



INACTIVE/SUSPENDED WELLS ON FREEHOLD

- **ERCB Decision 2009-037 – May, 2009:**
 - A CAPL 91 Lease may only be continued beyond the primary term with a suspended well which is capable of producing the leased substances in meaningful quantities in its existing configuration and state of completion
- **The Negotiator (Magazine of the CAPL) – Dec., 2009**
 - If the ERCB Decision is upheld on appeal “thousands (if not tens of thousands) of leases and wells” could be effected
- **Alberta Court of Appeal – Sept., 2011**
 - “The Board’s interpretation is correct”



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- Freeholder seeks ERCB review of well license – Nov., 2011
- ERCB Compliance – Dec., 2011
 - “The ERCB has determined that the issues pertaining to compensation, specifically, the leasing agreements are outside of the ERCB’s jurisdiction and are within the authority of the Courts”
- ERCB Associate General Counsel – March, 2012
 - In response to FHQA’s concerns: “the ERCB does not consider that it should be the preferred forum to decide questions about the existence or continuation of a freehold mineral lease”
 - and -
 - the regulator’s decisions are not to be owed any deference by a court



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- **FHOA disagrees with the AER's Associate General Counsel because**
 - The regulator “has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the Act “(S. 86, O&GCA)
 - The regulator is “a specialized and expert tribunal ... empowered to determine issues which are narrow and highly technical” Coalition of Citizens Impacted by the Caroline Shell Plant v. Alberta [1996] 9 W.W.R. 667 Alta. C.A. Par 14
 - The Court of Appeal has already ruled on the meaning of the Suspended Wells Clause in a CAPL 91 lease
 - The sole issue for determination by the regulator is technical
- **A change in the policy set forth by the regulator's counsel would**
 - Result in the termination of freehold leases being continued with wells which are not capable of producing and the abandonment and reclamation of these wells
 - Benefit not just freeholders but the general public exposed to significant liability by virtue of the Redwater Appeal Court ruling