

# Supreme Court of Canada decision may impact how we manage an asset's end of life

This week the Alberta Energy Regulator (AER) and the Orphan Well Association (OWA) will meet in the Supreme Court of Canada with the bankruptcy trustee of Redwater Energy Corp., to decide who should pay for the abandonment and remediation of wells. The case has garnered a huge amount of attention because of the implications for not only the oil and gas industry, but for landowners, banks, taxpayers, and other stakeholders as well.

As Dynamic Risk's subject matter expert on asset retirement and liability management I'll be watching (along with many other interested parties) the case closely. The impact the decision will have on our regulatory body (the AER) and energy producers when retiring assets at the end of life will usher in a new era for the oil and gas industry.

## Background

The subject of asset retirement has come to the forefront as western Canada producers have transitioned investment away from conventional oil and gas exploration to more unconventional resource plays, including the oil sands. This transition created a legacy of abandoned and often "orphaned" (meaning having no owner) conventional oil and gas wells and other assets that have not been remediated and reclaimed.

The AER believes there are presently 84,000 inactive wells that need to be abandoned, some of which may ultimately become orphans.

The AER is responsible for dealing with this very important and complex subject. One challenge for them is that the same licensee doesn't often own the entire life of an asset. When a well is drilled, it's done with a strategic core focus for an operator. As production declines over the life of that well, they may exit the area and divest the asset to a smaller producer that can invest to extend the life. The sale can include the associated pipelines and surface equipment. Joint ventures and working interest parties add extra complexities.

Historically, the AER had the ability to require the Receiver of a bankrupt licensee to be responsible for cleanup. To add additional protection, the OWA was created and funded by industry to cover the cost of abandoned wells where no responsible party could be found. The court judgement known as the Redwater Decision challenged that thinking.

## The Redwater Case – a primer

In 2015, a junior oil and gas producer named Redwater Energy filed for bankruptcy protection. Despite best efforts, this left 91 wells without an operator. In reviewing the assets, it appeared that only 20 had ongoing commercial value at current prices, and therefore an opportunity to be sold. As part of the bankruptcy proceedings, a Receiver was appointed. The AER sent the Receiver an abandonment and closure order to fulfill statutory obligations of the licensee. The Receiver successfully argued in court that other senior debt obligations came before the abandonment responsibility.

With the Redwater Decision, the AER's needs were subordinated to creditors. The Court's decision provides the AER very little ability to prevent wells from being disclaimed by Receivers, resulting in assets being pushed to the OWA.

## Why February 15 is so important

Much attention will be on the [Supreme Court of Canada February 15](#) as they hear the Redwater Case, and in coming months as we await the final decision. Many stakeholders including land owners, environmental groups, the Canadian Banking Association, and of course oil and gas producers and their partners like Dynamic Risk, will all be paying close attention. I certainly will be.

The general belief in the market is, regardless of the decision, we definitely won't see status quo. The AER and industry will both need to adapt to ensure producers can grow and deliver the world's energy needs, and the AER can manage the legacy abandonment needs of our province.

For the moment, industry is taking a "wait and see" approach as abandonment rates in Canada are down. This decision will provide the clarity that our industry needs.

## What you should be doing now to prepare for your assets' end of life

Your assets' end of life is inevitable, but there are steps you can take now to manage it cost effectively regardless of the Supreme Court's decision. Look at your assets ... both producing and non-producing ... and use a data driven approach to begin the orderly winding down of your operations in a way that addresses your liabilities.

Data plays a key role here. It gives you the ability to see what your liabilities are. Go out to the field and take a look at your surface equipment. Understand how it is all connected (wells to pipes to facilities). Through that data collection and analysis, you can begin the orderly planning over a period of time (perhaps 5 or 10 years) of how best to understand your liabilities, and plan for their end of life. You can only learn so much from the maps. What's often missing is data about contractual relationships with working interest partners and joint ventures with facilities and wells. It's only through the analysis of the connectivity in the field work that we can understand all these contracts and be able to address issues in a proactive and orderly way.

As is always the case, gathering and managing your data will provide additional operational value beyond preparing for your assets' end of life. It will also allow you to make better business decisions on whether you abandon, remediate and reclaim assets, or divest. And, if you are looking at acquiring assets, good data management will help you to assess a proper value of those assets.

## About The Author

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