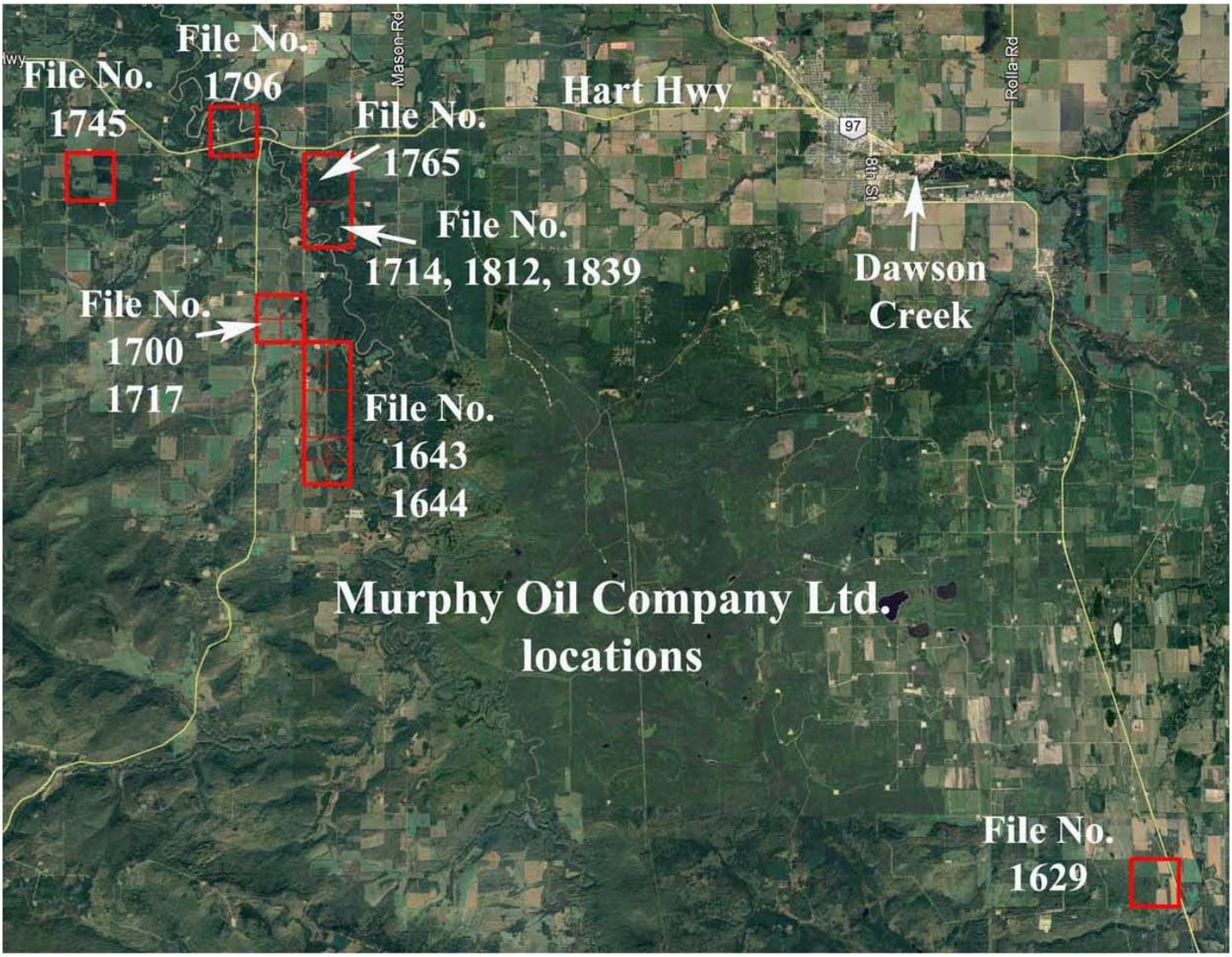
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1745
File No.
1796
Mason Rd
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File No.
1765
97
8th St
Rolla Rd
File No.
1714, 1812, 1839
Dawson
Creek
File No.
1700
1717
File No.
1643
1644
Murphy Oil Company Ltd.
locations
File No.
1629

File No. 1629
Board Order No. 1629-1

November 12, 2010

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
East ½ of Section 27, Township 26, Peace River District
except Plan H663

(The "Lands")

BETWEEN:

Burnem Hollister Grant
And Gertrude Grant

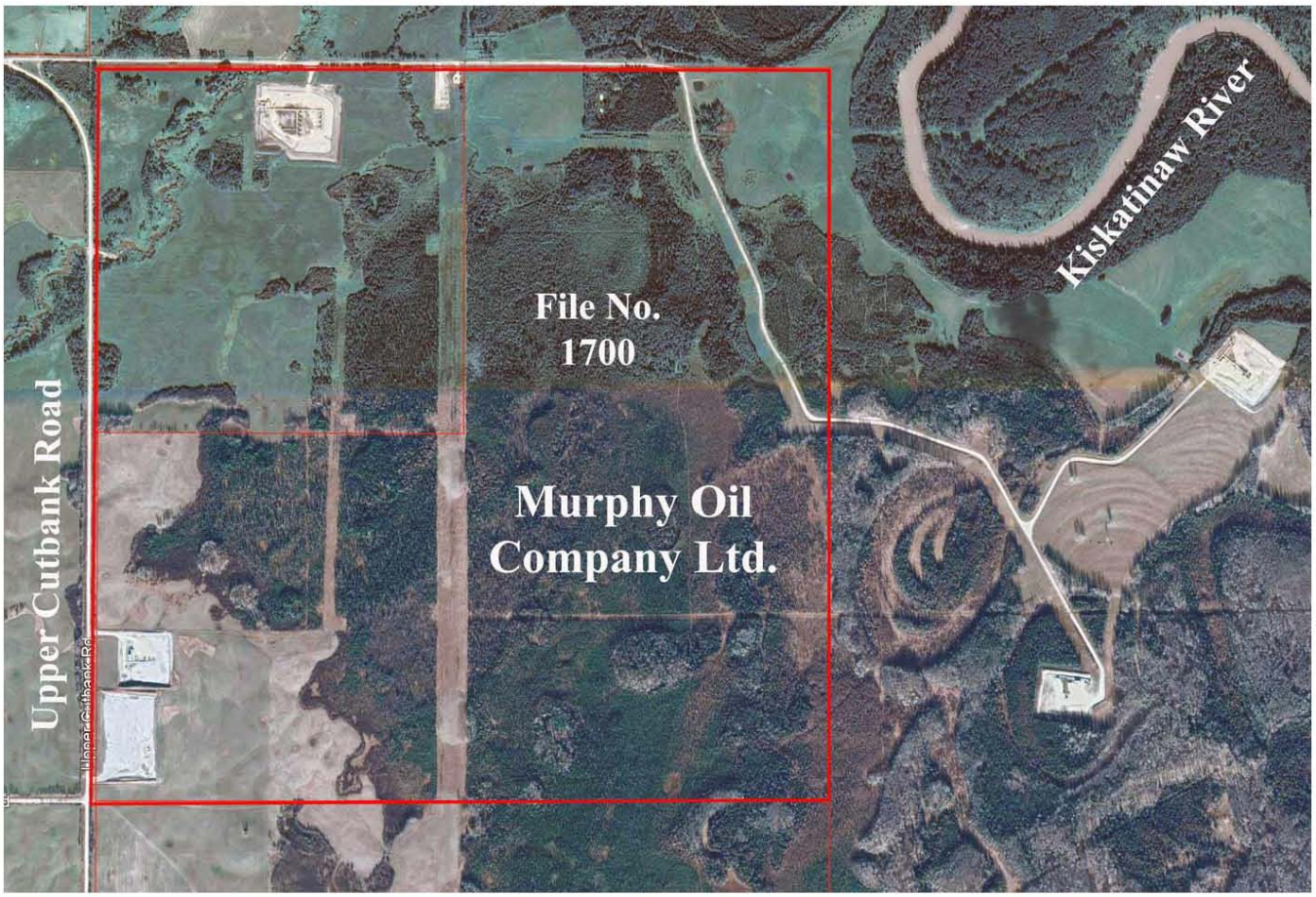
(APPLICANTS)

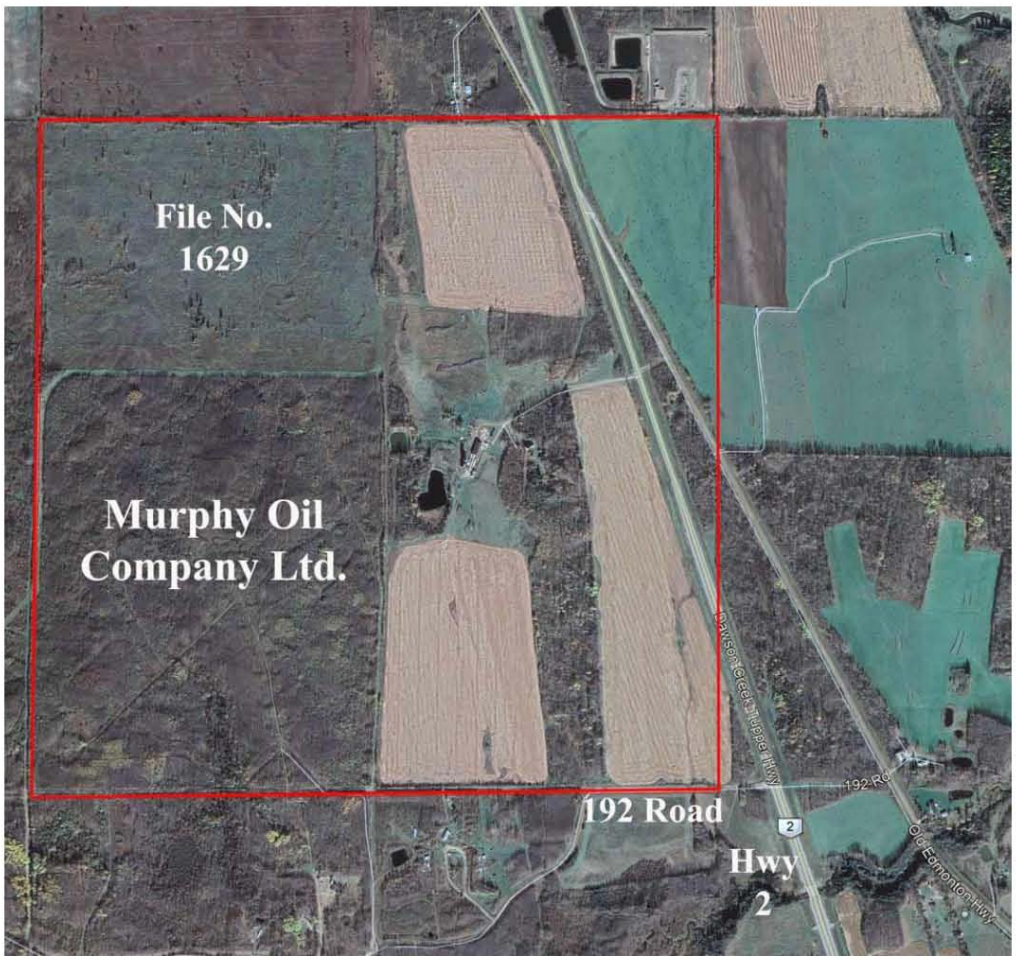
AND:

Murphy Oil Company Ltd.

(RESPONDENT)

BOARD ORDER


Kiskatinaw River
File No.
1700
Murphy Oil
Company Ltd.
Upper Cutbank Road


File No.
1629
Murphy Oil
Company Ltd.
192 Road
Hwy
2

Heard:	September 15, 2010 at Fort St. John, BC
Panel:	Cheryl Vickers
Appearances:	Burnem Grant and Gertrude Grant, on their own behalf Rick Williams, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The Applicant landowners, Burnem and Gertrude Grant, and the Respondent, Murphy Oil Company Ltd, (Murphy Oil) entered into two statutory right of way agreements, dated September 11, 2009, allowing Murphy Oil access to properties owned by the Grants (the Lands) for the purpose of constructing and operating two flowlines. The parties agreed to lump sum compensation for the use of the rights of way and for the compulsory aspect of the taking. The parties further agreed to submit a claim by the Grant's for additional compensation to account for diminishment in value of the Lands resulting from the rights of way and presence of the flowlines to the Board for determination. As the parties could not agree to a resolution of this claim, it was scheduled for arbitration.

ISSUE

[2] The only issue is whether compensation is payable by Murphy Oil to the Grants for diminution in value to the Lands, sometimes referred to as "injurious affection", and if so, how much is payable.

FACTS

[3] The Lands comprise 292.54 acres divided by Highway 2 and the Old Edmonton Highway (collectively the Highways). The Lands are zoned A-2 Large Agricultural Holdings and are designated "Agricultural – Rural Resource" by the Dawson Creek Rural Area Official Community Plan. The portion of the Lands lying east of the Highways (the East Portion) is approximately 36.4 acres and meets the Peace River Regional District Zoning By-law criteria for subdivision as a stand alone parcel. All of this area is within the Agricultural Land Reserve (ALR). Of the remaining 256.14 acre portion of the Lands to the west of the Highways (the West Portion), 115.35 acres is outside of the ALR and 140.79 acres is inside the ALR. Both the East and West Portions have access from Highway 2 and from the Old Edmonton Highway.

[4] The Grants operate a bison ranch approximately 16 kms from the Lands. They purchased the Lands in 2002 for speculative purposes. For the last eight years, the Lands have been farmed. The East Portion has Class 4 soil and is used to grow alfalfa. The West Portion has Class 4 and 5 soils and is partially cleared and cultivated, and partially forested. There is a residence, occupied by tenants, and farm buildings, some of which are in a dilapidated condition, on the

West Portion. A silo on the West Portion holds a wireless transmitter that provides high speed internet to the area.

[5] The rights of way for the two Murphy Oil flowlines are 18 metres wide and comprise, collectively, 6.37 acres. The first flowline right of way comprises 0.17 acres in the East Portion at the very northeast corner of the Lands along the northern edge of the property line, and connects with a wellsite located on the adjacent half section to the north. The second flowline right of way comprises 6.2 acres. It extends from the northern boundary of the Lands, in the East Portion, south along the eastern boundary, cuts across the Lands to cross under the Highways at a 90 degree angle, extends west across the West Portion to the western boundary, and continues south along the western boundary until turning west again into the adjacent half section. All but a small section of this right of way at the most southern part of the extension along the west boundary is located in that part of the Lands within the ALR.

[6] The flowlines in the rights of way carry sour gas. They are licensed to carry 2% hydrogen sulphide (H2S) but actually carry approximately 0.2% H2S. The residence on the Lands falls within the Emergency Planning Zone (EPZ) regulated by the Oil and Gas Commission (OGC). The occupants of the residence are subject to Murphy Oil's Emergency Response Plan, which provides protocol to be followed in the case of an emergency including provisions for shelter-in-place and evacuation.

[7] The flowlines are buried to a minimum depth of 1.5 metres. The land above the flowlines within the rights of way can continue to be used for agricultural purposes.

[8] Over the years, the Grants have considered filing an application with the Peace River Regional District (PRRD) to subdivide the East Portion from the Lands. They have gone so far as to fill in an application form and to speak with staff at the PRRD, but have not actually made an application for subdivision. They have received verbal advice from a staff person at the PRRD that subdivision of the East Portion from the rest of the Lands is viable. If the subdivision is approved by the PRRD, a separate application must also be made to the Agricultural Land Commission (ALC) for subdivision approval. Removal from the ALR requires a separate application to the ALC.

[9] The presence of the flowlines does not legally prevent subdivision of the Lands.

EVIDENCE AND ANALYSIS

[10] Pursuant to the *Petroleum and Natural Gas Act*, a landowner is entitled to be compensated for loss arising from the entry, occupation or use of land for the purpose of exploring for, developing or producing petroleum or a natural gas. If

the construction and operation of Murphy Oil's sour gas pipeline on the Grants' Lands causes loss to the Grants, Murphy Oil is liable to compensate for that loss.

[11] The compensable loss must be actual or reasonably foreseeable and proved on a balance of probabilities. Murphy Oil is not liable to compensate for possible or speculative loss in advance of a loss being probable.

[12] The Grants' claim for injurious affection, or loss in value to the remaining Lands, as a result of the rights of way and presence of the flowlines, arises in two ways. First, they say that the presence of the rights of way and flowlines on the East Portion has changed the highest and best use of the East Portion, making its subdivision from the Lands no longer probable, thus reducing its value. Second, they say that the market value of the West Portion is diminished because of the EPZ.

[13] To substantiate these claims, the evidence must demonstrate, on a balance of probabilities, that the value of the Lands, or each portion of the Lands, was greater before the signing of the rights of way and construction of the flowlines than after. Both parties called appraisal evidence. Anne Clayton, AACI, provided a summary report on behalf of the Grants providing an opinion of the loss of value to the Lands as a result of the flowline rights of way. John Wasmuth, AACI, provided an appraisal report appraising the market value of the area of land covered by the rights of way on a per acre basis, and providing an opinion about injurious affection to the rest of the land.

[14] I will address each claim in turn.

The East Portion

[15] Both appraisers provided an opinion with respect to highest and best use, although they approached the question from different perspectives and using different assumptions.

[16] Highest and best use is an appraisal concept that is described as the reasonably probable and legal use of a property that is physically possible, financially feasible and results in the highest value. The market value of property is based on its highest and best use. A determination of the highest and best use of property, or the use that will dictate a property's market value, involves consideration of what is physically possible, legally permissible, financially feasible and maximally productive.

[17] Ms. Clayton provided an opinion for the highest and best use of the East Portion as if it was a subdivided parcel. In her opinion, the highest and best use of the East Portion prior to construction of the flowlines was for development to a use permitted by the A-2 zoning such as a dwelling or dwelling with a home based business employing up to four employees. She did not do a highest and best use analysis to support this opinion.

[18] Based on the opinion that highest and best use of the East Portion was for subdivision and development, Ms. Clayton estimated the market value, as of August 2009, of the East Portion as a subdivided 36.4 acre parcel would have been $47,300 based on a price per acre of $1,250. In Ms. Clayton's opinion, the way the flowline cuts through the East Portion of the Lands would make a home business use permitted within the ALR difficult. In her opinion, the presence of the flowline rights of way in the East Portion significantly reduces the utility of the site so that its highest and best use is no longer development of a home site in conjunction with a home business, but is its current agricultural use as part of a larger farming operation. In Ms. Clayton's opinion, the value of agricultural land is $650/ acre based on sales of quarter sections in the area. Accordingly, she quantified the loss in value to the East Portion at $29,100 as follows:

Before flowline value	36.4 acres x $1,250/acre	$47,300
After flowline value	36.4 acres x $650/acre	$18,200
Difference in value		$29,100

[19] Mr. Wasmuth provided an opinion with respect to the whole half section. His highest and best use analysis led him to conclude that the highest and best use of the whole half section as of September 2009 was continued agricultural use given the overall agricultural soil capability, topography, ALR status, current zoning, location and permitted use. He recognized the property has the potential long term future use of subdivision of the East Portion for development as a country residential lot, however, considered such subdivision and development speculative at the time the rights of way were signed. In Mr. Wasmuth's opinion, the rights of way and installation of the flowlines did not change the highest and best use of the Lands. In his opinion, the highest and best use was for agricultural purposes before the rights of way agreements and construction of the flowlines, and continues to be so after construction.

[20] Mr. Wasmuth indicated he had reviewed ALC decisions with respect to small parcels with Class 5 and 6 soils and did not note any consistency in their determination of whether or not to allow subdivision. Murphy Oil provided three examples of decisions by the ALC North Panel denying applications for subdivision of land with Class 4, 5 or 6 soils. In all of these decisions, the Panel expressed some concern that allowing subdivision of small parcels would promote applications for exclusion from the ALR down the road, and would not encourage agricultural use of land within the ALR.

[21] Mr. and Mrs. Grant took issue with Mr. Wasmuth's conclusions of highest and best use and that the potential for subdivision and development is speculative. Their evidence was that there are considerable pressures on agriculture in the area these days and that it is not the most profitable and economic use of the property. They said there is demand for small land holdings or acreages to be used as residences or small businesses to service oil and gas activities. The Class 4 and 5 soils are limited in their productivity. Both the East

and West Portions have access and can be easily serviced with natural gas, power, telephone, high speed internet, water and sewer. They have observed other properties in the Dawson Creek area being rezoned and excluded from the ALR. They pointed to the recent purchase of property by an oil and gas company for establishing an office and yard site as an example of market activity indicating financial feasibility for subdivision. This transaction is one of the sales referred to by Ms. Clayton in estimating the value of the East Portion as if subdivided.

[22] The Grants provided an extract from the ALC's Annual Report for 2008-2009. This evidence indicates the ALC's North Panel received 118 applications in the year: eight for exclusions, eight for inclusions, and 102 for non-farm use and subdivision. Of the exclusions, 117.7 hectares were refused and 1,006.6 hectares were approved. Of these excluded hectares, 187.1 were prime land and 819.5 were secondary land. Consequently, the Grants consider it probable that an application to the ALR to exclude portions of the Lands from the ALR would be successful. The same exhibit indicates 1,430 hectares were approved for inclusion in the ALR. It does not indicate how many of the non-farm use and subdivision applications were approved or rejected.

[23] While both appraisers agree that the East Portion meets the zoning criteria for subdivision, they disagree on the probability that subdivision would ultimately be approved. Ms. Clayton's estimate of market value for the East Portion assumes its subdivision. Mr. Wasmuth considers the possibility to be just that, a future possibility, but is of the opinion that the market conditions do not exist at present to make subdivision and development of the East Portion profitable, feasible or probable. Reviewing the evidence of the probability of subdivision, I am not satisfied that it tips the scale from legally possible into probable. The Official Community Plan designates the Lands for agricultural use. One of the stated objectives of this designation is to assist the ALC in the preservation of lands in the ALR for agricultural purposes. Although the East Portion meets the criteria for subdivision in the zoning bylaw, that in itself does not mean an application would necessarily be approved. Even if it is approved, a further application must be made to the ALR and the evidence falls short of demonstrating that, in all probability, such an application would be approved. The excerpt from the ALC Annual Report shows that in 2008-2009 the North Panel approved for inclusion into the ALR more land than they approved for exclusion, for a net gain of land in the ALR. It does not indicate how many of the 102 applications for subdivision were approved. I have examples of three decisions from the North Panel of the ALC denying applications for subdivision of land with similar soil class and expressing concern that subdivision of small holdings does not support the purposes of the *Agricultural Land Commission Act*. So while I agree it was certainly possible that the East Portion could have been approved for subdivision before the rights of way agreements were signed, I am not satisfied that, as of that time, such approval was more likely than not.

[24] Turning to the market evidence, I am not satisfied that it demonstrates a demand for smaller subdivided parcels. Ms. Clayton provided four indices of

market activity for smaller acreages to support her estimate of value for the East Portion as if subdivided. Two are sales that occurred in 2005 and 2006, and are therefore, not indicative of market activity around the time the rights of way were signed. One is a current listing, not a sale. The fourth index, and the one referred to by the Grants and on which Ms. Clayton places most weight, is a 2010 transaction where the purchaser, an oil and gas company, agreed to pay the cost of rezoning and subdivision. However, rezoning and subdivision have not yet been approved. If the subdivision and removal of this parcel from the ALR is approved, and the sale completes, the sale may provide an indication of value for the East Portion if subdivision was approved, but as of the time both before and after the rights of way agreements were signed it only provides evidence of what might be possible.

[25] Mr. Wasmuth's evidence is that in the last three years there have only been two sales within a 15 kilometre radius of the Lands between 9 and 80 acres in size, and that there are numerous severed parcels in the area that remain under the same ownership as the parent parcel. The market evidence before me, therefore, does not demonstrate a demand for subdivided parcels.

[26] While I agree that subdivision of the East Portion was legally permissible, I am not satisfied the market conditions existed at the time the rights of way agreements were signed to make subdivision either probable, or feasible and maximally productive, and therefore its highest and best use. The evidence convinces me that the highest and best use of the Lands including both the East and West Portions was and is continued existing agricultural use.

[27] In any event, even if the highest and best use of the East Portion was for subdivision as of the time the rights of way were signed, the presence of the flowlines does not render the East Portion un-subdividable. The flowline does not affect the qualifications for subdivision under the zoning by-law. The same possibility of subdivision of the East Portion exists today, after installation of the flowlines as it did before installation of the flowlines. The flowlines do not render the East Portion, if subdivided, unusable for development. The evidence is that even considering set backs from the rights of way, the property will contain building sites capable of supporting allowable uses under the zoning bylaw. Nor is there evidence that presence of the flowlines necessarily changes the likelihood of approval of a subdivision by the PRRD or removal of the land from the ALR by the ALC. These steps to development remain in place and the evidence does not disclose that the likelihood of approval is any less as a result of the flowlines.

[28] Mr. Grant agreed that there is nothing legally preventing the subdivision of the Lands because of the flowlines, but argued that the subdivided parcel would be less desirable. There is no market evidence to support that argument. The Board cannot award compensation based on a hunch or a feeling of loss. The loss must be supported by evidence.

[29] I find that the highest and best use of the East Portion is, and was before the rights of way agreements were signed, its continued agricultural use for the time being and that the possibility of subdivision and alternate use of the East Portion has not changed as a result of the rights of way and flowlines. I am not satisfied the market value of the East Portion has diminished as a result of the rights of way agreements and flowlines. Consequently, there is no basis for compensation for injurious affection.

The West Portion

[30] The claim of injurious affection for the West Portion is based entirely on the presence of the EPZ and the argument that being in the EPZ negatively affects the value of the Lands. Ms. Clayton's opinion is that market value has been reduced by 10-25% as the occupants of this site are subject to the provision of the Emergency Planning Zone (EPZ).

[31] To calculate loss, Ms. Clayton provided three sales of residential acreages from 59.3 acres to 639 acres, occurring in 2008 and 2010, and indicating a range of value from $375,000 to $422,000. Placing most weight on the sale of a 59.3 acre site with a 27 year old, 2,884 square foot home with a guest cabin and greenhouse selling in June of 2008 for a time adjusted price of $422,000, she estimated loss of value for the West Portion to be in the range of $42,000 (10% of $422,000) to $105,000 (25% of $422,000).

[32] Ms. Clayton conceded that she is not aware of any studies that support her conclusion of diminution in value and that there is no market evidence to support a reduction to market value for being within an EPZ. She admitted to being unaware of any studies demonstrating that the value of land is negatively impacted by the presence of a pipeline or as a result of being inside an EPZ. Nor is she aware of any pattern of dealings that includes compensation for being in an EPZ.

[33] Mr. Wasmuth reported that he conducted a literature search on injurious affection. He indicated that while pipeline rights of way acquired through residential subdivisions have in some instances been found to negatively affect market price, he was not aware of any North American studies that indicate any negative impacts on market prices for agricultural holdings as a result of pipeline rights of way. In his own appraisal experience, he has never found a correlation to indicate a negative impact on the market prices of agricultural properties that contain underground pipelines.

[34] In the Grants' view, the diminishment of value comes from the fact that the flowline crosses the middle of the Lands rather than following property boundaries. In their view, the impact on the value of the Lands would have been much less if the flowlines had followed the property lines. There is no evidence, however, that the location of the flowline affects the continued use of the West Portion for agricultural purposes.

[35] There is simply no market evidence to support the claim for injurious affection to the West Portion. Neither appraiser could provide market evidence or studies to support diminishment of land value for the presence of a buried pipeline. If the presence of underground pipelines negatively affects the value of agricultural land, that impact should be evident from sales. As indicated above, the Board cannot compensate for loss based on a hunch or belief. The alleged loss must be supported with evidence and proved on a balance of probabilities. I find the evidence falls far short of demonstrating a negative impact to the value of the West Portion as a result of the rights of way and flowline or the EPZ, and consequently there is no basis for compensation for injurious affection to the West Portion of the Lands.

CONCLUSION

[36] I find that the probable use of the Lands into the foreseeable future has not changed as a result of the rights of way and flowlines and that the evidence does not demonstrate that the value of the Lands is less today as a result of the rights of way and flowlines than it was before the rights of way agreements were signed. Consequently, I find no compensation is payable by Murphy Oil to the Grants for injurious affection to the Lands.

DATED November 12, 2010

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1643/1644
Board Order No. 1643/44-1

July 22, 2010

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
NE ¼ Section 11, Township 77, Range 17, W6M, Peace River District
SW ¼ Section 14, Township 77, Range 17, W6M, Peace River District
NW ¼ Section 11, Township 77, Range 17, W6M, Peace River District

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

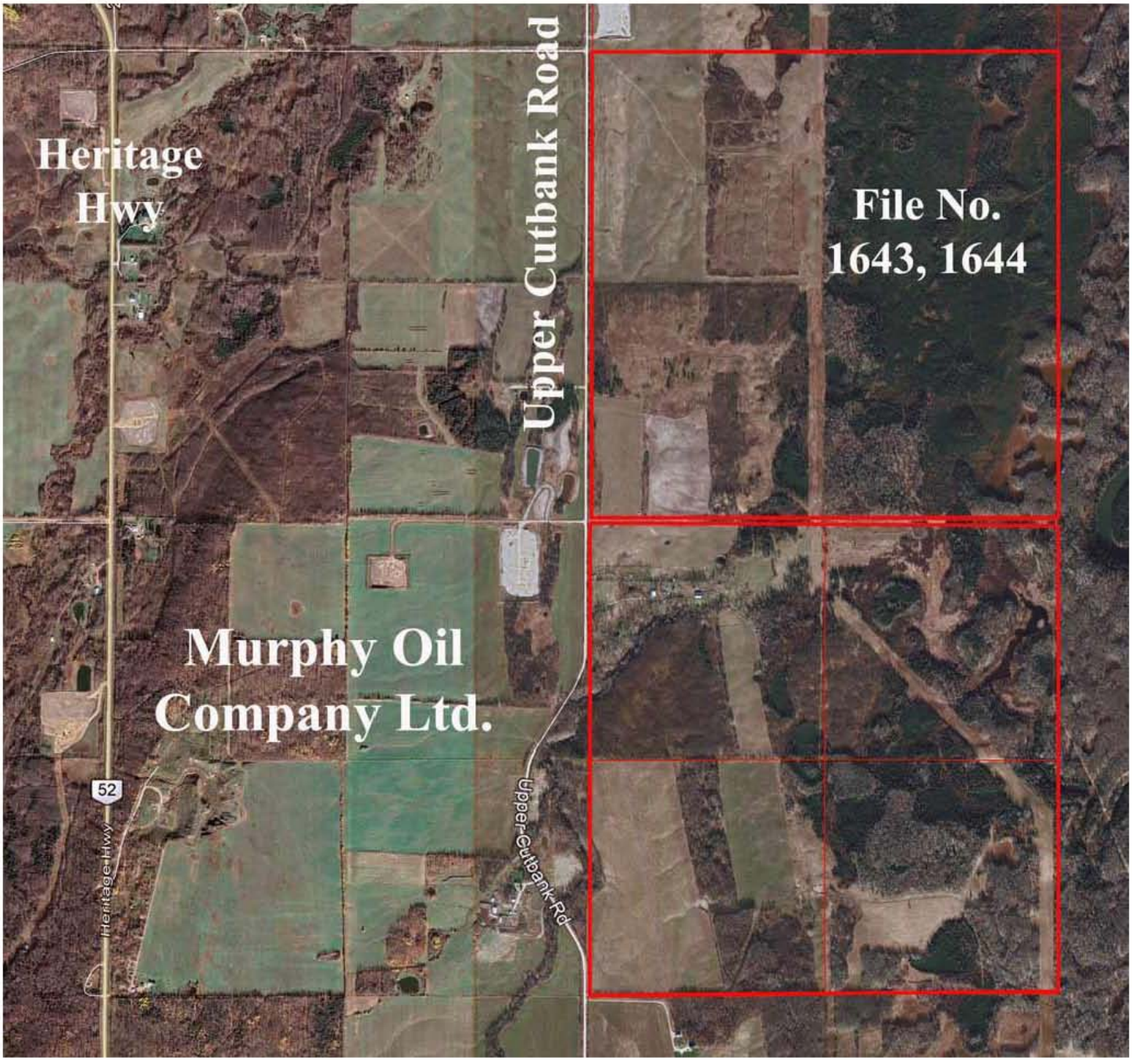
(APPLICANT)

AND:

DUANE HALLIDAY and SUZANNE HALLIDAY

(RESPONDENTS)

BOARD ORDER


Heritage Hwy
Upper Cutbank Road
File No. 1643, 1644
Murphy Oil Company Ltd.
52
Heritage Hwy
Upper Cutbank Rd

Heard by telephone conference:	July 21, 2010
Mediator:	Cheryl Vickers
Appearances:	Rick Williams, Ed Johnston, Glen Schafer, and Lloyd Maxwell for the Applicant, Murphy Oil Company Ltd.
	Duane Halliday, on his own behalf
	Brian Halliday, for the Respondent, Suzanne Halliday

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[1] The Applicant, Murphy Oil Company Ltd. (Murphy Oil), applies to the Board for mediation and arbitration respecting right of entry to Lands owned by Duane Halliday and Duane and Suzanne Halliday, and compensation payable for that entry. Murphy Oil seeks access to the Lands to construct and operate a flowline. Murphy Oil has received a permit from the Oil and Gas Commission (OGC) for the construction of the flowline. The Respondents do not consent to Murphy Oil accessing the Lands.

[2] Pursuant to the *Petroleum and Natural Gas Act*, the Board may authorize entry onto private lands if entry is required to explore for, develop or produce petroleum or natural gas, or for an incidental or connected purpose. A company who enters private 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.

[3] The Respondent, Duane Halliday, does not want anything to do with Murphy Oil. He wants to "be left in peace". He would prefer that the flowline go around his property and expressed concerns about his inability to build a residence on the property in the future because of the location of the proposed flowline. Mr. Halliday's concerns with respect to the location of the flowline are concerns that should have been brought to the attention of the OGC. It is within the OGC's jurisdiction to determine whether the proposed location for a flowline is appropriate and whether a proposed oil and gas installation otherwise complies with applicable legislation and Regulations. In issuing a permit for Murphy Oil's proposed flowline, the OGC has determined that the proposal is appropriate and has authorized its construction. I am advised by the OGC that Mr. Halliday was not willing to engage with them to deal with his concerns.

[4] Murphy Oil advised that all of the other landowners along the proposed flowline have entered right of way agreements allowing entry to their land for the

purpose of construction and installation of the flowline. Murphy Oil would like to commence construction as soon as possible so as to be able to tie wellsites into their Tupper West gas plant. I am satisfied that Murphy Oil needs access to the Lands to construct and operate the proposed flowline.

[5] On the issue of compensation, I understand Mr. Halliday does not agree that the amount of compensation offered by Murphy Oil is adequate. He suggested compensation should be in line with that paid by two other companies for other pipelines, but was not sure how those amounts were arrived at and was not specific as to what those amounts were for pipeline access. He indicated that a number of trees will have to be removed from the Lands to construct the flowline but no specific amount for compensation was suggested for this loss. Murphy Oil has made a compensation offer that includes compensation for the right of way, the compulsory aspect of the taking, and for temporary workspaces. It does not include an amount for damages or crop loss. Both parties are of the view the Board will have to arbitrate the compensation and that an agreement is unlikely. Given the history of these proceedings, I am inclined to agree.

[6] With respect to the timing of a right of entry order, Mr. Halliday expressed that it should not be made until either the amount of compensation was determined or that it should be held off for one year. The Board has been trying to engage the Respondents in mediated discussion for some time on the issue of compensation but Mr. Halliday has, until today, refused to participate. Mr. Halliday had the opportunity engage with the OGC with respect to his concerns but declined to do so. I see no reason to delay the entry as suggested by Mr. Halliday. The flowline has been permitted by the OGC, all of the other landowners on the flowline have consented to entry, and without the flowline, Murphy is unable to tie in producing wells to their gas plant. I am satisfied that the right of entry order should be made. The matter of compensation may proceed to arbitration if the parties continue to be unable to agree on the appropriate compensation payable.

[7] Pursuant to sections 18 and 19 of the *Petroleum and Natural Gas Act*, the Mediation and Arbitration Board Orders:

1. Further mediation is refused;

2. Upon payment of the amounts set out in items 3, 4 and 5 below, Murphy Oil Company Ltd, including its employees, contractors and assigns shall have the right of entry to and access across those portions of the Lands shown in Schedule "A" for the purpose of constructing and operating the flowline approved by the Oil and Gas Commission to be constructed on the Lands;

3. Murphy Oil Company Ltd shall deposit with the Mediation and Arbitration Board a security deposit payable to the Minister of Finance in the amount of $10,000.00. All or part of the security deposit may be returned to Murphy Oil Company Ltd. or paid to the Respondents upon the agreement of the parties or as ordered by the Board;

4. Murphy Oil Company Ltd. shall pay to Duane Halliday the amount of $14,439.00 as partial payment for compensation payable for entry to and use of that portion of the Lands identified as NE ¼ of Section 11, Township 77, Range 17, W6M, Peace River District and SW ¼ of Section 14, Township 77, Range 17, W6M, Peace River District;

5. Murphy Oil Company Ltd. shall pay to Duane and Suzanne Halliday the amount of $3,035.00 as partial payment for compensation payable for entry to and use of that portion of the Lands identified as NW ¼ of Section 11, Township 77, Range 17, W6M, Peace River District;

6. Murphy Oil shall serve the Respondents with a copy of this Order prior to entry on the Lands. Service may be accomplished by sending a copy of the Order to each of the Respondents by registered mail;

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

DATED July 22, 2010

FOR THE BOARD

Cheryl Vickers,Chair

File No. 1643/1644
Board Order No. 1643/44-2

November 20, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
NE ¼ Section 11, Township 77, Range 17, W6M, Peace River District
SW ¼ Section 14, Township 77, Range 17, W6M, Peace River District
NW ¼ Section 11, Township 77, Range 17, W6M, Peace River District

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(APPLICANT)

AND:

DUANE HALLIDAY and SUZANNE HALLIDAY

(RESPONDENTS)

BOARD ORDER

Heard: by way of written submissions, last received on September 12, 2012

Panel: Rob Fraser
Appearances: Rick Williams, Barrister and Solicitor, for the Applicant
Duane Halliday, Respondent

INTRODUCTION

[1] The Applicant, Murphy Oil Company Ltd. (Murphy Oil), applies to the Board for mediation and arbitration respecting the right of entry to Lands owned by Duane Halliday and Duane and Suzanne Halliday, and compensation payable for that entry.

[2] On July 22, 2010, the Board issued Order 1643/1644-1 granting Murphy Oil the right to enter the Lands for the construction of the flow line. In its Order, the Board noted the parties could not resolve the issue of compensation and refused further mediation.

[3] The right of way covers 9.17 acres, and the temporary work space is 5.05 acres.

[4] My decision considers the submissions of both parties regarding the appropriate compensation required to account for Murphy Oil's entry onto the lands.

Preliminary Issue 1: Flow Line versus Flow Lines

[5] Mr. Halliday takes issue with the wording of the Board's Order 1643/1644-1, as the writer refers to "flowline" and pipeline in the singular when in fact Murphy Oil installed five flowlines on the Lands. Mr. Halliday says because the Order refers to only one flow line, the other four are installed illegally. Murphy Oil says the Oil and Gas Commission ("OGC") issued a permit for five flow lines. Murphy Oil argues that the Board granted access to Murphy Oil to complete the work authorized by the OGC and that the wording of the Board's order is of no significance. Murphy Oil points to the construction plans that refer to "five pipes", plus the wording of a Court Order issued on September 20, 2012 that refers to "flow lines".

[6] I find nothing turns on the fact that the Board refers to "flow line" in the singular when the project involves the installation of five flow lines. I find that Mr. Halliday was aware of the number of flow lines as the OGC refers to "five pipes" in their approved construction plans. As well, in Murphy Oil's original application to the Board for mediation and arbitration services, Murphy Oil refers to "flow lines" in the plural rather than the singular.

[7] However, it is not important whether Mr. Halliday was aware of the installation of one flow line or five, or whether the Board used the singular rather than the plural. The Board Order granted Murphy Oil access to the Lands to complete the work approved by the OGC. The OGC approved the installation of five pipes, which are the five flow lines installed by Murphy Oil. It is not within the Board's jurisdiction to approve the number of flow lines for any given project. The Board's jurisdiction is limited to granting access for the completion of the project, and for settling the issue of compensation if the parties are unable to resolve it themselves. Whether the Board referred to a "flow line" or "flow lines", the entry order was for the construction of the works as approved by the OGC, and the wording of the Board's Order does not limit the project to one flow line nor does it make the presence of the other four illegal.

Preliminary Issue 2: The Riser Site

[8] The parties entered into two leases for a riser site and access. Neither formed part of the Board's Order and compensation for these leases, which is settled between the parties, is not part of this arbitration.

Settled Damages

[9] Murphy Oil paid Mr. Halliday $4,000 for fence repairs and $16,000 for timber removed and used in the construction of the project. As well, Murphy Oil paid Mr. Halliday $1,160 for damage to 29 bales of oats.

Settlement with Suzanne Halliday

[10] Suzanne Halliday is the former wife of Duane Halliday. She is currently a resident of Australia and may now have a different last name.

[11] On July 20, 2012, Murphy Oil and Suzanne Halliday reached an agreement for her portion of compensation for the NW ¼ Section 11, Township 77, Range 17, W6M. Murphy Oil paid her $1,400 for timber loss, $500 for fence cuts, and $2,221 for compensation and pasture loss.

ISSUE

[12] The sole issue before me is the determination of the appropriate compensation owing to Duane Halliday resulting from Murphy Oil's right of entry onto the Lands for the purposes of construction of an approved pipeline project.

SUBMISSIONS

[13] Mr. Halliday seeks damages of $258,340.00 from Murphy Oil. Murphy Oil says that they are prepared to pay Mr. Halliday $22,719.50 ($13,679.00 for loss of rights and land value and $9,040.50 for loss of profits). Mr. Halliday breaks down his claim into components and provides reasons for each amount. Murphy Oil provides an appraisal report of the bare land per acre market value of the lands, plus an agricultural damages report.

[14] John Wasmuth, an accredited and experienced real estate appraiser and a professional agrologist employed by Canadian Resource Valuation Groups Inc., prepared Murphy Oil's reports.

Reduction in Market Value

[15] Mr. Halliday says the value of one quarter of the Lands is negatively impacted by the right of way, and seeks $60,000, or half the land value as compensation. In support, he provides correspondence from three potential purchasers who declined to buy the land because of the presence of the right of way and flowlines.

[16] In his appraisal report, Mr. Wasmuth analyzed the impact of pipeline rights of way on the market value of land. He reviewed the available literature and applied his extensive experience (30+ years). He found that there are no North American studies that demonstrate a negative impact on the market value of agricultural holdings resulting from the presence of a pipeline right of way. As well, in his years of experience of performing thousands of appraisals of agricultural lands, he has never found a correlation between rights of way and value indicating a negative impact on the market prices of agricultural land containing underground pipelines.

[17] I find Mr. Wasmuth's report persuasive evidence and find that there is no support for an award of damages to account for a loss of market value due to the right of way or due to the presence of Murphy Oil's flowlines. The correspondence produced by Mr. Halliday indicates that his potential purchasers declined to enter into purchase agreements because they believed that the location of the right of way interfered with where they wished to place a residence. These letters indicate the desires of these purchasers, but are not evidence of a loss of value.

[18] Mr. Halliday did not provide any testable support for his opinion, such as an appraisal report, establishing whether the right of way actually creates a negative impact and if so, the amount of reduction in the market value of the land.

Loss of Timber:

[19] Mr. Halliday claims $16,840 for the loss of timber. Mr. Zeke Reimers, in his affidavit, says that Murphy Oil paid Mr. Halliday $16,000 for the agreed value of the

timber removed in clearing the land and in construction. Mr. Halliday signed a general release with respect to the timber. As well, Murphy Oil agreed to pay an additional $1,400 to Suzanne Halliday for her share of the timber.

[20] I find that there is not sufficient evidence to include a further $840 for timber loss, as the parties have agreed to $16,000 and Murphy Oil has paid that amount to Mr. Halliday.

Loss of Pasture

[21] Mr. Halliday claims a total loss of $79,000 for his loss of pasture. He calculates the loss for SW ¼ Section 14, Township 77, Range 17, W6M as $200 per acre for 116 acres, or $23,200 for 2011 and 2012.

[22] For NW ¼ Section 11, Township 77, Range 17, W6M he calculates a loss based on $200 per acre for 18 acres, or $3,600.

[23] For NE ¼ Section 11, Township 77, Range 17, W6M, Mr. Halliday calculates his loss as $200 per acre for 160 acres, or $32,000.

[24] Mr. Halliday selects $200 per acre, saying this figure is used by Murphy Oil in calculating the loss of use for pasture.

[25] Mr. Wasmuth provides a detailed calculation of productivity in his agricultural damages report. Based on his experience, he estimates a 100% crop loss for the years 2010, 2011 and 2012, with 75% loss in 2013, 50% loss in 2014, and 25% loss in 2015.

[26] He estimates the loss by calculating the forage yield of the lands, for both native and tame pasture lands. Then he determines the price of the forage crop, and applies this to the area of the pipeline right of way and to the temporary work space. For NE11 & SW 14 he estimates the loss at $2,340 for the right of way and $1,152 for the temporary work space, or a total of $3,492. For NW 11, he estimates the loss of the right of way at $350 and for the temporary work space at $243, or a total of $593. He concludes that $4,085 represents the agricultural loss arising from the construction of the flow lines in the right of way, and for the disruption in the temporary work space.

[27] Mr. Wasmuth produced a thorough and comprehensive analysis of the loss of forage. He considered the time it would take to bring the land back to full productivity, he limited his calculations to the actual land involved, and he provided a detailed calculation of the potential loss. In contrast, Mr. Halliday produced figures without any support. I give most weight to Mr. Wasmuth's evidence, and I find that the best estimate of agricultural loss is $4,085.

Value of the Land

[28] Mr. Halliday seeks a sum of $115,500 as the value of the land taken by Murphy Oil for the right way and for the temporary work space. He claims that another company paid $77,000 to go the same route as Murphy Oil. He says Murphy Oil used 1.6 as much land and their pipeline density is 1.4 times greater. He reaches his conclusion of value by calculating 1.6 + 1.4 = 3 / 2 = 1.5 x $77,000 = $115,500. Mr. Halliday does not provide any other evidence to support his conclusion.

[29] Mr. Wasmuth prepared a market value appraisal of the lands. He reviewed the amount cultivated, the soil rating, the topography, the zoning and the ALR status. He also analyzed the highest and best use, concluding the use is for agricultural production and that the highest and best use did not change because of the of the Murphy Oil project.

[30] In arriving at his estimate of the fee simple estate, Mr. Wasmuth analysed eight sales of lands similar in size, soil class, topography and zoning. He made adjustments for differences as necessary and found that the value of the bare land ranged from $540 per acre to $768 per acre, with an average of $674 per acre and a median of $699 per acre. His final conclusion is $700 per acre as of July 2010. Mr. Wasmuth then applies this to the area of the right of way, which totals 9.17 acres for a land value of $6,419.

[31] In valuing the temporary work space, Mr. Wasmuth considers that this is a short term taking and looks to the appropriate rental rate, which he determines to be $25 per annum for three years, or $75 per acre. However, in valuing the temporary work space, he relies on the industry standard of using 50% of the land value, or $350 per acre. He applies this to the 5.05 acres of temporary work space to estimate the value at $1,768.

[32] Mr. Wasmuth considers whether the presence of the right of way negatively impacts the value of the lands outside of the right of way. He considers the highest and best use of the land both before and after the right of way taking, and concludes that the taking will most likely not change the highest and best use from agricultural production.

[33] Mr. Wasmuth reviewed the relevant literature, applied his own extensive experience, and because there is no change in the highest and best use of the lands concludes that the right of way will not cause any reduction in the market value of the remaining portions outside of the right of way.

[34] I find that Mr. Wasmuth performed a detailed analysis of the value of the Lands, and I give most weight to his opinion of value. Mr. Halliday provides neither evidence nor rationale for his calculation. I find that the actual value for the land in the right of way is $6,419 and the actual value of the land in the temporary work space is $378.75 ($75 x 5.05 acres) but I will accept the industry standard of 50% of the value of the land in the right of way, or $1,768 ($350 x 5.05 acres). I also find that there is no evidence or theoretical support for a diminishment in value of the lands outside of the right of way.

ANALYSIS

[35] The sole remaining issue in this dispute is my determination of the appropriate compensation payable to Mr. Halliday by Murphy Oil resulting from the right of way and the activities associated with the installation of the flowlines.

[36] The factors the Board may consider in setting compensation are found in Section 154(1) of the *Petroleum and Natural Gas Act*, which provides as follows:

> **154** (1) In determining an amount to be paid periodically or otherwise on an application under this Part, the board may consider, without limitation, the following:
>
> (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.

[37] The specific factors in Mr. Halliday's claim for compensation and the specifics of Murphy Oil's offer to settle are covered by section 154. I do not need to consider factors other than those specified in the legislation.

[38] I found that the Board's Order was for a right of entry to construct the work approved by the OGC, regardless of how many flowlines Murphy Oil placed in the right of way. This is not a factor to be considered in determining compensation.

[39] Likewise, the riser site and access are not part of the Board's Order and therefore are not factors in determining compensation.

[40] After considering the evidence of the parties, I found that there was no evidence to support a reduction in the land value as a result of Murphy Oil's activities on the Lands. I found that the parties had settled on an amount for the loss of timber, and there was no evidence leading me to conclude that there should be any further compensation. For the loss of pasture, I accepted Mr. Wasmuth's estimate of $4,085. For the loss of the land, I again accepted Mr. Wasmuth's opinion that the value of the land in the right of

way is worth $6,419 and the value of the land in the temporary work space is $378.75, but accepted his adjustment to the industry standard or $1,768.

[41] Mr. Halliday's total loss is either $4,085 + $6,419 + $378.75 = $10,882.75 or accepting the industry standard applied to the temporary workspace, his total loss is $4,085 + $6,419 + $1,768 = $12,272.

[42] Mr. Halliday's maximum total loss of $12,272 is below Murphy Oil's offer of $22,719.50. Murphy Oil's offer for the loss of land is $13,679, which exceeds Mr. Wasmuth's opinion of $8,187, adopting the industry standard for temporary workspace.

[43] In *Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458, the Court said that the upper limit for compensation is the value of the land and if the landowner receives the full amount of the land value the Board must not make an additional payment for the compulsory aspect of the taking. The Board reiterated this principle in *Arc Petroleum Inc. v. John Miller and Mary Miller (*SRB Order 1633-3, May 2011).

[44] Mr. Wasmuth's opinion of the land value is for the fee simple value of the land. However, Murphy Oil is acquiring only a partial interest and not the full fee simple so to accurately determine the appropriate land loss, I should consider the residual or reversionary interest. In this case, Mr. Wasmuth did not adjust for any reversionary interest so therefore, his opinion of $700 per acre exceeds the appropriate amount per acre for land loss.

[45] If the only evidence before me was that of Mr. Halliday and Mr. Wasmuth, I would find that $8,187 exceeds the actual land loss. However, Murphy Oil made an offer based on what it had paid other landowners for similar situations. Although Murphy Oil's offer exceeds the actual loss, out of fairness Mr. Halliday should not receive an amount less than that received by others in the area. Therefore, I accept Murphy Oil's offer as reasonable compensation in these circumstances.

[46] One of the factors the Board may consider in setting compensation is the compulsory aspect of the taking. In this case, since the amount of compensation exceeds the actual value of the land, I find Murphy Oil's offer is sufficient to compensate Mr. Halliday for the compulsory aspect of his loss.

[47] Another factor the Board may consider is nuisance and/or severance. I have no evidence of any loss for these factors, and if there is any, it is incorporated in Murphy Oil's offer that exceeds Mr. Halliday's actual loss.

[48] In summary, I find that Murphy Oil produced the only credible evidence that assisted me in finding the appropriate compensation to account for their activities on Mr. Halliday's Lands. Murphy Oil's total offer for all factors of $22,719.50 exceeds the actual loss of $12,272.00, but for reasons of fairness is the appropriate compensation for any negative impacts to the Lands and for any loss of pasture. I find any compensation for the compulsory aspect of the taking and for nuisance/severance is

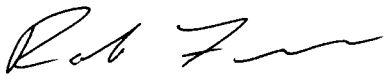
accounted as Murphy Oil's offer exceeds the actual loss. As well, I find no evidence to support a loss of land value because of the presence of the flowlines and the right of way.

ORDER

[49] The Board orders Murphy Oil Company Ltd. to pay to Duane Halliday the sum of $22,719.50 to account for the losses from all sources resulting from Murphy's activities on Mr. Halliday's Lands.

DATED: November 20, 2012

FOR THE BOARD



Rob Fraser, Arbitrator

File No.
Board Order # 1700/17-1

May 24, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
THE NORTH WEST ¼ OF SECTION 23 TOWNSHIP 77 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

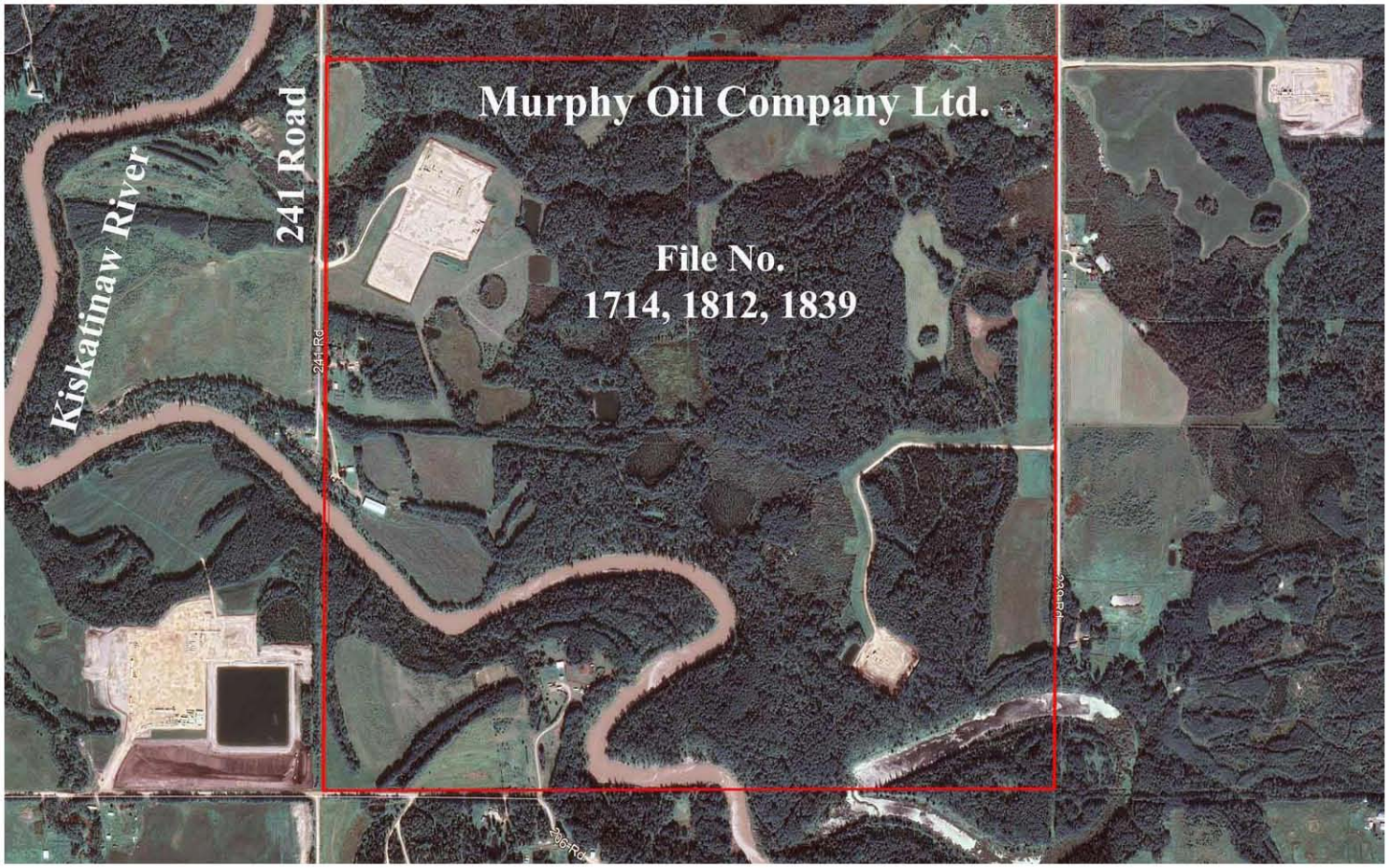
(APPLICANT)

AND:

Douglas Robert Jerome, Robert Earl Jerome,
Pearl Jerome, and Toni Ethel Jerome

(RESPONDENTS)

BOARD ORDER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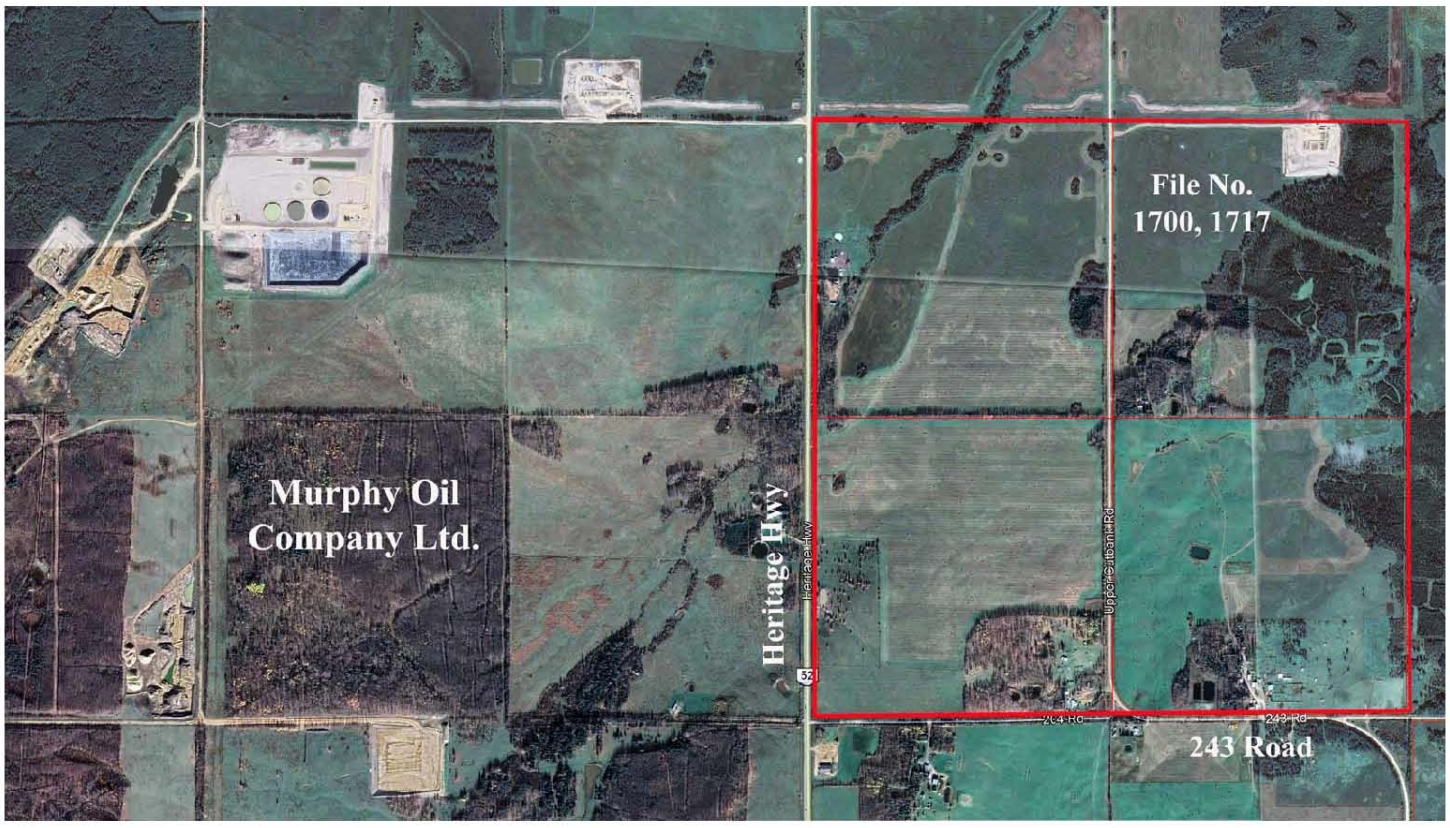
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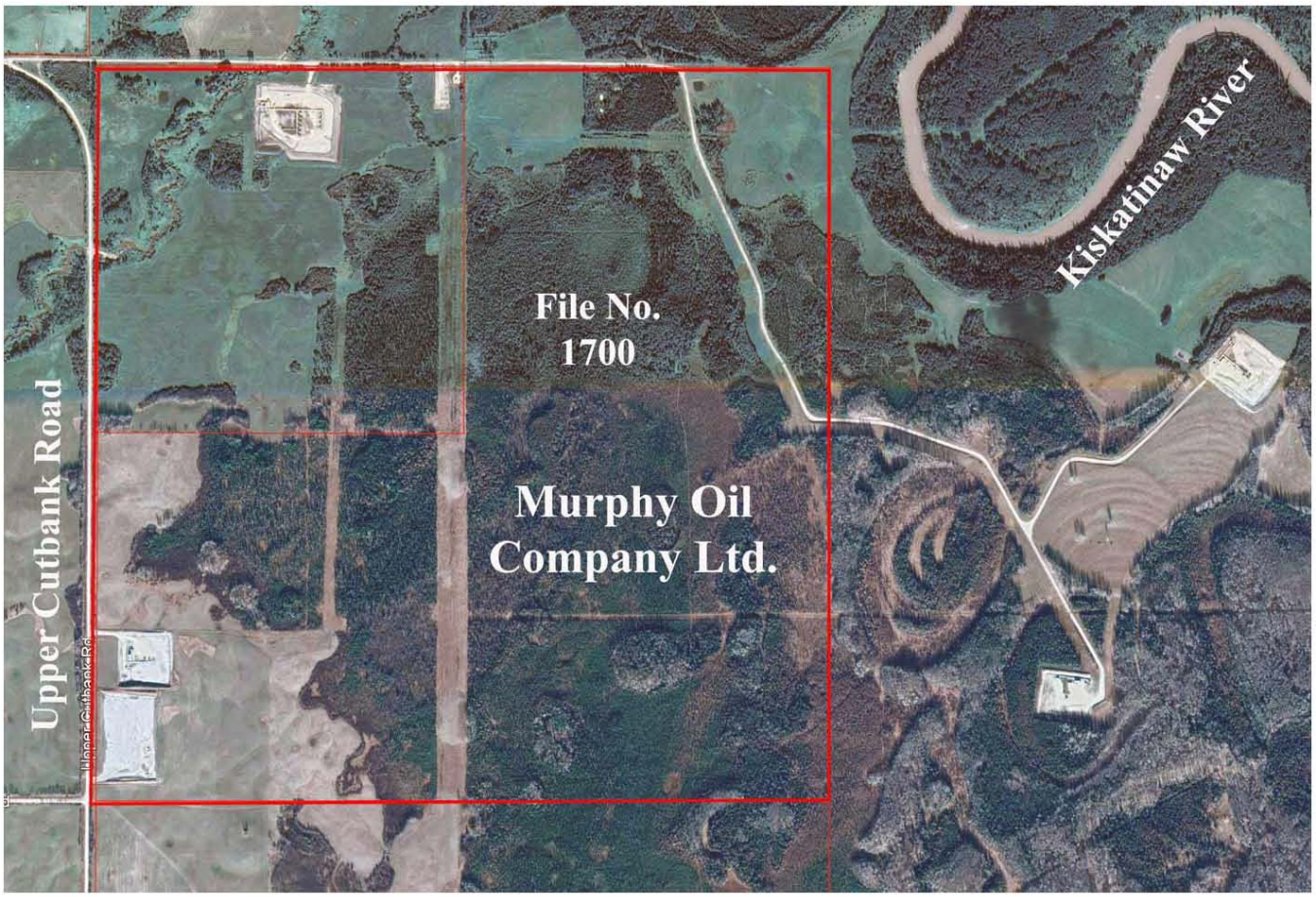
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Murphy Oil
Company Ltd.
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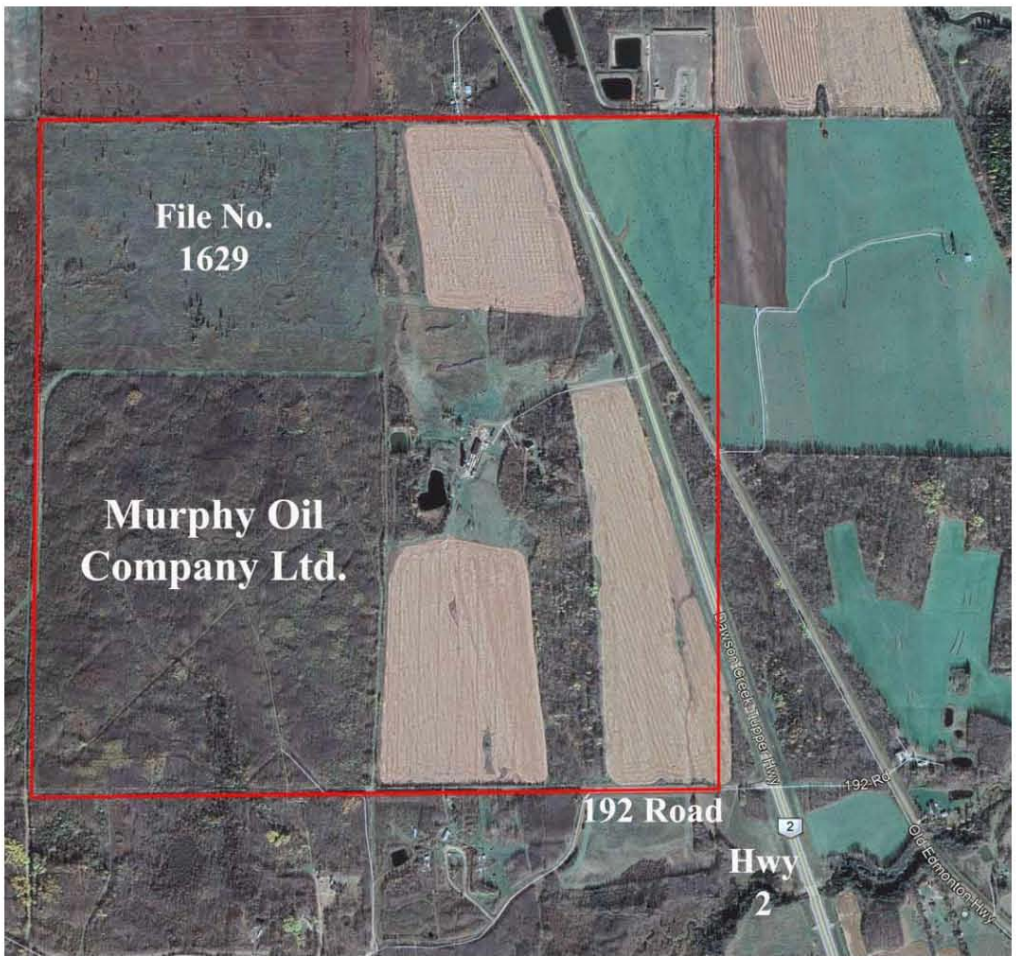

File No.
1629
Murphy Oil
Company Ltd.
192 Road
Hwy
2

Heard: By written submissions closing May 9, 2011

Appearances: Rick Williams, Barrister and Solicitor, for the Applicant
Douglas R. Jerome, for the Respondents

Panel: Cheryl Vickers

INTRODUCTION AND ISSUE

[1] The Applicant, Murphy Oil Company Limited (Murphy Oil), has applied to the Board for mediation and arbitration respecting right of entry to the Lands for the purpose of constructing and operating additional wellsites on areas previously leased by the landowners to Murphy Oil for the construction and operation of wellsites.

[2] The Respondent landowners, Douglas Robert Jerome, Robert Earl Jerome, Pearl Jerome, and Toni Ethel Jerome, submit the Board does not have jurisdiction to make a right of entry order in these circumstances. They argue that the *Surface Lease Regulation*, BC Reg. 497/74, requiring that all surface leases contain a clause providing that no area covered by a surface lease be used for purposes other than those set out in the lease unless the grantor of the lease consents in writing to another use, operates to remove jurisdiction from the Board to authorize entry in circumstances where a company wants to add additional wells to an existing wellsite area covered by a surface lease. Murphy Oil argues that the *Petroleum and Natural Gas Act* gives the Board jurisdiction to authorize entry in these circumstances, and that the *Surface Lease Regulation* does not operate to remove that jurisdiction.

[3] The issue is whether the Board has jurisdiction to make a right of entry order when land is required for the purpose of constructing additional wellsites on an area of land subject to an existing surface lease.

FACTS

[4] Robert Earl Jerome, Pearl Jerome and Douglas Robert Jerome are the owners of NW ¼ 23-77-17 W6M. On August 28, 2008, they signed a lease with Murphy Oil "...for the drilling and operation of a single well, a substitute well, riser valve sites or a permanent access road if required by the Company" on an area of NW ¼ 23-77-17 W6M comprising 4.33 acres. On February 9, 2009, they signed a lease with Murphy Oil "...for drilling and operation of a single well or a substitute well if required by the Company" on an area of NW ¼ 23-77-17

comprising 8.70 acres including the originally leased 4.33 acres. On February 19, 2009, they signed an amendment to the February 19, 2009 lease for wells B through F of 14-23-77-17.

[5] Murphy Oil seeks access to 9.59 acres of NW ¼ 23-77-17 W6M, inclusive of the already leased 8.70 acres to drill, operate and maintain four additional wells to be known as G14-23, H14-23, I14-23 and J14-23. The Oil and Gas Commission (OGC) has issued a permit to Murphy Oil for the development of these wellsites.

[6] Murphy Oil and the landowners have not agreed on terms of access to NW ¼ 23-77-17 W6M to construct and operate the four additional wells or on the compensation payable to the landowners arising from the access to construct and operate the four additional wells.

[7] Douglas Robert Jerome and Toni Ethel Jerome are the owners of NE ¼ 27-77-27 W6M. On August 22, 2009, they signed a lease with Murphy Oil "...for the drilling and operation of a single well (and associated production equipment and facilities) or a substitute well if required by the Company" on an area of NE ¼ 27-77-17 W6M. On the same date, the parties signed a Schedule "B" consenting to a second well (A16-27-77-17).

[8] Murphy Oil seeks access to 8.6 acres of NE ¼ 27-77-17 W6M inclusive of the area already leased by them to drill, operate and maintain four additional wells to be known as B16-27, C16-27, D16-27 and E16-27. The OGC has issued a permit to Murphy Oil for the development of these wellsites.

[9] Murphy Oil and the landowners have not agreed on terms of access to NE ¼ 27-77-17 W6M to construct and operate the four additional wells or on the compensation payable to the landowners arising from the access to construct and operate the four additional wells.

ANALYSIS

[10] Section 142 of the *Petroleum and Natural Gas Act* provides that a person may not enter, occupy or use privately owned land to carry out an "oil and gas activity" unless the entry, occupation or use is authorized under a surface lease with the landowner containing the prescribed content, or an order of the Board. "Oil and gas activity" is a defined term that includes the exploration for, development and production of natural gas, or in other words, the drilling, construction and operation of natural gas wells. Section 158 of the *Petroleum and Natural Gas Act* provides that a person who requires a right of entry may apply to the Board for mediation and arbitration if the person and the landowner are unable to agree on the terms of a surface lease. Section 159(1) provides that

the Board or a designated mediator may make an order authorizing a right of entry if the Board or mediator is satisfied that an order authorizing the right of entry is required for a purpose described in section 142.

[11] The *Surface Lease Regulation* prescribes content to be included in every surface lease. One of the prescribed terms is that:

> "no surface area covered by the lease shall be used for purposes other than those set out in the lease unless the grantor of the lease consents in writing to such other use".

[12] The landowners submit that this provision of the *Regulation* constrains the Board from permitting other uses in a leased area that have not been consented to by the lessor. They submit it is the intent of the legislation and *Regulation* to provide the lessor with the ability to have quiet enjoyment of their land without granting unrestrained expansion to the lessee beyond that anticipated when signing the initial lease. For the reasons set out below, I disagree that is the intent of the *Surface Lease Regulation* and find the *Surface Lease Regulation* does not operate to remove the jurisdiction of the Board to entertain applications for right of entry orders to land that is already subject to a surface lease or to make an order authorizing right of entry if satisfied that right of entry is required for an oil and gas activity.

[13] At common law, the owner of a mineral interest is the holder of a dominant estate as regards the surface of the land with the implied right to make such use of the surface as reasonably necessary for the exploration and production of the minerals (*Chambers v. British Columbia (Mediation and Arbitration Board)* [1979] B.C.J. No. 1480. As described by Todd in *The Law of Expropriation and Compensation in Canada*, Second Edition (Carswell 1992, at page 435), at common law, the owner of subsurface resources had the right to enter upon, use and disturb the surface of land owned by another, without compensation, in order to extract and remove the subsurface resource. The enactment of the *Petroleum and Natural Gas Act* does not detract from the right of a subsurface owner to the surface of privately owned land to access their subsurface resource, but requires that in order to exercise the right of entry, the person requiring entry must either enter a surface lease with the owner of the land or obtain the authority of the Board. In either event, the person who enters land for an oil and gas purpose is liable to compensate the owner of the land for loss and damage. As described in *Chambers, supra*, "(w)hat the *Petroleum and Natural Gas Act* tries to accomplish is a workable method whereby the owner of the petroleum and natural gas rights may gain access to explore for the product, at the same time the interest of the owner of the surface rights is taken into consideration". Other than to provide a right to compensation for loss, and a process for obtaining entry to private land to develop subsurface resources, the *Petroleum and Natural Gas Act* does not

remove the subsurface owner's right to access the surface of privately owned land to develop their resource.

[14] The compulsory aspect of entry to the surface of private land for the development of subsurface resources is acknowledged by the legislation. Section 154 of the *Petroleum and Natural Gas Act* provides that among other things, the Board may consider "the compulsory aspect of the entry" in determining the amount to be paid as compensation for entry to private land. In reviewing Board decisions, the Court has acknowledged a landowner's loss of the right to decide for themselves whether or not they want to see oil and gas exploration carried out on their land (see for example *Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510).

[15] The *Surface Lease Regulation* must be read in the context of this legislative scheme. The *Regulation* prescribes that certain terms must be included in every surface lease, including the term set out above. The terms of a surface lease govern the respective rights and obligations of the parties to the lease for the activities set out in the lease. The effect of the prescribed term in issue is to ensure that access to the surface, under the terms of that surface lease, shall only be for the purpose set out. In other words, the surface lease does not give a lessee authority to enter the land for any purpose, but only for the purpose described in the lease. If a lessee wants to enter the land for another purpose under the terms of that lease, that is on payment of the compensation set out in that lease and subject to other terms of access agreed in the lease, the lessee must have the consent of the landowner. If the landowner withholds consent, however, then the lessee, as a person requiring access to the surface of land for an oil and gas activity, is back to "square one" under the legislation and must either negotiate a surface lease for the required entry or seek the authority of the Board. The intent ascribed to the Regulation by the landowners is not in keeping with the context of the legislative scheme to provide a process for access where required for defined oil and gas activities, involving a compulsory aspect, with compensation to the landowner for loss arising.

[16] The *Surface Lease Regulation*, as a piece of subordinate legislation, cannot operate to amend the legislative scheme providing: 1) that a person may not enter private land for oil and gas activities without either a surface lease or an order of the Board, 2) the right of a person requiring entry to apply to the Board if the person and landowner are unable to agree to the terms of a surface lease, or 3) the authority of the Board to order right of entry if it is satisfied that the right of entry is required for an oil and gas activity.

[17] The purpose of the *Surface Lease Regulation* is not to limit the authority of the Board or change the rights of subsurface and surface owners, but is rather to prohibit a company from changing their use of the land under the terms of the existing lease without agreement or renegotiation. If a company wants to change

or expand their use of the land under the terms of the existing lease the landowner must agree. Alternatively, the company must renegotiate the lease with new terms to cover the changed or expanded use, enter a new surface lease with terms covering the changed or expanded use, or seek the authority of the Board for entry and the assistance of the Board in mediation and arbitration in determining the terms of access and compensation payable.

[18] The Board recently considered this same issue in *ARC Petroleum Inc. v. Miller* (MAB Order 1633-1). In that case, the landowners similarly argued that the Board did not have jurisdiction to entertain the company's applications for mediation and arbitration respecting right of entry to lands covered by an existing surface lease for the purposes of drilling additional wells because of the operation of the *Surface Lease Regulation*. In determining it had jurisdiction the Board said:

> "...the fact that there is an existing surface lease does not preclude the Board's jurisdiction or a company's ability to apply to the Board under the *PNGA*. The Board is not granting a surface lease or amendment to a surface lease, but rather is determining whether a right of entry should be granted and mediating and adjudicating on the appropriate compensation. Even after a right of entry order is granted, the parties can still negotiate and enter into a surface lease, or written amendments to an existing lease, and are encouraged to do so. If a surface lease or written amendments to an existing lease are entered into, the *Regulation* would apply. The *Regulation* itself does not preclude the Board's authority under the *PNGA*. Rather the *Regulation* governs the requirements when a surface lease is entered into."

[19] I agree with the Board's reasons and conclusions in *ARC v. Miller, supra*.

[20] The mandate of the Board was recently considered in *Vause v. British Columbia (Mediation and Arbitration Board)*, 2009 BCSC 916 where the Court said:

> The Board's mandate under the *Petroleum and Natural Gas Act* is to resolve by mediation and arbitration, disputes between landowners and persons who require entry to private land to explore for, develop, or produce petroleum or natural gas.... The premise of this legislation is that persons may not enter private land to explore, develop or produce petroleum or natural gas without negotiating a subsurface [sic] lease with the landowner. Where a consensual agreement with the landowner cannot be negotiated, the developer is required to obtain an authorization for entry, occupation or use of the land by applying for mediation and arbitration (s. 9) [now s.142]. There is also an expectation that the developer will pay compensation to the landowner for any damage or loss

caused by the entry and occupation of the land and possibly rent during the period of occupation.

[21] In this case, a consensual agreement with the landowners for access to the Lands for the development of the approved wells has not been negotiated. Consequently, Murphy Oil applies to the Board for mediation and arbitration and to obtain the authority of the Board to enter the Lands for the stated purpose. The applications are clearly within the scope of the Board's authority set out in the *Petroleum and Natural Gas Act* and as described in *Vause, supra*. Murphy Oil is not asking the Board to interpret or amend the terms of existing surface leases. It is asking the Board to authorize entry to Lands for specific oil and gas activities, namely the drilling of four wells at 14-23 and four wells at 16-27, because it has not been able to negotiate a surface lease with the landowners respecting the terms of access for those specific activities.

CONCLUSION

[22] I conclude the Surface Rights Board has jurisdiction to entertain Murphy Oil's applications for mediation and arbitration made under section 158 of the *Petroleum and Natural Gas Act*. The applications will be referred to a mediator for the purpose of assisting the parties with resolution. Either the Board, or the mediator, has jurisdiction to make an entry order to the Lands if the Board, or mediator, is satisfied entry to the Lands is required for an oil and gas activity.

DATED: May 24, 2011

FOR THE BOARD

Cheryl Vickers,
Chair

File No. 1700
Board Order No. 1700-2

July 15, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
THE NORTH WEST ¼ OF SECTION 23 TOWNSHIP 77 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Douglas Robert Jerome, Robert Earl Jerome and Pearl Jerome

(RESPONDENTS)

BOARD ORDER

Heard by telephone conference: July 5, 2011
Mediator: Rob Fraser

On July 5, 2011, I conducted mediation in an effort to resolve the issues of the right of access and compensation. The parties were unable to resolve either issue.

Murphy Oil Company Ltd. ("Murphy") seeks a Right of Entry Order to drill, complete and operate four wells on certain lands legally owned by Douglas Robert Jerome, Robert Earl Jerome and Pearl Jerome.

Murphy set out the terms it requested in the Right of Entry Order, the Jeromes responded with further terms and conditions. I am satisfied that the Applicant needs access to the Lands for a purpose described in section 142 (a) to (c) of the *Petroleum and Natural Gas Act*, specifically, to drill, complete and operate four new wells.

I have incorporated the suggestions from both parties, realizing that some of the terms and conditions fall within the jurisdiction of the Oil and Gas Commission.

The parties are unable at this time to resolve the issue of compensation. If they cannot resolve this issue, I will conduct further mediation.

ORDER

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

1. Upon payment of the amount set out in paragraphs 3 and 4, Murphy shall have the Right of Entry to and assess across the portions of the Lands legally described as THE NORTH WEST ¼ OF SECTION 23 TOWNSHIP 77, RANGE 17, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT, as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for all matters related to the construction, completion an operation of four (4) additional natural gas wells.

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $1,000.00 by cheque made payable to the minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowner as partial payment for compensation the amount of $6,000.00.

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: July 15, 2011

FOR THE BOARD

Rob Fraser, Mediator

APPENDIX "A"

Schedule "A" 1700-2 Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Robert Earl Jerome, Pearl Jerome, Douglas Robert Jerome as Owner and Murphy Oil Company Ltd. as Company.

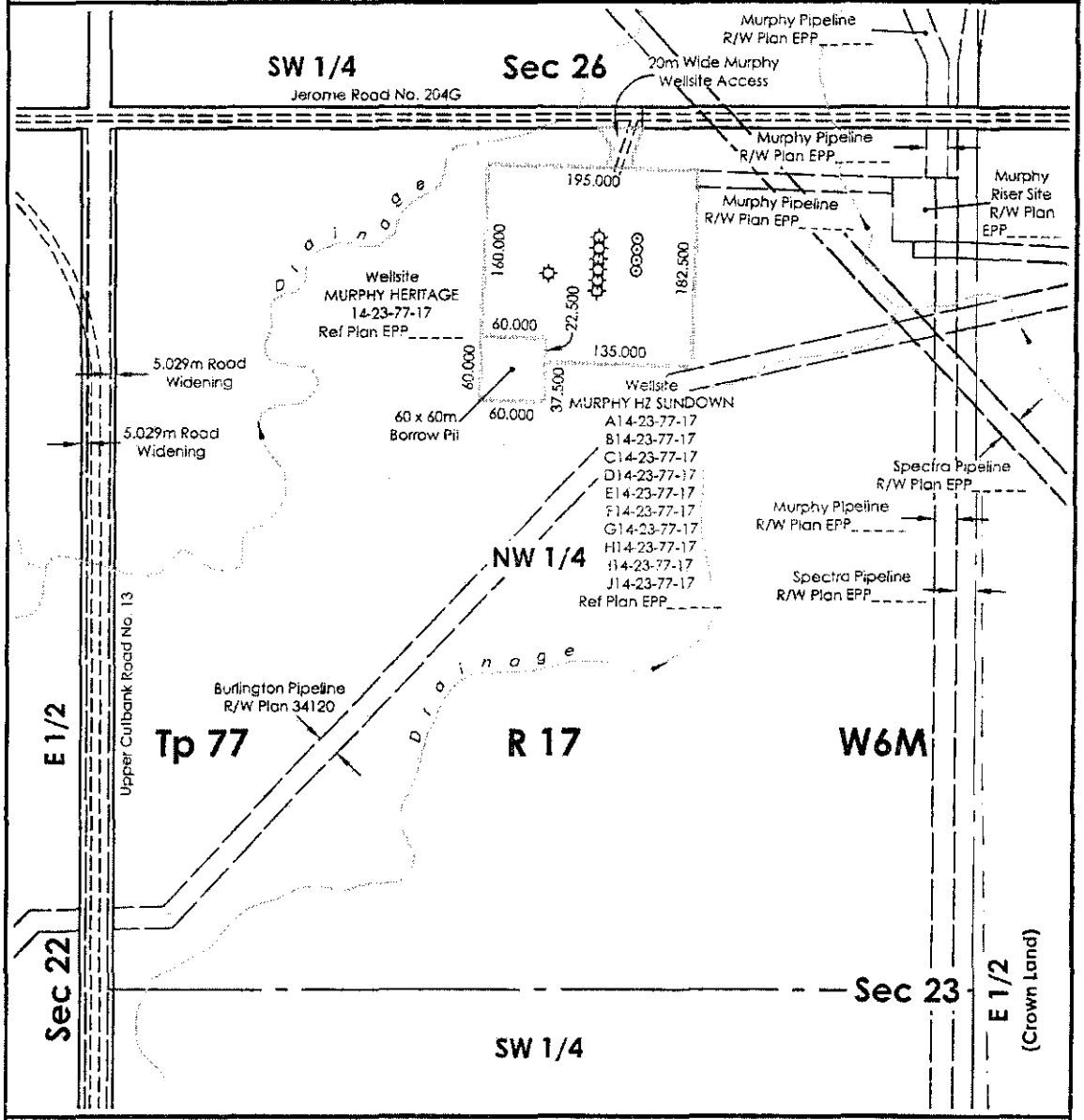
MURPHY OIL COMPANY LTD.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED WELLSITE AND ACCESS IN

NW 1/4 Sec 23, Tp 77, R 17, W6M

PEACE RIVER DISTRICT



TITLE No.: PM50525 **P.I.D. No.:** 013-699-121

OWNER(S): Robert Earl Jerome
Pearl Jerome
Douglas Robert Jerome

AREA REQUIRED:

Wellsite	3.42 ha	8.45 ac
Borrow Pit	0.36 ha	0.89 ac
Access Road	0.10 ha	0.25 ac
TOTAL:	3.88 ha	9.59 ac

LEGEND

SCALE = 1: 5,000

Portions referred to: .....

Notes: Distances shown are in metres. Dimensions and areas derived from original wellsite plans.

Certified correct this 8th day of March, 2011.

Chris R. Sakundiak, BCLS

N

NO	DATE	REVISION	DRN	CKD
0	10/10/08	Original plan issued	PJP	BB
1	11/03/08	Total Lease Dimensions Shown	GJP	CS

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Toll Free: 1.866.208.0983
Fax: 250.787.2323

CAN-AM FILE: J20100448

CAD FILE: J20100448IOP01

Client File No.: 52106137

AFE No.:

Land File No.:

1 REVISION

APPENDIX "B"

Conditions for Right of Entry

1. Murphy will use hospital grade mufflers on diesel generator to reduce noise from the drilling rig, as well as no jake brakes will be used on trucks.

2. Murphy will implement reasonable measures to control dust.

3. Murphy will take reasonable steps to ensure that no garbage is left behind by any of its operations on the Lands.

4. The landowner will be notified prior to construction.

5. Murphy will make all reasonable efforts to keep employees, agents or contractors from parking on the roadways within one quarter mile of the Jerome's residence.

6. Murphy will comply with all applicable regulations with respect to flaring, and will try to minimize flaring if reasonably possible under the circumstances. Murphy will provide 48 hours notice of flaring activity.

7. Murphy will make all reasonable efforts to ensure that none of its employees, agents or contractors trespasses off the right of way and temporary work space.

8. There will be no drilling or completions during the month of May on 14-23-77-17.

9. Murphy will contract with the landowners first for access to water for drilling/completions, if the rates are reasonable and fair.

10. Murphy will provide a copy of these terms and conditions to the Construction Manager, Rig Manager and Completions Manager.

File No. 1714
Board Order No. 1714-1

May 10, 2011

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF

THE NORTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

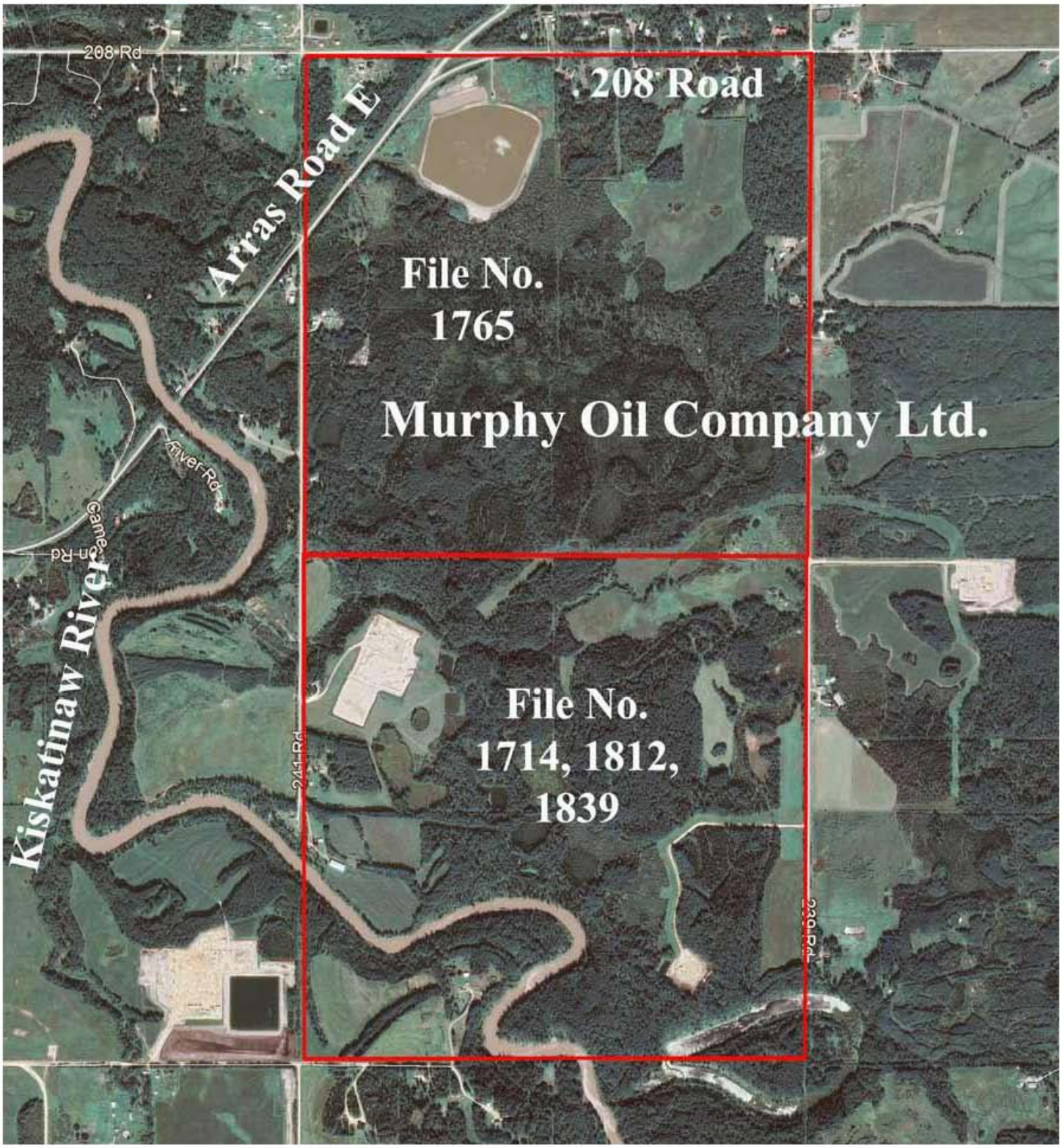
(APPLICANT)

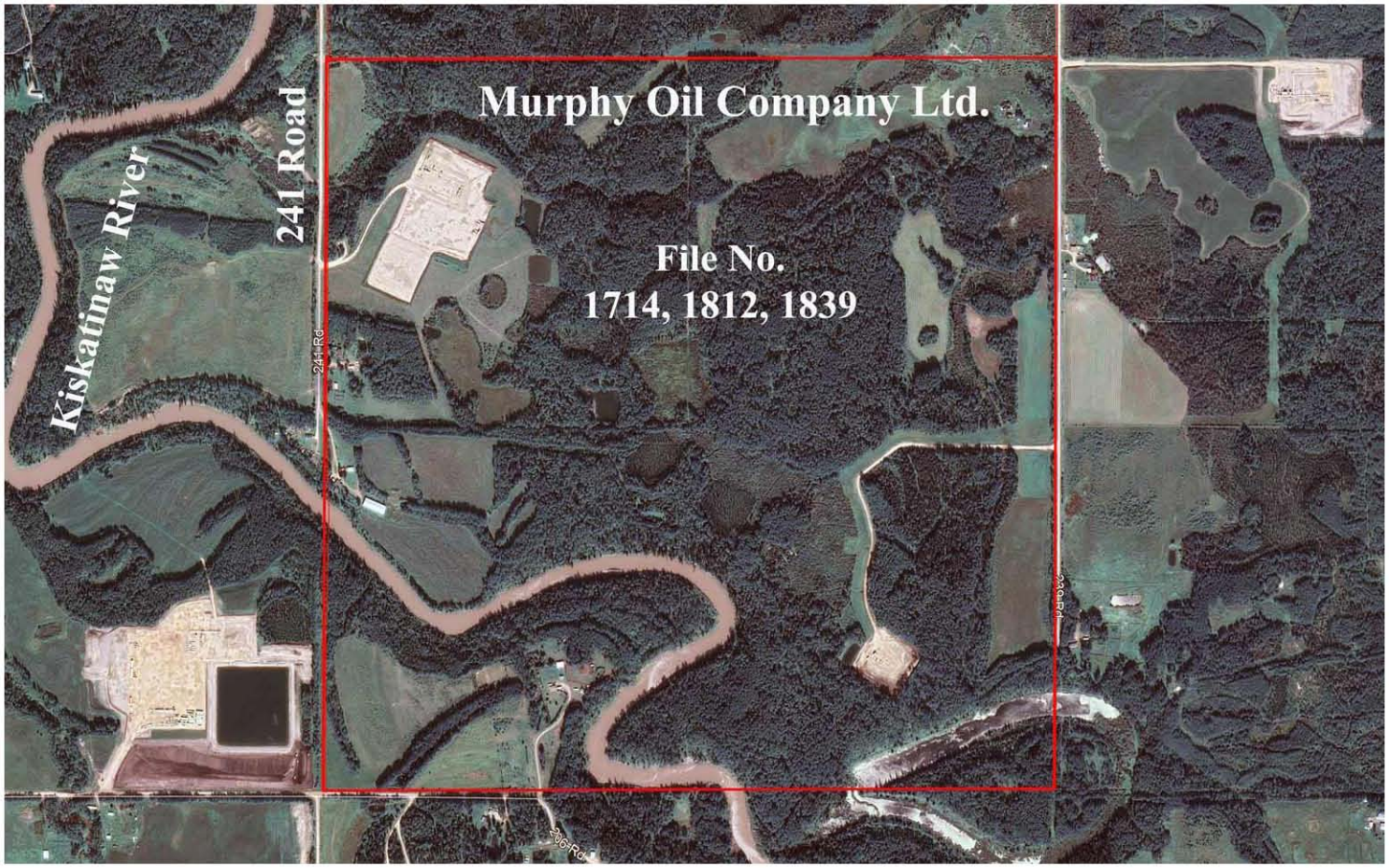
AND:

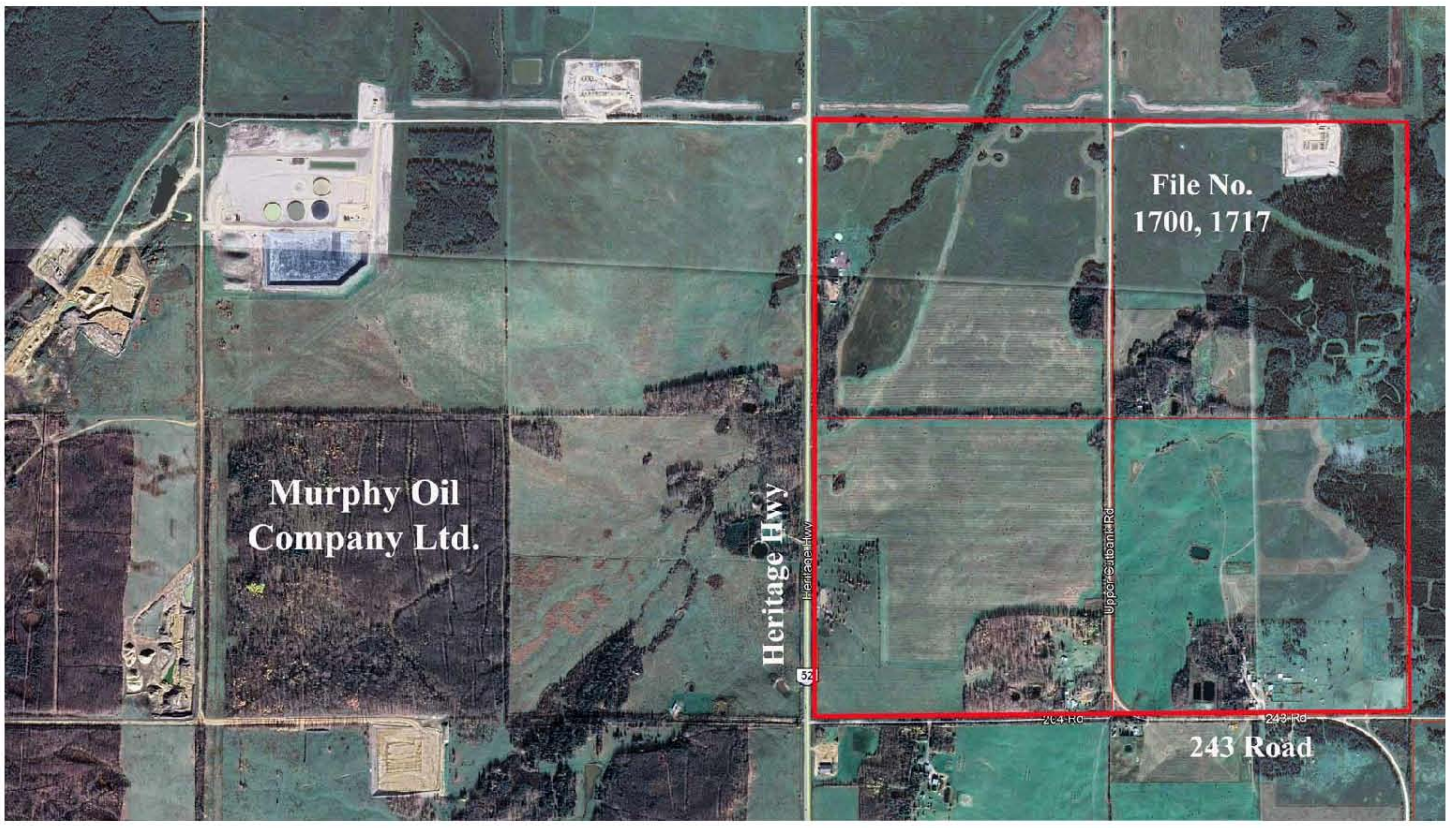
Marilyn Gross

(RESPONDENTS)

BOARD ORDER


208 Rd
208 Road
Arras Road E
File No.
1765
Murphy Oil Company Ltd.
River Rd
Came
n Rd
Kiskatinaw River
241 Rd
File No.
1714, 1812,
1839


Murphy Oil Company Ltd.
File No.
1714, 1812, 1839
241 Road
Kiskatinaw River
241 Rd
236 Rd


File No.
1700, 1717
Murphy Oil
Company Ltd.
Heritage Hwy
Heritage Hwy
Peace Laterals Rd
53
264 Rd
243 Rd
243 Road

Heard by telephone conference: May 2 and 9, 2011
Mediator: Rob Fraser

Murphy Oil Ltd. seeks a right of entry order to enter, complete and operate two wells on lands legally owned by Marilyn Gross.

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

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, Murphy shall have the Right of Entry to and access across the portions of land sown on the individual ownership plan attached as Appendix "A" (the Lands) for the purpose of drilling, completing and operating two wells.

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $1,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowner as partial payment for compensation the amount of $3,000 plus $500 representing the first year's 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 10, 2011

FOR THE BOARD

Rob Fraser, Mediator

Schedule "A"

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Marilyn Gross as Owner and **Murphy Oil Company Ltd.** as Company.

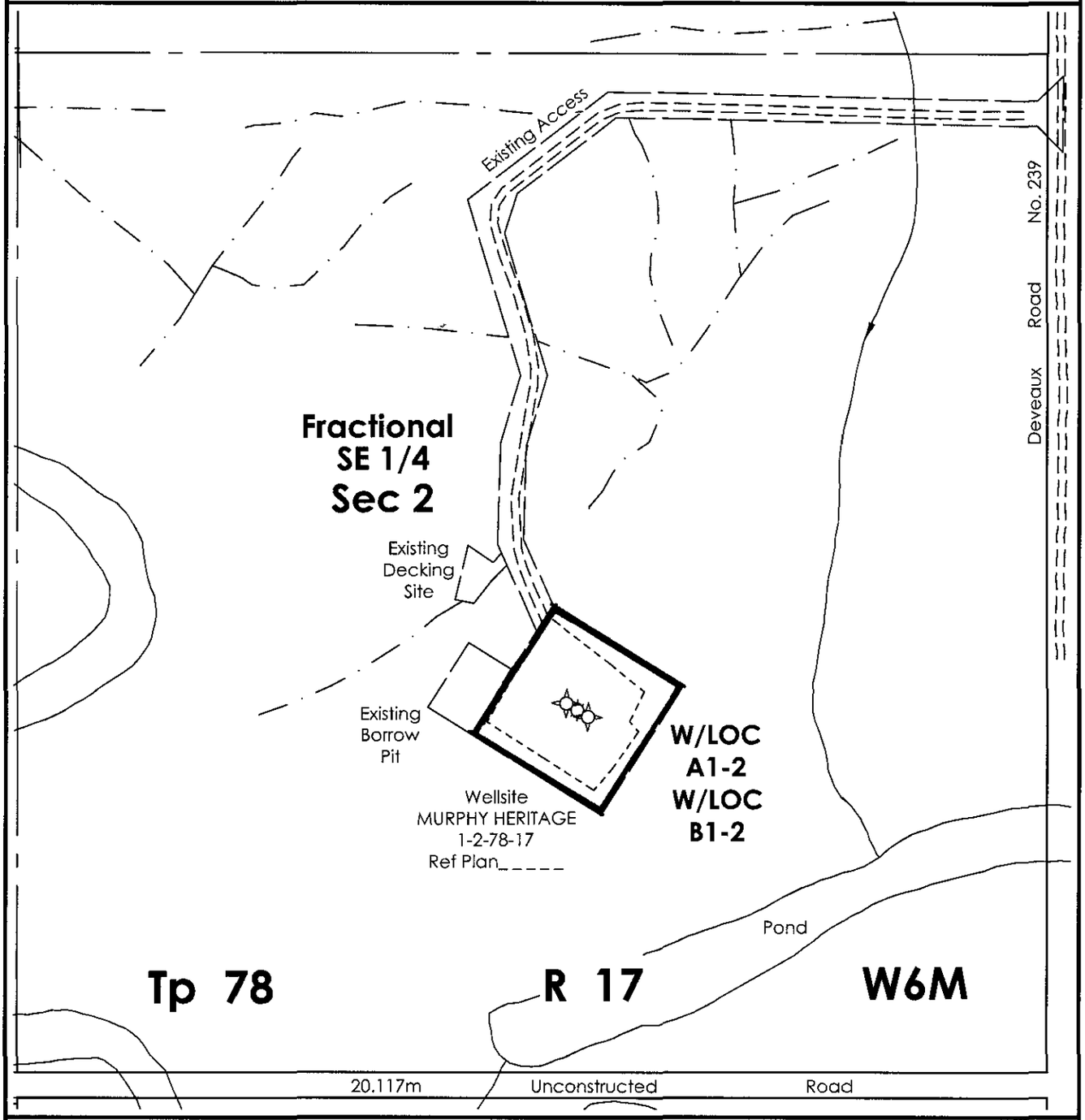
MURPHY OIL COMPANY LTD.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED WELLSITE IN

Fractional SE 1/4 of Sec 2, Tp 78, R 17, W6M

PEACE RIVER DISTRICT



TITLE No.: PM49233 **P.I.D. No.:** 011-202-467

OWNER(S): Marilyn Gross

LEGEND

SCALE = 1: 5,000

Portions referred to:

Notes: Distances shown are in metres.

Certified correct this
16th day of August, 2010.

N

AREA REQUIRED:

Wellsite	0.00 ha	0.00 ac
TOTAL:	0.00 ha	0.00 ac

Bryan Bates, BCLS

NO.	DATE	REVISION	DRN	CKD
0	10/08/12	Original plan issued	LA	BB
1	10/08/16	Wellsite Extension Removed	PJP	BB

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CAN-AM FILE: J20100350

CAD FILE: J20100350IOP01

Client File No.:

AFE No.: 52106091

Land File No.:

1 REVISION

Appendix "B"

Conditions for Right of Entry

1. Murphy will use hospital grade mufflers on the diesel generators to reduce noise from the drilling rig. As well, no jake brakes will be used on the trucks.

2. All construction equipment will be washed prior to entry in an effort to prevent the introduction of weeks onto the lease land.

3. Murphy will implement reasonable measures to control dust. Murphy will leave the public road in as good a condition as prior to use.

4. Murphy will take reasonable steps to ensure that no garbage is left behind by any of the operations on the lands.

5. The landowner will be notified prior to construction.

6. Murphy will not use Beaver Pond/Oxbow Lake for their water source.

7. Murphy will provide a copy of these terms and conditions to the Construction Manager, Rig Manager and Completions Manager.

File No. 1714
Board Order No. 1714-1amd

May 16, 2011

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF

THE NORTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENTS)

BOARD ORDER

Heard by telephone conference: May 2 and 9, 2011
Mediator: Rob Fraser

Murphy Oil Ltd. seeks a right of entry order to enter, complete and operate two wells on lands legally owned by Marilyn Gross.

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

This order replaces the Board's Order of May 10, 2010.

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, Murphy shall have the Right of Entry to and access across the portions of land shown on the individual ownership plan attached as Appendix "A" (the Lands) for the purpose of drilling, completing and operating two wells.

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

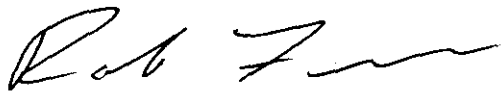
3. Murphy shall deliver to the Surface Rights Board security in the amount of $1,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowner as partial payment for compensation the amount of $3,000 plus $500 representing the first year's 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 16, 2011

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Marilyn Gross as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.

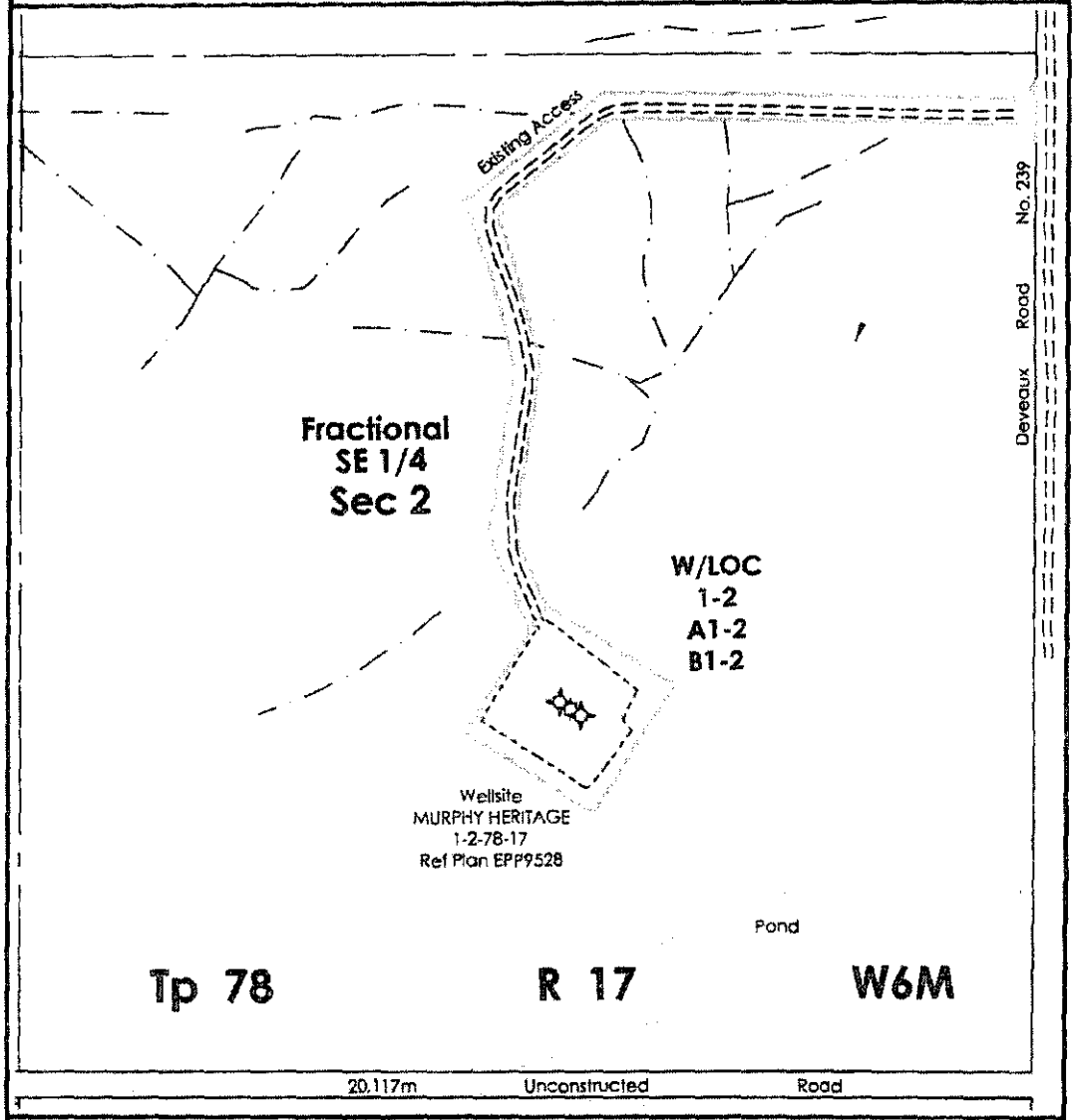
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED

WELLSITE IN

Fractional SE 1/4 of Sec 2, Tp 78, R 17, W6M

PEACE RIVER DISTRICT



TITLE No.: PM49233 **P.I.D. No.:** 011-202-467

OWNER(S): Marilyn Gross

LEGEND

SCALE = 1: 5,000

Portions referred to: .....

Notes: Distances shown are in metres.

Certified correct this
3rd day of May, 2011.

Bryan Bates, BCLS

AREA REQUIRED:

Wellsite	1.44 ha	3.56 ac
Access	1.63 ha	4.03 ac
TOTAL:	3.07 ha	7.59 ac

NO	DATE	REVISION	DRN	CKD
0	10/08/12	Original plan issued	LA	BB
1	10/08/16	Wellsite Extension Removed	PJP	BB
2	11/05/02	Revised Wellsite Access	BEJ	BB
3	11/05/03	Revised Area Table	BEJ	BB

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Fax: 250.787.2323

CAN-AM FILE: J20100350

CAD FILE: J20100350IOP03

Client File No.:

AFE No.: 52106091

Land File No.:

3 REVISION

Appendix "B"

Conditions for Right of Entry

1. Murphy will use hospital grade mufflers on the diesel generators to reduce noise from the drilling rig. As well, no jake brakes will be used on the trucks.

2. All construction equipment will be washed prior to entry in an effort to prevent the introduction of weeks onto the lease land.

3. Murphy will implement reasonable measures to control dust. Murphy will leave the public road in as good a condition as prior to use.

4. Murphy will take reasonable steps to ensure that no garbage is left behind by any of the operations on the lands.

5. The landowner will be notified prior to construction.

6. Murphy will not use Beaver Pond/Oxbow Lake for their water source.

7. Murphy will provide a copy of these terms and conditions to the Construction Manager, Rig Manager and Completions Manager.

File No. 1714
Board Order No. 1714-1amd2

August 30, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE FRACTIONAL SOUTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENTS)

BOARD ORDER

Murphy Oil Company Ltd. applies to the Surface Rights Board to amend their application, changing the description of the Lands. The only change was in the description of the Lands, and I find that amending the description does not prejudice the interests of the landowner and makes the written portion of the application consistent with the map at Schedule "A". The style of cause in this application is amended accordingly.

This Order replaces the Board's Order of May 16, 2011, replacing the Board's Order of May 10, 2011.

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, Murphy shall have the Right of Entry to and access across the portions of land shown on the individual ownership plan attached as Appendix "A" (the Lands) for the purpose of drilling, completing and operating two wells.

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $1,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowner as partial payment for compensation the amount of $3,000 plus $500 representing the first year's 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 August 30, 2011

FOR THE BOARD

Rob Fraser, Mediator

File Nos. 1714 and 1812
Board Order No. 1714/1812-1

March 12, 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 FRACTIONAL SOUTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENT)

BOARD ORDER

---

[1] This is an application by the landowner, Marilyn Gross, for advance costs to assist with the retainer of expert witnesses and counsel to participate in an arbitration hearing.

[2] The arbitration, scheduled for March 26 and 27, 2014 is to determine the compensation payable by Murphy Oil Company Ltd (Murphy Oil) to Marilyn Gross for its use and occupation of the lands to drill and operate two additional wells on an existing lease, and to review and determine the rent payable under the lease. In June 2013, following unsuccessful mediation, the Board refused further mediation and referred the disputes to arbitration. By Order dated September 3, 2013, the Board scheduled the arbitration for March 26 and 27, 2014 and set dates for the production of expert reports and documentary evidence to be relied on at the arbitration. The Board ordered Murphy Oil to produce its documents and reports by March 5, 2014, the landowner to produce her documents and reports by March 12, 2014, and Murphy Oil to produce any documents in response by March 19, 2014.

[3] On February 19, 2014, Murphy Oil sought to adjourn the arbitration and use the scheduled dates to continue mediation. The landowner did not consent. On February 25, 2014, Murphy sought to adjourn the arbitration to a date in April. The landowner's counsel opposed the request for adjournment on the grounds that the hearing date had been scheduled for a long time and his client would not next be available until August. The Board denied the adjournment.

[4] On March 3, 2014, six months after the Board's Order scheduling the arbitration, and less than 10 days before the date established for the production of the Appellant's evidence, Ms. Ellen Gross, on behalf of the landowner, made this application for advance costs. She submits she will require an appraisal and several assessments done by experts in the field of land value, damage, and loss on investment, and estimates her costs as follows:

Lawyer for the 2 day hearing	$10,000 (Approx 25 hours)
Lawyer travel to/from Dawson each day	$ 560 (1040 kms @ .54)
Appraisal	$2500 - $5000

[5] Ellen Gross submits the landowner is a pensioner with a limited income and that she is finding it difficult to come up with the funds to cover the anticipated costs. Murphy Oil opposes the application.

[6] Section 169 of the *Petroleum and Natural Gas Act* gives the Board the discretion to order an operator to pay to a landowner as advance costs all or part of the amount the Board anticipates will ultimately be awarded to the landowner for their costs. 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 (*CNRL v. Kerr*, Order 1715-2, and *Encana Corporation v. 507788 British Columbia Ltd., et al*, Order 1734/35-3).

[7] 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.

[8] Some of these factors exist in this case. The claim for compensation arises in a right of entry context. I am told the landowner's financial circumstances are modest and that she will incur financial difficulty in advancing her case. However, while the applications may require expert evidence, they do not raise novel issues, and the landowner has received an amount for costs of the mediation process. The factor that significantly weighs against he landowner in this case, however, is that an award of advance costs, at this time, would be highly prejudicial to the operator.

[9] This application comes far too late in the process. If an award of advance costs is necessary to ensure a landowner's effective participation in the process, that application must be made early on. The landowner could have and should have made this application early on when the arbitration was scheduled and the dates for the production of expert evidence set.

[10] If the landowner had not retained experts as of March 3, when the application was made, an award of advance costs would not assist with the preparation of expert evidence to be filed by March 12, 2014. In order to enable sufficient time for the expert opinions to be prepared, the arbitration would have to be adjourned. The landowner opposed Murphy's recent request for an adjournment indicating she wished to proceed. In the circumstances, requiring Murphy Oil to provide advance costs to assist with the preparation of expert evidence, necessitating adjournment, would be highly prejudicial.

[11] If experts have been retained such that the landowner can file expert evidence by March 12, then the advance costs were not required to ensure her participation. The Board can consider whether the landowner should recover all or part of her costs once a decision on the arbitration has been issued.

[12] The application for advance costs is dismissed.

DATED: March 12, 2014

FOR THE BOARD

Cheryl Vickers
Chair

File Nos. 1714 and 1812
Board Order No. 1714/1812-2

October 29, 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 FRACTIONAL SOUTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENT)

DRAFT BOARD ORDER

The parties reached agreement in these applicaions respecting right of entry to drill additional wells and associated compensation, and rent review for an existing wellsite. The parties have asked the Board to incorporate the terms of their agreement into a Board Order.

Marilyn Gross agrees to Murphy Oil Company Ltd.'s proposed flowline project across the Lands and further agrees not to oppose Murphy Oil Company Ltd.'s application to the OGC for the flowlines or appeal any permit issued by the OGC.

Murphy Oil Company Ltd. agrees to increase the annual rent for the wellsite lease to $7000, retroactive to October 2012. This increase includes a $2600 bonus amount, which Murphy agrees to based on Marilyn Gross' above noted agreement to the flow lines, the avoidance of the arbitration hearing in these matters and the need for any further board process. This is a relevant factor that will need to be considered on any future rent review.

Murphy Oil Company Ltd. agrees to a total initial payment of $4,000 and an annual payment for the two additional wells in the total amount of $1,000, retroactive to May 12, 2011.

CONSENT ORDER

The Surface Rights Board orders as follows:

[1] Murphy Oil Company Ltd. shall pay annual rent to Marilyn Gross in the amount of $7,000.00 commencing October 11, 2012.

[2] Murphy Oil Company Ltd. shall pay Marilyn Gross a one-time payment of $4,000.00.

[3] Murphy Oil Company Ltd. shall pay Marilyn Gross annual rent of $1,000.00 commencing May 12, 2015.

DATED: October 29, 2015

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1717
Board Order No. 1717-2

July 15, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

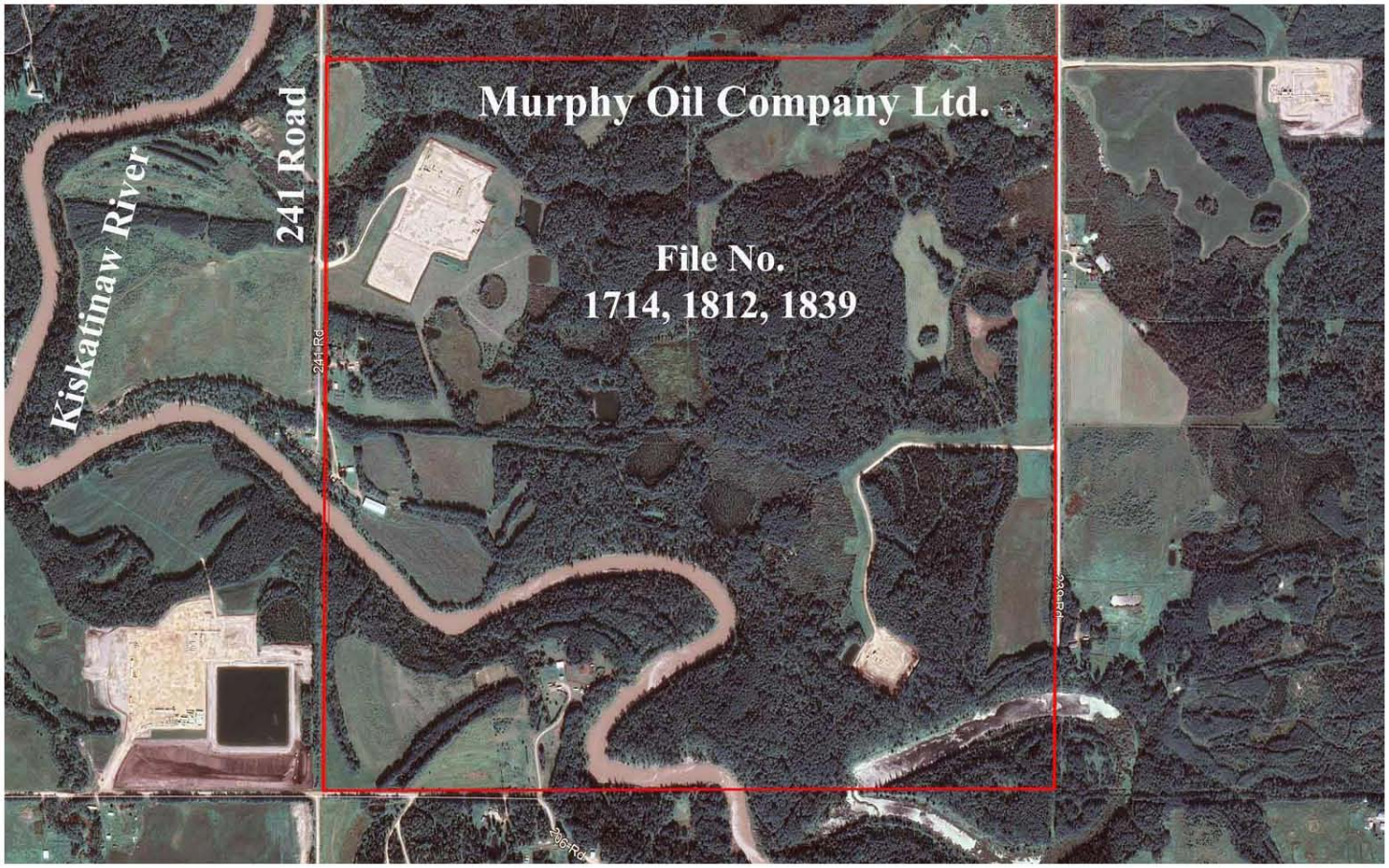
(APPLICANT)

AND:

Douglas Robert Jerome and Toni Ethel Jerome

(RESPONDENTS)

BOARD ORDER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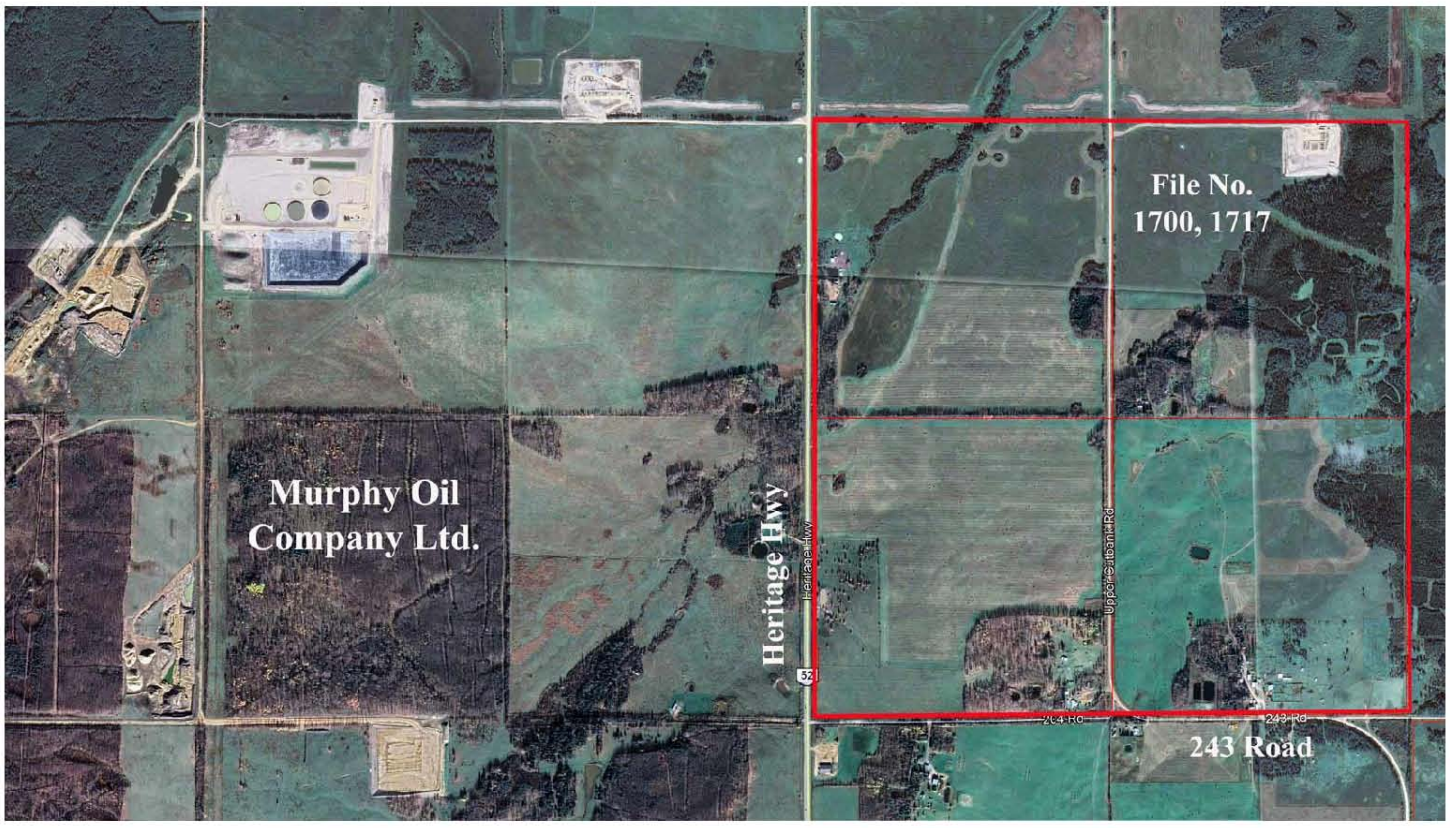

File No.
1700, 1717
Murphy Oil
Company Ltd.
Heritage Hwy
Heritage Hwy
Peace Laterals Rd
53
264 Rd
243 Rd
243 Road

Heard by telephone conference: July 5, 2011
Mediator: Rob Fraser

On July 5, 2011, I conducted mediation in an effort to resolve the issues of the right of access and compensation. The parties were unable to resolve either issue.

Murphy Oil Company Ltd. ("Murphy") seeks a Right of Entry Order to drill, complete and operate four wells on certain lands legally owned by Douglas Robert Jerome and Toni Ethel Jerome.

Murphy set out the terms it requested in the Right of Entry Order, the Jeromes responded with further terms and conditions. I am satisfied that the Applicant needs access to the Lands for a purpose described in section 142 (a) to (c) of the *Petroleum and Natural Gas Act*, specifically, to drill, complete and operate four new wells.

I have incorporated the suggestions from both parties, realizing that some of the terms and conditions fall within the jurisdiction of the Oil and Gas Commission.

The parties are unable at this time to resolve the issue of compensation. If they cannot resolve this issue, I will conduct further mediation.

ORDER

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

1. Upon payment of the amount set out in paragraphs 3 and 4, Murphy shall have the Right of Entry to and assess across the portions of the Lands legally described as THE NORTH EAST ¼ OF SECTION 27 TOWNSHIP 77, RANGE 17, WEST OF THE 6TH MERIDIAN, PEACE RIVER DISTRICT, as shown on the individual ownership plan attached as Appendix "A" (the "Lands") for all matters related to the construction, completion an operation of four (4) additional natural gas wells.

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $1,000.00 by cheque made payable to the minister of Finance. All or part of the

security deposit may be returned to Murphy, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowner as partial payment for compensation the total amount of $11,244.00.

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: July 15, 2011

FOR THE BOARD

Rob Fraser, Mediator

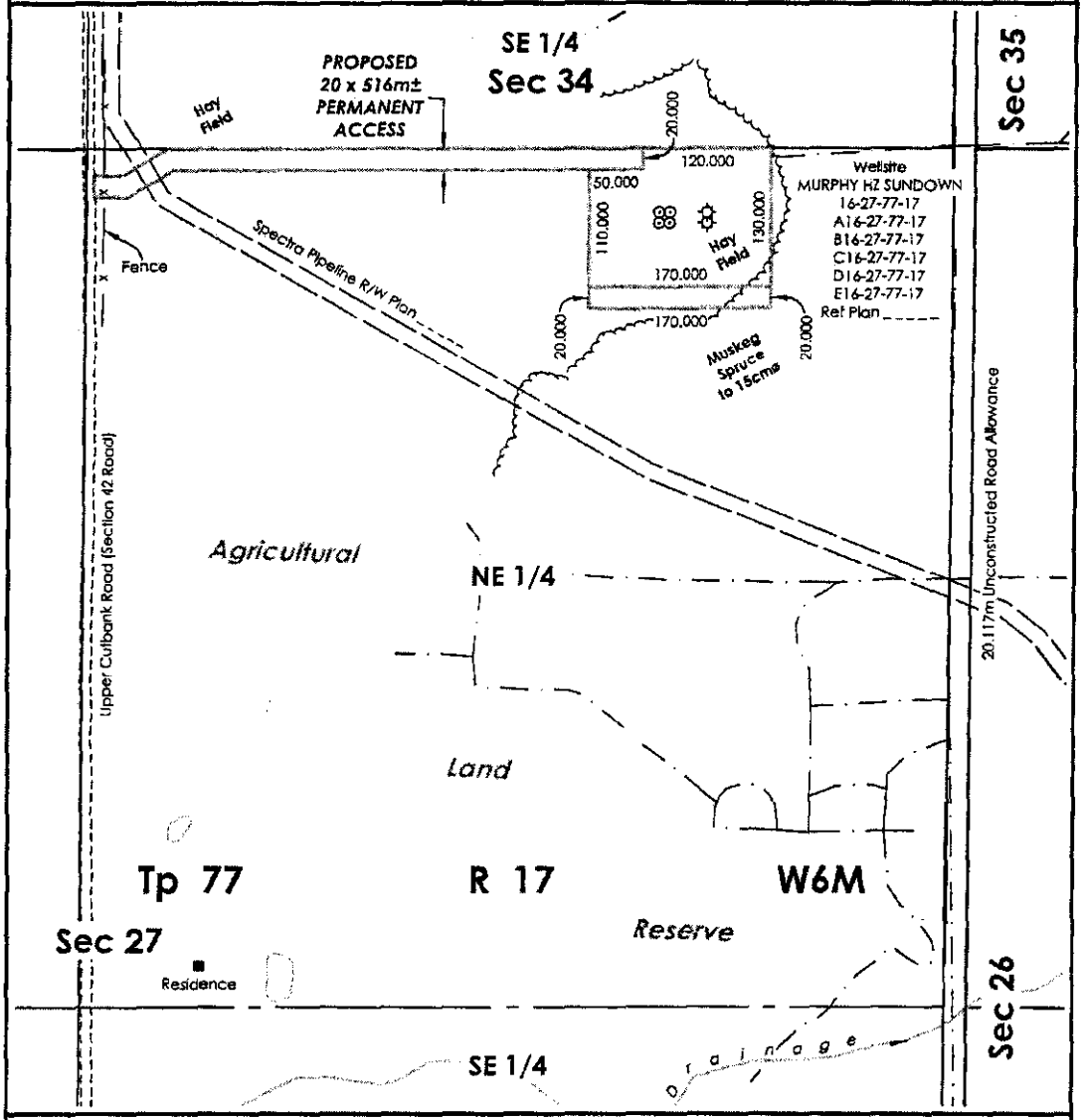
APPENDIX "A"

Schedule "A" 1717-2 Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Douglas Robert Jerome & Toni Ethel Jerome as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE AND ACCESS IN
THE NORTH EAST 1/4 Sec 27, Tp 77, R 17, W6M
PEACE RIVER DISTRICT



TITLE No.: T22829 **P.I.D. No.:** 014-439-891

OWNER(S): DOUGLAS ROBERT JEROME
TONI ETHEL JEROME

LEGEND
SCALE = 1: 5,000
Portions referred to: _____
Notes: Distances shown are in metres.
Dimensions and areas derived from original well plans.

AREA REQUIRED:

Wellsite	2.11 ha	5.21 ac
Borrow Pit	0.34 ha	0.84 ac
Access	1.03 ha	2.55 ac
TOTAL:	3.48 ha	8.60 ac

Chris R. Sakundiak, BCLS

NO	DATE	REVISION	DRN	CKD
2	09/10/14	Header Added to IOP Title Block	GJP	RN
3	09/10/22	Access Revised	EJ	RN
4	09/10/30	Removed Corner Cuts	EJ	RN
5	11/03/08	Total Lease Dimensions Shown	GJP	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: J20090375
CAD FILE: J20090375IOP05
Client File No.:
AFE No.: 52096111
Land File No.:
5 REVISION

APPENDIX "B"

Conditions for Right of Entry

1. Murphy will use hospital grade mufflers on diesel generator to reduce noise from the drilling rig, as well as no jake brakes will be used on trucks.

2. Murphy will implement reasonable measures to control dust.

3. Murphy will take reasonable steps to ensure that no garbage is left behind by any of its operations on the Lands.

4. The landowner will be notified prior to construction.

5. Murphy will make all reasonable efforts to keep employees, agents or contractors from parking on the roadways within one quarter mile of the Jerome's residence.

6. Murphy will comply with al applicable regulations with respect to flaring, and will try to minimize flaring if reasonably possible under the circumstances. Murphy will provide 48 hours notice of flaring activity.

7. Murphy will make all reasonable efforts to ensure that none of its employees, agents or contractors trespasses off the right of way and temporary work space.

8. Murphy's employees, agents and contractors will be advised that the swinging gate is to be kept closed on 16-27-77-17 except during drilling and completions where it would be impractical.

9. Murphy will contract with the landowners first for access to water for drilling/completions, if the rates are reasonable and fair.

10. Murphy will provide a copy of these terms and conditions to the Construction Manager, Rig Manager and Completions Manager.

File No. 1745
Board Order No. 1745-1

September 13, 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 NORTH WEST ¼ OF SECTION 12 TOWNSHIP78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PARCEL A (F8005)

BLOCK A OF THE SOUTH WEST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(Applicant)

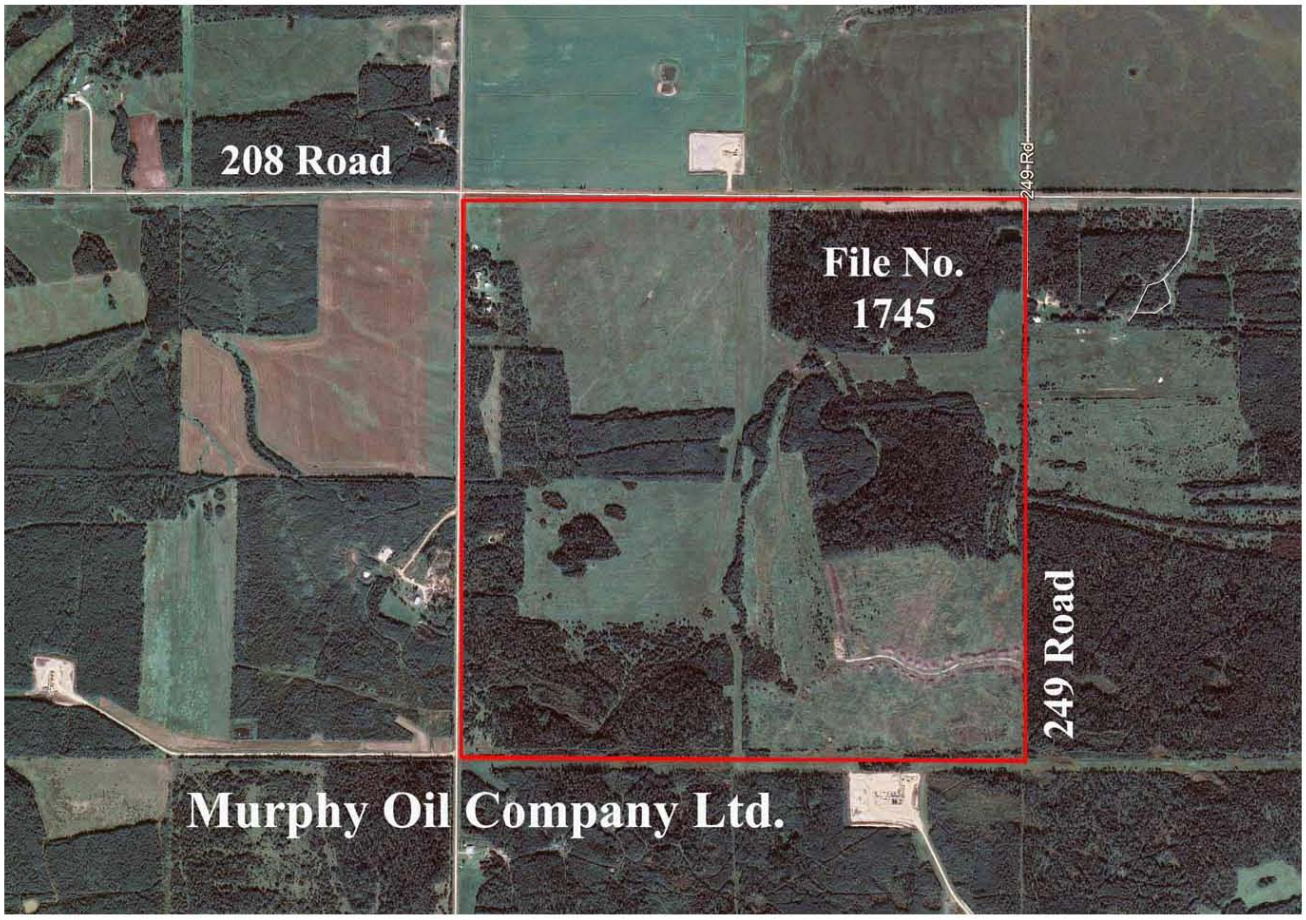
AND:

WILLIS MORLEY SHORE
AND MITCHELL TODD SHORE

(Respondents)

BOARD ORDER


File No.
1796
Kiskatinaw River
247 Rd
Keller Rd
Bearpaw Camp Rd
52
Heritage Hwy
Hart Hwy
97
208 Rd
Arras Rd W
Murphy Oil Company Ltd.
Heritage
Hwy


208 Road
249 Rd
File No.
1745
249 Road
Murphy Oil Company Ltd.

Heard:	by way of written submissions and by telephone conference conducted August 16, 2012
Panel:	Cheryl Vickers
Appearances:	Rick Williams, Barrister and Solicitor, for the Applicant Darryl Carter, Barrister and Solicitor, for the Respondents

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INTRODUCTION

[1] Murphy Oil Company Limited (Murphy) has applied to the Board under section 158 of the *Petroleum and Natural Gas Act* (*PNGA*) for mediation and arbitration respecting compensation and terms of access to the Lands owned by Willis Morley Shore and Mitchell Todd Shore (the Shores). Murphy seeks a right of entry order allowing it to enter on and use the Lands to carry out an oil and gas activity, specifically the construction, operation and maintenance of a flow line and all necessary associated activities.

[2] The Surface Rights Board may authorize entry to and use of private land for an oil and gas activity including the construction or operation of a flow line. A flow line is a type of pipeline defined in 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 Board does not have jurisdiction to authorize entry to and use of private land for the construction and operation of a pipeline that is not a flow line, or otherwise to provide mediation and arbitration services respecting compensation payable in relation to the entry to and use of private land for a pipeline other than a flow line. If a company with a permit from the Oil and Gas Commission (OGC) is unable to enter an agreement with a landowner for access to private land to construct or operate a pipeline that is not a flow line, the permit holder may expropriate, pursuant to section 34 of the *OGAA*, as much of the land or interest in it as may be necessary up to 18 meters in breadth, or wider if authorized by the OGC.

[4] The OGC issued a Pipeline Permit (the Permit) authorizing Murphy to construct and operate a pipeline for the purpose of conveying petroleum natural gas or water, in accordance with specific diagrams and construction plans. The authorized pipeline is to be constructed on the Lands owned by the Shores.

[5] The Permit authorizes the construction and operation of a pipeline as described in a construction plan, identifying three segments:

Segment 001 From DLS: 03-13-078-18 To DLS: 16-01-078-18
Segment 002 From DLS: 03-13-078-18 To DLS: 16-01-078-18
Segment 003 From DLS: 16-01-078-18 To DLS: 03-13-078-18
(collectively referred to in this decision as the Pipeline)

[6] The Shores dispute that the Pipeline, or any of its segments, are "flow lines" and that the Board has jurisdiction to issue an entry order or provide mediation and arbitration services in this case.

ISSUE

[7] The issue is whether the Board has jurisdiction. That determination turns on whether the Pipeline, or any of its segments, is a "flow line".

THE PIPELINE

[8] I received evidence as to the nature of the Pipeline in an Affidavit sworn by Ryan Dick, P. Eng, an employee of Murphy, and in verbal testimony from Mr. Dick when cross-examined on his Affidavit by way of telephone conference.

[9] The well site at 03-13-078-18 (03-13), just north of the Lands, has two wells that have been drilled but are not yet in production. The wells will produce natural gas and water. The water must be separated from the gas at the well site before metering. Liquids must also be removed from the gas by "knock out drums" prior to flaring. The equipment that separates the gas and water before metering and before flaring is located at the 03-13 well site.

[10] All three segments of the Pipeline are authorized by the OGC as a pipeline with a single job number and project number. Segment 001 will be an 8 inch steel pipe to transport natural gas produced by the wells at 03-13 to a tie in point at the well site located at 16-01-078-18 (16-01), just south of the Lands. Segment 002 will be a 3 inch steel pipe to transport liquids from 03-13 to the tie in at 16-01. From 16-01, the natural gas and water will be transported in already constructed pipelines to the Tupper West Plant (the Plant) for scrubbing, processing and storage. Segments 001 and 002 are licensed to transport up to 0.1% H_2S content. From the Plant, water will either be transported to a third party disposal facility or to a water disposal well. Acid gas will be removed from the natural gas and transported to a disposal well to the southeast of the Plant. The processed gas will go into a Murphy sales line and then into Alberta on a TransCanada transmission and distribution line.

[11] Segment 003 will be a 3 inch steel pipe to transport sweet fuel gas, produced at the Plant, from 16-01 to 03-13 to be used for operating onsite equipment including the line heater, the emergency shut down valves, control valves and other instruments at the well site, as well as the site alarm system and remote transmitting unit. Without this equipment, the wells and Pipeline cannot be operated. The equipment requires a power source to operate. If not powered from fuel gas, an alternate power source is required. The fuel line has the same lifespan as the other two lines and once the well is abandoned, it will not continue to operate.

[12] Murphy proposes to construct all three lines comprising the Pipeline at the same time in the same 15 metre right of way to a minimum depth of 1.5 metres.

ANALYSIS

Approach to Statutory Interpretation

[13] Mr. Carter argues the *PNGA* must be interpreted strictly because the legislation is "expropriation type" legislation. The Alberta Court of Appeal rejected this argument with respect to that province's *Surface Rights Act* with the Court finding the *Surface Rights Act* is not an expropriation statute (*Christensen v. Alberta Power Limited*, 1985 ABCA 83). Similarly, the Supreme Court of British Columbia has determined that the entry and occupation of private land under the *PNGA* is not an act of expropriation. Unlike with expropriation, no land and no legal interest in the land is taken from the landowner (*Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510). An entry under the *PNGA* is an authorized trespass, and may occur against the wishes of the landowner. The landowner cannot "decide for himself whether or not he wants to see oil and gas exploration and production carried out on his land" (*Dome*). The compulsory nature of a taking under the *PNGA* makes it like an expropriation, but unlike an expropriation, the landowner remains the fee simple owner of the land.

[14] The *PNGA* alters the unfettered common law right of the owner of a subsurface resource to enter private land to extract that resource. At common law, the owner of subsurface minerals has the right to enter upon the surface of private land and to use the land in order to extract the minerals, without compensating the landowner (Todd, *The Law of Expropriation in Canada, 2nd edition*, Carswell 1992). The *PNGA* changes the common law to require that the holder of subsurface rights may not enter private land to develop the subsurface resource without either an agreement with the landowner or authorization of the Board, and that the subsurface rights holder is liable to compensate the landowner for loss arising from the entry. The *PNGA* provides the method by which rights holders can enter private land to develop and produce oil and gas

and a dispute resolution process to determine the compensation payable if the parties cannot agree. To that extent, the statute is remedial, and ought to be given such broad and liberal interpretation as to give effect to its intent.

[15] The principle of statutory interpretation that legislation authorizing expropriation be strictly construed is to protect landowners from expropriation without compensation unless expressly permitted (*The Queen in Right of British Columbia v. Tener,*[1985] 1 S.C.R. 533 relying on *Attorney General v. De Keyser's Royal Hotel Ltd.*, [1920] A.C. 508 (H.L.))). Also, because expropriation is an ultimate taking of all rights and legal interest in private property, the principle protects a landowner from an interpretation that deprives the landowner of common law rights unless expressly provided. There is no question that the obligation to compensate a landowner flows from an entry under the *PNGA*. There is also no question that, as long as a subsurface rights holder can demonstrate the need for entry to private land to develop or produce oil or natural gas, they have the right to access that land. The only question is, do they access the land using the mechanisms provided under the *PNGA,* or do they access it by an act of expropriation authorized by section 34 of the *OGAA*? In either case, the landowner does not have the right to prevent access to their land so that the subsurface rights holder may develop the resource, and no rights are taken from a landowner that existed at common law.

[16] The question therefore becomes: is it the object and scheme of the legislation and the legislature's intent that where the landowner and rights holder cannot agree to the terms of entry for the purposes permitted by the OGC in this case, that the rights holder acquire entry to the land using the method provided by the *PNGA* or by an act of expropriation under the *OGAA*? In interpreting the term "flow line" in order to answer that question, there is no reason to apply any rule other than the modern rule of statutory interpretation enunciated by the Supreme Court of Canada and commonly and consistently applied by Courts across Canada to interpret the words of a statute. The words of an enactment, in this case the term "flow line", must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature (*Rizzo & Rizzo Shoes Ltd (Re),* [1998] 1 SCR 27).

Is the Pipeline, or any segment of it, a "flow line"?

[17] As indicated above, the term "flow line" must be interpreted harmoniously with the scheme and objects of the legislation, and the intention of the legislature. It cannot be interpreted in isolation of other provisions of the *PNGA* and the *OGAA*, or in isolation of the entire legislative scheme established by both pieces of legislation.

[18] The *OGAA* establishes the OGC 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 otherwise in compliance with the *OGAA* and its regulations. The OGC may issue a permit and must specify the oil and gas activity permitted to be carried out. In this case, the OGC has granted Murphy a permit to construct and operate a pipeline, in three segments, for the purpose of conveying petroleum, natural gas or water.

[19] The legislative scheme of the *PNGA* is to enable access to private land for an "oil and gas activity" while providing a dispute resolution mechanism to determine the compensation payable to landowners arising from an entry.

[20] "Oil and gas activity" is defined in the *OGAA*. The relevant portions of the definition, for the purposes of this case, are:

> ...
> (b) the exploration for and development of petroleum, natural gas or both,
> (c) the production, gathering, processing, storage or disposal of petroleum, natural gas or both,
> ...
> (e) the construction or operation of a pipeline

[21] A person who requires a right of entry, or the landowner, may apply to the Board for mediation and arbitration if the person requiring the right of entry and the landowner are unable to agree on the terms of a surface lease. "Surface lease" is expansively defined to include right of way agreement. The mechanisms for entry to private land set out in the *PNGA*, however, expressly do not apply to entry, occupation or use of land relating to a pipeline other than a flow line (*PNGA*, section 145(2)). So the Board may only authorize right of entry for an "oil and gas activity", including the construction and operation of a pipeline, as long as the pipeline is a "flow line".

[22] A flow line is a type of pipeline. The *OGAA* defines "pipeline" 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

[23] To be a "flow line", the disputed lines must also be "pipelines". Segments 001 and 002 are clearly pipelines. They are piping through which, in the case of Segment 001, natural gas is conveyed, and in the case of Segment 002, water produced in relation to the production of natural gas is conveyed.

[24] Segment 003, however, is not piping through which any of the enumerated substances in (a) to (e) in the definition of "pipeline" are conveyed although it is one of the segments of the Pipeline for which the OGC has issued the Permit. It can only be considered a "pipeline" if it falls into the inclusionary clause of the definition including "installations and facilities associated with the piping" that conveys the enumerated substances.

[25] The *OGAA* provides the following definition of "facility":

> "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) to (e) of the definition of "pipeline"

[26] Mr. Dick's evidence is that the fuel line is used to power various instruments and pieces of equipment required to operate the well. It is, therefore, part of a system of piping and other equipment used to gather, process, measure, store or dispose of natural gas and water. I find the fuel line and associated instruments and equipment is included in the definition of "pipeline". This interpretation accords with the OGC's treatment of the fuel line as a segment of the Pipeline for which the Permit has been granted.

[27] The question remains, is the Pipeline or any of its segments a "flow line"? Do they connect "a well head with a scrubbing, processing or storage facility" and precede "the transfer of the conveyed substance to or from a transmission, distribution or transportation line"? For ease of reference, I reproduce the definition of "flow line" again below:

> "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.

[28] Mr. Carter argues there is nothing before the Board to show that the segments of the Pipeline connect to a well head. He argues the diagrams show lines "coming and going" but that the well head is just a white space on the plan. Mr. Carter argues that the equipment that scrubs or separates the gas and water at the well site is a "scrubbing or processing facility that precedes the transfer of the conveyed substance to a transmission, distribution or transportation line". He submits Segments 001 and 002 transmit and transport product and are, therefore, "transmission, distribution or transportation" lines. In Mr. Carter's submission, the only pipeline that can be a flow line is the line that connects the well to this equipment at the well site. In his submission, a flow line does not extend beyond the well pad or well site area and these lines are "transmission, distribution or transportation lines" within the meaning of the definition of "flow line". For the reasons set out below, I find this interpretation does not give effect to the scheme and object of the legislation or the intention of the legislature.

[29] First, the term "well head" is not defined in the legislation. "Well" is defined in the *PNGA* as "a hole in the ground ... made or being made by drilling, boring, or any other method to obtain petroleum or natural gas..." The Glossary published by the OGC defines "well head" as "the equipment used to maintain surface control of a well". The term "well head", therefore, is not synonymous with "well", and encompasses more than the hole in the ground drilled to obtain natural gas. If the legislature had intended that a flow line was just the piece of pipeline that connected the well, that is the hole in the ground, to the equipment found at the well site necessary to separate water from the natural gas prior to metering or flaring, it could have used the word "well" and not the term "well head" in the definition of "flow line". Indeed, the legislature made this choice as evident from the legislative history of the present definition.

[30] In 2008, the legislature amended the definition of "flow line" with the enactment of the *OGAA* to mean "a pipeline connecting a well with a facility or another pipeline". This definition was never brought into force, and in 2010, the current definition was enacted and brought into force. It is interesting to note the change from the use of the word "well" in the 2008 amendment to "well head" in the 2010 amendment. During legislative debates on the proposed amendment, the Minister at the time suggested the government had "caught that we had made the definition too narrow" and said "we are expanding it again" (Hansard, March 31, 2010).

[31] While the evidence before me does not demonstrate that any of the segments of this Pipeline actually connect to the well itself, that is to the hole in the ground, the evidence does demonstrate that they connect to the equipment at the well site necessary to maintain and operate the well.

[32] Second, with respect to Mr. Carter's submission that Segments 001 and 002 transmit and transport product and are therefore transmission, distribution or transportation lines, they certainly do transmit or transport product in the sense of conveying a substance. The fact that they convey substances, however, does not make them transmission, distribution or transportation lines. The definition of "flow line" makes a distinction between a pipeline that conveys a substance, which is included in the definition, and "a transmission, distribution or transportation line", which would also convey substances but which are not included in the definition. A "flow line" is not intended to be an empty pipeline. It is a type of pipeline and, therefore, piping through which various substances are conveyed. The conveyance of a substance in the pipeline does not turn it into a transmission, distribution or transportation line. A transmission, distribution or transportation line is clearly a different kind of pipeline than a "flow line".

[33] There is no legislative definition of transmission, distribution or transportation line, and these terms are not included in the OGC Glossary previously referred to. Mr. Dick, in his Affidavit, says in his experience "the terms transmission, transportation and distribution lines are used to refer to downstream pipelines that convey product (i.e. gas, oil, liquids) from a processing facility to market for sale or further transport by truck rail or sea". He says these pipelines are generally much larger in diameter and require a larger trench. This understanding seems to accord with the former Minister's understanding reflected in Hansard that the type of pipeline not covered by the definition of "flow line", is "a larger pipeline, more permanent in nature" (Hansard, May 5, 2012). It also fits with the legislative scheme providing for the expropriation of land for a pipeline other than a flow line up to 18 meters in width (or more if authorized by the OGC), compared to the 15 meter right of way required for the three segments of this Pipeline.

[34] Third, the result of Mr. Carter's interpretation that a flow line does not extend beyond a well site area would be that the Board would only have authority to authorize entry to land for the well site or well pad area itself. 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.

[35] Further, 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 *PNGA* 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.

[36] Mr. Williams argues that the intention of the legislature was to give the Board jurisdiction over the gathering system, as distinct from the distribution system. This intention can be seen in the Minister's remarks recorded in Hansard, where he refers to a flow line and a gathering line as being synonymous (Hansard, May 5, 2010). The "gathering system", according the OGC Glossary, comprises the pipelines and other infrastructure that move raw gas from the wellhead to processing and transmission facilities.

[37] It is not necessary for the purpose of this decision to determine whether the definition of "flow line" can reasonably be interpreted to cover all pipelines comprising the gathering system. It is sufficient to determine whether the Pipeline and each of its segments in issue in this case, reasonably fall within the definition. I find Segments 001 and 002 clearly fall within the definition. I find they are pipelines that connect a wellhead, namely the equipment associated with the surface control of 03-13, with a processing facility, namely the Tupper West Plant, via the 16-01 well site. The lines precede the transfer of the conveyed substances, i.e. the natural gas and water to a transmission, distribution or transmission line.

[38] As to the fuel line, if it is not a "flow line", then the same right of way required for all three segments of the Pipeline, would have to be acquired twice by separate and duplicative processes. The Board could grant the right of entry for the purpose of constructing and operating Segments 001 and 002, but the land would need to be expropriated for the purpose of constructing and operating Segment 003. This is an absurd result that cannot have been the legislature's intent. Interpretations that lead to absurd consequences should be rejected (*Ontario v. Canadian Pacific Ltd.* [1975] 2 SCR 1031).

[39] As expropriation results in a greater impact on private property rights than a *PNGA* taking, the legislation ought not to be interpreted to require this result if possible. The excerpts from Hansard demonstrate the concern of some Members of the Legislative Assembly that the expropriation authorized by the *OGAA* sounded "draconian and stark" (Hansard, May 5, 2010).

[40] While at first blush, it may seem there is "no possible way" the fuel line can be considered a "flow line", when the words of the definition are read harmoniously with the scheme and object of the Act, and the intention of the legislature, the fuel line reasonably falls into the definition of flow line. The fuel line in this case 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. It too connects a well head, namely the equipment associated with the surface control of 03-13 with a processing plant, namely Tupper West via the 16-01 well site. To interpret the term "flow line" so as to exclude the fuel line would lead to absurd and harsh consequences that cannot have been intended.

[41] Mr. Carter made much of the fact that the fuel line carries processed gas from the Tupper West plant to 03-13. In relation to the direction of flow of the fuel in the line, the well head is downstream of the Plant, and therefore, in his view, it cannot "precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line". The "conveyed substance", however, is not the fuel in the fuel line, but the natural gas and water. The fuel line is a segment of this single pipeline project to be constructed and operated for the purpose of conveying petroleum, natural gas or water.

CONCLUSION

[42] The Pipeline, and each of its segments, is a flow line within the meaning of the *OGAA* and the *PNGA.* The Board has jurisdiction with respect to Murphy's application for a right of entry order and for mediation and arbitration services to settle the compensation payable to the Shores for Murphy's use and occupation of the Shore's Lands for the construction and operation of the flow line.

DATED: September 13, 2012

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1745
Board Order No. 1745-2

September 26, 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 NORTH WEST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PARCEL A (F8005)

BLOCK A OF THE SOUTH WEST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

THE SOUTH EAST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(Applicant)

AND:

WILLIS MORLEY SHORE
AND MITCHELL TODD SHORE

(Respondents)

BOARD ORDER

Murphy Oil Company Ltd. ("Murphy") 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 three flow lines.

The Oil and Gas Commission ("OGC") has approved the routing of the flow lines and has issued a permit for this project.

The Respondents have appealed the OGC's permit to the Oil and Gas Appeal Tribunal ("the Tribunal"). The Tribunal has not issued a stay of the permit.

I conducted a telephone mediation on September 21, 2012, where the parties discussed the merits of the project and whether I should issue Murphy a right of entry order.

I considered the submissions and found that there was no impediment preventing the Board from issuing Murphy the right of entry. Supported by the fact that the OGC has issued a permit for this project, the Board is satisfied that Murphy requires right of entry to the Lands for the purposes of oil and gas activities.

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, Murphy shall have the Right of Entry to and access across the portion of the Lands shown on the individual ownership plans attached to this Order as Appendix "A" for the purpose of construction, operation and maintenance of the flow lines authorized by OGC Pipeline Permit 9706395 .

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $7,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowners, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowners as partial payment for compensation the amount of $15,000.00.

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: September 26, 2012

FOR THE BOARD

Rob Fraser
Mediator

APPENDIX "A"

1745-2

Schedule "A" Page __ of __

Attached to and made part of a Lease dated this __ day of _____, 20__, between

Willis Morley Shore and Mitchell Todd Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.

INDIVIDUAL OWNERSHIP PLAN

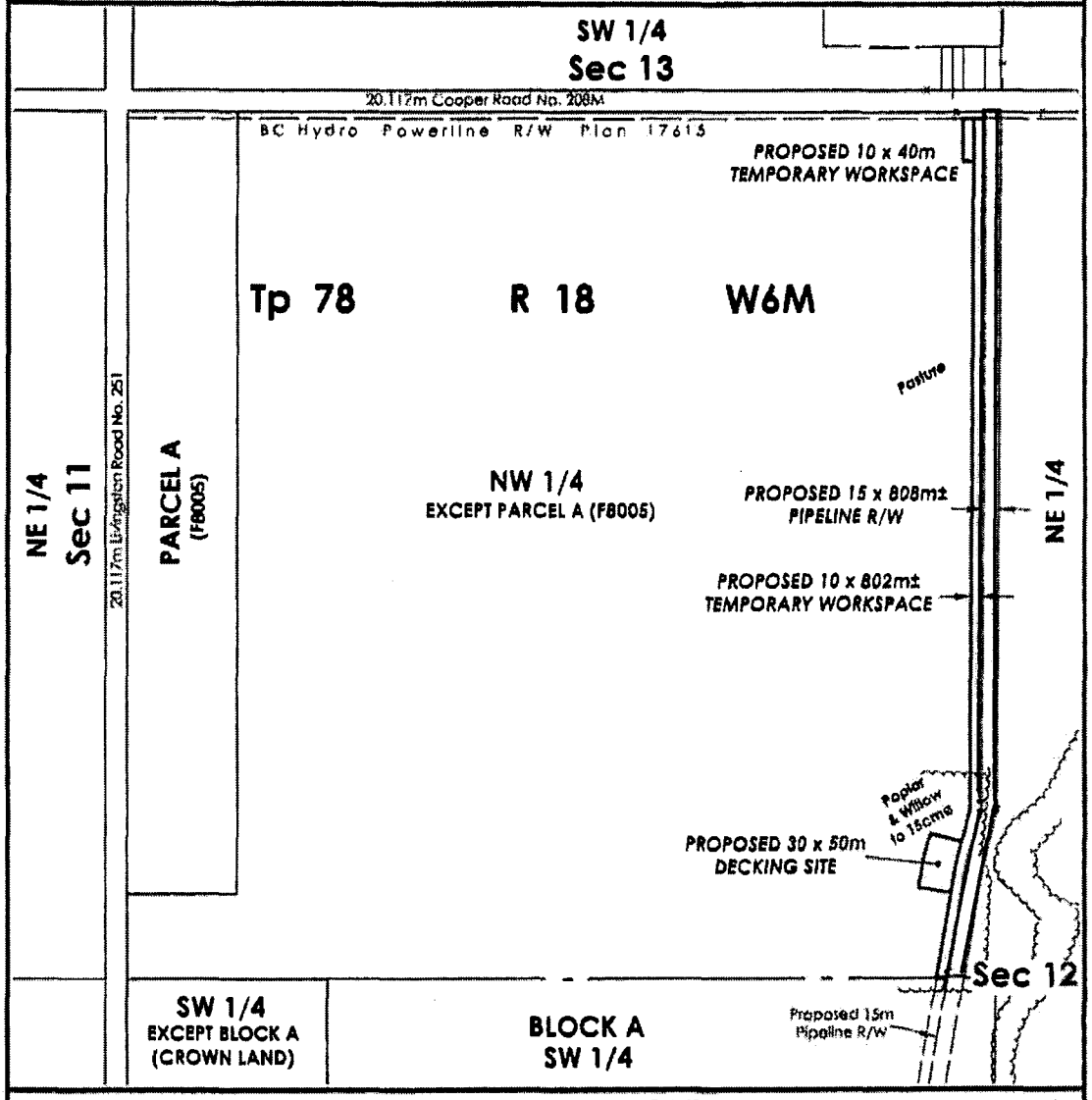
SHOWING PROPOSED

15m PIPELINE R/W, WORKSPACES AND DECKING SITE IN

NW 1/4 Sec 12, Tp 78, R18, W6M

EXCEPT PARCEL A (F8005)

PEACE RIVER DISTRICT



TITLE No.: PC9784 **P.I.D. No.:** 013-336-029

OWNER(S): Willis Morley Shore
Mitchell Todd Shore

AREA REQUIRED:

For 15m Pipeline R/W	1.21 ha	2.99 ac
Workspaces	0.84 ha	2.08 ac
Decking Sites	0.15 ha	0.37 ac
TOTAL:	2.20 ha	5.44 ac

LEGEND

SCALE = 1: 5,000

Portions referred to:

Notes: Distances shown are in metres.

Certified correct this
3rd day of February, 2012

Bryan Bates, BCLS

NO	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
1	12/02/03	Pipeline Width Changed	GJP	BPB

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CAD FILE: J20110605IOPA1
Client File No.:
AFE No.: 54096129-709
Land File No.:
1 REVISION

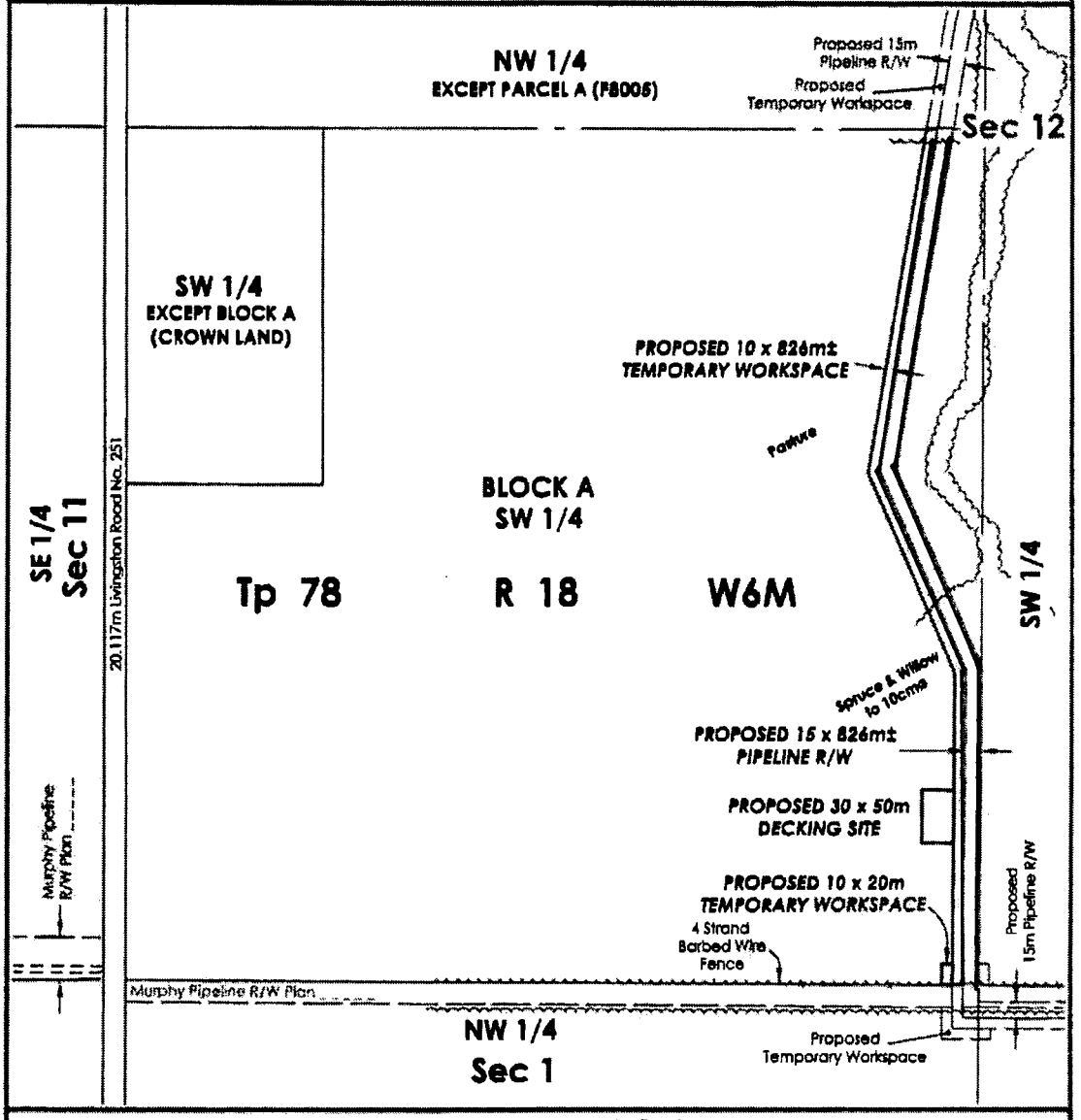
APPENDIX "A" 1745-2

Schedule "A" Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Willis Morley Shore and Mitchell Todd Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
15m PIPELINE R/W, WORKSPACES AND DECKING SITE IN
BLOCK A, SW 1/4 Sec 12, Tp 78, R18, W6M
PEACE RIVER DISTRICT



TITLE No.: PC9783 **P.I.D. No.:** 013-335-979

OWNER(S): Willis Morley Shore
Mitchell Todd Shore

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

Certified correct this
3rd day of February, 2012

AREA REQUIRED:

For 15m Pipeline R/W	1.24 ha	3.06 ac
Workspaces	0.85 ha	2.10 ac
Decking Sites	0.15 ha	0.37 ac
TOTAL:	2.24 ha	5.53 ac

Bryan Bates, BCLS

N

NO.	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
1	12/02/03	Pipeline Width Changed	GJP	BPB

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CAN-AM FILE:
CAD FILE: J20110605IOPB1
Client File No.:
AFE No.: 54096129-709
Land File No.:
1 REVISION

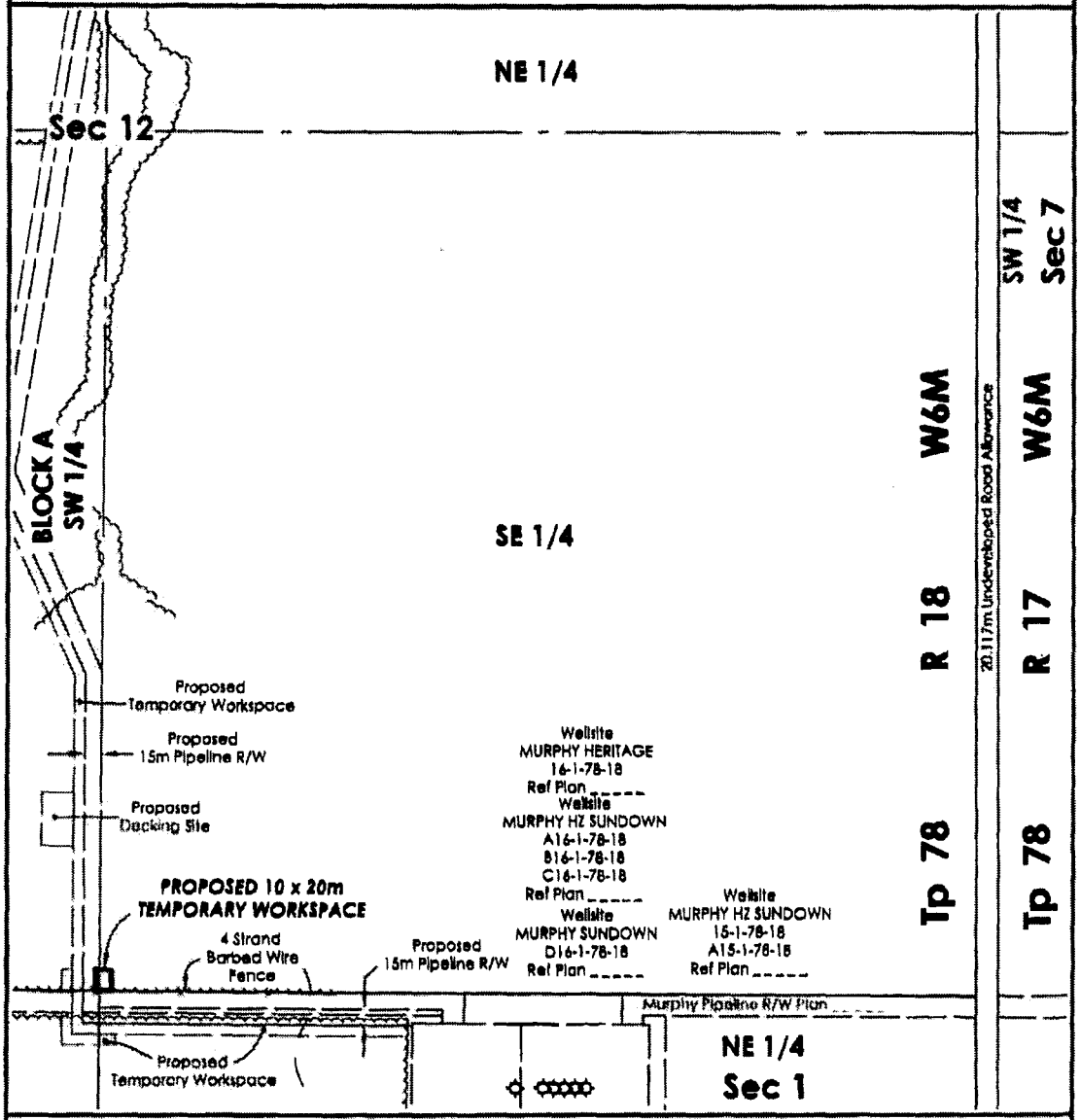
APPENDIX "A" 1745-2

Schedule "A" Page __ of __

Attached to and made part of a Lease dated this __ day of _____, 20___, between

Willis Morley Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED WORKSPACE IN
SE 1/4 Sec 12, Tp 78, R18, W6M
PEACE RIVER DISTRICT



TITLE No.: D3204 **P.I.D. No.:** 011-239-751

OWNER(S): Willis Morley Shore

LEGEND

SCALE = 1: 5,000

Portions referred to:

Notes: Distances shown are in metres.

Certified correct this 21st day of February, 2012

AREA REQUIRED:

Workspace	0.02 ha	0.05 ac
TOTAL:	0.02 ha	0.05 ac

Bryan Bates, BCLS

NO	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
1	12/02/21	Updated Scenery	GJP	BPB

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CAN-AM FILE:

CAD FILE: J20110605IOPE1

Client File No.:

AFE No.: 54096129-709

Land File No.:

1 REVISION

Appendix "B"

Conditions for Right of Entry

1. Murphy shall provide reasonable notice to the landowners prior to the start of construction of the Statutory Right of Way.

2. All Drainages, whether man-made or natural, insofar as reasonably practicable, shall be restored to the same or substantially the same condition as existed prior to the start of the Statutory Right of Way construction.

3. All Pipelines shall be buried such that there is a minimum cover of 1.5m, which should allow the landowners to cross such Statutory Right of Way under normal agricultural operations. Should the landowners wish to cross the pipeline with unusually heavy equipment (whether or not related to agricultural operations), The landowners shall provide Murphy sufficient prior notice such that Murphy, in compliance with governmental regulations, has a reasonable opportunity to ensure such measures and works are in place to allow for safe crossing.

4. Murphy shall install temporary barbed wire gates at all fence crossings and shall permanently repair such fences after construction has been completed.

5. Murphy shall stack and deck merchantable timber as reasonably requested by the landowners. Any timber or residual debris not wanted by the landowners shall be piled and burned.

6. Murphy shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Murphy's operations on the Right of Way Lands. Murphy shall assume responsibility for the control of noxious weeds on the Lands caused by Murphy's operations.

File No. 1745
Board Order No. 1745-2amd

May 13, 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 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PARCEL A (F8005)

BLOCK A OF THE SOUTH WEST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

THE SOUTH EAST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(Applicant)

AND:

WILLIS MORLEY SHORE
AND MITCHELL TODD SHORE

(Respondents)

BOARD ORDER

This Order is amended in accordance with Order 1745-3.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, Murphy shall have the Right of Entry to and access across the portion of the Lands shown on the individual ownership plans attached to this Order as Appendix "A" for the purpose of construction, operation and maintenance of the flow lines authorized by OGC Pipeline Permit 9706395 .

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

3. Murphy shall deliver to the Surface Rights Board security in the amount of $7,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy, or paid to the landowners, upon agreement of the parties or as ordered by the Board.

4. Murphy shall pay to the landowners as partial payment for compensation the amount of $15,000.00.

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.

6. Following the decommissioning and abandonment of the flow lines authorized by OGC Pipeline Permit 9706395, in the event the flow lines directly and materially interfere with or restrict an approved development proposed by the landowners, Murphy Oil shall, upon reasonable notice prior to commencement or construction of such approved development, remove at its sole cost and expense that portion of the abandoned flow lines which directly and materially interfere with or restrict the landowners' development, or shall compensate the landowners for any loss arising from the interference of the decommissioned and abandoned flow lines with the landowners' approved development.

DATED: May 13, 2014

FOR THE BOARD

Cheryl Vickers
Chair

APPENDIX "A"

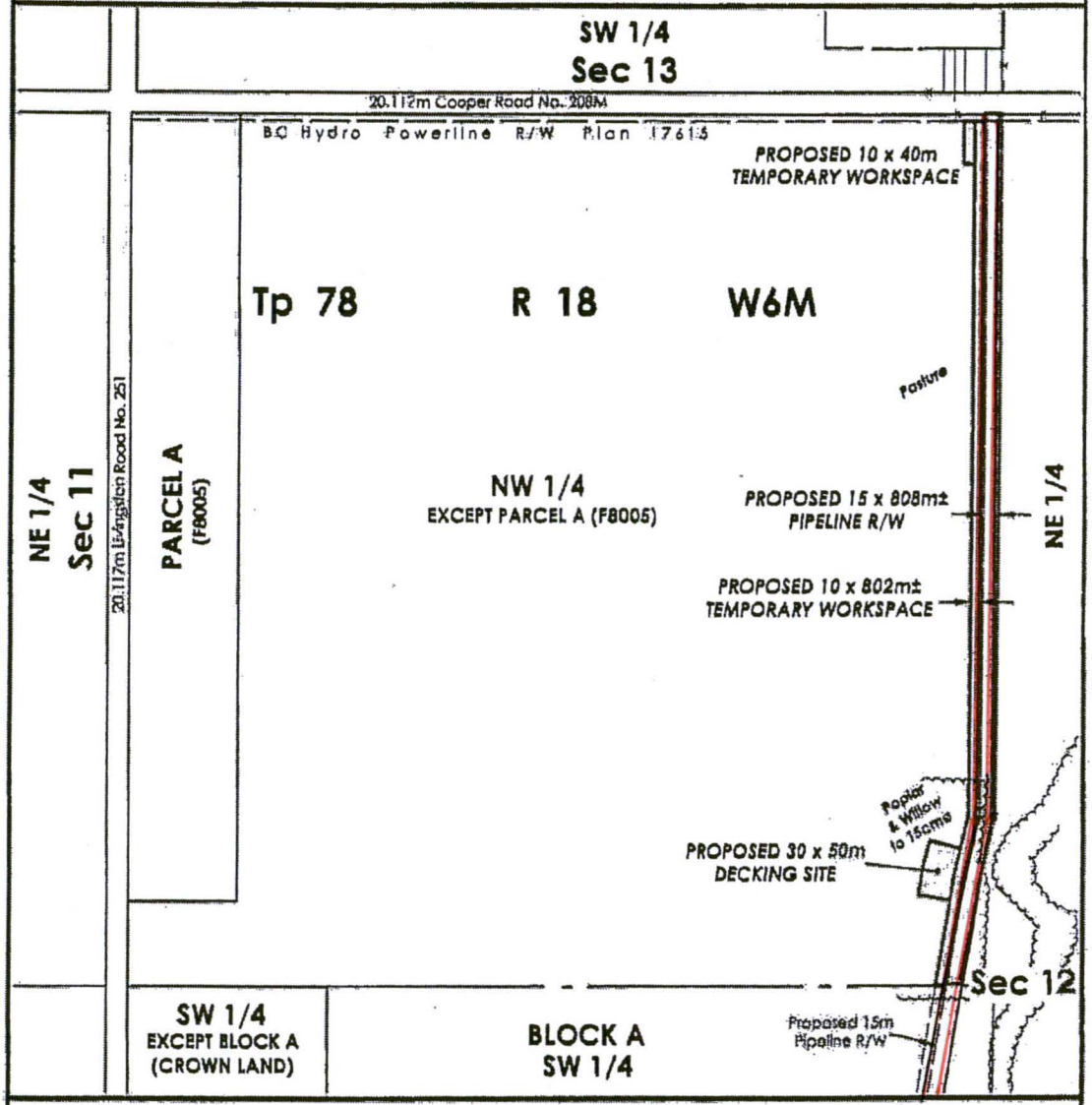
1745-2amd

Schedule "A" Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Willis Morley Shore and Mitchell Todd Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
15m PIPELINE R/W, WORKSPACES AND DECKING SITE IN
NW 1/4 Sec 12, Tp 78, R18, W6M
EXCEPT PARCEL A (F8005)
PEACE RIVER DISTRICT



TITLE No.: PC9784 **P.I.D. No.:** 013-336-029

OWNER(S): Willis Morley Shore
Mitchell Todd Shore

AREA REQUIRED:

For 15m Pipeline R/W	1.21 ha	2.99 ac
Workspaces	0.84 ha	2.08 ac
Decking Sites	0.15 ha	0.37 ac
TOTAL:	2.20 ha	5.44 ac

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

Certified correct this
3rd day of February, 2012

Bryan Bates, BCLS

NO	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
1	12/02/03	Pipeline Width Changed	GJP	BPB

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CAD FILE: J20110605IOPA1
Client File No.:
AFE No.: 54096129-709
Land File No.:
1 REVISION

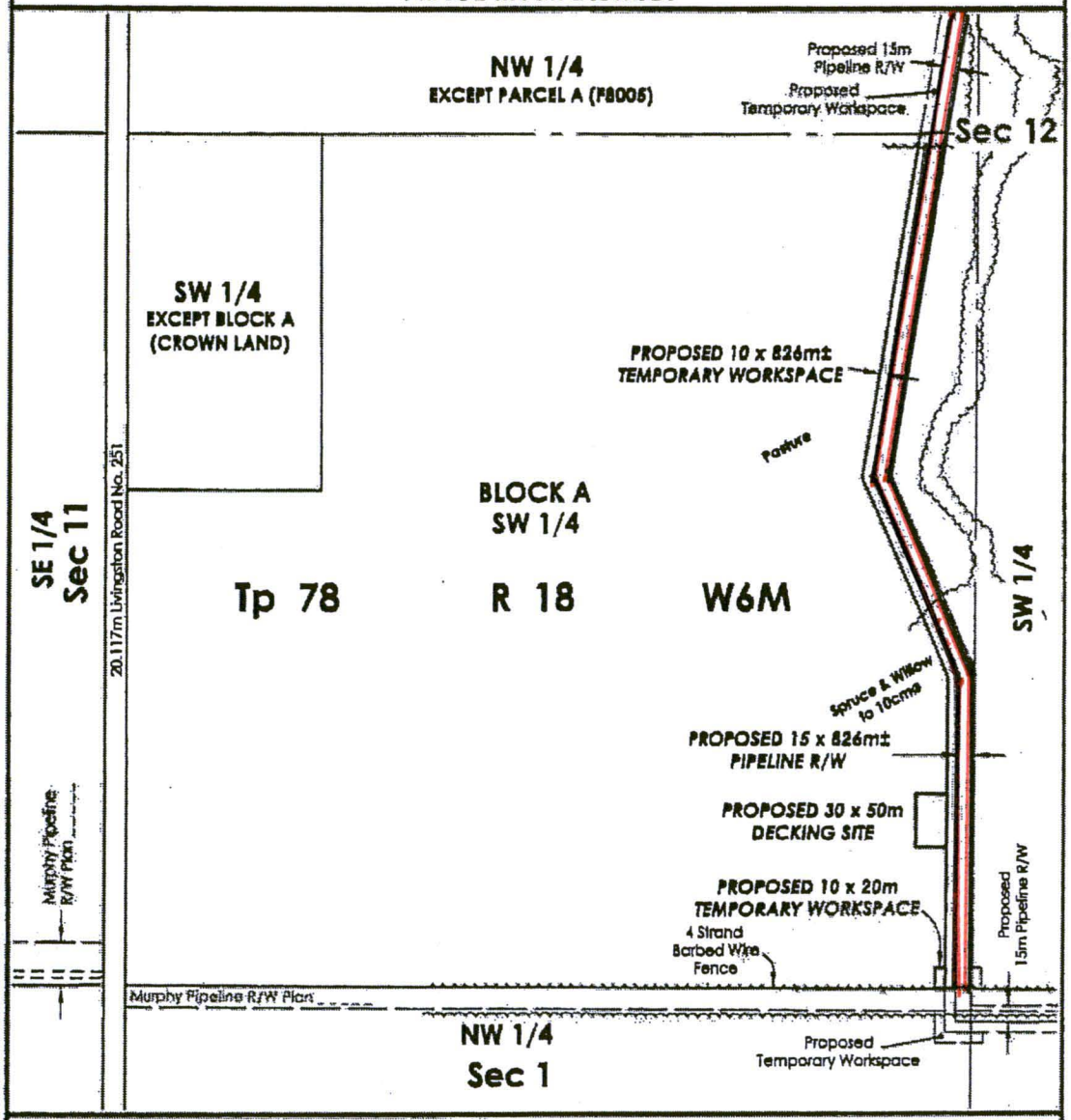
APPENDIX "A" 1745-2 and

Schedule "A" Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Willis Morley Shore and Mitchell Todd Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
15m PIPELINE R/W, WORKSPACES AND DECKING SITE IN
BLOCK A, SW 1/4 Sec 12, Tp 78, R18, W6M
PEACE RIVER DISTRICT



TITLE No.: PC9783 **P.I.D. No.:** 013-335-979

OWNER(S): Willis Morley Shore
Mitchell Todd Shore

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

Certified correct this
3rd day of February, 2012

Bryan Bates, BCLS

AREA REQUIRED:

For 15m Pipeline R/W	1.24 ha	3.06 ac
Workspaces	0.85 ha	2.10 ac
Decking Sites	0.15 ha	0.37 ac
TOTAL:	2.24 ha	5.53 ac

NO.	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
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Client File No.:
AFE No.: 54096129-709
Land File No.:
1 REVISION

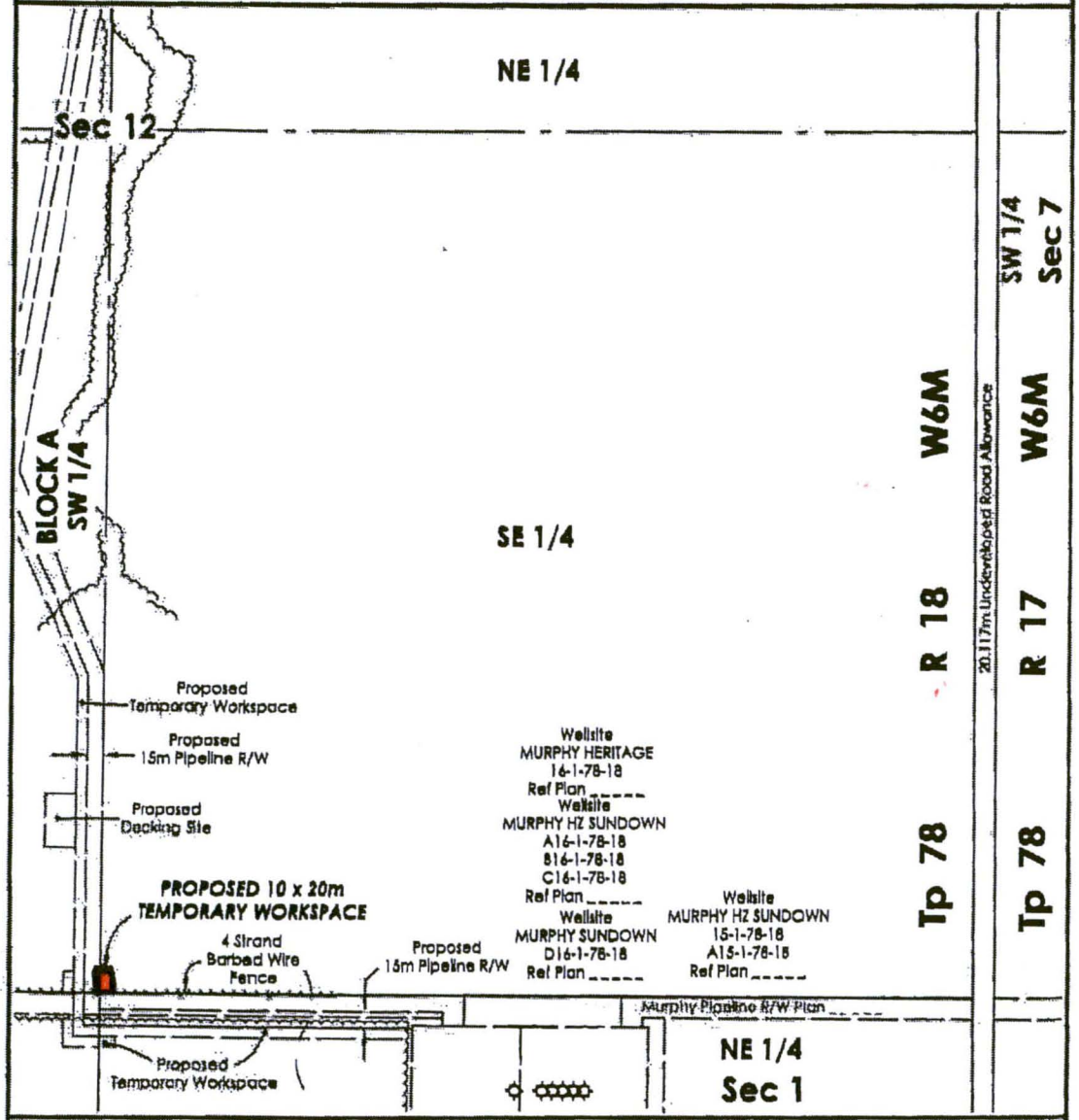
APPENDIX "A" 1145-2 and

Schedule "A" Page ___ of ___

Attached to and made part of a Lease dated this ___ day of _____, 20___, between

Willis Morley Shore as Owner and **Murphy Oil Company Ltd.** as Company.

MURPHY OIL COMPANY LTD.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED WORKSPACE IN
SE 1/4 Sec 12, Tp 78, R18, W6M
PEACE RIVER DISTRICT



TITLE No.: D3204 **P.I.D. No.:** 011-239-751

OWNER(S): Willis Morley Shore

LEGEND

SCALE = 1: 5,000

Portions referred to:

Notes: Distances shown are in metres.

Certified correct this 21st day of February, 2012

AREA REQUIRED:

Workspace	0.02 ha	0.05 ac
TOTAL:	0.02 ha	0.05 ac

Bryan Bates, BCLS

NO	DATE	REVISION	DRN	CKD
0	12/01/02	Original plan issued	RC	BPB
1	12/02/21	Updated Scenery	GJP	BPB

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CAN-AM FILE:

CAD FILE: J2011060SIOPE1

Client File No.:

AFE No.: 54096129-709

Land File No.:

1 REVISION

Appendix "B"

Conditions for Right of Entry

1. Murphy shall provide reasonable notice to the landowners prior to the start of construction of the Statutory Right of Way.

2. All Drainages, whether man-made or natural, insofar as reasonably practicable, shall be restored to the same or substantially the same condition as existed prior to the start of the Statutory Right of Way construction.

3. All Pipelines shall be buried such that there is a minimum cover of 1.5m, which should allow the landowners to cross such Statutory Right of Way under normal agricultural operations. Should the landowners wish to cross the pipeline with unusually heavy equipment (whether or not related to agricultural operations), The landowners shall provide Murphy sufficient prior notice such that Murphy, in compliance with governmental regulations, has a reasonable opportunity to ensure such measures and works are in place to allow for safe crossing.

4. Murphy shall install temporary barbed wire gates at all fence crossings and shall permanently repair such fences after construction has been completed.

5. Murphy shall stack and deck merchantable timber as reasonably requested by the landowners. Any timber or residual debris not wanted by the landowners shall be piled and burned.

6. Murphy shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Murphy's operations on the Right of Way Lands. Murphy shall assume responsibility for the control of noxious weeds on the Lands caused by Murphy's operations.

File No. 1745
Board Order No. 1745-3

May 13, 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 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PARCEL A (F8005)

BLOCK A OF THE SOUTH WEST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

THE SOUTH EAST ¼ OF SECTION 12 TOWNSHIP 78 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(Applicant)

AND:

WILLIS MORLEY SHORE
AND MITCHELL TODD SHORE

(Respondents)

BOARD ORDER

Heard: February 26 and 27, 2014 at Dawson Creek, BC.
Appearances: Rick Williams, Barrister and Solicitor, for Murphy Oil Company Ltd.
Elvin Gowman, Farmers' Advocacy Office, for Willis Morley Shore

---

INTRODUCTION

[1] Willis Morley Shore (also known as Bill Shore) owns, individually or jointly with Mitchell Todd Shore, the Lands described as:

NW ¼ Section 12, Township 78, Range 18, W6M Peace River District, except Parcel A (F8005) ("NW 12");
Block A, SW ¼ Section 12, Township 78, Range 18, W6M Peace River District ("Block A SW 12");
SE ¼ Section 12, Township 78, Range 18, W6M Peace River District ("SE 12")

[2] Bill Shore also owns other parcels in the area including the SW ¼ Section 7, Township 78, Range 17 ("SW 7") located immediately to the east of SE 12, as well as the NE ¼ of Section 12, Township 78, Range 18 ("NE 12"), and the NW ¼ of Section 7, Township 78, Range 17 ("NW 7").

[3] In May 2011, Murphy Oil approached Mr. Shore to obtain permission to survey a route for flow lines required to tie in two natural gas wells located north of the Lands with Murphy Oil's Tupper West Plant via a connection point south of the Lands. Murphy Oil's preferred route would have taken the flow line right through NE 12 and SE 12. Mr. Shore advised Murphy Oil that there were significant deposits of gravel on SE 12 and SW 7 immediately to the west, and that he was opposed to any route that passed through those quarter sections. The parties discussed various alternative routes and in August 2011 agreed to an alternative route that would have taken the flow line across the northwest corner of NW 7. This route turned out not to be feasible because of its impact on a planned residence of another landowner to the north.

[4] In December 2011, Murphy Oil filed an application to the Board seeking right of entry to the Lands. The initial planned project area submitted to the Oil and Gas Commission (OGC) was for a total of 11.35 acres, being 7.24 acres of right of way and 4.11 acres of temporary workspace. In February 2012, Murphy Oil agreed to reduce the width of the right of way from 18 metres to 15 metres, and later amended its application to the Board.

[5] On May 18, 2012, the Ministry of Energy, Mines and Petroleum Resources (the Ministry) approved an application by Brian Elliott of Tryon Land Surveying Ltd. (Tryon) for a 10-hectare sand and gravel mine on SE 12. The approved application proposes a 15 year mine life (2012-2027 depending on market conditions) with annual extraction of

approximately 55,100 m^3 and a mineable reserve over the life of the mine of approximately 827,000 m^3. The permit requires a seven metre leave strip around the mine area. This leave strip, and the western boundary of the mine area, extends 113 metres along the boundary between SE 12 and Block A SW 12.

[6] On July 23, 2012, the OGC granted Murphy Oil a permit to construct, operate and maintain the flow lines in the revised project area of 11.02 acres comprised of 6.05 acres of right of way and 4.23 acres of temporary workspace. On September 16, 2012, the Board granted Murphy Oil the right to enter the Lands to construct, operate and maintain the flow lines. The Board's right of entry order authorizes entry to the Lands within the revised project area as permitted by the OGC.

[7] The flow line right of way extends 113 metres along the boundary of Block A SW 12, immediately adjacent to and parallel with the western boundary of the mine on SE 12, before angling to the west and then angling back to the boundary between NW 12 and NE 12. The right of entry includes a .05 acre area in the southwest corner of SE 12 as temporary workspace.

[8] Mr. Shore filed an appeal of the OGC permit to the Oil and Gas Appeal Tribunal (OGAT), but OGAT denied the appeal.

[9] The flow lines were constructed in the fall of 2012 and are currently operating.

[10] The parties have been unable to resolve the compensation payable by Murphy Oil to the Shores for Murphy Oil's use and occupation of the Lands, and the Board must, therefore, arbitrate the compensation payable.

ISSUE

[11] The issue is to determine the appropriate compensation payable by Murphy Oil to the Shores arising from Murphy Oil's entry to and use and occupation of the Lands. Compensation is the equivalent in money for the loss sustained (*Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458; *Dome Petroleum Ltd. v. Juell*, [1982] B.C.J. 1510). The question the Board must ask is: what is the landowners' loss arising from Murphy Oil's entry to and use and occupation of the Lands?

[12] In determining compensation for loss arising from a right of entry, section 154 of the *Petroleum and Natural Gas Act* (*PNGA*) provides that the Board may consider, without limitation, the following:

(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.

SUBMISSIONS

[13] Bill Shore submits there are significant quantities of gravel under the right of way that are now lost to him as a result of the flow lines. He seeks compensation of approximately $115,000 for 25,267 m^3 of gravel he says is under the 113 metre section of the right of way on Block A SW 12, and under the 113 metre area adjacent to the right of way under the seven metre leave strip and excavation slope in the mine area. He submits this quantity of gravel is lost to him as a result of Murphy Oil's use and occupation of the Lands. A person's loss of a right or profit is a factor the Board may consider in determining compensation payable as a result of a right of entry.

[14] Murphy Oil argues the claim for loss of gravel is speculative. It submits there is no evidence of an economic deposit of gravel beneath the right of way. Murphy Oil submits its offer of just over $19,000 exceeds the Shores' actual loss arising from its use and occupation of the Lands.

[15] In the alternative, the landowners seek compensation of approximately $115,000 on the basis of other surface leases, in particular a lease between BC Hydro and Mr. Shore for a transmission line right of way. The terms of other agreements are a factor that the Board may consider in determining compensation payable as a result of a right of entry.

[16] Murphy Oil submits the circumstances with the BC Hydro lease are different and that lease does not provide an appropriate basis for determining the compensation payable for Murphy Oil's right of way. It submits its other agreements with landowners in the area are a more appropriate comparator.

[17] Murphy Oil submits appropriate compensation may be determined on consideration of the value of the land and estimated crop loss and provides evidence relevant to those factors. These are factors the Board may consider in determining compensation payable as a result of a right of entry.

EVIDENCE AND ANALYSIS

[18] I heard evidence from Bill Shore, Erwin Spletzer, John Wasmuth and Glen Schafer. Erwin Spletzer is the Aggregates Manager at Terus Construction Ltd., part of an international group that owns DGS Astro Paving Ltd. (DGS). He has over 30 years experience in the gravel business. John Wasmuth is an appraiser accredited by the Appraisal Institute of Canada and a professional agrologist. He has experience appraising sand and gravel deposits and has some limited, although dated, experience working with the soil survey division of the Research Council of Alberta. Glen Schafer is a Surface Land Man with Murphy Oil.

[19] The landowners have the burden of proving their alleged loss on a balance of probabilities. That burden is met if the evidence discloses it is more probable than not that the alleged loss has occurred or will occur in the reasonably near future.

[20] For the landowners to succeed in their claim for loss of gravel, the evidence must not only establish that it is more likely than not that there is gravel under the 113 metre section of right of way and adjacent strip in the quantity alleged, but it must also establish the probable value of that gravel, and that the landowners are prevented now or in the foreseeable future from developing and marketing the gravel as a result of Murphy Oil's use and occupation of the right of way. The evidence must establish that as a result of Murphy Oil's use and occupation of the Lands, an economic opportunity is lost to the landowners, and the value of that lost economic opportunity.

Claim for lost gravel

Gravel on SE 12

[21] The bulk of the evidence respecting gravel relates to the deposit on SE 12.

[22] Erwin Spletzer's evidence is that he was looking for a gravel source close to Dawson Creek. He says there is a general need for gravel in the area and that a source closer to Dawson Creek than those in Taylor and the Pine River area would have a cost advantage on hauling as trucking costs are reduced the closer a source of gravel is to its market. When he heard that Mr. Shore might have gravel on his land, he contacted Mr. Shore and went to see the property. When he saw the test holes Mr. Shore had dug, he was surprised and decided he was interested in pursuing an agreement to mine. He took samples from four test sites that Mr. Shore had dug and had DGS do a sieve analysis.

[23] The DGS sieve analysis indicates the gravel at all four test sites is suitable for aggregates. The results indicate gravel depth of seven metres, but Mr. Shore provided this information to Mr. Spletzer from Mr. Shore's observations in digging the pits. As Mr. Spletzer did not dig the test holes, he could not say how deep the gravel is at each location. Mr. Shore dug several pits on SE 12, not just the four from which DGS took

samples. Mr. Shore's evidence is that in some of the pits, the depth of gravel exceeds the 23 foot reach of his hoe.

[24] Mr. Shore's evidence includes photographs of eight test holes, all on SE 12, seven within the permitted mine area and one to the north of the permitted area. All of the DGS test sites are located on SE 12. On the basis of the aerial photographs showing the locations of the DGS test sites and the test pits Mr. Shore photographed, I find it is likely that DGS Pit #4 corresponds with Mr. Shore's Test Pit #5 located outside of the permitted mine area to the north. I am not able to match any of the other DGS test pits with the test pits Mr. Shore photographed.

[25] The closest test pit to the right of way is Mr. Shore's Test Pit #3. The evidence does not disclose the precise distance of this test pit from the right of way, but it appears it may be approximately 30 metres to the east. Mr. Shore's evidence is that he dug down at least 16 feet in this pit and did not get to the bottom of the gravel.

[26] The evidence also includes photographs showing gravel taken from a location in the southwest corner of SE 12, just next to the flow line trench, to create a crossing under an existing pipeline for the Murphy Oil flow lines. Mr. Shore's evidence is that this material was wet and different from the gravel dug out of his test holes on SE 12.

[27] DGS prepared a Letter of Intent dated May 10, 2012, indicating its interest in entering into an agreement with Mr. Shore to develop the pit. DGS offered to pay Mr. Shore $\$4.75/m^3$ with an annual minimum royalty of $20,000. Mr. Shore did not accept this offer. DGS prepared a second Letter of Intent dated January 27, 2014. DGS seeks exclusive rights to the gravel and is willing to pay Mr. Shore a minimum annual payment of $35,000 based on taking 10,000 m^3 at $\$3.50/m^3$ for a five-year term with a right of renewal. Mr. Shore has not accepted this proposal. It is his intention to mine the site himself. His evidence is that others have also expressed interest in mining the site but he has not sought out other offers in writing. There are no other expressions of interest in the evidence before me.

[28] As of the date of this arbitration, Mr. Shore had not commenced operations at the mine site. He had not cleared the land or constructed the required access. His evidence is he had intended to start by the spring of 2013, but "money and oil and gas slacked off a bit" so he was "in a holding pattern waiting to see what the summer would bring". He is hoping a proposed highway expansion project in the area will be approved creating a demand for gravel. There is no evidence of a business plan, equipment contracts or agreements to purchase gravel once mined.

[29] The mine permit on SE 12 must be renewed every five years, which means Mr. Shore will need to apply to have the permit renewed prior to May 2017.

[30] The application approved by the Ministry includes a cross-sectional alignment drawing prepared by Tryon showing the depth of material to be removed from the

permitted area. The drawing indicates that the deposit is greatest towards the east of the site in a north south direction and that it thins out towards the west of the site and towards the north edge of the site on the west side. Mr. Shore's evidence is that the largest gravel reserves he knows about on his properties are located on SE 12 and SW 7. He believes the gravel extends 600 to 800 metres to the north on SE 12 and SW 7. He believes, as does Mr. Spletzer, that the gravel also extends into the property to the south of SE 12. He initially wanted to apply for a permit to mine the whole of SE 12 but was convinced to limit the application to just over 10 hectares to avoid the necessity of an environmental assessment. He believes there is room for four or five more developments of a similar size on SE 12 and NW 7.

[31] Mr. Spletzer's evidence is that it is best to work a pit from its edge and work towards the gravel doing progressive reclamation as you go. This evidence conforms to the permit providing for the development of the pit in two phases. Phase 1 being the western side of the pit where the topography is lower and the deposit thinner, and Phase 2 being the eastern side, where the topography rises and the deposit thickens enabling excavation of a gravel face. The permit provides for the reclamation of Phase 1 prior to the excavation of Phase 2.

[32] The evidence establishes there is an economic gravel deposit on SE 12 that Mr. Shore intends to mine in the near future. If he decides not to develop the mine himself, DGS remains interested in securing an agreement with Mr. Shore to develop the site. There is no evidence that the flow lines, or Murphy Oil's use and occupation of the Lands will in any way impact Mr. Shore's ability to develop the permitted gravel mine, and indeed Mr. Shore does not make any claim in this regard.

Gravel on Block A SW 12

[33] The evidence respecting any deposit of gravel within the 113 metres of the right of way on Block A SW 12 for which Mr. Shore claims loss is less direct. I was not provided with any geotechnical evidence relating to the depth or quality of any gravel deposit on Block A SW 12. The only direct evidence before me that there is gravel under the right of way is found in six photographs Mr. Shore took at intervals in the 113 metre section of the flow line trench on Block A SW 12 immediately adjacent to the mine boundary. These photographs show rocks in the bottom of the flow line trench. Mr. Shore's evidence is that the overburden is 1.8 metres, based on his observations of the trench. I was also provided with a photograph identified as "pipeline trench material backfill" which Mr. Shore says is gravel thrown up from the backfill when digging the trench.

[34] Mr. Wasmuth's evidence is that in valuing gravel deposits various factors need to be considered including: the distance to truck, the depth of the overburden, the quality of the deposit, the extent and depth of the deposit, the level of the water table, and the percentage of waste as a result of admixing of other materials. Mr. Wasmuth's observations from the trench photographs are that the different colourings suggest admixing of materials, and that there may be clay and silt mixed in with the gravel.

[35] The only other evidence respecting any quantity of gravel on Block A SW 12 is Mr. Shore's testimony that the parcel the Crown owns in the northwest corner of SW 12 (SW ¼ Section 12 except Block A) is a former gravel pit that the Crown operated. I have no evidence as to the quantity or quality of gravel removed from that pit, the length of time the pit operated, or when or why it was closed.

[36] Mr. Shore provides a letter from Andrew Hall of Tryon calculating the total volume of gravel affected by 113 metres of the pipeline corridor at 25,267 m^3 or 33,048 yds^3. In this calculation, Mr. Hall includes the volume of gravel under the seven metre leave strip surrounding the mine immediately adjacent to the right of way, and the gravel under the back side of the excavation slope to the edge of the seven metre leave strip. The calculation is based on a depth of seven metres of gravel under 1.8 metres of overburden. The evidence is that these numbers were provided to Mr. Hall and that they have not been actually measured or independently verified.

[37] On the basis of Mr. Shore's testimony respecting a former pit in the northwest corner of SW 12, the photographs of the trench, and the evidence relating to the gravel on SE 12, I am being asked to infer that there is seven metres of gravel below 1.8 metres of overburden in the right of way of similar quality to the gravel located on SE 12. I find it more likely than not that there is gravel under the 113 metre section of the right of way on Block A SW 12. But, as there is no geotechnical evidence or even photographs of test pits in or immediately adjacent to the right of way, the evidence is inconclusive as to the probable depth and quality of gravel at this location. It is possible, that the quality determined by the DGS testing from pits on SE 12 extends to the gravel on Block A SW 12. It is also possible, based on the photographic evidence depicting different and wetter material immediately adjacent to the right of way, and variations of colour within the right of way that appears different from that at the test pits, that the quality of the gravel deteriorates as it approaches and extends below the right of way. It is possible that the depth of gravel observed at the test pits closest to the right of way extends under the right of way. It is also possible, based on the alignment drawings showing a thinning of the deposit on the western edge of the mine area, that the depth of gravel thins further as it extends under the right of way. There is no evidence to support the assumption that any gravel deposit existing on the Crown parcel in the northwest corner of SW 12 is a continuation of the same deposit on SE 12 within the mine permit area.

[38] I am not able to infer a depth and quality of gravel on the basis of photographs of rocks in a trench and test pits some distance away, in light of other evidence that casts doubt on whether the inference can be made and in the absence of geotechnical evidence to confirm the depth and quality of the deposit. As the evidence is insufficient to conclude that either of the possibilities above is more probable than the other, the burden of proving that there is the depth and quality of gravel alleged is not met.

[39] As the quantity of gravel under the right of way is not established on a balance of probabilities, neither has the value of any quantity been established.

Are the landowners prevented now, or in the foreseeable future, from developing any gravel under the right of way as a result of Murphy Oil's use of the right of way?

[40] I am not satisfied the evidence establishes there is gravel under the right of way of the depth and quality Mr. Shore alleges; however, if I am wrong in that conclusion, I will nevertheless consider whether the landowners are prevented in the foreseeable future from developing any supply of gravel under the right of way as a result of Murphy Oil's use and occupation of the right of way.

[41] To the extent any gravel under the seven metre leave strip imposed by the permit or under the excavation slope within the permitted area is presently not developable, I find that loss cannot be attributed to Murphy Oil's use and occupation of the right of way. That loss, if any, arises from the requirements of the permit itself. The only deposit potentially lost as a result of Murphy Oil's right of way is the portion under the right of way itself. Tryon's calculations on the basis of the depth information provided suggest there is 11,866 m^3 of gravel under the 113 metre length of the right of way adjacent to the mine although, as discussed above, I do not accept this calculation as conclusive evidence of the quantity of gravel at this location.

[42] The only evidence of any demand or market for a potential source of gravel is DGS's letter of intent with respect to the mine area on SE 12 offering an annual minimum payment of \$3.50/m^3 for 10,000 m^3, or \$35,000. DGS is prepared to commit to payment based on extraction of 10,000 m^3 although the mine permit allows annual extraction of up to 55,100 m^3. Mr. Shore has put his own plans to mine the permitted area on hold because of market conditions. Even if I was prepared to infer that the quality and depth of gravel on SE 12 extends under the right of way on Block A SW 12, there is no evidence of a current market or demand for additional gravel beyond the commitment DGS is prepared to make for gravel from SE 12.

[43] Extraction of gravel from the permitted area has not yet commenced. Once mining starts, it will take 15 years at the maximum allowable extraction rate for the mine to be depleted. If extraction only occurs at the rate DGS is willing at present to guarantee, it will take over 80 years to deplete the reserve.

[44] The alignment drawings indicate that the depth of the reserve increases to the east. Mr. Spletzer's evidence is that best practices indicate the permitted area should be mined from west to east in accordance with the natural slope of the land. Given the alignment drawings and Mr. Spletzer's evidence respecting best practices, it is likely that when the need for further gravel development arises, that development will continue to work the face of the gravel heading in an easterly direction. Mr. Shore's evidence is the gravel deposit extends to the north of the permitted area on SE 12 and to the west of the permitted area into SW 7. He expressed confidence that there is

room for four or five more developments of the same size on SE 12 and SW 7. If Mr. Shore is right about the extent of the gravel reserve on SE 12 and SW 7, it will likely be many more years before there is any immediate need to mine any deposit under the right of way.

[45] There is no evidence before me as to the likely length of service for the flow line but, generally, it is the Board's understanding that gathering lines may remain operational for approximately 40 years. If there was an immediate or near need to develop the gravel under the right of way, and a ready market for it, it would not be reasonable to expect a landowner to forego that lost opportunity for 40 years without compensation. But the evidence in this case does not support an immediate or near need to develop the gravel, assuming an economic deposit of gravel exists under the right of way. The landowners have not applied for a permit to develop the gravel under the right of way or conducted any tests to establish the extent or quality of the deposit. Mr. Shore has a permit to extract gravel on the adjacent parcel but has not commenced those operations, constructed the access road or commenced site clearing. He has no contracts in place for the purchase of the gravel that is readily available to him, let alone evidence of a demand for the gravel that is not. If he wishes to expand the permit area, he will need to seek the approval of the Ministry and the Agricultural Land Commission, and may need an environmental assessment. The evidence of best practices before me suggests it is likely that future expansion of the mine, if approved, would occur first to the east not to the west where the right of way is located. The evidence does not support a conclusion of any likelihood that gravel under the right of way will be developed within the time frame that the flow line is operational.

[46] Mr. Schafer of Murphy Oil indicated in his evidence that Murphy Oil consents to the right of entry order being amended to require Murphy Oil to remove the flow line from the right of way upon abandonment if required for the landowners to develop the land. In the circumstances of this case, the Board should make that order regardless of Murphy Oil's consent to ensure the landowners' future capability to develop any gravel under the right of way if and when the opportunity arises.

[47] Even if I was prepared to infer that the depth and quality of the gravel under the right of way is at least equal to the reserve within the mine area, the evidence does not support the conclusion the landowners would be able to or have the need to develop the deposit in the near future but for Murphy Oil's use of the right of way. Any gravel under the right of way will still be there when the flow line is taken out of service. Murphy Oil has not taken the gravel and has no right to take the gravel. Mr. Shore has not, as he suggested in his evidence, donated the gravel to Murphy Oil. The landowners' future opportunity to develop a gravel resource under the right of way is not lost as a result of Murphy Oil's use and occupation of the right of way.

[48] The evidence does not establish that the landowners have lost, or will lose in the foreseeable future, income from the development of gravel as a result of Murphy Oil's use and occupation of the Lands.

Claim based on BC Hydro Right of Way

[49] Mr. Shore entered into an agreement in June, 2013 with BC Hydro for a right of way across NW 12, NE 12 and NW 7. The right of way comprises 17.74 acres and is for the purpose of a 230 kV transmission line. Mr. Shore received approximately $220,000 in total from BC Hydro comprised of initial payments of $10,000 per parcel, closing compensation of $170,000, and compensation for merchantable timber of $13,729. The closing compensation includes market value for the land calculated at 75% of $900/acre, compensation for eight above ground transmission structures at $5,000/structure, injurious affection based on 5% of the market value of the land, and amounts for replacement fencing and tie-ins.

[50] Mr. Shore submits that if the amounts for timber and fencing are removed, this agreement indicates compensation of just over $10,200/acre. He seeks compensation of that amount for Murphy Oil's right of way.

[51] I find the compensation paid for the BC Hydro right of way is not indicative of Mr. Shore's loss arising from Murphy Oil's right of way. The BC Hydro right of way includes compensation for several factors that are not relevant to Murphy Oil's right of way. In addition to the payments for timber and fencing that Mr. Shore concedes are not relevant, the payments for above ground transmission structures and injurious affection are also not relevant. There are no above ground structures in Murphy Oil's right of way. Mr. Wasmuth's evidence is that he has never observed a reduction in the price of agricultural land as a result of an underground pipeline. In his opinion, based on his more than 30 years experience as a professional appraiser, the flow lines will not cause a reduction in the value of the land outside of the right of way. There is no basis, therefore, for any compensation for injurious affection.

[52] I am not able on the evidence before me to equate the initial compensation paid by BC Hydro with actual loss incurred by the landowners arising from the entry. It is possible that the "up front meeting" payments were intended to compensate the landowners for their time spent in negotiations. I have no evidence of the amount of time lost by the landowners as a result of BC Hydro's entry. Nor do I have evidence of the amount of time, if any, lost to the landowners as a result of Murphy Oil's entry. It is also possible that BC Hydro made some or all of the initial payments gratuitously in order to create goodwill and avoid the expense of expropriation.

[53] The compensation paid by BC Hydro as market value compensation for the right of way is based on 75% of $900/acre. The only appraisal evidence before me as to the market value of the Lands indicates a market value of the fee simple interest at $750/acre. Mr. Wasmuth's evidence is that the market value of the partial interest taken by a right of way is less to reflect the residual value retained by the owner of the fee. Presumably, although not explained in the evidence before me, the payment by BC

Hydro of 75% of market value is to reflect that its taking is of a partial interest and to account for the residual value.

[54] Other agreements are one of the factors the Board may consider in determining compensation. One other agreement, however, particularly an agreement allowing entry for a completely different purpose of an above ground high voltage transmission line, does not establish a pattern of dealings indicative of the probable loss arising from this right of entry for underground flow lines.

[55] The evidence does not support a finding that the compensation paid by BC Hydro pursuant to its agreement with Mr. Shore is a reflection of Mr. Shore's probable loss arising from Murphy Oil's entry to and use of the Lands.

Other Considerations

[56] It remains to determine the appropriate compensation payable by Murphy Oil to the landowners arising from its entry to and use of the Lands considering the evidence relevant to the various factors the Board may consider under section 154 of the *PNGA*.

Land Value

[57] John Wasmuth appraises the market value of the Lands at $750 per acre effective September 26, 2012. This conclusion is based on an analysis of six sales of comparable land between October 2010 and July 2013. He estimates the value of the temporary workspace at $96.00/acre based on a market rent for agricultural land of $32.00/acre for a period of three years. While this is Mr. Wasmuth's opinion of the market value of the temporary workspace, he bases his conclusion of value for this space on the industry practice of valuing temporary workspace at 50% of the value attributed to land in the right of way.

[58] Mr. Wasmuth's evidence is the only evidence before me respecting the value of the Lands. On the basis of this evidence, I find the probable market value of the fee simple interest in the Lands is $750/acre. As a right of way is only a partial interest in land, the market value of the partial interest taken is likely less than $750/acre.

[59] Murphy Oil offers $900/acre for the right of way and $450/acre for the temporary workspace area calculated as follows: (6.05 acres x $900) + (4.97 acres x $450) = $7,681.50. Murphy Oil offers an additional $500/acre for the 6.05 acre right of way area, or $3,025, as compensation for the compulsory aspect of the entry.

Loss of income or profit

[60] John Wasmuth also provides an estimate of the forage crop loss from the right of way based on two scenarios. The first scenario assumes the Lands were used for hay production prior to installation of the flow lines, and the second scenario assumes the

Lands were used for livestock grazing. Although his understanding is that a portion of the right of way area was used for forage production and a portion was treed, for the purpose of estimating crop loss, he assumes the entire right of way and temporary workspace areas were used for forage production. Due to the unavailability of data respecting yields and commodity prices within the Peace River District of BC, he uses data from the Peace Region of Alberta, where agricultural practices, soil and climate are similar. For the purpose of his analysis, he assumes 100% crop loss for 2013 and 2014, 75% loss for 2015, 50% loss for 2016 and 25% loss for 2017.

[61] In the first scenario, he estimates total forage loss over five years from the right of way area at $3,583 and from the temporary workspace at $2,943 using the combined average yield (1.88 tons/acre) and price ($0.045 per pound) for the Peace Region of Alberta for 2011-2013 for mixed hay and alfalfa hay. He does not deduct for fixed or variable expenses. Mr. Wasmuth's estimated total crop loss under this scenario is $6,526.00

[62] In the second scenario, he estimates total forage loss over five years from the right of way area at $2,558 and for the temporary workspace at $2,101 assuming yield to support grazing cow/calf pairs at the high end of the carrying capacity range and using the average price ($0.04 per pound) for mixed hay for 2011-2013. He does not deduct for fixed or variable expenses. Mr. Wasmuth's estimated total loss under this scenario is $4,659.00.

[63] Murphy Oil offers $6,887.50 for crop loss based on 11.02 acres x $625/acre.

[64] Mr. Shore's evidence is that the cleared area of the right of way had been used to graze horses and one part used to grow hay. A portion was covered with small diameter second growth timber that was no good for stacking and decking. He told Murphy Oil they could burn the timber. Murphy Oil offers Mr. Shore $1,500 for loss of timber.

[65] The evidence establishes that the landowners will likely incur some loss of income from an inability to use the right of way and temporary workspace areas for either grazing or production of hay during construction of the flow lines, and for a period of time after construction while the area is reseeded and the crop reestablishes. It is likely that the landowners' loss in this regard is less than that estimated by Mr. Wasmuth given his estimate is based on gross, rather than net, yields for the total right of way and temporary workspace area, and given that only a portion of the area was actually used for either grazing or hay production.

[66] I find Murphy Oil's offer for crop loss and timber likely exceeds the landowners' actual or reasonably foreseeable future loss of income as a result of Murphy Oil's use and occupation of the Lands.

Other right of way agreements

[67] Mr. Shore entered into a right of way agreement with Murphy Oil in August of 2011 for a 20 metre wide right of way across the northwest corner of SW 7. This was to be the route for the flow lines ultimately constructed on the Lands, but the route turned out not to be feasible. The compensation payable for this right of way would have been $1,611. Mr. Schafer's evidence is that compensation was based on $900.00/acre. This agreement incudes a surrender clause requiring Murphy Oil, following decommissioning and abandonment of the flow lines, to remove at its expense any portions of the abandoned flow lines that directly and materially interfere with an approved development of the landowner.

[68] Mr. Shore also provides copies of two right of way agreements entered in 2009 between himself and Shell Canada Limited for the construction and operation of pipelines on land owned by Mr. Shore approximately 32 kilometres from Dawson Creek. Mr. Shore's evidence is he received $34,096 as compensation for these entries involving 7.88 acres of permanent right of way and 2.3 acres of temporary workspace. He says the agricultural quality of these properties is not as good as the Lands and the pipeline goes around his hay field. As I read the agreements, they only require payment of $14,308. The agreements do not contain any indication of how the compensation was determined. They do not contain a surrender clause similar to the clause in the Murphy Oil agreement.

[69] Mr. Schafer's evidence is that Murphy Oil entered into agreements with three other landowners impacted by the flow lines. In each case, the landowners received $900/acre for the land and $500/acre for compulsory aspect. His evidence is the Murphy Oil agreements also include $625/acre for tamed pasture and $525/acre for bush pasture as compensation for crop loss. The $625/acre for tamed pasture is calculated as 100% of $250/acre for two years, and 50% of $250/acre for the third year.

[70] Mr. Schafer provides a large map showing all of Murphy Oil's flow lines in the area. His evidence is that all agreements with landowners in this area are based on $900/acre plus $500/acre plus crop loss. His evidence is Murphy Oil does not generally pay an amount for second growth tree stands. Murphy Oil's offer in this case is consistent with these other agreements, with the exception of the offer to compensate for timber in addition to the offer to compensate for tamed pasture for the whole of the right of way and temporary workspace area.

[71] Murphy Oil's use of $900/acre in compensating for the right of way is consistent with the value attributed to the land by BC Hydro in its agreement with Mr. Shore except that Murphy Oil offers 100% of this amount for the right of way (50% for the temporary workspace), while BC Hydro only paid compensation on the basis of 75% of this amount.

[72] The evidence of other agreements before me is not useful in determining the actual or probable loss incurred by the landowners as a result of this entry. The most it can do is indicate what others have received for similar entries.

CONCLUSION

[73] The evidence does not establish that there is gravel of the depth and quality alleged under the right of way. Nor does it establish that there is any probability that the landowners are prevented now or in the near future from developing any gravel deposit under the right of way, or that the landowners have lost an economic opportunity from gravel development as a result of Murphy Oil's right of way.

[74] Murphy Oil remains willing to pay the landowners $19,094.00 based on various assumptions about probable loss. Murphy Oil's assumptions in estimating loss are favourable to the landowners, and some of the assumptions are not borne out by the evidence. The evidence is that only a portion of the right of way was used to grow forage for grazing or hay production and yet crop loss is estimated on the basis of the whole of the right of way area. The evidence is that the timber removed from the site was not merchantable, yet the offer includes a payment for timber. The evidence is that the probable market value of the fee simple interest in the Lands is $750/acre, yet Murphy Oil offers $900/acre for the right of way area. The evidence does not support a finding that the landowners have incurred or are likely to incur loss equaling the amount offered by Murphy Oil.

[75] Murphy Oil's offer is consistent, however, with agreements entered with other landowners in the area for entry to land for the purpose of constructing and operating flow lines.

[76] I conclude that Murphy Oil's offer of $19,094.00 likely exceeds the landowners' loss arising from Murphy Oil's entry to, and use and occupation of, the Lands, but that this offer provides appropriate compensation as it is consistent with other agreements in the area.

ORDER

[77] Murphy Oil Company Ltd. shall forthwith pay to Willis Morley Shore and Mitchell Todd Shore the sum of $19,094.00 less any amount already paid as partial compensation.

[78] The Board's Order 1745-2 dated September 26, 2012 is amended to add the following clause:

Following the decommissioning and abandonment of the flow lines authorized by OGC Pipeline Permit 9706395, in the event the flow lines directly and materially interfere with or restrict an approved development proposed by the landowners, Murphy Oil shall, upon reasonable notice prior to commencement or construction of such approved development, remove at its sole cost and expense that portion of the abandoned flow lines which directly and materially interfere with or restrict the landowners' development, or shall compensate the landowners for any loss arising from the interference of the decommissioned and abandoned flow lines with the landowners' approved development.

[79] The Board will issue an amended version of Order 1745-2 that may be filed in the Land Title Office so the appropriate notations may be made on the Titles to the Lands.

DATED: May 13, 2014

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1765
Board Order No. 1765-1

February 22, 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 SOUTH WEST ¼ OF SECTION 11 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN PGP39322

(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

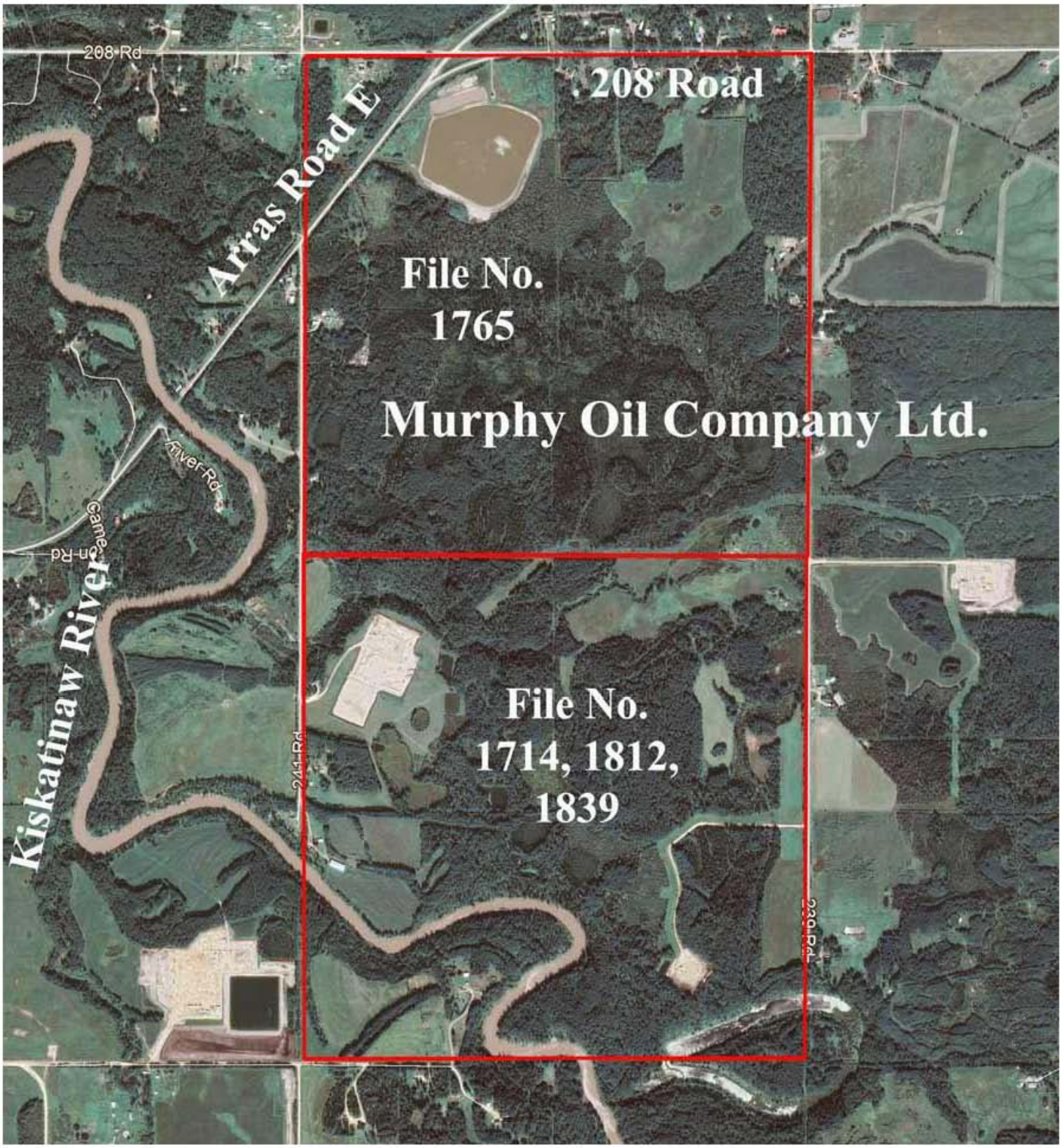
(APPLICANT)

AND:

Melvin Deforest Hogg

(RESPONDENT)

BOARD ORDER


208 Rd
208 Road
Arras Road E
File No.
1765
Murphy Oil Company Ltd.
River Rd
Came
n Rd
Kiskatinaw River
241 Rd
File No.
1714, 1812,
1839

Murphy Oil Company Ltd. ("Murphy Oil") seeks a right of entry order to access certain lands legally owned by Melvin Deforest Hogg to carry out an approved oil and gas activity, namely the construction, operation and maintenance of three flow lines and associated works. The total project is 0.47 acres, with 0.37 acres of temporary workspace and 0.10 acres of right of way.

The Oil and Gas Commission has issued a permit for this project.

On February 21, 2013, the Board conducted a mediation attended by Murphy Oil representatives and the Landowners. They discussed the right of entry order and compensation.

The Landowners assert the Board lacks the jurisdiction to hear Murphy Oil's application, as two of the three lines are pipelines and not flowlines. I heard submissions from both parties and I find that the facts are similar to those in *Murphy v. Shore (SRB 1745-, September 13, 2012)* where the Board found that the components of the pipeline are flowlines within the meaning of the relevant legislation. Therefore, I find the Board has jurisdiction to hear this application and can deal with the right of entry and compensation arising from the order.

The Landowners claimed 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.

Murphy Oil says it requires the Lands in order to move product from wells to a facility. I am satisfied that they require the lands for an oil and gas activity, supported by the fact the Oil and Gas Commission has approved their project.

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, Murphy Oil Company Ltd (Murphy Oil) shall have the right of entry to and access across the portions of the lands legally described as SOUTH WEST ¼ OF SECTION 11 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN PGP39322 as shown outlined in red on the Individual Ownership Plan attached as Appendix "A" (the "Lands") for the purpose of carrying out the approved oil and gas activities,

namely the construction, operation and maintenance of three flow lines and associated works.

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

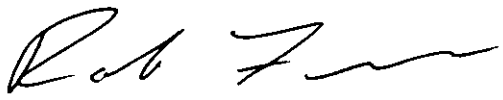
3. Murphy Oil shall deliver to the Surface Rights Board security in the amount of $2,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Murphy Oil, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Murphy Oil shall pay to the landowner as partial compensation the total amount of $500.00.

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

DATED: February 22, 2013

FOR THE BOARD



Rob Fraser, Mediator

Appendix "A" Order 1765-1

Schedule "A"

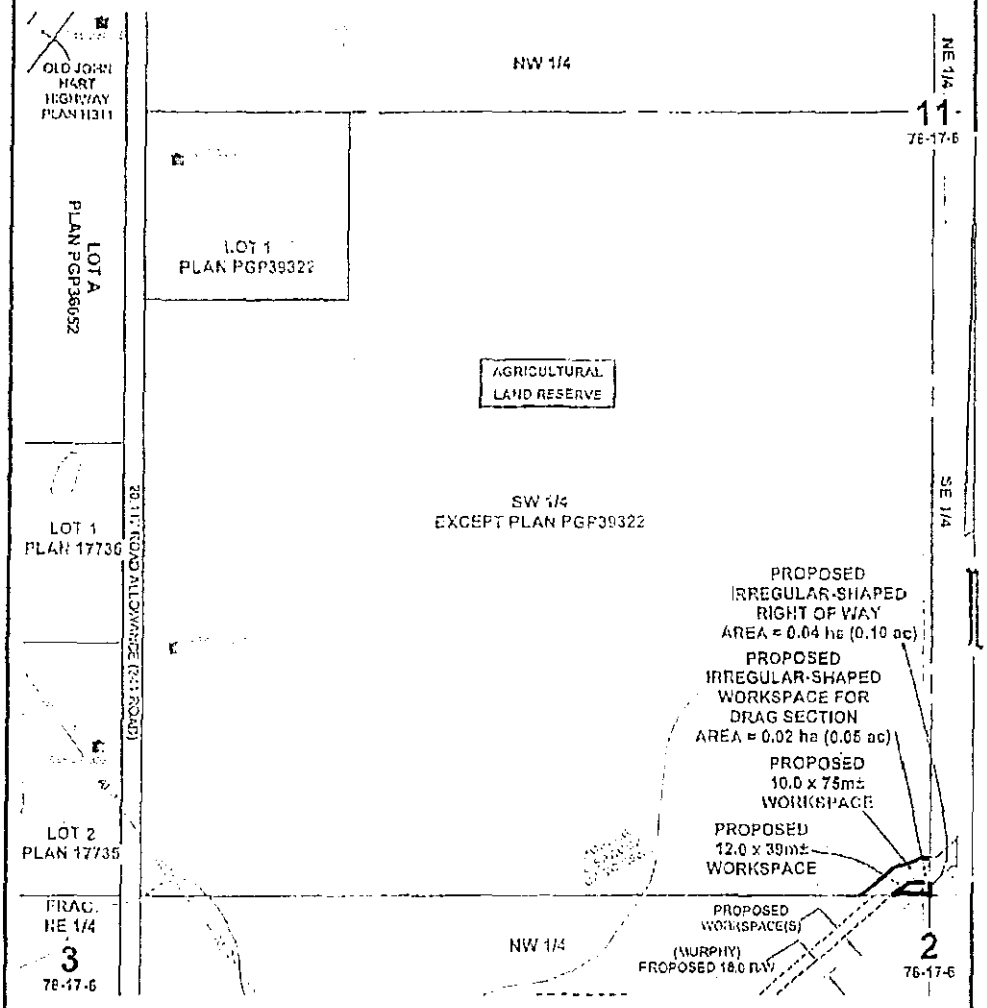
Page ___ of ___

Attached to and made part of a Lease dated this _____ day of _____, 20___, between

MELVIN DEFOREST HOGG as Owner and Murphy Oil Company Ltd. as Company.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 18.0 RIGHT OF WAY, & WORKSPACE
WITHIN SW 1/4 OF SECTION 11, TOWNSHIP 76, RANGE 17, W6M, EXCEPT PLAN PGP39322
PEACE RIVER DISTRICT



Owner(s)	MELVIN DEFOREST HOGG

Certificate Title No.	PJ33609
Parcel Identification No.	009-018-503
Murphy File:	

Areas:		
18.0 PIPELINE R/W	0.04 ha	0.10 ac
TEMP. WORKSPACE	0.15 ha	0.37 ac
Total	0.19 ha	0.47 ac

Area referred to shown thus: Permanent | Temporary

100 0 100 200
SCALE 1:5000 METRES

This plan certified correct this 16th day of November, 2011.

R. [illegible] B.C.L.S.

DWG.: F-0033-11-P9-IOP-B	By: PJP
	Revision: 0

MIDWEST SURVEYS
LAND SURVEYING LTD.
11003 Alaska Road
Fort St. John, BC
V1J 6P3
Tel: 250-785-3902

APPENDIX "B"
CONDITIONS FOR RIGHT OF ENTRY

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

2. Murphy Oil covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Murphy Oil's operations on the Lands, other than arising from or related to the wilful conduct or negligence of the landowner.

3. Murphy Oil will make all reasonable attempts to notify the landowner if any work, other than routine maintenance or inspection, is to be done on the Lands.

File No. 1796
Board Order No. 1796-1

June 4, 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 SOUTH EAST ¼ OF SECTION 17 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLANS 23873 AND PGP36854

(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

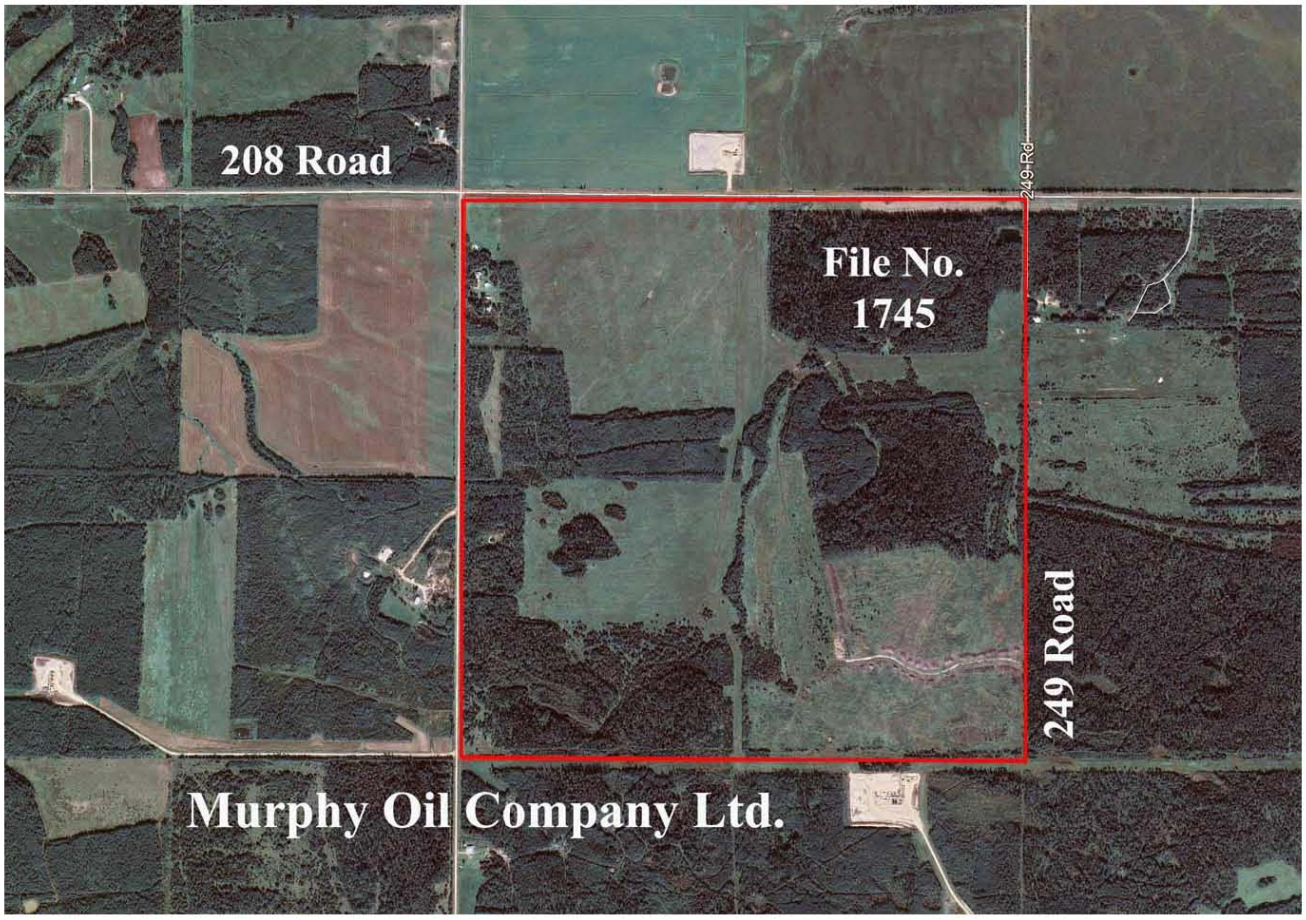
AND:

Shallan Marie Hauber

(RESPONDENT)

BOARD ORDER


File No.
1796
Kiskatinaw River
247 Rd
Keller Rd
Bearpaw Camp Rd
52
Heritage Hwy
Hart Hwy
97
208 Rd
Arras Rd W
Murphy Oil Company Ltd.
Heritage
Hwy


208 Road
249 Rd
File No.
1745
249 Road
Murphy Oil Company Ltd.

Murphy Oil Company Ltd. ("Murphy") seeks a right of entry order to access certain lands legally owned by Shallan Marie Hauber to carry out an approved oil and gas activity, namely to operate and maintain three existing flowlines located on the Lands.

The Oil and Gas Commission (the "OGC") has issued a permit for Murphy's project.

On June 3, 2013 I conducted a telephone conference attended by Z. Reimers, R. McKenzie and R. Williams for Murphy Oil, and S. Hauber and D. Carter for the Landowners.

I heard submissions from both parties, with Murphy asking the Board to issue an entry order and the Landowners both opposing the order and asking Murphy to remove the flowlines installed by trespass on the Lands.

I considered the submissions, and did not embrace the request to broadly interpret the Board's mandate and refuse to issue the entry order because Murphy installed the piplines without the approval of the Landowners or a Board order. Rather, I found that Murphy requires the entry order to carry on an approved gas and oil activity, in fulfillment of the OGC's amended permit for this project.

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, Murphy Oil shall have the right of entry to and access across the portions of the lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" (the "Lands") for the purpose of carrying out the approved oil and gas activities, namely the operation of three flow lines.

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

3. Murphy Oil shall pay to the landowner as partial compensation the total amount of $1,000.

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

DATED: June 4, 2013

FOR THE BOARD

Rob Fraser, Mediator

Schedule "A"

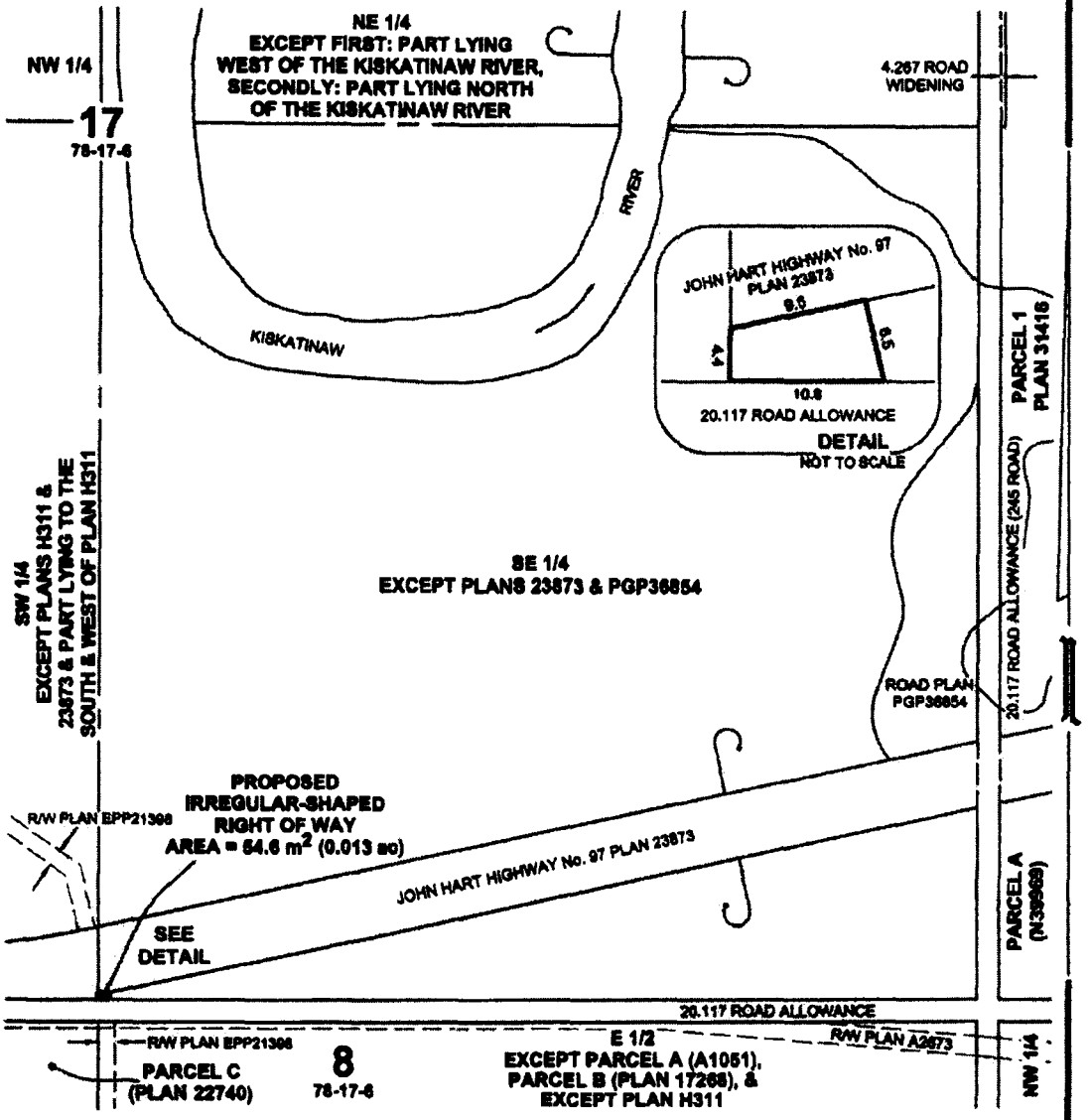
Page ___ of ___

Attached to and made part of a Lease dated this _____ day of _____, 20 ___, between

SHALLAN MARIE HAUBER as Owner and Murphy Oil Company Ltd. as Company.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED IRREGULAR SHAPED RIGHT OF WAY
WITHIN SE 1/4 OF SECTION 17, TOWNSHIP 78, RANGE 17, W6M, EXCEPT PLANS 23873 & PGP36854
PEACE RIVER DISTRICT



Owner(s) :	SHALLAN MARIE HAUBER	

Certification Title No. :	PM29893	
Parcel Identification No.:	014-983-999	
Murphy File:	82128038	

Areas:		
AREA	54.6 m²	0.013 ac
Total	54.6 m²	0.013 ac

This plan certified correct this 4th day of September, 2012.

Rich E. Nixon B.C.L.S.

Area referred to shown thus: Permanent Temporary

100 0 100 200
SCALE 1:5000 METRES

DWG.: F-0038-12-JS-HOP | By: PJP | Revision: 0

MIDWEST SURVEYS
LAND SURVEYING LTD.
11003 Alaska Road
Fort St. John, BC
V1J 6P3
Tel: 250-785-3602

APPENDIIX "B"
CONDITIONS FOR RIGHT OF ENTRY

1 The flow lines have been constructed and the land reclaimed. This order allows for the continued operation of the flow lines on the Lands. It does not authorize any access to the surface of the Lands, except to respond to an emergency. Should surface access be required for any other reason, including maintenance or inspection of the flow lines a separate agreement with the landowner or further right of entry order from the Board will be required.

2 Murphy Oil covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Murphy Oil's operations on the Lands, other than arising from or related to the wilful conduct or negligence of the landowner.

File No. 1839
Board Order No. 1839-1

August 12, 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 FRACTIONAL SOUTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT THE NORTH EAST ¼ OF SECTION 2 TOWNSHIP 78 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENT)

BOARD ORDER

Murphy Oil Company Ltd. ("Murphy Oil") seeks a right of entry order to access certain lands legally owned by Marilyn Gross to carry out an approved oil and gas activity, namely the construction, operation, and maintenance of three flowlines.

Following an agreement reached by the parties, and at the request of the parties, the Surface Rights Board orders, BY CONSENT:

ORDER BY CONSENT

1. Murphy Oil shall have the right of entry to and access across the portion of the Lands shown outlined in red on the Individual Ownership Plans attached as Appendix "A" (the "Lands") for the purpose of carrying out the approved oil and gas activity, namely the construction, operation , and maintenance of three flow lines (the "Flow Lines"). Murphy Oil's access to the Lands shall be subject to the additional terms and conditions attached as Appendix "B".

2. The parties agree that neither a partial payment nor a security deposit is required in the circumstances.

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

DATED: August 12, 2014

FOR THE BOARD

Cheryl Vickers, Chair

APPENDIX "B"

Additional Terms and Conditions

1. The Grantee shall provide reasonable notice to the Grantor prior to the start of construction of the statutory right of way.

2. All drainages, whether man-made or natural, insofar as reasonably practicable, shall be restored to the same or substantially the same condition as existed prior to the start of the statutory righto f way construction.

3. The Flow Lines shall be buried such that there is a minimum cover of 1.5m which should allow the Grantor to cross such statutory right of way under normal agricultural operations. Should the Grantor wish to cross the Flow Lines with unusually heavy equipment (whether or not related to agricultural operations), the Grantor shall provide the Grantee sufficient prior notice such that the Grantee in compliance with governmental regulations has a reasonable opportunity to ensure such measures and works are in place to allow for safe crossing.

4. The Grantee shall install temporary barbed wire gates at all fence crossings and shall permanently repair such fences after construction has been completed.

5. Any timber or residual debris not wanted by the Grantor shall be piled and burned.

6. The Grantee shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Grantee's operations on the right of way lands. The Grantee shall assume responsibility for the control of noxious weeds on the Lands caused by the Grantee's operations.

7. The Grantee shall bore the fence and trees beside the 239 Road while boring the 239 Road. The Grantee shall not cut the fence or remove the trees while boring without the landowner's written consent. The Grantee shall use the existing access road for access.

8. The statutory right of way shall be used as part of the Grantee's gas gathering system from 1-2-78-17 W6 to 14-1-14-1-78-17 W6 and shall not be used as a large diameter transmission pipeline.

9. When the Flow Lines are to be abandoned, the Grantee will pig the lines to remove and liquid hydrocarbon contamination, purge the lines with inert nitrogen gas, and cap each end of the pipe. This is to be done so that the pipes will be clean and can be left in the ground without contaminating the surrounding land.

10. The Grantee shall reseed the hayfield to hay mix (contact landowner or occupant for exact mixture) and the forested areas to native pasture grass mix.

11. Specifications of the Flow Lines are an approx.. 219.1mm natural gas pipeline, a 114.3mm liquids pipeline, and a 114.3mm fuel gas pipeline.

12. The Grantee shall bury the flow Lines under the hayfield with a minimum cover of 1.8m.

13. The Grantor is permitted to cross the statutory right of way with equipment weighing less than 10,000kg under firm ground conditions. The Grantor will call the Grantee to confirm whether it is safe to cross the statutory right of way if the Grantor is unsure about the ground conditions or the weight of the Grantor's equipment.

Appendix "A" 1839-1

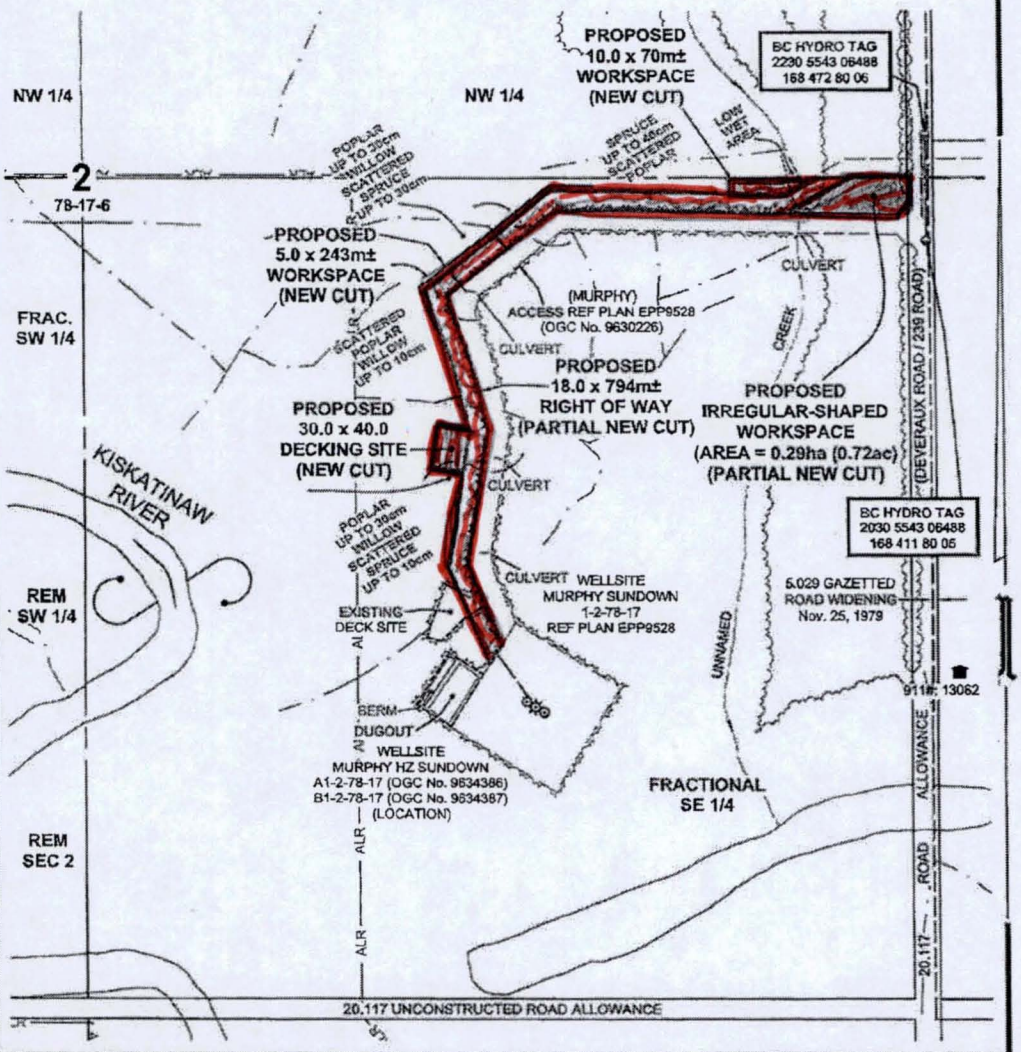
Page 1 of 2

Attached to and made part of a Lease dated this ____ day of _____, 20 __, between

MARILYN GROSS as Owner and Murphy Oil Company Ltd. as Company.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 18.0 PIPELINE RIGHT OF WAY
WITHIN FRACTIONAL SE 1/4 OF SECTION 2, TOWNSHIP 78, RANGE 17, W6M
PEACE RIVER DISTRICT



Owner(s) :	MARILYN GROSS	

Areas:		
PIPELINE R/W	1.43 ha	3.53 ac
DECKING SITE	0.12 ha	0.30 ac
WORKSPACE(S)	0.48 ha	1.19 ac
Total	2.03 ha	5.02 ac

Area referred to shown thus: Permanent Temporary

100 0 100 200
SCALE 1:5000 METRES

Certification Title No. :	PM49233
Parcel Identification No.:	011-202-467
Murphy File:	.

This plan certified correct this 15th day of November, 2013.

Rich E. Nixon B.C.L.S.

DWG.: F-0034-13-P1-IOP-A	By: PJP
	Revision: 0

MIDWEST SURVEYS
LAND SURVEYING LTD.
11003 Alaska Road
Fort St. John, BC
V1J 6P3
Tel: 250-785-3902

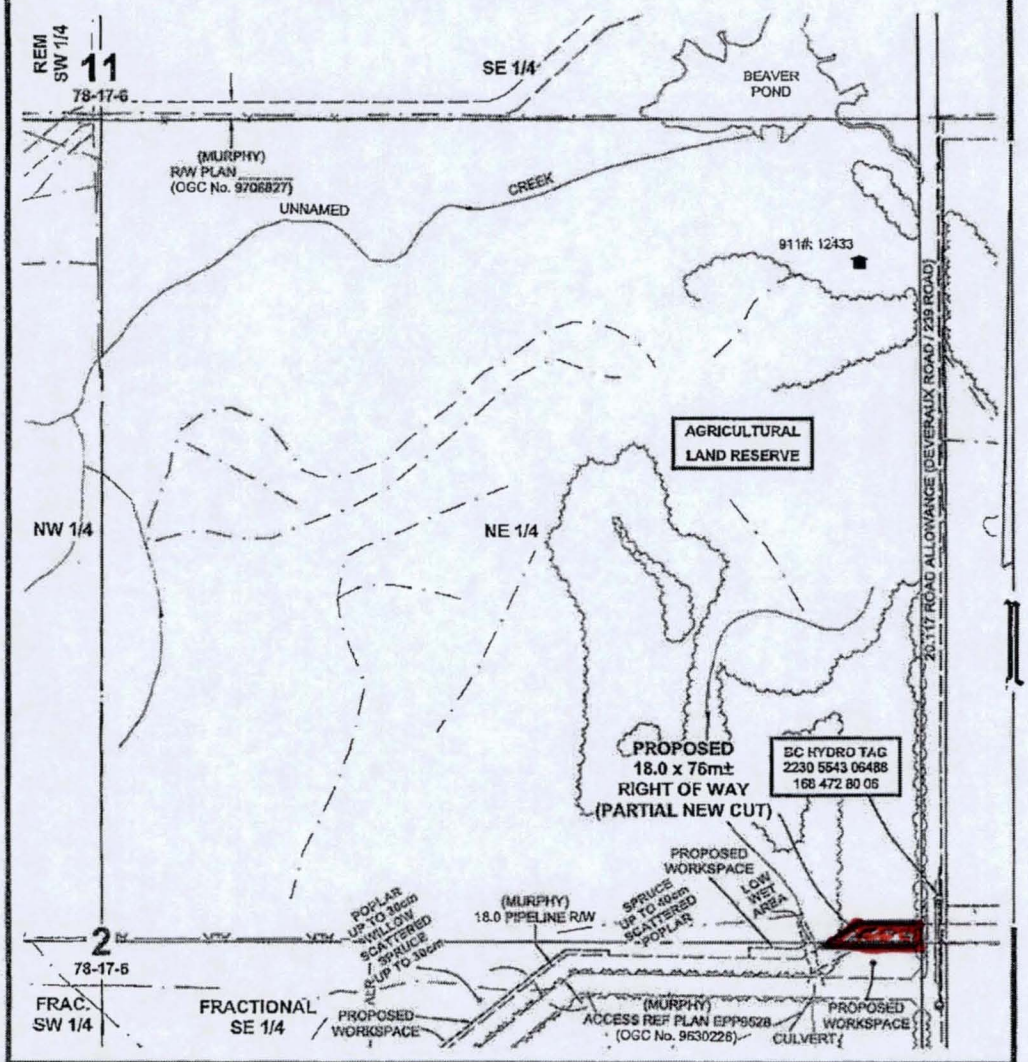
1839-1

Attached to and made part of a Lease dated this _____ day of _____, 20 ___, between

MARILYN GROSS as Owner and Murphy Oil Company Ltd. as Company.

INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 18.0 PIPELINE RIGHT OF WAY
WITHIN NE 1/4 OF SECTION 2, TOWNSHIP 78, RANGE 17, W6M
PEACE RIVER DISTRICT



Owner(s) :	MARILYN GROSS

Areas:		
AREA 1	0.14 ha	0.35 ac
Total	0.14 ha	0.35 ac

Certification Title No. :	PM49232
Parcel Identification No.:	011-202-459
Murphy File:	

This plan certified correct this 15th day of November, 2013.

Rich E. Nixon B.C.L.S.

Area referred to shown thus: Permanent Temporary

100 0 100 200
SCALE 1:5000 METRES

DWG.: F-0034-13-P1-IOP-8 By: PJP
Revision: 0

MIDWEST SURVEYS
LAND SURVEYING LTD.
11003 Alaska Road
Fort St. John, BC
V1J 6P3
Tel: 250-785-3802