February 9, 2023

The Honourable Danielle Smith

Premier of Alberta

Office of the Premier

307 Legislature Building

10800 – 97 Avenue

Edmonton, AB T5K 2B6

EMAIL: premier@gov.ab.ca

Dear Premier Smith,

Re: Trident Exploration Receivership & Positions Taken By the Alberta Energy Regulator ("AER") and Orphan Well Association ("OWA")

The Counties of Stettler and Woodlands (the "Municipalities") write this joint letter as a follow-up to our previous letter of April 6, 2021, respecting their efforts to recover unpaid property taxes from Trident Exploration. A copy of our April 6, 2021 letter is enclosed for reference. We write to advise you of a recent decision of the Court of King's Bench that will further impair the ability of municipalities to recover unpaid taxes on oil and gas properties.

Update: The Conclusion of Trident Exploration's Receivership

In our prior letter, we noted that:

- Trident Exploration, which owes an estimated $7 million in taxes to the Municipalities collectively, was placed into receivership and its assets sold with the goal of reducing Trident's unfunded end-of-life obligations (also called Abandonment and Reclamation Obligations ("ARO")) as directed by the AER.

- Approximately half of the $7 million in outstanding taxes arose after the receivership began, during the course of the sales process conducted for the benefit of the AER (in which the taxed oil and gas assets were kept in an assessable and taxable state).

- A significant portion of these post-receivership taxes were levied in relation to assets that were ultimately sold as part of the sales process – the sale of those assets contributed directly to the benefits generated from those sales (including the reduction in ARO).

- Although approximately $900,000 in net proceeds had been realized from the sales process, the AER and OWA took the position that the Municipalities should receive **none** of these proceeds, and that such proceeds should instead generally be directed to the OWA. In other words, all municipal taxes that lawfully accrued during the nearly two-year sales process for Trident's oil and gas assets, conducted for the AER and OWA's benefit, were to be ignored in their view.

Since our prior letter, the AER and OWA took aggressive steps to argue their position before the Court of King's Bench, forcing the Municipalities to defend their claims for post-receivership taxes before the Court. That resulted in the decision of *Orphan Well Association v. Trident Exploration Corp.,* 2022 ABKB 839 ("*Trident*"), a copy of which is also enclosed.

The *Trident* Decision

In the Municipalities' respectful view, the *Trident* decision should be a significant concern not only to all rural municipalities in Alberta, but to all Albertans.

In *Trident,* the AER and OWA were successful in establishing that *all* funds realized through a receivership should be paid towards unfunded ARO, ahead of even property tax obligations that arose *as a result of the receivership process*. The Court held that they were entitled to all of the sales proceeds in priority to the Municipalities, owing to their "super priority" for ARO granted by the Supreme Court of Canada case of *Orphan Well Association v. Grant Thornton Ltd.,* 2019 SCC 5 (the "*Redwater*" decision). In other words, the Municipalities were entitled to nothing and all their post-receivership taxes would go unpaid.

Previously, it had been unclear what the status of post-receivership taxes were in light of *Redwater* – it was known that all taxes accruing from *before* the receivership would be subordinate to the AER and OWA's super priority, but post-receivership taxes were a different matter – however, this case determined that even post-receivership taxes (which only arise *because of the insolvency*) must be left entirely unaddressed in the face of any outstanding ARO.

The *Trident* decision also determined that the AER and OWA are entitled to call upon *all* proceeds of the Trident estate to be directed to ARO, *regardless* of what assets those proceeds were derived from. Even real property and equipment not subject to AER regulation – the Trident estate

included an office building located in Fort Assiniboine – were held to be subject to the AER's super-priority. This is notable because in the recent case of *Manitok Energy Inc. (Re),* 2022 ABCA 117, the Court of Appeal left the door open to the notion that assets "completely unrelated to the oil and gas business" (see paragraph 36 of that decision) may not need to be directed to ARO; now *Trident* seems to have shut that door, to the detriment of Municipalities and other stakeholders with interests in such assets.

We note that at the outset of the Trident receivership, the AER and OWA allowed the receiver to pay the pre-receivership taxes on the Fort Assiniboine office building to Woodlands County; in the wake of *Trident,* it now appears that this would no longer happen, and that even taxes on *parcels of land* must be subordinated to ARO. This places municipalities with significant landholdings owned by oil and gas companies into a position of risk, since if those companies become insolvent, the outstanding taxes on those lands must now rank behind the AER and OWA.

Our Concerns

Ultimately, the *Trident* decision represents a continuation and an expansion of the same highly concerning trend that we noted in our previous letter, whereby it is municipalities (and other stakeholders) who are forced to bear the burden of unfunded ARO in place of the OWA, which was intended to be the industry-funded insurer of unfunded ARO. This was expressly acknowledged by the Court in *Trident,* which stated:

> [66] In my view, *Redwater* shifts liability from "polluter-pay" to "everyone pays," starting with all of those who have suffered financial losses in dealing with the insolvent company, and ending with the OWA, which spreads remaining losses between the Province of Alberta and industry.

The intent of the AER's liability management regime was to require specific oil and gas companies to pay for their own end-of-life obligations, and for the OWA – with the support of industry funding through the AER-enforced OWA levy – to step in where they cannot. But instead, "polluter pays" has become "everyone pays, and the industry pays last". Municipalities, their ratepayers, and other Albertan individuals and entities must now bear the burden of unfunded ARO ahead of the OWA and the industry it was intended to backstop.

And now, per *Trident,* this burden must be borne in even more situations than thought previously. Even assets that are wholly unregulated and unrelated to oil and gas activities must be diverted to the OWA's cause first. And even tax debts that accrued *during* a receivership process conducted *for the express purpose of furthering the AER and OWA's interests* need not be paid.

That the oil and gas industry, through the mechanism of the OWA, has such broad power to foist its liabilities onto other stakeholders (including entirely involuntary ones like municipalities) is unfair at the best of times. It is even more unfair following a year like 2022, where many oil and

gas companies enjoyed record profits, while municipalities and others saw their budgets strained by record inflation.

The Municipalities respectfully submit that a legislative or policy solution is needed to ensure that the industry is held accountable for its own environmental liabilities, and is no longer able to simply offload them onto other stakeholders using the mechanism of the OWA and the *Redwater* super priority.

Court's Comments on Municipal Tax Fairness

The Court in *Trident* also commented on the fact that, because Trident's oil and gas assets were not abandoned during the receivership, they were still assessed by the Provincial Assessor and required to be taxed by the Municipalities (and incorporated into their annual budgets), even though the Municipalities could not recover those post-receivership taxes in the wake of Trident's outstanding ARO.

At paragraphs 81-82 of its decision, the Court noted that this situation "appears to place rural municipal governments in a very unfair position *vis-à-vis* the Province of Alberta". It further stated that "it seems to me that there is a structural unfairness at play here from a municipal taxation and finance perspective as between the provincial government and rural municipalities. If that is indeed the case, it needs to be addressed by the Province of Alberta."

In general, we would respectfully agree with the Court's statements. While the Municipalities appreciate that efforts have been made to address these concerns that the Court does not reference – such as the Provincial Education Requisition Credit ("PERC") program – the AER and OWA's super priority has nevertheless created a highly challenging situation for municipalities. Where an oil and gas company has become insolvent, and the AER and OWA appoint a receiver to conduct a sales process of the company's assets, municipalities are obligated to tax those assets and prepare its budget on the basis that it will receive those taxes – even though in light of *Redwater* and now *Trident,* we know that it will not. The result is unavoidable shortfalls in the municipality's operating budget, which must be made up (and paid by other ratepayers) in a subsequent year in accordance with section 244 of the *Municipal Government Act.*

We would invite the Province to consider legislative intervention to address this issue, including by providing municipal taxes with greater priority in the face of the AER's claims for unfunded ARO, and by altering how assets held within an oil and gas receivership form part of a municipality's assessment and tax base.

Conclusion

We hope that the result in *Trident* will raise general awareness of the impact that the actions of the AER, and its delegate the OWA, have had on municipalities in Alberta. To this point, when municipalities have expressed concern to the AER about these issues, the AER has generally

treated them as suggesting that the AER should do their tax recovery work for them. This is reflected on the AER's website, where they include a notice that "The AER is not involved with the collection of unpaid municipal taxes… and does not have jurisdiction to take compliance or enforcement actions related to non-payment. Municipalities continue to be responsible for the collection and enforcement of their municipal taxes" (https://www.aer.ca/providing-information/by-topic/liability-management).

These statements fail to acknowledge the underlying problem that, through its zealous efforts to ensure that all of an oil company's other obligations are subordinate to ARO, the AER is *actively impeding* the ability of municipalities to recover unpaid taxes.

We hope that the Province will appreciate the significant unfairness represented by this situation and by the current state of the law, and would be willing to engage with us, other municipalities, and other stakeholders to explore solutions to these important issues. We look forward to working with the Province to ensure that Alberta's future is one where its oil and gas industry and its municipalities are both able to thrive. We look forward to any opportunity we may have to discuss these matters further.

Regards,

Larry Clarke, Reeve
Stettler County

John Burrows, Reeve
Woodlands County

Enclosures

April 6, 2021 Correspondence
Orphan Well Association v. Trident Exploration Corp., 2022 ABKB 839

cc:

Rebecca Schulz, Minister of Municipal Affairs
Peter Guthrie, Minister of Energy
Nate Horner, Minister of Agriculture and MLA for Stettler-Drumheller
Martin Long, MLA for West Yellowhead
Glenn van Dijken, MLA for Athabasca-Barrhead-Westlock
Paul McLauchlin, President, Rural Municipalities of Alberta (pmclauchlin@rmalberta.com)
RMA Member Municipalities

Court of King's Bench of Alberta

Citation: Orphan Well Association v Trident Exploration Corp, 2022 ABKB 839

Date:
Docket: 1901 06244
Registry: Calgary

Between:

Orphan Well Association

Applicant

- and -

Trident Exploration Corp., Trident Exploration (WX) Corp., Trident Exploration (Alberta) Corp., Trident Limited Partnership, Trident Exploration (Aurora) Limited Partnership I, Trident Exploration (2006) Limited Partnership I, and Fenergy Corp.

Respondents

Reasons for Decision
of the
Honourable Justice R.A. Neufeld

I. The Trident Insolvency

[1] Trident is a group of privately-owned oil and gas exploration and production companies and partnerships. As of May 2019, it held interests in approximately 4500 petroleum and natural gas wells across Alberta, of which 3700 were licenced to Trident as operator.

[2] On April 30, 2019, Trident issued a press release which advised that:

1) It had been engaged in discussions with the Alberta Energy Regulator (AER) and its lenders regarding restructuring, but without success;

2) As of April 30, 2019, its directors and management had resigned, and Trident had ceased operations and terminated all employees and contractors.

[3] Trident's primary obligations at the time consisted of:

1) Abandonment and reclamation obligations (ARO) associated with wells, facilities and pipelines estimated at $407,000,000;

2) Secured debt in the amount of $71,106,000;

3) Unsecured trade debts in the amount of $18,920,921.

[4] The effect of Trident's decision was to walk away from its obligations. Its licences were turned back to the AER, and its ARO would be assumed by the Orphan Well Association (OWA): *Orphan Fund Delegated Administration Regulation*, Alta Reg 45/2001, s 3(1).

[5] The AER, assisted by former (and unpaid) Trident employees and contractors attended to the immediate task of safely suspending Trident's field operations.

[6] The OWA took the unusual step of applying to this Court for an order appointing a Receiver.

[7] Historically, such an order would have been sought by secured creditors, but with the evolution of case law recognizing a "super priority" for environmental remediation (including ARO for oil and gas operations) and the magnitude of Trident's ARO, a different approach was considered appropriate.

II. Mandate of the Receiver

[8] The primary objective of the Receivership was to reduce the Trident ARO that would ultimately rest with the OWA. This was to be accomplished by selling the Trident assets to solvent oil and gas companies who were willing and able to assume environmental liability for the assets involved.

[9] The sales process was presented to the Court for approval. As asset sales were made, they too were presented to the Court for approval such that ownership of purchased assets would vest free and clear of all claims. These approvals were all granted without opposition as the process unfolded.

[10] At the outset, the Receiver sought advice from the sales agent, Veracity, about whether certain Trident licenced oil and gas assets should be operated pending sale to generate cashflow. The Receiver reported to the Court that, as part of its analysis, it considered all costs that would be incurred if operations were restored, including property taxes among other variable costs.

[11] The Receiver concluded that it would be uneconomic to operate Trident's assets and focused only on immediate steps for ensuring safe shut-in. As a result, throughout the Receivership proceedings, the Receiver did not pay other post-filing operational expenses, similar in nature to property taxes that would be incurred by a normal oil and gas company, including surface rentals, AER/OWA levies and payments for mineral leases, among other variable costs.

[12] When licenced oil and gas assets were sold, the purchaser assumed the ownership liabilities and ARO for those assets. The terms of sale did not include assumption of outstanding

municipal tax obligations or purchase price adjustments in that regard. However, all 19 affected municipalities were given notice of applications within the Receivership proceedings.

[13] A different approach was used in the sale of two real estate parcels which did not contain licenced oil and gas assets. Those sales contained adjustments for outstanding municipal taxes as is standard real estate conveyancing practice.

III. Current Status

[14] The Receiver reported in its August 15, 2022, Supplement to the 8th Report of the Receiver, that it views the sales process as successful because an estimated $266,000,000 (or 66%) of Trident's ARO was transferred to solvent oil and gas producers. This resulted in the continued operation of a significant number of assets to the benefit of all stakeholders. A further $5,000,000 was applied for and received under the Federal Site Rehabilitation Program, which was sufficient to partially abandon approximately 300 wells.

[15] At present, the Receiver holds approximately $900,000 in remaining funds, some or all of which was generated through the sale of non-licenced assets owned by Trident, such as real estate and machinery. The Receiver seeks advice and direction regarding the distribution of those funds. The AER/OWA contend that they should receive the funds pursuant to their super priority recognized in recent case law. The County of Kneehill, the County of Stettler and Woodland County argue that they should share in the proceeds as they also have a priority arising out of unpaid municipal taxes for Trident wells, pipelines and production facilities that accrued post-Receivership. The counties will be collectively referred to as the "Municipalities".

IV. Issues

[16] The Receiver's request for advice and directions raises two issues:

1) whether the AER/OWA is entitled to call on the proceeds of sale of all of Trident's assets, including realty; and

2) whether such entitlement takes precedence over municipal tax obligations that were incurred post-receivership in relation to licenced oil and gas wells pipelines and production facilities. If not, should the remaining funds be shared between the AER/OWA and the Municipalities?

[17] I have determined that the answer to both questions is yes. The AER/OWA is entitled to call on the proceeds of sale from all of Trident's assets and their entitlement takes precedence over municipal tax obligations because of the AER/OWA super priority over the funds in question.

V. Entitlement of the AER

[18] In recent years, the obligation of Receivers to undertake abandonment and reclamation of oil and gas facilities before distribution of funds to creditors has been widely characterized as a "super priority." To understand why that is so, it is necessary to first review the process used under the *Bankruptcy and Insolvency Act,* RSC 1985 c B-3 [*BIA*], as amended for resolving claims against the debtor's estate.

A. Insolvency Process

[19] Under the *BIA*, the monetization of assets and distribution of funds to creditors is done in a common proceeding. Existing actions against the debtor are stayed. Creditors are given the opportunity to submit claims for amounts owed at the time of bankruptcy or receivership. The trustee or receiver, whichever it may be, is tasked with monetizing the assets of the estate and considering the validity of the claims. That is, whether the debts alleged are owed and in what amount. The trustee or receiver may seek advice and directions on these issues, and to facilitate the monetization of assets, may obtain orders approving a sales process and individual sales so as to vest the assets in the purchaser free and clear of claims.

[20] Throughout the process, interested stakeholders are given notice of applications within the insolvency proceeding and an opportunity to participate.

[21] From time to time, the trustee or receiver may also seek approval to make interim distributions to creditors having provable claims and advice and direction regarding matters such as the validity of securities, the priorities among creditors and the interim or final distribution of estate proceeds.

[22] Not all obligations owed by a debtor will give rise to a claim provable in bankruptcy. Provable claims are defined at *BIA* s. 121(1) to be:

> All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[23] Non-provable claims will continue after the insolvency proceeding has been completed. With the lifting of the stay of proceedings, they may continue to be pursued in the normal course. They cannot, however, be resolved within the insolvency process itself.

B. Abandonment and Reclamation Obligations

[24] The appropriate treatment of environmental obligations of an estate in bankruptcy or receivership within the common proceeding rubric has been the subject of considerable debate and jurisprudence in recent years.

[25] A series of cases decided by the Supreme Court of Canada and the Alberta Court of Appeal have provided direction.

1. *Northern Badger*

[26] The first was ***Pan Americana de Bienes y Servicio v Northern Badger Oil & Gas Limited***, 1991 ABCA 181 [***Northern Badger***]. In that case, a creditor of Northern Badger obtained a receivership order and subsequently a bankruptcy order.

[27] Northern Badger was the licenced operator of 33 wells. Northern Badger's receiver agreed to sell 21 wells and advised the Energy Resources Conservation Board (ERCB) shortly after the sales agreement that the remaining 12 wells had not been sold. In result, 7 wells were passed back to the receiver. When the receiver sought a discharge and proposed to distribute remaining cash on hand ($226,000) to Pan Americana, the ERCB responded by obtaining an order in council requiring the receiver to abandon the 7 wells at an estimated cost of $220,000.

[28] Pan Americana challenged the constitutionality of the abandonment order, arguing that Alberta could not compel a receiver/manager to incur abandonment costs that would be at the expense of secured creditors as this would violate the priorities stipulated under the federal *BIA*. The chambers judge agreed and directed the receiver/manager to disregard the provincial abandonment order.

[29] The Alberta Court of Appeal overturned the decision of the chambers judge. The Court held that the ERCB was not acting as a creditor in issuing the order. Rather, the ERCB was enforcing a public law. The ERCB could have become a creditor if it had undertaken the abandonment itself, and thereby become a creditor by virtue of the provisions of the *Oil and Gas Conservation Act*, RSA 2000, c O-6 [*OGCA*]. But the ERCB had not done so.

[30] The Court went on to hold that a court-appointed receiver has an obligation to obey laws of general application. The receiver is not entitled to pick and choose only profitable wells for operation and sale, leaving behind wells whose environmental liabilities exceed potential revenue for the benefit of secured creditors. In result, the receiver/manager was found to be personally liable for the abandonment costs – a finding that created considerable controversy in the financial and insolvency fields.

[31] Following ***Northern Badger***, the *BIA* was amended to shield receivers from personal liability. The debate continued, however, about how environmental orders issued by regulatory authorities were to be characterized within an insolvency proceeding. That is, whether such orders created obligations to the public writ large or could or should be subject of proof in an insolvency proceeding (either as a subsisting debt or obligation that can be translated to a monetary value).

2. *Abitibi*

[32] The answer to that question was provided by the 2012 decision of the Supreme Court in ***Newfoundland and Labrador v AbitibiBowater Inc***, 2012 SCC 67 [***Abitibi***].

[33] Abitibi was a multi-national company that had operated a pulp and paper business in Newfoundland and Labrador for over 100 years. The company was in financial distress. It made a proposal for insolvency protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [*CCAA*], and closed its operations in the province, which put many people out of work.

[34] The provincial government responded with legislation expropriating Abitibi's assets and made known its intent to undertake remediation of the expropriated lands. It then issued a series of orders requiring the company to conduct that remediation.

[35] The chambers judge presiding in the *CCAA* proceeding found that when the remediation orders were issued, it was fully expected that the government would be remediating the Abitibi sites. The purpose of the orders was to obtain funds from the Abitibi estate to defray the cost of remediation.

[36] The Supreme Court affirmed that an environmental remediation order can constitute a monetary claim in some circumstances. When it does, it is subject to resolution within an

insolvency proceeding, and has no higher priority than that accorded to environmental claims in the *CCAA vis-à-vis* the claims of other creditors.

[37] To determine whether an environmental protection order is, in substance, a provable claim, the Court must assess: (1) whether the regulator has advanced a claim as a creditor; (2) whether the asserted debt, liability or obligation, existed at the time of insolvency; and (3) whether it is possible to assign a monetary value to the claim: at para 26. The Court held that each criterion was met given the findings of fact made by the *CCAA* court.

[38] Accordingly, the Newfoundland and Labrador claim was subject to the *CCAA* proceeding, and the priorities established under the *CCAA*: at para 19.

3. *Redwater*

[39] While not necessarily inconsistent with the reasoning of the Alberta Court of Appeal in ***Northern Badger***, the approach used in ***Abitibi*** created uncertainty regarding the treatment of abandonment and reclamation orders in insolvency proceedings for Alberta oil and gas companies.

[40] Although subject to environmental laws of general application, the primary regulator of oil and gas exploration and production activities in Alberta is the AER, a successor to the ERCB involved in the ***Northern Badger***. The AER administers a program designed to ensure, at the licencing (and licence transfer) stage, that operators will have sufficient liquidity to meet end-of-life obligations at wells, production facilities and pipelines. When an insolvency occurs, the AER may, as a matter of practice, participate in the proceedings as an interested party, including reviewing proposed asset dispositions and deciding on licence transfer requests. It may also issue formal abandonment and reclamation orders. If licences are ultimately turned back to the AER by a receiver as unmarketable, the abandonment and reclamation responsibility transfers to the OWA.

[41] The OWA is established under Alta Reg 45/2001. It operates under the aegis of the AER, and is jointly funded by government and industry.

[42] Given the Supreme Court's reasoning in ***Abitibi***, it was uncertain whether ARO's would in substance constitute provable claims in an insolvency or create binding but non-monetary regulatory obligations. If the former, the AER would be subject to the proof of claim and priorities process. If the latter, its orders would need to be complied with to the extent possible before distribution of funds and creditors.

[43] This uncertainty was addressed in ***Orphan Well Association v Grant Thornton Ltd***, 2019 SCC 5 [***Redwater***].

[44] Redwater was an oil and gas exploration and production company. It owned a variety of wells, production facilities and pipelines. Some had value greater than their estimated abandonment and reclamation costs. Some did not.

[45] On insolvency, Redwater's receiver sought approval of a sales process that would allow the receiver to sell economic assets and renounce and disclaim uneconomic assets. The AER responded with abandonment orders for the assets which the receiver sought to renounce. The chambers judge declared that disclamation was allowed and the receiver was not subject to any obligations under the Abandonment Orders for disclaimed assets pursuant to s. 14.06(4)(a)(ii)

and (c) of the *BIA*. The chambers judge concluded that, in the circumstances, the Abandonment Orders were intrinsically financial according to the ***Abitibi*** test and therefore subject to the statutory claims and priorities process.

[46] The Alberta Court of Appeal upheld the decision of the chambers judge: ***Orphan Well Association v Grant Thornton Limited***, 2017 ABCA 124. Speaking for the majority, Slatter J.A. found that there was sufficient certainty of abandonment and reclamation taking place. The AER was a creditor notwithstanding the interposition of the OWA in the eventual abandonment and reclamation activities themselves. Justice Martin (as she then was) disagreed, stating as follows:

> The province has to be able to maintain control over the transfer of well and pipeline licences during a bankruptcy and there is no reason why that regulatory requirement cannot co-exist with the distribution of a debtor's estate. The trustee must comply with the licensing requirements during the bankruptcy process. The trustee cannot, for example, transfer AER-issued well licences to an unqualified licensee; AER approval is required for any transfer. Similarly, the trustee must comply with the LLR program when seeking to transfer licences. The requirement to post security as part of the licence transfer is not, in my view, a "debt" owed to the AER or the province. It is part of the conditions attached to the licence. The AER does not become a creditor when it seeks to enforce the licence conditions, whether it does so by the issuance of abandonment orders or otherwise. On appeal to the Supreme Court, it was held that the Abandonment Orders did not fit within the ***Abitibi*** test. The AER was acting as a regulator, in pursuit of the environmental protection, not as a creditor, who stood directly gain in the outcome, as was the case in ***Abitibi***.

[47] The Supreme Court of Canada overturned the Court of Appeal, agreeing with the dissent. Chief Justice Wagner, for the majority, explained at paras 135 and 136:

> Based on the analysis in *Northern Badger*, it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims". I do not intend to suggest, however, that a regulator will be a creditor only where it acts exactly as the province did in *Abitibi*. There may very well be situations in which a regulator's actions fall somewhere between those in *Abitibi* and those in the instant case. Notably, unlike some previous cases, the Regulator has performed no environmental work itself. I leave such situations to be addressed in future cases in which there are full factual records. Here, it is clear that the Regulator is seeking to enforce Redwater's public duties, whether by issuing the Abandonment Orders or by maintaining the LMR requirements. The Regulator is not a creditor within the meaning of the *Abitibi* test.
>
> I reject the suggestion that the foregoing analysis somehow overrules the first prong of the *Abitibi* test. The facts in *Abitibi* were not comparable to the facts of this appeal. Although this Court discussed *Northern Badger* in *Abitibi*, it merely referenced the subsequent amendments to the *BIA*, and did not overturn the earlier

> decision. The Court was clear that the ultimate outcome "must be grounded in the facts of each case" (para. 48). The dissenting reasons claim that, given the foregoing analysis, it will be nearly impossible to find that regulators are ever creditors. *Abitibi* itself shows this not to be the case. Furthermore, as I have said, there may well be cases that fall between *Abitibi* and the present case. However, if *Abitibi* is read as requiring only a determination of whether the regulator has exercised an enforcement power, it will in fact be impossible for a regulator *not* to be a creditor. The dissenting reasons do not seriously deny this, merely suggesting that regulators can publish guidelines or issue licences. The Regulator does both, yet, under the approach taken in the dissenting reasons, it is powerless to take any practical steps in the public interest regarding its guidelines or licences without qualifying as a creditor. As I have explained, *Abitibi* clearly contemplates a place for regulators who are not creditors.

[48] In making this finding, the Supreme Court made it clear that the basic legal and policy considerations articulated in ***Northern Badger*** had not changed and did so with specific reference to Alberta's orphan well program. It is clear therefore that abandonment of oil and gas wells in Alberta is considered an overarching public duty. The Regulator does not become a creditor in enforcing such obligations and is not advancing a "non-provable" claim against the estate on behalf of the public. The Regulator may become a creditor if it incurs costs and asserts a statutory debt, but that is a choice for the Regulator to make.

[49] These underlying legal and policy principles were reinforced and restated in a recent decision of the Alberta Court of Appeal, ***Manitok Energy Inc (Re)***, 2022 ABCA 117 [***Manitok***].

4. *Manitok*

[50] The chambers judge in ***Manitok*** approved a proposed sales process in which the receiver of an oil and gas company would apply the sales proceeds of a group of wells and production facilities against the abandonment and reclamation costs of those assets only, leaving a surplus to be distributed to creditors. Other uneconomic assets would be disclaimed and turned back to the AER/OWA. The chambers justice found that such an approach was consistent with ***Redwater***, based on findings made by the Supreme Court of Canada at para 159, where it stated:

> Accordingly, the end-of-life obligations binding on GTL are not claims provable in the Redwater bankruptcy, so they do not conflict with the general priority scheme in the *BIA*. This is not a mere matter of form, but of substance. Requiring Redwater to pay for abandonment before distributing value to creditors does not disrupt the priority scheme of the *BIA*. In crafting the priority scheme set out in the *BIA*, Parliament intended to permit regulators to place a first charge on real property of a bankrupt affected by an environmental condition or damage in order to fund remediation (see s. 14.06(7)). Thus, the *BIA* explicitly contemplates that environmental regulators will extract value from the bankrupt's real property if that property is affected by an environmental condition or damage. Although the nature of property ownership in the Alberta oil and gas industry meant that s. 14.06(7) was unavailable to the Regulator, the Abandonment Orders and the LMR replicate s. 14.06(7)'s effect in this case. Furthermore, it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR

> requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, recognizing that the Abandonment Orders and LMR requirements are not provable claims in this case does not interfere with the aims of the *BIA* — rather, it facilitates them.

[51] On appeal, the Alberta Court of Appeal noted that para 159 of ***Redwater*** presents interpretational challenges. Notwithstanding those challenges, it remained that the division of assets and liabilities endorsed in chambers would undermine the basic principles articulated in ***Northern Badger*** and ***Redwater*** and could not be endorsed. At para 29, the Court writes:

> This interpretation would render ***Redwater*** meaningless. If the proceeds of the sale of the bankrupt corporation's valuable assets cannot be used to reclaim "unrelated assets" there would never be any proceeds available to satisfy public abandonment and reclamation obligations. The assets that are going to be disclaimed by a receiver or trustee because they are overwhelmed by abandonment and reclamation obligations are always going to be "unrelated" under this approach. The disclaimed and orphaned assets cannot, by definition, be sold because of their abandonment and reclamation obligations. Unless the sale proceeds of the valuable assets are available to satisfy those obligations, they can never be satisfied.

[52] Intervenor municipalities argued in ***Manitok*** that the phrase "assets unrelated to environmental condition or damage" used in ***Redwater*** means that the proceeds or value of non-oil and gas assets are not available for the satisfaction of abandonment and reclamation obligations: at para 33. The Court acknowledged at paras 35 and 36 that one could read para 159 of ***Redwater*** as excluding resort to such assets, but expressed skepticism before declining to resolve the issue:

> One could read para. 159 of ***Redwater*** as excluding resort to "unrelated" non-oil and gas assets to cover abandonment and reclamation costs. However, as was pointed out by the Orphan Well Association, the reasons in ***Redwater*** refer repeatedly to the "assets of the estate", without drawing any such distinction: see for example ***Redwater*** at paras. 76, 102, 107, 114. Further, there is no clear boundary between licensed assets and other assets. For example, the sale to Persist (like many similar sales) included not only licensed assets but oil and gas rights, royalty rights, intellectual property, seismic data, vehicles and other chattels. ***Redwater*** gives no support to the municipalities' argument.
>
> In the final analysis, the assets sold to Persist appear to be indistinguishable from the type of assets that the trustee in ***Redwater*** sold. ***Redwater*** confirms that the proceeds of the sale of those assets must be applied first towards the satisfaction of abandonment and reclamation obligations. To the extent that there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day.

VI. Is the Receiver Obligated to Pay Municipal Taxes Post-Insolvency?

[53] Although the Court of Appeal left the door slightly open for municipalities to argue that not all assets of an insolvent oil and gas are subject to the AER super priority, the Municipalities

in this proceeding do not do so. Nor do they dispute the fundamental finding in ***Redwater***: that the ARO must be addressed by a Receiver to the extent reasonably possible and this must be done before distributions can be made. (Hence the term "super priority").

[54] Rather, the Municipalities argue that the remaining funds should be shared with them because:

1. This case involves competing entitlements to proceeds by entities having non-provable claims, the AER claim pursuant to ***Redwater*** and the Municipalities claim for unpaid post-insolvency taxes under the *MGA*, with both claimants having a public interest mandate and neither having priority over the other. Hence, the benefits should be shared.
2. The Receiver was obligated to pay property tax on Trident's assets from its appointment to the date of sale or transfer back to the AER, as a Receivership expense. As an officer of the Court, the Receiver is bound to pay those as they accrue during the receivership.
3. Receivers are appointed pursuant to the *Judicature Act*, so the court may order an equitable division of remaining proceeds in the proportions it sees fit.

[55] The AER/OWA do not dispute that the municipal taxes continued to accrue post-insolvency. Rather, the AER/OWA argue that the Receiver is not required to pay the municipal taxes outside of the priority scheme because:

1. The AER/OWA do not compete with the municipal taxes for priority. ARO is paid in priority because it is a non-monetary regulatory order, not a non-provable claim. Municipal taxes, as a non-provable claim, are subject to the priority sequence.
2. The Receiver is not liable to pay the municipal taxes because they are not "necessary costs of preservation" as the assets were not operated and payment of the taxes would not be for the benefit of all parties. And in any event, it is too late for the Municipalities complain that economic assets were sold without adjustment for municipal taxes. The time for such complaints was when the sales process was presented to the Court for approval.
3. Fairness and equity are not justifications to disregard clear and established principles which govern insolvency.

A. Does the Obligation to Pay Municipal Taxes Post-Receivership Confer a Priority on Municipal Governments that is Parallel to the Super Priority of the AER/OWA?

[56] The municipal taxes owed by Trident may be considered in three categories based upon when the taxes arise. The taxes arise either pre-insolvency, post-insolvency, or post-sale of the assessed assets.

[57] The Municipalities acknowledge that the municipal taxes owing when the Receiver was appointed constitute debts that would need to be proved. As there will be no proceeds available for provable claims, the Municipalities would receive nothing for these claims, even though they

have statutory priority against creditors other than the Crown (which includes the AER) under the *MGA*: s. 348(c).

[58] Similarly, the Municipalities also recognize that the post-sale municipal taxes constitute debts payable by the purchasers of Trident's assets. A claim for those taxes in bankruptcy, if it was ever to arise, would likely also constitute a provable claim against the purchaser subject to the priority scheme.

[59] However, in the interim period, bookended by periods of taxes as provable claims, the Municipalities argue that post-insolvency municipal taxes become non-provable claims subject to a super priority similar to ARO. This is because both the AER/OWA and the Municipalities have a public interest mandate and the Receiver has an obligation to pay municipal taxes, particularly for assets whose operation is simply suspended pending sale rather than destined for abandonment. Therefore, the municipal taxes should similarly be paid outside and in advance of the insolvency regime. The Municipalities point to the ***Manitok*** insolvency as an example of such payments being made pursuant to the sales process presented to and approved by the court.

[60] There is no doubt that municipal governments provide necessary and valuable services to their communities. Many would argue that municipal government is the most efficient and valuable level of all. All community members bear responsibility to support their municipal government by paying property taxes, service levies and the like. But it is not as clear that the payment of municipal property taxes has any higher public interest component than obligations such as paying a farmer surface lease rentals for an expropriated wellsite or pipeline right-or-way post-insolvency, paying trade creditors for pre-insolvency debts, or even paying municipalities for outstanding pre-insolvency municipal taxes.

[61] I agree with the OWA that the assertion of a parallel priority based on the public interest as between two holders of non-provable claims is based on a flawed interpretation of ***Redwater***, which makes it clear that the OWA's entitlement to the proceeds of sale is not a claim on the estate that is subject to a determination of priorities. That is the essence of a "super priority" as that term has evolved.

[62] The OWA's entitlement is addressed outside of the insolvency regime because it is a non-monetary obligation which cannot be not reduced to a provable claim through the test in ***Abitibi***, not because it is non-provable. Producers, like Trident, have a legal obligation to ensure their wells are safely abandoned and reclaimed. The OWA acts as a safety net to ensure that those obligations are satisfied by ensuring that reclamation work is ultimately performed. Of course, a dollar figure can be put on end-of-life obligations, but that cost is what is necessary to satisfy the obligations of producers and ensure that wells are safely abandoned and reclaimed. The cost is not levied to generate revenue for the program. That is why the OWA entitlements "define the contours of the bankrupt estate available for distribution": ***Redwater*** at para 160.

[63] Municipal taxes, on the other hand, are neither a non-monetary obligation nor incompatible with the ***Abitibi*** test. The purpose of municipal taxes is to generate revenue for the municipality: ***Smoky River Coal Ltd, Re***, 2001 ABCA 209 at para 32. The only obligation on the taxpayer is to pay tax. There is no other corresponding regulatory obligation. And, indeed, the *MGA* makes clear that taxes "are recoverable as a debt due to the municipality" and that a taxpayer is a debtor: s. 348, s. 348.1. Taxes are evidently a monetary obligation.

[64] Even if I accepted that this case described a competition between claims, the legislation provides instruction about the order in which claims are to be paid. The Municipalities' claims "take priority over the claims of every person except the Crown": *MGA,* s. 348(c). On a plain reading of the *MGA*, the legislature has contemplated where the claims of the Municipalities rank in the priority scheme. And that is second to the Crown.

[65] There are those who might characterize the outcome of ***Redwater*** as shifting liability for environmental remediation in the oil and gas industry from "polluter-pay" to "lender-pay." I disagree.

[66] In my view, ***Redwater*** shifts liability from "polluter-pay" to "everyone pays," starting with all of those who have suffered financial losses in dealing with the insolvent company, and ending with the OWA, which spreads remaining losses between the Province of Alberta and industry. This includes secured creditors who have lent money to the insolvent entity in good faith, trade creditors who have provided goods or services and remain unpaid, landowners who have hosted the wells, pipelines and production facilities, and municipal governments who are owed taxes dating back to pre-insolvency, among many others. The essence of the AER super priority is that it is not subject to prioritization because the obligation must be met before a distribution can be made to anyone else. It defines the contours of the funds that may be available for distribution.

[67] I also find that the assets subject to the AER super priority are not limited to licenced oil and gas wells, pipelines and production facilities. Trident had certain real estate assets that were used for office or equipment storage and the like. However, Trident had only one business: exploration and production of oil and gas. It makes no sense to differentiate real estate assets from other assets used in that business, just as it made no sense in ***Manitok*** to carve out economic licensed assets from uneconomic ones. In either case, the result would be to undermine the policy purposes upon which the super priority principle is based.

B. Are Post Insolvency Municipal Taxes a Necessary Cost of Preservation of Assets?

[68] The Municipalities argue that municipal taxes can and should be paid by a Receiver as part as "necessary cost of preservation of assets," and the public interest: See ***Toronto Dominion Bank v Usarco Ltd* (1997)**, 50 CBR (3d) 127, 1997 CanLII 12417; ***Hamilton Wentworth Credit Union Ltd v Courtcliffe Parks Ltd* (1995)**, 23 OR (3d) 781, 1995 CanLII 7059; ***Robert F Kowal Investments Ltd et al v Deeder Electric Ltd* (1975)**, 9 OR (2d) 84, 59 DLR (3d) 492 [***Kowal Investments***]. The Municipalities conclude that:

> The unique difficulty here is that because both unpaid post-insolvency taxes and unfunded ARO constitute non-provable claims, we essentially have a priorities contest involving two interests that dwell outside the priorities scheme.
>
> The Municipalities agree with the Receiver that there is no legislation nor reported court decisions which give guidance as to how these non-provable claims should be treated as against each other. This makes allocating funds between these claims, which are not "provable claims", a somewhat novel exercise.

[69] The AER/OWA dispute that the payment of post-insolvency municipal taxes was a necessary cost of preservation of estate assets. They say that such costs were not necessary to allow assets to be operated, as the Receiver chose not to operate any of the assets—whether

marketable or otherwise. Among other considerations, the Receiver did not want to be exposed to any liabilities as an operator. They also argue it cannot be said that payment of property taxes was necessary to preserve assets as that concept is discussed in the case law.

[70] In ***Kowal Investments***, the Ontario Court of Appeal explained that "necessary costs of preservation" is one of three exceptions to the rule that receivers may not incur expenses on behalf of the estate, at the expense of creditors:

> To qualify, the payments must benefit all parties to the receivership, such as costs to maintain and repair property . . . or otherwise prevent destruction, waste or loss of property, including to prevent tax seizure.

[71] In ***Invictus***, this Court found that receiver/managers may be personally liable for post-receivership municipal taxes, in the same way as they may be personally liable for new contracts they enter into with third-parties in relation to the business, subject to a correlative right to be indemnified for those expenses out of the estate assets: ***Alberta Treasury Branches v Invictus Financial Corporation***, ABQB Edmonton No 8303 13970, at para 63 [***Invictus***].

[72] The Receiver here was not a receiver/manager as was the case in ***Invictus***. Nor was it legally or practically necessary to pay post-insolvency municipal taxes in order to preserve assets of the estate for the overall benefit of its creditors.

[73] The treatment of municipal taxes was part of the sales process presented to and approved by the Court. This was described in the Receiver's 8th report as follows:

> The Receiver determined it was uneconomic to operate Trident's assets after considering the associated costs, including post-filing property taxes, and therefore focused efforts on the safe shut-in of Trident's assets prior to initiating the Sales Process for the benefit of Trident's stakeholders. In the Receiver's view, and as described at length above, this was not an ordinary course receivership.

[74] The sale of marketable assets without adjustment for municipal taxes (pre- or post-insolvency) was also approved by the Court as the insolvency progressed, with notice to affected municipalities. The Municipalities did not oppose the sales process application, nor any subsequent application for approval of specific assets sales.

[75] It follows that payment of post-insolvency municipal taxes was not necessary to preserve Trident's exploration and production assets. On the contrary, the non-payment of such taxes made the assets more marketable to solvent companies, and hence more likely to generate economic benefits (and taxes) for host municipalities and landowners following resumption of production.

C. Does Fairness and Equity Justify Payment of the Municipal Taxes?

[76] Even if funds were available for distribution to the Municipalities, I would have been reluctant to order a distribution based on my jurisdiction under the *Judicature Act*. I agree with the AER/OWA, that the Municipalities' entreaties in this regard have been made too late.

[77] The proceeds of sale of Trident assets were from the outset intended to be used to reduce Trident's legacy abandonment and reclamation obligations, and by extension those of the Orphan Well program under Alberta's scheme for management of a province and industry wide problem. The OWA applied for the Receivership of Trident with that objective being clearly stated. The

Court approved the proposed plan, including the sales process and individual sales, free and clear of claims and encumbrances.

[78] Had the Municipalities taken issue with the sales process when first proposed, it is possible that municipal taxes may have been treated differently within this Receivership proceeding. They (and perhaps others) may have proposed a formula similar to that which they say was used in ***Manitok*** (although in ***Manitok***, the Receiver operated a number of producing assets for a number of years). Such a proposal may have been acceptable to the OWA and others, and if not, may have approved by the Court over the OWA's objection particularly if a financial case could be made for such treatment. They did not do so.

[79] Therefore, even if these were funds available for an "equitable" distribution I would not have made such an order.

VII. Conclusion

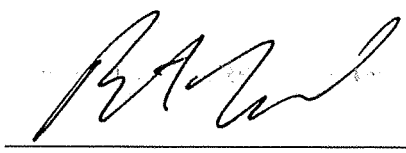
[80] In response to the request for advice and directions by the Receiver, I direct that the remaining funds will be distributed to the AER for use by the OWA. This includes proceeds of sale of non-licenced assets such as real estate and equipment.

[81] Although I do not accept the Municipalities' request to share in the remaining funds, I agree with the Municipalities that the non-payment of municipal taxes on certain oil and gas assets that are shut-in pending sale or transfer to the OWA appears to place rural municipal governments in a very unfair position *vis-à-vis* the Province of Alberta. Counsel explained that the provincial assessor includes such assets when determining the assessed value of properties in a rural municipality and removes them from the assessment roll only after abandonment is complete. Municipalities must use those assessed values in setting taxes for their rate payers to meet their budgetary requirements and education-related remissions back to the Province even though they may have no opportunity to recoup taxes from the assets in question.

[82] Although not directly in issue in this case, it seems to me that is there is a structural unfairness at play here from a municipal taxation and finance perspective as between the provincial government and rural municipalities. If that is indeed the case, it needs to be addressed by the Province of Alberta.

[83] As the application for advice and directions was made in the context of addressing issues of precedential value, there will be no costs awarded.

Heard on the 20th day of September, 2022.
Dated at the City of Calgary, Alberta this 13th day of December, 2022.



R.A. Neufeld
J.C.K.B.A.

Appearances:

Kelsey J. Meyer and Adam Williams
for Pricewater House Coopers Licence Insolvency Trustee, the court appointed receiver and manager of Trident Exploration Corp. and other Trident entities

Kelly J. Bourassa
for ATB Financial

Gregory Plester and Curtis J. Auch
for Woodlands County and Stettler County

Shauna N. Finlay and Moira Lavoie
for Kneehill County

Robyn Gurofsky, Jessica Cameron and Garrett Finegan
for Orphan Well Association

Candice A. Ross
for Alberta Energy Regulator

April 6, 2021

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The Honourable Sonya Savage
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Dear Sirs and Madam:

Re: Trident Exploration Receivership & Positions Taken By the Alberta Energy Regulator ("AER") and Orphan Well Association ("OWA")

The Counties of Stettler and Woodlands write this joint letter to inform you of the latest developments in the continuing saga of unpaid property taxes from oil and gas companies, and to express their deep concerns with the current state of affairs.

Background: Trident Exploration

Trident Exploration Corp., together with its related companies (collectively, “Trident”), was an oil and gas producer operating throughout Alberta. On April 30, 2019, with no warning, it announced that it had no funds available to operate its infrastructure or enter into creditor protection, terminated all of its employees and contractors, and left thousands of AER-licensed wells without an operator, many of them within the boundaries Stettler County and Woodlands County.

At that time, the Counties were approached by the Alberta Energy Regulator and asked to assist the AER and the OWA to see that a receiver was appointed to manage Trident’s affairs and assets. The Counties did so, and worked quickly with the AER and OWA to achieve this. Trident was brought into receivership on May 3, 2019.

Following this, the receiver then commenced a sales process for Trident’s oil and gas assets, at the AER’s direction, whereby the receiver endeavored to maximize the number of assets that were either placed in the hands of other, solvent companies, or abandoned and reclaimed so as to limit the amount of unfunded Abandonment and Reclamation Obligations (“ARO”) associated with those assets.

That sales process has finally concluded, and the receiver is looking to distribute surplus funds from the receivership at a court application scheduled to be heard next month.

The Current Situation

Collectively, the Counties are owed an estimated $7 million in taxes from Trident. Approximately half of this amount relates to taxes that arose after the receivership began, during the course of the sales process conducted for the benefit of the AER. A large portion of these post-receivership taxes were levied in relation to assets that were ultimately sold as part of the sales process, and thereby contributed directly to the amount of distribution proceeds available (and the reduction in unfunded ARO). The Counties have been up front about these facts and have disclosed, in extensive detail, their financial position and the basis of their claims to the receiver, the AER, and the OWA.

On that basis, and given that post-insolvency taxes have, in other insolvency matters, been treated as a cost of the estate to be paid out before any distribution to creditors, and before the AER/OWA in at least one instance, the Counties had hoped that the AER/OWA would be willing to agree that the Counties should be entitled to payment of at least some portion of the post-insolvency taxes owing to them.

This has not happened.

Instead, we have been made to understand that the AER/OWA will be taking the position that the Counties have no entitlement whatsoever to receive **any** payment with respect to unpaid property taxes on oil and gas assets that accrued after the receivership began, even where those taxes

relate to assets that were sold for the benefit of the estate and the AER/OWA. Instead, we understand that the AER takes the position that the majority of the remaining proceeds should be remitted to the OWA.

In other words, the AER/OWA appear to be of the view that they are free to appoint a receiver to conduct a nearly two-year sales process for oil and gas assets, for their benefit, all while entirely ignoring municipal taxes that lawfully accrue *during* that sales process.

Our Concerns

This latest development highlights the extremely difficult position that municipalities are placed in with respect to the recovery of unpaid taxes from oil and gas producers. What was a seemingly impossible task before has become even more so now that the AER and OWA are taking steps to directly undermine the ability of municipalities to recover taxes. The claims of the AER and OWA already loom large over the estates of oil and gas producers, even solvent ones. It has been suggested that municipalities should take legal action against producers who fail to pay taxes. But even where a municipality is successful in obtaining a judgment, it is unlikely that it will be paid, and any efforts to enforce the judgment will likely result only in the company being rendered insolvent (in which case, the AER's claims will take priority).

Now, the AER and OWA have signaled that they are not simply content with having priority over all pre-insolvency taxes – they want even post-insolvency taxes, lawfully imposed during an extensive sales process conducted for their benefit, to be ignored in their entirety.

What's worse is that this will likely continue for the foreseeable future as other oil and gas producers become insolvent. A significant number of Trident's assets located in Stettler County were purchased by Trident in the course of the receivership of another oil and gas company, Questfire Energy. At the time Trident was permitted by the AER to purchase those assets from Questfire, Trident was *already three years in arrears to Stettler County for unpaid taxes.*

The same thing appears to be happening again with Trident's receivership – numerous assets in the Counties were, with AER approval, sold to companies which are already in arrears (in Woodlands' case, the majority of assets in the County that were sold went to a company that is *four years in arrears*). There are some assets that have passed through three owners and two AER-approved transfers over a span of more than five years without the Counties seeing a dime from them. One wonders whether the Counties, and numerous other municipalities, will be dealing with this situation again in two years with respect to those companies who have purchased Trident assets – all while having received no tax payments whatsoever on those assets. Clearly, the indifference of the AER to the inability of their licensees to pay taxes continues to compound an already overwhelming issue.

But the AER has gone even further and is now actively frustrating the ability of municipalities to recover outstanding taxes. Essentially what is happening is that the AER is attempting to backstop the OWA on the backs of municipalities, especially rural municipalities, and their ratepayers.

Having failed in their regulatory duty to properly manage the abandonment and reclamation liabilities of the oil and gas industry in Alberta, they now seek to pass environmental costs that should have been imposed on the industry onto the municipal tax base instead.

Public funds have already been used to reduce the obligations of the OWA that would otherwise arise in relation to Trident's unsellable assets. We understand that many of Trident's unsellable assets have been (or are being) abandoned using funds provided through the publicly-funded Site Remediation Program. The publicly-funded bailout of the OWA appears to have begun.

As a result of the position taken by the AER and the OWA, our municipalities will be forced to press forward with costly litigation through the Courts in order to defend our claim in the face of aggressive opposition by the AER and OWA. As things stand, we expect that we will be forced to defend our claim to these taxes in court within the next few months.

It has never been more likely that the costs of cleaning up a well in Alberta will be borne not by the producer who reaped the financial rewards of that well, and not by the Regulator whose job it is to ensure that the well is cleaned up, and not by the industry through the OWA, but by our ratepayers.

We hope that the Province will appreciate the palpable injustice of this situation to our ratepayers, our Counties, and many other municipalities.

We welcome the engagement of you and your trusted officials, so that your government can properly determine and implement Alberta's interest.

Regards,

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