

BY E-MAIL ONLY

October 22, 2015

Donna Dahm

Applications No. MSL102827, LOC101999, MSL102421, LOC101633, and MSL102771 from Baytex Energy Ltd.**Statements of Concern No. 29980, 29979, 29978, 29977 and 29973.**

Dear Ms. Dahm:

You are receiving this letter because you filed statements of concern about Applications No. MSL102827, LOC101999, MSL102421, LOC101633, and MSL102771. The Alberta Energy Regulator (AER) has reviewed your statements of concern, along with the applications, the applicable requirements, and other submissions or information about the applications and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your statements of concern.

You have asserted that you may be directly and adversely affected by the AER's decisions on the applications. The factual part of the test set out in *Dene Tha' First Nation v Alberta (Energy and Utilities Board)* provides guidance on what information indicates that a party may be directly and adversely affected. It states that "some degree of location or connection between the work proposed and the right asserted is reasonable."¹ This statement is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board (EAB) that describe the "directly affected" test applied by the EAB. One recent EAB decision summarized the test:

[28] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected. The more ways in which the appellant is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their

¹ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, at para 14.

proximity), the more likely the person is directly affected. The onus is on the appellant to present a prima facie case that he or she is directly affected.²

In its review of your concerns, the AER considered the following:

- The proposed closest project is located approximately 7 kilometres southeast of lands that you own;
- Your concerns appear to be general in nature and are not directly related to the applied-for project;
- You have not provided information that demonstrates you may actually use lands or other resources in the project area or other locations that may be affected by the project; therefore, you have not demonstrated that you may be directly and adversely impacted by the applications;
- The applications are for conversion of short-term dispositions to long-term dispositions. You did not file SOCs in relation to the original dispositions, and no new impacts are proposed to occur.
- Based on the above, you have not demonstrated that you may be directly and adversely impacted by the applications.

An applicant is not required to provide a guarantee that there will be absolutely no negative cumulative effects resulting from a project. Any impacts from future applications would be assessed at the time of those applications, and notice of applications would be published on the AER website with a deadline for parties to file a statement of concern with the AER. Given the foregoing, the AER was not prepared to assume (in the absence of hard information) that you may be affected by the project.

The AER has issued the applied-for approvals, and this is your notice of that decision. Copies of the approvals are attached.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

² *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), Appeal No. 12-033-ID1 (AEAB).

inquiries 1-855-297-8311
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Sincerely,

Elizabeth Grilo

Director, Land use Authorizations

EG/cb

Attachments (5) PLA Dispositions

cc: Shane Koss, Baytex Energy Ltd,

AER Grande Prairie Field Centre

Authorizations Branch Support