



Bellamont Exploration Ltd.

Applications for Two Wells and Two Pipelines
Grande Prairie Field

Cost Awards

April 27, 2011

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2011-001: Bellamont Exploration Ltd., Applications for Two Wells and Two Pipelines, Grande Prairie Field

April 27, 2011

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**BELLAMONT EXPLORATION LTD.
APPLICATION FOR TWO WELLS
AND TWO PIPELINES
GRANDE PRAIRIE FIELD**

**Energy Cost Order 2011-001
Application Nos. 1598361, 1599688, and 1599690
Cost Application No. 1651805**

1 INTRODUCTION

1.1 Background

Bellamont Exploration Ltd. (Bellamont) applied to the Energy Resources Conservation Board (ERCB) for licences to drill two horizontal wells from a surface location in Legal Subdivision (LSD) 15, Section 30, Township 71, Range 4, West of the 6th Meridian. Bellamont also submitted applications to construct and operate two pipelines associated with the proposed wells.

Objections to the applications were filed by 1099342 Alberta Ltd. (Wilfred Rigler) and Alex McDonald and Shelly McDonald.

On May 12, 2010, Bellamont notified the ERCB that it was withdrawing its applications, and the Board accepted the withdrawal. Accordingly, a public hearing was not held.

The Board issued its decision on the application via *Decision 2010-020*, dated May 17, 2010.

1.2 Cost Claim

On May 19, 2010, Alex McDonald, Shelly McDonald, and 593605 Alberta Ltd. (collectively the McDonalds) filed a cost claim in the amount of \$16 599.01. On June 2, 2010, Bellamont submitted comments to the McDonalds' cost claim. On June 30, 2010, the McDonalds submitted a response to the comments of Bellamont.

The Board considers the cost process to have closed on July 20, 2010.

2 VIEWS OF THE BOARD—AUTHORITY TO AWARD COSTS

In determining local intervener costs, the Board is guided by its enabling legislation, in particular by Section 28 of the *Energy Resources Conservation Act (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.

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.

The Board's authority to award costs is derived from Section 28 of the *ERCA*. Pursuant to Section 28(2), a local intervener may be awarded costs. Section 28(1) identifies a local intervener as someone with an interest in or the right (exercised or not) to occupy land that will or may be directly and adversely affected by a decision of the Board. This requires the Board to determine (1) if the party seeking costs has an interest in, occupies, or has the right to occupy certain land; and (2) if that land may be directly and adversely affected by a decision of the Board.

Sections 26(2) and 28(1) of the *ERCA* set out different tests and determine different entitlements. Section 26(2) requires a determination based upon information available prior to a hearing on whether a person has legally recognized rights that may be directly and adversely affected by a Board decision. Section 28(1) entails a consideration by the Board of all evidence provided at the hearing and in the cost proceeding to determine if a party applying for costs has an interest in, occupies, or is entitled to occupy land that could be directly and adversely affected by the Board's decision.

The evidence before the Board clearly indicated that the McDonalds have interests in and reside on or occupy certain lands that could be directly and adversely affected by its decision. Further, the proposed well site would have been located on the McDonalds' lands, with the potential to affect the interests and/or lands of the McDonalds. As such, the Board finds that the McDonalds are local interveners pursuant to Section 28(1) of the *ERCA*, and are thus eligible to have their cost claims considered by the Board.

When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and Appendix E: Scale of Costs in *ERCB Directive 031: Guidelines for Energy Proceeding Cost Claims*.

Section 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.

3 VIEWS OF THE PARTIES

The McDonalds were represented by Klimek Law. On May 19, 2010, the McDonalds filed a cost claim for legal fees in the amount of \$14 217.50, attendance honoraria in the amount of \$500.00, expenses in the amount of \$11 16.23, and GST in the amount of \$765.28, for a total claim of \$16 599.01.

3.1 Views of Bellamont

Bellamont disputed the \$270.00 that was claimed as fees for services provided by Donna Terlecki, a legal assistant. Bellamont submitted that *Directive 031* is clear that Board does not

allow paralegals and legal assistants to charge separately for their services. Bellamont suggested that the Klimek Law claim should be reduced by \$283.50 (includes GST).

Bellamont agreed that the Board should award an honorarium to the McDonalds, but submitted that it should be less than the \$500.00 claimed given that the matter never proceeded to a public hearing and the McDonalds were represented by counsel.

3.2 Views of the McDonalds

Klimek Law submitted that Ms. Terlecki was reviewing documents and consolidating them for the submissions, work that would have been done by a junior lawyer at a much higher rate. Klimek Law also highlighted that the claim for secretarial costs was on the same tariff provided for a consultant's secretary/support staff.

With respect to the honorarium, the McDonalds spent time reviewing the application and consulting with counsel, and they did not consider the \$500.00 amount to be excessive.

4 VIEWS OF THE BOARD

With respect to the honorarium, the Board may award a local intervener preparation honorarium in recognition of the local intervener's efforts in preparing the intervention, even where a lawyer is representing the local intervener, provided that the local intervener participates in the preparation. In this case, the Board notes that no documentation was submitted outlining the work done by the McDonalds in preparing the intervention. The Board further notes that the McDonalds were represented by Klimek Law. Accordingly, the amount for preparation honorarium is denied.

The notice of hearing was issued on September 9, 2009, and the costs claimed by Klimek Law were incurred after the notice of hearing was issued. The Board finds that the costs are reasonable and is prepared to allow Jennifer Klimek's legal fees in the amount of \$14 644.87, including GST.

The Board notes that the claimed disbursements include amounts for a flight, hotel accommodation, parking, and meals. As set out in *Directive 031*, to enable the attendance of a local intervener's counsel at a hearing, the Board may award costs for these personal disbursements where these costs are incurred during the hearing phase. In this case, the hearing did not occur as the application was withdrawn. Accordingly, the Board denies the costs claimed for these amounts, but allows costs for disbursements in the amount of \$716.67, including GST.

The Board notes that costs have been claimed for Ms. Terlicki, who is listed as a legal assistant. Costs for legal assistants are not eligible as the Board considers legal fees to include all overhead charges. Further, the amounts were for preparation of documents, which the Board views as not requiring legal expertise. Accordingly, the amount claimed for Ms. Terlecki is denied.

5 ORDER

It is hereby ordered that

- 1) Bellamont shall pay intervener costs in the amount of \$15 361.54, and
- 2) payment shall be made to the offices of Klimek Law, #240, 4808 – 87 Street, Edmonton AB T6E 5W3.

Dated in Calgary, Alberta, on April 27, 2011.

ENERGY RESOURCES CONSERVATION BOARD

<Original signed by>

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

<Original signed by>

G. Eynon, P.Geol.
Board Member

<Original signed by>

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

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED

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