File No. 1935
Board Order No. 1935-1

May 29, 2017

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
SECTION 25 TOWNSHIP 86 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE SOUTH AND EAST 80 FEET
(The "Lands")

BETWEEN:

Wendy Harrington and
Ben Harrington

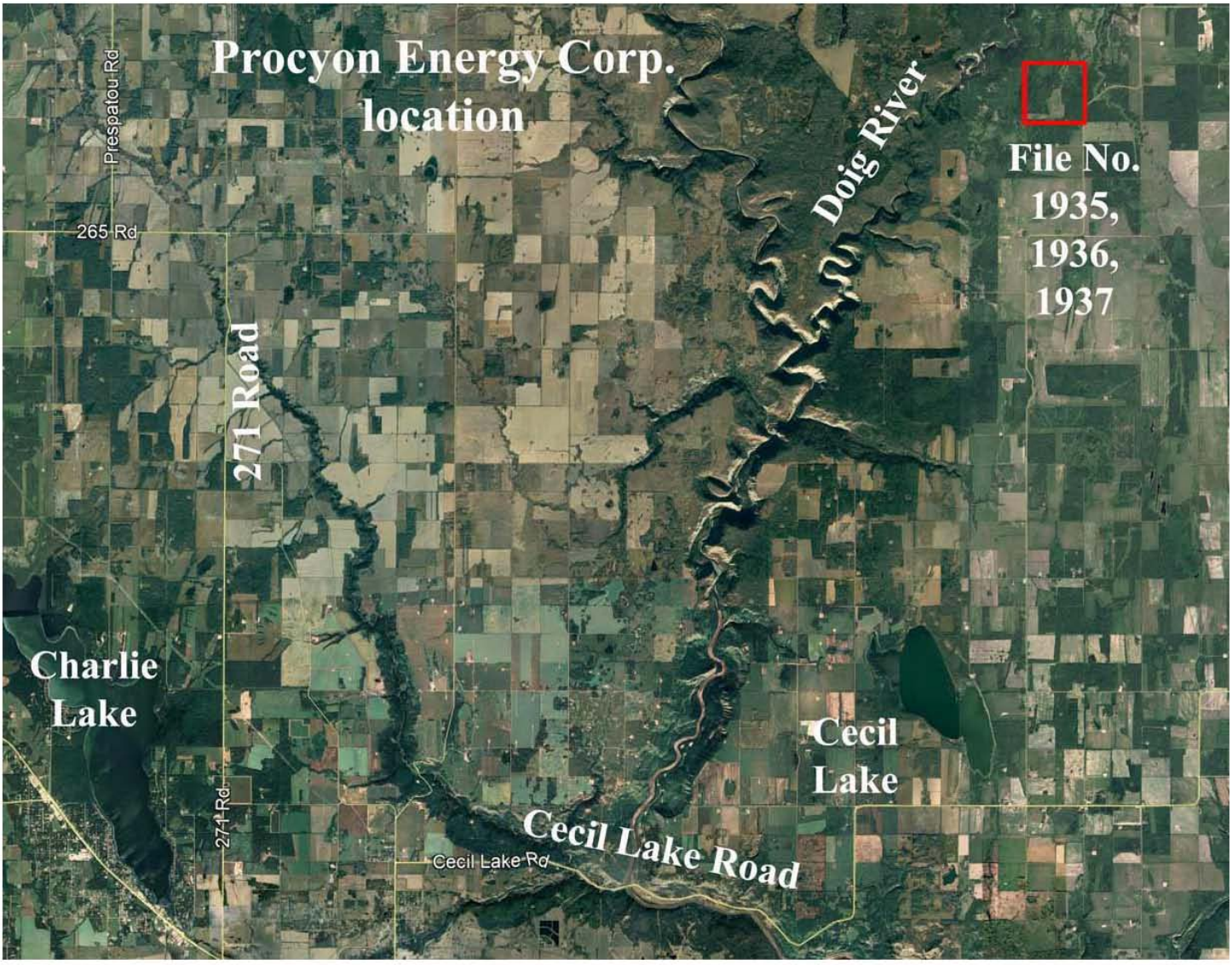
(APPLICANTS)

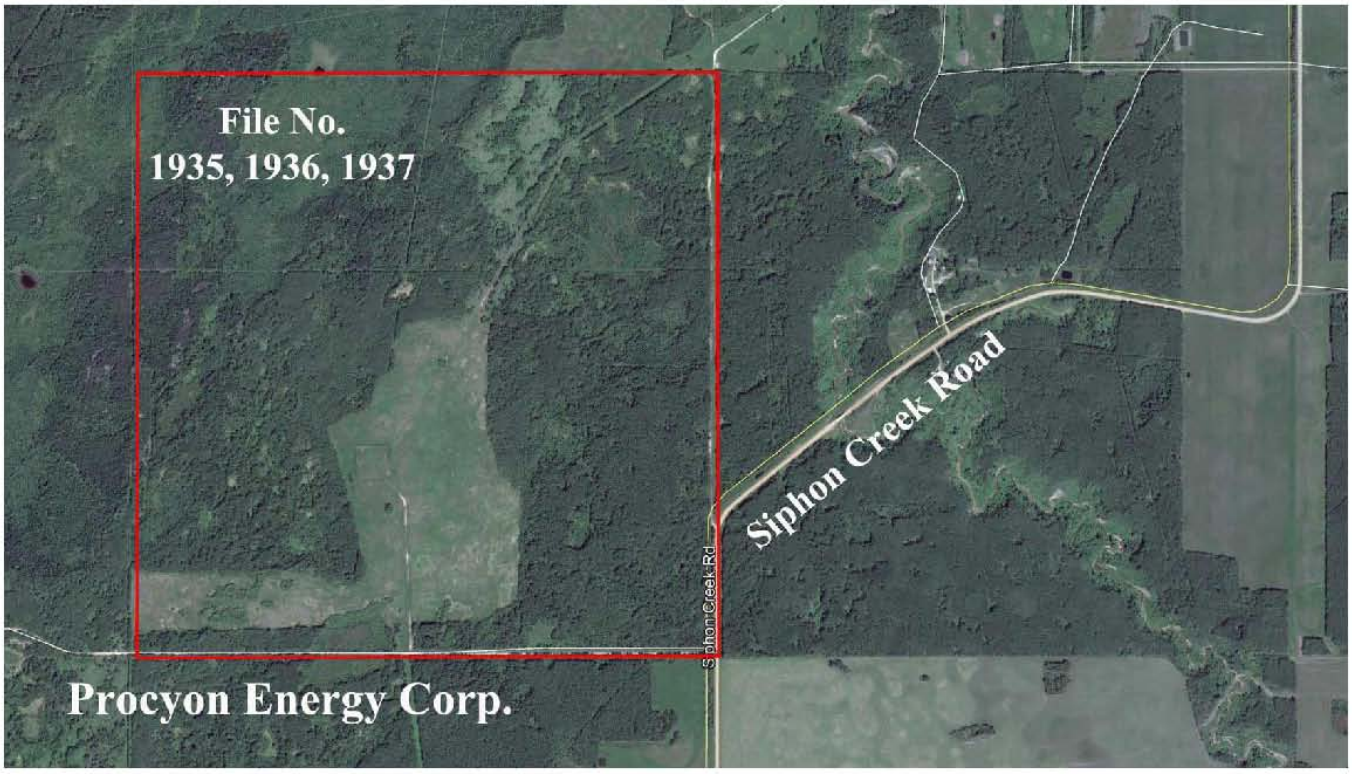
AND:

Procyon Energy Corp.

(RESPONDENT)

BOARD ORDER


Procyon Energy Corp.
location
Doig River
File No.
1935,
1936,
1937
Prespatou Rd
265 Rd
271 Road
Charlie
Lake
Cecil
Lake
271 Rd
Cecil Lake Rd
Cecil Lake Road


File No.
1935, 1936, 1937
Siphon Creek Road
Siphon Creek Rd
Procyon Energy Corp.

Heard: by way of written submissions
Appearances: Wendy Harrington and Ben Harrington, for the Applicants
Ron McKellar and Rae Brietzke, for the Respondent

INTRODUCTION AND ISSUE

[1] This is a reconsideration pursuant to section 155 of the *Petroleum and Natural Gas Act* of my decision letter of April 5, 2017 that Procyon Energy Corp. (Procyon Energy) had not properly acquired rights under a 1990 surface lease registered against the Title to the Lands owned by Wendy Harrington and Ben Harrington, and that the Board would issue a right of entry order granting Procyon Energy surface rights in order to operate and maintain the well site and access road on the Lands. I found the surface lease had not been properly assigned to Procyon Energy by ConnocoPhillips Canada Resources Corp. (Connoco Phillips).

[2] Following that decision, and prior to issuing the right of entry order, the Board received new information from Procyon Energy respecting the assignment of the 1990 surface lease and relevant to the issue of the validity of the lease. I exercised the Board's discretion to reconsider its decision in light of the new information and set out a process for further submissions from the parties.

[3] The defect in the assignment of the 1990 lease from Connoco Phillips to Procyon has been corrected to effectively assign the surface lease to Procyon Energy. Regardless of the effective assignment of the lease to Procyon Energy, however, the Harrington's submit the lease was terminated by them and is no longer in effect to grant Procyon the necessary surface rights. Procyon Energy disagrees the lease was effectively terminated.

[4] The issue, therefore, is whether the 1990 lease was effectively terminated. The Harringtons' initial application for a right of entry order raised the issue of the validity of the lease. I did not deal with that issue in my decision of April 5, 2017 as it was not

necessary to do so at the time. With the defect in the assignment having been corrected, however, the issue of the validity of the lease is now front and centre.

BACKGROUND FACTS

[5] Wendy Harrington and Ben Harrington are the current owners of the Lands legally described as: Section 25 Township 86 Range 17 West of the 6th Meridian Peace River District, except the south and east 80 feet (the Lands).

[6] On August 24, 1978, the former owner of the Lands, Weldon Shoaf, entered into a surface lease with North Star Resources Ltd. (the 1978 Lease). North Star Resources Ltd. then constructed a well site and access road on the Lands. On August 24, 1990, Mr. Shoaf entered into a new surface lease with Poco Petroleums Ltd., the then operator of the well site (the 1990 Lease). The 1990 Lease expressly supersedes the 1978 Lease. The 1990 Lease was registered against the Title to the Lands.

[7] At some point, Conocco Phillips succeeded Poco Petroleums Ltd. and took over operation of the well site. In 2009, Conoco Phillips assigned its interest in the well site to Procyon Energy, however, it erroneously assigned the 1978 Lease, not the 1990 lease registered on Title. That error has been corrected by way of an Assignment dated April 5, 2017 effective September 15, 2008. Procyon Energy is the lessee under the 1990 Lease and is the operator of the well site on the Lands.

[8] The Harringtons purchased the Lands in 2016 subject to the 1990 Lease. On June 10, 2016, the Harringtons wrote to Procyon Energy advising them that they were now the owners of the Lands and that the rental payments due under the lease registered as PF2527 will be due on each anniversary date payable to Ben Harrington. Charge PF2527 on the Title to the Lands is the 1990 Lease. The letter goes on to note that the lease is overdue for negotiation and seeks a rent increase to $5,500.

[9] On June 20, 2016, Rae Brietzke, Consulting Land Analyst with Procyon Energy wrote to the Harringtons acknowledging receipt of their June 10, 2016 letter and asking for a copy of the lease assignment.

[10] On October 1, 2016, the Harringtons wrote again to Procyon Energy. The Harringtons introduce the letter as “a follow up Overdue Notice to the June 10, 2016 demand for lease payment” and “a follow up for a rent review which is overdue for renegotiation. The letter goes on to advise that Procyon Energy “is in default of the surface lease” and says: “Please be aware that Procyon will default on, and forfeit the surface lease, and have no further rights if full payment as per the existing agreement is not received within 90 days of the lease anniversary.”

[11] On October 26, 2016, Ron McKellar, President of Procyon Energy, wrote to the Harringtons offering to increase the annual rent payable under the 1990 Lease to $4,100 effective August 24, 2016. Ben Harrington signed the rent renewal agreement. Wendy Harrington does not agree with the rent renewal and feels Ben was pressured into signing.

[12] On November 21 and again on November 22, 2016, Mr. Harrington phoned Procyon Energy and spoke to Mr. McKellar. Mr. Harrington told Mr. McKellar partial payment was not acceptable and that full payment was expected immediately or he would terminate the lease.

[13] On November 23, 2016, Ms. Brietzke sent an email to Mr. Harrington acknowledging receipt of Mr. Harrington’s letter accepting rentals of $4,100 and advising that Procyon was unable to pay any of their rental obligations in full and that they had been sending lessors full rental over a period of three months. Ms. Brietzke advised they would send a cheque in the amount of $1,366.00 by the end of November, another cheque for the same amount by the end of December, and a final payment of $1,368 at the end of January.

[14] On November 30, 2016 and December 22, 2016 Procyon Energy sent cheques of $1,366 each to the Harringtons, but these cheques were not made out correctly. Procyon Energy discovered the error, although it had not been brought to their attention

by the Harringtons, and on January 25, 2017 sent a cheque to Ben and Wendy Harrington in the amount of $4,100. I understand the cheque was not cashed.

[15] On March 9, 2017 the Harringtons wrote to Procyon Energy purporting to terminate both the 1978 Lease and the 1990 Lease "due to non-payment as per the terms of payment included in the lease agreements, and in the demand for payment letters dated June 10, 2016, and October 3, 2016."

SUBMISSIONS

[16] The Harringtons submit that they have effectively exercised their option to terminate the 1990 Lease and that the 1990 Lease is terminated. They ask the Board to issue a right of entry order including a security deposit to cover costs and damages.

[17] Procyon Energy submits the 1990 Lease has not been effectively terminated and that a right of entry order is not necessary.

ANALYSIS

Has the 1990 Lease been effectively terminated?

[18] The 1990 Lease contains a termination clause for non-payment under the terms of the lease at clause 2(a) as follows:

> If the Lessee fails or neglects to pay rentals or to make payments pursuant to the terms of this Lease and such default continues for a period of Ninety (90) days after demand in writing therefore by the Lessor, the Lessor may at the Lessor's option terminate this Lease.

[19] The Harringtons submit their letter of October 1, 2016 was a demand letter and that the default in payment of rent continued for 90 days after. They submit their letter of March 9, 2017 effectively terminated the lease. Procyon submits that cheques were sent on November 30 and December 22, 2016 within the 90 day demand period, although the cheques had been made out incorrectly. Upon discovery of their mistake,

Procyon sent a cheque for $4,100 on January 25, 2017. Procyon submits it has been acting in good faith and making every effort to meet its obligations.

[20] The termination clause provides that the Lessor may terminate the Lease upon the happening of three events:

i) the Lessee must be in default of a payment owing under the lease,
ii) the Lessor must make a demand in writing for payment, and
iii) the default must continue for 90 days after the demand in writing.

[21] Procyon defaulted on the rental payment owing under the 1990 Lease as of August 24, 2016. The amount owing as of August 24, 2016 was $1,850.

[22] I find the letter of October 1, 2016 was a demand letter as required by clause 2(a) of the 1990 Lease. The letter says:

> At this time, and as per the Petroleum and Natural Gas Act, Procyon is in default of the surface lease. We have been notified by Ron McKellar on September 26, 2016 that no payment will be made as a full payment will not be forthcoming. Other payment methods are not covered under the existing agreement and therefore are not acceptable. Please be aware that Procyon will default on, and forfeit the surface lease, and have no surface rights if full payment as per the existing agreement is not received within 90 days of the lease anniversary.

[23] Although it is somewhat inarticulately worded, I find it to be sufficiently clear that Procyon ought to have understood it to be a proper demand for the payment that was owing as of August 24, 2016. In accordance with clause 2(a) of the lease, the option to terminate could be exercised if the default continued 90 days after the written demand for payment. The default period within in which Procyon Energy could make payment was 90 days from October 1, 2016 which was December 30, 2016.

[24] Ben Harrington accepted Procyon Energy's October 26, 2016 offer to increase the rent to $4,100. On November 21 and 22, 2016 he spoke with Mr. McKellar on the telephone advising that partial payment was not acceptable and reiterating that the lease would be terminated if full payment was not made.

[25] Procyon did not make payment of the $1,850 owing as of August 24, 2016 or the revised rent of $4,100 by December 30, 2016. It attempted to make partial payments against the new rent of $4,100 with cheques sent on November 30 and December 22, 2016, but the cheques were not made out correctly. As of December 30, 2016, therefore, the default continued.

[26] On January 25, 2017 Procyon Energy sent a cheque for $4,100.00 payable to Ben and Wendy Harrington. The Harrington's did not cash this cheque and by letter dated March 9, 2017 exercised their option to terminate the 1990 Lease. As the default had continued for a period of 90 days following demand for payment, I find the Harrington's were entitled to exercise their option to terminate and were not obliged to accept the cheque tendered after the default period had expired. Additionally, the cheque tendered on January 25, 2017 was not made payable to Ben Harrington as instructed by the Harrignton's letter of June 10, 2016. I find the Harringtons' letter of March 9, 2017 effectively terminated the 1990 Lease.

[27] I understand that Procyon is experiencing financial difficulties. Financial difficulties do not relieve a rights holder from its obligations under a surface lease. The lease contained a termination clause, the criteria for exercising the Lessor's option to terminate the lease occurred, and I find the Harringtons did effectively terminate the 1990 Lease on March 7, 2016.

[28] I accept that Procyon has made good faith efforts to meet its obligations. In particular, it sent a cheque for $4,100 to the Harringtons on January 25, 2017. But its good faith efforts came too late to save it from the Harrington's proper exercise of the termination clause in the lease.

Should the Board issue a Right of Entry Order?

[29] As the lease was effectively terminated by the Harringtons on March 9, 2017, and as Procyon Energy needs surface rights to carry out its obligations with respect to the well site and access road on the Lands, I find a right of entry order should be issued.

[30] The order below includes provisions for partial payment against compensation that may be owed to the Harringtons for the right of entry and for a security deposit in accordance with section 160 of the *Petroleum and Natural Gas Act*. The Board retains jurisdiction to determine compensation and annual rent owing to the Harringtons in the event the parties are unable to agree.

ORDER

The Surface Rights Board Orders:

1. Upon payment of the amounts set out in paragraphs 2 and 3, Procyon Energy Corp. shall have the right of entry to and access across the portions of the Lands legally described as:

   SECTION 25 TOWNSHIP 86 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE SOUTH AND EAST 80 FEET

   as outlined in red on the copy of Survey Plan 25274 attached to this Order as Schedule “A” for the purpose of operating and maintaining a well site and access road as permitted or required by the Oil and Gas Commission.

2. Procyon Energy Corp. shall pay to Ben Harrington the sum of $4,100.00 as partial payment towards any compensation owing to both Ben and Wendy Harrington jointly.

3. Procyon Energy Corp. shall deliver to the Surface Rights Board security in the amount of $10,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Procyon Energy Corp. or paid to Ben and Wendy Harrington upon agreement of the parties or as ordered by the Board.

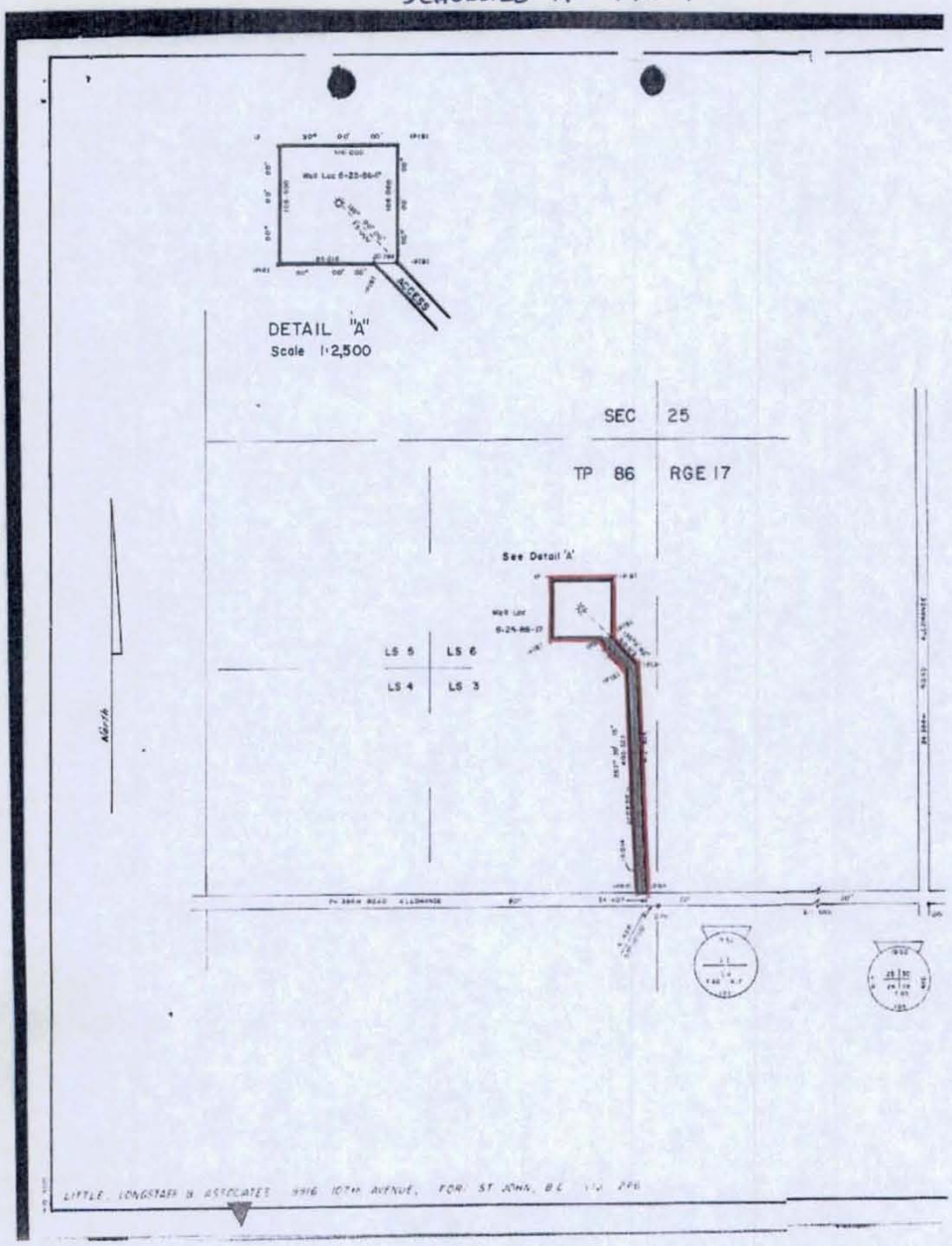
4. Nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: May 29, 2017

FOR THE BOARD

_____
Cheryl Vickers, Chair

SCHEDULE "A" 1935-1



PLAN 25274

DEPOSITED IN THE LAND REGISTRY OFFICE AT PRINCE GEORGE, B.C. THIS DAY OF 19 .

REGISTRAR

LEGEND

- ○ CLC
- ● SIP STANDARD IRON BAR POST
- ● CIP CAPPED IRON BAR POST
- ● PP STANDARD PIPE POST
- B BURIED

○ TH TRAVERSE HUB
⊕ PCON STANDARD CONCRETE POST
○ PRODUCING WELL

REFERENCE POSTS SET AT ALL SURVEY POSTS UNLESS OTHERWISE NOTED.
ALL DISTANCES ARE SHOWN IN METRES UNLESS OTHERWISE NOTED

BEARINGS ARE ASTRONOMIC, REFERRED TO CENTRAL MERIDIAN OF TP 86 RGE 17 W6M AND ARE DERIVED FROM S BDY SEC 25 TP 86 RGE 17 W6M

BOOK OF REFERENCE

LOCATION	DESCRIPTION	℄ DISTANCE	AREA
SW 1/4 SEC 25-86-17	WELLSITE E-25-86-17	108 x 108	1.124 ha
SW 1/4 SEC 25-86-17	12m ACCESS		0.2157 ha

I, E.R. LITTLE OF THE CITY OF FORT ST. JOHN, B.C., BRITISH COLUMBIA LAND SURVEYOR, MAKE OATH AND SAY THAT I WAS PRESENT AT AND DID PERSONALLY SUPERVISE THE SURVEY REPRESENTED BY THIS PLAN AND THAT THE SURVEY AND PLAN ARE CORRECT THE SAID SURVEY WAS COMPLETED ON THE 26th DAY OF JULY 1979.

E.R. Little
E.R. LITTLE BCLS

SWORN BEFORE AT THE CITY OF FORT ST. JOHN, B.C. THIS 28th DAY OF Sept 1979

A COMMISSIONER FOR TAKING AFFIDAVITS WITHIN BRITISH COLUMBIA

APPROVALS

NOTE THIS PLAN LIES WITHIN THE PEACE RIVER - LIARD REGIONAL DISTRICT

NORTHSTAR RESOURCES LTD.

REFERENCE PLAN OF WELLSITE & ACCESS in S.W. 1/4 SEC. 25 TP 86 RGE 17 W6M

Peace River District

SCALE: 1:5,000		JOB No. 127 - 79

File No. 1936
Board Order No. 1936-1

May 29, 2017

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
SECTION 25 TOWNSHIP 86 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE SOUTH AND EAST 80 FEET
(The "Lands")

BETWEEN:

Wendy Harrington and
Ben Harrington

(APPLICANTS)

AND:

Procyon Energy Corp.

(RESPONDENT)

BOARD ORDER

Wendy Harrington and Ben Harrington (the Landowners) are the owners of the Lands legally described as: SECTION 25 TOWNSHIP 86 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE SOUTH AND EAST 80 FEET (the Lands). Procyon Energy Corp. (Procyon Energy) operates a pipeline and associated infrastructure on the Lands.

The Landowners applied to the Board for mediation and arbitration services under section 158 of the *Petroleum and Natural Gas Act* alleging that Procyon Energy did not have surface rights to operate the pipeline on the Lands.

The Board convened a telephone conference on April 5, 2017. Representatives of Procyon Energy confirmed it does operate a pipeline on the Lands. They advised that a right of way agreement respecting the pipeline entered with a former landowner was not registered against the Title to the Lands.

As the owner of the Lands has changed, Procyon Energy cannot register the right of way agreement on Title at this time. Procyon Energy requires surface rights in order to operate and maintain the flowline and comply with regulatory requirements. I am satisfied that an order authorizing right of entry to conduct an oil and gas activity, namely the operation and maintenance of a pipeline is necessary.

ORDER

The Surface Rights Board orders:

1. Upon payment of the amounts set out in paragraph 2, Procyon Energy Corp. 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 Schedule "A" as necessary for the purpose of constructing, operating and maintaining a pipeline and associated infrastructure in accordance with a Permit issued by the Oil and Gas Commission on July 2, 2009 with OGC File No. 9702890.

2. Procyon Energy Corp. shall deliver to the Surface Rights Board security in the amount of $4,000 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Procyon Energy Corp. or paid to the Landowners, upon agreement of the parties or as ordered by the Board.

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: May 29, 2017

FOR THE BOARD

Cheryl Vickers
Chair

SCHEDULE "A" 1936-1

PROCYON ENERGY CORP.

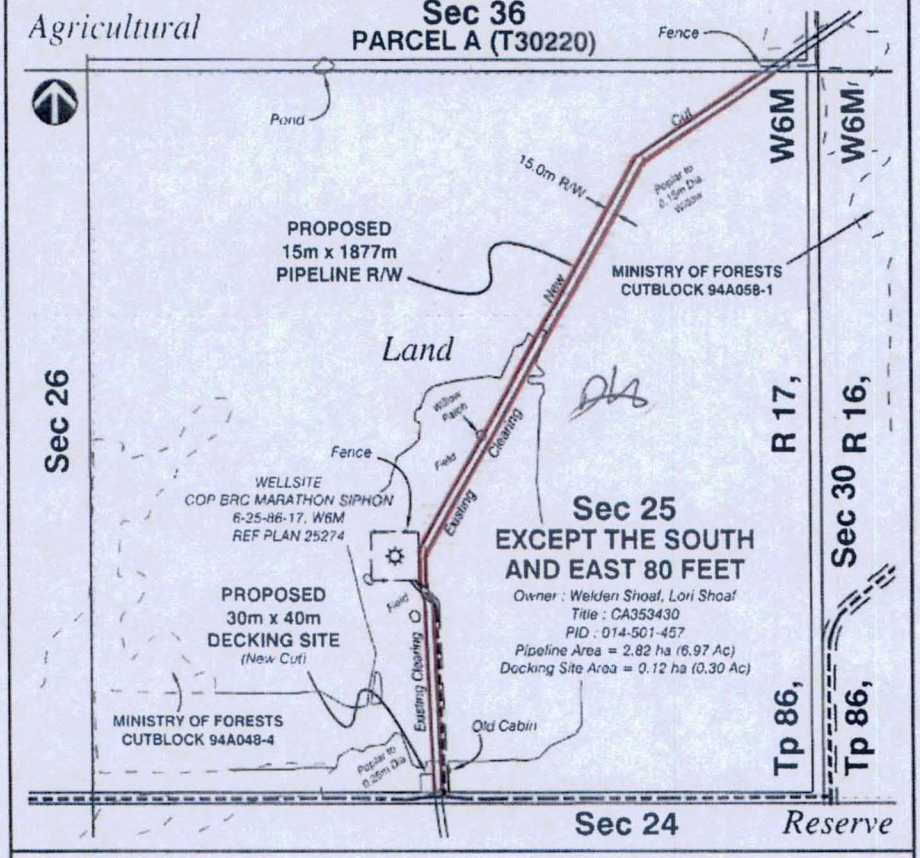
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 15.0m PIPELINE RIGHT OF WAY AND DECKING SITE

IN

Sec 25, Tp 86, R 17, W6M
EXCEPT THE SOUTH AND EAST 80 FEET

PEACE RIVER DISTRICT



OWNER : Welden Shoaf
Lori Shoaf

TITLE CA353430

PID 014-501-457

Pipeline R/W 2.82 ha 6.97 Ac

Decking Site 0.12 ha 0.30 Ac

Certified correct this _____ day of December 2008

E.P. SNUCINS, B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
9808 - 72nd Street
Fort St. John, British Columbia
Phone: (250)787-0336 Fax: (250)787-0313

McElhanney

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

REVISION : 0	DRAWN BY : MAZ
SCALE : 1:10000	JOB : 3111-186841P2

File Nos. 1935, 1936, 1937
Board Order No. 1935-36-37-2

March 23, 2018

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
SECTION 25 TOWNSHIP 86 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE SOUTH AND EAST 80 FEET
(The "Lands")

BETWEEN:

Wendy Harrington and
Ben Harrington

(APPLICANTS)

AND:

Procyon Energy Corp.

(RESPONDENT)

BOARD ORDER

Heard:	By written submissions closing February 7, 2018
Submissions from:	Wendy Harrington and Ben Harrington, on their own behalf, received October 25, 2017 and February 7, 2018 Ron McKellar and Rae Brietzke, on behalf of Procyon Energy Corp., received January 16, 2018 and January 17, 2018

INTRODUCTION

[1] The Applicants, Wendy Harrington and Ben Harrington, purchased Section 25 Township 86 Range 17 West of the 6th Meridian Peace River District, Except the South and East 80 Feet (the Lands) in May 2016. At the time of purchase, the Lands were encumbered by a surface lease dated August 24, 1990 registered against title in favour of the Respondent, Procyon Energy Corp. (Procyon), permitting access to the lease area for the purpose of constructing and operating a wellsite and access road (the Surface Lease).

[2] Procyon owns and operates the wellsite and a pipeline located on the Lands. Procyon's use and occupation of the Lands for the purpose of constructing and operating the pipeline was pursuant to a Right of Way Agreement with the previous owner of the Lands dated June 1, 2009 (the ROW Agreement). The ROW Agreement was not registered against the title to the Lands when the Harringtons purchased the Lands.

[3] The Harringtons notified Procyon of their purchase of the Lands and provided instructions respecting payment of the annual rent owing under the Surface Lease.

[4] Procyon failed to make the annual payment due under the Surface Lease on August 24, 2016. The Harringtons made a demand for payment in accordance with the terms of the Surface Lease by letter dated October 1, 2016, and on December 20, 2016 filed an application to the Board under section 164 of the *Petroleum and Natural Gas Act*

(the *Act*) seeking remedies for alleged non-compliance with the terms of the Surface Lease.

[5] On March 23, 2017, the Harringtons filed applications under section 158 of the *Act* claiming Procyon's use and occupation of the Lands for the wellsite and pipeline was not authorized and seeking compensation for the entry and continued use of the Lands for these purposes, and under sections 163 and 165 of the *Act* claiming damages arising from Procyon's use and occupation of the Lands and review of the rent payable under the Surface Lease.

[6] In a decision rendered May 29, 2017, the Board found the Harringtons had effectively terminated the Surface Lease in accordance with the termination clause in the Surface Lease. As Procyon required access to the Lands to carry out its obligations with respect to the well site and access road, the Board issued a right of entry order and ordered payment by Procyon of partial compensation to the Harringtons of $4,100 and a security deposit of $10,000 (Order 1935-1, the Wellsite Entry Order). As the ROW Agreement authorizing Procyon's use and occupation of the Lands for the purpose of constructing and operating the pipeline had not been registered against title and could not now be registered against title because of the change in ownership of the Lands, the Board issued a right of entry order authorizing Procyon's use of the Lands for the pipeline and ordered payment of a $4,000 security deposit (Order 1936-1, the Pipeline Entry Order).

[7] Following unsuccessful mediation, the Board scheduled this arbitration by way of written submissions to resolve the outstanding issues of compensation and annual rent owing for the wellsite and access road (file 1935), compensation owing for the pipeline right of way (file 1936), and the damage claim (file 1937). As the Board found the Surface Lease had been effectively terminated, the claims under sections 164 for non-compliance with the terms of a surface lease and 165 for rent review became moot.

[8] The Harringtons make financial claims including payments for loss of rights, crop loss, loss of value of the land, nuisance and disturbance and costs in excess of $95,000. They seek orders requiring Procyon to do various things including post no trespassing signs, install fencing and repair damage and also make various allegations respecting non-compliance with regulations. Procyon submits annual rent for the well site and access road should be $4,100 and that the claims for damages have not been substantiated.

LEGAL FRAMEWORK

Board's Jurisdiction

[9] The legal framework respecting the rights and obligations associated with the entry to private land for oil and gas activities is set out in the Part 17 of the *Act*. In accordance with section 142 of the *Act*, a person may not enter, occupy or use land to carry out an oil and gas activity unless the entry, occupation and use is authorized by a surface lease with the landowner in the prescribed form or an order of the Board. Section 143(2) of the *Act* provides that a right holder, that is the person who holds a right of entry, is liable to pay compensation to the landowner "for loss or damage caused by the right of entry" and, except where the right of entry relates to a right of way for a flow line, to pay rent to the landowner for the duration of the right of entry.

[10] Section 158 provides that a person who requires a right of entry or a landowner may apply to the Board if they are unable to agree on the terms of a surface lease. The Board may make an order, pursuant to section 159 of the *Act*, authorizing a right of entry if it is satisfied the right of entry is required for an oil and gas activity.

[11] In accordance with section 162 of the *Act*, if the Board has made a right of entry order, and the parties are unable to agree, the Board must determine the amount of rent, if any, or compensation to be paid to a landowner.

[12] Section 154 of the *Act* sets out the factors the board may consider in determining an amount to be paid periodically or otherwise.

[13] Section 163 of the *Act* allows a landowner or occupant of land subject to a right of entry to apply to the Board if the exercise of the right of entry causes damage to the land or loss to the owner or occupant. The Board may order the right holder to pay compensation for damage to the land or loss to the owner or occupant as a result of the exercise of the right of entry including, without limitation, compensation relating to negotiation with the right holder before the application was made to the Board. The Board may order interest is payable on an order for compensation.

[14] The applications that are the subject of this arbitration are brought under sections 158 and 163. Other than to make a right of entry order under the authority of section 159, the Board's remedial authority under these sections is limited to orders for the payment of compensation, rent, and interest on an order for compensation for damages or loss under section 163. The Board has no authority to make an order to compel, prevent or prohibit activities.

[15] The materials filed by the Harringtons seek remedies that are not within the jurisdiction of the Board to order such as the posting of "no trespass" signs, installation of fencing, removing the berms, and repairing damage. These are things parties may negotiate as part of a surface lease or right of way agreement or may consent to as terms of a right of entry order, but they are not things the Board has the authority to order in the absence of consent. The Board's remedial authority is limited to ordering payment of compensation for loss or damage arising from a right of entry.

[16] The Harringtons also make allegations respecting non-compliance with regulatory provisions, in particular that the access road was not constructed in accordance with standards and approvals applicable at the time. Allegations of non-compliance with regulatory requirements should be addressed to the Oil and Gas Commission (OGC).

The Board is not the regulator; the OGC is the regulator. The Board has no jurisdiction to monitor, investigate, or enforce compliance with regulations. Its jurisdiction is limited to determining compensation for loss arising from a right of entry.

[17] Section 170 of the *Act* provides that the Board may order a party to an application to pay all or part of the actual costs incurred by another party in connection with an application. Actual costs are defined in section 168 of the *Act* to include actual reasonable legal fees and disbursements, other actual reasonable expenses incurred by a party in connection with an application, and an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding. The Harringtons advance a claim for costs.

Compensation Principles

[18] Section 154 of the *Act* sets out the factors the board may consider in determining an amount to be paid periodically or otherwise. They include, without limitation:

a) the compulsory aspect of the entry;
b) the value of the 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.

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

[20] The Board has previously articulated a number of settled principles relating to compensation for entry under the *Act* that it has found to be binding upon it (*ARC v. Piper*, Order 1589-2, December 5, 2008; *Arc Petroleum Inc. v. Miller*, Order 1633-3, May 24, 2011; *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015). I reiterate some of those principles relevant to the arguments advanced in this case.

[21] The landowner's right to compensation is for compensation to the extent of loss or damage incurred or reasonably foreseeable as a result of the entry. It is not a right to remuneration beyond the loss or damage incurred (*Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458). The Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained (*Western Clay, supra*).

[22] There is a compulsory aspect to an entry to private land for oil and gas activity, in that a landowner does not have the ability to refuse entry if a company needs access. A landowner, therefore, loses the right to control the use of their land to the extent it is required for an oil and gas activity. The Court has recognized that the loss of intangible rights, such as the loss of quiet enjoyment, or the loss of the right to decide whether land may be used for oil and gas activity, is incapable of valuation in terms of money, and that any value placed on these rights will seem arbitrary (*Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510 (BCSC)).

[23] The Courts have recognized that a "taking" under the *Act* is not an expropriation, although expropriation principles may apply to determine the appropriate compensation. The landowner continues to hold the fee simple and, consequently, it is appropriate that

the Board consider the landowner's residual and reversionary interest (*Dome Petroleum Ltd v. Juell, supra*; *Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[24] The upper limit of compensation for the taking itself, is the value of the land; if the landowner receives full value for the land then no additional payment is required for the compulsory aspect of the taking (*Western Clay Products, supra*).

[25] "Value of the land" means value to the owner of the land, not the value to the taker (*Dau v. Murphy Oil Company Ltd.*, [1970] S.C.R. 861; applied in BC in *Dome Petroleum, supra*; *Scurry Rainbow; supra*; *Western Clay, supra*). What this typically means is that where the owner's use of the land is for agricultural purposes, the value of the land will likely be reflected by the sale of similar lands used for agricultural purposes (*Spectra v. London, supra*; *Encana Corporation v. Lumnitzer*, Order 1840/1847-2, November 24, 2016).The Board should consider whether there are any special factors which give a greater value to this owner for this particular piece of land beyond that shown by the average value of similar land indicated by sales (*Scurry Rainbow; supra*).

[26] The Board has found that the value of the land provides an appropriate benchmark upon which to determine compensation for the compulsory aspect of the taking and loss of rights in light of the court's instruction that the residual and reversionary interests should be taken into account, the acknowledgement that compensation for compulsory aspect of the entry and loss of intangible rights will of necessity be arbitrary, that compensation equivalent to the full value of the land includes compensation for the compulsory aspect of the taking, and that compensation for these factors cannot exceed the value of the land (*Arc v. Miller, supra*).

ISSUES

[27] The issues raised by the Harringtons applications within the jurisdiction of the Board are:

a) Are the Harringtons entitled to compensation for Procyon's acquisition of rights under the Wellsite Entry Order?
b) If so, how much compensation is appropriate for Procyon's acquisition of rights under the Wellsite Entry Order?
c) What is an appropriate annual rent for Procyon's continued use and occupation of the Lands for the well site and access road under the Wellsite Entry Order?
d) Are the Harringtons entitled to compensation for loss, including loss of rights, incurred as a result of the Pipeline Entry Order?
e) If so, how much compensation is appropriate for Procyon's acquisition of rights under the Pipeline Entry Order?
f) What, if any, compensation is owed to the Harringtons by Procyon for damage to the Lands or loss to the Harringtons arising from the rights of entry?
g) Are the Harringtons entitled to costs, and if so, how much?

FACTS

[28] I make the following findings of fact from the documentary evidence before me.

The Lands and Owners' Use of the Lands

[29] Wendy Harrington and Ben Harrington purchased the Lands on May 26, 2016 for $400,000.

[30] The Lands are used to grow hay as part of a sheep farm operated by Ben Harrington on this and other adjoining and neighbouring sections of land including 36-86-17 and 31-86-16. The sheep farm is one of the top producing sheep farms in British Columbia. The home section for the farm is 31-86-16 to the north east of the Lands.

[31] The carrying capacity of the farm is two ewes per acre per year. The adult sheep lamb an average of 1.8 sheep and wean 1.6 lambs for sale annually. The selling price for a lamb is approximately $200. Generally speaking, Mr. Harrington takes one crop of hay off a field and then grazes the field up to three times.

[32] The CLI soil classification for the Lands is Class 3. It has average topsoil depths of over 20 cm.

[33] The wellsite and access road effectively divide the Lands into two fields that must be worked separately, a smaller field to the west of the access road (Field A) and a larger field to the east of the access road (Field B).

Well site and Access Road

[34] The well on the Lands was drilled in 1978 by Northstar Resources Ltd.

[35] During the drilling of the well, the derrick fell over damaging the drilling rig. A new rig was brought in, the well completed and then shut in. The well has never been put into production.

[36] The well changed hands several times over the years as a result of corporate sales and amalgamations. Procyon acquired the well in 2008 from ConocoPhillips Canada.

[37] An access road was not actually constructed when the well was initially drilled. The well was accessed by driving over the field. Procyon constructed the access road with berms on either side and redeveloped the well site constructing berms around the leased area in 2008. The berms extend beyond the 15 metre surveyed road area such that the average combined width of the access road and berms is 18 metres along the entire length of the access road. The berms are approximately 1.5 metres high.

[38] The access road divides the field and is not constructed immediately adjacent to dedicated undeveloped road access along what would be the quarter section boundary line if the Lands were to be subdivided into quarter sections.

[39] An area of approximately 1.15 acres to the west of the wellsite and against the treed edge of Field A cannot be accessed with farm machinery. The hay grown in this area was cut by hand in 2016.

[40] Entry to the Lands for the purpose of drilling and operating the well site was originally authorized by a surface lease entered August 24, 1978 between Northstar Resources and the owner of the Lands at the time, Weldon Shoaf (the 1978 Lease). The 1978 Lease required payment to the landowner of $2,250 for the right of entry, compensation for taking, and inconvenience and disturbance, $1,000 for the first year's rent, and annual rent thereafter of $200 per acre. The sketch plan attached to the 1978 Lease shows the wellsite area of 1.124 hectares, a 15 metre wide access road comprising 0.748 hectares, a campsite of 0.186 hectares, and a sump of 0.186 hectares, for a total of 2.244 hectares or 5.545 acres. Survey Plan 25274 completed September 14, 1979 shows the well site area of 1.124 hectares and the 15 metre wide access road comprising 0.7157 hectares for a total of 1.8397 hectares or 4.545 acres.

[41] The campsite area is not currently used or occupied by Procyon or any other company. The one acre sump area is clearly visible in aerial photos as a cleared star shape in a treed area of the Lands. It is not currently actively used for any purpose, but neither has it been reclaimed.

[42] In 1990, Mr. Shoaf and Poco Petroleums Ltd., who at the time owned and operated the well site, entered the Surface Lease registered against the title to the Lands. The Surface Lease references Survey Plan 25274. The Surface Lease provides compensation of $1.00 for damages, severance of the demised premises, and inconvenience and disturbance and annual rent of $1,850.

[43] In 2009, Procyon and Mr. Shoaf agreed to increase the annual rent to $3,000.

[44] In June 2016, the Harringtons wrote to Procyon seeking a rent increase to $5,500. In October 2016 Procyon offered to increase the rent to $4,100 effective August 24, 2016. Ben Harrington signed the rent renewal agreement. Wendy Harrington did not agree.

[45] The Harringtons effectively terminated the Surface Lease for non-payment of rent by letter dated March 9, 2017. The Board issued a right of entry order on May 29, 2017 authorizing Procyon's occupation and use of the well site and access road to meet its continuing obligations.

Pipeline

[46] The pipeline was constructed by Procyon in 2009. It lies on the west edge of the access road to the well site then extends across the Lands in a north east direction where it crosses the south east corner of 36-86-17 immediately adjacent to the Lands on the north boundary, before carrying on in a northeasterly direction across adjoining 31-86-16.

[47] The pipeline right of way is 15 metres wide and 1,877 metres long covering a total of 6.97 acres. Most of the right of way is seeded with hay and productively farmed. An area of approximately .4 of an acre (100 m x 15 m) close to the northern boundary of the Lands is bare and unproductive.

[48] Pursuant to the ROW Agreement, Procyon paid the former owners of the Lands $20,000 which included $6,621.50 consideration for the right of way and $12,736 damages for crop loss, tree loss, and nuisance and inconvenience.

[49] One of the terms of the ROW Agreement was that Procyon would upgrade the access road to the well when the well was connected to the pipeline. Procyon's offer to

increase the wellsite and access road rent to $3,000 annually was contingent on the former landowners' entering the ROW Agreement.

[50] The ROW Agreement was not registered against the title to the Lands.

EVIDENCE AND SUBMISSIONS

[51] I will briefly summarize the parties' evidence and submissions relevant to the various factors the Board may consider in determining compensation set out in section 154 of the *Act* and with respect to the claim for costs.

Compulsory Aspect of the Right of Entry

[52] The Harringtons submit they are forced to keep a tenant on the lands that has defaulted on its obligations. Given the lifespan of a well and pipeline, they submit they may have to deal with these uses on the Lands for another 50 years.

[53] They submit the pipeline was not registered against title and is now forced upon them with no compensation having been paid. They submit that as the pipeline was not registered on title it was not taken into account by them on their purchase of the Lands.

Value of the Land

[54] The Harringtons evidence is that the purchase price for the Lands of $400,000 was based on the combined 2016 assessed values for the Lands and wellsite lease area. This price reflects a value of $625/acre for a whole section of 640 acres.

[55] The 2016 assessed value of the land leased to Procyon was $43,500. Mr. Harrington submits the value of this land is $6,500/acre. He submits the loss of a stable tenant has cost him the $43,500 attributed to the value of the leased area as part of the purchase of the Lands.

[56] The 2016 assessed land value for the Lands was $351,000, reflecting value of approximately $550/acre.

[57] The 2016 assessed land value for part of 22-86-17 comprising 461 acres was $118,000 reflecting value of $256/acre. Wendy and Ben Harrington purchased this parcel in January 2017 for $113,000 reflecting value of $245/acre.

[58] Mr. Harrington provides evidence of sales of comparable land in the area. In April 2014, SE 2-86-17 sold for $155,000 reflecting value of $951/acre and NE 2-86-17 sold for $145,000 reflecting value of $906/acre.

[59] The 2016 assessed land value for SE 35-85-17 was $157,000 reflecting value of $981/acre.

[60] Neither party has provided professional appraisal evidence of the value of the land.

Loss of Rights

[61] The Harringtons submit their right to farm the Lands has been impacted by the presence of the wellsite, access road and pipeline. They submit their right to subdivide the Lands will be affected by the presence of the wellsite, access road and pipeline.

[62] With respect to the pipeline, the Harringtons seek a payment of $15/metre to account for loss of rights over a 60 metre restricted zone. They submit that although the surveyed area of the right of way is only 15 metres wide, their use of the Lands is restricted within 30 metres from the centre of the pipeline. While the surveyed area of the pipeline right of way is 6.97 acres, they submit they are restricted in activities related to farming, logging and land development on 27.88 acres of the Lands. Using $1000/acre for 27.88 acres they arrive at $15/metre. (27.88 acres x $1000 = $27,880 ÷ 1,877 m = $14.85/m).

[63] The Harringtons submit that any payments made to previous landowners are invalid as the ROW Agreement was not registered against title.

[64] With respect to the wellsite and access road, the Harringtons submit compensation for loss of rights should include the campsite and sump areas.

Loss of Profit

[65] The Harringtons seek crop loss of $640/acre. This value is based on the farm's ability to produce 3.2 lambs/acre with a selling price of $200/lamb. They seek crop loss for 22.67 acres. This area includes the well site of 2.78 acres, access road of 2.22 acres based on a width of 18 metre rather than the surveyed 15 metres, the campsite area of .45 acres, 1 acre for the sump area, and 1.15 acres for a severed area to the west of the wellsite. The remaining 15.07 acres is the area they calculate to have been affected by flooding caused by the berms, which I will discuss in more detail below under the head of temporary and permanent damage.

[66] The Harringtons submit they are unable to obtain bank financing because of unpaid property taxes for the wellsite area, unpaid lease payments, and other unknown concerns related to past activity on the Lands, and have consequently had to leverage ownership of the Lands from other assets at a cost of missed opportunities in other investments. No specifics or details of this alleged loss is provided.

[67] The Harringtons say they have suffered loss caused by delays to their development plans for fencing and dugout creation due to the situation with Procyon. No details respecting the plans or the alleged loss are provided.

[68] Procyon submits that loss of use, loss of income and nuisance and disturbance has all been considered in the offer of $4,100 annual rent. Details of how the $4,100 is calculated are not provided.

Temporary and Permanent Damage from the Right of Entry

[69] The Harringtons submit that the berms along the access road and surrounding the wellsite create significant drainage issues making farming of the Lands difficult and causing crop loss and equipment damage. They say the berms act as a dam preventing proper drainage. They reference the pre-construction site assessment for the pipeline indicating soil drainage was good prior to construction of the access road and provide photographic evidence of the fields both before and after construction of the access road.

[70] The Harringtons' evidence is that in 2016, they could not plow the field until July and in 2017, they could not access the field for any work until after July. They provide photographic evidence overlaid with markings to show the direction of water flow, drainage paths, and areas where water gets backed up. Photographic evidence shows Field A to have been hayed in 2017 but not Field B.

[71] The Harringtons' evidence is they took hay test strips in 2017 in Field B, but the land was too rough to continue and the bales had to be discarded as they were too full of soil. Their evidence is they broke three shear pins. They include in their material respecting costs a June 2017 receipt from Butler Farm Equipment Ltd. for various parts. It is not clear whether this receipt relates to the broken shear pins.

[72] The Harringtons calculate the area of crop loss associated with drainage problems to be 15.07 acres. They ask that the berms be removed and seek crop loss compensation for the 15.07 acres for 2016 and 2017 on the assumption repairs will be made prior to the 2018 farming season.

[73] In 2017, Procyon installed a culvert under the access road and made two cuts in the berm near the wellsite. The Harringtons did not agree to this work and say it was not properly planned. They say the culvert partially addresses one area of concern but does not address flooding in other affected areas. Further, they say the culvert directs

water onto the access point for Field A. They say the cuts in the berm are too small and not angled properly to be effective. They submit Procyon's entry to the Lands to conduct this work constitutes trespass.

[74] Procyon submits flooding is an area wide issue experienced by many landowners and that the drainage problems on the Lands were not caused by Procyon. Procyon submits 2016 was a wet year in the Peace River region and provide a precipitation chart in support. They say they received reports from many farmers in the area of flooded fields, late harvesting and crop loss. They say the owners of land in Township 85 Range 16 lost 800 acres of canola but otherwise provide no specifics or details respecting the experience of other landowners. They include a map showing two flooded locations in the area. They provide no evidence respecting area wide concerns in 2017.

[75] Procyon submits the Lands consist of random hummock and swale topography typical of the area. They provide a satellite photo of the Lands taken in 2015 where drainage patterns are not discernable. Procyon submits soil berms are not unique to the Lands and provides photos of other oil and gas installations where berms are present.

[76] The Harringtons claim damages for crop loss with respect to the .4 acre area of the pipeline right of way that is bare and unproductive. They submit the topsoil was not replaced on this area following construction.

[77] The Harringtons submit that the encroachment of the berms beyond the 15 m surveyed road allowance constitutes a trespass and seek compensation for crop loss for this extended area.

Severance

[78] In addition to the evidence supporting the 1.15 acre severed area to the west of the wellsite, the Harringtons' evidence is that the access road will create a severed area

between the access road and the boundary between the SW and SE quarters if the Lands are subdivided because the access road does not follow the quarter section boundaries and dedicated road allowance.

Nuisance and Disturbance

[79] The Harringtons seek compensation for nuisance and disturbance arising from having to farm around the wellsite and as a result of the field being divided in two by the access road and berms. Their evidence is that 14 extra turns are required to farm the north side of the wellsite with each turn overlapping other areas of the field that have been worked. Their evidence is there is an additional one hour of machine time for each pass, and that on a yearly basis it is possible to spend eight extra hours farming around the lease. They submit if the access road were moved to the edge of Field A, it would cause less disruption to farming activity and make the field much easier to farm. They submit annual payment for nuisance and disturbance should be $4,000.

[80] Procyon submits the Harringtons were aware of the location of the access road when they purchased the Lands and cannot claim damages now because of its location.

[81] The Harringtons seek compensation for lost time associated with dealing with Procyon, including with respect to non-payment of rent and property taxes. They each claim their time at $75/hour. Neither has provided evidence to substantiate the value of their time at $75/hr. They have provided a detailed log of their time inclusive of time in the nature of tangible nuisance and disturbance associated with dealing with Procyon generally, as well as their time spent in advancing the applications to the Board, which will be discussed under the heading of costs.

[82] The Harringtons also seek compensation for intangible nuisance and disturbance related to stress caused by the potential for offsite migration of contamination as a result of the 1978 drilling rig incident, the remote sump, and a general lack of responsibility to maintain the wellsite by any of its operators. They submit the wellsite area is visually

annoying because the soil berms ruin the appearance of the land and make an otherwise beautiful view look unkempt. They submit annual payment for intangible nuisance and disturbance should be $500.

[83] The Harringtons submit the Lands are subject to trespass from hunters.

Money Previously Paid for Entry, Occupation or Use

[84] The Harringtons submit that they have never been paid for the rights of entry for either the wellsite and access road or the pipeline and that payments to previous landowners ought not to be taken into account.

Terms of Other Surface Leases

[85] Neither party has provided evidence of other surface leases. The Harringtons submit that there has been leasing activity in the area but that surface leases have not been submitted to the Board as required and consequently they have not been able to search them through the Board's website search tool.

Previous Orders of the Board

[86] Both parties refer the Board to previous decisions. The Harringtons refer to: *Iverson v. Canadian Natural Resources Limited*, Order 1797-1, January 8, 2014, respecting average rents in the area; *Petersen v. Penn West Petroleum Ltd.*, Order 1733-1, April 23, 2013 in support of their claim for nuisance and disturbance; *Thiessen v. Canadian Natural Resources Limited*, Order 1850-1, September 29, 2016 with respect to various principles related to rent review and nuisance and disturbance; and *Encana Corporation v. Lumnitzer*, Order 1840/1847-2, November 24, 2016, with reference to various principles related to the taking of land and loss of rights.

[87] Procyon refers to *Dietz v. Canadian Natural Resources Limited*, Order 1870-1, March 6, 2017 in support of its position respecting annual rent.

Costs

[88] The Harringtons seek $55,000 in costs inclusive of their time charged at $75/hour, lawyers' fees, and other expenses incurred in relation to their applications to the Board. They provide a detailed log of their time and copies of receipts for various disbursements. Some of the recorded time relates more to the claim for damages and loss.

[89] Procyon refers to the Board's decision in *Mertens, et al v. Leucrotta Exploration Inc*., Order 1858-1959-2 in response to the claim for costs.

ANALYSIS AND FINDINGS

Are the Harringtons entitled to compensation for loss, including loss of rights, incurred as a result of the Wellsite Entry Order?

[90] The Harringtons submit they have never been paid for Procyon's entry to and use of the Lands for the wellsite and access road. Although the Harringtons purchased the Lands subject to the Surface Lease, they effectively terminated the Surface Lease for non-payment of rent in accordance with its terms and the Board issued a right of entry order to authorize Procyon's entry to and use of the well site and access road in order to meet its continuing obligations. As the Surface Lease was terminated and a right of entry granted, are the Harringtons entitled to be compensated for the loss of rights as if the right of entry order was an initial taking?

[91] It could be argued that the Harringtons have not lost any rights with respect to the portions of the Lands used for the wellsite and access road because they purchased the Lands subject to the Surface Lease. The Harringtons' rights with respect to the areas of the Lands covered by the Surface Lease had already been taken prior to their purchase and they purchased the Lands with that knowledge. Further, it could be argued that although the Harringtons effectively terminated the Surface Lease, they must have known surface rights would continue to be required by Procyon and they would not

regain full surface rights to those areas of the Lands used for the wellsite and access road until some time in the future.

[92] However, the original parties to the Surface Lease registered on the title of the Lands agreed that if the lessee failed or neglected to pay rentals annually in advance, that the lessor could terminate the lease if default continued for a period of ninety days following demand in writing by the lessor. The parties must have intended by this clause that if a default in the payment of rent occurred and the lessor exercised the option to terminate the lease, that the lessee's rights under the lease would be lost. They must have further understood that if the lessee continued to require access to the Lands for its operations following termination of the lease, the lessee would have to reacquire those rights. That intent is evident in the granting clause of the lease which provides:

> The Lessor, at the rental hereinafter set forth, HEREBY LEASES to the Lessee, all and singular those parts or portions of the said lands as outlined in red on the attached plan (hereinafter referred to as the "leased lands") to held [sic] by the Lessee as tenant for the term of twenty-five (25) years from the date hereof for any and all purposes and uses as may be necessary or useful in connection with all its operations, and shall be renewed automatically and the term extended for a further twenty-five (25) years, so long as the Lessee's operations are carried on thereon, or until tenancy shall be sooner terminated as hereinafter provided, and upon and subject to the other terms and provisions hereof. (underlining added)

[93] The termination clause would have no purpose if the parties did not anticipate that if the rights granted under the lease were terminated but still required, they would have to be reacquired.

[94] The Board found the Harringtons effectively exercised their option to terminate the Surface Lease. When the Surface Lease was effectively terminated, Procyon lost its rights to the Lands. As Procyon still requires access to the Lands to meet its continuing obligations with respect to the well site and access road, it must reacquire those rights. I find that the Harringtons are entitled to be compensated for Procyon's acquisition of surface rights granted by the Wellsite Entry Order.

What is the appropriate compensation payable by Procyon to the Harringtons for the acquisition of surface rights granted by the Wellsite Entry Order?

Compensable Area

[95] The Harringtons claim compensation for the right of entry not only for the surveyed area of the wellsite and access road, but also for the additional width of the access road caused by the encroachment of the berms beyond the surveyed area, the campsite and the sump.

[96] I accept that there is a 1.15 acre area to the west of the wellsite that is severed and that this area should be included in the compensable area. I also accept that the berms along the access road extend beyond the surveyed lease area effectively taking an average 18 metre width rather than the surveyed 15 metre width. The additional 3 metre width over the length of the access road constitutes a trespass and effectively severs additional land. I find the compensable area of the access road should be calculated on the basis of a width of 18 metres.

[97] I accept that for the purpose of acquiring entry rights, the area of the remote sump should be included in the compensable area as this area has not been reclaimed. However, I do not include the area for the purpose of compensating loss of profit as it appears to be located in a stand of trees that would not be used for cultivation in any event.

[98] The campsite area is not compensable either for the purpose of acquiring the right of entry or for compensating ongoing loss of profit as it is not encumbered by the Wellsite Entry Order, is not used by Procyon, and the Harringtons have not suffered any loss with respect to this area.

[99] I find the compensable area for the purpose of acquiring the right of entry is 7.15 acres (2.78 acres for the wellsite + 2.22 acres for the access road + 1.15 acres

severance + 1.0 acre for sump = 7.15 acres). I find the compensable area for the purpose of compensating for annual loss of profit is 6.15 acres.

[100] The Harringtons submit there will be additional severance in the event of a subdivision because the access road has not been constructed along the quarter section boundary. The potential for a future severance does not create an actual present loss. The land between the access road and what would be the quarter section boundary is currently not severed and may be used for farming activities. If and when a future severance occurs resulting in loss, such loss may be compensable. No additional compensation for severance is required presently for the placement of the access road.

Compulsory aspect/Loss of rights/Value of the land

[101] The Harringtons submit that the value of the land comprising the wellsite and access road equates to the price they paid for it of $43,500 based on the 2016 assessed value for tax purposes. They argue that they have lost their investment of $43,500 because Procyon has turned out to be an unstable tenant. I reject this argument. The Harringtons continue to own the entire section of Lands inclusive of the leased area. Although the leased area is encumbered by Procyon's right of entry, the Harringtons are still the fee simple owners of that land and hold the residual and reversionary interests in it. It is appropriate that the Board consider the reversionary and residual interests in determining compensation (*Dome Petroleum Ltd. v. Juell*, *supra*; *Scurry Rainbow Oil v. Lamoureux*, *supra*).

[102] It is an established principle of compensation that the value of the land reflected in compensation for expropriation or compulsory surface takings is the value in the use that would be made of the land by the owner, not the taker (*Dau v. Murphy Oil Company Limited*, *supra* applied in B.C. in *Dome Petroleum Ltd. v. Juell*, *supra*). If the lease was not there, the leased area would be used for agricultural purposes. That is the use that the Harringtons would be able to make of the leased area but for the presence of the

lease. Its classification for tax purposes as major industrial reflects Procyon's use of the site, but has nothing to do with underlying zoning or the use that could be made of the land if the lease were not there. The wellsite area is not zoned for major industrial use, as submitted by the Harringtons. It is classified as Major Industrial for the purpose of levying property taxes based on Procyon's use of the site.

[103] The Board typically compensates a landowner using the market value of the land on a per acre basis as an objective benchmark (*ARC Petroleum Inc. v. Miller*, *supra*; *Encana Corporation v. Lumnitzer*, *supra*). Compensation at this level is intended to acknowledge the compulsory aspect of the taking and loss of intangible rights while also considering the residual or reversionary interest in the land.

[104] The Board typically relies on market evidence to determine the value of land. The assessed value of the leased area reflecting $6,500/acre clearly does not reflect the market value of the land in agricultural use as can be seen from the evidence of market transactions of agricultural land before me. The only market evidence of the sale of agricultural land before me are the 2014 sales of SE 2-86-17 reflecting value of $951/acre, and NE 2-86-17 reflecting value of $906/acre, and the Harringtons' 2016 purchase of the Lands reflecting value of $625/acre and 2017 purchase of part of 22-86-17 reflecting value of $256/acre. I will use $625/acre as reflective of the value of the land.

Loss of profit

[105] In the circumstances of this case, the Harrington's loss of profit associated with Procyon's reacquisition of surface rights is the loss of the annual lease payment of $3,000 was due on August 24, 2016 and not paid. As the Harrington's purchased the Lands with the well site in place, they could not have had any expectation of income from the land occupied by the wellsite and access road other than the lease payment. I include the rent owing as of August 24, 2016 in the compensation owing to the Harringtons for Procyon's re-acquisition of surface rights.

Nuisance and Disturbance

[106] The usual payment for nuisance and disturbance associated with the drilling and construction of a wellsite is not applicable as the Harringtons have not experienced any nuisance and disturbance in that regard. The annual rent would have included an amount reflecting nuisance and disturbance from the continued presence of the wellsite and access road. I accept, however, that there should be some compensation for the nuisance and disturbance associated with Procyon's non-payment of rent resulting in the termination of the Surface Lease necessitating the Wellsite Entry Order. I award $750 representing about 15 hours of the Harrington's time.

Calculation of Entry Fee

[107] I calculate compensation for Procyon's entry to the Lands for the purpose of operating and maintaining the wellsite and access road as follows:

For compulsory aspect of the taking/loss of rights/value of the land	$625/acre x 7.15 acres =	$4,468.75
For initial loss of profit	Rent due August 24, 2016	$3,000.00
For initial nuisance and disturbance		$ 750.00
Total initial payment		$8,218.75

[108] Stepping back and considering the compensation globally in light of the evidence and the principles of compensation binding on the Board, I find that an award of $8,220.00 adequately compensates the Harringtons for Procyon's acquisition of rights under the Wellsite Entry Order.

What is an appropriate annual rent for Procyon's continued use and occupation of the Lands for the wellsite and access road under the Wellsite Entry Order?

Compensable Area

[109] For the purpose of determining annual rent payable for Procyon's continued use of the wellsite and access road, I accept that the severed areas included above in the acquisition payment should be included in an annual calculation of loss. I do not accept

that the sump area should be included in an annual payment however, because there is no evidence that the area occupied by the sump which is located in a stand of trees would be capable of being farmed in any event without the trees being cleared. There is no ongoing annual loss of profit to the Harrington's attributable to this area.

[110] The Harrington's seek annual crop loss for an area of 15.07 acres which they have not been able to farm due to drainage issues caused by the berms. I will assess this claim as part of the claim for damages and not as part of annual rent.

[111] I find the compensable area for the purpose of compensating for annual loss of profit to be included in a rental payment is 6.15 acres. (2.78 acres for the wellsite + 2.22 acres for the access road + 1.15 acres severance = 6.15 acres).

Loss of profit

[112] The Harrington's claim loss of profit at $640/acre based on their estimate that they would be able to raise 3.2 lambs per acre at a selling price of $200 per lamb. The selling price of $200 is not reflective of profit as it does not account for the cost of raising a lamb. I have not been provided with any evidence of the cost of raising a lamb.

[113] The Harringtons submit that the pattern of dealing in the Peace Region is to pay crop loss based on gross revenue. They do not provide evidence to support this proposition. In *Thiessen v. CNRL*, Order 1850-1, September 29, 2016, the Board indicated it was its practice generally to estimate loss of profit from cultivated land using figures more reflective of gross rather than net revenue, and I accept that is the Board's practice when estimating compensation for loss of profit from cultivated land.

[114] I do not accept that it is the Board's practice, however, to estimate loss of profit from cultivated land based on gross revenue from the sale of animals raised on the land. The land produces forage. The forage may be sold as such or it may be used to

feed livestock raised on the farm. The loss of profit from the land is reflected in the value of the forage either for sale or as feed for livestock.

[115] I have no evidence with which to value the loss of profit from the hay fields. Nor have I been provided with evidence of a pattern of dealing in this regard based on other agreements. I am nevertheless aware that loss of profit from pasture land is typically compensated at $300 to $350 per acre which generally reflects gross rather than net revenue. Despite that I have no evidence to support loss of profit from pasture land, I accept that compensation should include an amount typically paid for this factor and find $325/acre to be appropriate.

Nuisance and Disturbance

[116] The Harringtons seek an annual payment of $4,000 for nuisance and disturbance. They describe this claim as “the regular $2,500.00 plus additional payment to cover the nuisance and cost in extra time of farming around the corner on the area of the field north of the wellsite approximately 5 acres.” There is no evidence to support “the regular $2,500” nor is there any evidence to support how the additional cost and time in farming the area of the field north of the wellsite equates to $4,000.

[117] The Harringtons seek an additional annual payment of $500 for intangible nuisance and disturbance “related to stress caused by potential offsite migration of contamination” related to the 1978 drilling rig incident and the “lack of responsibility to maintain the site by any of its operators and owners”. This claim is entirely unfounded. The Harringtons cannot claim loss from nuisance and disturbance associated with activity prior to their ownership of the Lands in the absence of evidence that they are presently affected by that activity to the extent that they are suffering loss. Compensation is not payable for risk – it is payable for loss.

[118] I accept that there is loss associated with the nuisance and disturbance of having the wellsite and access road in the middle of a cultivated field. If the wellsite and

access road was not where it is, the field would clearly be easier to farm. I further accept that there is some ongoing nuisance and disturbance associated with having to deal with Procyon on a regular basis, including time spent for matters such as ensuring the property taxes are paid. But the evidence does not support that the annual rent should include a payment for nuisance and disturbance of $4,500.

Determination of Annual Rent for Wellsite and Access Road

[119] Procyon has offered $4,100 in annual rent for the continued occupation and use of the wellsite and access road. They have not explained how that figure was determined. However, if I calculate reasonably foreseeable loss of profit at $325/acre over 6.15 acres that equates to $1,998.75, say $2,000.00 rounded, that would leave $2,100 from Procyon's offer for nuisance and disturbance. This amount is not out of line with typical awards for nuisance and disturbance. (See for example *Thiessen v. CNRL*, *supra*).

[120] I find annual rent for the wellsite and access road should be set at $4,100 effective May 29, 2017. There is overlap between the $3,000 annual rent payable as of August 26, 2016 and awarded as part of the reacquisition payment for the wellsite and access road and the new annual rent effective May 29, 2017 resulting in rent being paid twice for the period from May 29, 2017 to August 24, 2017. The overpayment amounts to approximately $715 which may be deducted from the first rent payment ($3,000 ÷ 365 days = $8.22/day x 87 days = $715.14).

Are the Harringtons entitled to compensation for loss, including loss of rights, incurred as a result of the Pipeline Entry Order?

[121] The Harringtons claim compensation for the pipeline and what they call "new restrictions to our title". They submit their title was clear when they purchased the Lands and Procyon has never paid them to acquire a valid interest in the Lands. They submit the land has now had its use and value compromised and their title encumbered by the Pipeline Entry Order without compensation. They submit they could not have

taken restrictions on the use of the land as a result of the pipeline into account in their planning when they purchased the Lands because the pipeline and associated restrictions were not registered on title and "it therefore did not exist to us as a restriction to free use of our land".

[122] The fact the ROW Agreement was not registered against the title to the Lands does not necessarily mean that it could not be enforced against the Harringtons or that the Harringtons must be compensated for any loss of rights arising from the Pipeline Entry Order. Notice, actual or constructive, of a prior unregistered interest may constitute fraud disentitling a registered owner of land to rely on the lack of registration of an interest in land to defeat that interest in accordance with section 29(2) of the *Land Title Act* (*Jager the Cleaner v. Li's Investments Co. Ltd. et al* (1979) 11 B.C.L.R. 311 (SC)).

[123] Section 29(2) of the *Land Title Act* provides:

> 29(2) Except in the case of fraud in which he or she has participated, a person contracting or dealing with or taking or proposing to take from a registered owner
>
> (a) a transfer of land, or
>
> (b) a charge on land, or a transfer or assignment or subcharge of the charge,
>
> is not, despite a rule of law or equity to the contrary, affected by a notice, express, implied, or constructive, of an unregistered interest affecting the land or charge other than [in circumstances not applicable to this case].

[124] There has been considerable discussion in the case law and academic articles over the years as to whether knowledge in and of itself by a purchaser of an unregistered interest in land constitutes fraud for the purposes of section 29(2) of the *Land Title Act*. Following a review of authorities, Taylor J. in *Jager the Cleaner, supra*, concluded:

> A consideration of the authorities cited shows clearly that under the British Columbia land registry system a purchaser who takes with knowledge of an unregistered interest may be guilty of fraud if he were thereafter to seek protection of the Land Registry Act so as to defeat the claim of the holder of that interest. But I do not accept the proposition that this result must follow in every

> case…. The question in every case must be whether a fraud would in fact be committed if the purchaser were to claim the protection of the Act; fraud, which is never lightly to be inferred, must, I think be established by the particular facts of the case, and cannot be presumed.

[125] The first question is whether the Harringtons had actual or constructive notice of the ROW Agreement.

[126] There is no evidence that the Harringtons were expressly advised that the pipeline existed on the Lands or that the former owner had entered the ROW Agreement. The question is, therefore, whether they can be said to have had constructive notice of the pipeline.

[127] In *Rogers v. Landmark*, 2000 BCSC 320, the court refers to Megarry and Wade, *The Law of Real Property*, 5th edition on the requirements of constructive notice as follows:

> A purchaser accordingly has constructive notice of a fact if he
> (i) had actual notice that there was some incumbrance and a proper inquiry would have revealed what it was, or
> (ii) deliberately abstained from inquiry in an attempt to avoid having notice; or
> (iii) omitted by carelessness or for any other reason to make an inquiry which a purchaser acting on skilled advice ought to make and which would have revealed the incumbrance.

[128] It is not conceivable, based on the evidence before me, that the Harringtons did not know there was a pipeline on the Lands at the time of purchase. The Harringtons knew there was a well on the Lands. The presence of a well ought to lead any reasonable purchaser to inquire as to the presence of a pipeline. 36-86-17 and 31-86-16 immediately adjacent and "kitty corner" to the Lands and also comprising the Harringtons' sheep farm are encumbered by the same pipeline which enters 36-86-17 at the border with the Lands. The email correspondence between Mr. Harrington and Mr. Shoaf respecting the purchase of the Lands makes reference to the Harringtons having done "due diligence". All of this evidence supports a conclusion that the Harringtons

knew or ought to have known there was a pipeline on the Lands when they purchased the Lands.

[129] If, in fact, the Harringtons did not know about the pipeline, the circumstances are such that their suspicions ought to have been aroused. An inquiry of Mr. Shoaf or the OGC would have revealed the presence of the pipeline on the Lands. I find the Harringtons knew or ought to have known the former landowner had entered an ROW Agreement, that there was a pipeline constructed on the Lands, and that they had constructive notice of the unregistered ROW Agreement.

[130] It is noteworthy that the Harringtons do not say anywhere in their submissions that they were unaware there was a pipeline on the Lands prior to their purchase or that they were unaware that the previous owner had entered the ROW Agreement. They submit that they "could not have taken it into account" and "it did not exist to them" because it was unregistered. It could be inferred that they are relying on the fact the ROW Agreement was not registered to claim compensation for loss of rights when they in fact knew the Lands were already encumbered. Fraud, within the meaning of the *Land Title Act*, cannot be inferred, but must be strictly alleged and strictly proved (*Szabo v. Janiel Enterprises Ltd. et al,* 2006 BCSC 502). Procyon has not alleged fraud, or indeed made any submissions on this issue, and in my view it cannot be strictly proved on the evidence before me.

[131] In any event, it is not for this Board to determine whether there is a fraud within the meaning of the *Land Title Act* that would allow Procyon to register the ROW Agreement, it is only for this Board to determine whether the Harringtons have incurred a loss for which they must be compensated.

[132] I am satisfied that the Harringtons purchased the Lands with constructive notice that there was a pipeline on the Lands. Although the ROW Agreement was not registered against title they knew or ought to have known, not only that the pipeline

existed, but that Procyon would continue to operate the pipeline and require access to the Lands for that purpose. They knew or ought to have known that Procyon continued to require access to the Lands for the purpose of the pipeline and that its failure to register the ROW Agreement would not prevent a right of entry order under the *Act* authorizing its use of the Lands for that purpose. The Harringtons could not have purchased the Lands with any expectation that the area used for the pipeline would not be so used for the foreseeable future or that their fee simple rights to the Lands would not be compromised by the pipeline right of way and the regulations restricting the use of land over the pipeline. They purchased the Lands with knowledge that their use would be restricted, and consequently, the Pipeline Entry Order does not give rise to a claim for compensation for loss of rights or loss of use of the right of way area from the "taking" itself.

[133] I find no compensation is owing to the Harringtons for Procyon's acquisition of rights under the Pipeline Entry Order.

What, if any, compensation is owned to the Harringtons by Procyon for damage to the Lands or loss to the Harringtons arising from the rights of entry?

[134] The Harringtons claim damages for loss as a result of their inability to farm a 15.07 acre area of the Lands. They submit that this area was too wet to farm in 2016 and 2017 because the placement of the berms along the access road does not permit the Lands to drain properly. Procyon says the drainage issue in the field are not caused by them but that any inability to farm is a consequence of wet weather and the normal condition of land in the area.

[135] The evidence before me shows that prior to the access road being constructed with the berms along its edges, the whole of the field could be farmed right up to the wellsite area. The evidence shows a hay crop cut in Field A to the west of the access road in 2017 but not in Field B to the east of the access road. Procyon's evidence of two other farms suffering water damage and consequent crop loss in 2016 does not

convince me that drainage issues on the Lands were not caused or exacerbated by the presence of the berm along the access road.

[136] Procyon submits soil berms are in common use on oil industry wells sites and lease roads and that there is no evidence the soil berms on the Lands are different or causing any unique problems. Whether soil berms are common or not is irrelevant. The issue is whether these berms are, on a balance of probabilities, causing loss that would otherwise not be incurred but for their presence. The Harringtons' evidence satisfies me that it is more likely than not that the berms along the access road act as a dam that prevents the natural drainage of water from Field B causing areas of Field B to be excessively wet rendering them not farmable. But for the presence of the berms along the access road, I find it is probable that most of the time, Field B would be farmable, as it appears to have been prior to construction of the access road.

[137] The Harringtons have calculated the area of crop loss due to the presence of the berms at 15.07 acres. I find that the Harringtons were not able to recover crop from 15.07 acres in 2016 or 2017 because of drainage problems caused by the berms. I calculate this loss at $4,900.00 in each year (15.07 acres x $325/acre = $4,897.75, say $4,900.00 rounded).

[138] The Harringtons claim damages associated with crop loss for a .4 of an acre area on the pipeline right of way that was not properly reseeded following construction of the pipeline. I am satisfied that this is loss arising from the right of entry that is compensable. I find the Harringtons did not recover crop from the .4 acre area in 2016 and 2017 because this area of the pipeline right of way was not properly reseeded following construction. I calculate this loss at $130 annually (.4 acres x $325 = $130).

[139] The Harringtons' record of their time and expenses records an entry for August 11, 2016 related to having to cut the berm on the east entrance to the field to get farm equipment through. A claim is advanced for four hours of pickup, trailer and bobcat in

the amount of $1,260. No information is provided to substantiate the hourly rates for the equipment. I nevertheless accept that Mr. Harrington spent four hours on August 11, 2016 having to cut the berm to gain access to the field and that his time is compensable. I will allow a claim for $200.00.

[140] The Harringtons have also claimed other unspecified damages for various potential losses that may or may not occur in the future as a result of Procyon's rights of entry. If damage or loss occurs that is caused by Procyon's right of entry, it may be claimed at that time and supported with evidence both as to the cause of the loss and to quantify the loss.

Determination of Damages Owing

[141] I find that Procyon's rights of entry have caused loss to the landowners and calculate that loss as follows:

For losses incurred in 2016:	Crop loss from water due to berm	$ 4,900.00
	Crop loss on right of way	$ 130.00
	Time	$ 200.00
For losses incurred in 2017:	Crop loss from water due to berm	$ 4,900.00
	Crop loss on right of way	$ 130.00
Total		$10,260.00

Are the Harrington's entitled to costs, and if so, how much?

[142] The *Act* provides that the Board may order a party to pay all or part of the actual costs incurred by another party in connection with an application (section 170). The term "actual costs" is defined to include "actual reasonable legal fees and disbursements", "other actual expenses incurred by a party in connection with a board proceeding" and "an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding". Costs, as distinct from damages or compensation, are the reasonable expenses incurred, including for a party's time, in connection with pursuing an application to the Board. An award of costs is discretionary.

[143] The Board's Rules establish a presumption in favour of a landowner receiving their costs with respect to the mediation of an application brought under section 158 for a right of entry order, unless the Board otherwise orders. There is no presumption in favour of either party receiving their costs in any other type of proceeding.

[144] The Board's Rules set out various factors the Board will consider when exercising its discretion with respect to an award of costs. Those factors include: the reasons for incurring costs, the contribution of counsel and experts retained, the conduct of a party, whether a party unreasonably delayed or lengthened a proceeding, the degree of success in the outcome, and the reasonableness of costs incurred.

[145] The Harrington's have been successful, not as to the amount claimed but as to the right to compensation, with respect to their application brought under section 158 respecting right of entry and compensation for the wellsite and access road. They have been entirely unsuccessful with respect to their claim brought under section 158 respecting compensation for the pipeline right of entry. They have been partially successful in their claim for damages. I find they are entitled to receive an amount in partial compensation of their reasonable costs in connection with the section 158 wellsite and access road application and the claim for damages.

[146] The Harringtons claim their time at $75/hour but provide no evidence to support that, but for spending time on these applications, they would receive $75/hour for their time. In the absence of evidence to support a specific claim, the Board will allow a landowner's time to be compensated at $50/hour.

[147] The claim for costs is excessive and unreasonable. The Harringtons submit it would have cost them much more if they had obtained professional assistance. While the hourly fee would have undoubtable been higher, I anticipate the number of hours spent in preparation for the Board proceedings and assembling evidence would likely have been considerably less. Much of the evidence provided by the Harringtons was

not relevant to the claims and a considerable amount of time appears to have been spent on matters not relevant to the claims. Having reviewed the time records, and considering the reasons for incurring costs, the degree of success in the outcome of the various applications, and the general reasonableness of the time spent, I find the Harringtons should be entitled to recover costs of $5,000.00 representing about 100 hours of their collective time.

[148] The Harringtons advance a claim for legal fees at $500/hour but the precise amount of that claim is not clear. The spreadsheet provided in the material totaling hours spent includes 7.75 hours for lawyers in 2016 and 2017 amounting to $3,875.00, but no invoice from counsel is provided to substantiate this claim. A receipt from Frontier Law for a retainer for legal services in the amount of $2,000 dated June 5, 2017 is included in the materials, but no account provided indicating expenditure of these funds. An account from Clark Wilson dated July 1, 2017 for $728.45 is included, however, other than a reference to an email from Ben regarding a pre-arbitration call, the description of services rendered does not relate specifically to the Board's proceedings but to other matters in relation to acquisition of land and relating to Procyon Energy. I deny any claim for legal fees in connection with the Boards proceedings as not being sufficiently supported by evidence.

[149] A registered mail receipt in the amount of $36.44 is provided. It is not clear what this receipt relates to, but as the Board's Rules require service of its applications by registered mail, I will allow this claim. Receipts totaling $500.67 dated October 17 and 19, 2017 from Staples are included. These receipts would appear to relate to the printing and assembly of the Harringtons' written submission. I will allow one half of this expense or $250.34.

[150] A receipt from Butler Equipment dated June 29, 2017 for $130.94 is included in the material. It is not clear what this receipt relates to, consequently I disallow this claim.

[151] I find the Harringtons are entitled to recover costs in the amount of $5,286.78, representing an amount on account of their time of $5,000.00 and disbursements of $286.78.

CONCLUSION

[152] The Harringtons are entitled to compensation arising from the Wellsite Entry Order of $8,220.00 and annual rent commencing May 29, 2017 of $4,100.00. The first year's annual rent shall be reduced by $715 to $3,385.00 to avoid double compensation between May 29, 2017 and August 24, 2017. As the Harringtons received partial payment of $4,100.00 in accordance with the Wellsite Entry Order, the amount owing as of May 29, 2017 of $11,605.00 shall be offset by the $4,100.00 paid leaving $7,505.00 owing. Subsequent rental payments due on May 29 of each year should be in the amount of $4,100.00.

[153] No compensation is payable arising from the Pipeline Right of Entry Order.

[154] The Harringtons are entitled to compensation for loss arising from the rights of entry in 2016 and 2017 in the amount of $10,260.00.

[155] The Harringtons are entitled to costs in the amount of $5,286.78.

ORDER

[156] The Surface Rights Board orders Procyon Energy Corp. to forthwith pay to Ben and Wendy Harrington the sum of $23,051.78 inclusive of compensation respecting the Wellsite Entry Order, annual rent payable as of May 29, 2017, compensation for loss in 2016 and 2017 arising from the rights of entry, and costs, reduced by the partial payment already made. Post judgement interest shall be payable on this amount in accordance with the *Court Order Interest Act*.

[157] Procyon shall pay annual rent for its continued entry to and use of the Lands under the Wellsite Entry Order in the amount of $4,100.00 on May 29, 2018 and annually on May 29 thereafter.

DATED: March 23, 2018

For the Board

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Cheryl Vickers, Chair