



DECLARATION NAMING ALEXANDER JUSTIN VON GRAMATZKI, FORMERLY KNOWN AS ALEXANDER JUSTIN HANNE, PURSUANT TO SECTION 106(1) OF THE OIL AND GAS CONSERVATION ACT

For the reasons set out in the accompanying letter, the Alberta Energy Regulator (“AER”) has determined that: (i) Alexander Justin Von Gramatzki (the “Individual”) is a person directly or indirectly in control of Arrow Point Oil & Gas Ltd., Big Coulee Resources Ltd., and Drumlin Energy Corp. (collectively, the “Regulated Entities”); (ii) Arrow Point Oil & Gas Ltd. has a debt to the AER; (iii) Big Coulee Resources Ltd. has failed to comply with an order of the AER; (iv) Drumlin Energy Corp. has failed to comply with an order of the AER; (v) the Individual has been in control of the Regulated Entities at all material times; and (vi) it is in the public interest to make a declaration naming the Individual under section 106(1) of the *Oil and Gas Conservation Act*, RSA 2000, c O-6 (“OGCA”).

The AER’s legislated mandate under section 2 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 (“REDA”) includes a requirement to provide for efficient, safe, orderly, and responsible development of energy resources in Alberta. In accordance with this mandate the AER hereby names the Individual under section 106(1) of the *OGCA* and places the following restrictions on them:

1. The Individual and any licensee or approval holder directly or indirectly controlled by him must inform the AER that a declaration under section 106(1) of the *OGCA* is in effect against the Individual and that the Individual has direct or indirect control of such licensee or approval holder upon the licensee or approval holder’s applying to the AER for any identification code, licence, or approval, or transfer of a licence or approval under the *OGCA* or the *Pipeline Act*, RSA 2000, c P-15 (“*Pipeline Act*”).
2. The AER may refuse to consider any application from the Regulated Entities, the Individual or any other licensee or approval holder over which the Individual has direct or indirect control, for an identification code, licence or approval or transfer of a licence or approval under the *OGCA* or *Pipeline Act*.
3. Where the AER is to consider an application from the Individual or any other licensee or approval holder over which the Individual has direct or indirect control, the AER may require the submission of abandonment and reclamation deposits in an amount to be determined by the AER prior to granting any licence, approval, or transfer of a licence or approval under the *OGCA*.
4. The Individual must submit sworn declarations by February 25, 2019 declaring whether they are in direct or indirect control of any licensee or approval holder, other than the Regulated Entities, that is an applicant to the AER, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or, if they are, a declaration stating the name of any such licensee or approval holder, and

specifying the applications each has before the AER and the AER licences and approvals such licensee or approval holder holds.

5. The declaration is in force at the date hereof and will remain in force until the Regulated Entities have rectified their contraventions, and paid any and all debts owed to the AER and to the AER on account of the orphan fund for abandonment and reclamation costs, or until the AER orders otherwise.

Dated: January 24, 2019

Alberta Energy Regulator signed: <original signed by Robert Wadsworth>

January 24, 2019

Calgary Head Office
Suite 1000, 250 - 5 Street SW
Calgary, Alberta T2P 0R4
Canada

By E-mail and Registered Mail

www.aer.ca

Alexander Justin Von Gramatzki
Gramatzki 31160 Grandarches Dr
Calgary, AB T3Z 0A7

Alexander Justin Von Gramatzki
400, 7015 Macleod Trail S
Calgary, AB T2H 2K6

Declaration naming Alexander Justin Von Gramatzki under section 106 of the *Oil and Gas Conservation Act*

Dear Mr. Von Gramatzki,

On October 29, 2018, the Alberta Energy Regulator (AER) sent a letter by registered mail and by e-mail to Alexander Justin Von Gramatzki notifying him of the AER's intention to name him in a declaration pursuant to section 106 of the *Oil and Gas Conservation Act (OGCA)*, and setting a deadline of November 30, 2018 for Mr. Von Gramatzki to make submissions. Upon request, the AER granted an extension of that deadline to December 13, 2018. In accordance with section 106 of the *OGCA*, time was provided to permit the individual to show cause as to why a declaration should not be made.

On December 13, 2018, the AER received submissions from Mr. Von Gramatzki purporting to show cause as to why a declaration should not be made. The AER has had an opportunity to review the submissions provided by the individual and has determined that Mr. Von Gramatzki has failed to satisfy the AER that a declaration should not be made. The AER hereby issues a declaration under section 106(1) of the *OGCA* naming Alexander Justin Von Gramatzki, formerly Alexander Justin Hanne, as a person in direct or indirect control of Arrow Point Oil & Gas Ltd. (Arrow Point), Big Coulee Resources Ltd. (Big Coulee), and Drumlin Energy Corp. (Drumlin), companies that have contravened or failed to comply with orders of the AER or have debts to the AER. The declaration, with its terms and conditions, is found in Attachment 1.

Section 106 of the *OGCA* applies where the AER considers it in the public interest to make a declaration naming one or more directors, officers, agents, or other persons who, in the AER's opinion, were directly or indirectly in control of a licensee, approval holder, or working interest participant that (i) has contravened or failed to comply with an order of the AER, or (ii) has an outstanding debt to the AER, or to the AER to the account of the Orphan Fund, in respect of suspension, abandonment, or reclamation costs.

According to the AER's records, at the time of Arrow Point's failure to pay its debt to the AER, Mr. Von Gramatzki acted as President and CEO of Arrow Point and was a majority shareholder of Big Coulee which in turn owned 100% of Arrow Point's shares. As previously found by the AER in *Decision 2015 ABAER 005*, the specific reference to directors, officers and agents in section 106 of the *OGCA* indicates that the legislature intended that individuals in those positions are presumed to be in direct or indirect control for the purposes of that section. Based on the foregoing, the AER concludes that Mr. Von Gramatzki was a director or person directly or indirectly in control of Arrow Point for the purposes of section 106 of the *OGCA*.

Arrow Point has not paid its debt to the AER arising from its failure to pay the 2018 Orphan Fund Levy and 2018 Administration Fee, totaling \$22,180.26. Mr. Von Gramatzki submits that it would be unfair to penalize him personally for the debts owed to the AER by a third party who fails to pay. Mr. Von Gramatzki asserts that in 2015 Arrow Point sold certain assets to Proven Oil Asia Ltd. (Proven Oil). However, after the transaction closed, the AER refused the application to transfer the well and facility licences from Arrow Point to Proven Oil as Proven Oil was unable to post the required security deposits with the AER. Subsequently, Arrow Point and Proven Oil entered into a Contract Well Operating Agreement and a Trust Agreement whereby Arrow Point would operate the wells and facilities it had sold to Proven Oil. Mr. Von Gramatzki asserts that Arrow Point asked Proven Oil to pay for the deposits and levies owed to the AER, but Proven Oil failed to pay. After considering this submission, the AER concludes that as Arrow Point remained the licensee of these wells and facilities, it is liable to pay the debts owed to the AER regardless of any other arrangements made with Proven Oil.

Based on the AER's records, Mr. Von Gramatzki was the director, officer and majority shareholder of Big Coulee and therefore a person in control of Big Coulee at the time that it failed to comply with the AER's Amended Closure/Abandonment Orders Nos. AD 2016-10A, AD 2016-10B and AD 2016-10C.

Mr. Von Gramatzki submits that as a non-operating working interest participant, Big Coulee was unable to comply with the closure/abandonment order as it was not insured or staffed to conduct operations on a well site. Section 27(2) of the *OGCA* provides that if the Regulator so directs a well must be abandoned by the working interest participant. Accordingly, the AER finds that Big Coulee was obligated to do the abandonment work and ensure its completion.

The AER also finds that Mr. Von Gramatzki was a director of Drumlin and therefore a person in control of Drumlin at the time that it failed to comply with Order 2018-006 issued to Artisan Energy Corporation and working interest participants, including Drumlin. It also finds that Mr. Von Gramatzki indirectly controlled Drumlin as the director, officer and controlling shareholder of Big Coulee.

In his submissions, Mr. Von Gramatzki asserts that he had resigned as director and officer of Drumlin on December 12, 2013 and produced a copy of a resignation letter in support of his submission. The AER notes that according to the Alberta Corporate Registry, Mr. Von Gramatzki was the sole director of Drumlin for 2014, 2015, 2016 and 2017 annual returns. By letter dated December 21, 2018, the AER gave Mr. Von Gramatzki a further opportunity to respond to its concerns. By reply, dated January 4, 2019, Mr. Von Gramatzki submits he was not the director of Drumlin and that the annual filings were in error. The AER has considered the additional information provided by Mr. Von Gramatzki. Section 101(2) of the Alberta *Business Corporations Act* requires corporations to have at least one director at all times. The AER has no record of any other individual serving as a director of Drumlin at the material time. The AER is therefore of the opinion that Mr. Von Gramatzki was a director of Drumlin at the time of the noncompliance with Order 2018-006.

Mr. Von Gramatzki further asserts that he did not in fact exercise any control directly or indirectly over Drumlin through Big Coulee. The AER notes that Mr. Von Gramatzki was a director and officer of Big Coulee at the material times and that Big Coulee was the 100% voting shareholder of Drumlin. As noted above, the legislature intended that individuals in director and officer positions are presumed to be in direct or indirect control for the purposes of section 106 of the *OGCA*. Further, pursuant to the *Securities Act*, RSA 2000, c S-4, absent evidence to the contrary, a person or company who holds more than 20% of the voting securities of a corporation holds a sufficient number of voting rights to materially affect control and is therefore a “control person” The AER finds Mr. Von Gramatzki failed to provide sufficient evidence why as a controlling shareholder of Big Coulee he should not be considered at all material times a control person of Big Coulee and indirectly in control of Drumlin. Based on the foregoing, the AER concludes that Mr. Von Gramatzki was a director or person directly or indirectly in control of Drumlin for the purposes of section 106 of the *OGCA*.

The AER has held in previous decisions under section 106 of the *OGCA* that the purpose of a declaration under section 106 of the *OGCA* is to prevent a licensee or person in control from continuing to breach requirements or incur new breaches or debts, thereby safeguarding the public interest. The AER has also previously held that continued confidence in the regulatory system is best assured when licensees comply with AER requirements.

The AER finds that the actions of Arrow Point, Big Coulee, and Drumlin have undermined the regulatory system and posed an unacceptable risk to public safety and the environment. On the facts before it, the AER concludes that the issuance of a declaration is necessary to deter future noncompliance and uphold the credibility of the regulatory system. It is not in the public interest to allow licensees and working

interest participants like Arrow Point, Big Coulee and Drumlin to continue to contravene orders of the AER and leave debts to the AER and to the AER on account of the Orphan Fund.

Note that submission of a sworn declaration in accordance with clause four of the attached declaration must be provided by the named individual by February 25, 2019. Failure to respond appropriately may result in an additional regulatory response from the AER.

Should the named individual wish to discuss how Arrow Point, Big Coulee and Drumlin will correct their noncompliances, please contact the undersigned.

Section 106 of the *OGCA* is a reverse onus provision. The burden is on the individuals to show why the declaration should not be made. They are in the best position to respond to the notice as they are the ones with best information regarding why they failed to comply with AER orders or pay outstanding debts.

Be advised that under the *Responsible Energy Development Act (REDA)*, an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of *REDA* and section 3.1 of the *Responsible Energy Development Act General Regulation*. Requests for regulatory appeal must be submitted in accordance with AER requirements. Filing requirements and forms are available on www.aer.ca.

Sincerely,

<*original signed by*>

Robert Wadsworth
Vice President, Closure & Liability

cc: Alan Harvie, Norton Rose Fulbright Canada LLP (E-Mail)