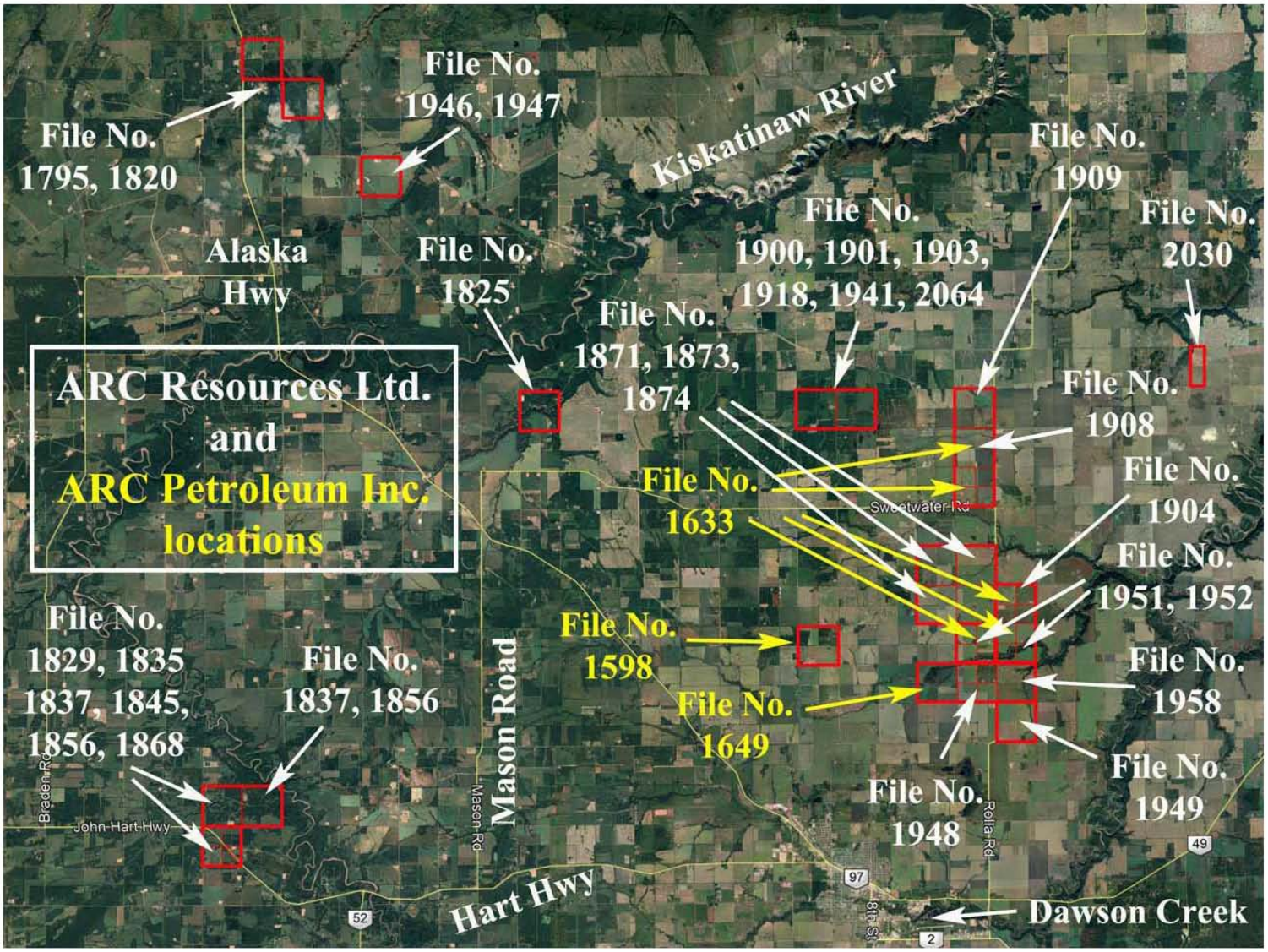

File No.
1795, 1820
File No.
1946, 1947
Kiskatinaw River
File No.
1909
File No.
2030
File No.
1900, 1901, 1903,
1918, 1941, 2064
Alaska
Hwy
File No.
1825
File No.
1871, 1873,
1874
File No.
1908
ARC Resources Ltd.
and
ARC Petroleum Inc.
locations
File No.
1633
Sweetwater Rd
File No.
1904
File No.
1951, 1952
File No.
1598
File No.
1958
File No.
1649
File No.
1829, 1835
1837, 1845,
1856, 1868
File No.
1837, 1856
Mason Road
Braden Rd
John Hart Hwy
Mason Rd
File No.
1948
Rolla Rd
File No.
1949
49
97
Hart Hwy
52
8th St
2
Dawson Creek

File No. 1598
Board Order # 1598- 1

April 14, 2008

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF NE ¼ Sec 10 & Lot 2 Sec 15 of Rge. 15 TWP 79 W6M (The "Lands")

BETWEEN:

Arc Petroleum Incorporation

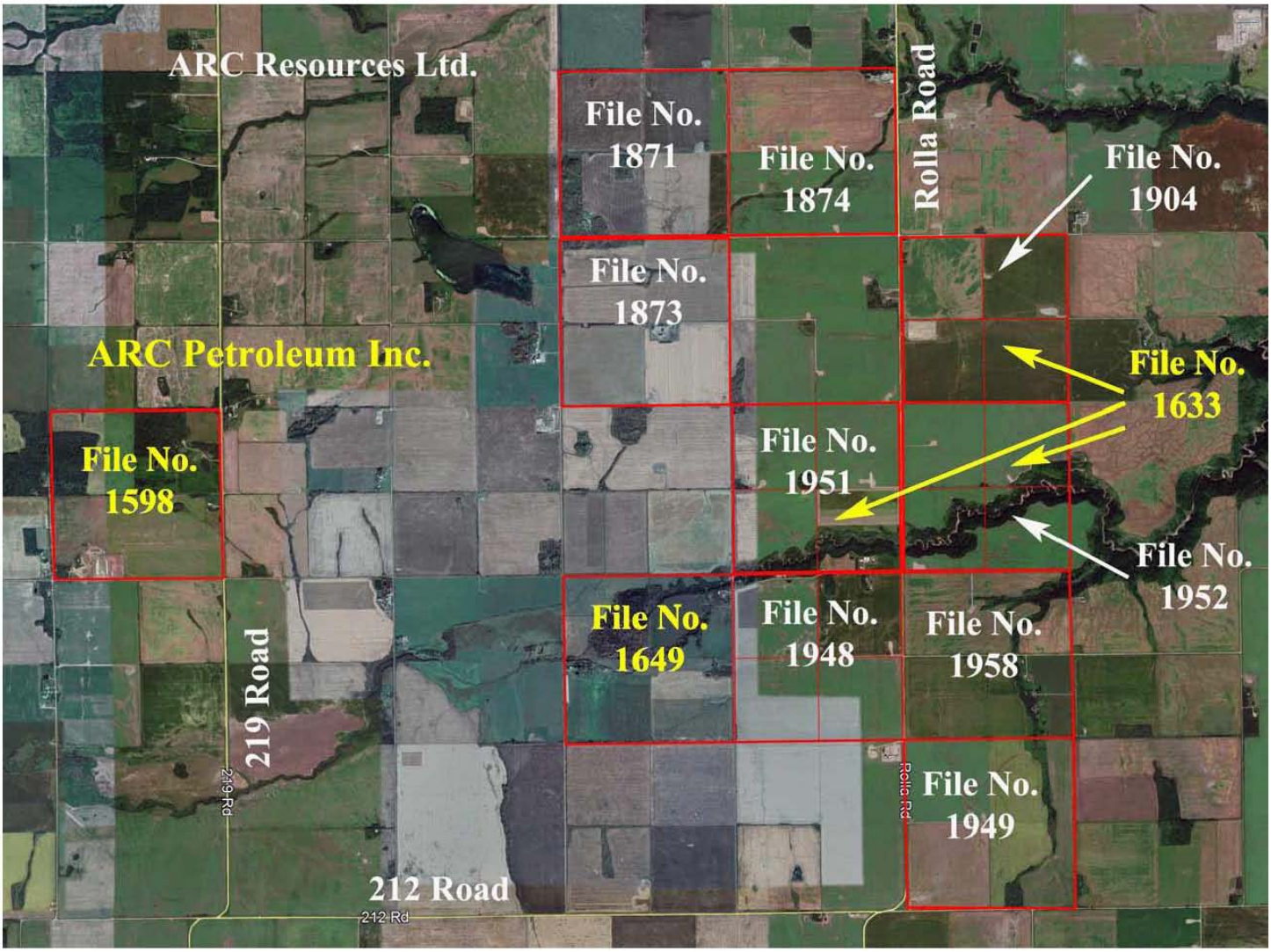
("APPLICANT(S)")

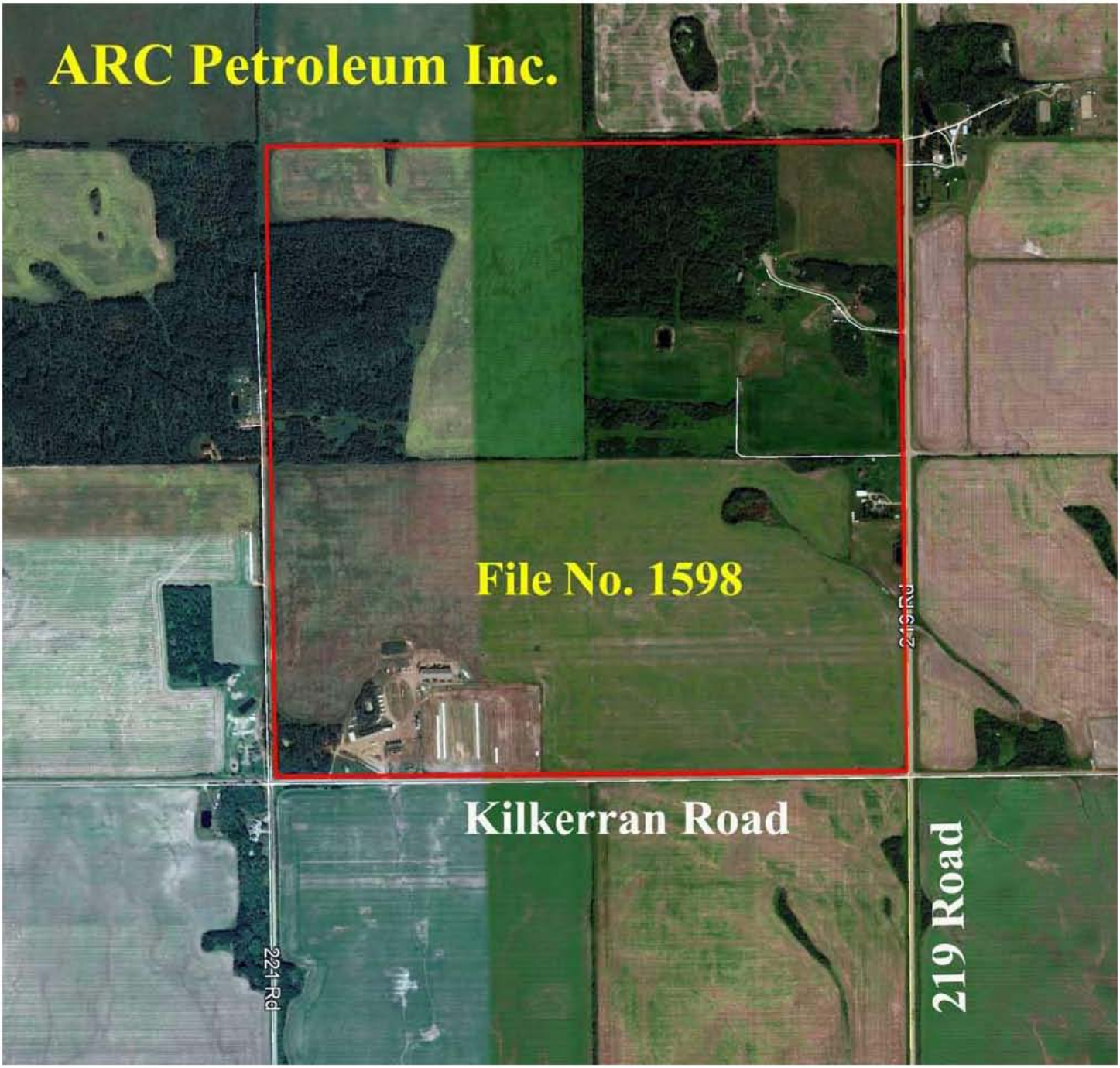
AND:

Kane Piper

("RESPONDENT(S)")

BOARD ORDER


ARC Resources Ltd.
File No. 1871
File No. 1874
Rolla Road
File No. 1904
File No. 1873
ARC Petroleum Inc.
File No. 1633
File No. 1598
File No. 1951
File No. 1952
219 Road
File No. 1649
File No. 1948
File No. 1958
File No. 1949
212 Road


ARC Petroleum Inc.
File No. 1598
219 Rd
Kilkerran Road
221 Rd
219 Road

The Applicant, Arc Petroleum Inc., requires access to the Lands owned by Kane Piper, the Respondent, for the purpose of constructing and operating a flow line as shown on the attached plan (Exhibit A). The parties agreed to amend the application to include, not only the flow line, but an incidental fuel line. The parties agree that a right of entry order should be made with terms and conditions as set out in Exhibit B. Compensation payable for the entry, occupation and use of the Lands was not agreed upon, although the parties have agreed upon partial compensation as set out below. The partial compensation is non-refundable regardless of any further orders of the Board or agreement of the parties on compensation. The Respondent agrees not to further challenge the Right of Entry Order or the terms and conditions in Exhibit B in any future proceedings of the Board or the courts.

I have not directed that the matter go to arbitration at this stage. If the parties wish further mediation or arbitration, they must apply to the Board for this purpose.

BY CONSENT, the Mediation and Arbitration Board orders that:

1. The Application is amended to include the construction and installation of a fuel line incidental to the flow line that is being applied for.

2. Upon payment of the amounts set out in paragraphs 2 and 3 and the terms and conditions set out in Exhibit B, the Applicant shall have the right of entry to and access across the portion of the Lands shown in Exhibit A for the purpose of constructing, installing, and operating a flow line and accompanying fuel line.

3. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $0.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

4. The Applicant shall pay to the Respondent the amount of $15,000.00 as a non-refundable payment for compensation payable for entry to and use of the Lands and the Respondent agrees not to challenge the Right of Entry at any further Mediation and Arbitration Board or court proceedings. Any further proceedings of the Board will be limited to the issue of compensation only.

5. The Applicant shall serve the Respondent with a copy of this Order by e-mail prior to entry upon the Lands.

6. This Order is subject to the application process required by the Oil and Gas Commission and nothing in this order operates as consent, permission,

approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: April 14, 2008

FOR THE BOARD

Simmi K. Sandhu
Mediator

File No. 1598
Board Order # 1598-2

December 5, 2008

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NE ¼ Sec 10 & Lot 2 Sec 15 of Rge. 15 TWP 79 W6M
(The "Lands")

BETWEEN:

Arc Petroleum Inc.

(APPLICANT)

AND:

Kane Piper

(RESPONDENT)

BOARD ORDER

Heard:	October 28, 2008 at Fort St. John
Panel:	Cheryl Vickers
Appearances:	Rick Williams, Barrister and Solicitor, for the Applicant
	Darryl Carter, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The Mediation and Arbitration Board granted the applicant, Arc Petroleum Inc (Arc), a right of entry order with respect to an 8.06 acre right of way across land owned by the respondent, Kane Piper, to construct a sour gas flowline and fuel line (the pipelines) on terms agreed to by the parties (Board Order 1598-1). Arc paid Mr. Piper $15,000 in compensation and agreed Mr. Piper would maintain the right to proceed to arbitration if he felt the compensation was inadequate. Mr. Piper felt the compensation was inadequate, and asked that the matter be arbitrated. He seeks compensation for the loss of rights taken in the amount of $2,850/acre ($22,971), annual compensation for loss of rights, and compensation for crop loss in the amount of $3,000/acre ($24,180).

ISSUE

[2] The sole issue is to determine the appropriate compensation payable to Mr. Piper under the *Petroleum and Natural Gas Act* (*PNGA*). While Arc takes the position that the $15,000 paid is more than adequate, they agree that in the event the Board determines the appropriate compensation to be less than $15,000, no amount is refundable.

FACTS

[3] The land, described as NE ¼ Sec 10 & Lot 2 Sec 15 of Range 15 TWP 79 W6M, owned by Mr. Piper, comprises 312.45 acres approximately four kilometres north of Dawson Creek in the Peace River Regional District (the Lands). The Lands are in the Agricultural Land Reserve (ALR). Mr. Piper has been farming these and other lands, collectively comprising approximately 7,500, acres for many years. On these two particular parcels, he has principally grown oats and canola and typically rotates those crops between these two parcels every year. Oats and canola are both annual crops. Mr. Piper has also planted wheat, barley and fescue but, in the last couple of years, the Lands have been used to grow oats and canola. Mr. Piper practices "zero tilling" on the lands, which he says outperforms conventional farming by approximately 30% year after year. These lands have been in zero till for over 15 years.

[4] The Right of Way in which Arc has constructed the pipelines encompasses 8.06 acres of Mr. Piper's land and runs along the property boundary and edge of the field. It is about ½ of a kilometre from Mr. Piper's residence.

[5] Construction of the pipelines on the Lands took place over 14 days during June 2008. The roads were watered to control dust, and operations were kept to daylight hours. No fence cuts were required. The land was left ready for reseeding in the spring of 2009. There is no permanent above ground disturbance along the right of way. At the request of Mr. Piper, Arc removed trees along the boundary of the right of way. Arc estimates the additional cost to them for the removal of trees at $3,000.

[6] Arc offered to pay Mr. Piper compensation of $13,299.00 based on $950/acre for the right of entry ($7,657.00) and $400/acre for crop loss, payable at 100% in the first year, 50% in the second year, and 25% in the third year ($5,642.00). Arc agreed to increase the compensation to $15,000 in consideration of Mr. Piper's agreement not to contest Arc's application to the OGC and to limit any further Board proceedings to the issue of compensation.

LAW

Principles of Compensation

[7] Pursuant to section 9(2) of the *PNGA*, a person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas is liable to pay compensation to the landowner for loss or damage caused by the entry, occupation or use. Section 21(1) of the *PNGA* lists various factors the Board may consider in determining an amount to be paid to a landowner. They are:

a) the compulsory aspect of the entry, occupation or use,
b) the value of the land and the owner's loss of a right or profit with respect to the land,
c) temporary and permanent damage from the entry, occupation or use,
d) compensation for severance,
e) compensation for nuisance and disturbance from the entry, occupation or use,
f) money previously paid to the owner for entry, occupation or use,
g) other factors the board considers applicable, and
h) other factors or criteria established by regulation.

[8] There are no factors or criteria established by regulation.

[9] A review of the case law illustrates that there are a number of settled principles relating to compensation for entry under the *PNGA*. The first is that a landowner's right to compensation is just that - a right to compensation for loss as a result of the entry. The landowner is entitled to the equivalent in money for the loss sustained and not for more than the loss sustained. The compensation does not represent a purchase price or a rental, it does not represent remuneration to the landowner for the development of subsurface resources under his land, and it does not compensate the landowner for the fact that a resource company has acquired the rights to subsurface resources. It simply compensates for the landowner's actual and projected probable future loss arising out of the company's entry, occupation and use of the surface (*Western Industrial Clay Products Ltd v. Mediation and Arbitration Board*, 2001 BCSC 1458.) The Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained (*Western Clay, supra*).

[10] The second principle is that a "taking" under the *PNGA* is not an expropriation, although expropriation principles may apply to determine the appropriate compensation. No land and no legal interest in the land is taken from the landowner. The landowner continues to hold the fee simple and, consequently, it is appropriate that the Board consider the landowner's residual and reversionary interest (*Dome Petroleum Ltd v. Juell* [1982] B.C.J No. 1510 (BCSC); *Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[11] Section 21(1) of the *PNGA* lists a number of factors that the Board may consider in determining compensation including "the value of the land". "Value of the land" means value to the owner of the land, not the value to the taker (*Dau v. Murphy Oil Company Ltd.*, [1970] S.C.R. 861; applied in BC in *Dome v. Juell, supra*; *Scurry Rainbow; supra*; *Western Clay, supra*). The Board should consider whether there are any special factors which give a greater value to this owner for this particular piece of land beyond that shown by the average value of similar land indicated by sales (*Scurry Rainbow; supra*).

[12] Evidence of what compensation is paid to other owners in the area is relevant and should be considered by the Board as an "other factor" where the evidence indicates an established pattern of compensation exists (*Scurry Rainbow, supra*). The Board may consider the various factors set out in section 21 of the *PNGA* and evaluate each, then step back and consider whether the totality gives proper compensation in any particular case (*Scurry Rainbow, supra*).

[13] These principles of compensation are the law in British Columbia and are binding on this Board in determining compensation under the *PNGA*. It is not open to this Board to change the law.

[14] It remains to apply these principles to the present case. The Board must ask what is the loss sustained by Mr. Piper as a result of Arc's right of way and what is the appropriate compensation for that loss? In determining the

appropriate compensation, the Board may consider the various factors listed in section 21 of the *PNGA*. Essentially, compensation includes compensation for loss of rights and compensation for damages and loss of profit. Damages are not an issue in this case, only the amounts payable for loss of rights and loss of profits, or crop loss.

EVIDENCE AND ANALYSIS

A. LOSS OF RIGHTS

Parties' Evidence & Submissions

[15] The evidence of both Andrea Fiedler, Surface Land Agent with Arc, and Darren Rosie, a local land agent, was that $950/acre is the amount typically paid in the area for right of way access. Ms. Fiedler has been working for Arc for three years. Her evidence was that Arc has paid $950/acre for right of way access during that time. She was aware that Arc had entered an agreement with Mr. Piper in 2003 at $950/acre. Her evidence was that she thought other landowners found the $950/acre rate to be fair.

[16] Mr. Rosie, the owner and President of Sierra Land Consulting, has been working as a local land agent for 15 years. His evidence was that when he started doing this work in 1994, the rate was $600/acre; it went up to $700, then $850 and has been $950/acre for the last several years. He indicated $950/acre for right of way access first started to be paid in 1999 or 2000 and that it has been the standard rate since 2003.

[17] Mr. Rosie testified that five landowners were affected by this flowline and that he had been retained by Arc to negotiate entry and compensation with all of them. He successfully negotiated compensation for right of entry with the other affected landowners at the $950/acre rate.

[18] Arc's brief of authorities contained Board Orders dating back to 2000 using $950/acre for pipeline rights of way.

[19] Mr. Piper characterized the $950/acre as "ridiculous" and indicated this rate has been paid for 20 years.

[20] I accept that $950/acre has been the standard rate for pipeline access in this area since 2000, and that it was the rate agreed by other landowners affected by this pipeline in 2008.

[21] Mr. Piper said land values had doubled since 2003 so if the rate was based on land values it needed to be changed. He does not think it is reasonable to compensate based on the per acre value of a whole ¼ section as, in his view, a small parcel of land equal in size to the right of way area, would be worth more per acre.

He admitted that he agreed to $950/acre in 2006 for a right of way, but said land values had increased since then and he was "most likely not happy with the 2006 value but took it anyway".

[22] To support his view of land value, Mr. Piper provided evidence of the sale of a 4.6 acre parcel in a residential subdivision overlooking Dawson Creek for $110,000 and of a conditional sale of a 4.69 acre parcel in the same subdivision for $95,000.

[23] Rolf Halvorsen, AACI, P. App, provided an appraisal of the Lands estimating market value as of April 15, 2008 at $1,250/acre in its existing use as agricultural land. His opinion of value is based on his analysis of six sales and two listings of agricultural land ranging in size from 78.22 acres to 160 acres and in price from $1,000/acre to $1,518/acre. I find the market value of the Lands to be $1,250/acre.

[24] Mr. Piper submitted the presence of a sour gas pipeline negatively affected the value of land. Mr. Halvorsen's evidence was that he could find no evidence that the presence of a pipeline on agricultural land impacted the value of the land.

[25] Mr. Rosie characterized the impact of the right of way on Mr. Piper's lands as "minimal" in that it stayed to the ¼ section lines, involved no above ground installations, and did not interfere with harvesting and seeding. Mr. Piper agreed the route along the property boundary was preferable to cutting across the field, that there were no severance issues in harvesting the field with this right of way, and that the pipelines were buried and the right of way left for reseeding. He thinks it is likely the line will settle and Arc may have to do some more work to fix any settlement. He agreed he could always come back to the Board to seek damages or ask Arc to fix any damage, and agreed that, other than the possibility of further damage, he can keep farming the right of way area.

[26] Considering the timing and time involved in construction of the pipelines, the location of the right of way in relation to Mr. Piper's residence and his overall farm operation, that there are no above ground installations, that no lands were severed and that, but for possible future settling, the lands are ready for re-seeding and continued agricultural use, I find that, relatively speaking, the impact of this right of way on these Lands and to this owner is minimal.

Board's Decision & Analysis

[27] Mr. Piper has lost certain rights with respect to his land. These rights are intangible and not easily capable of compensation with money. In attempting to calculate value for the loss, however, the legislation provides various factors which the Board may consider. One of those factors is the compulsory aspect of the taking. Once need for surface access is established, the landowner cannot say "no" to prevent entry for the purpose of oil and gas exploration or production.

Mr. Piper has lost the right to decide for himself the use of a portion of his lands and in particular, whether or not he wants to have a sour gas pipeline under his land. To this extent, his right to quiet enjoyment of the land is lost.

[28] Loss of an intangible right, such as the loss of quiet enjoyment, is virtually incapable of valuing in terms of money. Any amount of money placed on the value of intangible rights will seem arbitrary and has been acknowledged as such by the courts. As was said by Mr. Justice Berger in *Dome v Juell, supra*, an amount for compulsory aspect of entry "is intended to be a purely arbitrary amount to compensate the farmer for the loss of his right to decide for himself whether or not he wants to see oil and gas exploration and production carried out on his land. Like other matters covered by section 21, the figure is at large, and not capable of precise calculation according to some standard or other." The best the Board can do is consider all of the relevant circumstances, including the factors listed in section 21 and other factors that may be appropriate, and decide what amount is fair and reasonable in the circumstances.

[29] Another factor to be considered is the "value of the land". Mr. Piper argued it is not reasonable to base compensation on the value of the ¼ section as a whole, but on the value of a subdivided 4 acre parcel. That view of what "value of the land" means, however, is simply not in accord with the authorities binding on this Board. The "value of the land" in section 21(1) of the *PNGA* means value to owner (*Dau v. Murphy Oil, supra*). The value to owner of this land, subject to any special value, is the ¼ section value of agricultural land in the ALR. Mr. Piper, the owner of this land, can only use the land as agricultural land, and any loss of the use of that land or rights in that land is as agricultural land. The 8.06 acres comprising the right of way in this case has no value to Mr. Piper other than as agricultural land as it cannot be used or developed by him for another purpose. The presence of the pipeline in the right of way does not restrict Mr. Piper from continuing to use the right of way area for agricultural purposes.

[30] While the presence of the pipeline in the right of way does restrict building on the surface of the right of way, there is no evidence that it was reasonably probable at the time of the taking that Mr. Piper intended to build anything on the right of way. While the presence of the pipeline may impact the future subdivision and development of the Lands, there is no evidence that subdivision and development of these Lands was imminent or probable in the reasonably foreseeable future.

[31] The market value of the Lands is $1,250/acre. As $1,250/acre reflects the use of the land as agricultural land, it represents the value to owner, subject to evidence of any special value arising in the circumstances. There is no evidence that the particular 8.06 acres comprising the right of way across the Lands has any special value beyond that indicated by the market value for similar agricultural land other than as may be reflected in increased crop yields as a result of the practice of zero tilling.

There is no evidence before me, however, that lands that are zero tilled sell for more than lands that have been conventionally farmed. To the extent the zero till practice on these lands increases the yield, that factor can be taken into consideration in considering any loss of profits. I find the "value of the land" within the meaning of section 21(1) of the *PNGA* is $1,250/acre.

[32] This finding is not, in itself, determinative of the compensation payable in this case. The compensation is not a purchase price – no land is being purchased. It is simply a finding that in considering the "value of the land" in determining an amount of compensation, that value is $1,250/acre representing the value of this land in agricultural use.

[33] While Mr. Piper's land is now encumbered with a right of way, he maintains residual value in the unencumbered land and a reversionary interest to regain the unencumbered title. Residual value is the value remaining in the hands of the landowner because of his ability to make economic use of the right of way area during the life of the right of way, in this case, by being able to continue farming the right of way area over top of the buried pipelines. I was not referred to any BC authority to assist in determining the residual value to the owner in a pipeline right of way. The Alberta Court of Queen's Bench has found the reversionary/residual interest in a pipeline easement to be 75% of the land value (*Dome Petroleum Limited v. Grekul, et al* [1983] A.J. No. 994). If Mr. Piper's residual/reversionary interest in the lands is represented by 75% of the value of the lands, then $312.50/acre represents the value of his lost interest.

[34] Considering the compulsory aspect of the entry, the value of the land at $1,250/acre and Mr. Piper's residual value in the land, the relatively minimal impact of this right of way to Mr. Piper's use and enjoyment of the Lands, the standard use of $950/acre in Board orders and agreements between landowners and resource companies for pipeline access over the last several years and continuing into 2008, I am not satisfied that Mr. Piper is entitled to compensation beyond that rate for his loss of rights. I find $950/acre ($7,657) adequately compensates Mr. Piper for his loss of rights in this case.

B. CROP LOSS

Parties' Evidence & Submissions

[35] Mr. Rosie testified that he will usually wait until the pipeline is in the ground, then follow up with landowners to determine compensation for damages and crop loss. His evidence was it is standard practice to pay three years damages at 100% for the first year and 50% for the second year. If construction and reclamation has been done properly, the landowner should get a good crop and, by the third year, there is less of a risk that the landowner will not get a good crop. His general practice with landowners is to find out what they are growing and, after the fact, find out yield and price actually obtained.

He says he often uses $400/acre which he says provides a good average for most crops and assumes a good crop.

[36] Mr. Rosie said last year was one of the driest years on record in the Dawson Creek area and that yields were down about 1/3 of normal. According to Statistics Canada, the average 2008 yields in British Columbia for oats and canola were 2.7 bushels/acre and 20 bushels/acre, respectively.

[37] Mr. Piper's evidence was that it takes 10 years of zero till practice to bring the soil to a healthy organic state. He estimated his total crop loss for a seven year period at $3,000/acre, based on $725/acre (100%) in the first year decreasing over 7 years to $125.00/acre (17%) in year seven. He calculated the acre rate on the basis of a 50 bushel yield of canola at $14.31/bushel and a 200 bushel yield of oats at $3.75/bushel. He provided copies of 2008 purchase and sale agreements between himself and Louis Dreyfus Canada Inc and Agro Source Ltd for canola and seed grade oats to support the commodity prices used in his estimate. He indicated 200 bushels of oats was his best crop received in the season before last season and in 2005, and that an average crop was 170 bushels. He said 50 bushels of canola was his best crop and 40 bushels an average crop. His yield for canola in 2008 was about 15 bushels/acre and for oats was about 45 bushels/acre.

[38] As of October 23, 2008 the average closing canola price ranged from $8.80 to $9.70 a bushel and the average closing oat price was $1.90/bushel according to the Alberta Ministry of Agriculture and Rural Development.

Board's Decision & Analysis

[39] I accept Mr. Piper's evidence that his zero tilled land out performs conventional farm land and that, as a result of the installation of the pipelines, the benefits of zero tilling will be lost on the right of way area for a period of time. His evidence was that it takes 10 years to develop the full potential of zero tilling. Under cross-examination, he acknowledged 10 years was a "best guess" based on his past experience but did not agree that 5 years would be sufficient time to fully receive the benefit of zero tilling. Arc has not provided any evidence to the contrary with respect to the benefits of zero tilling or the amount of time that it takes for zero tilled land to reach its potential. Mr. Piper's estimate of crop loss is based on seven years, which I find is reasonable on the evidence before me. While Arc's offer estimating crop loss over a three year period may be appropriate and sufficient in most cases, it does not adequately consider that the crop loss in this case will extend beyond three years because of the zero till nature of this farm.

[40] Mr. Piper's calculation over seven years, however, is based on his best crop ever, not his actual 2008 crop or his average crop. When determining crop loss for 2008, the actual loss can be determined based on actual yield and contract price now that those factors are known.

When estimating crop loss for future years, a reasonably probable crop loss would be based on average yield. As one cannot know or predict commodity prices, and in the absence of evidence of average crop prices in average yield years, I will estimate future crop loss based on the prices obtained in 2008.

[41] On the evidence before me, Mr. Piper's actual crop loss for 2008 as a result of the right of way was $865.00 for canola (calculated as: 4.03 acres x 15 bu/acre x $14.31/bu = $865.03) and $680.00 for oats (calculated as: 4.03 acres x 45 bu/acre x $3.75/bu = $680.06) for a total of $1,545.

[42] His crop loss based on 100% of average yields and 2008 prices would be $2,307 for canola (calculated as: 4.03 acres x 40 bu/acre x $14.31/bu = $2,306.77) and $2,569 for oats (calculated as: 4.03 acres x 170 bu/acre x $3.75/bu = $2,569.12) for a total of $4,876.

[43] Applying the percentages applied by Mr. Piper to estimate loss in 2009 to 2014 (in the absence of any other evidence with which to calculate the loss while the land regains the benefit of zero till) results in crop loss as follows:

2009	$4,876 x 86%	$4,193
2010	$4,876 x 72%	$3,511
2011	$4,876 x 58%	$2,828
2012	$4,876 x 45%	$2,194
2013	$4,876 x 31%	$1,512
2014	$4,876 x 17%	$ 829
	Total 2009-2014	$15,067

[44] I find Mr. Piper is entitled to be compensated for crop loss in the amount of $16,612 ($1,545 + $15,067).

C. GLOBAL LUMP SUM

[45] I have found compensation for loss of rights is $7,657 and for loss of profits is $16,612. These amounts add up to $24,269. Stepping back and considering the totality of the award, I am satisfied that rounding this figure to $24,300 provides fair and reasonable compensation in the circumstances of this case.

D. ANNUAL PAYMENTS

[46] Mr. Piper seeks an annual payment for the pipeline right of way on his Lands, but provided no submissions as to the appropriate amount of an annual payment.

[47] Counsel, on Mr. Piper's behalf, argued that as a right of entry order takes away landowner's rights for an indefinite period of time, the only fair way of compensating the landowner is by an award of periodic payments. In that way, compensation is related to the time that the landowner's rights are affected. He argues that no reasonable landowner would willingly give up his or her rights to allow someone else to occupy his or her property to operate a sour gas pipeline for an indefinite period of time without requiring fair compensation over the length of time that the pipeline will be operated. He submits landowners should not be expected to accept less when their rights are forcibly taken away under the *PNGA*. I was not provided any evidence of what a "reasonable landowner" would consider "fair compensation" for the loss of annual rights in the event the landowner was able to negotiate their loss – likely because no such evidence exists given the loss of these rights is not negotiable.

[48] Counsel argued use of the right of way area for anything other than growing hay or crops is precluded and that land outside the right of way area is also affected by setback regulations, especially so in the case of a sour gas pipeline. He submitted future owners or a potential buyer will be wary and the risk of a pipeline leak or explosion, no matter how slight, is an adverse effect that cannot be ignored. However, there is no evidence that the value or marketability of the Lands will be diminished as a result the presence of a sour gas pipeline under the Lands. There is no evidence of lost opportunity with respect to the Lands, or that the presence of the pipelines will interfere with contemplated future use of the Lands.

[49] Counsel referred to two recent decisions of the Alberta Surface Rights Board awarding annual compensation for a pipe line right of way: *Penn West Petroleum Ltd v. North East Muni-Corr Ltd*, Decision No. 2008/0187 and *Enbridge Pipelines (Athabasca) Inc. v. Karpetz, et al*, Decision Nos. 2008/0362 *et al*. I was advised that the *Penn West* decision had been appealed and that the *Enbridge* decision would likely be appealed. Counsel submitted this Board was on the right track in its 1977 decision in *Houston Oils v. Berry*, Order 91A, which ordered an annual payment, albeit it minimal, for a pipeline right of entry.

[50] The Board's 1977 decision in *Houston Oils* is, to my knowledge, the only time this Board has awarded an annual payment for a pipeline entry. At $10 a year, the annual award can only be considered nominal. I was referred to two more recent decisions (*Talisman Energy v. Beresheim*, Order 336A, May 11, 2001 and *Spectra Energy Midstream Corporation v. Vause*, Order 420A, December 11, 2007) both declining to make an award of annual compensation for a pipeline entry.

[51] The decisions of the Alberta Surface Rights Board are not binding on this Board. In considering them, this Board must be cognizant of the differences in the relevant legislation. Without going so far as to say than an award of annual compensation in a pipeline case will never be appropriate, it is evident that the legislative criteria in BC and Alberta setting out the factors to be considered in

determining compensation are different and permit themselves more easily of an award for speculative future loss in Alberta than they do in BC. Counsel for Arc pointed to the provision of section 25(1) of the Alberta *Surface Rights Act* (*SRA*) allowing for the consideration of adverse effect, nuisance, inconvenience, noise and damage that "might be caused by or arise from" the entry. In contrast, section 9(2) of the *PNGA* establishes liability to pay compensation "for loss or damage *caused* by the entry" as opposed to that "*might be caused or arise from*" the entry (emphasis added) and section 21(1) of the *PNGA*, unlike section 25(1) of the *SRA*, does not encourage consideration of speculative future loss. I can only conclude that compensation under the *PNGA* is intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable. An award for annual compensation would necessarily have to be based on evidence of probable and reasonably foreseeable ongoing and recurring loss or damage that can be reasonably quantified. In the event there is future damage to the land or suffering to the landowner as a result of the entry that has not already been compensated for, it is open to the landowner to apply to the Board for compensation under section 16(2)(b) of the *PNGA*. Interestingly, a similar provision does not exist in the *SRA*, perhaps pointing to the purpose for making a speculative award in Alberta. The BC legislation, however, makes it neither necessary nor appropriate to make a speculative award.

[52] Another difference between the legislated factors for consideration in Alberta and BC is the presence in section 21 of the *PNGA* of consideration for the "compulsory aspect of the entry, occupation or use". There is an ongoing loss of intangible rights with respect to the land. The loss of quiet enjoyment and the loss of the right to determine the use of the land continue over the life of the pipeline. To the extent there is ongoing loss of rights, however, I find that this ongoing loss is recognized in the lump sum payment for loss of rights. In considering the compulsory aspect of the entry, consideration is given to the fact that the landowner has involuntarily lost certain rights to his lands and that those rights are lost over the life of the entry. The loss is compensated in a lump sum payment that is acknowledged as arbitrary and quite incapable of precise valuation. Although it is an ongoing loss, an annual payment would be no less arbitrary or incapable of calculation. In making an award for annual payment in *Houston Oils, supra*, the Board recognized the ongoing nature of the loss by contemplating "the reality that the owners' options as farmers are limited by the existence of the [pipe]line", but the nominal award made speaks both to its arbitrariness and incalculable nature. Indeed, I was provided no submissions to assist with quantifying an annual payment for this loss. In the absence of clear legislative direction with respect to the valuation of ongoing intangible rights, there seems little point to adding another arbitrary amount, particularly of a nominal nature, in an annual payment. I am satisfied that consideration of the compulsory aspect of the entry, occupation and use is intended to acknowledge the ongoing loss of intangible rights with a lump sum, and that the lump sum awarded in this case is sufficient compensation for this loss.

CONCLUSION

[53] I conclude Mr. Piper is entitled to lump sum compensation for the right of entry in the amount of $24,300. As he has already been paid $15,000, he is entitled to receive the balance of $9,300. I conclude an annual award is not appropriate in the circumstances of this case.

ORDER

[54] The Board orders Arc Petroleum Inc to pay Kane Piper $9,300, being the balance of compensation owed for loss caused by the entry.

Dated: December 5, 2008

FOR THE BOARD

Cheryl Vickers
Panel Chair

File No. 1598
Board Order # 1598-3

February 19, 2009

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NE ¼ Sec 10 & Lot 2 Sec 15 of Rge. 15 TWP 79 W6M
(The "Lands")

BETWEEN:

Arc Petroleum Inc.

(APPLICANT)

AND:

Kane Piper

(RESPONDENT)

DECISION

Heard by written submissions:	Closing January 20, 2009
Panel:	Rob Fraser
Submissions by:	Rick Williams, Barrister and Solicitor, for the Applicant Darryl Carter, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] On December 5, 2008, the Board issued its decision regarding compensation for the loss of rights and loss of profits arising from Arc Petroleum's (Arc) construction of a pipeline across land owned by Kane Piper (Piper).

[2] Arc asks the Board to review and vary its order with respect to the compensation payable for the loss of profits, being crop loss, pursuant to Section 26(2) of the *Petroleum and Natural Gas Act*.

[3] Section 26(2) reads:

> (2) The board may, on its own motion or on application,
>
> (a) rehear an application before making a determination, and
>
> (b) review, rescind, amend or vary a direction or order made by it, the chair or a board member.

[4] The Board ordered Arc to compensate Mr. Piper a total of $16,612 to account for crop loss. Arc asks the Board to reduce this amount because:

- There is a likelihood the award overcompensates Mr. Piper;
- The award fails to consider Mr. Piper's evidence that his land outperforms other land by about 30% year after year and;
- The Board exceeded its jurisdiction by relying on best guesses, bald assertions and projections without any empirical basis.

[5] Piper says that Arc is simply re-stating arguments made in the arbitration hearing, and it is wrong to expect a different member of the Board to reach a different decision without hearing either evidence or argument.

ANALYSIS

[6] Arc requests the Board review its decision, which I take to be an application pursuant to section 26(2)(b) of the *Act*.

[7] Section 26 uses the word 'may', which means the Board has the discretion to rehear, review, amend or vary its order. The wording does not create a right or entitlement, but allows for the Board to exercise its discretion if there is sufficient reason for it to do so. Circumstances that might warrant the exercise of the Board's discretion include, but are not limited to, a change in circumstances since making the original order, new evidence not available at the time of the original order, a clear error of law, or an issue relating to fairness and the principles of natural justice.

[8] Arc argues the Board erred in determining the amount of compensation payable to Mr. Piper, and sets out an alternative calculation. In its decision the Board says at paragraph 39 that it accepted Mr. Piper's evidence, although based on a "best guess" and found that Arc had not provided any contrary evidence. Further in paragraph 43, the Board says that it applied percentage crop loss as applied by Mr. Piper, "in the absence of any other evidence with which to calculate the loss while the land regains the benefit of zero till".

[9] Arc now says that it did not receive a break down of Mr. Piper's evidence until the morning of the hearing and had no opportunity to lead contrary evidence. As well, Arc says that Mr. Piper's own admission points to his calculations being exaggerated and overstated. Arc asks the Board to vary its order to reflect a 30% difference between zero-till and non zero-till lands, and asks the Board to vary the compensation period from seven to three years.

[10] Arc says it was disadvantaged and caught by surprise by Mr. Piper's evidence. If that was the case, and there is nothing in the decision to support this allegation, Arc could have sought an adjournment or some other remedy to give them sufficient time to seek contradictory evidence. They did not, the hearing proceeded and the Board considered the evidence and submissions before it and reached a decision. I do not find this a compelling reason for the Board to exercise its discretion to review its decision.

[11] The basis for Arc's request for a recalculation of the compensation is Mr. Piper's assertion that the difference between zero-till and conventional till productivity is about 30%, yet Mr. Piper starts with a calculation of 86% for the first year of crop loss. A plain reading of the Board's decision points to Arc confusing concepts. The Board found as fact that there is a 30% difference in productivity. However, this is independent of the calculation of the time necessary to return his land from its disturbed state after the installation of the pipeline to its former zero-till state. The Board was faced with Mr. Piper's "best guess" that it would take ten years to regain the productivity and his disagreement that this could be achieved in five years. The Board chose a mid-point of seven years, accepted the starting point of 86% crop loss in the first year and adjusted for increased productivity until the land reached 100% zero-till productivity. I cannot accept Arc's contention that the Board relied on a "flawed calculation" in estimating crop loss. Therefore, the Board made no error.

[12] The Board's arbitrator says more than once that she relied on Mr. Piper's evidence, and that Arc produced nothing to the contrary. On that basis alone, I would find that Arc has failed to establish a circumstance where the Board ought to exercise its discretion and review the decision. The Board heard the evidence, decided what was most compelling, and reached a decision. I agree with Piper that Arc is asking the reviewer to reach a different conclusion without the benefit of hearing the evidence and hearing submissions, and this is administratively incorrect.

[13] In this review, I am limited to a review of the Board's decision and must base my decision on it's contents alone. I was not present at the hearing, nor do I have the benefit of hearing the parties' evidence, testimony and argument. It would be wrong for me to substitute my view of the evidence for those of the decision maker, unless the decision contains an error of law, a jurisdictional error, or fundamental flaw.

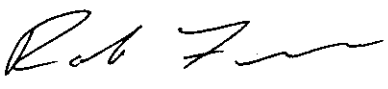
[14] Arc advances argument relating to the legislative intent regarding estimating reasonably foreseeable damages. Arc had the opportunity to advance this argument before the arbitrator during the hearing, allowing Piper an opportunity to provide rebuttal and allowing the Board to consider the merits of Arc's interpretation. They did not. Raising this argument in the review application, after the Board decision has been issued, is simply too late. If a party is allowed to raise new evidence and new argument in a review application, the Board will never be able to close a file, as the parties could continually apply for a review of some or all of a decision if they continued to disagree or if they wished to keep the arbitration process open. This is certainly could not have been the intention of the legislature in enacting section 26 of the *Act*.

CONCLUSION

[15] I find that Arc has not convinced me that their application falls within the circumstances where the Board could exercise its discretion to review and vary its decision. Arc in essence asks me to take a different view of the evidence presented, to view it in a different light, and come to a different conclusion. Therefore, the Board declines to exercise its discretion pursuant to section 26(2) of the *Petroleum and Natural Gas Act*.

Dated: February 19, 2009

FOR THE BOARD



Rob Fraser, Panel Chair

File No. 1633
Board Order 1633-1

May 5, 2010

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782
(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

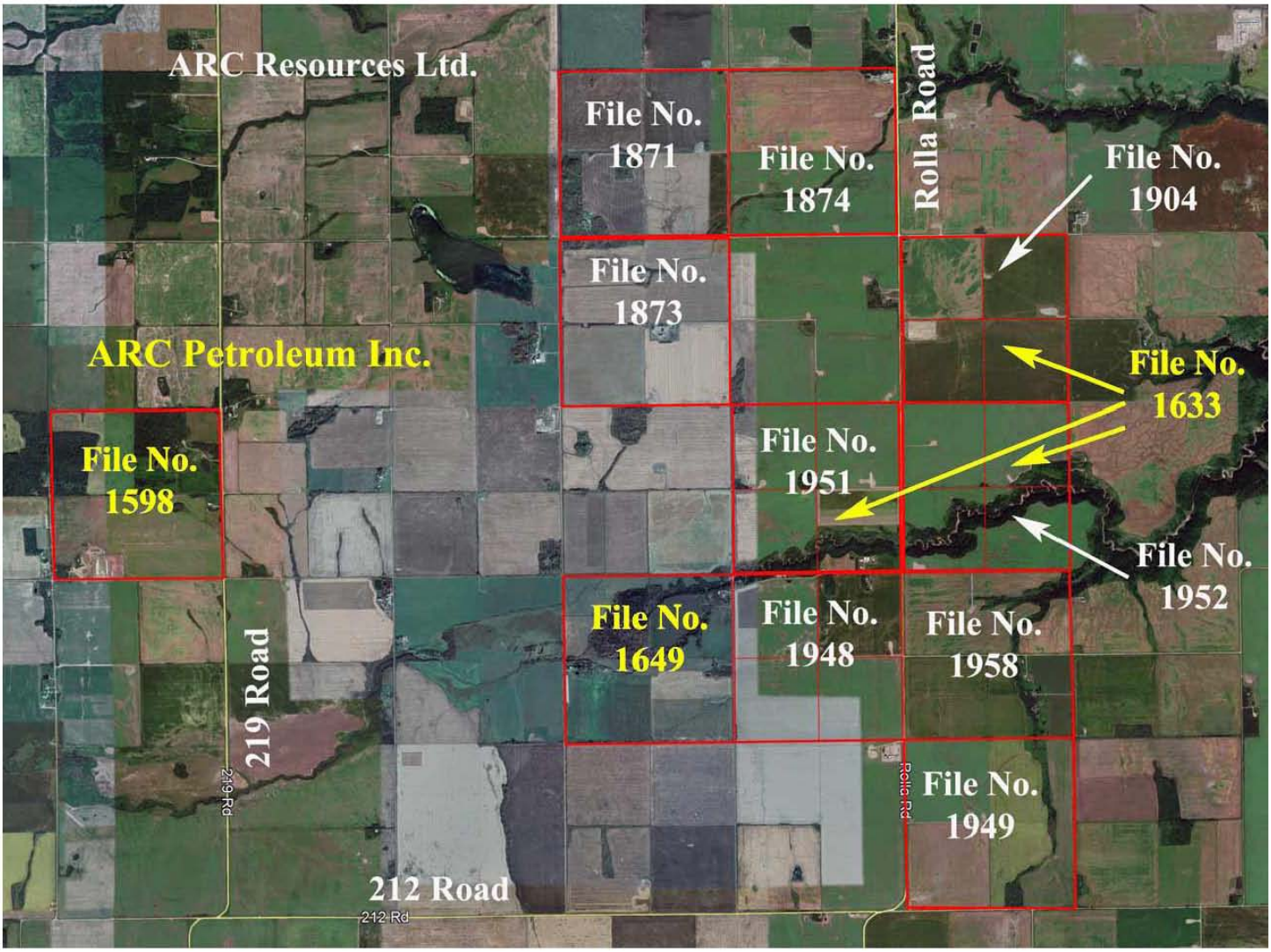
(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER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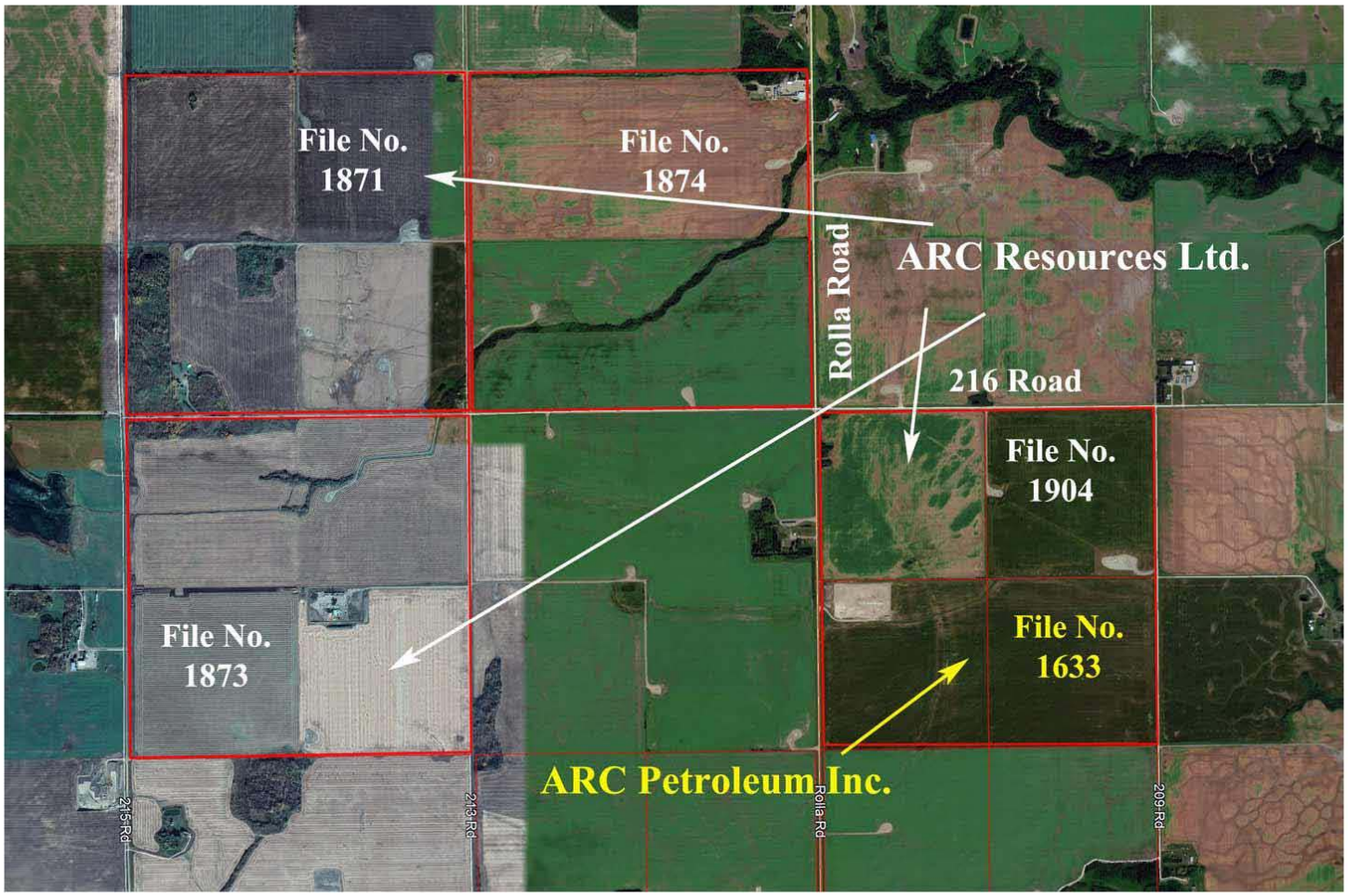
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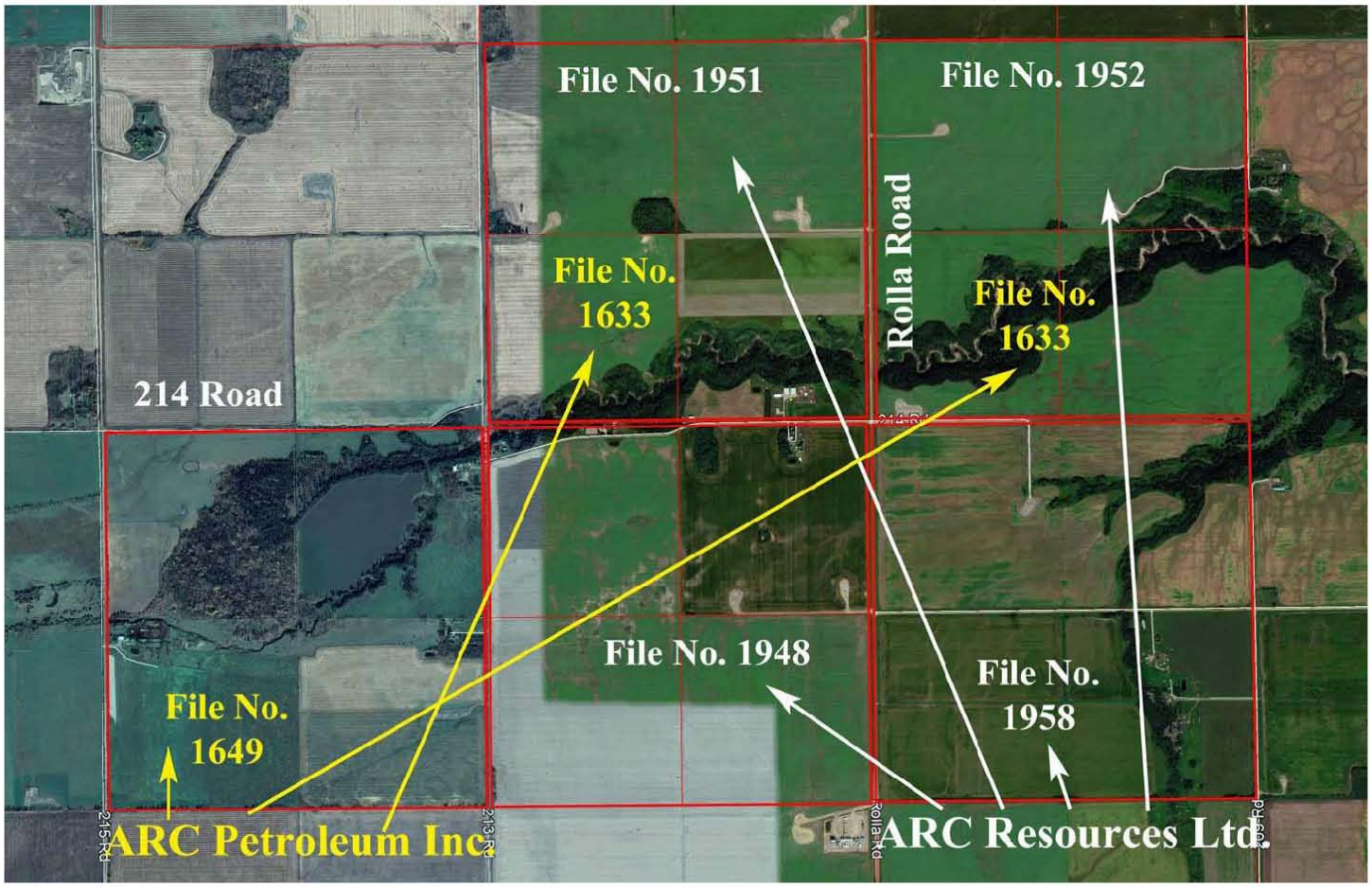
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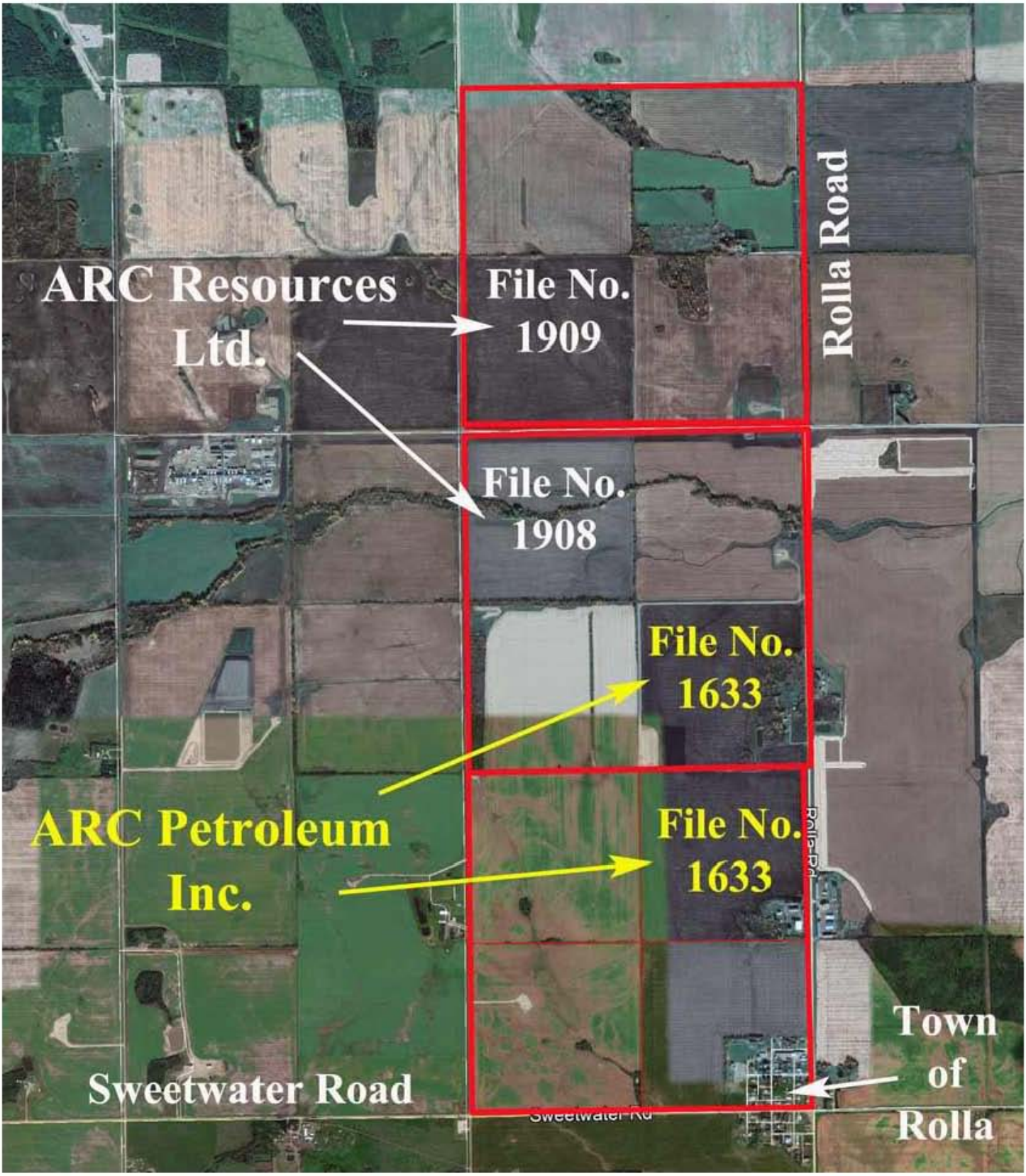
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Town of Rolla
Sweetwater Road
Sweetwater Rd

Heard by way of written submissions closing May 3, 2010

Rick Williams, Barrister and Solicitor, for the Applicant
Anne Clayton and Elvin Gowman, for the Respondents

INTRODUCTION

[1] ARC Petroleum Inc. ("ARC") has applied to the Board for mediation and arbitration of access to lands owned by John and Mary Miller (the "Millers") and compensation for that access. The applications concern two wellsites (ARC HZ Dawson C9-17-79-14 and ARC HZ Dawson D9-17-79-14) on NE ¼ of S. 17, Twp 79, R 14, W6M, and pipelines from ARC's wellsites to treatment facilities, namely a compressor station and a proposed plant.

[2] The Millers have applied to the Board for a preliminary determination on whether the Board has jurisdiction over these applications. Specifically, the Millers submit that the Board has no jurisdiction over the application for the wellsites as there is an existing lease over the lands and the terms of that lease govern. As for the pipelines, the Millers say that the Board has no jurisdiction as they are not "flow lines" within the definition of the *Pipeline Act*.

THE WELLSITES

[3] On February 20, 2007, the parties entered into a surface lease for wells ARC Dawson 9-17-79-14, and ARC HZ Dawson A9-17-79-14. An amendment to the lease was entered into between the parties in May, 2007 to include a further wellsite, ARC HZ Dawson B9-17-79-14, in which the parties also agreed that before a change in use could be implemented, "the owner must be consulted and a written agreement negotiated."

[4] ARC is now seeking access to construct and operate two additional wells (C9-17-79-14 and D9-17-79-14) adjacent to the existing wells.

[5] The Millers say that, notwithstanding the approval of the Oil and Gas Commission, the Board has no jurisdiction over the application regarding these two additional wells because of the requirement for a written agreement to be negotiated, which has not been done. They say the Board has no authority under the *Petroleum and Natural Gas Act* (the "*PNGA*") to interfere with the contractual obligations between the parties.

[6] In support of this argument, the Millers rely upon section 1(a) of the *Surface Lease Regulation*, BC Reg. 479/74 (the "Regulation") which provides that every surface lease shall contain a term that no surface area covered by the lease shall

be used for purposes other than those set out in the lease unless the grantor of the lease consents in writing to such other use.

[7] ARC submits that ARC has approached the Millers to negotiate but was unsuccessful, and therefore, has applied to the Board. ARC's application is within the scope of the Board's authority and it is not contingent nor does it require the Board to determine the contractual obligations under a prior lease. In fact, ARC says the Board has no jurisdiction to adjudicate the issue of contractual interpretation of the lease and over the remedy the Millers are really seeking, which is specific performance of the lease. In the alternative, ARC says that the clause in the amendment of the lease requiring written agreement for a change in use is void for uncertainty and legally unenforceable.

Board's decision:

[8] There are two methods (section 9 of the *PNGA)* by which an oil and gas company can gain access to a landowner's property: either to enter into a surface lease allowing the entry upon terms negotiated between the parties, or if an owner of the land refuses to grant a satisfactory surface lease, to apply to the Board for a right of entry order.

[9] The Board's jurisdiction over this application is contained in section 16 of the *PNGA*. Section 16 provides that "a person" may apply to the Board if the person "requires land to explore for, develop, or produce petroleum or natural gas or explore for, develop or use a storage reservoir or for a connected or incidental purpose, and an owner of the land refuses to grant a surface lease satisfactory to that person authorizing entry, occupation, or use for that purpose..."

[10] The Millers have not submitted anything to say that the legislative requirements for an application to the Board as set out in the *PNGA* have not been met.

[11] Although, there is nothing in the *PNGA* that precludes the Board's jurisdiction due to existing surface leases, they rely upon the terms of the amendment to the lease. But, the fact that there is an existing lease does not preclude the Board's jurisdiction or a company's ability to apply to the Board under the *PNGA*. The Board is not granting a surface lease or amendment to a surface lease, but rather is determining whether a right of entry should be granted and mediating and adjudicating on the appropriate compensation. Even after a right of entry order is granted, the parties can still negotiate and enter into a surface lease, or written amendments to an existing lease, and are encouraged to do so. If a surface lease or written amendments to an existing lease are entered into, the *Regulation* would apply. The *Regulation* itself does not preclude the Board's authority under the *PNGA*. Rather the *Regulation* governs the requirements when a surface lease is entered into.

[12] Here, ARC has made an application under the *PNGA* for a right of entry and appropriate compensation as the owner of the land has refused to grant a satisfactory surface lease for this new wellsite. The application is within the scope of the Board's authority. The fact it is on existing leased lands does not change the fact that ARC cannot enter the area for purposes of constructing and operating the new wellsites without either a surface lease or right of entry order from the Board. The existence of the prior lease, registered or unregistered in the land titles office, and the terms of that lease are irrelevant to the Board's exercise of its jurisdiction under the *PNGA*. If the Millers wish to enforce the terms of the lease or any other contract, they can do so by way of application to the courts. The Board has no authority to interpret or enforce the terms of the lease, which is what the Millers are essentially requesting.

[13] The Board is not interfering with the contractual obligations between the parties in dealing with this application. It is still up to the parties to negotiate the terms of access and compensation for access for the new wellsites. However, to date, they have been unable to do so. The failure to come to terms cannot now be used to preclude ARC from obtaining access or entry under the *PNGA*.

[14] Therefore, the Millers' application that the Board has no jurisdiction over application 1633-2 is dismissed.

THE PIPELINES

[15] The Millers say that they do not dispute the routing of the pipelines over their lands, however, they want section 3 of the *Expropriation Act* to apply because these pipelines are not "flow lines" as defined in the *Pipeline Act.*

[16] Section 16 of the *Pipeline Act* provides that Part 7 of the *Railway Act* applies to "pipelines" and Part 3 of the *PNGA* applies to flow lines. If the line is a "pipeline" as defined, then the provisions of the *Railway Act* provide that if compensation cannot be agreed upon, the matter is remitted to the courts for arbitration and the *Expropriation Act* applies to determine the "amount" of the compensation, not that section 3 applies.

[17] If the line is a "flow line", then the provisions of the *PNGA* giving the Board jurisdiction applies.

[18] The *Pipeline Act* defines flow lines as follows: "a pipeline serving to interconnect wellheads with separators, treaters, dehydrators, and field storage tanks or field storage batteries." Therefore, a flow line is a specific type of pipeline.

[19] The Millers submit that the lines that ARC proposes do not "interconnect" wellheads with any of these facilities but transport sour gas under pressure from wellhead to a gas processing plant as part of a pipeline network. They say that the plain, dictionary meaning, is that there has to be reciprocal connections between wellheads. In support, they provide a report from Herb Lexa, former appraiser with BC Assessment, who says that the lines do not meet the definition of "flow line" and that the definition requires that the facilities be in the "field". Mr. Lexa offers the opinion that the Board has no jurisdiction to hear these matters because these pipelines are not flow lines.

[20] The Board does not accept Mr. Lexa's opinion evidence. Firstly, Mr. Lexa purports to provide opinion evidence on the ultimate issue before the Board, namely whether or not the lines in question meet the statutory definition of "flow line". In addition, he provides an opinion based on his statutory interpretation of the *Pipeline Act*, again a matter that the Board must decide. As such, his opinion evidence is improper. Finally, Mr. Lexa is not qualified to provide a legal opinion and has no expertise to do so based on his qualifications and lack of legal training. Therefore, I give Mr. Lexa's report little weight.

[21] Finally, the Millers say that only the Oil and Gas Commission has the authority to classify a pipeline and that there is no provision in the *PNGA* for the Board to make orders granting a statutory right of way, only orders granting surface leases.

[22] ARC submits that these lines are "flow lines" as defined by the *Pipeline Act* because the proposed lines serve to directly interconnect wells with existing treatment facilities at the ARC compressor station at 1-34-79-14-WGM and the proposed ARC Dawson plant at 4-35-79-14-WGM. The compressor station contains two separators and the proposed plant will contain one separator. In support, ARC provides an Affidavit from its engineer, Leah Hrab. In addition, ARC relies upon the Board's decision in *Spectra Energy Midstream Co v. Vause*, MAB Order 420A (Dec. 11, 2007).

Board's Decision:

[23] The Board has jurisdiction over these applications if the proposed pipelines are "flow lines" within the definition of the *Pipeline Act*. The Board, not the Oil and Gas Commission, has the authority to determine whether or not it has jurisdiction under the provisions of the *PNGA*, and where relevant, the *Pipeline Act*. Section 16 of the *Pipeline Act* specifically states that Part 3 of the *PNGA* applies to flow lines, and this part gives the Board jurisdiction over right of entry and compensation, the very application before it now. The application is not for a statutory right of way and the Board is not attempting to issue as statutory right of way under the application. Rather, the application is for a right of entry order and

determination of the appropriate compensation, which the Board has authority over under Part 3 of the *PNGA*.

[24] The Millers say that the line is a "pipeline", namely a conduit through which the gas is transported under pressure to a treatment facility. It is true that this meets the definition of a "pipeline" under the *Pipeline Act*, however, this does not preclude the line from also being a flow line because a flow line is a type of pipeline. The definition of "pipeline" confirms this because it includes "(b) all gathering and flow lines used in oil and gas fields to transmit oil and gas..." If the line meets the narrower definition of "flow line", the Board has jurisdiction.

[25] The evidence before me is that these lines propose to interconnect the wells with treatment facilities at the compressor stations and the proposed Dawson plant, both of which contain separators (see Affidavit of Mr. Hrab). There is no evidence to the contrary. Therefore, they are "a pipeline serving to interconnect wellheads with separators", and consequently, are "flow lines". There is no requirement that the separators be "in the field", rather the definition speaks to storage tanks and batteries being in the "field".

[26] The Board has previously applied the principles of statutory interpretation to the definition of "flow line" in the *Spectra* decision where it found that pipelines that connected with producer owned pipelines, rather than wellheads directly, were still "flow lines" as the pipeline need only "serve" to connect, not connect directly. This decision is not under appeal as argued by the Millers, rather leave to file a judicial review of this decision was denied. There is currently a judicial review petition of another of the Board's decisions in that application to amend the style of cause, an unrelated matter. In fact, upon dismissing the application for leave to file a judicial review of the *Spectra* decision, Madam Justice Bruce found that the likelihood of a successful judicial review on the jurisdictional question (ie whether the Board had jurisdiction and if the line was a "flow line") was marginal based on the applicable standard of review.

[27] The Miller's arguments that the Board has no jurisdiction because section 3 of the *Expropriation Act* prevails, or that section 16(1) of the *PNGA* only refers to an owner refusing a surface lease, are unfounded. The correct interpretation of the interplay between *Pipeline Act*, the *PNGA*, and the *Railway Act* was set out in the Board's reasons in *Spectra*. If a pipeline meets the definition of "flow line", the Board has jurisdiction and if it does not, then the *Railway Act* prevails. This interpretation was upheld by Bruce, J. Section 3 of the *Expropriation Act* has no role to play in precluding the Board's jurisdiction nor does it apply to flow lines. As Section 16 is in part 3 of the *PNGA*, it applies to flow lines pursuant to section 16(4) of the *Pipeline Act*.

[28] Therefore, the Board dismisses the Millers' application that the Board has no jurisdiction over the applications 1633-1, 1633-6, 1633-3, 1633-7.

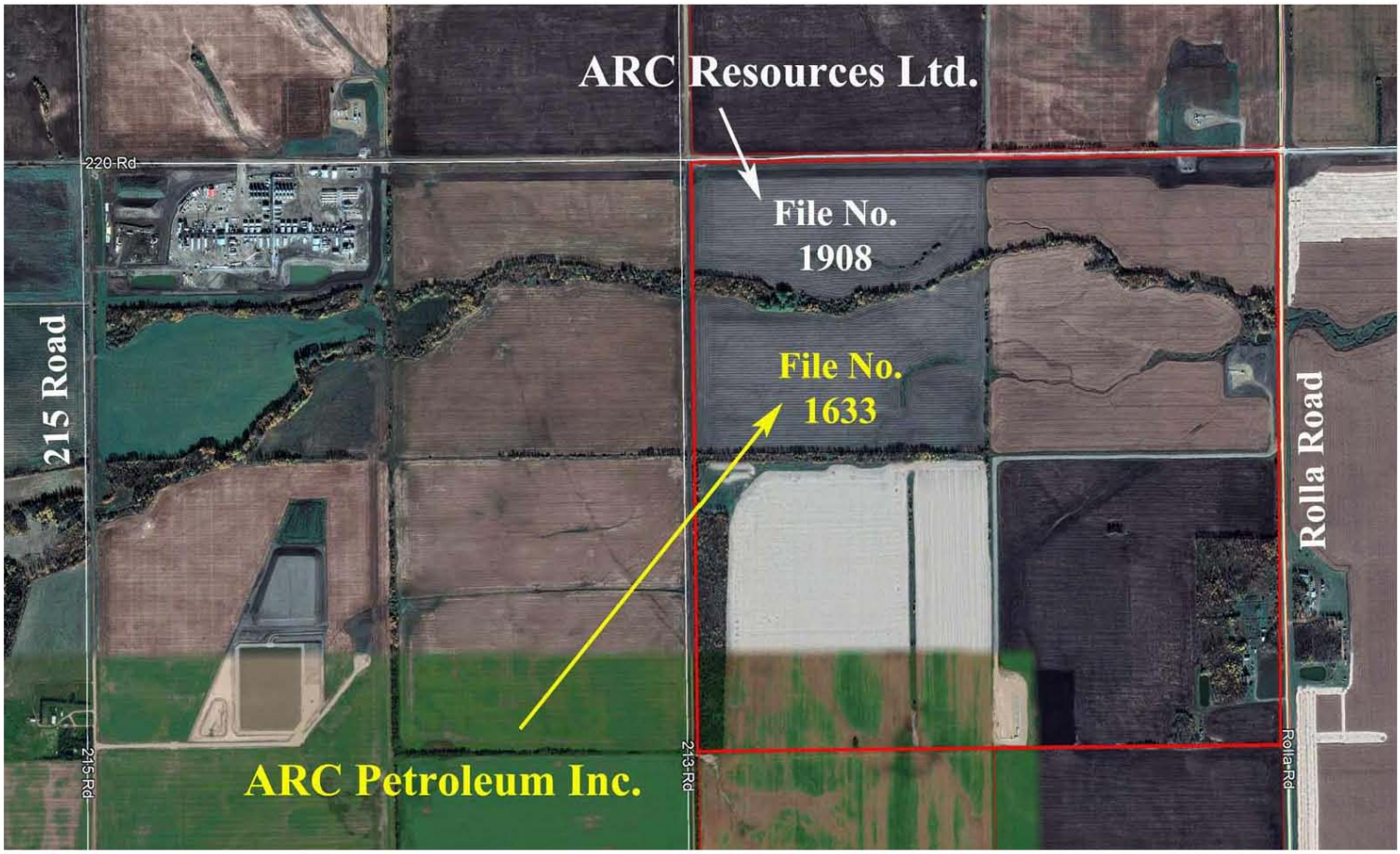
CONCLUSION

[29] The Board has jurisdiction and will proceed with these applications and with the mediation on May 26, 2010 in Fort St. John, BC.

Dated May 5, 2010

FOR THE BOARD

Simmi Sandhu, Member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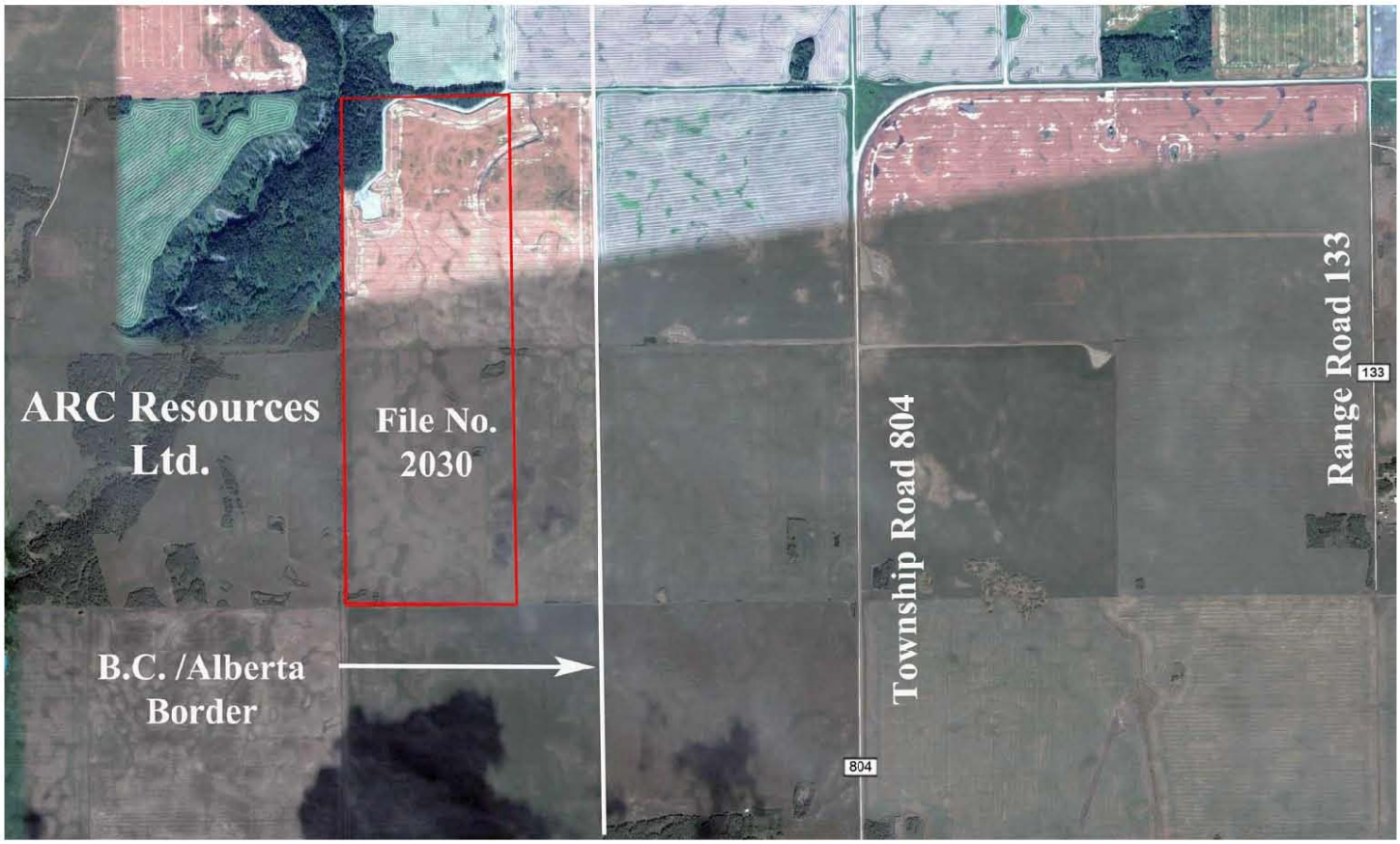
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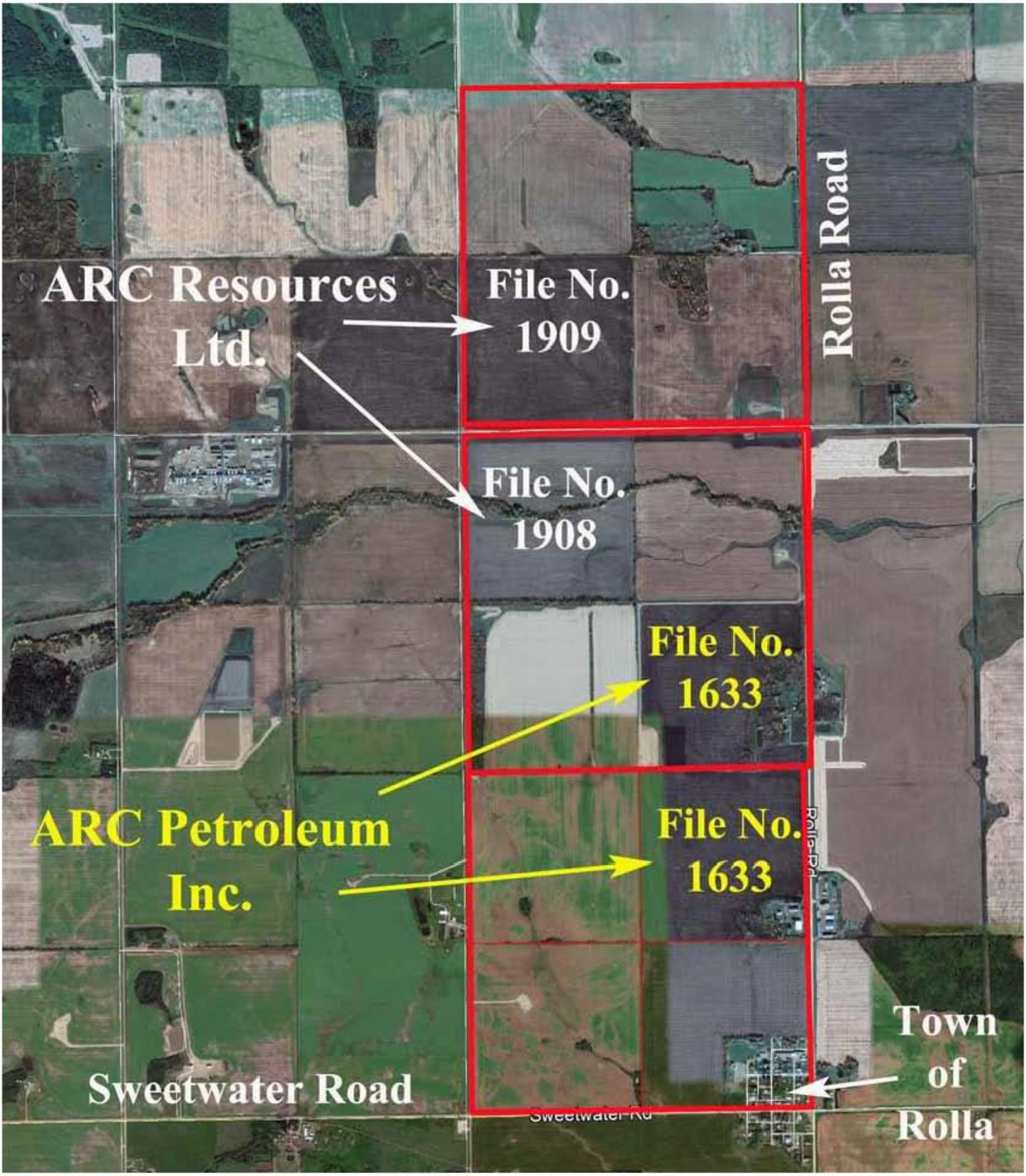
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ARC Petroleum Inc.
File No. 1633
Town of Rolla
Sweetwater Road
Sweetwater Rd

File No. 1633
Board Order 1633-2

June 7, 2010

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
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SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan 1782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER

Heard by telephone conference:	May 28, 2010
Mediator:	Simmi K. Sandhu
Appearances:	Rick Williams & Andrea Fiedler, for the Applicant, ARC Petroleum Inc. Les Mackoff, Elvin Gowman & Anne Clayton, for the Respondents, John and Mary Miller

[1] ARC Petroleum Inc. (ARC) applies to the Board for mediation and arbitration seeking entry to the Lands owned by the Millers in order to construct, install and operate, and maintain flowlines and wellsites. The Millers have a number of concerns with the entry.

[2] The Board may authorize the entry onto private land subject to specified terms if entry is required to explore for, develop or produce petroleum or a natural gas or for a connected or incidental purpose. The Oil and Gas Commission (OGC) has issued or is in the process of issuing either approvals for the construction and operation of flowlines 9-17 to 11-26-79-14, 15-26-78-15 to 9-17-79-14 and 5-5-80-14 to 1-31-79-14 and wellsites C9 and D9. ARC needs access to the Lands to construct, install and operate the flowlines and wellsites approved or to be approved by the OGC. The parties have agreed to the terms of entry, which terms are set out in the Order.

[3] A company who enters land for the purpose of developing or producing petroleum or natural gas is liable to pay compensation to the land owner for loss or damage caused by the entry, occupation or use of the land.

[4] ARC and the Millers do not agree on the amount of compensation payable for the entry. The parties take very different approaches to determine the appropriate compensation. As there has been no agreement on compensation, and as the parties have a significant difference of opinion, I am refusing further mediation and making the required orders for partial compensation and security deposit.

[5] **The Mediation and Arbitration Board orders**:

1. Pursuant to Rule 10(6) of the Board's Rules, further mediation is refused.

2. Upon payment of the amounts set out in paragraphs 4 to 7 below, the Applicant including its employees, contractors and assigns shall have the right of entry to and access across the portion of the Lands shown in Schedule "A" for the purpose of constructing operating and maintaining the flowlines and wellsites. This Order is subject to the application process required by the Oil and Gas Commission and nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission. The Order is also subject to the following terms and conditions:

a) ARC will use all reasonable efforts to maintain the soil admixing to no more than 20% subsoil,
b) ARC will use all reasonable efforts to maintain the work site and the public access roads free of excessive dirt and debris at all times during construction and operation of the subject pipeline and well sites,
c) ARC acknowledges that it is responsible for removal of rocks that are brought to the surface of the right of way during and following construction and in that regard will consult with the owners and the lessee in discharging this responsibility,
d) ARC will, within 7 days of receiving notice of a builder's lien claim being filed against the Lands as a result of the work being carried out by ARC on the subject property, cause the lien to be removed, either by way of paying the lien claimant or by paying the amount claimed into court in accordance with s. 23 of the *Builders Lien Act,*
e) All vehicles used in the farming operations of the Millers will have a right to cross the pipeline right-of-ways in the normal and ordinary course of such farming operations, regardless of whether the vehicle carries a farm license. For greater certainty, certain vehicles that are used in the farming operation for the delivery of fertilizer and other materials incidental to farming operation, as well as for the hauling of crops shall be permitted to cross the pipelines, notwithstanding that these vehicles may carry commercial plates only.

3. The Applicant shall serve the Respondents with a copy of the Order prior to entry onto the Lands.

Applications 1633-1, 1633-3, 1633-3 and 1633-7:

4. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

5. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $35,000.00, on the condition that if any of the flowlines do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment.

Applications 1633-3, 1633-4 and 1633-5:

6. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the

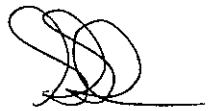
Respondents upon the agreement of the parties or as ordered by the Board.

7. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $20,000.00, on the following conditions:

   a) if any of the wellsites do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment, and
   b) if the Board orders compensation less than the partial payment, the Respondents shall refund to the Applicant the difference on a pro-rated basis.

DATED June 7, 2010

FOR THE BOARD



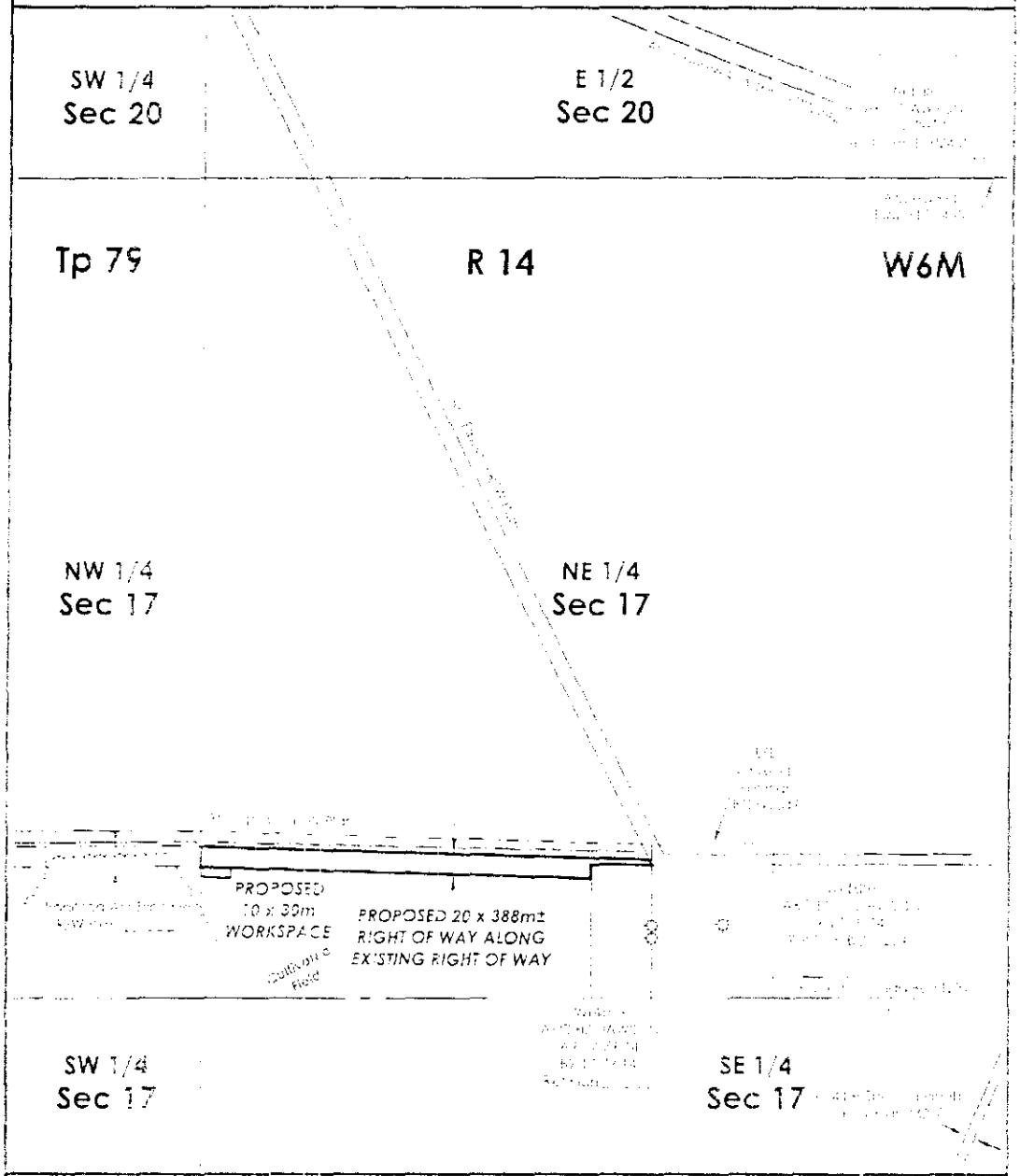
Simmi K. Sandhu, Panel Chair

schedule 8

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NE 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: [illegible] P.I.D. No.: [illegible]
OWNER(S): [illegible]

LEGEND
SCALE - 1:5,000
[illegible]

AREA REQUIRED:

[illegible]	[illegible]	[illegible]
TOTAL	0.54 ha	2.07 ac

can-am geomatics

CAN-AM FILE: J20090481

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NW 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT

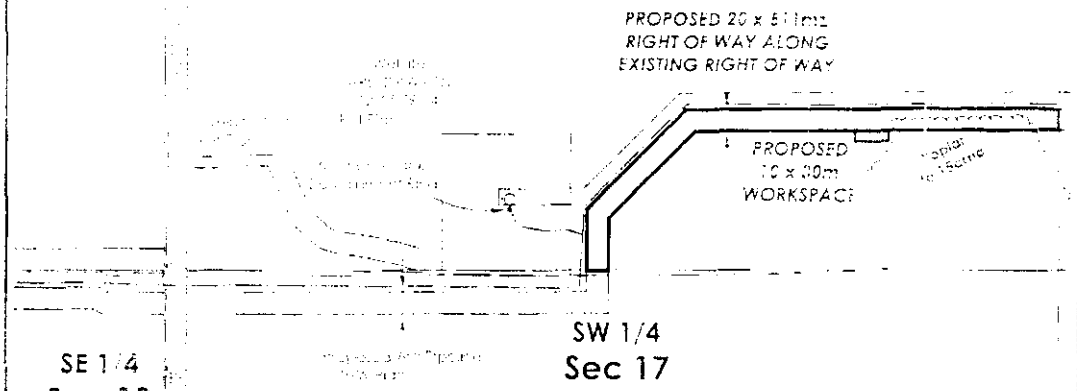
SE 1/4
Sec 19

SW 1/4
Sec 20

Tp 79 R 14 W6M

N 1/2
Sec 18

NW 1/4
Sec 17



SE 1/4
Sec 18

SW 1/4
Sec 17

TITLE No.: P.I.D. No.:
OWNER(S):

LEGEND

AREA REQUIRED:

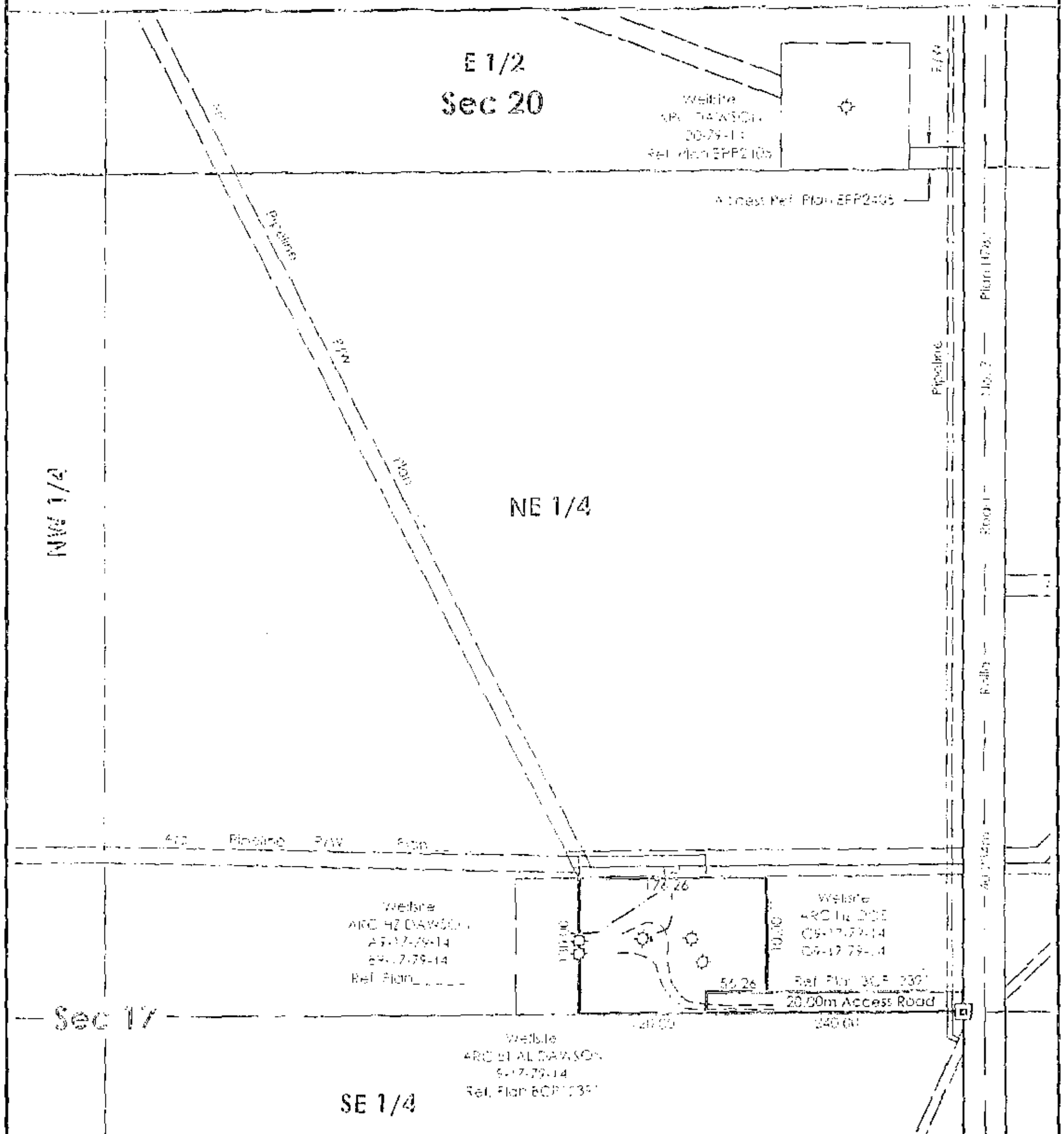
TOTAL:	0.5 ha	2.59 m²

can-am geomatics

CAN-AM FILE: J20090481

ARC PETROLEUM INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE IN
NE 1/4 Sec 17, Tp 79, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: PL9442 **P.I.D. No.:** 010-799-176

OWNER(S): Mary Kathleen Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
20th day of April, 2010.

Chad R. Sakundiak BCLS

AREA REQUIRED:

Wellsite	2.18 ha	5.39 ac
Access	0.48 ha	1.19 ac
TOTAL	2.66 ha	6.58 ac

NO	DATE	REVISION	DRN	CKD
0	10-04-20	Original plan issued		

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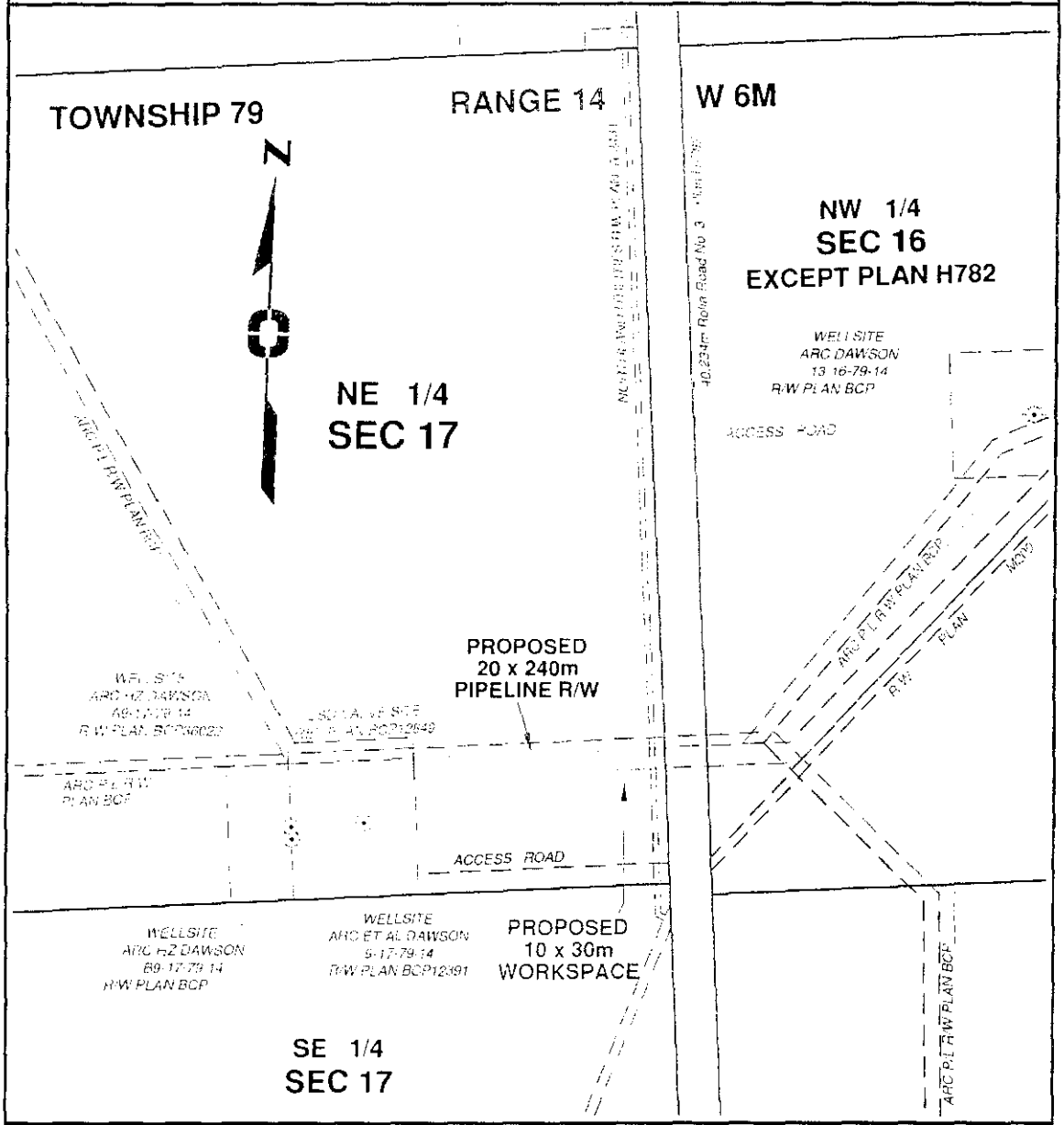
www.canam.com
Phone: 250.787.7111
Toll Free: 1.866.208.0365
Fax: 250.787.2323

CAN-AM FILE: J20090359
CAD FILE: J20090359PLOPB0
Client File No.: 106385
AFE No.:
Land File No.:
REVISION 0

SCHEDULE "A"

Attached to and made part of this Agreement dated this _____ day of _____ 20_____ between Mary Kathleen Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH EAST 1/4 OF SECTION 17 TOWNSHIP 79 RANGE 14 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	Mary Kathleen Miller
Title No:	PL2442
Parcel Identifier:	010-799-176

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	0.48 ha	1.19 ac
Temporary	0.03 ha	0.07 ac
Total	**0.51 ha**	**1.26 ac**

FOCUS
Focus Surveys

Focus Job No:	090072NP01R0
Ref Dwg:	090072CP01R0
Drafter:	CN

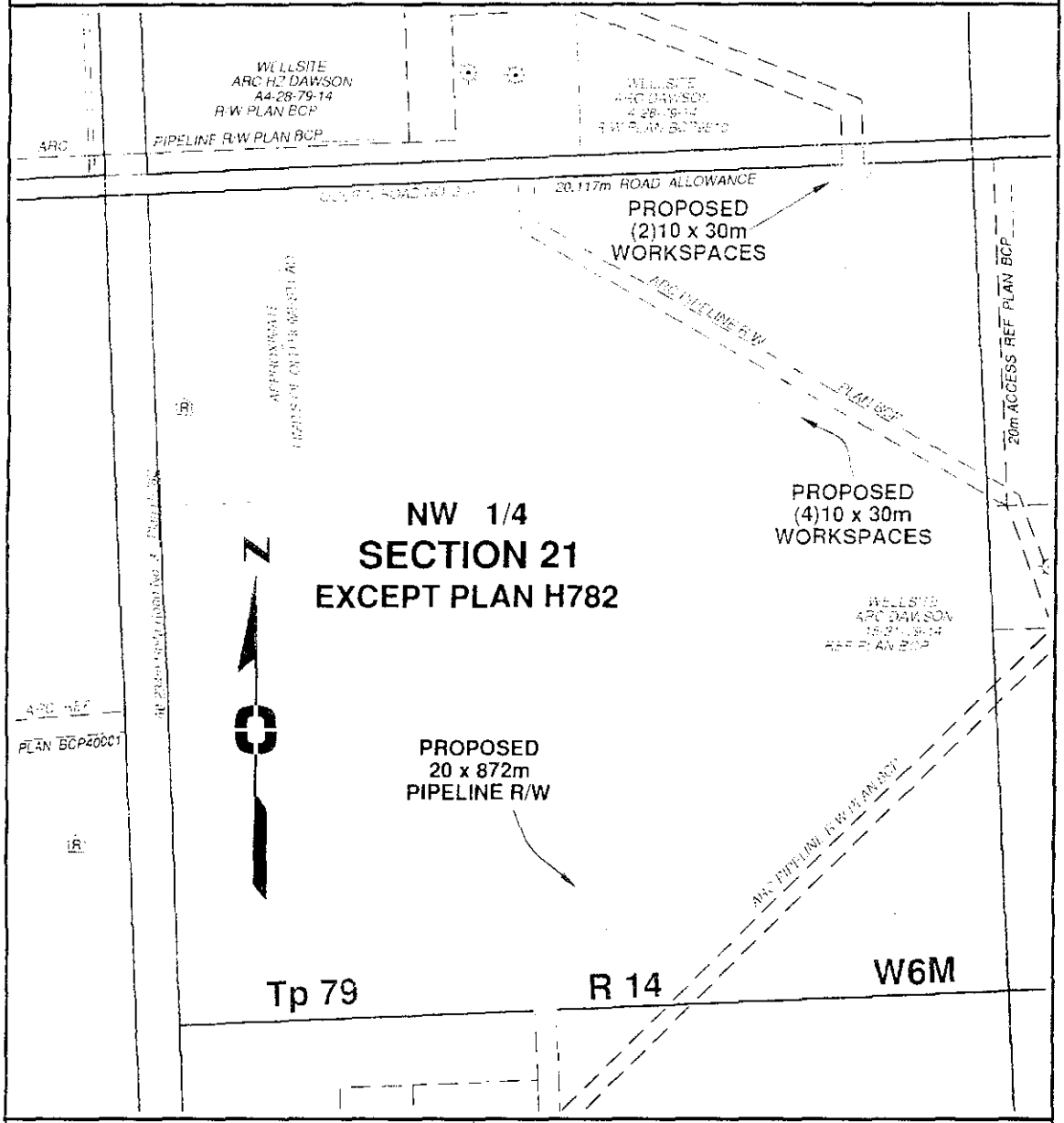
SCHEDULE "A"

Page__ of__

Attached to and made part of this Agreement dated this__ day of . 20__. between
Mary Kathleen Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 21 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT

(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	Mary Kathleen Miller
Title No:	PL2439
Parcel Identifier:	010-772-391

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	1.74 ha	4.30 ac
Temporary	0.18 ha	0.44 ac
Total	1.92 ha	4.74 ac

FOCUS
Focus Surveys

Focus Job No:	090072NP04R0
Ref Dwg:	090072CP01R0
Drafter:	CN

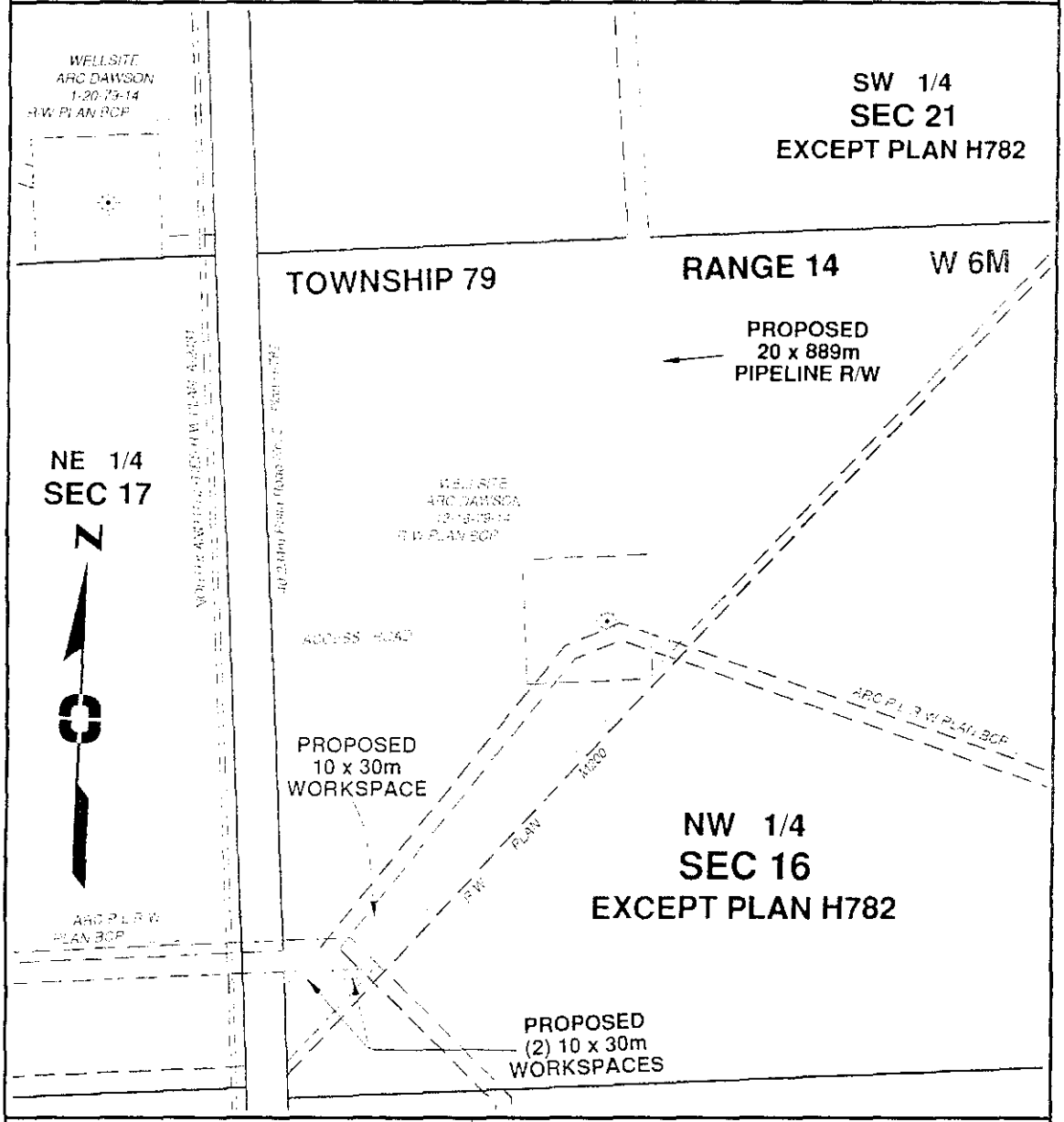
SCHEDULE "A"

Page ___ of ___

Attached to and made part of this Agreement dated this ____ day of _____, 20____, between John Irving Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 16 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT

(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	John Irving Miller
Title No:	PK47339
Parcel Identifier:	014-640-287

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	1.78 ha	4.40 ac
Temporary	0.09 ha	0.22 ac
Total	1.87 ha	4.62 ac

FOCUS
Focus Surveys
FCS Land Services Limited Partnership

Focus Job No:	090072NP02R0
Ref Dwg:	090072CP01R0
Drafter:	CN

ARC PETROLEUM INC.

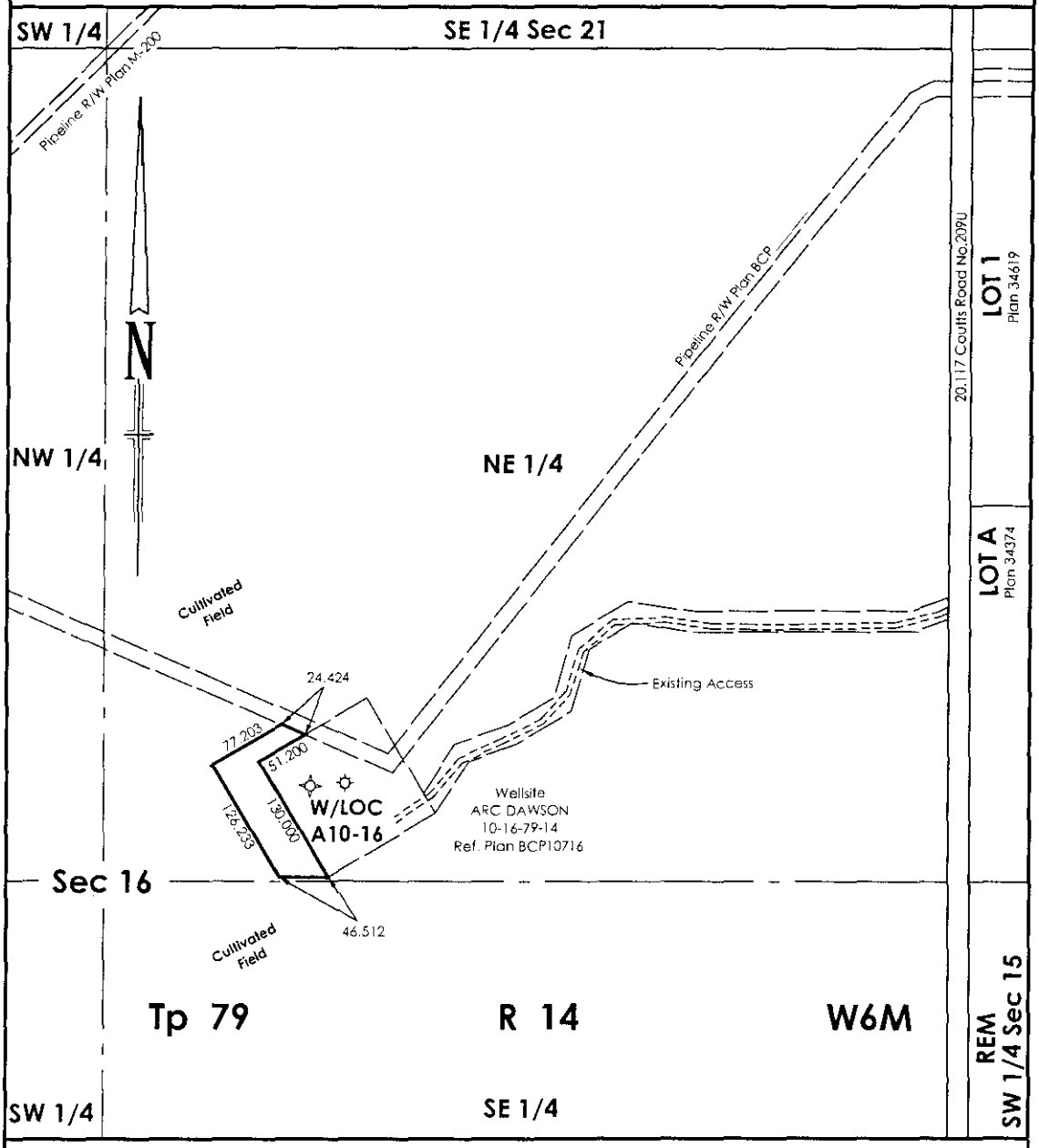
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED

WELLSITE IN

NE 1/4 Sec 16, Tp 79, R 14, W6M.

PEACE RIVER DISTRICT



OWNER(S): JOHN IRVING MILLER

TITLE No. 53041M

AREAS REQUIRED:

P.I.D. No. 016-045-319

WELL SITE	0.64 ha (1.58 ac)
TOTAL	0.64 ha (1.58 ac)

CERTIFIED CORRECT THIS 24TH DAY OF NOVEMBER, 2008.

BRYAN BATES B.C.L.S.

can-am geomatics bc
#200-9900 100th AVENUE
FORT ST. JOHN, B.C. V1J 5S7
ph (250) 787-7171

NOTES: DISTANCES SHOWN ARE IN METRES UNLESS OTHERWISE NOTED. AREAS REFERRED TO ARE OUTLINED IN BOLD.

SCALE = 1 : 5.000

50 0 100 200 300

METRES

JOB: J20080676

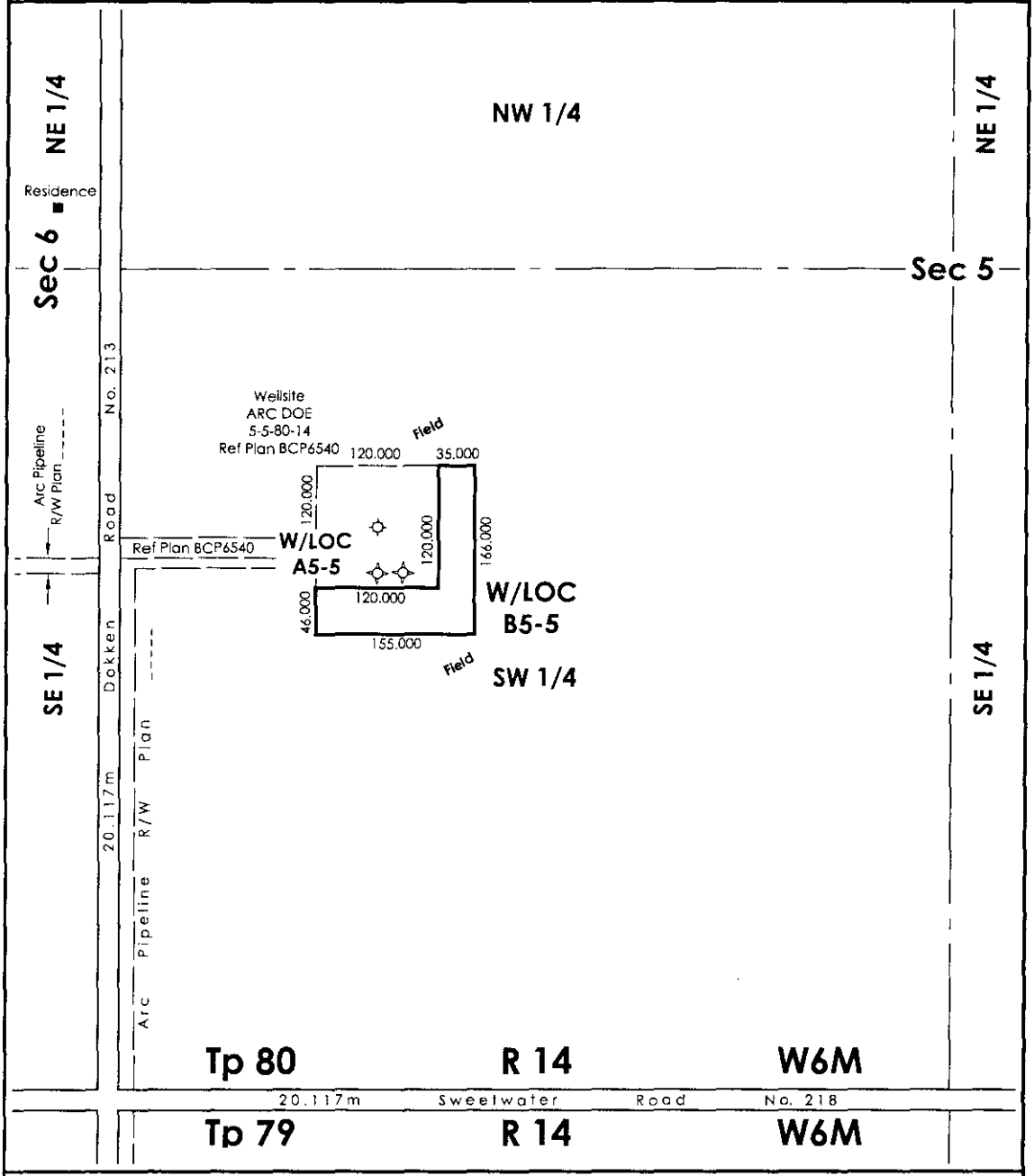
DWG: J20080676IOP00

ARC FILE:

ARC AFE:

REVISION: 0

ARC PETROLEUM INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITES IN
SW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757
OWNER(S): John Irving Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
21st day of May, 2010.

N

AREA REQUIRED:

Wellsites	1.13 ha	2.79 ac
TOTAL:	1.13 ha	2.79 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/01/29	Original plan issued	JMS	CS
1	10/05/21	Wellsite Revised	EJ	CS

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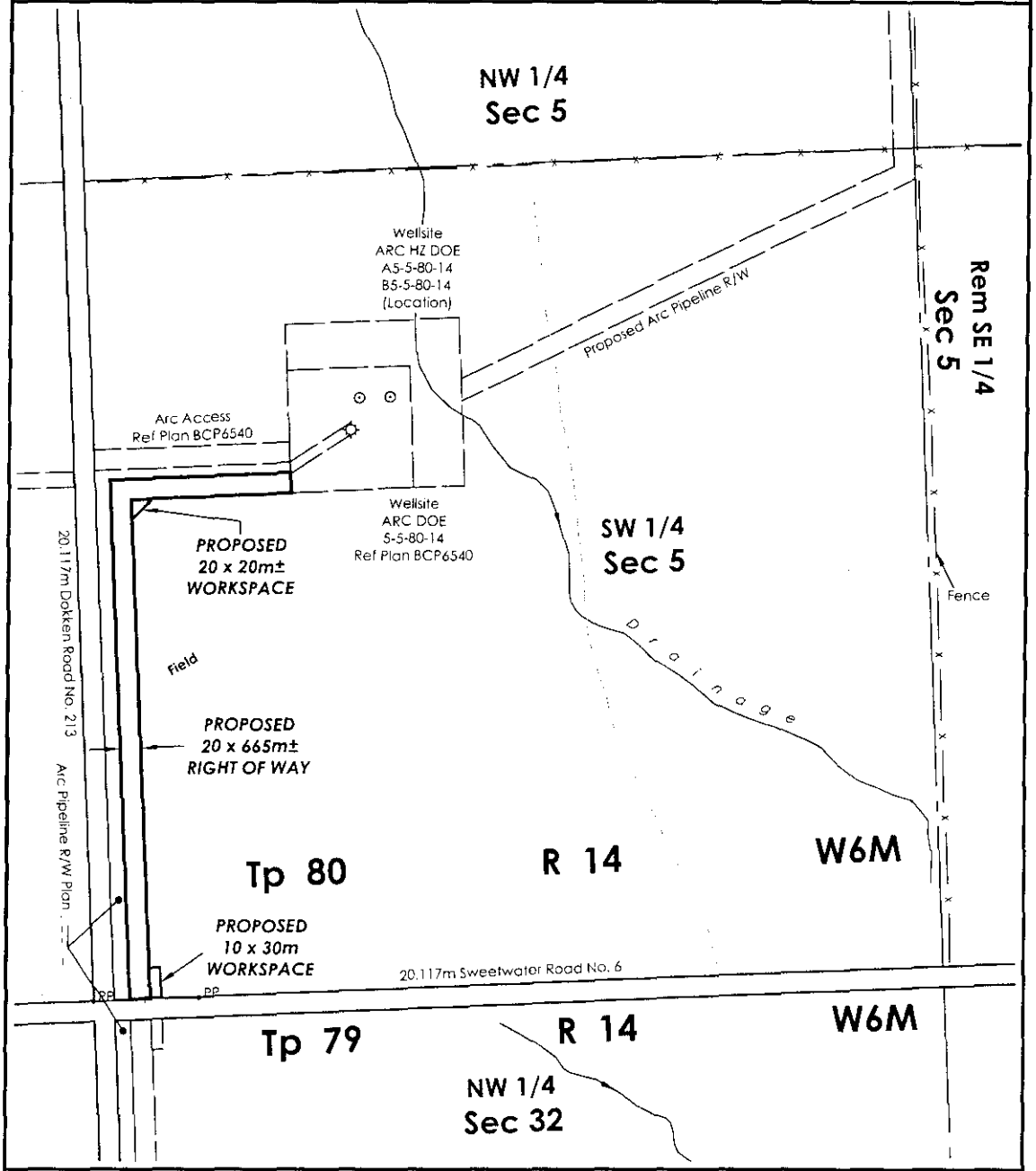
www.canam.com
Phone: 250.787.7171
Toll Free: 1.866.208.0983
Fax: 250.787.2323

CAN-AM FILE: J20090107
CAD FILE: J20090107IOP01
Client File No.: S06985
AFE No.:
Land File No.:
1 REVISION

ARC PETROLEUM INC
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
SW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757
OWNER(S): John Irving Miller

LEGEND
SCALE = 1: 5,000
Portions referred to: .....
Notes: Distances shown are in metres.

Certified correct this
12th day of February, 2010.

N

AREA REQUIRED:

20m Pipeline R/W	1.33 ha	3.29 ac
Workspaces	0.05 ha	0.12 ac
TOTAL:	1.38 ha	3.41 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/02/12	Original plan issued	JMS	CS

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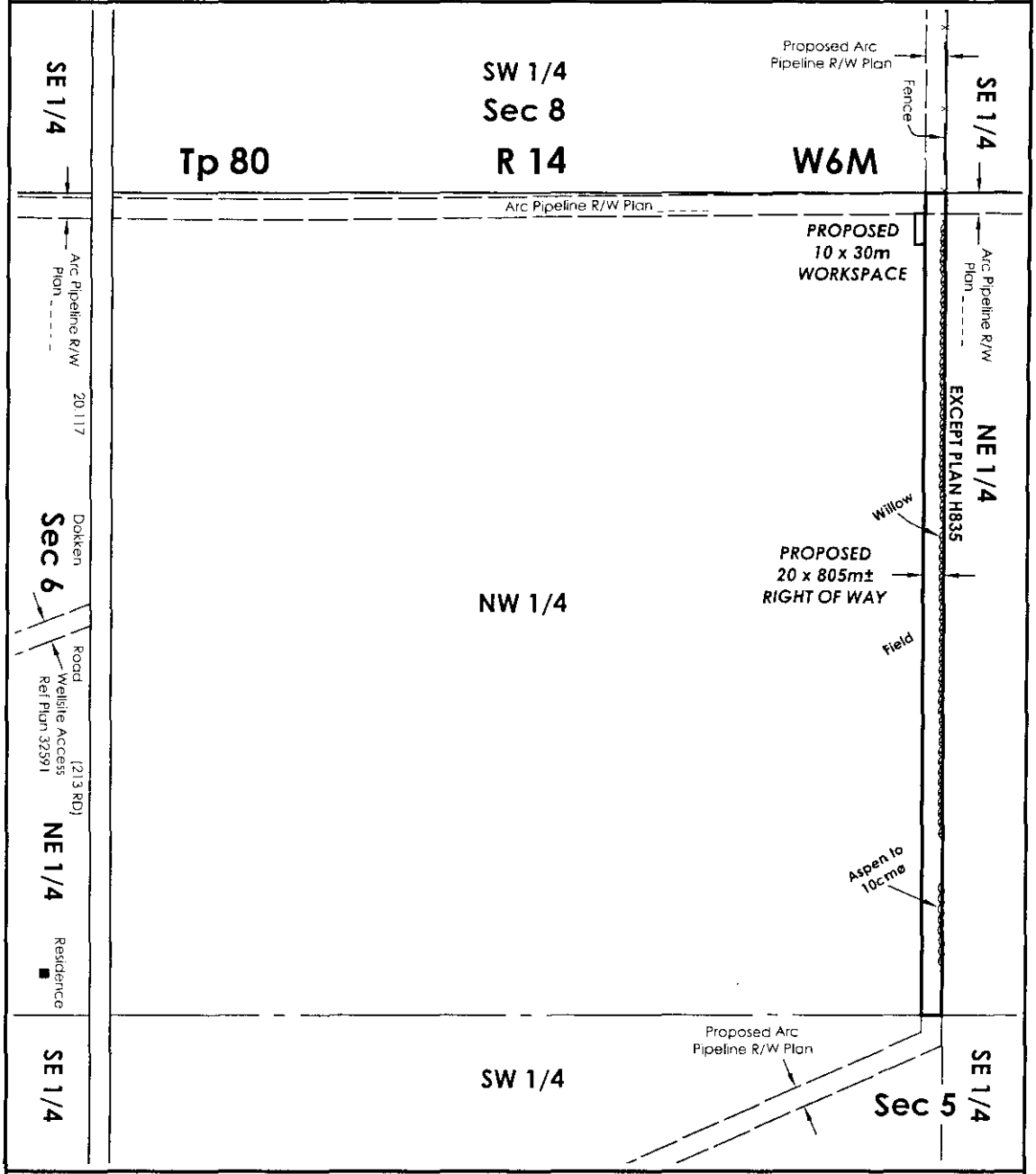
CAN-AM FILE: J20090545
CAD FILE: J20090545IOPA0
Client File No.: E10412
AFE No.:
Land File No.:
0 REVISION

ARC PETROLEUM INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4679 **P.I.D. No.:** 013-008-692
OWNER(S): John Irving Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
11th day of February, 2010.

N

AREA REQUIRED:

For 20m Pipeline R/W	1.61 ha	3.98 ac
For Workspace	0.03 ha	0.07 ac
TOTAL:	1.64 ha	4.05 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/02/11	Original plan issued	PJP	CS

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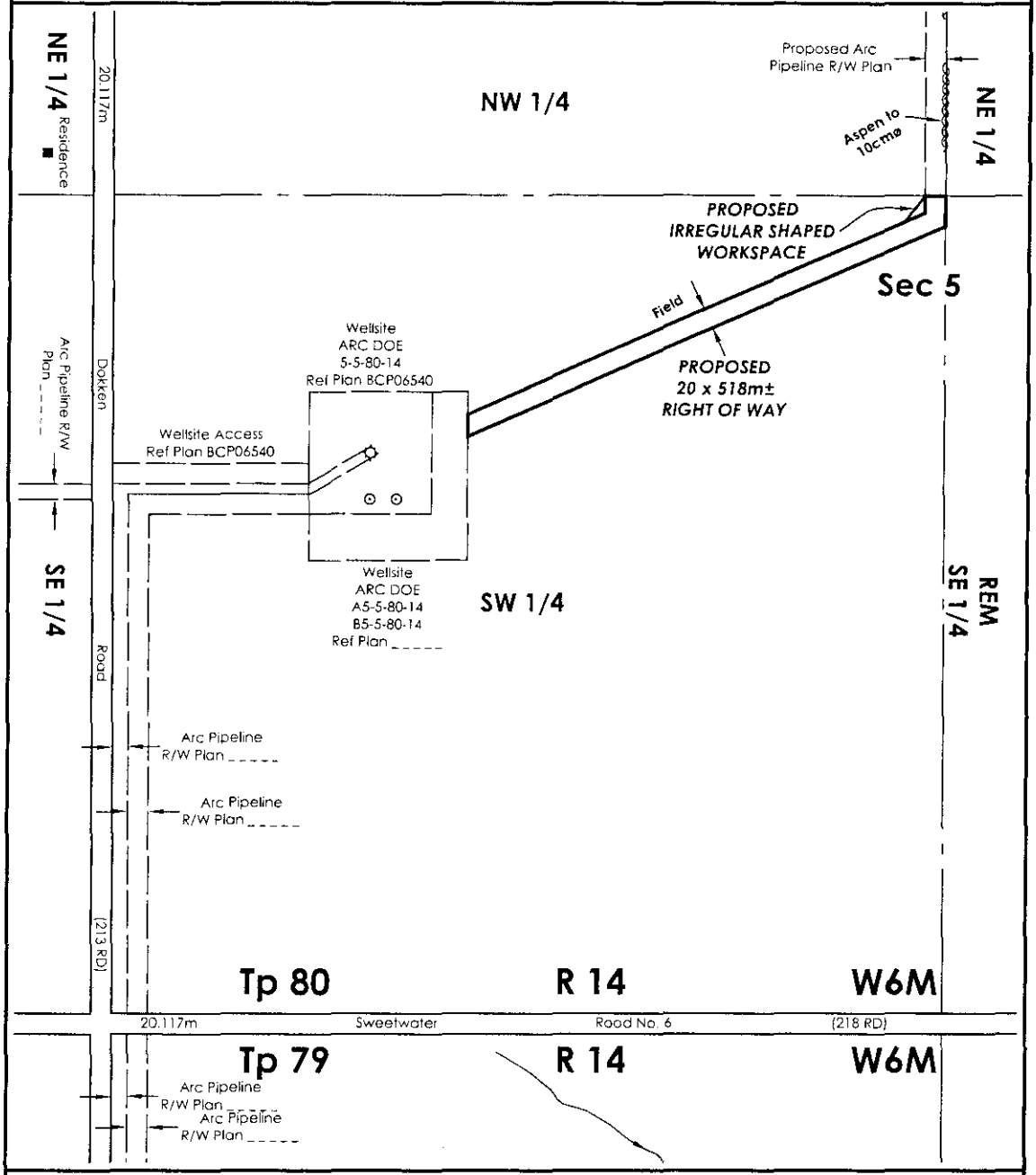
Fax: 250.787.2323

CAN-AM FILE: J20090486
CAD FILE: J20090486IOPC0
Client File No.: E10393
AFE No.:
Land File No.:
0 REVISION

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
SW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757

OWNER(S): John Irving Miller

LEGEND

SCALE = 1: 5,000

Portions referred to: .....

Notes: Distances shown are in metres.

Certified correct this 26th day of May, 2010.

N

AREA REQUIRED:

For 20m Pipeline R/W	1.04 ha	2.57 ac
For Workspace	0.02 ha	0.05 ac
TOTAL:	1.06 ha	2.62 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/02/11	Original plan issued	PJP	CS
1	01/05/26	Pipeline Extended	PJP	CS

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CAN-AM FILE: J20090486

CAD FILE: J20090486IOPD1

Client File No.: E10393

AFE No.:

Land File No.:

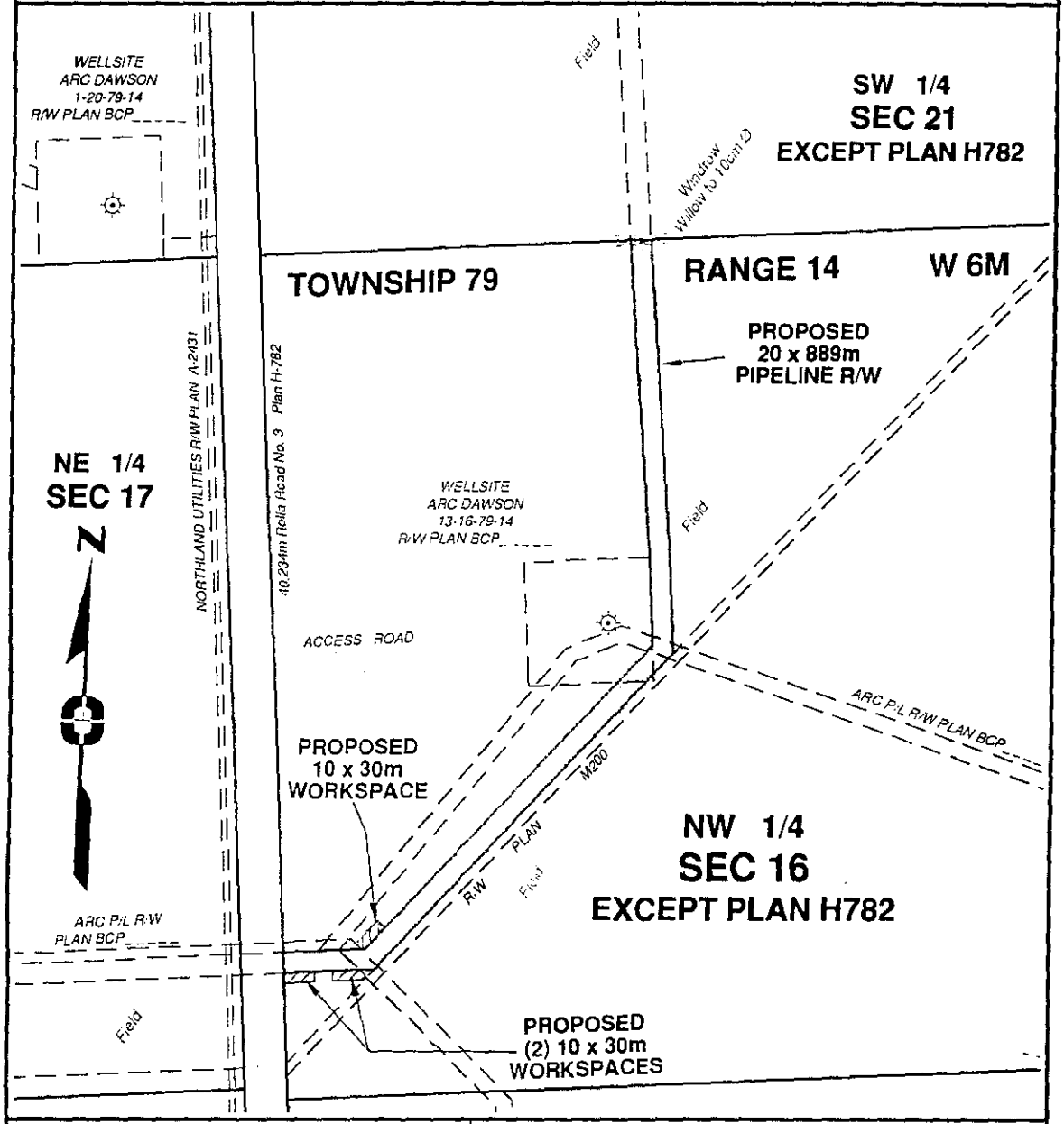
1 REVISION

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between John Irving Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 16 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s): John Irving Miller

Title No: PK47339
Parcel Identifier: 014-640-287

Areas		
Permanent	1.78 ha	4.40 ac
Temporary	0.09 ha	0.22 ac
Total	**1.87 ha**	**4.62 ac**

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

FOCUS
Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0300
Fax (250)787-1611
www.focus.ca

Focus Job No: 090072NP02R0
Ref Dwg: 090072CP01R0
Drafter: CN

File No. 1633
Board Order 1633-2amd

May 24, 2011

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER

[1] This Order amends and replaces Order 1633-2 dated June 7, 2010 as a result of the Applicant's withdrawal of a portion of their application, to correct typographical errors, and to attach amended Individual Ownership Plans in Schedule A depicting the portions of the Lands for which entry, occupation and use by the Applicant is authorized.

[2] **The Surface Rights Board orders**:

1. Further mediation is refused.

2. Upon payment of the amounts set out in paragraphs 4 to 7 below, the Applicant including its employees, contractors and assigns shall have the right of entry to and access across the portion of the Lands shown in Schedule "A" for the purpose of constructing operating and maintaining the flowlines and wellsites. This Order is subject to the application process required by the Oil and Gas Commission and nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission. The Order is also subject to the following terms and conditions:

   a) ARC will use all reasonable efforts to maintain the soil admixing to no more than 20% subsoil,
   b) ARC will use all reasonable efforts to maintain the work site and the public access roads free of excessive dirt and debris at all times during construction and operation of the subject pipeline and well sites,
   c) ARC acknowledges that it is responsible for removal of rocks that are brought to the surface of the right of way during and following construction and in that regard will consult with the owners and the lessee in discharging this responsibility,
   d) ARC will, within 7 days of receiving notice of a builder's lien claim being filed against the Lands as a result of the work being carried out by ARC on the subject property, cause the lien to be removed, either by way of paying the lien claimant or by paying the amount claimed into court in accordance with s. 23 of the *Builders Lien Act,*
   e) All vehicles used in the farming operations of the Millers will have a right to cross the pipeline right-of-ways in the normal and ordinary course of such farming operations, regardless of whether the vehicle carries a farm license. For greater certainty, certain vehicles that are used in the farming operation for the delivery of fertilizer and other materials incidental to farming operation, as well as for the hauling of crops shall be permitted to cross the pipelines, notwithstanding that these vehicles may carry commercial plates only.

3. The Applicant shall serve the Respondents with a copy of the Order prior to entry onto the Lands.

Applications 1633-1, 1633-3, 1633-6 and 1633-7:

4. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

5. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $35,000.00, on the condition that if any of the flowlines do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment.

Applications 1633-2, 1633-4 and 1633-5:

6. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

7. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $20,000.00, on the following conditions:

   a) if any of the wellsites do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment, and
   b) if the Board orders compensation less than the partial payment, the Respondents shall refund to the Applicant the difference on a pro-rated basis.

DATED: May 24, 2011

FOR THE BOARD

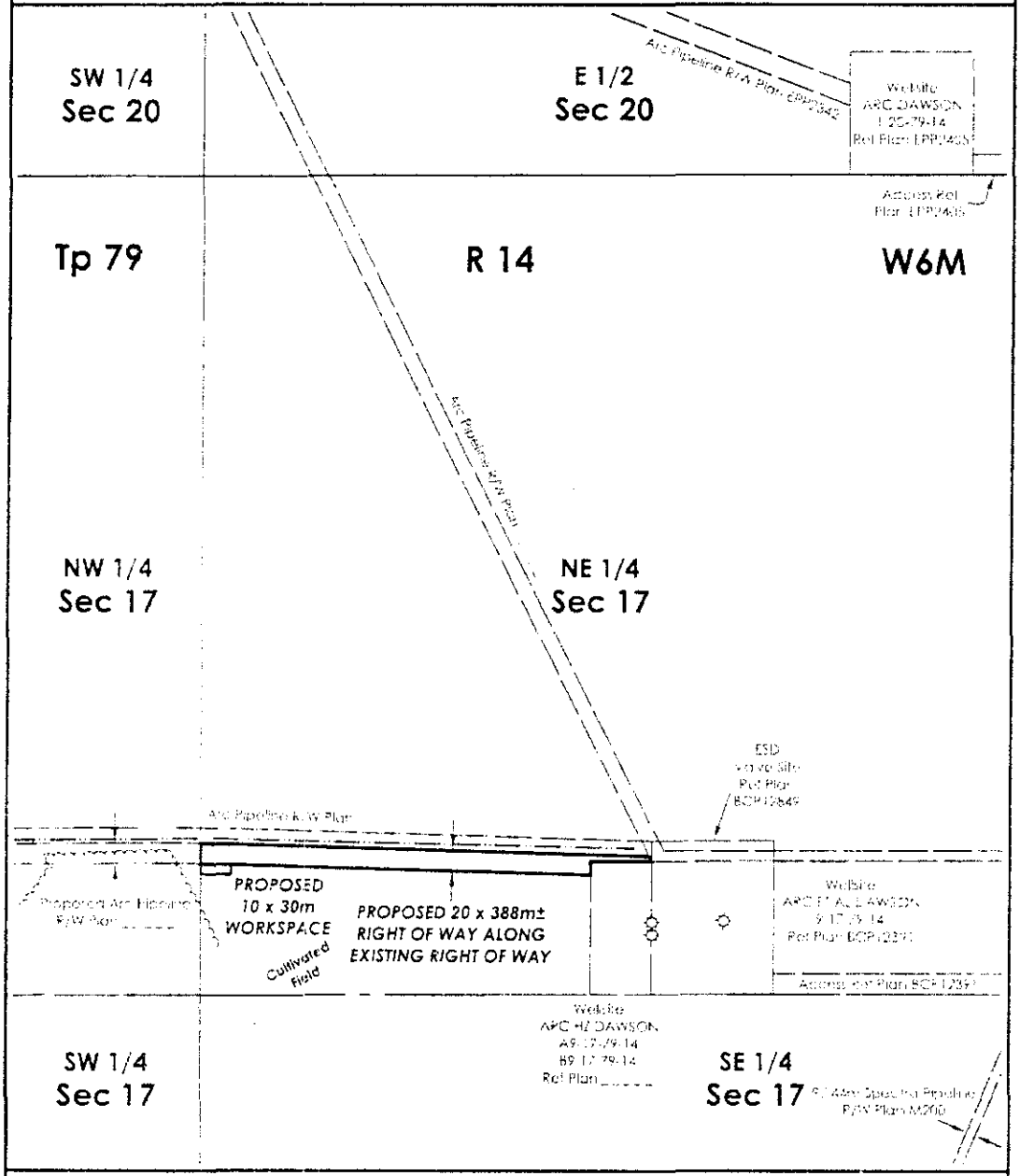
Cheryl Vickers
Chair

SCHEDULE "A" 1633-2amd

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NE 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: FI9442 **P.I.D. No.:** 010-799-176
OWNER(S): Mary Ramsden Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
28th day of January, 2010.

AREA REQUIRED:

20m Pipeline R/W	0.81 ha	2.00 ac
Workspace	0.03 ha	0.07 ac
TOTAL:	0.84 ha	2.07 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CHK
0	10/01/28	Original plan issued	RJH	CS

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Toll Free: 1.866.226.0983
Fax: 250.787.2303

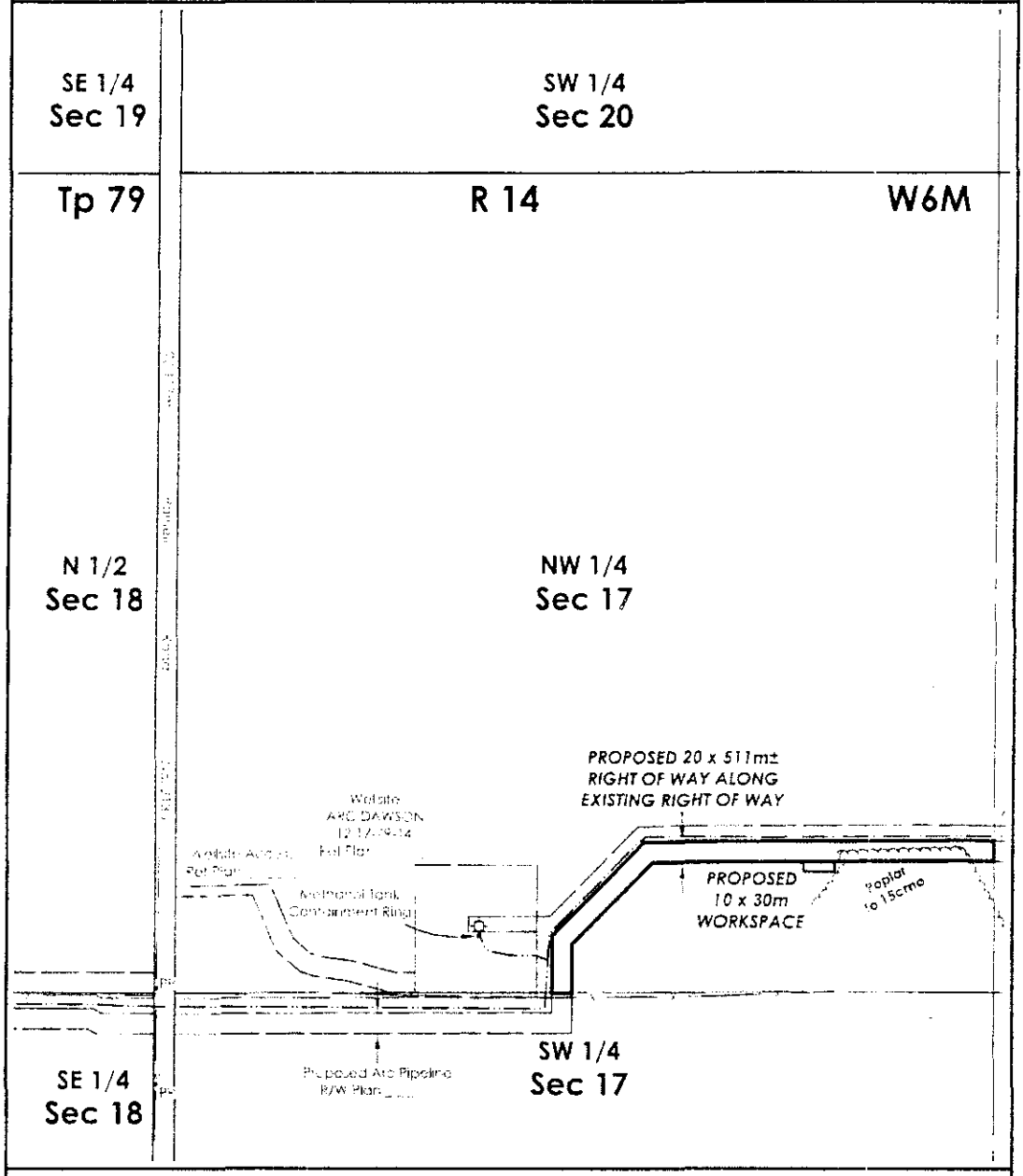
CAN-AM FILE: J20090481
CAD FILE: J20090481ROPAD
Client File No.: 10394
ARC No.:
Land File No.:
REVISION 0

SCHEDULE A 1633-2and

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NW 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: FL2443 **P.I.D. No.:** 010-799-150
OWNER(S): Mary Kathleen Miller

LEGEND
SCALE = 1 : 5,000
Portions referred to.
Notes. Distances shown are in metres

Certified correct this
28th day of January, 2016.

AREA REQUIRED:

20m Pipeline R/W	1.02 ha	2.52 ac
Workspace	0.03 ha	0.07 ac
TOTAL:	1.05 ha	2.59 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	2015/11/26	Original plan issued	PJP	CS

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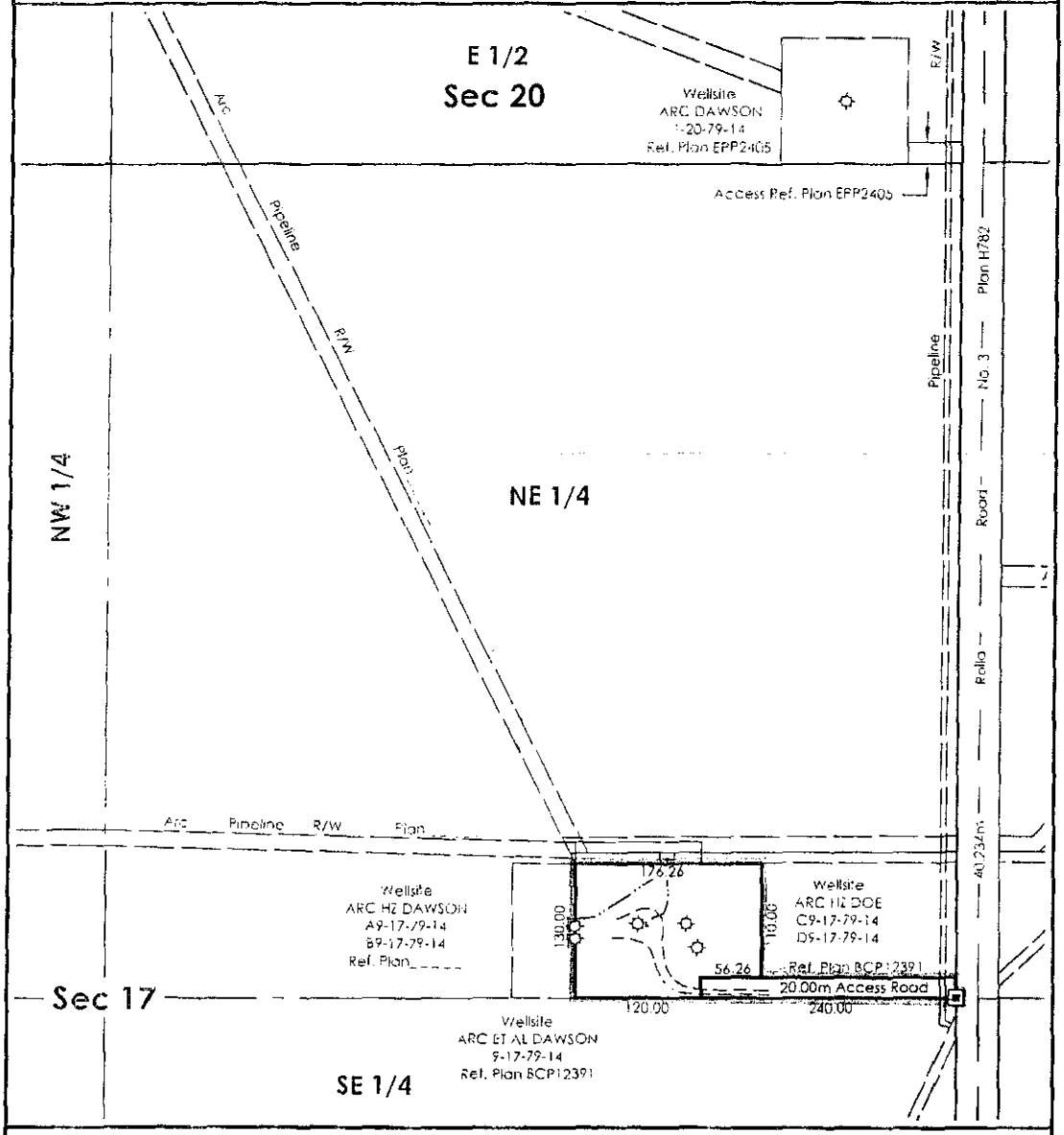
Fax: 250.787.0329

CAN-AM FILE: J20090481
CAD FILE: J20090481IOP.DGN
Client File No.: 210394
AFE No.:
Land File No.:
0
REVISION

SCHEDULE "A" 1633-2amd

ARC PETROLEUM INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE IN
NE 1/4 Sec 17, Tp 79, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: Pt.2442 **P.I.D. No.:** 010-799-176
OWNER(S): Mary Kathleen Miller

LEGEND
SCALE = 1: 5,000
Portions referred to: - - - - - - - -
Notes: Distances shown are in metres.

Certified correct this
20th day of April, 2010.

AREA REQUIRED:

Wellsite	2.18 ha	5.39 ac
Access	0.48 ha	1.19 ac
TOTAL:	2.66 ha	6.58 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/04/20	Original plan issued	LA	CS

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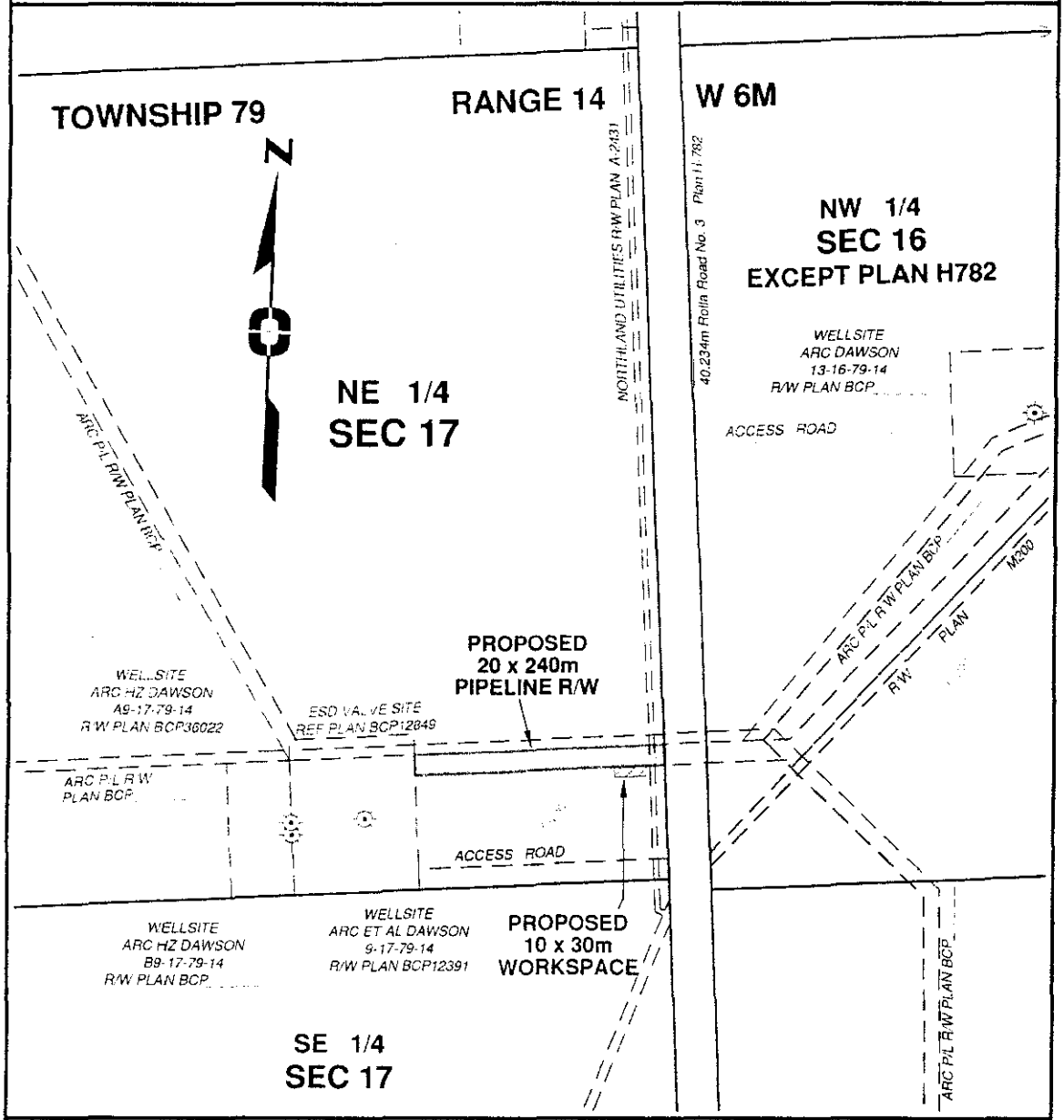
CAN-AM FILE: J20090359
CAD FILE: J20090359IOP80
Client File No.: 506886
AFE No.:
Land File No.:
0 REVISION

SCHEDULE "A" 1633-2 and Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Mary Kathleen Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH EAST 1/4 OF SECTION 17 TOWNSHIP 79 RANGE 14 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	Mary Kathleen Miller
Title No:	PL2442
Parcel Identifier:	010-799-176

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	0.48 ha	1.19 ac
Temporary	0.03 ha	0.07 ac
Total	**0.51 ha**	**1.26 ac**

FOCUS Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10716 100th Ave.
BC, V1J 1Z3
Ph: (250)787-0600
Fax:(250)787-1611
www.focus.ca

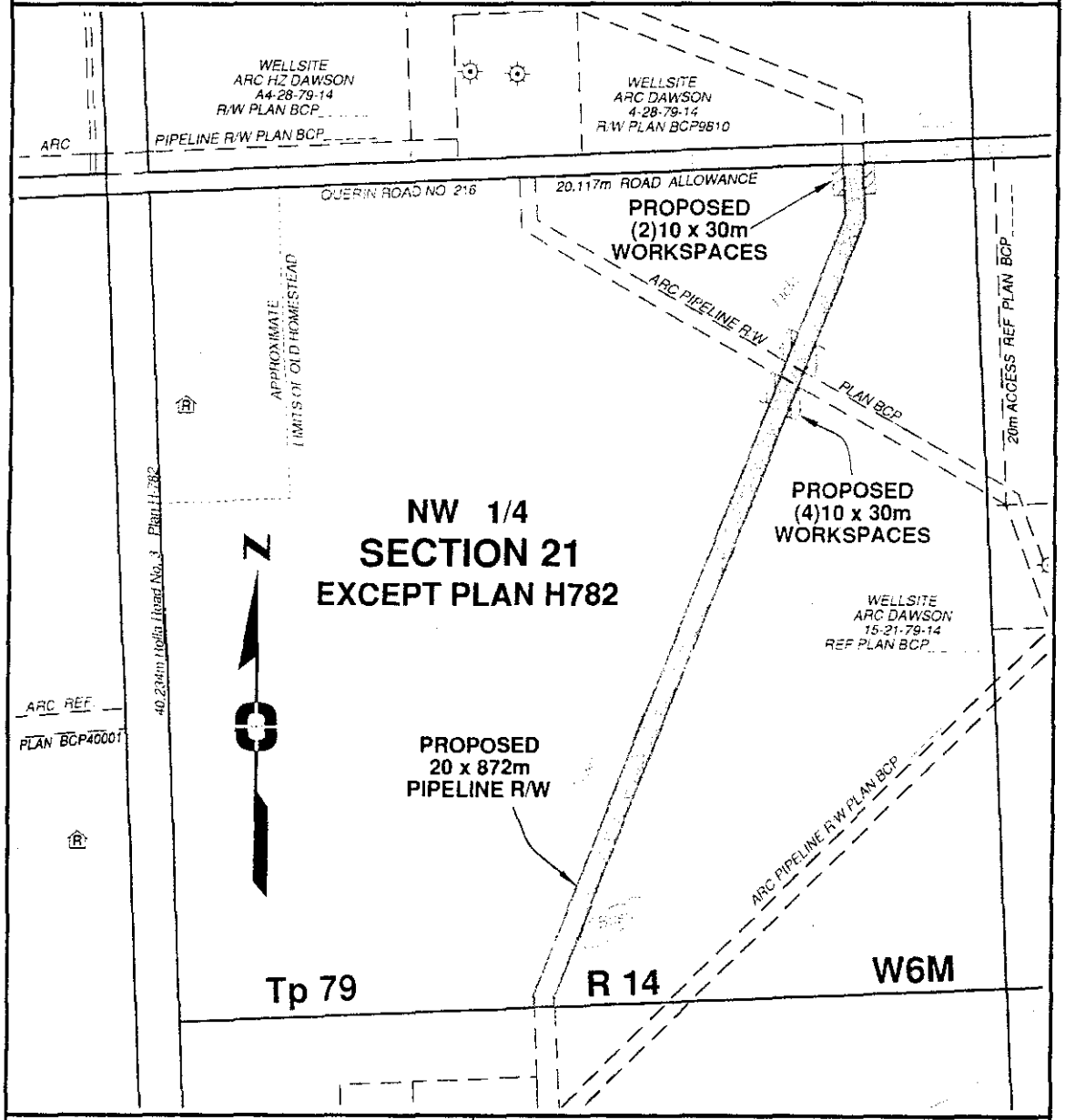
Focus Job No:	090072NP01R0
Ref Dwg:	090072CP01R0
Drafter:	CN

SCHEDULE "A" 1633-Zamd

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Mary Kathleen Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 21 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s): Mary Kathleen Miller

Title No: PL2439
Parcel Identifier: 010-772-391

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	1.74 ha	4.30 ac
Temporary	0.18 ha	0.44 ac
Total	1.92 ha	4.74 ac

FOCUS Focus Surveys
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Fort St. John
10715-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0300
Fax. (250)787-1511
www.focus.ca

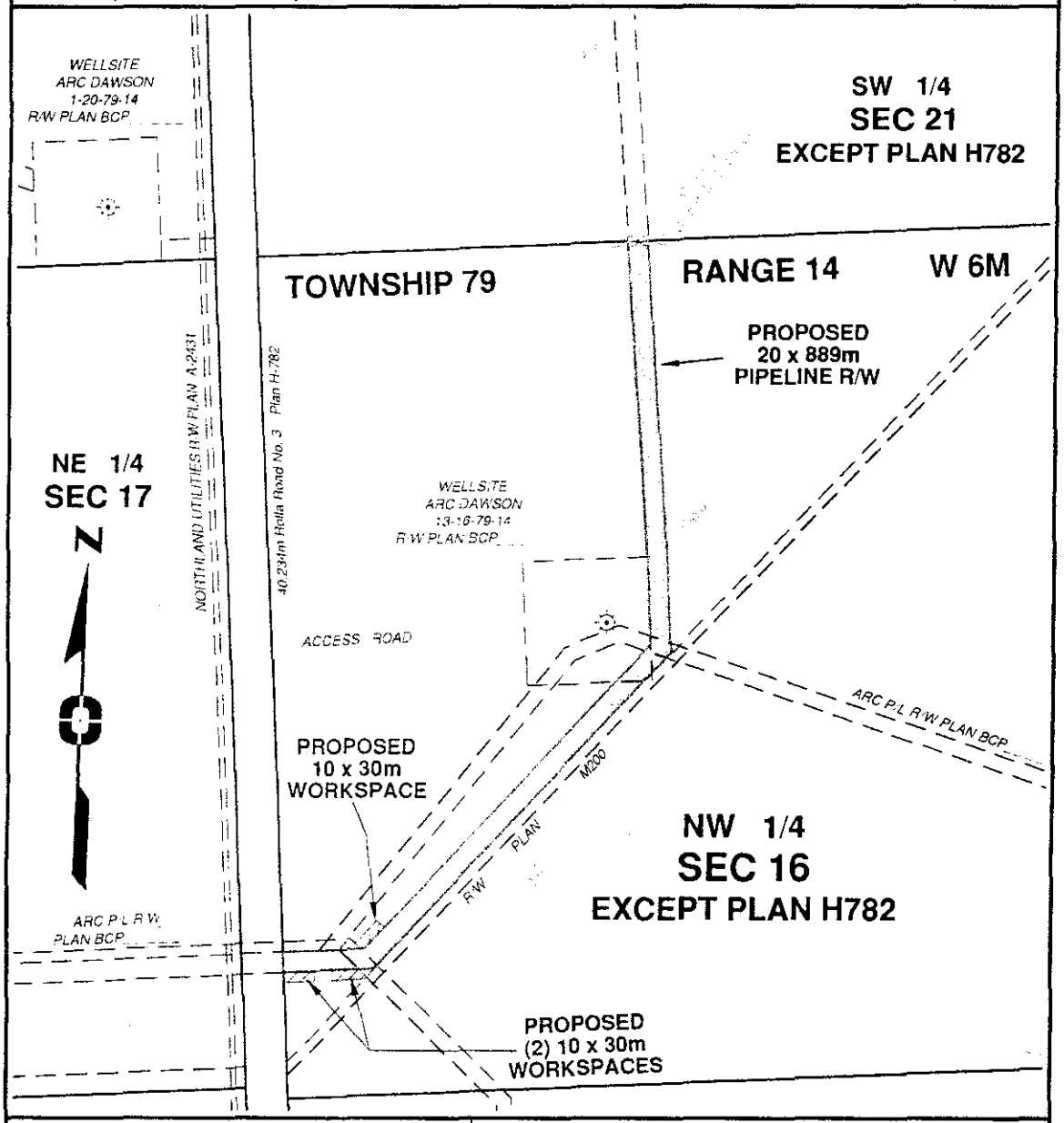
Focus Job No: 090072NP04R0
Ref Dwg: 090072CP01R0
Drafter: CN

SCHEDULE "A" 1633-2 and

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between John Irving Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 16 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s): John Irving Miller

Title No: PK47339
Parcel Identifier: 014-640-287

Areas		
Permanent	1.78 ha	4.40 ac
Temporary	0.09 ha	0.22 ac
Total	**1.87 ha**	**4.62 ac**

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

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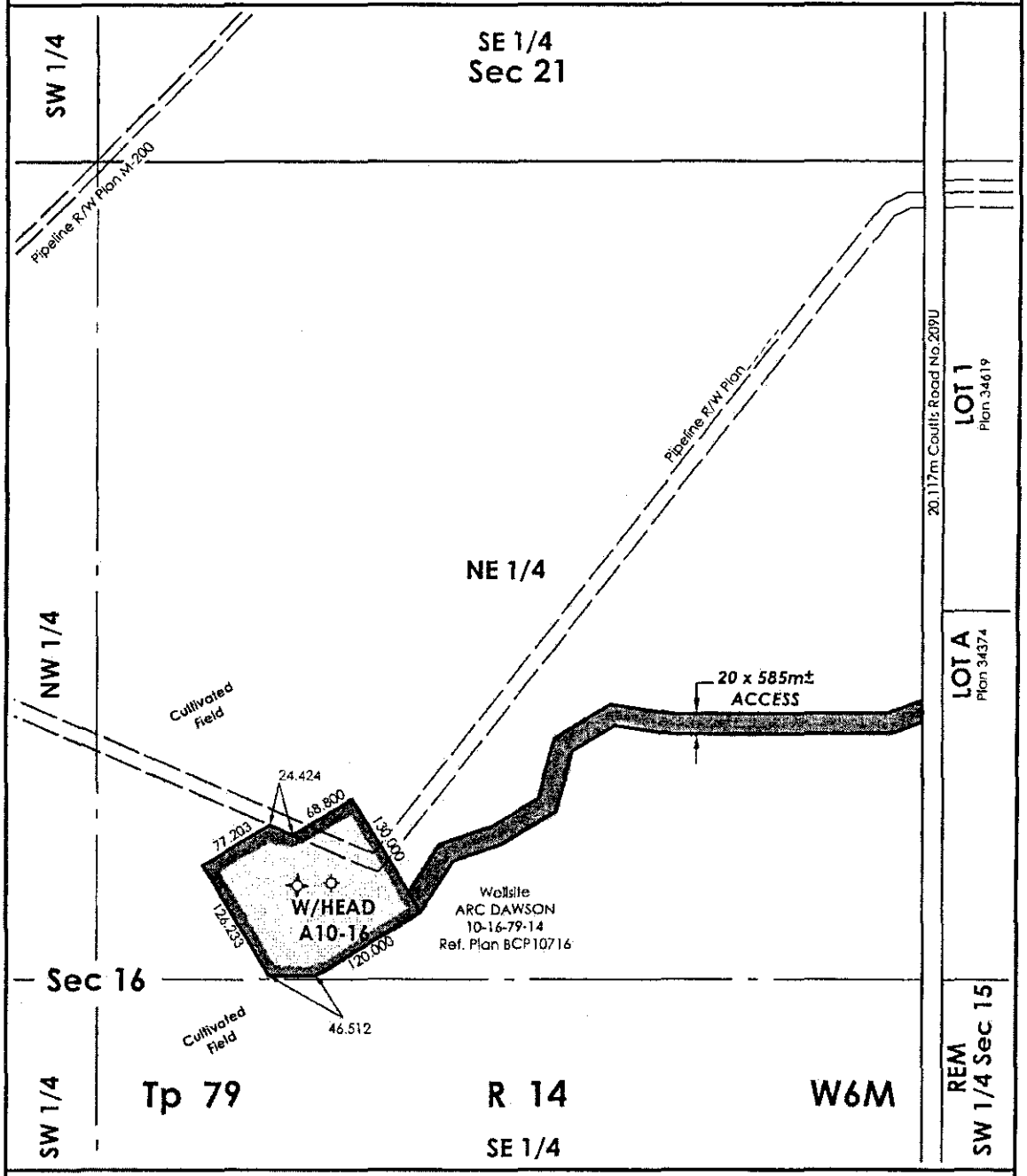
Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10716 100th Ave,
BC, V1J 1Z3
Ph (250)787-0390
Fax (250)787-1611
www.focus.ca

Focus Job No: 090072NP02R0
Ref Dwg: 090072CP01R0
Drafter: CN

ARC RESOURCES LTD.

SCHEDULE "A" 1633-2amd

INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE IN
NE 1/4 Sec 16, Tp 79, R14, W6M
PEACE RIVER DISTRICT



TITLE No.: 53041M **P.I.D. No.:** 016-045-319
OWNER(S): JOHN IRVING MILLER

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
23rd day of February , 2011.

N

AREA REQUIRED:

WELLSITE	2.20 ha	5.44 ac
ACCESS ROAD	1.17 ha	2.89 ac
TOTAL:	3.37 ha	8.33 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	08/11/24	Original plan issued	CV	SM
1	11/02/23	Wellsite & Access Revised	RC	CS

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CAN-AM FILE:
CAD FILE: J20080676IOP01
Client File No.:
AFE No.:
Land File No.:
1 REVISION

SCHEDULE "A" 1633-2 and

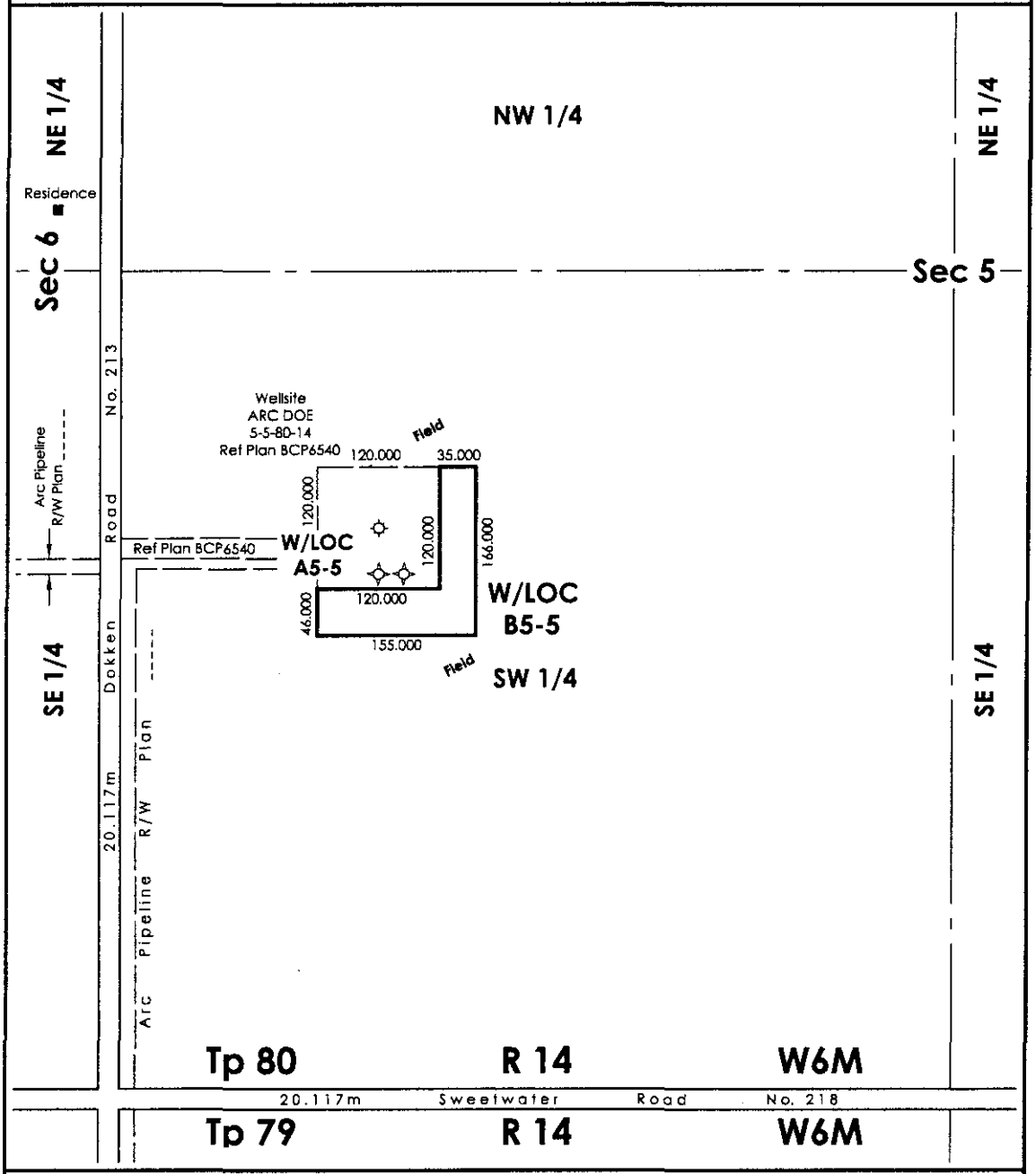
ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED WELLSITES IN

SW 1/4 Sec 5, Tp 80, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757

OWNER(S): John Irving Miller

LEGEND

SCALE = 1: 5,000

Portions referred to: ▭

Notes: Distances shown are in metres.

Certified correct this 21st day of May, 2010.

N

AREA REQUIRED:

Wellsites	1.13 ha	2.79 ac
TOTAL:	1.13 ha	2.79 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/01/29	Original plan issued	JMS	CS
1	10/05/21	Wellsite Revised	EJ	CS

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CAN-AM FILE: J20090107

CAD FILE: J20090107IOP01

Client File No.: S06985

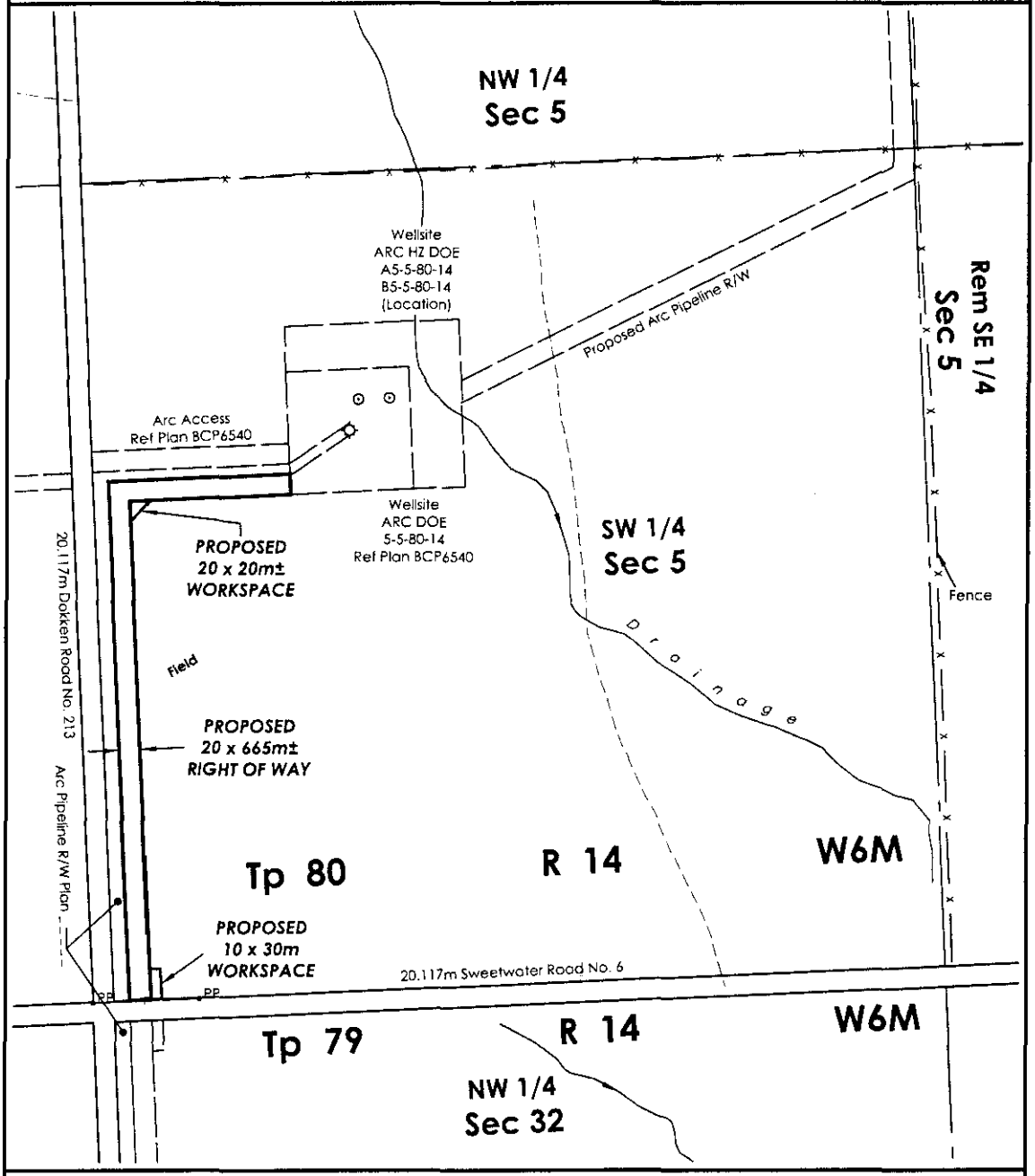
AFE No.:

Land File No.:

1 REVISION

SCHEDULE "A" 1633-2 and

ARC PETROLEUM INC
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
SW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757
OWNER(S): John Irving Miller

LEGEND
SCALE = 1: 5,000
Portions referred to: ..... ▭
Notes: Distances shown are in metres.

Certified correct this
12th day of February, 2010.

N

AREA REQUIRED:

20m Pipeline R/W	1.33 ha	3.29 ac
Workspaces	0.05 ha	0.12 ac
TOTAL:	1.38 ha	3.41 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/02/12	Original plan issued	JMS	CS

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CAN-AM FILE: J20090545
CAD FILE: J20090545IOPA0
Client File No.: E10412
AFE No.:
Land File No.:
0 REVISION

File No. 1633
Board Order 1633-3

May 24, 2011

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER

Heard:	February 16 and 17, 2011 at Dawson Creek
Appearances:	Rick Williams, Barrister and Solicitor, and Andrea Fiedler for the Applicant
	Elvin Gowman, Anne Clayton, Mary Miller, and John Miller for the Respondents
Panel:	Cheryl Vickers

INTRODUCTION

[1] In accordance with the *Petroleum and Natural Gas Act*, by Order dated June 7, 2010, the Board granted ARC Petroleum Inc. (ARC) right of entry to specified portions of the Lands, owned by John and Mary Miller, for the purpose of constructing and operating wellsites or flowlines (Order 1633-2). The Board ordered ARC to pay a security deposit and make partial payment to the Millers for entry, occupation and use of the Lands. The mediator refused further mediation requiring that the determination of compensation be arbitrated.

[2] I was appointed arbitrator. The parties agreed to attempt a mediated settlement, with myself facilitating discussions, and agreed that if resolution of compensation could not be reached, that I should determine the compensation payable. Unfortunately, the parties were unable to come to terms on the compensation payable, necessitating the arbitration and this decision to determine compensation.

[3] ARC has withdrawn its application with respect to one of the proposed flowlines for which right of entry was granted, and the Board's entry order will be amended to rescind the right of entry associated with that flowline. As of the date of arbitration, the Oil and Gas Commission (OGC) had not yet permitted two of the proposed wellsites for which the Board granted right of entry, and the determination of compensation with respect to those wellsites was not part of the arbitration.

ISSUES

[4] The issues are to determine the amount of compensation payable to the Millers by ARC for entry, occupation and use of the Lands for those oil and gas installations that have been approved by the OGC, and to determine the amount of costs payable by ARC to the Millers.

Preliminary Issue

[5] The Millers argued that the Board should state a case to the Supreme Court of British Columbia to get an opinion on the application of section 1(a) of the Surface Lease Regulation, and that the Board should stay rendering its decision in this arbitration until the Court rendered its opinion. The Millers did not propose a specific question of law that they wanted referred to the Court for an opinion, but I understand their submission to be that section 1(a) of the Surface Lease Regulation precludes the Board's jurisdiction to grant entry where there is an existing wellsite surface lease and additional land is required for additional wells. This issue was raised and argued by the Millers as a preliminary issue prior to the mediation of these applications. The Board determined in a decision rendered May 5, 2010 (Order 1633-1) that the Surface Lease Regulation did not preclude its jurisdiction in these applications. The Millers did not seek judicial review of that decision. If the Millers were of the view that the Board had erred in that determination, their remedy was to seek judicial review. They did not, and the Board is not inclined to state a case for the opinion of the court at this stage of the proceedings.

[6] In any event, I question whether the Board has the jurisdiction to do as the Millers request. Section 43 of the *Administrative Tribunals Act*, which allows a tribunal to refer a question of law to the court in the form of a stated case, does not apply to the Surface Rights Board.

BACKGROUND

[7] The Lands are used by the Millers for agricultural purposes and are located within the Agricultural Land Reserve (ALR). The Millers no longer farm the Lands themselves, but lease them to Mrs. Miller's son, Tim Pavlis, for that purpose. In the last several years, the Lands have been cultivated with canola or wheat. The Lands are cultivated using a "zero till" practice.

Wellsites

[8] The Board granted right of entry to the NE ¼ 17-79-14 W6M for the construction, drilling, completion and operation of two wells, at 9-17-79-14 W6M, where there is already an existing wellsite. These new wells will be referred to as C9-17 and D9-17. The OGC approved these wells on February 26, 2010 and March 4, 2010, respectively.

[9] NE ¼ 17-79-14-W6M is owned by Mary Miller. In December, 2001, Mrs. Miller and the predecessor to ARC, Star Oil and Gas Ltd. (Star), entered a Surface Lease giving Star access to construct and operate a wellsite at 9-17-79-14 W6M and providing initial and annual compensation to Mrs. Miller. The area of land covered by the surface lease was 5.16 acres. The Surface Lease was amended in 2007 to increase the area of occupation to 7.09 acres and to allow

for the drilling of two additional wells, A9-17 and B9-17. ARC requires, and has entry authorized for, an additional 1.53 acres adjacent to the existing lease area in order to construct and operate wells C9-17 and D9-17, for a total occupied area of 8.62 acres. Construction of the wellpad extension was completed in early July, 2010 but the wells have not yet been drilled. They are expected to be drilled in the summer of 2011.

[10] In their negotiations to try and settle compensation for the additional area of occupation required to construct wellsites C9-17 and D9-17, the parties discussed amending the current lease to consolidate the areas of occupation and provide compensation, but were unable to agree to the terms of a consolidated surface lease agreement. Nor were they able to agree on the terms of a new surface lease agreement solely with respect to the additional 1.53 acres required for the two new wells.

[11] The Board granted entry to the NE ¼ 16-79-14 W6M for the construction, drilling, completion and operation of a well at 10-16-79-14 W6M where there is already an existing wellsite. This new well will be referred to as A10-16. The OGC approved this well on June 8, 2010.

[12] NE ¼ 16-79-14 W6M is owned by John Miller. In June 2002, Mr. Miller and Star entered a Surface Lease giving Star access to construct and operate a wellsite at 10-16-79-14 W6M and providing initial and annual compensation to Mr. Miller. The area of land covered by the Surface Lease is 6.74 acres. ARC requires, and has entry authorized for, an additional 1.58 acres adjacent to the existing lease area in order to construct and operate A10-16, for a total occupied area of 8.32 acres. The wellpad extension has not yet been constructed. Construction is planned for May 2011 with the well scheduled to be drilled in June 2011.

[13] The wells C9-17, D9-17 and A10-16 will be drilled on existing well pads using prior disturbances and existing road access.

[14] The Millers argued that the Board should order the consolidation of the existing surface leases with new terms of entry for the additional areas required for the additional wells, and to determine compensation for entry, occupation and use of the consolidated areas. The Board may authorize entry to land if it is satisfied that entry is required for an "oil and gas activity" as defined in the *Oil and Gas Activities Act*. Oil and gas activities include the exploration for, development and production of petroleum and natural gas, or in other words, the construction and operation of a wellsite. The Board does not have the jurisdiction to consolidate or harmonize an existing surface lease with an additional area of land required for another oil and gas activity. If the Board authorizes entry for another oil and gas activity, in the absence of agreement by the parties, the Board must then determine the compensation payable as a result of the entry for that particular oil and gas activity.

[15] With respect to ARC's application for entry, occupation and use of land to construct and operate wells C9-17 and D9-17, the Board authorized the entry, occupation and use of NE ¼ 17-79-14 W6M for that purpose. As the parties have been unable to negotiate a surface lease or agree on the compensation payable for the entry, occupation and use of land required to construct and operate C9-17 and D9-17, the Board must determine the amount payable. The existing surface lease covers the compensation for the previously leased 7.09 acres for the purpose of the existing wellsites. The Board must determine the compensation payable for occupation of an additional 1.53 acres and arising from the construction and operation of the two additional wells.

[16] Similarly, with respect to ARC's application for entry, occupation and use of land to construct and operate well A10-16, the Board authorized the entry occupation and use of NE ¼ 16-79-14 W6M for that purpose. As the parties have been unable to negotiate a surface lease or agree on the compensation payable for the entry, occupation and use of land required to construct and operate A10-16, the Board must determine the amount payable. The existing surface lease covers compensation for the previously leased 6.74 acres for the purpose of the existing wellsite. The Board must determine the compensation payable for occupation of an additional 1.58 acres and arising from the construction and operation of an additional well.

[17] The Board's entry order of June 7, 2010 ordered ARC to pay $20,000.00 to the Miller's as partial payment for their loss and damage associated with the wellsites C9-17, D9-17 and A10-16, as well as for two other proposed wells (A5-80 and B5-80) that are not the subject of this arbitration.

Flowlines

[18] The Board granted entry for the construction and operation of flowlines on the Lands and for temporary workspace as indicated in Individual Ownership Plans attached to the Entry Orders. Two of the proposed flowlines for which entry to the Lands was granted have been constructed. ARC has withdrawn its application with respect to one of the proposed flowlines, and one proposed flowline has not yet been constructed. The Board's Entry Order will be amended to rescind right of entry for the construction and operation of the flowline from 9-8-80-14 to 5-5-80-14 W6M. As ARC entered portions of the Lands to survey for the proposed flowline that was later not proceeded with, the Millers seek compensation for the entry.

[19] The flowline right of way on NW ¼ 17-79-14 W6M and NE ¼ 17-79-14 W6M (owned by Mary Miller), for a segment of the flowline from 15-26-78-15 W6M to 9-17-79-14 W6M comprises 4.52 acres. Temporary workspace comprises .14 acres. The OGC approved the flowline on May 28, 2010. Construction has been completed and the right of way left for reseeding in the spring of 2011.

[20] The flowline right of way on NW ¼ 21-79-14 W6M except plan H782, NE ¼ 17-79-14-W6M (owned by Mary Miller), and NW ¼ 16-79-14 W6M except plan H782 (owned by John Miller) for a segment of the flowline from 9-17-79-14 W6M to 11-28-79-14 W6M comprises 9.89 acres. Temporary workspace comprises .73 acres. The OGC approved the flowline on May 18, 2010. Construction has been completed and the right of way has been left ready for reseeding in the spring of 2011.

[21] The flowline right of way on SW ¼ 5-80-14 W6M, NW ¼ 5-80-14 W6M, and SW ¼ 8-80-14 W6M (owned by John Miller) for a segment of the flowline from 5-5-80-14 W6M to 1-31 79-14 W6M comprises 3.29 acres. Temporary workspace comprises .12 acres. The OGC approved the flowline in February 2011. Construction is expected to proceed in the summer of 2011.

[22] The flowline rights of way are 20 metres wide. The buried flowlines within the rights of way are either 10 inches or 12 inches in diameter. The flowlines have been, or will be constructed to a depth of 1.5 metres. Once completed, the rights of ways can continue to be used for agricultural purposes.

[23] The Board's entry order of June 7, 2010 ordered ARC to pay $35,000.00 to the Millers as partial payment for their loss and damage associated with the flowlines described above as well as for a proposed flowline from 9-8-80-14 to 5-5-80-14, for which ARC's application is withdrawn and entry is no longer required.

PRINCIPLES OF COMPENSATION

[24] A person who enters, occupies or uses private land for an oil and gas or related activity, is liable to compensate the owner of the land for loss or damage caused by the entry. When the parties are unable to agree on the amount of compensation payable, either through direct negotiation or with the assistance of the Board in mediation, the Board must arbitrate the amount payable. In doing so, the Board must determine compensation in accordance with the *Petroleum and Natural Gas Act* and principles of compensation established by the Courts that are binding upon the Board. Section 154 of the *PNGA* lists various factors the Board may consider in determining an amount to be paid to a landowner. They are:

(a) the compulsory aspect of the entry;
(b) the value of the applicable land;
(c) a person's loss of right or profit with respect to the land;
(d) temporary and permanent damage from the right of entry;
(e) compensation for severance;
(f) compensation for nuisance and disturbance from the right of entry;
(g) the effect, if any, of other rights of entry with respect to the land;
(h) money previously paid for entry, occupation or use;

(i) the terms of any surface lease or agreement submitted to the Board or to which the Board has access;
(j) previous orders of the Board;
(k) other factors the Board considers applicable;
(l) and other factors or criteria established by regulation.

[25] There are no factors or criteria established by regulation. Not all of the above factors will be relevant in every case.

[26] The landowner's right to compensation is for compensation to the extent of loss or damage incurred or reasonably foreseeable as a result of the entry. It is not a right to remuneration beyond the loss or damage incurred (*Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458).

[27] There is a compulsory aspect to an entry to private land for oil and gas activity, in that a landowner does not have the ability to refuse entry if a company needs access. A landowner, therefore, loses the right to control the use of their land to the extent it is required for an oil and gas activity. The Court has recognized that the loss of intangible rights, such as the loss of quiet enjoyment, or the loss of the right to decide whether land may be used for oil and gas activity, is incapable of valuation in terms of money, and that any value placed on these rights will seem arbitrary (*Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510 (BCSC)). The Court has also acknowledged that a "taking" under the *Petroleum and Natural Gas Act* is not an expropriation, although expropriation principles may apply in determining compensation, and that no land or legal interest is taken from the landowner. The landowner continues to hold the fee simple and, consequently, it is appropriate that the Board consider the landowner's residual and reversionary interest (*Dome v. Juell, supra*; *Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)). The upper limit of compensation for the taking itself, is the value of the land; if the landowner receives full value for the land then no additional payment is required for the compulsory aspect of the taking (*Western Clay Products, supra*).

[28] In determining the amount of compensation payable by ARC to the Millers, I must apply the principles of compensation binding on the Board to the circumstances of this case. The question I must ask is: what is the loss sustained by the Millers as a result of ARC's entry, occupation and use of the Lands, and what is the appropriate compensation for that loss? Essentially, compensation includes compensation for loss of rights and compensation for loss of profit, damages and nuisance and disturbance.

EVIDENCE AND ANALYSIS

[29] Both parties filed documentary evidence marked as Exhibits 1 through 14. In addition, I heard evidence from Mary and John Miller with respect to the use of

the Lands, the impact of the ARC entries, and nuisance and disturbance experienced as a result of ARC's entries. I heard evidence from Andrea Fiedler of ARC, respecting the negotiations with the Millers and the compensation paid by ARC for surface access to other properties on these flowline routes. I heard expert evidence from John Wasmuth, a qualified appraiser and agrologist and Anne Clayton, a qualified appraiser. Both Mr. Wasmuth and Ms. Clayton gave opinion evidence as to the market value of the Lands. Mr. Wasmuth provided an opinion with respect to the value of probable crop loss. Ms. Clayton provided evidence with respect to other wellsite agreements or negotiations and other pipeline right of way agreements of which she was aware.

[30] I will review and discuss the evidence and argument as it relates to the various factors set out in section 154 of the *Petroleum and Natural Gas Act* that the Board may consider in determining compensation.

Compulsory Aspect of the Entry/Loss of Rights

[31] The intangible loss of rights may be compensated for even in the absence of any tangible damage to the land or loss of profit arising from an entry (*Imperial Oil Resources Limited v. Forrester*, MAB 1591-2). Compensation for loss of rights typically includes consideration of the compulsory aspect of the taking, the value of land, and the owner's residual or reversionary interest in the land. A right of entry is not granted in perpetuity but only for so long as surface access is necessary for the particular oil and gas activity. A landowner remains the fee simple owner and retains entitlement to the unencumbered fee and to exclusive possession when entry is no longer required. To the extent the landowner may continue to use the encumbered land, as in the case of a flowline right of way, there is residual value to the landowner. Authority from Alberta suggests that the reversionary/residual interest in a pipeline easement to be 75% of the value of the land (*Dome Petroleum Limited v. Grekul, et al* [1983] A.J. No. 994).

[32] An amount for compulsory aspect of the taking is intended to be a purely arbitrary amount to compensate for the loss of the landowner to decide whether his or her land is to be used for an oil and gas purpose. Compensation for this factor is not capable of precise calculation in accordance with some standard (*Dome v. Juell*, supra). There are no legislated or regulated criteria or standards in determining compensation for this factor.

[33] Sometimes the Board has compensated for the compulsory aspect of the taking on a per acre basis in addition to compensation for other factors (See for example *Encana Corporation v. Merrick*, Order 1599-2 and *Encana Corporation v. Jorgenson*, Order 1621-2 where compensation for entry associated with the construction and operation of a flowline included a payment of $500/acre specifically to acknowledge the compulsory aspect of the taking.) Sometimes this factor is not separately compensated for, but included in a per acre rate for compensation that also considers the value of the land. (See for example, *Arc Petroleum v. Piper*, Order 1598-2, *Imperial Oil v. Forrester*, Order 1591-2, and

Spectra Energy v. Vause, Order 420A). Sometimes the Board has ordered a lump sum payment to acknowledge the compulsory aspect of the taking. (See for example *Talisman Energy v. Eagle Eye Mountain*, Order 1653-1 and *Terra Energy v. Rhyason Ranch*, Order 403A.)

[34] In determining compensation in this case, I will include compensation for the compulsory aspect of the taking and loss of rights in a single per acre rate that also considers the value of the land.

Value of the Land

[35] Mr. Wasmuth and Ms. Clayton agreed the highest and best use of the Lands is for agricultural use. Mr. Wasmuth's analysis of comparable sales led him to conclude market value of $1,050/acre. Ms. Clayton's analysis of comparable sales led her to conclude market value of $1,200 to $1,350 per acre. Both appraiser's used the April 2010 transaction of two ¼ sections in 11-79-15 W6M, which Mr. Wasmuth analyzed as a combined sale of 297.63 acres with an average price per acre of $1,205. Ms. Clayton's evidence was that the transaction was of two separate titles, one of 140 acres at $997 per acre and one of 158 acres at $1,386/acre. The larger, higher value parcel is more comparable to the Miller's property as it has the same soil classification. Mr. Wasmuth provided evidence that several of the 2008 transactions provided by Ms. Clayton were not normal market transactions. The 2010 transactions of parcels with similar soil classification indicate a range of value of $913 to $1,628 per acre with an average price of approximately $1,100/acre. Placing most weight on these sales, I find the probable market value of the Lands at the time of the taking was in the range of $1,100 to $1,200/acre.

[36] Considering the court's instruction that the residual and reversionary interests should be taken into account, the acknowledgement that compensation for compulsory aspect of the entry and loss of intangible rights will of necessity be arbitrary, that compensation equivalent to the full value of the land includes compensation for the compulsory aspect of the taking, and that compensation for these factors cannot exceed the value of the land, I find the value of the land provides an appropriate benchmark upon which to determine compensation for the compulsory aspect of the taking and loss of rights. Compensation at this level suggests that the value of the compulsory aspect of the taking and loss of intangible rights equates to the difference between the market value of the fee simple interest in the land and the owners residual and reversionary interest. I acknowledge that this assumption is not based on any evidentiary foundation, and is likely, in fact, incapable of proof. It acknowledges however that although the landowner has a residual/reversionary interest, there is still compensation owing for the compulsory aspect of the taking and loss of intangible rights, and provides an objective basis, namely the market value of the land, that can be demonstrated with evidence, upon which to determine compensation for these factors.

[37] I find a payment of $1,200/acre, equivalent to the probable upper limit of market value for the land, compensates for the loss of rights associated with the entries and considers both the residual/reversionary interest and the compulsory aspect of the taking.

Loss of Profit

[38] Mr. Wasmuth provided evidence on average yields and prices for canola and wheat from 2005 to 2010. The indicated 2010 yields of 30 bushels/acre for canola and 40 bushels/acre for wheat represent the upper end of preliminary yield estimates. The 2010 price for canola ranged from a low of $10.61/bushel to a high of $10.97/bushel; the six year average was $8.73/bushel to $9.00/bushel. The 2010 price for wheat was $7.32/bushel, with a six year average of $6.07/bushel.

[39] Mr. Wasmuth's evidence was that 2010 was a drought year. He estimated the Miller's actual 2010 canola yields to be 10 – 15 bushels/acre and wheat yields to be 25-35 bushels/acre. Further, he estimated that canola yields would continue to decline going forward as, in his opinion, an optimal rotation of canola with other crops was not being practiced. His evidence was that in the Peace, the probability of crop failure is one year in five. Mr. Miller disputed this evidence saying that in 40 years as a farmer, he had never had a crop failure.

[40] In Mr. Wasmuth's opinion, a payment of 1 ½ to 2 times the expected annual crop loss would fully compensate for any expected damages and considers the zero till nature of the property. His evidence was that crop loss payments calculated on the basis of yield times price represent gross revenue and do not account for the input costs of seed, fertilizer, pesticides and fuel. His evidence was that normal input costs are 70-90% of gross revenue. In good years, input costs may fall to 50% of revenue, and in drought years may exceed revenues. His evidence was that the practice of zero tilling results in lower input costs, principally as a result of using less fuel, but that that growing canola in successive years increases input costs because of increased use of pesticides and fungicides.

[41] Mrs. Miller provided photographs depicting the crop loss from the corners where farm equipment has to turn. The more turns required to farm around oil and gas installations results in larger areas of crop loss. Mr. Wasmuth calculated a loss of approximately .02 acres on a corner turn.

[42] Mrs. Miller's evidence was that crop is lost from both the right of way and the temporary workspace and that crop loss extends beyond three years. She provided photographs depicting a cultivated right of way area in the fourth year demonstrating a lesser crop on the right of way. ARC did not dispute that crop loss was payable for the temporary workspace, but argued crop loss at $300 per acre paid at 100% for the first year, 50% for the second year and 25% for the third year was more than adequate to compensate for estimated crop loss.

[43] Mrs. Miller was highly critical of Mr. Wasmuth's estimates of probable crop loss but neither she nor Mr. Miller provided evidence of actual or anticipated crop loss, or of actual or anticipated yields or income from the Lands. Mr. Pavlis, who actually farms the Lands, did not give evidence. It appears from the photographic evidence provided by Mrs. Miller that wheat was grown on NW ¼ 16-79-14 in 2010 and that canola was grown on NE ¼ 17-79-14 and NW ¼ 17-79-14. There is no evidence before me as to which crop was grown on the other affected ¼ sections in 2010. Nor is there evidence as to which crop Mr. Pavlis anticipates cultivating on each of the various quarter sections in the coming years.

[44] Mrs. Miller argued that decreased production as a result of increased pipeline activity impacts the average production for crop insurance purposes, further impacting farmers. There is no evidence to support this assertion or quantify the impact of pipeline rights of way on average crop production or the potential downstream loss associated with reduced crop insurance payments.

[45] The only evidence before me with which crop loss can be estimated is the evidence provided by Mr. Wasmuth. On the basis of that evidence, using the upper ends of the ranges for both yield and price, the gross revenue from a canola crop in 2010 would have been $329.10/acre (30 bu/acre x $10.97/bu) and the gross revenue from a wheat crop would have been $292.80/acre (40 bu/acre x $7.32). If input costs are taken into account, the estimated loss of profit would be less than half those amounts. On the evidence before me, I find $300/acre more than adequately covers for the probable loss of profit from the land in the first year, and on an annual basis for the wellsite areas.

[46] As to the duration of the crop loss for the flowline and temporary work space areas, in the absence of more precise evidence, I accept Mr. Wasmuth's estimates of 50% for the second year and 25% for the third year. There is some evidence of a likelihood of crop loss extending to a fourth year, and I find crop loss should be compensated at 25% for the fourth year.

[47] Mrs. Miller provided examples of agreements paying crop loss at $400 and $450/acre and argued the same should be paid for these entries. The evidence before me does not support that the Millers have actually experienced crop loss at that level or are likely to experience that level of loss in the coming years. Just because others have agreed to payment at a certain level does not mean that payment need apply in every circumstance. The circumstances behind these other agreements are not known. It may be that the agreed crop loss figure reflects evidence a landowner was able to provide a company to support actual loss. It may be that a company was willing to pay an amount for crop loss higher than the evidence might support in order to secure an agreement quickly, avoid a lengthy dispute, or avoid the cost and time of arbitration. In a negotiated or mediated agreement, parties may agree to whatever they want. If an agreement cannot be reached and the Board is required to arbitrate compensation for loss,

the Board is constricted to determine compensation that conforms with the evidence before it and to the law. The evidence before me does not support actual or probable crop loss as high as $400/acre.

Severance

[48] Mrs. Miller gave evidence respecting the difficulties in farming a small area south of the flowline right of way on NE ¼ 17-79-14. In the initial year following construction of the right of way, the agricultural equipment cannot cross the right of way, effectively severing this small area. As a result, additional time is required in cultivating and harvesting this area as a result of having to make additional turns with the farm equipment. She was not able to estimate the additional time required. Mr. Pavlis, who actually farms the Lands, did not give evidence.

[49] Mr. Wasmuth estimated the increased time for farming NE ¼ 17-79-14 at ½ hour to ¾ hour in a growing season. He estimated the area severed in the first year as a result of the flowline at approximately 5 acres. Based on his own farming experience, his evidence was this area could still be farmed.

[50] There is no land that is severed in the sense that it can no longer be farmed at all and becomes unusable. Additional time incurred in farming the Lands as a result of having to operate equipment around oil and gas installations can be compensated as nuisance and disturbance.

Temporary and Permanent Damage

[51] Mrs. Miller's evidence was that as a result of ARC's activities on NW ¼ 16-79-14, the Saskatoon berries were wiped out. Mrs. Miller said top soil stripping was not done properly resulting in top soil loss. She did not provide evidence with which to quantify this damage.

[52] Mrs. Miller also gave evidence that even after abandonment of a pipeline, the pipe typically remains in the ground and liability may accrue to the landowner as a result. The evidence is that if a landowner disturbs an abandoned pipeline after it has received an abandonment certificate due to the landowner's desire to use the lands, then the landowner is required to ensure pipeline disturbance is corrected to a standard acceptable to the Oil and Gas Commission. The Millers argued the landowners do not a have a true reversionary interest because the pipeline stays in the ground forever, and while the right of way may be discharged, there will always be a notation on title advising of the presence of a deactivated pipeline. At present, the right of way area may continue to be used for agricultural purposes. Any potential future loss as a result of the presence of the pipeline is entirely speculative and cannot be known or quantified at this time. If there is future loss or damage caused by the presence of the pipeline, such loss or damage may be addressed at that time.

Nuisance and Disturbance

[53] In addition to the evidence respecting the additional time required to farm around the oil and gas installations, Mrs. Miller provided detailed itemization of her contact with ARC from February 2009 to December 2009 when ARC filed its applications with the Board, and for her time spent in dealing with the Board's applications. She envisages that there will be increased use of the access roads on the Lands for the drilling of the new wells, resulting in additional noise and dust.

[54] I accept there has been and will be some nuisance and disturbance in the form of noise, dust and traffic while the wellsites and flowlines are constructed, but cannot precisely quantify this loss with the evidence before me. None of the entries are within close proximity to the Miller's home, and there is no evidence as to how, or to what extent, dust and noise from the entries impacts the Millers.

[55] ARC did not take serious issue with Mrs. Miller's evidence of her time involved in dealing with ARC. To the extent the Millers spent time discussing access and negotiating terms and compensation, irrespective of any applications to the Board, this time is compensable as nuisance and disturbance. But for ARC's request for entry, the Millers could have used their time in other pursuits.

[56] While the evidence provided by Mrs. Miller itemizes her activities associated with ARC's request for entry, it does not always include the amount of time involved. My best estimate from the evidence before me is that Mrs. Miller has spent approximately 15 hours of her time, from ARC's initial request for entry in dealing with ARC's need for entry for both the wellsites and flowlines (exclusive of time spent in the Board's processes which is to be included in a payment for Costs).

[57] Some loss for nuisance and disturbance, for example for time spent, can be tracked and accounted for, and some nuisance and disturbance, for example for noise and dust, is not capable of precise quantification and must be arbitrarily acknowledged. I find an initial payment of $2,000 per wellsite adequately compensates for nuisance and disturbance associated with the construction of the wellsites, and $1,000 annually for each of the wellsite areas adequately compensates for ongoing nuisance and disturbance. I find an initial payment of $2,000 per entry adequately accounts for the nuisance and disturbance associated with the construction and operation of the flowlines.

Terms of Other Agreements

Wellsites

[58] Ms. Clayton gave evidence of a 2009 multi-well lease and an unaccepted multi-wellsite offer of which she was aware. She was not at liberty to identify the parties involved or provide copies of the surface lease or offer. The surface

lease agreement was for 7.78 acres and contemplated six wellsites. Her evidence was the total initial right of entry payment was $54,302 inclusive of cash, "in kind" work and contracts, and the annual rent for the pad and first well was $11,704 (comprised of cash and "in kind" value). Her evidence was that each additional wellsite was to be compensated at $2,000 for right of entry, plus annual rent of $500.

[59] Ms. Fiedler's evidence was that ARC drilled approximately 100 wells in north east British Columbia in the last 5 years. She said the average compensation agreed was $950/acre plus $300/acre crop loss, and an amount for nuisance, determined on a case by case basis, but typically around $2,000.

Pipelines

[60] Ms. Clayton provided evidence in the form of a model comparing compensation paid for three pipelines: Nova Gas Trans Canada Line, Spectra South Peace Pipeline, and the Enbridge Alberta Clipper Line, which have 20 metre, 18 metre and 20 metre rights of way respectively. The model was based on an 804.5 metre right of way comprising 3.68 acres and .58 acres of temporary workspace.

[61] All three of these pipelines are transmission lines under the jurisdiction of the National Energy Board. The rights of way contain pipelines that are 36 inches in diameter. The Nova Gas line was constructed in 2010 and much of it is within British Columbia, not far from ARC's line. The Spectra line is also fairly recent and part of it is within British Columbia. The Alberta Clipper line extends from Hardesty Alberta to Gretna Manitoba. The Miller's evidence included a generic copy of the 2007 agreement between Enbridge Pipeline Inc. and landowners along the Alberta Clipper Line. Copies of the Spectra and Nova Gas agreements were not provided. Ms. Clayton's evidence was that the agreements contained confidentiality clauses, and for that reason, she could not make them available. Neither she nor the Millers were parties to these agreements, or involved in their negotiation.

[62] Ms. Clayton's evidence was that in all cases compensation included a "trenching" or "ditching" fee of $35/linear metre ($45/metre for two pipes in the Enbridge Agreement). The Spectra and Nova Gas agreements compensated for the right of way at $950/acre, and Enbridge compensated at 150% of the market value of the land but no less than $800/acre. Spectra paid crop loss at $500/acre, half in advance and half on completion. Nova Gas paid a one time crop loss of $1,300/acre and the Enbridge crop loss varied from $1,275 to $1,750/acre with additional payments if going through wet land. Nova paid 100% (ie $950/acre) for temporary workspace; Spectra and Enbridge each paid 50% ($475/acre). Spectra and Enbridge compensated for inconvenience at $375/acre and provided a $1,000 signing bonus. Ms. Clayton calculated the total compensation packages at $45.29 to $53.75 per lineal foot of right of way or $9,902 to $11,751/acre.

[63] The sample Enbridge Agreement includes a clause whereby landowners give Enbridge a full and final release of damages and provide indemnification for related parties' claims. Landowners agree not to engage in opposition of any kind to the pipeline project and agree not to participate in the public hearing process. The Enbridge agreement characterizes the $35 (or$45) linear foot payment as an early signing incentive not additional compensation. The agreement indicates this payment will not be made for agreements signed after a specified date.

[64] Ms. Fiedler's evidence was that all of the other landowners along the ARC flowlines that are the subject of this arbitration were paid $950/acre for loss of rights and $300 for crop loss at 100% for the first year, 50% for the second year and 25% for the third year.

[65] The Millers argued that the Nova Gas, Spectra and Enbridge agreements constitute a "pattern of dealings" for the compensation of flowlines and that the Board should compensate the Millers for these flowlines in comparable terms.

[66] I do not accept that the evidence provided of the Nova Gas, Spectra and Enbridge agreements establish a pattern of dealings upon which the Board should place great weight in determining the compensation payable in this case. Other than a generic copy of the Enbridge agreement, I do not have copies of the agreements, and I do not have evidence as to the circumstances of their negotiation or the nature of the properties involved. The agreements are not in respect of flowlines within the jurisdiction of the Board, but pipelines within the jurisdiction of the National Energy Board, for which the process of acquiring rights to land is different than under the *Petroleum and Natural Gas Act*. Although the width of the rights of way is similar, the buried pipeline is considerably larger. It appears from the Enbridge agreement that the substantial "trenching" or "ditching" fee was an early signing incentive not intended to compensate landowners for actual loss. Without the trenching or ditching fee, the agreements are reasonably in line with ARC's agreements with landowners for other segments of their flowlines and other agreements in evidence before me. It is predominantly the trenching or ditching fee that provides additional compensation beyond what was paid by ARC to other landowners affected by this flowline and what is typically paid for flowline rights of way in this province. The additional payment is characterized as a signing bonus in the Enbridge Agreement, and the reason for it in the Spectra and Nova Gas Agreements is not evident on the evidence before me. It is possible that the different process for the acquisition of land for pipelines under the jurisdiction of the National Energy Board places a market value on entry over and above actual or foreseeable loss, which is all that is compensable under the *Petroleum and Natural Gas Act.* There is no evidence before me to substantiate actual or reasonably foreseeable loss from these flowline entries equating to $35 per lineal meter of right of way.

[67] The burden is on the party tendering the evidence as a pattern of dealings to establish that the agreements show an established pattern for cases with

similar facts. To a large extent, the facts surrounding these agreements are not in evidence, and to the extent the facts surrounding the agreements are in evidence, they are for the most part not similar to the facts of this case in that the nature of the pipeline and legislative framework for acquisition of rights are different. The evidence falls short of demonstrating an established pattern of dealings for determining flowline compensation in British Columbia.

Compensation for Wellsites

[68] Compensation for ARC's entry, occupation and use of the Lands for the construction and operation of the wellsites includes an initial payment to compensate for loss of rights, loss of profit, damage, and nuisance and disturbance, and an annual payment to compensate for annual loss of profits, and nuisance and disturbance.

[69] The Millers requested compensation on the basis that the area for the new entry be harmonized with the existing leases. As I have already indicated, the Board does not have the jurisdiction to harmonize a new entry with an existing surface lease.

[70] Applying my findings discussed above in relation to the various factors the Board may consider, I calculate initial and annual compensation for the entry associated with wellsites C9-17 and D9-17 as follows:

		Initial	Annual
For compulsory aspect of the taking/loss of rights/value of the land:	$1,200/acre x1.53 acres =	$1,836.00	
For loss of profit:	$300/acre x 1.53 acres =	$459.00	$459.00
For damage/nuisance and disturbance	$2,000/wellsite =	$4,000.00	
For nuisance and disturbance			$1,000.00
Total initial payment:		$6,295.00	
Total annual payment:			$1,459.00

[71] Stepping back and considering the compensation globally in light of the evidence before me and the principles of compensation binding upon me, I conclude that an initial payment of $6,300.00 and annual payments of $1,500.00 compensates the Millers for their actual and reasonably foreseeable loss associated with ARC's entry to NE ¼ 17-79-14 W6M to construct and operate wellsites C9-17 and D9-17.

[72] I calculate initial and annual compensation for the entry associated with wellsite A10-16 as follows:

		Initial	Annual
For compulsory aspect of the taking/loss of rights/value of the land:	$1,200/acre x1.58 acres =	$1,896.00	
For loss of profit:	$300/acre x 1.58 acres =	$474.00	$474.00
For damage/nuisance and disturbance	$2,000/wellsite =	$2,000.00	
For nuisance and disturbance			$1,000.00
Total initial payment:		$4,370.00	
Total annual payment:			$1,474.00

[73] Stepping back and considering the compensation globally in light of the evidence before me and the principles of compensation binding upon me, I conclude that an initial payment of $4,500.00 and annual payments of $1,500.00 compensates the Millers for their actual and reasonably foreseeable loss associated with ARC's entry to NE ¼ 16-79-14 W6M to construct and operate wellsite A10-16.

[74] The total initial compensation payable, therefore, to the Millers for entry, occupation and use of the Lands for wellsites C9-17, D9-17 and A10-16 is $10,800.00. Annual payments of $3,000.00 are payable commencing June 7, 2011. The Board's Order of June 7, 2010 required partial payment by ARC to the Millers of $20,000.00 on account of compensation owing in relation to these and two other wellsites. Initial compensation for C9-17, D9-17 and A10-16 is fully satisfied by the partial payment. The disposition of the remainder of the partial payment ($9,200.00) cannot be determined until compensation for wellsites A5-5 and B5-5 has either been agreed by the parties or determined by the Board.

Compensation for the Flowlines

[75] Compensation for ARC's entry, occupation and use of the Lands for the construction and operation of the flowlines includes a one-time payment to compensate for loss of rights, loss of profit, damage and nuisance and disturbance.

[76] Applying my findings discussed above in relation to the various factors the Board may consider, I calculate compensation for the entry associated with the flowline from 15-26-78-15 W6M to 9-17-79-14 W6M as follows:

		Initial
For compulsory aspect of the taking/loss of rights/value of the land:	$1,200/acre 4.66 acres =	$5,592.00
For loss of profit for 4 years:	$300/acre x 4.66 acres =	$1,398.00
	$300/ac x 4.66ac x 50% =	$699.00
	$300/ac x 4.66ac x 25% =	$349.50
	$300/ac x 4.66ac x 25% =	$349.50
For damage/nuisance and disturbance	$2,000	$2,000.00
Total payment:		$10,388.00

[77] Stepping back and considering the compensation globally in light of the evidence before me and the principles of compensation binding upon me, I conclude that payment of $10,400.00 compensates the Millers for their actual and reasonably foreseeable loss associated with ARC's entry to NW ¼ 17-79-14 W6M and NE ¼ 17-79-14 W6M to construct and operate a segment of the flowline from 15-26-78-15 W6M to 9-17-79-14 W6M.

[78] I calculate compensation for the entry associated with the flowline from 9-17-79-14 W6M to 11-28-79-14 W6M as follows:

		Initial
For compulsory aspect of the taking/loss of rights/value of the land:	$1,200/acre 10.62 acres =	$12,744.00
For loss of profit for 4 years:	$300/acre x 10.62 acres =	$3,186.00
	$300/ac x 10.62ac x 50% =	$1,593.00
	$300/ac x 10.62ac x 25% =	$796.50
	$300/ac x 10.62ac x 25% =	$796.50
For damage/nuisance and disturbance	$2,000	$2,000.00
Total payment:		$21,116.00

[79] Stepping back and considering the compensation globally in light of the evidence before me and the principles of compensation binding upon me, I conclude that payment of $21,150.00 compensates the Millers for their actual and reasonably foreseeable loss associated with ARC's entry to NW ¼ 21-79-14 W6M except plan H782, NE ¼ 17-79-14 W6M, and NW ¼ 16-79-14 W6M except plan H782 to construct and operate a segment of the flowline from 9-17-79-14 W6M to 11-28-79-14 W6M.

[80] I calculate compensation for the entry associated with the flowline from 5-5-80-14 W6M to 1-31-79-14 W6M as follows:

		Initial
For compulsory aspect of the taking/loss of rights/value of the land:	$1,200/acre 3.41 acres =	$4,092.00
For loss of profit for 4 years:	$300/acre x 3.41 acres =	$1,023.00
	$300/ac x 3.41ac x 50% =	$511.50
	$300/ac x 3.41ac x 25% =	$255.75
	$300/ac x 3.41ac x 25% =	$255.75
For damage/nuisance and disturbance	$2,000	$2,000.00
Total payment:		$8,138.00

[81] Stepping back and considering the compensation globally in light of the evidence before me and the principles of compensation binding upon me, I conclude that payment of $8,150.00 compensates the Millers for their actual and reasonably foreseeable loss associated with ARC's entry to SW ¼ 5-80-14 W6M, NW ¼ 5-80-14 W6M, and SW ¼ 8-80-14 to construct and operate a segment of the flowline from 5-5-80-14 W6M to 1-31-79-14 W6M.

[82] The Millers claimed compensation for the entry for the purposes of surveying the proposed right of way for the flowline from 9-8-80-14 to 5-5-80-14 that ARC has subsequently decided not to proceed with. At the time these entry orders were made, the recently enacted provisions of the *Oil and Gas Activities Act* providing for right of access for the purpose of surveying for a proposed pipeline right of way and the process to be followed to obtain access was not in force, and the Board made entry orders for this activity when parties could not agree to access and terms of access. With the enactment of the *Oil and Gas Activities Act* an entry order for the purpose of surveying a proposed pipeline

right of way is not required, and in the absence of actual damage caused by surveying activity, compensation for access itself is not payable. Access for surveying is typically required for a short period of time. I have no evidence of actual loss to the Millers associated with the entry for the purpose of surveying his proposed right of way. As entry was made, however, by order under the previous legislative regime, I award a nominal payment of $500 as compensation for the compulsory aspect of this entry and loss of rights.

[83] Total compensation owning for the flowlines is $40,200.00. The Board's Order of June 7, 2010 provided a partial payment by ARC to the Millers on account of compensation for the flowlines in the amount of $35,000.00. The balance owing to the Millers is, therefore, $5,200.00.

[84] I have found this decision extremely difficult to write because of the apparent disconnect between the law of compensation for surface access to private land and the expectations of the landowners as to the appropriate level of compensation. The difficulty has been compounded by the knowledge that the parties could have come to terms of compensation in excess of the amounts I have determined. Feeling the compensation offered by ARC to be unacceptably low, the Millers felt compelled to proceed with the arbitration in the hope that the Board could order compensation in line with their expectations. The problem, however, is that their expectations do not conform to the law that is binding on this Board. The Board cannot change the law. It is up to the legislature to consider the difficult public policy issues around oil and gas development and the rights of landowners, and to consider whether the law of compensation reflects an appropriate balancing of the interests of industry, landowners, and the public at large. If it is determined that the principles of compensation binding on the Board do not reflect a balancing of the various interests and are not socially acceptable, then it is for the legislature to address those concerns.

[85] In the meantime, parties are free to negotiate compensation without the constraints binding on the Board. Parties are at liberty to negotiate terms of entry that include value for the avoidance of arbitration, the maintenance of relationships, the forbearance from opposition to regulatory process, or any other circumstances that go beyond actual or foreseeable loss or damage to the landowner from the entry. If in the circumstances of a particular negotiation, the parties agree to consideration beyond compensation for loss and damage in order to come to a negotiated settlement they may do so. But if parties cannot agree to the terms of entry and compensation, either on their own or with the assistance of a Board mediator, and the Board is placed in the position of having to arbitrate compensation in accordance with the principles of compensation binding upon it, landowners cannot expect to receive payment beyond compensation for their actual and reasonably foreseeable loss established by evidence.

COSTS

[86] ARC did not dispute the Miller's entitlement to costs, but did take issue with some of the amounts claimed. Mrs. Miller submitted invoices accounting for time spent, disbursements, and kilometers travelled, and charging a flat rate per email sent and received, telephone call made and received, house visits, and conference calls from the house in addition to time spent on these activities. Mrs. Miller billed her time at $82/hour and Mr. Miller's time at $50/hour. The $82/hour rate is the average of hourly rates paid for costs in three other cases. The rate claimed of $1.12/km is the average of the kilometer rate paid in three other cases. Mrs. Miller also provided copies of invoices from Aspen Grove Property Services for Ms. Clayton's time and disbursements, and from Mackoff and Company for legal fees charged to Mr. Gowman in relation to these applications. The Millers' invoices for costs total $40,512.14.

[87] The Board's authority under section 170 of the *Petroleum and Natural Gas Act* is to require the payment of all or part of the actual costs, including reasonable legal and professional fees and disbursements, and reasonable time spent by a party. incurred by a party in connection with an application.

[88] ARC did not dispute the number of hours claimed by Mr. and Mrs. Miller (approximately 171 hours) but submitted they should be paid at $50/hour not the $82/hour claimed for Mrs. Miller's time, and disputed that the flat rate for emails, telephone calls, house visits and conference calls over and above time spent was reimbursable. In addition to the time claimed, ARC agreed to reimburse Mr. and Mrs. Miller for an additional 80 hours for the time spent at the mediation/arbitration at the rate of $50/hour (4 days x 10 hrs/day x 2 people = 80 hours).

[89] On the premise that when a landowner spends time preparing for and participating in Board proceedings they may not be able to engage in other remunerative work, the amount claimed for time should not exceed the rate that could be expected for other remunerative work. In the absence of evidence of the hourly rate actually received by a landowner from their business or employment, the Board has concluded that $50/hour is appropriate, and I find $50/hour is the appropriate hourly rate to apply to the Millers' time.

[90] I find the flat rate for emails, telephone calls, etc, over and above time spent by the landowner on these activities are not actual costs of the landowner and are not compensable.

[91] ARC did not dispute the kilometers claimed, the kilometer rate or any of the disbursements claimed. They agreed to costs of $500 with respect to the withdrawal of one of the flowline applications.

[92] ARC did take issue with elements of the accounts rendered by Aspen Grove and Mackoff and Company, questioning the possible overlap of services and

whether some of Mr. Mackoff's account was properly recoverable as costs of the Board's proceedings as they appeared to be to Mr. Gowman and not to the Millers, and a portion appeared to relate to consultation respecting whether or not to file an application for judicial review from the Board's jurisdiction decision. I was told that although Mr. Gowman retained Mackoff and Company, that retainer was on behalf of the Millers in respect of these applications. ARC also questioned the propriety of some of Ms. Clayton's account in that she appeared to be charging for services as both an expert witness and an advocate. In any event, and despite these concerns, ARC submitted that a payment of $35,000.00 on account of all of Mr. and Mrs. Miller's costs would be reasonable.

[93] Having reviewed the costs accounts I accept ARC's submission that payment of $35,000.00 on account of all of Mr. and Mrs. Millers costs is reasonable. Mr. and Mrs. Miller claimed a total of approximately 171 hours engaged in preparing for and attending the Board's processes in connection with these applications. This time with the additional 80 hours for attendance at the arbitration, at $50/hour equates to $12,550.00 (251 x $50 = $12,550). The total mileage claimed is $799.57 and the disbursements amount to $886.46. The Millers costs associated with their own time and disbursements, therefore, totals $14,236.03. The combined total of the professional accounts rendered by Mackoff and Company and Aspen Grove is $20,211.55. The combined totals are just shy of $35,000.00. On the understanding that responsibility for Mackoff and Company's account falls to the Millers, I find ARC should pay costs to the Millers of $35,000.00.

ORDER

[94] The compensation payable to John and Mary Miller by ARC Petroleum Inc. for access to those portions of the Lands required to construct and operate wellsites C9-17, D9-17 and A10-16 is $10,800.00. This payment is satisfied by the partial payment previously ordered by the Board.

[95] ARC Petroleum Inc. shall pay John and Mary Miller the sum of $3,000.00 annually commencing June 7, 2011 as annual rent for the occupation and use of those portions of the Lands required for the operation of wellsites C9-17, D9-17 and A10-16.

[96] The compensation payable to John and Mary Miller by ARC Petroleum Inc. for access to those portions of the Lands required to construct and operate flowlines15-26-78-15 W6M to 9-17-79-14 W6M, 9-17-79-14 W6M to 11-28-79-14 W6M, and 5-5-80-14 W6M to 1-31-79-14 W6M is $40,200.00. A portion of this compensation is satisfied by the partial payment previously ordered by the Board. ARC Petroleum Inc. shall forthwith pay to John and Mary Miller the sum of $5,200.00, being the balance owing on account of compensation payable for entry occupation and use of those portions of the Lands required for the construction and operation of these flowlines.

[97] ARC Petroleum Inc. shall forthwith pay to John and Mary Miller the sum of $35,000.000 as costs.

Dated: May 24, 2011

For the Board

Cheryl Vickers
Chair

File No. 1633
Board Order 1633-2amd2

June 30, 2011

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER

[1] This Order amends and replaces Order 1633-2amd dated May 24, 2011, amending and replacing Order 1633-2 dated June 7, 2010 as a result of the Applicant's withdrawal of a portion of their application, to correct typographical errors, and to attach amended Individual Ownership Plans in Schedule A depicting the portions of the Lands for which entry, occupation and use by the Applicant is authorized.

[2] **The Surface Rights Board orders**:

1. Further mediation is refused.

2. Upon payment of the amounts set out in paragraphs 4 to 7 below, the Applicant including its employees, contractors and assigns shall have the right of entry to and access across the portion of the Lands shown in Schedule "A" for the purpose of constructing operating and maintaining the flowlines and wellsites. This Order is subject to the application process required by the Oil and Gas Commission and nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission. The Order is also subject to the following terms and conditions:

    a) ARC will use all reasonable efforts to maintain the soil admixing to no more than 20% subsoil,
    b) ARC will use all reasonable efforts to maintain the work site and the public access roads free of excessive dirt and debris at all times during construction and operation of the subject pipeline and well sites,
    c) ARC acknowledges that it is responsible for removal of rocks that are brought to the surface of the right of way during and following construction and in that regard will consult with the owners and the lessee in discharging this responsibility,
    d) ARC will, within 7 days of receiving notice of a builder's lien claim being filed against the Lands as a result of the work being carried out by ARC on the subject property, cause the lien to be removed, either by way of paying the lien claimant or by paying the amount claimed into court in accordance with s. 23 of the *Builders Lien Act,*
    e) All vehicles used in the farming operations of the Millers will have a right to cross the pipeline right-of-ways in the normal and ordinary course of such farming operations, regardless of whether the vehicle carries a farm license. For greater certainty, certain vehicles that are used in the farming operation for the delivery of fertilizer and other materials incidental to farming operation, as well as for the hauling of crops shall be permitted to cross the pipelines, notwithstanding that these vehicles may carry commercial plates only.

3. The Applicant shall serve the Respondents with a copy of the Order prior to entry onto the Lands.

Applications 1633-1, 1633-3, 1633-6 and 1633-7:

4. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

5. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $35,000.00, on the condition that if any of the flowlines do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment.

Applications 1633-2, 1633-4 and 1633-5:

6. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $40,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

7. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $20,000.00, on the following conditions:

   a) if any of the wellsites do not receive approval of the Oil and Gas Commission, the Respondents will refund to the Applicant the partial payment on a pro-rated basis and on a per acre breakdown of the partial payment, and
   b) if the Board orders compensation less than the partial payment, the Respondents shall refund to the Applicant the difference on a pro-rated basis.

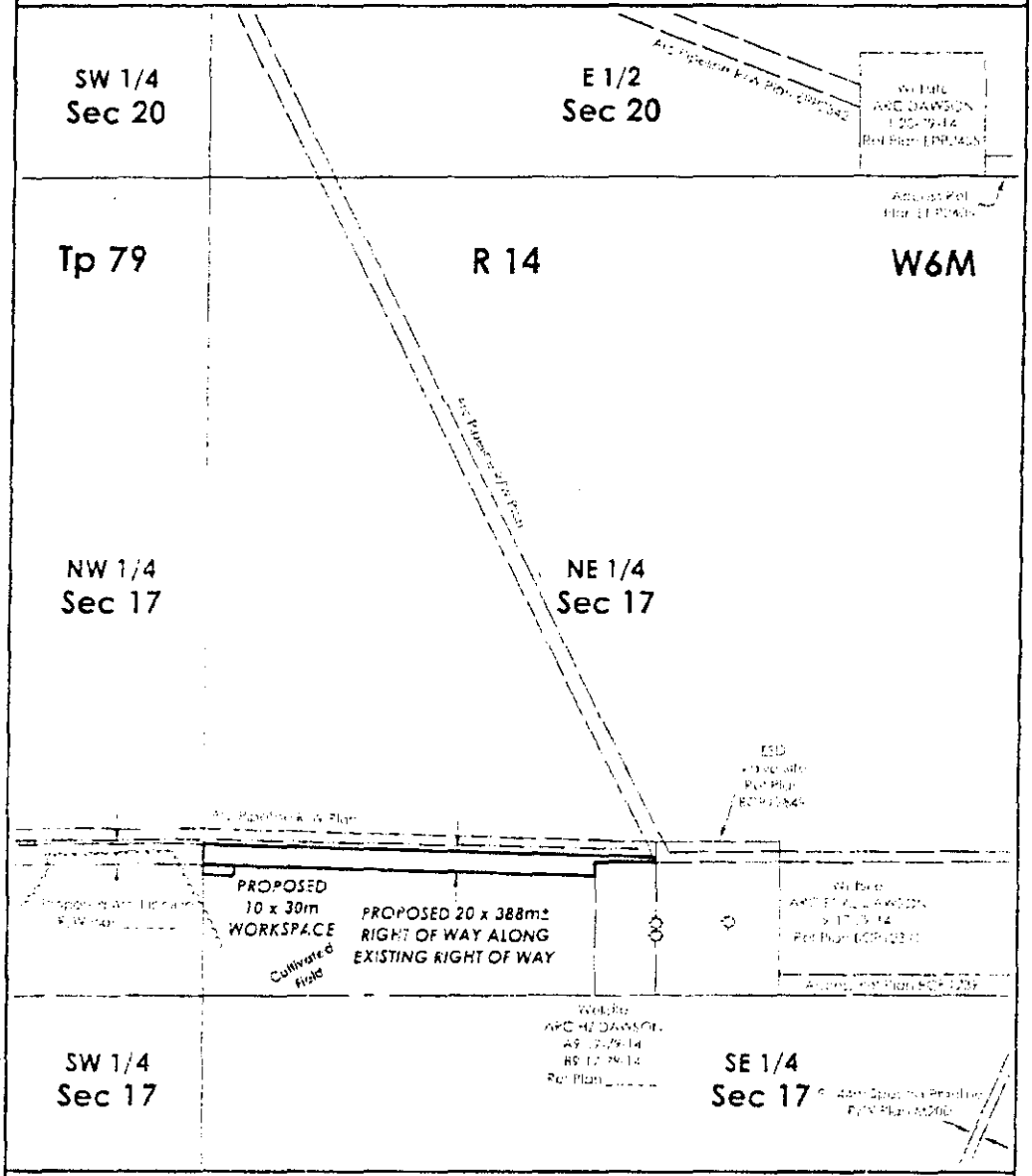
DATED: June 30, 2011

FOR THE BOARD

Cheryl Vickers
Chair

SCHEDULE "A" 1633-2 and 2

ARC PETROLEUM INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NE 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: [illegible] P.I.D. No.: [illegible]
OWNER(S): [illegible]

LEGEND
SCALE = 1: 5,000
Portions referred to: [illegible]
Notes: Distances shown are in metres.

Certified correct this
28th day of January 2010

Chris R. Sakundiak, BCLS

AREA REQUIRED:

20m Pipeline R/W	0.81 ha	2.00 ac
Metric data	0.03 ha	0.07 ac
TOTAL	0.84 ha	2.07 ac

No.	DATE	REVISION	DRN	CHK

can-am geomatics

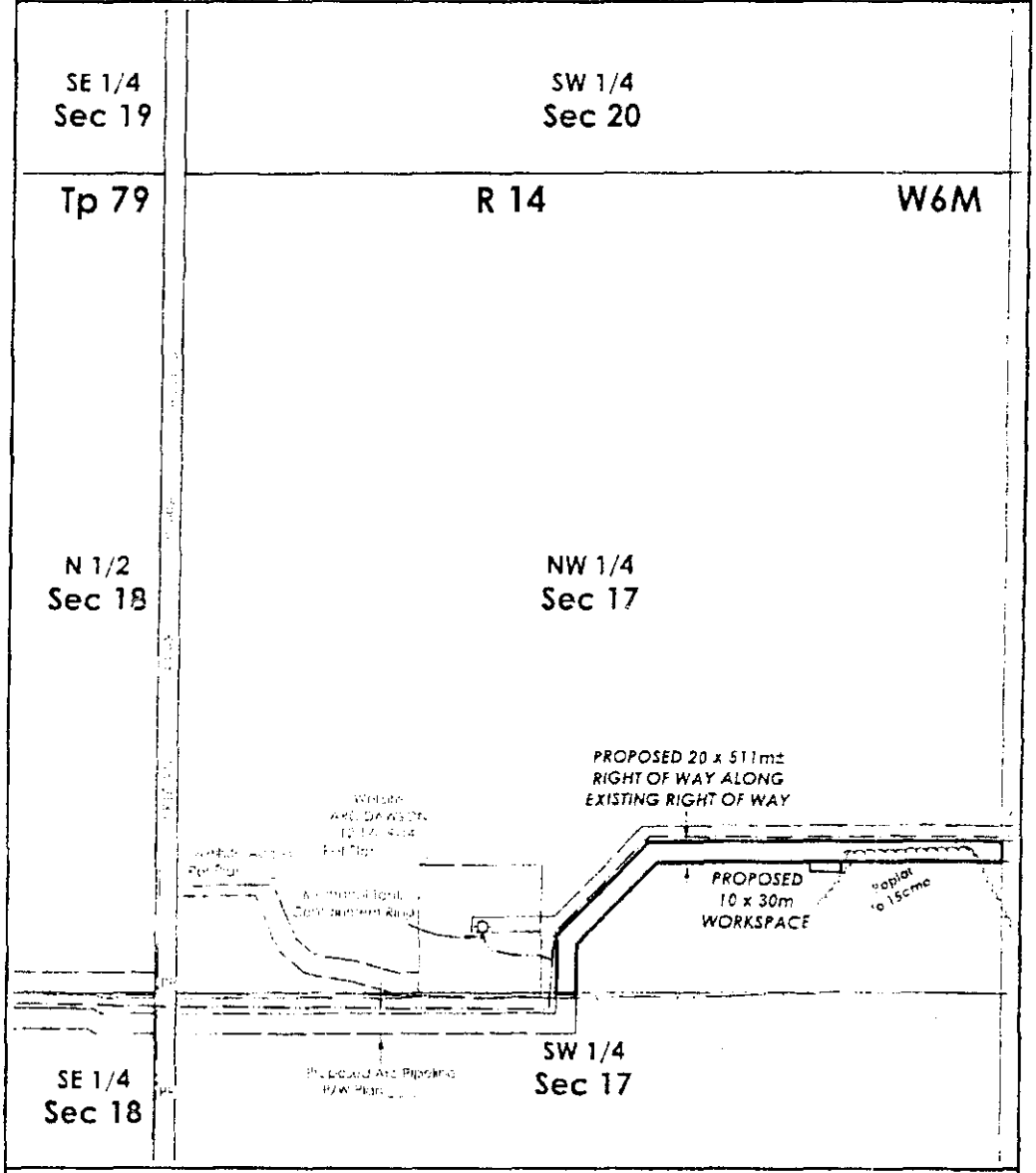
CAN-AM FILE: J200904B1

SCHEDULE A 1633-2 and 2

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
NW 1/4 Sec 17, Tp 79, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: [illegible] P.I.D. No.: 010-799-150
OWNER(S): Mrs. Kathleen Miller

LEGEND
SCALE = 1 : 5,000
Portions referred to
Metric Distances are shown and in red
Certified correct this
26th day of January, 2016

AREA REQUIRED:

20m Pipeline R/W	1.02 ha	2.52 ac
Workspace	0.03 ha	0.07 ac
TOTAL:	1.05 ha	2.59 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
2	[illegible]	[illegible]	MF	CS

can-am geomatics
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Fort St. John, B.C.
www.canam.com
Phone: 250-787-0317
Toll Free: 1-866-208-0983
Fax: 250-787-0327

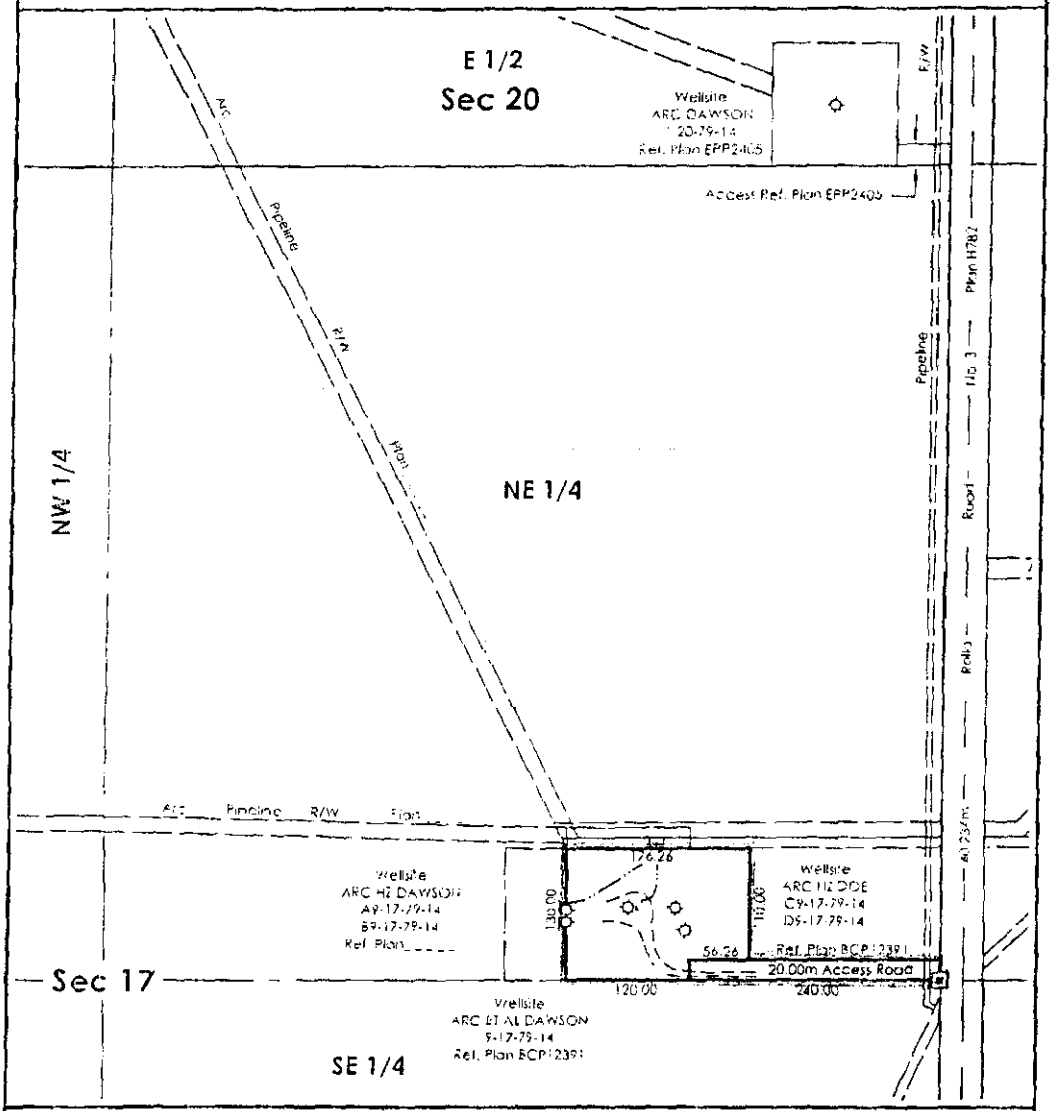
CAN-AM FILE: J20090481
CAD FILE: J20090481CP01
Client File No.: 210994
AFE No.:
Land File No.:
PLAN No.: 2

SCHEDULE "A" 1633-2 and 2

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE IN
NE 1/4 Sec 17, Tp 79, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: PL2442 P.I.D. No.: 010-799-176
OWNER(S): Mary Kathleen Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres

Certified correct this
20th day of April, 2010.

AREA REQUIRED:

Wellsite	2.18 ha	5.39 ac
Access	0.48 ha	1.19 ac
TOTAL:	2.66 ha	6.58 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10.04.20	Original plan issued	LA	CS

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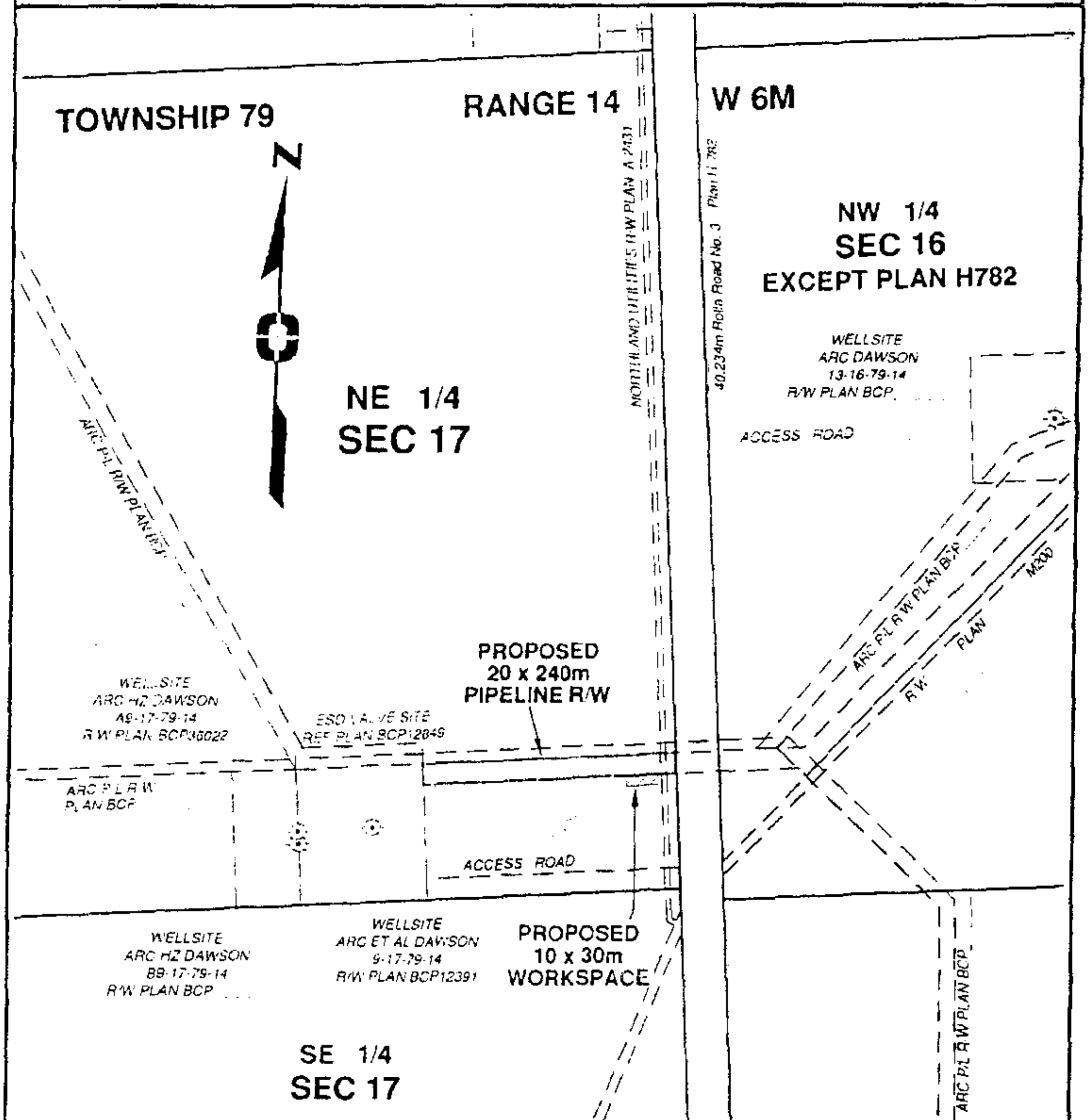
can-am geomatics Inc. Phone 250.787.2121
Fort St. John, B.C. Toll Free 1.866.208.0983
www.canamgeomatics.com Fax 250.787.2323

CAN-AM FILE: J20090359
CAD FILE: J20090359COP60
Client File No.: 506886
AFE No.:
Land File No.:
0 REVISION

SCHEDULE "A" 1633-2 and 2 Page___ of___

Attached to and made part of this Agreement dated this______day of ______________ 20______, between Mary Kathleen Miller (Lessor) and Arc Petroleum Inc (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH EAST 1/4 OF SECTION 17 TOWNSHIP 79 RANGE 14 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	Mary Kathleen Miller		
Title No:	PL2442		
Parcel Identifier:	010-799-176		
Areas			
Permanent	0.48 ha	1.19 ac	
Temporary	0.03 ha	0.07 ac	
Total	0.51 ha	1.26 ac	

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

FOCUS Focus Surveys
FCS Land Services Limited Partnership
Fort St. John

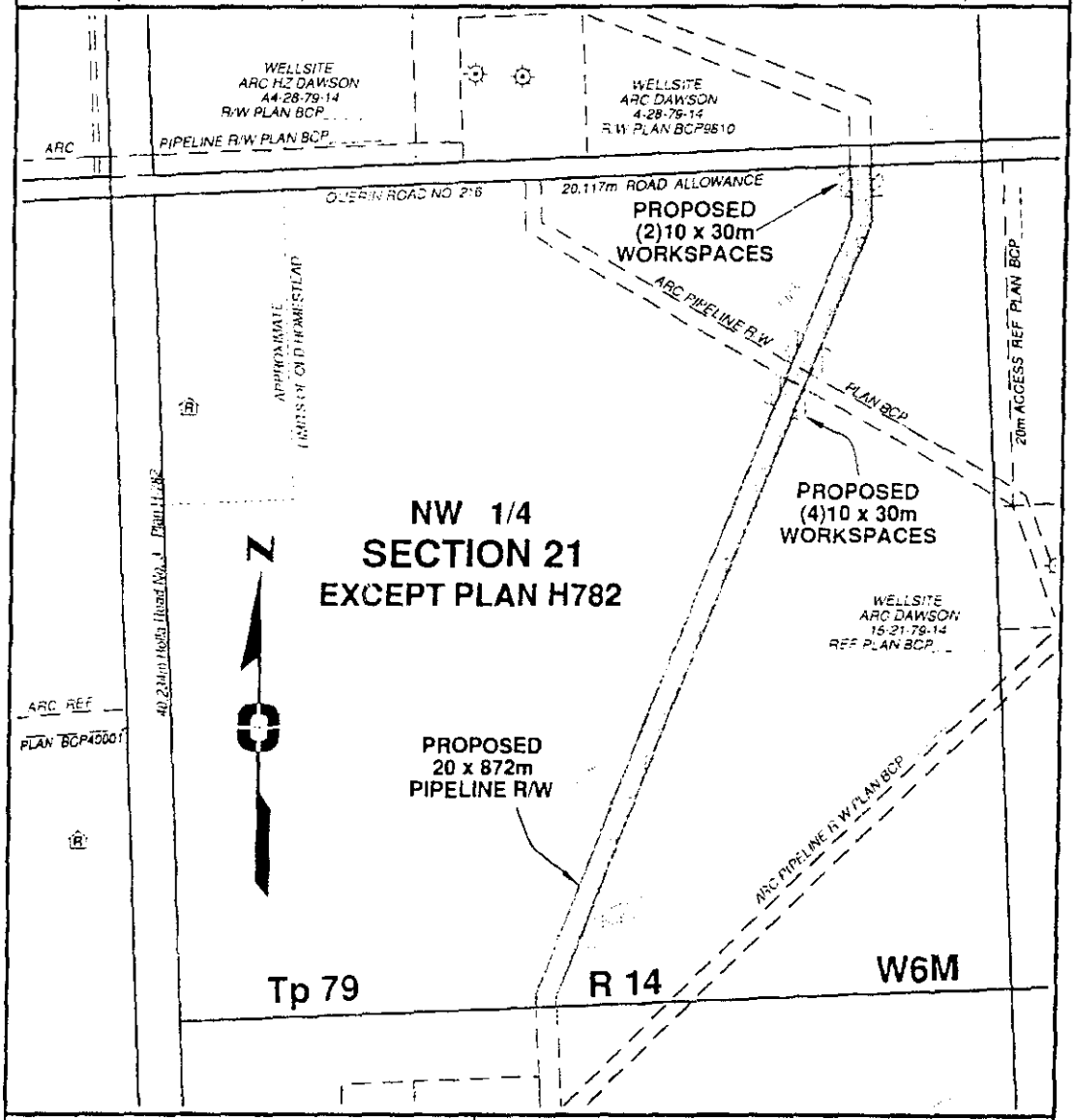
Focus Job No:	090072NP01R0
Ref Dwg:	090072CP01R0
Drafter:	CN

SCHEDULE "A" 1633-2 and 2

Page ___ of ___

Attached to and made part of this Agreement dated this _____ day of _____, 20_____, between Mary Kathleen Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 21 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s):	Mary Kathleen Miller
Title No:	PL2439
Parcel Identifier:	010-772-391

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

Areas		
Permanent	1.74 ha	4.30 ac
Temporary	0.18 ha	0.44 ac
Total	**1.92 ha**	**4.74 ac**

FOCUS
Focus Surveys
RCS Land Services Limited Partnership

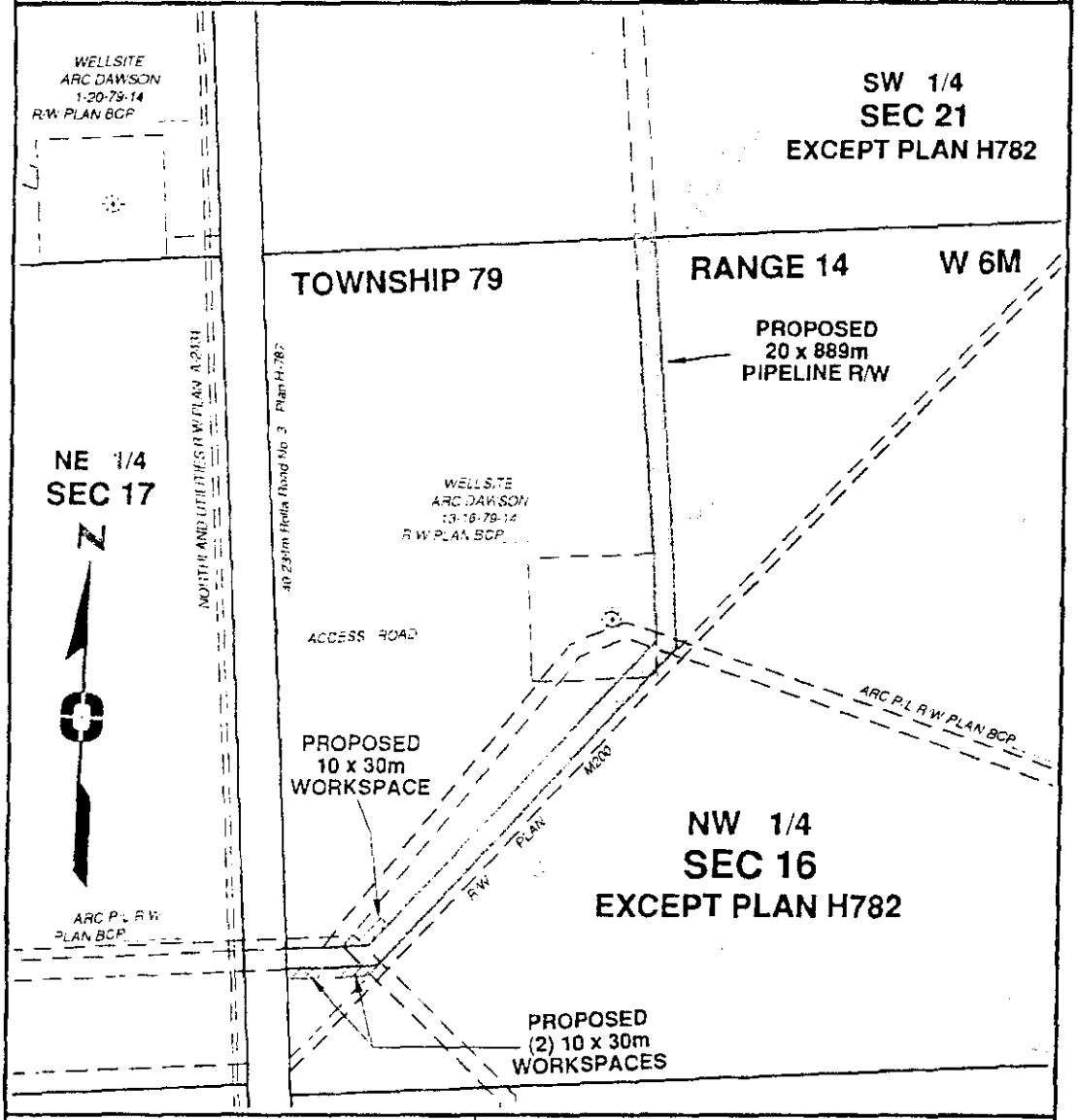
Fort St. John
10216-100th Ave
BC V1J 1Z3
Ph: (250)787-0390
Fax: (250)787-1511
www.focus.ca

Focus Job No: 090072NP04R0
Ref Dwg: 090072CP01R0
Drafter: CN

SCHEDULE "A" 1633-2 and 2 Page___ of___

Attached to and made part of this Agreement dated this_____ day of _____, 20_____, between John Irving Miller (Lessor) and Arc Petroleum Inc. (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 16 TOWNSHIP 79 RANGE 14 W6M, EXCEPT PLAN H782
PEACE RIVER DISTRICT
(Associated with Pipeline R/W From Wellsite 9-17-79-14 to Riser Site within 11-28-79-14)



Owner(s): John Irving Miller

Title No: PK47339
Parcel Identifier: 014-640-287

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 5000 (use legal size sheet)

Certified correct this 26th day of October, 2009

Wayne Brown, BCLS

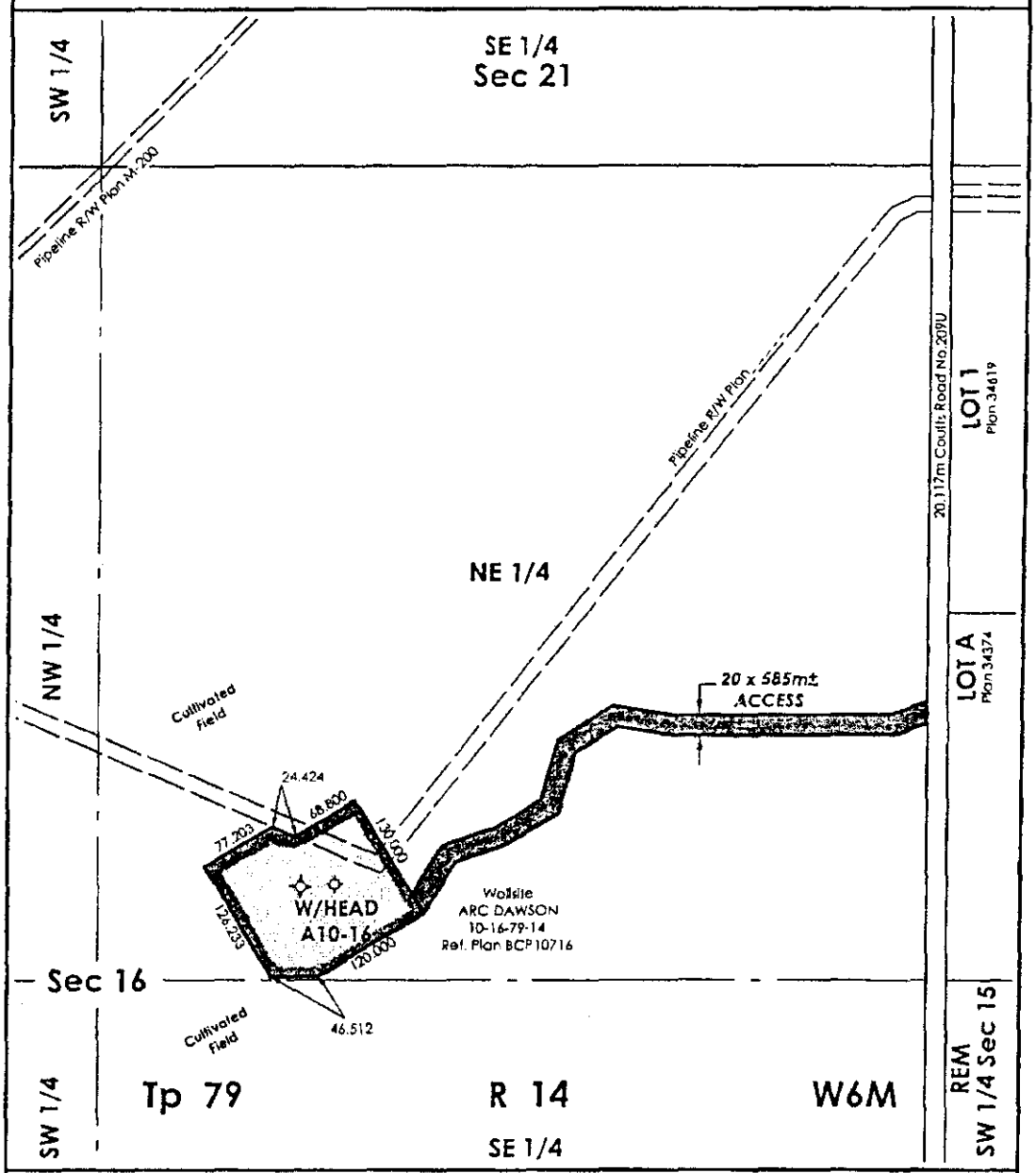
Areas		
Permanent	1.78 ha	4.40 ac
Temporary	0.09 ha	0.22 ac
Total	1.87 ha	4.62 ac

FOCUS
Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10756 100th Ave.
BC V1J 1Z3
Ph: (250)787-0843
Fax: (250)787-1611
www.focus.ca

Focus Job No: 090072NP02R0
Ref Dwg: 090072CP01R0
Drafter: CN

ARC RESOURCES LTD. SCHEDULE "A" 1633-2 and 2

INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE IN
NE 1/4 Sec 16, Tp 79, R14, W6M
PEACE RIVER DISTRICT



TITLE No.: 53041M P.I.D. No.: 016-045-319
OWNER(S): JOHN IRVING MILLER

LEGEND
SCALE = 1: 5,000
Portions referred to: . . . . . .
Notes: Distances shown are in metres.

Certified correct this
23rd day of February , 2011.

AREA REQUIRED:

WELLSITE	2.20 ha	5.44 ac
ACCESS ROAD	1.17 ha	2.89 ac
TOTAL:	3.37 ha	8.33 ac

Chris R. Sakundiak, BCLS

NO	DATE	REVISION	DRN	CKD
0	08/11/24	Original plan issued	CV	SM
1	11/02/23	Wellsite & Access Revised	RC	CS

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Fort St. John, B.C.
www.canam.com
Phone: 250.787.7171
Toll Free: 1.866.208.0983
Fax. 250.787.2323

CAN-AM FILE:
CAD FILE: J2008067610P01
Client File No.:
AFE No.:
Land File No.:
1 REVISION

SCHEDULE "A" 1633-2 and 2

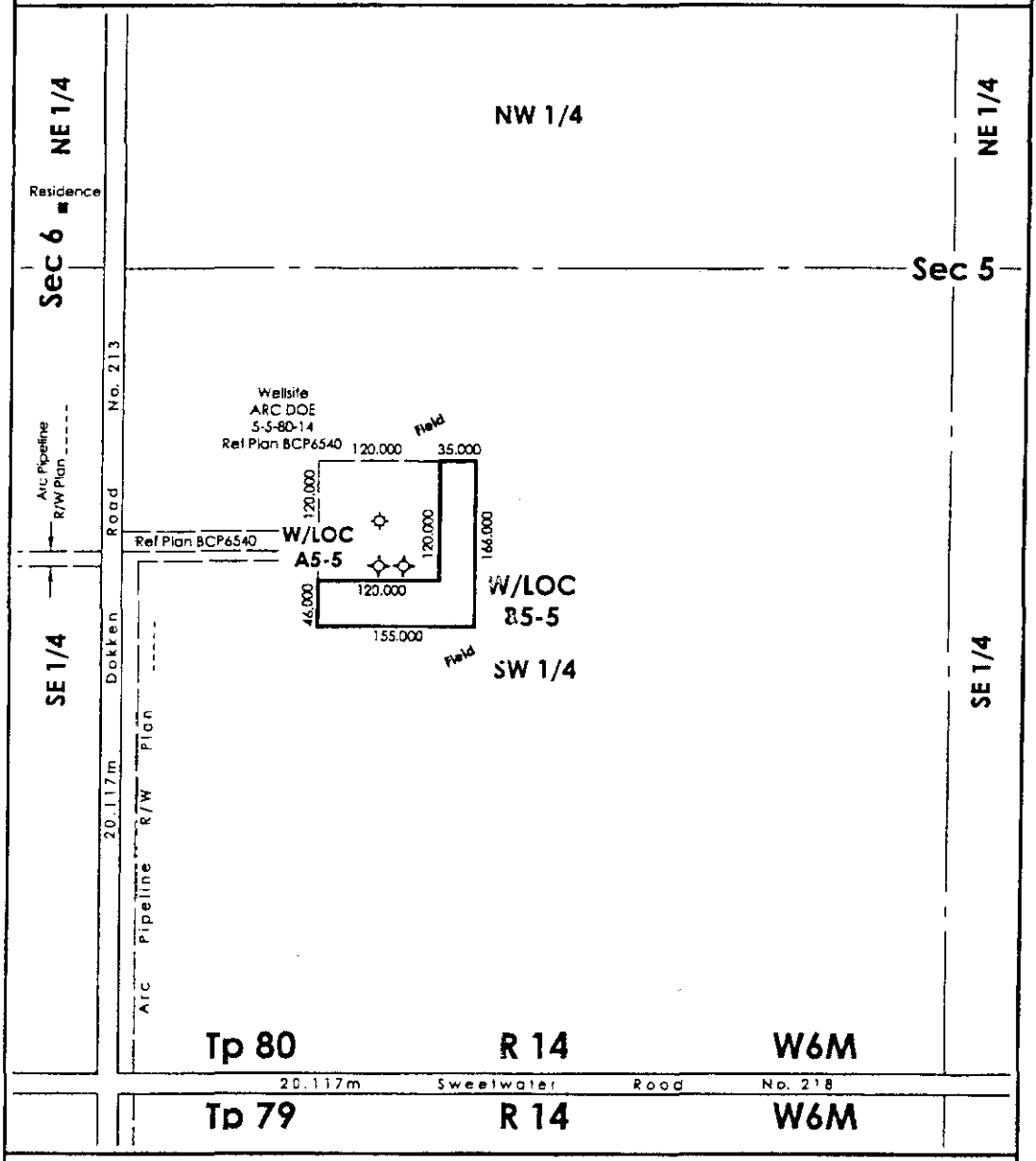
ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED WELLSITES IN

SW 1/4 Sec 5, Tp 80, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757

OWNER(S): John Irving Miller

LEGEND

SCALE = 1: 5,000

Portions referred to:

Notes: Distances shown are in metres.

Certified correct this 21st day of May, 2010.

Chris R. Sakundiak, BCLS

AREA REQUIRED:

Wellsites	1.13 ha	2.79 ac
TOTAL:	1.13 ha	2.79 ac

NO.	DATE	REVISION	DRN	CKD
0	10/01/29	Original plan issued	JMS	CS
1	10/05/21	Wellsite Revised	EJ	CS

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Fort St. John, B.C.
www.canam.com

Phone: 250.787.7171
Toll Free: 1.866.208.0983
Fax: 250.787.2323

CAN-AM FILE: J20090107

CAD FILE: J20090107IOP01

Client File No.: S06985

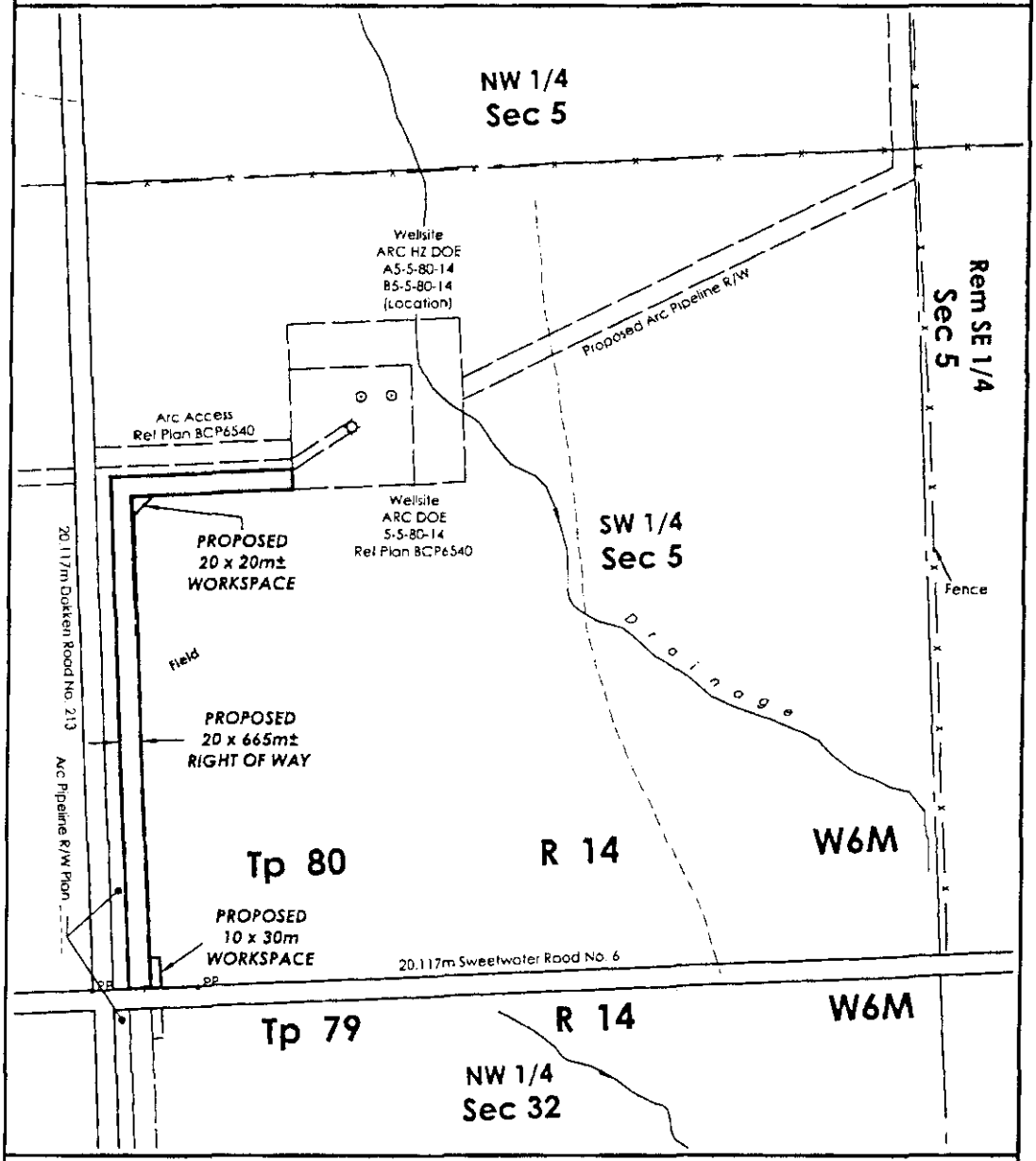
AFE No.:

Land File No.:

1 REVISION

SCHEDULE "A" 1633-2 and 2

ARC PETROLEUM INC
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
20m PIPELINE RIGHT OF WAY IN
SW 1/4 Sec 5, Tp 80, R 14, W6M
PEACE RIVER DISTRICT



TITLE No.: PC4680 **P.I.D. No.:** 013-008-757
OWNER(S): John Irving Miller

LEGEND
SCALE = 1: 5,000
Portions referred to:
Notes: Distances shown are in metres.

Certified correct this
12th day of February, 2010.

Chris R. Sakundiak, BCLS

AREA REQUIRED:

20m Pipeline R/W	1.33 ha	3.29 ac
Workspaces	0.05 ha	0.12 ac
TOTAL:	1.38 ha	3.41 ac

NO.	DATE	REVISION	DRN	CKD
0	10/02/12	Original plan issued	JMS	CS

can-am geomatics
can-am geomatics bc
Fort St. John, B.C.
www.canam.com
Phone: 250.787.7171
Toll Free: 1.866.208.0983
Fax: 250.787.2323

CAN-AM FILE: J20090545
CAD FILE: J20090545IOPA0
Client File No.: E10412
AFE No.:
Land File No.:
0 REVISION

File No. 1633
Board Order 1633-4

August 30, 2011

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 5, TOWNSHIP 80, RANGE 14, W6M PEACE RIVER DISTRICT;

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER

(RESPONDENT)

CONSENT ORDER

Heard by telephone conference:	August 26, 2011
Appearances:	Andrea Fiedler for the Applicant
	John Miller and Mary Miller for the Respondent
Mediator:	Cheryl Vickers

Following an agreement reached at a mediation telephone conference, and at the request of the parties to incorporate the terms of their agreement into a Consent Order of the Board, the Surface Rights Board orders, BY CONSENT:

1. The initial compensation payable to John Miller by ARC Petroleum Inc. for access to those portions of the Lands required to construct and operate wellsites A5-5-80-14W6M and B5-5-80-14W6M permitted by the Oil and Gas commission May 13, 2011 (WA 27291 and WA 27292) is $13,500.00.

2. ARC Petroleum Inc. shall forthwith pay to John Miller the sum of $13,500.00 for compensation for the occupation and use of those portions of the Lands required for the construction and operation of wellsites A5-5-80-14W6M and B5-5-80-14W6M.

3. ARC Petroleum Inc. shall pay John Miller the sum of $3,116.00 annually commencing May 13, 2012 as annual rent for the occupation and use of those portions of the Lands required for the operation of wellsites A5-5-80W6M and B-5-5-80W6M.

4. ARC Petroleum Inc. shall forthwith pay to John and Mary Miller the sum of $1,000.00 as costs.

DATED: August 30, 2011

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1633
Board Order 1633-3amd

July 30, 2015

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

BOARD ORDER

This Order amends the Board's Order 1633-3 dated May 24, 2011 at paragraph [95] as follows:

[95] ARC Petroleum Inc. shall pay Mary Miller the sum of $1,500.00 annually commencing June 7, 2011 as annual rent for the occupation and use of those portions of the Lands required for the operation of wellsites C9-17, D9-17. ARC Petroleum Inc. shall pay John Miller the sum of $1,500.00 annually commencing June 7, 2011 as annual rent for the occupation and use of those portions of the Lands required for the operation of wellsite A10-16.

DATED: July 30, 2015

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1633
Board Order 1633-6

_____

December 16, 2015

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

_____

BOARD ORDER

_____

Heard:	by written submissions closing October 23, 2015
Appearances:	John and Mary Miller on their own behalf Rick Williams, Barrister and Solicitor, for ARC Petroleum Ltd.
Panel:	Rob Fraser

---

[1] On September 24, 2015, John Miller and Mary Miller (the "Millers") asked the Board to reconsider Board Order 1633-3 (*ARC Petroleum Inc. and John Miller and Mary Miller)*.

History

[2] ARC Petroleum Inc. (ARC) applied to the Board for a right of entry order onto lands owned by the Millers for the purposes of the construction and operation of well sites and for the construction and operation of flowlines. The Board issued a right of entry to ARC, leaving compensation to be determined at a later date. The parties were unable to reach an agreement on compensation, and the dispute was referred back to the Board for arbitration.

[3] As a result of the arbitration, the Board issued Order 1633-3 on May 24, 2011.

Legislation

[4] The *Petroleum and Natural Gas Act* allows for the board or a party to apply for reconsideration of a board order as follows:

> **Reconsideration by board**
>
> 155 (1) The board, on its own motion or on application, may reconsider an order of the board, and may confirm, vary or rescind the order.
> (2) The board may make rules as follows:

(a) specifying the circumstances in which subsection (1) applies;
(b) respecting practice and procedure relating to the exercise of the authority of the board under subsection (1).

[5] The Board has set out the procedure for applying for a reconsideration of a board order in Rules 17 of its *Rules of Practice and Procedure*

Reconsiderations

17. (1) The Board may reconsider an order of the Board and may vary or rescind the order under section 155(1) of the Act if the Board is satisfied that any of the following circumstances exist:

(a) there has been a change in circumstance since the making of the Board's order;
(b) evidence has become available that did not exist or could not have been discovered through the exercise of reasonable diligence at the time of the making of the Board's order;
(c) the Board made a jurisdictional error including a breach of the duty of procedural fairness, or a patently unreasonable error of fact, law or exercise of discretion in respect of matters within the Board's jurisdiction.

(2) An application for reconsideration must be in writing and a copy of the application must be delivered to each other party.

(3) An application for reconsideration must state the grounds for reconsideration and must include as appropriate, a statement of the change of circumstance since the making of the board order, a summary of any new evidence relied on in support of the reconsideration, and the details of any alleged jurisdictional error.

(4) The Board may determine the procedures to be followed on a case by case basis in order to determine whether to conduct a reconsideration and how a reconsideration will be conducted.

(5) A party may only apply once for reconsideration of a Board order because of an alleged jurisdictional error.

[6] Rule 17 does not set out any time limits for filing a reconsideration application.

The Application

[7] John and Mary Miller allege the Board made errors of fact in paragraphs 31, 45, 64, 76, 77, 78, 79, 8, 81, 82, and 83 of Order 1633-3. They identify three main areas of dispute:

i) Compensation was not awarded on a per Individual Ownership Plan ("IOP") basis but on arbitrary segments lumped together by the Board;

ii) Loss of profit based on crop loss was not awarded equitably;

iii) Compensation for survey was not awarded for each flowline.

Submissions

[8] I have considered the Millers' application for reconsideration of September 24, 2015. It consists of 7 pages of text plus 12 exhibits, a two page response from ARC and a three page reply from the Millers' to ARC's submission.

Does the Application Fit Within Rule 17?

[9] In Rule 17, the Board must be satisfied that any of the following circumstances exist:

(a) there has been a change in circumstance since the making of the Board's order;

(b) evidence has become available that did not exist or could not have been discovered through the exercise of reasonable diligence at the time of the making of the Board's order;

(c) the Board made a jurisdictional error including a breach of the duty of procedural fairness, or a patently unreasonable error of fact, law or exercise of discretion in respect of matters within the Board's jurisdiction.

[10] The Millers' application does not specify which if any of these circumstances they advance as the basis of their request for reconsideration.

[11] The Rule clearly sets out the circumstances necessary for the Board to reconsider an order. The Millers fail to identify any specific circumstances in their application. After reviewing their application, I find that if I apply a very strict interpretation of Rule 17, I would not consider their application for reconsideration as it does not fit within any of the circumstances listed. Their application raises disagreements with the Board's findings, but they do not raise issues specific to Rule 17(1)(a),(b), or (c). For example, the Millers do not allege nor provide evidence or submissions that there has been a change of circumstance since the making of the Board's Order, evidence has become available that did not exist or could have been discovered, or the Board made a jurisdictional error. Therefore, on the basis of the requirements set out in Rule 17, I dismiss the Miller's application for reconsideration.

[12] I recognize that the Millers have made a significant effort in preparing their application. Although I have dismissed their application, I wish to comment on their other issues plus the issue of the timing of their application.

Timing of the Application

[13] ARC notes that the Millers' provided no explanation for waiting for more than four years to file their application. The Millers', in reply, point out their history over the past four years, which include a number of personal challenges.

[14] The Board's Rules are silent regarding a time limit for an application for a reconsideration. However, waiting for more than four years strikes me as extremely excessive even with regard to the personal circumstances outlined. If the Millers thought there was fault with the Board's decision, they could have simply notified the Board and ARC that they would be seeking a reconsideration, or they could have filed an application for reconsideration and then sought an extension for provision of their submissions in light of their particular circumstances.

[15] Instead, the Millers waited for over four years before filing their application for reconsideration, without giving any notice or indication of their dissatisfaction with the Board's Order.

[16] Because many of the parties who are participants in the mediation and arbitration process are part of the agricultural industry and are constrained by the annual cycle of raising crops and/or livestock, the Board tries to accommodate their schedules. For instance, I have adjusted schedules to work around harvest times, or seeding or winter holidays. This is the reality when one party is almost always a farmer. The Board recognizes that farmers have constraints on their time.

[17] The Millers are part of the farming community. It strikes me as reasonable that they may have required some time to file their application. But, four years is simply too long. In spite of Mrs. Miller's challenges as a care giver and the medical challenges experienced by her husband and sons, I understand that there may have been a delay in the filing an application for reconsideration, however, four years is not reasonable amount of time.

[18] Any party in an arbitration ought to be entitled to some certainty once the Board has issued a decision. Fairness dictates that after some reasonable time a party can conclude that the process is final and complete. Reconsideration should not be open ended.

[19] In my view, the Millers have not been fair and reasonable and on this basis I would refuse to consider their application for reconsideration.

[20] However, even if I was to consider the Millers' basis for reconsideration, they would not be successful as set out below.

Compensation for Crop Loss

[21] The Millers allege that the loss of profit (crop loss) was not awarded equitably. I have reviewed the Millers' application regarding crop loss (paragraphs 8 through 15 of their submission) and compared it with the Board's decision. In Paragraph 45, the Board finds the only evidence for crop loss is provided by ARC's expert witness. Paragraph 47 and paragraphs 64 to 67 specifically deal with the arguments raised by the Millers regarding equitable compensation. It is not necessary for me to comment further, as the Millers' are simply trying to reargue their case after being unsuccessful at the hearing. Their arguments were considered in the decision and dismissed.

[22] The circumstances for reconsideration do not include reopening a decision to reargue issues already decided. For this reason, I decline to reconsider the decision regarding crop loss.

Survey Fees

[23] The Millers allege that compensation for survey entry was not awarded for each flowline. Compensation for the flowlines is found at paragraphs 75 through 83 of the Board's order inclusive. In paragraph 82, the Board dealt with compensation arising from surveying for the flowlines and awarded the Millers $500 for each entry.

[24] In paragraph 83, the Board finds the total compensation for the flowlines is $40,200.

[25] The compensation for the flowlines alone is $10,400+ $21,150 + $8,150 = $39,700. Subtracting the flowline compensation alone from the total compensation attributable to the flowlines ($40,200 - $39,700) leaves a difference of $1,500. The Board awarded $500 for each of the three entries or 3 x $500 = $1500.

[26] It is clear to me that the Board considered compensation for the survey entry, chose $500 for each entry, and this amount was included in the total amount of compensation of $40,200. In the decision, the Board included an award for survey entry and therefore, there is no error.

[27] Therefore I find there is no reason to reconsider the Board's award of compensation for survey fees.

Compensation Based on Individual Ownership Plans (IOP)

[28] The Millers allege that "$2000 per entry was not awarded on a per Individual Ownership Plan basis, but rather on arbitrary segments lumped together by the SRB". They rely on the wording found in paragraphs 18 and 57 of the Board's decision. Paragraph 18 refers to entry for the construction of the project as indicated on the IOPs attached to the entry orders. They then refer to the $2000 per entry for nuisance and disturbance found in paragraph 57. They contend that each landowner should receive $2000 per IOP rather than $2000 per entry. The Millers did not produce any Court or Board decision in support their argument that their view of compensation is correct or binding on the Board.

[29] ARC argues the Millers are under the misapprehension that the Board ought to award compensation based on a per IOP basis.

[30] For assistance in understanding I have included both paragraphs:

> *[18] The Board granted entry for the construction and operation of flowlines on the Lands and for temporary workspace as indicated in Individual Ownership Plans attached to the Entry Orders. Two of the proposed flowlines for which entry to the Lands was granted have been constructed. ARC has withdrawn its application with respect to one of the proposed flowlines, and one proposed flowline has not yet been constructed. The Board's Entry Order will be amended to rescind right of entry for the construction and operation of the flowline from 9-8-80-14 to 5-5-80-14 W6M. As ARC entered portions of the Lands to survey for the proposed flowline that was later not proceeded with, the Millers seek compensation for the entry.*
>
> *[57] Some loss for nuisance and disturbance, for example for time spent, can be tracked and accounted for, and some nuisance and disturbance, for example for noise and dust, is not capable of precise quantification and must be arbitrarily acknowledged. I find an initial payment of $2,000 per wellsite adequately compensates for nuisance and disturbance associated with the construction of the wellsites, and $1,000 annually for each of the wellsite areas adequately compensates for ongoing nuisance and disturbance. I find an initial payment of $2,000 per entry adequately accounts for the nuisance and disturbance associated with the construction and operation of the flowlines.*

[31] These paragraphs must be read along with paragraphs 76, 77, 78, 79 and 80. In each of these paragraphs, the Board refers to various properties included in these projects. Each is identified by an alpha-numeric description.

[32] Paragraph18 refers to IOPs attached to the entry orders. Compensation for nuisance and disturbance is set on a per entry basis in paragraph 57. Paragraphs 76, 77, 78, 79 and 80 refer to the various lands involved in these projects, and there would be a separate IOP for each section of land. Clearly the Board was cognizant of the fact there were multiple properties and IOPs, but chose to award compensation for nuisance and disturbance on a per entry or individual project basis. There is nothing unreasonable or arbitrary in the Board setting compensation in this manner.

[33] As well, I believe the Millers have misunderstood the decision by believing the wording in paragraph 18 that refers to the IOPs attached to the Entry Orders means that the reference to “entry” in paragraph 57 requires compensation on a per IOP basis. When read together with paragraphs 76, 77, 78, 79 and 80 it is clear that the Board intended to award compensation for nuisance and disturbance on a per project basis.

Conclusion

[34] I find no basis to reconsider Board Order 1633-3 and dismiss the application because the Millers do not satisfy the requirements of Board Rule 17. As well, the application was not filed within a reasonable time from the date of publication; the Board’s decision on the calculation of crop loss is not patently unreasonable; the Board’s decision on compensation for survey fees is not patently unreasonable; and the Board’s calculation of compensation based on the basis of per entry rather than per IOP is not patently unreasonable.

DATED: December 16, 2015

FOR THE BOARD

_____

Rob Fraser, Member

File No. 1633
Board Order 1633-6amd

_____

April 18, 2016

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

NE ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 17, Township 79, Range 14, W6M Peace River District;
NW ¼ Section 21, Township 79, Range 14, W6M Peace River District except Plan H782;
NE ¼ Section 16, Township 79, Range 14, W6M Peace River District;
SW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 5, Township 80, Range 14, W6M Peace River District;
SW ¼ Section 8, Township 80, Range 14, W6M Peace River District;
NW ¼ Section 16, Township 79, Range 14, W6M Peace River District except Plan H782

(The "Lands")

BETWEEN:

ARC PETROLEUM INC.

(APPLICANT)

AND:

JOHN MILLER AND MARY MILLER

(RESPONDENTS)

_____

AMENDED BOARD ORDER

_____

Order 1633-6 dated December 16, 2015 is amended to correct inadvertent errors at paragraphs [23] through [26] as set out below:

[23] The Millers allege that compensation for survey entry was not awarded for each flowline. Compensation for the flowlines is found at paragraphs 75 through 83 of the Board's order inclusive. In paragraph 82, the Board dealt with compensation arising from surveying for the flowlines and awarded the Millers $500.

[24] In paragraph 83, the Board finds the total compensation for the flowlines is $40,200.

[25] The compensation for the flowlines alone is $10,400+ $21,150 + $8,150 = $39,700. Subtracting the flowline compensation alone from the total compensation attributable to the flowlines ($40,200 - $39,700) leaves a difference of $500. The Board awarded $500.

[26] It is clear to me that the Board considered compensation for the survey entry, chose $500, and this amount was included in the total amount of compensation of $40,200. In the decision, the Board included an award for survey entry and therefore, there is no error.

DATED: April 18, 2016

FOR THE BOARD

_____

Rob Fraser, Member

File No. 1649
Board Order # 1649-1

June 21, 2010

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NW ¼ Section 7, Township 79, Range 14, W6M, Peace River District
(The "Lands")

BETWEEN:

ARC Petroleum Inc

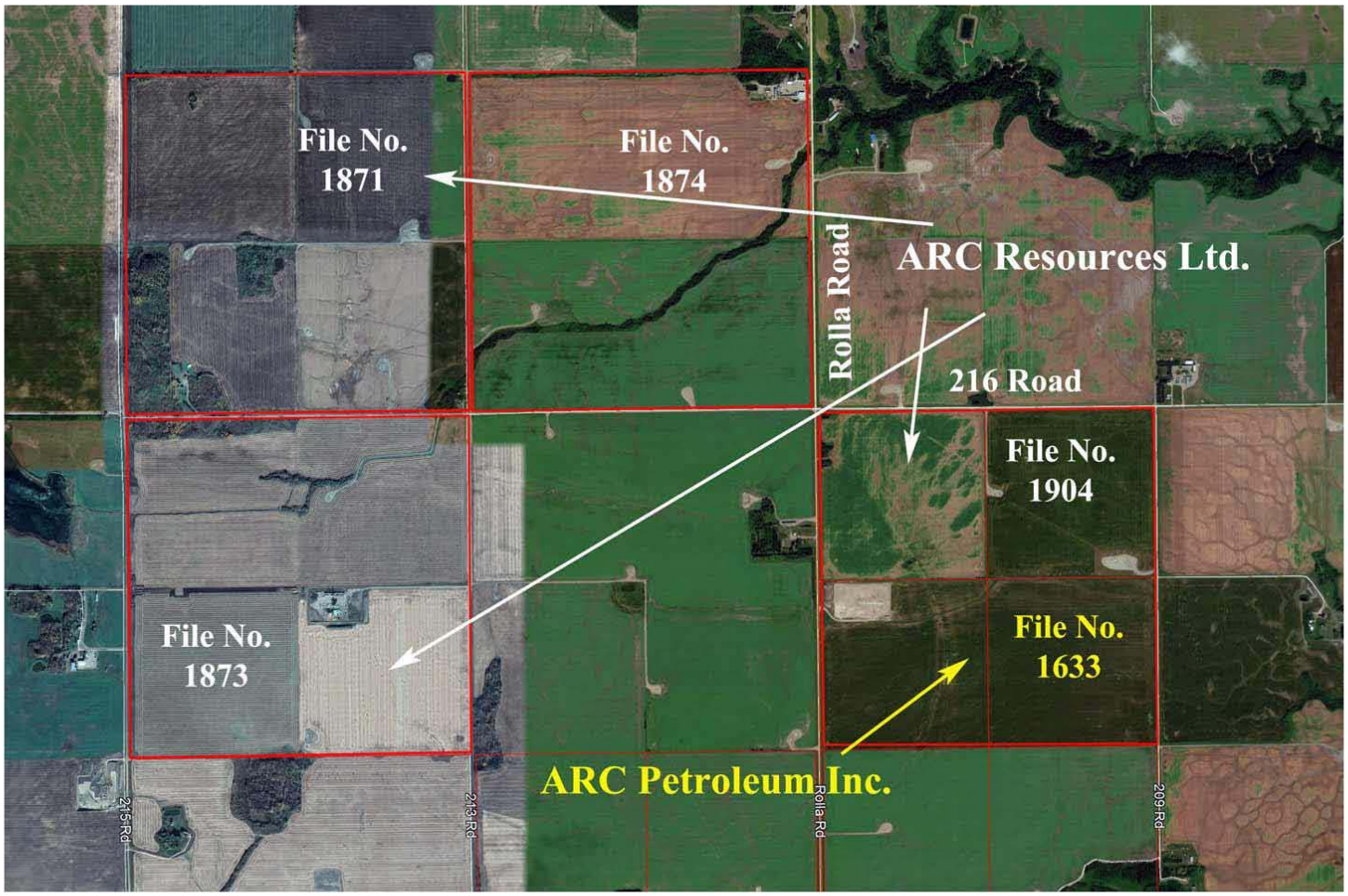
(APPLICANT)

AND:

Gladys Muriel Vyse, Jennifer Ann Stuart,
Mary Elizabeth Vyse, and Colin Robert Vyse

(RESPONDENTS)

BOARD ORDER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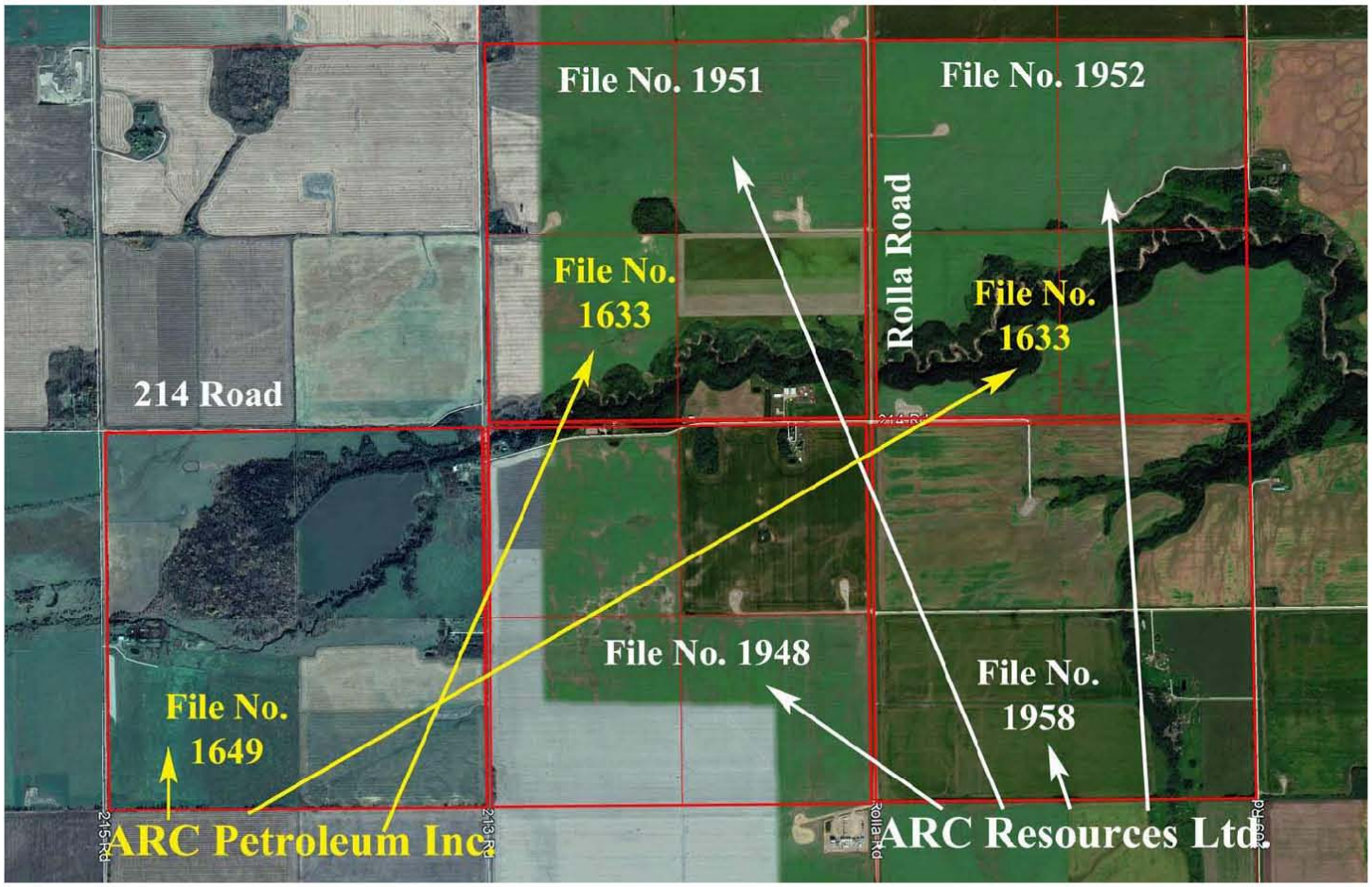
File No.
1874
Rolla Road
ARC Resources Ltd.
216 Road
File No.
1904
File No.
1873
File No.
1633
ARC Petroleum Inc.
215 Rd
213 Rd
Rolla Rd
209 Rd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File No. 1952
Rolla Road
File No.
1633
File No.
1633
214 Road
File No. 1948
File No.
1649
File No.
1958
ARC Petroleum Inc.
ARC Resources Ltd.
215 Rd
213 Rd
Rolla Rd
209 Rd

The Applicant requires access to the Lands for the purpose of construction, installation and operation of a flowline as shown on the attached plan (Appendix A). The Board is advised that the Applicant has received a pipeline permit for the flowline. The Respondents consent to the entry although the compensation payable for the entry, occupation and use of the Lands has not been agreed. The Board will conduct mediation proceedings in an effort at resolving the compensation payable.

BY CONSENT the Mediation and Arbitration Board orders:

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Land shown in Appendix A for the purpose of constructing, installing and operating a flow line.

2. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $4,000.00 by cheque payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant or paid to the Respondent upon the agreement of the parties or as ordered by the Board.

3. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $2,000.00.

4. The Applicant shall serve the Respondents with a copy of this Order prior to entry on the Lands.

5. This Order is subject to the application process required by the Oil and Gas Commission and nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: June 21, 2010

FOR THE BOARD

Cheryl Vickers
Chair

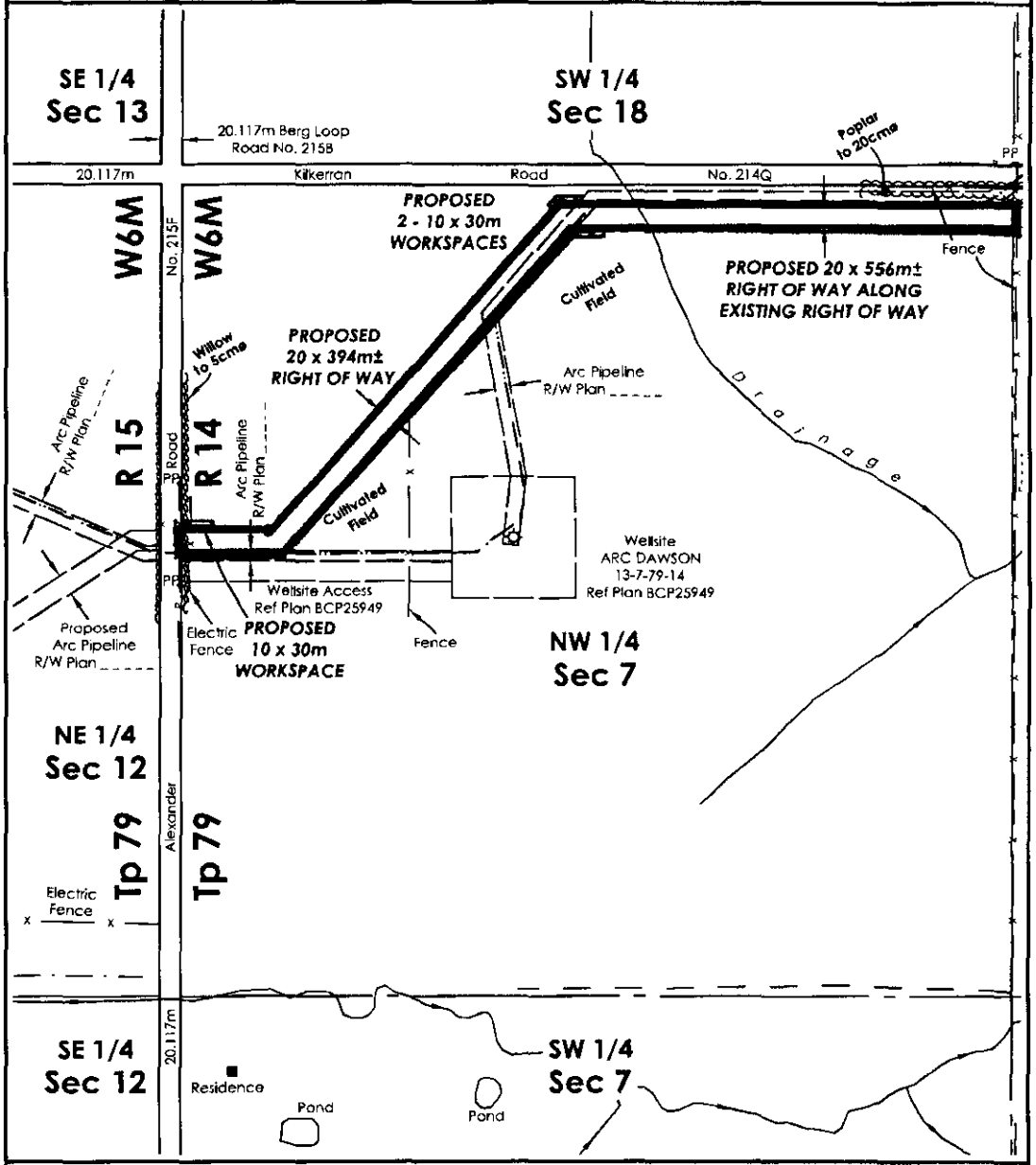
APPENDIX A

ARC PETROLEUM INC.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 20m PIPELINE RIGHT OF WAY IN NW 1/4 Sec 7, Tp 79, R 14, W6M

PEACE RIVER DISTRICT



TITLE No.: BX154341 **P.I.D. No.:** 014-208-393

OWNER(S): Gladys Muriel Vyse
Jennifer Ann Stuart
Mary Elizabeth Vyse
Colin Robert Vyse

LEGEND

SCALE = 1: 5,000

Portions referred to:-

Notes: Distances shown are in metres.

Certified correct this 28th day of January, 2010.

AREA REQUIRED:

20m Pipeline R/W	1.90 ha	4.69 ac
Workspaces	0.09 ha	0.22 ac
TOTAL:	1.99 ha	4.91 ac

Chris R. Sakundiak, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/01/28	Original plan issued	PJP	CS

can-am geomatics

can-am geomatics bc
Fort St. John, B.C.
www.canam.com

Phone: 250.787.7171
Toll Free: 1.866.208.0983
Fax: 250.787.2323

CAN-AM FILE: J20090481
CAD FILE: J20090481IOPF0
Client File No.: E10394
AFE No.:
Land File No.:
0 REVISION