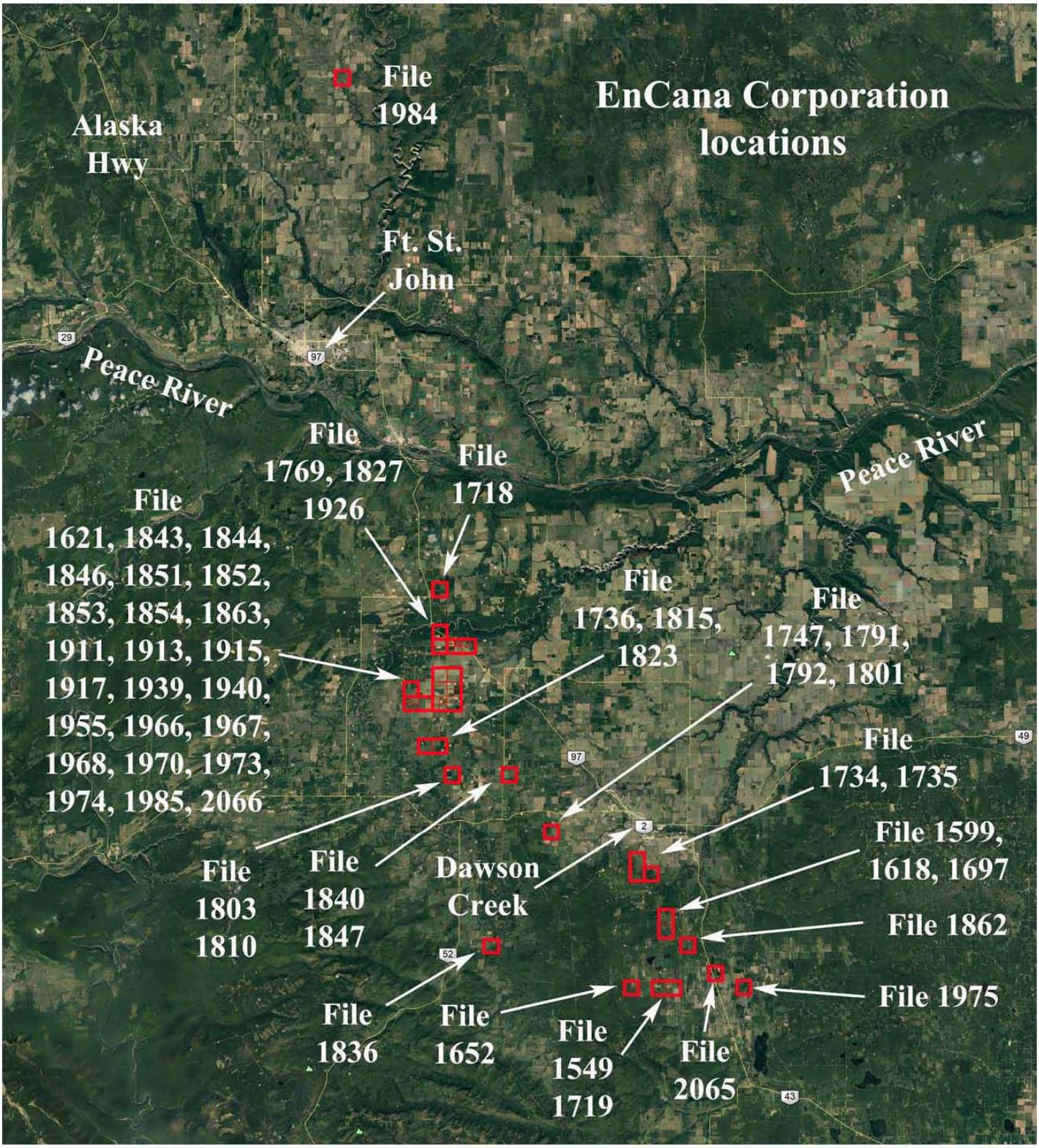


EnCana Corporation Files: BC Surface Rights Board
Imagery, compilation by Will Koop
B.C. Tap Water Alliance (www.bctwa.org)
October 29, 2020

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

FILE NO. M 1549

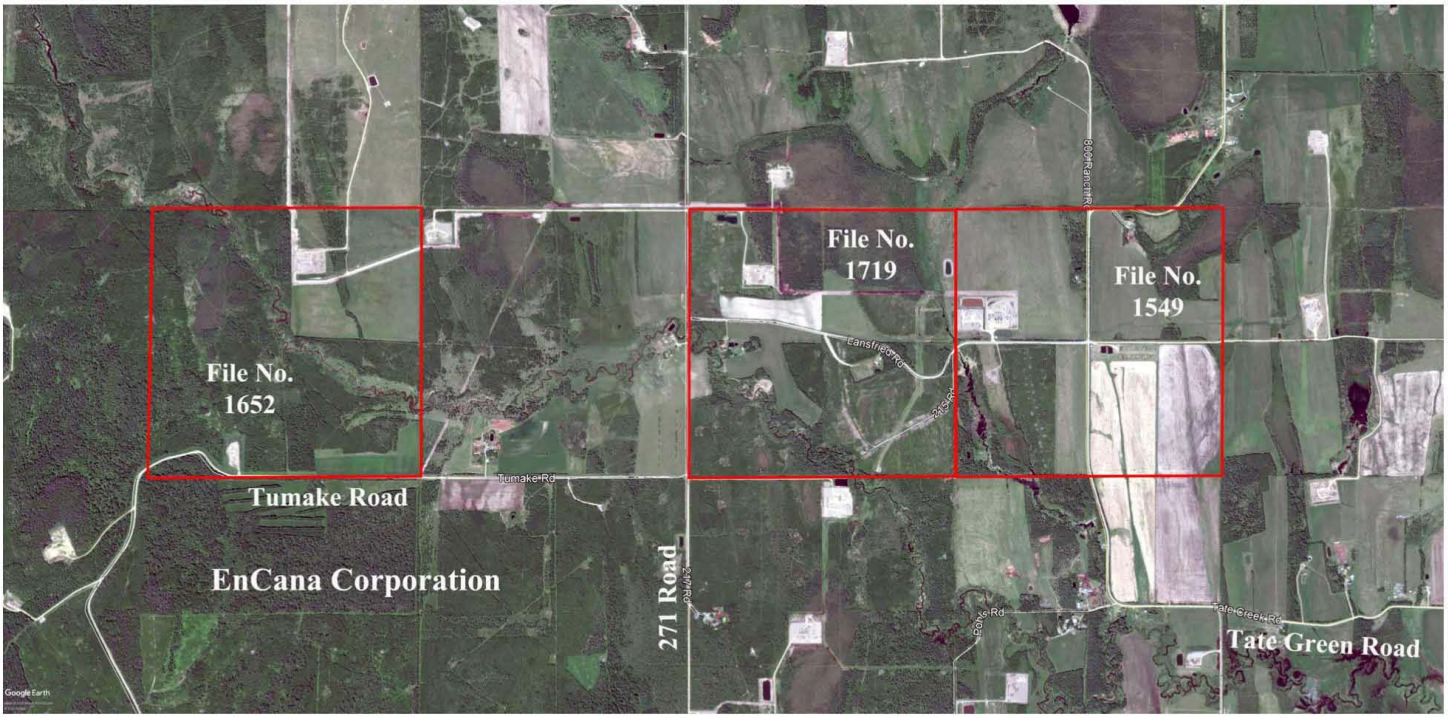
Date: February 24, 2006 **Board Order No. 400**

BEFORE THE ARBITRATOR:	IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, c. 361 as amended; THE MINERAL TENURE ACT, R.S.B.C. 1996 c. 292 as amended; AND THE MINING RIGHT OF WAY ACT, R.S.B.C. 1996, c. 294 as amended **(THE ACTS)**
	AND IN THE MATTER OF SW ¼, Sec 13, TWP 23, W6M PIN 014 478 3581 (**THE LANDS)**
BETWEEN:	ENCANA CORPORATION. **(APPLICANT**)
AND:	DENNIS MACLENNAN **(RESPONDENT)**

Background

On August 15, 2005, the Applicant, Encana Corporation ("Encana" or the "Applicant"), made an application to the Mediation and Arbitration Board (the "Board") under Section 16(1) of the Petroleum and Natural Gas Act for a right-of-way related to the construction of a pipeline across the Lands, owned by Mr. Dennis MacLennan, to its well-site located on the Lands.

On July 21, 1997, a predecessor to Encana obtained an order from the Board for a right-of-entry for the purpose of developing a well-site and access road on the Lands (*ACE*


File No.
1652
File No.
1719
File No.
1549
Tumake Road
EnCana Corporation
271 Road
Tate Green Road
Tumake Rd
Lansfield Rd
Rooke Rd
Tate Green Rd
Google Earth

West Ltd. v. McLennan, MAB Order No. 283A, amended by Order No. 283-1A). The order provided for compensation to Mr. MacLennan in the amount of $6,800.00 for the first year and $3,000.00 per year thereafter. The order further stated:

> "3. Upon payment of the sums awarded under Numbers 1 and 2 of this Order, ACE West Ltd. shall be entitled to all rights of an operator, to enter, occupy or use land granted under the provisions of the Petroleum and Natural Gas Act …, upon the lands referred to on the Individual Ownership Plan attached to the Application."

By agreement, the parties subsequently increased the payments to Mr. MacLennan.

Encana decided to move the well-site into production. Hence this application related to the construction of a pipeline to the well. The pipeline is (or is to be) connected to other wells in the area. Initially, the Applicant's proposal called for construction of the pipeline in an area immediately adjacent to the access way to the Applicant's well site. In the application before me the construction and location of the pipeline is within the access road, i.e. within the existing right-of-entry granted by Board Order No. 283A (Attached to the Decision is a copy of Schedule "A", showing the proposed pipeline). The access road leading to the well-site is approximately 150 meters long and 10 meters wide, and the area affected of the proposed pipeline right-of-way is 0.15 ha or 0.37 ac. To accommodate the landowner, the Applicant also proposed to construct the pipeline via boring as opposed to excavation.

The Board convened a mediation session on November 21, 2005, but the parties failed to reach an agreement with respect to the issues between them. In the result, on November 21, 2005, the Mediation and Arbitration Board issued an order. A term of the order was:

> This matter shall proceed to arbitration for final resolution of all issues pursuant to Section 20(1) of the *Petroleum and Natural Gas Act*,.

On January 30, 2006, as scheduled in the pre-hearing conference, the Board convened the arbitration hearing at Fort St. John, British Columbia. The Applicant was represented by Mr. Chad Moffat, Mr.Christopher M.akker and Mr. Tom Hourahine. Mr. Bakker and Mr. Hourahine did not attend until approximately 12:00 noon due to a delay in Calgary airport, but Mr. Moffat stated that he had authority to represent the Applicant and that he was prepared to proceed. The Respondent, Mr. Dennis MacLennan represented himself.

Preliminary Issues

Under the terms of the pre-hearing order, the Applicant was required to provide a copy of its submission, setting out the issues for resolution together with the documents it would be relying on by January 18, 2006, to the Board and the Respondent. The submission and the documents were required to be provided in a binder, tabbed and paginated.

By letter to the Board, dated Sunday January 29, 2006, and the hearing Mr. MacLennan sought to exclude the submission and documents filed by the Applicant. Mr. MacLennan asserted that he did not receive the Applicant's binder until January 19, 2006. He said that the envelope had been "broken" and it had not been forwarded by certified mail, and, therefore, the Applicant could not prove that he had received the binder within the time ordered by the Board. He also complained that the binder was broken and materials may have been missing. He did not, however, bring the binder to the hearing. He said he had left it with lawyer. He asserted that the Applicant could not rely on the submission and document. In any event, he "did not accept" the Applicant's submissions and documents.

At the hearing, Mr. MacLennan also complained that he did not receive the Board's Order, dated January 5, 2006, until January 14 and, therefore, that he did not have time to prepare a submission and documents to meet the timeline set out in the Order. He stated, somewhat cryptically, that it had been delivered to his mother by a woman and that his mother had been greatly upset by the delivery.

Mr. Moffat candidly explained he was not in a position to take issue with much of Mr. MacLennan's factual allegations. He said that as far as he was aware the Applicant's binder had been "shipped" no later than January 16, 2006 and to the address provided by the Board.

The Board's process is designed to provide a timely and efficient mechanism for resolving disputes between surface rights holders and sub-surface rights holders based on fundamental principles of natural justice. I considered Mr. MacLennan's submissions and rejected his application. Mr. MacLennan admits that he did, in fact, receive the Applicant's binder on January 19, 2006. While it was not clear when it had been delivered to Mr. MacLennan's address on file with the Board, there was no doubt, even on his submissions, that he, in fact, had received the materials. He did not explain when it was delivered to the address. He said it was up the Applicant to prove, because it had to "dot the i's and cross the t's." Assuming for the moment that Mr. MacLennan did not, in fact, receive the Applicant's binder until January 19, 2006, in all of the circumstances of this case, I am of the view that it would not be proper to exclude the Applicant's submissions and documents. If in fact there was a delay, as stated, the delay is a minor one. There is no suggestion that the Respondent has suffered any prejudice from the delay. I am also concerned that Mr. Maclennan chose to bring up this issue in a letter to the Board dated and faxed to the Board January 29, 2006, a Sunday, when the Board's offices are closed, and at the commencement of the hearing, rather than at the first opportunity. Mr. MacLennan did not provide any explanation for this.

Mr. MacLennan also asserted that the binder was not complete. He did not provide any meaningful particulars of this assertion. He did not bring the binder to the hearing. Rather, he had left it with his counsel. If, as stated, the binder was incomplete, it would have made sense to bring it to the hearing. On balance, I do not accept Mr. MacLennan's assertions.

I have similar concerns with respect to Mr. MacLennan's assertion that he did not receive the Board's January 5 Order until January 14, 2006. He claimed that he did not have sufficient time to prepare his case for the arbitration. Again, this matter was not raised with the Board at the first opportunity. There was, again, no explanation for this. Moreover, the assertion was cast in some doubt because he did , in fact, file a submission with the Board dated January 24, 2006. In that submission he argued that the Applicant's application amounted to an expropriation and that he should be compensated. The amount he had in mind was in excess of $20,000,000. Despite the fact that this submission was provided to the Board after the deadline set out in the Board's January 5 Order, I, nevertheless, allowed Mr. MacLennan to enter this document.

After I ruled against Mr. MacLennan, he left the hearing. Before he left he provided a brief statement, dated January 29, 2006, to the Board and the Applicant. In the letter, he stated that he was prepared to resolve the matter for $50,000 before 11:00 AM, and $100,000 after 11 AM on January 30, 2006, the day of the hearing.

Issue(s)

The application raises two issues. The first is whether the proposed pipeline is included in the previous order of the Board such that no further decision or agreement is required for the applicant to proceed and construct the pipeline to the well site. The second is, if I rule against the Applicants on the first issue, the appropriate level of compensation under Section 21 of the *Petroleum and Natural Gas Act.*

Decision

The Applicant's first argument is that the pipeline proposed to be constructed is included in the Board's previous order and, in other words, it can proceed with the construction without Mr. MacLennan's agreement and without paying compensation. Encana says that it has the surface rights, the right-of-entry, to the access road and, as well, by virtue of its sub-surface rights, and the Petroleum and Natural Gas Lease under the entire area in question. The pipeline will be constructed entirely within the area of the access road and will be bored. In the result, there will be no impact on the surface at all.

Turning to Encana's first argument, I am not, in the circumstances, satisfied that Encana has met the burden to persuade me that this is a proper disposition of the application. While this may be an interesting legal issue, the first leg of that argument is, in my view, whether I have jurisdiction to deal with the substance of the Applicant's sub-surface rights. The Applicant did not argue this point in any detail (or at all) and, in fact, seemed to assume that I did. It is not for me as an independent decision maker to research and find jurisprudent in support of one position or another. That would be entirely incompatible with the Board's neutrality as between the parties. The Applicant did not provide me with any authorities or precedent in support other than the earlier decision of this Board between the parties (or their predecessors, *ACE West Ltd. v. McLennan*), quoted out above, to the effect that it has "all rights of an operator, [sic.] to enter, occupy or use land granted under the provisions of the *Petroleum and Natural Gas Act*." The

core jurisdiction of the Board is terms of access and compensation. In so far as the previous decision of the Board may be taken to stand for the proposition that the Board has the jurisdiction to determine sub-surface rights -- and on a fair reading of the decision as a whole I do not think that it does -- I respectfully disagree. In my view, the first leg of this argument was not, I think, well-thought out and I reject it.

The second (and, in my view, independent) leg of the argument is whether the access to well site through a pipeline is covered by the previous Board order to the effect that it has "all rights of an operator, to enter, occupy or use land granted under the provisions of the *Petroleum and Natural Gas Act*." The term "operator" is not defined in the relevant legislation. The previous order dealt with the right-of-way to the well-site and the access road. This application concerns the access road. The Applicant says that there will be no interference with the surface and the pipeline will run underneath the existing access road at a depth of between 1.5 and 2.1 meters. At first glance, this is an attractive proposition. All the same, my reading of the previous order is that the Applicant was granted right of entry, occupation and use of an access road. The construction of a pipeline will, in my view, inevitably and invariably interfere with the landowner's enjoyment and use of the land. In other words, the earlier Board order was granted for a certain purpose, namely access to and from a well-site. The construction of a pipeline, a permanent facility, although it promises little interference with the surface is something entirely different. In short, I am unable to agree with Encana's argument.

Turning now to the issue of compensation and the factors set out in the legislation, I am at a disadvantage in this case. The land owner, Mr. Maclennan basically refused to participate in the hearing. As I hopefully clearly and unequivocally explained to the parties, the decision will be based on the evidence before me. In this case, regretfully, the land owner did not present any evidence. Encana did. I am bound to consider the evidence before me.

The factors I must consider are those provided in the legislation, more precisely Section 21 of the *Act*:

> 21 (1) In determining an amount to be paid periodically or otherwise on an application made under section 12 or 16 (1), the board may consider
>
> (a) the compulsory aspect of the entry, occupation or use,
> (b) the value of the land and the owner's loss of a right or profit with respect to the land,
> (c) the value of the land and the owner's loss of a right or profit with respect to the land,
> (d) temporary and permanent damage from the entry, occupation or use,
> (e) compensation for severance,
> (f) compensation for nuisance and disturbance from the entry, occupation or use,
> (g) money previously paid to an owner for entry, occupation or use,

(h) other factors the board considers applicable, and
(i) other factors or criteria established by regulation.

As mentioned, the only evidence before me was presented by the Applicant. The pipeline is to be constructed via boring to the well-site. The production schedule is some 17 days with little or no interference with the surface of the land, within the existing access road. The area affected by the construction of the pipeline is .37 acres. Mr. Bakker testified that the standard compensation in the Peace River region for a pipeline right of way is $950 per acre, including the value of the land, nuisance and disturbance and an entry fee. Added to that can be compensation for temporary work area and interference with other areas. The latter bases for compensation are not relevant here because the drilling for the pipeline will be carried out from outside the Lands, eliminating the need for temporary work areas.

Having considered all of the factors, I make the following orders:

Upon payment by the Applicant to the Respondent of $400.00, the Applicant shall have right to enter, use and occupy the portion of the Lands described on Appendix "A" as the access road for the purpose of constructing a pipeline to the Applicant's well site.

MEDIATION AND ARBITRATION BOARD
UNDER THE MINING RIGHT OF WAY ACT

DATED THIS 24TH DAY OF February, 2006

IB S. PETERSEN, CHAIR

File No. 1599
Board Order # 1599-1

February 19, 2008

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF SE ¼ Section 12 TWP 77 Range 15 W6M

(The "Lands")

BETWEEN:

Encana Corporation

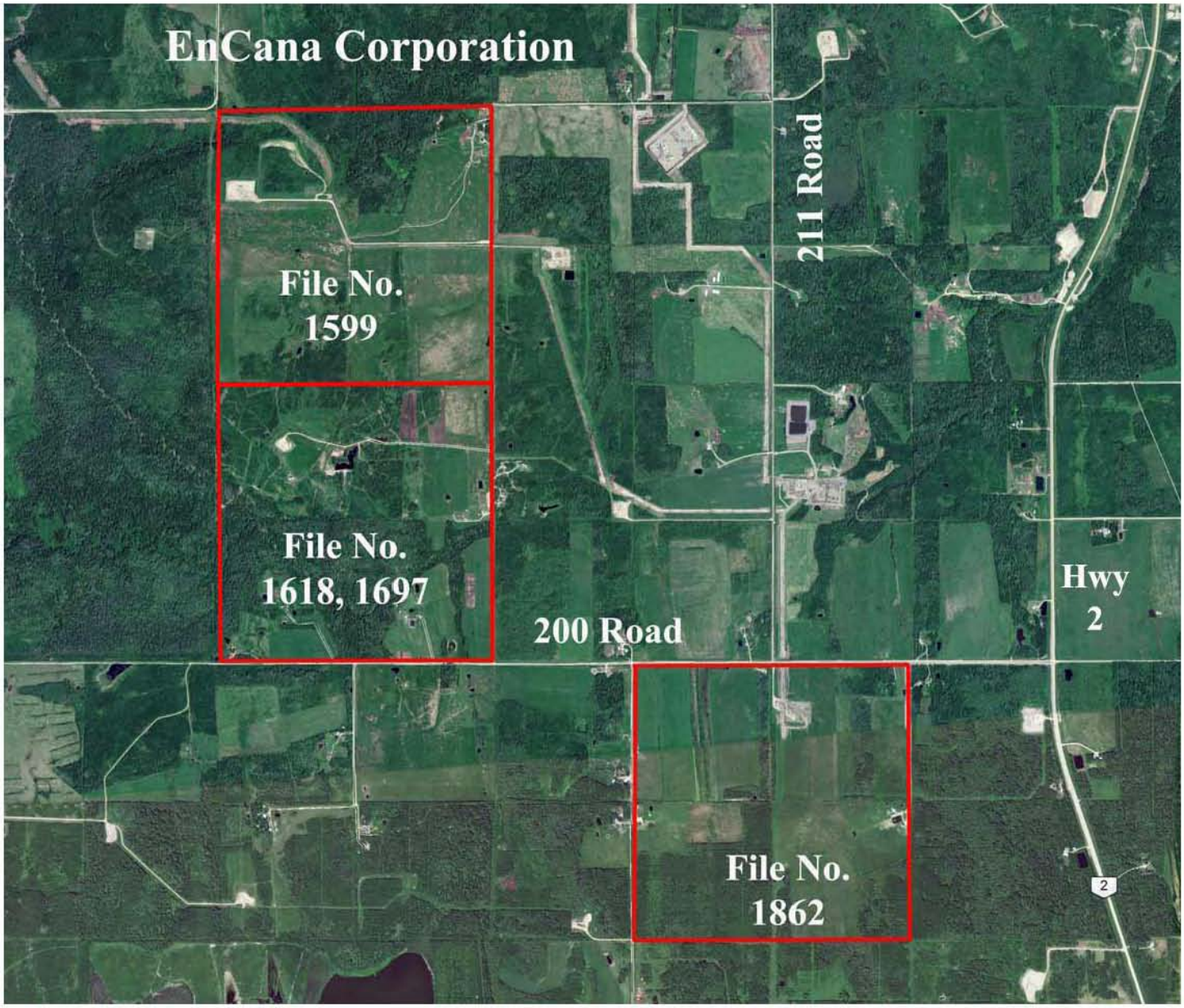
(APPLICANT)

AND:

Irene and George Merrick

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
211 Road
File No.
1599
File No.
1618, 1697
200 Road
Hwy
2
File No.
1862
2

The applicant requires access to the Lands for the purpose of constructing and operating a flow line as shown on the attached plan (Appendix A). Right of entry is not opposed but the parties have not agreed on the compensation payable for the entry, occupation and use of the Lands, and for nuisance and disturbance. The parties agree that a right of entry order should be made, and agree that the compensation issues be scheduled for a further mediation hearing.

BY CONSENT, the Mediation and Arbitration Board orders:

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

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

3. The Applicant shall pay to the Respondent the amount of $4,351.00 as partial payment for compensation payable for entry to and use of the Lands.

4. The Applicant shall serve the Respondents with a copy of this Order by e-mail prior to entry onto the Lands.

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

Dated: February 19, 2008

FOR THE BOARD

Cheryl Vickers
Chair

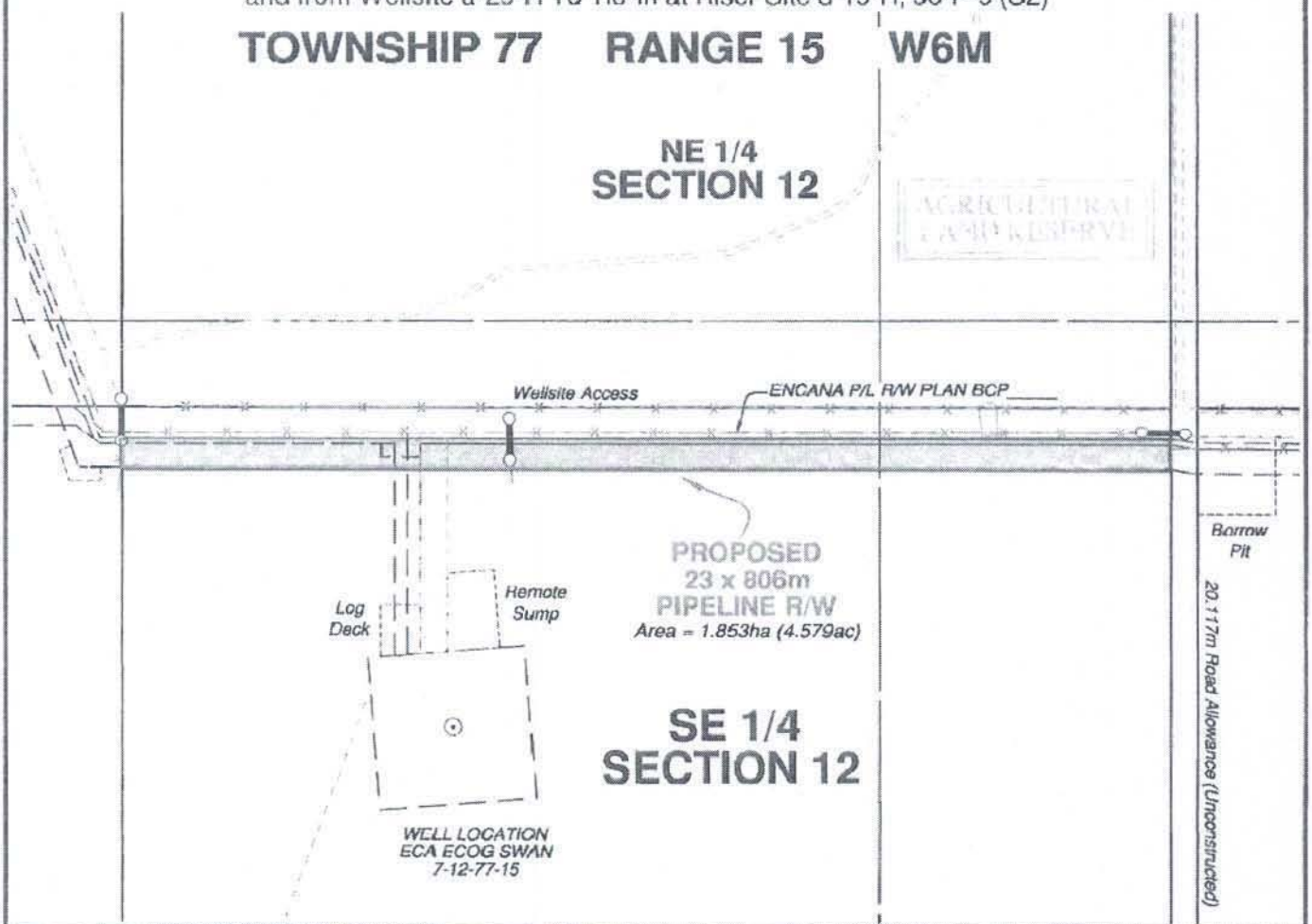
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between George Robert Merrick and Irene Stuart Merrick (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 23m PIPELINE RIGHT OF WAY WITHIN THE SOUTH EAST 1/4
OF SECTION 12, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Compressor Site 9-15-77-15 To Wellsite a-29-H, 93-P-9 (S1)
and from Wellsite a-29-H To Tie-In at Riser Site d-19-H, 93-P-9 (S2)



Owner(s): George Robert Merrick
Irene Stuart Merrick

Landowner File: S445073

Certification Title No.: BA580078
Parcel Identification No.: 017-729-980
EnCana File: S441778

Area(s):

Permanent	1.853 ha	4.579	ac
Temporary	0.000 ha	0.000	ac
Total	1.853 ha	4.579	ac

Certified correct this 13th day of November, 2007.

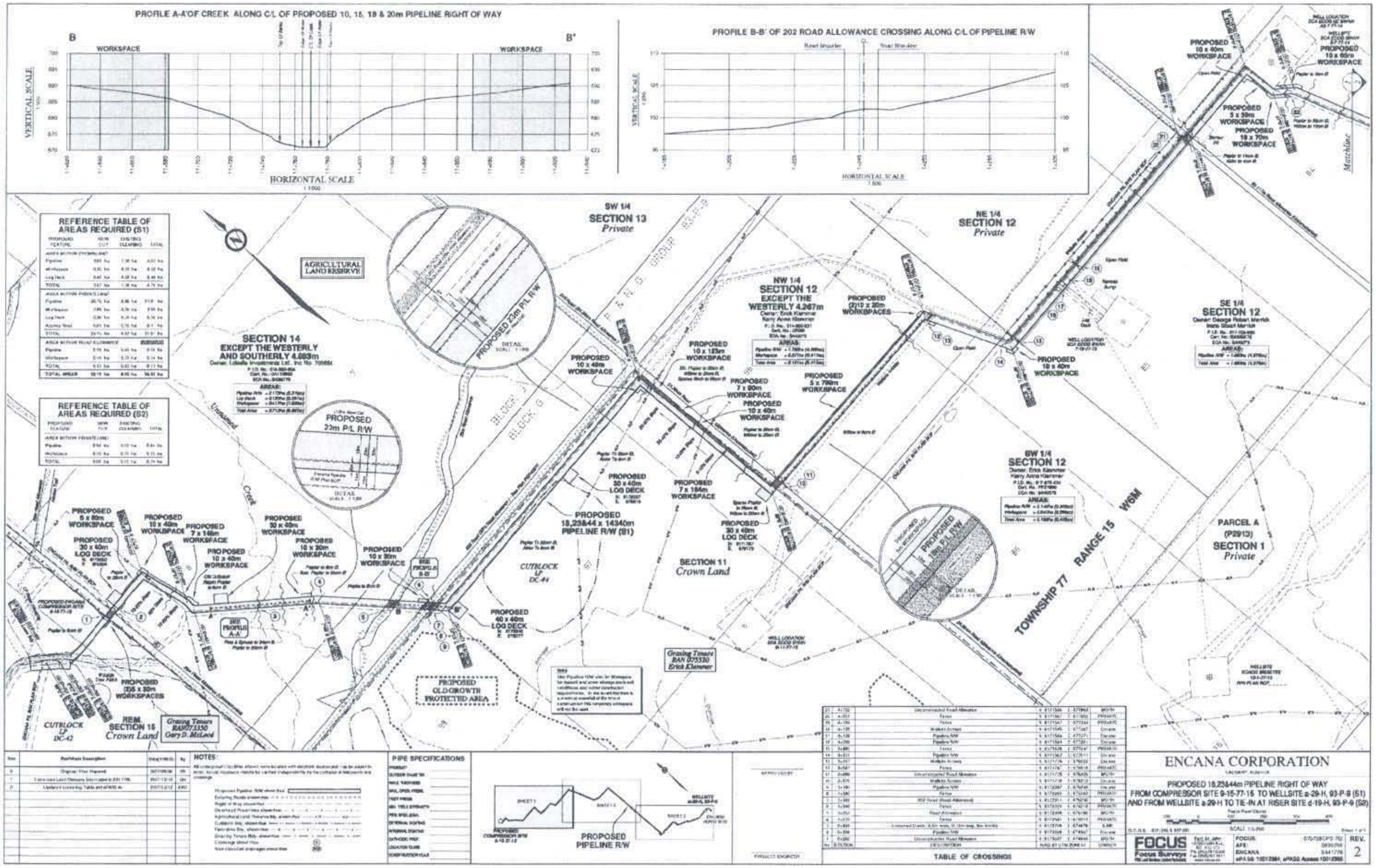
Adam Brash , BCLS

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Focus Job No.: 070728NP04R0 By: KG
Revision: 0

FOCUS
Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10720-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0300
Fax (250)787-1611
www.focus.ca


PROFILE A-A' OF CREEK ALONG C/L OF PROPOSED 10, 15, 18 & 20m PIPELINE RIGHT OF WAY
WORKSPACE
VERTICAL SCALE
HORIZONTAL SCALE
PROFILE B-B' OF 202 ROAD ALLOWANCE CROSSING ALONG C/L OF PIPELINE R/W
REFERENCE TABLE OF AREAS REQUIRED (S1)
REFERENCE TABLE OF AREAS REQUIRED (S2)
AGRICULTURAL LAND RESERVE
SW 1/4 SECTION 13 Private
NE 1/4 SECTION 12 Private
NW 1/4 SECTION 12 EXCEPT THE WESTERLY 4.267m
SE 1/4 SECTION 12
SECTION 14 EXCEPT THE WESTERLY AND SOUTHERLY 4.083m
SW 1/4 SECTION 12
PROPOSED 23m P/L R/W
PROPOSED 10 x 40m WORKSPACE
PROPOSED 10 x 123m WORKSPACE
PROPOSED 7 x 80m WORKSPACE
PROPOSED 5 x 790m WORKSPACE
PROPOSED (2)10 x 20m WORKSPACES
PROPOSED 30 x 40m LOG DECK
PROPOSED 7 x 164m WORKSPACE
PROPOSED 18,23&44 x 14340m PIPELINE R/W (S1)
PROPOSED 5 x 80m WORKSPACE
PROPOSED 7 x 146m WORKSPACE
PROPOSED 10 x 30m WORKSPACE
PROPOSED 40 x 40m LOG DECK
PROPOSED 2(6) x 30m WORKSPACES
PROPOSED 5 x 50m WORKSPACE
PROPOSED 15 x 70m WORKSPACE
PROPOSED 10 x 60m WORKSPACE
SECTION 11 Crown Land
CUTBLOCK LP DC-44
CUTBLOCK LP DC-42
REM. SECTION 15 Crown Land
Grazing Tenure RAN073350 Gary D. McLeod
Grazing Tenure RAN 075530 Erick Klemmer
PROPOSED OLD GROWTH PROTECTED AREA
TOWNSHIP 77 RANGE 15 W6M
PARCEL A (P2913) SECTION 1 Private
Unnamed Creek
NOTES:
PIPE SPECIFICATIONS
PROPOSED PIPELINE R/W
TABLE OF CROSSINGS
ENCANA CORPORATION
PROPOSED 18,23&44m PIPELINE RIGHT OF WAY
FROM COMPRESSOR SITE 9-15-77-15 TO WELLSITE a-29-H, 93-P-9 (S1)
AND FROM WELLSITE a-29-H TO TIE-IN AT RISER SITE d-19-H, 93-P-9 (S2)
FOCUS Focus Surveys
ENCANA
REV. 2

File No. 1599
Board Order 1599-2

July 23, 2008

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF SE ¼ Section 12 TWP 77 Range 15 W6M (The "Lands")

BETWEEN:

Encana Corporation

("APPLICANT(S)")

AND:

Irene and George Merrick

("RESPONDENT(S)")

BOARD ORDER

INTRODUCTION

[1] Encana Corporation (Encana) applied to the Board for mediation and arbitration pursuant to section 16(1) of the *Petroleum and Natural Gas Act* (*PNG Act)* on the grounds that they required access to land owned by George and Irene Merrick for the purpose of constructing a flowline. Encana and Mr. and Mrs. Merrick had been unable to negotiate the compensation payable for the right of entry.

[2] On February 19, 2008, the Board made an Order granting right of entry to the Lands by Consent, and requiring Encana to pay a security deposit and partial payment to the Merricks. The matter of compensation was scheduled for mediation.

[3] The parties agreed that they wanted to take the time during the mediation process to research the question of the compensation payable for a right of way, and to properly turn their minds to the factors that should go into a determination of the amount payable. The parties agreed that in the event they were able to successfully negotiate compensation, the Board could document their agreement in a consent order, including the rational for the agreement, in the hope that the agreement may provide assistance to other companies and landowners negotiating compensation for right of entry to construct a flowline.

[4] The parties met three times in mediation. Additionally, they each spent time researching the issues with respect to compensation for rights of ways and reviewing past decisions of both the Mediation and Arbitration Board and the Alberta Surface Rights Board. The parties have settled the issues of compensation between them and have asked the Board to record the terms of their settlement in a Consent Order.

FACTS

[5] Mr. and Mrs. Merrick own the Lands, a quarter section located approximately 13 kms south of Dawson Creek within the Agricultural Land Reserve. They reside on the Lands and use the acreage for pasture for horses and to grow hay. The taking for the construction of the flowline comprises 4.579 acres. The right of way extends east-west straight across the quarter section close to the northern lot line, within visual and hearing distance from the residence.

[6] Initial negotiations and meetings between the Merricks and Encana and/or their agents, and ongoing contact between Encana and/or their agents, and the Merricks during the construction and installation of the pipeline, consumed approximately 25 hours.

[7] Encana obtained an appraisal of the Merrick's property by a professional appraiser. The appraised market value of the property as of March 4, 2008 is $860 to $900/acre.

ISSUES

[8] Section 21 of the *PNG Act* provides that in determining an amount to be paid under section 16(1) the Board may consider:

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

[9] The parties agreed to the amount payable for crop loss as a result of the entry so an amount for crop loss or loss of profit in relation to the entry was not an issue in the mediation. They also agreed that severance was not a factor in this taking.

[10] In determining the amount to be paid to the Merricks, the parties could not agree on how to account for the compulsory aspect of the taking, the value of the land and the owner's loss of rights with respect to the land, and compensation for nuisance and disturbance. The discussions in mediation focussed on these factors and treated these factors as "heads of compensation".

DETERMINATION OF AMOUNT OWING

[11] The parties agreed to compensation in the amount of $7,960.00. What follows is an explanation of how this amount was determined including the parties' agreement of the rational behind that determination.

[12] The parties agreed that an amount should be paid for the compulsory aspect of the taking. This amount is acknowledged to be an arbitrary figure that is intended to recognize that the landowner can not say "no" when the holder of subsurface rights requires access to the surface for the purpose of exploring for, developing or producing a subsurface resource. The payment for compulsory aspect of the taking represents an amount that simply acknowledges that surface

access itself is not negotiable, only the compensation for it, and that the landowner does not necessarily enter negotiations willingly. The parties noted that an amount for compulsory aspect of the taking is established by Regulation in the Province of Alberta, but that while the compulsory aspect of the taking is specifically enumerated as a factor to be considered in British Columbia, no specific amount is prescribed. In the absence of a prescribed amount in British Columbia, the parties agreed that the amount of $500/acre prescribed in Alberta was fair. In the context of this case a payment for compulsory aspect of the taking is 4.579 acres x $500 = $2,289.00

[13] The parties agreed that compensation for nuisance and disturbance is primarily accomplished by compensating the landowner for the landowner's time and inconvenience in dealing with the company in the initial negotiations and through the phase of construction and installation of the flowline. Additionally, in circumstances where landowners experience nuisance and inconvenience from the traffic and noise associated with the pipeline construction, an additional amount for this added nuisance may be appropriate.

[14] With respect to the nuisance and disturbance associated with the landowners' time, the landowners have been affected by the project in having to spend their own time that otherwise could have been spent on other activities of their choice. Mrs. Merrick kept track of her activities associated with the company's entry, occupation and use of the lands and estimated the time taken by her in these activities to be, approximately 25 hours from the Fall of 2007 through the Spring of 2008. The activities that are compensated for as part of nuisance and disturbance include meetings and telephone calls with Encana's agent to discuss the pipeline and negotiate compensation and on site discussions and telephone calls with employees and contractors of Encana about the work in progress. The parties agreed that an appropriate rate to be applied to the landowner's time as compensation for nuisance and disturbance to the landowner as a result of the entry, occupation and use by the company of their land is $50/hour.

[15] With respect to the nuisance and disturbance associated with traffic and noise, the landowners experienced inconvenience as a result of traffic and noise but acknowledge the inconvenience was minimal due to the distance of the project from their residence. The parties agreed that increasing the time estimate by 6 hours adequately acknowledges the additional nuisance of traffic and noise. In the context of this case, compensation to the landowner for nuisance and disturbance, which includes compensation for time spent and traffic and noise, is 31 hours x $50/hour = $1,550.

[16] The balance of the compensation, $4,121.00, considers the value of the land, the loss of rights with respect to the land and any future nuisance and disturbance as a result of the entry occupation and use. The parties considered that there is both a loss of rights and residual rights to the landowner. They

considered that a right of way does not have the same impact on an owner as a wellsite in that once the surface of the right of way is restored, the owner may continue to use the surface for farming, in this case pasture and hay. They considered that although the landowners may continue to use the surface of the land for farm purposes, there is, nevertheless, some loss of right with respect to the use of that land. In particular, certain activities that may interfere with the pipeline or cause the pipeline to be unsafe including excavating within the right of way and building on the right of way are restricted. Consequently, while the owner's present use of the surface may continue, an alternate future use of the surface may be impaired. The parties considered that once the pipeline has been properly abandoned, the encumbrance on title can be removed.

[17] With respect to future nuisance and disturbance, the parties considered that there may be some ongoing, although probably minimal, nuisance and disturbance to the landowner over the life of the pipeline in dealing with the company including advising the company of any problems or concerns should they arise.

[18] Considering both the loss of rights and the residual rights to the landowner, and considering the potential future nuisance and disturbance to the landowner throughout the life of the pipeline, the parties agreed that adequate compensation equated to 100% of the appraised value of the land, applying the appraised value per acre of the quarter section to the amount of land covered by the right of way. In the context of this case, that payment is 4.579 acres x $900/acre = $4,121.00.

[19] The amount to be paid to the landowners as compensation for the right of way is:

For the compulsory aspect of the taking: 4.579 acres x $500/acre	$2,289
Considering the value of the land, the loss of rights and future nuisance and disturbance: 4.579 acres x $900	$4,121
For nuisance and disturbance in the construction and installation of the pipeline: 31 hours x $50/hour	$1,550
Total compensation for the right of way	$7,960
Less partial payment	$4,000
Amount owing:	$3,960

COSTS

[20] Encana agreed to the payment of costs in the amount of $6,000. This amount acknowledges that Mrs. Merrick spent approximately 100 hours in research and preparation for the three mediation sessions. Encana encouraged Mrs. Merrick to spend the time to properly research the issues and agreed up front that she would be compensated for her time. As both parties entered this process in the hope that they might come to an agreement that would provide some assistance to future parties, both parties felt it worth their time, and Encana was prepared to make the investment in Mrs. Merrick's time in the hope that an agreement might provide guidance to the community.

ORDER

[21] BY CONSENT, the Mediation and Arbitration Board orders that Encana Corporation shall pay to Irene and George Merrick the sum of $9,960 being $3,960 as the balance owing for the right of way and $6,000 for costs. Upon payment of this amount, Encana may apply for return of the security deposit held by the Board in this matter, and the security deposit shall be returned.

Dated: July 23, 2008

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1618
Board Order No. 1618-1

February 23, 2010

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
Parcel A (P2913) of Section 1, Township 77, Range 15, W6M,
Peace River District
(The "Lands")

BETWEEN:

GEORGE MERRICK AND IRENE MERRICK

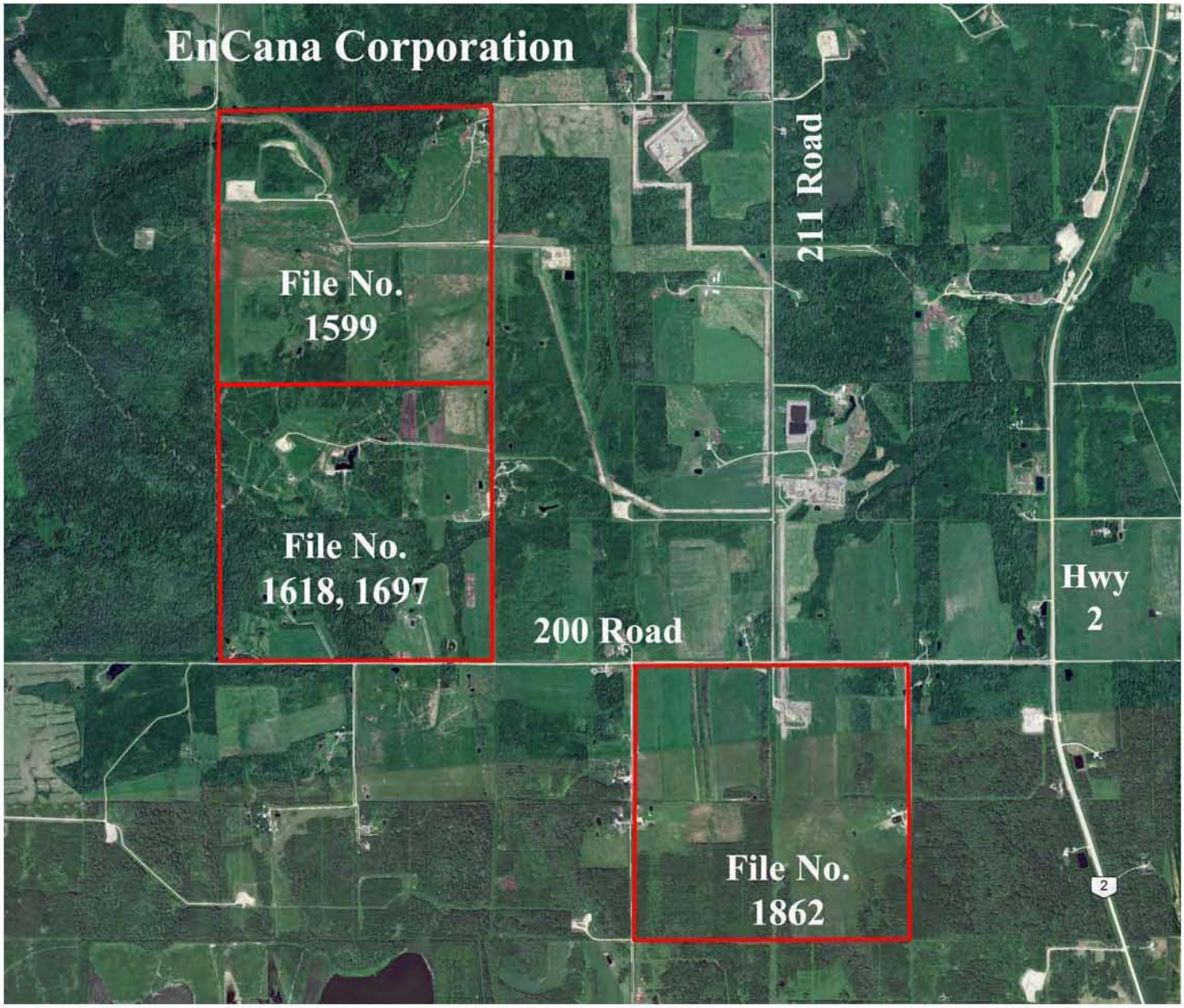
(APPLICANTS)

AND:

ENCANA CORPORATION

(RESPONDENT)

BOARD ORDER


EnCana Corporation
211 Road
File No.
1599
File No.
1618, 1697
200 Road
Hwy
2
File No.
1862
2

Heard by way of written submissions closing January 22, 2010

Irene Merrick, for the Applicants
Tom Owen, Barrister and Solicitor, for the Respondent

---

[1] On June 24, 2009, George and Irene Merrick filed an application for arbitration for a dispute on rent renegotiation under section 12(1) of the *Petroleum and Natural Gas Act,* R.S.B.C. 1996, chap. 361.

[2] The parties have been unable to resolve the dispute and seek the Board's determination in arbitration. However, Encana Corporation, the Respondent, says that the Form 2- Notice for Rent Renegotiation dated January 30, 2008 and the application filed with the Board are not valid pursuant to sections 11 and 12 of the *Act*.

Background Facts

[3] The surface lease that is the subject of the rent renegotiation was signed by the parties on July 19, 1997 and provided for an annual rent of $4,200.00 for wellsite Swan 13-1-77-15.

[4] On or about September 23, 2006, the parties renegotiated the annual rent to $6,000.00 along with a lump sum payment of $2755.00 for miscellaneous expenses. The new annual rent was retroactive back to 2003. The Merricks signed a Release and Waiver for this lump sum payment on September 23, 2006. Encana has paid $6000 for the annual rent to date.

[5] On January 30, 2008, the Merricks sent Encana a Notice for Rent Renegotiation to be effective July 19, 2007.

The Legislation

[6] Section 11(2) of the *Act* says that if a person has, "for a continuous period of 4 years, been entering, occupying or using land to explore for, develop or produce petroleum or natural gas.., an owner of the land may, on or after the next anniversary of the making of the lease...., on giving 60 days' notice in the prescribed form...require renegotiation of rental provisions in the surface lease..."

[7] Section 11(3) says that the above applies if "4 years have elapsed since (a) the completion of the last renegotiation of rentals under subsection (4)...". Subsection (4) says that if notice is given, the parties may renegotiate the rental provisions by mutual agreement.

[8] If rental provisions are not renegotiated under section 11(4) within 6 months after expiration of the 60 days notice, the owner may apply to the Board for arbitration.

[9] Section 12(2) provides that a renegotiation is effective from the immediate past anniversary date of the surface lease preceding the notice and is retroactive to the extent necessary.

Notice of Rent Renegotiation under section 11 of the Act

[10] Encana says that the effect of section 11 is to put a four year review cycle in place for rent renegotiations. For the subject lease, which was signed in 1997, the four year cycle would be 2001, 2005 and 2009, not 2007 as requested by the Merricks here.

[11] The Merricks say that they were given incorrect information from Encana's agent regarding renegotiations; at one point they were told that they were eligible for rent review "at any time" and then subsequently, every five years. In 2004, they verbally requested the rent be renegotiated, and then asked by written correspondence. It was not until September, 2006 that they were able to renegotiate with Encana, which agreement was retroactive. They then requested the second rent review initially in March, 2007 because four years had elapsed since the retroactive rent of 2003, but did not send the Form 2 Notice until January, 2008. The Merricks argue that the *Act* does not tie the four years of occupation to the date of the original signing of the lease.

[12] Although there may have been conversations between the parties, the first written request for the renegotiation in evidence is a September 13, 2005 email from the Merricks to Encana's agent requesting the renegotiation. In September, 2006, the parties reached agreement on increased rent along with a retroactive rent for three years, back to 2003.

[13] The Merricks say that four years from 2003 means that in 2007 they were entitled to request a further renegotiation.

[14] However, the language of the legislation does not support this interpretation. Section 11(3)(a) specifically speaks of four years elapsing from the "completion of the last renegotiation" (emphasis added), and in this instance, the completion occurred in September, 2006. Four years from that time would mean that the Merricks would be entitled to request a renegotiation by delivering a prescribed notice under section 11(2) in September, 2010.

[15] Unfortunately, the Merricks delivered the Form 2 Notice for renegotiation in January, 2008 and, as such, it is premature.

[16] The intent and purpose of the legislation, as determined from the language of the *Act*, is to allow owners to request a renegotiation of rents in a surface lease every four years. The legislation has set up a mechanism by which notice is to be given for such renegotiation. Here, the notice for the initial renegotiation is deemed to be September 13, 2005, which is the first written request for renegotiation the Merricks gave to Encana, which notice Encana accepted and acted upon. Pursuant to section 12(3), a renegotiation or Board order is effective from the immediate past anniversary date of the lease preceding the notice, which would have been July, 2004. The Merricks received retroactive rent beyond that time frame to three years, by mutual agreement of the parties.

[17] Encana also argues that, pursuant to section 12(3), the four years should be calculated from the immediate anniversary of the lease preceding the notice that was given in September, 2005. This would mean that the Merricks are entitled to give notice for a renegotiation no earlier than July, 2009. Section 12(3) speaks to when an order or renegotiation is effective.

[18] Although section 11(3) says that renegotiation could be requested four years from the "effective" date of an order in subsection (b), subsection (a) uses very different wording and criteria when dealing with a renegotiated rent as opposed to an order of the Board. In subsection (a), it speaks of fours years elapsing from the date of the completion of the last renegotiation of rentals, not the "effective" date of the renegotiation. Therefore, the fact that the renegotiation was retroactive for three years is not determinative. Rather, it is the date of the completion of the renegotiation that is the operative date, which, on the evidence before me, was in September, 2006.

[19] If the legislature intended that the four years would start from the date that the last renegotiation was "effective" then it would have used the same wording in section 11(3)(a) as it does for section 11(3)(b) when it refers to the effective date of an order. As stated in *Driedger on the Construction of Statutes*, third edition, there is a statutory presumption of consistent expression, namely that it is presumed that the legislature uses language carefully and consistently so that the same words have the same meaning and different words have different meanings. Given the presumption of consistent expression, it is possible to infer an intended difference in meaning from the use of different words. That is the situation here. The legislation has used different words in sections 11(a) and (b) when setting out when the four years is to elapse: for orders of the Board it is four years from the effective date, and for renegotiations, it is four years from the completion of the last renegotiation. As different wording is used, the reasonable presumption, in face of contrary evidence, is that the legislature intended a different calculation of when the four years would elapse for renegotiations between parties.

[20] This is unfortunate for landowners because it puts a higher burden on them to be familiar with the requirements of the legislation in terms of when notice can

or cannot be provided and potentially allows companies to drag out negotiations to completion longer than may be necessary so that the clock for renegotiation starts further in time. However, the Board is bound by the language of the legislation and until the legislation is changed, the Board does not have the discretion to ignore the clear wording of the *Act.*

Application to the Board under section 12(1)

[21] Section 12(1) says that if rental provisions are not renegotiated under section 11 within 6 months after the expiration of the 60 day notice, the landowner may apply to the Board.

[22] As the Form 2 Notice of Rent Renegotiation was given on January 30, 2008, instead of in September, 2010, it is premature and not validly made under section 11. The Board does not have jurisdiction, therefore, to entertain an application under section 12(1) of the *Act.*

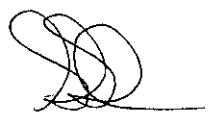
[23] The rental provisions cannot be renegotiated under the requirements of section 11 of the *Act* until four years have elapsed from the completion of the last rental renegotiation in September, 2006. Those four years will not elapse until September, 2010 and the application to the Board cannot take place until 6 months after the expiration of the 60 day notice. Therefore, an application to the Board cannot be made earlier than 8 months after September, 2010, which is May, 2011. Until that time, the Board does not have jurisdiction.

ORDER

[24] The application of June 24, 2009 is dismissed as the Board does not have jurisdiction in the matter because the Form 2 Notice of Rent Renegotiation dated January 30, 2008 is premature and invalid pursuant to section 11 of the *Act.*

Dated February 23, 2010

FOR THE BOARD



Simmi Sandhu, Member

File No. 1621
Board Order # 1621-1

October 9, 2009

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
NW ¼ Section 29, Township 79, Range 17 W6M
NE ¼ Section 30, Township 79, Range 17 W6M
SE ¼ Section 30, Township 79, Range 17 W6M and
SW ¼ Section 30, Township 79, Range 17 W6M, all in Peace River District

(The "Lands")

BETWEEN:

EnCana Corporation

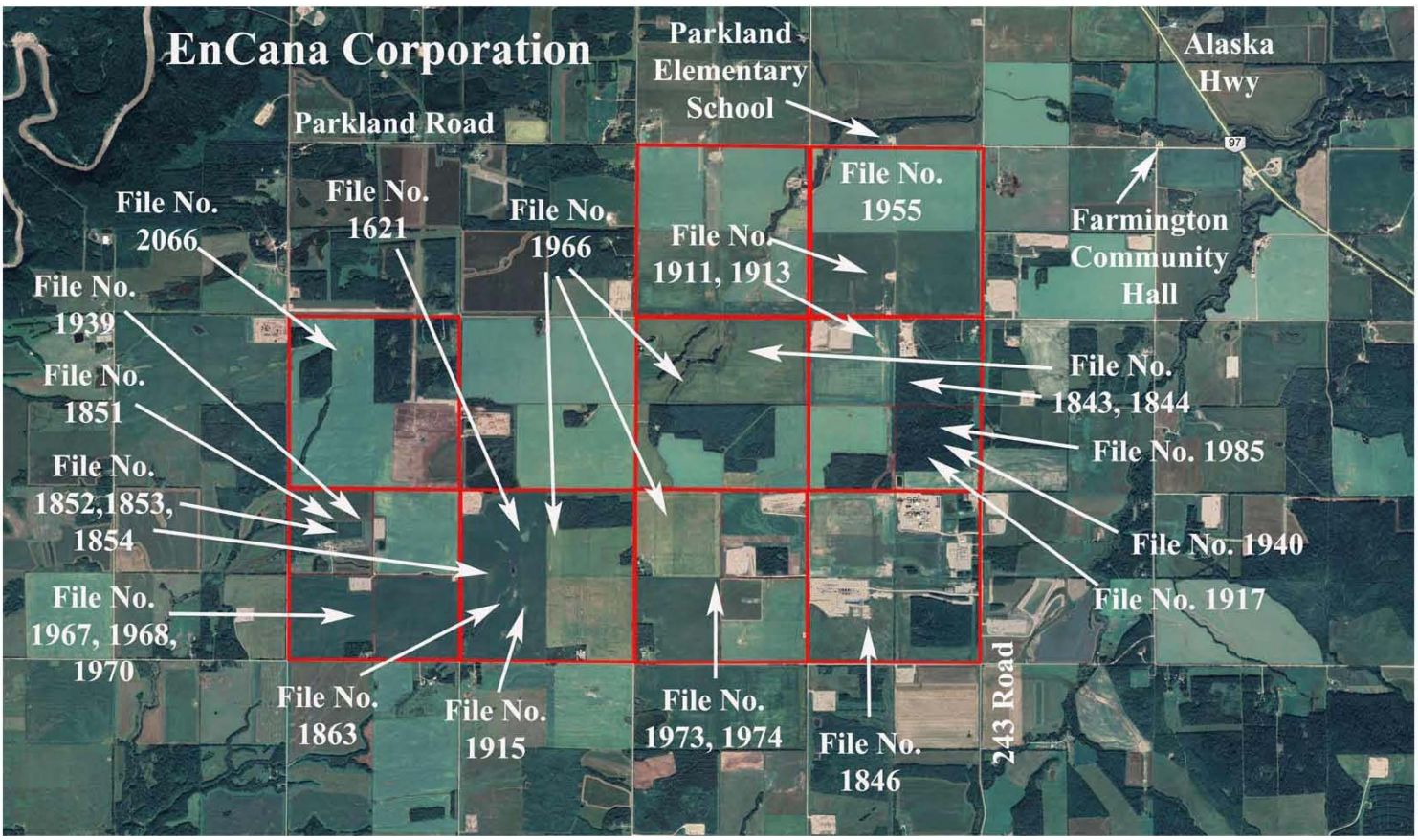
(APPLICANT)

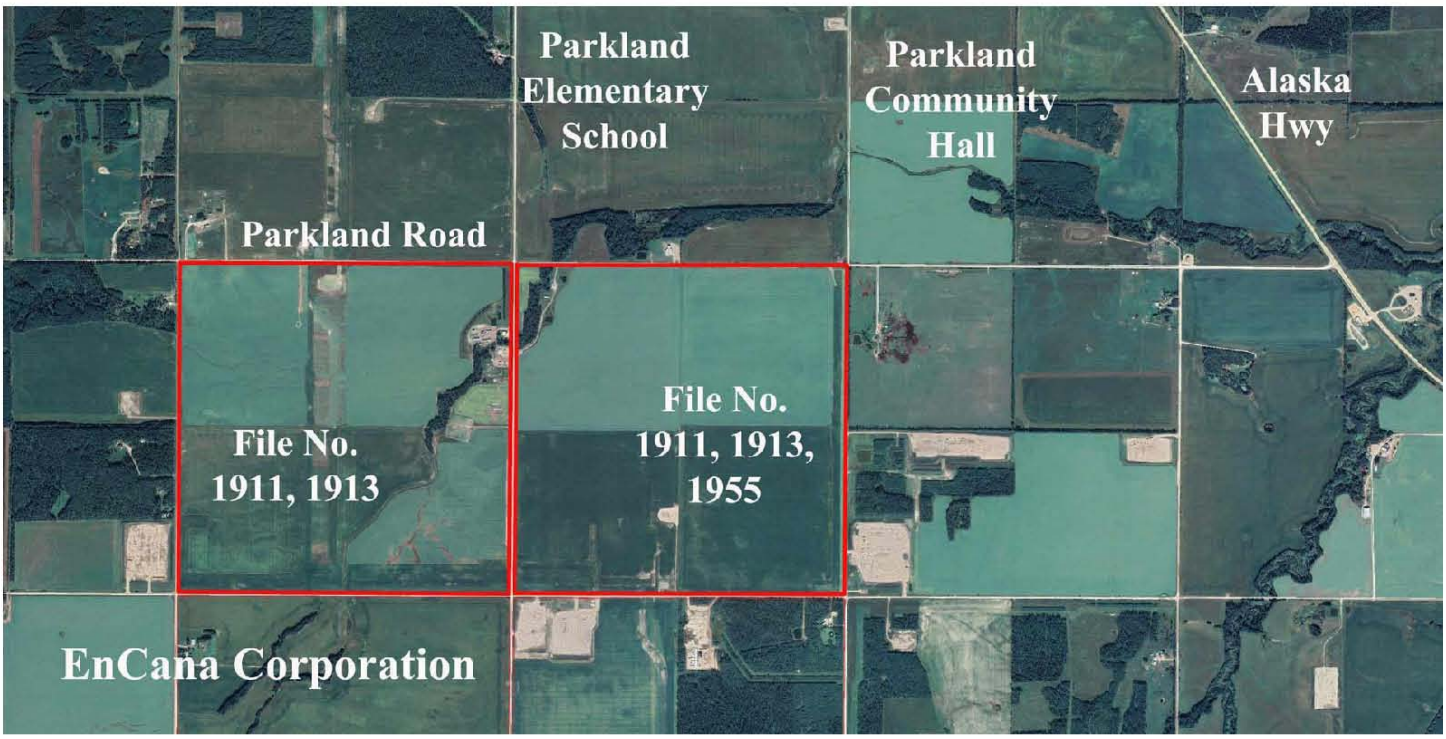
AND:

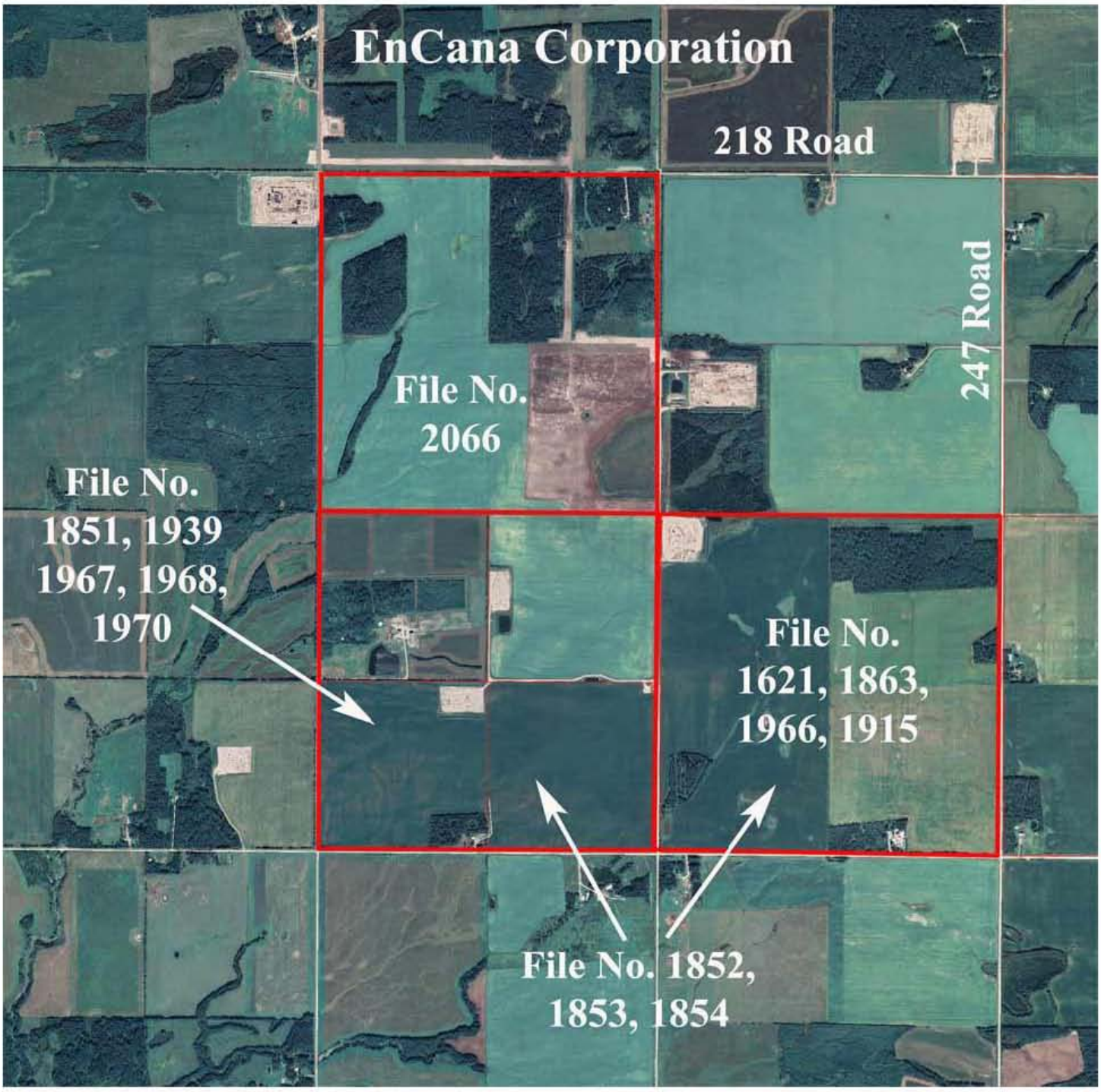
Olaf Jorgenson and Diane Jorgenson

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
Parkland Road
Parkland Elementary School
Alaska Hwy
97
Farmington Community Hall
File No. 2066
File No. 1621
File No. 1966
File No. 1955
File No. 1911, 1913
File No. 1939
File No. 1851
File No. 1852,1853, 1854
File No. 1967, 1968, 1970
File No. 1843, 1844
File No. 1985
File No. 1940
File No. 1917
File No. 1863
File No. 1915
File No. 1973, 1974
File No. 1846
243 Road


Parkland Elementary School
Parkland Community Hall
Alaska Hwy
Parkland Road
File No. 1911, 1913
File No. 1911, 1913, 1955
EnCana Corporation


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Heard by telephone conference:	October 1 and October 7, 2009
Mediator:	Cheryl Vickers
Appearances:	Tom Hourahine, Sandra Dixon and Fred Breurkens on behalf of the Applicant Scott Morrison on behalf of the Respondents

[1] EnCana Corporation (EnCana) applies to the Board for mediation and arbitration seeking entry to the Lands owned by Olaf and Diane Jorgenson (Jorgensons) in order to construct, install and operate two pipelines. The Jorgensons have a number of concerns with the entry and are particularly concerned that the work be done properly without "shortcuts", and that all regulatory requirements are adhered to.

[2] The Board may authorize the entry onto private land subject to specified terms if entry is required to explore for, develop or produce petroleum or a natural gas or for a connected or incidental purpose. The Oil and Gas Commission (OGC) has issued Approvals for the construction and operation of two natural gas pipelines and a riser on the Lands. EnCana needs access to the Lands to construct, install and operate the pipelines and the riser approved the OGC.

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

[4] Encana has agreed to some of the terms of entry proposed by the Jorgensons but has been unable to agree to other proposed terms. Some of terms proposed by the Jorgensons, while generally within the realm of agreement between a company and a land owner where that is possible, are not matters that the Board can order in the event of disagreement. For example, the Jorgensons are unhappy with EnCana's choice of contractor for the project. They express concerns about the contractor's reputation and concerns that the work will be done properly. EnCana has contractual obligations both to the contractor in question and to third parties for the delivery of natural gas within a specified timeline that make them unwilling or unable, at this time, to change the contractor. At the end of the day, EnCana is liable for any damage or loss caused by their entry, occupation and use of the Lands, and must comply with the various regulations governing their activity on the Lands. EnCana has selected their contractor with the knowledge of the risk and liability associated with the project and, in the absence of being able and willing to accommodate the Jorgensons' concerns through the selection of an agreed contractor, it is not for the Board to require a company to select a particular contractor. If EnCana is satisfied that their risk and liability can be managed with the contractor they select, that is their decision. If it turns out they have made a poor decision, then they are liable for any loss or damage that may result.

[5] Encana and the Jorgensons have not agreed on the amount of compensation payable for the entry. The focus of the discussions between them has been on the terms of entry. Because of the short timeline in which Encana is required to complete the project, there is some urgency to EnCana being permitted to enter the Lands. I am satisfied that as many of the issues relating to the terms of entry as could be agreed in the circumstances have been agreed, and those terms form part of this Order. The issue of compensation can continue to be mediated by the Board.

[6] The Mediation and Arbitration Board orders:

1. Upon payment of the amounts set out in paragraphs 2 and 3 below, the Applicant including its employees, contractors and assigns shall have the right of entry to and access across the portion of the Lands shown in Schedule "A", on the Terms set out in Schedule "B", for the purpose of constructing and operating the pipelines and riser approved by the Oil and Gas Commission.

2. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of $50,000.00. All or part of the security deposit may be returned to the Applicant or paid to the Respondents upon the agreement of the parties or as ordered by the Board.

3. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to and use of the Lands the amount of $61,534.00.

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

5. The Board retains jurisdiction to schedule a further mediation hearing on the issue of the compensation payable to the Respondents for the Applicant's entry, occupation and use of the Lands.

6. Nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: October 9, 2009

FOR THE BOARD

Cheryl Vickers, Chair

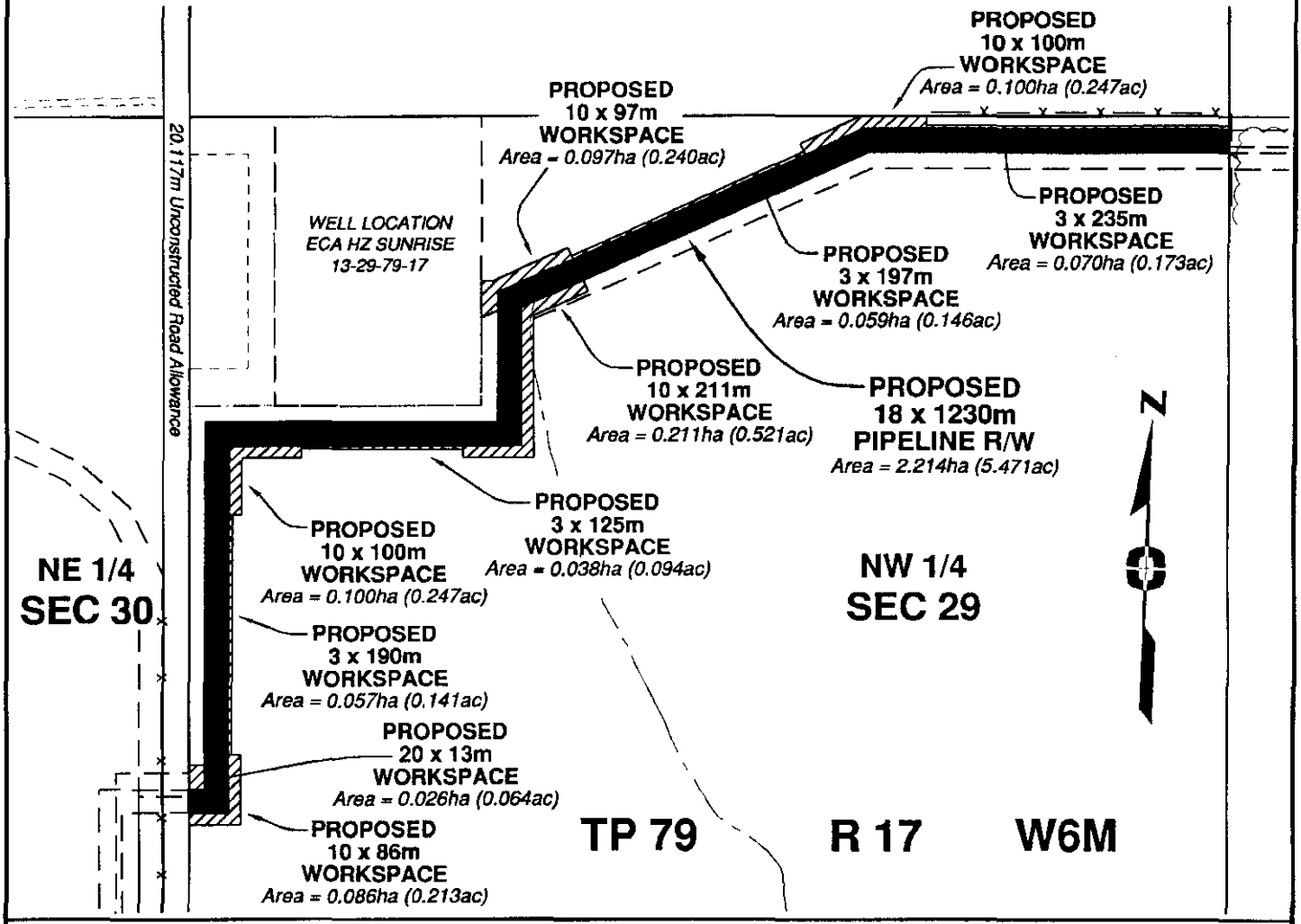
SCHEDULE "A"

Board Order 1621-1 Schedule A p.1 Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Compressor Site 9-27-79-17 to tie-in at Riser Site 8-30-79-17)



Owner(s): Olaf Anton Jorgensen

Landowner File: S452297

Certification Title No.: PP29096
Parcel Identification No.: 014-486-113
EnCana File: S449164

Area(s):			
	Permanent	2.214 ha	5.471 ac
	Temporary	0.844 ha	2.086 ac
	Total	3.058 ha	7.557 ac

Area referred to shown thus: Permanent ▬ Temporary ▨

Scale 1: 5000

100 0 100 200

Certified correct this 12th day of March, 2009.

Adam Brash , BCLS

Focus Job No.: 081539NP06R1 By: KG
Revision: 1

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

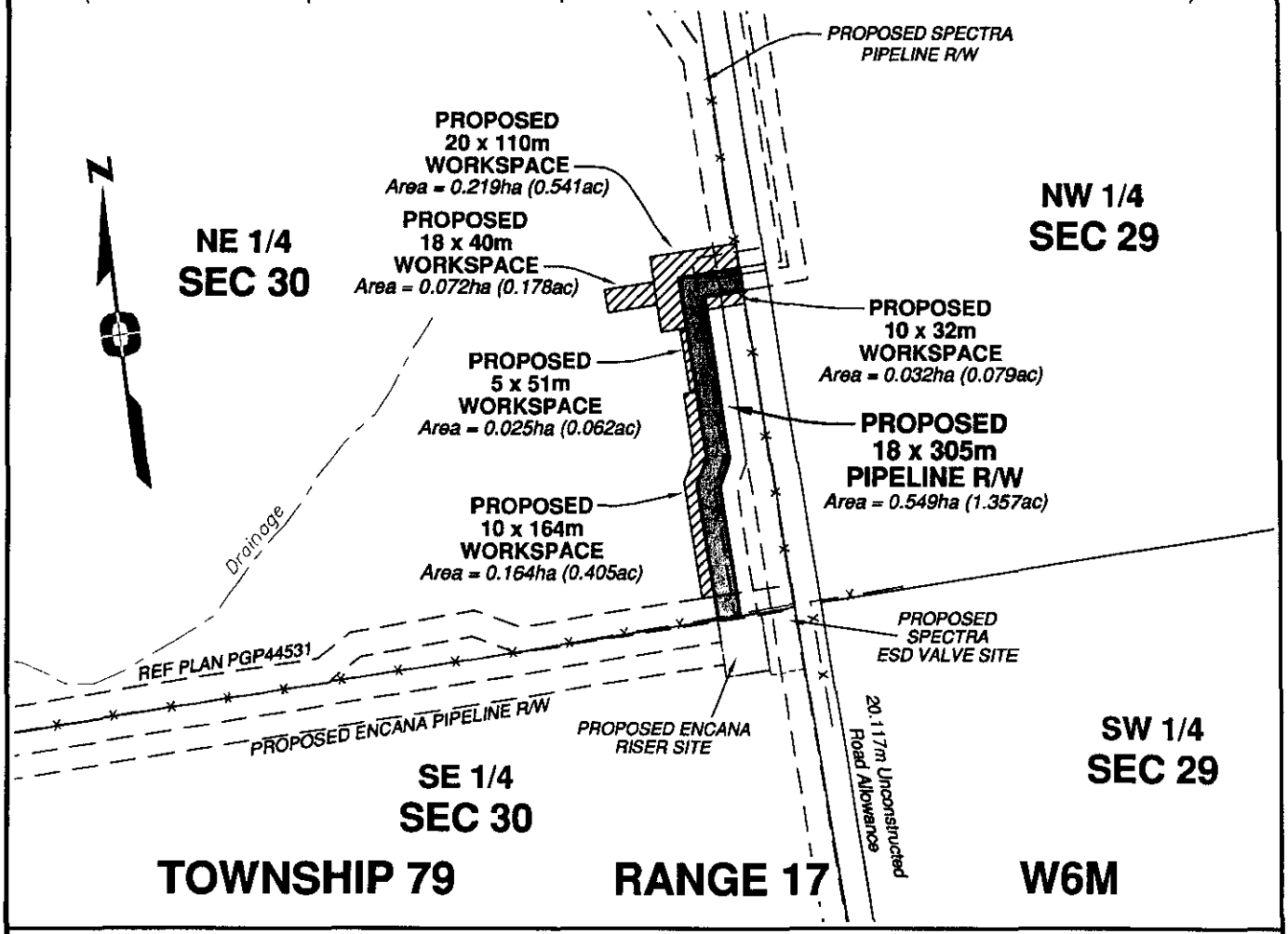
SCHEDULE "A"

Order 1621-1 Sched A p 2 Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Compressor Site 9-27-79-17 to tie-in at Riser Site 8-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner

Landowner File: S452298

Certification Title No.: CA201800
Parcel Identification No.: 014-486-148
EnCana File: S229164

Area(s):			
	Permanent	0.549 ha	1.357 ac
	Temporary	0.512 ha	1.265 ac
	Total	1.061 ha	2.622 ac

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Certified correct this 12th day of March, 2009.

Adam Brash, BCLS

Focus Job No.: 081539NP07R1 **By:** KG
Revision: 1

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

SCHEDULE "A"

Order 1621-1 Sched A p.3 Page___ of___

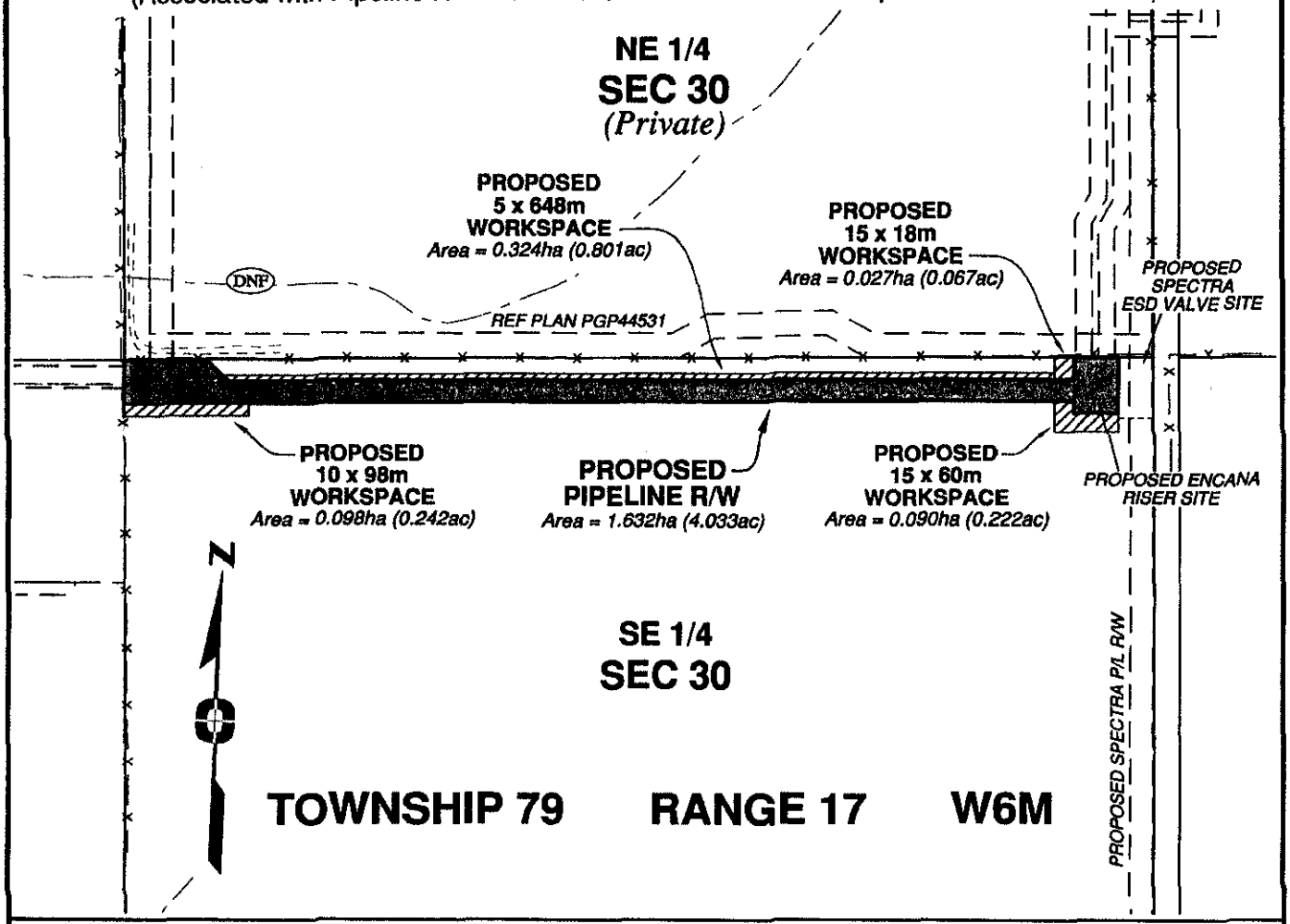
Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M

PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 1-25-79-18 To Compressor Site 9-27-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner

Landowner File: S452283

Certification Title No.: CA201797

Parcel Identification No.: 007-942-028

EnCana File: S449383

Area(s):

Permanent	1.632 ha	4.033 ac
Temporary	0.539 ha	1.332 ac
Total	2.171 ha	5.365 ac

Certified correct this 14th day of September, 2009.

Adam Brash , BCLS

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Focus Job No.: 08908NP03R1 By: CC
Revision: 0

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

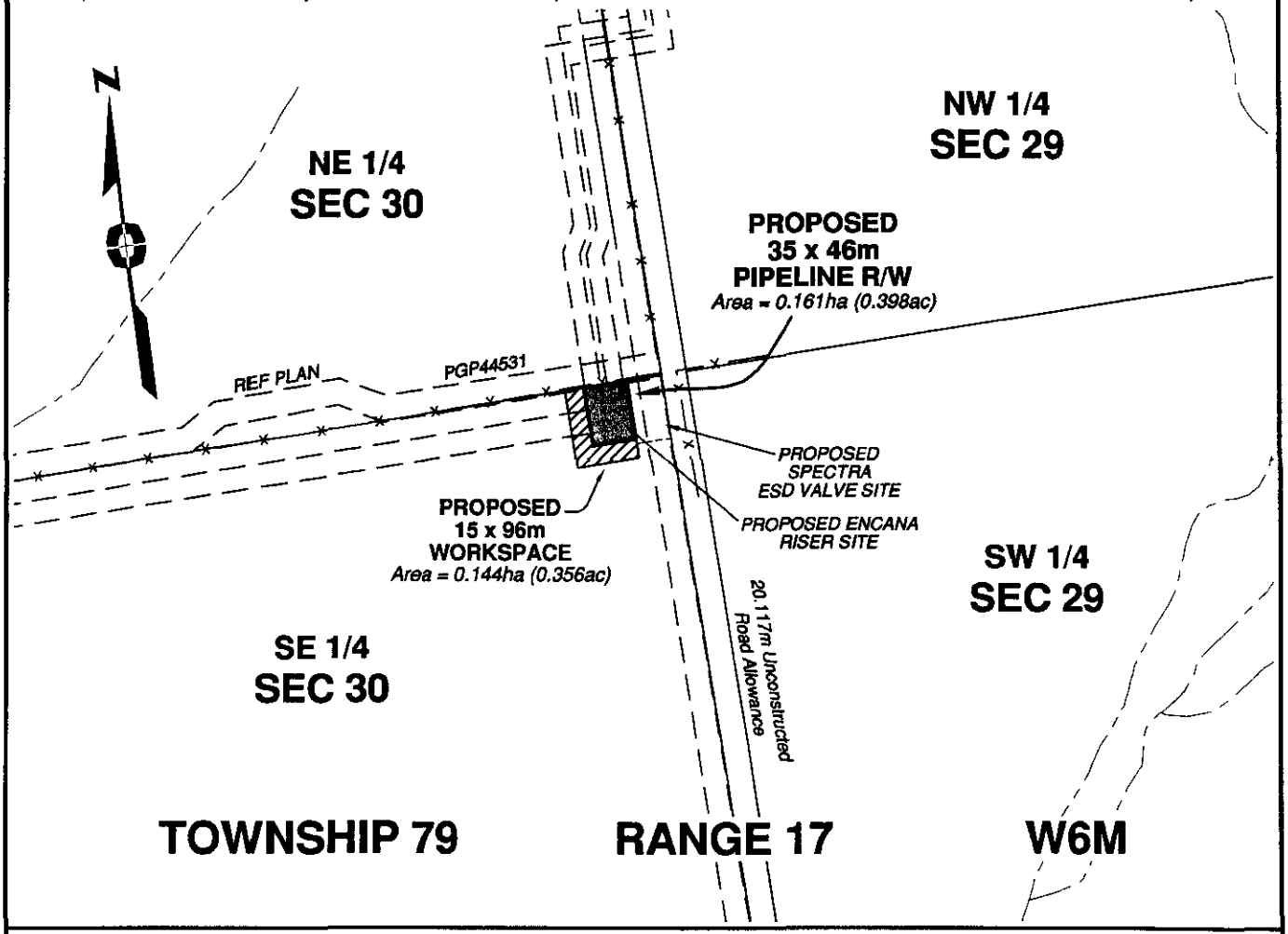
SCHEDULE "A"

Order 1621-1 Sched A p 4 Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Compressor Site 9-27-79-17 to tie-in at Riser Site 8-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner
Landowner File: S452298

Certification Title No.: CA201797
Parcel Identification No.: 007-942-028
EnCana File: S449164

Area(s):			
	Permanent	0.161 ha	0.398 ac
	Temporary	0.144 ha	0.356 ac
	Total	0.305 ha	0.754 ac

Certified correct this 12th day of March, 2009.

Adam Brash , BCLS

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Focus Job No.: 081539NP08R1 **By:** KG
Revision: 1

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

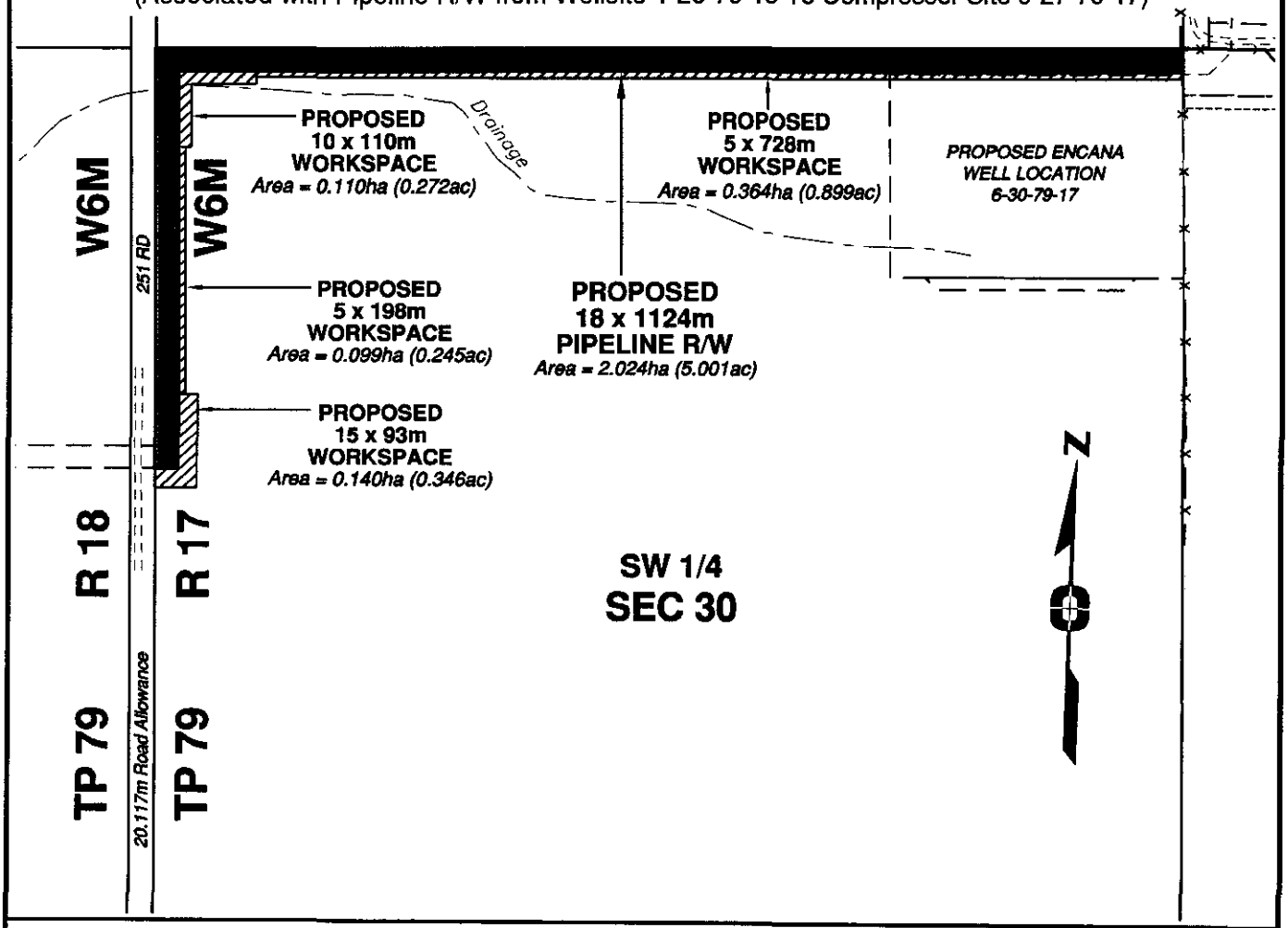
SCHEDULE "A"

Order 1624-1 Page ___ of ___
Sched A p.5

Attached to and made part of this Agreement dated this _____ day of _____, 20_____, between
Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
SOUTH WEST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-25-79-18 To Compressor Site 9-27-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner
Landowner File: S452283

Certification Title No.: CA201798
Parcel Identification No.: 007-942-036
EnCana File: S449383

Area(s):			
	Permanent	2.024 ha	5.001 ac
	Temporary	0.713 ha	1.762 ac
	Total	2.737 ha	6.763 ac

Certified correct this 21st day of September, 2009.

Adam Brash , BCLS

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Focus Job No.: 080980NP02R2 **By:** DG
Revision: 2

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

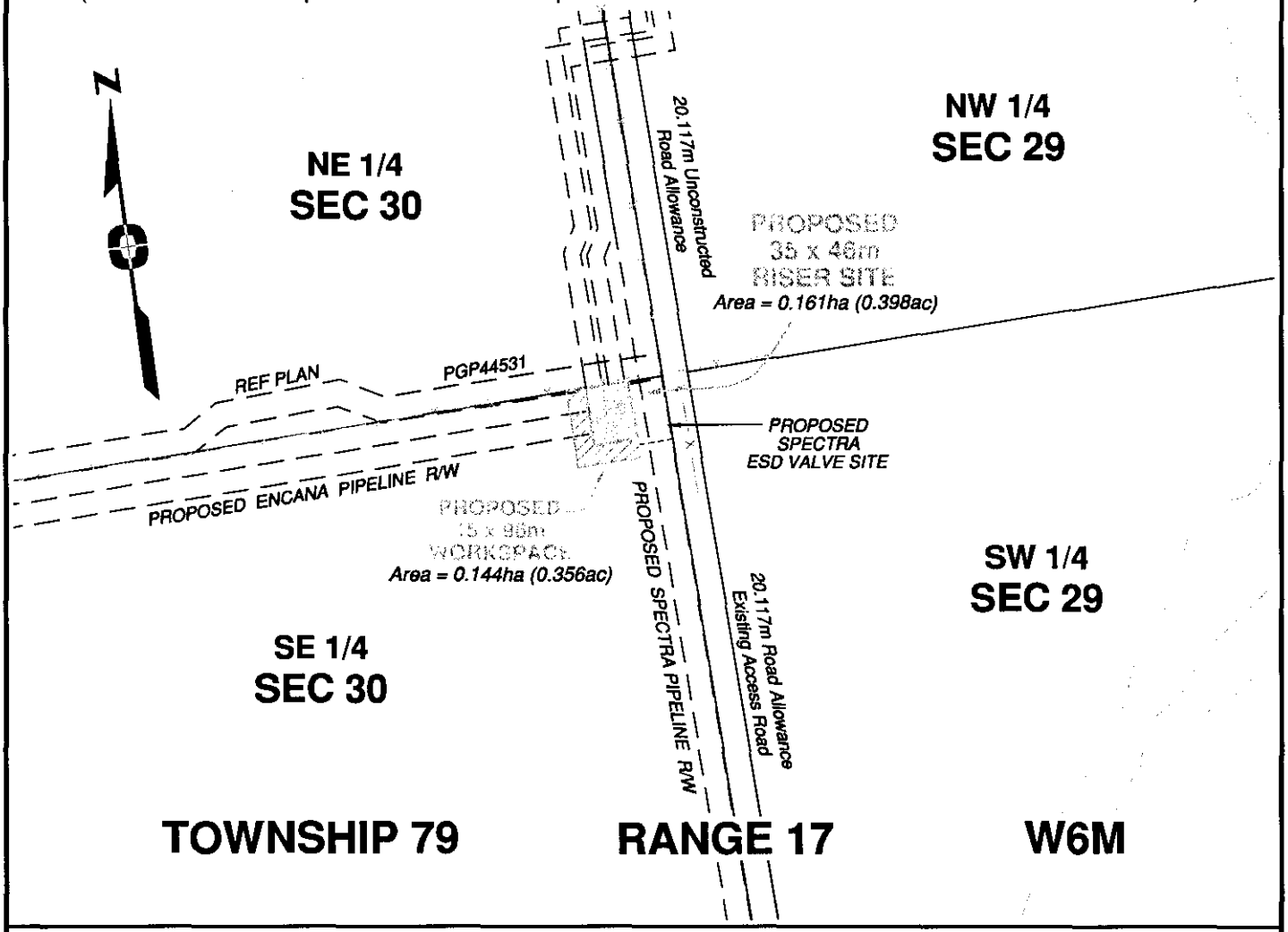
SCHEDULE "A"

Order 1621-1 Sched Ap. 6 Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED RISER SITE WITHIN
THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Compressor Site 9-27-79-17 to tie-in at Riser Site 8-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner

Landowner File: S454574

Certification Title No.: CA201797
Parcel Identification No.: 007-942-028
EnCana File: S449164

Area(s):			
	Permanent	0.161 ha	0.398 ac
	Temporary	0.144 ha	0.356 ac
	Total	0.305 ha	0.754 ac

Area referred to shown thus: Permanent Temporary

Scale 1: 5000 100 0 100 200

Certified correct this 30th day of September, 2009.

Adam Brash , BCLS

Focus Job No.: 081539NP09R1 **By:** KG/DG
Revision: 1

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

SCHEDULE "B"

- EnCana agrees to provide two heavy equipment crossing points over its right-of-ways for the landowners' use to access dugouts adjacent to wellsites at 13-29-79-17 & 15-30-79-17 including culverts, if necessary, and approaches to both crossing points

- EnCana agrees that rocks brought to the surface within the right-of-way as a result of EnCana's construction of the pipeline will be removed by the landowner and compensated by EnCana.

- Weed control: In addition to it's commitment to meet or exceed all applicable legislation, EnCana has it's contractors steam clean their equipment before starting a new project. This process is completed offsite and is documented by EnCana's environmental consultant. EnCana's environmental consultant will review the weed control analysis with the landowner.

- Rocks brought to the surface within the right-of-way as a result of EnCana's construction of the pipeline will be removed by the landowner and compensated by EnCana.

- EnCana endeavors to keep its construction sites as clean as possible. In the case of debris or garbage blowing off its right-of way during construction, an EnCana representative will communicate with the landowner in order to rectify (e.g. getting permission to leave the right-of-way to pick up). EnCana requests that in the case of the landowner being aware of garbage that has missed EnCana's attention, the landowner will communicate that as soon as possible for EnCana to deal with.

- If livestock are going to be affected by EnCana's pipeline construction then the company will work with the landowner to find the best solution to minimize impact (e.g. moving to different pasture etc.)

- EnCana reiterates its regulatory obligations to maintain soil integrity, environmental stability and public engagement. If at any time the landowner feels EnCana is not fulfilling these obligations he is encouraged to contact the Oil & Gas Commission to voice these concerns. The OGC can and has sent inspectors to the field to investigate. In the case that these concerns are in contravention of BC regulation a variety of levies against the company are brought to bear which could include stop work orders. No hills or mounds will be left.

- Damages including (but not limited to) fence cuts, crop loss and additional time spent while not a part of the right-of-way consideration will definitely be included in the damages negotiation.

- EnCana will provide a minimum of two inspectors and additional inspectors if necessary. EnCana's lead inspector will discuss the project with the landowner and provide details of what work is being performed and when. EnCana acknowledges work must be done to regulatory standards and will exercise due diligence to ensure work is performed properly.

- EnCana will provide the landowners with a contact for any issues that arise during construction of the project or afterwards

File No. 1621
Board Order # 1621-2

February 4, 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
NW ¼ Section 29, Township 79, Range 17 W6M
NE ¼ Section 30, Township 79, Range 17 W6M
SE ¼ Section 30, Township 79, Range 17 W6M and
SW ¼ Section 30, Township 79, Range 17 W6M, all in Peace River District

(The "Lands")

BETWEEN:

EnCana Corporation

(APPLICANT)

AND:

Olaf Jorgenson and Diane Jorgenson

(RESPONDENTS)

BOARD ORDER

Heard:	November 4, 5, & 26, 2010
Panel:	Simmi K. Sandhu and Bill Oppen
Appearances:	Scott Morrison, for the Jorgensens
	Tom Owen, for EnCana

INTRODUCTION

[1] Olaf and Diane Jorgensen own property near Dawson Creek, B.C., jointly or individually (the Lands), upon which EnCana Corporation (EnCana) has constructed and installed flowlines and a riser site. The Jorgensens use their Lands for the grazing and raising of cattle. By way of application to the Board, EnCana obtained right of entry and access to the Lands for the construction and operation of two flowlines and a riser site (Order 1621-1, dated October 9, 2009). None of the quarter sections accessed are home quarters or property on which the Jorgensen's have their home.

[2] The flowlines have now been constructed along with improvements on the riser site. The issue remaining to be determined is the appropriate compensation payable to the Jorgensens pursuant section 154(1) of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, ch. 361.

[3] Although the application was filed pursuant to the now repealed section 16 and 21 of the *Act*, the compensation provisions and principles of the new section 154, as amended October 4, 2010, are primarily the same. As there has been little change in the provisions pertaining to compensation, we will refer to the current provisions and apply the principles of compensation set out in prior jurisprudence.

[4] There was some discussion of the total acreage taken under Order 1621-1. EnCana says that the riser site, with a permanent area of .398 acres and .356 acres temporary workspace (at SE 30-79-17 WGM), is entirely within the flowline right of way for that property that consists of a permanent area of 4.033 acres and 1.332 acres temporary workspace. EnCana submitted that the total acreage of the rights of way, without duplication, is 25.129 acres for the permanent area and 11.182 acres of temporary workspace. The Jorgensens provide little dispute over this. Therefore, we accept that the appropriate acreage to be used in the calculation of compensation is as outlined by EnCana.

ISSUE

[5] The issue before us is: what is the appropriate compensation to be paid to the Jorgensens by EnCana pursuant to section 154 (1) of the *Act*?

THE LEGISLATION

[6] Section 154 (1) of the *Act* set out factors the Board may consider in determining an amount to be paid as compensation, including,

(a) the compulsory aspect of the right of entry;

(b) the value of the applicable land;

(c) a person's loss of a 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 one or more 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.

[7] These factors do not speak to speculative future loss or damage, and compensation under the *Act* is only intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable; it is inappropriate to make a speculative award *(Arc Petroleum Inc. v. Piper*, MAB Order 1598-2).

EVIDENCE AND ANALYSIS

[8] EnCana submits that the Jorgensens should receive the same compensation agreed to by their neighbours for the same flowlines because the Lands are similar to those of their neighbours. EnCana provided details of the compensation agreed to by the neighbouring landowners.

[9] The Jorgensens submit that they have been "taken" to arbitration by EnCana and that the compensation being offered is less than what has been previously ordered by the Board in other applications. The Jorgensens say this has been a long and drawn out process due to tactics used by EnCana. They also say that the compensation should be paid separately and individually per title and

EnCana does not object to this. However, nothing turns on this as the evidence before us calculates compensation by acre and not by title.

Compulsory Aspect of the Right of Entry:

[10] All of the agreements reached by EnCana for the subject flowlines with other landowners provide $500/acre for the permanent right of way.

[11] Mr. Fred Breurkens, agent for EnCana that negotiated the right of way agreements for the flowlines, provided details of these agreements and testified that the neighbouring lands were similar to the Lands, namely cultivated or pasture land.

[12] EnCana presented expert opinion evidence from Robert Telford, appraiser and land agent, who estimated the additional compensation that should be paid for the riser site effective October 9, 2009. He reviewed compensation for the compulsory aspect of the entry or taking and determined that this would not be applicable to the riser site, as this compensation would be accounted for in compensation for flowline right of way for this property and to compensate for it again for the riser site would be double compensation. We agree as the riser site area is within the flowline right of way.

[13] Mr. Telford also testified that based on his discussions with four oil companies operating in the area, EnCana, Arc, Penn West, and Progress, the going compensation was $500/acre for the compulsory aspect.

[14] The Jorgensens submit that their lands and operations are different and not comparable to these neighbouring properties, although, they do not provide many details to support this argument other than that Mr. Jorgensen operates a company and they are not simple landowners.

[15] They submit that they should receive 150% of the market value of the Lands as compensation for the compulsory aspect of the right of entry or use (Exhibit 6). In support, a short email is provided that sets out an opinion of market value of a realtor, Rick Walters. Mr. Walters states that he would put the four quarter sections at "100K per bare quarter then...150 per quarter with a house on it plus the house." This is the entire extent of Mr. Walter's opinion. Based on this opinion, the Jorgensens say that they should receive $150,000 for farmland (ie 150% of the market value of $100,000 per quarter section), which per quarter section (160 acres), amounts to $937.50/acre, and for a residential quarter section, amounts to $225,000 per quarter section or $1,406.25 per acre.

[16] It is not entirely clear where the 150% of market value is derived from other than reference to compensation for expropriation, which the Jorgensens say this is, under the *Pipeline Act*. There is no evidence that the compensation under the *Petroleum and Natural Gas* Act should be 150% of market value or that this is the

compensation that has been paid in other similar instances. We are not determining compensation for an expropriation as EnCana is not obtaining the fee simple interest of the Lands. Therefore, we cannot accept the Jorgensen's claim for 150% of market value.

[17] Regardless, we can not accept the market value opinion supplied by Mr. Walters in a one sentence email. He gives no basis for his opinion in terms of sales of comparable properties or an analysis, nor did Mr. Walters attend the hearing to be cross-examined or answer questions on his opinion. Therefore, we give Mr. Walter's evidence little or no weight in our determination.

[18] As stated by the Board previously in *Arc v. Merrick et al*, Order 1599-2, the amount for the compulsory aspect of the taking is intended to recognize that the landowner has no choice when the holder of subsurface rights requires access to their lands for the purpose of exploring, developing or producing a subsurface resource and that, absent a legislated amount, this is essentially an arbitrary figure. In that decision, the amount that was agreed to by the parties was also $500/acre.

[19] We accept that the best evidence to rely upon in determining the compensation for the compulsory aspect of the taking is the evidence of what the Jorgensens' neighbours agreed to in the same situation. Evidence of what compensation is paid to other owners in the area is relevant and should be considered by the Board where the evidence indicates an established pattern of compensation exists (*Arc Petroluem Inc. v. Piper*, Order 1598-2, *Scurry Rainbow Oil v.Lamoureux* [1985] B.C.J. No. 1430 (B.C.S.C.). We find that there is a pattern of compensation established in the area by the neighbouring landowners, and for many of the heads of compensation, this is the only reliable evidence that we have before us. This is also supported by the evidence from Mr. Telford that the rate paid as compensation by other oil companies in the area is also $500/acre.

[20] For the compulsory aspect of the taking for the Lands, we find the appropriate compensation is $500/acre for 25.129 acres, or $12,564.50.

Value of the Land:

[21] EnCana submits the appropriate compensation for this head of compensation is $800/acre for the permanent right of way and $400/acre for the temporary workspace, again based largely on what the neighbouring landowners agreed to for these flowlines. All but two of the neighbouring landowners agreed to this compensation, while two agreed to $900/acre for the permanent right of way and $450/acre for the temporary workspace. The evidence from the land agent that negotiated these two agreements, Jason Blanch, was that these two properties were cultivated with seeded fescue with no cattle.

[22] Mr. Telford provided evidence of land value where he reviewed sales of comparable properties in the area and determined an estimated market value of the subject as of October 9, 2009 at $800 per acre, but as the reversionary interest would remain with the property owners, the value of the land would be 75% of the market value or $600 per acre, with an estimate value for the workspace at 50% of the market value or $400 per acre. However, as the riser site is within the land already acquired for the right of way for the flowline, no additional compensation beyond what is to be paid for the flowline right of way would be attributable for the riser site. We agree that no additional compensation for the riser site is payable.

[23] The Jorgensens submit that they should receive $1,200/acre for the permanent right of way and $1,200/acre for the temporary workspace based on a right of way agreement reached between the Pavlis' and Arc Petroleum dated April 19, 2010. The Pavlis agreement is not complete as there is no survey plan attached showing the acreage taken nor a breakdown of how the compensation was arrived at. The Jorgensens also rely upon the agreement reached between Miller and Arc dated January 20, 2007 for $950/acre for the temporary workspace. These other agreements are of little assistance to the Board as there are no details as to the type of land, the use of the lands or what factors were considered by the parties in these circumstances. In addition, there is reference in the Jorgensen's materials (Exhibit 6) to the "Alberta Clipper" or Talisman Energy water pipeline proposals and a compensation formula for the Iniskys'. These were referred to but no details were supplied and no evidence is provided that these are actual agreements entered into. We give this evidence little weight.

[24] The Jorgensens also claim that their land is worth more than their neighbours as their Lands have a view of the valley, which was pointed out in a site visit that was conducted November 26, 2010. They make a claim for injurious affection as there has been a diminishment in the market value of the Lands resulting from the entry and rights of way of the subject flowlines. As stated by the Board in *Grant v. Murphy Oil Company Ltd.*, Order 1629-1, the compensable loss must be actual or reasonably foreseeable and not speculative, and in order to substantiate a claim for injurious affection, the evidence must demonstrate, on a balance of probabilities, that the value of the lands or portion of the lands was greater before the granting of the rights of way and construction of the flowlines than after. This evidence has not been provided by the Jorgensens. There is no evidence that the Lands are building sites. There are no residences located on the Lands currently and there is no evidence that residences will be constructed on them at anytime in the near future. The Lands are not used for a residential use. There is no evidence that the highest and best use of the Lands is something other than its current use. The only evidence before us is that the Lands are currently being used for pasture for cattle or cultivation, in which case, the fact that they have a view would not add value.

This claim by the Jorgensens is entirely speculative and not probable on a balance of probabilities.

[25] The Jorgensens also say that their land is worth more as they are a "no spray" operation, wherein they do not use chemical sprays to grow feed for their cattle or to eliminate weeds, although the operation is not certified organic. Despite not being certified, Mr. Jorgensen testified that he has been practising the same organic standard by keeping sprays out of his farming operation for years. He derided EnCana's efforts to keep his "no spray technique" on the Lands, which he has been following for 10 years. He asked EnCana to steam clean all vehicles, but they refused. As a result, he says that chemical residues and weeds have gotten onto his Lands brought by vehicles used during the construction and installation of the flowlines, but provides little details. However, he provided no evidence of the existence of residue or new weeds on the Lands, and gave no details of what chemicals or weeds he says are now present on the Lands that were not there before.

[26] The Jorgensens claim that this "no spray technique" has increased the value of the Lands, however, they provided no evidence in support. The Jorgensens tendered the opinion of market value of the realtor, Rick Walters, however, we give his evidence little weight for reasons stated above. Nevertheless, as argued by EnCana, even if we did accept Mr. Walter's opinion of land value at $100,000 per quarter section for farmland, this would amount to $625/acre, which is almost half of the Jorgensens' claim.

[27] As stated by the B.C. Supreme Court in *Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board* (20 BCLR (4th) 337 (affd by B.C.C.A. 35 B.C.L.R. (4th) 205), in the absence of special circumstances, the upper limit of compensation is the value of the land. Therefore, awarding compensation that represents more than the value of the Lands with no evidence of special circumstances, is contrary to the existing legal principles regarding compensation under the *Act* and beyond the jurisdiction of the Board.

[28] We do not find any reliable evidence to show there are special circumstances for these Lands that give a greater value to the Jorgensens beyond that shown by the market value of similar properties in the area.

[29] The best evidence of land value is provided by EnCana. Mr. Telford provided sales of comparable properties and determined a value for the Lands as of October, 2009 at $800 per acre. This supports what was negotiated by the neighbouring land owners that have similar pasture lands as the subject. We find that the appropriate compensation for the value of the land is $800/acre for the permanent right of way and $400/acre for the temporary workspace. We find that there should be no additional compensation for the riser site as the area for the riser site is included in the area taken for the flowline for that quarter section. Therefore, the compensation under this head is $20,103.20 ($800/acre for

25.129 acres for the permanent right of way) and $4,472.80 ($400/acre for 11.182 acres for the temporary workspace).

Loss of right of profit or Damage:

[30] EnCana submits that the installation and construction of the flowlines was uneventful and materially the same as what occurred on surrounding properties. They rely on the testimony of Martin Steel and Troy Kissock, who were directly involved in the construction and installation.

[31] EnCana submits the appropriate compensation is $250 per acre for loss of profit for 2 ½ years payable in the first year. For the riser site, EnCana proposes $250/acre payable in the first year or $200.56, and $105.87 annually. Again, EnCana relies upon the majority of agreements reached by the neighbouring landowners in support.

[32] The Jorgensens claim $750/acre ($700/acre for the riser site) for the loss of profit for 7 years, and for the loss of topsoil and time needed to reclaim the "no chemical spray" status. There is no expert evidence provided to support a finding of fact that there has been a loss of topsoil or soil integrity or, if there has, how it should be compensated for. Nor is there evidence that the Jorgensens' lost a "no spray" status such that there is a compensable loss for this lack of status. Even if there was a loss of this status, there is no evidence that the lack of "no spray" status affected or damaged the value of the Lands or resulted in a loss of profits such that compensable loss has occurred.

[33] We only have evidence of what other landowners with similar lands affected by similar activity of EnCana were paid, and we accept that it amounts to $250/acre for 2.5 years or $22,694.38 plus $200.56 for the riser site payable in the first year, and $105.87 annually for the riser site.

Compensation for Severance:

[34] Due to the routing of the flowlines, a portion of the Lands were severed (3.49 acres) such that they are no longer effectively used. EnCana submits the appropriate compensation is $800/acre for this portion, again based on the amount agreed to by another landowner who also suffered severance.

[35] Mr. Jorgensen expressed concerns regarding the different routes for the flowlines that was presented to him and suggested that EnCana engaged in poor planning leading to issues of severance and a protracted construction timeline. These issues of routing and planning are not within the Board's jurisdiction.

[36] The Jorgensens claim $750/acre for loss of profit and $1,000 annually for weed control for the severed portion for 7 years. No evidence is provided to support the loss of profit for the severed area or for the amount for weed control.

We accept the appropriate compensation for the severance is $800/acre, which is supported by what other landowners have agreed to, or $2,792.00.

Nuisance & Disturbance:

[37] EnCana submits the appropriate compensation for nuisance and disturbance should be based on what the neighbouring landowners largely agreed to, namely $50/hour for 8 hours (6 hours for initial meetings plus 2 hours for meeting for a water spray incident) for a total of $400. The Jorgensens say they had to deal with different people coming in with different information at different times. The Jorgensens claim they should receive $70/hour for both Mr. and Mrs. Jorgensen's time (although they also refer to compensation of $125/hour, an amount they negotiated with another oil company) plus $540 annually.

[38] Mr. Bruerkens testified that he spent at least 8 hours directly dealing with the Jorgensens in discussions relating to the flowline, including visits and calls to him, and that no threatening or bullying tactics were used in those discussions. He estimated 4-5 visits with the Jorgensens, individually or jointly, about 90 minutes each, although he agreed some of the discussion had to do with existing wellsites and not these flowlines. In addition, he testified that he made about 10 phone calls to Mr. Jorgensen. Surveyors had also been on the Lands about three times. Martin Steel from EnCana also testified that he met with Mr. Jorgensen and had phone calls with him. As did Bryan Arnold, also from EnCana, who testified that he had discussions with Mr. Jorgensen and met with him twice for one hour, there were also four phone calls totalling about 1 hour and four in field meetings. These calls and meetings, however, also included discussions and negotiating side agreements to compensate Mr. Jorgensen for work that he did for EnCana.

[39] There is no support for the rate for nuisance and disturbance other than what other landowners with similar operations for these flowlines have agreed to, which is $50 per hour. The Jorgensens' claim for $70 per hour is not substantiated. We accept that the rate of $50 per hour is appropriate. We do not accept that both Mr. and Mrs. Jorgensen's time should be accounted for as the evidence shows that Mrs. Jorgensen was not directly involved in the discussions or negotiations with EnCana and only attended some of the meetings peripherally. We accept that Mr. Jorgensen spent more than 8 hours in his dealings with EnCana. Trying to calculate the exact amount of time is difficult without time sheets or notes, which Mr. Jorgensen did not keep. However, we estimate that 15 hours is reasonable based on the evidence before us. Therefore, we find that the appropriate compensation for nuisance and disturbance is $50/hour for 15 hours or $750.

Riser Site:

[40] For the riser site, EnCana proposes $250 per acre for loss of profit and nuisance and disturbance, such that it would pay $540 for the first year and $444 per year thereafter.

[41] Mr. Telford testified that there is some additional compensation payable for the loss of profit or use of the riser site. Mr. Telford reviewed the soils and use of the lands and determined crop returns for it. Based on his analysis, the average gross loss of use would be $266 with a net return of $146 per acre, or $200.56 for initial loss and $105.87 annually. In terms of compensation for nuisance and disturbance, Mr. Telford estimated the nuisance to the farming operations in terms of the equipment and farming patterns and determined an appropriate compensation at $338. The total compensation estimated for the riser site is $540 for the first year and $444 annually thereafter. We accept his evidence on the riser site, as he has provided analysis and support for his conclusions.

Other Claims:

a) stress and anxiety:

[42] Mr. Jorgensen testified that the dealings with EnCana and their activity on his Lands, as well as news reports of the bombings of EnCana's facilities in the area, caused stress and anxiety for himself and his wife, Diane Jorgensen, such that Mrs. Jorgensen was unable to sleep and had to seek medical help. The Jorgensens claim $61,800.

[43] A one page letter from Dr. Pilgrim was tendered that set out what Mrs. Jorgensen had "reported" to the physician. The letter does not outline any details or supporting information as to what caused Mrs. Jorgensen's anxiety or sleeplessness other than what she stated, nor does it set out a medical diagnosis. The physician did not testify. In order for the Board to consider a claim for compensation based on stress and anxiety by the Jorgensen's, we require supporting evidence in the form of a detailed medical report from a physician outlining his or her medical opinion as to diagnosis and, importantly, as to causation of the medical condition; in addition, the physician should attend to answer questions from the other party and the Board. As we do not have this evidence, we give the letter from the doctor little weight in our determination. We have insufficient evidence before us that any stress or anxiety suffered was caused by the specific actions of EnCana, as opposed to something else, to a degree that the Jorgensens should be compensated for it. The Jorgensens have failed to prove that EnCana caused any stress and anxiety suffered by Mrs. Jorgensen that should be compensable and failed to provide any support to quantify their claim for $61,800.

b) sale of cattle:

[44] Mr. Jorgensen testified that due to EnCana's activities last year, he had to sell his 240 head of cattle. He stated that he had to do this as they were being grazed or quarantined on one quarter. Normally, he would rotate the cattle between the quarters, however, due to the construction activity, fences had to be torn down, such that he could only keep the cattle on one quarter which was unaffected by the construction. He said it was untenable to keep 240 head of cattle only on one quarter for a long period of time, therefore, he had no option but to sell and seeks compensation for this. He claims $7,745.00 for the cost of selling the cattle. He provided no evidence of what he received from the sale, however. Also, EnCana pointed out that Mr. Jorgensen sold half of his cattle well before construction began.

[45] EnCana submits that he did not have to sell the cattle and had the option of putting up fences to keep the cattle in other quarters. In support, Rod Kornlachner, another cattle rancher, testified that this was a viable option for Mr. Jorgensen. EnCana stated that they would have put up the fences if Mr. Jorgensen requested it and in fact, were required under the terms of Board Order 1621-1 to work with Mr. Jorgensen to find the best solution to minimize impact of the flowline construction, including moving cattle to different pastures. Mr. Jorgensen indicated that he did not ask EnCana for the fencing as they did not offer it and he was not going to ask them.

[46] We find Mr. Jorgensen had at least one other viable option to selling his cattle, which was to ask EnCana to put up fencing to allow his cattle to graze on the Lands, which option EnCana indicated they would have entertained. But, he did not make this request and therefore, failed to mitigate any damage that may have arisen. He did not try to work with EnCana pursuant to the terms of Board Order 1621-1 to minimize the impact to his livestock. In addition, Mr. Jorgensen owns 12 quarters in the area. It is not clear to us why he did not use these other quarters to graze his cattle. His lack of attempt to avoid the sale of his cattle was not reasonable in the circumstances and, as such, we find he is not entitled to claim for costs or damages arising from the sale.

c) Fencing

[47] The Jorgensens claim $9,000 for fence cuts and repairs to fencing. However, they provided no evidence to support this claim, such as identifying which fences were cut and needed repairs, invoices for the repairs or support for the time claimed. In fact, there is evidence that Mr. Jorgensen was paid for repairs to fence cuts and EnCana produced those invoices (Exhibit 5). We are not satisfied that the Jorgensens should be compensated for this claim beyond what they have already been paid by EnCana.

d) Claim for Each Access

[48] The Jorgensens claim $1,000 per person per quarter section for each time the property was accessed (*Talisman v. Webster*, Board Order 1655-1). However, this Order was for surveying, soil testing and assessment for a period of 60 days and not applicable here. No evidence is provided to support this claim.

e) Time Spent/Costs:

[49] The Jorgensens claim $43,000 for the time spent by Mr. Jorgensen (344 hours at $125/hour), and $35,500 for Mrs. Jorgensen (284 hours at $125/hour). In addition, they claim $165,000 for the cost of Scott Morrison's representation in this matter (1,320 hours at $125/hour). In total, the Jorgensens claim $257,235.00 for time and costs.

[50] Rule 18 of the *Board's Rules of Practice and Procedure* allows the Board to order a party to pay all or part of the actual costs of another party or intervener in connection with an application. In making an order for the payment of a party's costs, the Board will consider factors such as, the reasons for incurring costs, the conduct of a party in the proceeding, whether a party has unreasonably delayed or lengthened a proceeding, the degree of success in the outcome of a proceeding, and the reasonableness of any costs incurred.

[51] The Jorgensens provided no time sheets to justify the amount of time they claim they or Mr. Morrison spent. Both Mr. Jorgensen and Mr. Morrison testified that they did not keep written track of their time. Mr. Morrison did not produce any invoices submitted to the Jorgensens for payment. He agreed that he had no proof to substantiate the number of hours he has spent. There is no evidence as to the terms of agreement reached between Mr. Morrison and the Jorgensens at the time Mr. Morrison was retained, other than Mr. Jorgensen agreed to pay him for his work. The evidence is that Mr. Morrison is related to the Jorgensens and expects to inherit some of the Lands some day. There is no evidence that Mr. Morrison has any expertise in representing landowners regarding compensation matters before the Board or any other agency. In short, no evidence is provided to support the Jorgensens' claim.

[52] Given the above circumstances, we find the Jorgensens' claim for $257,325.00 is unreasonable, excessive, and unsupportable. However, EnCana submitted that they would be prepared to pay costs of $3,000 for Mr. Morrison's time calculated at $50 hour for 60 hours, and $1,250 for Mr. Jorgensen's attendance at the hearing, calculated at $50 per hour for three days of hearing. Given the nature of the application before the Board and the Board's proceedings as well as the hearing, we find that this is reasonable particularly given the length of proceedings which we find were extensive given the nature of the application and evidence. The Jorgensens made a number of claims that were

unsubstantiated and excessive, for example the claim for Mr. Morrison's representation and the Jorgensens' time spent, as well as claims regarding stress and anxiety. Therefore, we allow the Jorgensens $4,250 for costs and time spent in the Board's proceedings.

CONCLUSION AND ORDER

[53] We find that the total compensation to be paid to the Jorgensen's should be $63,916.88 plus $444 annually for the riser site, and costs of $4,250.00. EnCana has already paid $61,534.00 to the Jorgensens as partial payment for compensation pursuant to Board Order 1621-1. EnCana shall pay the balance of $2,382.88, plus $4,250.00 for costs, and $444.00, being the annual payment for 2010, to the Jorgensens forthwith, and shall continue annual payments of $444 every October 9 (the effective date of the entry) in accordance with applicable legislation.

[54] Upon payment of the amounts set out in paragraph [53], EnCana shall be entitled to return of the security deposited in accordance with Order 1621-1.

[55] EnCana also applies for a Board Order pursuant to rule 19 to attach two Individual Ownership Plans to Schedule A of Board Order 1621-1 which were inadvertently omitted from the Order. We amend Board Order 1621-1 by attaching the IOPs set out in Schedule "A" of this decision to that Board Order. The Board will provide the parties with certified copies of Order 1621-1 as amended.

Dated: February 4, 2011

FOR THE BOARD

Simmi K. Sandhu, Panel Chair

Bill Oppen, Member

SCHEDULE "A"

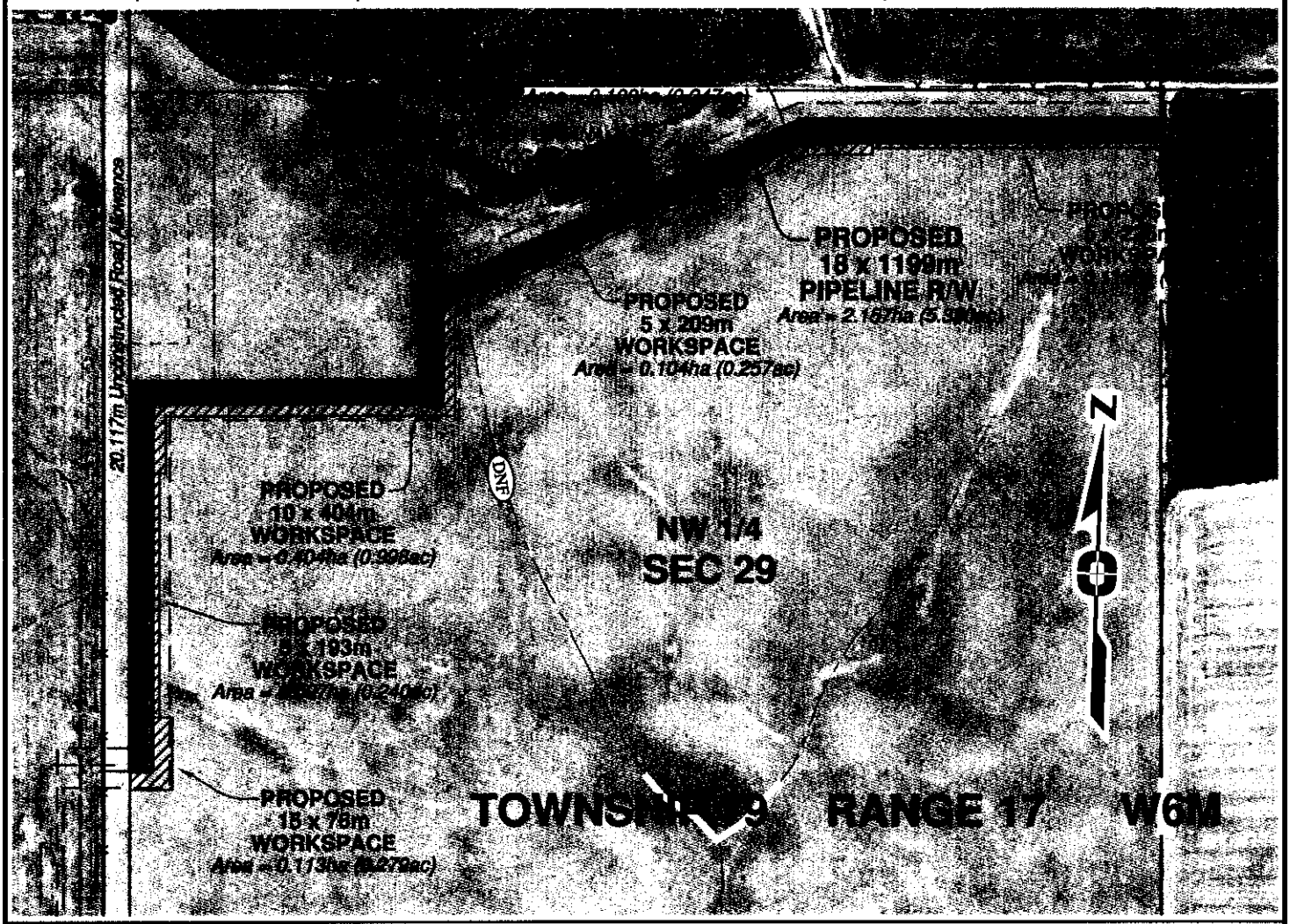
1621-1
1621-2

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-25-79-18 To Compressor Site 9-27-79-17)



Owner(s): Olaf Anton Jorgensen

Landowner File: S452284

Certification Title No.: PP29096
Parcel Identification No.: 014-486-113
EnCana File: S449383

Certified correct this 10th day of March, 2009.

Adam Brash , BCLS

Area(s):			
	Permanent	2.157 ha	5.330 ac
	Temporary	0.931 ha	2.300 ac
	Total	3.088 ha	7.630 ac

Area referred to shown thus: *Permanent* *Temporary*

Scale 1: 5000

100 0 100 200

Focus Job No.: 080980NP05R0 **By:** KG
Revision: 0

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

SCHEDULE "A"

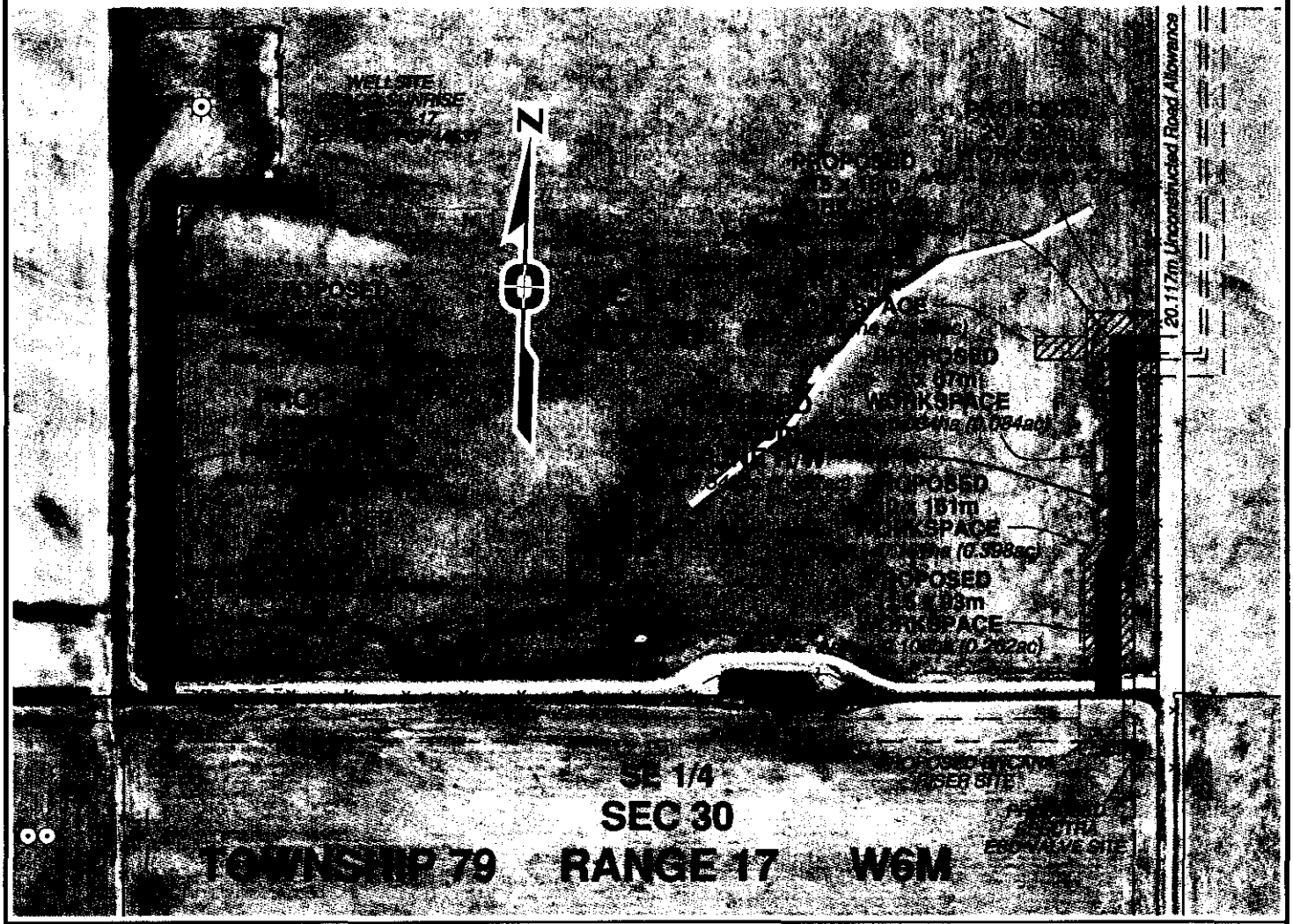
1621-1
1621-2

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Turner (Lessor) and EnCana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE
NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-25-79-18 To Compressor Site 9-27-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Turner

Landowner File: S452283

Certification Title No.: CA201800
Parcel Identification No.: 014-486-148
EnCana File: S449383

Certified correct this 10th day of March, 2009.

Adam Brash , BCLS

Area(s):			
	Permanent	1.432 ha	3.539 ac
	Temporary	0.842 ha	2.081 ac
	Total	2.274 ha	5.620 ac

Area referred to shown thus: *Permanent* *Temporary*

Scale 1: 5000 100 0 100 200

Focus Job No.: 080980NP04R0 **By:** KG
Revision: 0

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

File No. 1652
Board Order # 1652-1

August 24, 2010

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
NW ¼ Section 16, Township 23, Peace River District
(The "Lands")

BETWEEN:

Encana Corporation

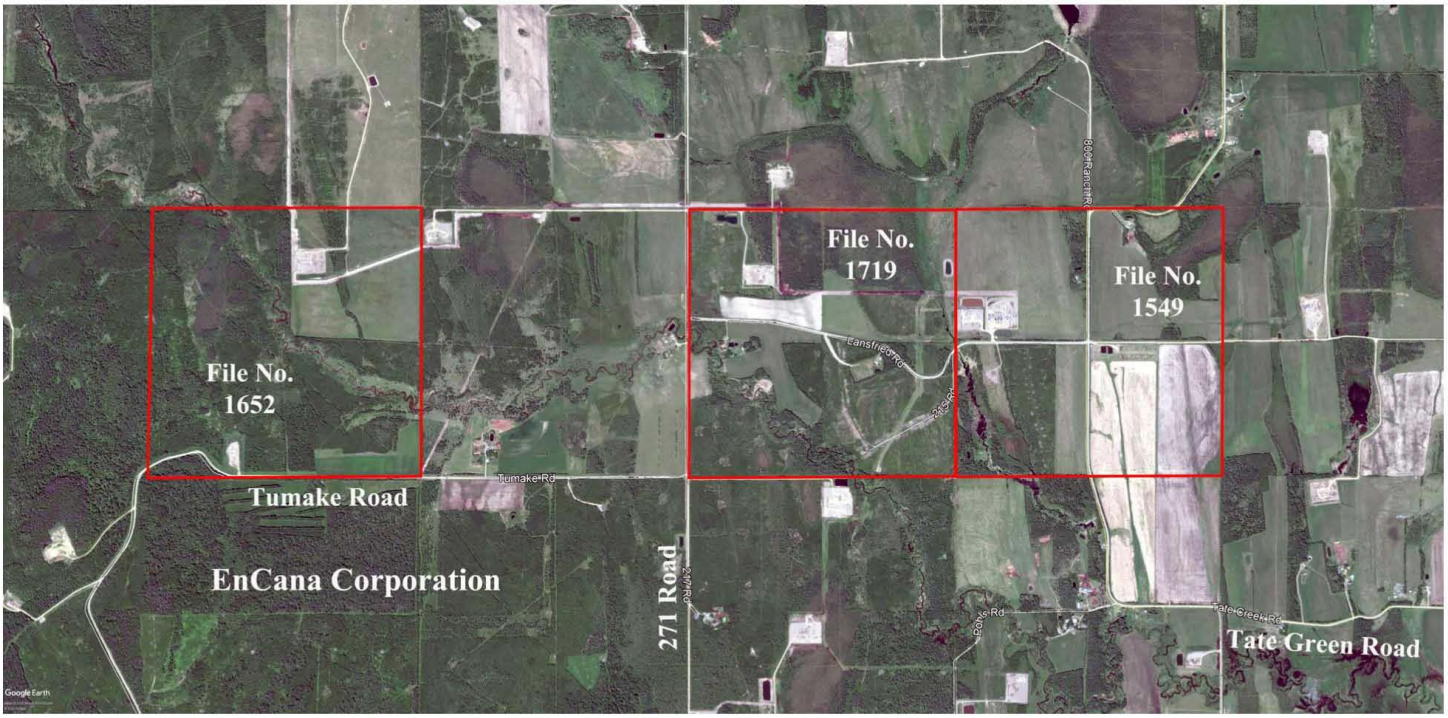
(APPLICANT)

AND:

Burnem Grant and Gertrude Grant

(RESPONDENTS)

BOARD ORDER


File No.
1652
File No.
1719
File No.
1549
Tumake Road
EnCana Corporation
271 Road
Tate Green Road
Tumake Rd
Lansfield Rd
Rooke Rd
Tate Green Rd
Google Earth

Heard by telephone conference:	August 20 and 24, 2010
Mediator:	Cheryl Vickers
Appearances:	Jasone Blazevic, Bruce White, and Rod Kronlachner, for the Applicant, Encana Corporation
	Burnem Grant, for the Respondents Burnem and Gertrude Grant

The Applicant requires access to the Lands for the purpose of construction, installation and operation of a flowline as shown on the attached plan (Appendix A). The Applicant has received a pipeline permit for the flowline from the Oil and Gas Commission. The Respondents do not oppose the flowline and agree to the amount of compensation for the right of entry, exclusive of any damages, but are not willing to sign a Right of Way Agreement expressing concerns about the landowners' loss of control over surface management of land and the priority of regulatory requirements that do not address landowners' concerns. The Respondents, while not willing to sign a Right of Way Agreement, consent to the Board making a Right of Entry Order so that the project may proceed.

BY CONSENT the Mediation and Arbitration Board orders:

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

2. The Applicant shall pay to the Respondents as payment for compensation payable for entry to and use of the Lands the amount of $6,315.00.

3. The Applicant shall pay to the Respondents the sum of $500.00 for costs.

4. The Applicant shall serve the Respondents with a copy of this Order prior to entry on the Lands either by way of personal service or by registered mail.

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

Dated: August 24, 2010

FOR THE BOARD

Cheryl Vickers
Chair

MAB ORDER 1662-1

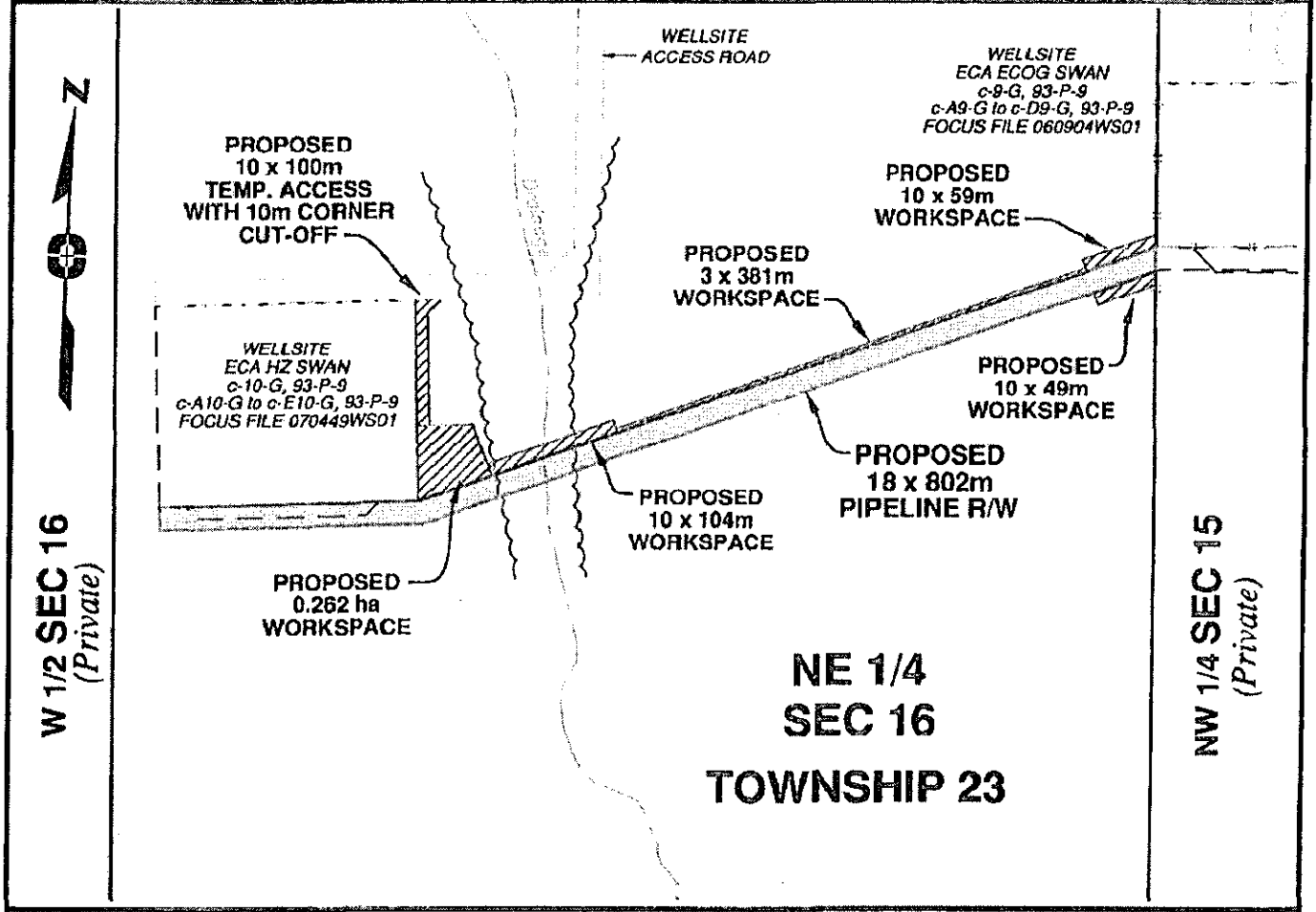
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Burnem Hollister Grant Jr. and Gertrude Grant (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE NORTH EAST 1/4 OF SECTION 16, TOWNSHIP 23 PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite c-10-G to Wellsite c-9-G, all within 93-P-9)



Owner(s): Burnem Hollister Grant Jr.
Gertrude Grant

Title No:	T31925
Parcel Identifier:	014-477-670
Landowner File:	S448722
EnCana File(s):	S448722

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 10th day of March, 2010.

Adam Brash, BCLS

Areas			
Permanent	1.444 ha	3.568 ac
Temporary	0.693 ha	1.712 ac
Total	2.137 ha	5.280 ac

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

Focus Job No: 081069NP01R0
Ref Dwg: 081069CP01R0
Drafter: KG

File No. 1652
Board Order # 1652-1amd

December 1, 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 NORTH EAST ¼ OF SECTION 16, TOWNSHIP 23, PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Burnem Grant and Gertrude Grant

(RESPONDENTS)

BOARD ORDER

This Order amends the cover page of Order 1652-1 to set out the correct legal description. The content and schedule to Order 1652-1 remain the same and are set out in full below.

Heard by telephone conference:	August 20 and 24, 2010
Mediator:	Cheryl Vickers
Appearances:	Jasone Blazevic, Bruce White, and Rod Kronlachner, for the Applicant, Encana Corporation Burnem Grant, for the Respondents Burnem and Gertrude Grant

---

The Applicant requires access to the Lands for the purpose of construction, installation and operation of a flowline as shown on the attached plan (Appendix A). The Applicant has received a pipeline permit for the flowline from the Oil and Gas Commission. The Respondents do not oppose the flowline and agree to the amount of compensation for the right of entry, exclusive of any damages, but are not willing to sign a Right of Way Agreement expressing concerns about the landowners' loss of control over surface management of land and the priority of regulatory requirements that do not address landowners' concerns. The Respondents, while not willing to sign a Right of Way Agreement, consent to the Board making a Right of Entry Order so that the project may proceed.

BY CONSENT the Mediation and Arbitration Board orders:

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

2. The Applicant shall pay to the Respondents as payment for compensation payable for entry to and use of the Lands the amount of $6,315.00.

3. The Applicant shall pay to the Respondents the sum of $500.00 for costs.

4. The Applicant shall serve the Respondents with a copy of this Order prior to entry on the Lands either by way of personal service or by registered mail.

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

Original Order Dated: August 24, 2010

Amended Order Dated: December 1, 2016

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1697
Board Order # 1697-1

January 20, 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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

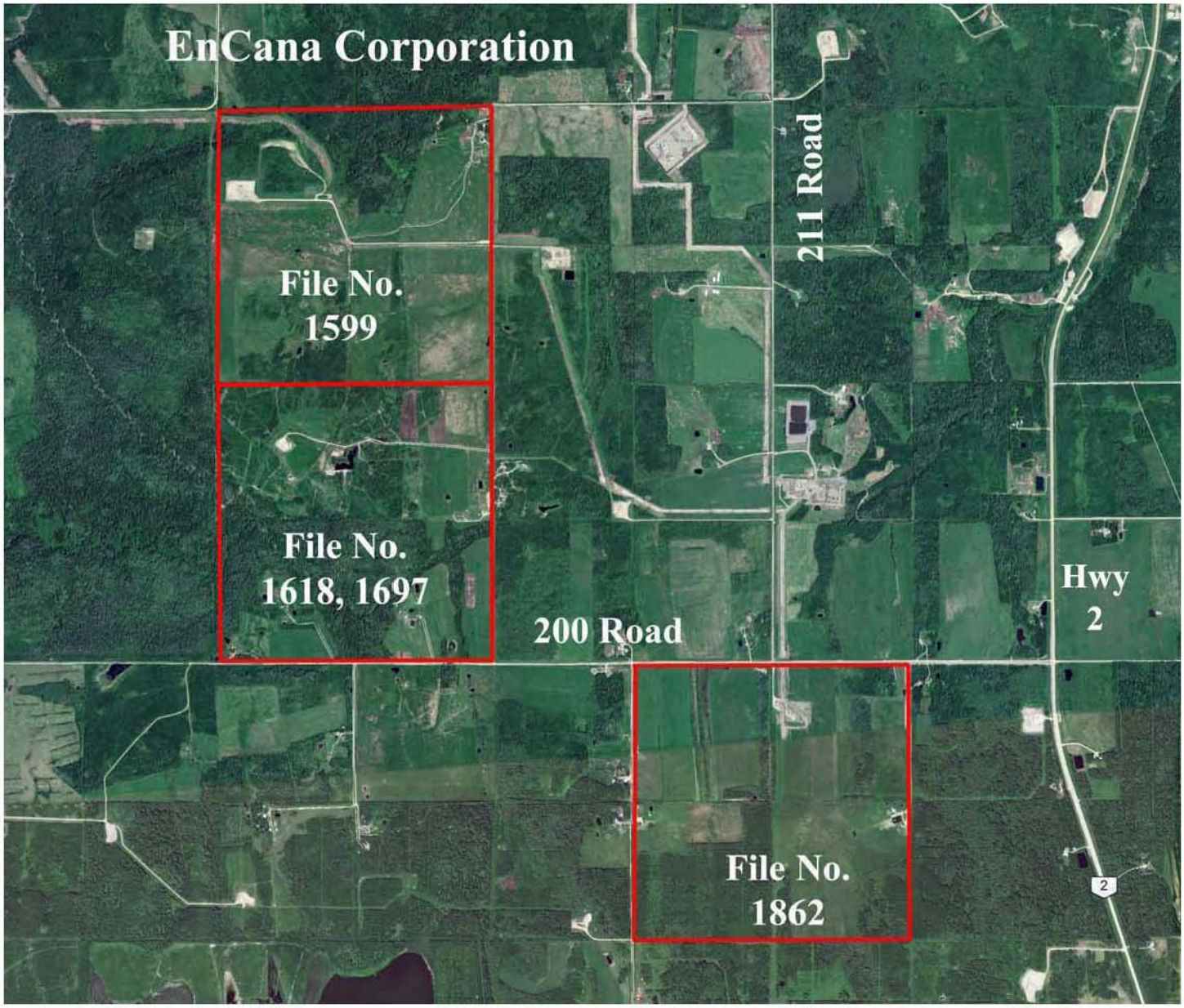
(APPLICANTS)

AND:

EnCana Corporation

(RESPONDENT)

BOARD ORDER


EnCana Corporation
211 Road
File No.
1599
File No.
1618, 1697
200 Road
Hwy
2
File No.
1862
2

[1] Mr. and Mrs. Merrick apply to the Board for mediation and arbitration services in their dispute over renegotiation of rental provisions in a surface lease with EnCana Corporation (EnCana) respecting occupation and use of the Lands. EnCana disputes the Board's jurisdiction, arguing that the application is premature. The issue before me, therefore, is whether the Board has jurisdiction to provide mediation and arbitration services in this dispute.

[2] This is the Merrick's second application for mediation and arbitration services in their attempt to review the rent in their surface lease with EnCana, and EnCana's second objection to the Board's jurisdiction. The Merricks first applied to the Board in June 2009. The provisions of the *Petroleum and Natural Gas Act* then in force provided that notice to renegotiate rent could be given four years after completion of the last renegotiation, and that if rental provisions were not renegotiated, an application could be made to the Board eight months after giving the notice. As the completion of the last renegotiation of the surface lease was September 2006, the Board found, under the legislation then in force, that notice of rent renegotiation could not be given until September 2010, and that the earliest the Merricks could apply to the Board was May, 2011 (*Merrick v. EnCana*, Order 1618-1).

[3] The *Petroleum and Natural Gas Act* was amended effective October 4, 2010. The provisions respecting rent review, sections 165 and 166 of the *Petroleum and Natural Gas Act*, now provide that a notice requiring rent renegotiation may be served after the fourth anniversary of the effective date of the most recent amendment to the rental provisions. If the rent is not renegotiated, a party may apply to the Board 60 days after the date of the notice to negotiate. The complete text of sections 165 and 166 is set out at Appendix "A".

[4] The objection in this case arises out of a misconception of what is the effective date of the most recent amendment to the rental provisions. Mrs. Merrick identifies July 19, 2007 as the effective date of the most recent amendment to the lease in her application to the Board. Accepting that July 19, 2007 is the effective date of the most recent amendment, EnCana objects to the Board's jurisdiction. If July 19, 2007 were the effective date of the most recent amendment, then the Merricks' application would be premature. The Merricks would not be able to serve notice to negotiate until July 19, 2011, and could not apply to the Board until September 19, 2011. However, I find that July 19, 2007 is not the effective date of the most recent amendment to the surface lease.

[5] The surface lease between the Merricks and EnCana was signed July 19, 1997. The last renegotiation was completed in September 2006, and provided a revised annual rent retroactive to 2003. The annual rent has not been revised subsequently. The effective date of the most recent amendment to the rental provisions is, therefore, July 19, 2003, not July 19, 2007. Under the current provisions of the *Petroleum and Natural Gas Act*, notice to negotiate could have been served as early as July 19, 2007 (had those provisions been in force).

[6] The Merricks provided notice to negotiate (for the second time) to EnCana on October 19, 2010. Their application to the Board is dated December 23, 2010.

[7] The Board has jurisdiction to provide mediation and arbitration services in the dispute over renegotiation of the rental provisions in the lease between the Merricks and EnCana respecting occupation and use of the Lands.

Dated: January, 20, 2011

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "A"

Negotiation of amendment to surface lease or order

165 (1) This section and section 166 apply despite

(a) the terms of a surface lease or order containing rental provisions made at any time before or after the coming into force of this section, or

(b) anything done under the surface lease or order before or after that time.

(2) Subject to subsection (3),

(a) a right holder who holds a right of entry under a surface lease or order of the board, or

(b) 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.

(3) A notice under subsection (2) may not be served before the 4th anniversary of the later of the following:

(a) the effective date of the surface lease or order to which the notice relates;

(b) the effective date of the most recent amendment to the rental provisions in the surface lease or order agreed to by the parties or ordered by the board, if any.

Parties do not agree to amendment of surface lease or order

166 (1) If persons giving and receiving a notice under section 165 (2) do not agree to an amendment of the rental provisions in the surface lease or order to which the notice relates within 60 days after receipt of the notice, either party may apply to the board to resolve the disagreement.

File No. 1697
Board Order # 1697-2

March 7, 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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

EnCana Corporation

(RESPONDENT)

BOARD ORDER
BY CONSENT

On the application of George Merrick and Irene Merrick, without a hearing and BY CONSENT;

THE BOARD ORDERS THAT:

1. EnCana Corporation concedes liability to pay all of the Applicants' actual reasonable legal fees and disbursements in relation to Surface Rights Board (SRB) File No 1697: *Merrick v. EnCana Corporation*, subject to the provisions of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361 and the Rules of the SRB. The Applicants shall withdraw their current application for advance costs and shall not submit any future applications to the SRB in relation to costs, advance or otherwise. The issue of costs shall no longer be before the SRB whether the dispute is settled privately or the SRB makes a decision on the merits. Any dispute over quantum may be submitted by either party to the British Columbia Supreme Court Registrar for review.

The above Order has been approved as to form and consented to by counsel for the Applicants and the Respondent, and is made by the Board at the request of the parties pursuant to section 153 of the *Petroleum and Natural Gas Act* and Rule 16(3) of the Board's Rules.

Dated: March 7, 2011

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1697
Board Order # 1697-3

June 21, 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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

EnCana Corporation

(RESPONDENT)

BOARD ORDER

---

[1] On January 20, 2011, the Board issued Order 1697-1, finding the "Board has jurisdiction to provide mediation and arbitration services in the dispute over renegotiation of the rental provisions in the lease between the Merricks and EnCana".

[2] On February 1, 2011, EnCana asked the Board to reconsider its order pursuant to Rule 17 of the Board's Rules (See Appendix 1). On February 17, 2011, EnCana produced argument supporting its application. The Merricks responded on April 11, 2011.

[3] On May 9, 2011, the parties produced a joint submission. They agree that the result of the Board's Order 1697-1 is correct, but argue the reasons are not. They ask that the Board reconsider the reasons to produce certainty and clarity.

[4] In decision 1697-1 the Board found the effective date of the most recent amendment to the rental agreement is July 19, 2003 based on an agreement between the parties. The parties submit this is incorrect and s.165 determines the effective date. Section165(7) of the *Petroleum and Natural Gas Act* (Appendix 2) dictates that the effective date of a new rental provision is the anniversary date of the lease that precedes the request for renegotiation, and not any agreement between the parties. Therefore, a party to a surface lease may request a rental review four years after the effective date of each renegotiated rental rate.

[5] In this case, the parties submit that the effective date of the new rate was July 19, 2003 and the Merricks became entitled to request a renegotiation on July 19, 2007. They sent a notice to EnCana on October 19, 2010, and following s.165 any newly ordered or negotiated rental provisions will be retroactive to and effective from the anniversary date of the lease preceding that date, being July 19, 2010.

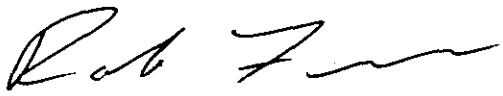
[6] I agree and reconsider the reasons for the Board Order, but confirm the Board's decision that it has jurisdiction in this application for mediation and arbitration. I accept the joint submission that s.165 dictates the effective date regardless of any agreement for retroactive payments made under the amending order. The Merricks requested a renegotiation in March of 2004 and July 19, 2003 was the anniversary date of the lease preceding the request, and therefore the effective date of the renegotiated rent. Although not settled until September 2006, the effective date was July 19, 2003 and, consistent with s.165, the Merricks became entitled to request another renegotiation four years later on July 19, 2007. The Merricks requested renegotiation on October 19, 2010.

[7] The Board has jurisdiction over this dispute and any newly ordered or negotiated rental provision is retroactive to July 19, 2010, which is the

anniversary date of the lease preceding the date of the Merricks' notice to renegotiate.

DATED: June 21, 2011

FOR THE BOARD



Rob Fraser
Vice Chair

Appendix 1

Rule 17 of the Board's Rules of Practice and Procedure:

17. (1) The Board may reconsider an order of the Board and may vary or rescind the order under section 155(1) of the Act if the Board is satisfied that any of the following circumstances exist:
(a) there has been a change in circumstance since the making of the Board's order;
(b) evidence has become available that did not exist or could not have been discovered through the exercise of reasonable diligence at the time of the making of the Board's order;
(c) the Board made a jurisdictional error including a breach of the duty of procedural fairness, or a patently unreasonable error of fact, law or exercise of discretion in respect of matters within the Board's jurisdiction.

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

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

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

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

Appendix 2

Sections 165 and 166, *Petroleum and Natural Gas Act*:

Negotiation of amendment to surface lease or order

165 (1) This section and section 166 apply despite

(a) the terms of a surface lease or order containing rental provisions made at any time before or after the coming into force of this section, or

(b) anything done under the surface lease or order before or after that time.

(2) Subject to subsection (3),

(a) a right holder who holds a right of entry under a surface lease or order of the board, or

(b) 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.

(3) A notice under subsection (2) may not be served before the 4th anniversary of the later of the following:

(a) the effective date of the surface lease or order to which the notice relates;

(b) the effective date of the most recent amendment to the rental provisions in the surface lease or order agreed to by the parties or ordered by the board, if any.

Parties do not agree to amendment of surface lease or order

166 (1) If persons giving and receiving a notice under section 165 (2) do not agree to an amendment of the rental provisions in the surface lease or order to which the notice relates within 60 days after receipt of the notice, either party may apply to the board to resolve the disagreement.

File No. 1697
Board Order # 1697-4

February 22, 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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER

Heard by written submissions closing February 7, 2012	
Appearances:	Leslie J. Mackoff, Barrister and Solicitor, for the Applicants
	Thomas R. Owen, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] This is the Merrick's application for production of documents from Encana Corporation (Encana) in advance of an arbitration to review the annual rent payable for Encana's occupation and use of Lands owned by the Merricks for the operation of a well site.

[2] The Merricks seek:

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 Encana uses to frack;
c) All epidemiological studies conducted by Encana with respect to the health effects of gas wells;
d) All studies and the data on which they rely with respect to the health implications of the chemicals it uses, which Encana 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 Encana;
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; and
l) Encana's plan/protocol in the event of a spill or blowout.

[3] The Merricks submit the requested documents are relevant to the determination of annual rent, inclusive of damages, payable by Encana arising from their use and occupation of the Merrick's Lands for the operation of a well site. The Merricks submit the documents are necessary to knowing the effect of Encana's operations on the air, soil and water surrounding the well, and assessing the compensation payable to the them.

[4] Encana submits the requested documents are not relevant to a review of the annual rent payable for Encana's use and occupation of the Lands, and that the application should be dismissed.

[5] The legislative authority for the Board to order the production of documents to a party is found in section 34(3)(b) of the *Administrative Tribunals Act* 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

...

(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) of the Board's Rules of Practice and Procedure similarly authorizes an arbitrator or panel chair presiding at a pre-arbitration conference to require a party to produce to another party any documents or other information which may be material and relevant to an issue in an application.

ISSUE

[7] The issue is whether the all or any of the documents and information requested by the Merricks may be relevant to an issue in the arbitration of the Merrick's application for rent review, and whether they should, therefore, be produced by Encana.

FACTS

[8] On or about July 19, 1997, the parties signed a surface lease providing that Encana pay the Merricks annual rent of $4,200 for a well site and pipeline built on the Merrick's property.

[9] On September 23, 2006, the parties signed an amendment to the surface lease increasing annual rent to $6,000.

[10] On or about October 19, 2010, the Merricks applied to the Surface Rights Board for mediation and arbitration services with respect to rent review pursuant to section 166 of the *Petroleum and Natural Gas Act*.

[11] On June 21, 2011, the Board ordered that any newly ordered or negotiated rental provision is retroactive to July 19, 2010.

[12] The parties have been unable to agree on a new rental provision and the matter has been scheduled for arbitration.

ANALYSIS

[13] The Merricks argue that oil and gas operations are "inherently dangerous" and that the petroleum products themselves and chemicals used in their extraction pose risks to human health and to the environment. They argue that the risk of harm to them and their Lands should be reflected in the annual rent, and that the requested information is

necessary to understand the nature of Encana's activities and their potential consequences.

[14] Encana argues that the Board does not have jurisdiction to award compensation for risk, and that a threat or possibility of injury or harm is not compensable.

[15] Section 143(2) of the *Petroleum and Natural Gas Act* provides that a person who holds a right of entry authorized by a surface lease with the landowner or an order of the Board is liable to pay compensation to the landowner for loss or damage caused by the right of entry, and other than where the right of entry relates to a flow line, to pay rent to the landowner for the duration of the right of entry. Encana's liability to compensate the Merricks for the right of entry granted by the surface lease, and the Board's jurisdiction to order compensation, extends to damage or loss caused by the right of entry. To the extent Encana's use and occupation of the Merrick's Lands to operate the well site causes damage to the Lands or loss to the Merricks, Encana is liable to compensate the Merricks for that loss. In the absence of damage or loss, however, there is no liability for compensation.

[16] The Merricks are concerned for their personal safety, health and well-being, and for the safety and wellbeing of their livestock. Their concerns are amplified by Encana's reluctance to divulge information with respect to the use of chemicals and their potential effect on health and the environment. Encana, in turn, submits that oil and gas activity is regulated and their well site has been permitted by the Oil and Gas Commission and must comply with strict regulatory requirements. The Oil and Gas Commission has recently taken steps to require oil and gas companies to disclose chemicals used in hydraulic fracturing (fracking) in response to the announced governmental commitment to "the development of a more open and transparent natural gas sector". As the requirement to disclose the chemicals used in fracking only became effective as of January 1, 2012, it does not address the Merrick's concern to understand the nature of Encana's activities on their Lands prior to that date.

[17] While I can understand the Merrick's concern to know the nature of Encana's activity on their Lands, and agree that initiatives to encourage transparency are in the public interest and may assist with responsible and accountable development of the oil and gas sector, knowing what chemicals Encana has used in fracking this or other wells is not relevant to determining the compensation payable for Encana's use and occupation of these Lands for the construction and operation of this well site in the absence of a specific claim for damage or loss caused by chemical use.

[18] The law of compensation for surface access is clear. The amount is linked to the damage or loss sustained by the landholder. If the Board orders an amount that exceeds the loss sustained, it is no longer providing compensation and exceeds its jurisdiction (*Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458.) To the extent the Merricks actually incur injury or harm as a result of Encana's use and occupation of their Lands, or to the extent their livestock is injured or harmed resulting in loss to the Merricks, they are entitled to be compensated for

those injuries or losses. But concern for safety and health in the absence of actual or reasonably probable loss or damage, is not compensable.

[19] The Merricks argue that rental payments should address the immediate and ongoing impact of Encana's operation to them and the Lands. That is indeed the purpose of an annual payment (*Dalgliesh v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)). To be compensable, however, the immediate and ongoing impact must result in actual or reasonably probable loss or damage and not just a fear or concern that loss or damage may occur.

[20] To the extent, therefore, that any of the requested documents or information relates to damage to the Lands or loss to the Merricks as a result of this right of entry, they are relevant to an application for review of the annual rent payable under the surface lease. To the extent the documents or information requested relates to potential rather than actual damage, or does not relate specifically to damage to the Lands or loss to the Merricks, it is not relevant to the review of annual rent payable under the surface lease.

[21] Much of what the Merricks seek is not related specifically to Encana's activities on their Lands or the effect of the well site on their Lands. But to the extent that Encana has information or documentation that may be relevant to determining the effect, if any, on the Merricks or the Lands from the operation of the well site, and the reasonably probable damage that may flow from those effects, that information is relevant to the rent review and should be produced.

ORDER

[22] The Board orders Encana Corporation to produce to George and Irene Merrick within three weeks of the date of this Order the following information or documents in its possession and control:

a) any information or documents relating to testing for contamination of soil, air or water arising from Encana's use and occupation of the Merrick's Lands for the construction and operation of the well site for which entry is authorized under the surface lease that is the subject of this application;
b) any information or documentation relating to a spill or blowout at the well site for which entry is authorized under the surface lease that is the subject of this application and any contamination of soil, air or water around this well site after a spill or blowout.

DATED: February 22, 2012

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1697
Board Order # 1697-5

November 28, 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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER

Heard:	July 9 and 10, 2012 in Fort St. John
Appearances:	Leslie J. Mackoff and Ellen S. Hong, Barristers and Solicitors, for the Applicants Thomas R. Owen and Heather Tanaka, Barristers and Solicitors, for the Respondent

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INTRODUCTION

[1] This is an application for review of rent payable under a surface lease with Encana Corporation (Encana). The Landowners, George and Irene Merrick, argue the current rent of $6,000.000 per annum for the use and occupation of 9.61 acres for a well site and access road does not adequately compensate them for their loss of income from the land or for nuisance and disturbance. They submit that Encana's activities on the Lands have frustrated their intent to operate a trail riding business. They ask that the rent be increased to $17,150 annually to compensate them for loss of income from the trail riding business and for both tangible and intangible nuisance and inconvenience from Encana's use and occupation of their Lands. Encana submits the current rent of $6,000.00 per annum adequately compensates the Merricks for their loss arising from the use of their Lands and submits no increase is warranted.

ISSUE

[2] The issue is to determine the appropriate annual rent payable by Encana for their use and occupation of the Merrick's Lands. The effective date of the rent established by this review is July 19, 2010.

FACTS AND EVIDENCE

[3] The Merricks acquired the Lands, comprising 319.03 acres, in the late 1970's. The Merricks farm the lands quite basically. Over the years, they have kept cattle and horses on the Lands. They grow and harvest oats and hay for their own animals. The Merricks adjust the size of their herds depending on market conditions. In the past few years, they have raised feeder calves, but did not purchase feeder calves this year.

[4] The Lands are mostly outside of the Agricultural Land Reserve. The Canadian Land Inventory soil capability rating for the land indicates it is suitable for production of forage crops and grazing of livestock.

[5] The Merricks enjoy trail riding and use the Lands and adjacent Crown land for this purpose. They have built trails, fences and other structures including a "saloon" with a

view to building a trail riding business. They maintain a grazing lease on adjacent Crown land and have built trails on the adjacent Crown land for riding.

[6] The Lands provide habitat for a variety of wildlife including mule deer, white tail deer, elk, bear, geese, ducks and birds.

[7] In July 1997, the Merricks entered into a surface lease with AEC Oil and Gas Co. Ltd. (AEC), the predecessor to Encana, granting access to and use of an area of the Lands for a well site and access road. Part of the area for the access road was a previously existing trail the Merricks used, and from which the Merricks built other trails for riding and snowmobiling.

[8] The original surface lease set the annual rent for AEC's use and occupation of the 9.61 acres required for the well site and access road at $4,200.00.

[9] For the first several years of the lease, there was little activity on the leased area. A well was drilled and a well head installed, but the well was not developed. There was little use of the access road by AEC or Encana, which at the time remained ungravelled. The Merricks continued to use the access road to gain access to adjacent lands, as they were permitted to do under the terms of the surface lease, including use of the access road for riding horses.

[10] The Merricks' residence is on the Lands. The well is not visible from the Merrick's residence nor is it visible from the "saloon". It is visible from various places on the Lands when out horseback riding or snowmobiling.

[11] In or around 2003, the Merricks started advertising a trail riding business. They offered trail rides and wagon rides in the spring, summer and fall, and sleigh rides in the winter. They provided rates for half day and full day trail rides and sleigh rides, and rates for two day trail rides and three day mountain adventures inclusive of meals and camping supplies. Their objective at the time was to develop the business for when they retired. They were not planning an intensive business, but planned to be able to take two to four riders out a couple of days a week from May to September or October. For a half day trail ride with lunch, they charged $100 per person. They hoped to be able to do sleigh rides during the snowy season from late October until March, perhaps a day or two a week, with more frequency during the Christmas season. They charged $50 per person with hot chocolate at the "saloon". The Merricks registered their business with the Tourist Bureau in Dawson Creek. While it is not clear from the evidence just how busy the Merricks were with their trail riding business in the early years, they did have some customers and I find they did, in fact, operate a small trail riding business. I have no evidence, however, of the income the Merricks actually received from this business.

[12] In or around 2004 and into 2005, Encana started to increase its operations on the Lands. They brought in a service rig and developed the well. A pipeline was constructed on the Lands. Encana began to use the access road more frequently, and in 2005, the access road was graveled.

[13] The well is classified as a sweet gas well but does have sour gas content of up to 400 parts per million. It has always been a poor producer, and is presently suspended although the evidence is not clear as to when it became suspended. The Emergency Planning Zone for this well is 11 metres. Encana personnel visit the well site to do a visual inspection about five times per month, accessing the well site in a pick up truck and spending approximately 10-15 minutes on site.

[14] There is a blue light installed on one of Encana's structures located on the well site that is intended to flash when there is a problem. The Merricks have observed the flashing blue light on three occasions. They reported the flashing light to the Hythe Gas Plant or the Oil and Gas Commission and were advised "everything was ok". There have been no incidents at this well site requiring evacuation.

[15] In 2006, Mr. Merrick underwent back surgery to alleviate a deteriorating condition from an old injury. He initially recovered from this surgery before his condition deteriorated again requiring further surgery in 2008. At present, Mr. Merrick is able to ride a horse. He is not comfortable sitting in a car for extended periods and does not snowmobile.

[16] In 2006, the Merricks and Encana signed a rent renewal agreement increasing the annual rent for Encana's use and occupation of the Lands to $6,000.00 retroactive to 2003. At the time the rent was renegotiated, the Merricks were operating their trail riding business.

[17] In 2008, some Encana installations in the area surrounding the Lands were targeted by one or more persons placing bombs at the sites. These incidents, which were widely reported in the media, resulted in a high level of police activity in the area and a high level of anxiety amongst persons living in the area, including the Merricks.

[18] Encana graveled the access road again in 2010. The gravel used on the access road contains large stones that do not provide a suitable surface on which to ride horses. Mrs. Merrick blames the gravelling of the road on the loss of the trail riding business. Mrs. Merrick's evidence was that shoeing the horses for the gravel road would have to be done about every six weeks and is expensive. But, in her view, shoeing the horses would not solve the problem as she says the gravel road takes away from the experience. She says clients want to ride on a trail that is more rustic.

[19] The Merricks have had issues with weed control both on and off the lease area since the well was developed. Detrimental weeds on the property include stinkweed and foxtail. In the past, the Merricks have spent time spraying weeds resulting in a compensation claim for time and expenses incurred by them for weed control. Mrs. Merrick has been highly critical of Encana's efforts at weed control and their response to her concerns about weeds on the Lands. In 2010, Encana hired Jennifer Critcher, a Vegetation Advisor, who has been working closely with the Merricks in an effort to deal with the weeds. Mrs. Merrick was not satisfied with Encana's weed control efforts in

2011, but agreed things were going better in 2012. Encana has not received any complaints from Mrs. Merrick with respect to weed control in 2012.

[20] Encana developed a Vegetation Management Document and Pest Management document in 2011. Jennifer Critcher's evidence was that she treats this site as a high priority site, and while she expressed confidence that weeds were now being effectively managed, agreed that previously Encana did not have a proper weed management program in place and she was not confident that in the past the work was being done properly. I find that prior to 2011, while providing some compensation to the Merricks to compensate them for their own expenses related to weed control, Encana was not meeting their responsibility under the surface lease for weed control of the leased area.

[21] Encana plows the access road in the winter, frequently leaving drifts across the trails that lead off the access road restricting access to other parts of the Lands and making it difficult to open or close gates. The plowing occasionally damages fences and gates. The drifts left by the snowplow make it difficult to access fields to feed the animals and make it difficult to access trails with the snowmobile. The Merricks have spent time and effort digging access where required. Mr. Blazevic's evidence, on behalf of Encana, was that Encana had not received any complaints from the Merricks with respect to plowing or any requests for crossings. He indicated Encana would make crossings if requested. I find that Encana's plowing of the access road has typically been done without regard to the effect of the plowing on the Merricks and their use of the Lands. I also find, however, that the Merricks have not consistently brought their concerns about plowing to Encana's attention.

[22] Encana has posted signs on the Lands advising Encana personnel the "Gates are to be left as found". I accept Mrs. Merrick's evidence that often Encana personnel or their contractors do not leave gates as found, often leaving them open if found closed, or closing them if found open. The Merricks find it inconvenient to have gates locked, but also have concerns about security and the number of people who are able to access the Lands via the access road.

[23] Occasionally, trespassers access the Lands via the access road with dirt bikes or quads.

[24] Encana provided compensation to the Merricks in 2002 for erosion damage attributed to Encana's activities. Encana has not received any claims for erosion damage or requests to fix erosion issues in recent years.

[25] Both parties provided me with evidence of other leases. The Merricks leases involve various operators and range in time from 2001 to 2011 and in per acre rate from approximately $899/acre to $1,550/acre, with an average rate of approximately $1,040/acre. None are in the same township as the Lands and no evidence was provided as to the relative comparability of any of the other leased lands to the Lands in terms of soil capability, actual use, level of the operator's activity, or impact on the landowner. The leases provided by Encana, some of which are Encana leases and some of which are not, range in time from 2008 to 2012 and in per acre rate from

approximately $450/acre to $977/acre, with an average rate of approximately $697/acre. With one exception, they are all in Township 77, as are the Lands. Some evidence is provided as to land use and the number of wells at each location, with the majority of lease sites having more than one well flowing.

Opinion Evidence

[26] The Board heard evidence from Todd Dalke and Rob Telford, both appraisers accredited by the Appraisal Institute of Canada. Neither provided an appraisal of the Lands. Both provided an opinion of the compensation payable as annual rent to the Merricks arising from Encana's use and occupation of the Lands. I permitted both witnesses to provide these opinions and marked their reports as exhibits. In reviewing the evidence of both witnesses, however, I have significant reservations both with respect to the qualifications of the witnesses to provide the opinions expressed and with respect to the appropriateness of the Board accepting opinion evidence of this nature at all.

[27] Mr. Telford is a qualified real estate appraiser. He is also a Professional Landman and licensed land agent in the Province of Alberta. His resumé lists various other professional qualifications, not all of which are relevant to the opinions expressed. The report is laid out like an appraisal report as required by the Canadian Uniform Standards for Professional Appraisal Practice (CUSPAP) adopted by the Appraisal Institute of Canada. The report is not an appraisal, however, and does not provide an opinion of the value of property, which is the type of opinion that qualified appraisers may provide and for which CUSPAP is intended to govern. It is an opinion of the compensation payable, not an opinion appraisers *per se* are qualified to give.

[28] As a Professional Landman, Mr. Telford has experience with the negotiation of surface leases in British Columbia, Alberta and other places, as well as experience with rent reviews. He may be qualified to provide an opinion as to what he thinks the appropriate rent payable under a surface lease may be as a result of this experience. However, an opinion of this nature is an opinion on the very issue that the Board must determine and encroaches on the very analysis required of the Board. While the supporting evidence in the report may be relevant and of some assistance to the Board, the opinion of appropriate compensation itself is superfluous.

[29] Mr. Dalke is also a qualified appraiser. He, likewise, prepared a report in the style of an appraisal report and purporting to address the CUSPAP requirements. His report does provide an opinion of value for the Lands although that is not the express purpose of the report, nor does it conform in that regard to the CUSPAP requirements. His opinion of compensation is expressed as a percentage of what he determines to be the value of the Lands. Mr. Dalke's qualifications to provide an opinion on compensation arise from having "looked at annual rents since 1997" and having "reviewed approximately 2,000 annual rent reviews". From this "review", he determined a pattern that compensation tended to be approximately 80% of land value. While Mr. Dalke may very well be able to express this observation from his review of 2,000 surface leases, I have reservations that he is properly qualified as an expert in compensation payable for

surface access. But in any event, as with Mr. Telford's opinion, Mr. Dalke's opinion as to the appropriate level of compensation payable as annual rent under this surface lease is the very matter on which the Board must make a determination, and is superfluous.

[30] As to the substantive content of each report, Mr. Telford takes the traditional approach of estimating crop loss to compensate for loss of income, although the leased area was not used for crops. Mr. Dalke takes a novel approach of equating compensation for loss to a percentage of the value of the land. Neither report considers the actual impact of Encana's use and occupation of the Lands to the Lands or to the Merricks, and neither report takes account of the Merricks' actual use of the Lands or purports to quantify their actual loss. I give no weight to the opinions of either Mr. Telford or Mr. Dalke and find the supporting evidence contained in each report of little assistance in estimating the Merricks' actual continued loss arising from Encana's use of the Lands.

ANALYSIS

[31] Section 154(1) of the *Petroleum and Natural Gas Act* (*PNGA*) lists the various factors the Board may consider in determining an amount to be paid periodically or otherwise. The enumerated items include:

(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.

[32] 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.

[33] Section 154(2) of the *PNGA* 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.

[34] 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 must be based on actual or reasonably probable loss or damage caused by the operator's entry on and 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).

[35] 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)).

[36] The Merricks' claim for revised annual rent is based principally on consideration of loss of profit and compensation for tangible and intangible losses associated with nuisance and disturbance. These are the two factors most relevant to a determination of immediate and ongoing loss in this case, and the two factors addressed by the bulk of the evidence before me.

Loss of profit

[37] The Merricks claim that Encana's use and occupation of the Lands has caused them to have to discontinue the trail riding business, resulting in loss of income. On the basis of Mrs. Merrick's evidence of intent to operate the trail riding business a couple of days a week for a season of 16-20 weeks, counsel estimated gross income of $12,000 - $25,600 annually for a 16-week season. He estimated expenses of $12,000 based on $500 for advertising, $3,000 for liability insurance, $6,000 for shoeing of horses, $1,500 for lunches, and $1,000 for administration and overhead, resulting in an estimated net income of $13,600. He further suggested discounting this figure by 25% to account for bad weather, thus arguing $10,200 was a reasonable claim for loss of income.

[38] Encana argues that the loss of the trail riding business is not attributable to Encana's use and occupation of the Lands, but to Mr. Merrick's back problems. In any event, Encana argues there is no evidence that the Merricks actually made any profit from the trail riding business, and no evidence upon which to estimate probable loss of income.

[39] I accept Mrs. Merrick's evidence that she and Mr. Merrick intended to operate a trail riding business into their retirement. I accept that they invested considerable effort into building the trails on their property for the purpose of a trail riding business. I further accept that they did, in fact, operate a modest trail riding business commencing in or around 2003 until at least sometime in 2006, and that at the time of the last rent renewal in 2006 they were operating a modest trail riding business. I accept Mrs. Merrick's evidence that gravelling of the access road impacted the trail riding business in that it not only required shoeing of the horses, but it also affected the experience of

the trail ride making riding less pleasant than on an ungravelled trail. I find that Encana's activities, in particular the gravelling of the road, contributed to the decline of the trail riding business. While I accept it is likely that Mr. Merrick's back surgery in 2006 and again in 2008 also affected at least his ability to participate in a trail riding business, I do not accept Mr. Merrick's condition was the sole contributing factor to the business' decline. I accept Mrs. Merrick's uncontroverted evidence that Mr. Merrick is now capable of trail riding. I also accept her evidence that the large gravel used on the access road makes the road unsuitable for riding horses, and will make it difficult, if not impossible, to rebuild a trail riding business in the future.

[40] While I have found that Encana's use and occupation of the Lands contributed to and continues to contribute to the Merricks' inability to operate a trail riding business on the Lands, and that there should therefore be some compensation for that loss, I have little in the way of evidence with which to estimate actual or probable future loss of profit. While I have evidence of what the Merricks charged for trail rides and of what other businesses currently charge, I have no evidence of the actual income earned by the Merricks' trail riding business. Nor do I have any evidence to support counsel's estimates of likely expenses and estimated net income.

[41] I have no records of income and expenses for income tax purposes, nor any records for the purpose of charging and remitting goods and services tax or harmonized sales tax. It is possible the income was so modest that it fell below taxable income thresholds or thresholds for charging goods and services tax, and records were not kept for that reason. It is also possible that, if records were kept, they have been lost or destroyed given the passage of time. While I accept the Merricks likely received some modest income from their trail riding business, I have insufficient evidence before me to determine how much income was earned or with which to estimate probable future loss of income.

[42] While in principle, I accept that loss of profit is not limited to an estimate of crop loss, but may include a claim for other business loss attributable to a right of entry, where a claim for specific business losses are made, it is incumbent upon a landowner not only to substantiate that the loss is attributable to the right of entry, but to substantiate the income or profit earned. In the absence of evidence upon which to calculate actual loss of profit or estimate probable future loss of profit, any estimate is simply speculative.

[43] In the absence of evidence of actual loss of profit, the Board will often estimate loss on the basis of potential agricultural production loss. The evidence is that the soil capability of the Lands is for the raising of forage crops or grazing of livestock. Mr. Telford provides evidence that rental rates for pasture in the vicinity range from $15.00 to $35.00 acre. His evidence is that if used for growing hay, the yield would range from 1.5 to 2.0 tonnes per acre with a range of $65.00 to $90.00 per tonne. Two tonnes per acre at $90.00/tonne would produce a gross yield of $180.00 per acre.

[44] The only other evidence of loss of profit before me is the Merricks' acceptance of $250 per acre for this factor for the 2006 rent renewal. At the time, the Merricks were

operating the trail riding business. I find this is the best evidence of the Merricks' actual loss of profit as of 2006. Assuming, but for Encana's use and occupation of the Lands, that the Merricks could expect a similar level of profit in 2010, and adjusting for inflation from 2006 to 2010 by 6.02% based on the Bank of Canada Inflation Calculator provided in the Merricks' document brief, I estimate loss of profit at approximately $265/acre, say $2,550 for 9.61 acres.

Nuisance and Disturbance

[45] The Board can consider whether compensation for both tangible and intangible nuisance and disturbance is appropriate. Nuisance and disturbance is "tangible" if it lends itself readily to some sort of objective quantification, such as for the time incurred by the landowner attributable to the right of entry. Such time might include extra time required to work a field because of an installation, time incurred by the landowner in communicating issues to the operator such as complaints about weeds, damage or noise, or time spent in negotiating periodic rent reviews. Nuisance and disturbance is "intangible" if its effect on the landowner is not readily capable of objective quantification, such as additional stress caused by the right of entry, or the effect of noise, traffic or dust. The tangible and intangible components of nuisance and disturbance may be difficult to separate. As was said in *CNRL v. Bennett, supra*, in its discussion of compensation for adverse effect in the Alberta context,

> "while there may be tangible and intangible components to adverse effect, they cannot be completely divorced from one another. For example while there is a quantifiable equipment cost to working over a piece of land two or more times, simultaneously, there is added stress on the operator to ensure that he or she does not hit any of the structures on the well site. Simultaneous with the extra caution being taken with each extra pass, there is extra time being expended."

[46] The Merricks claim $3,950 for tangible nuisance and disturbance. This claim is based on Mrs. Merrick's estimate that they have spent: approximately 30 hours at $50/hour per season on weed control including checking, phoning Encana, burning, and spraying; approximately 25 hours at $50/hour per season monitoring the coming and going of people on their Lands; and approximately 12 hours for man and machine time at $100/hour in the winter to create access for livestock because of Encana's plowing of the access road ((30 x $50) + (25 x $50) + (12 x $100) = $3,950).

[47] The Merricks claim $3,000 for intangible nuisance and disturbance based on the decision of the Alberta Surface Rights Board in *Progress Energy Ltd. v. Wilkins*, Decision 2010/0410 determining $3,000 to be an appropriate rate of compensation for adverse effect, noise, nuisance and inconvenience in circumstances counsel argued were at least as serious. In that case, the panel determined an amount approximately 20% above comparable leases paying the highest amounts for adverse effect was appropriate because of the amount of activity associated with the well site, its proximity to the landowner's residence, the increased amount of traffic associated with the active nature of the operations, and the significant noise from a gas powered pump jack.

[48] I accept that, up until 2012, the Merricks have spent considerable amounts of their own time with weed control. I further accept Ms. Critcher's evidence that Encana now treats this site as a high priority, and supported by the evidence that there were no complaints from the Merricks in 2012 that, going forward, it is probable that the Merricks will not have to spend as much time as in the past dealing with weeds. On the basis that 30 hours per season was required for 2010 and 2011, and estimating that only 5 hours per season will be required for the following two years, I find compensation based on an average of 10 hours per season for the four years commencing in 2010 is appropriate.

[49] I accept Mrs. Merrick's evidence that she and Mr. Merrick spend considerable time worrying about who is coming and going on their property, and checking whether persons gaining access to the Lands via the access road are Encana personnel or trespassers. I accept that trespassers occasionally gain access to the Lands via the access road causing stress and inconvenience to the Merricks. I further accept that Encana has not lived up to its agreement to "leave gates as found" also causing additional stress and inconvenience to the Merricks. It is probable that the Merricks will continue to experience nuisance and disturbance of this nature going forward. I find Mrs. Merrick's estimate that approximately 25 hours a season is consumed in checking whether persons using the access road are trespassers is appropriate for estimating the Merricks' time in dealing with tangible nuisance and disturbance associated with the surface lease issues (other than weeds or snowplowing), including time spent monitoring for trespassers.

[50] I accept that in plowing the access road in the winter, Encana has not been attentive to the Merricks' need to use the road to gain access to other parts of the Lands, in particular to attend to their animals. The surface lease provides that the Merricks may use the access road to gain access to adjacent lands, but in maintaining the road, Encana has not given due regard to the impact of that maintenance on the Merricks' use of the road. I accept that the Merricks have incurred time and expense in having to ensure their continued ability to use the road to access adjacent lands, and time and expense in occasionally repairing damage to gates or fences caused by the plowing of the road, and will likely have to continue to expend time and energy dealing with issues caused by the plowing of the road. I find compensation for nuisance and disturbance based on Mrs. Merrick's evidence estimating 12 hours per season of man and machine time is appropriate.

[51] The calculations above suggest $2,950 as an appropriate amount for tangible nuisance and disturbance. To this amount, I accept that an additional amount should be added for intangible nuisance and disturbance arising from Encana's use and occupation of the Lands, including recognition of stress and anxiety, disturbance from traffic, and the general loss of the Merricks' ability to simply use and enjoy the Lands as they would like to. Compensation for these factors is incapable of calculation, but is an exercise of judgment and discretion in the particular circumstances of a case. In the circumstances of this case, I find compensation for nuisance and disturbance should include $2,000 in recognition of intangible factors.

Stepping back to determine Global Sum

[52] My analysis of the compensation factors relevant to this case results in the following "sum of parts":

Factor	Annual amount
Loss of profit	$2,550.00
Nuisance and disturbance (tangible)	$2,950.00
Nuisance and disturbance (intangible)	$2,000.00
Sum of parts	**$7,500.00**

[53] An award of $7,500.00 equates to approximately $780/acre. This amount is considerably below the average in the leases provided by the Merricks, but well within the range of the leases provided by Encana. While other leases are a factor the Board may consider under section 154 of the *PNGA*, on the whole, I find consideration of other leases generally unhelpful to an analysis of loss in a particular case. First, other leases generally say nothing about the actual loss experienced in the case in issue, and it is the actual loss experienced for which compensation is payable. Second, in the absence of evidence with which to compare the circumstances involved in the other agreements to the circumstances in issue, and without any understanding of the particular losses compensated for in any particular case, the other leases do little to assist with determining appropriate compensation in the case in issue. At best, an array of leases without sufficient detail to enable a comparative analysis can only provide a check as to whether a determination of appropriate compensation in the case in issue falls within or outside of the compensation range agreed to in other cases.

[54] On the evidence before me, I am satisfied that $7,500.00 is an appropriate annual rent to compensate the Merrick's for their losses arising from Encana's use and occupation of the Lands for the current rent review period.

ORDER

[55] The Surface Rights Board orders that the annual rent payable by Encana Corporation to George and Irene Merrick for Encana's use and occupation of a portion of the Lands for a well site and access road be amended to $7,500.00 effective July 19, 2010. Encana Corporation shall forthwith pay to George and Irene Merrick any difference in annual rent paid since July 19, 2010 and the revised annual rent effective July 19, 2010.

DATED: November 28, 2012

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1697
Board Order No.1697-6

April 19, 2013

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

PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIEN PEACE RIVER DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER

Heard by written submissions closing March 27, 2013
Appearances: Leslie J. Mackoff and Ellen S. Hong, Barristers and Solicitors, for the Applicants
Thomas R. Owen, Barrister and Solicitor, for the Respondent

INTRODUCTION AND ISSUE

[1] Mr. and Mrs. Merrick seek to recover their personal costs in the amount of $7,199.44 in relation to this rent review proceeding. Encana Corporation (Encana) submits no costs should be awarded. In the alternative, Encana disputes the amount of the claim and submits any award should be limited to $2,674.72.

[2] The Board may require a party to pay all or part of another party's costs in relation to a Board proceeding. Costs are discretionary. Other than in relation to the mediation process in an application for a right of entry order, there is no presumption in favour of a landowner recovering costs of a Board proceeding. In exercising its discretion to determine whether a party should pay all or part of the costs of another party, the Board will consider various factors including: the reasons for incurring costs; the contribution of counsel and experts retained; the degree of success in the outcome of a proceeding; and the reasonableness of any costs incurred.

[3] The issue is whether the Board should exercise its discretion to make an award of personal costs in favour of the Merricks in relation to these proceedings, and if so, to determine the amount. Encana agreed in advance to pay the Merricks' reasonable legal fees and disbursements, and the parties have settled that amount. This application is limited to personal costs.

BACKGROUND

[4] In October 2010, the Merricks sent a notice to negotiate the rent payable under their surface lease with Encana, and in December 2010 applied to the Board for mediation and arbitration. Encana disputed the Board's jurisdiction to entertain an application for rent review. By decision rendered January 20, 2011, the Board determined it had jurisdiction (Order 1697-1).

[5] In February 2011, Encana submitted a request for reconsideration of the Board's decision that it had jurisdiction. The Merricks sought advance costs so that they could retain legal assistance. Encana conceded liability to pay the

Merrick's reasonable legal fees and disbursements, and the Merricks agreed to withdraw their application for advance costs. The Board issued a Consent Order to that effect on March 2, 2011 (Order 1697-2). On June 21, 2011, in response to a joint submission from the parties respecting Encana's request for reconsideration, the Board issued a reconsideration decision (Order 1697-3), determining the Board had jurisdiction to entertain the application and confirming the effective date of the rent review, but providing different reasons.

[6] The Board conducted two mediation teleconferences. As the parties were unable to resolve the rent payable, the Board refused further mediation in October 2011, thus requiring the application to proceed to arbitration.

[7] On February 22, 2012, the Board issued a decision following a contested application for the production of documents brought by the Merricks (Order 1697-4).

[8] The Board conducted an arbitration in Fort St John in July 2012, and rendered its decision on November 28, 2012 (Order 1697-5). The Board ordered that the annual rent increase from $6,000.00 to $7,500.00 effective July 19, 2010. At the arbitration, the Merricks had sought annual rent of $17,150.00. Encana submitted the rent should remain at $6,000.00.

[9] In February 2013, the Merricks made this application to recover their personal costs. They claim costs of $7,199.44 on account of their time spent and mileage for travel in relation to the proceedings, and for disbursements. Encana objected to the application arguing that as a result of Order 1697-2, the Merricks were not entitled to submit any claims for costs. By letter dated March 6, 2013, I determined that Order 1697-2 was intended only to resolve the issue of legal costs and disbursements and did not preclude the Merricks from seeking personal costs. Both parties have provided submissions respecting whether the Merricks should receive anything on account of their personal costs and, if so, respecting the quantum of costs claimed.

ANALYSIS

[10] The *Petroleum and Natural Gas Act* (*PNGA*) gives the Board the discretion to order a party to pay all or part of the actual costs incurred by another party (section 170). "Actual costs" 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 (*PNGA*, section 168).

[11] The Board's Rules provide that in making an order for the payment of a party's costs, the Board will consider:

a) the reasons for incurring costs;
b) the contribution of counsel and experts retained;
c) the conduct of a party in the proceeding;
d) whether a party has unreasonably delayed or lengthened a proceeding;
e) the degree of success in the outcome of the proceeding;
f) the reasonableness of any costs incurred, and
g) any other factors the Board considers relevant.

[12] The contribution of counsel and experts is relevant to a claim in relation to costs for legal or expert fees, and not a claim for personal costs. Other than this consideration, I will now review each of the other relevant considerations in considering the issue of whether any costs should be awarded, and if so, how much.

Should the Board exercise its discretion to award the Merricks any amount for personal costs?

The reasons for incurring costs

[13] The Merricks submit they are involuntary parties to the oil and gas operations undertaken by Encana on their Lands. They argue that they have had to set about educating themselves with respect to the appropriate compensation payable. They feel they had no choice but to commence these proceedings in light of the history of their interactions with Encana and previous attempts to renegotiate annual compensation.

[14] Encana disputes that the Merricks are involuntary parties as it is their application for rent review. Encana argues that if the Merricks had accepted an offer advanced by Encana, the matter could have been resolved and no arbitration would have been necessary. The Merricks, in turn, deny receiving an offer. Counsel explains the offer was made verbally and in the context of other proceedings.

[15] I agree with counsel for Encana that it is incompatible with the goal of resolution of disputes that one party should consider they will have their costs paid even if they reject a reasonable offer. In the circumstances, however, in light of the Merricks' denial that an offer was made, and counsel's explanation that it was a verbal offer in the context of other proceedings, I do not accept that the Merricks should be precluded from seeking costs solely on the basis of a reasonable offer for settlement having been made. If a party were to make an

offer in writing for the settlement of a claim, with clear explanation that the offer was without prejudice to the position that party would take at arbitration, and with clear explanation of the anticipated position that party would take on a claim for costs in the event the offer is not accepted and the Board's decision on the claim was less than the offer, the Board may be more inclined to accept the argument that no costs should be awarded.

[16] As the parties had not renegotiated rent following the Notice to Negotiate, it was not unreasonable for the Merricks to seek the Board's assistance. Having commenced a Board proceeding, tt is not unreasonable that landowners will spend time researching and investigating in relation to advancing a claim and determining whether to retain counsel. Additionally, landowners will incur time in attending Board proceedings. These are all valid reasons for incurring costs. The Board may still consider whether the costs are reasonable and whether they should be awarded in whole or in part.

The conduct of a party in the proceeding

[17] The Merricks submit that at all times during this proceeding they conducted themselves appropriately. I agree.

Whether a party has unnecessarily delayed or lengthened a proceeding

[18] Encana submits that the Merricks application for production of documents was a waste of time, that it took extra time at the hearing to deal with irrelevant documents in the Merricks' material, and that the evidence of their expert was an unnecessary waste of time. While the application for production of documents was largely unsuccessful, it was not a significant factor in delaying the proceedings. Some time, but not a lot, was incurred at the arbitration dealing with irrelevant documents. The Board found the evidence of Encana's expert to be largely unhelpful as well, and gave no weight to the opinions offered by either expert. I do not attribute any excessive delay or lengthening of the proceedings to the Merricks.

The degree of success in the outcome of the proceedings

[19] The Merricks characterize the outcome of the proceedings, awarding a 25% increase to the annual rent as a success. Encana characterizes it a failure given their request for in excess of $17,000. Encana likewise failed to have the rent remain at $6,000. Neither party was wholly successful in the outcome of the proceedings, but in relation to the positions advanced at the arbitration, a greater degree of success can be attributed to Encana than to the Merricks.

[20] The Merricks incurred personal costs, however, with respect to Encana's application respecting the Board's jurisdiction prior to their retention of counsel. This application was determined in the Merrick's favour and upheld, albeit with different reasons, on reconsideration.

Conclusion on whether any costs should be awarded

[21] Considering all of the above factors, I am prepared to exercise the Board's discretion to award the Merricks part of their actual costs in connection with the proceeding. I am inclined to award a substantial portion of their reasonable costs related to proceedings prior to involving counsel in late February 2011, including their spent in initiating the proceedings, and in dealing with the application respecting the Board's jurisdiction. I must still determine whether these costs are reasonable. As the Merricks were only modestly successful in their claim for increased rent, however, I am not prepared to exercise the Board's discretion to require Encana to pay all of their costs in connection with the arbitration process. Given the Merrick's limited success in relation to the claim advanced, I find the portion of recoverable costs incurred after the end of February, 2011 should be limited to approximately one third of reasonable costs claimed.

Determining the Amount

[22] Some of the costs claimed by the Merricks relate to time and mileage in advance of the Notice to Negotiate having been sent to Encana. In this respect, they are not "costs in connection with a Board proceeding" and must be deducted from the claim.

The reasonableness of the costs claimed

[33] The Merricks provided an itemization of their costs showing the time spent on various activities and the mileage incurred. They claim mileage at $1.00 per kilometer and time at $50 per hour. Encana objects to the per kilometer rate, submitting that if mileage is to be awarded it should only be at the rate allowed for witnesses of .47/km. Encana does not object to the per hour rate claimed for time, but objects to some of the time claimed for certain activities, and the associated mileage, as being unnecessary or unreasonable. The activities that Encana submits were either unnecessary or unreasonable include attendance at other arbitrations, consulting with the Farmers' Advocate and computer time at the Farmers' Advocate's office, attendance at an Encana community barbeque, mediation, and time spent accounting for time. The Merricks submit the kilometer rate is not unreasonable given they drive a ¾ ton diesel truck, and submit all of their time was both necessary and reasonable. They refer to other Board decisions on costs including *Helm v. Progress Energy Ltd*, Order 1634-1

and *Encana Corporation v. Merrick*, Order 1599-2, to support various aspects of their claim. I will consider each of Encana's objections below.

[34] As to disbursements claimed, Encana does not dispute the necessity or reasonableness of the disbursements themselves, other than a small claim for unidentified stationary supplies and associated mileage.

Mileage Rate

[35] The Board has awarded mileage at .50/km (*Miller v. Penn West Petroleum Ltd*, Order 1620-1) and at $1.15/km (*Helm v. Progress, supra*; *Schlichting v. Canadian Natural Resources Ltd*, Order 1750-1). The Board's Rules require the payment of .47/km to witnesses served with a Summons. That rate was intended to equate to the rate allowed for provincial government employees on travel status in accordance with a Treasury Board Directive. The rate provincial government employees on travel status may claim has since been raised to .51/km. In *Helm*, the Board recognized that the claimed rate of $1.15 was higher than had previously been allowed, but on the strength of the evidence from the landowner's agent respecting the rate charged and paid normally in her professional capacity, and noting that the agent's claim for time was on the light side, the Board allowed the claim for $1.15/km. In *Schlichting*, the mileage claim related to a single trip to Fort St. John in connection with filing and serving the application, and was not objected to. The Board acknowledged that the landowner had likely incurred other disbursements that he had neglected to retain receipts or records to substantiate.

[36] While the Merrick's have advised they drive a ¾ ton diesel truck, they have provided no other evidence to support the claim of $1.00/km. I will apply .51/km to allowable mileage.

Attendance at other arbitrations

[37] The Board generally encourages parties who are anticipating participating in an arbitration hearing to attend a hearing to become familiar with the process, particularly if they intend to represent themselves. It is not reasonable, however, to expect that all of the time spent attending other arbitrations, together with associated mileage, should be reimbursed. In this case, I am prepared to allow 4 of the 12 hours claimed as necessary research and preparation for attendance at an arbitration, but will not allow the claim for any associated mileage.

Consulting with the Farmers' Advocate and computer time

[38] Encana submits consulting with the Farmers' Advocate was unnecessary once counsel was retained. The Merricks submit consulting with the Farmers'

Advocate ultimately served to reduce legal costs by eliminating the need for counsel to conduct research into matters. Further, it is apparent that some of the time consulting with the Farmers' Advocate was incurred prior to counsel being retained.

[39] As to computer time, the Merricks advise that they only have a low speed DSL connection at home, which causes difficulty when sending lengthy documents. They utilized the resources at the Farmers' Advocate's Office to send documents to their counsel and retain copies for themselves. I accept that using the Farmers' Advocate's computer likely reduced time that would otherwise be spent in sending documents.

[40] I accept that the claim of 9.5 hours for consulting the Farmers' Advocate between November 12, 2010 and the end of February 2011 is reasonable, and allow reimbursement in full. I accept that time spent consulting the Farmers' Advocate after counsel was retained may have reduced counsel time, but am not inclined to reimburse all of this time in full after the end of February 2011. A total of 7.85 hours is claimed in relation to the Farmers' Advocate after the beginning of March 2011. I allow just over one third of this time or 3 hours.

[41] As to mileage, I allow the claimed mileage of 240 kilometers associated with consulting the Farmers' Advocate between November 12, 2010 and the end of February 2011. After the end of February 2011, I find the mileage specifically identified as associated with computer time to be reasonable. As a trip to Dawson Creek is not necessary simply to consult other than if having to use the computer, I disallow these mileage claims. Mileage on March 3, 2011, October 14, 2011 and May 14, 2012 totaling 144 kilometers, is allowed at .51/km, but not the mileage associated with the claims on March 4, 2011 and April 1, 2011.

Attendance at Encana Open House and Barbeque

[42] I do not consider attendance at a community open house and barbeque, even if for the purpose of meeting a representative of Encana to attempt to get an agreement to renegotiate rent as a cost in connection with the Board's proceedings. The claim for one hour of time in connection with this event and associated mileage is not allowed.

Mediation

[43] Encana argues that as mediation was not successful, and as mediation was not forced upon the Merricks as in a right of entry situation, that each party should bear their own costs. In other rent review cases where the landowner has not been successful in the arbitration, the Board has required reimbursement of the landowner's time in relation to the mediation process, while denying or

substantially reducing the claim for time spent in the arbitration process. (See for example, *Velander v. Imperial Oil Resources Limited*, Order 1726-2 and *Nelson v. Imperial Oil Resources Limited*, Order 1763-1.) I will allow the claim for 2.5 hours spent in mediation but will reduce the 12 hours claimed for attending the arbitration by two thirds to 4 hours.

Time to update time spent

[44] I allow one hour of the two hour claim on October 12, 2011 for updating time spent as reasonable. The Board requires a record of time spent when claiming costs. Maintaining this record is time spent in connection with the Board's proceedings. The claim is reduced to allow partial recovery in accordance with my finding above that time spent after the end of February 2011 will not be fully recovered.

Disbursements

[45] The Merricks claim $144.68 for postage, title search, commissioner of affidavits and stationary supplies. The disbursements were all incurred prior to the mediation and are not unreasonable. I allow the full claim.

Remaining Time and mileage

[46] The claim for activities not specifically discussed above includes approximately 52 hours and 444 kilometers related to commencing the proceedings, attending to mailing of documents, phone calls and emails with Encana personnel and counsel, reviewing documents and submissions, conducting research, and preparation for mediation and arbitration. An additional 392 kilometers is claimed in relation to travel to the arbitration. Thirteen hours and 104 kilometers are in relation to activities up to the end of February 2011. I allow the claim for this time and mileage (at .51/km). The time and mileage claimed after the end of February 2011 amounts to 34.46 hours and 732 kilometers. The Merricks may recover costs representing approximately one third of this time and mileage, or 12 hours and 244 kilometers at .51/km.

Calculation of Costs

[47] Applying my findings above, I find the Merricks are entitled to personal costs calculated as follows:

Time: 48 hours @ $50/hr	$2,400.00
Mileage: 732 kms @ .51/km	$373.32
Disbursements	$144.68
Total	**$2,918.00**

ORDER

[48] Encana Corporation shall forthwith pay to George and Irene Merrick the sum of $2,918.00 on account of their personal costs in connection with these proceedings.

DATED: April 19, 2013

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1718
Board Order 1718-1

September 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 4 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRCT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

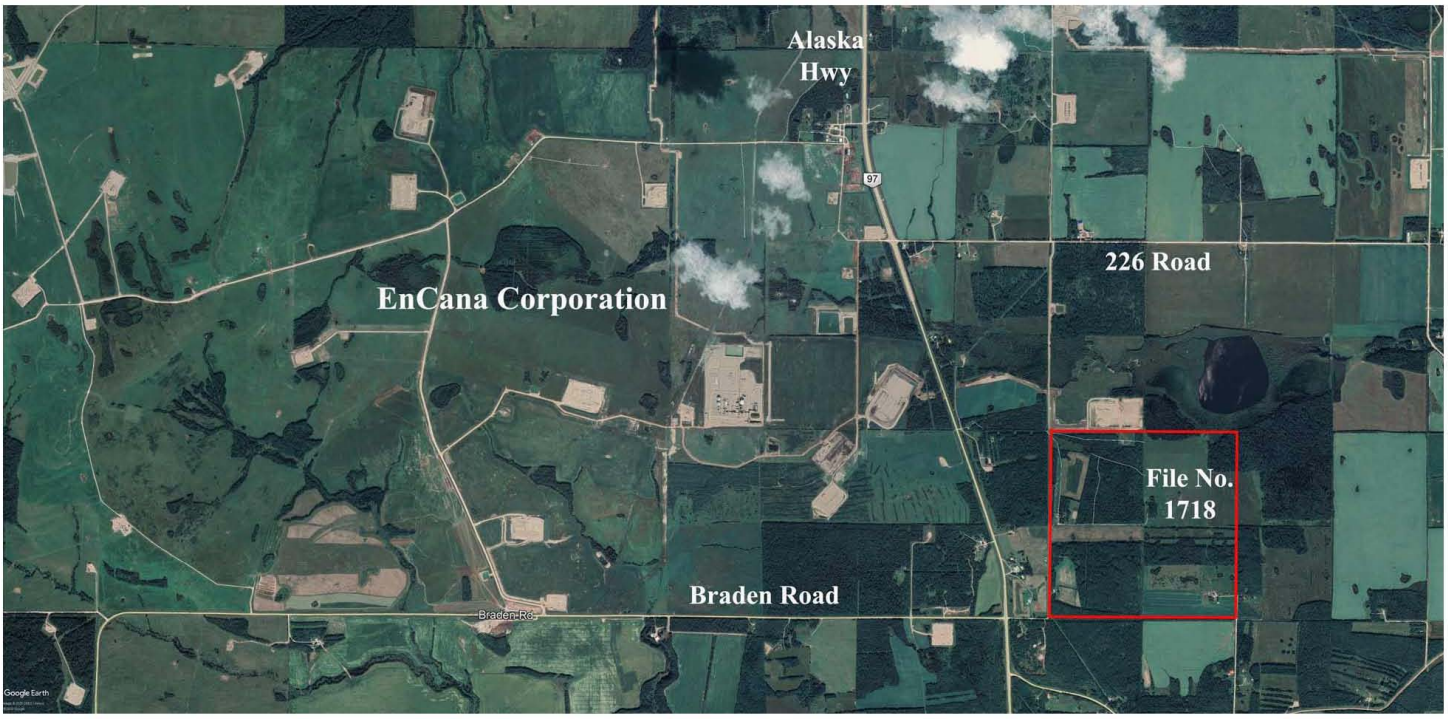
(APPLICANT)

AND:

MIKE FRASER AND ASPEN FRASER

(RESPONDENTS)

BOARD ORDER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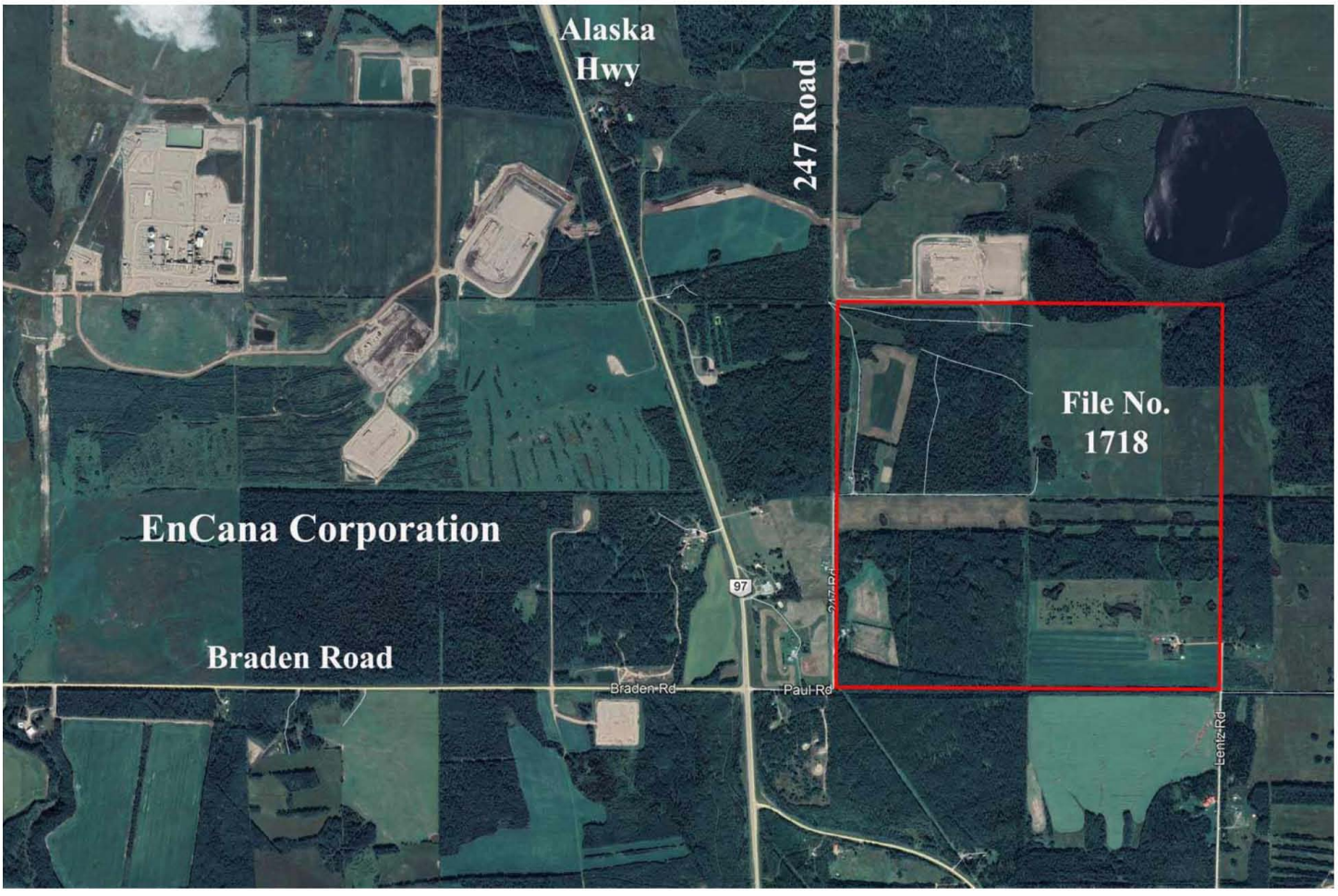
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File No.
1718
EnCana Corporation
97
Braden Road
Braden Rd
Paul Rd
Lentz Rd

On September 8, 2011, I conducted a telephone mediation. During the course of our discussions, we reviewed the issue of the right of entry, partial compensation, and terms and conditions.

The parties are unable, at this time, to resolve compensation.

Encana has received a permit from the Oil and Gas Commission (OGC)and is requesting a Right-of-Entry from the Surface Rights Board to:

1. Finalize any further and necessary assessments that may be required by the OGC; and
2. Construct, drill and operate a wellsite and access road located within the NW ¼ of Section **4**, Twp 81. Rng 17 W6M – Well Name – ECA TOWER 14-04-17 W6M.

Encana may drill further wells from this location at some time in the future.

The parties are in basic agreement with the terms and conditions, except that Mr. Fraser asks Encana to avoid flaring if at all possible. Encana will investigate and will make their best efforts to minimize flaring.

I am satisfied that Encana requires the right of entry for the purposes of gas and oil activities.

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, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 4, TOWNSHIP 81, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a six well padsite.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $10,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $18,750.00 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.

Dated September 13, 2011

FOR THE BOARD

Rob Fraser, Mediator

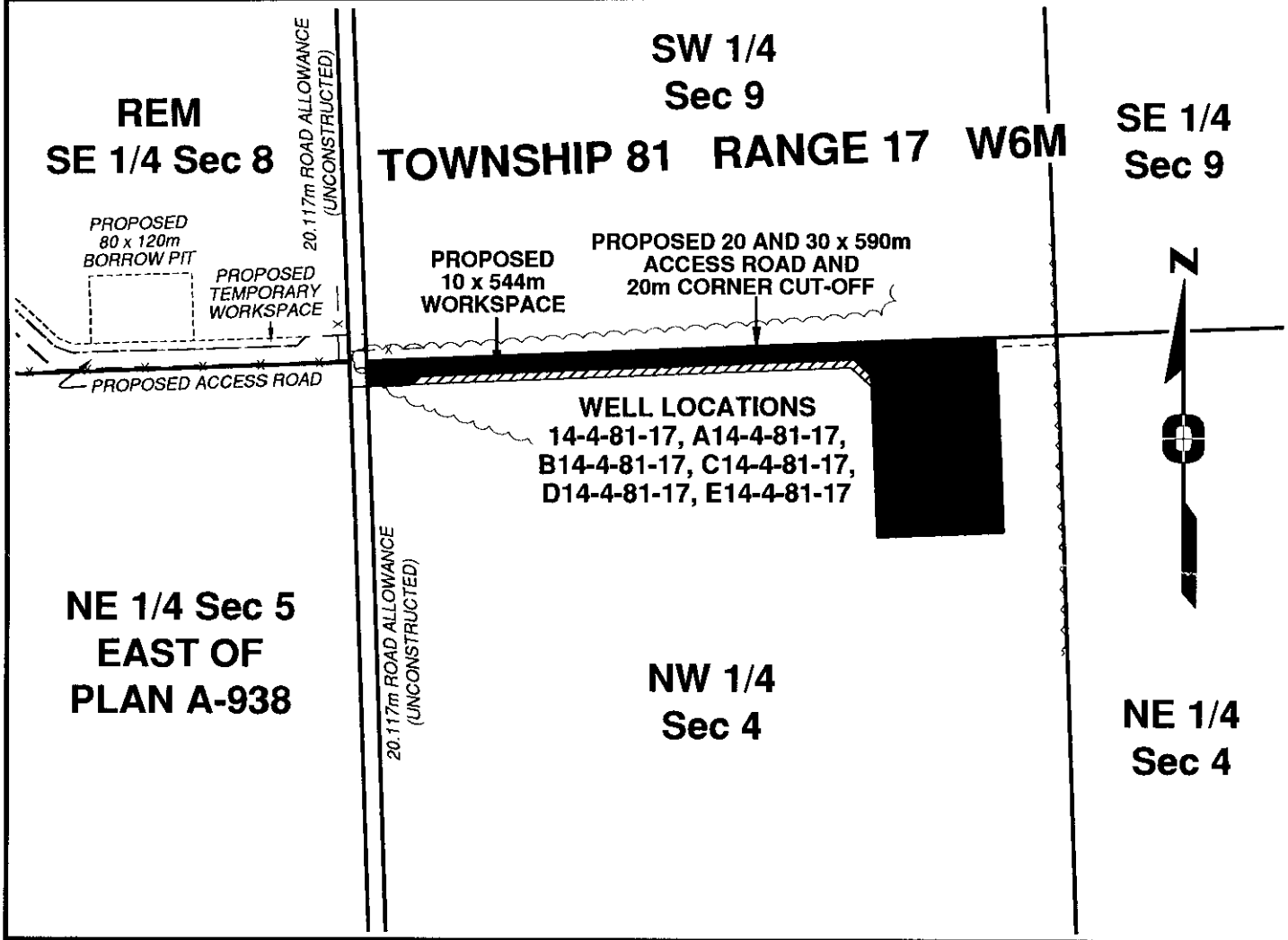
APPENDIX "A" 1718-1

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Michael Leigh Fraser and Aspen Lorraine Fraser (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELLSITE AND ACCESS ROAD WITHIN THE NORTH WEST 1/4 OF SECTION 4 TOWNSHIP 81 RANGE 17 W6M PEACE RIVER DISTRICT



Owner(s): Michael Leigh Fraser
Aspen Lorraine Fraser

Title No: CA1142354
Parcel Identifier: 012-897-353
Landowner File: S458564
EnCana File(s): S458564

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 7500 (use letter size sheet)

Certified correct this 10th day of March, 2011.

Adam Brash, BCLS

Areas			
Permanent		4.59 ha	11.34 ac
Temporary		0.54 ha	1.33 ac
Total		**5.13 ha**	**12.67 ac**

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

Focus Job No: 100678NP01R1
Ref Dwg: 100678WS01R1
Drafter: SS

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** will install a gate at the beginning of its wellsite access road where the property line meets the road allowance.

2. **Encana Corporation** will implement reasonable measures to control dust during the drilling and completion aspect of its project. These measures will be at the discretion of Encana and will be based on environmental factors that exist at the time of operations. Subject to environmental and safety considerations, Encana will use water on its access road to the Lands for dust control during drilling rig moves on and off the Lands and when completion activities are occurring.

3. **Encana Corporation** will notify the landowner prior to commencing construction, drilling and completion operations.

4. The landowner will have the option to retain the marketable timber.

5. During completion operations, **Encana Corporation** is prepared to use incineration instead of flaring if construction of the pipeline to this wellsite is not complete. If construction of the pipeline to this site is complete, **Encana Corporation** will test the well in-line.

6. Encana Corporation will notify the landowner of any material changes to our activity on the Lands.

File No. 1718
Board Order 1718-2

September 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 4 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRCT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

(APPLICANT)

AND:

MIKE FRASER AND ASPEN FRASER

(RESPONDENTS)

BOARD ORDER

On September 8, 2011, I conducted a continuation of a telephone mediation that began on August 25, 2011. One of the purposes of the mediation was to discuss amendments to Encana's application. During our first conference call it became apparent that the application contained the wrong size for the project on the Lands, the purpose for the access was incomplete, and the OGC had not issued a permit for the activities.

Subsequently the OGC has issued a permit, reflected in the wording in the amended application.

The size is corrected, reflecting only the portion on the Lands and not the total project. This is consistent with the map at Appendix A of the original application.

The Respondents do not oppose the amendments to Encana's application.

After a discussion with the parties I find that the amendments are not prejudicial to the Respondents, and that the changes are not material to the nature of the application.

ORDER

The Board amends Encana's application initially received on April 21, 2011 by replacing the contents of Section IV – Purpose of Access and Section V - Nature of Dispute with the wording that follows:

Amended Section IV - Purpose of Access

Set out the purpose for which access to the Land is needed:

At the time of submission of this application, the purpose of the application was to conduct a survey, soil assessment and archeological assessment for a wellsite located at 14-4-81-17 W6M with an intent to subsequently submit an application to the Oil and Gas Commission (OGC) for a permit. Since the submission of this application, Encana has been permitted to do some initial assessments on the proposed area and have submitted a request to the OGC for a permit with the understanding that any further assessment work that is required will be part of the application to the Surface Rights Board (SRB). Encana has received a permit from the OGC and is requesting a Right-of-Entry from the Surface Rights Board to:

1. Finalize any further and necessary assessments that may be required by the OGC; and
2. Construct, drill and operate a wellsite and access road located within the NW ¼ of Section 4, Twp 81. Rng 17 W6M – Well Name – ECA TOWER 14-04-17 W6M.

Project Area in Hectares or Acres:
The entire project area measures 8.43 hectares. However, under this application the area on the Fraser's property that Encana is requesting a Right-of-Entry on covers 5.13 hectares.

Has a permit been issued for the proposed activity on the land? Yes ☒ No ☐

Amended Section V - Nature of Dispute

Summarize the nature of the dispute and the specific issues where the parties disagree (*attach additional pages if necessary*):

Encana has been negotiating with the landowner to construct and drill 6 well padsite on their land located in the NW ¼ 4-81-17 W6M. It is Encana's understanding that the landowner is in agreement with the well and the placement of the wellsite and Encana has made commitments with respect to access, vegetation management, dust control and noise assessments to address the landowner's concerns. To Date Encana has not been able to agree with the landowner on compensation. Encana was moving forward with the necessary work to complete the survey, soil and archeological work. The work has subsequently stopped. As timing is of a concern Encana would like to proceed with the application to the Board for a Right of Entry Order so that Encana may finish any necessary work the OGC requires and construct, drill and operate a wellsite and access road located within the NW ¼ of Section 4, Twp. 81, Rng 17 W6M – Well Name: ECA-17 W6M.

Dated September 13, 2011

FOR THE BOARD

Rob Fraser, Mediator

File No. 1719
Board Order 1719-2

December 12, 2014

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 14, TOWNSHIP 23, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

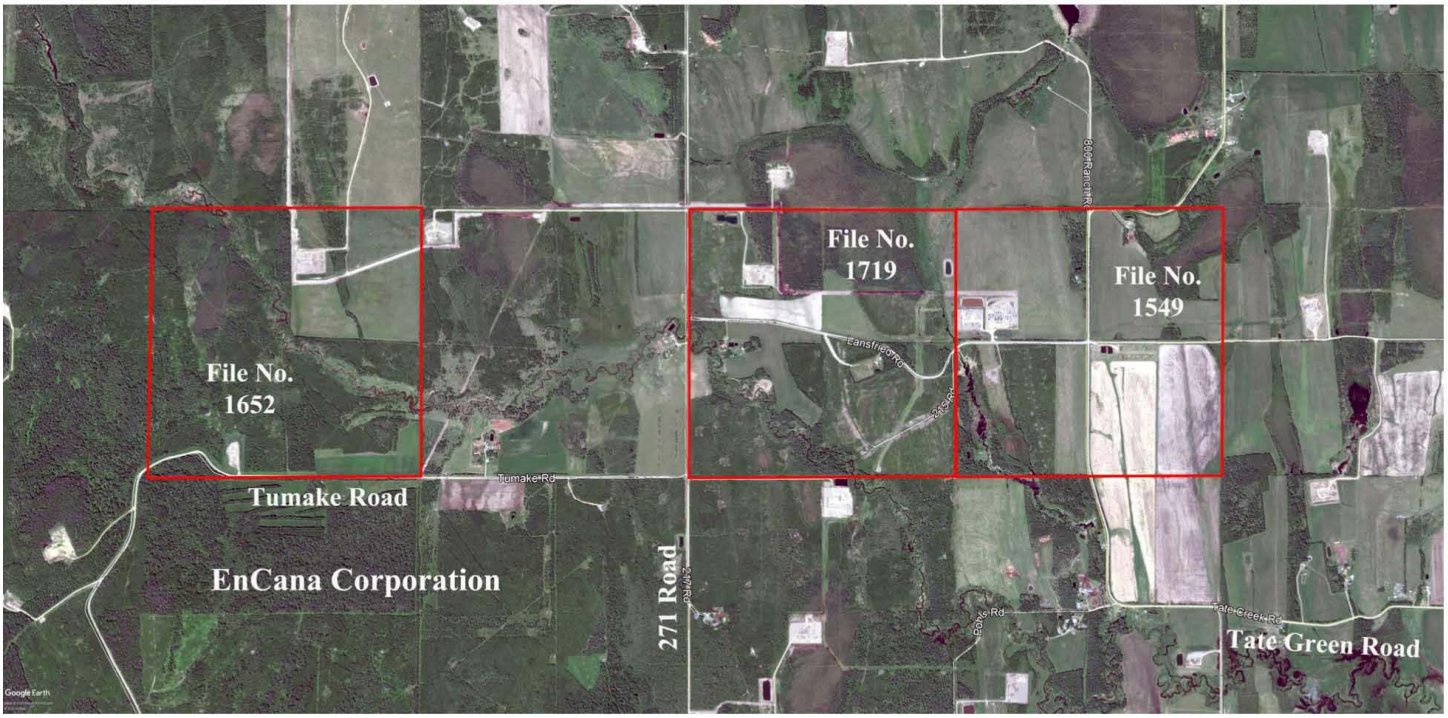
APPLICANT

AND

BERNUM HOLLISTER GRANT AND GERTRUDE GRANT

RESPONDENTS

BOARD ORDER


File No.
1652
File No.
1719
File No.
1549
Tumake Road
EnCana Corporation
271 Road
Tate Green Road
Tumake Rd
Lansfield Rd
Rooke Rd
Tate Green Rd
Google Earth

On July 6, 2011, the Surface Rights Board issued Board Order 1719-1 giving Encana Corporation ("Encana") access to the lands to construct a pipeline from b-86-B to Compressor Site a-5-G, all within 93-P-9.

Order 1719-1 included partial compensation payment of $6,500.00, leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation.

BY CONSENT the Surface Rights Board orders:

1. Encana shall pay to the Respondents, Bernum Hollister Grant and Gertrude Grant, the sum of Three Thousand Dollars ($3,000.00) as compensation for access and construction damages to those portions of lands required to construct and operate a pipeline from b-86-B to Compressor Site a-5-G, all within 93-P-9.

DATED: December 12, 2014

FOR THE BOARD

_____
Robert Fraser, Mediator

File No. 1734
Board Order 1734-1

October 14, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 26 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands)

BETWEEN:

Encana Corporation

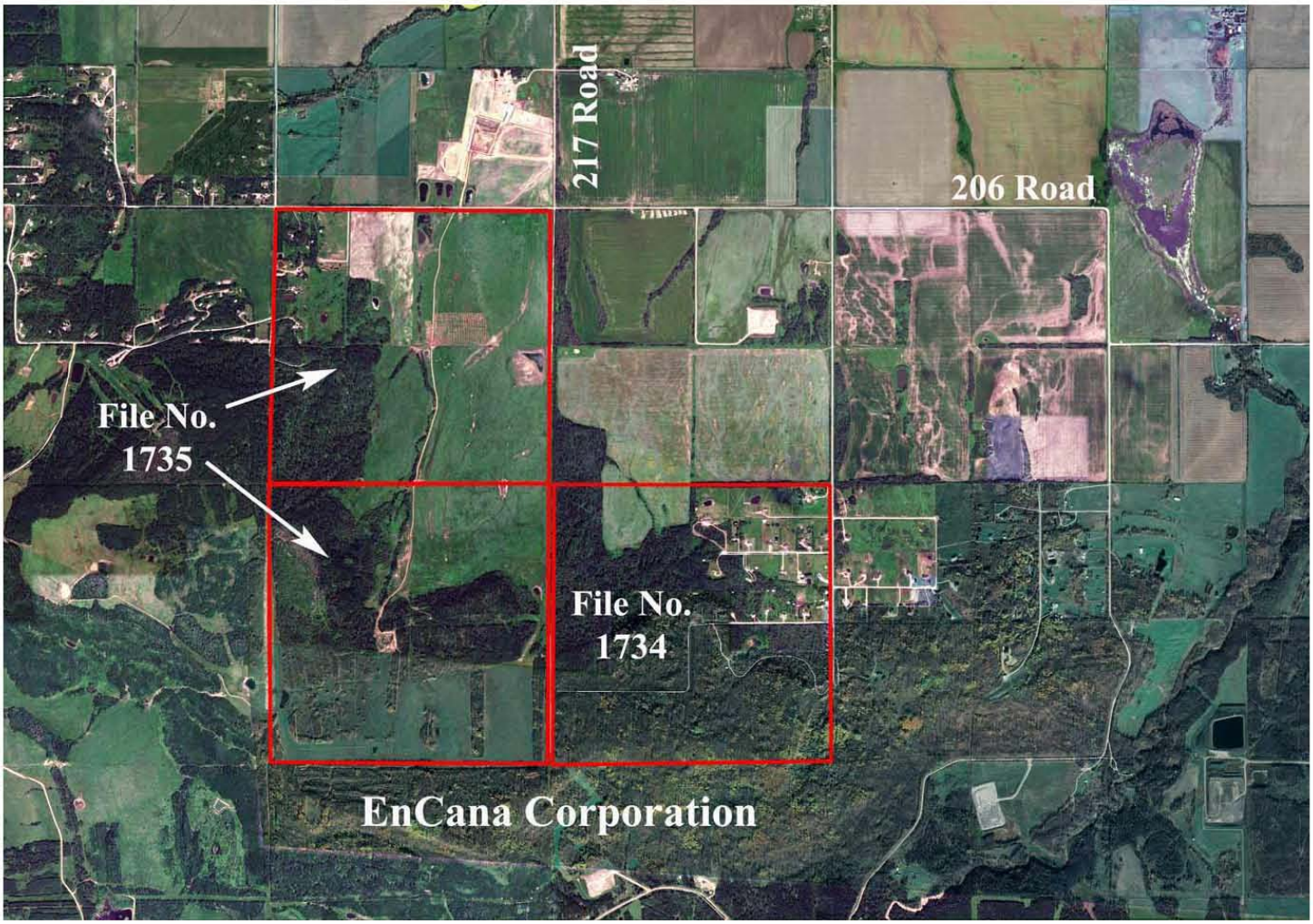
(APPLICANT)

AND:

507788 British Columbia Ltd.

(RESPONDENT)

BOARD ORDER


217 Road
206 Road
File No.
1735
File No.
1734
EnCana Corporation

On October 13, 2011, I conducted a telephone mediation. During the course of our discussions, we reviewed the issue of the right of entry, partial compensation, and terms and conditions.

At this time the parties are unable to resolve compensation.

Encana has received a permit from the Oil and Gas Commission (OGC) and is requesting a Right-of-Entry from the Surface Rights Board to:

1. Build and operate a flow line over the property.

The parties are in agreement with the terms and conditions.

I am satisfied that Encana requires the right of entry for the purposes of gas and oil activities.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, the Applicant shall have the Right of Entry to and access across the portions of the lands shown on the individual ownership plan attached as Appendix "A" for the purpose of constructing, installing and operating a flow line. The Lands are legally described as:

   THE SOUTH WEST ¼ OF SECTION 26 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (THE LANDS)

2. The Applicants right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. The Applicant shall deliver to the Surface Rights Board security in the amount of $5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.

4. The Applicant shall pay to the landowner as partial payment for compensation payable for entry to and use of the Lands the amount of $5,000.00.

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 October 14, 2011
FOR THE BOARD

Rob Fraser, Mediator

ORDER 1734-1

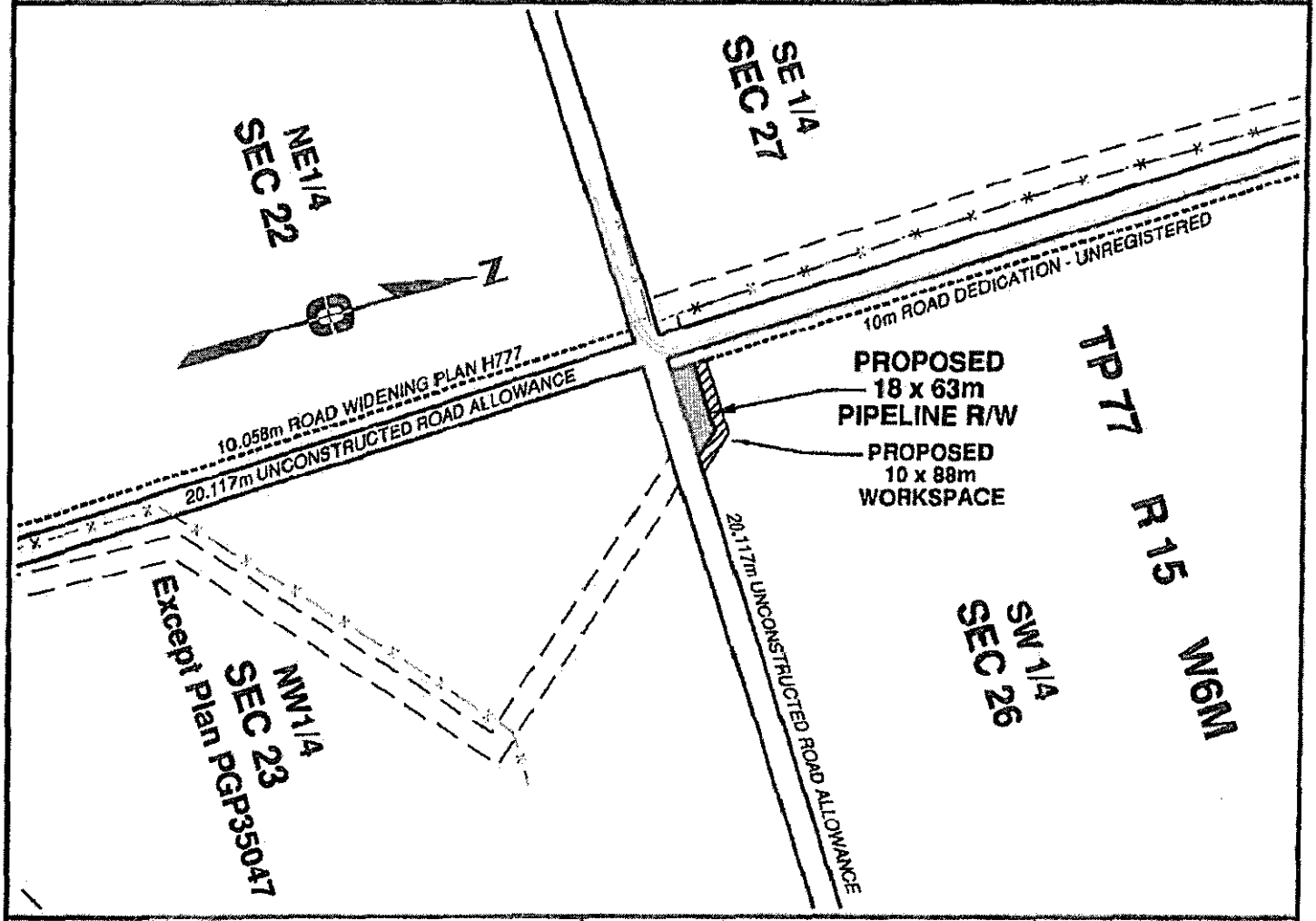
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between 507788 British Columbia Ltd., Inc. No. 50778 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE SOUTH WEST 1/4 OF SECTION 26, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s): 507788 British Columbia Ltd., Inc. No. 507788

Title No: PJ48803
Parcel Identifier: 010-979-026
Landowner File: S459594
EnCana File(s): S459591

Areas			
Permanent		0.114 ha	0.282 ac
Temporary		0.088 ha	0.217 ac
Total		**0.202 ha**	0.499 ac

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 9th day of March, 2011

Adam Brash, BCLS

FOCUS
Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
10716 100th Ave.
BC, V1J 1Z8
Ph: (250)787-0300
Fax (250)787-0311
www.focus.ca

Focus Job No: 101147NP07R0
Ref Dwg: 101147CP01R0
Drafter: KG

Appendix "B"

Conditions for Right of Entry

1. Encana will notify the landowner prior to commencing construction of the flow line on the Lands.

2. Encana shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.

3. Following construction, Encana will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.

4. Encana shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Encana's operations.

5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Encana, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Encana will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.

File No. 1735
Board Order 1735-1

October 4, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands)

BETWEEN:

Encana Corporation

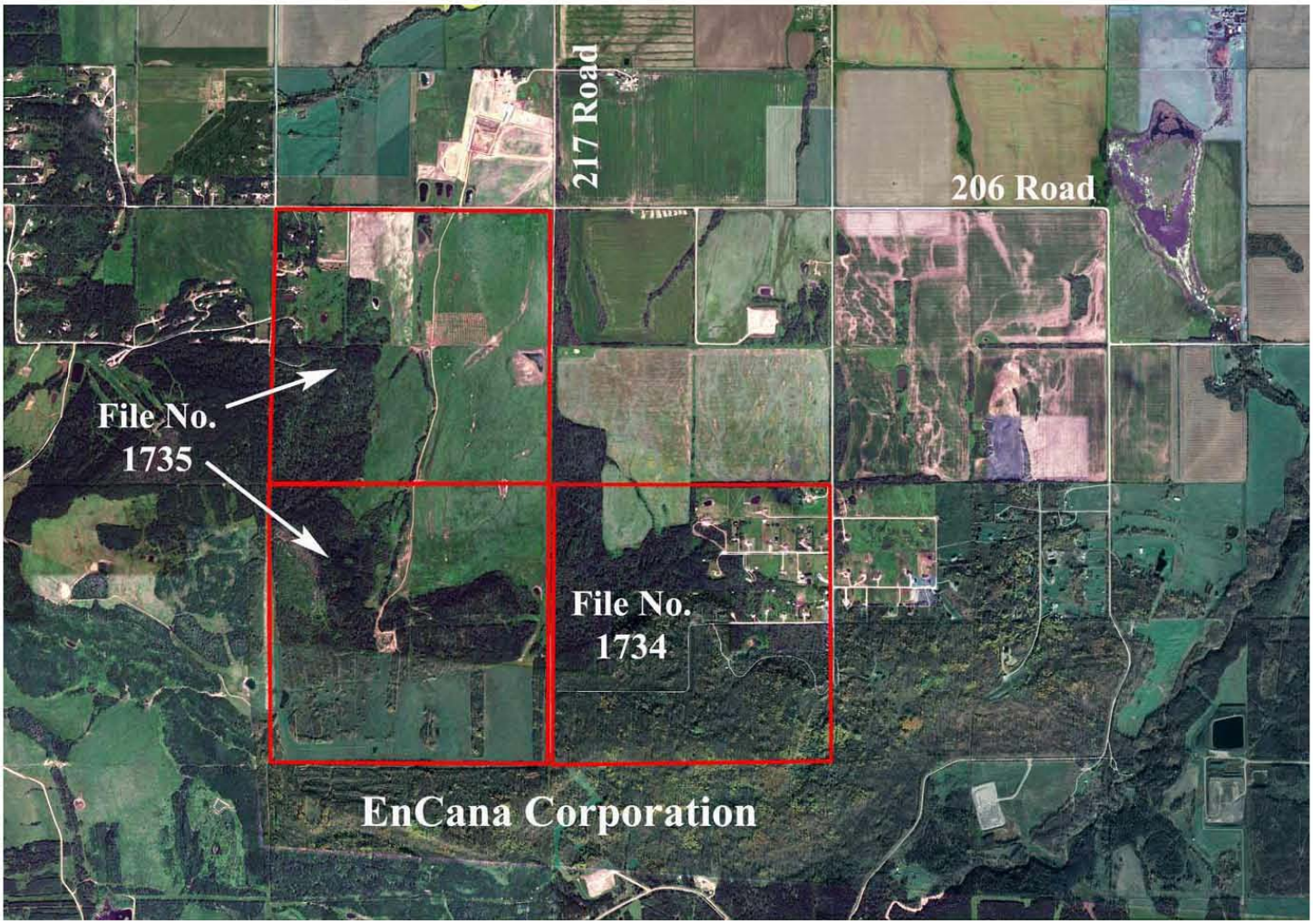
(APPLICANT)

AND:

Loiselle Investments Ltd.

(RESPONDENT)

BOARD ORDER


217 Road
206 Road
File No.
1735
File No.
1734
EnCana Corporation

On October 3, 2011, I conducted a telephone mediation. During the course of our discussions, we reviewed the issue of the right of entry, partial compensation, and terms and conditions.

At this time the parties are unable to resolve compensation.

Encna has received a permit from the Oil and Gas Commission (OGC) and is requesting a Right-of-Entry from the Surface Rights Board to:

1. Build and operate a flow line over the three properties.

The parties are in agreement with the terms and conditions.

I am satisfied that Encana requires the right of entry for the purposes of gas and oil activities.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, the Applicant shall have the Right of Entry to and access across the portions of Lands described below as shown on the individual ownership plans attached as Appendix "A" (the Lands) for the purpose of constructing, installing and operating a flow line as permitted by the Oil and Gas Commission.

   The Lands are legally described as:

   - THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
   - THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
   - THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

2. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Order.

3. The Applicant shall deliver to the Surface Rights Board security in the amount of $15,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.

4. The Applicant shall pay to the landowner as partial payment for compensation payable for entry to and use of the Lands the amount of $10,000.00.

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 October 4, 2011

FOR THE BOARD

Rob Fraser, Mediator

Order 1735-1

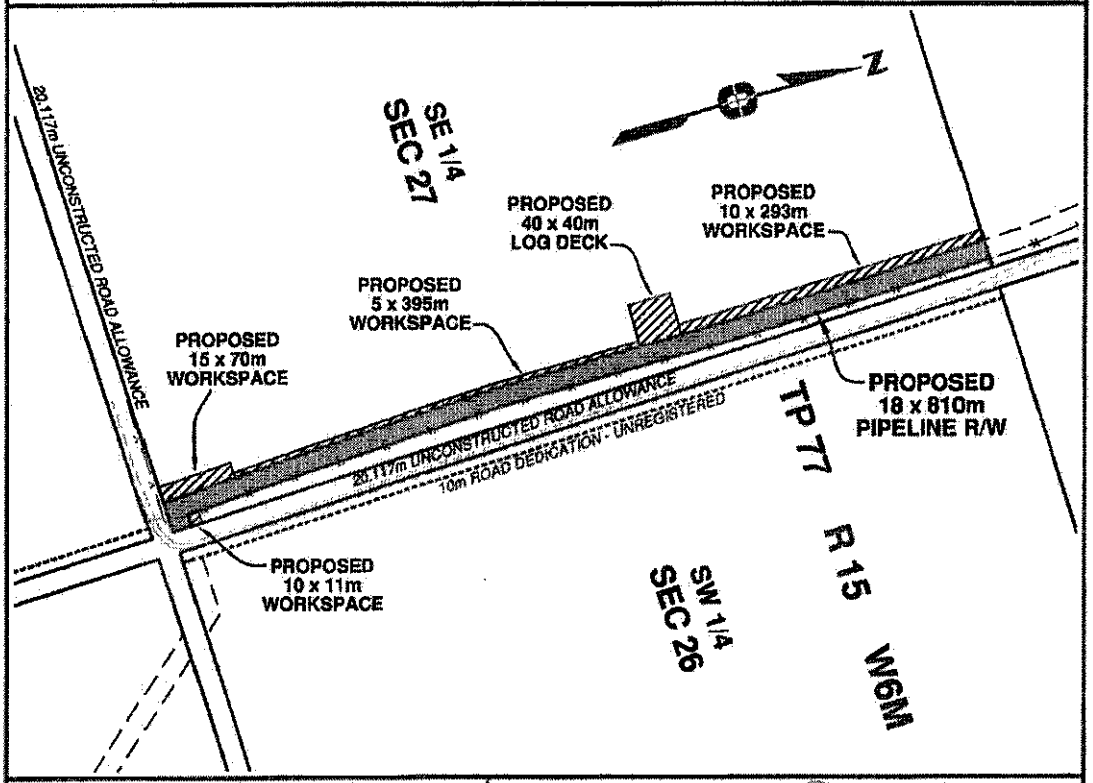
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s): Loiselle Investments Ltd., Inc. No. 705654

Title No:	BW512285
Parcel Identifier:	014-288-095
Landowner File:	S459593
EnCana File(s):	S459591

100 0 100 200 300 400

The intended plot size of this plan is 215mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 9th day of March, 2011

Adam Brash, BCLS

Areas		
Permanent	1.457 ha	3.600 ac
Temporary	0.914 ha	2.258 ac
Total	2.371 ha	5.858 ac

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

Focus Job No: 101147NP06R0
Ref Dwg: 101147CP01R0
Drafter: KG

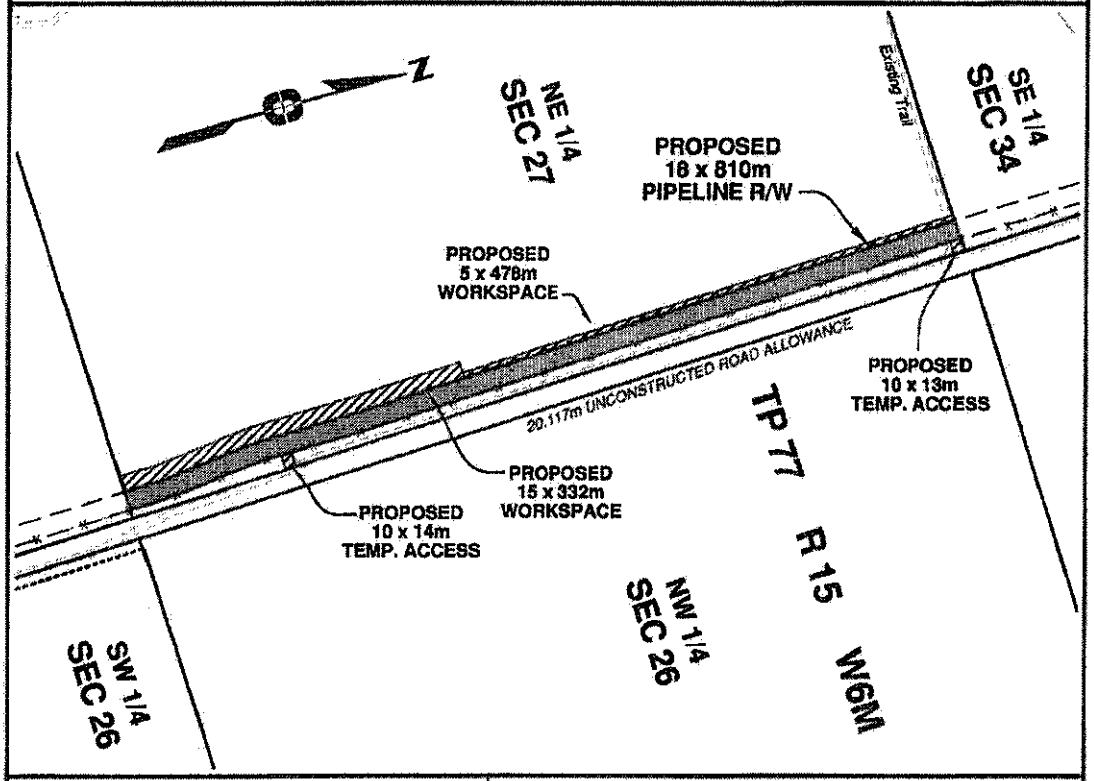
Order 1735-1

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE NORTH EAST 1/4 OF SECTION 27, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s): Loiselle Investments Ltd., Inc. No. 705654

Title No: BW512284
Parcel Identifier: 014-288-109
Landowner File: S459593
EnCana File(s): S459591

Areas		
Permanent	1.457 ha	3.600 ac
Temporary	1.002 ha	2.476 ac
Total	2.459 ha	6.067 ac

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 9th day of March, 2011

Adam Brash, BCLS

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

Focus Job No: 101147NP05R0
Ref Dwg: 101147CP01R0
Drafter: KG

Order 17354

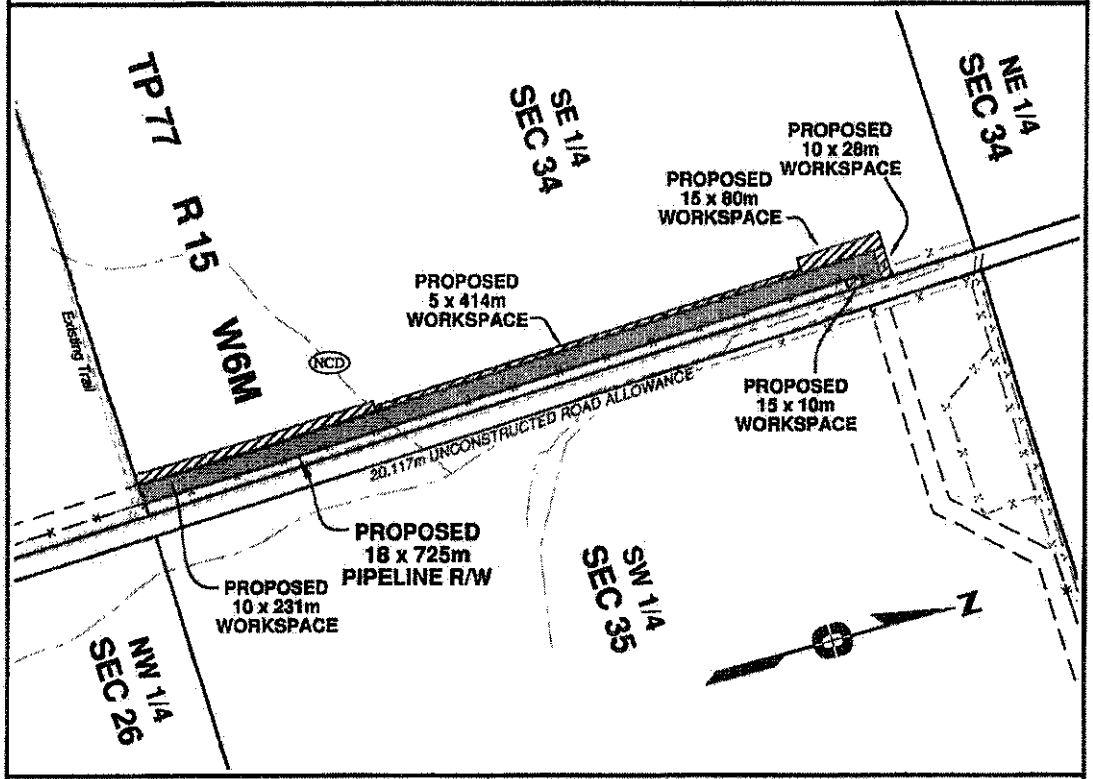
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s): Loiselle Investments Ltd., Inc. No. 705654

Title No: BW512286
Parcel Identifier: 014-288-214
Landowner File: S459593
EnCana File(s): S459591

Areas			
Permanent	1.307 ha	3.230 ac
Temporary	0.601 ha	1.485 ac
Total	1.908 ha	4.715 ac

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)

Certified correct this 9th day of March, 2011

Adam Brash, BCLS

FOCUS Focus Surveys
Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0380
Fax (250)787-1631
www.focus.ca

Focus Job No: 101147NP04R0
Ref Dwg: 101147CP01R0
Drafter: KG

Appendix "B"

Conditions for Right of Entry

1. Encana will notify the landowner prior to commencing construction of the flow line on the Lands.

2. Encana shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.

3. Following construction, Encana will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.

4. Encana shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Encana's operations.

5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Encana, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Encana will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.

File Nos. 1734 and 1735
Board Order 1734/35-3

August 22, 2013

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 26 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands, 1734)
THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICTTHE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICTTHE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands 1735)

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

507788 British Columbia Ltd. and
Loiselle Investments Ltd.

(RESPONDENTS)

BOARD ORDER

Heard by written submissions closing July 31, 2013

Brent R.H. Johnston, Barrister and Solicitor, for the Landowners
Lars H. Olthafer, Barrister and Solicitor, for Encana Corporation

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INTRODUCTION

[1] This is an application by Loiselle Investments Ltd. and 507788 British Columbia Ltd (the Landowners) for advance costs from Encana Corporation (Encana) pursuant to section 169 of the *Petroleum and Natural Gas Act* (*the Act*). In August 2011, Encana applied to the Board for mediation and arbitration services respecting right of entry to the Lands owned by the Landowners for the construction and operation of a flowline, and with respect to the compensation payable to the Landowners. On October 4, 2011 and October 14, 2011, the Board granted orders authorizing Encana's entry to and use of the Lands, and ordered partial payment to the Landowners and payment of security deposits (Orders 1735-1 and 1734-1). The Board continued to mediate the compensation payable to the Landowners, but the parties were unable to agree on the amount payable, and the mediator referred the files for arbitration. Dates for the arbitration have not been scheduled.

[2] The Board's orders authorize Encana's use and occupation of approximately 20 acres of the Lands for the construction and operation of a flowline, inclusive of both permanent right of way and temporary workspace. Part of the Lands are located within the Agricultural Land Reserve (ALR) and the Landowners use the Lands as part of a ranching and farming business. The Landowners allege they had commissioned plans to subdivide the non-ALR Lands, prior to Encana exercising their right of entry, and that as a result of Encana's activity on the Lands, the subdivision cannot continue as planned. The Landowners further allege they have incurred other losses arising from the loss of use of a commercially viable shale and sandstone resource, the loss of use of a public right of way, and contamination of a fresh water resource on the Lands. They advise that they anticipate claiming compensation in excess of $500,000.

[3] The Landowners estimate they will incur costs of approximately $111,500 to $141,500 in bringing their claim to conclusion by way of an arbitration before the Board. This estimate comprises:

a)	Counsel fees	$30,000
b)	Hydrology Expert	$19,000 - $36,000
c)	Geotechnical Expert	$37,500 - $45,500
d)	Appraiser/Valuator	$15,000 - $20,000
e)	Subdivision plans revision	$5,000
f)	Administrative	$5,000

TOTAL	$111,500 - $141,500

[4] Relying on the Board's decision in *CNRL v. Kerr* (SRB Order 1715-2, November 29, 2011), the Landowners seek an award of advance costs in the amount of $100,000. Also relying on *CNRL v. Kerr*, Encana submits the claim should be denied in its entirety or, in the alternative, that the Board should only award a minimal amount.

[5] In *CNRL v. Kerr,* the Board identified several factors that it found relevant to exercising its discretion to make an award of advance costs. These factors included: the compulsory aspect of the application, the personal and financial circumstances of the landholder, the fact that the landholder sought to advance novel arguments the Board had not previously had the opportunity to consider and the apparent need for expert evidence to support his case, the fact that the landowner had not received any amount on account of his costs of the Board's mediation process, and that there was no suggestion an award of advance costs would pose an unfair burden on the operator.

[6] The Landowners argue that many of the factors the Board found compelling in the *CNRL v. Kerr* case are present in this case and weigh in favour of the Board exercising its discretion to make an award of costs. Encana argues that despite enumerating various factors in *CNRL v. Kerr*, the determinative factor for the Board was the landholder's inability to participate in the process without hardship. Encana argues that as the Landowners in this case do not contend they will be unable to participate in the Board's proceedings without an award of advance costs, no award should be made. The Landowners counter that financial wherewithal is only one of several factors to be considered, and that *CNRL v. Kerr* expressly contemplated that an award of advance costs could be made despite a landholder having financial wherewithal.

[7] Encana further submits the costs claimed are unreasonable and lack sufficient detail. It submits there is no evidence that the involvement of experts in hydrology and geotechnical matters is reasonably necessary to determine compensation, and that an award of advance costs is premature. It alleges it has engaged in significant remediation to mitigate the Landowners' potential losses arising from Encana's activity on the Lands, and that there is a real risk that the actual costs associated with legal and expert representation of the Landowners will be denied by the Board upon the conclusion of the arbitration proceedings.

ISSUE

[8] The issue is whether the Board should exercise its discretion to make an order of advance costs in favour of the Landowners, and if so, for how much. In considering whether to exercise its discretion to award advance costs, the Board is essentially being asked to revisit and clarify its decision in *CNRL v. Kerr* with respect to:

- whether a landowner's ability to effectively participate in the Board's proceeding is a determinative factor for a award of advance costs, and
- the level of detail and certainty respecting the amount and necessity of anticipated costs that is required in making an application.

THE LEGISLATIVE FRAMEWORK

[9] Section 169 of the *Act* 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.

[10] There are no regulations with respect to costs or advance costs. "Operator" and "landholder" are defined terms; there is no dispute that Encana is an "operator" or that the Landowners are "landholders" within the meaning of section 169.

[11] 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

[12] The Landowners submit there are two fundamental flaws with Encana's submission opposing their application for advance costs. They submit Encana

misstates the Board's decision in *CNRL v. Kerr* to construct a threshold test of impecuniosity, and that Encana requires a degree of proof, particularity and certainty in support of an application for advance costs that is incongruent with the applicable legislative and regulatory language. With respect to this second argument, I agree that the statutory language expressly contemplates estimation, using such terms as "summarize", "estimate" and "anticipate". For the most part, I do not agree with Encana's submissions that the claim in this case is insufficiently particular or speculative, and would not deny the claim on that basis. With respect to the first argument, however, while I disagree that *CNRL v. Kerr* constructs a threshold test of impecuniosity, it does require that the Board's discretion to award advance costs be exercised for the purpose of ensuring the effective participation of a landholder. If the tool of advance costs is not required for that purpose, then there is no reason for the Board to exercise its discretion.

The Purpose of Advance Costs

[13] In *CNRL v. Kerr,* the Board considered for the first time, its authority and discretion under section 169 of the *Act* to make an order for advance costs, and the factors that the Board would consider in exercising that discretion. The Board reviewed the scheme of the *Act* and the context for the legislative provisions for advance costs. With respect to the legislative context the Board said at paragraph [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.

[14] In light of this legislative context and the Board's experience, the Board found that "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." The purpose of the advance costs provision is to ensure the effective participation of landholders and the provisions are intended to be used by the Board for that purpose.

[15] In applying its discretion to award costs to ensure the effective participation of landholders, the Board found it was not bound to apply the extremely high bar established by the common law for an award of advance costs in a litigation context. One of the tests established by the common law for an award of advance costs was the "impecuniosity test". This 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" (*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 test requires that 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.

[16] Concluding the legislature must not have intended that an applicant for advance costs demonstrate impecuniosity as required by the common law, the Board said at paragraph [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".

[17] The Board found that in authorizing the Board to exercise its discretion in favour of a landholder, the legislation contemplates the discretion to award advance costs in circumstances where parties will rarely, if ever, meet the "impecuniosity test". In making an application for advance costs, an applicant does not have to demonstrate "impecuniosity" as required by common law. An applicant does not have to demonstrate they have exhausted all funding alternatives, or that there is "no way" they could participate in the Board's proceedings without an award of advance costs. An applicant does not have to explore options of incurring debt or engaging counsel on a contingency fee basis. That is not to say, however, that financial wherewithal is not a factor to be considered. An applicant does have to show that an award of advance costs is required to ensure effective participation in the process, without hardship or without exploring options the common law "impecuniosity test" would have required.

[18] There will likely be many cases where a landholder's financial wherewithal, while not meeting the "impecuniosity test", will not permit a landholder to effectively participate in the Board's proceedings without hardship, or without incurring debt or exploring other options that the common law test would have required. A landholder is not expected to exhaust all possible resources or put themselves in a position of hardship before requesting advance costs. Such a requirement would not operate to "level the playing field" and ensure effective participation of landowners, but only serve to perpetuate the circumstance of landowners not being able to properly advance a claim and the Board not being able to effectively adjudicate. But, if a landholder is able to effectively participate in the Board's proceedings without hardship and without the assistance of advance costs, there is no reason for the Board to exercise its discretion to require the operator to assist by funding in advance the landholder's participation. If the landholder can effectively participate without assistance, the Board does not need to use the advance costs tool to ensure the landholder's effective participation.

[19] I agree that many of the factors the Board found compelling in *CNRL v. Kerr* also exist in this case. The claim for compensation arises in a right of entry context. The claim for compensation is complex and will require expert evidence to establish both the quantum of the alleged loss and that the loss was incurred as a result of Encana's activity on the Lands. Some of the compensation claims present issues the Board has not considered in the past. I agree it is appropriate the Landowners are represented by counsel and do not doubt, in the context of this case, that the participation of counsel will assist both the Landowners and the process. Encana has not established it would face an unfair burden if required to pay advance costs. I make no comment or finding with respect to Encana's argument that there is a significant risk the Landowners will not be able to substantiate their claim for compensation and may ultimately not be entitled to their costs of the arbitration process, but do not accept there is a significant risk that the Landowners will not be able to repay costs if the Board were ultimately to make that order. The Landowners have not received any amount for their costs incurred in the Board's mediation process.

[20] Despite all of those factors, however, the Landowners do not contend that they would be unable to participate without an award of advance costs in the amount sought, or that their effective participation in the arbitration will create hardship. If the Landowners can effectively participate in the Board's proceedings without an award of advance costs, the Board does not need to ensure the Landowner's effective participation and its authority and discretion to do so is not required.

Degree of Detail Required for Advance Costs

[21] Although not necessary for the disposition of this application, in order to provide some guidance for future applications, I will briefly address the arguments respecting the degree of proof, particularity and certainty required to support a claim for advance costs.

[22] In this application, the Landowners describe their alleged losses, identify the experts approached to provide opinions with respect to the alleged losses, and summarize the scope of the opinion that each expert will provide. They provide the range of fees quoted to them for the services of each expert and a breakdown of the estimated legal fees and disbursements budget.

[23] With respect to legal fees, while I encourage future applicants to include either the hourly rate of counsel or the number of hours anticipated to be spent for the itemized work to better assist the Board with determining the reasonableness of the anticipated fees, the need for legal services is evident from the application and the budget is sufficiently particular in estimating fees for various anticipated legal services and specific disbursements.

[24] With respect to expert fees, again I would encourage future applicants to provide either the hourly rate or the estimated number of hours behind the global fee estimates provided to assess the reasonableness of the anticipated cost. The landowner must link the anticipated opinion of an expert to an alleged loss, but I would not necessarily expect an applicant to prove the assertions that will be the very subject of the proposed expert evidence beyond being able to demonstrate that there is some basis for a claim and that a claim is not entirely speculative. In this case, Encana refutes the need for some of the proposed experts by alleging it will be able to demonstrate the alleged loss has either been avoided or mitigated, or is otherwise not caused by Encana. These will be the very issues in the arbitration and the very issues that will require the evidence of experts to resolve. The purpose of an advance costs award to ensure landowners have the access to experts that may be necessary to prove a claim would be defeated if significant funds towards substantiating a claim had to be expended to demonstrate the need and worth of an expert's opinion in advance of that evidence being tendered. At the end of the day, the Board may assess whether costs incurred were both necessary and reasonable and has the discretion to require repayment of advance costs should the Board find repayment appropriate in the circumstances.

CONCLUSION

[25] The application for advance costs is dismissed on the basis that the Board does not need to exercise its discretion, in the circumstances of this case, to ensure the Landowners' effective participation in the arbitration process. Issues respecting costs of the arbitration process will be left for the conclusion of the arbitration.

[26] As these proceedings arise out of Encana's application for a right of entry, there is a presumption that the Landowners shall be entitled to receive their actual costs of the Board's mediation process in accordance with Rule 18(2) of the Board's Rules. In the absence of some compelling reason why this presumption should not apply in this case,

the Landowners need not wait until the conclusion of the arbitration process to advance a claim for their costs incurred in the mediation process. If the parties are unable to resolve whether mediation costs are payable and the amount of those costs, the Board may determine any issues around payment of mediation costs in advance of the arbitration.

DATED: August 22, 2013

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1734
Board Order 1734-4

October 6, 2017

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 26 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Encana Corporation
(APPLICANT)

AND:

507788 British Columbia Ltd.
(RESPONDENT)

BOARD ORDER

On October 14, 2011, the Surface Rights Board issued Board Order 1734-1 giving Encana Corporation ("Encana") access to the Lands described as:

> THE SOUTH WEST ¼ OF SECTION 26 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

to construct and operate flowlines from 10-35-77-15 to 12-23-77-15 (the "Project").

Order 1734-1 included partial compensation payment of $5,000.00 leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation and associated costs and have asked the Board to issue a Consent Order reflecting the agreement.

BY CONSENT the Surface Rights Board orders:

1. No additional amounts are owing by Encana to the Respondent, 507788 British Columbia Ltd.

DATED: October 6, 2017

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1735
Board Order 1735-2

February 27, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands)

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Loiselle Investments Ltd.

(RESPONDENT)

BOARD ORDER

On October 4, 2011, the Board issued Order 1735-1 for right of entry to the lands described as:

- THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
- THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
- THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

On February 17, 2012, Encana Corporation ("Encana") asked the Board to reconsider Order 1735-1 and vary it as follows:

- Change the 10x478m workspace to 10x467m;
- Add a 10x29m temporary access road;
- Change the 15x70m workspace to 17x70m;
- Change the 5x395m workspace to 10x567m;
- Remove a 40x40m log deck;
- Change the 15x625m workspace to 20x494m;
- Revise the 18x4826m pipeline right of way to 18x4815m;
- Remove the 5x414m workspace;
- Add a 10x57m workspace;
- Add a 15x30m workspace;
- Add a 10x200m workspace;
- Add a 20x50m workspace;
- Add a 21x28m workspace;
- Add a 10x49m workspace;
- Change the 20x129m workspace to 20x121m;
- Change the 10x709m workspace to 15x709m.

The impacts of the request are as follows:

- The new cut on private land has increased by 0.92ha from 14.85ha to 15.77ha. The total area on private land has increased by 0.92ha from 15.04ha to 15.96ha.

- The new cut on Crown land has decreased by 0.02ha from 2.01ha to 1.99ha. The total area on Crown land has decreased by 0.02ha from 2.81ha to 2.79ha.

In correspondence between Encana and Loiselle Investments, dated January 25, 2012, Mr. Gary Loiselle acting for Loiselle Investments states that he does not object to this project.

On February 1, 2012, the Oil and Gas Commission amended the permit for pipeline project #22540, reflecting the changes requested by Encana.

Since Loiselle Investments does not oppose the proposed changes, because the Oil and Gas Commission has issued a permit, and because the changes are minor in comparison to the total project, the Board finds it reasonable to vary Order 1735-1.

ORDER

1. Pursuant to Section 155(1) of the *Petroleum and Natural Gas Act*, the Board amends Order 1735-1 to vary the amount of land required for this project as found in the Individual Ownership Plans in Appendix A.

Dated February 27, 2012

FOR THE BOARD

Rob Fraser, Vice Chair

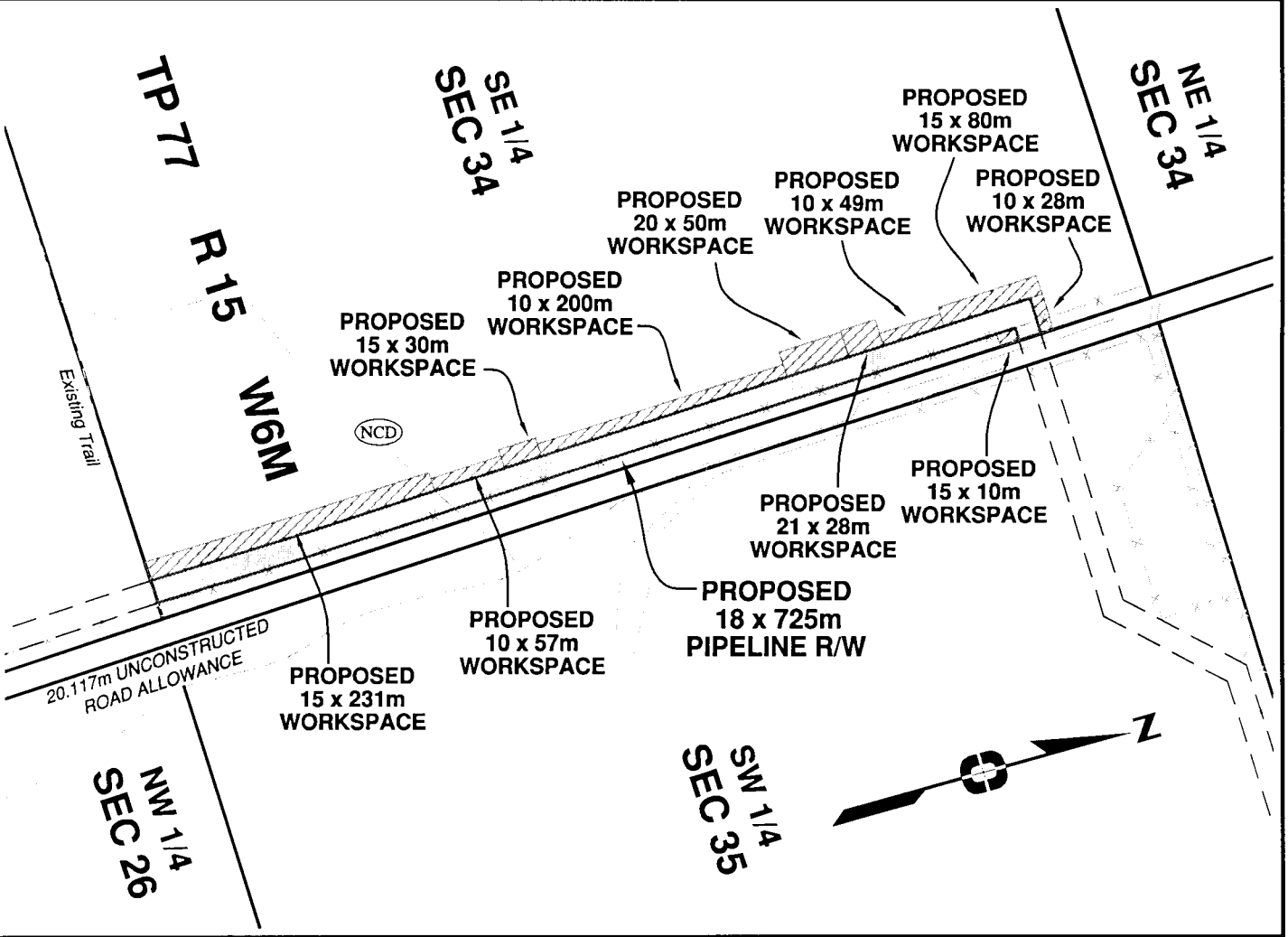
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s):	Loiselle Investments Ltd., Inc. No. 705654
Title No:	BW512286
Parcel Identifier:	014-288-214
Landowner File:	S459593
EnCana File(s):	S459591

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 25th day of January, 2012

Adam Brash, BCLS

Areas		
Permanent	1.307 ha	3.230 ac
Temporary	1.019 ha	2.518 ac
Total	2.326 ha	5.748 ac

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

Focus Job No: 101147NP04R1
Ref Dwg: 101147CP01R2
Drafter: KG

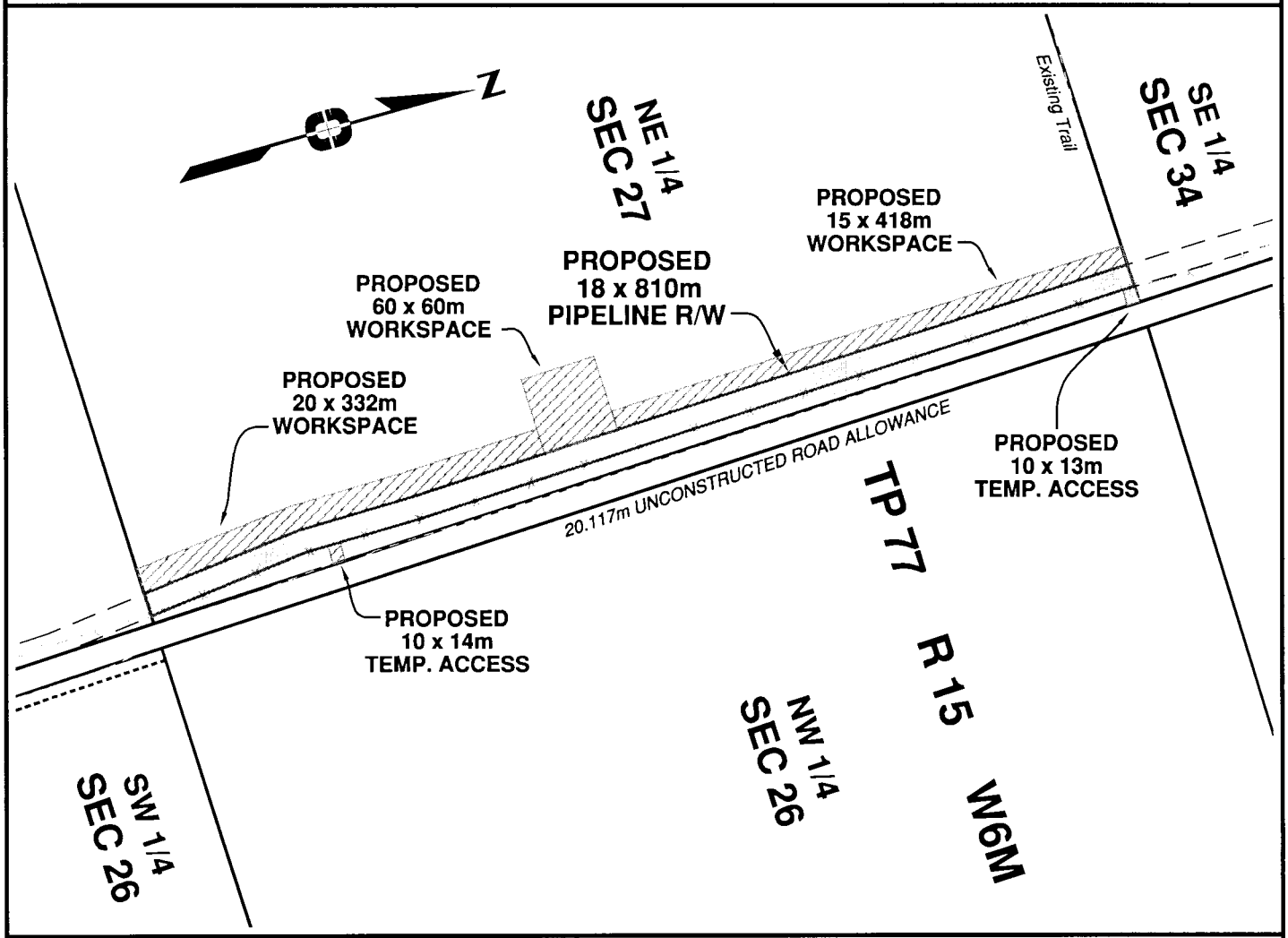
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE NORTH EAST 1/4 OF SECTION 27, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s): Loiselle Investments Ltd., Inc. No. 705654

Title No: BW512284
Parcel Identifier: 014-288-109
Landowner File: S459593
EnCana File(s): S459591

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)

Certified correct this 1st day of February, 2012

Adam Brash, BCLS

Areas		
Permanent	1.457 ha	3.600 ac
Temporary	1.677 ha	4.144 ac
Total	**3.134 ha**	**7.744 ac**

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

Focus Job No: 101147NP05R2
Ref Dwg: 101147CP01R3
Drafter: KG/LAS

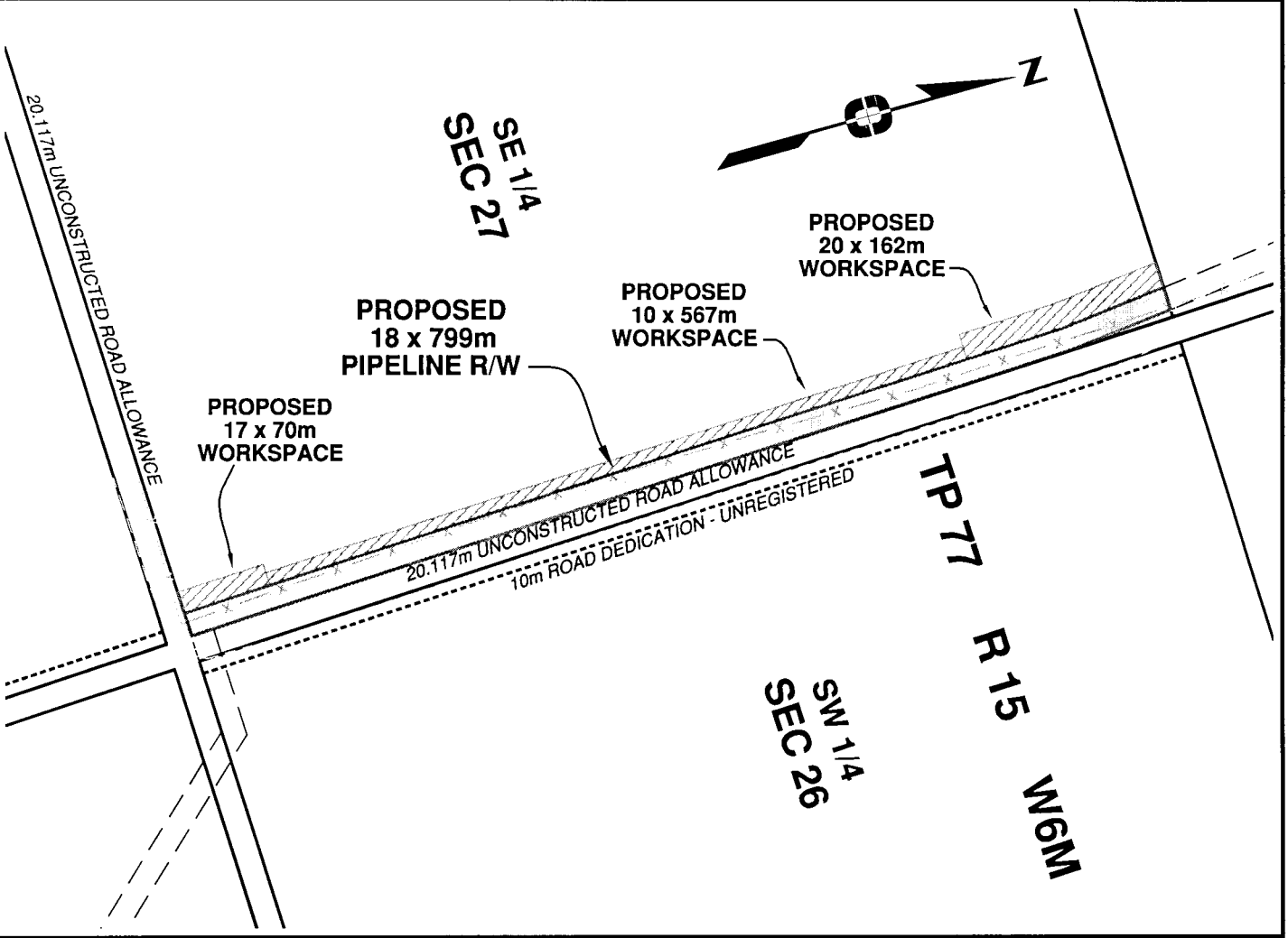
SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Loiselle Investments Ltd., Inc. No. 705654 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY
WITHIN THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 77, RANGE 15, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 10-35-77-15 to Wellsite 12-23-77-15)



Owner(s):	Loiselle Investments Ltd., Inc. No. 705654
Title No:	BW512285
Parcel Identifier:	014-288-095
Landowner File:	S459593
EnCana File(s):	S459591

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 25th day of January, 2012

Adam Brash, BCLS

Areas		
Permanent	1.438 ha	3.553 ac
Temporary	1.010 ha	2.496 ac
Total	**2.448 ha**	**6.049 ac**

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

Focus Job No:	101147NP06R1
Ref Dwg:	101147CP01R2
Drafter:	KG/LAS

File No. 1735
Board Order 1735-4

October 6, 2017

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Loiselle Investments Ltd.

(RESPONDENT)

BOARD ORDER

On October 4, 2011, the Surface Rights Board issued Order 1735-1 giving Encana Corporation ("Encana") access to the lands described as:

- THE SOUTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
- THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
- THE SOUTH EAST ¼ OF SECTION 34 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

to construct and operate flowlines form 10-35-77-15 to 12-23-77-15 (the "Project").

On February 27, 2012 the Surface Rights Board amended Order 1735-1 to vary the amount of land required for the Project.

Order 1735-1 included partial compensation payment of $10,000.00 leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation and associated costs and have asked the Board to issue a Consent Order reflecting the agreement.

Encana also confirms should Loiselle Investments Ltd., acting reasonably, require any third party pipeline consent agreements in relation to the Project, Encana Corporation agrees to execute any standard form industry approved agreements required.

BY CONSENT the Surface Rights Board orders:

1. Encana Corporation shall pay to the Respondent, LOISELLE INVESTMENTS LTD., the sum of Sixteen Thousand Nine Hundred Forty Six Dollars ($16,946.00) as additional compensation for access and construction damages to those portions of lands required to construct and operate the flowlines within E ½ -27 and SE ¼ -34-77-14W6.

2. No additional amounts are owing by Encana to the Respondent, LOISELLE INVESTMENTS LTD.

DATED: October 6, 2017

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1736
Board Order #1736-1

December 21, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 8 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands)

(the "Lands")

BETWEEN:

Encana Corporation

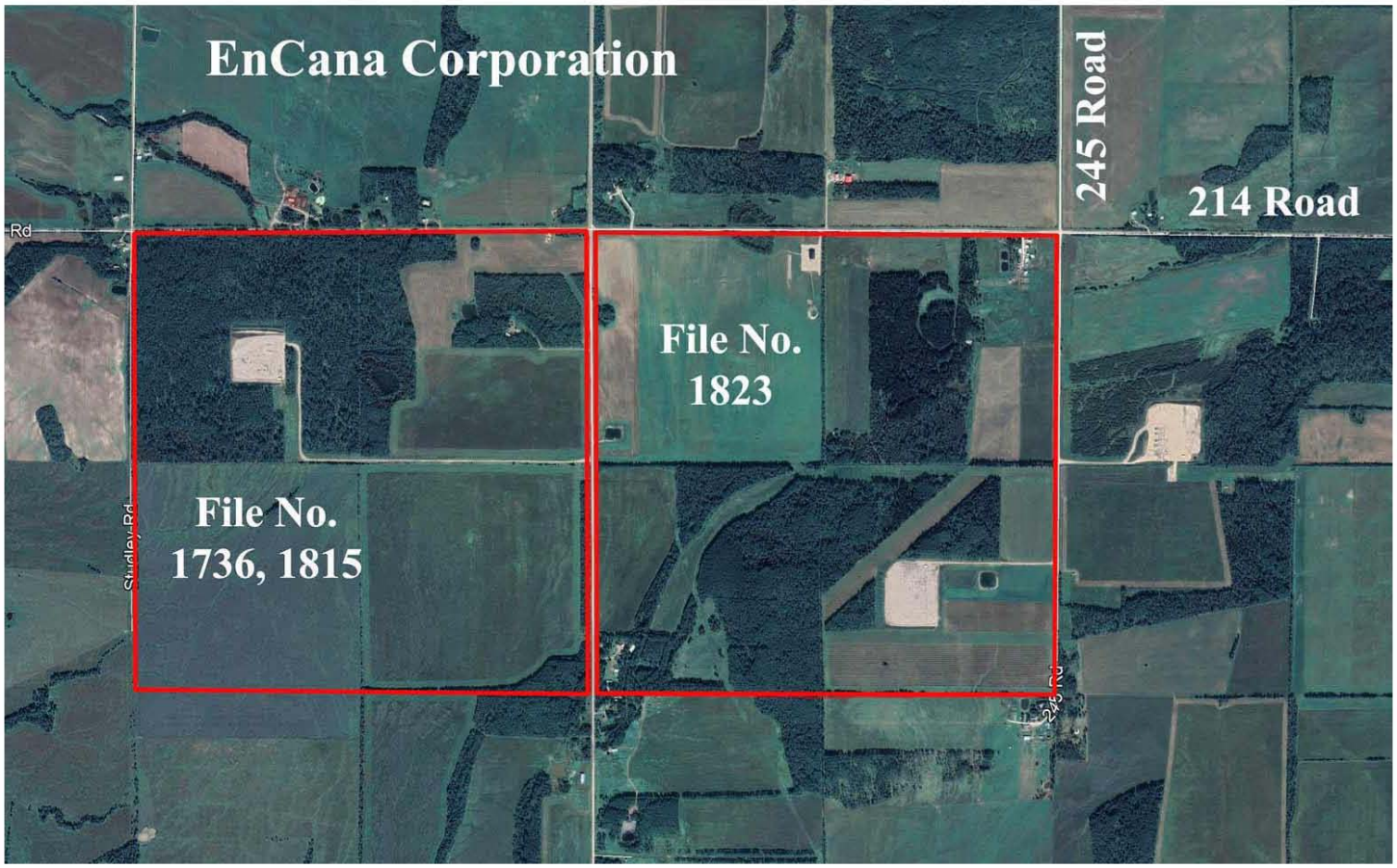
(APPLICANT)

AND:

Eileen Falck, Paul Justin Poirrier, Timothy John Poirrier, Maxime James Peter Poirrier

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
245 Road
214 Road
File No.
1823
File No.
1736, 1815

On December 15, 2011 I conducted a telephone mediation. During the course of our discussions, we reviewed the issue of the right of entry, partial compensation, and terms and conditions.

At this time the parties are unable to resolve compensation and I will continue to mediate final compensation.

Encana has received a permit from the Oil and Gas Commission (OGC) and is requesting a Right-of-Entry from the Surface Rights Board to:

> *complete any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose constructing an access road and for drilling, completing and operating a six well padsite.*

The parties are in agreement with the terms and conditions, except the Respondents desire Encana to fence the entirety of the Lands, which the mediator found was not necessary.

I am satisfied that Encana requires the right of entry for the purposes of gas and oil activities.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 8, TOWNSHIP 79, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a six well padsite.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** 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 Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $20,000.00 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.

Dated December 21 , 2011

FOR THE BOARD

Rob Fraser, Vice Chair

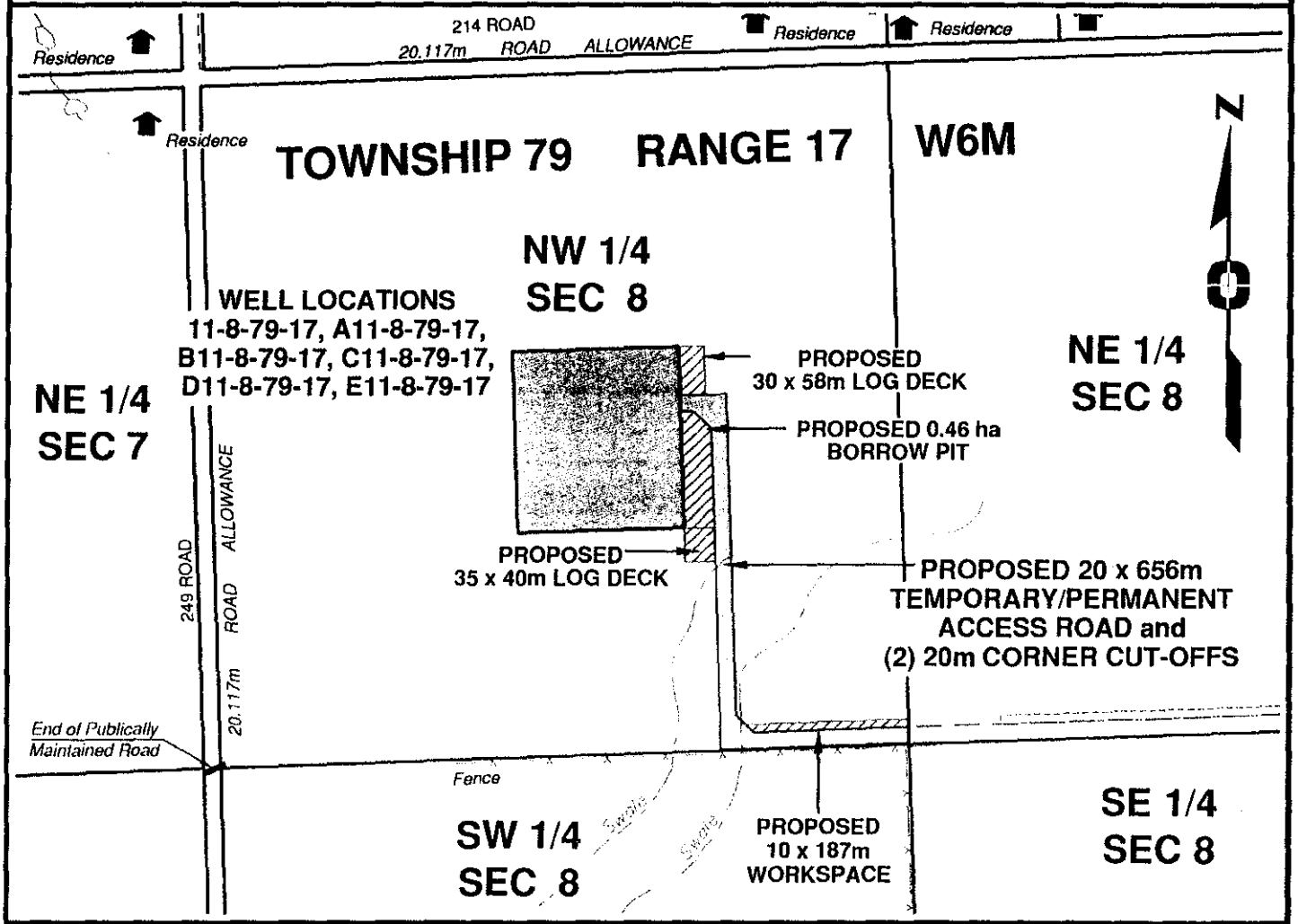
APPENDIX "A" 1736-1

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Eileen Marie Falck,Paul Justin Poirrier,Timothy John Poirrier and Maxime James Peter Poirrier (Lessor) and Encana Corporation (Lessee)

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED WELLSITE AND ACCESS WITHIN
NORTH WEST 1/4 SECTION 8, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT



Owner(s):	Eileen Marie Falck
	Paul Justin Poirrier
	Timothy John Poirrier
	Maxime James Peter Poirrier
Title No:	Y6390
Parcel Identifier:	004-163-842
Landowner File:	S454686
EnCana File(s):	S454686/S454687/S454688
	S454689/S454690/S454691

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 7500 (use letter size sheet)

Certified correct this 14th day of December, 2009.

Adam Brash, BCLS

Areas		
Permanent	5.55 ha	13.71 ac
Temporary	0.96 ha	2.37 ac
Total	**6.51 ha**	**16.08 ac**

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

Focus Job No: 090701NP01R0
Ref Dwg: 090701WS01
Drafter: DG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** will install a gate at the beginning of its wellsite access road where the property line meets the road allowance.

2. **Encana Corporation** will install a fence around the perimeter of the wellsite and access road.

3. **Encana Corporation** will erect 'no trespassing' and ' no hunting' signs on the access road and the wellsite.

File No. 1736
Board Order No. 1736-2

June 5, 2013

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 8, TOWNSHIP 79, RANGE 17, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

EILEEN FALCK, PAUL JUSTIN POIRRIER, TIMOTHY JOHN POIRRIER, MAXIME JAMES PETER POIRRIER

RESPONDENTS

CONSENT ORDER

Heard in person and by telephone conference: May 22, 2013

Appearances:	Thomas Owen, Heather Tanaka, Sandra Dixon, Heidi Berscht Kent Wiebe, Eileen Falck, Max Poirrier
Mediator:	Rob Fraser, Board Member assisted by Brian Sharp, Board Member

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

1. The compensation payable initially to the Respondents for the occupation and use of 16.08 acres of the Lands pursuant to Right of Entry Order #1736-1 shall be $43,650.00, itemized as follows:

    a. Compulsory Aspect of the right of entry: $5000.00

    b. Value of the applicable land: $16,080.00 ($1000/acre)

    c. Loss of a right or profit with respect to the land: $4020.00 ($250/acre)

    d. Compensation for nuisance and disturbance from the right of entry: $2400.00

    e. Other factors:

        i. Loss of merchantable timber : $13,875.00

        ii. Borrow pit: $1500.00

        iii. Damages for temporary workspaces and log decks: $775.00

2. The compensation payable on December 21, 2012 and annually thereafter shall be $6420.00, itemized as follows:

    a. Loss of a right or profit with respect to the land: $4020.00

    b. Compensation for nuisance and disturbance from the right of entry: $2400.00

3. In addition, compensation shall be payable for each additional well in the amount of $2000.00 initially when drilled, and $500.00 annually thereafter, the annual payment being due and payable on the December 21 following the date of drilling.

4. $5000.00 shall be paid by Encana to the Respondents in full and final settlement of all costs arising from the proceedings.

5. Payment of $28,650.00, representing the initial payment of $43,650.00 less $20,000.00 already paid in advance to the Respondents, and the $5000.00 in costs, shall be paid in trust to the solicitors for the Respondents.

6. All subsequent payments shall be made jointly to the Respondents, at a single address to be provided by them to Encana.

DATED: June 5, 2013

FOR THE BOARD

Rob Fraser
Mediator

File No. 1747
Board Order No. 1747-1

December 19, 2013

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
NORTH EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Jay London and Keir London

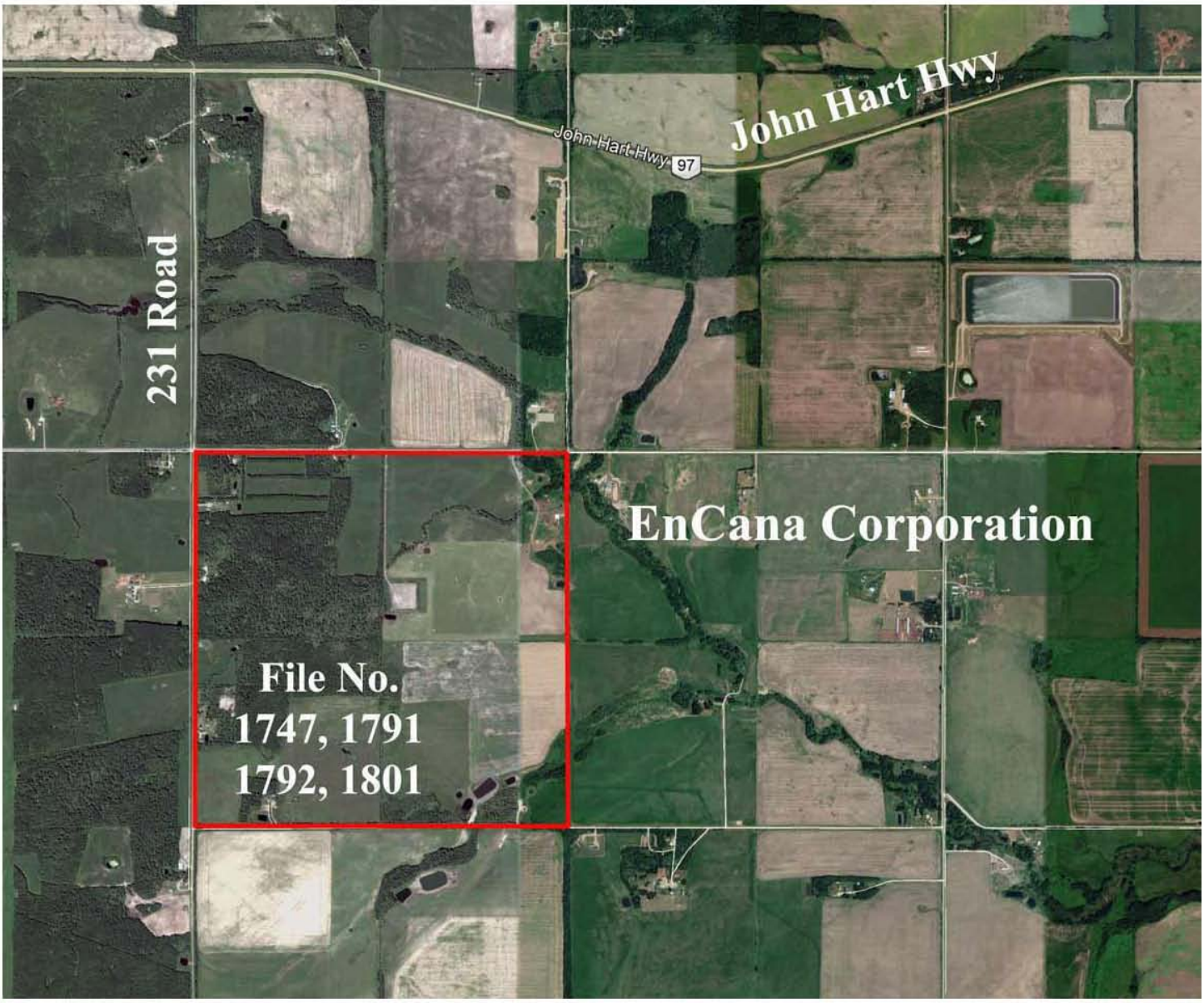
(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD DECISION


John Hart Hwy
John Hart Hwy
97
231 Road
EnCana Corporation
File No.
1747, 1791
1792, 1801

Application for dismissal of Lessors' application received: December 13, 2012

INTRODUCTION

[1] Jay and Keir London applied to the Board for mediation and arbitration services respecting the renewal of rental provisions in a surface lease with Encana Corporation (Encana). The parties engaged in mediation but were unable to resolve the dispute. The Board's mediator referred the dispute to arbitration. An arbitration hearing has been scheduled for June 2014. Encana now asks the Board to summarily dismiss the Londons' application alleging the Form 2, Notice to Negotiate, provided by the Londons is invalid, with the result that the Board does not have jurisdiction to resolve the rent review dispute.

[2] For the reasons that follow, I decline to summarily dismiss the Londons' application. I find the required Notice to Negotiate was effectively given to initiate the rent review process, and the parties in fact engaged in a rent review process as a result. While the Form 2, Notice to Negotiate, provided by the Londons was premature, the conduct of Encana both prior to and subsequent to the receipt of that Notice precludes them from now disputing that there is a valid rent review application before the Board.

FACTS

[3] The Londons entered into a surface lease with Encana effective February 19, 2007. On January 17, 2011, Encana wrote to the Londons advising them of their right to a compensation review within the next year. The letter contained erroneous information respecting the requirements for the review of rent payable under a surface lease in British Columbia, but included an invitation to write if they desired a rent review. On January 6, 2011, the Londons sent Encana a Form 2, Notice to Negotiate, requesting a review of the rent payable under the surface lease. By letter dated August 29, 2011, Encana provided the Londons with a written offer to amend the annual rent payable under the surface lease. The Londons did not accept this offer. On February 1, 2012, the Board received the Londons' application for mediation and arbitration services. The Londons sent a copy of this application to Encana by registered mail on January 30, 2012.

[4] By letter dated February 3, 2012, the Board acknowledged receipt of the application and asked the parties to confirm their contact information. In response to this correspondence sent by email to Jasone Blasevic of Encana, Mr. Blasevic advised by email dated February 6, 2012, that Encana was not in

receipt of the Londons' application. By email dated February 6, 2012, the Board provided Mr. Blasevic with a copy of the application.

[5] On February 8, 2012, Ms. Hannigan of the Board's offices inquired as to the parties' availability to schedule a mediation teleconference. On the same date, Mr. Blasevic responded that he would like the opportunity to meet with the Londons first before engaging in the Board's mediation process, referencing that to his knowledge, there had not been any communication between the parties since Encana's offer from the previous summer. The parties agreed to meet and engage in negotiations without the assistance of the Board and did engage in negotiations throughout the summer and early fall of 2012. In November 2012, in response to an inquiry from the Board as to whether the parties had successfully concluded their negotiations, Mr. London asked the Board to schedule a mediation session. The Board conducted three mediation sessions with the parties between January 30, 2013 and September 25, 2013 before refusing further mediation and referring the matter to arbitration. The mediator's letters disclose that the parties engaged in extensive discussions in an effort at resolving the rent review application. There is no reference to any objection from Encana to the validity of the process.

ANALYSIS

[6] Section 165(2) of the *Petroleum and Natural Gas Act (PNGA)* provides that a right holder or a landowner may serve notice on the other party to a surface lease or board order, in the form and manner prescribed by the Rules of the Board, requiring negotiation of an amendment to the rental provisions in the surface lease or order. The Board's Rules prescribe the Form 2 – Notice to Negotiate. Section 165(3) of the *PNGA* says that a Notice to Negotiate may not be served before the fourth anniversary of the effective date of the surface lease or board order or the most recent amendment to the rental provisions in the surface lease or board order. Section 166(7) of the *PNGA* provides that any revised rent is retroactive to the anniversary date immediately preceding the Notice to Negotiate.

[7] The *PNGA* provides a scheme, therefore, by which either party to a surface lease or Board order may request renegotiation of the rental provisions under that surface lease or order no earlier than the fourth anniversary date of the lease or order or the most recent amendment. A rent review is not automatic, but only occurs when requested. Once requested, any revised rent is effective as of the anniversary immediately preceding the request.

[8] The Board has found that while use of the prescribed Form 2 is preferable, it is not necessary if it can be discerned from the circumstances that Notice to

Negotiate was effectively given and received, and the parties engaged in negotiation towards rent renewal (*Wilderness Ranch Ltd. v. Progress Energy Ltd.*, SRB Order 1786-90-1, February 27, 2013).

[9] The date the Notice to Negotiate is either made or effectively made is important because it is that date that provides the trigger for determining the effective date of any renegotiation and sets the earliest next opportunity for requesting renegotiation. The purpose of the notice is to initiate the rent review process, which is otherwise not automatic, and to set the effective date of any renewal. If it can be demonstrated that written notice has been given and acted upon, regardless of whether that notice is in the prescribed form, the purpose of the requirement for notice set out in section 165(2) will be met and notice will effectively have been given in accordance with the *PNGA*.

[10] The fourth anniversary of the surface lease between the Londons and Encana was February 17, 2011. A Notice to Negotiate could not have been served by either party prior to that date. More importantly, any rent renegotiation could not be effective prior to that date. The Londons can hardly be faulted for providing their Notice to Negotiate early, having received the letter from Encana dated January 17, 2011 advising them of their right to seek a rent review in the coming year.

[11] Despite having received the Notice to Negotiate early, by letter dated August 29, 2011, Encana provided the Londons with an offer to amend the rent payable under the surface lease. Even if the Londons' Notice to Negotiate was premature and could not engage the rent review process, with this written offer Encana effectively provided the Londons with Notice to Negotiate the rent payable under the terms of the surface lease. Encana itself initiated the rent review process, with this letter, and had clearly engaged in a renegotiation of the rental provision under the surface lease by this date, despite the early notice from the Londons.

[12] Encana received a copy of the Londons' application to the Board on February 8, 2012, and engaged in further negotiations in an effort at resolving the rent payable under the surface lease.

[13] In the circumstances, it would be manifestly unfair to conclude that Notice to Negotiate pursuant to section 165(2) of the *PNGA* had not effectively been given and that the Board does not have jurisdiction to continue with the Londons' application for rent review. The communications between the parties and the conduct of the parties operated to effectively provide the required notice and to initiate the rent review process.

CONCLUSION

[14] Encana's application for the Board to summarily dismiss the Londons' application for mediation and arbitration services is dismissed. The arbitration of the Londons' application will proceed as scheduled.

DATED: December 19, 2013

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1747
Board Order No. 1747-2

August 27, 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
NORTH EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Jay London and Keir London

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD DECISION

Heard: June 25 and 26, 2014 in Dawson Creek
Appearances: Elvin Gowman and Jay London, for the Applicants
Tom Owen and Shannon Carter, Barristers and Solicitors, for the Respondent

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INTRODUCTION

[1] Mr. and Mrs. London seek a review of the annual rent payable under a surface lease with Encana Corporation (Encana). The lease of 9.71 acres for an access road and well site was originally executed on February 19, 2007 and provides for payment of annual rent of $5,000. The Londons seek rent of $1,500/acre, or $14,565 annually. Encana submits the current rent of $5,000 is appropriate and that no increase is warranted.

[2] The effective date for this review is February 19, 2011.

ISSUE

[3] The issue is to determine the appropriate annual rent under the surface lease for the period commencing February 19, 2011.

PRELIMINARY ISSUE

[4] In their Book of Documents filed in advance of the arbitration, the Applicants included at Tabs 13 and 15, two decisions of the Board as evidence of comparable lease payments. Encana sought to have these decisions ruled inadmissible as evidence. The Book of Documents included a section entitled "Authorities" providing copies of three additional decisions of the Board. I made the following ruling respecting the inclusion of Tabs 13 and 15:

> Section 40 of the *Administrative Tribunals Act* (which applies to the Board) provides that the tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. Section 154(j) of the *Petroleum and Natural Gas Act* expressly allows the Board to consider previous orders of the Board in determining compensation. Consequently, whether the Board's decisions at Tabs 13 and 15 remain in the "Evidence" section of the Book of Documents or are moved to the "Authorities" section, and used as such, does not really make much difference. The Board's decisions may be considered; it is really just an issue of how they considered and what use is made of them

Board decisions are not evidence of the facts set out in the decision. If that is the purpose of their inclusion with the evidence, then they may not be used in that way. Board decisions may be used as authority for a particular conclusion in light of certain facts. If a subsequent case has the same facts, as proven by the evidence in that case, it is open to a party to argue that the same result should apply. If the facts of another case are different, it is open to a party to argue that the conclusion reached in another case should not apply because the cases are distinguishable on their facts

For the conclusion in another case to be persuasive, the Board needs evidence that the circumstances of the case at hand are the same or highly similar and even then a previous decision does not create a binding precedent and is not binding on another member of the Board hearing a different case.

Technically speaking, the decisions at Tabs 13 and 15 are not evidence and should probably be moved. However, I do not think the proceedings of this Board should be unduly legalistic. It is not uncommon for parties to include a combination of evidence and argument in their briefs of documents.

Whether Tabs 13 and 15 are left where they are in the Applicants' Book of Documents or moved to the section of "Authorities", I will consider them in determining compensation in this case as I am permitted to do by section 154(j) of the *Act*. I will consider them not as evidence of the facts set out, but as authority for the conclusions reached. But a conclusion as to loss sustained by one landowner, is not evidence of the loss of another and does not prove the loss of another. Each case must be determined on its own evidence.

[5] With the exception of the document at Tab 14c that I found to be inadmissible, and with the addition of the document added at 17(b), I marked the Applicants' Book of Documents in its entirety as Exhibit 1.

FACTS

[6] Mr. and Mrs. London are the owners of the North East ¼ of Section 10 Township 78 Range 78 West of the 6th Meridian Peace River District (the Lands). The Lands are located on the south side of Road #208 (the old Hart Highway), 7.2 kms west of Dawson Creek. The Londons chose these Lands because of its creeks, wildlife diversity, and grass growing ability. The Londons, and their family, live on the Lands and they use the Lands for hay and cattle, although farming and ranching are not their principle livelihood, but more of a way of life. The Londons' residence is located in the northeast quarter of the Lands.

[7] A creek traverses the Lands in a generally northeasterly direction from the western boundary just north of the well site and joins the South Dawson Creek in the northeast corner of the Lands.

[8] The well site comprises 6.10 acres and is located in the southwest quarter of the Lands. The well site area is rectangular with the west boundary along the west property line of the Lands. The access road of 3.61 acres extends from the north boundary along the west side of the Lands, not quite along the actual boundary of the Lands, slivering off a severed area of .59 acres between the property line and the access road, north of the creek, meeting up with the property line just south of the creek. The severed area is treed. The access road is gated at the entrance to the old Hart Highway and at the entrance to the well site, and the access road is fenced on both sides with gates at two locations along it. The well site is mostly surrounded by a berm.

[9] The well has never produced and is shut in. Encana has no plans to bring the well into production and no plans to add additional wells to the site or to develop the well as a water well. Encana personnel visit the well site four times a year, three times for weed control and once for surface casing testing. In accessing the site for weed control, personnel use a pick up truck, an ATV, a tractor and a mower. In accessing the site for casing testing, personnel use a pick up truck. Annually, Encana personnel spend eight to ten hours in total at the site.

[10] Although Mr. London has had as many as 300 to 400 head of cattle at one time, currently he has 25 cow/calf pairs. In 2011 and 2012, there were no cattle on the Lands. In October of 2013, Mr. London brought 25 head of cattle onto the Lands. Those cattle calved in the spring of 2014. Mr. London plans to purchase another 25 head in the next couple of months, and hopes to build up his herd again over time. Mr. London hayed in 2011 and 2012, stockpiling the bales for forage.

[11] Mr. London practices what he calls "mob grazing" or intensive management grazing, which involves allowing the cattle to run around, eat and trample a 10 acre area, then moving them into another 10 acre area. There are eight 10 acre areas that the cattle rotate through on the Lands including the hay field itself. Mr. London wants the cattle to eat 1/3 of the grass and tromp 2/3 of it into the ground. This practice allows for the accumulation of dry matter on the ground, which lengthens the growing season and allows for the tromping of seeds into the earth, assisting with the rejuvenation of the land.

[12] Mr. London's haying operation involves cutting, baling and taking the bales off. He does not seed or spray.

[13] A couple or so years ago (possibly 2011, but Mr. London was not sure of the exact year), the well site flooded beyond the top of the wellhead. Without consultation with Mr. London or prior contact, Encana personnel broke the berm on the north side of the well site allowing the accumulated water and debris to flood into Mr. London's pasture.

Mr. London did not make a claim for damages. He put out hay bales to stem the water and did not claim compensation from Encana for his time, the lost hay or use of the tractor. The berm has remained open ever since. In a rainy year, water runs from the well site area onto the pasture, and eventually into the creek. Mr. London puts out hay bales to stem the water.

[14] In June 2012, the parties met to discuss various issues raised by Mr. London and agreed to various actions and compensation amounts as a result. In July 2014, Encana paid the Londons $15,000.00 for the installation and maintenance of trees to provide a visual buffer between the residence and the well site, $12,900.00 for the installation and reclamation of the livestock watering system and $2,924.00 for the pipe needed for this system, $5,000.00 for time spent dealing with various concerns, and $4,000.00 for time spent and materials used to deal with off-lease weed issues. Encana agreed to provide an additional $1,400.00 annually in each of 2012, 2013, 2014 and 2015 to assist with managing off-lease weeds. Encana replaced a gate along the east side of the access road, installed a culvert on the road leading to the barn and replaced another culvert near 208 Road, and graveled some access into the field. Encana replaced some fencing along the west side of the borrow pit.

EVIDENCE AND ANALYSIS

Principles of Compensation

[15] Section 154 of the *Petroleum and Natural Gas Act* sets out the factors the Board may consider in determining compensation or annual rent. They include:

(a) the compulsory aspect of the right of entry;
(b) the value of the applicable land;
(c) a person's loss of a 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 one or more 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.

[16] Additionally, in determining annual rent on a rent review, the Board must consider any change in the value of money and of land since the date the surface lease was originally or last granted.

[17] Following consideration of the various factors set out in the legislation, 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)).

[18] 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).

[19] The onus is on the applicants in a rent review application, in this case the Londons, to establish their ongoing prospective losses and to establish that any increase in the annual rent is warranted (*Progress Energy Canada Ltd. v. Salustro*, 2014 BCSC 960).

[20] I now turn to a consideration of the various factors set out in section 154 of the *Petroleum and Natural Gas Act* relevant to this application

Compulsory Aspect of the Entry

[21] The evidence is that compensation for the compulsory aspect of the entry was included in the initial payment to the Londons for this lease. Nevertheless, I accept that continuing use 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

[22] I have no evidence of the value of the Lands as of the rent renegotiation date. In any event, the evidence is that compensation for the value of the Land was included in the initial payment to the Londons for this lease. On a rent review, the Board is required to consider any change to the value of the land.

[23] Mr. Hoover suggests an increase of 20% in the value of land in the area from 2007 to 2011 based on the average selling price in 2006/2007 and the average price in 2010/2011 and statistics from Farm Credit Canada. All this evidence suggests is that

on average the market value of land in the area increased 20% between 2007 and 2011. It says nothing about the value of these Lands or the change in the value of these Lands, either up or down, over time or as a result of the lease.

[24] The Londons' Book of Documents includes a sales chart of vacant land sales with BC Assessment data. The sales chart includes three sales at approximately $1,500/acre in 2008 and four sales in 2012 with prices ranging from approximately $1,400/acre to $2,700/acre. No witness spoke to this information and there is no explanation or analysis of it. Consequently, these documents have no evidentiary value and I give them no weight. The Book of Documents also includes a chart of improved sales also without explanation or analysis. I do not see the relevance of this information and likewise give it no weight.

Loss of Right or Profit

[25] The presence of the lease means the landowner no longer has the right to use the leased area for his own purposes, and loses any income or potential income from use of the leased area.

[26] Mr. London's evidence is that the presence of the lease "screws up" his grazing as it removes 9.7 acres from the grazing rotation. Mr. London's evidence is that 9.7 acres would produce enough feed to support 22 or 23 head of cattle. On the basis of an average weight of 550 pounds market weight per calf at $2.30/pound, he estimates his potential loss of income from cattle as a result of the presence of the lease at $27,830 annually (22 calves x 550 pounds x $2.30 = $27,830).

[27] The Londons did not have cattle on the Lands as of the relevant date for renegotiation of this lease. Further, their decision to limit their herd to 25 head expanding to 50 head next year is not related to the presence of the lease. Mr. London's evidence is he has grass for many more animals than he actually has on the Lands. He feels reasonably confident that, assuming absence of drought that would compromise the grass, he could put out 100 head. While the lease area may be capable of supporting 22 or 23 head of cattle, as the Londons did not have cattle in February 2011, and as their present cattle operation has not been limited as a result of the presence of the lease, loss of income from cattle is not a reasonably foreseeable loss for this rent review period.

[28] Don Hoover, AACI, estimates probable loss of income from the lease area based on its hay growing capability. His evidence is that average actual yields in the area are 1.5 to 2.0 tons per acre. He assumes above average production of 2.5 tons per acre and applies an expected price of $60/ton to estimate gross revenue from hay production at $1,500 rounded (9.7 x 2.5 x $60 = $1,455). After factoring in expenses, he estimates the average margin at $94.25/year, rounded to $100 or $971 total.

[29] Mr. London's evidence is that he did not have any income from the Lands in 2011, 2012 or 2013. He did not have cattle on the Lands until the fall of 2013 and did not sell the hay harvested from the Lands. Although with the benefit of hindsight, it is evident that the Londons did not actually incur loss of income from the Lands as a result of the presence of the lease, as of the relevant renegotiation date it would not have been unreasonable to anticipate probable crop loss attributable to being unable to hay the leased area. Mr. Hoover's evidence provides the only evidence before me to estimate loss of haying income from the lease area.

Temporary and Permanent Damage

[30] Breaching the berm around the lease caused the pasture to be flooded and continues to allow run-off into the pasture. It is not clear from the evidence, however, whether this run-off is causing or has caused permanent damage to the Lands or what the ongoing effect of the run-off is to the Lands or to the Londons. There is no calculation of the time spent by Mr. London or other members of his family to deal with the run-off or any calculation of actual loss attributed to the run-off as a result of a reduced hay crop or otherwise.

[31] The Londons argued that Encana is a company that follows the practice that "it is easier to seek forgiveness than permission" and that it has shown little respect for the landowners and their quiet enjoyment of the Lands. They point to the breach of the berm as the most egregious example of Encana's attitude. I agree that breaching the berm and allowing a significant amount of water and debris to flood into the pasture without consultation with the landowner is egregious. If this activity has caused damage or continues to cause damage to the Lands, Encana should rectify the situation going forward and compensate the landowners for past loss and damage. The Londons did not seek damages when the breach event occurred and have not provided evidence in this rent review to assist with quantifying the effect of any continuing damage going forward. Annual rent is intended to compensate for reasonably foreseeable prospective losses, not past losses. When damage to land occurs as a result of a right of entry, if the damage is not rectified or loss is incurred, it can and should be the subject of a separate application to the Board.

[32] Mr. London's evidence is there has also been damage to the Lands as a result of the culvert in the access road washing out or plugging up. He does not provide evidence of his actual loss in terms of time spent or expenses incurred, or of how this problem otherwise contributes to loss on a regular basis. Ms. Berscht and Ms. Wannamaker deny that the road washes out regularly. Their evidence is that the culvert froze this year causing an ice jam so the water could not flow through it.

[33] The letter of June 2012 summarizing the parties' meeting and agreements with respect to various issues raised by Mr. London does not say anything about the culvert under the access road. If the culvert washes out regularly, I would expect that issue to have been raised by Mr. London along with all of the other issues. The letter sets out

the parties' agreement to a trial solution to deal with erosion. It is not clear whether this agreement relates to erosion related to the culvert over-flowing or from another cause. In any event, I do not have evidence with which to quantify any ongoing loss attributable to the culvert washing out. If damage occurs, it can be the subject of a separate application.

[34] The Londons argue the letter of June 2012 is evidence of Encana's "seek forgiveness rather than permission attitude". Encana argues it is evidence that when issues are brought to its attention, it is willing to deal with them. There is likely a bit of truth in both of these positions. The Londons are in the best position to identify problems as and when they arise. Those problems should be brought to Encana's attention when they occur, and if not rectified, claims for damages must be supported with evidence and not vague complaints. Encana has either rectified or provided compensation for several issues, although not always to the satisfaction of the Londons. Encana can likely improve its communications with the Londons, be more pro-active in ensuring issues do not arise, and be more responsive when issues do arise.

[35] On the whole, while I am satisfied there likely is some ongoing damage to the Lands as a result of the breached berm, the evidence does not assist with quantification of that damage.

Severance

[36] Mr. Hoover does not add any additional loss for the severed area as it is treed with no revenue potential. His evidence is that if the fence and access road were not there, the severed area would not contribute to hay production. If the fence and access road were not there, however, the trees could either be cleared for the purpose of haying or pasture, or the trees could be left as shelter for cattle and be easily accessed by cattle. Either way, although small, the area is effectively unavailable to the landowner. I am satisfied that the annual rent should reflect an amount for the small severed area.

Nuisance and Disturbance

[37] Anticipated time spent by a landowner dealing with the lease, farming around the lease, dealing with weeds off lease, bringing damage or other issues of concern to the company's attention, and following up with concerns is compensable as tangible nuisance and disturbance.

[38] The parties have already agreed to compensation for 2012, 2013, 2014 and 2015 for off lease weed control. There is no need, therefore, to include compensation for the nuisance and disturbance associated with off-lease weed control in this rent review.

[39] Mr. London's evidence is that unauthorized people use the access road for camping and hunting and that he is constantly having to kick people off. His evidence is that another oil and gas company also used the road without his permission. Around

the time of the bombing scare a few years ago, on two or three occasions, he found someone sleeping in in an unmarked truck on the access road beside the gate. It took some time and effort on his part to get hold of anyone at Encana to confirm that it was an Encana security person and not someone else. He expresses concern about unauthorized people gaining access to his property and says "my enjoyment and my whole life is topsy turvy watching that road". He says he found Encana people at 6:30 in the morning walking around looking at things. Encana now provides 48 hours notice if they are coming to the site so that Mr. London does not have to waste his own time trying to figure out what is going on.

[40] Mr. London expresses a lot of frustration in his dealings with Encana, accusing them of being poor communicators, failing to take initiative to ensure there are no problems, and being unresponsive to complaints. He says that since the meeting in 2012, it has been better, although sometimes Encana is still unresponsive to complaints. He has not documented his time spent dealing with Encana and does not provide an estimate of his time spent dealing with Encana. While I accept that Mr. London incurs loss in the form of his time dealing with Encana, his evidence does not assist with quantifying this loss.

[41] Mr. Hoover uses an obstruction mapper program that he has developed to estimate loss attributable to farming around the lease area. The program calculates missed areas and overlaps resulting from farming around the lease area and calculates the associated loss. As Mr. Hoover was not able to talk to Mr. London about his actual use of the Lands, he assumes the Lands are used for growing hay and assumes a hay crop will be harvested every year. He makes assumptions about the number of operations used to hay the Lands and assumptions about the size of the equipment used. Using this program, Mr. Hoover estimates increased farming costs of $116.08 annually as a result of farming around the lease area. Some of Mr. Hoover's assumptions turned out to be incorrect. I accept the Londons likely incur loss farming around the leased area. The evidence dos not enable a precise calculation of that loss.

[42] Mr. Hoover estimates that Mr. London will spend an additional seven hours a year for surveillance, dealing with Encana, administrative time and negotiation. At $35.00/hour, he estimates this loss at $245.00/year.

[43] I accept that the annual rent should include an amount to reflect the likely additional time the Londons will be required to spend dealing with Encana and working around the lease area. The parties agreed in 2012 to $5,000 to compensate Mr. London for his time spent during the first five-year period of the lease. In the absence of any actual records to substantiate Mr. London's time spent dealing with Encana, I find $1,000 per year is the best estimate of probable loss for time spent dealing with this lease.

[44] As for intangible nuisance and disturbance, Encana only accesses this site four times a year spending up to 10 hours a year on site. There is little disturbance,

therefore, in the way of noise or dust. While there was some flaring initially causing nuisance and disturbance, there is no ongoing nuisance and disturbance from flaring as the well has been capped. Mr. London has already been compensated an amount to plant trees as a visual buffer. I am not satisfied that that the evidence supports that the annual rent should include a significant amount for intangible nuisance and disturbance.

Money Previously Paid

[45] The parties have agreed to compensation for various losses extending into the time for this rent review including an annual payment of $1,400 in each of 2012, 2013, 2014 and 2015 to help manage weeds off lease. Encana has also already compensated Mr. London for time spent up to the summer of 2012.

Other Surface Leases

[46] Both parties provide evidence of other surface leases. The Londons provide seven rental agreements within a 120 km radius of the Lands involving a variety of different operators. Encana provides 20 leases within a 10 km radius of the Lands, including both Encana leases and leases with some other operators. Ms. Bersht's evidence is these leases include all leases within a 10 km radius for which a copy of the lease could be obtained. Both parties provide information as to the date of the lease or renegotiation, the number of acres involved, the status of the well and the parent parcel land use.

[47] The Londons compare the rents on a per acre basis calculated by dividing the total annual rent by the number of acres covered by the lease. Encana submits that comparing leases in this way is not appropriate. For its own leases, Encana provides a breakdown of the global rent showing amounts paid for nuisance and disturbance, severance and crop loss. Ms. Bersht's evidence is that the payment for crop loss is typically calculated on a per acre basis but compensation for other losses is never calculated that way.

[48] Ms. Berscht's and Ms. Wannamaker's evidence is that leases are initially negotiated on an assumption that the well will be producing, with all the attendant traffic, and that a landowner will be losing income from the leased area. It is apparent from Encana's comparable leases in the area, that Encana typically compensates loss of profit at $250/acre/year. In one circumstance, apparently involving cultivated land with soil that is more productive, they paid $400/acre/year. In other leases, however, where the parent parcel is identified as "cultivated", the payment for loss of profit is still $250/acre/year.

[49] Without evidence of the circumstances involved in any particular surface lease, it is virtually impossible to apply a rent negotiated in one case to the circumstances of another case. Other leases are rarely helpful unless they clearly support a pattern of dealings in an area, or unless the evidence discloses that the circumstances are the

same or highly similar. When the amounts paid for different losses are not broken down, and where reasons for particular payments are not apparent, it is very difficult to compare lease payments. Further, if the various payments comprising annual rents are not determined on a per acre basis, the total rent cannot be compared on that basis.

[50] The Londons argued a lease at 5-1-78-16, common to both parties' Books of Documents, should be given most weight. The evidence is however that this lease is on better land (Class 2 compared to Class 3), the land is cultivated with canola and wheat as opposed to hay or used for pasture, and the rent incudes higher payments for nuisance and disturbance and severance than paid under other leases because of the particular circumstances of that lease. In comparison, the Londons' lease creates a very small severed area and little in the way of intangible nuisance and disturbance. The evidence in this case does not demonstrate ongoing nuisance and disturbance compensable at the level paid for this other lease.

[51] The leases do not establish a pattern of dealings other than to suggest the "going rate" for loss of profit typically agreed to in Encana leases is $250/acre/year. This amount exceeds Mr. Hoover's estimated loss of profit and exceeds Mr. London's actual loss of profit since 2011. I am nevertheless satisfied that the annual rent in this case should reflect crop loss at $250/acre as this is the "going rate" and Mr. London's actual loss of income does not exceed this rate.

Change in the Value of Money

[52] Mr. Hoover's evidence is that from February 2007 to February 2011, the Consumer Price Index (CPI) for British Columbia increased by 11.28% according to Statistics Canada. This conclusion does not seem to equate with the chart provided in his report showing the CPI in February 2007 at 109 and the CPI in February 2011 at just over 115, which would indicate an increase of less than 6%.

Global Payment

[53] The above analysis suggests that the global rent payable under this lease should reflect a payment of $250/acre for loss of income including the severed area because it is a "going rate" despite that the Londons did not experience loss of income as a result of the lease. It should also reflect a payment of $1,000.00 annually to account for the Londons' probable time spent dealing with Encana during the rent period. This loss equates to $2,575.00 ((9.71+.59) x $250 + $1,000 = $2,575). Generally speaking, I accept that $2,575 is likely low in that it does not account for probable damage to the land, which I accept is occurring but for which I have insufficient evidence to quantify loss. Nor does it account for ongoing intangible loss such as the continuing compulsory aspect of the taking or intangible nuisance and disturbance, which is not substantial in this case. With respect to the first year of this rent review, however, Mr. London's time has already been compensated.

[54] The onus is on the Londons to establish their ongoing prospective losses as of February 19, 2011 and to establish that an increase to the current rent is warranted to compensate for ongoing prospective losses. The Londons have not provided evidence to support their claim for over $14,000 annual rent. The evidence simply does not establish a reasonable probability of ongoing gloss at that level as of February 2011. The evidence does not establish prospective loss as high as $5,000 as of February 2011, and shows that actual loss has, in fact, been less than that.

[55] The evidence does not support increasing the rent above the current rent of $5,000. The current rent more than sufficiently compensates the Londons for their actual tangible loss and provides additional compensation for intangible losses, likely incurred but not quantified.

[56] I find that annual rent of $5,000 continues to be appropriate as of the rent review period commencing February 19, 2011.

ORDER

[57] Encana Corporation shall continue to pay annual rent of $5,000 to the Londons for the rent period commencing February 19, 2011.

DATED: August 27, 2014

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1769
Board Order No. 1769-1

November 16, 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

THE SOUTH WEST ¼ OF SECTION 21 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT: EXCEPT THE WESTERLY 14 FEET AND PLAN 26071

(The "Lands")

BETWEEN:

Encana Corporation

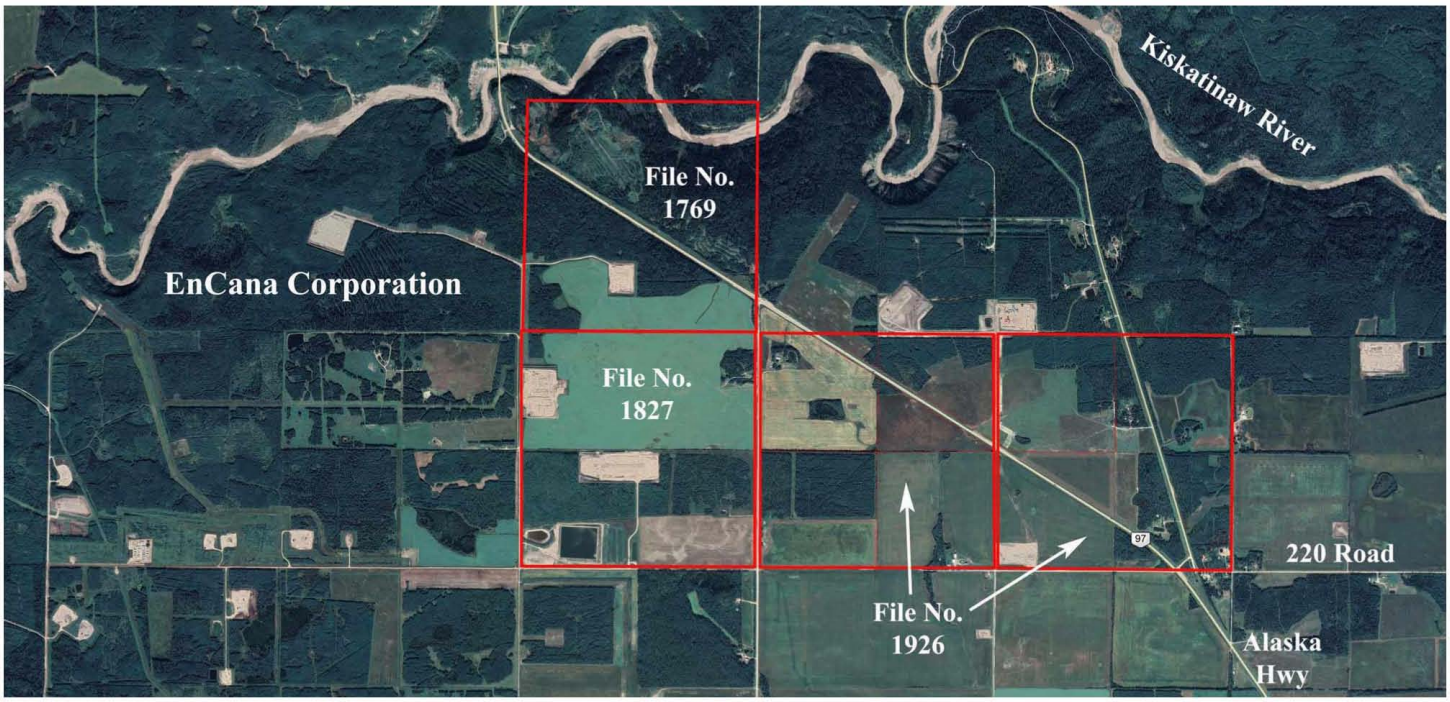
(APPLICANT)

AND:

Joseph Magusin and Juliette Louiseala Magusin

(RESPONDENTS)

BOARD ORDER


Kiskatinaw River
File No.
1769
EnCana Corporation
File No.
1827
97
220 Road
File No.
1926
Alaska
Hwy

Encana Corporation ("Encana") applies pursuant to sections 158 of the *Petroleum and Natural Gas Act* for mediation and arbitration and for a right of entry order to carry out an oil and gas activity on the Respondents' Lands, specifically the construction, operation and maintenance of a well site with multiple wells.

The Oil and Gas Commission ("OGC") has approved the location of the well site and has issued their permit for this project.

I conducted a telephone mediation conference calls on August 29, 2012, September 26, 2012, and November 9, 2012, where the parties discussed the project and whether I should issue Encana a right of entry order.

I considered the submissions and found that there is no impediment preventing the Board from issuing the right of entry. Supported by the fact that the OGC has issued a permit for this project, the Board is satisfied that Encana requires the right of entry for the purposes of oil and gas activities.

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, Encana Corporation shall have the Right of Entry to and access across the portions of lands legally described as THE SOUTH WEST ¼ OF SECTION 21 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT: EXCEPT THE WESTERLY 14 FEET AND PLAN 26071 as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a six well padsite.

2. Encana Corporation's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. Encana Corporation 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 Encana Corporation, or paid to the Respondents, upon agreement of the parties or as ordered by the Board.

4. Encana Corporation shall pay to the Respondents as partial payment for compensation the amount of $15,000.00 representing a portion of 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.

DATED: November 16, 2012

FOR THE BOARD

Rob Fraser
Mediator

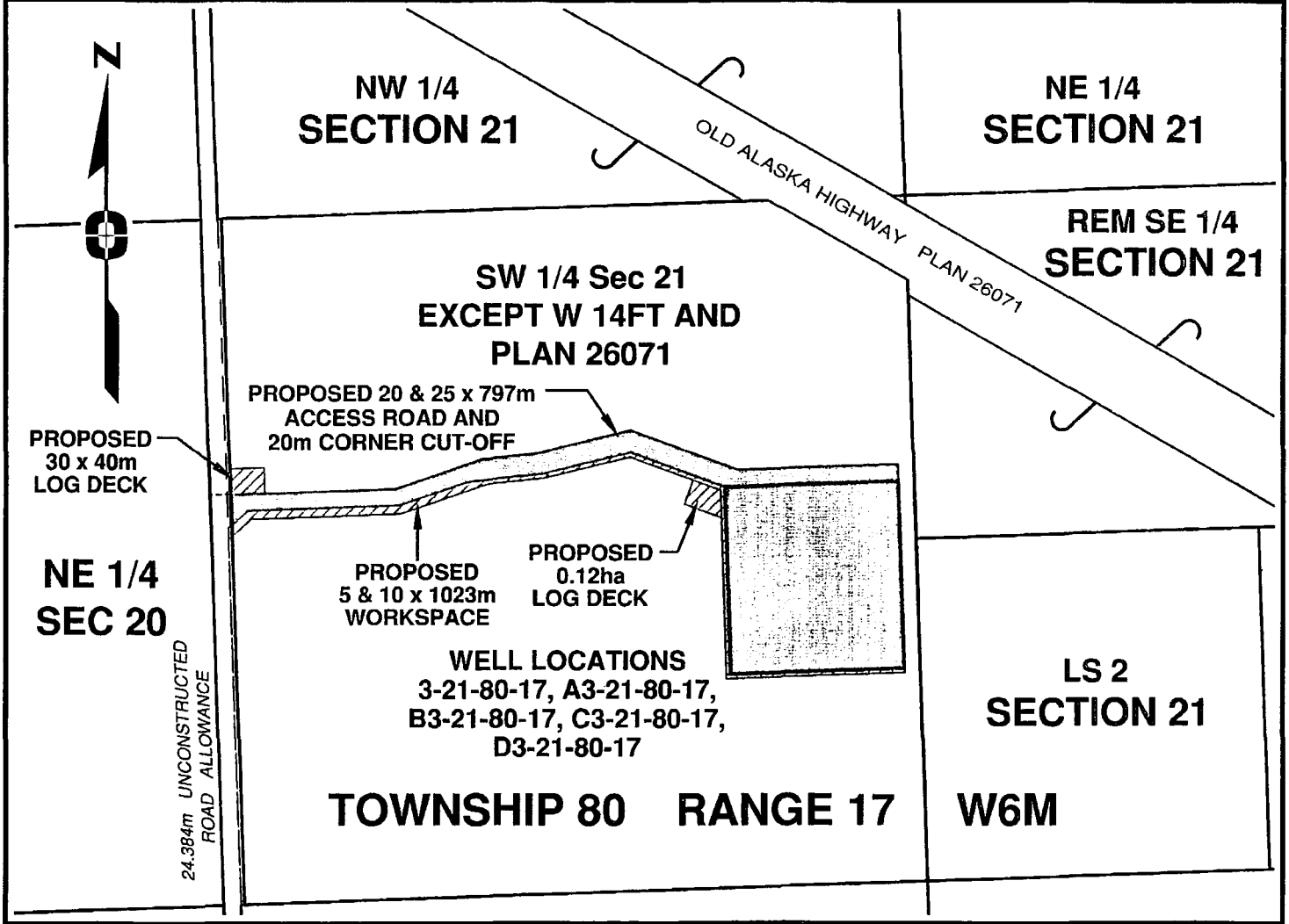
APPENDIX "A" 1769-1

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Joseph Magusin and Juliette Louiseala Magusin (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELLSITE AND ACCESS WITHIN THE SOUTH WEST 1/4 OF SECTION 21 TOWNSHIP 80 RANGE 17 W6M EXCEPT THE WESTERLY 14 FEET AND PLAN 26071 PEACE RIVER DISTRICT



Owner(s):	Joseph Magusin Juliette Louiseala Magusin
Title No:	L25014
Parcel Identifier:	014-597-926
Landowner File:	S463091
EnCana File(s):	S463091, S463435, S463436 S463437, S463438

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 7500 (use letter size sheet)

Certified correct this 22nd day of February, 2011

Adam Brash, BCLS

Areas		
Permanent	6.25 ha	15.44 ac
Temporary	0.90 ha	2.22 ac
Total	**7.15 ha**	**17.66 ac**

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

Focus Job No: 110017NP01R0
Ref Dwg: 110017WS01R0
Drafter: DG

Appendix "B"
Order 1769-1

Conditions for Right of Entry

1. Encana Corporation will install a gate at the beginning of its wellsite access road where the property line meets the road allowance.

2. Encana Corporation will install a fence around the perimeter of the wellsite and access road.

File No. 1769
Board Order 1769-2

April 8, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 21, TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT: EXCEPT THE WESTERLY 14 FEET AND PLAN 26071

(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

JOSEPH MAGUSIN AND JULIETTE LOUISEALA MAGUSIN

RESPONDENTS

BOARD ORDER

On November 16, 2012 the Surface Rights Board issued Board Order 1769-1 giving Encana Corporation ("Encana") access to the lands for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling and completing and operating a six well padsite.

Order 1769-1 included partial compensation payment of $15,000.00, leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation.

BY CONSENT, the Surface Rights Board orders:

1. Encana shall pay to the Respondents, JOSEPH MAGUSIN AND JULIETTE LOUISEALA MAGUSIN, the sum of $13,835.00, representing $28,835.00 less $15,000 already paid in advance, as compensation for construction, operation and maintenance of a wellsite with multiple wells.
2. Compensation shall be payable on November 16th, 2013 and annually thereafter at an amount of $5,867.50.
3. In addition, compensation shall be payable for each additional well in the amount of $2,000.00 prior to commencement of drilling, and $500.00 annually thereafter, the annual payment being due and payable on November 16th following the date of commencement of drilling.
4. Encana shall pay to the Respondents reasonable amounts for legal fees incurred by Kasara Tylor, the Committee of the Respondents' estates, in dealing with this matter and a reasonable amount for Kasara Tylor's time and expenses in dealing with this matter in her capacity as Committee for the Respondents.

DATED: April 8, 2015

FOR THE BOARD

_____

Robert Fraser, Mediator

File No. 1791
Board Order No. 1791-1

January 8, 2013

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 EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

James Nelson London and
Keir Marie London

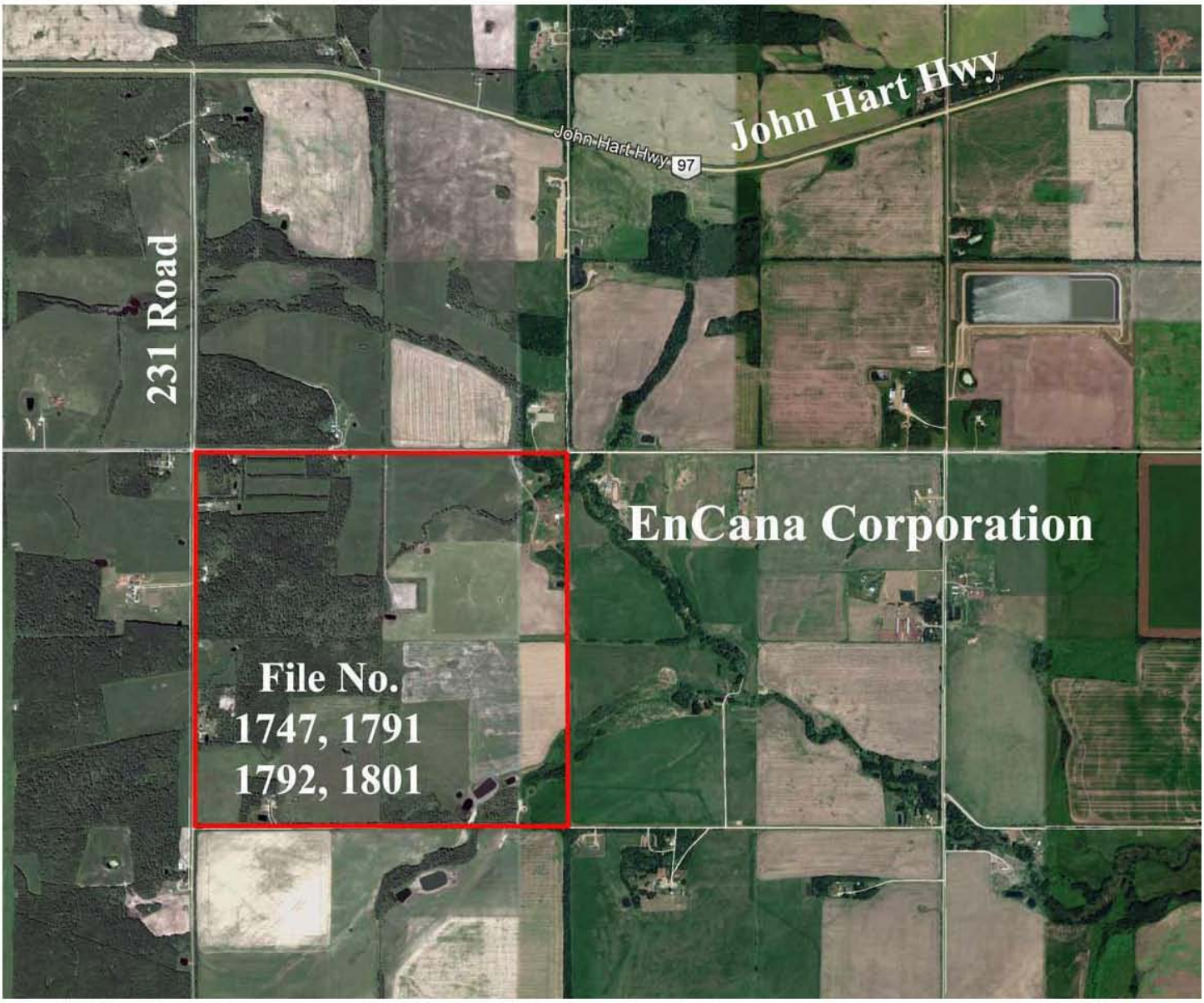
(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER


John Hart Hwy
John Hart Hwy
97
231 Road
EnCana Corporation
File No.
1747, 1791
1792, 1801

Heard by written submissions
Appearances: J. Darryl Carter, Q.C., Barrister and Solicitor, for the Applicants
Thomas R. Owen, Barrister and Solicitor, for the Respondent

INTRODUCTION AND ISSUE

[1] James and Keir London entered a right of way agreement (the "ROW Agreement") with Encana Corporation ("Encana") dated February 14, 2009 granting Encana a right of way over Lands owned by them to construct, operate and maintain a pipeline or pipelines and for incidental purposes. Pursuant to a Conveyance Agreement dated April 20, 2010, (the "Conveyance Agreement"), Encana conveyed and assigned its rights and interests in certain assets including the ROW Agreement to Westcoast Energy Inc., carrying on business as Spectra Energy Transmission ("Spectra").

[2] On December 17, 2010, the OGC issued a pipeline permit to Spectra authorizing construction and operation of a pipeline on the Lands. Spectra has constructed the pipeline permitted by the OGC on the Lands, exercising its rights under the ROW Agreement assigned to it to gain access to the Lands, and pursuant to right of entry orders granted by the Board for access to and use of initially .94 acres, and later 4.55 acres of the Lands required for temporary workspace (Order 1694-1 dated December 23, 2010 and Order 1694-2 dated January 31, 2011). The Londons and Spectra have not agreed to compensation for Spectra's access to and use of the Lands authorized by the Board's Orders.

[3] Encana has not entered the Lands or constructed anything on the Lands pursuant to the ROW Agreement.

[4] The Londons submit that the oil and gas activity permitted by the OGC and now conducted on the Lands by Spectra is substantially different from the oil and gas activity that was proposed by Encana during the negotiation of the ROW Agreement. They allege that Encana represented that the ROW Agreement was for the construction and operation of two pipelines (2" and 4") necessary for connecting facilities to a wellsite, but that Spectra constructed and now operates a major 16" sour gas transmission pipeline on the Lands. They allege that such an activity was not proposed by Encana and submit the ROW Agreement did not contemplate such an activity. The Londons ask the Board to amend the ROW Agreement under section 164 of the *PNGA* to make it clear that the construction and operation of a major 16" sour gas transmission pipeline on the Lands is not authorized, especially by another company such as Spectra. Section 164 of the *PNGA* is set out in full at Appendix "A" to this decision.

[5] Encana submits it is not a candidate for service of an application under section 164 of the *PNGA* because it is no longer a party to the ROW Agreement as a result of its assignment to Spectra. Encana submits the application against it should be dismissed.

[6] The only issue before me at this time is whether Encana is the proper party to an application under section 164 of the *PNGA*. I have not considered the substance of the London's allegations and make no findings in that regard.

SUBMISSIONS

[7] Encana says it is no longer a party to the ROW Agreement, and therefore, not the appropriate party to an application under section164 of the *PNGA*. The Londons submit Encana is a party to the ROW Agreement, and cannot simply remove itself as a party by entering an assignment with a third party. Encana, in turn, argues that is the very point of an assignment, and that the ROW Agreement does not restrict assignment and expressly only binds a party while it has an interest in the Lands. The Londons argue the ability to walk away from an agreement "flies in the face" of section 164 of the *PNGA*, and that an assignee can acquire no more than the Grantee acquired from the Grantor. Referring to Cheshire and Fifoot's *Law of Contracts*, the Londons argue that an assignment does not relieve an assignor of its obligations under a contract. Encana, in turn, points out the exception to this general rule, where the parties to a contract agree that the burden of a contract may be assigned.

ANALYSIS

[8] Pursuant to Clause 1 of the ROW Agreement, the Londons, as Grantor, granted Encana, as Grantee, right of access to the Lands owned by them as follows:

> 1. Grant of Statutory Right of Way
>
> The Grantor does hereby grant, convey, transfer and set over to the Grantee its successor, and assigns a right of way across over under on or through the said lands to construct, operate and maintain a pipeline or pipelines including accessories and appurtenances (collectively referred to as the "Works"), and for any other purpose preparatory or incidental thereto including the right to repair or replace the said pipeline or pipelines and generally do all acts necessary or incidental to the foregoing and to the business of the Grantee in connection therewith. The right to construct more than one pipeline in the right of way hereby granted shall be limited to one construction operation.

[9] Clause 11 of the ROW Agreement provides that the ROW Agreement is a covenant running with the land. It contemplates assignment and expressly provides that its covenants and conditions are not personal or binding on the parties unless they have an interest in the Lands as follows:

> 11. Assignment
>
> This Agreement is a covenant running with the said Lands and the provisions of this Agreement including all covenants and conditions herein contained shall extend and be binding upon and enure to the benefit of the heirs, executors, affiliates, administrators, successors and assigns of the Grantor and the Grantee and shall not be personal or binding on the parties hereto except during such time as the parties hereto shall have any interest in the Lands and only in respect of such portion of the Lands in which the parties have an interest. (Emphasis added)

[10] By way of the Conveyance Agreement, and for consideration, Encana assigned its rights under the ROW Agreement to Spectra and Spectra acquired "the entire right, title, estate and interest" of Encana in and to various assets including the ROW Agreement. The transfer of the ROW Agreement to Spectra is registered on the Title to the Lands (BB1269442).

[11] The ROW Agreement is a statutory right of way under section 218 of the *Land Title Act*. Section 218(3) of the *Land Title Act* provides that registration of an instrument creating a statutory right of way

> (a) constitutes a charge on the land in favour of the grantee, and
> (b) confers on the grantee the right to use the land charged in accordance with the terms of the instrument, and the terms, conditions and covenants expressed in the instrument are binding on and take effect to the benefit of the grantor and grantee and their successors in title, unless a contrary intention appears.

[12] A statutory right of way agreement registered on title is expressly binding on the successors in title to the agreement, unless otherwise contemplated in the agreement itself. The ROW Agreement expressly contemplates assignment and expressly provides that the covenants and conditions are not personal to the parties or binding upon them unless they continue to have an interest in the Land. As Encana's interest in the Lands has been assigned to Spectra, and transfer of those rights are registered on the title to the Lands, Encana is no longer a party to the ROW Agreement. As Encana's successor and assign, the terms, conditions and covenants in the ROW Agreement are now binding on Spectra and enure to the benefit of Spectra. Spectra effectively becomes the Grantee.

[13] With respect to the Londons' argument that an assignee can acquire no more than the Grantee acquired from the Grantor, I agree. Spectra does not

acquire any rights beyond those originally held by Encana under the ROW Agreement. But it is Spectra who is now bound by the terms of the ROW Agreement, not Encana, and if Spectra purports to exercise rights it does not have under the ROW Agreement (about which I make no finding) it is against Spectra that the Grantor may seek a remedy.

[14] Such an interpretation does not fly in the face of section 164 of the *PNGA* as the Londons submit. An application under section 164 must be brought against the current party to a surface lease or right of way agreement, and any orders of the board to remedy an alleged non-compliance or to amend the terms of an agreement will bind the current parties, and their successors, to that agreement. Such an interpretation conforms with the legislative scheme allowing the registration of statutory rights of way against title and providing that the terms of contracts of this nature are binding against successors in title.

CONCLUSION

[15] I conclude that Encana is not the proper party to an application under section 164 of the *PNGA* with respect to the ROW Agreement. I find that the Conveyance Agreement effectively assigned Encana's rights and obligations under the ROW Agreement to Spectra. I find that the ROW Agreement contemplated that rights could be assigned, and that the parties agreed that the ROW Agreement was only personally binding upon the original parties so long as they held an interest in the Lands. As Encana subsequently conveyed its interest in the Lands to Spectra, and as that interest is registered against the title to the Lands, Spectra is the party that is bound by the terms and covenants of the ROW Agreement, and against whom any application under section 164 of the *PNGA* should be brought.

ORDER

[16] The application against Encana is dismissed.

DATED: January 8, 2013

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "A"

Petroleum and Natural Gas Act, section 164 and relevant definition in section 141:

141 (1) In this Part:

...

"surface lease" means a lease, easement, right of way or other agreement authorizing the entry, occupation or use of land for a purpose described in section 142 (a) to (c).

164 (1) A party to a surface lease may apply to the board for mediation and arbitration in respect of either or both of the following:

(a) a disagreement respecting the operation of or compliance with a term of the surface lease;

(b) a disagreement respecting whether the surface lease should be amended based on a claim by a party that the oil and gas activity or related activity as approved by the commission on the land that is subject to the surface lease is substantially different from the oil and gas activity or related activity that was proposed during the negotiation of the surface lease.

(2) On application under subsection (1) (a), the board may do any or all of the following:

(a) make an order confirming the right of entry under the surface lease, subject to the terms and conditions specified in the order, if any;

(b) if the board is satisfied that a party to the surface lease has failed to comply with an obligation under the surface lease, order that party to pay compensation to the other party for that failure;

(c) order that interest is payable on an amount payable under paragraph (b);

(d) order that compensation awarded under paragraph (b) is payable by a party instead of the party complying with an obligation under the surface lease.

(3) On application under subsection (1) (b), or in making an order under subsection (2) (d), the board may make an order amending the terms of the surface lease from the effective date set out in the order.

File Nos. 1792 and 1801
Board Order No. 1792/1801-1

May 14, 2013

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 EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

James London and Keir London

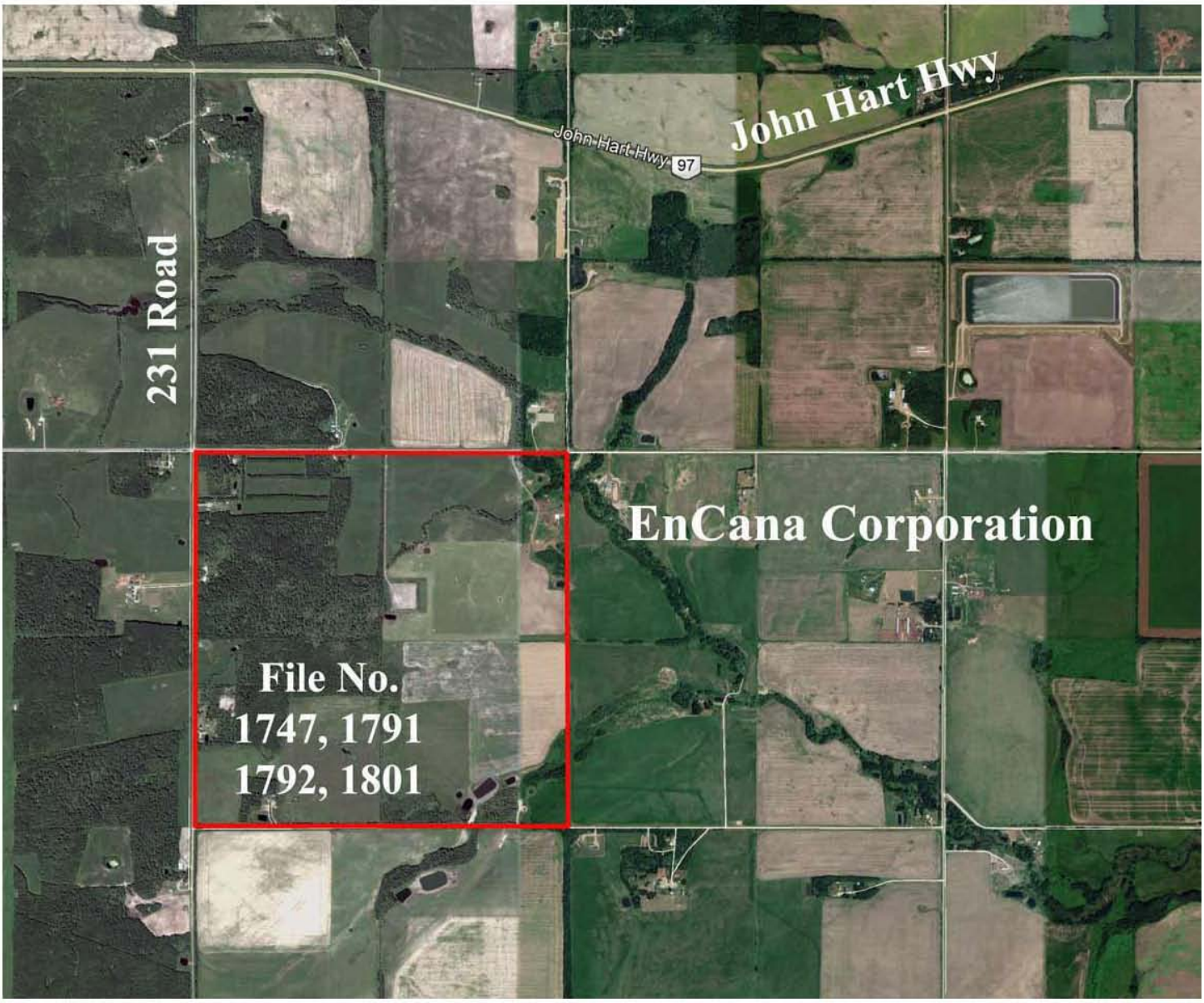
(APPLICANTS)

AND:

Spectra Energy Midstream Corporation

(RESPONDENT)

BOARD ORDER


John Hart Hwy
John Hart Hwy
97
231 Road
EnCana Corporation
File No.
1747, 1791
1792, 1801

Heard by written submissions closing May 10, 2013
Appearances: J. Darryl Carter, Q.C., Barrister and Solicitor, for the Applicants
Rick Williams, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] Spectra Energy Midstream Corporation (Spectra) seeks to have applications brought by James and Keir London pursuant to sections 163 and 164 of the *Petroleum and Natural Gas Act* (*PNGA*) summarily dismissed. Spectra alleges that the Board does not have jurisdiction, or alternatively, that the Londons are barred from seeking the requested relief.

BACKGROUND

[2] James and Keir London own the Lands described as the Northeast ¼ of Section 10 Township 78 Range 16 West of the 6th Meridian Peace River District (the "Lands"). In February 2009, the Londons entered a Right of Way Agreement with Encana Corporation ("Encana") granting Encana access to and use of the Lands for the purpose of constructing, operating and maintaining a pipeline or pipelines in exchange for compensation. The Londons executed a Release and Waiver of damages arising from the exercise of rights under the Right of Way Agreement, specifically with respect to crop loss and fence cuts.

[3] In April 2010, Encana assigned the Right of Way Agreement and Release to Spectra.

[4] In November 2010, Spectra filed an application to the Board seeking right of entry to a portion of the Lands for use as temporary workspace in the construction of a flow line. On December 17, 2010, the Oil and Gas Commission ("OGC") issued a pipeline permit to Spectra authorizing the construction and operation of the Bissette Pipeline on the Lands. On December 23, 2010, the Board issued a Right of Entry Order authorizing Spectra's use and occupation of .94 acres of the Lands for temporary workspace (Order 1694-1), and on January 31, 2011, the Board amended the Right of Entry Order to authorize Spectra access to and use of an additional 3.61 acres of the Lands for temporary workspace (Order 1694-2). The compensation payable to the Londons for Spectra's use and occupation of the Lands for temporary workspace is not yet resolved.

[5] Purporting to exercise its rights under the Right of Way Agreement and the Right of Entry Orders, Spectra constructed portions of the Bissette Pipeline on the Lands in 2011.

[6] In October 2012, the Londons filed an application to the Board pursuant to section 163 of the *PNGA* alleging that Spectra had caused damage to the Lands (file 1792). They also allege that the Bissette Pipeline is not a flow line and that the Board did not have jurisdiction to issue the Right of Entry Orders.

[7] In January 2013, the Londons filed an application to the Board pursuant to section 164 of the *PNGA* alleging that the oil and gas activity approved by the OGC, namely the Bissette Pipeline, is substantially different from the oil and gas activity proposed by Encana during the negotiation of the Right of Way Agreement (file 1801). They ask the Board to amend the Right of Way Agreement to "make it clear that the construction and operation of a major 16" sour gas transmission pipeline on the land is not authorized".

[8] Spectra submits that the Board does not have jurisdiction to determine the Londons' applications or to grant the relief sought, or that the Londons are barred from advancing their claims and the applications should be summarily dismissed.

ISSUES

[9] The issues are to determine whether the Board has jurisdiction in either or both applications, or alternatively, whether either or both applications should be summarily dismissed. As a further alternative, the issue is whether the applications can be amended to clearly fall within the jurisdiction of the Board and more clearly define the substantive issues.

ANALYSIS

File 1792: the section 163 application

[10] With respect to file 1792, Spectra asks:

a) Can the Londons now challenge whether the Bissette Pipeline is a flow line?
b) Are the Londons barred from seeking additional damages from Spectra?

[11] For the reasons that follow, I find that the Londons cannot challenge that the Bissette Pipeline is a flow line if they wish to pursue a claim pursuant to section 163 of the *PNGA* for damages. On the basis that the Bissette Pipeline is a flow line, I find that the Londons are not barred from seeking additional damages from

Spectra. Whether they are entitled to additional damages is a matter for the Board to mediate and, if necessary, ultimately determine on evidence in consideration of the merits of the Londons' application. On the basis that the Bissette Pipeline is a flow line, the Board has jurisdiction to hear the application for damages and it should not be summarily dismissed.

a) Can the London's now challenge whether the Bissette Pipeline is a flow line?

[12] The Board's jurisdiction to issue right of entry orders for an oil and gas activity, to determine the compensation payable for the use and occupation of land for an oil and gas activity, to determine if damages are payable arising from a right of entry, or with respect to any other remedies or orders that the Board is authorized to make under the *PNGA*, does not arise with respect to pipelines if the pipeline is not a flow line (*PNGA*, section 154(2)). Section 154(2) of the *PNGA* says:

> 154 (2) This Part does not apply to the entry, occupation or use of land relating to a pipeline, other than a flow line.

[13] The term "Part" in section 154(2) is a reference to Part 17 of the *PNGA*. None of the provisions of Part 17 of the *PNGA*, therefore, applies to the entry, occupation or use of land for a pipeline that is not a flow line.

[14] In considering Spectra's application for right of entry to the Lands for use as temporary workspace in the construction and operation of a flow line, the Londons did not take issue with Spectra's contention that the Bissette Pipeline was a flow line. The Board accepted that it was a flow line and no appeal was taken from the Board's Right of Entry Orders. Without leave of the Court, the time for seeking judicial review of the Board's orders granting Spectra right of entry to a portion of the Lands for temporary workspace has long since passed. Spectra has entered the Lands and constructed the Bissette Pipeline. The Board has not concluded mediation in an effort at resolving the compensation payable to the Londons arising from Spectra's use and occupation of the Lands for temporary workspace, but is not about to go back and consider at this time whether it had jurisdiction in the first place to grant the Right of Entry Orders.

[15] If the Board did not have jurisdiction to grant the Right of Entry Orders because the Bissette Pipeline is not a flow line, then it would not have jurisdiction in the Londons' application pursuant to section 163 for damages. Section 163 of the *PNGA* provides in part as follows:

> 163 (1) A person may apply to the Board for mediation and arbitration if the person

> (a) is a landowner or occupant of land that is subject to a right of entry, and the exercise of the right of entry causes damage to the land or other land of the owner or occupant or causes loss to the owner or occupant,...
> (b) ...
>
> (2) On application under subsection (1), the board may order the right holder to pay compensation to the landowner ... for damage to the landowner, ... or loss to the landowner, ... as a result of the exercise of the right of entry, including, without limitation, compensation relating to negotiation with the right holder before the application was made to the board.
>
> (3)...

[16] A "right holder" is a person who holds a "right of entry" (*PNGA*, section 141(1)) and a "right of entry" includes a right of way agreement (*PNGA*, sections 141(1) and 142(d)). Spectra is a right holder, and the Londons, as landowners, may apply to the Board for mediation and arbitration if Spectra's right of entry causes damage to their land or loss to them. If the Board finds the alleged loss or damage has occurred as a result of the right of entry, it may order Spectra to pay compensation to the landowners.

[17] However, section 163 falls within Part 17 of the *PNGA*. Therefore, if the application made under section 163 relates to damages caused to the land or loss to the landowner arising from the entry, occupation or use of land for a pipeline that is not a flow line, it does not apply, and the Board does not have jurisdiction to order compensation.

[18] Having brought the application under section 163 alleging that Spectra's right of entry, use and occupation of the Lands for the construction and operation of the Bissette Pipeline has caused damage to the Lands or loss to the landowners, the Londons can not now argue that the Bissette Pipeline is not a flow line. The Board's jurisdiction under section 163 to award compensation arising from Spectra's entry to and use of the Lands to construct and operate the Bissette Pipeline is only triggered if the Bissette Pipeline is a flow line.

b) Are the Londons' barred from seeking additional damage?

[19] Spectra argues the Release and Waiver executed by the Londons bars them from claiming further damages. This is an issue that will have to be determined by the Board in considering the London's application under section 163 of the *PNGA*. The Board will need evidence as to the alleged damage and

loss and will need to hear argument as to whether compensation for that damage is covered by the Release.

File 1801: the section 164 application

[20] With respect to file 1801, Spectra asks:

a) Does the Board have jurisdiction to interfere with permits granted by the OGC?
b) What are the circumstances necessary to trigger the Board's jurisdiction to amend a right of way agreement and are they met in this case?

[21] As to the first question, the Board does not have jurisdiction to interfere with permits granted by the OGC. The Board's jurisdiction is to grant rights of entry for an oil and gas activity and to determine the compensation payable for the use and occupation of land for an oil and gas activity. The permitting of the oil and gas activity itself is within the jurisdiction of the OGC. Any order of the Board cannot change a permit, it can only authorize entry and use of land for an oil and gas activity.

[22] In order to conduct an oil and gas activity on private land, a person requires both a permit from the OGC and either an agreement with the landowner or a right of entry order from the Board. The right of entry must authorize entry to land for the purpose of carrying out the permitted activity. If it does not, then entry to the lands to carry out the permitted activity would not be authorized until either an agreement with the land owner is obtained or a right of entry order authorizing entry for the permitted activity granted. Any order of the Board to amend a surface lease or right of way agreement under section 164 could potentially change the purpose for which right of entry is authorized, but could not change the permit granted by the OGC. In that event, the right holder would need either a new agreement or a new right of entry order to continue to enter and use the land for the permitted activity.

[23] As to the second question, these issues ought properly to be determined upon considering the evidence and arguments made in relation to the merits of the Londons' application. Section 164 of the *PNGA* provides in part as follows:

> 164 (1) A party to a surface lease may apply to the board for mediation and arbitration in respect of either or both of the following:
>
> (a) ...;
>
> (b) a disagreement respecting whether the surface lease should be amended based on a claim by a party that

> the oil and gas activity or related activity as approved by the commission on the land that is subject to the surface lease is substantially different from the oil and gas activity or related activity that was proposed during the negotiation of the surface lease.
>
> (2) ...
>
> (3) On application under section (1)(b), ..., the board may make an order amending the terms of the surface lease from the effective date set out in the order.

[24] A "surface lease" includes a right of way agreement (*PNGA*, section 141(1)). The Londons, as a party to the Right of Way Agreement, allege that the oil and gas activity approved by the OGC, i.e. the Bissette Pipeline, is substantially different from the oil and gas activity that was proposed during the negotiation of the Right of Way Agreement. Spectra argues the Right of Way Agreement authorizes entry to construct and operate a pipeline and the Bissette Pipeline is a pipeline so it is not "substantially different". What constitutes "substantial difference" and whether the Bissette Pipeline is "substantially different" from the oil and gas activity proposed during negotiation of the Right of Way Agreement will be for the Board to determine after hearing the evidence and considering the arguments. Similarly, whether the Board should amend the Right of Way Agreement as a result of any finding of "substantial difference" and the nature of any amendment, will also be for the Board to determine. However, on the basis that Spectra purportedly exercised the rights granted to it in the Right of Way Agreement to enter the Lands and construct the Bissette Pipeline, the Board has jurisdiction to hear the application brought under section 164 of the *PNGA*. That application should not be summarily dismissed without hearing and considering the evidence and arguments of the parties.

[25] I find, however, that the Londons' application should be amended to seek a remedy within the jurisdiction of the Board. The Londons may not ask the Board to amend or alter the OGC's permit or to amend the Right of Way Agreement so as to imply that the OGC's permit does not authorize construction and operation of the Bissette Pipeline. They may, however, ask the Board to amend the Right of Way Agreement to clarify that entry to and use of the Lands is not authorized for the purpose of constructing and operating a 16" sour gas transmission pipeline. Additionally, or alternatively, the Londons may ask the Board to amend the terms of the Right of Way Agreement with respect to the compensation payable for entry to and use of the Lands on the basis that the impact to the Lands and loss to the landowner is different than that contemplated during negotiation of the Right of Way Agreement because the oil and gas activity permitted by the OGC is substantially different from that contemplated during

negotiation of the Right of Way Agreement. The Board can determine whether to amend the Right of Way Agreement as requested upon considering the evidence and the arguments of the parties.

[26] Section 164, as with section 163, is within Part 17 of the *PNGA*. The Board's jurisdiction to grant a remedy under section 164 in relation to a right of way agreement for a pipeline must be in respect of a pipeline that is a flow line.

CONCLUSION

[27] On the basis that the Bisette Pipeline is a flow line, the Board has jurisdiction to consider the Londons' application under section 163 of the *PNGA* for damages. Spectra's argument that the Release and Waiver bars any claim for additional damages may be considered with the merits of the claim and does not go to the jurisdiction of the Board or give cause for summary dismissal of the claim.

[28] Upon amendment of the section 164 application to clarify that the remedy sought is within the jurisdiction of the Board, and on the basis that Bissette Pipeline is a flow line, the Board has jurisdiction to consider the Londons' application under section 164 of the *PNGA* asking the Board to amend the terms of the Right of Way Agreement. Spectra's argument that the oil and gas activity permitted by the OGC is not substantially different from that contemplated during negotiation of the Right of Way Agreement goes to the merits of the claim not the jurisdiction of the Board, and does not give cause for summary dismissal of the claim.

ORDER

[29] As indicated above, the Board has jurisdiction to hear these applications. The applications are referred to a Board mediator.

DATED: May 14, 2013

FOR THE BOARD

Cheryl Vickers, Chair

File Nos. 1792 and 1801
Board Order No. 1792/1801-1Cor

June 26, 2013

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 EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

James London and Keir London

(APPLICANTS)

AND:

Spectra Energy Midstream Corporation

(RESPONDENT)

CORRIGENDUM TO BOARD ORDER

I write this corrigendum to the Board's decision issued May 14, 2013 in response to the Londons' application to reconsider statements made in that decision.

Upon review of the arguments of counsel, I agree that the Board's jurisdiction to hear the application under section 163 of the *Petroleum and Natural Gas Act* arises from the exercise of a right of entry relating to a flowline and an allegation that the exercise of the right of entry caused damage. The Right of Way agreement between the Londons and Encana Corporation was for right of entry to construct and operate a flowline. Spectra purportedly exercised that right of entry to construct the Bissette Pipeline. The Londons allege that Spectra has caused damage in purportedly exercising that right of entry. Therefore, the Board has jurisdiction to hear the application.

The Board's jurisdiction to grant a remedy under section 163, however, will depend on a finding that "the exercise of the right of entry caused damage". If the evidence does not support that there was an "exercise of the right of entry", that there was "damage", and that the exercise of the right of entry "caused" the damage, then the Board's jurisdiction to award a remedy is questionable. So in other words, if the entry was for an unauthorized purpose under the right of way agreement, and that purpose is not for a "flowline", given section 145(2) of the *Petroleum and Natural Gas Act*, the Board may not ultimately have jurisdiction to provide a remedy.

DATED: June 26, 2013

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1803
Board Order No. 1803-1

May 17, 2013

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C. 1996, C. 361 AS AMENDED

AND IN THE MATTER OF
THE NORTH WEST ¼ OF SECTION 33 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

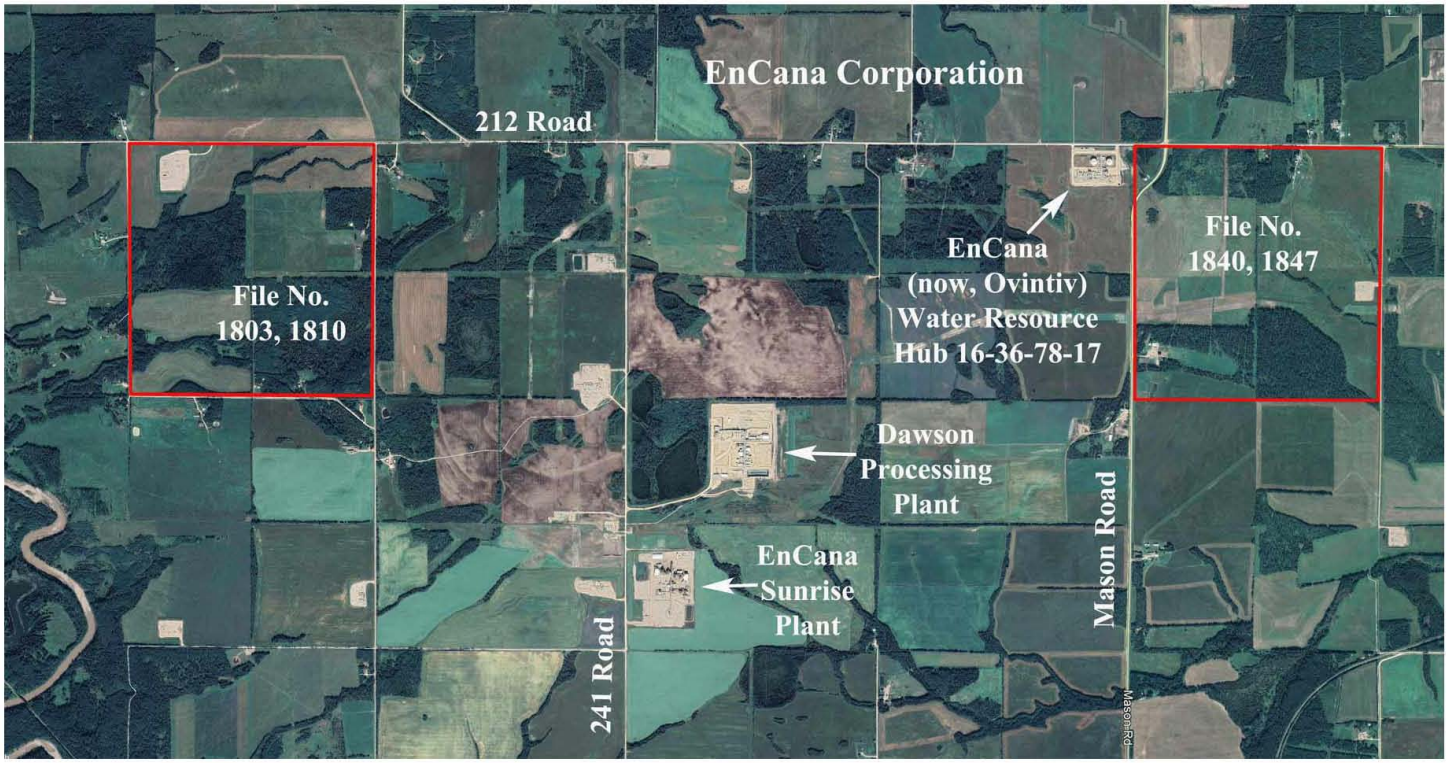
(APPLICANT)

AND:

Leslie Lancelot Dowd and
Perry Burl Piper

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
212 Road
File No.
1803, 1810
File No.
1840, 1847
EnCana
(now, Ovintiv)
Water Resource
Hub 16-36-78-17
Dawson
Processing
Plant
EnCana
Sunrise
Plant
241 Road
Mason Road
Mason Rd

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Lance Dowd and Perry Piper to carry out an approved oil and gas activity, namely to increase the size of an existing lease and to construct and operate additional wells. The Oil and Gas Commission (the "OGC") has issued a permit for Encana's project.

On May 16, 2013, I conducted a mediation attended by L. Dowd, P. Piper and K. Piper and E. Gowman for the landowners and J. Blanch and H. Berscht for Encana. During the mediation the parties discussed Encana's application for a Right of Entry order, and they also discussed the possible terms and conditions.

After some discussion, the parties agreed to the nature of the order and to the terms and conditions.

The Board is satisfied that Encana requires the Right of Entry for an oil and gas activity, as this project involves expanding an existing lease to allow for immediate drilling of a water well and the future drilling of a number of gas wells.

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, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 33, TOWNSHIP 78, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a 28 well padsite.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $10,000 by cheque made payable to the Minister of Finance. All or

part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowners $25,000 as partial payment for compensation.

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: May 17, 2013

FOR THE BOARD

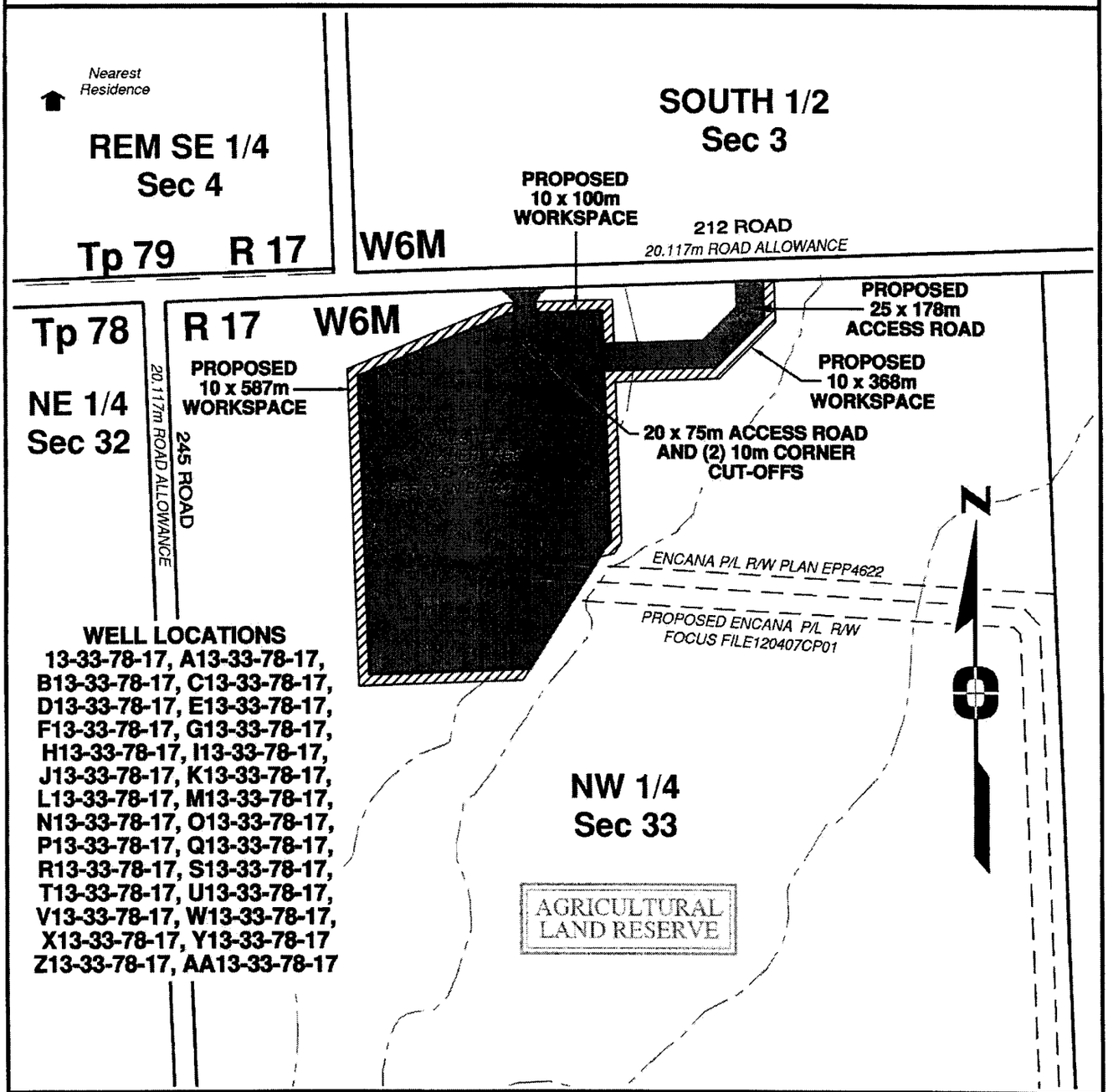
Rob Fraser, Mediator

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Perry Burl Piper and Leslie Lancelot Dowd (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELLSITE AND ACCESS ROAD WITHIN NORTH WEST 1/4 SECTION 33 TOWNSHIP 78 RANGE 17 W6M PEACE RIVER DISTRICT



WELL LOCATIONS
13-33-78-17, A13-33-78-17, B13-33-78-17, C13-33-78-17, D13-33-78-17, E13-33-78-17, F13-33-78-17, G13-33-78-17, H13-33-78-17, I13-33-78-17, J13-33-78-17, K13-33-78-17, L13-33-78-17, M13-33-78-17, N13-33-78-17, O13-33-78-17, P13-33-78-17, Q13-33-78-17, R13-33-78-17, S13-33-78-17, T13-33-78-17, U13-33-78-17, V13-33-78-17, W13-33-78-17, X13-33-78-17, Y13-33-78-17 Z13-33-78-17, AA13-33-78-17

Owner(s): Perry Burl Piper
Leslie Lancelot Dowd
Title No: BB1286473
Parcel Identifier: 014-393-891
Landowner File: S463694
EnCana File(s): S463694/S463780/S464180/S466916 S466917

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 28th day of September, 2012

Harald Riessner, BCLS

Area of Ref Plan EPP4475		
Permanent	2.87 ha	7.09 ac
Temporary	0.00 ha	0.00 ac
Remaining Area		
Permanent	4.09 ha	10.11 ac
Temporary	1.06 ha	2.62 ac
Total	**8.02 ha**	**19.82 ac**

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 120416NP01R1
Ref Dwg: 120416WS01
Drafter: AP

APPENDIX "B"
CONDITIONS FOR RIGHT OF ENTRY

1. **Encana Corporation** will fence the lease and install a gate at approximately the lease entrance.

2. **Encana Corporation** will notify the landowner prior to commencing construction, drilling and completion operations.

3. **Encana Corporation** will notify the landowner of any material changes to our activity on the Lands.

File No. 1810
Board Order No. 1810-1

June 14, 2013

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 WEST ¼ OF SECTION 33 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

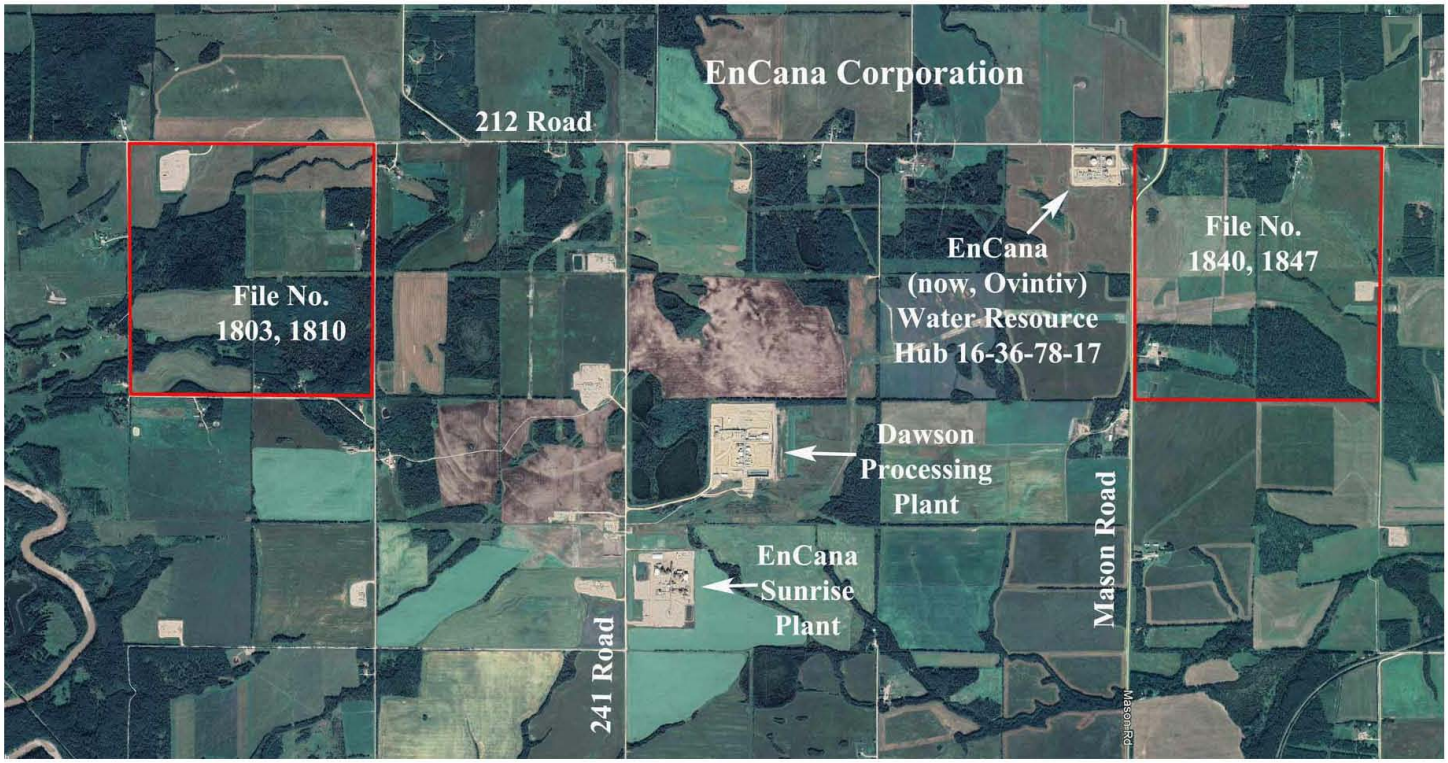
(APPLICANT)

AND:

Perry Burl Piper and
Leslie Lancelot Dowd

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
212 Road
File No.
1803, 1810
File No.
1840, 1847
EnCana
(now, Ovintiv)
Water Resource
Hub 16-36-78-17
Dawson
Processing
Plant
EnCana
Sunrise
Plant
241 Road
Mason Road
Mason Rd

Encana Corporation ("Encana") seeks a right of entry order to complete and maintain three flow on the Lands. The project, approved and permitted by the Oil and Gas Commission (the "OGC"), involves the installation of three flow lines. One will carry natural gas while the others will carry water to and from Encana's gas wells also located on the lands.

On June 10 and June 13, 2013, I conducted a mediation attended by L. Dowd, P. Piper and K. Piper and E. Gowman for the landowner and J. Blanch and H. Berscht for Encana, and B. Sharp for the Board. During the mediation the parties discussed Encana's application for a Right of Entry order, and they also discussed the possible terms and conditions.

After some discussion, the parties agreed to the nature of the order and to the terms and conditions.

The Board is satisfied that Encana requires the Right of Entry for an oil and gas activity, as this project involves installing flow lines to their existing lease on the Lands, and the project has approved by the OGC.

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

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 33, TOWNSHIP 78, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $10,000 by cheque made payable to the Minister of

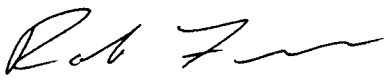
Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $22,000.00 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.

Dated: June 14, 2013

FOR THE BOARD



Rob Fraser, Mediator

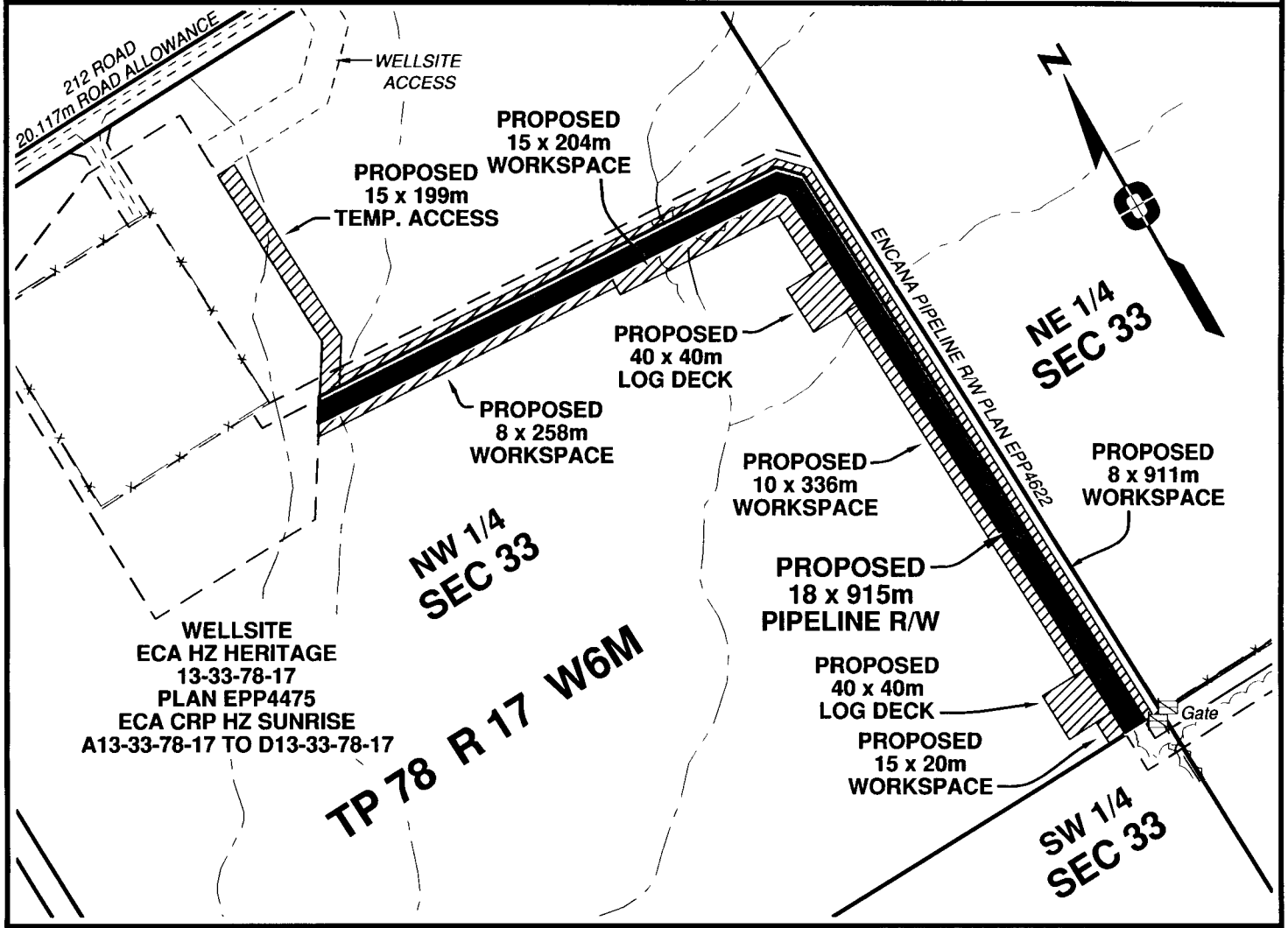
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Perry Burl Piper and Leslie Lancelot Dowd (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY WITHIN
THE NORTH WEST 1/4 OF SECTION 33, TOWNSHIP 78, RANGE 17, W6M
PEACE RIVER DISTRICT

(Associated with Proposed Pipeline R/W from Wellsite 13-33-78-17 to Wellsite 1-34-78-17)



Owner(s): Perry Burl Piper
Leslie Lancelot Dowd

Title No: BB1286473
Parcel Identifier: 014-393-891
Landowner File: S466866
EnCana File(s): S466866

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 3rd day of July, 2012

Adam Brash BCLS

Areas		
Permanent	1.648 ha	4.072 ac
Temporary	2.223 ha	5.493 ac
Total	**3.871 ha**	**9.565 ac**

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 120407NP01R2
Ref Dwg: 120407CP01R2
Drafter: KG

APPENDIX "B"

Conditions for Right of Entry

1. Encana Corporation will notify the landowner of any material changes to its activity on the Lands.

File No. 1810
Board Order No. 1803/1810-2

August 25, 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

THE NORTH WEST ¼ OF SECTION 33 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Perry Burl Piper and
Leslie Lancelot Dowd

(RESPONDENTS)

BOARD ORDER

Heard: May 27 – 29, 2014 in Dawson Creek
Appearances: Shawn Munro, Barrister and Solicitor, for Encana Corporation
Elvin Gowman, for Perry Burl Piper and Leslie Lancelot Dowd

INTRODUCTION

[1] Perry Burl Piper and Leslie Lancelot Dowd (the "Landowners") own land in the Peace River District, near Dawson Creek, namely Northwest 1/4 , Section 33, Township 78, Range 17, West of the 6th Meridian, Peace River District (the "Lands").

[2] Based on an existing surface lease, Encana Corporation ("Encana") operates a multi-well pad site on 7.09 acres of the Lands, consisting of 6.70 acres for the pad site and 0.39 acre for an access road ("Original Lease"). The lease was initially for one gas well but a lease amendment added two additional wells.

[3] Encana applied to construct and operate an well and to expand the well site to accommodate 27 additional wells, , and to construct and operate a pipeline right of way for three flow lines. On May 17, 2013, the Board issued a Right of Entry Order authorizing Encana access to the Lands for the purpose of drilling, completing and operating a 28 well padsite. This Order added 10.11 acres to the Original Lease area for permanent right of way and 2.62 acres for temporary workspace (the "expanded well site"). On June 14, 2013, the Board issued a Right of Entry Order authorizing Encana access to the Lands for the purpose of constructing and operating three flow lines, one to carry natural gas and the others to carry water (the "pipeline(s)"). The pipelines run to and from the expanded well site across the Lands. The Board granted access to 4.07 acres for a permanent pipeline right of way and 5.49 acres for temporary work space.

[4] The parties are unable to resolve the issue of the appropriate compensation for the entry and use of the Lands pursuant to section 162 of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, ch. 361 (the "*Act*"). The Landowners also seek a review of the rent payable under the Original Lease pursuant to section 166 of the *Act.* The parties agreed the effective date of the rent review is August 15, 2012.

ISSUES

[5] The issues are: what is the appropriate compensation to be paid by Encana to the Landowners for the entry, use and occupation of the Lands for the expanded well site and pipelines and what is the appropriate annual rent under the Original Lease as of August 15, 2012?

BACKGROUND

[6] The Lands consist of 163 acres and are located in the Agricultural Land Reserve, approximately 22 kilometers northwest from the City of Dawson Creek. The southern portion is covered by trees with the remainder used for hay and forage production by a farmer. The Landowners do not reside on or farm the Lands.

[7] The Lands have a soil classification of class 4X that limits the agricultural use of the Lands to perennial crops such as forage or hay with some rotation with cereal crops. In August, 2008, the previous landowners entered into a lease with Trident Exploration Corporation, for the drilling and operation of a single well. Trident paid the landowners an initial payment of $14,000 for damages, nuisance and disturbance, signing consideration and annual consideration, and $4,400 per year thereafter. In February, 2011, an amendment was entered into to allow an additional two wells onto the well site with compensation of $14,621.50 in damages, nuisance and disturbance, signing consideration and annual payments of $5,500 per year with $500 per well for the additional two wells. Trident subsequently assigned the Original Lease to Encana.

[8] Ms. Wannamaker of Encana testified that multi-well pad sites require a larger pad area for the additional well head(s). These sites are visited about once a day once it is producing. There is no trucking required or storage tanks on site, therefore, the amount of access required is not significant. The life span of these sites is approximately 15 years.

PRELIMINARY ISSUES

[9] At the start of hearing, the Landowners requested the Board view the Lands. After discussions with the parties, it was agreed that I would visit the property with Mr. Piper and a representative of Encana at the end of the first day of the hearing. I visited the Lands and viewed Encana's operations, but did not walk on the lease area. No evidence was discussed during the site visit other than identifying the well site, access roads, and rights of way. Although viewing the site was of interest, the parties provided no submissions arising from or touching on the visit.

[10] During the course of the hearing, the Landowners attempted to tender an expert witness, Blaine Nicholson, a local realtor to provide an expert opinion on real estate values and marketing. Encana objected. The Board had issued pre-hearing orders for the production of documentary evidence, including expert letters and reports. The Landowners did not file a report or written statement of Mr. Nicholson's expert opinion prior to the hearing. The Landowners submitted they were relying only on his verbal testimony. But, despite pre-hearing conferences, the Landowners did not notify the Board or Encana prior to the hearing, or even, at the start of the hearing of their

intention to call Mr. Nicholson. The Board refused to admit Mr. Nicholson's expert opinion and testimony other than as to facts within his direct knowledge. The Landowners requested that Mr. Nicholson's opinions be admitted and the Board consider any concerns regarding the lack of notification in assigning weight to his evidence. However, Rule 13(3) of the Board's Rules clearly provides that "unless otherwise ordered by the Board, if a party wants to tender the opinion evidence of an expert at an arbitration hearing, the party must deliver the expert's written report to the other parties and to the Board no later than 60 days before the start of the hearing." The Landowners did not comply with this rule or the pre-hearing orders for production of documentary evidence. I found that admitting the evidence would be prejudicial to Encana as they did not have advance notice of the evidence or an adequate opportunity to respond. In addition, admitting this evidence would have likely required an adjournment of the hearing to allow Encana an opportunity to respond, significantly disrupting the hearing process and increasing costs of all parties. Based on these considerations, I ruled Mr. Nicholson's opinion evidence was inadmissible.

[11] At the hearing, I heard from Encana's witnesses, Sherri Wannamaker and Heidi Berscht of Encana, and John Wasmuth and Trevor Sheehan, in support of their expert report. The sole witness for the Landowners was Kane Piper, a local farmer who does not farm the Lands. The Landowners, themselves, did not testify but relied solely on documentary evidence and submissions from their agent.

THE LEGISLATIVE FRAMEWORK

[12] In determining the appropriate compensation to be paid to landowners, the Board awards the equivalent in money for loss or damage sustained as a result of a company's entry, use and occupation of their lands; this compensation does not represent a purchase price or rental of the lands. If the Board orders an amount be paid that exceeds the loss sustained, it no longer provides compensation and exceeds its jurisdiction (*Western Industrial Clay Productions Ltd. v. MAB*, 2001 BCSC 145).

[13] Section 154 (1) of the *Act* sets out factors the Board may consider, including,

(a) the compulsory aspect of the right of entry;
(b) the value of the applicable land;
(c) a person's loss of a 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 one or more 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.

[14] In addition to the legislation, the Board and the courts have developed principles of compensation that apply in determining compensation. I reference the applicable principles below.

COMPENSATION EVIDENCE AND ANALYSIS

[15] Encana relied on an analysis of the compensation factors set out in section 154. The Landowners did not provide an analysis of these specific factors, but instead relied on documentary evidence of other leases and sales of properties from which the Board is expected to extrapolate a rent or value per acre. However, the legislation and case law confirm that an appropriate analysis of compensation is not based solely on a per acre basis. Rather, the Board considers the section 154 factors in determining the appropriate compensation to be paid and determines a global award. Some factors contributing to loss can be quantified on a per acre basis and some, like nuisance and disturbance, cannot and are specific to the circumstances.

[16] In any event, the Board must have evidence of actual, or reasonably foreseeable, loss suffered by the Landowners as a result of the entry to and use of their land. It is notable that the Landowners here did not present any evidence of their use of the Lands or of what loss they have incurred or may reasonably incur as a result of Encana's entry and operations. They do not reside on the Property. They did not testify as to how they presently use, or may foreseeably use, the Lands. They do not farm the Lands but another farmer does. Presumably, the farmer is the party largely suffering loss from Encana's entry and operations and it is his or her use of the Lands and farming operations that are affected, but the farmer did not testify or present any evidence of his or her crop loss or loss of revenue. There is no evidence that the Landowners receive rent or lease payments from the farmer and if so, no evidence as to how the rent received is affected by Encana's use of the Lands. The issue of who has suffered loss was not raised or argued by the parties and Encana is willing to provide compensation to the Landowners based on probable loss, therefore, I will proceed on this basis and determine compensation based on an analysis of the section 154 factors and principles set out in previous case law.

I. Section 154 Factors:

a) The Board may consider the value of the land in determining appropriate compensation;

[17] The value of the land is typically taken into consideration in a one-time payment for an initial entry.

[18] Encana relied on Mr. Wasmuth's report in which he provides an opinion of the per acre market value of the Lands, as of May 17, 2013, and an assessment of loss of use, adverse effects and other damages incidental to the expanded well site and pipeline right of way.

[19] For the permanent right of entry, he determined the market value of the fee simple interest in the Lands based on a highest and best use of continued agricultural production. However, in concluding a value for the temporary work space, he considered the residual rights to the landowners/farmer for these areas as the rights are only granted for short term use during construction activities.

[20] Mr. Wasmuth relied on the sales or transfers of six properties, including the subject in October 2010, that range in adjusted sale price from $706 to $769 per acre. He adjusted two of the sales for motivation as they were non- arm's length transactions, and one of the sales for location and access due to that property's superior location relative to the subject. He did not apply any time adjustments as the market for agricultural land for grazing and/or forage production in the area was relatively stable over the relevant time period. He concluded a market value of the fee simple interest in the Lands at $750 per acre as of May 17, 2013.

[21] In response, the Landowners presented a table setting out details of five sales, including the sale price, $/acre, sale date, property size and legal description, along with a Google Earth map pinpointing the sale properties. No other information was provided, such as the use of the properties, whether the sales were arm's length, motivations of the parties, location information, or whether the sales should be adjusted for differences with the subject. No witness spoke to this evidence and no analysis of the sales was provided. Without this evidentiary foundation and analysis, I can put little weight on this evidence. During submissions, the Landowners argued the subject's land value has doubled in the last four years. However, there is no evidence to support the statement that the market has changed and as such, I cannot rely on this submission.

[22] In comparison, Mr. Wasmuth analyzed sales near the effective date, provided supporting information, and made appropriate adjustments to those sales to determine the market value of the fee simple interest in the Lands. He attended to speak to the report and was cross-examined. Despite issues with the report, such as the subjective nature and lack of support for adjustments, I place greater weight on Mr. Wasmuth's opinion of the market value of the Lands at $750.00 per acre for the permanent rights of entry for the expanded well site and pipelines. For the temporary workspace, I also accept his opinion of value at half of the fee simple value, or $375.00 based on the standard practice of industry and landowners to use 50% of the fee simple interest value.

[23] This results in the first year consideration relative to the expanded well site (10.11 acres) at $750.00 per acre or a total of $7,590 (rounded), with the temporary workspace (2.62 acres) at $375.00 per acre or a total of $990 (rounded). The value of the pipeline right of way area (4.07 acres) is $750 per acre or a total of $3,060 (rounded)and the temporary workspace (5.49 acres) is $375 per acre or a total of $2,060 (rounded).

b) The Board may consider the compulsory aspect of the taking;

[24] The Landowners are faced with two separate rights of entry orders or "takings", one for the expanded well site and the other for the pipeline right of way.

[25] For the compulsory aspect of the taking, the upper limit of compensation is the value of the land; if the landowner receives full value for the land, no additional payment is required for this factor (*Western Industrial Clay Productions Ltd. v. MAB*, supra).Similarly, the Board has said payment of the market value of the land is sufficient to compensate a landowner for the intangible loss of rights, including the compulsory aspect (*Arc v, Miller, supra,)*.

[26] Despite this, I note that some of the agreements provided in evidence, including Encana agreements, additionally compensate for the compulsory aspect of the taking over and above compensation for the market value of the land.

[27] Encana's expert, Mr. Wasmuth, did not specifically address this factor in his report but acknowledged that the Board has previously considered this factor for the initial year of entry and has often considered it accounted for in compensation for the full fee simple value of the land.

c) The Board may consider a person's loss of a right or profit with respect to the land;

[28] This factor is intended to compensate a landowner for the loss of a right or use of the land relating to the entry and operation of the operator.

[29] This award must be based on evidence of actual or reasonably probable or foreseeable loss or damage that can be quantified, not speculative future loss or damage. The Board has repeatedly stated that compensation under the *Act* is only intended to compensate for loss or damage that has actually occurred or is reasonably probable and foreseeable arising out of the company's entry, occupation and use of the surface. *(Arc Petroleum Inc. v. Piper*, MAB Order 1598-2; *Arc Petroleum Inc. v. Miller,* SRB Order 1633). It is not reasonable for the Board to make a finding that loss is reasonably probable and foreseeable without evidence that the loss is likely to occur (*Progress Energy Canada Ltd. v. Salustro*, 2014 BCSC 960).

[30] Mr. Wasmuth identified loss of profit or crop loss resulting from the Landowners' inability to farm and produce crops from the leased areas as well as any severed or inaccessible areas adjacent to the lease sites. Mr. Wasmuth assumed there is added difficulty experienced in the farming operations as a result of having to farm around the lease sites, added equipment operating costs due to additional time involved, additional crop revenue losses and additional input costs due to overlapping required during field operations.

[31] As discussed above, these are losses likely incurred by the farmer and not the Landowners. However, as Encana is willing to pay compensation to the Landowners, the Board will proceed with the determination on this basis.

[32] The Landowners questioned the use of a software program and some of the assumptions used in Mr. Wasmuth's calculations, but they provided no evidence of their own to support different inputs or different conclusions on loss of profit, etc. Despite the Landowners' questioning, the only evidence of loss before me is that provided by Encana and Mr. Wasmuth.

[33] Mr. Wasmuth reviewed the net losses from the Original Lease area of 7.09 acres and the expanded well site of 10.11 acre, and determined the difference as a net loss of profit and adverse effect of $1,198.30.

[34] For the pipeline right of way and temporary workspace, Mr. Wasmuth advised that the forage on the Lands had been cut for hay as of September 2013 as the pipeline construction had not yet commenced, therefore, there was no forage loss for 2013. However, the forage loss was 100% for the 2014 season due to construction and the Landowners will experience reduced forage production for a few years thereafter while the forage crop becomes re-established after re-seeding. With losses in 2014-2017, he estimated net forage losses from the pipeline right of way at $1,540, the pipeline temporary workspace at $2,070, and the expanded well site temporary workspace at $990.

[35] As I have no contrary evidence from the Landowners, I accept these figures.

d) The Board may also consider any temporary and permanent damage from the entry and occupation of the Lands;

[36] This factor reimburses the Landowners for actual damage suffered as a result of the entry.

[37] Encana agreed there is typically some damage, at least temporary, caused to land within well site areas resulting from an entry, occupation and/or use. The damage may

be temporary in nature depending on the production life of the well, soil conservation practices used during site preparation, prevention of spills and reclamation and restoration methods used once production on the site ceases. Mr. Wasmuth says instances of damage to the Lands outside the well site area and pipeline area have not been reported in this instance. However, during the hearing, Encana agreed to pay $1,000 to compensate for snow blown off the temporary workspace onto adjacent Lands.

[38] The Landowners did not present evidence to substantiate a claim for damages resulting from the entry and operations relative to the expanded well site and pipeline right of way or relative to the rent review of the Original Lease. Therefore, based on the lack of evidence to substantiate a claim for damages, I find that there is no compensation to be paid for damages beyond the $1,000 Encana has agreed to pay for blown snow.

e) The Board may consider compensation for severance;

[39] This factor is intended to compensate a landowner where land is severed as a result of the entry and installation such that the landowner either loses the use of the severed land or makes the use of the severed area less profitable (*Helm v. Progress Energy Ltd.*, SRB Order 1634-1).

[40] Mr. Wasmuth explained that the imposition of the expanded well site resulted in a 1.80 acre area being severed from the remainder of the Lands. He included this severed area in calculating crop loss and loss of profit/revenue. He also estimated annual cost of $1,200 to control weeds on the severed area.

[41] In a notation on a Google Earth map provided by the Landowners, there is a notation that outlines three "severance areas" adjacent to the expanded well site. There is no further explanation of this and how it was calculated. Mr. Kane Piper testified for the Landowners. He is a grain farmer in the area though he does not farm the Lands. He provided his opinion that he could not see why anyone would farm those three smaller areas due to the difficulty of getting in and around the areas. However, in cross-examination, he confirmed that he was farming sites with small severed areas, discounting his earlier opinion. I am not sure what the Board is to make of this evidence. The Landowners provided no explanation of how his evidence supports their claims or how his evidence affects compensation. There is no evidentiary foundation for three "severance areas", or evidence of how they were calculated or determined.

[42] Therefore, I find that the amount of the severed area is 1.80 acres. Compensation for this area is included in compensation for other factors, as set out below.

f) The Board may award compensation for nuisance and disturbance from the entry and occupation of the Lands;

[43] A landowner is entitled to be compensated for nuisance and disturbance arising from the operator's entry and use of the lands. Nuisance and disturbance can be tangible or intangible, and is also sometimes referred to as "adverse effect".

[44] In *Merrick, supra.,* the Board defined "tangible" nuisance and disturbance as being objectively quantifiable, such as time incurred by the landowner in dealing with the right of entry, quantifiable equipment cost to working over a piece of land two or more times, or extra time required to work a field because of an installation. "Intangible" nuisance and disturbance is not readily capable of objective quantification, and can include additional stress on the landowner, or the effect of noise, traffic or dust from activities surrounding the entry or operation.

[45] The Landowners presented no evidence of tangible or intangible nuisance and disturbance that they are suffering or may suffer from Encana's entry or operations. They included in their documentary evidence information on prescribed setback requirements from a pipeline right of way, in particular section 76 of the *Oil & Gas Activity Act* and the *Pipeline Crossing Regulation*. However, the Landowners did not explain how this would specifically affect the farming operations and use of their Lands. There is no evidentiary foundation to support any claim on this basis.

[46] Mr. Wasmuth, in his report, indicated that he did not attempt to assess intangible nuisance and disturbance but accounted for tangible nuisance and disturbance attributable to farming around the expanded well site and additional farming costs in his loss of revenue and adverse effect calculations.

[47] He calculated loss of profit (on a net basis) and adverse effect and weed control for the original lease area and the well site expansion area and severed area. He arrived at total net annual losses at $3,250, which includes the Original Lease area ($850) and well site expansion ($1,200). As indicated by the Board in *Salustro, supra.,* the accepted approach in awarding loss of profit or revenue is to award compensation in the form of gross revenue, rather than net revenue (except for specialty crops).

[48] Encana, however, submitted a flat rate for both tangible and intangible nuisance and disturbance should be added to the compensation paid. They suggested $1,000 for the initial nuisance and disturbance for the expanded well site, in keeping with the going rate for this factor, for a total initial compensation for the expanded well site of $10,570 with crop loss of $990 included. Encana also suggested adding $1,000 for continuing nuisance and disturbance to Mr. Wasmuth's estimate of annual losses (based on gross revenue) for the expanded well site for a total of $3,200. With respect to the rent review for the Original Lease area, Encana suggested adding $2,400 annually to Mr. Wasmuth's estimate of total annual losses (based on gross revenue), for a total of

$3,820. This total amount would represent the annual rental payment for the Original Lease area, which is actually less than the current annual rental payment under the Original Lease.

[49] For the pipeline right of way, Encana submitted that $300 should be added for nuisance and disturbance (again based on the going rate) to Mr. Wasmuth's assessment of initial compensation for the right of way and temporary workspace, including lump sum crop losses ($8,730) for a total of $9,030.

[50] In the absence of evidence from the Landowners to substantiate greater payments for nuisance and disturbance, I accept Encana's submissions in this regard as appropriate.

> g) The Board may consider the effect, if any, of one or more other rights of entry with respect to the land, money previously paid for entry, occupation or use, the terms of any surface lease or agreement submitted to the board or to which the board has access, and previous orders of the board;

[51] The Landowners say there should be additional compensation for the multiple rights of entry on the Lands. For the expanded well site, they seek an initial payment of $32,000 based on their lease comparables that range from $1,200 -1,300 per acre and based on the number of additional wells proposed. For the pipeline right of way, the Landowners say they should receive $8,000-10,000 per acre due to the inconvenience caused by the setback requirements, the fact there will be multiple pipelines in the right of way and comparability with compensation awarded for other right of ways. The Landowners provided no breakdown or explanation as to how they arrived at these figures or how the section 154 factors were considered or accounted for. They also provide scatter graph of 1985 oil and gas lease data with a list of 1985 oil and gas lease data. Again, there is no explanation of this evidence is provided. I am left to assume that it is based 1985 oil and gas leases. It breaks down the leases into a $/acre and provides an average $/acre of $542 and a median $/acre of $554. I have no analysis of this evidence, or who compiled and created the data and scatter graph. There was no witness that spoke to this evidence or explained how I am to consider evidence of 1985 leases in my determination of the appropriate compensation in this instance. Without this analysis and supporting evidence, I am not able to give this much weight, if at all.

[52] The Board may consider the terms of any surface lease or pervious Board orders. For both the well site and pipeline right of way compensation, the Landowners provided copies of registered leases from 1978 to 2013, survey plans with no leases attached but notations, aerial photographs of properties with notations, an unsigned offer, and previous Board and court authorities, all to substantiate a rent per acre; this information is summarized in two tables included in the documentary evidence. The Landowners relied, in particular, on a surface lease with Crocotta Energy Inc. on lands owned by the

Steeves, a Bonavista surface Lease for district Lot 3187 owned by Wilderness Ranch, and *Arc v. Miller, supra.*

[53] The Landowners expect the Board to extrapolate a range of rent per acre from this information and pick an award based on this range. However, even if one were to simply make an analysis based on a rent per acre (which as indicated above is inappropriate), the Landowners provided no evidentiary foundation for the comparable leases or analysis of them. There is no evidence of the circumstances involved in the surface leases provided or referenced. There is no evidence on where these properties are located relative to the subject. There is no evidence to show how these properties and use of the properties are similar or comparable to the Lands; for example, are they home quarters, do they have similar farming operations (or are they farmed at all?), what crops are farmed on the lands, are they of similar soil classification etc. Without this information, it is inappropriate to extrapolate a rent per acre and apply it to the circumstances of this case. The evidence must show that either there is a clear pattern of dealings in the area or that the circumstances of the comparable leases are highly similar to the circumstances of the present case. The Landowners have not provided that evidence. Ms. Wannamaker for Encana spoke to some of the Landowners' lease comparables. For example, regarding the Crocotta lease, she spoke to the land agent and was advised that the land was bush/pasture land and the crop loss was based on cereal and oil seed production. The site is a battery site with increased traffic and nuisance and disturbance. Therefore, the circumstances of the Crocotta lease do not appear to be similar to the circumstances here and it would be inappropriate to simply apply that rent per acre to this case.

[54] As for the Landowners' reliance on previous Board decisions, prior Board decisions are not binding. Also, these decisions cannot be used as evidence of the facts in those decisions nor can they prove loss of the Landowners. The loss of one landowner is not automatically the same as the loss of another without some evidence to support that conclusion.

[55] Although Encana submits Mr. Wasmuth's report is the best evidence of appropriate compensation, they submit, in the alternative, that Encana's offers for compensation (tendered into evidence) could be an alternative basis for compensation when viewed in light of their comparable data. Encana's offers are higher than Mr. Wasmuth's conclusions on compensation and higher on a per acre basis than their comparables. Encana's offers include initial payments for the compulsory aspect for both the expanded well site and pipeline, along with an award for the value of land at $1,000 per acre contrary to the evidence of the market value of the lands at $750 per acre and contrary to the principle that an award for the compulsory aspect is not warranted when the Landowner is compensated for the full market value of the fee simple interest.

[56] Encana provided lease comparables for the well site and pipeline rights of way and submitted this evidence supports a clear pattern of dealings. Ms. Berscht, for Encana,

testified on her methodology for gathering comparables; she obtained information for all wells and pipelines from 2010 to 2013 within a 10 km radius of the Lands. She obtained copies of those agreements from various sources. Encana submitted that the most comparable leases are leases of other larger site expansions that are not home quarters. Encana argued that smaller sites are not comparable to the subject as the rent per acre decreases as the leased area increases. In support, Encana relied on a regression analysis provided by Mr. Wasmuth as part of his expert report. Encana argued that many of the Landowners' lease comparables are smaller than the subject and because they have higher consideration per acre due to the smaller size, they are not comparable to the subject.

[57] The Landowners argued that the Encana's lease comparables are largely Encana leases not duly signed and with provisions that misrepresent the law in B.C., particularly with regards to setting an upper limit for compensation on the compulsory aspect, making the leases "void or voidable at law". Therefore, the leases cannot be relied upon. However, no evidence was provided to support the submission that the leases were not enforceable agreements or that the landowners that signed the agreements were misled or were unaware of the law in BC. I am unable to simply dismiss this evidence based only on allegations.

[58] Although there may be some issues with Encana's comparables, they are more reliable as indicative of "going rates" than those provided by the Landowners. Encana has provided supporting evidence to show the comparability of those properties with the subject. The ten leases Encana submits are the most comparable are similarly of larger lease sites with multiple wells and expansions to the sites, and are of cultivated land. The Landowners say if their evidence is insufficient and the Board is not able to make a decision, it is because the government has created a situation where landowners cannot meet the test or burden placed on them to make their claims. The Landowners say the Board can refer to other Board orders and leases in its possession to obtain evidence that it requires. The Board will not be doing research for the parties on its own or attempt to rectify a party or parties' evidentiary deficiencies. The Board can only rely upon the evidence provided by the parties.

h) The Board may consider other factors;

[59] Mr. Wasmuth estimated the additional cost to control weeds on the severed area was $1,200. Encana argued that this should not be included in compensation as their offer on nuisance and disturbance for both the Original Lease and well site expansion area is more than the nuisance and disturbance payments for larger lease sites. However, I find that the cost of weed control of $1,200 is a factor different from nuisance and disturbance and requires separate compensation. The need for weed control is required due to the configuration of the well site and access road and is an additional cost of maintaining the severed area.

[60] Another factor to consider is compensation for additional wells to be drilled on the expanded well site. Encana had offered $2,000 initial payment per additional well and $500 per well annual compensation per additional well. The Landowners seek an additional $1,000 per well annual compensation per additional well. A review of the leases suggest a "going rate" of $1,000 - $2000 initial compensation per additional well and a range of $250-$500 per well annual compensation for additional wells. I accept that Encana's offer for additional wells is within that range.

II. Rent Review Application:

[61] 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)).It is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing use of the lands. In a 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).*

[62] 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.

[63] Finally, in an application for rent review, the applicants, or the Landowners in this case, have the onus to establish ongoing prospective losses and to establish that an increase in the annual rent is warranted (*Progress Energy Canada Ltd. v. Salustro,* 2014 BCSC 960*).*

[64] The Landowners submitted that the appropriate compensation for the Original Lease site is $1,350 per acre based on comparables provided, $2,000 for initial compensation for additional wells and $1,000 per additional well for annual compensation. The Landowners rely on the rent per acre set out in their lease comparables and in the Board's decision in *Arc v. Miller*, *supra.*

[65] The Landowners have not discharged their onus of proof in establishing ongoing prospective loses or in establishing that an increase in rent is warranted. As indicated above, the Landowners relied solely on lease and sale comparables, and past Board decisions, with no evidentiary foundation or supporting information such that I am unable to rely upon that evidence. They relied on past Board decisions to set compensation rates, however, the evidence that was before the Board in those decisions is not before me nor is there any evidence that the circumstances of those

decisions are similar to the circumstances here. The Landowners presented no evidence on how Encana's operations have affected their use of the Lands or of actual or reasonably probable or foreseeable loss resulting from the operations. I have no evidence to consider any change in the value of money since the date of the Original Lease or last renewal. As for the change in the value of land, Encana provided some evidence there has been no change in use or value of the Lands since the transfer of the Lands to the Landowners in 2010.

[66] Therefore, I dismiss the Landowners' application for an increase to the annual rent under the Original Lease. The parties to the Original Lease agreed to the compensation set out in the Original Lease, and I find that the rental payment should remain unchanged.

III. Global Review of Compensation:

[67] As indicated above, compensation under the *Act* is for loss or damage sustained as a result of a company's entry to, and use and occupation of a landowner's lands (*Western Clay, supra.*). It has been a struggle to determine the appropriate compensation due to the lack of evidence provided from the Landowners, in particular, the lack of evidence of their actual or reasonably foreseeable and probable loss. Due to this, I am left to try to determine compensation based on the evidence before me, some of which, such as nuisance and disturbance, is arbitrary and some of which is based, not on evidence of loss, but on the willingness of Encana to pay the Landowners amounts comparable to those paid to other landowners. As indicated by the Court in *Salustro, supra.,* the Board operates in the context of a system of administrative justice where reviews of its decisions are governed by the *Administrative Tribunals Act* and the Board's decision can be set aside if there is insufficient evidence to support it.

[68] Applying my findings above in relation to the section 154 factors, the Landowners are entitled to the following compensation:

Original Lease (7.10 acres): There is no change to the rent payable as of August 15, 2012.

Expanded Well site (10.11 acres): Initial one-time consideration for the value of the land (which forms the upper limit for the compulsory aspect of the taking):

Permanent entry:	$750.00 x 10.11 acres = $7,590
Temporary workspace:	$375.00 X 2.62 acres = $990
Crop loss (temporary workspace):	$990
Damages (snow blown onto adjacent land):	$1,000
Nuisance and Disturbance:	$1,000
Total Initial Payment:	**$11,570**

Annual payment for the expanded well site:

Annual loss:	$2,200
Nuisance & Disturbance:	$1,000
Weed control:	$1,200
Total: Annual Payment on expanded well site:	**$4,400**

Additional drills:

Initial payment:	**$2,000 per drill** as the additional wells are drilled
Annual compensation:	**$500 per well** as each additional well is drilled

Pipeline Right of Way: Initial one-time compensation:

Value of the permanent right of way:	$750 x 4.07 = $3,060
Value of temporary workspace:	$375 x 5.49 = $2,060
Nuisance & Disturbance:	$300
Crop Loss on right way:	$1,540
Crop loss on temporary workspace:	$2,070
Total right of way compensation:	**$9,030**

[69] Following consideration of the enumerated factors, the Board must step back and consider whether the award in its totality is appropriate compensation, as there may be cases where the sum of the parts exceeds, or falls short, of proper compensation *(Scurry Rainbow Oil v. Lamoureux* [19850 BCJ No. 1430 (BCSC)).

[70] Stepping back and reviewing the totality of the compensation for the expanded well site and the pipeline right of way, I find the compensation above falls short when compared to Encana's lease comparables. When reviewing the ten leases that Encana says are most comparable (leases of similar larger leases with well site expansion), some of the leases disclose that Encana pays a sum of $500 per acre for the compulsory aspect of the taking (to a maximum of $5,000) plus the value of the land in the initial, one-time compensation award. The other leases and leases from other operators do not disclose whether the initial payment includes awards for both the compulsory aspect and the market value of the lands. However, Encana's offer to the Landowners included both awards. Therefore, contrary to the principle that the market value of the land represents the upper limit of compensation, Encana's practice, at least in some instances (including this one) appears to be to allow compensation for both the compulsory aspect and the market value of the land. Therefore, for both the expanded well site and pipeline right of way, I find appropriate compensation should include a further award for the compulsory aspect of the taking at $500 per acre to a maximum of $5,000 in line with what appears to be Encana's practice. For the expanded well site,

the initial compensation should be increased by $5,000, for a global award of $16,570 plus $2,000 for each additional well drilled and annual rent of $4,400 to be increased by $500/year for each additional well drilled. For the pipeline right of way, compensation should be increased by $2,035 for a global award of $11,065.

[71] The result of my determination is that the Landowners are entitled to compensation that is less than what they were seeking and even less than what Encana offered. This result may be distressing to them, however, at arbitration, the Board's hands are tied by legislation, binding case law, and the evidence, or, in this instance, the lack of evidence, before it.

ORDER

[72] For the rent review period commencing August 15, 2012, there is no change in the annual rent payable under the Original Lease.

[73] For the expanded well site, the Landowners are entitled to an initial payment of $16,570 along with initial compensation of $2,000 per well for additional wells as they are drilled. Encana shall pay annual rent of $4,400 increasing by $500 per well per year for each of the additional wells drilled. Encana's partial payment of $25,000 made pursuant to the Board's order of May 17, 2013, shall include the initial payment and annual rental payments until the partial compensation is depleted. Once the partial compensation is depleted, Encana shall continue to pay annual rent as set out above.

[74] For the pipelines, the Landowners are entitled to initial payment of $11,065. As the partial payment to the Landowners of $22,000 made pursuant to the Board's order of June 14, 2013, exceeds the Landowners' entitlement, the Landowners shall forthwith pay to Encana the difference of $10,935.00.

DATED: August 25, 2014

FOR THE BOARD

Simmi Sandhu, Vice Chair

File No. 1815
Board Order 1815-1

February 18, 2014

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 8, TOWNSHIP 79, RANGE 17, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

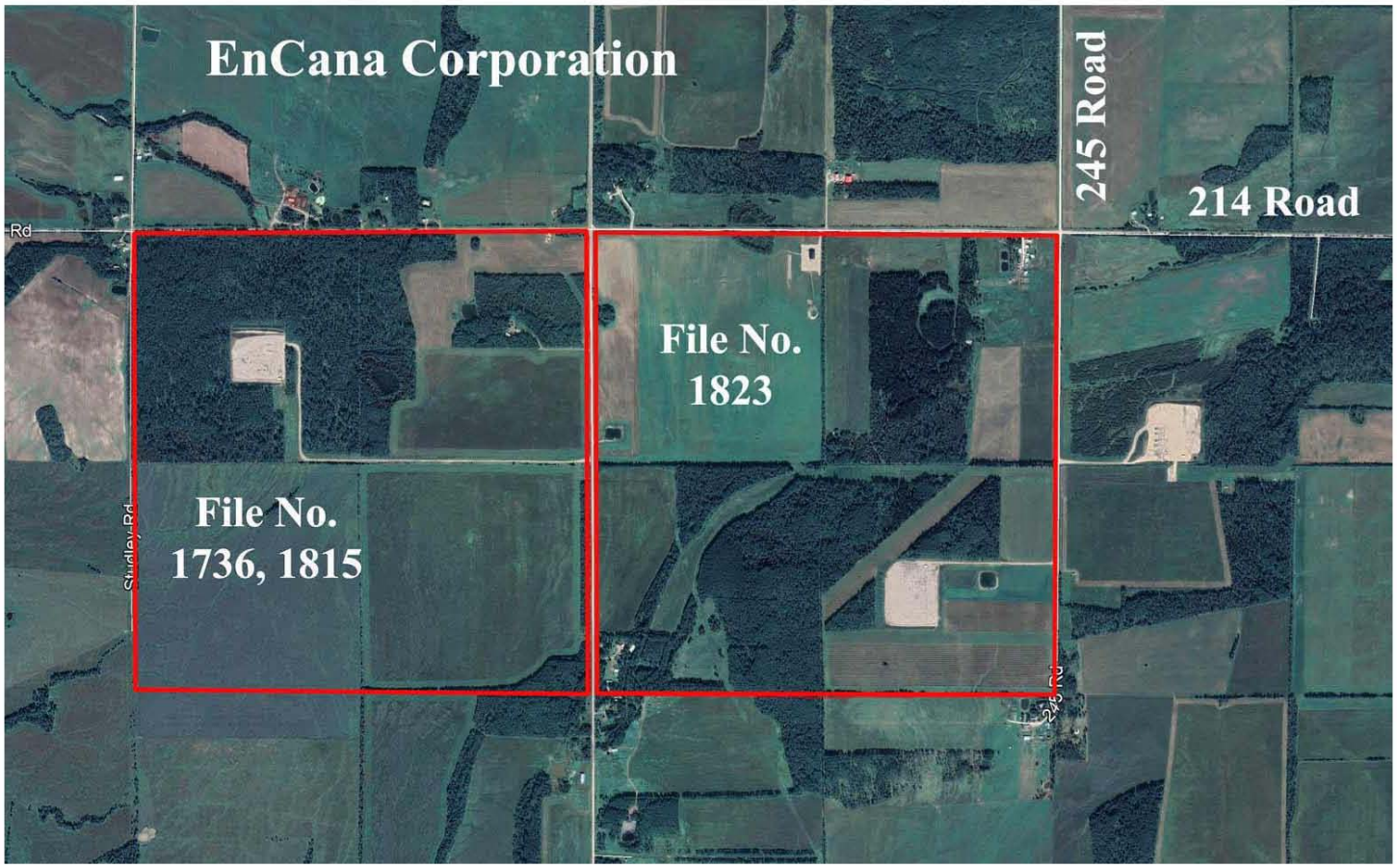
APPLICANT

AND

EILEEN FALCK, PAUL JUSTIN POIRRIER, TIMOTHY JOHN POIRRIER, MAXIME JAMES PETER POIRRIER

RESPONDENTS

BOARD ORDER


EnCana Corporation
245 Road
214 Road
File No.
1823
File No.
1736, 1815

Heard by telephone conference:	December 2 and 13, 2013
Appearances:	Janaya Flower, Sheri Wannamaker, Heidi Berscht, Jeffery Wittmann, Eileen Falck, Max Poirrier
Mediator:	Rob Fraser

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

1. Upon payment of the amounts set out in paragraph 3 below, Encana Corporation shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 8, TOWNSHIP 79, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. Encana Corporation's Right of Entry shall be subject to the terms and conditions of the Oil and Gas Commission report dated April 30, 2013 attached hereto as Appendix "B" and forming part of this Right of Entry Order and the *Oil and Gas Activities Act* [S.B.C. 2008] c. 36, as amended and the *Environmental Management Act*, [R.S.B.C. 1996] c. 118, as amended, and shall also be subject to the terms and conditions set out in Appendix "C".

3. Encana Corporation shall pay to the Respondents as payment for compensation the amount of CDN$10,000.00 representing the first year's initial payment determined as follows:

a.	Compulsory Aspect of the right of entry:	$1,323.00
b.	Value of the applicable land:	$2,646.00 ($1000/acre)
c.	Compensation for Temporary Workspace	$343.50
d.	Compensation for nuisance and disturbance from the right of entry:	$150.00 ($50/hour)
e.	Other factors:	
	i. Damages for Pipeline – i. Timber Loss ($2,500/ha x 1.349 ha total area):	$ 3,372.50

ii. Legal fees, disbursements
And other expenses: $2165.00

The initial payment of $10,000 shall be paid in trust to the solicitors for the Respondents. All subsequent payments, if any, shall be made jointly to the Respondents, at a single address to be provided by them to Encana.

4. Nothing in this Order operates as a consent, permission, approval, requirement, direction or authorization to Encana Corporation of a matter within the jurisdiction of the Oil and Gas Commission, Environment Canada or the British Columbia Ministry of the Environment.

5. Each landowner represents that he or she is a non-resident of Canada within the meaning of the Income Tax Act (Canada) and any payment made by or on behalf of Encana Corporation to the landowner under this Right of Entry Order will be made net of any deduction or withholding as required by the Income Tax Act (Canada) or any other applicable law.

DATED: February 18, 2014

FOR THE BOARD

Robert Fraser, Mediator

APPENDIX A 1815-1

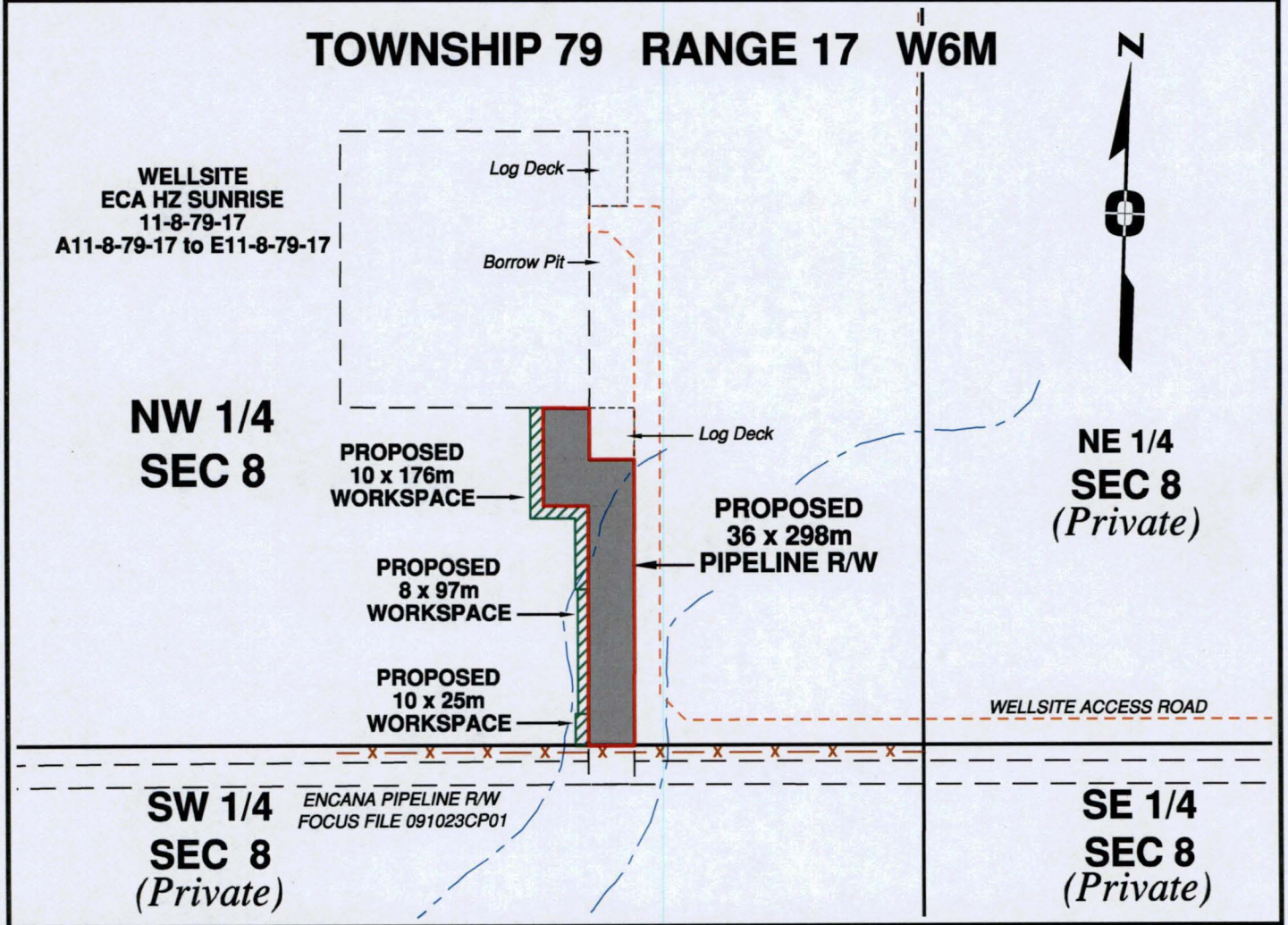
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Eileen Marie Falck, Paul Justin Poirrier, Timothy John Poirrier and Maxime James Peter Poirrier (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY WITHIN
THE NORTH WEST 1/4 OF SECTION 8, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 11-8-79-17 to Wellsite 12-10-79-17)



Owner(s):	Eileen Marie Falck
	Paul Justin Poirrier
	Timothy John Poirrier
	Maxime James Peter Poirrier
Title No:	Y6390
Parcel Identifier:	004-163-842
Landowner File:	S455731
EnCana File(s):	S455731

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 24th day of April, 2012.

Adam Brash, BCLS

Areas		
Permanent	1.071 ha	2.646 ac
Temporary	0.278 ha	0.687 ac
Total	**1.349 ha**	**3.333 ac**

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

Focus Job No:	091022NP01R3
Ref Dwg:	091022CP01R4
Drafter:	KG

APPENDIX B
1815-1
Scott Land

BC OIL & GAS COMMISSION

April 30, 2013

EnCana Corporation
P.O. Box 2850
500 Centre Street SE
Calgary, Alberta
T2P 2S5

Attention: EnCana Corporation

RE: Pipeline Permit

Date of Issuance: April 30, 2013
Commission File No: 9704268
Job No.: 006880120-001
Project Number: 000023011
Segment 001 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 002 From DLS: 12-10-79-17 To DLS: 11-08-79-17
Segment 003 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 004 From DLS: 12-10-79-17 To DLS: 11-08-79-17

PERMISSIONS

1. The BC Oil and Gas Commission ("The Commission"), under *section* 25(1) of the *Oil & Gas Activities Act*, hereby permits the holder to construct and operate a pipeline for the purpose of conveying petroleum, natural gas or water, subject to the following conditions, any applicable exemptions and authorizations:

   a. Piping & Instrumentation Diagram(s), STN1442C Revision 1A1, and STN1442B Revision 1A1, dated October 16, 2012, and STN1784E Revision 2A2, and STN1748F Revision 2A2, dated June 20, 2012, submitted by EnCana Corporation, and

   b. The permissions and authorizations granted under this permit are limited to the area described in construction plan number 091022CP01R4, sheet 1 of 1, revision 4, dated April 24, 2012 by FOCUS Surveys as submitted to the Commission in the permit application dated September 20, 2012.

CONDITIONS

1. Within 60 days of the completion of the clearing phase of the activity permitted, the permit holder must submit to the Commission a Post construction plan as an ePASS shape file identifying the location of the total area actually cleared under this permit.
2. If artifacts, materials or other thing protected under section 13(2) of the *Heritage Conservation Act* are noted during any phase of ground-disturbing activities, the permit holder must:

   c. immediately cease all work in the vicinity of these artifacts, features, materials or things, and

   d. as soon as practicable, contact the Commission;

   unless the permit holder holds a permit under section 12 of the *Heritage Conservation Act* in respect of that artifact, material or thing.

3. An Archaeological Impact Assessment is required for the proposed development area prior to any development activities taking place.

   If an archaeological site is recorded as a result of this assessment, a report must be submitted immediately to the Oil and Gas Commission and all mitigation measures must be approved by OGC archaeology staff prior to the start of construction.

   If no archaeological site is recorded during this assessment, an AIA report is still required and must be submitted to the OGC as soon as possible as per the Archaeology Process Guidelines.

   The Permit Holder must cease disturbance activities and immediately notify the Oil and Gas Commission in the event that cultural heritage materials or features are encountered during development.

   In the event a heritage site, heritage object, or any other feature, place or material that may contain historical or archaeological value as defined by the Heritage Conservation Act [RSBC 1996] Chapter 187 is encountered, the Permit Holder must cease disturbance activities and immediately notify the Oil and Gas Commission.

4. The Permit Holder is to provide the Schedule B Site Assessment to the Oil and Gas Commission two years from the date of construction.

5. The ancillary sites associated with this application are not authorized in this Permit.

6. The permit holder must ensure that emergency response plans prepared for the operation of pipeline segments 3 and 4 include identification for response personnel of (1) the dugouts on SW 9-79-17 W6M as specific values at risk of contamination and, (2) the drainage connectivity between the pipeline right of way and the dugouts.

7. Prior to the commencement of any activities relating to pipeline segments 3 and 4 under this permit, and on an ongoing basis (according to a schedule determined by a qualified professional) during the period when pipeline segments 3 and 4 are available for use, the permit holder must:

   1.Have the water in each of the water source dugouts located on SW 9-79-17 W6M sampled under the direction of a qualified professional and analyzed by an accredited laboratory facility using standard and accepted field sampling and analyzing procedures; and

   2.Have the completed results and analysis of the test provided directly to owner of SW 9-79-17 W6M or the owner's authorized representative and, upon request, to the Commission.

   Each analysis referenced above will include:

   a. Basic water chemistry, including anions, cations, pH, alkalinity, SO4;

   b.BTEX (benzene, toluene, ethylbenzene, and xylene);

   c.Dissolved methane and higher chain hydrocarbons, if such substances are detected; and

   d.Isotope analysis of dissolved methane, if methane is detected.

   The obligation to conduct the water sampling and analysis referenced above is subject to the permit holder being provided with the written consent of the owner of SW 9-79-17 W6M. Further, the water sampling of the water source dugouts located on SW 9-79-17 W6M must only be carried out with the permission of the owner of SW 9-79-17 W6M.

ADVISORY GUIDANCE

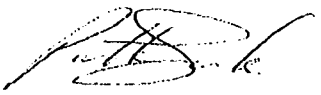
1. This permit expires two years from the date of issuance as per section 8 of the *Oil and Gas Activities Act* General Regulation if the permit holder has not begun the construction of the pipeline permitted unless the permit has been extended.

2. As required by section 4(1)(a) of the Pipeline Regulation, the permit holder must notify the Commission at least 2 days before beginning construction of a pipeline of its intention to begin construction.

3. As required under section 6 of the Pipeline Regulation, the permit holder must give at least 48 hour notice to the owner of or authority responsible for the public place, highway, road, railway underground communication line, power line or pipeline before beginning the work unless the permit holder and the owner or authority have agreed that the notice is to be provided by another time.

4. As required by section 3 of the Pipeline Regulation, the permit holder must design, construct, operate and maintain in accordance with CSA Z662.

5. As required by section 4(1)(b) of the Pipeline Regulation, the permit holder must notify the Commission at least 2 days before beginning a pressure test of a pipeline of its intention to begin testing.
6. As required by section 4(1)(c) of the Pipeline Regulation, the permit holder must notify the Commission before beginning operation of a pipeline of its intention to begin operation.
7. As required by section 4(2) of the Pipeline Regulation, the permit holder must submit to the Commission the pipe and component specifications and the as-built drawings for the pipeline within 3 months after completion of construction of a pipeline.
8. As required by section 24(1) of the *Oil and Gas Act* General Regulation, the permit holder must complete the surveying and posting of the pipeline right of way within 16 months after completing the pipeline.



Patrick Smook
Authorized Signatory
Commission Delegated Decision Maker

pc: Scott Land & Lease Co. Ltd.
OGC: 9704268
WorkSafe BC

Appendix "C"

Conditions for Right of Entry

1. **Encana Corporation** will notify the landowner of any material changes to our activity on the Lands.

File No. 1823
Board Order No. 1823-1

April 11, 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
THE SOUTH WEST ¼ OF SECTION 9 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

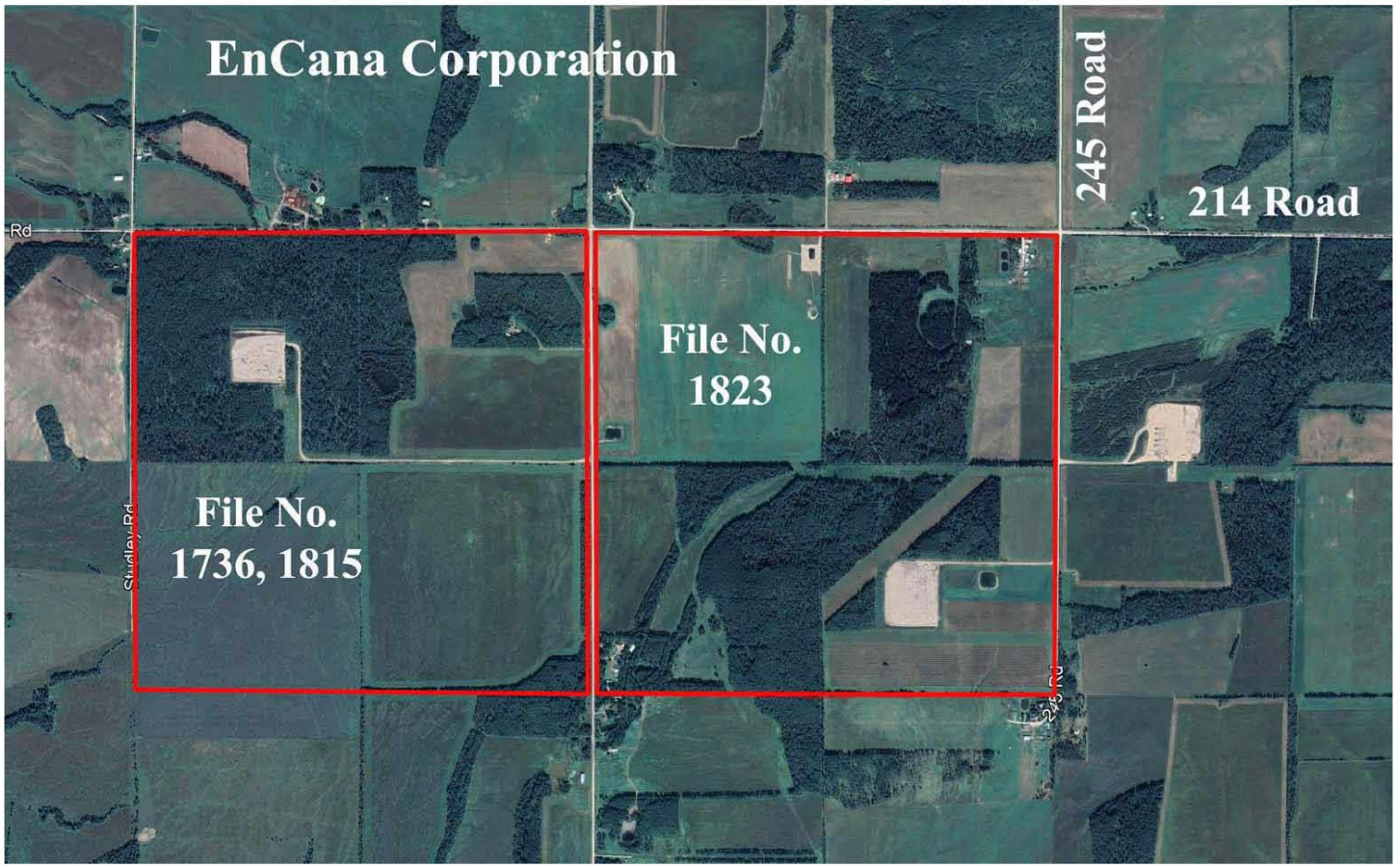
(APPLICANT)

AND:

Wesley Boris Ilnisky and
Laurene Mabelle Ilnisky

(RESPONDENTS)

BOARD DECISION


EnCana Corporation
245 Road
214 Road
File No.
1823
File No.
1736, 1815

Heard by written submissions closing March 17, 2013
Lars H. Olthafer, Barrister and Solicitor for Encana Corporation
Wesley and Laurene Ilnisky on their own behalf

INTRODUCTION AND ISSUE

[1] Wesley and Laurene Ilnisky own the Lands described as the South West ¼ of Section 9 Township 79 Range 17 West of the 6th Meridian, Peace River District (the Lands). The Oil and Gas Commission (OGC) granted a Pipeline Permit to Encana Corporation (Encana) for the construction, installation and operation of a pipeline, in four segments, across the Lands (the Pipeline). As Encana and the Ilniskys have not been able to agree to the terms of Encana's entry to the Lands or the compensation payable to the Ilniskys arising from Encana's entry to and use of the Lands, Encana applied to the Board for a right of entry order and for mediation and arbitration services to assist in determining the compensation payable.

[2] The Ilniskys dispute the Board's jurisdiction to grant the requested right of entry order on the grounds that the Pipeline, or at least three segments of it, is not a "flow line" within the meaning of the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act*.

[3] The issue for this decision is whether the Board has jurisdiction to grant the right of entry order and provide mediation and arbitration services to settle or determine the compensation payable to the Ilniskys for the entry. As the Board only has jurisdiction with respect to pipelines that are "flow lines", the issue is whether the Pipeline is a "flow line".

FACTS

[4] The Pipeline Permit authorizes the construction and operation of a pipeline in four segments for the purpose of conveying petroleum, natural gas or water as follows:

Segment 001 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 002 From DLS: 12-10-79-17 To DLS: 11-08-79-17
Segment 003 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 004 From DLS: 12-10-79-17 To DLS: 11-08-79-17

[5] Segment 001 will transport produced natural gas and Segment 002 will transport fuel gas. Segments 003 and 004 will transfer produced water. Segment 003 is more specifically described as a hydraulic fracturing water supply pipeline and Segment 004 is more specifically described as a hydraulic

fracturing water return pipeline. I will refer to all four segments, collectively, as the Pipeline, and to Segments 003 and 004 collectively as the "Water Pipelines".

[6] The Water Pipelines are required infrastructure for a produced water recycling scheme in the area northwest of Dawson Creek. The purpose of the Water Pipelines is to transport produced water between Encana's Water Resources Hub (the Water Hub) to be located at 16-36-078-17 W6M and storage tanks to be located at well sites in the Farmington area for use in hydraulic fracturing stimulation operations. The Water Pipelines will transport produced water from three sources, described below, namely: Cadotte Produced Water, Montney Produced Water, and Frac Water Flowback.

[7] Cadotte Produced Water is water produced from a vertical well located at 14-35-078-17 W6M and three horizontal wells located at A13-33-078-17 W6M, 9-34-078-17 W6M, and A9-34-078-17 W6M for use in hydraulic fracturing operations. Upon completion of the Water Hub, Cadotte Produced Water will be transmitted by pipeline to the Water Hub, where it will be filtered, injected with a scale inhibitor chemical and stored.

[8] Montney Produced Water is water that has been separated from the production of gas, water and condensate at gas wells. The liquid components of this production are transported by pipeline from compressor stations located at 09-27-079-17 W6M and 01-34-078-17 W6M to the Water Hub for further treatment, including removal and recovery of condensate and dissolved natural gas to create the separated water, or Montney Produced Water.

[9] Cadotte Produced Water will be blended with Montney Produced Water and Frac Water Flowback. A hydraulic fracturing water supply pipeline, of which Segment 003 is a part, will transport some of these combined volumes to well sites for hydraulic fracture stimulation operations. The produced water blend delivered from the Water Hub (Frac Water) will be temporarily stored in tanks at a given well site until required for hydraulic fracturing stimulation operations. The well site storage tanks will be connected to the well head by hydraulic fracturing equipment, and the Frac Water will be used in the hydraulic fracturing stimulation operations of the targeted natural gas reservoir.

[10] While much of the Frac Water will remain in the natural gas reservoir, some will return to the surface along with other produced fluids during the well cleanup and production testing operations (the Frac Water Flowback). The Frac Water Flowback will again be temporarily stored in tanks at the well site, and then will be pumped from the well site storage tanks back to the Water Hub through a hydraulic fracturing water return pipeline, of which Segment 004 is a part. At the Water Hub, the Frac Water Flowback will be treated, recycled and blended with the Cadotte Produced Water and the Montney Produced Water for ultimate delivery to well sites for hydraulic fracture stimulation operations.

LEGISLATION

[11] The *Oil and Gas Activities Act* provides the following definitions:

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line
>
> "pipeline" means, ...piping through which any of the following is conveyed:
>
> a) petroleum and natural gas;
> b) water produced in relation to the production of petroleum and natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;
> c) solids;
> d) substances prescribed under section 133(2)(v) of the Petroleum and Natural Gas Act,
> e) other prescribed substances,
> and includes installations and facilities associated with the piping, but does not include
> f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,
> g) a well head
> h) anything else that is prescribed
>
> "facility" means a system of vessels, piping, valves, tanks and other equipment that is used to gather, process, measure, store or dispose of petroleum, natural gas, water or a substance referred to in paragraph (d) or (e) of the definition of "pipeline"

[12] These definitions must be interpreted harmoniously with the scheme and objects of the legislation and the intention of the legislature in accordance with the modern rule of statutory interpretation.

ANALYSIS

[13] The Ilniskys argue that water lines are clearly defined as pipelines. They argue that the legislature purposefully distinguishes flow lines from pipelines such as water lines. I agree that the legislature has created two classes of pipelines – one class over which the Board has jurisdiction and one class over which the Board does not. The distinction between a pipeline and a flow line, however, is not based on what is conveyed within the pipeline as suggested by the Ilniskys, because a "flow line" is a subset of pipeline, or a type of pipeline. To be a "flow line" the disputed installation must first be a "pipeline". As a pipeline may convey water produced in relation to the production of natural gas, a "flow

line" may also convey water produced in relation to the production of natural gas. It is not the fact that a pipeline conveys water produced in relation to the production of natural gas that distinguishes it from a flow line.

[14] If a pipeline conveys a substance not identified in subsections (a) to (e) of the definition of pipeline, for example fresh water drawn from a lake or stream, the pipeline would not be a "pipeline" within the meaning of the *Petroleum and Natural Gas Act* or the *Oil and Gas Activities Act*, and could not, therefore be a "flow line" within the meaning of either of those Acts. But if it conveys a substance set out in subsections (a) to (e) of the definition of pipeline, and is not otherwise excluded by subsections (f) to (h) of the definition, it is a pipeline and could also be a "flow line".

[15] To be a "flow line", the pipeline or its respective segments must be a pipeline "that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line". It must 1) connect a well head to a facility, and it must 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[16] Dealing first with the second requirement of the definition, the Ilniskys submit that the definition contemplates the transfer of the conveyed substance to or from a transmission, distribution or transportation line. They argue that the Water Pipelines have no such purpose and, therefore, cannot be flow lines. Encana argues that the definition does not require the transference of a conveyed substance to or from a transmission, distribution or transportation line, but that the use of the word "precede" refers to the oil and gas sector (i.e. upstream versus midstream/downstream) in which each pipeline is situated. With reference to the Board's decision in Murphy *Oil Company Ltd. v. Shore*, Order 1745-1, and the former Minister's explanations during the legislative debates on these provisions, Encana submits the legislative intent is to give the Board jurisdiction over pipelines and infrastructure comprising the upstream or gathering system, but not over pipelines comprising the downstream distribution, transmission or transportation system. That is the interpretation adopted by the Board in *Murphy Oil* upon an analysis of the legislative scheme and with reference to the legislative debates. The Ilniskys' arguments in this case do not convince me otherwise. The definition of "flow line" does not contemplate that the flow line operates to transfer a conveyed substance to a transmission, distribution or transportation line. It contemplates only that that the flow line precedes the transfer of the conveyed substance to or from such a line.

[17] The definition of "flow line" carves out a subset of pipeline depending on the location of the pipeline. The former Minister equated "flow lines" with the gathering or upstream part of the oil and gas system. The language of the definition is reasonably capable of that interpretation. The upstream or gathering part of the system connects the well heads with scrubbing, processing or storage facilities, but does not include the transmission, distribution, or transportation of

substances beyond those facilities. The gathering system "precedes" or is located "upstream" or in advance of the transfer of substances to or from transmission, distribution, transportation lines "downstream" of, or beyond, those facilities.

[18] Segment 001 is piping through which natural gas is conveyed. It is, therefore, a pipeline in accordance with subsection (a) of the definition. It connects a well head to a processing facility and precedes the transfer of the natural gas to a transmission, distribution or transportation line. The Ilniskys do not dispute that this segment is a flow line. I find Segment 001 is clearly a "flow line".

[19] Segments 003 and 004 are piping through which water produced in relation to the production of natural gas is conveyed. They are, therefore, pipelines in accordance with subsection (b) of the definition. They connect a well head, with the Water Hub. The evidence discloses that at the Water Hub the produced water from three sources is blended and treated, and redistributed through pipelines for use in the production of natural gas. The Water Hub is a facility used to gather and process water and is, therefore, a "facility" within the meaning of the legislation. Segments 003 and 004 are, therefore, pipelines that connect a well head with a processing facility, and meet the first part of the definition of "flow line".

[20] As to the second part of the definition of flow line, the substance that is conveyed within these segments (produced water) is not a product that is further distributed through a transmission, distribution or transportation line. The location of the segments, however, precedes the transfer of the natural gas conveyed in Segment 001 to a transmission, distribution or transportation line. They are part of the gathering system for the conveyance of natural gas from a well head to a processing facility. The intent of the legislation is to give the Board jurisdiction over pipelines that comprise the gathering system, but not pipelines that comprise the transmission, distribution or transportation system downstream of a processing facility.

[21] Segment 002 carries fuel gas. The Ilniskys' objection initially related only to the Water Pipelines and neither party has provided evidence respecting the purpose of this segment. The Board has previously found a fuel gas line associated with other pipeline segments connected to a well head conveying produced gas and produced water to fall within the definition of "pipeline" as "installations and facilities associated with the piping" (*Murphy Oil, supra*). The evidence in the *Murphy Oil* case was that the fuel line was required to power various instruments and pieces of equipment required to operate the well. In the Board's experience, this is the purpose of a fuel line permitted as a pipeline segment. As I have no evidence to conclude that the fuel line in this case is for a different purpose, it also falls within the definition of "pipeline" in accordance with the Board's earlier decision.

[22] The Ilniskys argue that Encana incorrectly characterizes the works as "Pipeline segments". They submit they are four distinct pipelines in the same right of way each serving a distinct and separate purpose, one quite apart from the other. They argue it is illogical to think of them as segments as they comprise four distinct linear works.

[23] The characterization of the works as a pipeline in four segments comes from the Permit the OGC granted. The Permit authorizes the construction and operation of a pipeline in four segments for the conveyance of petroleum, natural gas, or water. The definition of "pipeline" does not refer to "a pipe" but speaks of "piping through which any of" various substances "is conveyed". While each segment comprises a distinct pipe, the four segments function together to produce and transport natural gas as part of the gathering system. Neither line has an independent function. Each functions in conjunction with the others as part of the gathering system for the production of natural gas. Collectively, they are piping through which petroleum, natural gas and produced water are conveyed, and are collectively a pipeline within a single right of way forming part of the natural gas gathering system.

[24] I find each segment of this Pipeline connects a well head with processing facilities. In the case of the disputed Water Pipelines they carry produced water and connect well heads with produced water processing and storage facilities. They are located upstream of the transfer of the produced water to or from those facilities. The produced water is not transferred to a transmission, distribution, or transportation line, but is recirculated in the upstream portion of the oil and gas system as part of the gathering system for the production of natural gas. The Water Pipelines precede the transfer of the natural gas, to transmission, distribution or transportation pipelines and are part of the gathering system.

CONCLUSION

[25] I conclude the Pipeline permitted by the OGC and each of its segments is a "flow line". The Board, therefore, has jurisdiction to provide mediation and arbitration services with respect to Encana's application.

DATED: April 11, 2014

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1823
Board Order No. 1823-2

May 6, 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
THE SOUTH WEST ¼ OF SECTION 9 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Wesley Boris Ilnisky and
Laurene Mabelle Ilnisky

(RESPONDENTS)

BOARD ORDER

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Wesley Boris Ilnisky and Laurene Mabelle Ilnisky to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flow lines and associated works. The total project is 1.03 acres, with 0.472 acres of temporary workspace and 0.531 acres of right of way.

The Oil and Gas Commission has issued a permit for this project.

On May 5, 2014, the Board conducted a mediation attended by Encana's representatives and the Landowners. They discussed the Board's jurisdiction to deal with this application, the proposed right of entry order and briefly touched on compensation.

The Board heard submissions regarding the Board's jurisdiction to hear this application, with the Landowners arguing the flow lines are pipe lines beyond the Board's jurisdiction. In Board Order 1823-1 issued on April 11, 2014, the Board found the pipe lines are flow lines and the Board has jurisdiction over this application. Although within the appeal period for the filing of a judicial review, in the absence of any order to stay the Board's processes I continued with hearing submissions on the right of entry order and compensation.

The Landowners claim the amount of partial compensation offered by the company is not sufficient. I find the amount offered is not out of line considering the scope of the project and the amounts paid for other rights of way. Since it is partial compensation, the amount does not limit the Landowners' ability to negotiate more.

Encana says it requires the Lands as part of a larger project. I am satisfied that they require the lands for an approved oil and gas activity, supported by the fact the Oil and Gas Commission has issued a permit for this project.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE SOUTH WEST ¼ OF SECTION 9, TOWNSHIP 79, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $2000.00 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.

Dated May 6, 2014

FOR THE BOARD

Rob Fraser, Mediator

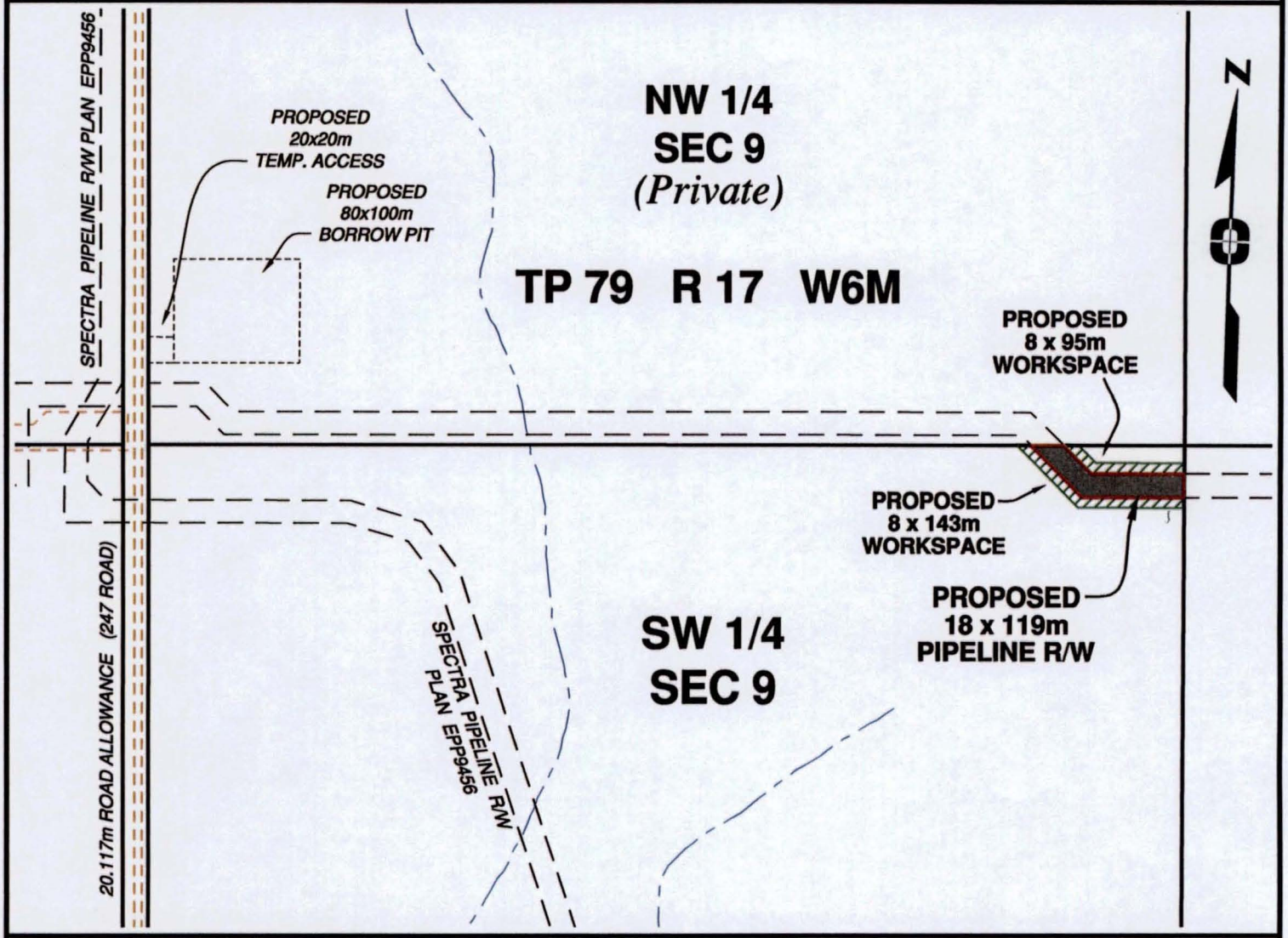
Order 1823-2

SCHEDULE "A"

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Wesley Boris Ilnisky and Laurene Mabelle Ilnisky (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE SOUTH WEST 1/4 OF SECTION 9, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 11-8-79-17 to Wellsite 12-10-79-17)



Owner(s): Wesley Boris Ilnisky
Laurene Mabelle Ilnisky

Title No: LA142043
Parcel Identifier: 014-510-251
Landowner File: S455932
EnCana File(s): S455731

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 24th day of April, 2012.

Adam Brash, BCLS

Areas			
Permanent		0.215 ha	0.531 ac
Temporary		0.191 ha	0.472 ac
Total		**0.406 ha**	**1.003 ac**

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

Focus Job No: 091022NP04R2
Ref Dwg: 091022CP01R4
Drafter: KG/DG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands. **Encana Corporation** shall also provide the names and telephone numbers of a designated surface land and construction contact person.
2. **Encana Corporation** shall contain its operations to the area within the surveyed right-of-way and temporary work space areas, including the travel and movement of personnel, equipment, and vehicles. Any trespass off the right–of-way or outside of the temporary workspace areas shall be compensated as a new taking in accordance with the *Petroleum and Natural Gas Act*.
3. **Encana Corporation** shall salvage all timber/logs, posts and firewood on the said lands in a manner as agreed between the parties for the landowners use.
4. In the event the Lands are developed, **Encana Corporation** shall work with the landowner to ensure that **Encana Corporation's** operations minimally interfere with the landowner's proposed development.

File No. 1823
Board Order 1823-3

December 23, 2014

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 9, TOWNSHIP 79, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

WESLEY BORIS ILNISKY AND LAURENE MABELLE ILNISKY

RESPONDENTS

BOARD ORDER

On May 6, 2014, the Surface Rights Board issued Board Order 1823-2 giving Encana Corporation ("Encana") access to the lands to construct and operate flowlines from 11-8-79-17 W6M to 12-10-79-17 W6M.

Order 1823-2 included partial compensation payment of $2,000.00, leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation.

BY CONSENT the Surface Rights Board orders:

1. Encana Corporation shall pay to the Respondents, Wesley Boris Ilnisky and Laurene Mabelle Ilnisky, the sum of Five Thousand Six Hundred Dollars ($5,600.00) as additional compensation for access and construction damages to those portions of lands required to construct and operate the flowlines within the SW ¼ 9-79-17 W6M.

DATED: December 23, 2014

FOR THE BOARD

Robert Fraser, Mediator

File No. 1827
Board Order No. 1827-1

February 6, 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

THE NORTH WEST ¼ of SECTION 16, TOWNSHIP 80, RANGE 17, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

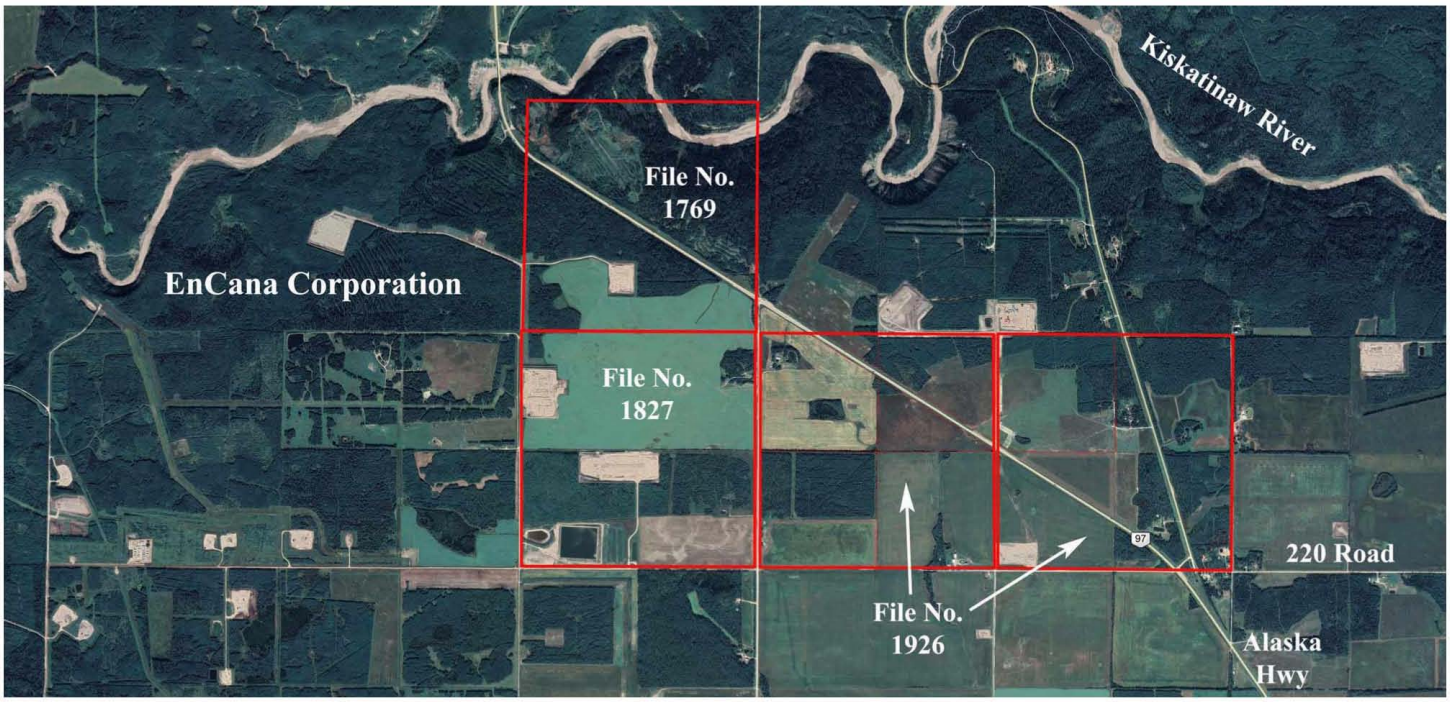
(APPLICANT)

AND:

Joseph Magusin and Juliette Louiseala Magusin

(RESPONDENTS)

BOARD ORDER


Kiskatinaw River
File No.
1769
EnCana Corporation
File No.
1827
97
220 Road
File No.
1926
Alaska
Hwy

Encana Corporation ("Encana") applies pursuant to section 158 of the *Petroleum and Natural Gas Act* for mediation and arbitration and for a right of entry order to carry out an oil and gas activity on the Respondents' Lands, specifically the construction, operation and maintenance of a well site with multiple wells.

The Oil and Gas Commission ("OGC") has approved the location of the well site and has issued their permit for this project.

I conducted telephone mediation conference calls on January 22, 2014 and February 6, 2014 where the parties discussed the project and whether I should issue Encana a right of entry order.

I considered the submissions and found that there is no impediment preventing the Board from issuing the right of entry. Supported by the fact that the OGC has issued a permit for this project, the Board is satisfied that Encana requires the right of entry for the purposes of oil and gas activities.

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 2 and 3, Encana Corporation shall have the Right of Entry to and access across the portions of lands legally described as NW ¼ of Section 16, Township 80, Range 17, W6M, Peace River District, as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a multiple well padsite as permitted by the Oil and Gas Commission.

2. Encana Corporation 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 Encana Corporation, or paid to the Respondents, upon agreement of the parties or as ordered by the Board.

3. Encana Corporation shall pay to the Respondents as partial payment for compensation the amount of $15,000.00 representing a portion of 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: February 6, 2014

FOR THE BOARD

Simmi K. Sandhu, Mediator

APPENDIX "A"

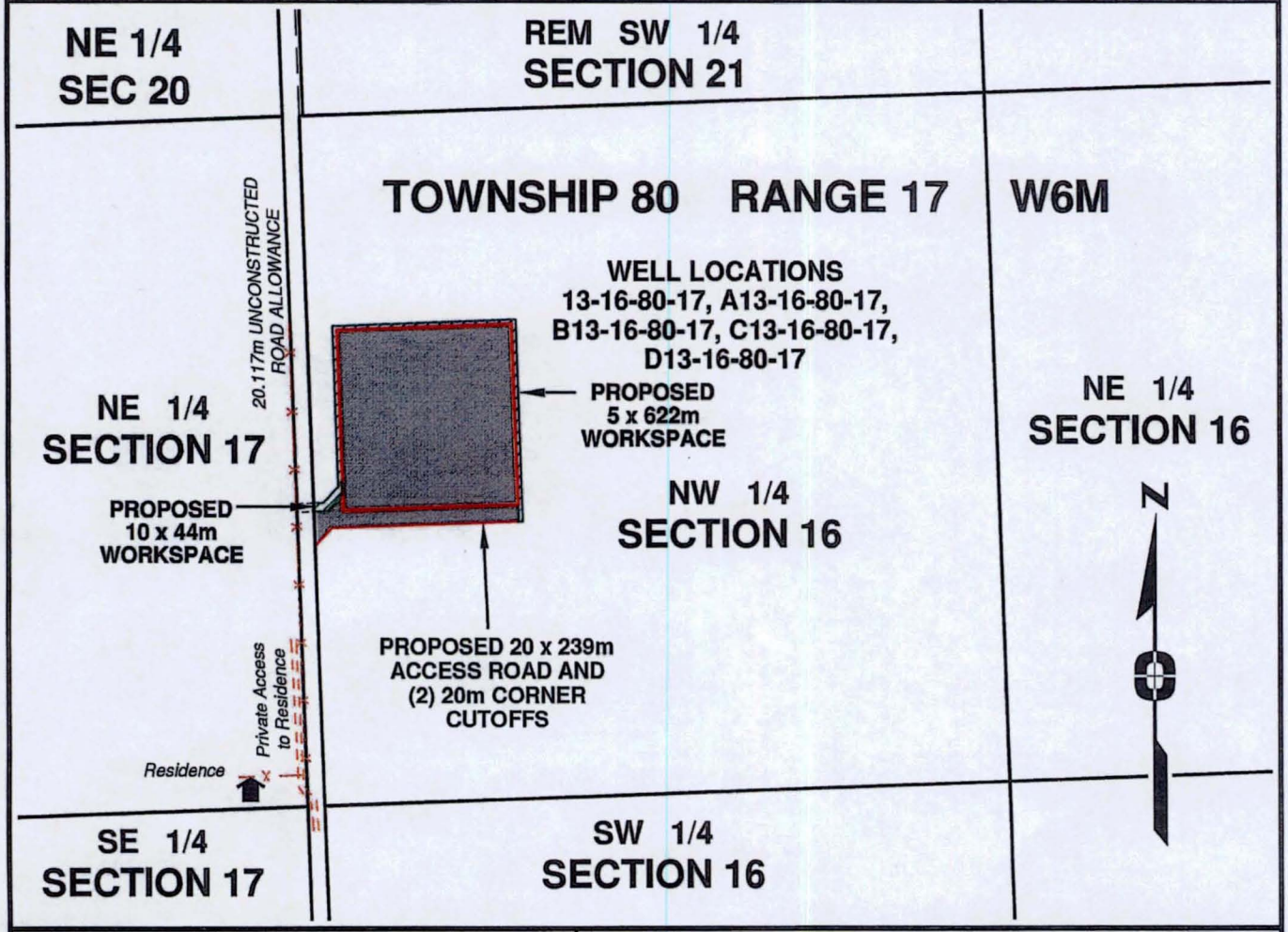
1821-1

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Joseph Magusin and Juliette Louiseala Magusin (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELLSITE AND ACCESS WITHIN THE NORTH WEST 1/4 OF SECTION 16 TOWNSHIP 80 RANGE 17 W6M PEACE RIVER DISTRICT



Owner(s): Joseph Magusin
Juliette Louiseala Magusin

Title No:	PC36190
Parcel Identifier:	014-521-881
Landowner File:	S463092
EnCana File(s):	S463092, S463439, S463440, S463441, S463442

Areas		
Permanent	4.80 ha	11.86 ac
Temporary	0.36 ha	0.89 ac
Total	**5.16 ha**	**12.75 ac**

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 7500 (use letter size sheet)

Certified correct this 28th day of February, 2011

Adam Brash, BCLS

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

Focus Job No: 110018NP01R0
Ref Dwg: 110018WS01R0
Drafter: DG

File No. 1827
Board Order 1827-2

April 8, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 16, TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

JOSEPH MAGUSIN AND JULIETTE LOUISEALA MAGUSIN

RESPONDENTS

BOARD ORDER

On February 06, 2014 the Surface Rights Board issued Board Order 1827-1 giving Encana Corporation ("Encana") access to the lands for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of construction, operation and maintenance of a wellsite with multiple wells.

Order 1827-1 included partial compensation payment of $15,000.00, leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation.

BY CONSENT, the Surface Rights Board orders:

1. Encana shall pay to the Respondents, JOSEPH MAGUSIN AND JULIETTE LOUISEALA MAGUSIN, the sum of $9,934.75, representing $24,934.75 less the $15,000 already paid in advance, as compensation owing for access to those portions of lands required for drilling and completing and operating a multiwell padsite.
2. Compensation shall be payable on February 6th, 2015 and annually thereafter at an amount of $6,851.00.
3. In addition, compensation shall be payable for each additional well in the amount of $2000.00 prior to commencement of drilling, and $500.00 annually thereafter, the annual payment being due and payable on February 6th following the date of commencement of drilling.
4. Encana shall pay to the Respondents reasonable amounts for legal fees incurred by Kasara Tylor, the Committee of the Respondents' estates, in dealing with this matter and a reasonable amount for Kasara Tylor's time and expenses in dealing with this matter in her capacity as Committee for the Respondents.

DATED: April 8, 2015

FOR THE BOARD

_____
Robert Fraser, Mediator

File No. 1836
Board Order 1836-1

August 28, 2014

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE FRACTIONAL NORTH WEST ¼ OF SECTION 35 TOWNSHIP 19 PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

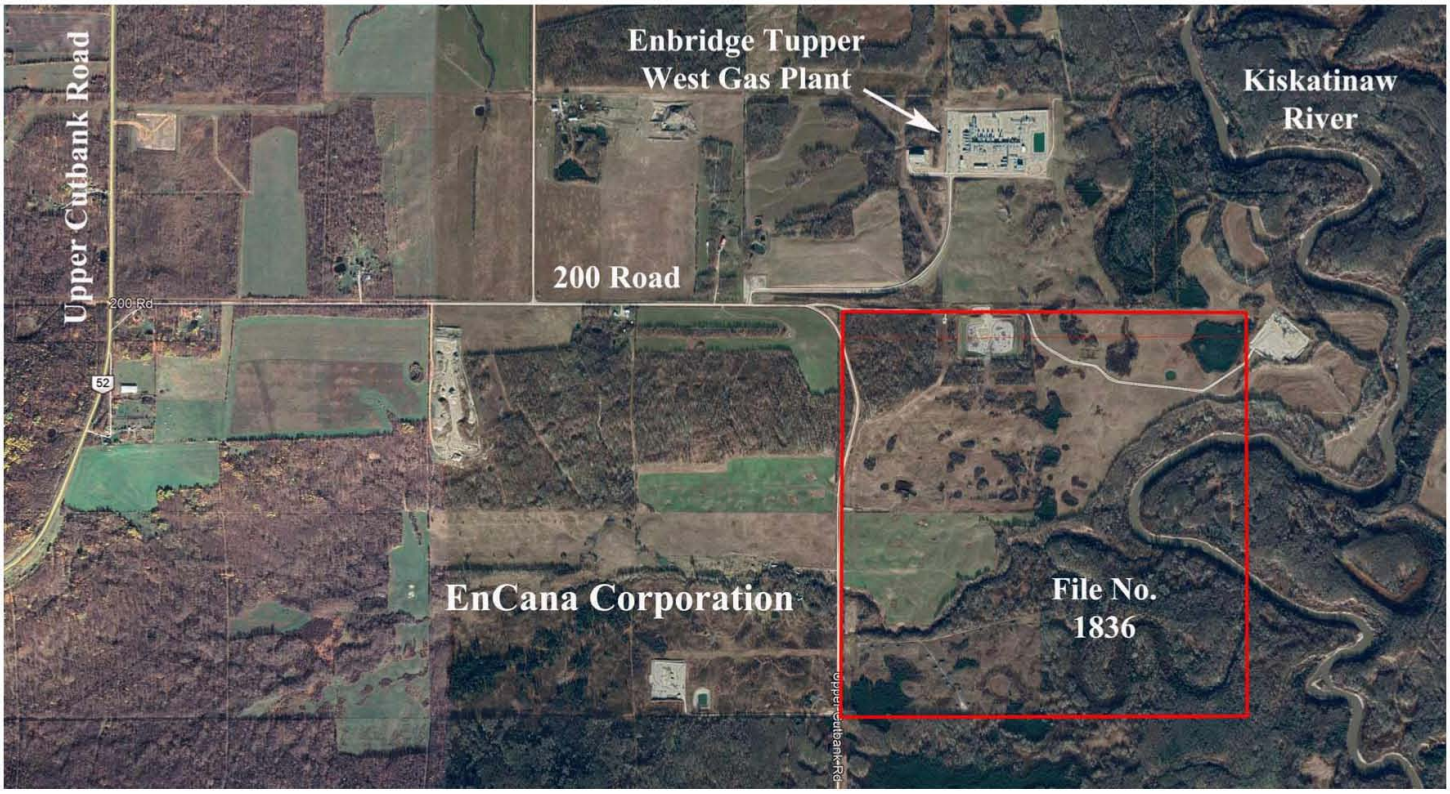
APPLICANT

AND

Jimmy Ray Gigger, Barbara Lynn Gigger, Thad James Gigger and Christa Lee Radford

RESPONDENTS

BOARD ORDER


Upper Cutbank Road
Enbridge Tupper
West Gas Plant
Kiskatinaw
River
200 Road
200 Rd
52
EnCana Corporation
File No.
1836
Upper Cutbank Rd

Heard by telephone conference:	July 31, 2014 and August 28, 2014
Appearances:	H. Berscht, S. Carter, and C. Muise for Encana, and J. Gigger and C. Radford for the Landowners
Mediator:	Rob Fraser

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

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE FRACTIONAL NORTH WEST ¼ OF SECTION 35 TOWNSHIP 19 PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall pay to the landowners total payment for compensation the amount of $7794.00 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: August 28, 2014

FOR THE BOARD

Robert Fraser, Mediator

Appendix "B"
Order 1836-1

Conditions for Right of Entry

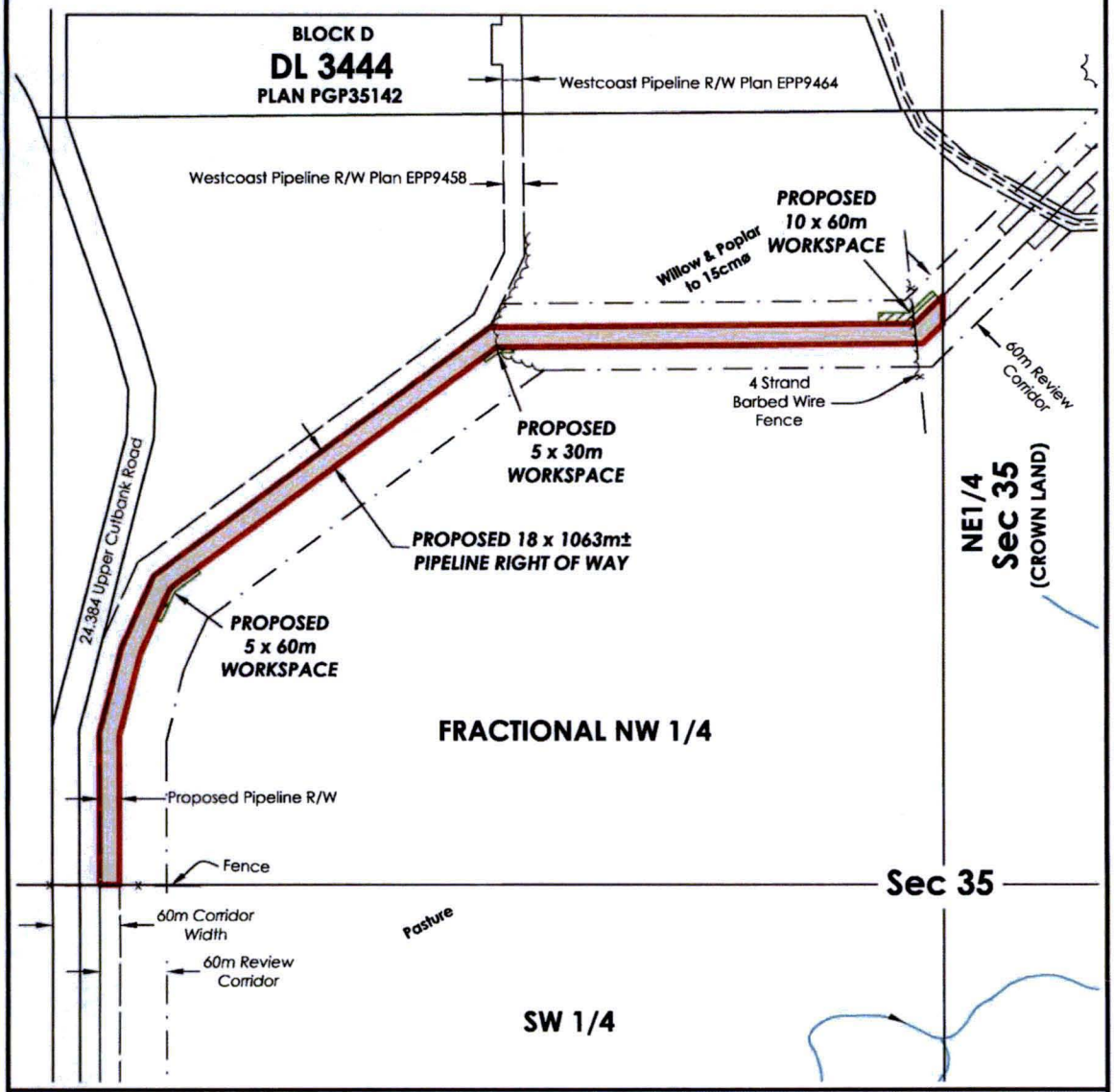
1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

Schedule "A" 1836-1 Page of

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Jimmy Ray Gigger, Barbara Lynn Gigger, Thad James Gigger and Christa Lee Radford (Lessor) and **Encana Corporation** (Lessee).

ENCANA CORPORATION
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
18m PIPELINE R/W IN
FRACTIONAL NW 1/4 Sec 35, TOWNSHIP 19
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite d-43-H, 93-P-10 to Wellsite b-69-H, 93-P-9)



TITLE No.: CA1214787 **P.I.D. No.:** 005-526-388

OWNER(S): JIMMY RAY GIGGER
BARBARA LYNN GIGGER
THAD JAMES GIGGER
CHRISTA LEE RADFORD

Permanent	1.91 ha	4.72 ac
Temporary	0.11 ha	0.27 ac
TOTAL:	2.02 ha	4.99 ac

NOTES
SCALE = 1: 5,000
Distances shown are in metres.
Permanent Portions referred to:
Temporary Portions referred to:

Certified correct this
16th day of December, 2013

Chris R. Sakundiak, BCLS

N

NO	DATE	REVISION	DRN	CKD
0	13/12/16	Original plan issued	RC	CS

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

CAN-AM FILE: J20130944
CAD FILE: J20130944lOP3-0
Client File No.: S468733
AFE No.: 12168603
Land File No.:
0 REVISION

File No. 1836
Board Order 1836-1amd

April 9, 2018

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE FRACTIONAL NORTH WEST ¼ OF SECTION 35 TOWNSHIP 19 PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Tourmaline Oil Corp.
(formerly Encana Corporation)

APPLICANT

AND

Jimmy Ray Gigger, Barbara Lynn Gigger, and Thad James Gigger

RESPONDENTS

BOARD ORDER

By Order 1836-1 dated August 28, 2014 (attached to this Order as Appendix "A"), the Surface Rights Board granted Encana Corporation right of entry to a portion of the Lands to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

By Assignment dated July 20, 2017, Encana Corporation assigned its rights under Board Order 1836-1 to Tourmaline Oil Corp. Tourmaline Oil Corp. operates and maintains the flowlines constructed by Encana Corporation and continues to require access to the Lands for that purpose. Tourmaline Oil Corp. seeks to amend Order 1836-1 to reflect this change in circumstances pursuant to section 155 of the *Petroleum and Natural Gas Act*.

The Lands are currently owned by Jimmy Rae Gigger, Barbara Lynn Gigger and Thad James Gigger.

The Surface Rights Board orders:

1. Order 1836-1 is amended to change Encana Corporation to Tourmaline Oil Corp. and to remove Christa Lee Radford as a Respondent.

2. Tourmaline Oil Corp. has the right to enter that portion of the Lands shown on Appendix A to operate and maintain multiple flowlines.

3. 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: April 9, 2018

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX A

File No. 1836
Board Order 1836-1

August 28, 2014

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE FRACTIONAL NORTH WEST ¼ OF SECTION 35 TOWNSHIP 19 PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

APPLICANT

AND

Jimmy Ray Gigger, Barbara Lynn Gigger,
Thad James Gigger and Christa Lee Radford

RESPONDENTS

BOARD ORDER

Heard by telephone conference:	July 31, 2014 and August 28, 2014
Appearances:	H. Berscht, S. Carter, and C. Muise for Encana, and J. Gigger and C. Radford for the Landowners
Mediator:	Rob Fraser

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

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE FRACTIONAL NORTH WEST ¼ OF SECTION 35 TOWNSHIP 19 PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

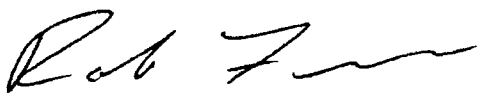
2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall pay to the landowners total payment for compensation the amount of $7794.00 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: August 28, 2014

FOR THE BOARD



Robert Fraser, Mediator

Appendix "B"
Order 1836-1

Conditions for Right of Entry

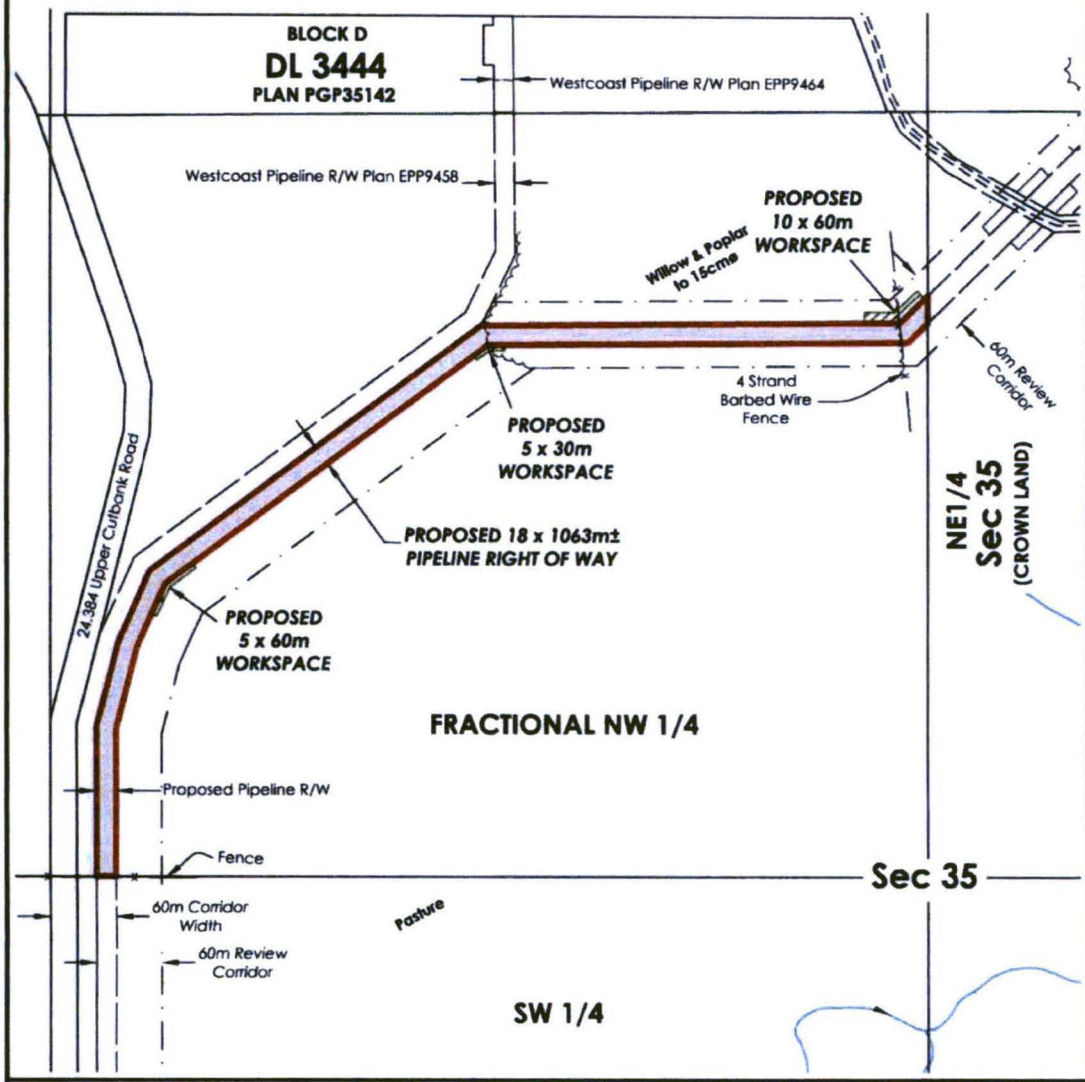
1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

Schedule "A" 1836-1 Page of

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Jimmy Ray Gigger, Barbara Lynn Gigger, Thad James Gigger and Christa Lee Radford (Lessor) and **Encana Corporation** (Lessee).

ENCANA CORPORATION
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
18m PIPELINE R/W IN
FRACTIONAL NW 1/4 Sec 35, TOWNSHIP 19
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite d-43-H, 93-P-10 to Wellsite b-69-H, 93-P-9)



TITLE No.: CA1214787 **P.I.D. No.:** 005-526-388

OWNER(S): JIMMY RAY GIGGER
BARBARA LYNN GIGGER
THAD JAMES GIGGER
CHRISTA LEE RADFORD

Permanent	1.91 ha	4.72 ac
Temporary	0.11 ha	0.27 ac
TOTAL:	2.02 ha	4.99 ac

NOTES
SCALE = 1: 5,000
Distances shown are in metres.
Permanent Portions referred to:
Temporary Portions referred to:

Certified correct this
16th day of December, 2013

Chris R. Sakundiak, BCLS

N

NO	DATE	REVISION	DRN	CKD
0	13/12/16	Original plan issued	RC	CS

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

CAN-AM FILE: J20130944
CAD FILE: J20130944IOP3-0
Client File No.: S468733
AFE No.: 12168603
Land File No.:
0 REVISION

File No. 1840
Board Order No. 1840-1

November 19, 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
THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

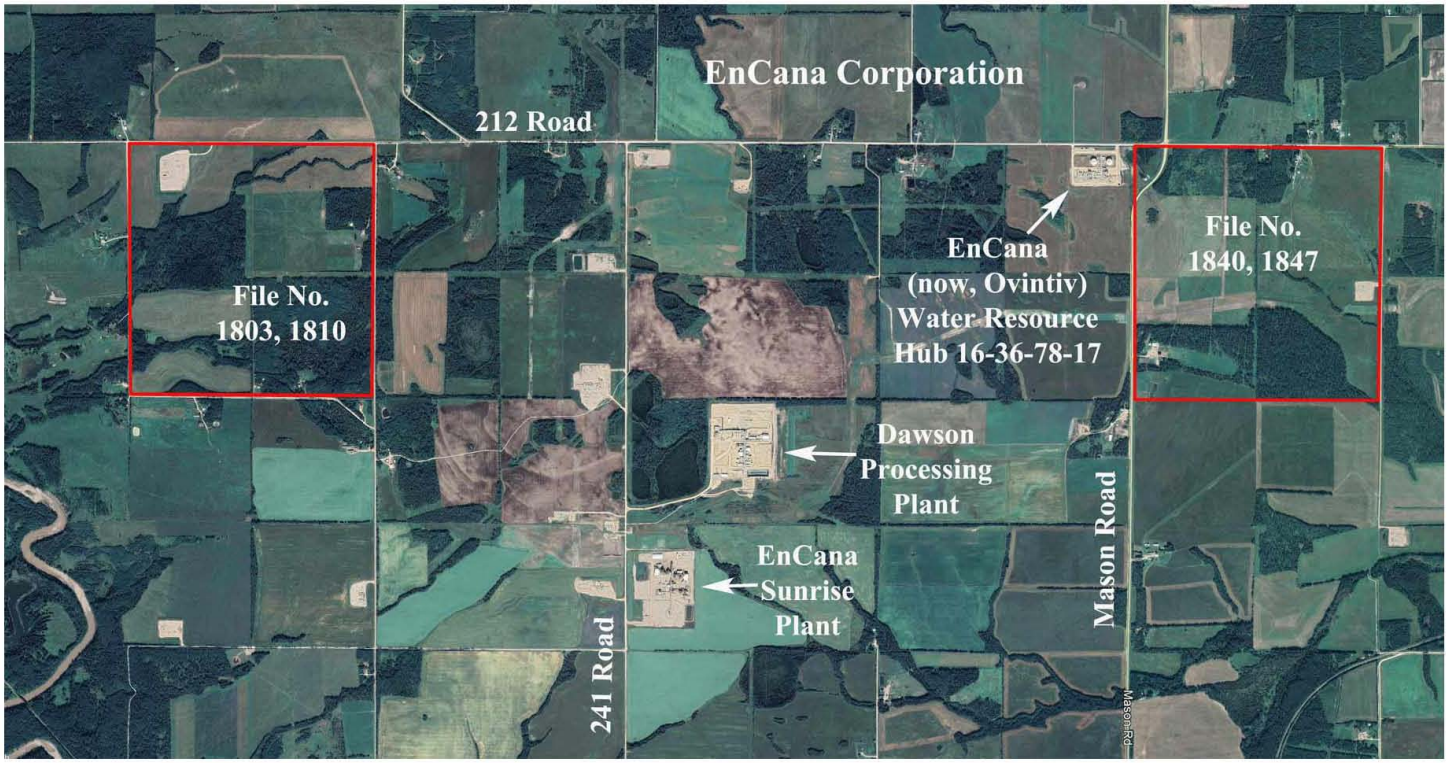
(APPLICANT)

AND:

Wilhelmina Lumnitzer and
Fred Ralph Lumnitzer

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
212 Road
File No.
1803, 1810
File No.
1840, 1847
EnCana
(now, Ovintiv)
Water Resource
Hub 16-36-78-17
Dawson
Processing
Plant
EnCana
Sunrise
Plant
241 Road
Mason Road
Mason Rd

I conducted telephone mediation conference calls on September 11, 2014 and November 11, 2014.

Encana Corporation seeks right of entry over the Lands owned by Wilhelmina Lumnitzer and Fred Lumnitzer to construct, operate and maintain flow lines. The Oil and Gas Commission has issued a permit authorizing the construction of the flow lines.

I am satisfied that Encana Corporation requires access to the Lands for an approved oil and gas activity. The parties have not agreed on the compensation payable to Wilhelmina Lumnitzer and Fred Lumnitzer; an order for partial compensation is made below.

THE SURFACE RIGHTS BOARD ORDERS:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT as shown on the individual ownership plan attached as Appendix "A" (the "Lands")

   to carry out an approved oil and gas activity, namely the construction, operation,and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

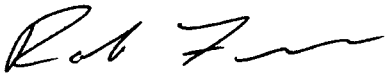
3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $16,300.00 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.

DATED: November 19, 2014

FOR THE BOARD



Rob Fraser, Mediator

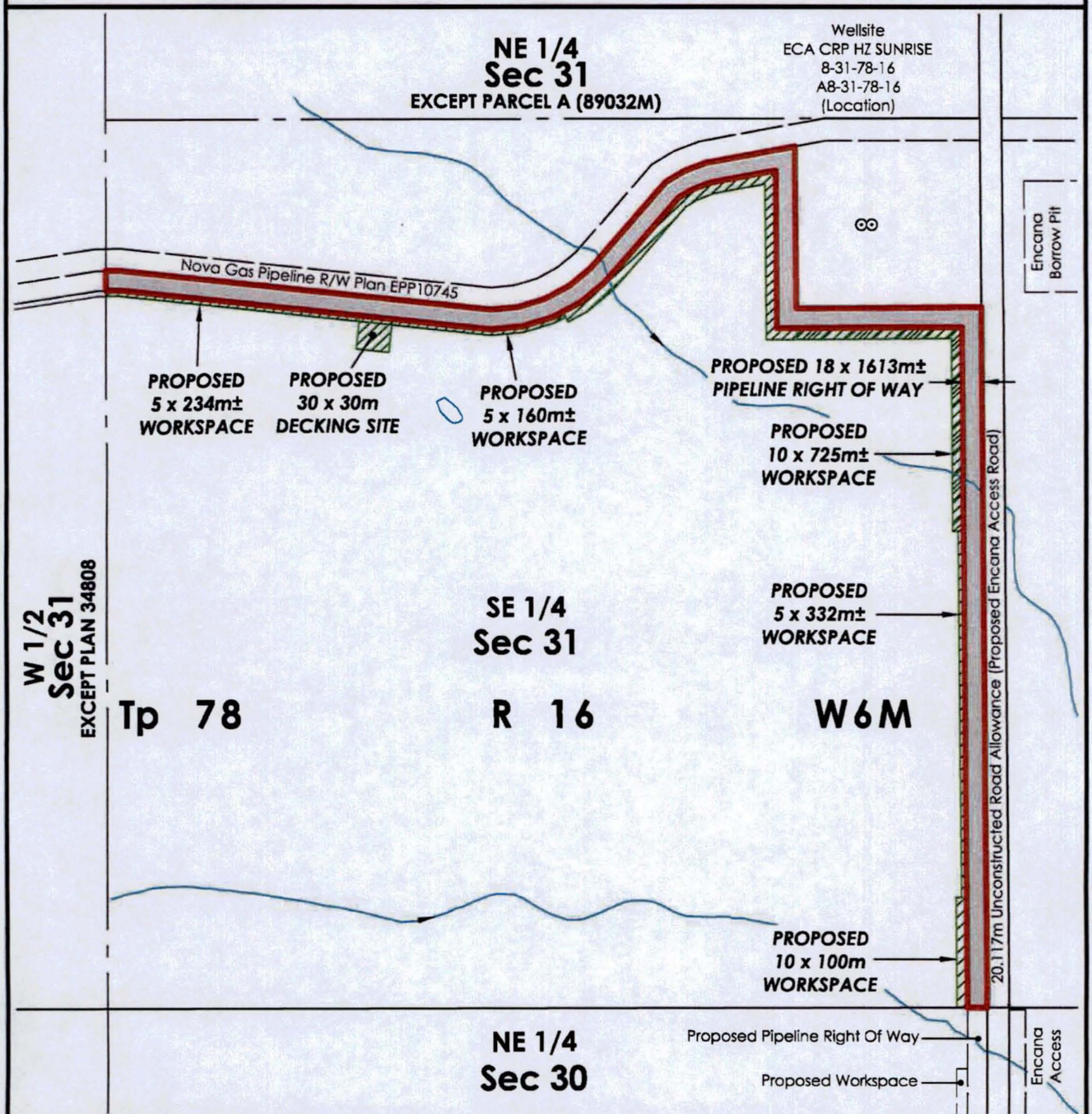
Order 1840-1 App "A"

Schedule "A" Page ___ of ___

Attached to and made part of this Agreement dated this ____ day of _____, 20___, between

Wilhelmina Lumnitzer & Fred Ralph Lumnitzer (Lessor) and **Encana Corporation** (Lessee).

ENCANA CORPORATION
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
18m PIPELINE R/W, WORKSPACES & DECKING SITE IN
SE 1/4 Sec 31, Tp 78, R 16, W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 5-29-78-16 to Facility Site 16-36-78-17)



TITLE No.: BB1135647 **P.I.D. No.:** 014-328-950

OWNER(S): WILHELMINA LUMNITZER
FRED RALPH LUMNITZER

Permanent	2.90 ha	7.17 ac
Temporary	1.28 ha	3.16 ac
TOTAL:	4.18 ha	10.33 ac

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

Certified correct this
16th day of December, 2013

Chris R. Sakundiak, BCLS

N

NO	DATE	REVISION	DRN	CKD
0	13/07/23	Original plan issued	AB	CS
1	13/12/13	Extended Pipeline R/W	RC	CS

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CAN-AM FILE: J20130398
CAD FILE: J20130398IOP5-1
Client File No.: S468103
AFE No.: 14173031
Land File No.:
1 REVISION

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1840
Board Order No. 1840-1amd

November 25, 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
THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Wilhelmina Lumnitzer and
Fred Ralph Lumnitzer

(RESPONDENTS)

BOARD ORDER

This Order is to replace the Board's Order issued November 19, 2014 which attached, in error, an incorrect IOP as Appendix "A". Order 1840-1 is cancelled and replaced with this Order.

I conducted telephone mediation conference calls on September 11, 2014 and November 11, 2014.

Encana Corporation seeks right of entry over the Lands owned by Wilhelmina Lumnitzer and Fred Lumnitzer to construct, operate and maintain flow lines. The Oil and Gas Commission has issued a permit authorizing the construction of the flow lines.

I am satisfied that Encana Corporation requires access to the Lands for an approved oil and gas activity. The parties have not agreed on the compensation payable to Wilhelmina Lumnitzer and Fred Lumnitzer; an order for partial compensation is made below.

THE SURFACE RIGHTS BOARD ORDERS:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT as shown on the individual ownership plan attached as Appendix "A" (the "Lands")

   to carry out an approved oil and gas activity, namely the construction, operation,and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $16,300.00 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.

DATED: November 25, 2014

FOR THE BOARD

Rob Fraser, Mediator

APPENDIX "A" 1840-1amd

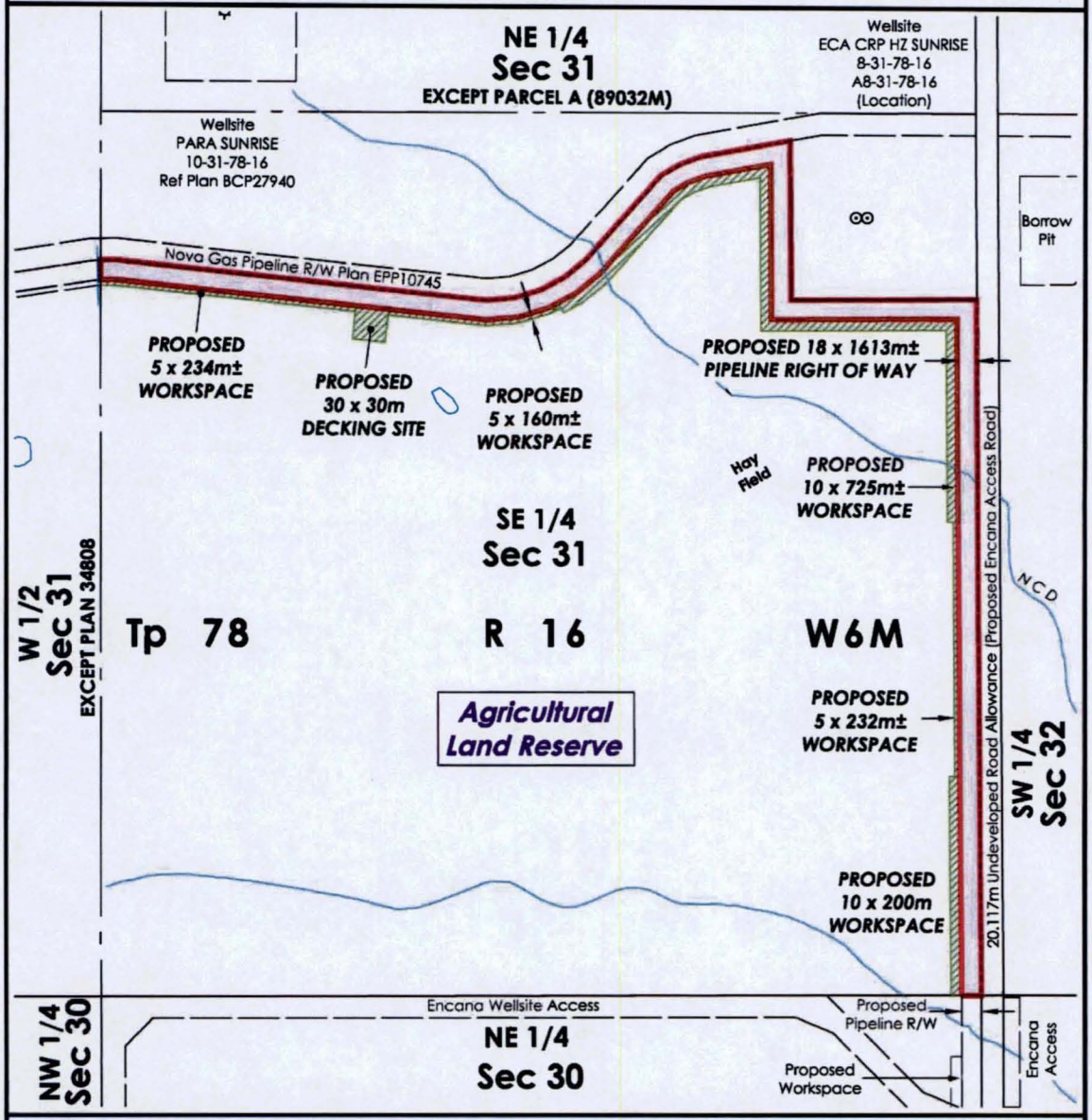
Schedule "A" Page ___ of ___

Attached to and made part of this Agreement dated this ____ day of _____, 20___, between

Wilhelmina Lumnitzer & Fred Ralph Lumnitzer (Lessor) and **Encana Corporation** (Lessee).

ENCANA CORPORATION
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
18m PIPELINE R/W, WORKSPACES & DECKING SITE IN
SE 1/4 Sec 31, Tp 78, R 16, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 5-29-78-16 to Facility Site 16-36-78-17)



TITLE No.: BB1135647 **P.I.D. No.:** 014-328-950

OWNER(S): WILHELMINA LUMNITZER
FRED RALPH LUMNITZER

Permanent	2.90 ha	7.17 ac
Temporary	1.33 ha	3.28 ac
TOTAL:	4.23 ha	10.45 ac

LEGEND

SCALE = 1: 5,000

Permanent Portions referred to: · · · · ·

Temporary Portions referred to: · · · · ·

Notes: Distances shown are in metres.

Certified correct this
21st day of April, 2014

Chris R. Sakundiak, BCLS

N

NO.	DATE	REVISION	DRN	CKD
0	13/07/23	Original plan issued	AB	CS
1	13/12/13	Extended Pipeline R/W	RC	CS
1	14/04/17	Revised Workspaces	MM	CS

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CAN-AM FILE: J20130398

CAD FILE: J20130398IOP5-2

Client File No.: S468103

AFE No.: 14173031

Land File No.:

2 REVISION

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File Nos. 1840 and 1847
Board Order No. 1840/1847-2

November 24, 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 SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

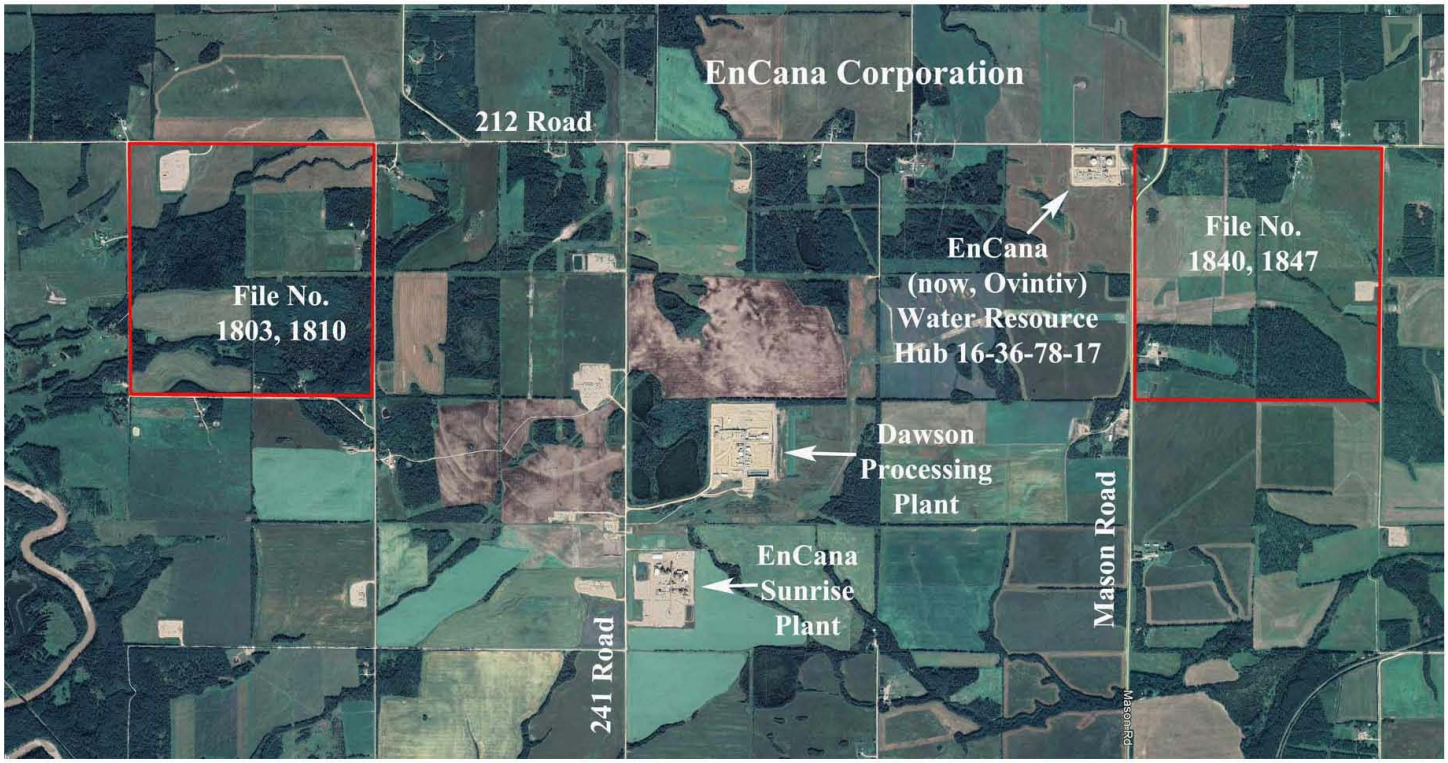
(APPLICANT)

AND:

Wilhelmina Lumnitzer and
Fred Ralph Lumnitzer

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
212 Road
File No.
1803, 1810
File No.
1840, 1847
EnCana
(now, Ovintiv)
Water Resource
Hub 16-36-78-17
Dawson
Processing
Plant
EnCana
Sunrise
Plant
241 Road
Mason Road
Mason Rd

Heard: October 5, 2016 in Dawson Creek
Appearances: Tom Owen, Barrister and Solicitor, for the Applicant
Elvin Gowman and Fred Lumnitzer for the Respondents

INTRODUCTION

[1] Fred Lumnitzer and Wilhelmina Lumnitzer are the owners of the Lands described as: THE SOUTH EAST ¼ OF SECTION 31, TOWNSHIP 78, RANGE 16 WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT (the Lands).

[2] Encana Corporation (Encanca) has rights of entry over portions of the Lands to construct and operate flow lines (Board Order 1840-1amd) and a wellsite (Order 1847-1amd). The parties have been unable to agree on the compensation to be paid by Encana to the Lumnitzers arising from the rights of entry.

[3] When granting the rights of entry, the Board ordered partial compensation to the Lumnitzers of $16,300.00 for the right of entry for flow lines and $13,372.00 for the right of entry for the wellsite. Mr. Lumnitzer seeks compensation of $75,000 for the flow line entry, and an initial payment of $27,000 with annual rent of $10,000 for the wellsite entry. Mr. Lumnitzer's claim for compensation is primarily based on other agreements he has with other companies for a pipeline across the Lands and for a wellsite on an adjoining parcel.

[4] Encana submits other agreements relied on by Mr. Lumnitzer do not establish a pattern of dealings that the Board may rely on to establish compensation in this case. Encana submits the partial payments more than compensate the Lumnitzers for their actual and reasonably foreseeable loss arising from the rights of entry and seeks an order for repayment of a portion of the partial compensation paid on account of both the flowline right of way and the wellsite entry. Encana submits annual rent for the wellsite should be $882.00.

[5] I have determined that the evidence does not support compensation to the extent claimed by Mr. Lumnitzer, but neither does it support compensation below the level of the partial payments already made. Nor does it support rent at the level suggested by Encana. As will be seen later, I find the appropriate compensation for the right of way is $19,000.00. I find the appropriate initial compensation for the wellsite is $15,320.00 with annual rent prior to the drilling of two wells of $4,555.00. I find there should be an additional payment of $2,000.00 when the wells are drilled and the annual rent should be increased by $250.00.

PRELIMINARY MATTER

[6] At the beginning of the arbitration, Mr. Lumnitzer questioned the Board's jurisdiction, submitting the pipelines were not flow lines.

[7] Mr. Lumnitzer raised the issue of the Board's jurisdiction at the first mediation conference call. The Board determined that no further submissions were necessary on the basis that the factual circumstances were the same as in *Encana Corporation v. Ilnisky*, Order 1823-1. Mr. Lumnitzer did not attend the second mediation conference call despite being party to its scheduling. The Board gave Mr. Lumnitzer the opportunity to provide submissions on the jurisdiction issue responsive the Board's decision in *Ilnisky*. The Board indicated that if it did not receive a submission from the Lumnitzers by November 18, 2014, the Board would issue the right of entry order for the pipeline project. Mr. Lumnitzer did not provide a submission addressing the jurisdictional issue and on November 19, 2014, the Board issued a right of entry order (Order 1840-1). The Board cancelled and replaced Order 1840-1 on November 25, 2014 with Order 1840-1amd granting Encana the right to enter a portion of the Lands to construct and operate the pipeline project. No application for judicial review contesting the jurisdiction of the Board was ever filed from the right of entry order.

[8] Mr. Lumnitzer attended a third mediation conference call on December 2, 2014 to discuss compensation. He did not raise any issue with respect to the jurisdiction of the Board.

[9] Mr. Lumnitzer attended further mediation conference calls on January 15, 2015 and January 29, 2015 to discuss compensation. He did not raise any issue with respect to the jurisdiction of the Board. On January 29, 2015, the mediator refused further mediation and referred the compensation issue to the Board for arbitration.

[10] The Board scheduled a pre-arbitration conference call for April 21, 2015. This call was cancelled at Mr. Lumnitzer's request. Following inquiries from the Board, Mr. Lumnitzer confirmed on December 2, 2015 that compensation for both the flow line and wellsite entries had not been resolved and that he intended to proceed to arbitration. The Board scheduled a pre-arbitration conference call for January 13, 2016.

[11] At the pre-arbitration conference call, the Board scheduled an arbitration to determine compensation for April 27 and 28, 2016 and set dates for the production of evidence to be relied on at the arbitration. Mr. Lumnitzer did not raise any issue as to the Board's jurisdiction at the pre-arbitration conference call.

[12] The Board adjourned the arbitration scheduled for April 27 and 28, 2016 to June 7 and 8, 2016 at the request of Mr. Lumnitzer. Mr. Lumnitzer sought a further adjournment, and the Board adjourned the arbitration to June 22 and 23, 2016.

[13] The Board agreed to adjourn the arbitration scheduled for June 22 and 23, 2016, at Mr. Lumnitzer's request, because of severe flooding in Dawson Creek. The Board rescheduled the arbitration for October 4 and 5, 2016. At no time in

any of Mr. Lumnitzer's requests for adjournments did he raise any issue with respect to the jurisdiction of the Board.

[14] Encana exercised its right of entry commencing construction of the right of way on August 15, 2016 and finishing on September 28, 2016. The Lumnitzers did not object to Encana's entry or at any time raise an issue with the jurisdiction of the Board to grant the right of entry order.

[15] It is simply too late to raise the issue that the Board does not have jurisdiction. The Lumnitzers had opportunity to make submissions on that issue but did not. No application for judicial review was taken from the Board's right of entry order and the time for doing so has long since passed. The issue was never raised at any subsequent mediation conferences or at the pre-arbitration conference call. No submissions or any other documentation respecting jurisdiction was produced in advance of the arbitration. The right of entry order has been acted upon and the flow lines are in the ground, presenting significant prejudice to Encana if the Board's jurisdiction to issue the right of entry order is revisited.

[16] I declined Mr. Lumnitzer's request to raise an issue with respect to the Board's jurisdiction with respect to the flow lines and proceeded to hear evidence and submissions respecting the compensation payable for the rights of entry for both the flowlines and the wellsite.

ISSUE

[17] The issue is to determine the compensation for loss payable to the Lumnitzers caused by Encana's rights of entry to the Lands.

FACTS

[18] The Lands are located approximately 16 kms northwest of Dawson Creek. The Lands are comprised of 160 acres, wholly within the Agricultural Land Reserve, and zoned A-2 Large Agricultural Holdings. Approximately 50% of the Lands are cleared and cultivated. The soils are classified 100% as Class 5 under the Canada Land Inventory (CLI) – Soil Capability for Agriculture mapping system.

[19] Fred and Wilhelmina Lumnitzer own the Lands and other adjacent parcels and use the Lands as part of their farming operations. Mr. Lumnitzer's parents purchased the Lands in the late 1970's and their other parcels, including the home quarter, in 1961. Mr. Lumnitzer has lived most of his life on this farm.

[20] From time to time, the Lands have been used for cereal crops and to raise cattle. Most recently, they have been used to grow hay. In 2015 and 2016 the Lands were used to grow hay pursuant to a sharecropping agreement, and hay was harvested in both of those years. In 2014, no hay was harvested because of drought conditions.

[21] The Board issued Order 1840-1amd on November 25, 2014 granting Encana the right of entry to and access across a portion of the Lands to carry out an approved oil and gas activity, namely the construction, operation and maintenance of multiple flow lines and associated works. The right of entry covers 7.17 acres of the Lands for the right of way and 3.28 acres for temporary workspace. The Board ordered partial compensation in the amount of $16,300.00.

[22] Encana constructed the right of way and installed the flow lines during August and September of 2016. The flow lines include two 6" bi-directional water lines to be used for oil and gas activities, and a 4" fuel line. The flow lines are buried to a depth of 1.6 metres in the right of way. Encana will reseed the right of

way and the temporary workspace areas next summer. Once the temporary workspace area has been restored, Encana will not be using it.

[23] The right of way extends east from the western boundary of the Lands along a Nova Gas Pipeline right of way where it overlaps into the wellsite. It then extends south and east inside the wellsite area along the western and southern boundaries of the wellsite, and then extends south along the eastern boundary of the Lands exiting at the southeast corner. The area of the pipeline right of way that overlaps the wellsite area is 1.48 acres.

[24] The Board issued Order 1847-1amd on May 26, 2015 granting Encana the right of entry to and access across a portion of the Lands for the purpose of drilling, completing and operating a multi well padsite. The right of entry covers 7.78 acres for the padsite and .44 acres for temporary workspace. The temporary workspace entirely overlaps the temporary workspace for the flow line right of way. The Board ordered partial compensation in the amount of $13,372.00.

[25] Encana constructed the padsite between July 6 and July 24, 2016. Two water source wells will be drilled in the first quarter of 2017. The wellsite will be gated and locked.

[26] The wellsite is located in the northeast corner of the Lands with access directly from 235 Road along the east boundary of the Lands. The location of the wellsite in the field creates two additional inside corners that are inaccessible to farm equipment comprising .08 of an acre in total.

[27] The wellsite has been fenced along the north and east sides of the right of way lying within the wellsite area. Encana has finished with the area required for temporary workspace other than to reseed it.

[28] The plan is to drill the wells in the first quarter of 2017. The intention is to only bring the drilling apparatus to the site once, and to drill the wells one after the other. It will take 10-15 days to drill the wells. Once the wells are drilled, Encana personnel will visit the wellsite using a lightweight vehicle or pickup truck at least once a week for the first couple of months, then monthly, and eventually yearly for maintenance and safety and operational checks.

EVIDENCE AND ANALYSIS

Legal Framework/Principles of Compensation

[29] The legal framework respecting the rights and obligations associated with the entry to private land for oil and gas activities is set out in the *Petroleum and Natural Gas Act*. In accordance with section 142 of that *Act*, a person may not enter, occupy or use land to carry out an oil and gas activity unless the entry, occupation and use is authorized by a surface lease with the landowner in the prescribed form or an order of the Board. The Board may make an order, pursuant to section 159 of the *Act*, authorizing a right of entry if it is satisfied the right of entry is required for an oil and gas activity. Section 143(2) of the *Act* provides that a right holder, that is the person who holds a right of entry, is liable to pay compensation to the landowner "for loss or damage caused by the right of entry" and, 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.

[30] Section 154(1) of the *Petroleum and Natural Gas Act* lists various factors the Board may consider in determining the compensation to be paid to a landowner. They are:

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

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

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

[32] The Board has previously articulated a number of settled principles relating to compensation for entry under the *Petroleum and Natural Gas Act* that it has found to be binding upon it (*ARC Petroleum Inc. v. Piper*, Order 1589-2, December 5, 2008 and *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015).

[33] The first principle is that a landowner's right to compensation is just that – a right to compensation for loss as a result of the entry. The landowner is entitled to the equivalent in money for the loss sustained and not for more than the loss sustained. The compensation does not represent a purchase price or a rental, it does not represent remuneration to the landowner for the use of his land for an oil and gas activity. It simply compensates for the landowner's actual and projected probable future loss arising out of the company's entry, occupation and use of the surface (*Western Industrial Clay Products Ltd v. Mediation and Arbitration Board*, 2001 BCSC 1458.) The Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained (*Western Clay, supra*).

[34] The second principle is that a "taking" under the *Petroleum and Natural Gas Act* is not an expropriation, although expropriation principles may apply to determine the appropriate compensation. The landowner continues to hold the fee simple interest in the land and, consequently, it is appropriate that the Board consider the landowner's residual and reversionary interest (*Dome Petroleum Ltd*

v. Juell [1982] B.C.J No. 1510 (BCSC); *Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[35] Evidence of what compensation is paid to other owners in the area is relevant and should be considered where the evidence indicates an established pattern of compensation exists (*Scurry Rainbow, supra*). The Board must be satisfied that a pattern has been established and that the pattern reflects the various factors set out in section 154 of the *Petroleum and Natural Gas Act.*

[36] The Board may consider the various factors set out in section 154(1) of the *Petroleum and Natural Gas Act* and evaluate each, then step back and consider whether the totality gives proper compensation in any particular case (*Scurry Rainbow, supra*).

[37] These principles of compensation are the law in British Columbia and are binding on this Board in determining compensation under the *Petroleum and Natural Gas Act*. It is not open to this Board to change the law.

[38] It remains to apply these principles to the present case. The Board must ask what is the loss sustained by the Lumnitzer's as a result of Encana's right of entry for the right of way, the well site area and the temporary workspace, and what is the appropriate compensation for that loss? In determining the appropriate compensation, the Board may consider the various factors listed in section 154(1) of the *Petroleum and Natural Gas Act.*

Other Agreements/Pattern of Dealings

[39] As Mr. Lumnitzer's claim for compensation is based primarily on what has been paid in other agreements, I will start with the evidence before me in that regard.

Right of Way Agreements

[40] With respect to the right of way for the flowline, Mr. Lumnitzer provides evidence of four right of way agreements, three for pipelines and one for a BC Hydro transmission line. He submits that a "right of way is a right of way" and it should not matter what industry the right of way is for.

[41] The purpose of looking at other right of way agreements to assist with determining compensation for loss caused by a right of entry for oil and gas activity is to see if they demonstrate a pattern of dealings in the way landowners are compensated for loss in similar situations. An agreement respecting payment to a landowner for a right of way for a different purpose and acquired under different legislative authority is not capable of establishing a pattern of dealings for compensation for loss caused by a right of entry for oil and gas activity. It is evident looking at the BC Hydro agreement provided (Exhibit. 4, Tab 10) that the circumstances and the loss sustained by the landowner are quite different. The agreement contains compensation for factors that are not relevant to the circumstances of this case such as for above ground steel transmission structures and injurious affection to the value of the remaining lands of which there is no evidence in this case. An agreement allowing entry to private land for an overhead high voltage transmission line with above ground transmission structures does not establish a pattern of dealings indicative of the probable loss arising from a right of entry for underground pipelines.

[42] With respect to the right of way agreements in evidence for pipelines, Mr. Lumnitzer testified he has just signed an agreement in the last two month for a new Nova Gas line across the Lands and provided a calculation worksheet (Exhibit 8) respecting the compensation to be paid. The compensation worksheet indicates Nova Gas Transmission Ltd. will pay $2,000 per acre for the right of way and the temporary workspace. Mr. Lumnitzer did not provide a copy of the actual agreement for this right of way.

[43] Mr. Lumnitzer provided copies of two right of way agreements for oil and gas activities. The first is a copy of his 2010 agreement with Nova Gas Transmission Ltd. for a 4.22 acre right of way across the Lands and temporary workspace of 6.13 acres (Exhibit. 4, Tab 8). The agreement indicates the Lumnitzers received a total of $23,787.50 comprised of $4,009.00 for the right of way inclusive of value of the land ignoring residual value, $5,823.50 for the temporary workspace, $13,455.00 for crop loss and $500.00 for "Other". The description of what the "Other" payment is for is not legible in the copy provided to the Board. The payment for the right of way and temporary workspace is calculated at $950 per acre and the payment for crop loss is calculated at $625 per acre.

[44] Mr. Lumnitzer submits the compensation paid under this agreement, allowing for inflation and the increase in land value, is the most accurate reflection of compensation for Encana's pipeline because Encana's right of way follows right alongside this right of way.

[45] The second right of way agreement is a copy of a 2013 agreement with Plateau Pipe Line Ltd. for a 6.97 acre right of way and 3.56 acres of temporary workspace (Exhibit 7). The agreement indicates the landowners received a total of $21,984 comprised of $6,970 for the right of way, $3,485 for the compulsory aspect of the entry, $2,060 for the temporary workspace, $1,725 for crop loss, and additional payments for loss of use of timber area, fence cuts, and a signing bonus. It appears the compensation for the right of way is based on $1,000 per acre. The crop loss is calculated at $250 per acre for 2.3 acres for three years. The right of way appears to be for the most part through timbered land.

[46] I find the two agreements and a worksheet are not enough to establish a pattern of dealings. First of all, the worksheet is not a right of way agreement. Even if the two agreements and the worksheet could establish a pattern of dealings, these do not. They do not reflect any pattern of compensation for categories of loss by compensating categories at the same rates or even by

identifying the same categories of loss. One agreement includes an additional payment for compulsory aspect of the taking, while the other does not. One compensates for crop loss at $625 per acre while the other compensates at $250 per acre. It is not clear from the worksheet whether the $2,000 per acre is intended to compensate for all losses including crop loss.

[47] Mr. Lumnitzer submits that the 2010 Nova Gas agreement "sets the value" for a pipeline right of way across his Lands as the Encana right of way is right beside it, crossing the very same Lands. The evidence is, however, that the right of way for the Nova Gas line was not obtained under the provisions of the *Petroleum and Natural Gas Act* but under those of the *National Energy Board Act*. Different provisions apply to pipelines regulated by the National Energy Board (NEB) with the result that the losses caused by an entry for an NEB pipeline will not necessarily be the same as those caused by the flow lines in this case. The different provisions for entering private land under the *National Energy Board Act* and the *Petroleum and Natural Gas Act* may affect the motivations of the parties and consequently the compensation payable.

[48] Unless a number of agreements for similar projects in similar circumstances demonstrate a pattern of dealings for the categories of loss, the compensation negotiated by one landowner for a particular project is not indicative of the probable loss that will be incurred by another landowner, or even by the same landowner for a different project. Just because Nova Gas was willing to pay Mr. Lumnitzer what it did for its project, does not mean that Encana must pay the same amount for its very different project governed by a different legislative scheme. As this Board has said before, negotiated agreements may compensate for factors beyond actual loss, include payments to incentivize signing such as signing bonuses, or in other respects compensate beyond what agreements demonstrating a pattern of dealings might suggest are typical values to both landowners and companies for the rights taken and received and the losses sustained. Unless a number of agreements can establish a pattern of

dealings, the Board must endeavor to quantify the probable loss caused by the right of entry from empirical evidence of loss.

[49] The agreements relied on by Mr. Lumnitzer do not establish a pattern that reflects the various compensation factors set out in section 154 of the *Petroleum and Natural Gas Act*. They do not establish a pattern indicative of the compensation Encana should be expected to pay in the circumstances of this case.

Lease Agreements

[50] Mr. Lumnitzer provided evidence at Exhibit 5 of 14 leases, five rent review agreements and two consent Board decisions on rent review applications. He did not give evidence as to the criteria for the selection of his agreements. They range in time from 2006 to 2014. The evidence of Heidi Berscht, Senior Surface Land Coordinator for Encana was that they cover a wide geographic area. The agreements provide global amounts for payment and do not indicate how those global amounts were arrived at.

[51] Mr. Lumnitzer relies principally on his 2010 agreement with ARC Petroleum Inc. (Exhibit 5, Tab 8) for a 3.56 acre well site on an adjoining parcel to the Lands. This lease provides an initial payment of $10,000 and an annual payment of $3,700. He submits this lease is comparable as it is on adjacent lands with similar crop production and yields. It is not evident from this agreement how either the initial payment or the annual rent was determined.

[52] Exhibit 1 contains 7 agreements from other companies and 28 Encana Agreements. Ms. Berscht gave evidence as to the methodology for gathering the lease comparables submitted in Exhibit 1. She used a 10 km radius from the Lands in selecting lease agreements and included leases back to 2012. The Agreements from other companies include the global annual rent paid, but do not include any information as to how that global amount was determined. Six of the

agreements include payments for additional wells ranging from $1,500 to $2,000 as an initial payment per additional well and ranging from $350 to $500 annual payment per additional well.

[53] The Encana agreements include information as to the components of payments. Compensation for value of the land ranges from $950 per acre to $1,100 per acre with the majority at $1,000. Temporary workspace is consistently, with one exception, compensated at half of the value per acre for the land. Annual nuisance and disturbance ranges from a low of $1,900 to a high of $2,500. Loss of profit is typically compensated at $250 per acre for bush, hay or pasture and $300 to $350 per acre for cultivated land. Payments for additional wells range from $1,000 to $2,000 per additional well as an initial payment, with the majority at $2,000 per well, and $250 to $500 annual per additional well with the majority at $500 per well.

[54] Ms. Berscht's evidence was that none of the agreements in Exhibit 1 are similar to the subject or to each other. Mr. Lumnitzer was also critical of Encana's lease selection. He went through the leases pointing out the differences with his Lands and the discrepancies between annual lease payments.

[55] I find the totality of the lease agreements in evidence do not establish a pattern of compensation reflective of all of the factors set out in section 154, however, I find they do establish certain expectations for some factors including crop loss, nuisance and disturbance and compensation for additional wells. I will apply some of these factors where there is no empirical evidence of a factor, or where the empirical evidence would result in compensation below expectations evident from the various agreements before me.

Other Section 154 Factors

Compulsory Aspect of the Taking

[56] A right of entry under the *Petroleum and Natural Gas Act* is a compulsory taking in that the landowner is not in a position to oppose the entry if entry is required for an oil and gas activity. There is a consequent loss of rights associated with a right of entry. Compensation for the compulsory aspect of the taking and the associated loss of rights is not capable of precise calculation and is invariably somewhat arbitrary (*Dome Petroleum Ltd. v Juell* [1982] B.C.J. 1510 (BCSC)).

[57] The Board has approached compensation for this factor in various ways, but generally includes compensation for the compulsory aspect of the taking in a per acre amount that considers the value of the land and the owner's reversionary or residual interests in the land (*ARC Petroleum Inc. v Miller*, Order 1633-3, May 24, 2011).

Value of the Land

[58] Jeremy Wasmuth, an accredited appraiser, provided an opinion as to the per acre market value of the fee simple interest in the Lands and the residual value of the rights within the right of way (Exhibit 2). His professional opinion is that the per acre value of the fee simple interest in the Lands as of November 25, 2014, the date of the right of entry for the flow lines, was $1,325. In his opinion, the per acre value as of May 26, 2015, the date of the right of entry of the well site, was $1,365. This opinion is based on an analysis of two current listings and six sales of similar property in close proximity to the Lands in 2014 and 2015. Mr. Wasmuth adjusted for time of sale and presence of improvements. He considered the relative similarity of the comparables to the Lands considering factors such as access, soil classification, and percentage of cleared area.

[59] Mr. Lumnitzer provided evidence of seven reported sales from Ritchie Bros. auction on April 1, 2016. The sales are all of land with Class 2 soil and with higher percentages of cleared acreage than the Lands. At least one of the sales includes improvements such as a bungalow, workshop, dugout and sewage lagoon, but no adjustment is made to estimate the bare land value. No adjustments are considered for time of sale or other dissimilarities with the Lands. Given the time of these sales and other dissimilarities with the Lands, I find these sales are not a likely indicator of the market value of the Lands as of the dates of the right of entry orders, and prefer the professional opinion of Mr. Wasmuth.

[60] Following a review of articles, Mr. Wasmuth concluded the residual value to the landowner in the right of way is 50% of the fee simple per acre value, and in the temporary workspace is 75% of the fee simple per acre value. The value, therefore, of the rights taken by the right of way, in his opinion, is $663/acre and in the temporary workspace for the right of way is $331/acre.

[61] While acknowledging that it is appropriate to consider the residual value to the landowner in a right of way, the Board has often provided compensation for a right of way equivalent to the per acre value of the fee simple interest in the land to acknowledge the loss of rights and to attribute some value to that loss. As the Board said in *ARC Petroleum v. Miller, supra* at paragraph [36]:

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

> acknowledges however that although the landowner has a residual/reversionary interest, there is still compensation owing for the compulsory aspect of the taking and loss of intangible rights, and provides an objective basis, namely the market value of the land, that can be demonstrated with evidence, upon which to determine compensation for these factors.

[62] The Board has typically acknowledged that the loss of rights associated with temporary workspace, is also temporary and that once the company has finished with the temporary workspace there is no further loss associated with the right of entry for temporary workspace. The Board typically compensates for the loss of rights associated with temporary workspace at 50% of the value of the land. (See for example *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015). Despite Mr. Wasmuth's literature review in this case, which I find does not prove the value of the residual or reversionary interests in this case, I see no reason to depart from what has become the Board's practice in this regard.

[63] I find Encana's submission that the right of way should be compensated at 50% of the land value and the temporary workspace at 25% of the land value does not consider compensation for the compulsory aspect of the taking or for the intangible loss of rights. I will use Mr. Wasmuth's estimate of the value of the land as the objective benchmark to compensate not only for the value of the land but also for the intangible loss associated with the compulsory aspect of the taking and the loss of rights as a result of both the right of way and the well site.

Loss of Profit

[64] Mr. Lumnitzer's evidence was that in 2016, 940 bales of hay were harvested from 190 acres of his farm, which equates to approximately five bales per acre. His evidence was he sells his hay bales for $65/bale. Five bales x $65 equates to gross income of $325/acre, which is higher than the amount typically paid for loss of profit for pasture and hay land in the other lease agreements before me.

[65] Trevor Sheehan, a professional agrologist, estimated farming losses as a result of the rights of entry (Exhibit 3). Mr. Sheehan's evidence was that from inspection, it appeared that no or very little hay had been harvested from the Lands in the last few years. He provided photographs of bales of hay left in the fields at various states of decomposition. He nevertheless conducted an assessment of the probable agricultural damages that would be incurred by a reasonable operator as a result of the well site and right of way.

[66] Mr. Sheehan estimated loss of profit from the well site area on a net basis adjusting for expenses, but based on 7.86 productive acres, which includes 0.08 acres of severed land. He estimated gross revenue based on average yields and prices for good quality mixed hay at $145/acre. Applying average total direct expenses from published data, he concluded actual loss of profit from the lands at $41/acre. He estimated the total loss of profit attributable to the well site at $322 annually.

[67] It is evident from the other lease agreements before me however, that typically loss of profit from crop loss is not compensated on a net basis. The amounts paid for loss of profit between $250 and $400 per acre are significantly higher than the net loss calculated by Mr. Sheehan and reflect an expectation that compensation for loss of profit should be based on gross rather than net revenue from farming activity. Mr. Lumnitzer's evidence of gross revenue from hay in 2016 at $325/acre is above the typical compensation for loss of profit attributable to hay and pasture in the lease agreements before me but within the range typically paid for cultivated land. I will calculate loss of profit at $325/acre based on Mr. Lumnitzer's evidence, for both the wellsite and the right of way.

[68] Applying $325/acre to 7.86 acres results in loss of profit of $2,555 annually from the well site area. Crop loss from the .44 acres of temporary workspace for 2016 equates to $143. As the well site temporary workspace is wholly within the 3.28 acres of temporary workspace for the right of way, crop loss for subsequent

years is compensated in the loss of profit from temporary workspace for the right of way.

[69] Mr. Sheehan initially estimated loss of profit from the right of way and temporary work space area based on 100% loss for 2016 and 2017, 75% loss for 2018, 50% loss for 2019, and 25% loss for 2020. As the evidence is that Mr. Lumnitzer harvested a hay crop in 2016, he revised his estimate to remove the 2016 loss. His estimate of declining loss over the next four years allows time for the hay to re-establish following construction of the right of way. I accept the estimated declining crop loss over the next four years is reasonable allowing for 100% in 2017 declining to 25% loss in 2020. As 1.48 acres of the pipeline right of way is within the well site area, the compensable area of right way for the purpose of calculating loss of income is 5.69 acres (7.17-1.48 = 5.69). The 1.48 acres within the well site area is included in the loss of profit attributable to the well site.

Severance

[70] The well site severs .08 acres. The compensable area for the purpose of calculating loss of profit from the wellsite entry is, therefore, 7.86 acres.

Nuisance and Disturbance

[71] As the wellsite creates an obstruction in the field that must be worked around, Mr. Sheehan estimated the additional time involved due to extra cornering and working additional headlands, providing an empirical estimate of tangible nuisance and disturbance. In calculating the additional time, he made various assumptions favourable to the landowner respecting equipment size and working direction to create the worst-case scenario. He estimated the annual additional cost of extra field working time at $130.

[72] Mr. Sheehan also estimated the additional input costs from working additional headlands at $10 annually and decreased revenues attributable to additional headlands at $49 annually. Mr. Sheehan's total estimate of annual loss attributable to tangible nuisance and disturbance associated with the well site is, therefore, $189.

[73] Mr. Lumnitzer did not provide evidence of either tangible or intangible nuisance and disturbance. It is evident from the lease agreements before me, however, that compensation for nuisance and disturbance ranges from $1,900 to $2,500 annually, an amount that clearly exceeds calculable tangible loss from working around an installation and additional input costs. I find there is an expectation that compensation for nuisance and disturbance will exceed what can be empirically estimated as tangible loss. As the well site in this case is in the corner of a field and as the Lands are not a home quarter, I find compensation for nuisance and disturbance associated with the wellsite should be on the low end of the range and find $2,000 annually to be appropriate.

Compensation for Right of Way and Temporary Workspace

[74] Considering all of the above, I calculate compensation payable by Encana to the Lumitzers arising from the right of entry for the pipeline and temporary workspace as follows:

For loss of rights/compulsory aspect of the taking/value of the land – Right of way	7.17 acres x $1,325	$9,500
For loss of rights/compulsory aspect of the taking/value of the land – Temporary Workspace	3.28 acres x $1,325 x 50%	$2,173
Loss of profit – Right of Way and temporary workspace (5.69* acres + 3.28 acres = 8.97 acres)	2017: 8.97 acres x $325 x 100% 2018: 8.97 acres x $325 x 75% 2019: 8.97 acres x $325 x 50% 2020: 8.97 acres x $325 x 25%	$2,915 $2,186 $1,458 $ 729
		$18, 961

*7.17 acres – 1.48 acres within the wellsite = 5.69 acres

[75] I find appropriate compensation for the loss arising from Encana's right of way and temporary workspace is $19,000.00.

Compensation for wellsite

[76] I calculate compensation payable by Encana to the Lumitzers arising from the right of entry for the wellsite as follows:

		Initial	Annual
For loss of rights/compulsory aspect of the taking/value of the land – wellsite area	7.78 acres x $1,365	$10,620	
Loss of profit – wellsite area and severance (7.78 acres + .08 acres = 7.86 acres)	7.86 acres x $325	$2,555	$2,555
Loss of profit temporary workspace for 2016*	.44 acres x $325	$143	
Nuisance and disturbance (initial padsite construction and ongoing)		$2,000	$2,000
		$15,318	**$4,555**

*compensation for following four years while crop re-establishes is included in the 3.28 acres of temporary workspace for the right of way

[77] I find the compensation payable for loss arising from the wellsite is an initial payment of $15,320.00 and annual rent of $4,555.00.

Compensation for Additional Well

[78] The wells were not drilled when the padsite was constructed but are intended to be drilled in the first quarter of 2017, necessitating another period of construction with associated nuisance and disturbance. I find there should be an additional payment of $2,000 to compensate for the additional nuisance and disturbance when the wells are drilled.

[79] The lease agreements before me indicate that there is an expectation of additional compensation for each well beyond the first well drilled on a multi-well padsite. As the evidence does not suggest there will be significant additional

impact to the landowner for the additional well, I find the additional payment should be at the low end of the indicated range or $250 for the second well annually. When the second well is drilled, the annual rent should be increased by $250 bringing it to $4,805.00.

ORDER

[80] Encana Corporation shall forthwith pay to Fred and Wilhelmina Lumnitzer the sum of $2,700.00 for the right of way being the difference between total compensation owning of $19,000.00 and the partial payment of $16,300.00 already made.

[81] Encana Corporation shall forthwith pay to Fred and Wilhelmina Lumnitzer the sum of $1,948.00 for the well site being the difference between total initial compensation owning of $15,320.00 and the partial payment of $13,372.00 already made.

[82] Encana Corporation shall forthwith pay Fred and Wilhelmina Lumnitzer the sum of $4,555.00 for the annual rent owing as of May 26, 2016, and shall continue to pay annual rent of $4,555.00 on each anniversary date of the wellsite right of entry thereafter.

[83] Upon the drilling of the two wells, Encana Corporation shall forthwith pay to Fred and Wilhelmina Lumnitzer the sum of $2,000.00. Encana Corporation shall increase the annual rent by $250 for the second drill effective on the first anniversary date of the initial right of entry following the drilling of the wells.

DATED: November 24, 2016

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1843
Board Order No. 1843-1

July 7, 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 SOUTH WEST ¼ OF SECTION 33 TOWNSHIP 79 RANGE 17
WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

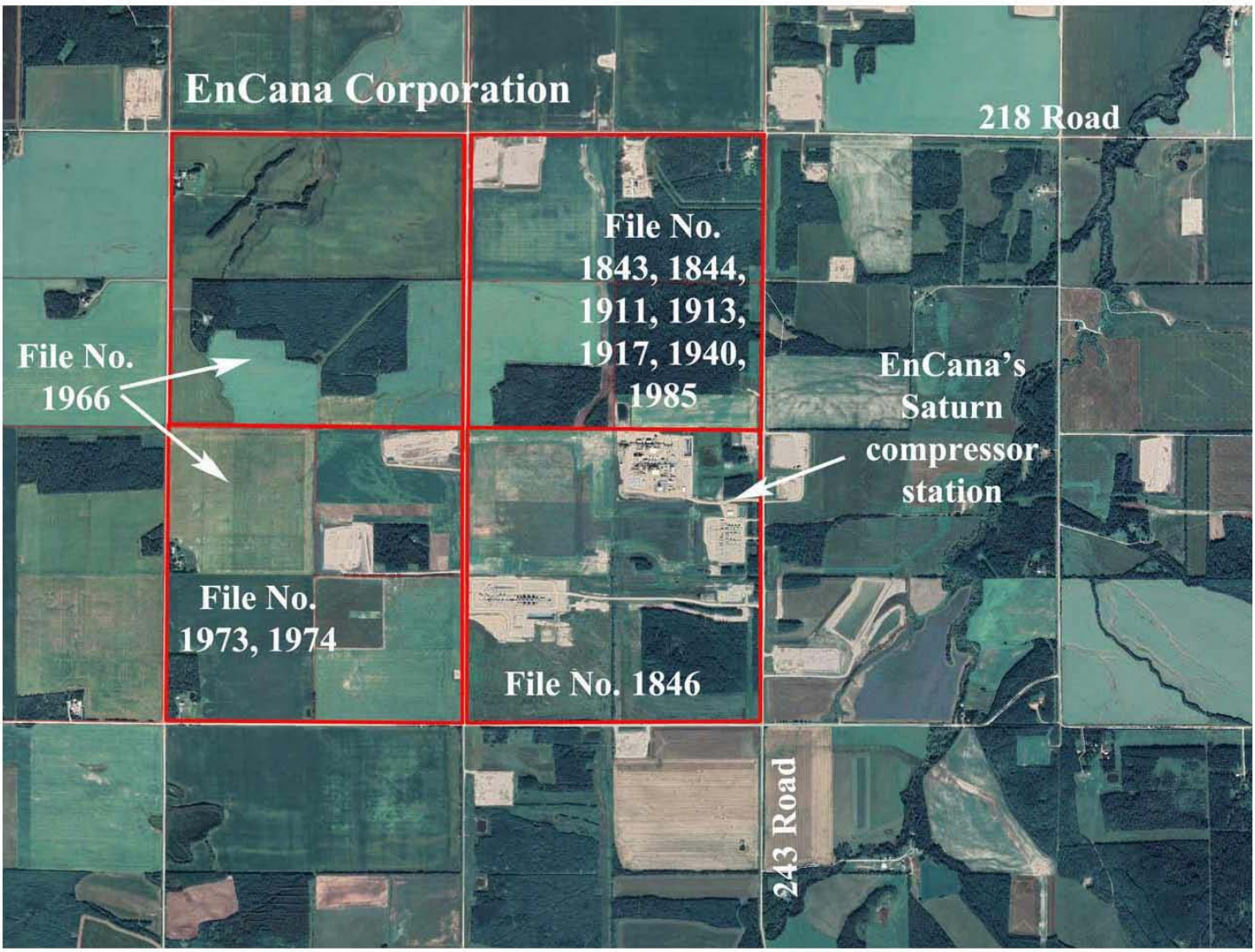
(APPLICANT)

AND:

Andrew George Neis
Michelle Amanda Derfler

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned Andrew George Neis and Michelle Amanda Derfler to carry out an approved oil and gas activity, namely to construct and operate a pipeline project within a right of way located on the Lands.

I conducted a telephone mediation on September 9, 2014. The Landowners did not attend. In my results letter I said:

> *I asked Encana to prepare a draft of the Right of Entry Order and circulate it to the Landowners so they know exactly what Encana is proposing.*
>
> *Once the Landowners have this draft they may:*
> 1. *Agree with the project and enter into a right of way agreement with Encana;*
> 2. *Agree with the project but ask the Board to issue a consent Right of Entry Order;*
> 3. *Object to the project and reject the content of the draft order.*

On November 3, 2014, Encana produced the draft order to the Landowners.

Encana asked the Board to issue the right of entry order as the Landowners have had time to consider the draft and have not responded. I attempted to contact the Landowners to determine whether they agreed but received no response.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on my review of the application and also on the fact that the Oil and Gas Commission has issued a permit for Encana's project, I am satisfied that Encana requires the Lands for an approved oil and gas activity.

Compensation has not been resolved and remains an issue for mediation.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE SOUTH WEST ¼ OF SECTION 33 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands")

to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $8,700.00 representing the partial payment of 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.

Dated July 7, 2015

FOR THE BOARD

Rob Fraser, Mediator

Order 1843-1 AppA

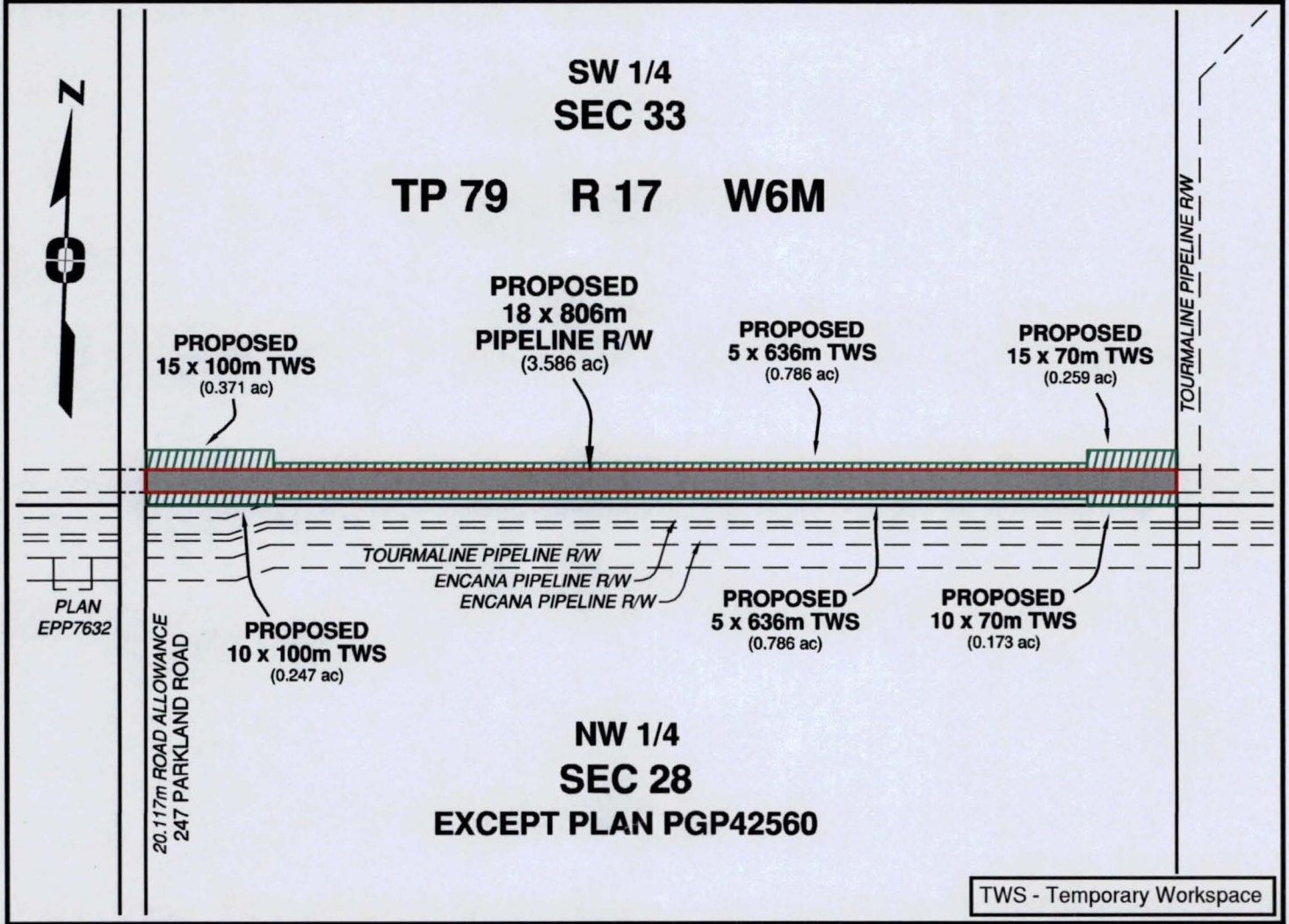
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Andrew George Neis and Michelle Amanda Derfler (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 13-29-79-17 to Compressor Site 15-27-79-17)



TWS - Temporary Workspace

Owner(s): Andrew George Neis
Michelle Amanda Derfler

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Title No: CA2967439
Parcel Identifier: 013-633-911
Landowner File: S467521
Encana File(s): S467442

Certified correct this 20th day of March, 2014

B.K. Doherty, BCLS

Areas		
Permanent	1.451 ha	3.586 ac
Temporary	1.061 ha	2.622 ac
Total	**2.512 ha**	**6.208 ac**

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130084NP04R1
Ref Dwg: 130084CP01R2
Drafter: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1844
Board Order No. 1844-1

July 7, 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 SOUTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

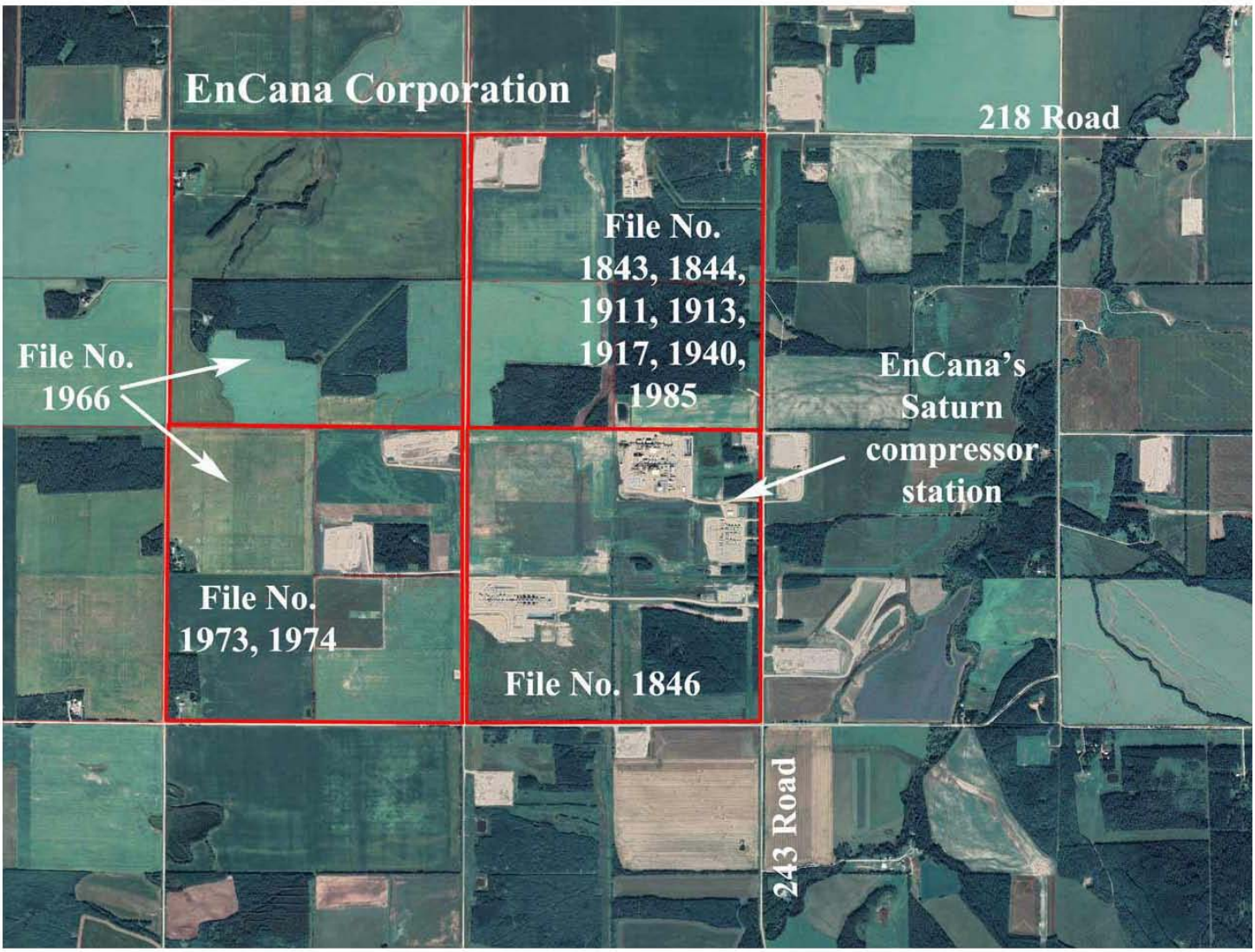
(APPLICANT)

AND:

Lila Evangeline Derfler
Brian Ernest Derfler

(RESPONDENTS)

BOARD ORDER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File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned Lila Evangeline Derfler and Brian Ernest Derfler to carry out an approved oil and gas activity, namely to construct and operate a pipeline project within a right of way located on the Lands.

I asked Encana to produce a draft right of entry order to the Landowners. On November 6, 2014, Encana complied.

Neither the Board nor Encana have received any comments from the Landowners regarding the draft right of entry.

Encana asked the Board to issue the right of entry order as the Landowners have had time to consider the draft and have not responded. I attempted to contact the Landowners to determine whether they agreed but received no response.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on my review of the application and also on the fact that the Oil and Gas Commission has issued a permit for Encana's project, I am satisfied that Encana requires the Lands for an approved oil and gas activity.

Compensation has not been resolved and remains an issue for mediation.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE SOUTH WEST ¼ OF SECTION 27 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as payment for compensation the amount of $3,700.00 representing the partial payment of 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.

Dated July 7, 2015

FOR THE BOARD

Rob Fraser, Mediator

App A
Order 1844-1 p-1082

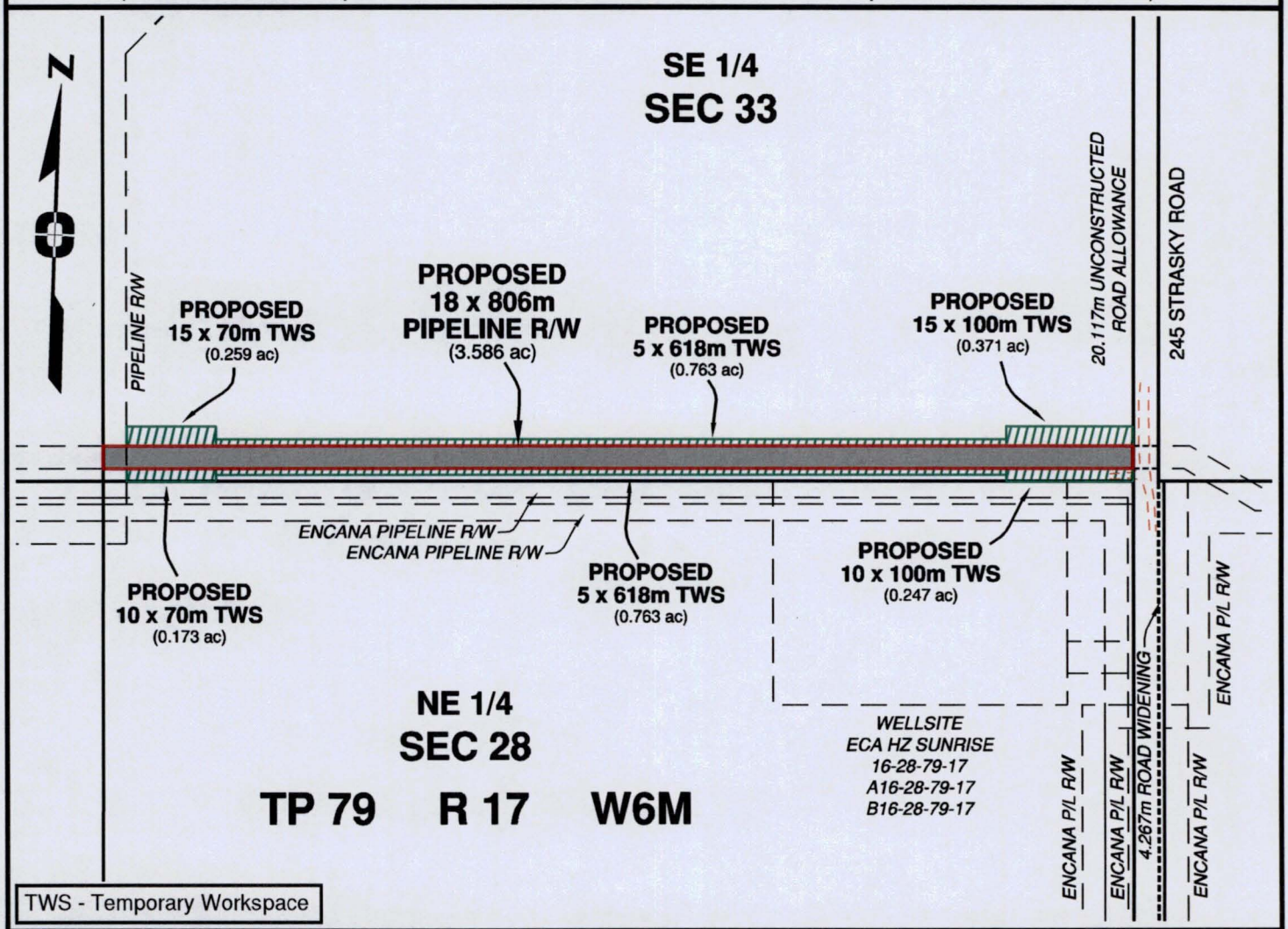
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Lila Evangeline Derfler and Brian Ernest Derfler (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE SOUTH EAST 1/4 OF SECTION 33, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 13-29-79-17 to Compressor Site 15-27-79-17)



TWS - Temporary Workspace

Owner(s): Lila Evangeline Derfler
Brian Ernest Derfler

Title No: BB4061234
Parcel Identifier: 014-581-990
Landowner File: S467522
Encana File(s): S467442

Areas			
Permanent		1.451 ha	3.586 ac
Temporary		1.043 ha	2.576 ac
Total		**2.494 ha**	**6.162 ac**

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 20th day of March, 2014

B. Doherty

B.K. Doherty, BCLS

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130084NP05R1
Ref Dwg: 130084CP01R2
Drafter: KG

AppA
Order 1844-1 p.2082.

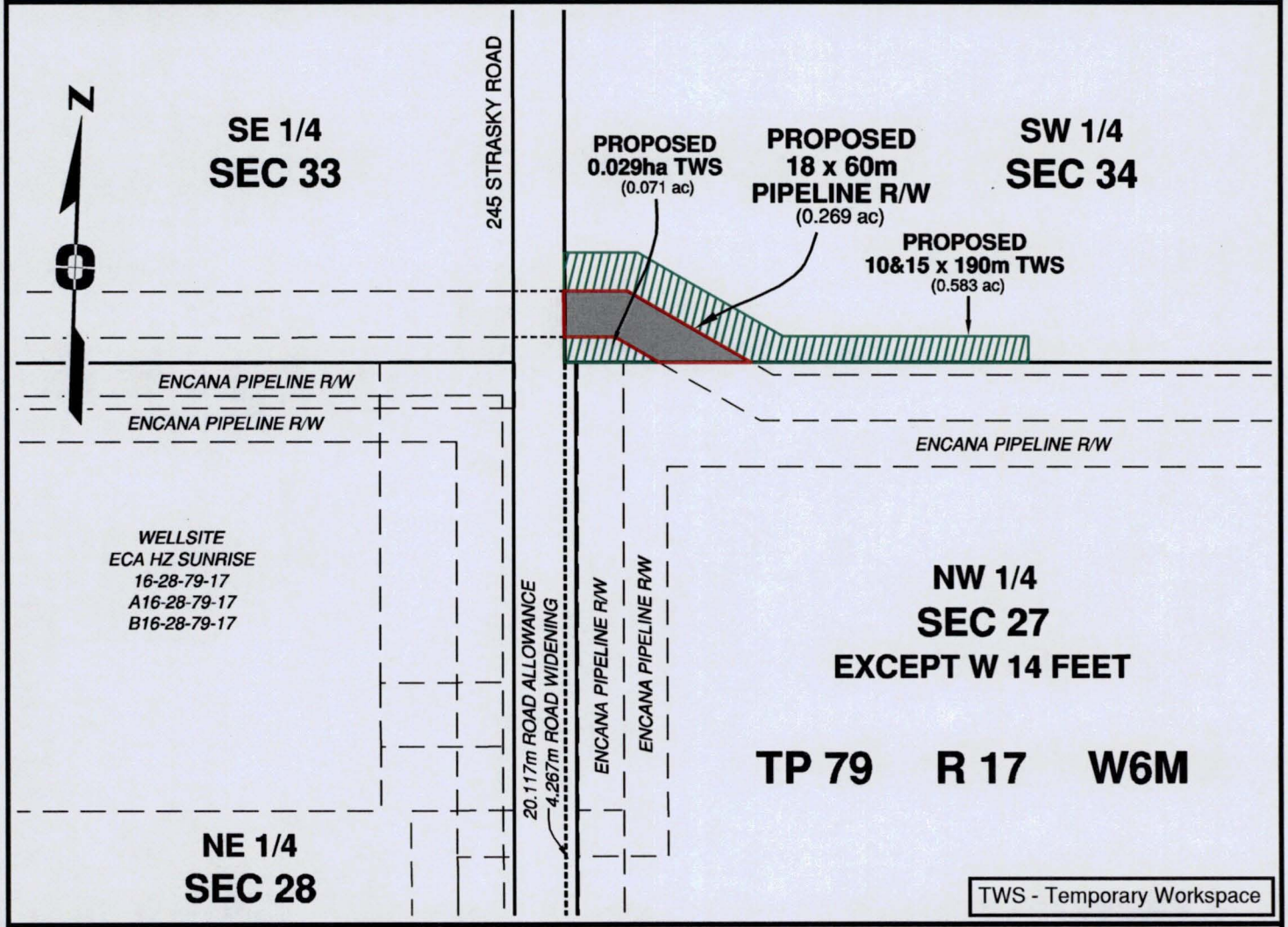
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Lila Evangeline Derfler and Brian Ernest Derfler (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE THE SOUTH WEST 1/4 OF SECTION 34, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 13-29-79-17 to Compressor Site 15-27-79-17)



Owner(s): Lila Evangeline Derfler
Brian Ernest Derfler

Title No: BB4061235
Parcel Identifier: 014-581-981
Landowner File: S467522
Encana File(s): S467442

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Certified correct this 20th day of March, 2014

B.K. Doherty, BCLS

Areas			
Permanent		0.109 ha	0.269 ac
Temporary		0.265 ha	0.654 ac
Total		**0.374 ha**	**0.923 ac**

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130084NP06R1
Ref Dwg: 130084CP01R2
Drafter: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1846
Board Order No. 1846-1

November 20, 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
THE SOUTH WEST ¼ SECTION 27 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

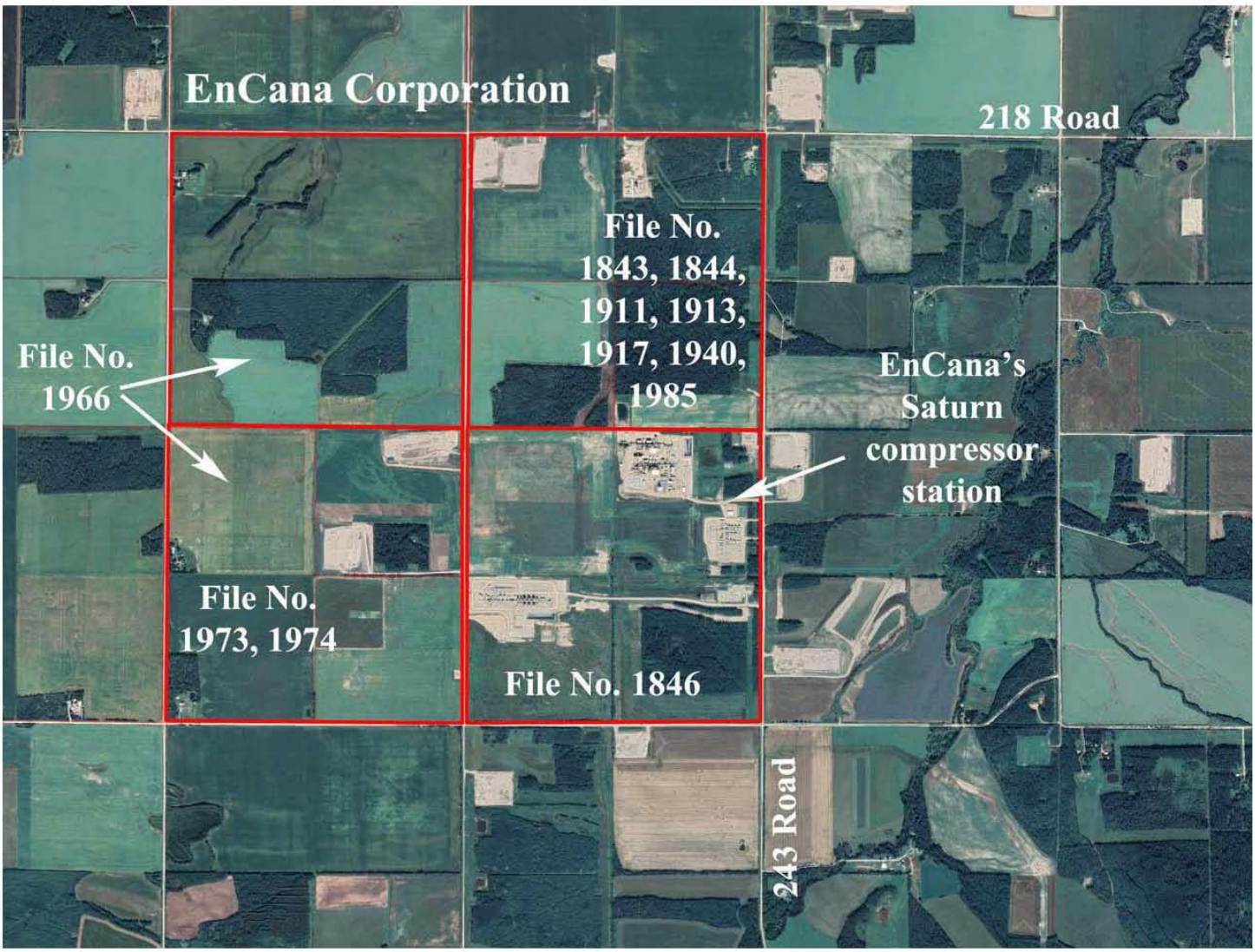
(APPLICANT)

AND:

John Clark Grusing and
Haida Marianne Biro

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by John Clark Grusing and Haida Marianne Biro to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flow lines and associated works. The total project is 2.073 acres, with 1.003 acres of temporary workspace and 1.07 acres of right of way.

The Oil and Gas Commission has issued a permit for this project.

On November 19, 2014, I conducted a telephone mediation attended by the Applicant's representatives and the Respondents. They discussed the proposed right of entry order and compensation. At the end of the discussion, the Landowners said they find the compensation for the pipeline project reasonable and they agree with the contents of the proposed order. However, final compensation is not resolved and remains an open issue due to uncertainties regarding the installation of residential hydro and any impacts of this project on the Respondent's costs.

Encana says it requires access to the Lands as part of a larger oil and gas project. I am satisfied that they require the Lands for an approved oil and gas activity, supported by the fact the Oil and Gas Commission has issued a permit for this project.

THE SURFACE RIGHTS BOARD ORDERS:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE SOUTH WEST ¼ OF SECTION 27 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowners as partial payment for compensation the amount of $3,700.00 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.

DATED: November 20, 2014

FOR THE BOARD

Rob Fraser, Mediator

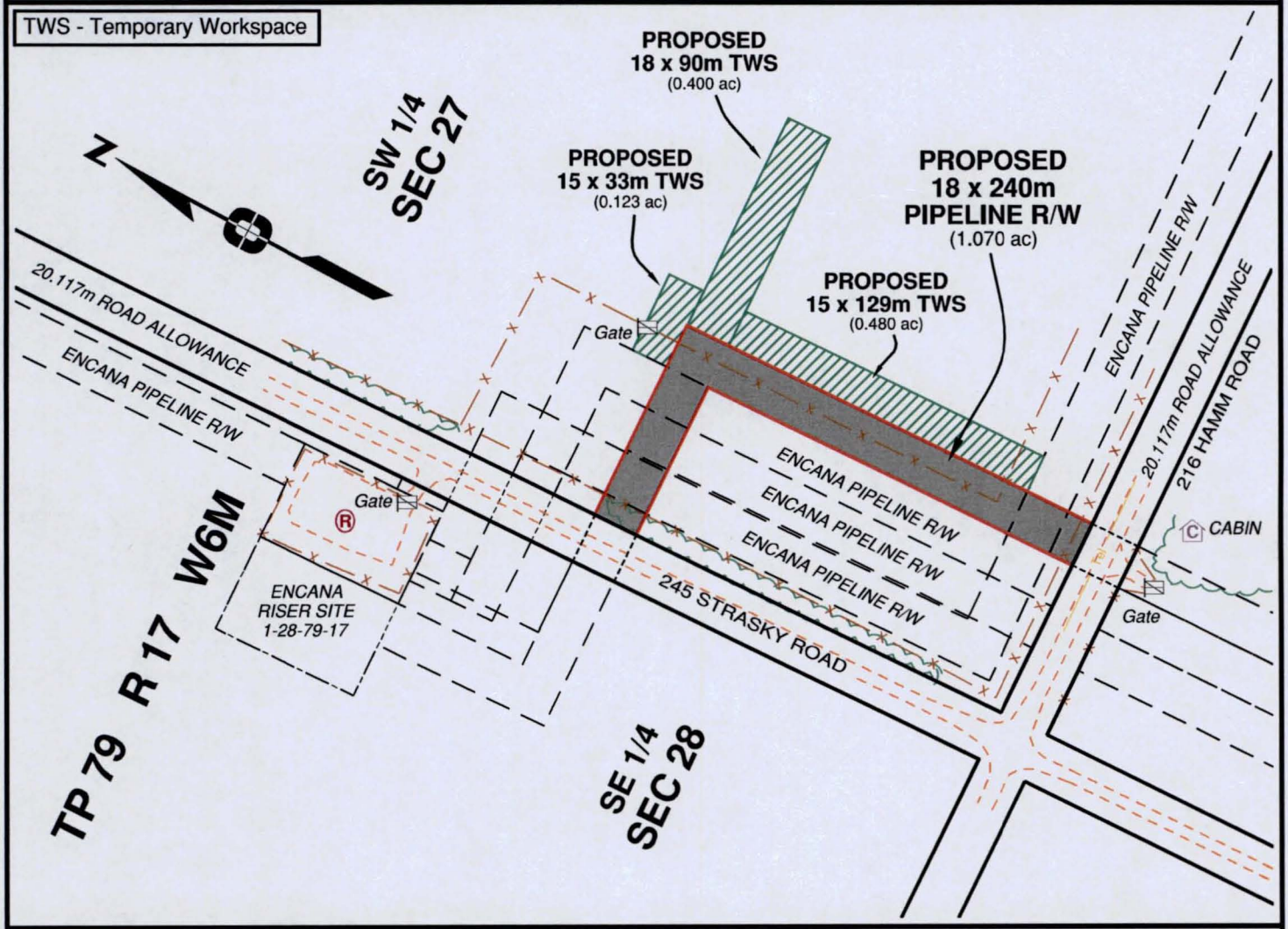
Order1546-1 Appendix A

SCHEDULE "A"

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between John Clark Grusing and Haida Marianne Biro (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE SOUTH WEST 1/4 OF SECTION 27, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 4-22-79-17 to Riser Site 1-28-79-17)



Owner(s): John Clark Grusing
Haida Marianne Biro

Title No: CA3673641
Parcel Identifier: 007-498-608
Landowner File: S467835
EnCana File(s): S458875

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Certified correct this 7th day of October, 2014

Darrin B.C. Connatty, BCLS

Areas			
Permanent		0.433 ha	1.070 ac
Temporary		0.406 ha	1.003 ac
Total		**0.839 ha**	**2.073 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 100959NP03R1
Ref Dwg: 100959CP01R3
Drafter: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1847
Board Order No. 1847-1amd

May 26, 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 SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 78 RANGE 16
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

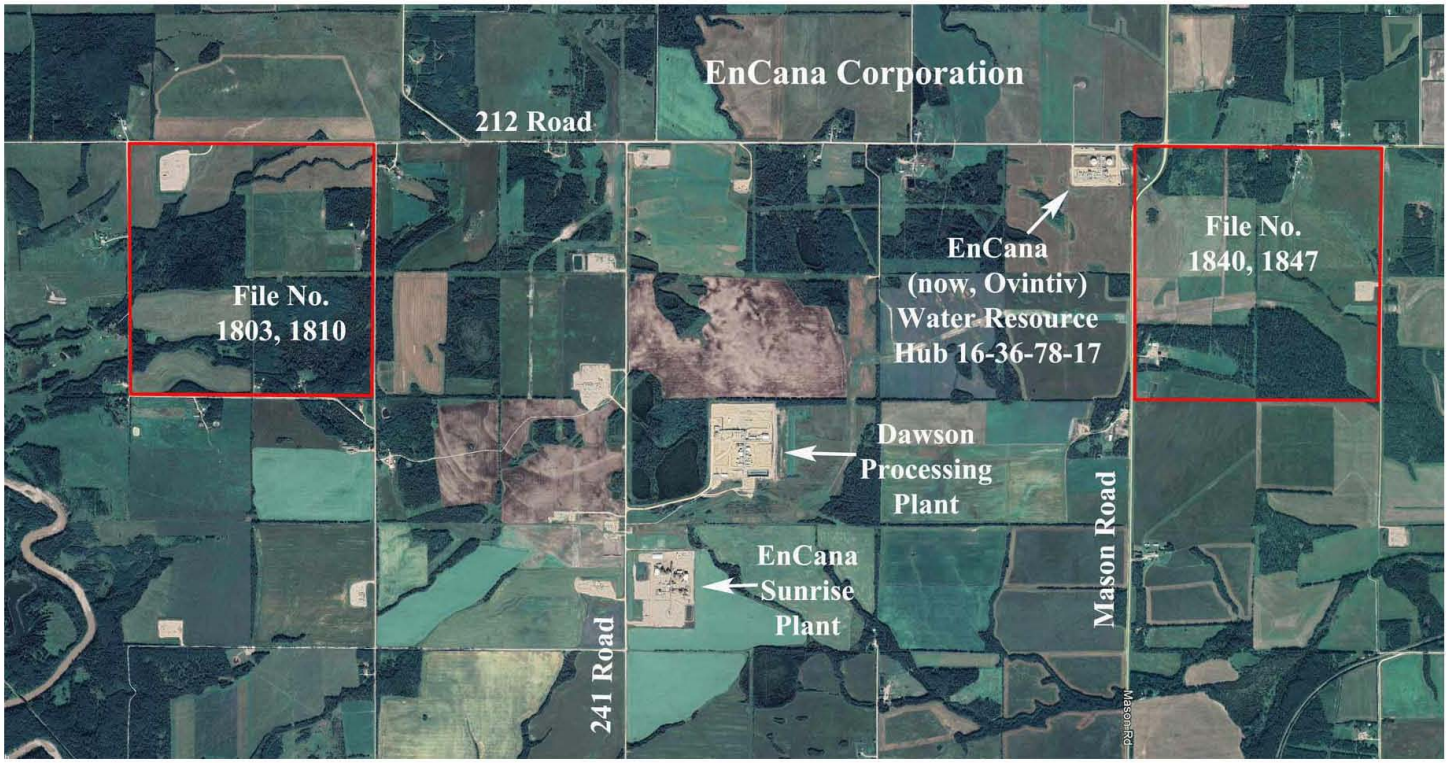
(APPLICANT)

AND:

Wilhelmina Lumnitzer
Fred Lumnitzer

(RESPONDENT)

BOARD ORDER


EnCana Corporation
212 Road
File No.
1803, 1810
File No.
1840, 1847
EnCana
(now, Ovintiv)
Water Resource
Hub 16-36-78-17
Dawson
Processing
Plant
EnCana
Sunrise
Plant
241 Road
Mason Road
Mason Rd

This Order amends and replaces Order 1847-1 dated May 20, 2015.

Encana Corporation seeks a right of entry order to access certain lands legally owned by Wilhelmina Lumnitzer and Fred Lumnitzer to carry out an approved oil and gas activity, namely to construct and operate a multi-well pad site within a lease site.

On May 19, 2015 I conducted a mediation dealing with Encana's application to the Surface Rights Board for mediation and arbitration services, which the Landowners did not attend. Based on this discussion plus the fact that the OGC has issued a permit for the project I am satisfied that Encana requires the Lands for an approved oil and gas activity, namely the construction and operation of a multi-well pad site in a lease site.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE SOUTH EAST ¼ OF SECTION 31, TOWNSHIP 78, RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for the purpose of completing any necessary assessments the Oil and Gas Commission Well Permit requires and for the purpose of drilling, completing and operating a multi well padsite.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $13,372.00 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.

Dated May 26, 2015

FOR THE BOARD

Rob Fraser, Mediator

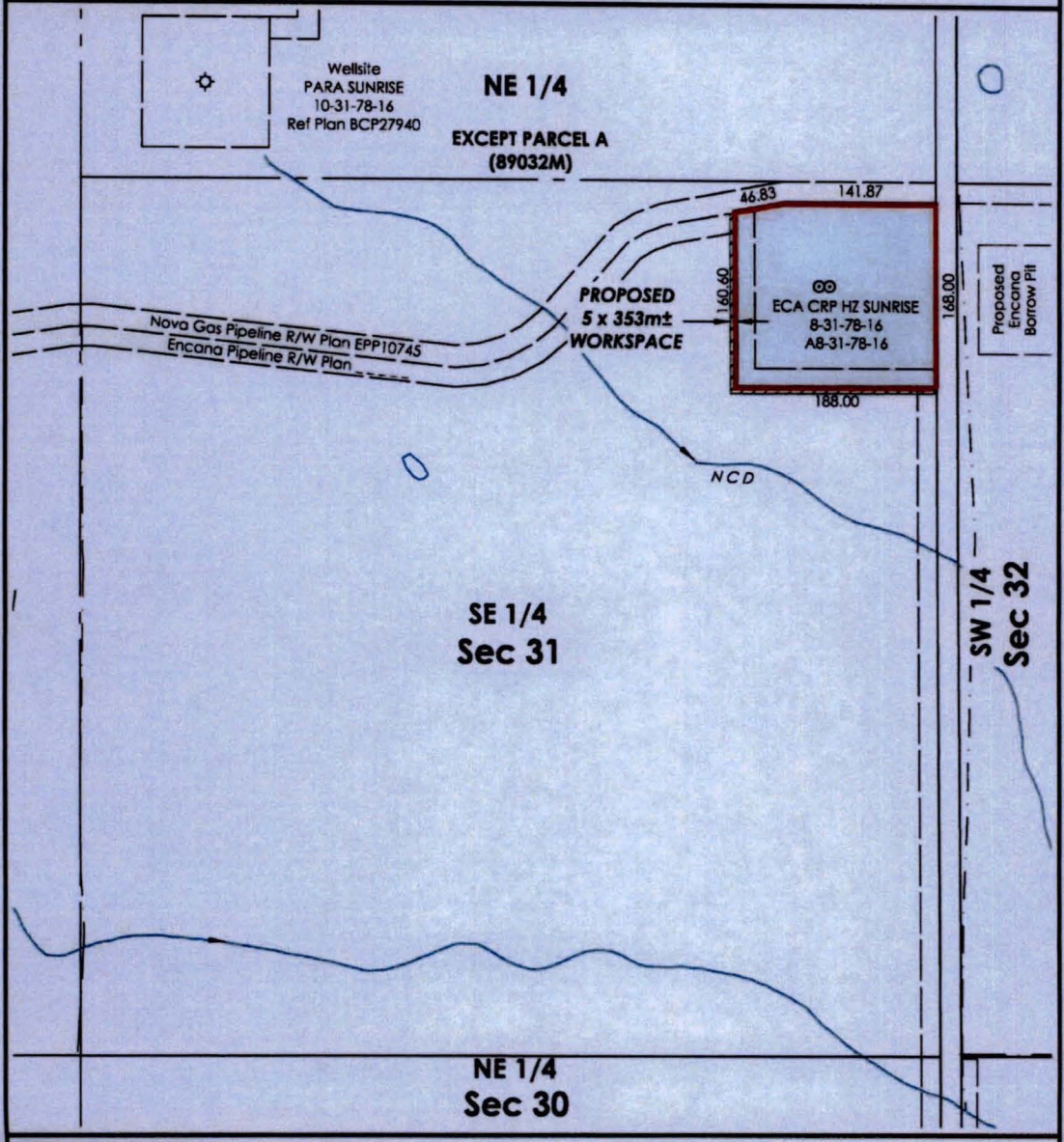
ORDER 1547-1
APPENDIX "A" - amd

Schedule "A" Page ___ of ___

Attached to and made part of this Agreement dated this ____ day of _____, 20___, between

Wilhelmina Lumnitzer and Fred Ralph Lumnitzer (Lessor) and **Encana Corporation** (Lessee).

ENCANA CORPORATION
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE AND WORKSPACE IN
SE 1/4 Sec 31, Tp 78, R16, W6M
PEACE RIVER DISTRICT



TITLE No.: BB1135647 **P.I.D. No.:** 014-328-950

OWNER(S): WILHELMINA LUMNITZER
FRED RALPH LUMNITZER

Permanent	3.15 ha	7.78 ac
Temporary	0.18 ha	0.44 ac
TOTAL:	3.33 ha	8.22 ac

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

Certified correct this
16th day of February, 2015.

Chris R. Sakundiak, BCLS

NO	DATE	REVISION	DRN	CKD
0	13/06/12	Original plan issued	AB	CS
1	15/02/16	Extended Lease	SC	CS

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

CAN-AM FILE: J20130319
CAD FILE: J20130319IOP-1
Client File No.: S467864
AFE No.: 13172854
Land File No.:
1 REVISION

APPENDIX "B"

Conditions for Right of Entry

1. **Encana Corporation** will notify the landowner prior to commencing construction, drilling and completion operations.

File No. 1851
Board Order No. 1851-1

April 14, 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 WEST ¼ SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

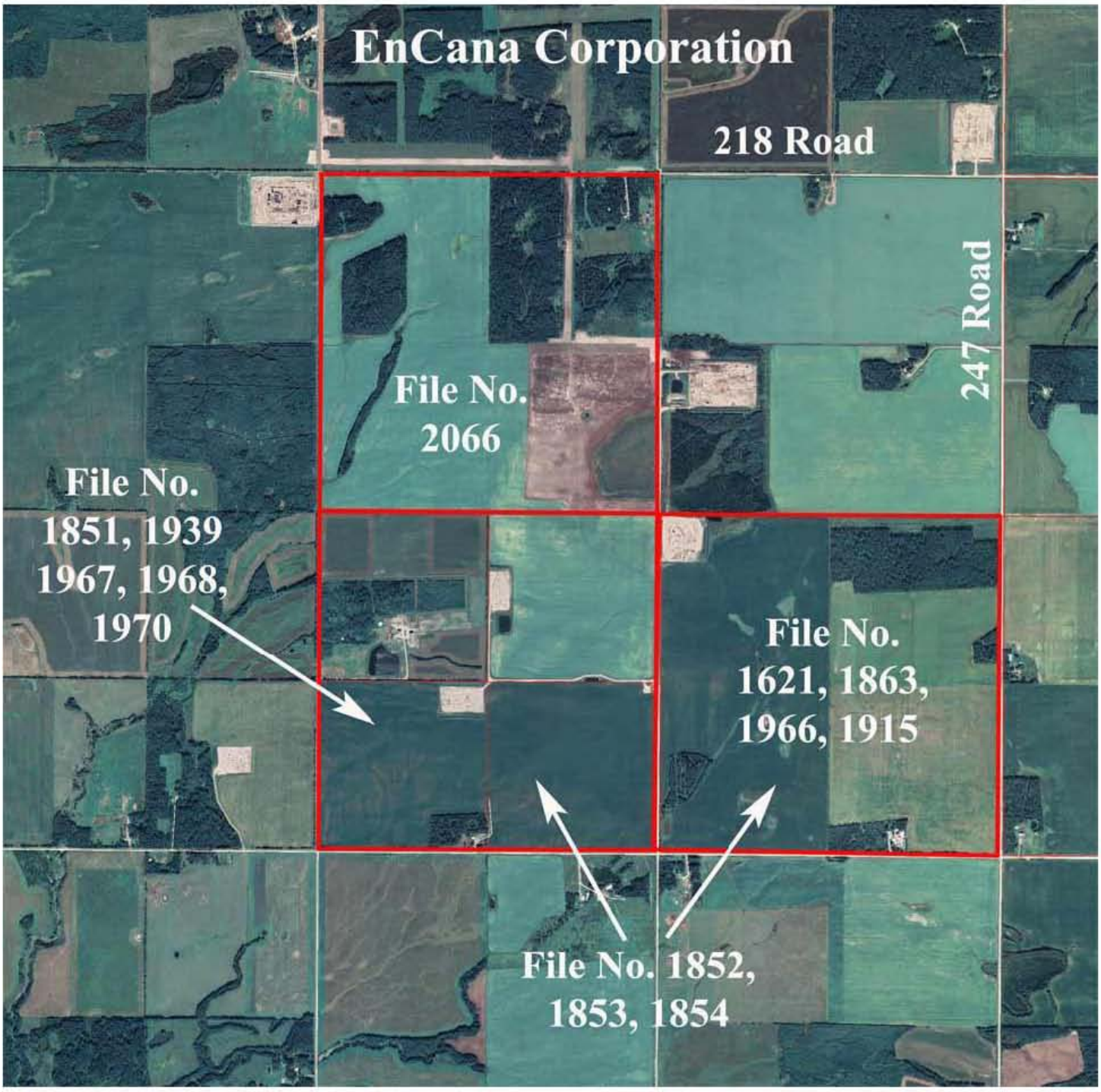
(APPLICANT)

AND:

Robert Ernest Dilworth
Maxine Margaret Dilworth

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation seeks a right of entry order to access certain lands legally owned by Robert Ernest Dilworth and Maxine Margaret Dilworth to carry out an approved oil and gas activity, namely to construct and operate multiple flow lines within a right of way.

On April 10, 2015 I conducted a mediation dealing with Encana's application to the Surface Rights Board for mediation and arbitration services. During that mediation the parties discussed Encana's project on the Lands, including the Landowner's objections to the placement of the right of way and Encana's reasons for the location.

Based on this discussion plus the fact that the OGC has issued a permit for the project I am satisfied that Encana requires the Lands for an approved oil and gas activity, namely the construction and operation of flow lines in a right of way.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $2,500.00 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.

DATED: April 14, 2015

FOR THE BOARD

Rob Fraser, Mediator

Order No. 1851-1

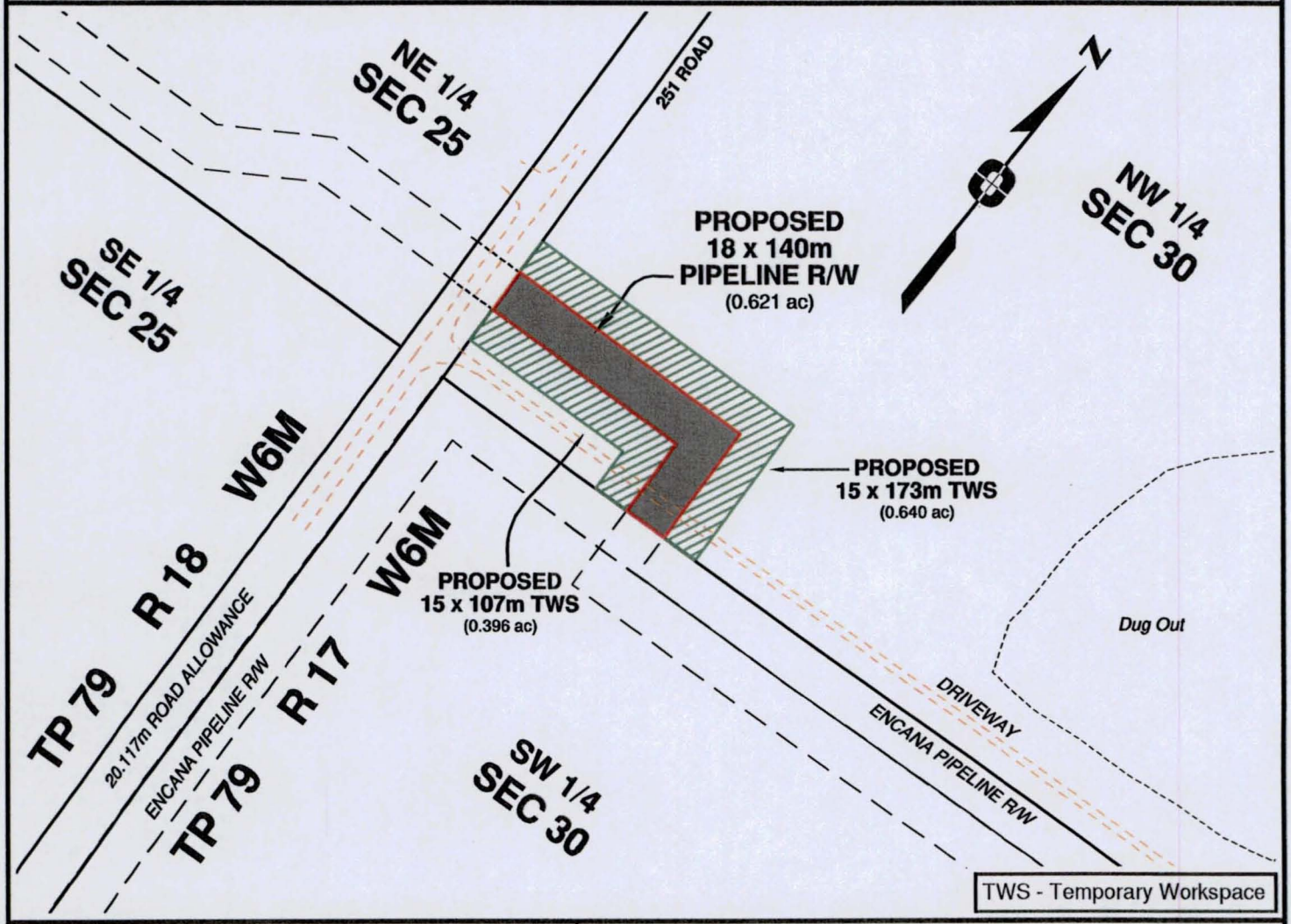
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Robert Ernest Dilworth and Maxine Margaret Dilworth (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE NORTH WEST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



Owner(s): Robert Ernest Dilworth
Maxine Margaret Dilworth

Title No:	CA3756523
Parcel Identifier:	010-380-647
Landowner File:	S467441
Encana File(s):	S467441

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	0.251 ha	0.621 ac
Temporary	0.419 ha	1.036 ac
Total	**0.670 ha**	**1.657 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No:	130078NP03R6
Ref Dwg:	130078CP01R6
Drafter:	DCG

APPENDIX B

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File Nos. 1852 and 1853
Board Order No. 1852/1853-1

June 15, 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 WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

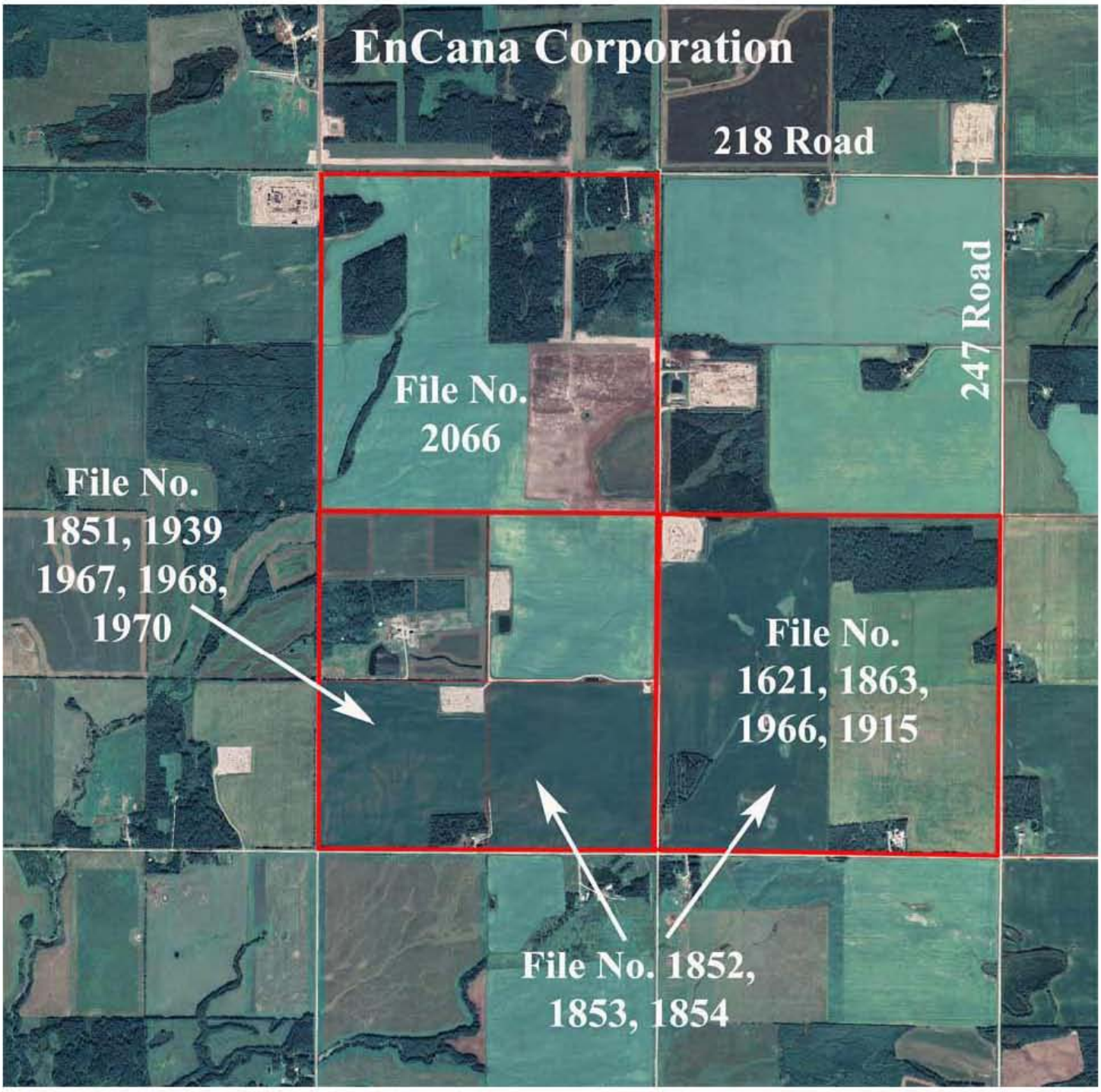
(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD DECISION


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Heard: By written submissions closing June 11, 2015
Appearances: Lars Olthafer and Katie Slipp, Barristers and Solicitors, For Encana Corporation
Ellen S. Hong, Barrister and Solicitor, for Olaf Anton Jorgensen and Francis Diane Jorgensen

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INTRODUCTION

[1] Olaf Jorgensen is the owner of land legally described as the North West ¼ of Section 29 Township 79 Range 17 (NW 29-79-17), and Olaf and Diane Jorgensen are the joint owners of land legally described as the South East ¼ of Section 30 Township 79 Range 17 (SE 30-79-17), the South West ¼ of Section 30 Township 79 Range 17 (SW 30-79-17), and the North East ¼ of Section 30 Township 79 Range 17 (NE 30-79-17) all West of the 6th Meridian Peace River District (collectively the Lands). Encana has received a permit from the Oil and Gas Commission (the OGC) to construct and operate a pipeline project with multiple segments located partially within the Lands (the Permit). Encana Corporation (Encana) seeks a right of entry order from the Board granting them the right to enter and use a portion of the Lands to construct and operate the pipelines.

[2] Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline. However, pursuant to section 154(2) of the *Petroleum and Natural Gas Act*, the Board's jurisdiction to grant right of entry and determine the compensation payable to a landowner as a result of an entry does not extend to a pipeline that is not a "flow line".

[3] The term “flow line” is defined in the *Petroleum and Natural Gas Act* by reference to the *Oil and Gas Activities Act* as follows:

> “flow line” means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[4] One of the pipelines authorized by the Permit is a natural gas pipeline referred to as the Sales Gas Pipeline. The Jorgensens argue the Sales Gas Pipeline is not a “flow line” within the meaning of the *Petroleum and Natural Gas Act*, and therefore not within the jurisdiction of the Board.

[5] The Sales Gas Pipeline when constructed will transport natural gas from the Saturn Compressor Station located at 9-27-79-17 W6M (the Saturn Compressor Station) to a riser site located at 8-30-79-17 W6M (the 8-30 Riser Site). Encana describes the natural gas that will be transported in the Sales Gas Pipeline as “unprocessed”. The Jorgensens submit that the natural gas is “processed” at the Saturn Compressor Station. They argue that the Saturn Compressor Station is a “scrubbing, processing, or storage facility” within the meaning of the definition of “flow line”. As the Sales Gas Pipeline connects well heads with the Saturn Compressor Station, which they say is a “scrubbing, processing or storage facility”, they submit the Sales Gas Pipeline is, therefore, not a “flow line”.

ISSUE

[6] The issue before me is whether the Sales Gas Pipeline is a “flow line”. More specifically, that issue involves determining whether what happens at the Saturn Compressor Station is “processing” and whether the Saturn Compressor Station is a “scrubbing, processing or storage facility”.

EVIDENCE AND FINDINGS OF FACT

[7] The evidence before me is an Affidavit of Nairn Bannatyne, a Senior Facilities Technologist with Encana. His responsibilities include oversight of the planning and design of the Saturn Compressor Station.

[8] The Jorgensen's submit that paragraphs 12 and 16 of Mr. Bannatyne's Affidavit be struck from the record as being based on information and belief without identifying the basis for that belief. Paragraph 12 is a statement as to what Mr. Bannatyne believes happens at another Encana Compressor Station known as the 9-15 Compressor Station. The 9-15 Compressor Station was referred to by the Board in its decision in *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015 (*Spectra v. London*). In *Spectra v. London*, based on the evidence before it, the Board found that a pipeline known as the Bissette Pipeline transporting natural gas from the 9-15 Compressor Station to Spectra's Dawson Plant was a flow line. Paragraph 16 is a statement as to what Mr. Bannatyne believes happens downstream of the Spectra McMahon Plant. I agree that neither statement provides reliable evidence of the alleged facts and, for that reason, can be given no weight.

[9] In any event, although both parties referred in their arguments to the 9-15 Compressor Station, and in particular tried to compare the activities at the 9-15 Compressor Station to the activities at the Saturn Compressor Station, this case will turn on the evidence before me of what happens at the Saturn Compressor Station. Mr. Bannatyne's belief as to what occurs at the 9-15 Compressor Station is not relevant, particularly where that belief includes information that was not relied on by the Board in coming to its decision in *Spectra v. London*.

[10] From Mr. Bannatyne's Affidavit I find as follows.

[11] Raw natural gas and produced liquids, principally water and condensates, enter the Saturn Compressor Station from well pads that are tied into the Saturn Gathering Pipeline System. At the Saturn Compressor Station, the raw natural gas and produced liquids undergo primary treatment comprised of inlet separation, compression, and dehydration.

[12] Inlet separation is a necessary component of field compression and is required to separate liquids (water and condensate emulsion) from the natural gas prior to compression and further transport of that gas through the Sales Gas Pipeline and the South Peace Pipeline. The liquids are relatively incompressible and are, therefore, not physically compatible with compression. Once the natural gas is separated from the liquids, it is subject to compression and dehydration.

[13] The separated liquids are directed to a flash tank which operates at lower pressure. Most of the remaining natural gas entrained in the produced liquids comes out of solution in the flash tank, is captured by a vapour recovery unit and is directed back to the compressors. From the flash tank, the liquids are directed to the desand unit which removes approximately 99% of sand particles 25 microns and greater from the liquids.

[14] The separated sand is directed to a sand slurry tank and the clean desanded liquids are directed through the produced liquid (emulsion) tanks which feed the emulsion delivery pumps that pump the liquids to the Water Resource Hub located at 16-36-78-17 W6M. The principal function of these tanks is to ensure there is adequate liquid volume and pressure (head) to support the operation of the emulsion delivery pumps and, in the event that Encana's ability to pump the liquids to the Water Resource Hub is interrupted, to serve as temporary holding tanks until pumping can be resumed. While referred to as the "Liquid Storage (Emulsion) tanks", the separate liquids typically flow continuously through the tanks except in the case of pumping service interruptions. The produced liquids delivered to the Water Resource Hub are treated, recycled and

blended for, among other things, delivery to well sites for hydraulic fracturing stimulation operations.

[15] Following inlet separation and vapour recovery, the separated raw natural gas is compressed to South Peace Pipeline pressure specifications to which the Sales Gas Pipeline connects.

[16] Following compression, the raw natural gas enters dehydration to remove residual water vapour in order to meet South Peace Pipeline water dew point specifications. As part of dehydration, the natural gas stream is percolated through the glycol tower. The residual water is captured by the glycol, which is then directed through a reboiler so that the entrained water is vapourized and released, and the glycol can be recirculated through the glycol tower.

[17] None of the inlet separation, compression or dehydration functions of the Saturn Compressor Station alters the composition of the raw natural gas, which may contain up to 9 ppm Hydrogen Sulphide (H2S), received from the wells and which is delivered to the Spectra McMahon Plant by the Sales Gas Pipeline and the South Peace Pipeline. The raw natural gas that leaves the Saturn Compressor Station is first metered at the Spectra McMahon Sales Meter located within the Saturn Compressor Station and then conveyed through the Sales Gas Pipeline to the 8-30 Riser Site. From the 8-30 Riser Site, the gas is further conveyed through the South Peace Pipeline to the Spectra McMahon Plant for processing before being transported to market.

[18] The Sales Gas Pipeline does not transport natural gas to market for sale.

[19] The following processes are undertaken at the Spectra McMahon Plant:

- the raw natural gas stream is sent through the inlet separators to remove any remaining free liquids;

- the raw natural gas is treated through an amine system and impurities, such as carbon dioxide and hydrogen sulfide are removed;
- hydrogen sulfide is sent to the sulphur plant for treating;
- the gas stream then goes through a lean oil absorption process to remove heavier hydrocarbons;
- heavy hydrocarbons removed during the lean oil absorption process are condensed into liquid form;
- hydrocarbon liquids recovered at various points throughout the process are sent for further processing where they are stabilized and fractionalized to meet certain specifications; and
- the processed gas is dehydrated and sent to the sales outlet.

SUBMISSIONS

[20] The parties disagree that the inlet separation, de-sanding, compression, and dehydration that occurs at the Saturn Compressor Station is “processing” as that word is used in the definition of “flow line”. Relying on the ordinary meaning of the word “processing” as well as various judicial authorities considering that word in other legislative contexts, the Jorgensens submit these activities amount to “processing” of the natural gas. Encana argues that as the composition of the gas is not altered, “processing” does not occur and the Saturn Compressor Station is not a “scrubbing, processing or storage facility”.

[21] Encana submits “processing” of natural gas has an industry specific meaning that does not include the activities at the Saturn Compressor Station. Encana submits the Sales Gas Line is part of the gathering system that transports raw unprocessed natural gas to the Spectra McMahon Plant for “processing”, as that term is understood in the natural gas industry, prior to its transmission to market.

[22] While not disputing that the natural gas is processed at the Spectra McMahon Plant, the Jorgensens argue that it is also processed at the Saturn Compressor Station. As the Sales Gas Line transports natural gas from the Saturn Compressor Station to the 8-30 Riser Site and on to the South Peace Pipeline and the Spectra McMahon Plant, they argue it is not part of the upstream gathering system but part of the downstream system for the transmission, distribution or transportation of natural gas to market.

ANALYSIS

Previous Board Decisions

[23] The Board has considered the definition of "flow line" in several cases. The Board has found that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines (*Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014 (*Encana v. Ilnisky*); *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014 (*ARC v. Hommy*)). The gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities (*Murphy Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012 (*Murphy v. Shore*)).

[24] A pipeline need not connect directly to a well head to be a flow line as long as it is part of the gathering system for the production of natural gas (*Spectra v. London*). A "flow line" must: 1) connect a well head to a "scrubbing, processing or storage facility" and 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line. The Board has found the following types of pipelines to be flow lines:

a) a segment of pipeline transporting natural gas from a well head (*Murphy v. Shore*;

b) a segment to transport produced water separated from the natural gas at a well site (*Murphy v. Shore*);
c) a fuel line transporting fuel gas from a facility to a well head (*Murphy v. Shore*);
d) a line to transport produced gas from a well site (*Encana v Ilnisky*);
e) a hydraulic fracturing water supply line (*Encana v Ilnisky*);
f) a hydraulic fracturing water return line (*Encana v, Ilnisky*);
g) a 16 inch line to transport produced gas from a well site (*ARC v. Hommy*);
h) a hydraulic fracturing water supply line also licensed for bi-directional use to carry natural gas from a well site (*ARC v. Hommy*);
i) a line connecting a well head to a scrubbing, processing or storage facility that is not owned by the same entity that operates the well head or the facility (*Spectra v. London*).

[25] In all of these cases, the Board found the pipelines in issue to be part of the gathering system for the production of natural gas.

[26] In *ARC v. Hommy*, the Board found that a segment of a pipeline that transported water as post-production waste from a processing and storage facility to a vertical well for injection and disposal was not a flow line because, although it was located on the gathering side of the system, it did not function as part of the gathering system.

[27] The Board has found that the legislature intended to give the Board jurisdiction over those pipelines that form part of the gathering system and function as part of the gathering system. The gathering system starts at the well heads and ends at “scrubbing, processing or storage facilities” that precede the transfer of the conveyed substance to transmission, distribution or transportation lines. This case asks whether the Saturn Compressor Station is a “scrubbing,

processing or storage facility" that marks the end of the gathering system, such that the Sales Gas Pipeline is not a "flow line".

Approach to Statutory Interpretation

[28] The modern approach to statutory interpretation set out by the Supreme Court of Canada, and applied by the Board, requires that the words of an enactment must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act, and the intention of Parliament.

[29] According to *Sullivan on the Construction of Statutes*, 5th ed (Markam: LexisNexis 2008), words in a statute are presumed to have their ordinary meaning unless this assumption becomes untenable (page 24). Sullivan sets out the following propositions for applying the ordinary meaning of words to statutory interpretation:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must consider the purpose and scheme of the legislation; they must consider the entire context.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

[30] An exception to applying the ordinary meaning of words, or one of the reasons for not applying the ordinary meaning, is where a particular word has a technical meaning that is generally understood within a particular trade or industry, and the statute is written for that trade or industry (*Sullivan*, page 51-52). The parties disagree on whether the ordinary or technical meaning of the word "processing" should be used in interpreting the phrase "scrubbing, processing or storage facility".

Ordinary or Technical Meaning

[31] The Jorgensens provide definitions from the *Canadian Oxford Dictionary* for the noun form of "process" as: "a course of action or proceeding, esp. a series of stages in manufacture or some other operation"; and for the verb form as: put (a raw material, a food, etc.) through an industrial or manufacturing process in order to change or preserve it etc.". The *Dictionary of Canadian Law* defines the term "processing" as: "1. '[T]he treatment must make the goods more marketable and … there must be some change in the nature or appearance of the goods.' *Tenneco Canada Inc. v. R* (1987), [1988] 2 F.C. 3 at 9, [1987 2 C.T.C 231, 87 D.T.C. 5434, 15 F.T.R 314, Dubé J. 2. Includes changing the nature, form size, shape, quality or condition of a natural product by mechanical, chemical or any or any other means."

[32] Judicial interpretation of the word "processing" found in other statutes, in particular taxation statutes, has generally adopted an ordinary meaning of the word as, most recently, in *Repsol Canada Ltd. v. R.* 2015 TCC 21 which said:

1. The term "processing" should be given broad interpretation;
2. There must be some change to the goods; and
3. The change must render the goods more marketable.

[33] The Jorgensens submit that the ordinary meaning of the word "processing should be used to interpret the phrase "scrubbing, processing or storage facility" and that applying the ordinary meaning of the word and judicial interpretation of that word makes what happens at the Saturn Compressor Station "processing".

[34] Encana submits that the legislation is technical in nature and that the technical meaning of words as they are understood in the industry should be used. Encana says "processing" of natural gas as that term is understood in the industry means removing the constituent parts of the gas such as the H2S and other deleterious substances and the by-products such as pentane, butane,

propane and ethane in order to render the gas marketable. Encana provides a definition from *The Manual of Oil and Gas Terms*, 13th ed, that defines "processing plant" as "a plant to remove liquefiable hydrocarbons from wet gas or casing head gas." Encana submits this definition confirms that processing involves the alteration of gas by removing liquefiable hydrocarbons (i.e. propane, butane, ethane, etc.); that is, separating the gas into its constituent parts. The definition of "raw gas" in the same *Manual* as "casing-head gas after it has passed through a separator for the purpose of removing oil and condensate and prior to its passage through a gas processing facility for the extraction of various liquefiable hydrocarbons", supports the previous definition of "processing plant".

[35] Encana refers to the following definitions from various Regulations:

Drilling and Production Regulation, BC Reg 282/2010 (*OGAA*):

> "gas processing plant" means a facility for the extraction from natural gas of hydrogen sulphide, carbon dioxide, helium, ethane, natural gas liquids or other substances, but does not include a facility that
> a) has a processing capacity less than 150 000 m³/day, and
> b) uses a non-regenerative system for the removal of hydrogen sulphide or carbon dioxide.

Oil and Gas Waste Regulation, BC Reg 254/2005 (*Environmental Management Act*):

> "processing plant" means a facility that extracts hydrogen sulphide, carbon dioxide, helium, ethane or natural gas liquids from natural gas.

Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation, BC Reg 495/92 (*PNGA*):

> "natural gas processing plant" means a plant for the extraction from natural gas of marketable gas and natural gas by-products.

[36] The terms “marketable gas” and “natural gas by-products” are not defined in the Regulations under the *Petroleum and Natural Gas Act* but are defined in the *Oil and Gas Activities Act General Regulation*, BC Reg 274/2010 as follows:

> “marketable gas” means natural gas that is available for sale for direct consumption as a domestic, commercial or industrial fuel, or as an industrial raw material, or is delivered to a storage facility, whether it occurs naturally or results from the processing of natural gas.
>
> “natural gas by-products” means natural gas liquids, sulphur and substances other than marketable natural gas that are recovered from raw natural gas by processing or normal 2-phase field separation.

[37] Encana argues that these definitions support the conclusion that “processing” requires that the composition of the natural gas be altered such that it is broken down into its constituent components or otherwise made ready for market. Encana submits that the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act* are specialized statutes that are intended for a technical audience, and for that reason, the presumption in favour of using the ordinary meaning of words is rebutted.

[38] I am satisfied that if the ordinary meaning of the word “processing” as set out in the various cases that have considered that word is used, then what occurs at the Saturn Compressor Station is “processing”. The product that enters the Saturn Compressor Station is changed in that liquid is removed, it is desanded, it is compressed and it is dehydrated. The product that emerges from the Saturn Compressor Station into the Sales Gas Pipeline is not the same as the product that entered the Saturn Compressor Station. The processes, in the ordinary sense, that are applied to the raw natural gas at the Saturn Compressor Station, while not making the gas marketable directly to consumers, make the gas “more marketable” than it was before the processes were carried out.

[39] I am also satisfied that “processing” of natural gas has a specific meaning in the industry that involves altering the gas by removal of the constituent

components to make the gas marketable. This definition is evident in the industry material provided to me as well as the various definitions for “natural gas processing plant”, “gas processing plant”, and “processing plant” found in various regulations under the *Oil and Gas Activities Act*, the *Petroleum and Natural Gas Ac*t and the *Environmental Management Act.* I am satisfied that the processes, in the ordinary sense, that are applied to the raw natural gas at the Saturn Compressor Station does not process the natural gas as that term is understood in the industry as there is no change to the constituent components of the natural gas itself.

[40] The question is, which meaning of the word “processing” did the legislature intend to apply in the phrase “scrubbing, processing or storage facility” in the definition of “flow line”?

[41] In *Murphy v. Shore*, with reference to the Debates of the Legislative Assembly, the Board found that the legislature’s intent in defining two classes of pipelines, one over which the Board has jurisdiction and one over which it does not, was to give the Board jurisdiction over those pipelines that comprise the gathering system. In that decision, the Board found that pipelines that carry produced gas and produced water separated at the well site are flow lines. The Board applied an industry understanding of the term “gathering system”, in finding that it could not have been the legislature’s intent that separation of raw natural gas and water at the well head would be considered “processing” for the purpose of the definition of “flow line” otherwise, the legislative intent that “flow lines” include those pipelines comprising the gathering system would be frustrated.

[42] Without the benefit of the thorough submissions in this case with respect to the meaning of the word “processing”, the Board’s decision in *Murphy v. Shore* necessarily applies the meaning of “processing” as it is understood in the industry. The fact that “processing” in the ordinary sense occurred at the well

site, did not turn the equipment that performs that function into a “processing facility” within the meaning of the definition of “flow line”. To interpret the well site separation of raw natural gas and water as “processing” would not give effect to the intent that flow lines are the pipelines that comprise the gathering system.

[43] In *Murphy v. Shore*, the Board also gave effect to the industry understanding of “transmission, distribution and transportation lines” as the downstream pipelines that convey product from a processing facility to market for sale or further transport.

[44] The *Oil and Gas Activities Act* establishes the Oil and Gas Commission and provides the regulatory framework for the development of the oil and gas industry in the province. It provides that a person may not carry out an “oil and gas activity” without a permit and in compliance with the Act and its regulations. The *Petroleum and Natural Gas Act* provides the regulatory framework for exploration and drilling for oil and natural gas, and in Part 17, establishes the Surface Rights Board and the legislative scheme for gaining access to private land and the dispute resolution mechanism to determine compensation for access to private land. Together, the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* provide a comprehensive scheme for the regulation of the oil and gas industry in British Columbia. Much of the language used in both Acts is technical in nature and has specific meaning within the oil and gas industry. The principal audience for the legislation is the oil and gas industry. It makes sense, therefore, that words in the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* be interpreted in accordance with the industry’s understanding of those words.

[45] The Jorgensens point out that the term “flow line” is only used in the *Petroleum and Natural Gas Act* in the context of defining the Board’s jurisdiction to grant right of entry to private land and determine compensation for entry. The term “flow line” is defined in the *Oil and Gas Activities Act* and that definition is

incorporated by reference in to the *Petroleum and Natural Gas Act*. The term "flow line" is used in both pieces of legislation dealing with entry to private land. The *Petroleum and Natural Gas Act* provides that the Board may grant a right of entry order for an oil and gas activity, including for the construction and operation of a pipeline as long as the pipeline is a flow line. Section 34 of the *Oil and Gas Activities Act* allows that a permit holder who has failed to obtain an entry agreement with a landowner authorizing the permit holder to enter, occupy and use land for the purposes of constructing and operating a pipeline that is not a flow line, may expropriate as much of the land as is necessary for constructing and operating the pipeline. The sole purpose for the definition of "flow line", therefore, is to differentiate between those pipelines over which the Surface Rights Board has jurisdiction to grant a right of entry and determine the compensation payable for entry, and those pipelines for which a permit holder may expropriate the land necessary for the construction and operation of the pipeline. Arguably, as the word "flow line" is not used in any context relating to the regulation of the industry, there is no reason to apply industry specific meanings to the words in the definition. However, interpretation of the word "flow line" must make sense in the context of the entire legislative scheme, and words should be interpreted consistently throughout the legislation.

[46] Unless industry specific meanings are applied to the definition of flow line, the legislative intent that the Board have jurisdiction over the gathering system cannot be given effect and there would be confusion and uncertainty about which pipelines the Board has jurisdiction over and which it does not. If the ordinary meaning of the word "processing" is used in the definition of flow line, then whether a pipeline connecting a well head to a downstream processing plant is a "flow line" would differ depending on when initial separation of the raw natural gas and water occurred and depending on the location of other intermediate processes, in the ordinary sense, as raw natural gas is conveyed to a plant for processing into marketable gas. As pointed out by Encana, there are numerous upstream operations that are applied to raw natural gas including well site test

separation or the injection of corrosion inhibitor or methanol into a raw natural gas stream. Applying the ordinary meaning of “processing” would mean some pipelines typically considered as part of the gathering system would not be “flow lines” while other pipelines typically considered part of the gathering system would be “flow lines”. As many pipeline projects consist of more than one pipeline, the likelihood that duplicitous processes would be necessary to gain entry to the land would increase. In the absence of agreement with landowners, there would be a patchwork of entry by Board Order and entry by expropriation throughout the gathering system creating inconsistency, uncertainty and confusion. Applying the generally understood meaning within the industry of “processing facility” as the facility that processes the raw natural gas into marketable gas, provides certainty to both landowners and permit holders and treats all of the pipelines comprising the gathering system consistently.

[47] If the legislature intended that any change to the natural gas that made it “more marketable” was “processing”, then arguably every upstream operation from the moment the gas leaves the well would be processing. There would not be any “flow lines” or any reason for the definition of “flow line”, and the Board would have no jurisdiction to grant right of entry beyond a well site. As articulated in *Murphy v. Shore*, if the legislative intent was to confine the Board’s authority to authorizing entry to land required only for oil and gas activities associated with a well site, there would be no purpose to giving the Board jurisdiction to authorize entry for an “oil and gas activity” including “the construction or operation of a pipeline”, but then limit that jurisdiction to a particular type of pipeline. There would have been no need to distinguish between flow lines and pipelines, or provide a definition of “flow line” at all. The Board could simply have been given jurisdiction with respect to activities required for the construction and operation of a well site.

[48] As well, as articulated in *Murphy v. Shore*, there would have been no need to provide an expansive definition of “surface lease” to include right of way

agreement, as use and occupation of land for portions of pipeline within the boundaries of a well site would be covered by the surface lease for the well site. And, as annual rent is payable to a landowner for continued use and occupation of a well site area, there would have been no need in section 143(3) of the *Petroleum and Natural Gas Act* to expressly limit a right holder's obligation to pay annual rent for a right of way for a flow line. The definition of "pipeline" itself expressly excludes "well head" requiring that the use of land for all of the equipment associated with a well head be covered by a surface lease or board order, rather than a right of way agreement, and liable to payment of annual rent. Reading the legislation as a whole, a "flow line" must be intended to extend beyond a well site area, and the Board must be intended to have jurisdiction for pipelines beyond those actually located at the well site. That intent can only be realized if the industry specific meanings are applied to the words within the definition.

[49] I find that as the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Acts* are written for the purpose of providing a comprehensive scheme for the regulation of the oil and gas industry in the province, that interpretation of the legislation should be done with the technical or industry specific words in mind. I agree with Encana's submission that the legislature must not have intended that the phrase "scrubbing, processing or storage facility" include any facility in which scrubbing, processing in the ordinary sense, or storage takes place. I find that those words are intended to demarcate the extent of the Board's jurisdiction over pipelines at those scrubbing facilities, processing facilities, or storage facilities, where scrubbing, processing in the industry sense as the processing of raw natural gas into marketable gas, or storage is the principal purpose of the facility.

[50] In the context of this case, the evidence is that the Saturn Compressor Station does not process the raw natural gas into marketable gas. The principal function and purpose of a compressor station is to boost natural gas pressure to move it through pipelines or other facilities. As indicated by information provided

by the Jorgensens about compressor stations, over distance friction and geographic elevation differences slow the gas and reduce the pressure. To ensure gas continues to flow optimally, it must be compressed and pushed through the pipeline. Compressor stations are placed along a pipeline to give the gas a “boost”. The evidence is that inlet separation is necessary for compression. The raw natural gas is not compressible unless liquids are removed. None of the inlet separation, compression or dehydration functions of the Saturn Compressor Station alters the composition of the raw natural gas by removing its constituent elements. None of the functions of the Saturn Compressor Station turn the raw natural gas into marketable gas.

[51] The evidence is that the McMahon Plant processes natural gas, as that term is understood in the industry, by removing its constituent parts including the H2S and heavy hydrocarbons. The McMahon Plant processes change the raw natural gas into marketable gas.

[52] The parties also provided submissions with respect to “scrubbing” and “storage”. I find the Saturn Compressor Station is not a “storage facility”. While temporary storage of emulsion may occur periodically during pumping interruptions, storage is not a major function of this facility, and it cannot be considered a “storage facility”.

[53] “Scrubbing” is an industry specific term that refers to the removal of liquids from raw natural gas and to the extraction of deleterious substances such as H2S from raw natural gas. “Scrubbing” is part of, and somewhat synonymous with, “processing” as that term is understood in the industry. The Alberta *Gas Utilities Act,* RSA 2000, c G-5, defines a “scrubbing plant” as “any plant for the purifying, scrubbing or otherwise treating, of gas for the extraction or removal from it of hydrogen sulphide or any other deleterious substance”. Notably, whereas the word “processing” is used in the *Oil and Gas Activates Act* and the *Petroleum and Natural Gas Act* and their various regulations, other than in the definition of

"flow line", the word "scrubbing" does not occur elsewhere in either the *Oil and Gas Activities* Act or the *Petroleum and Natural Gas Act*. The fact that the word "'scrubbing" is not used, supports the understanding that "scrubbing" is intended to be synonymous with "processing". A "scrubbing facility" performs many of the same functions as a "processing facility", as the term "processing" is understood in the industry. I find the Saturn Compressor Station is not a "scrubbing facility" for the same reasons it is not a "processing facility".

CONCLUSION

[54] I find that in the context of the entire legislative scheme the legislative intent must have been that the words in the term "flow line" be interpreted in accordance with the generally understood meanings of those words in the industry. The presumption that the ordinary meanings of words apply is rebutted in the context of the legislative scheme and to give effect to the legislative intent. In particular, I find it was not the legislature's intent to apply the ordinary meaning of the word "processing" or the meaning of that word as it has been judicially interpreted in the context of other legislative schemes to the definition of "flow line". I conclude that the Saturn Compressor Station is not a "processing facility" within the meaning of the definition of "flow line" and that the Sales Gas Pipeline is a "flow line".

[55] The Sales Gas Pipeline functions to connect well heads in the Saturn Gathering Pipeline System with a scrubbing or processing facility, namely the McMahon Plant, where raw natural gas is processed into marketable gas. The Sales Gas Pipeline is, therefore, a flow line, and the Board has jurisdiction.

ORDER

[56] The Board has jurisdiction to deal with Encana's application for right of entry with respect to the Sales Gas Pipeline and to determine the compensation payable to the Jorgensens. The application is referred back to the mediator.

DATED: June 15, 2015

FOR THE BOARD

_____

Cheryl Vickers, Chair

File No. 1852/1853
Board Order No. 1852/1853-2

June 16, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST
OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST
OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST
OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Olaf Anton Jorgensen
Francis Diane Jorgensen

(RESPONDENTS)

BOARD ORDER

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Olaf Anton Jorgensen and Francis Diane Jorgensen to carry out an approved oil and gas activity, namely to construct and operate a pipeline project with multiple segments located partially within the Lands.

On April 14, 2015 I conducted a mediation dealing with Encana's application to the Board for mediation and arbitration services. During the mediation the Landowners challenged the Board's jurisdiction over one of the pipelines characterized as a "sales line". I referred this question back to the Board for adjudication and on June 15, 2015 the Board issued Order No. 1852/1853-1 finding that the Board has jurisdiction over this pipeline.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on our discussions and also on the fact that the Oil and Gas Commission has issued a permit for Encana's project, I am satisfied that Encana requires the Lands for an approved oil and gas activity.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

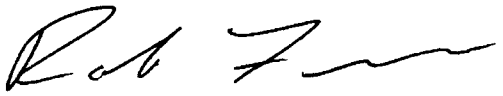
3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $29,000.00 representing the first year's initial payment and prepaid damages.

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 June 16, 2015

FOR THE BOARD



Rob Fraser, Mediator

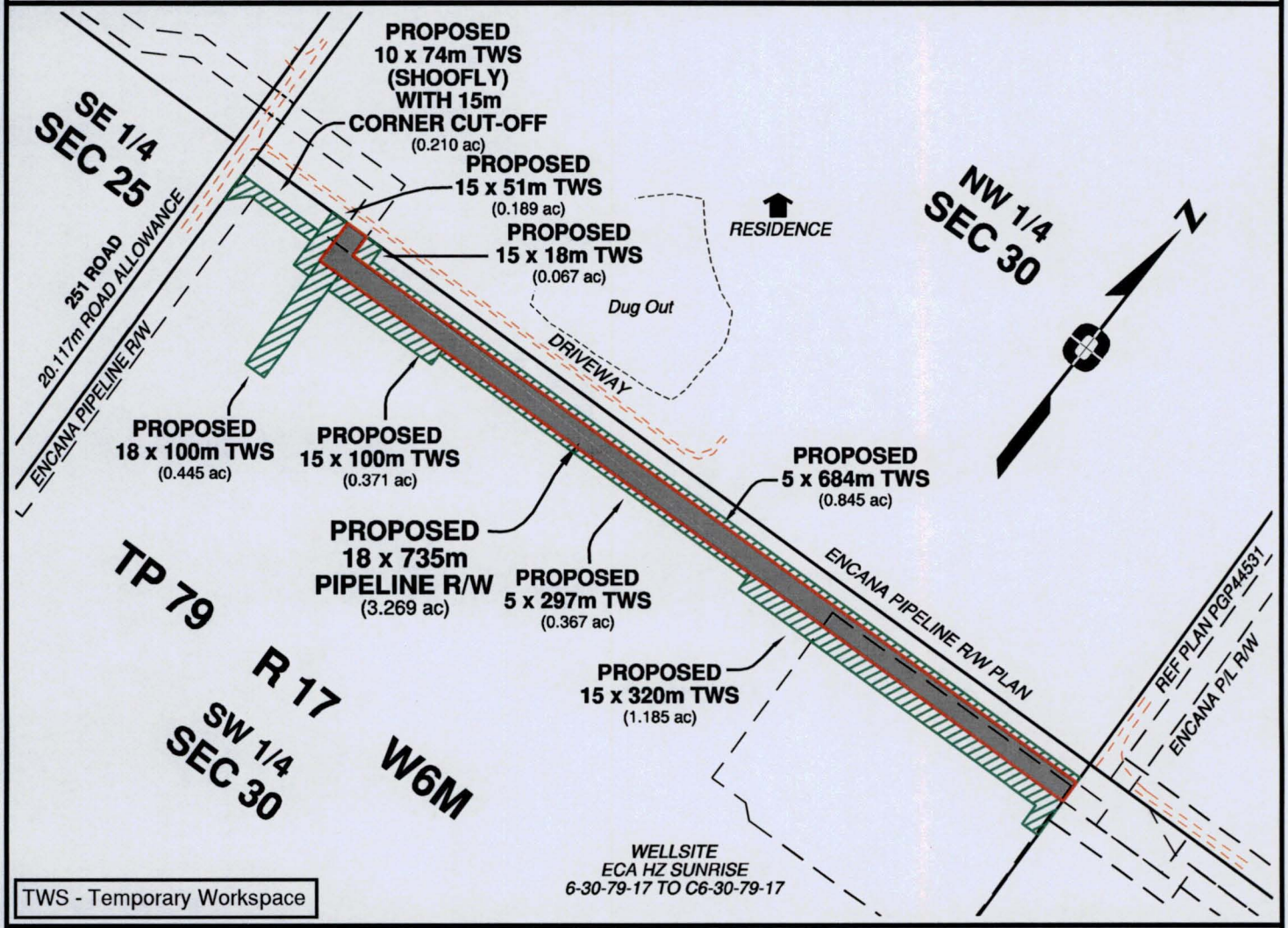
APP "A" Order 1852/1853-2

SCHEDULE "A"

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE SOUTH WEST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



TWS - Temporary Workspace

Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Title No:	BB1186086
Parcel Identifier:	007-942-036
Landowner File:	S467517
Encana File(s):	S467441

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	1.323 ha	3.269 ac
Temporary	1.489 ha	3.679 ac
Total	**2.812 ha**	**6.948 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130078NP04R5
Ref Dwg: 130078CP01R6
Drafter: DCG

APP "A" Order 1852/1853-2

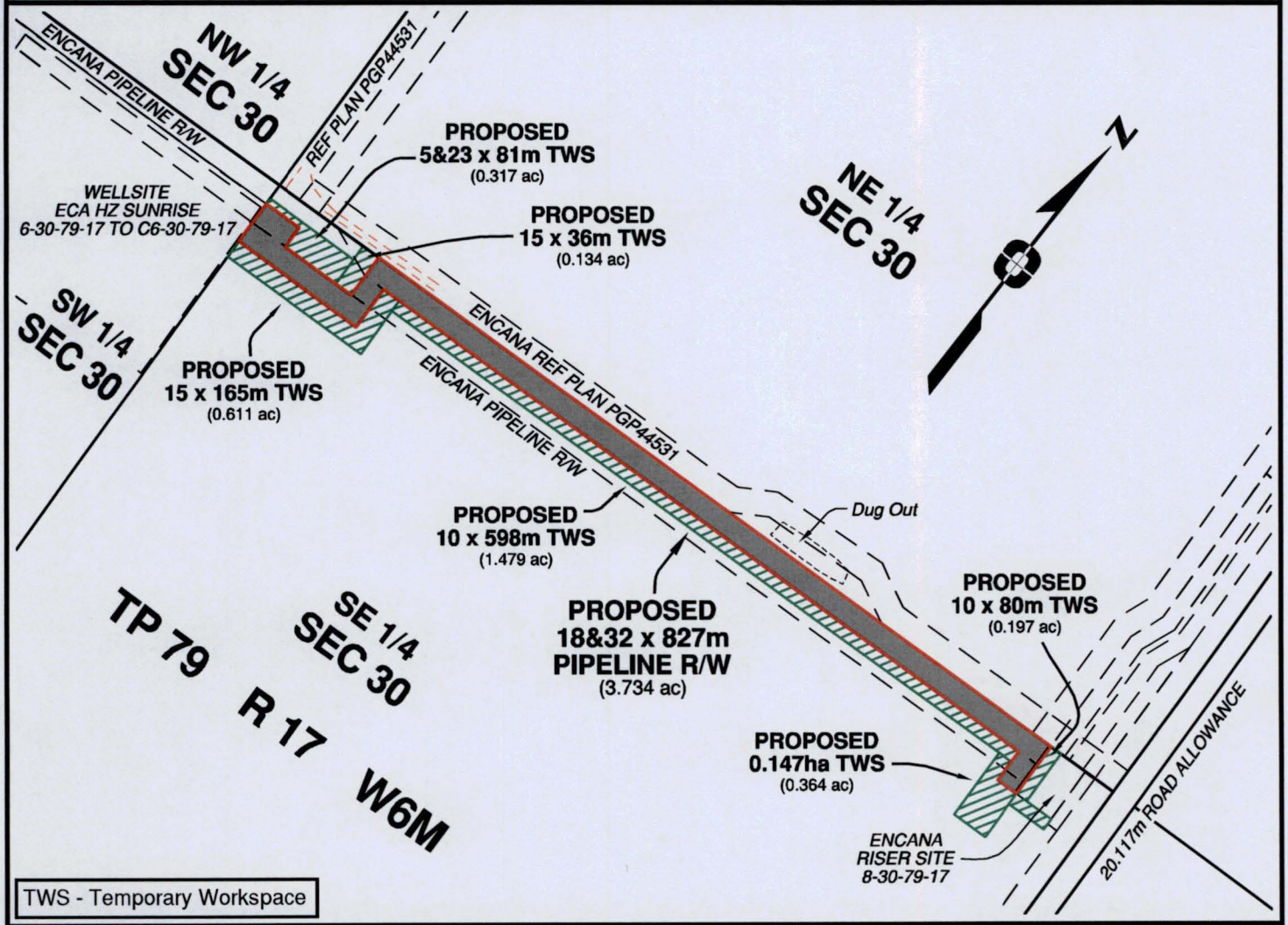
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



TWS - Temporary Workspace

Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186085
Parcel Identifier:	007-942-028
Landowner File:	S467517
Encana File(s):	S467441

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	1.511 ha	3.734 ac
Temporary	1.255 ha	3.102 ac
Total	**2.766 ha**	**6.836 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130078NP05R5
Ref Dwg: 130078CP01R6
Drafter: DCG

App "A" order 1852/1853-2

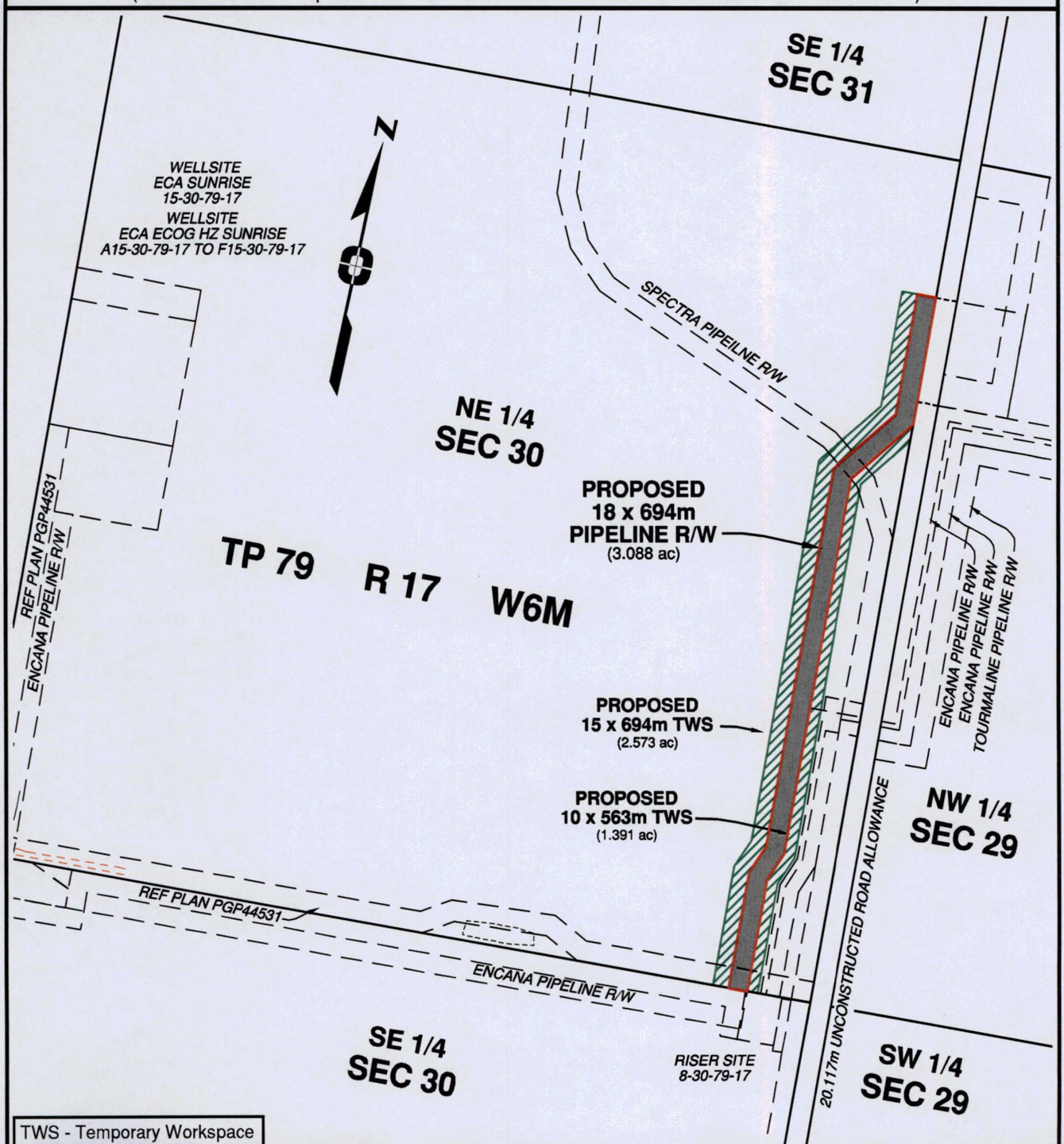
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE THE NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 79, RANGE 17, W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



TWS - Temporary Workspace

Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

100 0 100 200 300 400

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

Title No:	BB1186084
Parcel Identifier:	014-486-148
Landowner File:	S467517
Encana File(s):	S467441

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	1.249 ha	3.088 ac
Temporary	1.604 ha	3.964 ac
Total	**2.853 ha**	**7.052 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No:	130078NP06R5
Ref Dwg:	130078CP01R6
Drafter:	DCG

APP "A" Order 1852/1853-2

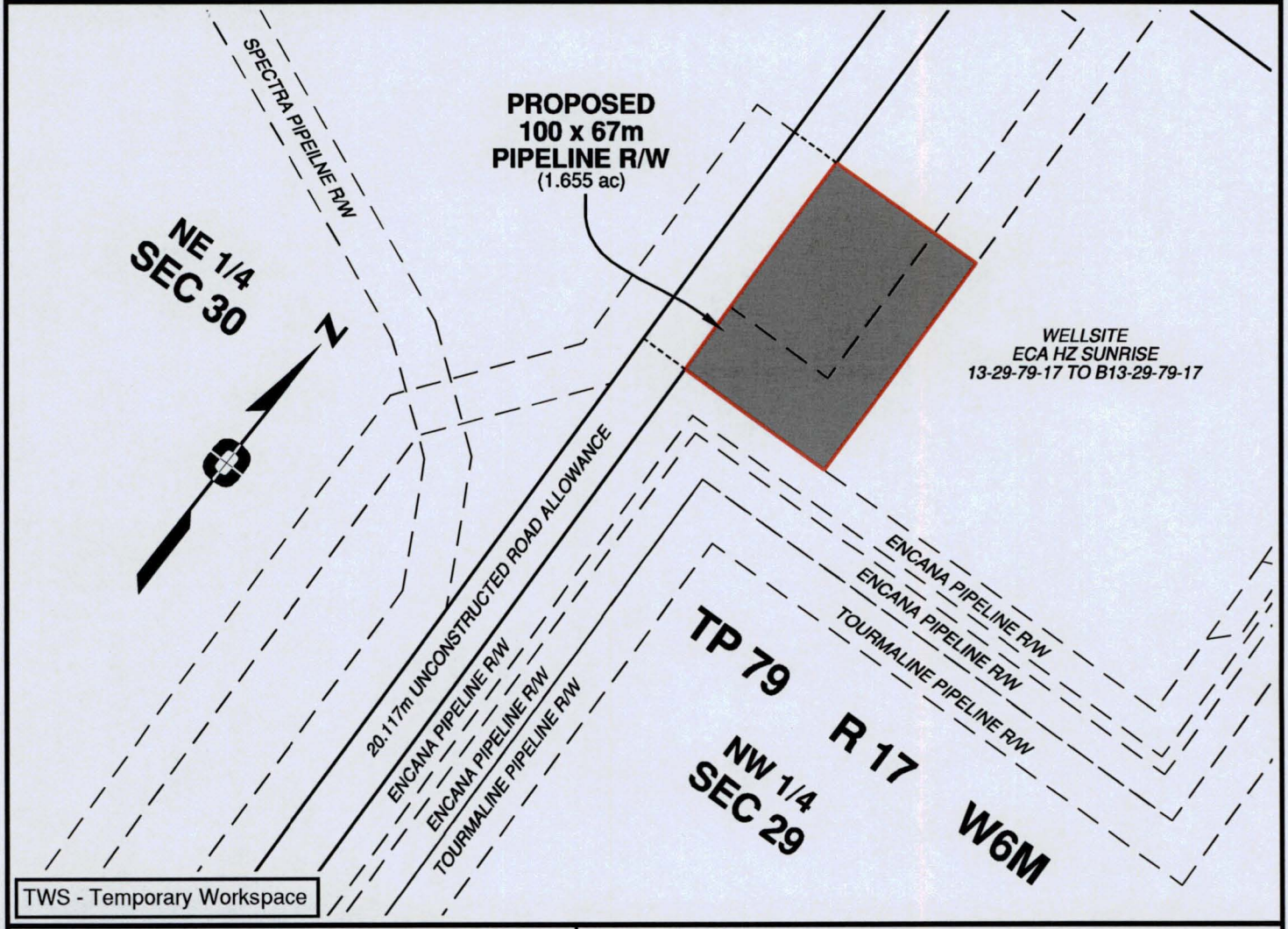
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



Owner(s): Olaf Anton Jorgensen

Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S467516
Encana File(s):	S467441

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	0.670 ha	1.655 ac
Temporary	0.000 ha	0.000 ac
Total	**0.670 ha**	**1.655 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130078NP07R5
Ref Dwg: 130078CP01R6
Drafter: DCG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1852
Board Order No. 1852-3

June 24, 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 WEST ¼ SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF
THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

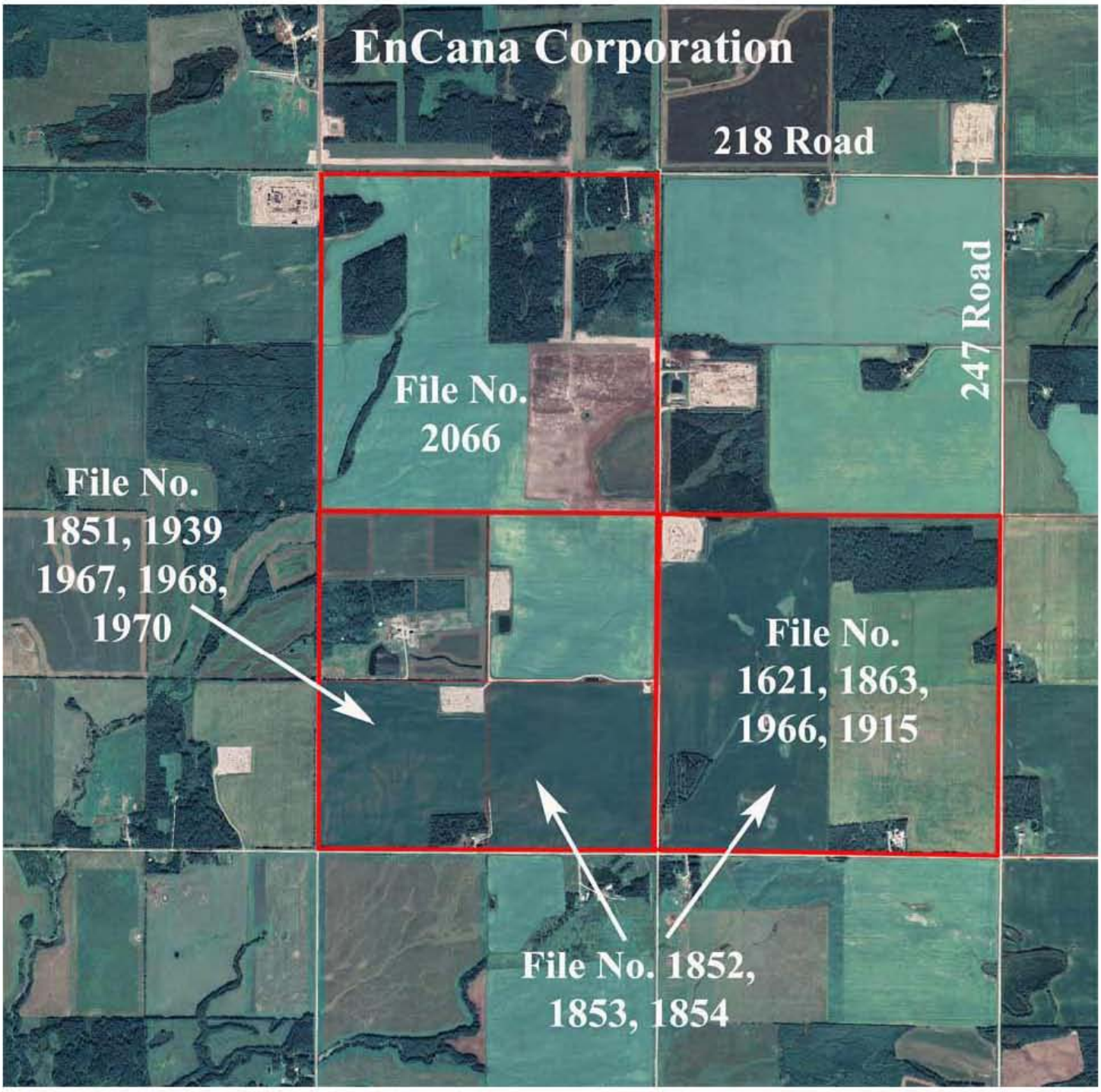
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely to construct and operate a pipeline project with multiple segments located partially within the Lands.

On April 14, 2015 I conducted a mediation dealing with Encana's application to the Board for mediation and arbitration services. During the mediation the Landowners challenged the Board's jurisdiction over one of the pipelines characterized as a "sales line". I referred this question back to the Board for adjudication and on June 15, 2015 the Board issued Order No. 1852/1853-1 finding that the Board has jurisdiction over this pipeline.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on our discussions and also on the fact that the Oil and Gas Commission has issued a permit for Encana's project, I am satisfied that Encana requires the Lands for an approved oil and gas activity.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

THE NORTH WEST ¼ SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

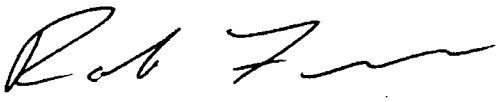
3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $3,500.00 representing the first year's initial payment and prepaid damages.

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 June 24, 2015

FOR THE BOARD



Rob Fraser, Mediator

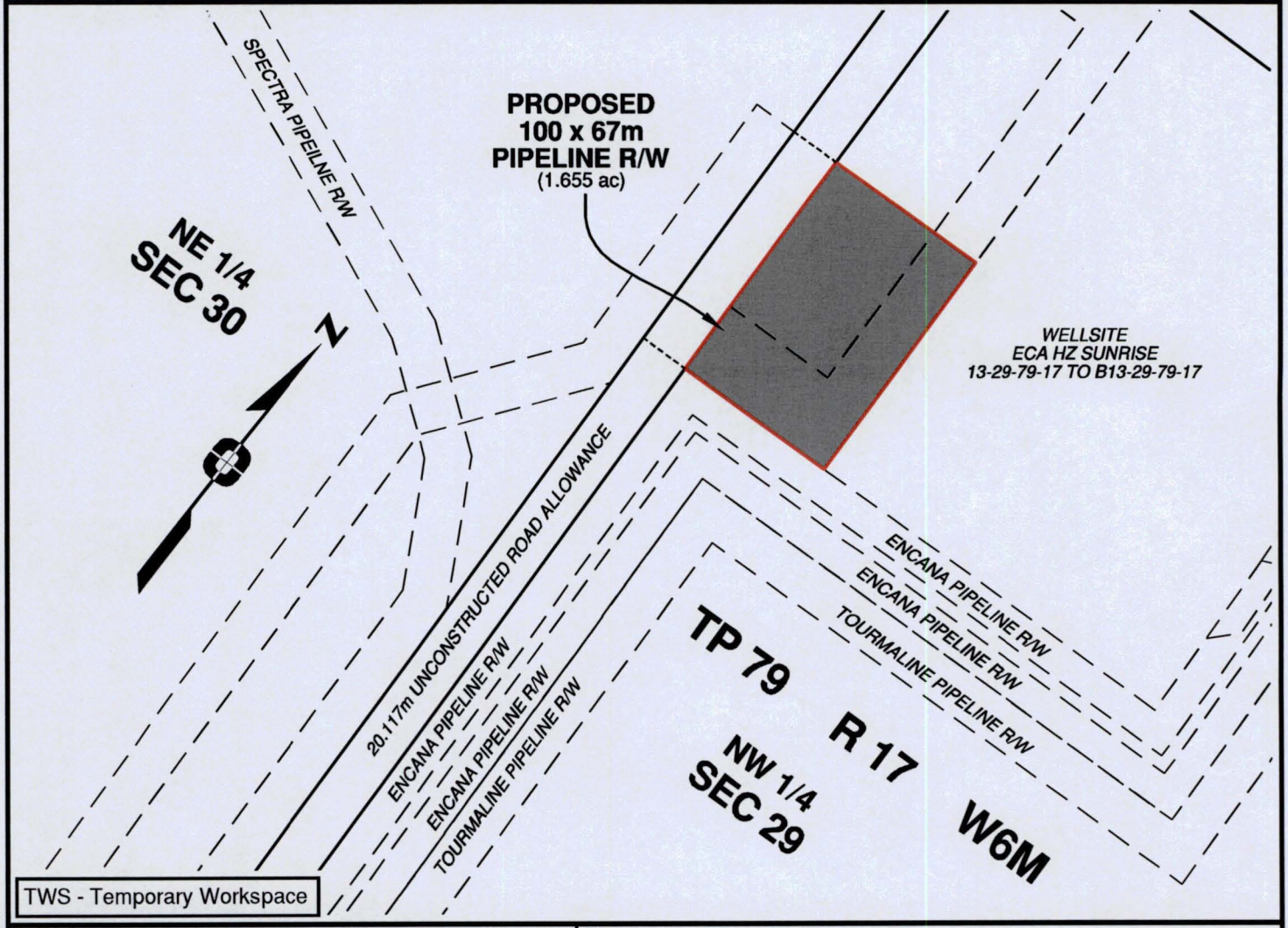
APP "A" Order 1852-3

SCHEDULE "A"

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY WITHIN THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Riser Site 12-25-79-18 to Wellsite 13-29-79-17)



Owner(s): Olaf Anton Jorgensen

Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S467516
Encana File(s):	S467441

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Certified correct this 20th day of August, 2014

Darrin Connatty, BCLS

Areas		
Permanent	0.670 ha	1.655 ac
Temporary	0.000 ha	0.000 ac
Total	**0.670 ha**	**1.655 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 130078NP07R5
Ref Dwg: 130078CP01R6
Drafter: DCG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1854
Board Order No. 1854-1

June 25, 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 WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands")

BETWEEN:

Encana Corporation

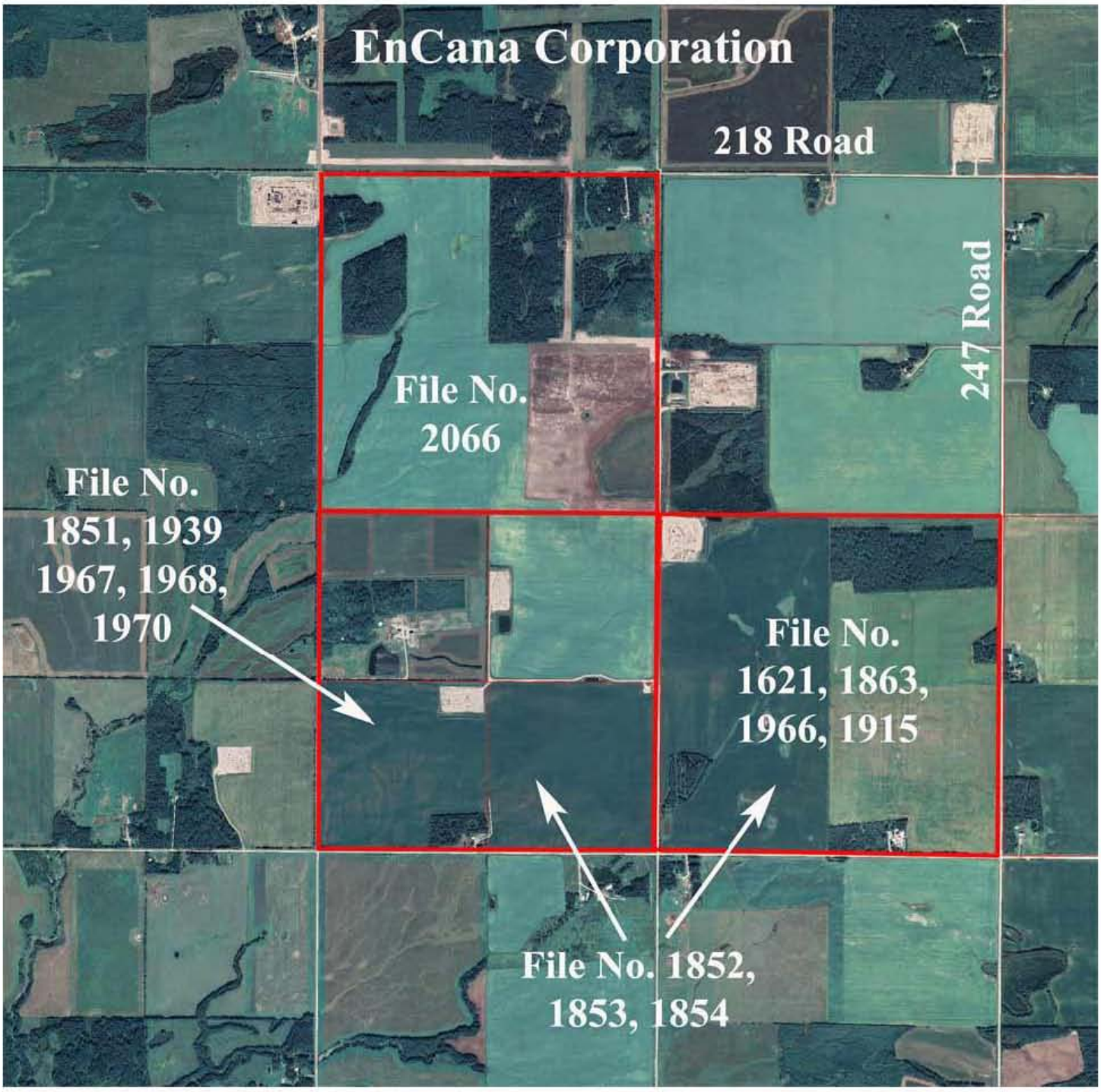
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

On June 15, 2015 I conducted a mediation dealing with Encana's application to the Board for mediation and arbitration services.

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely to construct and operate a multiple pipeline project within a right of way located on the Lands.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on our discussions and also on the fact that the Oil and Gas Commission has issued a permit for Encana's project, I am satisfied that Encana requires the Lands for an approved oil and gas activity.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $6,500.00 representing the first year's initial payment and prepaid damages.

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 June 25, 2015

FOR THE BOARD

Rob Fraser, Mediator

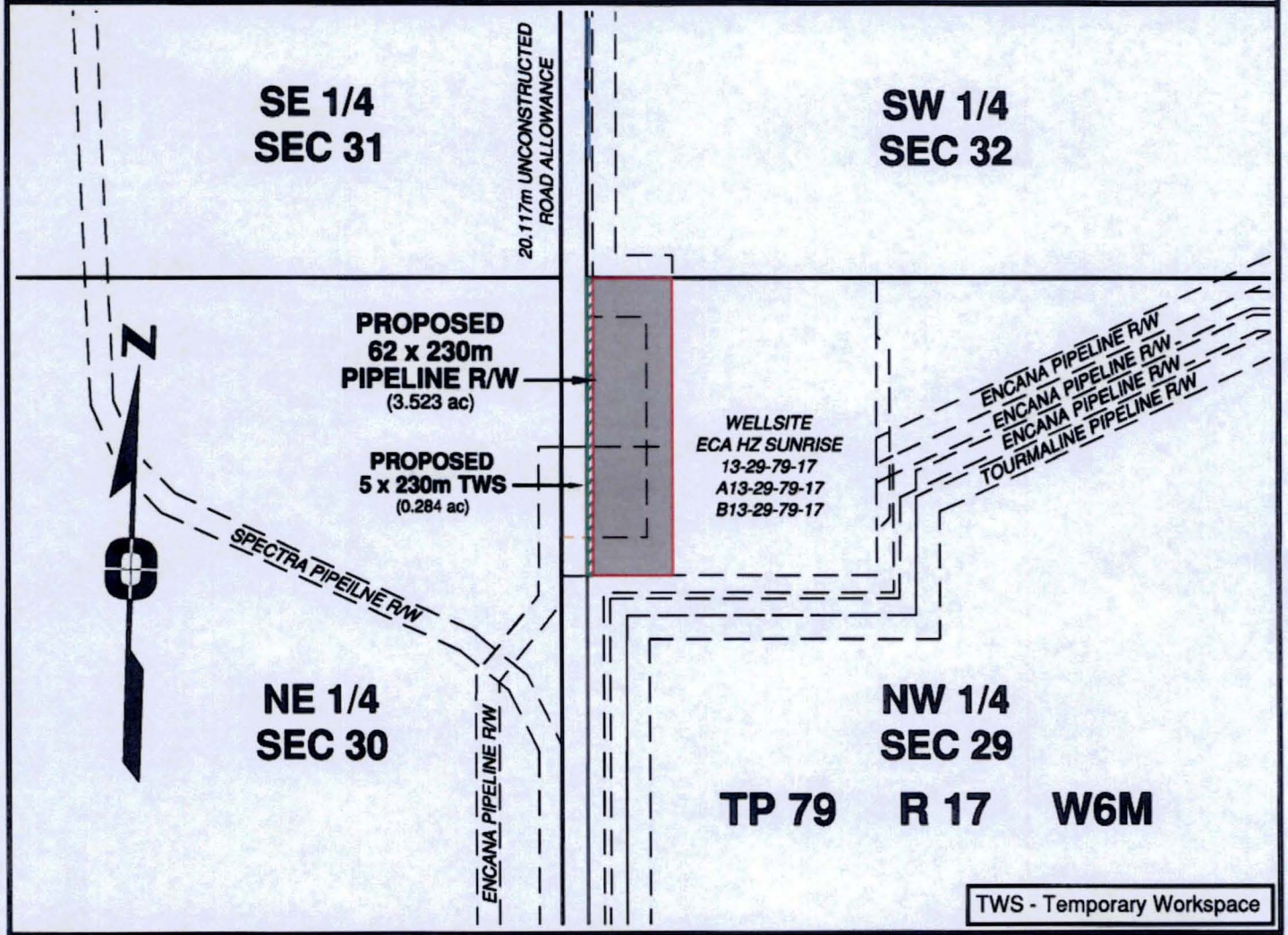
SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 5-32-79-17 to Wellsite 13-29-79-17)



Owner(s): Olaf Anton Jorgensen

Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S468812
Encana File(s):	S468128

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 11th day of September, 2014

Darrin B.C. Connatty, BCLS

Areas		
Permanent	1.426 ha	3.523 ac
Temporary	0.115 ha	0.284 ac
Total	**1.541 ha**	**3.807 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No:	140078NP02R1
Ref Dwg:	140078CP01R1
Drafter:	KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1862
Board Order 1862-1

July 20, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH EAST 1/4 OF SECTION 31 TOWNSHIP 25 PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

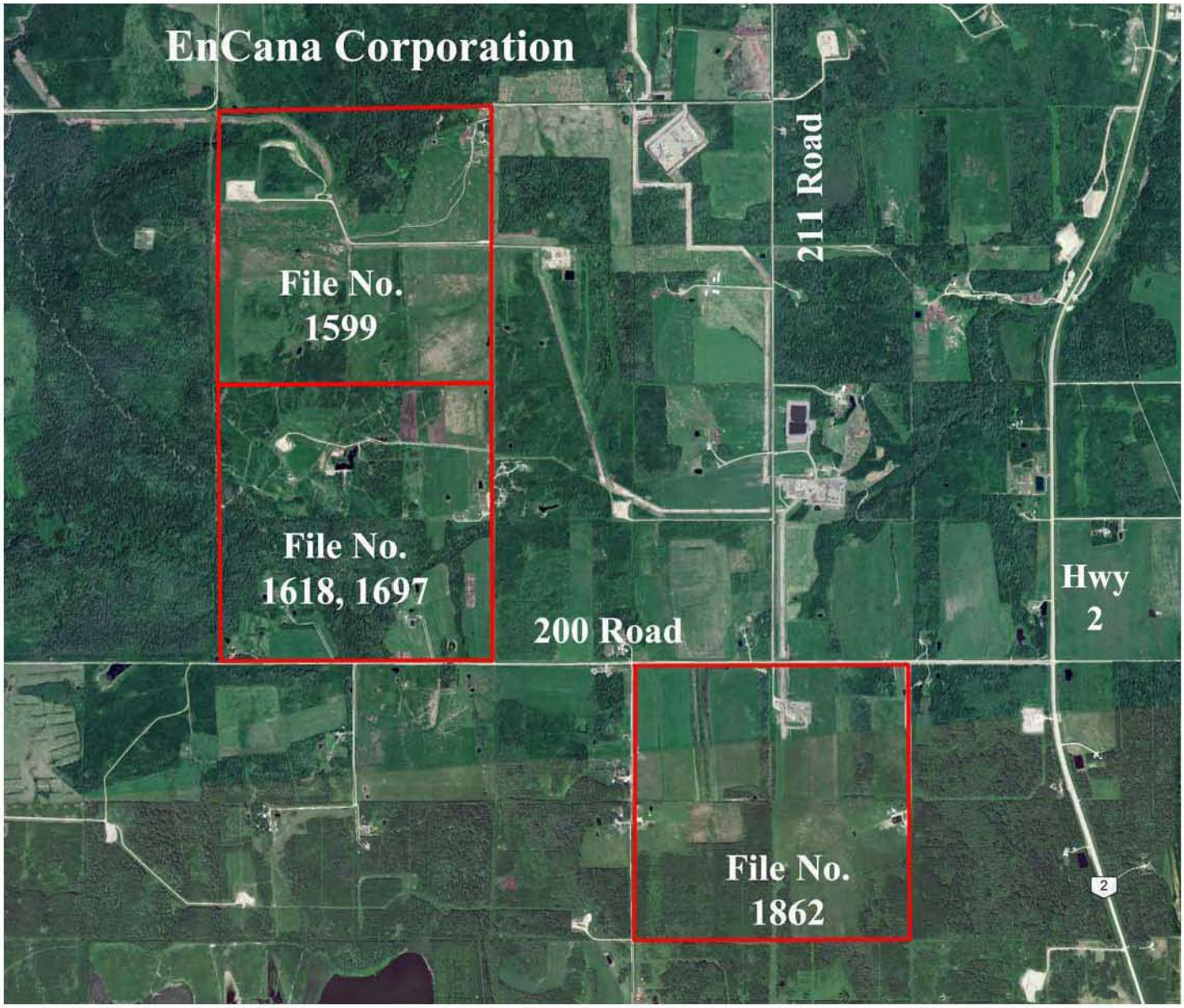
APPLICANT

AND

THOMAS BENNETT (DECEASED)

RESPONDENT

BOARD ORDER


EnCana Corporation
211 Road
File No.
1599
File No.
1618, 1697
200 Road
Hwy
2
File No.
1862
2

Encana seeks a right of entry order on lands owned by the Estate of Thomas Bennett for their project to install and operate a pipeline tie in.

The parties informed the Board that they have reached an agreement with the form of the right of entry order, and that they also agree on compensation.

BY CONSENT the Surface Rights Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as THE NORTH EAST 1/4 OF SECTION 31 TOWNSHIP 25 PEACE RIVER DISTRICT as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall pay to the landowner as payment for compensation the amount of $13,220.00 representing the first year's initial compensation and damages for the construction of the flow lines.

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 July 20, 2015

FOR THE BOARD

Rob Fraser, Mediator

APPENDIX "A" Order 1862-1

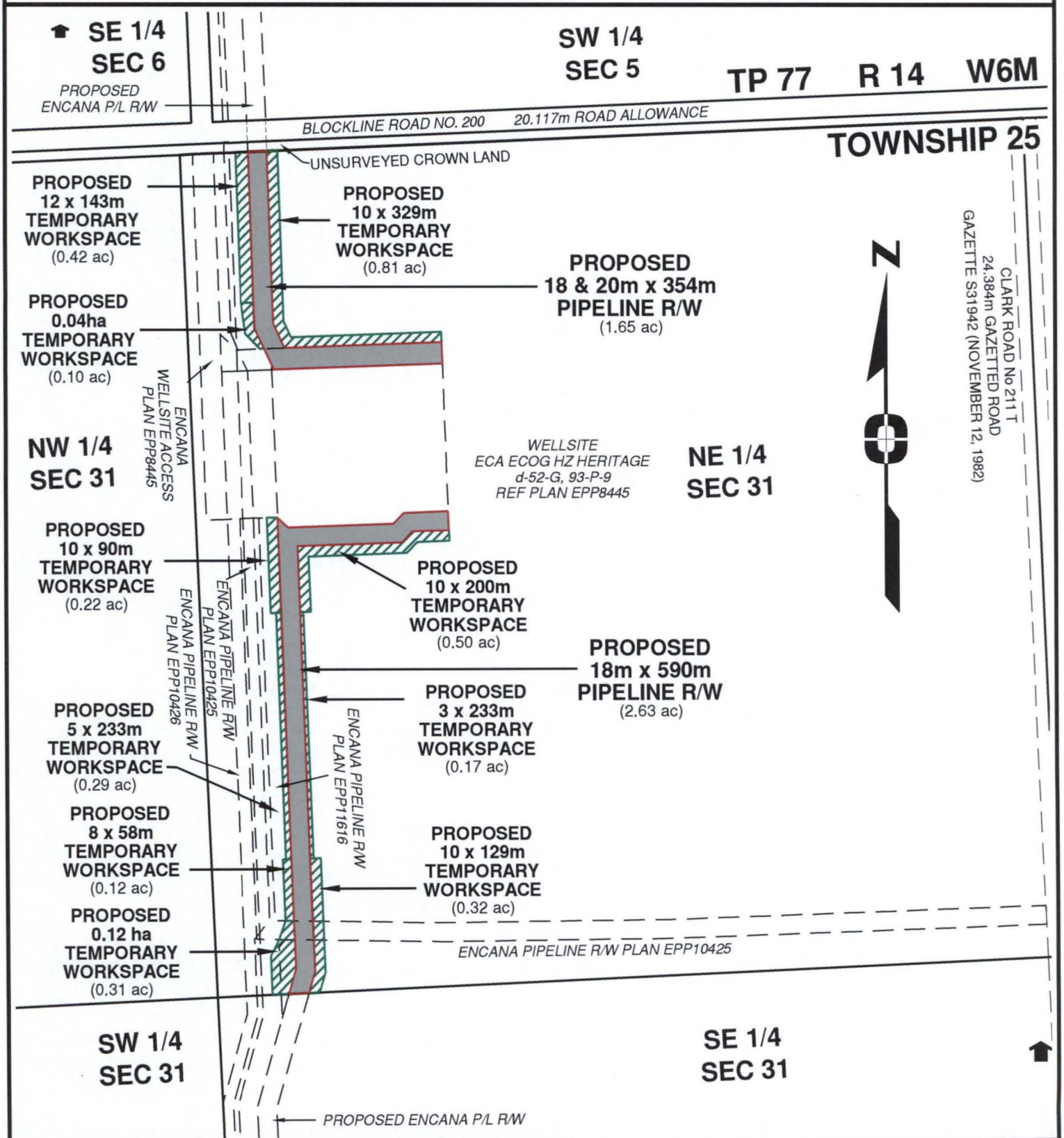
SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Thomas Bennett (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18 & 20m PIPELINE R/W AND ANCILLARY SITES
WITHIN NORTH EAST 1/4 OF SECTION 31, TOWNSHIP 25, PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 12-5-77-14 to Wellsite d-52-G, 93-P-9 and from Wellsite d-52-G, 93-P-9 to Wellsite b-32-G, 93-P-9)



Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1863
Board Order No. 1863-2

August 14, 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 WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands")

BETWEEN:

Encana Corporation

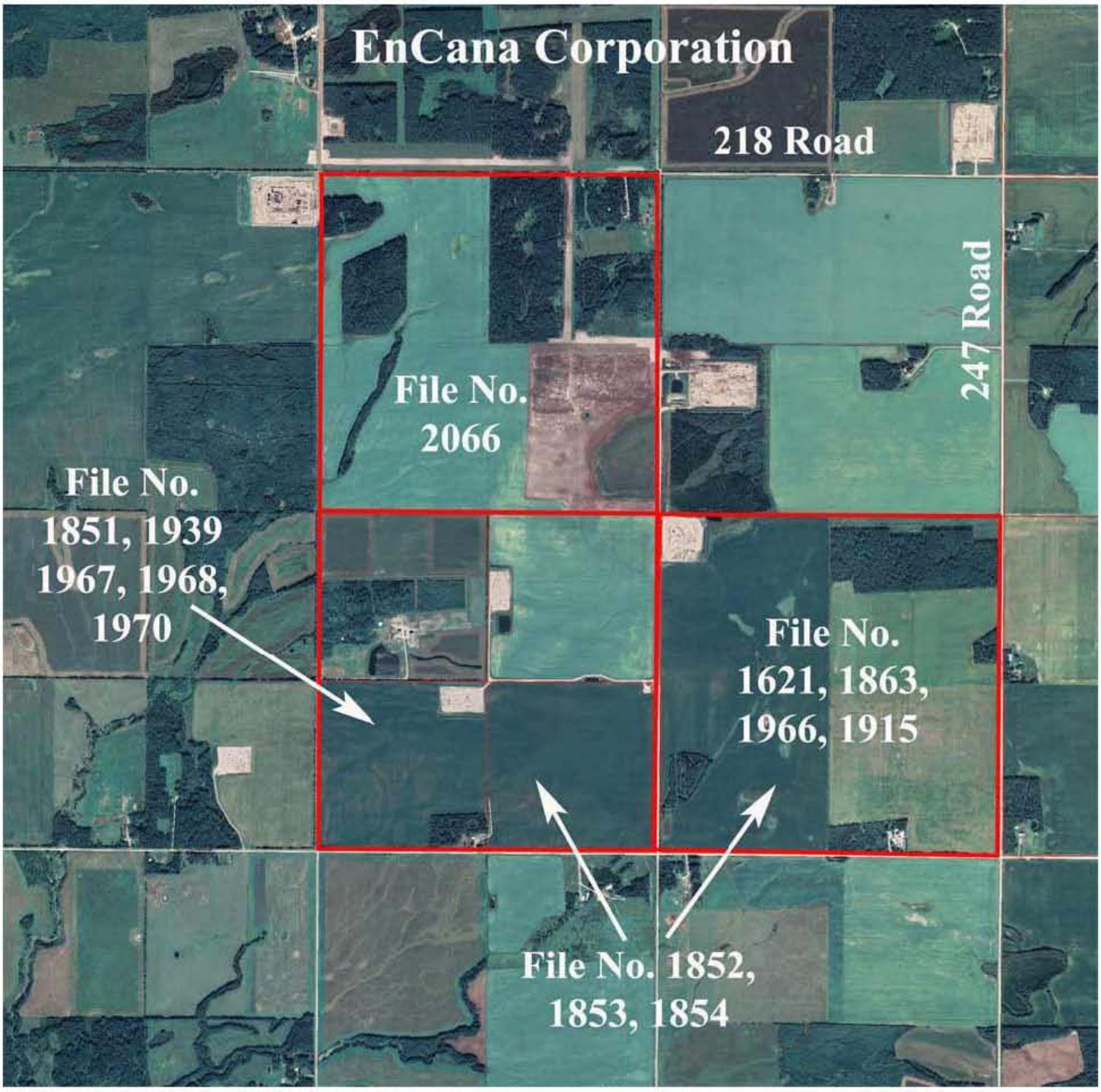
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely to construct and operate a multiple pipeline project within a right of way located on the Lands.

The Board issued Order 1863-1, allowing Encana limited access to carry out soil testing and satisfy permit conditions in advance of starting construction.

The Board attempted to schedule a telephone mediation conference to discuss the right of entry and compensation, but was not successful for a variety of reasons. The Board attempted to balance the interests of the Landowners who had work commitments and Encana who have construction deadlines, and sought and received submissions relating to the Board considering issuing a permanent right of entry order without convening a conference call.

I considered the submissions, found the Landowners have had a sufficient opportunity to review the application, review a draft of the right of entry order, seek advice, and provide reasons why the Board should not proceed with the order. I found appropriate in the circumstances of this application to consider issuing the permanent right of entry order.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission's Permit 9708141.

This order gives Encana a permanent right of entry to complete their project on the Lands.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

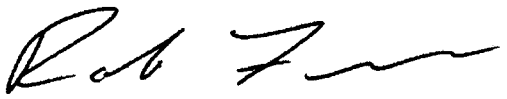
3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for initial consideration the amount of $4,260.00 representing the first year's initial payment and pre-paid damages.

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 August 14, 2015

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX A - Order 1863-2

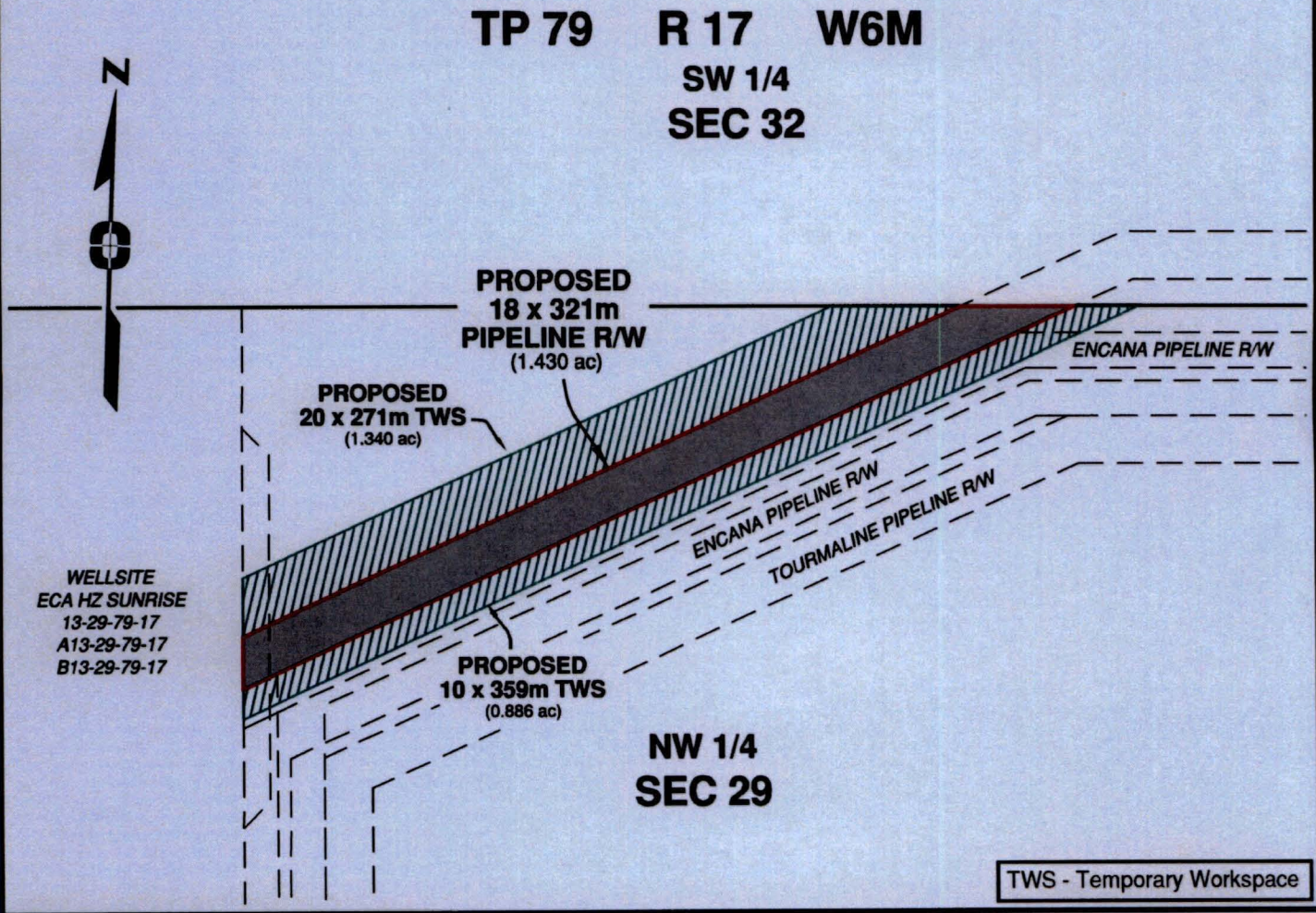
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 79, RANGE 17, W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 13-29-79-17 to Compressor Site 15-27-79-17)



TWS - Temporary Workspace

Owner(s): Olaf Anton Jorgensen

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 2500 (use letter size sheet)

Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S467442
Encana File(s):	S467442

Certified correct this 20th day of March, 2014

B.K. Doherty, BCLS

Areas		
Permanent	0.579 ha	1.430 ac
Temporary	0.901 ha	2.226 ac
Total	**1.480 ha**	**3.656 ac**

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No:	130084NP01R1
Ref Dwg:	130084CP01R2
Drafter:	KG

Appendix "B"

Conditions for Right of Entry

1. Encana Corporation must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File Nos. 1911 and 1913
Board Order No. 1911/1913-1

October 20, 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 NORTH WEST 1/4 OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH 1/2 OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST 1/4 OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands", file 1911)
AND
THE NORTH WEST ¼ OF SECTION 34, TOWNSHIP 79, RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands", file 1913)

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Rodney Allen Strasky and
Kim Lori Strasky

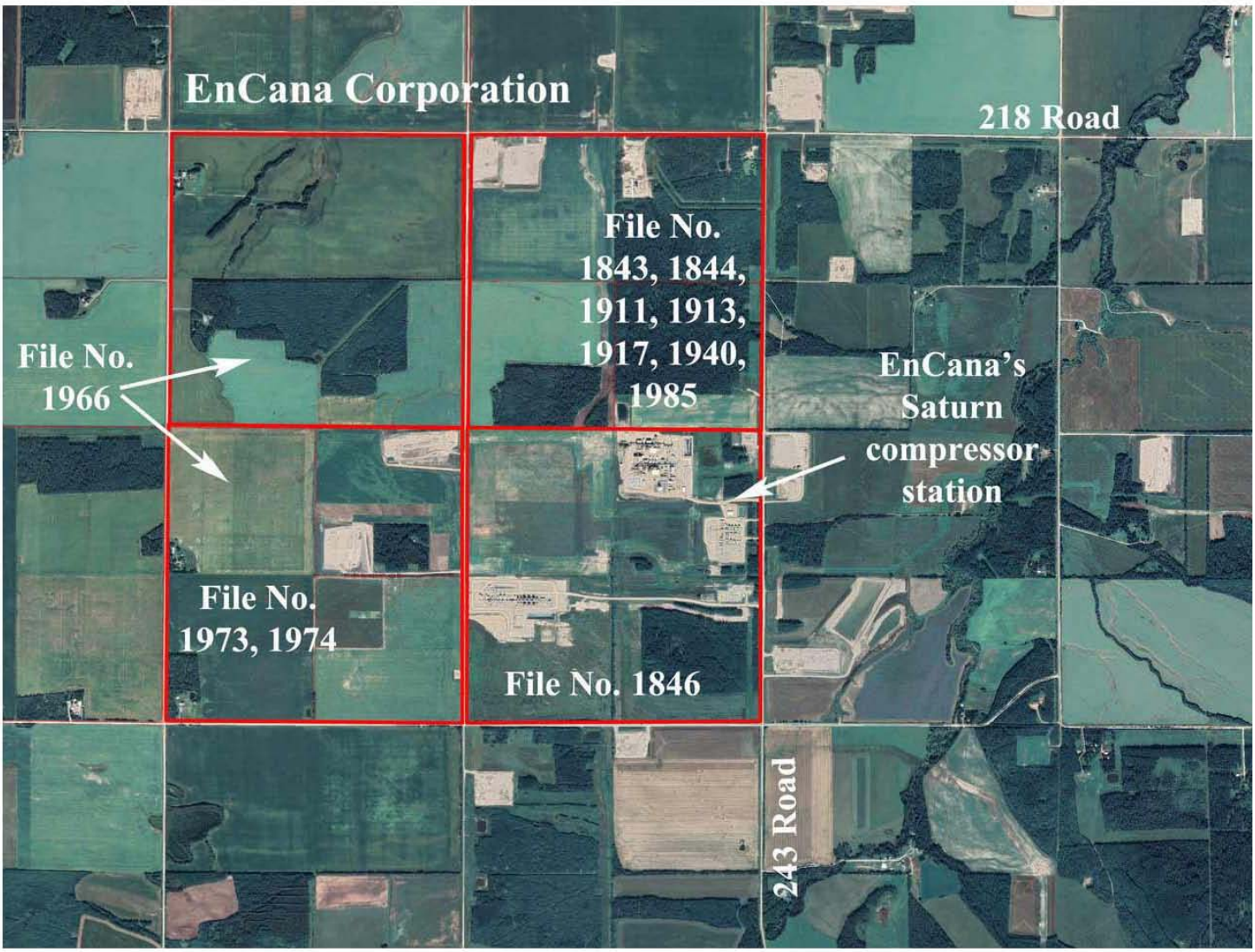
(RESPONDENTS, file 1911)

AND:

Tailwind Properties Ltd.

(RESPONDENT, file 1913)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Heard: by written submissions closing October 14, 2016
Appearances: Darrin K. Naffin, Barrister and Solicitor, for the Applicant
Darryl Carter, Q.C., for the Respondents

INTRODUCTION

[1] Encana Corporation (Encana) has applied to the Board for mediation and arbitration services respecting right of entry to construct a pipeline right-of-way from 14-27-79-W6M to riser site 4-19-80-W6M (the Pipeline Segment) and with respect to unsettled compensation to the owners of the affected lands. Rodney and Kim Strasky are the Respondents to application 1911 and the owners of the Lands described as: NW ¼ 4-80-17 W6M, S ½ 4-80-17 W6M and SW ¼ 3-80-17 W6M (Board's file 1911). Tailwind Properties Ltd. (Tailwind) is the Respondent to application 1913 and owner of the Lands described as: NW ¼ 34-79-17 (Board's file 1913). Mr. and Mrs. Strasky are also the occupiers of Tailwind's Lands.

[2] The Respondents take issue with the Board's jurisdiction to grant the right of entry orders, submitting that the Pipeline Segment is not a "flow line". The term "flow line" is defined by the *Petroleum and Natural Gas Act* and *Oil and Gas Activities Act* as follows:

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[3] The Board's jurisdiction to grant right of entry and determine the compensation payable as a result of an entry does not extend to a pipeline that is not a "flow line".

ISSUE

[4] The issue is whether the Pipeline Segment is a "flow line" and thus a pipeline over which the Board has jurisdiction.

EVIDENCE AND FINDINGS OF FACT

[5] The evidence before me is an Affidavit of Jason Tauber, a Senior Development Engineer in the Infrastructure and Planning department, Northern Operations of Encana. From Mr. Tauber's Affidavit I find as follows.

[6] The Pipeline Segment is one segment of the Encana C3+ pipeline project from 1-27-78-17 W6M to 3-7-81-17 W6M (collectively, the C3+ Pipeline) for the conveyance of unprocessed natural gas liquids (NGLs) to storage at the Tower Centralized Liquids Hub (Tower CLH). The NGLs are comprised primarily of a mix of propane, butane and other heavier hydrocarbon components.

[7] The C3+ Pipeline is a component of a system for the conveyance of NGLs from the Sunrise Gas Plant and the Saturn Phase 2 Sweet Gas Plant (collectively, the Gas Plants) to the Tower CHL. The Gas Plants are raw natural gas processing facilities. The Pipeline Segment, as a component of the C3+ Pipeline, will convey NGLs from the Gas Plants to an above ground riser site at 4-19-80-17, upstream of the Tower CLH.

[8] The Gas Plants will receive raw natural gas from well head production in the Dawson North development area in northeast British Columbia. At the inlet to each of the Gas Plants, raw natural gas will be separated from free liquids such as produced water and condensate. The raw natural gas is then compressed and refrigerated to segregate NGLs.

[9] The NGL's will undergo treatment as necessary to meet network requirements of the C3+ Pipeline and Pembina Pipeline Corporation and related entities' Peace pipeline (the Pembina Mainline). The NGLs may be temporarily stored in pressurized storage tanks associated with each of the Gas Plants before being received on the C3+ Pipeline and conveyed to the Tower CLH.

[10] The principle function of the Tower CLH is to accumulate and store NGLs delivered from the Gas Plants via the C3+ Pipeline. The NGLs will be conveyed from a custody transfer unit adjacent to the Tower CLH to the Pembina Redwater Fractionation and Storage Facility (the RFS Facility) via the Pembina Mainline.

[11] As NGLs are a mixture of different hydrocarbon liquids such as propane and butane among others, fractionation is required to make the liquid hydrocarbons consumable for domestic and industrial purposes. Fractionation refers to distillation of natural gas liquids into pure components, primarily through the addition of heat. Following fractionation, end uses of the pure components include home heating, crop drying, motor fuel, petro-chemical and industrial uses. The pure products recovered from fractionation at the RFS Facility will be transported for immediate sale to end users or for further distribution.

SUBMISSIONS

[12] Encana submits the Pipeline Segment is part of the "gathering system for unprocessed NGLs". It submits the C3+ Pipeline connects well head production of NGLs to a "storage" facility at the Tower CLH and a "processing" facility at the RFS Facility within the meaning of the definition of "flow line" and that both the Tower CLH and the RFS Facility precede the transmission of the pure natural gas liquids to market.

[13] The Respondents submit that "processing" of the raw natural gas to segregate the NGL's will have occurred at the Gas Plants and that a pipeline downstream of this "processing" cannot meet the definition of "flow line".

[14] In response, Encana submits it is the unprocessed NGLs that are the "conveyed substance" within the meaning of the definition of "flow line" not the raw natural gas, that "processing" within the meaning of the definition of "flow line" requires making a marketable product, and that "processing" of the NGLs occurs downstream of the C3+ Pipeline.

ANALYSIS

[15] For convenience, I repeat the statutory definition of "flow line":

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[16] As noted by the Board in *Encana Corporation v. Jorgensen*, Order 1852/1853-1, June 15, 2015, the term "flow line" is only used in the *Petroleum and Natural Gas Act* and in the *Oil and Gas Activities Act* in dealing with entry to private land. The sole purpose of the definition of "flow line" is to define the Board's jurisdiction by differentiating between those pipelines over which the Surface Rights Board has jurisdiction to grant right of entry and determine compensation payable for entry, and those pipelines for which a permit holder may expropriate land necessary for the construction and operation of a pipeline. The Board has applied the industry specific understanding of words in the definition of "flow line" in order to give effect to what it has found to be the legislative intent, to provide certainty as to which pipelines the Board has jurisdiction over and which it does not, and to ensure that words are interpreted consistently throughout the legislation that provides the comprehensive scheme for the regulation of the oil and gas industry in British Columbia (*Encana v. Jorgensen.*).

[17] The Board has considered the definition of "flow line" in several cases all involving pipeline components required for the production of natural gas. The Board has found the following types of pipelines to be flow lines:

a) a segment of pipeline transporting natural gas from a well head (*Murphy Oil Company Ltd. v. Shore,* Order 1745-1, September 13, 2012);
b) a segment to transport produced water separated from the natural gas at a well site (*Murphy v. Shore*);
c) a fuel line transporting fuel gas from a facility to a well head (*Murphy v. Shore*);
d) a line to transport produced gas from a well site (*Encana Corporation v Ilnisky*, Order 1823-1, April 11, 2014);
e) a hydraulic fracturing water supply line (*Encana v Ilnisky*);
f) a hydraulic fracturing water return line (*Encana v, Ilnisky*);
g) a 16 inch line to transport produced gas from a well site (*ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014);
h) a hydraulic fracturing water supply line also licensed for bi-directional use to carry natural gas from a well site (*ARC v. Hommy*);
i) a line connecting a well head to a scrubbing, processing or storage facility that is not owned by the same entity that operates the well head or the facility (*Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015);
j) a line connecting a compressor station where raw natural gas is not processed into marketable gas to a gas plant where raw natural gas is processed into marketable gas (*Encana Corporation v. Jorgensen*).

[18] In all of these cases, the Board found the pipelines in issue to be part of the gathering system for the production of natural gas and that the legislative intent of the definition of "flow line" is to give the Board jurisdiction over those pipelines that form part of the gathering system and function as part of the gathering system.

[19] In *ARC v. Hommy*, the Board found that a segment of pipeline that transported water as post production waste from a processing and storage facility to a vertical well for injection and disposal was not a flow line because, although it was located on the gathering side of the system, it did not function as part of the gathering system.

[20] The Board has found that a "processing facility" within the meaning of the definition of "flow line" is the facility that processes raw natural gas into marketable gas (*Encana v. Jorgensen*). It has found the term "scrubbing" facility is synonymous with "processing facility" and that to be a "storage facility" within the meaning of the definition of "flow line", storage needs to be a major function of the facility, not a temporary or periodic occurrence (*Encana v. Jorgensen*).

[21] Further, in *Encana v. Jorgensen*, the Board found that the words "scrubbing, processing or storage facility" in the definition of "flow line" "are intended to demarcate the extent of the Board's jurisdiction over pipelines at those scrubbing facilities, processing facilities, or storage facilities, where scrubbing, processing in the industry sense as the processing of raw natural gas into marketable gas, or storage is the principle purpose of the facility." By characterizing the C3+ Pipeline as "part of the gathering system for unprocessed NGL's", and on the basis that the NGL's are not processed into a marketable product until they get to the RFS Facility, Encana submits the definition of "flow line", and therefore the Board's jurisdiction, extends to those pipelines carrying unmarketable product, namely unprocessed NGL's, downstream of the Gas Plants which process raw natural gas into marketable gas. The question is: Can the definition of "flow line" bear that interpretation when read in the context of the legislative scheme as a whole and the intention of the legislature?

[22] As the Board has said before, there are two parts to the definition of "flow line". A "flow line" must 1) connect a well head to a scrubbing, processing or storage facility; and 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line (*Spectra v. London; Encana v. Jorgensen*). The Board

has found that a "flow line" need not connect directly to a well head, but may indirectly connect well heads to scrubbing, processing or storage facilities, as long as "it is part of the gathering system for the production of natural gas" (*Spectra v. London*; *Encana v. Jorgensen*). As the Board said in *Spectra v. London*, a " 'flow line' is but one part of the upstream gathering system that moves gas from wellheads to processing facilities, prior to the transmission of the processed gas to market."

[23] Characterizing the C3+ pipeline as "part of the gathering system for unprocessed NGL's", Encana submits the C3+ Pipeline connects well head production of NGL's with the Tower CLH which is a "storage facility" and the RFS Facility which is a "processing facility" and therefore meets the first part of the definition of "flow line". However, this characterization of the "gathering system" does not conform to the industry definition of the term.

[24] The Oil and Gas Commission (OGC) defines "Gathering system" as "The pipelines and other infrastructure moving raw gas from the well head to processing and transmission facilities" (Oil and Gas Glossary and Definitions, Version 1.0: July 2016). This is the same definition that has informed the Board's understanding of the "gathering system". See for example *Murphy v. Shore* where the Board has described the gathering system as comprising "the pipelines and other infrastructure that move raw gas from the well head to processing facilities".

[25] While a "flow line" need not connect directly to a well head, it will be part of the upstream system that conveys substances from well heads to processing facilities. The OGC's definition of "Gathering System schematic (Gathering Block Diagram)" is also instructive as follows: "A diagram indicating the flow path of oil and/or gas (including liquids) in pipelines between wells (well site facilities) and central facilities they are physically linked to (connected by pipelines)." (Emphasis added). The gathering system is the system of pipelines that serves to convey product from well heads to processing facilities. That product may include liquids, but to be considered a "flow line" the liquids

must be transported in a pipeline that serves to connect well heads, and be produced at well site facilities. The evidence in this case is that the unprocessed NGL's are recovered from the natural gas at the Gas Plants. I find it is stretching the definition of "flow line" to say that the C3+ Pipeline connects well heads to scrubbing, processing or storage facilities.

[26] Encana submits the unprocessed NGLs are the "conveyed substance", within the meaning of the definition, and the Pipeline Segment "precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line" and therefore meets the second part of the definition. As the Board found in *Encana v. Jorgensen* that "processing" meant processing into a marketable product, and as the NGLs are not marketable, Encana submits the C3+ Pipeline is part of the "gathering system" for NGLs and characterizes the Gas Plants as "Gathering Plants".

[27] What the Board found in *Encana v Jorgensen* was that a "processing facility" within the meaning of the definition of "flow line" was a facility that processed raw natural gas into a marketable product. A "flow line" connects well heads where raw natural gas (and other substances) is produced to scrubbing or processing facilities where the natural gas is processed into a marketable product or to storage facilities that are primarily for storing the conveyed substance prior to its transfer to a transmission, distribution or transportation line.

[28] I agree that NGL's are the "conveyed substance" in the C3+ Pipeline. However, they are not a "conveyed substance" until they are recovered from the raw natural gas stream at the Gas Plants. The evidence is that the NGL's in the C3+ Pipeline are recovered from the raw natural gas at the Gas Plants, not at the well heads. I agree with the Respondent's submission that whether or not the NGL's are themselves then further processed into a marketable product is irrelevant. Processing of the natural gas, as the industry understands it, will have already occurred. A pipeline downstream of this processing does not meet the definition of "flow line".

[29] I do not think it was the legislature's intent to stretch the "gathering system" over which the Board has jurisdiction beyond scrubbing or processing facilities that process raw natural gas into marketable product. A "flow line" is intended to convey raw natural gas (or presumably raw petroleum) from well heads to scrubbing, processing or storage facilities that precede its transfer to market. It may also convey produced water separated from the natural gas at well head facilities as it did in *Murphy v. Shore,* and potentially other liquids also separated from the natural gas at well heads. In all of those situations the "flow line" connects well heads with processing facilities and is functioning as part of the gathering system for natural gas.

[30] In *ARC v. Hommy* the Board found a pipeline segment carrying water from a gas plant for disposal was not a flowline as it was carrying post production waste and no longer functioning as part of the gathering system for natural gas. Similarly, in this case the C3+ Pipeline is carrying post-production by-product from the processing of raw natural gas for further processing. It is no longer part of the gathering system for natural gas.

[31] That NGL's are a byproduct of natural gas is evident from other definitions within the comprehensive legislative scheme for the regulation of the oil and gas industry.

[32] Natural Gas Liquids are defined in the *Drilling and Production Regulation* under the *Oil and Gas Activities Act* as follows:

> "natural gas liquids" means ethane, propane, butanes, or pentanes or any other condensates, or any combination of them recovered from natural gas.

[33] The same Regulation provides the following definition of "natural gas by-products":

> "natural gas by-products" means natural gas liquids, sulphur and substances other than marketable natural gas that are recovered from raw natural gas by processing or normal 2-phase field separation

[34] The *Petroleum and Natural Gas Act* provides as definition of "plant liquids":

> "plant liquids" means hydrocarbon liquids recovered from natural gas other than by normal 2 phase separation.

[35] NGLs are hydrocarbon liquids recovered from natural gas also known as "natural gas byproducts" or "plant liquids". While it is true that the NGL's are part of the raw natural gas stream produced at wells, they are not, in the circumstances of this case, the conveyed substance in a pipeline that connects well heads to scrubbing, processing or storage facilities as they do not exist as a singular conveyable product until they have been recovered from the natural gas at the processing facility that processes the natural gas. The C3+ Pipeline conveys these natural gas byproducts to a storage facility and then to a facility where they, in turn, are processed into marketable products. It does not connect well heads to scrubbing, processing or storage facilities, but connects processing facilities, namely the Gas Plants, to a facility for storage and then for further processing.

[36] The Board found in *Encana v. Jorgensen* that the words "scrubbing, processing or storage facility" in the definition of "flow line" "demarcate the extent of the Board's jurisdiction over pipelines at those scrubbing facilities, processing facilities, or storage facilities, where scrubbing, processing in the industry sense as the processing of raw natural gas into marketable gas, or storage is the principle purpose of the facility". I do not think it was the legislature's intent to extend the Board's jurisdiction over pipelines beyond those pipelines that convey substance from well heads to processing facilities or storage facilities. It did not intend the Board to have jurisdiction over pipelines beyond those facilities that carry post production waste or post production by-product recovered from the natural gas processing plant. Beyond those facilities the pipeline no longer connects well heads to scrubbing, processing or storage facilities and is no longer part of upstream gathering system for natural gas. It is part of the downstream post processing system for the conveyance of waste substances, byproduct and marketable product.

[37] I find the Pipeline Segment is not a "flow line" and the Board does not have jurisdiction.

ORDER

[38] The Board does not have jurisdiction. The applications are dismissed.

DATED: October 20, 2016

Cheryl Vickers, Chair

File No. 1915
Board Order No. 1915-1

November 10, 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 NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

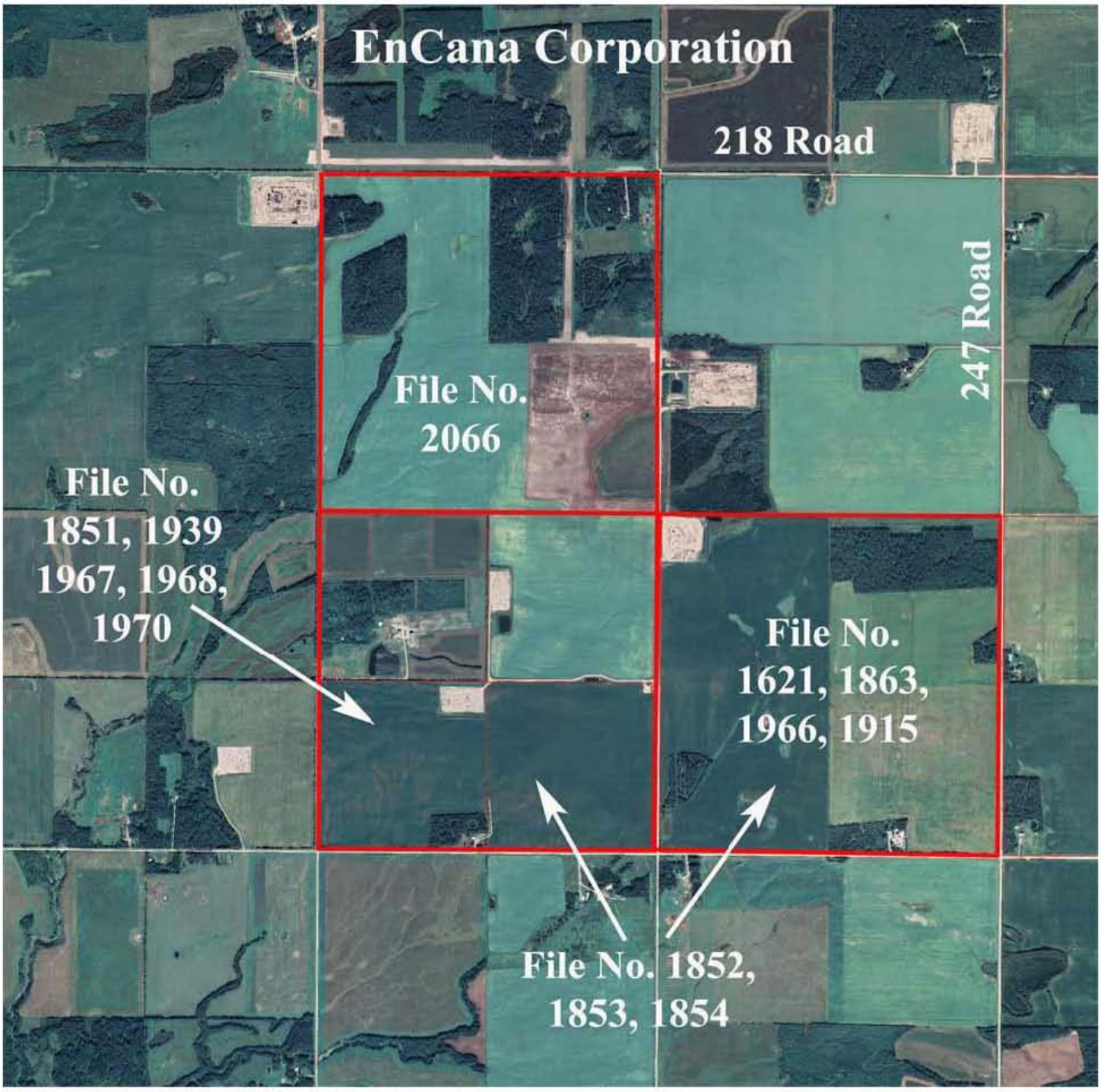
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") applied to the Board for mediation and arbitration services, asking for a right of entry order onto the Lands to drill additional wells and expand an existing wellsite in 13-29-79-17 in order to accommodate additional well development.

The Oil and Gas Commission ("OGC") has approved this project by amending the well permit well authorization #25638, referenced in the OGC's Commission File 9631531.

The parties informed the Board that they have reached an agreement regarding the nature of the right of entry order and associated terms and conditions. They ask the Board to issue the order by consent.

By Consent:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the portions of lands, legally described as **THE NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT**, that are identified as the remaining area on the individual ownership plan attached as Schedule "A" (the "Lands") for the purpose of constructing, drilling, completing operating, abandoning and reclaiming a multi-well padsite in accordance with Oil and Gas Commission Well Authorization No. 25638 (Well Permit) and the existing authorizations associated with the Well Permit.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Schedule "B" to this right of entry order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner the amount of $3,450.00 on account of rent or compensation payable for the right of entry order.

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

Dated: November 10, 2016

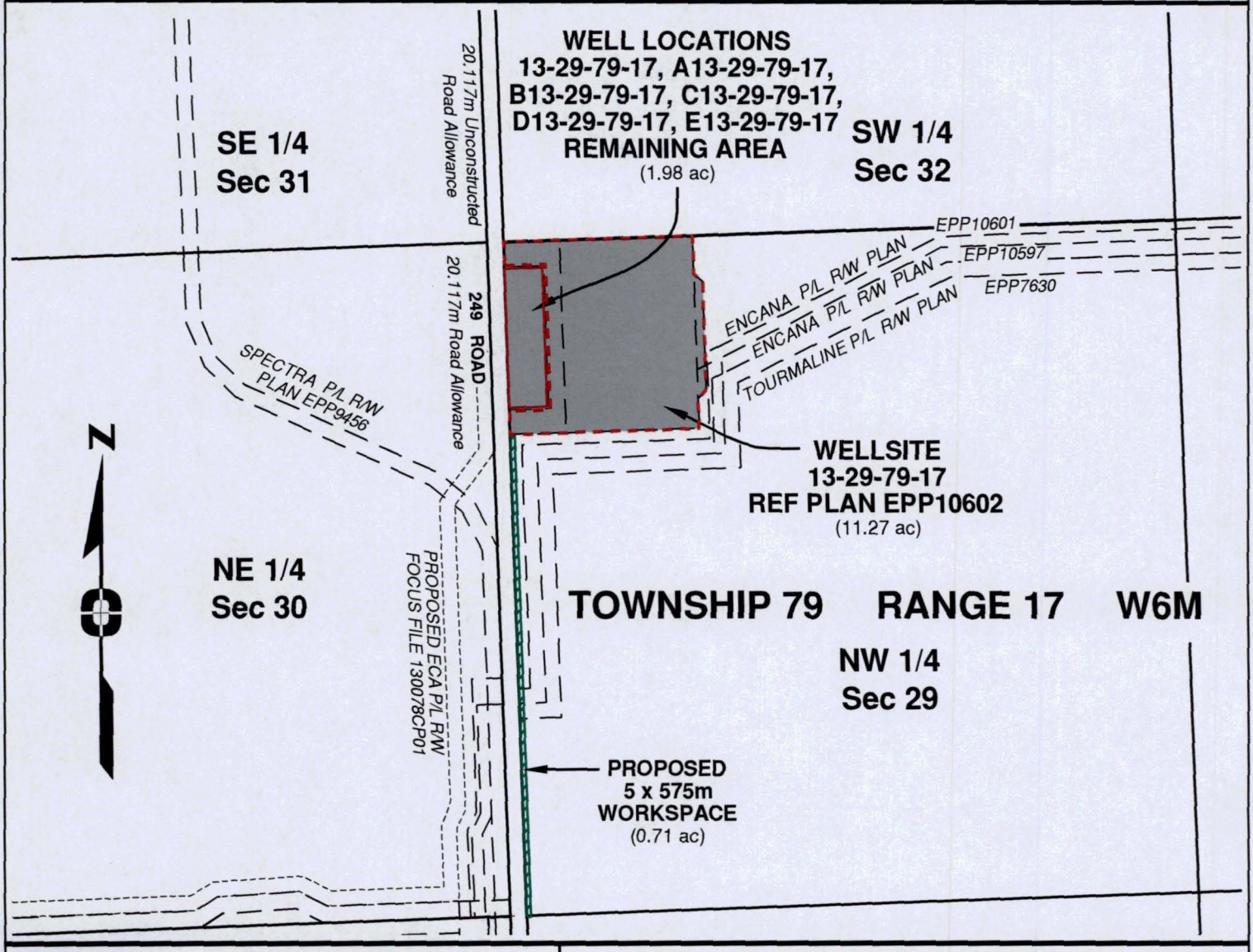
FOR THE BOARD

Rob Fraser, Mediator

SCHEDULE "A"

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELLSITE AND ANCILLARY SITE WITHIN THE NORTH WEST 1/4 SECTION 29 TOWNSHIP 79 RANGE 17 W6M PEACE RIVER DISTRICT



Owner(s):	Olaf Anton Jorgensen
Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S449322
EnCana File(s):	S449320, S449321, S449322 S449323, S442324, S449325

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 7500 (use letter size sheet)

Certified correct this 30th day of October, 2014

B.K. Doherty, BCLS

Area of Current Compensation (Ref Plan EPP10602)		
Permanent	4.56 ha	11.27 ac
Remaining Area		
Permanent	0.80 ha	1.98 ac
Temporary	0.29 ha	0.71 ac
Total	**5.65 ha**	**13.96 ac**

FOCUS
Focus Surveys (BC) Limited Partnership
10716 - 100th Avenue Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Focus Job No: 080972NP01R2
Ref Dwg: N/A
Drafter: DG

Schedule "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1917
Board Order No. 1917-1

November 22, 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 NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands")

BETWEEN:

Encana Corporation

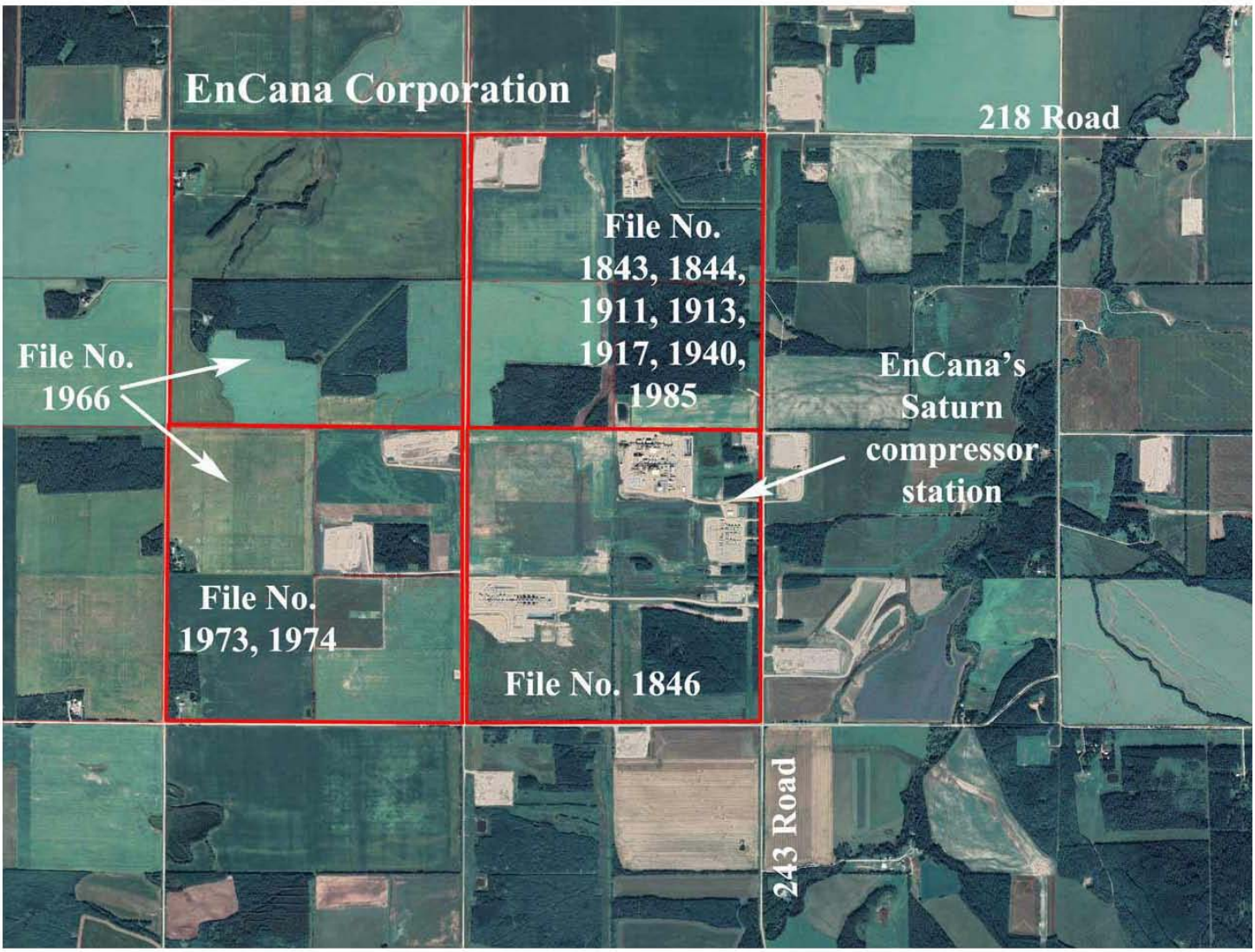
(Applicant)

AND:

Tailwind Properties Ltd.
Rodney and Kim Strasky

(Respondents)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

On November 15, 2016, I conducted a telephone conference call, attended by representatives of Encana and the Landowner, to discuss Encana's application for the Board's mediation and arbitration processes.

Encana has approval from the Oil and Gas Commission to construct a project on the Lands. They applied to the Board as they could not reach an agreement with the Landowner regarding access or compensation.

The parties have reached agreement on the wording of a consent right of entry order. They disagree on the amount of first year compensation and annual compensation. Regarding the amount of partial payment, the parties could not agree, asking me to set the amount.

By consent, the Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the portions of lands, legally described as **THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT**, shown outlined and delineated on the individual ownership plan attached as Schedule "A" (the "**Lands**") for the purpose of constructing, drilling, completing, operating, abandoning and reclaiming a multi-well padsite in accordance with Oil and Gas Commission Well Authorization Nos. 31949, 31950, 31951, 31952, 31953, 31954, 31955, and 31956.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Schedule "B" to this right of entry order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner the amount of $30,860.00 on account of rent or compensation payable for the right of entry order.

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

Dated November 22, 2016.

FOR THE BOARD

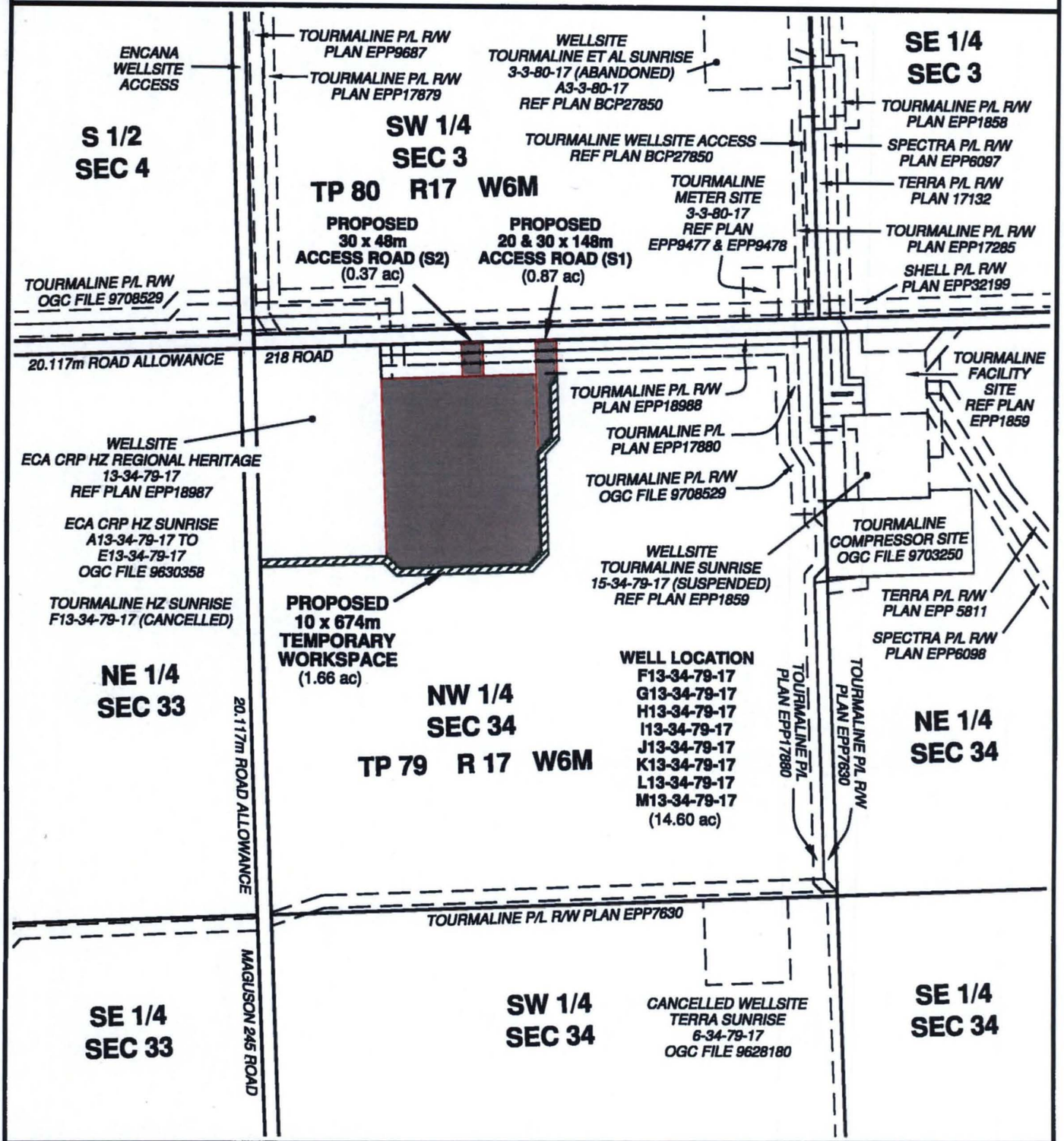
Rob Fraser, Mediator

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc. No. BC0520501 (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED WELL LOCATION, ACCESS ROADS AND TEMPORARY WORKSPACE WITHIN THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 W6M PEACE RIVER DISTRICT



Owner(s): Tailwind Properties Ltd., Inc. No. BC0520501

Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S468860
Encana File(s):	S468860, S468991, S468992 S468993, S468994, S468995 S470182, S470183

Areas		
Permanent	6.41 ha	15.84 ac
Temporary	0.67 ha	1.65 ac
Total	**7.08 ha**	**17.49 ac**

200 0 200 400 600 800

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 10,000 (use legal size sheet)

Certified correct this 29th day of July, 2015

Tyler Mikkelson, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	140298NP01R0
Ref Dwg:	140298WS01R0
Drafted by:	TMC

Schedule "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said Lands.

File No. 1917
Board Order No. 1917-1amd

October 26, 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 WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

(Applicant)

AND:

Tailwind Properties Ltd.
Rodney and Kim Strasky

(Respondents)

BOARD ORDER

This Order amends Order 1917-1 to add the following Oil and Gas Commission Well Authorization Nos. to the end of Paragraph 1: 34355, 34356, 34357, 34358, 34359, 34360, 34361, 34362, and 34363. The content and schedule to Order 1917-1 otherwise remain the same.

On November 15, 2016, I conducted a telephone conference call, attended by representatives of Encana and the Landowner, to discuss Encana's application for the Board's mediation and arbitration processes.

Encana has approval from the Oil and Gas Commission to construct a project on the Lands. They applied to the Board as they could not reach an agreement with the Landowner regarding access or compensation.

The parties have reached agreement on the wording of a consent right of entry order. They disagree on the amount of first year compensation and annual compensation. Regarding the amount of partial payment, the parties could not agree, asking me to set the amount.

By consent, the Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the portions of lands, legally described as **THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT**, shown outlined and delineated on the individual ownership plan attached as Schedule "A" (the "**Lands**") for the purpose of constructing, drilling, completing, operating, abandoning and reclaiming a multi-well padsite in accordance with Oil and Gas Commission Well Authorization Nos. 31949, 31950, 31951, 31952, 31953, 31954, 31955, 31956, 34355, 34356, 34357, 34358, 34359, 34360, 34361, 34362, and 34363

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Schedule "B" to this right of entry order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner the amount of $30,860.00 on account of rent or compensation payable for the right of entry order.

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

Original Order Dated: November 22, 2016

Amended Order Dated: October 26, 2017

FOR THE BOARD

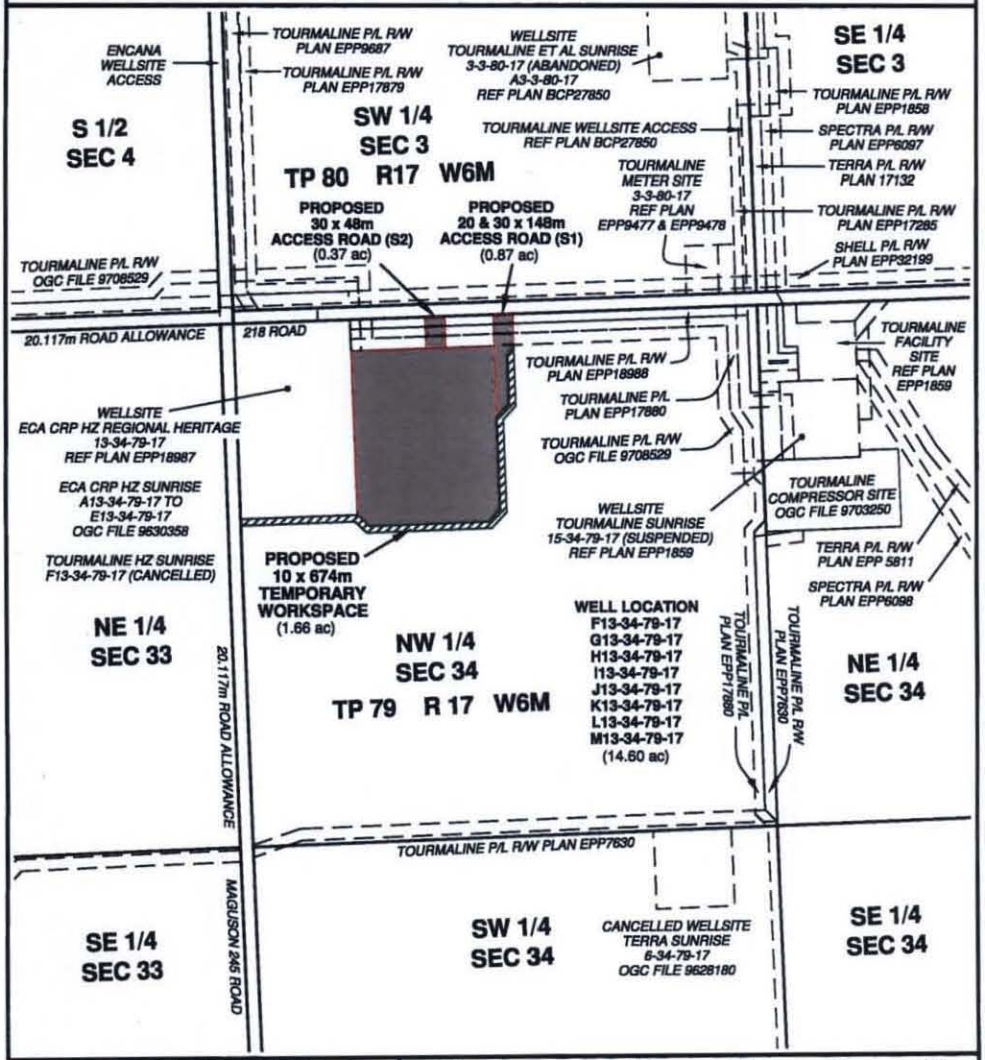
_____
Rob Fraser, Mediator

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc. No. BC0520501 (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED WELL LOCATION, ACCESS ROADS AND TEMPORARY WORKSPACE
WITHIN THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT



Owner(s): Tailwind Properties Ltd., Inc. No. BC0520501

Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S468860
Encana File(s):	S468860, S468991, S468992 S468993, S468994, S468995 S470182, S470183

Areas			
Permanent		6.41 ha	15.84 ac
Temporary		0.67 ha	1.65 ac
Total		**7.08 ha**	**17.49 ac**

200 0 200 400 600 800

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1: 10,000 (use legal size sheet)

Certified correct this 29th day of July, 2015

Tyler Mikkelson, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	140298NP01R0
Ref Dwg:	140298WS01R0
Drafted by:	TMC

Schedule "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said Lands.

File No. 1917
Board Order No. 1917-2

November 21, 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 WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

(Applicant)

AND:

Tailwind Properties Ltd.
Rodney and Kim Strasky

(Respondents)

BOARD ORDER

Encana Corporation has approval from the Oil and Gas Commission to operate an existing 13.34 acre multi-well padsite on the Lands.

The Parties have reached agreement on the wording of a consent right of entry order and on the amount of compensation.

BY CONSENT the Surface Rights Board orders:

1. Encana Corporation shall have the right to enter and access the portions of lands, legally described as THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT, shown outlined and delineated on the individual ownership plan attached hereto as Schedule "A" (the "**Lands**") for the purpose of constructing, drilling, completing, operating, abandoning, and reclaiming a multi-well padsite in accordance with Oil and Gas Commission Well Authorization Nos. 24326, 24939, 25130, 25547, 25548, and 26147.

2. Encana Corporation shall pay to the Respondent, TAILWIND PROPERTIES LTD., $11,000 annually on account of compensation payable for the right of entry order.

3. No additional amounts are owing by Encana to the Respondents, TAILWIND PROPERTIES LTD. and RODNEY AND KIM STRASKY.

4. Nothing in this right of entry order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

Dated November 21, 2017.

FOR THE BOARD

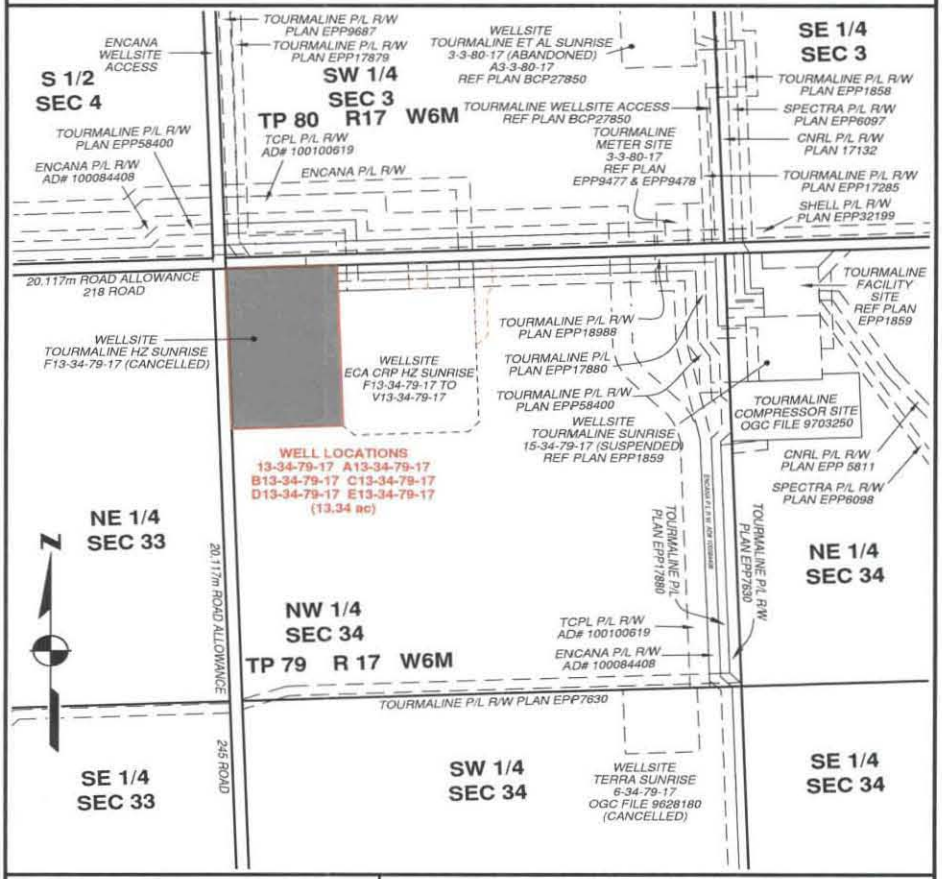
_____
Cheryl Vickers, Chair

SCHEDULE “A”

SCHEDULE "A" Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc.No. BC0520501 (Lessor) and Encana Corporation (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED WELL LOCATION WITHIN
THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT



Owner(s):	Tailwind Properties Ltd., Inc.No. BC0520501
Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S468742
Encana File(s):	S468742

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1:7500 (use legal size sheet)

Certified correct this 15th day of November, 2017

Tyler Mikkelson, BCLS

Areas		
Permanent	5.40 ha	13.34 ac
Temporary	0.00 ha	0.00 ac
Total	**5.40 ha**	**13.34 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 141-55601-00-000-00-WSHIP002-R0
Ref Dwg: 080306WS01R1
Drafted by: KG

File No. 1917
Board Order No. 1917-3

November 21, 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 WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

(Applicant)

AND:

Tailwind Properties Ltd.
Rodney and Kim Strasky

(Respondents)

BOARD ORDER

On November 22, 2016, the Surface Rights Board issued Board Order 1917-1 giving Encana Corporation ("Encana") access to the lands described as:

- THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

for the purpose of constructing, drilling, completing, operating, abandoning and reclaiming a multi-well padsite in accordance with the Oil and Gas Commission Well Authorizations Nos. 31949, 31950, 31951, 31952, 31953, 31954, 31955, and 31956 (the "Project")

By Order 1917-1amd dated October 26, 2017, the Surface Rights Board amended Order 1917-1 to add additional Well Authorization Nos. 34355, 34356, 34357, 34358, 34359, 34360, 34361, 34362 and 34363 with no new land required for the Project.

Order 1917-1 included partial compensation payment of $30,860.00 leaving the issue of final compensation for a later date.

The parties have reached an agreement on the amount of compensation.

BY CONSENT the Surface Rights Board orders:

1. Encana Corporation shall pay to the Respondent, TAILWIND PROPERTIES LTD., the sum of Sixty One Thousand Eight Hundred Fourteen Dollars Fifty Cents ($61,814.50) representing the first year's initial payment determined as follows:

a) Compulsory Aspect of the right of entry:	$7,920.00
b) Value of the applicable land:	$23,760.00
c) Loss of Profit:	$6,732.00
d) Nuisance and Disturbance:	$2,000.00
e) Severance:	$1,275.00
f) Compensation for Temporary Workspace:	$2,987.50
g) Additional Nuisance and Disturbance ($3000 X 16 Wells):	$48,000.00
	$92,674.50
Minus amount already paid	$30,860.00
Amount Owing	$61,814.50

2. Encana Corporation shall pay to the Respondent, TAILWIND PROPERTIES LTD., the following amounts on an annual basis for each year following the first year:

a) Loss of Profit: $6,732.00
b) Nuisance and Disturbance: $2,000.00
c) Severance: $1,275.00
d) Additional Wells: $500.00 per well drilled

3. No additional amounts are owing by Encana to the Respondents, TAILWIND PROPERTIES LTD. and RODNEY AND KIM STRASKY.

DATED: November 21, 2017.

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1926
Board Order No.1926-1

January 20, 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 EAST ¼ OF SECTION 15 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN 26071 PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

Encana Corporation

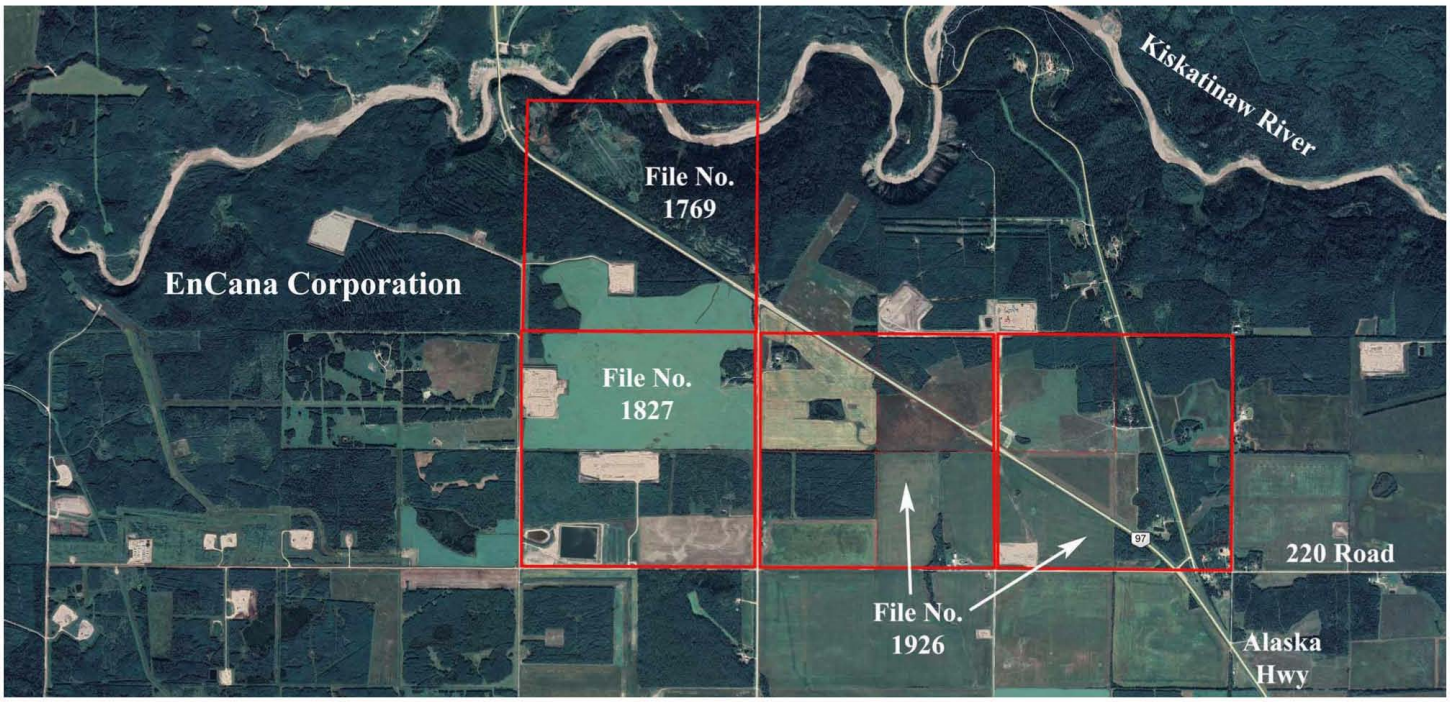
(APPLICANT)

AND:

Peter Derrick Bailey

(RESPONDENT)

BOARD ORDER


Kiskatinaw River
File No.
1769
EnCana Corporation
File No.
1827
97
220 Road
File No.
1926
Alaska
Hwy

On January 18, 2016, I conducted a telephone mediation to discuss Encana Corporation's ("Encana") application for mediation and arbitration services. Encana asks the Board for a right of entry to the Lands in order to construct and operate flowlines.

The Oil and Gas Commission ("OGC") has issued a permit for this project.

Mr. Bailey objects to the routing of this project and has filed an appeal to the Oil and Gas Appeal Tribunal ("OGAT"). He has not applied for a stay of the permit but intends to ask OGAT to amend his application and issue a stay of the permit.

To provide Mr. Bailey time to pursue his alternatives and also to allow Encana to fulfil the requirements of the permit, I declined to issue a right of entry order for the pipeline project but agreed to issue an interim order allowing Encana to perform necessary studies and assessments.

Based on our discussions, supported by the OGC's permit for the pipeline project, I find Encana requires access to the Lands for an approved oil and gas activity.

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH EAST ¼ OF SECTION 15 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN, EXCEPT PLAN 26071 PEACE RIVER DISTRICT AND PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plans attached as Appendix "A" (the "Lands") to carry out such surveys, examinations, studies and investigations related and preparatory to the construction, operation, and maintenance of multiple flow lines and associated works as approved by the BC Oil and Gas Commission by Pipeline Permit issued on September 30, 2016 ("Approved Oil and Gas Activity") required to:

    a. fix the site of the Approved Oil and Gas Activity;

    b. identify any potential artifacts, materials or things protected under section 13(2) of the Heritage Conservation Act; and

    c. support of the completion of a Schedule 'A' Site Assessment required pursuant to the Agreement between the Provincial Agricultural Land Commission and the BC Oil and Gas Commission dated June 13, 2013.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $500.00 representing compensation for the Right of Entry and prepaid damages.

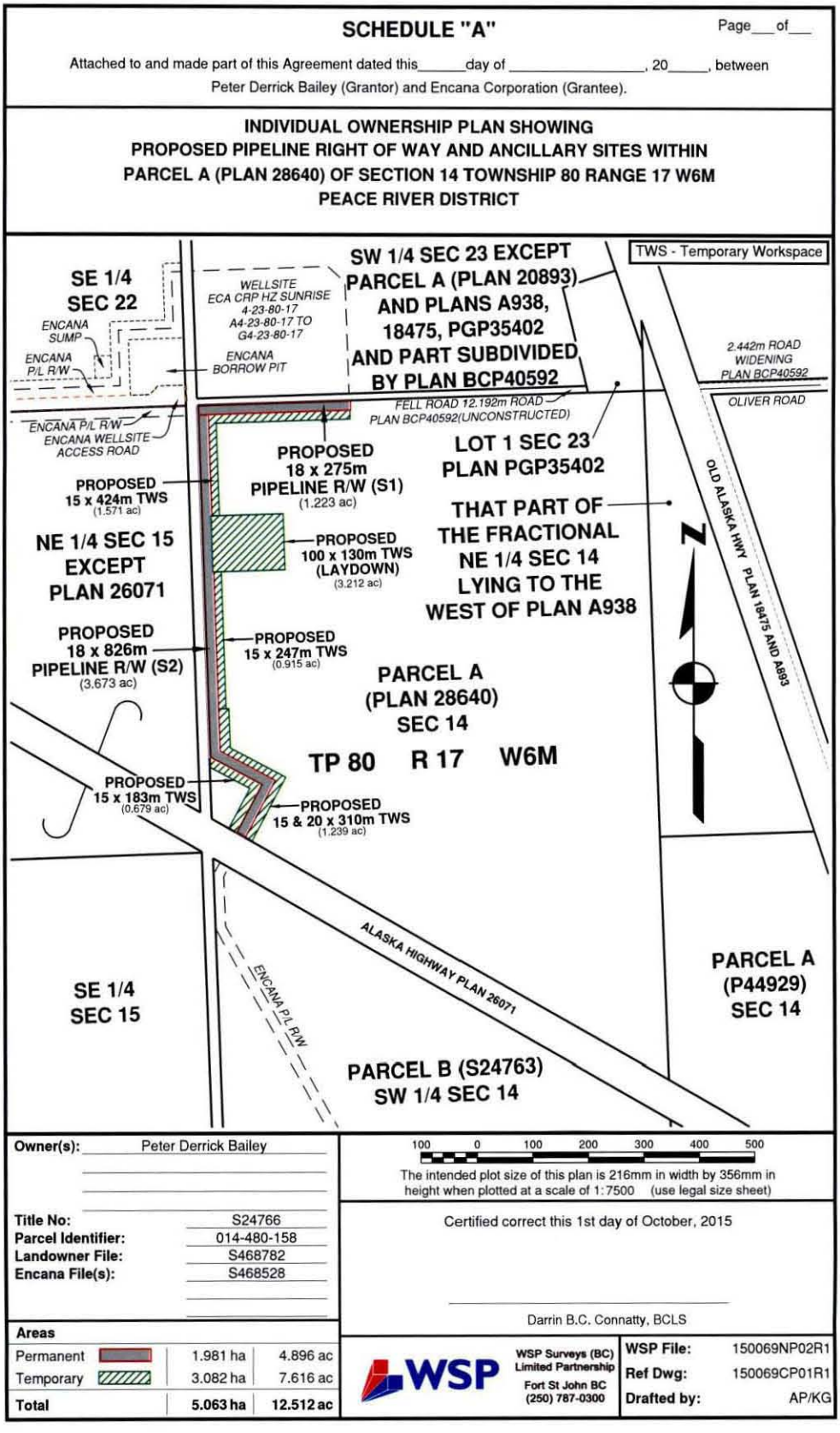
4. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

Dated January 20, 2017

FOR THE BOARD

Rob Fraser, Mediator

Appendix "A"

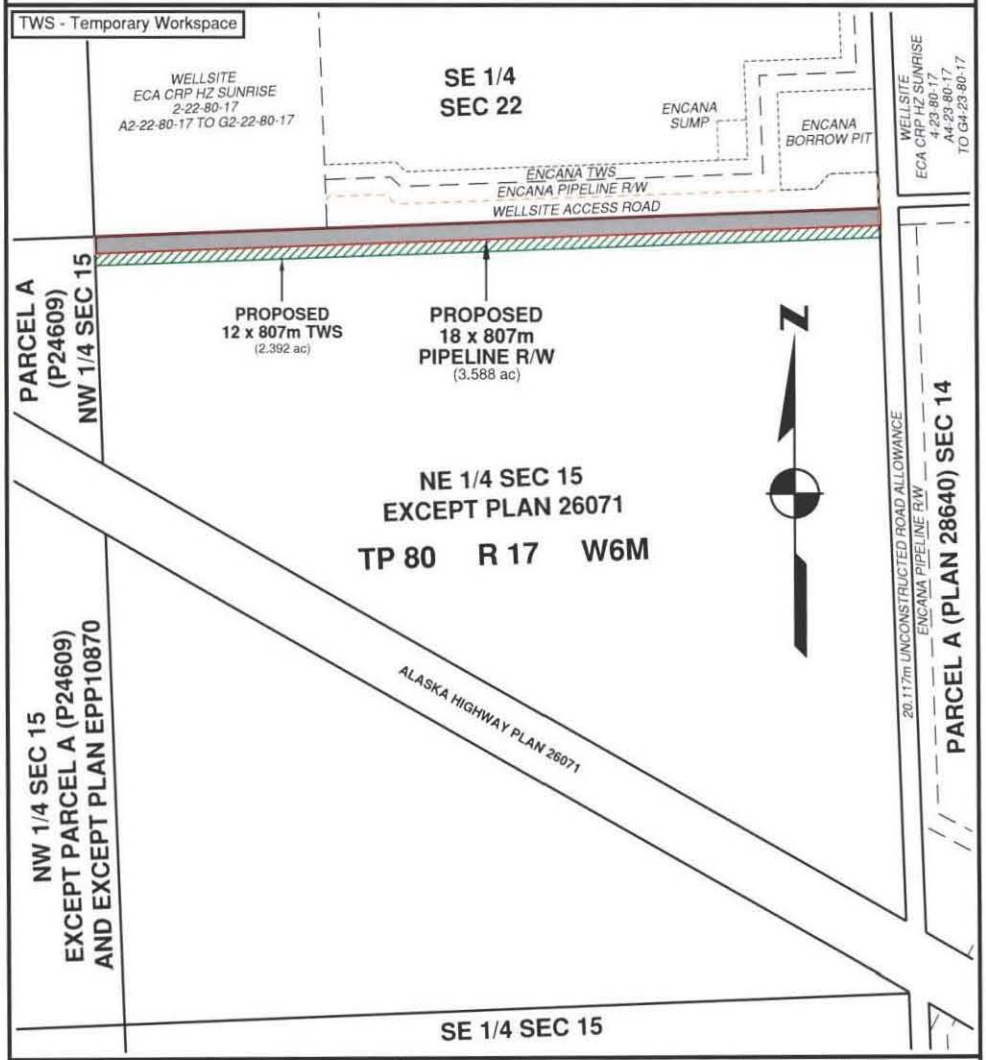

SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Peter Derrick Bailey (Grantor) and Encana Corporation (Grantee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 W6M
PEACE RIVER DISTRICT
TWS - Temporary Workspace
SE 1/4
SEC 22
WELLSITE
ECA CRP HZ SUNRISE
4-23-80-17
A4-23-80-17 TO
G4-23-80-17
ENCANA
SUMP
ENCANA
P/L R/W
ENCANA
BORROW PIT
SW 1/4 SEC 23 EXCEPT
PARCEL A (PLAN 20893)
AND PLANS A938,
18475, PGP35402
AND PART SUBDIVIDED
BY PLAN BCP40592
2.442m ROAD
WIDENING
PLAN BCP40592
OLIVER ROAD
FELL ROAD 12.192m ROAD
PLAN BCP40592(UNCONSTRUCTED)
ENCANA P/L R/W
ENCANA WELLSITE
ACCESS ROAD
PROPOSED
18 x 275m
PIPELINE R/W (S1)
(1.223 ac)
LOT 1 SEC 23
PLAN PGP35402
PROPOSED
15 x 424m TWS
(1.571 ac)
NE 1/4 SEC 15
EXCEPT
PLAN 26071
PROPOSED
100 x 130m TWS
(LAYDOWN)
(3.212 ac)
THAT PART OF
THE FRACTIONAL
NE 1/4 SEC 14
LYING TO THE
WEST OF PLAN A938
OLD ALASKA HWY PLAN 18475 AND A893
N
PROPOSED
18 x 826m
PIPELINE R/W (S2)
(3.673 ac)
PROPOSED
15 x 247m TWS
(0.915 ac)
PARCEL A
(PLAN 28640)
SEC 14
TP 80 R 17 W6M
PROPOSED
15 x 183m TWS
(0.679 ac)
PROPOSED
15 & 20 x 310m TWS
(1.239 ac)
ALASKA HIGHWAY PLAN 26071
ENCANA P/L R/W
SE 1/4
SEC 15
PARCEL A
(P44929)
SEC 14
PARCEL B (S24763)
SW 1/4 SEC 14
Owner(s): Peter Derrick Bailey
Title No: S24766
Parcel Identifier: 014-480-158
Landowner File: S468782
Encana File(s): S468528
100 0 100 200 300 400 500
The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1:7500 (use legal size sheet)
Certified correct this 1st day of October, 2015
Darrin B.C. Connatty, BCLS
Areas
Permanent 1.981 ha 4.896 ac
Temporary 3.082 ha 7.616 ac
Total 5.063 ha 12.512 ac
WSP
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300
WSP File: 150069NP02R1
Ref Dwg: 150069CP01R1
Drafted by: AP/KG

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Peter Derrick Bailey (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 80 RANGE 17 W6M EXCEPT PLAN 26071
PEACE RIVER DISTRICT



Owner(s): Peter Derrick Bailey

Title No:	S24767
Parcel Identifier:	014-597-802
Landowner File:	S468782
Encana File(s):	S468528

Areas		
Permanent	1.452 ha	3.588 ac
Temporary	0.968 ha	2.392 ac
Total	**2.420 ha**	**5.980 ac**

100 0 100 200 300 400

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

Certified correct this 1st day of October, 2015

Darrin B.C. Connatty, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	150069NP01R1
Ref Dwg:	150069CP01R1
Drafted by:	AP/KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner twenty-four (24) hours prior to entry onto the said lands.

File No. 1926
Board Order No.1926-2

March 16, 2017

SURFACE RIGHTS BOARD

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

THE NORTH EAST ¼ OF SECTION 15 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN 26071 PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Peter Derek Bailey

(RESPONDENT)

BOARD ORDER

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Peter Derek Bailey (the "Lands").

Encana requires access to the Lands to construct, operate and maintain a pipeline and associated infrastructure.

The parties have advised the Board that they have reached agreement on the right of entry as set out below.

By way of background to their agreement, Encana advised me that after mediation conducted by the Oil and Gas Appeal Tribunal Encana and Mr. Bailey had entered into an agreement regarding this project.

As Mr. Bailey has hearing difficulties, and he does not have access to email, I contacted his advisor, Mr. Jim Collins. On the morning of March 10, 2017, Mr. Collins called me, with Mr. Bailey present. Mr. Collins reviewed the agreement, which agreed with Encana's account of the agreement. As well, the agreement contains a number of issues beyond the Board's jurisdiction.

Later in the day I spoke with Mr. Bailey, and again confirmed the nature of the agreement.

Accordingly, BY CONSENT, the Surface Rights Board orders:

1. Upon payment of the amount set out in paragraphs 3, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as **THE NORTH EAST ¼ OF SECTION 15 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN, EXCEPT PLAN 26071 PEACE RIVER DISTRICT AND PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT** as shown on the individual ownership plans attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works ("flow lines").

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** Encana shall pay to the Respondent, Peter Derrick Bailey, the sum of Thirty Thousand Dollars ($30,000) as compensation payable for the negotiation and acquisition of the rights granted herein as well as all damages arising from the construction of the flow lines within the Lands.

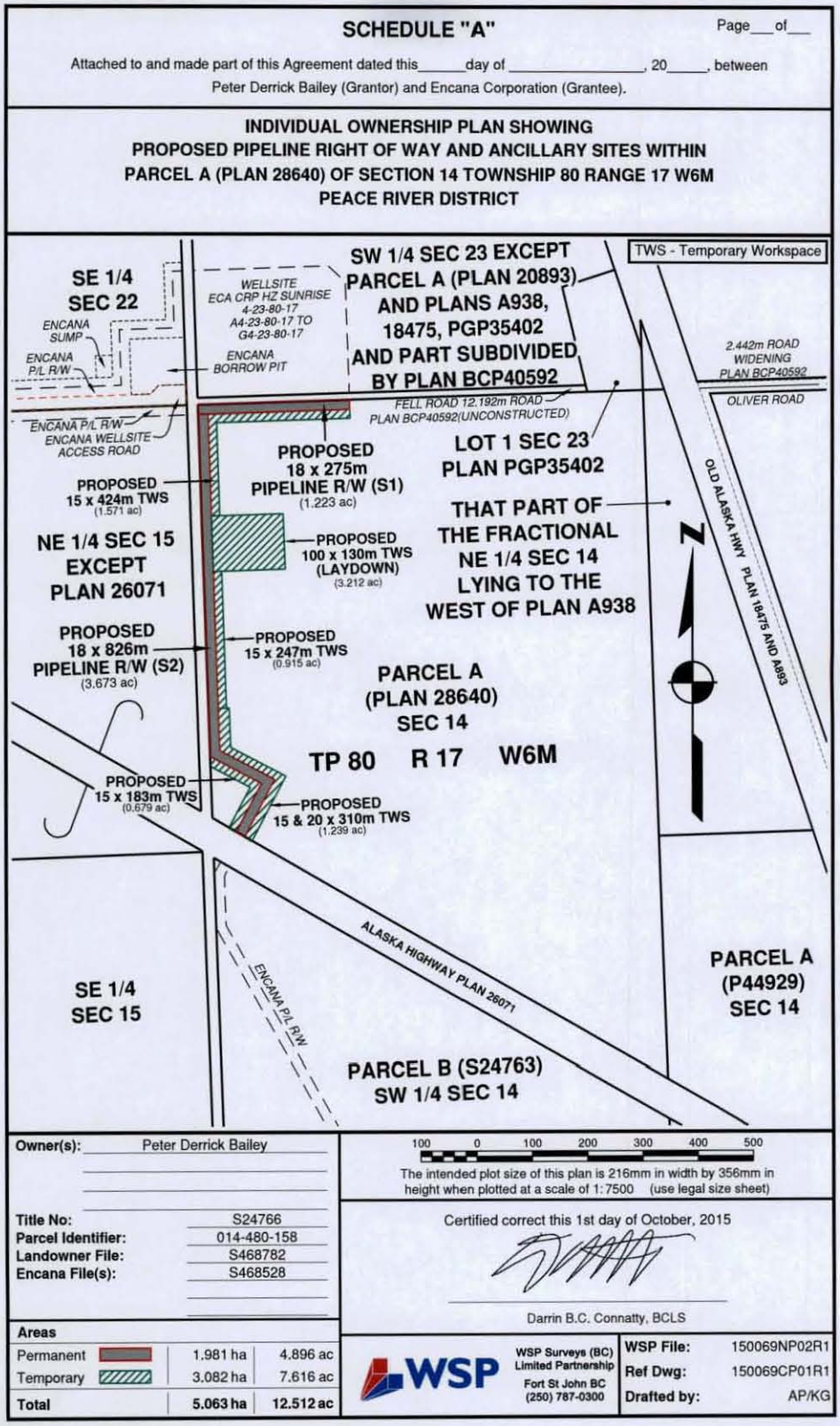
4. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

Dated: March 16, 2017

FOR THE BOARD

_____

Rob Fraser, Mediator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INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
PARCEL A (PLAN 28640) OF SECTION 14 TOWNSHIP 80 RANGE 17 W6M
PEACE RIVER DISTRICT
TWS - Temporary Workspace
SE 1/4 SEC 22
WELLSITE ECA CRP HZ SUNRISE 4-23-80-17 A4-23-80-17 TO G4-23-80-17
ENCANA SUMP
ENCANA P/L R/W
ENCANA BORROW PIT
SW 1/4 SEC 23 EXCEPT PARCEL A (PLAN 20893) AND PLANS A938, 18475, PGP35402 AND PART SUBDIVIDED BY PLAN BCP40592
2.442m ROAD WIDENING PLAN BCP40592
OLIVER ROAD
FELL ROAD 12.192m ROAD PLAN BCP40592(UNCONSTRUCTED)
ENCANA P/L R/W
ENCANA WELLSITE ACCESS ROAD
PROPOSED 18 x 275m PIPELINE R/W (S1) (1.223 ac)
LOT 1 SEC 23 PLAN PGP35402
PROPOSED 15 x 424m TWS (1.571 ac)
PROPOSED 100 x 130m TWS (LAYDOWN) (3.212 ac)
THAT PART OF THE FRACTIONAL NE 1/4 SEC 14 LYING TO THE WEST OF PLAN A938
NE 1/4 SEC 15 EXCEPT PLAN 26071
OLD ALASKA HWY PLAN 18475 AND A893
N
PROPOSED 18 x 826m PIPELINE R/W (S2) (3.673 ac)
PROPOSED 15 x 247m TWS (0.915 ac)
PARCEL A (PLAN 28640) SEC 14
TP 80 R 17 W6M
PROPOSED 15 x 183m TWS (0.679 ac)
PROPOSED 15 & 20 x 310m TWS (1.239 ac)
ALASKA HIGHWAY PLAN 26071
ENCANA P/L R/W
SE 1/4 SEC 15
PARCEL A (P44929) SEC 14
PARCEL B (S24763) SW 1/4 SEC 14
Owner(s): Peter Derrick Bailey
Title No: S24766
Parcel Identifier: 014-480-158
Landowner File: S468782
Encana File(s): S468528
100 0 100 200 300 400 500
The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1:7500 (use legal size sheet)
Certified correct this 1st day of October, 2015
Darrin B.C. Connatty, BCLS
Areas
Permanent 1.981 ha 4.896 ac
Temporary 3.082 ha 7.616 ac
Total 5.063 ha 12.512 ac
WSP
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300
WSP File: 150069NP02R1
Ref Dwg: 150069CP01R1
Drafted by: AP/KG

SCHEDULE "A"

Page___of___

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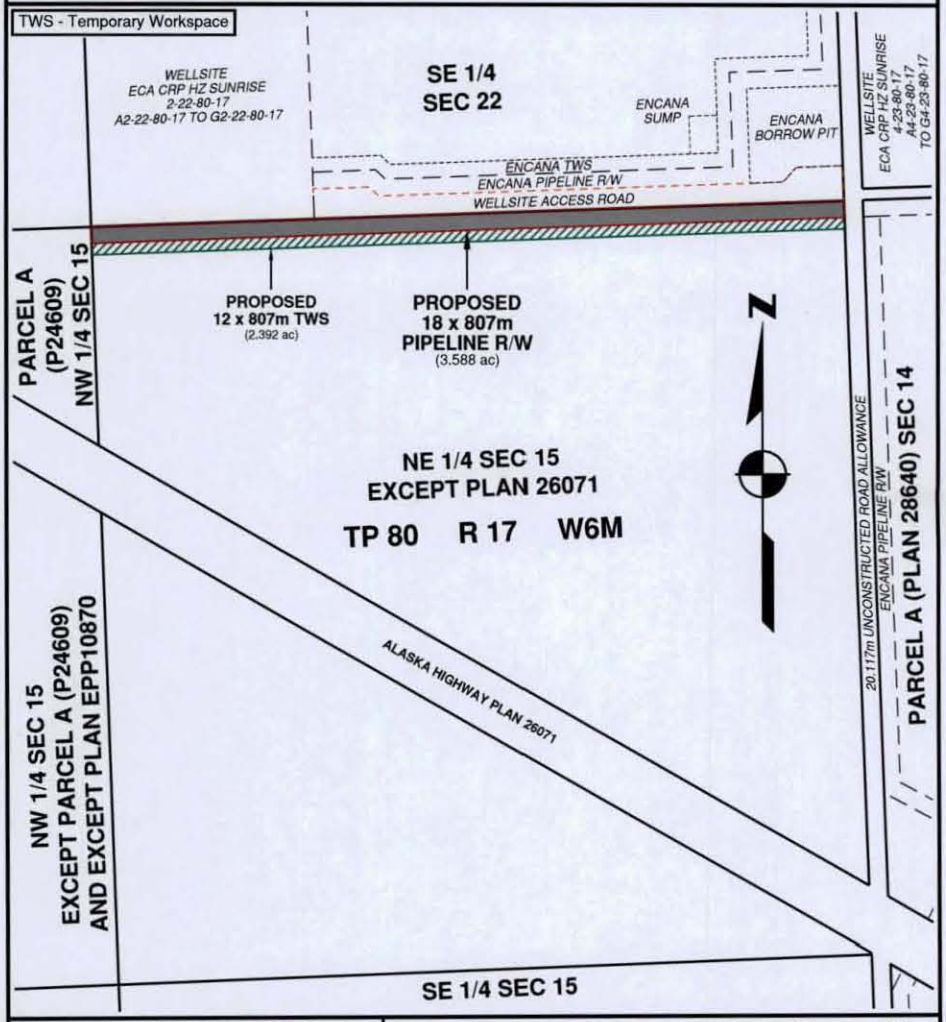
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 80 RANGE 17 W6M EXCEPT PLAN 26071
PEACE RIVER DISTRICT



Owner(s): Peter Derrick Bailey

100 0 100 200 300 400

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

Title No:	S24767
Parcel Identifier:	014-597-802
Landowner File:	S468782
Encana File(s):	S468528

Certified correct this 1st day of October, 2015

Darrin B.C. Connatty, BCLS

Areas		
Permanent	1.452 ha	3.588 ac
Temporary	0.968 ha	2.392 ac
Total	**2.420 ha**	**5.980 ac**

WSP

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	150069NP01R1
Ref Dwg:	150069CP01R1
Drafted by:	AP/KG

APPENDIX “B”

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the Lands.

File No. 1939
Board Order No. 1939-1

May 31, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

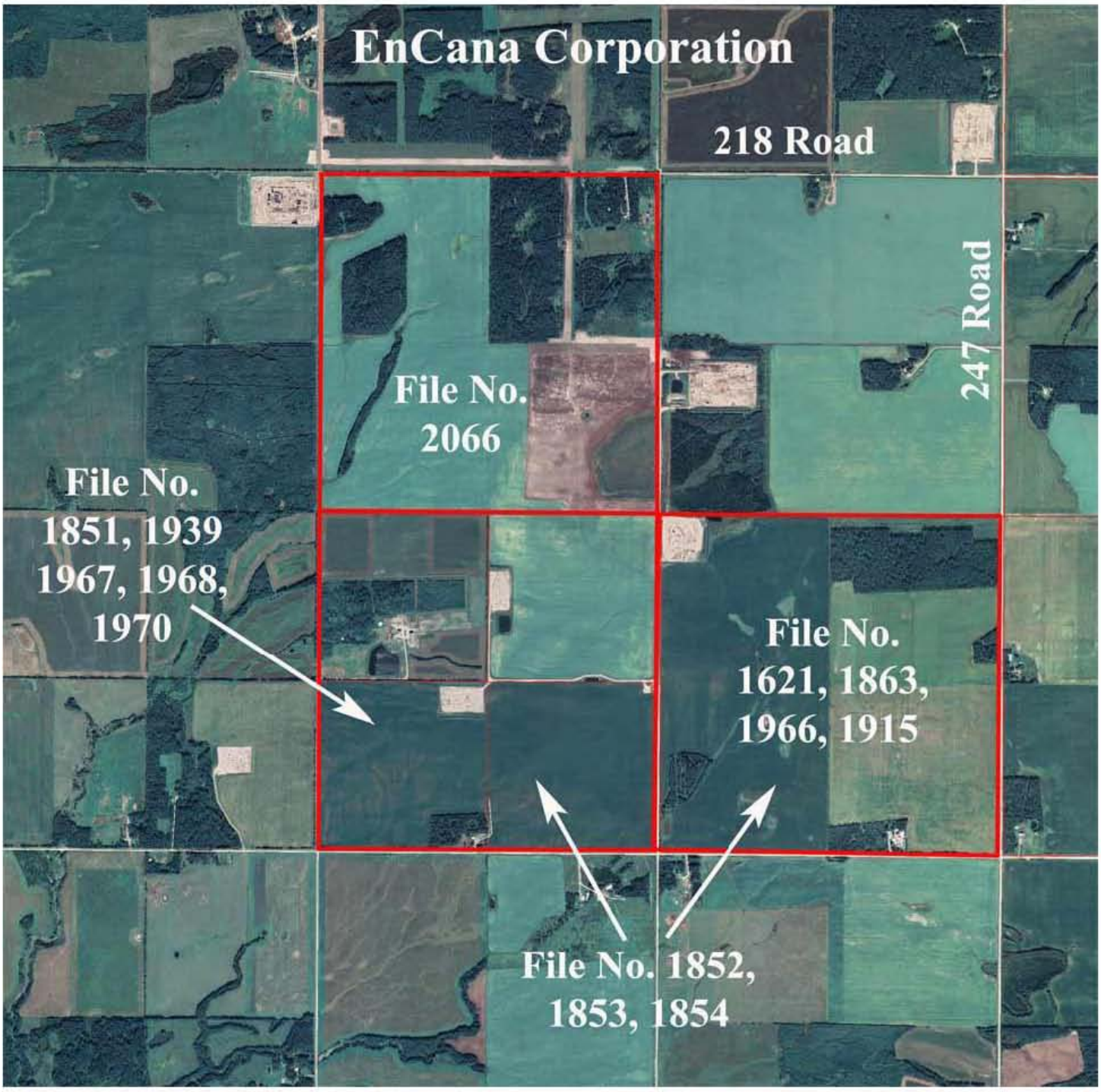
(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD DECISION


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Heard: By way of written submissions
Appearances: Lars Olthafer, Barrister & Solicitor, for the Applicant
J. Darryl Carter, Q.C., for the Respondents

INTRODUCTION AND ISSUE

[1] The applicant, Encana Corporation ("Encana") seeks a right of entry order over Lands owned by the Respondents, Olaf Anton Jorgensen and Frances Diane Jorgensen, to construct and operate a pipeline in four segments (the "Pipeline"). The Pipeline has been permitted by the Oil and Gas Commission. The Respondents question the Board's jurisdiction to issue the requested right of entry order on the basis that the Pipeline, and in particular segments 3 and 4 of the Pipeline, is not a "flow line" within the meaning of the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act*.

[2] As the Board's jurisdiction with respect to pipelines is limited to those pipelines that are "flow lines" as defined in the legislation, the issue is whether the Pipeline or any of its segments is a "flow line".

[3] The *Oil and Gas Activities Act* provides the following definition of "flow line":

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

BACKGROUND

[4] The application is for a right of entry order for right of way, workspaces, and sump required for the construction or operation of a portion of the Pipeline located between two well sites operated by Encana on two parcels of the Lands owned by the Jorgensens (the "NE 30 Well Site" and the "SE 30 Well Site", collectively the "Well Sites"). Following receipt of the parties' submissions on the issue of whether the

Pipeline is a “flow line”, I asked the parties to address the Board’s jurisdiction to issue a right of entry order with respect to the sump. This decision does not deal with that issue.

[5] The Pipeline includes four segments. Segment 1 is a 12” uni-directional pipeline that carries raw, produced natural gas and liquids from the NE 30 Well Site to a compressor station (the “15-27 Compressor”) via the NW 30 Well Site. After undergoing separation, compression and dehydration at the 15-27 Compressor, gas is transferred to the Enbridge Spectra Dawson Processing Plant for processing (the “Dawson Plant”).

[6] Segment 2 is a 6” uni-directional pipeline that carries produced water from Encana’s Water Resource Hub (the “Water Hub”) to the NE 30 Well Site for hydraulic fracturing via the SW 30 Well Site.

[7] Segment 3 is a 4” bi-directional pipeline that carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing via the NW 30 Well Site. It also conveys produced water from the NE 30 Well Site, after fracturing operations, to the Water Hub via the NW 30 Well Site.

[8] Segment 4 is a 4” uni-directional pipeline that carries sweet fuel gas to the NE 30 Well Site via the SW 30 Well Site. The fuel gas is used to power emergency shut down valves and control valves at the NE 30 Well Site, as well as to power a supervisory control and data acquisition system (SCADA) system, a remote transmitting unit, various instruments, and pieces of equipment, such as pumps, required for operations at the NE 30 Well Site.

ANALYSIS

[9] The Board has considered the definition of “flow line” in a number of cases to determine the extent of its jurisdiction over pipelines and pipeline components. Those cases and the various findings of the Board respecting the term “flow line” are

summarized in *Encana Corporation v. Strasky*, Order 1911/1913-1 and I will not repeat that summary here. Essentially, the Board has found that pipelines that function as part of the gathering system for the production of natural gas are “flow lines”. They need not connect directly to a well head, but may connect well heads indirectly with scrubbing, processing or storage facilities as long as they are part of the gathering system for the production of natural gas. The Board has found that scrubbing, processing or storage facilities demarcate the extent of the Board’s jurisdiction over pipelines.

[10] Flow lines are a subset of pipelines. “Pipeline” is defined in the *Oil and Gas Activities Act* as follows:

> **"pipeline"** means… piping through which any of the following is conveyed:
>
> (a) petroleum or natural gas;
>
> (b) water produced in relation to the production of petroleum or natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;
>
> (c) solids;
>
> (d) substances prescribed under section 133 (2) (v) of the *Petroleum and Natural Gas Act*;
>
> (e) other prescribed substances,
>
> and includes installations and facilities associated with the piping, but does not include
>
> (f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,
>
> (g) a well head, or
>
> (h) anything else that is prescribed;

[11] A “flow line” must 1) connect a well head with a facility, and it must 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

Is the Pipeline a flow line?

[12] Segment 1 of the Pipeline clearly functions as part of the gathering system that conveys raw natural gas to processing facilities. It connects a well head with a processing facility via the NW 30 Well Site and the 15-27 Compressor and precedes the transfer of the natural gas to a transmission, distribution or transportation line. The Board has previously found pipelines similar to Segment 1 to be flow lines (*Murphy Oil Company Limited v. Shore*, Order 1745-1 and *Encana Corporation v. Ilnisky*, Order 1823-1) and I am not persuaded that the Board's reasoning in those cases should not apply to Segment 1 in this case.

[13] Segment 2 carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing. It may be described as a hydraulic fracturing water supply line. The Board found a similar pipeline segment to be a "flow line" in *Encana v. Ilnisky*.

[14] Segment 3 carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing and from the NE 30 Well Site back to the Water Hub. It may be described both as a hydraulic fracturing water supply line and a hydraulic fracturing water return line. The Board found a hydraulic fracturing water return line to be a "flow line" in *Encana v. Ilnisky*.

[15] Segment 4 is a fuel line. It carries fuel for the purpose of powering emergency shut down valves and control valves at the NE 30 Well Site as well as other equipment required for the operation of the NE 30 Well Site. The Board found fuel line segments to be flow lines in both *Murphy Oil v. Shore* and *Encana v. Ilnisky*.

[16] As to Segments 3 and 4, the Respondents submit there is no evidence these pipelines will either connect a well head with a scrubbing, processing or storage facility, or that they will precede the transfer of the conveyed substance (produced water as to Segment 3, and fuel as to Segment 4) to or from a transmission, distribution or transportation line. The Board dealt with a similar argument in *Encana v. Ilnisky* and said:

> The definition of "flow line" does not contemplate that the flow line operates to transfer a conveyed substance to a transmission, distribution or transportation line. It contemplates only that the flow line precedes the transfer of the conveyed substance to or from such a line. (Emphasis in original)

[17] As discussed in *Encana v Ilnisky*, the substance conveyed in the hydraulic fracturing water supply and water return lines, namely produced water, "is not a product that is further distributed through a transmission, distribution or transportation line". The location of the segments in issue in *Encana v. Ilnisky*, as with the location of Segments 2 and 3 of the Pipeline in issue here, precedes the transfer of the natural gas conveyed in Segment 1 to a transmission, distribution or transportation line. They are both part of the gathering system for the conveyance of natural gas from a well head to a processing facility.

[18] In *Murphy Oil v. Shore*, the Board found that a fuel line used to power equipment at a well site including emergency shut down valves and control valves is "included in the definition of pipeline as 'installations and facilities associated with the piping' and is part of the system of vessels, piping, valves, tanks and other equipment that is used to gather, process, measure, store, or dispose of natural gas or water". The Board found that to exclude a fuel line segment from the definition of "flow line" would "lead to absurd and harsh consequences that cannot have been intended".

[19] The OGC Permit in this case authorizes the construction and operation of a pipeline in four segments as specifically detailed. As the Board said in *Encana v. Ilnisky*:

> While each segment comprises a distinct pipe, the four segments function together to produce and transport natural gas as part of the gathering system. Neither line has an independent function. Each functions in conjunction with the others as part of the gathering system for the production of natural gas. Collectively, they are piping through which petroleum, natural gas, and produced water are conveyed, and are collectively a pipeline within a single right of way forming part of the natural gas gathering system.

[20] The same may be said for each of the four pipeline segments in this case. They will function collectively for the production of natural gas as part of the gathering system. Collectively, they connect a well head, the NE 30 Well Site, with a processing facility, namely the Dawson Plant, and precede the transfer of the produced natural gas to transmission, distribution or transportation lines. I am not persuaded that the Board's previous analysis respecting similar pipeline segments should not apply to these segments and find that Segments1, 2, 3 and 4 of the Pipeline are a "flow line".

CONCLUSION

[21] The Pipeline is a "flow line". The Board has jurisdiction to make a right of entry order for the purpose of constructing and operating the Pipeline as permitted by the OGC and to determine the compensation payable to the Jorgensens for the right of entry. The application will be referred back to the mediator.

DATED: May 31, 2017

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1939
Board Order No. 1939-2

May 31, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD ORDER

On May 16, 2017, I conducted a telephone conference attended by H. Berscht, S. Wannamaker and L. Olthafer for Encana, and O. and D. Jorgensen, D. Carter, B. Fast and E. Gowman for the Landowners.

Encana applies to the Board for mediation and arbitration services under section 158 of the *Petroleum and Natural Gas Act* regarding their project to construct and operate pipelines on the Lands.

The Oil and Gas Commission ("OGC") has issued a permit for this project.

During the call the Landowners raised a number of issues, but did not take issue with a draft right of entry order that Encana included as part of their application. Since that call the Landowners have not raised any concerns regarding the wording of the draft.

The Landowners questioned the Board's jurisdiction to hear this application, arguing that segments of the proposed pipeline were not a "flow line". The Board received submissions and found that all the proposed pipeline and all of its segments are a "flow line" and that the Board has jurisdiction with respect to the pipeline (see Board Order 1939-1).

The Board is considering submissions respecting the Board's jurisdiction with respect to the sump. The right of entry order below does not include the sump.

Based on our discussions and because the Oil and Gas Commission has issued a permit for this project I am satisfied that Encana requires a right of entry for an approved oil and gas activity, namely the construction and operation of a pipeline.

The Surface Rights Board orders:

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, Encana Corporation shall have the Right of Entry to and access across the portions of lands legally described as:

   THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;
   THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;
   THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plans attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in

accordance with Oil and Gas Commission Pipeline Permit Determination #100102009; Pipeline Project # 000024376, segments 1, 2, 3 & 4.

2. Encana Corporation's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. Encana Corporation shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Encana Corporation shall pay to the landowner as partial payment for compensation the amount of $7,850.00 representing the first year's initial payment and prepaid damages.

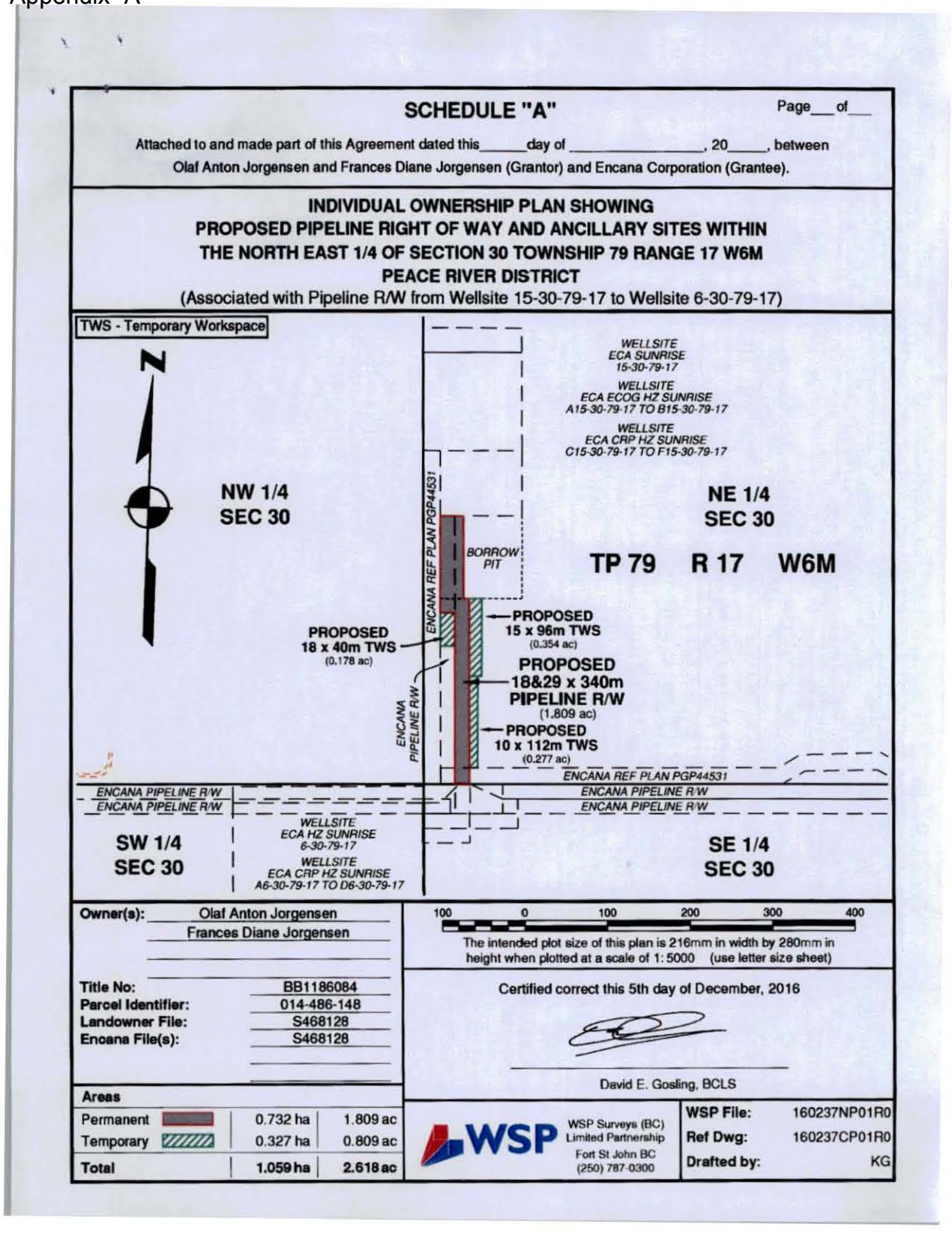
5. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

Dated May 31, 2017

FOR THE BOARD

Rob Fraser, Mediator

Appendix "A"


SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)
TWS - Temporary Workspace
N
NW 1/4
SEC 30
NE 1/4
SEC 30
TP 79 R 17 W6M
SW 1/4
SEC 30
SE 1/4
SEC 30
WELLSITE
ECA SUNRISE
15-30-79-17
WELLSITE
ECA ECOG HZ SUNRISE
A15-30-79-17 TO B15-30-79-17
WELLSITE
ECA CRP HZ SUNRISE
C15-30-79-17 TO F15-30-79-17
ENCANA REF PLAN PGP44531
BORROW PIT
PROPOSED
18 x 40m TWS
(0.178 ac)
PROPOSED
15 x 96m TWS
(0.354 ac)
PROPOSED
18&29 x 340m
PIPELINE R/W
(1.809 ac)
PROPOSED
10 x 112m TWS
(0.277 ac)
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA REF PLAN PGP44531
WELLSITE
ECA HZ SUNRISE
6-30-79-17
WELLSITE
ECA CRP HZ SUNRISE
A6-30-79-17 TO D6-30-79-17
Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen
Title No: BB1186084
Parcel Identifier: 014-486-148
Landowner File: S468128
Encana File(s): S468128
100 0 100 200 300 400
The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)
Certified correct this 5th day of December, 2016
David E. Gosling, BCLS
Areas
Permanent 0.732 ha 1.809 ac
Temporary 0.327 ha 0.809 ac
Total 1.059 ha 2.618 ac
WSP
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300
WSP File: 160237NP01R0
Ref Dwg: 160237CP01R0
Drafted by: KG

SCHEDULE "A"

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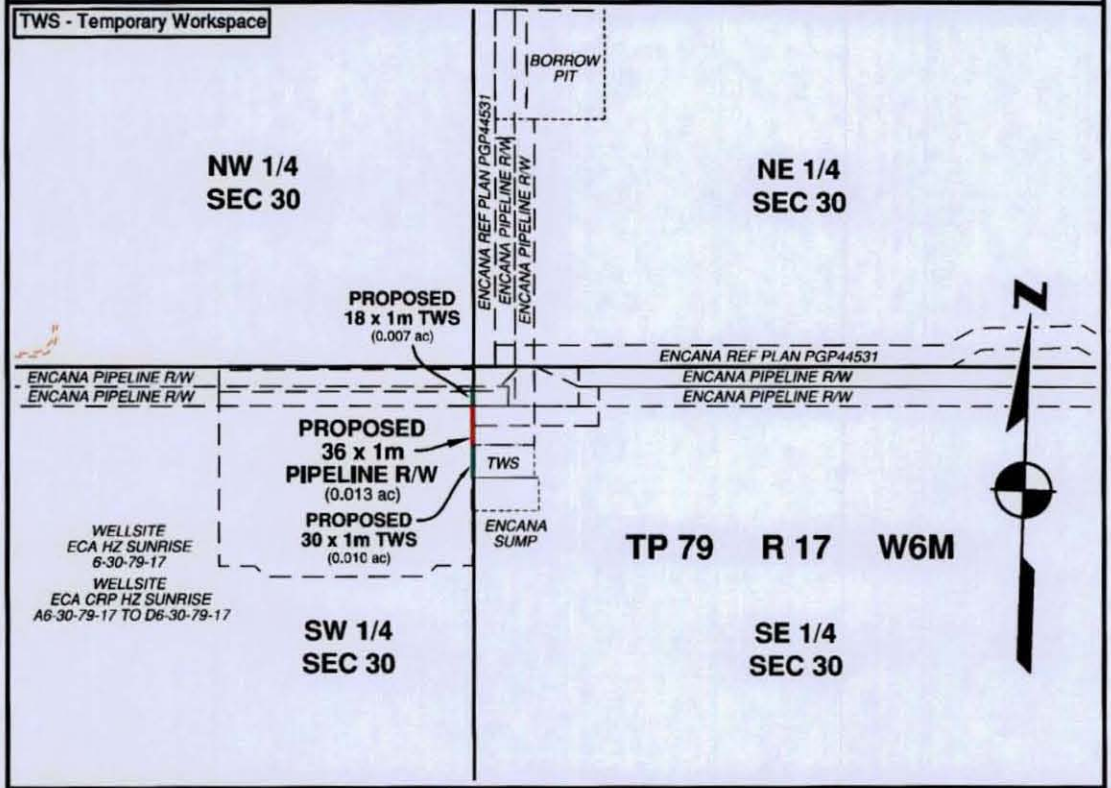
THE SOUTH WEST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186086
Parcel Identifier:	007-942-036
Landowner File:	S468128
Encana File(s):	S468128

100 0 100 200 300 400

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Certified correct this 5th day of December, 2016

David E. Gosling, BCLS

Areas		
Permanent	0.005 ha	0.013 ac
Temporary	0.007 ha	0.017 ac
Total	**0.012 ha**	**0.030 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	160237NP03R0
Ref Dwg:	160237CP01R0
Drafted by:	KG

SCHEDULE "A"

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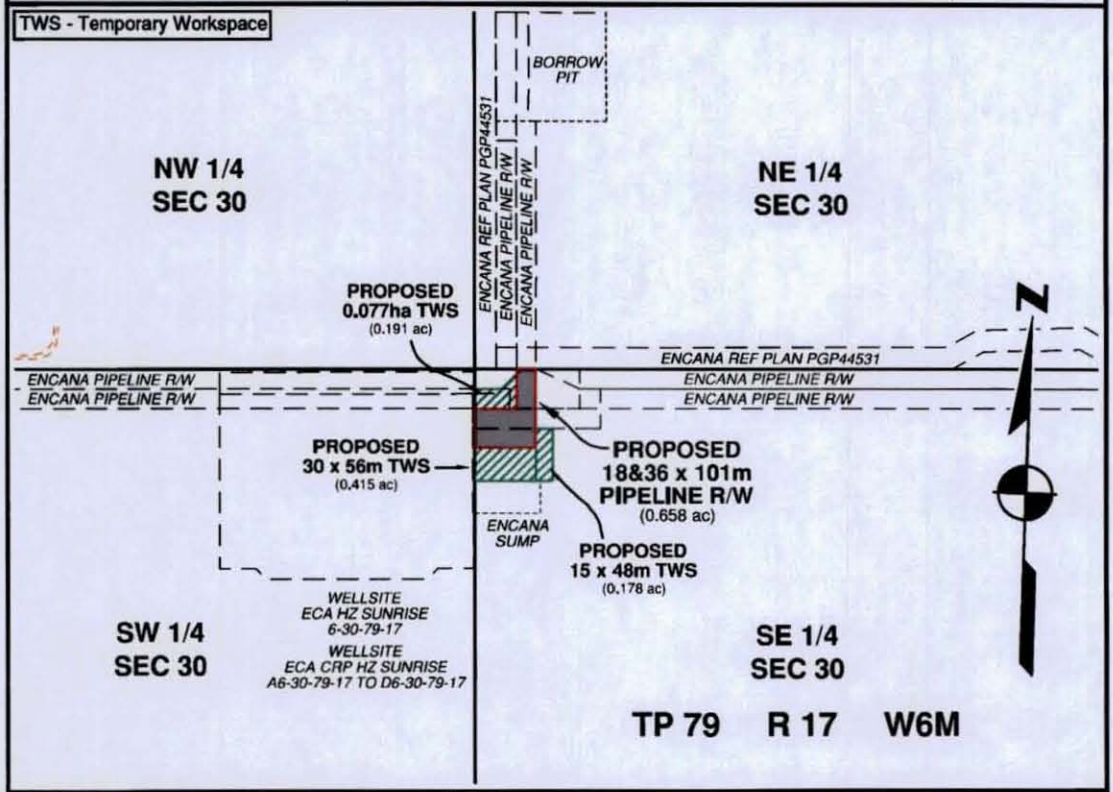
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186085
Parcel Identifier:	007-942-028
Landowner File:	S468128
Encana File(s):	S468128

Areas		
Permanent	0.266 ha	0.658 ac
Temporary	0.318 ha	0.785 ac
Total	**0.584 ha**	**1.443 ac**

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 5th day of December, 2016

David E. Gosling, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	160237NP02R0
Ref Dwg:	160237CP01R0
Drafted by:	KG

Appendix “B”

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1939
Board Order No. 1939-2amd

June 2, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD ORDER

This Order amends and replaces Order 1939-2 issued May 31, 2017.

On May 16, 2017, I conducted a telephone conference attended by H. Berscht, S. Wannamaker and L. Olthafer for Encana, and O. and D. Jorgensen, D. Carter, B. Fast and E. Gowman for the Landowners.

Encana applies to the Board for mediation and arbitration services under section 158 of the *Petroleum and Natural Gas Act* regarding their project to construct and operate pipelines on the Lands.

The Oil and Gas Commission ("OGC") has issued a permit for this project.

During the call the Landowners raised a number of issues, but did not take issue with a draft right of entry order that Encana included as part of their application. Since that call the Landowners have not raised any concerns regarding the wording of the draft.

The Landowners questioned the Board's jurisdiction to hear this application, arguing that the gas fuel line is a flow line. The Board received submissions and found that all the pipelines in this project are flow lines (see Board Order 1939-1).

The Landowners also questioned whether the sump identified in an IOP in Encana's application is covered by the OGC's permit. The Board considered submissions on this issue, and found the sump is an "oil and gas activity" and the Board has the jurisdiction to include the sump in the right of entry order (see Board Order 1939-3).

Based on our discussions and because the Oil and Gas Commission has issued a permit for this project I am satisfied that Encana requires a right of entry for an approved oil and gas activity.

The Surface Rights Board orders:

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, Encana Corporation shall have the Right of Entry to and access across the portions of lands legally described as:

    THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;
    THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;
    THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

as shown on the individual ownership plans attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission Pipeline Permit Determination #100102009; Pipeline Project # 000024376, segments 1, 2, 3 & 4.

2. Encana Corporation's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. Encana Corporation shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Encana Corporation shall pay to the landowner as partial payment for compensation the amount of $7,850.00 representing the first year's initial payment and prepaid damages.

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 June 2, 2017

FOR THE BOARD

Rob Fraser, Mediator

Appendix “A”

SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

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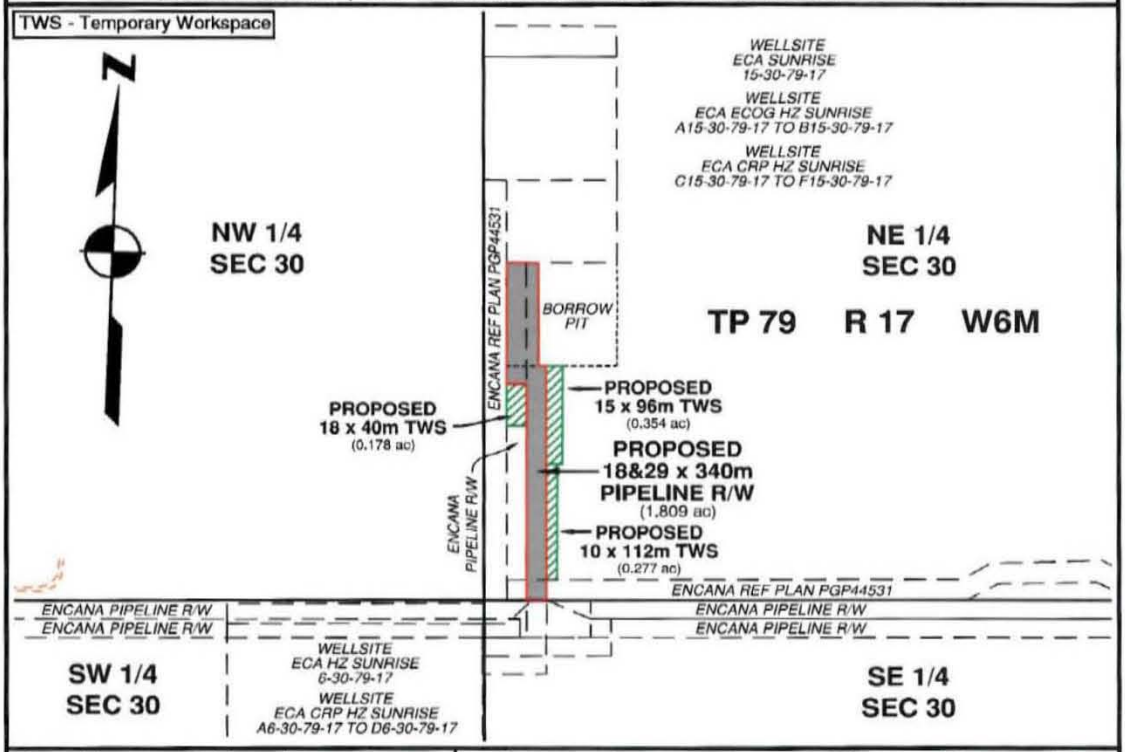
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186084
Parcel Identifier:	014-486-148
Landowner File:	S468128
Encana File(s):	S468128

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 5th day of December, 2016

David E. Gosling, BCLS

Areas		
Permanent	0.732 ha	1.809 ac
Temporary	0.327 ha	0.809 ac
Total	**1.059 ha**	**2.618 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	160237NP01R0
Ref Dwg:	160237CP01R0
Drafted by:	KG

SCHEDULE "A"

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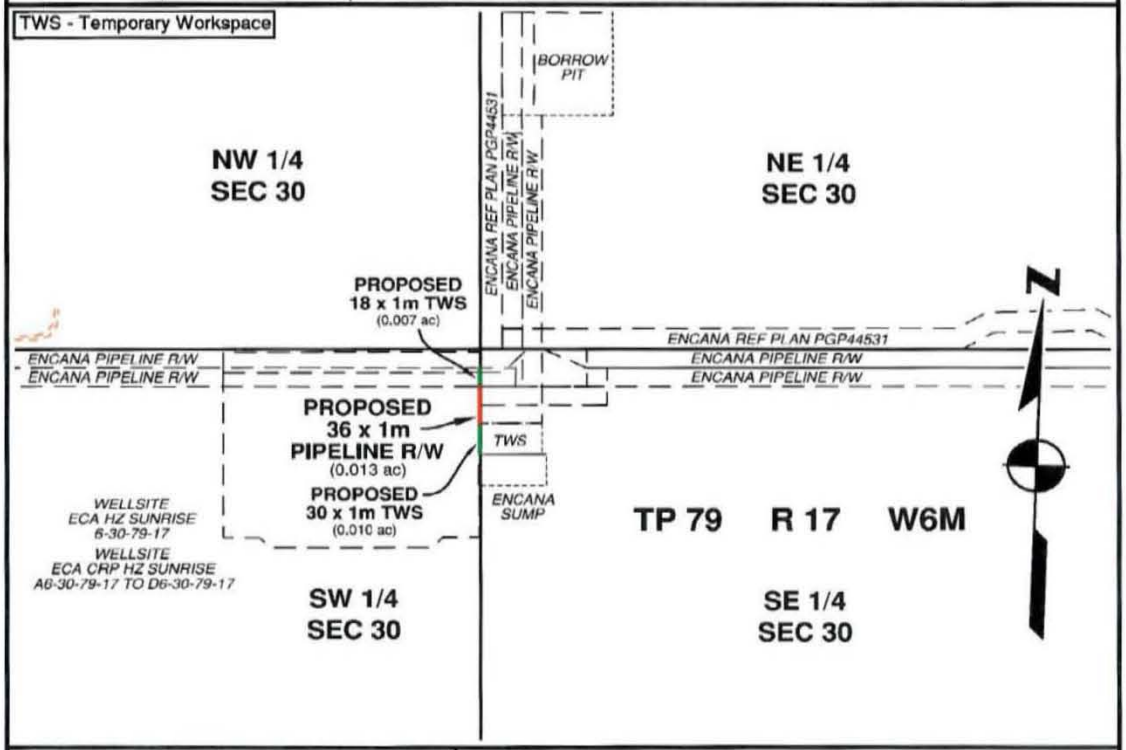

Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186086
Parcel Identifier:	007-942-036
Landowner File:	S468128
Encana File(s):	S468128

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Fort St John BC
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WSP File:	160237NP03R0
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Drafted by:	KG

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THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
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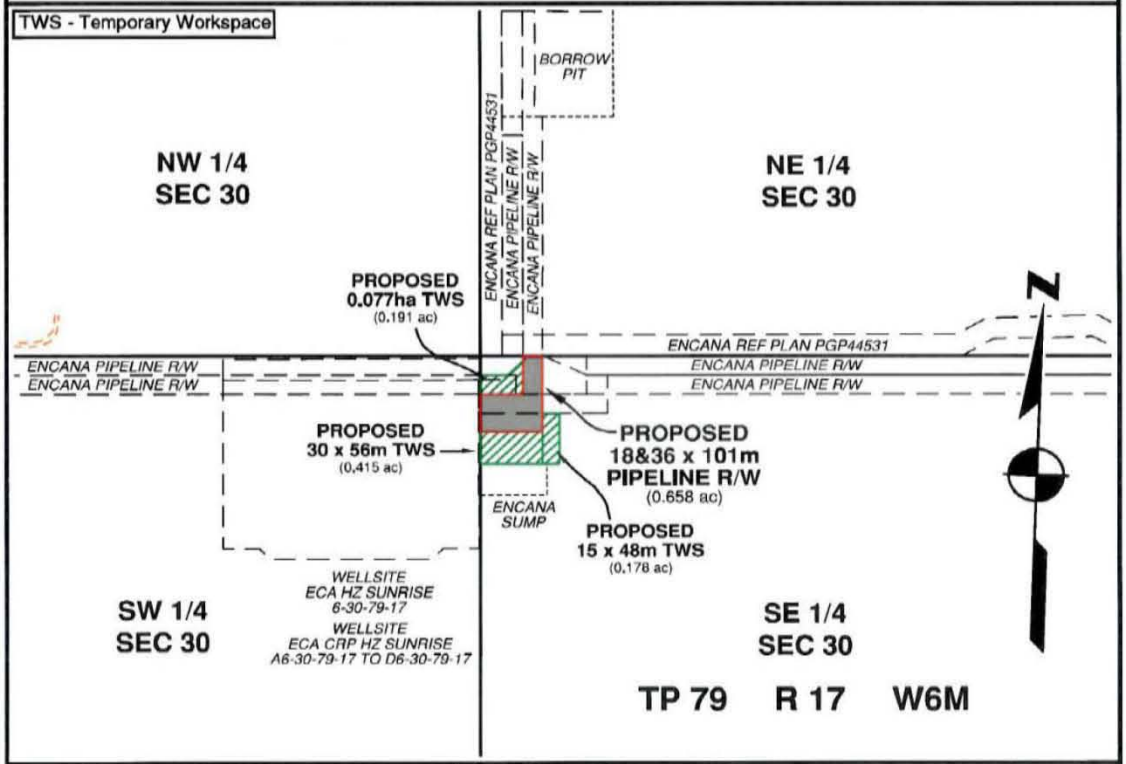
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186085
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100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 5th day of December, 2016

David E. Gosling, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

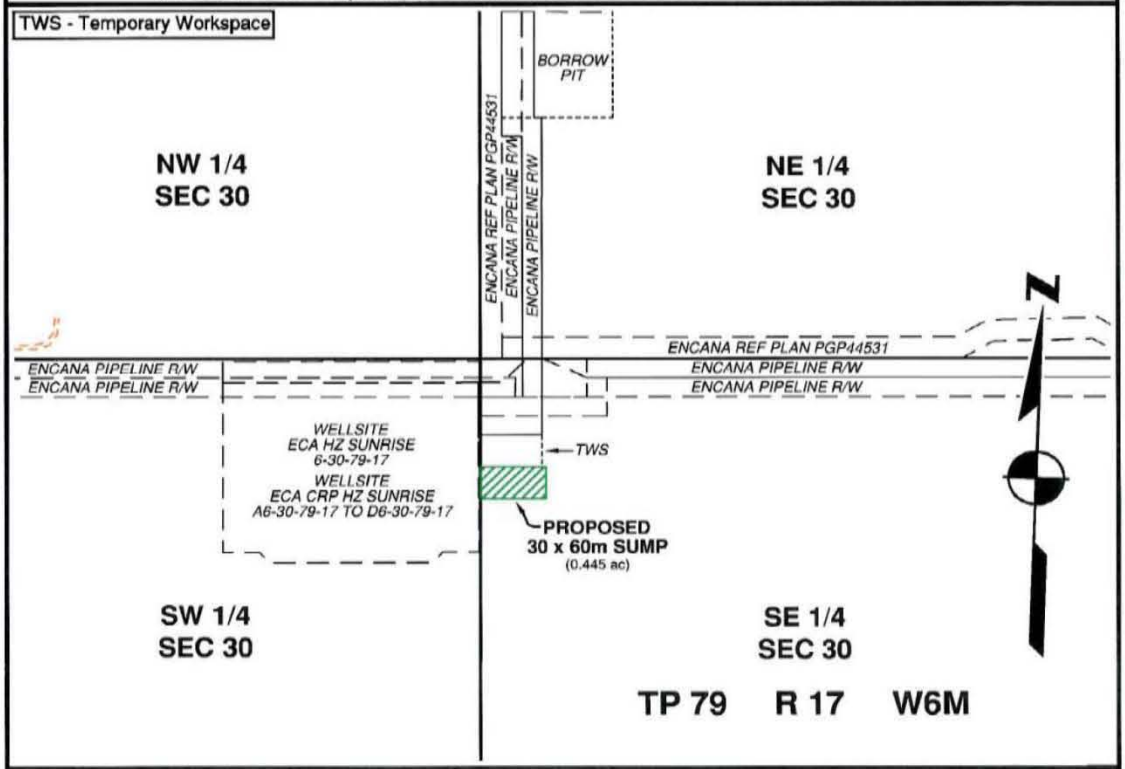
WSP File:	160237NP02R0
Ref Dwg:	160237CP01R0
Drafted by:	KG

SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED SUMP WITHIN
THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 15-30-79-17 to Wellsite 6-30-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186085
Parcel Identifier:	007-942-028
Landowner File:	S468128
Encana File(s):	S468128

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 5th day of December, 2016

David E. Gosling, BCLS

Areas

Permanent		0.000 ha	0.000 ac
Temporary		0.180 ha	0.445 ac
Total		**0.180 ha**	**0.445 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	160237NP04R0
Ref Dwg:	160237CP01R0
Drafted by:	KG

Appendix “B”

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1939
Board Order No. 1939-3

June 2, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

ENCANA CORPORATION

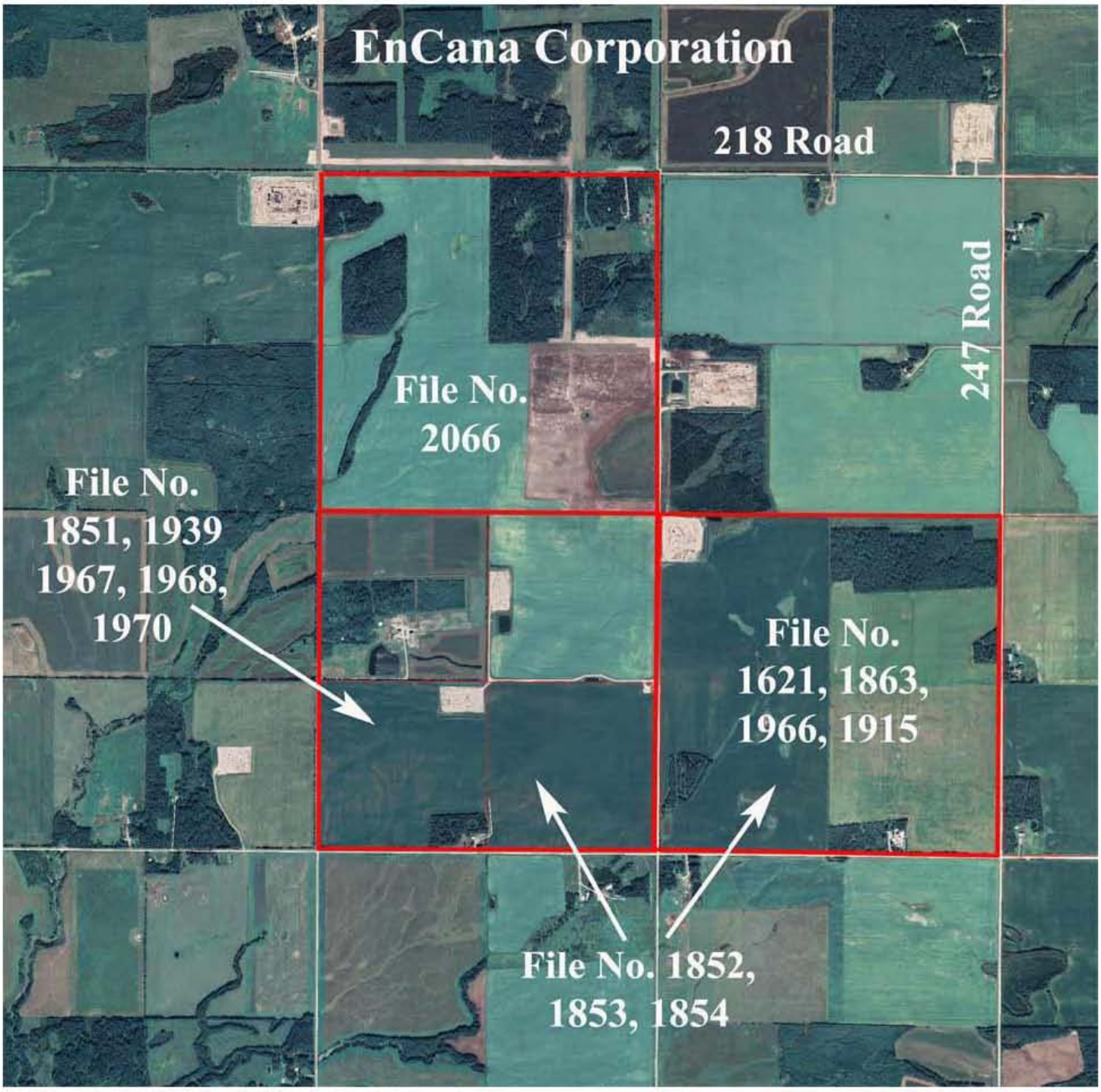
(Applicant)

AND:

OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN

(Respondents)

BOARD DECISION


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

[1] By Order dated May 31, 2017 (Order 1939-2), the Board granted the Applicant, Encana Corporation (Encana), a right of entry order over portions of the Lands owned by the Respondent, Olaf Anton Jorgensen and Frances Diane Jorgensen, to construct and operate a pipeline in four segments (the Pipeline) as permitted by the Oil and Gas Commission (OGC). Encana's application for a right of entry order included a 0.180 hectare (0.445 acre) area of the Lands for use as a sump immediately south of the location where the Pipeline right of way crosses two existing Encana pipelines and an access road (the Sump). The Board's right of entry order specifically excluded the area of the Lands to be used for the Sump as further submissions had been requested from the parties on the issue of the Board's jurisdiction to grant the right of entry order to the Lands for the Sump.

[2] Pursuant to section 142 of the *Petroleum and Natural Gas Act*, a person may not enter private land to carry out an "oil and gas activity", to carry out "a related activity", or to comply with an order of the OGC unless entry, occupation and use of the land is authorized under a surface lease with the landowner in the prescribed form or an order of the Board. Pursuant to section 158 of the *Petroleum and Natural Gas Act*, the Board may make an order authorizing a right of entry to private land if the board is satisfied that an order authorizing entry is required for a purpose described in section 142, in other words, to carry out an "oil and gas activity" or "a related activity", or to comply with an order of the OGC. The Board does not have jurisdiction, therefore to issue a right of entry order for a purpose other than to carry out an "oil and gas activity" or "related activity", or to comply with an order of the OGC.

[3] The issue in this case is whether the Sump is an "oil and gas activity" or "related activity" within the meaning of the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* over which the Board has jurisdiction to grant a right of entry order.

[4] "Oil and gas activity" and "related activity" are defined terms. The *Oil and Gas Activities Act* defines "related activity" as follows:

> "related activity" means an activity
>
> > (a) that, under a specified enactment, must not be carried out except as authorized under the specified enactment or that must be carried out in accordance with the specified enactment, and
> >
> > (b) the carrying out of which is required for or facilitates the carrying out of an oil and gas activity

[5] "Specified enactment" is also a defined term specifying five particular statutes. There is nothing before me to indicate the Sump is an activity that requires authorization under a specified enactment. It is not, therefore a "related activity". For the Board to have jurisdiction to issue the right of entry order, the Sump must be an "oil and gas activity".

[6] The definition of "oil and gas activity", also found in the *Oil and Gas Activities Act,* includes "the construction or operation of a pipeline".

[7] The OGC's Permit (the Permit) specifically authorizes an oil and gas activity namely, the construction and operation of a pipeline. The Sump is referenced in the Application Report attached to the Permit and the area required for the Sump is included in the Project Area covered by the Permit.

[8] Further submissions from Encana indicate that in order to construct the Pipeline, Encana is required to bore beneath the existing pipelines and access road and pull the Pipeline segments through the crossing. As part of that process, Encana requires the Sump for the disposal of the inert water-based drilling fluid and soil removed from the bores. The Sump contents will be mixed with subsoil and then covered with topsoil in order to effect the reclamation of the area.

[9] Use of the area required for the Sump is intended to be temporary. Once the Sump is no longer required during construction of the Pipeline, the area will be reclaimed and returned to the landowners.

[10] I am satisfied that the Sump, as proposed in the context of this application, is part and parcel of the construction of the Pipeline and is, therefore an “oil and gas activity”. The Sump has no purpose other than for the disposal of drilling fluid and soil removed as part of the construction process for the installation of the Pipeline. Entry and use of the land for this purpose is akin to entry and use for temporary workspace in that its only purpose is to facilitate construction and the area required will be reclaimed and returned to landowners when it is no longer needed for that purpose.

[11] The Board has jurisdiction to issue a right of entry order for use of the Lands for the Sump.

DATED: June 2, 2017

FOR THE BOARD

_____

Cheryl Vickers, Chair

File No. 1940
Board Order No. 1940-1

July 11, 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 WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Encana Corporation

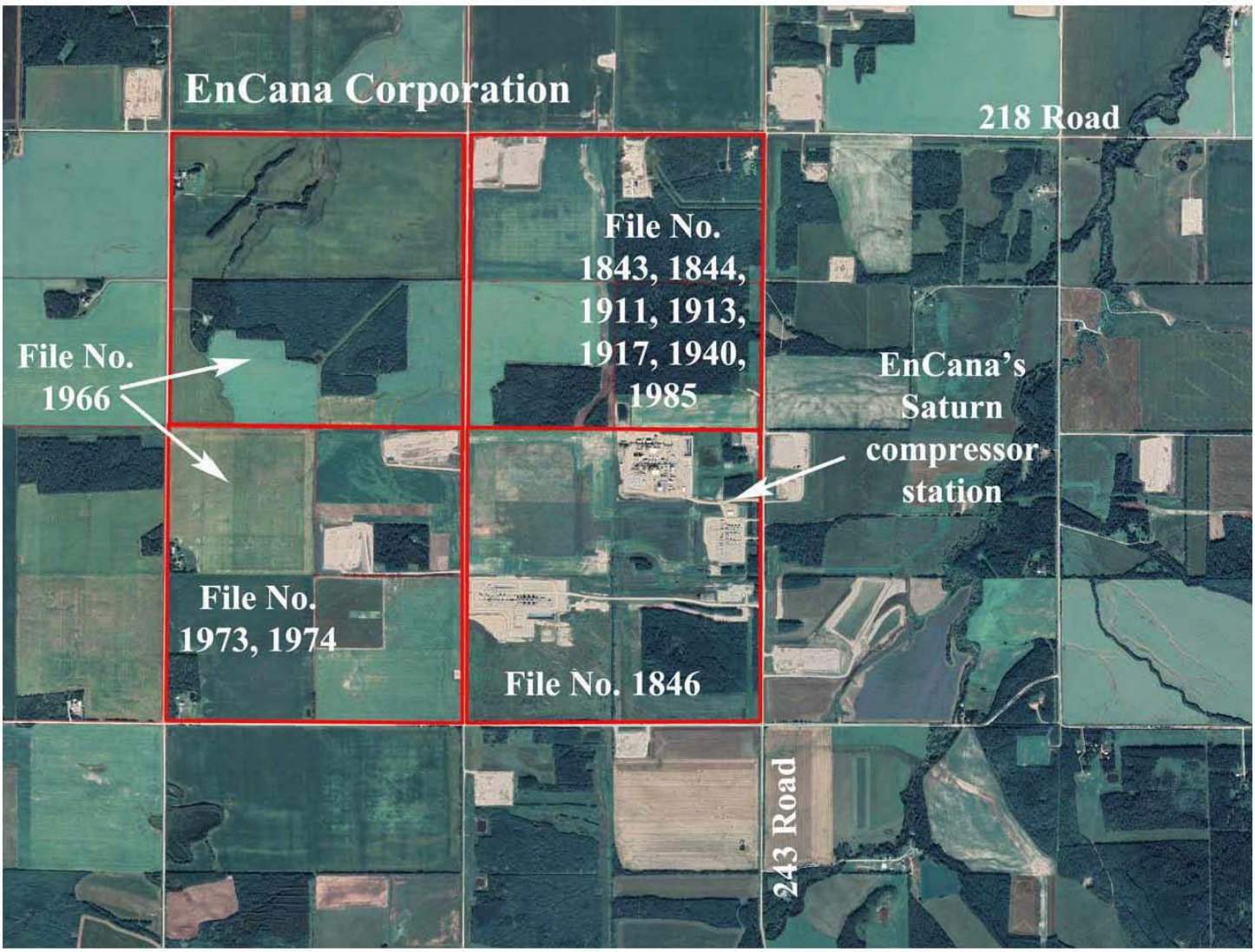
(APPLICANT)

AND:

Tailwind Properties Ltd**.**

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation ("Encana") seeks a right of entry order to access certain lands legally owned by Tailwind Properties Ltd**.** (the "Lands").

Encana requires access to the Lands to construct, operate and maintain a pipeline and associated infrastructure.

The Oil and Gas Commission ("OGC") has approved this project, and has issued a permit (Pipeline Permit Determination #100101424).

On July 6, 2017, I convened a telephone conference attended by representatives from both Encana and Tailwind Properties Ltd**.** ("Tailwind") to discuss Encana's proposed project on the Lands.

At that discussion Tailwind raised a number of issues, which I found to be beyond the Board's jurisdiction and were more likely regulatory and within the responsibility of the OGC.

Tailwind raised environmental concerns, the potential for contamination leaching, the depositing of chemicals, the difficulty in selling a property when contamination must be disclosed, and who would be responsible for reclamation. Tailwind questioned the uses of the sump referenced in the approved permit, asking that Encana be restricted in how the sump was used to store materials.

After hearing and considering the submissions from Encana and Tailwind, I informed the parties that the Board would issue a right of entry order for this project.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission's Pipeline Permit Determination #100101424.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and

Gas Commission Pipeline Permit Determination #100101424; Pipeline Project # 000024228, segments 1, 2, 3 & 4.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $8,850.00 representing the first year's initial payment and prepaid damages.

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: July 11, 2017

FOR THE BOARD

Rob Fraser, Mediator

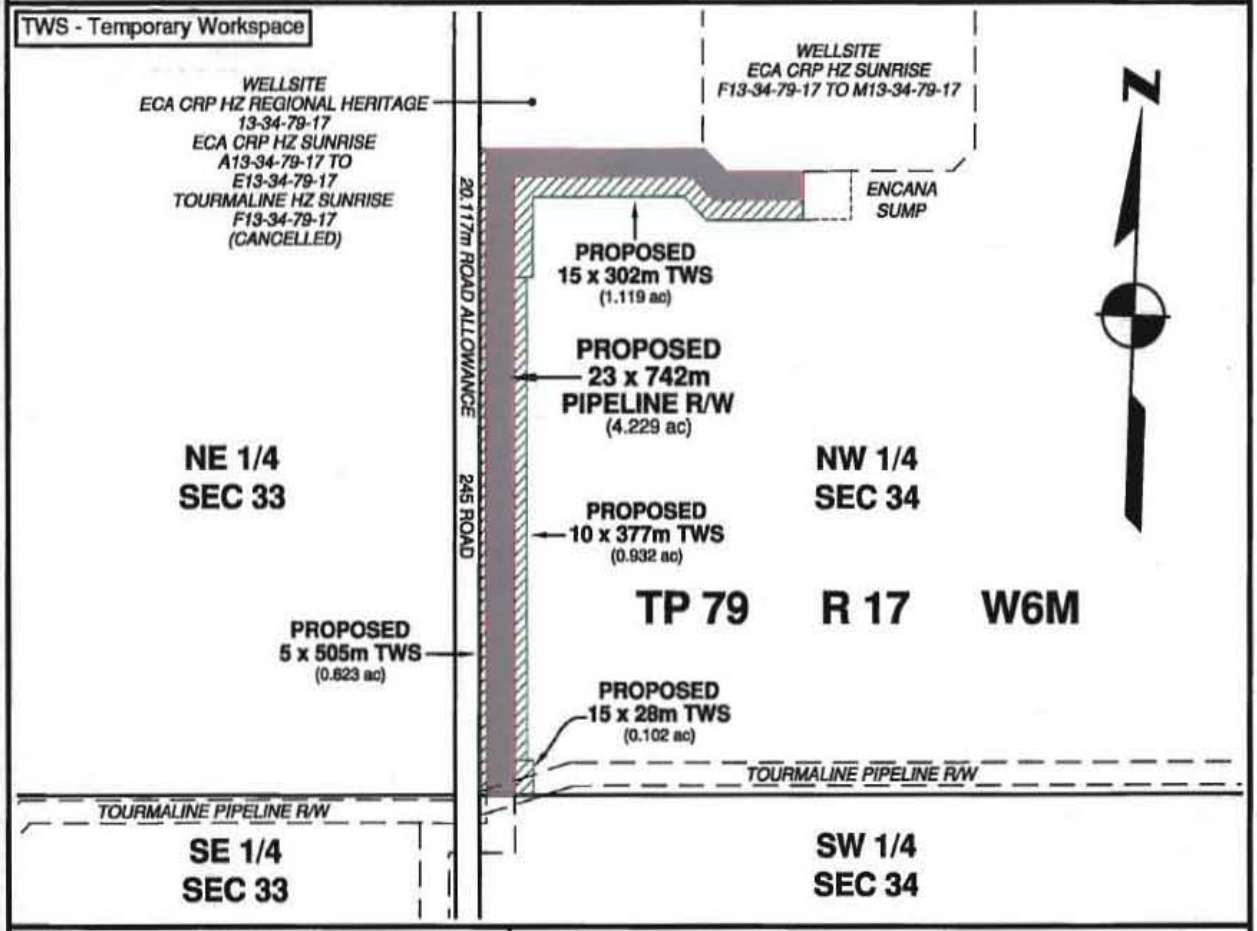
Appendix "A"

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc.No. BC0520501 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite F13-34-79-17 to Wellsite 16-28-79-17)



Owner(s): Tailwind Properties Ltd., Inc.No. BC0520501

Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S470706
Encana File(s):	S470706

Areas			
Permanent		1.711 ha	4.229 ac
Temporary		1.123 ha	2.776 ac
Total		**2.834 ha**	**7.005 ac**

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)

Certified correct this 28th day of October, 2016

David E. Gosling, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	150677NP01R0
Ref Dwg:	150677CP01R0
Drafted by:	KG

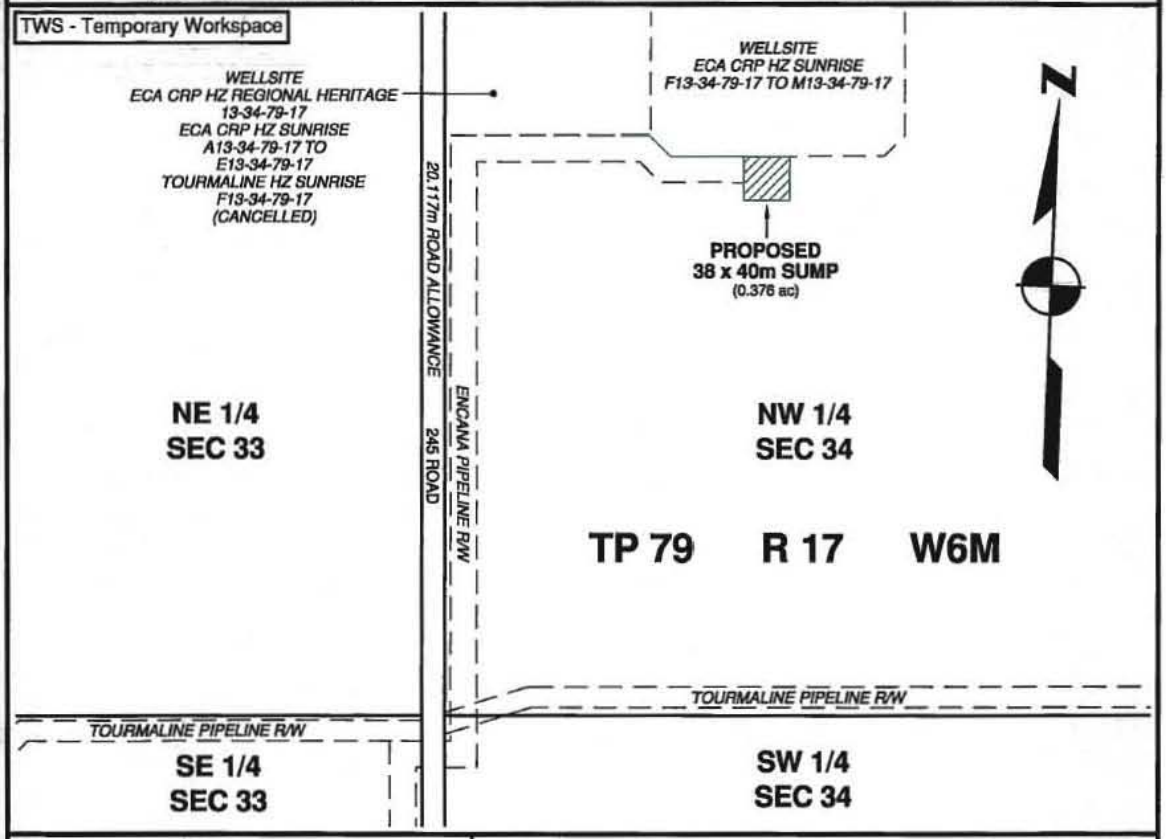
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc.No. BC0520501 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED SUMP WITHIN
THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 W6M
PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite F13-34-79-17 to Wellsite 16-28-79-17)



Owner(s): Tailwind Properties Ltd., Inc.No. BC0520501

Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S470706
Encana File(s):	S470706

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)

Certified correct this 28th day of October, 2016

David E. Gosling, BCLS

Areas

Permanent		0.000 ha	0.000 ac
Temporary		0.152 ha	0.376 ac
Total		**0.152 ha**	**0.376 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	150677NP04R0
Ref Dwg:	150677CP01R0
Drafted by:	KG

Appendix “B”

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1955
Board Order No. 1955-1

October 23, 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 SOUTH EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

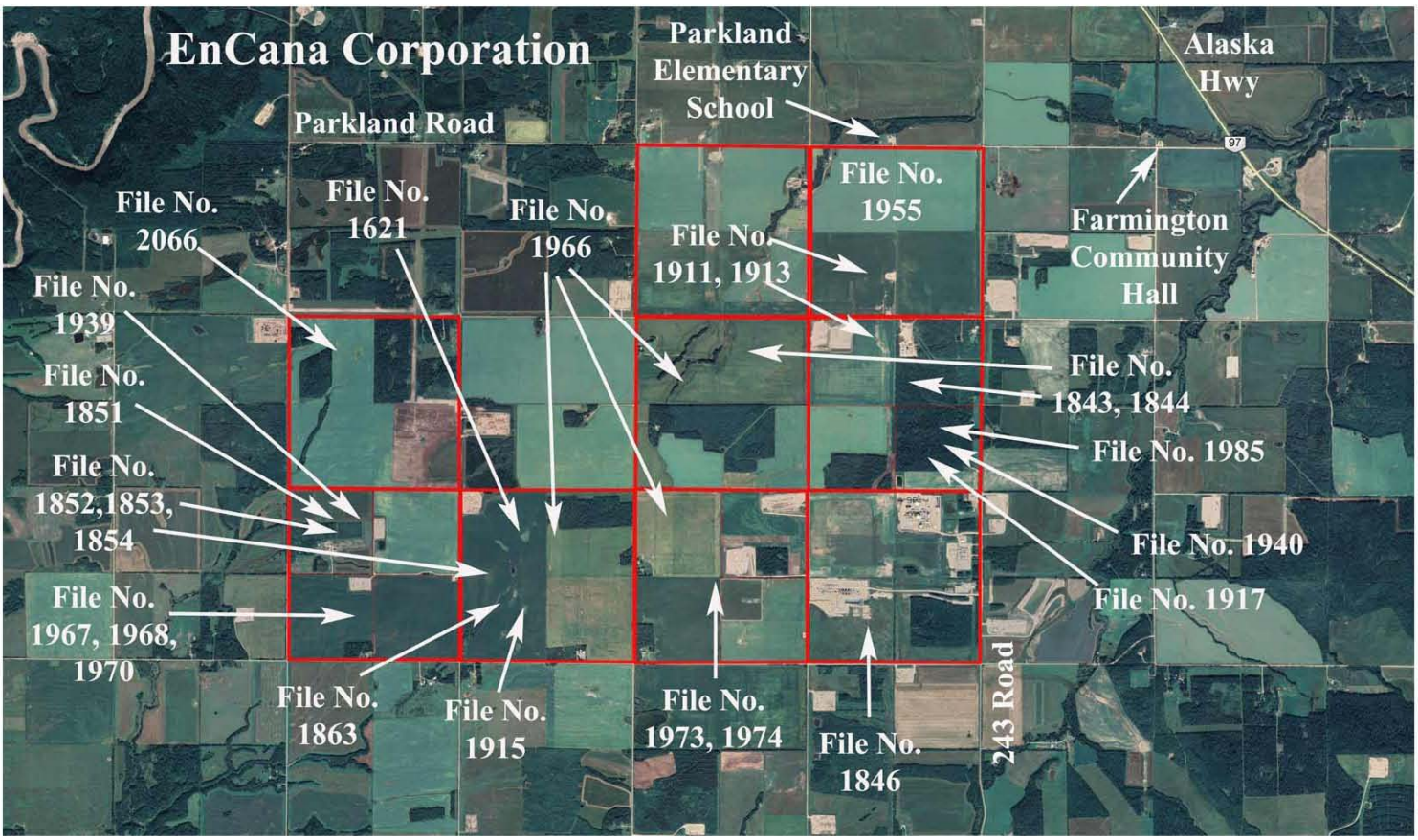
(APPLICANT)

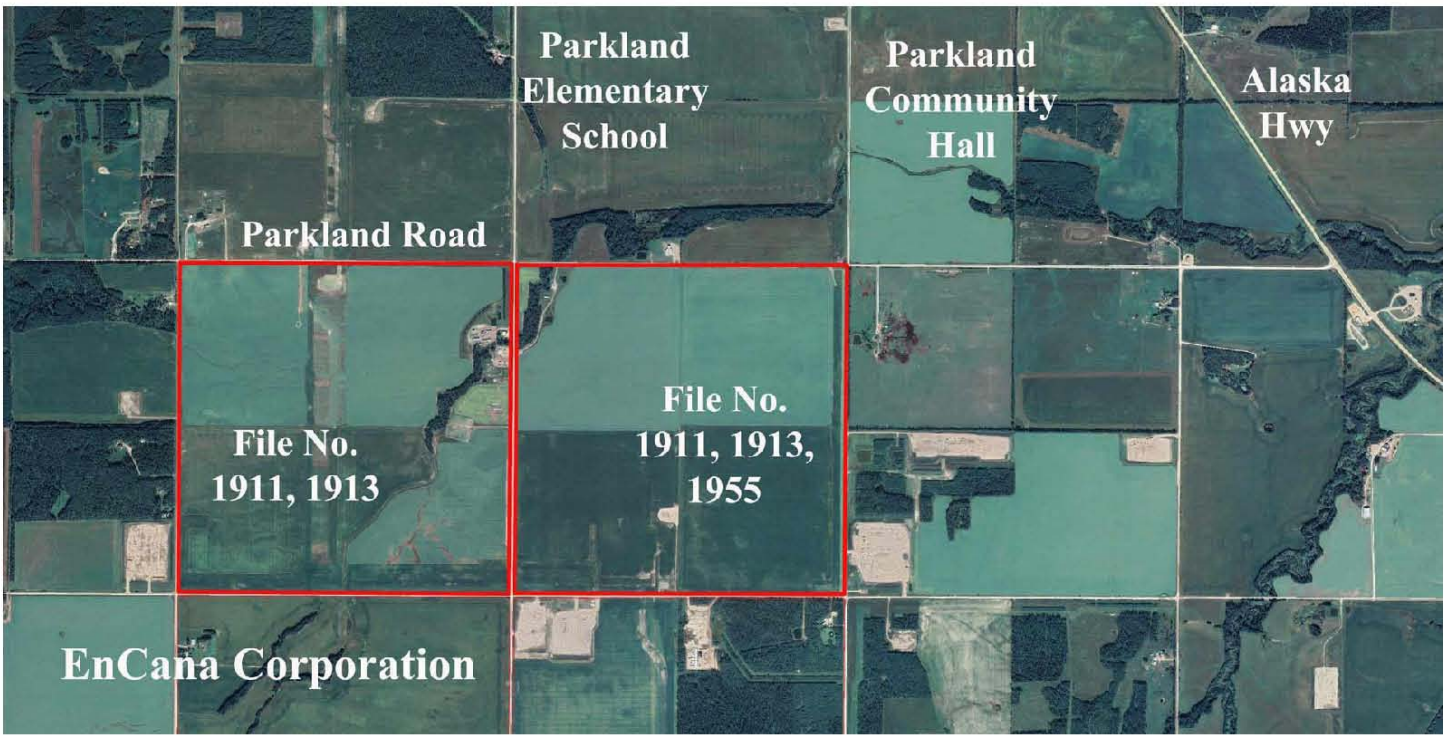
AND:

Rodney Allen Strasky and
Kim Lori Strasky

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
Parkland Road
Parkland Elementary School
Alaska Hwy
97
Farmington Community Hall
File No. 2066
File No. 1621
File No. 1966
File No. 1955
File No. 1911, 1913
File No. 1939
File No. 1851
File No. 1852,1853, 1854
File No. 1967, 1968, 1970
File No. 1843, 1844
File No. 1985
File No. 1940
File No. 1917
File No. 1863
File No. 1915
File No. 1973, 1974
File No. 1846
243 Road


Parkland Elementary School
Parkland Community Hall
Alaska Hwy
Parkland Road
File No. 1911, 1913
File No. 1911, 1913, 1955
EnCana Corporation

Heard: By way of written submissions
Appearances: Daron K. Naffin, Barrister & Solicitor, for the Applicant
J. Darryl Carter, Q.C., for the Respondents

Introduction and Issues

[1] The Applicant, Encana Corporation ("Encana"), seeks a right of entry order over the Lands owned by the Respondents, Rodney Allen Strasky and Kim Lori Strasky, to survey and complete archeological and soils work and to construct and operate a proposed pipeline in four segments (the "Pipeline"), not yet permitted by the Oil and Gas Commission ("OGC"). The Respondents question the Board's jurisdiction on the basis that the Pipeline is not a "flow line" within the meaning of the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act.*

[2] As the Board's jurisdiction with respect to pipelines is limited to those pipelines that are flow lines as defined in the legislation, the issue is whether the Pipeline is a "flow line".

[3] Encana provided an "Application Supplement" with its application for a right of entry order describing the proposed project and referencing previous decisions of the Board considering the definition of "flow line" to provide the Board with information from which it could determine it had jurisdiction. Encana did this in line with a letter decision of the Board dated June 7, 2017 in Encana Corporation v. Tailwind Properties Ltd. (the "Tailwind Letter", attached to this decision as Schedule "A"). In addition to their substantive arguments on the issue of whether the Pipeline is a "flow line", the Respondents submit that Encana has not submitted evidence for the Board to satisfy itself that the proposed project falls within its jurisdiction. They submit the Board must make a decision in each case based on careful reasoning and that it cannot rely on the assertions of counsel respecting the function of a proposed pipeline or submissions that the Board should rely on its previous cases in

similar circumstances. They submit the Board should require evidence in Affidavit form that may be subject to cross-examination if necessary.

[4] A preliminary issue arises, therefore, as to the nature of the information the Board will require to satisfy itself it has jurisdiction and, in particular, whether it must receive evidence from someone with firsthand knowledge by sworn affidavit to satisfy itself that a proposed pipeline is a "flow line" over which it has jurisdiction.

Information Required by the Board

[5] In the Tailwind Letter I said that "when making an application for a right of entry order, the applicant must provide sufficient information to indicate that the proposed project is one that is within the jurisdiction of the Board to grant a right of entry order." The Straskys submit that Encana must provide evidence to satisfy the onus of proving the proposed Pipeline falls within the definition of a "flow line". They submit that evidence has to be from someone with firsthand knowledge as to the nature and purpose of the proposed project and that the evidence would have to be in affidavit form.

[6] The Surface Rights Board is an administrative tribunal established by the *Petroleum and Natural Gas Act.* In accordance with section 40 of the *Administrative Tribunals Act*, made to apply to the Board by way of section 148 of the *Petroleum and Natural Gas Act*, the Board "may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law." The Board is not bound by the rules of evidence as they apply in judicial proceedings. The Board has wide discretion with respect to the information it may accept. Use of the word "information" instead of "evidence" in the *Administrative Tribunals Act* implies that the Board may accept information that would not necessarily be considered proper evidence in a court of law. I find the Board has the discretion and authority to accept whatever information it considers relevant, necessary and appropriate regardless of whether that information would

properly be considered evidence in a judicial proceeding or whether it would be admissible in court.

[7] This is not to say that the Board may not require evidence in any particular form, including a sworn affidavit, where is considers it to be necessary and appropriate. As I said in the Tailwind Letter, "If the Board has concerns or questions it may seek further information..." The Board may require an applicant to provide evidence in affidavit form where, in its discretion, it considers affidavit evidence to be necessary and appropriate, but if it considers information in another form to be satisfactory in the circumstances, it may accept that information.

[8] As discussed in the Tailwind Letter, the Board has now written seven decisions considering the definition of "flow line" dealing with 11 different types of pipeline segments in order to determine the extent of the Board's jurisdiction. None of those decisions has been judicially reviewed. The decisions comprise a body of law upon which stakeholders may rely in assessing whether a proposed pipeline is within the jurisdiction of the Board. As said in the Tailwind letter:

> To the extent the Board has determined that a particular type of pipeline or pipeline segment is or is not a "flow line", stakeholders may rely on those decisions and expect the Board to consistently interpret the term "flow line" to the extent a proposed project is the same type of pipeline or pipeline segment and to the extent new arguments not previously considered have not been raised. If a proposed pipeline presents different circumstances from those previously considered by the Board, or if an argument not previously considered is made, the Board must consider those circumstances or that argument. However, if a proposed pipeline or segments of a proposed pipeline project are the same as those previously determined by the Board to be flow lines within its jurisdiction, unless there is new information or new arguments brought to the Board's attention, the Board may rely on its previous decisions to accept jurisdiction and need not reconsider the merits of each case.

[9] The information that an applicant must provide to satisfy the Board of its jurisdiction does not necessarily need to be evidence according to the law of

evidence. It may be information in any form. If the Board is of the view that further information is required, or that the information should be provided by way of evidence in affidavit form, it may make that request. It need not, however, require the applicant in every case to provide evidence of that nature.

Is the information provided in this case sufficient?

[10] In this case, Encana included with its application for a right of entry a written supplementary document describing the proposed Pipeline and each segment. The information includes whether each segment is uni-directional or bi-directional, what will be carried within each segment from where and to where it will be carried, and where that substance is carried beyond that point. It includes references to previous case law where the Board has considered similar projects. Encana also included a copy of the Application Report to the OGC which also provides information about the direction of each segment, what is carried within each segment, the "from" and "to" locations and other technical information. Encana also included a colour coded schematic drawing of the proposed Pipeline.

[11] The information sufficiently describes the purpose and function of each Pipeline segment to enable an assessment of whether the Pipeline and each segment is a "flowline". The written application supplement is consistent with the information in the Application Report to the OGC and I do not think it is necessary in the circumstances to require Encana to provide evidence in Affidavit form.

Is the Pipeline a "flow line"?

[12] The proposed Pipeline consists of four segments.

[13] Segment 1 is a uni-directional line that will carry raw produced natural gas and liquids from various upstream well sites via a riser (the "9-10 Riser") to a compressor station (the "9-27 Compressor"). The gas will then be transferred either to the

Enbridge Dawson Creek plant or the Enbridge McMahon plant for further processing.

[14] Segments 2 and 3 are uni-directional lines that will carry raw produced natural gas and liquids from various upstream well sites via the 9-10 Riser to the "15-27 Plant", where the gas will undergo separation, compression and dehydration prior to being transferred to the Enbridge Dawson Creek plant for processing. The gas will then be transferred to the TransCanada sales point.

[15] Segment 4 is a bi-directional flow line that will carry produced water from the Water Resource Hub at 16-36-78W6 (the "Water Hub") to various well sites for hydraulic fracturing activities and from the well sites back to the Water Hub. The Water Hub is the same Water Hub that the Board determined was a "facility" in *Encana Corporation v. Ilnisky*, Order 1823-1.

[16] In a letter to Mr. and Mrs. Strasky dated April 25, 2017, Encana advised that upon completion of the project "the license and ownership of the Natural Gas Gathering Pipeline will be transferred to Veresen Midstream General Partner Inc. ("Veresen"). Encana will assign the Right of Way agreements to Encana and Veresen where both companies will retain an interest (pipeline) in the common right of way."

17] [The *Oil and Gas Activities Act* provides the following definition of "flow line":

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[18] The Board has considered the definition of "flow line" in a number of cases. Those cases are summarized in *Encana Corporation v. Strasky*, Order 1911/1913-1 and I will not repeat them here. Essentially, the Board has found that pipelines that function as part of the gathering system for the production of natural gas are "flow

lines". They need not connect directly to a well head, but may connect well heads indirectly with scrubbing, processing or storage facilities as long as they are part of the gathering system. The Board has found that scrubbing, processing or storage facilities demarcate the extent of the Board's jurisdiction over pipelines.

[19] The information provided by Encana with this application is sufficient for me to conclude that Segments 1, 2 and 3 of the proposed Pipeline will connect well heads with one of two processing facilities. The information satisfies me that it will function as part of the gathering system and that they are similar to other lines that the Board has found to be "flow lines" in *Ilnisky*, *Spectra Energy Midstream Corporation v. London*, Order 1694-3, *Encana Corporation v. Jorgensen*, Order 1852/1853-1, and *Encana Corporation v. Jorgensen*, Order 1939-1, in that they will carry unprocessed raw natural gas from wellsites to processing plants in line with the Board's findings in earlier decisions respecting what constitutes "processing" and a "processing plant". The Straskys have not provided any new arguments not previously considered by the Board to convince me that I should not follow the Board's previous jurisprudence and accept jurisdiction.

[20] The information provided by Encana is sufficient for me to conclude that Segment 4 of the proposed Pipeline is similar to hydraulic fracturing water supply and water return lines found to be flow line in *Ilnisky*. The Respondents submit the Board did not properly consider the words "conveyed substance" in the definition of flow line in coming to the conclusion that the water lines in *Ilnisky* were flow lines. The Straskys' argument is essentially that the "conveyed substance" in the line that connects a well head to a processing plant must be the same as the "conveyed substance" in the subsequent transmission, distribution or transportation line. That is certainly one possible interpretation of the definition. It is an interpretation, however, that the Board found in *Ilnisky* would result in absurd consequences and not conform with legislative intent that the Board have jurisdiction over those pipelines that function collectively as the gathering system. I am not persuaded by

the arguments in this case that the interpretation is incorrect or unreasonable or that I should depart from it.

[21] Mr. and Mrs. Strasky submit that fracking is not part of the gathering system but is akin to suggesting "feeding grain to the hens is part of gathering the eggs". Hydraulic fracturing, also called fracking or fraccing, is a process used to improve the permeability of a gas reservoir thus enabling the gas to be produced or retrieved from the reservoir. It is necessary to the production of natural gas in certain circumstances. The Board found in *Ilnisky* that hydraulic fracturing water supply and water return lines function as part of the gathering system for the production of natural gas. Mr. and Mrs. Strasky's submission in this case does not lead me to a different conclusion.

[22] Finally, Mr. and Mrs. Strasky submit that the fact that a pipeline will be assigned to a midstream company like Veresen Midstream is a matter the Board has never dealt with before. The intended assignment of a pipeline from one company to another is not relevant to the definition of "flow line".

[23] I am satisfied that the Pipeline is a "flow line" and that the Board has jurisdiction.

Conclusion

[24] The information before me sufficiently describes the function of the proposed Pipeline and each of its segments and satisfies me each segment is a "flow line" in accordance with the Board's jurisprudence on the issue. The jurisdictional challenge by the Respondents does not raise new issues not previously considered by the Board that give me cause to request further information, require the applicant to provide evidence in affidavit form, or reconsider the jurisprudence respecting similar pipelines found to be "flow lines".

[25] I am satisfied the Board has jurisdiction. The application for a right of entry order will be referred to the mediator.

DATED: October 23, 2017

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "A"
ORDER 1955-1

SURFACE RIGHTS BOARD

Suite 10 – 10551 Shellbridge Way
Richmond, BC
V6X 2W9

Telephone: 604-775-1740
Toll-free phone: 1-888-775-1740
Facsimile: 604-775-1742
Toll-free Facsimile: 1-888-775-1742

E-Mail: office@surfacerightsboard.bc.ca
Web Site: www.surfacerightsboard.bc.ca

Application Forms and information about the Board are available from any Service BC Centre (Government Agent) and Applications may be delivered to the Board either directly or through Service BC

June 7, 2017

VIA EMAIL

Encana Corporation
Attention: Sheri Wannamaker
500 Centre Street SE
Calgary, AB T2P 2S5

Sheri.wannamaker@encana.com
Heidi.Berscht@encana.com

Bennet t Jones LLP
Attn: Darrin K. Naffin/Tim Myers
4500 Bankers Hall East
855 – 2nd Street SW
Calgary, AB T2P 4K7

naffind@bennettjones.com
myerst@bennettjones.com

VIA EMAIL

Tailwind Properties Ltd.
Attn: Blair Ledingham
1716 Beach Grove Road
Delta, BC V4L 1P3

pilaster@dccnet.com

Stringam LLP
Attn: J. Darryl Carter
#102 – 10126 97th Avenue
Grande Prairie, AB T8V 7X6

Darryl@stringam.ca

Rodney Allen Strasky
Kim Lori Strasky
5045 245 Road
PRRD, BC V1G 0J2

straskyk@pris.ca

Re: SRB file 1940; Encana Corporation v. Tailwind Properties Ltd.
THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT (the Lands)

I write further to my correspondence of May 23, 2017 (incorrectly captioned SRB file 1917), and the ensuing email correspondence from : Mr. Carter, May 30, 2017 (two emails); Mr. Myers, May 30, 2017; myself, June 5, 2017; Mr. Carter, June 5, 2017; Mr. Myers, June 6, 2017; and Mr. Carter, June 6, 2017.

Encana Corporation has applied to the Board for a right of entry order to Lands owned by Tailwind Properties Ltd. and occupied by Rod and Kim Strasky to construct and operate a pipeline in four segments as permitted by the Oil and Gas Commission on April 24, 2017.

The area of the Lands for which Encana seeks right of entry include areas to be used for the pipeline right of way, temporary workspace, and a sump.

I asked Mr. Carter to advise if the Respondents took issue with whether any or all of the proposed pipelines are "flow lines" within the Board's jurisdiction, or any other jurisdictional issues prior to the application being referred for mediation. Mr. Carter submitted that the onus is on Encana to demonstrate the proposed pipelines come within the definition of "flow line", "i.e that they are pipelines that connect a well head with a scrubbing, processing or storage facility and that precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line" (emphasis in original), and that Encana had not satisfied that onus in the materials filed with the application. Mr. Carter further noted that:

- "the proposed right of way stops at the south boundary of the proposed padsite covered by SRB Order 1917 so it does not even purport to be connected to a wellhead at that location.
- The application appears to include an area for a proposed sump...The 'Compensation Summary' page attached to the application also refers to a "Remote Sump"...A "sump" would not come within the definition of a pipeline. Also I do not see where a "sump" on the land was approved by the OGC."

Mr. Myers submitted that if the Respondents wished to pursue the issue of the Board's jurisdiction they can make a preliminary application. He submitted that having applied to the Board for the right of entry order, Encana is of the view the pipelines fall within the Board's jurisdiction "and that in the absence of a preliminary jurisdictional application from the Respondents, Encana does not intend to present any further submissions in support of that submission at this stage."

I accept that when making an application for a right of entry order, the applicant must provide sufficient information to indicate that the proposed project is one that is within the jurisdiction of the Board to grant a right of entry order. If the Board has concerns or questions it may seek further information, or if the Respondent challenges the jurisdiction of the Board, the Respondent may make an application to that effect providing the reasons for the challenge. However, the Board need not engage in a jurisdictional inquiry in the absence of concerns or questions it may have from the information provided or an application from the Respondent.

By email dated June 5, 2017, I advised the parties that the Board accepted it has jurisdiction with respect to the proposed pipeline on the basis of the information provided by Encana with its application subject to any specific challenge from the Respondents. I asked Encana to provide more information as to the purpose of the sump.

By email dated June 5, 2017, Mr. Carter advised that he did challenge the Board's jurisdiction. He submitted that "landowners are entitled to a careful analysis by the Board in each case regarding the issue of jurisdiction. Each case must be decided on its own facts and merits." He then provided the following submission:

> "In this case, the proposed segment 2 pipeline is a unidirectional fuel line. There is no evidence that this pipeline will precede the transfer of the conveyed substance (fuel) to or from a transmission, distribution or transportation line. Encana would have to show what .transmission, distribution or transportation line that might be and how the

> conveyed substance (fuel) is transferred to or from it. The same issue arises with respect to the proposed segment 3 and 4 lines. Encana would have to show what transmission, distribution or transportation line the conveyed substance (produced water) will be transferred to or from.
>
> I note too that the Board has not dealt with the fact that the proposed right of way stops at the south boundary of the proposed padsite covered by SRB Order 1917so it does not even purport to be connected to a wellhead at that location."

By email dated June 6, 2017, Mr. Myers advised as to the purpose of the sump as follows:

> "In order to construct the subject pipeline, Encana is required to bore beneath the 245 Road and an existing pipeline and pull the pipeline segments through those crossings. As part of that process, Encana requires the sump for the inert water-based drilling fluid and soil removed from the bores. The sump contents will be mixed with subsoil and then covered with topsoil in order to reclaim the area.
>
> The location of the sump is shown on Individual Ownership Plan 150677NP04R0, which is included in Encana's application and is attached again here for reference. The sump is also specifically contemplated by OGC Permit No. 100101424 (the "Permit") as an oil and gas activity associated with the construction and operation of the subject pipeline and is clearly shown on the construction plan appended to the Permit."

Mr. Carter responded by email dated June 6, 2017 submitting that "just because the sump was shown on a construction plan does not mean it was approved or even considered by the OGC."

The current definition of "flow line" came into effect on October 4, 2010. The Board has now written seven decisions considering the definition of "flow line", dealing with 11 different types of pipeline segments in order to determine the extent of the Board's jurisdiction with respect to pipelines. These decisions are:

i) *Murphy Oil Ltd. v. Shore*, Order 1745-1, September 13, 2012
ii) *Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014
iii) *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014
iv) *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015
v) *Encana Corporation v. Jorgensen*, Order 1852/1853-1, June 15, 2015 (*Encana v. Jorgensen 1*)
vi) *Encana Corporation v. Strasky and Tailwind Properties Ltd.,* Order 1911/1913-1, October 20, 2016
vii) *Encana Corporation v. Jorgensen*, Order 1939-1, May 31, 2016 (*Encana v. Jorgensen 2*).

The various types of pipelines that the Board has determined to be flow lines within its jurisdiction and those which it has determined not to be flow lines are discussed in *Encana v. Strasky*. In *Encana v. Jorgensen 2* the Board summarized its findings and the Board's jurisdiction with respect to pipelines as follows:

> "Essentially, the Board has found that pipelines that function as part of the gathering system for the production of natural gas are "flow lines". They need not connect directly to a well head, but may connect well heads indirectly with scrubbing, processing or storage facilities as long as they are part of the gathering system for the production of natural gas. The Board has found that scrubbing, processing or storage facilities demarcate the extent of the Board's jurisdiction over pipelines."

In *Encana v. Jorgensen 1* the Board found that the "scrubbing, processing or storage facilities" demarcating the extent of the Board's jurisdiction are "scrubbing facilities, processing facilities, or storage facilities, where scrubbing, processing in the industry sense as the processing of raw natural gas into marketable gas, or storage is the principle purpose of the facility".

Mr. Carter submits that landowners "are entitled to a careful analysis by the Board in each case regarding the issue of jurisdiction" and that "each case must be decided on its own facts and merits." I agree that each case must be decided on its own facts and merits, but to the extent the Board has already considered similar facts and arguments, unless different information or new arguments are advanced, it should be able to rely on its existing jurisprudence defining its jurisdiction.

None of the Board's decisions interpreting the definition of "flow line" and determining the extent of the Board's jurisdiction with respect to pipelines has been judicially reviewed. Together, they provide a body of law interpreting the definition of "flow line" upon which the Board's stakeholders may rely in assessing whether a proposed pipeline project is within the jurisdiction of the Board. To the extent the Board has determined that a particular type of pipeline or pipeline segment is or is not a "flow line", stakeholders may rely on those decisions and expect the Board to consistently interpret the term "flow line" to the extent a proposed project is the same type of pipeline or pipeline segment and to the extent new arguments not previously considered have not been raised. If a proposed pipeline presents different circumstances from those previously considered by the Board, or if an argument not previously considered is made, the Board must consider those circumstances or that argument. However, if a proposed pipeline or segments of a proposed pipeline project are the same those previously determined by the Board to be flow lines within its jurisdiction, unless there is new information or new arguments brought to the Board's attention, the Board may rely on its previous decisions to accept jurisdiction and need not reconsider the merits of each case.

The information provided by Encana with its application in this case indicates the proposed pipeline has four segments. Segment 1 is a 12" uni-directional line to carry natural gas from 13-34-079-17 (13-34) to 16-28-079-17 (16-28). The location 13-34 is the padsite located on the Lands. Segment 2 is a 4" uni-directional fuel gas line from 16-28 to 13-34. Segment 3 is a 6" uni-directional line to carry produced water from 16-28 to 13-34. Segment 4 is a 4" bi-directional line to carry produced water from 13-34 to 16-28.

Each of these segments is a type of pipeline segment that the Board has found to be within its jurisdiction. The Board found lines carrying produced gas from a well head, like Segment 1 in this case, to be within its jurisdiction in *Murphy Oil v. Shore* and *Encana v. Ilnisky*. The Board has found fuel lines, like Segment 2 in this case, to be within its jurisdiction in *Murphy Oil v. Shore, Encana v Ilnisky* and *Encana v. Jorgensen 2*. The Board has found lines

carrying produced water both to and from well sites, similar to Segments 3 and 4 in this case, to be within its jurisdiction in *Encana v. Ilnisky* and *Encana v. Jorgensen 2*.

With respect to Mr. Carter's arguments about the "conveyed substance" as they relate to the fuel line, this argument was considered and rejected in *Murphy Oil v. Shore*. This argument as it relates to the lines carrying produced water was considered and rejected in *Encana v. Ilnisky*.

With respect to Mr. Carter's argument that the right of way stops at the southern boundary of the padsite "so it does not even purport to be connected to a wellhead", a right of way need not extend into an area covered by a well site lease or entry order. Assuming Mr. Carter means to argue that the evidence does not show that the pipeline connects to a well head, the Board has found that a flowline does not have to connect directly to a well head (*Spectra v. London*). The Permit indicates that each of these lines connects to the padsite at 13-34.

The Board has found that a flow line is a pipeline that functions as part of the gathering system for natural gas. The OGC Permit provided by Encana with its application provides sufficient information for the Board to conclude that each of these four segments function as part of the gathering system for natural gas. They function collectively to produce natural gas from the wells at padsite 13-34.

I am satisfied on the basis of the information provided by Encana that the proposed pipeline in four segments is a "flow line" in accordance with previous decisions of the Board, and that the Board has jurisdiction in this application. The information before me and the arguments made by Mr. Carter do not suggest there are different circumstances or new issues in this case that have not already been considered by the Board. Consequently, I am prepared to rely on the body of the Board's jurisprudence on the issue of what is a "flow line" to accept jurisdiction in this case with respect the proposed pipeline.

As for the sump, Mr. Carter argues the sump does not come under the definition of pipeline and submits it has not been approved by the OGC. I agree with Mr. Carter that just because the sump is shown on the construction plan it does not mean it is necessarily covered by the Permit. Indeed, paragraph 6 of the Permit indicates the construction plan is not integral to it.

The issue on a right of entry application for the Board, however, is whether the applicant requires a right of entry order to enter, occupy or use private land to carry out an oil and gas activity. An "oil and gas activity" includes the construction of a pipeline. Encana has provided information indicating how the sump will be used in the construction of the pipeline. To the extent the purpose of the sump is to facilitate construction of the pipeline, just as the purpose of temporary workspace it to facilitate construction of the pipeline, it is an oil and gas activity over which the Board has jurisdiction. The Board may determine whether Encana requires a right of entry order for that purpose.

I am satisfied the Board has jurisdiction and the application will be referred to the mediator.

For the Board

Cheryl Vickers, Chair

File No. 1955
Board Order No. 1955-2

January 24, 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 EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17
WEST OF THE 6TH MERIDIAN
THE NORTH EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT
(the "Lands")

BETWEEN:

Encana Corporation

(Applicant)

AND:

Rodney Allen Strasky
Kim Lori Strasky

(Respondents)

BOARD ORDER

---

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the Oil and portions of lands legally described as **THE SOUTH EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN AND NORTH EAST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT**, as shown outlined on the individual ownership plan(s) attached as Appendix "A" to carry out an oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission Application Determination No. 10010368.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $30,000.00 representing the first year's initial payment and prepaid damages.

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

DATED: January 24, 2018

FOR THE BOARD

Rob Fraser, Mediator

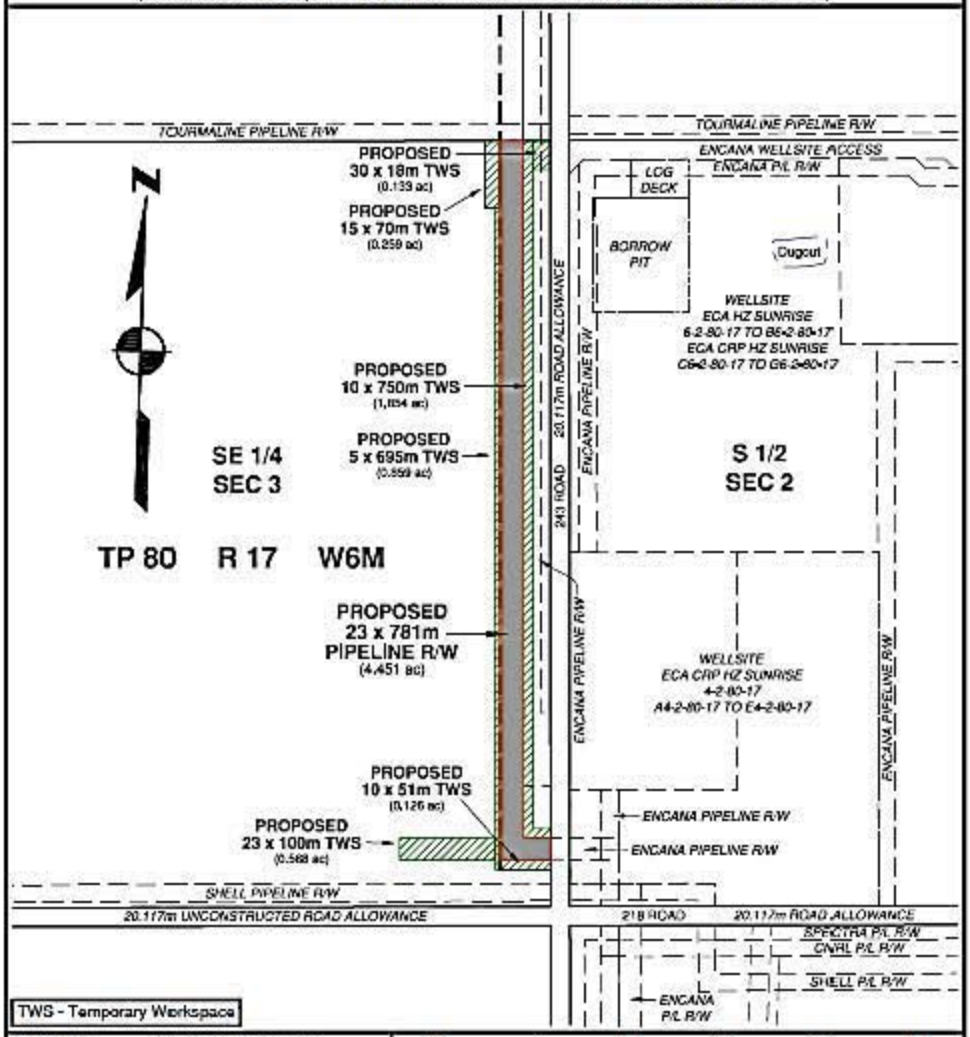
Appendix "A"

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Rodney Allen Strasky and Kim Lori Strasky (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH EAST 1/4 OF SECTION 3 TOWNSHIP 80 RANGE 17 W6M
PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 4-2-80-17 to Riser Site 9-10-80-17)



TWS - Temporary Workspace

Owner(s): Rodney Allen Strasky
Kim Lori Strasky

Title No: FB498671
Parcel Identifier: 014-519-992
Landowner File: S471272
Encana File(s): S470722

Areas			
Permanent		1.801 ha	4.451 ac
Temporary		1.538 ha	3.799 ac
Total		3.339 ha	8.250 ac

100 0 100 200 300 400

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

Certified correct this ***th day of ***, 2017

Preliminary

Andrew J. Moody, BCLS

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	170263NP02R0
Ref Dwg:	170263CP01R0
Drafted by:	KG

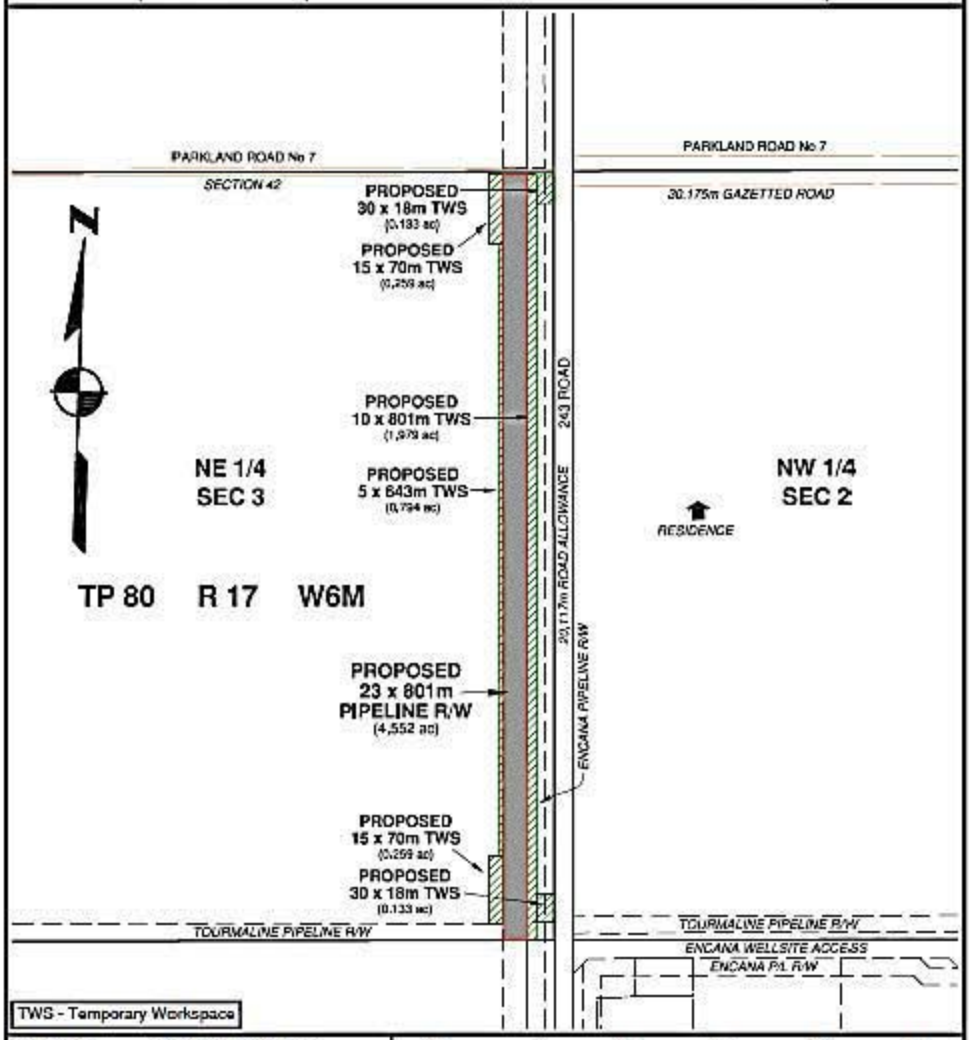
SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Rodney Allen Strasky and Kim Lori Strasky (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE NORTH EAST 1/4 OF SECTION 3 TOWNSHIP 80 RANGE 17 W6M PEACE RIVER DISTRICT

(Associated with Pipeline R/W from Wellsite 4-2-80-17 to Riser Site 9-10-80-17)



Owner(s):	Rodney Allen Strasky Kim Lori Strasky
Title No:	FB498869
Parcel Identifier:	014-519-968
Landowner File:	S471272
Encana File(s):	S470722

100 0 100 200 300 400

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

Certified correct this ***th day of ***, 2017

Preliminary

Andrew J. Moody, BCLS

Areas		
Permanent	1.642 ha	4.552 ac
Temporary	1.440 ha	3.557 ac
Total	3.282 ha	8.109 ac

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	170263NP03RD
Ref Dwg:	170263CP01RD
Drafted by:	KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said Lands.

File No. 1966
Board Order No. 1966-1

July 10, 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 NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

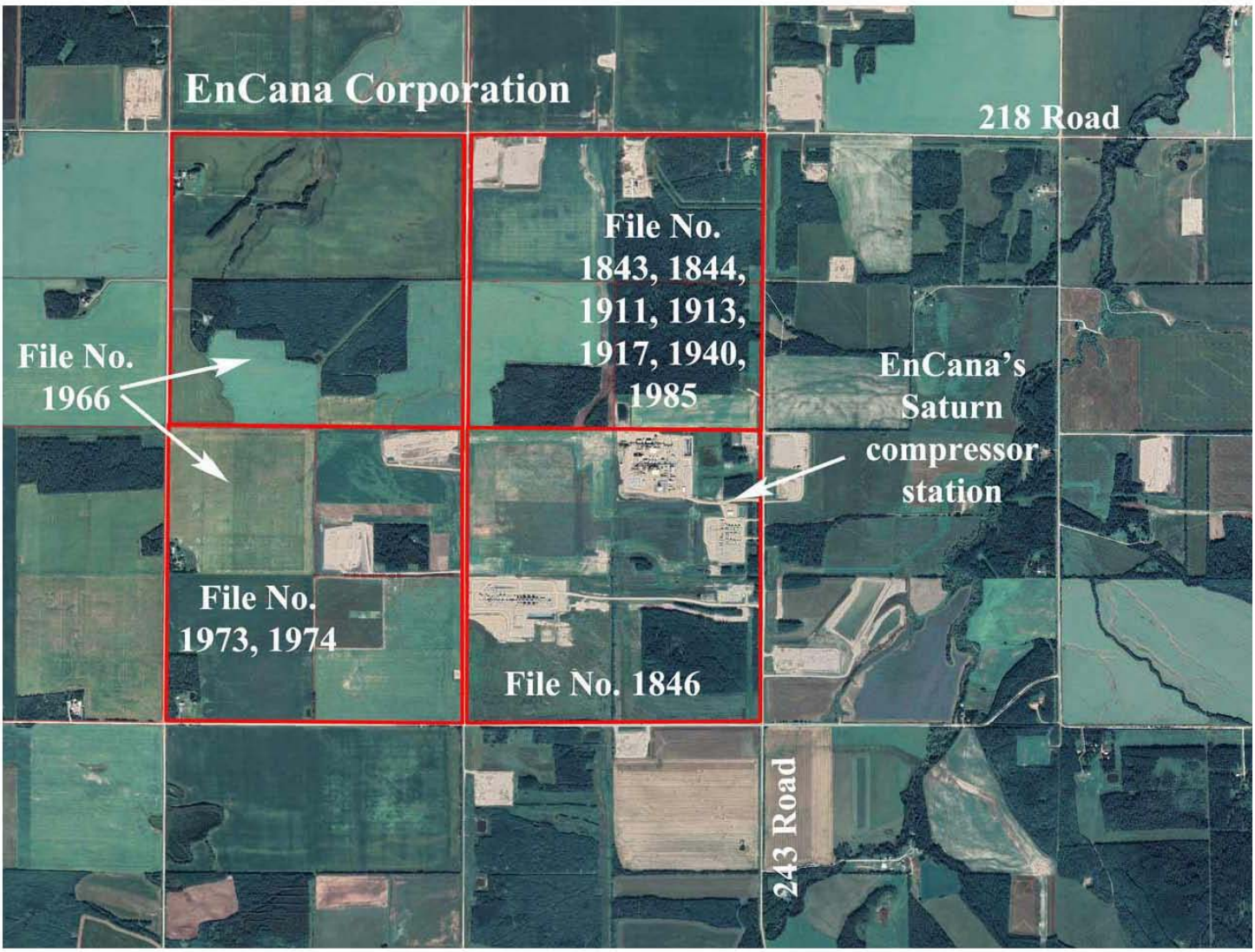
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

The project involves a permanent right of way over 4.725 acres and 3.962 acres of temporary work space.

The Oil and Gas Commission ("OGC") has issued a permit for this project identified in their records by Application Determination Number 100104588.

Mr. Jorgensen objects to the right of entry order including temporary work space. The Board is satisfied that it has the jurisdiction to issue a right of entry order for an "oil and gas activity" which includes the construction of a pipeline. I am satisfied that the temporary work space is required for the construction of the pipeline and is therefore part of an "oil and gas activity".

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

The Surface Rights Board orders:

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission permit 100104588.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or

part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $15,000.00 representing the first year's initial payment and prepaid damages.

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: July 10, 2018

FOR THE BOARD

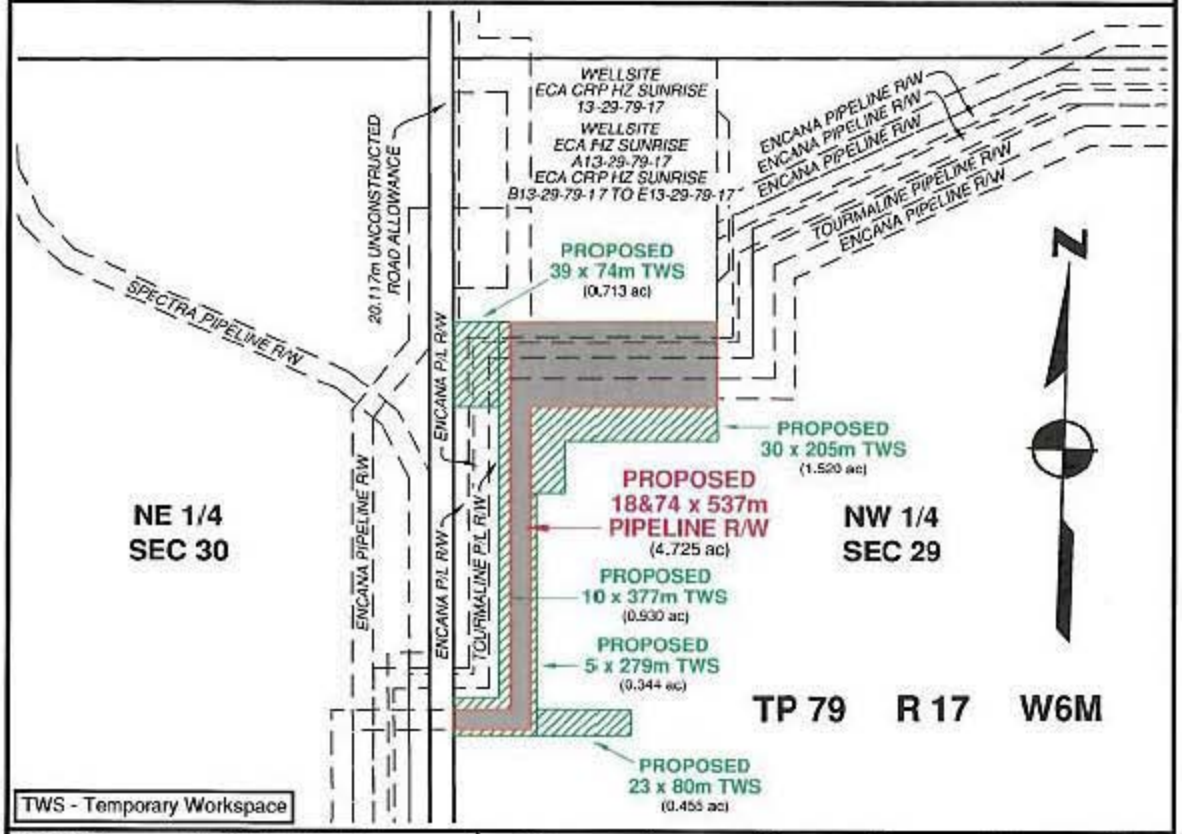
_____
Rob Fraser, Mediator

Appendix "A"

SCHEDULE "A" Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH WEST 1/4 OF SECTION 29 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Riser Site 8-30-79-17 to Wellsite 13-29-79-17)



Owner(s): Olaf Anton Jorgensen

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Title No:	PP29096
Parcel Identifier:	014-486-113
Landowner File:	S471570
Encana File(s):	S471305

Certified correct this 15th day of January, 2018

David E. Gosling, BCLS

Areas		
Permanent	1.912 ha	4.725 ac
Temporary	1.603 ha	3.962 ac
Total	3.515 ha	8.687 ac

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	170193NP04R2
Ref Dwg:	170193CP01R2
Drafted by:	KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1967
Board Order No. 1967-1

July 10, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

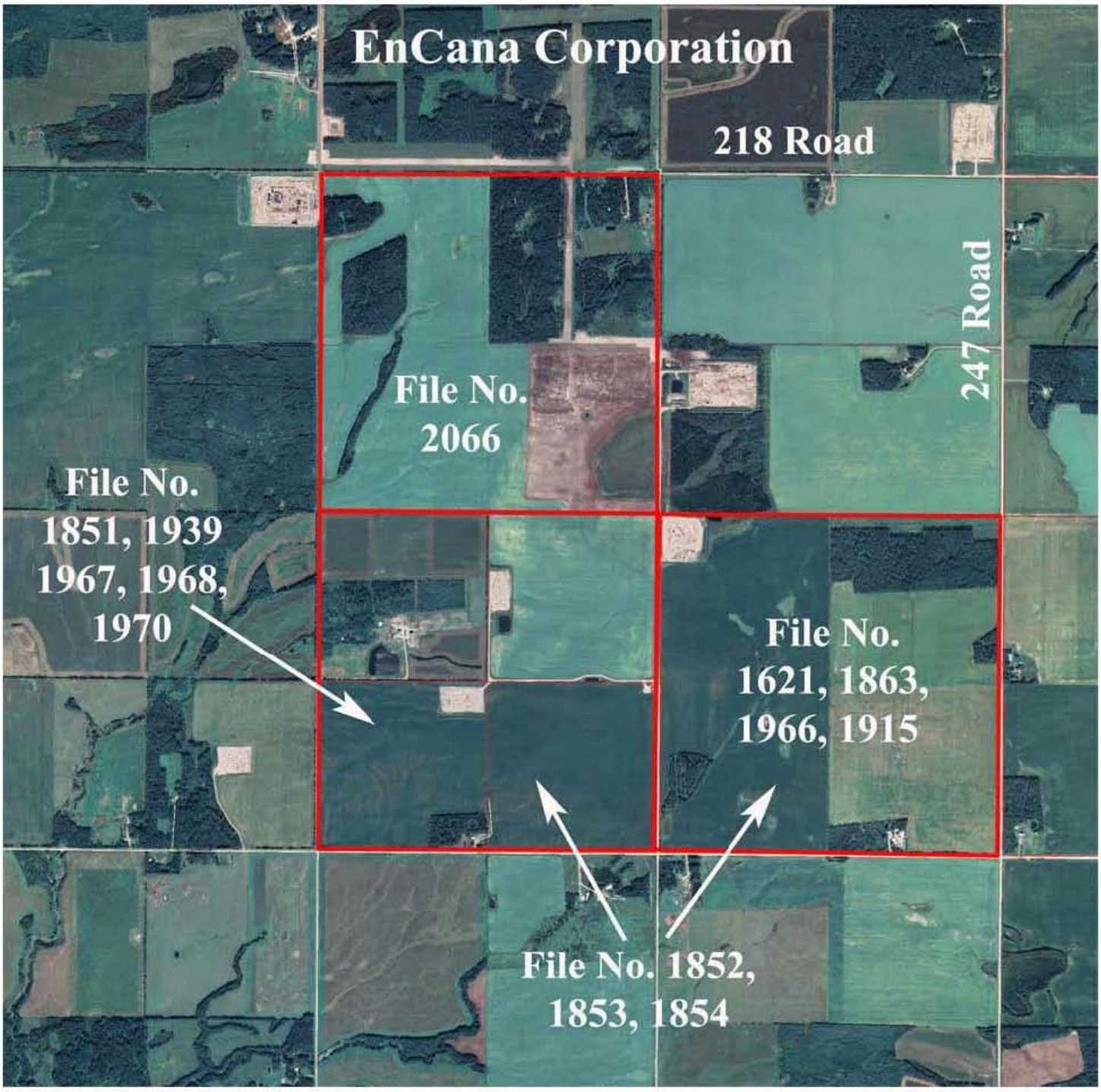
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

The project involves a permanent right of way over 4.725 acres and 3.962 acres of temporary work space.

The Oil and Gas Commission ("OGC") has issued a permit for this project identified in their records by Application Determination Number 100104588.

Mr. Jorgensen objects to the right of entry order including temporary work space. The Board is satisfied that it has the jurisdiction to issue a right of entry order for an "oil and gas activity" which includes the construction of a pipeline. I am satisfied that the temporary work space is required for the construction of the pipeline and is therefore part of an "oil and gas activity".

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

The Surface Rights Board orders:

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
   THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission permit 100104588.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $7,800.00 representing the first year's initial payment and prepaid damages.

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.

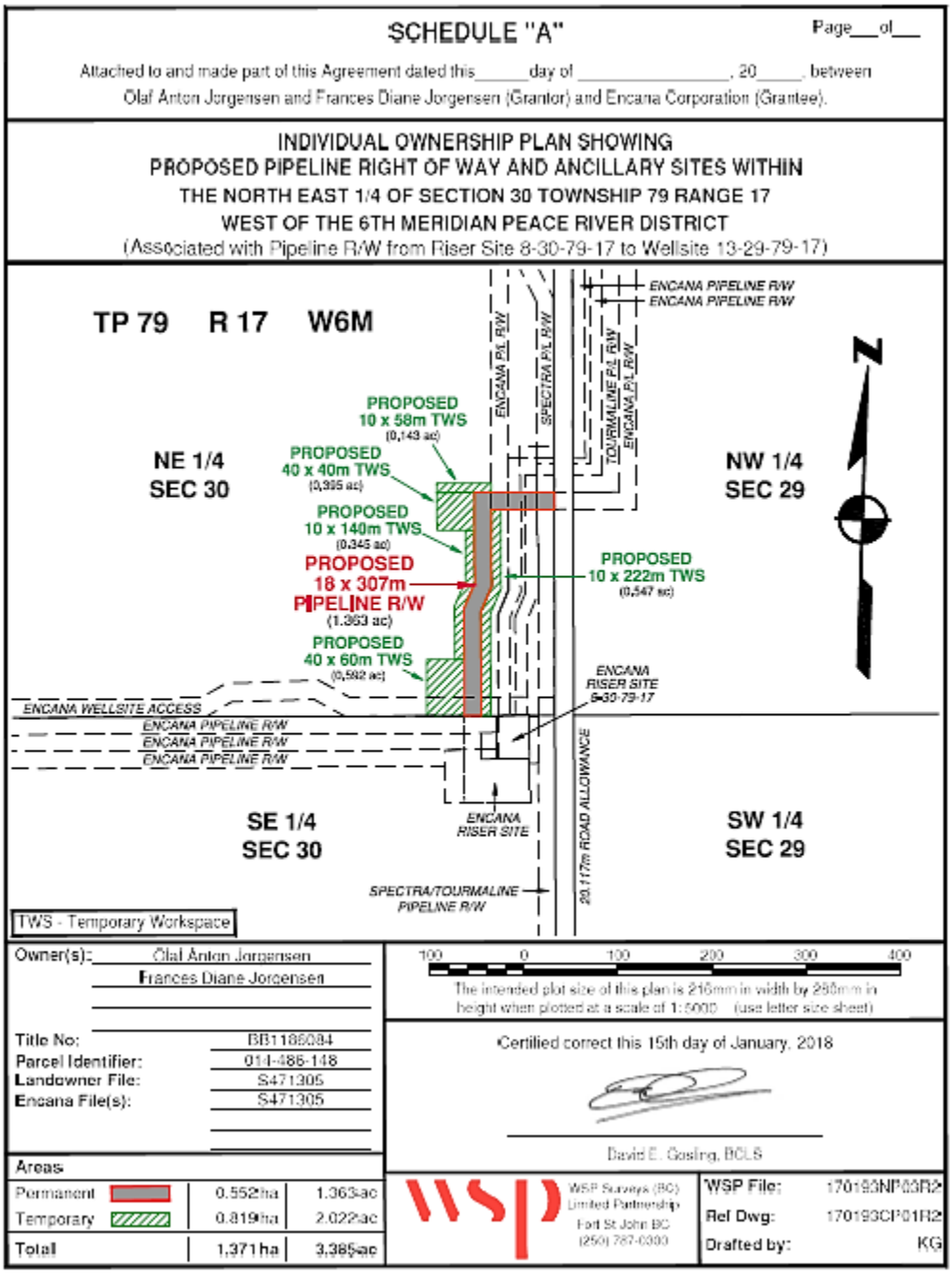
DATED: July 10, 2018

FOR THE BOARD

_____

Rob Fraser, Mediator

Appendix "A"

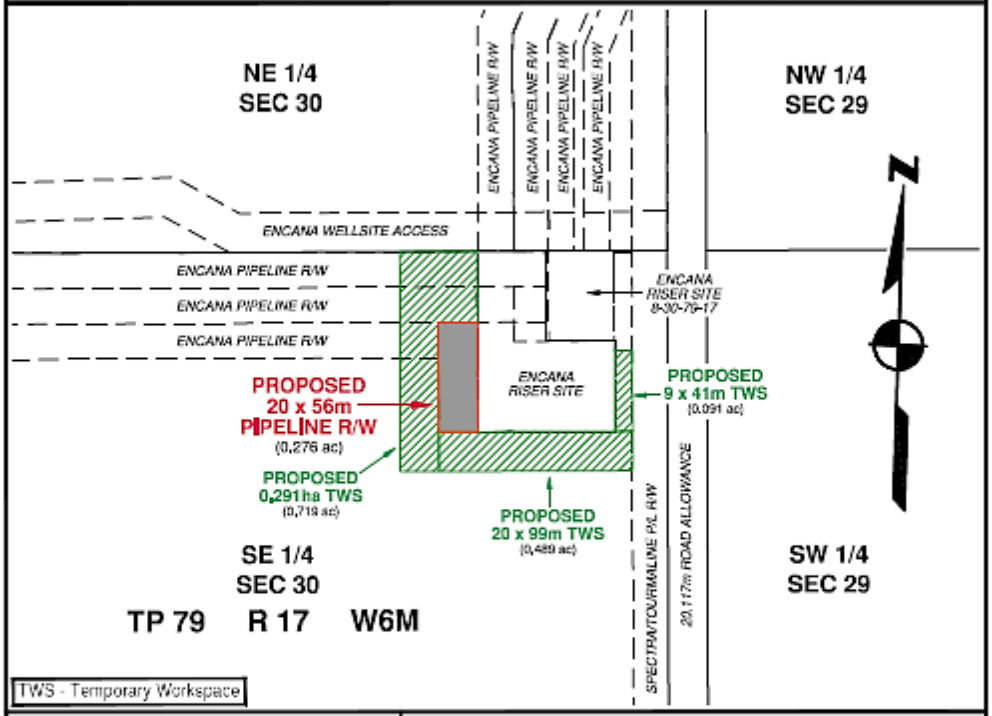

SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE NORTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Riser Site 8-30-79-17 to Wellsite 13-29-79-17)
TP 79 R 17 W6M
NE 1/4 SEC 30
NW 1/4 SEC 29
SE 1/4 SEC 30
SW 1/4 SEC 29
PROPOSED 10 x 58m TWS (0.143 ac)
PROPOSED 40 x 40m TWS (0.395 ac)
PROPOSED 10 x 140m TWS (0.345 ac)
PROPOSED 18 x 307m PIPELINE R/W (1.363 ac)
PROPOSED 40 x 60m TWS (0.592 ac)
PROPOSED 10 x 222m TWS (0.547 ac)
ENCANA PIPELINE R/W
ENCANA P/L R/W
SPECTRA P/L R/W
TOURMALINE P/L R/W
ENCANA WELLSITE ACCESS
ENCANA RISER SITE 8-30-79-17
ENCANA RISER SITE
SPECTRA/TOURMALINE PIPELINE R/W
20.117m ROAD ALLOWANCE
TWS - Temporary Workspace
Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen
Title No: BB1186084
Parcel Identifier: 014-486-148
Landowner File: S471305
Encana File(s): S471305
100 0 100 200 300 400
The intended plot size of this plan is 215mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)
Certified correct this 15th day of January, 2018
David E. Gosling, BCLS
Areas
Permanent 0.552ha 1.363ac
Temporary 0.819ha 2.022ac
Total 1.371ha 3.385ac
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0393
WSP File: 170193NP03R2
Ref Dwg: 170193CP01R2
Drafted by: KG

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Riser Site 8-30-79-17 to Wellsite 13-29-79-17)



Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen

Title No:	BB1186085
Parcel Identifier:	007-942-028
Landowner File:	S471305
Encana File(s):	S471305

50 0 50 100 150 200

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:2500 (use letter size sheet)

Certified correct this 15th day of January, 2018

David E. Gosling, BCLS

Areas			
Permanent		0.112ha	0.276ac
Temporary		0.525ha	1.299ac
Total		0.637ha	1.575ac

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File:	170193NP01R2
Ref Dwg:	170193CP01R2
Drafted by:	KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1968
Board Order No. 1968-1

July 10, 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 WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

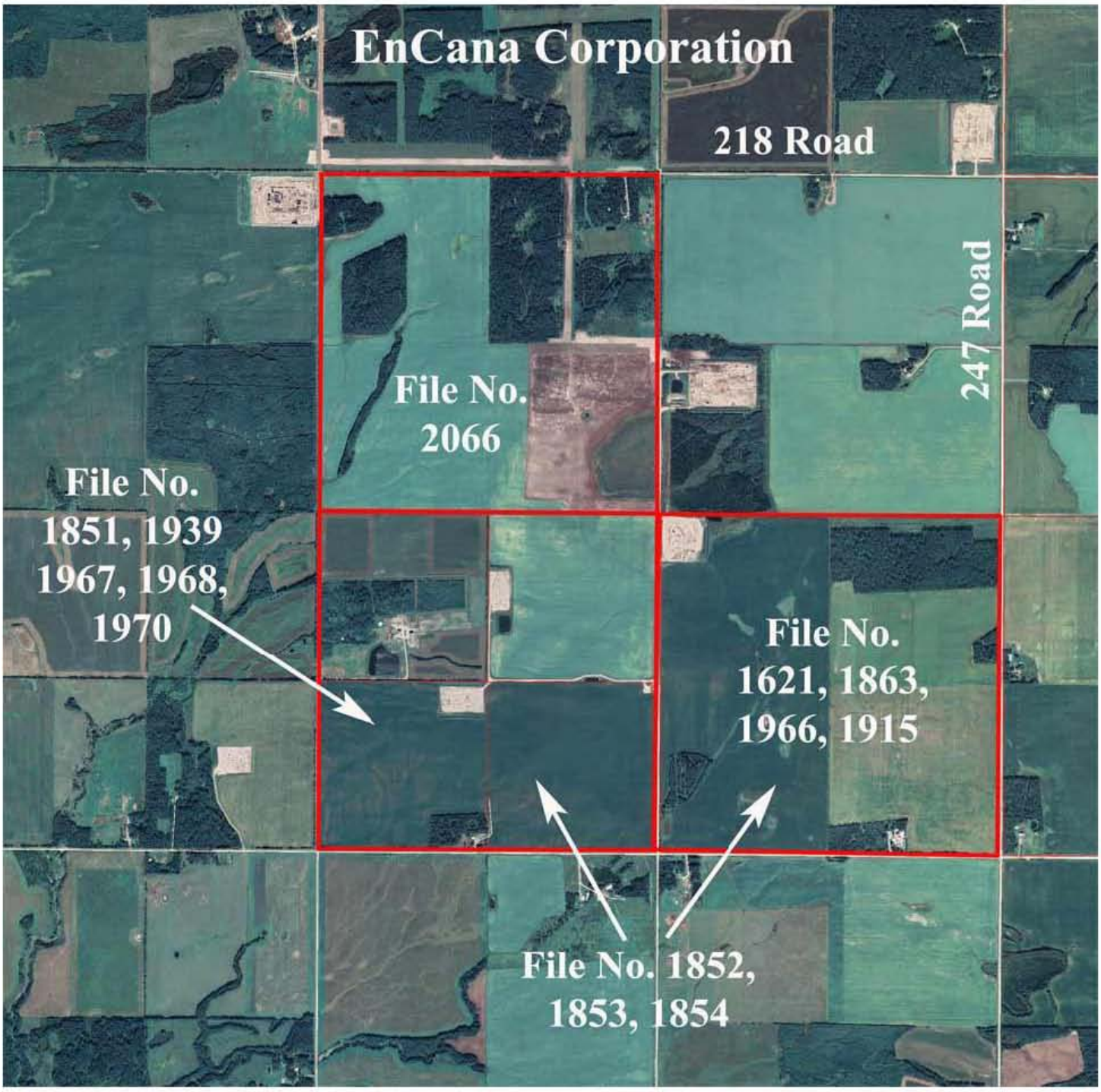
(APPLICANT)

AND:

Olaf Anton Jorgensen and Frances Diane Jorgensen

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Olaf Anton Jorgensen and Frances Diane Jorgensen to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

The project involves a permanent right of way over 3.765 acres and 5.403 acres of temporary work space.

The Oil and Gas Commission ("OGC") has issued a permit for this project identified in their records by Application Determination Number 100104589.

Mr. Jorgensen objects to the right of entry order including temporary work space. The Board is satisfied that it has the jurisdiction to issue a right of entry order for an "oil and gas activity" which includes the construction of a pipeline. I am satisfied that the temporary work space is required for the construction of the pipeline and is therefore part of an "oil and gas activity".

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

The Surface Rights Board orders:

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
   THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission permit 100104589.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $15,000.00 representing the first year's initial payment and prepaid damages.

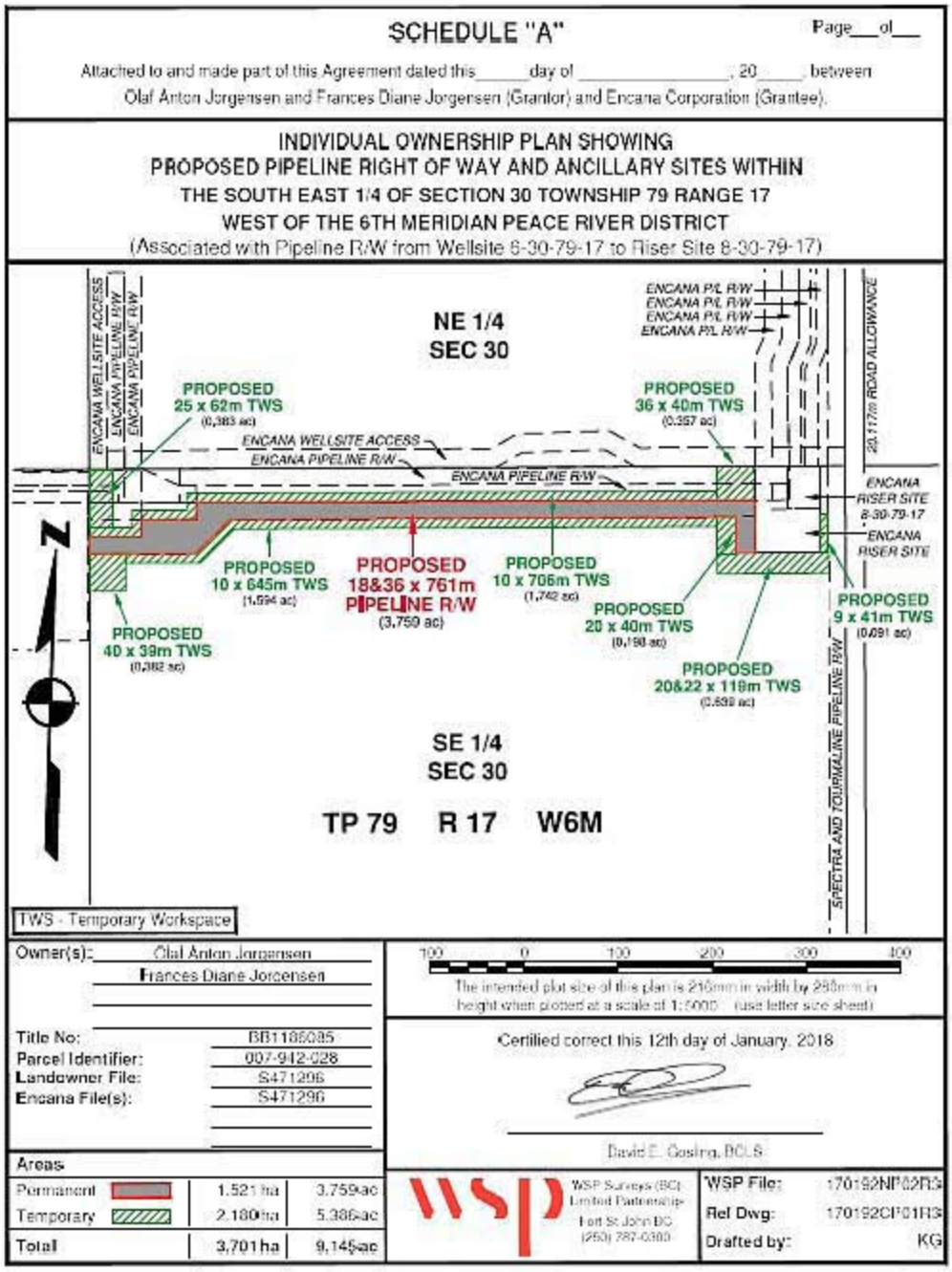
5. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

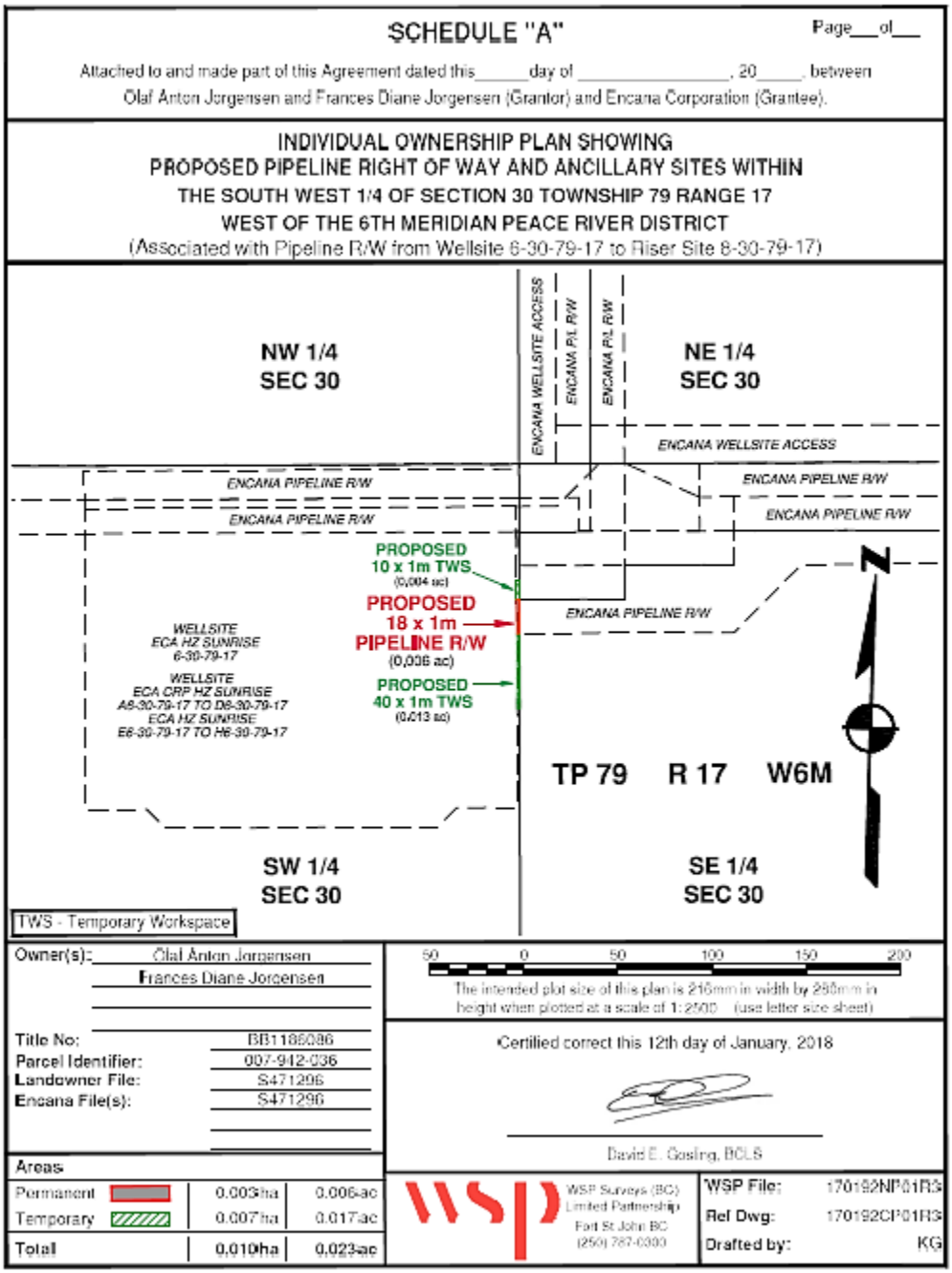
DATED: July 10, 2018

FOR THE BOARD

Rob Fraser, Mediator

Appendix "A"


SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 6-30-79-17 to Riser Site 8-30-79-17)
NE 1/4
SEC 30
SE 1/4
SEC 30
TP 79 R 17 W6M
ENCANA WELLSITE ACCESS
ENCANA PIPELINE R/W
ENCANA P/L R/W
20.117m ROAD ALLOWANCE
PROPOSED 25 x 62m TWS (0.383 ac)
PROPOSED 36 x 40m TWS (0.357 ac)
PROPOSED 10 x 645m TWS (1.594 ac)
PROPOSED 18&36 x 761m PIPELINE R/W (3.759 ac)
PROPOSED 10 x 706m TWS (1.742 ac)
PROPOSED 20 x 40m TWS (0.198 ac)
PROPOSED 40 x 39m TWS (0.382 ac)
PROPOSED 20&22 x 119m TWS (0.589 ac)
PROPOSED 9 x 41m TWS (0.091 ac)
ENCANA RISER SITE 8-30-79-17
ENCANA RISER SITE
SPECTRA AND TOURMALINE PIPELINE R/W
TWS - Temporary Workspace
Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen
Title No: BB1186085
Parcel Identifier: 007-942-028
Landowner File: S471296
Encana File(s): S471296
100 0 100 200 300 400
The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)
Certified correct this 12th day of January, 2018
David E. Gosling, BCLS
Areas
Permanent 1.521 ha 3.759ac
Temporary 2.180 ha 5.386ac
Total 3.701 ha 9.145ac
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0380
WSP File: 170192NP02R3
Ref Dwg: 170192CP01R3
Drafted by: KG


SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Grantor) and Encana Corporation (Grantee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH WEST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 6-30-79-17 to Riser Site 8-30-79-17)
NW 1/4
SEC 30
NE 1/4
SEC 30
SW 1/4
SEC 30
SE 1/4
SEC 30
ENCANA WELLSITE ACCESS
ENCANA P/L R/W
ENCANA P/L R/W
ENCANA WELLSITE ACCESS
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
ENCANA PIPELINE R/W
PROPOSED
10 x 1m TWS
(0,004 ac)
PROPOSED
18 x 1m
PIPELINE R/W
(0,036 ac)
PROPOSED
40 x 1m TWS
(0,013 ac)
WELLSITE
ECA HZ SUNRISE
6-30-79-17
WELLSITE
ECA CRP HZ SUNRISE
A6-30-79-17 TO D6-30-79-17
ECA HZ SUNRISE
E6-30-79-17 TO H6-30-79-17
TP 79
R 17
W6M
N
TWS - Temporary Workspace
Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen
Title No: BB1186086
Parcel Identifier: 007-912-036
Landowner File: S471296
Encana File(s): S471296
50 0 50 100 150 200
The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:2500 (use letter size sheet)
Certified correct this 12th day of January, 2018
David E. Gosling, BCLS
Areas
Permanent 0.003ha 0.006ac
Temporary 0.007ha 0.017ac
Total 0.010ha 0.023ac
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0393
WSP File: 170192NP01RS
Ref Dwg: 170192CP01RS
Drafted by: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 1970
Board Order No. 1970-1

July 10, 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 EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Encana Corporation

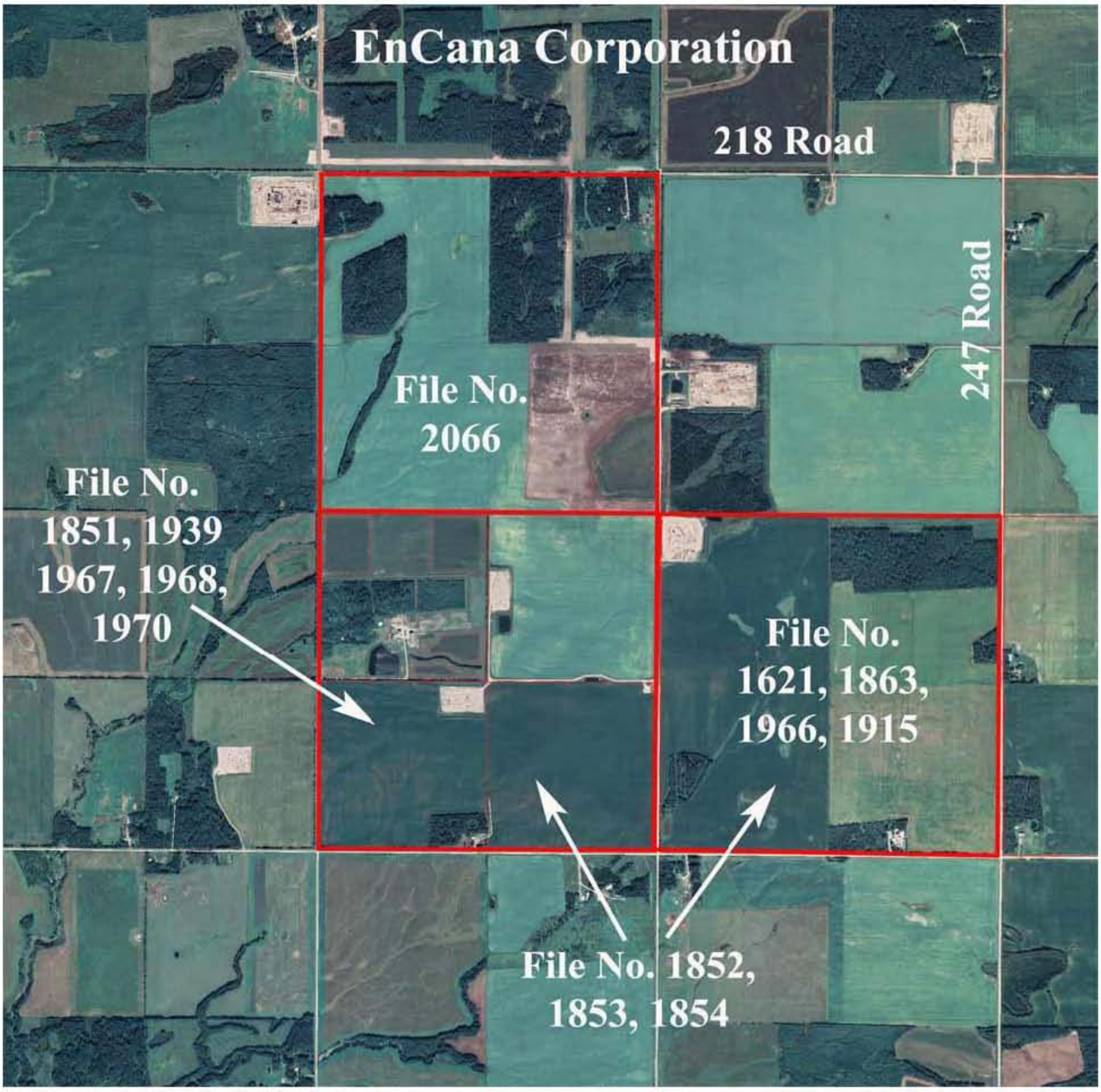
(APPLICANT)

AND:

Olaf Anton Jorgensen and Frances Diane Jorgensen

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Olaf Anton Jorgensen and Frances Diane Jorgensen to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

The project involves a permanent right of way over 1.192 acres.

The Oil and Gas Commission ("OGC") has issued a permit for this project identified in their records by Application Determination Number 100104588.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

The Surface Rights Board orders:

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of Riser Site in accordance with Oil and Gas Commission permit 100104588.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $2,500.00 representing the first year's initial payment and prepaid damages.

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.

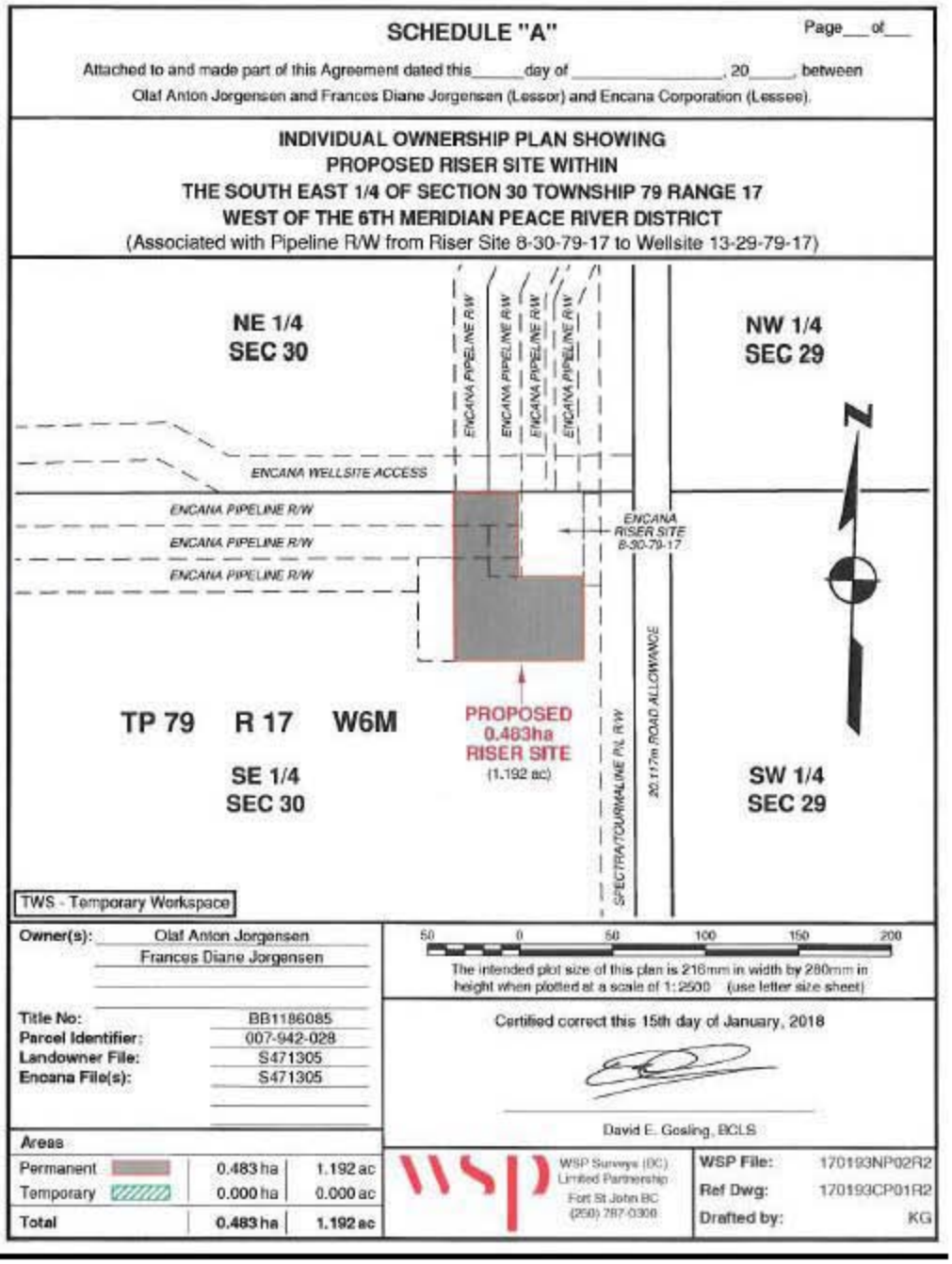
DATED: July 10, 2018

FOR THE BOARD

_____

Rob Fraser, Mediator

Appendix "A"


SCHEDULE "A"
Page___of___
Attached to and made part of this Agreement dated this_____day of _____, 20_____, between
Olaf Anton Jorgensen and Frances Diane Jorgensen (Lessor) and Encana Corporation (Lessee).
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED RISER SITE WITHIN
THE SOUTH EAST 1/4 OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Riser Site 8-30-79-17 to Wellsite 13-29-79-17)
NE 1/4
SEC 30
NW 1/4
SEC 29
ENCANA PIPELINE R/W
ENCANA WELLSITE ACCESS
ENCANA RISER SITE 8-30-79-17
N
TP 79 R 17 W6M
PROPOSED 0.483ha RISER SITE
(1.192 ac)
SPECTRA/TOURMALINE R/L R/W
20.117m ROAD ALLOWANCE
SE 1/4
SEC 30
SW 1/4
SEC 29
TWS - Temporary Workspace
Owner(s): Olaf Anton Jorgensen
Frances Diane Jorgensen
Title No: BB1186085
Parcel Identifier: 007-942-028
Landowner File: S471305
Encana File(s): S471305
50 0 50 100 150 200
The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:2500 (use letter size sheet)
Certified correct this 15th day of January, 2018
David E. Gosling, BCLS
Areas
Permanent 0.483 ha 1.192 ac
Temporary 0.000 ha 0.000 ac
Total 0.483 ha 1.192 ac
WSP Surveys (DC) Limited Partnership
Fort St John BC
(250) 787-0300
WSP File: 170193NP02R2
Ref Dwg: 170193CP01R2
Drafted by: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File Nos. 1973, 1974
Board Order No. 1973-74-1

May 22, 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 NORTH WEST ¼ OF SECTION 28 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXXCEPT PLAN PGP42560;
THE SOUTH EAST ¼ OF SECTION 33 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
THE NORTH EAST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

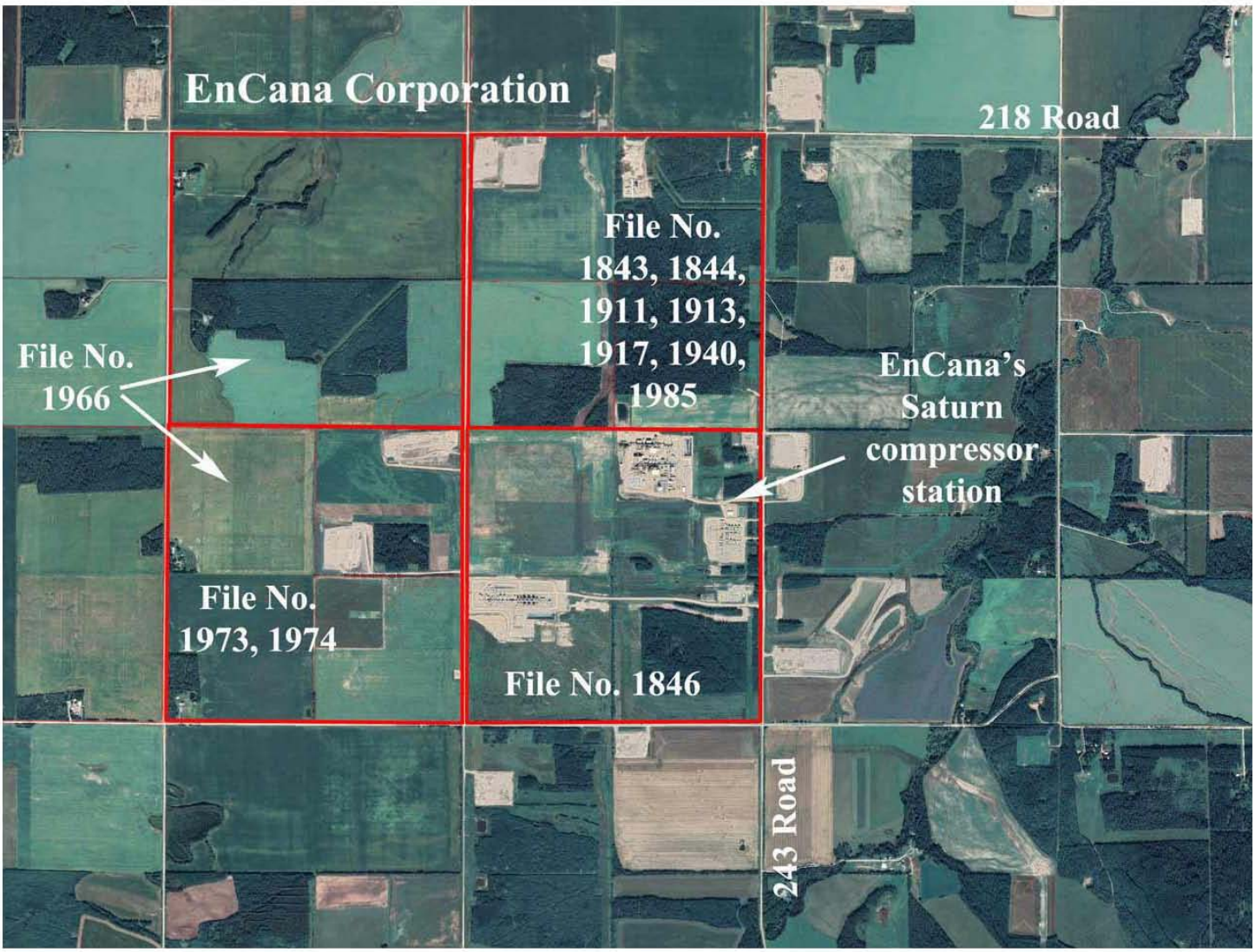
(APPLICANT)

AND:

Brian Ernest Derfler and
Lila Evangeline Derfler

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Heard: By way of written submissions
Appearances: Lars H. Olthafer, Barrister and Solicitor, for the Applicant
Patrice Brideau, Barrister and Solicitor, for the Respondents

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Introduction and Issue

[1] The Applicant, Encana Corporation ("Encana"), seeks right of entry to the Lands owned by the Respondents, Brian Ernest Derfler and Lila Evangeline Derfler, for the purpose of constructing and operating a proposed pipeline in three segments. Segments 1 and 2 are proposed to be uni-directional pipelines to move raw natural gas and liquids from well sites to a liquids hub. Segment 3 is a proposed bi-directional pipeline to move produced water from a Water Resource Hub (the "Water Hub") to various well sites for hydraulic fracturing activities and then return produced water from the well sites back to the Water Hub. The Derflers contests the Board's jurisdiction over Segment 3 (the "Water Line") submitting this segment is not a "pipeline" and, consequently, not a "flow line" within the meaning of the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act*.

[2] As the Board does not have jurisdiction over a pipeline that is not a "flow line" within the meaning of the legislation, the issue is whether the Board has jurisdiction over the Water Line.

The Water Line

[3] The Water Line will carry water for hydraulic fracturing operations from three sources: 1) water produced from wells in the water leg of the Sunrise field Cadotte "A" reservoir ("Cadotte produced water"); 2) water separated from wells producing gas, water and condensate in the Montney area ("Montney produced water"); and 3) hydraulic fracturing water flowback. Water is proposed to be transported from the

Water Hub to well sites for on-site storage until it is used in hydraulic fracturing operations. Once hydraulic fracturing operations are concluded, the gas, water and condensate recovered will be separated on site and liquid phases stored in tanks. The recovered water will be transported via the Water Line back to the Water Hub. At the Water Hub, the hydraulic fracturing flowback water will be treated, recycled and blended with Cadotte produced water and Montney produced water to be used again in hydraulic fracturing operations.

The Respondents' submission

[4] The Derflers submit the Water Line does not qualify as a "pipeline" within the meaning of the *Oil and Gas Activities Act* as it will not convey "produced water" or any other substances listed in (a) to (e) of the definition of "pipeline" in that Act, and consequently cannot be a "flow line" as defined. They submit the Water Line will not be conveying produced water but will be conveying produced water blended with either or both of non-produced water and chemicals for hydraulic fracturing. They submit what will be conveyed is not one of the substances listed in the definition of "pipeline". The submission that what will conveyed in the Water Line is not one of the substances listed in the definition of "pipeline" is not a submission previously considered by the Board.

Analysis – Is the Water Line a "flow line"?

[5] A "flow line", as defined, must also be a "pipeline" as defined. The term "pipeline" is defined in the *Oil and Gas Activities Act*, the relevant portions of which define a "pipeline" as "piping through which any of the following is conveyed:

a) …;
b) water produced in relation to the production of petroleum or natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;
c) …;
d) …,

e) other prescribed substances."

[6] The *Oil and Gas Activities General Regulation*, B.C. Reg. 274/2010 (the "Regulation"), prescribes various substances for the purpose of the definition of "pipeline" including at section 3(1)(a) "water or steam used for geothermal activities or oil and gas activities". The definition of "oil and gas activity" in the *Oil and Gas Activities Act* includes "the production, gathering, processing, storage or disposal of petroleum, natural gas, or both".

[7] I find the Water Line is a "pipeline" as it falls within either or both of subsections b) and e) of the definition.

[8] The water to be conveyed in the Water Line is "water produced in relation to the production of petroleum and natural gas". It includes Cadotte produced water, Montney produced water, and hydraulic fracturing water flowback, all of which have been produced in relation to the production of petroleum and natural gas.

[9] While there is no legislative definition of "produced water", the on-line Glossary published by the Oil and Gas Commission provides a definition of "produced water" as follows:

> Water flowing or is [*sic*] extracted to the surface from a natural gas or oil well, including water injected into the formation, and including any chemicals added during the production/treatment process. This includes flow-back fluids from well completion and stimulation operations. This also includes any fresh water not used for domestic purposes.

[10] The industry understanding of the term "produced water" and the phrase "water produced in relation to the production of petroleum and natural gas", therefore, includes the water to be conveyed in the Water Line.

[11] Even if all or some of the water in the Water Line is not "water produced in relation to the production of petroleum and natural gas", it is "water…used…for oil and gas activities" as prescribed by the Regulation. Hydraulic fracturing operations are completed for the production of natural gas in certain formations and the water used for hydraulic fracturing and recovered as flowback is water used for oil and gas activities. The Water Line, therefore, also falls with subsection e) of the definition of "pipeline".

[12] The term "flow line" is defined in the *Oil and Gas Activities Act* as follows:

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to of from a transmission, distribution or transportation line.

[13] The Board has considered the definition of "flow line" in a number of cases to determine the extent of its jurisdiction over pipelines and pipeline components. Those cases and the various findings of the Board respecting the term "flow line" are summarized in *Encana Corporation v. Strasky*, Order 1911/1913-1, and I will not repeat that summary here. Essentially, the Board has found that pipelines that function as part of the gathering system for the production of natural gas are "flow lines".

[14] The proposed Water Line will perform the same functions as water lines found by the Board to be flow lines within its jurisdiction in *Encana Corporation v. Ilnisky*, Board Order 1823-1, *Encana Corporation v. Jorgensen*, Board Order 1939-1, and *Encana Corporation v. Strasky*, Board Order 1955-1. In those cases the Board found pipelines used to carry water from the Water Hub to well sites for hydraulic fracturing and from well sites to the Water Hub including produced water and hydraulic fracturing flowback to be flow lines within the meaning of the legislation and within the jurisdiction of the Board. The Board found those similar pipeline segments function collectively with the other pipeline segments to produce and transport natural gas as part of the gathering system. Having considered the Respondents' submission respecting whether the

proposed Water Line is a “pipeline” and having found that it is, I see no reason in this case to depart from the analysis in the previous decisions finding similar pipeline segments to be “flow lines”.

[15] I am satisfied that the proposed pipeline inclusive of Segment 3 is a “flow line” over which the Board has jurisdiction.

Conclusion

[16] The Board has jurisdiction over Encana’s application for a right of entry order with respect to the proposed pipeline project.

DATED: May 22, 2018

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1975
Board Order No. 1975-1

November 27, 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 14 TOWNSHIP 25 PEACE RIVER DISTRICT
EXCEPT PLAN A754
(The "Lands")

BETWEEN:

Barry Reid and
Darrel Reid

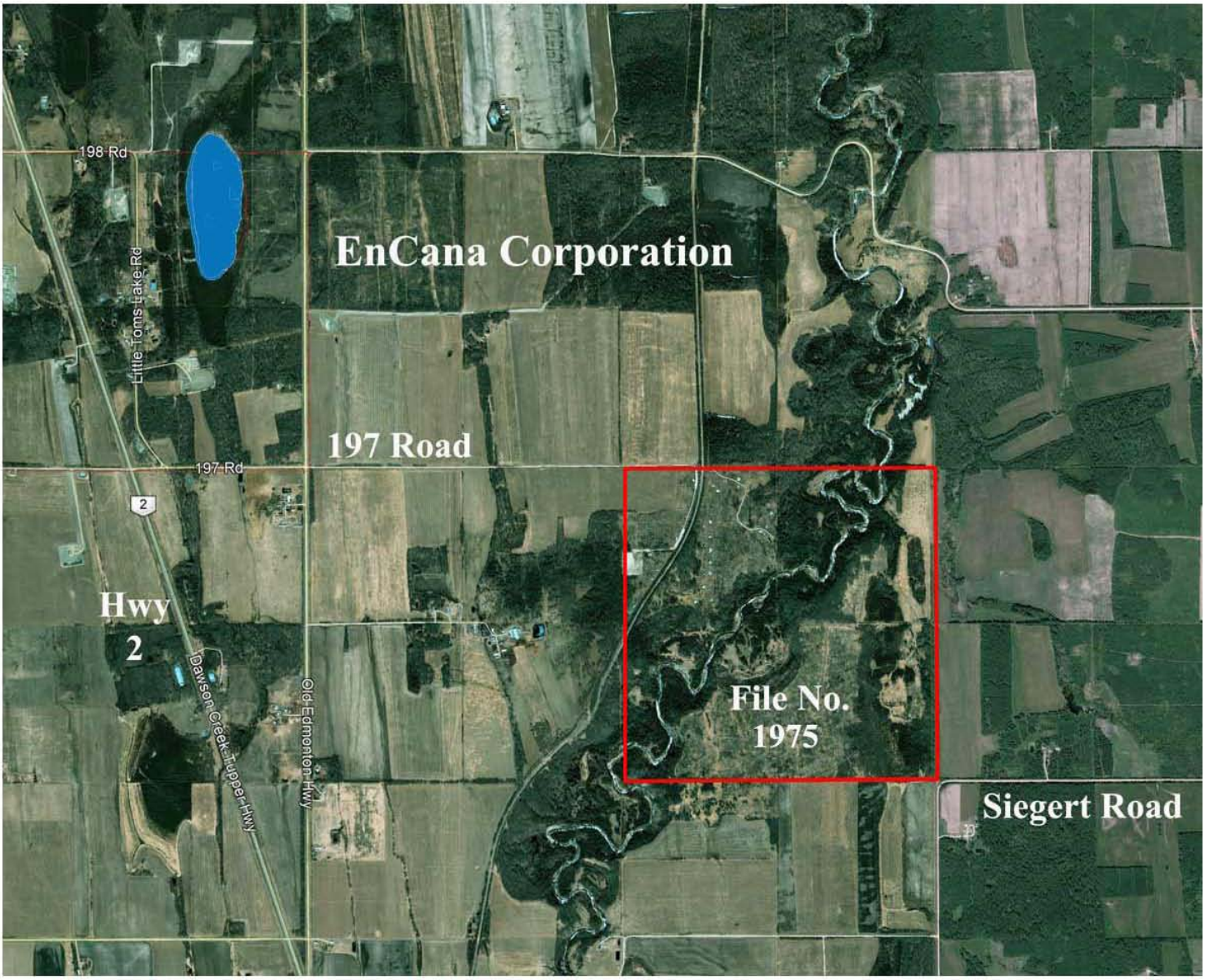
(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER


198 Rd
Little Toms Lake Rd
EnCana Corporation
197 Road
197 Rd
2
Hwy
2
Dawson Creek-Tupper Hwy
Old Edmonton Hwy
File No.
1975
Siegert Road

Heard: October 16, 2018 at Dawson Creek, BC
Appearances: Barry Reid for the Applicants
Tom Owen, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The applicants, Barry and Darrel Reid, seek review of the rent payable under a surface lease with Encana Corporation (Encana). The leased area is 3.121 acres and is used by Encana for an access road to a riser site. The annual rent payable under the lease is $2,500. Mr. Barry Reid, on behalf of both applicants, seeks to have the rent increased. Encana submits the current rent more than covers the ongoing and reasonably anticipated losses arising from the right of entry and submits the rent should be decreased. The effective date of this review is April 25, 2017.

ISSUE

[2] The issue is to determine whether the rent should be revised to reflect the ongoing and reasonably foreseeable loss to the owners of the Lands arising from Encana's continued use and occupation of the Lands.

[3] The onus is on the applicants to establish their ongoing and reasonably prospective loss and to establish that an increase to the rent is warranted (*Progress Energy Canada Ltd. v. Salustro*, 2014 BCSC 960).

PRELIMINARY MATTER

[4] Prior to the hearing, Mr. Reid asked the Board to make an order requiring Encana to produce the Encana agent or employee who negotiated each of the Encana leases relied on at the arbitration. He submitted requiring the agent who negotiated the leases relied on by Encana to testify would allow the landowner to cross-examine that individual with respect to the circumstances of the agreement. I did not make the requested order.

[5] It may be presumed that surface leases, like any other contract, speak for themselves. Extrinsic evidence may be used to prove otherwise, such as for example that there is a collateral contract, unconscionability, or additional terms, or as an aid to construction. But if a party is alleging a contract does not speak for itself, then it is up to that party to lead evidence to that effect by calling the parties to the contract or through cross-examination of the witnesses put forward.

[6] Other surface leases are only helpful to the extent they demonstrate a pattern of dealings, regardless of evidence of actual loss (*Encana Corporation v. Lumnitzer*, Order 1840/1847-2, November 24, 2016; *Dietz v. CNRL*, Order 1870-1, March 6, 2017). Proof of the negotiation process is not necessary to make out a valid pattern of dealings (*Enbridge Pipelines v. Karpetz*, 2010 ABCA 185).

[7] It will generally, therefore, not be necessary to have the persons who actually negotiated a surface lease attend to give evidence of the negotiations. And unless there is evidence to support the need for extrinsic evidence to establish circumstances beyond those addressed in the contract itself relevant to the question of whether the leases establish a pattern of dealings and the individual tendered to provide evidence of the contract is not able to provide evidence of the relevant circumstances, it will not generally be necessary to require attendance of the persons who actually negotiated the contract.

[8] I was not satisfied of the necessity to call the Encana agents who actually negotiated any of the Encana leases relied on by Encana in this arbitration.

BACKGROUND

[9] The Lands have been owned by members of the Reid family for approximately 90 years. They were originally purchased by Mr. Reid’s grandfather and passed to his father upon his grandfather’s death. His father owned the lands until his death in 2008,

when they passed to Mr. Reid's mother, Martha Reid, as the executrix of his father's estate.

[10] It was soon after Mr. Reid's father's death that Encana approached Martha Reid respecting entry to the Lands for a pipeline right of way and an access road to a riser. They entered a surface lease and right of way agreement on April 25, 2008. The annual rent payable under the lease was $1,500.

[11] Mr. Reid is extremely critical of Encana's conduct in entering the surface lease and right of way agreement with his mother in light of his mother's age, and physical and mental condition at the time. He is of the view that his mother was not mentally competent, Encana entered an unconscionable contract, and the original lease was invalid.

[12] Martha Reid died in May 2009, and the Lands passed to Mr. Reid and his sister as co-executors of his mother's estate. Upon his sister's death in 2012, Mr. Reid became the sole executor of Martha Reid's estate. In that capacity, he attempted to get in touch with Encana about the lease. He served a Form 2 to commence rent review proceedings and filed an application for rent review with the Board in June of 2012. The parties successfully resolved the application and on May 9, 2013 entered a new surface lease effective April 25, 2008 (the Surface Lease) to replace the original surface lease. The Surface Lease increased annual rent to $2,500 retroactive to April 25, 2009. It is the rent payable under the Surface Lease that is the subject of this application.

[13] Mr. Reid sees the new agreement reflected in the Surface Lease as an acknowledgment by Encana that the rent of $1,500 in the original surface lease with his mother was inadequate. He continues to be angry and frustrated with Encana for the manner in which they dealt with his mother and deeply resents that "in the name of building a pipeline and a road, Encana would walk into an assisted living facility and sign a contract."

[14] Encana does not acknowledge that the original lease was unconscionable or invalid. It submits it was dealing with the right person as Martha Reid did not have a Power of Attorney and provided some evidence that Mr. Reid's sister was with their mother when she signed the agreement. Encana says it was not able to register the original lease in the Land Title Office because the original lease had been signed by Martha Reid as the lessor, whereas ownership of the Lands were registered to Martha Reid as Executrix of her late husband's estate. Encana says the Land Title Office would not permit the original surface lease to be registered, so to protect its interest in the Lands, it needed to enter a new lease.

[15] Whether the original lease was valid, the conduct of Encana, the capacity of Mrs. Reid in entering the original lease, the sufficiency of the original rent, and the reasons for entering a replacement lease are not relevant to the rent review before me in this arbitration and I make no findings on any of these matters. I set out the background above to acknowledge that these issues are important to Mr. Reid and are the source of considerable stress, anger and resentment. However, the only issue before me in this arbitration is to determine whether the rent of $2,500 payable under the Surface Lease is adequate to compensate him and his brother as co-owners of the Lands for their prospective ongoing and reasonably foreseeable loss until the rent becomes eligible for review again.

THE LANDS

[16] The Lands comprise a half section and are owned by Mr. Reid and his brother, Darrel Reid.

[17] The Lands are undeveloped other than with two small cabins and a couple of outbuildings in a clearing close to the south east corner boundary. Mr. Reid and his family use the Lands for recreational purposes. No one lives on the Lands. Mr. Reid visits the Lands at least a couple of times a year, sometimes more often, and will stay for three to four days at a time. His brother is generally able to visit the Lands a little more frequently, maybe four or five times a year, again staying three to four days at a

time. The Lands are used for family events such as reunions, weddings and memorial services. Mr. Reid expressed a deep emotional connection to the Lands. He goes there to connect with his ancestors.

[18] The leased area comprises 3.121 acres. It is a 15 metre wide roadway extending from just west of the middle of the Lands in a north east direction diagonally to the north boundary of the Lands. The road connects a well pad operated by Encana located just south of the Lands to a riser site north of the Lands. The Encana well site is accessed by an access road from the south. There is a gate to the south of the well site and another gate at the start of the subject access road at the north edge of the well site on the south boundary of the Lands. There is a gate on the north boundary of the Lands across the subject access road and another gate closer to the riser site a little to the north.

[19] A pipeline right of way lies on the east side of the access road containing a pipeline from the Encana well site just south of the Lands to the riser site just north of the Lands.

[20] The riser site is accessed by pickup truck for pigging once a month. Additionally, the access road is used by vegetation management crews for weed spraying. Spraying occurs once or twice in the summer months. The road will be accessed by maintenance crews or snowplows as required to enable the monthly access for pigging.

[21] There is a well pad operated by Murphy Oil Ltd. (Murphy) north of the Lands. An access road to this well site runs the length of the Land's eastern boundary. Another Murphy well pad is just south of the Lands and to the east of the Encana well site. A pipeline lies adjacent to the access road connecting the two Murphy well sites.

[22] The cabins on the Lands are approximately 30-35 metres from the Murphy access road.

[23] The Lands drain to the north. Water from a borrow pit south of the Lands has flooded an entire strip of the Lands from the south to north boundary to the west of the cabins and to the east of the subject access road. As a result of the flooding, approximately ¾ of the Lands including the access road are not accessible from the cabins other than with an amphibious vehicle. The borrow pit is not operated by Encana.

[24] The Tupper River runs through the western side of the Lands.

[25] The Lands are treed with spruce, pine, aspen and cottonwood. A large area of the Lands was logged in the mid 1990's. The trees have been allowed to regrow naturally. Sixty-three acres of the previously logged area lies to the west of the access road. The entire area of the Lands lying west of the access road is 173 acres including unlogged land and area comprising the Tupper River valley.

EVIDENCE AND ANALYSIS

[26] Section 154(1) of the *Petroleum and Natural Gas Act* provides a non-exclusive list of factors the Board may consider in determining compensation payable for a right of entry either periodically or otherwise. Section 154(2) provides that in determining the amount to be paid in a rent review application, the Board must consider any change in the value of money and of the land since the surface lease was originally made. I will discuss the factors set out in section 154 to the extent they are relevant to this application and to the extent I was provided evidence of them.

Value of the land and change in value of the land

[27] In 2013, BC Assessment assessed the Lands at $144,000. In 2017, BC Assessment assessed the Lands at $210,000 suggesting an increase in value of 36%.

Loss of profit

[28] The land is not farmed or used for any other income generating activity. Mr. Reid expressed concern that the presence of the access road and pipeline right of way would prevent logging of the Lands in future. Ashlin Ray of Encana gave evidence that Encana works with logging companies and landowners all the time to facilitate safe crossing of a pipeline right of way or access road by logging equipment. The evidence does not establish that the presence of either the access road or pipeline right of way would prevent future logging of the Lands causing potential loss of income. In any event, Mr. Reid acknowledged that he had no plans to log the Lands over the next few years. Loss of income from logging is not, therefore, reasonably foreseeable in the time prior to the lease's next eligibility for rent review.

[29] The evidence is that Encana typically pays $250/acre for bushland. Mr. Reid did not dispute that $250/acre was appropriate compensation for loss of profit. Although Mr. Reid does not in fact experience loss of profit as a result of the Surface Lease, I will nevertheless use $250/acre for this factor in assessing an appropriate annual rent.

Severance

[30] Mr. Reid claims that the 173 acres west of the access road are effectively severed by the lease and should be included in the lease area for the purpose of an annual rent. He submits there is no way to access to the 173 acres west of the access road other than to cross the pipeline and access road.

[31] Mr. Reid submits he is beholden to Encana to get the permission to cross the right of way and access road in order to develop or engage in any development of that area. There is no evidence, however, of any plans to develop the area or otherwise use the area for income generating purposes or in any manner other than as currently used as recreational land. Further, there is no evidence that Encana would not permit or facilitate safe crossing of the right of way and access road by equipment or vehicles required for the development of the land to the west. While, Mr. Reid would need to seek Encana's permission for heavy equipment to cross the right of way and access

road, the evidence of Ashlin Rae is that such permission is regularly given and Encana will work with landowners and contractors to ensure safe crossing is available at no cost to the landowner.

[32] There is no evidence that the landowners' use for recreational purposes of the 173 acres to the west of the access road has been lost as a result of Encana's right of entry.

[33] In the alternative, Mr. Reid argued rent should be paid for the 63 acres west of the access road that were previously logged. There is likewise no evidence that the 63 acres previously logged cannot be used, developed or logged as a result of the access road and cannot continue to be used as they have been a recreational land. There is no basis for increasing the lease area for severance and I will use the lease area of 3.121 acres to calculate ongoing rent.

Nuisance and Disturbance

[34] Mr. Reid's evidence was that from the cabins he can hear traffic on the access road. He can also hear traffic on the Murphy access road and workers on the Murphy well site immediately to the south east.

[35] Ms. Rae's evidence was that Encana personnel and contractors use the access road for approximately one hour to one and half hours a month. Her evidence was that vehicle traffic on an access road to a riser site is less than on an access road to a well site. Well sites typically require access daily by an operator, as opposed to monthly for a riser site, as well as access by maintenance service rigs.

[36] Mr. Reid's evidence was that he often finds the gates have not been locked. His evidence was that when he visited the Lands just prior to the hearing, it was the first time he had found the gates locked. On his visits to the Lands, he finds litter, vehicle tracks, fire pits, animal drag tracks and other evidence of hunters and trespassers having been on the Lands. Ms. Rae's evidence was that she had not received any reports from operators of damaged locks or of other persons using the access road.

[37] I accept Mr. Reid's evidence that he has found gates unlocked in the past and has found evidence of trespassers. Mr. Reid does not spend a lot of time on the Lands, so while I accept that he has experienced and may continue to experience nuisance and disturbance in the form of trespassers and traffic, these are not nuisances with which he is faced daily as may someone who lives full time on land subject to a right of entry.

[38] I also accept Ms. Rae's evidence that Encana's use of the access road is minimal compared to the use of an access road to a well site and that the consequent nuisance and disturbance from traffic using this access road is likely less than that associated with an access road to a well site.

[39] Mr. Reid expressed considerable frustration in his dealings with Encana. He estimated that he spends about 10 hours a year on activities related to Encana's right of entry including inspecting the property, checking if the gates are locked, reporting issues to Encana, and dealing with correspondence. In terms of the value of his time, Mr. Reid works as an independent consultant and sessional instructor. For some of his work, he earns in excess of $100 hour.

The effect of other rights of entry

[40] Mr. Reid gave evidence that oil and gas activity in the area has increased over the years. Certainly, the Lands are impacted not only by Encana's activities but also by Murphy's activities. Mr. Reid does not blame Encana for Murphy's activities. He does not blame Encana for the flooding to the Lands, but wondered to what extent the presence of the Encana access road affected drainage. In the absence of any evidence that Encana's access road has in fact contributed to nuisance or damage caused by other operators I am not able to conclude that rent is payable for this factor.

Terms of other surface leases

[41] Mr. Reid provided evidence of rents payable under seven surface leases, including two Encana leases, six of which were for access roads only, and one of which was for a wellsite and access road. They ranged in date from 2006 to 2014. Mr. Reid also relied on his recent rent renewal with Murphy Oil respecting its access road lease on the Lands. The Murphy Oil lease is for 1.99 acres. The new annual rent, effective November 2017, is $3,500.

[42] Ms. Heidi Berscht, of Encana, also provided evidence of surface leases. Her evidence was that two of the Encana leases relied on by Mr. Reid had been cancelled. Ms. Berscht provided five surface leases for access roads to risers and three surface leases for access roads to padsites, one of which was for a site relied on by Mr. Reid. The access road to riser site leases range in date from 2016 to 2018. The access road to padsite leases range from 2014 (being the one relied on by Mr. Reid) to 2016. Ms. Berscht's evidence was that there are not a lot of surface leases for access roads to riser sites.

[43] Mr. Reid calculates a per acre rate for each of the surface leases provided by dividing the total annual rent by the number of acres leased. Equating leases on a per acre basis is not appropriate if the various components of the rent are not calculated on a per acre basis.

[44] The Encana leases provide a breakdown of the rent as between loss of profit and nuisance disturbance. The leases provided by Mr. Reid involving operators other than Encana, do not. The Encana surface leases compensate loss of profit for bushland at $250/acre. The compensation for nuisance and disturbance ranges from $250 to $2,000, with $2,000 being paid for access roads to well sites. Nuisance and disturbance relating to access roads to riser sites ranges from $250 to $1,000, with $1000 being paid where the access road passes within 50 metres of the landowners' residence. The average annual compensation for nuisance and disturbance for access

roads to riser sites is $587. If the $1000 payment related to an access road in close proximity to a residence is removed, the average payment is $483.75.

[45] Other surface leases are only helpful to the extent they establish a pattern of dealings for comparable projects in comparable circumstances (*Encana Corporation v. Lumnitzer*; *Dietz v. CNRL*). None of Mr. Reid's comparables are for comparable projects in that they are for access roads to wellsites and not access roads to riser sites. While Encana has provided leases for access roads to riser sites, none of those leases cut across the whole of a piece of land as does the subject lease. While neither party has provided evidence that sufficiently establishes a specific pattern of dealings, the leases do indicate that nuisance and disturbance paid for access roads to riser sites is typically less than that paid for access roads to padsites.

[46] The leases support the evidence that Encana typically compensates for loss of profit at $250/acre for bushland.

Change in the value of money

[47] Mr. Reid provided a printout of the Bank of Canada's Inflation calculator indicating that at basket of goods and services that cost $2,500 in 2013 would cost $2,726.46 in 2018 for an increase of 9.1%. I have taken the liberty of using the Bank of Canada's website to calculate the change between 2013 (when the Surface Lease was negotiated) and 2017 (the effective date of this rent review) at 6.08%. A basket of goods and services that cost $2,500 in 2013 would cost $2,652.07 in 2017.

Determining Annual Rent

[48] Applying loss of profit of $250/acre to 3.121 acres equates to $780.25. The current rent of $2,500 therefore allows $1,719.75 for nuisance and disturbance. This amount is higher than that paid for nuisance and disturbance in any of the leases for riser site access roads before me. Encana submitted that $500 for nuisance and disturbance was justified and that the rent should be reduced to $1,280.

[49] I am satisfied that the intangible nuisance and disturbance from this site is minimal in relation to that from access roads to padsites including the Murphy access road on the Lands. It makes sense that the payment for intangible nuisance and disturbance for the Murphy road would be higher than for this road because of the difference in the volume and nature of traffic as well as the proximity of the Murphy road to the cabins. I accept that a payment of $500 would not be out of line with other Encana leases to riser site access roads, but am not satisfied it will fully compensate Mr. Reid for nuisance and disturbance.

[50] Mr. Reid also provided evidence of tangible nuisance and disturbance in the form of his time spent in relation to dealing with Encana generally and in inspecting the lease. His estimate of 10 hours per year at $100 equates to $1,000. The evidence supports a payment for both tangible and intangible nuisance of at least $1,500.

[51] Considering the evidence as a whole, I am satisfied that the current rent of $2,500 continues to adequately compensate Mr. Reid for his reasonably foreseeable prospective losses until the rent becomes eligible for renewal again. I am not satisfied that the rent needs to be increased so as to continue to compensate Mr. Reid for his ongoing losses associated with the Surface Lease, but neither do I accept that it significantly over compensates Mr. Reid and that it should be reduced.

CONCLUSION

[52] The annual rent payable under the Surface Lease shall remain at $2,500 effective April 25, 2017.

DATED: November 27, 2018

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1984
Board Order No. 1984-1
September 12, 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 WEST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

THE SOUTH ½ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

ENCANA CORPORATION

(APPLICANT)

AND:

RODNEY ALLEN STRASKY and KIM LORI STRASKY

(RESPONDENTS)

BOARD ORDER


EnCana Corporation
File No.
1984
259 Rd
260 Road
260 Rd
261 Road
261 Rd
Rose Prairie Rd

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Rodney Allen Strasky and Kim Lori Strasky to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

On September 11, 2018, I convened a telephone mediation to discuss the issues of access and compensation.

Mr. Strasky raised concerns regarding temporary work space, that is not included in the permit issued by the OGC. The Board is satisfied that it has the jurisdiction to issue a right of entry order for an "oil and gas activity" which includes the construction of a pipeline. I am satisfied that the temporary work space is required for the construction of the pipeline and is therefore part of an "oil and gas activity".

Under the provisions of the Petroleum and Natural Gas Act, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the portions of lands legally described as THE SOUTH WEST ¼ OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT and THE SOUTH ½ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT, 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 multiple flow lines and associated works in accordance with Oil and Gas Commission Authorization No. 100101579.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Right of Entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $82,000.00 representing the first year's initial payment and prepaid damages.

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 this 12th day of September 2018.

FOR THE BOARD

Rob Fraser, Mediator

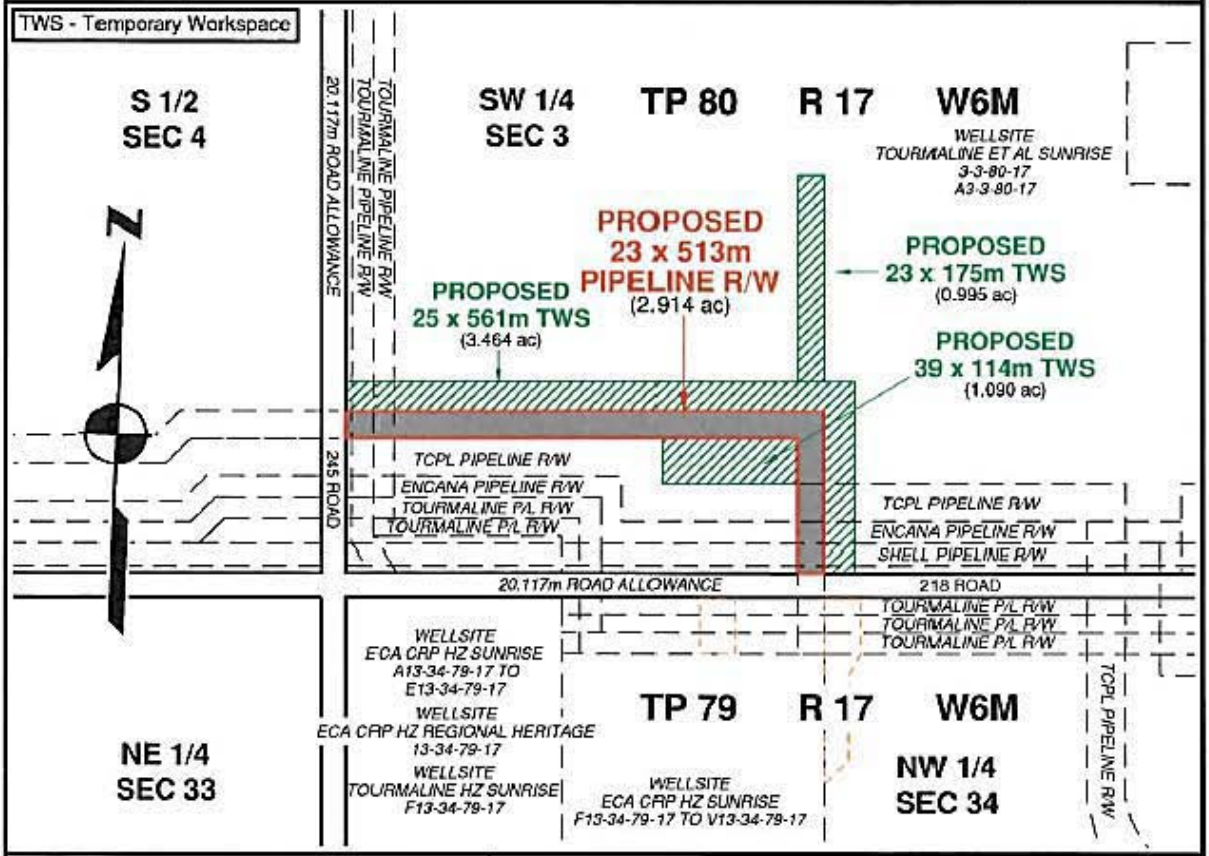
Appendix "A"

SCHEDULE "A"

Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Rodney Allen Strasky and Kim Lori Strasky (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH WEST 1/4 OF SECTION 3 TOWNSHIP 80 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-5-80-17 to Wellsite 13-34-79-17)



Owner(s): Rodney Allen Strasky
Kim Lori Strasky

Title No: FB499872
Parcel Identifier: 014-519-879
Landowner File: S472926
Encana File(s): S470705

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1:5000 (use letter size sheet)

Certified correct this 22nd day of March, 2018

Emanuel Lys, BCLS

Areas			
Permanent		1.179 ha	2.914 ac
Temporary		2.246 ha	5.549 ac
Total		3.425 ha	8.463 ac

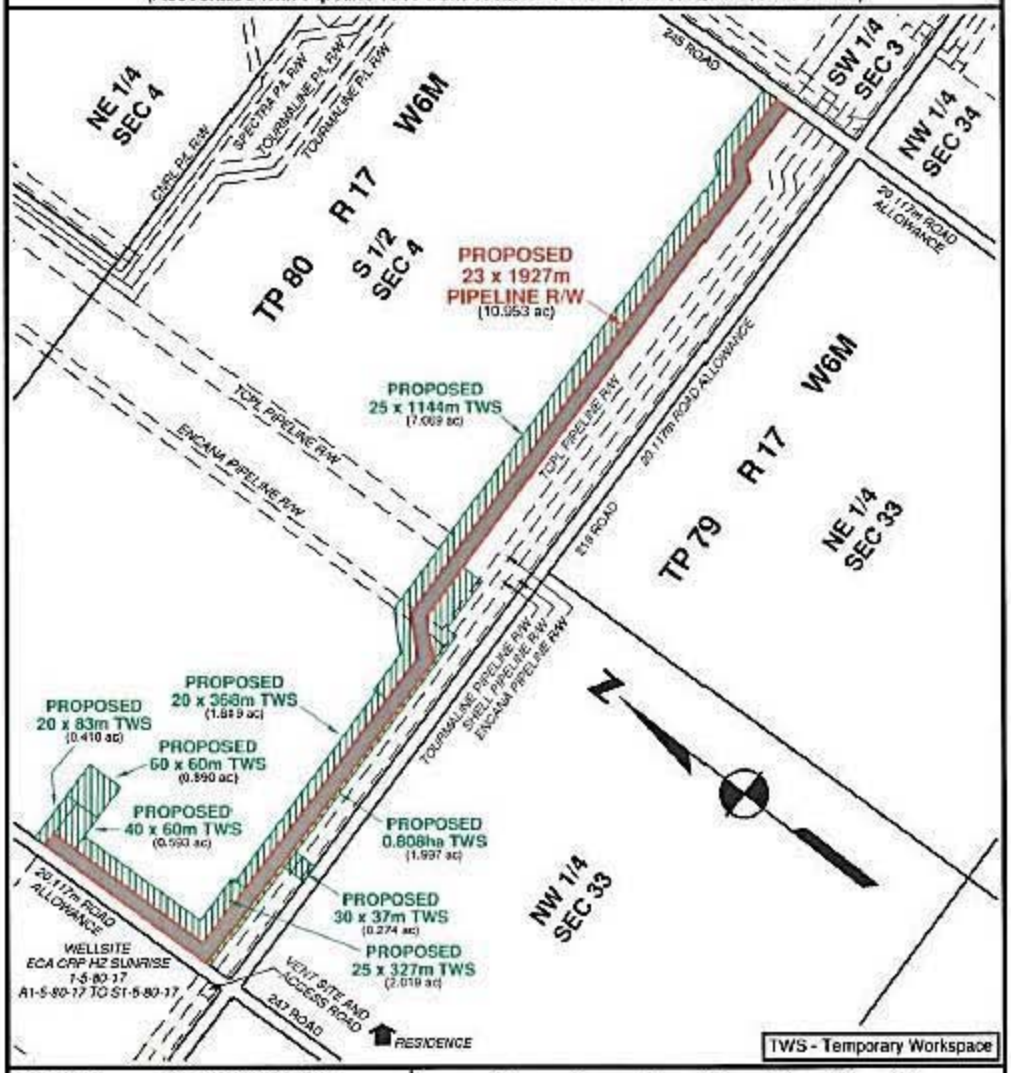
WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 171-15874-00-001-00-PIPIP002-R0
Ref Dwg: 171-15874-00-001-00-PIPCP001-R0
Drafted by: KG/SP

SCHEDULE "A" Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Rodney Allen Strasky and Kim Lori Strasky (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN
THE SOUTH 1/2 OF SECTION 4 TOWNSHIP 80 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-5-80-17 to Wellsite 13-34-79-17)



Owner(s):	Rodney Allen Strasky Kim Lori Strasky
Title No:	FB498875
Parcel Identifier:	011-750-243
Landowner File:	S472925
Encana File(s):	S470705

100 0 100 200 300 400 500

The intended plot size of this plan is 216mm in width by 356mm in height when plotted at a scale of 1:7500 (use legal size sheet)

Certified correct this 22nd day of March, 2018

Emanuel Lys, BCLS

Areas		
Permanent	4.432 ha	10.953 ac
Temporary	6.098 ha	15.071 ac
Total	10.530 ha	26.024 ac

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 171-15874-00-001-00-PIPIP001-R0
Ref Dwg: 171-15874-00-001-00-PIPCP001-R0
Drafted by: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said Lands.

File No. 1985
Board Order No. 1985-1
September 12, 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 NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

ENCANA CORPORATION

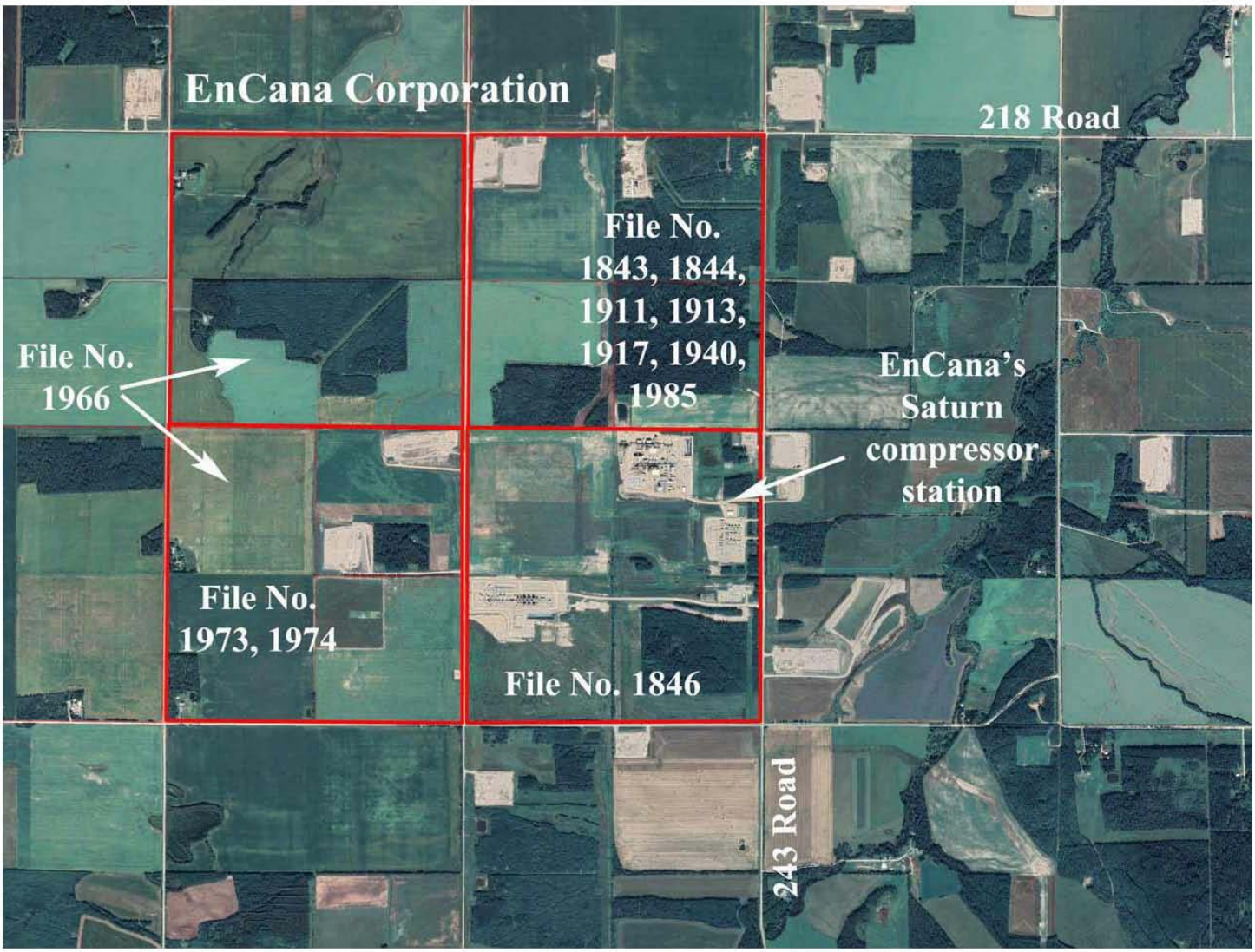
(APPLICANT)

AND:

TAILWIND PROPERTIES LTD.

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
File No.
1843, 1844,
1911, 1913,
1917, 1940,
1985
File No.
1966
EnCana's
Saturn
compressor
station
File No.
1973, 1974
File No. 1846
243 Road

Encana Corporation (“Encana”) seeks a right of order to access certain lands legally owned by Tailwinds Property Ltd. to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

On September 11, 2018, I convened a telephone mediation to discuss the issues of access and compensation.

Under the provisions of the Petroleum and Natural Gas Act, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the right to enter and access the portions of lands legally described as THE NORTH WEST ¼ OF SECTION 34 TOWNSHIP 79 RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT, 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 multiple flow lines and associated works in accordance with Oil and Gas Commission Authorization No. 100101579.

2. **Encana Corporation’s** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Right of Entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $1,200.00 representing the first year’s initial payment and prepaid damages.

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 this 12th day of September 2018.

FOR THE BOARD

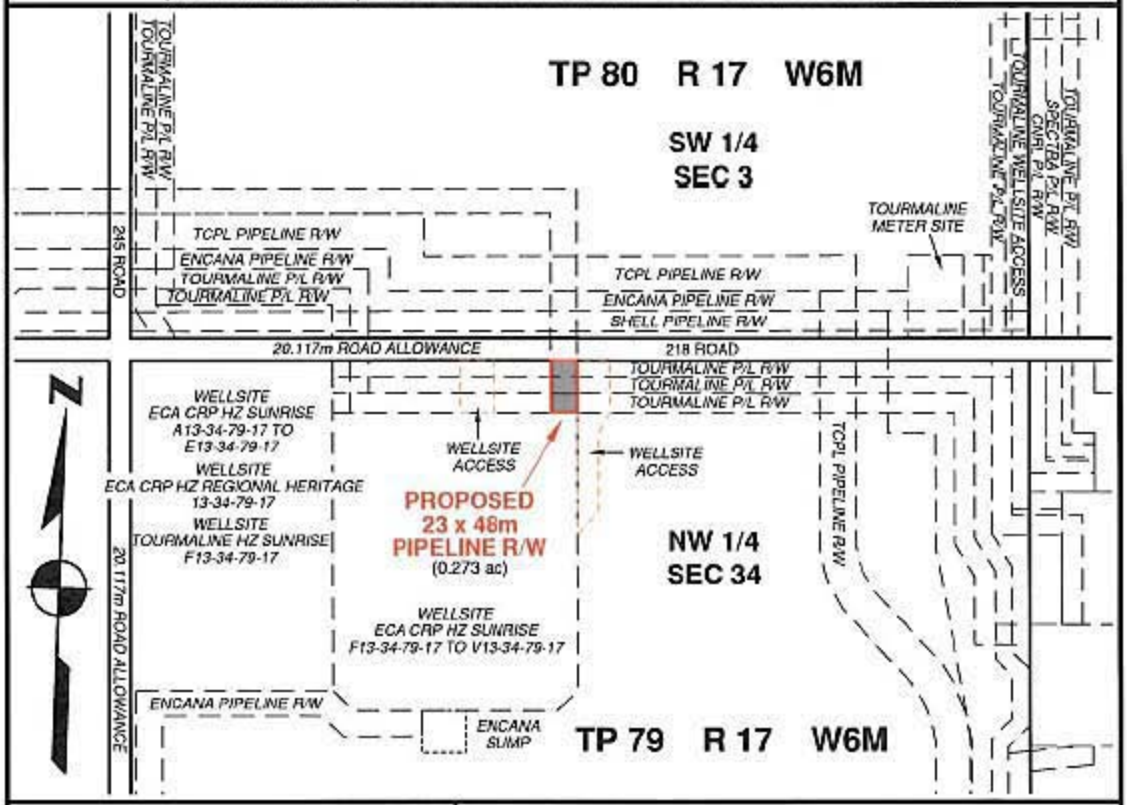
Rob Fraser, Mediator

Appendix "A"

SCHEDULE "A" Page___of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between Tailwind Properties Ltd., Inc.No. BC0520501 (Grantor) and Encana Corporation (Grantee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY WITHIN
THE NORTH WEST 1/4 OF SECTION 34 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 1-5-80-17 to Wellsite 13-34-79-17)



Owner(s):	Tailwind Properties Ltd., Inc.No. BC0520501
Title No:	CA3739877
Parcel Identifier:	014-521-865
Landowner File:	S472927
Encana File(s):	S470705

100 0 100 200 300 400

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 5000 (use letter size sheet)

Certified correct this 22nd day of March, 2018

Emanuel Lys, BCLS

Areas			
Permanent	0.110 ha	0.273 ac
Temporary	0.000 ha	0.000 ac
Total	**0.110 ha**	**0.273 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 171-15874-00-001-00-PIPIP003-R0
Ref Dwg: 171-15874-00-001-00-PIPCP001-R0
Drafted by: KG

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said Lands.

File No. 2065
Board Order 2065-1

August 16, 2019

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 21, TOWNSHIP 25, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

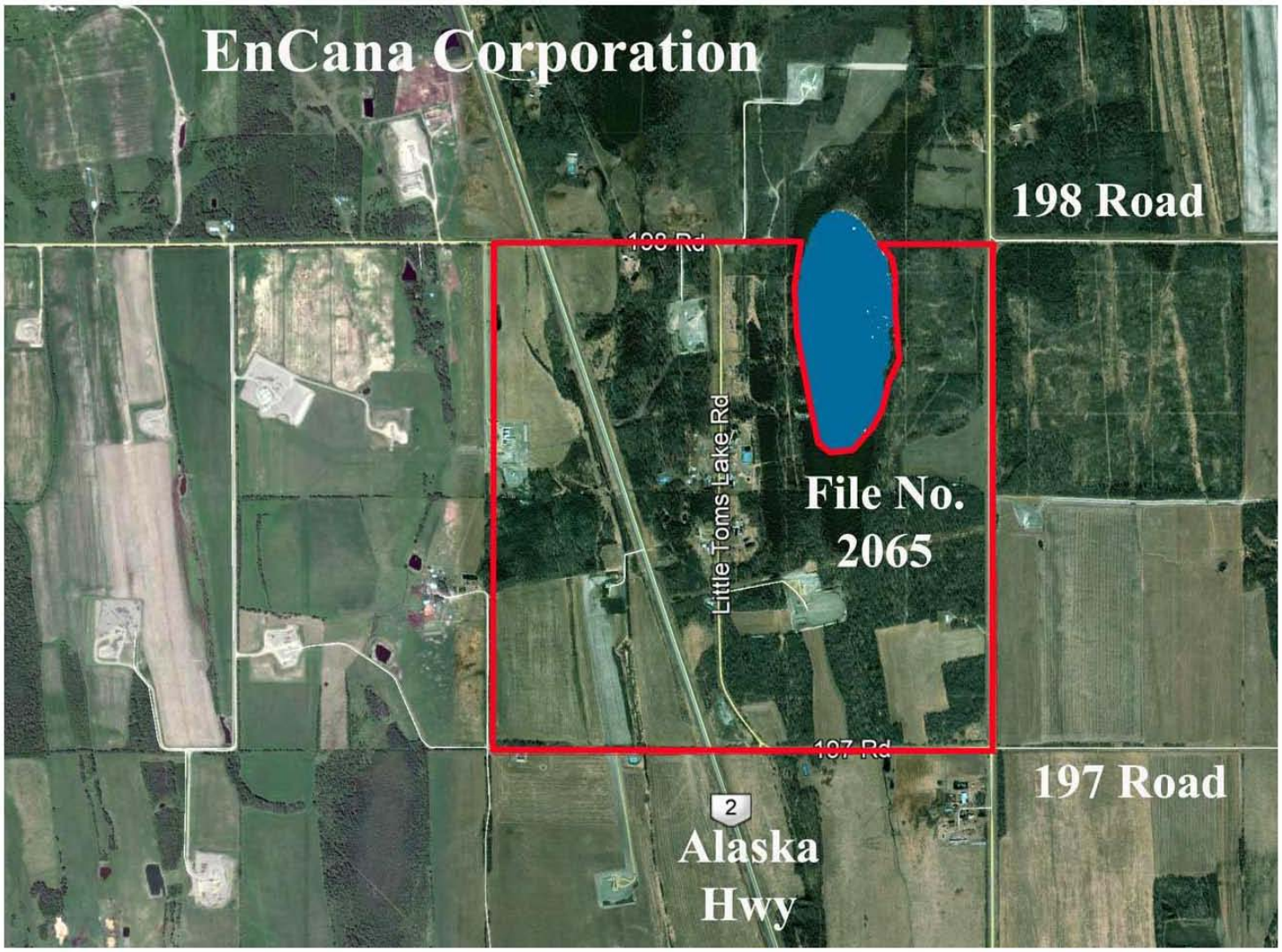
APPLICANT

AND

GARRY BRATT
FRANK JOHN BRATT AND
JOHN HENRY BRATT

RESPONDENTS

BOARD ORDER


EnCana Corporation
198 Road
Little Toms Lake Rd
File No.
2065
197 Road
2
Alaska
Hwy

Encana Corporation ("Encana") applies to the Board for mediation and arbitration services. Encana seeks a right of entry order for continued access to the Lands legally owned by the Respondents.

On October 10, 2008, Encana entered into a Surface Lease Agreement with Elfrieda Bratt (the "Lease") to access the Lands for the purpose of carrying out an approved oil and gas activity, namely installation of an above ground riser site and associated infrastructure. The Lease was not registered on title to the Lands.

The Board has conducted mediation conference calls and there are numerous email exchanges as the parties attempted to agree on the wording of a consent order. These efforts failed.

I have reviewed the correspondence, with Encana supporting their request for a right of entry order and with the Landowner and his representative objecting. I find that Encana is engaged in an approved oil and gas activity, supported by a statement from the Oil and Gas Commission. As the parties are unable to enter into a consent agreement, I am issuing a Right of Entry Order, leaving compensation unresolved.

The Surface Rights Board orders:

1. Upon payment of the amounts set out in paragraph 2, Encana shall continue to have the right to enter and access the portions of Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" as necessary for the purpose of operating and maintaining a riser in accordance with the Oil and Gas Commission.

2. As partial compensation Encana shall pay the following compensation with respect to the riser to the Respondents, GARRY BRATT, FRANK JOHN BRATT AND JOHN HENRY BRATT:
    a. the sum of Nine Hundred Dollars ($900.00) equally divided among the Respondents as annual compensation, whereby the anniversary date for the annual compensation will be October 10; and

    b. Two Thousand Six Hundred Dollars ($2600.00) equally divided among the Respondents as additional compensation owing.

3. If the parties cannot agree on final compensation they may return to the Board for mediation and arbitration services.

4. This order replaces the previous Lease dated October 10, 2008. The Lease dated October 10, 2008 between Encana and Elfrieda Bratt shall be terminated

effective as of the date of this Order, pursuant to s. 167(1) and (7) of the *Petroleum and Natural Gas Act.*

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: August 16, 2019

FOR THE BOARD

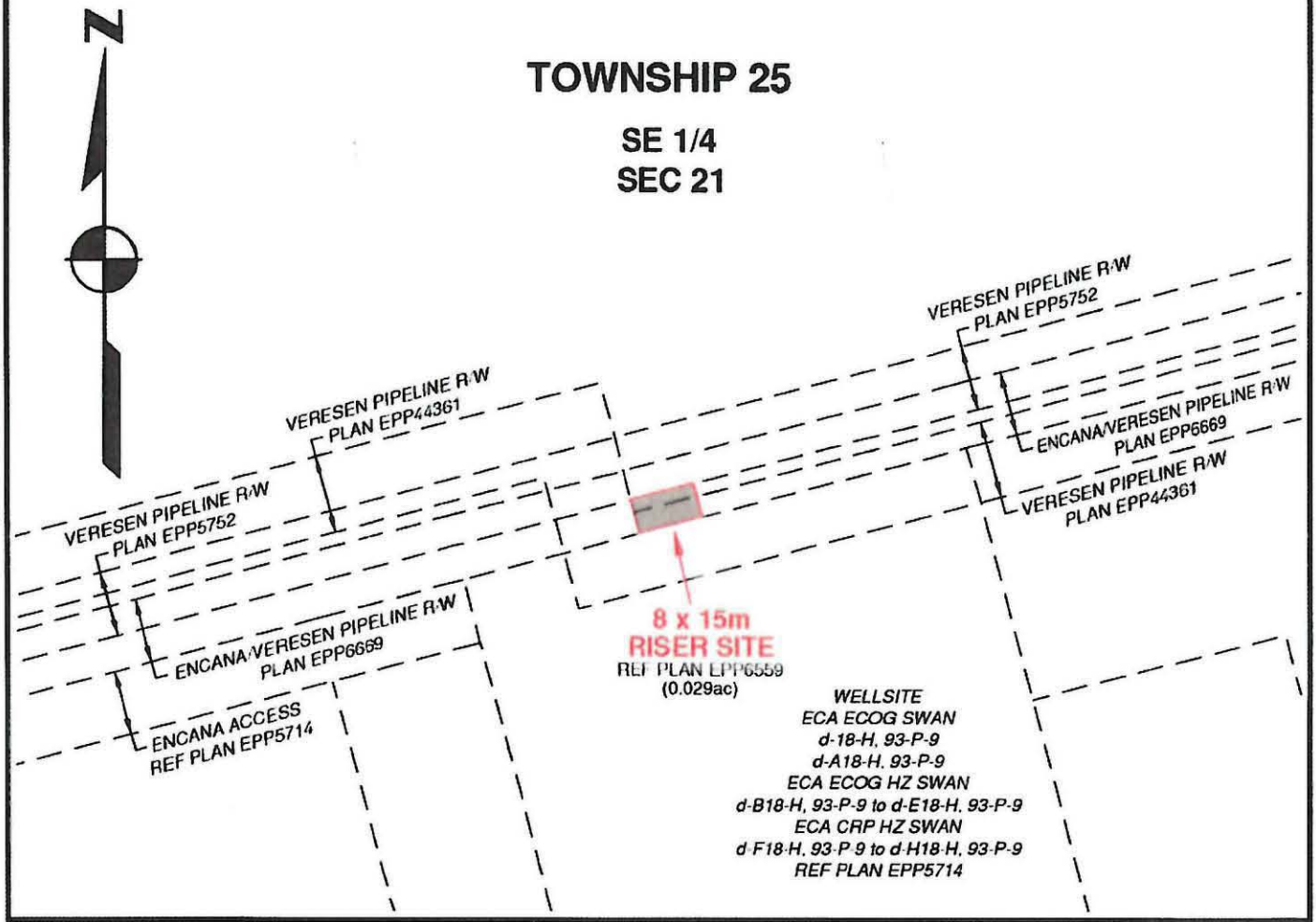
Robert Fraser, Mediator

SCHEDULE "A"

Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between GARRY RANDOLPH BRATT, FRANK JOHN BRATT AND JOHN HENRY BRATT (Lessor) and ENCANA CORPORATION (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
RISER SITE WITHIN
THE SOUTH EAST 1/4 OF SECTION 21 TOWNSHIP 25
PEACE RIVER DISTRICT



Owner(s): GARRY RANDOLPH BRATT
FRANK JOHN BRATT
JOHN HENRY BRATT

Title No:	CA7019392
Parcel Identifier:	014-451-387
Landowner File:	S420233
Encana File(s):	S420233

20 0 20 40 60 80 100

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 1500 (use letter size sheet)

Certified correct this 18th day of September, 2018

David E. Gosling, BCLS

Areas		
Permanent	0.012 ha	0.029 ac
Temporary	0.000 ha	0.000 ac
Total	**0.012 ha**	**0.029 ac**

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 181-06803-00-000-00-PIPIP001-R4
Ref Dwg: 081071NP01R2
Drafted by: KG

File No. 2065
Board Order 2065-1amd

November 13, 2019

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 21, TOWNSHIP 25, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

GARRY BRATT
FRANK JOHN BRATT AND
JOHN HENRY BRATT

RESPONDENTS

BOARD ORDER

During a telephone mediation conference call I conducted on November 4, 2019, the parties agreed that the amounts of partial compensation found in Order 2065-1 are final compensation.

The Board replaces the word “partial” with “final” in paragraph 2.

The Surface Rights Board orders:

1. Upon payment of the amounts set out in paragraph 2, Encana shall continue to have the right to enter and access the portions of Lands shown outlined in red on the Individual Ownership Plan attached as Appendix “A” as necessary for the purpose of operating and maintaining a riser in accordance with the Oil and Gas Commission.

2. As final compensation Encana shall pay the following compensation with respect to the riser to the Respondents, GARRY BRATT, FRANK JOHN BRATT AND JOHN HENRY BRATT:
    a. the sum of Nine Hundred Dollars ($900.00) equally divided among the Respondents as annual compensation, whereby the anniversary date for the annual compensation will be October 10; and

    b. Two Thousand Six Hundred Dollars ($2600.00) equally divided among the Respondents as additional compensation owing.

3. This order replaces the previous Lease dated October 10, 2008. The Lease dated October 10, 2008 between Encana and Elfrieda Bratt shall be terminated effective as of the date of this Order, pursuant to s. 167(1) and (7) of the *Petroleum and Natural Gas Act.*

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 13, 2019

FOR THE BOARD

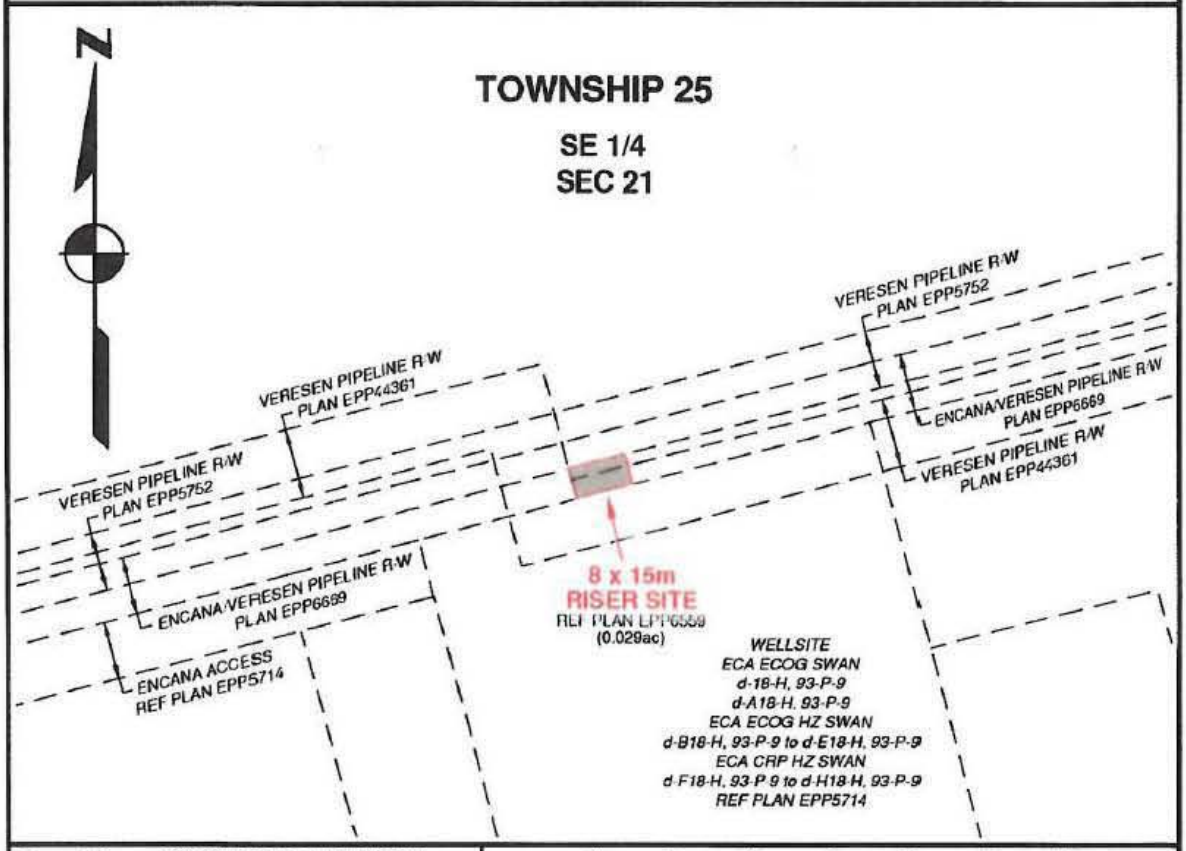
Robert Fraser, Mediator

Appendix "A"

SCHEDULE "A" Page___ of___

Attached to and made part of this Agreement dated this_____day of _____, 20_____, between GARRY RANDOLPH BRATT, FRANK JOHN BRATT AND JOHN HENRY BRATT (Lessor) and ENCANA CORPORATION (Lessee).

INDIVIDUAL OWNERSHIP PLAN SHOWING
RISER SITE WITHIN
THE SOUTH EAST 1/4 OF SECTION 21 TOWNSHIP 25
PEACE RIVER DISTRICT



Owner(s):	GARRY RANDOLPH BRATT FRANK JOHN BRATT JOHN HENRY BRATT
Title No:	CA7019392
Parcel Identifier:	014-451-387
Landowner File:	S420233
Encana File(s):	S420233

20 0 20 40 60 80 100

The intended plot size of this plan is 216mm in width by 280mm in height when plotted at a scale of 1: 1500 (use letter size sheet)

Certified correct this 18th day of September, 2018

David E. Gosling, BCLS

Areas		
Permanent	0.012 ha	0.029 ac
Temporary	0.000 ha	0.000 ac
Total	0.012 ha	0.029 ac

WSP Surveys (BC) Limited Partnership
Fort St John BC
(250) 787-0300

WSP File: 181-06803-00-000-00-PIPIP001-R4
Ref Dwg: 081071NP01R2
Drafted by: KG

File No. 2065
Board Order 2065-2

January 28, 2020

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST ¼ OF SECTION 21, TOWNSHIP 25, PEACE RIVER DISTRICT

(the "Lands")

BETWEEN:

ENCANA CORPORATION

APPLICANT

AND

GARRY BRATT
FRANK JOHN BRATT AND
JOHN HENRY BRATT

RESPONDENTS

BOARD ORDER

The parties have settled the issue of costs payable by the Applicant to the Respondent and have requested the Board issue an Order for payment of costs to reflect their agreement.

BY CONSENT the Surface Rights Board Orders:

1. Encana Corporation shall pay $1,500 to Gary Bratt in full and final satisfaction of the Respondents' claim for costs in this matter.

DATED: January 28, 2020

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 2066
Board Order No. 2066-1

May 31, 2019

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 EAST ¼ OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

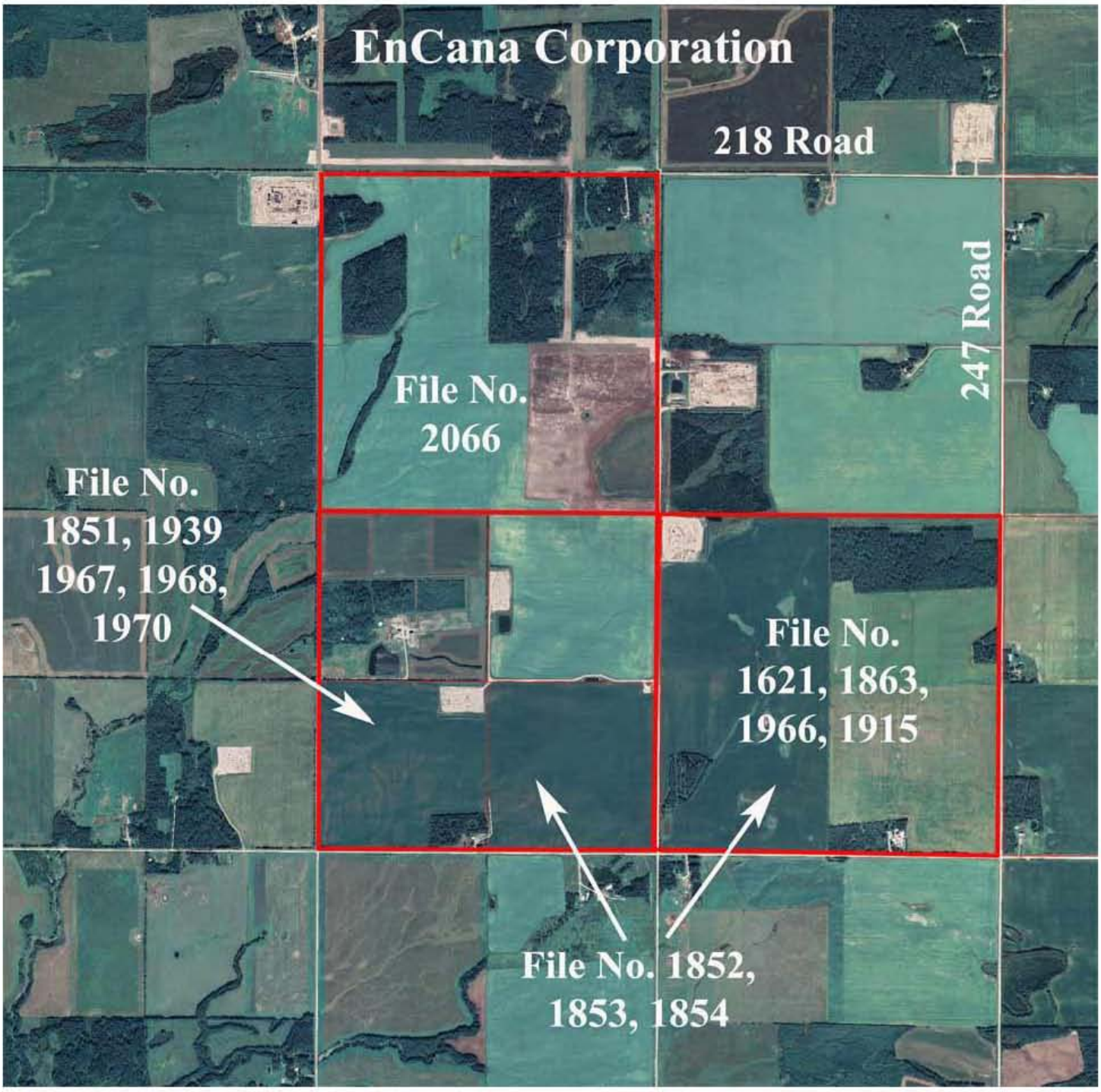
(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER


EnCana Corporation
218 Road
247 Road
File No.
2066
File No.
1851, 1939
1967, 1968,
1970
File No.
1621, 1863,
1966, 1915
File No. 1852,
1853, 1854

Heard by written submissions

INTRODUCTION AND ISSUE

[1] The Applicant, Encana Corporation (Encana) seeks a right of entry Order to Lands owned by the Respondent, Olaf Jorgensen, for the purpose of constructing and operating a pipeline in four segments for which the Oil and Gas Commission (OGC) has issued a permit.

[2] Segments 1 and 2 are uni-directional lines that will transport raw produced natural gas and liquids from 16-36-79-18W6M pad (the 16-36 Pad) to 05-32-79-17W6M (the 5-32 Pad).

[3] Segment 3 is a bi-directional line to transport produced water from the 5-32 Pad to the 16-36 Pad for hydraulic fracturing. It will also carry produced water from the 16-36 Pad back to the 5-32 Pad. At the 5-32 Pad the water line will connect with existing water infrastructure to flow water to and from Encana's Water Resource Hub (the Water Hub).

[4] Segment 4 is a uni-directional fuel line to move processed purchased fuel gas across the Saturn field including to the 16-36 Pad. The fuel is used to power various instruments and equipment required to operate the 16-36 well site and associated pipelines, including emergency shut down valves and control valves.

[5] The Respondent takes issue with the Board's jurisdiction with respect to Segments 3 and 4 of the proposed pipeline on the basis that they are not flow lines within the meaning of the *Petroleum and Natural Gas Act* (*PNGA*). The Board's jurisdiction over pipelines is limited to those pipelines that fall within the definition of "flow line" as defined in the *PNGA* with reference to the *Oil and Gas Activities Act* (*OGAA*) as follows:

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[6] The Respondent does not dispute that Segments 1 and 2 of the proposed pipeline are flow lines within the jurisdiction of the Board.

[7] The issue is, therefore, whether Segment 3 and Segment 4 of the proposed pipeline are flow lines within the Board's jurisdiction.

THE BOARD'S JURISPRUDENCE

[8] The Board has issued a number of decisions considering the meaning of "flow line". It has found that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines. It has found the gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities. A flow line need not connect directly to a well head, but may connect well heads indirectly with scrubbing, processing or storage facilities as long as they are part of the gathering system for the production of natural gas. A summary of the Board's jurisprudence on the meaning of "flow line" may be found in *Encana Corporation v. Strasky*, Order 1911/13-1, October 20, 2016 (*Strasky 1*).

[9] The Board has found that water lines similar to Segment 3 are flow lines (*Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014 (*Ilnisky*); *Encana Corporation v. Jorgensen*, Order 1939-1, May 31, 2016 (*Jorgensen 2*); *Encana Corporation v. Strasky*, Order 1955-1, October 23, 2017 (*Strasky 2*); *Encana Corporation v. Derfler*, Order 1973-74-1, May 22, 2018 (*Derfler*).

[10] The Board has found that fuel lines similar to Segment 4 are flow lines (*Murphy Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012 (*Shore*); *Ilnisky*; *Jorgensen 2*.

SUBMISSIONS

[11] The Respondent submits that the Board's rationalization of what constitutes the gathering system and that flow lines are part of the gathering system does not conform with the statutory language. "Gathering system" is not a defined term in the *PNGA* or *OGAA*.

[12] The Respondent submits Segment's 3 and 4 are two entirely unconnected pipelines that are not capable of characterization as flow lines under the statute. He submits the gathering system rationale, if applied to the facts of this case, will completely displace the statutory provisions. He submits the Board's created definition of gatherings system does not appear to be tested or weighed against the language of the statute. He submits the "gathering system" language used by the Board, if applied to Segments 3 and 4, goes beyond a necessarily incidental interpretation of the legislation with reference to *ATCO Gas Pipeline Ltd. Alberta (Energy and Utilities Board)*, 2006 SCC 4 (*ATCO Gas*).

DECISION

[13] As indicated, the Board has considered the definition of "flow line" on numerous occasions. None of these decisions has been judicially reviewed. Nor has the legislature amended the definition so as to provide greater clarity or negate the Board's interpretation.

[14] I do not accept the Respondent's submission that the Board's definition of gathering system was not tested or weighed against the language of the statute or against a comprehensive analysis of the legislative scheme and legislative intent. In interpreting the definition of "flow line", the Board has applied the modern rule of statutory interpretation to interpret the words of the definition in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the legislation and the intention of the legislature. It has engaged in an

analysis of the legislative scheme established by the *PNGA* and *OGAA* and an analysis of legislative intent. It has considered other statutory definitions within the *PNGA* and *OGAA*. It has considered interpretive aids including excerpts from legislative debates and the Glossary published by the OGC. It has considered legislative history. It has considered the OGC's treatment of pipeline segments as a single pipeline project for permitting purposes. These analyses and considerations are set out in *Shore* and *Ilnisky*, and have been adopted and applied in subsequent decisions of the Board.

[15] I accept that it is difficult to apply the statutory language of the definition of "flow line" to either of Segment 3 or Segment 4 if the words of the definition and each of those segments is considered in isolation. I disagree, however, that when the words are considered in the context of the whole of the legislative scheme, that the Board's rational for including pipelines that function as part of the gathering system for the production of natural gas is untenable or goes beyond what can be considered necessarily incidental.

[16] As was said in *ATCO Gas*, at para. 49:

> The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:
>
> > As the product of a rational and logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: "each legal provision should be considered in relation to other provisions, as parts of a whole" . . . .
> > (P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 308)
>
> As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context of the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme (*Bell ExpressVu*, at para. 27; see also *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 (in Appendix)). "[S]tatutory

> interpretation is the art of finding the legislative spirit embodied in enactments": *Bristol-Myers Squibb Co.*, at para. 102.

[17] Having considered the words of the definition and the statutory scheme as a whole, and with the assistance of interpretive aids, the Board concluded that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines (*Ilnisky*; *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014). It has found the gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities (*Shore*). The analysis leading to those conclusions may be found in the decisions cited. I will apply the Board's analysis and findings to the pipeline segments in issue.

[18] The purpose of the proposed pipeline, comprised of four segments, is to gather natural gas. Segments 1 and 2 do that specifically. Segment 3 is used for hydraulic fracturing for the purpose of gathering natural gas. Segment 4 powers the facilities required for the gathering of natural gas, including those necessary for safety of the well site and pipeline. Together, the segments are permitted as a single pipeline project and collectively function to gather natural gas and connect well heads with processing facilities. Segments 3 and 4 are not, as submitted by the Respondent entirely unconnected pipelines; they are part of a single pipeline project for the purpose of gathering natural gas.

[19] For all of the reasons expressed in *Shore* and *Ilnisky*, I am satisfied that the legislative intent was to give the Board jurisdiction over pipelines and pipeline segments of the nature in issue here and that the definition of "flow line" captures the proposed pipeline inclusive of Segments 3 and 4. To interpret the definition of flow line otherwise, so as to give the Board jurisdiction over only two of four pipeline segments collectively functioning as part of the gathering system and connecting well heads with processing facilities, would result in an absurdity. As said in *ATCO Gas* at para 51: "…the powers conferred by an enabling statute are construed to

include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature."

[20] I am satisfied that including segments 3 and 4 in the definition of "flow line" is not an interpretation falling outside of the doctrine of jurisdiction by necessary implication. The analysis of the legislative scheme and intent articulated in the Board's earlier jurisprudence supports that conclusion.

[21] I am satisfied the Board has jurisdiction over the proposed pipeline inclusive of Segments 3 and 4.

ORDER

[22] The Board has jurisdiction to issue the requested right of entry order. The application is referred back to the mediator to consider whether the right of entry order should be made.

DATED: May 31, 2019

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 2066
Board Order No. 2066-2

May 31, 2019

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 EAST ¼ OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER

Encana Corporation ("Encana") seeks a right of order to access certain lands legally owned by Olaf Anton Jorgensen to carry out an approved oil and gas activity, namely the construction, operation and maintenance of flowlines and associated infrastructure.

On May 15, 2019 I convened a telephone mediation to discuss the issues of access and compensation, and the contents of a draft right of entry order produced by Encana on April 10, 2019. Encana amended the draft, increasing the amount of partial compensation.

Mr. Jorgensen raised the issue of the Board's jurisdiction, and in Board Order 2066-1, the Board found it has the jurisdiction to deal with this application.

Under the provisions of the Petroleum and Natural Gas Act, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. The Board is satisfied that Encana requires entry to the Lands for an approved oil and gas activity, namely completing the project authorized by the Oil and Gas Commission.

ORDER:

1. Upon payment of the amounts set out in paragraphs 3 and 4, **Encana Corporation** shall have the Right of Entry to and access across the portions of lands legally described as:

   THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

   as shown on the individual ownership plan attached as Appendix "A" (the "Lands") to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of multiple flow lines and associated works in accordance with Oil and Gas Commission.

2. **Encana Corporation's** right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. **Encana Corporation** shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Encana Corporation, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. **Encana Corporation** shall pay to the landowner as partial payment for compensation the amount of $2,100.00 representing the first year's initial payment and prepaid damages.

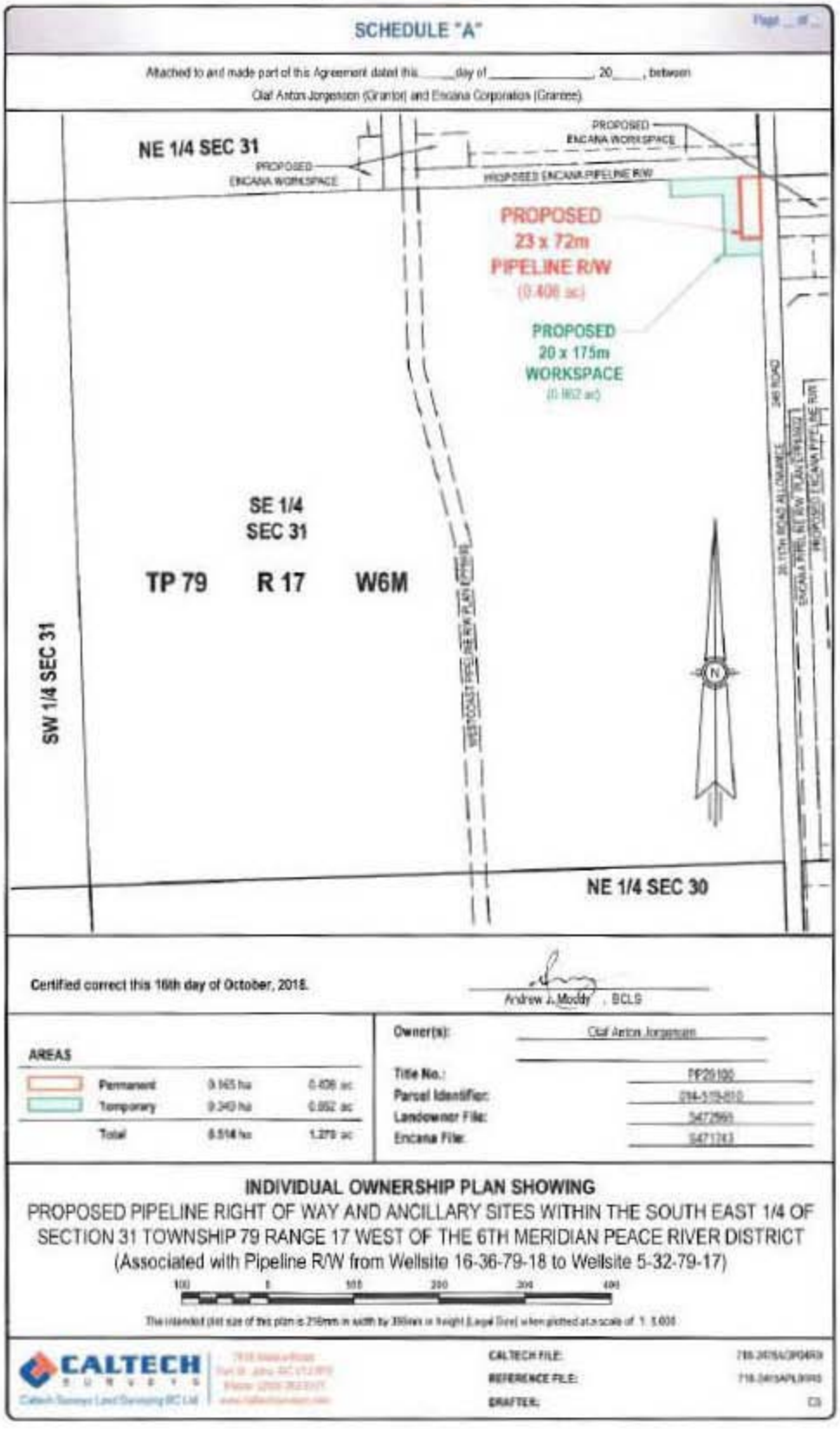
5. Nothing in this Order operates as a consent, permission, approval, or authorization of a matter within the jurisdiction of the Oil and Gas Commission.

Dated: May 31, 2019

For the Board

Rob Fraser
Mediator

Appendix "A"


SCHEDULE "A"
Attached to and made part of this Agreement dated this ____ day of _____, 20____, between
Olaf Anton Jorgenson (Grantor) and Encana Corporation (Grantee).
NE 1/4 SEC 31
PROPOSED ENCANA WORKSPACE
PROPOSED ENCANA PIPELINE R/W
PROPOSED
23 x 72m
PIPELINE R/W
(0.408 ac)
PROPOSED
20 x 175m
WORKSPACE
(0.862 ac)
SE 1/4
SEC 31
TP 79
R 17
W6M
SW 1/4 SEC 31
NE 1/4 SEC 30
Certified correct this 16th day of October, 2018.
Andrew J. Moddy, BCLS
AREAS
Permanent 0.165 ha 0.408 ac
Temporary 0.340 ha 0.862 ac
Total 0.514 ha 1.270 ac
Owner(s): Olaf Anton Jorgenson
Title No.: FP29100
Parcel Identifier: 014-515-810
Landowner File: 5472993
Encana File: 5471743
INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY AND ANCILLARY SITES WITHIN THE SOUTH EAST 1/4 OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(Associated with Pipeline R/W from Wellsite 16-36-79-18 to Wellsite 5-32-79-17)
100 0 100 200 300 400
CALTECH SURVEYS
CALTECH FILE:
REFERENCE FILE:
DRAFTER:

Appendix "B"

Conditions for Right of Entry

1. **Encana Corporation** must notify the landowner forty-eight (48) hours prior to entry onto the said lands.

File No. 2066
Board Order No. 2066-3

November 29, 2019

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 EAST ¼ OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER

Heard by written submissions closing October 29, 2019

INTRODUCTION

[1] By way an Order 2066-2 dated May 31, 2019, the Board granted the Applicant, Encana Corporation (Encana) right of entry to the Lands owned by the Respondent, Olaf Jorgensen (the "Landowner"), for the purpose of constructing and operating a pipeline in four segments for which the Oil and Gas Commission (OGC) had issued a permit.

[2] The Board's jurisdiction over pipelines is limited to those pipelines that fall within the definition of "flow line" as defined in the *Petroleum and Natural Gas Act* (the "*PNGA* ") with reference to the *Oil and Gas Activities Act* (*OGAA*) as follows:

> "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[3] The Landowner disputed the Board's jurisdiction over the subject pipeline. On May 31, 2019 by way of Order 2066-1, the Board determined that it had jurisdiction and that the disputed segments were "flow lines" (the "Decision"). The Landowner now applies for reconsideration of this Decision and says two of the four segments are not within the Board's jurisdiction as "flow lines".

BACKGROUND

[4] In the Decision, the Board outlined the following facts:

[5] The proposed pipeline has four segments. Segments 1 and 2 are uni-directional lines that will transport raw produced natural gas and liquids from 16-36-79-18W6M pad (the 16-36 Pad) to 05-32-79-17W6M (the 5-32 Pad). The Landowner did not

dispute that Segments 1 and 2 of the proposed pipeline are flow lines within the jurisdiction of the Board.

[6] Segment 3 is a bi-directional line to transport produced water from the 5-32 Pad to the 16-36 Pad for hydraulic fracturing. It will also carry produced water from the 16-36 Pad back to the 5-32 Pad. At the 5-32 Pad the water line will connect with existing water infrastructure to flow water to and from Encana's Water Resource Hub (the Water Hub).

[7] Segment 4 is a uni-directional fuel line to move processed purchased fuel gas across the Saturn field including to the 16-36 Pad. The fuel is used to power various instruments and equipment required to operate the 16-36 well site and associated pipelines, including emergency shut down valves and control valves.

[8] The Landowner had argued that the Board did not have jurisdiction with respect to Segments 3 and 4 on the basis that they are not "flow lines" within the meaning of the *PNGA*. As set out in its Decision, the Board disagreed.

THE RECONSIDERATION APPLICATON

[9] The power to reconsider a decision is discretionary. The reconsideration process is not intended to provide parties with a forum to re-argue their appeals. Rule 17 of *Board's Rules of Practice and Procedure* describes certain situations where the Board may exercise its discretion to reconsider a decision.

[10] Rule 17 states that the Board may reconsider an order if:

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

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

c) if "the Board made a jurisdictional error including a breach of the duty of procedural fairness, or patently unreasonable error of fact, law or exercise of discretion".

[11] The Landowner applies for reconsideration of the Decision on the basis the Board erred in law in misconstruing its jurisdiction and made findings of fact without evidentiary basis leading to a misapplication of the appropriate jurisdictional test. Encana argues the application should be dismissed as the Decision contains no error of law or of mixed fact and law.

STANDARD OF REVIEW OF RECONSIDERATION

[12] The Landowner says the standard of review on a reconsideration review should be correctness while Encana says it should be reasonableness.

[13] Rule 17 provides that the standard of review on a review for errors of law or fact is whether the errors are "patently unreasonable". In *Venturion Oil Limited* (Board Order 1848-1855), the Board adopted an interpretation of "patently unreasonable" to mean whether the impugned decision made findings of fact without evidence or the decision is "openly, clearly and evidently unreasonable."

[14] The Landowner not only alleges the Board made findings of fact without evidence but misconstrued its jurisdiction by misinterpreting definitions in the *Act.* In a review for jurisdictional error, Rule 17 does not expressly indicate the standard of review.

[15] Section 148 of the *PNGA* provides that section 59 of the *Administrative Tribunals Act* applies to decisions of the Board. Section 59 provides that, in a "judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural

justice and procedural fairness." Section 59 clearly applies to judicial review proceedings, not reconsiderations by the Board and therefore, is not determinative of the standard of review required in this instance.

[16] Rather, reconsiderations are dealt with by section 155 of the *PNGA* that provides the Board with discretion to "reconsider an order of the board, and may confirm, vary or rescind the order". Subsection (2) provides that "(t)he board may make rules (a) specifying the circumstances in which subsection (1) applies; (b) respecting practice and procedure relating to the exercise of the authority of the board under subsection (1)".

[17] The Decision in question makes a determination based on the Board's interpretation of "flow line" in the Act, the Board's enabling legislation. The Courts have held that the standard of review for a tribunal's interpretation of its own statute, or statutes closely connected to its function and which it is familiar with, will be presumed to be a question of statutory interpretation subject to deference by the application of a reasonableness standard of review (see the seminal Supreme Court of Canada decision of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R.) I note that the Court in *Dunsmuir* indicated that the correctness standard on judicial review would apply in "true questions of jurisdiction" which includes breaches of the duty of procedural fairness as indicated by Rule 17 and which has not been alleged here.

[18] This is consistent with the Board's discretionary authority in a reconsideration application under Rule 17 and section 155 of the *PNGA*. Rule 17 provides that the Board "may" reconsider in certain circumstances. Also, in a reconsideration application, the Board does not re-weigh the evidence, second guess the conclusions or findings drawn from the evidence or the application of the legislation by the panel and substitute different findings of fact or inferences from findings, or rely on evidence being insufficient. Therefore, in a reconsideration review for a

jurisdictional error, it makes sense to apply a reasonable standard of review rather than a correctness standard that may apply in a judicial review.

[19] The functional definition of the reasonableness standard is set out in *Dunsmuir*:

> [47] Reasonableness is a deferential standard animated by the principle that … certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[20] Therefore, I will review the Decision for patently unreasonable errors of fact or law or mixed fact/law or for unreasonable jurisdictional defects.

PARTIES' SUBMISSIONS

Landowner's Submissions

[21] First, the Landowner argues that the Board's interpretation of "flow line" in *Murphy Oil Company Ltd. v. Shore*, Order 1745-1 that was applied in the Decision has not been the subject of proper review by an entity other than the Board. He submits that *Murphy* erred by ignoring the language of the relevant legislation, regulation and official glossaries and by using extrinsic evidence improperly to "overwhelm" the clear language of the statute in favour of achieving an "industry centric result" at the expense of the fee simple owner.

[22] He argues the line of cases that follow *Murphy* are internally inconsistent and lack principled reasons. For example, the emphasis in the decisions change from "what is in the pipe" to "how the substance is used at the wellhead" without an

underlying rationale; also, in some cases, byproducts from production are accepted to be upstream of processing but excluded in others because they do not form part of the gathering system while recycled water is permitted. As result, the test of whether a pipeline functions as part of a gathering system is applied inconsistently.

[23] The Landowner submits that the Board, in its statutory interpretation analysis, searched for legislative intent by placing almost exclusive weight on what he says is an ambiguous portion of Hansard which indicated that the definition of “flow line” was originally “too narrow”.

[24] He argues that *Murphy* misstates several legal principles and fails to fully appreciate or address resulting errors such as the owner of subsurface rights be able to disturb the surface without compensation, the finding that no interest in land is taken in a right of entry, the finding that expropriation has a greater impact to the rights of the owner and therefore to be avoided.

[25] Second, the Landowner submits that equipment at a well head is not included in the definition of “flow line” pursuant to *Drilling and Production Regulation*, BC Reg. 282/2010 , which regulation had not been addressed in the Decision and caselaw including *Murphy.* Therefore, regarding Segment 4 of the pipeline, the Landowner says it carries refined fuel from a processing plant (5-27 NCLH) to be used in the operation of <u>equipment</u> at the well head and carries product from a processing plant. As such, it is not a flow line.

[26] Regarding Segment 3, the Landowner says the conveyed substance is water used for oil and gas activities, transported to an end user, and produced water (a byproduct) transported to a water processing facility. As such, it is not a flow line.

[27] He submits that there is no basis to expand the definition of “flow line” to include fuel gas for the operation of well head equipment or to find water recycling/circulation systems different from byproducts.

[28] Finally, the Landowner submits that Segments 3 and 4 are not “necessary” for operation of the well head.

Encana’s Submissions

[29] Encana submits the Decision is reasonable as the Board provided cogent reasons and did not make any findings of fact (with respect to the necessity of Segments 3 and 4 or otherwise) that were not supported by the evidence before it. The Decision is neither openly, clearly or evidently unreasonable. In response, the Landowner argues the standard of review in considering questions of jurisdiction is correctness.

[30] Encana says the Board has articulated a three part analytical framework for assessing whether a given pipeline segment is a “flow line” which involves determination of i) whether the segment at issue satisfied the OGAA definition of “pipeline”, ii) whether the segment connects a well head to a scrubbing, processing or storage facility and iii) whether the segment precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[31] Encana submits the Board’s approach in interpreting the statutory definition of “flow line” in *Murphy* and other decisions is consistent with the modern approach and principles of statutory interpretation. The Landowner responds that the Oil and Gas Commission Glossary gives meaning to the words under review and should not be disregarded in the statutory interpretation analysis.

[32] Encana argues that the Landowner's submission that the definition of well head in the *Drilling and Production Regulation* is baseless because this definition was only added to the regulation May 17, 2019, 14 days before the Decision. In any event, Encana says this definition does not change this analysis as the definition merely clarifies that flow lines do not form part of the well head. In response, the Landowner says the recent amendment of this Regulation makes reconsideration necessary and needs to be addressed.

[33] As for the use of extrinsic evidence, Encana submits that the use is admissible and form an integral part of the legislative context required by the modern approach to statutory interpretation. Here, the Board used extrinsic evidence to understand the actual intent of the legislature when it enacted the definition of flow line. Further the Board's interpretation avoids absurd results and facilitates efficient and effective rights of entry processes before the Board. The Landowner disagrees and says the Landowner's proposed result is not absurd.

[34] In response, the Landowner submits that if the legislature had meant for a flow line to mean any "pipeline connecting a well with a facility or another pipeline", it would have used that language but Encana and the Board has used language from legislative debate to override clear language in the legislation.

[35] Encana argues that the Board's decisions are not inconsistent as the Board applies the three part test but the outcomes are different as the facts are different.

[36] Regarding Segment 3, Encana says it connects the well heads (i.e. equipment installed above the uppermost portion of the surface casing) at the 16-36 Pad to the Water Resources Hub, which is a processing and storage facility, and it precedes the transfer of conveyed substances to or from a transmission, distribution or transportation line and conveys substances as part of the upstream gathering

system. Finally, Encana says the Landowner's submission that Segment 3's function can be replaced by trucking is incorrect.

[37] Regarding Segment 4, it is a pipeline through which natural gas is conveyed and connects wellheads at the 16-36 Pad with the Veresen Plant, at which gas processing takes place. Encana says this fuel gas line is integral to the project. It would be absurd to treat this segment differently than the other segments of the pipeline. Encana says that the natural gas conveyed by Segment 4 serves a number of important functions and this segment is also integral to the project's operations.

[38] In response, the Landowner says the necessity of the segments to the project does not determine jurisdiction and that a private owner's rights are being used for public purposes that is a *de facto* expropriation absent a proper statutory basis. Also, he cautions against Encana's failure to put forward sworn evidence and reliance on opinion evidence absent the use of experts and objects to Encana providing unsworn evidence and expert evidence from an advocate to support its submission that the pipes are necessary.

BOARD'S RECONSIDERATION DECISION

[39] As indicated above, the Board has discretion to reconsider a decision in certain circumstances. In particular, the Board may reconsider if there is no evidence to support the findings or the decision is "openly, clearly, evidently unreasonable" in which instances the decision is "patently unreasonable" (see *Venturion, supra.*). The other circumstances a decision can be reconsidered is if the Board was unreasonable in determining the Board's jurisdiction in the matter.

[40] I find that the Board did not make findings of fact or mixed fact/law that were "patently unreasonable" or committed an unreasonable jurisdictional defect in the

Decision. In making these findings, I need not consider any additional evidence produced as part of the reconsideration submissions. The Board had some evidence and submissions before it in making its findings. The Board had provided the parties with the opportunity to produce submissions and evidence which they did. The Board relied on the written material to make its findings. It is generally not bound by the rules of evidence in making these findings.

[41] In terms of statutory interpretation in the Decision, the Board reviewed the definitions of "flow line" and "pipeline" in the OGAA and "wellhead" in the *Drilling and Production Regulation* BC Reg 282/2010 as it stood at the time of the Decision. The Board also reviewed the *Oil and Gas Activities Act Regulation* (BC Reg. 274/2010) that prescribes certain substances for the purposes of the definition of "pipeline", including "(a) water or steam used for geothermal activities or oil and gas activities…and (2) Piping used in a gas distribution main…"

[42] The fact that the definition of "wellhead" was amended after the Decision does not warrant a reconsideration as there is nothing to indicate that the amendment to the definition should be applied retroactively. Nor does the amendment change the analysis or test to be applied in applying the definition of "flow line".

[43] In the Decision, the Board reviewed previous cases that interpreted and applied the definition of "flow line. It applied the modern rule of statutory interpretation to interpret the words of the definition in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the legislation and the intention of the legislature. After reviewing the statutory interpretation process, it recognized that the analyses and considerations set out in *Shore* and *Ilnisky* have been adopted and applied in subsequent decisions of the Board.

[44] The Board also recognized the difficulty in applying the statutory language of the definition of “flow line” to either of Segment 3 or Segment 4 if the words of the definition and each of those segments is considered in isolation. The Board held that the words are to be considered in the context of the whole of the legislative scheme which it reviewed along with the relevant caselaw.

[45] Therefore, the Board held that previous decisions that concluded that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines (*Ilnisky*; *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014) and that gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities (*Shore*), were all consistent with the words of the definition and the statutory scheme as a whole, and interpretive aids. The Board then applied these analyses and findings to the disputed segments at hand.

[46] There is nothing in the Board’s reasons to indicate that the Board used extrinsic evidence improperly to “overwhelm” the clear language of the statute in favour of achieving an “industry centric result” at the expense of the fee simple owner as submitted by the Landowner. This presumes “clear language” in the statute which I do not accept. If there was such clear language, there would be no need for the Board to interpret the definition in as many cases as has been required. Nor would there be need for the Board to outline a three part test in determining what is a “flow line” based on principles of statutory interpretation. The use of extrinsic evidence is admissible and part of the analysis of legislative context and intent required by the modern approach to statutory interpretation. In the Decision, the Board explained that its interpretation avoided absurd results as well as was consistent with the legislative scheme. In doing so, the Board reviewed the purpose of the proposed pipeline and the four different segments.

[47] As such, the Board's interpretation of the definition of "flow line" in the Decision was reasonable based on the modern approach to statutory interpretation and was consistent with the Board's previous jurisprudence that have considered the meaning of "flow line" (see *Encana Corporation v. Strasky*, Order 1911/13-1, October 20, 2016 (*Strasky 1*)). The finding that Segment 3 is a flow line is consistent with prior decisions that found water lines similar to Segment 3 are flow lines (see *Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014 (*Ilnisky*); *Encana Corporation v. Jorgensen*, Order 1939-1, May 31, 2016 (*Jorgensen 2*); *Encana Corporation v. Strasky*, Order 1955-1, October 23, 2017 (*Strasky 2*); *Encana Corporation v. Derfler*, Order 1973-74-1, May 22, 2018 (*Derfler*). The finding that Segment 4 is a flow lines is consistent with prior decisions that found that similar fuel lines are flow lines (*Murphy Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012 (*Shore*); *Ilnisky*; *Jorgensen 2*). These findings on Segments 3 and 4 is within a reasonable range of outcomes available to the Board. I do not see that the there is an inconsistency in the interpretation of the legislation in these decisions as outcomes in the application of the interpretation would necessarily be different as the facts of each case are different.

[48] Finally, I find that the Decision is not "openly, clearly evidently unreasonable". The Board considered and weighed all the evidence and submissions before it made its findings and conclusions. It had some evidence to support its findings in its Decision (evidence and submissions provided by the parties and the Oil and Gas Permit and in the application). As indicated above, the Board will not reconsider a decision on the basis of the insufficiency of the evidence nor will the Board re-weigh the evidence or second guess findings of fact (see *Venturion*).

ORDER

[49] I dismiss the application to reconsider.

DATED: November 29, 2019

For the Board

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Simmi K. Sandhu

Vice-Chair