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COURT

COURT OF QUEEN'S BENCH OF ALBERTA IN  
BANKRUPTCY AND INSOLVENCY  
CALGARY

JUDICIAL CENTRE

PROCEEDINGS

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF MANITOK ENERGY INC.

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF RAIMOUNT ENERGY CORP.

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF CORINTHIAN OIL CORP.

RESPONDENT

ALBERTA ENERGY REGULATOR

DOCUMENT

**BRIEF OF THE RESPONDENT**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**ALBERTA ENERGY REGULATOR**  
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## I. INTRODUCTION

1. This Brief is submitted by the Alberta Energy Regulator (the “AER”) in its capacity as the regulator of upstream oil and gas development throughout its life cycle in Alberta and a stakeholder in the Manitok Energy Inc. (Manitok) receivership (Receivership).
2. The AER supports the position of the Receiver that the End of Life Obligations must be paid out of the estate funds in preference to the Lien Claims. The Supreme Court of Canada in *Orphan Well Association v. Grant Thornton Ltd.* 2019 SCC 5 (*Redwater*) affirmed the AER’s regulatory ability to enforce regulatory requirements regarding outstanding environmental liabilities to the maximum extent possible in insolvencies, prior to distribution of funds to creditors.
3. The AER also files this Brief to set out the various orders and regulatory steps that it took in the Manitok Receivership.

## II. FACTS

### A. Background

4. Manitok Energy Inc. (“Manitok”) is insolvent and Alvarez & Marsal Canada Inc. (the Receiver) was appointed on February 20, 2018 as Receiver and Manager.
5. Manitok is an AER licensee that at the time of its insolvency held AER licences for 907 wells, 137 facilities plus pipelines.<sup>1</sup>

### B. AER Mandate and Practices

6. The AER was established by the *Responsible Energy Development Act (REDA)* and acts as the single regulator of all upstream oil and gas activities in the Province of Alberta.<sup>2</sup> The AER’s mandate includes providing “efficient, safe, orderly and environmentally responsible development of energy resources in Alberta.”<sup>3</sup>
7. In carrying out its mandate, the AER establishes rules and issues licences, approvals, permits, orders, decisions and directions in furtherance of the purposes of the AER

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<sup>1</sup> Affidavit of Laura Chant, para. 3.

<sup>2</sup> Affidavit of Laura Chant, para. 2.

<sup>33</sup> Section 2, *Responsible Energy Development Act (REDA)*, SA 2020, c. R-17.3

administered legislation including the Oil and Gas Conservation Act (OGCA).<sup>4</sup> The AER also enforces the requirements of its administered legislation.

8. The AER will not grant a company a licence under its administered legislation unless that company assumes the end of life obligations for plugging and capping oil wells to prevent leaks, dismantling surface structures and restoring the surface to its previous condition. These environmental obligations are known as “abandonment” and “reclamation”.<sup>5</sup>
9. A licensee must abandon a well or facility when ordered to do so by the Regulator or when required by the rules or regulations. The Regulator may order abandonment when “the Regulator considers that it is necessary to do so in order to protect the public or the environment.”<sup>6</sup> Under the rules, a licensee is required to abandon a well or facility, *inter alia*, on the termination of the mineral lease, surface right or right of entry, where the Regulator cancels or suspends the licence or where the Regulator notifies the licensee that the well or facility may constitute an environmental or safety hazard.<sup>7</sup> Section 23 of the *Pipeline Act* requires licensees to abandon pipelines in similar situations.<sup>8</sup> The duty to reclaim is established by s. 137 of EPEA.
10. As described in *Redwater*, in the case of an insolvency, the OGCA, the *Pipeline Act* and EPEA all contemplate that a licensee’s regulatory obligations will continue to be fulfilled.<sup>9</sup> The definitions of “licensee” in the OGCA and Pipeline Act and “operator” in the EPEA explicitly include receivers, receiver-managers and trustees.<sup>10</sup>
11. In a receivership, following the discharge of the Receiver, who is no longer providing control or possession over the discharged sites associated with AER licences, the enforcement process results in the issuance of the abandonment orders to the licensee and any remaining working interest participants (WIPs), as well as reclamation orders directed to the licensee.<sup>11</sup>
12. Where there were no remaining responsible parties, the AER designated the sites as “orphan” to enable the abandonment and reclamation work to be conducted by the Orphan Well Association (“OWA”).<sup>12</sup>
13. Once the OWA has completed its environmental work, it may be reimbursed for its costs. The AER looks first to the estate proceeds to address the licensee’s remaining environmental obligations.<sup>13</sup> Only where the estate proceeds are inadequate to address

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<sup>4</sup> *Oil and Gas Conservation Act* (OGCA), R.S.A. 2000, c. O-6

<sup>5</sup> OGCA, s. 1(1)(b) and *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, s. 1(ddd).

<sup>6</sup> OGCA, s. 27(3)

<sup>7</sup> *Oil and Gas Conservation Rules* (OGCR), Alta. Reg. 151/71, s. 3.012).

<sup>8</sup> *Pipeline Act*, (Pipeline Act) R.S.A. 2000, c. P-15.

<sup>9</sup> *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, at para. 21.

<sup>10</sup> OGCA, s. 1(1)(cc), Pipeline Act, s. 1(1)(n) and EPEA, s. 134(b)(vi).

<sup>11</sup> Affidavit of Laura Chant, at para. 8.

<sup>12</sup> OGCA, s. 70(2)(a).

<sup>13</sup> Affidavit of Laura Chant, at para. 18.

the licensee's end of life obligations will the use of the "orphan fund" under s. 70 of the OGCA be considered.

### **C. Developments Subsequent to the Partial Discharge Order**

14. The Receiver in Manitok implemented a court-approved sales process for Manitok's oil and gas properties. As discussed in the Receiver's Ninth Report and subsequent reports, the AER worked with the receiver to pursue marginally or non-accretive sales to reduce the number of unsold assets and therefore reduce any remaining end of life obligations in the estate.<sup>14</sup>
15. At the completion of the Court-approved sale process, there remained a significant amount of unsold property, including oil and gas assets (the "Unsold Assets"). On July 9, 2019, the Court granted the Receiver a partial discharge over the Unsold Assets (Partial Discharge Order).<sup>15</sup> As described in the Receivers' 11th and 15th Report, the Receiver further advised that there were insufficient funds remaining in the estate to address the end of life obligations of those assets that remained unsold.<sup>16</sup>
16. After the Partial Discharge Order was granted, the AER commenced enforcement proceedings. It issued abandonment and reclamation orders to Manitok and WIPs.<sup>17</sup> It also orphaned assets where no responsible party remained and directed the OWA to abandon and reclaim those assets.<sup>18</sup>
17. Pursuant to the Court's Third and Fourth Interim Distribution Orders on October 16, 2019, and the confidential distribution agreement entered into between the National Bank of Canada and the AER, the AER received the distribution of some funds from the sales of the Manitok assets.<sup>19</sup> These funds will be held in trust by the AER for Manitok and applied against the costs incurred by the OWA in abandoning and reclaiming those Manitok assets that were orphaned to them, or where the OWA has reimbursed the WIP for Manitok's proportionate share of abandonment and/or reclamation costs incurred.<sup>20</sup> As the Receiver advised in its Fifteenth Report, total realizations from the Receivership will be substantially less than the cost of satisfying the end of life obligations associated with the Unsold Assets.<sup>21</sup>

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<sup>14</sup> Receiver's Ninth Report, dated June 25, 2019, at paras 10(h), 17-20, 24, 28-31.

<sup>15</sup> Partial Discharge Order, granted and filed July 9, 2019.

<sup>16</sup> Receiver's Eleventh Report, dated September 12, 2019, at para. 28 and Receiver's Fifteenth Report, dated September 18, 2020, at para. 16.

<sup>17</sup> Affidavit of Laura Chant, paras. 10-11, 13-15.

<sup>18</sup> Affidavit of Laura Chant, paras. 9, 12, and 16.

<sup>19</sup> Third and Fourth Interim Distribution Orders, granted October 16, 2019 (filed October 17, 2019).

<sup>20</sup> Affidavit of Laura Chant, para. 17.

<sup>21</sup> Receiver's Fifteenth Report, dated September 18, 2020, at para. 16.

### III. ISSUE

The Receiver, Prentice and Riverside have agreed on the sole issue to be determined, which is the following:

*Whether end of life obligations associated with the abandonment and reclamation of unsold oil and gas properties must be satisfied by the Receiver from Manitok's estate in preference to satisfying what may otherwise be first-ranking builders' lien claims based on services provided by the lien claimants before the receivership date.*

### IV. ANALYSIS

#### A. Priority of End of Life Obligations under Redwater SCC

The AER adopts the analysis of the Receiver with respect to the priority of end of life obligations under the Supreme Court of Canada's decision in *Redwater*.

### V. RELIEF SOUGHT

The AER supports the Receiver's application and the request for an order determining that End of Life Obligations must be paid in preference to the Lien Claims and authorizing the release of the Lien Holdbacks to become general estate funds.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF OCTOBER 2020

ALBERTA ENERGY REGULATOR



Maria Lavelle  
Legal Counsel