



October 28, 2022

VIA EMAIL (ddafoe@360elm.com)

360 ELM / Bench Creek Resources Ltd.
Suite 1600, Bow Valley Square 1
202 - 6th Avenue SW
Calgary, AB T2P 2R9

Attention: Derek Dafoe
Project Manager

RE: Review File R-2022-002: General Order 2021-0144-01

Dear Mr. Dafoe:

I write regarding the request you made in an email dated July 14, 2022, on behalf of Bench Creek, for a review of General Order 2021-0144-01 (the "**Order**") under s. 70 of the *Oil and Gas Activities Act* ("**OGAA**"). I have been designated as the review official for your request for review.

Background

On August 27, 2021, the Commission approved the transfer of several oil and gas wells from GS E&R Canada Inc. to Bench Creek. As a condition of the transfer, Bench Creek was required to complete a remediation program. Around the same time, the parties concluded a separate Escrow Agreement. My authority as review official pursuant to section 70 relates only to the Order and does not extend to the Escrow Agreement. On August 27, 2021, the Commission issued General Order 2021-0144-01 (the "Order"). The Order requires Bench Creek to complete certain abandonment and reclamation obligations. The obligations and timelines set out in the General Order reflected obligations under the *Oil and Gas Activities Act*, the Dormancy and Shutdown Regulation ("DSR"), and the permits held by Bench Creek (namely the conditions of the transfer). The Order included information on how to initiate a review or appeal.

On July 14, 2022, Bench Creek requested a review of the Order. I have reviewed that correspondence, which sets out Bench Creek's position on why it was not able to complete the actions required by the Order, including:

- Non-routine accessibility for the sites listed in Schedule A and B;
- Volume of work to be conducted before July 31, 2022;
- Road construction for winter access sites;
- Requirements for water approvals (stating "because no water was available due to the Blueberry River ruling, this created even more delay, causing abandonment operations to exceed expected timelines");
- Procurement delays (stating "sudden demand for aircraft and resources creating scarcity"); and

- Weather conditions (stating “cold wet spring preventing suitable landing conditions”).

I am aware that Bench Creek has partially completed the requirements of the Order and acknowledge Bench Creek’s submission that it continues to make progress to satisfy the terms of the Order.

Section 70 of OGAA governs requests for review. It reads, in part:

...

(3) A request for review under subsection (a) must be made within 30 days of receiving the later of

(a) the determination, and

(b) any written reasons respecting the determination.

(4) Despite subsection (3), a review official may extend the time to request a review, even if the time to make the request has expired, if satisfied that

(a) special circumstances existed which precluded making the request within the time period required under subsection (3), and

(b) an injustice would otherwise result.

In the Commission’s letter of August 19, 2022, the Commission requested that Bench Creek identify and submit any supporting information relating to any special circumstance or injustice as described in OGAA s. 70(4)(a) or (b) that Bench Creek would like me to consider. This information was repeated in the Commission’s letter of September 6, 2022, and Bench Creek was informed that the Commission would consider any submission provided on or before September 13, 2022. The Commission did not receive any response to these letters. No additional information was provided by Bench Creek to substantiate the position it took in its email of July 14, 2022, or to specify what steps it did take to try to avoid or mitigate the stated obstacles to fulfilling the Order requirements.

Your email of July 14, 2022 indicated your view that the deadline of July 31, 2022 was not achievable, nor was it at the time of the order. This indicates that Bench Creek could have identified this of the Order from the outset, or certainly well before July 2022, just before the obligations under the Order were due. Despite this, Bench Creek did not seek any of the remedies available to them when the order was issued, such as a request for an amendment under OGAA section 49, a request for a review or an appeal under Part 6 of OGAA within the designated timeframe.

I have considered section 70(4)(b) and potential injustice that could result from a decision regarding extension of time for initiating a request for review. Before making a finding that a person has contravened an order, the Commission must provide the person with an opportunity to be heard (OGAA section 62(1)). Further, the Commission may not make a finding of contravention if the person demonstrates to the satisfaction of the Commission that the person exercised due diligence to prevent the contravention (by taking all reasonable steps to try to comply with the Order) (OGAA section 62(5)). As such, in the event that the Commission were to take further steps in relation to the Order, Bench Creek would be afforded an opportunity to provide evidence and submissions to show why it was not able to comply with the Order.

Conclusion

Based on the above analysis I am not satisfied that special circumstances existed which precluded Bench Creek from making the request within the time period under OGAA section 70 (3). Additionally, Bench Creek has provided no information to support whether an injustice would otherwise result. As such I am declining to exercise my authority to extend the time to request a review under section 70 (4) of OGAA.

This concludes my decision and request for review. Questions regarding administration of the order may be made to Andy Johnson (250) 794-5237.

Yours truly,



Richard Slocomb, P.Eng.
Vice President, Well & Energy Resource Stewardship

cc. Andy Johnson, Vice President, Operations
VIA EMAIL (Andy.Johnson@bcogc.ca)