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**RE: Request for a Regulatory Appeal by PrairieSky Royalty Ltd. (PrairieSky)
Enhance Energy Inc. (Enhance)
Application No.: 1956215 (Application);
CO₂ Sequestration Approval No.: 13463 (Approval)
Request for Regulatory Appeal No.: 1959100 (Request)**

The Alberta Energy Regulator (AER) has considered PrairieSky's Request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve Application No. 1956215 and issue the CO₂ Sequestration Approval No. 13463 to Enhance on July 30, 2025 (the Decision). The AER has carefully considered PrairieSky's submissions, and the submissions made by Enhance.¹ The absence of a reference to a particular aspect of a submission should not be construed as a failure by the AER to consider it. The entirety of all submissions was considered.

For the reasons that follow, the AER has decided that PrairieSky is not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

The starting point for considering PrairieSky's Request is section 38 of *REDA* which 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. [emphasis added]

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

¹ On August 28, 2025, PrairieSky submitted a request for a Regulatory Appeal in relation to the Approval. On October 2, 2025, Enhance's response to the Request was submitted to the AER. On October 23, 2025, E3 submitted its reply submission to the AER.

a person who is directly and adversely affected by a[n appealable] decision ...

and “appealable decision” includes:

A decision of the Regulator that was made under an energy resource enactment [including the *Oil and Gas Conservation Act*], ... if that decision was made without a hearing. [REDA section 36(a)(iv)]

Background

In 2024, through an agreement the Government of Alberta granted Enhance the right to inject carbon dioxide (CO₂) into the Leduc Formation within the Woodbend Group (Sequestration Agreement). Enhance plans to inject CO₂ over its carbon capture and sequestration (CCS) project's estimated 17.5-year injection period. Enhance anticipates the sequestered CO₂ to result in a 4km plume radius, up to a maximum radius of 5.6km. Enhance refers to this CCS project as the Origins Project.

Subsequently, Enhance applied under the *Oil and Gas Conservation Act* (OGCA) to the AER for approval of a Class III Scheme in the Lacombe Field and surrounding areas, for sequestration of CO₂ in the Leduc Formation at 100/04-36-039-25W4/00 (the Application).

In January 2025, the AER received a Statement of Concern (SOC) from PrairieSky in relation to the Application.

On July 30, 2025, the AER issued the Approval for the sequestration scheme and an associated well, located at 00/04-36-039-25W4/0 (the 04-36 Well). The 04-36 Well is the only one for which Enhance has approval to inject CO₂. By way of a letter of the same date, the AER advised PrairieSky that it had determined a hearing was not required to consider the concerns raised in PrairieSky's SOC (the SOC letter). Also in the SOC letter, the AER advised PrairieSky that the Approval had been issued to Enhance and provided PrairieSky with a copy of the Approval.

Submissions

PrairieSky's Request

PrairieSky submitted:

PrairieSky is a pure-play publicly traded royalty company with approximately 9.8 million acres of freehold mines and mineral interests. PrairieSky focuses on encouraging third parties to actively develop its freehold mines and mineral interests. The PrairieSky mineral interests include various freehold mines and mineral interests in and above the Leduc Formation and freehold metallic and industrial minerals, such as lithium, within the Leduc Formation. Some of PrairieSky's interests are producing in what PrairieSky refers to as the “Project Area” for Enhance's Origins Project.²

² See graphic representation on page 7 of 15 of Request.

PrairieSky is directly and adversely affected by the Origins Project because development of PrairieSky's mineral interests may be impacted by that project.

i. Impacts Related to Petroleum and Natural Gas Production

There is a "very real" risk of CO₂ leakage from the day-to-day operations of the Origins Project and consequential impairment to ongoing production and drilling activities to PrairieSky's freehold petroleum and natural gas rights. Sources of impact include:

- *Lack of caprock seal integrity/Potential migration of the CO₂ plume to the PrairieSky-Producing Wells:* The primary seal for the project's sequestered CO₂ lacks integrity (has thin spots). Increased reservoir pressure from sequestration could compromise the caprock seal. The secondary seals for sequestered CO₂ also have vulnerabilities (thin or might have brittle dolomites with fractures). The plume for sequestered CO₂ is expected to have higher migration north-east of Enhance's 04-36 well and a compromised caprock seal could in turn affect production from wells currently producing PrairieSky's mineral interests in what PrairieSky describes as the Project Area.
- *Leakage of sequestered CO₂ from abandoned wells:* There are 230 abandoned wells in the area with several that produced from the Leduc Formation in close proximity to the 04-36 Well. These abandoned wells are more susceptible to leakage or casing vent flows and may therefore leak sequestered CO₂.
- *Potential impairment of production in the Glauconitic oil pool within the Mannville Group:* The Origins Project will result in increased formation pressure across the Leduc Formation (and potentially other formations), which may negatively impact or impair production of petroleum and natural gas, including to PrairieSky's mineral interests.

ii Impacts Related to Metallic and Industrial Mineral Production

Some of PrairieSky's mineral interests include freehold metallic and industrial mineral rights in the Leduc Formation, including lithium. The Government of Alberta has taken steps to develop the metallic and industrial minerals. The AER has issued forecasts about lithium production rising. The Government of Canada has also taken steps to develop critical minerals. E3 Lithium Ltd. (E3) conducted a pre-feasibility study that confirms 1.1 million tonnes of lithium carbonate equivalent of proven and probable mineral reserves within the brine of the Leduc Formation.

The commingling of sequestered CO₂ with brine creates an acidic brine content. Due to its corrosive nature, co-production of brine-hosted lithium and sequestered CO₂ would increase lifting and handling costs. The increase in production costs will impair PrairieSky's freehold metallic and industrial mineral rights and may even result in uneconomic production. PrairieSky actively considers opportunities to expand production of its metallic and industrial minerals, supports innovation to develop new business and it currently exploring opportunities.

In addition to making submissions regarding how it is or may be directly and adversely affected by the Approval, it also submitted in its Request:

PrairieSky is entitled to a regulatory appeal as a matter of procedural fairness because the AER's historical practice has been to grant a regulatory appeal to those directly impacted by its decision. A grant of pore space to sequester CO₂ does not grant the right to affect the mines and minerals owned by another person. If the owner of mines and minerals raises a concern about such impact, the AER must satisfy its duty of procedural fairness and allow the owner to be heard.

The Government of Alberta has made comments about the nature of and process for obtaining sequestration hubs. The AER in deciding an application for a CO₂ sequestration approval, must consider valid concerns and consider the requirements of the OGCA including section 39(1.1) of that act.

Enhance's Response

Enhance submitted:

PrairieSky has not demonstrated it is eligible for a regulatory appeal (per section 38 of *REDA*) because:

- The Request contains no new information.
- The Request fails to demonstrate the Approval will impact PrairieSky's mineral interests.
- The Request fails to establish Enhance's application was deficient in its risk management plans, modelling or consultation.

Even if PrairieSky has demonstrated it is eligible for a regulatory appeal because it may be directly and adversely affected by the Approval, the AER should dismiss the Request because it is without merit (per s. 39(4) of *REDA*).

Impacts to PrairieSky's interests are speculative and unsupported by evidence. PrairieSky does not address the AER's finding on caprock integrity and the sufficiency of the technology and tools to confirm that injected fluids are confined. The PrairieSky wells within the extended plume are shallow compared to the Project injection zone. Because of the seal, there will be no migration to these wells. Further, there is no Leduc hydrocarbon pool within the extended plume location.

PrairieSky's allegation that it is directly and adversely affected because it considers opportunities to expand production of its freehold minerals (such as exploration in Saskatchewan) is unsupported. Considering and supporting technology in Saskatchewan doesn't demonstrate directly and adversely effect from the Approval. Also, PrairieSky is relying on advice from E3 that there are mineral reserves in the brine of the Leduc Formation but E3 published a preliminary

study in 2024 which shows limited lithium in the Bashaw District and large variability of concentrations.

PrairieSky has not established even a "*prima facie*" case that the Project will impact its interests. The only evidence is a letter from E3 claiming Enhance's injection of CO₂ will "effectively sterilize all future mineral production." which is insufficient.

The AER is not required to hold a hearing. Section 39(1.1) of the OGCA does not necessitate a hearing. That section requires the AER to consider whether Enhance has satisfied the AER the Project will not interfere with the recovery or conservation of oil and gas. Enhance did satisfy the AER of this.

The AER did not defer to Alberta when granting the Approval. The AER's reference [in its decision not to hold a hearing to consider the Applications] to the Agreement between Alberta and Enhance was only in relation to showing Enhance had the necessary rights from Alberta to inject CO₂.

The grant of pore space to sequester CO₂ gives Enhance the right to impact recovery of minerals and geothermal resources per the express words of the Sequestration Agreement.

PrairieSky's Reply

In reply, PrairieSky submitted:

The standard of proof is low to show possible direct and adverse effect; it is not balance of probabilities (more likely than not) at this stage of the proceeding. The information submitted on the extent of its ownership of the PrairieSky mineral interests within the area and PrairieSky's concerns regarding potential impacts meets the standard of proof. Potential economic impact to PrairieSky's mineral interests, including the PrairieSky producing wells and any future production of critical minerals from the Leduc Formation, would result from this impact.

Any valid concerns that relate to fulfilling the purpose and intent of AER enactments must be considered by the AER. Section 39(1.1) of the OGCA limits the AER from approving CCS projects that have the potential to interfere with the recovery or conservation of oil or gas.

Enhance says the grant of pore space rights under the Sequestration Agreement expressly acknowledges impairment to development of mineral resources. However, the Government of Alberta has made statements that pore space does not change the ownership of mine and mineral resources. This means the Sequestration Agreement does not grant Enhance the right to unilaterally impair PrairieSky's mineral interests.

Enhance references the request for project proposals (RFPP) process which required proponents to submit information on potential subsurface conflicts. The RFPP required successful proponents

to identify and address potential subsurface interactions and conflicts. Enhance has made no effort to engage in meaningful discussions with PrairieSky.

The AER must consider its jurisdiction independent of the Government of Alberta's commercial arrangements and this matter squarely engages the principles of conservation.

The Bashaw District contains an estimated ~16.20 million tonnes of lithium carbonate equivalent. PrairieSky is a freehold mineral owner in the Leduc Formation, and this is a sizeable and tangible critical mineral resource for PrairieSky to produce. The sequestration of CO₂ risks impairing PrairieSky's rights.

Reasons for Decision

As noted above, the first task in considering PrairieSky's request for regulatory appeal is, per section 38 of *REDA*, to determine if PrairieSky is "eligible" for a regulatory appeal because it is "directly and adversely affected" by an "appealable decision".

Appealable Decision

The decision to approve the Application and issue the Approval was made pursuant to the *OGCA*, an energy resource enactment, without the AER holding a public hearing to consider the matter. This satisfies the definition of appealable decision found in section 36(a)(iv) of *REDA*. As such, the Decision is an "appealable decision."

Directly and Adversely Affected

To conclude PrairieSky is or may be directly and adversely affected by the Decision, we must satisfy ourselves that there is a sufficient degree of location or connection with the Decision and its effects on PrairieSky³ and we must conclude the impact is "direct." This means harms that we find are indirect do not satisfy the section 38 test. Adverse effect which will satisfy the test will almost always be prospective, but some types of harm may be too remote or too speculative.⁴

As noted by the Court of Appeal of Alberta:

... adverse effect is a *matter of degree*. At some point the Board must decide whether the *magnitude of risk* is such that the applicant has become "directly and adversely affected."⁵[emphasis added]

³ *Dene Tha' First Nation v Alberta (Energy Utilities Board)* 2005 ABCA 68 at paragraph 14. This decision includes a "first step" in the analysis which requires the party requesting "standing" demonstrate they have a "legal right" which may be affected. The requirement relates to the standing test in section 26 of the *Energy Resources Conservation Act* which specifically referenced an impacted right to meet that standing test. Section 38 of *REDA* does not contain the same requirement.

⁴ *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board* 2020 ABCA 456 at paragraph 81.

⁵ *Kelly v ERCB* 2011 ABCA 325 at paragraph 26.

There is some disagreement between PrairieSky and Enhance as to the applicable standard of proof we should apply in deciding PrairieSky's request. Enhance suggests that to grant the Request, we need to be satisfied it is more likely than not that PrairieSky will or may be directly and adversely affected by the Decision. In contrast, PrairieSky says that standard of proof, the balance of probabilities, is too high; it does not have to demonstrate the alleged harm is likely. Even applying a *prima facie* standard of proof that is lower than the balance of probabilities, we have concluded the information before us is insufficient to demonstrate PrairieSky may be directly and adversely affected by the Decision.

We acknowledge that PrairieSky has mines and minerals interests including in the Leduc Formation which is the same formation into which Enhance will dispose of CO₂.

PrairieSky has also provided some information in its Request relating to the potential for brine-hosted lithium in the Leduc Formation by way of one page of E3's December 20, 2024 letter addressed to "Mineral Tenure Holder". That letter appears to be an invitation to mineral holders to enter into negotiations with E3. It states that E3 issued a pre-feasibility study for its brine hosted lithium extraction project, the Clearwater Project, that "confirms" 1.1 million tonnes of lithium carbonate equivalent of proven and probable mineral reserves within the brine of the Leduc Formation in the Clearwater Project area. The statements in this letter regarding the quantity of lithium in the Leduc Formation are in contrast to an earlier study which indicated there is limited information regarding lithium in the area and there is large variability in the concentrations of lithium.⁶

The information in this form letter does not persuade us that the Decision and the associated sequestration activities will or may directly and adversely impact PrairieSky. It is some evidence of the possible presence of brine-hosted lithium in the Leduc Formation in the area of E3's proposed Clearwater Project. However, the area of the Clearwater Project is significantly too far from Enhance's project and the associated 4km predicted CO₂ plume to establish that brine-hosted lithium minerals in this area are present or present in quantities to be the subject to commercial development and may be directly and adversely impacted by the Approval.

While PrairieSky provided some information in the form of studies and estimates about the potential for brine-hosted minerals in the Bashaw District within the Leduc Formation, it acknowledged the large variability in lithium concentrations across the Bashaw District and provided no specific information or evidence about the presence of these minerals in the area of Enhance's sequestration, including within the predicted CO₂ plume.

Many of the potential impacts referenced in PrairieSky's submissions hinge on its assertion caprock will not serve as an effective seal to injected CO₂. The studies provided indicated that caprock integrity may be jeopardized where certain factors or conditions exist. However, the information provided does not show that such factors or conditions exist in the area of Enhance's disposal

⁶ Enhance Response Submission paragraph 106.

operations. Moreover, the Leduc Formation is well known and commonly utilized for disposal operations due to the integrity of the caprock seal. It is well known it has been utilized for this purpose for decades. We are satisfied that conservation and development of oil and gas or other mineral resources in any other formations (i.e. the Nisku or Glauconic) will not be impacted by Enhance's CO₂ disposal and sequestration operations. In addition, under condition 7(h) of its approval, Enhance must conduct temperature logs across the Leduc and Nisku formations in the 00/04-36-039-25W4/0 well. This is to verify the geological containment of the sequestered fluids within the target formation. The totality of the terms and conditions of the Approval, which are standard to all disposal approvals, will ensure the safe operation of the 04-36 Well and containment within the targeted formation.

Regarding the potential for leakage of sequestered CO₂ through abandoned well bores in the Origins Project area, PrairieSky offered only assumptions that these wells were not properly abandoned and therefore might leak CO₂ in sufficient quantities and in locations of PrairieSky's mineral rights so as to directly and adversely affect them. This speculation is insufficient to demonstrate direct and adverse impact, particularly in the face of Alberta's rigorous requirements for well abandonment. In any event, condition 11 of the Approval requires Enhance to provide a risk assessment for all abandoned and other wells terminated at or traversing the Leduc Formation and within the projected fluid plume area. The assessment must evaluate the potential for leakage based on the wells' age, diagnostic tools used, and abandonment practices applied (including porous zone isolation). Wells identified as medium to high risk in the Measurement, Monitoring and Verification plan must have their risks mitigated before the fluid plume reaches these locations. Further, even if leakage of CO₂ were to occur, the information provided does not demonstrate how this would directly and adversely affect PrairieSky.

Regarding alleged impacts related to hydrocarbon recovery, Enhance's submissions indicate there is no Leduc hydrocarbon pool within the extended plume associated with Enhance's CO₂ sequestration.⁷ That information is consistent with our understanding of the current lack of oil and gas recovery & development potential in this area of the Leduc Formation and fact it is so commonly utilized for disposal operations. We are satisfied that the injection of the captured CO₂ by Enhance will not interfere with the recovery or conservation of oil or gas.

The information presented is not sufficiently robust to raise a magnitude of risk of CO₂ impairing PrairieSky's rights (or economic interests) to demonstrate direct harm to PrairieSky emanating from the decision to issue the Approval. The asserted harms are too speculative to satisfy us PrairieSky will or may be harmed directly.

We note PrairieSky's submissions regarding procedural fairness requiring a hearing if it is or may be directly and adversely affected by the Decision. As we have concluded PrairieSky will not be directly and adversely affected, that argument does not need to be addressed. Arguments regarding

⁷ October 2, 2025 Enhance Response paragraph 103.

resource conservation do not demonstrate direct harm to PrairieSky. Finally, our conclusions regarding the absence of impacts to oil and gas resources, including their recovery and conservation, make it unnecessary to consider PrairieSky's arguments under section 39 (1.1) of the OGCA.

Conclusion

In light of the above, we conclude that PrairieSky is not eligible to request a regulatory appeal of the decision to issue the Approval and therefore the Request is dismissed.

Sincerely,

On behalf of the AER Adjudicative Committee

< **Original signed by** >

Martin Foy

Chief Operations Officer