

**Via Email Only**

June 27, 2018

Bennett Jones LLP

Ken Cowles

Calgary Head Office  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada[www.aer.ca](http://www.aer.ca)**Attention: Blake Williams**

Dear Sirs:

**RE: Request for Regulatory Appeal by Ken Cowles  
Tourmaline Oil Corp. (Tourmaline)  
Application No/s.: 1896015, 1895071, 1895072, and 1895073  
Location: 07-059-01W6M; 12-059-02W6M  
Request for Regulatory Appeal No.: 1903608**

The Alberta Energy Regulator (AER) has considered Mr. Ken Cowles's request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decisions to approve the well and multi-well battery licences issued for the applications cited above (Applications). The licences were issued on November 22, 2017, allowing Tourmaline to add three additional sweet natural gas wells (B140) at an existing multi-well pad site at 12-07-059-01W6M, and to build a new multi-well gas battery (battery) at 09-12-059-02W6M.

The AER has reviewed Mr. Cowles's submissions and Tourmaline's response submissions. For the reasons that follow, the AER has decided that Mr. Cowles has not demonstrated he is directly and adversely affected by the AER's decision to approve the Applications, and therefore he is not an eligible person. The request for a regulatory appeal is dismissed for the reasons outlined below.

**Reasons for Decision**

The applicable provision of *REDA* in regard to regulatory appeal requests is section 38, which states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules.

The term "eligible person" is defined in section 36(b)(ii) of *REDA* to include:

a person who is directly and adversely affected by a decision [that was made by the AER under an energy resource enactment, if that decision was made without a hearing].

The licences were issued under the *Oil and Gas Conservation Act* which is an energy resource enactment. The decisions to issue the licences are appealable decisions, and the request for a regulatory appeal was filed in accordance with the rules. The substantive issue in this matter is

whether Mr. Cowles is a person who is directly and adversely affected by the AER's decision to issue the licences.

Mr. Cowles' concerns with the wells and battery are stated in a general way. What is missing from his requests is information that provides a demonstrated degree of location or connection between the wells and battery (or any of them) and impacts on him or his trapping activities, so that the AER has reliable information indicating that a reasonable potential or probability exists that the impacts alleged by Mr. Cowles will occur. Instead, Mr. Cowles's concerns are stated in a general sense, as though each of the wells and the battery gives rise to all of the concerns he raises about impacts on his trapping activity and assets.

Mr. Cowles states he has four cabins in his TPA and miles of trails, and that these are affected in an area of a 30 mile radius from Tourmaline's facilities. He indicates that the wells and battery are approximately one kilometre from his main trapping cabin, however, he does not provide information that demonstrates the wells or battery will have a particular impact on him or his activities at that cabin or at any other specific location within his TPA. His concerns are stated in a general way that makes it impossible to discern what impacts are expected at what particular location(s) within his TPA.

Mr. Cowles states that fracking (*i.e.*, hydraulic fracturing) in the area has caused a loss of his water source around his main cabin. He does not provide any information about the water source, the fracturing event or operator responsible for it, or any other details that would permit the AER to verify this part of Mr. Cowles's submission.

The AER notes that other resource companies are active in Mr. Cowles's trapping area, including a forestry company, and that this factor is not addressed by Mr. Cowles. For Mr. Cowles to be granted a regulatory appeal he must demonstrate that *these particular* Tourmaline facilities are responsible for the impacts that he is concerned about: damage to his TPA; the loss of his source of water at his main cabin; the disappearance of fur-bearing wildlife and the diminished resale value of his TPA.

In relation to Mr. Cowles's concerns over a lack of compensation for diminished harvests, loss of resale value of the TPA and costs of maintaining the TPA, the AER does not have authority to require that compensation be paid by Tourmaline to Mr. Cowles for these kinds of losses. In any case, the extent to which these losses are occurring and whether Tourmaline or its personnel are responsible for such losses is not indicated by the information provided to the AER.

In summary, based on the information provided the AER cannot conclude that any of Tourmaline's wells or the battery will directly and adversely affect Mr. Cowles. The fact that Tourmaline is active in the area of the TPA does not, by itself, demonstrate that Tourmaline is or may be responsible for impacts on Mr. Cowles's trapping assets and activities. For this reason, the AER has decided not to grant the requests for regulatory appeals.

The AER also notes that Mr. Cowles has submitted numerous statements of concern and regulatory appeal requests to the AER in connection with various applications and approvals within the area of the TPA. In previous letters to Mr. Cowles conveying the AER's decisions on regulatory appeal requests filed by him, the AER provided the following comments. While each of Mr. Cowles's submissions and requests remains to be considered on its own merits by AER decision-makers, the concerns stated by Mr. Cowles in his various submissions are all general in nature and lack information about site-specific impacts. In order to determine if a hearing is

required on a given application, the AER requires information about specific impacts. Statements of concern and regulatory appeal requests filed by Mr. Cowles often restate exactly what was provided in previous submissions, without making any distinction between the different facilities, activities or even applicants that are involved, and without information about site-specific impacts on Mr. Cowles and/or his activities in the vicinity. As stated previously, the risk to Mr. Cowles proceeding this way arises from section 39(4)(a) of *REDA* and section 6.2(2)(e) of the *Alberta Energy Regulator Rules of Practice*, which permit the AER to disregard concerns or requests that are frivolous or vexatious. The courts have established that repeatedly making the same claim or filing duplicitous claims, as a matter of practice or strategy, is frivolous and vexatious behaviour on the part of a clamant that warrants judicial intervention.

Sincerely,

<Original Signed by>

Richard Tomlins  
Senior Technical Advisor, Industry Operations

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Paul Ferensowicz  
Senior Advisor, Industry Operations