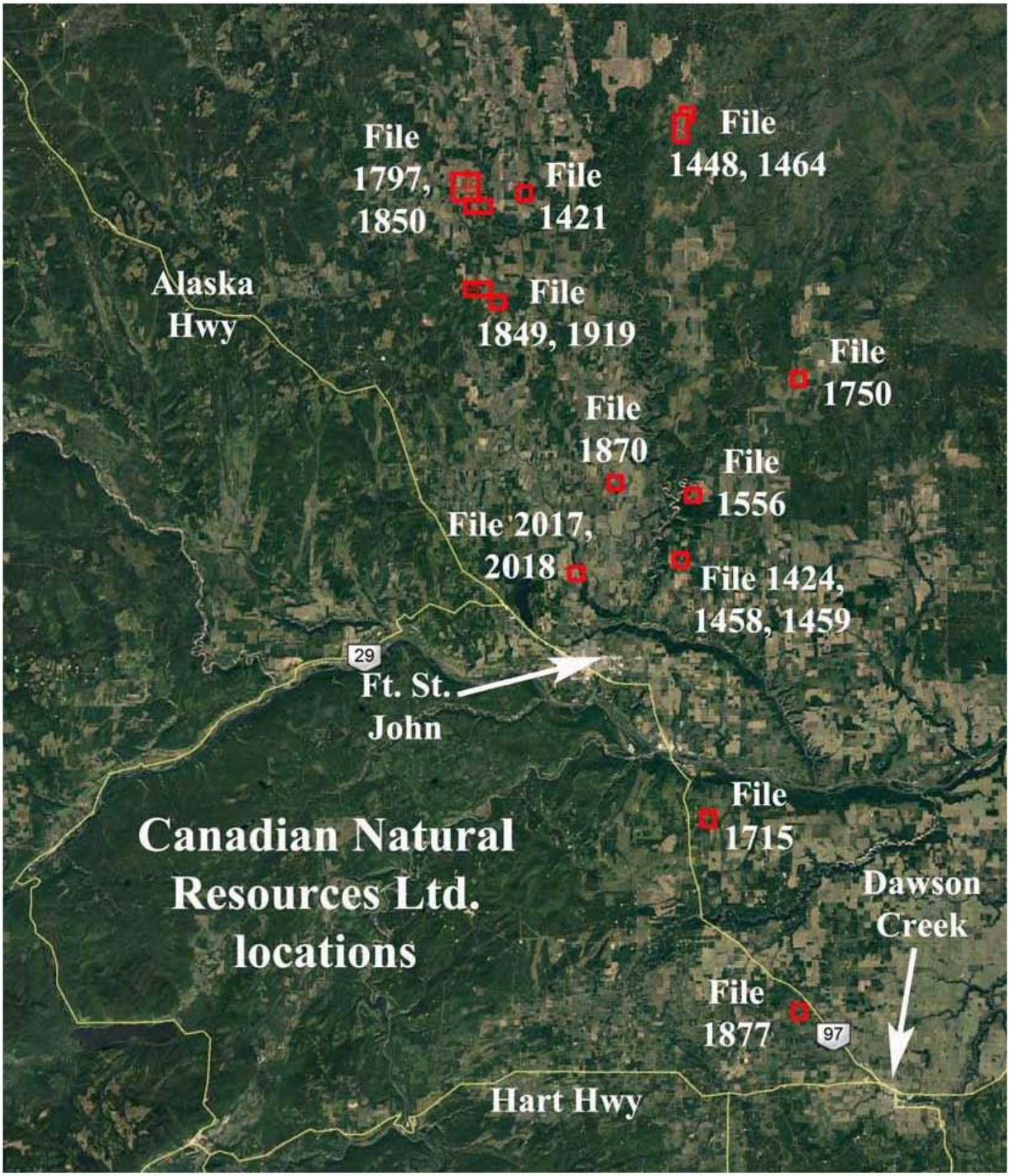

File 1797, 1850
File 1421
File 1448, 1464
Alaska Hwy
File 1849, 1919
File 1750
File 1870
File 1556
File 2017, 2018
File 1424, 1458, 1459
29
Ft. St. John
Canadian Natural Resources Ltd. locations
File 1715
Dawson Creek
File 1877
97
Hart Hwy

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
114, 10142 101 Avenue
Fort St. John, BC V1J 2B3

Date: July 30, 2001

File No. 1421 **Board Order No. 325 A**

BEFORE THE ARBITRATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO: **(THE ACT)**

AND IN THE MATTER OF A PORTION OF SI/2 OF DISTRICT LOT 643 (S ½ DL 643) **(THE LANDS)**

BETWEEN:

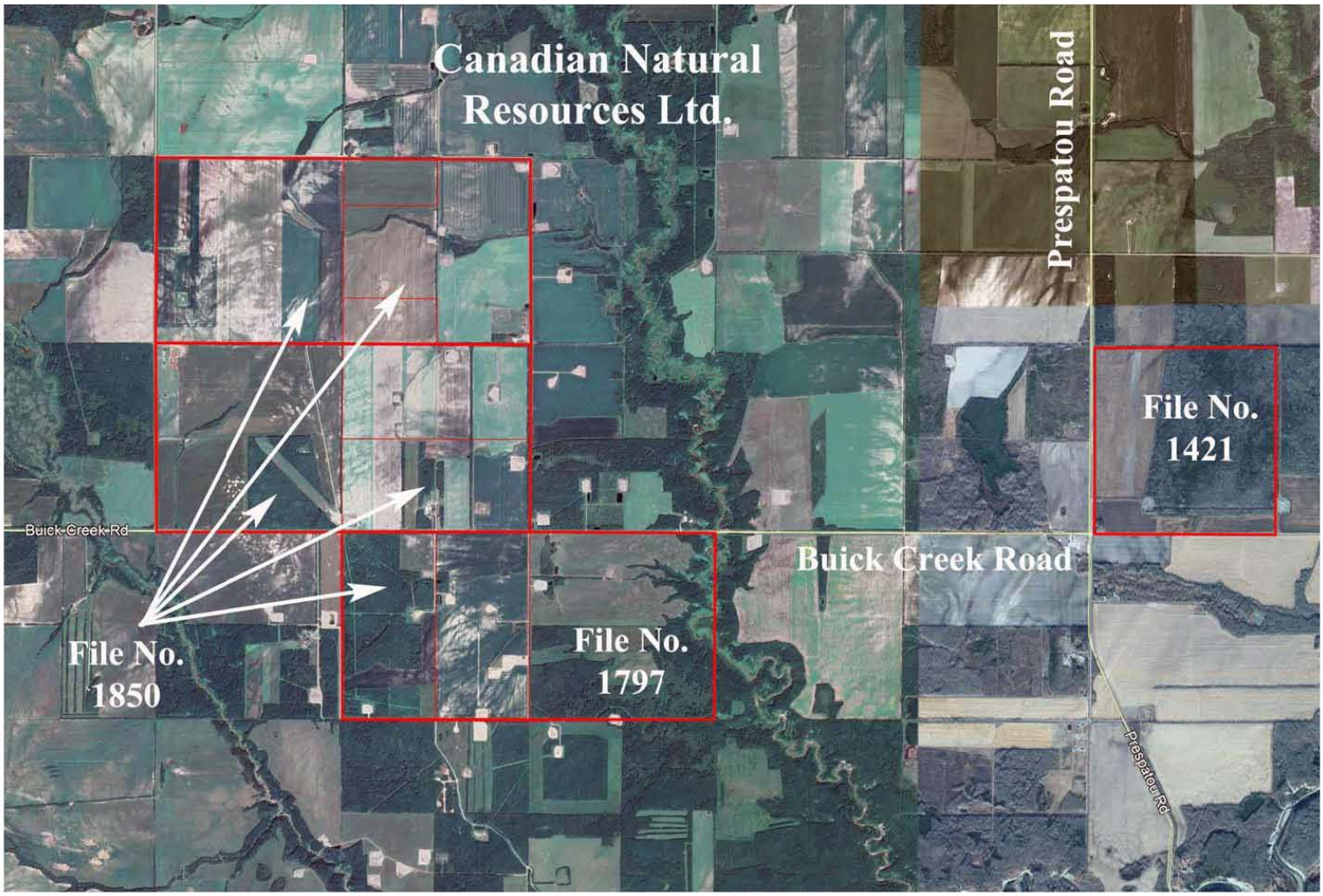
CANADIAN NATURAL RESOURCES LIMITED
BOX 6929 STATION "D"
CALGARY, AB.
T2P 2G1
(THE APPLICANT)

AND:

BLUEBERRY RIVER FARMS LTD.
C/O 9940 104TH AVENUE
FORT ST. JOHN, B.C.
V1J 2K3
(THE RESPONDENT)

Certified a true copy this 29th day of August 2001
The original ruling is in the custody of the Mediation and Arbitration Board under the "Petroleum and Natural Gas Act, 1998"
[signature]
Board Secretary

ARBITRATION ORDER


Canadian Natural Resources Ltd.
Prespatou Road
File No. 1421
Buick Creek Rd
Buick Creek Road
File No. 1850
File No. 1797
Prespatou Rd

BACKGROUND

An application to the Mediation and Arbitration Board for survey purposes was made in December I999. Permission to enter for survey purposes was granted by Mediation Order 316M in June 2000. A further Board Order to allow right of entry to construct was granted in September 2000. On November 29, 2000, an arbitration hearing was adjourned, as the construction was not yet complete.

On May 30th, 2001 an Arbitration panel of Mavis Nelson, Frank Breault, Bill Wolfe and Julie Hindbo convened to hear representation from the Applicant, Canadian Natural Resources Ltd. (CNRL), represented by Barry Taylor. Supporting C.N.R.L. were Kirk Fowler of Pioneer Land Services Ltd., accompanied by Chad Moffat as an observer. The Respondent was not in attendance and the Arbitration proceeded ex parte, the Board being satisfied that adequate notice had been given. Prior to the hearing the Board visited the location to view the current condition of the site.

POSITION OF THE PARTIES

APPLICANT

The Applicant presented Exhibit A referring first to the length of time it has taken to complete this project as the initial contact began in November I999. During the entire length of time numerous letters were exchanged and discussions had taken place but the parties failed to resolve the issues. The flow line joins two sweet gas wells, and is under fair to good soil on relatively flat land. The Applicant believes they have complied with all Oil and Gas Commission regulations and that they follow good oilfield practices.

There was discussion about a riser site that was removed during the re-opening of trench to install the second line. Mr. Taylor spoke briefly about paying some monies for the previous years and this matter is to be left between the parties and is not considered in this Order.

In regard to the new right-of-way area for the pipeline constructed on the east side of the well site at c-18-D, 94-A-15, the Applicant offered

1. new right of way compensation in the amount of $3,591.00, based on the rate of $950.00 per acre for 3.78 acres

2. timber loss in the amount of $1,000.00

3. re-seeding on the Right of way will be done with a Standard Forestry mix consistent with what is used on Government leases and will be done in a timely fashion so as to allow for settling of the line.

On the west side of the well site c-18-D, 94-A-15, the existing right of way was re-opened to place in a second line. For this re-entered right of way, the Applicant offered

1. crop loss in the amount of $1,215.00, based on fescue production of 500 lbs. per acre x 0.90 cents per lb. X 2 years for I.35 acres

2. temporary work space in the amount of $ 352.00, based on $475.00 per acre x 0.74 acre

3. and crop loss of $666.00, based on the same rate as in # 1above

The total compensation offered in this matter is $ 6,824.00. The Applicant believes their compensation offer is consistent with other companies operating in the area.

RESPONDENT

While the Respondent was not in attendance, the panel tried to address the concerns raised in a letter dated March 27, 2000 from Mr. H.J. Kopp and addressed to C.N.R.L. Ongoing correspondence presented in Exhibit "A" as well as letters to the Mediation and Arbitration Board indicates that discussion had taken place albeit not to the satisfaction of the Respondent.

DECISION

The Arbitration Panel, having heard all the evidence presented at the hearing, and the arguments made in support makes the following observations;

1. The Board considers acceptable the Applicants offer of $950.00 per acre for the new right of way area consisting of3.78 acres x $950.00 per acre = $3,591.00.

2. The Board considers acceptable the value of $1,000.00 for the loss of timber as presented by the Applicant.

3. The Board considers acceptable the value of the crop loss as presented by the Applicant, for a value of $1,215.00 in the matter of the re-entry to existing pipeline right-of-way and for a value of $666.00 in the matter of the temporary workspace.

4. The Board considers acceptable the Applicants offer for temporary workspace compensation in the amount of $352.00.

5. The Board considered that re-entry into the area of an existing pipeline to lay a subsequent line constitutes re-opening of the soil for a pipeline trench and as such, a compensation sum should be calculated at a per acre rate as reflected in similar takings in the area. The per acre rate which this Board considers fair compensation is one-half the Right of Entry rate i.e.1.35 acres x ($950.00 per acre x ½=$475.00)=$642.00

6. The Board will reply to the May 19,2001 letter from the Respondent to the Applicant so as to acknowledge the Respondents concerns. It is the view of this Board that the majority of the concerns listed are covered by B.C. government regulations either through the Oil and Gas Commission or the Land Reserve Commission. While some disruption of privately owned land is inevitable due to oil and gas exploration and development, the purpose of the Arbitration process is to establish a fair monetary value to be paid to the landowner.

IS HEREBY ORDERED THAT;

1. Pursuant to Section 21 of the Petroleum and Natural Gas Act, the Applicant will pay to the Respondent the amount of $7,466.00 less the amounts ordered by Board Order# 316M and 325M within 90 days of the date of this order.

2. The Applicant is to include with this payment a copy of their exhibits presented at the arbitration hearing.

3. Pursuant to Section 25(3) of the Act, the Applicant is to forthwith file a Certified Copy of this Order with the Registrar of the appropriate Land Title district and to provide details of that filing with the Board.

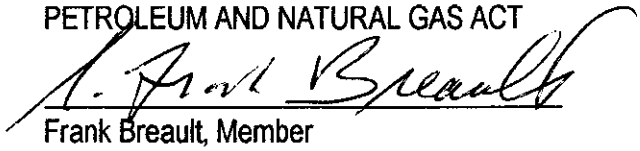
4. No portion of this order varies the legislative, statutory or regulatory requirements of the Petroleum and Natural Gas Act or any other legislation effect regarding the construction of flow lines.

5. The parties have liberty to have other issues of compensation arising from the construction of the lines, which are the subject matters of this application, dealt with by further application to the Board.

6. Nothing in this order is or operates as consent, permit or authorization that by enactment a person is required to obtain in addition to this order.

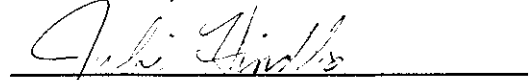
Dated at the City of Fort St. John, British Columbia, this 30th day of July 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

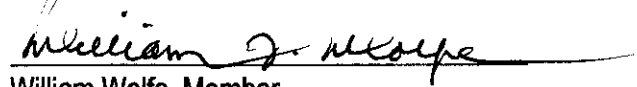


Frank Breault, Member

Mavis Nelson, Member



Julie Hindbo, Member



William Wolfe, Member

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
114, 10142 101 Avenue
Fort St. John, BC V1J 2B3

Date: October 24, 2000

File No. 1424 Board Order No. 327M

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTON OF THE SOUTH ½ SECTION EIGHT, TOWNSHIP EIGHTY-FIVE, RANGE SEVENTEEN, WEST OF THE SIXTH MERIDIAN, PEACE RIVER DISTRICT, EXCEPT THE MOST WESTERLY 14 FEET AND MOST SOUTHERLY 80 FEET IN PARALLEL WIDTHS THEREOF
(S ½ 8-85-17 W6M)
(THE LANDS)

THE

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
BOX 6986 STATION "D"
CALGARY ALBERTA
T2P 2G1
(THE APPLICANT)

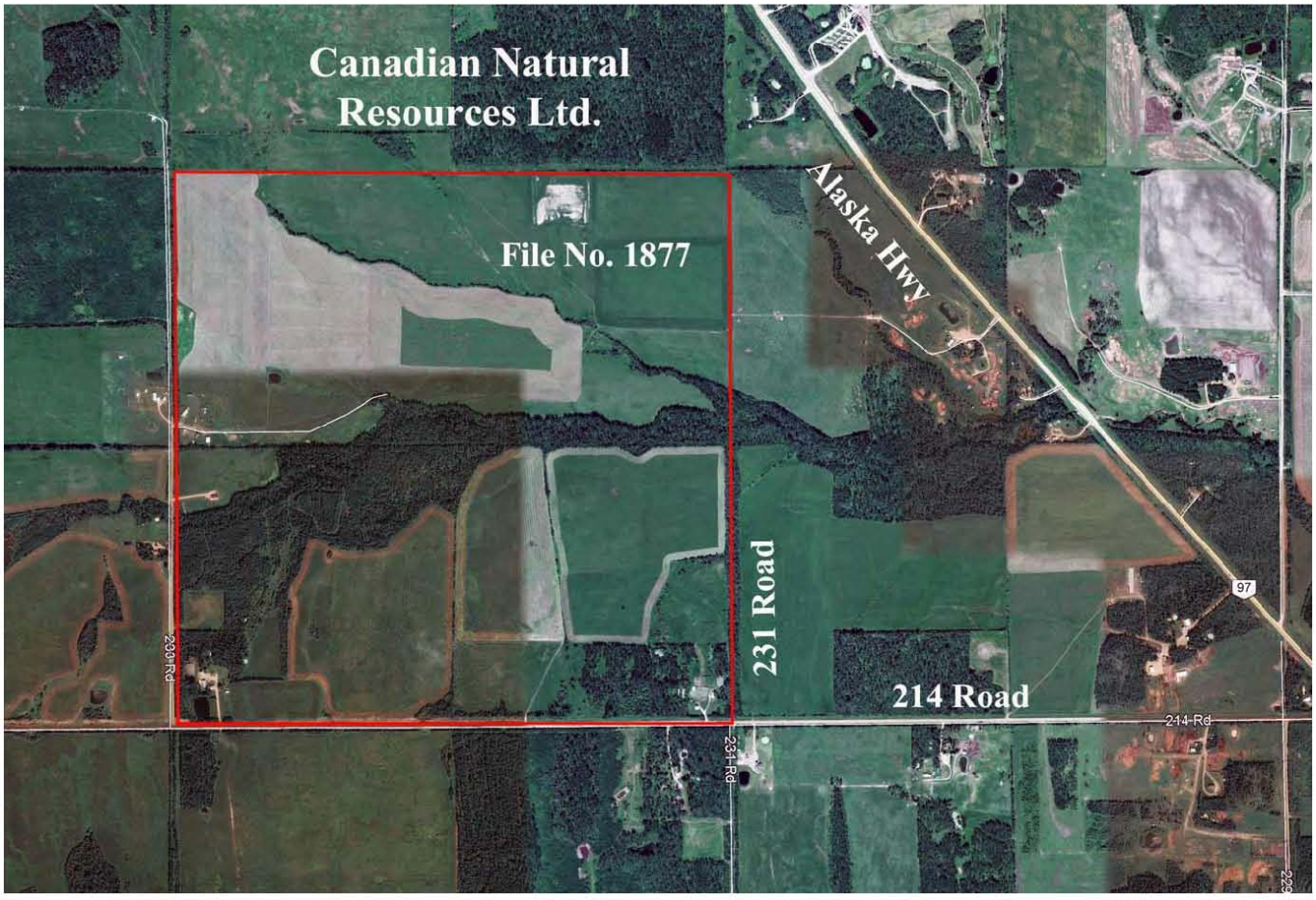
AND:

CLIFFORD ANDREW KIMMIE
SHIRLEY ANN KIMMIE
GENERAL DELIVERY,
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

RIGHT OF ENTRY ORDER

BACKGROUND:


Canadian Natural Resources Ltd.
250 Road
250 Rd
249 Road
File No. 1424,
1458, 1459
249 Rd


Canadian Natural
Resources Ltd.
File No. 1877
Alaska Hwy
231 Road
214 Road
97
214 Rd
231 Rd
230 Rd

The Mediation and Arbitration Board received from Pioneer Land Services Ltd., Agent for Canadian Natural Resources Limited on 27 September 2000 an application for Mediation and Arbitration and Permission to Enter, to the said lands. Entry was required for construction and operation of a flow line. Pursuant to Section 16 (2) of the Petroleum and Natural Gas Act, an affidavit verifying service of a copy of the Application to the Mediation and Arbitration Board was sent by registered mail to Clifford and Shirley Kimmie on 27 September 2000.

On 19 October 2000, a Mediation hearing was conducted in the Mediation and Arbitration Board Office, located at 101042 101st Avenue, Fort St. John, BC., regarding the application from Canadian Natural Resources Ltd. for Right-Of-Entry to construct a flow line across land owned by the Respondents. Julie Hindbo was the Mediator.

Representing the Applicant, was Barry Taylor (C.N.R.L.) and Mike Erlendson (Pioneer Land Services Ltd.) Mr. Clifford Kimmie appeared on his own behalf and on behalf of his wife representing the Respondent.

POSITION OF THE PARTIES:

It became clear in the mediation that the Respondent was not opposed to the proposed flow line which would tie-in a well at 2-8-85-17 to a pipeline tie-in location 3-8-85-18. The Respondent was not opposed either to the compensation proposed by the Applicant or the location of the flow line, as proposed, going south from the 2-8 wellstie and then following the south border of S1/2-8-85-17, going west to the tie-in. There was no official survey plan submitted with the application, however, the Applicant referred to a survey plan from a recent pipeline project on the same property. It was agreed between the Applicant and Respondent, that the proposed route would be surveyed, and both parties would submit their approval of the survey plan to the Mediator prior to proceeding with construction.. The Respondents' opposition was primarily based on their decision to withdraw from any negotiations on their land until the outstanding rental reviews for surface leases on the Respondents land, was resolved. An application for these outstanding rental reviews is presently before the Board, with scheduling of a Hearing pending pursuant to Section 11 and 12 of the *Petroleum and Natural Gas Act*.

It was agreed by the parties that the current Mediation could only deal with the application for the flow line which was before the Board, and not the re-negotiation issue. It appeared that the parties would be able to cooperate and communicate with one another during the survey and construction of the proposed flow line. The parties agreed on compensation at $950.00 per acre for the flow line right-of-way, with damages to be settled following construction. There were presently no issues with cattle or horses, however, the Respondent would be using the area for pasture as soon as winter weather conditions require. The only fence of concern in the area of the proposed project was located on the surface lease operated and maintained by the Applicant. The parties appeared willing to communicate and cooperate should any further issues arise as a result of the survey and construction plans. The Applicant agreed to be responsible for replacing any fencing taken down in the construction of the flow line and to erect temporary fencing as necessary.

Notwithstanding the cooperation between the Applicant and the Respondent, the Respondent indicated he and his wife were not prepared to execute the standard documents prepared by the Applicant for a flow line. The parties were, however, in agreement that a Board Order could deal with the right of the Applicant to enter on the Respondents' property with compensation agreed.

DECISION:

The Mediator is of the opinion that a Right-Of-Entry be granted to the Applicant to allow for the survey of the flow line.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 18 (2) (c) of the Petroleum and Natural Gas Act, the Mediator will set a second Mediation Hearing following submission of the survey plans to ensure there are no outstanding issues prior to construction.

2. Pursuant to Section 19 (2) (b) of the Petroleum and Natural Gas Act, the Applicant shall pay the Respondent as partial payment, five hundred dollars ($500.00) for the Right-Of-Entry to the said lands; and shall pay the balance of the agreed compensation (nine hundred fifty dollars ($950.00) per acre times the surveyed acreage) prior to commencing construction of the said right of way..

3. Pursuant to Section 19 (2) (a) of the Petroleum and Natural Gas Act, the Applicant shall deposit with the Mediation and Arbitration board a cheque made payable to the "Minister of Finance and Corporate Relations" for the amount of five hundred dollars ($ 500.00) as a security deposit.

4. The Applicant shall deliver to the Respondent a certified true copy of this Order by registered mail.

5. The Applicant will replace any fences taken down or damaged with fences of similar kind and quality.

6. The Applicant will construct temporary fencing as necessary to prevent any interference with the Respondents' cattle or horses.

7. Following completion of moneys paid as outlined in 2 and 3 of this order, the Applicant may enter the said lands for the purpose of surveying and constructing the flow line as agreed to at Mediation and in accordance with the survey plan to be submitted and approved by the parties.

8. This order is subject to the completion of the referral process, conducted by the Oil and Gas Commission and the issuance of the "Permission to construct Letter."

9. Nothing in this order is or operates as consent permit or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 24th day of October 2000.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Julie Hindbo, Mediator

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: July 30, 2001

File No. 1448 Board Order No. 335A

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF DISTRICT LOTS 1499, 1293 AND 1966 WITHIN UNIT 1 BLOCK 6, 94-A-15 RIVER DISTRICT WEST OF THE SIXTH MERIDIAN
(DL 1499, 1293 & 1966 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LTD.
BOX 6926, STATION "D"
CALGARY, AB
T2P 2G1
(THE APPLICANT)

AND:

LAWRENCE PATRICK RYAN
8932 117TH AVENUE
FORT ST. JOHN, B.C.
V1J 6P9
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND:


(CNRL Peejay
Field Office)
File No.
1464
File No.
1448
Milligan Creek Road
Milligan Creek Rd
Canadian Natural Resources Ltd.

An Arbitration Hearing in this matter was held at the offices of the Mediation and Arbitration Board (Board) in Fort St. John on 13 July 2001. Mr. Barry Taylor, Surface Landman for the Applicant, Canadian Natural Resources Ltd. (CNRL) appeared, as did the owner of the surface rights Lawrence Patrick Ryan.

The Panel of the Board consisted of Mavis Nelson, Julie Hindbo and Rod Strandberg. Margo Boyle, a Land and Resource Management student at Northern Lights College attended as an observer.

THE APPLICATION

By application dated 14 February 2001, the Applicant applied for Permission to enter the lands of the Respondent, described as District Lots 1499, 1293 (except the South 80 feet) and 1966, Peace River District for the purpose of surveying, constructing, reclaiming and testing of a flow line to connect a number of wells in the area.

Board Member Frank Breault conducted mediation in this matter on 8 March 2001. Although the issues between the parties could not be resolved at the mediation, a Right-Of-Entry Order was granted to the Applicant upon payment of the sum of $ 15,000.00 by the Applicant to the Respondent. The Mediator's Order contained other conditions.

Although there was a delay in payment by the Applicant, as of the date of the Arbitration the money had been paid.

POSITION OF THE PARTIES

A APPLICANT

The Applicant wished to commence construction of the flow line on or about 17 July 2001. As initially contemplated, the project would impact 8.66 acres of the Respondent's land. Additional temporary workspace would be required for the project. Additionally, there would be crop loss for the land, which was used for the production of barley. The Applicant was prepared to include an amount for crop loss in the award of the Board, either calculated at 100% crop loss for the first two years and 50% crop loss for the third year. Alternatively, to await a determination of the actual crop loss to be dealt with at a subsequent time.

The Quantum of compensation offered by the Applicant was;

1. $ 950.00 per acre for the land affected by the flow line,
2. $ 400.00 for the temporary work space in the construction of the flow line and
3. crop loss at $ 600.00.
4. The total of the initial offer by the Applicant at the Arbitration was $ 9,927.00.

B RESPONDENT

The Respondent wished the flow line to be constructed along a straighter route than that proposed by the Applicant to reduce the future consequences and effect of the flow line on his farming operations. He wished the flow line to be buried to a minimum depth of 48 inches because he tills his land to a depth of 36-38 inches. He requested that in areas of peat that there be a minimum covering of two feet of clay.

The Respondent calculated between eight and nine acres of crop loss would occur as a result of the flow line construction. He advised that he purposely had not planted crops over the area to be affected by the flow line for this crop year, as construction of the flow line would have rendered this work superfluous. He advised that the land was planted with canola and barley with timothy under seed and that in the 2002 crop year he would expect a crop of timothy. He calculated his crop loss at $ 2,382.00 based on his view of expected yields.

The Respondent also sought compensation for the surface rights impacted by the construction or moving of fences on the surface and compensation for his time and the inconvenience of dealing with the Applicant, surveyor and others involved in the project and attending the Mediation and Arbitration Hearings in this matter. The Respondent felt that the amount he had received from the Applicant pursuant to the Mediator's Order was fair in the circumstances.

DISCUSSION

The Applicant indicated that it had no difficulty changing the routing of the flow line. The Mediation and Arbitration Board had no jurisdiction to order the routing of the flow line. However, this award is predicated on the Applicant changing the routing of the flow line. This re-routing of the flow line, by agreement and with the consent of the parties, will eliminate some of the temporary workspace required in the construction of the flow line. Re-routing will result in 9.52 acres being impacted.

The parties appeared to be in substantial agreement on the estimated crop loss as a consequence of the construction of the flow line; both as to expected yields and commodity prices. The parties wish the Board to determine crop loss and to include it in the award. Should crop loss be more extensive than is currently anticipated then the parties are at liberty to either negotiate an additional award or to apply to this Board for an assessment of consequential damage.

The Board concludes that the Respondent is entitled to compensation for:

- the rights given up over 9.52 acres of his land,
- crop loss on Right-Of-Way and temporary work space,
- the nuisance and inconvenience associated with the construction of the flow line,
- the nuisance and inconvenience associated with the restoration of the surface upon the conclusion of construction, and
- compensation for his time, although it is the view of the Board that much of the time which he has spent in discussions with the Applicant related to matters other than this flow line.

DECISION

After carefully considering all of the evidence presented to it at the Hearing and the submissions of the parties and all of the factors enumerated under Section 21 of the *Petroleum and Natural Gas* Act, as well as all other additional factors which may be relevant in the specific facts of this case, the Board's award is as follows;

1. For granting of Right-Of-Way over surface rights;	$ 9,044.00
2. For crop loss as agreed by the parties;	$ 2,618.00
3. As compensation for work performed by the Respondent on the project;	$ 300.00
4. For the time and expenses of the Respondent in participating in the Mediation and Arbitration process;	$ 1,700.00
TOTAL AWARD	$ 13,662.00

The Applicant had paid the Respondent $ 15,000.00 pursuant to the order of the Mediator in this matter. Accordingly the Respondent has been overpaid by $ 1,338.00.

Accordingly, the Board orders as follows;

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 20 (3) (b) of the *Petroleum and Natural Gas* Act, the order of the Mediator (Board Order 335M) is varied to provide that the Applicant has the right to construct the flow line which is the subject matter of his arbitration and to carry out all work necessary to bring the flow line into operation.

   This Order does not authorize the Applicant to enter upon or pass over the Respondent's land for any other purpose once the flow line is in operation. Should the Applicant need to enter upon or pass over the Respondent's property at any time after the flow line is in operation it will require the permission of the Respondent or further order of the Board.

2. The Respondent will forth with, and in any event within 90 days of this Order, reimburse the Applicant the sum of $ 1,338.00 and provide proof of reimbursement to the Board.

3. Nothing in this order is, or operates as consent, permit or authorization that by enactment, a party is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 30th day of July 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rod Strandberg, Chair

_____
Mavis Nelson, Member

_____
Julie Hindbo, Member

MEDIATION AND ARBITRATION BOARD
Under the *Petroleum and Natural Gas* Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: December 13, 2001

File No. 1458 Board Order No. 347ARR

BEFORE THE BOARD: IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS* ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE SOUTH EAST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(2-8-85-17 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

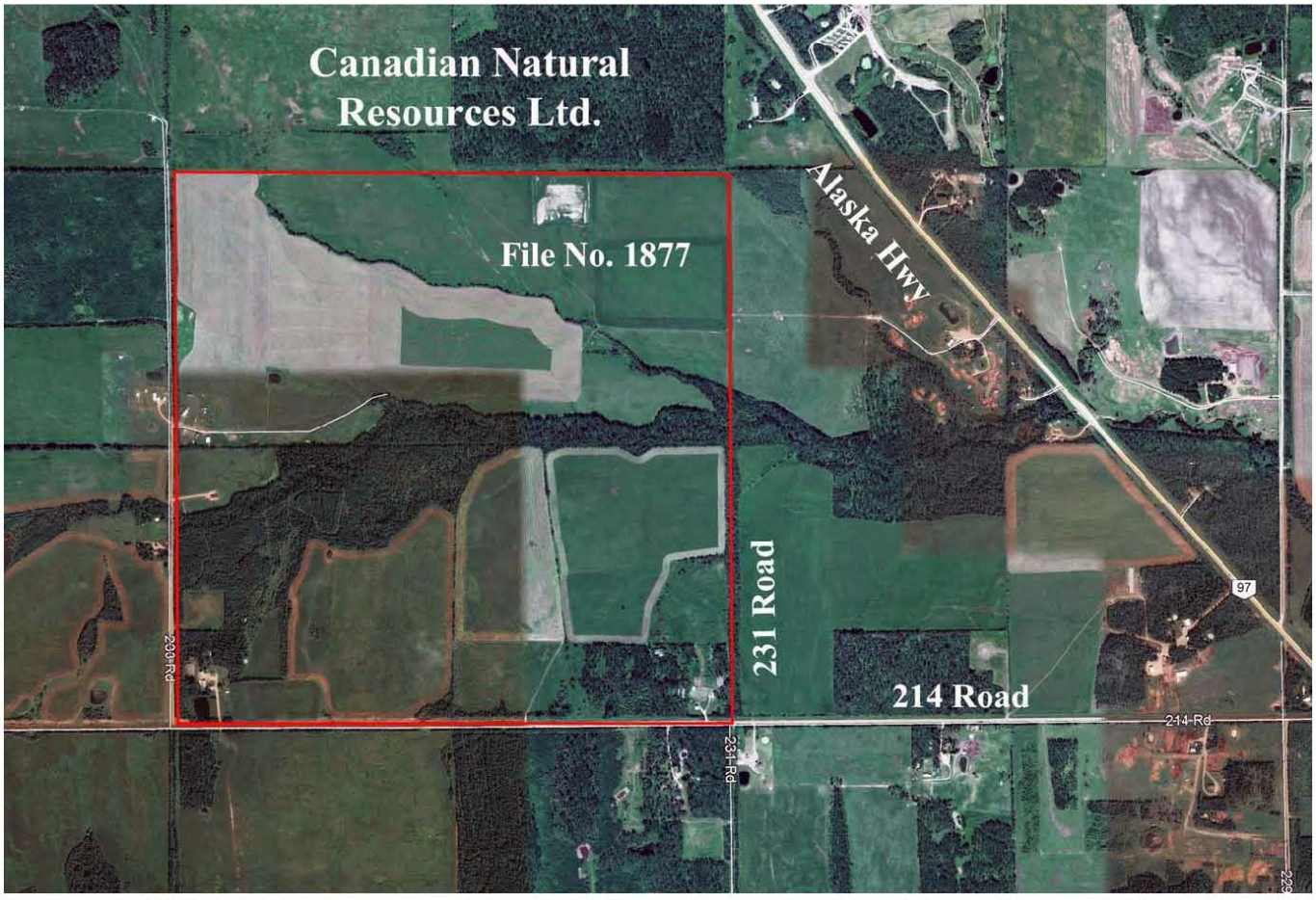
AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD

BACKGROUND


Canadian Natural Resources Ltd.
250 Road
250 Rd
249 Road
File No. 1424,
1458, 1459
249 Rd


Canadian Natural
Resources Ltd.
File No. 1877
Alaska Hwy
231 Road
214 Road
97
214 Rd
231 Rd
230 Rd

A rental review arbitration was conducted before a panel consisting of Frank Breault, member of the Board and Rodney J. Strandberg, Chair of the Board, in Fort St. John on 5 October 2001. Cliff and Shirley Kimmie (the "Applicants") appeared on their own behalf. Barry Taylor, surface land man, appeared for Canadian Natural Resources Ltd. (the "Respondent").

Nature of Arbitration

Before the Panel of the Board were applications for arbitration of renegotiation of compensation for two leases by the Respondent of land owned by the Applicants.

By Notice filed May 3, 2001 the Applicants requested a renegotiation and review of compensation for the South ½, 8-85-17, CNRL Forte Cecil 2-8-85-17 West of the 6th Meridian. The original lease between the Applicants and Morrison Petroleum Ltd. was dated October 29, 1993, as amended, providing for annual payments of $3500.00 on August 20 of each year.

Prior to the hearing the members of the Panel attended at the well site to view it.

By agreement between the parties, in order to expedite the hearing, evidence for this arbitration and another was heard at the same time although two separate orders will be made. The Applicants presented their evidence on both applications followed by the Respondent's presentation regarding both well sites. At the conclusion of the arbitration the Panel reserved its decision. This is that decision.

Well Site 2-8-85-17

This well site is located on the southern boundary of the Applicants' property. The well, together with an access road affects 6.47 acres of the surface.

The well is accessed by an access road which follows the southern edge of the Applicant's property beside a road allowance. The well site is 120 by 102 meters square and is fenced. The well produces oil. On the lease are storage tanks and a pump jack. Any sour gas is recovered from the well. The well site is upwind of the home quarter of the Applicants but is not visible from their home.

The Applicants use their land for grazing purposes.

POSITIONS OF THE PARTIES
Applicants' position

The Applicants indicate that this well site has not been as great as problem as the other well site. The fence around it is tight and neat. Their main concern is with unauthorized persons entering the property along the access road. They indicate that they have asked the Respondent to ensure that gates at the road are locked at all times to prevent both the egress of cattle from their property and entrance by

unauthorized persons, primarily hunters, who believe that the access road gives them the right to enter the property.

The Applicants believe that, in addition to losing the productive grazing land as a result of the well site and access road, they are also losing cattle which are being shot by hunters. They are of the view that the Respondent is responsible for locking and maintaining the gates and posting signs that the road is a private road. It is unclear whether locking the gate on this road would reduce or eliminate this problem because there is an undeveloped road allowance immediately to the south of the access road which might be used by hunters to enter the property. The Applicants testified that they lose eight calves per year each with a value of $700.00.

The Applicants presented comparable compensation amounts in Exhibits 7 and eight for leases in the immediate area. These comparable leases are recent. Their position is that appropriate compensation is be $800.00 per acre for annual compensation of $5,176.00. They also sought an award of interest on unpaid compensation from the date any revised compensation was deemed to commence to the date that payment is received.

Respondent's position

The Respondent acknowledged that the road allowed access onto the Applicants' land and recognized that cows and horses were able to walk over the cattle guard at the entrance to the access road.

The Respondent's view was that calculating compensation on a per acre basis was not the proper approach because the Petroleum and Natural Gas Act sets out criteria to be considered, some of which cannot be calculated on a per acre basis. It was further noted that compensation calculated on a per acre basis would overcompensate for larger well sites.

The Respondent relied on Exhibit #4, a summary of what it considered an assortment of comparable sites showing first year and annual compensation amounts, on both a total basis and on a per acre basis.

The Respondent calculated loss of profit based on a memorandum from Christopher M. Baker of Pioneer Land Services Ltd. to Encal Energy Ltd. dated April 15, 1999 which was Exhibit 5. This sets out a calculation for loss of grazing revenue which, if accepted, would provide a loss of profit of$75.00 per acre for a total of $485.25.

The Respondent calculated damage to land at $250.00 per acre for a total of$1617.50, allowed nuisance and disturbance at $1,000.00 and proposed compensation for other factors of $300.00 providing an offer less than the annual compensation currently paid. Following this analysis the Respondent felt that the existing annual compensation of $3,500.00 was fair.

The Respondent felt that nothing should be awarded for any cattle loss and suggested a way to determine what loss, if any, was sustained by the Applicants.

Analysis

The Panel's responsibility is to determine what is appropriate compensation to the Applicants for continuing damages incurred resulting from the Respondent's activities in each year. Section 21 of the *Petroleum and Natural Gas Act* guides the Panel regarding the factors which the Panel may consider in determining compensation. Some of the factors are amenable to a form of mathematical calculation based on a unit such as an acre; some are intangible and not susceptible of easy calculation. Once all of the factors are given appropriate consideration the Board still has an overriding duty to consider whether the amount determined is proper. The Panel has the ultimate responsibility to exercise its discretion to adjust that which may be the outcome after a consideration of a consideration of all relevant factors to ensure that compensation is fair to both the surface and sub-surface right's holders.

The Panel does not accept that a calculation on a per acre basis is the appropriate means to determine compensation payable to land owners. The size of the lease is a factor to consider but it is just one of several factors which must be considered.

Of the comparable information provided to the Panel by the parties that provided by the Applicants is of greatest value to the Panel. These comparable are current and relate to property close to the Applicants' land. The information provided by the Respondent in Exhibit #4 does not provide the date on which the compensation was determined and is of little assistance in determining appropriate compensation. The locations chosen by the Respondent are not near the Applicants' land and deal with different uses of the land by the surface right's holder.

The Panel finds Exhibit #5, the memorandum from Pioneer Land Services of limited use. While this Exhibit makes reference to a meeting with officials of the BC Ministry of Agriculture and Food, nothing in it suggests that the figures arrived at by its author were reviewed, commented on or approved of by those officials. The calculations are based on assumptions of forage production, the amount of feed required to support one cow with a calf and an assertion regarding consumption. The value of private grazing for this area is based on anecdotal evidence. The calculation uses what the Panel regards as self-serving language, such as "extremely generous figures." The Panel is aware that the document was prepared for a specific audience and purpose. It cannot be viewed as objective or reliable. Information verified, accepted and approved of by neutral persons is of far greater use to the Panel.

The Panel also accepts that the Applicants have lost cattle, likely due to the unauthorized activities of hunters on the land. This is a loss arising from the activities of the Respondent on the leased land. The Respondent summarily rejected this claim. The Panel finds it likely that there has been a loss similar in nature to what was described. The absence of verifiable data suggests that the total amount claimed for this loss, 8 animals at $700.00 per animal per year, may not be reliable. The Panel cannot reject a compensable head of damage merely because evidence which might serve to support or prove this loss is unavailable or may not be totally reliable. The Respondent agreed that if the locking of gates and the posting of signs led to a reduction in losses reported by the Applicants then the relationship between unauthorized presence of hunters on the property and loss of cattle might be established. While there is no jurisdiction to order that the Respondent keep gates locked, construct cattle guards which do not allow

cattle to leave the property or to post signs to prevent trespass, if these steps are taken and animal loss reduced then there may be an adjustment to compensation in the future.

Award

After having carefully considered the factors which the Panel is directed by statute to consider in Section 21 of the Act, the direction to consider the time value of money and after having heard and carefully considered the evidence and the submissions of the parties the Panel concludes that the appropriate compensation to be paid to the Applicants by the Respondent is $4,500.00 per annum. This compensation will commence on the anniversary date of the lease immediately preceding May 3, 2001, the date the application for Arbitration was received by the Mediation and Arbitration Board. This is August 20, 2000. It appeared to the Panel that the renegotiation process had been delayed by changes in the ownership of the lease. The parties, however, were unable to agree on any commencement date earlier than that set by legislation.

IT IS HEREBY ORDERED THAT:

1. Commencing on August 20, 2000 and on the 20th day of August each and every year thereafter until altered by agreement of the parties or further board order the annual compensation payable to the Applicants by the Respondent for this lease is $4,500.00;

2. In addition to the increased compensation the Applicants will receive interest on the difference between the new compensation and compensation already paid calculated at the rates of interest fixed by the Province of British Columbia as post-judgment interest as set out in Schedule #1 to this Order;

3. The Respondent will within thirty (30) days of this Order provide an accounting to the Board office of the payments made by it since the 20th day of August, 2000 together with confirmation that the revised compensation and interest have been paid and a calculation of the interest paid to the Applicants;

4. The Respondent will, within thirty (30) days, provide to the Board and the Applicants all documents to show the chain of ownership and assignment of this lease from Morrison Petroleum Ltd. to the Respondent.

5. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney J. Strandberg, Chair

_____
S. Frank Breault, Member

MEDIATION AND ARBITRATION BOARD
Under the *Petroleum and Natural Gas* Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: 16 December 2002

File No. 1458

Board Order No. 347ARR-1

BEFORE THE BOARD:

IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS* ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE SOUTH EAST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(2-8-85-17 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD

BACKGROUND

On 13 December 2001, by Order of this Board following an Arbitration compensation review a panel of the Board consisting of Frank Breault, member and Rodney Strandberg, Chair fixed annual compensation payable by the operator, Canadian Natural Resources Ltd. (C.N.R.L.), to the landowners Cliff and Shirley Kimmie.

C.N.R.L. appealed the Order of the Board. The Honourable Madam Justice Loo heard the appeal. In her decision dated 5 November 2002, she directed that the Board define the compensation payable for the interference and nuisance to the landowners associated with their enjoyment of their land and the compensation payable for the potential for a loss of cattle as a result of the activities of C.N.R.L. The Learned Justice left it to the discretion of the panel as to whether the Arbitration had to be reconvened or whether this clarification could be provided based on the evidence previously taken at the Arbitration on 5 October 2002.

The panel feels that the necessary clarification can be made based on the material presented at the Arbitration.

Value of Land

The Landowners provided adequate comparable information regarding the value of the land in the vicinity of the subject land to allow the Board to determine the prevailing market value for the land affected by the Operator's activities.

In general, the Board accepts that the activities of Operators on land cause disruption to a Landowner. It is generally accepted that these activities cause temporary damage, nuisance and disturbance to a Landowner. The degree of these effects is unique in each case. Some of the effects of Operator's activities creating loss or profit and or severance are not assumed to occur in each case.

When the parties to a hearing before the Board provide evidence by way of comparable lease information, unless the lease refers to special or specific types or heads of damage, the Board proceeds on the basis that the compensation addresses the generally accepted effects of activity on the land.

The Board expects that if there are unusual impacts addressed by compensation in comparable lease information the parties will address this.

Having carefully heard the evidence presented and considering the compensation amount in the comparable lease evidence before it, the Board concludes that the compensation payable for considerations other than the potential lost cattle is $ 4,000.00 for the well site and access road located at 2 - 8 - 85 - 17.

Value of Cattle

The evidence before the Board on this aspect of compensation would be for effect on the activities of the Landowner that would not be assumed by the Board to generally occur but, rather, would be specific and unique to the Landowners.

The Board finds as a fact that the Landowners sustain a loss of cattle as a result of the failure of the Operator to ensure that gates are closed and locked. The effect of this is that unauthorized persons are allowed entry onto the land. There are at least two consequences of this. The first is that the unauthorized persons increase the degree of nuisance and disturbance to the Landowners. The second is that hunters or other persons may kill cattle or the cattle may escape the property and disappear.

The Landowners stated that they lost 8 calves per year at an average cost of $ 700.00 per head. The evidence on this point, however, was Spartan. However, the Board has an obligation to make the fairest possible Order based on the evidence that it has received and accepted. Because the Landowners provided no evidence regarding the number of cattle they maintained on the property before the Operator began its activities or the numbers on the property since or the average price received per animal in the relevant years, the Board substantially discounted the values suggested by the Landowners. It would be hoped that in the course of future negotiations between the Operator and the Landowner or at any future arbitrated compensation review this evidence, together with any evidence from the Operator regarding the steps taken to mitigate this loss would be provided.

Accordingly the annual compensation payable by the Operator, C.N.R.L. to the Landowners as compensation for lost cattle is $ 500.00 for the well site and access road located at 2 - 8 - 85 - 17.

IT IS HEREBY ORDERED THAT:

1. The Mediation and Arbitration Board confirms its order 347A.

2. Commencing on August 20, 2000 and on the 20th day of August each and every year thereafter until altered by agreement of the parties or further Board Order, the annual compensation payable to the Landowners by the Operator for this lease is $ 4,500.00.

3. The Operator shall within thirty (30) days of this Order pay to the Landowners and provide proof of payment(s) to the Board, the new annual compensation amounts, if it has not already done so.

4. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 16th day of December 2002.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney J. Strandberg, Chair

_____
S. Frank Breault, Member

MEDIATION AND ARBITRATION BOARD
Under the *Petroleum and Natural Gas* Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: December 13, 2001

File No. 1459

Board Order No. 348A

BEFORE THE BOARD:

IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS* ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE SOUTH WEST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(A6-8-85-17 W6M)
(THE LANDS)

BETWEEN:

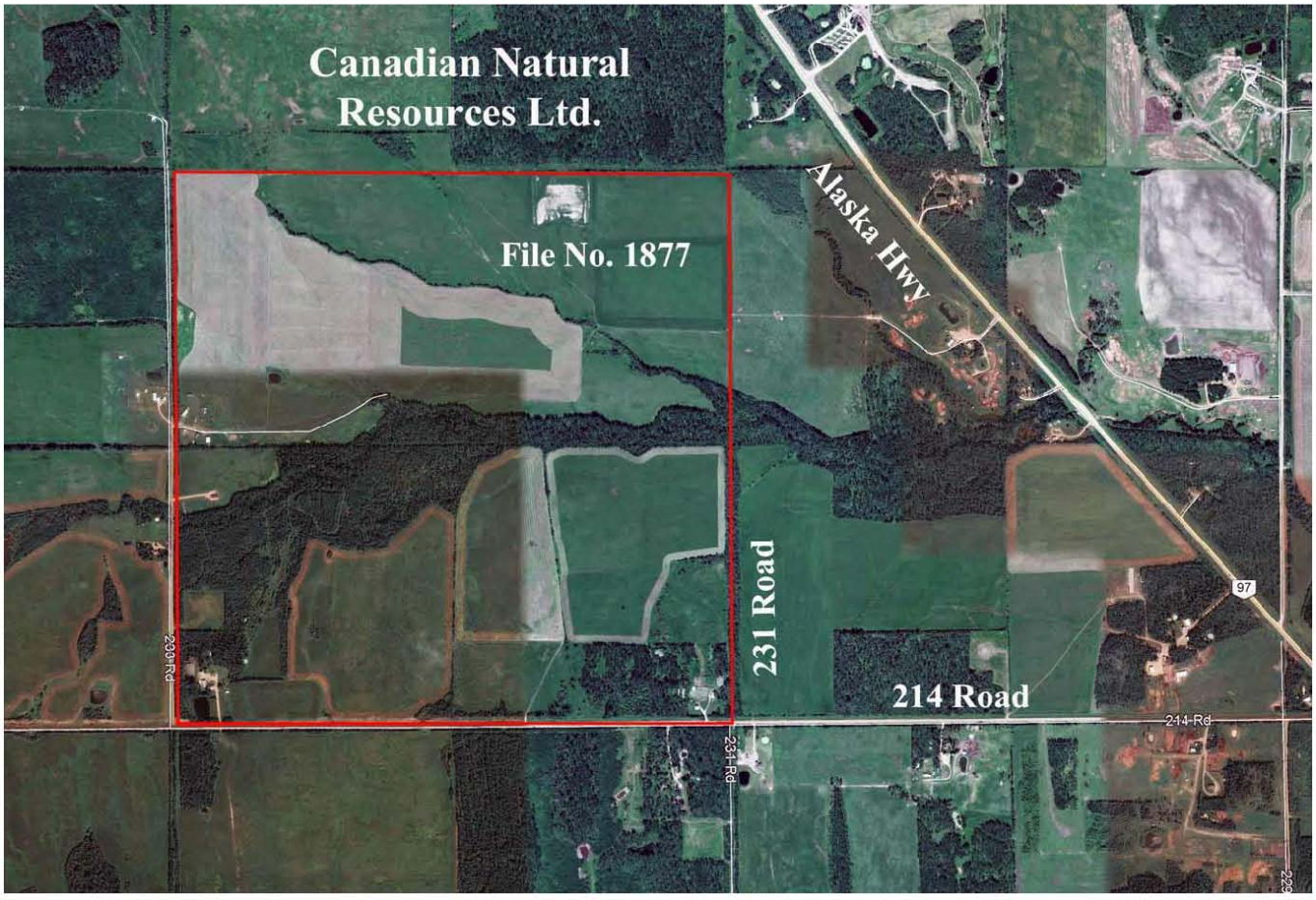
CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD


Canadian Natural Resources Ltd.
250 Road
250 Rd
249 Road
File No. 1424,
1458, 1459
249 Rd


Canadian Natural
Resources Ltd.
File No. 1877
Alaska Hwy
231 Road
214 Road
97
214 Rd
231 Rd
230 Rd

BACKGROUND

A rental review arbitration was conducted before a panel consisting of Frank Breault, member of the Board and Rodney J. Strandberg, Chair of the Board, in Fort St. John on 5 October 2001. Cliff and Shirley Kimmie (Applicants) appeared on their own behalf. Barry Taylor, surface land man, appeared for Canadian Natural Resources Ltd. (Respondent).

Nature of Arbitration

Before the Panel of the Board were applications for arbitration of renegotiation of compensation for two leases by the Respondent of land owned by the Applicants.

By Notice filed May 3, 2001 the Applicants requested a renegotiation and review of compensation for the Southwest 1/4 8-85-17, CNRL Forte Cecil A6-8-85-17 West of the 6th Meridian. The Applicants stated that the original lease between the Applicants and Morrison Petroleum Ltd. was dated 9 March 1992. A copy of the original of that lease was not available for review.

Prior to the hearing the members of the Panel attended at the well site to view it.

By agreement between the parties, in order to expedite the hearing, evidence for both arbitrations between the parties was heard at the same time. The Applicants presented their evidence on both applications followed by the Respondent's presentation regarding both well sites. After all evidence and submissions were completed the Panel reserved its decision. This is that decision.

Well Site A6-8-85-17

The well site is located on the north side of the Applicants' property. It is accessed by a road along the north boundary. The lease site and access road affect 9.41 acres of the surface. The access road is used to access at least one of the Respondent's wells and at least one owned by another company, Talisman Energy.

It is an oil well. There appears to be a relatively new flow line constructed in the lease. There are oil storage tanks on the property and an unused flare pit. The well site is upwind from the Applicant's home and is not visible from it.

POSITIONS OF THE PARTIES

Applicant

The Applicants advised that this lease had caused them many problems. They indicated that the fence around the site was poorly constructed and that they had lost a horse in that area. This well site had an unused flare pit full of water. It was unclear to whether the water is contaminated. The Applicants were concerned that the road into this well site was being used by the Respondent to access other wells, without compensation, and also by at least one other company to access its well without notice to them or compensation. The Applicants were concerned that while plans had been made for the construction of a power line on the south side of the access road the Respondent had, without notice to them, constructed it on the north side of the road along the fence line. They anticipated difficulties in servicing and maintaining the fence. The Applicants were also concerned that the gates on the roads were not closed and locked. Although they had asked the Respondent to ensure this was done apparently it was not cone and livestock were able to cross cattle guards and unauthorized persons were able to enter the property.

They estimate a loss of approximately 8 calves per year, worth on average & 700.00 and believed these were shot by hunters.

The Applicants presented comparable compensation amounts in Exhibits 7 & 8 for leases in the immediate area. These comparable leases are recently dated. Their position is that appropriate compensation is $ 800.00 per acre for annual compensation of $ 5,176.00. They also sought an award of interest on unpaid compensation from the date any revised compensation was considered to commence to the date that payment is received.

Respondent

The Respondent acknowledges that there had been ongoing problems with unauthorized persons entering on the Applicants property.

The Respondent's view was that calculating compensation on a per acre basis was not the proper approach because the *Petroleum and Natural Gas* Act sets out criteria to be considered, some of which cannot be calculated on a per acre basis. It was further noted that compensation calculated on a per acre basis would overcompensate for larger well sites.

The Respondent relied on Exhibit #4, a summary of what it considered an assortment of comparable sites showing first year and annual compensation amounts, on both a total basis and on a per acre basis.

The Respondent calculated loss of profit based on a memorandum from Christopher M. Baker of Pioneer Land Services Ltd. dated 15 April 1999 to Encal Energy Ltd. (Exhibit 5). This sets out a calculation for loss of grazing revenue, which, if accepted, would provide a loss of profit o f$ 75.00 per acre for9.41 acres for a total of $ 705.75.

The Respondent did not accept that any cattle were lost as a result of its activities. The Respondent was not able to advise whether it was receiving any additional compensation from other companies for use of the access road.

The Respondent felt that concerns regarding gates, signage and the access road allowing unauthorized persons onto the property were operational in nature and matter that could or should be worked out between the Respondent and the Applicants. The Respondent suggestion for annual compensation, based on its comparables was:

1. Crop loss for 9.41 acres @ $ 75.00 per acre totaling $ 707.75;
2. Nuisance and disturbance totaling $ 2,000.00;
3. Other factors totaling $ 300.00

Analysis

The Panel's responsibility is to determine what is appropriate compensation to the Applicants for continuing damages incurred resulting from the Respondent's activities in each year. Section 21 of the *Petroleum and Natural Gas* Act guides the Panel regarding the factors, which may be considered in determining compensation. Some of the factors are amenable to a form of mathematical calculation based on a unit such as an acre; some are intangible and not susceptible of easy calculation. Once all of the factors are given appropriate consideration the Panel still has an overriding duty to consider whether the amount determined is proper. The Panel has the ultimate responsibility to exercise its discretion to adjust that, which may be the outcome after a consideration of all factors to ensure that compensation is fair to the surface and sub-surface owners of rights.

The Panel does not accept that a calculation on a per acre basis is the appropriate way to determine compensation. The size of the lease is one factor to consider but it is just one of many which must be considered.

After reviewing the comparable information provided to the Panel by the parties, those provided by the Applicant is preferred. These comparables are current and relate to property close to the Applicants land. The information provided by the Respondent in Exhibit # 4 does not provide the date on which the compensation was determined and is of little assistance in determining the appropriate compensation. The locations chosen by the Respondent are not near the Applicants land and deal with different uses of the land by the surface rights owner.

The Panel finds Exhibit #5, the memorandum from Pioneer Land Services of limited use. While this Exhibit makes reference to a meeting with officials of the BC Ministry of Agriculture and Food, nothing in it suggests that the figures arrived at by its author were reviewed, commented on or approved of by those officials. The calculations are based on assumptions of forage production, the amount of feed required to support one cow with a calf and an assertion regarding consumption. The value of private grazing for this area is based on anecdotal evidence. The calculation uses what the Panel regards as self-serving

language, such as "extremely generous figures." The Panel is aware that the document was prepared for a specific audience and purpose. It cannot be viewed as objective or reliable. Information verified, accepted and approved of by neutral persons is of far greater use to the Panel.

The Board also accepts that the Applicants have lost cattle, likely due to the unauthorized activities of hunters on the land. This is a loss arising directly from the Respondent activities on the leased land. The Respondent summarily rejected this claim. The Panel finds it likely that there has been a loss similar in nature to what was described. The absence of verifiable data suggests that the total amount claimed for this loss, 8 animals @ $ 700.00 per animal per year, may not be reliable. The Panel cannot reject a compensable head of damage merely because evidence, which might serve to support or prove this loss, is unavailable or may not be totally reliable.

The Respondent agreed that if the locking of gates and the posting of signs led to a reduction in losses reported by the Applicants then the relationship between unauthorized presence of hunters on the property and loss of cattle might be established. While there is no jurisdiction to order that the Respondent keep gates locked, construct cattle guards which do not allow cattle to leave the property or to post signs to prevent trespass, if these steps are taken and animal loss reduced then there may be an adjustment to compensation in the future.

Award

After having carefully considered the factors which the Panel is directed by statute to consider in Section 21 of the Act, the time value of money and after having heard and carefully considered the evidence presented at this Arbitration, the Panel concludes that the appropriate compensation to be paid to the Applicants by the Respondent is $ 7,000.00 per annum. This compensation will commence on the anniversary date of the lease immediately preceding May 3, 2001; the date the Mediation and Arbitration Board received the date the application for Arbitration. This is 9 March 2001.

It appeared to the Panel that the renegotiation process had been delayed by changes in the ownership of the lease. The parties, however, were unable to agree on any commencement date earlier than that specified by legislation.

IT IS HEREBY ORDERED THAT:

1. Commencing on 9 March 2001 and on the 9th day of March each and every year thereafter until altered by agreement of the parties or further board order the annual compensation payable to the Applicants by the Respondent for this lease is $ 7,000.00;

2. In addition to the increased compensation the Applicants will receive interest on the difference between the new compensation and compensation already paid calculated at

the rates of interest fixed by the Province of British Columbia as post -judgment interest as set out in Schedule #1 to this Order;

3. The Respondent will within thirty (30) days of this Order provide an accounting to the Board of the payments made by it since August 20, 2000 together with confirmation that the revised amount of compensation and interest has been paid to the Applicants and a calculation of the interest;

4. The Respondent will provide to the Board and to the Applicants, within thirty (30) days, a copy of the original lease in this matter;

5. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the annual compensation payable to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney J. Strandberg, Chair

S. Frank Breault, Member

Dates from:	to:	Pre-Judgment Interest Rate	Post-Judgment Interest Rate	Bankers' Prime Rate	Rate paid on funds held under R 58(6)
Jan. 1, 1991	Mar. 31, 1991	11	5	12.75	10.75
Apr. 1, 1991	June 30, 1991	9	5	11.25	9.25
July 1, 1991	Sep. 30, 1991	8	5	9.75	7.75
Oct. 1, 1991	Dec. 31, 1991	8	5	9.5	7.5
Jan. 1, 1992	Mar. 31, 1992	6	5	8	6
Apr. 1, 1992	June 30, 1992	6	8	8.25	6.25
July 1, 1992	Sep. 30, 1992	5	7	7	5
Oct. 1, 1992	Dec. 31, 1992	4.25	7	6.25	4.25
Jan. 1, 1993	June 30, 1993	5.25	7.25	7.25	5.25
July 1, 1993	Dec. 31, 1993	4	6	6	4
Jan. 1, 1994	June 30, 1994	3.5	5.5	5.5	3.5
July 1, 1994	June 30, 1995	6	8	8	6
July 1, 1995	Dec. 31, 1995	6.75	8.75	8.75	6.75
Jan. 1, 1996	June 30, 1996	5.5	7.5	7.5	5.5
July 1, 1996	Dec. 31, 1996	4.5	6.5	6.5	4.5
Jan. 1, 1997	Dec. 31, 1997	2.75	4.75	4.75	2.75
Jan. 1, 1998	June 30, 1998	4	6	6	4
July 1, 1998	Dec. 31, 1998	4.5	6.5	6.5	4.5
Jan. 1, 1999	June 30, 1999	4.75	6.75	6.75	4.75
July 1, 1999	Dec. 31, 1999	4.25	6.25	6.25	4.25
Jan. 1, 2000	June 30, 2000	4.5	6.5	6.5	4.5
July 1, 2000	June 30, 2001	5.5	7.5	7.5	5.5
July 1, 2001	Dec. 31, 2001	4.25	6.25	6.25	4.25

Interest rates: call or fax (604) 886-4211, or email us: evinross@dccnet.com

MEDIATION AND ARBITRATION BOARD
Under the *Petroleum and Natural Gas* Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: December 13, 2001

File No. 1459 Board Order No. 348ARR

BEFORE THE BOARD: IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS* ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE SOUTH WEST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(A6-8-85-17 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD

BACKGROUND

A rental review arbitration was conducted before a panel consisting of Frank Breault, member of the Board and Rodney J. Strandberg, Chair of the Board, in Fort St. John on 5 October 2001. Cliff and Shirley Kimmie (Applicants) appeared on their own behalf. Barry Taylor, surface land man, appeared for Canadian Natural Resources Ltd. (Respondent).

Nature of Arbitration

Before the Panel of the Board were applications for arbitration of renegotiation of compensation for two leases by the Respondent of land owned by the Applicants.

By Notice filed May 3, 2001 the Applicants requested a renegotiation and review of compensation for the Southwest 1/4 8-85-17, CNRL Forte Cecil A6-8-85-17 West of the 6th Meridian. The Applicants stated that the original lease between the Applicants and Morrison Petroleum Ltd. was dated 9 March 1992. A copy of the original of that lease was not available for review.

Prior to the hearing the members of the Panel attended at the well site to view it.

By agreement between the parties, in order to expedite the hearing, evidence for both arbitrations between the parties was heard at the same time. The Applicants presented their evidence on both applications followed by the Respondent's presentation regarding both well sites. After all evidence and submissions were completed the Panel reserved its decision. This is that decision.

Well Site A6-8-85-17

The well site is located on the north side of the Applicants' property. It is accessed by a road along the north boundary. The lease site and access road affect 9.41 acres of the surface. The access road is used to access at least one of the Respondent's wells and at least one owned by another company, Talisman Energy.

It is an oil well. There appears to be a relatively new flow line constructed in the lease. There are oil storage tanks on the property and an unused flare pit. The well site is upwind from the Applicant's home and is not visible from it.

POSITIONS OF THE PARTIES

Applicant

The Applicants advised that this lease had caused them many problems. They indicated that the fence around the site was poorly constructed and that they had lost a horse in that area. This well site had an unused flare pit full of water. It was unclear to whether the water is contaminated. The Applicants were concerned that the road into this well site was being used by the Respondent to access other wells, without compensation, and also by at least one other company to access its well without notice to them or compensation. The Applicants were concerned that while plans had been made for the construction of a power line on the south side of the access road the Respondent had, without notice to them, constructed it on the north side of the road along the fence line. They anticipated difficulties in servicing and maintaining the fence. The Applicants were also concerned that the gates on the roads were not closed and locked. Although they had asked the Respondent to ensure this was done apparently it was not cone and livestock were able to cross cattle guards and unauthorized persons were able to enter the property.

They estimate a loss of approximately 8 calves per year, worth on average & 700.00 and believed these were shot by hunters.

The Applicants presented comparable compensation amounts in Exhibits 7 & 8 for leases in the immediate area. These comparable leases are recently dated. Their position is that appropriate compensation is $ 800.00 per acre for annual compensation of $ 5,176.00. They also sought an award of interest on unpaid compensation from the date any revised compensation was considered to commence to the date that payment is received.

Respondent

The Respondent acknowledges that there had been ongoing problems with unauthorized persons entering on the Applicants property.

The Respondent's view was that calculating compensation on a per acre basis was not the proper approach because the *Petroleum and Natural Gas* Act sets out criteria to be considered, some of which cannot be calculated on a per acre basis. It was further noted that compensation calculated on a per acre basis would overcompensate for larger well sites.

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The Respondent did not accept that any cattle were lost as a result of its activities. The Respondent was not able to advise whether it was receiving any additional compensation from other companies for use of the access road.

The Respondent felt that concerns regarding gates, signage and the access road allowing unauthorized persons onto the property were operational in nature and matter that could or should be worked out between the Respondent and the Applicants. The Respondent suggestion for annual compensation, based on its comparables was:

1. Crop loss for 9.41 acres @ $ 75.00 per acre totaling $ 707.75;
2. Nuisance and disturbance totaling $ 2,000.00;
3. Other factors totaling $ 300.00

Analysis

The Panel's responsibility is to determine what is appropriate compensation to the Applicants for continuing damages incurred resulting from the Respondent's activities in each year. Section 21 of the *Petroleum and Natural Gas* Act guides the Panel regarding the factors, which may be considered in determining compensation. Some of the factors are amenable to a form of mathematical calculation based on a unit such as an acre; some are intangible and not susceptible of easy calculation. Once all of the factors are given appropriate consideration the Panel still has an overriding duty to consider whether the amount determined is proper. The Panel has the ultimate responsibility to exercise its discretion to adjust that, which may be the outcome after a consideration of all factors to ensure that compensation is fair to the surface and sub-surface owners of rights.

The Panel does not accept that a calculation on a per acre basis is the appropriate way to determine compensation. The size of the lease is one factor to consider but it is just one of many which must be considered.

After reviewing the comparable information provided to the Panel by the parties, those provided by the Applicant is preferred. These comparables are current and relate to property close to the Applicants land. The information provided by the Respondent in Exhibit # 4 does not provide the date on which the compensation was determined and is of little assistance in determining the appropriate compensation. The locations chosen by the Respondent are not near the Applicants land and deal with different uses of the land by the surface rights owner.

The Panel finds Exhibit #5, the memorandum from Pioneer Land Services of limited use. While this Exhibit makes reference to a meeting with officials of the BC Ministry of Agriculture and Food, nothing in it suggests that the figures arrived at by its author were reviewed, commented on or approved of by those officials. The calculations are based on assumptions of forage production, the amount of feed required to support one cow with a calf and an assertion regarding consumption. The value of private grazing for this area is based on anecdotal evidence. The calculation uses what the Panel regards as self-serving language, such as "extremely generous figures." The Panel is aware that the document was prepared for a specific audience and purpose. It cannot be viewed as objective or reliable. Information verified, accepted and approved of by neutral persons is of far greater use to the Panel.

The Board also accepts that the Applicants have lost cattle, likely due to the unauthorized activities of hunters on the land. This is a loss arising directly from the Respondent activities on the leased land. The Respondent summarily rejected this claim. The Panel finds it likely that there has been a loss similar in nature to what was described. The absence of verifiable data suggests that the total amount claimed for this loss, 8 animals @ $ 700.00 per animal per year, may not be reliable. The Panel cannot reject a compensable head of damage merely because evidence, which might serve to support or prove this loss, is unavailable or may not be totally reliable.

The Respondent agreed that if the locking of gates and the posting of signs led to a reduction in losses reported by the Applicants then the relationship between unauthorized presence of hunters on the property and loss of cattle might be established. While there is no jurisdiction to order that the Respondent keep gates locked, construct cattle guards which do not allow cattle to leave the property or to post signs to prevent trespass, if these steps are taken and animal loss reduced then there may be an adjustment to compensation in the future.

Award

After having carefully considered the factors which the Panel is directed by statute to consider in Section 21 of the Act, the time value of money and after having heard and carefully considered the evidence presented at this Arbitration, the Panel concludes that the appropriate compensation to be paid to the Applicants by the Respondent is $ 7,000.00 per annum. This compensation will commence on the anniversary date of the lease immediately preceding May 3, 2001; the date the Mediation and Arbitration Board received the date the application for Arbitration. This is 9 March 2001.

It appeared to the Panel that the renegotiation process had been delayed by changes in the ownership of the lease. The parties, however, were unable to agree on any commencement date earlier than that specified by legislation.

IT IS HEREBY ORDERED THAT:

1. Commencing on 9 March 2001 and on the 9th day of March each and every year thereafter until altered by agreement of the parties or further board order the annual compensation payable to the Applicants by the Respondent for this lease is $ 7,000.00;

2. In addition to the increased compensation the Applicants will receive interest on the difference between the new compensation and compensation already paid calculated at

   the rates of interest fixed by the Province of British Columbia as post-judgment interest as set out in Schedule # 1 to this Order;

3. The Respondent will within thirty (30) days of this Order provide an accounting to the Board office of the payments made by it since the 9th day of March 2001 together with confirmation that the revised compensation and interest have been paid and a calculation of the interest paid to the Applicants;

4. The Respondent will provide to the Board and the Applicants, within thirty (30) days a copy of the original lease in this matter.

5. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney J. Strandberg, Chair

_____
S. Frank Breault, Member

MEDIATION AND ARBITRATION BOARD
Under the *Petroleum and Natural Gas* Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: 16 December 2002

File No. 1459

Board Order No. 348ARR-1

BEFORE THE BOARD:

IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS* ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE SOUTH EAST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(A6-8-85-17 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD

BACKGROUND

On 13 December 2001, by Order of this Board following an Arbitration of a compensation review a panel of the Board consisting of Frank Breault, member and Rodney Strandberg, Chair fixed annual compensation payable by the operator, Canadian Natural Resources Ltd. (C.N.R.L.), to the landowners Cliff and Shirley Kimmie.

C.N.R.L. appealed the Order of the Board. The Honourable Madam Justice Loo heard the appeal. In her decision dated 5 November 2002, she directed that the Board define the compensation payable for the interference and nuisance to the landowners associated with their enjoyment of their land and the compensation payable for the potential for a loss of cattle as a result of the activities of C.N.R.L. The learned Justice left it to the discretion of the panel as to whether the Arbitration had to be reconvened or whether this clarification could be provided based on the evidence previously taken at the Arbitration on 5 October 2002.

The Panel feels that the necessary clarification can be made based on the material presented at the Arbitration.

Value of Land

The Landowners provided adequate comparable information regarding the value of the land in the vicinity of the subject land to allow the Board to determine the prevailing market value for the land affected by the Operator's activities.

In general, the Board accepts that the activities of Operators on land cause disruption to a Landowner. It is generally accepted that these activities cause temporary damage, nuisance and disturbance to a Landowner. The degree of these effects is unique in each case. Some of the effects of Operator's activities creating loss or profit and or severance are not assumed to occur in each case.

When the parties to a hearing before the Board provide evidence by way of comparable lease information, unless the lease refers to special or specific types or heads of damage, the Board proceeds on the basis that the compensation addresses the generally accepted effects of activity on the land. The Board

expects that if there are unusual impacts addressed by compensation in comparable lease information the parties will address this.

Having carefully heard the evidence and considered the compensation amount in the comparable lease evidence before it, the Board concludes that the compensation payable for considerations other than the potential lost cattle is $ 6,300.00 for the well site and access road located at A6 - 8 - 85 - 17.

Value of Cattle

The evidence before the Board on this aspect of compensation would be for effect on the activities of the Landowner that would not be assumed by the Board to generally occur but, rather, would be specific and unique to the Landowners.

The Board has found as a fact that the Landowners sustain a loss of cattle as a result of the failure of the Operator to ensure that gates are closed and locked. The effect of this is that unauthorized persons are allowed entry onto the land. There are at least two consequences of this. The first is that the unauthorized persons increase the degree of nuisance and disturbance to the Landowners. The second is that hunters or other persons may kill cattle or the cattle may escape the property and disappear.

The Landowners stated that they lost 8 calves per year at an average cost of $ 700.00 per head. The evidence on this point, however, was Spartan. However, the Board has an obligation to make the fairest possible Order based on the evidence that it has received and accepted. Because the Landowners provided no evidence regarding the number of cattle they maintained on the property before the Operator began its activities or the numbers on the property since or the average price received per animal in the relevant years, the Board substantially discounted the values suggested by the Landowners. It would be hoped that in the course of future negotiations between the Operator and the Landowner or at any future arbitrated compensation review this evidence, together with any evidence from the Operator regarding the steps taken to mitigate this loss would be provided.

According the annual compensation payable by the Operator, C.N.R.L. to the Landowners as compensation for lost cattle is$ 700.00 for the well site and access road located at A6 - 8 - 85 - 17.

IT IS HEREBY ORDERED THAT:

1. The Mediation and Arbitration Board confirms its order 348A.

2. Commencing on 9 March 2001 and on the 9th day of March each and every year thereafter until altered by agreement of the parties or further Board Order, the annual compensation payable to the Landowners by the Operator for this lease is $ 7,000.00.

3. The Operator shall within thirty (30) days of this Order pay to the Landowners and provide proof of payment(s) to the Board, the new annual compensation amounts, if it has not already done so.

4. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 16th day of December 2002.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney J. Strandberg, Chair

_____
S. Frank Breault, Member

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: January 28, 2002

File No. 1464 Board Order No. 349ARR

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT BEING CHAPTER 361 OF THE REVISED STATUTES OF BRITISH COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF DISTRICT LOT 1499, d-31-G/94-A-15 PEACE RIVER DISTRICT WEST OF THE SIXTH MERIDIAN
(DL 1499, W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LTD.
BOX 6926, STATION "D"
CALGARY, AB
T2P 2G1
(THE APPLICANT)

AND:

LAWRENCE PATRICK RYAN
8932 117TH AVENUE
FORT ST. JOHN, B.C.
V1J 6P9
(THE RESPONDENT)

ARBITRATED RENT REVIEW

BACKGROUND:


(CNRL Peejay
Field Office)
File No.
1464
File No.
1448
Milligan Creek Road
Milligan Creek Rd
Canadian Natural Resources Ltd.

The Mediation and Arbitration Board (Board) received an application from Mr. Lawrence Ryan (Applicant) on 15 November 2001, for a review of the rental provisions of the surface lease pertaining to a well site and access known as d-31-G/94-A-15, located within District Lot 1499 Peace River District.

An Arbitration Hearing was subsequently scheduled and proceeded on 17 December 2001 in the Board Room of the Fort St. John Ministry of Forests building. Mr. Ryan represented himself, as owner of District Lot 1499 and Applicant to the proceedings. Mr. Barry Taylor appeared on behalf of the Respondent, Canadian Natural Resources Ltd. (CNRL).

The Panel of the Board consisted of Julie Hindbo and Rod Strandberg. Observers in attendance included Bruce Baxter, Gordon Hill and Arthur Hadland.

POSITION OF THE PARTIES

A APPLICANT

The Applicant provided a history of the well site under review. According to the Applicant, the well was drilled, abandoned, and not recorded with the appropriate Crown Ministry. The Applicant acquired District Lot 1499 first by Agriculture Lease in 1978, and later by crown grant into fee simple ownership in 1990 when the appropriate crown requirements were met.

At the time the Agricultural Lease was acquired, and prior to the crown grant, there was no record or knowledge of the drilled well and site. The Applicant discovered the well site while clearing land for a home site.

In the early 1980's and again in 1990 (when the residence near the well site was occupied by renters), there was a problem with gas leaking from the well site, which was reported to the Ministry of Energy Mines and Petroleum Resources.

In approximately 1990, it was determined that the well had been drilled by Dome Petroleum in approximately 1966; later transferred to Amoco who subsequently assigned it to the Respondent in 1992.

Since approximately 1991, when Dome Petroleum corrected the gas leak problem and hooked up a wellhead, there have been no further problems with the shut-in location. The Applicant noted that the land surrounding the well has been cleared and seeded to fescue, and there is a proposed feedlot surrounding the well site location.

A Surface Lease was signed between the Applicant and the Respondent in 1994, with an annual compensation amount of $ 2,500.00. The Applicant was of the understanding that subject to the Schedule "A" attached to and forming part of the surface lease, a rental review would be conducted when the well was brought into production. Neither the well site nor the surface lease has been recorded on title.

The well site area comprises one acre of land. The Applicant confirmed that the access into the well site was originally a Ministry of Transportation and Highways road, and is designated road allowance into the District Lot. Thus, the access road is not part of the surface lease.

The Quantum of compensation requested by the Applicant is;

1. $ 80,000.00 for Right-Of-Entry, the presence and location of the well site with respect to the residence and feedlot, which includes inconvenience issues associated with working around the well site, and
2. $ 8,000.00 annual compensation.

The Applicant indicated these values were arrived at by considering the land value to be comparable to that of recreational acreages, the increased activity with the well being brought into production and the increased value to the Respondent by virtue of a producing well.

B RESPONDENT

The Respondent requested that all previous offers be withdrawn from consideration at this Arbitration Hearing.

The Respondent confirmed the well was tied into a newly constructed flow line in September 2001. In the Respondent's view, the Surface Lease dated 24 March 1994 is a valid and binding agreement, with the annual compensation amount only to be considered for this Hearing, and not any amount for Right-Of-Entry. It is the intention of the Respondent, that the Surface Lease will be registered on title along with a legal survey plan in the near future.

The Respondent noted that the well site under review is unique, thus it was difficult to assess a fair value. Nevertheless, a number of comparable surface leases were submitted for consideration. The Respondent also provided a compensation worksheet based on the headings under Section 21 of the *Petroleum and Natural Gas* Act. This worksheet indicated $ 2,200.00 is fair annual compensation. These submissions were labeled as Exhibit "B". In the Respondent's view, the five-year review takes current prices for comparable leases and for compensation values into effect, thus inflation or change in the value of money pursuant to under Section 21 (2) of the *Petroleum and Natural Gas* Act is not applicable.

In the Respondent's view, they have acted in good faith toward the Applicant. The area for the well site has been kept unusually small to reduce impact and interference with the landowner's use of the surrounding lands. Efforts have been made to keep nuisance and disturbance to a minimum.

The landowner was approached in February of 2001 to resolve any outstanding concerns and issues prior to the well being brought into production. In July of 2001 an attempt was made to negotiate the rental review, but this was not resolved. The Respondent's position is that the current rental amount of $ 2,500.00 exceeds the value of the surface lease, using both comparables and compensation headings.

DISCUSSION

The parties expressed some differences of opinion regarding the intent of the Surface Lease dated 24 March 1994, and the comparability of the surface leases submitted by the Respondent.

The parties indicated agreement on the size and location of the area subject to the surface lease, the general history of the well site location, and the current use of the land.

DECISION

The Board carefully considered the evidence presented at the Hearing, including the submissions of the parties, and the unique factors relevant in the specific facts of this case. It is the value to the owner, not the taker that is before the Board. Thus, considering the current loss and inconvenience to the owner, the Board's award is as follows; the annual compensation for the well site known as d-31-G/94-A-15 located within District Lot 1499, Peace River District, shall be increased from the amount of $ 2,500.00 to $ 3,000.00.

Accordingly, the Mediation and Arbitration Board orders as follows;

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 12 (2) of the *Petroleum and Natural Gas* Act the rental provisions of the surface lease signed 24 March 1994 paid by the Respondent to the Applicant are varied from $ 2,500.00 per annum to $ 3,000.00. The increased rental provisions are effective from 24 March 2001 and are due and payable each year until agreement of the parties or further order of this Board. The next review date shall be 24 March 2006 unless otherwise agreed by the parties;

2. The Respondent will forthwith, and in any event within 60 days of this Order (29 March 2002) provide to the Mediation and Arbitration Board at the Board Office a written accounting of the payment of the retroactive increase less any annual payments made pursuant to the existing lease agreement. The balance due and owning to the Applicant shall be paid within that time period;

3. Nothing in this Order varies expressly or by implication any of the other terms of the existing lease between Lawrence Patrick Ryan and Canadian Natural Resources Ltd.

4. Nothing in this order is, or operates as consent, permit or authorization that by enactment, a party is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 28th day of January 2002.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rod Strandberg, Chair

_____
Julie Hindbo, Member

BRITISH COLUMBIA

File: 1516

MEDIATION ORDER 375M

Parties to the Mediation:

Victor Gerhard Willms.
Dorothy Anne Willms.
Box 44,
Montney, British Columbia,
Applicant.

Canadian Natural Resources Limited,
Suite 300 9900 100th Avenue,
Fort St. John, British Columbia,
Respondent.

Date: 18 February, 2004.

Location- North Peace Business & Innovation Centre, Fort St. John, BC.

Time Commenced 11:10 a. m. Concluded 1:45 pm.

Parties:

Victor Gerhard Willms, Surface Land Owner.

Dorothy Anne Willms, Surface Land Owner.

Arthur Hadland, Assisting Land Owner.

Frank Halliday, Canadian Natural Resources Limited.

Les Dellow, counsel for Canadian Natural Resources Limited.

Thor Skafte Lead Mediator, Jim Sodergren, Mediation and Arbitration Board.

Terms agreed to:

A. FINANCIAL.

Canadian Natural Resources Limited agrees to:

1. Increase annual compensation from $ 3,025.00 per annum to $ 4,525.00 per annum effective 1 November 2000, including the anniversary date 1 November 2006.

2. The increased compensation is subject to set off for the annual compensation paid to the applicant since 1 November 2000.

3. Pay the applicant's costs in the amount of $ 6,958.00, which includes Mr. Hadland's time.

4. Either party may submit to the other party a 60 - day notice anytime after 1 November 2006.

5. All weeds are to be sprayed at the appropriate time on the lease and access, and good husbandry practises exercised on the lease, including but not limited to, no garbage or spills while working on location, and proper lease contouring.

ORDER:

The Board orders that the parties to this mediation:

(a) Execute a lease adjustment, varying the terms of the surface lease, incorporating the above terms and incorporating the Surface Lease Regulation (B.C. Reg 497/74).

(b) Pursuant to section 25 (3) of the *Petroleum and Natural Gas Act ,* file a copy of the lease adjustment with the Land Title Office for registration.

(c) Comply therewith; and

(d) Complete those other terms agreed to during mediation, and noted above, and do so as expeditious as is reasonable.

Dated at the City of Fort St. John, British Columbia, this 18th day of February, 2004.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT.

_____
Thor Skafte, Mediator.

_____
Jim Sodergren, Mediator.

Mediation and Arbitration Board
 # 114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: February 19, 2007

FILE NO. 1556
Board Order No. A416

BEFORE THE ARBITRATOR:	IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, c. 361 as amended; **(THE ACT)** AND IN THE MATTER OF N1/2 Section 4, Township 86 and Range 17 W6M **PID**: 014-377-730 **(THE LANDS)**
BETWEEN:	Hartley Blatz, Karen Blatz and Clifford Blatz **(APPLICANTS)**
AND:	Canadian Natural Resources Limited **(RESPONDENT)**

Appearances:

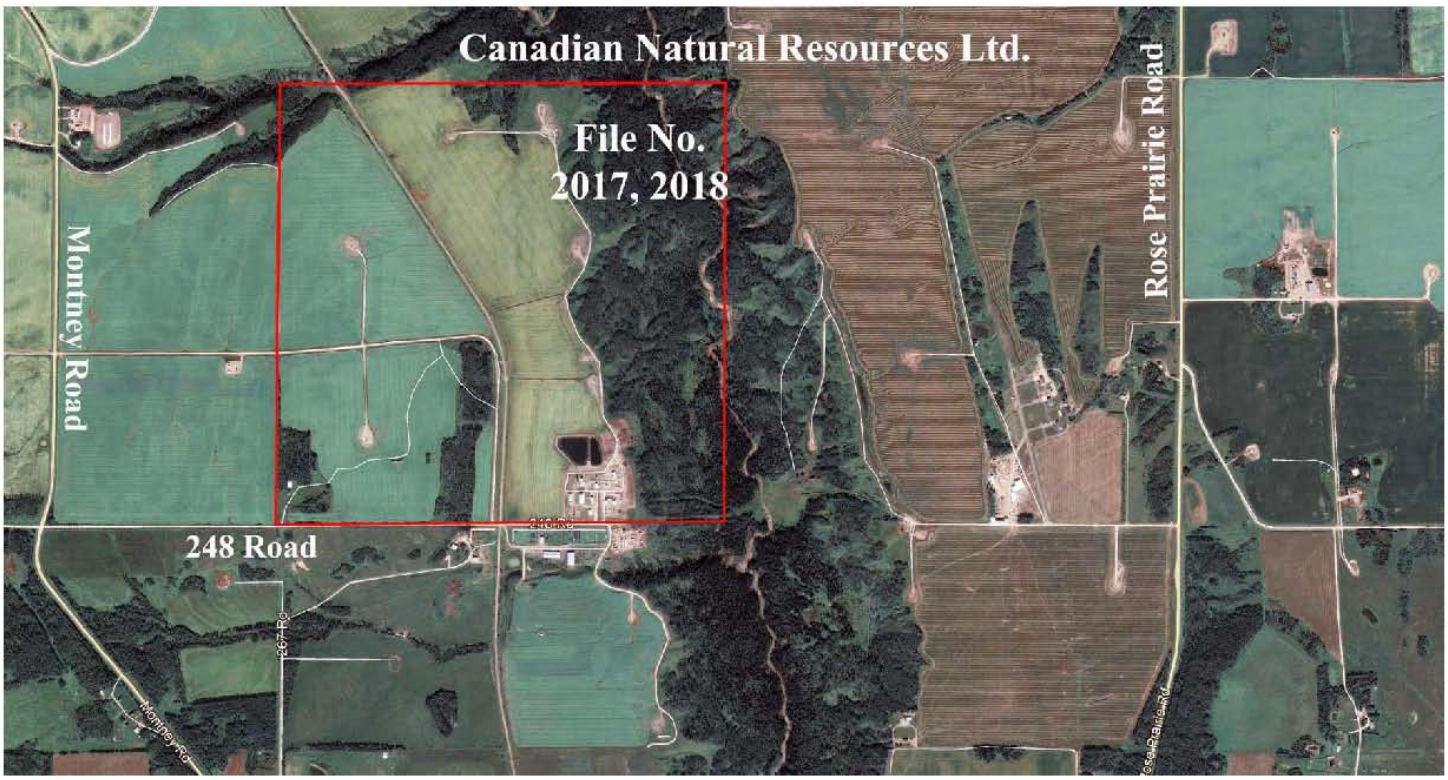
R.J. Strandberg, for Mr. and Mrs. Blatz
L.G. Dellow, for Canadian Natural Resources Limited

Reasons for Adjourning the Costs Hearing Scheduled for February 13, 2007
Oral Reasons given on February 13, 2007
Written Reasons given on February 19, 2007

There is an application by Mr. and Mrs. Blatz against Canadian Natural Resources Limited ("CNRL") for damages under section 16 (2) of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361 ("*PNGA*") before the Board and this was scheduled for a five day hearing commencing on February 12, 2007.

On February 12, 2007, I heard an application by Mr. Hope, counsel retained by CNRL or by Mr. Dellow, to speak to CNRL's application to adjourn the hearing. This was a


Canadian Natural Resources Ltd.
Doig River
File No. 1556
Beatton River


Canadian Natural Resources Ltd.
File No. 2017, 2018
Montney Road
Rose Prairie Road
248 Road

contested adjournment application, which involved cross-examination of a witness from CNRL and was vigorously and well argued by counsel. I decided to adjourn the arbitration hearing on terms. I have issued a separate order setting out the terms of the adjournment and my reasons for adjourning the hearing.

One of those terms of the adjournment was an order that CNRL pay the "costs thrown away by the Blatz's by virtue of the adjournment." The purpose of the hearing on February 13, 2007, was to hear evidence and argument regarding the amount of costs and the method by which I should assess costs. At the outset of this hearing I briefly adjourned so that counsel could have an opportunity to canvass the possibility of settling this issue, and indicated if an agreement could be reached I would issue a consent order. Counsel were unable to settle the costs issue.

The burden of proof of the amount of costs thrown away was on the Blatz's on a balance of probabilities. I indicated that process to be followed for the costs assessment would be that counsel for each party, commencing with the Blatz's, would have an opportunity to give an opening statement on the quantum and method of assessing costs. I would then hear any oral evidence from the applicants, which would be subject to cross-examination by counsel for CNRL and re-examination by counsel for the Blatz's. Once the Blatz evidence was concluded CNRL could give evidence if it chose in a similar manner.

During the course of opening statements, the costs claim of the Blatz's was marked as Exhibit "3". The claim for costs was a total of $29,493.51 and costs are sought on an indemnity basis. Counsel for the Blatz's proposes to give evidence on his fees, and call Mr. and Mrs. Blatz to give evidence. A significant portion of that claim ($16,387.50) was a claim by the Blatz's, over and above counsel fees, for "their costs or fees" in assisting in the preparation of the matter, and meeting with counsel. The claim appears to be based on time spent or on opportunity costs. A portion of the fees was a claim for fees by an earlier counsel for the Blatz's, Darryl Carter, and fees and disbursements for Mr. Strandberg. The costs claim for counsel fees, disbursements and taxes is $12,669.23. At this stage I am not going to set out the full opening statements. There was a request for reconsideration by counsel for CNRL which I denied, followed by an adjournment request that I granted. When I hear the evidence and argument on the merits I will set out a more full discussion of the costs arguments.

Refusal to Reconsider the Costs Decision:

I refused to reconsider my order for costs thrown away, because an order for costs was an integral and essential part of my decision to grant the adjournment yesterday. I note also that counsel for Mr. Dellows and CNRL conceded at the adjournment application on February 12, 2007 that an order for costs thrown away was appropriate, but that there was a significant question as to the amount of costs, and the process by which costs should be assessed. CNRL argued that costs should be limited to costs under the British Columbia Supreme Court Rules, and costs should be assessed by a Master. While today, counsel for CNRL argued that there should not be an assessment of costs thrown away for a variety of reasons including a possible lack of jurisdiction, in my view even on the Respondent's

argument the Board would have jurisdiction with respect to damages on the parcel on which the installation is situate, whether there are damages is a separate question. I expressly make no ruling on the jurisdictional arguments as this will be dealt with at a separate time.

I ordered that this costs hearing be adjourned, with a schedule for written submissions on an issue, followed by a resumption of an oral hearing. I ordered this matter to be adjourned because given the amount of the claim, the novelty of the claims presented, the importance of the costs issue generally, the lack of timely notice of the claim and disclosure of documents by the Blatz's, I was not prepared to force counsel for CNRL to "wing" a cross-examination of the witnesses presented by the Blatz on a $29,493.51 issue.

In saying a "lack of timely notice", I do not wish to attribute fault to any party. In my view it was optimistic for both Mr. Dellow and Mr. Strandberg to think that this costs hearing could take place if I remained in Fort St. John the next day to hear a costs application, given the size of the costs claim and the nature of the issues.

In a decision to grant an adjournment the Board must consider the factors set out in section 39 of the *Administrative Tribunals Act,* S.B.C. 2004 c. 45:

> ***39** (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.*
>
> *(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:*
>
> *(a) the reason for the adjournment;*
> *(b) whether the adjournment would cause unreasonable delay;*
>
> *(c) the impact of refusing the adjournment on the parties;*
>
> *(d) the impact of granting the adjournment on the parties;*
> *(e) the impact of the adjournment on the public interest.*

In applying section 39, the ultimate test is whether an adequate hearing can be held. The Board's decision is a discretionary decision and involves a balancing of the factors in section 39(2). In my view CNRL could not have an adequate hearing as required by section 39(1) of the *Administrative Tribunals Act* if forced to proceed with a costs application for an amount claimed of $29,493.51 with Mr. Dellows having less than twenty four hours to consider the documents, given the size of the costs claim and the novelty of the issues presented. I note also that fresh documents were handed by Mr. Strandberg to Mr. Dellows on the Blatz's time during the course of the costs hearing.

Had the costs claimed in these proceedings been simply a claim for costs for lawyers' fees and disbursements thrown away, this costs claim could have proceeded, with cross-

examination of Mr. Strandberg on February 13, 2007. The large claim presented by Mr. and Mrs. Blatz for "their time" raises novel legal issues as well as had the potential to be a lengthy hearing and extremely unfair hearing.

In summary, there is a good reason to adjourn this matter and I see no negative impacts on the Blatz's, with a strong negative impact on CNRL who will be required to pay costs thrown away. The balance of the issues in this matter can be dealt with in a timely manner without unreasonable delay. The issue of whether the Blatz's should be paid for their time, is a novel issue, may have implications beyond this particular case, and there is a public interest in having this point well presented and well argued.

I indicated that I wanted written submissions on the issue of whether:

> *Is a litigant who is represented by counsel entitled as "costs thrown away" to compensation for their "own time spent" in preparing for a hearing?*

Counsel for the Blatz's agreed to provide written submissions, including any authorities, to the counsel for CNRL and the Board by Friday February 16, 2007. Counsel for CNRL agreed that he would provide written submissions, including any authorities by February 28, 2007. Counsel for the Blatz's will provide any reply submission by March 14, 2007.

The Board will fix a date for resuming the costs hearing after it receives the written submissions. I will consider the written submissions, and if I conclude that there is a basis for me to consider a claim by the Blatz for "their time", I will hear oral evidence from them. If I conclude that there is no basis to consider a claim by Blatz's for "their time", I will hear any other oral testimony on other aspects of the costs claim. Any costs decision will be issued in a written form and published on the Board's website.

I have made no decision on whether there is an entitlement to costs for the adjournment of the costs hearing on February 13, 2007, but I will consider this as part of my costs thrown away ruling.

If either of the parties changes counsel, the parties and departing counsel will provide the other party and the Board with a new address, fax and telephone numbers. If there is a change of counsel and a request to adjust the dates for submissions, I will consider that request.

MEDIATION AND ARBITRATION BOARD

DATED THIS 19th DAY OF FEBRUARY, 2007

Paul Love
Board Chair and Arbitrator

Mediation and Arbitration Board
 # 114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: February 19, 2007

FILE NO. 1556
Board Order No. A415

BEFORE THE ARBITRATOR:	IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, c. 361 as amended; **(THE ACT)** AND IN THE MATTER OF N ½ Section 4, Township 86 and Range 17 W6M **PID**: 014-377-730 **(THE LANDS)**
BETWEEN:	Hartley Blatz, Karen Blatz and Clifford Blatz **(APPLICANTS)**
AND:	Canadian Natural Resources Limited **(RESPONDENT)**

Appearances:

R.J. Strandberg, for Mr. and Mrs. Blatz

J. Hope and L. Dellow, for Canadian Natural Resources Limited

Reasons for Adjourning the Hearing Set for February 12 to 16, 2007
Brief Oral Reasons given on February 12, 2007
Written reasons given on February 19, 2007

These are my written reasons to adjourn a hearing set for February 12 to 16, 2007.

Background:

On November 21, 2005, Mr. and Mrs. Blatz filed an application for damages against Canadian Natural Resources Limited ("CNRL") pursuant to section 16(2) of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361 ("*PNGA*"). A mediation meeting took place on January 10, 2006. The parties were unable to settle the matter at mediation and the Board member conducting the mediation ordered that the claim for damages proceed to arbitration. I was appointed as a single arbitrator to hear this case.

I held a pre-hearing conference with the parties on February 24, 2006. As a result of the pre-hearing conference directions for hearing were made orally at the conference. As a result of the oral directions for hearing Mr. and Mrs. Blatz delivered their documents to the Board on May 26, 2006. At that conference call a tentative date of the week of October 23, 2006 was reserved for the hearing. The Board was expecting to hear from Mr. Carter [1] concerning the dates, as he did not attend the conference call. The Blatz's were represented at the conference call by Mr. Darcy Delko, from Mr. Carter's office. At the time of the conference call the week of October 23, 2006 appeared to be agreeable to Mr. Dellow. Mr. Carter was supposed to confirm his availability and the Board has no record that he did so. The Board's administrator had e-mail communication with Mr. Delko about the October 23, 2006 dates and indicated that there would be written directions for hearing issued.

The Board's directions for hearing were released to the parties in writing on July 13, 2006. After the release of the directions, Mr. Dellow informed the Board by letter dated July 31, 2006 that neither he nor Mr. Carter had been consulted adequately by the Board about the October dates and that the dates should have been confirmed in writing at an earlier time. Mr. Dellow wrote to the Board as follows:

> *Mr. Carter and I have spoken about an appropriate hearing date for this arbitration. He and I agree that the matter should be scheduled to proceed in February of 2007. Proceeding in February would accommodate various scheduling concerns of the parties and counsel.*

After further consultation between the Board's administrator and the parties about available dates for the hearing, on August 22, 2006, the parties were notified of a change in the dates of hearing to February 12 to 16, 2006, by an email from the Board's administrator. It is my finding that the October dates were changed by the Board, based on the consent of both parties and based on the scheduling concerns of both parties. I cannot conclude from the material before me that the Blatz's were ready to proceed on the October hearing dates and that this matter was adjourned simply because CNRL was not ready to proceed. It would appear that this is not the case as the Blatz's delivered further documents to the Board in November 2006. The Board issued a reminder letter to the parties of the hearing date on November 20, 2006.

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[1] Then the counsel for Mr. and Mrs. Blatz

This is a case which is of considerable importance not only to the parties, but to parties in the Peace area generally. It involves an issue of weed control and damages claimed for scentless camomile, alleged to emanate on a lease site on lands owned by the Blatz's, with transmission of the seeds by water running off the lease site and possibly by the hooves of buffalo to other parts of the Blatz farm. It also involves transmission to parcels of land referred to as the Blatz farm, but which are not on the same legal title on which the lease has been granted. There are some differences in the names of the registered owners on the various parcels comprising the Blatz farm. The claim for damages is in excess of $280,000 and involves a claim for hand picking the scentless camomile. From the material filed with the Board, the Blatz have prepared and documented their case, which also involves expert evidence.

Adjournment Application:

On January 29, 2007, counsel for CNRL advised the Board that he intended to raise a jurisdictional issue and the Board received submissions from CNRL on January 29, 2007, February 8, 2007, and from the Blatz's on February 9, 2007.[2] The gist of CRNL's jurisdictional argument is that the Board has jurisdiction to deal with damage issues only on the well site and the access road covered by the lease as "damage to land" in section 16(2) of the *PNGA* means the land occupied by the lease. CNRL submits that the Board does not have jurisdiction to consider damages on other portions of the Blatz farm. A further submission is that the Blatz's claim is limited to the time period that they have owned the land.

On January 31, 2007, the Board wrote to the parties requesting whether this jurisdictional issue required the hearing of evidence and also advised the parties that given the limited time before the hearing, it was unlikely that the jurisdictional issue could be dealt with before the hearing. The parties did not respond on the issue of whether evidence was required to determine the jurisdictional issue. In a submission dated February 9, 2007, counsel for the Blatz's informed the Board that it was the Blatz's view that the jurisdictional issue should be dismissed as it was without foundation, and in any event CNRL had attorned to the Board's jurisdiction by its acquiescence.

On February 2, 2007, Mr. Dellow wrote to the Board indicating that he was considering applying for an adjournment, or in the alternative a hearing conducted in stages. In his letter various suggestions are made including splitting the issue of damages from liability, hearing the jurisdictional argument only or hearing the Blatz's case only. On February 7, 2007, Mr. Dellow wrote to the Board indicating that he was seeking an adjournment, or in the alternative to have the hearing conducted in stages. He delivered affidavits in support of an adjournment to Mr. Strandberg on February 9, 2007, and Mr. Strandberg faxed his position along with the affidavits to the Board on February 9 2007 at about 4:12 p.m. Mr. Strandberg appears to have received the affidavits, according to the fax transmission at 3:28 p.m. The affidavits came to my attention after 6:00 p.m. on February 9, 2007, when I returned to my office from an out-of-town business trip. I was scheduled

[2] I have very briefly referred to the jurisdictional arguments and I have not set out the jurisdictional arguments in full. This application will be argued by the parties at a later time.

to fly to Fort St. John on Sunday to commence the hearing on Monday. Mr. Dellow faxed the affidavits to the Board on February 12, 2007 at 7:10 a.m.

Until one reads the affidavits dated February 9, 2007, CNRL's reasons for seeking an adjournment are not apparent.

At the outset of the hearing on February 12, 2007, after I made some opening remarks, I directed that the issue of the adjournment be dealt with first. The application could not proceed at the time scheduled as counsel appearing on the matter, Mr. Hope, was in Provincial Court, and would not be available until 10:00 a.m. There were two affidavits in support of the adjournment, from Mr. Leslie Dellow and Ryan DeLeeuw sworn on February 9, 2007. Mr. Strandberg indicated that he intended to cross-examine both deponents on their affidavits. As a matter of practice, in British Columbia, counsel does not generally speak to his own affidavit, and by letter dated February 9, 2007 and so the hearing was adjourned until later in the morning when Mr. Hope could appear.

Adjournment Application Process:

In terms of process, Mr. Hope spoke to the adjournment application and the affidavits. At the end of Mr. Hope's submission, Mr. Strandberg indicated that he wished to cross-examine Mr. DeLeeuw on his affidavit. Mr. Hope resisted this cross-examination as it was his view, that it was not cross-examination on the affidavit but cross-examination at large. I permitted Mr. Strandberg to cross-examine Mr. DeLeeuw on his affidavit, but set the scope for cross-examination. Given the lateness of the material, without cross-examination Mr. Strandberg has had no effective opportunity to question or challenge the material. Given the submissions of CNRL, this Board wanted to know whether CNRL was in fact an innocent party as has been alleged in the affidavits and submitted by counsel, or whether CNRL was responsible in whole or part for the lack of preparation by Mr. Dellow. The Board is conscious of the superior resourcing of CNRL [3] and wished to be satisfied that an adjournment is necessary in order to hold an adequate hearing of this damage claim.

Mr. Strandberg sought to cross-examine Mr. DeLeeuw on the following issues after hearing from counsel. I have paraphrased these issues as follows:

(1) Did CNRL follow through in a diligent fashion with Mr. Dellow to ensure that he was properly prepared for the hearing?

(2) What office services and staff services of CNRL were made available to Mr. Dellow to assist him in preparing and want assistance if any did he make of the services?

(3) Was CNRL an "innocent party" or where they wilfully blind to Mr. Dellow failure to properly prepare for the hearing?

[3] From Mr. Dellow's affidavit which stated the earnings of CNRL were $2.2 billion

(4) Whether CNRL anticipates any witness problems if the hearing is adjourned and whether CNRL is prepared to pay costs, an advance, interest, and accruing damages if the hearing is adjourned?

I heard argument from counsel on the permissible scope of cross-examination in this application. I agreed with Mr. Strandberg that the first three issues were relevant to pursue and the Board wanted to know whether this was a case of neglect by counsel or whether CNRL facilitated or was wilfully blind to the lack of preparation claimed. The Board is very alive to the fact, from the affidavits filed, that CNRL appears to have vast resources to litigate. [4] Except for questions related to anticipated witness difficulties, I did not permit cross-examination regard to terms of an adjournment acceptable to CRNL. It was my view that anticipated witness difficulties was a relevant inquiry. It was unfair to the witness and unhelpful to the Board to have a witness negotiate the terms of an adjournment while under oath, as I would impose terms on CNRL if an adjournment granted.

Evidence on the Adjournment Application:

In his affidavit [5] Mr. Dellow deposed that the claim for damages was in excess of $280,000, that he had been retained since February 2006, but that he was not sufficiently prepared to proceed. In his affidavit, Mr. Dellow a solo practitioner who works as a solicitor as well as a barrister described a very busy conveyancing year, with the loss of two key staff members in the fall of 2006. In explaining why he required an adjournment of the February dates he said as follows:

...

9. Most of my preparation for the hearing in this matter was not started until early January of 2007.

...

22. Significant preparation for this hearing on my part did not commence until early January of this year. The workload issues described earlier in this affidavit were the major causes of the delay in preparation.

23. Areas in which I consider the preparation to be insufficient for the purposes of CRNL in this arbitration are as follows:

(a) an expert witness has not been retained to advise on certain agricultural aspects of this matter including:

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[4] According to the affidavit of Leslie G. Dellow sworn February 9, 2007 (Exhibit 2), CRNL had earnings in excess of $2.2 billion.

[5] Exhibit 2, Affidavit of Leslie G. Dellow, sworn February 9, 2007

(i) whether it is reasonable to attempt to control weeds organically in the circumstances of this case alleged by the Blatz's;

(ii) whether some of the damages claimed by Blatz's are for matters that farmers would have done in any event regardless of whether or not there was a weed problem as alleged (such as the claims for fencing and re-working the 192 hectare field);

(iii) whether the premises and/or assumptions in the Blatz analysis of damages for "loss of Production – Hay Bales" are reasonable;

(iv) whether it is reasonable that hand picking of scentless chamomile will be necessary for 20 years as alleged by the Blatz family;

(v) whether the actions of the Blatz's described in "Field Work and Seeding 192 Acre Field" in the "Compensation" section of the first Blatz binder were the optimal method of dealing with the situation or whether those actions may have exacerbated the situation;

(b) evidence has not been obtained re the cost of fencing;

(c) documents re actual weights of hay produced by the Blatz farm in recent years have not been obtained – such documents are in the possession of the Crop Insurance Office (I will be seeking disclosure of these documents from Blatz)

(d) witness statements are not finalized.

24. I advised Mr. Strandberg, counsel for the Blatz's on January 26, 2007 that an application for an adjournment might be made and so advised the Board administrator on January 29. I did not "bite the bullet" and advise unequivocally that an application for adjournment would be made as I had no finalized my thoughts in that regard. As my work on the file continued, I determined that an adjournment would be necessary. I advised the Board administrator and Mr. Strandberg's office by telephone on February 5 that the application would be made and confirmed my advice in writing.

25. In my opinion, to ensure that this proceeding, if the Board has jurisdiction, can be properly addressed on its merits, CNRL requires an adjournment to remedy the deficiencies that currently exist in the preparation of its case. I estimate that an adjournment of four months would be required. ... I am unaware of any information or witnesses that would not be available for presentation on behalf of the Blatz family if this matter is adjourned. CNRL, to the best of my knowledge, is a solvent corporation. CNRL's earnings for the 9 month period ending September 30, 2006, were approximately 2.2 billion dollars according to information published on CNRL's webite. I mention this only for the purpose of showing that there is no possibility that, if the Blatz's were successful in some or all of their claims, the

Blatz's would not be unable to collect on whatever amounts may be ultimately awarded to them.

Mr. Dellow also described the issues in his affidavit as:

(a) Does the Board have jurisdiction to hear and arbitrate upon all, some or none of the Blatz allegations/complaints?

(b) Is CNRL liable in law for the weed problems about which Blatz has complained?

(c) If CNRL is liable, what are the damages?

(d) If CNRL is liable, is Blatz precluded from recovering all provable damages due to a failure to mitigate?

In paragraph 3 and 4 of his affidavit Mr. DeLeeuw states:

3. Mr. Dellow advised me on January 26, 2007 of his concerns re state of his preparation for this arbitration. CNRL was not aware, prior to January 26, 2007 of the possibility that it might be necessary, in order to fully prepare CNRL's case, to seek an adjournment of the matter.

4. CNRL regards this case as very important. A substantial amount of money is being claimed in a case which is somewhat complex. While I understand that it is sometimes said that "cases are decided on their facts", I am concerned that if a decision adverse to CRNL results in this case, such decision will end up becoming a precedent if similar cases involving weed control are advanced by others in the future. If such a result were to follow from a decision in this case where we were not adequately prepared, I would be very concerned indeed on behalf of my employer.

Mr. DeLeeuw's evidence under oath was not substantially different from that contained in his affidavit. Some of his evidence was not entirely accurate as to dates; for example he believed that the hearing was set in November 2006; but that is not accurate, as the current dates were set on August 22, 2006. He also believes it was CNRL's second adjournment request. The correspondence clearly shows both parties consented to an adjournment of the October dates. I generally accept that he was a credible witness.

Mr. DeLeeuw had meetings and exchanged emails on a weekly basis with Mr. Dellow. He carried out tasks and investigations at the direction of Mr. Dellow. He indicated that he never sought assurances from Mr. Dellow that he would be ready to proceed, but he appeared to be working on the case. Mr. DeLeeuw indicated that CNRL had a problem in identifying a local expert witness on scentless camomile, and now they have determined that they will look for and engage a non-local expert. At the time when the October hearing was rescheduled, CNRL was expecting to be ready to proceed, but they

were "not absolutely confident" because they were looking for experts and witnesses. CNRL indicates that they have a "candidate list" for their witnesses.

In cross-examination, Mr. DeLeeuw testified that CNRL has four employees in the Fort St. John office. Because of the complexity of the file he was available to assist Mr. Dellow, but other staff persons would not be able to assist as they had their own duties and were not up to speed on the file.

After hearing the cross-examination, it is my view that CNRL could, in hindsight, have taken some further steps to ensure that their lawyer was prepared, but that they were relying on Mr. Dellow, and were very surprised when Mr. Dellow told them on January 26, 2007 that he was not prepared to proceed.

Argument:

CNRL's Argument

Mr. Hope argued on behalf of CNRL that the adjournment should be granted. The role of CNRL's land agent, Mr. DeLeeuw is one of a witness and the lawyer, Mr. Dellow had conduct of the matter. This matter involves a significant claim for damages. This is a "bit of a *mia culpa* application." Counsel says that he is not ready to proceed, and unforeseen problems in his office related to staffing problems and a busy year for conveyancing were root causes of the failure to prepare. Given the nature of the issues for hearing, an adjournment is necessary in order to ensure that rudimentary justice is done. Mr. Hope says that "that the reason is not the best that he has seen" but Mr. Dellow has been frank and full in his disclosure and the issues cannot be dealt with at this time, with justice to both parties. In essence as he put it, "the sins of the lawyer should not be visited on the client."

Mr. Hope says that a four month delay in the hearing of this case would not be undue delay. The Board should be concerned to have the full benefit of evidence that properly prepared and instructed counsel can bring to a hearing.

The Blatz's Argument

Mr. Strandberg argued that the adjournment should be refused. He submitted that the obvious point is that CNRL cannot say, after fifteen months, who their witnesses are or whether they will be able to proceed on a new date. CNRL had ample time to prepare the case for hearing since the pre-hearing conference in February of 2006. He says that the Blatz's are prejudiced by not finding out until the last business day before this hearing what the grounds were for the adjournment application, and by being denied a timely determination of their substantial claim for damages. They are prejudiced by having to argue an adjournment application on the date of the hearing.

Mr. Strandberg further argued that Mr. Hope made no submissions on the alternative position put forward by Mr. Dellow in his letters for a phased hearing. Mr. Strandberg

says that the hearing should not be split as the plaintiff should not have to bear the costs of educating two different arbitrators for two different phases of the hearing. He argues, in the alternative, if an adjournment is granted the Blatz's should be entitled to costs thrown away, an advance of damages, and interest and post judgement interest fixed from today's date on any damages proven.

In Reply by CNRL:

In particular, there is no testimony or evidence concerning the prejudice to the Blatz's if this matter is adjourned. Any prejudice can be dealt with by way of an order for costs thrown away. Costs should be assessed by a Master of the Supreme Court of British Columbia under Appendix B of the Supreme Court Rules: *Encal* v. *Viens*, 1996 CanLII 3022 (BC S.C.) and should be awarded and the conclusion of the arbitration. CNRL is not opposed to an order that the hearing be made peremptory on CNRL.

In Further reply by Blatz:

The Board is not limited to awarding costs based on the Supreme Court tariff, as the court in *Viens* was dealing with an interpretation of section 27 of the PNGA, now repealed, and section 47 of the *Administrative Tribunals Act* deals with costs.

Reasons for the Decision:

This is the second set of dates reserved for this hearing, but it is the first request to adjourn the hearing which is a contested. The Board has the statutory power to adjourn a case before the Board. In a decision to grant an adjournment the Board must consider the factors set out in section 39 of the *Administrative Tribunals Act,* S.B.C. 2004 c. 45 which read as follows:

> *39 (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.*
>
> *(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:*
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> *(a) the reason for the adjournment;*
> *(b) whether the adjournment would cause unreasonable delay;*
>
> *(c) the impact of refusing the adjournment on the parties;*
>
> *(d) the impact of granting the adjournment on the parties;*
> *(e) the impact of the adjournment on the public interest.*

Section 39 of the *Administrative Tribunals Act* applies to the Board by virtue of section 13(6) of the *PNGA*. The Board's decision is a discretionary decision, and the Board must consider the facts advanced in this case for this adjournment request, apply section 39 of the *Administrative Tribunals Act*. In particular, the decision to adjourn should focus on

whether an adequate hearing can be held. The adequacy of the hearing must be determined in relation to factors requiring the adjudicator to consider the impact of the decision on both parties, and balance the interests or statutory factors set out in section 39(2) of the *Administrative Tribunals Act*.

I have considered and balanced the factors set out in section 39(2) of the *Administrative Tribunals Act* in reaching my decision to adjourn this hearing on terms. I wish to turn now to each of the criteria.

Reason for the Adjournment:

First, I have considered the reason for the adjournment, and the reason is that counsel is unprepared for this hearing. Mr. Dellow was candid in his admission that he was unprepared. It is my finding that counsel for CRNL is completely unprepared for this hearing, to the point that CNRL has been deprived of services of counsel. The reason for being unprepared is unacceptable given that the hearing dates have been known since August 22, 2006, counsel has had most of the Blatz's materials since April of 2006, and there is little that has changed in the issues other than an issue of jurisdiction raised by Mr. Dellow approximately two weeks before the hearing. It is unfortunate that counsel has not prepared properly for this hearing, and attempted to do most of his preparation in January of 2007.

I am satisfied that Mr. Dellow faced a substantial and unforeseen problem in his law practice with his conveyancing staff and workload. It is unfortunate that he did not come to grips with the preparation of this substantial case until January. The last minute adjournment of this case has been expensive for all parties.

It seems somewhat inexcusable that Mr. Dellow did not alert his client, opposing counsel, and the Board of problems in his readiness to proceed until late January. I do not fully accept that the problems arose in September of 2006, because there was a failure to deliver the points of defence in this matter by CNRL by the time agreed to at the preliminary meeting in February 2006 and further, a witness list was not delivered in a timely way. One would generally expect expert witnesses to be identified early in preparation of a case. This indicates problems in preparation which precede the problems in Mr. Dellow's conveyancing practice.

My sense is that CNRL could perhaps have taken further steps to inquire whether Mr. Dellow was ready for this hearing; however I accept the evidence of Mr. DeLeeuw that he was surprised when Mr. Dellow advised him he was not ready to proceed. Mr. Dellow is a competent and experienced counsel as submitted by both Mr. Strandberg and Mr. Hope. Generally, parties should be able to rely on competent and experienced counsel to prepare a case for hearing or alternatively alert the client in a timely way if there are difficulties in preparation. This is a case where CNRL is an innocent party and has not contrived an adjournment. I accept that CNRL is disappointed that this hearing cannot proceed as scheduled.

The reason advanced for this adjournment is not really an acceptable reason, but rather an inexcusable reason. Counsel should not leave the bulk of the work in defending a $280,000 claim for damages to six weeks before a hearing is due to commence, particularly where there is some complexity to the issues and counsel knew that the opposing party had supplied significant materials (a large binder) and an expert report. For example, leaving the bulk of the work until January would not have left any time for retaining an expert, instructing an expert or for the timely disclosure of an expert's report. Expert evidence is an issue which was canvassed at the pre-hearing conference. It is a factor that was taken into account in the fixing the first hearing dates. Nevertheless I am very concerned that if I were to force this hearing on, there would not be an "adequate hearing" of CNRL's defences to use the language in the *Administrative Tribunals Act*. Further, in order to make a proper decision in this case, the Board needs relevant evidence and submissions from both parties and at this time CNRL apparently has no documentary evidence or an expert report.

Unreasonable Delay:

I must consider whether the delay sought is an unreasonable delay. A delay of four months has been sought. Given the state of readiness, and the need to retain and instruct an expert and comply with the deadlines in the *Evidence Act*, a four month delay is not unreasonable. Mr. Strandberg has argued that this case should not be adjourned to an unknown date in the future, for witnesses who have not been identified and whose availability is unknown. Given the complexity of issues, and the need for expert witnesses, a four month delay is not an unreasonable delay. Any issue of further delay or a guarantee that the hearing proceed without additional delay can be dealt with by way of terms of an order which make the new hearing dates peremptory on CNRL. In considering the issue of delay, I have considered that while Mr. and Mrs. Blatz's application to the Board was filed in November 2005 and there were earlier dates for hearing reserved in October, their own former counsel consented to a change from October 2006 to February 2007. In my view, a consent by both parties to a change of dates "cannot count" as an earlier adjournment request by CNRL. CNRL probably was not prepared to proceed and the Blatz's were probably not prepared to proceed in October of 2006.

Impact on the Parties:

I must consider the impact on the parties of refusing or granting an adjournment. Forcing CNRL to a hearing, where that party clearly is not properly prepared has a risk of being less than an adequate hearing. At this point in time CNRL can cross-examine witnesses, but has no expert evidence to martial on the main issues of causation, quantum of damages or mitigation of damages. There is prejudice to CNRL if this hearing proceeds. If the hearing is adjourned there will be further legal costs for the Blatz's; however, this can be addressed and the Blatz's can be compensated from any prejudice arising from the adjournment with an award of costs. In my view there is a greater prejudice to CNRL than the Blatz's in being forced on to a complex hearing, without proper preparation. While it is always nice to get a decision as quickly as possible, any prejudice is wasted

hearing preparation and this can be adequately compensated by costs. The Board can provide for more certainty of this hearing proceeding in the future by imposing conditions that no further adjournments will be granted. The impact of granting the adjournment will result in a better hearing with more or fuller information to the Board on the issues alleged.

The Public Interest:

The public interest is a factor that the Board is required to take into account in making a decision to adjourn a hearing. It is not apparent from the small audience attending at the hearing that there is any significant degree of public interest in this case. Nevertheless, the issue of weed control is a serious issue, the amount of damages claimed is a serious issue and the jurisdictional issues raised are serious issues which go beyond the particular dispute involving these parties. In my view, it would be helpful for the community of persons who appear before the Board – landowners and industrial parties – to have a well reasoned decision which may assist the parties in arranging and negotiating their lease arrangements and settling or litigating damage claims. When the pre-hearing conference was held in February of 2006, the importance of the issues, with the exception of the jurisdictional issue recently raised, was known to the parties. The original date reserved for October was set sufficiently "down the road" for experienced counsel to adequately prepare an important case. It is unfortunate that CNRL did not take advantage of the time to prepare its case.

There is a public interest in timely hearings, but the greater public interest in my view rests in having an adequate and fair hearing, with each party having an opportunity to present fully the evidence in order for the Board to make an informed decision.
In my view at this time CNRL could not have an adequate hearing as required by section 39(1) of the *Administrative Tribunals Act* if forced to proceed. In applying section 39, the ultimate test is whether an adequate hearing can be held. In this case because of the lack of proper preparation, CNRL would be deprived of the services of counsel. In my view, counsel's failure to properly prepare for this hearing is inexcusable, but CNRL was surprised when it was notified in the middle of January that counsel was not prepared. As Mr. Hope put it, "the sins of the lawyer should not be visited on the client."

For all the above reasons this hearing will be adjourned on terms.

Timing of the Request to Adjourn:

The Board presently does not have a particular form to apply for adjournments and the Board relies on parties to make their requests by way of a letter to the Board. While Mr. Dellow wrote to the Board on February 2 and 7, 2007, concerning an adjournment his reasons for an adjournment could not be ascertained until he delivered the affidavits late on February 9, 2007, and the Board only became aware of the affidavits on February 9, 2007 because Mr. Strandberg faxed them to the Board along with his submission. This late delivery of material in support of an application is inexcusable and has resulted in unnecessary expense.

This adjournment application consumed roughly .75 days of time and was heard in Fort St. John. While the Board's offices are situate in Fort St. John and the parties are in the Peace area, none of the Board members who arbitrate cases for the Board reside in Fort St. John. If Mr. Dellow had raised his adjournment request in a timely way, the application would have been heard by conference call. Under section 36 of the *Administrative Tribunals Act* the Board has the power to hold hearings by electronic means, and would have scheduled this adjournment application by telephone conference call. As well as unnecessary time and expense to the Blatz's occasioned by an adjournment, the Board has been put to unnecessary expenses for the costs of travel and hearing room rentals.

At the outset of the pre-hearing conference it was envisaged that there be one hearing. If I had not granted the adjournment I would have heard the argument related to jurisdiction and all the evidence in the case. After the completion of the evidence I would have directed my mind first to writing the jurisdictional issue. Given the lateness of the jurisdictional challenge, I would not have adjourned the merits to hear only the jurisdictional argument and issue a ruling. Further, I would not have scheduled the case to hear the Blatz's evidence during the February 12 to 16 time slot, with CNRL's evidence at a later time, as this would be an unfair advantage to CNRL. I accept Mr. Strandberg's submission that it makes no sense to split the issue of liability from damages, particularly given that there is no guarantee that the Board member [6] or counsel for the Blatz's will remain available for two separate hearings and there would be significant overlap in the information between liability and damages and a need to repeat evidence if the issues of liability and damages are split.

TERMS OF THE ADJOURNMENT

I ORDER AND DIRECT AS FOLLOWS:

1. The hearing shall be adjourned on terms.

2. The Board's administrator will consult with the parties concerning dates; however the date will be no sooner than four months from today's date (February 12, 2007). The purpose of this is to ensure that if expert reports are filed, that proper notice is given under the *Evidence Act*, R.S.B.C. 1996, c. 124, which requires thirty days notice [7] for the admission of expert opinion evidence and expert reports.

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[6] My term as Board Chair expires on July 27, 2007, and in January of 2007, I notified the appointing authority that I am not seeking reappointment and will not be available for work as a member or Chair after that date. Mr. Strandberg indicated that he was retained for the hearing and unlikely to remain as counsel if the matter is adjourned.

[7] At the hearing I indicated 60 days, which is the time set out in Rule 40 A of the *Supreme Court Rules*; the time in the *Evidence Act, R.S.B.C. c. 124* applicable to this application is 30 days.

3. The new date will be peremptory on CNRL and will not be further adjourned at the request of CNRL.

4. CNRL shall by March 29, 2007 deliver an amended points of defence which sets out all the facts and issues in answer to the points of claim set out in Tab T of the Blatz's exhibit book. Blatz's have leave to file a reply and if choose to do so must be by April 19, 2007. I am doing so to make sure all the issues are identified in a timely way before the hearing.

5. Any further documents on which CNRL relies at the hearing shall be delivered 60 days before the scheduled hearing date.

6. CNRL shall pay to the Blatz's forthwith after a review by me, if necessary, the costs thrown away by virtue of the adjournment. I may require further written submissions from the parties on the amount of costs, and the basis by which costs will be assessed. However, I will be making the assessment, and not referring this to the Master. I do not accept that the reasoning in the case of *Viens*, as binding me to refer the assessment of costs thrown away to a Master of the Supreme Court of British Columbia. Since the pronouncement of *Viens*, section 27 (the costs provision) in the PNGA has been repealed and section 47 of the *Administrative Tribunals Act* is now in force. Further, *Viens* relied heavily on a decision of the Court of Appeal in *Ridley Terminals Inc. v. Minette Bay Ship Docking Ltd.* (1990), B.C.L.R. (2d) (C.A.), which dealt with costs in a commercial arbitration case. The effect of the decision in *Ridley Terminals* has been overruled by an amendment to section 11(2) the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55.

7. If the parties can agree on the amount of the costs, I will make a consent order with regard to the amount of costs.

8. CNRL shall provide to the Board by February 26, 2007 a written submission setting out why the Board should not order that CNRL pay the Board's costs or portion of the Board's costs pursuant to section 47(1) (c) of the *Administrative Tribunals Act*, for the costs thrown away for this hearing ("recovery of Board expense application"). The Board has incurred unnecessary expense in this matter because the adjournment application was not made in a timely way. I am concerned that the conduct has been improper in leaving this adjournment application to the last minute, and abusive to the Board's process.

9. If Mr. and Mrs. Blatz wish to make a submission on the issue of recovery of Board expenses from CNRL or the interpretation of section 47(1)(c) of the *Administrative Tribunals Act*, the Blatz's shall provide a written submission to the Board and to CNRL by March 5, 2007 with a final reply by CNRL by March 12, 2007.

10. I make no order for an advance on damages to Mr. and Mrs. Blatz as liability in this case is disputed, and the Board is not going to prejudge the merits of this case by awarding an advance.

11. I make no order for interest and any accruing damages at this time other than to note that this adjournment is caused by the fault of CNRL and its counsel, and that this finding may have some impacts on any compensation ordered by the Board if CNRL is found to be responsible.

12. I remain seized of the costs issue, as well as the scheduling issue, however I will not be the arbitrator who will hear the merits, or the jurisdictional argument.

After I gave my oral ruling, the parties agreed that it would be helpful to have a pre-hearing conference sixty days in advance of the hearing date, and I will give directions to the Board's administrator to arrange this, when the hearing date is scheduled.

In light of this ruling, the parties agreed to an assessment of costs at an oral hearing scheduled for 1:30 p.m. on February 13, 2007 in Fort St. John.

MEDIATION AND ARBITRATION BOARD

DATED THIS 19th DAY OF FEBRUARY, 2007

Paul Love
Board Chair and Arbitrator

File No. 1715
Board Order No. 1715-1

June 3, 2011

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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

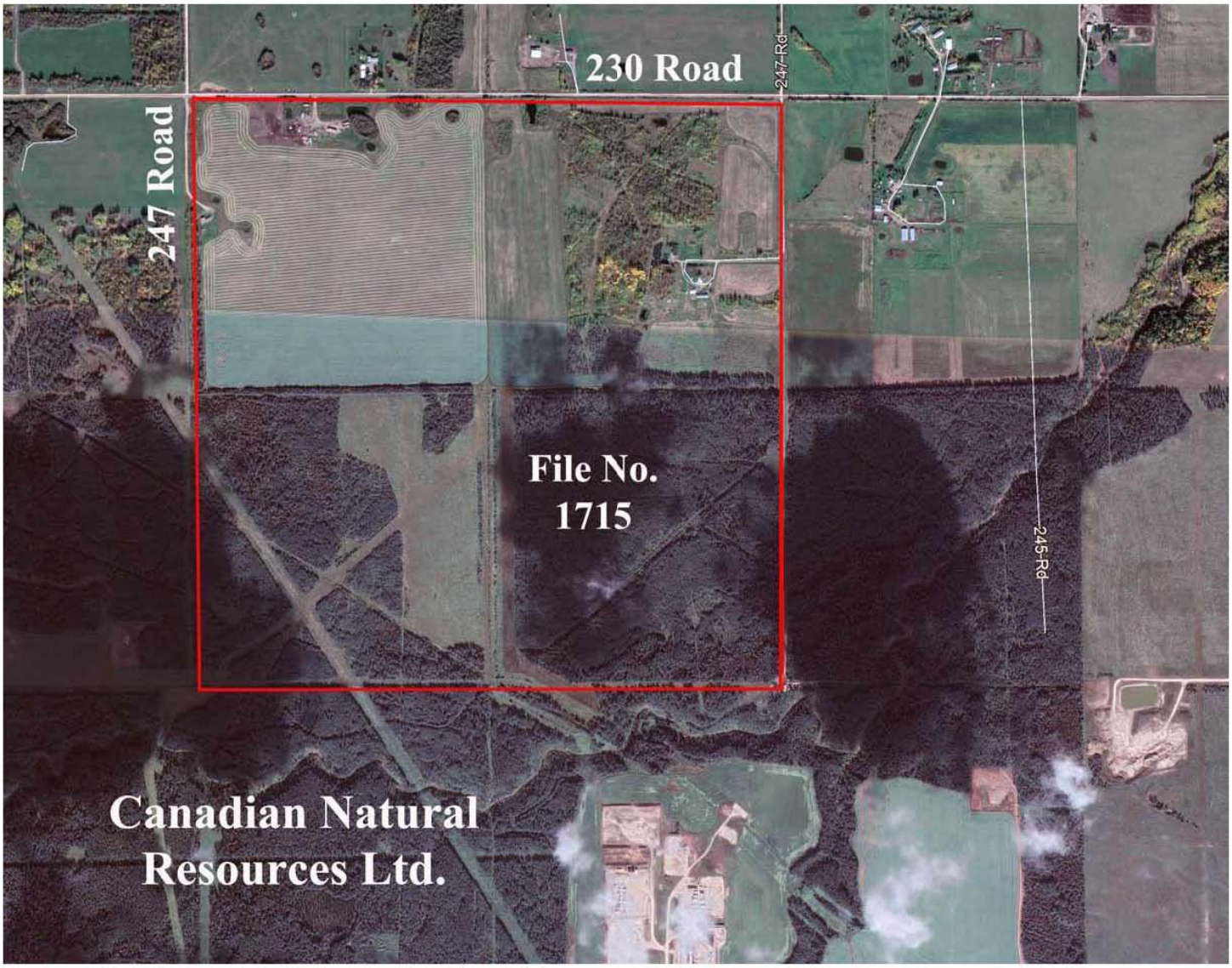
(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER


230 Road
247-Rd
247 Road
File No.
1715
245-Rd
Canadian Natural
Resources Ltd.

Heard by telephone conference: May 25 and June 1, 2011
Mediator: Rob Fraser

Canadian Natural Resources Limited (CNRL) seeks a right of entry order to enter, complete and operate a well on lands legally owned by Daniel Leigh Kerr.

After discussions with the parties I am satisfied that an order authorizing entry to the Lands is required for a purpose described in section 142 (a) to (c) of the *Petroleum and Natural Gas Act*.

The parties have not resolved the issue of total compensation and those discussions are part of a continuing mediation.

The Surface Rights Board is aware that Ms. Bell as Power of Attorney for Daniel Leigh Kerr has filed an appeal with the Oil and Gas Tribunal (the Tribunal), appealing the permit issued by the Oil and Gas Commission (OGC) for this well.

The Board has communicated with the Tribunal, and it appears that Ms. Bell's application does not include an application to stay the permit issued by the OGC. Therefore, it is my opinion that the Board can issue the right of entry order.

However, I think it fair to allow Ms. Bell a limited amount of time to prove to the Board that she has applied to the Tribunal for a stay of the permit or that the Tribunal has issued a stay.

The order below comes into force no later than **June 8, 2011** unless Ms. Bell establishes to the Board's satisfaction that the Tribunal has issued a stay or that Ms. Bell has applied to the Tribunal for a stay.

ORDER

Pursuant to section 159 of the *Petroleum and Natural Gas Act*, the Board orders as follows:

1. Upon payment of the amounts set out in paragraphs 3 and 4, Canadian Natural Resources Limited shall have the right of entry to and access across the portions of the Lands described as SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, as shown on the individual ownership plan attached as Appendix "A" for the purpose of drilling, completing and operating one well.

2. Canadian Natural Resources Limited's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. Canadian Natural Resources Limited shall deliver to the Surface Rights Board security in the amount of $10,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Canadian Natural Resources Limited, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Canadian Natural Resources Limited shall pay to the landowner as partial payment for compensation the amount of $10,100.00 representing the first year's initial payment.

5. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

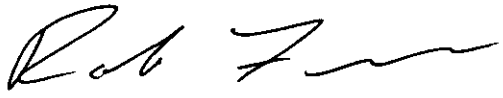
6. In keeping with other multi well pads in the area, additional wells will be compensated at $2000.00 initial consideration and $500.00 additional annual compensation.

7. Canadian Natural Resources Limited will pay additional compensation of $4000.00 if the Borrow Pit and Remote sump area shown on Appendix "A" are required.

8. The Board will continue to mediate total compensation payable in addition to any amounts ordered above.

Dated June 3, 2011

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A" 1715-1
June 3, 2011

Canadian Natural Resources Limited

INDIVIDUAL OWNERSHIP PLAN

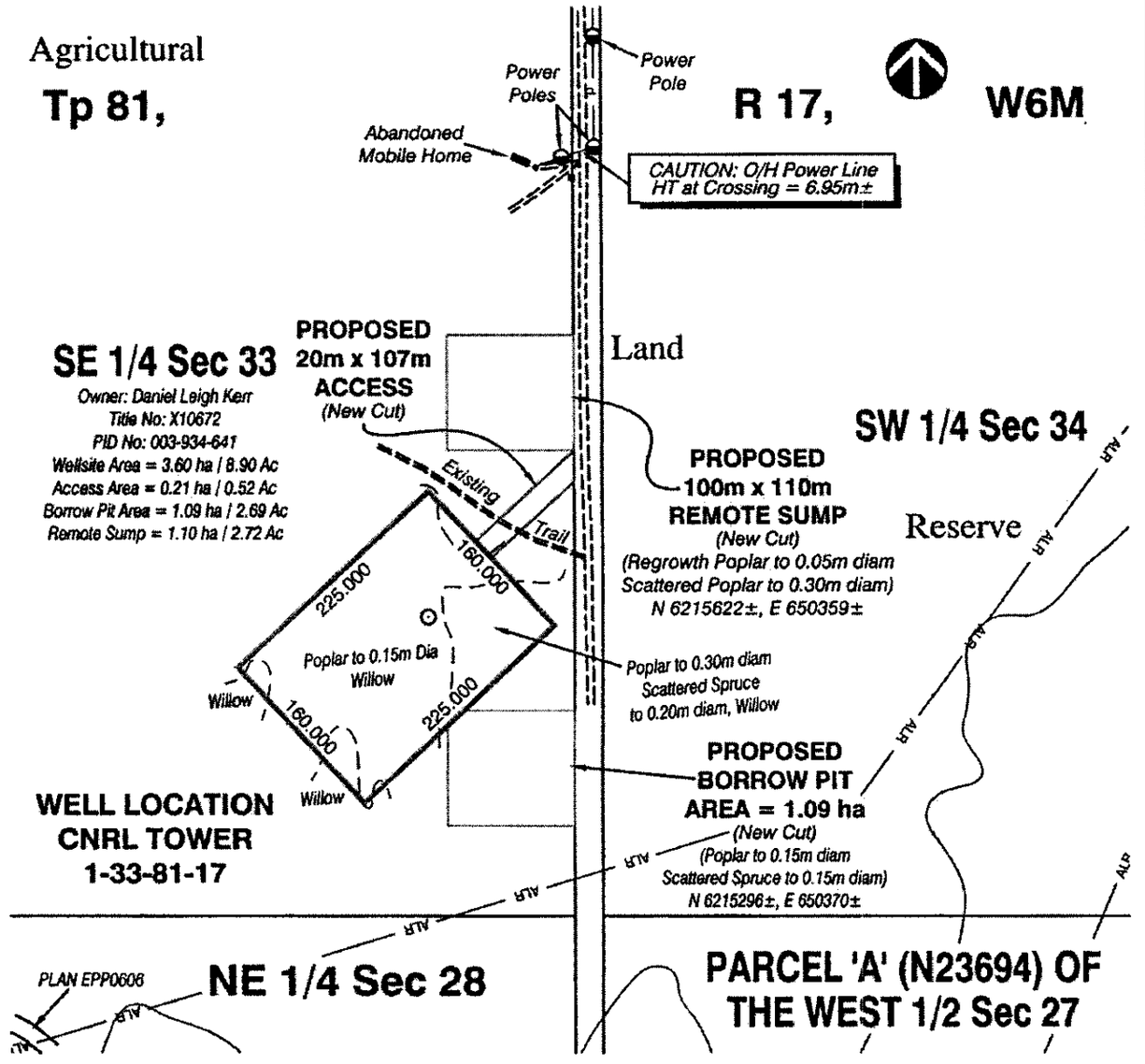
SHOWING WELL LOCATION 1-33-81-17, 20.0m ACCESS, BORROW PIT, AND REMOTE SUMP.

IN

SOUTH EAST 1/4 OF SECTION 33 TOWNSHIP 81, RANGE 17, W6M

PEACE RIVER DISTRICT

CNRL File No. 1113292



OWNER: Daniel Leigh Kerr

TITLE X10672

PID 003-934-641

Wellsite	3.60	ha	8.90	Ac.
Access	0.21	ha	0.52	Ac.
Borrow Pit	1.09	ha	2.69	Ac.
Remote Sump	1.10	ha	2.72	Ac.
Total Area	6.00	ha	14.83	Ac.

Certified correct this 25th day of FEBRUARY 2011.

D.N. BATTEN B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED AND GREEN.

REVISION: 1	DRAWN BY: TL
SCALE: 1:5000	JOB : 3111-J19665IP1

Appendix "B"

Conditions for Right of Entry

1. Canadian Natural Resources Limited will implement reasonable measures to control dust. Canadian Natural Resources Limited will leave the public road in as good a condition as prior to use.

2. Canadian Natural Resources Limited will take reasonable steps to ensure that no garbage is left behind by any of the operations on the lands.

3. The landowner will be notified prior to construction.

4. Canadian Natural Resources Limited will provide a copy of these terms and conditions to the Construction Manager, Rig Manager and Completions Manager.

5. The landowner will be notified prior to construction.

File No. 1715
Board Order No. 1715-2

November 29, 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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER

Heard:	By written submissions closing November 8, 2011
Appearances:	Heidi Meldrum, Barrister and Solicitor, for the Applicant Leslie J. Mackoff, Barrister and Solicitor, for the Respondent
Panel:	Cheryl Vickers

INTRODUCTION AND ISSUE

[1] This is an application by Daniel Leigh Kerr, for advance costs pursuant to section 169 of the *Petroleum and Natural Gas Act* (the *Act*). Mr. Kerr is the Respondent landowner in an application by Canadian Natural Resources Ltd. (CNRL) for mediation and arbitration, pursuant to section 158 of the *Act*, respecting right of entry to the Lands owned by the Mr. Kerr, and the terms of entry including compensation.

[2] The parties commenced negotiating the compensation payable for access to and use of the Lands for the purpose of constructing and operating a wellsite in November 2010. CNRL filed its application with the Board in March 2011. The Board issued an Order granting CNRL the right to enter, occupy and use portions of the Lands to construct and operate a wellsite on June 3, 2011. The Order included an order for partial compensation and the Board continued efforts to mediate the final compensation payable. In September 2011, the Board determined settlement was unlikely and refused further mediation. The Board must conduct an arbitration to determine the compensation payable. Dates for arbitration are not yet scheduled.

[3] Mr. Kerr has retained counsel. He intends to present epidemiological evidence and obtain the opinions of an environmental expert and an appraiser. The purpose of the expert evidence is to support a claim for compensation for the effects on the landowner and the Lands of CNRL's activity on the Lands. Mr. Kerr claims compensation of $51,000 for the right of entry itself and $10,122 in annual rent. To advance this claim at the arbitration, Mr. Kerr estimates he will incur costs for legal fees, expert fees, disbursements, and taxes totaling $40,320.

[4] I am told that Mr. Kerr is a pensioner who resides in a care facility and that he has a modest income that barely covers his expenses. He acts through Powers of Attorney.

[5] Mr. Kerr submits the Board should exercise its discretion to order CNRL to pay him advance costs of $40,320. CNRL submits the application for advance costs should be denied and that the Board should determine the issue of costs at the conclusion of the arbitration.

[6] The issue is whether the Board should exercise its discretion to make an order that CNRL pay advance costs to Mr. Kerr.

THE LEGISLATION

[7] Section 169 enables the Board, on application, to order an operator to pay all or part of the amount the Board anticipates will be the landholder's actual costs awarded by the Board as follows:

> 169 (1) Subject to any regulations, the board may, on application, order the operator to pay to the landholder, as advance costs, all or part of the amount that the board anticipates will be the landholder's actual costs awarded by the board under section 170.

[8] There are no regulations with respect to costs or advance costs. "Operator" and "landholder" are defined terms; there is no dispute that CNRL is an "operator" or that Mr. Kerr is a "landholder" within the meaning of section 169.

[9] Section 170 provides that the Board may order a party to pay all or part of the actual costs incurred by another party in connection with an application. It goes on to provide that if actual costs are awarded to a landholder who has received an amount as advance costs that exceeds the amount awarded, the operator may deduct the difference from any amount of rent or compensation payable and, if rent or compensation has been paid, the Board may order the landholder to pay the excess to the operator. "Actual costs" are defined in section 168 as follows:

> 168 In this Division
> "actual costs" includes, without limitation, the following:
>
> (a) actual reasonable legal fees and disbursements;
> (b) actual reasonable fees and disbursements of a professional agent or expert witness;
> (c) other actual reasonable expenses incurred by a party in connection with a board proceeding;
> (d) an amount on account of the reasonable time spent by a party in preparing for an attending a board proceeding.

ANALYSIS

[10] This is the Board's first opportunity to consider its discretion under section 169 of the *Act* in a contested application. In determining this application, I must consider the intent of the legislature in giving the Board discretion to award advance costs and the factors that the Board will consider in making such awards.

[11] The words of an enactment must be interpreted in accordance with the oft quoted principle enunciated by Professor Driedger and repeatedly cited by our courts as the preferred approach to statutory interpretation, namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously

with the scheme of the Act, the object of the Act, and the intention of Parliament." (*Bell Express Vu Limited Partnership v. R.* 2002 SCC 42).

[12] The *Act* provides a scheme to enable the holder of subsurface resources to gain access to the surface of private land to explore for and develop that resource, and a mechanism to determine the compensation payable to a landowner as a result. The *Act* amends the common law giving the owner of subsurface resources the right to access the surface of private land to exploit their resource by requiring that a landowner must be compensated for their loss and any damage to the land arising from the entry. Recent amendments to the *Act* further expand rights to compensation to neighbours and occupiers of land subject to an entry in certain circumstances. The courts have recognized the compulsory nature of access to private land for the development of sub-surface resources (see for example *Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510 (BCSC)), and the *Act* identifies the compulsory aspect of entry as one of the factors that the Board may consider in determining appropriate compensation when the parties are unable to agree (section 154 (1)(a)).

[13] It is in this context, that the Legislature saw fit to recently amend the provisions of the *Act* to include, among other revisions, sections 168 to 170 giving the Board the discretion to make orders for advance costs and defining the scope of what may be covered in an award of costs.

[14] Further context for the legislative provisions may be found in the history of Board proceedings and the Board's costs awards. With respect to the Board's proceedings generally, landowners often have difficulty providing the evidentiary basis to support requested compensation for alleged loss or damage. It is not uncommon for a landowner to represent him or herself before the Board, and the Board does not often hear expert evidence in support of a compensation claim by a landowner. On the other hand, it is common that an operator is represented by counsel and the Board will frequently hear expert evidence called by the operator to support the operator's view of appropriate compensation. The Board often struggles with the quality of the evidence before it.

[15] As to costs, the Board's Rules contemplate that a landowner will be compensated for his or her costs associated with the Board's mediation process in an application respecting right of entry and associated compensation. This presumption in favour of a landowner recuperating mediation costs acknowledges the compulsory nature of the proceedings and departs from the traditional notion that costs follow the event. The presumption does not necessarily flow through to arbitration proceedings, nor does it necessarily apply to other types of applications before the Board. The Board's Rules also set out the factors the Board will consider in making an award of costs. Many of these factors cannot apply to an award of advance costs as they are factors that cannot be assessed until the completion of a proceeding.

[16] Prior to the enactment of sections 169-170, the Board's costs awards often took a restrictive view of what could be recovered as costs (see for example *Spectra Energy*

Midstream Corporation v. Vause, et al (2008) Board Order 1589-2), and fell short of recompensing a party for actual costs incurred. Section 168 provides an inclusive and expansive definition of "actual costs" that enables a cost award to more fully recompense a party for the cost of participating in the Board's process.

[17] The legislation does not provide at test for awarding advance costs or set out the factors the Board should consider. An award is left to the Board's discretion. The common law, in the absence of a statutory scheme for advance costs, supports an award of advance costs only in "rare and exceptional cases", involving impecuniosity, a meritorious case, and special circumstances "where necessary to avoid unfairness or injustice" (*British Columbia(Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, [2003] 3 S.C.R. 371; *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue*), 2007 SCC 2, [2007] 1 S.C.R. 38). The bar for meeting the common law test, in particular the requirements of impecuniosity and special circumstances are extremely high. CNRL argues it is this test that must be met in an application under section 169.

[18] The Legislature must have realized, however, in enacting section 169, that the common law test could virtually never be met in proceedings before the Board. The Supreme Court of Canada's "impecuniosity test" requires that the party seeking advance costs "genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial – in short, the litigation would be unable to proceed if the order were made" (*Okanagan; Little Sisters*). An applicant must "satisfy a court that all funding options have been exhausted". It contemplates that an applicant must have explored the possibility of obtaining a loan, thereby incurring debt, and having counsel act on a contingency fee as two possible funding options.

[19] Section 169 authorizes the Board to exercise its discretion to order advance costs to a landholder. A landholder is an owner of land or occupant who is a party to a Board proceeding. An owner of land will generally have the option of mortgaging the land to raise funds to advance their claim. While there certainly could be circumstances where a landholder could be found to be impecunious to the extent that there is no way they could participate in the Board's proceedings without financial assistance, the legislation expressly grants the discretion to award advance costs in circumstances where parties generally will have some financial wherewithal, and where it will often be impossible to demonstrate there is "no other realistic option".

[20] The Legislature must have also realized that the Supreme Court of Canada's "special circumstances test" would also rarely, if ever, be met in the context of Board proceedings. The Board must essentially determine the amount of compensation payable to a landholder arising from a right of entry. There is no question that the issue of compensation is important to the individual landholder and company involved. Nor do I doubt that the issues of compensation in one case are not important to other landholders and companies who are engaged in negotiations respecting the compensation payable as a result of a right of entry, or to landholders generally who see themselves as affected by oil and gas activity. But at the end of the day, each case

will depend on the circumstances of that case and the evidence before the Board to substantiate the alleged loss or damage and the amount claimed. Public interest or public importance alone is not enough to characterize proceedings as "special enough" to warrant advance costs when applying the common law test (*Little Sisters*). The Board does not even have the jurisdiction to consider constitutional questions (section 148 of the *Act* and section 44 of the *Administrative Tribunals Act*) so there will never be a case where constitutional rights and the broader public interest concerned with those rights is in issue. It is hard to conceive of a Surface Rights Board case, even one that advances novel arguments, that would have the "special circumstances" contemplated by the Supreme Court of Canada in *Okanagan* or *Little Sisters*.

[21] If the Legislature had intended that in the exercise of its discretion to award advance costs the Board would use the common law test developed by the Supreme Court of Canada then there would have been little, if any, purpose to giving the Board that discretion. The Legislature must, therefore, have intended that Board could move away from the common law test and be more flexible in exercise of its discretion. It must have intended that the Board could exercise its discretion in the particular context of the cases before it that would rarely, if ever, meet the exceptionally high bar for an award at common law intended to apply outside of a statutory dispute resolution context. The Legislature must be presumed to have been aware of the Board's particular statutory mandate, the context of its proceedings and the common law, and must have enacted the cost provisions for a reason with the intention that the Board would find circumstances to exercise its discretion to award advance costs. The Legislature must have intended to give the Board the discretion to award costs in its particular context, and must have intended the threshold for advance costs to be lower that the common law test set out by the Supreme Court of Canada

.

[22] All of which takes me back to the particular legislative context and the Board's particular experience.

[23] An entry order is a compulsory taking. While a landowner is entitled to be compensated, in the absence of an agreement with the operator, the landowner has no choice but to engage in the Board's processes to advance a claim. Landowners are frequently unable to support a claim because they present little or no evidentiary support, or because they cannot establish the legal basis for a claim beyond those commonly recognized in law. A landowner is disadvantaged in the absence of effective legal assistance with advancing the evidence and arguments to support alleged loss or damage. The right to compensation provided by the legislation cannot be effectively explored, tested or advanced if one party to the dispute does not have proper representation. The Board's ability to effectively adjudicate a claim for loss or damage is compromised if one side of the dispute is not effectively represented.

[24] In this context, the intent of the Legislature in enacting section 169 must have been to give the Board a tool to ensure that both sides of a dispute before it would be able to effectively participate in its processes and have the ability to engage the professional

resources necessary to advance the evidence and legal arguments necessary to support a claim.

[25] I find support for this intent in the language of the legislation itself which clearly distinguishes between the rights of the parties before the Board when it comes to advance costs. For example, it is interesting to note that the Legislature did not see fit to give the Board discretion to make an order for advance costs in favour of an operator, but only in favour of a landholder. This circumscription to the Board's discretion to award advance costs only to a landholder and not to an operator acknowledges, generally speaking, that in Board proceedings one of the players, namely the landowner, is often disadvantaged through the lack of legal representation or expert assistance and gives the Board a tool to address that disadvantage. Further, the legislation contemplates that the Board may refuse to proceed with an application from an operator if an award for advance costs is not paid. In advance of an entry order being made, the discretion to refuse to proceed with an application for failure to pay advance costs is not only a significant "stick" to effect compliance, but offers something to counter-balance the compulsory aspect of the proceedings from a landowner's perspective.

[26] The Legislature further distinguishes between the respective rights of landholders and operators in the provisions contemplating the situation where a landholder might receive an award for advance costs that is different from the amount of costs ultimately awarded. It is interesting to note that where the Board determines a landholder is entitled to actual costs in excess of an award of advance costs that the landholder is entitled to receive the difference, but that if an award of advance costs exceeds actual costs awarded, the operator may deduct the difference from compensation owing or, if compensation has been paid, the Board may order the landholder to pay back the difference. The Board clearly has discretion to ensure a landholder's costs are covered even where the landholder may not, strictly speaking, be entitled to an award of costs at the end of the day. This discretion reinforces the use of costs as a tool to ensure the Board can effectively adjudicate the issues before it by ensuring landholders have the means to properly advance a case, whether they are ultimately successful or not. I will leave the circumstances in which the Board might invoke that discretion to the appropriate case, but note for the purposes of this application, that the discretion is there, lending support to a legislative intent that the costs provisions are intended to be used by the Board to ensure effective participation of landholders.

[27] Further, the definition of "actual costs" itself lends support to a legislative intent that the costs provisions are intended to be used to ensure effective participation in that through an award of costs a party may be "made whole". In using the term "actual costs" and in providing an inclusive and "without limitation" definition of that term expressly expanding the scope of costs that may be awarded, the legislature must have been alert to the limited costs awards made and the potential financial burden of Board proceedings, and must have intended that the vehicle of costs could be used, where appropriate, to make a party whole.

[28] I conclude that in exercising its discretion to make an award of advance costs under section 169, the Board is not constrained by the common law test, but may exercise its discretion to give effect to a legislative intent to facilitate effective landowner participation in Board proceedings, ultimately assisting the Board in the effective adjudication of compensation issues. Effective adjudication of compensation issues ultimately benefits all stakeholders to the Board's processes. Compensation awards made with the benefit of fulsome consideration of evidence and legal argument to support alleged loss and damage are more likely to provide guidance to stakeholders to assist with resolution of compensation issues.

[29] Without limiting the factors that the Board may find relevant to exercising its discretion to award advance costs in any particular case, the factors that I find compelling in this case include the compulsory nature of the application, Mr. Kerr's personal and financial circumstances, the fact that Mr. Kerr seeks to advance novel arguments the Board has not had the opportunity to consider to advance his claim for compensation, the apparent need for expert evidence to support his case, the fact that Mr. Kerr has not received any amount on account of his costs incurred in participating in the Board's mediation process, and that there is no suggestion that an award of advance costs would pose an unfair burden on CNRL.

[30] These proceedings arise from CNRL's application for mediation and arbitration respecting right of entry to Mr. Kerr's Lands and the compensation payable as a result. Mr. Kerr is an involuntary participant in the Board's process. He is *prima facie* entitled to his costs of the mediation process, which to my knowledge have not been paid. The parties have not agreed on compensation owing and the Board must adjudicate. I am told that Mr. Kerr's is a pensioner who resides in a care facility and that he has a modest income that barely covers his expenses. I do not know whether he could finance his participation in these proceedings by way of mortgaging the Lands or by some other means. In any event, as discussed above, I do not think it is necessary that a landowner must incur debt or prove impecuniosity, at least as that test is set out by the common law. Mr. Kerr's modest income alone would not provide the financial means to effectively participate in an arbitration. Mr. Kerr's Powers of Attorney should not be expected to finance Mr. Kerr's participation in the Board's proceedings.

[31] I am told that Mr. Kerr's claim requires expert evidence and that his claim may advance arguments not previously considered by the Board. I have little doubt that Mr. Kerr will benefit from representation by counsel and counsel's advice and assistance with respect to both the evidentiary and legal support for alleged loss or damage, or that the Board will benefit from the opportunity to consider expert evidence in support of a claim.

[32] CNRL argues that the Board should not depart from its normal practice of determining costs at the end of the process. Until recently, the Board has not had the legislative authority to consider an award of advance costs and departing from "normal practice" was not an option. The new legislation expressly gives the Board the discretion to depart from its "normal practice" in part to address the hardship that flows

from it. In this case, if the Board does not exercise its discretion to award advance costs, there is some likelihood that Mr. Kerr may not be able to effectively participate in the process at all, or without hardship. I am satisfied, in all of the circumstances of this case, that the Board should exercise its discretion to make an award of advance costs.

[33] As to the amount of advance costs, section 169 contemplates that such an award may equate to all or part of the amount the Board anticipates will be the landowner's actual costs under section 170. I cannot know at this point whether Mr. Kerr will ultimately be awarded costs under section 170, but I can assume that Mr. Kerr is at the very least entitled to costs of the mediation process, and that entitlement under section 170 is not necessarily dependent on success in the cause. The Board's discretion under section 170 must be exercised not only in light of the circumstances of each case but also being mindful of the statutory scheme and the apparent legislative intent to ensure landholders may effectively participate in the Board's proceedings.

[34] The estimated costs for Mr. Kerr's participation in the arbitration for counsel fees, expert witnesses, disbursements and taxes, all of which are contemplated in the definition of "actual costs" are not unreasonable and do not account for costs of the mediation process already incurred. I find the Board should exercise its discretion to grant an award of advance costs in the amount of $40,320.00.

ORDER

[35] The Board orders Canadian Natural Resources Ltd to pay forthwith to Daniel Leigh Kerr the amount of $40,230.00 as advance costs pursuant to section 169 of the *Petroleum and Natural Gas Act*.

DATED: November 29, 2011

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1715
Board Order No. 1715-3

June 6, 2012

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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER

Heard:	By written submissions last received May 18, 2012
Appearances:	Heidi Meldrum, Barrister and Solicitor, for the Applicant
	Leslie J. Mackoff, Barrister and Solicitor, for the Respondent
Panel:	Simmi K. Sandhu

INTRODUCTION

[1] The Landowner, Daniel Kerr, applies to the Board for pre-arbitration production of documents from Canadian National Resources Limited (CNRL) pursuant to Rule 12(5)(e) of the Board's Rules of Practice and Procedure. The arbitration is to determine the appropriate compensation pursuant to section 158 of the *Petroleum and Natural Gas Act* (the Act) for the right of entry by CNRL to Lands owned by Mr. Kerr. On June 3, 2011, the Board issued an Order granting CNRL the right to enter, occupy and use portions of the Lands to construct and operate a wellsite and an order for partial compensation. The arbitration has been scheduled for September 12-14, 2012.

[2] Mr. Kerr seeks the following documents from CNRL:

a) A complete list of all chemicals that are commonly used in the construction and operation of a well;
b) A complete list of all chemicals CNRL uses to frack;
c) All epidemiological studies conducted by CNRL with respect to the health effects of gas wells;
d) All studies and data on which they rely with respect to the health implications of the chemicals it uses, which CNRL possesses;
e) Data concerning the amount of chemicals used;
f) Data concerning recovery of chemicals;
g) The method of accounting for chemicals not recovered;
h) All documents pertaining to studies undertaken with respect to contamination issues, including of soil, air and water;
i) Data regarding all spills or blowouts at all well sites operated by CNRL;
j) Whether the spills have been reported to the appropriate authorities;
k) Data regarding contamination of soil, air and water around a well site after a spill or blowout;
l) CNRL's plan/protocol in the event of a spill or blowout;
m) Information about how the well itself will be constructed, including what materials will be used to construct the well, the composition of drilling fluids, and how the well will be plugged;
n) Information about the depth and horizontal dimensions of the well;
o) How long CNRL anticipates that the well will be in active production;
p) A complete list of all chemicals CNRL <u>may</u> use to frack any wells on the Lands;

q) All studies and data CNRL possesses with respect to the effect of air emissions from fracking on human and animal health;
r) Information on how CNRL intends to dispose of wastewater from fracking;
s) Data and information on what chemicals and liquids CNRL intends to put into the remote sump;
t) Information on the intended size of the remote sump, including volume, width and depth;
u) Data and information about how the remote sump will be constructed, including materials used;
v) Information on how CNRL will ensure that structural integrity of the remote sump is maintained to prevent future spills;
w) Information on prices CNRL has paid since 2010 for borrow pit materials;
x) Information on the size of the borrow pit once material has been extracted; and
y) Information with respect to the intended use of the gravel to be used from the borrow pit.

[3] Mr. Kerr says these documents and information are relevant to the determination of the appropriate compensation payable by CNRL and, in particular, to determine the degree of risk posed to Mr. Kerr and the Lands by chemicals used in the extraction process and in CNRL's operations. Mr. Kerr intends to show that the current value of the Lands is adversely affected by the growing body of information that shows that drilling and fracking of a well poses serious risks to human health and the environment, and that "whether or not these risks will materialize as actual damages suffered is irrelevant."

[4] CNRL submits the requested information is not relevant to the issue before the Board, namely to determine compensation for loss or damage caused by the right of entry. CNRL says the documents requested do not directly relate to any of the factors setout in section 154(1) and that the risks referred to are speculative and not actual.

LEGISLATIVE AUTHORITY

[5] Section 34(3)(b) of the *Administrative Tribunals Act* sets out the Board's authority for a pre-hearing order for production information or documents as follows:

> 34(3) ....at any time before or during a hearing, but before a decision, the tribunal may make an order requiring a person
> (a)...
> (b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

[6] Rule 12(5)(e) states the Board may "require a party to produce to the Board or another party, or allow the Board or another party access to, any documents or other information which may be material and relevant to an issue".

[7] The B.C. Supreme Court in *Assessor of Area #01 v. Lehigh Portland Cement Limited, et al* (2010 BCSC 193) in considering the scope of section 34(3) of the *Administrative Tribunals Act* held that a tribunal has the power to control its own processes and make rules respecting practice and procedure to facilitate the just and timely resolution of matters before it and that the powers set out in the Rules in that instance (similar wording to Rule 12(5)(e)) are consistent with this mandate. Therefore, in determining this application, I will apply the test set out in Rule 12(5)(e) of the Rules.

ISSUE

[8] The issue is whether all or any of the documents and information requested by Mr. Kerr may be material and relevant to an issue in the arbitration and if so, whether they should be produced by CNRL.

ANALYSIS

[9] Mr. Kerr agrees the issue in the arbitration is to determine appropriate compensation for the right of entry order, not the nature of the development, the level of risk involved in the development, or the potential for harm to human health or the environment. However, he says information as to the nature of the development, the level of risk involved, or the potential for harm to human health or the environment has a direct impact on property value, which is one of the factors to consider when awarding compensation pursuant to section 154 of the *Act*. In particular, the requested information relates to:

a) "a person's loss of a right or profit with respect to the land" (sec. 154(1)(c)) as an impact on property value,
b) "temporary and permanent damage from the right of entry" (section 154(1)(d)) as there is evidence chemicals used damage the environment,
c) "compensation for severance" (section 154(1)(e)) as the injection of fracking chemicals could render land unusable beyond the wellsite,
d) "compensation for nuisance and disturbance from the right of entry" (section 154(1)(f)) as the size and depth of the well, chemicals that might be used to frack, wastewater disposal, and data regarding contamination after a spill or blowout correlates to the actual activities at the wellsite which affects the nuisance and disturbance to Mr. Kerr in terms of the number of consultants and experts that will be brought to the site, the amount of traffic to be expected on the Lands, the resulting wear and tear on the Lands, and personal safety concerns.

e) "other factors the board considers applicable" (section 154(1)(k)).

[10] Further, it is submitted that the standard practices and protocols implemented by CNRL for drilling or fracking wells is relevant and material to the landowner's right to compensation that extends to the loss or damage "reasonably foreseeable" as result of the entry.

[11] CNRL says the concerns raised by Mr. Kerr are potential and hypothetical rather than actual damages and the ability to address health and safety concerns lies within the jurisdiction of the Oil and Gas Commission, not the Board. CNRL relies on the Board's decision in *Encana v. Merrick*, SRB Decision 1697-4, which denied an almost identical request for documents beyond information or documents related to the company's use of the specific site and to spills, blowouts, and contamination that had actually occurred on the site. CNRL has not yet made any use of the Kerr Lands and, therefore, CNRL says they have no site specific information to disclose.

[12] Section 143(2) of the *Act* provides that.. "a right holder is liable
(a) to pay compensation to the landowner for loss or damage caused by the right of entry, and
(b) except where the right of entry relates to a right of way for a flow line, to pay rent to the landowner for the duration of the right of entry."

[13] In determining the amount to be paid, the Board may consider factors set out in section 154(1). To the extent that CNRL's right of entry of the Lands to construct and operate a wellsite causes loss or damage, the landowner is entitled to compensation for that loss. The landowner is not entitled to compensation beyond the actual or reasonably probable foreseeable loss sustained and if the Board awards compensation that exceeds the loss sustained, the Board has exceeded its jurisdiction (*Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458).

[14] Therefore, to the extent that CNRL's use and occupation of the Lands pursuant to the right of entry causes loss or damage to Mr. Kerr, he is entitled to be compensated for that loss or damage. However, CNRL has not yet made use of the Lands or right of entry and no actual loss or damage has occurred.

[15] Mr. Kerr raises concerns that go beyond actual loss or damage to potential or possible risks and impact on property values, human health and the environment. These risks have not been demonstrated to result in any actual loss or injury, nor have they been demonstrated to be "reasonably foreseeable". In fact, Mr. Kerr admits that whether or not these risks will materialize as actual damages suffered is irrelevant; rather, he says potential purchasers, informed of these risks, would be disinclined to pay the same price for a property on which a well or multiple wells have been fracked. However, it has not been shown how the information and documentary evidence requested, which relate to standard practices, environmental risks, and health concerns are relevant and material to what a potential purchaser will pay. Whether the presence

of wellsites on a property is likely to affect that property's market value should be evident from looking at the market evidence relating to the sales of similar properties with wellsites and comparing that evidence to the market evidence relating to the sales of similar properties without wellsites. Likely, a potential purchaser would have access to and investigate information publicly available on the operations of a particular wellsite of a property they are looking to buy, as well as information that a potential vendor has in his/her possession.

[16] As stated by C. Vickers, Chair of the Board, in the *Merrick* decision, *supra.*, "..concern for safety and health in the absence of actual or reasonably probable loss or damage, is not compensable". I am not satisfied that the majority of the documents and information requested relate to actual or reasonably probable loss or damage.

[17] Most, if not all, of the documents and information requested are not related specifically to CNRL's activities on the Lands or the effect of the wellsite on the Lands because CNRL has not yet made use of any of the Lands. However, the information regarding the intended use of the Lands is site specific, and a landowner cannot know what damage or loss may be reasonably foreseeable if they do not know what are the intended uses of the site. Therefore, although this information refers to the intended use of the wellsite, sump and borrow pit, to the extent CNRL has information on the intended uses, I find it may be relevant and material to a loss or damage to the landowner or the Lands that is "reasonably foreseeable or probable", and should be produced.

ORDER

[18] The Board orders CNRL to produce to Mr. Kerr within three weeks of the date of this Order, the following information or documents in its possession and control:

a) Information about how the well itself will be constructed, including what materials will be used to construct the well, the composition of drilling fluids, and how the well will be plugged;
b) Information about the depth and horizontal dimensions of the well;
c) How long CNRL anticipates that the well will be in active production;
d) A complete list of all chemicals CNRL <u>may</u> use to frack any wells on the Lands;
e) Data and information on what chemicals and liquids CNRL intends to put into the remote sump;
f) The intended size of the remote sump, including volume, width and depth;
g) Data and information about how the remote sump will be constructed, including materials used;
h) Information on the size of the borrow pit once material has been extracted; and

i) Information with respect to the intended use of the gravel to be used from the borrow pit.

DATED: June 6, 2012

FOR THE BOARD

Simmi K. Sandhu, Member

File No. 1715
Board Order No. 1715-4

July 12, 2012

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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

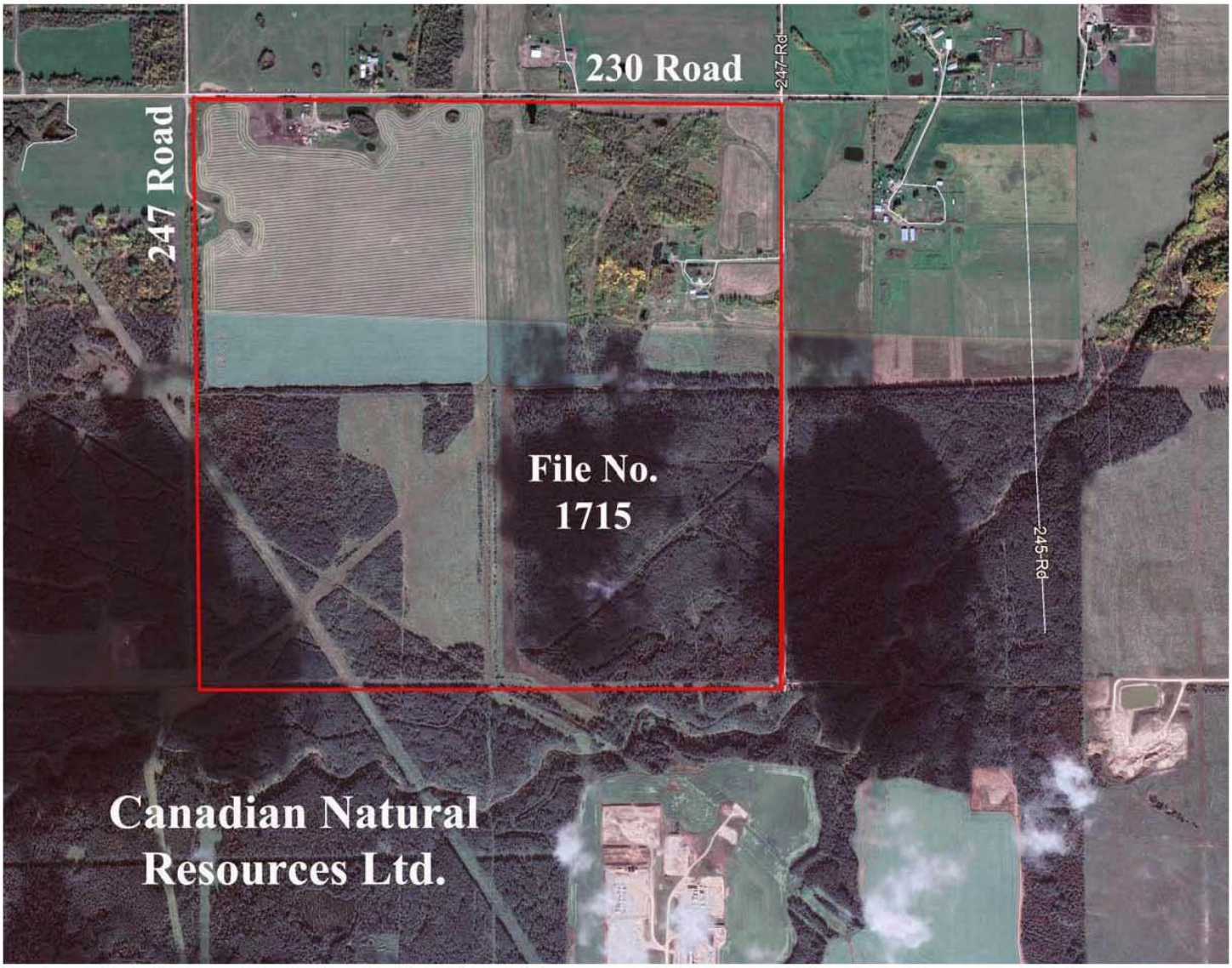
(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER


230 Road
247-Rd
247 Road
File No.
1715
245-Rd
Canadian Natural
Resources Ltd.

On the application of the Applicant, Canadian Natural Resource Limited (CNRL), and with the consent of the Respondent, Daniel Leigh Kerr, the Board terminates its Order 1715-1 dated June 3, 2011 granting CNRL the right of entry to and access across the portions of the Lands described as SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, as shown on the individual ownership plan attached as Appendix "A" attached to Order 1715-1. CNRL advises that it has not made use of the Lands and will not be proceeding with any wells on the Lands.

ORDER

The Surface Rights Board orders as follows:

1. CNRL's right of entry to and access across the portions of the Lands described as SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT is terminated.

2. Daniel Leigh Kerr shall forthwith return to CNRL any monies paid to him in accordance with Board Order 1715-1.

3. Daniel Leigh Kerr shall pay to CNRL any unexpended portion of the advance costs paid to him pursuant to Board Order 1715-2.

DATED: July 12, 2102

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1715
Board Order No. 1715-5

December 20, 2012

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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER

Heard by written submissions
Leslie J. Mackoff and Ellen Hong, Barristers and Solicitors, for Daniel Leigh Kerr
Heidi Meldrum, Barrister and Solicitor, for Canadian Natural Resources Limited

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INTRODUCTION

[1] On June 3, 2011, the Board granted Canadian Natural Resources Limited (CNRL) right of entry to a 14.83 acre area of the Lands owned by Daniel Leigh Kerr for the purpose of drilling, completing and operating a well (Order 1715-1). In accordance with this Order, CNRL paid Mr. Kerr $10,000 as partial payment on account of compensation payable to him for the use and occupation of the Lands. On November 29, 2011, the Board ordered CNRL to pay Mr. Kerr $40,230 as advance costs (Order 1715-2). On July 12, 2012, the Board terminated the entry order and ordered Mr. Kerr to return to CNRL any monies paid to him under the entry order and any unexpended portion of the advance costs (Order 1715-4, attached as Appendix A). The Board made Order 1715-4 understanding it was being made with Mr. Kerr's consent and on CNRL's advice that it had not made use of the Lands and would not be proceeding with any wells on the Lands. Mr. Kerr returned $7,649.65 to CNRL on September 18, 2012 representing the unexpended portion of the advance costs.

[2] Mr. Kerr asks the Board to reconsider Order 1715-4 on the grounds that CNRL had in fact entered the Lands, and on the grounds that he did not consent to the return of the $10,000 partial payment. Although not asking the Board to reconsider its termination of the entry order, he argues that in accordance with provisions of the *Petroleum and Natural Gas Act* (*PNGA*), the earliest CNRL could have brought its application for termination was September 15, 2013. He seeks compensation for loss and damage arising from the entry, annual compensation for an additional period of two years, and seeks costs of the Board's proceedings. Mr. Kerr asks the Board to:

- delete the paragraph [2] of Order 1715-4 requiring the repayment of the $10,000 partial compensation;
- award initial compensation to Mr. Kerr of $28,559.00, subject to the offset of the $10,000 already paid;
- award annual compensation to Mr. Kerr of $16,000.00 for two years;
- award personal costs to Mr. Kerr of $10,722.73; and
- award interest to Mr. Kerr of $1,816.79.

[3] Mr. Kerr therefore seeks $73,098.52 from CNRL subject to the offset of the $10,000 partial payment already received.

[4] CNRL opposes the reconsideration maintaining the Board's understandings on which Order 1715-4 was based were correct, and asks the Board to dismiss the request for reconsideration, thereby requiring Mr. Kerr to repay the $10,000 partial payment. CNRL maintains no compensation is payable to Mr. Kerr. CNRL seeks to recover a

greater portion of the advance costs, submitting the legal fees claimed are unreasonable. While not disputing Mr. Kerr's entitlement to personal costs, CNRL disputes the amount claimed and submits he should recover $1,061.00 for personal costs. After offsetting Mr. Kerr's personal costs against what CNRL seeks to recover from the advance costs, CNRL seeks an award of $16,519.35. Add this amount to the $10,000 partial payment that CNRL seeks recovery of, and CNRL seeks $26,519.35 from Mr. Kerr.

PRELIMINARY CONSIDERATION

[5] Neither party asks the Board to reconsider its termination of the entry order. Mr. Kerr submits however, that in accordance with section 167(1) of the *PNGA*, CNRL could not have brought its application prior to September 15, 2013. Section 167(1) of the PNGA provides:

> 167(1) A right holder who holds a right of entry under a surface lease or an order of the board may, on not less than 90 days' notice to the landowner, apply to the board for an order terminating the surface lease or order if at least 2 years have expired since the effective date of the surface lease or order.

[6] Given that neither party has taken issue with the Board's jurisdiction to entertain CNRL's application to terminate the entry order or with the Board's ability to terminate the right of entry order with the consent of both parties, I will proceed on the basis that the legislative provisions for the expiry of time and notice to the landowner must be directory rather than mandatory if the landowner consents to termination of a right of entry. Section 153 of the *PNGA* gives the Board the authority to make a consent order resolving an application at the request of the parties. I can see no reason why the Board should not accede to a request to terminate a right of entry order prior to the expiration of two years and without 90 days notice when both parties consent, thereby forcing an unwanted compulsory entry on a landowner that a company no longer requires.

ISSUES

[7] The issues arising in this application are:

- Should the Board reconsider Order 1714-4, and in particular, paragraph [2] requiring Mr. Kerr to return to CNRL monies paid in accordance with Order 1715-1?
- If yes, should all or any part of the monies paid to Mr. Kerr pursuant to Order 1715-4 should be returned to CNRL? If so, how much?
- Is Mr. Kerr entitled to annual compensation?
- Is CNRL entitled to return of a greater portion of the advance costs?
- What is an appropriate claim for Mr. Kerr's personal costs?

FACTS

[8] Mr. Kerr is the owner of the Lands. He acts through his Powers of Attorney, Patricia Bell and Danny Kerr.

[9] In or around mid 2010, CNRL advised Mr. Kerr that it sought entry to the Lands for a well site, access road, remote sump, and borrow pit. Between December 2010 and May 2011, the parties negotiated compensation for the requested use and occupation of the Lands. Mr. Kerr, through his attorneys, spent time and incurred expenses in attempting to negotiate compensation.

[10] In March 2011, CNRL applied to the Board for mediation and arbitration services requesting a right of entry order to the Lands and seeking the Board's assistance with determining the compensation payable to Mr. Kerr. The Board engaged the parties in mediation. On June 3, 2011, the mediator issued Order 1715-1 granting CNRL a right of entry to the Lands and ordering partial compensation of $10,000.00. The mediator continued mediation in an effort at resolving the compensation payable, but on September 29, 2011, the mediator refused further mediation, thereby referring the resolution of compensation to arbitration.

[11] On November 29, 2011, the Board issued Order 1715-2 ordering CNRL to pay Mr. Kerr $40,230.00 as advance costs.

[12] In April 2012, the Board scheduled the arbitration for September 12-14, 2012.

[13] On June 29, 2012, CNRL advised that it would not be proceeding with any wells on the Lands and had not made use of the Lands, and asked the Board to terminate the right of entry order. CNRL requested that any monies paid under the right of entry order be returned as well as any unexpended portion of the advance costs paid by CNRL. On July 5, 2012, counsel for Mr. Kerr sent the following e-mail in response to CNRL's request that the entry order be terminated:

> We confirm receipt of Ms. Meldrum's letter to the Surface Rights Board, dated June 29, 2012 advising that CNRL will not be proceeding with any wells on the land or making any other use of the land. Mr. Kerr welcomes CNRL's decision.
>
> We look forward to receiving a copy of the Board's Order indicating that CNRL's right of entry application has been terminated by request and a copy of CNRL's notice to the BC Oil and Gas Commission advising that it intends to surrender its permit
>
> We confirm that we will issue a final bill and return to CNRL any unexpended portion of the advance costs in due course.

[14] The Board replied:

> As there are no objections to the application to terminate the right of entry, the Board will proceed to process this as a Consent Order and will adjourn the arbitration hearing.

[15] On July 12, 2012, the Board issued Order 1715-4 terminating CNRL's right of entry, ordering Mr. Kerr to return to CNRL any monies paid to him in accordance with Order 1715-1, and ordering Mr. Kerr to pay to CNRL any unexpended portion of the advance costs paid to him pursuant to Order 1715-2.

[16] By letter dated July 13, 2012, counsel for Mr. Kerr advised that Mr. Kerr did not consent to paragraph [2] of Order 1715-4 requiring the repayment of monies paid. Counsel further advised it had come to their attention that CNRL had entered the Lands to conduct a survey, drill a spud hole, and install a tripod.

[17] On September 10, 2012, the Board agreed to conduct a review of Order 1715-4 "on the basis that the order was initially made on the understanding there had been NO entry, but it was later discovered there was entry for the purpose of survey, drilling a spud hole, and installing a tripod." The Board sought CNRL's confirmation of whether it had entered and used the Lands as alleged and invited submissions on whether Mr. Kerr should return any or all of the $10,000.00 partial payment as well as submissions on costs.

[18] On or about September 18, 2012, Mr. Kerr returned $7,649.65 to CNRL, representing the unexpended portion of the advance costs. Mr. Kerr's counsel rendered an account dated August 16, 2012 for $30,980.09 inclusive of fees, disbursements and taxes. The balance of the advance costs was spent on fees for a consulting expert located in the United States and associated conversion costs arising in the payment and reimbursement of his retainer.

ANALYSIS

Is reconsideration of Order 1715-4 necessary?

[19] CNRL submits the basis upon which the Board originally made Order 1715-4 is correct and that there was no entry to the Lands pursuant to Order 1715-1. CNRL says it entered the Lands for the purpose of surveying and soil testing, but that this entry occurred prior to the grant of Order 1715-1 and with the landowner's permission. CNRL says that Pat Bell spoke with a CNRL representative on September 20, 2010 and granted permission for surveying, soil sampling and archaeological assessment. CNRL says surveyors entered the Lands between September 21 and 23, 2010 and conducted a survey of the proposed well site. As part of the survey, the surveyors cleared some trees and placed stakes and/or flags along the boundary lines of the well site. The surveyors placed a small wooden tripod at the well centre. CNRL advises the official survey document was finalized on September 28, 2010. CNRL says that on or about October 6, 2010, CNRL entered the Lands and conducted a soil assessment on the surveyed portion, which involved taking small soil samples for analysis. CNRL advises

the soil assessment did not involve drilling any holes. It says it did not enter the Lands following the grant of Order 1715-1.

[20] I accept that CNRL did not enter the Lands in accordance with Order 1715-1. I accept that it did enter the Lands with the landowner's permission prior to the Board granting Order 1715-1. Indeed, in order to make its application to the Oil and Gas Commission (OGC) for a well permit, it would have had to conduct a survey, take soil samples and conduct an archeological assessment.

[21] In seeking to terminate the right of entry order, CNRL advised it would "not be proceeding with any wells on the referenced land or making any other use of the referenced land". It confirmed that it had "not commenced construction or otherwise made use of the land" (emphasis added). I find CNRL had "otherwise made use of the land" as it had entered to complete the activities necessary to make its application to the OGC. While its use of the Lands was not pursuant to Order 1715-1, it had, nevertheless made use of the Lands, and the Board ought to have been alert to the fact that it would have had to make use of the Lands for at least the purposes required to initiate its application to the OGC.

[22] CNRL points to the fact that the Board issued Order 1715-4 as a consent order. CNRL submits that a review of Mr. Kerr's July 5, 2012 response does not indicate any disagreement with any portion of the termination request, including the request that monies paid pursuant to Order 1715-1 be returned.

[23] It is true that the July 5 email does not express disagreement with any part of CNRL's request. But neither does it express agreement with the request that the monies paid pursuant to Order 1715-1 be returned. It expresses that "Mr. Kerr welcomes CNRL's decision" that it will not be proceeding with any wells on the Lands. It indicates "We look forward to receiving a copy of the Board's Order indicating CNRL's right of entry application has been terminated" and confirms that "we will issue a final bill and return to CNRL any unexpended portion of the advance costs". It expresses agreement, therefore, with two of CNRL's requests, namely that the right of entry order be terminated and that the unexpended portion of the advance costs be returned, but is silent with respect to the request for the return of monies paid pursuant to Order 1715-1. In response, the Board noted there were "no objections to the application to terminate the right of entry" and advised it would proceed to process a Consent Order and adjourn the arbitration hearing. While I think the Board cannot be faulted for thinking Mr. Kerr had indeed consented to all of CNRL's requests, and for including all three of CNRL's requests in the consent Order, its response could be construed as limiting the consent order to the termination of the right of entry. Immediately upon receipt of Order 1715-4, Mr. Kerr, through his counsel, indicated his lack of consent to the repayment of monies paid pursuant to Order 1715-4. I accept that Mr. Kerr did not in fact consent to the return of monies paid pursuant to Order 1715-1.

[24] I find it is appropriate to review Order 1715-1 for two reasons. The first is that CNRL did in fact use the Lands, although that use was not pursuant to the entry Order, and the Board terminated the entry on CNRL's advice that it had not used the Lands.

The second reason is that Mr. Kerr did not, in fact, consent to paragraph [2] of Order 1715-4. Reconsideration of Order 1715-4, and in particular paragraph [2] of the order is, therefore, necessary. Reconsideration of this portion of the Order and a determination of whether all or any part of the monies paid to Mr. Kerr pursuant to Order 1715-4 should be returned to CNRL gives rise to the following issues:

- Should Mr. Kerr receive compensation for CNRL's use of the Lands?
- If so, how much?

[25] No one seeks reconsideration of paragraph [3] of Order 1715-4. The only issue that arises with respect to the repayment of the unexpended portion of the advance costs, is whether the amount that was expended is reasonable, and whether a greater portion should be refunded to CNRL.

Should Mr. Kerr receive compensation for CNRL's use of the Lands?

[26] CNRL argues that the Board does not have jurisdiction to determine compensation because the right of entry was terminated. The Board is being asked, however, to reconsider an order made at the same time it made the order to terminate the right of entry. In conducting the reconsideration, and considering the information now available to it, the Board can place itself back in time and consider the matter as if the termination order had not yet been made. If the Board had realized when it made the termination order that the request for the return of the $10,000 partial payment had not been consented to, it would have had to consider whether all or part of the partial compensation should be returned upon terminating the right of entry.

[27] The Board has the express legislative power under section 155 of the *PNGA* to reconsider its orders. If the Board lost jurisdiction to determine compensation upon granting the termination order, then it would lose its ability to reconsider, contrary to express legislative intent. I find the Board did not lose jurisdiction to reconsider its order that Mr. Kerr return the $10,000 partial payment to CNRL. In reconsidering that order, and determining whether Mr. Kerr may retain all or any part of the partial payment, it is effectively asking whether Mr. Kerr should receive compensation in the circumstances.

[28] CNRL further argues that the Board's authority to award compensation is limited to loss or damage arising from the right of entry. As CNRL did not enter the Lands pursuant to the right of entry, it argues there is no basis for an award of compensation.

[29] The Board's authority to determine compensation is found in section 162 of the *PNGA*. Section 162(1) provides:

> 162(1) Unless the parties to an application otherwise agree, if the Board or a mediator has made a right of entry order, the board by order,
>
> (a) must determine the amount of rent, if any, or compensation to be paid to the landowner,...

[30] Section 162(2) speaks to the scope of that compensation and specifically contemplates compensation payable to a landowner arising from events prior to an

application to the board, and therefore, prior to a right of entry order having been granted. It provides:

> 162(2) An amount determined under subsection 1(a) may include, without limitation, compensation to the landowner relating to negotiation with the right holder before the application was made to the board.

[32] In this case, a mediator made a right of entry order and the parties did not come to an agreement respecting the amount of rent or compensation payable to the landowner. In accordance with section 162(1), therefore, the board must determine the amount to be paid. In accordance with section 162(2), the amount determined may include compensation to the landowner relating to negotiation with the right holder before the application was made to the board, and therefore before any right of entry order was granted. The use of the words "without limitation" means that the compensation to be determined is not limited to compensation relating to negotiation, but could include other loss or damage arising from the company's request to enter the land. At the very least, prior to terminating the right of entry order, the Board could have determined, and must now determine on this reconsideration, whether an amount should be paid to Mr. Kerr relating to negotiation with CNRL before the application was ever filed with the Board.

[33] Section 167(3) of the *PNGA* sets out the Board's authority when dealing with an application to terminate a right of entry order. Subsection 167(3)(c) speaks to the situation, as in this case, where a right of entry has not been exercised, and provides that the Board "may make an order terminating the right of entry with or without terms or conditions." Subsection 167(4) provides that an order sunder subsection 167(3) which includes an order terminating a right of entry where the right of entry has not been exercised, "may include an award of money for any or all of the following amounts that have not been received at the time of the order:

(a) rent or compensation for the right of entry that is the subject of the application;
(b) damages in relation to the right of entry;
(c) any other amounts owing under the surface lease or past orders of the board."

[34] The Board clearly, therefore, has the authority to award compensation when terminating a right of entry order, even when the right of entry order has not been exercised. The legislation clearly contemplates that, even where a right of entry has not been exercised, compensation to a landowner may be payable and, an order of compensation may be made as a condition of terminating a right of entry. In providing that a landowner may receive compensation, the legislation contemplates that the landowner may experience loss or damage not only as a direct result of the exercise of the right of entry, but "in relation to the right of entry" and in negotiations with the right holder even before an application to the Board for a right of entry order is commenced. Even where a right of entry order is not obtained or acted upon, a landowner may be compensated for loss and damages arising from the activities and processes necessary to obtaining that right of entry and in advance of obtaining a right of entry. It is clearly

the intent of the legislation that a landowner should not suffer loss or damage because a company seeks to invoke its rights to enter private land for an oil and gas activity. When a company requires a right of entry for an oil and gas activity, a landowner cannot say "no", and is forced into a process of having to deal with the company in response to its request. If later, a company decides it no longer intends to proceed with a project, the landowner should not be left out of pocket as a result of the company's actions and decisions. If a company is going to invoke the authority of the Board to ensure its right to enter private land for an oil and gas activity, then it also invokes the authority of the Board to ensure a landowner receives compensation, not only for loss and damage arising from the right of entry itself, but also arising from negotiation with the company in advance of its entry, and for any damage in relation to its entry, whether or not a right of entry order itself is ever acted upon.

[35] I find the Board has the jurisdiction to consider whether Mr. Kerr should receive compensation in the circumstances of this case.

[36] CNRL entered the Lands to conduct a survey, take soil samples and conduct an archaeological assessment. To conduct the survey, CNRL removed some trees from the Lands. These activities were necessary in order to submit an application to the OGC. If the landowner had not granted permission to enter the Lands for these purposes, the Board would have undoubtedly granted a limited right of entry order to enable these activities to take place (see for example: *Storm Exploration Inc. v. Unruh et al*, Order 1609-1, October 23, 2008). So while CNRL did not require an entry order in the circumstances of this case to gain access to the Lands for the purpose of surveying and conducting the other assessments required by the OGC in advance of filing an application for a well permit, its ability to enter the Lands for that purpose was just as compulsory as its right to enter to construct the well itself and not something Mr. Kerr could have denied.

[37] I find CNRL should compensate Mr. Kerr for his loss and damage arising from its use and occupation of the Lands. Although CNRL's use and occupation of the Lands was limited, Mr. Kerr nevertheless incurred loss, and that loss should be compensated.

How much compensation is payable to Mr. Kerr?

[38] Kane Sanders, RPF, estimates compensation value for the timber at $2,197.60. I find Mr. Kerr is entitled to recover this loss from CNRL. Other than the removal of timber, there is no evidence of other physical damage to the Lands.

[39] I have evidence, however, of considerable nuisance and disturbance associated with CNRL's request to enter the lands, in the form of time and expense incurred by Mr. Kerr's attorneys to deal with the request and negotiate compensation, prior to CNRL filing its application with the Board. The information provided indicates Mr. Kerr's attorneys spent approximately 75 hours of their time and incurred $1,929.05 in long distance charges, travel expenses, and consultant fees. I find Mr. Kerr is entitled to recover these losses from CNRL. In the absence of any evidence of the actual value of

Mr. Kerr's attorneys' time, I will use $50/hour, which is the rate the Board usually applies for landowner's time.

[40] To these actual losses, I find Mr. Kerr is entitled to an amount for the compulsory aspect of the taking. This is admittedly an arbitrary amount, incapable of precise calculation, intended to compensate the landowner for the fact that he cannot say "no" to the use of his property for an oil and gas activity (*Dome Petroleum v. Juell* [1982] B.C.J. No. 1510 (BCSC)). Mr. Kerr seeks $500/acre for the compulsory aspect of the entry. Given that there has been minor insult to the Lands, and that the compulsory entry has been terminated early, I find a lump sum of $2,000 to acknowledge the compulsory nature of CNRL's request to use the Lands provides adequate recognition of this factor. This amount is consistent with previous orders of the Board ordering compensation for the compulsory aspect of a limited entry for the purposes of surveying, soil sampling and archaeological assessment in advance of a company making its application to the OGC for a permit. (See for example: *Talisman Energy Inc. v. Eagle-Eye Mountain Ltd.*, Order 1653-1, September 13, 2010).

[41] Mr. Kerr seeks an additional amount to compensate for the value of the Land. I find compensation for this factor is not appropriate in the circumstances of this case. Mr. Kerr has not lost the value of the Lands and there is no evidence before me that the Lands have lost value as a result of CNRL's limited use of them. Mr. Kerr lost rights with respect to 9.42 acres of the Lands for a relatively short period of time. He did not sell the 9.42 acres to CNRL, and never lost his reversionary interest to the 9.42 acres. With the termination of the entry order, he has recovered full rights and full use of the 9.42 acres. I find an award for the compulsory aspect of the entry sufficiently acknowledges his loss of rights for a short period of time and any further payment on account of the value of the Lands is not necessary and would amount to over compensation.

[42] Mr. Kerr seeks $6,000 for nuisance and disturbance. The award on account of the attorneys' time prior to the application to the Board already provides compensation towards initial nuisance and disturbance. The attorneys' accounting for time incurred after the application to the Board, as far as it relates to the Board's proceedings will be considered in determining the claim for costs. The attorneys' accounting of time includes 5.5 hours after the application to the Board for dealing with OCG related matters. This time is not properly compensable as costs, as it does not relate to the Board's proceedings. It is compensable as nuisance and disturbance however, as it is time the landowner's attorneys incurred in dealing generally with CNRL's request to enter and use the Lands. I award $275 for additional nuisance and disturbance.

[43] Mr. Kerr claims an additional $10,000 to compensate for the property's intrinsic and special value to Mr. Kerr and his family and because the well site was to be built within 400 metres of a potential future home site. As the well was never drilled and will not now be drilled, and as the future home site was never constructed, there is no basis for this claim.

[44] I calculate the compensation payable to Mr. Kerr as follows:

Landowner's attorneys' time prior to application to the Board: 75 hours @$50/hour	$3,750.00
Landowner's disbursements prior to application to the Board	$1,929.05
Value of timber	$2,197.60
Compulsory aspect of the entry	$2,000.00
Additional nuisance and disturbance	$275.00
Total	**$10,151.65**

[45] Given that Mr. Kerr received $10,000 on account of compensation payable in June 2011, I find interest is not payable on the above award.

Is Mr. Kerr entitled to annual compensation?

[46] Mr. Kerr seeks annual compensation for an additional period of two years on the grounds that, under section 167(1) of the *PNGA*, CNRL could not bring its application prior to September 15, 2013. Given that the Board terminated the right of entry order with the consent of both parties, and that no party has taken issue with the termination of the entry order, I find annual compensation is not necessary. CNRL did not enter the Lands pursuant to the entry order, and the Board terminated the entry order by consent on July 12, 2012. Upon termination of the entry order, there was no ongoing loss to Mr. Kerr arising from the entry to be compensated in an annual payment.

Is CNRL entitled to return of a greater portion of the advance costs?

[47] CNRL submits the account rendered by Mr. Kerr's counsel is not reasonable. The account claims legal fees of $25,704.00 plus HST for a total of $28,959.61 up to the termination of the entry order, and an additional $1,804.00 for legal fees plus HST for a total of $2,020.48 after its termination. CNRL asks the Board to fix Mr. Kerr's legal fees at $15,000 and seeks to recover $17,580.35 of the advance costs in addition to the $7,649.65 already returned.

[48] As to the reasonableness of counsel's bill, CNRL submits there was unnecessary duplication of work between Ms. Hong as junior counsel, and Mr. Mackoff as senior counsel. It submits the time researching experts (26 hours) was excessive, particularly given that Mr. Kerr only retained one expert. It submits there was duplication of work with other files and inappropriate time spent in discussion with the Farmer's Advocates Office (FAO). Mr. Kerr's counsel, in turn, submits the costs of legal representation in the circumstances are not unreasonable. They submit there was no duplication of work and that Ms. Hong performed the vast majority of the work resulting in a lower cost. They submit the time researching experts was not unreasonable, there was no duplication of work with other files, and discussion with the FAO ultimately served to reduce counsel's billable hours.

[49] My review of counsel's account reveals minimal duplication of work between Ms. Hong and Mr. Mackoff. When junior counsel is working under the supervision and

direction of senior counsel, some duplication of work is inevitable and not unreasonable, and ultimately results in less cost to the client than if senior counsel was working without the assistance of a junior.

[50] One of the bases for granting the award of advance costs in the first place was to ensure Mr. Kerr would have the means to seek out and retain experts. I cannot say that the spectrum of experts consulted, including appraisers, realtors, a toxicologist and an econometrician, is inappropriate. Of course, the Board will not now have the opportunity to determine whether the expert retained by Mr. Kerr contributed to the litigation or advanced Mr. Kerr's case. Nor will it have the opportunity to assess the merits of Mr. Kerr's claim for compensation and the contribution of counsel to the advancement of that claim. While the time spent researching experts seems high, having granted Mr. Kerr the ability through an award of advance costs to seek necessary evidence to support a claim before the Board, I am unwilling to require that the funds expended in seeking out experts be refunded now that CNRL has decided not to proceed. If the arbitration had proceeded with a number of experts ultimately found not to have contributed significantly to the advancement of a legitimate claim, perhaps the outcome would be different. But in the circumstances of this case, now that CNRL has decided it no longer requires entry to the Lands, I find Mr. Kerr should not be left out of pocket from his preparations for the arbitration.

[51] I accept that counsel's use of the FAO as a resource likely served to reduce legal costs by eliminating the need for counsel to conduct research into matters upon which the FAO could easily provide information.

[52] I note further that the time entries for the various activities conducted by counsel do not seem excessive or overstated.

[53] In granting advance costs to Mr. Kerr, the Board concluded that the legislature must have intended the Board to be able to ensure the effective participation of landowners in its processes. As noted in that decision (Order 1715-2):

> [23] An entry order is a compulsory taking. While a landowner is entitled to be compensated, in the absence of an agreement with the operator, the landowner has no choice but to engage in the Board's processes to advance a claim. Landowners are frequently unable to support a claim because they present little or no evidentiary support, or because they cannot establish the legal basis for a claim beyond those commonly recognized in law. A landowner is disadvantaged in the absence of effective legal assistance with advancing the evidence and arguments to support alleged loss or damage. The right to compensation provided by the legislation cannot be effectively explored, tested or advanced if one party to the dispute does not have proper representation. The Board's ability to effectively adjudicate a claim for loss or damage is compromised if one side of the dispute is not effectively represented.

[54] CNRL's decision not to proceed with the project and make use of their right of entry, means Mr. Kerr's claim will not be advanced or tested. Having given him the means to do that, however, the Board's ability to ensure his effective participation would

be for naught if, in the absence of making any determination on the merits of his claim, he is required to pay back costs incurred to advance his claim.

[55] I accept that counsel's account up to the termination of the entry order is reasonable. However, I agree with CNRL's submission that given the termination order of June 12, 2012 required Mr. Kerr to return any unexpended portion of the advance costs, legal fees incurred after that date cannot be paid from the award for advance costs. I will consider these fees as part of Mr. Kerr's claim for costs.

[56] I find that the remittance to CNRL for the unexpended portion of the advance costs should be increased by $2,020.48, being that portion of counsel's account incurred after the date of Order 1715-4.

What is an appropriate claim for Mr. Kerr's costs?

[57] Mr. Kerr's attorneys' accounting of time in connection with the application to the Board amounts to approximately 27 hours. I reduce this claim by 2 hours for the mediation teleconference on September 28, 2011 that the attorneys did not attend. I award Mr. Kerr personal costs in the amount of $1,250 calculated as 25 hours at $50/hour.

[58] The attorneys claim telephone charges in the amount of $18.04. I allow this claim.

[59] To this amount, I allow recompense of counsel's account for time incurred after the termination order not specifically related to research into termination of the right of entry order or compensation. Counsel should have conducted research of this nature prior to providing Mr. Kerr's consent to the termination, potentially obviating the need for this reconsideration. I allow $784 in legal fees after the termination order plus HST of 94.08 for a total of $878.08.

[60] I award costs to Mr. Kerr in the amount of $2,146.12.

CONCLUSION

[61] I find it appropriate to reconsider the Board's Order that Mr. Kerr refund the $10,000.00 partial payment to CNRL. I conclude Mr. Kerr is entitled to compensation of $10,151.65. As he has already received $10,000.00, CNRL owes him the balance of $151.65.

[62] I conclude CNRL is entitled to repayment of an additional $2,020.48 from the award of advance costs.

[63] Mr. Kerr is entitled to recover costs from CNRL in the amount of $2,146.12.

[64] The balance owing from CNRL to Mr. Kerr, therefore, is $277.29 ($151.65 + $2,146.12 - $2,020.48 = $277.29).

[65] Each party shall bear their own costs of this application for reconsideration and costs.

ORDER

[66] The Board deletes paragraph [2] of Order 1715-4 dated July 12, 2012.

[67] The Board orders that Canadian Natural Resource Limited shall forthwith pay to Daniel Leigh Kerr the sum of $277.29.

DATED: December 20, 2012

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "A"
to Board Order 1715-5

File No. 1715
Board Order No. 1715-4

July 12, 2012

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

SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

AND:

Daniel Leigh Kerr

(RESPONDENT)

BOARD ORDER

On the application of the Applicant, Canadian Natural Resource Limited (CNRL), and with the consent of the Respondent, Daniel Leigh Kerr, the Board terminates its Order 1715-1 dated June 3, 2011 granting CNRL the right of entry to and access across the portions of the Lands described as SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, as shown on the individual ownership plan attached as Appendix "A" attached to Order 1715-1. CNRL advises that it has not made use of the Lands and will not be proceeding with any wells on the Lands.

ORDER

The Surface Rights Board orders as follows:

1. CNRL's right of entry to and access across the portions of the Lands described as SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT is terminated.

2. Daniel Leigh Kerr shall forthwith return to CNRL any monies paid to him in accordance with Board Order 1715-1.

3. Daniel Leigh Kerr shall pay to CNRL any unexpended portion of the advance costs paid to him pursuant to Board Order 1715-2.

DATED: July 12, 2102

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1750
Board Order No. 1750-1

August 17, 2012

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
SECTION 24 TOWNSHIP 87 RANGE 16 WEST OF THE 6TH MERIDIAN
PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

FRANK SCHLICHTING

(Applicant)

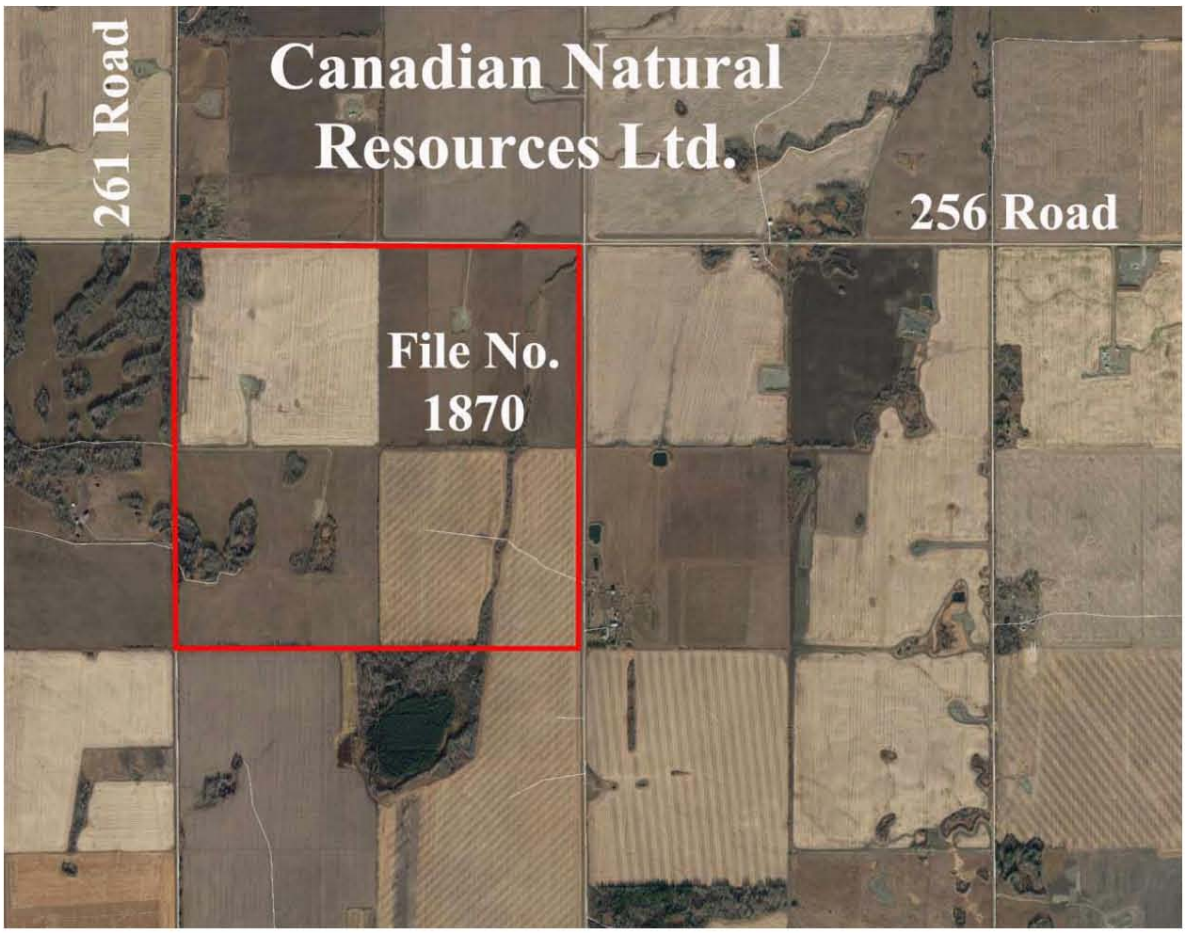
AND:

CANADIAN NATURAL RESOURCES LTD.

(Respondent)

BOARD ORDER


Canadian Natural Resources Ltd.
File No.
1750
Siphon Creek Rd
Siphon Creek Road


261 Road
Canadian Natural
Resources Ltd.
256 Road
File No.
1870

Heard by written submissions closing July 27, 2012.

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[1] The applicant landowner, Frank Schlichting, seeks payment of his costs in relation to his application for rent review. The parties resolved the rent review during the Board's mediation process, but have been unable to resolve the claim for costs.

[2] The Board conducted two mediation sessions. Following the first mediation, Mr. Schlichting traveled to Fort St. John to meet with Ms. Scriba of CNRL to continue their discussions, but were unable to conclude an agreement. The Board conducted a second mediation during which the parties agreed on renewed annual rent but did not agree to Mr. Schlichting's costs.

[3] Mr. Schlichting sent CNRL an invoice for $3,211.00 representing 61 hours of his time at $50/hour and 140 km of travel at $1.15/km. He provided Ms. Scriba with his notes itemizing the time spent and describing the activity engaged in. Subsequent email communication between the parties failed to produce any resolution of costs.

[4] Ms. Scriba argues CNRL cannot agree to the hours set out in Mr. Schlichting's notes as many are for issues unrelated to the rent review and are excessive or unreasonable. She agrees to the mileage claim and agrees to 13.5 hours commencing March 6, 2012 with the Board's mediation, for a total of $836.00.

[5] Mr. Schlichting submits his claim is reasonable and notes that it does not include many expenses that could reasonably have been included such as for registered letters, postage, office expenses and cell phone use. He suspects his actual time spent is much greater than that claimed.

[6] Much of the submissions of both parties are directed at whether or not there was a prior agreement by CNRL to pay costs of $2,500 representing 50 hours at $50/hour. Mr. Schlichting argues there was no agreement but notes that CNRL was apparently prepared to accept 50 hours as reasonable at the time the offer was made. He explains the larger claim includes hours and travel costs incurred subsequently. Ms. Scriba argues CNRL had agreed to pay the $2,500 claim contingent on receiving an itemized statement, and that upon review of the itemized statement they no longer accept the claim as reasonable. I find that interpretation is not born out by the email correspondence before me. The correspondence makes it clear that Ms. Scriba thought there had been an earlier agreement on costs, although there was not, and had in fact received the "ok" to pay that amount. The request for details came later, to support the larger claim.

[7] The Board has the discretion to require that a party pay all or part of another party's actual costs in connection with an application. "Actual costs" are defined in the *Petroleum and Natural Gas Act* and include actual reasonable expenses incurred by a party in connection with a Board proceeding, and an amount on account of the reasonable time spent by a party in preparing for and attending a Board proceeding.

[8] The reasonable time spent in connection with an application, will include time to prepare and file an application, communications and discussions with the other party and the Board in relation to the scheduling and resolution of the application, reasonable time spent on research and preparation for Board proceedings, and attendance at Board proceedings.

[9] I have reviewed Mr. Schlichting's itemization of his time. The time incurred prior to providing CNRL with Notice to Renegotiate, is not time incurred in connection with a Board proceeding and is not properly included in a claim for costs. I accept time spent in preparation to file a Notice to Renegotiate as the commencement of time spent "in connection with a Board proceeding". Most of the activities described in Mr. Schlichting's notes, with the exception of the claim for time spent in discussions with the OGC, I find are properly part of a claim for costs. While some of the entries lack detail making it difficult to determine whether the activity was either properly "in connection with a Board proceeding" or "reasonable", I find a claim for 50 hours in the circumstances of this case involving two telephone mediation sessions, an additional settlement meeting between the parties, and the preparation and research required to participate effectively in the proceedings, is not unreasonable. While Mr. Schlichting's original offer of $2,500 included time not properly forming part of a claim for costs, his time incurred subsequent to that proposal is clearly time spent in connection with a Board proceeding.

[10] While I accept that Mr. Schlichting undoubtedly incurred disbursements other than that claimed for mileage for a single trip to and from Fort St John, in connection with filing and serving the application, in the absence of receipts, I am not willing to make an order for additional disbursements beyond the $161.00 claimed and accepted by CNRL.

[11] I find CNRL should pay costs of $2,661.00 calculated as follows:

50 hours x $50/hr for time	$2,500.00
Disbursements	$ 161.00
Total	$2,661.00

ORDER

The Respondent, Canadian Natural Resources Ltd, shall forthwith pay to the Applicant, Frank Schlichting, the sum of $2,661.00 as costs pursuant to section 170(1)(a) of the *Petroleum and Natural Gas Act.*

DATED: August 17, 2012

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1797
Board Order No. 1797-1

January 8, 2014

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
SECTION 33 TOWNSHIP 113 PEACE RIVER DISTRICT EXCEPT THE SOUTH ½ AND PLAN PGP43992
(The "Lands")

BETWEEN:

Terrance Henry Iverson and
Donna Marie Iverson

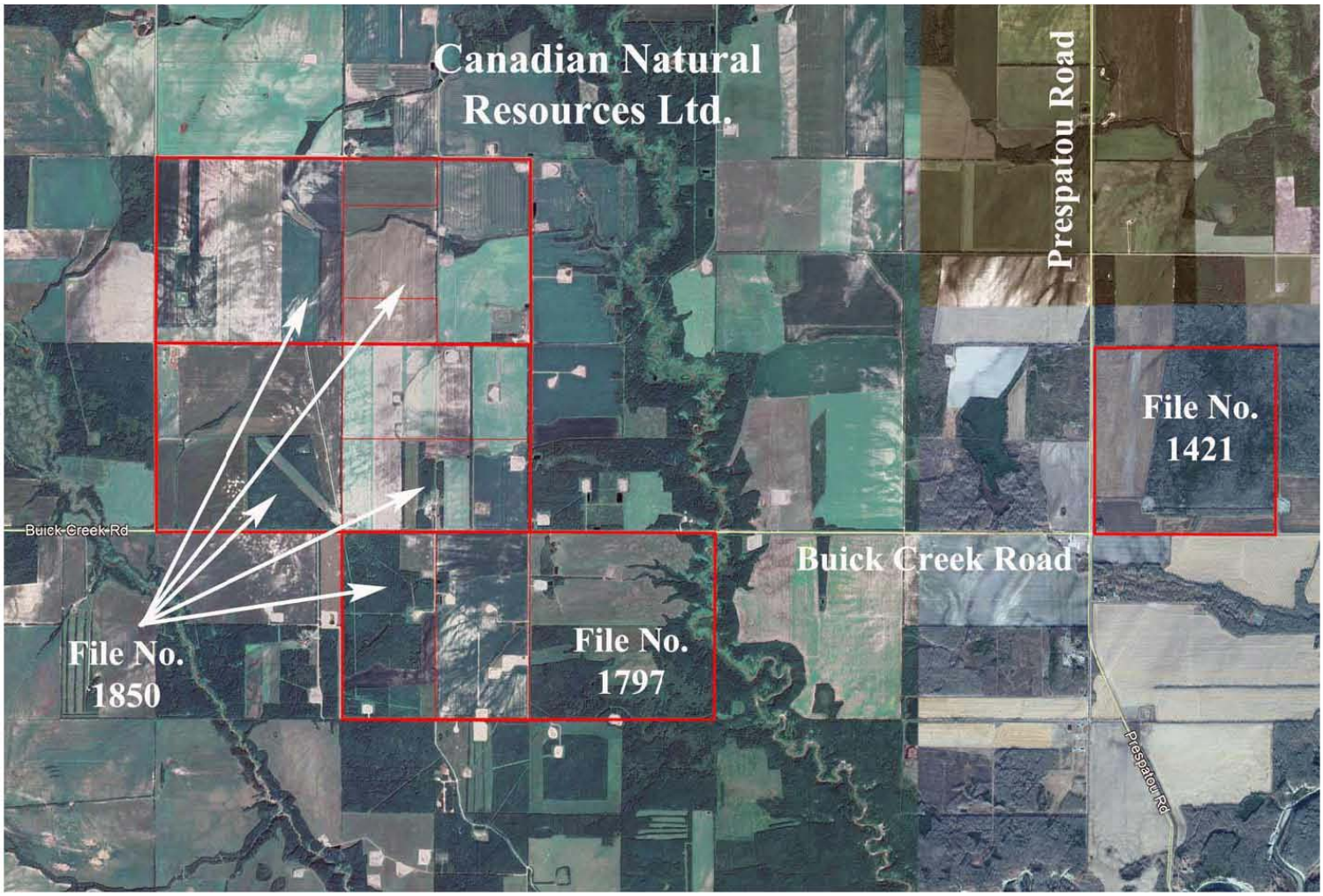
(APPLICANTS)

AND:

Canadian Natural Resources Limited

(RESPONDENT)

BOARD ORDER


Canadian Natural Resources Ltd.
Prespatou Road
File No. 1421
Buick Creek Rd
Buick Creek Road
File No. 1850
File No. 1797
Prespatou Rd

Heard: October 16 and 17, 2013 at Victoria
Appearances: Donna Iverson, Barrister and Solicitor, for the Applicants
Heidi Meldrum, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] Mr. and Mrs. Iverson seek review of rent payable under three leases with Canadian Natural Resources Limited (CNRL). The Iversons seek annual rent in the range of $1,100 to $1,200/acre whereas CNRL's offers for the three sites range from $867 to $897/acre. Additionally, the Iversons seek rent for a borrow pit associated with one of the well sites and for severance associated with another site, which CNRL opposes.

[2] The parties disagree on the effective date of any renewed rent. CNRL relies on the Form 2 delivered September 13, 2012 and section 165(7) of the *Petroleum and Natural Gas Act* (the *Act*) to argue that any renewal is effective on the anniversary date of each lease immediately preceding September 13, 2012. The Iversons argue that CNRL effectively received notice to negotiate well in advance of the Form 2 being delivered. Relying on the Board's decision in *Wilderness Ranch Ltd. v. Progress Energy Ltd.*, SRB Order 1786-90-1, February 27, 2013, they submit the effective date of any renewed rent should be the anniversary date immediately preceding the date of such effective notice to negotiate.

ISSUES

[3] The issues for this arbitration are to determine the amount of annual rent payable for each site going forward and the effective date of any renewed rent. Specific issues with respect to individual leases include: whether compensation for the borrow pit at B-14-A should be included in the rent review, and whether there is severance associated with C-5-A.

[4] The parties' positions with respect to renewed rent and the effective dates of renewal for each lease are summarized below:

Lease	Start date	Last Renewed	Iverson Renewal Date	CNRL Renewal Date	Current Rent	Iverson Proposed Rent	CNRL Proposed Rent
B-14-A	Jan. 2/96	Jan. 2/06	Jan. 2/11	Jan. 2/12	$5,700	$8,998	$6,620
C-4-A	Dec. 19/98	Dec.19/03	Dec. 19/07	Dec. 19/11	$4,100	$6,492	$4,800
C-5-A	Sept. 29/05*	n/a	Sept. 29/10	Sept. 29/11	$3,300	$5,950	$3,900

*The lease is actually dated July 8, 2005, but both parties referred to a start date of September 29, 2005 and based proposed renewal dates on a September 29th anniversary.

[5] The parties' positions with respect to the compensable areas for which rent is payable for each lease are as follows:

Lease	Lease Area	Severance Iversons	Severance CNRL	Iverson Total Compensable Area	CNRL Total Compensable Area
B-14-A	6.58 acres	1.6 acres*	.8 acres	8.18 acres	7.38 acres
C-4-A	5.41 acres	none	none	5.41 acres	5.41 acres
C-5-A	4.5 acres	1.0 acre	none	5.5 acres	4.5 acres

*Includes .8 acres for borrow pit.

FACTS

[6] Mr. and Mrs. Iverson own the Lands described as Section 33 Township 113 Peace River District except the South ½ and Plan PGP43992 (the Lands). The Lands are located in the Buick area, approximately 50 miles north of Fort St. John. The Iversons do not live on the Lands and have not farmed the Lands since 1985. The Lands are currently farmed by Bruce Roberts. Mr. Roberts principally uses the Lands to grow forage for his cattle.

[7] There are three leases on the Lands subject to this rent review application known as B-14-A, C-4-A, and C-5-A.

B-14-A

[8] The lease for well site B-14-A was initially signed January 2, 1996 and is for a 6.58 acre area comprised of a well site (4.18 acres) and an access road (2.4 acres). The rent for this site was last renewed as of January 2, 2006 at $5,700.

[9] There is a borrow pit associated with this well site of approximately .8 of an acre that is not covered by the lease, but for which the Iversons also seek a rental payment. Mr. Iverson signed a consent for the borrow pit, but requested that it be re-configured so it would not fall on cultivated land. CNRL did not honour this request. The Iversons received an installation payment for the borrow pit, but have never been paid rent for the area occupied by the borrow pit. When Mr. Iverson inquired about rent for the borrow pit, he was advised by Dwayne Werle, of CNRL, that "we do not pay annual rental on borrow pits".

[10] There is an area south of the access road between the road and a ditch of approximately .8 of an acre that both parties agree is severed by this lease.

[11] The B-14-A well is suspended. The well site contains a well head and a couple of risers. CNRL typically accesses this well site twice a year for yearly inspection and weed control.

C-4-A

[12] The lease for well site C-4-A was initially signed December 19, 1998 and is for a 5.41 acre area comprised of a well site (4.18 acres) and an access road (1.23 acres). The rent for this site was last renewed effective December 19, 2003 at $4,100.

[13] C-4-A is located to the south and east of B-14-A. The access road is accessed off of the access road for B-14-A at the south west corner of the B-14-A well site, and crosses the drainage ditch in which a 12-inch culvert has been placed. The well site contains a well head, a riser and a fence, which has partially fallen over. Other than the very small fenced area, the lease area, including most of the access road has been farmed over.

[14] The culvert plugs up with ice in the winter, and is too small to handle heavy spring run off and rain with the result that an area of the field south of B-14-A and west of C-4-A is prone to flooding. Sometimes this area cannot be seeded at the same time as other parts of the field because it is too wet. The flooding has caused some erosion and the water has cut ruts in the field.

[15] Mr. Iverson asked CNRL to fix the drainage problem in 2002, and again in 2004 and 2005, without satisfaction. Mr. Roberts has also complained about the culvert, although neither he nor Mr. Iverson made any complaints to CNRL about the culvert and drainage problem in the last year. Mr. Roberts sets bales out in the draw in an effort at controlling the erosion.

[16] Mr. Roberts experiences problems with weeds, including foxtail, on the lease area.

[17] The C-4-A well is suspended. CNRL typically accesses the well once a year for weed control.

C-5-A

[18] The lease for well site C-5-A was initially effective September 28, 2005 and is for a 4.5 acre area comprised of a well site (3.41 acres), an access road (0.2 acres), and a borrow pit (0.89 acres) located on the east side of the well site. The well site contains a well head, a methanol tank, and a riser. The well is operational and is accessed daily with a pick up truck.

Communications Between the Parties Respecting Rent Review

[19] The Iversons served CNRL with a Form 2 – Notice to Negotiate respecting all three leases on September 12, 2013. The evidence discloses that prior to the Notice to Negotiate being served, the parties had engaged in other communications respecting the renewal of these leases.

[20] By letter dated December 3, 2007 CNRL advised the Iversons they were entitled to a review of the C-4-A lease. CNRL further advised it was not aware of any factors warranting a change to annual rent, and that the current annual rent would, therefore, remain unchanged for a further five-year period. CNRL advised the lease would be eligible for further review on December 19, 2013. By hand-written note on the bottom of this letter, faxed back to the attention of Carolyn Richards at CNRL on January 22, 2008, Mr. Iverson requested a rent review for this lease.

[21] Mr. Iverson discussed annual rent with Ryan Deloouw of CNRL, and on February 12, 2008, Mr. DeLoouw faxed a proposal to Mr. Iverson. By letter dated April 29, 2008 to Mr. Deloouw, transmitted by fax on April 30, 2008, Mr. Iverson presented a proposal for revised annual rent.

[22] The evidence discloses no further communications between the parties on the subject of rent renewal for C-4-A until the summer of 2011. By letter dated August 24, 2011, CNRL agreed to increase the annual rent for C-4-A to $4,600 effective December 19, 2008.

[23] By letter dated August 24, 2011, CNRL agreed to increase the annual rent for B-14-A to $6,100 effective January 2, 2011.

[24] By letter dated August 24, 2011, CNRL agreed to increase the annual rent for C-5-A to $3,300 effective September 29, 2011.

[25] Upon receipt of the August 24, 2011 letters from CNRL, Mr. Iverson had several conversations with Ashley Scriba and Dwayne Werle, both of CNRL, but no agreement was reached. On July 6, 2012, Mrs. Iverson wrote to Ms. Scriba with a proposal. The Form 2 - Notice to Negotiate was sent in September 2012, and these applications were filed in December 2012.

[26] By letters dated March 22, 2013, CNRL agreed to increase the annual rent for C-4-A to $4,800 effective December 19, 2011; for B-14-A to $6,620 effective January 2, 2011; and for C-5-A to $3,900 effective September 29, 2011.

ANALYSIS

What is the effective date of any renewed rent?

[27] CNRL submits that in accordance with section 165(7) of the *Act*, any renewed rent is effective on the anniversary date immediately preceding the Notice to Negotiate, namely, for B-14-A: January 2, 2012; for C-4-A: December 19, 2011; and for C-5-A: September 29, 2011. The Iversons argue that CNRL was aware of the Iverson's desire to renew rents before the Form 2 was served, and that CNRL had engaged in rent renewal negotiations before the Form 2 was served.

[28] With respect to C-4-A, the Iversons argue the handwritten request for review faxed to CNRL on January 21, 2008 provided effective Notice to Negotiate, and that the renewal date should be the anniversary preceding, or December 19, 2007. With respect to B-14-A and C-5-A, the Iversons argue the renewal dates should be the anniversaries preceding CNRL's letters of August 24, 2011, or January 2, 2011 for B-14-A, and September 28, 2010 for C-5-A.

[29] In support of the submission that a formal Notice to Negotiate is not necessary if notice can be deemed to effectively have been given, the Iversons rely on the Board's decision in *Wilderness Ranch, supra*. In that case, the landowner applied to the Board for a rent review following a protracted period of negotiation between the parties, but did not send the operator a Notice to Negotiate in Form 2. The operator argued that as the Notice to Negotiate in the required form had not been served in accordance with section 165(2) of the *Act*, the Board could not proceed to hear the application. The Board found that while use of the prescribed form to initiate the rent review process was preferable, it was not necessary. The Board found notice must be in writing and clearly indicate an intention to negotiate an amendment to the rental provisions in the lease. The Board reviewed the history of communications between the parties and determined that notice had effectively been given through email and that any renewed rent would be effective on the anniversary preceding the date determined to have provided effective notice.

[30] CNRL argues that the circumstances in *Wilderness Ranch* are distinguishable because the prescribed form of notice had never been given, whereas in this case, a Form 2 -Notice to Negotiate was delivered. CNRL argues its delivery dictates the renewal date of any revised rent in accordance with section 165(7) of the *Act*. The Iversons argue that the parties were engaged in negotiation long before the prescribed notice was provided and that they ought not to be prejudiced for failure to use the prescribed form, when the intent to renegotiate was clear from the circumstances and the parties were actively engaged in negotiations. Further, they argue their eventual use of the prescribed form following protracted negotiations should likewise not prejudicially serve to restart the rent review process and change the effective date in the circumstances.

[31] The *Act* entitles either party to a surface lease or Board Order to request a rent review following the fourth anniversary of the effective date of a lease or Board order, or the effective date of the most recent amendment to the rental provisions of a surface lease or Board order. In accordance with section 165(2) of the *Act*, the right holder or landowner may serve notice on the other party in the form prescribed by the Board's rules. The Board has prescribed the Form 2 – Notice to Negotiate for this purpose. Section 165(7) of the *Act* provides that any renewed rent is retroactive to the anniversary date of the lease or Board Order immediately preceding the notice.

[32] Because a rent review does not occur automatically, the purpose of the notice is to initiate the review. Initiation of the review then triggers the effective date of any

renewal, and sets the earliest date by which application may be made to the Board if renewed rent is not agreed. It also serves to set the earliest next available date for either party to request a rent review. Unless one or other of the parties gives notice to the other party that rent should be reviewed, the current rental provisions remain in place unless the rent is renegotiated following the fourth anniversary of the date the rent was last negotiated or renegotiated.

[33] I agree with the decision in *Wilderness* that use of the prescribed form to initiate the rent review process is preferable, but not necessary. It is preferable because it serves to clearly initiate the process and provide the trigger for determining the effective date of any renewal and the entitlement date for the next rent review. If the prescribed form is used, there can be no doubt in the mind of the other party that the rent review process has been engaged. However, if the written communications between the parties effectively serve the purpose of the notice, namely to clearly initiate the review process and engage the other party, use of the prescribed form should not be necessary. (See also: *London v. Encana Corporation*, SRB Order 1747-1, December 19, 2013).

[34] In this case, with respect to C-4-A, CNRL wrote to Mr. Iverson on December 3, 2007 advising he was "entitled" to have the C-4-A lease reviewed, but that CNRL was not aware of circumstances warranting a change to the rent. The legislation in force at the time was similar to the current legislation in that it did not create any "entitlement" to review but required that a rent review be initiated by one of the parties by written notice. The legislation did not prescribe a five-year window of entitlement as suggested by the letter. Mr. Iverson wrote on the bottom of the letter: "This is a request for you to enter into a rent review on this well" and faxed it back to CNRL on January 22, 2008. Mr. Deloouw provided a proposal in writing for revised rent on February 8, 2008 and Mr. Iverson, in turn, provided a written proposal on April 28, 2008. The correspondence references telephone communications between the parties. It is clear that CNRL received Mr. Iverson's hand-written note as a request to engage in rent review negotiations and that the parties did in fact engage in rent review negotiations. For whatever reason that is not evident from the evidence, the parties did not pursue the negotiations further until the summer of 2011. The correspondence leaves no doubt, however, of Mr. Iverson's intent to initiate the process in January 2008, and of CNRL's engagement in the process.

[35] I find that with respect to C-4-A notice to initiate the rent review process was effectively given as of January 22, 2008. In accordance with section 165(7) of the *Act*, therefore, the effective date of any renewed rent will be the anniversary preceding this notice, or December 19, 2007.

[36] With respect to B-14-A, CNRL sent the Iverson's a letter dated August 24, 2011 offering to amend the rental provisions in the lease. The Iversons engaged in discussions with CNRL personnel in response to this letter in an effort to agree on a renewed rent. I find this letter effectively provided notice to initiate the rent review process as required by section 165(2) of the *Act*. In accordance with section 165(7)

of the *Act*, therefore, the effective date of any renewed rent will be the anniversary preceding this notice, or January 2, 2011.

[37] Similarly, with respect to C-5-A, CNRL sent the Iversons a letter dated August 24, 2011 offering to amend the rental provisions in the lease. The Iversons engaged in discussions with CNRL personnel in response to this letter in an effort to agree on a renewed rent. I find this letter effectively provided notice to initiate the rent review process as required by section 165(2) of the *Act.* In accordance with section 165(7) of the *Act*, therefore, the effective date of any renewed rent will be the anniversary preceding this notice, or September 29, 2010.

Rent Review – Consideration of Relevant Factors

[38] Section 154 of the *Act* sets out the factors the Board may consider in determining the initial compensation or annual rent payable for the use and occupation of private land. Those factors are as follows:

(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) other factors or criteria established by regulation.

[39] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[40] Section 154(2) of the *Act* further provides that in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was originally granted or last renewed.

[41] The purpose of a rental payment is to address the immediate and ongoing impact of an operator's activity on private land to the landowner and to the lands (*Dalgliesh v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)). The rental payment is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing use of the lands. In an application for rent review, any revised rent is payable for the period following the effective date,

not for past losses. In determining a revised annual rent with reference to actual loss and on consideration of the relevant factors, an analysis of probable future use of the land and probable future losses must be undertaken (*Canadian Natural Resources Ltd. v. Bennett, et al*, 2008 ABQB 19).

[42] Following consideration of the various factors, the Board must step back and consider whether the award in its totality gives proper compensation, as there may be cases where the sum of the parts exceeds, or where the sum of the parts falls short of proper compensation (*Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[43] In this case, neither party supported their view of appropriate rent with reference to specific evidence of loss relating to the factors set out in section 154 of the *Act*. Both parties simply advanced a lump sum amount which, if divided by the number of acres in issue, could be expressed as a per acre amount. I will nevertheless consider the relevant factors for which I have evidence or argument.

Compulsory Aspect of the Entry

[44] The Iversons and their witnesses referenced the compulsory aspect of entry to private land for oil and gas purposes, and the relative imbalance of bargaining power when negotiating compensation for entry. In British Columbia, a surface landowner typically does not own the subsurface rights, and the holder of subsurface rights has the right to enter private land to develop that resource. A private landowner is not in the position of being able to choose whether to permit oil and gas development on their land or to choose who the operator of any oil and gas facility will be. An operator is liable, however, to pay compensation to the landowner for loss or damage caused by the right of entry, and except where a right of entry relates to a flow line, to pay rent to the landowner during the duration of the right of entry.

[45] While the compulsory aspect of an entry is typically acknowledged in an initial entry payment, the entry and occupation of private land for an oil and gas activity remains compulsory until terminated in accordance with legislative provisions. Where a right of entry has been exercised, a landowner does not have the power to terminate that relationship or to oppose the assignment of a right of entry to another operator. I accept that renewed rent may reflect this ongoing compulsory relationship.

Value of the Land and Change in the Value of Land

[46] The Iversons provided evidence of two bulk sales each involving several quarter sections in the area in 2012, indicating land value of approximately $1,160/acre.

[47] The Iversons provided evidence of BC Assessment's determination of the market value of the Lands from 2004 to 2012. BC Assessment's conclusion of

market value as of July 1, 2004 (for the 2005 assessment roll) was $73,334. This was not the assessed value of the Lands for the 2005 roll, as the Lands are classified as Farm requiring their assessment in accordance with prescribed rates and not on the basis of their market value. BC Assessment's determination of value as of July 1, 2012 (for the 2013 roll) was $193,562.77, indicating an increase in value of about 246% in eight years.

[48] Revised rent may reflect that land values have increased since these leases were last negotiated.

Loss of Profit

[49] Mr. Iverson's evidence was that he leases the land to Mr. Roberts to farm. He himself has not farmed the Lands since 1985. I have no evidence of Mr. Iverson's rental income from the Lands or evidence about how the leases might affect the rental income. Mr. Iverson's evidence was that Mr. Roberts does not pay much to farm the Lands, that he had not paid this year's rent, and that it is really more of a stewardship relationship to keep the Lands in cultivation.

[50] Mr. Iverson's evidence was that CNRL used to pay him $400/acre for crop loss when the Land was cultivated with fescue. Mr. Deloouw's letter of February 12, 2008 with respect to C-4-A offered crop loss of $300/acre, calculated as six bales per acre at $50/bale.

[51] Ms. Scriba, CNRL's surface landman for the Buick area, gave evidence that she generally paid $200/acre, calculated as four bales per acre at $50/bale. Her evidence was that the amounts paid by CNRL did not typically depend on whether land was cultivated with a crop or hay for pasture. She was not able to provide worksheets suggesting particular amounts for any of the factors listed in section 154 of the *Act*, including crop loss, either for these losses or any of the comparable leases referred to by CNRL.

[52] Mr. Roberts' evidence was that he generally is able to seed and harvest 220 to 230 acres. In 2013, only 200 acres could be cultivated because of flooding. His evidence was that he places up to 15 bales in the draw in an effort to control erosion and water damage. Presumably, these are bales that could otherwise be sold or used to feed livestock.

[53] I have no evidence of actual yields or crop prices with which to calculate loss of profit. In any event, this application is not an application from Mr. Roberts, as the occupier of the Lands, pursuant to section 163 of the *Act*, for his loss incurred as a result of CNRL's entry to the Lands. While there is no doubt the leases take areas of the Lands out of production, the evidence is insufficient to properly estimate the Iversons' actual or probable ongoing loss of profit as a result of CNRL's use and occupation of the Lands. Other than to acknowledge that there likely is some loss of

profit arising from CNRL's right of entry, it will be impossible to reflect that loss with any degree of precision in the rent.

Temporary and permanent damage

[54] There is evidence before me of damage to the Lands as a result of flooding, likely caused by the inadequate culvert at C-4-A. The Iversons are not advancing a claim for temporary or permanent damage as part of this rent review. I agree that compensation for temporary or permanent damage to the land should be paid as and when the damage occurs and is not generally incorporated into a rental payment.

Severance

[55] With respect to B-14-A, the parties agree there is approximately .8 of an acre severed along the access road between the road and the ditch. Additionally, the Iversons claim rent for the area occupied by the borrow pit. Both Mr. Iverson and Ms. Scriba referred in their evidence to there being some sort of agreement between the Iversons and CNRL with respect to the borrow pit, although of copy of that agreement was not provided. I was not provided with documentation respecting CNRL's authority to use the Lands for a borrow pit or with respect to the financial arrangements between the parties with respect to the borrow pit. In the absence of this agreement, I cannot determine the rights and obligations of either party with respect to the borrow pit and I make no findings in that regard. As the area occupied by the borrow pit is not included in the lease, however, rent for the borrow pit is not payable under the lease and any claim for rent is not properly part of this rent review.

[56] There is no severance associated with C-4-A.

[57] With respect to C-5-A, the location of the well and access road creates two rectangles of land between the western edge of the well site and the western boundary of the Lands. The Iversons argue these rectangular areas create a severance of approximately one acre; CNRL disagrees. The aerial photograph shows that neither of these rectangular areas is cultivated. To access the rectangular area on the north side of the access road, farm equipment would have to cross the access road. While the rectangular area on the south side of the access road could be accessed by the field, it appears to be too small for efficient and easy access by farm equipment. Mr. Roberts' evidence was that this lease cut off some land that he could not get into to farm. I find that both of these areas are not easily accessible by farm equipment, creating a severance of approximately one acre.

[58] Loss due to severance may be reflected in the rent by increasing the lease area to include the severed areas. Inclusion of the severed area associated with B-14-A brings the compensable area for this lease to 7.38 acres. Inclusion of the severed area for C-5-A brings the compensable area for this lease to 5.5 acres.

Nuisance and Disturbance

[59] As the Iversons do not live on the Lands, they are not impacted by traffic or noise from the wellsites. With respect to B-14-A and C-4-A, there is little in the way of activity at these sites in any event.

[60] Both Mr. Iverson's evidence and Mr. Roberts' evidence indicate that the presence of the well sites creates some nuisance with respect to the farming of the Lands. The position of B-14-A, while not severing land to the east, creates some difficulties with access.

[61] The placement of C-4-A, and in particular the culvert, has created drainage issues that in some years impact the timing of seeding, the nature of the crop that can be planted, and the cultivable area. In some years, additional time and expense is incurred because parts of the field impacted by water run off cannot be seeded when the rest of the field is seeded. Mr. Iverson has written to CNRL in the past expressing his concerns about the drainage, but CNRL has not taken any action to address his concerns. His evidence was that he eventually just "gave up". Mr. Roberts' evidence was that he had also contacted CNRL in the past about the culvert. He described farming these Lands as a "pain in the butt" because of difficulties moving farm equipment from one field to another and because of delay in seeding wet areas.

[62] Mr. Roberts also expressed issues with weed control and indicated he had difficulty getting CNRL to spray the foxtail at the right time. His evidence was that just foxtail and weeds grow in the farmed area of C-4-A.

[63] Mr. Iverson's evidence was that in 2009, he received overdue tax notices for the leased areas. He had to call Victoria and spend time sorting out the situation. Ms. Scriba's evidence was that as far as she is aware, CNRL's taxes are up to date with respect to these well sites. I accept that receipt of an overdue tax notice of a leased area is a nuisance and inconvenience that a landowner should not have to experience.

[64] The evidence indicates that Mr. and Mrs. Iverson certainly spend time dealing with CNRL, although it is not possible to estimate how much time on the evidence before me. They have experienced frustration in bringing concerns to CNRL's attention. While they do not live on the Lands, and while CNRL's activity on the Lands is minimal, the Iversons nevertheless experience nuisance and disturbance as a result of CNRL's rights of entry, and this nuisance and disturbance, although difficult to quantify, may be acknowledged in the rent paid. I find the nuisance and disturbance associated with C-4-A is greater than with respect to the other two sites as a result of inadequate weed and water control and that the rent for C-4-A may reflect that the nuisance and disturbance is greater.

Other leases

[65] Both parties relied principally on rates being paid for other leases to support their respective positions on the appropriate rent payable for these leases.

[66] The Iversons provided evidence of rent renewals in 2013 for six leases between a landowner and Baytex Energy Ltd. located approximately 12 miles to the west of the Lands. The per acre rates for the six leases range from $976 to $1,273, with an average of $1,112. The land covered by these leases is used for crop or pasture.

[67] June Volz gave evidence that she negotiated a rent renewal with CNRL in November 2011 with respect to land owned by her in the Milligan Creek area at $1,000/acre. Her land is used to grow hay for livestock. Mrs. Volz also negotiated rent at $1,000/acre for another landowner in the area. Some of this land is used for crop and some for grazing of livestock. Her evidence was that Milligan Creek is approximately the same distance from Fort St. John as Buick, but in a north easterly direction rather than a northwesterly direction. She described the Buick area as an older settled community in comparison to Milligan Creek, with smaller, more developed land holdings and more community amenities.

[68] John Ross gave evidence of having recently completed rent review negotiations with Devon with respect to leases on land owned by him in the Rose Prairie area, approximately 27 miles north of Fort St. John, about half way between Fort St. John and Buick. One of his leases was renewed at $1,200/acre and the other, containing a long access road, at approximately $1,100/acre.

[69] CNRL provided evidence of 24 leases in the Buick area that were renewed between 2011 and 2013. Nine of the leases are with respect to land owned by a single landowner, and the remaining 15 leases are with respect to land owned by another single landowner. Both of the landowners rent their land to other farmers. The land is mixed farmland, some cultivated and some pasture, with some bushland. The lease rates range from $653 to $1,149 per acre. The site leased at $653/acre is a nine-acre site with a very long access road. The site leased at $1,149 is for a very small area for a well extension. Removing these low and high leases with distinguishable factors, leaves a range of $679 to $943 per acre, with leases from four to eight acres ranging between $846/acre for a 6.33 acre well site to $922 for a 7.16 acre battery site, with an average of $886/acre.

[70] Ms. Scriba's evidence was that CNRL has about 165 leases in the Buick area. CNRL is the main operator in the Buick area, holding the vast majority of the leases. CNRL's offers in this case fall within the range of the lease rates being paid by CNRL. I was not provided with any evidence of the lease rates paid by other operators in the immediate area.

[71] Ms. Scriba's evidence was that in determining an amount to offer for renewed rent, she looked at "what other people are receiving in the area" and the "heads of compensation" as if she was going to "sign it up today". She starts with a "compensation worksheet", and in the case of a rent review, typically considers crop loss, nuisance and disturbance, and any severance. Her evidence was this calculation generally results in an amount lower than what other people are receiving, and that, consequently, she will make a global offer that is not broken down by specific factors or presented as a per acre amount. In presenting an offer, she provides the landowner with other CNRL leases from the area for comparison. She was not able to provide compensation worksheets for the Iverson sites and could not say what portion of CNRL's offers related to crop loss, nuisance and disturbance or other specific factors. She was similarly not able to provide any detail or background to the amounts agreed in the comparable leases provided. Her evidence was the use of the land typically makes little difference in the amount of compensation paid.

Determination of Appropriate Annual Rent

[72] It is not possible on the basis of the evidence before me to calculate the actual or anticipated losses incurred by Mr. and Mrs. Iverson as a result of the right of entry. The evidence does not permit an estimate of probable loss of profit, or an estimate of the value of either intangible, or tangible, ongoing nuisance and disturbance. While I accept that the landowners experience nuisance and disturbance that should be reflected in the rent, and likely incur other losses that should be reflected in the rent, the best I can do with the evidence before me is to determine an appropriate annual rent on the basis of the evidence of the amounts generally paid to others.

[73] While the legislation sets out various factors for the Board's consideration in determining an amount paid for initial entry or as annual rent, a review of the Board's decisions demonstrates how difficult it is for the Board to determine rent on an analysis of all of the factors set out in section 154 of the *Act.* The decisions demonstrate that it is difficult, if not impossible, for most landowners to substantiate actual loss with evidence. More often than not, the determination of annual rent is an exercise in estimation and comparison than a precise calculation. Given the difficulty associated with providing evidence to quantify actual loss, both landowners and operators in rent review arbitrations often take the approach of determining rent principally from an analysis of other leases. Indeed, both parties took this approach to the determination of rent in this case.

[74] A review of the Board's decisions demonstrates that in the absence of evidence to establish and quantify actual or probable loss, rent may be based on evidence of average rents generally. Where the evidence falls short of demonstrating actual loss to the landowner, the Board has been satisfied to fall back on average rents paid to other landowners or on the offer made in that particular case where it reflects or exceeds "going rates".

[75] This approach to the determination of rent is less concerned with actual loss and recognizes that the determination of rent is often somewhat arbitrary. It recognizes that, in the absence of special individual losses that can be substantiated with evidence, it may be more important to ensure some equity of treatment between landowners than to focus on precise loss, which is difficult to demonstrate or prove in most cases. While possibly over compensating landowners for their actual tangible losses, this approach acknowledges value for intangible losses incapable of calculation, including the ongoing compulsory aspect of the relationship between the parties.

[76] In determining rent based on other leases, CNRL argued it is not appropriate to rely on leases from outside the Buick area. The Iversons argued that it is inappropriate to rely solely on area rates set by a single operator holding the vast majority of leases in the area and inappropriate to rely on negotiations with only two landowners. While the rents offered by CNRL are within the range typically paid by them in the Buick area, they are low in relation to the comparables provided by the Iversons from neighbouring areas reflecting rent paid for land in similar circumstances. The evidence does not suggest any particular reason why the rents negotiated by Mrs. Volz or the landowner 12 miles to the west should be higher than average rents in the Buick area. If anything, Mrs. Volz's evidence comparing Buick to Milligan Creek might suggest that land in Milligan Creek could be less valuable than land in Buick given the lack of community services in Milligan, suggesting rents should also be lower. In both of these comparables, the land itself is put to the same use as the Iversons' Lands. The evidence does suggest that rents for land closer to Fort St. John may be higher, again likely attributable to higher land value, which might account for the rent negotiated by Mr. Ross being on the higher side of the general averages.

[77] CNRL's rents in the immediate area are also low in relation to the average rent arbitrated by the Board since 2010. Since 2010, the Board has rendered eight decisions on rent review arbitrations. Expressed as per acre value, the rents awarded range from $721/acre to $1,331/acre with an average of $1,027/acre.

[78] I find in the circumstances of this case, that rent should be set principally on a consideration of rents paid to other landowners and generally reflect average rents paid. The evidence does not support that the Iversons' actual or probable loss is as much as claimed by them. On the other hand, the offer made by CNRL is low in relation to average rates generally paid by other operators and arbitrated by the Board.

[79] I conclude that an appropriate rent to be paid by CNRL to the Iversons should reflect approximately $1,030/acre for both leased and severed areas. This amount acknowledges: the ongoing compulsory aspect of these entries; that the land value has significantly increased since the rents were last determined; that the Iversons incur loss that is not capable of calculation, including nuisance and disturbance; and reflects an average of going rates paid in similar circumstances and rates arbitrated

by the Board. Given the effective date for the C-4-A lease is several years earlier than for the other two leases, use of the same lease rate being a higher than average lease rate for the time recognizes the additional nuisance and disturbance associated with that site.

Conclusion

[80] I determine rent for each of the leases as follows:

Lease	Area including severance	Amount	Effective Date
B-14-A	7.38 acres	$7,600	January 2, 2011
C-4-A	5.41 acres	$5,570	December 19, 2007
C-5-A	5.5 acres	$5,665	September 29, 2010

ORDER

[81] CNRL shall pay annual rent to Donna and Terry Iverson in the amount of $7,600 for the lease described as B-14-A effective January 2, 2011.

[82] CNRL shall pay annual rent to Donna and Terry Iverson in the amount of $5,570 for the lease described as C-4-A effective December 19, 2007.

[83] CNRL shall pay annual rent to Donna and Terry Iverson in the amount of $5,665 for the lease described as C-5-A effective September 29, 2010.

[84] CNRL shall forthwith pay to Donna and Terry Iverson the difference in annual rent already paid and that ordered above for each lease as of the effective dates indicated above.

DATED: January 8, 2014

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1849
Board Order No. 1849-1

April 12, 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
BLOCK A OF THE NORTH ½ OF SECTION 25 TOWNSHIP 88 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT: PART ON PLAN BCP34469
PARCEL A (L19264) OF THE SOUTH ½ OF SECTION 25 TOWNSHIP 88 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
PARCEL B (L19264) OF THE SOUTH ½ OF SECTION 26 TOWNSHIP 88 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Ernest John Wiebe and
Margaret Rose Wiebe

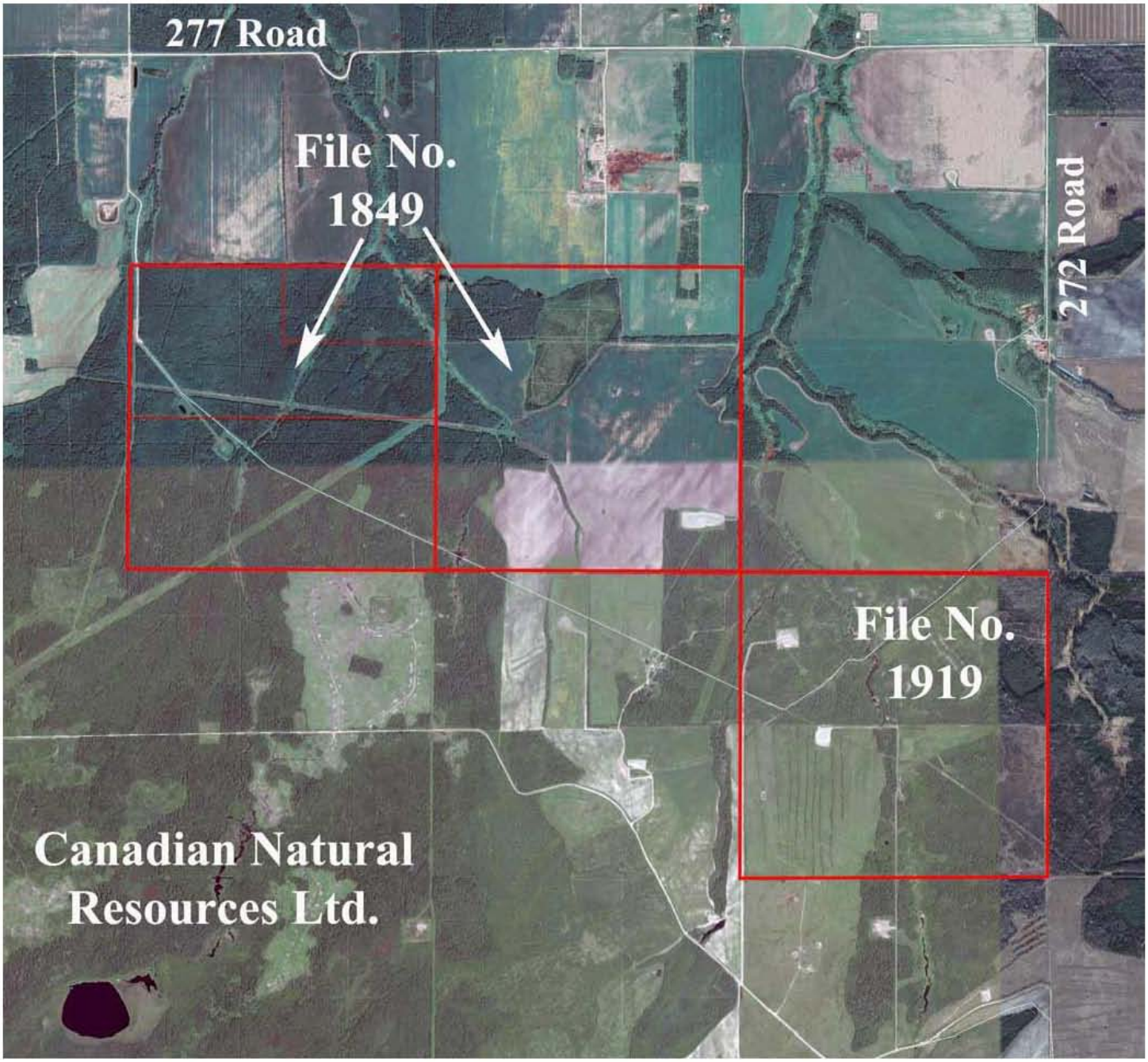
(APPLICANTS)

AND:

Canadian Natural Resources Ltd.

(RESPONDENT)

BOARD ORDER


277 Road
File No.
1849
272 Road
File No.
1919
Canadian Natural
Resources Ltd.

Heard by written submissions last received March 28, 2016

Thor Skafte, for the Applicants Ernest and Margaret Wiebe
Daron K. Naffin and Tim Myers, for the Respondent Canadian Natural Resources Ltd

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INTRODUCTION AND ISSUE

[1] Ernest and Margaret Wiebe filed an application with the Board for the review of rent payable under eight surface leases with Canadian Natural Resources Limited (CNRL). The applications with respect to seven surface leases were not resolved and the Board's mediator referred the disputes to arbitration. CNRL submits the Board does not have jurisdiction to consider applications for rent review with respect to five of the surface leases.

[2] The only issue before me in this preliminary application is whether the Board has jurisdiction to hear an application for rent review with respect to the surface leases for the following well locations:

1-25-88-20-W6M
A1-25-88-20-W6M
11-25-88-20-W6M
1-26-88-20-W6M
6-26-88-20-W6M

FACTS

[3] Ernest and Margaret Wiebe own the Lands subject to the surface leases in issue. They purchased these Lands from the former owner, Leonard Matteson, in December, 2012. Prior to purchasing the Lands, the Wiebes rented the Lands from Mr. Matteson for their farming operations. The Wiebes have been farming the Lands since the spring of 1996.

[4] The Wiebes also own and farm other lands in the vicinity. In the late spring and early summer of 2012, Mr. Wiebe had telephone conversations with Ashley Scriba, the surface landman for CNRL, respecting review of rent payable under surface leases with CNRL on the lands owned by the Wiebes. During their conversations, Mr. Wiebe was told that Leonard Matteson was negotiating the rent payable under five leases on the Lands owned by him, which at the time was rented by the Wiebes. These are the five leases in issue in these proceedings.

[5] Mr. Wiebe informed Ms. Scriba that he had made an offer to purchase the Lands from Mr. Matteson and that he did not feel it was right that Mr. Matteson was negotiating leases on property that he was in the process of selling to him. Mr. Wiebe did not think it was right that as lessor of the Lands he did not get to provide input into the negotiations.

[6] Ms. Scriba suggested that as she was in the process she would go ahead with negotiating with Mr. Matteson, but that as soon as Mr. Wiebe took possession of the Lands, they would review the five leases. Mr. Matteson signed rent renewal agreements with CNRL for the five leases on August 3, 2012.

[7] Mr. Matteson agreed to revised annual rent of: $6,500 for location 1-25-88-20-W6M effective December 1, 2012; $3,196 for location A1-25-88-20-W6M effective September 11, 2013; $5,500 for location 11-25-88-20-W6M effective July 29, 2013; $4,726 for location 1-26-88-20-W6M effective January 11, 2013; and $3,613 for location 6-26-88-20-W6M effective October 23, 2012.

[8] Mr. and Mrs. Wiebe took possession of the Lands on December 18, 2012.

[9] In the spring of 2013, Mr. Wiebe contacted Ms. Scriba with respect to rent review of the five leases on the Lands purchased from Mr. Matteson. He was told by Ms. Scriba

that CNRL was engaged in another rent review dispute with other landowners, namely Terrance and Donna Iverson, and that they would wait for the outcome of the Surface Rights Board arbitration of that case and pay the Wiebes in accordance with the Board's decision.

[10] On January 8, 2014, the Board rendered its decision in *Iverson v. Canadian Natural Resources Limited*, SRB Order 1797-1.

[11] In February, 2014, Mr. Wiebe received a call from Paul Brown, land agent from Vertex Land Services who had been authorized by Ms. Scriba to set up a date to review his rents. Mr. Wiebe and Mr. Brown met on February 20, 2014 at the Wiebe's home. They discussed all of the leases, not just those on the property originally owned by the Wiebes, but also the five on the Lands purchased from Mr. Matteson. Mr. Brown indicated he could not pay in accordance with the *Iverson* decision and said his hands were tied. Mr. Wiebe and Mr. Brown discussed what CNRL would be willing to pay but when Mr. Wiebe asked if he could sign up that very day, Mr. Brown said "No, he would have to get authorization from CNRL first".

[12] On July 7, 2014 Mr. Wiebe met with Ms. Scriba and two other individuals at the Wiebe farm. Mr. Wiebe pointed out various issues with weed control and maintenance on the lease areas.

[13] During the summer of 2014, Mr. Wiebe was told by Ms. Scriba that Calgary head office would have to make a decision on his file. On September 15, 2014, Mr. Skafte and Mr. Wiebe flew to Calgary to meet with Mr. Scott Reed, the senior supervisor landman at the time. It is not clear from Mr. Wiebe's evidence whether this meeting was about the rent reviews, the claims for damages relating to poor weed control and other maintenance issues, or both. In any event, Mr. Wiebe and Mr. Skafte were told that the team in Fort St. John would be the ones to make a decision.

[14] Mr. Wiebe commenced his application to the Board for rent review in February 2015. He has not commenced an application for damages. The rent review applications did not resolve through the mediation process and on September 14, 2015, the Board's mediator referred them to arbitration.

[15] The Board conducted a pre-arbitration conference call on October 14, 2015 for this file and for file 1850 and scheduled both rent review applications for arbitration in early February 2016. By letter dated December 16, 2015, CNRL sought to have Mr. Wiebe's rent review applications dismissed on the grounds that they were not properly before the Board. The Board convened a telephone conference call to discuss on December 23, 2015 and determined that the arbitration should be adjourned to July 2016, and scheduled a written submission process to resolve any jurisdictional issues in advance of the arbitration.

ANALYSIS

[16] The parties' rights and the Board's authority with respect to the review of annual rent payable under a surface lease are set out in sections 165 and 166 of the *Petroleum and Natural Gas Act*. The key provisions for the purpose of this application may be summarized as follows.

[17] Subsection 165 (2) provides that a right holder who holds a right of entry under a surface lease or the landowner whose land is subject to the right of entry may serve notice on the other party in a prescribed manner requiring negotiation of an amendment to the rental provisions in the surface lease. Subsection 165(3) provides that notice to renegotiate the rental provisions in a surface lease may not be served prior to the fourth anniversary of the effective date of the surface lease or the effective date of the most recent amendment to the surface lease.

[18] Subsection 166(1) provides that if the parties are unable to agree to a rental amendment within a prescribed time of the notice under subsection 165(2) having been given, either party may apply to the Board to resolve the disagreement.

[19] The right to seek an amendment to a rental provision in a surface lease is limited to the right holder and the landowner. In accordance with the definitions of "landowner" and "owner" set out in section 141(1) of the *Petroleum and Natural Gas Act*, a "landowner" for the purposes of a rent review is the person registered in the land title office as the registered owner of the land or as its purchaser under an agreement for sale. An occupant of land, such as a tenant, does not have any rights with respect to the review of rent payable under a surface lease. Although Mr. Wiebe was actually farming the Lands at the time of the last rent review, and had made an offer to purchase, he was not the "landowner" within the meaning of the *Petroleum and Natural Gas Act* and, therefore, had no rights at the time the rent reviews were being negotiated by Mr. Matteson.

[20] Mr. Wiebe's evidence that Ms. Scriba told him that once he became the owner of the Lands CNRL would revisit the rent reviews is not contradicted by CNRL and I accept it. However, although Ms. Scriba may have said CNRL would review the rents, that offer did not conform with the legislative scheme providing that a party to a surface lease may not give notice to renegotiate rental provisions prior to the fourth anniversary of the most recent amendment. Even if CNRL could be said to be estopped from relying on the legislative scheme in refusing to renegotiate with Mr. Wiebe (which was not argued in any event) the Board's jurisdiction cannot be invoked in the absence of a valid notice to renegotiate having been given under section 165(2) and the prescribed time from receipt of the notice having elapsed under section 166(1).

[21] The right to apply to the Board is dependent on persons <u>giving and receiving notice under section 165(2)</u>. Section 165(3) provides that "notice under subsection (2) <u>may not be served before the fourth anniversary of the later of</u>" the effective date of the lease

or the effective date of the most recent amendment. So even if the parties agreed to consensually renegotiate rent outside of the legislative time frame, their failure to consensually agree to a revised rent outside of the legislative time frame does not give rise to any jurisdiction in the Board to resolve that dispute.

[22] The rental provisions of the five surface leases in question were renegotiated by the parties to those surface leases, namely Mr. Matteson and CNRL, in accordance with the provisions of the *Petroleum and Natural Gas Act* and effectively amended as of the dates agreed by those parties. Mr. and Mrs. Wiebe took possession of the Lands with recently renegotiated surface leases in place. Their right to serve notice requiring negotiation of the rent paid under each of those leases did not arise until the fourth anniversary of the effective date of each renewal. In accordance with section 165(3) of the *Petroleum and Natural Gas Act*, Mr. and Mrs. Wiebe could not serve notice to negotiate the rent payable for each location until the dates set out below:

Location	**Effective date of last renewal**	**Fourth anniversary date on which notice under section 165(3) may be served**
1-25-88-20-W6M	December 1, 2012	December 1, 2016
A1-25-88-20-W6M	September 11, 2013	September 11, 2017
11-25-88-20-W6M	July 29, 2013	July 29, 2017
1-26-88-20-W6M	January 11, 2013	January 11, 2017
6-26-88-20-W6M	October 23, 2012	October 23, 2016

[23] As the applications relating to the five locations above have not been initiated in accordance with the time frame set out in the *Petroleum and Natural Gas Act* for rent review, the Board does not have jurisdiction to hear them.

CONCLUSION

[24] The rent review applications with respect to locations 1-25-88-20-W6M, A1-25-88-20-W6M, 11-25-88-20-W6M, 1-26-88-20-W6M, and 6-26-88-20-W6M are not properly before the Board and the Board does not have jurisdiction to arbitrate at this time.

DATED: April 12, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1850
Board Order No. 1850-1

September 29, 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

THE EAST ½ OF SECTION 32, TOWNSHIP 113, PEACE RIVER DISTRICT;
THE WEST ½ OF SECTION 32, TOWNSHIP 113, PEACE RIVER DISTRICT;
THE SOUTH ½ OF SECTION 5, TOWNSHIP 112, PEACE RIVER DISTRICT;
THE NORTH ½ OF SECTION 5, TOWNSHIP 112, PEACE RIVER DISTRICT
EXCEPT PLAN PGP43769;
THE SE ¼ OF SECTION 6, TOWNSHIP 112, PEACE RIVER DISTRICT
EXCEPT THE MOST SOUTHERLY 20.116 METRES;
SECTION 7, TOWNSHIP 112, PEACE RIVER DISTRICT;
THE SOUTH ½ OF THE NORTH WEST ¼ OF SECTION 8 TOWNSHIP 112, PEACE
RIVER DISTRICT
(the "Lands")

BETWEEN:

Kevin Thiessen and
Tina Thiessen

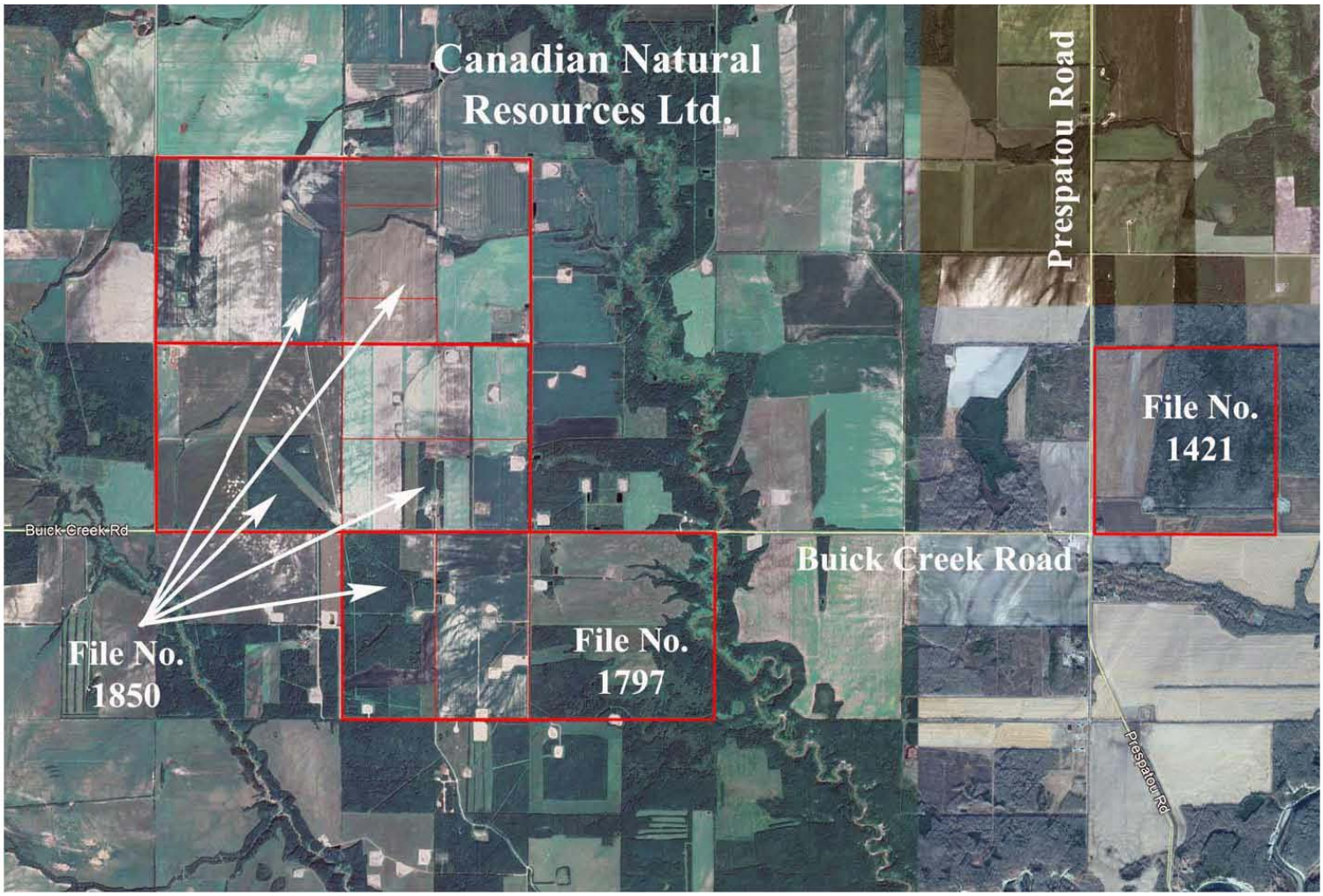
(APPLICANTS)

AND:

Canadian Natural Resources Limited

(RESPONDENT)

BOARD ORDER


Canadian Natural Resources Ltd.
Prespatou Road
File No. 1421
Buick Creek Rd
Buick Creek Road
File No. 1850
File No. 1797
Prespatou Rd

Heard: July 26 and 27, 2016 in Fort St. John
Appearances: Thor Skafte and Kevin Thiessen, for the Applicants
Darrin Naffin, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] These are applications for the review of rent payable under 22 surface leases between Kevin and Tina Thiessen, the Applicant landowners, and Canadian Natural Resources Limited (CNRL), the Respondent.

[2] Mr. and Mrs. Thiessen submit the annual rent payable under each of the leases should be increased. CNRL submits the landowners have not met the burden upon them to demonstrate that the current rent does not adequately cover their ongoing losses arising from CNRL's use and occupation of their Lands and that the applications should be dismissed or, in the alternative, that the rent payable under each lease should be reduced. In determining the appropriate rent, the parties disagree on how to estimate loss of profit and on the appropriate amount to be paid for either tangible or intangible loss arising from nuisance and disturbance. The parties disagree on whether the current rents should be adjusted for inflation, and if so, how such an allowance should be calculated.

[3] For seven of the leases, the parties disagree on the area of the lease. For all 22 leases, the parties disagree on the effective date of the rent review.

[4] The Thiessen's have also filed a separate application with the Board claiming compensation for damages arising from CNRL's rights of entry. That application was not part of this arbitration and I make no findings in this proceeding with respect to the damage claims.

ISSUES

[5] The issues are:

a) What is the effective date of rent review for each of the 22 leases?
b) Where lease area is not agreed, what is the lease area for the calculation of rent?
c) For each of the 22 leases, does the current rent compensate for ongoing losses or should it be varied?

[6] After setting out some background, I will divide this decision into three sections. The first will deal with the effective date issue, the second with determining compensable area, and the third with the review of the rents.

BACKGROUND

[7] Kevin and Tina Thiessen are the registered owners of land legally described as:

> The East ½ of Section 32, Township 113, Peace River District;
> The West ½ of Section 32, Township 113, Peace River District;
> The South ½ of Section 5, Township 112, Peace River District;
> The North ½ of Section 5, Township 112, Peace River District Except Plan PGP43769;
> The SE ¼ of Section 6, Township 112, Peace River District Except the Most Southerly 20.116 Metres;
> Section 7, Township 112, Peace River District;
> The South ½ of the North West ¼ of Section 8 Township 112, Peace River District (collectively the Lands).

[8] CNRL uses portions of the Lands to operate natural gas wells and as access roads pursuant to surface leases with Mr. and Mrs. Thiessen. Some of the leases were in place when the Thiessens acquired the Lands and some of the leases were signed by the Thiessens after they acquired the Lands.

[9] All of the rents were last reviewed in 2009.

[10] The Thiessens operate a farm known as Buck Ridge Farm comprising 2,700 acres and including the Lands. They use some of the Lands for the cultivation of crops including oats, barley, wheat, canola, peas, timothy, and fescue, and some of the Lands for raising cattle and growing forage. They do not grow all of these crops or raise cattle every year. They have not raised cattle since 2014.

I. EFFECTIVE DATE OF RENT REVIEW

FACTS

[11] Sometime in 2013, Mr. Thiessen contacted Ashley Scriba of CNRL by telephone to initiate a review of rents payable under the surface leases on his Lands. Ms. Scriba told him that there was another rent review involving CNRL leases proceeding to arbitration and that CNRL would wait for the results of that case before making a decision on his rents. The Board released its decision in *Iverson v. CNRL*, Order 1797-1, on January 8, 2014. Mr. Thiessen communicated back and forth for some time with Ms. Scriba following the release of the *Iverson* decision, but CNRL was not willing to increase the rents payable under the leases with the Thiessens.

[12] Mr. Thiessen retained the services of Mr. Skafte in May of 2014 to assist with the rent review negotiations. He and Mr. Skafte attended meetings with CNRL personnel in Fort St. John on June 9 and November 24, 2014, and in Calgary on September 9, 2014 to discuss the rent payable without resolution.

[13] The Board received the Thiessen's application for Rent Review on February 16, 2015. The application indicates that the date of the Form 2 – Notice to Negotiate was January 9, 2015.

LEGISLATION

[14] The process for the negotiation and amendment of rent payable under a surface lease or board order is set out in sections 165 and 166 of the *Petroleum and Natural Gas Act.* Section 165(2) provides that a right holder who holds a right of entry under a surface lease or Board order or the landowner whose land is subject to the right of entry "may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order". I will call this notice a Notice to Negotiate. The Board's Rules prescribe Form 2 to provide notice under section 165 of the *Petroleum and Natural Gas Act* for rent renegotiation. The method of delivery is prescribed on the Form 2 itself as registered mail.

[15] Section 165(3) provides that a Notice to Negotiate may not be served before the 4th anniversary of the effective date of the surface lease or Board order or the effective date of the most recent amendment to the rental provisions in the surface lease or Board order, whichever is the later. Section 165(4) requires a person serving a Notice to Negotiate to file a copy of the Notice to Negotiate with the Board. Section 165(6) provides that if persons giving and receiving a Notice to Negotiate agree to an amendment of rental provisions, the right holder must submit a copy of the agreement to the Board. Section 165(7) provides that an agreed amendment to the rental provisions is effective from the anniversary of the effective date of the surface lease or order immediately preceding the Notice to Negotiate and retroactive to the extent necessary.

[16] Section 166 deals with the process when the parties do not agree to amend the rental provisions in a surface lease or Board order. Section 166(1) provides that if persons giving and receiving a Notice to Negotiate do not agree to an amendment of the rental provisions within 60 days after receipt of the Notice to Negotiate, either party may apply to the Board to resolve the disagreement. Section 166(3) allows the Board to vary the rental provisions in a surface lease or Board order when an application is

made to it. Section 166(4) provides that any order varying the rental provisions is effective from the anniversary date of the surface lease or Board order immediately preceding the Notice to Negotiate and is retroactive to the extent necessary.

SUBMISSIONS

[17] The parties' respective positions on the effective date of each rent review are set out below together with the date of each surface lease and last rent review:

Ref	Location	Date of original Surface Lease	Last Rent Review	Thiessen effective date	CNRL effective date
1	a-6-A/94-A-14	26-June-1995	26-June-2009	June 27, 2012	June 26, 2014
2	a-26-A/94-A-14	28-November-1990	30-October-2009	October 30, 2012	November 28, 2014
3	a-27-A/94-A-14	3-November-2004	3-November-2009	November 3, 2013	November 3, 2014
4	b-5-A/94-A-14	6-May-1995	6-May-2009	May 6, 2013	May 6, 2014
5	b-16-A/94-A-14	23-April-1999	23-April-2009	April 23, 2013	April 23, 2014
6	b-25-A/94-A-14	12-April-2003	12-April-2009	April 12, 2013	April 13, 2014
7	b-36-A/94-A-14	12-April-2003	3-April-2009	April 12, 2013	April 12, 2014
8	b-a36-A/94-A-14	22-September-2003	22-September-2009	April 12, 2013	September 22, 2014
9	b-49-A/94/A-14	22-November-2000	22-November-2009	November 22, 2013	November 22, 2014
10	b-C46-A/94-A-14	14-September-2005	14-September-2014	September 14, 2012	September 14, 2014
11	cb-6-A/94-A-14	17-October-1995	26-June-2009	October 17, 2013	October 17, 2014
12	c-A6-A/94-A-14	17-October 1995	29-July-2009	July 29, 2013	October 17, 2014
13	c-17-A/94-A-14	29-July-1995	29-July-2009	July 29, 2013	July 29, 2014
14	c-39-A/94-A-14	26-January-2000	26-January-2009	January 26, 2013	January 26, 2014
15	c-97-I/94-A-11	9-August-2005	5-August-2009	August 9, 2013	August 9, 2014
16	d-6-A/94-A-14	28-November-1990	29-July-2009	November 28, 2013	November 28, 2014
17	d-A6-A/94-A-14	9-August-2005	9-August-2009	August 9, 2013	August 9, 2014
18	d-16-A/94-A-14	12-April-2003	12-April-2009	April 12, 2013	April 12, 2014
19	d-26-A/94-A-14	14-Novemeber-2002	14-November-2009	November 14, 2013	November 14, 2014
20	d-27-A/94-A-14	14-September-2005	14-September-2009	September 14, 2013	September 14, 2014
21	d-95-I/94-A-11	28-February-1995	28-February-2009	September 14, 2013	February 28, 2014
22	d-96-I/94-A-11	16-May-1970	16-May-2009	May 16, 2012	May 16, 2014

[18] As can be seen from the chart above, CNRL uses the 2014 anniversary date of each lease as the effective date for each rent review. In most cases, the Thiessens use the 2013 anniversary date and in a few cases the 2012 anniversary date. For Reference 12, the Thiessens use the 2013 anniversary of the last rent renewal, which apparently did not conform to the anniversary date of the lease. In four instances, References 1, 2, 6, and 8, the effective date used by the Thiessens does not conform to the anniversary date of either the lease or the last rent renewal.

[19] CNRL argues that sections 165 and 166 of the *Petroleum and Natural Gas Act* mandate both the process for seeking an amendment to the rental provisions in a surface lease and the effective date of any amendment ordered by the Board. CNRL submits that section 165(2) requires the service of a notice "in the form and manner established by the rules of the board", and that it is the anniversary date of the surface lease immediately preceding that notice that becomes the effective date of any revised rent. CNRL argues that the serving of a notice in the form established by the rules of the Board, what I have called a Notice to Negotiate, is mandatory.

[20] The Thiessens argue that the notice established by the rules of the Board is not mandatory. They argue CNRL had effective notice of their request to renegotiate the rental provisions in the surface leases when Mr. Thiessen contacted Ms. Scriba in 2013 to discuss. The Thiessens rely on the Board's decision in *Iverson v. CNRL, supra.* In that case the Board found that use of the prescribed form to initiate the rent review process is preferable but not necessary if written communications between the parties effectively serve the purpose of the notice to clearly initiate the process and engage the other party.

ANALYSIS

What is the effective date of rent review for each of the 22 leases?

[21] Section 165(2) of the *Petroleum and Natural Gas Act* provides that a right holder or landowner "may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order". The phrase "in the manner established by the rules of the board" being surrounded by commas, is a restrictive clause defining the notice that may be served on the other party in the preceding phrase. The grammatical and ordinary meaning of the words in section 165(2) is that the notice that may be served by either the right holder or landowner on the other party must be in the form established by the rules of the Board and must be served in the manner established by the rules of the Board. It is this notice that initiates the rent review process and that dictates the

effective date of any amendment to rental provisions in a lease or board order, whether by agreement or as determined by the Board.

[22] Despite the clear wording of the legislation, the Board has nevertheless allowed notice to be given other than by the form and manner established by the rules in circumstances where the Board was able to determine that notice had effectively been given and the parties had clearly engaged in a process of negotiation towards a renewed rent. The *Iverson* case is one such decision. The circumstances of the *Iverson* case were that, with respect to one of the surface leases in issue, the landowner had sent a hand written note clearly asking for a rent review to the right holder and the right holder had responded with a letter containing a written proposal for rent review. With respect to the other two surface leases in issue, the right holder had sent a letter to the landowner offering to amend the rental provisions in the leases and the landowner had responded. The Board found, in the circumstances, that the purpose of the notice provisions of the Act to clearly initiate the process had been met, and that the right holder had clearly engaged in the process.

[23] In *Wilderness Ranch Ltd. v. Progress Energy Canada Ltd.*, Order 1786-90-1, no notice in the form prescribed by the Board had ever been sent. The evidence disclosed that there had been negotiations between the parties for some time. The Board found that notice had been effectively given in the form of an email from the right holder with an offer to amend the rent. The Board found it could not rely on earlier undated written communications to provide effective notice.

[24] In both *Iverson* and *Wilderness Ranch*, the Board was prepared to accept a dated written communication from the landowner expressing clear intent to give notice followed by a written offer to amend the rent from the right holder, or a written dated communication from the right holder including an offer to amend the rent as effective notice. In both cases, the right holders' engagement in the process, with written offers for amended rent, essentially precluded them from arguing that effective notice had not been given.

[25] In this case, the evidence discloses that the parties had certainly discussed rent review prior to the Notice to Negotiate having been sent, but there is no evidence of a dated written communication from the landowner clearly invoking the process, nor is there any evidence of dated written communications from CNRL including offers to amend the rent. The circumstances are distinguishable from those in both *Iverson* and *Wilderness Ranch*. The only evidence of written notice in any form having been sent by the Thiessens to CNRL is the reference on the application to the date of the Form 2. Even if there was clear written notice in another form delivered by the Thiessens to CNRL, there is no evidence before me of any written communication from CNRL in response with an offer to amend the rent.

[26] In the circumstances, I am unable to find effective notice to invoke the rent review process in advance of the Form 2. I find the rent review process was not initiated in accordance with the requirements of the *Petroleum and Natural Gas Act* until January 19, 2015 which is the date of the Form 2. This is the "notice in the form and manner prescribed by the board" required by section 165(2) of the *Petroleum and Natural Gas Act* and the date that establishes the effective date of any amended rent ordered by the Board in accordance with section 166(4). I find the effective dates for each of the rent reviews is the anniversary date of each surface lease preceding January 19, 2015 as set out below:

Ref	Location	Effective Date
1	a-6-A/94-A-14	June 26, 2014
2	a-26-A/94-A-14	November 28, 2014
3	a-27-A/94-A-14	November 3, 2014
4	b-5-A/94-A-14	May 6, 2014
5	b-16-A/94-A-14	April 23, 2014
6	b-25-A/94-A-14	April 13, 2014
7	b-36-A/94-A-14	April 12, 2014
8	b-a36-A/94-A-14	September 22, 2014
9	b-49-A/94/A-14	November 22, 2014
10	b-C46-A/94-A-14	September 14, 2014
11	cb-6-A/94-A-14	October 17, 2014
12	c-A6-A/94-A-14	October 17, 2014
13	c-17-A/94-A-14	July 29, 2014

14	c-39-A/94-A-14	January 26, 2014
15	c-97-I/94-A-11	August 9, 2014
16	d-6-A/94-A-14	November 28, 2014
17	d-A6-A/94-A-14	August 9, 2014
18	d-16-A/94-A-14	April 12, 2014
19	d-26-A/94-A-14	November 14, 2014
20	d-27-A/94-A-14	September 14, 2014
21	d-95-I/94-A-11	February 28, 2014
22	d-96-I/94-A-11	May 16, 2014

II. COMPENSABLE AREA

[27] For each of the 22 leases, the Thiessen's seek an increase to the current rent based on what they claim to be the compensable area. Their proposed increase is based on claims for crop loss, added inputs due to overlap, adverse effect, and an inflationary increase, all of which will be discussed in the next section of this decision. The calculations supporting their claim for each lease are set out at Tab 7 of Exhibit 1. A calculation sheet is provided for each lease.

[28] CNRL provides a report (Exhibit 2) prepared by Robert J. Telford, an appraiser and land consultant, setting out Mr. Telford's estimates for loss of profit, and tangible and intangible nuisance and disturbance for each lease based on CNRL's view of compensable area.

[29] The parties disagree on the compensable areas of leases 1, 2, 3, 11, 12, 15 and 18 as set out below:

Ref	Location	Area in acres per Thiessens	Area in acres per CNRL
1	a-6-A/94-A-14	4.79	4.44
2	a-26-A/94-A-14	8.32	7.87
3	a-27-A/94-A-14	4.08	7.64
11	cb-6-A/94-A-14	5.10	5.06
12	c-A6-A/94-A-14	4.74	4.37

15	c-97-I/94-A-11	3.73	3.36
18	d-16-A/94-A-14	4.68	4.18

[30] In some cases, the difference between the parties arises from a disagreement as to whether any area of land is severed by the lease. In some cases, the difference is not explained.

Severance

[31] The compensable area of a lease may be increased for the purpose of calculating loss of profit where the lease causes an area of land to be severed. Severance occurs where an area in addition to the area covered by a lease is rendered permanently incapable of access by farm equipment, or otherwise permanently incapable of use by the landowner, as a result of the placement of the lease. Where area is severed rendering it incapable of use, loss of profit arising from the lease should include the loss of profit attributable to the severed area. The parties agree the compensable area of leases 4, 6, 7, and 13 should be increased to compensate for severance as follows:

Ref.	Location	Acres in Lease	Acres severed	Compensable Area in acres
4	b-5-A/94-A-14	4.62	3.50	8.12
6	b-25-A/94-A-14	4.27	3.58	7.85
7	b-36-A/94-A-14	4.35	0.50	4.85
13	c-17-A/94-A-14	4.40	0.50	4.90

[32] For some leases, the Thiessens claim for severance arises from an allegation that there is either temporary or permanent damage to the land from the right of entry. Temporary damage rendering land unusable from time to time is not compensable as severance, but may be compensable with an award of damages where evidence establishes the damage and loss is likely caused by the right of entry. If damage causes an area of land to be permanently unusable, it could be compensated for with annual rent as if the area was severed where evidence establishes the permanent loss of use is likely caused by the right of entry. Mr. Thiessen has filed claims for damages which were not heard as part of this arbitration, and I do not make any findings with respect to either temporary or permanent damage in this proceeding. Where his claim

for severance in this application is based on an allegation that there is permanent damage caused by the right of entry rendering an area of land unusable, that claim is deferred to be heard with the claim for damages.

EVIDENCE AND ANALYSIS

Where lease area is not agreed, what is the lease area for calculation of rent?

Ref. 1 – A-6-A/94-A-14

[33] Mr. Thiessen claims the compensable area is 4.79 acres. The lease area is 4.44 acres. Mr. Thiessen's evidence is that there is severe washing occurring in the SE corner of the lease, with the wash extending under the fence and into the field. The calculation sheet for this lease (Exhibit 1, Tab 7-P1) indicates: "The lease, together with the other leases in the immediate area, severs 3.5 acres from the rest of the field." The difference in areas, however, is .35 acres. Mr. Thiessen provided an undated photograph of the washout associated with this lease. Mr. Thiessen acknowledged that the extent and severity of washouts varies from year to year depending on weather conditions.

[34] As this claim for severance is based on an allegation that an area of land has been damaged presumably as a result of the lease, it will be left for the damage claim. There is nothing in evidence to support that either 3.5 acres or .35 acres has been severed as a result of the placement of the lease rendering it inaccessible by farm equipment on a permanent basis. I find the compensable area for the purpose of determining loss of profit is the lease area of 4.44 acres.

Ref. 2 – a-26-A/94-A-14

[35] Mr. Thiessen claims the compensable area is 8.32 acres. The lease area is 7.87 acres. It is not clear from the evidence what gives rise to the difference in compensable areas. Mr. Thiessen provides several undated photographs of this location (Exhibit 1, Tab 8-2 through 8-6) captioned "Numerous severe washouts in to [*sic*] Landowner adjacent fields from lease Water drainage, and foxtail weeds." The evidence does not

support a severance of .45 acres caused by the location of the lease, being the difference in compensable area claimed by Mr. Thiessen and the area of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 7.87 acres.

Ref. 3 – a-27-A/94-A-14

[36] Mr. Thiessen claims the compensable area is 4.08 acres. CNRL's evidence is the compensable area is 7.64 acres. The lease area is 9.24 acres. The evidence does not explain the discrepancies and I can see nothing in the evidence to support a conclusion that the compensable area would be other than the lease area. I find the compensable area for the purpose of determining loss of profit is the lease area of 9.24 acres.

Ref. 11 – cb-6-A/94-A-14

[37] Mr. Thiessen claims the compensable area is 5.10 acres. The lease area is 5.06 acres. The evidence is conflicting and it is not clear on what basis the claim for additional area is based. Mr. Thiessen provides several undated photographs of this location (Exhibit 1, Tab 8-29 through 8-31) captioned "Drainage water from lease running across access road into landowner adjacent fields, causing washouts and reducing landowner profits". To the extent the Thiessens may be advancing a claim for severance based on alleged permanent damage, it will be left for the damage claim. The calculation sheet for this lease (Exhibit 1, Tab 7-Z1) indicates "This is an example of a good tear dropped lease". The aerial photograph of this location in Mr. Telford's brief does not support that there is any severance. The evidence does not support a permanent severance of .04 acres as a result of the location of the lease and I find the compensable area for the purpose of determining loss of profit is the lease area of 5.06 acres.

Ref. 12 – c-A6-A/94-A-14

[38] Mr. Thiessen claims the compensable area is 4.74 acres. The lease area is 4.37 acres. Mr. Thiessen provides several undated photographs (Exhibit 1, Tab 8-26 and 8-

27) depicting a washed out berm and flooding. From the aerial photograph of this location in Mr. Telford's evidence, the field appears to be farmed into the lease area and there is no indication of a severed area. The evidence does not support a permanent severance of .4 acres as a result of the location of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 4.37 acres.

Ref. 15 – c-97-I/94-A-11

[39] Mr. Thiessen claims the compensable area is 3.73 acres. The lease area is 3.36 acres. It is not clear from the evidence what gives rise to the difference in compensable areas. The calculation sheet for this lease (Exhibit 1, Tab 7D1-1) indicates: "This lease is in pasture land and has foxtail and noxious weed issues, due to lack of weed control. The lease is cut into a hillside, giving rise to erosion problems." The evidence does not support a permanent severance of .40 acres as a result of the placement of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 3.36 acres.

Ref. 18 – d-16-A/94-A-14

[40] Mr. Thiessen claims the compensable area is 4.68 acres. The lease area is 4.16 acres. The calculation sheet for this lease (Exhibit 1, Tab 7G1-1) indicates: "The location of the lease causes a 0.5 acre severance parcel". The evidence does not disclose where the alleged severed area is. The aerial photograph in Mr. Telford's brief depicts what appears to be a strip of field between the well site and the access road. The lease document itself, however, shows the lease area lying immediately adjacent to the access road with no area in between. I find the evidence does not sufficiently support severance of .5 acres and find the compensable area for the purpose of determining loss of profit is the lease area of 4.16 acres.

[41] To summarize, I conclude the compensable area of each lease is as follows:

Ref	Location	Compensable Area in acres
1	a-6-A/94-A-14	4.44
2	a-26-A/94-A-14	7.87
3	a-27-A/94-A-14	9.24
4	b-5-A/94-A-14	8.12
5	b-16-A/94-A-14	3.56
6	b-25-A/94-A-14	7.85
7	b-36-A/94-A-14	4.85
8	b-a36-A/94-A-14	1.14
9	b-49-A/94/A-14	4.92
10	b-c46-A/94-A-14	3.19
11	cb-6-A/94-A-14	5.06
12	c-A6-A/94-A-14	4.37
13	c-17-A/94-A-14	4.90
14	c-39-A/94-A-14	4.34
15	c-97-I/94-A-11	3.36
16	d-6-A/94-A-14	8.71
17	d-A6-A/94-A-14	3.85
18	d-16-A/94-A-14	4.18
19	d-26-A/94-A-14	5.78
20	d-27-A/94-A-14	4.60
21	d-95-I/94-A-11	4.13
22	d-96-I/94-A-11	3.11

III. RENT REVIEW

LEGAL FRAMEWORK

[42] Section 154 of the *Petroleum and Natural Gas Act* sets out the factors the Board may consider in determining the initial compensation or annual rent payable for the use and occupation of private land. Those factors are as follows:

(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) other factors or criteria established by regulation.

[43] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[44] Section 154(2) of the *Petroleum and Natural Gas Act* further provides that in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was originally granted or last renewed.

[45] The purpose of a rental payment is to address the immediate and ongoing impact to the landowner and to the lands of an operator's activity on private land (*Dalgliesh v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)). The rental payment is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing use of the lands. In an application for rent review, any revised rent is payable for the period following the effective date, not for past losses. In determining a revised annual rent with reference to actual loss and on consideration of the relevant factors, an analysis of probable future use of the land and probable future losses must be undertaken (*Canadian Natural Resources Ltd. v. Bennett, et al*, 2008 ABQB 19).

[46] The onus is on the applicants, Mr. and Mrs. Thiessen, to establish their ongoing prospective losses and to establish that an increase to the rental payment under each lease is warranted to compensate for ongoing losses (*Progress Energy Canada Ltd. v. Salustro* 2014 BCSC 960). The Board must base its finding with respect to loss on the evidence before it. The burden of providing evidence to substantiate loss rests with the applicants.

EVIDENCE

[47] Of the factors listed in section 154 of the *Petroleum and Natural Gas Act*, I heard evidence respecting loss of profit (referred to as crop loss by the Thiessens), damage, severance, nuisance and disturbance (referred to as "added inputs" and "adverse effect" by the Thiessens), terms of other surface lease, and previous orders of the Board. I have already discussed severance. I will discuss the evidence of both parties relevant to the other factors in general terms and then make some general findings. I will discuss the evidence in more detail when considering whether the rent should be amended for each lease.

[48] As previously indicated, for each of the 22 leases, the Thiessen's seek an increase to the current rent. Their proposed increase is based on claims for crop loss, added inputs due to overlap, adverse effect, and an inflationary increase. The calculations supporting their claim for each lease are set out at Tab 7 of Exhibit 1. A calculation sheet is provided for each lease. Mr. Thiessen gave evidence at the hearing.

[49] CNRL provided a report (Exhibit 2) prepared by Robert J. Telford, an appraiser and land consultant, setting out Mr. Telford's estimates for loss of profit, and tangible and intangible nuisance and disturbance for each lease. Mr. Telford also gave evidence at the hearing along with Kira Gerow, a professional agrologist. Mr. Telford's estimates of loss do not exceed the current rents.

Crop Loss or Loss of Profit

[50] The Thiessens' calculation of crop loss is set out at Tab 7 of Exhibit 1 which provides a crop sales report (Tab 7-O) indicating the yield and price for each crop, and an individual calculation sheet for each lease (Tab 7P through K1). The Thiessens estimate crop loss using their average actual yields for oats, barley, wheat, canola, peas, timothy, and fescue, and the average price obtained for each crop in each year the crop was grown from 2009 to 2015, an average yield and price for forage, and an estimated return for steers. Not every crop is grown every year, so for some crops, the

average yield and price calculated is not based on the entire seven years production. The return for steers is based on requiring three acres per animal and a price of $2,100 per animal. The Thiessens take the average yield and average price, calculated over the number of years the crop was grown between 2009 and 2015, and multiply by the compensable acreage to determine potential average total return from the lease area for that crop. They then average the total of the nine potential crops (including steers and forage) and use that average as their claim for crop loss. For three of the leases, described as pasture leases, Ref. 9 (b-49-A/94-A-14), Ref. 14 (c-39-A/94-A-14), and Ref. 15 (c-97-I/94-A-11), crop loss is estimated solely on the basis of raising steers.

[51] Tab 6 of Exhibit 1 is a report from Dr. John Church, a professional agrologist and Associate Professor of Natural Resource Science at Thompson Rivers University. Dr. Church also gave evidence at the hearing. Dr. Church's report and evidence discusses the beef industry in British Columbia. The report provides information about different types of cattle production and the associated costs, and compares marketing options. It is a generic report that describes how the industry works and is not specific to the Thiessens' cattle operation. Dr. Church did not have a role in preparing the Thiessens' claims for loss of profit.

[52] Mr. Telford uses the production records provided by Mr. Thiessen for 2010-2015 for the various crops grown, to estimate loss of profit from the lease areas, but excludes any income from steers. He utilizes input costs of $95/acre based on input costs provided by Mr. Thiessen averaging $200/acre but including some duplication depending on the crop produced. For the three pasture locations (Refs. 9, 14, and 15), he uses the value for hay forage provided by Mr. Thiessen with the input costs provided by Mr. Thiessen for these locations deducted.

Temporary and Permanent Damage

[53] The Thiessens provide photographic evidence of washouts and erosion, claiming these events are caused by CNRL's rights of entry. Some, but not all of the leases have washouts and erosion extending onto the adjacent fields. Mr. Thiessen's evidence

was that the extent and duration of these issues varies from year to year. The Thiessen's have also filed a separate application with the Board claiming compensation for damage to the Lands arising from CNRL's rights of entry. As I have said before, that application was not part of this arbitration and I make no findings in this proceeding with respect to the damage claims. Erosion is also noted in the Thiessens' claim for Adverse Effects, discussed below. Mr. Thiessen confirmed he is not seeking to be doubly compensated.

[54] Generally speaking, if there is damage to land arising from a right of entry the right holder is liable to rectify the damage or compensate for it. A claim for damages may be made as and when damage occurs, or may be made at the same time as an application for rent review. It is, however, a separate application and may claim for past losses whereas rent is compensate for probable future losses. As such, claims for damage are not appropriately included in annual rent unless the evidence substantiates probable ongoing loss from damage caused by the right of entry. As the Thiessens have filed a separate claim for damages, and will have the opportunity in other proceedings to provide evidence to substantiate these claims, I will not include an award for temporary or permanent damage in the annual rent.

Nuisance and Disturbance

[55] The Thiessens make claims for "Added Inputs" and "Adverse Effect" which can be compared to Mr. Telford's breakdown of nuisance and disturbance into tangible and intangible nuisance and disturbance. The Thiessens claim for "Added Inputs" is to compensate for the added costs of farming around each of the leases due to overlap. Mr. Telford estimates loss for added inputs as a calculation of tangible nuisance and disturbance.

[56] The Thiessens also claim an amount for Adverse Effect which they describe as:

> "A fee compensating property owners for nuisance issues resulting from oil and gas activity on their property such as:

> Loss of privacy anybody and everybody in our back yard (loss of private hunting area to supply wild meat).
> Eye sore on our property.
> Lack of maintenance by Subsurface Rights Holder.
> Permanent erosion issues.
> Frustration when working around lease with equipment.
> Weed issues on lease and access, ..."

[57] The compensation sheets also reference "Landowner property damage due to adverse effects not repaired as of December 2015". To the extent the Thiessens claim compensation for "permanent erosion issues", or "Landowner property damage" these claims should be advanced as part of their claim for damages. The other nuisance issues described as adverse effects are typically matters included in an award for nuisance and disturbance. I heard no evidence specific to any of the leases about loss of privacy or hunting area. For some of the leases I heard evidence about "eye-sore", lack of maintenance, frustration when working around the lease and weed issues. I will discuss the evidence specific to each lease in more detail below when considering whether the rent for any particular lease should be increased.

[58] Mr. Telford describes intangible nuisance and disturbance as "those items that may occur and that cannot be readily calculated" that "may involve noise of the facilities, and ongoing dealings with surveyors, contractors and the company".

[59] I will discuss the Thiessens' evidence respecting Added Inputs and Mr. Telford's evidence respecting tangible nuisance and disturbance together, and the Thiessens' evidence respecting Adverse Effect and Mr. Telford's evidence respecting intangible nuisance and disturbance together.

Added Inputs/Tangible Nuisance and Disturbance

[60] The Thiessens claim for Added Inputs is based on the cost per acre for thirteen operations described as: pre-seed burn spraying, pre-seed chemical, seeding cost, fertilizer, seed cost, spraying cost, herbicide, liquid fertilizer, liquid fertilizer application

costs, swathing, combining, heavy harrowing after harvest, and desicating peas. The total cost of operations relevant to each of seven potential crops (oats, barley, wheat, canola, peas, timothy and fescue) are multiplied by 75% of the claimed compensable acreage to determine the added input cost for each crop, and the average calculated and claimed as the added inputs due to overlap. No added inputs are claimed for two of the three pasture leases (Ref. 9 and 15), but are claimed for Ref. 14. The use of 75% of the compensable area of the lease to calculate added input costs is not explained.

[61] Mr. Thiessen's evidence is that the leases create additional headlands. His evidence is that he uses a GPS when doing field work and that for a 160 acre field he ends up covering 175 acres due to overlap.

[62] Mr. Telford's estimated compensation for tangible nuisance and disturbance includes the extra time, turns, inputs and potential crop yield reductions associated with having to farm around the leases. He bases his estimates on the farm operations necessary for cereal/oil seed production, uses equipment costs based on Alberta data, and makes assumptions respecting equipment size that are favourable to the landowner. For each location he calculates the costs associated with additional distance for headlands and realignment, and additional turns, and crop loss due to unseeded areas, additional inputs and compaction. He uses a rate of 20% to account for loss of production due to overlap which he considers generous based on a study and discussions with other landowners. His evidence is that when using GPS, overlap is generally less than 5%.

[63] For the pasture locations, Mr. Telford's evidence is the tangible impact of the leases is due to the extra time and supervision associated with pasture land and the grazing of cattle which he estimates at 8-10 hours per year during the grazing season at $50/hour, and estimates $450.00 in tangible nuisance and disturbance associated with the pasture locations.

Adverse Effect/Intangible Nuisance and Disturbance

[64] The Thiessens claim for adverse effect ranges from $2,000 to $4,000 per lease.

[65] For most of the leases, the calculation sheet contains notes describing the issues with the site such as washouts, weeds, inconvenience in farming around the lease, erosion, and other matters, which I will discuss when dealing with each lease. Tab 8 of Exhibit 1 includes photographs of most of the leases depicting issues with weeds, washouts or erosion. Mr. Thiessen also provided evidence about weeds, washouts and erosion for some of the leases. As discussed above, to the extent this claim is to compensate for damage, it should be advanced in the claim for damages, not as intangible nuisance and disturbance.

[66] Ms. Gerow provided evidence of her observations respecting weeds at the various sites. She inspected each of the sites the day before the arbitration. Her evidence is that many of the locations are free of weeds and have active vegetation management. Where she noted the presence of weeds they are primarily contained on the lease area. Her evidence is that weeds are prevalent in the area on roadsides, and in yards, ditches and staging areas. She noted foxtail on adjacent lands and scentless chamomile in Mr. Thiessen's yard area.

[67] Mr. Telford estimates intangible nuisance and disturbance at $400 per location (with one exception) on the assumption that the landowner would spend an additional day a year dealing with these items on an annual basis. For Ref. 21 he reduces this estimate by 50% to $200.00 because it is an access road that leads to a number of wellsites.

[68] I set out the Thiessens' claims for added inputs, Mr. Telford's calculations for tangible nuisance and disturbance, the Thiessens' claims for adverse effect and Mr. Telford's calculation for intangible nuisance and disturbance for each of the leases in the chart below:

Ref	Location	Thiessen Added Inputs	Telford Tangible N&D	Thiessen Adverse Effect	Telford Intangible N&D
1	a-6-A/94-A-14	$703.10	$1,576.79	$4,000.00	$400.00
2	a-26-A/94-A-14	$1,221.26	$883.41	$2,000.00	$400.00
3	a-27-A/94-A-14	$598.89	$1,021.29	$2,500.00	$400.00
4	b-5-A/94-A-14	$1,191.90	$1,365.09	$4,000.00	$400.00
5	b-16-A/94-A-14	$522.56	$814.92	$2,000.00	$400.00
6	b-25-A/94-A-14	$1,152.27	$769.30	$2,000.00	$400.00
7	b-36-A/94-A-14	$711.91	$951.39	$2,000.00	$400.00
8	b-a36-A/94-A-14	$83.67	$562.43	$1,000.00	$400.00
9	b-49-A/94/A-14	Nil	$450.00	$2,000.00	$400.00
10	b-C46-A/94-A-14	$468.25	$767.17	$2,000.00	$400.00
11	cb-6-A/94-A-14	$748.61	Nil	$4,000.00	$400.00
12	c-A6-A/94-A-14	$695.76	$694.75	$2,000.00	$400.00
13	c-17-A/94-A-14	$719.25	$740.98	$3,000.00	$400.00
14	c-39-A/94-A-14	$211.90	$450.00	$2,000.00	$400.00
15	c-97-I/94-A-11	Nil	$450.00	$2,000.00	$400.00
16	d-6-A/94-A-14	$1,278.50	$1,756.41	$4,000.00	$400.00
17	d-A6-A/94-A-14	$565.13	$1,229.85	$2,000.00	$400.00
18	d-16-A/94-A-14	$686.96	$859.92	$2,000.00	$400.00
19	d-26-A/94-A-14	$848.42	$1,914.65	$2,000.00	$400.00
20	d-27-A/94-A-14	$675.21	$1,446.40	$3,000.00	$400.00
21	d-95-I/94-A-11	$606.23	Nil	$3,000.00	$200.00
22	d-96-I/94-A-11	$456.50	$787.88	$2,000.00	$400.00

Other Leases and Other Board Orders

[69] Tab 11 of Exhibit 1 includes copies of the Board's decisions in *Iverson, supra* and in *Helm v. Progress Energy Ltd.*, Order 1634-1, December 2, 2010. The Board's determinations of rent in both of those cases was based on the evidence specific to each case.

[70] Mr. Telford provides a Negotiated Agreement Review (Exhibit 3). The review identifies similar facilities within 10 miles of the Lands with rents negotiated within 5 years of the effective dates for these leases. CNRL is the only operator in the area. Exhibit 3 identifies 16 locations, all with the same landowner, that Mr. Telford considers comparable to the subject leases.

[71] The agreements typically compensate for severance, nuisance and disturbance associated with access roads at $1,500.00, and associated with wellsites and combined

wellsites and access roads at $2,000.00. This figure can be compared to Mr. Thiessen's combined claims for added inputs and adverse effect which range from a low of $2,000.00 for Ref. 9 and 15 to a high of $5,278.50 for Ref. 16, and to Mr. Telford's estimates of tangible and intangible nuisance and disturbance which range from a low of $200.00 for Ref. 21 to a high of $2,324.65 for Ref. 19.

[72] As for crop loss, the agreements compensate for loss of profit associated with cultivation of oats at $264.00/acre, peas at $300/acre, fescue at $450/acre and hay and pasture at $250/acre.

Inflationary Increase

[73] The Thiessens' calculation sheets include an amount for an inflationary increase. Each sheet is accompanied by a printout from the Bank of Canada Inflation Calculator showing the inflationary adjustment from 2009 to 2016 for each rental payment.

[74] Mr. Telford does not add an amount for inflation or the change in the value of money to estimates of loss. His evidence is that the estimate for loss of profit uses current values of commodities as well as input and equipment costs so inflation is accounted for. Mr. Naffin submitted that if an inflationary increase was to be added to the previous rental payments, it should be calculated to 2014, which is the effective date of any rent renewal.

ANALYSIS

General Findings on Compensation Factors

Crop Loss or Loss of Profit

[75] I find Mr. Thiessen's claim for crop loss is not a reasonable reflection of his probable loss of profit from the leased areas. First, his inclusion of a retail price for finished steers in estimating average crop loss inflates the probable loss from the leased areas. Including a finished retail price for steers does not account for the cost of

rearing the steer and, therefore, overstates the potential profit from this activity. Dr. Church's evidence suggests the cost of producing a finished steer is in excess of $1,700. The net revenue for a steer is, therefore, around $400.00, not $2,100.00.

[76] Further, the evidence is that Mr. Thiessen only ever raised steers in the fenced pasture fields, yet income from steers has been included for every lease location whether in a fenced pasture field or not. The evidence is further that Mr. Thiessen has not raised steers at all since 2014 and that at least one of the fenced pasture fields is being converted from pasture to cultivated land.

[77] As land cannot be used for raising cattle and growing crops at the same time, an estimate of loss based on an average of both uses is not realistic or reasonable.

[78] Mr. Skafte defended the inclusion of the steers, and indeed the inclusion of all of the other crops in estimating crop loss on the grounds that it was possible that Mr. Thiessen could have grown any of the crops or possible that he could have used the Lands to raise steers. However, compensation is not for possible loss of profit, it is for reasonably probable loss of profit. I find it was not reasonably probable as of 2014 the Thiessens would use all of the Lands to raise steers.

[79] As with the steers, Mr. Thiessen's use of the average actual price obtained for each of the possible crops does not account for the cost of growing any particular crops and is not a reflection of profit, but of potential gross revenue. Mr. Telford deducts production costs from his estimates of income. However, it is evident from the other leases provided by CNRL (Exhibit 3), that use of gross rather than net revenue is the general practice when compensating for loss of profit from crop cultivation. The other leases in evidence compensate for loss of profit associated with cultivation of oats at $264.00/acre, peas at $300/acre, fescue at $450/acre and hay and pasture at $250/acre. These amounts exceed Mr. Thiessen's estimate of average gross revenue per acre for peas at $261.19 and fescue at 263.23. They are lower than Mr. Thiessen's

estimates of average gross revenue per acre for oats at $360.28 and hay at $262.00. They all exceed Mr. Telford's net figures.

[80] Mr. Telford's per acre loss of profit ranges from a low of $132.50 to a high of $194.93. I find Mr. Telford's practice of accounting for input costs to calculate a net profit results in lower estimates for crop loss or loss of profit than is typically agreed to in other agreements in the area, and does not conform with the Board's practice generally to estimate loss of profit for cultivated land using figures more reflective of gross rather than net revenue.

[81] Other than for the leases in pasture land, the evidence does not indicate which of the eight crops grown by Mr. Thiessen would probably have been grown in each field as of the rent renewal date and for the next few years. For leases in cultivated fields, as I cannot tell that it is more probable than not that any particular field would be used for the higher value crops, in estimating loss of profit I will use the averages provided by Mr. Thiessen based on his actual average yields for all eight crops excluding steers. For leases in pasture fields, I will estimate loss of profit based on Mr. Thiessen's average yields for hay.

Nuisance and Disturbance

Added Inputs/Tangible Nuisance and Disturbance

[82] I prefer Mr. Telford's estimate of the probable loss associated with working around the leases because it is specific to each lease location and takes into account the actual additional headlands associated with each lease, rather than an arbitrary percentage of the lease area itself. Mr. Thiessen's use of 75% of the leased area to calculate added inputs does not make sense. His evidence was that for a 160 acre filed he covers 175 acres due to overlap. The difference between 175 acres and 160 acres equates to overlap of just over 9% of the filed size. The Thiessens add input costs multiplied by 75% of the lease area or claimed compensable area to each lease regardless of the

lease's location in the field, whether there are additional headlands associated with the lease, or the extent of the inconvenience and difficulty when farming around that lease. For some locations, using 75% of the lease area to calculate added inputs creates a claim for working around a lease where no additional headlands are in fact created because of the location of the lease on the edge of a field. For most of the locations, Mr. Telford's estimate of loss for tangible nuisance and disturbance to account for working around the lease is higher than the Thiessens' claim for Added Inputs.

[83] In considering whether the current rents should be amended I will use Mr. Telford's calculations for tangible nuisance and disturbance to compensate for loss associated with added time to work around the leases, and losses due to overlap and compaction.

Adverse Effect/Intangible Nuisance and Disturbance

[84] The Thiessens' evidence does not explain why the claim for adverse effects varies from lease to lease. In many cases, nuisance and disturbance is confused with allegations of temporary or permanent damage. In some cases, the assertions about so called adverse effects on the calculation sheets is either not supported with evidence or the evidence respecting that lease is inconsistent. In some cases, the assertions on the calculation sheets are obviously in error. Generally speaking, I find the evidence on the Thiessens' calculation sheets relevant to intangible nuisance and disturbance to be unreliable because of the inconsistencies and errors. On the other hand, I find Mr. Telford's estimate does not account for intangible nuisance and disturbance other than additional time spent by the landowner, such as noise, traffic, dust and unsightliness, and likely undercompensates for this factor. Where Mr. Thiessen provided evidence in his testimony of intangible nuisance and disturbance specific to a particular lease distinct from evidence respecting damage, I have generally accepted that evidence.

[85] A payment for intangible nuisance and disturbance will of necessity be arbitrary as the nature of intangible nuisance and disturbance makes it incapable of precise calculation. I accept that the rents should include an allowance for intangible nuisance

and disturbance that is at a minimum equivalent to Mr. Telford's estimate, but in most cases will be higher.

Combined Tangible and Intangible Nuisance and Disturbance

[86] The other leases indicate that CNRL's "going rate" for nuisance and disturbance is $2,000 for wellsites and access roads and $1,500 for access roads. Mr. Skafte was critical of this lease selection because it only involves one operator and one landowner. However, as CNRL is the only operator in the area, there are no leases from other operators to compare. The Thiessens did not provide evidence of leases from other operators. Mr. Thiessen argued the *Iverson* and *Helm* decisions provided evidence of other leases. The evidence in one case does not become evidence in another case just because the decision is referred to. The decisions in both of those cases reflect the evidence before the Board in those cases and are based on that evidence. The evidence of other leases presented to the Board in the *Iverson* case was not before the Board in this case. The Helm decision was based on an analysis of the factors set out in section 154 of the *Petroleum and Natural Gas Act*, not an analysis of other leases, and on the evidence before it the Board found $1,500.00 to be an appropriate amount for nuisance and disturbance associated with the well site lease.

[87] I accept that $2,000.00 is the "going rate" for combined tangible and intangible nuisance and disturbance. In considering whether the current rents adequately compensate for tangible and intangible nuisance and disturbance I will use $2,000.00 as a minimal "going rate" for this factor.

Inflation

[88] Generally, the Board must consider the change in the value of money in a rent review to ensure that the rent continues to adequately compensate for reasonably probable ongoing losses. If the current rent adequately compensates for reasonably probable ongoing losses, it is not necessary to add an amount for inflation. If it does

not, applying an inflation factor may raise the rent sufficiently to provide adequate compensation. If an amount for inflation is required for any of the rents in issue, it will be to 2014, the effective date of these rent renewals.

Rent

Does the current rent compensate for ongoing losses or should it be varied?

Ref. 1 – a-6-A/94-A-14

[89] This is a 4.4 acre lease used for a wellsite and access road. The current rent is $4,400.00. The Thiessens submit the annual rent should be $6,769.00, which includes crop loss of $1,528.09, added inputs of $703.10, adverse effect of $4,000.00 and an inflationary increase of $537.35. The Thiessen's rent request is based on 4.79 acres, whereas I have found the compensable area is 4.4 acres.

[90] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, and using 4.44 acres, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $1,202.21.

[91] Mr. Telford calculates $1,576.79 for tangible nuisance and disturbance associated with working around this lease. Adding this figure to the estimated loss of profit equals $2,779.00, leaving $1,621.00 of the current rent of $4,400.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $3,197.79, which is considerably higher than the amount being paid for nuisance and disturbance in other surface leases in the area.

[92] I find the current rent of $4,400.00 more than adequately compensates the Thiessen's for their probable ongoing losses associated with this lease. I will leave the current rent as is rather than reducing it, however, recognizing the difficulty in quantifying nuisance and disturbance and the inherent arbitrariness of any payment for

this loss. The parties agreed the current rent adequately compensated for loss in 2009. I find it does not need to be increased, but neither am I inclined to reduce it.

Ref. 2 – A-26-A/94-A-14

[93] This is a 7.87 acre lease used for a wellsite and access road. The current rent is $5,000.00. The Thiessens submit the annual rent should be $6,476.00, which includes crop loss of $2,643.76, added inputs of $1,221.26, adverse effect of $2,000.00 and an inflationary increase of $610.62. The Thiessen's rent request is based on 8.32 acres, whereas I have found the compensable area is 7.87 acres.

[94] Adjusting Mr. Thiessen's estimate for crop loss to remove the steers, and using 7.87 acres, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $2,131.62.

[95] Mr. Telford calculates $883.41 for tangible nuisance and disturbance associated with working around this lease. Adding this figure to the estimated loss of profit equals $3,015.03, leaving $1,984.97 of the current rent of $5,000.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,868.38, which is higher than the amount being paid for nuisance and disturbance in other surface leases in the area.

[96] I find the current rent of $5,000.00 more than adequately compensates the Thiessens for their probable ongoing losses associated with this lease. The current rent does not need to be increased, but I am not inclined to reduce it either.

Ref. 3 – a-27-A/94-A-14

[97] This is a 9.24 acre lease used for a wellsite and access road. The current rent is $4,800.00. The Thiessens submit annual rent should be $4,976.00, which includes crop loss of $1,311.35, added inputs of $598.89, adverse effect of $2,500.00 and an inflationary increases of $566.19. The Thiessens based their claim on 4.08 acres; CNRL used 7.64 acres. I have found the compensable area is 9.24 acres.

[98] Using Mr. Thiessen's average yields for eight crops, I estimate loss of profit for 9.24 acres at $2,516.63. Mr. Telford's calculation for tangible nuisance and disturbance for this lease is $1,021.29. Adding these two numbers together equals $3,737.92, which leaves $1,062.08 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,083.37. I find the current rent of $4,800.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 4 – b-5-A/94-A-14

[99] This is a 4.62 acre lease used for a wellsite and access road. The parties agree the lease severs 3.5 acres so the compensable area is 8.12 acres. The current rent is $4,400.00. The Thiessens submit the annual rent should be $8,184.00, which includes crop loss of $2,454.46, added inputs of $1,191.90, adverse effect of $4,000.00, and an inflationary increase of $537.35.

[100] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $2,050.76. Adding Mr. Telford's estimate of $1,365.09 for tangible nuisance and disturbance equals $3,415.85, leaving $984.15 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,329.24. I find the current rent of $4,400.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 5 – b-16-A/94-A-14

[101] This is a 3.56 acre lease used for a wellsite. The current rent is $3,200.00. The Thiessens submit the annual rent should be $4,078.00, which includes crop loss of $1,164.22, added inputs of $522.56, adverse effect of $2,000.00 and an inflationary increase of $390.80.

[102] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $998.25. Adding Mr. Telford's estimate of $814.92 for tangible nuisance and disturbance equals $1,813.17, leaving $1,386.83 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,301.75.

[103] Mr. Thiessen's evidence is that this lease is just below his house and that he "looks at this one". His evidence is that while some equipment has been taken out, pipes and wires have been left hanging. I am satisfied that the intangible nuisance and disturbance component of this rent should be a little higher than the "going rate" to account for the unsightliness of this lease in proximity to the Thiessen's residence. Applying the Bank of Canada Inflation Calculator to adjust the $3,200.00 rent last renewed in 2009 to 2014 results in an increase to $3,506.89, which I find provides a sufficient increase to adequately compensate for ongoing losses. I find the annual rent for this lease should be amended to $3,510.00 effective April 23, 2014.

Ref. 6 – b-25-A/94-A-14

[104] This is a 4.35 acre lease used for a wellsite. The parties agree the lease severs 3.5 acres so the compensable area is 7.85 acres. The current rent is $3,500.00. The Thiessens submit the annual rent should be $6,037.00, which includes crop loss of $2,457.55, added inputs of $1,152.27, adverse effect of $2,000.00, and an inflationary increase of $1,152.27.

[105] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $2,077.87. Adding Mr. Telford's estimate of $769.30 for tangible nuisance and disturbance equals $2,847.17, leaving $652.83 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal only $1,422.13 which is below the "going rate". Adjusting this rent solely for inflation will only increase it by just over $300.00 which will not provide a sufficiently high increase to

bring the allowance for nuisance and disturbance up to $2,000.00. I find the annual rent for this lease should be increased to $4,100.00 effective April 13, 2014.

Ref. 7 – b-36-A/94-A-14

[106] This is a 4.35 acre lease used for a wellsite and access road. The parties agree the lease severs a .5 acre area so the compensable area is 4.85 acres. The current rent is $3,400.00. The Thiessens submit the annual rent should be $4,645.00, which includes crop loss of $1,472.50, added inputs of $711.91, adverse effect of $2,000.00 and an inflationary increase of $460.11.

[107] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $1,279.74. Adding Mr. Telford's estimate of $951.39 for tangible nuisance and disturbance equals $2,231.13, leaving $1,168.87 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,120.26. I find the current rent of $3,400.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 8 – b-a36-A/94-A-14

[108] This is a 1.14 acre lease used for a wellsite. The current rent is $1,200.00. The Thiessens submit the annual rent should be $1,661.00, which includes crop loss of $1,472.50, added inputs of 167.34, adverse effect of $2,000.00 and an inflationary increase of $146.55, all reduced by 50%. The reduction is not explained but I assume it is because this appears to be a lease extension to Ref. 7.

[109] The calculation sheet for this lease appears to contain errors. The crop loss, based on the average yield for nine crops including steers, is calculated as $478.10, yet $1,472.50 is claimed. If the crop loss is adjusted to remove steers, the crop loss based on the average yield for eight crops is $439.12.

[110] Mr. Telford's estimate for tangible nuisance and disturbance is $562.43. This figure added to the crop loss equals $1,040.83 leaving $159.17 of the current rent for intangible nuisance and disturbance. As this is a lease extension, compensation for nuisance and disturbance is mostly compensated for in the rent for the original lease, Ref. 7, as the expansion of a wellsite does not substantially increase the nuisance and disturbance from the wellsite once any additional well has been drilled. Nevertheless, I find the rent should include at least $500 for intangible nuisance and disturbance. I find the annual rent for this lease should be increased to $1,540.00 effective September 22, 2014.

Ref. 9 – b-49-A/94-A-14

[111] This is a 4.92 acre lease used for a wellsite and access road. The current rent is $3,500.00. The lease is in a pasture field, not a cultivated field. The Thiessens submit the annual rent should be $5,837.00, which includes crop loss of $3,409.56 based solely on the production of steers, adverse effect of $2,000.00 and an inflationary increase of $427.43.

[112] As this lease is in a pasture field rather than a cultivated field, I find the loss of profit from this lease should be calculated solely on the basis of hay production. Using Mr. Thiessen's average yields for hay, I estimate the loss of profit from this lease at $1,291.50. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit based on the production of hay is deducted from the current rent of $3,500.00, $2,208.50 is left for tangible and intangible nuisance and disturbance. I find the current rent adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 10 – b-c46-A/94-A-14

[113] This is a 3.19 acre lease used for a wellsite. The current rent is $2,393.00. The Thiessens submit the annual rent should be $3,852.00, which includes crop loss of $1,091.42, added inputs of $468.25, adverse effect of $2,000.00, and an inflationary increase of $292.24.

[114] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $948.72. Adding Mr. Telford's estimate of $767.17 for tangible nuisance and disturbance equals $1,715.89, leaving $677.11 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $1,444.28, below the "going rate". I find this rental payment should be increased by about $600.00 to continue to compensate the Thiessens for their probable ongoing losses. This increase exceeds the amount calculated by the Bank of Canada Inflation Calculator. I find the annual rent for this lease should be amended to $3,000.00 effective September 14, 2014.

Ref. 11 – b-6-A/94-A-14

[115] This is a 5.06 acre lease used for a wellsite and access road. The current rent is $4,300.00. The Thiessens submit the annual rent should be $6,696.00, which includes crop loss of $1,632.80, added inputs of $748.61, adverse effect of $4,000.00, and an inflationary increase of $314.88. The Thiessens rent request is based on 5.10 acres, whereas I have found the compensable area is 5.06 acres.

[116] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, (but not adjusting for the small difference in compensable area) I estimate loss of profit from the lease area based on Mr. Thiessen's average yields for eight crops at $1,502.53.

[117] Mr. Telford calculates tangible nuisance and disturbance for working around this site at nil. It is evident from the aerial photograph that the site is surrounded on three sides by bush, and that there would not be any additional turns or loss due to overlap

involved with working around this site. There is, therefore, no need to compensate for "added inputs".

[118] Mr. Thiessen's evidence respecting this lease is that a ditch is supposed to drain to a culvert but it rarely does. His evidence is he spends 6-7 hours in the spring cleaning the snow out of the ditch so that water will run to the culvert. I accept that Mr. Thiessen spends additional time in connection with this lease to deal with drainage issues. I estimate tangible nuisance and disturbance for his time spent dealing with drainage issues at $350.00 (7 hours x $50.hour).

[119] Adding together loss of profit of $1,502.53 and tangible nuisance and disturbance of $350.00 equals to $1,852.53 leaving $2,447.47 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,797.47. I find the current rent of $4,300.00 more than adequately compensates the Thiessen's for probable ongoing losses associated with this lease. I will leave the current rent in place.

Ref. 12 – c-A6-A/94-A-14

[120] This is a 4.37 acre lease used for a wellsite and access road. The current rent is $4,700.00. The Thiessens submit the annual rent should be increased minimally to $4,768.00, which includes crop loss of $1,498.21, added inputs of $695.76, adverse effect of $2,000.00 and an inflationary increase of $314.88. The Thiessens rent request is based on 4.74 acres, whereas I have found the compensable area to be 4.37 acres.

[121] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, and based on 4.37 acres, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $1,190. 23. Adding Mr. Telford's estimate of $694.75 for tangible nuisance and disturbance equals $1,894.98, which leaves $2,805.02 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $3,499.77. I find the current rent of $4,700.00 more

than adequately compensates the Thiessens for their probable ongoing losses associated with this lease. I will leave the current rent in place.

Ref. 13 – c-17-A/94-A-14

[122] This is a 4.40 acre lease used for a wellsite and access road. The parties agree the lease severs .5 of an acre so the compensable area is 4.90 acres. The current rent is $3,080.00. The Thiessens submit the annual rent should be $5,582.00, which includes crop loss of $1,496.20, added inputs of $719.25, adverse effect of $3,000.00, and an inflationary increase of $376.14.

[123] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $1,290.83. Adding Mr. Telford's estimate of $740.98 for tangible nuisance and disturbance equals $2,031.81, leaving $1,048.19 of the current rent of $3,080.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $1,789.17. I find this rental payment should be increased slightly to increase the allowance for intangible nuisance and disturbance and ensure it continues to adequately compensate for ongoing probable loss. Applying the Bank of Canada Inflation Calculator to adjust the rent of $3,080.00 last renewed in 2009 to 2014 results in an increase to $3,375.38, which sufficiently increases the rent to allow just over $2,000.00 for tangible and intangible nuisance and disturbance. I find the annual rent for this lease should be amended to $3,375.00 effective July 29, 2014.

Ref. 14 – c-39-A/94-A-14

[124] This is a 4.34 acre lease used for a wellsite and access road. The current rent is $3,200.00. The lease is in a field that has been used for pasture but is being transitioned into a field for cultivation. As of the effective date for this rent renewal, the field was pasture. The Thiessens submit annual rent should be $5,641.00, which includes crop loss of $3,038.00 based solely on the production of steers, added inputs of $211.90, adverse effect of $2,000.00, and an inflationary increase of $390.80.

[125] As this lease was in a pasture field as of the effective date for the rent renewal, I find loss of profit should be estimated on the basis of hay production. Using Mr. Thiessen's average yield for hay, I estimate loss of profit at $1,139.25. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit from hay production is deducted from the current rent of $3,200.00, $2,060.75 is left for tangible and intangible nuisance and disturbance. I find the current rent of $3,200.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 15. – c-97-I/94-A-11

[126] This is a 3.36 acre lease used for a wellsite and access road. The current rent is $2,800.00. This lease is in a pasture field. The Thiessens submit annual rent should be $4,953.00, which includes crop loss of $2,611.00 based solely on the production of steers, adverse effect of $2,000.00, and an inflationary increase of $341.95. The Thiessen's rent request is based on 3.73 acres, whereas I have found the compensable area to be 3.36 acres.

[127] As this lease is in a pasture field, I find loss of profit should be calculated on the basis of hay production. On the basis of Mr. Thiessen's average yield for hay I estimate loss of profit at $882.00. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit from hay production is deducted from the current rent of $2,800.00, $1,918.00 is left for tangible and intangible nuisance and disturbance, a little less than the "going rate". I

find the annual rent for this lease should be amended to $2,900.00 effective August 9, 2014.

Ref. 16 – d-6-A/94-A-14

[128] This is an 8.71 acre lease used for a wellsite and access road. The Thiessens' evidence is that the current rent is $5,920.00 whereas CNRL's evidence is the current rent is $4,700.00. The rent agreed in the lease negotiated in 1990 was $3,742.00. The Thiessens submit the annual rent should be $8,588.00, which includes crop loss of $2,949.95, added inputs of $1,278.50, adverse effect of $4,000.00, and an inflationary increase of $360.00.

[129] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at $2,187.83. Adding Mr. Telford's estimate of $1,756.41 for tangible nuisance and disturbance equals $3,944.27. If the current rent is $5,920.00 as indicated by the Thiessens, it leaves $1,975.73 for intangible nuisance and disturbance. If it is $4,700.00 as indicated by CNRL it only leaves $755.73 for intangible nuisance and disturbance. The Thiessen's calculation sheet for this lease (Exhibit 1, Tab 7E1-1) provides the following note:

> This lease is in the centre of a 200 acre field with access cutting off a land parcel between the lease and a natural draw. The access has massive erosion issues affecting the economic value of the landowner's property, and causing a sharp rise in increased operating costs due to location of the lease.

[130] There is no other evidence before me to support either that the "massive erosion issues" are caused by the right of entry or as to how or to what extent they affect the economic value of the property or cause an increase in operating costs. Mr. Telford's estimate of tangible nuisance and disturbance of $1,756.41 accounts for losses associated with working around the lease in the centre of the field, and exceed the landowner's calculation for added inputs.

[131] Applying the Bank of Canada Inflation Calculator to adjust the original rent of $3,742.00 negotiated in1990 to 2014 results in an increase to $5,991.97. I find the

annual rent for this lease should be amended to $5,990.00 effective November 28, 2014 to compensate the Thiessen's for probable ongoing losses.

Ref. 17 – d-a6-A/94-A-14

[132] This is a 3.85 acre lease used for a wellsite and access road. The current rent is $2,888.00. The Thiessens submit annual rent should be $4,320.00, which includes crop loss of $1,402.50, added inputs of $565.13, adverse effect of $2,000.00 and an inflationary increase of $352.69.

[133] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $1,065.14. Adding Mr. Telford's estimate of $1,229.85 for tangible nuisance and disturbance equals $2,294.99, leaving $593.01 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $1,822.86, which is below the "going rate". Applying the Bank of Canada Inflation Calculator to adjust the rent of $2,888.00 last renewed in 2009 to 2014 results in an increase to $3,164.97, which allows approximately $2,100.00 for tangible and intangible nuisance and disturbance. I find the annual rent for this lease should be amended to $3,165.00 effective August 9, 2014.

Ref. 18 – d-16-A/94-A-14

[134] This is a 4.18 acre lease used for a wellsite. The current rent is $3,500.00. The Thiessens submit the annual rent should be $4,764.00 based on crop loss of $1,649.97, added inputs of $686.96, adverse effect of $2,000.00, and an inflationary increase of $427.23. The Thiessens' rent request is based on 4.68 acres, whereas I have found the compensable area to be 4.18 acres.

[135] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, and based on 4.18 acres, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $1,138.48. Adding Mr. Telford's estimate of $859.92 for tangible nuisance and disturbance equals $1,998.40, leaving $1,501.60 of the current rent for intangible

nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,361.52.

[136] The notes on the Thiessen's calculation sheet for this lease (Exhibit 1, Tab 7G1-1) indicate the lease is directly east of the landowner's yardsite and in their view daily. Although the current rent allows in excess of $2,000 for tangible and intangible nuisance and disturbance, I am satisfied the rent should be increased slightly to provide a greater allowance for intangible nuisance and disturbance. Applying the Bank of Canada Inflation Calculator to adjust the rent of $3,500.00 last renewed in 2009 to 2014 results in an increase to $3,835.66. I find the annual rent for this lease should be amended to $3,835.00 effective April 12, 2014.

Ref. 19 – d-26-A/94-A-14

[137] This is a 5.78 acre lease used for a wellsite and access road. The current rent is $4,046.00. The Thiessens submit the annual rent should be $5,135.00, which includes crop loss of $1,792.65, added inputs of $848.42, adverse effect of $2,000.00, and an inflationary increase of $494.11.

[138] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at $1,510.98. Adding Mr. Telford's estimate for tangible nuisance and disturbance of $1,914.65 equals $3,425.63, leaving $620.37 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $2,535.02. I find the current rent of $4,046.00 more than adequately compensates the Thiessen's for their probable ongoing losses associated with this lease. I will leave the current rent in place.

Ref. 20 – d-27-A/94-A-14

[139] This is a 4.60 acre lease used for a wellsite and access road. The calculations sheet for this lease (Exhibit 1, Tab 7I1-1) notes that "this lease in addition with a-27-A, severs a 5 acre parcel between the two leases on three sides." Despite this note, no

severance is claimed or accounted for in the calculations, so I use the lease area of 4.60 acres. The current rent is $3,188.00. The Thiessens submit the annual rent should be $5,523.00, which includes crop loss of $1,458.57, added inputs of $675.21, adverse effect of $3,000.00, and an inflationary increase of $389.33.

[140] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit on the basis of Mr. Thiessen's average yield for eight crops at $1,238.40. Adding Mr. Telford's estimate for tangible nuisance and disturbance of $1,446.40 equals $2,684.80, leaving $503.20 for intangible nuisance and disturbance. The combined allowance for tangible and intangible nuisance and disturbance equals $1,949.60. I find this rent should be increased slightly to bring the allowance for tangible and intangible nuisance and disturbance above $2,000.00. Applying the Bank of Canada Inflation Calculator to adjust the rent of $3,188.00 last renewed in 2009 to 2014 results in an increase to $3,493.74, which I am satisfied provides a sufficient increase. I find the annual rent for this lease should be adjusted to $3,490.00 effective September 14, 2014.

Ref. 21 – d-95-I/94-A-11

[141] This is a 4.13 acre lease used for an access road. The current rent is $2,900.00. The Thiessens submit the annual rent should be $5,300.00, which includes crop loss of $1,339.22, added inputs of $606.23, adverse effect of $3,000.00 and an inflationary increase of $354.16.

[142] Adjusting Mr. Thiessen's estimate for crop loss to remove the steers, I estimate loss of profit on the basis of Mr. Thiessen's average yield for eight crops at $1,145.24. Mr. Telford estimates tangible nuisance and disturbance for working around this site as nil. From the aerial photograph it is evident that this access road extends along the edge of a field so it does not create any additional headlands.

[143] With loss of profit estimated at $1,145.24, the current rent allows $1,754.76 for nuisance and disturbance, which is above the "going rate" for access roads. I find the

current rent of $2,900.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

Ref. 22 – d-96-I/94-A-11

[144] This is a 3.11 acre lease used for a wellsite and access road. The current rent is $2,400.00. The Thiessens submit the annual rent should be $3,793.00, which includes crop loss of $1,043.38, added inputs of $456.50, adverse effect of $2,000.00 and an inflationary increase of $293.10.

[145] Adjusting Mr. Thiessen's estimate for crop loss to remove the steers, I estimate loss of profit on the basis of Mr. Thiessen's average yield for eight crops at $901.68. Adding Mr. Telford's estimate for tangible nuisance and disturbance of $787.88 equals $1,689.56, leaving $710.34 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal $1,498.22, below the "going rate". I am satisfied this rental payment should be increased by about $500.00, which exceeds the amount calculated by the Bank of Canada Inflation Calculator, to continue to compensate the Thiessens for their ongoing probable losses. I find the annual rent for this lease should be amended to $2,900.00 effective May 16, 2014.

[146] To summarize, I find the current rents adequately compensate the Thiessens for their ongoing probable losses for the following leases:

Ref.	Location	Rent	Effective date of rent review
1	a-6-A/94-A-14	$4,400.00	June 26, 2014
2	A-26-A/94-A-14	$5,000.00	November 28, 2014
3	a-27-A/94-A-14	$4,800.00	November 3, 2014
4	b-5-A/94-A-14	$4,400.00	May 6, 2014
7	b-36-A/94-A-14	$3,400.00	September 22, 2014
9	b-49-A/94-A-14	$3,500.00	November 22, 2014
11	b-6-A/94-A-14	$4,300.00	October 17, 2014
12	c-A6-A/94-A-14	$4,700.00	October 17, 2014
14	c-39-A/94-A-14	$3,200.00	January 26, 2014

19	d-26-A/94-A-14	$4,046.00	November 14, 2014
21	d-95-I/94-A-11	$2,900.00	February 28, 2014

[147] I find the rents for the following leases should be amended as of the effective dates set out below to the amounts set out below:

Ref.	Location	Amended Rent	Effective Date of rent review
5	b-16-A/94-A-14	$3,510.00	April 23, 2014
6	b-25-A/94-A-14	$4,100.00	April 13, 2014
8	b-a36-A/94-A-14	$1,540.00	September 22, 2014
10	b-c46-A/94-A-14	$3,000.00	September 14, 2014
13	c-17-A/94-A-14	$3,375.00	July 29, 2014
15	c-97-I/94-A-11	$2,900.00	August 9, 2014
16	d-6-A/94-A-14	$5,990.00	November 28, 2014
17	d-a6-A/94-A-14	$3,165.00	August 9, 2014
18	d-16-A/94-A-14	$3,835.00	April 12, 2014
20	d-27-A/94-A-14	$3,490.00	September 14, 2014
22	d-96-I/94-A-11	$2,900.00	May 16, 2014

ORDER

[148] The Surface Rights Board orders:

A. The annual rent payable under the following leases shall remain as set out below as of the effective dates set out below:

Ref.	Location	Rent	Effective date of rent review
1	a-6-A/94-A-14	$4,400.00	June 26, 2014
2	A-26-A/94-A-14	$5,000.00	November 28, 2014
3	a-27-A/94-A-14	$4,800.00	November 3, 2014
4	b-5-A/94-A-14	$4,400.00	May 6, 2014
7	b-36-A/94-A-14	$3,400.00	September 22, 2014
9	b-49-A/94-A-14	$3,500.00	November 22, 2014
11	b-6-A/94-A-14	$4,300.00	October 17, 2014
12	c-A6-A/94-A-14	$4,700.00	October 17, 2014
14	c-39-A/94-A-14	$3,200.00	January 26, 2014
19	d-26-A/94-A-14	$4,046.00	November 14, 2014
21	d-95-I/94-A-11	$2,900.00	February 28, 2014

B. The rent payable under the following leases shall be amended as set out below as of the effective dates set out below:

Ref.	Location	Amended Rent	Effective Date of rent review
5	b-16-A/94-A-14	$3,510.00	April 23, 2014
6	b-25-A/94-A-14	$4,100.00	April 13, 2014
8	b-a36-A/94-A-14	$1,540.00	September 22, 2014
10	b-c46-A/94-A-14	$3,000.00	September 14, 2014
13	c-17-A/94-A-14	$3,375.00	July 29, 2014
15	c-97-I/94-A-11	$2,900.00	August 9, 2014
16	d-6-A/94-A-14	$5,990.00	November 28, 2014
17	d-a6-A/94-A-14	$3,165.00	August 9, 2014
18	d-16-A/94-A-14	$3,835.00	April 12, 2014
20	d-27-A/94-A-14	$3,490.00	September 14, 2014
22	d-96-I/94-A-11	$2,900.00	May 16, 2014

C. CNRL shall forthwith pay to the Thiessens the difference in rent owing under the leases set out at B above as of the effective date of each rent review and as owing on each anniversary subsequent to the effective date to the date of this order, to make the rent payable under each lease current to the date of this order.

DATED: September 29, 2016

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1870
Board Order 1870-1

March 6, 2017

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 NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 86
RANGE 18, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT
(the "Lands")

BETWEEN

KEITH DIETZ

APPLICANT

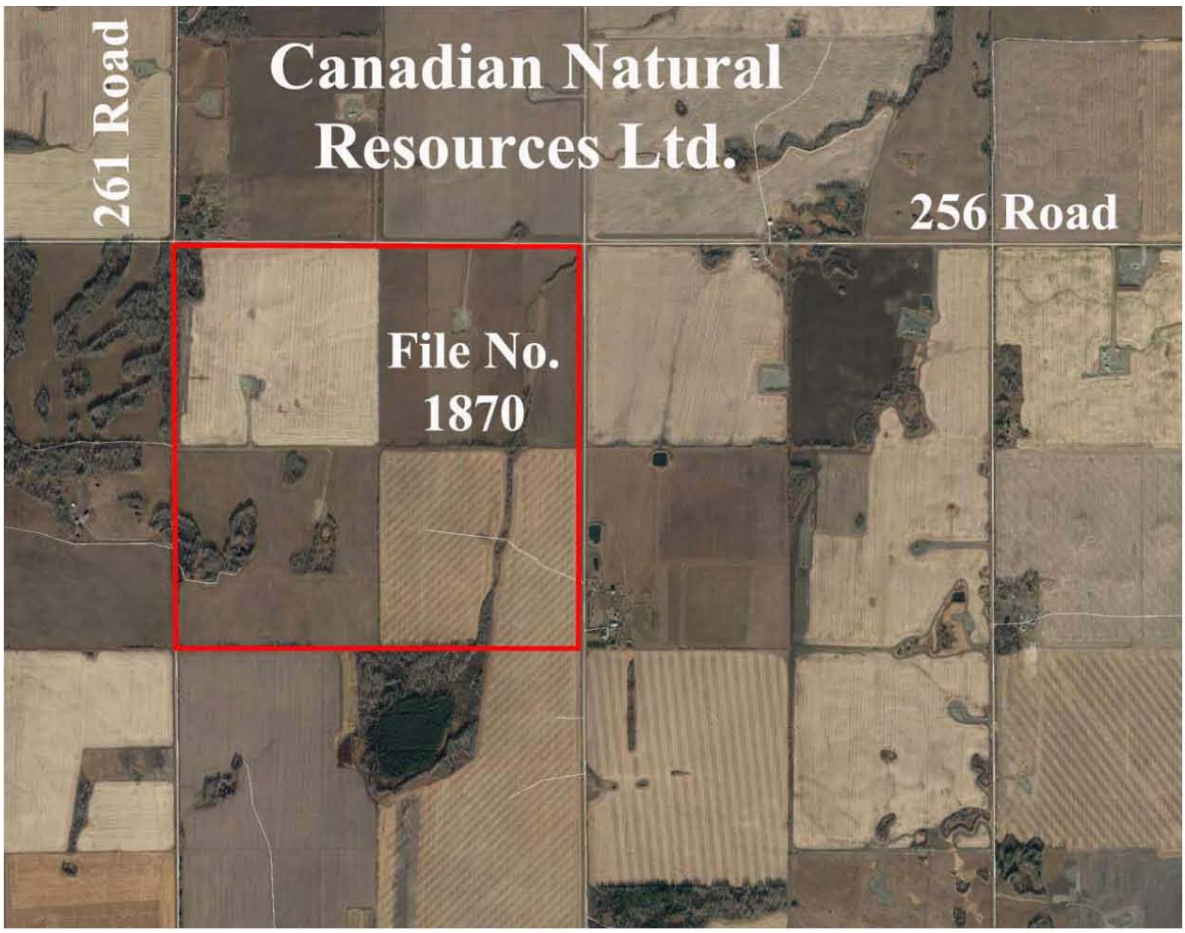
AND

CANADIAN NATURAL RESOURCES LIMITED

RESPONDENT

BOARD ORDER


Canadian Natural Resources Ltd.
File No.
1750
Siphon Creek Rd
Siphon Creek Road


261 Road
Canadian Natural
Resources Ltd.
256 Road
File No.
1870

Heard: November 7 and 8, in Fort St. John
Appearances: Keith Dietz, for the Applicant
Dwayne Werle, for the Respondent

INTRODUCTION AND ISSUE

[1] The Applicant, Keith Dietz, is the owner together with Susanne Lorain Dietz of the Lands legally described as: THE NORTHWEST ¼ OF SECTION 9 TOWNSHIP 86 RANGE 18 WEST OF THE 6th MERIDIAN PEACE RIVER DISTRICT (the "Lands"). On April 29, 1991 a surface lease was entered into between Eleanor Rose Blanchette and Margaret Jean Blanchette and Amerada Hess Canada Ltd. ("Amerada") granting Amerada the use of 4.35 acres of the Lands to operate and maintain a well site and an access road (the "Lease"). Subsequently the Land was sold to the Applicant and Ms. Dietz and an assignment of the Lease was made dated March 1, 2005. Canadian Natural Resources Ltd. ("CNRL") is now exercising the rights of the lessee, Amerada. The original amount of the rent under the Lease was $2,500 a year. The rent increased over the years. The last rent review occurred in October 2009. The rent was increased to $4,400 a year from $4,000 a year.

[2] Mr. Dietz seeks an increase to the annual rent payable under the Lease in accordance with the provisions for rent review set out in the *Petroleum and Natural Gas Act* R.S.B.C. 1996 c. 361. The effective date of this review is October 18, 2014.

[3] The purpose of a rental payment is to address the immediate and ongoing impact to the landowner and to the land of an operator's activity on private land (*Dalgliesh v Worldwide Energy Company Ltd.,* (1970) 75W.W.R. 516 (Sask. D.C.)). The rental payment is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing use of land.

[4] The onus is on the Applicant, Mr. Dietz, to establish his ongoing prospective loss and to establish that an increase to the rental payment is warranted to compensate for ongoing losses (*Progress Energy Canada Ltd v Salustro,* 2014 BCSC 960). The Board

must base its findings with respect to the loss on the evidence before it. The burden of providing evidence to substantiate loss rests with the Applicant.

[5] Mr. Dietz is seeking to increase his annual rent to $5,800 from the current annual rent of $4,400, an increase of $1,400. He claims that an increase is due on several grounds including increased production and returns on his farm, the general increase in the value of farm land, increased cost of production due to the location of the wellsite and general nuisance and disturbance. CNRL submits that the evidence does not support an increase. CNRL submits that the current rent of $4,400 represents fair compensation when considering both loss of use and any nuisance or disturbance.

[6] The issue, therefore, is to determine whether the evidence substantiates that the annual rent should be increased to reflect the actual and ongoing loss to the Applicant arising from CNRL's continued use and occupation of the Lands.

FACTS

[7] The Lands are agricultural land used for growing wheat, canola, and fescue. The surface lease area is 4.35 acres, including an access road. Currently on site, there is a teardrop pad with two small buildings and a water injection well. The well site is not located on a home quarter and no additional land is severed. CNRL visits the site approximately once a week. Mr. Dietz rotates the crops on a four-year cycle, two years of fescue, one year of canola and one year of wheat.

LEGAL FRAMEWORK

[8] Section 154 of the *Petroleum and Natural Gas Act* sets out the factors the Board may consider in determining the initial compensation or annual rent payable for the use and occupation of private land. Those factors are as follows:

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 nuisance and disturbance from the right of entry;
f) the effect, if any, of other rights of entry with respect to the land;
g) money previously paid for entry, occupation and use;
h) the terms of any surface lease or agreement submitted;
i) previous orders of the Board;
j) other factors the Board considers applicable;
k) other factors or criteria established by regulation.

[9] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[10] Section 154(2) of the *Petroleum and Natural Gas Act* further provides, in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was originally granted or last renewed.

EVIDENCE

[11] I heard evidence from Mr. Dietz with respect to the use of the Lands and the impact of the Lease on the use of the Lands. I heard evidence from Ms. Kira Gerow, Reclamation Coordinator, CNRL respecting loss of use, crop rotation and market value of the crops harvested and from Mr. Dwayne Werle, District Landman, CNRL about the Lease and CNRL's operations.

[12] Mr. Dietz provided a Book of Documents (Exhibit 1) and CNRL provided a Book of Documents (Exhibit 2), both of which contained lists of comparable leases. Exhibit 2 also contained an Annual Compensation Review Report prepared by Ms. Gerow, a professional agrologist and certified crop adviser, setting out Ms. Gerow's estimates for loss of profit, and nuisance and disturbance. Ms. Gerow also gave evidence at the

hearing. Ms. Gerow's estimate of loss does not exceed the current rent. I consider the evidence as it relates to the factors set out in the *Petroleum and Natural Gas Act*.

Value of the Land and Change in the Value of the Land

[13] Mr. Dietz provided some evidence about the increase in land values in the area. He said that 1/4 sections which previously had sold for $20,000 now sell for $370,000 and that the price of land has gone up. The evidence was very general in nature with no supporting documentation respecting the increasing value of land as a whole. Nor was the evidence specific to the value of the parcel of land in question. The evidence does not assist me in determining the value of the specific parcel in question and the change in value of these Lands over time or as a result of the Lease.

Loss of Right or Profit

[14] Mr. Dietz testified as to his farming practise. He has farmed over twenty years and has adopted practices to increase farm production. He uses GMO plants and seeds and uses larger and bigger equipment to improve efficiency. He rotates his crops on a four-year cycle, the first two years are fescue, the third year is canola and the fourth year is wheat. As a result of the layout and shape of the leased property, he has additional headlands (extra corners around the lease area) resulting in greater compaction of the ground and additional time for the extra headlands when using his equipment. This increases his costs due to extra time, machinery wear and fuel costs. He estimated his costs to be $150 per acre.

[15] Mr. Dietz also testified that his overall farm income has been increasing at a rate of about 16% a year since 2010 but provided no income records to support his statement. He also did not provide any specifics of how the sale of the products of the Land related to his overall income. He did indicate initially that his loss was approximately $173 an acre for crop loss (a total of $752.55 for the 4.35 acres). In his closing submission, Mr. Dietz provided two breakdowns of his crop loss.

[16] The first approach relied upon his 16% increase each year. He estimated is crop loss per acre in 2014 to be $477 and then increased that by 16% resulting in a loss of $561 (2015), $650 (2016) and $754 (2017) for an average crop loss of $610 per acre or $2,647 annual crop loss.

[17] The second approach was based upon actual loss on the Lands. In 2013, it was fescue at 900 lb. per acre times $ .90 for $810. In 2014, it was the second year of fescue at 600 lb. per acre times $ .90 for $540. In 2015, it was canola at 54 bushels per acre times $10.00 for $540. In 2016, it was wheat at 70 bushels per acre times $7.00 for $490. Total loss over four years was $2,380 or an average of $595 per year, which multiplied by 4.35 acres equates to total annual loss of $2,588.

[18] However, one must consider input costs as well. In his oral evidence, Mr. Dietz indicated the following input costs: $110 per acre for wheat, $170 per acre for canola and $75 an acre for fescue. Accounting for input costs decreases the actual loss as follows: fescue Year 1 $735 an acre, fescue Year 2 $465 an acre, canola Year 3 $370 an acre, and wheat Year 4 $380 an acre for a total loss of $1,950 or average annual loss of $487.50 an acre, which multiplied by 4.35 acres equates to total annual loss of $2,120.

[19] In her evidence, Ms. Gerow, for CNRL, reviewed the document she had prepared entitled Annual Compensation Review for 12-09-086-18 W6M, August 2016 (found at Tab 1, Exhibit 2). Ms. Gerow used representative industry data as Mr. Dietz had not provided production records to CNRL. Ms. Gerow used data from the Agricultural Financial Service Corporation (a publication for the Province of Alberta). She stated that this data was more readily available and that the data for British Columbia was limited. She calculated the weighted average yields for the three crops for 2012 to 2015 – fescue, 500 lb. per acre (for a good year); canola 29.25 bushels an acre and wheat 48 bushels an acre. She also calculated the average market price, certified fescue $.70 per lb, canola $11.38 a bushel and wheat $6.35 a bushel. Her input costs calculations were, fescue $75 an acre for seedling and $50 an acre for established, $185 an acre for

canola and $130 an acre for wheat. Ms. Gerow initially calculated the average loss over four years to be $222.19 per acre for a total loss of $966.54 a year. After further questioning and analysis, she made adjustments based upon Mr. Dietz's evidence and recalculated the average loss to be $332 per acre or $1,445 for the total loss per year.

[20] In addition to the crop loss, there was evidence of the cost and expense related to the extra headlands which Mr. Dietz estimated to be $150 an acre for a total of $652.50 resulting in a total loss of $1,405 (using the $175 an acre estimate) or $2,872 (using the actual loss figures). Ms. Gerow's calculations, which were more detailed and based upon the evidence given by Mr. Dietz regarding his farming practice, added an additional cost of $477.50 due to the headlands resulting in a total loss of $1,922.50.

[21] I accept Mr. Dietz's estimate of loss (with the inclusion of input costs) of $2,120 plus Ms. Gerow's more detailed assessment of headland costs of $477.50 resulting a total loss of $2,597 for loss of profit.

Nuisance and Disturbance

[22] Little direct evidence was presented respecting nuisance and disturbance. CNRL said that the well site was accessed by CNRL approximately once a week. Mr. Dietz suggested it was more than that. The well is a water-injection well not an oil or gas producing well. The lease site is not located on the home quarter. Mr. Werle suggested that an amount of $1,500 was sufficient for any nuisance and disturbance. Mr. Dietz suggested $2,500 but did not provide any evidence to support a specific amount.

[23] There was some evidence related to water pooling on the property to the east of the well site but the evidence suggested that this was related to the slope of the land and not to the well site in particular. There is a culvert on the road.

Other Leases

[24] Both parties presented evidence respecting other leases. While the Board may consider other leases, it has found that often other leases are of limited or no assistance

in a rent review application unless they are capable of substantiating a clear pattern of dealings. The rent negotiated to compensate for ongoing prospective losses in one case does not establish another landowner's probable ongoing loss or create an entitlement by another landowner of the same amount. Compensations for factors such as nuisance and disturbance will be dependent on the particular circumstances of each case, and unless the evidence establishes that the circumstances giving rise to one particular element of compensation are the same or very similar, the compensation agreed in one case does not substantiate loss in another case.

[25] Mr. Dietz provided a table of nine comparable leases (Tab 17, Exhibit 1). He suggested that the lease of 16-16-86-18 was the most relevant. CNRL provided a list of fourteen comparable leases (Tab K, Exhibit 2) including 16-16-86-18. The lease of 16-16-86-18 has a rental of $4,900 for 4.67 acres and was last reviewed in 2009. CNRL advises it is an active oil well site with the pump jack close to the house. The nuisance and disturbance payment is $3,000. Another lease of 6-9-86-18 of 7.36 acres is of an active water injection sell site which has a nuisance and disturbance payment of $2,000 according to CNRL with a total rental of $4,900 (it is farmed for hay). Mr. Dietz also provided some leases which only provided total rental payment without a breakdown for loss of use and for nuisance and disturbance (leases, 10-36-88-19, 1-33-85-18 and 5-8-88-17) and as such are of limited value. Given the list of comparable leases a nuisance and disturbance payment between $1,500 and $2,000 appears appropriate.

Change in the Value of Land and Money

[26] Section 154(2) of the *Petroleum and Natural Gas Act* requires the Board to consider any changes in the value of land or money since the rent was last negotiated, in this case October 2009. No evidence of the change in the value of money was presented by either party. The evidence relating to the change in the value of land was of general nature about land increasing in value but no specific evidence of the change in the value of the Lands that are the subject of the application since October 2009. The evidence was anecdotal at best.

ANALYSIS AND CONCLUSION

[27] The above analysis suggests that considering Mr. Dietz's farming practise of the Lands, in particular the four-year rotation and the use of GMO products and his success at fescue production, and taking into account the input costs and headland costs, that a payment in the range of $2,600 is sufficient to cover his actual losses. Further, there is a nuisance and disturbance factor related to regular access to the well site but the well site is not located near the home quarter and Mr. Dietz did not indicate any extensive disturbance. In addition, the comparable leases speak to a range of $1,500 to $2,000 for this type of intangible award. Accordingly, $1,800 would appear to be sufficient resulting in a lease payment of $4,400, the current lease amount.

[28] The evidence does not support increasing the rent above the current rent of $4,400. The current rent sufficiently compensates Mr. Dietz for the tangible losses and provides additional compensation for intangible losses, likely incurred but not quantified.

[29] I find the annual rent of $4,400 continues to be appropriate as of the rent review period commencing October 18, 2014.

ORDER

[30] Canadian Natural Resources shall continue to pay annual rent of $4,400.00 to Mr. and Mrs. Dietz for the rent period commencing October 18, 2014.

Dated: March 6, 2017

FOR THE BOARD

_____

Howard Kushner, Panel Chair

File No. 1877
Board Order No. 1877-1

December 9, 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
THE NORTH ½ OF SECTION 15 TOWNSHIP 79 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN EPP21626
(The "Lands")

BETWEEN:

Raymond Earl Sluggett

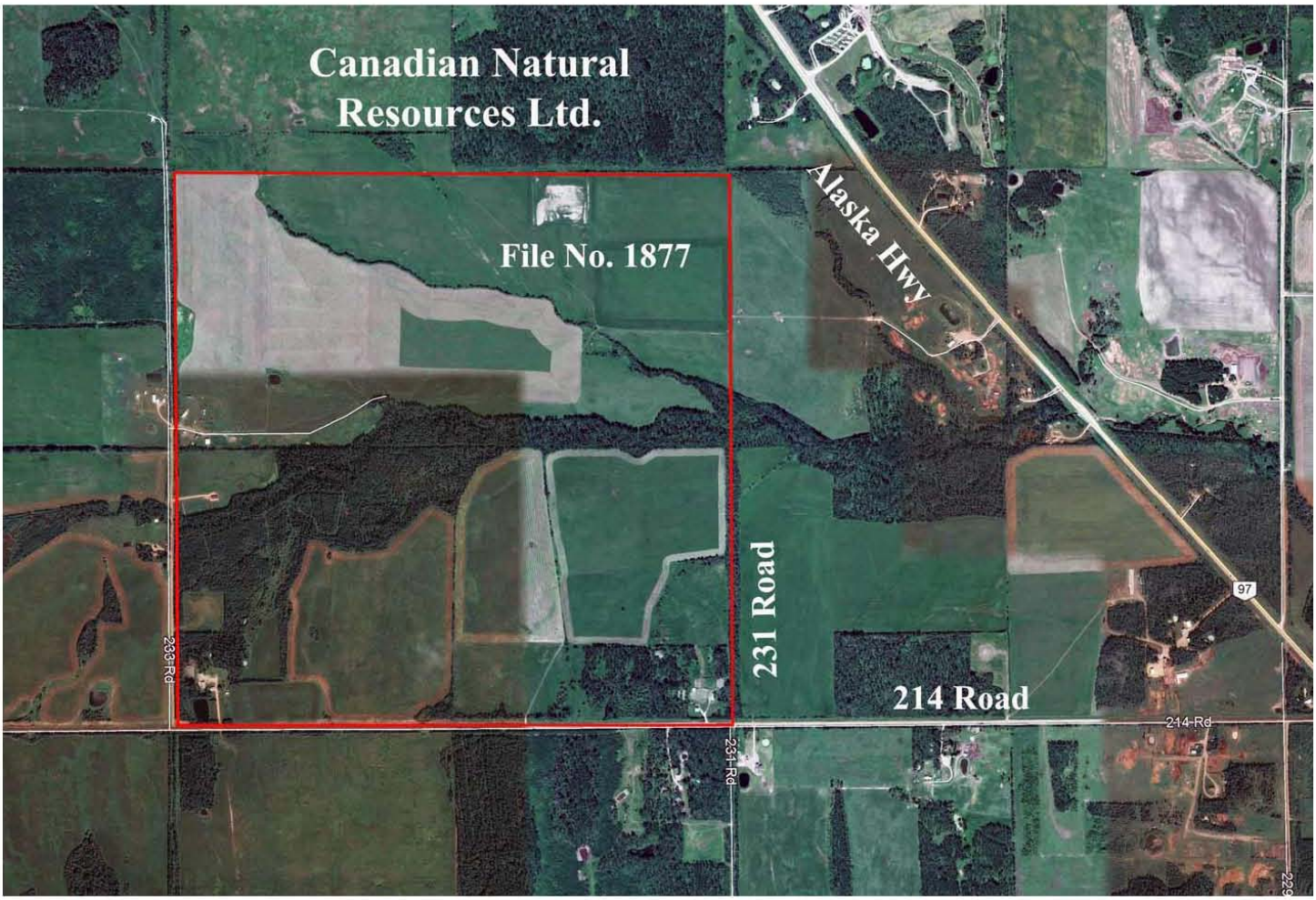
(APPLICANT)

AND:

Canadian Natural Resources Ltd.

(RESPONDENT)

BOARD ORDER


Canadian Natural
Resources Ltd.
File No. 1877
Alaska Hwy
231 Road
214 Road
233 Rd
231 Rd
214 Rd
97

Canadian Natural Resources Ltd. ("CNRL") requires access to the Lands legally described as: THE NORTH ½ OF SECTION 15 TOWNSHIP 79 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN EPP21626, owned by Raymond Earl Sluggett for an oil and gas activity , specifically to construct and maintain an access road and wellsite. Right of entry is not opposed and partial compensation payable by CNRL to Raymond Earl Sluggett for entry, occupation and use of the Lands is agreed. The parties do not agree on the amount of total compensation.

ORDER

BY CONSENT the Surface Rights Board orders:

1. Upon payment of the amount set out in paragraph 2, Canadian Natural Resources Ltd. shall have the right of entry to those portions of the Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" to construct and maintain an access road and wellsite (a total of 19.72 acres) in accordance with an Oil and Gas Commission permit with Commission File No. 9643080.

2. Canadian Natural Resources Ltd. shall pay to Raymond Earl Sluggett as partial compensation the total amount of $37,080. Payment is to be made no earlier that January 1, 2016 and no later than January 15, 2016.

3. Canadian Natural Resources Ltd. shall deliver to the Surface Rights Board security in the amount of $1.00 (receipt sufficiency of which is hereby acknowledged).

4. Nothing in this order operates as a consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: December 9, 2015

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "A" ORDER 1877-1

CANADIAN NATURAL RESOURCES LIMITED

INDIVIDUAL OWNERSHIP PLAN

SHOWING

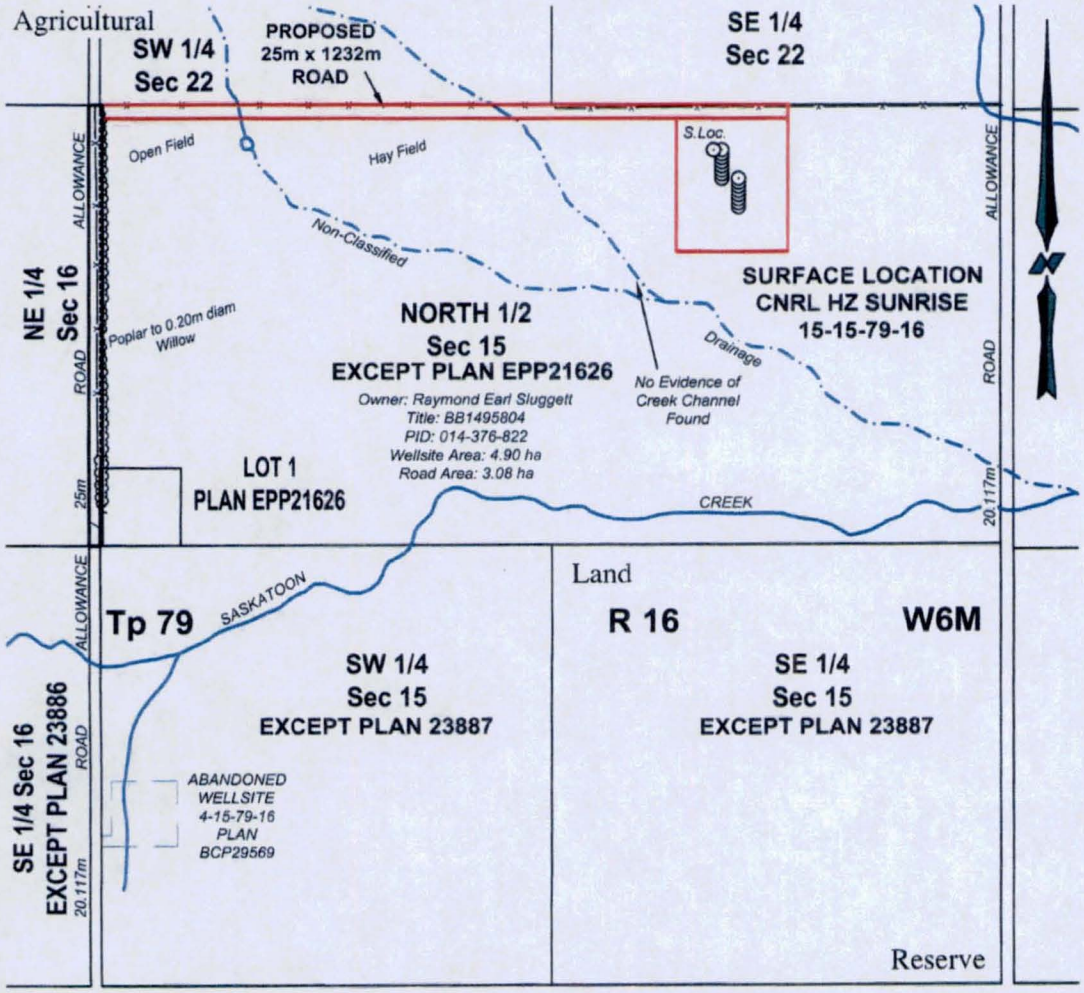
WELLSITE AND ROAD

IN

THE NORTH HALF OF SECTION 15 TOWNSHIP 79 RANGE 16 WEST OF THE 6TH MERIDIAN
EXCEPT PLAN EPP21626

PEACE RIVER DISTRICT

FILE:1194320



OWNER(S): RAYMOND EARL SLUGGETT

TITLE: BB1495804

PID: 014-376-822

WELLSITE 4.90 ha 12.11 Ac

ROAD 3.08 ha 7.61 Ac

Certified Correct this 15th day of JULY, 2015.

D.N. BATTEN BCLS 797

McElhanney

McElhanney Geomatics
Professional Land Surveying Ltd.
8808 - 72 Street Fort St. John, BC
Phone: (250)787-0356 Fax (250)787-0310

Distances are in metres.
Portions referred to are outlined in Red and Green.

REVISION: 1	DRAWN BY: CM
SCALE 1:10000	JOB No 311123703

File No. 1877
Board Order No. 1877-2

May 3, 2017

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 NORTH ½ OF SECTION 15 TOWNSHIP 79 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN EPP21626
(The "Lands")

BETWEEN:

Raymond Earl Sluggett

(APPLICANT)

AND:

Canadian Natural Resources Ltd.

(RESPONDENT)

BOARD ORDER

In December of 2015 the Board issued Board Order 1877-1 for Canadian Natural Resources Ltd. ("CNRL") to access to the Lands legally described as: THE NORTH ½ OF SECTION 15 TOWNSHIP 79 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN EPP21626, owned by Raymond Earl Sluggett for an oil and gas activity, specifically to construct and maintain an access road and wellsite (Well Authority: 31748) ; Road Permit – 9643080 (Road No.:03484). The wellsite has the potential for up to 16 additional wells, that are not yet permitted.

Although discussions have taken place, the parties are unable to agree to compensation.

On April 27, 2017, I conducted an in-person mediation in Dawson Creek attended by D. Werle for CNRL, and R. Sluggett and E. Gowman for the Landowner.

Mr. Werle explained that the access road is not constructed and that the well is only partially constructed.

Mr. Sluggett explained his use of the lands that form the access road and the well site, saying that he rotates the land between a grain crop and a hay crop, and uses the land for fall grazing.

The parties discussed Mr. Sluggett's actual losses plus the associated nuisance and disturbance. The also reviewed other settlements and leases.

After a thorough and lengthy discussion, the parties agreed to compensation, retroactive to the date of Board Order 1877-1.

ORDER

BY CONSENT the Surface Rights Board orders:

1. One time payment for the compulsory aspect of the entry, occupation or use: $5,000.00

2. One time payment for the value of land at $1,700.00 per acre for 19.72 acres: $33,524.00

3. Annual payment for loss of profit (crop loss) $320 per acre for 19.72 acres: $6,310.00

4. Annual payment for nuisance and disturbance: $2,500.00

5. Total annual payment is $8,810 ($6,301.00 + $2,500 = $8,810 from paragraphs #3 and #4)

6. One time payment for temporary & Permanent damage from entry: $2,958.00

7. Total first year payment (the total of the amounts above) minus payment of $37,080 (paid as per Board Order 1877-1) of $13,212.00.

8. The parties have agreed to the amount to cover Mr. Sluggett's time and travel, and will settle that outside the terms of this Order.

9. The parties agreed that the payment for subsequent wells would be a $2000.00 initial payment for each well, and an increase in the annual rent of $500.00 for each producing well.

DATED: May 3, 2017

FOR THE BOARD

Rob Fraser, Mediator

File No. 1919
Board Order No. 1919-1

February 7, 2018

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 ½ OF SECTION 19 TOWNSHIP 88 RANGE 19 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

BLACK WILLOW BISON INCORPORATED

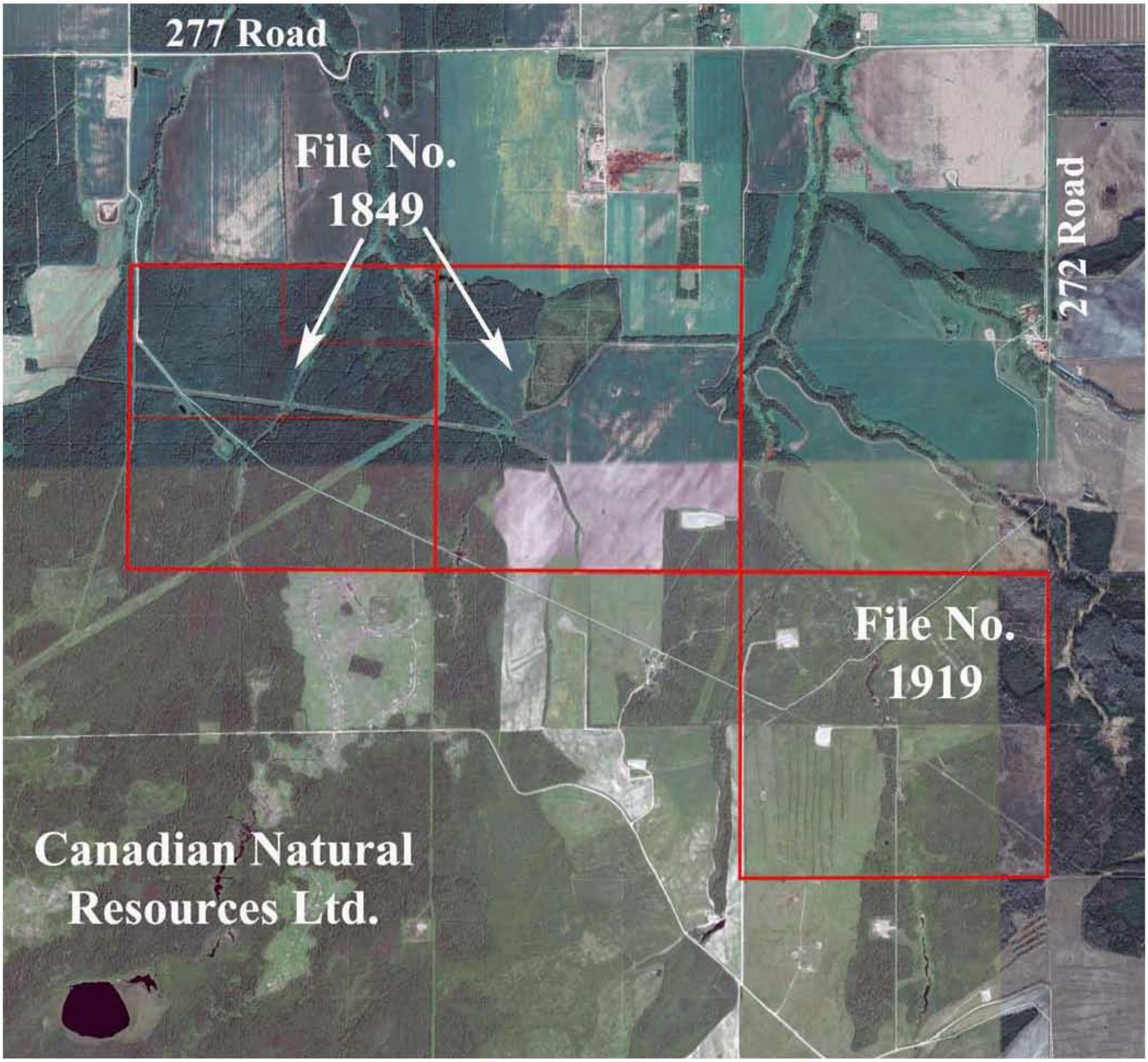
(APPLICANT)

AND:

CANADIAN NATURAL RESOURCES LIMITED

(RESPONDENT)

BOARD ORDER


277 Road
File No.
1849
272 Road
File No.
1919
Canadian Natural
Resources Ltd.

Heard:	By written submissions
Submissions from:	Darron K. Naffin, Barrister and Solicitor, on behalf of Canadian Natural Resources Limited dated September 11, 2017, October 30, 2017 and January 26, 2018 Black Willow Bison Incorporated dated October 16, 2017

INTRODUCTION AND ISSUE

[1] Black Willow Bison Incorporated (Black Willow) is the registered owner of land legally described as: The South ½ of Section 19 Township 88 Range 19 West of the 6th Meridian Peace River District (the Lands). Canadian Natural Resources Limited (CNRL) conducts an oil and gas activity on the Lands. The previous operator of the oil and gas activity signed a surface lease with a previous owner of the Lands granting the previous operator surface rights to the Lands (the Surface Lease). The Surface Lease was not registered in the Land Title Office.

[2] Black Willow filed an application with the Board under section 158 of the *Petroleum and Natural Gas Act* (the *Act*) for mediation and arbitration services. Black Willow says that CNRL refuses to engage with them to legalize its occupation of the land. Black Willow disputes that the Surface Lease grants CNRL a valid right of entry.

[3] CNRL submits Black Willow does not have standing to bring the application and the Board does not have jurisdiction to hear it.

[4] The parties agreed that the issue for this jurisdictional challenge brought by CNRL is: In an application under section 158 and 159 of the *Petroleum and Natural Gas Act*, does the Board have jurisdiction to determine if an existing unregistered surface lease is valid so as to provide a proper right of entry?

[5] Both parties provided written submissions. I did not find Black Willow's submissions helpful. But for the reasons that follow, neither have I found CNRL's submissions to be persuasive. I am satisfied that the Board has the jurisdiction to determine the threshold

issue to Black Willow's application: namely whether the existing surface lease already provides CNRL with an effective right of entry.

ANALYSIS

[6] The Board's jurisdiction is defined by its enabling legislation, the *Petroleum and Natural Gas Act.* The Board may interpret its legislation in order to determine whether an application before it falls within its mandate and seeks a remedy the Board is authorized to provide. The legislation must be interpreted in accordance with the modern rule of statutory interpretation that the words of an enactment must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 (SCC)).

[7] The scheme of Part 17 of the *Act* is to provide a forum and framework for the resolution of disputes between landowners and persons requiring access to the surface of private land for oil and gas activities about right of entry to the land and the compensation payable to the landowner for loss or damage caused by the right of entry.

[8] Division 1 of Part 17 of the *Act* is an Interpretation section setting out the definitions of various terms used in Part 17. Division 2 deals with the authority to enter private land for an oil and gas activity and the liability of a right holder to pay compensation for loss or damage caused by a right of entry. Division 3 establishes the Board and Division 4 deals with the Board's operations. Section 147 sets out the Board's jurisdiction as follows:

> 147 The Board has jurisdiction in relation to any or all of the following:
>
> (a) an application under Division 5 by a person who requires a right of entry or by a landowner;
> (b) an application under Division 6 for mediation and arbitration;
> (c) an order for payment of costs or advance costs under Division 7;
> (d) any other matter in respect of which the board has jurisdiction under this or another Act.

[9] Division 5 deals with the Board's authority to grant rights of entry. Division 6 deals with Board orders relating to rights of entry and the Board's authority to hear disputes respecting alleged damage to land or loss to landowners or occupants of land subject to a right of entry, disputes respecting the operation of or compliance with a term of a surface lease, and disputes about review of rent payable under a surface lease. Division 7 deals with costs.

[10] The basic premise of the legislative scheme is found at section 142 of the *Act* which provides that persons may not enter, occupy or use land to carry out an oil and gas activity or a related activity, or to comply with an order of the Oil and Gas Commission (OGC) unless the entry, occupation and use is authorized by a surface lease with the landowner or an order of the Board. I reproduce section 142 in full below:

> 142 Subject to section 39 of the *Oil and Gas Activities Act*, a person may not enter, occupy or use land
> (a) to carry out an oil and gas activity,
> (b) to carry out a related activity, or
> (c) to comply with an order of the commission,
> unless the entry, occupation or use is authorized under
> (d) a surface lease with the landowner in the form prescribed, if any, or containing the prescribed content, if any, or
> (e) an order of the board.

[11] Sections 158 and 159 of the *Act* are within Division 5 entitled Authority to Enter Land. Pursuant to section 147(a) of the *Act*, the Board has jurisdiction in relation to an application under Division 5 by a person who requires a "right of entry" or by a "landowner".

[12] Section 158 *Act* provides:

> **Application for mediation and arbitration**
>
> 158 A person who requires a right of entry or the landowner may apply to the board for mediation and arbitration if the person and the landowner are unable to agree on the terms of a surface lease.

[13] Section 159 of the *Act* provides that in an application under section 158, the Board or a mediator "may make an order authorizing a right of entry, subject to the terms and conditions specified in the order" if the Board or mediator "is satisfied that an order authorizing the right of entry is required for a purpose described in section 142(a) to (c)." Section 159 then goes on to deal with the mediator's continued authority to assist the parties in resolving issues when a right of entry order is made, discretionary and mandatory conditions of a right of entry order, and procedural obligations on the right holder when a right of entry order is granted.

[14] CNRL submits that Black Willow is not a "landowner" capable of bringing an application under section 158 and that CNRL does not require a "right of entry". Both of these terms are defined at section 141(1) of the *Act* as follows:

> **"landowner"** means the owner of land that is subject to a right of entry or a proposed right of entry
>
> **"right of entry"** means an authorization under section 142(d) or (e) to enter, occupy or use land for a purpose described in section 142(a) to (c)

[15] Section 141(1) also provides a definition of "owner" as follows:

> **"owner"** in relation to land, means either of the following:
> (a) a person registered in the land title office as the registered owner of the land or as its purchaser under an agreement for sale;
> (b) a person to whom a disposition of the land has been issued under the *Land Act*,
> but does not include the government.

[16] To summarize the combined effect of the provisions and definitions referred to above, a person may not enter land to conduct oil and gas activities unless the entry is authorized under a surface lease agreed with the landowner or an order of the Board. Either the person requiring the right of entry or the landowner may apply to the Board under section 158 if they are unable to agree on the terms of a surface lease. The landowner may be the registered owner of the land, or the person to whom a disposition of the land has been made under the *Land Act*, where the land is subject to a right of entry or a proposed right of entry.

[17] CNRL submits that sections 158 and 159 do not authorize the Board to make a determination on the validity of an existing surface lease. With reference to section 158, CNRL submits it is not a person who requires a right of entry because it already has the right to enter the Lands pursuant to the Surface Lease. It says CNRL and the owner of the land (or its predecessor) have already agreed on the terms of a surface lease so no issue falls within the scope of section 158 for the Board to mediate or arbitrate.

[18] Whether CNRL already has the right to enter the Lands for its oil and gas activity, however, is precisely the issue in this case. Whether the Board will be satisfied a right of entry order is required, is the issue raised by Black Willow and an issue squarely within the jurisdiction of the Board to consider under section 159.

[19] CNRL submits that section 159 does not specifically reference, or even remotely suggest, that the Board has the authority to make a determination on the validity of a surface lease. It says CNRL has not made, and does not intend to make, an application to the Board for a right of entry order in relation to the Lands because it says it is already authorized to enter the Lands under the Surface Lease. Again, this is the issue that is squarely raised by Black Willow's application. Determining whether a right of entry is required is a matter within the jurisdiction of the Board.

[20] CNRL says Black Willow's application is conflicted. As noted above, a "landowner" is "the owner of land that is subject to a right of entry or a proposed right of entry". Black Willow cannot be suggesting it is the owner of land that is subject to a right of entry. If the land is subject to a right of entry there is no purpose for invoking the Board's jurisdiction under section 159 to consider whether a right of entry is required. CNRL submits that if Black Willow is relying on the fact that it is the owner of land that is subject to a proposed right of entry to establish its standing to bring the application, the Board should dismiss the application on the basis that no right of entry has been proposed. CNRL says is not proposing a right of entry; it says it already has the right to and does enter the Lands to conduct its oil and gas activity.

[21] A “landowner” is the registered owner of the land. Section 158 clearly gives the registered owner of the land that is subject to a proposed right of entry the right to seek the assistance of the Board if the registered owner of the land and the person requiring the right of entry cannot agree to the terms of a surface lease. CNRL says that is not the situation here because it and the previous owner of the Lands already agreed to the terms of a surface lease. It says the Lands are not subject to a proposed right of entry.

[22] Black Willow, however, takes the position that the Surface Lease negotiated with the previous owner of the land does not provide an effective right of entry to the Lands in the circumstances. In effect, Black Willow is saying that if CNRL proposes to continue to enter the Lands to conduct its oil and gas activities, it must have a right of entry either in the form of a surface lease with Black Willow as the current registered landowner or an order of the Board. Viewed in this light, the Lands are subject to a proposed right of entry. Black Willow is the registered owner of the land that is subject to a proposed right of entry.

[23] CNRL submits that the issue of the validity of a lease is properly dealt with by the Courts in British Columbia, which is an indication that the Board is not authorized to make such a determination under section 158 or 159 of the *Act*. CNRL submits that if the Board were to undertake the exercise of determining the validity of the Surface Lease, it would be required to assess much more than the terms of the lease itself, including the provisions of other enactments and the common law on issues that extend beyond its expertise. It provides the case of *Vancouver City Savings Credit Union v. Alda Wholesale Ltd.,* 2000 BCSC 411 as an example of the Court’s jurisdiction respecting interests in real property and the effect of registration.

[24] I agree that determining whether the Surface Lease provides CNRL with an effective right of entry will involve considering legislation and law that is not necessarily within the expertise of the Board and that does not typically arise in the resolution of disputes before the Board. The fact that the Board may have to consider law of more

general application in the resolution of a particular dispute, however, does not necessarily remove the dispute from the Board's jurisdiction if the Board must consider such law to interpret the terms and provisions of its enabling legislation. Of course, any such interpretation is subject to judicial review.

[25] In an application under section 158 and 159 of the *Act*, the Board must determine whether it "is satisfied that an order authorizing the right of entry is required". In the context of this application, resolution of that issue will involve considering whether the rights granted in the Surface Lease effectively bind Black Willow and CNRL so as to provide CNRL with a "right of entry" in light of the fact the Surface Lease is not registered and in all of the other circumstances that may be established by the evidence when the application is heard on its merits. This inquiry will likely require the Board to consider legislation beyond the *Act* itself and common law respecting knowledge of unregistered interests as part of the exercise of statutory interpretation of its enabling legislation.

[26] CNRL submits that the landowner is asking the Board to interfere in a private commercial matter between the parties and that there are other more appropriate forums in which Black Willow can pursue its complaint. The Board's authority to authorize right of entry to private land for oil and gas activities and to impose the terms and conditions of that entry including the amount of rent payable to a landowner essentially is an intervention in what would otherwise be a private commercial matter between the operator of an oil and gas installation and the owner of the surface of land required for that activity. The Board's authority under Division 6 of the *Act* to review rent payable under a surface lease and even to amend the terms of a surface lease also provides it with authority to interfere in what would otherwise be private commercial arrangements between private parties. The legislation clearly places certain disputes involving private commercial agreements within the jurisdiction of the Board.

[27] CNRL submits that to interpret section 158 of the *Act* as authorizing a landowner to bring, and the Board to hear, an application for a right of entry every time a landowner

disputes the validity of a surface lease, would result in a significant burden and expense to both the Board and operators. It submits the correct forum to challenge such private agreements is in the courts. If CNRL is correct in this submission, then landowners are faced with the significant burden and expense of disputing an operator's right to enter their land for oil and gas activities by being required to initiate court proceedings.

[28] The *Act* was amended in 2010 to specifically provide landowners with the right to bring an application to the Board for mediation and arbitration when the landowner and the person requiring right of entry to the land for an oil and gas activity could not agree on the terms of a surface lease. Prior to the enactment of section 158, only the person requiring a right of entry could invoke the Board's jurisdiction to consider whether a right of entry order was required. In amending the legislation, the legislature must have intended to allow landowners the same access to the Board for the resolution of disputes respecting the right to enter land for oil and gas activities as companies engaged in oil and gas activities. It cannot have been the intention of the legislature that only a company engaged in oil and gas activities is able to engage the dispute resolution services of the Board to authorize its entry to private land, determine terms and conditions of entry, and the compensation and rent payable to landowners. It must have been the intent of the legislature to also provide landowners who dispute that an operator of an oil and gas activity on their land has an effective right of entry with the same access to dispute resolution respecting the right to enter private land and the compensation payable.

[29] Whether CNRL requires a right of entry is a matter within the jurisdiction of the Board under sections 158 and 159 of the *Act*. Considering that issue in the context of this case will involve determining whether the existing unregistered surface lease provides CNRL with an effective right of entry. If the Board determines that it does, Black Willow's application will necessarily be dismissed. If it determines that it does not, however, and that "an order authorizing right of entry is required", it will have to determine the terms of the order including the compensation or rent that may be payable to the landowner. These are issues within the jurisdiction of the Board.

CONCLUSION

[30] I find Black Willow is the landowner of land that is subject to a proposed right of entry within the meaning of the *Act* and is entitled to bring the application under section 158. The Board has jurisdiction to hear the application and determine whether CNRL requires a “right of entry”.

DATED: February 7, 2018

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 2017
Board Order No. 2017-1

November 20, 2018

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

LOT 17 ST. JOHN INDIAN RESERVE #172 TOWNSHIP 85 RANGE 19 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT 3986 EXCEPT PLAN 18795

(The "Lands")

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

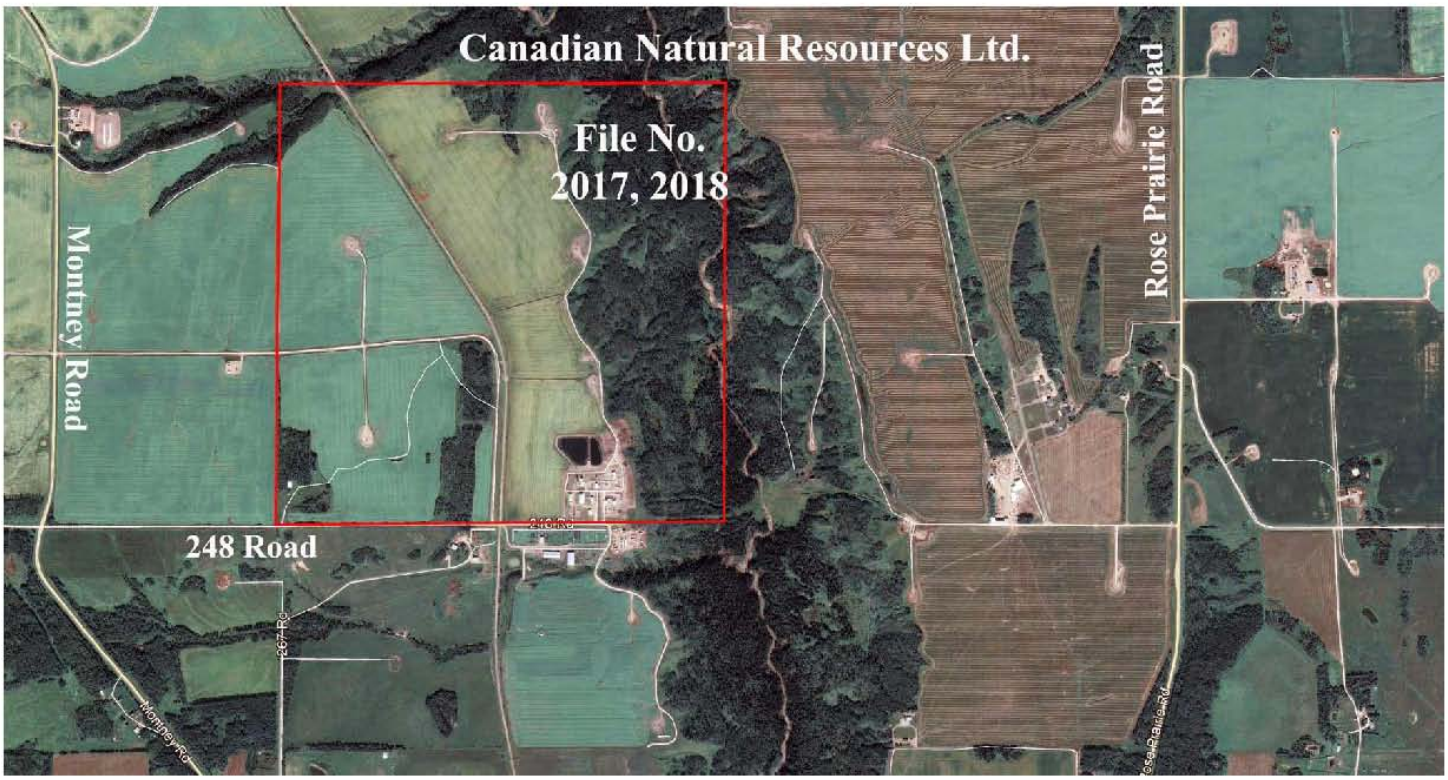
AND:

Marguerite Hasiuk
Darlene Patricia Beer and
Kimberley Delmage

(RESPONDENTS)

BOARD ORDER


Canadian Natural Resources Ltd.
Doig River
File No. 1556
Beatton River


Canadian Natural Resources Ltd.
File No. 2017, 2018
Montney Road
Rose Prairie Road
248 Road

1. Upon payment of the amount set out in paragraph 3, **Canadian Natural Resources Limited** shall have the right to enter and access the portions of lands legally described as Lot 17 St. John Indian Reserve #172 Township 85 Range 19 West of the 6th Meridian Peace River District 3986 Except Plan 18795, as shown outlined on the individual ownership plan(s) attached as Appendix "A" (the "**Lands**") for the purpose of carrying out an approved oil and gas activity, namely the operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission Authorization No. 9707364.

2. **Canadian Natural Resources Limited's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Right of Entry Order.

3. **Canadian Natural Resources Limited** shall pay to the landowner as payment for compensation the amount of $3,500.00 representing the first year's initial payment.

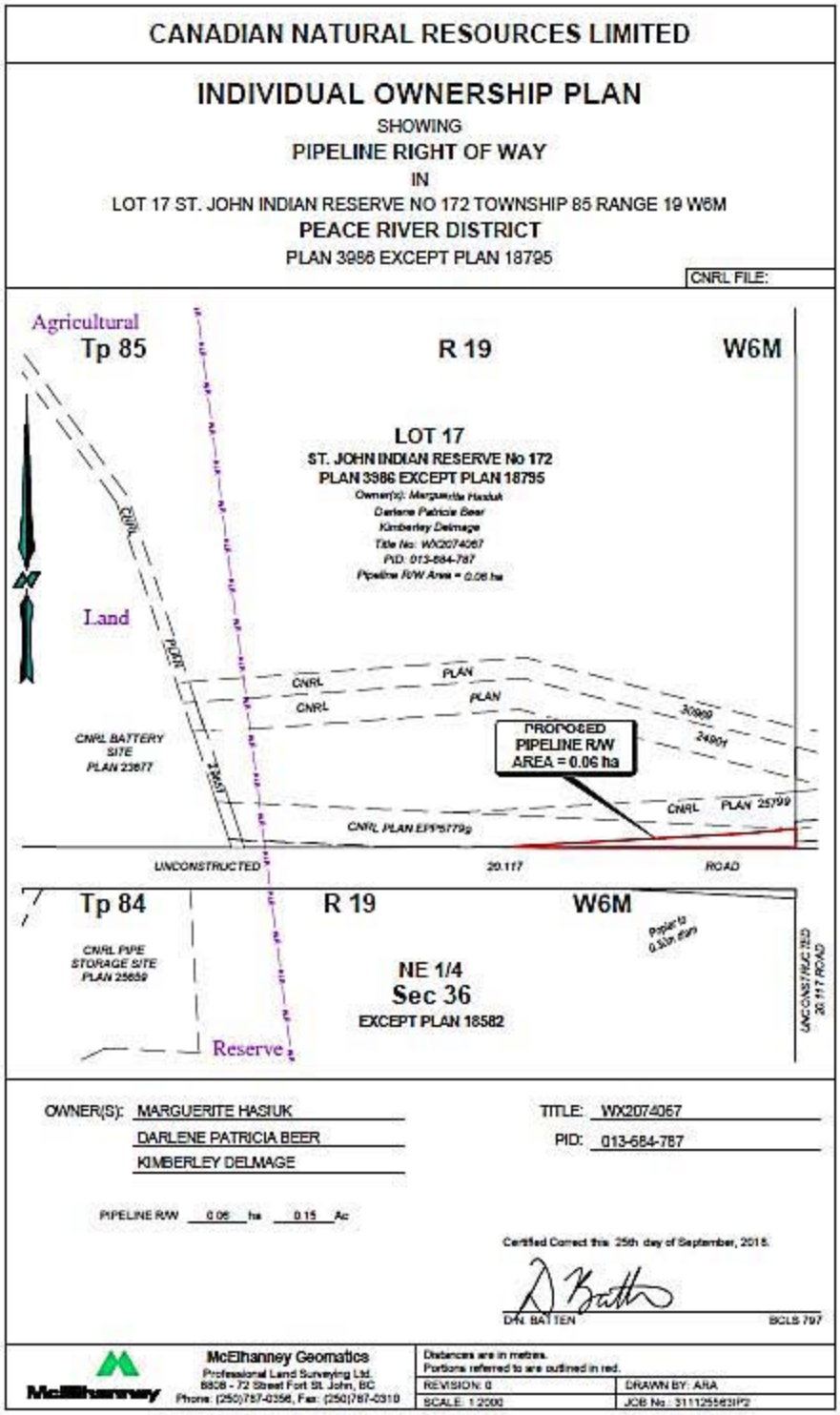
4. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

DATED: November 20, 2018

FOR THE BOARD

Cheryl Vickers, Chair

Appendix "A"


CANADIAN NATURAL RESOURCES LIMITED
INDIVIDUAL OWNERSHIP PLAN
SHOWING
PIPELINE RIGHT OF WAY
IN
LOT 17 ST. JOHN INDIAN RESERVE NO 172 TOWNSHIP 85 RANGE 19 W6M
PEACE RIVER DISTRICT
PLAN 3986 EXCEPT PLAN 18795
CNRL FILE:
Agricultural
Tp 85
R 19
W6M
LOT 17
ST. JOHN INDIAN RESERVE No 172
PLAN 3986 EXCEPT PLAN 18795
Owner(s): Marguerite Hasiuk
Darlene Patricia Beer
Kimberley Delmage
Title No: WX2074067
PID: 013-684-787
Pipeline R/W Area = 0.06 ha
Land
CNRL
PLAN
CNRL BATTERY SITE PLAN 23677
PROPOSED PIPELINE R/W AREA = 0.06 ha
CNRL PLAN 25799
CNRL PLAN EPS5779
UNCONSTRUCTED
20.117
ROAD
Tp 84
R 19
W6M
CNRL PIPE STORAGE SITE PLAN 25659
NE 1/4
Sec 36
EXCEPT PLAN 18582
Reserve
UNCONSTRUCTED 20.117 ROAD
OWNER(S): MARGUERITE HASIUK
DARLENE PATRICIA BEER
KIMBERLEY DELMAGE
TITLE: WX2074067
PID: 013-684-787
PIPELINE R/W 0.06 ha 0.15 Ac
Certified Correct this 25th day of September, 2015.
D.N. BATTEN
BCLS 797
McElhanney Geomatics
Professional Land Surveying Ltd.
8808 - 72 Street Fort St. John, BC
Phone: (250)787-0356, Fax: (250)787-0319
Distances are in metres.
Portions referred to are outlined in red.
REVISION: 0
DRAWN BY: ARA
SCALE: 1:2000
JOB No.: 31112556SIP2

Appendix "B"

Conditions for Right of Entry

1. **Canadian Natural Resources Limited** must notify the landowners forty-eight (48) hours prior to entry onto the said Lands.

File No. 2018
Board Order No. 2018-1

November 20, 2018

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

LOT 17 ST. JOHN INDIAN RESERVE #172 TOWNSHIP 85 RANGE 19 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT 3986 EXCEPT PLAN 18795

(The "Lands")

BETWEEN:

Canadian Natural Resources Limited

(APPLICANT)

AND:

Marguerite Hasiuk,
Darlene Patricia Beer, and
Kimberley Delmage

(RESPONDENTS)

BOARD ORDER

---

1. Upon payment of the amounts set out in paragraph 3, **Canadian Natural Resources Limited** shall have the right to enter and access the portions of lands legally described as Lot 17 St. John Indian Reserve #172 Township 85 Range 19 West of the 6th Meridian Peace River District 3986 Except Plan 18795, as shown outlined on the individual ownership plan(s) attached as Appendix "A" (the "**Lands**") for the purpose of carrying out an approved oil and gas activity, namely the construction, operation, and maintenance of a flow line and associated works in accordance with Oil and Gas Commission Authorization No. 100104584.

2. **Canadian Natural Resources Limited's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Right of Entry Order.

3. **Canadian Natural Resources Limited** shall pay to the landowner as payment for compensation the amount of $18,575.00 representing the first year's initial payment.

4. The Board retains jurisdiction to provide mediation and arbitration services with respect to construction damages off the demised premises, if any, and the parties are at liberty to return to the Board to resolve any issues respecting construction damages, if necessary.

5. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

DATED: November 20, 2018

FOR THE BOARD

Cheryl Vickers, Chair

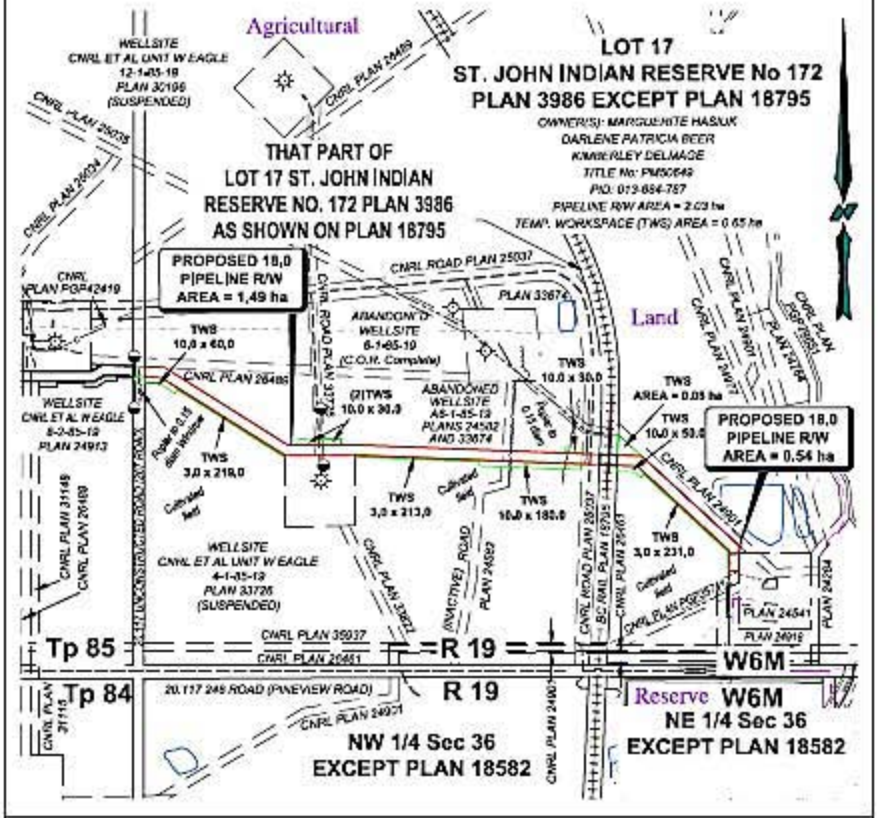
Appendix "A"

CANADIAN NATURAL RESOURCES LIMITED

INDIVIDUAL OWNERSHIP PLAN

SHOWING
PIPELINE RIGHT-OF-WAY AND TEMP. WORKSPACE
IN
LOT 17 ST. JOHN INDIAN RESERVE NO 172
TOWNSHIP 85 RANGE 19 WEST OF THE 6TH MERIDIAN PLAN 3986
EXCEPT PLAN 18795
PEACE RIVER DISTRICT

CNRL FILE: 1230321



OWNER(S): MARGUERITE HASIUK
DARLENE PATRICIA BEER
KIMBERLEY DELMAGE

TITLE: PM50649
PID: 013-684-787

PIPELINE R/W 2.03 ha 5.02 Ac
TEMP. WORKSPACES (TWS) 0.65 ha 1.61 Ac

Certified Correct this 1st day of December, 2017,

D.N. BATTEN BCLS 797

McElhanney Geomatics
Professional Land Surveying Ltd.
9838 • 72 Street Fort St. John, BC
Phone: (250)787-0359, Fax: (250)787-0310

Distances are in metres.
Portions referred to are outlined in green and red.

REVISION: 0	DRAWN BY: ARA
SCALE: 1:7500	JOB No.: 31112507/7/P1

Appendix "B"

Conditions for Right of Entry

1. **Canadian Natural Resources Limited** must notify the landowners forty-eight (48) hours prior to entry onto the said Lands.