

**Proceeding 411**

October 21, 2021

**Calgary Head Office**  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada[www.aer.ca](http://www.aer.ca)

By email only

Bennett Jones LLP	Dorin Land and Oilfield Management Inc.	AER Enterprise Reclamation Group
Attn: Daron Naffin	Attn: Mark Dorin	Attn: Kiril Dumanovski

**RE: Regulatory Appeal of the Decision to Issue Reclamation Certificate 382273  
Regulatory Appeal 1933054  
Hearing Issues and Schedule**

Dear Parties:

I am writing on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners presiding over this proceeding (the panel).

By way of a letter dated October 1, 2021, the panel invited the parties to submit their comments on the need for and timing of a formal information request (IR) process, and the following issues for the hearing identified by the panel:

Should reclamation certificate 382273 be confirmed, varied, suspended or revoked, in consideration of:

- i) Fencing that remains in place at or near the well site;
- ii) The status of the east-west access road and the legal effect of the 2008 release relative to reclamation certificate 382273;
- iii) The soil condition on the lands covered by reclamation certificate 382273; and
- iv) The process followed by the AER in its decision to grant reclamation certificate 382273 and whether it gave rise to any procedural fairness concerns that are not remedied through this regulatory appeal process.

Whitecap Resources Inc. (Whitecap) and Herman, Shirley, and Mark Dorin (Dorins) provided comments in response to the panel's letter. AER Enterprise Reclamation Group (ERG) did not.

For the reasons set out below, the panel has decided that it will not establish a formal IR process, and that all four issues identified by the panel for the hearing will remain unchanged.

### **Party Submissions**

On October 8, 2021, Whitecap submitted that there is no need for a formal IR process because such process would be unlikely to achieve any of the purposes for an IR process set out in s.12(1) of the *Alberta Energy Regulator Rules of Practice (Rules)*. With respect to the issues, Whitecap submitted that it does not take any issue with issues (i) through (iii). However, Whitecap submitted that issue (iv) does not need to be addressed as a specific issue for the hearing because the regulatory appeal process itself remedies any procedural fairness concerns arising from the application process. Regarding the proposed process schedule for the proceeding, Whitecap submitted that both its and ERG's written submissions should be filed on the same day.

On October 13, 2021, the Dorins submitted that the identification of the issues for hearing had reduced the need for a formal IR process prior to the parties' submissions on the merits to determine facts and identify the issues for the hearing. The Dorins made further submissions on the potential benefits of and timing for a formal IR process in this proceeding but concluded that if the AER decided to establish a formal IR process “the Dorins may or may not make formal IRs”.

With respect to the issues for hearing, the Dorins submitted that they have no issue with issues (i) through (iv). Additionally, the Dorins suggested three topics for potential submissions related to issue (iv): a communication protocol for communications between the AER and Mark Dorin; the AER's decision not to request a cooperative proceeding with the then-Surface Rights Board, now Land and Property Rights Tribunal; and circumstances and factors relating to the issuance of well licence 65135 on August 5, 1977, for the Midway Garr 08-18-31-01 W5M well.

### **Decision**

#### *Formal IR Process*

Considering the submissions of Whitecap and the Dorins, the panel will not establish a formal IR process, either before the parties' submissions on the merits or after. However, as before, the parties are encouraged to talk and exchange information amongst themselves, including through hearing commissioner facilitated dispute resolution meetings. The panel notes that the *Rules* contemplate the possibility of parties using those meetings to, for example, agree on a statement of facts or matters related to evidence.

### *Issues*

Neither Whitecap nor the Dorins expressed concern with issues (i) through (iii). These issues remain unchanged.

Whitecap and the Dorins disagreed on the need for issue (iv). The panel has considered the submissions it received and decided that issue (iv) will also remain unchanged. However, concerning the scope of the issues for the hearing, the panel refers the parties to the AER's disposition letter dated May 14, 2021, (disposition letter) on the Dorins' request for regulatory appeal (request). The request was granted on the question of whether reclamation certificate 382273 (reclamation certificate) was properly issued. The request was not granted on a number of other matters raised in the request, and which are out of scope for this regulatory appeal. Among other things, this regulatory appeal was not granted on matters related to the 1977 issuance of the well licence, general challenges to the AER's processes, statutory authority, and policies, and the AER's test and processes around reconsiderations.

Similarly, in the disposition letter the AER did not exercise its discretion to request a cooperative proceeding with the Land and Property Rights Tribunal, as requested by the Dorins. This too is out of scope for this regulatory appeal.

With respect to the communication protocol and any other matters which may be raised in respect of issue (iv), the panel will consider evidence submitted by the parties in this regulatory appeal proceeding specifically about the process followed by the AER when it granted the reclamation certificate and whether that process gave rise to any procedural fairness concerns that are not remedied through this regulatory appeal process.

The panel also notes that, absent a confidentiality order, all submissions and evidence filed in respect of this proceeding must be placed on the public record. All communications from the panel to the parties are sent directly to the parties and are also placed on the public record.

### **Hearing Schedule**

The panel has considered Whitecap's submission that the submission deadline for both it and ERG should be the same but has decided to retain the order as originally proposed. The panel has established the below hearing schedule. References to submissions are references to submissions on the merits as required by section 9.2 of the *Rules*.

*Schedule*

November 25, 2021	Dorins' submissions
December 9, 2021	Whitecap's submissions
December 23, 2021	ERG's submissions
January 13, 2022	Dorins' reply submissions
January t.b.d. 2022	Electronic platform practice session with required attendance by all hearing participants.
1 full week before the hearing start date	Last day to file any motions
Week of January 24, 2022	Hearing start – specific date t.b.d.

Please note that submissions must be filed with [hearing.services@aer.ca](mailto:hearing.services@aer.ca) by noon on the stated date. Submissions should be in PDF format, page numbered to match the PDF page number, bookmarked and searchable (optical character recognition). Submissions must meet the requirements of section 9.2(2) of the *Rules* and must be focused on the issues identified by the panel for this regulatory appeal.

All submissions that are filed in this proceeding are marked as exhibits and posted in SharePoint. This forms part of the public record of this proceeding. If you wish to refer to a document already on the record in SharePoint, please use the exhibit number of the document rather than refileing it.

The panel may, at any time, direct parties to file additional information that it considers necessary to permit a full and satisfactory understanding of the issues in the proceeding.

With the ongoing uncertainty around COVID related measures, the panel has decided to hold an electronic hearing to be hosted on the ZOOM platform. As relayed in the panel's letter dated September 22, 2021, AER's Hearing Services will be responsible for hosting the Zoom meeting, managing the technology, and addressing any associated issues. A Zoom practice session will be scheduled in advance of the hearing and further procedural details and guidance will be provided prior to the start of the

hearing. Please advise the writer as soon as possible if you have accessibility concerns regarding the electronic hearing format.

Please provide your availability for a two-day hearing during the week January 24, 2022, to [hearing.services@aer.ca](mailto:hearing.services@aer.ca) **no later than noon on October 27, 2021.**

For questions about the above, please contact me by email at [hearing.services@aer.ca](mailto:hearing.services@aer.ca).

Sincerely,

*Tammy Turner*

Hearing Coordinator, Hearing Services

cc: T. Myers, Bennett Jones LLP

M. LaCasse, AER

L. Mosher, AER