

ALBERTA PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – August 14, 2018

IN THE MATTER OF sections 121, 124, and 125 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 216, 217, 219 and 228 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF appeals filed by 1657492 Alberta Ltd., 1798471 Alberta Ltd., and Big Easy Ventures Ltd., with respect to the decisions of the Director, Provincial Approvals Section, Alberta Environment and Parks, to refuse applications for Surface Materials Lease 160008, 160009, 160010, Surface Materials Exploration Permit 170005, and Surface Material Licence 170017.

Cite as: *1657492 Alberta et al. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (14 August 2018), Appeal Nos. 17-0022, 0025-0027, and 0045-R (A.P.L.A.B.).

ORAL HEARING BEFORE:

Ms. AJ Fox, Board Member, Panel Chair;
Mr. Eric McAvity, Q.C., Board Member; and
Mr. Tim Goos, Board Member.

SUBMISSIONS BY:

Appellants: 1657492 Alberta Ltd., 1798471 Alberta Ltd.,
and Big Easy Ventures Ltd., represented by
Mr. Tom Owen, Owen Law.

Director: Ms. Corinne Kristensen, Director, Provincial
Approvals, Alberta Environment and Parks,
represented by Ms. Vivienne Ball, Alberta
Justice and Solicitor General.

Interested Parties: Cold Lake Pipeline Ltd., represented by Mr.
Sander Duncanson, Osler, Hoskin & Harcourt
LLP.

Mr. Don Luciak and Ms. Tina Luciak.

EXECUTIVE SUMMARY

These appeals deal with three appellants applying for five dispositions under the *Public Lands Act*, R.S.A. 2000, c. P-40. Specifically:

- a numbered company owned by Mr. Zachary Kalinski (ZK Ltd.) applied to Alberta Environment and Parks (AEP) for Surface Material Lease (SML) 160009 and Surface Material Exploration Permit (SME) 170005;
- a numbered company owned by Mr. Matthew Kalinski (MK Ltd.) applied to AEP for SML 160008 and Surface Material Licence (SMC) 170017; and
- Big Easy Ventures Ltd. (BEV Ltd.), a company owned by Mr. Elisha Kalinski, applied to AEP for SML 160010.

AEP refused to issue the dispositions because the applications violated the “80-Acre Rule.” ZK Ltd., MK Ltd., and BEV Ltd. are the Appellants in these appeals.

The “80-Acre Rule” is taken from the *Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use of Public Land* (Aggregate Policy). The rule prohibits an applicant from obtaining a surface material disposition where the applicant is “affiliated” with other disposition holders, such that the total of the surface material dispositions held by the applicant and the affiliates would be over 80 acres. In the case of an SME, the prohibition applies if the total is over 320 acres.

While AEP refused applications because they violated the 80-Acre Rule, AEP had other reasons for refusing to issue four of the five dispositions:

- SME 170005 was located within a Key Wildlife and Biodiversity Zone (KWBZ) and overlapping two Protective Notation (PNT) areas;
- SML 160008 overlapped a PNT, and no consent was obtained from the leaseholders of the grazing lease in which the SML was to be located;
- SML 160009 was located within the KWBZ, and no consent was obtained from the leaseholders of the grazing lease in which the SML was to be located; and
- SML 160010 was located with the KWBZ.

Only SMC 170017 was refused solely based on violating the 80-Acre Rule.

The Appellants appealed AEP’s decision to the Public Lands Appeal Board (Board). At the request of the Appellants and with the consent of AEP, the Board combined the five appeals for administrative purposes and for the hearing. An oral hearing with written submissions was held on July 13, 2018.

After considering the written and oral submissions, the Board found there was insufficient evidence to support AEP's decision to deny the applications of the Appellants based on affiliation with other entities. The Board found there was evidence to support the other reasons given by AEP for refusing the applications, except for SMC 170017.

The Board recommended the Minister confirm AEP's decision to refuse to issue SME 170005, SML 160008, SML 160009, and SML 160010. The Board accepted the other reasons that AEP gave for refusing to issue these dispositions.

The Board recommended the Minister reverse AEP's decision to refuse to issue SMC 170017, and order AEP to issue SMC 170017, with appropriate terms and conditions.

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I. INTRODUCTION

[1] This is the Report and Recommendations of the Public Lands Appeal Board (“PLAB” or the “Board”) to the Minister, Alberta Environment and Parks, regarding five separate appeals filed by three appellants (collectively the “Appellants”), who are appealing decisions of the Director, Provincial Approvals Section, Alberta Environment and Parks (the “Director”) to refuse applications for these dispositions:

- Surface Material Exploration Permit (“SME”) 170005, applicant 1657492 Alberta Ltd. (“ZK Ltd.”), owned by Mr. Zachary Kalinski (PLAB Appeal No. 17-0022);
- Surface Material Lease (“SML”) 160009, applicant ZK Ltd., owned by Mr. Zachary Kalinski (PLAB Appeal No. 17-0025);
- SML 160008, applicant 1798471 Alberta Ltd. (“MK Ltd.”), owned by Mr. Matthew Kalinski (PLAB Appeal No. 17-0026);
- SML 160010, applicant Big Easy Ventures Ltd. (“BEV Ltd.”), owned by Mr. Elisha Kalinski (PLAB Appeal No. 17-0027); and
- Surface Material License (“SMC”) 170017, applicant MK Ltd., owned by Mr. Matthew Kalinski (PLAB Appeal No. 17-0045).¹

The primary basis of the Director’s decision to refuse to issue the dispositions is, according to the Director, the Appellants are “affiliated,” meaning operating in concert with each other. Affiliation is a concern as it can result in the control over sand and gravel resources in a particular area being consolidated in a one or a small group of individuals.

II. BACKGROUND

A. SME 170005

[2] On January 4, 2017, ZK Ltd. submitted an application for SME 170005 for public lands located at N½ 18-62-7-W4M. The application included a Statutory Declaration for ZK Ltd., which stated:

“Neither the Applicant nor any Affiliated Entities have applied for, nor are they the holder of, any other Surface Material Dispositions under the Public Lands Act within a [six-mile] radius of the Disposition Area that, when combined with the Disposition Area, will exceed 320 acres with respect to sand and gravel exploration holdings.”²

¹ ZK Ltd., MZ Ltd., and BEV Ltd. are the Appellants.

² Director’s Record, PLAB Appeal No. 17-0022, at Tab 1.

[3] On January 9, 2017, the Director conducted an Activity Standing Search, which indicated the lands were subject to:

- Consultative Notation (“CNT”) 020210, which required a clearance from a public land specialist within Alberta Environment and Parks (“AEP”);
- Protective Notation (“PNT”) 160015, which specifies the area has sensitive wildlife habitat; and
- PNT 890592, which indicates adverse soil conditions in the area.

[4] The fees for the SME application were paid by Kalinko Enterprises Ltd. (“Kalinko Ltd.”). Kalinko Ltd. is owned by Mr. Tim Kalinski, the father of Samuel, Zachary, Matthew, and Elisha Kalinski. (This family relationship is said to be part of the Director’s argument the Appellants are “affiliated.”)

[5] On June 6, 2017, the Director received the Merit Rationale from the Senior Lands Officer in AEP’s Lac La Biche office. The Senior Lands Officer recommended the Director refuse the application for SME 170005 because:

- ZK Ltd. is listed in the AEP computer system (known as GLIMPS) as having the same address as Mr. Samuel Kalinski, who is the son of Mr. Tim Kalinski and brother to Mr. Zachary Kalinski, the principal of ZK Ltd.;
- the subject lands are within six miles of SML 010005, which is held by Kalinko Ltd.;
- according to the Senior Lands Officer, the application violates sections 4, 5, and 6 of the statutory declaration, and exceeds the 80-Acre Rule;³
- the subject lands are within the Key Wildlife and Biodiversity Zone (KWBZ);

“‘Affiliated Entity’ means any other business, organization or enterprise, regardless of form, with respect to which the Applicant or its officers, shareholders, directors, or employees has control over or an interest in, including:

- i) a trust for which the Applicant, or its officers, shareholders, directors or employees, is a beneficiary, or
- ii) any person, organization or enterprise that is involved in a joint venture or partnership with the Applicant or its officers, shareholders, directors or employees; or
- iii) where the Applicant is a publicly-traded corporation, any other corporation that is an affiliate (as that term is defined in the Business Corporations Act, R.S.A. 2000, c. B-9), or
- iv) where the Applicant is a privately-held corporation, any other corporation in which the Applicant, or its officers, shareholders, directors or employees owns an interest.”

³ The “80-Acre Rule” is taken from the Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use of Public Land (“Aggregate Policy”). The rule prohibits an applicant from obtaining a surface material disposition where the applicant is “affiliated” with other disposition holders, such that total of the surface material dispositions held by the applicant and the affiliates would be over 80 acres. In the case of an SME, the prohibition applies if the total is over 320 acres.

- the subject lands are within PNT 160015, which identifies the area as sensitive habitat along the Beaver River that is already heavily impacted by surface material activities in the area; and
- the subject lands are within PNT 890592, which identifies the area having adverse soil characteristics.⁴

[6] On November 7, 2017, the Director confirmed:

- the sole shareholder of ZK Ltd. was Mr. Zachary Kalinski;
- ZK Ltd. had the same registered office and records office as Kalinko Ltd. and MK Ltd.; and
- the website for Kalinko Ltd. listed Mr. Zachary Kalinski as a contact for Kalinko Ltd.

[7] On November 17, 2018, the Director wrote to ZK Ltd. and advised the application for the SME was refused on the following reasons:

“The proposed SME is located within a Key Wildlife and Biodiversity Zone. Key Wildlife and Biodiversity Zones are a combination of key winter ungulate habitat and higher habitat potential for biodiversity.

The proposed SME overlaps with [the] proposed protective notation (PNT 160015) which is in place as the area is recognized as containing sensitive wildlife habitat that is key to maintaining the diversity, abundance and distribution of wildlife resources in the region.

The proposed SME overlaps with a protective notation (PNT 890592) which is in place due to adverse soil conditions.

The application does not comply with the *Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land* [(the “Directive”)]. This document is available on the AEP website: <http://aep.alberta.ca/land/land-management/surface-materialapplications/surface-materials.aspx>

The proposed SME does not meet the requirement that neither the applicant nor any Affiliated Entities have applied for nor are the holder of any other surface material dispositions under the Public Lands Act within a [six-mile] radius of the disposition area, that when combined with the disposition area will exceed 320 acres with respect to sand and gravel exploration holdings.”⁵

[8] On December 4, 2017, the Board received a Notice of Appeal from ZK Ltd., appealing the Director’s decision to refuse the application for SME 170005 (PLAB Appeal No. 17-0022). The Notice of Appeal listed as grounds for appeal that the Director had erred in the

⁴ Director’s Record, PLAB Appeal No. 17-0022, at Tab 10.

⁵ Director’s Record, PLAB Appeal No. 17-0022, at Tab 13.

determination of a material fact, erred in law, and exceeded the Director's jurisdiction or legal authority.

[9] On December 4, 2017, the Board acknowledged receipt of the Notice of Appeal and requested the Director's Record. The Director's Record was subsequently received from the Director and provided to the Appellants.

B. SML 160009

[10] On February 5, 2016, ZK Ltd. submitted an application for SML 160009 on public lands located at E½ 21-62-8-W4M and NW 22-62-8-W4M. The total area of the proposed SML was 73.19 acres.

[11] The application included a Statutory Declaration for ZK Ltd., which stated:
“Neither the Applicant nor any Affiliated Entities have applied for, nor are they the holder of, any other Surface Material Dispositions under the Public Lands Act within a [six-mile] radius of the Disposition Area that, when combined with the Disposition Area, will exceed 80 acres with respect to sand and gravel extraction holdings.”⁶

[12] On February 9, 2016, the Director conducted an Activity Standing Search, which indicated the lands were subject to:

- Grazing Lease (“GRL”) 38820;
- PNT 860395, which indicates the area is subject to wind erosion; and
- PNT 960103, which restricts surface dispositions due to multiple resource concerns.

[13] On February 26, 2016, ZK Ltd. submitted an amendment application for SML 160009, which corrected deficiencies in the application sketch plan and contained supporting documentation.

[14] On June 14, 2016, the Director advised ZK Ltd. written consent to withdraw land from the leaseholder for GRL 38820 was required.

[15] A second amendment application was submitted by ZK Ltd. on August 29, 2016, which included a survey plan and supporting documentation, and changed the size of SML 160009 to 71.81 acres.

⁶ Director's Record, PLAB Appeal No. 17-0025, at Tab 1.

[16] On February 27, 2017, the Director received the Merit Rationale from the Senior Lands Officer in AEP's Lac La Biche office. The Senior Lands Officer recommended the Director refuse the application for SML 160009 because:

- the subject lands are within six miles of SML 010005, which is held by Kalinko Ltd.;
- according to the Senior Land Officer, the application violates sections 4, 5, and 6 of the statutory declaration, and exceeds the 80-Acre Rule;
- the subject lands are within GRL 38820, but no consent from the grazing leaseholder was provided; and
- the subject lands are within the KWBZ, along the Beaver River, which is already heavily impacted by surface material activities.⁷

[17] On April 6, 2017, the Director confirmed:

- the sole shareholder of ZK Ltd. was Mr. Zachary Kalinski;
- ZK Ltd. had the same registered office and records office as Kalinko Ltd., BEV Ltd., and MK Ltd.; and
- the website for Kalinko Ltd. lists Mr. Tim Kalinski, Mr. Zachary Kalinski, Mr. Matthew Kalinski, and Mr. Elisha Kalinski as contacts for Kalinko Ltd.

[18] On May 26, 2017, the Director sent a letter to ZK Ltd., inviting it to submit additional information to address the Director's concerns, which can be summarized as follows:

- (a) the application does not appear to comply with the Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use of Public Land (the "Aggregate Policy"), due to an apparent affiliation between ZK Ltd., MK Ltd., and BEV Ltd.;
- (b) the corporate directors of the Appellants are listed on Kalinko Ltd.'s website as contacts for Kalinko Ltd.;
- (c) a corporate search record for the Appellants and Kalinko Ltd. listed the same address for their registered offices, records offices, and mail addresses;
- (d) given PNT 860395 specifies a wind erosion concern, what proposed mitigation measures for wind erosion will be implemented;
- (e) given PNT 960103 restricts surface dispositions due to multiple resource concerns within the Amisk, Beaver, Moose Lake, and Sand Rivers corridors as identified in the Lakeland Sub-Regional Integrated Resource Plan ("Lakeland Plan"), why should the application be considered;

⁷ Director's Record, PLAB Appeal No. 17-0025, at Tab 23.

- (f) given the location is in the Lakeland Plan and the Lower Athabasca Regional Plan (“LARP”), how does the application comply with these plans; and
- (g) given the location is in a Key Wildlife Biodiversity Zone (“KWBZ”), why should the application be considered?

[19] On June 9, 2017, ZK Ltd. provided one response on behalf of ZK Ltd., MK Ltd., and BEV Ltd., which had all received similar inquiries from the Director.

[20] In a letter dated November 30, 2017, the Director refused the application for SML 160009, stating the application did not comply with the Aggregate Policy due to the affiliation between Kalinko Ltd., ZK Ltd., MK Ltd., and BEV Ltd.⁸

[21] On December 5, 2017, the Board received a Notice of Appeal from ZK Ltd., appealing the Director’s decision to refuse the application for SML 160009 (PLAB Appeal No. 17-0025). The Notice of Appeal listed as grounds for appeal that the Director erred in the determination of a material fact, erred in law, and exceeded the Director’s jurisdiction or legal authority.

[22] On December 6, 2017, the Board acknowledged receipt of the Notice of Appeal and requested the Director’s Record. The Director’s Record was subsequently received and provided to the Appellants.

C. SML 160008

[23] On February 5, 2016, MK Ltd. submitted an application for SML 160008 on public lands located at N½ 22-62-8-W4M. The total area of the proposed SML was 73.19 acres.

[24] The application included a Statutory Declaration for MK Ltd., in the same terms as ZK Ltd. provided in the application for SML 160009.⁹

[25] On February 9, 2016, the Director conducted an Activity Standing Search which indicated the lands were subject to:

- GRL 38820; and
- PNT 860395, which specifies the area was subject to wind erosion.

⁸ Director’s Record, PLAB Appeal No. 17-0025, at Tab 30.

⁹ Director’s Record, PLAB Appeal No. 17-0025, at Tab 1.

[26] On February 26, 2016, MK Ltd. submitted an amendment application for SML 160008 to correct some deficiencies in the application sketch plan and included supporting documentation.

[27] On June 9, 2016, the Director advised MK Ltd. written consent to withdraw land from the leaseholders of GRL 38820 was required, along with a plan of survey for lease boundaries.

[28] On August 29, 2016, a second amendment application for SML 160008 was submitted by MK Ltd., which changed the total acres of the proposed SML to 79.44, and included supporting documentation.

[29] On February 27, 2017, the Director received the Merit Rationale from the Senior Lands Officer in AEP's Lac La Biche office. The Senior Lands Officer recommended the Director refuse the application for SML 160009 because:

- the subject lands are within six miles of SML 010005, which is held by Kalinko Ltd.;
- according to the Senior Land Officer, the application violates sections 4, 5, and 6 of the statutory declaration, and exceeds the 80-Acre Rule;
- the subject lands are within GRL 38820, but no consent from the grazing leaseholder was provided; and
- the subject lands are within the KWBZ, along the Beaver River, which is already heavily impacted by surface material activities.¹⁰

[30] On April 6, 2017, the Director confirmed:

- the sole shareholder of MK Ltd. was Mr. Matthew Kalinski;
- MK Ltd. had the same registered office and records office as Kalinko Ltd., BEV Ltd., and ZK Ltd.; and
- the website for Kalinko Ltd. listed Mr. Tim Kalinski, Mr. Zachary Kalinski, Mr. Matthew Kalinski, and Mr. Elisha Kalinski as contacts for Kalinko Ltd.

[31] On May 26, 2017, the Director sent a letter to MK Ltd. and invited MK Ltd. to submit additional information that would address the Director's concerns, which can be summarized as follows:

- (a) the application appeared to be non-compliant with the Aggregate Policy;

¹⁰ Director's Record, PLAB Appeal No. 17-0025, at Tab 23.

- (b) PNT 860395 specified there was a wind erosion hazard;
- (c) the application did not seem to be compatible with the Lakeland Plan;
- (d) the application did not seem to be compatible with LARP; and
- (e) the application was within the KWBZ, which was of importance to ungulates in winter for habitat, forage, and cover.

[32] On June 9, 2017, MK Ltd. provided one response on behalf of MK Ltd., ZK Ltd., and BEV Ltd., all of which received similar inquiries from the Director.

[33] In a letter dated November 30, 2017,¹¹ the Director refused the application for SML 160008 for the following reasons:

- (a) the proposed SML overlaps with PNT 860395, which raises concerns regarding a wind erosion hazard; and
- (b) the application does not comply with the Aggregate Policy, as Kalinko Ltd., ZK Ltd., MK Ltd., and BEV Ltd. are Affiliated Entities.

[34] On December 5, 2017, the Board received a Notice of Appeal from MK Ltd., appealing the Director's decision to refuse the application for SML 160008 (PLAB Appeal No. 17-0026). The Notice of Appeal listed as grounds for appeal that the Director had erred in the determination of a material fact, erred in law, and exceeded the Director's jurisdiction or legal authority.

[35] On December 6, 2017, the Board acknowledged receipt of the Notice of Appeal and requested the Director's Record. The Director's Record was subsequently received and provided to the Appellants.

D. SML 160010

[36] On February 5, 2016, BEV Ltd. submitted an application for SML 1600010 on public lands located at SE 28-62-8-W4M. The total area of the proposed SML was 62.02 acres.

[37] The application included a Statutory Declaration for BEV Ltd., in the same terms as ZK Ltd. provided in the application for SML 160009.¹²

[38] On February 9, 2016, the Director conducted an Activity Standing Search which indicated the lands were subject to:

¹¹ Director's Record, PLAB Appeal No. 17-0026, at Tab 60.

¹² Director's Record, PLAB Appeal No. 17-0027, at Tab 63.

- GRL 39974; and
- PNT 840296, which specifies the area was subject to adverse soil conditions.

[39] On February 26, 2016, BEV Ltd. submitted an amendment application for SML 160010 to correct some deficiencies in the application sketch plan, and included supporting documentation.¹³

[40] On June 1, 2016, the Director advised BEV Ltd. written consent to withdraw land from the leaseholder of GRL 39974, Mr. William Tiller, was required along with a plan of survey for lease boundaries.

[41] On August 28, 2016, a second amendment application for SML 160010 was submitted by BEV Ltd., which increased the size of the proposed SML to 62.42 acres, and included supporting documentation.¹⁴

[42] On February 27, 2017, the Director received the Merit Rationale from the Senior Lands Officer in AEP's Lac La Biche office. The Senior Lands Officer recommended the Director refuse the application for SML 160009 because:

- the subject lands are within six miles of SML 010005, which is held by Kalinko Ltd.;
- according to Senior Land Officer, the application violates sections 4, 5, and 6 of the statutory declaration, and exceeds the 80-Acre Rule;
- the subject lands are within GRL 39974, but no consent from the grazing leaseholder was provided; and
- the subject lands are within the KWBZ, along the Beaver River, which is already heavily impacted by surface material activities.¹⁵

[43] On March 29, 2017, BEV Ltd. submitted the grazing consent and a Historical Resources Value consent, and information addressing the KWBZ.

[44] On April 6, 2017, the Director confirmed:

- the sole shareholder of BEV Ltd. was Mr. Elisha Kalinski;
- BEV Ltd. had the same registered office and records office as Kalinko Ltd., MK Ltd., and ZK Ltd.; and

¹³ Director's Record, PLAB Appeal No. 17-0027, at Tab 68.

¹⁴ Director's Record, PLAB Appeal No. 17-0027, at Tab 82.

¹⁵ Director's Record, PLAB Appeal No. 17-0025, at Tab 86.

- the website for Kalinko Ltd. listed Mr. Tim Kalinski, Mr. Zachary Kalinski, Mr. Matthew Kalinski, and Mr. Elisha Kalinski as contacts for Kalinko Ltd.

[45] On May 26, 2017, the Director sent a letter to BEV Ltd., and invited the submission of additional information that would address the Director's concerns, which can be summarized as follows:

- (a) the application appeared to be non-compliant with the Aggregate Policy;
- (b) PNT 840296 specified adverse soil conditions
- (c) the application did not seem compatible with the Lakeland Plan;
- (d) the application did not seem compatible with LARP; and
- (e) the application was within the KWBZ, which is of importance to ungulates in winter for habitat, forage, and cover.

[46] On June 9, 2017, BEV Ltd. provided one response on behalf of ZK Ltd., MK Ltd., and BEV Ltd., which had all received similar inquiries from the Director.

[47] In a letter dated November 30, 2017, the Director refused the application for SML 160010 on the grounds the application did not comply with the Aggregate Policy, as Kalinko Ltd., ZK Ltd., MK Ltd., and BEV Ltd. are Affiliated Entities.

[48] On December 5, 2017, the Board received a Notice of Appeal from BEV Ltd., appealing the Director's decision to refuse the application for SML 160010. The Notice of Appeal listed as grounds for appeal that the Director had erred in the determination of a material fact, erred in law, and exceeded the Director's jurisdiction or legal authority. (PLAB Appeal No. 17-0027.)

[49] On December 6, 2017, the Board acknowledged receipt of the Notice of Appeal and requested the Director's Record. The Director's Record was subsequently provided to the Appellants.

E. SMC 170017

[50] On April 28, 2017, MK Ltd. submitted an application for SMC 170017 on public lands located at SW 34-66-4-W4M. The total amount of gravel proposed to be extracted was 10,032.36 cubic yards.

[51] The application included a Statutory Declaration for MK Ltd., in the same terms as ZK Ltd. provided in the application for SML 160009.¹⁶

[52] On February 5, 2018, the Director received the Merit Rationale from the Senior Lands Officer in AEP's Lac La Biche office. The Senior Land Officer recommended the Director refuse the application for SMC 170017 because:

“Application SMC 170071 was made by MK Ltd. held by [Mr.] Matthew Kalinski for an area of 4.92 ac or 1.99 ha. The boundary of the application is adjacent to SML 010032 which is 115.94 ac or 46.92 ha and held by Kalinko Enterprises Ltd. a company owned by Matthew's father [Mr.] Tim Kalinski. SMC 170017 is also in contravention of sections 4, 5, and 6 of the Statutory Declaration and also exceeds the 80-acre rule within a [six-mile] radius of an affiliated disposition.”¹⁷

[53] Before making her decision, the Director confirmed:

- SML 010032 was adjacent to SMC 170017;
- SML 010032 was held by Kalinko Ltd.;
- Mr. Matthew Kalinski was the sole director and shareholder of MK Ltd.; and
- MK Ltd. had the same registered office and records office as Kalinko Ltd.

[54] In a letter dated March 8, 2018, the Director refused the application for SMC 170017 on the following grounds:

“[The Directive] states that applicants will be required to provide a signed declaration indicating all of their public land aggregate interests within a six-mile radius of the application area. Where the combined total area of an existing lease [and] any aggregate activity held by the proponent is over 80 acres, it will be assessed under the same criteria as sites over 80 acres.

The adjacent surface material lease (SML 010032) is held by Kalinko Enterprises Ltd., which is an affiliate of [MK Ltd.] The combined size of SML 010032 and SML 170017 is over 80 acres.”¹⁸

[55] The Director's reasons also indicated the application was being denied because an agent signed the Statutory Declaration instead of a principal of the applicant. At the oral hearing,

¹⁶ Director's Record, PLAB Appeal No. 17-0045, at Tab 1.

¹⁷ Director's Record, PLAB Appeal No. 17-0045, at Tab 10.

¹⁸ Director's Record, PLAB Appeal No. 17-0045, at Tab 15. The Director's reasons also indicated that the application was being denied because an agent signed the Statutory Declaration instead of a principal of the application. At the oral hearing, the Director acknowledged this was a mistake, as an agent may swear a statutory declaration on behalf of a client.

the Director acknowledged this was a mistake, as an agent may swear a statutory declaration on behalf of a client.

[56] On March 14, 2018, the Board received a Notice of Appeal from MK Ltd., appealing the Director's decision to refuse the application for SMC 170017 (PLAB Appeal No. 17-0045). The Notice of Appeal listed as grounds for appeal that the Director had erred in the determination of a material fact, erred in law, and exceeded the Director's jurisdiction or legal authority.

[57] On April 4, 2018, the Board acknowledged receipt of the Notice of Appeal and requested the Director's Record. The Director's Record was subsequently provided to the Appellants.

F. BOARD'S PROCESS

[58] On December 22, 2017, the Appellants requested a stay of the Director's decisions to refuse to issue SMLs 160008, 160009, and 160010, until the appeals were resolved.

[59] On January 5, 2018, the Board received a request from the Appellants to combine PLAB Appeal Nos. 17-0022, 17-0025, 17-0026, and 17-0027. The Board granted the request.

[60] On January 12, 2018, the Director provided the Board with a list of disposition holders who may be impacted by the appeals.

[61] On January 23, 2018, the Board set the issues and submission schedule for the application for a stay of the Director's decisions to refuse to issue SMLs 160008, 160009, and 160010. The Board received written submissions from the Director and the Appellants, and a decision was issued on April 25, 2018, refusing the stay application.¹⁹

[62] On January 31, 2018, the Board contacted the disposition holders who may be impacted by the appeals and requested they notify the Board if they wished to be a party to the appeals.

[63] On February 12, 2018, in response to its correspondence regarding disposition holders potentially impacted by the appeals, the Board received an email from Cold Lake

¹⁹ *1657492 Alberta Ltd., 1798471 Alberta Ltd., and Big Easy Ventures Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (25 April 2018), Appeal Nos. 17-0025-0027-ID1 (A.P.L.A.B.)

Pipeline Ltd. (“CLPL”). On February 13 and 14, 2018, the Board received emails from Mr. Don Luciak and Ms. Tina Luciak, requesting to be involved in a hearing on the appeals. Mr. Don Luciak is one of the leaseholders of GRL 38820. After receiving comments from the Director and the Appellants, the Board approved the participation of CLPL and the Luciaks as Interested Parties.

[64] On March 2, 2018, the Board provided a copy of the Director’s Records to CLPL and the Luciaks.

[65] On March 22, 2018, the Board received emails from the Appellants requesting PLAB Appeal Nos. 17-0022, 17-0023, 17-0024, 17-0025, 17-0026, and 17-0027 be combined and proceed directly to a hearing. Later that same date, the Board was informed the Appellants were withdrawing PLAB Appeal Nos. 17-0023 and 17-0024.

[66] On April 13, 2018, the Board advised the parties it was scheduling an oral hearing for PLAB Appeal Nos. 17-0022, 17-0025, 17-0026, and 17-0027. The hearing date was set for July 13, 2018, and a schedule for receiving written submissions was established.

[67] On April 22, 2018, the Board received an email from the Appellants requesting PLAB Appeal No. 17-0045 be added to the hearing for PLAB Appeal Nos. 17-0022, 17-0025, 17-0026, and 17-0027. After confirming there was no objection from the Director, the Board combined the appeals for the hearing and confirmed the oral hearing and written submission schedule for all five appeals: PLAB Appeal Nos. 17-0022, 17-0025, 17-0026, 17-0027, and 17-0045.

[68] The Board received written submissions from the parties and held the oral hearing as scheduled on July 13, 2018, at the Board’s Offices in Edmonton.

III. ISSUES

[69] The issues for the hearing were set by the Board in its letter dated June 15, 2018:

1. Did the Director, by rejecting the Appellants’ applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, err in the determination of a material fact on the face of the record?
2. Did the Director, by rejecting the Appellants’ applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, err in law?

3. Did the Director, by rejecting the Appellants' applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, exceed the Director's jurisdiction or legal authority?

[70] An issue regarding evidence was raised at the oral hearing. The Director objected to the introduction of evidence by the Appellants that was not part of the Director's Record but had no objection to the Board admitting the evidence and determining the weight it should be given. The Board decided to accept the evidence and determine weight after the hearing.

IV. SUBMISSIONS

A. APPELLANTS

1. Issue 1

Did the Director, by rejecting the Appellants' applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, err in the determination of a material fact on the face of the record?

SME 170005

[71] The Appellants submitted the Director erred in determining the SME was located within the KWBZ when it was only partially within the KWBZ.

[72] The Appellants argued the Director erred in determining the SME conflicted with PNT 160015. The PNT states no vegetation removal is permitted within the floodplain. The Appellants stated the SME was approximately 730 meters away from the Beaver River and was not within the floodplain.

[73] The Appellants submitted the Director erred in determining ZK Ltd., or Affiliated Entities, had applied for or held surface material dispositions within a six-mile radius of the SME. The Appellants argued there was no evidence on the face of the Record to support the affiliation allegation.

[74] The Appellants noted the Director's Record contained a Statutory Declaration declaring there were no Affiliated Entities within a six-mile radius.

[75] The Appellants submitted the evidence in the Director's Record showed Mr. Tim Kalinski and Kalinko Ltd. were not shareholders or directors of ZK Ltd., and Mr. Zachary

Kalinski was not a shareholder or director of Kalinko Ltd. The Appellants argued there was no evidence of a partnership between ZK Ltd. and Kalinko Ltd.

SML 160009

[76] The Appellants submitted the Director erred in determining ZK Ltd. was affiliated with any other entities within a six-mile radius of the proposed SML 160009. The Appellants argued there was no evidence on the face of the record to support the affiliation allegation.

[77] The Appellants noted the Director's Record contained a Statutory Declaration declaring there were no Affiliated Entities within a six-mile radius.

[78] The Appellants submitted the evidence in the Director's Record showed Mr. Tim Kalinski and Kalinko Ltd. were not shareholders or directors of ZK Ltd., and Mr. Zachary Kalinski was not a shareholder or director of Kalinko Ltd. The Appellants argued there was no evidence of a partnership between ZK Ltd. and Kalinko Ltd.

[79] The Appellants submitted BEV Ltd., MK Ltd., and Kalinko Ltd. were not affiliates of ZK Ltd. The Appellants stated BEV Ltd., MK Ltd., and Kalinko Ltd. did not have any shareholders or directors in common with ZK Ltd.

SML 160008

[80] The Appellants submitted the Director erred in determining MK Ltd. was affiliated with any other entities within a six-mile radius of the proposed SML 160008. The Appellants argued there was no evidence on the face of the record to support the affiliation allegation.

[81] The Appellants stated the Director's Record contained the Statutory Declaration declaring there were no Affiliated Entities within a six-mile radius.

[82] The Appellants submitted the evidence in the Director's Record showed Mr. Tim Kalinski and Kalinko Ltd. were not shareholders or directors of MK Ltd., and Mr. Matthew Kalinski was not a shareholder or director of Kalinko Ltd. The Appellants argued there was no evidence of a partnership between MK Ltd. and Kalinko Ltd.

[83] The Appellants submitted BEV Ltd., ZK Ltd., and Kalinko Ltd. were not affiliates of MK Ltd. The Appellants stated BEV Ltd., ZK Ltd., and Kalinko Ltd. do not have any shareholders or directors in common with MK Ltd.

SML 160010

[84] The Appellants submitted the Director erred in determining that BEV Ltd. was affiliated with any other entities within a six-mile radius of the proposed SML 160010. The Appellants argued there was no evidence on the face of the record to support the affiliation allegation.

[85] The Appellants stated the Director's Record contained the Statutory Declaration declaring there were no Affiliated Entities within a six-mile radius.

[86] The Appellants submitted the evidence in the Director's Record showed Mr. Tim Kalinski and Kalinko Ltd. were not shareholders or directors of BEV Ltd. Further, Mr. Elisha Kalinski was not a shareholder or director of Kalinko Ltd. The Appellants argued there was no evidence of a partnership between BEV Ltd. and Kalinko Ltd.

[87] The Appellants submitted MK Ltd., ZK Ltd., and Kalinko Ltd. were not affiliates of BEV Ltd. The Appellants stated MK Ltd., ZK Ltd., and Kalinko Ltd. did not have any shareholders or directors in common with BEV Ltd.

SMC 170017

[88] The Appellants submitted the Director erred in determining that MK Ltd. was affiliated with any other entities within a six-mile radius of the proposed SMC 170017. The Appellants argued there was no evidence on the face of the record to support the affiliation allegation.

[89] The Appellants stated the Director's Record contained the Statutory Declaration declaring there were no Affiliated Entities within a six-mile radius.

[90] The Appellants submitted the evidence in the Director's Record showed Mr. Tim Kalinski and Kalinko Ltd. were not shareholders or directors of MK Ltd., and Mr. Matthew Kalinski was not a shareholder or director of Kalinko Ltd. The Appellants argued there was no evidence of a partnership between MK Ltd. and Kalinko Ltd.

[91] The Appellants submitted BEV Ltd., ZK Ltd., and Kalinko Ltd. were not affiliates of MK Ltd. The Appellants stated BEV Ltd., ZK Ltd., and Kalinko Ltd. did not have any shareholders or directors in common with MK Ltd.

2. Issue 2

Did the Director, by rejecting the Appellants' applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, err in law?

[92] Citing the Supreme Court of Canada decision in *Oakwood Developments*,²⁰ the Appellants submitted the Director had a duty to do more than just consider the problem – she had to consider the scope of the problem and possible solutions to it, otherwise, it was an error in law.

SME 170005

[93] The Appellants submitted the Director erred in law in refusing the application for SME 170005 without considering there are multiple approved SMLs wholly within the KWBZ boundary. The Appellants also stated the Director erred in law by not considering mitigation strategies that would satisfy concerns raised by AEP staff regarding the SME in relation to the KWBZ.

[94] The Appellants submitted the following as mitigation strategies:

- A. Protect vegetation from being cleared by minimizing all industrial activity...
- B. Minimize activity during winter months to avoid displacing wildlife...
- C. Reduce access and/or do not create new access...
- D. Follow general timing restrictions....”²¹

[95] The Appellants submitted the Director erred in law by not considering the Lakeland Plan when making the decision to refuse to issue SME 170005. The Appellants argued the Lakeland Plan identified the area as a known gravel source, which could be used for future responsible aggregate development given the regional aggregate shortage.

[96] The Appellants submitted there is no evidence in the Director's Record the Director considered the Lakeland Plan's findings and goals along with the PNT's restrictions in making her decision. The Appellants also stated the Director erred in law by not considering mitigation strategies, which would satisfy concerns raised regarding the PNT.

²⁰ *Oakwood Developments Ltd. v. Rural Municipality of St. Francis* [1985] 2 SCR 164 (SCC).

²¹ Appellant's Submission, June 28, 2018, at pages 8 to 10.

[97] The Appellants submitted the following as mitigation strategies to be implemented if the SME was approved:

- “A. SME 170005 is within a Key Wildlife and Biodiversity Zone...
- B. Sensitive habitat disturbance during exploration...
- C. Manage sensitive habitat and travel corridors during operations....”²²

[98] The Appellants submitted the Director erred in law by not considering the Lakeland Plan when making the decision to refuse to issue SME 170005 because of the adverse soil conditions identified in PNT 890592. The Appellants stated the Director erred in law by not considering mitigation strategies, which would satisfy concerns raised regarding PNT 890592.

[99] The Appellants submitted soil conservation measures would be used as mitigation strategies address the concern of adverse soil conditions if the SME was issued.²³

[100] The Appellants committed to using various guidance documents in the mitigation and reclamation efforts if the results of the SME were positive, and an SML was subsequently issued.

SML 160008

[101] The Appellants submitted the Director erred in law by not considering wind erosion mitigation strategies. The Appellants submitted the following as mitigation strategies to be implemented to address the concern of wind erosion if the SML was issued:

- “A. As this PNT is for general coverage of the area the exact site conditions can vary within the SML footprint. Completing a detailed site assessment will provide a greater level of detail to aid in site specific decisions...
- B. An acceptable industry approach to mitigating the risk of wind erosion is to, as quickly as possible, establish and maintain a vegetative cover on disturbed areas with highly erodible soils...
- C. Other acceptable approaches include spreading of coarse woody debris over disturbed areas to collect natural seed sources and reduce the wind speed at the soil surface...
- D. Disturbing the least amount of area for operational needs reduces the risk of area exposed to wind erosion...

²² Appellant’s Submission, June 28, 2018, at pages 9 to 10.

²³ Appellant’s Submission, June 28, 2018, at pages 10 to 11.

- E. Regular mapping and documentation of operations as they progress through each season will provide the most up to date site information to aid in making decisions on mitigation...
- F. Regular monitoring measures the success of the mitigation efforts. Decisions to change or increase the mitigation efforts can be made based on the results of the monitoring....²⁴

[102] The Appellants committed to using a variety of approved methods to mitigate the wind erosion hazard during operation and reclamation on site.

The Director Misinterpreted the Directive

[103] The Appellants submitted the Director erred in law by misinterpreting the Directive. The Appellants alleged the Director interpreted the Directive to prohibit an applicant or affiliated entity from holding another surface disposition within a six-mile radius of the disposition area applied for if the combined area of the dispositions exceeds 80 acres for SMLs and 320 acres for SMEs.

[104] The Appellants argued there was no such requirement in the Directive, and the Directive did not mention affiliates or a six-mile radius.

[105] The Appellants submitted the Directive required an applicant to swear or affirm a Statutory Declaration, but it did not require the applicant to confirm the applicant or Affiliated Entities did not have surface dispositions exceeding the 80-acre limit within a six-mile radius.

[106] The Appellants stated the Director's referenced documents, which were not in the Director's Record, and then argued that these documents were the basis of her decision. The Appellant argued this was an attempt to enhance the Director's reasons for refusing the Appellants' applications.

[107] The Appellants noted the word "affiliate" is only mentioned in section 167(3) of the Public Lands Administration Regulation ("PLAR")²⁵, but has nothing to do with aggregate interests.²⁶

²⁴ Appellant's Submission, June 28, 2018, at pages 11 to 12.

²⁵ Alta. Reg. 187/2011.

²⁶ Section 167(3) of PLAR provides:

"The director or other person in charge of a document or information that is the subject of a request under subsection (1) may refuse to disclose the document or information if he or she is satisfied that it has already been provided to a group, organization, association or other body of

The Director Based Her Decision on Irrelevant Considerations

[108] The Appellants submitted the Directive does not prohibit affiliates from holding aggregate interests within six miles of the applied for lands. Therefore, the Director erred in law by basing her decision on the issue of affiliation, which is an irrelevant consideration.

3. Issue 3

Did the Director, by rejecting the Appellants' applications for SME 170005, SML 160009, SML 160008, SML 160010, and SMC 170017, exceed the Director's jurisdiction or legal authority?

[109] The Appellants submitted the Director, by rejecting the Appellants applications for surface dispositions based on the issue of affiliation, exceeded her jurisdiction or legal authority.

[110] The Appellants stated:

“The Director is a ‘creature of statute,’ and it is well-accepted law that a creature of statute only has the jurisdiction or legal authority given to her by the statute, or by necessary implication.”²⁷

[111] The Appellants submitted section 167 of PLAR expressly gives the Director authority to reject an application for disclosure of information if the Director is satisfied disclosure has been made to an affiliate of the applicant, but section 167 is silent on the Director’s legal authority to reject an application due to affiliation. The Appellants argued the legal maxim “to express one thing is to exclude the other,”²⁸ applies in this situation.

[112] The Appellants submitted legal authority for the Director to reject an application based on affiliation must be based on regulation, not policies or directives. Since PLAR does not give the Director legal authority to refuse an application due to affiliation, the Director exceeded her legal authority when she refused the Appellants’ applications for alleged affiliations.

[113] The Appellants submitted the Statutory Declaration is a prescribed form, and applicants are required to provide a sworn declaration as worded. However, the definition of "affiliate" renders the Statutory Declaration flawed.

which the person making the request is a member or with which that person is otherwise affiliated.”

²⁷ Appellants’ Submission, June 28, 2018, at page 16.

[114] The Appellants argued the definition of “affiliate” requires the applicant to swear it is not part of a “joint venture” or a “partnership,” but fails to define those terms. As a result, an applicant may not understand what he or she is swearing to when signing the Statutory Declaration. The Appellants submitted the wording of the Statutory Declaration is unfair and, as the Director relied on the declarations and took the Statutory Declarations into consideration, her decisions were unfair.

[115] The Appellants submitted it was unfair the Director accepted the Statutory Declarations sworn by an agent in the other applications under appeal but refused the declaration sworn by an agent in the application for SMC 170017.

B. DIRECTOR

[116] The Director submitted she did not err in the determination of a material fact, err in law, or exceed her jurisdiction or authority when she refused to issue SML 160009, SML 160008, SML 160010, SME 170005, and SMC 170017.

[117] The Director argued she had the discretion to refuse to issue authorizations, such as an SME and SMC, and the authority to refuse to issue a formal disposition such as an SML.

1. Identifying Affiliated Entities

[118] The Director submitted the concepts of “control over or an interest in” are significant in determining whether an applicant is affiliated with another entity in the context of applications that are submitted.

[119] The Director stated the definition of “affiliated entity” in the Statutory Declaration includes a person, business, organization, or enterprise.

[120] The Director argued in order to determine whether or not an applicant for a surface material lease is affiliated with another entity, the relevant wording in the definition of “affiliated entity” is:

“... any other business, organization or enterprise, ... with respect to which, the Applicant, or its officers, shareholders, directors, employees ‘has control over or an interest in:’ ...

- ii) any person, organization or enterprise that is involved in a joint venture or partnership with the Applicant or its shareholders, directors or employees ...
- iv) where the Applicant is a privately-held corporation, any other corporation in which the Applicant, or its officers, shareholders, directors or employees owns an interest.”²⁹

[121] The Director stated an applicant may be an affiliated entity in relation to another entity, if another person, business, organization or enterprise has control over or an interest in the applicant.

[122] The Director submitted evidence of control or interest in another entity included:

- (a) ownership of shares in one corporate entity;
- (b) two or more entities, including persons, who are acting in concert as if they were one entity or person carrying on the same operation or activity;
- (c) one or more corporate entities are effectively controlled by the same corporate entity;
- (d) a corporate entity is a subsidiary of another corporate entity; and/or
- (e) two or more corporate entities are subsidiaries of the same corporate entity.

2. Director’s Decision and Affiliated Entities

[123] The Director submitted for each application from the Appellants, the Director:

- “a) reviewed the application on its merits according to the applicable allocation procedure established ... for the surface material disposition applied for,
- b) considered and applied the Aggregate Policy and the Directive, including the prohibition against affiliation and the Appellants sworn statutory declaration in the context of the facts [as] known ...,
- c) considered the specific program information obtained through the internal referral process, where applicable, and
- d) made a decision within her jurisdiction.”³⁰

[124] The Director stated she wrote to the applicants for SML 160008, SML 160009, and SML 160010 before she made her decision and identified her concerns, including affiliation, and provided an opportunity for the applicants to submit further information for her consideration.

²⁹ Director’s Submissions, June 28, 2018, at page 34.

SML 160009, SML 160008, and SML 160010

[125] The Director submitted she considered whether ZK Ltd., BEV Ltd., MK Ltd., and Kalinko Ltd. were affiliated, either all together or whether with one or more of the companies.

The Director noted the following:

- (a) Mr. Zachary Kalinski, sole director for ZK Ltd., Mr. Elisha Kalinski, sole director for BEV Ltd., Mr. Matthew Kalinski, sole director for MK Ltd., and Kalinko Ltd., had the same registered office, records and mailing address;
- (b) Mr. Zachary Kalinski, Mr. Matthew Kalinski, and Mr. Elisha Kalinski were listed as contacts for Kalinko Ltd. on Kalinko Ltd.'s website;
- (c) Mr. Zachary Kalinski, Mr. Elisha Kalinski and Mr. Matthew Kalinski were sons of Mr. Tim Kalinski, the sole director of Kalinko Ltd.;
- (d) ZK Ltd., MK Ltd., and BEV Ltd. used the same consultant, Silver Sage Ltd., to prepare the applications and amendments that were submitted;
- (e) ZK Ltd., MK Ltd., and BEV Ltd. submitted their applications on the same date (February 5, 2016) and amendments to their applications on the same date (February 26, 2016); and
- (f) Silver Sage Ltd. wrote to AEP on May 26, 2017, describing collective activities of "all three companies," and stated all three companies had carried out reclamation on existing SMLs held by Kalinko Ltd., including SML 010005, which is within a six-mile radius of the applications.

[126] The Director submitted the above information was evidence ZK Ltd., MK Ltd., BEV Ltd., and Kalinko Ltd., were acting in concert and were Affiliated Entities contrary to the Aggregate Policy.

SME 170005

[127] The Director submitted she considered whether ZK Ltd. was affiliated with Kalinko Ltd., who is the holder of SML 010005, located within a six-mile radius of the SME subject lands. The Director considered the following:

- (a) Mr. Zachary Kalinski, sole director for ZK Ltd., and Kalinko Ltd., had the same registered office, records and mailing address;
- (b) Mr. Zachary Kalinski was listed as a contact for Kalinko Ltd. on Kalinko Ltd.'s website;
- (c) Mr. Zachary Kalinski is a son of Mr. Tim Kalinski, the sole director of Kalinko Ltd.;

- (d) ZK Ltd. used the same consultant, Silver Sage Ltd., to prepare the applications and amendments; and
- (e) Kalinko Ltd. submitted payment for the application fees for the SME.

[128] The Director submitted the above information was evidence ZK Ltd. was either being effectively controlled by Kalinko Ltd. or vice versa, and the two corporations were acting in concert and therefore, were Affiliated Entities contrary to the Aggregate Policy.

SMC 170017

[129] The Director submitted she considered whether MK Ltd. was affiliated with Kalinko Ltd., who was the holder of SML 010005, located within a six-mile radius of the SMC subject lands. The Director considered the following:

- (a) MK Ltd. and Kalinko Ltd., had the same registered office, records and mailing address; and
- (b) Mr. Matthew Kalinski, the sole shareholder of MK Ltd., was a son of Mr. Tim Kalinski, the sole director of Kalinko Ltd.

[130] The Director submitted the above information was evidence MK Ltd. was either being effectively controlled by Kalinko Ltd. or vice versa, and the two corporations were acting in concert and therefore were Affiliated Entities contrary to the Aggregate Policy.

3. Consequences of Swearing a False Statutory Declaration

[131] The Director submitted the statutory declarations sworn in the applications have the same force and effect as if made under oath or affirmation. The Director noted it is an offence under the Criminal Code to make a false or fraudulent declaration knowing the statement is false, and “it is common practice” is not a defence.

[132] The Director stated sections 26(1),³¹ 56(1),³² and 59(3)(b)³³ of the *Public Lands Act* set out the powers of the Director and potential fines if an applicant acquired a disposition by fraud.

³¹ Section 26(1) of the *Public Lands Act* provides:

“The director may cancel, suspend or amend a disposition when

- (a) the holder of the disposition fails to comply with the disposition, this Act or the regulations, or fails to comply with a notice given under this Act or the regulations,
- (b) in the case of a holder that is a corporation, the holder ceases to be incorporated or registered under the enactment regulating the carrying on of business by the corporation in Alberta,

4. Relief Requested

[133] The Director requested the Board find the Director did not err in the determination of a material fact, did not err in law, and did not exceed her jurisdiction or legal authority in refusing to issue:

- (a) SML 160009 and SME 170005 to ZK Ltd.;
- (b) SML 160008 and SMC 170017 to MK Ltd.; and
- (c) SML 160010 to BEV Ltd.

[134] The Director requested the Board recommend that the Minister dismiss each of the appeals.

C. COLD LAKE PIPELINE LTD.

[135] CLPL submitted it is the licensee of record for the Cold Lake Pipeline System, which, in the area of the subject lands, consists of two pipelines within a 30-metre right-of-way, issued to CLPL's predecessor as pipeline agreement 800563 (the "PA") in 1981.

[136] CLPL stated its submissions are only related to SML 160008 and 160009, as the PA is located directly adjacent to proposed SMLs 160008 and 160009. SML 160009 is proposed to be developed on both sides of the PA right of way and a CLPL block valve site.

-
- (c) the holder acquired the disposition in error or through fraud, misrepresentation, personation or improvidence,
 - (d) the holder of the disposition is convicted of an offence under an ALSA regional plan, this Act or the regulations that relates to the use of the land contained in the holder's disposition, or
 - (e) the holder of the disposition is indebted to the Crown."

³² Section 56(1)(c) of the *Public Lands Act* provides:

"A person who ...

- (c) willfully provides false or misleading information to an officer, the director or the Minister concerning public land, a disposition, this Act or the regulations ...

is guilty of an offence."

³³ Section 59(3)(b) of the *Public Lands Act* provides:

"No person may be convicted of an offence under ...

- (b) a provision of this Act or the regulations that is prescribed in the regulations for the purposes of this section,

if the person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission."

[137] CLPL submitted the *Guidelines for Acquiring Surface Material Dispositions on Public Land* (the “Guidelines”) require applicants to notify and obtain consent from registered disposition holders that may be affected by the application. CLPL noted the following:

- (a) both SML applications identified CLPL as an interested holder;³⁴
- (b) both SML applications stated CLPL received notification letters;³⁵
- (c) Conservation, Operation and Reclamation Plans for both SML applications indicated there was “no conflict” between the SML applications and the PA; and
- (d) neither of the SML applications contained the required consents, and expressly indicated “none” in relation to consent files attached to the SML applications.

[138] CLPL submitted it had no records of any letters of notification or other communication with the Appellants regarding the SML applications. CLPL stated the first notice it received was from the Board in a letter dated January 31, 2018.

[139] Since receiving notification from the Board, CLPL stated it held preliminary discussions with the Appellants to understand the SML applications and potential impacts on the PA. Based on the information before CLPL, there are two primary areas of concern regarding the SML applications:

- (a) the safety of CLPL's pipelines are at risk due to the proximity of the operations proposed by Appellants; and
- (b) the setbacks proposed in the SML applications are insufficient to ensure CLPL will be able to access and maintain its pipelines safely in the future.

[140] CLPL hired Stantec Consulting Inc. (“Stantec”) to conduct a preliminary engineering assessment of the SML applications that would examine whether the applications pose a safety, function, and stability risk to the pipelines. CLPL stated Stantec identified the following areas that needed further engineering investigations:

- “(a) The slope stability of the proposed slope design adjacent to [PA] 800563 and the CLPL block valve, taking into account the native soil and groundwater levels underneath the mine site;
- (b) The potential for lateral movement within [PA] 800563 as a result of the SML operations, taking into account the native soil and groundwater levels underneath the mine site;

³⁴ Director’s Record, PLAB Appeal Nos. 17-0025 and 17-0026, at Tabs 1 and 51.

³⁵ Director’s Record, PLAB Appeal Nos. 17-0025 and 17-0026, at Tabs 13 and 47.

- (c) Slope stability of the proposed ground geometry post-reclamation;
- (d) Surface water drainage across [PA] 800563 post-reclamation, including the potential for water ponding or freezing;
- (e) Impacts of the proposed mining methods and equipment, including vibration, on the pipeline safety and stability; and
- (f) Groundwater flow post-reclamation, including the potential for the reclaimed landscape to affect the bedding and backfill material currently surrounding the pipeline.”³⁶

CLPL expressed concern regarding the possibility of the pipelines being damaged and noted it would potentially be a very serious problem that would have far-reaching impacts. CLPL stated:

“If the integrity of CLPL’s pipelines were to be compromised, either as a result of a direct strike or indirectly through a change in the ground conditions surrounding the pipe, product may be released from the pipeline creating the potential for harm to the environment, private property, public health and safety. If such an event occurred, in addition to taking steps to contain the release and address any residual impacts, CLPL would need to immediately suspend operations of the pipeline until the line’s integrity had been restored, likely through on-the-ground maintenance and repair work. Such a suspension in pipeline operations would likely result in curtailments to CLPL’s customers, which in turn could affect their overall oil sands production levels. Each of these potential consequences is unacceptable to CLPL and, in CLPL’s submission, contrary to the overall public interest.”³⁷

CLPL submitted if the Board recommends the decision of the Director to refuse to issue SMLs 160008 and 160009 be reversed, then the following conditions should be included in the SMLs:

- “(a) The Appellants must retain an engineering firm mutually agreed upon with CLPL to conduct each of the engineering assessments recommended by Stantec, and must provide copies of those assessments upon their completion to CLPL.
- (b) Prior to commencement of any ground disturbance, as defined under the Pipeline Act, the Appellants must:
 - (i) Provide the Board with written confirmation that CLPL has reviewed the results of the engineering assessments referred to in (a), as well as any resulting design changes to the SML operations, and has no outstanding engineering concerns.
 - (ii) Enter into a proximity agreement with CLPL under section 4 of the PLAR that includes setback distances that are agreed upon between the parties to ensure CLPL’s ability to safely and efficiently access, maintain and operate its pipelines.

³⁶ Written Submissions of Cold Lake Pipeline Ltd., June 28, 2018, at page 6.

³⁷ Written Submissions of Cold Lake Pipeline Ltd., June 28, 2018, at pages 6 and 7.

- (iii) Submit a plan to the Board, for the Board's approval, outlining the processes that the Appellants will follow to ensure that all SML activities are conducted within the approved site boundaries and outside of any setback areas."³⁸

D. MR. DON LUCIAK AND MS. TINA LUCIAK

[141] Mr. Don Luciak and his father Mr. Metro Luciak are the leaseholders of GRL 38820. Ms. Tina Luciak is Mr. Don Luciak's spouse. SML 160008 and SML 160009 overlap with the GRL. The Luciaks submitted the following concerns:

- “1. We use this land to pasture our cows. Cattle are a major source of income for us. Gravel pits will decrease the pasture.
2. Much of the land has been drastically disturbed by the oil companies/ already straining the wildlife. Gravel pits will only add to the strain.
3. The father of the Kalinski's entered the land and did test holes without requesting permission and did not clean up the trees he knocked down. To this day he still has not made amends.
4. The applicants are all related and related to [Mr.] Tim Kalinski who has interests in more than a few gravel pits in the area. This goes against the laws set out by public lands.
5. The area is widely used by recreational goers - whether it is berry pickers, hikers, quadders and skidoers. Gravel pits will take this away from them too.
6. Gravel pits are close to the homes of three families. The noise, traffic, and dust will impact them and their cattle.
7. Water from the rain and snow makes its way down to the river. The dust and pollution from the pits will be brought to the river. The river [used] to have an abundance of fish but this is no longer the case.
8. The bridge crossing the river is old. It works well for the ones that need to use it. However, gravel pits will increase the amount of traffic crossing the bridge and who will replace it.”³⁹

[142] In their oral submissions, the Luciaks noted they had not provided any consent to the Appellants to enter the GRL for the purpose of a previous SME, or consent for the current SML proposals.

[143] The Luciaks submitted they only received notice of the SML applications when the Board contacted them by letter advising of the appeals.

³⁸ Written Submissions of Cold Lake Pipeline Ltd., June 28, 2018, at page 9.

³⁹ Appeal Submission of Don and Tina Luciak, June 28, 2018, at page 1.

[144] The Luciaks stated once a gravel pit is built, the land cannot be restored to the way it was previously. The Luciaks asked the Board not to allow the gravel pit to proceed.

V. ANALYSIS

A. EVIDENCE

[145] The admissibility of evidence introduced by the Appellants at the oral hearing was raised by the Director.

[146] When considering whether evidence is admissible in a hearing before the Board, the first consideration is the governing legislation, the *Public Lands Act*. The Board notes section 120 of the *Public Lands Act* states: “An appeal under this Act must be based on the decision and the record of the decision-maker.”

[147] In section 120, the “record” is the Director’s Record. In an appeal on the record, the Board’s decision must be based on the evidence found in the record provided by the Director. However, the Board’s decision can also be based on other evidence that is rationally connected to evidence found in the Director’s Record, meaning evidence that provides details, clarifies, or helps the Board understand the evidence found in the Director’s Record.

[148] The Board found the evidence provided by the Appellants at the oral hearing was focused mainly on mitigation measures the Appellants would undertake if the Board reversed the Director’s decision to refuse the Appellants’ applications. Such evidence was not before the Director at the time of the decision, and therefore, is not part of the record upon which the appeals are based.

[149] While it is commendable, the Appellants have gone to great lengths to address concerns raised by the Director in her refusal letters. However, such evidence of mitigation would be better presented to the Director as part of an application process, not as evidence before the Board in a hearing, where the question is whether the Director’s decision should be confirmed, reversed, or varied. The Board found the evidence of mitigation plans introduced at the oral hearing by the Appellants did not provide details, clarification, or help the Board understand the evidence found in the Director’s Record. As a result, the Board gave no weight to the evidence presented by the Appellants that was not part of, or related to, the Director’s Record.

[150] The Board noted the Director's Record mentioned CLPL as a potentially interested party, but contained no further details. The Board found the evidence provided by CLPL to be of great assistance to the Board by providing further details lacking in the Director's Record. The Board accepted the evidence provided by CLPL, as well as any relevant evidence related to the CLPL pipelines provided by the Appellants, other than mitigation proposals.

[151] The Board also noted the Director required the consent from the Luciaks for SMLs 160008 and 160009. The Board found the evidence provided by the Luciaks to be of great assistance to the Board in understanding evidence found in the Director's Record relating to the Luciaks' grazing lease. The Board accepted the evidence provided by the Luciaks, as well as any relevant evidence related to the Luciaks' grazing lease provided by the Appellants.

B. AFFILIATION

[152] The Director requires an applicant for a surface material disposition to swear to a Statutory Declaration. It contains the following clause:

“Neither the Applicant nor any Affiliated Entities have applied for, nor are they the holder of, any other Surface Material Dispositions under the Public Lands Act within a [six-mile] radius of the Disposition Area that, when combined with the Disposition Area, will exceed 80 acres with respect to sand and gravel extraction holdings.”⁴⁰

[153] The purpose of this part of the Statutory Declaration is to enforce the Aggregate Policy that limits surface material dispositions to 80 acres or less for the direct award process, where an applicant can apply for a surface material disposition without making the application public. If an applicant applies for a surface material disposition over 80 acres, the application is subject to the bonus bid process, where the application must be publicly advertised, and other parties may submit a bid for exclusive rights to extract the aggregate.

[154] Obtaining a surface material disposition through a direct award rather than having to bid on it is a tremendous business advantage. Through its 80-Acre Rule, AEP is attempting to keep the process fair by preventing businesses from combining multiple dispositions, obtained through a direct award, into one operation, thus bypassing the bonus bid process.

[155] The Statutory Declaration contains a definition of “Affiliated Entity”:

⁴⁰ Director's Record, PLAB Appeal No. 17-0022, at Tab 1.

“‘Affiliated Entity’ means any other business, organization or enterprise, regardless of form, with respect to which the Applicant or its officers, shareholders, directors, or employees has control over or an interest in, including:

- i) a trust for which the Applicant, or its officers, shareholders, directors or employees, is a beneficiary, or
- ii) any person, organization or enterprise that is involved in a joint venture or partnership with the Applicant or its officers, shareholders, directors or employees; or
- iii) where the Applicant is a publicly-traded corporation, any other corporation that is an affiliate (as that term is defined in the Business Corporations Act, R.S.A. 2000, c. B-9), or
- iv) where the Applicant is a privately-held corporation, any other corporation in which the Applicant, or its officers, shareholders, directors or employees owns an interest.”⁴¹

In order to prove that a business is an “Affiliated Entity,” one or more of the above elements must be evident.

[156] The Director submitted the concepts of “control over or an interest in” were significant in determining whether an applicant was affiliated with another entity in the context of the applications that were submitted, and argued the following are evidence of control or interest in another entity:

- (a) ownership of shares in one corporate entity;
- (b) two or more entities, including persons, who are acting in concert as if they were one entity or person carrying on the same operation or activity;
- (c) one or more corporate entities are effectively controlled by the same corporate entity;
- (d) a corporate entity is a subsidiary of another corporate entity; and/or
- (e) two or more corporate entities are subsidiaries of the same corporate entity.

[157] The Director referred to evidence of the Appellants being affiliated with each other and with Kalinko Ltd., which included:

- (a) the Appellants had the same registered office, records and mailing address as each other and as Kalinko Ltd.;
- (b) Mr. Zachary Kalinski, Mr. Matthew Kalinski, and Mr. Elisha Kalinski were listed as contacts for Kalinko Ltd. on Kalinko Ltd.’s website;
- (c) Mr. Zachary Kalinski, Mr. Elisha Kalinski, and Mr. Matthew Kalinski are sons of Mr. Tim Kalinski, the sole director of Kalinko Ltd.;

⁴¹ Director’s Record, PLAB Appeal No. 17-0022, at Tab 1.

- (d) ZK Ltd., MK Ltd., and BEV Ltd. used the same consultant, Silver Sage Ltd., to prepare the applications and amendments;
- (e) ZK Ltd., MK Ltd., and BEV Ltd. submitted their applications on the same date (February 5, 2016) and amendments to their applications on the same date (February 26, 2016);
- (f) the Appellants wrote AEP on May 26, 2017, describing collective activities of “all three companies,” and stated all three companies had carried out reclamation on existing SMLs held by Kalinko Ltd., including SML 010005, which is within a six-mile radius of the SML applications; and
- (g) in the case of SME 170005, Kalinko Ltd. submitted payment for the application fees for the SME.

[158] The Appellants argued there was no evidence in the Director’s Record to prove the companies were Affiliated Entities. The Appellants submitted:

- (a) the Appellants were not shareholders in each other’s companies, or in Kalinko Ltd.;
- (b) Kalinko Ltd. and Tim Kalinski were not shareholders or directors of the Appellants’ companies;
- (c) there was no evidence of a partnership between the Appellants’ companies; and
- (d) there was no evidence of a partnership between the Appellants’ companies and Kalinko Ltd.

[159] The Board found insufficient evidence in the Director’s Record to prove the Appellants were Affiliated Entities, as defined in the Statutory Declaration, with each other’s companies or Kalinko Ltd. The Board found no evidence of a trust, a joint venture, partnership, common officers, shareholders, directors or employees, or ownership of an interest in one of the other companies.

[160] The Board found evidence of the Appellants “acting in concert.” The Appellants used the same agent, submitted responses on the same day, and responded collectively. However, this is not sufficient evidence to prove “control and interest.”

[161] The Board appreciates the importance of the 80-Acre Rule and its purpose of preventing businesses from obtaining multiple dispositions through a direct award and bypassing the bonus bid process. However, the wording of the definition of Affiliated Entities is inadequate for the Director’s purpose of enforcing that policy goal in the circumstances of this case. The definition of Affiliated Entities being used is focused on the legal forms a business can

take (trust, joint venture, corporation, partnership) and the control structures associated with these forms (shareholders, director, officers). In many cases, this definition will be adequate. However, as demonstrated in this case, to use this definition where the control is less obvious, more evidence would be required as to how the businesses are run to show they are operating in concert. For example, it may be necessary to demonstrate where the actual decision-making authority is found or determine how revenues and expenses are run through the various businesses. To avoid having to provide this type of evidence to demonstrate affiliation, AEP may wish to consider a different definition for "affiliated entities," which more closely aligns with the harm AEP is trying to prevent.

[162] Based on the Aggregate Policy and Directive as currently stated, the Board found the Director erred in the determination of a material fact on the face of the record by refusing the Appellants' applications based on an erroneous finding that the Appellants were Affiliated Entities, with each other and with Kalinko Ltd.

C. THIRD PARTY NOTIFICATION

[163] On the Site Information Form for SML applications 1600008 and 1600009, under the heading "Identify Reservations needing mitigation and the actions required," MK Ltd. and ZK Ltd. both list PA "800563 Cold Lake Pipeline" as requiring "Letter of Notification." Both applications also list "GRL 38820, Donald & Metro Luciak" as requiring "Land Withdrawal."⁴²

[164] CLPL and the Luciaks submitted they did not receive notice of the applications for SML 160008 or SML 160009 until the Board contacted them by letter to notify them of the appeals. The Board found no evidence in the Director's Record to show the Appellants contacted CLPL and the Luciaks as required. The Board also found no evidence in the Director's Record to indicate the Director or AEP staff contacted CLPL or the Luciaks regarding applications that could potentially have a significant impact on their interests and rights.

[165] CLPL has oil and gas infrastructure that require protective measures to ensure their integrity and safety. CPLC provided compelling evidence that allowing work under the dispositions to proceed could result in a danger to public safety. The Luciaks are long-term leaseholders of a grazing lease, which they rely upon for their financial well-being. MK Ltd. and

⁴² Director's Record, PLAB Appeal No. 17-0025 at Tab 1, and PLAB Appeal No. 17-0026, at Tab 31.

ZK Ltd. had a responsibility to inform CLPL and the Luciaks of the SML applications, which could affect their interests and rights, but the Appellants failed to follow up with that responsibility. The failure of MK Ltd. and ZK Ltd. to inform CLPL and the Luciaks of the SML applications meant the Director did not have appropriate and vital information before her when making the decision. Under section 9 of PLAR, the consent of the GRL leaseholders is necessary for the application to be complete. Had the Board not contacted CLPL and the Luciaks and informed them of the SML applications, their rights could have been potentially compromised. The Board finds the failure of MK Ltd. and ZK Ltd. to fulfill this important responsibility a serious concern.

[166] The Board notes the Merit Rationale submitted by AEP staff for SML 160009 indicates the applicant had not obtained consent from the GRL leaseholder, but no mention of the required consent is found in the Merit Rationale for SML 160008 or in the decision letter of the Director to MK Ltd. The Board is concerned the initial SML applications identified the need for consultation with other leaseholders, yet no steps were taken by AEP staff or the Director to confirm the required consents were received and information provided. By failing to consider if notification had been made, the Director lost the benefit of having the concerns of CLPL and the Luciaks before her when evaluating the applications. This resulted in a flawed decision by the Director based on incomplete information. In the Board's view, taking into consideration the rights of CLPL and the Luciaks is as important as taking into account a PNT or CNT.

[167] The Board notes there is no formal process in place for AEP to confirm whether applicants have completed the mandatory notifications. The Board recommends AEP consider how to ensure future applicants have completed the actions required in order to complete the application, so the Director has all the evidence she needs to make an informed decision.

D. REASONS FROM THE DIRECTOR

[168] The Board found the Director was inconsistent in providing written reasons in her decision letter. For example, in the decision letter on SME 170005, she provided several reasons for the refusal, but in the decision letter on SML 160009, she only identified the issue of affiliation as her reason, despite other reasons being mentioned in the Merit Rationale.

[169] While the Board recognizes the Director does not have a legal duty to list all the reasons for a decision, there is a benefit to communicating the reasoning behind the decision

made by the Director. In the Supreme Court of Canada decision of *Baker v. Canada*,⁴³ Madame Justice L'Heureux-Dubé noted some of the benefits of providing reasons, including:

- ensure fair and transparent decision-making;
- reduce arbitrary or capricious decisions;
- afford parties the opportunity to assess the question of appeal;
- foster better decision-making by ensuring that issues and reasoning are well articulated and therefore more carefully thought out;
- allow the parties to see the applicable issues have been carefully considered; and
- those affected may be more likely to feel they were treated fairly and appropriately.⁴⁴

[170] Although the Board would have preferred to see the reasons for the Director's decision more fully indicated in the decision letters, the Board found the Director could rely on reasons contained in the Director's Record as a basis for her decision. The Board found the Director has authority to make decisions regarding the merits of an application for a disposition, including using her discretion to judge the merits of dispositions in relation to other dispositions, PNTs, CNTs, and KWBZs. This authority and discretion are subject to the decision being reasonable and in compliance with the principles of administrative law.

VI. CONCLUSIONS

A. SME 170005

[171] The Board found the Director erred in the determination of a material fact on the face of the Record by refusing the application by ZK Ltd. for SME 170005 because of "affiliation" contrary to the Aggregate Policy.

[172] The Board found the Director did not err in the determination of a material fact on the face of the Record, err in law, or exceed her jurisdiction or authority in refusing the application by ZK Ltd. for SME 170005 because the proposed area is within the KWBZ and overlaps with PNT 160015 and PNT 8900592.

⁴³ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

⁴⁴ Jones, David Phillip, Q.C., and Anne S. de Villars, *Principles of Administrative Law*, 6th ed. (Toronto: Thomson Reuters, 2014), at page 387.

[173] The Board recommends the Minister confirm the decision made by the Director to refuse to issue SME 170005.

B. SML 160009

[174] The Board found the Director erred in the determination of a material fact on the face of the Record by refusing the application by ZK Ltd. for SML 160009 because of "affiliation" contrary to the Aggregate Policy.

[175] The Board found the Director did not err in the determination of a material fact on the face of the Record, err in law, or exceed her jurisdiction or authority in refusing the application by ZK Ltd. for SML 160009 because the proposed area is within the KWBZ and GRL 38820, and no consent from the grazing leaseholder was provided. While not considered in the Director's decision, the Board notes the safety concerns raised by CLPL also weigh against granting the SML.

[176] The Board recommends the Minister confirm the decision made by the Director to refuse to issue SML 160009.

C. SML 160008

[177] The Board found the Director erred in the determination of a material fact on the face of the Record by refusing the application by MK Ltd. for SML 160008 because of "affiliation" contrary to the Aggregate Policy.

[178] The Board found the Director did not err in the determination of a material fact on the face of the Record, err in law, or exceed her jurisdiction or authority in refusing the application by MK Ltd. for SML 160009 because the proposed area is within the KWBZ, overlaps PNT 860395, is within GRL 38820, and no consent from the grazing leaseholder was provided. While not considered in the Director's decision, the Board notes the safety concerns raised by CLPL also weigh against granting the SML.

[179] The Board recommends the Minister confirm the decision made by the Director to refuse to issue SML 160008.

D. SML 160010

[180] The Board found the Director erred in the determination of a material fact on the face of the Record by refusing the application by BEV Ltd. for SML 160010 because of "affiliation" contrary to the Aggregate Policy.

[181] The Board found the Director did not err in the determination of a material fact on the face of the Record, err in law, or exceed her jurisdiction or authority in refusing the application by BEV Ltd. for SML 160010 because the proposed SML is within the KWBZ.

[182] The Board recommends the Minister confirm the decision made by the Director to refuse to issue SML 160010.

E. SMC 170017

[183] The Board found the Director erred in the determination of a material fact on the face of the Record by refusing the application by MK Ltd. for SMC 170017 because of "affiliation" contrary to the Aggregate Policy.

[184] The Board found the Director erred in law by refusing the application from MK Ltd. for SMC 170017 on the basis it submitted a Statutory Declaration signed by the agent for MK Ltd. The Director admitted this was an error. No other basis for refusing to issue the SML was detailed in the Director's record.

[185] The Board recommends the Minister reverse the decision of the Director and order the Director to issue SMC 170017 to MK Ltd., with appropriate terms and conditions as determined by the Director.

VII. RECOMMENDATION

[186] The Board recommends the Minister confirm the decision of the Director to refuse to issue SME 170005, SML 160009, SML 160008, and SML 160010. Further, the Board recommends the Minister reverse the decision of the Director to refuse to issue SMC 170017, and order that the disposition be issued to MK Ltd. (being 1798471 Alberta Ltd.), with appropriate terms and conditions as determined by the Director.

[187] With respect to section 125(4) of the *Public Lands Act*, the Board recommends copies of the Report and Recommendations, and the decision of the Minister, be sent to the following persons:

1. Mr. Tom Owen, Owen Law, representing 1657492 Alberta Ltd., 1798471 Alberta Ltd., and Big Easy Ventures Ltd;
2. Ms. Vivienne Ball, Alberta Justice and Solicitor General, representing Ms. Corinne Kristensen, Director, Provincial Approvals, Alberta Environment and Parks;
3. Mr. Sander Duncanson, Osler, Hoskin & Harcourt LLP, representing Cold Lake Pipeline Ltd.;
4. Ms. Michelle Dawson, representing Inter Pipeline Ltd.; and
5. Mr. Don and Ms. Tina Luciak.

Dated on August 14, 2018, at Edmonton, Alberta.

- original signed -

A.J. Fox
Panel Chair

- original signed -

Eric McAvity, Q.C.
Board Member

- original signed -

Tim Goos
Board Member