No: _____ Vancouver Registry

In the Supreme Court of British Columbia

Between

Western Canada Wilderness Committee and Sierra Club of British Columbia Foundation

and

Petitioners

Oil and Gas Commission and Encana Corporation

Respondents

PETITION TO THE COURT

ON NOTICE TO:

Oil and Gas Commission

Third Floor 398 Harbour Road Victoria, BC V9A 0B7

Encana Corporation

c/o Paul S. Richardson Floor 25 700 West Georgia Street Vancouver, BC V7Y 1B3

Attorney General

Legal Services Branch Ministry of Justice 1001 Douglas Street, 11th floor Victoria, BC, STN PROV GOVT V8W 9J7

This proceeding has been started by the petitioners for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) File a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) Serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) If you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or
- (d) If the time for response has be set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioners is:
	Morgan Blakley and Karen Campbell
	Barristers and Solicitors
	214-131 Water Street
	Vancouver, BC, V6B 4M3
	Fax number address for service of the petitioners: 604-685-7813
	E-mail addresses for service of the petitioners: mblakley@ecojustice.ca and kcampbell@ecojustice.ca

(3) The name and office address of the petitioners' lawyer is:

Morgan Blakley and Karen Campbell Barristers and Solicitors 214-131 Water Street Vancouver, BC, V6B 4M3

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

- 1. An order declaring that the Oil and Gas Commission's practice of granting approvals under s. 8 of the *Water Act* for more than one term is contrary to s. 8 of the *Water Act* and unlawful.
- 2. An order declaring that the Oil and Gas Commission's practice of granting approvals under s. 8 of the *Water Act* for more than 24 months is contrary to s. 8 of the *Water Act* and unlawful.
- An order quashing the approval contained in OGC File #9635593 that authorizes Encana Corporation to use or divert water from December 5, 2012 to December 4, 2013 at Wasp Lake, with northing and easting coordinates 6151841 – 629414, which is more than one term and more than 24 months.
- 4. An order quashing the approvals listed in Appendix A that authorize Encana Corporation to use or divert water from May 16, 2013 to May 15, 2014 pursuant to OGC File #9638063, all of which are more than one term, and some of which are also more than 24 months.
- 5. An order directing that the Oil and Gas Commission file with the Court the records of decisions, including policies, guidelines or other documents that informed the Oil and Gas Commission in making its decisions regarding the approvals at issue in this proceeding, excluding those materials already contained in the petitioners' affidavits.
- 6. Costs against the Oil and Gas Commission.

- An order that the petitioners be protected from costs in the event that the petition is dismissed.
- 8. Such other and further relief as this Court deems just.

Part 2: FACTUAL BASIS

The Parties

- The Sierra Club of British Columbia Foundation (the "Sierra Club BC") is a federally
 registered charity whose mission is to protect and conserve British Columbia's
 wilderness, species and ecosystems. The Sierra Club BC advocates for the responsible
 development and use of British Columbia's natural resources while protecting British
 Columbia's environment. The Sierra Club BC undertakes public education, engages with
 government decision makers and conducts research on environmental and natural
 resource issues.
- 2. The Western Canada Wilderness Committee (the "Wilderness Committee") is a federally registered charity working to protect Canada's environment. The Wilderness Committee has worked to protect wilderness and biodiversity in British Columbia and western Canada through research and grassroots public education since 1980. The Wilderness Committee seeks to raise public awareness of the environmental impacts of resource extraction activities and advocate for stronger laws and policies to protect the environment and species in British Columbia.
- 3. The Oil and Gas Commission (the "Commission") is generally responsible for the regulation of oil and gas activities in British Columbia and has authority to issue approvals pursuant to s. 8 of the *Water Act*. The Commission's decisions to grant certain approvals pursuant to s. 8 of the *Water Act* are challenged in this proceeding.
- 4. Encana Corporation ("Encana") was granted approvals to use and divert water pursuant to s. 8 of the *Water Act* by the Commission. The petitioners seek to have some of Encana's approvals quashed because they were unlawfully granted by the Commission.

Water concerns related to drilling and fracking

- 5. The petitioners are concerned about the environmental impacts that may result from the significant quantities of fresh water that are being used and diverted from lakes, rivers, streams and source water dugouts in northeast British Columbia for oil and gas production, and in particular, for hydraulic fracturing ("fracking").
- 6. Fracking is a process used to extract natural gas from geological formations that involves injecting large quantities of fresh water, sand and chemicals at high pressure down into wellbores. The pressurized mixture causes the rock layer to fracture and release the natural gas trapped in the formation.
- 7. Among the concerns of the petitioners are the ecological impacts of diverting surface waters from ecosystems in British Columbia; the underground injection of chemicals for use in fracking; and safe disposal of the contaminated flowback water once the drilling and fracking processes have been completed.
- 8. The petitioners are also concerned that the long term impacts of significant water withdrawals for industry use in northeast British Columbia are poorly understood by the Commission and the public. An implication of unlawful water use includes additional pressure on biodiversity and ecosystems that are already under stress from industrial development and climate change.
- 9. The petitioners have a genuine interest in the administration of the *Water Act* and in the regulation and management of the oil and gas industry in British Columbia.

Commission File Data and Approvals

- 10. The Commission routinely grants approvals for the short term use or diversion of water under s. 8 of the *Water Act* ("Section 8 Approvals") for use in oil and gas activities.
- Section 8 Approvals grant the right to use water for oil and gas operations in northeast British Columbia.

- 12. Individual Section 8 Approvals are often granted through bulk authorizations by the Commission. A bulk group of authorizations is contained in an "OGC File". Thus, an OGC File can contain anywhere from 1 to over 100 individual approvals, determined spatially by northing and easting. Northings and eastings are the geographic coordinates used by the Commission.
- 13. The Commission grants repeated Section 8 Approvals that combine to authorize companies to use or divert water for more than one term and for more than 24 months. While no Section 8 Approval singularly exceeds one term or the statutory time limit, multiple approvals are routinely granted over multiple years to the same company, for the same purposes, at the same locations and thereby violate s. 8 of the *Water Act*.
- 14. Sierra Club BC made two separate information requests to the Commission asking for copies of certain Section 8 Approvals to determine whether these approvals were authorizing water use in a manner contrary to the *Water Act*.
- 15. In response to the two requests, the Commission provided copies of 81 OGC Files containing 1,352 Section 8 Approvals (the "Approvals"). The Petitioners then reviewed the information contained in the OGC Files to determine whether water use was being authorized for more than one term or more than 24 months.
- 16. The process of obtaining the Approvals from the Commission was expensive. It was also time consuming and difficult to collate the data from the OGC Files in a useful electronic format.
- 17. The effort expended to collate the data was compounded by the fact that the Water Act was amended on March 28, 2013, while the petitioners were summarizing the data, to extend the time limit for Section 8 Approvals from 12 to 24 months.
- 18. The collated Approvals data shows that:
 - a. The time period for the Approvals spans over seven years. The start date for the earliest Approval is December 8, 2006 and the end date for the latest Approval is May 15, 2014;

- b. The 81 OGC files provided by the Commission grant 1,352 Approvals. 1,121 of the Approvals are repeated and 866 of the repeated Approvals grant the right to use water at a given location for more than 24 months in total;
- c. In other words, 1,121 of the 1,352 Approvals grant the right to use or divert water for more than one term to the same company, for the same purposes, from the same location; which is 83% of the Approvals; and
- d. Similarly, 866 of the repeated Approvals grant the right to use or divert water to the same company, for the same purposes, from the same location, for more than 24 months; which is 64% of the Approvals.
- 19. The Commission practice of granting Section 8 Approvals that combine to exceed one term or the statutory time limit has been ongoing for at least seven years and is a systemic practice by the Commission.
- 20. The petitioners seek to quash active Approvals in OGC Files #9635593 and #9638063 because:
 - a. these are the active approvals that the petitioners have accessed that grant the right to use or divert water for more than one term or for more than 24 months; and
 - b. it is impractical to, and the petitioners do not have the means to, obtain and review all current approvals issued by the Commission.
- 21. The just, speedy, and inexpensive resolution of this case will best be achieved by providing sufficient evidence of the Commission's practices while challenging active Section 8 Approvals granted by the Commission.

Part 3: LEGAL BASIS

The Water Act

1. Currently, the *Water Act* only applies to surface water. Surface waters are generally lakes, rivers and streams. The *Water Act* does not currently apply to ground water, which is

defined in the *Water Act* as water that is below the surface of the ground. As such, unless otherwise specified, all references to water are references to surface water.

- Section 2 of the *Water Act* vests the property in, and right to the use and flow of water in the government except only in so far as private rights have been established under <u>licenses issued</u> or <u>approvals given</u> under the *Water Act*.
- 3. Section 8 of the *Water Act*, an <u>approvals</u> provision, governs the short term use and diversion of water.
- 4. Long term uses of water are governed by the *Water Act*'s <u>licensing</u> provisions, which are generally set out in Part 2 of the *Water Act*.
- 5. Section 8 of the *Water Act* authorizes comptrollers and regional water managers to grant an approval for the use or diversion of water if the use or diversion of water is required for a term not exceeding 24 months. Thus, a water license is required if the use or diversion of water is required for more than one term; and a water license is required if the use or diversion of water is required for more than 24 months.
- Issuing repeated Section 8 Approvals to the same company, for the same location, for the same purposes is inconsistent with the express language and full context of the *Water Act*.

The Commission's Authority and Responsibilities

- Section 8 of the *Oil and Gas Activities Act* delegates to the Commission: authority to issue Section 8 Approvals; responsibility associated with the power to grant Section 8 Approvals; and stipulates that the powers and responsibilities so delegated remain subject to the *Water Act*.
- 8. The Commission cannot grant Section 8 Approvals that violate the Water Act.
- The Commission's practices regarding granting Section 8 Approvals unlawfully permit oil and gas companies to use or divert water for more than one term and for more than 24 months.

Costs

- 10. The petitioners bring this proceeding in the public interest. The issues arising in this proceeding extend beyond the immediate interests of the petitioners.
- 11. The Petitioners assert that it is in the public interest to ensure that where public water resources are allocated to private users, that it is done so in compliance with the law. It is in the public interest to require that the Commission acts within the authority granted to it by the Legislature when granting Section 8 Approvals.
- 12. The petitioners have no personal or pecuniary interest in the outcome of the proceeding and there is no economic justification for the proceeding.

Enactments and Other Grounds Relied Upon

13. The Water Act, RSBC 1996, c. 483

- 14. The Oil and Gas Activities Act, SBC 2008, c. 36
- 15. The Judicial Review Procedure Act, RSBC 1996, c. 241
- 16. The Supreme Court Civil Rules, BC Reg. 168/2009
- 17. Such other enactments and grounds as counsel may identify.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Caitlyn Vernon, made 16/Oct/2013.
- 2. Affidavit #1 of Eoin Madden, made 12/Nov/2013.

The petitioners estimate that the hearing of the petition will take 2 days.

Date: 13/Nov/2013

Signature of lawyers for the petitioner Morgan Blakley and Karen Campbell

of part 1 of this petition
ms:
*
5. A
Signature of [] Judge [] Master

Petition Appendix

	A	Laborate and American	С	D	E	F
1	Approval - OGC File Number	Northing	Easting	Greater than 24 Months (Y/N)	Start Date	End Date
2	9638063	6105545	678521	Y	16-May-13	15-May-14
3	9638063	6106903	679050	Y	16-May-13	15-May-14
4	9638063	6106978		N	16-May-13	15-May-14
5	9638063	6107020	680161	Y	16-May-13	15-May-14
6	9638063	6107203	682213	Y	16-May-13	15-May-14
7	9638063	6107237	682215	N	16-May-13	15-May-14
8	9638063	6108319	682274	N	16-May-13	
9	9638063	6108595	682782	. N	16-May-13	15-May-14
10	9638063	6108907	682815	Y	16-May-13	15-May-14
11	9638063	6109046	685673	N	16-May-13	15-May-14
12	9638063	6109065	683624	Y	16-May-13	
13	9638063	6112070	684154	N	16-May-13	15-May-1-
14	9638063	6112300	688619	Y	16-May-13	15-May-1-
15	9638063	6112391	684073	N	16-May-13	15-May-1
16	9638063	6112686	684334	N	16-May-13	15-May-1
17	9638063	6113936	685580	N	16-May-13	
18	9638063	6114281	685531	N	16-May-13	15-May-1-
19	9638063	6114424	684282	N	16-May-13	15-May-1
20	9638063	6114776	686850	N	16-May-13	
21	9638063	6115053	677300	N	16-May-13	
22	9638063	6115157	678977	Y	16-May-13	
23	9638063	6115404	684435	N	16-May-13	15-May-1
24	9638063	6117047	682884	Y	16-May-13	
25	9638063	6117614	680634	Y	16-May-13	
26	9638063	6117663	680930	Y	16-May-13	15-May-1
27	9638063	6117680	679977	Y	16-May-13	15-May-1
28	9638063	6117989	672609	N	16-May-13	15-May-1
29	9638063	6118219	679864	Y	16-May-13	15-May-1
30	9638063	6118620	686177	Y	16-May-13	
31	9638063	6119324	674984	N	16-May-13	15-May-1
32	9638063	6119516	678107	N	16-May-13	15-May-1
33	9638063	6119845	672326	N	16-May-13	15-May-1
34	9638063	6119848	680849	Y	16-May-13	
35	9638063	6119995	674163	N	16-May-13	
36	9638063	6120569	678147	Y	16-May-13	
37	9638063	6120674	681160	Y	16-May-13	
38	9638063	6120787	672342	N	16-May-13	
39	9638063	6120956		Y	16-May-13	

Petition Appendix

				evo tale al sector e text texts		
	A	В	С	D	E	F
40	9638063	6122136	686011	Y	16-May-13	15-May-14
41	9638063	6122142	671045	N	16-May-13	15-May-14
42	9638063	6122193	671236	N	16-May-13	15-May-14
43	9638063	6122227	687027	Y	16-May-13	15-May-14
44	9638063	6122430	670973	Y	16-May-13	15-May-14
45	9638063	6122996	663621	Y	16-May-13	15-May-14
46	9638063	6123874	670622	Y	16-May-13	15-May-14
47	9638063	6123899	670667	N	16-May-13	15-May-14
48	9638063	6124646	679136	Y	16-May-13	15-May-14
49	9638063	6124743	670521	Y	16-May-13	15-May-14
50	9638063	6125059	671763	N	16-May-13	15-May-14
51	9638063	6127500	684981	Y	16-May-13	15-May-14
52	9638063	6136325	684785	Y	16-May-13	15-May-14
53	9638063	6136468	684713	Y	16-May-13	15-May-14
54	9638063	6140556	633130	Y	16-May-13	15-May-14
55	9638063	6141917	634058	Y	16-May-13	15-May-14
56	9638063	6142612	634289	N	16-May-13	15-May-14
57	9638063	6143384	634223	Y '	16-May-13	15-May-14
58	9638063	6144778	631737	Y	16-May-13	15-May-14
59	9638063	6144892	630376	N	16-May-13	15-May-14
60	9638063	6144984	633825	Y	16-May-13	15-May-14
61	9638063	6145583	635245	N	16-May-13	15-May-14
62	9638063	6146063	627427	N	16-May-13	15-May-14
63	9638063	6147166	636211	Y	16-May-13	15-May-14
64	9638063	6147195	631411	Y	16-May-13	15-May-14
65	9638063	6147702	637317	Y	16-May-13	15-May-14
66	9638063	6148017	636617	Y	16-May-13	15-May-14
67	9638063	6149489	628136	Y	16-May-13	15-May-14
68	9638063	6151024	638991	Y	16-May-13	15-May-14
69	9638063	6151759	650442	Y	16-May-13	15-May-14
70	9638063	6151978	648861	N	16-May-13	15-May-14
71	9638063	6152212	643305	Y	16-May-13	15-May-14
72	9638063	6152624	631536	N	16-May-13	15-May-14
73	9638063	6152671	642365	Y	16-May-13	15-May-14
74	9638063	6153481	630968	N	16-May-13	15-May-14
75	9638063	6154236	640299	N	16-May-13	15-May-14
76	9638063	6154932	629836	N	16-May-13	15-May-14
77	9638063	6155307	625666	Y	16-May-13	15-May-14
78	9638063	6156041	628088	Y	16-May-13	15-May-14
79	9638063	6159065	651924	Y	16-May-13	15-May-14
80	9638063	6159516	651823	Y	16-May-13	15-May-14
81	9638063	6161057	637628	Y	16-May-13	15-May-14

Petition Appendix

	A	В	C	D	E	F
82	9638063	6161824	627921	Y	16-May-13	15-May-14
83	9638063	6161963	627138	Y	16-May-13	15-May-14