AMENDED this 13th day of March 2017 Pursuant to Rule 3.62 dated the 13th day of March 2017

CLERK OF THE COURT

FORM 10
[RULE 3.25]

Clerk's stamp

CLERK OF THE COURT
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CALGARY, ALBERTA

COURT FILE NUMBER	1701-03460
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	
PLAINTIFF	ALBERTA ENERGY REGULATOR
DEFENDANT	LEXIN RESOURCES LTD.
DOCUMENT	**AMENDED STATEMENT OF CLAIM**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP** Barristers 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2 Christa Nicholson Phone: 403 571 1520 Fax: 403 571 1528 File: 13817.001

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.
Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, the Alberta Energy Regulator (the "**AER**"), is a corporation established by the *Responsible Energy Development Act*, SA 2012, c R-17.3 ("***REDA***").

2. Under *REDA*, the AER is tasked with overseeing the safe, efficient, orderly and environmentally responsible development of energy resources in Alberta.

3. The Defendant, Lexin Resources Ltd. ("**Lexin**"), is a corporation registered in the province of British Columbia and is extra-provincially registered in Alberta. Lexin was

previously named "MFC Energy Corporation," and prior to that, it was named "Compton Petroleum Corporation."

4. Lexin is the licensee of licenses issued by the AER respecting 1,380 wells, 81 facilities, and 201 pipelines (the "**Sites**") for a total of 1,662 operational licences and Sites. It is also the licensee of 134 abandoned wells, 5 abandoned facilities and 6 abandoned pipelines.

Facts and Conduct of Lexin

5. The AER has issued to Lexin a number of directions and orders which have not been complied with, namely:

   (a) On February 5, 2016, the AER issued to Lexin a Notice of Non-Compliance for failure to install a dilution gas meter at a sour gas facility, and failure to remove numerous bags of spent catalyst from the grounds of the facility. On June 15, 2016, the AER issued an order to Lexin for failure to comply with this Notice of Non-Compliance;

   (b) In April of 2016, Lexin was directed by the AER in an environmental protection order made pursuant to s. 113 of the *Environmental Protection and Enhancement Act,* RSA 2000, c E-12 to address a serious surface casing vent flow issue on one of the Sites;

   (c) On August 9, 2016, the AER issued to Lexin an order directing, *inter alia,* that Lexin and a related entity, LR Processing Ltd., immediately suspend and discontinue the Mazeppa sour gas facility and infrastructure;

   (d) In August of 2016, numerous closure and abandonment orders were issued against Lexin for expired surface rights (3 wells) and mineral rights (26 wells);

   (e) On October 25, 2016, the AER issued an order to Lexin to take immediate steps to clean up a hydrocarbon spill at another sour gas facility. The AER first informed Lexin of this spill on July 28, 2016. Lexin had not cleaned it up, despite statutory obligations to do so and notwithstanding having received from the AER a notice of non-compliance issued in August 2016 for this spill;

   (f) On October 27, 2016, the AER issued a direction to Lexin by letter, directing it to cease and desist from the removal of any equipment;

(g) On November 24, 2016, the AER sent a letter to Lexin stating that "Global Refer" status had been imposed on Lexin because of its inability or unwillingness to comply with regulatory requirements.

6. On January 19 2017, the AER issued a declaration under section 106 of the *OGCA* naming Michael J. Smith, Jasmina Cezek, and Rob Jennings, naming them as persons in direct or indirect control of Lexin, and declaring that Lexin has contravened requirements or failed to comply with orders of the AER or is indebted to the AER (the "**Director Declaration**").

7. On January 31, 2017, Lexin advised the AER by letter that it was not sure that it could provide proper health and safety overview and measures for its sour wells beyond February 15, 2017 (the "**Deadline Letter**").

8. On February 6, 2017, in response to the Deadline Letter the AER sent a letter (the "**Demand Letter**") to Lexin which required Lexin to take steps to ensure that the Sites are maintained in a manner that ensures that the public and environment are protected. By the Demand Letter, Lexin was also directed to advise by February 10, 2017 of steps that it planned to take to ensure that its sour wells are maintained in safe condition.

9. On February 10, 2017, Lexin replied by letter, which was non-responsive to the Demand Letter (the "**Reply Letter**").

10. In response to the foregoing, on February 14, 2017, the AER issued an order pursuant to section 27 of the *Oil and Gas Conservation Act,* RSA 2000, c O-6 (the "***OGCA***"), section 12 of the *Pipeline Act,* RSA 2000 c P-15, and *REDA*, suspending all of Lexin's operational well, facility, and pipeline licenses, and ceasing operations of the associated wells and facilities on the Sites (the "**Suspension Order**").

11. On February 14, 2017, the AER issued to Lexin a direction requiring Lexin to produce the records described therein and allow persons authorized by the AER to access its facilities, equipment, and physical and electronic records as set out in the direction (the "**Inspection Direction**").

Court Proceedings

12. In response to the foregoing, and upon receiving reports of removal of equipment from the Sites, on February 14, 2017, the AER served on Lexin an Originating Application in Court of Queen's Bench Action Number 1701-02272 to seek the Court's assistance in

fulfilling the mandate of the AER (the "**AER Proceedings**"), including an Order pursuant to section 19(2) of *REDA*:

a) directing that no person remove Equipment from the Sites (the "**Equipment Relief**"); and

b) directing that Lexin produce records as described in the Inspection Direction (the "**Inspection Relief**").

13. The Equipment Relief was granted on February 14, 2017 on an interim basis, was extended on February 17, 2017, and was then granted on the merits by Order dated March 3, 2017 (the "**Equipment Order**"). The Inspection Relief was adjourned *sine die* with a right provided to the AER to return to the Court on three days notice.

14. In order to fulfil its mandate, the AER has orphaned, for suspension purposes, those of the Sites which, to the AER's knowledge, have no viable working interest participants (the "**OWA Sites**")

15. On February 27, 2017, in the same AER Proceedings, Lexin served on the AER an application ("**Lexin Proceeding #1**"). By Order of the Court granted March 3, 2017, the AER was granted an adjournment of Lexin Proceeding #1 and a hearing was scheduled for March 22 and 23, 2017 (the "**Jurisdiction Hearing**") to hear argument on the Court's jurisdiction to hear Lexin Proceeding #1.

16. On March 7, 2017, Lexin served on the AER a new proceeding, made by way of Originating Application, filed in in the Court of Queen's Bench Action Number 1701-03310, also returnable on March 22 and 23, 2017 ("**Lexin Proceeding #2**").

17. Both Lexin Proceeding #1 and Lexin Proceeding #2 (collectively, the "**Lexin Proceedings**") seek the following relief:

(a) an Order in the nature of mandamus directing the AER to forthwith take reasonable steps to remedy all health, safety and environmental issues that may exist at the Sites; and

(b) an Order directing the AER to:

(i) issue abandonment orders for the Sites that have already been designated as orphans by the AER for the purposes of suspension; and

(ii) have those sites transferred to the Orphan Well Association.

18. The AER opposes the Lexin Proceedings as being without jurisdiction and improper.

The Debt

19. Lexin has failed to pay several invoices owing to the AER, including 2016 orphan fund levy payments ("**Orphan Fund Levies**") and 2016 administration fees levy ("**Administration Levy**").

20. The Administration Levy is collected pursuant to the *Alberta Energy Regulator Administration Fees Rules,* Alta Reg 98/2013 (the "**Fees Rules**").

21. Orphan Fund Levies are collected by the AER pursuant to Part 11 of the *OGCA.*

22. Specifically, Lexin has refused or neglected to pay the following Administration Levy and the Orphan Fund Levies totalling amount of $1,188,910.66 (the "**Debt"**), particulars of which are as follows:

   (a) 1st 2016 Orphan Fund Levy Payment invoiced on March 23, 2016, in the amount of $58,005.34;

   (b) 1st 2016 Orphan Fund Levy Payment Penalty invoiced on May 3, 2016, in the amount of $11,601.07;

   (c) 2016 Administration Levy invoiced on May 18, 2016, in the amount of $876,700.65;

   (d) 2016 Administration Levy Penalty invoiced on July 5, 2016, in the amount of $175,340.13;

   (e) 2nd 2016 Orphan Fund Levy Payment invoiced on August 8, 2016, in the amount of $56,052.89; and

   (f) 2nd 2016 Orphan Fund Levy Penalty invoiced on September 21 2016, in the amount of $11,210.58.

23. Pursuant to section 76 of the *OGCA*, Lexin had the right to appeal the Orphan Fund Levies. Lexin has not appealed the Orphan Fund Levies.

24. Pursuant to section 7 of the Fees Rules, Lexin had the right to appeal the Administration Levies. Lexin has not appealed the Administration Levies.

25. Pursuant to section 58 of *REDA*, the AER is entitled to recover any money payable to it in an action in debt pursuant to *REDA* or any other enactment.

Garnishment, Lien, and the Amount Outstanding

26. The AER is a secured creditor of Lexin. The AER has a statutory lien (the "**Lien**") in respect of the Debt pursuant to Section 103(2) of the *OGCA* over Lexin's interest in any wells, facilities and pipelines, land or interests in land, including mines and minerals, equipment and petroleum substances, and the Lien has priority over all other liens, charges, rights of set-off, mortgages and other security interests.

27. Section 103 of the *OGCA* provides that the Lien may be enforced by garnishment. On June 13, 2016, the AER enforced its Lien security by serving on Lexin a notice of garnishment. The AER was able to successfully garnish the amount of $112,971.81, which it applied to reduce the Debt, leaving a total amount outstanding of $1,076,251.18^ (the "**Amount Outstanding**").

28. Lexin has not paid the Amount Outstanding or any part thereof which remains fully due and owing.

29. Since the orphaning for suspension purposes of the OWA Sites, the OWA has incurred costs associated with carrying out suspension activities. Costs incurred to date are $199,522.41. Pursuant to section 72 of the *OGCA,* if a debt to the AER to the account of the orphan fund shall for the purpose of enforcement of payment of the debt be treated the same as any other debt to the AER and accordingly, the AER takes the position that its secured Lien also secures this amount.

Recent Safety Concerns from Lexin

30. Since the Equipment Order was sought, Lexin has advised the AER that it remains unable to address health, safety and environmental risks that exist at the Sites, and that it does not have the financial means to address these risks. Lexin is currently not addressing these risks.

31. Recently, Lexin has advised the AER about its concerns relating to the public safety environmental risks present at least one of its licensed sites. Lexin has also communicated that it is unable and/or unwilling to address the public safety and environmental risks associated with its unattended licensed sites. Lexin has sent letters to the AER regarding these issues on March 6, 2017 and March 7, 2017. Lexin's correspondence is a thinly disguised attempt to "fob off" its responsibilities to the AER

and OWA. The AER is not responsible for assuming the obligations of a licensee that, like Lexin, attempts to abdicate and transfer its responsibilities for regulatory non-compliances and place those responsibilities at the foot of the AER and/or WA. It is not open for a licensee, when times get tough, to transfer the burdens associated with holding AER licences to the AER and/or the OWA, which is exactly what Lexin is attempting to do here.

Lexin's Other Creditors

32. Lexin has many secured creditors who claim an interest in respect of some or all of Lexin's personal and real property, including:

    (a) secured creditors holding a total of 19 security agreements, including 2 security agreements claiming and interest over all of Lexin's present and after acquired personal property; and

    (b) secured creditors holding 5 land charges.

33. There have been numerous Writs of Enforcement ("**Writs**") filed, enforcing judgments against Lexin, and numerous reports of seizure ("**Seizure**"), including:

    (a) 5 Writs; and

    (b) 11 Seizures.

34. There are three Municipal Districts or Counties which claim a secured interest in respect of some or all of Lexin's personal and real property, including:

    (a) One Municipal District or County claiming a statutory charge and a lien; and

    (b) Two Municipal Districts or Counties claiming liens.

35. Since the Equipment Order was issued, claimants have contacted the AER seeking to remove property from the Sites and have threatened Court proceedings.

Lexin is insolvent

36. Lexin cannot meet its liabilities as they generally become due, and/or has ceased paying its current obligations in the ordinary course of business as they generally become due, and is insolvent.

Interest in the Sites

37. There are viable parties interested in acquiring at least some of the Sites.

38. Many of Lexin's Sites have economic value and should be sold, rather than left with the OWA. It is not in the interest of Albertans to leave these sites with the OWA when many of Lexin's sites and assets are still viable.

39. It is to Lexin's and other's benefit to have a Receiver appointed to sell or transfer the Sites rather than risk premature abandonment of them.

Need for Receiver

40. Having regard to all of the circumstances, including those referenced above, it would be just or convenient for a Receiver to be appointed over the current and future assets, undertakings and properties of Lexin and a general stay of proceedings ordered pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, and section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 B-3 in order to, *inter alia:*

    (a) if necessary, to provide potential supplementary financial support to address any safety issues which may arise while the OWA Sites are in possession of the OWA;

    (b) pending a determination of entitlements, for the benefit of creditors claimants (including secured creditors, the OWA and Albertans generally), ensure the Sites and Lexin property are preserved and protected against "scrambling" by creditors;

    (c) undertake a professional marketing process for the sale of the Sites and capitalize on the interest expressed by potential purchasers in the Sites;

    (d) effect more efficiently than the AER and the OWA are able, the transfers of the Sites to viable parties, which would ease the potential burden on the OWA, Working Interest Participants and potentially Albertans and try to prevent valuable energy resources from potentially being stranded by abandonment;

    (e) effect the transfer to viable parties of the Sites including any liabilities associated therewith which are otherwise the responsibility of Lexin and which, if reduced, would benefit Lexin; and

    (f) avoid irreparable harm being and to be suffered by secured and other creditors the OWA and Albertans generally.

Real and Substantial Connection to Alberta

41. The Plaintiff proposes to serve this claim on Lexin outside of Alberta. Service outside of Alberta is necessary, and permitted pursuant to Rule 11.25 (1) and (3) of the *Alberta Rules of Court*, Alta Reg 124/2010 in that Lexin is incorporated outside of Alberta, and there is no head office or address for service in Alberta.

42. This claim is served on Lexin on the basis that a real and substantial connection exists between Alberta and the facts on which the claim is based. That connection arises from factors including the following:

(a) the claim is governed/contemplated by the Alberta Responsible *Energy Development Act, Oil and Gas Conservation Act,* and *Judicature Act*; and

(b) the claim relates to land in Alberta.

Remedy sought

43. The Plaintiff, AER, claims as follows:

(a) judgment for the Amount Outstanding, being $1,076,251.18^, or any amount to which it continues to accrue;

(b) judgment for any amounts owed to the Orphan Fund as a result of costs incurred in relation to the orphan Lexin sites, being $199,522.41 or any further costs incurred;

(c) a declaration that the Lien is valid, secures all amounts owing to the AER and OWA as aforesaid and has the priority contemplated by the *OGCA;*

(d) the appointment of a Receiver pursuant to the *Judicature Act,* RSA 2000, c J-2; and section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 B-3; and

(e) costs of this Action; and

(f) such further and other relief as this Honourable Court may deem just and appropriate having regard to all the circumstances.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.