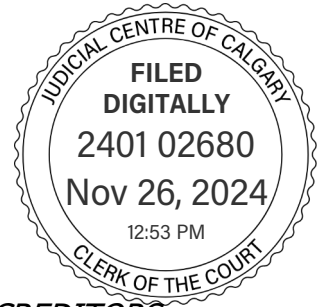


Clerk's Stamp:

COURT FILE NUMBER: 2401-02680  
COURT: COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE: CALGARY



APPLICANTS: **(Respondents on Application)**  
IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

**DOCUMENT: BRIEF OF ALBERTA PETROLEUM MARKETING COMMISSION**

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**BRIEF OF ALBERTA PETROLEUM MARKETING COMMISSION**

**For the Application scheduled for November 27, 2024**

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## **PART 1: SUMMARY OF POSITION**

1. Razor Energy Corp. ("Razor") did not deliver the Crown's royalty share of oil that it produced in January, 2024 to the Alberta Petroleum Marketing Commission ("APMC"), the Crown agent responsible for receiving and dealing with it. The Initial Order stayed APMC's regulatory authority to direct the Crown's royalty share to be delivered in the subsequent month. Once the stay established by the Initial Order is lifted, APMC will have the authority to direct that Razor deliver the Crown's royalty share to the APMC that was not delivered in January, 2024.
2. As part of its application, Razor has proposed a number of Regulatory Payments including one to offset the obligation it will have to deliver the Crown's royalty share of oil to APMC once the CCAA stay is lifted. By doing so, Razor is seeking to mitigate the impact of the authority of APMC to direct delivery of the Crown's January share of crude oil once the stay is lifted.
3. If this Court approves the RVO application and the orders in relation to it, those orders should include the APMC Regulatory Payment.
4. Alternatively, if this Court approves an order that does not include the APMC Regulatory Payment, the RVO application and the orders in relation should be amended so that:
  - a. they do not have the effect of vesting in Razor the Crown's royalty share in Razor or any other person; and
  - b. they do not interfere with or undermine the authority of the APMC under section 12 of the *Petroleum Marketing Regulation* to direct Razor after the approval of the RVO Application to deliver the Crown's royalty share that was not delivered in January.

## **PART 2: ARGUMENT OF THE ALBERTA PETROLEUM MARKETING COMMISSION**

### **A. Argument of APMC on the APMC Regulatory Payment**

5. APMC is the Crown's agent responsible for receiving and dealing with Alberta's crude oil royalty volumes in the public interest of Alberta.
6. APMC learned on November 21, 2024 that Arena Investors LP ("Arena") continued to oppose the application by Razor Energy Corp. ("Razor"), Razor Holdings GP Corp. and Blade Energy Services Corp. (collectively the "Razor Entities") in respect of their application seeking approval of a transaction (the "RVO Transaction"), scheduled for November 27, 2024 (the "RVO Application"). This Brief is filed as Arena's argument affects a payment that Razor proposes be made to APMC.
7. Razor has proposed an order that contemplates a distribution from the proceeds of the Subscription Agreement, inter alia:
  - ....
  - (n) authorizing and directing the Monitor to make the following distributions from the proceeds of the Subscription Agreement:
    - ....;
    - (iii) \$491,584.72 to the Alberta Petroleum Marketing Commission ("APMC"), on account of Razor Energy's royalty share for the month of January 2024, (collectively, the "Regulatory Payments");
8. The source for this proposed payment to APMC in the order is not a negotiated resolution between Razor and APMC to settle an outstanding permission to appeal application before the Court of Appeal (although that may be its effect). There have been no negotiations between Razor and APMC respecting this payment.

9. By including the APMC Regulatory Payment in the proposed order, Razor is seeking to mitigate the impact of the authority of APMC to direct delivery of the Crown's January share of crude oil in a subsequent period.
  
10. APMC's position throughout these proceedings has been and continues to be that Razor has an obligation to deliver to it the volume of the Crown's royalty share in-kind for January. APMC is not an unsecured creditor. It exercises the Crown's rights to require delivery of Crown's in kind oil royalties under the *Petroleum Marketing Act* and regulations. This authority is currently stayed by the CCAA Order but after that stay is lifted, APMC can continue to enforce its authority under section 12 of the *Petroleum Marketing Regulation* to require that Razor deliver the Crown's royalty share that was not delivered in January.<sup>1</sup>
  
11. The royalty share is owned by the Crown *in rem* and continues to be owned by the Crown even though produced from a reserve. Any oil produced from a Crown lease is the Crown's oil:
  - a. Until it is produced, the Crown's crude oil all belongs to the Crown. When the crude oil is produced, the portion of the Crown's royalty share continues to belong to the Crown including any amount of the required royalty share that was undelivered in a previous period.
  - b. The Crown's right to require that Razor deliver the Crown's royalty share, regardless of the time period in which it is produced, is based on the principle that the royalty share is an *in rem* right to a fungible commodity.
  
12. The Crown owns all the oil in the basin from which Razor produces the oil in issue. Therefore, where there is a deficiency in deliveries in the Crown's royalty share in one period, it can direct Razor to deliver the deficiency in its royalty share in a

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<sup>1</sup> [Petroleum Marketing Regulation](#), AR 174/2006 [**Authorities, Tab 1**].

subsequent period. This is reflected in section 12 of the *Petroleum Marketing Regulation*.

13. Arena is incorrect when it asserts that under Justice Burns' decision dated September 6, 2024, APMC is left with a claim in conversion. Burns J.'s order simply recognized that the stay in the Initial Order applied to APMC's authority to direct delivery of the Crown's royalty share under section 12 of the *Petroleum Marketing Regulation* during the CCAA proceedings. Burns J. recognized APMC's *in rem* rights in respect of the Crown's royalty share. The Crown's right and title to any and all subsequent oil, subject to the terms of the lease and the legislation, were not discharged by Justice Burn's decision. Rather she found the regulatory mechanism APMC could use to require delivery of that oil was stayed.
14. The *in rem* rights to the Crown's royalty share that was required to be delivered in January continue to adhere to the next cubic meter of crude oil produced from the Crown's holdings. Once the CCAA proceedings are concluded, APMC can direct that Razor deliver that oil, which is Crown oil, to the APMC. Burns J.'s decision did not remove the Crown's right to its oil; it simply delayed the exercise of the regulatory tool designed to implement that right.
15. If the order respecting the APMC Regulatory Payment is not granted as proposed by Razor:
  - a. the vesting order cannot apply to the Crown's *in rem* rights to its oil;
  - b. there should be no continuing stay that impedes APMC's authority to require that Razor deliver to it the volume of the Crown's royalty share that was not delivered in January 2024; and
  - c. there should be no release that shields any person from the Crown's claim with respect to the Crown's royalty share that was not delivered in January 2024.

**B. Decision of Madam Justice Burns in *Razor Energy Corp., v Companies' Creditors Arrangement Act*<sup>2</sup>**

16. The matter of APMC's authority to direct delivery of a deficiency in royalty oil in the face of the CCAA stay in the Initial Order came before Madam Justice Burns. In her decision dated September 6, 2024, Madam Justice Burns agreed with APMC *inter alia*:

- a. The Crown owns and holds title to the royalty oil. (Para. 9)
- b. The CCAA applies with respect to the debtor's assets and does not permit a debtor to take and use that which they do not own. (Para. 15)
- c. Razor's relationship to the Crown's royalty share as a trustee or agent is not a deemed trust created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share. No deemed trust is necessary or has been created. There is already a proprietary interest. Razor does not hold the oil in a "trust" as one would find in a deemed trust. Razor is holding onto the Crown's oil. (Para. 18)
- d. The Initial Order applies to creditors and to Razor's property, not the Crown's property. (Para. 22)
- e. It is clear that the Crown's rights to the royalty share are *in rem*. Razor never owned and was never entitled to own the Crown's royalty share of production. (Para. 23)
- f. Neither the BIA nor the CCAA give Razor any ownership interest in the Crown's royalty share. (Para. 23)
- e. The reality is that the royalty is a tangible, physical quantity of oil but Razor no longer possesses the January 2024 royalty shares volume because it was likely transferred to third party oil marketers back in the beginning of the year (albeit in violation of section 11 of the Act) and the tangible assets are unrecoverable. As a result, APMC cannot enforce its *in rem* rights with respect to that particular oil (Para. 26). (APMC notes,

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<sup>2</sup> [Razor Energy Corp., v Companies' Creditors Arrangement Act](#), 2024 ABKB 534 [Authorities, Tab 2].

there is no prohibition on APMC using section 12 of the *Petroleum Marketing Regulation* after the stay is lifted to recover the under-delivery of Crown royalty oil.)

17. However, she disagreed with APMC on the application of the CCAA stay:
- a. Section 12 of the PMR is a statutory enforcement clause/remedy. Section 15 of the Initial Order is specific in providing that all rights and remedies of a government body, whether judicial or extra-judicial, statutory, or non-statutory, against or in respect of the Razor Entities, or affecting the Business or Property, are stayed. (Para. 28)
  - b. At its crux, even though the oil was wrongfully taken in January, and the Crown has title to any and all subsequent oil, subject to the terms of the leases, and even though the oil was held in a true trust, not a deemed trust, the Act allows, and the Initial Order provides, that all attempts at remedying the taken oil were stayed. Using the power in Section 12 is a remedial step that is stayed. (Para. 31)
18. The issue raised in the permission to appeal is whether Justice Burns erred in determining the "Initial Order" stayed APMC's authority to direct Razor to physically deliver the Crown's royalty share of oil in kind in February 2024. She did not decide that following the CCAA proceedings, APMC should be barred from enforcing its rights to require delivery of the undelivered January balance under section 12 of the *Petroleum Marketing Regulation*.

### **C. Background to the Crown's ownership of the Royalty Share**

19. The Crown owns the rights to minerals, including crude oil, in most of Alberta.<sup>3</sup>

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<sup>3</sup> *Natural Resources Transfer Agreement*, 1930 (Alberta) (Schedule of Constitution Act, 1930, R.S.C. 1985, App. II, No. 26), [**Authorities, Tab 3**]; see also Peter W Hogg, "Constitutional Law of Canada, 5th Edition" at §29:1, online: (WL Can) Thomson Reuters Canada. [**Authorities, Tab 4**].



20. The legislative framework for crude oil royalties in Alberta reflects the underlying Crown ownership of its mineral resources, and the statutory terms under which producers are permitted to develop these resources and cause the Crown's royalty share of production to be delivered to it. Under the *Mines and Minerals Act*:<sup>4</sup>
- a. there can be no disposition of an estate in a mineral, including crude oil, owned by the Crown unless the disposition is specifically authorized by that Act or another Act (s. 11);
  - b. the Minister of Energy and Minerals (the "Minister") may issue an agreement permitting the production of crude oil by an operator (s. 16);
  - c. a royalty determined under that Act is reserved to the Crown on any crude oil recovered under an agreement (s. 33);
  - d. in respect of crude oil, the royalty reserved to the Crown is deliverable in kind (s. 34);
  - e. the Crown is the owner of its royalty share of the crude oil at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown's title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee's share prior to or at the time of the disposal or transfer of title (s. 35); and
  - f. there is implied in every disposition any and all reservations that are required to be made on the disposal of any mineral rights owned by the Crown (s. 44).<sup>5</sup>

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<sup>4</sup> [Mines and Minerals Act, RSA 2000](#), c M-17 [**Authorities, Tab 5**].

<sup>5</sup> [Mines and Minerals Act, RSA 2000](#), c M-17 [**Authorities, Tab 5**].

Note: the definition of "disposition" reads:

[1\(1\)\(f\)](#) "disposition" means a grant, a transfer referred to in section 12 or an agreement;

"Agreement" is defined as

[1\(1\)\(a\)](#) "agreement" means an instrument issued pursuant to this Act or the former Act that grants rights in respect of a mineral, subsurface reservoir, or geothermal resource, but does not include a notification, a transfer referred to in section 12, a unit agreement or a contract under section 9(a);

## D. Background to the Role of the APMC

21. The APMC is the Crown's agent for receiving and dealing with Alberta's crude oil royalty volumes. APMC derives authority directly from the *Petroleum Marketing Act*<sup>6</sup> and a number of interrelated statutes and regulations.
22. APMC's primary role is to accept delivery of and deal with the Crown's royalty share of crude in the public interest of Alberta. Section 15 of the *Petroleum Marketing Act* provides:

### Dealing with Crown's royalty share

**15** Subject to the regulations, the Commission shall

- (a) accept delivery of the Crown's royalty share of a hydrocarbon substance required to be delivered to the Commission pursuant to an agreement, a contract under section 9(a) of the *Mines and Minerals Act* or an enactment,
- (b) deal with the Crown's royalty share of the hydrocarbon substance in a manner that is, in the Commission's opinion, in the public interest of Alberta, and
- (c) engage in other hydrocarbon-related activities in a manner that is, in the Commission's opinion, in the public interest of Alberta.<sup>7</sup>

23. Under section 86(1) of the *Mines and Minerals Act* and section 3 of the 2009 and 2017 *Petroleum Royalty Regulations*,<sup>8</sup> producers that hold agreements to produce oil from the Crown's reserves must deliver the Crown's royalty share to APMC. Section 86 of the *Mines and Minerals Act* reads:

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<sup>6</sup> [Petroleum Marketing Act, RSA 2000](#), c P-10 [Authorities, Tab 6].

<sup>7</sup> [Petroleum Marketing Act, RSA 2000](#), c P-10, s. 15 [Authorities, Tab 6].

<sup>8</sup> [Petroleum Royalty Regulation, 2009](#), AR 222/2008 at s. 3 [Authorities, Tab 8]; [Petroleum Royalty Regulation](#), 2017, AR 212/2016 at s. 3 [Authorities, Tab 7].

**86(1)** Every agreement to which this section applies is subject to the condition that the Crown's royalty share of a mineral to which this section applies recovered pursuant to the agreement must be delivered to the Alberta Petroleum Marketing Commission.<sup>9</sup>

Section 3 of each of the *Petroleum Royalty Regulations* makes section 86 applicable to royalties for crude oil. It reads:

**3** Section 86 of the *Mines and Minerals Act* applies to all agreements granting petroleum and natural gas rights or petroleum rights and to crude oil obtained from petroleum recovered pursuant to those agreements.<sup>10</sup>

24. The *Petroleum Marketing Regulation* establishes a system for crude oil royalty forecasting, delivery and settlement on a monthly basis.<sup>11</sup> The APMC administers this system. Producers and pipeline shippers provide APMC with the information to facilitate the forecasting.
25. Razor had and has obligations through this legislative structure and the terms of its leases, to properly forecast and deliver the Crown's royalty share of production to APMC.<sup>12</sup>
26. Under this system of forecasting, delivery and settlement, the Crown's royalty share in respect of production in a calendar month is delivered and settled in the first part of the next month.

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<sup>9</sup> *Mines and Minerals Act*, RSA 2000, c M-17, s. 86 [**Authorities, Tab 5**].

<sup>10</sup> *Petroleum Royalty Regulation*, 2009, AR 222/2008 at s. 3 [**Authorities, Tab 8**]; *Petroleum Royalty Regulation, 2017*, AR 212/2016 at s. 3 [**Authorities, Tab 7**].

<sup>11</sup> Described in terms of the general principles in the Affidavit of Bradley Weicker sworn March 6, 2024 (Weicker Affidavit #2) at paras 3 and 4; and in terms of Razor specifically in the Weicker Affidavit #1 at paras 7 to 9 and in Weicker affidavit #2 at para 5. [**Affidavits #1 and #2 of Bradley Weicker attached as Appendix A and B**].

<sup>12</sup> Weicker Affidavit #1, para 5 [**Appendix A**].

27. In order to manage the logistics of actual deliveries and address the practicalities of crude oil trade cycles, which happen in advance of a delivery month, the legislative framework requires producers to forecast the Crown's royalty share of production for delivery to APMC.<sup>13</sup>
28. Actual final deliveries are determined through Crown royalty production splits which are settled by producers usually between the tenth and twelfth day of the month following the delivery month.<sup>14</sup>
29. If a producer does not deliver or underdelivers the Crown's royalty share in any month, APMC can direct delivery of that royalty share in another month. Section 12(1) of the *Petroleum Marketing Regulation* provides:

**Direction to deliver royalty deficiency**

**12(1)** If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

- (a) in the month in which the direction is given,
- (b) in a particular subsequent month, or
- (c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction.<sup>15</sup>

30. APMC is a Crown agent and exercises all of its powers as an agent of the Crown.<sup>16</sup>

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<sup>13</sup> The *Petroleum Marketing Regulation* reflects the intention that normal oil industry practice is followed by producers when forecasting Crown volumes. APMC has the ability to determine what constitutes normal oil industry practice [Petroleum Marketing Regulation](#), AR 174/2006, s. 16(4), [**Authorities, Tab 1**].

<sup>14</sup> Weicker Affidavit #1 at para 4 [**Appendix A**].

<sup>15</sup> [Petroleum Marketing Regulation](#), AR 174/2006 s. 12(1) [**Authorities, Tab 1**].

<sup>16</sup> [Petroleum Marketing Act](#), RSA 2000, c P-10, s. 8(1) [**Authorities, Tab 6**].

## **E. Background to Razor's refusal to deliver the Crown's royalty share for January 2024**

31. In December 2023, Razor forecasted the delivery of Crown royalty oil to APMC for the January 2024 delivery month. During January 2024, draft pipeline shipper balances, and final draft shipper balances, continued to reflect Crown royalty oil deliveries to APMC from Razor based on production forecasts.<sup>17</sup>
32. About February 12, 2024, Razor filed final Crown royalty production splits for January 2024 showing no Crown royalty oil being delivered to APMC for the delivery month of January 2024.<sup>18</sup>
33. Razor failed to deliver 934.8 cubic meters of crude oil of Crown royalty oil to APMC for the delivery month of January 2024.<sup>19</sup>
34. On February 27, 2024, Alberta Energy and Minerals sent an email to Razor asking why there was no delivery of royalties for January production.<sup>20</sup>
35. In a response on the same day, Razor stated that it had commenced restructuring proceedings on January 30, 2024 by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*. Razor said that it "was advised by it's lawyers and FTI [the Trustee] that January oil royalties were stayed as part of this process and accordingly Razor did not deliver any royalty for January production."<sup>21</sup>

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<sup>17</sup> Weicker Affidavit #1, para 7 **[Appendix A]**.

<sup>18</sup> Weicker Affidavit #1, para 8 **[Appendix A]**.

<sup>19</sup> Weicker Affidavit #1, para 9 **[Appendix A]**.

<sup>20</sup> Weicker Affidavit #1, Exhibit A at p. 8 **[Appendix A]**.

<sup>21</sup> Weicker Affidavit #1, Exhibit A at p. 8 **[Appendix A]**.

36. On February 28, 2024, general counsel for APMC responded advising that Razor had failed to recognize the Crown's continuing estate, ownership and title to the Crown royalty share and that Razor did not merely owe a cash royalty obligation.<sup>22</sup>

37. On March 1, 2024, two separate things happened:

a. Razor provided a copy of the February 28, 2024 Order by the Honourable Justice N.J. Whiting. No notice of the application for this order had been provided to APMC before this.<sup>23</sup>

b. APMC directed Razor to make up the underdelivery balance by the delivery in-kind to APMC of crude oil of an equal quantity and of like quality to the January royalty deficiency volumes as part of its February 2024 delivery month.<sup>24</sup>

38. It was the direction of APMC that resulted in the application before Burns J. described above. As noted, APMC is not seeking a monetary judgment. Rather, APMC can direct delivery of the balances at each battery in subsequent months. The Order sought by Razor to make a regulatory payment to APMC is to offset the reality that APMC will issue a direction under section 12 of the *Petroleum Marketing Regulation*.

### **PART 3: POSITION ON RELIEF SOUGHT BY RAZOR**

39. If this Court approves the RVO application and the orders in relation to it, those orders should include the APMC Regulatory Payment.

40. Alternatively, if this Court approves an order that does not include the APMC Regulatory Payment, the orders in relation to the RVO application should be amended so that:

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<sup>22</sup> Weicker Affidavit #1, Exhibit B at p. 11 [**Appendix A**].

<sup>23</sup> Weicker Affidavit #1, para 13 [**Appendix A**].

<sup>24</sup> Weicker Affidavit #1, para 11 and Exhibit C at pp. 13 and 14 [**Appendix A**].

- a. they do not have the effect of vesting in Razor the Crown's royalty share in Razor or any other person;
- b. they do not interfere with or undermine the authority of APMC under section 12 of the *Petroleum Marketing Regulation* to direct Razor after the approval of the RVO Application to deliver the Crown's royalty share that was not delivered in January.

All of which is respectfully submitted this 26<sup>th</sup> day of November, 2024.

**SHORES JARDINE LLP**



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William Shores, K.C.  
Counsel for the Alberta Petroleum  
Marketing Commission

## **PART 4: TABLE OF AUTHORITIES**

### **Previously Filed Materials Relied Upon**

Appendix A. Affidavit #1 of Bradley Weicker, filed March 6, 2024

Appendix B. Affidavit #2 of Bradley Weicker, filed March 6, 2024

### **Legislation, Case Law and Secondary Sources**

1. *Petroleum Marketing Regulation*, AR 174/2006
2. *Razor Energy Corp., v Companies' Creditors Arrangement Act*, 2024 ABKB 534
3. *Natural Resources Transfer Agreement*, 1930 (Alberta) (Schedule of Constitution Act, 1930, R.S.C. 1985, App. II, No. 26)
4. Peter W Hogg, "Constitutional Law of Canada, 5th Edition" online: (WL Can) Thomson Reuters Canada
5. *Mines and Minerals Act*, R.S.A. 2000, c. M-17
6. *Petroleum Marketing Act*, RSA 2000, c. P-10
7. *Petroleum Royalty Regulation*, 2017, AR 212/2016
8. *Petroleum Royalty Regulation*, 2009, AR 222/2008



# APPENDIX A



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COM March 6, 2024

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: **(Respondents on Application)** IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

**DOCUMENT: AFFIDAVIT IN SUPPORT OF APPLICATION OF ALBERTA PETROLEUM MARKETING COMMISSION**

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## AFFIDAVIT OF BRADLEY WEICKER

**Sworn on March 5, 2024.**

I, Bradley Weicker, of the City of Calgary, of the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Marketing Manager of the Alberta Petroleum Marketing Commission (APMC). I have personal knowledge of the facts and matters sworn in this Affidavit, except where information was received from someone else or some other source of information, as identified herein. Where that information contained herein was received from another source, I believe such information to be true.
  2. Under the *Petroleum Marketing Act*, APMC is created and appointed to act as the Crown's agent to receive and market crude oil royalty volumes. APMC's statutory responsibilities include administering various aspects of the *Petroleum Marketing Regulation* related to crude oil royalty forecasting, deliveries and settlements of Crown royalty oil.
  3. For their part, producers have, among their responsibilities, an obligation under Section 86(1) of the *Mines and Minerals Act* and Section 3 of the *Petroleum Royalty Regulation* to deliver the Crown crude oil royalty volumes to APMC. That producer obligation is further established as a condition of each mineral lease from the Crown under Section 86(1) of the *Mines and Minerals Act*. To determine royalty entitlement, the legislative framework calculates prescribed royalty quantities on a monthly basis through production calculations and par prices that are set under the *Petroleum Royalty Regulation* as a proxy of market value.
  4. In order to manage the logistics of actual deliveries and address the practicalities of crude oil trade cycles, which happen in advance of a delivery month, the legislative framework requires producers to forecast the Crown's royalty share of production for delivery to APMC. The *Petroleum Marketing Regulation* reflects the intention that normal oil industry practice is followed by producers when forecasting Crown volumes, with subsection 16(4) giving APMC the discretion to determine what constitutes normal oil industry practice. Actual final deliveries are determined through Crown royalty production splits which are settled by producers usually between the tenth and twelfth day of the month following the delivery month.
  5. Razor Energy Corp. (Razor Energy) has obligations through this legislative structure and the terms of its leases, to properly forecast and deliver the Crown's royalty share of production to APMC.
  6. APMC works with producers and pipelines to track, balance and manage its delivery and shipping positions throughout a delivery month. APMC also works closely with Alberta Energy's Delivery and Reconciliation and Royalty Calculations team to identify and manage underdelivery balances which are caused when the prescribed royalty quantity for a battery exceeds the actual deliveries from the battery during that deliver month. Section 1(t) of the
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-

*Petroleum Marketing Regulation* allows the underdelivery balance quantity to be determined according to the records of the APMC.

7. For the January 2024 production month, Razor Energy settled forecasts in December 2023 reflecting the anticipated delivery of Crown royalty oil to the APMC. During the January 2024 production month, draft pipeline shipper balances, and final draft shipper balances, continued to reflect Crown royalty oil deliveries to APMC from Razor Energy based on production forecasts.
8. On or about February 12, 2024, Razor Energy filed final Crown royalty production splits for January 2024 resulting in zero volumes of the Crown's royalty oil being delivered to the APMC for the delivery month of January 2024.
9. According to the records of APMC, the aggregate underdelivery balance of Crown royalty oil by Razor Energy for the delivery month of January 2024 is 934.8 cubic meters of crude oil, set out by battery location as follows:

Delivery Month	Operator Id - Name	Div Facility	Calculated Royalty Volume (m <sup>3</sup> )	Confirmed Delivery Volume (m <sup>3</sup> )	Net Balance Volume (m <sup>3</sup> )
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0046304	0.4	0.0	0.4
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0090060	0.0	0.0	0.2
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0093531	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0107818	14.0	0.0	14.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0120702	73.7	0.0	73.7
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0131305	23.5	0.0	23.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0142356	3.1	0.0	3.1
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0144707	1.8	0.0	1.8
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0152603	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0154311	12.6	0.0	12.6
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0900019	24.3	0.0	24.3
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 5140017	446.9	0.0	446.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870059	0.5	0.0	0.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870076	95.0	0.0	95.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8890004	221.0	0.0	221.0
<b>Total Outstanding:</b>					<b>934.8</b>

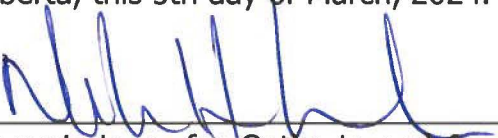
10. In correspondence dated February 27, 2024, Razor Energy Corp. stated the reason for not allocating production to the Crown, was as a result of the Notice of Intention proceedings commenced by Razor Energy under *the Bankruptcy and Insolvency Act* on January 30, 2024, and that "Razor Energy was advised by it's lawyers and FTI that January oil royalties were stayed as part of this process [Notice of Intention] and accordingly Razor did not deliver any royalty for January production." Attached here to and marked as Exhibit "A" is a true copy of an email from Razor Energy referring to the Notice of Intention process

and their own legal advice as the noted basis for staying the Crown's in-kind deliveries.

11. On February 28, 2024, APMC responded to Razor Energy putting Razor Energy and FTI on notice of the continuing legal obligation to deliver the Crown's royalty share of production to APMC. Attached here to and marked as Exhibit "B" is a true copy of an email from N. Hindmarsh to FTI cc'd to Razor Energy. By notice dated March 1, 2024, APMC directed Razor Energy to make up the underdelivery balance by the delivery in-kind to APMC, as part of the February 2024 production month, crude oil of an equal quantity and of like quality to the January royalty deficiency volumes. Attached here to and marked as Exhibit "C" is a true copy of APMC's records of the underdelivery balance for Razor Energy in January 2024 and the directive to Razor Energy to deliver the deficiency to APMC in-kind as part of the February 2024 deliveries.
  12. Crown royalty production splits for the February 2024 delivery month to allocate Crown production to APMC will be determined by Razor Energy as part of the regular schedule of forecasting and delivery activities, which is on or before the twelfth day of March 2024.
  13. APMC became aware on March 5, 2024 that the Monitor takes the position that the APMC direction of March 1, 2024 was in breach of the Order made February 28, 2024. APMC received no notice of the application that led to the February 28, 2024 order and only received the order on March 1, 2024. In issuing the direction, the APMC was of the view that it was simply protecting the Crown's right to its own property in the Crown's royalty share and following up on the position taken by APMC in Exhibit "B", the email of February 28, 2024, from N. Hindmarsh to FTI cc'd to Razor Energy.
  14. APMC has now reviewed the position of the Monitor and the Order in detail and understands that given the scope of the Order it may have inadvertently stepped outside its literal terms. If it has, APMC apologizes to the Court and humbly requests the right to withdraw the March 1, 2024 Direction and seeks leave to issue a new direction to Razor Energy under section 12 of the *Petroleum Marketing Regulation* despite the application by the Respondents to extend the stay.
  15. The APMC's counsel will draw the Court's attention to section 11.1 of the CCAA in relation to the Monitor's position that it has breached the Order. In this regard, the APMC affirms that it is not seeking the enforcement of a payment ordered by a court or a regulatory body; it is seeking to direct that the Crown's royalty share be delivered to it.
- 
-

- 16. APMC will be prejudiced if this application is not heard and determined before March 12, 2024 as the Crown's right as owner of the resource to require its royalties be delivered in kind and the regulatory obligation to deliver royalties in kind will be defeated by requested extension of the stay and the passage of time.
- 17. I make this affidavit in support of the relief sought on behalf of the APMC in the application submitted for filing March 5, 2024.

SWORN BEFORE ME at  
the City of Calgary, in the Province of  
Alberta, this 5th day of March, 2024.

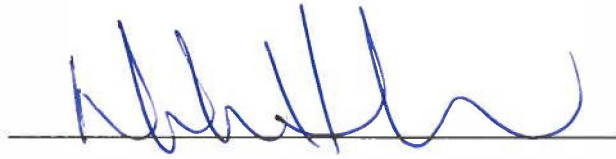
  
\_\_\_\_\_  
Commissioner for Oaths in and for the  
Province of Alberta

  
\_\_\_\_\_  
BRADLEY WEICKER

**NOLAN HINDMARSH**  
*Barrister & Solicitor*

This is Exhibit "A" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5<sup>th</sup> day of March, 2024

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

**NOLAN HINDMARSH**  
*Barrister & Solicitor*

Classification: Protected A

**From:** Linda Kerbrat <[lkerbrat@razor-energy.com](mailto:lkerbrat@razor-energy.com)>

**Sent:** February 27, 2024 4:39 PM

**To:** Oil Royalty DAR <[OilRoyaltyDAR@gov.ab.ca](mailto:OilRoyaltyDAR@gov.ab.ca)>

**Subject:** RE: 2024-01 Crown under deliveries

**CAUTION:** This email has been sent from an external source. Treat hyperlinks and attachments in this email with care.

Good afternoon

Please be advised that on January 30, 2024, the Razor Energy Corp. and Blade Energy Services Corp. (collectively the "Company") commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* ("BIA"). FTI Consulting Canada Inc. ("FTI") has been appointed as the Trustee under the NOI ("Trustee").

Although the NOI proceeding is pursuant to the BIA, it is important to note that the Company is not bankrupt and intends to continue operating during the proceedings.

At present, creditors are not required to file a proof of claim. The Trustee will provide you with further information and a proof of claim form, if necessary, at a later date.

During the proceedings:

- No person may terminate or amend any agreement with the Company, or claim an accelerated payment, or a forfeiture of the term, under any agreement with Company, by reason only that the Company is insolvent or by reason of filing of the Notice of Intention, pursuant to Section 65.1(1) of the BIA;
- No creditor has any remedy against the Company or its property, or shall commence or continue any action, or other proceedings against the Company pursuant to Section 69.1(1) of the BIA; and
- The Company requires ongoing support from its creditors while undertaking these proceedings. In accordance with Section 65.1 (4) of the BIA no supplier is prohibited from requiring immediate payment for services provided going forward within these proceedings. Suppliers should discuss directly with their usual Company contact the terms of payment for goods and/or services that they provide to the Company or contact the Proposal Trustee at the contact details below with questions.

Further information with respect to these proceedings will be made available on the Trustee's website: <http://cfcanada.fticonsulting.com/razor-blade>

If you have any questions please contact a representative of the Trustee, Cameron Browning at (403) 454-6037 or via email: [cameron.browning@fticonsulting.com](mailto:cameron.browning@fticonsulting.com)

Razor Energy was advised by it's lawyers and FTI that January oil royalties were stayed as part of this process and accordingly Razor did not deliver any royalty for January production.

Linda Kerbrat | Razor Energy

From: Oil Royalty DAR <[OilRoyaltyDAR@gov.ab.ca](mailto:OilRoyaltyDAR@gov.ab.ca)>

Sent: Tuesday, February 27, 2024 2:11 PM

To: Linda Kerbrat <[lkerbrat@razor-energy.com](mailto:lkerbrat@razor-energy.com)>

Subject: 2024-01 Crown under deliveries

**CAUTION:** This email originated from outside of the organization.

Good Afternoon,

The following batteries did not deliver any royalty for January production.  
Can you provide a reason for this?

Dlv Facility	Calculated Royalty Volume (m <sup>3</sup> )	Confirmed Delivery Volume (m <sup>3</sup> )
AB BT 0046304	0.4	0
AB BT 0093531	8.9	0
AB BT 0107818	14	0
AB BT 0120702	73.7	0
AB BT 0131305	23.5	0
AB BT 0142356	3.1	0
AB BT 0144707	1.8	0
AB BT 0152603	8.9	0
AB BT 0154311	12.6	0
AB BT 0900019	24.3	0
AB BT 5140017	446.9	0
AB BT 8870059	0.5	0
AB BT 8870076	95	0
AB BT 8890004	221	0

Thank you,

**Jenna Maunu**

Operational Analyst

Alberta Energy and Minerals | Oil Royalty Operations

7<sup>th</sup> Floor, North Petroleum Plaza | 9945 - 108 Street | Edmonton, AB T5K 2G6

Phone: (780) 422-9122 (direct)





This is Exhibit "B" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5<sup>th</sup> day of March, 2024



A Commissioner for Oaths in and for the Province of Alberta

**NOLAN HINDMARSH**  
*Barrister & Solicitor*

**From:** Nolan Hindmarsh  
**Sent:** February 28, 2024 3:08 PM  
**To:** cameron.browning@fticonsulting.com  
**Cc:** lkerbrat@razor-energy.com; Cate Howell <Cate.Howell@apmc.ca>  
**Subject:** FW: 2024-01 Crown under deliveries

**Attention:**       **Cameron Browning, Trustee  
                          And Razor Energy Corp.**

We are aware of the communication below from Razor Energy Corp advising of the NOI process under the BIA. The correspondence states that: *“Razor Energy was advised by its lawyers and FTI that January oil royalties were stayed as part of this process and accordingly Razor did not deliver any royalty for January production.”*

APMC is the Crown agent responsible for accepting delivery and dealing with the Crown’s royalty share of production under the *Petroleum Marketing Act*. We dispute the advice provided and put Razor Energy and FTI on strict notice of the continuing legal obligation to deliver the Crown’s royalty share of production to APMC.

The BIA may have the effect of suspending obligations to make payments, including payments of cash royalty amounts in some circumstances. However, unlike other mineral royalties, crude oil royalties are not taken in cash, but are taken in-kind and are legislatively structured as the Crown retaining ownership in its royalty share of production. At no point does Razor Energy acquire an ownership interest in the Crown’s royalty share of crude oil production that could make it part of Razor’s estate and property for the purpose of BIA proceedings. At all times, the Crown retains actual ownership and title to its share of production, notwithstanding that its royalty share may be co-mingled with Razor Energy production. Razor Energy is in a bailment and trust relationship with respect to the Crown’s royalty share of crude oil production, and there is no right to seize and convert the Crown’s property for the use of Razor Energy’s and its creditors.

For reference, I would direct you to Section 35(1) of the *Mines and Minerals Act* which confirms Crown ownership and title to the Crown’s royalty share of production notwithstanding that it may be co-mingled with, and indistinguishable from, a lessee’s share. Whereas the regulations to the *Mines and Minerals Act* provide for the deemed sale and transfer of the Crown’s royalty share of natural gas and bitumen production to the lessee – thereby transferring title and creating a cash royalty payment obligation for the lessee on these products – the legislative structure for crude oil production and royalties is entirely different and does not work to transfer the Crown’s ownership interest in the royalty share to the lessee in return for a cash payment. Producers have, among their responsibilities, an obligation under Section 86(1) of the *Mines and Minerals Act* and Section 3 of the *Petroleum Royalty Regulation* to deliver the Crown’s royalty share of crude oil royalty volumes to APMC, as agent of the Crown. Under the *Petroleum Marketing Regulation*, the Crown’s royalty share of crude oil production is deemed to be delivered first (section 2(3)(b)).

The advice to withhold the Crown’s royalty share of crude oil production fails to recognize the Crown’s continuing estate, ownership and title to that royalty share. It mistakenly assumes that Razor Energy has somehow acquired title to the Crown share and simply owes a cash royalty obligation in return, which is not true.

We would ask for your immediate attention to clarify this issue, rescind the former advice to withhold the Crown's royalty share deliveries, and confirm steps that will be taken to rectify the suspended deliveries.

I look forward to your response.

Thanks,

**Nolan Hindmarsh**

General Counsel

Tel: 403-297-4563

Cell: 587-227-0395

[Nolan.Hindmarsh@apmc.ca](mailto:Nolan.Hindmarsh@apmc.ca)



Classification: Protected A

This is Exhibit "C" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5<sup>th</sup> day of March, 2024

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, written over a thin horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

**NOLAN HINDMARSH**  
*Barrister & Solicitor*



Centennial Place, West Tower  
250 – 5th Street SW  
Calgary, Alberta T2P 0R4  
Email: APMC-Marketing@apmc.ca

March 1, 2024

VIA EMAIL

FTI Consulting Canada Inc. (the “Monitor”)  
520 Fifth Avenue S.W.  
Suite 1610  
Calgary, AB T2P 3R7

And

Razor Energy Corp.(“Razor Energy”)  
500 5<sup>th</sup> Avenue S.W.  
Suite 800  
Calgary, AB T2P 3L5

**Attn: Cameron Browning  
Linda Kerbrat**

**DIRECTIVE TO DELIVER JANUARY ROYALTY DEFICIENCY VOLUMES-IN-KIND**

Razor Energy failed to deliver the prescribed royalty quantity of Crown oil to the Alberta Petroleum Marketing Commission (“APMC”) for the January 2024 delivery month. According to the records of APMC, the underdelivery balance for each Razor Energy battery for the delivery month of January 2024 is set out below (and collectively referred to as the “January Royalty Deficiency Volumes”):

Delivery Month	Operator Id - Name	Div Facility	Calculated Royalty Volume (m <sup>3</sup> )	Confirmed Delivery Volume (m <sup>3</sup> )	Net Balance Volume (m <sup>3</sup> )
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0046304	0.4	0.0	0.4
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0090060	0.0	0.0	0.2
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0093531	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0107818	14.0	0.0	14.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0120702	73.7	0.0	73.7
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0131305	23.5	0.0	23.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0142356	3.1	0.0	3.1
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0144707	1.8	0.0	1.8
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0152603	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0154311	12.6	0.0	12.6
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0900019	24.3	0.0	24.3
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 5140017	446.9	0.0	446.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870059	0.5	0.0	0.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870076	95.0	0.0	95.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8890004	221.0	0.0	221.0
<b>Total Outstanding:</b>					<b>934.8</b>

On February 28<sup>th</sup>, APMC notified the Monitor and Razor Energy of the Crown's ownership and title to royalty oil, including the January Royalty Deficiency Volumes, which cannot form part of the property of Razor Energy.

In accordance with the *Petroleum Marketing Regulation*, APMC now directs Razor Energy to deliver in kind to APMC, as part of deliveries for February 2024, crude oil of an equal quantity and of like quality to the January Royalty Deficiency Volumes (the "Make-Up Volumes").

Please ensure that all forecasts and final shipper balances for the February 2024 delivery month are updated to reflect Crown oil deliveries to APMC for both: (i) the Make-Up Volumes, and (ii) the prescribed royalty quantities for the February 2024 delivery month. Please also ensure that deliveries recorded in Petrinex reflect these new Crown pipeline splits, and that all forecast reports are amended promptly to reflect the changes.

Thank you for your cooperation with this matter.

Sincerely,

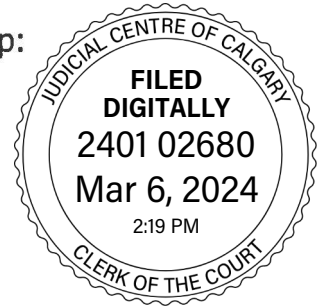


Brad Weicker  
Senior Manager, Marketing  
Alberta Petroleum Marketing Commission

cc. Nolan Hindmarsh, APMC  
Lindsay Rowlands, Alberta Energy and Minerals

# APPENDIX B

Clerk's Stamp:



COURT FILE NUMBER: 2401-02680

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: IN THE MATTER OF *THE COMPANIES' CREDITORS*  
**(Respondents on Application)** *ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

**DOCUMENT: AFFIDAVIT #2 OF BRADLEY WEICKER IN SUPPORT OF APPLICATION OF ALBERTA PETROLEUM MARKETING COMMISSION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Shores Jardine LLP  
Barristers and Solicitors  
2250, 10104 – 103 Avenue  
Edmonton, Alberta T5J 0H8  
William W. Shores, K.C.  
Telephone: 780-448-9275  
Facsimile: 780-423-0163  
File No. 2352-00005 WWS

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## AFFIDAVIT #2 OF BRADLEY WEICKER

**Sworn on March 6, 2024.**

I, Bradley Weicker, of the City of Calgary, of the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Marketing Manager of the Alberta Petroleum Marketing Commission (APMC). I have personal knowledge of the facts and matters sworn in this Affidavit, except where information was received from someone else or some other source of information, as identified herein. Where that information contained herein was received from another source, I believe such information to be true.
  2. Under the *Petroleum Marketing Act*, APMC is created and appointed to act as the Crown's agent to receive and market crude oil royalty volumes. APMC's statutory responsibilities include administering various aspects of the *Petroleum Marketing Regulation* related to crude oil royalty forecasting, deliveries and settlements of Crown royalty oil.
  3. In order to manage the logistics of actual deliveries and address the practicalities of crude oil trade cycles, which happen in advance of a delivery month, the legislative framework requires producers to forecast the Crown's royalty share of production for delivery to APMC. The *Petroleum Marketing Regulation* reflects the intention that normal oil industry practice is followed by producers when forecasting Crown volumes, with subsection 16(4) giving APMC the discretion to determine what constitutes normal oil industry practice.
  4. The normal oil industry process for settling forecasts and delivering production can be described as follows:
    - a. Oilfield facility operators provide forecasts of crude oil production (and splits for the Crown) for each delivery month to downstream transporters and terminals to which those volumes will be delivered in accordance with the Crude Oil Logistics Committee (COLC) processes, as adapted and supplemented by practices generally accepted in the Alberta oil and gas industry (Accepted Practice).
    - b. At some point in the process of transacting and handling crude that is bought and sold, the quantities that are to be transacted in a delivery month have to be determined or set (or become "firm") so that the downstream facilities and others can plan their operations for the delivery month appropriately. This is done using processes where Form A production estimates are prepared by field operators and then aggregated into Form C's that are used as the final shipping numbers for the Notices of Shipment on the downstream facilities.
    - c. While the Form A forecasts are changeable for a period in the month preceding the month of delivery, such volumes become definitive (or "firm") per Accepted Practice for a delivery month upon the Form C and related Notice of Shipment document becoming final (subject to downstream
- 
-



facility apportionment), such occurring around the tenth day of the month preceding the delivery month.

- d. Once that volume is “firm” (unchangeable) per the above process, it is the volume intended to be transacted. Downstream marketing and transportation commitments (including for APMC) are settled based on these firm volumes in the Notice of Shipment.
  - e. Throughout the delivery month, pipelines, in fact, directly manage shipper obligations and track deliveries to the pipeline within the delivery month using their own draft shipper balance forms and processes.
  - f. Final draft shipper balances are published by the pipelines at the end of the delivery month showing final expected deliveries. Actual final deliveries are determined through Crown royalty production splits which are settled by producers usually between the tenth and twelfth day of the month following the delivery month.
5. According to the records of APMC, Razor Energy settled forecasts in February 2024 reflecting the anticipated delivery of Crown royalty oil in aggregate volumes of only 47 cubic meters for the March 2024 delivery month. Set out below are APMC’s records of all forecasts of Crown royalty oil deliveries for Razor Energy in the March 2024 delivery month, with the Form C forecasts showing the aggregation of Razor Energy’s Form A forecasts for the month.

Bow River South:

Producer	Op Cod	Battery Code	LSD or UWI	Original Form C	Facility Stream	From Facility 1 Code	From Facility 1 Name	From Facility 2 Code	From Facility 2 Name	To Pipeline Code	To Pipeline Name	Standard Stream ID
Razor Energy Corp	A7N1	ABBT0144707	100/06-01-008-15W4/00		BRS	ABPL0000113	Bow River River Pipeline South			ABPL0000096	Milk River BRS	
Razor Energy Corp	A7L1	ABBT0900019	100/13-19-016-17W4/00	40.0	BRS	ABTM0000801	Hays Truck Terminal	ABPL0000195	Bow River Hardisty South	ABPL0000096	Milk River BRS	
Razor Energy Corp	A7L1	ABBT0144707	100/06-01-008-15W4/00	5.0	BRS	ABTM0000801	Hays Truck Terminal	ABPL0000195	Bow River Hardisty South	ABPL0000096	Milk River BRS	

CAL:

Producer	Op Cod	Battery Code	LSD or UWI	Original Form C	Facility Stream	From Facility 1 Code	From Facility 1 Name	From Facility 2 Code	From Facility 2 Name	To Pipeline Code	To Pipeline Name	Standard Stream ID
Razor Energy Corp	A7L1	ABB15060001	100/14-13-020-20W4/00	2.0	CAL	ABTM0000835	West Drumheller TT			ABPL0000032	Central Alberta CAL	

- 6. Based on the Razor Energy forecasts reflected in APMC records, Razor Energy is not expected to have enough production in March 2024 to satisfy the current underdelivery balance of 934.8 cubic meters in Crown royalty oil that was caused by the failure of Razor Energy to deliver the Crown’s royalty share of January 2024 production.
- 7. APMC received information from Razor Energy on March 6, 2024 through non-standard channels, and very recently an affidavit, that Razor Energy has recently updated its forecasts to reflect an increased allocation of Crown royalty oil for the March 2024 delivery month; however, APMC has not yet confirmed this information with the pipelines.

8. I make this affidavit in support of the relief sought on behalf of the APMC in the application submitted for filing March 6, 2024.

SWORN BEFORE ME at  
the City of Calgary, in the Province of  
Alberta, this 6th day of March, 2024.



Commissioner for Oaths in and for the  
Province of Alberta



BRADLEY WEICKER

**NOLAN HINDMARSH**  
*Barrister & Solicitor*

(Consolidated up to 247/2018)

**ALBERTA REGULATION 174/2006**

**Petroleum Marketing Act  
Mines and Minerals Act**

**PETROLEUM MARKETING REGULATION**

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- 3 Petrinex

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### Definitions

#### 1 In this Regulation,

- (a) "actual deliveries", in relation to a delivery month and a battery, means the quantity of crude oil actually delivered to the Commission from the battery to a field delivery point during the delivery month, as determined by the Commission on the basis of the information in the possession of the Commission, including the final shipper's balance that related to or included that quantity;
- (b) "agency contract" means a contract under which the Crown in right of Alberta and the Commission appoint a person as their agent for the purpose, among others, of marketing certain quantities of the Crown's royalty share of crude oil;
- (c) "agent" or "Commission's agent" means a person appointed as an agent under an agency contract;
- (d) "agreement" means an agreement as defined in the *Mines and Minerals Act*;
- (e) "amendment report" means a report furnished or required to be furnished to the Commission pursuant to a notice given under section 4(5);
- (f) "battery", in relation to any crude oil, means each battery at which the crude oil is measured after its recovery from a well;
- (g) "Commission" means the Alberta Petroleum Marketing Commission;
- (h) "Commission's field price" means
  - (i) with respect to royalty oil delivered to the Commission in a delivery month, the value to the Crown of the oil, in dollars per cubic metre, as

## Part 2 Underdelivery and Overdelivery of Oil

### Field delivery point for royalty oil

**11(1)** Subject to subsection (2), the place at which royalty oil shall be delivered to the Commission is prescribed as follows:

- (a) if the battery at which the Crown's royalty share of crude oil is calculated is connected directly to a pipeline, the place where the royalty oil is to be delivered to the Commission is the point on the pipeline at which the battery is connected to it;
- (b) if the battery at which the Crown's royalty share of crude oil is calculated is not connected directly to a pipeline, the place at which the royalty oil is to be delivered to the Commission is
  - (i) the nearest unloading facility connected to a pipeline, or
  - (ii) if there is another unloading facility connected to a pipeline entailing a higher net revenue return to the Crown, that other unloading facility.

**(2)** The Commission may in a particular case direct or consent to the delivery of royalty oil at a place other than that prescribed under subsection (1), either indefinitely or for a specified period.

### Direction to deliver royalty deficiency

**12(1)** If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

- (a) in the month in which the direction is given,
- (b) in a particular subsequent month, or
- (c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction.

**(2)** A direction to an operator under subsection (1) relating to the underdelivery balance for a particular delivery month may include underdelivery balances for the same battery for any previous

delivery months if the operator to whom the direction is given was also the operator of that battery for each of those previous delivery months.

(3) The Commission may, with or without conditions, direct or consent to the postponement of delivery in kind of all or part of the volumes of royalty oil specified in a direction under subsection (1) to a later month or months and, on doing so, the direction is deemed to be amended accordingly.

(4) If a direction under subsection (1) is not complied with, then,

(a) to the extent that the quantity of crude oil delivered pursuant to the direction is less than the underdelivery balance or the aggregate of the underdelivery balances, as the case may be, specified in the direction, the Commission may, in a monthly statement, charge the operator with the payment to the Commission of an amount of money equal to, whichever of the following amounts is shown in the monthly statement,

(i) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the delivery month or months in which the royalty oil was originally payable, or

(ii) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the month or months in which the royalty oil should have been delivered in accordance with the direction,

and

(b) to the extent the quantity of crude oil delivered pursuant to the direction is less than that required to be delivered pursuant to the direction, the Commission may, in a monthly statement, charge the operator with the payment to the Commission of an amount of money that in the Commission's opinion is equal to the difference in value between the crude oil delivered and that required to be delivered.

(5) When an amount of money becomes owing to the Commission under subsection (4), the direction under subsection (1) ceases to apply.

(6) The Commission may not give a notice under subsection (1) in respect of an underdelivery balance for a delivery month if it has

charged the operator under section 13(1) with the payment of a money amount in respect of the same underdelivery balance.

#### **Money in lieu of royalty deficiency**

**13(1)** If there is an underdelivery balance at a battery for a delivery month, the Commission, in a monthly statement sent to the operator of the battery, may charge the operator with the payment to the Commission of an amount of money calculated by multiplying the underdelivery balance by the Commission's field price for that underdelivery balance for that month.

**(2)** The Commission may not charge a battery operator with the payment of an amount of money under subsection (1) of this section in respect of an underdelivery balance for a delivery month if a notice has been given under section 12(1) in respect of the same underdelivery balance.

#### **Money amounts owing under section 12 or 13**

**14(1)** If the operator of a battery is charged with the payment of an amount of money owing in respect of an underdelivery balance pursuant to section 12(4) or 13(1),

- (a) the obligation to pay the amount of money so charged replaces the obligation to deliver the underdelivery balance in kind to the Commission,
- (b) full payment of the amount of money so charged operates to fulfil the obligation to deliver the underdelivery balance in kind to the Commission, and
- (c) any crude oil delivered to the Commission in purported payment in kind of the underdelivery balance shall be dealt with by the Commission under section 15 as though it were an overdelivery of crude oil to which that section applies.

**(2)** If after a battery operator has been charged with the payment of a money amount under section 12(4) or 13(1) it is found that the amount owing to the Commission is greater or less than the amount charged, the Commission may adjust the amount owing to the Commission by decreasing or increasing it and cause the adjustment to be reflected in a subsequent monthly statement to the operator.

**(3)** Where a money amount is owing to the Commission under section 12(4) or 13(1) by reason of a charge contained in a monthly statement and the amount remains wholly or partly unpaid after the person so charged is succeeded as the operator of the battery concerned then, despite anything in section 12 or 13,

- (a) the person charged with the payment of the amount, and
- (b) each of that person's successors as operator of the battery,

are jointly and severally liable to the Commission for the amount or the unpaid part of the amount, as the case may be.

**(4)** Nothing in section 12 or 13 precludes the Commission from agreeing to accept, in lieu of payment of any money amount owing to the Commission under either of those sections, the delivery to the Commission of a quantity of crude oil having a value, based on the Commission's field price, at least equal to the money amount owing.

#### **Overdelivery of crude oil**

**15(1)** For the purposes of this section, there is an overdelivery of crude oil to the Commission from a battery in a delivery month if, according to the records of the Commission,

- (a) the actual deliveries from the battery for that delivery month

exceed

- (b) the prescribed royalty quantity in respect of the battery for that delivery month.

**(2)** If there is an overdelivery of crude oil from a battery in any delivery month, the Commission must, by itself or through its agent, act on behalf of the owner of the excess quantity of crude oil for the sale and delivery of that excess quantity to a purchaser.

**(3)** Where an excess quantity of crude oil is sold or delivered pursuant to subsection (2),

- (a) the Commission or the Commission's agent, as the case may be, must negotiate the sale of the excess quantity of crude oil on the same terms and conditions that apply to the sale of the royalty oil unless the Commission or its agent is unable to do so because of market factors, and
- (b) subject to subsection (5), the Commission must pay to the operator concerned, in respect of each cubic metre of the excess quantity of crude oil, an amount equal to the sale proceeds received by the Commission for the excess quantity less the amount per cubic metre prescribed by the Commission as a fee for its services in carrying out the sale and delivery of the excess quantity.



- (4) If a payment of an amount is made under subsection (3)(b) to the operator of the battery,
- (a) the operator is responsible for paying that amount to the former owner or owners of the excess quantity to the extent that the operator was not its owner, and
  - (b) the payment to the operator operates to discharge the Commission of any liability to pay that amount to the former owner or owners of the excess quantity.
- (5) The Commission is not liable
- (a) to any person for the payment of interest in relation to any amount received by the Commission under this section, or
  - (b) to pay any amount to the battery operator or any owner or former owner of the excess quantity in respect of any portion of the excess quantity lost or destroyed before delivery to the purchaser of the excess quantity.

### **Part 3 Penalties Related To Inaccurate Forecasting**

#### **Interpretation**

**16(1)** In this Part,

- (a) “avoidance charge” means a cost or charge reasonably incurred by a shipper for the purpose of avoiding the imposition of a non-performance penalty, or reducing the amount of a non-performance penalty, that would otherwise be imposed on the shipper;
- (b) “cleaning plant” means a crude oil cleaning plant that
  - (i) is connected to a gathering pipeline but is not operated by the owner of that pipeline, or
  - (ii) is not connected to a gathering pipeline;
- (c) “connected battery” means a battery that is connected directly to a gathering pipeline or feeder pipeline;
- (d) “document” means a document or other memorandum of information whether in writing or in electronic form or represented or reproduced by any other means;

- (e) “feeder pipeline” means a crude oil pipeline in Alberta that is connected to and transports crude oil to a trunk line;
- (f) “flow-through penalty” means a penalty imposed by the Commission pursuant to section 18(1);
- (g) “Form A forecast” means a document, commonly referred to in the oil industry as a Form A forecast, provided prior to a delivery month in accordance with normal oil industry practice by the operator of a connected battery, truck terminal, cleaning plant or gathering pipeline to the operator of a feeder pipeline and showing
  - (i) a forecast of the volume of crude oil to be delivered by the operator of that unconnected battery, truck terminal, cleaning plant or gathering pipeline in the delivery month,
  - (ii) the shippers for whose account the crude oil is to be delivered by those operators in the delivery month, and
  - (iii) the portions of that volume allocated to the accounts of those shippers;
- (h) “Form C forecast” means a document, commonly referred to in the oil industry as a Form C forecast, provided prior to a delivery month in accordance with normal oil industry practice by the operator of a feeder pipeline to
  - (i) each operator of a connected battery, truck terminal, cleaning plant or gathering pipeline that is expected to deliver crude oil to the feeder pipeline in that delivery month, and
  - (ii) each shipper for whose account crude oil is to be delivered to the feeder pipeline in that delivery month,and showing a forecast of the volume of crude oil that will be tendered for delivery to that feeder pipeline in that delivery month, the shippers for whose account the crude oil is to be delivered by those operators and the portions of those volumes allocated to the accounts of those shippers;
- (i) “gathering pipeline” means a crude oil pipeline in Alberta that is connected to one or more batteries, truck terminals or cleaning plants and transports crude oil to a feeder pipeline;

- (j) “non-performance penalty”, in relation to a delivery month, means a penalty imposed on a shipper by the operator of a crude oil pipeline pursuant to its tariff by reason of a failure by the shipper to tender for delivery to the pipeline in that delivery month
  - (i) the volume of crude oil that the shipper notified the pipeline operator would be tendered for delivery to the pipeline by that shipper in that delivery month, or
  - (ii) the percentage specified in the tariff of that volume of crude oil;
- (k) “notice of shipment” means
  - (i) a document, commonly referred to in the oil industry as a notice of shipment, given by a shipper to the operator of a crude oil pipeline prior to a delivery month in accordance with normal oil industry practice and showing, among other things, the volume of crude oil to be tendered for delivery by the shipper to that pipeline during the delivery month,
  - (ii) if the shipper prepares a corrected notice of shipment after being notified of discrepancies in the initial notice referred to in subclause (i), the corrected notice of shipment, or
  - (iii) if the pipeline operator informs the shipper of an apportionment among shippers of the total volume of crude oil that may be tendered for delivery to the pipeline in that delivery month, the revised notice of shipment given by the shipper to the operator reflecting the reduction of the volume of crude oil to be tendered for delivery by that shipper in that delivery month resulting from the apportionment;
- (l) “oilfield facility” means a battery, a truck terminal, a cleaning plant or a gathering pipeline;
- (m) “transfer forecast” means a forecast that
  - (i) is part of a series of transfer forecasts forming part of the reporting and forecasting system administered by the oil industry,
  - (ii) is prepared by an oilfield facility operator in accordance with normal oil industry practice, and
  - (iii) shows, among other things, the volumes of crude oil intended to be delivered by that oilfield facility

operator to another oilfield facility operator in a delivery month;

- (n) “truck terminal” means a crude oil tank terminal connected to a gathering pipeline or feeder pipeline not operated by the operator of that pipeline and to which crude oil is transported by truck;
- (o) “trunk line” means an extra-provincial crude oil pipeline;
- (p) “unconnected battery” means a battery that is not directly connected to a gathering pipeline or feeder pipeline.

(2) If the Commission’s agent, in its capacity as a shipper, is liable to the operator of a crude oil pipeline for a non-performance penalty in respect of a delivery month and the agent is entitled under the agency contract to recover all or part of the amount of the penalty from the Crown and the Commission, the amount so recoverable shall, for the purposes of this Part, be deemed to be a non-performance penalty imposed on the Commission by the operator of the pipeline.

(3) If the Commission’s agent, in its capacity as a shipper, incurs an avoidance charge in respect of a delivery month and the agent is entitled under the agency contract to recover all or part of the avoidance charge from the Crown and the Commission, the amount so recoverable shall, for the purposes of this Part, be deemed to be an avoidance charge incurred by the Commission.

(4) The Commission may determine what constitutes normal oil industry practice for the purposes of this Regulation and in doing so shall have regard to the system of forecasting and reporting administered by the oil industry.

#### **Notice to furnish information**

**17(1)** Subject to this section, the Commission may give a notice to a person who is or was the operator of an oilfield facility or feeder pipeline for a delivery month to furnish to the Commission, by the deadline specified in the notice,

- (a) a copy of a transfer forecast or a Form A forecast prepared by or on behalf of that operator in respect of that delivery month, or
- (b) information relating to the preparation of the transfer forecast or the Form A forecast.

(2) The Commission may give a notice under this section only for the purpose of obtaining information for the purpose of determining

- (a) the liability of an oilfield facility operator for a flow-through penalty in respect of the delivery month concerned, and
- (b) the amount of the penalty.

**(3)** A person who is required to comply with a notice given under this section is liable to pay to the Commission

- (a) a penalty of \$100, if the copy of the forecast or the information referred to in the notice is not furnished to the Commission by the deadline specified in the notice, and
- (b) if the failure to comply with the notice continues for one or more months following the deadline specified in the notice, a further penalty of \$100 for each time any of those months expires without the notice having been complied with.

**(4)** If a notice given under this section is only partially complied with by reason of the omission of any copy of a forecast or of any information required to be furnished then, for the purposes of subsection (3), the notice shall be deemed not to have been complied with until the omitted copy or information is furnished to the Commission.

#### **Flow-through penalties**

**18(1)** The Commission may, subject to this Part, impose a penalty on one or more oilfield facility operators in respect of a delivery month in any or all of the following circumstances:

- (a) if the Commission, in its capacity as a shipper of crude oil, is liable to the operator of a crude oil pipeline for a non-performance penalty in respect of that delivery month;
- (b) if a non-performance penalty is deemed to be imposed on the Commission in respect of a delivery month by reason of section 16(2);
- (c) if the Commission, in its capacity as a shipper, incurs an avoidance charge in respect of that delivery month;
- (d) if the Commission is deemed to have incurred an avoidance charge in respect of that delivery month by reason of section 16(3).

**(2)** The Commission may impose flow-through penalties in respect of a delivery month only if it determines

- (a) that the non-performance penalty imposed or deemed to be imposed on the Commission in respect of that month, or the avoidance charge incurred or deemed to be incurred by the Commission in respect of that month, was attributable to the fact that the notice of shipment for the month given by the Commission or its agent to the operator of the pipeline showed volumes of crude oil to be tendered for delivery that were greater than the actual volumes delivered, as shown in the Commission's or the agent's final shipper's balance for the month,
  - (b) that the crude oil volumes shown in the Commission's or the agent's notice of shipment as the volumes to be tendered for delivery in the month were based on crude oil volumes in Form C forecasts provided to the Commission or its agent by one or more operators of feeder pipelines that transported the crude oil, and that the volumes of crude oil actually delivered in the month were less than the volumes shown in the Form C forecasts, and
  - (c) that the reason for the overforecasting of crude oil deliveries in the Form C forecasts was attributable to inaccurate forecasting of deliveries in one or more of the Form A forecasts on which the Form C forecasts were wholly or partly based or in one or more transfer forecasts on which one or more Form A forecasts were wholly or partly based.
- (3)** The Commission may determine which oilfield facility operators are liable for flow-through penalties on the basis of
- (a) the Form A forecasts and transfer forecasts provided by those battery operators who delivered, or were required to but did not deliver, royalty oil to the Commission in the delivery month concerned,
  - (b) one or more transfer forecasts that led to an inaccurate Form C forecast on which the Commission or its agent relied in preparing the Commission's or the agent's notice of shipment for a delivery month, where each of those transfer forecasts either
    - (i) contained an excessive forecast of the volume of royalty oil to be delivered by the oilfield facility operator who prepared the transfer forecast, or
    - (ii) changed the forecast of deliveries of royalty oil in another transfer forecast that preceded it in the series of transfer forecasts for that delivery month and that caused the other transfer forecast to become

excessive or more excessive in relation to royalty oil deliveries,

and

- (c) any other information obtained by the Commission pursuant to section 17 or otherwise in the possession of the Commission and containing evidence of excessive forecasting of royalty oil deliveries.

**(4)** The Commission may determine the amounts of the respective flow-through penalties imposed on oilfield facility operators determined to be liable for those penalties under subsection (3), subject to the following:

- (a) a penalty imposed on an operator in respect of a delivery month is subject to a minimum of \$250;
- (b) the aggregate amount of the flow-through penalties imposed on all oilfield facility operators in Alberta for a delivery month must not exceed the aggregate of
  - (i) the non-performance penalties imposed or deemed to be imposed on the Commission in respect of that delivery month,
  - (ii) the avoidance charge incurred or deemed to have been incurred by the Commission in respect of that delivery month, and
  - (iii) an amount determined by the Commission as its administration costs incurred in connection with the imposition of the flow-through penalties for that delivery month,

unless that aggregate amount is exceeded by reason of the imposition of minimum penalties under clause (a).

#### **Waiver of penalty**

**19** The Commission may, on application by the oilfield facility operator concerned, waive all or part of a penalty imposed on that operator under this Part if the Commission considers the waiver warranted in the circumstances.

#### **Invoicing for penalties**

**20** Where a penalty is imposed on an oilfield facility operator pursuant to this Part, the Commission must

- (a) send to the oilfield facility operator an invoice for the penalty and inform the operator of the reason for its imposition and the deadline by which payment of the penalty must be received by the Commission, or
- (b) in the case of a penalty imposed on a battery operator, include the penalty in a monthly statement sent to the battery operator and showing the reason for the penalty.

**Appeals respecting penalties**

**21(1)** Subject to this section, a person on whom a penalty is imposed under this Part may file with the Commission a notice of an appeal to the Minister in respect of

- (a) that person's liability for the penalty,
- (b) the amount of the penalty, or
- (c) the Commission's refusal to waive the penalty pursuant to section 19.

**(2)** A notice of appeal must be filed with the Commission within

- (a) 2 months after the date of the invoice for the penalty or the monthly statement that includes the penalty, as the case may be, or
- (b) one month after the date of the Commission's notice to the battery operator of its refusal to waive the penalty, in the case of an appeal under subsection (1)(c).

**(3)** On receiving a notice of appeal, the Minister shall conduct a review of the penalty and the representations in or accompanying the notice.

**(4)** On concluding the review, the Minister must either

- (a) confirm the penalty,
- (b) revoke the penalty on the ground that the appellant was not liable for it,
- (c) reduce the amount of the penalty, or
- (d) grant any penalty waiver pursuant to section 19 that the Commission could have granted, in the case of an appeal under subsection (1)(c),

and must inform the appellant of the Minister's decision.



(5) The Commission may establish general directions respecting the filing of and content of notices of appeal under this section and the procedures for the conduct of those appeals.

## **Part 4 General**

### **Truck transportation allowances**

**22(1)** Subject to this section, the Crown is liable to a battery operator for an allowance based on an average of the costs incurred in the transportation of royalty oil by truck during a delivery month from that operator's battery to an unloading facility connected to a pipeline.

(2) The Crown is liable for an allowance under this section only to the extent that the Minister consents to be liable for the allowance.

(3) The payment of an allowance under this section is subject to any conditions the Minister prescribes, in addition to the following conditions:

- (a) the royalty oil must have been transported in an uninterrupted manner;
- (b) the royalty oil must have been delivered to the unloading facility to which it was required to be delivered during the delivery month concerned pursuant to section 11(1)(b) or (2), whichever applied;
- (c) the royalty oil must have been delivered to the unloading facility for the Crown's account;
- (d) the royalty oil, while being transported, met the quality specifications for the pipeline to which the royalty oil was delivered from the unloading facility.

(4) If a condition referred to in subsection (3) was breached in respect of an allowance paid under this section, the Minister may recover the allowance by action or by way of set-off under section 23.

(5) An allowance for which the Crown is liable under this section shall be paid to the operator of the battery for the delivery month in which the royalty oil was transported by truck.

(6) The Minister may not consent to the payment of an allowance under this section unless a claim is made by the operator of the battery for the delivery month concerned by the end of the 2nd year following the year in which the delivery month occurred.

# Court of King's Bench of Alberta

**Citation: Razor Energy Corp., v Companies' Creditors Arrangement Act, 2024 ABKB 534**

**Date:**20240906  
**Docket:** 2401 02680  
**Registry:** Calgary

In the Matter of the Companies Creditors Arrangement Act, RSC 1985, c C-36

Between:

**Razor Energy Corp., Razor Holdings Gp Corp, Blade Energy Services Corp.**

Applicants

- and -

**Companies' Creditors Arrangement Act**

Respondents

**Corrected judgment:** A corrigendum was issued on September 12, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Corrected judgment:** A corrigendum was issued on September 9, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Decision  
of  
Honourable Justice M.E. Burns**

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[1] Razor is in the business of the development and production of oil and gas.

[2] Alberta (the "Crown") owns and holds legal title to most mines and minerals and natural resources in the province and enters into agreements under the *Mines and Minerals Act*, RSA c

M-17 (the “*Act*”) that grants rights in respect of minerals, which includes petroleum and oils as provided in Section 1(1)(p)(i) and section 16 of the *Act*.

[3] The *Act* provides that a royalty determined under the *Act* is reserved to the Crown on a mineral recovered pursuant to an agreement. The royalty is prescribed from time to time by the Lieutenant Governor in Council (section 34).

[4] The Alberta Petroleum Marketing Commission (“APMC”) was created and appointed to act as the Crown’s agent to receive and market crude oil royalty volumes and includes tasks related to crude oil royalty forecasting, deliveries, and settlement of Crown oil royalties under the *Petroleum Marketing Act* and its’ regulations.

[5] Razor has entered into approximately 321 “Petroleum and Natural Gas Leases” with the Crown. Each of the agreements are substantially identical other than the location and “leased substance.” As a result, Razor is obligated to deliver to the Crown a royalty share of the leased substance produced by delivering such share to APMC.

[6] The royalty owing to the Crown in respect of the leased substance produced by Razor in January 2024 was not delivered to the APMC by Razor.

[7] On January 30, 2024, Razor commenced insolvency proceedings by filing notices of intention to make proposals to their creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“*BIA*”), consequently there was a stay of proceedings respecting Razor and its property.

[8] On February 28, 2024, Razor converted its proposal proceedings to proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“*CCAA*”), with an (“initial order”) being granted the same day. Amongst other things, a Monitor was appointed and the stay of proceedings under the proposal continued with respect to preventing parties from commencing or continuing proceedings or exercising any rights or remedies against Razor.

[9] On February 28th, APMC notified the Monitor and Razor Energy of the Crown’s ownership and title to royalty oil, including the January royalty deficiency volumes (estimated to be 934.8 m<sup>3</sup> of crude oil). APMC advised Razor Energy it was in a bailment and trust relationship with respect to the Crown’s royalty share of crude oil production, and there was no right to seize and convert the Crown’s property for the use of Razor Energy and its creditors and the royalty oil could not form part of the property of Razor Energy.

[10] On March 1, 2024, the APMC directed Razor Energy (“the Direction”), pursuant to section 12(1) of the *Petroleum Marketing Regulation*, to deliver, in kind, to APMC, as part of the February 2024 royalty deliveries, crude oil of an equal quantity and like quality to the January 2024 royalty deficiency volumes that were not delivered.

[11] The Monitor’s position, as stated in its First Report, was that as the Direction from APMC was directly related to the January royalty amounts, it appeared to the Monitor that the Direction was in breach of the prohibition on the exercise of rights and remedies contained in paragraph 15 of the Initial Order.

[12] APMC, on behalf of the Crown, argues that it has a proprietary right in the oil that it reserves as royalties. This right applies to the monthly oil royalty and the oil it directs to be paid under section 12(1) of the *Act*. APMC argues that the Crown does not become a creditor when a royalty is not paid – it has a proprietary right that it may seek over subsequent oil production.

AMPC is not seeking the enforcement of a payment, it is seeking to have the Crown's royalty share delivered to it.

[13] Razor, and its primary creditor, Arena Investors LP, argue that while the Crown may have a proprietary right to the oil in the month the royalties are due, if the oil is not provided, the Crown becomes a creditor with respect to the outstanding royalty deficiency volumes and the usual priorities will apply to the Crown in the context of the bankruptcy. The fact that APMC is directing Razor's pre-filing obligations be paid in kind rather than cash is still enforcing a missed payment – an outstanding liability to a creditor.

**What is the scope of the stay?**

[14] The Initial Order, as amended and extended, contains provisions mandating a stay. It provides, in part, that:

**NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

14. Until and including March 8, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court [...]

[15] Razor asserts that all financial and payment obligations relating to the pre-filing period are stayed under the CCAA and failure to pay a pre-filing royalty deficiency volume does not give rise to an enforceable remedy during the applicable stay period. The CCAA is clear that it is binding upon the Crown. It is also clear that the CCAA applies with respect to the debtor's assets and does not permit a debtor to take and use that which they do not own.

**Is this a deemed trust?**

[16] Razor argues that while the *Mines and Minerals Act* uses language of "ownership," APMC's claim is akin to or in fact a statutory deemed trust. Section 37(1) of the CCAA provides:

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

[17] Razor argues that the Crown's royalty share of the mineral produced in a given month is commingled with all the produced minerals which are property of Razor Energy. Razor asserts that section 3(b) of the *Marketing Regulation* implicitly recognizes this and states that "when crude oil recovered pursuant to an agreement is delivered to a field delivery point during a delivery month, the Crown's royalty share of that crude oil is deemed to be delivered first". Presumably, Razor's position is that the Crown's oil, deemed to be delivered first, would then engage the protection of s 37(1) of the CCAA.

[18] The Crown's position is that this is different because here there is no question that the Crown holds the proprietary interest in all of the crude subject to Razor's interest. Razor's interest is governed by a contract and the provisions of the *Act*. Section 37 applies to "property of a debtor company" being held in trust for Her Majesty. The Crown's royalty share is not and never was the "property of the debtor" which was deemed by statute to be held for the Crown. It was always the property of the Crown. At most, Razor is "a trustee or agent" in respect of the Crown royalty share. This is not a deemed trust created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share.

[19] The Alberta Court of Appeal considered the *Act* and the Crown's interest in the mineral production in the decision of *Excel Energy Inc v Alberta*, 1997 ABCA 24 at paragraphs 6 and 7, where the court noted:

... under Alberta law, the Crown royalty is an *in rem* right. To establish the required statutory obligation, Excel relied upon provisions in the *Mines and Minerals Act*, RSA 1980, c M-15, s 34 provides that "A royalty ... is reserved to the Crown in right of Alberta on any mineral recovered pursuant to an agreement." S. 35(3) provided that the royalty interest was deliverable in kind. S. 36 provides that title remains in Alberta even though the royalty is commingled during the extraction and refining process, and indeed remains until the Alberta interest is "disposed of by or on behalf of the Crown". If then, the producer ever sells the royalty it can only do so as agent for Alberta.

It first must be said that this attempt by Canada to treat an obligation as income is, of course, the creation of a fiction. Nobody but Alberta ever in fact had that royalty or received a penny by way of proceeds from it. Alberta held an *in rem* interest in the hydrocarbons as they came out of the ground, and, when they were sold, the proceeds, under the scheme of the *Alberta Act*, went straight to Alberta. The producer could never be anything more than a trustee or agent.

[20] Consequently, this is not a case such as *British Columbia v. Henfrey Samson Belair Ltd.*, [1989] 2 S.C.R. 24, where a person collects a tax (cash or similar), and the legislation deems a trust over the tax collector's property for the amount of the tax collected.

[21] Further, in *Canada v. Canada North Group Inc.*, 2021 SCC 30, the question was whether a deemed trust created by statute had a priority over priming (administrative) charges in the context of the CCAA. The SCC found that the deemed trust did not create a beneficial interest that could be considered a proprietary interest and did not give the Crown a property interest as a common law trust would, reasoning that the trust lacked the quality that allowed a court to refer to a beneficiary as a beneficial owner.

[22] Here, the Court of Appeal recognized the *in rem* ownership interest in the hydrocarbons. Razor's relationship to the Crown's royalty share as a trustee or agent is not a deemed trust

created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share. No deemed trust is necessary or has been created. There is already a proprietary interest. Razor does not hold the oil in a “trust” as one would find in a deemed trust. Razor is holding onto the Crown’s oil. The Initial Order applies to creditors and to Razor’s property, not the Crown’s property.

**But does the Crown become a creditor when a royalty is not delivered?**

[23] Given the decision in *Excel*, it is clear that the Crown’s rights to the royalty share are *in rem*. Razor never owned and was never entitled to own the Crown’s royalty share of production. Neither the *BIA* nor the *CCAA* give Razor any ownership interest in the Crown’s royalty share.

[24] The Crown argues that Alberta is not acting as a creditor, but the steward of natural resources owned by and for the benefit of all Albertans, which it develops in the public interest, but in the context of oil that was not provided when required, is the Crown then a creditor with respect to the non-delivered amount? And if so, is it the type of “claim” covered by the Initial Order or the statutes?

[25] Arena argues that APMC is fundamentally seeking relief in relation to a pre-filing claim which has been stayed by virtue of the Initial Order. The APMC is utilizing the enforcement mechanisms available to it under provincial legislation to seek recovery of the January 2024 royalty shares.

[26] The reality is that the royalty is a tangible, physical quantity of oil but Razor no longer possesses the January 2024 royalty shares volume because it was likely transferred to third party oil marketers back in the beginning of the year (albeit in violation of section 11 of the *Act*) and the tangible assets are unrecoverable. As a result, the APMC cannot enforce its *in rem* rights with respect to that particular oil.

**Can APMC demand the royalty under s 12?**

[27] Section 12(1) of the Petroleum Marketing Regulation provides:

12(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

- (a) in the month in which the direction is given,
- (b) in a particular subsequent month, or
- (c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction (emphasis added).

[28] Section 12 is a statutory enforcement clause/remedy. Section 15 of the Initial Order is specific in providing that all rights and remedies of a government body, whether judicial or extra-judicial, statutory, or non-statutory, against or in respect of the Razor Entities, or affecting the Business or Property, are stayed.

[29] Whether APMC could exercise its rights under section 13 (seeking a monetary amount) is irrelevant to this determination.

[30] Further, there is no paramountcy issue here. There is no conflict between the Act and *Petroleum Marketing Regulation* and the *CCAA* or *BIA*. The Initial Order was made within the power, authority, and jurisdiction of the Court. The Crown is bound by it.

[31] At its crux, even though the oil was wrongfully taken in January, and the Crown has title to any and all subsequent oil, subject to the terms of the leases, and even though the oil was held in a true trust, not a deemed trust, the act allows, and the Initial Order provides, that all attempts at remedying the taken oil were stayed. Using the power in Section 12 is a remedial step that is stayed.

[32] APMC's application is dismissed.

Heard on the 10 day of April, 2024.

**Dated** at the City of Calgary, Alberta this 6<sup>th</sup> day of September, 2024.

---

**M.E. Burns**  
**J.C.K.B.A.**

**Appearances:**

William Shores,  
Shores Jardine LLP  
for the Applicant

Pantellis Kyriakakis,  
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**Corrigendum of the Reasons for Decision**  
**of**  
The Honourable Justice M.E. Burns Honourable Justice M.E. Burns

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A corrigendum was issued to correct Honourable Justice M.E. Burns title on the cover page.

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**Corrigendum of the Reasons for Decision  
of  
M.E. Burns M.E. Burns, Registrar in Bankruptcy**

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A Corrigendum was issued to correct one counsel's law firm.



CANADA

CONSOLIDATION

CODIFICATION

Alberta Natural Resources Act

Loi des ressources naturelles de  
l'Alberta

S.C. 1930, c. 3

S.C. 1930, ch. 3

Current to March 6, 2024

À jour au 6 mars 2024

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

### Inconsistencies in Acts

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to March 6, 2024. Any amendments that were not in force as of March 6, 2024 are set out at the end of this document under the heading “Amendments Not in Force”.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

### Incompatibilité – lois

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 6 mars 2024. Toutes modifications qui n'étaient pas en vigueur au 6 mars 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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## TABLE OF PROVISIONS

### **An Act respecting the transfer of the Natural Resources of Alberta**

- 1 Short title
- 2 Agreement confirmed / Proviso

#### **SCHEDULE**

#### **SCHEDULE**

## TABLE ANALYTIQUE

### **Loi concernant le transfert des ressources naturelles de l'Alberta**

- 1 Titre abrégé
- 2 Convention ratifiée

#### **ANNEXE**

#### **ANNEXE**



S.C. 1930, c. 3

## An Act respecting the transfer of the Natural Resources of Alberta

[Assented to 30th May 1930]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### Short title

**1** This Act may be cited as *The Alberta Natural Resources Act*.

### Agreement confirmed / Proviso

**2** The agreement set out in the schedule hereto is hereby approved, subject to the proviso that, in addition to the rights accruing hereunder to the province of Alberta, the said province shall be entitled to such further rights, if any, with respect to the subject matter of the said agreement as are required to be vested in the said province in order that it may enjoy rights equal to those which may be conferred upon or reserved to the province of Saskatchewan under any agreement upon a like subject matter hereafter approved and confirmed in the same manner as the said agreement.

S.C. 1930, ch. 3

## Loi concernant le transfert des ressources naturelles de l'Alberta

[Sanctionnée le 30 mai 1930]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

### Titre abrégé

**1** La présente loi peut être citée sous le titre : *Loi des ressources naturelles de l'Alberta*.

### Convention ratifiée

**2** La convention énoncée à l'Annexe de la présente loi est par les présentes approuvée, sous la réserve que, outre les droits attribués ci-après à la province de l'Alberta, ladite province doit jouir de tous autres droits, s'il en est, concernant le sujet de ladite convention, dont il pourra être nécessaire d'investir ladite province afin qu'elle puisse jouir de droits égaux à ceux qui peuvent être conférés ou réservés à la province de la Saskatchewan en vertu de toute convention sur un sujet semblable dorénavant approuvée et ratifiée de la même manière que pour ladite convention.

## SCHEDULE

# Memorandum of Agreement made this fourteenth day of December, 1929,

BETWEEN

THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior,

*Of the first part,*

AND

THE GOVERNMENT OF THE PROVINCE OF ALBERTA, represented herein by the Honourable John Edward Brownlee, Premier of Alberta, and the Honourable George Hoadley, Minister of Agriculture and Health,

*Of the second part.*

"Whereas by section twenty-one of *The Alberta Act*, being chapter three of four and five Edward the Seventh, it was provided that "All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under *The North-west Irrigation Act, 1898*, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories";

\* [Note: Act in force on assent May 30, 1930.]

And Whereas it is desirable that the Province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905;

And Whereas it has been agreed between Canada and the said Province that the provisions of *The Alberta Act* should be modified as herein set out;

Now Therefore This Agreement Witnesseth:

## Transfer of Public Lands Generally

**1** In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province and the interest of the Crown in the waters and water-powers within the Province under the *North-west Irrigation Act, 1898*, and the *Dominion Water Power*

## ANNEXE

# Mémorandum de la Convention conclue ce quatorzième jour de décembre 1929,

ENTRE

LE GOUVERNEMENT DU DOMINION DU CANADA, représenté aux présentes par l'honorable Ernest Lapointe, ministre de la Justice, et l'honorable Charles Stewart, ministre de l'Intérieur,

*d'une part;*

ET

LE GOUVERNEMENT DE LA PROVINCE DE L'ALBERTA, représenté aux présentes par l'honorable John Edward Brownlee, premier ministre de l'Alberta, et l'honorable George Hoadley, ministre de l'Agriculture et de la Santé,

*d'autre part.*

"Considérant que, par l'article vingt et un de l'*Acte de l'Alberta*, chapitre trois de quatre et cinq Edouard VII, il a été prévu que « Les terres fédérales, mines et minéraux et les redevances qui s'y rattachent, ainsi que les droits de la Couronne sur les eaux comprises dans les limites de la province sous l'empire de l'*Acte d'irrigation du Nord-Ouest, 1898*, continuent d'être la propriété de la Couronne et sous l'administration du gouvernement du Canada pour le Canada, sauf les dispositions de tout acte du Parlement du Canada, relatives aux réserves pour chemins et aux chemins ou trails, et telles qu'en vigueur immédiatement avant l'entrée en vigueur de la présente loi, lesquelles s'appliqueront à ladite province et comporteront substitution de ladite province aux territoires du Nord-Ouest »;

\* [Note : Loi en vigueur à la sanction le 30 mai 1930.]

Et considérant qu'il est avantageux que la province soit traitée à l'égal des autres provinces de la Confédération quant à l'administration et au contrôle de ses ressources naturelles, à dater de son entrée dans la Confédération en 1905;

Et considérant qu'il a été entendu entre le Canada et ladite province que les dispositions de l'*Acte de l'Alberta* devraient être modifiées telles qu'énoncées aux présentes;

À ces causes, la présente convention fait foi :

## Transfert des terres publiques en général

**1** Afin que la province puisse être traitée à l'égal des provinces constituant originairement la Confédération, sous le régime de l'article cent neuf de l'*Acte de l'Amérique britannique du Nord, 1867*, l'intérêt de la Couronne dans toutes les terres, toutes les mines, tous les minéraux (précieux et vils) et toutes les redevances en découlant à l'intérieur de la province ainsi que l'intérêt de la Couronne dans les eaux et les forces hydrauliques à l'intérieur de la province, visées par l'*Acte*

Act, and all sums due or payable for such lands, mines, minerals or royalties, or for interests or rights in or to the use of such waters or water-powers, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

**2** The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto or is legislation relating to the conservation of oil resources or gas resources or both by the control or regulation of the production of oil or gas or both, whether by restriction or prohibition and whether generally or with respect to any specified area or any specified well or wells or by repressuring of any oil field, gas field or oil-gas field, and, incidentally thereto, providing for the compulsory purchase of any well or wells.

**3** Any power or right, which, by any such contract, lease or other arrangement, or by any Act of the parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province as may, be specified by the Legislature thereof from time to time and until otherwise directed, may be exercised by the Provincial Secretary of the Province.

**4** The Province will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation in respect of the public lands to be administered by it hereunder to any person entitled to a grant of

*d'irrigation du Nord-Ouest, 1898, et par la Loi des forces hydrauliques du Canada, qui appartiennent à la Couronne, et toutes les sommes dues ou payables pour ces mêmes terres, mines, minéraux ou redevances, ou pour les intérêts dans l'utilisation de ces eaux ou forces hydrauliques ou pour les droits y afférents, doivent, à compter de l'entrée en vigueur de la présente convention, et sous réserve des dispositions contraires de la présente convention appartenir à la province, subordonnement à toutes les fiducies existant à leur égard et à tout intérêt autre que celui de la Couronne dans ces ressources naturelles, et ces terres, mines, minéraux et redevances seront administrés par la province pour ces fins, sous réserve, jusqu'à ce que l'Assemblée législative de la province prescrive autrement, des dispositions de toute loi rendue par le Parlement du Canada concernant cette administration; tout paiement reçu par le Canada à l'égard de ces terres, mines, minéraux ou redevances avant que la présente convention soit exécutoire continue d'appartenir au Canada, qu'il soit payé d'avance ou autrement, l'intention de la présente convention étant que, sauf dispositions contraires spécialement prévues aux présentes, le Canada ne soit pas obligé de rendre compte à la province d'un paiement effectué à l'égard de ces terres, mines, minéraux ou redevances, avant la mise en vigueur de la présente convention, et que la province ne soit pas obligée de rendre compte au Canada d'un pareil paiement effectué postérieurement à la présente convention.*

**2** La province, d'accord avec les conditions stipulées aux présentes, exécutera tout contrat d'achat ou de location de terres, mines ou minéraux de la Couronne et tout autre arrangement en vertu duquel une personne a été investie d'un intérêt dans les susdits à l'encontre de la Couronne, et elle convient en outre de ne porter aucune atteinte ni apporter aucune modification à l'une quelconque des conditions de ce contrat d'achat ou de location, ou d'un autre arrangement, par législation ou autrement, sauf du consentement de toutes les parties à ce contrat ou arrangement autre que le Canada ou en tant qu'une législation puisse s'appliquer généralement à toute convention semblable relative aux terres, mines ou minéraux de la province, ou à un intérêt dans les susdits, sans égard à quiconque peut y être partie, ou qu'elle constitue une législation sur la conservation des ressources de pétrole ou de gaz, ou des deux, par le contrôle ou la réglementation de la production de pétrole ou de gaz, ou des deux, soit par restriction ou interdiction, et soit généralement ou concernant quelque région déterminée ou un ou plusieurs puits spécifiés, ou par le rétablissement de la pression dans un champ de pétrole ou de gaz, ou dans un champ de gaz de pétrole, et, accessoirement, prévoyant l'achat obligatoire d'un ou plusieurs puits.

**3** Tout pouvoir ou droit qui, par un contrat, bail ou autre arrangement, ou par une loi du Parlement du Canada se rapportant aux terres, mines, minéraux ou redevances par les présentes transférés, ou par un règlement établi sous l'empire de cette loi, est réservé au gouverneur en son conseil ou au ministre de l'Intérieur ou à tout autre fonctionnaire du gouvernement du Canada, peut être exercé par le fonctionnaire du gouvernement de la province qui, à l'occasion, peut être désigné par la législature de cette dernière, et, à moins d'ordres contraires, peut être exercé par le secrétaire provincial de la province.

**4** La province devra satisfaire à toute obligation du Canada résultant des dispositions de quelque loi, arrêté en conseil ou règlement concernant les terres publiques qu'il est tenu d'administrer de ce chef, envers toute personne ayant droit à une



lands by way of subsidy for the construction of railways or otherwise or to any railway company for grants of lands for right of way, road bed, stations, station grounds, work-shops, buildings, yards, ballast pits or other appurtenances.

**5** The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled, carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the *Dominion Lands Act* and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made prior to the coming into force of this agreement. Nothing in this agreement, or in any agreement varying the same as hereinafter provided, shall in any way prejudice or diminish the rights of the Hudson's Bay Company or affect any right to or interest in land acquired or held by the said Company pursuant to the Deed of Surrender from it to the Crown, the *Dominion Lands Act* or the said Agreement of the 23rd day of December, 1924.

## School Lands Fund and School Lands

**6** Upon the coming into force of this agreement, Canada will transfer to the Province the money or securities constituting that portion of the school lands fund, created under sections twenty-two and twenty-three of *The Act to amend and consolidate the several Acts respecting Public Lands of the Dominion*, being chapter thirty-one of forty-two Victoria, and subsequent statutes, which is derived from the disposition of any school lands within the Province or within that part of the Northwest Territories now included within the boundaries thereof.

**7** The School Lands Fund to be transferred to the Province as aforesaid, and such of the school lands specified in section thirty-seven of the *Dominion Lands Act*, being chapter one hundred and thirteen of the Revised Statutes of Canada, 1927, as pass to the administration of the Province under the terms hereof, shall be set aside and shall continue to be administered by the Province in accordance, *mutatis mutandis*, with the provisions of sections thirty-seven to forty of the *Dominion Lands Act*, for the support of schools organized and carried on therein in accordance with the law of the Province. The Province will, notwithstanding anything in this Agreement, invest money to which this paragraph applies in securities of Canada, or of a Province, or of a municipal corporation, school district or school division in the Province of Alberta, or in securities guaranteed by Canada or a Province, to form a school fund, and will apply the interest arising

concession de terrains par voie de subvention pour la construction de chemins de fer ou autrement, ou envers une compagnie de chemin de fer, à l'égard de concessions de terrains pour emprises, terrassements, gares, terrains de station, ateliers, bâtiments, parcs, carrières de ballast ou autres dépendances.

**5** À l'égard de tous terrains ou intérêts dans ces terrains auxquels la compagnie de la Baie d'Hudson peut avoir droit, la province sera tenue, en outre, d'exécuter les termes et conditions de l'acte de cession par ladite compagnie à la Couronne, tel que modifié par la *Loi des terres fédérales* et la Convention en date du 23<sup>e</sup> jour de décembre 1924, entre Sa Majesté et ladite compagnie, laquelle convention a été approuvée par arrêté en conseil en date du 19<sup>e</sup> jour de décembre 1924 (C.P. 2158), et, en particulier, la province concédera à la compagnie les terrains situés dans la province que la compagnie peut avoir le droit de choisir et qu'elle peut choisir sur les listes des terrains fournies à la compagnie par le ministre de l'Intérieur, en vertu et en conformité de ladite convention du 23<sup>e</sup> jour de décembre 1924, et elle se libérera et se déchargera des patentes réservées dont il est question dans la clause trois de ladite convention, au cas où cette libération et cette décharge n'auraient pas été effectuées avant l'entrée en vigueur de la présente convention. Rien dans la présente convention ni dans toute convention qui la modifie conformément aux dispositions qui suivent, ne doit d'aucune manière porter atteinte aux droits de la compagnie de la Baie d'Hudson ni les diminuer, ni toucher à un droit ou intérêt dans un terrain acquis ou détenu par ladite compagnie, en conformité de l'acte de cession par elle à la Couronne, de la *Loi des terres fédérales* ou de ladite convention du 23<sup>e</sup> jour de décembre 1924.

## Terres des écoles et caisse des terres des écoles

**6** Dès l'entrée en vigueur de la présente convention, le Canada transporterà à la province les fonds ou valeurs qui constituent la partie de la caisse des terres des écoles, créée sous l'autorité des articles vingt-deux et vingt-trois de l'*Acte à l'effet d'amender et refondre les divers actes concernant les terres publiques fédérales*, chapitre trente et un de quarante-deux Victoria, et des statuts subséquents, qui provient de l'aliénation des terres des écoles situées dans la province ou dans cette partie des territoires du Nord-Ouest maintenant comprise dans les limites de ladite province.

**7** La caisse des terres des écoles à transférer à la province comme susdit et les terres des écoles mentionnées à l'article trente-sept de la *Loi des terres fédérales*, chapitre cent treize des Statuts révisés du Canada, 1927, qui passent sous l'administration de la province en vertu des conditions stipulées aux présentes, doivent être mises de côté et continuer d'être administrées par la province, d'accord, *mutatis mutandis*, avec les dispositions des articles trente-sept à quarante de la *Loi des terres fédérales*, pour subvenir aux écoles y organisées et administrées conformément à la loi de la province. Nonobstant toute disposition de la présente convention, la province placera les deniers visés par la présente clause en valeurs du Canada, ou d'une province, ou d'une corporation municipale, d'un district ou division scolaire dans la province d'Alberta, ou en valeurs garanties par le Canada ou une province, pour constituer une caisse d'écoles, et en affectera les intérêts,

29 MAR 2024

## **Constitutional Law of Canada, 5th Edition**

Constitutional Law of Canada, 5th Edition

Part II. Distribution of Power

Chapter 29. Public Property

I. Distribution of Public Property

§ 29:1. Distribution of public property

### **Constitutional Law of Canada, 5th Ed. § 29:1**

**Constitutional Law of Canada, 5th Edition** |

Peter W. Hogg, Wade Wright

**Part II. Distribution of Power**

**Chapter 29. Public Property**

**I. Distribution of Public Property**

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#### § 29:1. Distribution of public property

##### **Legal Topics**

At the time of confederation, it was necessary to apportion the assets and liabilities of the confederating provinces between the new Dominion and the provinces. This was accomplished by various sections in [Part VIII of the Constitution Act, 1867](#). [Section 108](#) conveyed from the provinces to the Dominion the property listed in the third schedule to the Act. The schedule includes canals, public harbours, lighthouses and piers, steamboats, dredges and public vessels, rivers and lake improvements, railways, military roads, customs houses, post offices and other public buildings, ordinance and military property and lands set apart for general public purposes. [Section 117](#) provided that the provinces should retain their “public property not otherwise disposed of by [this Act](#)”, and [s. 109](#) reinforced this residuary provision by providing that “all lands, mines, minerals, and royalties belonging to the several

provinces” should continue to belong to the provinces.<sup>1</sup>

These provisions, along with the rest of the [Constitution Act, 1867](#), applied only to the four original provinces of Ontario, Quebec, New Brunswick and Nova Scotia. As new provinces were admitted, special arrangements with respect to public property had to be made in each case, but subject to some modifications the terms of the [Constitution Act, 1867](#) were made applicable to each new province. A striking exception to the general application of the Act was the reservation by the Dominion of Crown lands in the provinces which were carved out of federal territories, that is, the three prairie provinces of Alberta, Saskatchewan and Manitoba. The purpose of the reservation was to facilitate federal policies with respect to immigration, land settlement and railways; but it meant that in the prairie provinces the Dominion owned the natural resources that in the other provinces belonged to the province by virtue of [ss. 109](#) and [117](#). This continued until 1930, when the Natural Resources Agreements were entered into by the Dominion with the three prairie provinces, transferring to the provinces the type of assets which belonged to the other provinces. These agreements were confirmed, and given overriding effect, by the [Constitution Act, 1930](#).<sup>2</sup>

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## Footnotes

- <sup>1</sup> For details, see La Forest, *Natural Resources and Public Property under the Canadian Constitution* (1968), chs. 1-7. There is also a note in Laskin, *Canadian Constitutional Law* (5th ed., 1986 by Finkelstein), 662-667. See also the symposium, “The Natural Resources Transfer Agreements at 75” (2007) 12 *Rev. of Con. Studies* 127-300.

2 R.S.C. 1985, Appendix II, No. 26. The Agreements are scheduled to the Act. For commentary, see La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), ch. 3. The [Constitution Act, 1930](#) also confirmed an agreement with B.C., under which Canada conveyed back to B.C. the Railway Belt and Peace River Block. These were lands that had been conveyed to Canada to assist in the financing of the Canadian Pacific Railway, but which had not in fact been used for that purpose.

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**End of  
Document**

01 APR 2024

## **Constitutional Law of Canada, 5th Edition**

Constitutional Law of Canada, 5th Edition

Part II. Distribution of Power

Chapter 29. Public Property

III. Executive Power Over Public Property

§ 29:3. Executive power over public property

### **Constitutional Law of Canada, 5th Ed. § 29:3**

**Constitutional Law of Canada, 5th Edition** |

Peter W. Hogg, Wade Wright

**Part II. Distribution of Power**

**Chapter 29. Public Property**

**III. Executive Power Over Public Property**

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#### § 29:3. Executive power over public property

##### **Legal Topics**

The federal and provincial governments have full executive powers over their respective public properties. It is neither necessary nor accurate to invoke the royal prerogative to explain the Crown's power over its property. As a legal person,<sup>1</sup> the Crown in right of Canada or the Crown in right of a province has the power to do anything that other legal persons (individuals or corporations) can do.<sup>2</sup> Thus, unless there are legislative<sup>3</sup> or constitutional<sup>4</sup> restrictions applicable to a piece of public property, it may be sold, mortgaged, leased, licensed or managed at the pleasure of the responsible government, and without the necessity of legislation.<sup>5</sup> The Crown's power to do these things is not a prerogative power, because the power is not unique to the Crown, but is possessed in common with other legal persons.<sup>6</sup> Moreover, in the role

of proprietor, the Crown can (subject to market conditions) insist upon the inclusion in leases, licences or other instruments of any terms that a private proprietor could insist upon. These include terms that in other contexts would be outside the province's power to impose by legislation.<sup>7</sup>

A province's ownership of natural resources, such as oil and gas, or other minerals,<sup>8</sup> gives it much more power over the resources than it possesses over privately-owned resources. The exploitation of a provincially-owned resource can be controlled by the province, either by the province directly producing and selling the resource, or by the province granting permits, leases or licences that authorize private firms to produce and sell the resource. Obviously, the rate of production, the degree of processing within the province and (subject to market conditions) the price at which it is to be sold can be controlled by the province as proprietor. These matters could not necessarily be controlled in the case of privately-owned resources, because legislation would be necessary, and there are limits to provincial legislative power over natural resources, especially those resources destined for export from the province.<sup>9</sup> Similarly, a province can profit from the exploitation of provincially-owned resources in a variety of ways: by direct sales or by licence fees, rents or royalties. A province can profit from the exploitation of privately-owned resources only through taxes, and there are limits to provincial legislative power to levy taxes on natural resources.<sup>10</sup>

All Canadian governments are extensively involved in commercial activities, either directly or through Crown corporations. Governments sell liquor, electricity, insurance, books, wheat, eggs and other natural products. They own or owned railways, airlines, pipelines, telephone systems and radio and television networks. Nor do a government's commercial activities have to coincide with the legislative power of that

level of government. The activities are premised on powers which flow from the ownership and control of property, not on the catalogue of legislative powers which are independent of property ownership.<sup>11</sup>

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## Footnotes

- [1](#) See ch. 10, The Crown, under heading [§ 10:1](#), “Definition of the Crown”.
- [2](#) La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), 143, 167. For a contrary view, see the discussion in [§ 29:2](#), “Legislative power over public property”.
- [3](#) An example of a legislative restriction would be provincial land acquired or set aside for a hospital. If the hospital purpose was imposed by statute, then any inconsistent executive dealing with the land would be illegal. The Crown's prerogative or common law powers may be displaced by a statute: [A.-G. v. De Keyser's Royal Hotel, \[1920\] A.C. 508](#) (prerogative power of expropriation displaced by statute). Of course, a legislative restriction can always be removed or modified by statute.
- [4](#) An example of a constitutional restriction would be lands reserved for the Indians, which, although owned by the province, are subject to federal legislative power under s. 91(24): see ch. 28, Aboriginal Peoples.
- [5](#) La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), 19–21, argues persuasively that no legislative authority is necessary, although in practice of course each jurisdiction regulates the disposition of Crown lands by statute. For a contrary view, see the discussion in [§ 29:2](#),

“Legislative power over public property”.

- [6](#) The term prerogative is sometimes used to include all of the common law powers of the Crown, but in my view it should not include those common law powers that are not unique to the Crown: see ch. 1, Sources, under heading [§ 1:9](#), “Prerogative”.
- [7](#) A.-G. [B.C. v. Deeks Sand and Gravel Co., \[1956\] S.C.R. 336](#) (royalty that might have been ultra vires if enacted upheld as a contract). The conditions in [Smylie v. The Queen \(1900\), 27 O.A.R. 172 \(Ont. C.A.\)](#) and [Brooks-Bidlake and Whittall v. A.-G. B.C., \[1923\] A.C. 450](#) could have been imposed without authorizing legislation.
- [8](#) Throughout Canada, provincial governments have usually retained title to timber lands, issuing licences to permit their exploitation. As a result, most timber lands are still provincially owned. Most mineral rights in Ontario, Quebec and the Atlantic provinces are privately owned. Offshore resources are in effect owned by the federal government, which has the exclusive right to explore for and exploit them, although revenue-sharing and management agreements have been entered into with the coastal provinces: ch. 30, Natural Resources, under heading §§ [30:11](#) to [30:14](#), “Offshore minerals”. The provinces also have the power to expropriate privately owned lands or mineral rights, as Saskatchewan did in 1973 in order to gain greater control over its oil and gas.
- [9](#) [Central Canada Potash Co. v. Govt. of Sask., \[1979\] 1 S.C.R. 42](#), striking down provincial scheme for the prorationing of production and fixing the price of potash. Laskin C.J. for the Court emphasized (at p. 72) that the government of Saskatchewan was acting “not under proprietary right but in pursuance of legislative and statutory authority directed to proprietary rights of others”. Since this decision, provincial power to regulate natural resources has been enlarged by [s. 92A of the Constitution Act, 1867](#) (added in 1982):



see ch. 21, Property and Civil Rights, under heading [§ 21:14](#), “Provincial power”.

[10](#) [Canadian Industrial Gas & Oil v. Govt. of Sask., \[1978\] 2 S.C.R. 545](#), striking down a “mineral income tax” on oil produced on private land and a “royalty surcharge” on oil produced on Crown land. (Much of the Crown land had been expropriated from private owners, in order to make it subject to royalties, rather than taxation.) The Court held that the “royalty surcharge” was a tax rather than a royalty, because it was imposed on land already subject to oil leases, and the leases did not authorize the additional royalty. The additional royalty could only be imposed by legislation, which meant taxation. Since this decision, provincial power to tax natural resources has been enlarged by [s. 92A\(4\) of the Constitution Act, 1867](#) (added in 1982): see ch. 31, Taxation, under heading [§ 31:14](#), “Resource taxes”.

[11](#) Spending, lending, contracting and disposing of property are all alike in this respect: see ch. 6, Financial Arrangements, under heading §§ [6:8](#) to [6:9](#), “Spending power”.

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## **Constitutional Law of Canada, 5th Edition**

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Part II. Distribution of Power

Chapter 30. Natural Resources

I. Onshore Minerals: Provincial Powers

§ 30:1. Provincial public property

### **Constitutional Law of Canada, 5th Ed. § 30:1**

**Constitutional Law of Canada, 5th Edition** |

Peter W. Hogg, Wade Wright

**Part II. Distribution of Power**

**Chapter 30. Natural Resources**

**I. Onshore Minerals: Provincial Powers**

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#### § 30:1. Provincial public property

##### **Legal Topics**

With respect to minerals<sup>1</sup> owned by a province, we have noticed in the previous chapter on Public Property that the broad range of powers open to a private proprietor is also open to the province as proprietor. This is an important source of regulatory authority over the oil and gas that is found in Alberta and Saskatchewan, because a major part of the oil and gas reserves in each of those provinces is owned by the province.

Once a province ceases to own a resource, its proprietary right is lost. But the provinces of Alberta and Saskatchewan have devised ingenious ways of perpetuating their control through proprietary right. An oil or gas lease, which gives to a private oil producer the right to produce and sell oil or gas from the leased Crown land, may include a “compliance with laws” clause, which obligates the lessee to comply with future

provincial laws, and a “variable royalty” clause, which obligates the lessee to pay whatever royalty is prescribed by future provincial laws.<sup>2</sup> These clauses incorporate into the lease future changes in provincial regulations or royalties. By virtue of these clauses, the grant of the lease does not preclude continued exercise of provincial control by proprietary right. In the absence of these clauses, the lease would be as binding on the Crown as on the private party. Of course, the province by statute could still derogate from the contractual rights and obligations, or regulate or tax the oil and gas after its recovery from the ground (and conversion to private ownership), but this would require the enactment of legislation that would have to satisfy the more stringent tests of validity that are applicable when the province is acting purely as legislator.

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## Footnotes

- 1 There is a vast literature on the constitutional law relating to minerals, especially, oil and gas. Especially useful are La Forest, *Natural Resources and Public Property under the Canadian Constitution* (1968); M. Crommelin, “Jurisdiction over Onshore Oil and Gas in Canada” (1975) 10 U.B.C. L. Rev. 86; J. McEvoy, “On Shore Natural Resource Ownership: Atlantic Canada Perspective” (1986) 10 Dal. L.J. 103. For commentary on s. 29A (the resource amendment of 1982), see W.D. Moull, “Section 92A of the Constitution Act, 1867” (1983) 61 Can. Bar Rev. 715; R.D. Cairns, M.A. Chandler and W.D. Moull, “The Resource Amendment ([Section 92A](#)) and the Political Economy of Canadian Federalism” (1985) 23 Osgoode Hall L.J. 253; R.D. Cairns, M.A. Chandler and W.D. Moull, “Constitutional Change and the Private Sector: The Case of the Resource Amendment” (1987) 24 Osgoode Hall L.J. 299.

2

The use, effect and validity of these clauses are discussed by R.J. Harrison, "The Legal Character of Petroleum Licences" (1980) 58 Can. Bar Rev. 483; W.D. Moull, "Natural Resources: Provincial Proprietary Rights" (1983) 21 Alta. L. Rev. 472. The critical point is that the rights and obligations of the lessee must be regarded as stemming from the lease (or other contract) and not from the legislation authorizing the lease. Even so, it is likely that there are some basic terms that cannot be unilaterally changed under these clauses.

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Province of Alberta

# **MINES AND MINERALS ACT**

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Chapter M-17

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# **MINES AND MINERALS ACT**

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

### Interpretation

#### 1(1) In this Act,

- (a) “agreement” means an instrument issued pursuant to this Act or the former Act that grants rights in respect of a mineral, subsurface reservoir, or geothermal resource, but does not include a notification, a transfer referred to in section 12, a unit agreement or a contract under section 9(a);
- (a.01) “base of groundwater protection” means the base of groundwater protection as defined in the *Water Wells and Ground Source Heat Exchange System Directive* published by Alberta Environment and Protected Areas, as amended or replaced from time to time;
- (a.1) “captured carbon dioxide” means a fluid substance consisting mainly of carbon dioxide captured from an emissions source;
- (b) “certificate of record” means a certificate of record within the meaning of the regulations;
- (c) “certificate of title” means a certificate granted pursuant to the *Land Titles Act*;
- (d) “crude bitumen” means a naturally occurring viscous mixture, mainly of hydrocarbons heavier than pentane, that may contain sulphur compounds and that, in its naturally occurring viscous state, will not flow to a well;
- (e) “Department” means the Department administered by the Minister;
- (f) “disposition” means a grant, a transfer referred to in section 12 or an agreement;

- (g) “estate in a mineral” means an estate in fee simple in a mineral or an estate for a life or lives in being in a mineral;
- (h) “fluid mineral substance” means a fluid substance consisting of a mineral or of a product obtained from a mineral by processing or otherwise;
- (i) “former Act” means any predecessor of this Act;
- (i.1) “geothermal resource” means the natural heat from the earth that is below the base of groundwater protection;
- (j) “grant” means letters patent under the Great Seal of Canada or a notification issued pursuant to *The Provincial Lands Act*, RSA 1942 c62, the former Act or this Act;
- (k) “issue”, with reference to a disposition, means to issue the disposition in accordance with the regulations;
- (l) “lessee” means, except in section 82.1, the holder according to the records of the Department of an agreement;
- (m) “location” means, except in section 82.1, the tract described in an agreement;
- (n) “mine” means any opening or excavation in, or working of, the surface or subsurface for the purpose of working, recovering, opening up or proving any mineral or mineral-bearing substance, and includes works and machinery at or below the surface belonging to or used in connection with the mine;
- (o) “mineral claim” means the tract described in a certificate of record;
- (p) “minerals” means all naturally occurring minerals, and without restricting the generality of the foregoing, includes
  - (i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but
  - (ii) does not include

- (A) sand and gravel that belong to the owner of the surface of land under section 58 of the *Law of Property Act*,
  - (B) clay and marl that belong to the owner of the surface of land under section 57 of the *Law of Property Act*,  
or
  - (C) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations;
- (q) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (r) “notification” means a notification in the prescribed form;
- (s) “oil sands” means
- (i) sands and other rock materials containing crude bitumen,
  - (ii) the crude bitumen contained in those sands and other rock materials, and
  - (iii) any other mineral substances, other than natural gas, in association with that crude bitumen or the sands and other rock materials referred to in subclauses (i) and (ii),
- and includes a hydrocarbon substance declared to be oil sands under section 7(2) of the *Oil Sands Conservation Act*;
- (t) “owner” when used in connection with a mineral claim means the holder according to the records of the Department of a certificate of record;
- (u) “quarry” means a pit or excavation in the ground for the purpose of removing, opening up or proving any mineral other than coal or oil sands, and includes works and machinery belonging to or used in connection with the quarry;
- (v) “record” means a record as defined in the *Financial Administration Act*;
- (w) “registered” means
- (i) registered under Division 1 of Part 6, in relation to a transfer, or

- (ii) registered under Division 2 of Part 6, in relation to a security notice or any other document registrable under that Division;
- (x) “Registrar” means the Registrar within the meaning of the *Land Titles Act*;
- (y) “royalty compensation” means money payable to the Crown in right of Alberta as compensation pursuant to regulations made under section 36(2)(i);
- (y.1) “sequestration” means permanent disposal;
- (z) “storage rights” means the right to inject fluid mineral substances into a subsurface reservoir for the purpose of storage;
- (aa) “subsurface cavern” means a subsurface space created as a result of operations for the recovery of a mineral;
- (bb) “subsurface reservoir” means the pore space within an underground formation or a subsurface cavern;
- (cc) “transfer”, in relation to an agreement, means
  - (i) a transfer of the agreement, a part of the location of the agreement or a specified undivided interest in the agreement made by the lessee of the agreement or the interest, as the case may be,
  - (ii) a transfer of the agreement or a specified undivided interest in the agreement made by the Minister pursuant to section 23(3), or
  - (iii) a transfer of the agreement, a part of the location of the agreement or a specified undivided interest in the agreement made by the Minister pursuant to a judgment or order of a court;
- (dd) “Transfer Agreement” means the agreement in the Schedule to *The Alberta Natural Resources Act*, SA 1930 c21, and all amendments to that agreement;
- (ee) “unit agreement” means an agreement entered into by the Minister under section 102(1);
- (ff) “unit operation order” means an order under the *Turner Valley Unit Operations Act*;

(gg) “well” means a well within the meaning of the *Oil and Gas Conservation Act*.

(2) If any mineral, any product obtained from a mineral or any substance is injected into or removed from a subsurface reservoir and a question arises between the Minister and the lessee under an agreement, or any person claiming under the lessee, as to the purpose for which the mineral, mineral product or substance was injected or removed, then, for the purposes of this Act, the question is to be decided by the Minister.

(3) A reference in this Act to a township, section, half section, quarter section and legal subdivision means a township, section, half section, quarter section and legal subdivision, respectively, within the meaning of the *Surveys Act*.

(4) For the purposes of this Act, a reference to a township, section, half section, quarter section or legal subdivision is, in respect of land in unsurveyed territory, deemed to refer to what would be a township, section, half section, quarter section or legal subdivision if the land were surveyed in accordance with the *Surveys Act*.

(5) The references in sections 8(1)(a), 9(a)(i), 36(2)(j) and (3.1), 50(4) and (5) and 52(1) to a product obtained from a mineral, and in section 36(2)(a) and (b) to a product obtained from a royalty share include

- (a) any product obtained from a mineral or the royalty share of a mineral by processing, reprocessing or otherwise, and
- (b) any product obtained directly or indirectly, and in whole or in part, in exchange for a mineral, a royalty share of a mineral or a product referred to in clause (a).

RSA 2000 cM-17 s1;2003 c28 s2;2006 c21 s26;2008 c36 s2;  
2010 c14 s2;2020 cG-5.5 s31;2022 c21 s56

## Application of Act

### Application of Act

#### 2 This Act applies

- (a) to all mines and minerals, pore space and related natural resources vested in or belonging to the Crown in right of Alberta, and
- (b) where the context so permits or requires, to all wells, mines, quarries, minerals and geothermal resources in Alberta.

RSA 2000 cM-17 s2;2010 c14 s2;2020 cG-5.5 s31

- (a) to claim damages or compensation of any kind, including, without limitation, damages or compensation for injurious affection, from the Crown, or
- (b) to obtain a declaration that the damages or compensation referred to in clause (a) are payable by the Crown,

as a result of the enactment of this section.

2010 c20 s2

### Geothermal resources

**10.2** The owner of the mineral title in any land in Alberta has the right to explore for, develop, recover and manage the geothermal resources associated with those minerals and with any subsurface reservoirs under the land.

2020 cG-5.5 s31

### Authorized disposition

**11(1)** No disposition may be made of an estate in a mineral owned by the Crown in right of Alberta unless the disposition is specifically authorized by this or another Act.

**(2)** Subsection (1) does not preclude

- (a) the Lieutenant Governor in Council from transferring the administration and control of minerals to the Crown in right of Canada, or
- (b) the Minister from executing and delivering a transfer under the *Land Titles Act* in favour of the Crown in right of Canada of an estate in minerals of which the Crown in right of Alberta is the registered owner.

1983 c36 s6;1985 c39 s3

### Transfer

**12(1)** When a person is entitled to receive from the Crown in right of Alberta a title for an estate in a mineral for which a certificate of title is registered under the *Land Titles Act*, a transfer shall be issued by the Minister.

**(2)** Before the issue of the transfer, the registration fee payable under the *Land Titles Act* shall be paid to the Minister.

**(3)** The Minister shall forward the fee paid and the transfer to the Registrar for registration of the transfer under the *Land Titles Act*.

1983 c36 s6

### Notification

**13(1)** When a person is entitled to receive from the Crown in right of Alberta a title for an estate in a mineral for which no certificate



- (ii) minerals or water is produced, recovered or extracted from the subsurface reservoir,

and

- (c) the exception of pore space under this section is deemed to be an exception contained in the original grant from the Crown for the purposes of section 61(1) of the *Land Titles Act*.

(2) Subsection (1) does not operate to affect the title to land that, on the date on which this section comes into force, belongs to the Crown in right of Canada.

(3) The Minister may enter into agreements with respect to the use of pore space.

(4) It is deemed for all purposes, including for the purposes of the *Expropriation Act*, that no expropriation occurs as a result of the enactment of this section.

(5) No person has a right of action and no person shall commence or maintain proceedings

- (a) to claim damages or compensation of any kind, including, without limitation, damages or compensation for injurious affection, from the Crown, or
- (b) to obtain a declaration that the damages or compensation referred to in clause (a) is payable by the Crown,

as a result of the enactment of this section.

2010 c14 s2

## Agreements

### Issue of agreements

**16** Subject to this Act and the regulations and any express provision in any applicable ALSA regional plan limiting mineral development within a geographic area, the Minister may issue an agreement in respect of a mineral, subsurface reservoir or geothermal resource

- (a) on application, if the Minister considers the issuance of the agreement warranted in the circumstances,
- (b) by way of sale by public tender conducted in a manner determined by the Minister, or
- (c) pursuant to any other procedure determined by the Minister.

RSA 2000 cM-17 s16;2009 cA-26.8 s82;2010 c14 s2;2020 cG-5.5 s31

- (a) removing any installations, equipment or casing incidental to the well,
- (b) removing any installations or equipment incidental to the mine or quarry, or
- (c) doing any act specified in the authorization in relation to the well, mine or quarry.

(5) If a well, mine or quarry becomes the property of the Crown under this section, the Minister has the same rights and duties that the former lessee had in respect of any right of entry order or surface lease relating to the land on which the well, mine or quarry is located.

(6) Notwithstanding subsection (5), the Minister is not subject to any penalty, debt or other obligation incurred by the former lessee under the right of entry order or surface lease.

(7) In subsections (5) and (6),

- (a) “right of entry order” means a right of entry order as defined in the *Surface Rights Act* and a right of entry order under Part 4 of the *Metis Settlements Act*;
- (b) “surface lease” means a lease or other instrument under which the surface of land is held for any purpose for which a right of entry order may be made under the *Surface Rights Act* or Part 4 of the *Metis Settlements Act*, and that provides for the payment of compensation.

1983 c36 s6;1990 cM-14.3 s276;1997 c17 s15

## Royalty and Other Revenues

### Royalty on mineral

**33** A royalty determined under this Act is reserved to the Crown in right of Alberta on any mineral recovered pursuant to an agreement.

1983 c36 s6

### Amounts payable re geothermal resources

**33.1** Amounts determined under this Act for the exploration for and the development and recovery of geothermal resources associated with minerals or subsurface reservoirs that are property of the Crown in right of Alberta are payable to the Crown in right of Alberta.

2020 cG-5.5 s31

**Royalty to be prescribed**

**34(1)** Subject to section 34.1, the royalty reserved to the Crown in right of Alberta on a mineral recovered pursuant to an agreement shall be the royalty prescribed from time to time by the Lieutenant Governor in Council.

(2) If a royalty has been reserved to the Crown in right of Canada in any letters patent that convey a mineral, there is reserved to the Crown in right of Alberta

- (a) the royalty prescribed from time to time by the Lieutenant Governor in Council in accordance with the Transfer Agreement, or
- (b) if no royalty is prescribed under clause (a), the royalty at the rate in effect immediately before the coming into force of the Transfer Agreement.

(3) Except as otherwise provided by the regulations,

- (a) the royalty reserved to the Crown in right of Alberta shall be deliverable in kind,
- (b) the quantity of the royalty reserved to the Crown in right of Alberta shall be calculated at the place where the mineral is first measured after it is recovered, and
- (c) the royalty reserved to the Crown in right of Alberta shall be delivered to the Crown at the place at which the quantity of the royalty is calculated.

RSA 2000 cM-17 s34;2019 c9 s2

**Royalty structures – legislative framework guarantee**

**34.1(1)** In this section,

- (a) “fundamental restructuring” does not include adjustments or changes made
  - (i) to simplify or streamline cost calculations, processes, reporting or other similar requirements of an enactment or policy,
  - (ii) to address significant changes in technology and world markets,
  - (iii) in accordance with an enactment in force on the date this section comes into force, except as otherwise provided in this section, or in accordance with a relevant policy,

including the planned transition to the Modernized Royalty Framework, 2017, or

(iv) where the Government of Alberta considers that the adjustments or changes are appropriate and consistent with this section;

(b) “hydrocarbon” does not include coal;

(c) “legislative framework” does not include the *Petroleum Marketing Act* and the regulations under that Act.

(2) For a period of 10 years after this section comes into force, no fundamental restructuring of the legislative framework generally applicable to hydrocarbon royalties reserved to the Crown in right of Alberta shall be implemented.

(3) Subject to the regulations, no fundamental restructuring of the legislative framework applicable to hydrocarbon royalties reserved to the Crown in right of Alberta in place on the date a well commences production shall be implemented with respect to that well for a period of 10 years after that date.

(4) For greater certainty, “the legislative framework applicable to hydrocarbon royalties reserved to the Crown in right of Alberta in place on the date a well commences production” in subsection (3) includes the planned transition to the Modernized Royalty Framework, 2017, which will apply to that well according to the terms in force on the date the well commences production.

2019 c9 s3

#### **Crown as owner**

**35(1)** The Crown in right of Alberta is the owner of its royalty share of the mineral at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown’s title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee’s share prior to or at the time of the disposal or transfer of title.

(2) If, at the place where the Crown’s royalty share of a mineral is to be delivered to the Crown in right of Alberta, the Crown’s royalty share of the mineral is commingled with the lessee’s share of the mineral so that the Crown’s royalty share cannot be identified, the Crown in right of Alberta is entitled to the quantity of the mineral of equivalent quality that is equal to the Crown’s royalty share.

**(3)** If under the regulations or a contract or agreement under section 9 the quantity of the royalty on a mineral is calculated on the basis of all or any of the products obtained by processing that mineral or by reprocessing the products obtained by processing that mineral, unless otherwise provided a reference to the mineral in any provision in this Act or the regulations respecting the royalty on the mineral shall be read as a reference to the product obtained by the processing or reprocessing, as the case may be.

RSA 2000 cM-17 s35;2008 c36 s6

### Regulations

**36(1)** The Lieutenant Governor in Council may make regulations

- (a) prescribing the royalty on a mineral;
- (b) prescribing that the quantity of the royalty on a mineral be calculated at a place other than the place where the mineral is first measured after it is recovered;
- (c) prescribing that the royalty on a mineral be delivered to the Crown in right of Alberta at a place other than that at which its quantity is calculated;
- (d) authorizing the Minister to determine any component or value in the calculation of the royalty on a mineral;
- (e) respecting the circumstances under which the quantity of the royalty on a mineral shall be calculated on all or any of the products obtained by processing the mineral or by reprocessing any of those products instead of on the mineral;
- (f) respecting the waiver or variation of all or part of the royalty on a mineral and the termination of any such waiver or variation before any date, or before the passing of any time period, specified in the regulations by which the waiver or variation is to expire;
- (g) respecting the administration, implementation and operation of section 34.1 generally or with respect to a well or mine or a class of wells or mines;
- (h) respecting the legislative framework with respect to a well or a class of wells under section 34.1(3);
- (i) defining any word or expression used but not defined in clauses (g) and (h) and section 34.1;

- (j) further clarifying the definition of “fundamental restructuring”, “hydrocarbon” or “legislative framework” in section 34.1(1) for the purposes of section 34.1;
- (k) respecting any other matter relating to section 34.1;
- (l) respecting the amounts payable to the Crown in right of Alberta for the exploration for and the development and recovery of geothermal resources associated with minerals and subsurface reservoirs that are property of the Crown in right of Alberta, including the determination of the amounts and the administration of payments.

**(2) The Lieutenant Governor in Council may make regulations**

- (a) respecting the Crown’s royalty share of a mineral, including, without limitation, the delivery of the royalty share in kind and the undertaking of any action in relation to the royalty share so delivered for any purpose leading directly or indirectly to and including the disposal of the royalty share or of any product obtained from the royalty share;
  - (b) respecting the circumstances under which the lessee, the Alberta Petroleum Marketing Commission or any other person may be required to act, or requiring the lessee, the Alberta Petroleum Marketing Commission or any other person to act, as agent of the Crown in right of Alberta for any purpose leading directly or indirectly to and including the disposal of the Crown’s royalty share or of any product obtained from the royalty share;
  - (c) respecting the conditions of any agency relationship created pursuant to clause (b) and the powers, rights and duties of the Minister and of the lessee, the Alberta Petroleum Marketing Commission or any other person under the agency relationship;
- (c.1) respecting goods and services that may be required by the Minister or the Alberta Petroleum Marketing Commission to be provided to the Crown or the Alberta Petroleum Marketing Commission for any purpose in relation to the Crown’s royalty share of a mineral, the persons required to provide those goods and services, and the consideration to be paid by the Crown or the Alberta Petroleum Marketing Commission for those goods and services;
  - (c.2) respecting the determination by the Minister or the Alberta Petroleum Marketing Commission of the consideration referred to in clause (c.1) or the determination by the

Alberta Utilities Commission of charges instead of consideration;

- (c.3) respecting the rights, powers, liabilities and obligations of the Minister, the Alberta Petroleum Marketing Commission and others in relation to the provision of goods and services referred to in clause (c.1) and the payment of consideration, or charges instead of consideration, for those goods and services;
- (d) respecting the determination of the amount of money payable to the Crown in respect of the Crown's royalty share of a mineral when disposed of by a person required by the regulations to be an agent of the Crown for that purpose, notwithstanding the consideration actually received for the Crown's royalty share when it is disposed of by the agent, and respecting the liability of that agent for the payment of that amount;
- (e) respecting the determination of the value of a mineral or of the Crown's royalty share of a mineral for any purpose under the regulations;
- (f) respecting the costs and allowances for which the Crown may consent to be liable in relation to the Crown's royalty share of a mineral;
- (g) respecting the respective rights, powers, liabilities and obligations of the Minister, the lessee and others in the event that the quantity of a mineral delivered to the Crown under the lessee's agreement in a month is less than or greater than the quantity of the Crown's royalty share of the mineral actually payable in respect of that month;
- (h) respecting the transfer of title to the Crown's royalty share of a mineral to the lessee or any other person after the recovery of the mineral;
- (i) respecting the determination and payment to the Crown of compensation in respect of the Crown's royalty share of a mineral, where the Crown's title to that share is transferred pursuant to regulations under clause (h);
- (j) respecting the delivery of a mineral or of a product obtained from a mineral in exchange for, or on account of, or in lieu of, the Crown's royalty share of a mineral or of a product obtained from a mineral.

**(3)** Without limiting the powers of the Lieutenant Governor in Council under subsection (2)(g), regulations may be made under that clause

- (a) respecting the powers of the Minister, in the event of a deficiency in deliveries of the quantity of the Crown's royalty share of a mineral under an agreement in a month, to require that the default under the agreement resulting from the deficient delivery be remedied in a subsequent month by either
  - (i) the delivery in kind to the Crown of the deficient quantity in that subsequent month, or
  - (ii) the payment to the Crown in that subsequent month of an amount of money determined in accordance with the regulations as the value to the Crown of the deficient quantity,

whichever the Minister directs;

- (b) respecting the powers of the Minister, in the event of deliveries of a mineral to the Crown in excess of the quantity of the Crown's royalty share of the mineral in a month, to act as the agent of the owner of the excess quantity for the sale and delivery of the excess quantity to a purchaser in accordance with the regulations.

**(3.1)** Without limiting the powers of the Lieutenant Governor in Council under subsection (2)(j), regulations may be made under that clause

- (a) authorizing or requiring, or providing for the authorizing or requiring, of deliveries referred to in subsection (2)(j);
- (b) respecting the persons authorized or required to participate in a delivery referred to in subsection (2)(j);
- (c) respecting the terms governing deliveries referred to in subsection (2)(j);
- (d) respecting the rights, powers, duties, functions, liabilities and obligations of the Minister, the Alberta Petroleum Marketing Commission, a lessee or any other person in relation to deliveries referred to in subsection (2)(j), including, without limitation, in relation to excess or deficient deliveries of a mineral, a product obtained from a mineral, the Crown's royalty share of a mineral or the



Crown's royalty share of a product obtained from a mineral, for the purposes of such deliveries;

- (e) respecting estimation by the Minister or the Alberta Petroleum Marketing Commission of the Crown's royalty share of a mineral or of a product obtained from a mineral for the purposes of deliveries referred to in subsection (2)(j);
- (f) respecting the acquisition by the Minister or the Alberta Petroleum Marketing Commission of anything required for the purposes of, or in connection with, deliveries referred to in subsection (2)(j);
- (g) respecting the specifications applicable to any mineral or product obtained from a mineral to be provided to the Crown in deliveries referred to in subsection (2)(j);
- (h) respecting the determination or prescribing of adjustments and prices and the application of adjustments and prices for any purpose in relation to deliveries referred to in subsection (2)(j);
- (i) respecting the establishment and operation of a market for the purposes of deliveries referred to in subsection (2)(j).

**(4) The Lieutenant Governor in Council may make regulations**

- (a) prescribing a money royalty on a mineral instead of a royalty in kind;
- (b) authorizing the Minister to determine any component or value in the calculation of a money royalty on a mineral;
- (c) authorizing the Minister to determine the costs and allowances that may be deducted in computing a money royalty on a mineral.

**(5) Regulations made under this section may relate to**

- (a) a specified mineral or class of minerals, or
- (b) a specified agreement or class of agreements.

**(5.1) The Minister may make regulations**

- (a) respecting the determination of any component or value in the calculation of the royalty on a mineral;
- (b) respecting the determination of any component or value in the calculation of

- (i) a money royalty,
- (ii) amounts owing to the Crown in respect of the Crown's royalty share of a mineral when the Crown's royalty share is disposed of by an agent, or
- (iii) royalty compensation.

**(5.2)** The Lieutenant Governor in Council may make regulations

- (a) prescribing an amount, item or matter for the purpose of section 38(1)(b);
- (b) respecting the examination of a record under section 38;
- (c) respecting, for the purpose of section 38(3), the amending of a record and the submission of additional documents or information;
- (d) respecting the determination of the calendar years for the purpose of section 38;
- (e) respecting the period for making an amendment, conducting an examination and making a calculation of costs, charges, expenses, interest and penalties for the purpose of section 38(10);
- (f) respecting persons who are authorized to make an objection under section 39;
- (g) respecting the making, reviewing and resolving of an objection under section 39;
- (h) respecting the application of amendments made by section 6(4), (5) and (6) of the *Statutes Amendment Act, 2014*.

**(6)** If regulations are made under this section respecting the calculation of royalty on a mineral recovered pursuant to an agreement subject to a unit agreement or unit operation order, the regulations operate notwithstanding anything in the unit agreement or unit operation order.

**(7)** Repealed 2008 c36 s7.

**(8)** A regulation made under this section, or an order made pursuant to a regulation made under this section, may be made effective with reference to a period occurring before it is made.

**(9)** No compensation is payable for goods or services provided pursuant to regulations under subsection (2)(c.1) other than the

(b) is validly given if it is left with an adult person employed at the place of business of the addressee.

(7) If 2 or more persons carry on business as a partnership, a notice to those persons under subsection (2)

(a) may be addressed to the partnership name, and

(b) is validly given if it is given to one of the partners or left with an adult person employed at the place of business of the partnership.

1983 c36 s6;1992 c20 s5;1994 c22 s11;1997 c17 s17

### General

#### Implied reservations to Crown

**44** There is implied in every disposition any and all reservations that are required to be made on the disposal of any mineral rights owned by the Crown in right of Alberta.

1983 c36 s6

#### Cancellation of agreement

**45(1)** The Minister may cancel an agreement if

- (a) there is a breach of any condition contained in the agreement and the breach by its nature is not capable of being remedied,
- (b) the lessee has not complied with a notice given under this Act with respect to the agreement or with a notice given under the agreement, or
- (c) subject to subsection (2), the lessee has not complied with
  - (i) this Act or the regulations in relation to the agreement,
  - (ii) a covenant under the agreement, or
  - (iii) a condition contained in the agreement, where the default in complying with the condition is by its nature capable of being remedied.

(2) The Minister may not cancel an agreement pursuant to subsection (1)(c) unless

- (a) the Minister has given a notice to the lessee stating the nature of the default and that the Minister will cancel the agreement if the default is not remedied before the expiration of the 30-day period following the date on the notice, and

## The Alberta Petroleum Marketing Commission

### Marketing of Crown's share

**86(1)** Every agreement to which this section applies is subject to the condition that the Crown's royalty share of a mineral to which this section applies recovered pursuant to the agreement must be delivered to the Alberta Petroleum Marketing Commission.

**(2)** This section applies only to those agreements and minerals to which it is made applicable by the regulations under subsection (3).

**(3)** The Lieutenant Governor in Council may make regulations specifying the agreements and minerals to which this section applies.

**(4)** The Minister may, with respect to any agreement to which this section applies and in any special case when the Minister considers it warranted by circumstances to do so, waive compliance with subsection (1) for any period of time and on any conditions the Minister may prescribe.

RSA 2000 cM-17 s86;2008 c36 s15

## Part 5 Oil Sands

### McMurray formation

**87(1)** A lease of bituminous sands rights granted before July 1, 1978 is deemed for all purposes to be a lease of oil sands rights with respect to the McMurray formation.

**(2)** For the purposes of this Act, the McMurray formation is deemed to be and to have always been a zone designated by the Alberta Energy Regulator.

**(3)** If any question arises under a disposition or in the administration of this Act or the regulations as to whether

- (a) any stratigraphic formation is or is not the McMurray formation, or
- (b) any mineral occurring in a stratigraphic formation is or is not oil sands,

the question must be referred to the Minister whose decision on the question is final.

**(4)** The Minister may, on the application of the lessee of a bituminous sands lease, accept the surrender of the bituminous

# PETROLEUM MARKETING ACT

## Chapter P-10

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19.1	Regulations re provision of goods and services

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

**1** In this Act,

- (a) "agreement" has the same meaning as in the *Mines and Minerals Act*;

indemnities, to arise in the normal course of the performance of the agreement if the agreement is properly performed.

(3) The Commission may, with the approval of the Lieutenant Governor in Council, provide indemnities in addition to those authorized by subsections (1) and (2).

2013 c16 s7

### Delegation

7 Subject to the regulations, the Commission may in writing delegate any power, duty or function conferred or imposed on it by this Act or any other Act or any regulation or rules to any person.

RSA 2000 cP-10 s7;2012 cR-17.3 s100;2013 c16 s8

### Commission as Crown agent

8(1) The Commission is for all purposes an agent of the Crown in right of Alberta and its powers may be exercised only as an agent of the Crown in right of Alberta.

(2) An action or other legal proceeding in respect of any right or obligation acquired or incurred by the Commission on behalf of the Crown in right of Alberta, whether in its name or in the name of the Crown in right of Alberta, may be brought or taken by or against the Commission, in the name of the Commission, in any court that would have jurisdiction if the Commission were not an agent of the Crown.

RSA 1980 cP-5 s7

### Fiscal year

9 The fiscal year of the Commission is the calendar year, unless otherwise prescribed by the Lieutenant Governor in Council.

RSA 1980 cP-5 s9

### Records and accounts

9.1 The Commission shall prepare and retain records and accounts in accordance with the regulations as required by the Minister.

2013 c16 s9

### Information to the Commission

9.2(1) The Lieutenant Governor in Council may make regulations respecting the keeping of and the furnishing to the Commission of information that relates to hydrocarbon substances and that is required for the purposes of

- (a) evaluating, formulating or administering any policy or program of
  - (i) the Crown, or

**Definition**

**14(1)** In section 16, “crude oil” means the crude oil component of petroleum.

**(2)** This section is repealed on Proclamation.

RSA 2000 cP-10 s14;2009 c20 s9

**Dealing with Crown’s royalty share**

**15** Subject to the regulations, the Commission shall

- (a) accept delivery of the Crown’s royalty share of a hydrocarbon substance required to be delivered to the Commission pursuant to an agreement, a contract under section 9(a) of the *Mines and Minerals Act* or an enactment,
- (b) deal with the Crown’s royalty share of the hydrocarbon substance in a manner that is, in the Commission’s opinion, in the public interest of Alberta, and
- (c) engage in other hydrocarbon-related activities in a manner that is, in the Commission’s opinion, in the public interest of Alberta.

RSA 2000 cP-10 s15;2009 c20 s9;2013 c16 s14

**Direction to provide goods and services**

**16(1)** The Commission may, in accordance with the regulations, direct a supplier to provide goods or services or both.

**(2)** The Commission may include in a direction under subsection (1) any terms and conditions that it considers appropriate.

**(3)** The Commission may pay consideration for the provision of the goods or services in accordance with the regulations.

**(4)** A supplier who receives a direction under subsection (1) shall comply with

- (a) the direction, and
- (b) any regulations relating to the provision of the goods or services.

**(5)** Where the Commission gives a direction under subsection (1) and the Commission is unable to reach an agreement with the supplier as to the just and reasonable consideration to be paid by the Commission for the goods or services, the Alberta Utilities Commission may, on the application of the Commission or the supplier, fix charges instead of consideration in accordance with the regulations.

(6) No compensation is payable for goods or services provided under this section other than consideration or charges instead of consideration that are paid or fixed under this section.

(7) A supplier who contravenes subsection (4) is guilty of an offence and is liable to a fine of not more than \$5000 for each day that the contravention continues.

(8) Where a supplier contravenes subsection (4), the Commission may, whether or not the supplier has been convicted of an offence in respect of the contravention, apply to the Court of King's Bench for an order requiring the supplier to comply with the direction or the regulations, as the case may be.

(9) Where

- (a) a supplier is the lessee under an agreement, and
- (b) a direction is given to the supplier under subsection (1) calling for goods or services to be provided in respect of a hydrocarbon substance that is, in whole or in part, the Crown's royalty share of a mineral payable pursuant to the agreement,

a contravention of subsection (4) by the supplier is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the supplier has been convicted of an offence in respect of the contravention.

RSA 2000 cP-10 s16; 2007 cA-37.2 s82(21);2009 c20 s9;  
2009 c53 s130;2012 cR-17.3 s100;AR 217/2022

**17** Repealed 2009 c20 s9.

#### **Discharge of lessee's liability**

**18(1)** Subject to this section and the regulations, the delivery to the Commission of the Crown's royalty share of a hydrocarbon substance recovered pursuant to an agreement operates to discharge the lessee with respect to the lessee's liability to pay that royalty to the Crown in right of Alberta.

(2) Where money is paid to the Commission pursuant to regulations made under section 19(1)(e) as provided for under section 19(2)(a),

- (a) the money is deemed to be payable under an agreement and is for all other purposes deemed to be a money royalty



payable on the hydrocarbon substance under an agreement,  
and

- (b) the payment of the money operates to discharge the lessee of an agreement with respect to the lessee's liability to pay royalty on the hydrocarbon substance to the Crown in right of Alberta to the extent that the money represents the value of the royalty on the hydrocarbon substance as determined under the regulations.

RSA 2000 cP-10 s18;2009 c20 s9

### Regulations

#### **19(1)** The Lieutenant Governor in Council may make regulations

- (a) specifying substances or classes of substances as hydrocarbon substances for the purposes of this Act;
  - (a.1) respecting delegation by the board under section 2;
  - (a.2) prescribing powers, duties and functions that may not be delegated under section 2;
  - (a.3) respecting the providing of indemnities by the Commission under section 6.3(1) and (2);
  - (a.4) respecting delegations by the Commission under section 7;
- (b) respecting the preparation and retention of records and accounts under section 9.1;
  - (b.1) respecting directives issued by the Minister under section 12.2(1);
- (c) respecting information to be furnished to the Commission, the persons required to furnish that information, the form in which that information must be furnished and the time within which the information must be furnished;
- (d) respecting the imposition of pecuniary penalties payable to the Commission, the circumstances in which the penalties may be imposed, the persons liable to pay the penalties and the time by which the penalties must be paid;
- (e) respecting the respective rights, powers, liabilities and obligations of the Commission, lessees and others in the event that the quantity of a hydrocarbon substance delivered to the Commission in a month is less than or greater than the Crown's royalty share of the hydrocarbon substance actually payable in respect of that month;

- (f) providing for any matter in connection with or incidental to the administration of sections 15 to 18.

(2) Without limiting the powers of the Lieutenant Governor in Council under subsection (1)(e), regulations may be made under that subsection

- (a) respecting the powers of the Commission, in the event of a deficiency in deliveries of the quantity of the Crown's royalty share of a hydrocarbon substance under an agreement in a month, notwithstanding any provision to the contrary in the *Mines and Minerals Act* or a regulation under that Act,
  - (i) to accept the payment of money instead of delivery of the deficient quantity, or
  - (ii) to direct the payment to the Commission of an amount of money determined by it in accordance with the regulations as the value to the Crown of the deficient quantity;
- (b) respecting the powers of the Commission, in the event of deliveries of a hydrocarbon substance to the Commission in a month in excess of the quantity of the Crown's royalty share of the hydrocarbon substance for that month, to act as the agent of the owner of the excess quantity for the disposition and delivery of the excess quantity to a purchaser in accordance with the regulations.

(3) A failure to comply with the regulations under this section in respect of an agreement is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the lessee has been convicted of an offence in respect of the contravention.

(4) Reports and other information supplied to the Commission pursuant to regulations under this section are, for the purposes of section 38 of the *Mines and Minerals Act*, deemed to be supplied under that Act.

RSA 2000 cP-10 s19;2009 c20 s9;2013 c16 s15

#### **Regulations re provision of goods and services**

**19.1(1)** The Lieutenant Governor in Council may make regulations

- (a) specifying goods or services or classes of goods or services for the purposes of section 16;

- (b) specifying persons or classes of persons as suppliers for the purposes of section 16;
- (c) respecting the giving of directions to suppliers and respecting the provision of goods or services by suppliers under section 16;
- (d) respecting the consideration to be paid by the Commission under section 16(3) and the fixing of charges instead of consideration by the Alberta Utilities Commission;
- (e) respecting applications to the Alberta Utilities Commission for the purposes of section 16(5);
- (f) respecting the rights, powers, liabilities and obligations of the Commission, suppliers and others in relation to the provision of goods or services and consideration for goods or services or charges instead of consideration under section 16.

**(2)** A failure to comply with the regulations under this section in respect of an agreement is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the lessee has been convicted of an offence in respect of the contravention.

**(3)** Reports and other information supplied to the Commission pursuant to regulations under this section are, for the purposes of section 38 of the *Mines and Minerals Act*, deemed to be supplied under that Act.

2009 c20 s9



Province of Alberta

## MINES AND MINERALS ACT

# **PETROLEUM ROYALTY REGULATION, 2017**

### **Alberta Regulation 212/2016**

With amendments up to and including Alberta Regulation 52/2019

Current as of September 30, 2019

Office Consolidation

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### **Note**

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 52/2019)

**ALBERTA REGULATION 212/2016**

**Mines and Minerals Act**

**PETROLEUM ROYALTY REGULATION, 2017**

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## Schedule

**Part 1  
General****Interpretation****1(1)** In this Regulation,

- (a) “crude oil” means a mixture mainly of pentanes and heavier hydrocarbons
  - (i) that may be contaminated with sulphur compounds,
  - (ii) that is recovered or is recoverable at a well from an underground reservoir, and
  - (iii) that is liquid at the conditions under which its volume is measured or estimated,and includes all other hydrocarbon mixtures so recovered or recoverable except natural gas, field condensate or crude bitumen;
- (b) “field condensate” means field condensate as defined in the *Natural Gas Royalty Regulation, 2017*;
- (c) “heavy oil” means the category of crude oil determined under section 4 as heavy oil;
- (d) repealed AR 52/2019 s8;
- (e) “initial activity” means all drilling and fracture operations in a well resulting in a TVD, TLL or TPPE that occur within one year of the well first commencing production;
- (f) “licence” means a licence for a well issued under the *Oil and Gas Conservation Act*;
- (g) “licensee” means the holder of a licence according to the records of the Regulator and includes a trustee or receiver-manager of property of a licensee;
- (h) “light oil” means the category of crude oil determined under section 4 as light oil;
- (i) “medium oil” means the category of crude oil determined under section 4 as medium oil;

- (j) “operator”, in respect of a well, means the person who is the operator according to the records of the Department;
- (k) “opted in well” means a well that has been approved as an early opted in well by the Minister under Part 2 of this Regulation or under Part 3 of the *Natural Gas Royalty Regulation, 2017*;
- (l) “par price” means the par price determined under section 5 applicable to the category of crude oil determined by the Minister under section 4;
- (m) “pool” means a natural underground reservoir containing or appearing to contain an accumulation of petroleum or natural gas separated or appearing to be separated from any other such accumulation;
- (n) “producing interval” means a perforation from which production is obtained;
- (o) “production month” means the month in which petroleum is recovered;
- (p) “re-entry” means all drilling or fracture operations in a well resulting in a change to TVD, TLL or TPPE that occurs at least one year after the first date a well commences production after initial activity or previous re-entry activity;
- (q) “Regulator” means the Alberta Energy Regulator;
- (r) “royalty” means royalty reserved to the Crown in right of Alberta;
- (s) “solution gas” means
  - (i) gas that is separated from crude oil after recovery from a well, and
  - (ii) gas that is dissolved in crude oil under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance;
- (t) “TLL” means the total lateral length of a well in metres as determined by the Minister
  - (i) for a single-leg well by subtracting the TVD from the TMD, and
  - (ii) for a multi-leg well by subtracting the deepest TVD in the well from the TMD;



- (u) “TMD” means the total measured depth of a well in metres calculated by using the measured depth of the well bore and adding the length of any legs in the well measured from the end of the leg back to the first unique kickoff point for that leg;
- (v) “TPPe” means the total proppant placed in a well in tonnes as determined by the Minister using the records of the Regulator and the proppant equivalent prescribed by the Minister;
- (w) “TVD” means the true vertical depth of a well in metres determined by measuring the vertical distance in metres in a perpendicular line from the kelly bushing of a well to the base of the deepest drilled leg;
- (x) “ultra-heavy oil” means the category of crude oil determined under section 4 as ultra-heavy oil;
- (y) “well event” means
  - (i) a part of a well completed in a zone and given a unique well identifier by the Regulator,
  - (ii) parts of a well completed in 2 or more zones and given a single unique well identifier by the Regulator,
  - (iii) a part of a well completed in and recovering crude oil from a zone but which has not yet been given a unique well identifier by the Regulator, or
  - (iv) parts of a well completed in and recovering crude oil from 2 or more zones during the period when the parts are considered by the Minister as a single well event for the purposes of this Regulation and before the Regulator makes a decision whether or not to give the parts a single unique well identifier;
- (z) “zone” means any stratum or any sequence of strata that is designated by the Regulator as a zone.

**(2)** A reference in this Regulation to a month, whether by its name or not, shall be construed as the period commencing at 8:00 a. m. Mountain Standard Time on the first day of the month and ending immediately before 8:00 a.m. Mountain Standard Time on the first day of the next month.

AR 212/2016 s1;52/2019

**Application of Regulation**

**2** This Regulation applies to royalty on crude oil and solution gas obtained from petroleum

- (a) recovered from a well on or after January 1, 2017, and
  - (i) if the well has a spud date of January 1, 2017 or later;
  - (ii) if the well has a spud date earlier than January 1, 2017 and has been subject to re-entry on or after January 1, 2017 and either or both of the following apply:
    - (A) the well has been given a new spud or finished drilling date and the well has been given a new TVD or TMD;
    - (B) new proppant has been placed in the well that meets the minimum equivalency threshold set out in the Schedule,

as long as the well has a C\* amount in dollars remaining as calculated under section 2 of the Schedule;

- (b) recovered from a well on or after July 13, 2016 if the well has been approved as an opted in well, and
- (c) recovered from a well on or after January 1, 2027.

**Section 86 of the Mines and Minerals Act**

**3** Section 86 of the *Mines and Minerals Act* applies to all agreements granting petroleum and natural gas rights or petroleum rights and to crude oil obtained from petroleum recovered pursuant to those agreements.

**Categories and densities of crude oil**

**4(1)** The categories of crude oil and the density of each category are as specified in the following Table:

**Crude Oil Category and Density Table**

<b>Category of Crude Oil</b>	<b>Density</b>
light oil	less than 850 kilograms per cubic metre
medium oil	greater than or equal to 850 kilograms per cubic metre and less than 900 kilograms per cubic metre
heavy oil	greater than or equal to 900 kilograms per cubic metre and less than 925 kilograms per cubic metre
ultra-heavy oil	greater than or equal to 925 kilograms per cubic metre

(2) The category for crude oil recovered from a well event during a month is determined by the Minister based on density information included in records provided to the Minister by the Regulator.

(3) In making a determination under subsection (2), the Minister may request and consider density information from the Alberta Petroleum Marketing Commission and the operator.

(4) If density information is not available to make a determination under subsection (2), the category for crude oil recovered from a well event during a month is light oil.

**Prescribing par prices**

**5** The Minister may, with respect to any month, determine an amount per cubic metre as the par price for each of the following:

- (a) light oil;
- (b) medium oil;
- (c) heavy oil;
- (d) ultra-heavy oil.

**Royalty**

**6(1)** The royalty on petroleum recovered from a well event pursuant to an agreement granting petroleum and natural gas rights, petroleum rights or natural gas rights is

- (a) that part of the crude oil obtained from the petroleum in each month calculated in accordance with the Schedule, and
- (b) that part of the solution gas obtained from the petroleum in each month calculated in accordance with the *Natural Gas Royalty Regulation, 2009* or the *Natural Gas Royalty Regulation, 2017*, as applicable.

(2) The royalty on crude oil and solution gas must be free and clear of all deductions.

#### **Calculation of royalty**

7 The royalty on petroleum recovered from a well event that is also eligible production under the *New Well Royalty Regulation* is the lesser of

- (a) the royalty percentage calculated pursuant to section 6, and
- (b) 5%.

#### **Approved schemes under the Enhanced Oil Recovery Royalty Regulation, the Enhanced Hydrocarbon Recovery Royalty Regulation and the Emerging Resources Royalty Regulation**

8(1) Notwithstanding anything in this Regulation, the *Enhanced Oil Recovery Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Oil Recovery Royalty Regulation* applies.

(2) Notwithstanding anything in this Regulation, the *Enhanced Hydrocarbon Recovery Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Hydrocarbon Recovery Royalty Regulation* applies.

(3) Notwithstanding anything in this Regulation, the *Emerging Resources Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well to which an approval as defined in the *Emerging Resources Royalty Regulation* applies.

**Adjustment of royalty**

**9(1)** Repealed AR 52/2019 s8.

**(2)** Repealed AR 52/2019 s8.

**(3)** Where, by an order made pursuant to the *Oil and Gas Conservation Act*, the maximum allowable production from a well event is determined for a period in excess of one month, the royalty that has been calculated, levied and collected on crude oil shall, on application by the operator or licensee, at the end of that period be recalculated for each month during the period that crude oil was produced from the well event, and for that purpose the production of crude oil is deemed to have been produced at the same rate as specified in the order for each month of the period.

**(4)** If the royalty that has been levied and collected is in excess of the amount recalculated under subsection (3), a payment of the excess amount must be made in accordance with section 15 of the *Petroleum Marketing Regulation* (AR 174/2006) as if the excess amount was an overdelivery of crude oil for the purposes of that section.

AR 212/2016 s9;52/2019

**Crown tract in unit**

**10** If petroleum owned by the Crown is subject to a unit agreement or unit operation order, the unit area under the unit agreement or order is deemed to be a location for the purpose of determining the royalty calculated under sections 3 and 4 of the Schedule applicable to the portion of the production allocated to any tract contained in an agreement.

**Lesser royalty**

**11** Where in the opinion of the Lieutenant Governor in Council it is necessary or desirable in the interests of conservation or of maintaining or increasing the recovery of crude oil or natural gas from one or more well events in one or more wells, a pool or any portion of a pool, the Lieutenant Governor in Council may by order

- (a) prescribe a royalty with respect to the crude oil recovered from the one or more well events, the pool or portion of the pool, that is less than the royalty that would otherwise be deliverable under this Regulation, and
- (b) prescribe the period in respect of which the order is to apply.

**Responsibility of operator**

**12** Where petroleum is recovered from a well in a month pursuant to an agreement, the operator of the well for that month is responsible as the agent of the lessee of the agreement for the delivery of the royalty on crude oil under the agreement in respect of that month.

**Objections**

**13** An operator is authorized to make an objection under section 39 of the Act.

**Minister's decision final**

**14** Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there is no appeal from the Minister's decision.

**Furnishing documents to the Minister**

**15(1)** If this Regulation requires a document to be furnished to the Minister, or an amount to be paid to the Crown, on or before a day, the document is deemed to be furnished or the amount is deemed to be paid, as the case may be, if it is received by the Department on or before that day.

**(2)** Unless otherwise directed by the Minister, where any document required or permitted to be furnished under this Regulation must be provided in a form required by the Minister, the document must

- (a) contain complete and accurate information required by the form, and
- (b) be completed in accordance with any general directions given by the Minister or any instructions shown in the form.

**(3)** The Minister may refuse to accept a document that does not meet the requirements of subsection (2) and in that case the document is, for the purposes of this Regulation, deemed not to have been furnished.

## **Part 2 Opted In Wells**

**Definitions**

**16** In this Part, "eligible well" means a well that is an eligible well under section 17.

**Eligible well**

**17(1)** A well that meets all of the following criteria is an eligible well for the purposes of this Part:

- (a) a well with a spud date of July 13, 2016 or later but on or before December 31, 2016;
- (b) a well that does not produce oil sands or crude bitumen;
- (c) the Minister is of the opinion that the well would not have been spud between July 13, 2016 and December 31, 2016 without the approval for opt in by the Minister under this Part.
- (d) the well is not subject to re-entry.

(2) Information must be provided to the Minister by the licensee if required to aid in determining whether a well meets the criteria set out in this section.

**Application**

**18(1)** The licensee of an eligible well may apply, in accordance with this section, to have the royalty on crude oil and solution gas obtained from petroleum recovered from that well determined under this Regulation in accordance with the provisions set out in the Schedule.

(2) The licensee must furnish the application in writing to the Minister before the well's spud date and on or after July 13, 2016.

**Approval**

**19** On receiving an application under section 18, the Minister may approve an application for opt in for an eligible well if, in the opinion of the Minister, it is in the public interest to do so.

**When opt in has effect**

**20** An approval by the Minister in respect of an eligible well has effect from the first day of the first production month of the eligible well.

**When opt in approval ceases to have effect**

**21** An opt in approval by the Minister ceases to have effect in respect of a well on the date on which the well ceases to be an eligible well.

**Part 3**  
**Consequential Amendments and**  
**Coming into Force**

**Consequential amendment**

**22** The *Enhanced Oil Recovery Royalty Regulation* (AR 156/2014) is amended in section 5 by adding “or under section 3 of the Schedule to the *Petroleum Royalty Regulation, 2017*” after “*Petroleum Royalty Regulation, 2009*”.

**Consequential amendment**

**23** The *Petroleum Royalty Regulation, 2009* (AR 222/2008) is amended by repealing section 2 and substituting the following:

**Application of regulation**

**2** Subject to section 2 of the *Petroleum Royalty Regulation, 2017*, this Regulation applies to royalty on crude oil and solution gas obtained from petroleum recovered from a well event on or after January 1, 2009 until December 31, 2026 for wells with a spud date before January 1, 2017.

**Coming into force**

**24** This Regulation is deemed to have come into force on July 13, 2016.

**Schedule**  
**Crown Royalty Share of Crude Oil**

**Definitions**

- 1** In this Schedule,
- (a) “ACCI” means the Alberta Capital Cost Index for a year determined by the Minister on an annual basis;
  - (b) “Crown interest” means the percentage of Crown ownership of crude oil recovered from a well event as determined by the Minister in accordance with section 26.1 of the *Petroleum and Natural Gas Tenure Regulation* (AR 263/97);
  - (c) “C\*” means the drilling and completion cost allowance in dollars calculated for a well under section 2 of this Schedule;
  - (d) “quantity” means the monthly production in cubic metres of crude oil from a well according to the records of the Regulator;



- (e) “TVDa” means the average of the true vertical depths of all drilled legs.

**Calculation of C\* for a Well**

**2(1)** The C\* for a well where the TVD of the well is greater than 2000 metres is the dollar amount calculated in accordance with the following formula:

$$C^* = ACCI \times ((1170 \times (TVD - 249)) + (3120 \times (TVD - 2000)) + (Y \times 800 \times TLL) + (0.6 \times TVDa \times TPPE))$$

where

Y is the linear factor for multi-leg wells, determined in accordance with the following formula:

$$Y = 1.39 - 0.04 \times (TMD/TVDa)$$

but,

- (a) if the ratio of TMD/TVDa is less than 10, Y equals 1
- (b) if Y is calculated as less than 0.24, Y equals 0.24

If TVD is equal to or less than 249, (TVD - 249) equals 0.

**(2)** The C\* for a well where the TVD of the well is 2000 metres or less is the dollar amount calculated in accordance with the following formula:

$$C^* = ACCI \times ((1170 \times (TVD - 249)) + (Y \times 800 \times TLL) + (0.6 \times TVDa \times TPPE))$$

where

Y is the linear factor for multi-leg wells, determined in accordance with the following formula:

$$Y = 1.39 - 0.04 \times (TMD/TVDa)$$

but,

- (a) if the ratio of TMD/TVDa is less than 10, Y equals 1;
- (b) if Y is calculated as less than 0.24, Y equals 0.24.

If TVD is equal to or less than 249, (TVD - 249) equals 0.

**(3)** The incremental C\* for a well where re-entry results in lengthening only is the dollar amount calculated in accordance with the following formula:

$$C^* = \text{ACCI} \times (1000 \times \text{TLLi})$$

where

TLLi is the TLL of the incremental drilling done since the last drilling occurrence that resulted in a calculation of C\* under this regulation.

(4) Where re-entry results in fracturing only and at least the minimum amount of proppant equivalent of 50 tonnes for a horizontal well or 10 tonnes for a vertical well is placed, the incremental C\* for the well is the dollar amount calculated in accordance with the following formula:

$$\text{Incremental } C^* = \text{ACCI} \times (1.5 \times (0.6 \times \text{TVDp} \times \text{TPPi}) + 150,000)$$

where

TPPi is the TPPE of the incremental proppant placed since the last proppant was placed that resulted in a calculation of C\* under this regulation;

TVDp is the average of the true vertical depth of the legs where incremental proppant has been placed.

(5) The incremental C\* for a well, where a re-entry results in fracturing, at least the minimum amount of proppant equivalent of 50 tonnes for a horizontal well or 10 tonnes for a vertical well is placed, and the well is also lengthened, is the dollar amount calculated as follows:

- (a) for wells that have a TVD greater than 2000 before and after lengthening:

$$\text{Incremental } C^* = C^*_{\text{new}} - C^*_{\text{prime}}$$

where

C\*new is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry;

C\*prime is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry

- (b) for wells that have a TVD of 2000 metres or less before lengthening, but a TVD greater than 2000 metres after lengthening:

$$\text{Incremental } C^* = C^*_{\text{new}} - C^*_{\text{prime}}$$

where

$C^*_{\text{new}}$  is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry;

$C^*_{\text{prime}}$  is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry

- (c) for wells that have a TVD of 2000 metres or less before and after lengthening:

$$\text{Incremental } C^* = C^*_{\text{new}} - C^*_{\text{prime}}$$

where

$C^*_{\text{new}}$  is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry; and

$C^*_{\text{prime}}$  is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPE, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry.

(6) For the purposes of this section a vertical well is a well that is not determined to be a horizontal well by the Minister under subsection (7).

(7) For the purposes of this section a horizontal well is a well that is determined to be a horizontal well by the Minister based on:

- (a) the well having at least one well event classified by the Regulator as “horizontal”, and

- (b) according to the records of the Regulator, the well having at least one well event that was drilled at a wellbore inclination angle exceeding 80 degrees.

**(8)** Incremental drilling and usage of proppant after the date the C\* for a well is first calculated will result in an increase in the C\* for a well as a result of a recalculation of the C\* under whichever of subsections (3), (4) or (5) are applicable to the incremental drilling and usage of proppant.

**(9)** A well with a spud date before January 1, 2017, other than an opted in well, that is subject to re-entry will receive a C\*, but only for the incremental drilling done in the well and for the proppant used on the well after January 1, 2017.

**(10)** For further clarity, any re-entry activity that takes place within the year following the first date a well commences production after a previous re-entry will result in a recalculation of incremental C\* under whichever of subsections (3), (4) or (5) are applicable instead of a new incremental C\*.

**Calculation of Crown royalty share  
when C\* greater than zero**

**3(1)** Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (5\%) \times \text{quantity} \times \text{Crown interest}$$

**(2)** Royalty will be calculated according to subsection (1) until a well's total revenue from all hydrocarbon products as determined by the Minister equals C\* or until a well has been abandoned according to the records of the Regulator, whichever comes first.

**(3)** Once a well's total revenue from all hydrocarbon products as determined by the Minister equals C\*, royalty for all subsequent months will be calculated under

- (a) section 4 of this Schedule for
  - (i) wells spud on or after January 1, 2017, and
  - (ii) opted in wells, and
  - (iii) all wells on or after January 1, 2027.
- (b) the *Petroleum Royalty Regulation, 2009* for wells that were spud before January 1, 2017 and are not opted in wells until December 31, 2026.

**(4)** Revenue from a well will be determined by multiplying the volumes of all the hydrocarbons produced from the well by their

respective par prices for the time period in which the well has a C\* greater than or equal to the revenue determined under this subsection. For crude oil the volumes used will be produced volumes and for natural gas and natural gas products the volumes used will be allocated volumes.

(5) The volumes referenced in subsection (4) include freehold volumes.

#### Calculation of Crown royalty share post C\*

4(1) Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (r_p\% + r_q\%) \times \text{quantity} \times \text{Crown interest}$$

where

$r_p\%$  is the percentage rate for price calculated in accordance with section 5 of this Schedule;

$r_q\%$  is the percentage rate for oil equivalent volume calculated in accordance with section 6 of this Schedule.

(2) Where the calculation of  $(r_p\% + r_q\%)$

(a) is less than 5%, the amount is 5%, or

(b) is more than 40%, the amount is 40%.

#### Calculation of rate for price

5(1) In the case of a production month commencing with and subsequent to the January 2017 production month, the  $r_p\%$  for the purpose of section 4 of this Schedule is calculated in accordance with the following Table:

**Rate for Price Table**

Par Price	Formula
par price less than or equal to \$251.70 per cubic metre	$r_p\% = 10\%$
par price greater than \$251.70 per cubic metre and less than or equal to \$409.02 per cubic metre	$r_p\% = [(\text{par price} - 251.70) \times 0.00071 + 0.10000] \times 100$
par price greater than \$409.02 per cubic metre and less than or equal to \$723.64 per cubic metre	$r_p\% = [(\text{par price} - 409.02) \times 0.00039 + 0.21170] \times 100$

par price greater than \$723.64 per cubic metre	$r_p\% = [(par\ price - 723.64) \times 0.00020 + 0.33440] \times 100$
Maximum/Default	40%

#### Calculation of rate for oil equivalent volume

**6** The  $r_q\%$  for the purpose of section 4 of this Schedule is calculated in accordance with the following Table:

**Rate for Oil Equivalent Volume Table**

Oil Equivalent Volume	Formula
oil equivalent volume greater than zero and less than 194.0 cubic metres	$r_q\% = [(oil\ equivalent\ volume - 194.0) \times 0.001350] \times 100$
oil equivalent volume greater than or equal to 194.0 cubic metres	$r_q\% = 0\%$


Oil equivalent volume is the total of all crude oil volumes, field condensate volumes and gas volumes using a conversion factor of 1.7811.

#### Reporting requirements

**7** For the purposes of determining royalty under this Schedule information required by the Minister must be provided to the Minister by the licensee or operator in the form and in the time prescribed by the Minister.

AR 212/2016 Sched.;27/2017



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(Consolidated up to 52/2019)

**ALBERTA REGULATION 222/2008**

**Mines and Minerals Act**

**PETROLEUM ROYALTY REGULATION, 2009**

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Schedule

**Part 1  
General****Interpretation****1(1)** In this Regulation,

- (a) repealed AR 89/2013 s37;
- (b) “crude oil” means a mixture mainly of pentanes and heavier hydrocarbons
  - (i) that may be contaminated with sulphur compounds,
  - (ii) that is recovered or is recoverable at a well from an underground reservoir, and
  - (iii) that is liquid at the conditions under which its volume is measured or estimated,and includes all other hydrocarbon mixtures so recovered or recoverable except natural gas, field condensate or crude bitumen;
- (c) “field condensate” means field condensate as defined in the *Natural Gas Royalty Regulation, 2009*;
- (d) “heavy oil” means the category of crude oil determined under section 4 as heavy oil;
- (e) repealed AR 52/2019 s7;
- (f) “licence” means a licence for a well issued under the *Oil and Gas Conservation Act*;
- (g) “licensee” means the holder of a licence according to the records of the Regulator and includes a trustee or receiver-manager of property of a licensee;
- (h) “light oil” means the category of crude oil determined under section 4 as light oil;
- (i) “medium oil” means the category of crude oil determined under section 4 as medium oil;
- (j) “operator”, in respect of a well, means the person who is the operator according to the records of the Department;

- (k) “pool” means a natural underground reservoir containing or appearing to contain an accumulation of petroleum or natural gas separated or appearing to be separated from any other such accumulation;
- (k.1) “producing interval” means a perforation from which production is obtained;
- (k.2) “production month” means the month in which petroleum is recovered;
- (k.3) “Regulator” means the Alberta Energy Regulator;
- (l) “royalty” means royalty reserved to the Crown in right of Alberta;
- (m) “solution gas” means
  - (i) gas that is separated from crude oil after recovery from a well, and
  - (ii) gas that is dissolved in crude oil under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance;
- (n) “ultra heavy oil” means the category of crude oil determined under section 4 as ultra heavy oil;
- (o) “well event” means
  - (i) a part of a well completed in a zone and given a unique well identifier by the Regulator,
  - (ii) parts of a well completed in 2 or more zones and given a single unique well identifier by the Regulator,
  - (iii) a part of a well completed in and recovering crude oil from a zone but which has not yet been given a unique well identifier by the Regulator, or
  - (iv) parts of a well completed in and recovering crude oil from 2 or more zones during the period when the parts are considered by the Minister as a single well event for the purposes of this Regulation and before the Regulator makes a decision whether or not to give the parts a single unique well identifier;
- (p) “zone” means any stratum or any sequence of strata that is designated by the Regulator as a zone.

(2) A reference in this Regulation to a month, whether by its name or not, shall be construed as the period commencing at 8:00 a.m. Mountain Standard Time on the first day of the month and ending immediately before 8:00 a.m. Mountain Standard Time on the first day of the next month.

AR 222/2008 s1;135/2009;199/2010;89/2013;52/2019

#### Application of regulation

2 Subject to section 2 of the *Petroleum Royalty Regulation, 2017*, this Regulation applies to royalty on crude oil and solution gas obtained from petroleum recovered from a well event on or after January 1, 2009 until December 31, 2026 for wells with a spud date before January 1, 2017.

AR 222/2008 s2;212/2016

#### s86 of the Mines and Minerals Act

3 Section 86 of the *Mines and Minerals Act* applies to all agreements granting petroleum and natural gas rights or petroleum rights and to crude oil obtained from petroleum recovered pursuant to those agreements.

#### Categories and densities of crude oil

4(1) The categories of crude oil and the density of each category are as specified in the following Table:

**Crude Oil Category and Density Table**

Category of Crude Oil	Density
light oil	less than 850 kilograms per cubic metre
medium oil	greater than or equal to 850 kilograms per cubic metre and less than 900 kilograms per cubic metre
heavy oil	greater than or equal to 900 kilograms per cubic metre and less than 925 kilograms per cubic metre
ultra heavy oil	greater than or equal to 925 kilograms per cubic metre

(2) The category for crude oil recovered from a well event during a month is determined by the Minister based on density information included in records provided to the Minister by the Regulator.

(3) In making a determination under subsection (2), the Minister may request and consider density information from the Alberta Petroleum Marketing Commission and the operator.

(4) If density information is not available to make a determination under subsection (2), the category for crude oil recovered from a well event during a month is light oil.

AR 222/2008 s4;89/2013

#### **Prescribing par prices**

**5** The Minister may, with respect to any month, prescribe an amount per cubic metre as the par price for each of the following:

- (a) light oil;
- (b) medium oil;
- (c) heavy oil;
- (d) ultra heavy oil.

#### **Royalty**

**6(1)** The royalty on petroleum recovered from a well event pursuant to an agreement granting petroleum and natural gas rights, petroleum rights or natural gas rights is

- (a) that part of the crude oil obtained from the petroleum in each month calculated in accordance with the Schedule, and
- (b) that part of the solution gas obtained from the petroleum in each month calculated in accordance with the *Natural Gas Royalty Regulation, 2009*.

(2) The royalty on crude oil and solution gas must be free and clear of all deductions.

#### **Calculation of royalty**

**6.1** The royalty on petroleum recovered from a well event that is also eligible production under the *New Well Royalty Regulation* is the lesser of

- (a) the royalty calculated pursuant to section 6, and
- (b) 5%.

AR 32/2011 s18

**Approved schemes under the Enhanced Oil Recovery Royalty Regulation**

**6.2** Notwithstanding anything in this Regulation, the provisions of the *Enhanced Oil Recovery Royalty Regulation* apply to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Oil Recovery Royalty Regulation* applies.

AR 156/2014 s16

**Adjustment of royalty**

**7(1)** Repealed AR 52/2019 s7.

**(2)** Repealed AR 52/2019 s7.

**(3)** Where, by an order made pursuant to the *Oil and Gas Conservation Act*, the maximum allowable production from a well event is determined for a period in excess of one month, the royalty that has been calculated, levied and collected on crude oil shall, on application by the operator or licensee, at the end of that period be recalculated for each month during the period that crude oil was produced from the well event, and for that purpose the production of crude oil is deemed to have been produced at the same rate as specified in the order for each month of the period.

**(4)** If the royalty that has been levied and collected is in excess of the amount recalculated under subsection (3), a payment of the excess amount must be made in accordance with section 15 of the *Petroleum Marketing Regulation* (AR 174/2006) as if the excess amount was an overdelivery of crude oil for the purposes of that section.

AR 222/2008 s7;52/2019

**Crown tract in unit**

**8** If petroleum owned by the Crown is subject to a unit agreement or unit operation order, the unit area under the unit agreement or order is deemed to be a location for the purpose of determining the royalty calculated under section 2(1) of the Schedule applicable to the portion of the production allocated to any tract contained in an agreement.

**Lesser royalty**

**9** Where in the opinion of the Lieutenant Governor in Council it is necessary or desirable in the interests of conservation or of maintaining or increasing the recovery of crude oil or natural gas from one or more well events in one or more wells, a pool or any portion of a pool, the Lieutenant Governor in Council may by order

- (a) prescribe a royalty with respect to the crude oil recovered from the one or more well events, the pool or portion of the pool, that is less than the royalty that would otherwise be deliverable under this Regulation, and
- (b) prescribe the period in respect of which the order is to apply.

**Responsibility of operator**

**10** Where petroleum is recovered from a well in a month pursuant to an agreement, the operator of the well for that month is responsible as the agent of the lessee of the agreement for the delivery of the royalty on crude oil under the agreement in respect of that month.

**Objections**

**10.1** An operator is authorized to make an objection under section 39 of the Act.

AR 170/2015 s13

**Minister's decision final**

**11** Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there is no appeal from the Minister's decision.

## **Part 2**

### **Transitional Well Events**

**Definitions**

**11.1** In this Part,

- (a) "eligible well event" means a well event that is an eligible well event under section 11.2;
- (b) "measured depth" means, in respect of a well event, the longest distance, in metres, along the bore of the well from the kelly bushing of the well to
  - (i) the base of the deepest producing interval in the well event, or
  - (ii) if the production of the well event is commingled with the production of one or more other well events, to the base of the deepest producing interval in the well from which the commingled production is obtained;

- (c) “transitional election” means an election made in respect of an eligible well event in accordance with section 11.3;
- (d) “transitional well event” means a well event in respect of which a transitional election is in effect under this Part.

AR 135/2009 s4

**Eligible well event**

**11.2(1)** A well event that meets all of the following criteria is an eligible well event for the purposes of this Part:

- (a) the well event is part of a well with a spud date on or after November 19, 2008 and on or before December 31, 2010;
- (b) the measured depth of the well event, according to the records of the Regulator, is greater than or equal to 1000 metres and less than or equal to 3500 metres;
- (c) the well event is not part of a well that produces oil sands or crude bitumen, other than a gas well as defined in the *Oil and Gas Conservation Rules* (AR 151/71).

**(2)** Information must be provided to the Minister by the licensee if required to aid in determining whether a well event meets the criteria set out in this section.

AR 135/2009 s4;199/2010;89/2013

**Transitional election**

**11.3(1)** The licensee of an eligible well event may elect, in accordance with this section, to have the royalty on crude oil and solution gas obtained from petroleum recovered from that well event determined under this Regulation in accordance with the provisions set out in the Schedule for transitional well events.

**(2)** The licensee must furnish the election to the Minister by electronic transmission to Petrinex in accordance with the directions of the Minister respecting the operation of the Registry not later than the last day of the first production month of the eligible well event or December 31, 2010, whichever is earlier.

**(3)** Despite subsection (2), if the first production month of an eligible well event occurs before July 2009, the election must be furnished under that subsection between June 4, 2009 and June 30, 2009.

AR 135/2009 s4;199/2010;140/2014

**When transitional election has effect**

**11.4(1)** A transitional election made in respect of an eligible well event has effect from the first day of the first production month of the eligible well event.

**(2)** Despite subsection (1), if the first production month of an eligible well event occurs before July 2009, a transitional election made in respect of that well event has effect from the first day of the first production month of the well event after December 2008.

AR 135/2009 s4

**When transitional election ceases to have effect**

**11.5** A transitional election ceases to have effect in respect of a well event on the earlier of the following:

- (a) the date on which the well event ceases to be an eligible well event;
- (a.1) the date on which a licensee opts out of a transitional election in accordance with section 11.6;
- (b) December 31, 2013.

AR 135/2009 s4;199/2010

**Opting out of transitional election**

**11.6(1)** The licensee of an eligible well event may opt out of a transitional election by giving notice to the Minister by electronic transmission to Petrinex between January 1, 2011 and February 15, 2011 in accordance with the directions of the Minister respecting the operation of Petrinex.

**(2)** If a licensee opts out of a transitional election under subsection (1), the royalty for the transitional well event shall be calculated in accordance with section 5 of the Schedule until the end of the December 2010 production month.

AR 199/2010 s6;140/2014

### **Part 3**

## **Consequential Amendments, Expiry and Coming into Force**

**12 to 21** *(These sections amend other regulations; the amendments have been incorporated into those regulations.)*

**22** Repealed AR 90/2018 s1.



**Coming into force**

**23** This Regulation comes into force on January 1, 2009.

**Schedule****Crown Royalty Share of Crude Oil****Definitions**

**1** In this Schedule,

- (a) “Crown interest” means the percentage of Crown ownership of crude oil recovered from a well event as determined by the Minister in accordance with section 26.1 of the *Petroleum and Natural Gas Tenure Regulation* (AR 263/97);
- (b) “par price” means the par price prescribed under section 5 of the Regulation applicable to the category of crude oil determined by the Minister under section 4 of the Regulation;
- (c) “quantity” means the monthly production in cubic metres of crude oil from a well event according to the records of the Regulator;
- (d) “transitional well event” means a well event in respect of which a transitional election is in effect under Part 2 of this Regulation or under Part 2.1 of the *Natural Gas Royalty Regulation, 2009* (AR 221/2008).

**Calculation of Crown royalty share**

**2(1)** Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (r_p\% + r_q\%) \times \text{quantity} \times \text{Crown interest}$$

where

$r_p\%$  is the percentage rate for price calculated in accordance with section 3 of this Schedule;

$r_q\%$  is the percentage rate for quantity calculated in accordance with section 4 of this Schedule.

**(2)** Where the calculation of  $(r_p\% + r_q\%)$

- (a) is less than 0%, the amount is 0%, or
- (b) is more than

- (i) 50%, the amount is 50%, in the case of a production month prior to and including the December 2010 production month, or
- (ii) 40%, the amount is 40%, in the case of a production month commencing with and subsequent to the January 2011 production month.

#### Calculation of rate for price

**3(1)** In the case of a production month prior to and including the December 2010 production month, the  $r_p\%$  for the purposes of section 2 of this Schedule is calculated in accordance with the following Table:

**Rate for Price Table 1**

Par Price	Formula
par price greater than zero and less than or equal to \$250.00 per cubic metre	$r_p\% = ((\text{par price} - 190.00) \times 0.0006) \times 100$
par price greater than \$250.00 per cubic metre and less than or equal to \$400.00 per cubic metre	$r_p\% = [((\text{par price} - 250.00) \times 0.0010) + 0.0360] \times 100$
par price greater than \$400.00 per cubic metre	$r_p\% = [((\text{par price} - 400.00) \times 0.0005) + 0.1860] \times 100$

**(2)** In the case of a production month commencing with and subsequent to the January 2011 production month, the  $r_p\%$  for the purpose of section 2 of this Schedule is calculated in accordance with the following Table:

**Rate for Price Table 2**

Par Price	Formula
par price greater than zero and less than or equal to \$250.00 per cubic metre	$r_p\% = ((\text{par price} - 190.00) \times 0.0006) \times 100$
par price greater than \$250.00 per cubic metre and less than or equal to \$400.00 per cubic metre	$r_p\% = [((\text{par price} - 250.00) \times 0.0010) + 0.0360] \times 100$
par price greater than \$400.00 per cubic metre and less than or equal to \$535.00 per cubic	$r_p\% = [((\text{par price} - 400.00) \times 0.0005) + 0.1860] \times 100$

metre	
par price greater than \$535.00 per cubic metre	$r_p\% = \left[ \left( (\text{par price} - 535.00) \times 0.0003 \right) + 0.2535 \right] \times 100$

(3) Where the  $r_p\%$  calculated under subsections (1) or (2) exceeds 35%, the  $r_p\%$  is deemed to be 35%.

#### Calculation of rate for quantity

4(1) The  $r_q\%$  for the purpose of section 2 of this Schedule is calculated in accordance with the following Table:

**Rate for Quantity Table**

Quantity	Formula
quantity greater than zero and less than or equal to 106.4 cubic metres	$r_q\% = \left( (\text{quantity} - 106.4) \times 0.0026 \right) \times 100$
quantity greater than 106.4 cubic metres and less than or equal to 197.6 cubic metres	$r_q\% = \left( (\text{quantity} - 106.4) \times 0.0010 \right) \times 100$
quantity greater than 197.6 cubic metres and less than or equal to 304.0 cubic metres	$r_q\% = \left[ \left( (\text{quantity} - 197.6) \times 0.0007 \right) + 0.0912 \right] \times 100$
quantity greater than 304.0 cubic metres	$r_q\% = \left[ \left( (\text{quantity} - 304.0) \times 0.0003 \right) + 0.1657 \right] \times 100$

(2) Where the  $r_q\%$  calculated under subsection (1) exceeds 30%, the  $r_q\%$  is deemed to be 30%.

#### Calculation of Crown royalty share for transitional well events

5(1) Notwithstanding section 2 of this Schedule, and subject to subsection (2), the royalty for a month for a transitional well event is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (r_p\% + r_q\%) \times \text{quantity} \times \text{Crown interest}$$

where

$r_p\%$  is the percentage rate for price calculated in accordance with section 6 of this Schedule;

$r_q\%$  is the percentage rate for quantity calculated in accordance with section 7 of this Schedule.

- (2) Where the calculation of  $(r_p\% + r_q\%)$
- (a) is less than 0%, the amount is 0%, or
  - (b) is more than 50%, the amount is 50%.

**Calculation of rate for price for transitional well events**

**6(1)** The  $r_p\%$  for the purpose of section 5 of this Schedule is calculated in accordance with the following Table:

**Rate for Price Table for Transitional Well Events**

Par Price	Formula
par price greater than zero and less than or equal to \$250.00 per cubic metre	$r_p\% = \left( (\text{par price} - 210.00) \times 0.00035 \right) \times 100$
par price greater than \$250.00 per cubic metre and less than or equal to \$350.00 per cubic metre	$r_p\% = \left[ \left( (\text{par price} - 250.00) \times 0.0001 \right) + 0.0140 \right] \times 100$
par price greater than \$350.00 per cubic metre	$r_p\% = \left[ \left( (\text{par price} - 350.00) \times 0.00005 \right) + 0.0240 \right] \times 100$

- (2) Where the  $r_p\%$  calculated under subsection (1) exceeds 35%, the  $r_p\%$  is deemed to be 35%.

**Calculation of rate for quantity for transitional well events**

**7(1)** The  $r_q\%$  for the purpose of section 5 of this Schedule is calculated in accordance with the following Table:

**Rate for Quantity Table for Transitional Well Events**

Quantity	Formula
quantity greater than zero and less than or equal to 30.4 cubic metres	$r_q\% = \left( (\text{quantity} - 30.4) \times 0.0013 \right) \times 100$
quantity greater than 30.4 cubic metres and	$r_q\% = \left( (\text{quantity} -$

less than or equal to 152.0 cubic metres	$30.4) \times 0.0013) \times 100$
quantity greater than 152.0 cubic metres and less than or equal to 273.6 cubic metres	$r_q\% = [((\text{quantity} - 152.0) \times 0.0008) + 0.1581] \times 100$
quantity greater than 273.6 cubic metres	$r_q\% = [((\text{quantity} - 273.6) \times 0.0002) + 0.2554] \times 100$

(2) Where the  $r_q\%$  calculated under subsection (1) exceeds 35%, the  $r_q\%$  is deemed to be 35%.

AR 222/2008 Sched.;135/2009;199/2010;89/2013