

Via Email

March 23, 2017

Dorin Land and Oilfield Management Inc.

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca**Attention: Mr. Mark Dorin**

Dear Sir:

**RE: Request for Regulatory Appeal by Braun Land Owners
Penn West Petroleum Limited (Penn West)
Application No.: 1832419
Approval No. 12447 (Approval)
Regulatory Appeal No. 1869031 (Regulatory Appeal)**

The Alberta Energy Regulator (AER) has considered the Braun Land Owners Group's (Braun Land Owners) regulatory appeal request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve Approval No. 12447 for an enhanced recovery scheme. The Braun Land Owners consists of Dale Braun, Coleen Braun, Daneve Marie Lucas, Lillian Evanoff, Guy Lewis, and Elizabeth Storochuk and they hold land interests in the SW ¼ and SE ¼ of Section 4-52-25W4M. The group authorized Mr. Dorin to represent them and file the regulatory appeal request on their behalf. The AER has reviewed the submissions filed by Mr. Dorin and the submissions made by Penn West.

For the reasons that follow, the AER has decided that the Braun Land Owners are not eligible to request a regulatory appeal in this matter as the definition of "eligible person" is not met, as set out in section 36 of *REDA*. Therefore, the request for a regulatory appeal is dismissed.

The applicable provision of *REDA* in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [underlining added]

The term "eligible person" is defined in section 36(b)(ii) of *REDA* to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]

The term "appealable decision" is defined in section 36 of *REDA*. Specifically relevant to this regulatory appeal request is section 36(a)(iv).

Preliminary Issue

In their correspondence, the Braun Land Owners submit that Approval No. 12447 has expired since Penn West did not complete one of the approval's conditions within three months of issuance. They submit that "Penn West's submissions are incontrovertible evidence that the terms and conditions of expiry of Approval No. 12447 were not met, and that such Approval has indeed expired on its terms". The Braun Land Owners argued that the request for regulatory appeal should be closed as the Approval has expired.

In its response submission, Penn West explains that it has not met one of the conditions of Approval No. 12447.

- 2)....Injection shall commence in the well(s) referred to in clause 2 within three months of the date of this approval.

Penn West submits that "...Penn West, in good faith, has not taken any action on the Approval pending the outcome of the regulatory appeal process". Penn West seeks a 90 day extension to this deadline.

The AER notes that the Approval does not state that if injection does not commence that the Approval expires. Not meeting a condition of an Approval is a compliance issue and will be dealt with through the AER's compliance process. Therefore, since the Approval has not expired, the AER considered the request for regulatory appeal.

Reasons for Decision

The AER notes that in their request for a regulatory appeal, the Braun Land Owners provided submissions regarding what it considered "inaccurate considerations" in the AER's letter of August 26, 2016. The Braun Land Owners also submitted that the AER did not identify how many of their concerns expressed in their Statement of Concern (SOC) were addressed to the satisfaction of the AER. The AER's August 26, 2016 letter set out the AER's considerations in exercising its discretion to not hold a hearing to consider Application 1832419. The Braun Land Owners cannot seek a regulatory appeal of the decision to not go to a hearing as that decision was made under *REDA*. As per sections 36 and 38 of *REDA*, the only decisions that can be regulatory appealed are decisions made under the energy enactments, the specified enactments and any other decision or class of decisions described in the regulations (which does not include decisions as to whether to go to a hearing or not). Accordingly, the letter of August 26, 2016 is not an appealable decision.

The AER notes the request for regulatory appeal was filed within 30 days of issuance of Approval No. 12447. The decision to issue the approval is an appealable decision as the decision was made under the *Oil and Gas Conservation Act*, an energy enactment, without a hearing.

In order for the decision to issue Approval No. 12447 to be an "appealable decision" under section 36(b)(ii) of *REDA*, the Braun Land Owners must demonstrate that it is a person who is directly and adversely affected by the AER's decision to issue Approval No. 12447.

Approval No. 12447 issued to Penn West is for the enhanced recovery of oil by gas injection and waterflood in the Blairmore Pool in the Armisic Field through the existing well at 03-04-052-25W4M. This well is not located on lands owned by the Braun Land Owners and Braun Land Owners are not the mineral rights holders in the area of the Approval. In issuing an enhanced recovery approval, the AER considers whether the subsurface characteristics of the reservoir are suitable for enhanced recovery operations. Approval No. 12447 does not affect any surface rights or authorize activities that could impact the surface. Furthermore, no additional facilities were approved for the implementation of the enhanced recovery scheme as Penn West will be using the existing infrastructure for transportation to the injection well. The enhanced recovery scheme will eliminate the potential for surface emissions associated with Penn West's oil and gas production in the area, which is expected to decrease existing potential surface impacts. Therefore, it does not appear that surface owners, such as the Braun Land Owners, may be directly and adversely impacted by the AER's decision to issue Approval No. 12447, which deals with subsurface matters.

Other issues: Operational

The Braun Land Owners raised concerns about the emergency response plan for the enhanced recovery scheme. In its August 26, 2016 letter, the AER outlined that Penn West updated its emergency response plan and that the AER was satisfied that Penn West had met all requirements under *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry*. The AER has reviewed the emergency response plan and it has been deemed compliant with requirements. The AER notes that at the time of the original application, an updated plan was required to reflect the increased H₂S concentration. The related Emergency Planning Zone did not encroach on the Braun Lands and as

such, did not include any changes that could affect the Braun Land Owners. The Braun Land Owners also raise concerns with respect to the following condition in Approval No. 12447:

- 5) The composition of injected gas shall not exceed 0.66 mole percent hydrogen sulphide.

In their SOC, the Braun Land Owners raised concerns with consistency of H₂S requirements between various related licences. In particular, they are concerned that the maximum percentage of H₂S in solution gas allowed under a related battery licence must not exceed the limit of 0.66%. Further, the Braun Land Owners submit that the AER has overlooked Penn West's exceedances of the maximum approved inlet H₂S concentration at the battery. The AER included this condition in Approval No. 12447 because of the Braun Land Owners concerns about consistency to align the requirements for the related battery to the Approval. In regards to exceedances, if Penn West were to exceed the licensed limit, this would be a compliance issue and the licensee subject to enforcement by the AER. The addition of this condition into Approval No. 12447 does not directly and adversely impact the Braun Land Owners.

In addition to compliance with the H₂S limits, the Braun Land Owners also raise an operational concern about flaring. This issue has been previously raised by the Braun Land Owners with the Edmonton Field Centre (formerly the St. Albert Field Centre) and, as outlined in the AER's December 12, 2016 letter to Mr. Dorin stating, "The AER is satisfied that its staff has responded appropriately to operational concerns raised by you in relation to Armisie Field facilities, and there are no established non-compliances that warrant a review of existing licensing in the area." With the issuance of Approval No. 12447, the gas that was previously being flared would be re-injected into the formation to facilitate oil production in the enhanced recovery scheme, which is expected to decrease flaring. Further, existing AER flaring requirements remain in place under Approval No. 12447 and therefore, the decision to issue the Approval does not impact the Braun Land Owners with respect to flaring. Such operational concerns must be addressed with the Edmonton Field Centre.

The Braun Land Owners raised concerns with the consultation by Penn West and that Penn West was required to consult with Armisie Oil Company Limited (Armisie Oil), however, that company no longer exists. Without deciding whether Penn West was required to consult with Armisie Oil, the AER is of the view that the Braun Land Owners have not demonstrated that they could be impacted by this potential lack of consultation.

Finally, in their request, the Braun Land Owners raised concerns that certain AER-issued licences and approvals, including Approval No. 12447, for the area are invalid, wrongfully obtained or improperly continued, based on allegations that surface and/or subsurface land interests were never granted, ceased to exist or ought to be rescinded. These concerns had been raised in various pieces of correspondence to the AER dating back to early 2015, prior to the September 24, 2016 request.

In response, the AER wrote to Mr. Dorin on December 12, 2016 and provided the following:

Demands to review AER licences based on tenure issues. You have made numerous claims that AER-issued approvals are invalid, wrongfully obtained or improperly continued, based on allegations that surface and/or subsurface land interests were never granted, ceased to exist or ought to be rescinded. Some of these claims involve agreement or other disposition documents going back decades in time. Based on the limited information available to the AER at the time you raised these matters, the AER concluded that the claims were not sufficiently substantiated to require further investigation by the AER (within the limits of its authority). This was communicated to you, including in Ms. Cabot's email message of June 26, 2015. You have, nevertheless, persisted in advancing those arguments and demands in subsequent correspondence.

Please advise your clients as follows. The AER is not authorized to make legally binding decisions on the kinds of tenure questions you are advancing on their behalf. Genuine legal disputes or issues concerning ownership of and interests in real property in Alberta must be addressed in an action brought in the Court of Queen's Bench of Alberta. That court is empowered to compel witnesses and

documents touching on the matters in question, and to make declarations and grant other remedies that give effect to its factual findings on ownership of land and lesser interests in real property. The AER has none of those powers in relation to private parties, including your clients and other unnamed or unknown persons who could be affected by such declarations. Therefore, on a go-forward basis, the AER will not take any steps to review or reconsider existing licensing of wells and facilities in the Armisic Field based on the allegations you have made about defects in licensees' surface and/or subsurface rights and interests. The AER will only revisit these matters if and when a court or other competent authority issues a decision or order that settles such questions of tenure.

Accordingly, the AER confirms the foregoing for the purpose of the request for regulatory appeal and in particular reiterates that genuine legal disputes or issues concerning ownership of and interests in real property in Alberta must be addressed in an action brought in the Court of Queen's Bench of Alberta.

Given the above, and in particular the fact that Approval No. 12447 determines the suitability of the reservoir for enhanced operations and does not authorize surface activities, the AER has decided that the Braun Land Owners have not demonstrated they may be directly and adversely affected by the issuance of Approval No. 12447. As a result, the Braun Land Owners are not an "eligible person" under section 38 of *REDA* and have failed to meet a requirement to file a regulatory appeal of the decision to issue the approval. Therefore, the AER has dismissed the request for a regulatory appeal in accordance with Section 39(4) of *REDA*.

The AER notes that the Penn West has not complied with the deadline to commence injection under the Approval. Although the request for regulatory appeal process has been completed, Penn West must still resolve its compliance issue before acting on the Approval by contacting AER's Resource Compliance Group.

Sincerely,

[Original signed by:]

Nancy Barnes
Director, Oil and Gas

[Original signed by:]

Kevin Parks
Vice President,
Reserves and Resources

[Original signed by:]

Stephen Smith
Sr. Advisor
National/International Stakeholder Relations

cc: PennWest – Shawn Milligan