

**THE SURFACE RIGHTS BOARD OF MANITOBA
BOARD ORDER
Under *The Surface Rights Act*, C.C.S.M. c. S235**

Hearing:
No hearing held.

**Order No: 01-2016
File No: 01-2016**

Date issued: July 6, 2016

BEFORE: Clare Moster, Presiding Member
Gordon Lillie, Deputy Presiding Member
Russell Newton, Board Member
Goldwyn Jones, Board Member

Barbara Miskimmin, Board Administrator

BETWEEN:
Landowner

Gertrude Racy Lee

- AND -

Operator

Penn West Petroleum Ltd.

Occupant

Don Douglas Lee

CONCERNING:

Lsds 2, 7, 10 and 15 in Section 32-1-25 WPM in the Province of Manitoba (hereinafter referred to as the "well sites").

PURPOSE OF ORDER

To terminate Board Order Nos. 02-2012, 03-2012 and 04-2012 (hereinafter referred to as the "subject Orders").

TERMINATION OF BOARD ORDERS

BACKGROUND:

Board Order No. 5/86 had granted right of entry for a well site and associated access road on Lsd 15-32-1-25WPM. The "Sketch Plan" to the Order showed a 100m by 100m well site in the approximate center of Lsd 15 connected by an access road 15m in width from a well site in the approximate center of Lsd 16.

Board Order No. 6/86 established the compensation that the operator was ordered to pay for the right of entry granted by Board Order No. 5/86. The compensation awarded was \$4,463.88 for the initial year beginning March 18, 1986 and \$2,217.58 per year for each year thereafter.

Subsequent to the above Orders, the parties informed the Board of agreed upon amounts for compensation, and consented to the Board issuing an amending order to Order No. 6/86 to reflect the agreed upon amounts. On December 4, 1987, Board Order No. 67/87 was issued, amending Board Order 6/86 and setting initial compensation at \$5,500 and annual rental at \$2,000.

By 2012, Penn West Petroleum Ltd. ("Penn West") had become the operator of wells on the E1/2 of Section 32-1-25WPM. As well, the ownership of the land (surface) had changed to Gertrude Racy Lee, with Don Douglas Lee, her son, as occupant.

Penn West made application to the Board for orders granting surface rights and compensation for three (3) well sites and associated access roads, flow lines, power line right-of ways, and temporary work spaces on the subject well sites. One well site included portions of both Lsd 2 and Lsd 7. Penn West planned to drill thirteen (13) horizontal wells on the subject well sites.

The subject Orders were issued by the Board to Penn West on December 5, 2012 following a Hearing held in Waskada on October 11, 2012.

Order No. 02-2012 granted right of entry for an enlargement of the existing well site on Lsd 15 to allow for the drilling of three (3) new horizontal wells. As the enlarged well site was to include the existing 15-32 vertical well site, Order No. 02-2012 included the well site covered by Order No. 5/86 and repealed and replaced Order No. 5/86.

The issue of compensation was deferred to be either negotiated between the parties to the Orders, or determined by the Board at a later date. As "interim" compensation, the Board ordered payment in the amount of \$2,000.00 for each of the subject Orders.

Following issuance of the subject Orders, Penn West applied for and was issued 11 well licences for the drilling of 11 planned horizontal wells. Other than making use of the temporary workspaces, Penn West did not proceed with the construction of the three (3) planned well sites, access roads, flow lines and power line right of ways.

Following issuance of Order 02-2012, Penn West transferred its interest in Order 02-2012 to Tundra Oil and Gas Partnership.

Counsel for Tundra Oil and Gas Partnership notified the Board that, other than requiring right of entry for the well site on Lsd 15-31-1-325WPM, the subject Orders are no longer required and the parties have agreed to the termination of the subject Orders.

The Board understands that caveats or similar encumbrances filed against title to the land pertaining to the subject Orders have been removed.

ISSUE:

1. Should the Board terminate the subject Orders?
2. Should the Board issue a new order to cover the well site and access road for the existing 15-32 (vertical) well?
3. Should any further compensation or costs be awarded by the Board?

DECISION:

As the parties have agreed that the subject Orders be terminated:

It is the Order of This Board That:

1. The subject Orders, namely:
Board Order No. 02-2012,
Board Order No. 03-2012, and
Board Order No. 04-2012
are terminated effective the date of this Order.

Should there be any caveats or similar encumbrances pertaining to the subject Orders still filed against title to the land, the Operator shall take action to have them removed within 60 days of the issuance of this order.

2. A new order, Order No. 02-2016, be issued to the current operator, Tundra Oil and Gas Partnership, to cover the existing 15-32-1-25WPM well site and associated access road, containing:
 - a) terms and conditions regarding right of entry similar in nature to those in Schedule "A" to Board Order No. 02-2012, and
 - b) provision for the compensation to be paid for the right of entry granted.

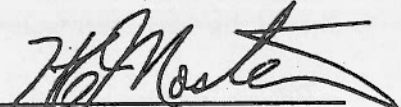
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3. No further compensation or costs are payable related to the issuance of this Order.

REASONS FOR DECISION

1. Should the Board terminate the subject Orders?
 - The operations planned in 2012 to be done by Penn West under the subject Orders has not occurred.
 - Tundra Oil and Gas Partnership, the current operator on the E ½ 32-1-25WPM, did not acquire the subject Orders from the Operator.

- Neither Penn West nor Tundra Oil and Gas Partnership has plans on proceeding with the operations covered by the subject Orders.
 - The parties to the subject Orders have agreed that the subject Orders should be terminated.
 - Allowing the subject Orders to continue unnecessarily complicates the ownership records of the parties, as well as the Board's records pertaining to active Board orders.
 - Other than for the need to continue to provide right of entry for the existing well on Lsd 15-32-1-25WPM, the Board sees no reason to continue the subject Orders, therefore the subject Orders should be terminated.
 - The termination order should contain a provision requiring the Operator to remove any remaining caveat or other encumbrance filed against title to the land pertaining to the subject Orders within a reasonable time period.
2. Should the Board issue a new order to cover the well site and access road for the existing 15-32 (vertical) well?
- As the 15-32 well site and access road are still in existence and are required to enable the operation and/or abandonment of the existing 15-32 well, there is an ongoing need to have a Board order authorizing the required surface rights pertaining to that well.
 - Right of entry authorization was initially provided by Board Order No. 5/86.
 - Board Order No. 5/86 was terminated and replaced as part of Board Order No. 02-2012.
 - This Order terminates Board Order No. 02-2012.
 - Therefore a new right of entry order is required to cover the 15-32 well site and access road, similar to the right of entry previously provided by Board Order Nos. 5/86 and 02-2012.
 - To provide for continuity, the new order should be made effective the same date that this termination Order becomes effective.
3. Should any further compensation or costs be awarded by the Board?
- As the 15-32 well has not been abandoned, the Board assumes that Tundra Oil and Gas Partnership is paying the Owner annual rent satisfactory to both parties. Therefore the Board should not order any different amount for annual rent. The new right of entry order for this well site will include the normal provision for review of annual rental every three (3) years as part of the terms and conditions of the order.
 - This termination Order did not require a hearing, so there are no costs payable related to the issuance of this Order.

Decision delivered July 6, 2016.


H. Clare Moster
Presiding Member