the companies of which he is a director, officer, agent, or other involved person and specifying the applications that they have before the AER and the AER licences and approvals the companies hold.
- 2) Any company in which Bryce Lee Karl is a director, officer, agent, or in some other way involved, that holds or is applying to the AER for an identification code, licence, or approval or the transfer of a licence or approval under the *OGCA* or the *Pipeline Act*, must inform the AER of his status within the company and that a section 106 declaration is in effect against him.
- 3) If the AER were to consider an application from Bryce Lee Karl or any company where Bryce Lee Karl is, in the opinion of the AER, a director, officer, agent, or other person in direct or indirect control, the AER may require the submission of abandonment and reclamation deposits in amounts determined by the AER before granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.
- 4) The AER may require the submission of abandonment and reclamation deposits in an amount determined by the AER for any wells or facilities of any licensee or approval holder where Bryce Lee Karl is, in the opinion of the AER, a director, officer, agent, or other person in direct or indirect control.
- 5) Require Bryce Lee Karl to disclose that he has been named in a section 106 declaration to any licensee and approval holder who is acquiring licences in which either Mr. Karl, or a company that he controls is a WIP. The licensee and approval holder in turn should be advised by Mr. Karl that the licensee and approval holder will be required to disclose to the AER in the licence application, the working interest that he, or companies he is involved with, have in each property and an explanation as to Mr. Karl's relationship to the licensee and approval holder, specifically as it relates to control of the licensee and approval holder.

- 6) The AER may suspend operations of a licensee or approval holder under the *OGCA* or a licensee under the *Pipeline Act* where Bryce Lee Karl is, in the opinion of the AER, a director, officer, agent, or other person in direct or indirect control.
- 7) The AER may refuse to consider any application for an identification code, licence, or approval or a transfer of a licence or approval under the *OGCA* or the *Pipeline Act* from Bryce Lee Karl or any company where Bryce Lee Karl is, in the opinion of the AER, a director, officer, agent, or other person in direct or indirect control.
- 8) Bryce Lee Karl 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 the purposes of those acts.
- 9) This declaration is in force at the date of this decision and will remain in force until the noncompliances of Copper Creek Petroleum Inc., Reid Resources Ltd., and Savant Energy Ltd. outlined in this decision have been rectified and their debts to the AER and to the account of the Orphan Well Fund for abandonment costs have been paid or until the AER orders otherwise.

September 9, 2015