

# **Xenotime Energy Inc.**

## **Application for Pooling Order**

**June 22, 2023**

**Alberta Energy Regulator**

Decision 2023 ABAER 003: Xenotime Energy Inc.; Application for Pooling Order

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Suite 1000, 250 – 5 Street SW

Calgary, Alberta

T2P 0R4

Telephone: 403-297-8311

Inquiries (toll free): 1-855-297-8311

Email: [inquiries@aer.ca](mailto:inquiries@aer.ca)

Website: [www.aer.ca](http://www.aer.ca)

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## 2023 ABAER 003

### Xenotime Energy Inc. Application for Pooling Order

#### Application No. 1938765

#### Decision

[1] Having carefully considered all the evidence, the Alberta Energy Regulator (AER) approves application 1938765 for a pooling order of all tracts from the surface to the base of the Mannville Group in the northwest quarter of Section 15, Township 50, Range 4, West of the 4th Meridian, subject to the terms and conditions contained in the pooling order in appendix 1.

#### Introduction

##### Application

[2] Xenotime Energy Inc. applied under section 80 of the [\*Oil and Gas Conservation Act\* \(OGCA\)](#) for a pooling order prescribing that all tracts within the drilling spacing unit in the northwest quarter of Section 15, Township 50, Range 4, West of the 4th Meridian (NW15), be operated as a unit to produce oil from all formations from the surface to the base of the Mannville Group through a well to be drilled in Legal Subdivision 13.

[3] There are two tracts of mineral rights in NW15: a 45.16-hectare parcel under Kenilworth Lake leased by Xenotime from the Crown in Right of Alberta and a 19.0-hectare parcel of freehold mineral title held by PrairieSky Royalty Ltd.

[4] Xenotime requested standard AER pooling clauses to specify that costs and share of production under the pooling order be allocated on a tract-area basis, to name Xenotime as operator of the proposed well, and to apply the maximum penalty allowed under the *OGCA* if a tract owner fails to pay their tract's share of costs by the time specified in the pooling order.

##### Statement of Concern

[5] PrairieSky submitted a statement of concern opposed to the application. PrairieSky noted that it was the fee simple title owner of all mines and minerals, except coal, within, upon, or under the lands within a portion of the northwest quarter section of NW15. PrairieSky stated that it does not conduct oil and gas operations on any of its mineral titles and does not hold an operator's licence. Therefore, it was of

the view that the application for a compulsory pooling order was inapplicable to the failed freehold mineral lease negotiations between itself and Xenotime.

[6] PrairieSky's principal argument was that it was the fee simple mineral title owner, but not a working interest owner, in the NW15. It submitted that section 80 of the *OGCA* applies to a working interest owner of a tract within a drilling spacing unit that is unable to come to an agreement with other working interest owners to negotiate a satisfactory pooling arrangement. PrairieSky argued that because it was not engaged in oil and gas operations and did not hold an operator's licence, section 80 of the *OGCA* does not apply, and a compulsory pooling order cannot be issued.

### Participation in the Hearing

[7] A notice of hearing was issued on February 14, 2023, stating that Xenotime and PrairieSky were parties to the proceeding. The notice required PrairieSky to confirm its intent to participate in the hearing and the nature and scope of its participation.

[8] On February 28, 2023, in response to the notice of hearing, PrairieSky submitted a letter stating that it would not participate in the hearing. It reiterated that section 80 of the *OGCA* does not apply to fee simple mineral title owners, such as itself, because it is not the "owner" of a "tract," as section 78 of the *OGCA* requires. Further, PrairieSky submitted that if the AER were to grant a compulsory pooling order to Xenotime, this would be beyond the powers given to the AER by the *OGCA* (*ultra vires*) and prejudicial to the rights and interests of two arm's-length parties engaged in commercial negotiations.

[9] On March 14, 2023, we advised PrairieSky as follows:

The panel notes that PrairieSky did not file a motion under section 44 of the *Alberta Energy Regulator Rules of Practice* in order for the panel to consider the AER's jurisdiction in this matter as a preliminary issue. The panel will continue to process and consider its jurisdiction in the disposition of the application.

[10] In subsequent correspondence dated March 23, 2023, PrairieSky confirmed that it wished to maintain its statement of concern and objection on the record of this proceeding.

[11] On March 3, 2023, and in response to PrairieSky, Xenotime asked the AER to proceed to issue a standard pooling order. In support of this request, Xenotime referred us to a previous compulsory pooling order granted by the AER in 2020 (Application 1929313, Pooling Order No. P470) where one of the parties was an owner of freehold mineral rights and not an operator.

### Hearing

[12] On April 3, 2023, we issued a letter stating that we would conduct a hearing through a written process, with the possibility of conducting a portion of the hearing orally. We also requested additional information from Xenotime, which was received on April 4, 2023.

[13] On April 20, 2023, we confirmed that we had sufficient information to decide the application without any further process and closed the evidentiary portion of the proceeding.

#### AER Jurisdiction

[14] While PrairieSky did not submit a formal motion in this proceeding under the [Alberta Energy Regulator Rules of Practice](#), the panel—as it does in all matters that come before it—must satisfy itself that it has the requisite authority to grant the relief applied for.

[15] The jurisdiction to grant a compulsory pooling order arises from Part 12 of the *OGCA* (sections 78–90). Section 80 states as follows:

80(1) The owner of a tract within a drilling spacing unit may apply to the Regulator for an order that all tracts within the drilling spacing unit be operated as a unit to permit the drilling for or the production of oil or gas from the drilling spacing unit.

[16] In this case, Xenotime acquired an undivided petroleum and natural gas leasehold interest from the Crown on land that covers about 70 per cent (45.16 ha) of NW15. Determining whether Xenotime’s leasehold interest meets the requirements of “owner of a tract” requires application of the definitions in section 78:

78(a) “owner”, when used in connection with a tract, includes the person who has the right or an interest in the right to drill for, produce and dispose of any oil or gas from the tract or who would have that right or interest in the absence of any contract, statute, regulation, rules or order governing the disposition of the production;

78(b) “tract” means an area within a drilling spacing unit or a pool, as the case may be, within which an owner has the right or an interest in the right to drill for and produce oil or gas;

[17] Xenotime’s mineral lease from the Crown states that Xenotime has “the exclusive right to drill for and recover the Leased Substances within the Location together with the right to remove from the Location any Leased Substances recovered.” This qualifies Xenotime as an owner of a tract for the Crown lease portion of NW15.

[18] In its statement of concern, PrairieSky argued that it is the mineral title owner, but not a working interest owner, in the NW15. The remaining question is whether PrairieSky’s fee simple mineral title in its portion of NW15 can be considered a “tract” that can be pooled under section 80 of the *OGCA*.

[19] [Directive 065: Resource Applications for Oil and Gas Reservoirs](#) is clear that compulsory pooling applications are an extraordinary remedy and should be a last resort; the negotiation of voluntary pooling arrangements is always the preferred option. When the negotiation of voluntary pooling arrangements is not successful, an application for a pooling order can be made under the *OGCA*. Moreover, when considering whether a pooling order should be issued, the AER must consider the impact of issuing such an order on the respective rights of freehold mineral rights owners.

[20] Section 10 of the *Interpretation Act* (RSA 2000, c I-8) requires that an enactment (in this case, the *OGCA*) “be construed as being remedial and shall be given the fair, large, and liberal construction and interpretation that best ensures the attainment of its objects.” The narrow interpretation of the pooling provisions suggested by PrairieSky would be inconsistent with the purpose of the *OGCA* stipulated at section 4(d): “to afford each owner the opportunity of obtaining the owner’s share of the production of oil or gas from any pool.” If PrairieSky’s view was accepted, opportunity of other fee simple mineral owners to obtain their share of production may be blocked without recourse by failure to negotiate terms for pooling.

[21] The term “working interest” is not used in either section 78 or section 80, despite being used over 40 times in the rest of the *OGCA*. Rather, the definition of “owner” at section 78(a) uses “includes,” which indicates that the defined word also has a meaning that is not stated. Furthermore, “owner” is defined as a “person who has the right or an interest in the right to drill for... any oil or gas... or *who would have that right or interest in the absence of any contract, statute, regulation, rules or order governing the disposition of the production*” (emphasis added). Here, the statute is articulating that if a person has a right to drill, or who could have the right to drill, then they may be included within the definition of “owner.” Although the owner of a fee simple estate in mineral rights may not hold a licence to drill, their fee simple estate gives them the right to drill a well to access their minerals, provided that all contracts, statutes, regulations, rules etc. have been complied with, including submitting a well licence application to the AER. In that sense, the owner of a fee simple estate in mineral rights has a right to drill and is the owner of a “tract” under section 78.

[22] Because a fee simple mineral title owner satisfies the definition of an “owner” of a “tract” for the purposes of sections 78–90 of the *OGCA*, we find that the AER has the authority to issue a compulsory pooling order that includes fee simple mineral title owners, including, in this case, PrairieSky. An examination of the AER’s past pooling orders that include fee simple mineral rights, such as Pooling Order P470 noted by Xenotime, demonstrates that this is a long-standing practice of the regulator. We did not receive any evidence or argument to persuade us to deviate from this practice.

## Issues

[23] In making our decision on the application, we need to ensure the requirements of the *OGCA* and *Directive 065* are satisfied. Therefore, we set the hearing issues, as communicated in our April 3, 2023, letter as follows:

- Is there a need for a compulsory pooling order?
- Has Xenotime made adequate effort to negotiate a voluntary pooling arrangement with the other owner (PrairieSky) within the drilling spacing unit?
- If a pooling order is granted, what terms are appropriate?



[24] Additionally, we must have regard for section 15 of the [Responsible Energy Development Act \(REDA\)](#) and section 3 of the [REDA General Regulation](#), which require us to also consider the application's social and economic effects, environmental effects, and effects on landowners.

[25] In reaching our decision, we considered all relevant materials properly before us. Accordingly, references to specific portions of the evidence in this decision are intended to assist the reader in understanding our reasoning on a particular matter and do not mean that we did not consider all relevant portions of the evidence.

## Is There a Need for a Compulsory Pooling Order?

### Background

[26] In our review of the application materials, we note that Xenotime acquired an interest in a five-year Crown petroleum and natural gas production lease in December 2017, which would expire on December 21, 2022. Furthermore, in March 2018, Xenotime acquired the lessee interest in the freehold mineral lease, between Cidel Trust Company, as lessor, and TagCU Ltd., as lessee for the remainder of a three-year primary term that required production or active drilling by October 24, 2020.

[27] Xenotime did not produce oil or natural gas from the lands before the freehold mineral lease expired at the end of its primary term on October 24, 2020. Xenotime submitted that it had worked continuously since the lease was acquired to evaluate its potential, identify potential drilling locations, and find suitable surface locations to reach under the lake, but surface location availability significantly impeded its efforts to develop the NW15. Later, in 2020, the Covid-19 pandemic and lower oil prices further impacted its ability to develop or extend the lease.

[28] Cidel subsequently sold its freehold mineral interest to PrairieSky, in May 2022. In June 2022, Xenotime contacted Cidel with a request to obtain a freehold mineral lease for the freehold mineral rights for oil in NW15 with the same terms as the previous lease. Xenotime was advised that Cidel had sold its fee simple mineral title to PrairieSky.

[29] On June 24, 2022, Xenotime contacted PrairieSky and asked it to grant a freehold mineral lease for oil for the NW 15 on the same terms as the previous lease and expressed urgency as the summer construction season was ending and the Crown lease expired on December 21, 2022. According to Xenotime's evidence, PrairieSky said it preferred to work with bigger partners with well-funded budgets but advised that it would shop around with various operators to lease its freehold rights in NW15. PrairieSky said that it preferred to remain a freehold lessor rather than enter a pooling agreement as a working interest partner.

[30] On July 12, 2022, PrairieSky advised Xenotime of terms under which it was prepared to lease its freehold mineral rights in the Mannville Group. According to Xenotime's submissions, between July 12

and July 18, PrairieSky and Xenotime exchanged five offers and counteroffers which did not lead to any agreement.

[31] On July 18, 2022, PrairieSky reiterated its lease terms from a previous offer and said its expectations were firm. Xenotime advised PrairieSky that it would not make an offer to lease freehold mineral rights for oil in NW15 as PrairieSky's expectations were "onerous compared with the current market conditions and the previous lease it had on this land."

[32] As an alternative, Xenotime outlined terms for a pooling agreement with PrairieSky for the NW15. Xenotime also stated that, "If we cannot agree to voluntary pooling, Xenotime may have to apply to the AER for force pooling." PrairieSky advised Xenotime that it is "a pure play royalty company and is not involved in any operations" and would not consider being party to a pooling agreement. PrairieSky reiterated its proposed lease terms from July 15, 2022, and it said the lease offer was open until the close of business July 28, 2022.

[33] During the summer of 2022, Xenotime asked the AER about the possibility of approval for reducing the size of the drilling spacing unit under *Directive 65* to one legal subdivision instead of a standard quarter section, but it was advised by the AER that it was "very unlikely" that such an application would be approved.

[34] On July 22, 2022, Xenotime applied under section 80 of the *OGCA* for an order pooling its mineral rights leased from the Crown with PrairieSky's freehold mineral rights to permit production of heavy oil from the NW15. Xenotime stated it had exhausted all the options to negotiate a lease on reasonable terms with PrairieSky. Xenotime said that an order was the last resort for Xenotime as, in the absence of production, its lease on the Crown portion of the mineral rights in the NW15 would expire December 21, 2022.

[35] In November 2022 and in February 2023, PrairieSky made updated offers to Xenotime and continued to invite it to lease its freehold mineral rights. Xenotime submitted that there was no substantial difference between the offers.

[36] On December 21, 2022, at Xenotime's request, and after satisfying Alberta Energy's conditions, Alberta Energy extended the Crown lease to December 21, 2023, pursuant to section 17 of the *Petroleum and Natural Gas Tenure Regulation*.

## Analysis

[37] Under section 4.010(3)(a) of the [Oil and Gas Conservation Rules](#), unless otherwise prescribed by the AER, the surface area for a drilling spacing unit for an oil well is one quarter section. Xenotime made several attempts to obtain production rights for the entire quarter section. Xenotime also attempted to

obtain a voluntary pooling agreement for the Mannville Group in the drilling spacing unit. These attempts were unsuccessful.

[38] The approved drilling spacing unit for oil production in this area is approximately 64 ha. Section 7.2.7.2 of *Directive 065* speaks to special Drilling Spacing Unit applications:

Divided mineral ownership within a drilling spacing unit is not a reason to file a special Drilling Spacing Unit application. If the mineral owners are unable to voluntarily negotiate a pooling arrangement, a Compulsory Pooling application may be filed with the AER. Applications for special Drilling Spacing Units will only be considered by the AER in unique situations. Therefore, an applicant wishing to file a special Drilling Spacing Unit application should contact the AER Resources Applications Group before filing.

[39] The drilling spacing unit at NW15 comprises about 70 per cent Crown land and 30 per cent freehold land. A special drilling spacing unit would be the only way to reduce the size of the drilling spacing unit, but *Directive 065* does not allow divided mineral ownership to be the reason for the application. Therefore, both Crown and freehold rights for the entire quarter section must be held by a single party to produce oil from the drilling spacing unit. This can occur through the leasing of mineral rights, a voluntary pooling arrangement, or a compulsory pooling order.

[40] Xenotime's Crown production rights will expire on December 21, 2023. In the absence of a pooling order, it appears unlikely that oil production from the Mannville Group in the drilling spacing unit can be achieved prior to expiry of the Crown lease.

[41] We find that there is a need for a pooling order to allow drilling for and production of oil from the drilling spacing unit and to afford Xenotime the opportunity of obtaining its share of the production of oil from its Crown production rights.

#### Has Xenotime Made Adequate Efforts to Negotiate a Voluntary Pooling Arrangement?

[42] Section 80(2) of the *OGCA* and sections 1.5.3(4) and 1.5.3(5) of *Directive 065* require an applicant to make substantial efforts to negotiate a voluntary pooling arrangement. A compulsory pooling application should be a last resort.

[43] In June and July of 2022, Xenotime made several attempts to obtain production rights for the drilling spacing unit. Most of these efforts did not concern negotiation of a voluntary pooling arrangement. Nonetheless, Xenotime's effort to obtain a lease from PrairieSky, similar to a pooling arrangement, would have enabled oil production from the drilling spacing unit in NW15. After leasing attempts failed, Xenotime outlined terms for a pooling agreement to produce petroleum from the drilling spacing unit. The proposal by Xenotime to compete a pooling agreement between the two companies was categorically rejected by PrairieSky on the basis that PrairieSky is a royalty trust and not an oil and gas operator.

[44] Based on the evidence provided by Xenotime regarding its efforts to enter into a voluntary pooling arrangement, it does not appear that PrairieSky's position changed in a material way during the negotiations. There is evidence that some communication and mediation efforts continued, and may have been ongoing, after Xenotime filed its application for a pooling order in July 2022. However, there is no evidence on the record of this proceeding that suggests a voluntary pooling arrangement is likely.

[45] Based on the evidence on the record, we find that Xenotime tried to enter into a voluntary pooling arrangement with PrairieSky. However, PrairieSky did not consider a pooling arrangement as an option and part of their business practice, and the efforts to achieve a voluntary pooling arrangement failed quickly. Therefore, we are satisfied with the efforts made by Xenotime.

#### If a Pooling Order is Granted, What Terms are Appropriate?

[46] For the reasons stated above, we have decided that a pooling order should be granted. Now we need to consider the terms and conditions that should be included in the pooling order.

[47] Xenotime requested the following terms be applied to a compulsory pooling order:

- 1) The two tracts, Crown and freehold, be operated as a unit to permit production of heavy oil to the base of the Mannville.
- 2) Xenotime be appointed the operator of the unit.
- 3) If any well is drilled and dry and without production, Xenotime assumes the costs of drilling and abandoning the well.
- 4) If any well is drilled and placed on production within the drilling spacing unit, the costs of drilling, completion, equipping, tie-in, operation, abandonment, and reclamation of such well be allocated to Xenotime and PrairieSky on an area basis. In other words, each company's share of the total costs is in the same proportion as the area of each tract is to the total area of the drilling spacing unit.
- 5) The operator allocates to each company its share of the production of oil from the drilling spacing unit on an area basis. This means, each company's share of the total production is equal to the proportion of the area of its tract to the area of the drilling spacing unit.
- 6) The payment of the drilling, completion, equipping, tie-in, operation, abandonment, and reclamation costs of any well within the drilling spacing unit be recoverable on or before 15 days after the costs are billed to PrairieSky.
- 7) If PrairieSky fails to pay Xenotime within 15 days after the costs are billed, a maximum penalty of 200 per cent be applied in addition to the actual costs and the operator can sell PrairieSky's share of production to pay for the costs.
- 8) Xenotime to pay royalties on its share of production to the Crown.

- 9) PrairieSky to pay all the taxes due to its share of production including mineral taxes.
- 10) The operator dispose PrairieSky's share of production, not less than Xenotime's price, and account to PrairieSky for the proceeds and costs of the sale due to small operation.

[48] We note that section 80(4) of the *OGCA* sets out the matters that a compulsory pooling order must provide for:

- the appointment of an operator to be responsible for the drilling, operation, or abandonment of the proposed well
- the allocation to each tract of its share of production from the drilling spacing unit, which allocation will be on an area basis unless it can be shown to the regulator that that basis is inequitable
- the payment of the actual costs of the drilling of the well whether drilled before or after the making of the order
- the payment of the actual costs of the operation and abandonment of the well, but the share of the costs, if any, and payable by any owner who fails to pay the owner's share by the time specified in the order, will be recoverable only out of that owner's share of production from the drilling spacing unit

[49] The terms proposed by Xenotime for the compulsory pooling order are generally consistent with the requirements of the *OGCA*, *Directive 065*, and standard AER conditions for compulsory pooling orders, with some exceptions, as noted below.

[50] The order specifies that all tracts within the NW15 will be operated as a unit to permit the production of oil from all zones to the base of the Mannville Group through a well to be drilled in Legal Subdivision 13.

[51] Xenotime holds the majority interest in the drilling spacing unit and is currently eligible to hold licenses from the AER. The order, therefore, appoints Xenotime as the operator for the purposes of the drilling, operation, and abandonment of the well that is to be drilled.

[52] If the well is drilled and dry without production, Xenotime, as operator, will be responsible for paying all costs associated with the drilling and abandonment of the well.

[53] If any well is drilled and placed on production within the drilling spacing unit, the costs of drilling, completion, operation, and abandonment of the well will be allocated to the tract owners on an area basis. This means each company's share of the cost of drilling, completion, operation, and abandonment of the well will be equal to the proportion of the area of its tract to the area of the drilling spacing unit.

[54] The payment of the drilling and completion costs will be recoverable on or before 30 days after the actual costs are billed to the tract owners. Operation and abandonment costs of any well within the

drilling spacing unit will be recoverable on or before 15 days after the costs are billed to the tract owners. We note that Xenotime also requested that reclamation costs be allocated to tract owners should the well be placed on production. However, as reclamation costs are not included in either Part 12 of the *OGCA* or in section 1.5, “Application for Compulsory Pooling Order,” of *Directive 065*, we find that we cannot include these costs in the pooling order.

[55] Furthermore, each company’s share of the production of oil from the drilling spacing unit will be allocated by the operator on an area basis. Similarly, this means each company’s share of the total production will be equal to the proportion of the area of its tract to the area of the drilling spacing unit.

[56] If a tract’s share of the operating expenses for any month is not paid within 15 days of the time the owner of the tract has been billed for such expenses, the operator will sell the tract’s share of the production of oil at not less than the current price in the field. The operator must remit 20 per cent of the proceeds of such sale to the owner of the tract and apply the remaining 80 per cent of proceeds to the tract’s share of the operating expenses or any lesser amount that is required to pay the tract’s share of operating expenses.

[57] Xenotime requested that the maximum penalty of 200 per cent be applied to PrairieSky. Section 80(5) of the *OGCA* states as follows:

The Regulator in its order may specify that, in the event production of oil or gas is obtained and the owner of a tract fails to pay the owner’s share of the actual cost of drilling the well by the time specified in the order, then the amount payable by that owner shall include, in addition to that tract’s share of the actual cost of drilling, a penalty payable to the operator in an amount equal to not more than 2 times that tract’s share of the actual cost of drilling.

[58] Parties subject to a compulsory pooling order that are not ordinarily participants in the oil and gas industry may not have the industry knowledge or financial resources to respond to penalty provisions. However, PrairieSky is a sophisticated corporate entity operating in the oil and gas industry. A reasonable inference may be made that PrairieSky is familiar with the purpose and use of penalty provisions and would be able to make an informed decision about whether to pay their share of costs when invoiced by the operator or not pay their share of the costs and pay a penalty. Furthermore, PrairieSky chose not to participate in the hearing to provide evidence or argument contradicting Xenotime’s position. In its application, Xenotime says it is a small oil and gas producer, and being burdened by the need to carry another tract owner’s costs for drilling and completing the well until costs can be recovered from that tract owner’s share of production may place an undue hardship on Xenotime. Therefore, we find it reasonable to apply the maximum penalty provision provided by section 80(5) of the *OGCA* to drilling and completion costs.

[59] Xenotime proposed that the order require PrairieSky to bear its proportionate share of abandonment costs for any well that is placed on production within the drilling spacing unit from its share of production revenue. While this has not been a standard condition of pooling orders, we note that

section 80(4)(d) of the *OGCA* states that a pooling order must provide (among other things) “for the payment of the actual cost of the drilling of the well whether drilled before or after the making of the order, and for the payment of the actual costs of the operation and abandonment of the well.”

[60] Without hearing from PrairieSky as to why it should not bear its share of the abandonment costs, we see no reason that these costs should not be recoverable from PrairieSky. The order includes allocation of abandonment cost by the operator to the share of production.

[61] The 20/80 cost allocation specified above is a standard approach used by the AER in pooling orders involving freehold mineral rights. It attempts to balance the trade-off between revenues and costs, including penalty provisions and abandonment costs. It requires the operator to proportionately remit 20 per cent of the proceeds from the sale of the production to the owner of each tract and apply the remaining 80 per cent to the tract owner’s share of drilling and operating costs. Section 80(4)(d) of the *OGCA* is clear that the costs of drilling, operating, and abandonment of the well and penalty, if any, and payable by any owner who fails to pay the owner’s share by the time specified in the order, may be recovered only out of that owner’s share of production from the drilling spacing unit. Thus, the oil and natural gas mineral title owner is not exposed to drilling, operating, or abandonment costs beyond what is covered by its share of production.

[62] Lastly, Xenotime requested that the order specify that it pay royalty on its share of the production to the Crown and that PrairieSky pay all the taxes associated with PrairieSky’s share of production including mineral taxes. However, the AER does not have jurisdiction related to the payment of royalties and taxes, so these issues cannot be included in the order.

## Conclusion

[63] Xenotime satisfied the requirements under section 80(2) of the *OGCA* for a pooling order to be issued. We are satisfied that Xenotime and PrairieSky made multiple attempts to negotiate terms of a lease or a voluntary pooling arrangement. The two parties did not reach agreement on terms that would be satisfactory to them. We have, therefore, determined that there is a need for a compulsory pooling order.

[64] Issuing a pooling order is also consistent with the AER’s mandate under the *OGCA*, *REDA*, and the *REDA General Regulation*. In particular, the panel has considered the factors prescribed in section 3 of the *REDA General Regulation*, including the social and economic effects of the energy resource activity. We find that together they favour the issuance of a compulsory pooling order. Ultimately, the pooling order will provide for the efficient development of resources in Alberta and, in the event of the proposed well’s production, result in royalty payment to the Crown.

[65] The pooling order includes standard provisions for a compulsory pooling order, based on the *OGCA* and previous pooling decisions, and will be in the form provided at appendix 1.

Dated in Calgary, Alberta, on June 22, 2023.

**Alberta Energy Regulator**

Parand Meysami, M.Sc., P.Eng  
Presiding Hearing Commissioner

Alex Bolton, P.Geo.  
Hearing Commissioner

Tracey Stock, K.C., P.Eng., Ph.D.  
Hearing Commissioner



## **Appendix 1      Draft Pooling Order**

MADE at the City of Calgary, in the  
Province of Alberta, on

ALBERTA ENERGY REGULATOR

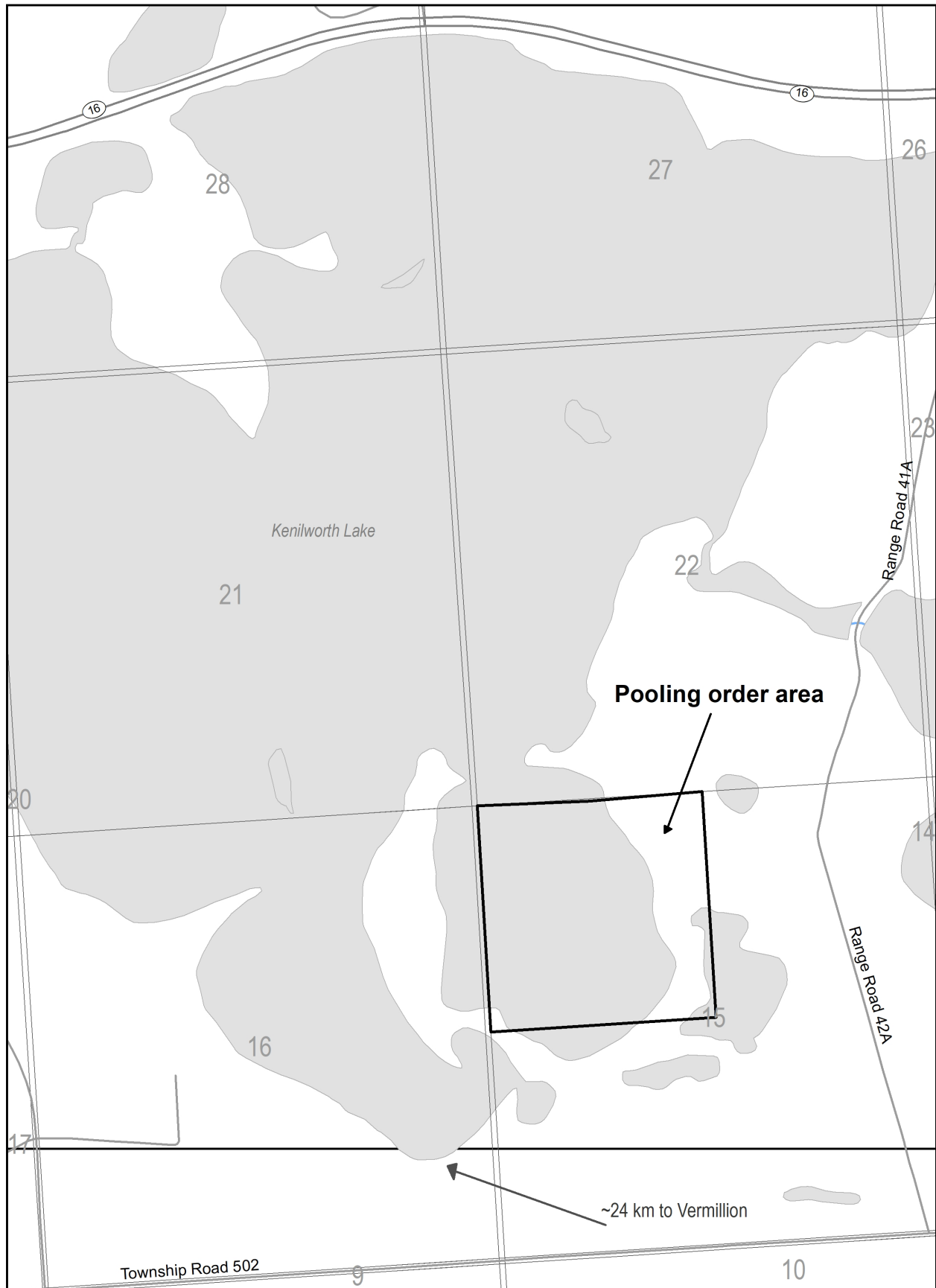
The Alberta Energy Regulator (AER) pursuant to the Oil and Gas Conservation Act, chapter O-6 of the Revised Statutes of Alberta, 2000, orders the pooling of tracts within a certain drilling spacing unit in the **Lloydminster Field** as follows:

- 1) All tracts within the Northwest Quarter of Section 15 of Township 050, Range 04, West of the 4th Meridian, shall be operated as a unit to permit the production of oil from the surface to the base of the Mannville Group through a well to be drilled in Legal Subdivision 13.
- 2) Xenotime Energy Inc. shall drill and, if commercial quantities of oil are encountered, complete a well in the drilling spacing unit as described in clause 1 hereof, within 6 months of the date of this order.
- 3) Xenotime Energy Inc. (hereinafter called "the Operator") shall be the Operator of the said well and shall be responsible for the well and for all completing, producing and abandonment operations at the well.
- 4) The costs of drilling, operating and abandoning the well shall be paid by the Operator, subject to the terms and conditions hereinafter contained.
- 5) The Operator shall allocate to each tract its share of the production of oil from the drilling spacing unit, such share being in the same proportion to the whole of the production of the drilling spacing unit as the area of the tract is to the total area of the drilling spacing unit.
- 6) (1) Subject to clauses 7 and 8 hereof, the owner of a tract entitled to take the tract's share of production of oil may elect to take in kind and dispose of, or to direct the disposition of, the tract's share of production by notice to the Operator given
  - a) not less than 30 days before it is expected to place the well on production, or
  - b) thereafter not less than 60 days before the time at which the owner will start or resume taking in kind or directing the disposition of the share.
- (2) If an owner fails to give notice as provided for in subclause (1), the Operator shall sell the tract's share of production at not less than the current price in the Field and account to the owner for the proceeds of the sale.
- (3) If dispute arises between the Operator and an owner who elects to take in kind, or direct the disposition of his tract's share of production regarding the point of delivery of the tract's share, the dispute shall be referred to the Regulator and the Regulator's decision shall be final.




- 7) (1) If the well is placed on production, the owner of each tract in the drilling spacing unit shall pay each month to the Operator the tract's share of the operating and abandonment expenses of the well, such share being in the same proportion as the allocation to each tract of its share of production in accordance with clause 5.
- (2) If a tract's share of the operating and abandonment expenses for any month is not paid within 15 days of the time the owner of the tract has been billed for such expenses, and whether or not the owner of the tract has given notice under clause 6, the Operator shall
- a) sell the tract's share of the production of oil at not less than the current price in the Field,
  - b) remit 20 per cent of the proceeds of such sale to the owner of the tract,
  - c) apply on the tract's share of the operating and abandonment expenses 80 per cent of the proceeds of such sale or such lesser amount as may be required to pay the tract's share of operating and abandonment expenses, and
  - d) account to the owner for the balance of the proceeds of the sale of the tract's share of production.
- (3) If dispute arises between the Operator and an owner regarding the operating and abandonment expenses of the well or the tract's share of such expenses, the dispute shall be referred to the Regulator and the Regulator's decision shall be final.
- 8) (1) If the well is placed on production, the owner of each tract shall pay to the Operator the tract's share of the actual cost of drilling the well to, and completing it in, the formation(s) referred to in clause 1, such share being in the same proportion to the whole of the actual cost of drilling the well to, and completing it in, the said formation(s) as the allocation to each tract of its share of production in accordance with clause 5.
- (2) The Operator shall give the owner of each tract within the drilling spacing unit a statement in writing of the tract's share of the actual cost of drilling and completing the well, and subject to the other provisions of this order, the owner of the tract shall, on or before 30 days after the later of the delivery of the statement to him, the issuance of this pooling order, or the well being placed on production, pay the share of the actual cost.
- (3) If a tract's share of the actual cost of drilling and completing the well is not otherwise paid within the time specified in subclause (2), and whether or not the owner of the tract has given notice under clause 6, the Operator shall
- a) apply a penalty equal to 200 per cent of the owner's tract's share of the actual cost of drilling and completing to that tract's share of the costs,
  - b) sell the tract's share of production of oil at not less than the current price in the Field,
  - c) remit 20 per cent of the proceeds of such sale to the owner of the tract,

- d) apply on the tract's share of the actual cost of drilling and completing, the portion of the 80 per cent of the proceeds of the sale of the tract's share of production remaining after payment of the tract's share of operating expenses pursuant to clause 7 or such lesser amount as may be required to pay the balance of the tract's share of the actual cost, and
  - e) account to the owner for the balance of the proceeds of the tract's share of production.
- (4) If dispute arises between the Operator and an owner regarding the cost of drilling and completing the well or the tract's share of the cost, the dispute shall be referred to the Regulator and the Regulator's decision shall be final.
- 9) (1) An owner is not required to make, and the Operator is not entitled to recover, payment under clauses 7 and 8 hereof
- a) if the well fails to produce oil from the formation(s) described in clause 1 hereof, or
  - b) exceeding in any month, 80 per cent of the value of the share of production that the Operator would otherwise be entitled to receive.
- (2) If the tract's share of production of oil in any month is sold by the Operator and the proceeds applied for payment under clauses 7 and 8 hereof, the proceeds shall be applied firstly to the payment under clause 7 and secondly to the payment of the tract's share of the cost of drilling and completing the well plus penalty.

END OF DOCUMENT



**Legend**

-  Pooling order area
-  Lakes/rivers
-  Roads

