



**Alberta
Energy
Regulator**

Richard Riegert Memorial Lecture: Addressing End-of- Life Obligations Post Redwater

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What the SCC Decision Found

- AER was found not to be a creditor in enforcing its abandonment orders and applying LLR requirements, it was enforcing a public duty.
- Confirmed personal liability protections and that disclaimer does not negate obligations of the estate.

Redwater Timeline

1991	Alberta Court of Appeal decision in Northern Badger, that abandonment obligations are a public duty that cannot be avoided through insolvency and ERCB was an enforcer not creditor
1992 and 1997	Amendments to the BIA provide greater protection for receivers/trustees relating to environmental conditions and introduces the concept of renunciations.
2012	AbitibiBowater Supreme Court of Canada decision creates a 3 part test for determining when a regulatory obligation is really a debt to a creditor
May 2016	The Court of Queen's Bench of Alberta issues its decision (the Redwater decision) on the AER's challenge to Grant Thornton Limited's (the receiver) ability to disclaim energy-industry liabilities.
May 2016	The AER files an appeal of the Court of Queen's Bench of Alberta ruling.
April 2017	The Alberta Court of Appeal denies the AER's appeal of the Redwater decision.
February 2018	The AER and OWA appeal of the Redwater decision is heard by the Supreme Court of Canada.
January 2019	The Supreme Court of Canada issues its ruling, overturning the Redwater decision. ₃

Impacts of Redwater

- May 2016 - January 2019:
Receivers and trustees involved in 28 insolvencies renounced their interest in more than 10 000 AER-licensed sites with deemed liabilities of almost \$335 million.
- In that same period, the OWA's inventory of wells increased more than 300 per cent from 768 to 3100.

What the Decision Didn't Determine

- Whether renunciations of licensed assets can occur and what the effect of a renunciation is.
- In what circumstances a regulator will be found to be a creditor under the Abitibi test.
- How section 14.06 will work in practice
- What happens when there are competing regulatory obligations (ie. multiple regulators)

Since The Redwater Ruling...

- Reports of some borrowing bases being reduced.
- Strategic Oil & Gas Ltd – Entered into CCAA on April 10, 2019.
- Trident Exploration Corp – Receiver appointed May 3, 2019 following ceased ops.
- Sequoia Resources Corp – Impact of SCC decision on Perpetual/Rose application.
- BC regulations for the creation of timelines

Insolvencies In The Near-Term

- Increased focus on end of life obligations
- Potentially more CCAA and ceased operations.
- Increased use of stalking horse bids.
- Appointments by stakeholders other than main secured creditor.

How the AER manages liability?

- AER continues to follow its existing regulatory requirements to protect public interest.
- During insolvencies, AER expects:
 - Assets to be transferred to responsible operators; or
 - End of life obligations addressed by doing closure work or have funds from estate pay security to the AER on behalf of the OWA.

Assets being orphaned to the OWA is a last resort.
- AER will not object to reasonable fees being paid to insolvency professionals from the estate.



Questions

- What are the impacts of the decision?
- Are there any unintended consequences?
- What needs to change post-Redwater?



Thank you