COURT FILE NUMBER	1801-09188
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	THIRD EYE CAPITAL CORPORATION
RESPONDENTS	RANCH ENERGY CORPORATION, OPSMOBIL 1734163 ALBERTA INC., 1859821 ALBERTA INC., OPSMOBIL GROUP INC., OPSMOBIL CONSTRUCTION INC., OPSMOBIL ENERGY SERVICES INC., AIR DALLAIRE LTD., AND K.L. CAPITAL CORP.
DOCUMENT	**AFFIDAVIT OF JAMES O'HANLEY**

Clerk's Stamp

CLERK OF THE COURT
FILED
NOV 05 2018
JUDICIAL CENTRE
OF CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Jensen Shawa Solomon Duguid Hawkes LLP
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

Attention: Christa Nicholson
Tel: 403 571 1053
Fax: 403 571 1528
File: 13662.003

AFFIDAVIT OF: JAMES O'HANLEY

SWORN ON: NOVEMBER 5, 2018

I, James O'Hanley, of the City of Fort St. John, in the Province of British Columbia ("**B.C**"), SWEAR THAT:

1. I am the Vice President, Applications, at the British Columbia Oil and Gas Commission ("**BCOGC**"), and as such, have personal knowledge of the facts and matters sworn to in

this Affidavit, except where stated to be based upon information, in which case, I believe the information to be true.

2. I am aware that on October 17, 2018, Predator Oil BC Ltd. ("**Predator**") applied to the Court in these proceedings ("**Predator's Application**"), seeking advice, direction, and orders relating to certain petroleum and natural gas assets located in B.C. (the "**Assets**"). I understand that the majority of the Assets (excluding only the Uneconomic Assets, as that term is defined below) are currently being operated by Ernst & Young Inc. (the "**Receiver**") as receiver and manager of the insolvent debtor, Ranch Energy Corporation ("**Ranch**").

3. I swear this Affidavit in order to provide the parties and the Court with information, from the BCOGC's perspective, about the regulatory environment in which Predator and the Receiver are functioning, including the BCOGC's mandate and aspects of the current position of the BCOGC in these proceedings.

A. The Role of the BCOGC

4. The BCOGC is a regulatory agency in B.C., which is responsible under the *Oil and Gas Activities Act*, SBC 2008, c 36 (the "**OGAA**") for overseeing oil and gas operations in B.C. As I understand it, the BCOGC has a similar, but not identical, role to that of the Alberta Energy Regulator ("**AER**") in Alberta.

5. The BCOGC operates a "single-window" system, meaning that the system is designed to efficiently facilitate all regulatory processes for the exploration, development, transportation, and reclamation of oil and gas operations in B.C.

6. The BCOGC's core roles include reviewing and assessing applications for industry activity, consulting with First Nations, ensuring industry complies with provincial legislation, and cooperating with partner agencies.

7. In conducting its mandate, the BCOGC is charged with, *inter alia,* ensuring public safety, protecting the environment, conserving petroleum resources, and ensuring equitable participation in production.

8. Under B.C.'s regulatory regime, permits may be issued under the OGAA. A person who holds a permit issued under the OGAA is responsible, *inter alia,* for abandoning, plugging and restoring wells and associated sites, and therefore the inevitable future costs of their abandonment and remediation are its responsibility.

9. The BCOGC also administers an orphan site reclamation fund ("orphan fund"). The orphan fund is used to pay reclamation costs regarding wells, facilities, pipelines, oil and gas roads, and areas which the BCOGC designates as "orphan sites" because the Permittee (as defined below) or former permit holder cannot be identified, or is insolvent. The BCOGC collects funds from the industry for the orphan fund to deal with the costs of abandonment, remediation and reclamation of orphan sites that arise in the normal course of oil and gas operations.

10. As I understand it, the fact that the BCOGC administers its own orphan fund is different than the system in Alberta, in which reclamation costs are paid for using an orphan fund administered by the Orphan Well Association, which is an organization distinct from the Alberta oil and gas regulator (the AER).

11. There are currently a total of 326 orphan sites in B.C., 310 of which require further restoration. A budget of $13.9 million has been allocated for the BCOGC's 2018/2019 fiscal year to carry out decommissioning and restoration activities on orphan sites. While costs can vary significantly from site to site, the BCOGC estimates that the average cost to abandon and reclaim a site in B.C. is approximately $370,000.

B. Current Status of the Assets and Operation of the Assets by the Receiver

12. Predator currently holds permits for approximately 800 unrestored wells and associated infrastructure (the "**Permits**"). It is estimated that Ranch owns 75% of those wells and

infrastructure. The infrastructure at the remaining 25% of the sites for which Predator holds Permits is not subject to receivership proceedings (the "**Non-Receivership Assets**").

13. I understand that the Receiver sent a letter dated October 2, 2018 (the "**Letter**") purporting to disclaim property (the "**Purported Disclaimer**") in respect of 228 of the Assets (the "**Uneconomic Assets**"). The BCOGC contests the ability of a receiver to disclaim oil and gas assets, including the ability of the Receiver to disclaim the Uneconomic Assets, on grounds including those addressed in the *Orphan Well Association v Grant Thornton Limited,* 2017 ABCA 124 ("*Redwater*") case currently on reserve from the Supreme Court of Canada. As such, the BCOGC reserves all of its rights in connection with the Letter and the Purported Disclaimer.

14. On October 29, 2018, in connection with inquiries by the BCOGC seeking information about the operation of the Assets (the "**Inquiries**"), Lance Ollenberger, Vice President, Operations, at the BCOGC ("**Mr. Ollenberger**") wrote to the Receiver in care of its counsel, and to Ranch, attention: Ryan Tobber (formerly of Ranch), requesting documentary evidence establishing and specifying the basis upon which Ranch has authority to conduct its oil and gas activities in B.C. Those letters are attached and collectively marked as **Exhibit "A"**.

15. On October 30, 2018, Mr. Ollenberger received a letter in response to his letter of October 29, 2018, from counsel for the Receiver. That letter is attached and marked as **Exhibit "B"**.

16. Without limiting or constraining the BCOGC's rights and obligations to act under its statutory mandate as it may determine to be appropriate, the BCOGC may consider the Court's determinations regarding Predator's Application in addressing the Inquiries.

C. The Status of the Permits

17. In general, only a person who has been issued a permit by the BCOGC (a "**Permittee**"), or a person deriving its rights through a Permittee (an "**Authorized Operator**"), may operate oil and gas assets. The BCOGC only authorizes one permit holder to conduct an oil and

gas activity, and each well, facility, and pipeline has a unique identifier with one authorized permit holder. In this case, the permits were issued to Predator.

18. The BCOGC's position is that a receiver and manager operating oil and gas assets, like all operators, must comply with applicable laws and regulations relating to oil and gas assets. Receivership Orders cannot themselves confer upon receiver managers authority to operate oil and gas assets unlawfully. As such, a receiver manager must be a Permittee or an Authorized Operator if it is to lawfully operate oil and gas assets in B.C. Since Predator is the Permittee, in these unique circumstances where there is a dispute before this Court as to whether the Receiver is an Authorized Operator, without limiting or constraining the BCOGC's rights and obligations to act under its statutory mandate as it may determine to be appropriate, BCOGC looks to this Court to determine that legal issue.

19. Further, pursuant to section 39 of the OGAA, if a Permittee has commenced operation of a well but ceases to own the subsurface rights associated with the well or have a valid agreement with the owner of the subsurface rights associated with the well, it must immediately suspend operation of the well unless the BCOGC has approved continued operations. In this case, to BCOGC's knowledge, Predator does not own the subsurface tenure related to the Assets. Permit holders also require a right of access to the surface lands related to the Assets. In this case, to BCOGC's knowledge, Predator does not hold a right of access to the surface lands related to some of the Assets.

20. The BCOGC has the power under the OGAA, at any time and at its discretion, *inter alia*, to require that oil and gas activities cease, to require that wells and facilities be shut in, to itself take over operations at a site, or to cancel or transfer the Permits in accordance with OGAA. To date, the BCOGC has not exercised its statutory authority to require the shut in of the Assets. In these proceedings, both Predator and the Receiver have expressed the desire that the Assets not be shut-in.

21. From the BCOGC's perspective, it would appear that Predator and Ranch are co-dependent, on account of the various arrangements between them that have been put

into place. To be authorized to operate the Assets pursuant to the Permits, Predator needs permission to access the land on which the Assets sit and permission to produce from the subsurface tenure held by Ranch. To be authorized to operate the Assets, in these circumstances where Predator is the Permittee, the Receiver needs to be an Authorized Operator.

22. The BCOGC is statutorily mandated to act in the public interest, and as part of that objective, to minimize financial impacts to the orphan fund. If all of the Assets, or as many as possible, are sold to a solvent entity capable of fulfilling regulatory responsibilities to restore the Assets, the number of Assets potentially designated as orphan sites will be minimized. Further, if the Assets are shut in, this would likely negatively affect the value and marketability of the Assets in the current sales process being administered by the Receiver under the Court's supervision.

23. That said, as stated above the BCOGC may, at any time and at its discretion, require that the Assets be shut in, including in the interest of public safety and the environment. As previously stated, the BCOGC contests the ability of a receiver to disclaim oil and gas assets on grounds including those addressed in the *Redwater* case and, as such, it reserves all of its rights in connection with any potential future attempts by the Receiver to disclaim any of the Assets.

D. Clarifying Facts incorrectly described in the Tobber Affidavit and Third Eye Brief

24. I have read the Affidavit of Ryan Tobber, sworn in these proceedings on October 16, 2018 (the "**Tobber Affidavit**").

25. Paragraph 12 of the Tobber Affidavit is incorrect. If all of the Permits associated with the Assets are transferred into Ranch's name, or the name of a purchaser of the Assets, the part of the Total Security Deposit (as defined in the Tobber Affidavit) associated with the Assets may or may not be returned to it, in whole or in part, in accordance with section 25 of the B.C. *Fee, Levy and Security Regulation*, BC Reg 8/2014.

26. Paragraphs 23 and 26 of the Tobber Affidavit are also incorrect. The security posted by Predator referred to in paragraphs 23 and 26 of the Tobber Affidavit is in respect of Predator's whole portfolio of Permits, including the Non-Receivership Assets. In the case of Predator, the BCOGC does not hold security separately for particular assets associated with the entire portfolio of Permits.

27. I have read the Brief of Law and Argument filed by Third Eye Capital Corporation (the "**Third Eye Brief**") in these proceedings on October 31, 2018. Paragraph 16 of the Third Eye Brief reproduces, in its entirety, paragraph 4(a) of the receivership order granted July 19, 2018. However, an amended receivership order was filed in these proceedings on August 7, 2018 (the "**Receivership Order**"). Rather than allowing the Receiver to disclaim authorizations notwithstanding the OGAA, the current and amended Receivership Order now states that the Receiver may:

> ...take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include, without limiting the foregoing, any right the Receiver may have, including pursuant to section 14.06(4) of the BIA, to abandon, dispose of or otherwise release any interest in any of the Debtor's real property, or any right in any immovable, in compliance with applicable laws[.]

SWORN BEFORE ME on the ~~1st~~ 5th day of November, 2018 at City of Fort St. John, in the Province of British Columbia.	))))))	
GORDON W. GENTLES 9947 - 100 AVENUE FORT ST. JOHN, B.C. V1J 1Y4 BARRISTER AND SOLICITOR A NOTARY PUBLIC IN AND FOR THE PROVINCE OF BRITISH COLUMBIA Witnessed as to execution only. No advice sought or given.		James O'Hanley

This is **Exhibit "A"** referred to in the Affidavit of James O'Hanley, sworn before me on November ~~1~~ 25, 2018.

A Notary Public in and for the Province of British Columbia

GORDON W. GENTLES
9947 - 100 AVENUE
FORT ST. JOHN, B.C. V1J 1Y4
BARRISTER AND SOLICITOR

A NOTARY PUBLIC IN AND FOR THE
PROVINCE OF BRITISH COLUMBIA

BC Oil & Gas COMMISSION

October 29, 2018

Ranch Energy Corporation
1200, 815-8th Ave SW
Calgary, Alberta T2P 3P2

Attention: Ryan Tobber

As you are aware, questions have recently been raised concerning the authority of Ranch Energy Corporation (Ranch) to conduct oil and gas activities it is carrying out in British Columbia.

Predator BC Oil Ltd. (Predator) is the holder of certain permits under the *Oil and Gas Activities Act* (Act) for assets (Assets) currently held by Ranch.

The BC Oil and Gas Commission (Commission) has received copies of an Asset Purchase and Sale Agreement dated May 8, 2017 between Ranch and Predator; a Transition Services Agreement dated July 7, 2017 between Predator and Ranch; a Trust Agreement dated June 16, 2017 between Predator, Ranch and OpsMobil Group Inc. (OGI); and an Amended and Restated Trust Agreement between Predator, Ranch and OGI dated July 10, 2017.

On October 2, 2018, Ernst & Young Inc. in its capacity as court-appointed Receiver (Receiver) of the property of Ranch, advised the Commission that Ranch does not adopt the Trust Agreement and is hereby disclaiming and renouncing Ranch's entire interest under the Trust Agreement effective as of July 19, 2018. The Receiver has communicated that it gave further notice to Predator on October 19, 2018 that the Receiver did not adopt the Amended and Restated Trust Agreement and the disclaimer notice issued on October 2, 2018 applied to the Amended and Restated Trust Agreement.

On October 12, 2018, Predator asserted that Ranch lacks authority to operate the Assets, as a result of the disclaimer of the Trust Agreement. In contrast, Ranch and the Receiver have disputed that assertion.

Section 21(a) of the Act states a person must not carry out an oil and gas activity without a permit that gives the person permission to carry out that oil and gas activity.

I have reviewed the information provided to the Commission to date including the Agreements. I will consider any further documentary evidence submitted by **4:30PM on October 30, 2018** establishing and specifying the basis on which Ranch has the authority to conduct its oil and gas activities in British Columbia.

Sincerely,

Lance Ollenberger
Vice President, Operations
BC Oil and Gas Commission

Operations
Compliance & Enforcement

6534 Airport Rd
Fort St. John BC V1J 4M6

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BC Oil & Gas COMMISSION

October 29, 2018

Ernst & Young Inc.
C/O Borden Ladner Gervais LLP
Calgary, Alberta T2P 0R3

Attention: Robyn Gurofsky

As you are aware, questions have recently been raised concerning the authority of Ranch Energy Corporation (Ranch) to conduct oil and gas activities it is carrying out in British Columbia.

Predator BC Oil Ltd. (Predator) is the holder of certain permits under the *Oil and Gas Activities Act* (Act) for assets (Assets) currently held by Ranch.

The BC Oil and Gas Commission (Commission) has received copies of an Asset Purchase and Sale Agreement dated May 8, 2017 between Ranch and Predator; a Transition Services Agreement dated July 7, 2017 between Predator and Ranch; a Trust Agreement dated June 16, 2017 between Predator, Ranch and OpsMobil Group Inc. (OGI); and an Amended and Restated Trust Agreement between Predator, Ranch and OGI dated July 10, 2017.

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I have reviewed the information provided to the Commission to date including the Agreements. I will consider any further documentary evidence submitted by **4:30PM on October 30, 2018** establishing and specifying the basis on which Ranch has the authority to conduct its oil and gas activities in British Columbia.

Sincerely,

Lance Ollenberger
Vice President, Operations
BC Oil and Gas Commission

This is **Exhibit "B"** referred to in the Affidavit of James O'Hanley, sworn before me on November ~~1~~ 5, 2018.

A Notary Public in and for the Province of British Columbia

GORDON W. GENTLES
9947 - 100 AVENUE
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A NOTARY PUBLIC IN AND FOR THE
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BLG
Borden Ladner Gervais

File No. 413255.63

October 30, 2018

Delivered by Email (Lance.Ollenberger@bcogc.ca)

BC Oil and Gas Commission
6534 Airport Rd.
Fort St. John, BC V1J 4M6

Attention: Lance Ollenberger, Vice President

Dear Sir:

Re: In the Matter of Receivership of Ranch Energy et al

We write in response to Lance Ollenberger's letter dated October 29, 2018, in which the B.C. Oil and Gas Commission ("**OGC**") invited Ernst & Young Inc. (the "**Receiver**") to submit further evidence establishing the basis on which Ranch has the authority to conduct its oil and gas activities in British Columbia.

To that end, please find enclosed the Receiver's 3rd and 4th Reports, as well as an affidavit sworn by Mark Horrox on October 24, 2018.

In addition to the attached documents, this letter provides a summary of the Receiver's position in order to assist the OGC's understanding of the basis on which the OGC should allow the Receiver to continue to operate the Assets (defined below).

The following is a chronology of key events.

1. Predator Oil B.C. Ltd. ("**Predator**") was the permit holder and operator of various petroleum and natural gas assets in B.C. (the "**Assets**").

2. Predator sold the Assets to Ranch Energy Corporation ("**Ranch**") pursuant to a purchase and sales agreement ("**PSA**") dated May 8, 2017, including but not limited to the surface rights agreements and the underlying mineral rights.

3. Pursuant to the PSA, it was the intention of Predator and Ranch that Ranch operate the Assets, and Ranch in fact became the operator of the Assets with the consent and cooperation of Predator. The PSA also included provisions indicating that to the extent that Ranch must be recognized by a Government Authority under the permits, until that recognition had been effected, Predator would hold title to the permits in trust for Ranch, represent Ranch and receive and hold all benefits and advantages accruing in respect of the

permits for the benefit, use and ownership of Ranch. This is clear on the face of the PSA (section 8.3).

4. Due to Ranch's Liability Management Ratio, the OGC permits issued to Predator (the "**Permits**") could not be transferred to Ranch as required by the PSA. When this became apparent, Predator and Ranch entered into a trust agreement ("**TA**") to establish the fees and other consideration payable by Ranch to Predator in exchange for Predator holding the Permits in trust. The TA does not address operatorship of the Assets.

5. Pursuant to the PSA, Ranch operated the Assets beginning in July, 2017, when it assumed operations from Predator, to July 19, 2018 when the Receiver was appointed.

6. No separate operatorship agreement was entered into between Predator and Ranch.

7. On July 19, 2018, Ernst & Young was court-appointed as receiver and manager of Ranch pursuant to a court order (the "**Receivership Order**"). The Receivership Order authorized the Receiver to continue operating the Assets on Ranch's behalf, and the Receiver has been operating the Assets since the date of the Receivership Order.

8. At all times since the date of the Receivership Order, the OGC and Predator have known that the Receiver was operating the assets, and the Receiver has been keeping both parties fully informed about operations. At no time did the OGC question the Receiver's right to operate the Assets, but instead treated the Receiver as duly authorized to operate the Assets. In the course of operating the Assets, the Receiver has expended significant resources (approximately $6 million to date) to comply with regulatory requirements and OGC directions which had not previously been remedied or addressed by Ranch.

9. The Receiver, pursuant to its authority as Receiver of the Assets, elected not to adopt the TA, and gave notice of such election to Predator on October 2, 2018.

Ranch operated the Assets prior to the Receivership because the PSA intended Ranch, as the new owner, to also be the operator. Predator was the bare trustee for Ranch of the Permits pursuant to the TA and the provisions of the PSA, and had consented pursuant to the PSA to Ranch operating the Assets. The PSA does not give Predator the responsibility to operate the Assets while it holds the Permits in trust for Ranch, but merely to act in an administrative fashion in keeping with the obligations of a bare trustee. Obviously someone had to operate the Assets subject to the Permits on closing in these conditions and such responsibility was clearly left in the hands of Ranch, under the PSA and the relevant conveyance agreements delivered at closing.

That was the situation the Receiver stepped into when appointed by the Court to, inter alia, operate the Assets and ultimately market and sell the Assets to a responsible producer. Because the TA does not govern operatorship, the fact that the Receiver never adopted it is irrelevant to the question whether either Ranch or the Receiver ever legally operated the Assets. The TA acted as a mechanism pursuant to which Predator sought compensation from Ranch as bare trustee of the Permits. Ostensibly, it is a financial agreement. Operatorship of the Assets was addressed by the parties in the PSA, which (as mentioned) contemplates the Permits being held in trust by Predator for Ranch, and in the Transition Services Agreement appended as Schedule "P" to the PSA, which contemplates that Ranch would assume operatorship within 3 months of the PSA transaction. So in effect, the disclaimer of the TA is a red herring and had no impact on the Receiver's or Ranch's right to operate.

With respect to Predator's application, it bears emphasis that ss. 34 and 39 of the *Oil and Gas Activities Act* (the "**Act**") precludes Predator from operating the Assets qua permit holder. Sections 34 and 39(1) prevent Predator from carrying on activities when they no longer have the required land entry agreements or permits to do so, subject to obtaining additional approval from the OGC pursuant to s. 39(2). Further, section 39(3) prohibits a permit holder from operating a well once it no longer is the owner of the petroleum and natural gas rights of the well or no longer has an agreement with the owner of the gas rights. There is no application procedure under s. 39(3). As a result, Predator may not operate assets as it does not own the underlying oil and gas rights and, importantly, the OGC does not have the statutory authority to sanction such operation.

Given that Predator can't legally operate the assets under s.39 (informed by ss. 21, 24, and 34), and that contractually, it has no right to operate the Assets on Ranch's behalf, given the complications caused by the fact that Ranch/the Receiver does not hold the Permits, the situation requires the OGC to exercise its broad discretionary powers to implement a practical solution to allow the Receiver's continued operation of the Assets until the sale process is complete and buyers have been found for the Assets. The Phase 2 Bid Deadline is November 15, 2018, so one is dealing with a very short interim period for the continued management of the Assets by the Receiver with negative consequences should the OGC not permit the Receiver to continue operating the Assets. Again, the Receiver has expended significant resources to comply with the OGC's regulatory requirements which Ranch had previously ignored. The Receiver has managed and operated the Assets since the inception of its appointment in a responsible manner conducive with the regulatory requirements. In particular, it has retained the previously employed field staff and has hired an additional field contractor to operate the Assets responsibly. In addition, the Receiver has engaged Sproule as a consultant to provide land, production, joint venture and other administrative support related to the operation of the Assets.

In support of the Receiver's position, we note that it would also be open to the OGC to amend the Permits to allow the Receiver to continue to operate the Assets. As noted, section 39 of the Act does not allow Predator to apply to the OGC (or the OGC to allow) as a permit holder to operate Assets when it does not own the petroleum and natural gas rights. This fact triggers the provisions of s. 26(2) that allow the OGC to exercise its wide discretion to vary permits and authorizations as necessary to give effect to the purposes of the Act. Thus, on the one hand, there is no legal basis for Predator to operate the Assets qua permit holder. On the other hand, given that the Receiver has been operating the Assets (and is in fact court-ordered to continue to operate the Assets), it is open to the OGC to amend the Permits or place conditions on the Permits to allow the Receiver to continue to operate the Assets. Doing so meets the general purpose of the OGC of ensuring the sound development of the oil and gas sector and represents a proper and measured use of its statutory powers in the very unique circumstances of this case.

We trust that this satisfactorily explains the legal basis for the OGC to allow the Receiver to continue to operate the Assets. We note that this letter does not purport to be a full representation

Borden Ladner Gervais

of the Receiver's position, which will be more fully outlined in its responding materials to Predator's motion.

Yours truly,

Borden Ladner Gervais LLP

Robyn Gurofsky