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March 21, 2016

The Alberta Energy Regulator
Suite 1000, 250 – 5th Street SW
Calgary, Alberta, T2P 0R4

VIA E-MAIL

Attention: Ms. Lisa Gagyi

Dear Sir or Madame:

Re: Application No. 1832419, EOR and Gas-Reinjection Scheme, Armisic Field

We represent our own interest in Armisic Field lands as well those of several surface owners. We recently received notification of an application for an EOR project approval.

We and the surface owners are grateful that the Alberta Energy Regulator (the “**Regulator**”) has directed Penn West Petroleum Ltd. (“**Penn West**”) to notify landowners concerning Application No. 1832419 dated June 17, 2015 (the “**Application**”). Said Notification represents a unique opportunity to restore long-absent legality and safety to Armisic Field operations, which we have long attempted to do, unsuccessfully to date, by other legislated means.

We are eager to contribute to expert, expedient, low cost administrative solutions, which the Regulator has a mandate to deliver to licensees and surface land owners alike.

In our extensive experience, licensees regularly enjoy the benefit of quick and low cost legal and illegal licensing decisions.

Unfortunately, and in stark contrast to the foregoing, landowners are often essentially denied access to the supposed benefits of the system by one means or another, illegally and improperly. This only works if the Regulator follows legislated procedure to the letter, and if decision making processes result in absolutely flawless decisions in each and every case.

The problems include that a goal as lofty as perfection is impossible. Perfection requires the following at minimum:

- that an iron-clad system be in place, whereby applicants for, and holders of, licenses to conduct oil and gas activities on the surface of Alberta land cannot possibly mislead landowners or the Regulator; and,
- that the facts and circumstances related to each and every aspect of any decision never change; or,

- that the Regulator has the ability to accurately predict the future, perhaps by way of some magical crystal ball.

We submit that, while perfection is something to strive for, in reality perfection is rarely achieved, and there is no question whatsoever that the Regulator's daily performance falls short of perfection.

In fact landowners, residents, and travelers through the Armisic Field, not to mention workers related to adjacent non-oil and gas development works, have often been placed in serious danger because of the irresponsible actions of Penn West and lack of regulatory enforcement.

Precisely because perfection is virtually impossible to achieve, lawmakers included provisions for review and variance of former decisions in Section 42 of your enabling statute.¹

In fact, Justice Miller of the Court of Queen's Bench of Alberta recently found that primary reasons administrative bodies, such as the Surface Rights Board, or the Regulator, may expeditiously issue decisions (without holding oral hearings) are:

- Their enabling statutes contain provisions for review and variance of flawed former decisions.
- If certain types of errors have been committed, or in the event circumstances change, former decisions can be reviewed and varied at the reasonable request of any adversely affected party with standing.

Mueller v. Montana Alberta Tie Line, [2011 ABQB 738 \(CanLII\)](#) paras 39, 40

These are the checks and balances that are obviously designed to protect landowners and licensees alike from the repercussions of flawed administrative decision making processes.

We assure you that, without any question whatsoever, you and your colleagues have embarked on a highly flawed process to date related to said Application, without possessing the authority or jurisdiction to do so. Penn West has not met, and we believe cannot possibly meet, the minimum application requirements set out in Directive 065, for a multitude of reasons we shall formally address in due course.

Until we file formal Statements of Concern, please consider this a preliminary "heads up", provided to enable you and your colleagues to avoid repetition of serious errors of jurisdiction, law, and fact, and/or to avoid the potential for compounding existing Armisic Field injustices, all of which abound in former licensing decisions.

Our sincere advice, provided with the greatest of respect, is that the Regulator apply the brakes related to the Application, take two steps backward so to speak, and take certain actions to correct the following serious shortcomings related to Regulator decision making processes:

¹ The *Responsible Energy and Development Act*.

1. The *Alberta Energy Regulator Rules of Procedure and Practice*, AR 99/2013 do not contain rules or procedures related to review and variance of former decisions contemplated by Section 42 of the *Responsible Energy Development Act* (“**REDA**”).
2. Our experience shows the Regulator has no adequate procedures in place whereby adversely affected parties (other than licensees or prospective licensees) may file review and variance applications, or reconsideration applications, with the Regulator that:
 - a) Are given a file number or are otherwise acted on.
 - b) Trigger a process to evaluate if an applicant has met any threshold requirements for a review of a former decision under S. 42 of *REDA*, particularly those such as the former Armisic Field decisions that are so drastically and fatally flawed.
3. We and our clients have, related to Armisic Field and other regulatory problems elsewhere in Alberta, been treated like a jurisdictional hot potato, or have been victims of an illegal game we have dubbed “Jurisdictional Ping Pong”.

Regulator telephone intake personnel insist we contact field offices, field inspectors insist we call the Calgary intake line, audit personnel direct us to stakeholder advisors, and stakeholder advisors take the position that legislation and regulation are policy the Regulator possesses discretion to ignore. The buck is passed so to speak at the expense of safety and regulatory compliance, without resolving reasonably raised issues.

We note the following, having found and performed an initial review of numerous documents on the Regulator’s website related to the Application:

- A. Applications filed by us for review and variance of former decisions, which predate the Application and have not been addressed or disposed of, are requests to resolve issues that the Regulator is being misled about by Penn West, pursuant to Application documents related to the proposed EOR scheme.
- B. Numerous e-mails are being exchanged, and meetings appear to have been conducted, between Applicant and Regulator personnel, which adversely affected parties such as we or our clients have not been made aware of.
- C. A number of preliminary or guiding decisions appear to have already been made by Regulator personnel, we submit without regard to actual facts, the statutory scheme, without the decision maker having assessed his or her jurisdiction, and contrary to the principles of natural justice (rendering such decisions nullities at law).

We represent Armisic Field landowners in precisely the same manner Penn West’s agents represent Penn West’s interests. As Penn West possesses the unassailable right to retain technical and legal advisors of its choosing, the same applies to surface owners and occupants.

Please absolutely ensure the following, or alternately provide well-reasoned reasons why the Regulator cannot or will not do so:

1. That all review by the Regulator of the Application be suspended, at least until preliminary issues have been identified and all adversely affected parties have been given the opportunity to know and respond to preliminary issues.
2. That with respect to the Application, no more correspondence be exchanged, and no more meetings or telephone conversation be conducted, between Applicant and Regulator personnel, without including or copying us.

We respectfully submit that the foregoing is in the best interests of all oil and gas producers and landowners in Alberta. Responsible and economical oil and gas production is dependent on the following:

- Access to expedient, expert, low cost, administrative decisions.
- Review of those decisions, which are hopefully in the minority, that are flawed.
- Sufficient enforcement whereby irresponsible operators such as Penn West are not so daring as to thumb their noses at landowners and our two key administrative bodies, the Regulator and the Surface Rights Board, as Penn West has repeatedly done and continues to do related to a multitude of unresolved Armisic Field issues in dispute.

If the Regulator cannot or will not review former flawed decisions made by it or its predecessor licensing authorities, prior to review of the proposed EOR and gas-reinjection scheme related to the Application, the repercussions must be an *ongoing requirement* to conduct extensive, protracted, and highly expensive hearings related to issuance of *each and every* licence, permit, or approval, in future.

We submit such repercussions would be a disaster, and that the Regulator should simply implement rules and procedures whereby any potentially flawed decision may be reviewed and varied if necessary, and abide by the binding decisions of our courts.

The Regulator reconsiders former decisions for licensees daily, for example when a well or pipeline is transferred from one owner to another.

Circumstances that impact landowner rights also change, which should trigger the same type of expedient low cost review. Otherwise the Regulator has drastically failed to carry out its mandate on behalf of all Albertans, and its decisions fail to display the necessary reasonable apprehension of bias.

Yours sincerely,

DORIN LAND AND OILFIELD MANAGEMENT INC.


Mark Dorin
President

CC: Penn West Petroleum, per Mr. Blake Williams, Bennett Jones LLP, legal counsel
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