



# Glencoe Resources Ltd.

Application for Well Licence  
Chigwell Field

Cost Awards

July 16, 2012

**ENERGY RESOURCES CONSERVATION BOARD**

Energy Cost Order 2012-006: Glencoe Resources Ltd., Application for Well Licence, Chigwell Field

July 16, 2012

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## **ENERGY RESOURCES CONSERVATION BOARD**

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**Calgary Alberta**

GLENCOE RESOURCES LTD.  
APPLICATION FOR WELL LICENCE  
CHIGWELL FIELD

**Energy Cost Order 2012-006**  
**Application No. 1695898**  
**Cost Application No. 1721674**

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### **INTRODUCTION**

#### **Background**

- [1] Glencoe Resources Ltd. (Glencoe) applied to the Energy Resources Conservation Board (ERCB/Board) for licences to drill two horizontal wells from a surface location at Legal Subdivision (LSD) 4, Section 35, Township 42, Range 26, West of the 4th Meridian, with bottomhole locations at LSD 6-26-42-26W4M and LSD 15-34-42-26W4M. The proposed wells would have produced crude oil with no hydrogen sulphide from the Viking Formation and would have been located about 2.5 kilometres southwest of Ponoka, Alberta.
- [2] Based on an objection to Application No. 1695898 (Application) filed by Marsha Turney, mineral lessor and surface owner in Section 35-42-26W4M (Section 35), the Application was scheduled for a hearing in Calgary, Alberta, on February 15, 2012.
- [3] On January 26, 2012, the applicant notified the ERCB that it was withdrawing the Application pursuant to Section 21 of the *Energy Resources Conservation Board Rules of Practice (Rules of Practice)*.
- [4] On February 3, 2012, the ERCB issued 2012 ABERCB 003 (Decision), accepting the applicant's request to withdraw its Application and cancelling the public hearing.

#### **Cost Claim**

- [5] On March 6, 2012, Ms. Turney filed a cost claim in the amount of \$157 802.82. On March 29, 2012, Glencoe submitted comments on the cost claim of the intervener. On April 12, 2012, the intervener submitted a response to Glencoe's comments.
- [6] The Board considers the cost process to have closed on March 12, 2012.

### **VIEWS OF THE BOARD—AUTHORITY TO AWARD COSTS**

- [7] In determining local intervener costs, the Board is guided by its enabling legislation, in particular by Section 28 of the *ERCA*, which reads as follows:

28(1) In this section, "local intervener" means a person or a group or association of persons who, in the opinion of the Board,

- (a) has an interest in, or

- (b) is in actual occupation of or is entitled to occupy land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

[8] It is the Board's position that a person claiming local intervener costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board's decision on the Application in question.

[9] When assessing costs, the Board refers to Part 5 of the *Rules of Practice* and Appendix E: Scale of Costs in ERCB *Directive 031*. Subsection 57(1) of the *Rules of Practice* states:

57(1) The Board may award costs, in accordance with the scale of costs, to a participant if the Board is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the proceeding, and
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

### **COST CLAIM OF MARSHA TURNEY**

[10] Ms. Turney was represented by Carscallen LLP (Carscallen) and Woodland Resources Ltd. (Woodland). On March 6, 2012, Ms. Turney filed a cost claim for legal fees in the amount of \$35 757.00, consulting fees in the amount of \$112 845.00, expenses in the amount of \$1524.21, and GST in the amount of \$7676.61, for a total claim of \$157 802.82.

### **Views of Glencoe**

[11] Glencoe requested that the Board dismiss Ms. Turney's claim for costs as it was submitted out of time as required under *Directive 031: Guidelines for Energy Proceeding Cost Claims (Directive 031)*, which reads:

Claims for local intervener costs if no hearing is held should be filed with the ERCB as soon as possible. If such a claim is being made regarding an application that was withdrawn, the claim must be filed within 30 days of the date upon which the application was withdrawn. The ERCB will not consider claims received after the 30-day period unless extraordinary circumstances prevented timely filing. (emphasis added)

[12] Glencoe stated that the Application was withdrawn on January 26, and 30 days from that date is February 29. The cost claim was submitted March 6, and as there were no extraordinary circumstances, Glencoe submitted that the cost claim should be dismissed.

[13] In the alternative, Glencoe submitted that Ms. Turney does not qualify as an intervener under the test set out in Section 28 of the *Energy Resources Conservation Act (ERCA)*. Glencoe submitted that Ms. Turney does not meet the third step of the test set out in

Section 28 of the *ERCA*, in that Section 35 would not be adversely affected by a decision in respect of the Application.

- [14] Glencoe submitted that Ms. Turney demonstrated that her concerns related to the impact on her ability to “develop her lands to their highest use” had been resolved when she granted a surface lease to Sand Hills on December 13, 2011, in respect of essentially the same surface location proposed by Glencoe. By granting the lease, Ms. Turney confirmed that there would not be any adverse impact on the land from a Board decision licensing a well at Glencoe’s proposed surface location. As a result of both the financial focus of her objections and the subsequent grant of a surface lease over the lands in question to another operator, Glencoe submitted that Ms. Turney does not meet the test set out in Section 28 of the *ERCA* and requested that the Board deny her cost claim.
- [15] In the further alternative, if the Board would find that Ms. Turney meets the requirements of Section 28 of the *ERCA*, Glencoe submitted that the costs claimed are not “reasonable and directly and necessarily related to the proceeding” and should be reduced.
- [16] Glencoe noted that the hearing notice was issued on December 20, 2011, and submitted that there were no special circumstances related to the Application; therefore the Board should follow its normal practice as set out in Section 6.3 of *Directive 031* and only award costs incurred after the Notice of Hearing was issued.
- [17] Glencoe also noted that the same lawyers, consultants, and other professionals assisting Ms. Turney with her objection were also assisting Sand Hills with its applications and objections before the Board. Glencoe advised that Sand Hills currently has an outstanding application for a well licence for a surface location at LSD 4-35 and a review and variance application in respect of Glencoe’s previously approved holding approvals. Glencoe pointed out that as Sand Hills did not have standing to bring a cost claim in respect of the Application, any work done in relation to Sand Hills’ applications and objections cannot be included in any cost award. Ms. Turney no longer had an interest in the minerals underlying Section 35, so any technical evidence regarding Sand Hills’ ability to develop those minerals cannot have bearing on or relevance to Ms. Turney’s objection. While Glencoe recognized that there may be some benefit to parties sharing experts or representatives, it submitted that a comparison between the financial and surface-related nature of Ms. Turney’s objections and the extremely technical and mineral-focused nature of the various Sand Hills applications and objections makes it clear that any efficiency to be gained by sharing representatives and experts would be minimal.
- [18] Glencoe suggested that costs should be denied unless it could be clearly demonstrated that a lawyer, consultant, or other professional was working specifically on Ms. Turney’s objection and not on Sand Hills’ applications or objections.
- [19] Glencoe noted that Ms. Turney claimed legal fees incurred by Carscallen of \$35 757.00, disbursements of \$478.82, and GST of \$2003.22, for a total of \$38 239.04. These fees include work completed by Michael Niven and Lindsey Grice, for a total of 124.60 hours. As a comparison, Glencoe provided a list of Board awards for legal fees and disbursements in other circumstances where costs were awarded after an application was withdrawn prior to a hearing being held, in which the award of costs ranged from \$1074.65 to \$15 361.54.

[20] Glencoe submitted that the legal fees claimed were unreasonable for the following reasons, amongst others:

- The nature of Ms. Turney’s objection is related to surface and financial issues and is not technically complex; therefore, consultation with technical experts is not warranted.
- The claim for Fekete Associates Inc. (Fekete) relates to Sand Hills’ objection and/or applications, and such time should not be allowed.
- The use of two counsel in this situation was not always efficient, the account contains anomalies, the time appears unreasonably long, and the account includes time spent related to appropriate dispute resolution (ADR).
- The account includes time spent dealing with Sand Hills, either in relation to Sand Hills’ applications or otherwise.
- The account includes numerous references to correspondence with “client” without specifying whether the client referred to is Ms. Turney or Sand Hills.

[21] Glencoe further noted that, due to the way in which the time entries are recorded on the pre-bills, it is impossible to determine exactly how much time was spent for each of the issues; Glencoe submitted that a lump-sum reduction of 60 per cent would be appropriate.

[22] Glencoe indicated that it did not have any concern with the disbursements for mileage or for photocopying but submitted that the disbursement for conference calls was “unaccompanied by any receipt or explanation and did not appear to be reasonable in light of this matter.” Glencoe requested that the \$305.12 claimed for conference calls be disallowed as there was inadequate support for the claimed disbursement.

[23] Glencoe noted that Ms. Turney claimed \$81 772.50 in fees, \$623.20 in disbursements, and \$4119.76 in GST for the services of Fekete for a total of \$86 515.46. Glencoe pointed out that Fekete’s account states that the services provided were as follows:

- December 1–31, 2011
  - review of Turney objection and request for expert witness testimony
  - review of unit outliers and summary of correspondence
  - review of spacing issues for vertical/horizontal drilling options in 4-35 location
  - development of report format and communication with lawyers
- January 1–31, 2012
  - assessment of geology and well production history for the Chigwell Viking E pool and surrounding Section 35-042-26W4
  - development of consistent reservoir model for Sections 26, 24, and 35-042-26W4
  - review of findings with Carscallen
  - support of client in prep for ERCB hearings

[24] Glencoe submitted that Fekete’s services, as described in their invoices, were not “reasonable and necessary” in general and in particular in light of the simple, surface-related nature of Ms. Turney’s objection. The description of services provided

indicates that their work related directly and solely to the technical issues underlying Sand Hills' applications and objection. This is supported by the fact that the only information provided to the ERCB, prepared by Fekete, was contained in Mr. Niven's correspondence of January 26, 2012, after the Application was withdrawn, and relates to Sand Hills' spacing application and/or review and variance request of Glencoe's earlier holding applications and not to the Application.

- [25] Glencoe raised concerns with the technical details in the Fekete report and submitted that the Fekete invoices did not contain "sufficient detail to demonstrate that all items billed were necessary and related to the Application or proceeding." There is no indication in the invoices to show who was involved in performing any of the services described, which services were performed by which individual, or how much time was spent on the different services. Glencoe submitted that this failure to provide information in and of itself has previously been sufficient for the Board to decline awarding costs for professional fees. Glencoe submitted that the costs claimed for Fekete should be denied in their entirety.
- [26] Alternatively, Glencoe submitted that, as a comparison, other Board awards to expert witnesses following multi-day hearings have been significantly below the amount claimed by Fekete for only its preparatory work. Glencoe submitted that, should the Board elect to award fees to Fekete, both the unreasonably high amount of the Fekete fees and the fact that Fekete is also providing services to Sand Hills in respect of its applications and objection support a drastic reduction in the fees awarded to Fekete. Glencoe noted that the Fekete report was not provided nor did any Fekete employees appear at a hearing or meet with counsel to prepare for a hearing appearance.
- [27] Glencoe argued that Ms. Turney claimed a total of \$8154.65 for the services of CODECO but did not provide any indication of what CODECO is, what its purpose or area of expertise is, or why its services were retained.
- [28] Glencoe stated that the CODECO invoice references a "horizontal pad location review". However, there is no indication as to the need for a pad review or of the location of the pad reviewed, and no indication as to why CODECO would be conducting such a review as opposed to someone else (i.e., Fekete). As Glencoe's proposed surface location was subsequently overlapped by the surface lease to Sand Hills, the location review would not have been solely in respect of the Glencoe location or of the Glencoe Application. The CODECO location review occurred during the time the parties were in ADR and may not have been conducted in relation to hearing preparation.
- [29] Ms. Turney claimed \$23 512.50 in fees, \$205.54 in disbursements, and \$1175.63 in GST for the services of her representative, Ken Miklos, through his company Woodland, for a total claim of \$24 893.67. This claim includes a total of 156.75 hours, of which at least 91.5 were incurred prior to the issuance of the Notice of Hearing. Glencoe submitted that costs for these hours should not be awarded.
- [30] Glencoe submitted that there is insufficient detail, which makes it difficult, if not impossible, to determine whether the services provided by Woodland after the publication of the Notice of Hearing were reasonable or necessary. Glencoe noted that Woodland incurred 37.50 hours in January 2012 and that Mr. Niven and Ms. Grice incurred 52.60 and 71.90 hours, respectively. Glencoe submitted that it was not reasonable or necessary for

Woodland to spend so much time doing unspecified tasks when Mr. Miklos had already retained Carscallen “for hearing preparation and representation,” and legal counsel was clearly undertaking whatever tasks were necessary to prepare for the hearing.

[31] Glencoe submitted that although Ken Miklos claimed to have more than 30 years of experience, it was unclear where that experience lies. Even if Mr. Miklos does have some experience dealing with the ERCB on matters that have not resulted in published decisions, he is not a lawyer and has no legal training. He is a lay representative who was apparently active in assisting his client to obtain legal counsel. In *ECO 2011-008 - Shell Canada Limited Applications for Well, Facility, and Pipeline Licences Waterton Field - Cost Awards*, the Board found that Mr. Sawyer, who was a lay representative with limited experience representing individuals before administrative tribunals and was the sole representative for a particular intervener, was only entitled to an hourly rate of \$125.00. As Woodland is in the role of consultant and was not representing Ms. Turney before the Board, Glencoe submitted that \$120.00 per hour should be used for any hours accepted by the Board.

[32] Glencoe submitted that, given that Ms. Turney was represented by counsel at all times following the Notice of Hearing, Woodland’s representation during that time was not useful, reasonable, or necessary. Recognizing that Woodland was instrumental in retaining legal counsel for Ms. Turney, notwithstanding that this occurred prior to the issuance of the Notice of Hearing, and given that Woodland may have acted as a go-between for Ms. Turney and her legal counsel following the Notice of Hearing, Glencoe submitted that a reasonable award for Woodland would be for fifteen hours of work. Glencoe noted that Woodland did not provide any invoices to support its disbursements and asked that the claim for disbursements be denied.

[33] Glencoe requested firstly that the Board dismiss the cost claim in its entirety as it was submitted after the deadline set out in the *ERCA*, the *Rules of Practice*, and *Directive 031*.

[34] Alternatively, Glencoe requested that the Board fix costs as follows:

	Fees	Disbursements	GST	Total
Carscallen	\$14 302.80	\$173.70	\$723.83	\$15 200.33
Fekete	\$0.00	\$0.00	\$0.00	\$0.00
CODECO	\$0.00	\$0.00	\$0.00	\$0.00
Woodland	\$1 800.00	\$0	\$90	\$1 890.00

### Views of Ms. Turney

[35] Ms. Turney submitted that Glencoe withdrew its Application on January 26, 2012, but Board decision 2012 ABERCB 003 confirming Glencoe’s withdrawal and the termination of proceedings was not issued until February 3, 2012. This was seven days after Glencoe’s withdrawal and therefore the 30-day time limit was March 6, the date the claim was filed.

[36] If the Board was to reject this, then Ms. Turney submitted that there were extraordinary circumstances that justify the filing of the claim a mere seven days after the earlier time limit. Glencoe’s Application was withdrawn on January 26, a mere two days after Ms.

Turney's submissions in opposition to the Application were supposed to have been submitted. On January 20, the parties received notice from the Board of an adjournment of the hearing. Submissions were provided. Ongoing discussions, submissions, and preparations by Ms. Turney carried on into the following week.

- [37] Ms. Turney submitted that in the midst of the confusion resulting from Glencoe's "sudden about face," counsel began diligently seeking invoices and cost summaries from all those who had been involved in Ms. Turney's objection, some of which were received only a short time before the March 6 filing. Ms. Turney respectfully submitted that these circumstances justify consideration of the claim and that the Board should exercise the discretion provided for in the *Rules of Practice* to permit the claim to proceed.
- [38] Glencoe was aware that Ms. Turney intended to file a costs claim, and any delay would not have changed the position of Glencoe in any way that would prejudice its ability to satisfy the claim. In contrast, great prejudice would result to Ms. Turney if the claim were dismissed at this stage.
- [39] Mr. Niven noted that Ms. Turney is the owner of both the surface and the freehold mineral rights in Section 35. As the surface holder of the lands, Ms. Turney submitted that she clearly meets the test for being directly and adversely affected by Glencoe's proposed Application.
- [40] Granting a surface lease to Sand Hills did not detract in any way from Ms. Turney's ability to object to Glencoe's Application. There is a significant difference between one well site and two located on one's lands, particularly where the minerals contained within these lands are being drained by Glencoe in the adjacent section.
- [41] Ms. Turney, as the owner of Section 35 minerals, is further directly and adversely affected by a well proposing to increase production (and drainage) from Section 35 minerals. Ms. Turney continues to hold a royalty interest in these lands and is still therefore directly and adversely affected by the Glencoe Application as both the surface owner and the mineral lessor. Ms. Turney's decision to permit a surface lease to Sand Hills will result in a significantly higher royalty rate on the production of Section 35 minerals than she is currently receiving from production of these same minerals from Glencoe's adjacent units.
- [42] Ms. Turney submitted that the Board's practice of denying claims for recovery of costs incurred prior to the Notice of Hearing is the usual practice only. Whether to permit a claim for these costs is often made on a case by case basis. Ms. Turney stated that the practice of the Board to deny these costs is based upon a general understanding of the nature of time spent and costs incurred prior to the issuance of the Notice of Hearing. In particular, it appears that the reason for this practice is the assumption that costs incurred prior to the Notice of Hearing relate to settlement and compensation matters, as opposed to public interest issues. The costs claimed by Ms. Turney for the period prior to the Notice of Hearing relate to the preparation of her objection on the basis of public interest and reservoir issues which have become the basis for Ms. Turney's objection to the Application.
- [43] In this case, the Notice of Hearing was issued several months after Glencoe filed its Application. On July 13, 2011, Glencoe submitted its Application for wells covering a

sizeable lease area of 6.30 acres on Section 35 and Ms. Turney immediately began preparing her objection. Ms. Turney argued, therefore, that the cost compensation should run from this time. Legal fees incurred between the submission of the application on July 13 and November 28 total approximately \$595.00 (1.70 hours).

- [44] Failing that, however, Ms. Turney submitted that costs should be recovered at least from November 28, 2011, the point at which she was granted intervener status. On December 20, 2011, the day the Notice of Hearing was issued, a meeting was held with Woodland, prospective experts, and counsel. Due to holiday time in December and January and the timing of the submissions and hearing, Ms. Turney was required to undertake preparations as soon as possible, which resulted in these preparations taking place in earnest prior to the issuance of the Notice of Hearing on December 20.
- [45] With respect to Glencoe's allegation that there is duplication in costs for Sand Hills and Ms. Turney, Ms. Turney submitted that all preparation included in the claim would have been conducted for her objection to the Application, notwithstanding the objection filed by Sand Hills. Only Ms. Turney was granted standing as an intervener at the time that the Application was withdrawn, and she therefore retained experts and prepared submissions in opposition to the Application.
- [46] Contrary to Glencoe statements that Ms. Turney's objection to Glencoe's Application is limited to "surface and financial" issues, Ms. Turney submitted that the reservoir issues explored in the course of these proceedings were shared by Ms. Turney and Sand Hills. It came to Ms. Turney's attention that as a result of several reservoir issues, Glencoe has been inequitably draining Section 35 and producing these minerals from its unitized wells (and in particular from its 8-34 well) for several years. This has had and continues to have a direct and prejudicial effect on Ms. Turney and was a significant (though not the only) reason for Ms. Turney's objection to the Application. In order to properly review, assess, and respond to these reservoir issues, Ms. Turney retained Fekete to address these issues and to assist in the preparation of her objection.
- [47] Sand Hills did not retain Fekete, Ms. Turney did. Ms. Turney stood to be prejudiced in the event that the Application was to proceed, and she incurred these costs.
- [48] If Sand Hills had been granted standing as an intervener, it would have made economic sense for the parties to share these expert costs, but Glencoe withdrew its Application before that could occur. Nonetheless, the benefit of the work by Fekete and counsel was solely for Ms. Turney.
- [49] Ms. Turney emphasized that there are no costs relating to Sand Hills' review and variance request included in the cost claim, since the claim only includes costs up to January 26, 2012. The review and variance request was filed the same day that Glencoe withdrew the Application.

[50] Ms. Turney responded to Glencoe's concerns regarding legal fees and submitted, among other things, the following:

- The Application relates to a relatively complex unitization and Enhanced Recovery Scheme (EOR) and, in addition to the complex reservoir issues, Ms. Turney also objected to the Glencoe Application as the surface owner.
- The Board decisions cited by Glencoe as a guide for reasonable legal fees dealt with relatively simple surface issues, as opposed to the complex, technical, evidence-heavy issues here.
- The use of senior and junior counsel in this circumstance was done to reduce and minimize legal fees incurred in the objection to Glencoe's Application, and Ms. Grice did most of the "heavy lifting" at almost half of Mr. Niven's rate under the Scale of Costs.
- Counsel for Ms. Turney acknowledged that there was some time spent dealing with issues relating to Sand Hills in the entries, though these were certainly not the only issues dealt with, and a reduction may be appropriate.
- In the event that the Board elects to reduce the claim to account for time relating to ADR, Ms. Turney submitted that an appropriate reduction would be \$350.00, totaling one hour of time spent by Mr. Niven reviewing correspondence relating to these issues.
- The "anomalies" referred to by Glencoe in its March 29 letter were merely technical errors relating to the entry of time; she provided corrections.
- If further deductions are required, these would be somewhere in the magnitude of \$500.00.

[51] Ms. Turney acknowledged that the disbursement of \$305.12 in teleconference fees may seem somewhat excessive to the Board, but it was a necessary expense incurred as a result of the timing of the Application. A large portion of this charge was incurred by Mr. Niven interrupting his Christmas holidays to call in to a teleconference in order to outline Ms. Turney's evidence with her and her experts, as the evidence was due January 24. Ms. Turney attached a conference summary sheet evidencing this charge of \$98.85.

[52] Ms. Turney submitted that the 60 per cent reduction suggested by Glencoe is not appropriate and is drastic in light of the large amount of preparation completed prior to withdrawal of the Application and the time required to prepare a response to the Application.

[53] Regarding the costs claimed for Fekete, Ms. Turney submitted that her objection was based, for the most part, on inequitable drainage occurring as a result of the Glencoe EOR, which would increase in the event that the Application was approved. This required assessment of very technical data regarding the pool, Section 35, and Glencoe's EOR scheme. Ms. Turney's objection relied on the determination that, contrary to Glencoe's previous evidence to the Board, the Section 35 Viking Chigwell pool was in communication with the Glencoe EOR scheme, that the pool did not contain a gas cap, and that, as a result of all of this, Glencoe had been producing Section 35 minerals for several years. These "technical issues" did not just relate to Sand Hills' application and objection.

Ms. Turney is likely to be just as prejudiced by the inequitable drainage and reservoir issues as Sand Hills, if not more so.

- [54] In response to the cost orders noted by Glencoe, Ms. Turney submitted that the cost of professional fees and expert witness preparation is entirely fact specific and depends on the type and amount of work completed by the expert. Ms. Turney cited some past cost awards that ranged between \$33 000.00 and \$69 800.00. Ms. Turney submitted that there are several other decisions, not cited, with costs for expert fees exceeding those above. Fekete's level of expertise, the complex nature of the evidence, and the importance to the issue justify a cost award on the higher end of this scale.
- [55] Ms. Turney noted that Fekete's invoice terminates on January 26, and work completed for Sand Hills' holding application and review and variance application is not included in the fees claimed for Fekete in Ms. Turney's claim. Ms. Turney submitted that the use of Fekete's services, along with its fees for these services, was both reasonable and necessary in light of the present circumstances and should be recovered in full.
- [56] CODECO's role, described in its invoice as "horizontal pad location review" was to assess the 4-35 proposed surface location relative to those in the surrounding area and to determine if there was a better surface location and/or drill plan for each of Glencoe's proposed wells. Assessment of alternate well sites is directly relevant to Ms. Turney's objection, given that she is the surface owner and occupies Section 35.
- [57] Ms. Turney submitted that Woodland and its principle Ken Miklos hold over 30 years of experience in land consultation. Mr. Miklos is an independent, professional agrologist and most of his career has been focused on land consultation issues with respect to oil and gas developments. He has extensive experience advising land owners on surface rights, mineral rights, and environmental issues. Ms. Turney hired Woodlands several years ago to act as agent in all matters relating to development of oil and gas facilities on her lands, including those incorporated into the Glencoe units adjacent to Section 35. Given the complex history and relationship between Glencoe and Ms. Turney, Mr. Miklos' services cut down on time that would have otherwise been spent wading through this history.
- [58] Ms. Turney respectfully submitted that, subject to the following reasonable deductions, the claim should be approved in full.

Legal fees	\$2200.00
Woodland Resources Ltd.	\$4762.50
Total	\$6962.50

- [59] Ms. Turney submitted that she would be happy to provide the Board with copies of submissions and evidence prepared in support of her objection, if requested to do so.

## **Views of the Board**

### ***Eligibility for Costs***

- [60] The Board notes that this cost claim was for a well that was to be located on Ms. Turney's lands. The Board notes that Ms. Turney subsequently leased her mineral rights in the

section to Sand Hills and entered into an agreement with Sand Hills for a well pad to be located at the exact location that Glencoe had applied for. This resulted in Glencoe withdrawing its Application and the hearing being cancelled.

- [61] The Board found that Ms. Turney had standing as her rights could be directly and adversely impacted by the Application which proposed a well site on her lands. The Board finds that she is a local intervener as defined under Section 28 of the *ERCA* as her interests in land could have been adversely impacted by the Board's decision on the Application. The fact that she entered into a surface lease with Sand Hills does not mean that she may not have been adversely impacted by the proposed Glencoe Application at the same location. In fact, it suggests the opposite.
- [62] Glencoe alleges that the cost claim should not be considered because it was filed on March 6, 2012, which is outside the 30-day time limit, as set out in the *Rules of Practice* and *Directive 031*, from the date of the withdrawal on January 26, 2012. The Board notes that Ms. Turney alleges that it is within 30 days of the issuance of the Board's Decision dated February 3, 2012 accepting Glencoe's withdrawal and cancelling the hearing. Section 55 of the *Rules of Practice* states that the cost claim must be filed within 30 days after the proceeding is closed. The Board accepts Ms. Turney's position that it was reasonable to view the proceeding as closed from the date of the Decision as that confirmed the Board's acceptance of the withdrawal under Section 21 of the *Rules of Practice*. The Board notes that March 6, 2012, is 32 days after February 3, 2012; however, Section 1 of the *Rules of Practice* requires the *Rules* to be liberally construed and there is no allegation of prejudice by Glencoe in receiving the cost claim two days late. Further, the Board notes that Ms. Turney advised of her intention of filing a cost claim in her January 26, 2012, submission. Although it would have been a simple matter for experienced counsel representing Ms. Turney to request an extension to file the cost claim, the Board is prepared to use its discretion under the *Rules of Practice* and accept the cost claim.

[63] For the reasons above, the Board finds that Ms. Turney is eligible for costs.

#### ***Legal Fees and Expenses—Carscallen LLP***

- [64] The Board notes that, upon request for further information, Carscallen provided its account claiming a total of \$38 239.04. The Board notes that Ms. Turney retained multiple representatives. Woodland is her long time representative, and Carscallen was also retained and represented both Ms. Turney and Sand Hills. The Board notes Sand Hills was not granted standing in the proceeding, its applications were not included in the hearing, and Sand Hills is ineligible to claim costs under Section 28 of the *ERCA*.
- [65] The Board notes Ms. Turney's position that it was reasonable to have at least two lawyers on the file, a senior lawyer and a junior to do the "heavy lifting," as this would result in reduced costs. The Board agrees that this could be the case, but given the numerous conferences, reviews, and responses between the lawyers and Woodland, the Board is of the view that there were needless inefficiencies and duplications in the costs.
- [66] The Board notes that it was conceded that some of the costs claimed related to work done for Sand Hills and ADR, and reductions of 6.10 hours for Sand Hills work and 1 hour for ADR were submitted. The Board finds this reduction does not cover the numerous costs

claimed that reference Sand Hills, its staff, or “clients” generally. Although these entries may also reference other work for Ms. Turney, without further details explaining the time for each client, the Board is unable to determine the costs for Ms. Turney on those dates. When a representative has two clients in a proceeding, one that may be eligible for costs and one that is not, it is critical for the representative to ensure that a detailed breakdown of costs is provided. This is reasonable given that two invoices would be completed, one for each client, and the invoices would not contain costs associated with work done for the other client.

- [67] The Board also notes the numerous entries related to communications with Woodland. No evidence suggesting that these costs were reasonable and necessary to the intervention was provided and the Board is of the view that there was duplication of work and inflation of costs by the involvement of the representatives. Based on the above, the Board finds that it does not appear that much of the costs are reasonable and necessary for Ms. Turney’s intervention and a reduction is appropriate. The Board is prepared to award 50 per cent of the \$35 757.00 claimed for legal fees, for an award of \$17 878.50 plus GST.
- [68] The Board notes that there are costs for mileage within the claimed amount. As set out in *Directive 031*, mileage can be claimed only during the hearing phase to attend the hearing and so the amount of \$171.40 is denied.
- [69] The total award for legal fees and disbursements is \$19 095.22, including GST.

***Consultant Fees and Expenses—Woodland Resources Ltd.***

- [70] The Board notes that the claim by Woodland includes costs incurred prior to the Notice of Hearing being issued. As set out in *Directive 031*, the Board’s practice is not to award costs incurred prior to the Notice of Hearing given that there is no certainty that a hearing will be held. Ms. Turney does not provide any evidence of unique circumstances that required Woodlands to begin its preparation for a hearing prior to the Notice being issued. The Board notes that the cost claim includes hours per each month and provides a general description of the work completed on the file; however, the details are not sufficient for the Board to be able to determine if the time spent was reasonable and necessary for the intervention. Given that Ms. Turney represented in correspondence dated August 11, 2011, that Sand Hills would be addressing mineral right impacts, the amount of hours claimed for her concerns related to surface and gravel business impacts are excessive. The Board notes that a letter was sent out on November 28, 2011, advising that Ms. Turney had standing in this matter and that a hearing would be held. The Board finds that costs incurred after this date are eligible to be awarded. The Board notes that specific time entries, with dates of the work done, were not provided by Woodland. Further, as the letter went out at the end of November, the Board finds that only those costs incurred for hours of work completed in December and January, as the letter requesting withdrawal of the Application by Glencoe was issued on January 26, 2012, are eligible. The total is 81 hours.
- [71] The Board notes that Ms. Turney is claiming that Mr. Miklos is an expert, with over 30 years experience in land consultation; however, no participation by Mr. Miklos in prior ERCB hearings was identified, a CV was not provided, nor is it clear from Mr. Miklos’ professional credentials that he has expertise in oil and gas development. The Scale of Costs under *Directive 031* provides a sliding scale for professional fees on the basis that as

the professional's experience increases, so will their wage and, importantly, value to the hearing process. Each claim will be assessed upon its individual merits. The Board notes that there were numerous costs claimed for researching issues related to the proposed well sites. The Board finds the evidence does not support a finding that he is an experienced consultant and therefore it is appropriate to award costs at an hourly rate of \$120.00/hr.

[72] Again, the Board notes that the claim includes costs for mileage in the amount of \$205.54. As set out in *Directive 031*, the Board awards these costs incurred during the hearing phase of the proceeding in order to facilitate attendance at the hearing. In this case, no hearing was held and these costs are denied.

[73] Based on the above, the Board awards costs for 81 hours at a rate of \$120/hr for a total of \$9720.00, excluding GST.

***Expert Fees and Expenses—Fekete Associates Inc.***

[74] The Board notes that the cost claim includes costs related to work done by Fekete for a total of \$86 515.49, including GST. The Fekete invoice states that the expert work done included

- assessing geology and history of the Viking E pool surrounding Section 35,
- developing a consistent model for surrounding sections,
- reviewing findings with Carscallen and providing support in preparation for the hearing, and
- reviewing spacing issues for drilling options at the 4-35 location.

[75] The Board notes that, although Ms. Turney has raised concerns with drainage, it is not clear to what degree she was going to be pursuing this issue at the hearing. In correspondence dated August 11, 2011, Ms. Turney advised that Sand Hills, being the mineral interest lessee, would be speaking to mineral rights issues and in correspondence dated September 30, 2011, she advised that she did not object to Glencoe developing its unit so long as it didn't object to development on Section 35. The Board understands that Ms. Turney and Sand Hills may have shared the concern that the adjacent EOR scheme was draining oil from Section 35 and that the proposed wells were a part of that scheme. In letters dated January 9, 2012, Sand Hills applied for standing in this proceeding on the basis that the Glencoe Application would result in recovery of minerals that are properly the subject of Sand Hills' lease and had requested that its own applications for development on Section 35 be heard in the proceeding.

[76] The Board finds that Sand Hills intended on bringing forward and addressing the issue of drainage as per Ms. Turney's August correspondence and per its standing request. Further, the EOR scheme, generally, was raised as a concern and, specifically, the 8-34 well; however, the scheme and 8-34 approvals would likely have been outside the scope of the proceeding and not directly related to Ms. Turney's intervention.

[77] Concerns relating to the EOR scheme are relevant to the review application that was filed by Ms. Turney and Sand Hills in their January 26, 2012, submission in this proceeding. The Board notes that the January 26, 2012, review request is based on the Fekete report as "new

information” upon which a review hearing should be held. Further, the work done on the drilling and spacing issues for the 4-35 location, although maybe an interest to Ms. Turney as the lessor, are directly related to the decision by Sand Hills to apply for a well at this site.

[78] Given the above, the Board finds that the work done by Fekete is not reasonable or necessary for Ms. Turney’s intervention and declines to award these costs.

***Expert Fees and Expenses—CODECO Consulting (2000) Inc.***

[79] The Board notes that the invoice from CODECO Consulting (2000) Inc. relates to an engineering report regarding the impacts of the proposed well location. Given the surface concerns of Ms. Turney, this would have been directly relevant to her issues that were to be heard at the hearing. The claim includes costs for mileage in the amount of \$216.65, which are only awarded for costs incurred during the hearing phase of a proceeding. These costs are denied as no hearing was held. The Board awards the costs claimed by CODECO for 28 hours at a rate of \$270/hour for a total of \$7938.00, including GST.

**ORDER**

[80] It is hereby ordered that Glencoe pay local intervener costs to Ms. Turney in the amount of \$35 465.72 and GST in the amount of \$1773.30 for a total of \$37 239.22. This amount must be paid to Carscallen LLP as the submitter of the claim at

Carscallen LLP  
1500, 402 – 2 Street SW  
Calgary AB T2P 2Y3

Dated in Calgary, Alberta, on July 16, 2012.

**ENERGY RESOURCES CONSERVATION BOARD**

*(Original signed by)*

G. Eynon, P.Geol.  
Presiding Board Member

*(Original signed by)*

T. L. Watson, P.Eng.  
Board Member

*(Original signed by)*

A. Bolton, B.Sc., P.Geol.  
Board Member

## **APPENDIX—SUMMARY OF COSTS CLAIMED AND AWARDED**

This appendix is not available on the ERCB website. To order a copy of this appendix, contact ERCB Information Services toll-free at 1-855-297-8311.