

**Mediation and Arbitration Board (the Board)
114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3**

Date: July 23, 2007

**FILE No. 1589
Board Order No. 422M**

BEFORE THE MEDIATOR:

**IN THE MATTER OF THE PETROLEUM
AND NATURAL GAS ACT, R.S.B.C. 1996,
c. 361
(THE ACT)**

**NE ¼ of Section 31 Township 79 Range 16,
W6M, Peace River District, except Plans
H903 and PGP38729
(THE LANDS)**

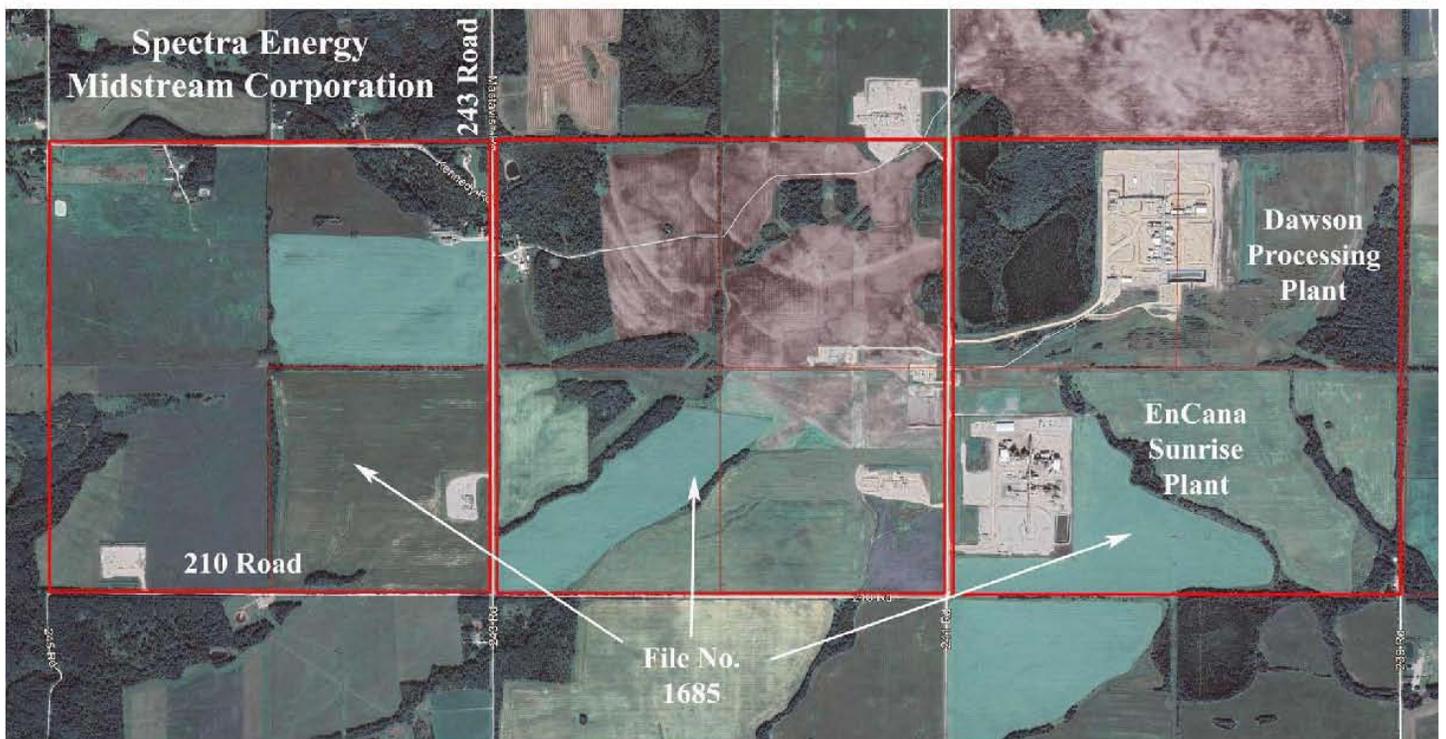
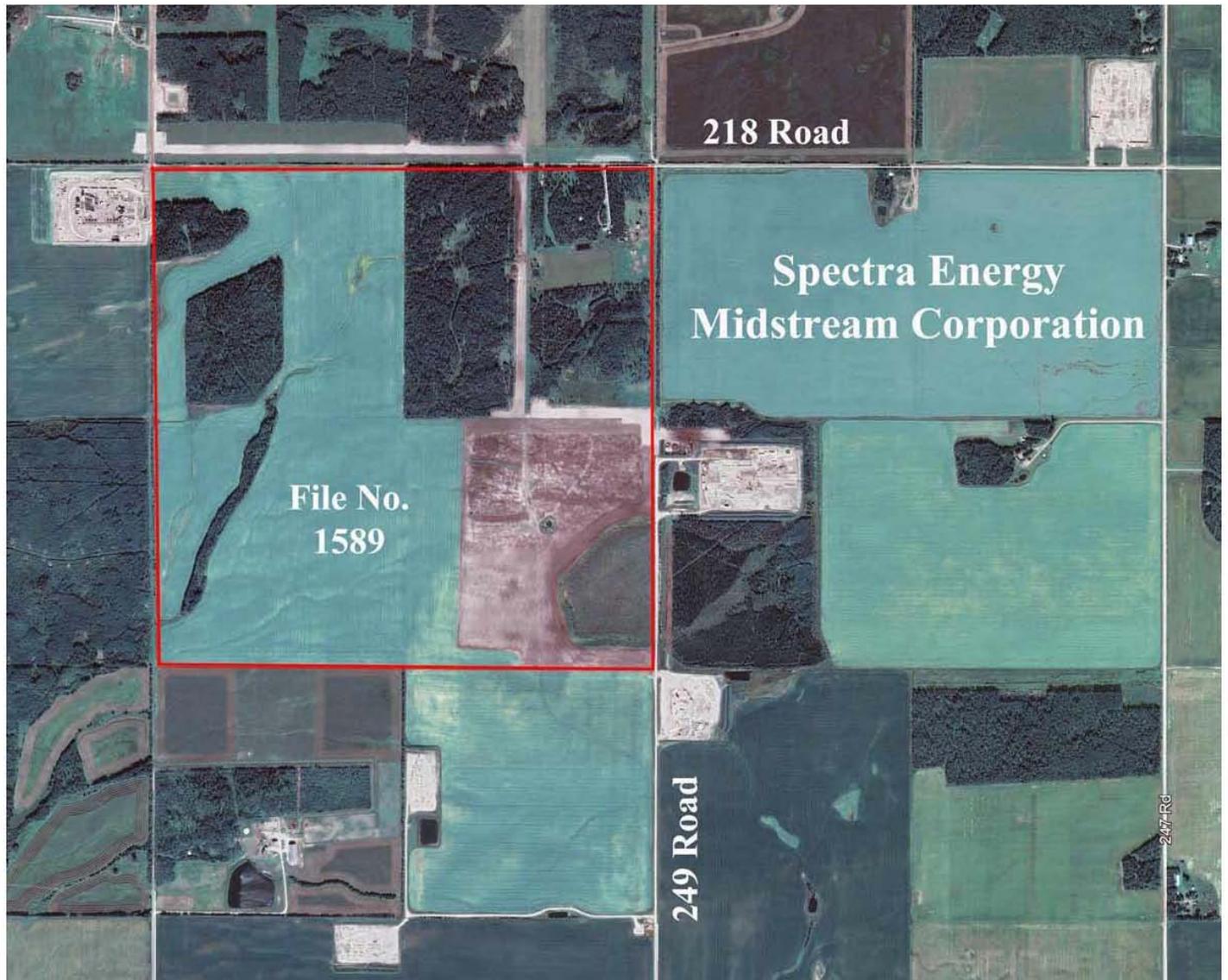
BETWEEN:

**SPECTRA ENERGY MIDSTREAM
CORPORATION
(APPLICANT)**

AND:

**KENNETH JAMES VAUSE &
LORETTA VAUSE
(RESPONDENTS)**

MEDIATION ORDER



Applicant: Spectra Energy Midstream Corporation
Respondents: Kenneth James Vause and Loretta Vause
Counsel for the Respondents: Darryl Carter Q.C.
Site Visit: July 8, 2007
Mediation Meeting: July 9, 2007 at the Board offices at Fort St. John, B.C.
Decision: July 23, 2007
Mediator: Darrel Woods

Board Order

Background

Under 16(1)(a) of the Act the Applicant is seeking an order to enter the lands for the purpose of environmental assessment, archaeological assessment and construction and operation of a pipeline.

A pre-hearing conference was held on June 20, 2007 by telephone conference. Board Order 420 PHC resulted from a submission made by Darryl Carter at the pre-hearing conference. A survey of the lands has taken place.

Site Visit

A site visit took place the evening of July 8, 2007. Those who attended were the same as those who attended the mediation except that Shirley Olsen, Board administrator, attended the site visit but not the mediation and Darryl Carter and Cameron Matte did not attend the site visit.

The Mediation

Those attending the mediation hearing on July 9, 2007 were:

Darrel Woods	Board Mediator
Kenneth James Vause and Loretta Vause	Respondents
Darryl Carter Q.C.	Counsel for the Respondents
Jim Eros	Spectra, Manager, Lands Midstream,
Cameron Matte	Spectra, Commercial Manager
Jim Eros	Spectra, Senior Project Manager
Brian Dunn, Kelsey McLeod and Sacha Plotnikow	Roy Northern Land Service Ltd.

The mediator gave a general introduction to the mediation process.

Darryl Carter has raised two preliminary issues, initially at the pre-hearing conference. He was asked to provide written submissions which he did by email to the Board office

dated June 22, 2007. Spectra responded by fax letter to the Board office dated July 5, 2007. The issues are related to some degree.

The first issue is whether the Board should proceed with mediation, and possibly make an order for entry, before the Oil and Gas Commission (the OGC) has considered the application. The second issue is whether the subject application relates to a flow line or a pipeline. Darryl Carter submits that the Board cannot properly consider the question of whether it is dealing with a flow line or a pipeline [a pipeline that is not a flow line] until the OGC has approved an application. In his submission he states that the reason for this is that the Board cannot consider the issue until it knows "...what sort of line if any, has been approved by the OGC."

Flow line or Pipeline

A flow line is defined in section 1 of the *Pipeline Act* as follows:

" 'flow line' means a pipeline serving to interconnect wellheads with separators, treaters, dehydrators, field storage tanks or field storage batteries;..."

Section 16(4) of the *Pipeline Act* reads as follows:

Part 3 of the Petroleum and Natural Gas Act, in so far as it is not inconsistent with this Act applies to flow lines and necessary works and undertakings connected with them.

It is Part 3 of the Petroleum and Natural Gas Act which provides for the process of the Board.

There was considerable discussion as to whether the application in this matter relates to a flow line or not. In their written submission Spectra stated that:

"Our proposed operation is clearly a flow line pursuant to the definition presented in the Pipeline Act, since it is a pipeline interconnecting wellheads with a dehydrator, separators and an amine treatment system. This line is being constructed to move raw gas from the field to a treatment plant which includes these facilities."

Spectra demonstrated on a series of plans why they conclude that the proposed line met this criteria. Although Darryl Carter questioned Spectra closely, in my opinion he did not demonstrate that there was any real question as to the characterization of the proposal as a flow line. Accordingly I find that for purposes of this application that the proposal relates to a flow line.

Board Mediation prior to OGC consideration

In his written submission Darryl Carter stated he was relying on Order No. 331M and Order No. 367M with the attached submission "*Reasons why the Mediator should not proceed at this time*". Darryl Carter was counsel for the Respondent at the hearing which resulted in Order No. 367M.

In Order No. 331M the application was “...*for access and to construct, drill and operate a well site*”. Following two mediation sessions the outstanding issue for the Respondent (landowner) was “...*one of locational and operational concerns in regard to impacts on his organic bison operation.*” The mediator stated that “*These are matters that must be addressed by the Land Reserve Commission and the Oil and Gas Commission of British Columbia.*”

The mediator concluded that upon approval of these bodies, and failing agreement by the parties, that she would be willing to hold a “...*final Mediation Hearing to discuss the terms and conditions for a Right-of-Entry Order which will be promptly approved...*”

In Order No. 367M the application was also for “...*access and to construct, drill and operate well sites ...*”. This application concerned coal bed methane. The mediator stated that this was the first time that the Board had considered coal bed methane. The position of the Respondent (landowner) was “...*that the operational issues, particularly the disposal of produced water [was] too great an unknown; and that the operational and location issues associated with the three wells should be known prior to a Right-of-Entry being being issued.*”

The Applicant’s position, in part, was that “...*obtaining a Right-of-Entry would in no way prejudice the Respondent during the OGC well authorization review and approval process.*”

The mediator agreed “...*with Mr. Carter that with respect to **these** Coal Bed Methane Applications, the Well authorizations should issue first.*” The mediator concluded that once the well authorization was obtained from the OGC, and if an agreement had not been signed either party could re-convene the mediation to discuss the terms and condition of a Right-of-Entry Order.

Despite the reference to *the particular* coal bed methane applications in Order 367M, it appears to be accepted by the mediators who made both orders that the OGC would be prepared to consider the circumstances and provide authorizations without a prior Board order for entry. However, I note that in paragraph 8 of Darryl Carter’s submissions for Order 367M that he states that the OGC “...*has decided a company must apply to the Mediation and Arbitration Board first.*” This suggests to me that this was the accepted policy of the OGC at the time.

There was no evidence at the present mediation to explain this apparent discrepancy between the policy and the confidence on the part of the mediators in the above cases that the OGC would deal with issues arising out of an application in the absence of a right to entry.

For purposes of this mediation I am treating the degree to which the OGC will consider the details of an application in the absence of an agreement between the parties or a Board order for entry as being an uncertainty.

Order for Entry

The question remains as to whether the Board has the statutory authority to consider and issue an order for entry prior to the OGC considering an application. In my opinion the answer to this is yes. This is consistent with the process set out in Part 3 of the Act. I refer to Board Orders 402 MA and 403A as to the Board process and matters the Board may consider with respect to an application.

An application is part of a process to enable an applicant to seek access to exploit its subsurface rights.

Should there be an order for entry with respect to this particular application? The Applicant explained why it felt that the southern routing which would require entry on the Respondents' land was most appropriate. The Respondents asked about alternatives and these were discussed.

Although the Respondents raised at least one specific objection to the proposed routing on their property, they believe that there are better alternative routes such that their property would be avoided altogether. Darryl Carter stated that the Respondents did not want to discuss the issues that would arise if there were to be a pipeline on their property, including routing options within their property as their position is that there are better alternative routes. As a result there was no opportunity to consider what might be appropriate terms of entry, if any, or why an order for entry should not be made within the parameters of this application.

Description of lands to which application relates

Darryl Carter raised the issue that correspondence from the Board referred to the NE 1/4 parcel of land but not the NW 1/4 parcel. Spectra stated that they understood that there was no specific objection to the NW1/4. The Respondents did not acknowledge this was the case. I also referred to only one parcel on the facing page of my Order 420PHC. I did this as a form of abbreviation. The application itself refers to both 1/4 sections. I agree with Darryl Carter that it would be best for correspondence and records to refer to all parcels to which the application relates. I am not aware of any prejudice to the Respondents in this instance.

Security

At the conclusion of the mediation hearing both the Respondents and the Applicants indicated that they were not concerned as to the issue of security.

Costs

Darryl Carter stated that he wanted to seek an order for costs. Both parties agreed that this issue would be adjourned. An application for costs may be brought under Rule 25 of the Rules.

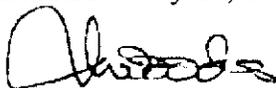
Decision:

The Mediation and Arbitration Board makes the following Order:

1. Under section 18(2)(c) of the *Petroleum and Natural Gas Act*, further mediation is refused.
2. Under section 19(1) of the *Petroleum and Natural Gas Act*, the Applicant is granted the right to enter onto the lands for the purposes of an environmental assessment, an archaeological assessment and construction and operation of a pipeline as sought in the application.
3. Under section 19 (2)(a) of the *Petroleum and Natural Gas Act*, the Applicant must deposit with the Board or the Government of British Columbia, security in the amount of \$0.00 for the purpose of ensuring the Respondents will be paid any amount ordered subsequently to be paid to them.
4. Under section 19 (2)(b) of the *Petroleum and Natural Gas Act*, the Applicant must pay to the Respondents, as partial payment of the amount subsequently ordered by this Board to be paid to the Respondents, the amount of \$0.00.
5. Pursuant to Section 19(2)(c) of the *Petroleum and Natural Gas Act*, the Applicant must serve a copy of this order on the Respondents prior to entry onto the land.
6. The Applicant shall provide the Respondents with reasonable notice before entering onto the lands.
7. Under section 20 of the *Petroleum and Natural Gas Act*, this matter shall proceed to arbitration unless both parties report in writing that they consent to the terms of this order within 30 days of the date of this order.

MEDIATION AND ARBITRATION BOARD
UNDER THE PETROLEUM AND NATURAL GAS ACT

DATED: July 23, 2007



Darrel Woods, Board Member

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 of Section 31 Township 79 Range 16, W6M, Peace
River District, except Plans H903 and PGP38729
(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION.
("Spectra")

("APPLICANT(S)")

AND:

KENNETH JAMES VAUSE AND
LORETTA VAUSE.
(The "Vauses")

("RESPONDENT(S)")

ARBITRATION ORDER

BOARD ORDER

I. INTRODUCTION

Spectra seeks entry, occupation and use to the Lands under Section 16(1) of the *Petroleum and Natural Gas Act* (the "Act"). Spectra and Mr. and Mrs. Vause failed to reach an agreement, and Spectra applied to the Mediation Arbitration Board (the "Board").

II. BACKGROUND

The Board appointed Mr. Darrel Woods to mediate the dispute.

A pre-hearing conference was held on June 20, 2007. There was a site visit on July 8 and a mediation session on July 9, attended by their parties or their representatives.

The mediation order, issued on July 23, 2007 (the "Mediation Order"), briefly sets out the factual background and reasons for the order. The Mediation Order deals, in some detail, with two preliminary objections made by the Vauses concerning the appropriateness of Board mediation prior to the disposition of the application by the Oil and Gas Commission (the "OGC"). They are of the view that the OGC must approve the application first before a Right of Entry order is granted by the Board. Moreover, they continue to question whether the application is in respect of a "flow line" or a pipeline, the Board's jurisdiction being limited to the former. The Mediator did not accept the objections and proceeded to conduct the mediation.

The Mediator made a number of orders, including the following:

1. Refusing further mediation (section 18(2)(c)).
2. Granting Spectra a right of entry for the purpose of an environmental assessment, an archeological assessment and construction and operation of a "pipeline" as sought in the application (section 19(1)).
-
- 5.. Requiring Spectra to serve a copy of the mediation order prior entry.
6. Requiring Spectra to give reasonable notice before entering onto the Lands.

7. Finally, unless the parties agreed in writing within 30 days, ordering the application to proceed to arbitration.”

The Mediation Order did not require any security deposit and partial payment to the landowner (Section 19(2)).

The application proceeded to arbitration and the Chair of the Board appointed me as the arbitrator to hear the application.

On September 13, 2007 the Board convened a telephone conference to deal with pre-hearing issues, including hearing dates, submissions from the parties setting out the issues in the arbitration, and timelines for exchange of submissions, reliance documents, and witness lists.

Counsel for the Vauses indicated that the issues raised earlier in the course of the mediation would also be part of their case at the arbitration. I understand that Spectra is prepared to fully address, and provide evidence on, those issues in the course of the arbitration.

III. SUBMISSIONS AND ARGUMENTS

At the September 13 pre-hearing conference, counsel for the Vauses brought up two matters, costs up to and including the mediation, and the effect of the mediator’s order. The Board convened a second pre-hearing conference on September 19 to address those issues.

In his reasons for the Mediation Order, the Mediator stated that “both parties agreed this issue would be adjourned” and that an “application for costs may be brought under Rule 25...” Counsel for the Vauses was of the view that the Mediator had agreed to decide on costs up to and including the mediation. From their perspective, the Mediator was better suited to deal with those costs. Spectra did not agree. Its position was that the costs were more appropriately addressed as part of the arbitration. Following brief correspondence between the parties and the Board, the Chair assigned the matter of costs to me to be addressed in the arbitration.

The second issue was the effect of the Mediator's Order.

Spectra was concerned about the delay in accessing to the Lands, both in terms of the delay in getting to arbitration and the continuing refusal of the Vauses to provide access in accordance with the order so the project could continue. Its position was that the Mediator's Order provided an effective Right of Entry Order. The order was made by a quasi-judicial body and must be respected. Counsel for Spectra pointed to an earlier Board decision, ***Terra Energy Corp. v. Meeks***, Board Order No. 409AR, May 16, 2007, for the proposition that the Mediator's Order is effective and capable of enforcement as of the date it is issued. In his view the factual circumstances in that case were similar to those at hand.

The Vauses took issue with the earlier Board decision which, in their view, was wrongly decided. They also, if I understood them correctly, suggested that the scheme of the legislation was inconsistent with mediators' orders being enforceable. In their view, there is a distinction between mediators and the Board. The mediators' orders are not orders of the Board. They denied being in breach of the Mediator's Order. Mr. Vause stated Spectra could enter as soon as it pays costs. They argued that it is not for the arbitrator or the Board to interpret or determine the effects of the Mediator's Order. They did not point to any specific provisions in the Act in support of their positions.

III. ISSUE

The issue before me is whether the Mediation Order is an effective and enforceable Right of Entry Order with respect to the Lands.

IV. RELEVANT STATUTORY PROVISIONS

The relevant provisions of the **Act** are the following:

9 (1) A person may not enter, occupy or use land, other than Crown land, to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir unless

(a) the person makes, with each owner of the land, a surface lease in the form and content prescribed authorizing the entry, occupation or use,

- (b) the board authorizes the entry, occupation or use, or
- (c) as a result of a hearing under section 20, the board makes an order specifying terms of entry, occupation and use, including payment of rent and compensation.

18 (1) The chair, or a member the chair designates, must summarily hear representation by or on behalf of the applicant and persons likely to be directly affected, and must act as mediator for the purpose of resolving the complaint specified in the application.

(2) If, after the first mediation hearing, the application is not withdrawn and the complaint or issue specified in the application is not resolved, the mediator may

- (a) dismiss the application,
- (b) set one or more mediation hearings, or
- (c) if the mediator believes that the complaint or issue cannot be summarily resolved by mediation, make an order refusing further mediation hearings.

(3) If an application is made under section 16 (1), and if the mediator believes, as a result of a mediation hearing, that the applicant should be permitted to enter, occupy or use the land, the mediator may make an order under section 19.

(4) If an applicant alleges in an application made under section 16 (1) that money is due to the applicant, the mediator may, as a result of a mediation hearing, order that the amount the mediator determines be paid to the applicant by the person or persons, and in the proportions the mediator may specify.

(5) An order of the mediator under subsection (4) is not final unless every person directly affected by the order approves of it or the board confirms the order.

19 (1) A mediator may make an order permitting, subject to the terms the mediator may specify in the order, an applicant under section 16 to enter, occupy or use the land for a purpose stated in that section.

(2) Before making an order, a mediator must

- (a) require the applicant to deposit with the board security in the amount, form and manner that the mediator considers necessary for the purpose of ensuring that the owners of the land will be paid any amount ordered subsequently to be paid to them,
- (b) require the applicant to pay to the owners, as partial payment of the amount subsequently ordered by the board to be paid to them, an amount of money not less than 1/2 the amount of security required to be deposited, and
- (c) require the applicant to serve a copy of the order on each owner of the land, and direct the manner of service.

(3) Despite subsection (2), the board, on application at any time, may require the applicant to pay to the owners under subsection (2) (b) additional amounts the board considers proper.

(4) In determining an amount of money to be paid, the board is not bound by an order of the mediator under section 18 (4) or by a requirement of the mediator under subsection (2)

20 (1) Unless the application is withdrawn or the applicant and the person who will likely be directly affected by an order approve the order of the mediator, the board must hear representation by or on behalf of the applicant and persons likely to be directly affected by an order, and must arbitrate for the purpose of resolving the complaint specified in the application.

(2) Unless the applicant and the other persons otherwise agree, the board must review an order of the mediator made under section 19, and may confirm or vary the order, subject to the terms it considers proper.

(3) Unless the applicant and the other persons otherwise agree, the board,

- (a) if a mediator has made an order under section 18 (4), must review the order, confirm it or vary it in the manner and subject to the terms the board considers proper,
- (b) if a mediator has not made an order under section 18 (4), must determine the amount of money to be paid to a person, as rent for occupation or use, or for damage caused, up to the date stated in a certificate of restoration, for the entry, occupation or use, and
- (c) may determine the disposition of the amount remaining of the deposit required under section 19 (2) as between the applicant and the owner.

25 (1) If an order is made by the board, the board must provide notice of the order to the applicant and to any other persons directly affected by that order.

(2) If the board makes an order on an application under section 16 (1) (a), the applicant must not enter, occupy or use the land until the owner of the land has received a certified copy of the order.

(3) If the board makes an order authorizing or terminating entry, occupancy or use of land, the applicant for the order must file a certified copy of the order with the registrar of the appropriate land title district, who, on payment of the appropriate fees, must endorse his or her records accordingly.

(4) An order made by the board is effective on the date it is issued by the board unless the order specifies otherwise.

(5) If the board is of the opinion that because there are so many parties to an application or for any other reason it is impracticable to give notice of its final order to all or any of the parties individually, the board may give notice of its final order by public advertisement or otherwise as the board directs.

(6) If the board gives notice under subsection (5) of a final order, the notice must inform the parties where copies of the final order may be obtained.

(7) The board must provide for public access to its orders.

26 (1) An order of the mediator or board granting the right to enter, occupy or use land may be enforced in the same manner as a writ of possession issued by a court.

(2) The board may, on its own motion or on application,

(a) rehear an application before making a determination, and

(b) review, rescind, amend or vary a direction or order made by it, the chair or a board member.

V. ANALYSIS AND DECISION

The purposes of Part Three of the *Act* are twofold. The first is to provide entry, occupation and use of private lands for purposes connected with exploration, development and production or storage of oil and natural gas, allowing subsurface rights holders, for example, oil and gas companies, access to those rights, including, for example, oil and gas rights leased from the Crown. The Crown is the dominant tenant, holding the relevant subsurface rights unless granted by the Crown in the original grant. Subsurface rights holders may obtain access to private land through agreement (9(1)(a)), Board authorization (9(1)(b)) or Board order (9(1)(c)) for the purposes of exploration, development and production of oil and natural gas.

The second purpose is to facilitate that access by setting terms and providing compensation to the surface rights holders (see Sections 9 and 21, *Terra Energy v.*

Rhyason Ranch Ltd. MAB Order No. 1565, March 5, 2007). Finally, the Board has the power to award compensation for “damages to the land or suffering to the owner” caused by the entry. Occupation and use (Section 16(1)(b)). In my view, the framework of Part Three not only allows, but requires, the Board to balance the interests of subsurface rights holders and surface rights holders.

If an oil and gas company makes an application to the Board under Section 16(1), as in the case at hand, the first stage in the Board’s process is mediation. The process contemplated under Section 18 is a summary process. It is generally a confidential process where the mediator seeks to facilitate agreement between the parties on some or all of the issues between them. At the end of conclusion of the mediation, the mediator has the discretion to issue certain orders, including making a Right of Entry order. An order under section 18(4) is not final unless agreed to or confirmed by the Board (section 19(4)). If the mediator “believes,” as a result of the mediation, that right of entry should be granted of the he may make an order under section 19 (see *Arc v. Piper* MAB Order No. 402MA, 2006).

Under section 19, the mediator has fairly broad powers to make orders. If the mediator makes a right of entry order, he or she has the discretion to specify terms. However, the mediator makes an order under section 19(1) for right of entry, in my view, he or she must require the applicant to pay a security deposit, pay an amount to the landowner, and serve the order on the landowner. Section 19(4) provides specifically that the Board is not bound by a mediator’s order under section 18(4).

If the parties fail to reach an agreement in mediation, the legislation provides for arbitration. In fact, unless the application is withdrawn or the parties approve of the mediator’s order, the Board is required to arbitrate the dispute (Section 20(1)). Again, unless the parties agree, if the mediator has made an order under Section 19, the Board is required to review the mediator’s order and “may confirm or vary the order, subject to terms it considers proper” (Section 20(2)), including the disposition of any amount remaining of the deposit required under Section 19(2) as between the oil and gas company and the land owner. In short, I do not accept the position advanced by the Vauses that I am without power, as they put it, to interpret or change the Mediator’s Order. In fact, the legislation expressly provides that I “review” the Mediator’s Order and have power to vary it.

Section 26(1) of the **Act** specifically states that a Right of Entry “order of the mediator ... may be enforced in the same manner as a writ of possession issued by a court.” Moreover, Section 25(4) provides that “an order made by the board is effective on the date it is issued by the board unless the order specifies otherwise.” It follows that I do not accept the distinction between a mediator and the Board.

I have considered the parties' submissions carefully, and I see no reason to depart from the Board's decision in the *Terra v. Meeks* case, *above*:

.... I am of the view that a mediation order is effective and capable of enforcement on the date it is issued. However, while section 18(4) expressly requires Board review and confirmation before being “final” (see also sections 19(4) and 20(3)), I do not agree that a mediation order under section 19 is final. I rely upon the express wording of section 20(1) and (2). In other words, unless the parties agree the “board must review an order of the mediator made under section 19, and may confirm or vary the order, subject to the terms it considers proper.”

In other words, a mediator's order is effective and enforceable the date it is issued. If the parties do not agree with a mediator's order, it is subject to review and, therefore, not final. If, on the other hand, they agree, it is a final effective and enforceable order.

In this case the Mediator made a Right of Entry Order under section 19(1). The terms of the Order are relatively clear, providing for entry for the purpose of an environmental assessment, an archeological assessment and construction and operation of a “pipeline” as sought in the application. There was no issue that these assessments were not related to the purposes of exploration, development and production of “petroleum or natural gas” (Section 9(1)). While the Order speaks “pipeline,” the Mediator in this case considered the provisions of the *Pipeline Act*, RSBC 1996, c. 364, and the *Petroleum and Natural Gas Act* and dismissed the Vauses' preliminary objections. He found that the “for the purposes of this application that the proposal relates to a flow line.” Reading the Mediation Order fairly, therefore, there is in my view, no ambiguity on that point.

From the brief reasons for the Right of Entry Order, it appears that Spectra explained the basis for its proposal and discussed alternatives. It also appears that the Vauses' position was that there were better alternatives “such that their property would be

avoided altogether.” Apparently, they “did not want to discuss the issues that would arise if there were to be a pipeline on their property, including routing options within their property ...” (Mediation Order, p. 5). Accordingly, there was no opportunity to consider terms of entry or why a Right of Entry Order should not be granted. There is nothing before me to suggest that the Mediator’s decision to grant the Right of Entry Order did not arise out of the mediation.

There is no argument that the Mediator did not allow the parties full opportunity to make submissions, including with respect to right of entry. I am, therefore, concerned if the landowners are denying Spectra entry in accordance with the Mediation Order. While counsel for the Vauses denied that they were, Mr. Vause clearly stated that Spectra could enter once they paid for his costs, which I understand to be for his legal costs and his time up to and including the mediation. He also accused Spectra of reading the Mediation Order selectively. With respect, I do not read the Mediation Order to require payment of costs. Nowhere in the Mediation Order is there a pre-condition that those costs are to be paid prior to entry. Quite the contrary, it states that “both parties agreed this issue would be adjourned” and that an “application for costs may be brought under Rule 25...” The Vauses’ position was that the Mediator had agreed to decide on costs up to and including the mediation. There is no support for that view in the Order. The position is also, with respect, inconsistent with the position that Spectra somehow is – selectively reading – or misrepresenting the content of the Order.

In the pre-hearing conference, the parties did not raise or address the requirements under Section 19(2) of the Act for the payment of a security deposit with the Board or part payment to the land owner in relation to the issue of effectiveness or enforcement of the Mediation Order. The explanation for that may be as the parties indicated to the Mediator, “that they were not concerned as to the issue of security” (Mediation Order, p. 5).

In my view, the Mediation Order is effective and enforceable. Enforcement, however, as suggested by the Vauses, is a matter for the courts, not the Board. As noted in Section 26(1), an order of a mediator or the board for right of entry, occupation and use may be enforced in the same manner as a “writ of possession” of the court. Rule 42(3) of the **BC Supreme Court Rules** provide that an order for the recovery or delivery of

the possession of land may be enforced by a writ of possession in Form 47. A writ of possession directs the sheriff to enter the lands and give possession to it to the person entitled to it under the order. It also allows the sheriff to seize and sell goods and chattels to realize the costs, fees and expenses of execution. The registrar of the Supreme Court may issue a writ of possession upon the filing of satisfactory proof of service of the order and that it has not been complied with (Rule 42(12)). In the case at hand, Spectra did not indicate that it was seeking enforcement through the courts at this time.

In short, the Mediation Order is effective and enforceable.

DATED: October 1, 2007, Vancouver, British Columbia



Ib Skov Petersen
Vice Chair

Mediation and Arbitration Board
310, 9900 100 Avenue
Fort St. John, BC V1J 5S7

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 of Section 31 Township 79 Range 16, W6M,
Peace River District, except Plans H903 and PGP38729
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(“Spectra”)

(“APPLICANT(S)”)

AND:

KENNETH JAMES VAUSE AND
LORETTA VAUSE.
(The “Vauses”)

(“RESPONDENT(S)”)

ARBITRATION ORDER

BOARD ORDER

I. INTRODUCTION

Spectra Energy Midstream Corporation is a Nova Scotia company, operating among others, in the Province of British Columbia.

Spectra intends to construct a pipeline running underground approximately 15 kilometers east from its compressor site at 13-4-80-16 W6M to the Pienza Sunrise well site 1-18-80-17 W6M. The 6" pipeline will run 1.5 meters underground and transport raw sour gas to Spectra's West Doe Gas Plant, located at 02-25-80-15W6, about 15 kilometers north of the compressor site, in the Peace River area of British Columbia. The Plant, which has separators, dehydration facilities, compressors, an amine treatment system, and storage tanks is near completion, and is expected to be in service within the next month. The pipeline will connect three other well sites, at the Pienza compressor site, located at 15-34-79-17 W6M, with the Plant. The pipeline will not connect directly with any of the four well heads but with producer owned pipelines extending from the well heads.

For the purpose of the pipeline, Spectra requires a 15 meter right of way across the land of 17 landowners, including Mr. and Mrs. Vause, the owners of the Lands. All landowners, except the Vauses, entered into right of entry agreements with Spectra. Spectra initially intended to cross the Alaska Highway on the Lands, cutting southeast through the Vauses' field, rather than following an unconstructed road allowance at the edge of the Lands. The Vauses objected to the proposed routing.

Spectra filed an application under Section 16(1) of the ***Petroleum and Natural Gas Act*** (the "***Act***") seeking entry, occupation and use to the Lands. The Board appointed a mediator to mediate the dispute. Following unsuccessful mediation, the mediator issued an order on July 23, 2007 dismissing two objections made by the Vauses, including that the Board lacked jurisdiction to deal with the pipeline because it did not meet the definition of a "flow line" under the ***Pipeline Act***, RSBC 1996, c. 364. The mediator also granted Spectra right of entry for the purpose of an environmental assessment, an archeological assessment, and construction and operation of a pipeline.

Before the scheduled hearings dates, October 29 and 30, 2007 in Fort St. John, British Columbia, the parties reached an agreement on a different routing of the pipeline.

II. ISSUES

The issues before me are the following:

1. whether the proposed pipeline, which does not connect directly with the well heads, is a “flow line” and, therefore, within the jurisdiction of the MAB?
2. if question #1 is answered in the affirmative, and the right of entry order is upheld, what is the appropriate compensation for the right of entry?
3. whether the Vauses are entitled to legal costs and compensation for their time and expenses in connection with their dealings with Spectra?

At the hearing, the parties informed me that they had agreed to defer the issues relating to costs pending my decision on the two first issues.

III. FACTS AND EVIDENCE

Mr. Scott McLeod, a senior project manager with Spectra Energy Corporation, and Mr. Brian Dunn, a land agent with Roy Northern Land Services Ltd., testified on behalf of Spectra. Mr. and Mrs. Vause testified on their own behalf. By consent, they testified together.

a. The Project

Spectra is a subsidiary of Spectra Energy Corporation and part of a larger business venture. In general terms, Spectra’s business is gathering, processing, and transporting natural gas and constructing, acquiring, owning, and operating facilities for those purposes. It does not own mineral rights or produce natural gas. It is in the pipeline or infrastructure business. Some of the pipelines in British Columbia fall under the **Pipeline Act** and others fall under the **National Energy Board Act**, RSC 1985, c N-7.

Spectra intends to construct a pipeline running underground approximately 15 kilometers east from its compressor site at 13-4-80-16 W6M to the Pienza Sunrise well site 1-18-80-17 W6M. The 6” pipeline will run 1.5 meters underground and transport raw sour gas to Spectra’s West Doe Gas Plant, located at 02-25-80-15W6, about 15 kilometers north of the compressor site, in the Peace River area of British Columbia.

The pipeline will connect four well sites that are currently “shut in,” meaning that they are not connected to anything. Pienza Sunrise (1-18-80-17 W6M), Terra Sunrise (7-9-80-17 W6M), Terra Sunrise (9-4-80-17 W6M) and Pienza Sunrise (3-3-80-17 W6M). The well sites have producer owned pipelines that in three cases extend beyond the well sites. In the case of Pienza Sunrise (1-18-80-17 W6M), the producer owned pipeline extends to the boundary of the well site. At that point it will be connected to Spectra’s pipeline. For a distance of several kilometers, the Spectra pipeline will run parallel with a pipeline operated by Terra Energy and, in fact, bypass Terra Sunrise (7-9-80-17 W6M), Terra Sunrise (9-4-80-17 W6M) and Pienza

Sunrise (3-3-80-17 W6M), and connect with them at the Pienza compressor site (15-34-79-17 W6M). The pipeline is not going through the compressor at the Pienza compressor site at this time; later, however, as pressure decreases, it likely will. The pipeline will not connect directly with any of the four well heads but with producer owned pipelines extending from the well heads.

From the Pienza compressor site, the pipeline will transport the gas to Spectra's compressor site and, from there, on to the West Doe Gas Plant. The plant has separators, dehydration facilities, compressors, an amine treatment system and storage tanks. It is near completion, and is expected to be in service within the next month.

Except with respect to the variation of the routing of the pipeline over the Vauses' property as agreed between the parties, I understand that the Oil and Gas Commission ("OGC") has approved the pipeline. An application to the OGC is pending for the variation.

b. The Pipeline and the Vauses' Lands

Spectra held an open house with respect to its proposal and application to the OGC to construct the Plant and the "associated sour gathering system" in early January 2007. Mr. and Mrs. Vause did not attend the public meeting but learned about the pipeline proposal shortly after. They had some contacts with Spectra's representatives from Roy Northern which were less than satisfactory from their standpoint. They complained that they were only provided with preliminary plans. After a brief meeting on April 4, 2007 between a Roy Northern agent and the Vauses, Spectra filed an application with the MAB for right of entry. The parties were not able to resolve their differences through the Board's process.

One of the issues between Spectra and the Vauses was the routing of the pipeline. The Vauses objected to the pipeline taking a jog down through their field as opposed to following the edge of the property. Spectra viewed the original proposal as the most appropriate routing. The original proposal for crossing the Lands was determined, among other factors, by regulation. BC highways regulations mandate that a "flow line" must cross a highway at a 90 degree angle, and sour gas regulations require a 100 meter setback from residential buildings.

In late September there were direct contacts between Mr. and Mrs. Vause and Spectra. As the result of these contacts, Spectra agreed to revise the routing of the pipeline along the lines proposed by the Vauses.

Under the revised proposal, the pipeline will follow the property line approximately 200 meters to the north, cross the Alaska Highway, and then

generally follow the Highway southeast for about 500 meters, meeting up with the unconstructed road allowance. The routing is approximately 240 m longer and follows the edge of the Vauses' property. It involves a landowner to the north whose property was not originally affected by the pipeline. It will cost Spectra \$65,000 - \$70,000 more, including compensation to the other land owner. Spectra expects that the new routing will be delay the project by approximately one week. Construction can commence within one week of approval by the OGC. Spectra has engaged a contractor, and construction is expected to take two months, depending on the weather, and labour and supply shortages.

c. Compensation

The Vauses have grown fescue, rotated with other crops, for 25 years. They likely intend to continue using the Lands for those purposes for another 5 – 10 years. The Lands are in the Agricultural Land Reserve (ALR). The 15 meter right of way will take up 7.27 acres which has been used for growing fescue, of which 1.03 acres is temporary work space,.

Spectra paid the other landowners in this project \$950/acre for the right of entry, as a one time payment. In Mr. Dunn's experience, no landowners have been paid more than \$950/acre. The amount is an "established" industry standard, and is pre-printed on Spectra's Pipeline Compensation Sheet. Other companies and agents use the same amount for pipelines in British Columbia. Spectra and other companies pay \$475/acre for temporary work space. Mr. Dunn has used the \$950/acre for more than eight years and does not know its origin.

Spectra proposed to pay the \$950/acre for the entire 7.27 acres, including the temporary workspace. In Mr. Vause's view this offer is "ridiculous." He said it is not possible to buy a small amount of acreage with a pipeline in it for that price. He receives \$1,232/acre for a 2.88 acre well site and access road. Mr. Vause wants Spectra to pay \$2,000/acre up front and \$850/acre per year, less than the surface rate because the pipeline is underground. In cross examination, Mr. Vause agreed that the \$2,000 was "negotiable" and "not a big deal." In his view, the pipeline will never be removed and will tie up the land forever and will continue to restrict his use of the land.

Mr. Dunn explained that oil and gas companies do not normally make annual payments for pipelines, because, unlike well sites, there is nothing above ground, and, therefore, no ongoing or continuing loss of use as farm land after the completion of construction.

That does not necessarily mean that there is no ongoing or continuing impact on the landowner. The company may inspect, repair and maintain the pipeline. The landowner cannot build over the right of way. The **Sour**

Pipeline Regulation, BC Reg 359/98, provides for minimum setbacks from the pipeline of at least 100 meters for different classes of buildings, depending on the release rate for the pipeline. There are no similar setback requirements for sweet gas pipelines. The regulation also requires that an emergency planning zone must be maintained for sour gas pipelines, extending 3000 meters from the pipeline in each direction. It is unlikely that the pipeline will be removed.

The Lands are currently used as farm land. Mr. Vause agreed that the land was not listed for sale, but he said he would or could sell privately. While he asserted that he knew the value of the land, he had not consulted a real estate consultant. He also stated that the Lands could be removed from the ALR and that he could build nine houses on each quarter.

Mr. Dunn testified that fescue is grown in a three-year cycle. In the first and second years, the yield is generally higher than the third year, depending on fertilization, weed control, water and farming practices. After three years, the fields are reworked and re-seeded. Spectra pays for 2.5 years, based on the rationale that the first year is a total loss, there is some crop loss in the second year, and the possibility of loss in the third year. In the Vause's case, the affected fields are at the end of the cycle. Mr. Vause appeared to disagree with Mr. Dunn's view of the crop cycle for fescue, but his testimony, and particulars of the claim for crop loss, were largely consistent with Mr. Dunn's evidence. Mr. Vause said that a possible fourth year depended on weather, and said that he expected next year to provide a good crop.

Mr. Dunn estimated that the crop loss on the affected Lands was \$275/acre. He arrived at this number using an estimated crop of 1,800 pds at the price of \$.38/pd, which is a little higher than the average price for fescue for the period 2001 to 2005 according to statistics from the Alberta Ministry of Agriculture. Other affected landowners growing fescue were compensated on the same basis.

Mr. Vause explained that fescue peaks every 4-5 years. He said the current price is \$.45/pd and expected it to increase to \$.55/pd in the new year. He also said that he had not sold any fescue for the last 5 years. He could not rule out a change to a different crop, such as canola or barley, depending on the prices. The Vause's claim for anticipated crop loss per acre is as follows:

2008	fescue	800pds@	\$.55 =	\$440
2009	fescue	700pds@	\$.55 =	\$385
2010	fescue	500pds@	\$.55 =	\$275
2011	canola	45bus @	\$8.75 =	\$393.75
2012	fescue	800pds@	\$.55 =	\$440
2013	fescue	700pds@	\$.55 =	\$385

Mr. Dunn testified that Spectra proposed to pay \$300/acre for re-seeding, compensating for fertilizer, and the landowner's time. Other landowners were paid the same amount per acre. The Vauses claimed \$350/acre.

Spectra proposed \$200/acre on account of disturbance, or inconvenience and cost to the landowner from the construction. In this project, 12 landowners were not paid for disturbance.

The Vauses' position is that 4 quarters of land is affected and that Spectra, therefore, should pay \$50,000 on account of nuisance or loss of value, based on \$12,500 per quarter of land. As far as nuisance was concerned, the Vauses said that they had put up with "garbage" since their initial dealings with Spectra.

IV. ANALYSIS AND DECISION

a. Jurisdiction and Statutory Interpretation

Section 16 of the **Pipeline Act** provides that a company may take land or an interest in land for the purposes of building, construction, laying or operation of a pipeline, either by agreement or as provided in Part 4 of that Act. It goes on to say that Part 7 of the **Railway Act** applies to "pipelines," and Part 3 of the **PNG Act** applies to "flow lines." "Pipeline" is broadly defined to include "all gathering and flow lines used in oil and gas fields to transmit oil and gas." A "flow line" is defined as:

"flow line" means a pipeline serving to interconnect wellheads with separators, treaters, dehydrators, field storage tanks or field storage batteries;

In general terms, the legislation distinguishes between "flow lines", connecting well heads with treatment, that are within the jurisdiction of the Board, and the pipelines that move the product downstream to market (**Talisman Energy Inc. v. Fay**, ECB No. 09/04/249, 2004, para. 37). Only if the pipeline in question is a "flow line," as the mediator concluded, does the MAB have jurisdiction to deal with Spectra's application for a right of entry. If the pipeline is not a "flow line", the **Railway Act** provides for expropriation, and Spectra must proceed under that legislation.

On this issue, the material facts are not in dispute. The Spectra pipeline will connect four well sites that are currently "shut in". These sites have producer owned pipelines that in three cases extend well beyond the well site. Spectra pipeline will run parallel with a producer owned pipeline for several kilometers and, in fact, bypass three wells sites, and connect at the Pienza compressor site. In the future, as pressure in the line decreases, the pipeline will likely be connected with the compressor at the Pienza compressor site. In one case, the producer owned pipeline extends to the

boundary of the well site. From the Pienza compressor site, Spectra's pipeline will transport the natural gas to Spectra's compressor site and, from there, to the West Doe Gas Plant which has dehydration facilities, separators, an anime treatment system, and storage tanks.

There is no dispute that the subject matter of the application is a pipeline, "a continuous conduit between 2 geographical locations through which oil, gas or solids is transported under pressure" (*Pipeline Act*, Section 1). That definition is broad and inclusive. The definition of "flow line", on the other hand, carves out a narrower and more limited type of pipeline, consistent with the two different processes set out in section 16 of the *Pipeline Act* – proceeding by way of expropriation or the less onerous right of way route through the MAB.

The real issue is whether the fact that Spectra's pipeline does not connect with wellheads directly, but connects with producer owned pipelines, means that is not a "flow line". In my view, Spectra's pipeline clearly "serves" to "interconnect" wellheads with a treatment facility. To "interconnect" means to "connect with each other" (*Oxford Canadian Dictionary*, Toronto: Oxford University Press, 1998), and that is precisely what the pipeline here is doing; it is joining wellheads with each other and with treatment facilities. In this case, the treatment facility includes dehydration, anime treatment system, separators, and storage tanks. The narrow focus on the change of ownership of the physical pipeline, or the lack of direct connection, would lead to the absurd result that the "shut in" producer owned pipelines are not "flow lines" because they, while connected to the wellheads, are not connected to treatment. By logical extension, the focus on ownership would also prevent different producers from sharing flow lines.

The use of the phrase "serving to interconnect" negates, rather than supports, the need for direct connection. The pipeline need only serve to connect, not connect directly. There is no requirement in the statutory language that wellheads must be joined "directly" with the treatment facilities. If connecting directly had been the legislative intent, it would have been simple to say so.

The Vauses note that Spectra characterized the pipeline as a "gathering line" in public notices, in testimony, and elsewhere, or used that term interchangeably with "flow line." They point to corporate web publications suggesting that the thrust of Spectra's business is as a "common carrier." In my view, Spectra's characterization of the pipeline is immaterial to the application before me; it is the words of the legislation itself that governs.

In my view, the statutory language is clear. The pipeline is a "flow line".

The subject matter of the application is a “flow line” and the Board has the jurisdiction to deal with it. I uphold the mediator’s order for right of entry, with the necessary changes to reflect the changed routing of the “flow line” as set out in the maps attached as Appendix “A”.

b. Compensation

Under Section 21 of the **Act**, the MAB has broad remedial powers to award compensation to surface rights holders.

The Vauses argue that they are entitled to compensation on two general bases: first, for the “taking of the right” (*Dome Petroleum Ltd. v. Juell* (1982), 28 LCR 82 (BCSC), p. 87; *Murphy Oil Company Ltd. v. Dau et al.* (1969), 77 WWR 339, p. 341 [reversed on other grounds [1970] SCJ No. 42]), second, for actual damages or harm to the landowner caused by the right of entry (*Fletcher Challenge Energy Canada Inc. v. Sulz*, 2001 CarswellSask 76 (Sask.CA), para. 73). They emphasize that compensation must take into account “not only the value of the lands ... but such factors as adverse effect, general disturbance, nuisance and inconvenience...” (Holmes J, *Nova, an Alberta Corporation v. Bain et al.*, (1984), 31 LCR 47 (Alta.CA), at p. 53), appeal dismissed (1985), 33 LCR 91 (Alta.CA), at p. 93).

The Vauses argue that they are entitled to annual compensation: *Houston Oils Limited v. Berry et al.*, MAB Order No. 91A, 1977. In that decision, a majority of the panel, fixed annual “nominal” compensation at \$10 for “having [the] gasline remain under the surface of the ... lands and contemplates that the owners’ options ... are limited by the ... line and of the lease.”

Spectra does not agree that the right of way amounts to a “taking of rights” and submits there is no basis for annual compensation as the Vauses can continue to enjoy their land in the same manner they have for the past 25 years. The only real impact, Spectra argues, is the construction. Spectra relies on the Board’s decision in *Talisman Energy Inc. v. Beresheim*, MAB Order No. 336A, 2001. In that case, the landowner argued that an underground pipeline would restrict the future use of the land, and any encumbrance on title might impact on the marketability of the land. The panel did not find those positions supported by evidence and declined to make an award for annual payments.

A 6” pipeline running 1.5 meters underground, with no above ground facilities, is unlike a well site. There is no ongoing occupation and use of the surface of the Lands when construction is completed. Once the sour gas pipeline has been put underground, the Vauses can grow fescue, or other crops, as they have for many years, and as they intend to continue doing. While the pipeline will likely remain underground indefinitely, once it is no longer in use as a pipeline, it is simply a piece of metal in the ground.

However, the Vauses, or a subsequent owner, cannot build on top of the right of way, or within the setbacks created by it (***Sour Pipe Regulation***). Thus, in my view, the pipeline right of way represents a continuing impact on their enjoyment of the Lands and, in that sense; I accept that the right of way is a “taking of rights” (***Dome***). The Vauses lose the right to deal with a part of their property encompassed by the right of way and setbacks in the manner they see fit.

As to the impact of this taking, the interest taken is less of an impact than, for example, a well site which represents ongoing occupation use of the surface. In my view, there is minimal impact on the current use of the Lands for farming after the completion of the construction. Further, there is no evidence that the pipeline would interfere with any current or contemplated use of the land or would adversely affect marketability of the land. Mr. Vause’s testimony was that the land was not listed for sale, but it could be sold privately. He had not consulted a real estate consultant. He stated that the Lands could be removed from the ALR and that he could build nine houses on each quarter, but there is no evidence of any actual plans with respect to the Lands, beyond those that lie in the realm of speculation and possibility, other than the continued use as farm land.

Although the landowner has had rights taken, it does not follow that the Board should impose periodic or annual payments, even of the nominal kind. There is little precedent for periodic payments. The ***Houston Oils*** case is the only Board decision that I am aware of that has awarded annual payments. In that case, the award was for a “nominal” amount of \$10 per year. The decisions of the MAB show a considerable reluctance to award annual payments (***Talisman Energy; Samson Canada Limited v. Bouffieux et al.***, MAB Order No. 355A, 2002), although that may be as much a reflection of the evidence presented as of principle. In my view, a single upfront payment is capable of compensating the rights taken from, or lost by, the Vauses.

The \$950/acre offered by Spectra has been the industry practice for a number of years. I appreciate the concern noted by the Vauses that the oil and gas companies, not surprisingly, have been reluctant to establish a precedent for departing from that rate (***Samson Canada***). As noted by the Alberta Court of Appeal in ***Nova v. Bain et al.***, (p. 93), “if the board ... finds a pattern established it not only should apply the results of that pattern, it should not depart from it without good reason for doing so.” While, in this case, I question how much the \$950/acre was subject to “real” negotiation, given the fact that it was pre-printed on Spectra’s Pipeline Compensation Sheet, the amount was nevertheless offered, and accepted, by the other landowners in this project.

That is not to say that parties should not be able to challenge “industry standards” –or patterns – before the Board when there are good reasons for doing so. The Board’s power to award compensation, set out in Section 21, provides the Board the necessary discretion to consider a broad range of factors: the compulsory aspect of the entry, occupation or use, the value of the land and the owner’s loss of a right or profit with respect to the land, temporary and permanent damage from the entry, occupation or use, compensation for severance, compensation for nuisance and disturbance from the entry, occupation or use, money previously paid to an owner for entry, occupation or use, and “other factors the board considers applicable.”

The Vauses pointed out that the figure of \$950/acre has been the standard since the early 1980s (*Nova v. Bain*). There can be no doubt that it has been used for a considerable number of years although, on the basis of the submissions and the law, exactly what the amount historically, or over time, has been payment for is somewhat unclear. Mr. Dunn testified to having used the \$950/acre for eight years and that he did not know its origin. It may well be appropriate to revisit this standard.

The Vauses request a \$2,000/acre initial payment (and \$850/acre, thereafter, in the context of annual payments). I have already indicated that I do not think annual payments are appropriate in this case. Mr. Vause stated that the \$2,000 was “negotiable” and “not a big deal.” The evidentiary basis for this amount was unclear and, accordingly, I am reluctant to use this amount as an appropriate payment for the right of way.

The \$950/acre offered here is payment for the right of way only. In addition, compensation will be paid for crop loss, re-seeding and nuisance/disturbance. Except that Spectra is offering \$200/acre for nuisance/disturbance, it is quite similar to the compensation provided in *Nova v. Bain*. In the 2002 *Samson* case, the parties agreed at the arbitration to an amount of \$1,000 for “right of entry on a 15 m wide flow line assessment, this amount to include all compensation for crop loss, re-seeding, nuisance and disturbance.” Regardless of the minor differences, I am concerned that this standard has been in place for many years. In the absence of an appropriate measure suggested by the parties, I am of the view that I may take notice of the fact that the cost of living has increased over the years. Between 1985 and 2006, the Consumer Price Index (the CPI) increased from 60.6 to 109.1 (2002 = 100), or almost 50% (Statistics Canada). The CPI indicates changes in consumer prices experienced by Canadians and provides some measure of changes to the purchasing power of the Canadian Dollar over time. In the circumstances, I am reluctant to accept that the \$950/acre is an appropriate amount for the right of way. In my view, it is appropriate and

reasonable to consider changes in the value of money and I set the rate at \$1,425/acre for the right of way

As far as crop loss is concerned, Spectra emphasizes that the Vauses have not sold any fescue for the last 5 years, and that the prices in the last 5 years have varied between \$.25 and \$.44. These numbers came from the Alberta Ministry of Agriculture. The Vauses' claim for crop loss for 6 years, presuming that they will grow nothing on the land for that length of time, is based on crop prices that are little more than speculation. While I appreciate their evidence that crop prices are expected to increase in the near future, there was no independent evidence to support the estimated increase. Mr. Vause testified that the lowest yield in the last 5 years was 275pds/acre and that the yield in 2006 was 600pds/acre. He could not recall the yield for 2005. In the circumstances, I find the offer of \$275/acre, reflecting a price of \$.38, for 2.5 years is fair and reasonable.

With respect to re-seeding, there is not much difference between the amounts offered and claimed, \$300 and \$350. I find \$350/acre is reasonable.

The Vauses seek \$50,000 for loss of land value based on the value of the four quarters of land they say are affected by the right of entry order (\$12,500 per quarter). I reject that claim. My review of the maps and plans indicates that the new pipeline route only crosses two quarters. In any event, whether the route crosses two or four quarters, there was no real evidence of the market value of the property affected or of any impact on market value. The Vauses' evidence on this point amounted to little more than bald assertions. They did not provide an appraisal of the property. They asserted that they knew the value. With respect, in my view, an assertion unsupported by market evidence is insufficient (*Rhyason Ranch*, p. 28). There was also no evidence of any actual plans for the property inconsistent with the current use. The value of the land means the value attributable to the present day use of the land, "not some hypothetical future value as the site of a shopping center or housing development" (*Samson Canada*, p. 3). I find no evidentiary or legal basis to support this claim.

The Vauses also claim \$12,000 for nuisance. Mr. Vause justified that claim with reference to the cost, time and expenses incurred in dealing with Spectra's application. Spectra says the claim is more in the nature of a claim for costs, not compensation, a matter that has been deferred. There is little evidence before me to challenge the amount offered by Spectra, namely \$200/acre for nuisance and disturbance.

THEREFORE THE BOARD MAKES THE FOLLOWING ORDERS:

1. Upon payment by the Applicant to the Respondents of the following amounts, calculated on the basis of 7.27 acres:
 - a. Right of way (acres@\$1,425/acre): \$10,359.75
 - b. Crop loss (\$275/acre for 2.5 years): \$4,998.13
 - c. Re-seeding (\$350/acre): \$2,544.50
 - d. Nuisance/disturbance (\$200/acre): \$1,454.00

the Applicant shall have entry to, occupation and use of the Lands for the purposes of construction and operation of a pipeline.

2. The mediator's order for entry, occupation and use of the Lands is confirmed, except as varied to reflect the new routing of the pipeline as agreed between the parties.

DATED: December 11, 2007, Vancouver, British Columbia



Ib Skov Petersen
Vice Chair

Mediation and Arbitration Board
#310 9900 – 100 Ave
Fort St. John, BC V1J 5S7

**File No. 1589
Board Order
No. 1589-2**

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 of Section 31 Township 79 Range 16, W6M,
Peace River District, except Plans H903 and PGP38729
(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION.
(“Spectra”)

(“APPLICANT(S)”)

AND:

KENNETH JAMES VAUSE AND
LORETTA VAUSE
(the “Vauses”)

(“RESPONDENT(S)”)

ARBITRATION ORDER

Appearances:

Mr. Rick Williams, counsel for Spectra Energy Midstream Corporation
Mr. Darryl Carter, counsel for Kenneth James Vause and Loretta Vause

ORDER

I. INTRODUCTION

This decision deals with the application for costs made by Mr. and Mrs. Vause in connection with Spectra's application under Section 16(1) of the ***Petroleum and Natural Gas Act*** (the "***Act***" or "***PNGA***") seeking entry, occupation and use to the Lands, filed April 4, 2007.

II. BACKGROUND

I do not intend to set out the facts in detail and refer to the facts set out in the Board's decision on the merits (***Spectra Energy Midstream Corporation v. Kenneth James Vause and Loretta Vause***, MAB Order No. 420A, December 11, 2007 ("***Spectra v. Vause***").

Spectra is engaged in the construction of an underground sour gas flowline connecting certain well sites with Spectra's compressor site and gas plant. Spectra required a right of way from the affected landowners, who all, with the exception of the Vauses, entered into right of entry agreements with the company.

Following initial meetings between the parties, Spectra filed an application for right of entry with the Board. The Vauses did not agree with Spectra's proposed routing of the flowline. In particular, they were concerned that the proposed flowline would take a jog down through their field rather than following the property line.

After a pre-hearing conference, the Board scheduled a site visit and a mediation session on July 8 and 9, 2007. At the mediation, the Vauses made two preliminary objections. They were of the view that the Oil and Gas Commission (the "OGC") had to approve Spectra's application prior to mediation. They also asserted that the flowline was a pipeline outside the Board's jurisdiction, because it did not meet the definition of a "flow line" under the ***Pipeline Act***, RSBC 1996, c. 364. The mediator did not agree, dismissed the objections and issued an order on July 23, 2007, granting Spectra a right of entry for the purpose of an environmental assessment, an archaeological assessment and construction and

operation of a "pipeline." The mediator also ordered the matter to proceed to arbitration.

After the mediation, Spectra sought entry to the Lands for the purpose of soil sampling. However, the Vauses took the position that the mediator's order was not enforceable until it had been confirmed in arbitration. In an August 15, 2007 letter, their counsel wrote that the "Order is only a mediator's order.... Therefore there is no order ... authorizing Spectra to enter the land." Later that month, the Vauses' counsel reiterated this position.

In response Spectra applied to the Board for a determination that the mediation order was enforceable. In ***Spectra Energy Midstream Corporation v. Kenneth James Vause and Loretta Vause***, MAB Order No. 422PA, October 1, 2007, I decided that the mediator's order, though not final, was effective and enforceable.

In September, the Vauses proposed an alternate routing of the flowline, which in their view would have "less impact on the property." The Vauses confirmed that in writing on October 4. They also confirmed that the "only outstanding issues will be that of costs and compensation."

On September 21, Spectra offered to settle the matter for \$15,500. Spectra says that the Vauses did not make any counter proposals other than it would have to be in excess of \$50,000. The Vauses do not deny this, but say that Spectra's proposal was based on "land at a 26 year old price," and based on an alternate routing that might not be approved by the OGC. Spectra advised the OGC of the changed routing on October 19.

In the meantime, Spectra filed its "statement of points" with the Board, offering \$13,407.50 plus costs to be determined at a later date. On October 10, the Vauses submitted their "points of defence" suggesting that the appropriate amount was in excess of \$80,000, annual rent of \$6,179.50, and all of their legal and personal costs. In its October 19 reply, Spectra revised the offer to \$15,539.63 based on the revised route, with costs to be determined at a later date. The revised route added some \$65,000 - \$70,000 to the project costs, including payments to another landowner who was not affected by the initial route.

At the arbitration, there were three main issues between the parties. The first was whether the Board had jurisdiction to deal with Spectra's application. That, in turn, depended on the whether the pipeline in question was a "flowline". If the application was within the Board's jurisdiction, the second issue was the amount of compensation the Vauses' were entitled to. The third main issue was the Vauses entitlement to costs, including legal and personal costs. By agreement, the latter issue was deferred pending a decision on the merits.

The Board held a hearing in Fort St. John, British Columbia on October 29 and 30, 2007. I issued a decision on jurisdiction and compensation on December 11, 2007 (*Spectra v. Vause*).

In my view, the pipeline was a “flowline” within the Board’s jurisdiction and I determined the compensation issues under Section 21 of the *PNGA*.

With respect to compensation issues, the parties were far apart. The table below illustrates the differences.

Land: 7.27 acre	Spectra	Vauses
Loss of land value	n/a	\$50,000
Right of way	\$ 950/acre	\$ 2,000/acre \$ 850 (annual)
Crop loss	\$ 275/acre (2.5 years)	\$ 275 - \$440/acre (6 years)
Re-seeding	\$ 300/acre	\$ 350/acre
Nuisance/disturbance	\$ 200/acre	\$12,000
<u>Approximate</u> totals Year 1	\$15,525	\$81,900

Spectra based the payment for the right of way on “industry practice,” which had also been accepted by other landowners in this project. The Vauses challenged the “industry practice” that had been in place since the 1980’s. In my arbitration award, I decided that the “industry practice” failed to take into account the buying power of the dollar and increased that amount by 50% to \$1,425/acre.

The Vauses also argued that they were entitled to annual payments for the duration of the flowline, \$50,000 for the loss of value to the land and \$12,000 on account of nuisance and disturbance. They were not successful on those points.

In the arbitration award, I made the following compensation orders:

- “1. Upon payment by the Applicant to the Respondents of the following amounts, calculated on the basis of 7.27 acres:
 - a. Right of way (acres@\$1,425/acre): \$10,359.75
 - b. Crop loss (\$275/acre for 2.5 years): \$4,998.13
 - c. Re-seeding (\$350/acre): \$2,544.50
 - d. Nuisance/disturbance (\$200/acre): \$1,454.00

the Applicant shall have entry to, occupation and use of the Lands for the purposes of construction and operation of a pipeline.

2. The mediator's order for entry, occupation and use of the Lands is confirmed, except as varied to reflect the new routing of the pipeline as agreed between the parties."

This order did not include the Vauses' substantial claim for legal and personal costs.

Following the arbitration award, Spectra notified the Vauses that it intended to come onto the Lands to commence construction. The Vauses told Spectra that "there will be absolutely no entry allowed on our property as we are applying for a judicial review." They noted that [c]osts and compensation are still outstanding." Only after Spectra had commenced an action in the Supreme Court of BC to enforce the December 11 arbitration award was it permitted onto the Lands.

After the arbitration, the parties attempted to reach an agreement with respect to costs but were unable to do so. Accordingly, an application was made to the board for a determination.

The Vauses claim a total of \$38,330.58 legal costs and disbursements. They also claim \$7,294.92 on account of their personal costs, on the basis of \$100 per hour, and expenses from their first encounter with Spectra's representatives in January 2007.

III. ISSUES

There are two issues:

1. Whether, in the circumstances, the Vauses are entitled to compensation for the legal costs and disbursements, and if so, how much and for what?
2. Whether the landowner is entitled to reimbursement for the time spent and expenses incurred dealing with the subject matter of the application?

IV. ANALYSIS AND DECISION

Section 47 of the **ATA** provides the Board with the discretion to award costs:

47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:

- (a) requiring a party to pay part of the costs of another party or an intervener in connection with the application,

In my view, the Board's costs awards are guided by principles that include the following (**Rhyason Ranch**):

1. Generally, costs must provide partial indemnity to the surface rights holder for reasonable and necessary representational costs, including legal fees and disbursements, in connection with the application;
2. However, those costs must also encourage parties before the MAB to make reasonable offers to settle their disputes, encourage them to narrow the issues in dispute, and discourage improper or unnecessary steps in the litigation.

I turn first to the Vauses' claim for their personal time and expenses. In the past, the MAB made such awards, although – as far as I am aware, and I have not been referred to any authority to the contrary – never in amounts even close to the Vauses' claim of \$7,294.92 plus substantial legal costs. They say that **Rhyason Ranch** was wrongly decided – the adjudicator favoured operators over landowners – and that there is “no good reason” to depart from the Board's interpretation of the word “costs” under Section 27 of the **PNGA**

It is certainly open to the Vauses to show that this decision was wrongly decided or does not apply to the circumstances of the cases at hand. However, they have neither provided any basis in statutory construction nor authorities in support of their argument on this point. While administrative tribunals, such as this Board, are not bound by *stare decisis*, I am of the view that I ought not to depart from previous Board authority without good reason. My jurisdiction is based on the current legislation, Section 47 of the **ATA** and, in my view, the word “costs” means “legal costs” (**BC Vegetable Greenhouse I, LP v. BC Vegetable Marketing Commission**, BC Farm Industry Review Board, May 20, 2005, para. 23). In short, the Vauses claim for personal time and expenses is denied.

I now turn to the Vauses' claim for legal costs and disbursements. The claim is substantial, \$38,330.50, including taxes and disbursements of \$1,279.98. Their counsel billed them for 87.4 hours between May 31 and December 13, 2007 at the rate of \$400.00. Counsel rendered his first account, for the period May 31 to July 9 up to and including the mediation, 25.6 hours, in the amount \$11,011.07 on July 10. The second account, covering the balance of the time, 61.8 hours, in the amount of \$27,319.51

The burden to prove that the costs claimed are necessary and reasonable rests with the party claiming the costs, *i.e.* the Vauses. Some of the entries on the

accounts are not particularly informative, indicating communications with various persons, some of whom are known to be involved in this matter. A few hours claimed clearly appears to be related to a process before another administrative body, the Oil and Gas Commission. However, I am left with considerable doubt as to the nature of the charges and whether they are, in fact, “connected with the application” or related to other matters. Mr. Vause’s statement, in a statutory declaration filed with the application for costs, that the “time, expenses and legal costs ... are reasonable and accurate” does little to remedy or alleviate those concerns.

All the same, it is clear that the Vauses did, in fact, incur costs in connection with the Board’s “application.” Of the 25.6 hours on the first account, 12.5 hours are clearly identified as relating to preparation for and attending to the mediation; of the 61.8 hours on the second, about 25 hours are related to conference calls, preparation, review of statements of points, drafting of statements of points (in response), preparation for a two day arbitration, attending to the arbitration, obtaining client instructions and preparing final argument.

Essentially, the Vauses seek full indemnity for their legal costs. They argue that the **PNGA** is expropriation type legislation, and that they are entitled to the legal costs on a client and solicitor basis because of the “forced taking” of their property (**Cochin Pipelines Ltd. V. Rattray** (1980), 22 LCR 198 (Alta. CA); **Robertson et al. v. Calgary Power Ltd.** (1981), 22 LCR 210 (Alta. CA); Eric CE Todd, **The Law of Expropriation and Compensation in Canada** (Carswell, 1992, 2nd ed). **Rhyason Ranch** ignored the **Cochin Pipelines** line of cases, which protects landowners.

Unfortunately, the Vauses do not address Section 47 of the **ATA** in any substantive manner. As noted by Spectra, there is no provision in the **ATA** for “client solicitor costs.” “Client solicitor costs” or “special costs” (in British Columbia) are meant to provide higher indemnity than “ordinary costs” based on the Supreme Court tariff (**Bradshaw Construction Ltd. v. Bank of Nova Scotia** (1991), 54 BCLR (2d) 309, affd (1992), 73 BCLR (2d) 212 (CA)). However, Rule 57 (Costs) of the BC Supreme Court Rules does not apply to the Board’s proceedings (see J.L.A. Sprague, **The Annotated Administrative Tribunals Act**, Toronto, Ont.: Carswell, 2005).

Cochin Pipelines arose out of an appeal of an arbitrator’s award under the **Railway Act**, RSC 1970, C R-2, which provided broadly that he “ascertain compensation in such way as he deems best.” The Alberta Court of Appeal adopted, without any analysis, the rule expressed by the arbitrator that the landowner ought not to be out of pocket, and that costs be awarded on a client solicitor basis. In **Robertson**, the Alberta Court of Appeal applied the principle in the context of an appeal from decisions made by the Surface Rights Board. The court applied the Alberta **Expropriation Procedure Act**, RSA 1970, c 130, which

provided for “the costs of an incidental to the application” and on appeal “such directions as [the court] considers just.” Despite the similarity in the statutory language to the now repealed Section 27 of the **PNGA**, these cases do not appear to have had any impact in the Board’s past decisions. In any event, the statutory language under the **ATA** is different from the legislation considered by the Alberta courts in **Cochin Pipelines**. In my view, these cases are of little assistance here.

In any event, the Vauses’ argument with respect to whether or not the **PNGA** is expropriation type legislation is misdirected. Even under expropriation legislation in BC, landowners are not provided full indemnity. Normally, in proceedings under the **Expropriation Act**, RSBC 1996, c. 125, a landowner is entitled to “costs necessarily incurred” based on a tariff (**Compensation Action Procedure Rule**, BC Reg 100/2005). The landowner may be entitled to “actual reasonable legal costs” if the amount awarded exceeds the amount paid by 115% or some or all of the costs in the court’s discretion even if amount awarded is less.”

It is clear from the language of Section 47 – “requiring a party to pay part of the costs of another party ... in connection with the application” – that the **ATA** contemplates less than full indemnity, whether characterized as client solicitor costs or not. In other words, I have the discretion to award costs as long as the amount awarded is less than 100 per cent of that party’s costs. As noted in **Rhyason Ranch**, landowners may generally expect “partial indemnity for reasonable and necessary representational costs” and, in my view, it would be the rare and exceptional case where the Board would award close to actual legal costs. I do not see anything on the facts of this case that would entitle the Vauses to that. I am of the view that they are entitled to reasonable and necessary legal costs for part of the MAB process.

I turn first to the costs up to and including the mediation stage. I note that the Vauses take exception to the Board’s emphasis on mediation as set out in **Rhyason Ranch**. In their view that emphasis favours operators over landowners. With respect, I disagree. Given the emphasis in the **Act**, and by the Board, on mediation and voluntary dispute resolution, a surface rights holder may well expect a greater proportion of reasonable and necessary costs associated with the mediation stage in the MAB process. In my opinion, this will encourage both parties to adopt reasonable positions early on in the process and discourage unnecessary litigation.

In my view, the 12.5 hours appear to be attributable to the board’s mediation process and, thus, connected with the application. As well, 2 hours for client instructions and investigation of the case is reasonable. I am of the view that an hourly rate of \$400 is certainly at the high end, considering the factors discussed

in *Rhyason Ranch*, p. 11. In the circumstances, I am prepared to award \$3,500.00 up to and including the mediation plus disbursements up to this point in the amount claimed of \$156.67

I add, at this point, that I do not accept Spectra's assertion that the accounts were never intended to be paid. The statement by counsel for the Vauses that he has not been paid by his clients and does not "expect payment until they ... received funds from the company" does not, in my view, show that he has rendered an account that was not intended to be paid. On their face, the accounts are represented to be "payable on receipt." In the case relied upon by Spectra, *AEC Oil & Gas v. Nobbs*, MAB Order No. 325A (Costs), May 21, 2002, there was "no evidence that the account was paid or intended to be paid." Counsel in that case also did not attend the mediation or arbitration. That cannot be said here. I would be reluctant to accept the inference that counsel, as an officer of the court, would knowingly put forward accounts designed to deceive the Board.

I now turn to the legal costs incurred after the mediation up to and including the arbitration hearing. At this stage, the Board will more closely scrutinize the conduct of the parties, including such factors as the nature of the costs incurred, the reasons for incurring them, the contributions of counsel or advisors, fairness in the Board's process, and whether parties have taken a "realistic approach" in dealing with the issues before the Board. The degree of success in outcome may provide some measure or indication of whether parties adopted a "realistic approach."

The Vauses complain that Spectra did not negotiate in good faith before filing an application with the Board, based on incomplete information. They say they were willing to negotiate on the basis of the "re-routed" proposal. They point out that Spectra's settlement proposal of \$15,500 "all in" was less than the Board's compensation award. Spectra, on the other hand, says that the Vauses should not be awarded any costs because they took unrealistic positions, rejected reasonable offers and refused to negotiate compensation. Even after Spectra changed the routing of the flowline at a substantial cost, the Vauses demanded \$80,000, annual rent of more than \$6,000, and 100% of their legal and personal costs.

The jurisdictional and compensation issues were not, in and of themselves, in my opinion, unreasonable to raise on behalf of the landowner. While I decided the jurisdictional argument in favour of Spectra, and that the pipeline was a flowline within the Board's jurisdiction, the issue was properly raised.

Contrary to the Vauses' assertion, the *Rhyason Ranch* case does not prevent landowners from challenging "industry standards." Overall, the Vauses went into

the arbitration with a position that was not "realistic," particularly given Spectra's agreement to change the routing of the flowline. The Vauses also argued that they were entitled to annual payments for the duration of the flowline, \$50,000 for the loss of value to the land and \$12,000 on account of nuisance and disturbance. They were not successful on those claims. More importantly from a cost standpoint, there was very little basis in the evidence in support of those claims. While I appreciate the Vauses criticism of the ongoing reliance on "industry standard" – Spectra's proposal for the right of entry was based on "land at a 26 year old price" – they successfully challenged the "industry practice" that was in place since the 1980's and I increased that amount by 50% to \$1,425/acre.

While Spectra correctly notes that the arbitrated award is less than 20% of what the Vauses had demanded, my decision increased the payment to the Vauses from the \$15,525.00 offered to \$19,356.38, or by approximately 20%. This order did not include the Vauses' substantial claim for legal and personal costs.

Of particular importance in that regard, is the role of the so-called "industry standard" for a right of way for pipelines. Spectra based the payment for the right of way on "industry practice," which had also been accepted by other landowners in this project. As noted in *Rhyason Ranch*, p. 14, there is considerable merit in "industry standards." They provide a measure of predictability, uniformity and, perhaps, fairness between landowners. All the same they must be subject to challenge lest they become inflexible, "one-size fits all", boilerplate. As well, they must also reflect changing circumstances.

Regardless of the particulars of the account, Counsel clearly would have been engaged in preparing and attending to the pre-arbitration conferences, reviewing Spectra's statement of points, preparation of the Vauses' statement of points (in response), preparation for the hearing, attending to the arbitration, 25 hours claimed and directly attributable to the Board's process are not an unreasonable amount of time, in all of the circumstances, for a two day arbitration.

Based on the general principles set out above that the landowner is entitled to a measure of indemnity for reasonable and necessary legal costs, while encouraging a mediated or negotiated resolution, I am inclined to conclude that the Vauses would, in the absence of factors indicating otherwise as discussed below, be entitled to costs for the arbitration stage and I would have awarded \$5,000.

As mentioned earlier, the Board's power to award costs is discretionary. In this case, I was concerned about the Vauses' conduct in relation to the Board's orders and its process. Spectra says that costs are inappropriate because of the "blatant contempt" of the Board's processes displayed by the Vauses.

The mediator's order on July 23, 2007, granted Spectra the right of entry for the purpose of an environmental assessment, an archaeological assessment and construction and operation of a "pipeline." After the mediation, Spectra sought entry to the Lands for the purpose of soil sampling. The Vauses took the position that the mediator's order was not enforceable until it had been confirmed in arbitration, despite an earlier decision of this Board on this point (*Terra Energy Corp. v. Meeks*, Board Order No. 409AR, May 16, 2007), necessitating an application to the Board (*Spectra Energy Midstream Corporation v. Kenneth James Vause and Loretta Vause*, MAB Order No. 422PA, October 1, 2007)

While I would not have awarded any costs to the Vauses in connection with this conduct, I am more concerned with the Vauses ongoing refusal to comply with the Board's orders, particularly after Spectra had agreed to change the routing at substantial costs. Following the arbitration award, Spectra notified the Vauses that it intended to come onto the Lands to commence construction. The Vauses told Spectra that "there will be absolutely no entry allowed on our property as we are applying for a judicial review." They noted that [c]osts and compensation are still outstanding." Only after Spectra had commenced an action in the Supreme Court of BC to enforce the December 11 arbitration award was it permitted onto the Lands. An application for judicial review was not commenced

In short, as a result of the Vauses conduct in refusing to comply with the Board's order, I decline to exercise my discretion to award costs for the portion of the Board's process after the mediation.

VI. DECISION

THEREFORE THE BOARD MAKES THE FOLLOWING ORDERS:

1. Spectra must pay legal costs and disbursements to Mr. James Vause and Loretta Vause in the amount of \$ \$3,656.67. The amount is payable no later than 30 days from the date of this order unless the parties agree otherwise.

MEDIATION AND ARBITRATION BOARD

DATED THIS 23 DAY OF APRIL, 2008



IB S. PETERSEN,
VICE-CHAIR

File No. 1589
Board Order # 1589-4

December 22, 2008

MEDIATION AND ARBITRATION BOARD

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

**AND IN THE MATTER OF
NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District,
except Plans H903 and PGP38729
(The "Lands")**

BETWEEN:

Spectra Energy Midstream Corporation

(APPLICANT)

AND:

Kenneth James Vause and Loretta Vause

(RESPONDENTS)

AMEND ORDER

This Order is made pursuant to section 26(2)(b) of the *Petroleum and Natural Gas Act* to amend the style of cause in all of the Board's Orders in these proceedings to correct the description of the Lands.

By letter dated July 9, 2007 the Board granted the Applicant's request to amend its application to change the legal description of the Lands to which entry was being sought. In subsequent Board orders, however, the Lands were not correctly identified in the style of cause due to clerical error.

The Board amends the title page of Order 422M dated July 23, 2007, Order 422PA dated October 1, 2007, Order 420A dated December 11, 2007, Order 1589-2 dated April 23, 2008, and Order 1589-3 dated October 16, 2008, in each case to delete the legal description set out and to replace the legal description in each Order with the following: **NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729.**

The Board will provide the parties with certified copies of each of the Orders referenced above as amended in accordance with this Order.

Dated December 22, 2008

FOR THE BOARD



Cheryl Vickers, Chair

File No. 1589
Board Order #1589-5

December 2, 2009

MEDIATION AND ARBITRATION 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
SE ¼ of Section 6 Township 80 Range 16, W6M, Peace River District, except
Plans B6096, A938 and PGP45806; NE ¼ of Section 31 Township 79 Range 16,
W6M, Peace River District, except Plans H903 and PGP38729; and
NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District,
except Plans H903, PGP39172 and BCP14003
(PID#014-322-455, #014-606-020 and #014-605-821)
(The "Lands")**

BETWEEN:

Spectra Energy Midstream Corporation

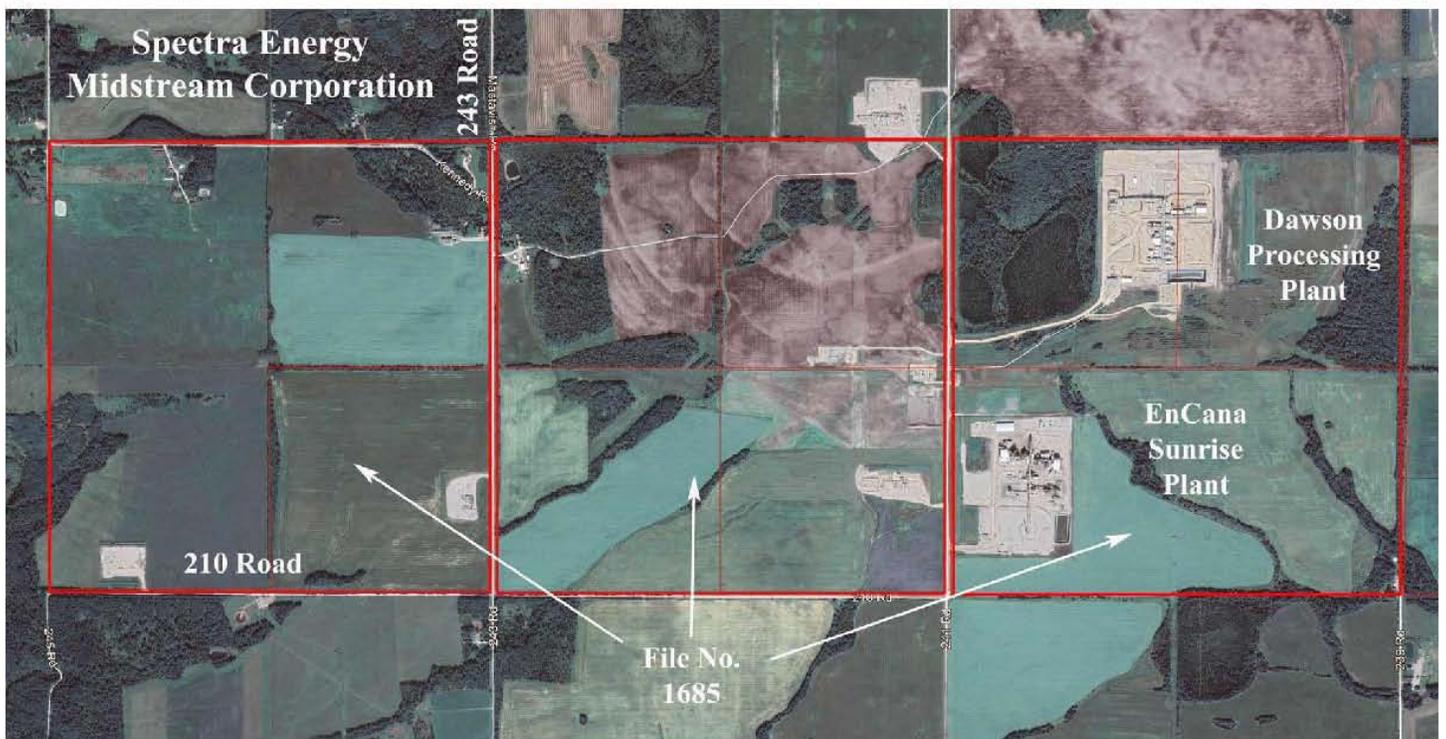
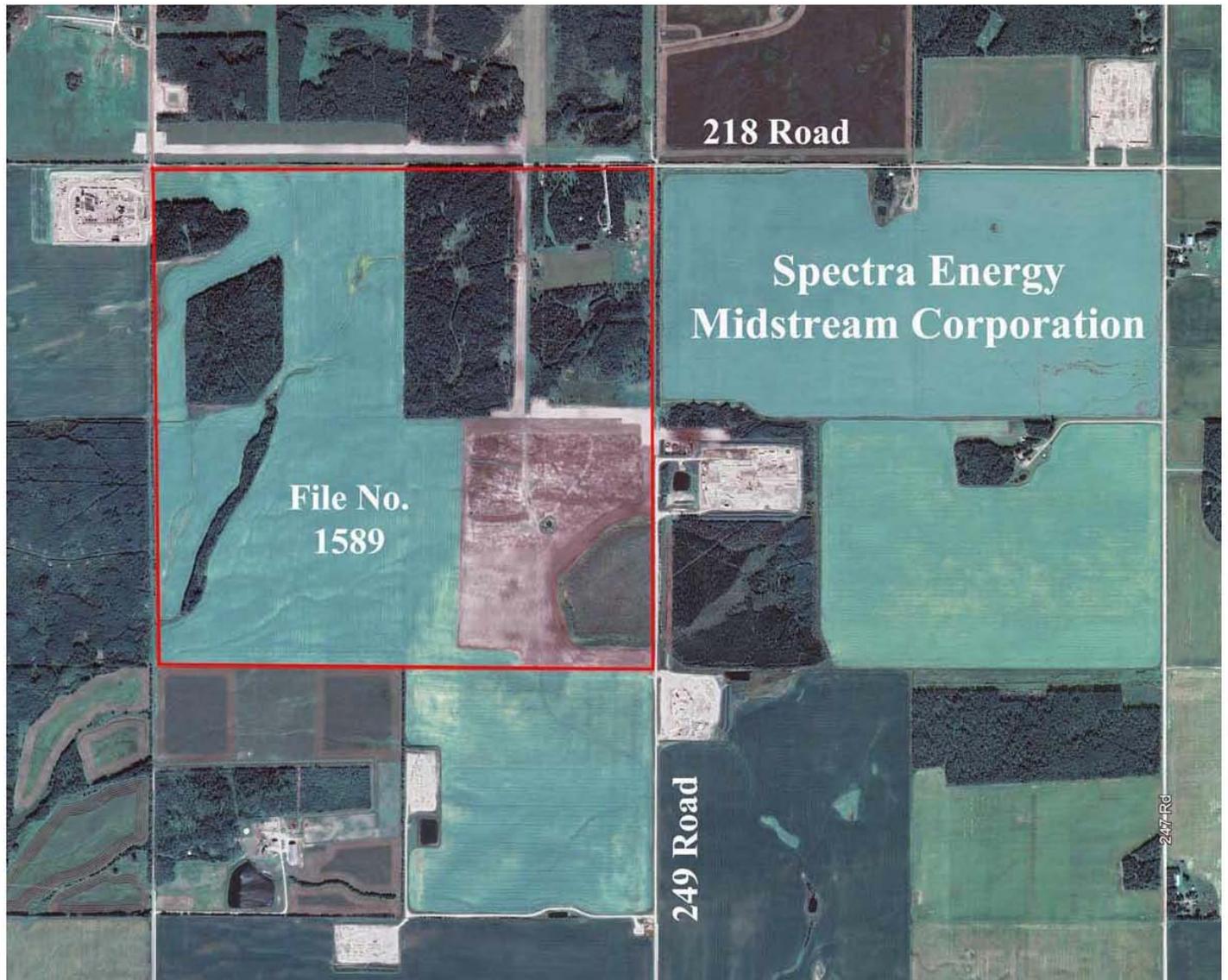
(APPLICANT)

AND:

Kenneth James Vause and Loretta Vause

(RESPONDENTS)

AMEND ORDER



Heard by way of written submissions closing November 27, 2009.

Rick Williams and Dionysios Rossi, Barristers and Solicitors, for the Applicant
Kenneth Vause and Loretta Vause, on their own behalf

INTRODUCTION AND ISSUE

[1] This is an application by Spectra Energy Midstream Corporation (Spectra) to amend the style of cause in the Board's Orders to include reference to a parcel of land owned by Kenneth and Loretta Vause in the SE ¼ of Section 6, Township 80, Range 16 W6M, upon which Spectra has constructed a flow line. The application is opposed by Mr. and Mrs. Vause on the basis that the legal parcel was not contemplated as being part of the arbitrator's decision respecting compensation for Spectra's entry and occupation of their land and amending the Board's earlier order authorizing the entry and occupation of the their land. The Vauses argue that the Board does not have the jurisdiction to grant the remedy requested on the basis that it is a material change that falls outside the scope of the Board's authority to amend a final order.

[2] The issue is whether the Board has the authority to make the requested amendment, and if so, whether the amendment is appropriate.

HISTORY OF PROCEEDINGS

[3] I will set out in some detail the history of these proceedings.

[4] On May 2, 2007, the Board received an application from Spectra pursuant to section 16(1)(a) of the *Petroleum and Natural Gas Act (PNGA)* seeking the right to enter land owned by the Vauses. The application was received under copy of a letter dated April 4, 2007 sent by registered mail to the Vauses enclosing the application for service upon them. The application identified the Lands as: NE ¼ 31-79-16 W6M except plans H903 and BCP 14003 and NW ¼ 32-79-16 W6M except plans H903, PGP39172 and BCP14003. The application did not include a copy of the Titles. As we now know, the description on the application was correct with respect to the parcel in the NW ¼ of section 32, but not correct with respect to the parcel in the NE ¼ of section 31.

[5] By letter dated May 14, 2007 scheduling a pre-hearing telephone conference to discuss the application, the Board set out the legal description of the Lands as: NE ¼ Sec 31 TP 79 Rg 16 W6M except Plans H903 & PGP 38792, which is the correct reference for the parcel in the NE ¼ of section 31, but which leaves off

reference to the parcel in the NW ¼ of section 32. This error is perpetuated in later Board correspondence.

[6] By letter dated July 9, 2007 the Board's administrator wrote:

Spectra Energy Midstream has requested an amendment to the application dated April 4, 2007 to include access required on NW ¼, Section 32 TP 79 Rg 16 W6M. The Board is granting this amendment for the specific reason that the Vauses have objections only to the access on Section 31 TP 79 Rg 16 W6M.

[7] The Board's record does not include a record of the application to amend or any submissions by either party and, while I question the authority of the Board's administrator to grant such an amendment, in the end, nothing ultimately turns on that decision. Given that the application originally included the NW ¼ of Section 32, Township 79, Range 16 except certain plans, an application to amend was not, at that time, necessary for that quarter section. At that time, the application should have been to amend the incorrect reference to the parcel in the NE ¼ of section 31.

[8] The Board conducted a mediation on July 9, 2007. Although the Lands had been improperly described, it cannot be said that there was any confusion over the land in issue. The route proposed for the pipeline traversed two parcels of land owned by the Vauses in the NW ¼ of section 32 and the NE ¼ of section 31.

[9] During the mediation, the Vauses opposed an entry order being made on two grounds. First, they argued that the proposed pipeline was not a "flow line" and, therefore, the Board did not have jurisdiction. Second, they argued that the Board should not make an entry order in advance of the Oil and Gas Commission (OGC) issuing a permit for the pipeline's construction. The Vauses objected to the route proposed for the pipeline. They suggested there were better alternate routes that would avoid their property altogether.

[10] The mediator found the proposed pipeline was a "flow line" and that the Board had jurisdiction to issue an entry order prior to the OGC considering the application. The mediator issued an order on July 23, 2007 including an order refusing further mediation; granting Spectra the right to enter onto the lands for the purposes of an environmental assessment, an archaeological assessment and construction and operation of a pipeline as sought in the application; and ordering that the matter proceed to arbitration unless both parties reported in writing that they consented to the terms of the order within 30 days (the "Mediator's Order"). The Mediator's Order noted that the Board's correspondence had only referred to one of the quarter sections but that the application referred to both quarter sections and indicated that correspondence

and records should refer to all parcels to which the application related. The style of cause on the Mediator's Order, however, did not include the full legal description of the Lands.

[11] By letter dated August 29, 2007, counsel for the Vauses sought a ruling from the Board on costs of the mediation. By letter dated September 17, 2007, I advised that the matter of costs both with respect to the mediation and otherwise would be assigned to the arbitrator to be resolved in conjunction with the arbitration proceedings.

[12] The Board conducted pre-hearing telephone conferences on September 13 and 19, 2007 to schedule dates for the arbitration and the production of evidence. The Vauses raised the issues of costs and the effect of the Mediator's Order. As I understand it, there was no suggestion that the Mediator's Order was not enforceable due to a mis-description of the Lands, but more fundamentally, that the intent of the legislation was that a mediator's order was not enforceable. The arbitrator indicated the matter of costs had been assigned to him to address in the arbitration. In a decision rendered October 1, 2007, the arbitrator concluded that the Mediator's Order was effective and enforceable (the "Pre-Hearing Order"). The style of cause in the Pre-Hearing Order continued to reflect the incorrect legal description for the Lands. It referenced both quarter sections but used the incorrect legal description for the parcel in the NE ¼ of section 31 set out in original application.

[13] In accordance with pre-hearing directions by the arbitrator, Spectra filed a Statement of Points and Evidence Book on September 24, 2007. The Vauses filed their Points of Defence on October 10, 2007. The Points of Defence indicated that the Vauses had agreed to allow a reroute of the pipeline on their land. Spectra filed its Reply on October 19, 2007 indicating Spectra's agreement to the Vauses' proposed rerouting of the pipeline and attaching copies of the Schedule "A" Individual Ownership Plans (IOPs) showing the revised route. The IOPs show the proposed pipeline right of way on parcels within the NW ¼ of section 31 (not owned by the Vauses), the SW ¼ of section 6 (not owned by the Vauses), the SE ¼ of section 6, the NE ¼ of section 31, and the NW ¼ of section 32 (all owned by the Vauses). By letter dated October 4, 2007, included with Spectra's Reply, the Vauses indicated their agreement to a new revised route and their agreement that the only outstanding issues were costs and compensation.

[14] The arbitration proceeded on October 29 and 30, 2007. Spectra's Statement of Points and Evidence Book and Reply were marked as Exhibits 1 and 2 respectively, and the Vauses' Points of Defence was marked as Exhibit 3. The arbitrator published his decision on December 11, 2007 (the "Arbitrator's Decision"). The arbitrator described the issues before him as follows:

1. whether the proposed pipeline, which does not connect directly with the well heads, is a "flow line" and, therefore, within the jurisdiction of the MAB?
2. if question #1 is answered in the affirmative, and the right of entry order is upheld, what is the appropriate compensation for the right of entry?
3. whether the Vauses are entitled to legal costs and compensation for their time and expenses in connection with their dealings with Spectra?

[15] The parties agreed to defer the costs issue pending a decision on the first two issues.

[16] On the first issue, the arbitrator determined that the proposed pipeline was a "flow line" within the meaning of the *Pipeline Act*, and that the Board had jurisdiction. On the second issue, the arbitrator determined the amount of compensation payable for the right of way, crop loss, re-seeding and nuisance and disturbance. He determined there was no entitlement to annual compensation. He determined the compensation payable on account of each category of loss on a per acre basis and made an order for payment calculated on the basis of 7.27 acres. He further ordered that the "mediator's order for entry, occupation and use of the Lands is confirmed, except as varied to reflect the new routing of the pipeline as agreed between the parties." The style of cause continued to reflect the incorrect legal description for the Lands as set out in the original application and did not make reference to land within the SE ¼ of section 6.

[17] In December, 2007, the Vauses asked the Board to rescind the Arbitrator's Decision under section 26(2) of the *PNGA*. I considered the Board's authority under this provision and, by letter dated December 21, 2007 declined to rescind the Arbitrator's Decision.

[18] The Vauses applied to the Board for costs. The arbitrator rendered his decision awarding costs to the Vauses on April 23, 2008 (the "Costs Decision").

[19] On June 11, 2008, the Vauses sought reconsideration of the Costs Decision and again sought reconsideration of the Arbitrator's Decision. By letter dated July 28, 2008, I declined the request for reconsideration of the Arbitrator's Decision, but agreed to reconsider the Costs Decision with respect to the application for costs in connection with the arbitration proceedings only. By decision dated October 16, 2008 (the "Costs Reconsideration Decision"), I determined that Spectra should pay the Vauses an additional amount for costs.

[20] In December, 2008, counsel for Spectra asked the Board to amend the style of cause in the Arbitrator's Decision to correct the legal description of the Lands

with respect to the NE ¼ of section 31. The Board issued an amend Order on December 22, 2008 but, while correcting the legal description for the parcel in the NE ¼ of section 31, by mistake deleted all reference to the parcel in the NW ¼ of section 32. The Board issued another amending order on January 30, 2009, following another application from counsel for Spectra to correct the style of cause. Order 1589-4amd issued January 30, 2009 amended the description of the Lands set out in the style of cause on the title page of all of the proceeding Board orders to read: NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729 and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District except Plans H903, PGP39172 and BCP14003.

[21] On January 22, 2009, the Vauses filed an application for an extension of time to seek judicial review of all of the Board's decisions. By decision rendered July 6, 2009, the Court granted the extension with respect to the Costs Reconsideration Decision only, but otherwise declined leave to seek judicial review of the other Board decisions. The Vauses did not proceed with an application for judicial review of the Costs Reconsideration Decision.

[22] It was during the process to seek leave for an extension of time to file an application for judicial review that Mr. Vause brought to light that the Board's amending order "still does not have it right". His Affidavit filed in support of the application says, "The pipeline is on 3 quarters of our land. The SE ¼ Section 6 TWP 80 Range 16 W6M, which is on the revised route that Spectra built the pipeline, has never been on any Board Order or correspondence".

[23] On October 14, 2009, Spectra filed this application to further amend the style of cause to include reference to the SE ¼ of Section 6, Township 80, Range 16 W6M except Plans B6906, A938 and PGP45806. The Vauses provided their submission in opposition to the application on November 9, 2009. Spectra provided a response to the Vauses' submission on November 13, 2009. The Board received a further response from the Vauses on November 20, 2009, from Spectra on November 25, 2009 and from the Vauses on November 27, 2009.

ANALYSIS

[24] The essence of the Vauses' submission is that the application is not a mere application to amend an accidental slip or error but seeks to amend the manifest intention of the arbitrator. They argue that it was not the arbitrator's intention to include compensation for entry to the SE ¼ of 6-80-16 and that this parcel of land was not included in the entry order or the order for compensation. They submit that amending the style of cause to include reference to this parcel would substantively change the Arbitrator's Decision, which the Board does not have

jurisdiction to do. They submit that compensation for entry to this parcel was to be the subject of separate proceedings.

[25] Rule 17(3) of the Board's Rules provides:

- 17(3) The Board may amend a final decision to correct
- a) a clerical or typographical error;
 - b) an accidental or inadvertent error, omission or other similar mistake; or
 - c) an arithmetic error.

[26] The Vauses are correct in their submission that, neither this Rule, nor the common law, would permit an amendment to a Board decision that manifestly changes the intent of the decision. The legislative authority for the Board to amend a decision is found in section 26(2) of the *PNGA*.

[27] Section 26(2) of the *PNGA* also gives the Board a discretionary reconsideration or review power that permits a broader power to actually reconsider and potentially change a decision. The Board has interpreted this section to permit such a reconsideration in limited circumstances including where there is a change in circumstances since making the original order, new evidence not available at the time of the original order, a clear error of law, or an issue relating to fairness and the principles of natural justice. I find this application does not engage the Board's reconsideration powers, but may be dealt with within the scope of the Board's powers to amend its decisions as authorized by section 26(2) described and circumscribed in the Rules.

[28] The issue is whether the requested amendment does manifestly change the arbitrator's intention, as submitted by the Vauses, or whether it falls within the scope of Rule 17(3). A closer look at the Arbitrator's Decision is required. Reproduced below are all of the references within the Arbitrator's Decision that include any description or reference to the pipeline route, the land affected by the pipeline, or land with respect to which compensation for entry was in issue.

[29] At page 2, in the Introduction, the arbitrator writes:

For the purpose of the pipeline, Spectra requires a 15 meter right of way across the land of 17 landowners, including Mr. and Mrs. Vause, the owners of the Lands. All landowners, except the Vauses, entered into right of entry agreements with Spectra. Spectra initially intended to cross the Alaska Highway on the Lands, cutting southeast through the Vauses' field, rather than following an unconstructed road allowance at the edge of the Lands. The Vauses objected to the proposed routing.

...

Before the scheduled hearing dates, October 29 and 30, 2007 in Fort St. John, British Columbia, the parties reached an agreement on a different routing of the pipeline.

[30] In the Facts and Evidence section of the decision, under the heading "The Project", at page 4, the arbitrator writes:

Except with respect to the variation of the routing of the pipeline over the Vauses' property as agreed between the parties, I understand that the Oil and Gas Commission ("OGC") has approved the pipeline. An application to the OGC is pending for the variation.

[31] At the same page and onto the next page, under the heading "The Pipeline and the Vauses' Lands", the arbitrator writes:

One of the issues between Spectra and the Vauses was the routing of the pipeline. The Vauses objected to the pipeline taking a jog down through their field as opposed to following the edge of the property. Spectra viewed the original proposal as the most appropriate routing. The original proposal for crossing the Lands was determined, among other factors, by regulation. BC highways regulations mandate that a "flow line" must cross a highway at a 90 degree angle, and sour gas regulations require a 100 meter setback from residential buildings.

In late September there were direct contacts between Mr. and Mrs. Vause and Spectra. As a result of these contacts, Spectra agreed to revise the routing of the pipeline along the lines proposed by the Vauses.

Under the revised proposal, the pipeline will follow the property line approximately 200 meters to the north, cross the Alaska Highway, and then generally follow the Highway southeast for about 500 meters, meeting up with the unconstructed road allowance. The routing is approximately 240 m longer and follows the edge of the Vauses' property. It involves a landowner to the north whose property was not originally affected by the pipeline. It will cost Spectra \$65,000 - \$70,000 more, including compensation to the other landowner.

[32] At page 5, under the heading "Compensation", the arbitrator writes:

The 15 meter right of way will take up 7.27 acres which has been used for growing fescue, of which 1.03 acres is temporary workspace.

...

Spectra proposed to pay the \$950/acre for the entire 7.27 acres, including the temporary workspace.

[33] At page 7, under the same heading, the arbitrator writes:

The Vauses' position is that 4 quarters of land is affected and that Spectra, therefore, should pay \$50,000 on account of nuisance or loss of value, based on \$12,500 per quarter of land.

[34] In the Analysis and Decision section of the decision, under the heading "Jurisdiction and Statutory Interpretation", at page 9, the arbitrator writes:

I uphold the mediator's order for right of entry, with the necessary changes to reflect the changed routing of the "flow line" as set out in the maps attached as Appendix "A".

[35] The published version of the Board's decision appearing on its website does not include an Appendix "A".

[36] In the same section of the decision, under the heading "Compensation", at page 12, the arbitrator writes:

The Vauses seek \$50,000 for loss of land value based on the value of the four quarters of land they say are affected by the right of entry order (\$12,500 per quarter). I reject that claim. My review of the maps and plans indicates that the new pipeline route only crosses two quarters. In any event, whether the route crosses two or four quarters, there was no real evidence of the market value of the property affected or of any impact on market value.

[37] At page 13, the arbitrator makes an Order for compensation "calculated on the basis of 7.27 acres" and confirms the Mediator's Order for entry occupation and use of the Lands "except as varied to reflect the new routing of the pipeline as agreed between the parties."

[38] As indicated earlier, the style of cause on the first page of the Arbitrator's Decision referenced the NE ¼ of section 31 and the NW ¼ of section 32, providing an incorrect description of the parcel in the NE ¼ of section 31, and did not reference the SE ¼ of section 6.

[39] The Vauses refer to the arbitrator's reference at page 12 to "two quarters", (quoted above in paragraph [36]) to argue that the arbitrator did not turn his mind to the SE ¼ of section 6 and that the object of his deliberation was only two quarters of land. A review of all of the arbitrator's references to the land, however, and reading the decision as a whole makes it clear that the object of

the arbitrator's deliberation was the revised route as agreed between the parties encompassing 7.27 acres. The evidence before the arbitrator (Exhibit 2) included the IOPs for the revised route including an IOP for the SE $\frac{1}{4}$ of section 6. The evidence referred to an increase in the amount of land being taken, with the revised route taking 7.27 acres, as compared to the original route, where only 6.92 acres would have been taken. The arbitrator's award is calculated on the basis of 7.27 acres being the total taking inclusive of temporary work space in the revised route. The description of the route change at pages 4-5 of the decision (quoted above at paragraph [31]), when read in conjunction with the IOPs at Exhibit 2, clearly describes the portion of the route crossing the SE $\frac{1}{4}$ of section 6.

[40] The arbitrator's indication that the route "crosses two quarters" is not inconsistent with the IOPs for the revised route. Although the route affects three quarters, it can only be said to "cross" two quarters being the SE $\frac{1}{4}$ of section 6 and the NW $\frac{1}{4}$ of section 32. The revised route takes a very small corner of the NE $\frac{1}{4}$ of section 31 comprising .06 of an acre and .1 of an acre for temporary workspace.

[41] The Vauses' contention that it was their understanding that compensation for the SE $\frac{1}{4}$ of section 6 would be addressed separately is simply not credible. As can be seen from the decision, the Vauses argued that the taking affected four quarters of land, not just two. For them to suggest now that they thought the proceedings only related to two quarters of their land is not believable. Mr. Vause's Affidavit in support of the application for an extension of time to seek judicial review indicating the Board "still does not have it right" and identifying the SE $\frac{1}{4}$ of section 6 as being on "the revised route that Spectra built the pipeline" is inconsistent with their current suggestion that they thought the SE $\frac{1}{4}$ of section 6 would be the subject of separate proceedings. The statement is more consistent with an understanding that the SE $\frac{1}{4}$ of section 6 was part of the revised route described by the arbitrator and included in the arbitration and suggests that amending the description of the Lands to include reference to the SE $\frac{1}{4}$ of section 6 would "make it right". Further, the Arbitrator's Decision does not reflect that the arbitrator was only dealing with the compensation payable for a portion of the revised route. It is clear from his decision that the issue before him was to determine compensation for the whole of the revised route and that he did determine compensation for the whole of the revised route.

[42] The IOPs at Exhibit 2 set out the area included in the permanent right of way and for temporary workspace on each parcel. The combined total of areas on each of the three parcels owned by the Vauses is 7.27 acres inclusive of 1.03 acres of temporary workspace. This is the area upon which the arbitrator based his award.

[43] The Vauses argue that the arbitrator may have calculated the 7.27 acres with reference to a sketch of a proposed route and an IOP for the NW $\frac{1}{4}$ of section 32 found at Tabs 2 and 8 of Exhibit 1, being Spectra's Statement of Points and Evidence book filed on September 24, 2007. The IOP at Tab 8 clearly shows a proposed taking on the NW $\frac{1}{4}$ of section 32 of 3.19 acres. Tab 2 contains a photocopy of a survey plan showing a proposed pipeline across several quarter sections including the NE $\frac{1}{4}$ of section 31 upon which has been sketched by hand another route further to the south. The Vauses submit that the sketched portion of the route comprises 4.08 acres, although this is not evident from the face of the document, which added to the 3.19 acres indicated on the IOP for the NW $\frac{1}{4}$ of section 32, makes the total proposed taking equal 7.27 acres. They suggest this is how the arbitrator arrived at 7.27 acres.

[44] I reject this suggestion for a number of reasons. Tab 8 of Exhibit 1 also includes an IOP for the NE $\frac{1}{4}$ of section 31 showing Spectra's initial proposed taking on that quarter to be 3.71 acres. It is clear from Exhibit 1 and the Arbitrator's Decision that the original proposal encompassed 6.92 acres, comprised of 3.71 acres on the NE $\frac{1}{4}$ of section 31 and 3.19 acres on the SW $\frac{1}{4}$ of section 32. The Vauses filed their Points of Defence on October 10, 2007 (Exhibit 3) indicating that they had agreed to a revised route although the specifics of the route are not set out. Spectra filed its Reply (Exhibit 2) on October 19, 2007 indicating that Spectra had agreed to a revised route proposed by the Vauses and attaching the IOPs for the revised route. These are the IOPs described earlier involving three quarters of the Vauses' land and two quarters of land owned by other persons. The IOPs show the proposed taking on the Vauses' land to comprise 7.27 acres inclusive of 1.03 acres of temporary workspace. Exhibit 2 references the change in the original proposal from 6.92 acres to 7.27 acres in the revised proposal. There was no evidence before the arbitrator that the sketch at Tab 2 of Exhibit 1 had been agreed by the parties and comprised the "revised route". There is no calculation as to how much of the sketched area comprised temporary workspace to equate with the 1.03 acres referred to by the arbitrator. The only evidence before the arbitrator of an agreed revised route is that found in Exhibit 2. The arbitrator's reference, therefore, to the "revised route", and the calculation of 7.27 acres inclusive of 1.03 acres of temporary workspace can only relate to the route shown in Exhibit 2 and not another route. That route clearly includes the SE $\frac{1}{4}$ of section 6 and there can be no doubt that was the route that was the subject of the arbitration for compensation.

[45] Further, if the Vauses did not agree to the route at Exhibit 2 described as the revised route, there is nothing on the face of the record to show that they voiced any objection to the evidence depicting the revised route or to Spectra's characterization of the route as having been proposed by them and agreed to by Spectra. The Vauses were represented by counsel at the arbitration and it is not

conceivable that such an objection would not have been made by counsel if it was warranted.

[46] Even if the Vauses are correct as to how the arbitrator calculated the 7.27 acres, which I do not accept as being plausible on the face of the record, they would not now be entitled to any additional compensation. Even if the arbitrator thought he was compensating for 7.27 acres comprised only of land in the NE $\frac{1}{4}$ of section 31 and the NW $\frac{1}{4}$ of section 32 and not including any land in the SE $\frac{1}{4}$ of section 6, again which I do not accept on the face of the record, he awarded compensation for 7.27 acres, and 7.27 acres is what has been taken in the construction of this pipeline.

[47] The pipeline has long since been constructed on the revised route including the land in the SE $\frac{1}{4}$ of section 6. The Vauses did not object to Spectra's entry onto that parcel on the grounds that it was not included in the entry order. If they thought compensation for the entry on the SE $\frac{1}{4}$ of section 6 had not been included in the Arbitrator's Decision, they could have made an application to the Board for damages arising from the entry onto that quarter, which they have not done.

[48] The Vauses must have understood the arbitrator's order varying the mediator's right of entry order "to reflect the new routing of the pipeline as agreed between the parties" included the right to enter the parcel in the SE $\frac{1}{4}$ of section 6. Further, they must have understood that the 7.27 acres compensated for by the arbitrator was the 7.27 acres comprising the revised route before the arbitrator in Exhibit 2 and including the SE $\frac{1}{4}$ of section 6.

[49] I find it is very clear from the Arbitrator's Decision that the arbitrator turned his mind to the SE $\frac{1}{4}$ of section 6. I find that both the right of entry order and the award for compensation were in respect of the whole of the revised route for the pipeline as agreed between the parties including the takings in the SE $\frac{1}{4}$ of section 6, the NE $\frac{1}{4}$ of section 31 and the NW $\frac{1}{4}$ of section 32. I find that the amendment now requested by Spectra does not materially change the Arbitrator's Decision. It simply amends the style of cause to correctly reflect the description of the Lands in evidence before the arbitrator over which the right of way was required and contemplated by him in rendering his decision confirming the right of entry and awarding compensation for the entry. The amendment falls within the scope of Rule 17(3) as an accidental or inadvertent omission. On a review of the whole of the Arbitrator's Decision, there can be no question that it was the arbitrator's manifest intent that the Lands over which the right of entry was authorized, and for which compensation for entry was awarded, included three parcels of land owned by the Vauses properly described as follows:

SE $\frac{1}{4}$ of Section 6 Township 80 Range 16, W6M, Peace River District,
except Plans B6096, A938 and PGP45806, NE $\frac{1}{4}$ of Section 31 Township

79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729, and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District except Plans H903, PGP39172 and BCP14003

[50] While Spectra should have thought to amend their application to include the additional quarter, and the Board should have taken more care in setting out the description of the Lands, it is not conceivable that the Vauses did not understand that the arbitration was in respect of compensation for the whole of the revised route inclusive of the land in the SE ¼ of section 6. It was clearly the intent of the arbitration and all parties' understanding of the arbitration that, subject to the issue of the Board's jurisdiction, if it was determined the Board had jurisdiction, the arbitrator was to determine compensation for the whole of the revised route. It was clearly the arbitrator's intent to determine compensation for the whole of the revised route including the portions of the route on the SE ¼ of section 6, the NE ¼ of section 31 and the NW ¼ of section 32.

[51] Although the Board made administrative errors in the description of the Lands, I do not accept that at any time there was any confusion by the parties and in particular by Mr. and Mrs. Vause, about which Lands were in issue. Nor do I accept that the administrative errors by the Board contributed to any substantive error, or that without the errors, the result of the arbitration would have been different.

CONCLUSION

[52] I conclude that the Board has the jurisdiction to amend its decision as requested and that the requested amendment is appropriate to correct an accidental or inadvertent omission. I conclude that the requested amendment does not change the manifest intent of the arbitrator.

ORDER

[53] Pursuant to section 26(2) of the *Petroleum and Natural Gas Act* and Rule 17(3) of the Board's Rules, the Board rescinds Orders 1589-4 and 1589-4amd dated December 22, 2008 and January 30, 2009, respectively, and replaces them as follows:

The Board amends the title page of Order 422M dated July 23, 2007, Order 422PA dated October 1, 2007, Order 420A dated December 11, 2007, Order 1589-2 dated April 23, 2008, Order 1589-3 dated October 16, 2008, in each case to delete the legal description set out and to replace the legal description in each Order with the following: SE ¼ of Section 6 Township 80 Range 16, W6M, Peace River District,

**except Plans B6096, A938 and PGP45806; NE ¼ of Section 31
Township 79 Range 16, W6M, Peace River District, except Plans H903
and PGP38729; and NW ¼ of Section 32 Township 79 Range 16 W6M,
Peace River District, except Plans H903, PGP39172 and BCP14003
(PID#014-322-455, #014-606-020 and #014-605-821)**

[54] The Board will provide the parties with certified copies of each of the Orders referenced above as amended in accordance with this Order.

Dated December 2, 2009

FOR THE BOARD



Cheryl Vickers, Chair

File No. 1589
Board Order # 1589-3

October 16, 2008

MEDIATION AND ARBITRATION BOARD

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

**AND IN THE MATTER OF NE ¼ of Section 31 Township 79 Range 16, W6M,
Peace River District, except Plans H903 and PGP38729**

(The "Lands")

BETWEEN:

Spectra Energy Midstream Corporation

(APPLICANT)

AND:

**Kenneth James Vause and
Loretta Vause**

(RESPONDENTS)

BOARD ORDER

Heard by way of written submissions closing September 12, 2008

Rick Williams, Barrister and Solicitor, for Spectra Energy Midstream Corporation
Kenneth James Vause and Loretta Vause, on their own behalf

[1] This is a reconsideration pursuant to section 26 of the *Petroleum and Natural Gas Act* of the Board's decision in Order 1589-2 with respect to costs of the arbitration process. In that decision, the arbitrator declined to exercise his discretion to make an order for the payment of costs to the Respondents, Kenneth and Loretta Vause (the Vauses) in connection with the Board's arbitration process. (The nature of the original application to the Board by Spectra Midstream Energy Corporation (Spectra), the evidence presented to the arbitrator, and the arbitrator's decision with respect to compensation payable by Spectra to the Vauses for right of entry to lands owned by the Vauses to construct a flowline may be found in Order 420-A.)

[2] In determining whether to make an award of costs in relation to the arbitration proceedings, the arbitrator considered a number of factors including the nature of the costs incurred, the reasons for incurring them, the contributions of counsel or advisors, fairness in the Board's process, and whether the parties had taken a "realistic approach" in dealing with the issues before the Board. The arbitrator reviewed the party's positions on the issues and considered their relative success with respect to those issues. He reviewed counsel's account and determined that 25 hours was identifiable as directly attributable to the Board's arbitration process and that 25 hours was not an unreasonable amount of time, in all of the circumstances, to be claimed for a two day arbitration. Having considered these various factors, the arbitrator found that, but for other factors subsequently considered, he would have awarded the Vauses \$5,000 for their costs of the arbitration.

[3] The arbitrator then considered the Vauses' conduct in relation to the Board's orders and process, including what he characterized as "their ongoing refusal to comply with the Board's orders" and in particular, their refusal to allow Spectra onto the land to commence construction necessitating an application by Spectra in the Supreme Court of British Columbia to enforce the Board's order for entry. The arbitrator declined to exercise his discretion to award any costs for the portion of the Board's process after the mediation "as a result of the Vauses conduct in refusing to comply with the Board's order".

[4] In deciding to review the arbitrator's order for costs in connection with the arbitration, I found that in considering the Vause's conduct subsequent to the arbitration proceedings, the arbitrator had considered an irrelevant factor. The parties' conduct after the arbitration proceedings was not associated with the application to the Board and, therefore, not a relevant consideration in the award of costs relating to the Board's application.

[5] The role of the Board on reconsideration is limited. The purpose of the reconsideration and the Board's role in it will depend, to a certain extent, on the reason for agreeing to exercise the discretion to reconsider a decision in the first place. In the circumstances of this case, I agreed to reconsider on the grounds that the arbitrator had made a clear error of law by considering an irrelevant factor. The purpose of the review, therefore, is to correct the error of law. The purpose of the review is not to substitute my discretion for that of the arbitrator, where the arbitrator's discretion was exercised appropriately on consideration of relevant factors.

[6] The Board's authority to award costs is found in section 47 of the *Administrative Tribunals Act* which provides that the Board may require a party to pay part of the costs of another party in connection with the application. The only direction that is clear from this authority is that the power to award costs is discretionary and that it is limited to "part of the costs of another party" (emphasis added). Payment of total costs, as requested by the Vause, therefore, is not an option.

[7] Since the Board's decision in Order 1589-2, the Board has made Rules respecting costs which may provide more guidance and direction going forward. These Rules, however, were not in effect at the time the arbitrator made his award in this case and, consequently, could not play into the exercise of his discretion as they will in future applications.

[8] An award of costs is discretionary. But for his consideration of the Vause's conduct following the arbitration, the arbitrator would have awarded \$5,000 as payment toward the Vause's costs of the arbitration. The arbitrator considered a number of factors, none of which were irrelevant in my view, in concluding that \$5,000 represented an appropriate award in the circumstances of this case.

[9] Spectra argues that other factors went into the arbitrator's decision not to award any costs for the arbitration besides his consideration of the Vause's conduct after the arbitration. In particular, counsel refers to the comments of the arbitrator at page 11 with respect to his concern with "the Vause's ongoing refusal to comply with the Board's Orders" including the initial right of entry order issued by the mediator. While this may be so, I have some sympathy for the fact that, in light of the recent Memorandum of Understanding between the Board and the Oil and Gas Commission (OGC), the Board would likely not have made the entry order it did before the parties had engaged in the OGC's dispute resolution process in an effort at addressing the Vause's concerns with respect to the placement of the flowline. As matters turned out, the Vause's concerns about the placement of the flowline did ultimately get addressed (although after the original entry order was made) with the result that routing of the flowline changed.

[10] The arbitrator's conclusion of \$5,000 is significantly lower than the total amount of costs incurred by the Vauses. While some of their original claim clearly related to proceedings before the OGC rather than the Board and would not have been compensable as Board costs in any event, the arbitrator's identification of 25 hours as clearly identifiable Board costs is not only likely on the low side, but is only reimbursed at half of the hourly rate billed by counsel. The award of \$5,000 is, therefore, a partial award that already serves to take into consideration various other factors considered by the arbitrator in the exercise of his discretion, and accounts for factors mitigating against an award that would make a more significant contribution towards total costs incurred.

[11] While I might have exercised my discretion differently, I cannot say that the arbitrator's conclusion, but for his consideration of the Vause's post arbitration conduct, was inappropriate. Considering the nature of the costs incurred, the reasons for incurring them, the contributions of counsel or advisors, fairness in the Board's process, whether the parties had taken a "realistic approach" in dealing with the issues before the Board and the parties relative success with respect to those issues, I find that the arbitrator's conclusion that he would have awarded \$5,000 is an appropriate award of partial costs in the circumstances. I award costs of the arbitration to the Vauses of \$5,000.

ORDER

[12] Pursuant to section 47 of the *Administrative Tribunals Act*, the Board orders Spectra Energy Midstream Corporation to pay Kenneth James Vause and Loretta Vause \$5,000 in costs of the arbitration.

For the Board



Cheryl Vickers
Chair

**File Nos. 1674
Board Order 1674-1**

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SW 1/4 of Section 11, Township 78, Range 16, W6M

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

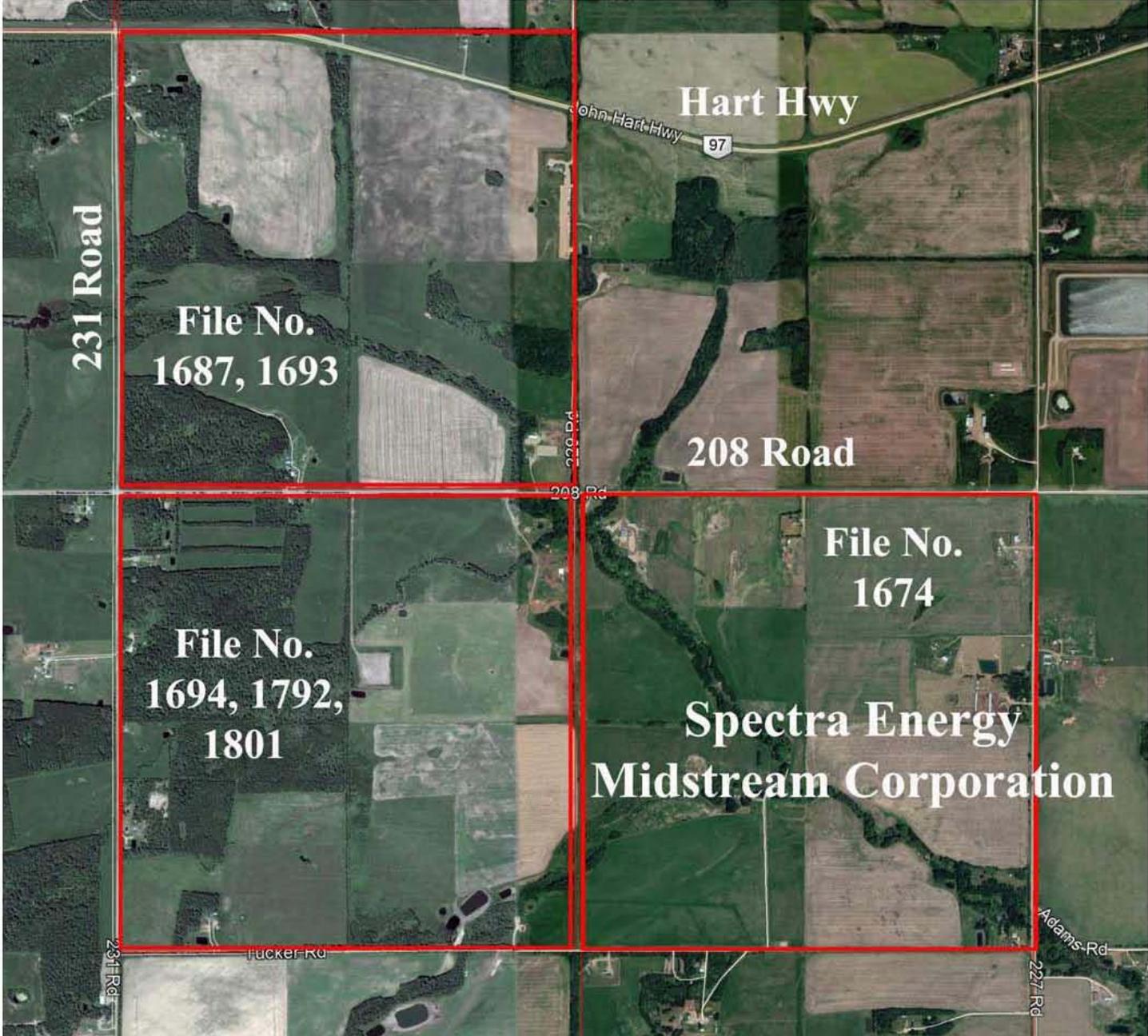
(APPLICANT)

AND:

ROBERT GORDON TUCKER AND SHERILYN LEE TUCKER

(RESPONDENTS)

BOARD ORDER



231 Road

**File No.
1687, 1693**

Hart Hwy

John Hart Hwy 97

208 Road

**File No.
1694, 1792,
1801**

**File No.
1674**

**Spectra Energy
Midstream Corporation**

231 Rd

Fucker Rd

208 Rd

208 Rd

Adams Rd
227 Rd

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Robert Gordon Tucker and Sherilyn Lee Tucker.

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*.

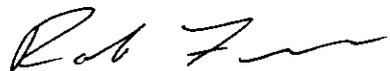
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$4,800.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

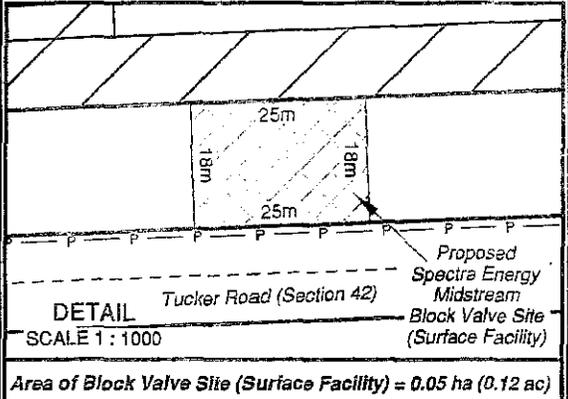
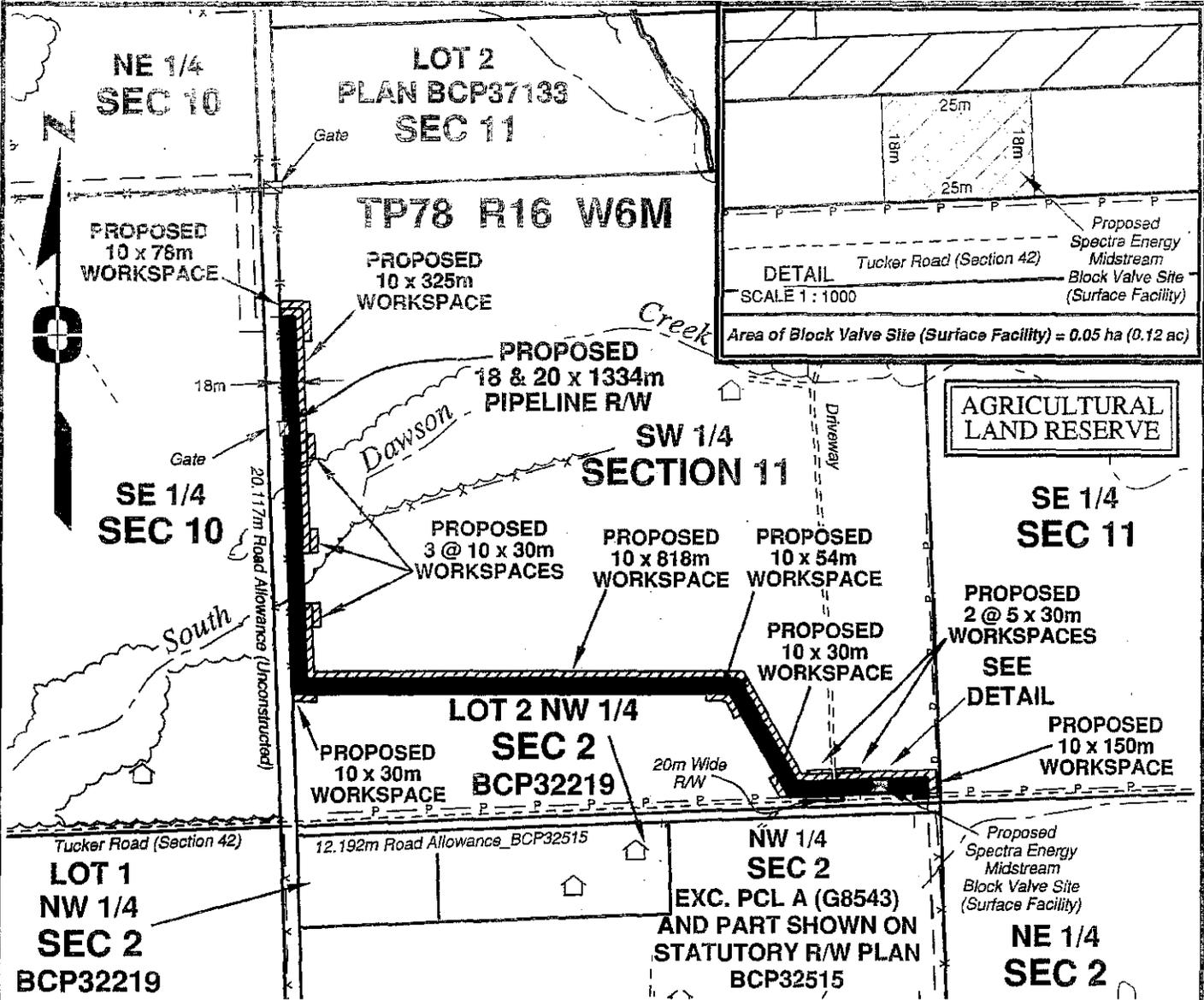
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18 & 20m PIPELINE R/W
 WITHIN THE SOUTH WEST 1/4 OF SECTION 11 TOWNSHIP 78 RANGE 16 W6M
 PEACE RIVER DISTRICT



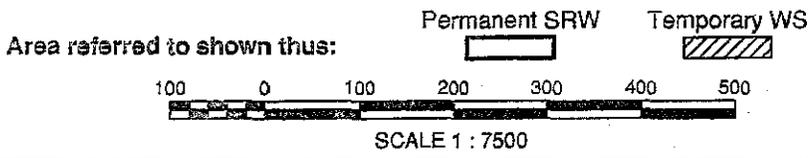
Owner(s): Robert Gordon Tucker
 Sherilyn Lee Tucker

Title No: PL29745
 Parcel Identifier: 014-328-143
 Company File:

Area(s):

Permanent Statutory Right-of-Way	2.41 ha	5.96 ac
Temporary Working Space	1.61 ha	3.98 ac
Total	4.02 ha	9.94 ac

Certified correct this 20th day of December, 2010
 Adam Brash, BCLS



Focus Job No: 100294NP24R7
 Date: 2010/12/20
 Drafter: FR Revision: 7

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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1675
Board Order 1675-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

Block A of SE ¼ of Section 30, Township 77, Range 15, W6M,
Peace River District

Block A of SW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District

Block A of SE ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District

Block A of Section 28, Township 77, Range 15, W6M, Peace River District

North ½ of Section 21, Township 77, Range 15, W6M, Peace River District

Block B of Section 20, Township 77, Range 15, W6M, Peace River District

Block A of NW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District

NE ¼ of Section 29, Township 77, Range 15, W6M, Peace River District,

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

LOISELLE INVESTMENTS LTD.

(RESPONDENT)

BOARD ORDER

Heard by telephone conference: December 13 and 23, 2010

Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Loiselle Investments Ltd.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$12,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$19,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

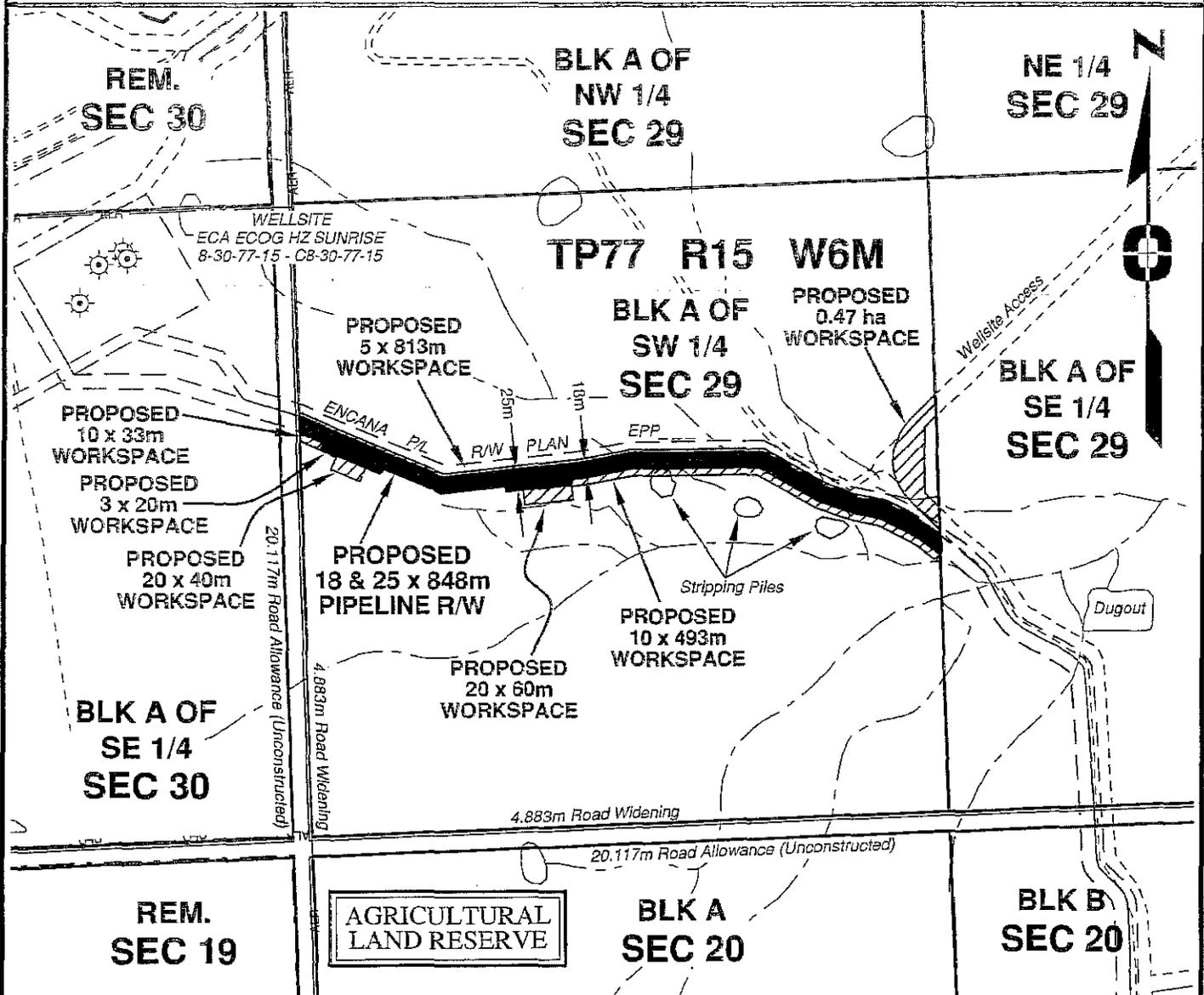
Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18 & 25m PIPELINE R/W
WITHIN BLOCK A OF THE SOUTH WEST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



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

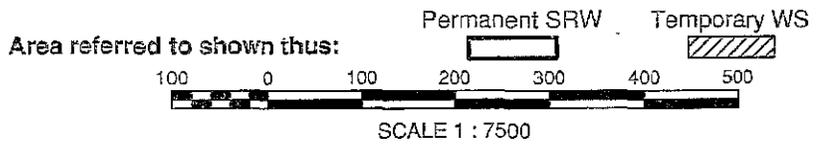
Title No: BA518747
Parcel Identifier: 014-288-176
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.64 ha	4.05 ac
Temporary Working Space	1.61 ha	3.98 ac
Total	3.25 ha	8.03 ac

Certified correct this 20th day of December, 2010

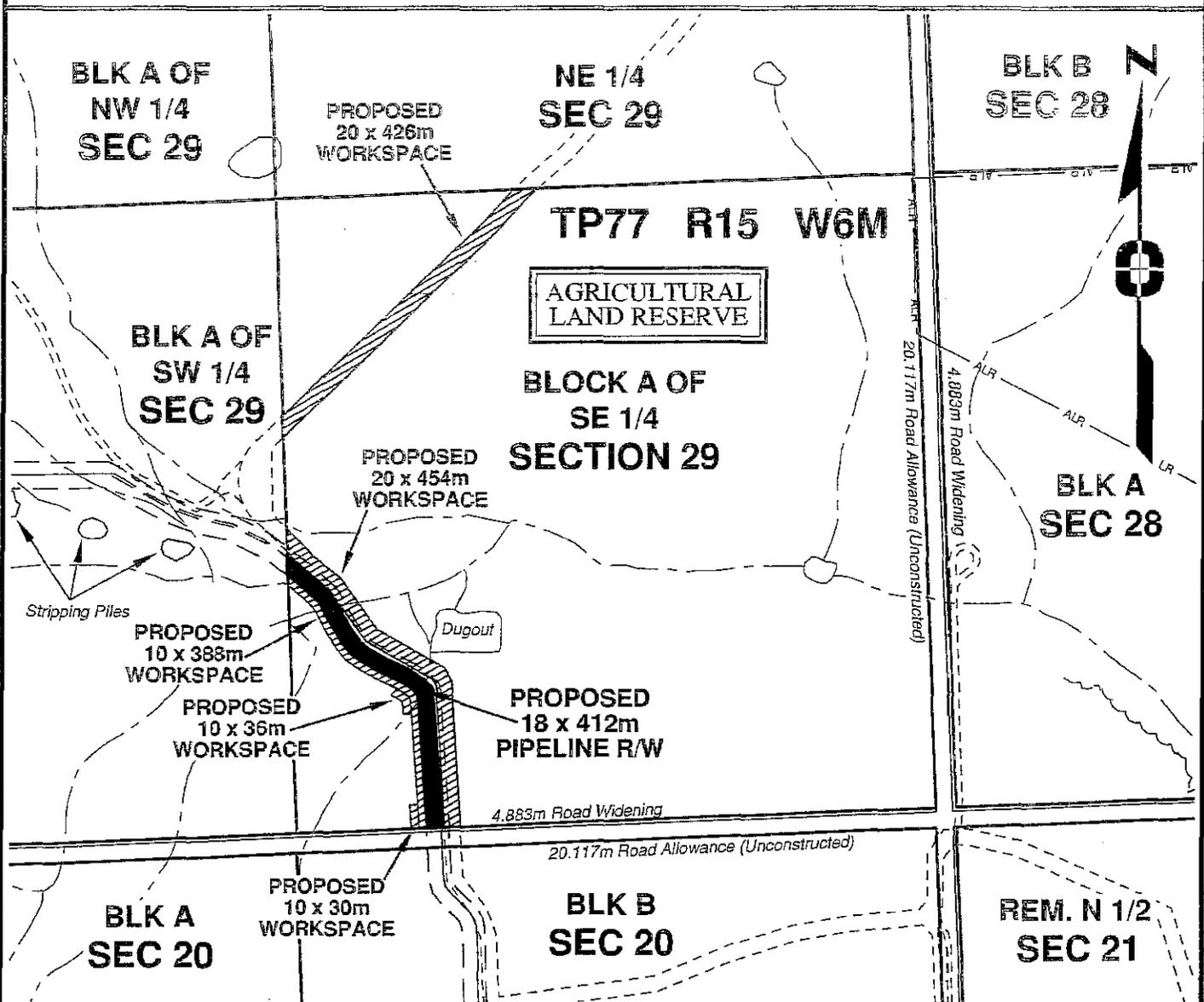
Adam Brash, BCLS



Focus Job No:	100294NP38R2
Date:	2010/12/20
Drafter: FR	Revision: 2

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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN BLOCK A OF THE SOUTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT**



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

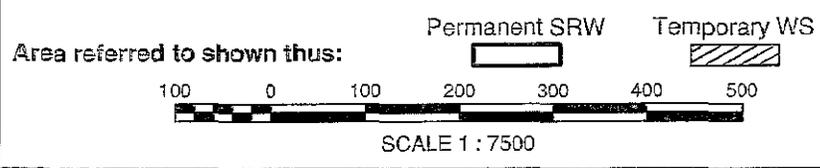
Title No: BA518746
Parcel Identifier: 015-969-657
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	0.74 ha	1.83 ac
Temporary Working Space	2.21 ha	5.46 ac
Total	2.95 ha	7.29 ac

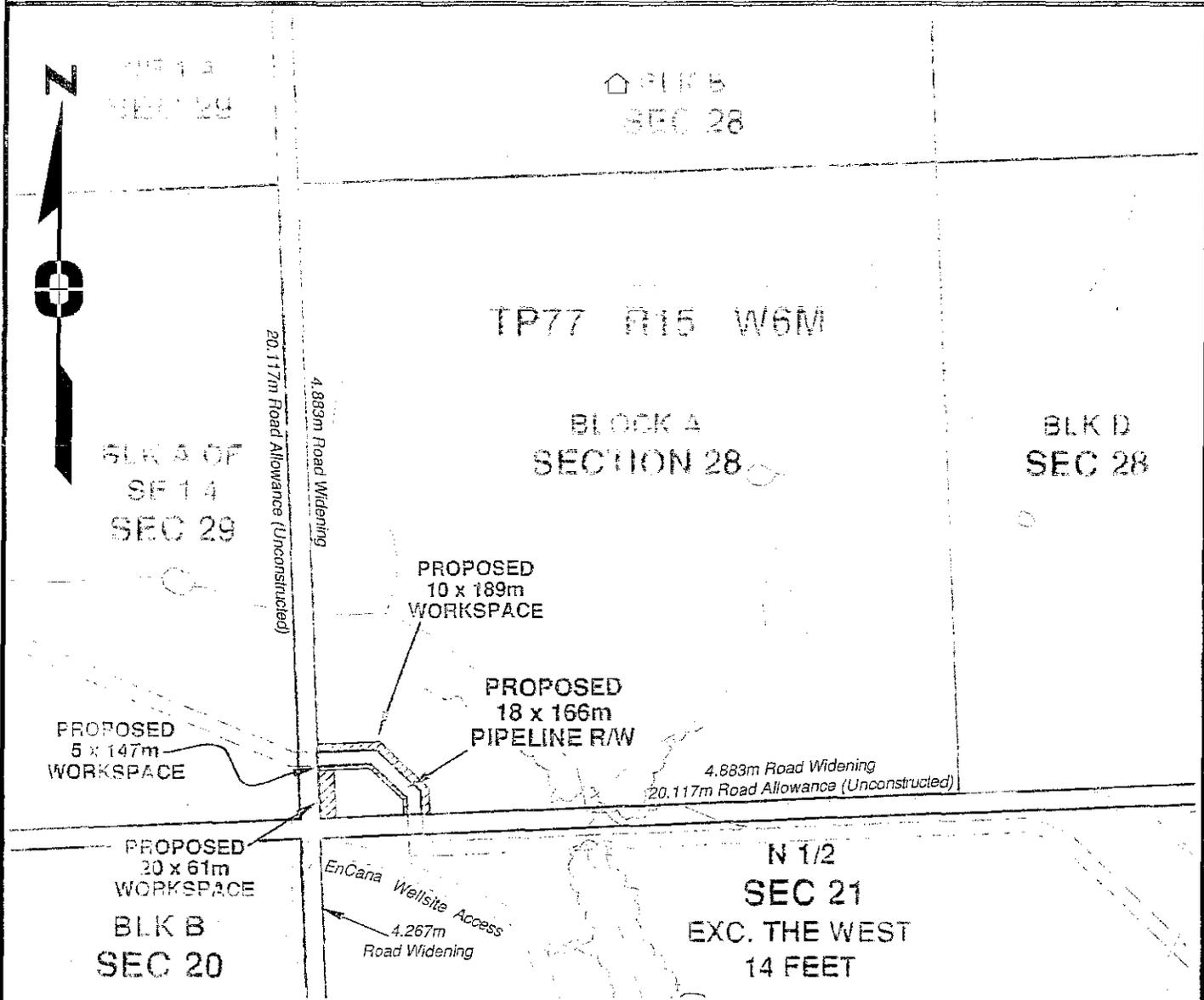
Certified correct this 20th day of December, 2010

Adam Brash, BCLS



Focus Job No:	100294NP39R4
Date:	2010/12/20
Drafter: FR	Revision: 4
FOCUS	
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Focus Surveys FCS Land Services Limited Partnership	

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN BLOCK A SECTION 28 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



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

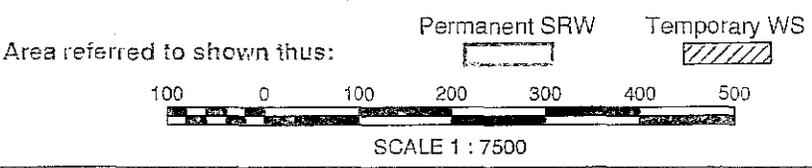
Title No: BA518740
Parcel Identifier: 014-288-338
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	0.30 ha	0.74 ac
Temporary Working Space	0.39 ha	0.96 ac
Total	0.69 ha	1.70 ac

Certified correct this 20th day of October, 2010

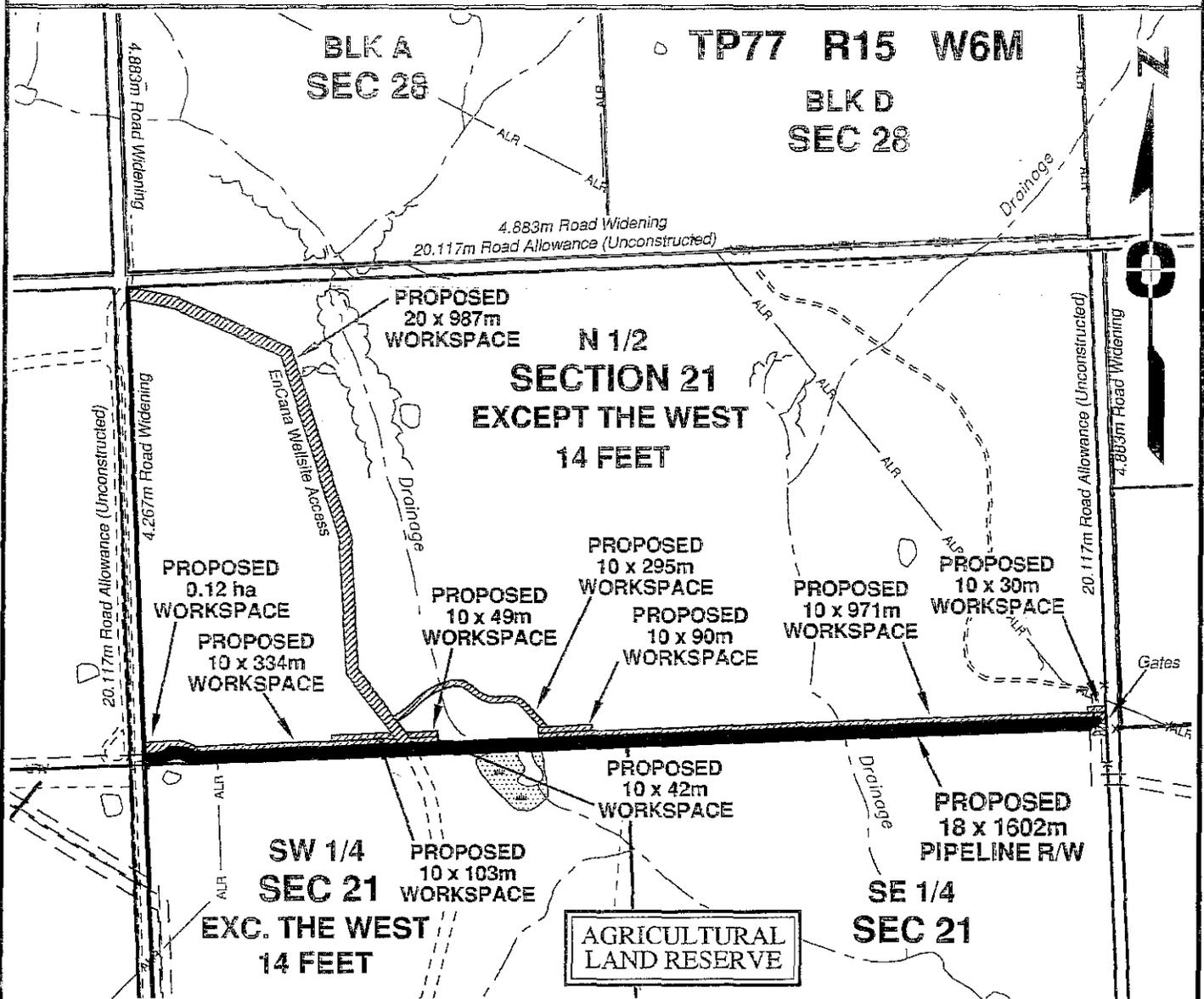
Adam Brash, BCLS



Focus Job No:	100294NP40R2
Date:	2010/10/20
Drafter: FR	Revision: 2

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10716-100th Ave.
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Fax: (250)787-1611
www.focus.ca

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH 1/2 OF SECTION 21 TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT, EXCEPT THE WEST 14 FEET**



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

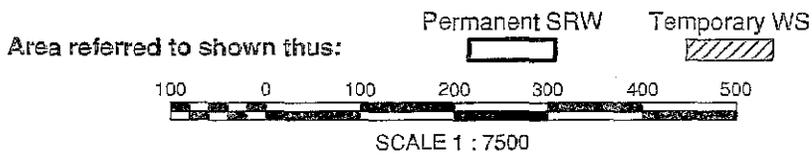
Title No: BA518738
Parcel Identifier: 014-390-710
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	2.88 ha	7.12 ac
Temporary Working Space	4.01 ha	9.91 ac
Total	6.89 ha	17.03 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS

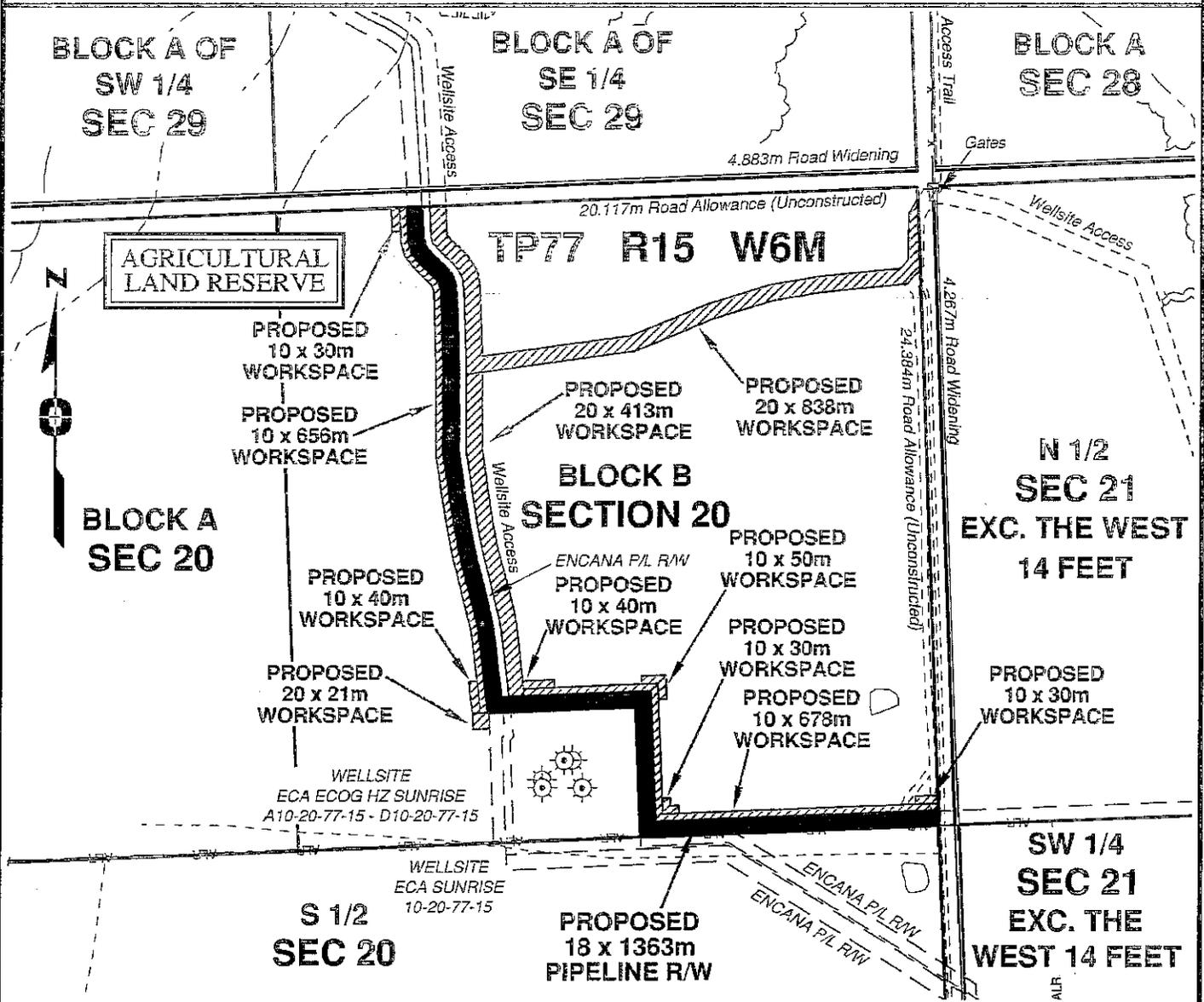


Focus Job No:	100294NP41R5
Date:	2010/12/20
Drafter: FR	Revision: 5

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INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN BLOCK B OF SECTION 20 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



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

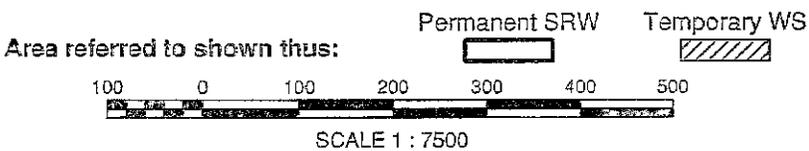
Title No: BA518737
 Parcel Identifier: 014-390-680
 Company File(s): _____

Area(s):

Permanent Statutory Right-of-Way	2.45 ha	6.05 ac
Temporary Working Space	4.10 ha	10.13 ac
Total	6.55 ha	16.18 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS

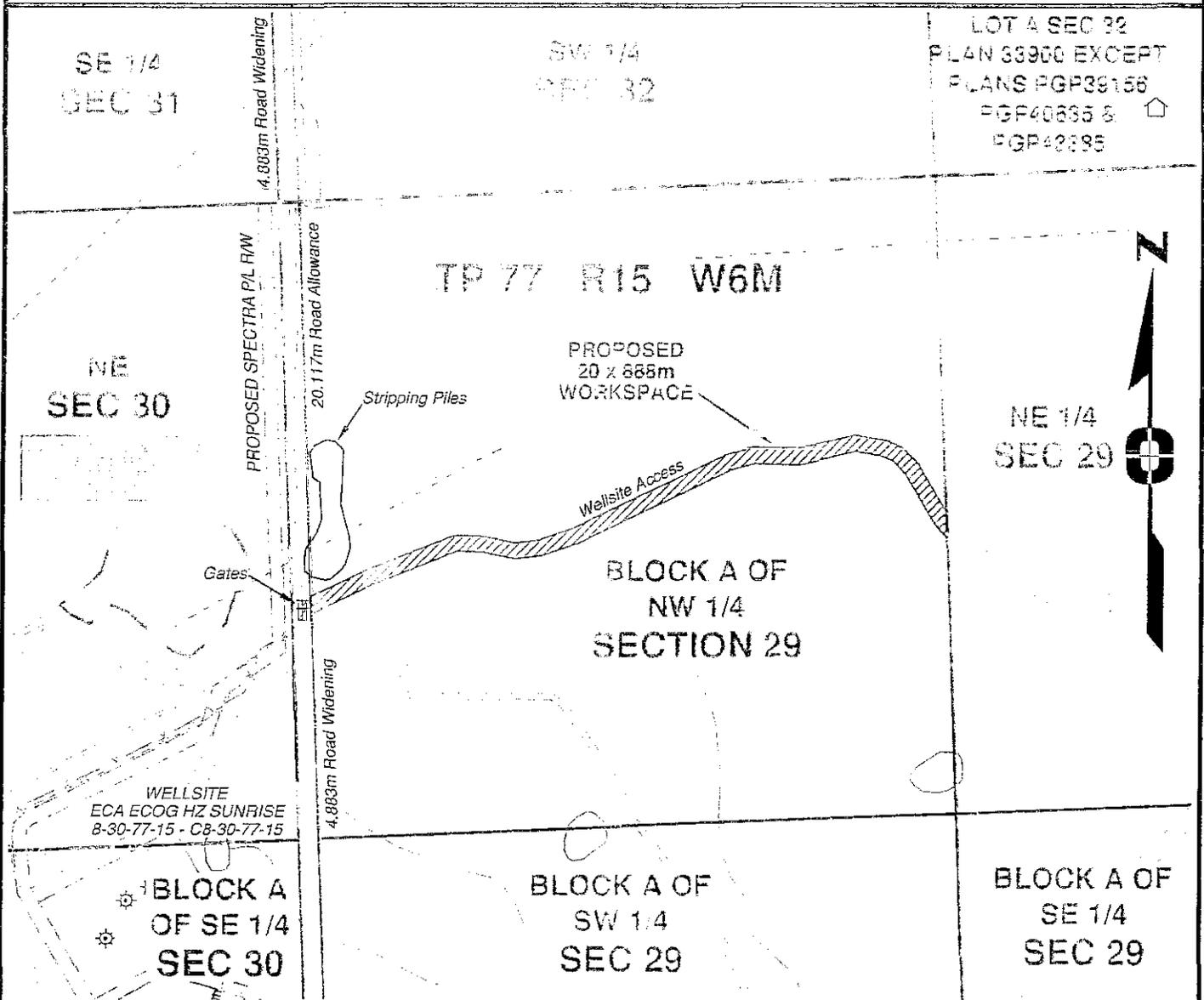


Focus Job No: 100294NP50R1
 Date: 2010/12/20
 Drafter: FR Revision: 1

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 Fax (250)787-1611
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INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m WORKSPACE
WITHIN BLOCK A OF THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT



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

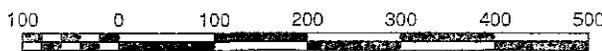
Title No: BA518745
Parcel Identifier: 014-288-184
Company File: _____

Certified correct this 21st day of October, 2010

Area(s): Temporary Working Space 1.78 ha 4.40 ac

Adam Brash, BCLS

Area referred to shown thus: Permanent SRW Temporary WS

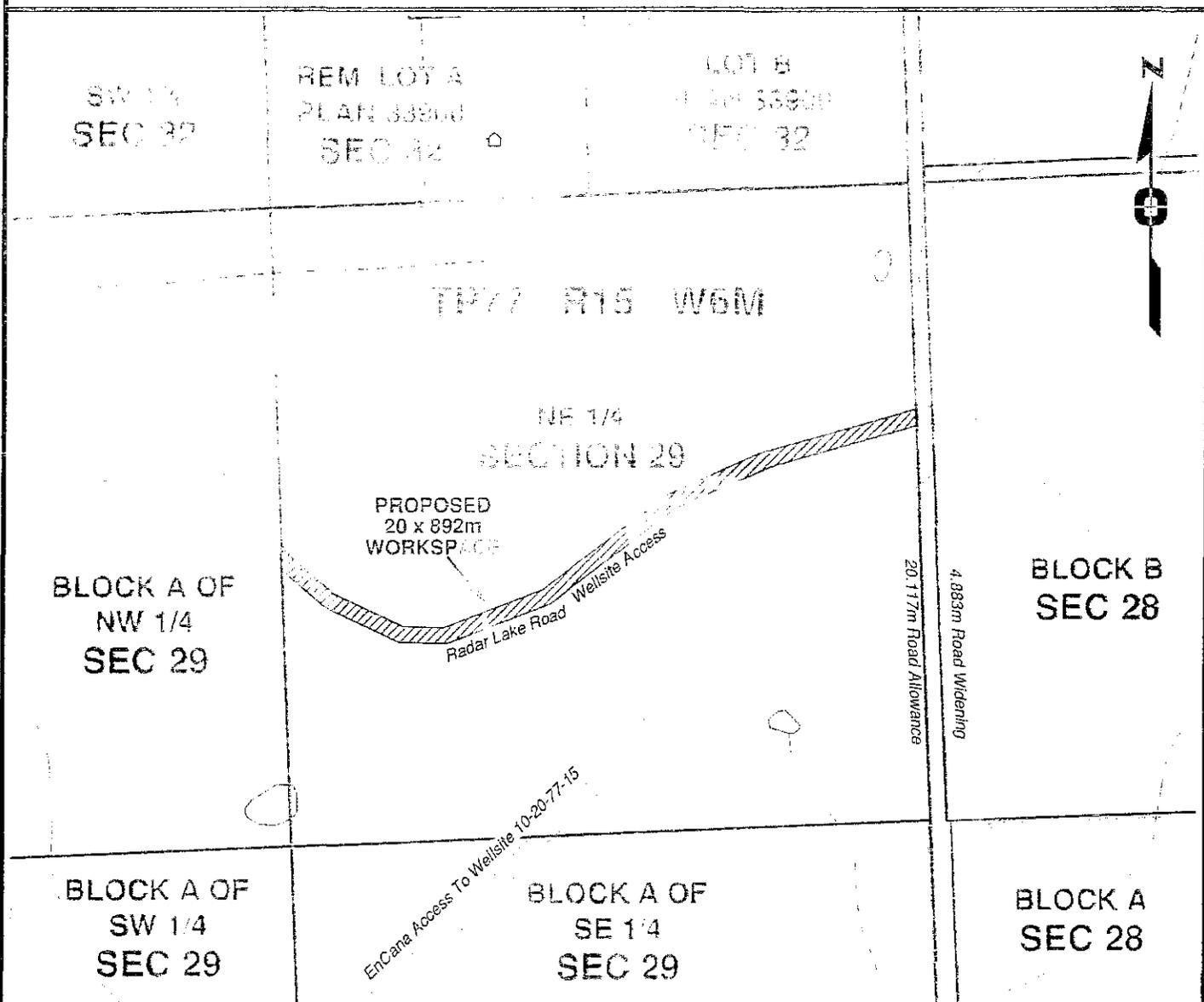


SCALE 1 : 7500

Focus Job No:	100294NP35R2
Date:	2010/10/27
Drafter: FR	Revision: 1

FOCUS Focus Surveys
 Fort St. John
 10716-100th Ave.
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 Fax: (250) 787-1611

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m WORKSPACE
WITHIN THE NORTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



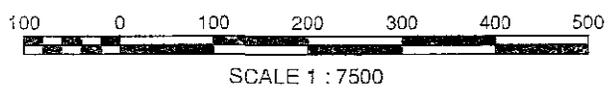
Owner(s): Loiselle Investments Ltd., Inc. No. 705654

Title No: BA518744
Parcel Identifier: 014-264-676
Company File(s): _____

Certified correct this 21st day of October, 2010

Area(s):
Temporary Working Space 1.78 ha 4.40 ac

Area referred to shown thus: Permanent SRW Temporary WS



Adam Brash, BCLS

Focus Job No:	100254NP51R0
Date:	2010/10/21
Drafter:	Revision: 0
FOCUS Focus Surveys RCS Land Services Limited Partnership	
Fort St. John 10718-100th Ave. BC, V1J 1Z3 Ph: (250) 797-0300 Fax: (250) 787-1611 www.focus.ca	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1675
Board Order 1675-1amd**

June 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**Block A of SE ¼ of Section 30, Township 77, Range 15, W6M,
Peace River District**

**Block A of SW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District**

**Block A of SE ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District**

**Block A of Section 28, Township 77, Range 15, W6M, Peace River District
North ½ of Section 21, Township 77, Range 15, W6M, Peace River District,
Except the West 14 Feet**

Block B of Section 20, Township 77, Range 15, W6M, Peace River District

**Block A of NW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District**

NE ¼ of Section 29, Township 77, Range 15, W6M, Peace River District,

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

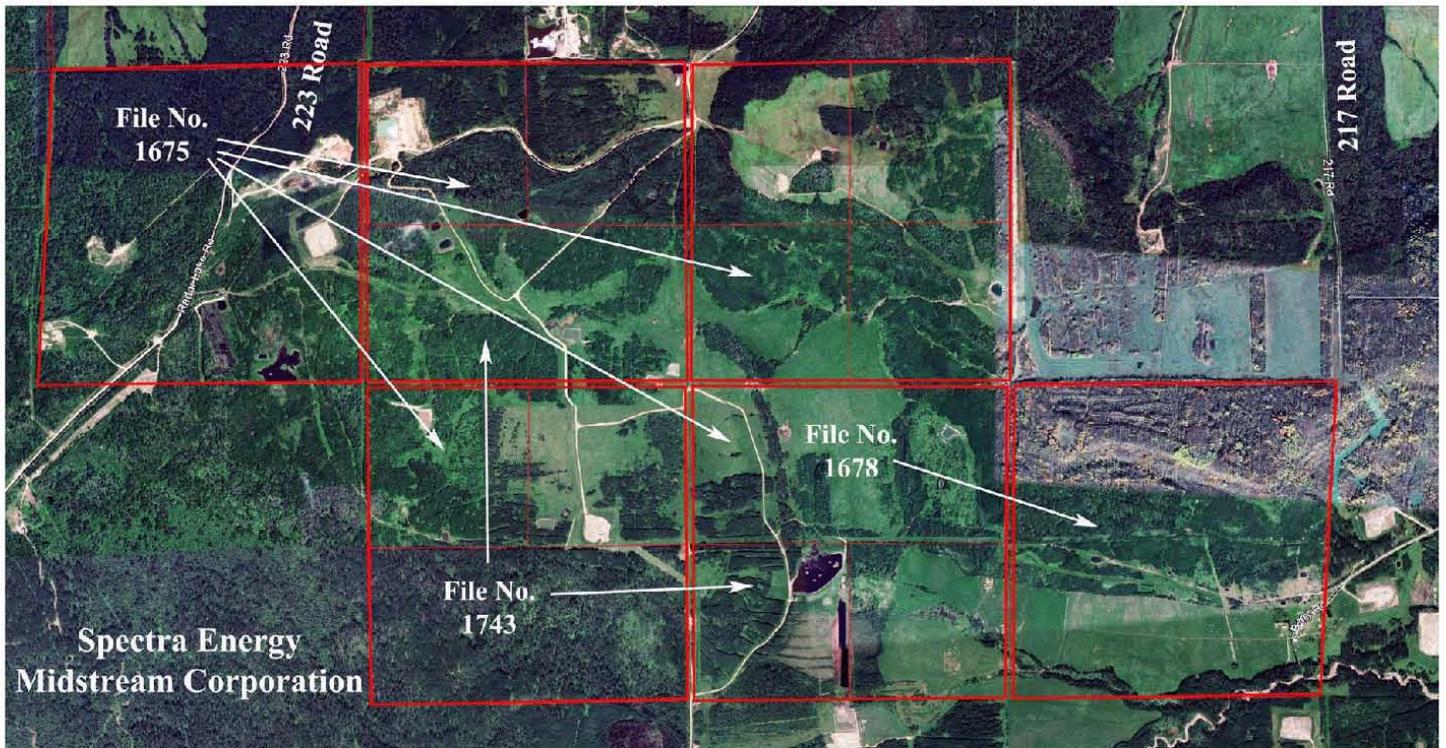
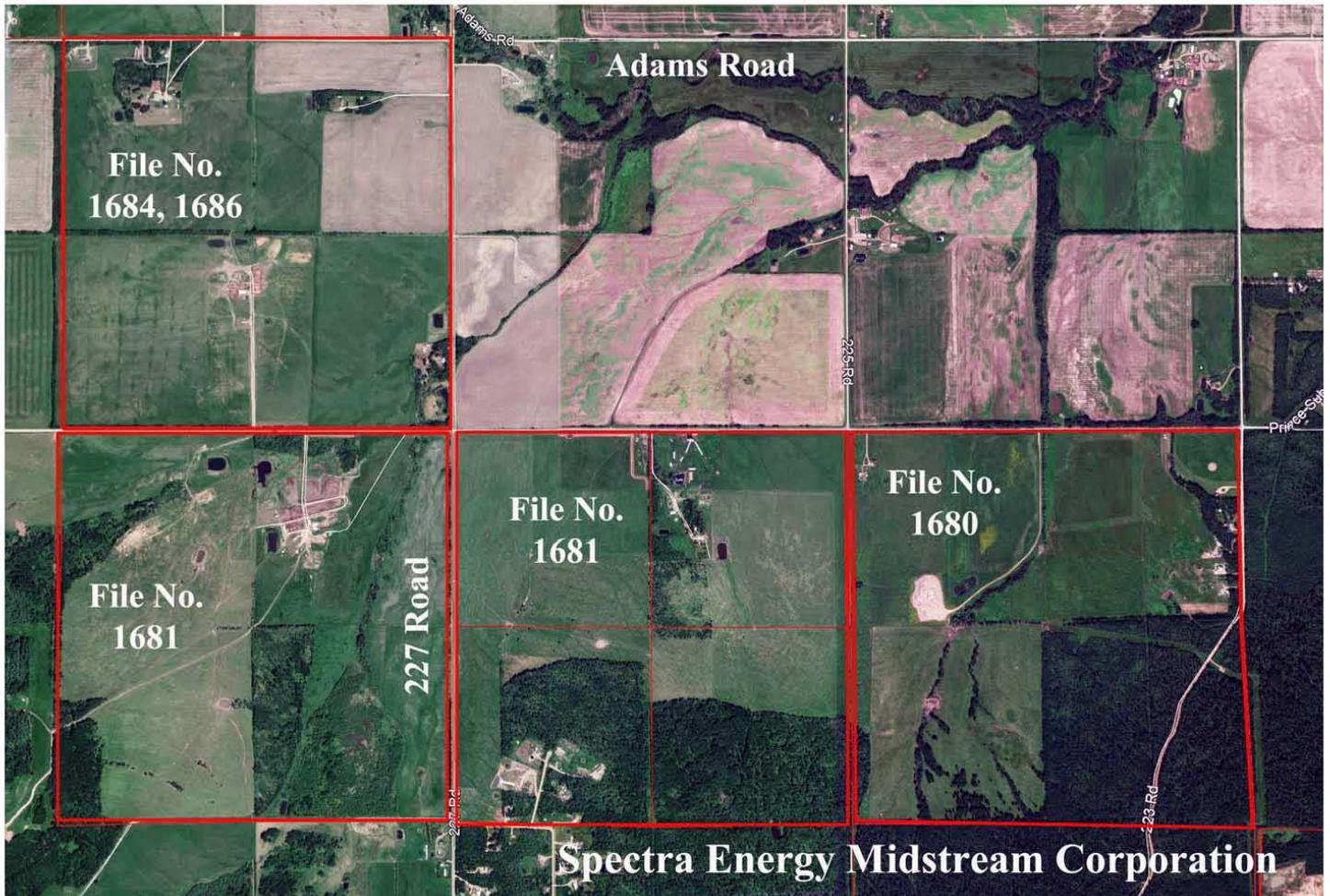
(APPLICANT)

AND:

LOISELLE INVESTMENTS LTD.

(RESPONDENT)

**AMENDED
BOARD ORDER**



Heard by telephone conference: December 13 and 23, 2010

Mediator: Rob Fraser

This Order amends Order 1675-1 issued December 23, 2010 to correct an error in the description of the Lands set out in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Loiselle Investments Ltd.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$12,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$19,000.00.
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 13, 2011

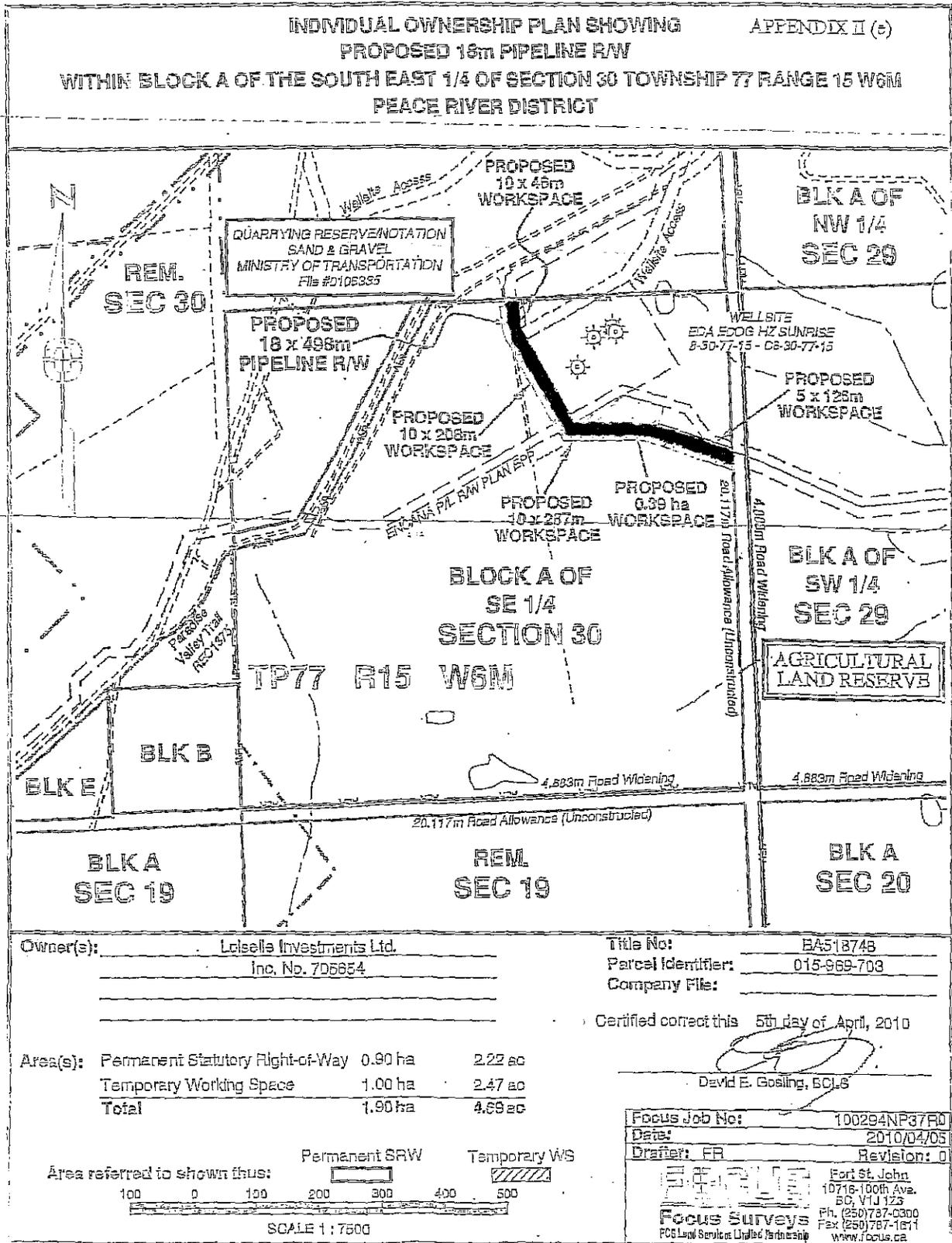
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

14.2



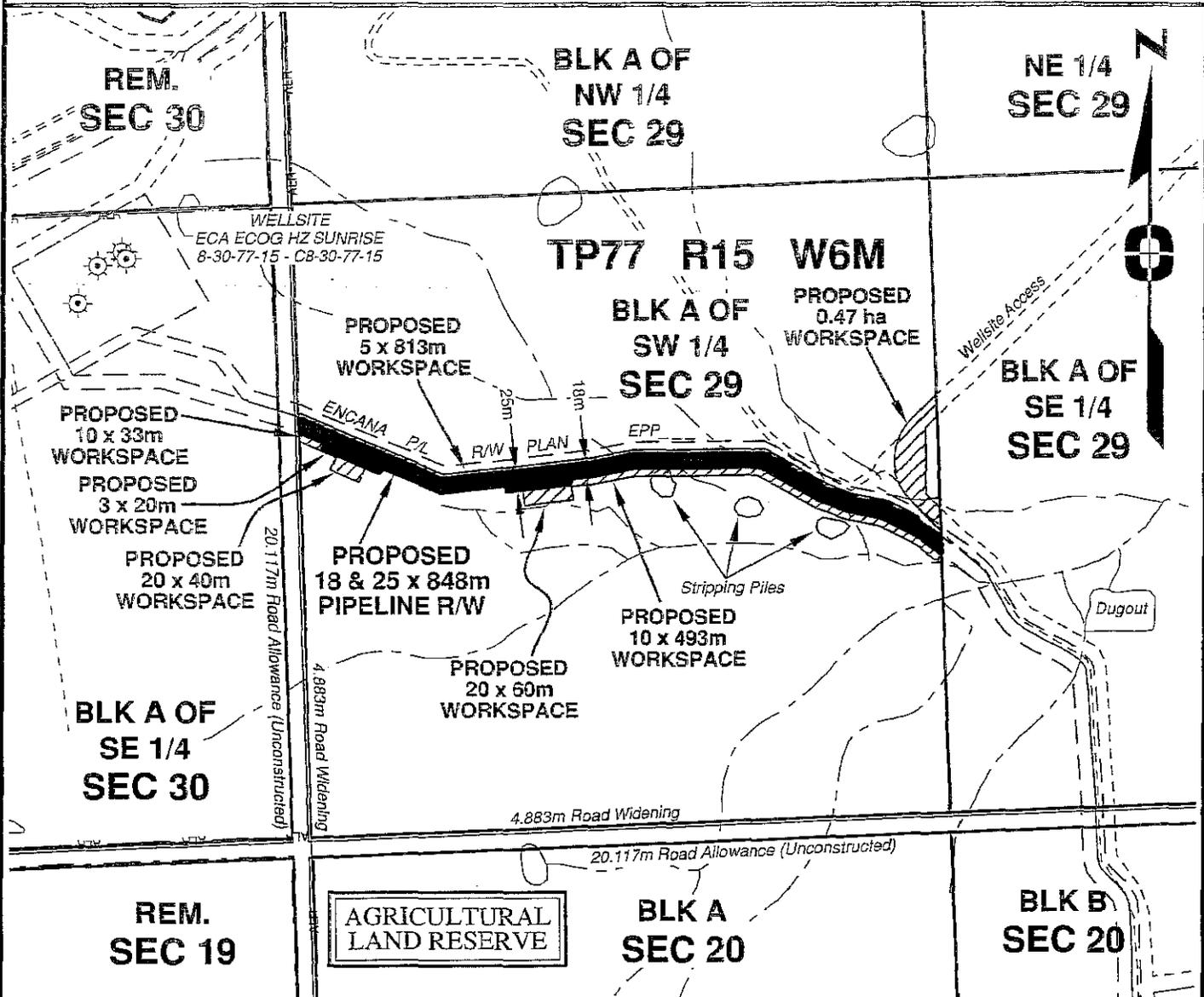
ORDER 1675-1
App A(2)

INDIVIDUAL OWNERSHIP PLAN SHOWING

Page ___ of ___

PROPOSED 18 & 25m PIPELINE R/W

WITHIN BLOCK A OF THE SOUTH WEST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



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

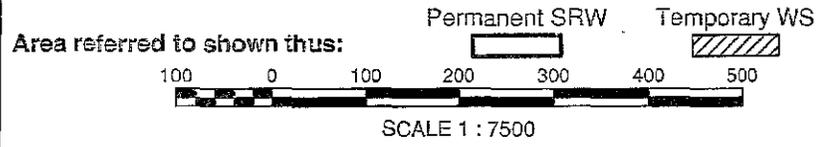
Title No: BA518747
Parcel Identifier: 014-288-176
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.64 ha	4.05 ac
Temporary Working Space	1.61 ha	3.98 ac
Total	3.25 ha	8.03 ac

Certified correct this 20th day of December, 2010

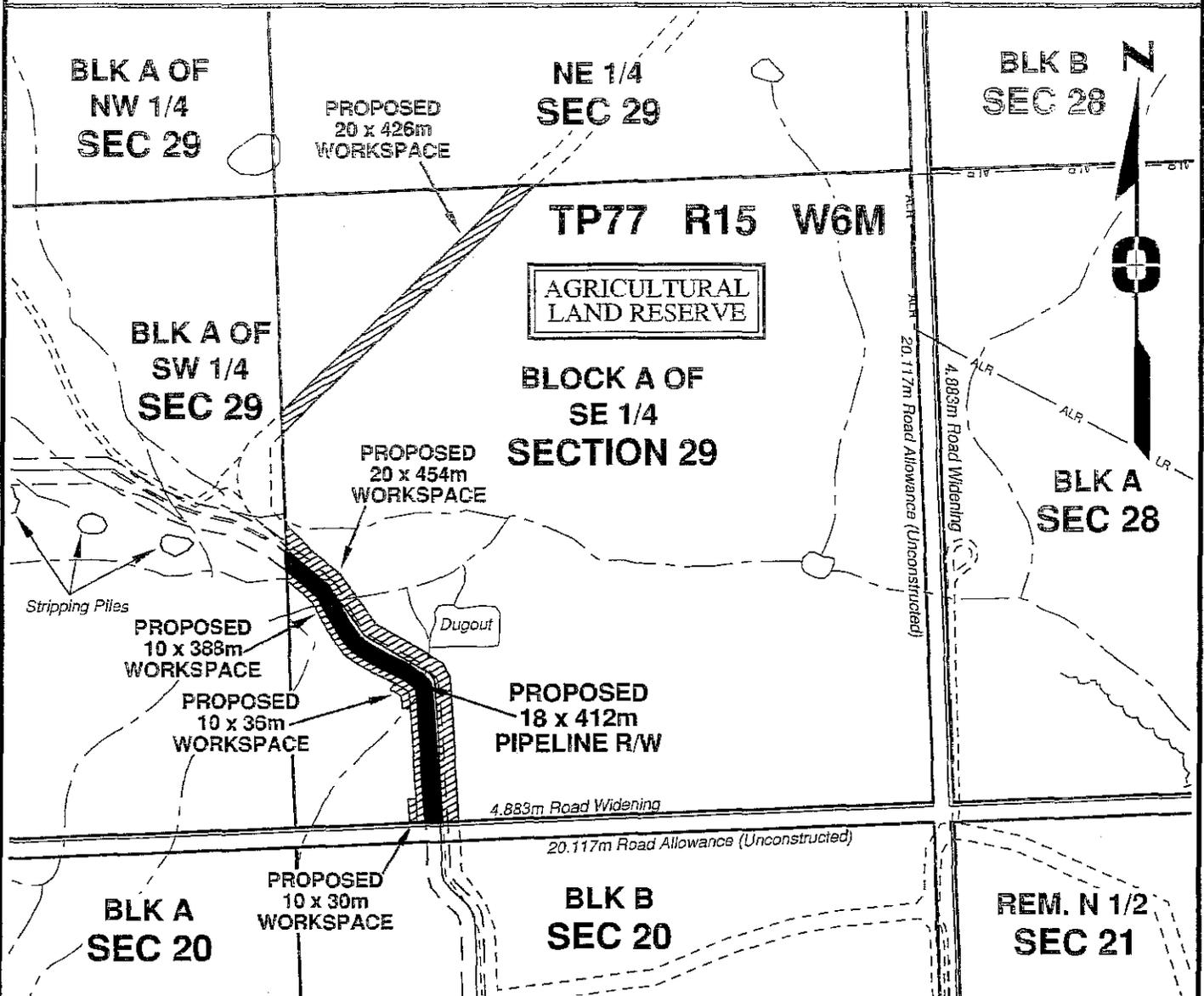
Adam Brash, BCLS



Focus Job No: 100294NP38R2
Date: 2010/12/20
Drafter: FR Revision: 2

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www.focus.ca

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN BLOCK A OF THE SOUTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



Owner(s): Loiseile Investments Ltd. Inc. No. 705654

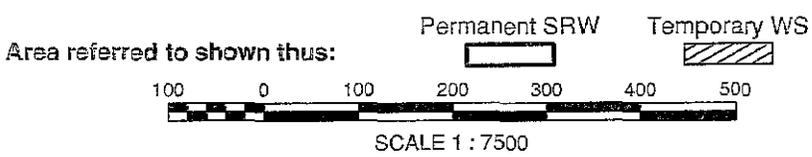
Title No: BA518746
Parcel Identifier: 015-969-657
Company File:

Area(s):

Permanent Statutory Right-of-Way	0.74 ha	1.83 ac
Temporary Working Space	2.21 ha	5.46 ac
Total	2.95 ha	7.29 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS

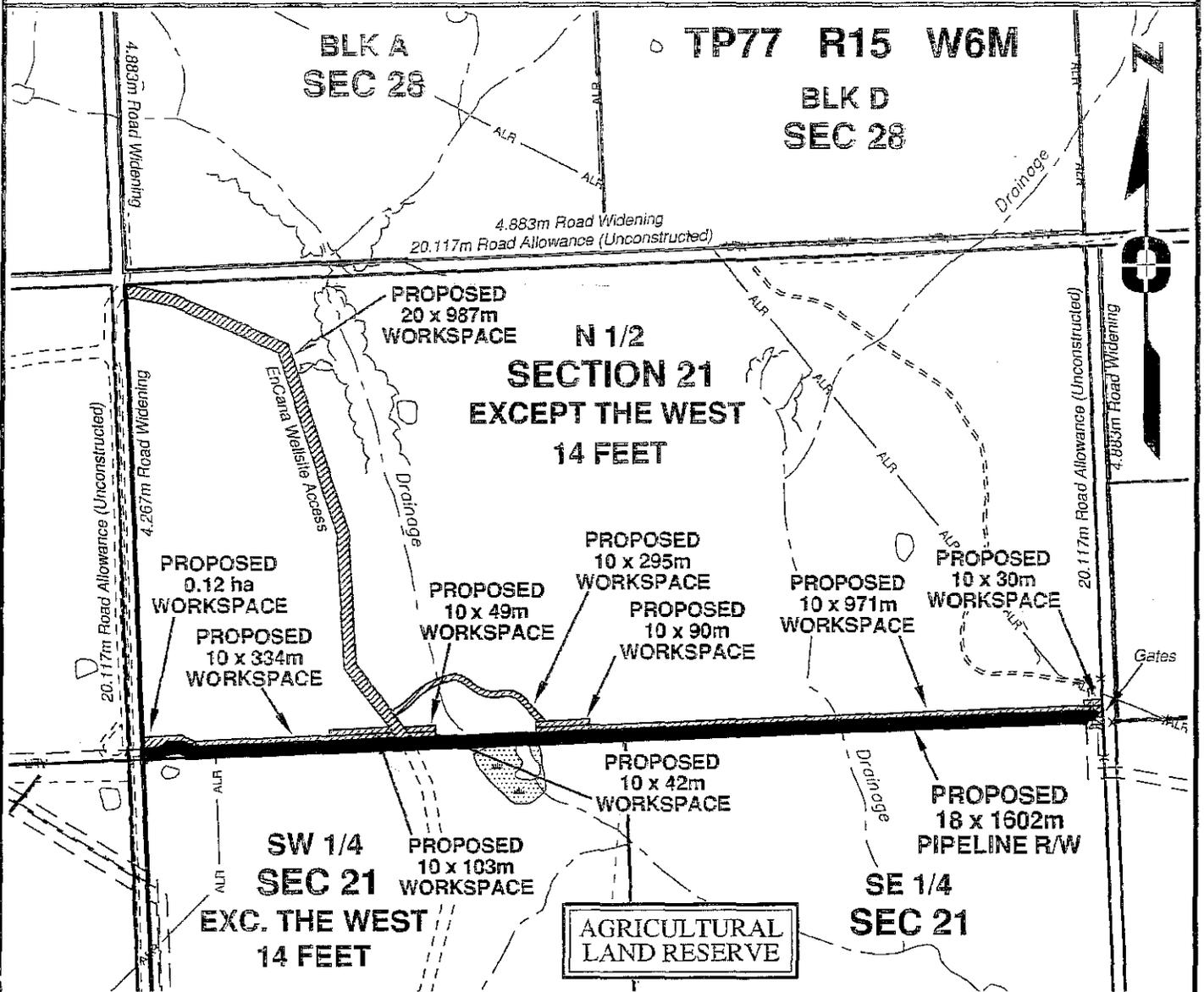


Focus Job No: 100294NP39R4
Date: 2010/12/20
Drafter: FR
Revision: 4

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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH 1/2 OF SECTION 21 TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT, EXCEPT THE WEST 14 FEET**



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

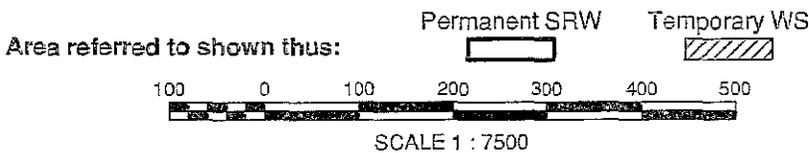
Title No: BA518738
Parcel Identifier: 014-390-710
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	2.88 ha	7.12 ac
Temporary Working Space	4.01 ha	9.91 ac
Total	6.89 ha	17.03 ac

Certified correct this 20th day of December, 2010

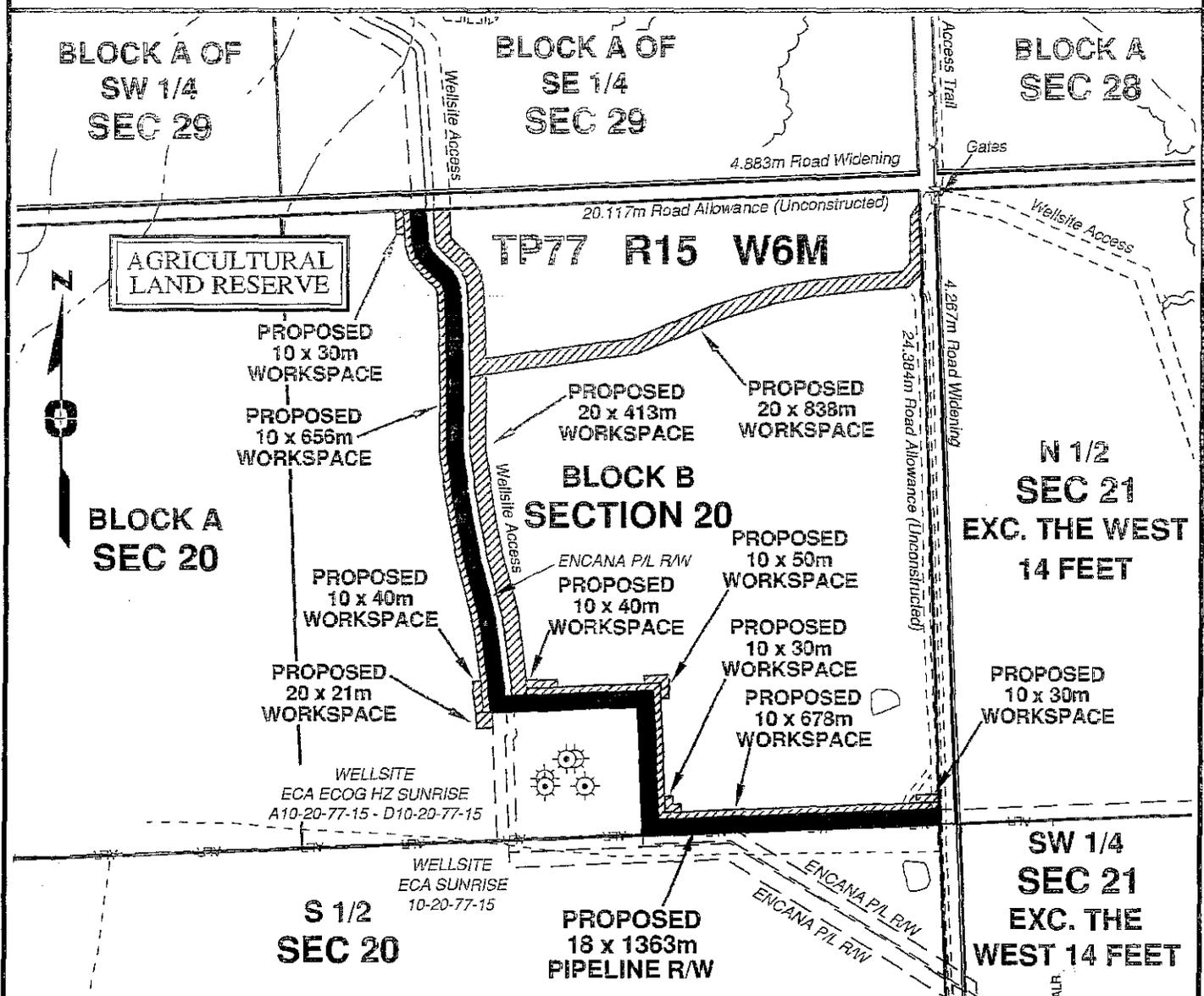
Adam Brash, BCLS



Focus Job No: 100294NP41R5
Date: 2010/12/20
Drafter: FR **Revision:** 5

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Focus Surveys
FCS Land Services Limited Partnership
Fort St. John
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Fax (250) 787-1611
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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN BLOCK B OF SECTION 20 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT**



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

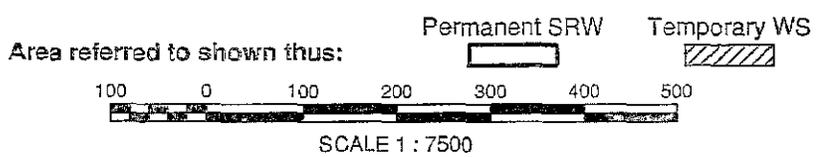
Title No: BA518737
Parcel Identifier: 014-390-680
Company File(s):

Area(s):

Permanent Statutory Right-of-Way	2.45 ha	6.05 ac
Temporary Working Space	4.10 ha	10.13 ac
Total	6.55 ha	16.18 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS

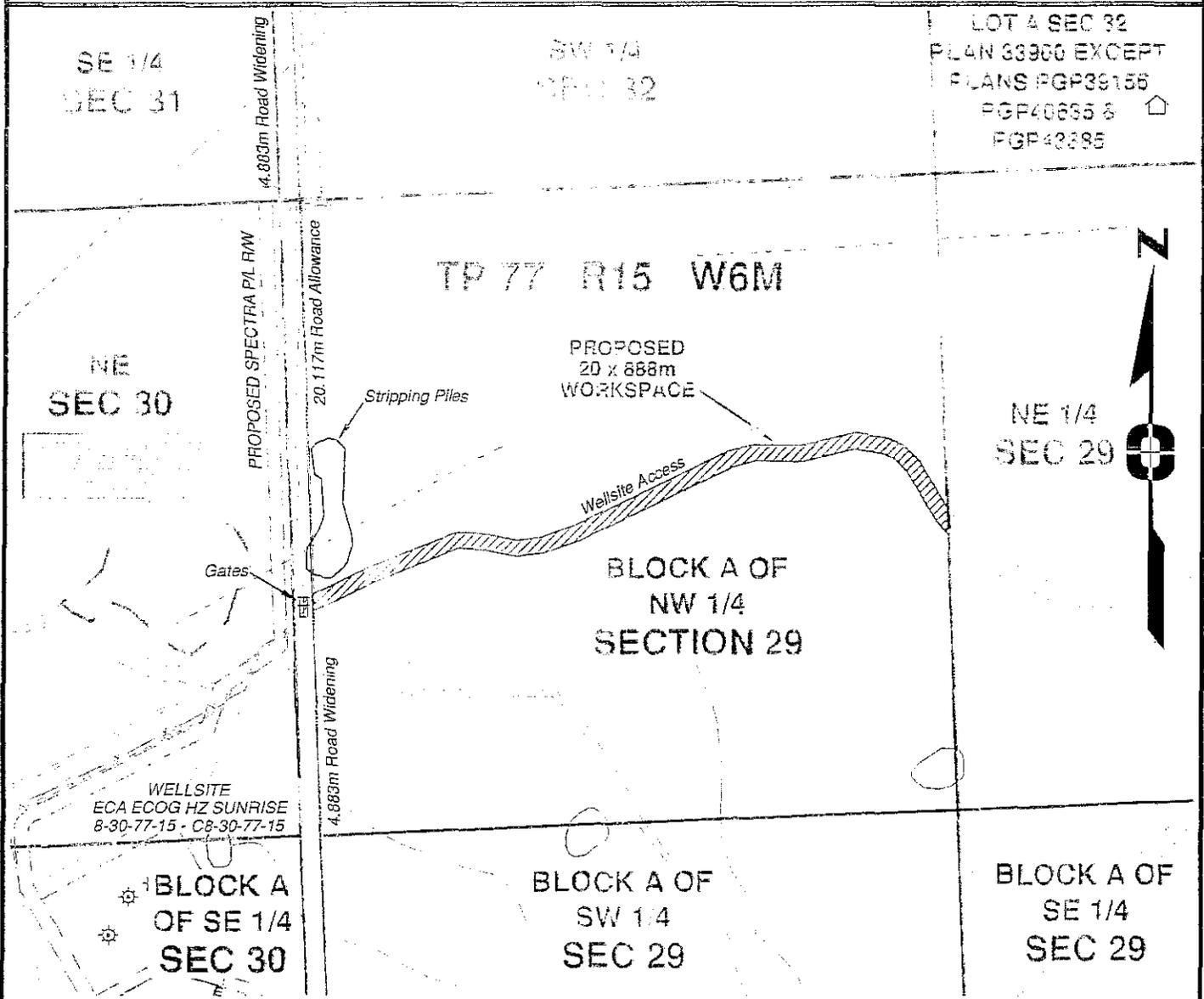


Focus Job No:	100294NP50R1
Date:	2010/12/20
Drafter: FR	Revision: 1

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FCS Land Services Limited Partnership

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Ph. (250)787-0300
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www.focus.ca

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m WORKSPACE
WITHIN BLOCK A OF THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT



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

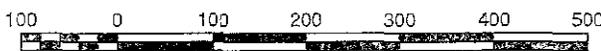
Title No: BA518745
Parcel Identifier: 014-288-184
Company File: _____

Certified correct this 21st day of October, 2010

Area(s): Temporary Working Space 1.78 ha 4.40 ac

Adam Brash, BCLS

Area referred to shown thus: Permanent SRW Temporary WS



SCALE 1 : 7500

Focus Job No: 100294NP35R2
Date: 2010/10/21
Drafter: FR Revision: 1

FOCUS Fort St. John
Focus Surveys 10716-100th Ave.
BC, V1J 1Z3
Tel: (250) 787-0300
Fax: (250) 787-1611

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1675
Board Order 1675-1amd2**

August 26, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

Block A of SE ¼ of Section 30, Township 77, Range 15, W6M,
Peace River District
Block A of SW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District
Block A of SE ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District
Block A of Section 28, Township 77, Range 15, W6M, Peace River District
North ½ of Section 21, Township 77, Range 15, W6M, Peace River District,
Except the West 14 Feet
Block B of Section 20, Township 77, Range 15, W6M, Peace River District
Block A of NW ¼ of Section 29, Township 77, Range 15, W6M,
Peace River District
NE ¼ of Section 29, Township 77, Range 15, W6M, Peace River District,
Block B of Section 28, Township 77, Range 15, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

LOISELLE INVESTMENTS LTD.

(RESPONDENT)

**AMENDED
BOARD ORDER**

Heard by telephone conference: August 22, 2011
Mediator: Rob Fraser

This Order varies Order 1675-1amd issued June 13, 2011 to grant entry and access to an additional parcel of Land owned by the Respondent.

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*, for the purpose of carrying out an oil and gas activity on the Respondent's Lands, specifically surveying, construction, operation and maintenance of a flowline .

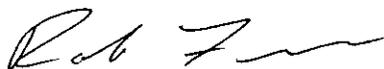
ORDER

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

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$12,500.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$20,101.50.
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: August 26, 2011

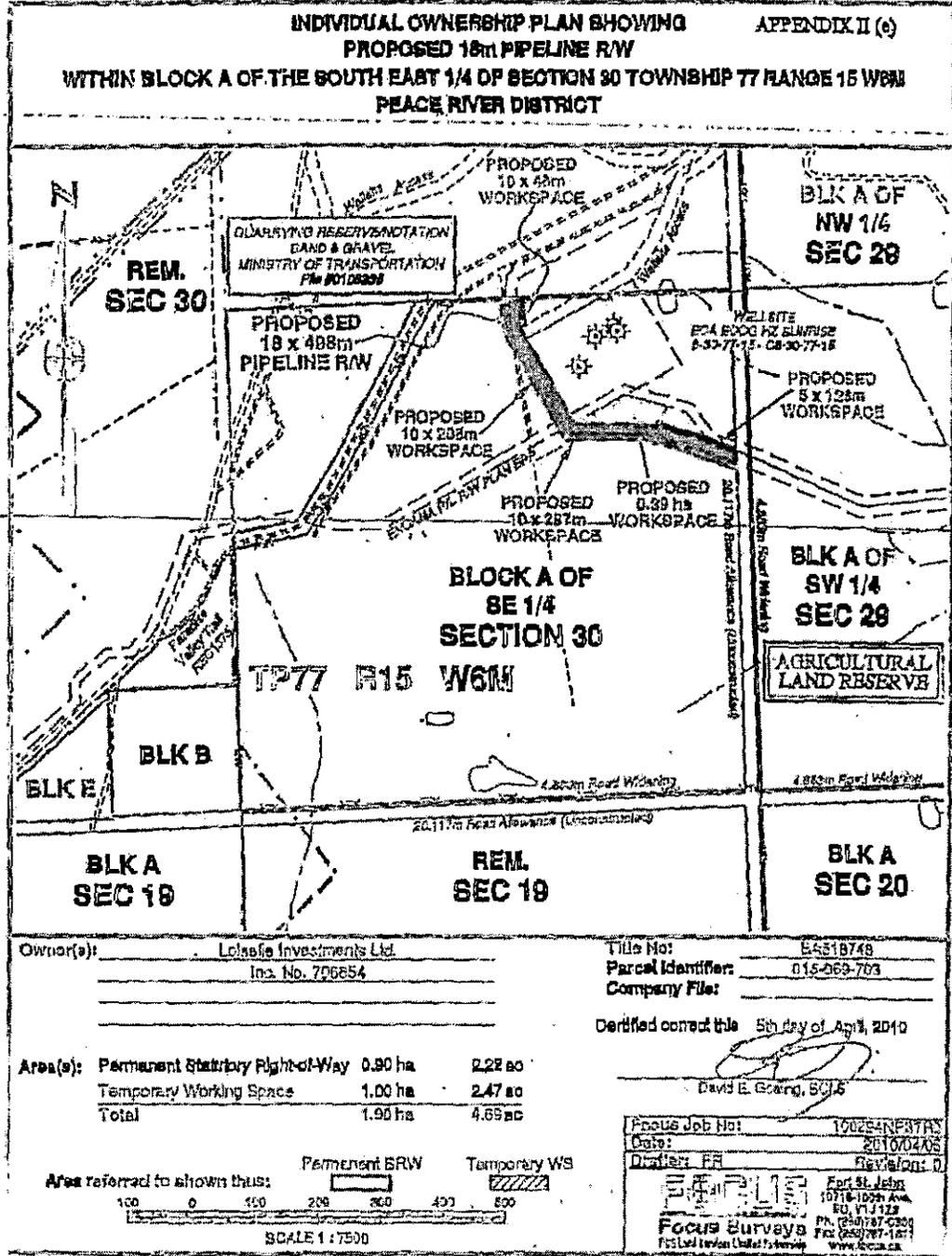
FOR THE BOARD



Rob Fraser, Mediator

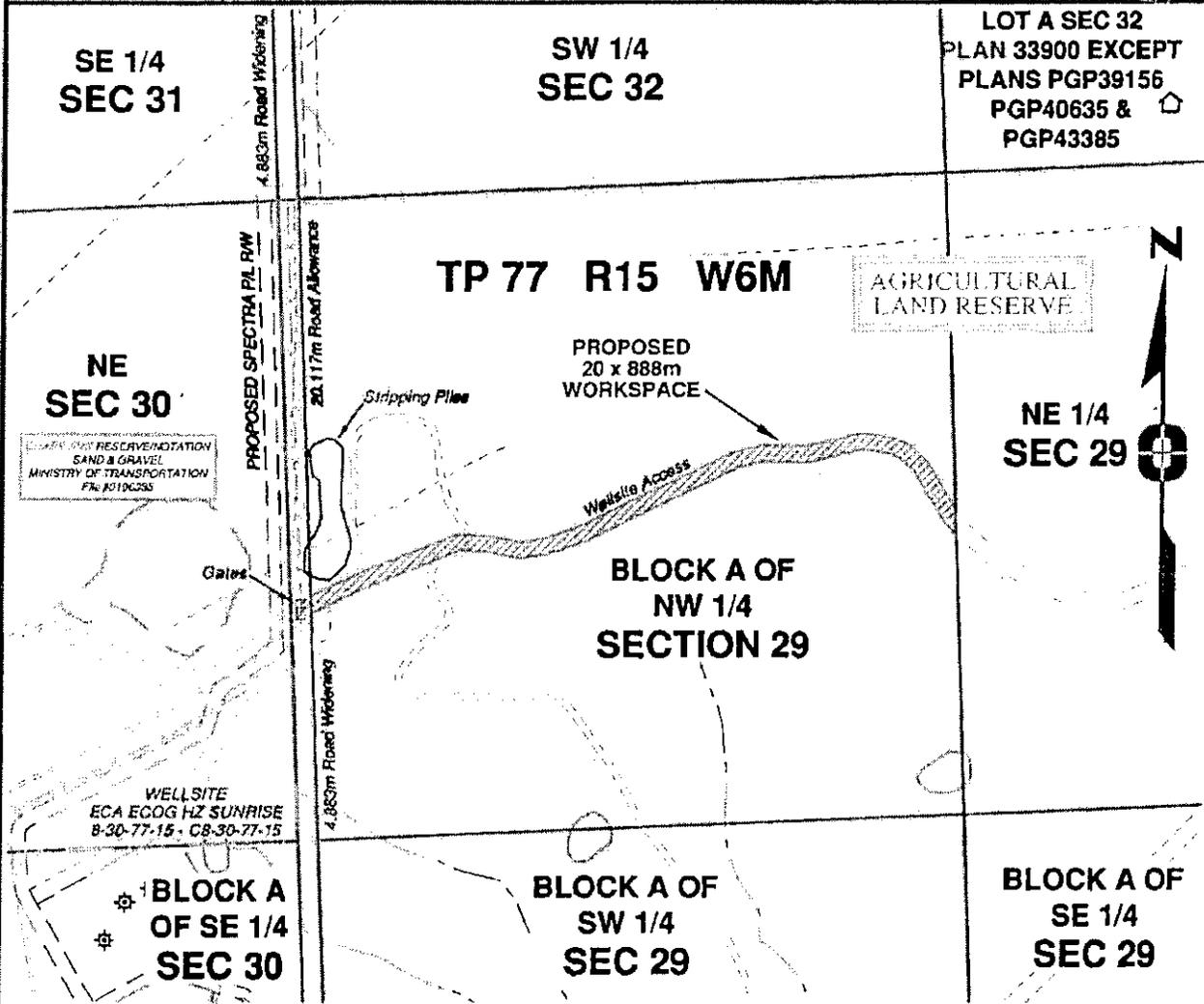
APPENDIX "A"

142



**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m WORKSPACE
WITHIN BLOCK A OF THE NORTH WEST 1/4 OF SECTION 29, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT**

Page ___ of ___



Owner(s): Loiselle Investments Ltd. Inc. No. 705854

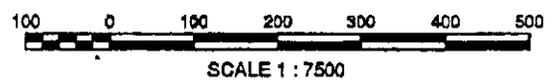
Title No: BA518745
Parcel Identifier: 01A-288-184
Company File: _____

Certified correct this 21 day of October, 2010

Adam Brash, BCLS

Area(s): Temporary Working Space 1.78 ha 4.40 ac

Area referred to shown thus: Permanent SRW Temporary WS

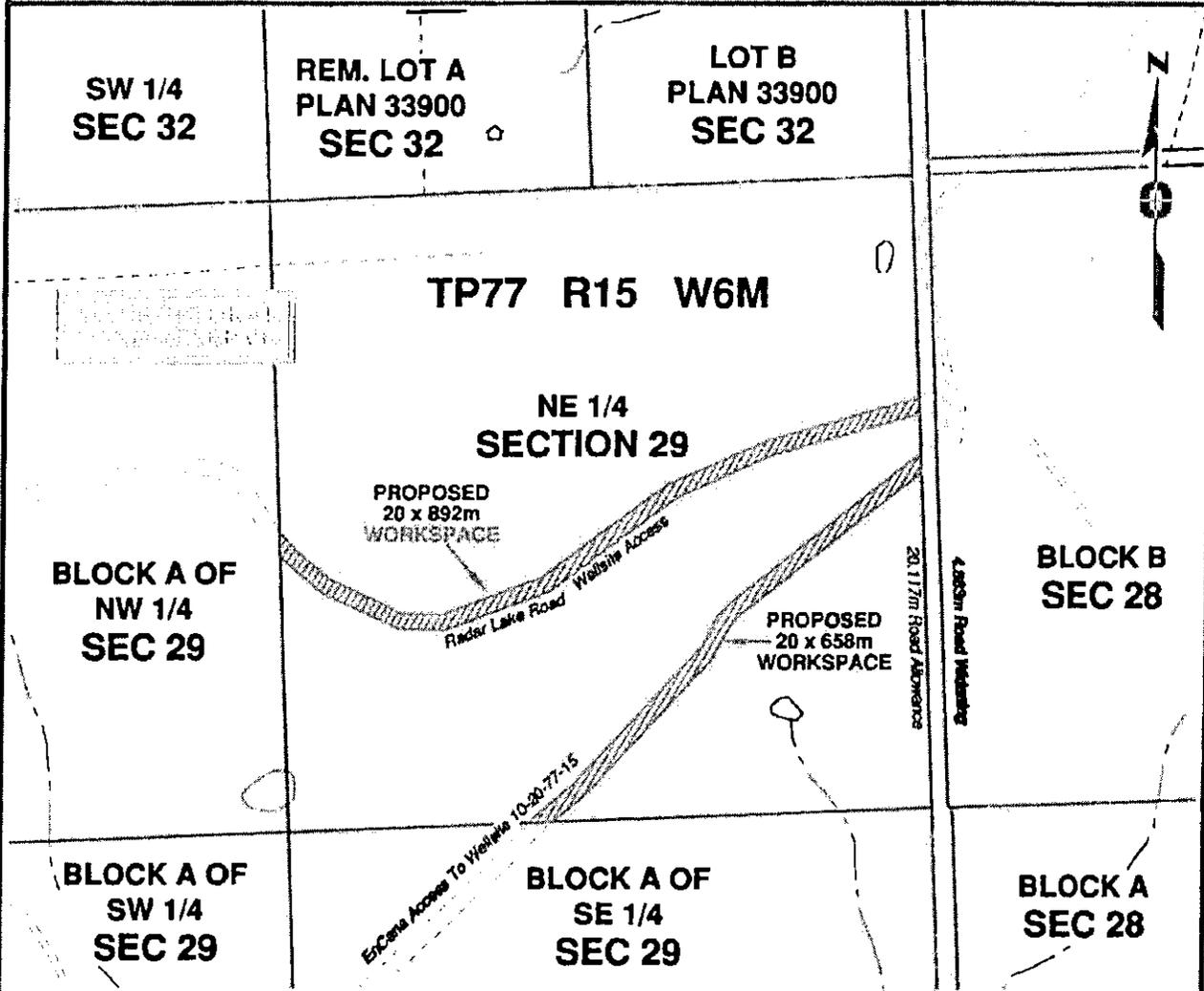


Focus Job No: 100294NP35H2
Date: 2010/10/2
Drafter: FR Revision: 1

FOCUS Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0300
Fax (250)787-1611

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 20m WORKSPACE
 WITHIN THE NORTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
 PEACE RIVER DISTRICT

Page ___ of ___



Owner(s): Loise Investments Ltd., Inc. No. 705864

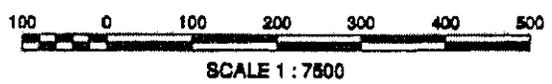
Title No: BA518744
 Parcel Identifier: 014-264-676
 Company File(s): _____

Area(s):
 Temporary Working Space 3.10 ha 7.66 ac

Certified correct this 27th day of June, 2011

 Mike Yastremak, BCLS

Area referred to shown thus:



Focus Job No: 100284NP51R1
 Date: 2011/06/24
 Drafter: CW Revision: 1

FOCUS Fort St. John
 Focus Surveys 10716-100th Ave.
 B.C. V1J 1Z3
 Ph. (250)787-0300
 Fax (250)787-1611
 www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1677
Board Order 1677-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SE ¼ of Section 22, Township78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

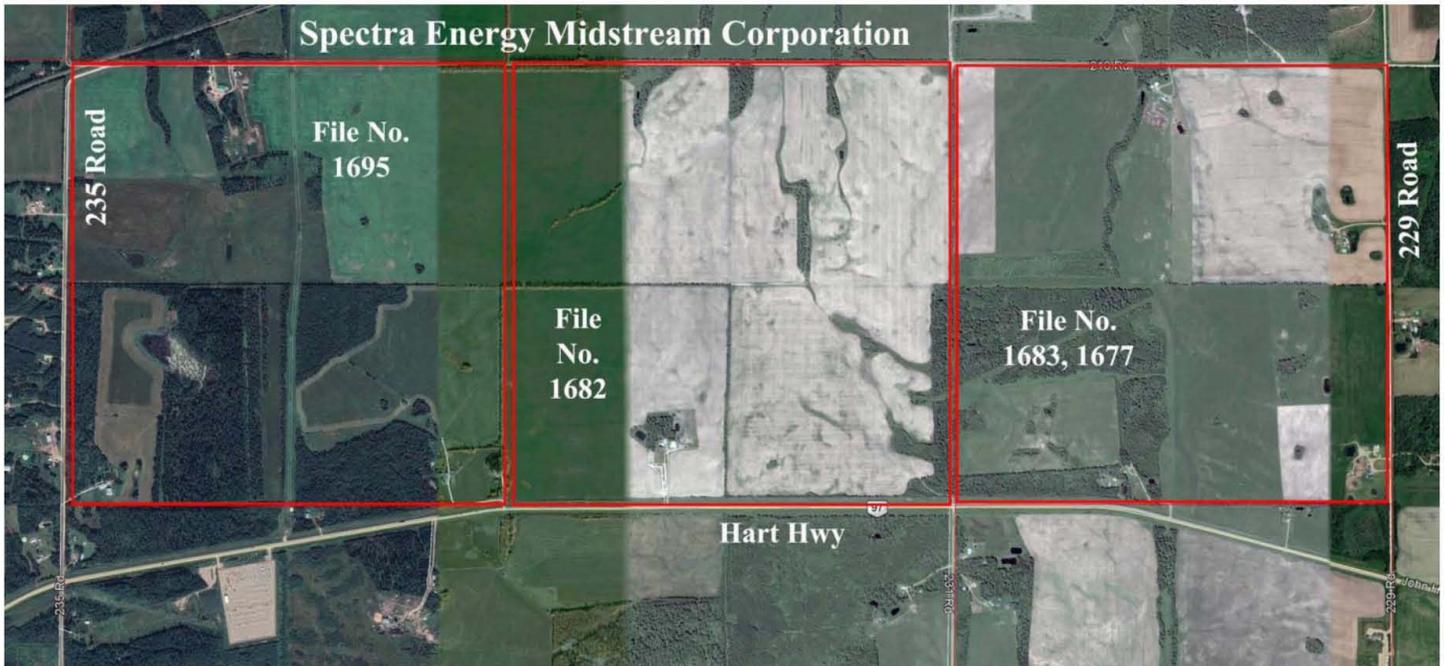
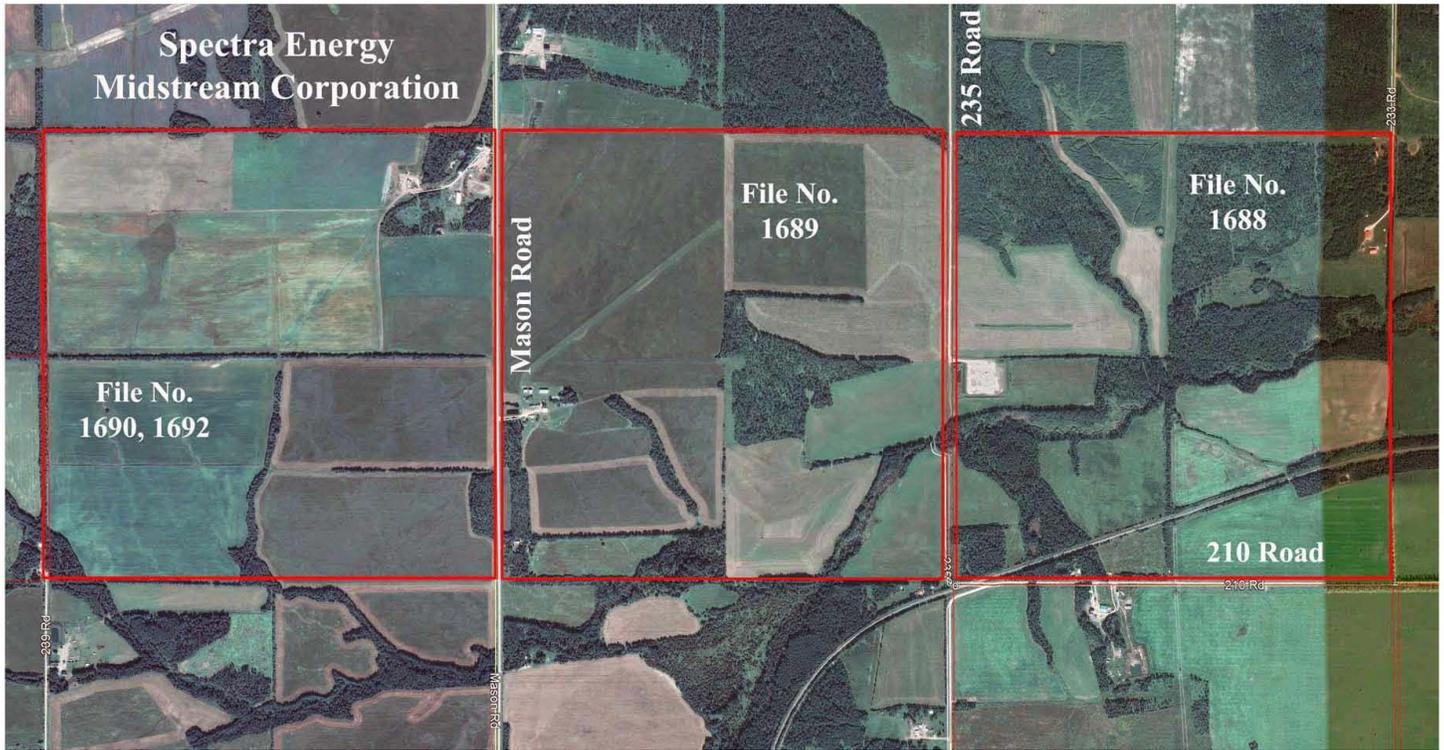
(APPLICANT)

AND:

WILLIAM ERNEST ECKERT

(RESPONDENT)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by William Ernest Eckert.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,600.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD

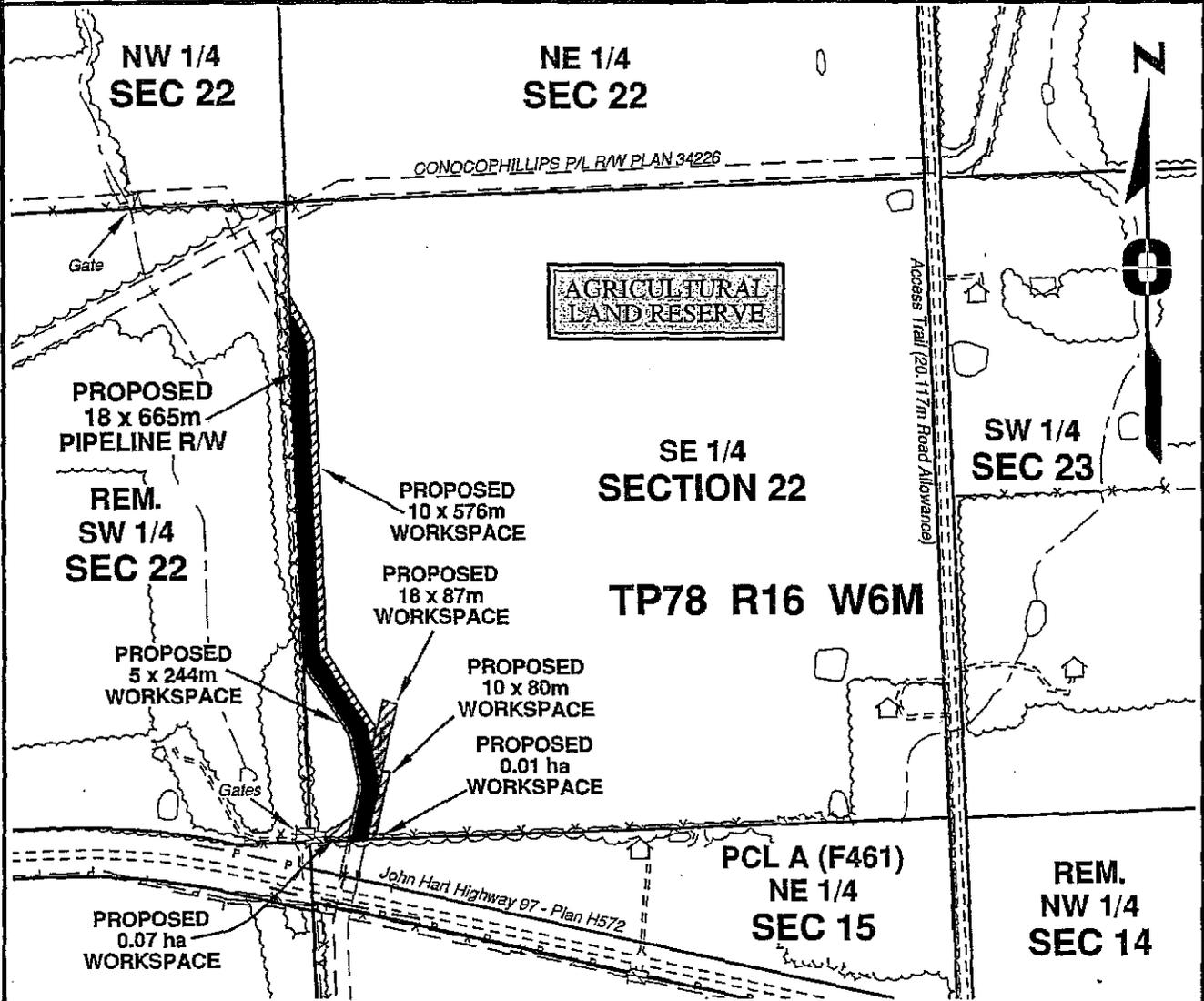


Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18m PIPELINE R/W
 WITHIN THE SOUTH EAST 1/4 OF SECTION 22, TOWNSHIP 78 RANGE 16 W6M,
 PEACE RIVER DISTRICT

APPENDIX II



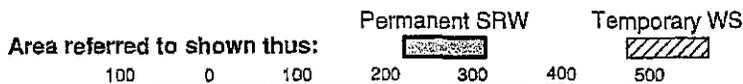
Owner(s): William Ernest Eckert

Title No: PM1899
 Parcel Identifier: 014-328-291
 Company File: _____

Certified correct this 28th day of July, 2010

David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	1.20 ha	2.97 ac
	Temporary Working Space	1.02 ha	2.52 ac
	Total	2.22 ha	5.49 ac



SCALE 1 : 7500

Focus Job No: 100294NP18R2
 Date: 2010/07/28
 Drafter: FR Revision: 2

FOCUS Fort St. John
 10716-100th Ave.
 BC, V1J 1Z3
 Ph: (250)787-0300
 Fax: (250)787-1611
 www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1678
Board Order 1678-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**The South ½ of Section 22, Township 77, Range 15, W6M, Peace River
District**

SE ¼ of Section 21, Township 77, Range 15, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

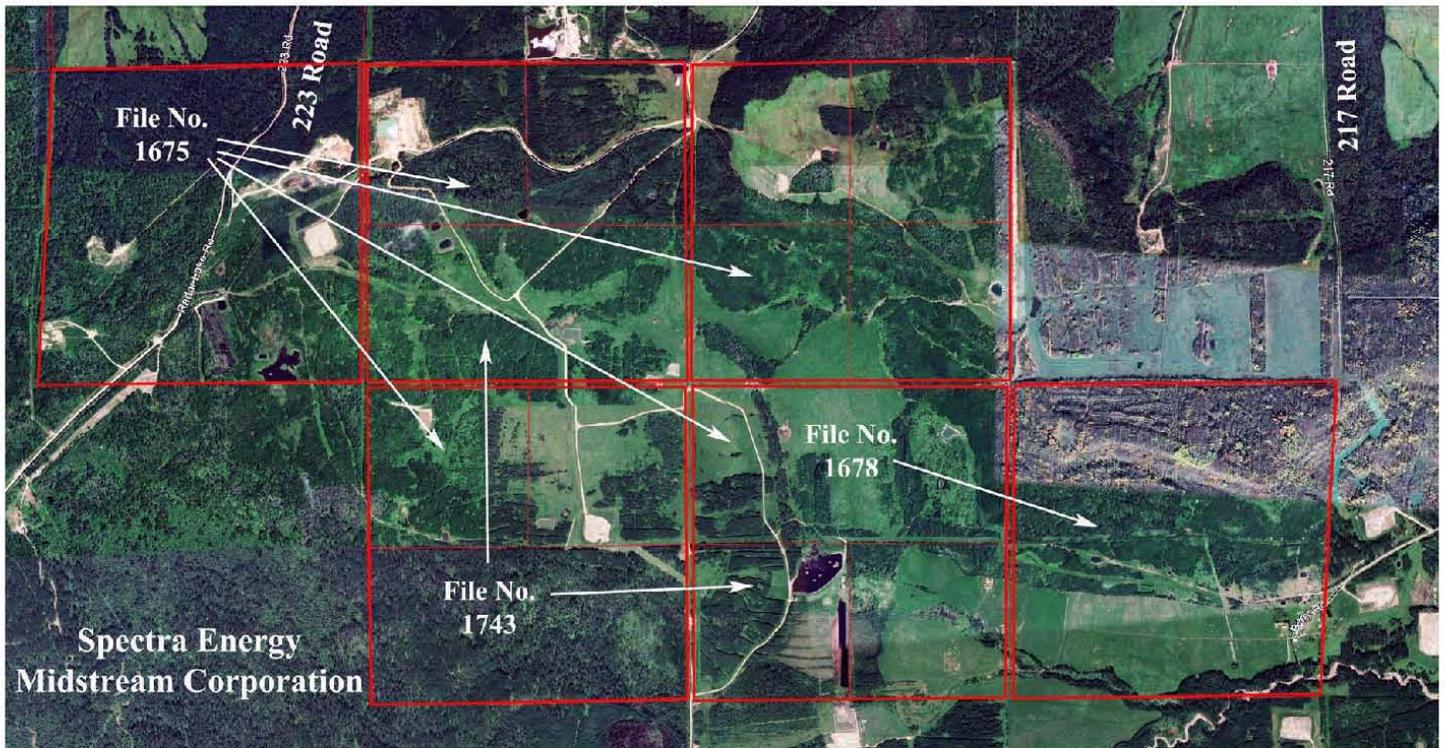
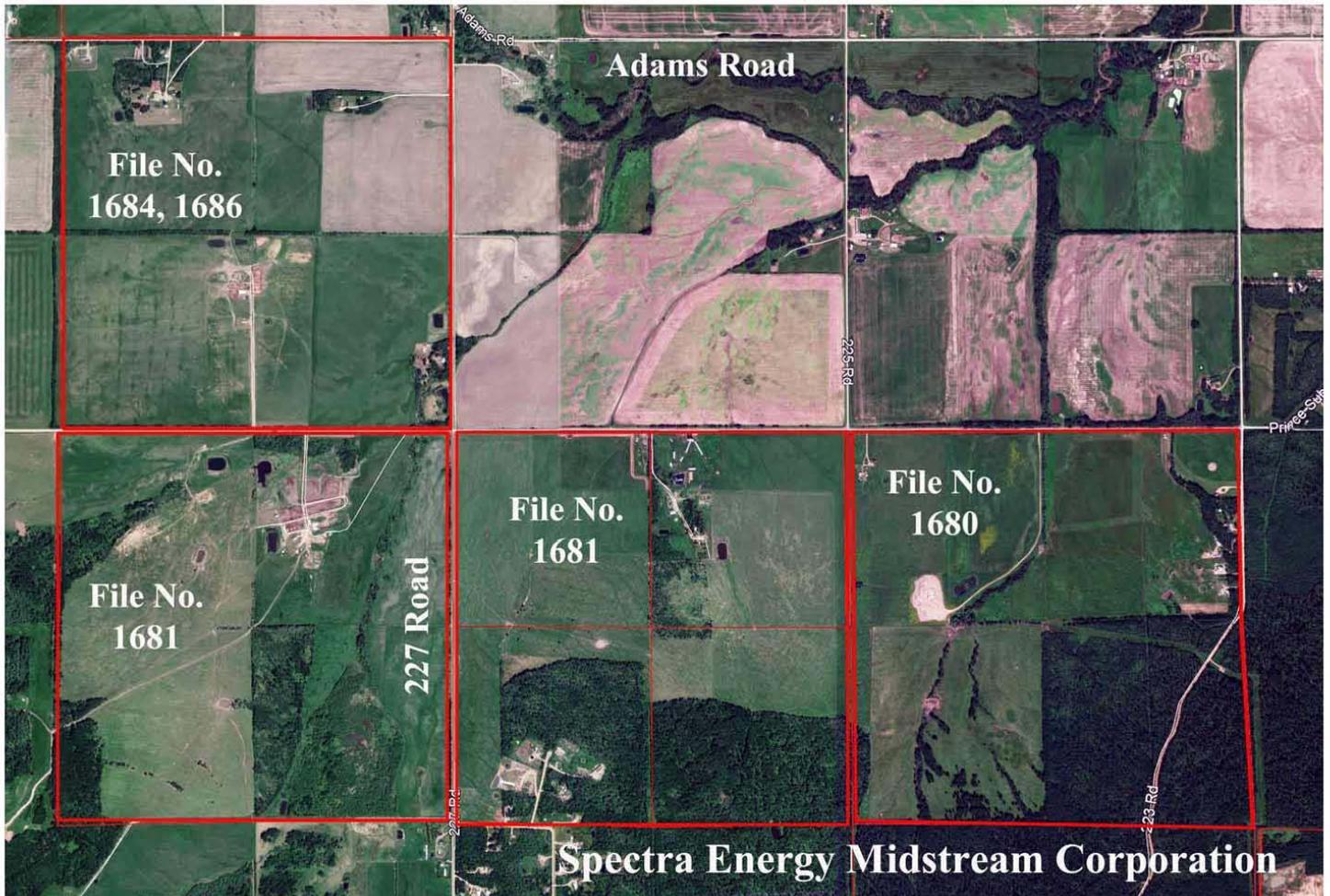
(APPLICANT)

AND:

ROLAND EDELMAN AND SABINE EDELMAN

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Roland Edelman and Sabine Edelman.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$5,000.00.
4. This Order is subject to the approval of the Oil and Gas Commission, and nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

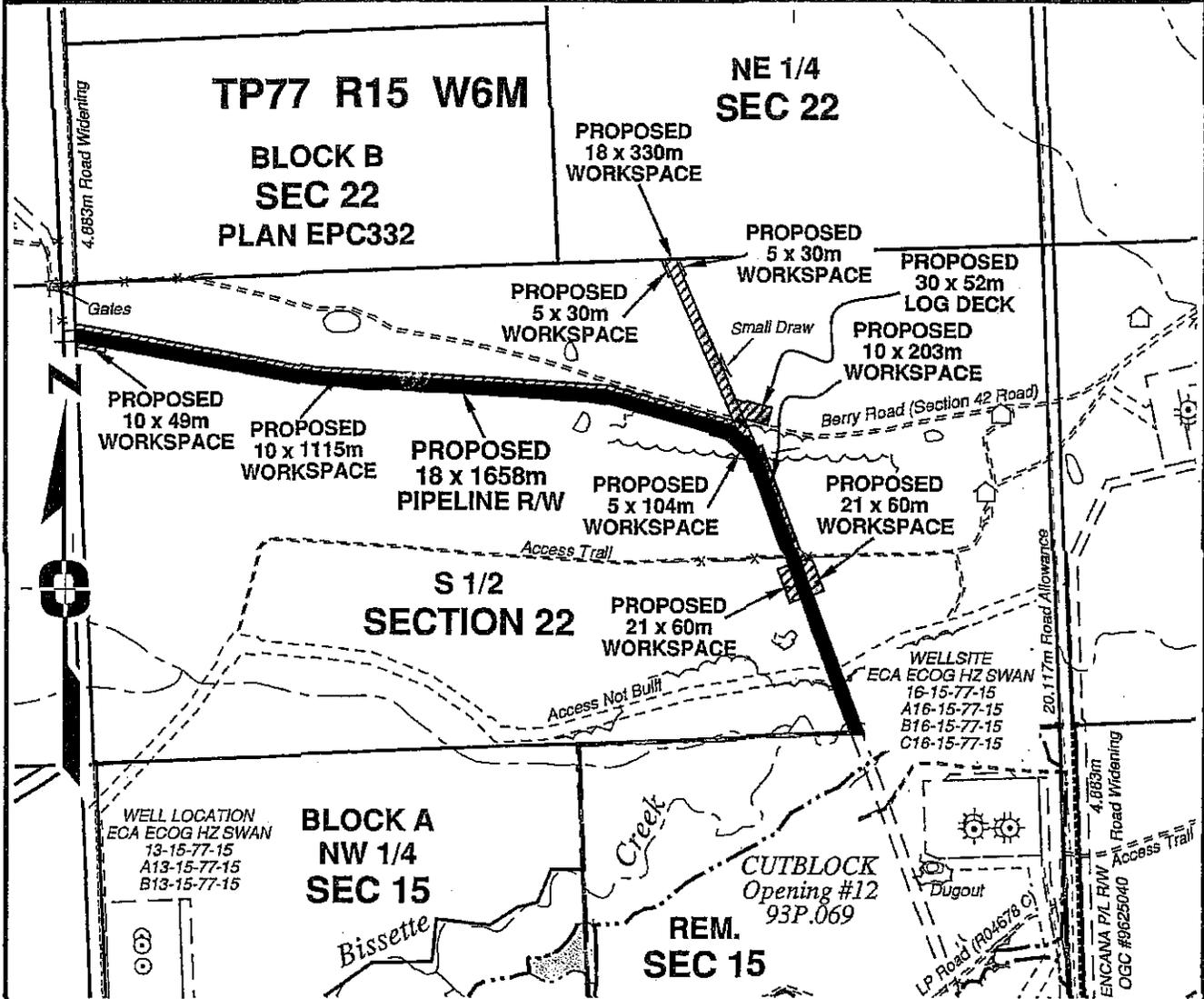
FOR THE BOARD



Rob Fraser, Mediator

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE SOUTH 1/2 OF SECTION 22, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT**

APPENDIX II(a)



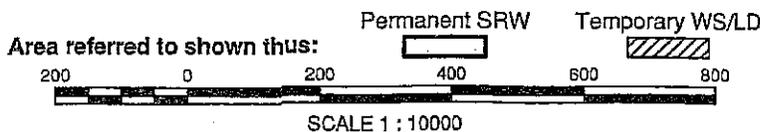
Owner(s): Roland Edelmann
Sabine Erika Edelmann

Title No: PN12231
Parcel Identifier: 014-354-675
Company File:

Certified correct this 5th day of April, 2010

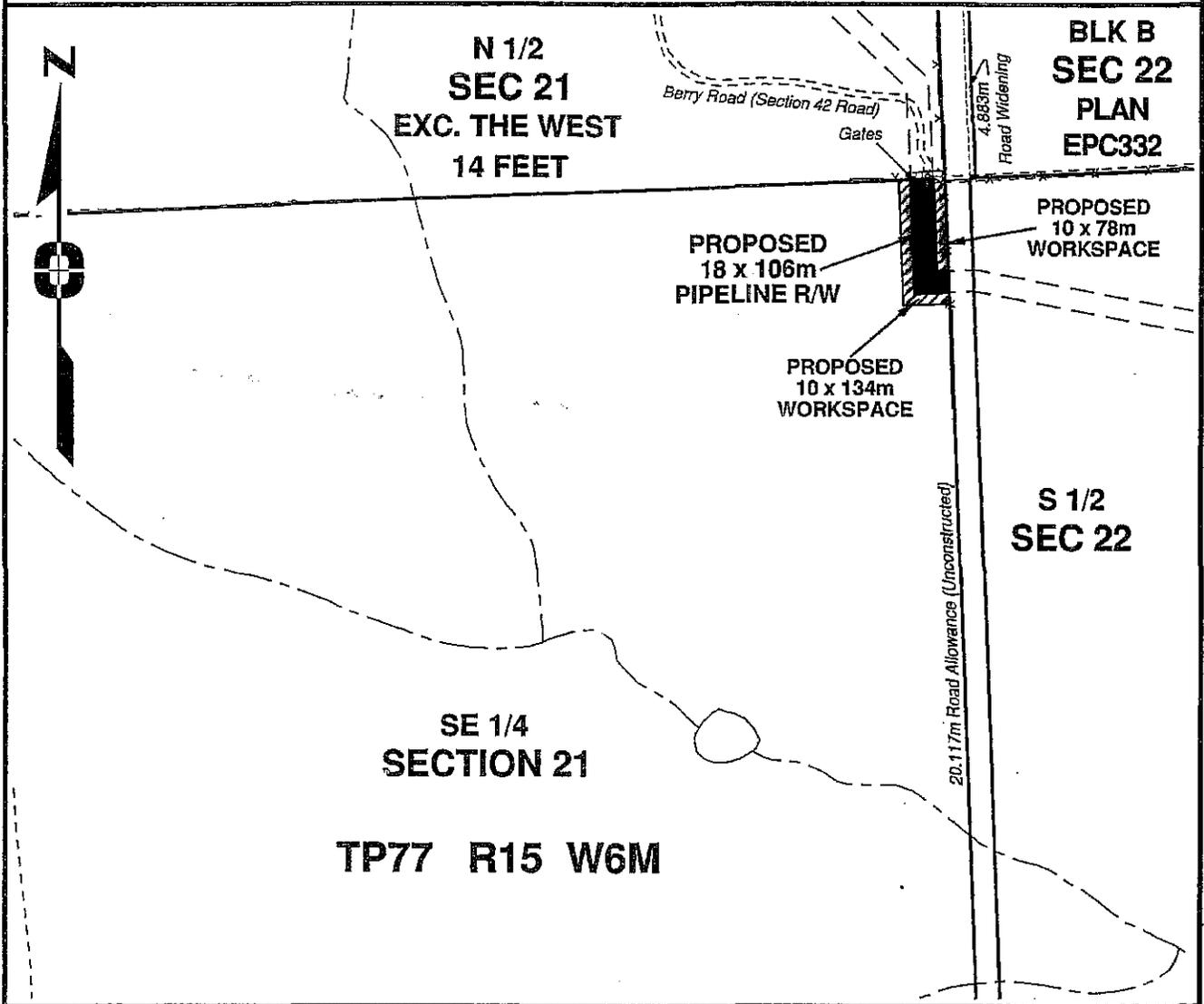
David E. Gosling, BCLS

Area(s): Permanent Statutory Right-of-Way	2.98 ha	7.36 ac
Temporary Working Space/Log Deck	2.45 ha	6.05 ac
Total	5.43 ha	13.41 ac



Focus Job No:	100294NP43R0
Date:	2010/04/05
Drafter: AMD	Revision: 0
FOCUS	
Focus Surveys	
Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250) 787-0300 Fax (250) 787-1611 www.focus.ca	
FCS Land Services Limited Partnership	

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
APPENDIX II(b)
WITHIN THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT



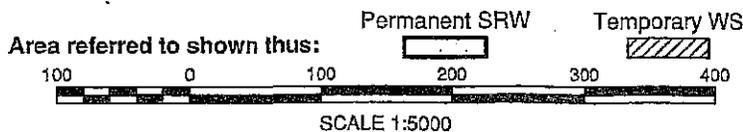
Owner(s): Roland Edelmann
Sabine Erika Edelmann

Title No: PN12233
 Parcel Identifier: 014-354-632
 Company File: _____

Certified correct this 7th day of June, 2010

Adam Brush, BCLS

Area(s):	Permanent Statutory Right-of-Way	0.19 ha	0.47 ac
	Temporary Working Space	0.21 ha	0.52 ac
	Total	0.40 ha	0.99 ac



Focus Job No: 100294NP42R1
 Date: 2010/05/25
 Drafter: FR Revision: 1

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

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1678
Board Order 1678-1amd**

June 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**The South ½ of Section 22, Township 77, Range 15, W6M, Peace River District
SE ¼ of Section 21, Township 77, Range 15, W6M, Peace River District**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

ROLAND EDELMANN AND SABINE ERIKA EDELMANN

(RESPONDENTS)

**AMENDED
BOARD ORDER**

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

This Order amends Order 1678-1 issued December 23, 2010 to correct a typographical error in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Roland Edelman and Sabine Edelman.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$5,000.00.
4. This Order is subject to the approval of the Oil and Gas Commission, and 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 13, 2011

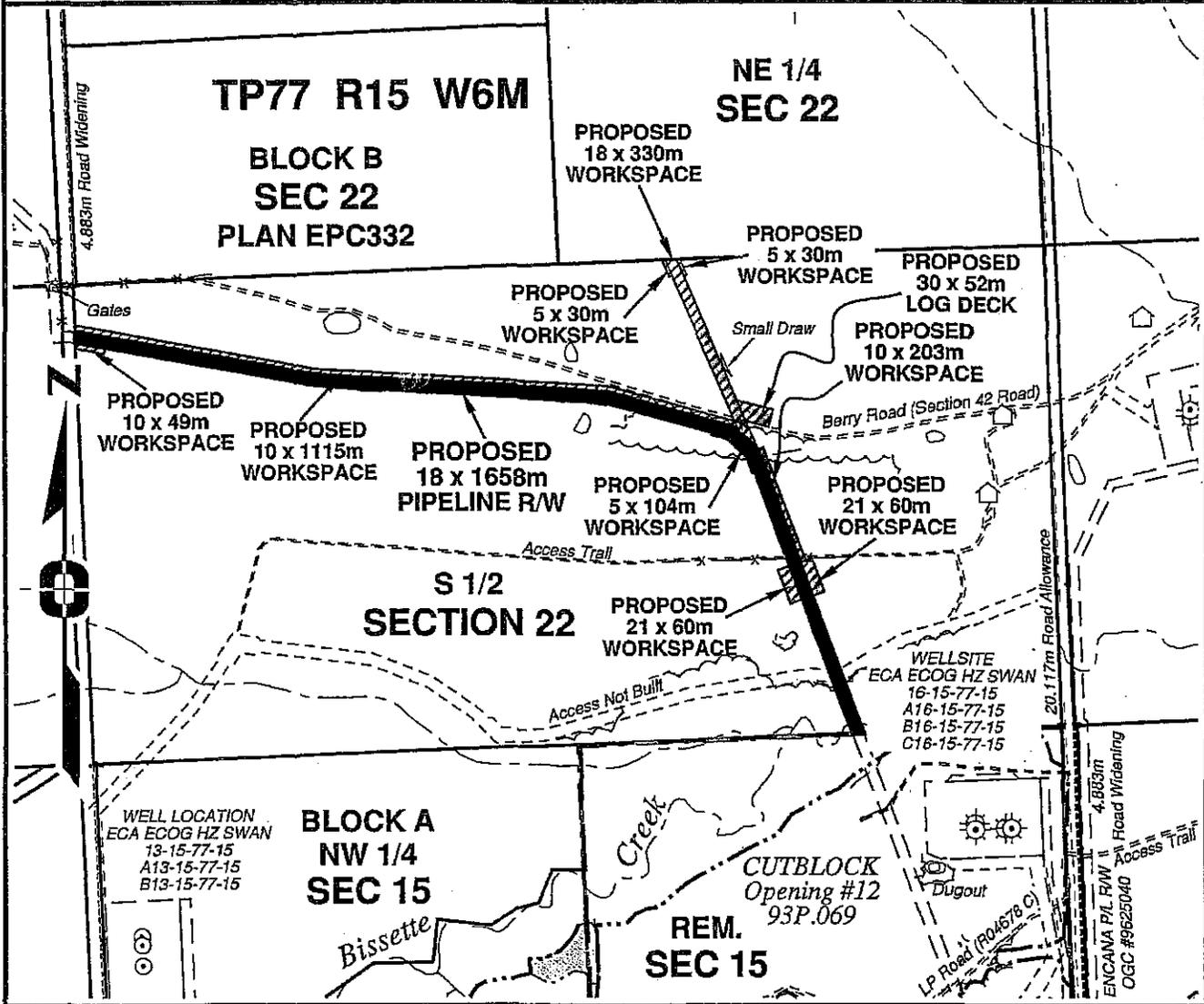
FOR THE BOARD



Rob Fraser, Mediator

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE SOUTH 1/2 OF SECTION 22, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT**

APPENDIX II(a)



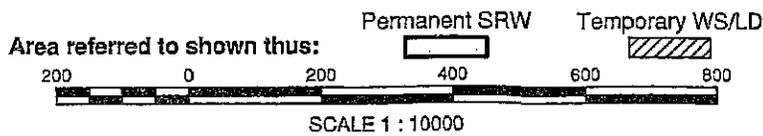
Owner(s): Roland Edelmann
Sabine Erika Edelmann

Title No: PN12231
Parcel Identifier: 014-354-675
Company File: _____

Certified correct this 5th day of April, 2010

[Signature]
David E. Gosling, BCLS

Area(s): Permanent Statutory Right-of-Way	2.98 ha	7.36 ac
Temporary Working Space/Log Deck	2.45 ha	6.05 ac
Total	5.43 ha	13.41 ac

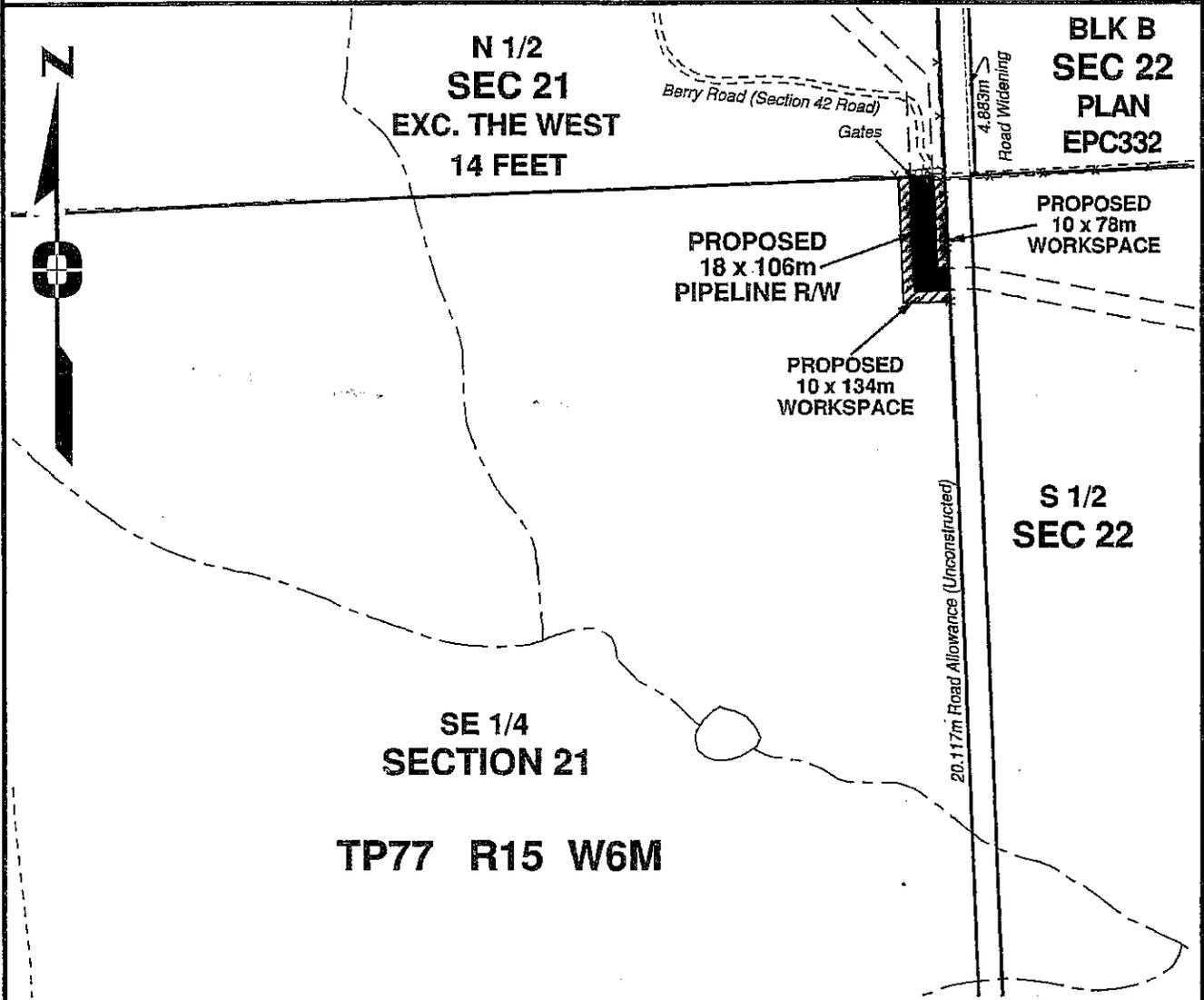


Focus Job No:	100294NP43R0
Date:	2010/04/05
Drafter:AMD	Revision: 0

FOCUS Focus Surveys
FCS Land Services Limited Partnership

Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250)787-0300
Fax (250)787-1511
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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
APPENDIX II(b)
WITHIN THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT**



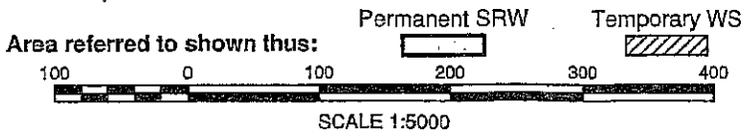
Owner(s): Roland Edelmann
Sabine Erika Edelmann

Title No: PN12233
Parcel Identifier: 014-354-632
Company File: _____

Certified correct this 7th day of June, 2010

Adam Brash, BCLS

Area(s): Permanent Statutory Right-of-Way	0.19 ha	0.47 ac
Temporary Working Space	0.21 ha	0.52 ac
Total	0.40 ha	0.99 ac



Focus Job No:	100294NP42R1
Date:	2010/05/25
Drafter: FR	Revision: 1

FOCUS Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250)787-9300
Fax (250)787-1611
www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1680
Board Order 1680-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SW ¼ of Section 31, Township 77, Range 15, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

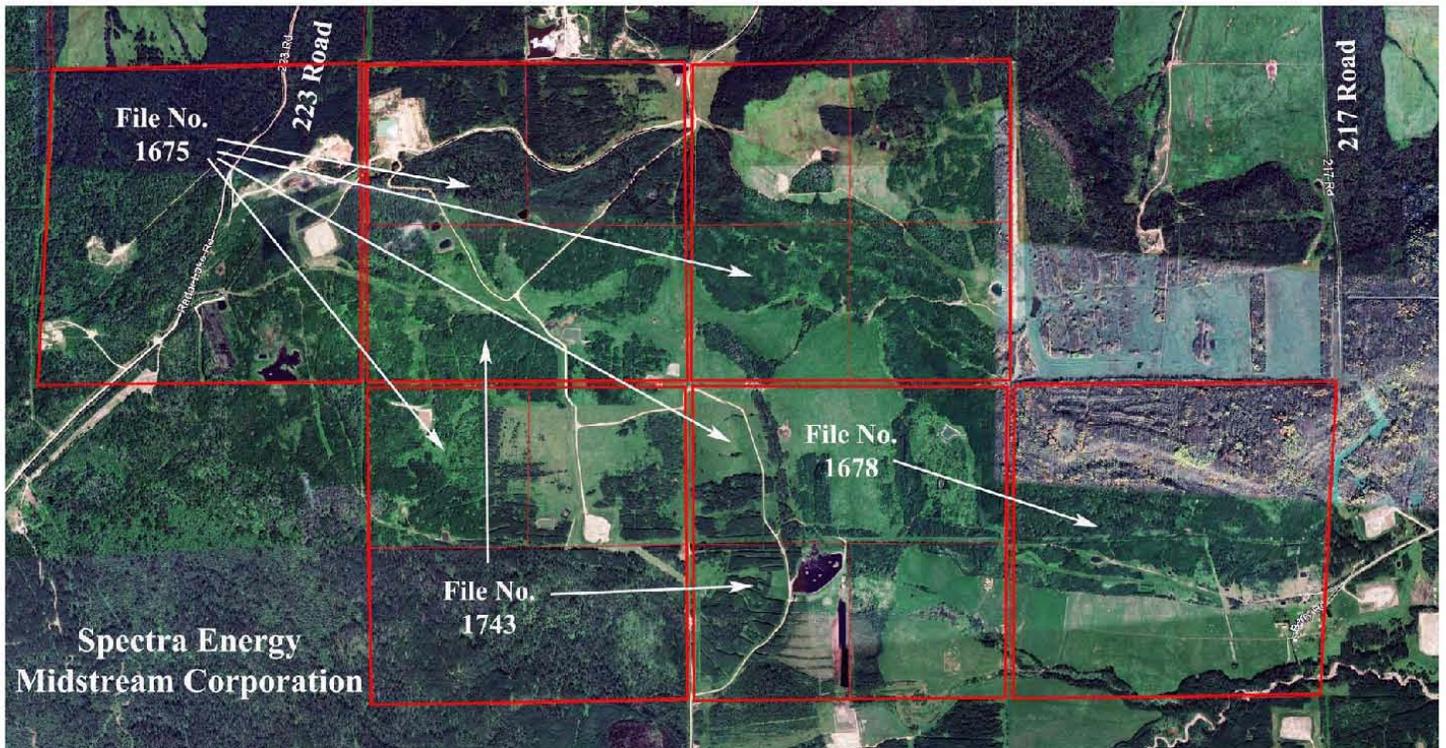
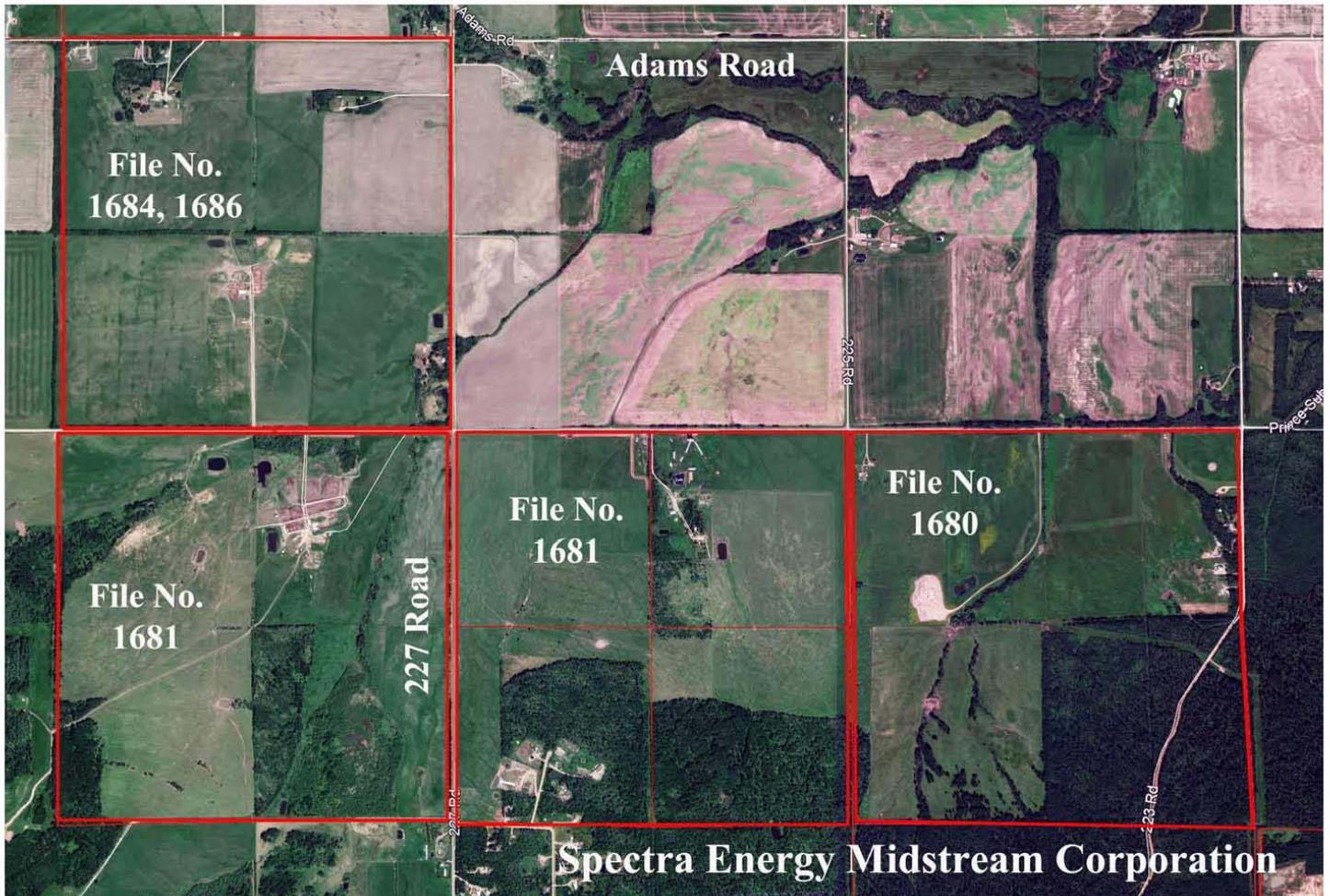
(APPLICANT)

AND:

PHILIP ANDREW STEFANYK AND CINDY LEA STEFANYK

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Philip Andrew Stefanyk and Cindy Lea Stefanyk.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$2,500.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



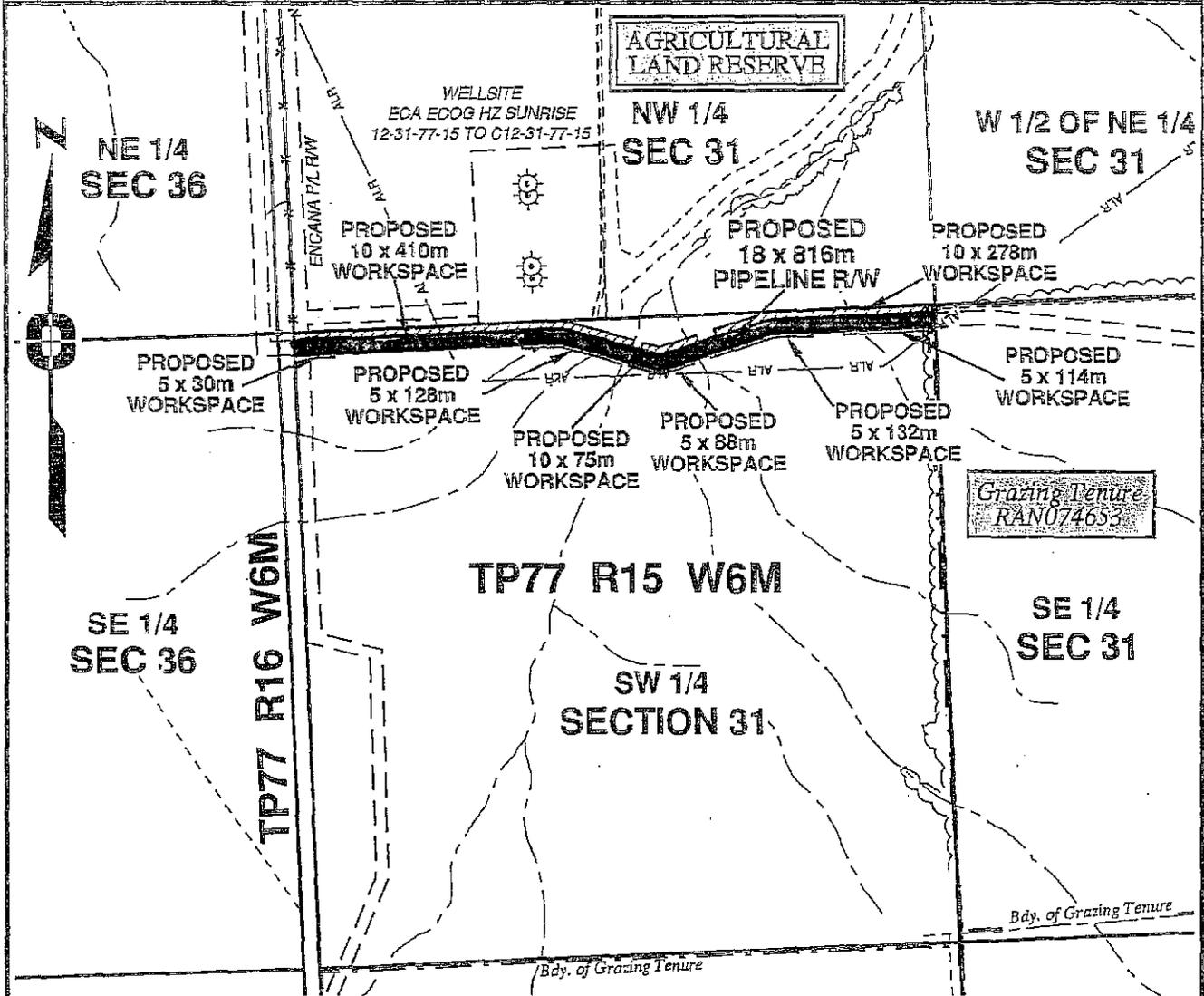
Rob Fraser, Mediator

APPENDIX "A"

1577

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18m PIPELINE R/W
 WITHIN THE SOUTH WEST 1/4 OF SECTION 31, TOWNSHIP 77 RANGE 15 W6M,
 PEACE RIVER DISTRICT

APPENDIX II



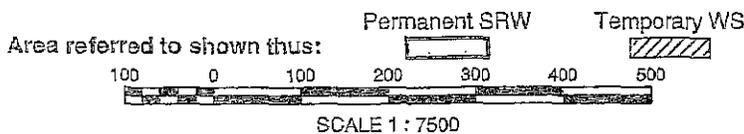
Owner(s): Philip Andrew Stefanyk
 Cindy Lea Stefanyk

Title No: BB293080
 Parcel Identifier: 014-310-708
 Company File:

Certified correct this 5th day of April, 2010

(Signature)
 David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	1.47 ha	3.63 ac
	Temporary Working Space	1.01 ha	2.50 ac
	Total	2.48 ha	6.13 ac



Focus Job No: 100294NP32R0
 Date: 2010/04/08
 Drafter: AMD Revision: 0

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 Fax (250)787-1611
 www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1681
Board Order 1681-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NE ¼ of Section 35, Township 77, Range 16, W6M, Peace River District
NW ¼ of Section 36, Township 77, Range 16, W6M, Peace River District
NE ¼ of Section 36, Township 77, Range 16, W6M, Peace River District**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

PARKER LIVESTOCK LTD.

(RESPONDENT)

BOARD ORDER

Heard by telephone conference:
Mediator:

December 13 and 23, 2010
Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Parker Livestock Ltd.

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*.

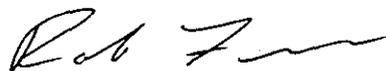
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$10,500.00.
4. This Order is subject to the approval of the Oil and Gas Commission, and nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

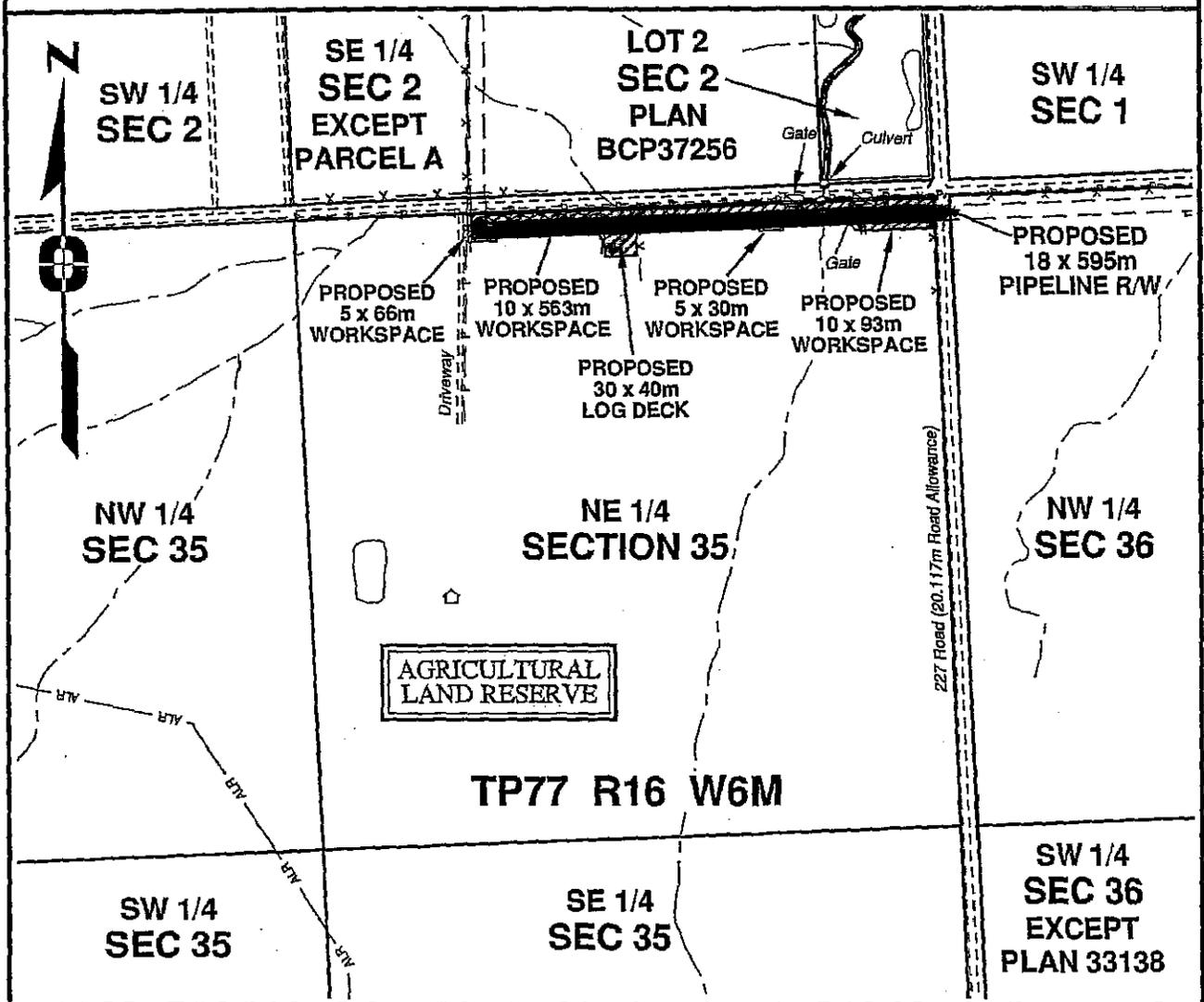
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
APPENDIX II (c)
WITHIN THE NORTH EAST 1/4 OF SECTION 35 TOWNSHIP 77 RANGE 16 W6M,
PEACE RIVER DISTRICT



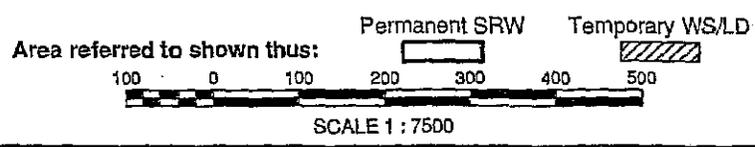
Owner(s): Parker Livestock Ltd., Inc.No. 421612

Title No: PL23696
Parcel Identifier: 014-485-672
Company File: _____

Certified correct this 1st day of April, 2010

Area(s): Permanent Statutory Right-of-Way	1.07 ha	2.64 ac
Temporary Working Space/Log Deck	0.82 ha	2.03 ac
Total	1.89 ha	4.67 ac

David E. Gosling, BCLS



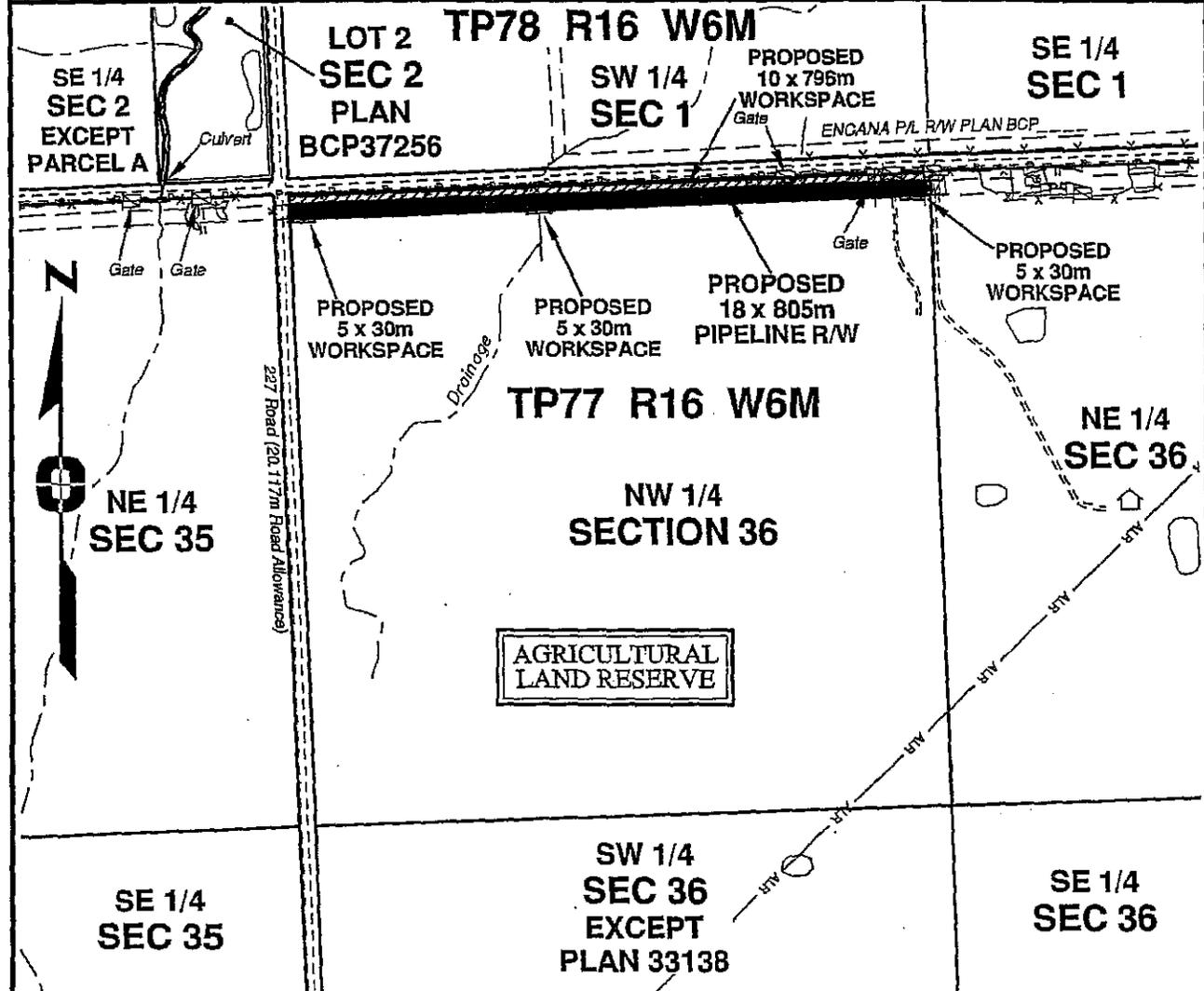
Focus Job No: 100294NP28R0
Date: 2010/04/01
Drafter: FR/AMD Revision: 0

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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH WEST 1/4 OF SECTION 36 TOWNSHIP 77 RANGE 16 W6M
PEACE RIVER DISTRICT**

APPENDIX II (b)



Owner(s): Parker Livestock Ltd., Inc.No. 421612

Title No: CA5685D1

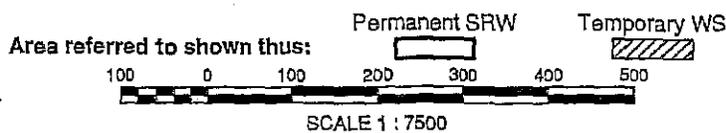
Parcel Identifier: 011-720-786

Company File: _____

Certified correct this 1st day of April, 2010

(Signature)
David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	1.45 ha	3.58 ac
	Temporary Working Space	0.84 ha	2.08 ac
	Total	2.29 ha	5.66 ac



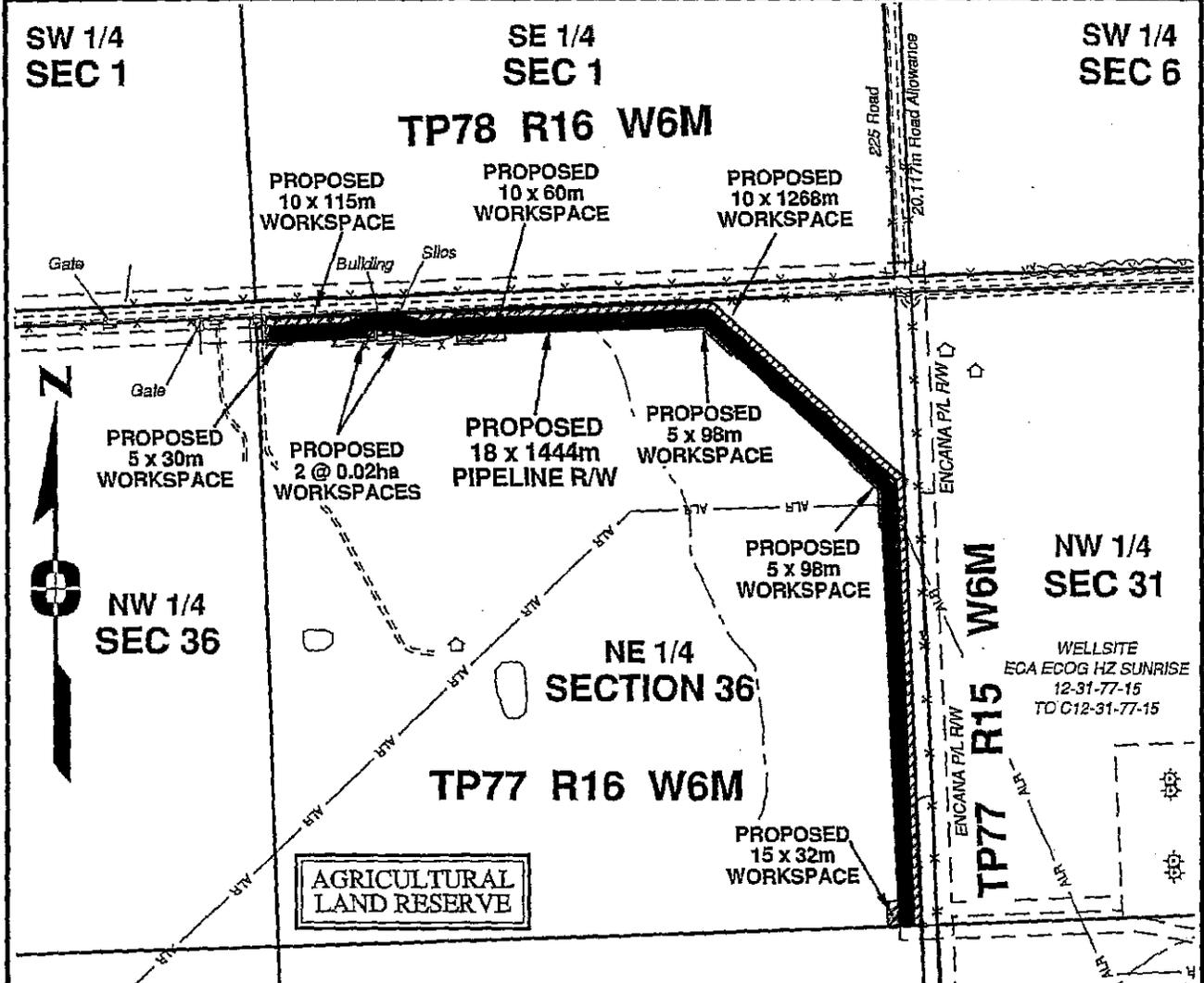
Focus Job No: 100294NP29R0
Date: 2010/04/01
Drafter: FR/AMD Revision: 0

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INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
APPENDIX II (a)
WITHIN THE NORTH EAST 1/4 OF SECTION 36, TOWNSHIP 77 RANGE 16 W6M,
PEACE RIVER DISTRICT



Owner(s): Parker Livestock Ltd., Inc.No. 421612

Title No: BX33847

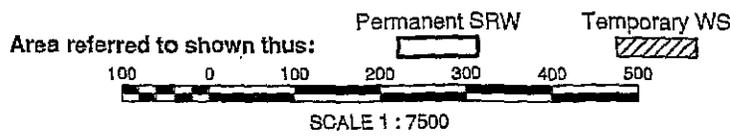
Parcel Identifier: 011-720-808

Company File: _____

Certified correct this 8th day of April, 2010

[Signature]
David E. Gosling, BCLS

Area(s): Permanent Statutory Right-of-Way	2.60 ha	6.42 ac
Temporary Working Space	1.64 ha	4.05 ac
Total	4.24 ha	10.47 ac



Focus Job No: 100294NP30R2

Date: 2010/04/09

Drafter: FR Revision: 2

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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1682
Board Order 1682-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NE ¼ of Section 21, Township 78, Range 16, W6M, Peace River District
NW ¼ of Section 21, Township 78, Range 16, W6M, Peace River District**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

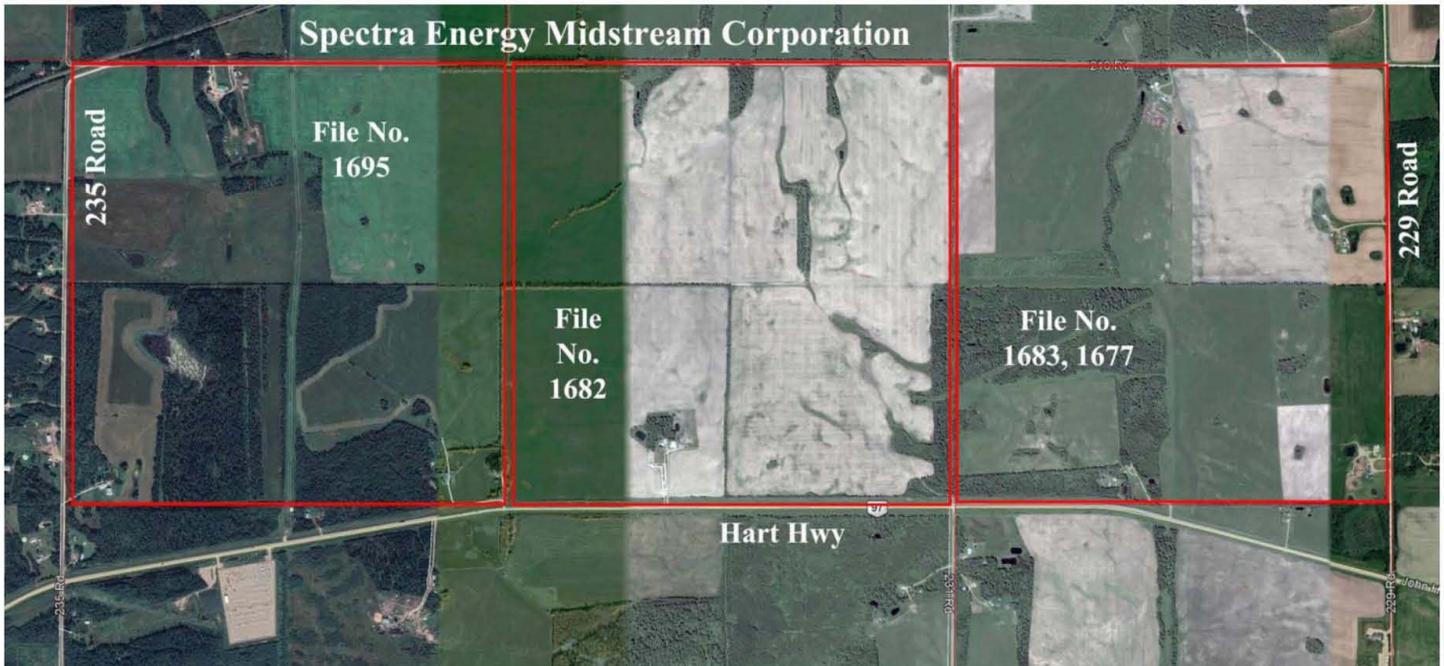
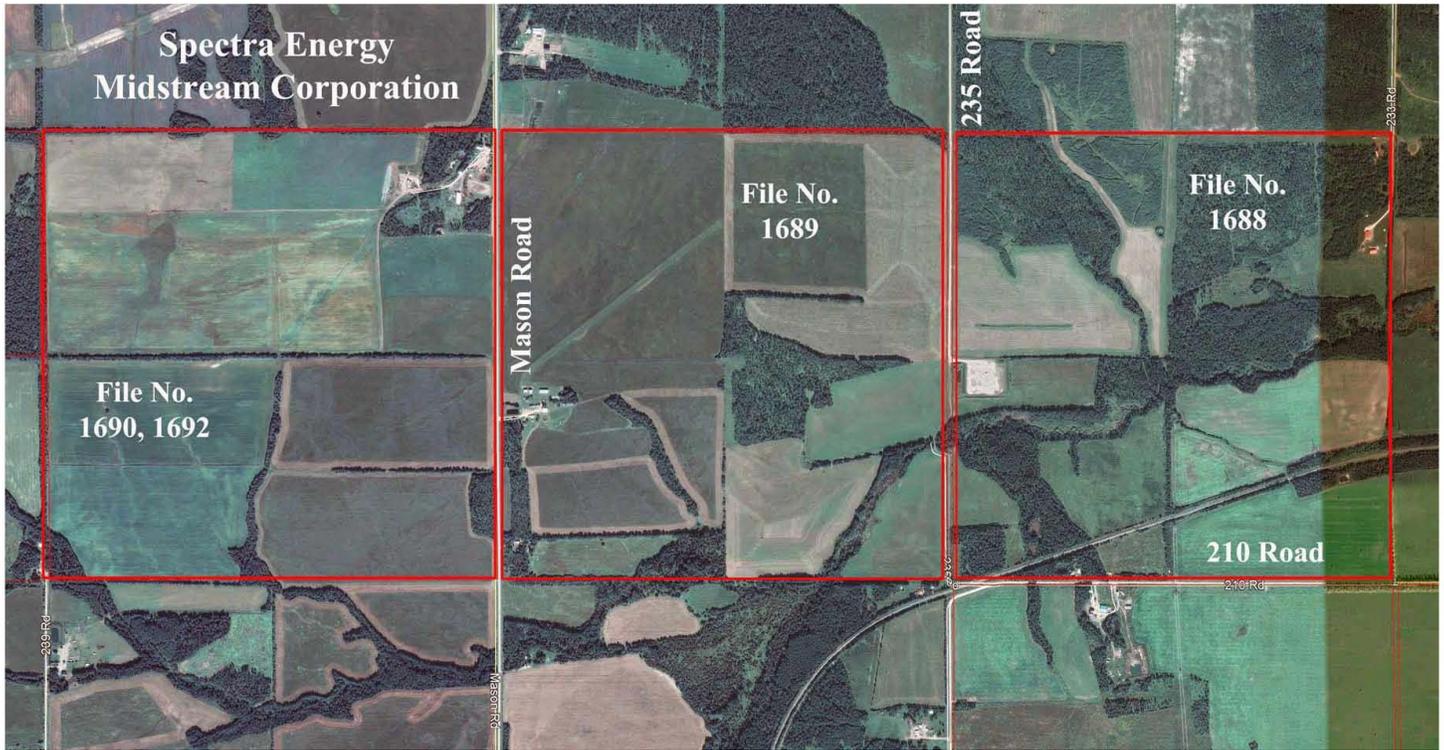
(APPLICANT)

AND:

JOHN GASPARD VANDERHORST AND ELIZABETH ANN VANDERHORST

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by John Gaspard Vanderhorst and Elizabeth Ann Vanderhorst.

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*.

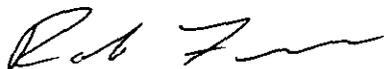
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$4,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



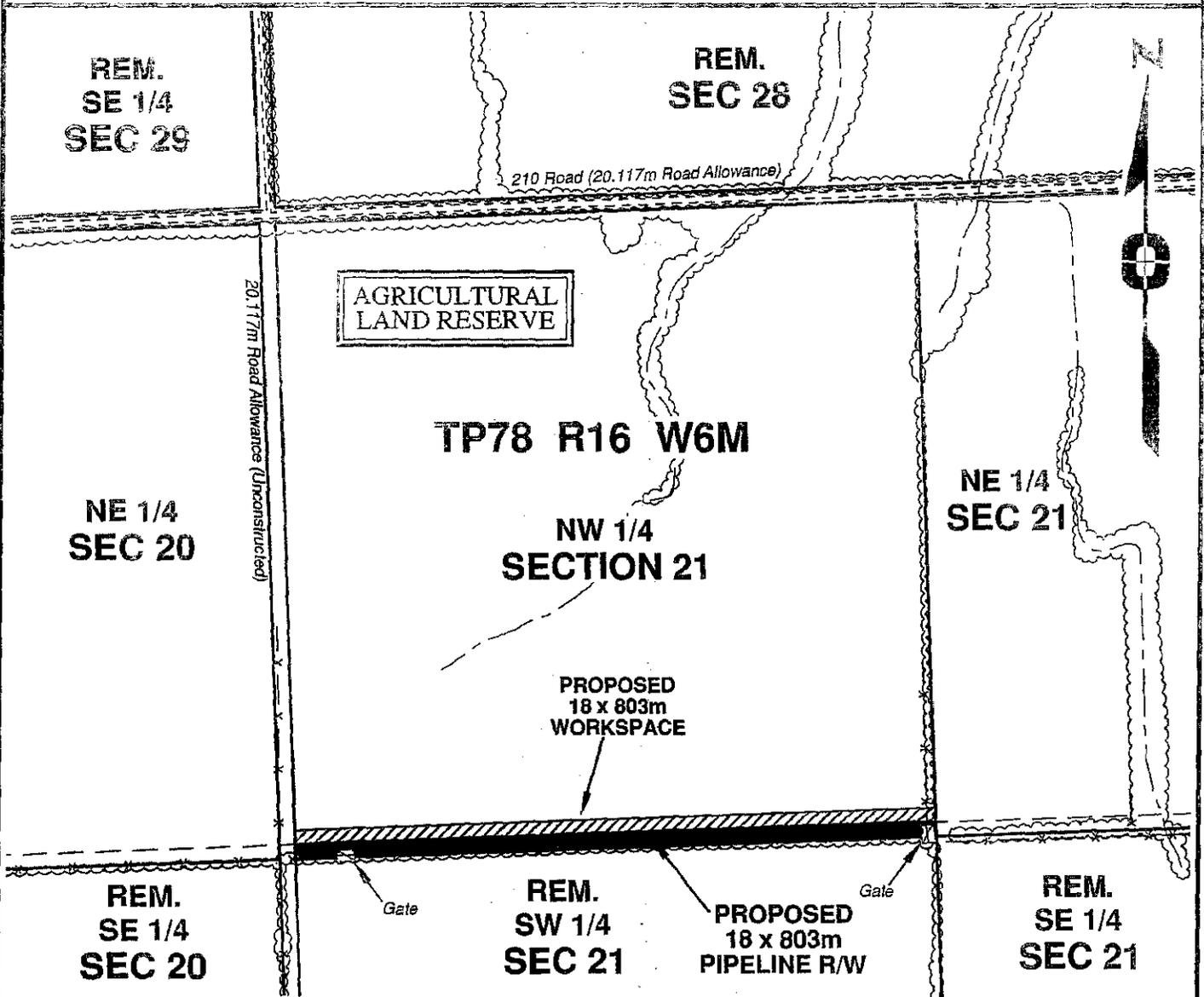
Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W

Page ___ of ___

WITHIN THE NORTH WEST 1/4 OF SECTION 21, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT



Owner(s): John Gaspard Vanderhorst
Elizabeth Ann Vanderhorst

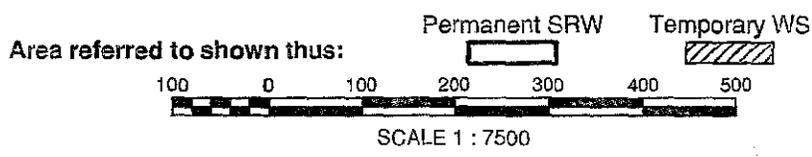
Title No: BV404587
Parcel Identifier: 012-967-459
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.45 ha	3.58 ac
Temporary Working Space	1.45 ha	3.58 ac
Total	2.90 ha	7.16 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS

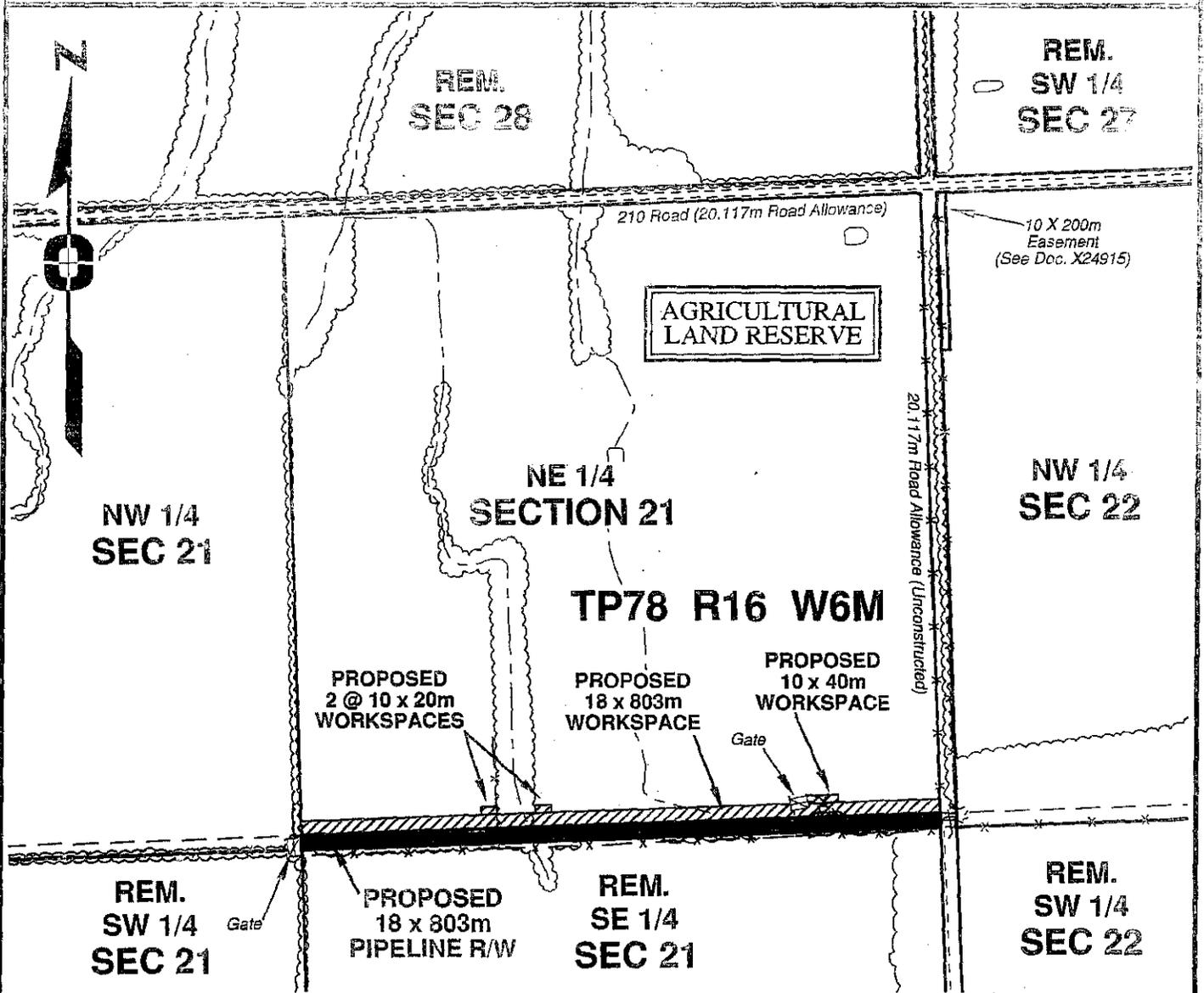


Focus Job No:	100294NP14R2
Date:	2010/12/20
Drafter: FR	Revision: 2

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**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH EAST 1/4 OF SECTION 21, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT**



Owner(s): John Gaspard Vanderhorst
Elizabeth Ann Vanderhorst

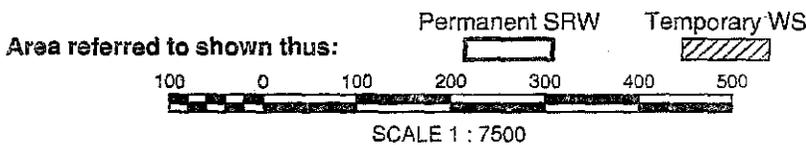
Title No: BV404588
Parcel Identifier: 014-328-305
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.45 ha	3.58 ac
Temporary Working Space	1.53 ha	3.78 ac
Total	2.98 ha	7.36 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS



Focus Job No: 100294NP15R2
Date: 2010/12/20
Drafter: FR **Revision:** 2

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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1682
Board Order 1682-2

May 9, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

NE ¼ of Section 21, Township 78, Range 16, W6M, Peace River District
NW ¼ of Section 21, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

JOHN GASPARD VANDERHORST AND ELIZABETH ANN VANDERHORST

(RESPONDENTS)

BOARD ORDER

On the application of the Applicant, Spectra Energy Midstream Corporation, and with the consent of the Respondents, John Gaspard Vanderhorst and Elizabeth Ann Vanderhorst, and pursuant to section 155 of the *Petroleum and Natural Gas Act*, the Board rescinds its Order of December 23, 2010 and substitutes that Order with the Order below to reflect a change to the right of way and temporary workspace area required by the Applicant.

The Board acknowledges receipt of the required security deposit and understands the partial payment of \$4,000.00 to have been made to the Respondents.

ORDER

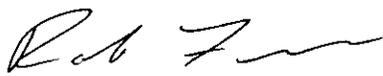
The Board's Order of December 23, 2010 is rescinded and replaced with the following:

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

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" to this Order for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$4,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

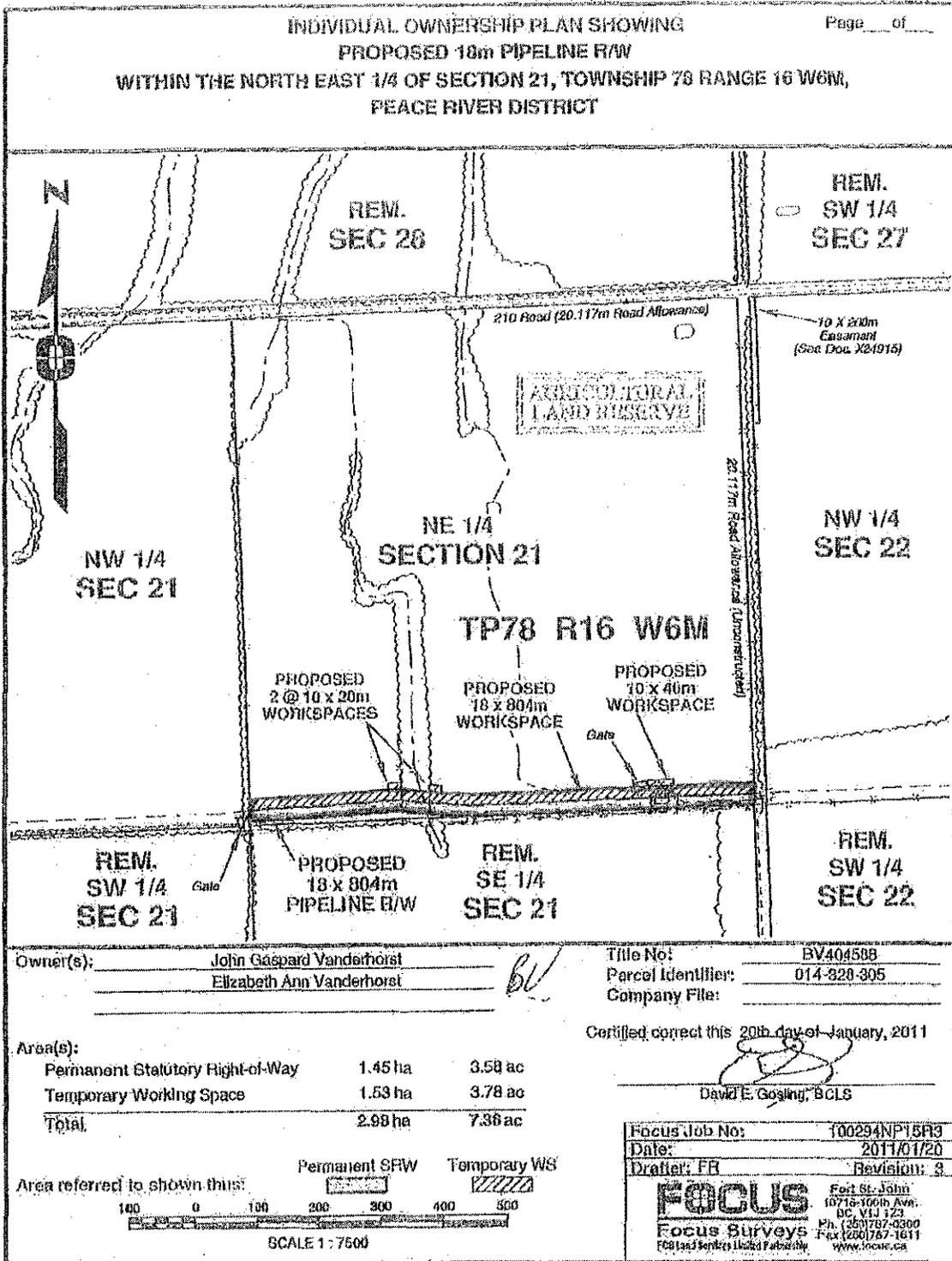
Dated: May 9, 2011

FOR THE BOARD



Rob Fraser, Mediator

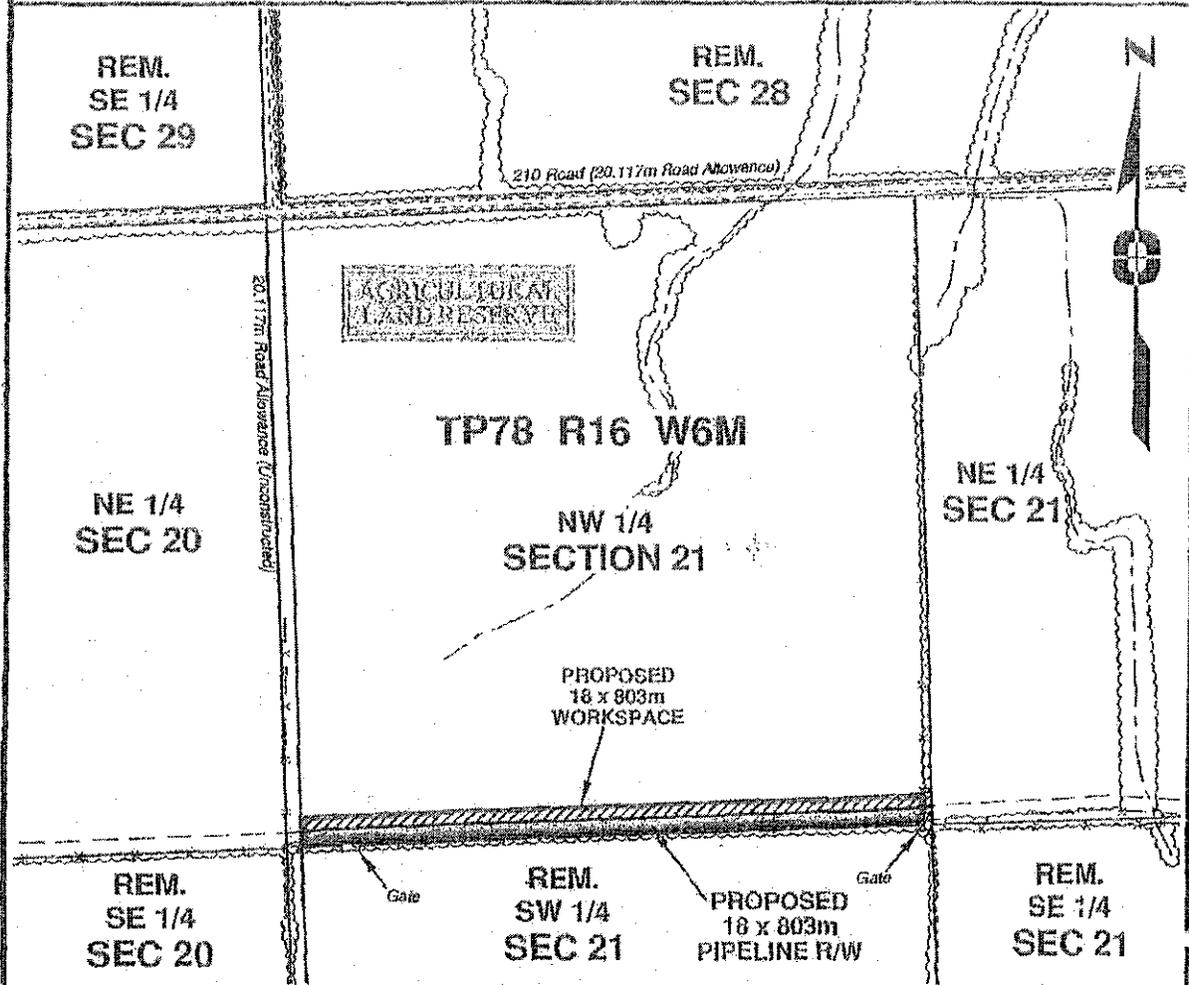
APPENDIX "A" 1652-2



INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W

Page ___ of ___

WITHIN THE NORTH WEST 1/4 OF SECTION 21, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT



Owner(s): John Gaspard Vanderhorst
Elizabeth Ann Vanderhorst

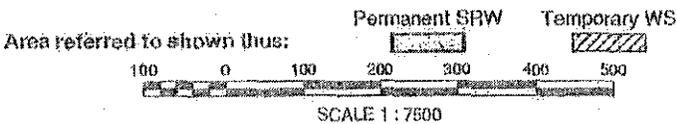
Title No: BV404587
Parcel Identifier: 012 967-459
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.45 ha	3.58 ac
Temporary Working Space	1.45 ha	3.58 ac
Total	2.90 ha	7.16 ac

Certified correct this 20th day of January, 2011

David E. Gosling
David E. Gosling, BCLS



Focus Job No:	100294NP14R3
Date:	2011/01/20
Drafter: FR	Revision: 3

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10718-106th Ave.
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FOCUS Land Services Limited Partnership

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1683
Board Order 1683-1**

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

NW ¼ of Section 22, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

WILLIAM CLIFFORD BULL AND SHIRLEY CATHERINE BULL

(RESPONDENTS)

BOARD ORDER

Heard by telephone conference:
Mediator:

December 13 and 23, 2010
Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by William Clifford Bull and Shirley Catherine Bull.

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*.

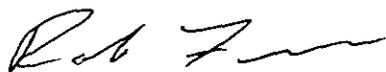
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,600.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD

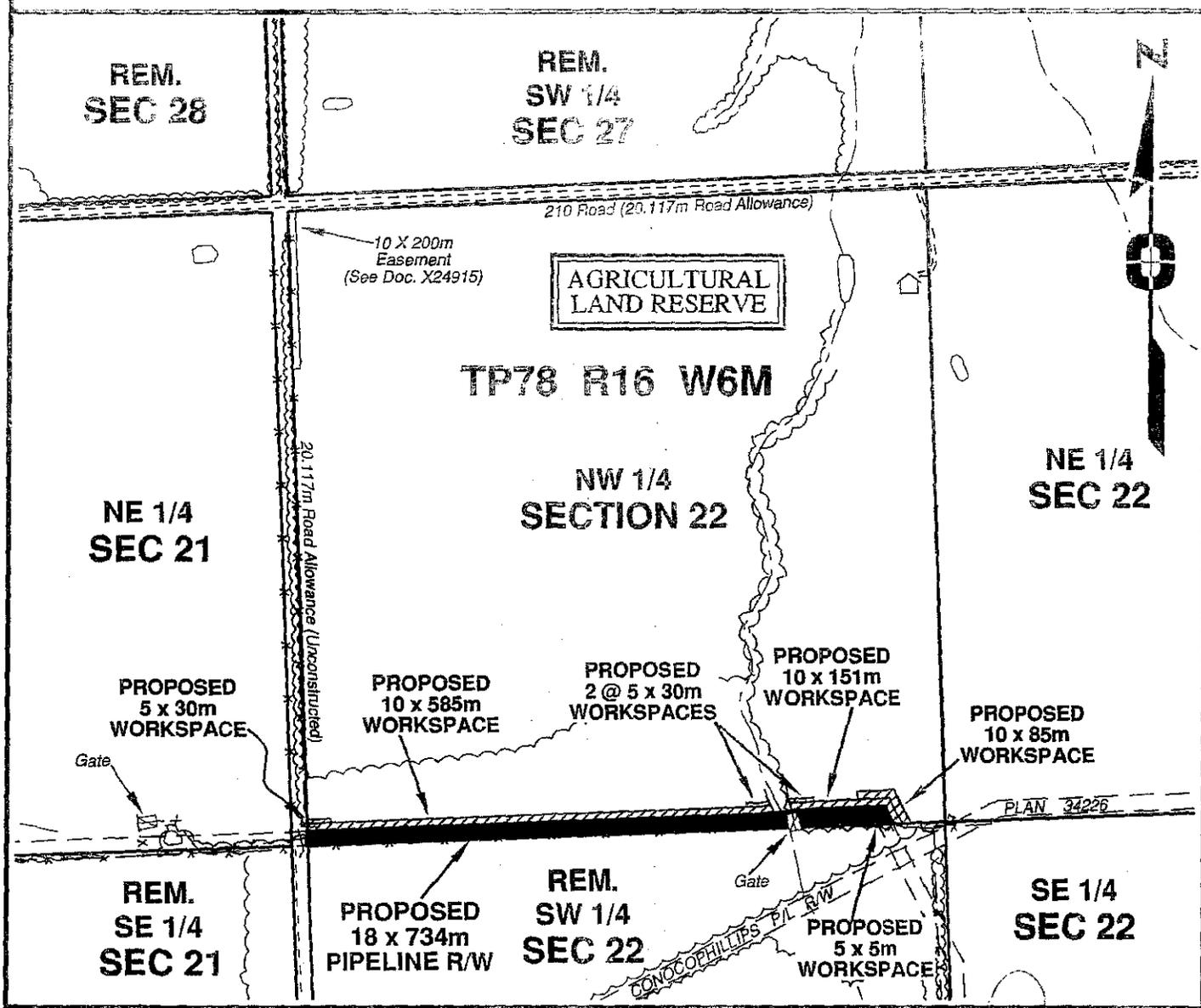


Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18m PIPELINE R/W
 WITHIN THE NORTH WEST 1/4 OF SECTION 22, TOWNSHIP 78 RANGE 16 W6M,
 PEACE RIVER DISTRICT

Page ___ of ___



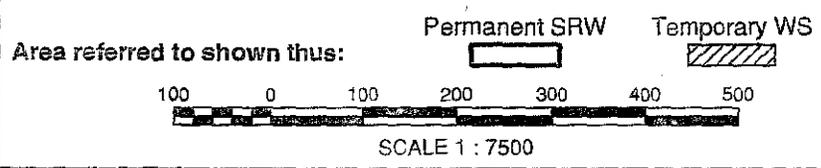
Owner(s): William Clifford Bull
Shirley Catherine Bull

Title No: PG42408
 Parcel Identifier: 004-754-689
 Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.32 ha	3.26 ac
Temporary Working Space	0.87 ha	2.15 ac
Total	2.19 ha	5.41 ac

Certified correct this 20th day of December, 2010
 Adam Brash, BCLS



Focus Job No:	100294NP16R1
Date:	2010/12/20
Drafter: FR	Revision: 1

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 Fax (250)787-1611
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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1684
Board Order 1684-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NW ¼ of Section 2, Township 78, Range 16, W6M, Peace River District, Except:
Parcel A (G8543) and Part Shown on Statutory Right of Way Plan BCP32515**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

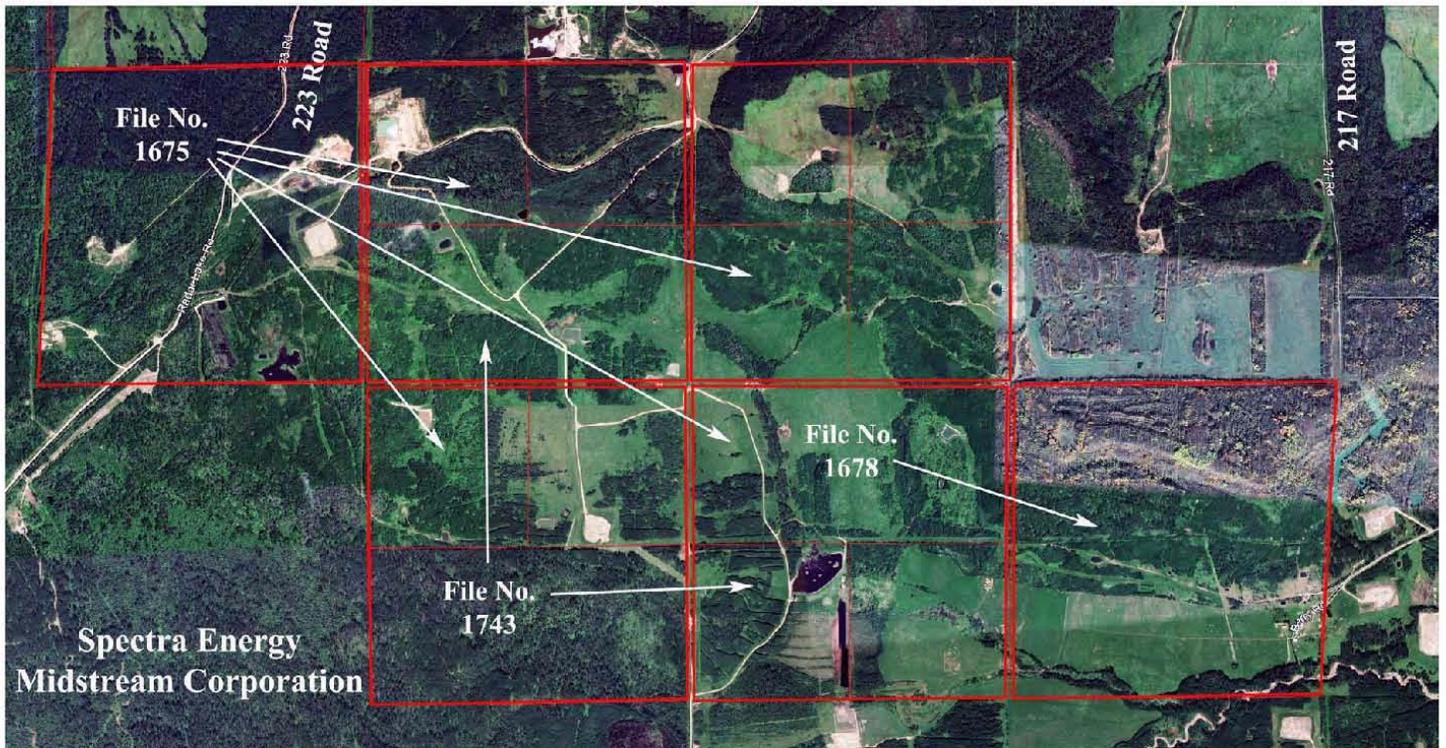
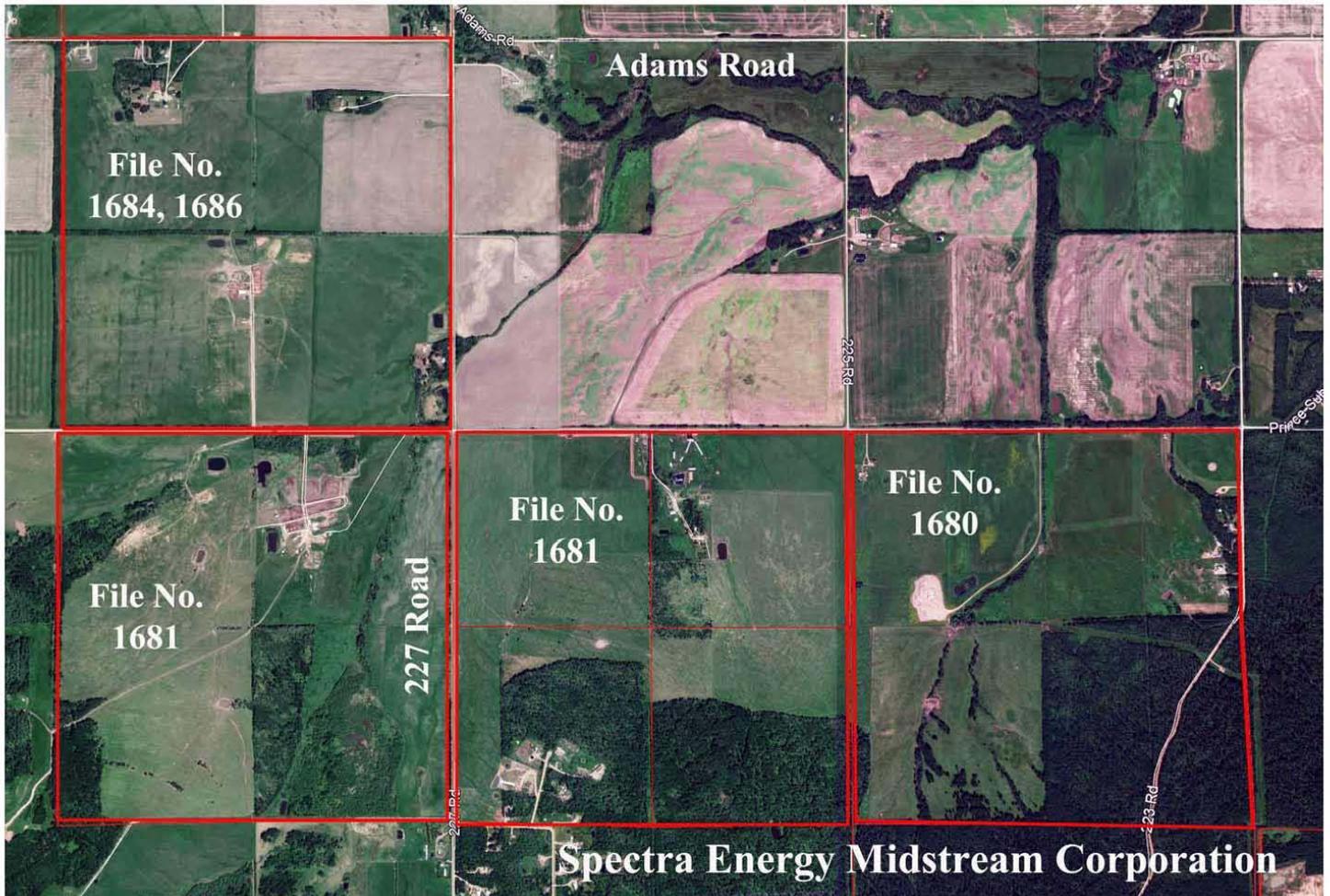
(APPLICANT)

AND:

KATHRYN VALERIE JEAN VIPOND AND CAROLYN RAE ALENE HOLLINGSHEAD

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flowline across certain Lands legally owned by Kathryn Valerie Jean Vipond and Carolyn Raye Alene Hollingshead.

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*.

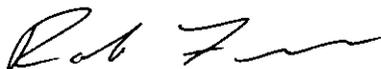
ORDER

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

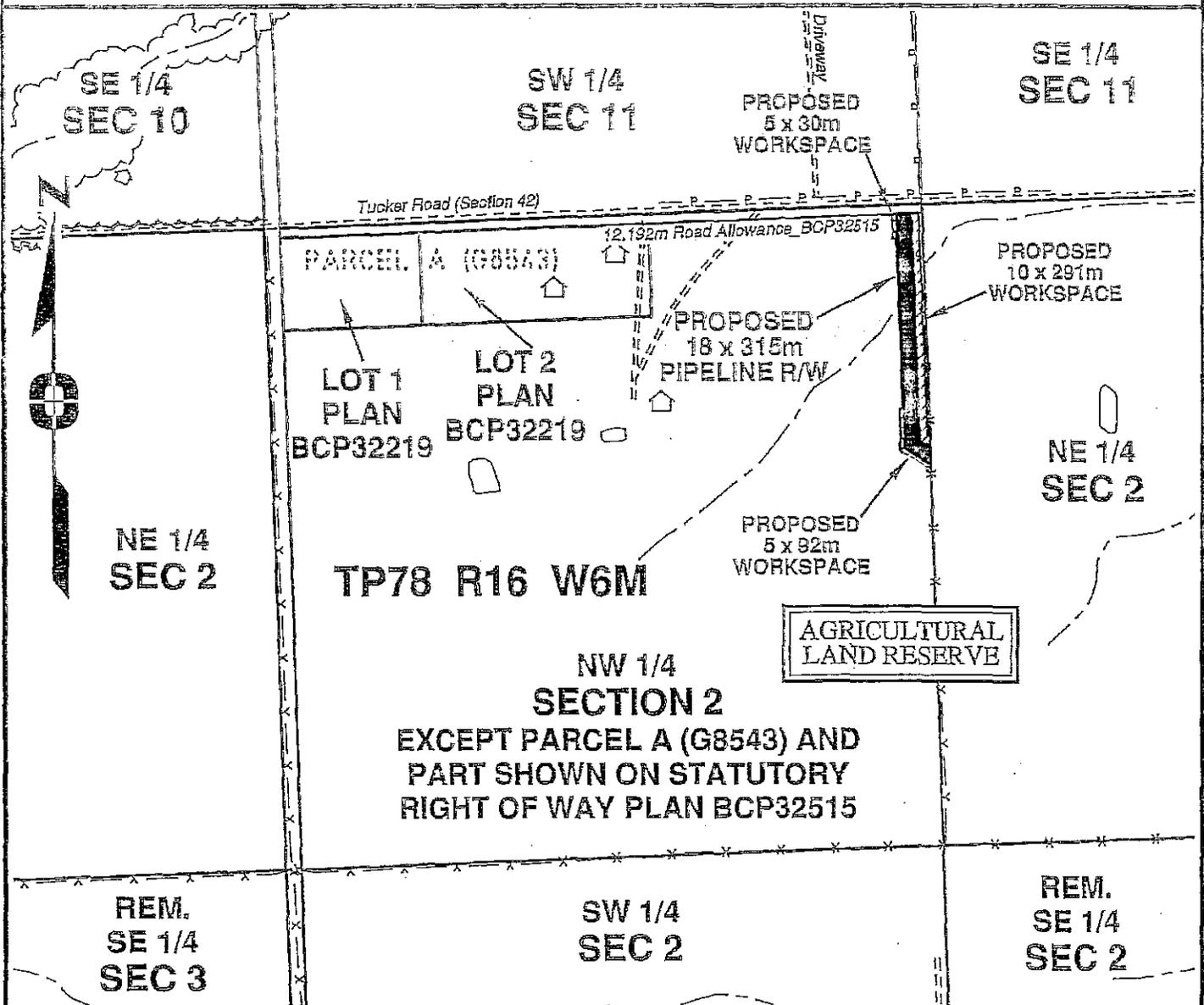
1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line approved by the British Columbia Oil and Gas Commission. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of \$2,500.00 by cheque payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to an use of the Lands, the amount of \$1,200.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD


Rob Fraser, Mediator

INDIVIDUAL OWNERSHIP PLAN SHOWING APPENDIX II
 PROPOSED 18m PIPELINE R/W WITHIN THE NORTH WEST 1/4 OF SECTION 2
 TOWNSHIP 78 RANGE 16 W6M, PEACE RIVER DISTRICT, EXCEPT: PARCEL A (G8543)
 AND PART SHOWN ON STATUTORY RIGHT OF WAY PLAN BCP32515



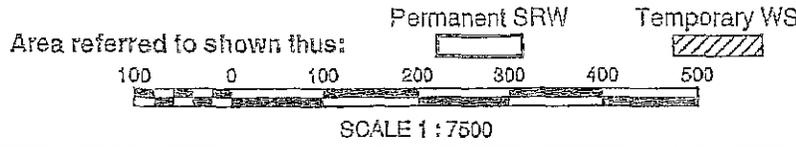
Owner(s): Kathryn Valerie Jean Vipond
 Carolyn Raye Alene Hollingshead

Title No: BB1050738
 Parcel Identifier: 004-265-254
 Company File:

Certified correct this 26th day of March, 2010

Area(s):	Permanent Statutory Right-of-Way	0.57 ha	1.41 ac
	Temporary Working Space	0.35 ha	0.86 ac
	Total	0.92 ha	2.27 ac

David E. Gosling, BCLS



Focus Job No: 100294NP25R0
 Date: 2010/03/26
 Drafter: FR Revision: 0

FOCUS Fort St. John
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 Fax (250)787-1611
 www.focus.ca

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 FCS Land Services Limited Partnership

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1684
Board Order 1684-1amd**

June 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NW ¼ of Section 2, Township 78, Range 16, W6M, Peace River District, Except:
Parcel A (G8543) and Part Shown on Statutory Right of Way Plan BCP32515**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

KATHRYN VALERIE JEAN VIPOND AND CAROLYN RAYE ALENE HOLLINGSHEAD

(RESPONDENTS)

**AMENDED
BOARD ORDER**

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

This Order amends Order 1684-1 issued December 23, 2010 to correct a typographical error in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flowline across certain Lands legally owned by Kathryn Valerie Jean Vipond and Carolyn Raye Alene Hollingshead.

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*.

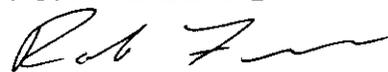
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line approved by the British Columbia Oil and Gas Commission. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deposit with the Mediation and Arbitration Board security in the amount of \$2,500.00 by cheque payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation payable for entry to an use of the Lands, the amount of \$1,200.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

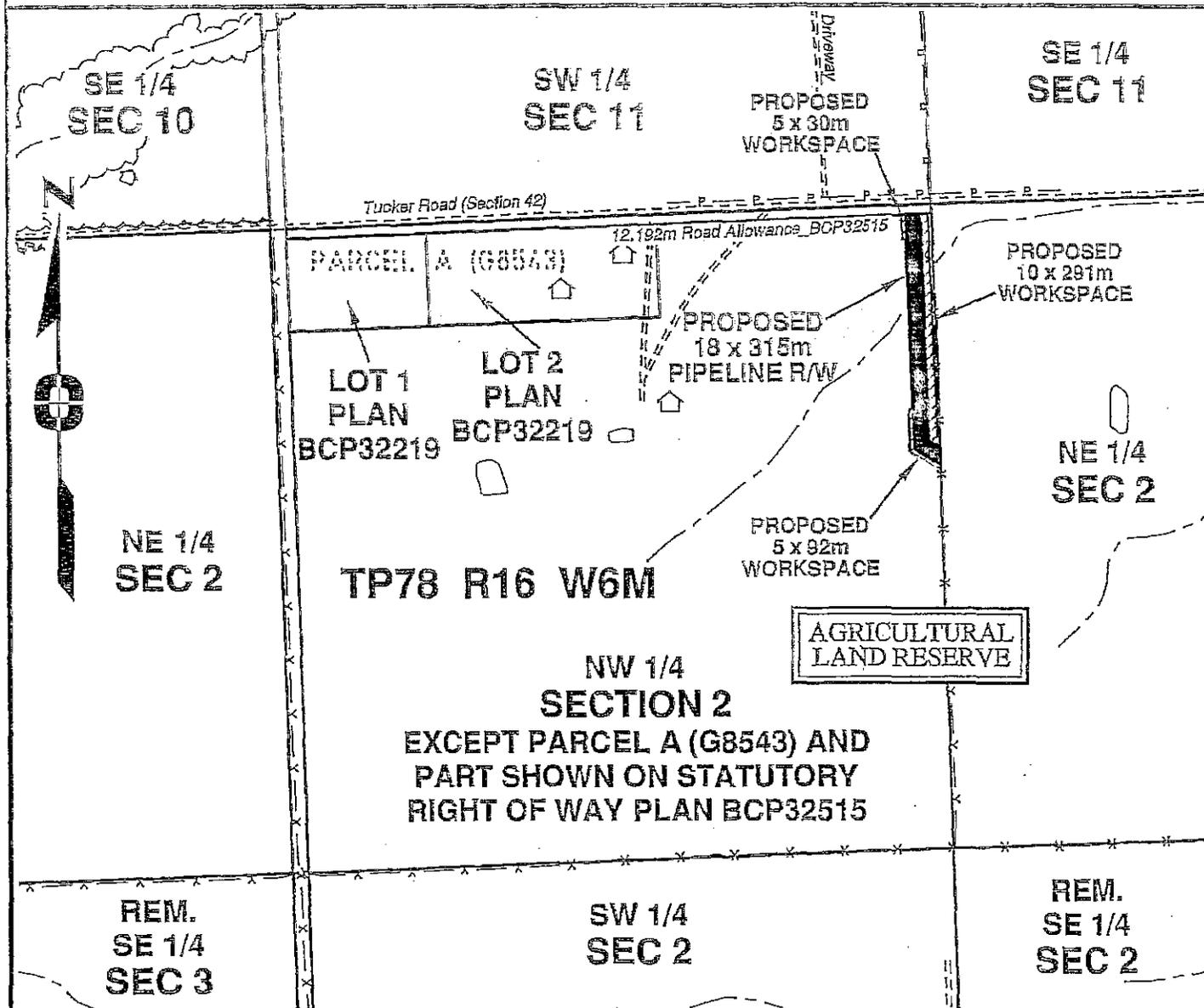
Dated: June 13, 2011

FOR THE BOARD



Rob Fraser, Mediator

INDIVIDUAL OWNERSHIP PLAN SHOWING APPENDIX II
 PROPOSED 18m PIPELINE R/W WITHIN THE NORTH WEST 1/4 OF SECTION 2
 TOWNSHIP 78 RANGE 16 W6M, PEACE RIVER DISTRICT, EXCEPT: PARCEL A (G8543)
 AND PART SHOWN ON STATUTORY RIGHT OF WAY PLAN BCP32515



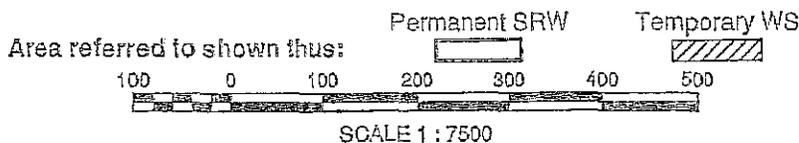
Owner(s): Kathryn Valerie Jean Vipond
 Carolyn Raye Alene Hollingshead

Title No: BB1050738
 Parcel Identifier: 004-265-254
 Company File:

Certified correct this 28th day of March, 2010

(Signature)
 David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	0.57 ha	1.41 ac
	Temporary Working Space	0.35 ha	0.86 ac
	Total	0.92 ha	2.27 ac



Focus Job No:	100294NP25R0
Date:	2010/03/26
Drafter: FR	Revision: 0
FOCUS	Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250)787-0300 Fax (250)787-1611 www.focus.ca
Focus Surveys	
FCS Land Services Limited Partnership	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1685
Board Order 1685-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**The South ½ of Section 26, Township 78, Range 17, W6M, Peace river District,
Except Parcel A (S27484)
SE ¼ of Section 27, Township 78, Range 17, W6M, Peace River District
SW ¼ of Section 27, Township 78, Range 17, W6M, Peace River District
SE ¼ of Section 28, Township 78, Range 17, W6M, Peace river District**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

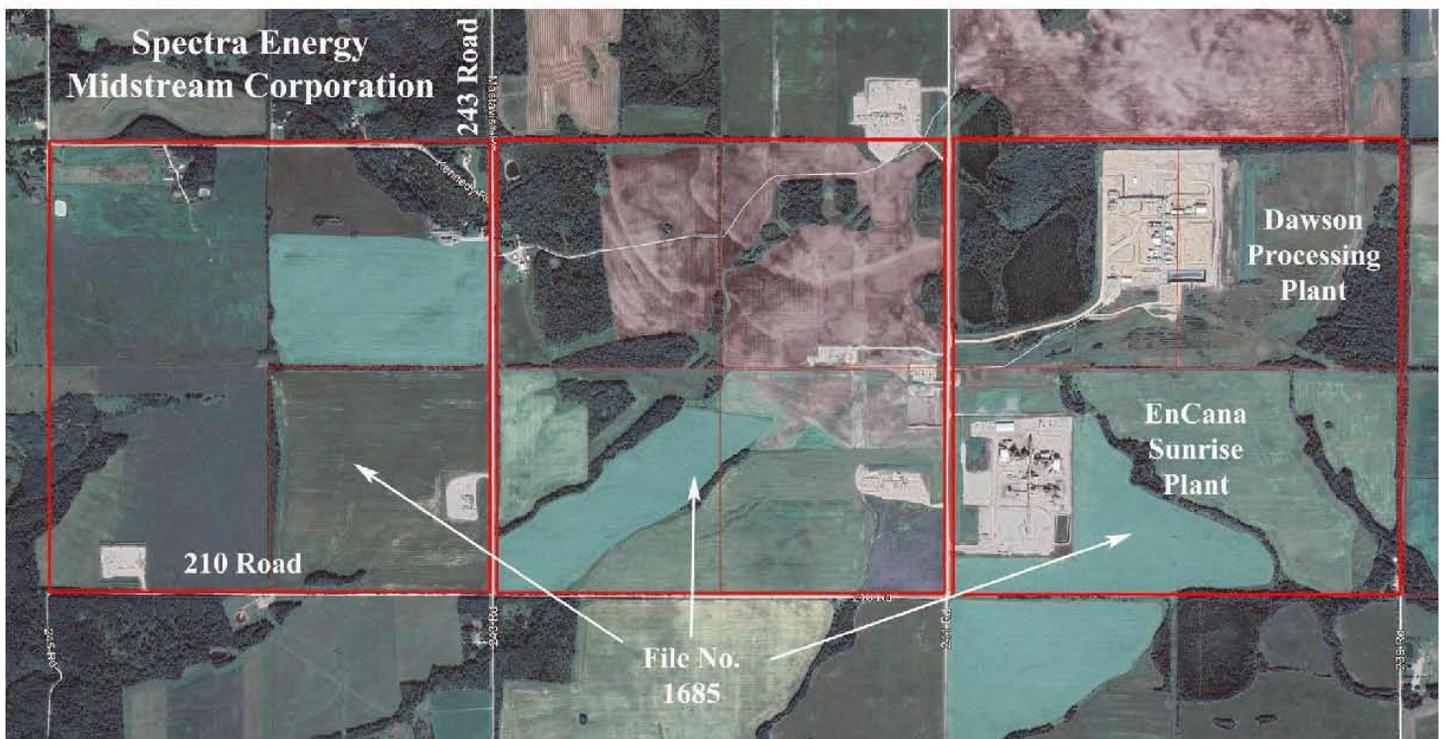
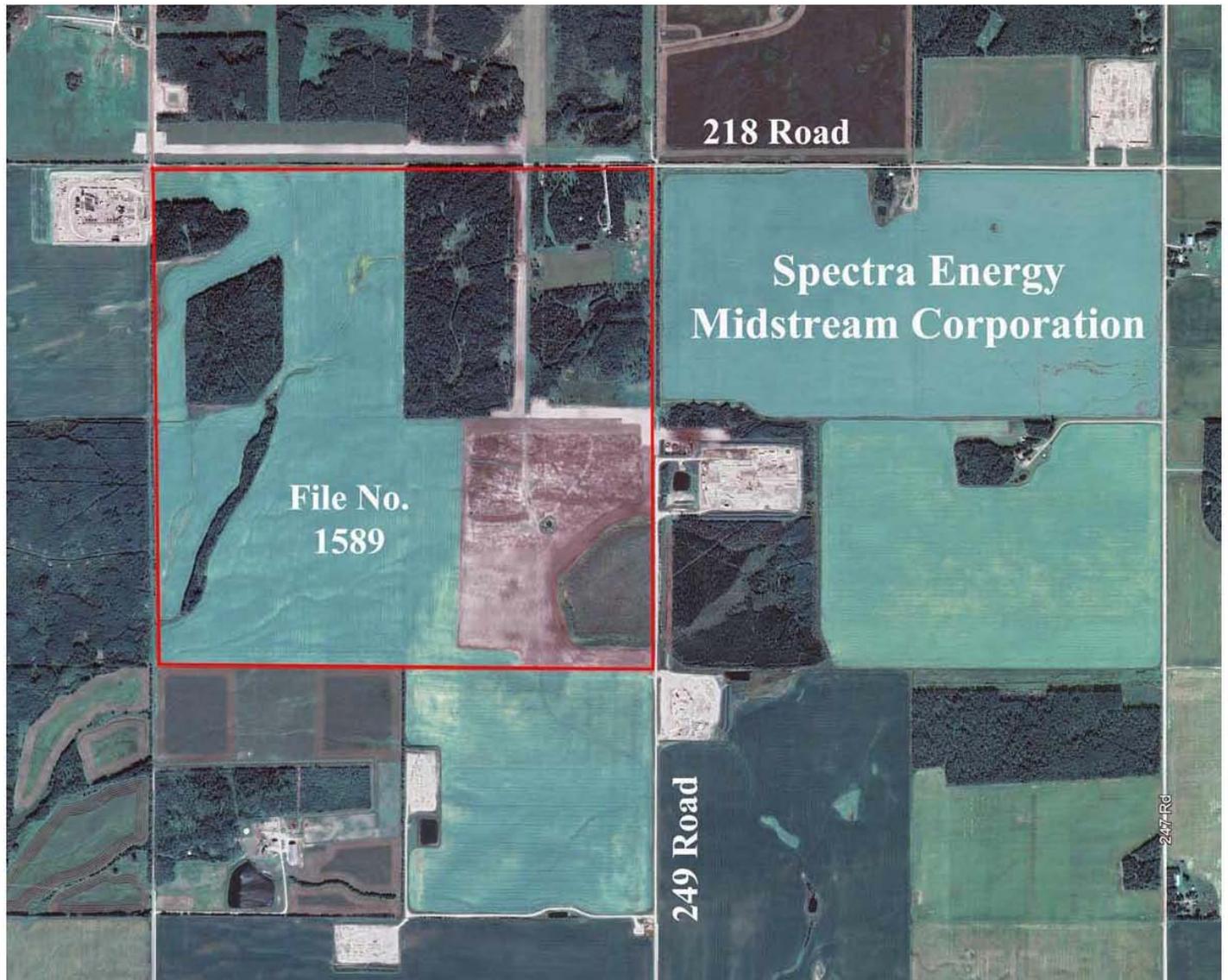
(APPLICANT)

AND:

GEORGE JOSEPH RALPH AND NORMA ALICE RALPH

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference:
Mediator:

December 13 and 23, 2010
Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by George Joseph Ralph and Norma Alice Ralph.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$10,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$7,150.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

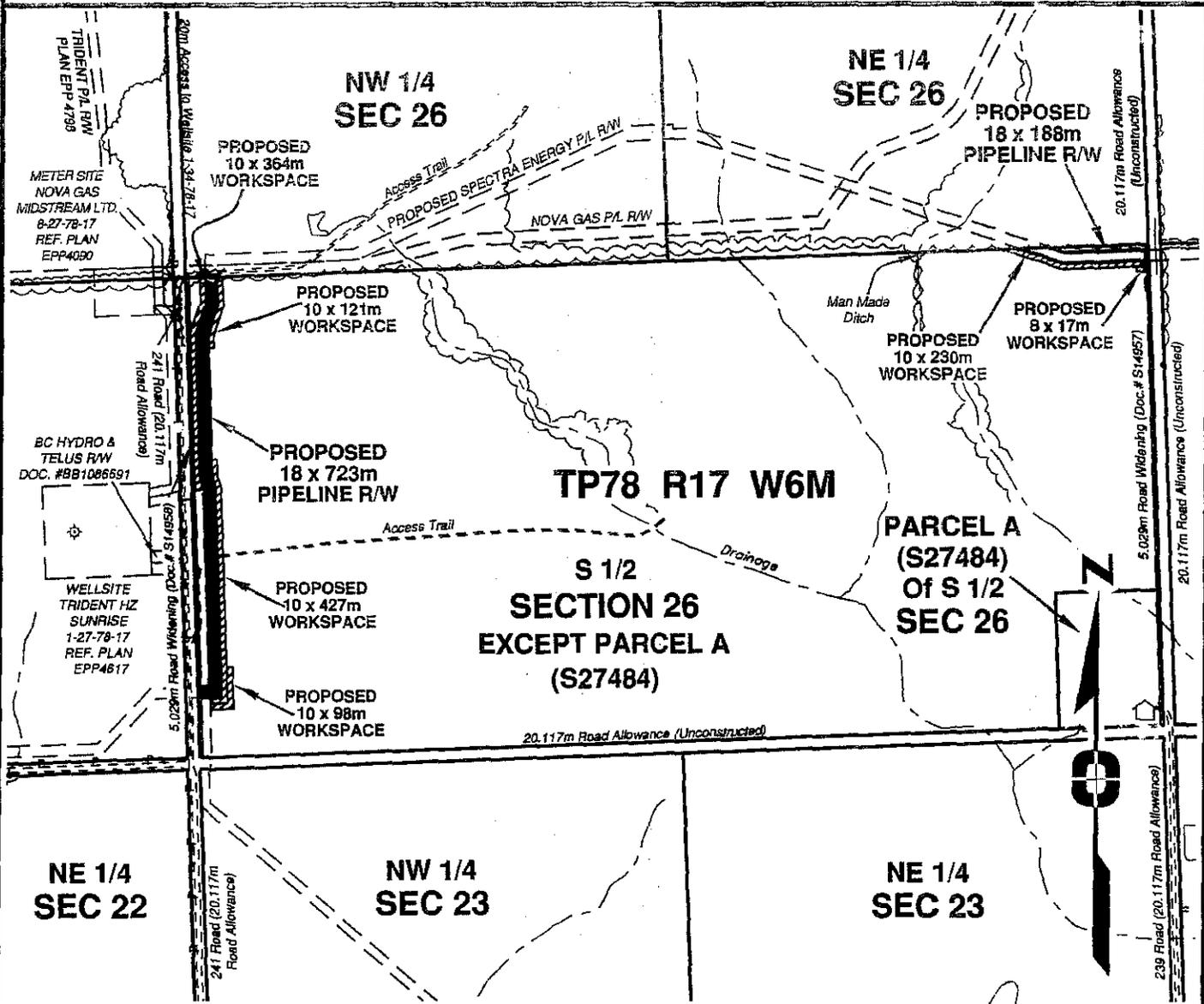
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18m PIPELINE R/W
 WITHIN THE SOUTH 1/2 OF SECTION 26, TOWNSHIP 78 RANGE 17 W6M,
 PEACE RIVER DISTRICT, EXCEPT PARCEL A (S27484)



Owner(s): George Joseph Ralph
Norma Alice Ralph

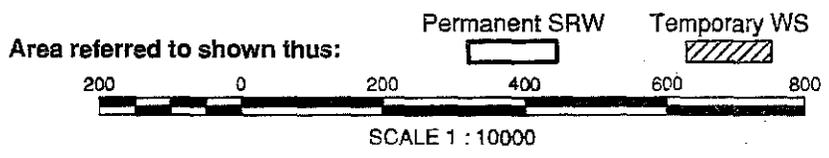
Title No: S27486
 Parcel Identifier: 014-561-425
 Company File(s): _____

Area(s):

Permanent Statutory Right-of-Way	1.64 ha	4.05 ac
Temporary Working Space	1.25 ha	3.09 ac
Total	2.89 ha	7.14 ac

Certified correct this 20th day of December, 2010

Adam Brash, BCLS



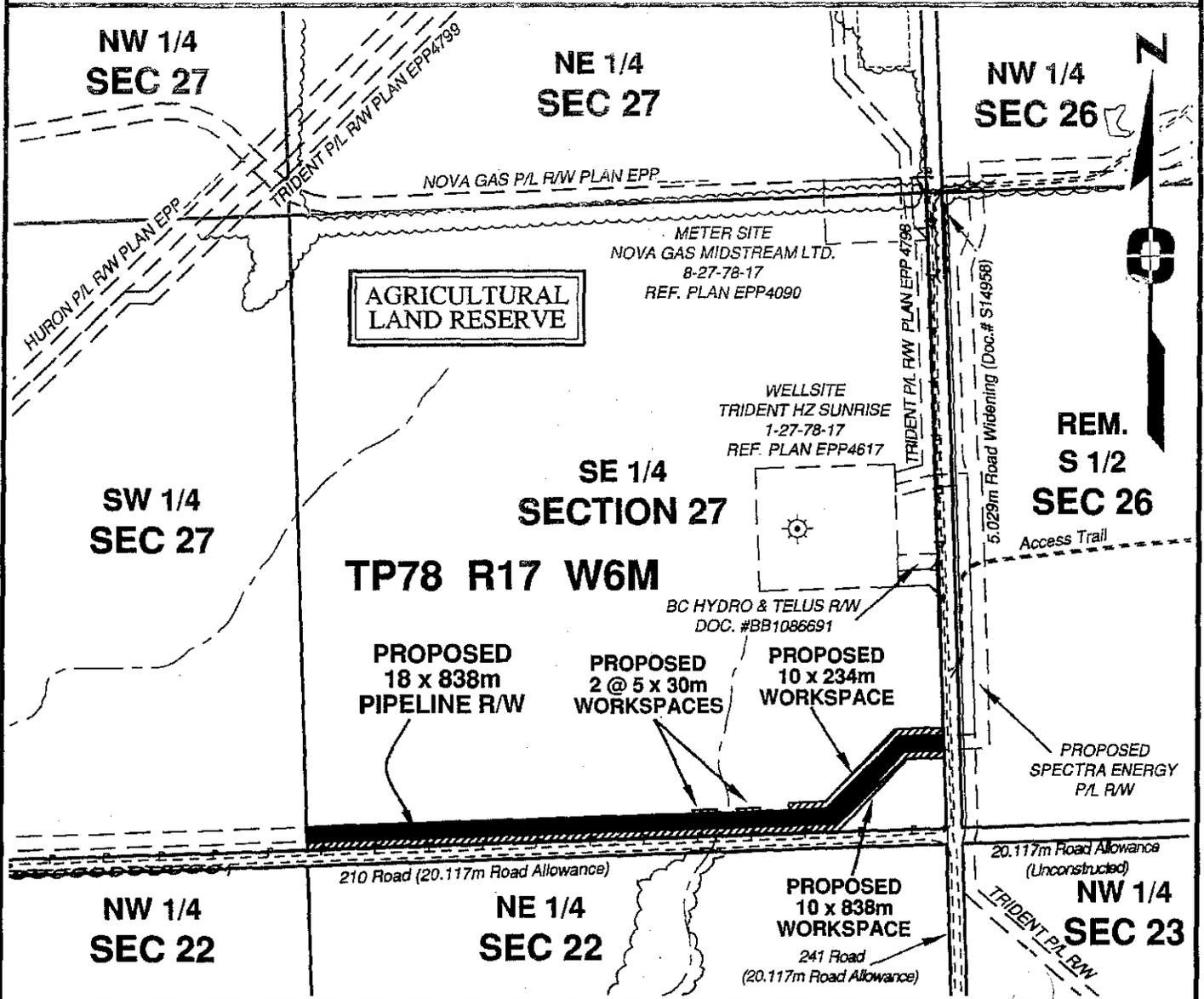
Focus Job No:	100294NP06R3
Date:	2010/12/20
Drafter: FR	Revision: 3

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INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W

WITHIN THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 78 RANGE 17 W6M,
PEACE RIVER DISTRICT



Owner(s): George Joseph Ralph
Norma Alice Ralph

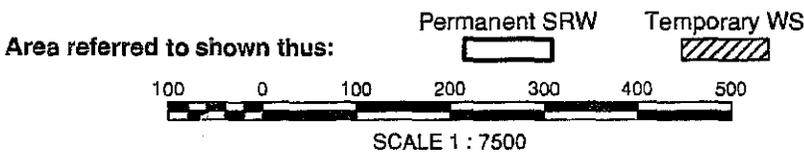
Title No: PC33621
Parcel Identifier: 014-424-622
Company File: _____

Area(s):

Permanent Statutory Right-of-Way	1.51 ha	3.73 ac
Temporary Working Space	1.10 ha	2.72 ac
Total	2.61 ha	6.45 ac

Certified correct this 20th day of December, 2010

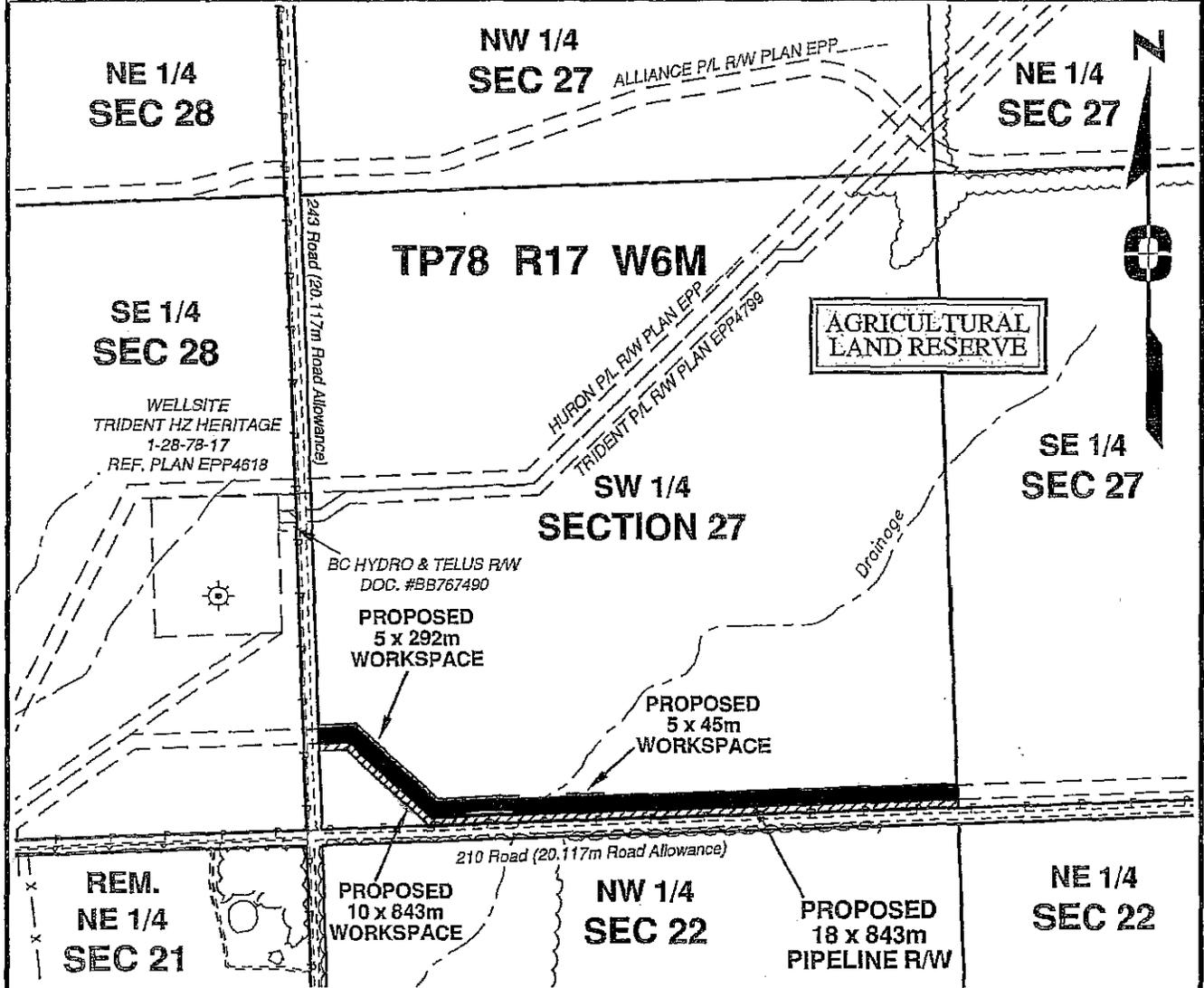
Adam Brash, BCLS



Focus Job No:	100294NP05R3
Date:	2010/12/20
Drafter: FR	Revision: 3
FOCUS	
Focus Surveys	
FCS Land Services Limited Partnership	
Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250)787-0300 Fax (250)787-1611 www.focus.ca	

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE SOUTH WEST 1/4 OF SECTION 27, TOWNSHIP 78 RANGE 17 W6M,
PEACE RIVER DISTRICT**

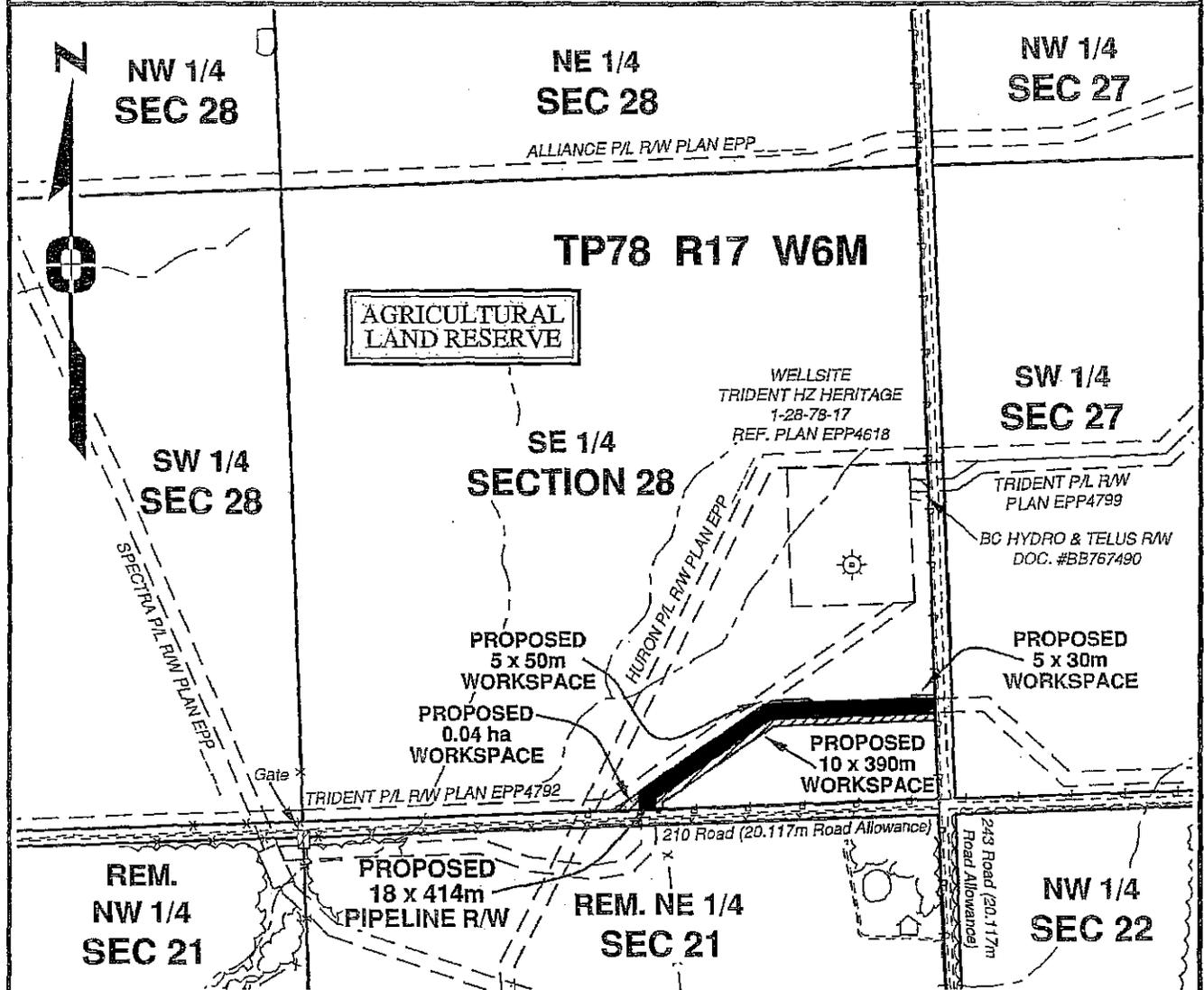
APPENDIX II (c)



<p>Owner(s): _____ George Joseph Ralph _____ Norma Alice Ralph _____ _____</p>	<p>Title No: _____ PC33620 Parcel Identifier: _____ 014-424-606 Company File: _____</p>
<p>Certified correct this <u>1st</u> day of <u>April</u>, 2010</p>	
<p>_____ David E. Gosling, BCLS</p>	
<p>Area(s): Permanent Statutory Right-of-Way 1.52 ha 3.76 ac Temporary Working Space 1.01 ha 2.50 ac Total 2.53 ha 6.26 ac</p>	
<p>Area referred to shown thus: Permanent SRW Temporary WS</p> <p style="text-align: center;"> </p> <p style="text-align: center;"> </p> <p style="text-align: center;">SCALE 1 : 7500</p>	
<p>Focus Job No: _____ 100294NP04RT Date: _____ 2010/04/01 Drafter: FR Revision: 1</p> <p>FOCUS Fort St. John Focus Surveys 10716-100th Ave. FCS Land Services Limited Partnership BC, V1J 1Z3 Ph. (250)787-0300 Fax (250)787-1611 www.focus.ca</p>	

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE SOUTH EAST 1/4 OF SECTION 28, TOWNSHIP 78 RANGE 17 W6M,
PEACE RIVER DISTRICT**

APPENDIX II (d)



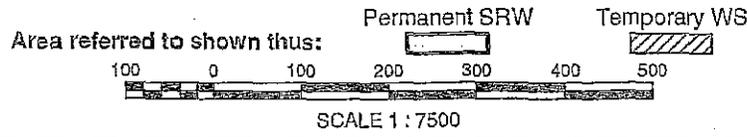
Owner(s): George Joseph Ralph
Norma Alice Ralph

Title No: D1549
Parcel Identifier: 011-277-840
Company File: _____

Certified correct this 1st day of April, 2010

David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	0.74 ha	1.83 ac
	Temporary Working Space	0.47 ha	1.16 ac
	Total	1.21 ha	2.99 ac



Focus Job No:	100294NP03R1
Date:	2010/04/01
Drafter: FR	Revision: 1

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Fax (250)787-1611
www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1686
Board Order 1686-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**SE ¼ of Section 2, Township 78, Range 16, W6M, Peace River District,
except Parcel A (71054M)**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

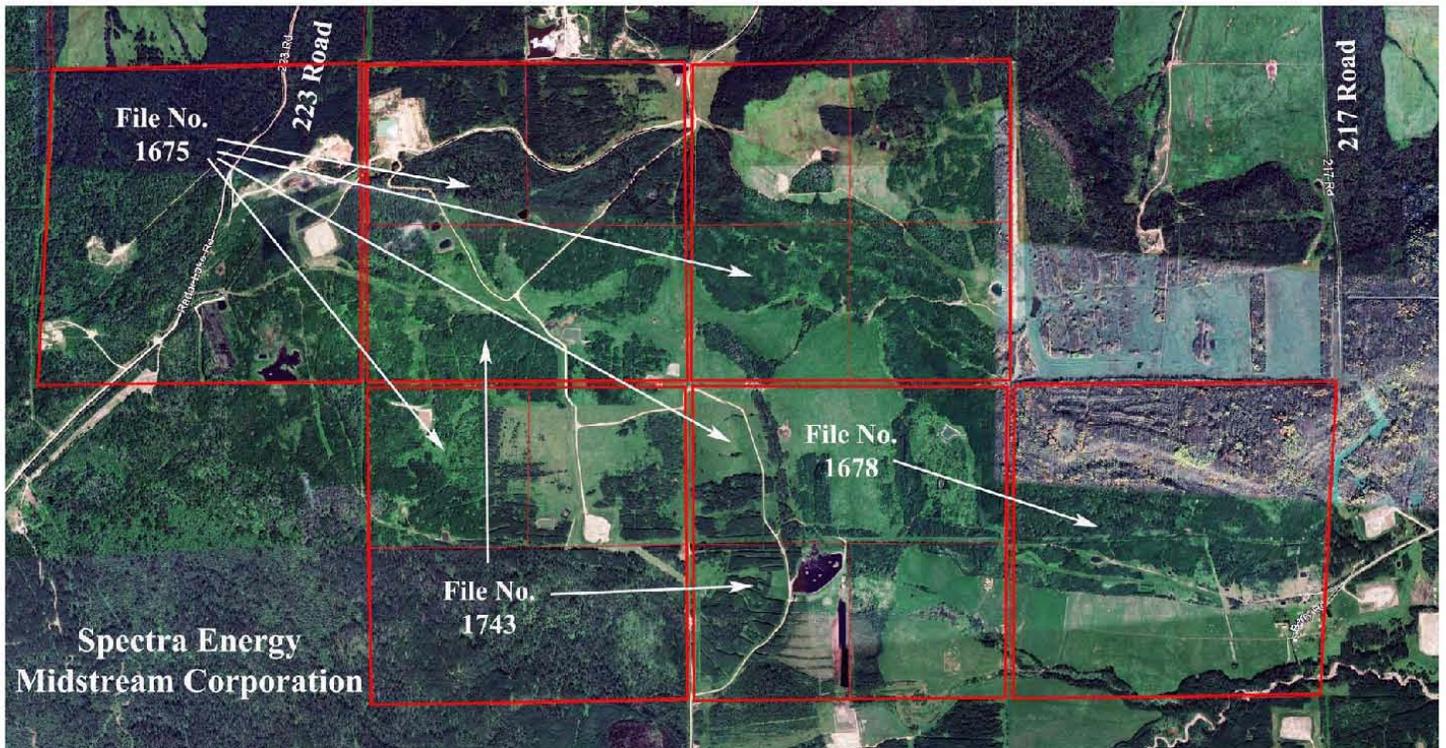
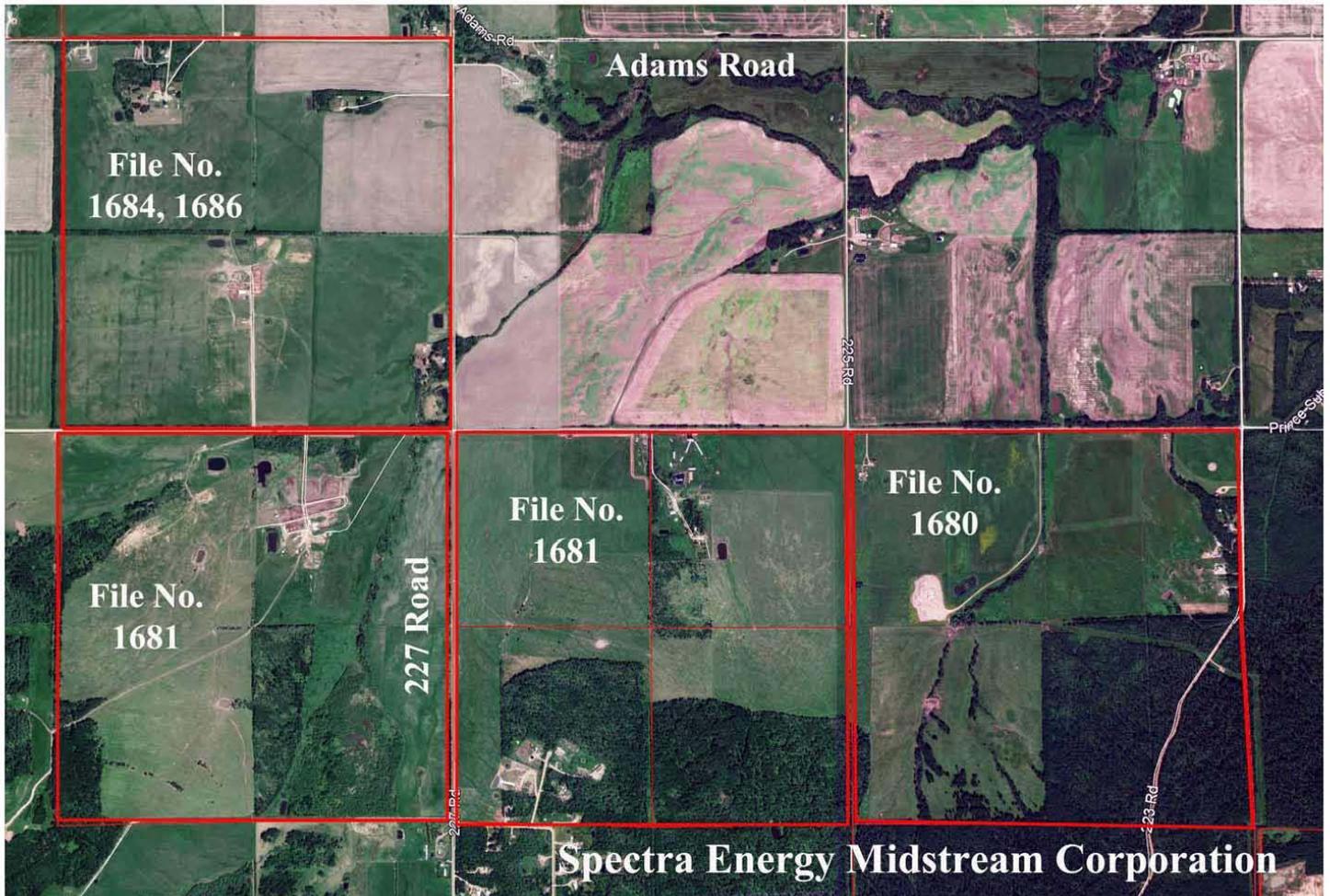
(APPLICANT)

AND:

BRENT WESLEY KINNEAR

(RESPONDENT)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Brent Wesley Kinnear.

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*.

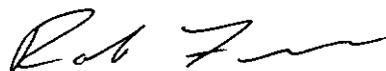
ORDER

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

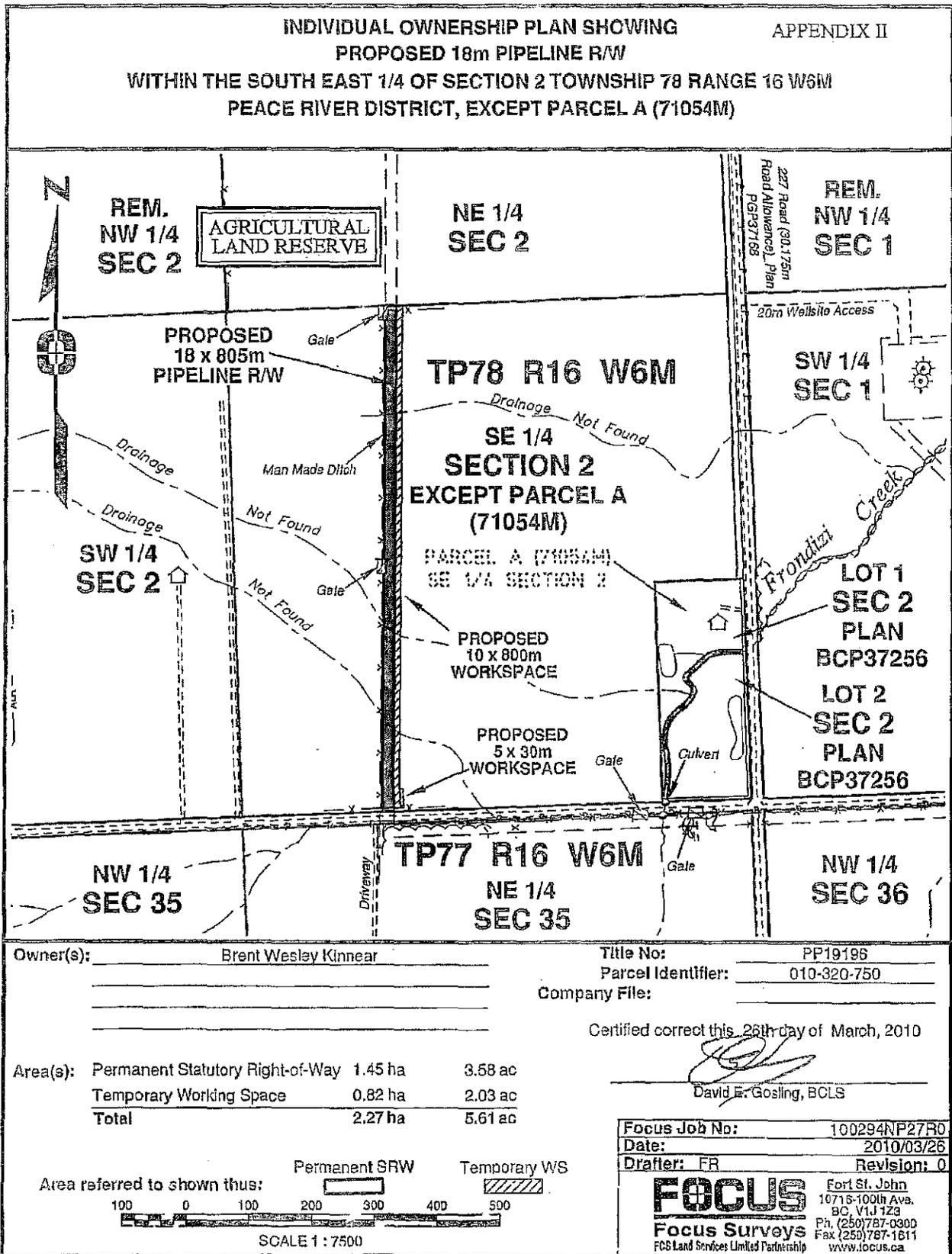
1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$3,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator



APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1687
Board Order 1687-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

Parcel A (F461) of the NE ¼ of Section 15, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

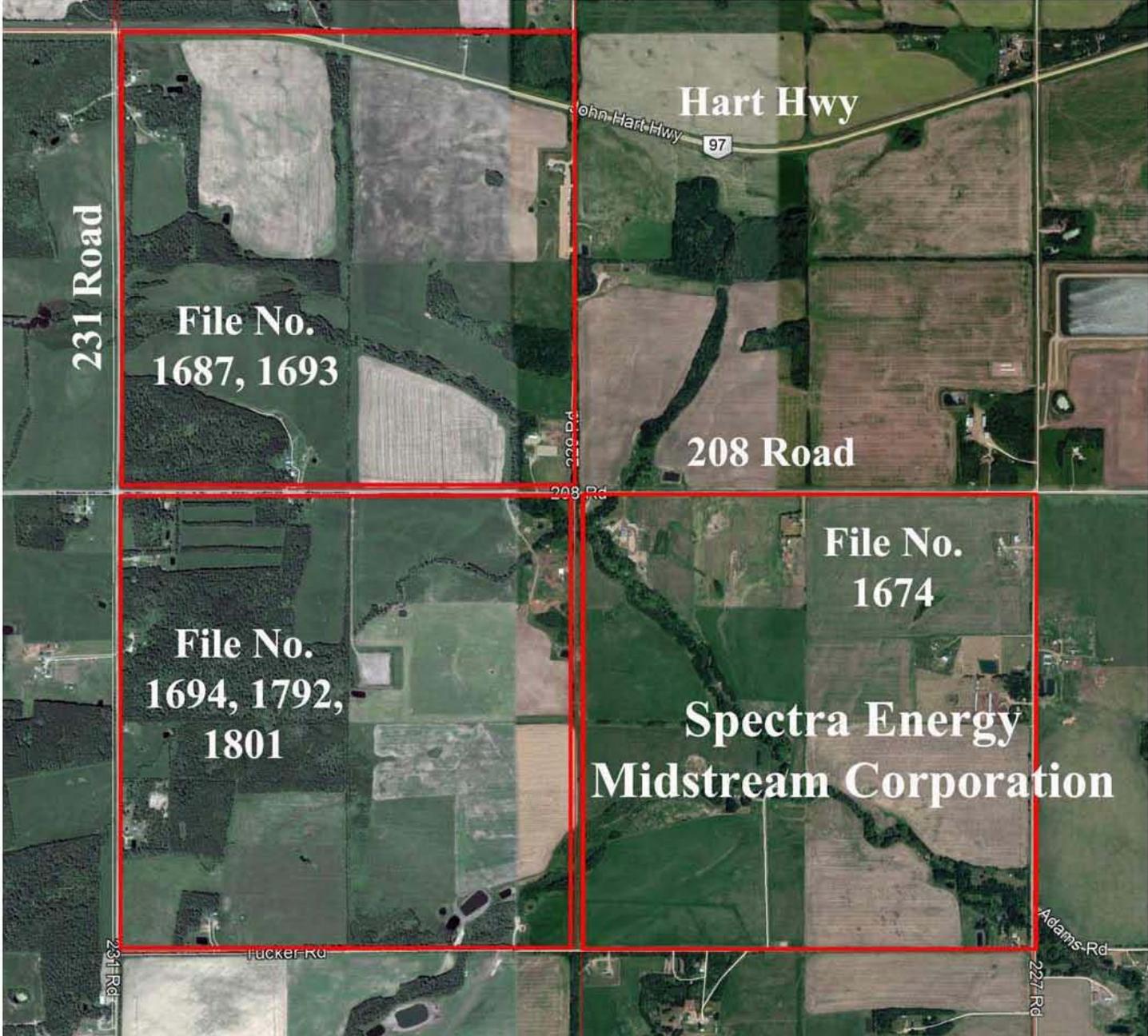
(APPLICANT)

AND:

COLIN BRENT FELLERS AND DEBORAH SUZANNE VEITCH

(RESPONDENTS)

BOARD ORDER



231 Road

**File No.
1687, 1693**

Hart Hwy

John Hart Hwy 97

208 Road

**File No.
1694, 1792,
1801**

**File No.
1674**

**Spectra Energy
Midstream Corporation**

231 Rd

Fucker Rd

220 Rd

208 Rd

Adams Rd
227 Rd

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Colin Brent Fellers and Deborah Suzanne Veitch.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,400.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD

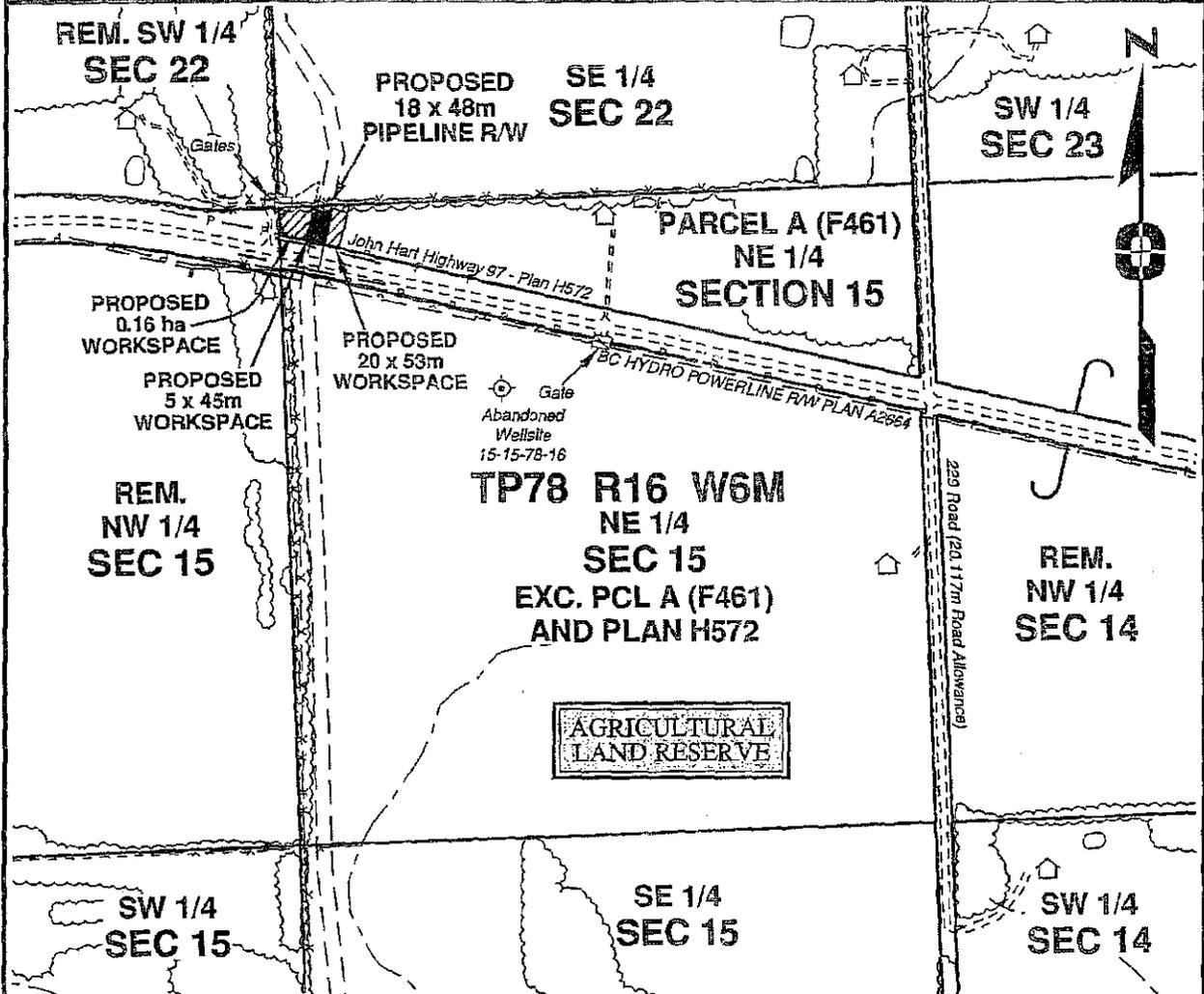


Rob Fraser, Mediator

APPENDIX "A"

SR# 1687-1 786

INDIVIDUAL OWNERSHIP PLAN SHOWING APPENDIX II
 PROPOSED 18m PIPELINE R/W
 WITHIN PARCEL A (F461) OF THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 78 RANGE 16 W6M,
 PEACE RIVER DISTRICT



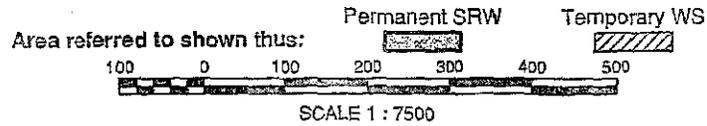
Owner(s): Collin Brent Fellers
Deborah Suzanne Veitch

Title No: BB133227
 Parcel Identifier: 016-277-031
 EnCana File(s): _____

Certified correct this 28th day of April, 2010

(Signature)
 David E. Gosling, BCLS

Area(s):	Permanent Statutory Right-of-Way	0.09 ha	0.22 ac
	Temporary Working Space	0.29 ha	0.72 ac
	Total	0.38 ha	0.94 ac



Focus Job No: 100294NP19R2
 Date: 2010/07/28
 Drafter: FR Revision: 2

FOCUS
 Focus Surveys
 FCS Land Services Limited Partnership

Fort St. John
 10716-100th Ave.
 BC, V1J 1Z3
 Ph. (250) 787-0300
 Fax (250) 787-1611
 www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1687
Board Order 1687- 1amd**

June 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

Parcel A (F461) of the NE ¼ of Section 15, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

COLLIN BRENT FELLERS AND DEBORAH SUZANNE VEITCH

(RESPONDENTS)

**AMENDED
BOARD ORDER**

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

This Order amends Order 1687-1 issued December 23, 2010 to correct a typographical error in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Colin Brent Fellers and Deborah Suzanne Veitch.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,400.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

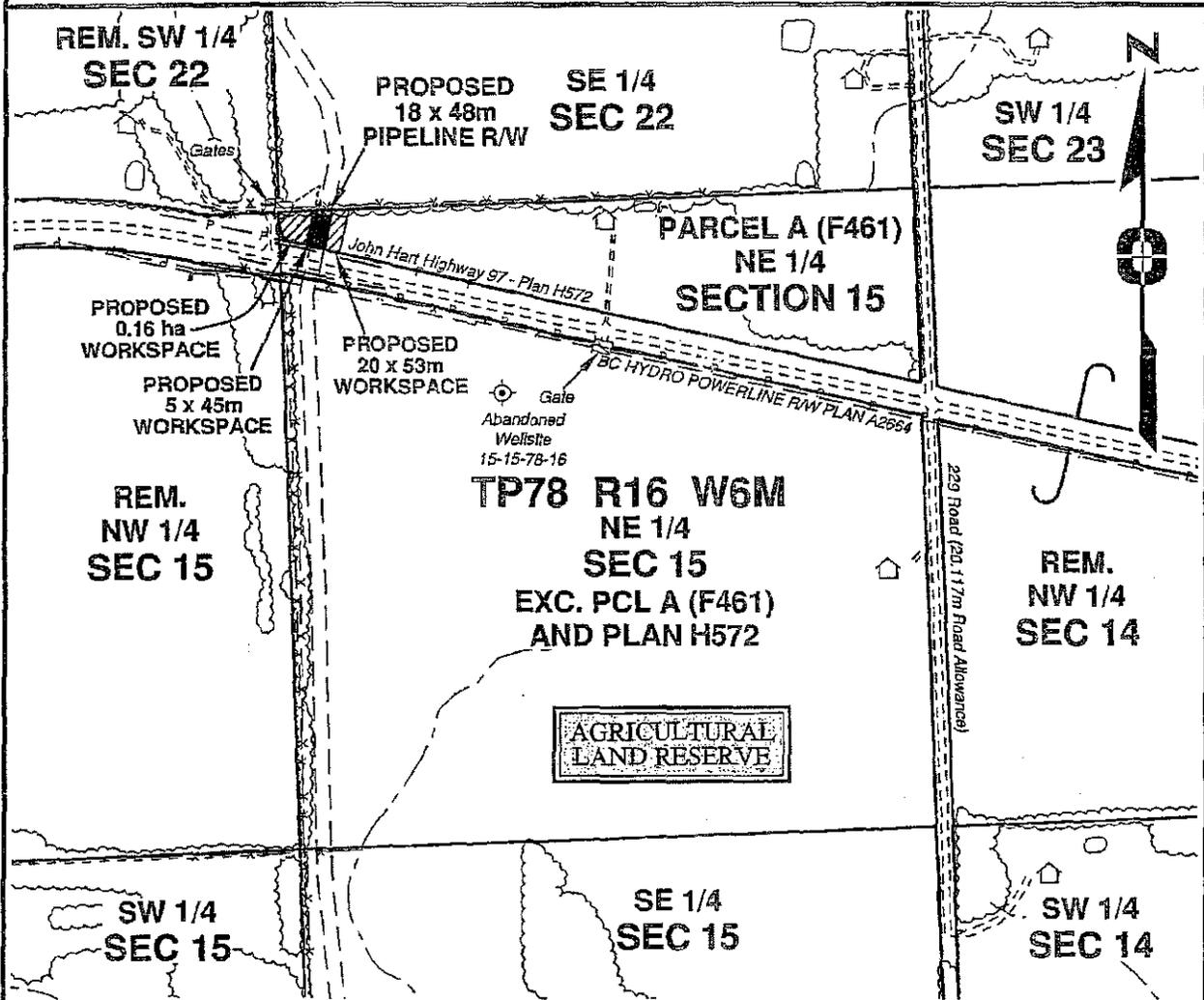
Dated: June 13, 2011

FOR THE BOARD



Rob Fraser, Mediator

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
APPENDIX II
WITHIN PARCEL A (F461) OF THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT**



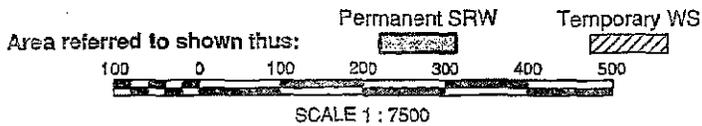
Owner(s): Collin Brent Fellers
Deborah Suzanne Veitch

Title No: BB133227
 Parcel Identifier: 016-277-031
 EnCana File(s): _____

Certified correct this 28th day of April, 2010

(Signature)
 David E. Gosling, BCL.S

Area(s):	Permanent Statutory Right-of-Way	0.09 ha	0.22 ac
	Temporary Working Space	0.29 ha	0.72 ac
	Total	0.38 ha	0.94 ac



Focus Job No:	100294NP19R2
Date:	2010/07/28
Drafter: FR	Revision: 2
FOCUS	
Focus Surveys FCS Land Services Limited Partnership	
Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250) 787-0300 Fax (250) 787-1611 www.focus.ca	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
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6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1688
Board Order 1688-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**SW ¼ of Section 29, Township 78, Range 16, W6M, Peace River District,
Except Plans A2035 and 32053**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

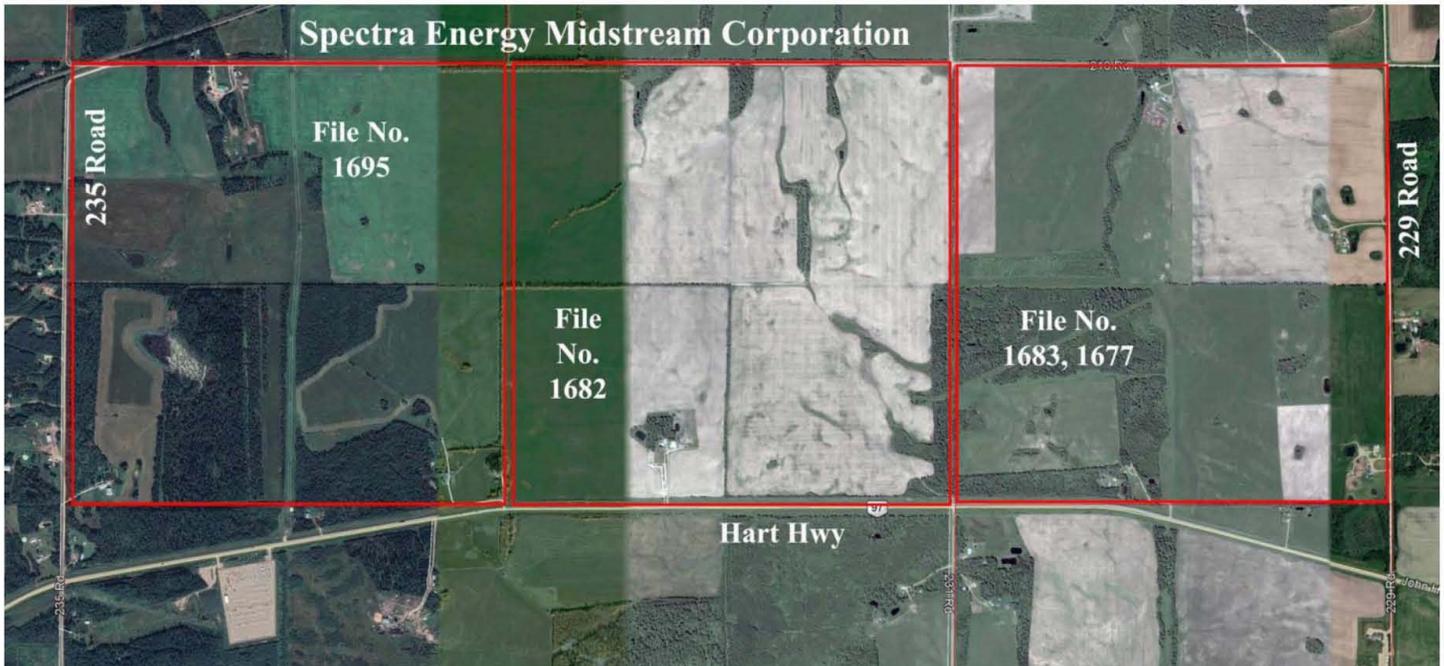
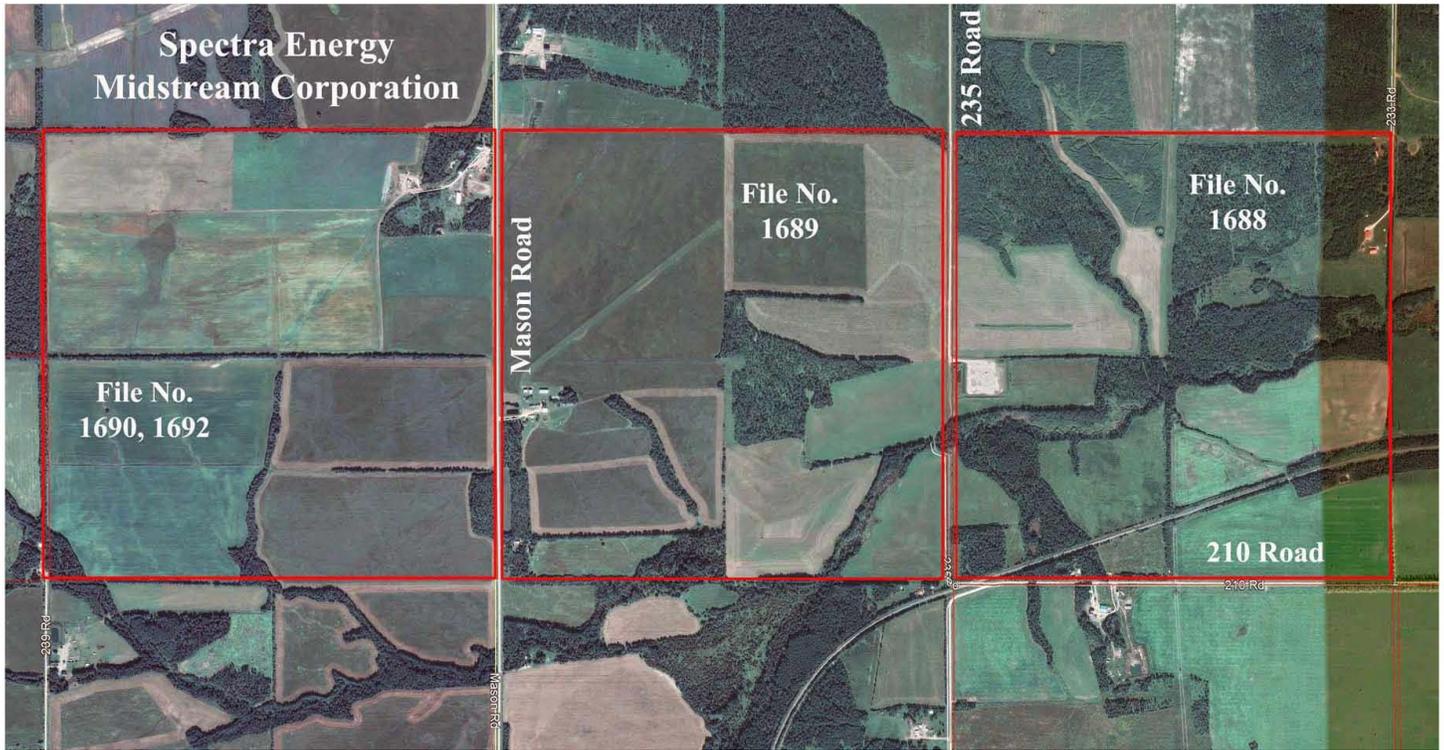
(APPLICANT)

AND:

WAYNE GEORGE CLEVE AND GLORIA ANN CLEVE

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Wayne George Cleve and Gloria Ann Cleve.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$300.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

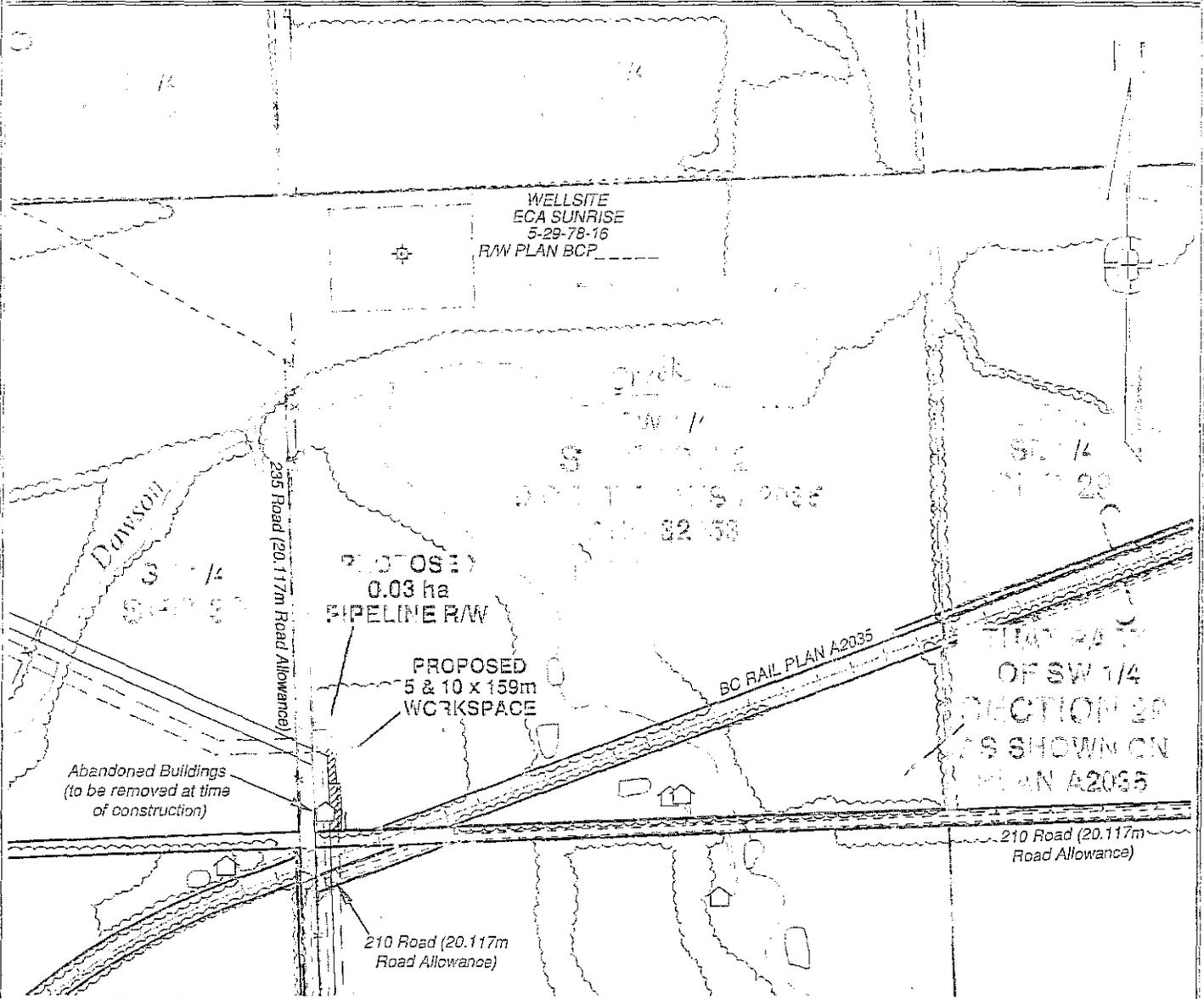
APPENDIX "A"

CONVEYANCE OWNERSHIP PLAN SHOWING

Page ___ of ___

PROPOSED 18m PIPELINE R/W

WITHIN THE SOUTH WEST 1/4 OF SECTION 29, TOWNSHIP 78 RANGE 13 W6M,
PEACE RIVER DISTRICT, EXCEPT PLANS A2035 AND 32053



Owner(s): Wayne George Cleve
Gloria Ann Cleve

Title No: PN48648
Parcel Identifier: 009-999-400
Company File: _____

Additional Area(s):

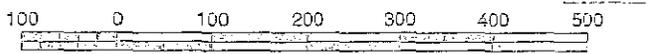
Permanent Statutory Right-of-Way	0.03 ha	0.07 ac
Temporary Working Space	0.13 ha	0.32 ac
Total	0.16 ha	0.39 ac

Certified correct this 20th day of October, 2010

Adam Brash, BCLS

Area referred to shown thus:

Permanent SRW Temporary WS



SCALE 1 : 7500

Focus Job No: 100294NP11AR
Date: 2010/10/21
Drafter: FR Revision: 1

Focus Survey
Fort St. John
10716-100th Ave.
BC, V1J 1Z3
Ph. (250) 787-0300
Fax (250) 787-1611

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
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6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1688
Board Order 1688-2

June 12, 2013

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**SW ¼ of Section 29, Township 78, Range 16, W6M, Peace River District,
Except Plans A2035 and 32053**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

WAYNE GEORGE CLEVE AND GLORIA ANN CLEVE

(RESPONDENTS)

BOARD ORDER

Heard: By written submissions, closing May 15, 2013
Panel: Simmi K. Sandhu
Appearances: No submissions from the Cleves
Rick Williams, for Spectra

INTRODUCTION

[1] Wayne and Gloria Ann Cleve own property near Dawson Creek, B.C., (the "Property") upon which Spectra Energy Midstream Corporation ("Spectra") has constructed and installed a pipeline. By way of application to the Board, Spectra obtained right of entry and access to the lands for the construction and operation of a flowline (Order 1688-1, dated Dec. 23, 2010). The lands accessed are 0.07 acres of a permanent right of way and 0.32 acres of temporary workspace (the "Lands"). The Lands are used for hay production and possible grazing.

[2] The entire pipeline was constructed in February and March 2011, and the Lands were cleaned up in November, 2011, with reseeded completed. Spectra plans to undertake further re-seeding of the right of way pursuant to an environmental assessment.

[3] The issue remaining to be determined is the appropriate compensation payable to the Cleves pursuant section 154(1) of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, ch. 361.

[4] The matter was set for written submissions, however, the Cleves, who had not participated in the Board's previous proceedings, did not produce any submissions. Therefore, the only evidence and submissions before the Board are Spectra's.

ISSUE

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

THE LEGISLATION

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

- (a) the compulsory aspect of the right of entry;
- (b) the value of the applicable land;
- (c) a person's loss of a right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;

- (e) compensation for severance;
- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any, of one or more other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the board or to which the board has access;
- (j) previous orders of the board;
- (k) other factors the board considers applicable;
- (l) other factors or criteria established by regulation.

[7] The purpose of a rental payment is to address the immediate and ongoing impact of an operator's activity on private land to the landowner and to the lands (*Dalgliesh v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)).

[8] The factors above do not speak to speculative future loss or damage, and compensation under the *Act* is only intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable; it is inappropriate to make a speculative award (*Arc Petroleum Inc. v. Piper*, MAB Order 1598-2, *Arc Petroleum Inc. v. Miller*, SRB Order 1633).

EVIDENCE AND ANALYSIS

[9] The only evidence and submissions before me are those provided by Spectra. Spectra submits that a payment of \$1,000 is reasonable although this likely exceeds the actual loss and damages suffered.

[10] For consideration of the value of the land in determining compensation (section 154(1)(b)), Spectra has provided an appraisal report effective June, 2010 that appraises the Cleves' Property. The appraiser's opinion of the market value of the fee simple in the Property is \$750/acre based on the current use of agricultural production as the highest and best use of the Property. However, Spectra says this is not an accurate reflection of the fair compensation for Spectra's use of the Lands as Spectra is not taking the fee simple interest in the land, the landowner will be able to continue to use the land after installation of the flowline and the land will be returned to the landowner. Therefore, the Board must consider the residual and reversionary value of the lands retained by the landowner, which must be deducted from the market value of the fee simple interest. Spectra submits the value of the Lands is only 25% to 50% of the market value of the fee simple value (\$750/acre) of the Lands. This conclusion is supported by the appraisal report. The value of the Lands is \$86.25 (0.32 x 25%

of \$750/acre for the temporary work space, plus $\$0.07 \times 50\%$ of \$750/acre for the right of way).

[11] As for the compulsory aspect of the taking (section 154(1)(a)), Spectra says the actual value of the land (based on expert appraisal evidence) is sufficient to compensate the landowner for the intangible loss of rights, including the compulsory aspect and value of the land after accounting for the residual and reversionary interests (*Arc v. Miller, supra.*). Therefore, the combined amount for the loss of value and rights, and the compulsory aspect is at most \$172.50 ($(0.07 \times \$750.00) + (0.32 \times \$750.00)$).

[12] Spectra submits there is no negative impact to the market value of the Property as result of the flowline, which is supported by the appraisal report, in which it was the appraiser's opinion that the proposed right of way will not cause any reduction in the market value of the remaining Property.

[13] Spectra submits that the right of entry did not result in any appreciable nuisance or severance or otherwise negatively impact the Property, particularly considering the small size of the area accessed by Spectra.

[14] As for damages and loss of profit, Spectra says the Cleves are limited to any loss of profit as a result of their inability to utilize pasture land for a period of time due to the construction of the flowline. Prior to construction, the Lands were not actively farmed nor did it appear to be used for grazing purposes. However, the appraiser, in his report, concluded a payment for loss of profit of \$34.00.

[15] In terms of money paid to others, Spectra submits that it reached agreements with other landowners along the pipeline route at \$950/acre for the land value of the permanent right of way, \$500/acre for the compulsory aspect of the taking, \$450/acre for any temporary work space, and \$1,000 signing bonus for those who came to an agreement without the need of a Board hearing. For properties with crop lands, Spectra paid landowners \$625/acre. Relying on these figures, the amount of compensation that would have been payable to the Cleves would be \$508.75, below the \$1,000 that Spectra says is reasonable.

[16] Spectra says the evidence supports a finding that the Cleves' loss and damages for the Lands are far less than the \$1,000 suggested, however, is willing to round that up to \$1,000.

[17] Given that the Board has no contrary evidence or submissions, the Board accepts Spectra's evidence on the factors set out in section 154(1) of the *Act* and finds that, although, the evidence suggests compensation less than that suggested by Spectra, the amount of \$1,000 is appropriate compensation. The Board is concerned that this amount may exceed the upper limit of the value of

the land, but as Spectra is prepared to pay this amount, the Board considers \$1,000 appropriate compensation in the circumstances.

CONCLUSION

[18] I find the appropriate compensation to be paid by Spectra to the Cleves is \$1,000. As Spectra has already paid \$300.00 partial payment pursuant to Board Order 1688-1, Spectra shall pay the balance of \$700.00 to the Cleves.

ORDER

[19] Spectra Energy Midstream Corporation shall forthwith pay to Wayne George Cleve and Gloria Ann Cleve the sum of \$700.00.

DATED: June 12, 2013

FOR THE BOARD



Simmi K. Sandhu, Vice Chair

File No. 1689
Board Order 1689-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SW ¼ of Section 30, Township 78, Range 16, W6M, Peace River District,
except Parcel A (D7781)

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

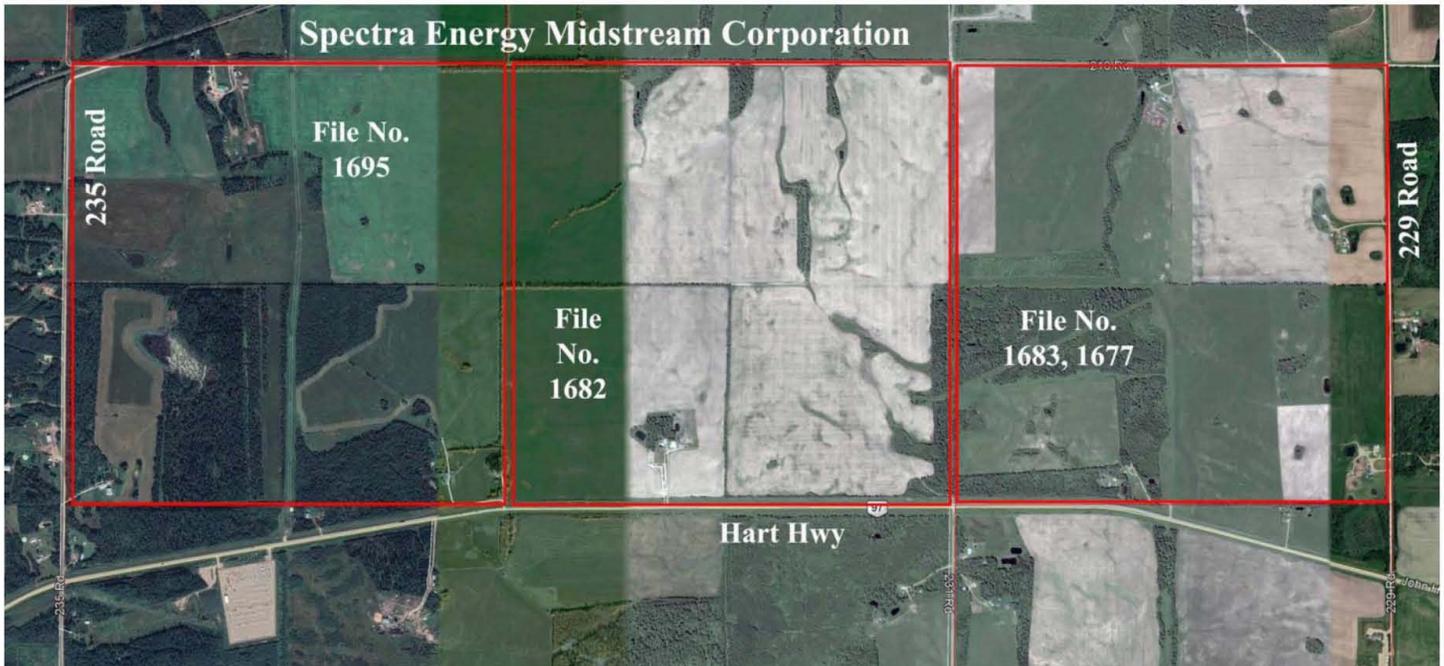
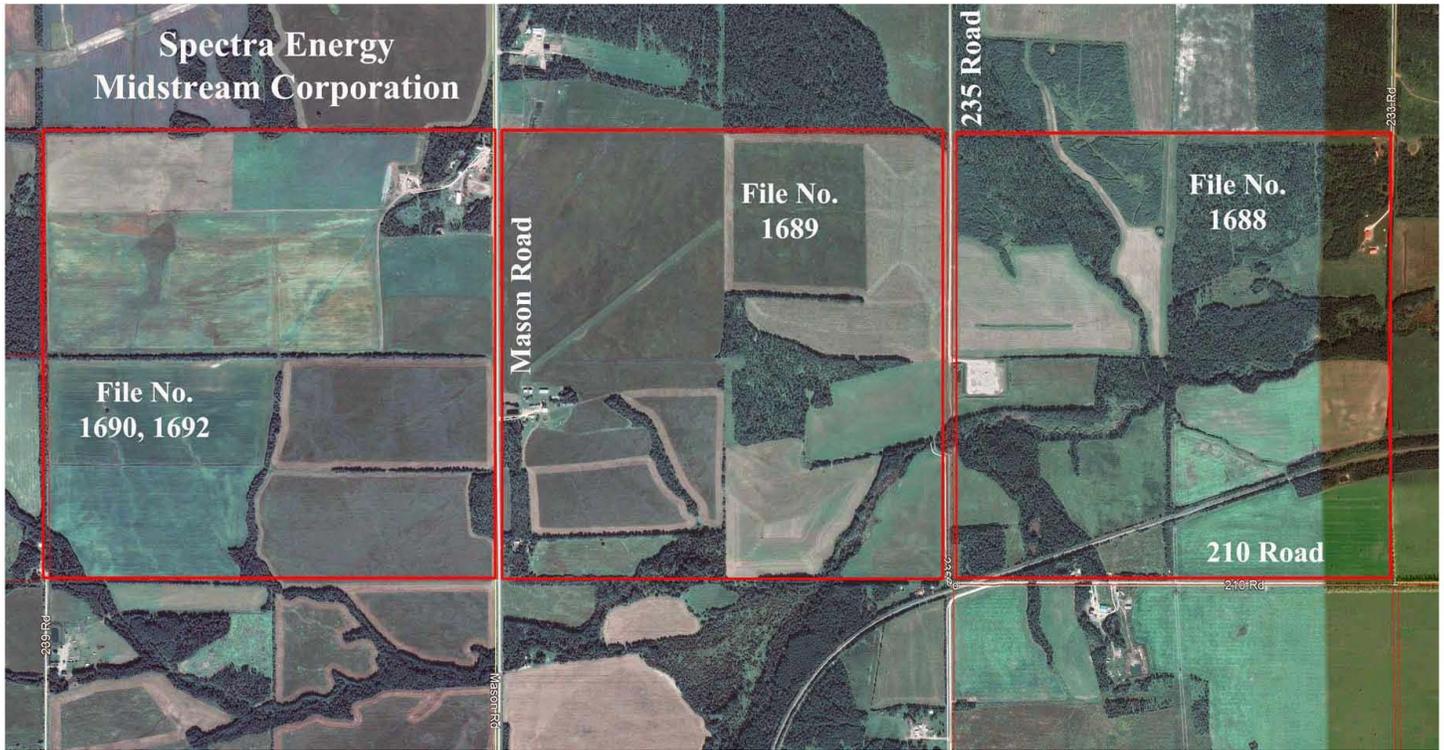
(APPLICANT)

AND:

LESLIE LLOYD SEMPLE, EXECUTOR OF THE WILL OF
LLOYD R. SEMPLE - DECEASED

(RESPONDENT)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Leslie Lloyd Semple, Executor of the Will of Lloyd R. Semple – Deceased.

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*.

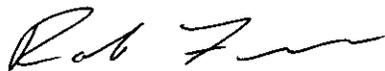
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$2,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
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6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1690
Board Order 1690-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SE ¼ of Section 25, Township 78, Range 17, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

LESLIE LLOYD SEMPLE

(RESPONDENT)

BOARD ORDER

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Leslie Lloyd Semple.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,800.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD

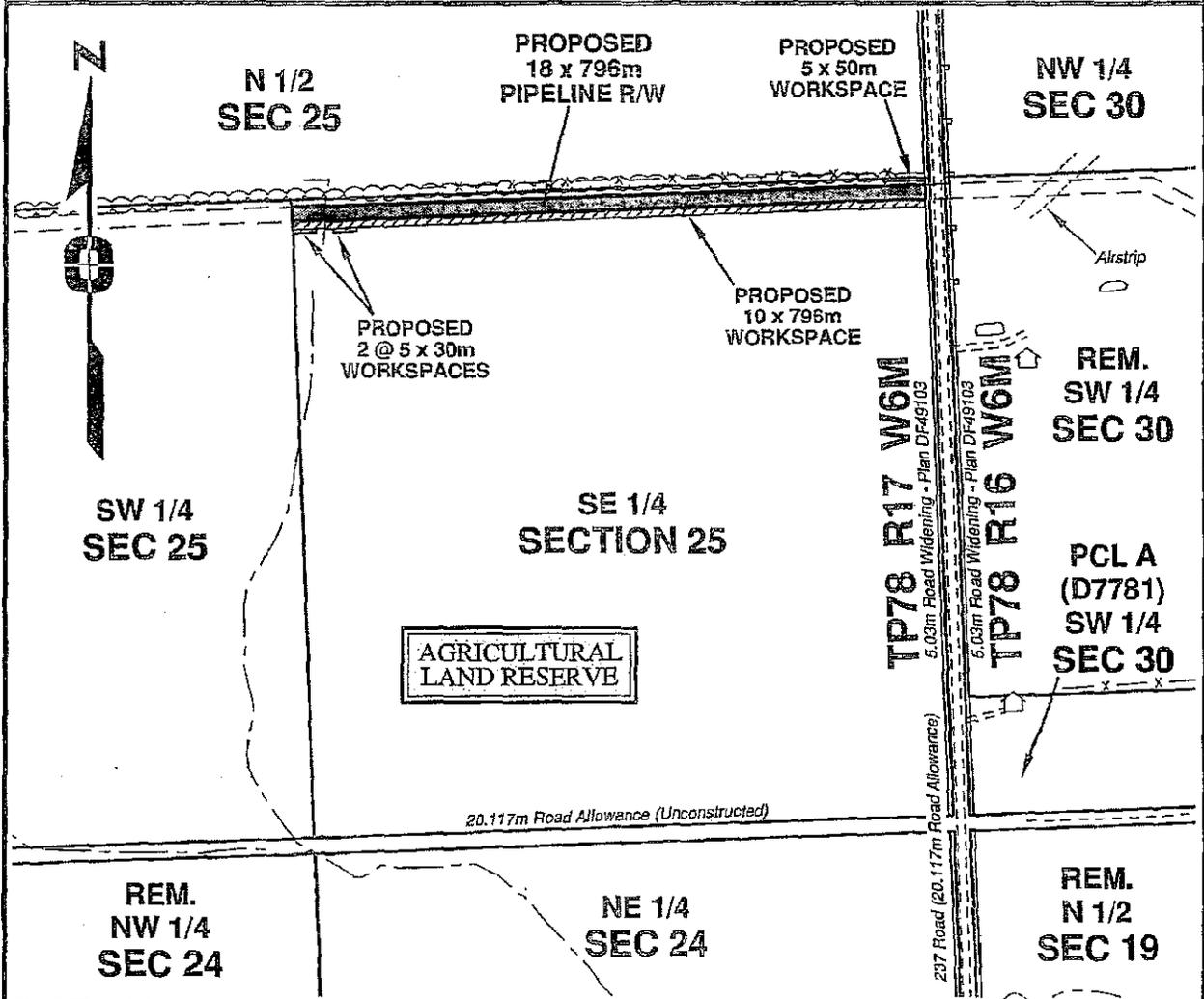


Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED 18m PIPELINE R/W
 WITHIN THE SOUTH EAST 1/4 OF SECTION 25, TOWNSHIP 78 RANGE 17 W6M,
 PEACE RIVER DISTRICT

APPENDIX II (b)



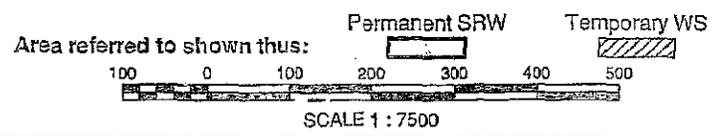
Owner(s): Leslie Lloyd Semple

Title No: S11000
 Parcel Identifier: 014-581-298
 Company File: _____

Certified correct this 7th day of June, 2010

Adam Brash, BCLS

Area(s): Permanent Statutory Right-of-Way	1.43 ha	3.53 ac
Temporary Working Space	0.85 ha	2.10 ac
Total	2.28 ha	5.63 ac



Focus Job No:	100294NP08R2
Date:	2010/05/06
Drafter: FR	Revision: 2

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

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File Nos. 1689 and 1690
Board Order 1689/90-2**

August 14, 2013

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**SW ¼ of Section 30, Township 78, Range 16, W6M, Peace River District,
except Parcel A (D7781)**

And

**Southeast 1/4 , Section 25, Township 78, Range 17, W6M, Peace River District
(The "Lands")**

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

**LESLIE LLOYD SEMPLE, EXECUTOR OF THE WILL OF
LLOYD R. SEMPLE – DECEASED AND LESLIE LLOYD SEMPLE**

(RESPONDENTS)

BOARD ORDER

Heard by written submissions

Appearances: Rick Williams, Barrister and Solicitor, for the Applicant
Elwin Gowman, for the Respondents

INTRODUCTION

[1] On December 23, 2010, the Board issued Right of Entry Orders authorizing Spectra Energy Midstream Corporation (“Spectra”) to access lands owned by Leslie Lloyd Semple, in his own capacity and as executor of the will of Lloyd R. Semple, at Southwest 1/4 , Section 30, Township 78, Range 16, W6M, Peace River District and at Southeast 1/4 , Section 25, Township 78, Range 17, W6M, Peace River District (the “Lands”). The purpose of the access was to construct and operate a 16 inch, approx. 33 kilometre long, natural gas line (the “Pipeline”) approved by the Oil and Gas Commission (the “OGC”).

[2] Mr. Semple now says the Board was outside its jurisdiction as the Pipeline was the subject of earlier expropriation proceedings pursuant to the *Railway Act*, R.S.B.C. 1996, c. 395.

BACKGROUND

[3] Prior to the issuance of the Right of Entry Orders, Spectra commenced proceedings to expropriate the Lands in accordance with the provisions of the *Railway Act*.

[4] Section 16 of the now repealed *Pipeline Act*, RSBC 1996, c. 364, stated that Part 7 of the *Railway Act* applied to pipelines and necessary works and undertakings connected to them, while the *Petroleum and Natural Gas Act*, R.S.B.C., 1996, c. 364 (the “PNG Act”) applied to flow lines as defined and necessary works and undertakings connected with them. Spectra determined that the Pipeline may not have come within the definition of “flow line” as it then was and as such commenced proceedings under the *Railway Act*.

[5] Spectra served Notices of Expropriation on Mr. Semple on or about September 22, 2010. Spectra also filed an application to the B.C. Supreme Court for a Warrant of Immediate Possession which would, if granted, permit immediate access to the Lands pending determination of compensation.

[6] However, before the application for the Warrant was heard by the Court, the *Oil and Gas Activities Act*, S.B.C 2008, c. 36 (the “OGAA”) became effective law October 4, 2010. This new Act included a different definition of the term “flow line” and an elimination of the right to expropriate under the *Railway Act*. Spectra determined that

under this new definition, the Board, not the Supreme Court, would have jurisdiction over the Pipeline. In addition, the OGC rescinded its earlier approval for the Pipeline as some of the landowners may have not have been contacted the OGC. As the OGC certificate had been rescinded prior to the OGAA being brought into force, it was not grandfathered and Spectra had to apply under OGAA to carry out the oil and gas activity. On December 17, 2010, Spectra obtained a permit from the OGC to construct the Pipeline on routing requested by Mr. Semple. On or about December 22, 2010, Spectra delivered a revised Board application to Mr. Semple based on the routing change.

PARTIES' SUBMISSIONS

[7] Mr. Semple submits that, in the fall of 2010, Spectra set about to acquire, by expropriation the lands required for the Pipeline by taking the necessary steps to comply with the *Railway Act*, including depositing the plan, profile and book of reference in the Land Title Office, giving public notice of the filings, and serving the notices of expropriation on Mr. Semple on or about September 22, 2010. Mr. Semple says the expropriation was complete as of this date, and, therefore, the Board did not have jurisdiction to issue the Right of Entry Orders in December, 2010.

[8] Mr. Semple says that it is "troubling" that the Board Orders made no reference to the expropriation and this colours the process. In approving the expropriation, the OGC made a decision that the subject was a pipeline falling under the provisions of the *Railway Act*. Therefore, Mr. Semple says that compensation must be determined in accordance with this Act.

[9] Spectra says the expropriation proceedings were commenced as they had determined that the Board likely would not have had jurisdiction based on the old definition of flow line in the *Pipeline Act*, which definition was more ambiguous than the current definition. However, the expropriation never proceeded beyond the preliminary steps because the OGAA came into force which eliminated the right to expropriate under the *Railway Act* and included a broader definition of flow line, and, on October 1, 2010, the OGC rescinded approval for the Pipeline. On or about November 9, 2010, Spectra advised Mr. Semple that due to the change in legislation, Spectra would not be proceeding with the expropriation and was instead applying to the Board.

[10] Spectra submits that Mr. Semple is now seeking, in effect, a reconsideration of the Right of Entry Orders pursuant to section 155 of the *PNG Act*, some 2 ½ years after they were issued. Spectra says that the test for reconsideration is not met as defined by the Board, and in particular, there has been no jurisdictional error as there is no dispute that the Pipeline is a flow line as the term is now defined by the OGAA. Spectra also says the right of way for the approved oil and gas activity was not expropriated as alleged because the OGC rescinded its initial certificate in October 1, 2010 and the expropriation cannot predate the approval, and because the court application for the

Warrant for Immediate Possession and compensation did not proceed. The *Railway Act* expressly provided that the right to take possession of the land does not vest in the company until compensation is awarded or agreed to or paid into Court, neither of which occurred.

[11] Alternatively, even if there was a prior expropriation over the same area, Spectra says the Board would still have had the jurisdiction to issue the Right of Entry Orders as the Board has previously determined that the existence of a surface lease or right of way agreement does not preclude the Board from issuing a right of entry order over the same lands (*Arc v. Miller*, MAB Order No. 1633). Further, if the right of way had been expropriated, the right to expropriate under the *Railway Act* relied wholly on the issuance of the OGC certificate (section 16) , which was rescinded on October 1, 2010; therefore, Spectra had no right to carry out the activities as contemplated under the alleged expropriation.

[12] Spectra submits that, while it initially intended to expropriate the right of way to the Lands, and had commenced steps to do so, due to a change in circumstances beyond its control (legislative amendments and the OGC's rescinding of the prior certificate), it never completed the process.

[13] In response, Mr. Semple says he is not seeking a reconsideration of the Right of Entry Orders but a determination that jurisdiction lies with the B.C. Supreme Court. Mr. Semple says that he did not see a need to dispute the Pipeline as a flow line as the OGC's approval of the expropriation made that decision and Mr. Semple continues to believe it is a pipeline. Mr. Semple also disputes that the OGC's rescinding of the initial approval cancels the expropriation approval. The *Railway Act* makes no provision for the abandonment of an expropriation and Mr. Semple never received notice from the Commission that the expropriation approval was rescinded. Mr. Semple argues that the Board has a legal duty to recuse itself from the matter and the matter rests with the Court.

DECISION

[14] The Board's jurisdiction regarding the determination of entry for an oil and gas activity, compensation or other remedies the Board is authorized to make only arises with respect to pipelines that are "flow lines" (Section 154(2) of the *PNGA*).

[15] During the determination and issuance of the Right of Entry Orders to the Lands, it appears that Mr. Semple did not take issue with Spectra's contention that the Pipeline was a flow line, the Board accepted that it was a flow line, and no appeal was made from the Board's Right of Entry Orders. The Board accepted it had jurisdiction over the matter. Mr. Semple says he is not asking the Board to reconsider the Orders but argues, 2 ½ years later, that the Board did not have nor currently has jurisdiction over the matter. He does not agree the Pipeline is a flow line and believes it is a pipeline but

provides no submissions or evidence to support his belief. Rather he argues that an expropriation has been started and completed, the result of which is that the Board did not and does not have jurisdiction.

[13] The Board disagrees that an expropriation had been “completed” by September, 2010. Spectra had served expropriation materials on Mr. Semple, filed an application in Court for a Warrant for Immediate Possession with supporting Affidavits, and had notices published of Spectra’s intention to apply to obtain statutory rights of way, all as required by the *Railway Act*. In addition, the OGC had issued a certificate to Spectra authorizing the construction and operation of the Pipeline. However, these facts do not mean that an expropriation has been completed, but rather, proceedings for an expropriation had been commenced.

[14] The right to take possession of the land does not vest in the company under the *Railway Act* until payment of compensation to the landowner or into court (section 58 of the *Railway Act*). This had not been done as there was no agreement with the landowner nor an award of the court. Spectra had applied for a Warrant of Immediate Possession under sections 60 and 61 of the *Railway Act* but this application did not proceed nor was a warrant granted by the Court. The requirements of section 58, 60 and 61 had not been met and as a result, an expropriation of the right or the right to enter and take possession of the Lands had not yet vested with Spectra. In addition, the rescinding of the OGC’s initial certificate on October 1, 2010 ensured that Spectra had no right to carry out the activities on the Lands as contemplated in the expropriation materials (section 16 of the *Pipeline Act*) and as such could not proceed with the expropriation proceedings.

[15] At the time application was filed with the Board, the *Pipeline Act* was repealed and the *OGAA* was in force and Spectra had applied to the OGC for new approval for its oil and gas activity. The new definition of flow line was in place and as such Spectra filed an application to the Board for the right of entry. Subsequent to the Right of Entry Orders, the OGC had issued new approval for the oil and gas activity. There is no concurrent jurisdiction between the Board and the Court. Due to the legislative changes, the jurisdiction over a flow line as defined by the *OGAA* lies with the Board.

[16] As Mr. Semple does not provide evidence or submissions to argue or show the Pipeline is not a flow line, and as the parties and the Board, until now, have proceeded on the basis the Pipeline is a flow line as defined the *OGAA*, the Board accepts it has jurisdiction over the matter.

[17] The Board will not reconsider its Right of Entry Orders pursuant to section 155 of the *PNG Act* as there has been no change in circumstances, no new evidence, and no jurisdictional error made by the Board.

CONCLUSION

[18] The Board has jurisdiction over the matter and as such the arbitration will proceed as scheduled.

DATED: August 14, 2013

FOR THE BOARD

A handwritten signature in black ink, consisting of several loops and a horizontal line at the end, positioned above a horizontal line.

Simmi Sandhu, Vice Chair

December 19, 2013

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**SW ¼ of Section 30, Township 78, Range 16, W6M, Peace River District,
except Parcel A (D7781)
and
Southeast 1/4 , Section 25, Township 78, Range 17, W6M, Peace River District
(The "Lands")**

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

**LESLIE LLOYD SEMPLE, EXECUTOR OF THE WILL OF
LLOYD R. SEMPLE – DECEASED AND LESLIE LLOYD SEMPLE**

(RESPONDENTS)

BOARD ORDER

Heard: By written submissions closing November 14, 2013
Appearances: Rick Williams, Barrister and Solicitor, for the Applicant
Elvin Gowman, for the Respondents

INTRODUCTION

[1] The Respondent, Leslie Lloyd Semple, in his own capacity and as executor of the estate of Lloyd R. Semple, owns land (the "Landowners") in the Peace River District, near Dawson Creek, namely Southwest 1/4, Section 30, Township 78, Range 16, W6M, Peace River District and at Southeast 1/4, Section 25, Township 78, Range 17, W6M, Peace River District (the "Lands").

[2] On December 23, 2010, the Board issued Right of Entry Orders authorizing Spectra Energy Midstream Corporation ("Spectra") access to the Lands for the purpose of constructing and operating a natural gas line called the Bissette pipeline (the "Pipeline") as approved by the Oil and Gas Commission (the "OGC"). The Pipeline lies in a strip 18 metres wide on the Lands, and access was granted for 7.09 acres of right of way ("ROW") and 4.52 acres for temporary work space ("TWS").

[3] The parties were unable to resolve the issue of the appropriate compensation for the entry and use of the Lands. The Board scheduled an in person arbitration to hear this issue but the hearing was converted to written submissions when Mr. Semple failed to produce documentary evidence pursuant to the Board's pre-hearing Orders. Although Mr. Semple failed to comply with the Board's pre-hearing Orders, the Board allowed Mr. Semple the opportunity to respond to Spectra's evidence.

ISSUE

[4] The issue is: what is the appropriate compensation to be paid to the Landowners by Spectra arising from its entry to the Lands in accordance with the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, ch. 361 (the "Act")?

BACKGROUND

[5] The Lands comprise two properties used for hay and forage production in the Agricultural Land Reserve near Dawson Creek.

[6] In mid-2010, prior to construction of the Pipeline, Spectra determined that it would have to proceed under the *Pipeline Act*, R.S.B.C., 1996, c. 364, and the *Railway Act*, R.S.B.C. 1996, c. 395, and expropriate the interests of landowners along the route because the Pipeline may not have met the then definition of "flow line". As part of those proceedings, Spectra obtained an appraisal report and an agricultural damage report prepared by John Wasmuth, AACI, P. App, P. Ag, CAC.

[7] Prior to the expropriation, the *Pipeline Act* was repealed and the *Oil and Gas Activities Act* was brought into force. As a result of this legislative change, the definition of “flow line” was amended and, as the Pipeline now met this new definition, Spectra abandoned the expropriation proceedings and instead applied to the Board, and was granted, a right of entry order to the Lands.

[8] Following the application to the Board, Mr. Semple requested and obtained a change in routing of the Pipeline to eliminate a severance issue by having the Pipeline follow the property boundary.

[9] In February and March, 2011, Spectra constructed the 16 inch diameter sour gas Pipeline extending approximately 33 kilometres from the NE 15-77-15-W5M to the Spectra Energy Transmission South Peace Pipeline riser site. The Pipeline traverses a number of separate parcels of land, including the subject Lands. In May 2011, portions of the right of way on the Lands were eroded, which erosion Spectra remedied. In January, 2012, Mr. Semple and Spectra came to an agreement on damages. Also, in August, 2012, Spectra paid an additional \$390.00 for weed control.

PRELIMINARY ISSUE

[10] Spectra relies upon the appraisal and agricultural damage reports from Mr. Wasmuth in these proceedings. Mr. Semple says these expert reports should be given no weight because they were prepared for purpose of the initial expropriation proceedings, which is not the same as the acquisition of the statutory right of entry, and that compensation in the two situations is not based on the same principles. As he has been limited to a response to Spectra’s material, Mr. Semple submits there is no merit in providing a response to materials prepared on the basis of expropriation and further requests that Spectra’s application be dismissed and a new hearing struck.

[11] Spectra responds that having Mr. Wasmuth redo his reports is a waste of resources and of no benefit and that if Mr. Wasmuth were to prepare an analysis under section 154 of the *Act*, his numbers would be lower not higher as expropriation is far more onerous. In any event, the instructions Mr. Wasmuth would have received for an opinion under the *Act* would have been the similar, namely provide an opinion on the market value of the right of way and temporary work space and the reduction in the market value, if any, to the remainder of the lands as a result of the entry and occupation.

[12] Although the expert reports were prepared for the expropriation proceeding, I find this fact alone is not sufficient reason to give the reports no weight or to have the application before me dismissed and have a new hearing struck. They are tendered as evidence to support Spectra’s position in this matter and must be considered. I will place the appropriate weight on those expert opinions in light of all of the evidence before me and taking into account the expert’s assumptions and conditions that form the parameters of his assignment.

THE LEGISLATIVE FRAMEWORK

[13] Section 143(2) of the *Act*, provides that a right holder is liable to pay compensation to a landowner for loss or damage caused by the right of entry. Where right of entry relates to a flow line, compensation is payable for loss or damage caused by the entry, but no annual rent is payable (section 143(2)(b)).

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

- (a) the compulsory aspect of the right of entry;
- (b) the value of the applicable land;
- (c) a person's loss of a right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;
- (e) compensation for severance;
- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any, of one or more other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the board or to which the board has access;
- (j) previous orders of the board;
- (k) other factors the board considers applicable;
- (l) other factors or criteria established by regulation.

[15] Compensation is for the landowner's loss or damage that has occurred or is reasonably probable and foreseeable; it is inappropriate to make a speculative award (*Arc Petroleum Inc. v. Piper*, MAB Order 1598-2, *Arc Petroleum Inc. v. Miller*, SRB Order 1633).

[16] Finally, the upper limit of compensation is the value of the land and if the landowner receives full value for the land, no additional payment is required for the compulsory aspect of the taking (*Western Industrial Clay Productions Ltd. v. MAB*, 2001 BCSC 1458).

COMPENSATION EVIDENCE AND ANALYSIS

Section 154 Factors

Land Value

[17] Under section 154 of the *Act*, the Board may consider the value of the land in determining appropriate compensation.

[18] In support of this consideration, Spectra relies upon Mr. Wasmuth's appraisal report in which he provides an opinion of the value, effective June, 2010, of the statutory right of way and temporary work space to be expropriated and an opinion on the reduction in the market value, if any, to the remainder of the lands as a result of the

expropriation. Spectra says the effective date of the appraisal is not relevant as nothing changed from June, 2010 to the effective date for valuing loss in this case (namely December 23, 2010 which is the date of the Right of Entry Order) that would impact the highest and best use analysis.

[19] The appraiser determines the market value of the fee simple interest in the Lands based on the highest and best use of the Lands as continued agricultural production. He relies upon the sales of five bare land sales that ranged in adjusted sale prices from \$642 to \$814 per acre and concluded that the market value of the fee simple interest in the Lands in a bareland state was \$750 per acre as of June 2, 2010.

[20] Spectra submits that the Landowners are not entitled to the full market value of the fee simple interest (\$750 per acre) as no land or permanent legal interest was taken, but rather the Board must consider the residual and reversionary value in the Lands to take into account the fact that the Landowners are able to continue using the Lands after the Pipeline is installed and the Lands will be returned to the Landowners upon the Pipeline ceasing to be used. In quantifying these values, Spectra relies on Mr. Wasmuth's conclusion of the market value of the statutory right of way at 50% or \$375.00 and the market value of the temporary workspace to be acquired at 25% or \$187.50. He also concluded that there would be no reduction in the market value of the remaining land (ie outside the ROW and TWS) as a result of the proposed Pipeline and Spectra says there should be no compensation for injurious affection.

[21] Therefore, Spectra submits the value of the Lands subject to the Right of Entry Orders is $\$3,506.25 = (2.42 \times \$187.50 \text{ TWS}) + (3.56 \times \$375 \text{ ROW})$ and $(2.10 \times \$187.50 \text{ TWS}) + (3.53 \times \$375 \text{ ROW})$.

[22] Although the appraisal report was not prepared for the purpose of these proceedings, it is the only evidence of the market value of the Lands before me. The report analyzes the sale of comparable properties near the effective date and makes appropriate adjustments to those sales to determine the market value of the fee simple interest in the Lands. Without contrary market evidence, I accept Mr. Wasmuth's opinion of value on the market value of the fee simple interest and the reversionary and residual interests in the Lands.

[23] Mr. Semple says there is a 30 metre setback adjacent to the right of way that diminishes the lands in both utility and value, which has not been accounted for in Spectra's analysis (11.8 acres of setback or 30 m. x 1592 m). Spectra disputes this and says the prescribed distance is measured from the Pipeline and not the right of way. A person carrying out a "ground activity" which is defined to include farming activity to a depth of more than 45 cm (for which there is no evidence the Landowners will be carrying out) within 10-30 metres from a pipeline is required to advise BC One Call in advance. For activity within 10 metres of a pipeline, the person would need agreement of the pipeline permit holder (Spectra) or an order from the OGC. Therefore, as the 16 inch Pipeline is in the middle of an 18 metre right of way, there is only one additional metre on either side of the right of way where Mr. Semple would have to ask for Spectra's agreement for carrying out farming activity to a depth greater than 45 cm.

Spectra provides consent to any reasonable activities, on request, carried out in a manner that will not affect the safety and integrity of the Pipeline in a letter provided as part of its submissions.

[24] Mr. Semple also says the *Pipeline and Liquefied Natural Gas Facility Regulation* has not been taken into account as the Landowners' home and farm headquarters are located in the heart of the emergency planning zone. However, Spectra says that no evidence is provided to support the claim that the emergency zone would affect the market value of the Lands. Finally, Mr. Semple argues that there is the possibility that he will never regain the unencumbered land if the works are abandoned in place and this possibility has not been accounted for.

[25] I find that the Landowners have not substantiated the claims for the effect of the setback, emergency zone or the possibility of abandonment of the works. These claims are either not substantiated by any evidence and/or are speculative. As stated in previous decisions, the compensation to be paid must compensate for actual or reasonably foreseeable loss or damage by the landowner (*Arc Petroleum Inc. v. Piper*, MAB Order 1598-2). The Landowners' claims and supporting evidence regarding the emergency zone or abandonment of the works do not support a finding of reasonably foreseeable loss or damage.

Compulsory Aspect of the Taking

[26] Under section 154, the Board may consider the compulsory aspect of the taking in determining compensation.

[27] The Board has previously indicated that an amount for the compulsory aspect of the taking will of necessity be arbitrary and that, considering the compensation for these factors cannot exceed the value of the land, the actual value of the land is sufficient to compensate a landowner for the intangible loss of rights, including the compulsory aspect (*Arc v. Miller, supra*).

[28] Spectra says that in this case the combined amount of compensation for the loss of value/rights and the compulsory aspect for the right of way would be at the most \$7,012.50 (7.09 acres x \$750).

[29] I agree that this sets the upper limit of compensation as indicated by the Court in *Western Industrial Clay, supra*. and would adequately compensate the Landowners for the value of the Lands, taking into account the residual and reversionary interests, loss of rights, and compulsory aspect of the right of entry.

Loss of Profit and Temporary and Permanent Damage

[30] The Board may also consider a person's loss of profit with respect to the land in awarding compensation, as well as any temporary and permanent damage and nuisance and disturbance from the entry.

[31] This amounts to reimbursement to the landowner for any actual damage suffered as a result of the Right of Entry Order and for any loss of profit as a result of his inability to utilize the land for a period of time due to construction. Spectra says there is not any appreciable nuisance or an otherwise negative impact on the Lands nor is there evidence of any injurious affection to the remaining lands. However, if there were, Spectra argues the generous assumptions made in the landowners' favour in Mr. Wasmuth's analysis of loss provide more than sufficient compensation.

[32] In Mr. Wasmuth's Agricultural Damage Report, he concludes \$6,202 would fully compensate the Landowners for the monetary value of the damages/losses likely to arise from Spectra's construction on the Lands. In arriving at this figure, Mr. Wasmuth made generous assumptions in favour of the Landowners. However, he did use a proposed route that was different than the one constructed and that resulted in some severance of lands. That route was subsequently amended. Therefore, based on the actual route (7.09 acres rather than 7.41 acres for ROW and 4.52 acres rather than 4.84 TWS), Spectra says the award for damages/loss should be \$5,183.26.

[33] Mr. Semple says that Mr. Wasmuth has disregarded the risk of farming over the Pipeline as trenches fail and machinery is damaged when a wheel falls into the trench causing delay and repairs to machinery and equipment. Spectra says there is no evidence provided to show this event has occurred or is likely to occur, and refers to photographs showing that the right of way has been farmed since the Pipeline was constructed. Spectra also provides an assessment completed by M. Edgar, an environmental scientist. Mr. Edgar concluded that the trench has not failed and does not prevent continued farming, although he did observe some "minor rill erosion" at one point of the right of way which Spectra is prepared to remedy.

[34] I find that the Landowners' claim for risk of farming is speculative and does not meet the threshold of actual or reasonably foreseeable or probable loss or damage (*Arc v. Piper, supra.*). The Landowners have provided insufficient evidence to support their claim. There is no evidence that there is actual loss or damage or loss that is reasonably foreseeable or probable as a result of farming over the right of way.

[35] As well, Mr. Semple submits the right of way and 30 metre setback preclude some farm activities such as subsoiling. A letter from Larry Fossum is provided that indicates he will not be cutting or baling hay on the right of way next year unless the washouts, rough ground and weed problems have been rectified. Spectra notes that Mr. Fossum does not indicate which land or pipeline he is referring to and says there have been no prior complaints of this nature made by either Mr. Semple or Mr. Fossum.

[36] I find that there is insufficient evidence to show that the issues identified by Mr. Fossum are connected to the existence and operation of the Pipeline but, in any event, there is insufficient detail of the issues provided to show an actual or reasonably foreseeable or probable loss, or a quantification of compensation for these issues.

[37] Finally, Mr. Semple provides his actual yields and calculations and argues the damages should incorporate "tax gross up". Spectra responds that, incorporating the

evidence of actual yields for the two years for which yields were impacted by construction and the correct figure of 11.61 acres as the actual area impacted by construction, leads to a total loss of \$3,715.20, less than Mr. Wasmuth's estimation.

[38] I find the best evidence of crop loss is from the actual yields provided by Mr. Semple for the two years that were impacted by construction and the actual area impacted by construction (11.61) acres. Calculating crop loss on this basis amounts to a total crop loss of \$3,715.20. I have nothing to support a claim for "tax gross up".

Money Paid to Others

[39] The Board may also consider money paid to others.

[40] Spectra advises that it reached agreements with many other landowners along the Pipeline route for \$950/acre for the land value of the permanent right of way, \$500/acre for the compulsory aspect of the taking, \$450/acre for the use of any temporary work space, and \$1,000 signing bonus for those that reached agreement with Spectra without Board involvement. For crop lands, Spectra paid other landowners \$625/acre (\$250/acre per year at 100% for two years and 50% for the third year) as total damages.

[41] Spectra is prepared to pay the Landowners the same arrangement reached with others, less the signing bonus, as follows:

Permanent right of way: 7.09 acres x \$950	\$6,735.50
Temporary work space: 4.52 acres x \$470	\$2,147.00
Crop Loss 3 years: 11.61 acres x \$625	\$7,256.25
Compulsory aspect of taking: 7.09 acres x \$500	<u>\$3,545.00</u>
Total:	\$19,683.75

[42] Mr. Semple says he has other adjoining lands impacted by a pipeline right of way for which he has received \$12,700 per acre and asks for this amount as compensation here. I am unable to consider this as appropriate compensation. No details or explanation as to how this figure was arrived at has been provided. Also, if Mr. Semple is requesting compensation of \$12,700 per acre for 7.09 acres, this amount is substantially higher than the market value of the fee simple interest in the Lands at \$750/acre, which should set the upper limit of compensation for the value of land and compulsory taking as the only other head of compensation payable is crop loss, which I have found is actually \$3,715.20 (*Western Industrial Clay, supra*).

Global Review of Compensation

[43] Applying my findings above in relation to the various factors the Board may consider, the Landowners are entitled to the following:

For compulsory aspect of taking/loss of rights/value of the land:	\$7,012.50
For loss of profit/crop loss:	\$3,715.20

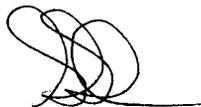
[44] However, this calculation does not take into account what has been paid to others along the same Pipeline. Consideration of that factor increases the global sum to \$19,683.75. I am aware that this amount might be above the upper limit of compensation that has been referred to in terms of the value of the land and loss of rights, as well as crop loss. However, as Spectra is willing to pay this amount, and in the interest of fairness, I will order compensation in this amount to be paid by Spectra to the Landowners.

ORDER

[45] The Landowners are entitled to compensation in the sum of \$19,683.75 for access to the Lands by Spectra to construct and operate the Pipeline. However, as Spectra has previously made a partial payment of \$2,000 pursuant to Order 1689-1 and \$1,800 pursuant to Order 1690-1, Spectra shall forthwith pay to the Landowners the amount of \$15,883.75, being the amount of compensation owing on both applications less the two partial payments.

DATED: December 19, 2013

FOR THE BOARD



Simmi K. Sandhu, Vice Chair

File No. 1692
Board Order 1692-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

SW ¼ of Section 25, Township 78, Range 17, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

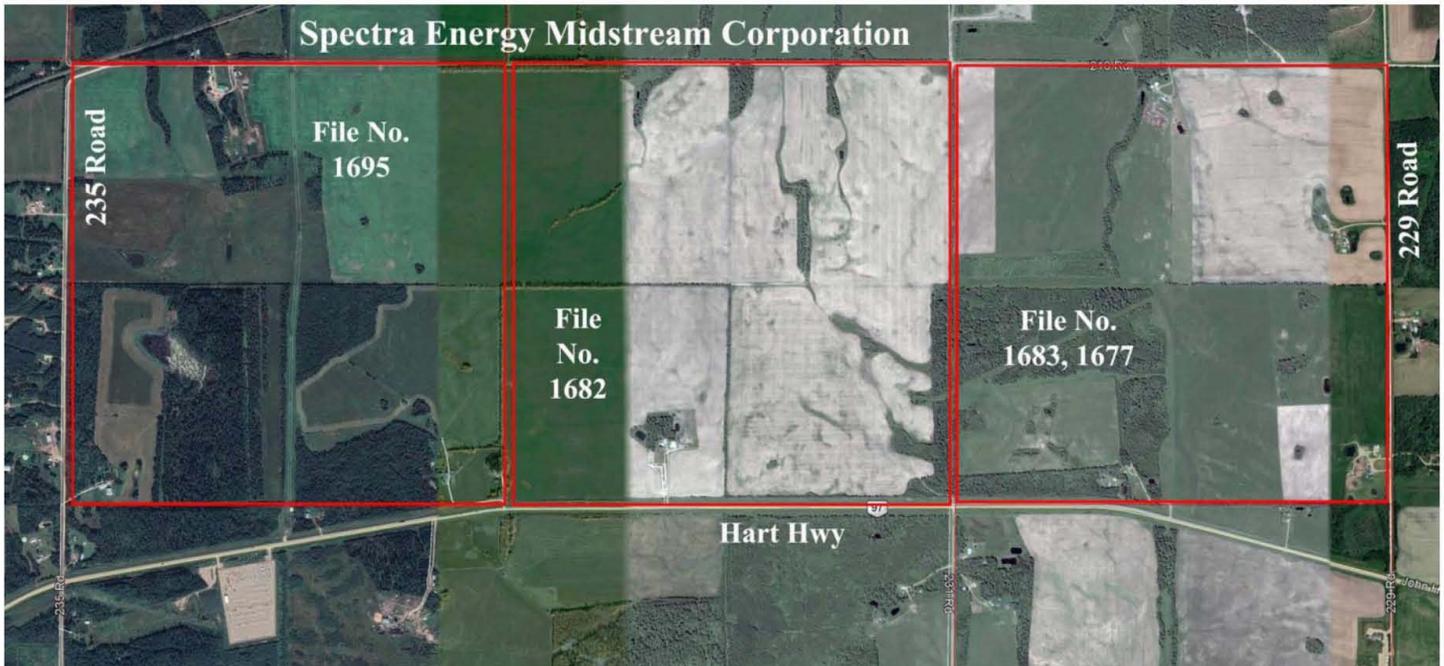
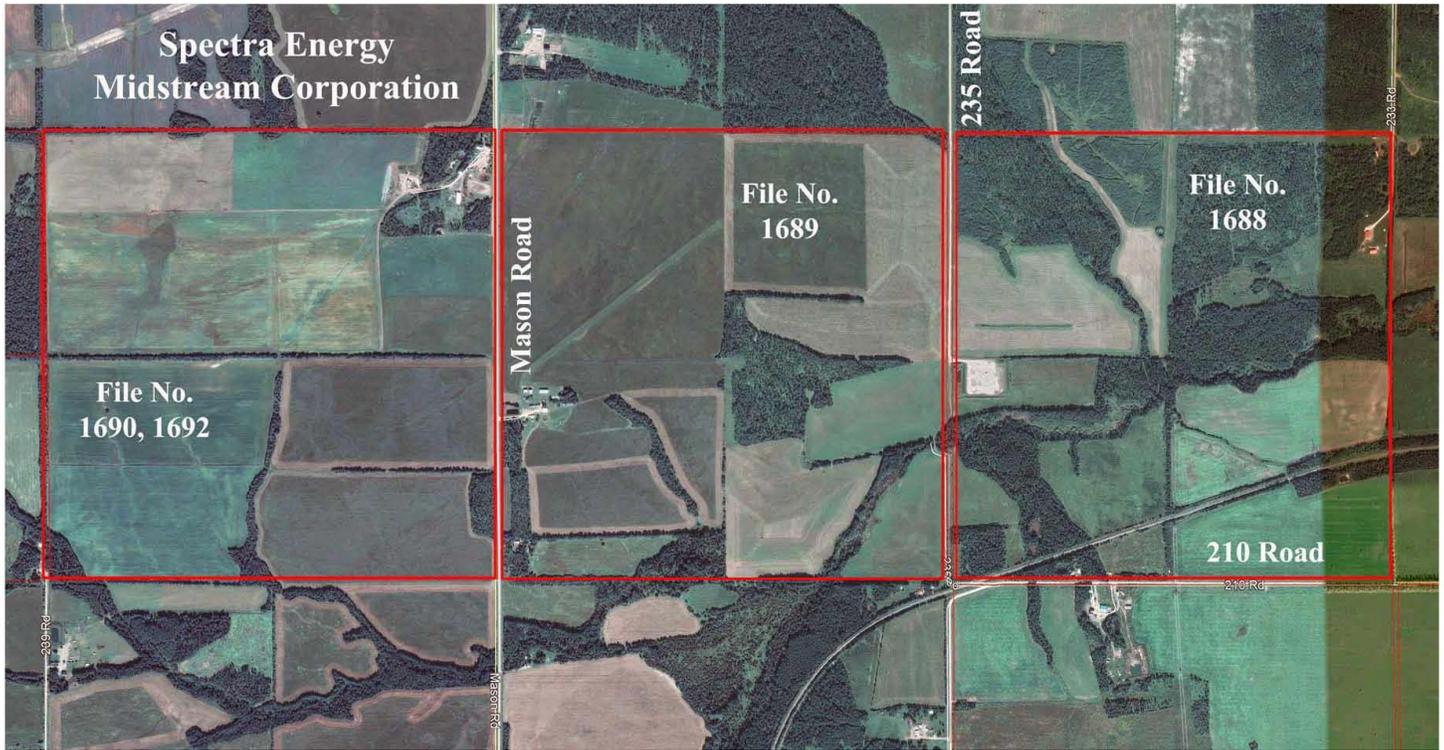
(APPLICANT)

AND:

CHRISTOPHER MICHAEL MOAT AND HEATHER LEE MOAT

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010

Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Christopher Michael Moat and Heather Lee Moat.

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*.

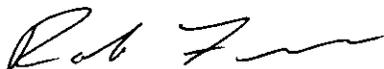
ORDER

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$1,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

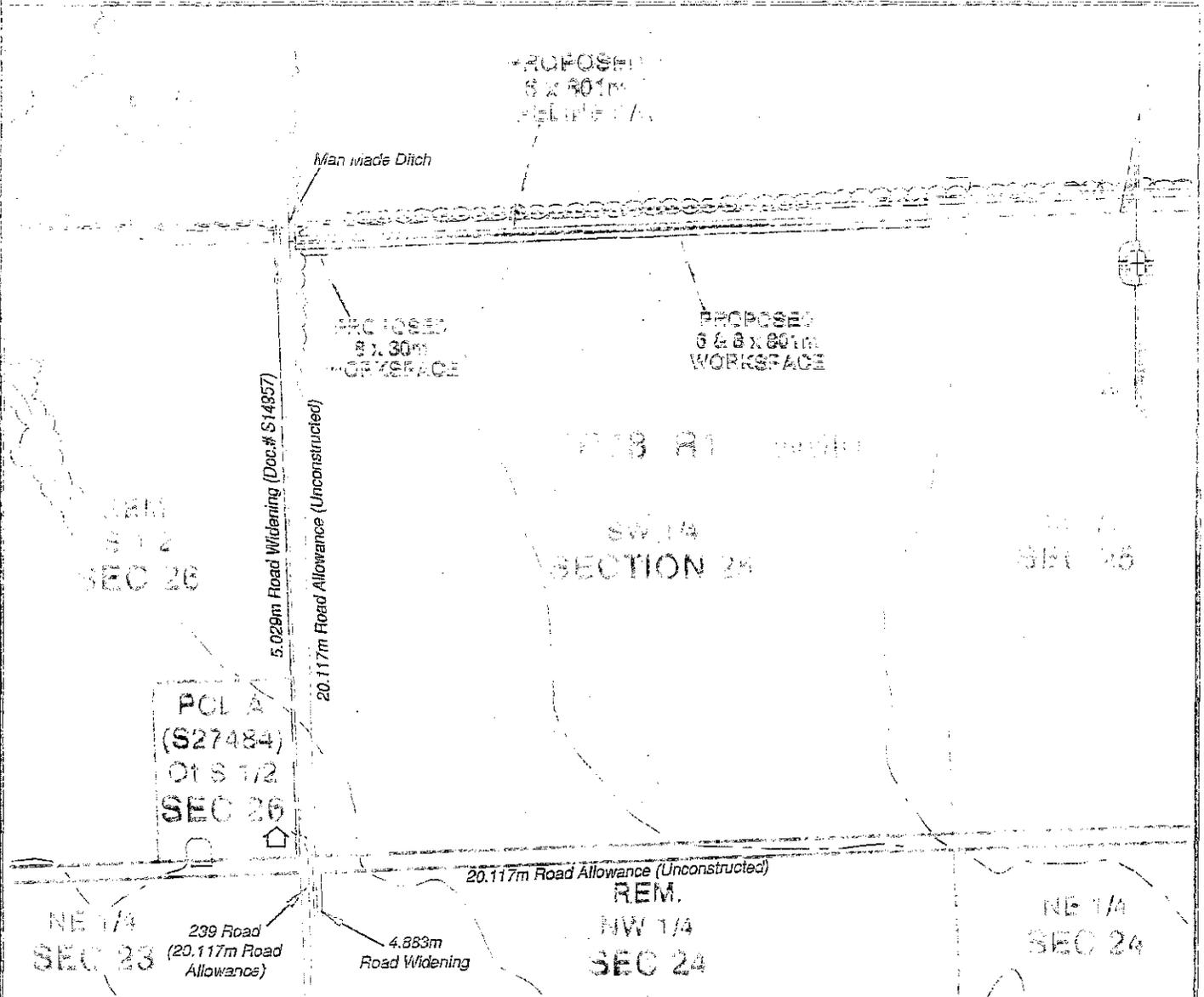
Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

PROPOSED 15m PIPELINE R/W
 WITHIN THE SOUTH WEST 1/4 OF SECTION 25, TOWNSHIP 78 RANGE 17 W6M,
 PEACE RIVER DISTRICT



Owner(s): Christopher Michael Moat
 Heather Lee Moat

Title No: CA1105115
 Parcel Identifier: 014-458-373
 Company File:

Certified correct this 16th day of November, 2010

Adam Brash, BCLS

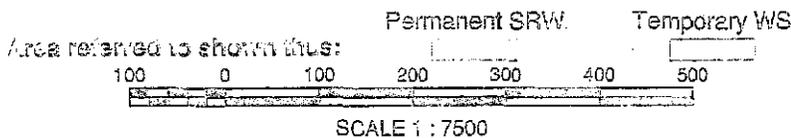
Area(s):	Permanent Statutory Right-of-Way	0.50 ha	1.24 ac
	Temporary Working Space	0.67 ha	1.66 ac
	Total	1.17 ha	2.90 ac

Focus Job No:	100294NP07AR1
Date:	2010/11/16
Drafter: FR	Revision: 1

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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1693
Board Order 1693-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NE ¼ of Section 15, Township 78, Range 16, W6M, Peace River District,
except Parcel A (F461) and Plan H527**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

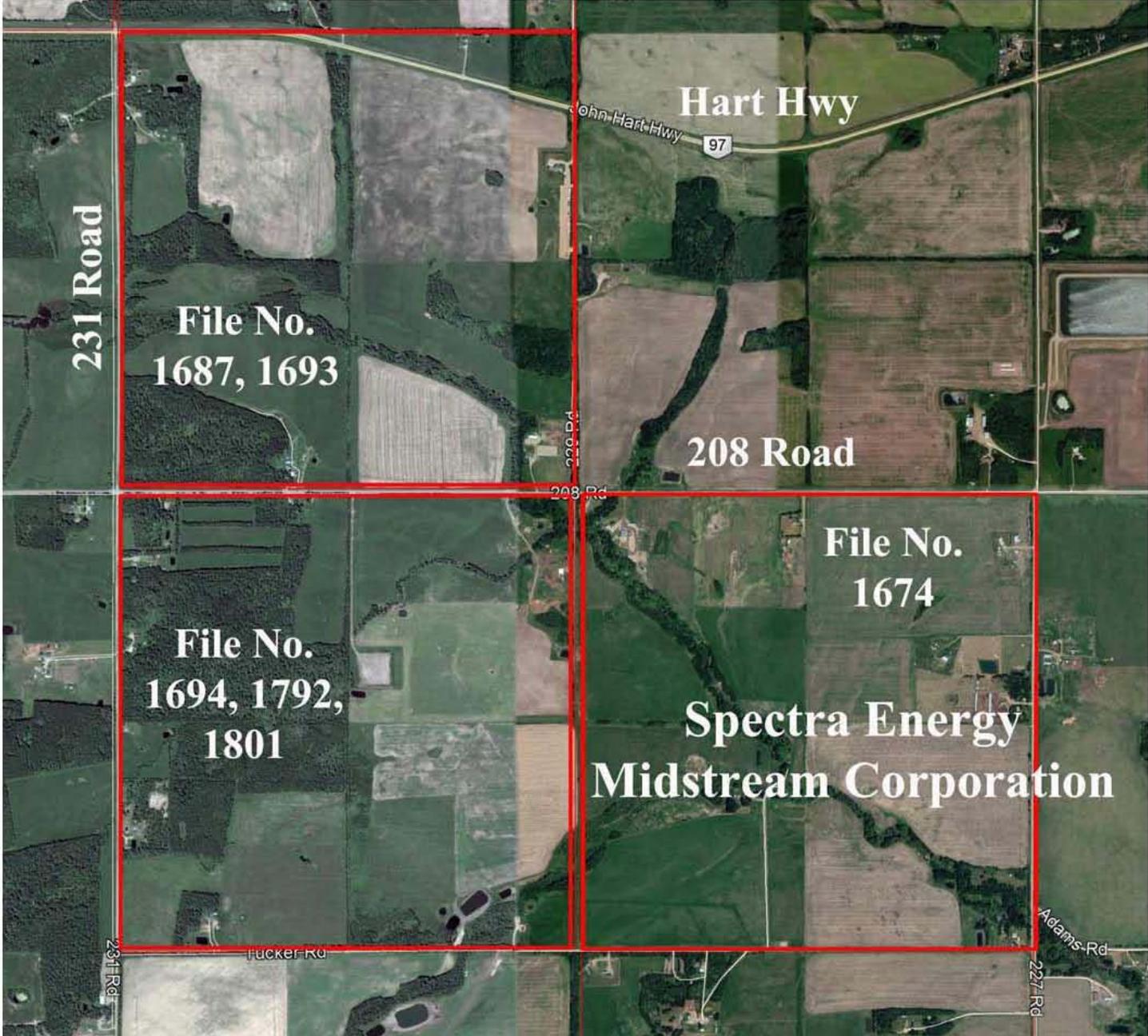
(APPLICANT)

AND:

DANIEL GORDON McLEOD AND RENA LEANNE McLEOD

(RESPONDENTS)

BOARD ORDER



231 Road

**File No.
1687, 1693**

Hart Hwy

John Hart Hwy 97

208 Road

**File No.
1694, 1792,
1801**

**File No.
1674**

**Spectra Energy
Midstream Corporation**

231 Rd

Fucker Rd

208 Rd

208 Rd

Adams Rd
227 Rd

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Daniel Gordon McLeod and Rena Leanne McLeod.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$400.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

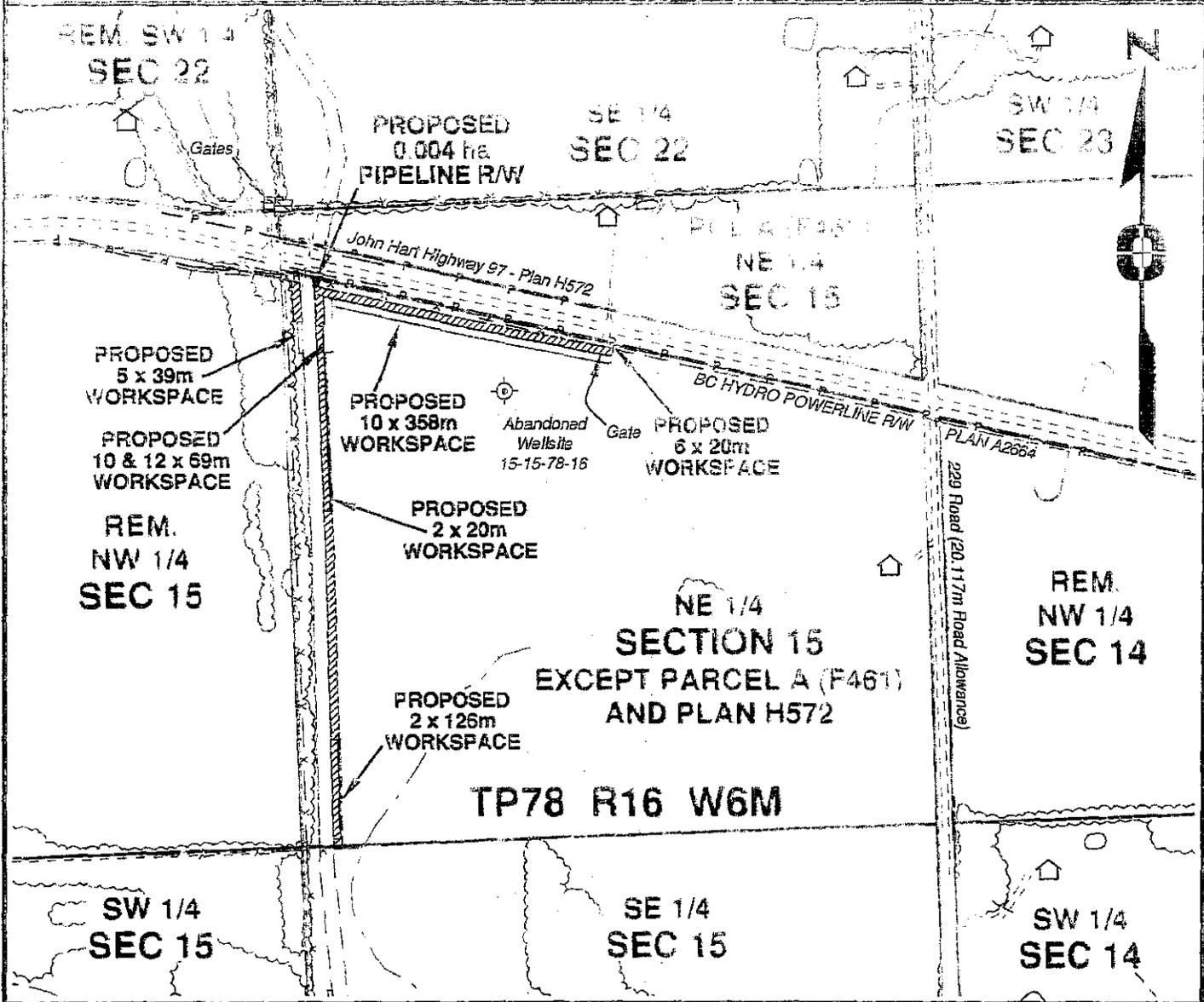
APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING

Page ___ of ___

PROPOSED 16m PIPELINE R/W

WITHIN THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT, EXCEPT PARCEL A (F461) AND PLAN H572



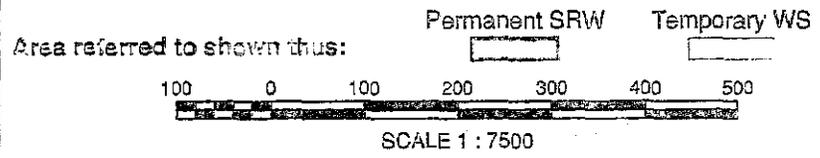
Owner(s): Daniel Gordon McLeod
Rena Leane McLeod

Title No: BW426456
Parcel Identifier: 014-330-920
Company File:

Additional Area(s):

Permanent Statutory Right-of-Way	0.004 ha	0.010 ac
Temporary Working Space	0.531 ha	1.312 ac
Total	0.535 ha	1.322 ac

Certified correct this 16th day of November, 2010
Adam Brash, BCLS



Focus Job No:	100294NP20AR1
Date:	2010/11/16
Drafter: FR	Revision: 1

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BC, V1J 1Z3
Ph. (250)787-0300
Fax: (250)787-1511
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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File No. 1693
Board Order 1693-1amd**

June 13, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NE ¼ of Section 15, Township 78, Range 16, W6M, Peace River District,
except Parcel A (F461) and Plan H527**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

DANIEL GORDON McLEOD AND RENA LEEANNE McLEOD

(RESPONDENTS)

**AMENDED
BOARD ORDER**

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

This Order amends Order 1693-1 issued December 23, 2010 to correct a typographical error in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by Daniel Gordon McLeod and Rena Leanne McLeod.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$400.00.
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 13, 2011

FOR THE BOARD

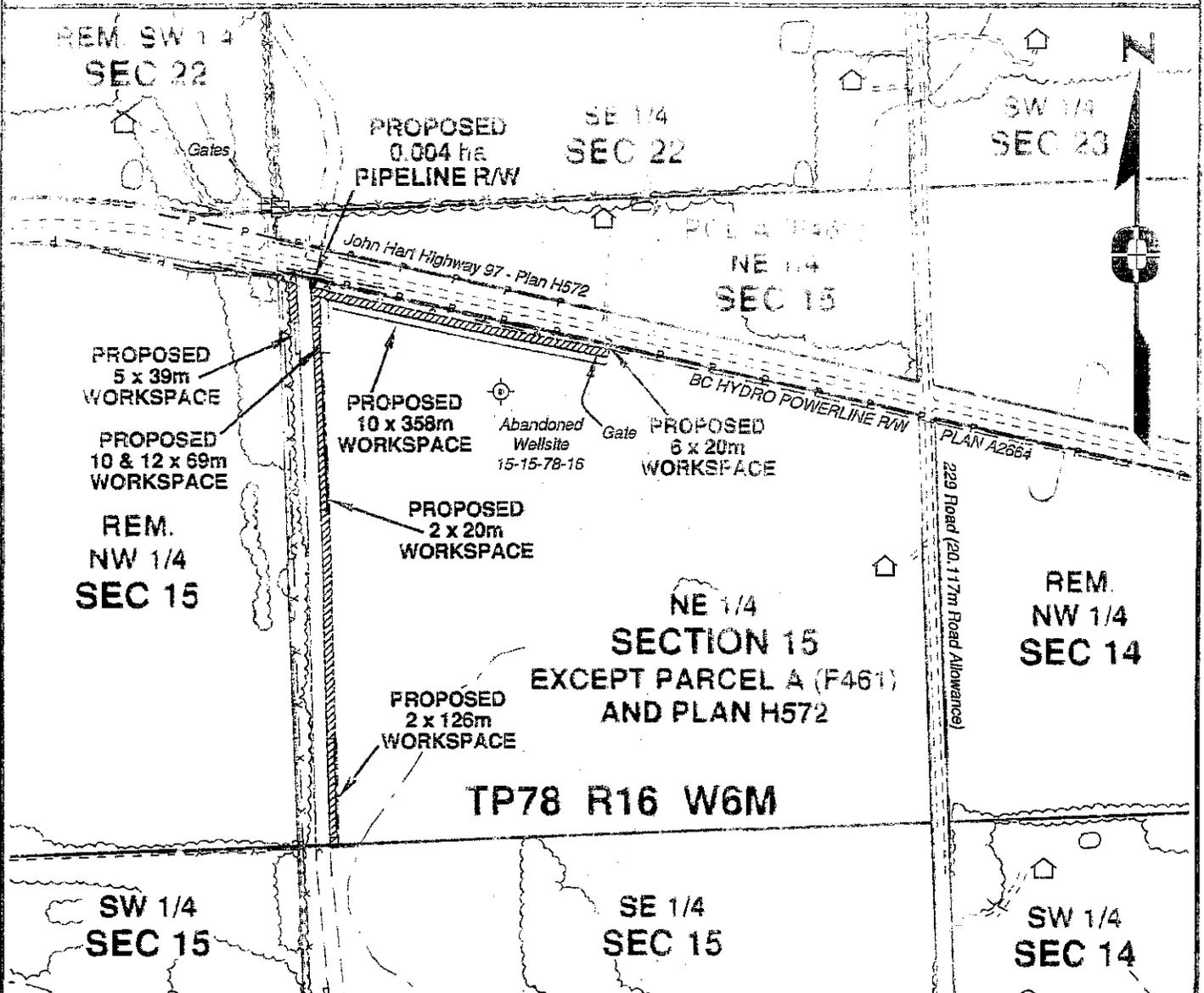


Rob Fraser, Mediator

APPENDIX "A"

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W

WITHIN THE NORTH EAST 1/4 OF SECTION 15 TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT, EXCEPT PARCEL A (F461) AND PLAN H572



Owner(s): Daniel Gordon McLeod
Rena Lesane McLeod

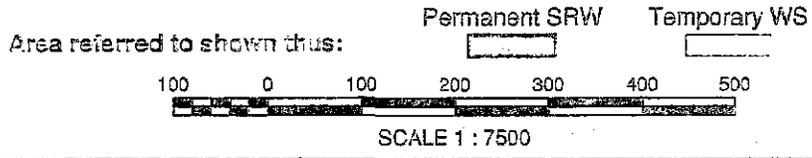
Title No: BW426456
Parcel Identifier: 014/330-920
Company File:

Additional Area(s):

Permanent Statutory Right-of-Way	0.004 ha	0.010 ac
Temporary Working Space	0.531 ha	1.312 ac
Total	0.535 ha	1.322 ac

Certified correct this 16th day of November, 2010

Adam Brash, BCLS



Focus Job No:	100294NP20AR1
Date:	2010/11/16
Drafter: FR	Revision: 1

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APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1694
Board Order 1694-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

NE ¼ of Section 10, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

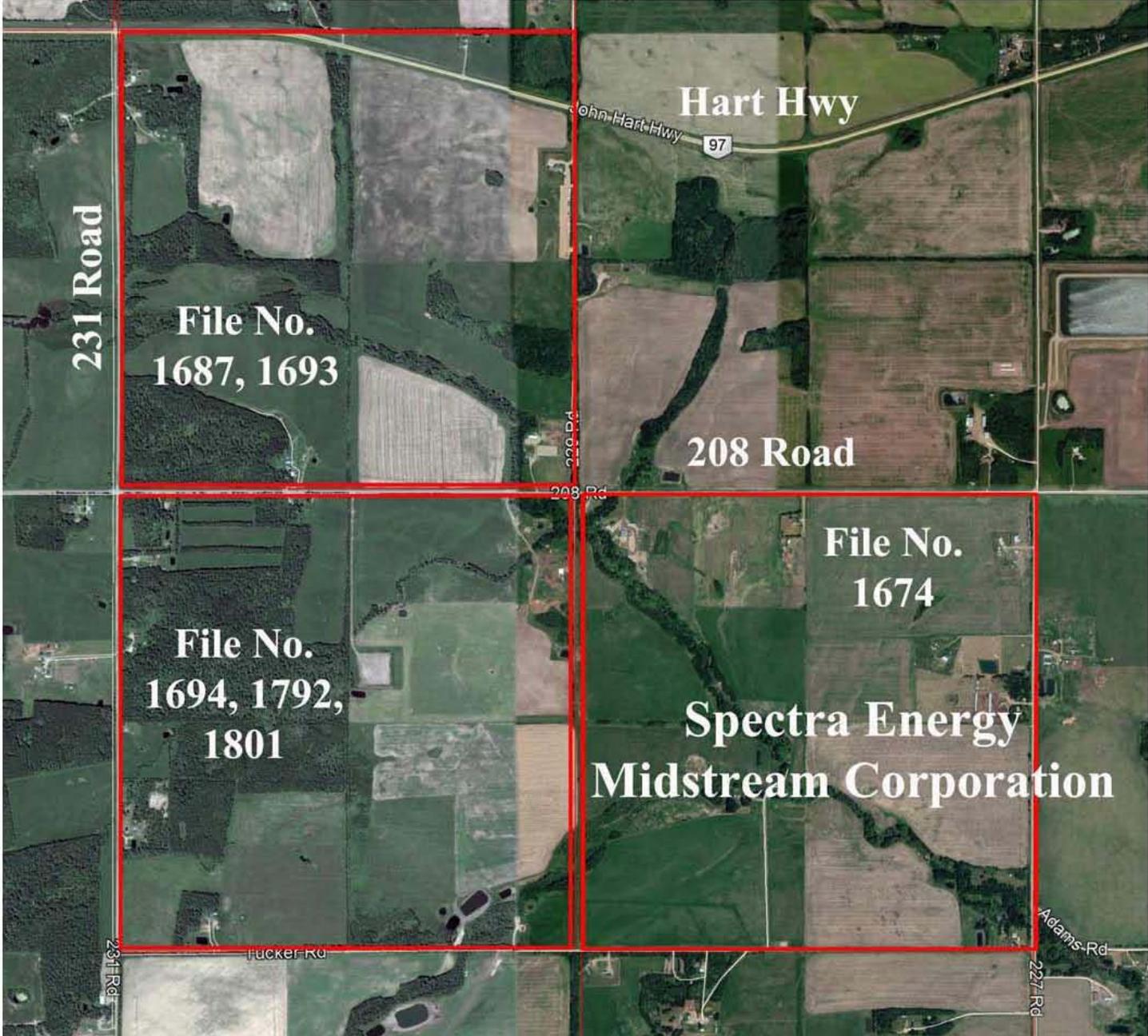
(APPLICANT)

AND:

JAMES NELSON LONDON AND KEIR MARIE LONDON

(RESPONDENTS)

BOARD ORDER



231 Road

**File No.
1687, 1693**

Hart Hwy

John Hart Hwy 97

208 Road

**File No.
1694, 1792,
1801**

**File No.
1674**

**Spectra Energy
Midstream Corporation**

231 Rd

Fucker Rd

208 Rd

208 Rd

Adams Rd
227 Rd

Heard by telephone conference: December 13 and 23, 2010
Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain Lands legally owned by James Nelson London and Keir Marie London.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$300.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1694
Board Order 1694-2

January 31, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

NE ¼ of Section 10, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

JAMES NELSON LONDON AND KEIR MARIE LONDON

(RESPONDENTS)

BOARD ORDER

Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks to amend the right of entry order made December 23, 2010. Spectra requires additional temporary workspace on the Lands to construct the flowline. Construction of the flowline on the Lands is scheduled to commence February 2, 2011. I am satisfied that the entry order of December 23, 2010 should be amended to authorize entry to the required temporary workspace.

I am advised that the payments required by the Board's Order of December 23, 2010 have been made. The order below requires an additional payment to the landowner for partial compensation.

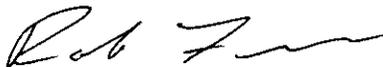
ORDER

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 paragraph 2, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plan attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$900.00. This payment is additional to the payment required in paragraph 3 of the Board's order of December 23, 2010.
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: January 31, 2011

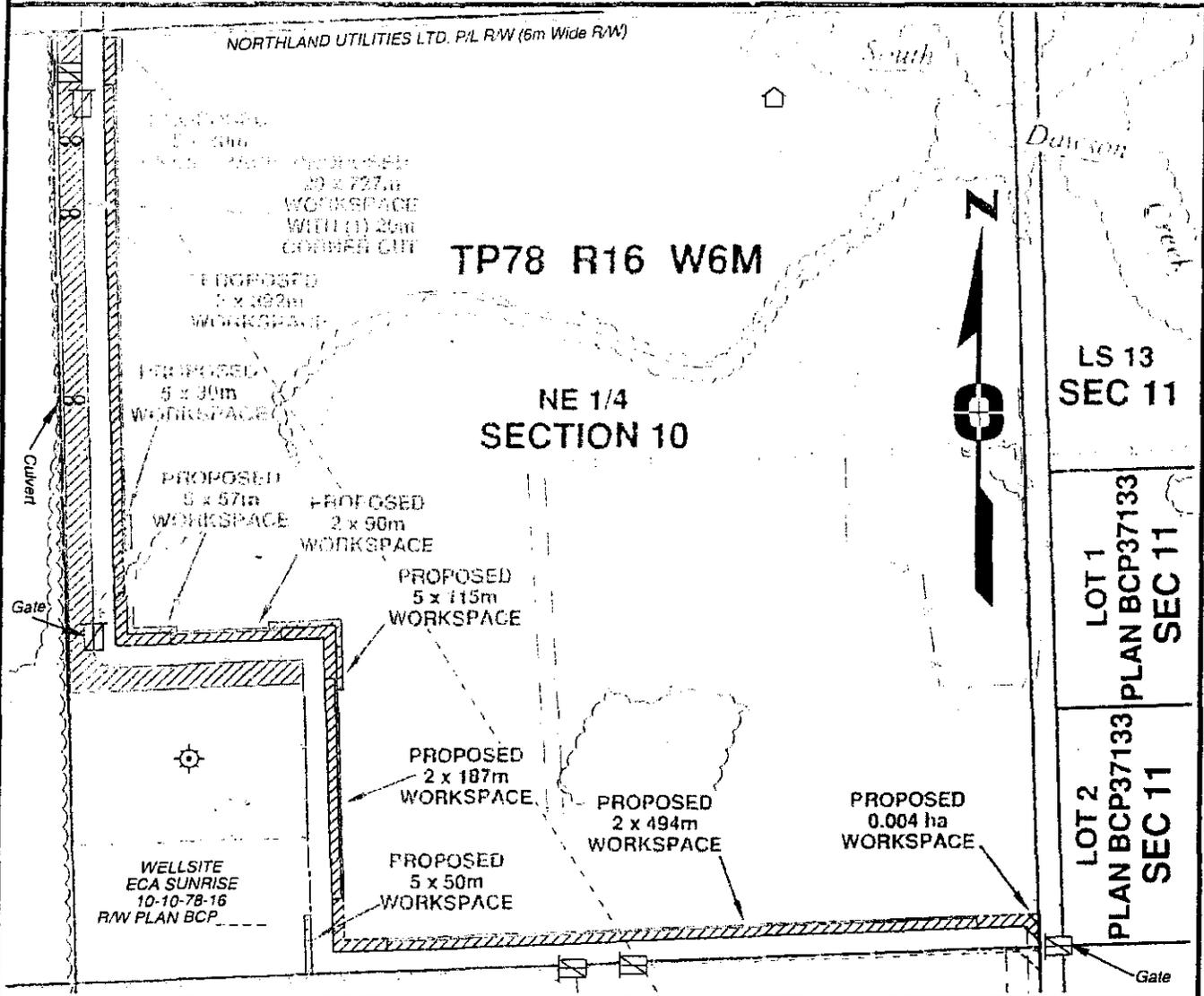
FOR THE BOARD



Rob Fraser, Mediator

INDIVIDUAL OWNERSHIP PLAN SHOWING

PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH EAST 1/4 OF SECTION 10, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT



Owner(s): James Nelson London
Keir Marie London

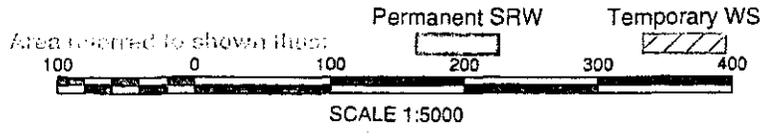
Title No: BB1288719
 Parcel Identifier: 009-300-732
 Company File: _____

Certified correct this 26th day of January, 2011

Additional Area(s):

Permanent Statutory Right-of-Way	0.00 ha	0.00 ac
Temporary Working Space	1.84 ha	4.55 ac
Total	1.84 ha	4.55 ac

Adam Brash, BCLS



Focus Job No:	100294NP22AR3
Date:	2011/01/26
Drafter: CW	Revision: 3
FOCUS	
Focus Surveys FCS Land Services Limited Partnership Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250)787-0300 Fax (250)787-1611 www.focus.ca	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

**File Nos. 1694, 1792, 1801
Board Order No. 1694-3**

February 24, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**THE NORTH EAST $\frac{1}{4}$ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")**

BETWEEN:

**SPECTRA ENERGY MIDSTREAM CORPORATION
(Applicant File 1694)**

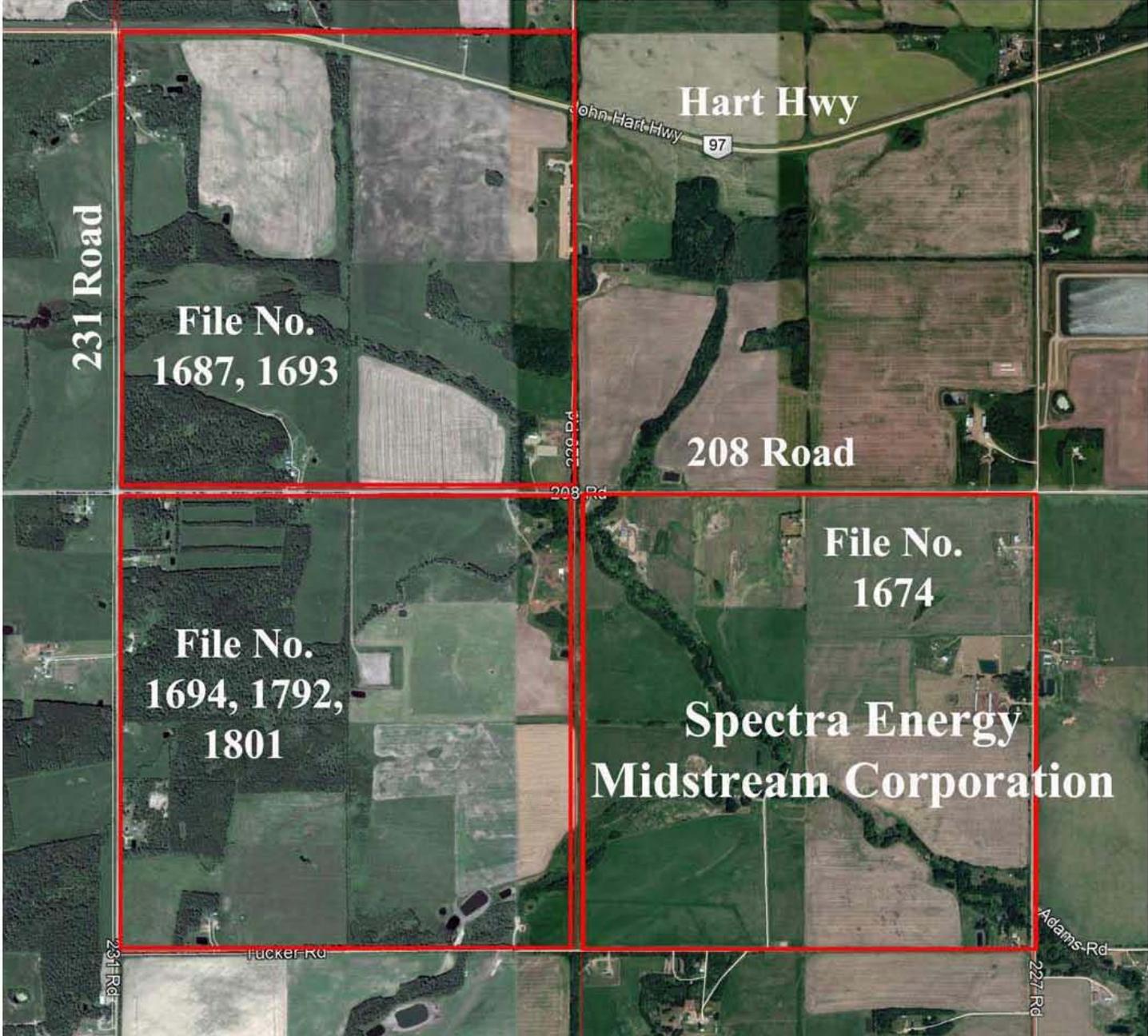
**JAMES NELSON LONDON AND KEIR MARIE LONDON
(Applicants Files 1792 and 1801)**

AND:

**JAMES NELSON LONDON AND KEIR MARIE LONDON
(Respondents File 1694)**

**SPECTRA ENERGY MIDSTREAM CORPORATION
(Respondent Files 1792 and 1801)**

BOARD ORDER



231 Road

**File No.
1687, 1693**

Hart Hwy

John Hart Hwy 97

208 Road

**File No.
1694, 1792,
1801**

**File No.
1674**

**Spectra Energy
Midstream Corporation**

231 Rd

Fucker Rd

220 Rd

208 Rd

Adams Rd
227 Rd

Heard: November 27 and 28, 2014 in Dawson Creek and January 8, 2015 by telephone conference
Appearances: Rick Williams, Barrister and Solicitor, for Spectra Energy Midstream Corporation
Darryl Carter, Q.C., Barrister and Solicitor, for Jay and Keir London

Background

[1] Jay and Keir London are the fee simple owners of the Lands legally described as: The North East ¼ of Section 10 Township 78 Range 16 West of the 6th Meridian Peace River District (the Lands). On February 14, 2009, the Londons and Encana Corporation (Encana) executed a Right of Way Agreement (the ROW Agreement) granting Encana a right of way over the Lands for the purpose of constructing, operating and maintaining a pipeline or pipelines. In April 2010, Encana assigned the ROW Agreement to Spectra Energy Midstream Corporation (Spectra).

[2] Spectra received a permit from the Oil and Gas Commission (OGC) to construct and operate a pipeline known as the Bissette Pipeline, in part within the right of way covered by the ROW Agreement. Spectra determined it would require additional temporary workspace than that already granted in the ROW Agreement in order to construct the pipeline. As Spectra was unable to negotiate an agreement with the Londons for the additional temporary workspace, it applied to the Board for a right of entry order. On December 23, 2010 as amended on January 31, 2011, the Board granted Spectra the right to enter and use a portion of the Lands as temporary workspace for the construction of a flow line pursuant to section 159 of the *Petroleum and Natural Gas Act* (Orders 1694-1 and 1694-2). The total area authorized by the Board as temporary workspace is 4.55 acres of which 3.61 acres lies within an existing lease on the Lands.

[3] In February and March 2011, Spectra constructed the Bissette Pipeline within the right of way granted by the ROW Agreement and using the temporary workspace granted by the Board's right of entry orders. The parties have been unable to resolve the compensation payable to the Londons for Spectra's use of the temporary workspace area authorized by the Board.

[4] In October 2012, the Londons applied to the Board under section 163 of the *Petroleum and Natural Gas Act* for loss and damages allegedly caused by Spectra's exercise of their right of entry under the ROW Agreement. In this application, the Londons alleged that the Bissette Pipeline was not a "flow line". In January 2013, the Londons applied to the Board under section 164 of the *Petroleum and Natural Gas Act* claiming that the Bissette Pipeline approved by the OGC is substantially different from the oil and gas activity that was contemplated during the negotiation of the ROW Agreement, and asking the Board to amend the ROW Agreement "to make it clear that the construction and operation of a major 16" sour gas transmission pipeline on the land is not authorized." Spectra sought to have both of these applications summarily dismissed on the grounds that the Board did not have jurisdiction to hear the applications or grant the remedies sought, or that the Londons were otherwise barred from advancing the claims. The Board found it had jurisdiction to hear the applications and declined to summarily dismiss them (Orders 1792/1801-1 and 1792/1801-1Cor).

[5] The Board found that the Londons could not challenge that the Bissette Pipeline is a flow line if they wished to pursue a claim pursuant to section 163 of the *Petroleum and Natural Gas Act* for damages. As the Londons had not challenged that the Bissette Pipeline was not a flow line when Spectra applied for the right of entry order, and as they did not seek judicial review of the Board's right of entry orders, the Board said it was "not about to go back and consider at this time whether it had jurisdiction in the first place to grant the Right of Entry Orders". The Board found that it had jurisdiction to hear the application under section 163 on the basis that the ROW Agreement was for a right of entry to construct and operate a flow line,

Spectra purportedly exercised that right of entry in constructing the Bissette Pipeline, and Spectra's exercise of that right of entry allegedly caused damage. The Board questioned its jurisdiction under section 163 to provide a remedy unless the Bissette Pipeline is a flow line.

[6] The Board scheduled Spectra's application to resolve the compensation payable for the right of entry for the temporary workspace (file #1694), the Londons' application under section 163 of the *Petroleum and Natural Gas Act* for damages (file #1792), and the Londons' application under section 164 of the *Petroleum and Natural Gas Act* (file #1801) for arbitration, all three applications to be heard at the same time. In accordance with the Board's order, the parties produced a summary of their claims and the documents they intended to rely on in support of their respective positions on each claim. Spectra advanced that the Londons should receive \$2,750.00 as compensation for the right of entry for temporary workspace. The Londons requested compensation of \$25,000 for the loss of rights and other losses resulting from the Board's right of entry orders. The Londons sought an amendment of the ROW Agreement to make it clear that the construction and operation of a 16" sour gas transmission pipeline on the land is not authorized by that agreement and damages of \$100,000, or as determined by the Board, for unauthorized use of the Lands. Spectra submitted there was no "substantial difference" between the oil and gas activity contemplated during negotiation of the ROW Agreement, Spectra's use of the Lands was not unauthorized, and no damages were owing.

[7] At the arbitration, counsel for the Londons withdrew the application under section 163 of the *Petroleum and Natural Gas Act* asserting that the Bissette Pipeline is not a flow line, and agreeing that the Board would, therefore, have no jurisdiction to provide a remedy under section 163. Counsel for Spectra objected to the Londons once again raising the jurisdictional question of whether the Bissette Pipeline is a flow line. In our review of the evidence and submissions following the arbitration, we determined that in light of counsel's submissions we should satisfy ourselves that

the Board either has or does not have jurisdiction. As the arbitration had not originally been for the purpose of determining whether the Bissette Pipeline is a “flow line”, we sought further Affidavit evidence on that issue and provided the opportunity for cross-examination on the Affidavit and further argument.

Issues

[8] The issues are:

- I. Is the Bissette Pipeline a “flow line” within the meaning of the *Petroleum and Natural Gas Act*?
 - II. Is the Bissette Pipeline substantially different from the oil and gas activity contemplated during negotiation of the ROW Agreement within the meaning of section 164 of the *Petroleum and Natural Gas Act*, and if so, should the Board amend the ROW Agreement “to make it clear that the construction and operation of a major 16” sour gas transmission pipeline on the land is not authorized”?
 - III. If the Bissette Pipeline is a “flow line”, what is the appropriate compensation payable by Spectra to the Londons for loss or damage caused by the right of entry for use of temporary workspace?
- I. **Is the Bissette Pipeline a “flow line” within the meaning of the *Petroleum and Natural Gas Act*?**

Procedural Objections

[9] Before turning to the submissions and our analysis on the substantive issue of whether this pipeline is a “flow line”, we wish to address both counsels’ procedural objections with respect to the Board’s handling of this issue.

[10] Mr. Williams, on behalf of Spectra, objects to the Board opening this issue at this time. He argues that the Londons did not question the Board's jurisdiction when Spectra filed its application for right of entry, and have never applied for reconsideration. He submits it is completely improper for the Board to deal with the issue now. Mr. Carter, on behalf of the Londons, submits the landowners were not represented by counsel when the right of entry orders were made and could not be expected to raise the issue of jurisdiction. He submits the Board ought not to simply rely on a company's assertion that a project is a flow line but should satisfy itself of its jurisdiction before proceeding to grant right of entry. Both counsel raise valid procedural arguments. Mr. Carter says the Board should have asked questions with respect to its jurisdiction earlier; Mr. Williams says it can't ask those questions now.

[11] Although the Londons were not represented by counsel at the time the right of entry orders were made, they have been represented by counsel since October 2012, but still have never sought reconsideration of the entry orders squarely bringing the issue of jurisdiction before the Board. Counsel raised the issue of jurisdiction in connection with the applications brought under section 163 and 164 while at the same time invoking the jurisdiction of the Board to grant a remedy. It was not until closing argument following the arbitration, that counsel once again raised the issue. We understand completely Spectra's frustration at the Board now conceding to consider the issue.

[12] On the other hand, although this is an adversarial as opposed to inquisitorial process, we agree that the Board could have and probably should have at least raised the issue itself earlier on to see if any of the landowners took issue with the Board's jurisdiction. If the Board does not have jurisdiction, it does not have jurisdiction. In the context of this Board where landowners are frequently not represented by counsel, we agree the Board may need to be more mindful of potential issues of jurisdiction and takes steps to satisfy itself early on that it indeed has the jurisdiction to proceed.

[13] In light of the continued objections in this case, we decided we had no choice but to seek additional evidence relevant to the issue of jurisdiction, hear argument, consider the issue with an open mind, and make a determination.

Facts

[14] At the arbitration, we heard evidence relevant to this issue from Joel Lavers, Spectra's Project Manager for the Bissette project, from Bruce White, Encana's surface land representative at the time the ROW Agreement was entered with the Londons, and from Rod Locke, the Manager of Field Operations with Spectra. The Board received additional affidavit evidence from Joel Lavers. On the basis of this evidence, we find the following facts:

[15] Spectra is in the business of gathering, processing and transmitting natural gas. It does not drill natural gas wells as part of its business.

[16] The Bissette Pipeline is 16" in diameter. It carries raw, unprocessed, sour natural gas originating from third party producer owned wells in the Sunrise Field, southwest of Dawson Creek, to Spectra's Dawson Processing Plant (the "Dawson Plant"). At the Dawson Plant, the gas is processed and then transported via a third party, sweet gas transmission pipeline to market.

[17] The natural gas that is carried in the Bissette Pipeline is first transported from producer wellheads through producer flowlines to the Encana Gathering Compressor Site at 9-15-77-W6M (the "Compressor"). The gas is compressed to increase pressure to establish the flow rates necessary to allow the gas to travel the remaining distance through the Bissette Pipeline to the Dawson Plant. Once the gas reaches the Dawson Plant it undergoes initial scrubbing and processing, including separation, sweetening, dehydration, refrigeration and condensing to ensure it

meets the specifications for transfer through the Nova Groundbirch Transmission Pipeline to downstream markets.

[18] The Bissette Pipeline does not physically connect directly to any wellheads. It is part of the upstream gathering process necessary to convey gas to scrubbing and processing facilities.

[19] Encana is the only producer with wells tied into the Bissette Pipeline at present. Spectra is soliciting other customers. Any new customers would need to meet the design specifications for the Bissette Pipeline in order to be able to have their gas flow into it.

[20] Encana has a non-producing well on the Lands. This well could be tied into the Bissette Pipeline if Encana ever changed its mind about bringing this well into production.

[21] Spectra applied to the OGC for a permit to construct the Bissette Pipeline in May or June of 2010. The OGC issued a permit in September 2010, but on the coming into force of the *Oil and Gas Activities Act* and amendments to the *Petroleum and Natural Gas Act* on October 4, 2010, the OGC rescinded the permit to require Spectra to reapply and engage in the consultation process provided for in the *Oil and Gas Activities Act*. Spectra reapplied for a permit pursuant to the newly enacted *Oil and Gas Activities Act* and on December 17, 2010, the OGC issued a new pipeline permit.

[22] Prior to the first OGC permit being rescinded, Spectra initiated proceedings to expropriate land required for the right of way for the Bissette Pipeline where it did not have right of way agreements with landowners. It did not carry through with this process, but instead initiated applications under the newly amended *Petroleum and Natural Gas Act* to require access to land where agreements with landowners could not be reached.

Analysis

[23] Section 1 of the *Oil and Gas Activities Act* defines “flow line” 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.

[24] There are two parts to the definition. A “flow line” must 1) connect a well head to a facility; and it must 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[25] Emphasizing the first part of the definition, Mr. Carter submits that to be a “flow line” the pipeline must connect directly to a well head. As the Bissette Pipeline does not connect directly to well heads, but starts from a compressor station, and as Spectra is not in the business of producing natural gas, he submits it cannot be a flow line. He argues the “rest of the definition doesn’t matter”.

[26] The definition does not say a “flow line” is a pipeline that connects to a well head. It says it is a pipeline that “connects a wellhead with a scrubbing, processing or storage facility...”. This pipeline functions to connect well heads operated by Encana to Spectra’s processing plant, and therefore functions to connect well heads to a processing facility. There is no evidence that the gas is processed prior to entering the Bissette Pipeline. It is compressed to increase its pressure, but does not undergo scrubbing and processing, including separation, sweetening, dehydration, refrigeration and condensing until it reaches the Dawson Plant.

[27] Nor does the definition imply that a pipeline connecting a well head with a scrubbing, processing or storage facility must be operated by the same entity that operates the well head, or the same entity that operates the scrubbing, processing or storage facility for that matter. The “flow line” is but one part of the upstream

gathering system that moves raw gas from wellheads to processing facilities, prior to the transmission of the processed gas to market.

[28] The Board has considered this definition of “flow line” on three previous occasions.

[29] In *Murphy Oil Company v. Shore*, Order 1745-1, September 13, 2012, the Board found that a pipeline in three segments including a segment to transport natural gas from a well head, a segment to transport produced water separated from the natural gas at the well site, and a fuel line was a “flow line”. In *Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014, the Board found a pipeline in four segments including a line to transport produced gas from a well site, a fuel line, a hydraulic fracturing water supply line and a hydraulic fracturing water return line was a “flow line”. In *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014, the Board found three segments of a pipeline in four segments, including a 16 inch line to transport produced gas from a well site, a hydraulic fracturing water supply line also licensed for bidirectional use to carry natural gas, and a fuel line were a “flow line” The Board found that a fourth segment to be used to carry produced water from storage facilities at a processing plant to a well head for disposal was not a “flow line”.

[30] With respect to Mr. Carter’s argument that the first part of the definition requires that a “flow line” connect directly to a well head, the Board’s previous decisions have found various types of pipelines that function as part of the gathering system to be “flow lines” regardless of whether the pipeline actually connects directly to the well head. For example, in *Encana v. Ilnisky, supra*, the water pipelines in issue connected to tanks at the well site which were in turn connected to the well head by hydraulic fracturing equipment. The pipelines connected well heads to a water hub and functioned as part of the gathering system for the production of natural gas. In *ARC v. Hommy, supra*, the proposed pipeline included a 16 inch diameter segment that would connect to a pre-existing 12 inch diameter line, which in turn connected to

the 3 inch diameter lines that actually connected to the producing well heads. There was no issue in that case that the 16 inch segment, which did not directly connect to the well head, was not a “flow line”.

[31] Considering both parts of the definition, the Board has found that it carves out a subset of pipeline depending on its location as part of the gathering system (*Encana v. Inisky, supra*) but only includes pipelines used as part of the gathering system (*ARC v Hommy, supra*). The Bissette Pipeline is part of the gathering system in that it carries raw natural gas to a processing plant for processing and precedes the transfer of the natural gas to a transmission, distribution or transmission line to downstream markets.

[32] Mr. Carter points to the evidence of Spectra’s initiation of expropriation procedures to argue that Spectra knew the Bissette Pipeline was not within the jurisdiction of the Board. The current definition of “flow line” came into force on October 4, 2010. Whether Spectra felt it needed to use the expropriation process before that time is not relevant to an interpretation of the current definition.

[33] Mr. Carter argues that “no one in the industry” would ever think of this pipeline as a “flow line”. We have no evidence of what people in the industry think. In any event, the issue of whether a particular pipeline is a “flow line” is a matter of statutory interpretation and legislative intent, not a question of what people in the industry think. The legislature has created two classes of pipelines; one over which the Board has jurisdiction and one over which the Board does not. The intention of the legislature is to be derived from the ordinary meaning of the words of the enactment read in their entire context and in the context of the legislative scheme as a whole. The legislative intent is to give the Board jurisdiction over pipelines that comprise the gathering system, but not pipelines that comprise the transmission, distribution or transportation system downstream of a processing facility. The arguments in this case do not persuade us that the Board’s analysis in its previous decisions leading to this conclusion of the legislature’s intent was wrong.

[34] The evidence is clear that the Bissette Pipeline is part of the gathering system. It functions to connect well heads to a processing plant and it precedes the transfer of the processed natural gas to a transmission line for distribution to market. We find the Bissette Pipeline is a “flow line”, and the Board has jurisdiction.

- II. Is the Bissette Pipeline substantially different from the oil and gas activity contemplated during the negotiation of the ROW Agreement, and if so, should the Board amend the ROW Agreement “to make it clear that the construction and operation of a major 16” sour gas transmission pipeline on the land is not authorized”?**

Introduction

[35] Section 164(1) of the *Petroleum and Natural Gas Act* provides that a party to a surface lease may apply to the Board for mediation and arbitration with respect to ...

b) a disagreement respecting whether the surface lease should be amended based on a claim by a party that the oil and gas activity or related activity as approved by the commission on the land that is subject to the surface lease is substantially different from the oil and gas activity or related activity that was proposed during the negotiation of the surface lease.

[36] The term “surface lease” is expansively defined to include right of way agreement.

[37] Section 164(3) provides that in an application under section 164(1)(b), the Board may make an order amending the terms of the surface lease (or right of way agreement) from the effective date set out in the order.

[38] The Londons ask the Board to amend the ROW Agreement to “make it clear that the construction and operation of a major 16” sour gas transmission pipeline on the land is not authorized”.

[39] Mr. Carter submits the Bissette Pipeline is substantially different from the pipeline proposed by Encana during negotiations and that Mr. London would not have signed the ROW Agreement if he thought a 16" sour gas pipeline would be installed in the right of way. He submits the discussions between the parties support that Mr. London did not agree to a 16" pipeline on his Lands. Mr. Williams submits the intention of the parties must be discerned from the language of the ROW Agreement itself as a matter of contractual interpretation. He submits the ROW Agreement is clear and unambiguous and that resort to parole evidence as to the parties' intent is not necessary.

[40] The first question, therefore, in resolving this issue is whether and to what extent, in considering an application under section 164(1)(b) of the *Petroleum and Natural Gas Act*, the Board may rely on extrinsic evidence to the words of the surface lease or right of way agreement itself to determine whether the oil and gas activity approved by the OGC is substantially different from that proposed during the negotiation of the agreement.

[41] The answer to that question is, once again, an issue of statutory interpretation to determine the legislative intent of section 164 of the *Petroleum and Natural Gas Act*.

Legislative Context

[42] Part 17 of the *Petroleum and Natural Gas Act* provides a scheme to enable entry to private land where entry is required for an oil and gas activity, and it provides a dispute resolution process to determine the compensation payable to a landowner arising from a right of entry. The *Act* provides that a person may not enter, occupy or use private land to carry out an oil and gas activity unless the entry, occupation and use is authorized by a surface lease or right of way agreement with the landowner or an order of the Board (section 142). The *Act* provides that a person with a right of entry authorized by the Board or by an agreement with the

landowner is liable to compensate the landowner for loss or damage caused by the right of entry (section 143(2)).

[43] A right of way agreement creating a grant in favour of a pipeline permit holder for the operation of its undertaking is an instrument created under the authority of section 218 of the *Land Title Act*. In accordance with section 218(3) of the *Land Title Act*, registration of the right of way in the Land Title Office “confers on the grantee the right to use the land charged in accordance with the terms of the instrument”.

[44] It is in this legislative context that section 164 provides for an application to the Board in respect of a disagreement respecting whether a surface lease or right of way agreement should be amended based on a party’s claim that the oil and gas activity approved by the OGC is substantially different than that proposed during negotiation of the surface lease or right of way agreement. The legislative scheme, on the one hand, authorizes the entry to private land through the vehicle of a statutory right of way, registration of which gives the grantee the right to use the land charged in accordance with the terms of the agreement, and on the other hand gives the Board the authority to amend the terms of the agreement if the oil and gas activity approved by the OGC is “substantially different” from that proposed during the negotiation of the agreement. The Board’s authority under section 164 of the *Petroleum and Natural Gas Act* must be interpreted harmoniously with the whole of the legislative scheme including that for the provision, registration, and effect of statutory rights of way.

[45] When interpreting a statutory right of way agreement the Board must have regard primarily to the words of the agreement in determining the intention of the parties (*Avanti Mining Inc. v. Kitsault Resort Ltd.* 2010 BCSC 1181). Interpreting the terms of the right of way agreement are subject to the usual rules of contractual interpretation in that it is only if the intent of the parties cannot be objectively determined from the words of the contract itself, such that there is an ambiguity, that

consideration may be given to extrinsic evidence (*Avanti, supra*). As registration of a right of way agreement confers on the grantee the right to use the land in accordance with the terms of the agreement, the right that is conferred must be discerned from the terms of the agreement, unless the terms give rise to an ambiguity.

[46] The Board's remedial authority to amend the terms of an agreement if the activity on the land is "substantially different" from that proposed during negotiation of the agreement must have some purpose, however. In the context of the legislative scheme described above setting out the liability of a right holder to compensate a landowner for loss and damage caused by a right of entry and the dispute resolution mechanisms to resolve compensation, that remedial authority must be for the purpose of considering whether the terms of an agreement should be amended because the impact on the land or a landowner is "substantially different" from that originally contemplated, regardless of whether the actual use of the land is authorized by the agreement. So even where the clear terms of a surface lease or right of way agreement authorizes the use of land, the Board could be asked to consider whether terms of the agreement should be amended because the use, although authorized by the agreement, is "substantially different" from that proposed when the agreement was negotiated. While extrinsic evidence may not be necessary to interpret the terms of an agreement itself, it may be considered to determine whether the impact of the agreed activity is substantially different and whether the agreed terms adequately compensate for the anticipated loss.

[47] In this case, the Board was simply asked to amend the ROW Agreement "to make it clear that the construction and operation of a major 16" sour gas transmission pipeline on the land is not authorized". Whether a particular activity is authorized by the terms of the ROW Agreement is a matter of interpreting the ROW Agreement itself. Unless the words of the Agreement create an ambiguity, extrinsic evidence is not necessary to determine the parties' intent.

Interpreting the ROW Agreement

[48] The ROW Agreement contains the following grant at clause 1:

The Grantor does hereby grant, convey, transfer and set over to the Grantee its successors and assigns a right of way across over under on or through the said lands to construct, operate and maintain a pipeline or pipelines including accessories and appurtenances (collectively referred to as the “Works”), and for any other purpose preparatory or incidental thereto including the right to repair or replace the said pipeline or pipelines and generally to do all acts necessary or incidental to the foregoing and to the business of the Grantee in connection therewith. The right to construct more than one pipeline in the right of way hereby granted shall be limited to one construction operation.

[49] Clause 3 of the ROW Agreement limits the right of way to 18 meters. Clause 11 permits assignment of the ROW Agreement and clause 20 provides that “[a]ny additional terms, express or implied shall be of no force or effect unless made in writing and agreed to by the Grantor and Grantee.”

[50] We find the words of the grant are clear and unambiguous. The Londons grant a right of way over an 18 meter wide strip of the Lands to construct, operate and maintain a pipeline or pipelines and for any other purpose preparatory or incidental thereto. The OGC issued a permit authorizing Spectra to construct and operate a pipeline. Other than to restrict the width of the right of way and to require that construction of more than one pipeline be completed in a single operation, the words of the agreement do not contemplate other specifications as to the nature of the pipeline to be constructed. The ROW Agreement specifically allows for its assignment.

[51] The ROW Agreement was registered in the Land Title Office conferring on Encana and then Spectra through assignment the right to use the land as expressed by the terms of the right of way namely to construct, operate and maintain a pipeline. In constructing, operating and maintaining the Bissette Pipeline, Spectra has exercised the right conferred. There is no need to amend the ROW Agreement as

requested by the Appellant, therefore, to “make it clear that the construction and operation of a 16” sour gas transmission pipeline on the land is not authorized by that agreement”. The ROW Agreement clearly authorizes Spectra’s activity on the Lands.

Is the Bissette Pipeline substantially different in its impact to the Lands and the landowners than the project proposed during negotiation of the ROW Agreement?

[52] We were not asked to amend any other terms of the ROW Agreement to ensure that the impact to the landowner and the Lands arising from the oil and gas activity approved by the OGC was substantially different from the impact anticipated during negotiation of the ROW Agreement. We heard evidence from Mr. London and Mr. White as to their discussions during the negotiation of the ROW Agreement, and from Mr. London and Mr. Locke with respect to discussions about the Bissette Pipeline and will nevertheless consider whether the Bissette Pipeline is substantially different in its impact to the landowners and the Lands than the project proposed by Encana during negotiation of the ROW Agreement.

[53] The evidence is that Encana’s proposed project was for a 16 inch sour gas pipeline and a 4 inch fuel line. It was to run between a compressor at 9-15-77-15 to a compressor at 5-26-78-17 and then to another compressor at 9-27-79-17. It would tie in several wells, but not the well site on the Lands known as 10-10. The proposal was to construct a riser with various instruments on the 10-10 site. Mr. London was not privy to the engineering plans.

[54] We accept that Mr. London may have thought Encana’s proposed pipeline would tie in the 10-10 well site, although that was not the intention, as there had been some previous discussions between Mr. London and Mr. White about proposals to tie in the 10-10 well site.

[55] We accept that Mr. London did not know Encana's proposed pipeline would be 16 inches in diameter. Mr. London asked Mr. White about the size of the proposed pipeline. Mr. London's evidence is that he was told "maybe 6 inches maybe 8 inches". Mr. White's evidence is that he told Mr. London the pipeline would be probably "somewhere between 8 inches and 12 inches" but that he "didn't know for sure". We find Mr. London was never told the proposed pipeline would be 2 inches to 4 inches in diameter, as originally alleged in his application, but neither was he told it would be 16 inches in diameter.

[56] Regardless of whether Mr. London thought Encana's proposed pipeline would tie into the 10-10 well site or other well sites, or what he thought about the size of the pipeline, he knew Encana's proposed pipeline would carry sour gas and that it would be buried in an 18 foot right of way.

[57] Mr. London's evidence was that the reason he was concerned about the size of the pipeline was because he was concerned about setbacks. The evidence is however, that regulations require a setback of 10 meters from a pipeline regardless of the size of the pipeline. The fact that the pipeline constructed may have been larger than Mr. London may have been expecting did not change the setback. Regardless of the size of the pipeline, the impact to the London's use of the Lands as a result of any required setback would be the same. Any concern that Mr. London may have had with respect to required setback as a result of the size of the pipe was misinformed, as the impact on his use of the Lands arising from any setback would not change depending on the size of the pipeline. The evidence is, further, that Spectra offset the pipeline within the right of way so that there is a clear 10 meters from the edge of the pipe to the edge of the right of way with the result that there is no additional setback into the Lands beyond the edge of the right of way itself.

[58] Although we accept that Mr. London asked about the size of the pipeline, we do not accept that the size of Encana's proposed pipeline was a significant factor in

signing the ROW Agreement because Mr. London's evidence as to his concern with the size of the Encana's proposed pipeline is not consistent with his response to the information provided by Spectra about the Bissette Pipeline.

[59] Mr. Locke's evidence is that someone from Spectra first met with the Londons in early March of 2010 to discuss the project. His evidence is that all of the landowners on the proposed route, including the Londons were given an Information Sheet about the project (Exhibit 2, Tab 12). His understanding of the March discussions was that the London's did not raise any concerns about the project. In April or May of 2010, all of the landowners on the route, including the Londons, were provided with an updated Information Sheet on the Bissette project (Exhibit 2, Tab 14). Mr. London did not dispute receiving either of these Information Sheets.

[60] Both of the information sheets indicate the Bissette Pipeline would be a 16 inch sour gas pipeline. Mr. London did not raise any concern about the size of the Bissette Pipeline upon receipt of these information sheets. Nor did he raise any concerns about the Bissette Pipeline when Spectra made its first application to the OGC for a permit.

[61] Mr. London's evidence is that he was originally approached with respect to the Bissette Pipeline by Brian Dunn, a landman representing Spectra. His evidence is he told Mr. Dunn "he was not interested" and that "things got heated" and he told Mr. Dunn to leave. He says he reiterated that this was not why he agreed to the right of way and that he had not agreed to the size of the pipeline. Mr. Locke's evidence is, however, that Mr. Dunn never worked for Spectra on the Bissette Pipeline, but that he worked for Spectra in the past on a different project. While Mr. London may have had a heated conversation with Mr. Dunn about a proposed Spectra project on the Lands, we accept Mr. Locke's evidence that any such conversation was not with respect to the Bissette Pipeline.

[62] Spectra delivered an Invitation to Consult to the Londons on October 18, 2010. The Invitation to consult advised of the size of the Bisette Pipeline and included a map showing the Emergency Planning Zone (EPZ), which covers the Lands. The evidence is that the new consultation regulations required the permit applicant to provide information about the EPZ for a proposed project. Previously, permit applicants were not required to provide landowners with information about the EPZ. The evidence is that there would have been an EPZ for Encana's proposed pipeline, but that it would not have been shared with the Londons or other landowners. We accept that Mr. London did not realize the extent of the EPZ until he received Spectra's Invitation to Consult.

[63] Mr. London submitted a Stakeholder Written Submission Form to the OGC dated November 19, 2010. The evidence includes a copy of Spectra's response to this submission dated December 1, 2010. It does not appear from this response that Mr. London had raised a concern with the size of the Bisette Pipeline. Mr. Locke and Mr. London met on December 13, 2010 to discuss Mr. London's concerns. Spectra made various commitments in response to Mr. London's concerns, which are set out in a letter dated December 13, 2010. Spectra met all of the commitments set out in that letter.

[64] As previously indicated, the Bisette Pipeline extends from a compressor station at 9-15-77-15 to the Dawson Plant, and does not currently tie in any well sites. Although one of the end points of the pipeline is different from that proposed by Encana, there is no difference in the impact to the Londons or to the Lands as a result of this change. The fact that it does not directly tie-in to well sites does not change the impact to the Londons or to the Lands. The route of the right of way through the Lands did not change. The setbacks impacting the London's use of the Lands did not change. The Lands would have been subject to an EPZ for both projects.

[65] We find the project approved by the OGC is not “substantially different” in its impact to the Lands or to the landowners than the project proposed by Encana during negotiation of the ROW Agreement.

III. What is the appropriate compensation payable by Spectra to the Londons arising from Spectra’s entry to the Lands for temporary workspace?

Facts

[66] By Order dated December 23, 2010, the Board granted Spectra the right to enter a .94 acre area of the Lands as temporary workspace for pipeline construction. The .94 acres is comprised of two meter wide and five meter wide sections along the entire length of the right of way granted under the ROW Agreement. By Order dated January 31, 2011, the Board amended the right of entry order to grant Spectra the right to enter an additional 3.61 acres as temporary workspace. The 3.61 acres of additional temporary workspace is within an existing Encana lease for a well site and access road signed in 2007.

[67] Spectra constructed the Bissette Pipeline on the Lands, and used the temporary workspace for that purpose beginning in the first week of February 2011. Spectra completed construction on the Lands at the end of March or in the first week of April 2011. Clean-up crews returned to do clean up in September of 2011. Spectra has not completed reclamation as Mr. London has denied access. Some limited access to the temporary workspace is still required to complete the necessary environmental assessment, but then Spectra will no longer require access to the temporary workspace and the right of entry order can be terminated. Spectra would have completed reclamation of the temporary workspace in 2012 if Mr. London had not denied access.

[68] The Londons reside on the Lands and have a cow calf operation. They use the Lands to grow hay and forage for the cattle.

[69] The Lands comprise 159 acres in total. Approximately 130 acres are used for hay and forage production or grazing. The remaining area is comprised of the residence and residential yard site, livestock feeding and handling areas, creek and bush areas, and the Encana surface lease of 9.71 acres along the western boundary and in the southwest corner.

[70] The Lands are located approximately seven kilometers from Dawson Creek and are accessible from the Old Hart Highway. The Lands are designated A-2 (Large Agricultural Holdings Zone) under the Peace River Regional District Zoning Bylaw No 1343, 2001 and are wholly within the Agricultural Land Reserve (ALR). The soil is classified as Class 3c.

[71] The ROW Agreement grants use of 6.916 acres for the right of way itself and 3.207 acres for temporary workspace. Compensation for the taking and loss associated with these areas was agreed to and has been paid.

[72] The temporary workspace in issue comprises a total of 4.55 acres, 3.61 acres of which are within the Encana surface lease and the remainder of which is immediately adjacent to and extends along the entire length of the area granted by the ROW Agreement on its eastern and northern edges.

Legal Framework

[73] Section 143(2) of the *Petroleum and Natural Gas Act* provides that a right holder is liable to pay compensation to the landowner “for loss or damage caused by the right of entry”.

[74] Section 154(1) of the *Petroleum and Natural Gas Act* lists various factors the Board may consider in determining the compensation to be paid to a landowner.

They are:

- (a) the compulsory aspect of the entry;
- (b) the value of the applicable land;
- (c) a person's loss of right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;
- (e) compensation for severance;
- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any of other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the Board or to which the Board has access;
- (j) previous orders of the Board;
- (k) other factors the Board considers applicable;
- (l) other factors or criteria established by regulation.

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

[76] There are a number of settled principles relating to compensation for entry under the *Petroleum and Natural Gas Act*. The Board has articulated these principles before in *ARC v. Piper*, Order 1589-2, December 5, 2008. In light of arguments made this case, we review and reiterate some of those principles

[77] The first principle is that a landowner's right to compensation is just that – a right to compensation for loss as a result of the entry. The landowner is entitled to the equivalent in money for the loss sustained and not for more than the loss sustained. The compensation does not represent a purchase price or a rental, it does not represent remuneration to the landowner for the development of subsurface resources under his land, and it does not compensate the landowner for the fact that a resource company has acquired the rights to subsurface resources. It simply compensates for the landowner's actual and projected probable future loss arising out of the company's entry, occupation and use of the surface (*Western*

Industrial Clay Products Ltd v. Mediation and Arbitration Board, 2001 BCSC 1458.)

The Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained (*Western Clay, supra*).

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

[79] While compensation does not represent a rental or a purchase price, one of the factors the Board may consider under section 154(1) of the *Petroleum and Natural Gas Act* is “the value of the land”. “Value of the land” means value to the owner of the land, not the value to the taker (*Dau v. Murphy Oil Company Ltd.*, [1970] S.C.R. 861; applied in BC in *Dome Petroleum, supra*; *Scurry Rainbow, supra*; *Western Clay, supra*). The Board should consider whether there are any special factors which give a greater value to this owner for this particular piece of land beyond that shown by the average value of similar land indicated by sales (*Scurry Rainbow, supra*).

[80] Evidence of what compensation is paid to other owners in the area is relevant and should be considered where the evidence indicates an established pattern of compensation exists (*Scurry Rainbow, supra*). The Board may consider the various factors set out in section 154(1) of the *Petroleum and Natural Gas Act* and evaluate each, then step back and consider whether the totality gives proper compensation in any particular case (*Scurry Rainbow, supra*).

[81] These principles of compensation are the law in British Columbia and are binding on this Board in determining compensation under the *Petroleum and Natural Gas Act*. It is not open to this Board to change the law.

[82] It remains to apply these principles to the present case. The Board must ask what is the loss sustained by the Londons as a result of Spectra's right of entry for the temporary workspace and what is the appropriate compensation for that loss? In determining the appropriate compensation, the Board may consider the various factors listed in section 154(1) of the *Petroleum and Natural Gas Act*. In this case, damages are not in issue, so compensation will be for loss of rights and loss of profit.

Evidence and Analysis

Loss of Rights

[83] As indicated above, a taking by a right holder of private land for an oil and gas activity is compulsory in that a landowner does not have the right to resist. As Justice Berger said in *Dome Petroleum v. Juell, supra*, the landowner loses the right "to decide for himself whether or not he wants to see oil and gas exploration and production carried out on his land". A right holder's liability to compensate a landowner for loss caused by the right of entry includes liability to compensate for the loss of rights. The challenge is to put a monetary value on that loss. Mr. Carter argues that "no amount of money" can replace what is taken from the landowner in loss of rights. We are nevertheless charged with the task of putting a monetary value on the Londons' loss of rights including their loss of any right of choice with respect to the use of their land for an oil and gas activity, and their loss of rights with respect to the quiet enjoyment of their land. In doing so, we must apply the law that is binding up on us and the evidence before us.

[84] In *Western Clay, supra*, Chief Justice Brenner reviewed the legal meaning of compensation and articulated the mandate of the Board in awarding compensation as follows:

The Board, then is to provide to the landowner the equivalent in money for the loss sustained. The compensation to be paid does not represent a purchase price or rental. It is compensation for loss or damage. The amount is linked to the damage sustained by the landowner. (See *Dome Petroleum Ltd. v. Juell* [1982], B.C.J. No. 1510.) If the Board orders an amount to be paid that exceeds the loss sustained, it is no longer providing compensation and has exceeded its jurisdiction.

[85] Chief Justice Brenner went on to say:

Where the owner of the surface rights is being paid an amount equal to the value of the property itself, it is not appropriate to make an award for the compulsory aspect of the taking. In my view, where an owner receives the full value of the Property, he has been fully compensated.

[86] Mr. Carter argues that *Western Clay* is distinguishable on the basis that it involved the taking of the whole of a parcel of land for mining purposes. He argues that the Court's conclusion that a landowner cannot recover more than the total value of the property does not apply in this situation where a small portion of land is taken for the operation of an underground pipeline for an indeterminate amount of time as opposed to the situation in that case involving right of entry to the entire parcel of land for mining purposes. He submits that the Board needs to value the rights that are pulled apart from the total bundle differently than on the basis of looking at the total bundle of rights, or fee simple interest. The argument suggests that the loss of a part of the total bundle of rights is worth more on a per acre basis than the per acre monetary value of the total bundle of rights.

[87] The first problem with this argument is that it is not supported by evidence to substantiate that the monetary value of a part of a bundle of rights may exceed the monetary value of the total bundle. Certainly, a right of entry involves the loss of rights. But, it is not a loss of the total bundle of rights. In this case, the Londons lose the use of the temporary workspace area for a limited time, following which they

may continue to use the area as they did before the taking. If the value of the fee simple interest in land represents the value of the total bundle of rights, in the absence of evidence to substantiate that the value of partial rights exceeds the value of the total bundle, we are left to apply the law as expressed in *Western Clay*, that any compensation for the taking of rights cannot exceed the fee simple value of the land. This is not to say that a right holder's liability to compensate a landowner for loss and damage arising from a right of entry is limited to the market value of the fee simple interest in the lands taken, only that compensation for the loss of rights inclusive of the compulsory aspect of the taking cannot exceed the market value of the fee simple interest in the lands taken.

[88] *Western Clay, supra*, is binding upon us and there is no reason to distinguish it on the basis that it dealt with a right of entry over an entire parcel of land for mining purposes. The legal schemes for compensation for a compulsory taking for mining purposes and for an oil and gas activity are the same. The factors that the Board may consider as set out in section 154 of the *Petroleum and Natural Gas Act* apply to determining compensation in the mining context and in the oil and gas context. As far as any compensation for loss of rights goes, if the landowner receives the full market value of the fee simple interest in the land that is subject to the right of entry, the landowner has been fully compensated for loss of all the rights associated with the fee simple interest. In the context of a partial taking, where a landowner retains residual and reversionary rights, the value of the full bundle of rights represented by the value of the fee simple will over compensate the landowner for the rights taken.

[89] Mr. Carter submits that the practice in Alberta is not to differentiate between the value of the loss of rights with respect to temporary workspace and permanent right of way. He submits that the same compensation agreed for the right of way in the ROW Agreement, or \$1,900 per acre, should be applied to the temporary workspace inclusive of recognition for the compulsory aspect of the taking. There is no evidence to support that the loss of rights in relation to the temporary workspace equates to \$1,900 per acre, and as will be seen in our discussion of the evidence

respecting the value of the land below, \$1,900 exceeds the fee simple value of the lands. Further, the practice in Alberta does not apply in British Columbia. In British Columbia the law is that compensation must not exceed the value of the loss, that compensation reflecting the value of the fee simple fully compensates for loss of the total bundle of rights, and that it is appropriate to consider the residual and reversionary value where only a partial interest in land is being taken.

[90] The loss of rights arising from a taking of temporary workspace is not the same as the loss of rights arising from the taking of a permanent right of way. A right holder's need for temporary workspace is limited to the time required for construction of the pipeline and restoration of the land. Once reclamation is complete, right of entry to land for temporary workspace is no longer required. The evidence in this case is that if Mr. London had not denied Spectra access to complete reclamation, Spectra's right of entry to the temporary workspace could have been terminated in 2012.

[91] The British Columbia Courts have confirmed that it is appropriate to consider a landowners residual and reversionary rights to land that is subject to a right of entry (*Dome v Juell, supra; Scurry Rainbow, supra*). In the case of temporary workspace, those residual rights are substantial given the landowner regains full use of the area within a short time.

[92] Mr. Locke's evidence is that Spectra compensated other landowners along the Bisette Pipeline route \$450-\$475 per acre for loss of use of temporary workspace. This figure reflects 50% of the value Spectra applied to the land in the right of way itself of \$900-\$950 per acre. There is no evidence before us, however, of how the figure of \$950-\$975 was arrived at. Mr. Locke's evidence was that Spectra paid an additional \$500 per acre to the right of way area for the compulsory taking, bringing the right of way compensation, exclusive of income loss or other damage, to \$1,400-\$1,450 per acre.

[93] We will determine what monetary value to place on the loss of rights after considering the evidence before us on the value of the land.

Value of the Land

[94] John Wasmuth, a professional appraiser and designated AACI, provides an appraisal of the bare land per acre market value of the fee simple interest in the Lands as of January 31, 2011. In his opinion, the highest and best use of the Lands, including the right of way and temporary workspace areas is for continued agricultural production. In his opinion, the highest and best use has not changed as a result of the installation and operation of the Bissette Pipeline and will remain the same into the foreseeable future.

[95] Mr. Wasmuth reviews seven sales, occurring between January 2009 and September 2011, of bare land properties of similar size to the Lands, used for agricultural purposes and entirely within the ALR. The unadjusted sale prices range from \$997 to \$1,386 per acre. After adjusting for location (in one sale) and soil and topography (in six sales) Mr. Wasmuth's evidence is that the sales indicate a per acre value range of \$997 to \$1,247. In his opinion, the per acre market land value of the fee simple interest in the Lands as of January 31, 2011 was \$1,200 per acre. He applies this per acre value to estimate the fee simple bare land value of the land in the right of way. He notes that the \$1,200/acre does not consider any reduction or value discount to account for the value of the residual interests retained by the Londons within the right of way area. Mr. Wasmuth does not provide an estimate of the residual value within the right of way. It is his opinion, however, that if he did account for residual value he would expect a reduction to the land value in the right of way from the fee simple value.

[96] Mr. Wasmuth takes two approaches to value the temporary workspace. The first is to estimate value on the basis of market rents. In this approach Mr. Wasmuth uses a rent of \$30 per acre based on rents for pastureland in the Peace Region of

Alberta, over three years. He estimates the value of the short term interest in the temporary workspace at \$90/acre, or \$409.50 in total ($\$30/\text{acre} \times 3 \text{ years} \times 4.55 \text{ acres} = \409.50)

[97] Using what Mr. Wasmuth calls the fairly common convention of industry and landowners to pay/receive 50% of the per acre amount paid for pipeline right of way relative to temporary workspace areas, he estimates the value of the temporary workspace area at \$2,730 ($\$1,200 \times .50 \times 4.55 = \$2,730$).

[98] Mr. Carter is highly critical of Mr. Wasmuth's approach to valuing the Lands and the temporary workspace arguing that it equates to a per acre value of a fictional bare land quarter section and does not reflect what the Londons could expect to realize if they put the Lands, inclusive of their improvements, on the market. He also argues that the value of the small acreage comprising the pipeline right of way cannot be equated to the value on a per acre basis of a whole quarter section. Despite these criticisms, the Londons did not provide their own evidence of land value or any contrary expert opinions to those of Mr. Wasmuth as to how to estimate either the value of the Lands or the land value of the temporary workspace areas. We therefore accept Mr. Wasmuth's conclusion that the value of the temporary workspace is in the range of \$90 to \$600 per acre depending on the approach used as it provides the only evidence with respect to land value before us. In the absence of other evidence, we accept Mr. Wasmuth's opinion that the value of the land within the right of way would likely be less than the indicated fee simple value to account for the landowners' residual interest.

[99] It is Mr. Wasmuth's opinion that the Bissette Pipeline right of way will not cause any reduction to the market value of those portions of the Lands outside of the right of way. This opinion is based on consideration of the highest and best use of the Lands, Spectra's liability for potential contamination and obligation to compensate the landowners for loss and damage, conclusions drawn from various studies and articles, and his own experience of 40 years appraising agricultural land.

[100] Again, while critical of Mr. Wasmuth's opinion that the Bissette Pipeline would not cause any reduction to the market value of the Lands, the Londons did not provide any evidence in support of a contrary view.

[101] As the loss of rights associated with the taking of temporary workspace does not deprive a landowner of the complete bundle of rights, and typically only lasts up to three years leaving the landowner with significant residual and reversionary rights, there is no need to compensate a landowner for the full market value of the area taken. Mr. Wasmuth's evidence is that it is common industry practice to compensate for loss associated with temporary workspace at 50% of the rate applied to a pipeline right of way but does not provide an opinion of what the discount to the fee simple value should be to account for the Londons' residual interest in the right of way to enable the Board to award 50% of that rate. Mr. Williams argues compensation should be \$475 per acre for the temporary workspace on the basis that this was the amount accepted by other landowners or ordered by the Board for other takings for temporary workspace along the Bissette Pipeline route. He argues that this figure is supported by Mr. Wasmuth's evidence.

[102] Mr. Wasmuth's evidence of industry practice to compensate for temporary workspace at 50% of the compensation for a right of way itself together with his opinion that he would expect a reduction to the fee simple value of a right of way, suggests that compensation for the temporary workspace should be less than \$600 per acre. But Mr. Wasmuth's evidence does not quantify the amount of any discount to the fee simple value of the right of way lands to account for the landowners' residual interest. Nor does the evidence that some other landowners accepted \$475 inform us as to how that figure was calculated or what it was intended to represent.

[103] Mr. Williams refers to previous cases suggesting the discount to fee simple value of right of way lands should be discounted by 50% to 75% where a landowner may continue using the land in a right of way as before. See for example, *Gulf*

Canada Resources Limited v. Moore (1982), 27 L.C.R. 174, where the Alberta Court of Queen's Bench discounted the *en bloc* value of land in a right of way by 50% to account for the landowner's residual value. Mr. Carter argues that the Court's conclusion in this regard was not supported by the evidence, and on our reading of that decision, we are inclined to agree. In any event, there is no evidence in this case to substantiate the amount of the discount to the fee simple value to account for the landowners' residual interest.

[104] We have considered Mr. Wasmuth's market rent approach to value the temporary workspace, but find that the application of a market rent for three years is actually an alternative to valuing the loss of income from the area of land taken, and not a reflection of the value of the rights taken.

[105] We conclude that the value of the loss of rights associated with a taking for temporary workspace must be considerably less than the value of the fee simple interest. We accept Mr. Wasmuth's evidence of industry practice to compensate for temporary workspace at 50% of the compensation for the taking of the right of way. This evidence is supported by Mr. Locke's evidence of the compensation paid to other landowners for temporary workspace on the Bissette Pipeline route. In the absence of evidence to actually quantify the value of the rights taken, we find that compensation for the loss of rights in this case, inclusive of the compulsory aspect of the taking, is adequately represented by applying 50% to the fee simple value of the Lands. That value is \$2,730.

Crop Loss or Loss of Income from the Lands

[106] Mr. Wasmuth, also a professional Agrologist, estimates the forage crop loss from the temporary workspace areas using two scenarios. In the first scenario, he assumes the whole of the temporary workspace area was used for hay production and that the land produced above average yields of 2.0 tons per acre at above average quality and price of \$0.048 per pound (\$96/ton). He estimates loss on the

basis of gross rather than net income. His evidence is that generally in the Peace River Region a seeded forage crop typically requires two to three years to become fully established and reach full yield potential, but assumes 100% loss for 2011 and 2012, and allows for three years of declining yield loss for forage re-establishment thereafter, estimating crop loss over a five year period as follows:

2011 – 100%

2012 – 100%

2013 – 75%

2014 – 50%

2015 – 25%

[107] On this basis, Mr. Wasmuth estimates total gross income loss from the temporary workspace area at \$3,058.

[108] In the second scenario he estimates loss based on the carrying capacity of the land for livestock grazing. Again, he assumes the whole of the temporary workspace area was used to graze livestock. Using data from the Peace Region of Alberta, he estimates one animal unit month (AUM), or the amount of forage required to sustain a cow calf pair, is 915 pounds of forage per month, and the estimated average yield assuming the top end of the AUM per acre range is 3,020 pounds per acre. Again estimating loss over five years on the same declining basis applied above, but using 3,500 pounds per acre at \$0.042 per pound (\$84/ton), Mr. Wasmuth estimates loss from the temporary workspace area at \$2,341 using this scenario.

[109] The Londons did not provide any evidence with respect to their loss of income arising from Spectra's use of the temporary workspace area. We therefore accept Mr. Wasmuth's estimates of probable income loss for the whole of the temporary workspace area.

[110] The Londons were already compensated, however, for income loss with respect to the 3.61 acres of temporary workspace within the Encana lease, and are paid an annual rental for this area to compensate for anticipated ongoing losses from this area arising from Encana’s continuing right of entry. There is no evidence that the Londons incurred any additional income loss beyond that already compensated for as a result of Spectra’s use of the 3.61 acres of temporary workspace within the Encana lease. Any income loss arising from Spectra’s use of the temporary workspace area only arises from Spectra’s use of .94 acres. On the basis of Mr. Wasmuth’s highest per acre estimate of income loss, and assuming loss over five years on the same basis assumed by Mr. Wasmuth, we calculate the Londons’ loss of income from Spectra’s use of the temporary workspace area at \$630 as follows:

Year	Acres	% of Loss	Est. Yield (lbs./ac.)	Est. Price (\$/lbs.)	Est. Total Crop Loss
2011	.94	100	4,000	0.048	\$180
2012	.94	100	4,000	0.048	\$180
2013	.94	75	4,000	0.048	\$135
2014	.94	50	4,000	0.048	\$90
2015	.94	25	4,000	0.048	\$45
Total					\$630

Conclusion

[111] Compensation is the equivalent in monetary terms for the loss sustained arising from a right of entry. We have concluded the monetary equivalent of the loss of rights inclusive of the compulsory aspect of the taking associated with the temporary workspace is \$2,730 and that the loss of income or profit from Spectra’s use and occupation of the temporary workspace is \$630, for a total of \$3,360. Considering all of the circumstances and the evidence before us, we find payment of

\$3,360 provides the monetary equivalent to the Londons' for the loss caused by Spectra's right of entry to 4.55 acres of the Lands for temporary workspace.

ORDER

[112] The Board Orders Spectra Energy Midstream Corporation to pay James Nelson London and Keir Marie London compensation in the amount of \$3,360, less any amounts already paid as partial compensation pursuant to the Board's Orders of December 23, 2010 and January 31, 2011, for loss caused by Spectra's right of entry to the Lands for temporary workspace.

[113] The Londons' application under section 164 of the *Petroleum and Natural Gas Act* (file 1801) is dismissed.

[114] The Londons' application under section 163 of the *Petroleum and Natural Gas Act* (file 1792) is withdrawn.

DATED: February 24, 2015

FOR THE BOARD



Cheryl Vickers, Chair



Howard Kushner, Member

File Nos. 1694, 1792, 1801
Board Order No. 1694-4

May 8, 2015

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH EAST $\frac{1}{4}$ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION
(Applicant File 1694)

JAMES NELSON LONDON AND KEIR MARIE LONDON
(Applicants Files 1792 and 1801)

AND:

JAMES NELSON LONDON AND KEIR MARIE LONDON
(Respondents File 1694)

SPECTRA ENERGY MIDSTREAM CORPORATION
(Respondent Files 1792 and 1801)

BOARD ORDER

Heard by written submissions closing April 7, 2015

Rick Williams, Barrister and Solicitor, for Spectra Energy Midstream Corporation
Darryl Carter, Q.C., Barrister and Solicitor, for Jay and Keir London

INTRODUCTION AND ISSUE

[1] This is an application by the landowners, Jay and Keir London, for their costs in relation to these applications. The Londons claim costs in the amount of \$47,365.35. The bulk of this claim is with respect to an account for legal fees and disbursements. They seek to recover the whole of this account, as well as an amount on account of Mr. London's attendance at the arbitration.

[2] The *Petroleum and Natural Gas Act* gives the Board authority to order a party to an application to pay all or part of the actual costs of another party. The issue is whether the Board should require Spectra to pay all or part of the costs claimed by the Londons in the circumstances of this case.

BACKGROUND

[3] The Londons own the Lands described as the NE ¼ Section 10, Township 78, Range 16, W6M, Peace River District. In February 2009, the Londons entered a statutory right of way agreement with Encana Corporation (Encana) granting Encana a right of way over the Lands for the purpose of constructing, operating and maintaining a pipeline or pipelines (the ROW Agreement). In April 2010, Encana assigned the ROW Agreement to Spectra Energy Midstream Corporation (Spectra).

[4] Spectra received a permit from the Oil and Gas Commission (OGC) to construct and operate a pipeline known as the Bissette Pipeline, in part within the right of way covered by the ROW Agreement. Spectra determined it would require additional temporary workspace than that already granted in the ROW Agreement in order to construct the

pipeline. In November 2010, Spectra made a written offer to the Londons respecting compensation for the additional temporary workspace, which the Londons did not accept, and Spectra applied to the Board for a right of entry order (File 1694).

[5] On November 29, 2010 the Board provided the Londons with Notice of a mediation teleconference scheduled for December 13, 2010. The Londons did not attend the scheduled telephone mediation and the Board adjourned the mediation to December 23, 2010 and provided the Londons with Notice of the new date. On December 23, 2010 the Board granted Spectra the right to enter and use a .94 acre portion of the Lands as temporary workspace for the construction of a flow line pursuant to section 159 of the *Petroleum and Natural Gas Act* and made an order for the payment of partial compensation and a security deposit (Order 1694-1). In January, 2011 the Board amended the right of entry order granting Spectra access to an additional 3.61 acres for temporary workspace and increased the partial payment, bringing the total area authorized by the Board as temporary workspace to 4.55 acres, 3.61 acres of which was within an existing lease on the Lands (Order 1694-2).

[6] The Board moved slowly to resolve compensation for the various landowners along the Bissette Pipeline route as Spectra and the landowners worked to resolve compensation without the assistance of the Board. In March 2012, the Board initiated process to actively mediate compensation for the landowners along the Bissette Pipeline route where resolution had not been reached, including these landowners. In June 2012, Spectra offered to pay the Londons \$4,445.25 as compensation for the temporary workspace. The Londons did not accept this offer. Following consultation with the Londons with respect to a date for mediation, on June 29, 2012, the Board scheduled a mediation telephone conference for October 3, 2012.

[7] In July 2012, the Londons retained counsel. The Board convened the scheduled telephone mediation on October 3, 2012. The Londons did not attend; counsel attended but did not have instructions to discuss compensation in the Londons'

absence. The Board indicated it would schedule an in-person mediation to discuss compensation if the Londons wished to proceed.

[8] On October 18, 2012, the Londons' filed an application pursuant to section 163 of the *Petroleum and Natural Gas Act* for damages allegedly arising from Spectra's activities on the Lands (File 1792). At the same time, the Londons filed an application pursuant to section 164 of the *Petroleum and Natural Gas Act* against Encana alleging non-compliance with the ROW Agreement (file 1791). By decision rendered January 8, 2013, the Board determined that Encana was not the proper party to an application under section 164 alleging non-compliance with the ROW Agreement and dismissed the application against Encana (Order 1791-1). On January 9, 2013 the Londons filed an application pursuant to section 164 of the *Petroleum and Natural Gas Act* against Spectra alleging non-compliance with the ROW Agreement (file 1801). In the section 163 and 164 applications, the Londons alleged for the first time that the Bissette Pipeline was not a "flow-line" within the meaning of the *Petroleum and Natural Gas Act* and that the Board did not have jurisdiction to grant Spectra right of entry to the Lands.

[9] Spectra sought to have the applications brought against it pursuant to sections 163 and 164 of the *Petroleum and Natural Gas Act* summarily dismissed on the grounds that the Board did not have jurisdiction to hear the applications or grant the remedies sought, or that the Londons were otherwise barred from advancing the claims. By decisions rendered May 14, and June 26, 2014, the Board found it had jurisdiction to hear the applications and declined to summarily dismiss them (Orders 1792/1801-1 and 1792/1801-1Cor). The Board found that the Londons could not challenge that the Bissette Pipeline is a flow line if they wished to pursue a claim pursuant to section 163 of the *Petroleum and Natural Gas Act* for damages. As the Londons had not challenged that the Bissette Pipeline was not a flow line when Spectra applied for the right of entry order, and as they did not seek judicial review of the Board's right of entry orders, the Board said it was "not about to go back and consider at this time whether it had jurisdiction in the first place to grant the Right of Entry Orders". The Board found that it had jurisdiction to hear the application under section 163 on the basis that the ROW

Agreement was for a right of entry to construct and operate a flow line, Spectra purportedly exercised that right of entry in constructing the Bissette Pipeline, and Spectra's exercise of that right of entry allegedly caused damage. The Board questioned its jurisdiction under section 163 to provide a remedy unless the Bissette Pipeline is a flow line.

[10] The parties agreed the issue of compensation for the temporary workspace (File 1694) and the Londons' section 163 and 164 applications should all be dealt with at the same time. On May 28, 2014 the Board refused further mediation in all three applications and referred them for arbitration. On August 6, 2014, the Board scheduled all three applications for a two day arbitration hearing on November 27 and 28, 2014 in Dawson Creek and set dates for the production of summary position statements, lists of witnesses, and documents to be relied on at the arbitration.

[11] On October 17, 2014 Spectra offered the Londons \$7,500 in full and final settlement of compensation and damages with respect to all three applications. The letter stated:

Spectra expressly reserves the right to bring this offer, and any prior offers, to the attention of the SRB as part of any costs proceeding. Specifically, in the event that the Londons refuse this offer and are awarded the same or less than the amount of compensation and damages offered following the arbitration, Spectra will take the position that no costs should be awarded to the Londons and will consider whether to seek recovery of its costs.

[12] The Londons did not accept the offer.

[13] In advance of the arbitration, the parties each produced a summary of their claims. Spectra took the position that the Londons should receive \$2,750 as compensation for its use of the temporary workspace; the Londons claimed \$25,000 in compensation. With respect to the section 163 and 164 applications, the Londons claimed \$100,000 in damages and sought an order amending the ROW Agreement to make it clear that construction of the Bissette Pipeline was not authorized by that agreement.

[14] The arbitration proceeded on November 27 and 28, 2014 as scheduled. In closing argument the Londons submitted the Bissette Pipeline was not a “flow line” and that the Board did not have jurisdiction. They withdrew their claim for \$100,000 damages. Spectra objected to the Londons raising the jurisdictional issue. The Board determined it would hear the jurisdictional issue, sought further affidavit evidence and convened a teleconference on January 8, 2015 to hear argument.

[15] The Board issued its decision with respect to all three applications on February 24, 2015 (Order 1694-3). The Board determined the Bissette Pipeline was a flowline and that the Board, therefore, had jurisdiction. It dismissed the Londons’ section 164 application, and determined that Spectra should pay the Londons \$3,360 as compensation for its use of the temporary right of way.

[16] On February 26, 2015 the Londons applied for costs. They seek recovery of \$47,365.35: \$1,500 for Mr. London’s attendance at the arbitration (\$750/day x 2 days), \$45,486 for legal fees, and \$877.35 for disbursements incurred by counsel. In support of the application, counsel has submitted a copy of his account to the Londons dated December 10, 2014.

SUBMISSIONS

[17] The Londons argue that landowners in Surface Rights Board cases ought to be entitled to costs on a solicitor-client basis and that the landowner ought not to be out of pocket. They submit legal costs should not be dependent on whether or not the case advanced by counsel was favourably received. Spectra argues that an award of costs is not automatic and that there is no presumption in favour of the Londons receiving their costs in connection with the applications advanced by them. With reference to the Board’s Rules, Spectra submits that, in the circumstances, the Board should not award the Londons any part of the costs claimed.

ANALYSIS

[18] The Board's authority to require a party to pay the costs of another party is found in section 170(1) of the *Petroleum and Natural Gas Act*. The section provides:

170(1) Subject to any regulations, the board may order a party to an application under this part or an intervener to pay any or all of the following:

- a) all or part of the actual costs incurred by another party or intervener in connection with the application;

[19] Section 168 provides a definition of "actual costs" that includes "actual legal fees and disbursements" and "an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding".

[20] The Londons argue that landowners in Surface Rights Board cases ought to be entitled to costs on a solicitor-client basis. The Board's legislative authority to make an award of costs, however, establishes no such entitlement. An award of costs is not automatic. The use of the word "may" in section 170 of the *Petroleum and Natural Gas Act* gives the Board the discretionary power to make an award of costs and the discretion to require a party to pay "all or part" of the costs of another party. Whether a party is to receive any or all or part of their costs is entirely at the Board's discretion. It is contrary to the clearly expressed legislative intent that the Board has the discretion to require a party to pay costs and the discretion to make an award for all or part of a party's costs to suggest that there is either an entitlement to costs or that any entitlement should be on a solicitor and client basis.

[21] The Londons refer to various authorities in support of their submission that landowners in Surface Rights Board cases ought to be entitled to costs on a solicitor and client basis. None of these authorities relate to the Surface Rights Board's authority under the *Petroleum and Natural Gas Act*. They refer either to applications

before the National Energy Board and the costs provisions provided for in the *National Energy Board Act*, or they refer to expropriation proceedings under the *Alberta Expropriation Act*. The legislative provisions with respect to the entitlement to costs and awarding costs payable by one party to another are different than the legislative provisions from which this Board receives the discretionary authority to make orders for costs.

[22] The Board has enacted Rules respecting costs. Rule 18(2) provides a presumption in favour of a landowner receiving costs incurred in relation to the mediation process for a right of entry application as follows:

18(2) ...,unless otherwise ordered by the Board, in an application under section 158 of the Act, the person who requires a right of entry shall pay the landowner's costs in relation to mediation of the application.

[23] The presumption in favour of the landowner does not extend to the arbitration of an application under section 158, nor does it extend to applications other than those for right of entry and to determine the appropriate compensation payable to the landowner arising from the right of entry.

[24] The *Petroleum and Natural Gas Act* sets up a two stage process for the resolution of applications. The parties are required to participate in mediation and it is only when the mediator believes that an application cannot be resolved by mediation that an application is referred to arbitration. The Board's rule establishing a presumption in favour of landowners receiving their costs for the mediation process in a right of entry application acknowledges the compulsory nature of a right of entry. But, by limiting the presumption in favour of a landowner receiving their costs to the costs incurred in the mediation process, it is intended to encourage resolution of disputes at the mediation stage and discourage unnecessary process where compensation ought reasonably to be resolved at the mediation stage.

[25] A person requiring a right of entry should expect to pay a landowner's costs in relation to the mediation process for a right of entry application and with respect to the compensation payable as a result of the right of entry, and landowners may expect to recover their costs of the mediation process to determine the compensation payable. In that way, where reasonable offers are made and accepted, landowners will not be out of pocket and right holders will not be required to pay costs beyond those associated with the mediation process. But if the parties cannot resolve compensation through mediation, and the Board is required to arbitrate the compensation payable, the same expectations do not apply. A landowner who does not accept a reasonable proposal forcing a right holder into an expensive arbitration process, may not be able to recover their costs of the arbitration process. But a right holder who does not offer reasonable compensation thereby forcing a landowner into an expensive arbitration process, may well be required to pay a landowner's costs which could include full legal fees and disbursements, expert fees and disbursements and an amount on account of the landowner's time and reasonable expenses. It is, therefore, in both parties' interest to take full advantage of the mediation process to try to resolve a dispute without the extra costs associated with arbitration. In an application for costs associated with the arbitration process, the Board will consider the factors set out in its Rules.

[26] Rules 18(3) provides that an application for costs must be in writing and must include reasons to support the application, a detailed description of the costs sought, and copies of invoices or receipts for disbursements. If disputes are not resolved at the arbitration stage then the Board will exercise its discretion in making an order for the payment of a party's costs. Rule 18(4) sets out the factors the Board will consider as follows:

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

[27] The Londons' application is in writing but does not provide reasons supporting the application. The application does not include adequate detail for the costs sought in that it does not indicate the time spent by counsel for each entry to assess the reasonableness of the claim. It does not include copies of receipts for disbursements.

[28] As to the reasons for incurring costs, the application and associated invoice does not provide sufficient information to enable to the Board to assess which work was in relation to these applications, as opposed to the application against Encana, or to distinguish work associated with Spectra's application and the determination of compensation as opposed to the Londons' sections 163 and 164 applications. Although the invoice does not clearly distinguish work that may have been associated with the mediation process or efforts at resolution, the dates of entries suggest the bulk of the work is in relation to the arbitration process for all three applications.

[29] As to the Londons' conduct, acting through counsel, they claimed \$25,000 in compensation and \$100,000 for damages, but provided no evidence at the arbitration to support loss or damage, and withdrew the damage claim in final argument. As well, in final argument, the Londons advanced without warning the issue of the Board's jurisdiction. They declined to take advantage of the mediation process despite the Board's efforts to convene a mediation.

[30] The Londons were unsuccessful on every issue. On the issue of compensation, the Board ordered more than that advocated by Spectra at the hearing, but far less than that claimed by the Londons. Spectra provided an offer in excess of that awarded by the Board as early as June 2012 prior to the current claim for costs having been incurred. The Londons declined this offer. Spectra made another offer in advance of the arbitration with clear advice as to the position it would take on costs if the Board awarded less. The Londons declined to accept the offer, forcing the issue to arbitration. Ultimately, the Board ordered compensation in an amount less than half of that offered by Spectra.

[31] Considering all of the circumstances of this case, we decline to exercise our discretion to require Spectra to pay any of the Londons' claim for costs. Having made reasonable offers on compensation in an effort at avoiding the arbitration process that exceeded the Board's award, with clear advice as to the position it would take on costs if the Board awarded less, it would be unfair to ask Spectra to pay the costs to arbitrate a matter that could have and should have been settled. It would be unfair to have Spectra pay the costs to advance and arbitrate a claim for damages for which no evidence was ultimately tendered, and which was withdrawn at the last minute. It would be unfair to ask Spectra to pay the costs to advance and arbitrate a claim to amend the ROW Agreement, which the Board found to be without merit. These are not applications in which a landowner is compulsorily required to participate, and for which in the absence of a meritorious claim, inappropriate conduct worthy of sanction on the part of the other party, or other extenuating circumstances, there should be any expectation of automatic cost recovery.

[32] The Board acknowledges that a right of entry is a compulsory process, and acknowledges that in responding to an application for a right of entry and in determining the compensation payable as a result of a right of entry, a landowner ought to be made whole. But that principle does not mean that a landowner, or their counsel, may use the dispute resolution processes provided in the *Petroleum and Natural Gas Act* to recover costs that are not reasonably and necessarily incurred, or to benefit from requiring process that is neither reasonable nor necessary to ensuring a landowner is made whole. The legislation provides the means for parties to resolve issues of compensation expeditiously and fairly in accordance with applicable law. The discretion given to the Board to require a party to pay the costs of another party may be applied to ensure that disputes are resolved expeditiously and fairly without more process than reasonably necessary to ensure an appropriate outcome.

ORDER

[33] The application for costs is dismissed.

DATED: April 8, 2015

FOR THE BOARD



Cheryl Vickers, Chair



Howard Kushner, Member

File No. 1695
Board Order 1695-1

December 23, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**NW ¼ of Section 20, Township 78, Range 16, W6M, Peace River District,
except Plan A2035
NE ¼ of Section 20, Township 78, Range 16, W6M, Peace River District,
except Plan A2035**

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

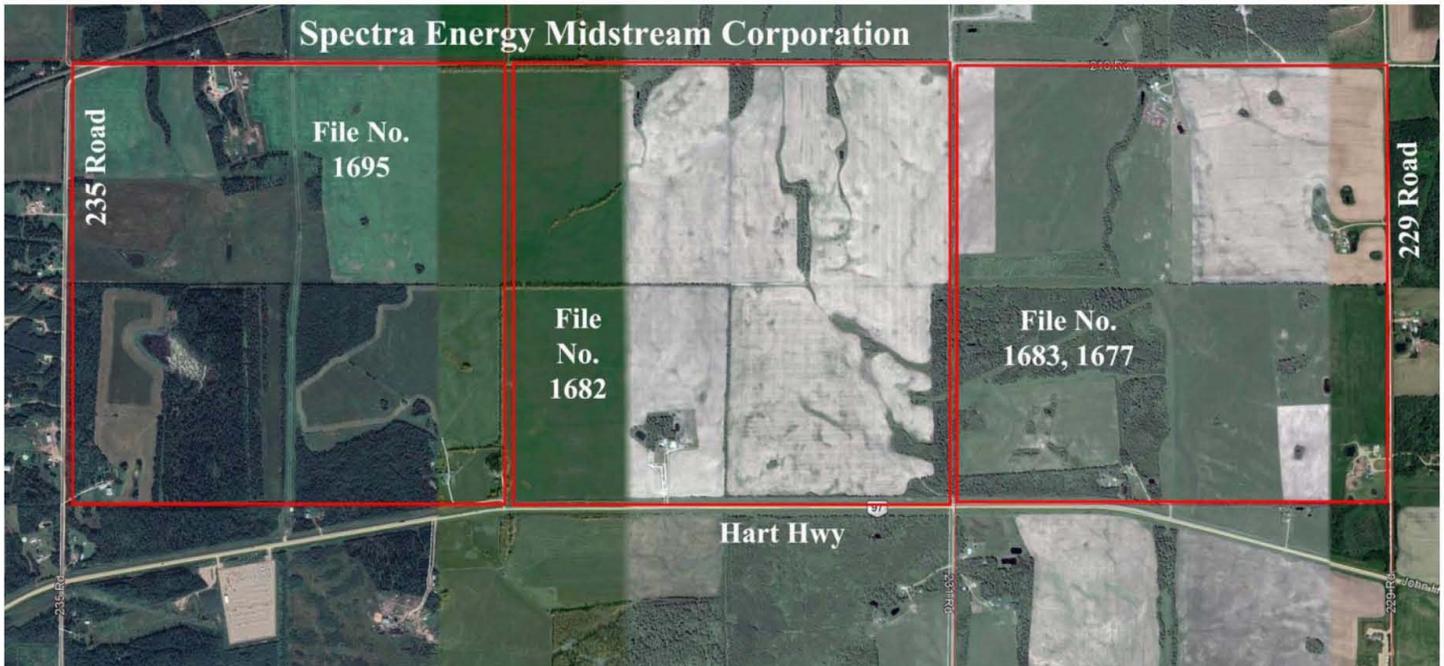
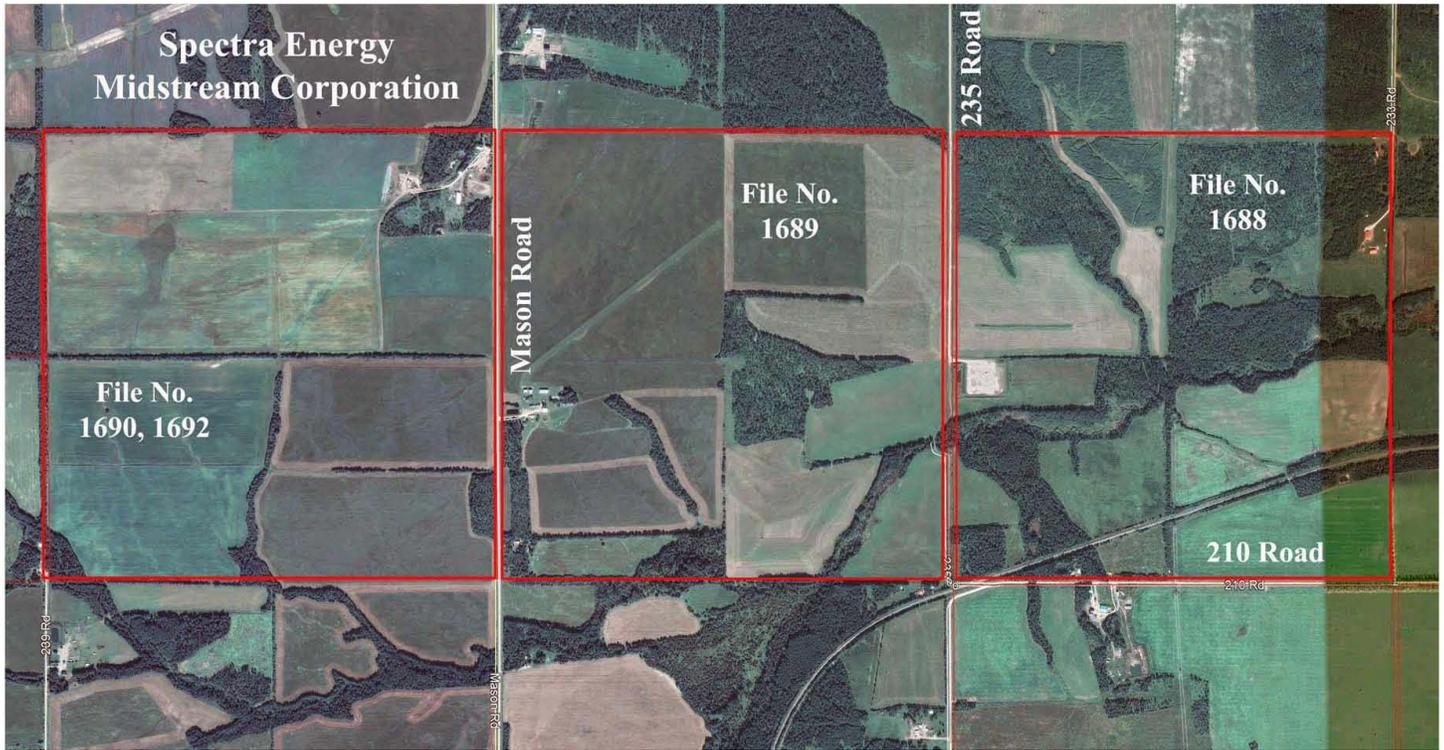
(APPLICANT)

AND:

WESLEY RAYMOND DYCK AND SHERRY ANN DYCK

(RESPONDENTS)

BOARD ORDER



Heard by telephone conference: December 13 and 23, 2010

Mediator: Rob Fraser

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to construct, operate and maintain a flow line across certain lands legally owned by Wesley Raymond Dyck and Sherry Ann Dyck.

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 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$4,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

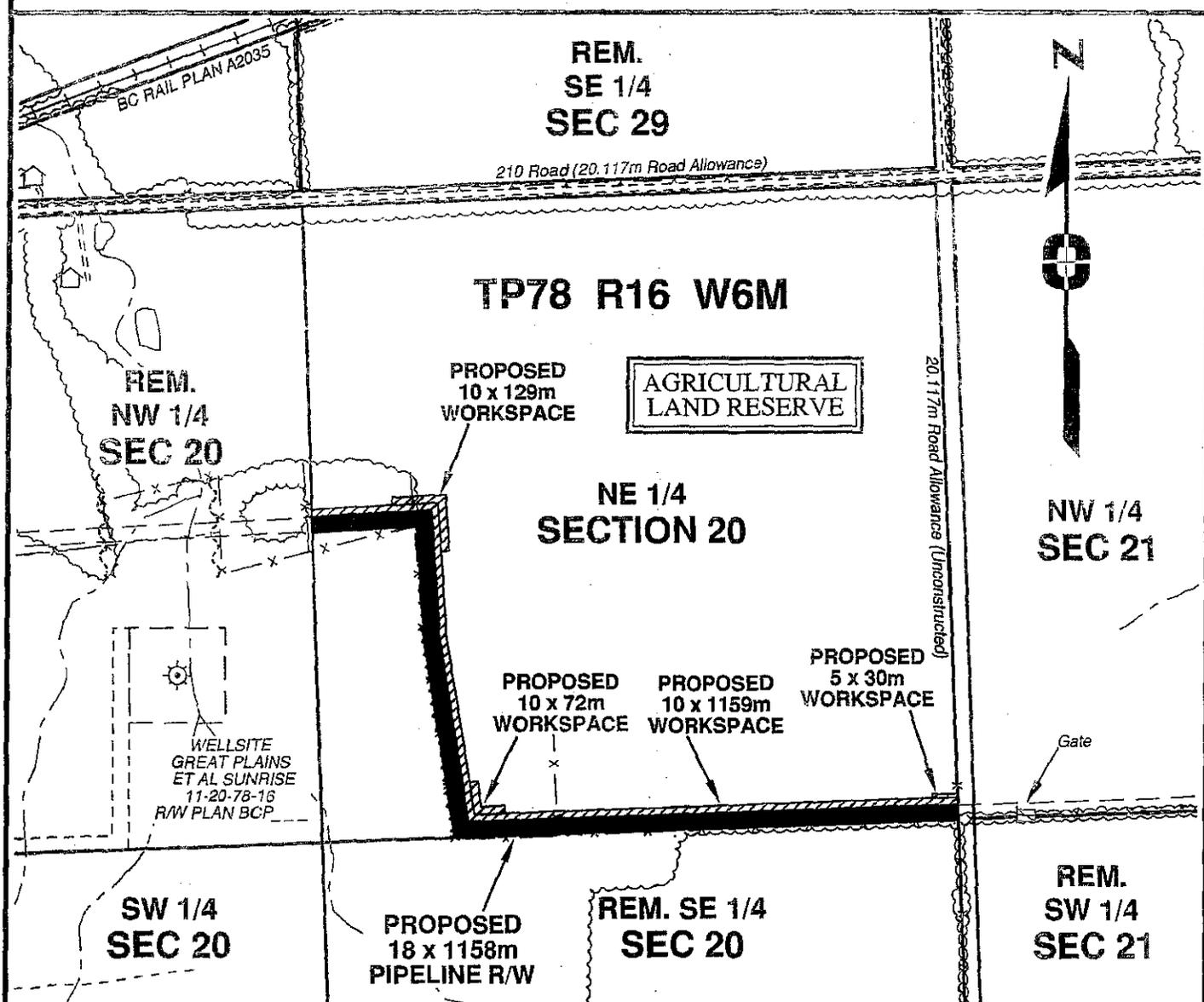
Dated: December 23, 2010

FOR THE BOARD



Rob Fraser, Mediator

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT**



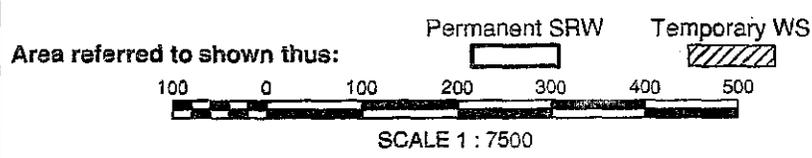
Owner(s): Wesley Raymond Dyck
Sherry Ann Dyck

Title No: PF43081
Parcel Identifier: 012-967-408
Company File:

Certified correct this 20th day of December, 2010

Area(s):	Permanent SRW	Temporary WS
Permanent Statutory Right-of-Way	2.08 ha	5.14 ac
Temporary Working Space	1.37 ha	3.39 ac
Total	3.45 ha	8.53 ac

Adam Brash, BCLS



Focus Job No:	100294NP13R2
Date:	2010/12/20
Drafter: FR	Revision: 2
FOCUS	
Focus Surveys	
FCS Land Services Limited Partnership	
Fort St. John 10716-100th Ave. BC, V1J 1Z3 Ph. (250)787-0300 Fax (250)787-1611 www.focus.ca	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

File No. 1695
Board Order 1695-2

May 9, 2011

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

NW ¼ of Section 20, Township 78, Range 16, W6M, Peace River District,
except Plan A2035
NE ¼ of Section 20, Township 78, Range 16, W6M, Peace River District

(The "Lands")

BETWEEN:

SPECTRA ENERGY MIDSTREAM CORPORATION

(APPLICANT)

AND:

WESLEY RAYMOND DYCK AND SHERRY ANN DYCK

(RESPONDENTS)

BOARD ORDER

On the application of the Applicant, Spectra Energy Midstream Corporation, and with the consent of the Respondents, Wesley Raymond Dyck and Sherry Ann Dyck, and pursuant to section 155 of the *Petroleum and Natural Gas Act*, the Board rescinds its Order of December 23, 2010 and substitutes that Order with the Order below to reflect a change to the route of the flowline temporary workspace area, and to increase the amount of the partial payment to Respondents as a result of an increase to the surface area required by the Applicant.

The Board acknowledges receipt of the required security deposit and understands a partial payment of \$4,000.00 to have already been made to the Respondents on account of the payment ordered below.

ORDER

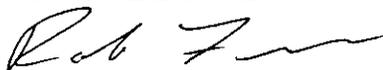
The Board's Order of December 23, 2010 is rescinded and replaced with the following:

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

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" to this Order for the purpose of constructing, operating, and maintaining a flow line. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this Order.
2. The Applicant shall deliver to the Surface Rights Board security in the amount of \$5,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondents as partial payment for compensation the amount of \$7,000.00.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

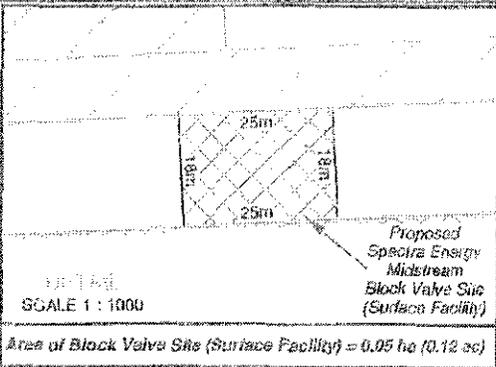
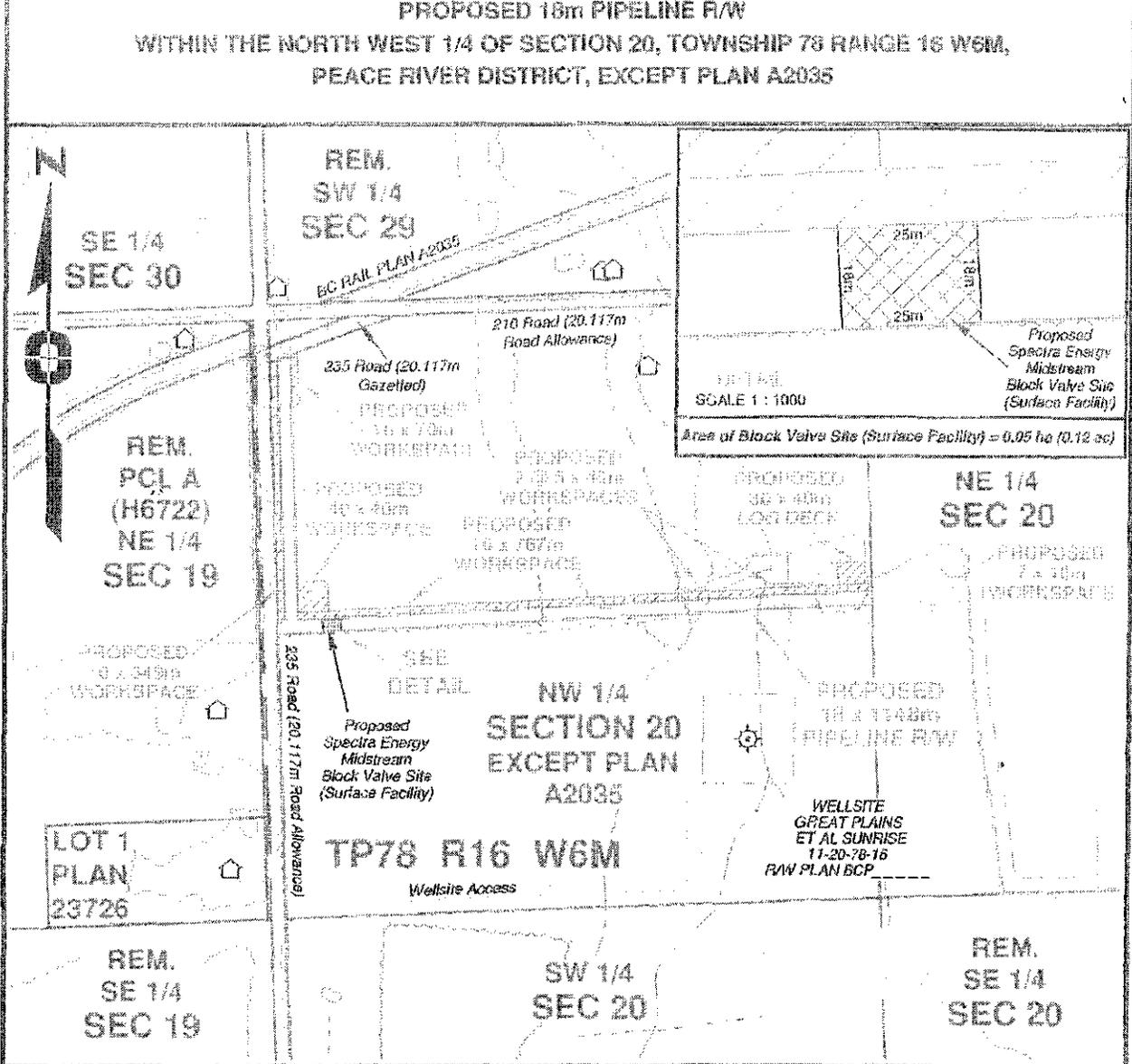
Dated: May 9, 2011

FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A" 1695-2



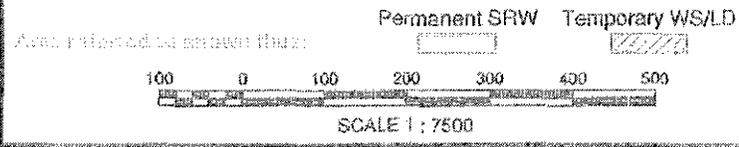
Owner(s): Wesley Raymond Dyck
Sheny Ann Dyck

Title No: PF43080
Parcel Identifier: 012-967-380
Company File:

Certified correct this 18th day of January, 2011

Area	ha	ac
Permanent Statutory Right-of-Way	2.07	5.12
Temporary Working Space/Log Deck	1.51	3.73
Total	3.58	8.85

David E. Gosling, BCLS



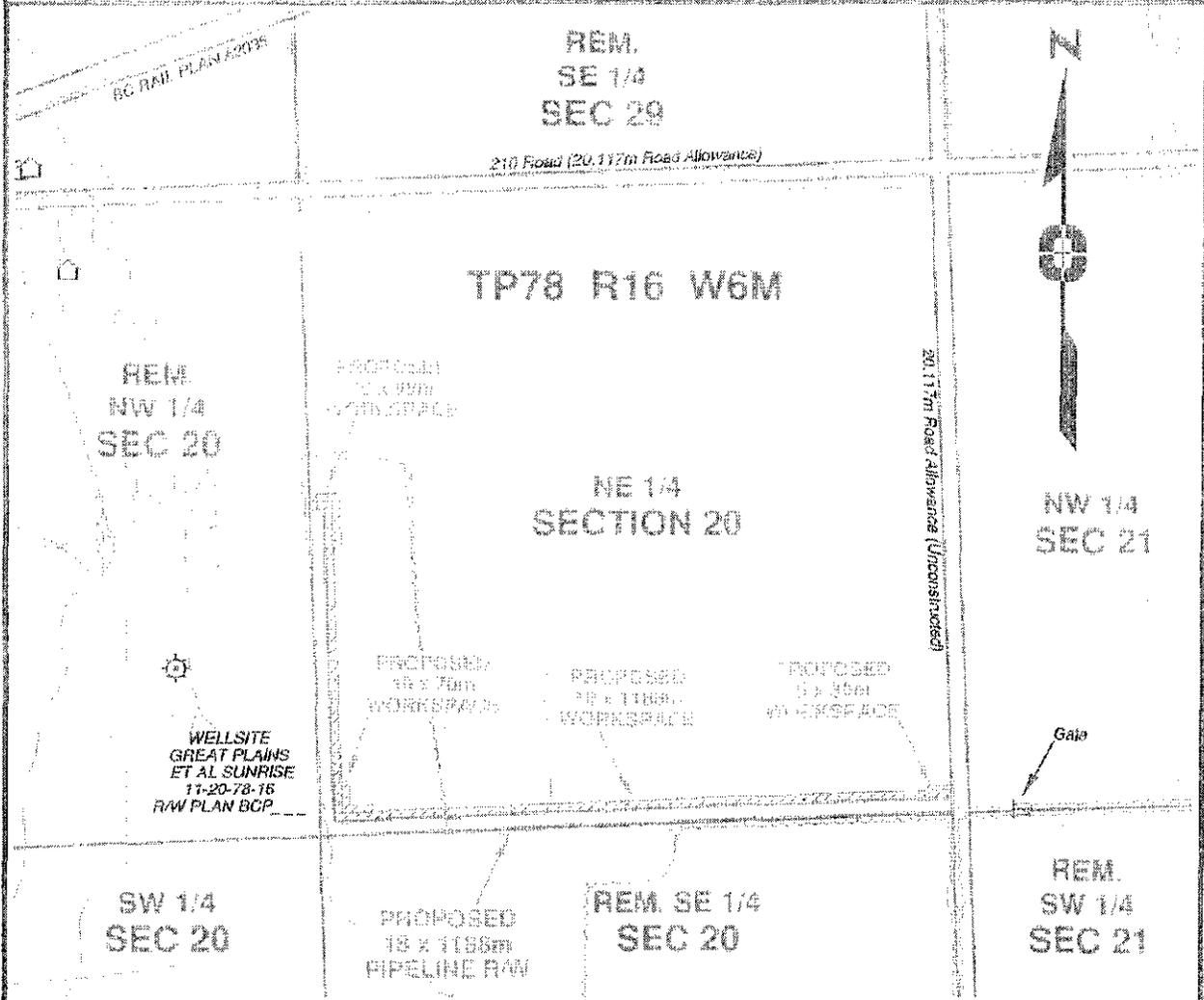
Focus Job No:	100294NP12R6
Date:	2011/01/18
Order:	FR
Sheet:	6

FOCUS
Focus Surveys
101 East Second Street
Edmonton, Alberta T6E 0A2
Tel: (780) 443-1234
Fax: (780) 443-1234
www.focus.ca

INDIVIDUAL OWNERSHIP PLAN SHOWING

Page of

PROPOSED 18m PIPELINE R/W
WITHIN THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 78 RANGE 16 W6M,
PEACE RIVER DISTRICT



Prepared by Wesley Raymond Dyck
Sherry Ann Dyck

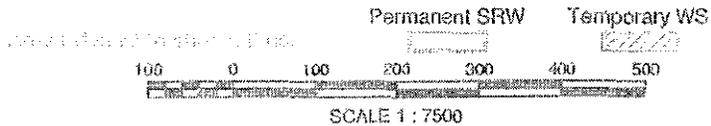
Title No: PF43081
Planed identifier: 012-987-408
Company File:

Areas:

Permanent Statutory Right-of-Way	2.14 ha	5.29 ac
Temporary Working Space	1.37 ha	3.39 ac
Total	3.51 ha	8.68 ac

Certified correct this 18th day of January, 2011

David E. Gosling, BCLS



Field Book No.	100294NP13R3
Date:	2011/01/18
Drawn: FR	Revision: 3
FOCUS	
Focus Surveys	
FCS Land Services Listed Partnership	
P.O. Box 100 10718-1000 Ave Red Deer, AB T4E 0S6 Tel: (403) 292-7300 Fax: (403) 292-7301 www.focus.ca	

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra will contact the landowner prior to commencing construction of the flow line on the Lands.
2. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plan, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
3. Following construction, Spectra will leave the portions of the right-of-way that were previously forage or pasture land ready for seeding, and will otherwise make all reasonable efforts to ensure the right of way is left in a similar condition as the adjoining Lands.
4. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
5. Should a spill, leak, break, rupture or failure occur in the flow line on the Lands, Spectra, shall, as soon as reasonably possible, notify and inform the landowner of the location of the incident and advise the landowner of the measures being taken to contain, repair, and clean up the spill, leak, break, rupture or failure. Spectra will be permitted immediate access to any of the landowner's surrounding Lands as necessary to contain, repair and clean up the spill, leak, break, rupture or failure.
6. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

January 19, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

**BLOCK A OF THE SOUTH WEST ¼ OF SECTION 29 TOWNSHIP 77
RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;**

**BLOCK A OF THE SOUTH EAST ¼ OF SECTION 29 TOWNSHIP 77
RANGE 15 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;**

**THE SOUTH WEST ¼ OF SECTION 21 TOWNSHIP 77 RANGE 15 WEST
OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WEST 14
FEET;**

**BLOCK A OF SECTION 20 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT**

(THE LANDS)

BETWEEN:

Spectra Energy Midstream Corporation

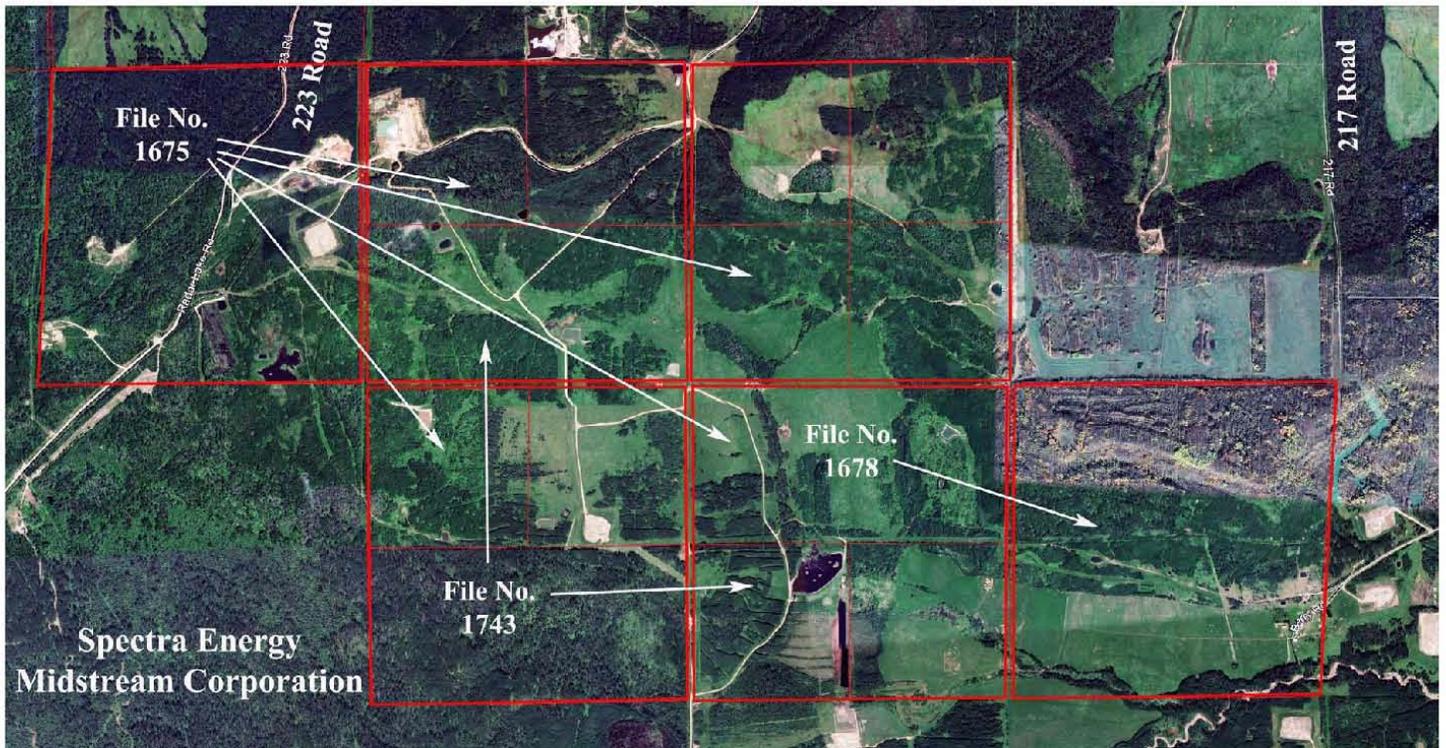
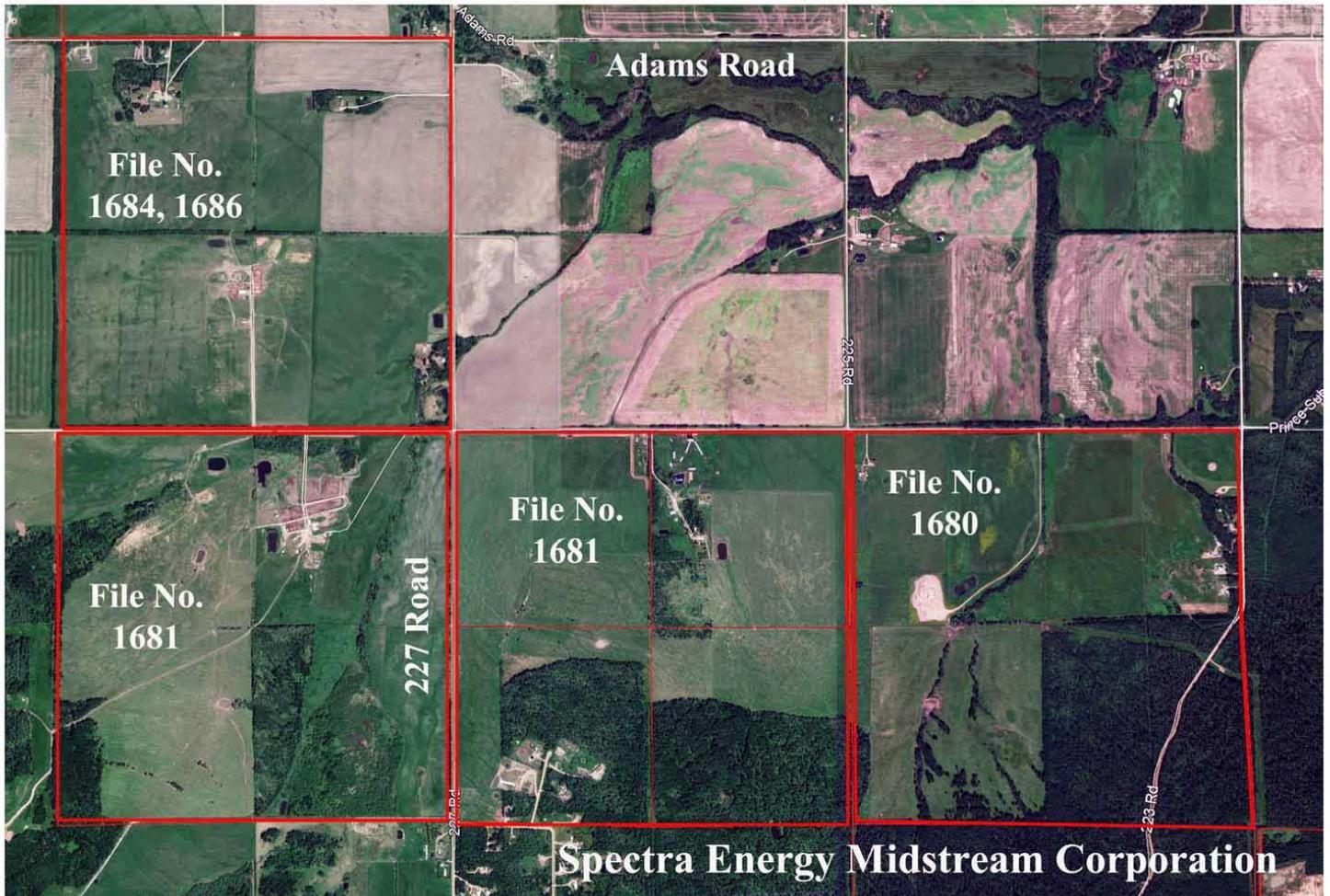
(APPLICANT)

AND:

Loiselle Investments Ltd.

(RESPONDENT)

BOARD ORDER



The Board conducted a telephone mediation on January 19, 2012, where the parties discussed Spectra's application for a right of entry order

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to access certain lands legally owned by Loisel Investments Ltd. to perform the necessary reclamation and remediation work as part of an approved oil and gas activity.

Spectra requires the right of entry in order to comply with an order of the Oil and Gas Commission to reclaim and restore lands covered by Board Order 1675-1amd2.

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*, specifically the purpose described at section 142 (c) to comply with an order of the Oil and Gas Commission.

The parties consent to the Board issuing the right of entry order.

ORDER

By consent, the Board orders as follows:

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A for the purpose of performing the necessary reclamation and remediation work as part of the approved oil and gas activity, in compliance with an order of the Oil and Gas Commission. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondent as the amount of \$5,341.50 as partial payment of compensation payable.
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 January 19, 2012

FOR THE BOARD

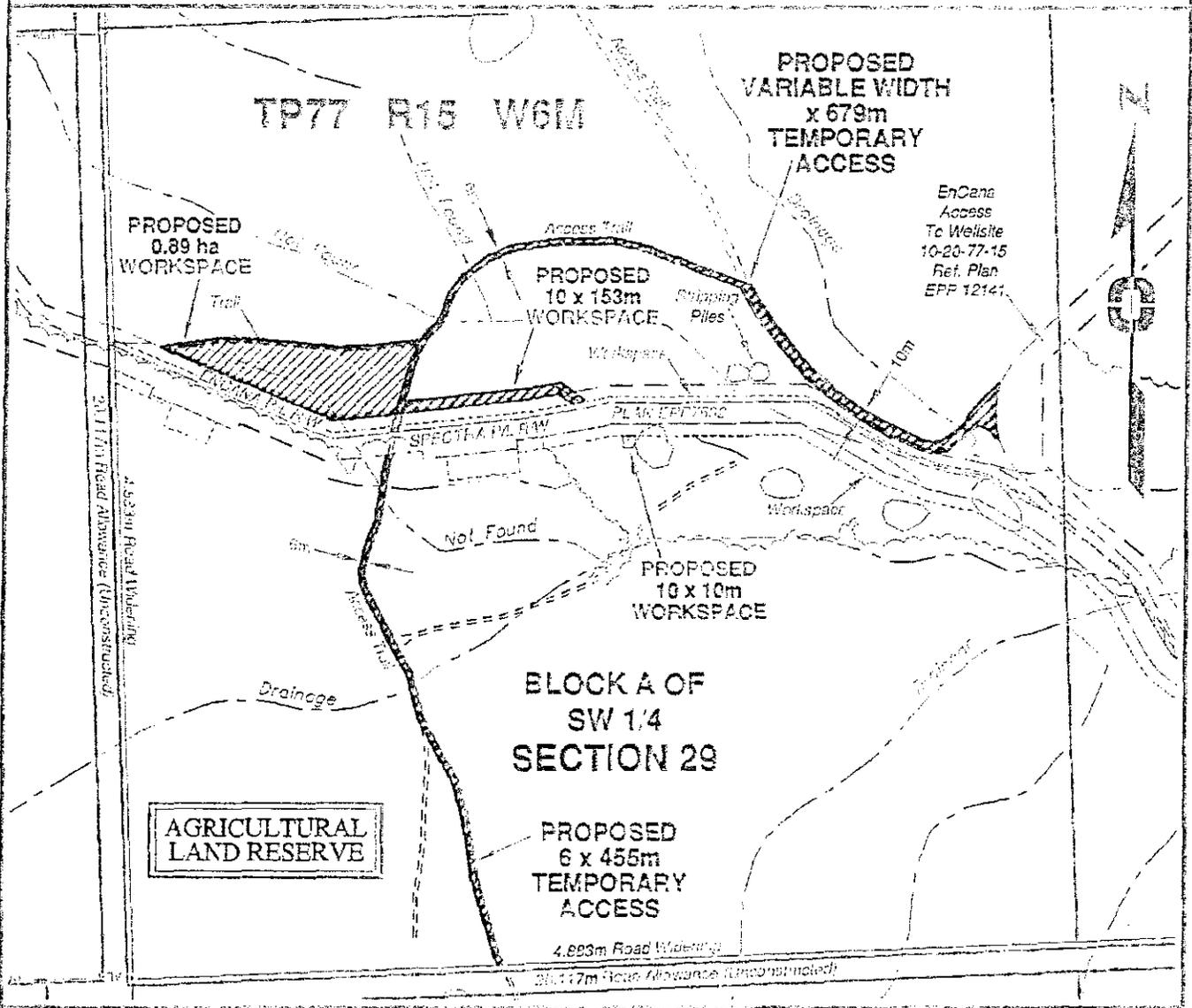


Rob Fraser, Vice Chair

APPENDIX 4 - 00017451

Page ___ of ___

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED TEMPORARY WORKSPACES AND TEMPORARY ACCESSSES
WITHIN BLOCK A OF THE SOUTH WEST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT**



**AGRICULTURAL
LAND RESERVE**

**BLOCK A OF
SW 1/4
SECTION 29**

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

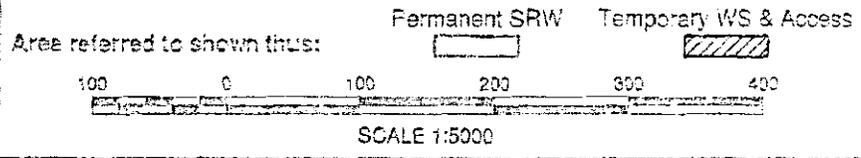
Title No: BA5*8747
Parcel Identifier: 014-288-176
Company File: _____

Certified correct this 7th day of December, 2011

Area(s):

Temporary Access Road	0.83 ha	2.05 ac
Temporary Working Space	1.05 ha	2.59 ac
Total	1.88 ha	4.54 ac

David E. Gosling, BCUS

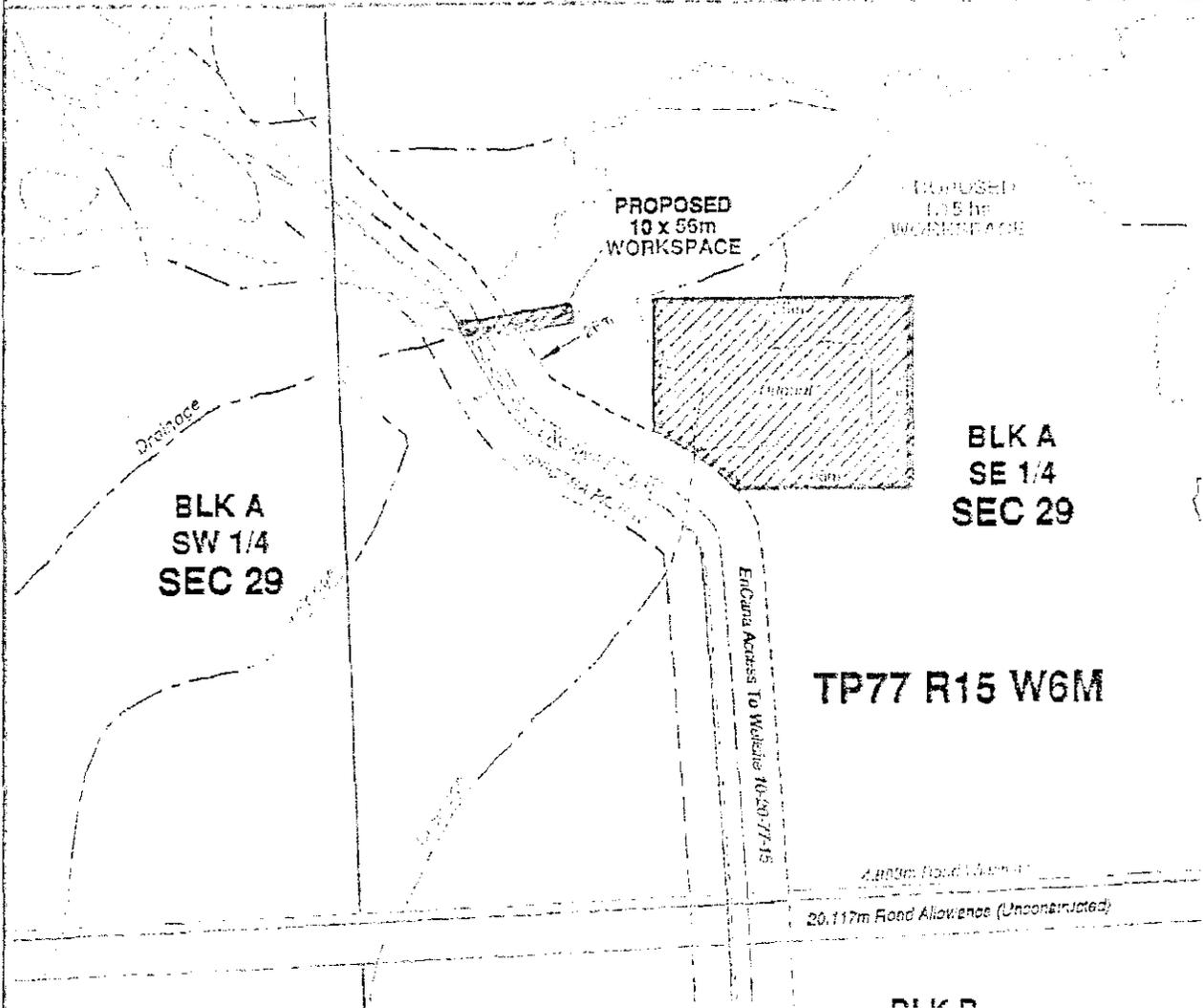


Focus Job No: 100294NP58R2
Date: 2011/12/07
Drafted: ER Revisant: 2

FOCUS
FCS Land Services Limited Partnership
10716 - 100th Avenue, Fort St John BC
V1J 1Z3 250.787.0300 www.focus.ca

Page ___ of ___

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED TEMPORARY WORKSPACE
WITHIN BLOCK A OF THE SOUTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT**



Owner(s): Lolselle Investments Ltd.
Inc. No. 705654

Title No: 04518745
Parcel Identifier: 015-939-657
Company File:

Area(s):
Temporary Working Space 1.21 ha 2.99 ac

Certified correct and conformity of November, 2011

Area referred to shown thus:

Permanent SRW Temporary WS

60 0 60 120 180 240

SCALE 1 : 3000

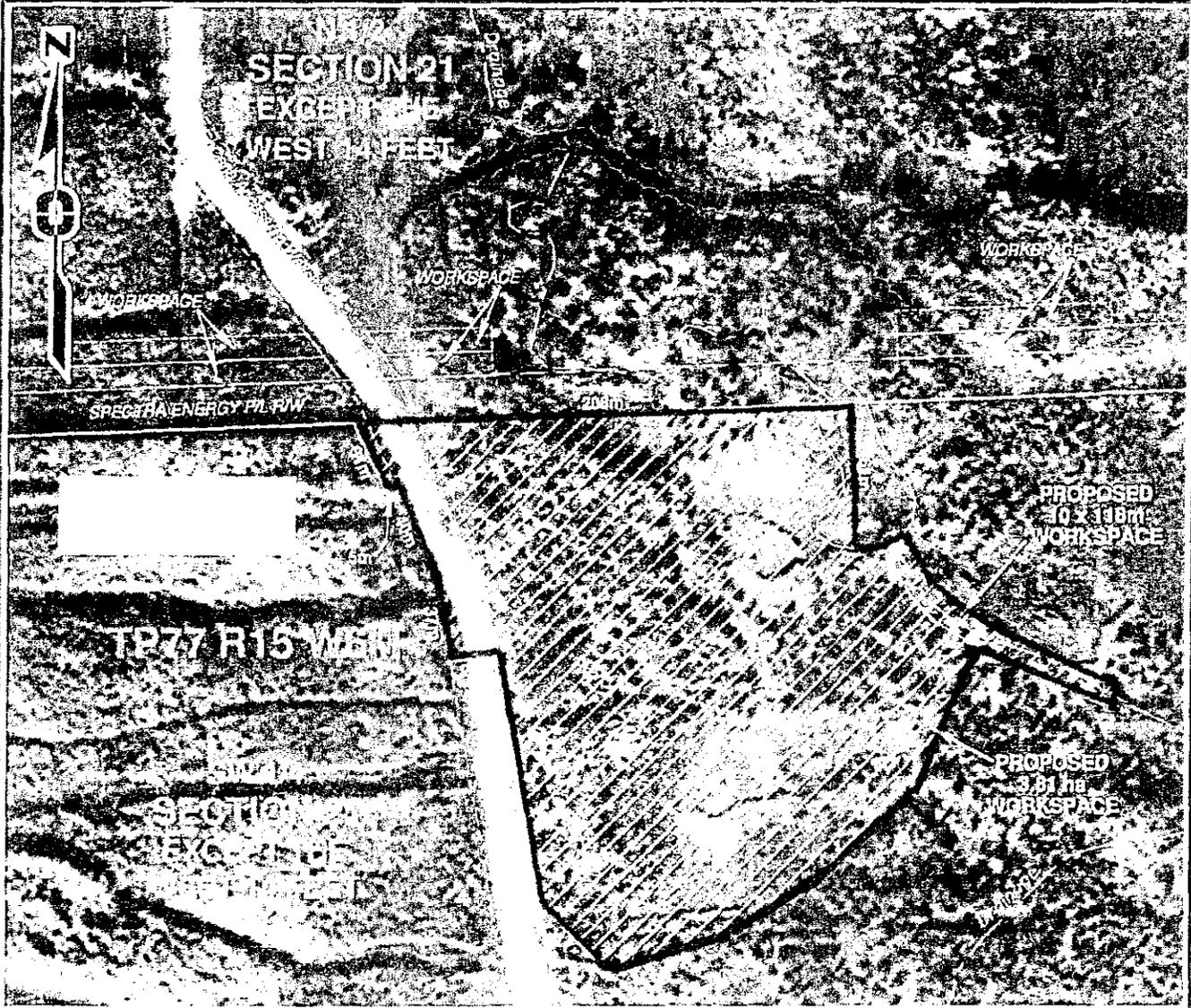
Focus Ltd.
 Date: _____
 Drafter: LF Revision: 1

FOCUS

10716 - 100th Avenue, Fort St John BC
 V1J 1Z5 250.787.6300 www.focus.ca

Page ___ of ___

**PROPOSED TEMPORARY WORKSPACE WITHIN SOUTH WEST 1/4 OF SECTION 21
TOWNSHIP 77 RANGE 15 W6M, EXCEPT THE WEST 14 FEET
PEACE RIVER DISTRICT**



Client: Loiselle Investments Ltd.
Inc. No. 705654

Title No: BA516739
Phone No: 014 390-744
Company No: _____

Area: _____
Temporary Working Space 3.96 ha 9.71 ac

Certified correct this _____th day of December, 2011

David E. Gealing, BOLS

Also referred to as: _____ Permanent SRW Temporary WS



SCALE 1 : 2500

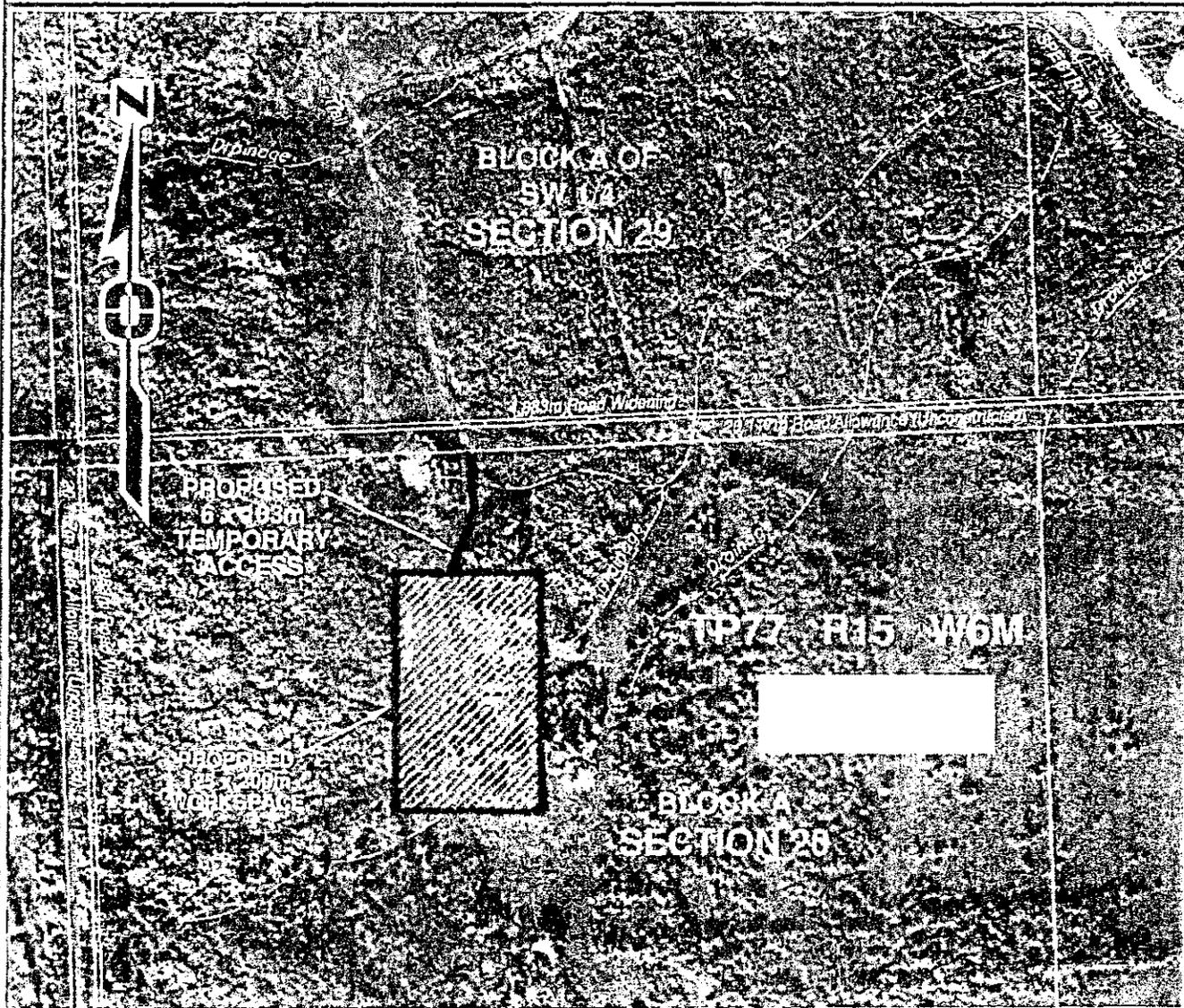
Project No: 100294NP60R1
Date: 2011/12/07
Project: FR Page: 1

FOCUS

FOCUS CONSULTING INC.
10000 100th Street, Suite 100
Edmonton, Alberta T5A 0A6
Canada

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED TEMPORARY WORKSPACE AND TEMPORARY ACCESS
WITHIN BLOCK A OF SECTION 20 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT

Page ___ of ___



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

Title No. BA516736
 Survey Map No. 014-390-671
 County No. _____

Certified correct this 28th day of November, 2011

Category	Area (ha)	Area (ac)
Temporary Access Road	0.06	0.15
Temporary Working Space	2.50	6.18
Total	2.56	6.33

David E. Gosling BOLS

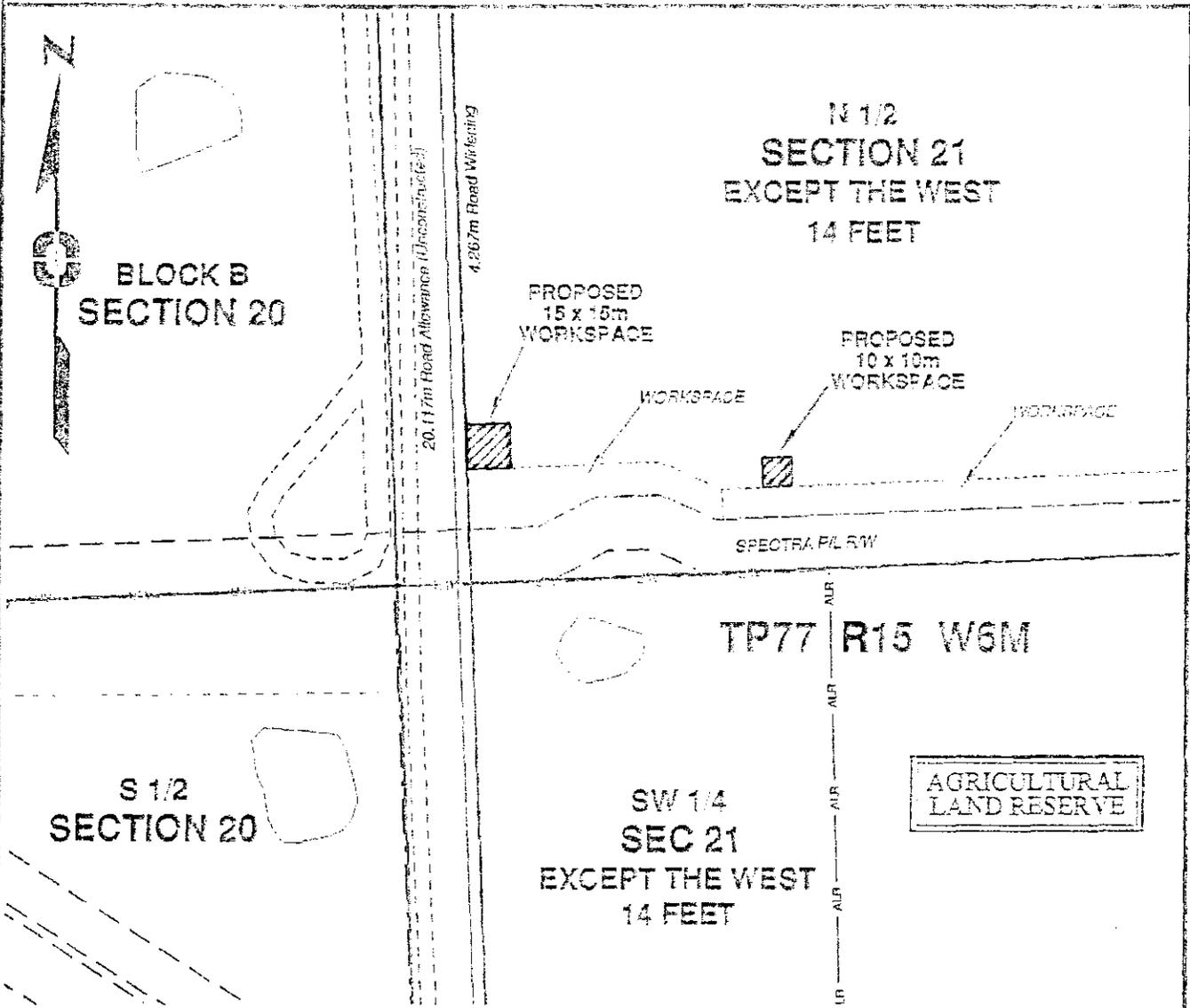
Permanent SRW Temporary WS & Access

100 0 100 200 300 400

100294NP62R0
 2011/11/30
 0
FOCUS

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED WORKSPACES
WITHIN THE NORTH 1/2 OF SECTION 21 TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT, EXCEPT THE WEST 14 FEET**

Page ___ of ___



Owner(s): Loiselle Investments Ltd., Inc. No. 705354

Title No: EA518738
Parcel Identifier: 014-390-710
Company File: _____

Area(s):
Temporary Working Space 0.03 ha 0.07 ac

Certified correct this 7th day of December, 2011

David E. Gering, BCLS

Area referred to shown thus:
Permanent SRW  Temporary WS 
50 0 50 100 150
SCALE 1 : 2000

Focus Job No: 100294NP63R0
Date: 2011/12/07
Drafter: FE Revision: 0
FOCUS Fort St. John
Focus Surveys 10716-100th Ave.
BC, V1J 1Z3
Ph: (250)767-0300
Fax: (250)767-1611
www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
2. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
3. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.

February 3, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

BLOCK A OF THE SOUTH WEST ¼ OF SECTION 29 TOWNSHIP 77
RANGE 15 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;

BLOCK A OF THE SOUTH EAST ¼ OF SECTION 29 TOWNSHIP 77
RANGE 15 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT;

THE SOUTH WEST ¼ OF SECTION 21 TOWNSHIP 77 RANGE 15 WEST
OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WEST 14
FEET;

BLOCK A OF SECTION 20 TOWNSHIP 77 RANGE 15 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT;

THE NORTH ½ OF SECTION 21 TOWNSHIP 77 RANGE 15 WEST OF
THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WEST 14
FEET

(THE LANDS)

BETWEEN:

Spectra Energy Midstream Corporation

(APPLICANT)

AND:

Loiselle Investments Ltd.

(RESPONDENT)

AMENDED BOARD ORDER

This order amends Order 1743-1 issued January 19, 2012 to correct an error in the description of the Lands set out in the style of cause.

Spectra Energy Midstream Corporation ("Spectra") seeks a right of entry order to access certain lands legally owned by Loisel Investments Ltd. to perform the necessary reclamation and remediation work as part of an approved oil and gas activity.

Spectra requires the right of entry in order to comply with an order of the Oil and Gas Commission to reclaim and restore lands covered by Board Order 1675-1amd2.

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*, specifically the purpose described at section 142 (c) to comply with an order of the Oil and Gas Commission.

The parties consent to the Board issuing the right of entry order.

ORDER

By consent, the Board orders as follows:

1. Upon payment of the amounts set out in paragraphs 2 and 3, the Applicant shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" for the purpose of performing the necessary reclamation and remediation work as part of the approved oil and gas activity, in compliance with an order of the Oil and Gas Commission. The Applicant's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry order.
2. The Applicant 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 the Applicant, or paid to the Respondent, upon agreement of the parties or as ordered by the Board.
3. The Applicant shall pay to the Respondent as the amount of \$5,341.50 as partial payment of compensation payable.
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 February 3, 2012

FOR THE BOARD

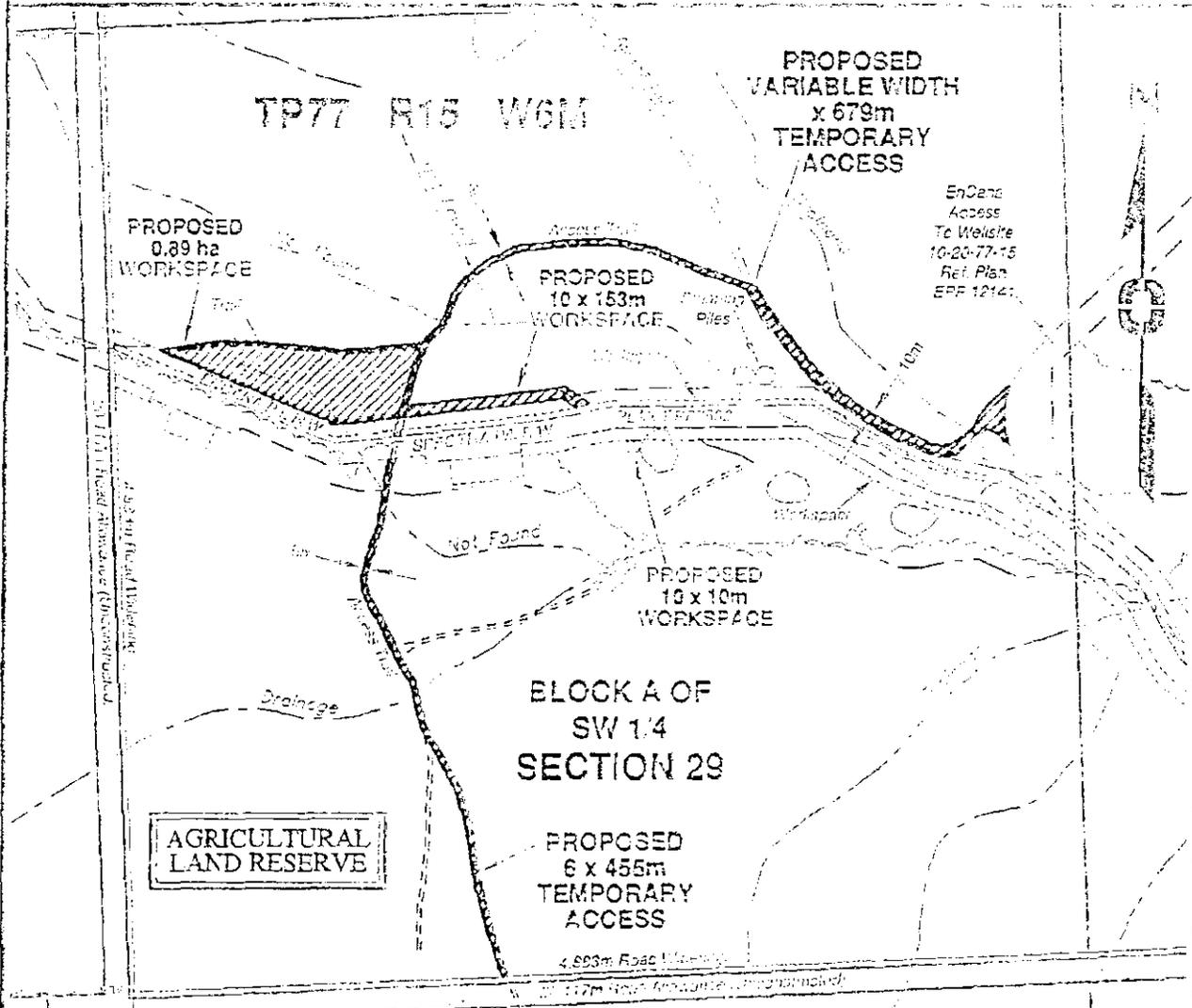


Rob Fraser, Vice Chair

APPROVAL - 10/20/11/451

INDIVIDUAL OWNERSHIP PLAN SHOWING
 PROPOSED TEMPORARY WORKSPACES AND TEMPORARY ACCESSSES
 WITHIN BLOCK A OF THE SOUTH WEST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
 PEACE RIVER DISTRICT

Page ___ of ___



Owner(s): Loiseile Investments Ltd Title No: 5A5-8747
 Inc. No. 705654 Parcel Identifier: 014-288-176
 Company File: _____

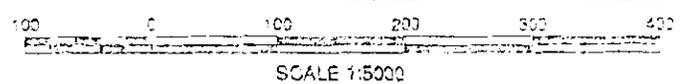
Area(s):

Temporary Access Road	0.83 ha	2.05 ac
Temporary Working Space	1.05 ha	2.59 ac
Total	1.88 ha	4.64 ac

Certified correct this 7th day of December, 2011

David E. Gosling, P.O.S.

Area referred to shown thus: Permanent SRW Temporary WS & Access



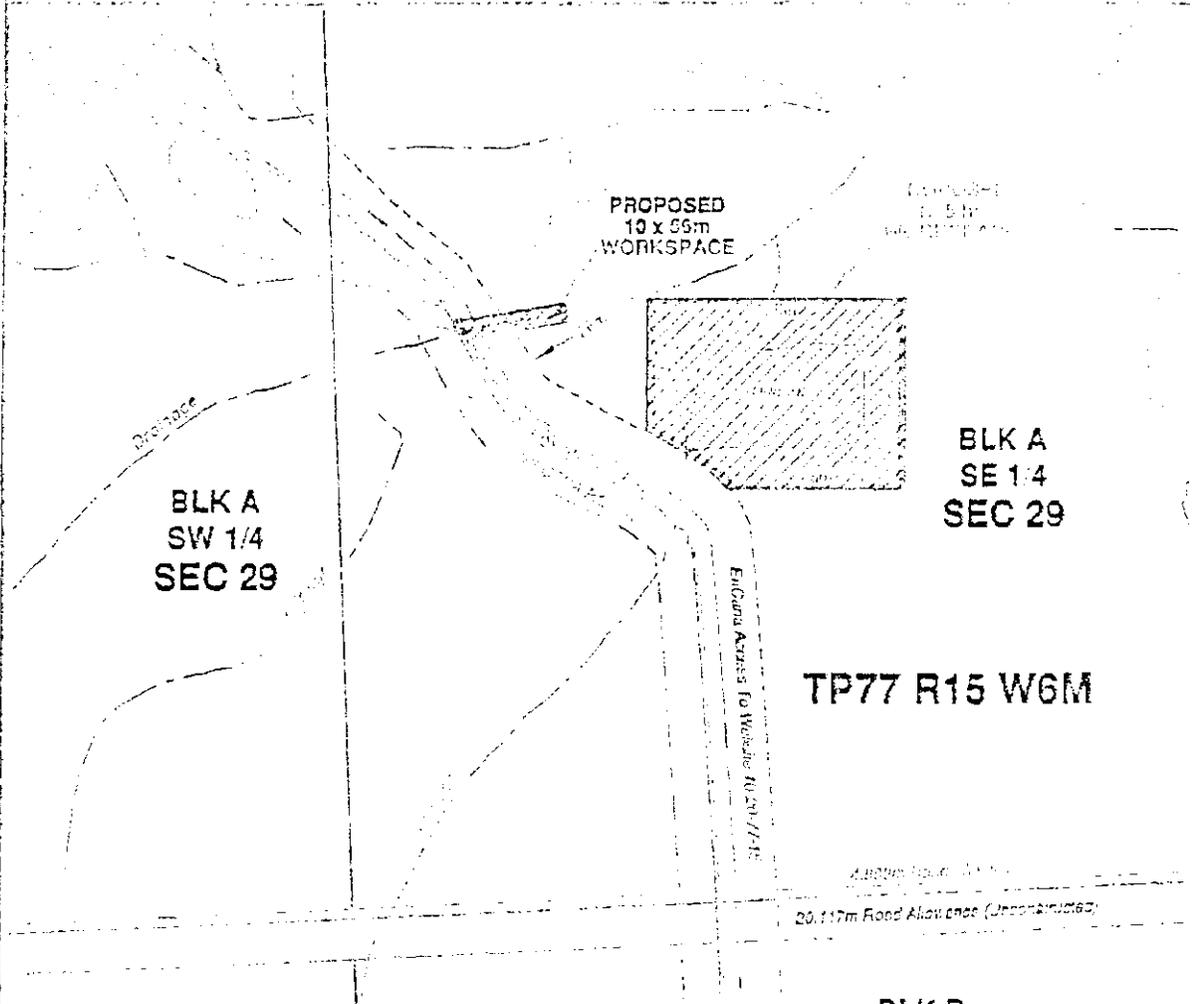
Focus Job No: 100244NP682
 Date: 2011/12/07
 Drafted: ER Revision: 2

FOCUS

10716 - 100th Avenue, Fort St. John, BC
 V1J 1Z3 250.787.0300 www.focus.ca

Page ___ of ___

**INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED TEMPORARY WORKSPACE
WITHIN BLOCK A OF THE SOUTH EAST 1/4 OF SECTION 29 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT**



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

Title No: 107110 48
 Parcel Identifier: 015-869-657
 Company File:

Area(s):
 Temporary Working Space 1.21 ha 2.99 ac

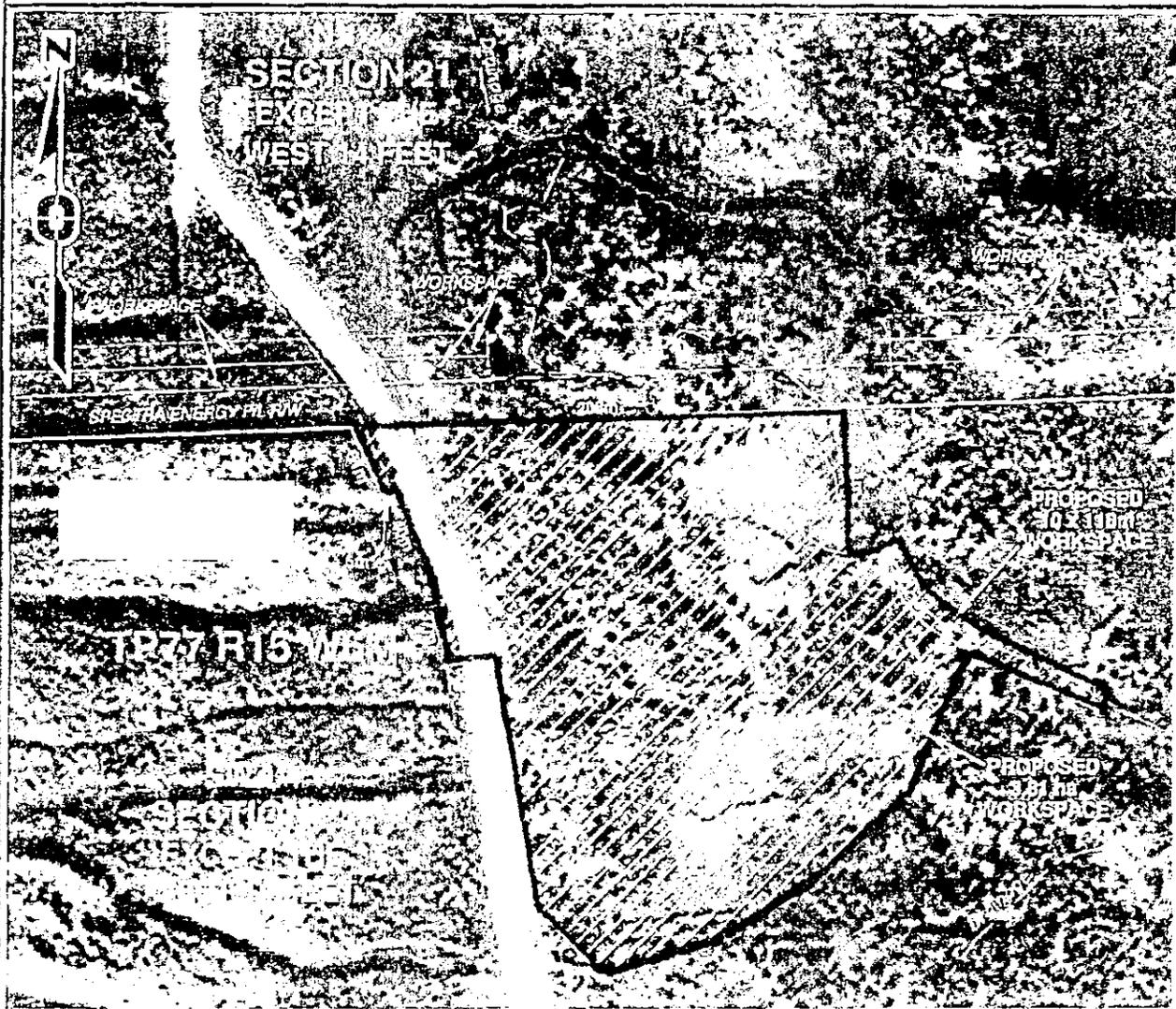
Certified correct per 101 (encl) of November, 2011

Area referred to shown thus:
 Permanent SRW Temporary WS
 00 0 60 120 180 240
 SCALE 1 : 3000

Prepared by: FOCUS
 Date: 10/20/2011
 Drawn by: FOCUS
 Checked by: FOCUS

FOCUS
 ENGINEERING & SURVEYING
 10715 - 100th Avenue, Fort St. John, BC
 V1R 4Z6 250.767.0300 www.focus.ca

PROPOSED TEMPORARY WORKSPACE WITHIN SOUTH WEST 1/4 OF SECTION 21
TOWNSHIP 77 RANGE 15 W6M. EXCEPT THE WEST 14 FEET
PEACE RIVER DISTRICT



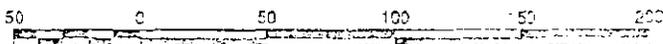
Client: Loiselle Investments Ltd. File No: E4515739
 Inc. No. 705654 File No. 014 390 744

Certified correct this 7th day of December, 2011

Temporary Working Space 3.95 ha 9.71 ac

David E. Gault, BCLS

Permanent SRW Temporary IWS

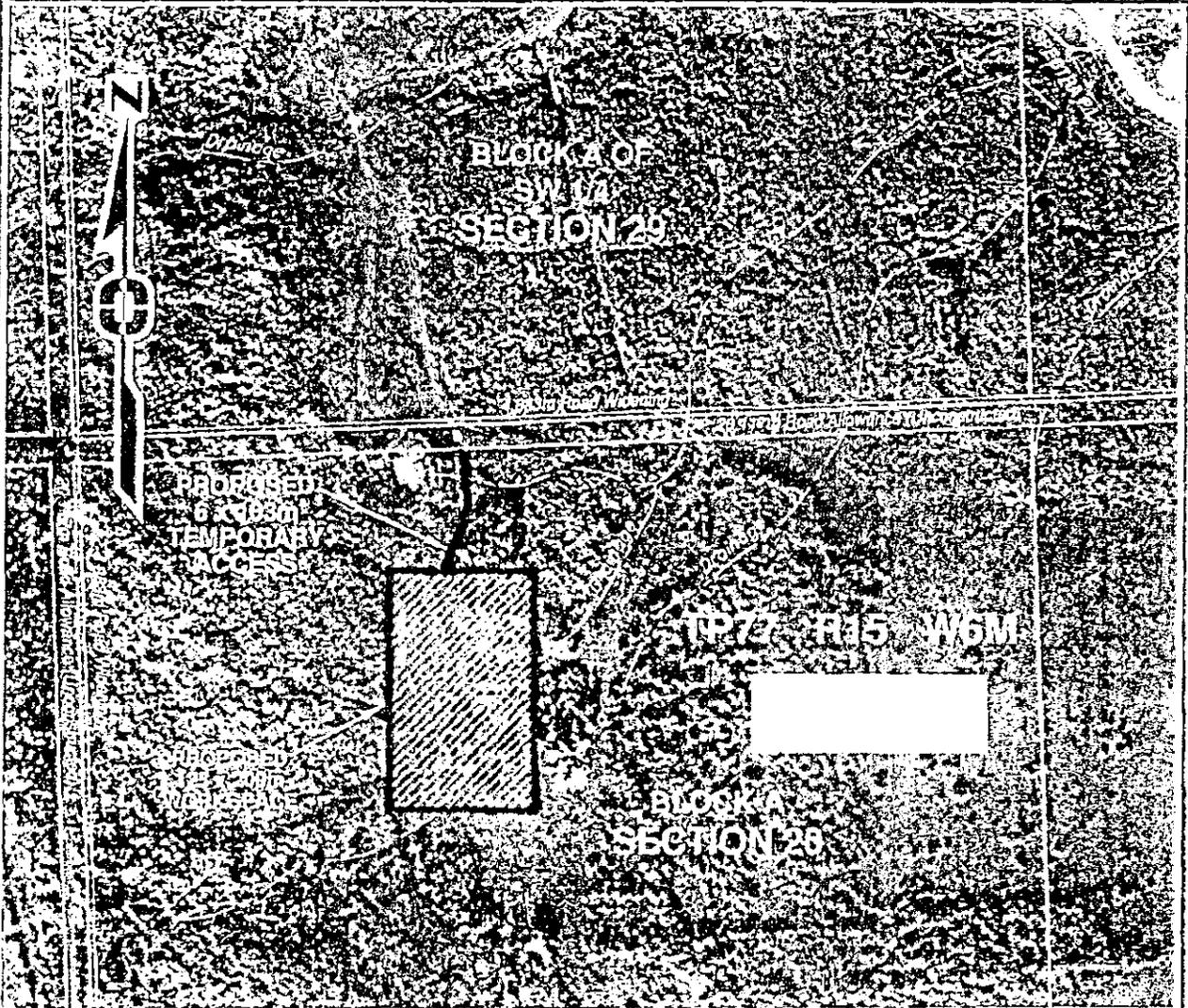


SCALE 1 : 2500

110254RP80R1
 20111207
 TR
FOCUS
 REALTY INC.

Page ___ of ___

PROPOSED TEMPORARY WORKSPACE AND TEMPORARY ACCESS
WITHIN BLOCK A OF SECTION 20 TOWNSHIP 77 RANGE 15 W6M
PEACE RIVER DISTRICT



Applicant: Loiselle Investments Ltd.
Inc. No. 705654

File No: B4518735
Phone: 014-890-671

Certified correct this 30th Day of November, 2011

Temporary Access Road	0.06 ha	0.15 ac
Temporary Working Space	2.50 ha	6.18 ac
Total	2.56 ha	6.33 ac

Noted E. Giesing, E.S.S.

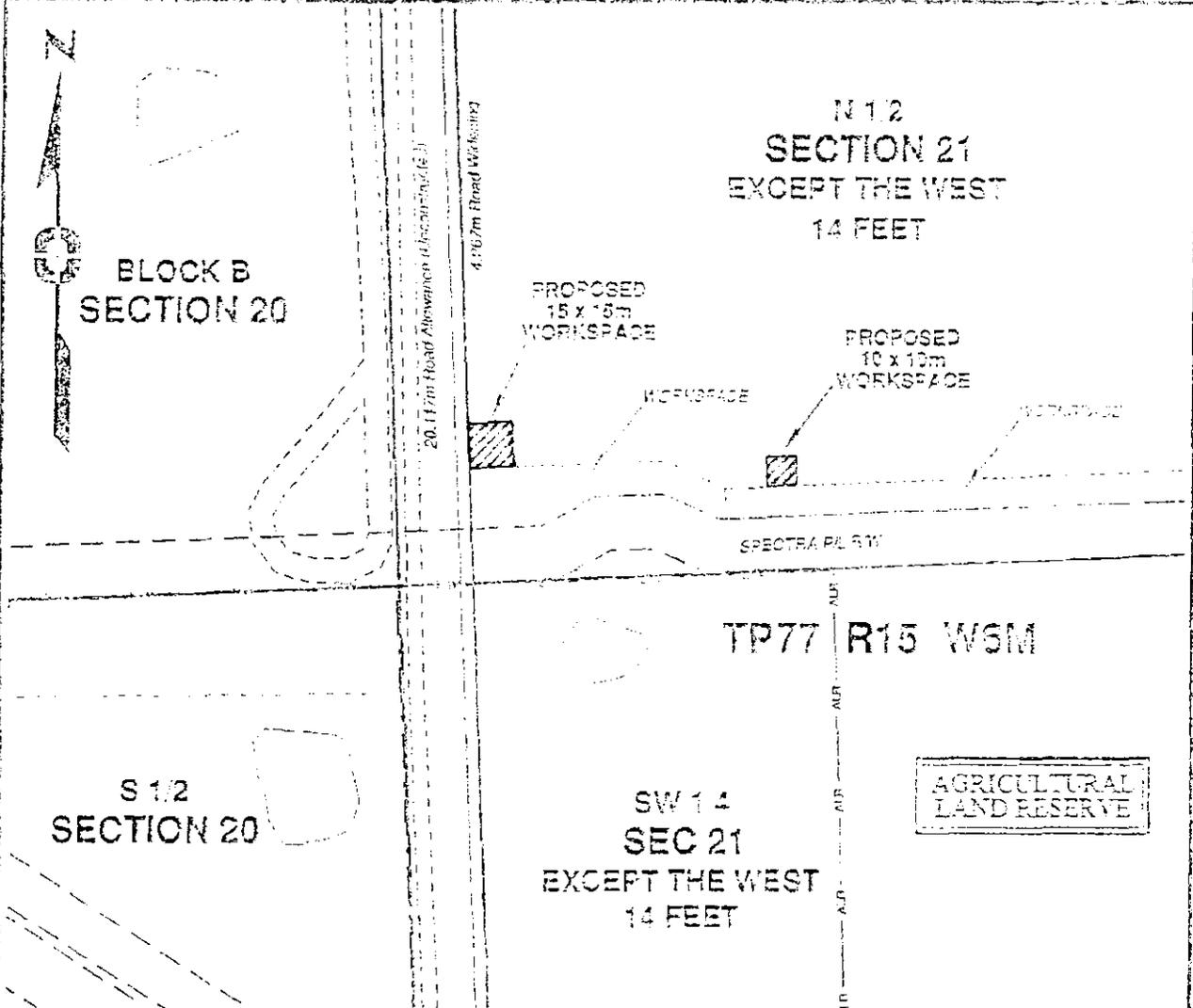
Permanent SRW	Temporary WS & Access
100	0
100	200
200	300
300	400

100294NP62R0
2911/11/30
FOCUS

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED WORKSPACES

Page ___ of ___

WITHIN THE NORTH 1/2 OF SECTION 21 TOWNSHIP 77 RANGE 15 W6M,
PEACE RIVER DISTRICT, EXCEPT THE WEST 14 FEET



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

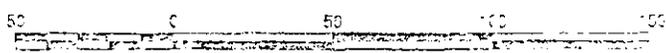
Title No: 54518738
Parcel Identifier: 814-390-710
Company File: _____

Area(s):
Temporary Working Space 0.03 ha 0.07 ac

Certified correct this 7th day of December, 2011

David B. Working 1025

Area referred to shown thus: Permanent SRW Temporary WS



SCALE 1 : 2000

Focus Job No: 002541P50R0
Date: 2011/12/07
Drafter: EF Revision: 0

FOCUS
Focus Surveys
F01 Land Services Limited/Proprietary
Fert St. John
107-6-102th Ave
BC, V1J 1Z3
Ph: (250)787-0300
Fax: (250)787-1611
www.focus.ca

APPENDIX "B"

CONDITIONS FOR RIGHT OF ENTRY

1. Spectra shall make all reasonable efforts to contain its operations to the areas indicated on the individual ownership plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowner.
2. Spectra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Spectra's operations.
3. Spectra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Spectra's operations on the Lands, other than that arising from the willful damage or negligence of the landowner.