Form 21
[Rules 14.37 and 14.58]

COURT OF APPEAL FILE NUMBER	2101-0021AC
TRIAL COURT FILE NUMBER	1801-10960
REGISTRY OFFICE	CALGARY
PLAINTIFF/RESPONDENT	PRICEWATERHOUSECOOPERS INC., LIT in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
STATUS ON APPEAL	APPELLANT
DEFENDANTS/APPLICANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE
STATUS ON APPEAL	RESPONDENTS
APPLICANTS (NOT A PARTY)	CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD.
DOCUMENT	**JOINT APPLICATION OF CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD., PROPOSED INTERVENORS ON APPEAL**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Parlee McLaws LLP 3300, 421 - 7th Ave SW Calgary, Alberta T2P 4K9 Attention: G. Scott Watson/Charles W. Ang Telephone: (403) 294-7038 / 3457 Facsimile: (403) 767-8875 File No. 22-921

Clerk's Stamp

NOTICE TO RESPONDENTS: PRICEWATERHOUSECOOPERS INC., LIT in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity, PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE.

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENTS:

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	June 10, 2021
Time:	9:30 a.m.
Where:	Court of Appeal of Alberta 2600 TransCanada Pipelines Tower 450 - 1st St. S.W. Calgary, AB T2P 5H1
Before:	A single judge of the Court (Rule 14.37)

Nature of the Application and Relief Sought:

1. An Order pursuant to Rule 14.58(1) of the *Alberta Rules of Court*, Alta Reg 124/2010, (the "***Rules of Court***") granting Canadian Natural Resources Limited ("**Canadian Natural**"), Cenovus Energy Inc. ("**Cenovus**"), and Torxen Energy Ltd. ("**Torxen**"; collectively with Canadian Natural and Cenovus, the "**Applicants**"), leave to intervene in Court of Appeal Action No. 2101-0021AC, (this "**Appeal**") with a right to participate in all proceedings related to the Appeal of the Honourable Mr. Justice D.B Nixon's ("**Justice Nixon**") findings on the characterization and analysis of Abandonment and Reclamation Obligations ("**ARO"**), and all matters incidental thereto;

2. Further pursuant to Rule 14.58(1) of the *Rules of Court*, an Order prohibiting costs, either in favour of, or against the Applicants, with respect to any other party or intervenor in the Action; and

3. Such further and other relief incidental to the above as requested and as this Honourable Court deems appropriate.

Grounds for Making this Application:

4. Terms not hereinafter defined shall have the same meaning as set out in the Factum of the Appellants submitted in the Alberta Court of Appeal File Number 1901-0255AC and Trial Court File Number 1801-10960.

Background

5. Canadian Natural is a Canadian-based energy company with headquarters in Calgary, Alberta. It is one of the largest independent producers of crude oil and natural gas in Canada, with operations involving oil sands mining, thermal oil sands, conventional oil (light and heavy), natural gas and natural gas liquids operations throughout Western Canada.

6. Cenovus is a Canadian integrated oil and natural gas company headquartered in Calgary, Alberta. Effective January 1, 2021, Cenovus acquired Husky Energy Inc. and now is the third largest Canadian oil and natural gas producer and the second largest Canadian-based refiner and upgrader. Cenovus operates in Canada, the United States and the Asia Pacific region. Cenovus's operations include oil sands projects in northern Alberta, thermal and conventional crude oil and natural gas projects across Western Canada, crude oil production offshore Newfoundland and Labrador and natural gas and liquids production offshore China and Indonesia. Cenovus's downstream operations include upgrading, refining and marketing operations in Canada and the Unites States.

7. Torxen is an exploration and production company focused on the development and optimization of conventional oil and gas assets in Southern Alberta.

8. The Applicants collectively hold approximately one-third of all AER licenses for wells located in the Province of Alberta, and correspondingly contribute to the Orphan Fund Levy (the "**Levy**").

9. The Levy is the primary means used by the Orphan Well Association to fund the abandonment and reclamation of wells, facilities, and pipelines that do not have a solvent and responsible owner to protect people and the environment through the completion of those processes.

10. Canadian Natural and Cenovus are creditors in the bankruptcy proceedings of Sequoia Resources Corp. ("**Sequoia**"), which was formerly known as Perpetual Energy Operating Corp.

The First Nixon Decision and the First Appeal

11. On March 23, 2018, Sequoia made an assignment into bankruptcy and the Appellant, PricewaterhouseCoopers Inc., LIT in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity (the "**Appellant**"), was appointed. Subsequently, on August 2, 2018, the Appellant filed a Statement of Claim against the Respondents, Perpetual Energy Inc., Perpetual Operating Trust, and Perpetual Operating Corp., (the "**Perpetual Group**") and Ms. Susan Riddell Rose (together with the Perpetual Group, the "**Respondents**") commencing Court of Queen's Bench Action No. 1801-10960 (the "**Action**").

12. The Respondents applied for summary dismissal of the Action, and on August 15, 2019, Justice Nixon provided oral reasons for striking all but one of the Appellant's claims (the "**First Oral Reasons**").

13. On August 23, 2019, the Appellant filed a Civil Notice of Appeal to appeal the First Oral Reasons (the "**First Appeal**"). Shortly thereafter, the Perpetual Group filed a cross-appeal.

14. On January 13, 2020, Justice Nixon provided written reasons clarifying his First Oral Reasons (the "**First Nixon Decision**"), which included findings based upon his interpretation of *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 ("***Redwater***"), as well as his determination that "ARO is not a liability".

15. In the First Appeal, the Appellant raised concerns regarding Justice Nixon's interpretation of *Redwater* and consequent characterization of ARO, which "heavily influenced" the First Nixon Decision.

16. On November 13, 2020, the Applicants and the Orphan Well Association (the "**OWA**") were granted intervenor status in the First Appeal.

17. On December 10, 2020, this Honourable Court heard, *inter alia*, the First Appeal, and on January 25, 2021, this Honourable Court issued its decision in the First Appeal (the "**First Appeal Decision**").

18. The First Appeal Decision was critical of Justice Nixon's interpretation of *Redwater* and his characterization of ARO, providing detailed analysis regarding what was characterized as Justice Nixon's "significant overreading of the effect of the *Redwater* decision". In particular, the First Appeal Decision stated that ARO "may not be a conventional 'debt', but rather operate by depressing the value of the assets; whichever side of the equation they be on, they could impact whether there is 'undervalue' in a transaction". Further, the Court of Appeal held that ARO "are a real liability or obligation", and that while the exact ARO cost associated with the Goodyear Assets may have been "unknown and unquantified", "the obligation was no longer "contingent"; the obligation was merely unperformed".

19. This Honourable Court further clarified, that "none of the claims pleaded in this action can be struck out or dismissed for 'failing to disclose a cause of action', or because they 'lacked merit' on the basis that *Redwater* 'nullifies' or 'extinguishes' Abandonment and Reclamation Obligations".

<u>The Findings of Justice Nixon in the Second Nixon Decision</u>

20. On February 25, 2020, the Perpetual Group filed an application to strike and/or summarily dismiss the remaining claims of the Appellant in the Action (the "***BIA* Application**").

21. On July 24, 2020, the Applicants and the OWA were granted intervenor status in the *BIA* Application, and same was heard in October 2020.

22. On January 14, 2021 – 11 days prior to this Honourable Court's decision in the First Appeal – Justice Nixon rendered his decision in the *BIA* Application, and provided written reasons for summarily dismissing the Appellant's remaining claims in the Action (the "**Second Nixon Decision**").

23. The Second Nixon Decision maintained that ARO was not an "obligation, due and accruing" and that ARO had no value for the purposes of considering whether a person was insolvent under the *Bankruptcy and Insolvency Act*. Justice Nixon reiterated that ARO were merely estimates that had yet to be constituted, were not exigible, and were not an "obligation, due and accruing due" absent existing creditors. Justice Nixon consequently assigned the ARO associated with the impugned Goodyear Assets at the time of the Asset Transaction a value of "Nil", and accordingly found Perpetual Energy Operating Corp. to have neither been insolvent nor rendered insolvent by the Asset Transaction.

24. The findings of Justice Nixon in the Second Nixon Decision conflict with the findings of this Honourable Court in the First Appeal Decision. In particular, this Honourable Court confirmed that ARO serve to depress the value of an asset, and are capable of impacting an asset's value in a transaction especially where the asset is at or close to the end of its productive life cycle. Conversely, Justice Nixon found that ARO were not "obligations, due and accruing due", and refused to consider ARO in the assessment of value of the impugned Goodyear Assets at the time of the Asset Transactions, despite the fact that many of the Goodyear Assets were at the end of their productive life cycles and had already been shut-in or abandoned.

25. Accordingly, the Applicants seek to intervene in this Appeal of the Second Nixon Decision on the basis that, pursuant to the findings of the Supreme Court of Canada in *Redwater* as well as the findings of this Honourable Court in the First Appeal Decision, Justice Nixon erred in his assessment, characterization, and application of ARO in his analysis.

26. Specifically, the Applicants seek confirmation that ARO is an unavoidable public duty or obligation, inherent and fundamental to the value of the licenced assets, equivalent to an up-front cost, and recognized to depress the value of a licensed asset.

The Applicants' Unique and Useful Perspectives

27. The Applicants seek to provide unique and useful expertise on the characterization of ARO and its financial and practical effects on the oil and gas industry, including the following perspectives:

    a) Industry participants, including the Applicants, have long recognized ARO as an inherent, unavoidable certainty associated with all licensed assets regulated by the Alberta Energy Regulator, and intended to mitigate environmental concerns pursuant to the polluter-pay principle;

    b) Recognition of ARO as a predictable and inevitable financial burden affecting the valuation of assets is reflected in the industry standards and business practices of the oil and gas industry of Alberta;

    c) The Supreme Court of Canada in *Redwater* and this Honourable Court in the First Appeal Decision confirmed ARO as a liability serving to depress the corresponding asset's value; and

    d) Such further and other submissions in respect of matters incidental to the above, as counsel may advise and this Honourable Court may permit.

28. The Applicants further seek to provide perspective on the commercial consequences and policy implications from the potential outcomes of this Appeal, including:

    a) The risk of sanctioning similar stepwise transactions concluded by insolvency, resulting in the diversion of ARO to third party license holders, and the abandonment of the polluter-pay principle;

    b) The direct and indirect impacts of tolerating the Asset Transaction on the Levy, and the immediate and long-term consequences to private industry, as well as the environment; and

    c) Such further and other submissions in respect of matters incidental to the above, as counsel may advise and this Honourable Court may permit.

29. The Applicants' perspectives are necessary for this Honourable Court to properly consider the private industry interests of Alberta's oil and gas sector, as well as the

associated public interest in requiring industry members to be guided by both economic and environmental objectives.

30. In particular, the Applicants will provide their extensive knowledge and experience to assist this Honourable Court in understanding the pragmatic effects of ARO, and the potential consequences of its decision on the issue of ARO that are raised by the Applicants in the Appeal.

31. Finally, as a diversified cohort of industry members, the Applicants are well situated to serve as a representative sample of the oil and gas industry, and will each lend their unique perspective to assist this Honourable Court.

The Applicants will be Directly and Significantly Affected by this Appeal

32. The Applicants will be directly and significantly affected by the outcome of the Appeal in several ways, including:

a) A decision to uphold Justice Nixon's findings on ARO will almost certainly result in the orphaning of the impugned Goodyear Assets and the shifting of the significant financial burden of the corresponding ARO to the industry contributors to the Levy, which includes the Applicants, and is estimated to be:

i. Approximately $42,000,000.00 to Canadian Natural;

ii. Approximately $13,400,000.00 to Cenovus; and

iii. Approximately $6,500,000.00 to Torxen; and,

b) This Honourable Court's ruling on the characterization of ARO will have significant effects on industry standards, as well as the future and present business arrangements of all industry participants.

Intervenor Status

33. Further, granting the Applicants leave to intervene in this Appeal will not:

a) unduly delay the proceedings;

b) cause prejudice to any of the parties; or

c) widen the *lis* between the parties.

34. Further, or in the alternative, any concerns regarding timeliness or the *lis* can be addressed through conditions imposed on the Applicants by this Honourable Court restricting the scope of the intervention.

35. The Applicants understand that the Appellant supports the intervention of the Applicants in this Appeal.

Material or Evidence to be Relied on:

36. The written reasons of judgment of the Chambers Justice dated January 14, 2021: *PriceWaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABQB 2;

37. The written reasons of judgment of the Alberta Court of Appeal dated January 25, 2021: *PriceWaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16;

38. The pleadings and materials filed in the Court of Queen's Bench of Alberta Action No. 1801-10860, as set out in the Appellant's Record;

39. The pleadings and materials filed in the Alberta Court of Appeal Action No. 1901-0255AC, as set out in the Appellant's Record;

40. The Affidavit of Shaaista Murji dated May 20, 2021; and

41. Such further and other material as counsel may advise and this Honourable Court may allow.

Applicable Acts, Regulations, and Rules:

42. The inherent jurisdiction of this Honourable Court to control its own process;

43. Rules 14.28, 14.37, 14.40, and 14.58 of the *Alberta Rules of Court*;

44. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3; and

45. Such further and other material, legislation, and rules as counsel may advise and this Honourable Court may allow.