

THE SURFACE RIGHTS BOARD OF MANITOBA

WINNIPEG, MANITOBA

Order No. 2/2011
File No. 05/2011

IN THE MATTER OF: *THE SURFACE RIGHTS ACT C.C.S.M. c.S235*

AND IN THE MATTER OF: L.S.D. 1A-30-9-29 W.P.M. in Manitoba

BETWEEN:

T. Bird Oil Ltd.,

Applicant (Operator)

- and -

Carlyle Glenn Jorgensen,

Respondent (Owner)

RIGHT OF ENTRY AND COMPENSATION ORDER

Manitoba

The Surface Rights Board

)
) Order No. 2/2011
) File No. 05/2011
) October 25, 2011

BEFORE:

T.A. (Art) Cowan, Presiding Member
Margaret Hodgson, Member
Claude Tolton, Member
Ivan Carey, Member
Barb Miskimmin, Administrator

IN THE MATTER OF:

THE SURFACE RIGHTS ACT C.C.S.M. c.S235

- AND -

IN THE MATTER OF:

L.S.D. 1A-30-9-29 W.P.M. in Manitoba

BETWEEN:

T. Bird Oil Ltd.,

Applicant (Operator)

- and -

Carlyle Glenn Jorgensen

Respondent (Owner)

RIGHT OF ENTRY AND COMPENSATION ORDER

Whereas the Operator and the Owner are unable to agree to terms of a lease for surface rights;

And Whereas the Operator applied for an Order granting Right of Entry pursuant to Section 21 of *The Surface Rights Act* with respect to one proposed well site on L.S.D. 1A in Section 30, Township 9, Range 29 W.P.M. in Manitoba;

Now Therefore the Board orders that:

1. The application for Right of Entry is granted subject to the terms and conditions set out in Schedule "A" which is affixed to this Order and forms part of this Order.
2. Compensation shall be \$8000.00 payable to Carlyle Glenn Jorgensen, to be paid prior to the Operator exercising the Right of Entry, or within 60 days of this Order, whichever occurs first, and annual compensation of \$3000.00 payable to Carlyle Glenn Jorgensen, payable on or before the anniversary date of this Board Order and thereafter.

Dated: October 25, 2011.


Presiding Member

Order No. 2/2011

Schedule "A" terms and conditions attached to and forming part of Order No. 2/2011, File No. 05/2011.

1. Quiet Enjoyment

That the Owner has good title to the Lands as hereinbefore set forth, has good right and full power to grant and lease the land, rights and privileges in the manner herein set forth, and that the Operator, upon observing and performing the covenants and conditions on the Operator's part herein contained, shall and may peaceably possess and enjoy the Demised Premises and the rights and privileges hereby granted during the term of the Board Order without any interruption or disturbance from or by the Owner or any person whomsoever.

2. Demised Premises

The Owner for the purposes and at the rent, including compensation for capital damage, hereinafter set forth does hereby lease unto the Operator all and singular those parts of the said lands shown upon a sketch or plan hereto annexed and marked Exhibit "A", hereinafter called "the Demised Premises", to be held by the Operator as tenant for the term of twenty-one (21) years from the date hereof for the purpose of a well site for the drilling of a well for petroleum and/or natural gas and the operation thereof and the taking of production therefrom with the right, liberty and privilege in, upon, under or across the Demised Premises to lay down, construct, maintain, inspect, remove, replace, reconstruct, and repair pipes, pipe lines, and all structures and equipment necessary or incidental thereto for use in connection with the operations of the Operator for which this Board Order is granted, and also for the purpose of a roadway, at the clear rent to be determined and payable in accordance with the laws and regulations of Manitoba.

3. Renewal

That if the Operator is not in default of any of the covenants and conditions contained in this Board Order at the date of the expiration of the term of twenty one (21) years hereinbefore mentioned, then the Operator may, by giving written notice thereof to the owner on or before the said date, renew this Board Order for a further term of twenty one (21) years from the said date subject to the same terms, covenants and conditions as herein contained including this covenant for renewal.

4. Taxes Paid by Owner

To promptly pay and satisfy all taxes, rates and assessments that may be assessed or levied against the said lands during the continuance of this Board Order.

5. Taxes Payable by Operator

To pay all taxes, rates, and assessments that may be assigned or levied in respect to any and all machinery, equipment, structures, and works, placed by the Operator in, on, over or under the Demised Premises.

6. Abandonment and Restoration

Upon the abandonment of the well on the Demised Premises, to cause the same to be plugged and all excavation in connection therewith to be filled in, all in compliance with the regulations of the Government of the Province of Manitoba in that regard, and upon the discontinuance of the use of any portion or portions of the Demised Premises, to restore such portion or portions to the same conditions, so far as it may be reasonably and practicable so to do, as that existing immediately prior to the entry thereon and the use thereof by the Operator.

7. Compensation for Damage

To pay compensation for damage done by it to growing crops, fences, timber or buildings of the Owner upon the Demised Premises.

8. Cancellation in Event of Default

That if the Operator defaults in the payment of any sum payable by way of rent or in the performance of any covenant, promise or undertaking herein contained on the part of the Operator, this agreement shall be terminated at the expiration of forty five (45) days after written notice to that effect is given to the Operator by registered mail, unless the Operator shall have, in the meantime, remedied such default or breach of covenant, promise or undertaking, but without prejudice to any other right or remedy to which the Owner is otherwise entitled under this Board Order.

9. Digging of Pits for Mud and Sludge and Destruction of Weeds

To dig a pit or pits or have adequate metal reservoirs and deposit therein the mud and sludge resulting from the drilling operations and will not permit the same to escape into the Owner's land adjoining the Demised Premises and the Operator will take all necessary precautions to keep down and destroy all noxious weeds on the Demised Premises using only commonly accepted agricultural herbicides in effecting weed control.

10. Shallow Ditches or Approaches to Permit Owner to Cross Roadway with Farm Machinery

To so construct any roadway on the Demised Premises as to have a low crown and gently sloping shallow ditches if requested by the Owner or an adequate number of approaches where required so that the Owner can cross the roadway with farm machinery in moving from one field in the said lands to another field which lies across the roadway.

11. Fencing of Well Site, Roadway and Excavations

During the continuance of this Board Order, to erect and put upon the boundaries of any well site and roadway on the Demised Premises, a good substantial fence if so required by the Owner and that the Operator will, if required so by the Owner, enclose and keep enclosed all openings and excavations made in connection with or for the purpose of drilling operations aforesaid with fences sufficient to prevent livestock falling thereinto.

12. Replacement and Repair of Fences, Guards and Gates

In the use of the rights and privileges hereby granted, the Operator shall replace all fences that he has removed for his purposes and repair all fences he has damaged and, if so required by the Owner, provide property livestock guards or gates at any point of entrance on the Demised Premises used by him and, if gates are installed, shall cause the same to be closed under his use thereof.

13. Indemnity Against Claims and Actions

That the Operator will indemnify and save harmless the Owner of, from and against all actions, suits, claims and demands by any person whomsoever in respect of any loss, injury, damage or obligation arising out of or connected with the operations carried on by the Operator, its servants or agents, in, under or upon the Demised Premises.

14. Retention and Redistribution of Topsoil

That prior to the commencement of drilling operations, the Operator shall strip the topsoil from the area around the immediate wellbore and the mud pits and retain the topsoil for redistribution over the effected areas upon restoration of the Demised Premises.

15. Surrender and Removal of Equipment

The Operator may at any time, upon thirty (30) days notice to that effect to the Owner, cease the use and occupation of the Demised Premises and in the event of the Operator so doing, the Board Order shall terminate at the next succeeding anniversary date thereof and the Operator may within the balance of the rental year, remove or cause to be removed from the Demised Premises all structures, materials and equipment whatsoever nature or kind, which the Operator may have placed on or in the Demised Premises.

16. Review of Rental Every Three Years Upon Request of Either Party

Notwithstanding anything contained in this Board Order, upon the request of either party to this Board Order, the amount payable in respect of the Demised Premises shall be subject to review within three (3) months before or within three (3) months after the expiration of each three (3) year interval following the date of this Board Order. Such request shall be in writing and given to the other party within the three (3) month periods aforementioned. In case of any disagreement as to the amount of rental to be payable or any matter in connection therewith, the relevant provisions of *The Surface Rights Act*, as amended from time to time, shall apply.

17. Discharge of Encumbrances by Operator and Reimbursement

The Operator shall have the option to pay or discharge any balance owing under any agreement of sale, any tax, charge, lien or encumbrance of any kind or nature whatsoever that may now or hereafter exist on or against or in any way affect the Demised Premises and in that event the Operator shall be subrogated to the rights of the holder or holders of such encumbrances and shall have, in addition thereto, the option to be reimbursed by applying to the amount so paid the rent or other sums accruing to the Owner under the terms of this Board Order.

18. Manner of Payment

All rentals and other sums payable by the Operator to the Owner hereunder may be paid or tendered at par by cheque or draft of the Operator mailed or delivered to the Owner.

19. Assignment by the Operator

Notwithstanding anything herein to the contrary, the Operator may delegate, assign or convey to other persons or corporations, all or any of the powers, rights and interests obtained by or conferred upon the Operator hereunder to be enjoyed by such person or corporation either singularly or jointly with the Operator, and may enter into all agreements, contract and writings and do all necessary acts and things to give effect to the provisions of this clause, provided that such persons corporations must use the Demised Premises for operations similar to the Operator's operations.

20. Notices

Any notice requires to be given hereunder shall be deemed to have been given seven (7) clear days after such notice is mailed by prepaid registered post properly addressed to a party and for the purpose of this clause, the addresses of the parties shall be:

Owner: Carlyle Glenn Jorgensen
Box 4
Cromer MB R0M 0J0

Operator: T. Bird Oil Ltd.
200, 1329-3rd Street
Estevan SK S4A 0S1

Either party may change his or its address by written notice to the other party.

21. Time of the Essence

Time shall be in every respect of the essence of this Board Order.

22. Manitoba Law to Apply

This Board Order shall for all purposes be constructed according to the laws of Manitoba.

23. Gender

The singular number and masculine gender shall also include the plural number and feminine and neuter gender when the context so requires and all covenants shall be construed as being joint and several.

24. Power

If power is required at the Demised Premises, the service lines will be installed underground.

25. Surveying

If the Demised Premises covered by this Board Order are not entered upon, except for survey purposes within 365 days of the date of this Board Order:

The Operator shall pay to the Owner the sum of \$250.00 for the right to survey and all other inconveniences and the said Board Order shall terminate. However, should the Operator enter the Demised Premises to drill or should the Operator make payment of the full initial consideration in the amount of \$8000.00 as previously set out, within the 365 day period, then the Operator shall have full rights on the Demised Premises pursuant to the terms of the said Board Order.

T. BIRD ET AL DALY SINCLAIR PROV HZNTL 4-30-9-29WPM

WELL SITE
TERMINUS

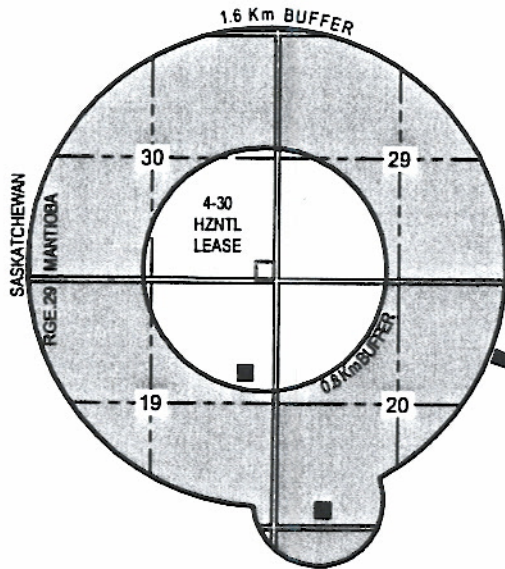
LSD. 4B - SEC. 30 - TWP. 9 - RGE. 29WPM

WELL SITE SURFACE LOCATION

LSD. 1A - SEC. 30 - TWP. 9 - RGE. 29WPM

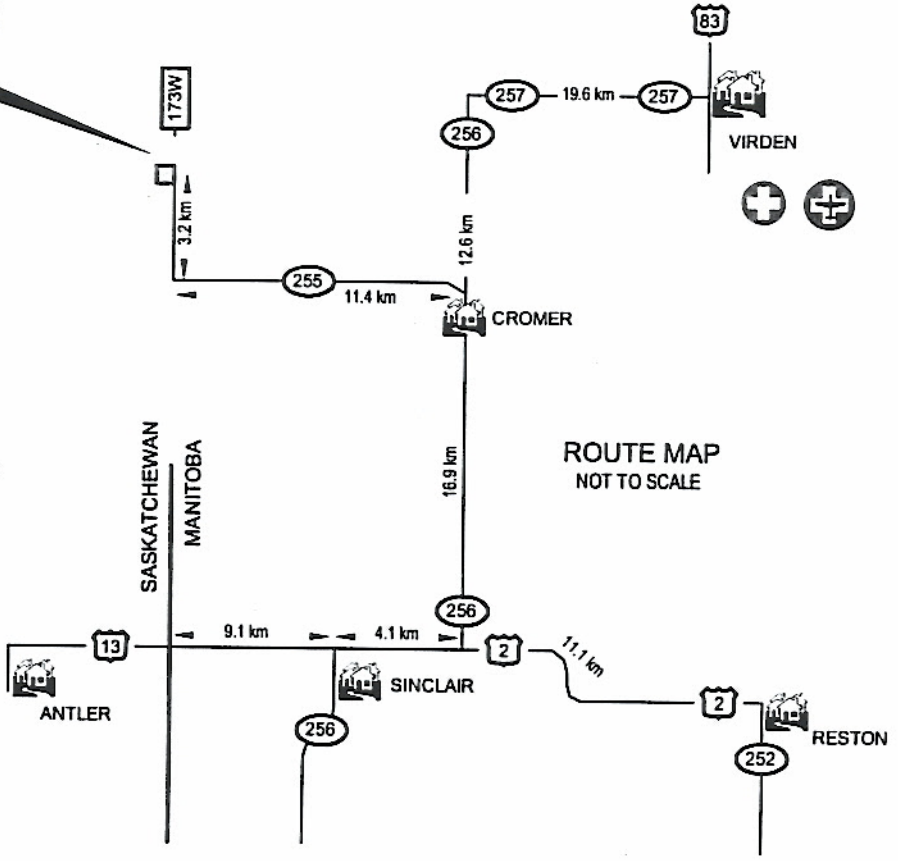
R.M. of PIPESTONE

EXHIBIT "A"



RESIDENCE SKETCH

- RESIDENCE
- ABANDONED RESIDENCE



LEGEND

- ⊕ HOSPITAL
- ⊕ LIFE FLIGHT EMERGENCY SERVICE
- 256 SECONDARY HIGHWAY
- 2 PRIMARY HIGHWAY
- 44N MUNICIPAL ROAD
- TransCanada Highway

LEGEND:

Distances are in metres. SCALE: 1:5000

Portions referred to shown thus:

Legal Survey Posts (found / placed)

Planted Wood Hub

Fence Lines

Oil / Gas Lines

Overhead Power Lines

Buried Power Cables

Buried Telecom Cables

Bush

Low Area / Slough

Water Covered Area

Surveyed Well Centre

Standing Well

Producer

Abandoned Producer

Abandoned Dry

Injection Well

Injection Well (Former Producer)

Abandoned Water Injection

Abandoned Water Injection (Former Producer)

Salt Water Disposal

○

●

⊕

⊕

⊕

⊕

⊕

⊕

⊕

⊕

Salt Water Disposal (Former Producer)

Abandoned Salt Water Disposal

Abd. Salt Water Disposal (Former Prod.)

Dual Completion

Abandoned Dual Completion

Junked and Abandoned

Surface Location - Horizontal / Directional / Slant

Water Supply Well

Abandoned Water Supply Well

Abandoned Structure Test Hole

⊕

⊕

⊕

⊕

⊕

⊕

⊕

⊕

⊕

⊕

OPERATOR:



WELL LICENCE INFORMATION

THE PROPOSED WELL CENTRE IS:

-At least 1.5 km from the Corporate Limits of a City, Town or Village

- At least 75m from any shoreline

-At least 75m from any Surface Improvements

-At least 45m from any surveyed road

-At least 75m from any aircraft runway or taxiway

-At least 75m from any water well

-Approximately 8.3 km from the nearest urban centre (Kola)

-Approximately 0.7 km from the nearest residence (NE¼ 19-9-29WPM)

YES NO

■ □

■ □

■ □

■ □

■ □

■ □

■ □



FACILITIES SHOWN ON THIS PLAN ARE FOR INFORMATIONAL PURPOSES ONLY. PRIOR TO ANY CONSTRUCTION ON LEASE OR ACCESS ROAD, T. BIRD OIL LTD., MTS COMMUNICATIONS INC., MANITOBA HYDRO, AND MANITOBA HYDRO-GAS OPERATIONS MUST BE CONTACTED FOR LOCATION OF ANY UNDERGROUND FACILITIES THAT MAY EXIST.

There are no surface or underground improvements within 76m of well centre except as shown. OTHER FACILITIES MAY EXIST, OF WHICH WE WERE UNAWARE OF OR UNABLE TO LOCATE.

All distances shown are horizontal and at ground level.

All bearings are NAD 83 (Zone 14) UTM grid bearings. The Combined Scale Factor derived is 0.999884

FIELD BOOK V29
PAGE(S) N/A

Surveyed by: KD
Drafted by: CP
Checked by: PFS

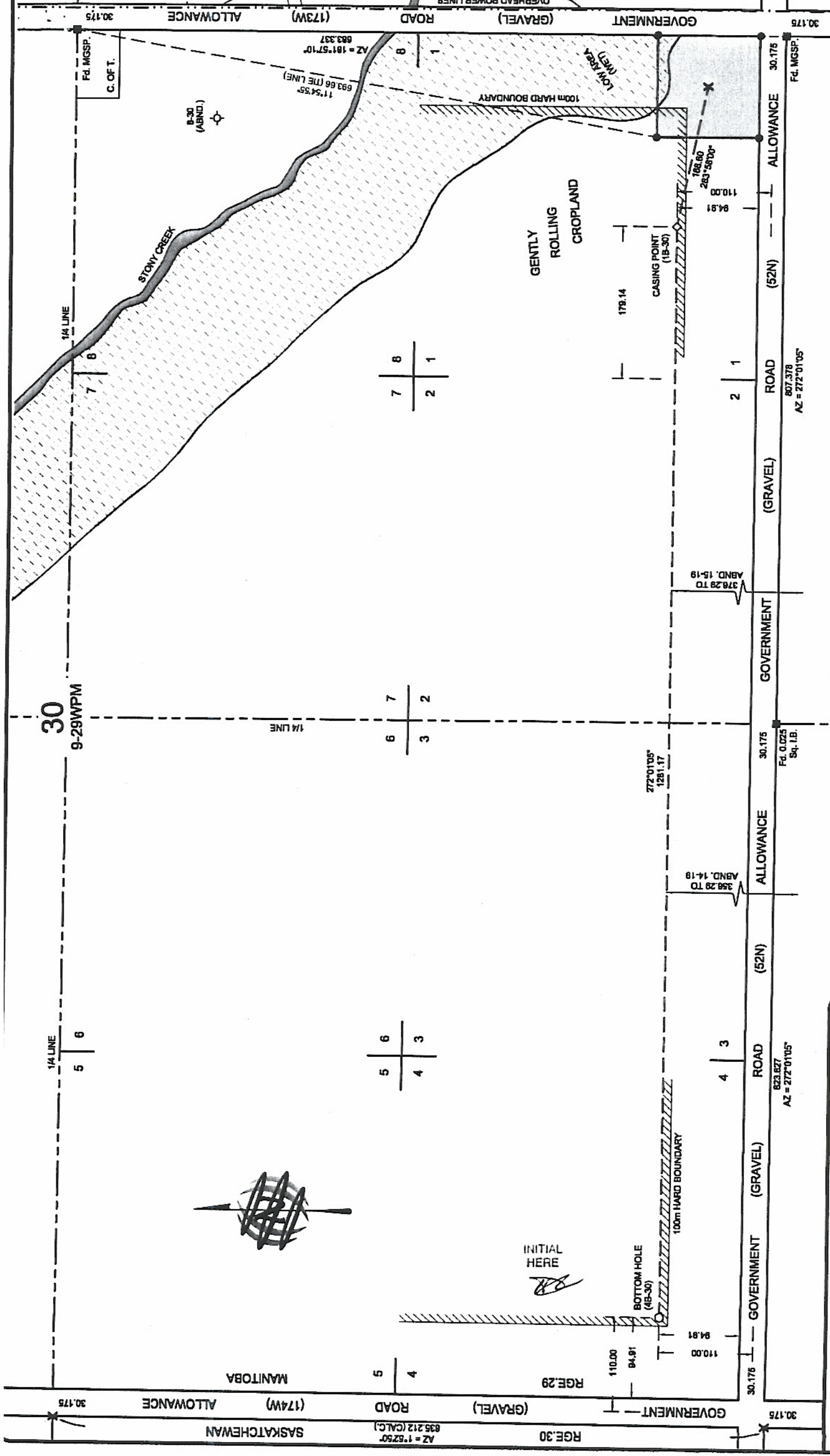
No.	DATE	DESCRIPTION	DWN	CKD
0	MAY.17, 2011	ISSUED	CP	PFS

REVISIONS

Altus Geomatics
Manitoba

Toll Free: 1-800-465-6233
www.altusgeomaticsmb.com

Client File: N/A
NTS SHEET: 62 F/14
ALTUS GEOMATICS File: 139803



**SURFACE
(1A-30)**

LOCAL CO-ORDINATES

60.00 N of S } Sec.30
60.00 W of E }

UTM CO-ORDINATES (NAD 83)

5515743.415 N } CSRS
327466.446 E }

UTM CO-ORDINATES (NAD 27)

5515523.477 N } CSRS
327494.980 E }

LATITUDE / LONGITUDE(LL83)

49°48'09.722" } CSRS
101°23'45.974" }

LATITUDE / LONGITUDE(LL27)

49°48'09.722" } CSRS
101°23'44.267" }

**CASING POINT
(1B-30)**

LOCAL CO-ORDINATES

94.91 N of S } Sec.30
224.91 W of E }

UTM CO-ORDINATES (NAD 83)

5515784.099 N } CSRS
327302.850 E }

UTM CO-ORDINATES (NAD 27)

5515564.160 N } CSRS
327331.365 E }

LATITUDE / LONGITUDE(LL83)

49°48'10.889" } CSRS
101°23'54.211" }

LATITUDE / LONGITUDE(LL27)

49°48'10.870" } CSRS
101°23'52.503" }

**BOTTOM HOLE
(4B-30)**

LOCAL CO-ORDINATES

94.91 N of S } Sec.30
94.91 E of W }

UTM CO-ORDINATES (NAD 83)

5515829.204 N } CSRS
326022.619 E }

UTM CO-ORDINATES (NAD 27)

5515609.255 N } CSRS
326051.139 E }

LATITUDE / LONGITUDE(LL83)

49°48'10.999" } CSRS
101°24'58.230" }

LATITUDE / LONGITUDE(LL27)

49°48'10.999" } CSRS
101°24'58.520" }

CARTESIAN CO-ORDINATES (NAD83)

Note:

All distances are cartesian referenced to the UTM GRID, NAD 83, ZONE 14

Casing Point is		
40.89 North		of surface location
183.61 West		
Bottom Hole is		
85.80 North		of surface location
1443.99 West		
ABND. 15-19 Surface is		
320.28 South		of surface location
805.76 West		
ABND. 14-19 Surface is		
288.77 South		of surface location
987.98 West		

CARTESIAN CO-ORDINATES (TRUE NORTH)

Note:

All distances are cartesian referenced to True North (Grid Convergence = -1.8293°)

Casing Point is		
35.45 North		of surface location
164.83 West		
Bottom Hole is		
39.68 North		of surface location
1446.00 West		
ABND. 15-19 Surface is		
339.43 South		of surface location
594.23 West		
ABND. 14-19 Surface is		
318.16 South		of surface location
978.30 West		

WELL CENTRE ELEVATION: 536.11

Elevations shown are in Geodetic Datum from the Province of Manitoba Mon. #82R753

SE¼ Sec.30 Twp.9 Rge.29WPM

Owner(s): CARLYLE GLENN JORGENSEN

C.T. No. 1425157

AREAS:

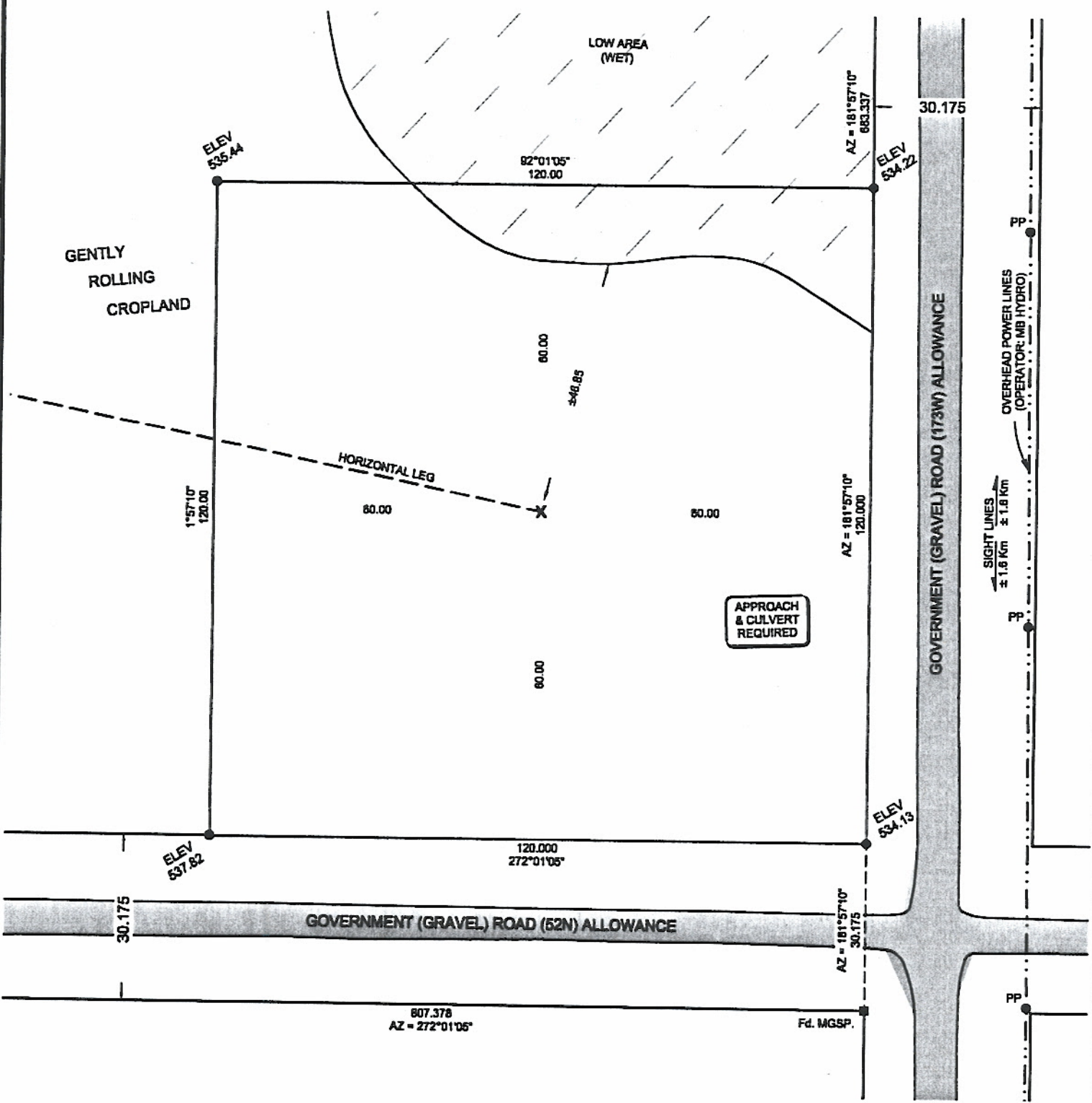
WELL SITE 1.440 ha 3.56 ac

I certify that the survey represented by this plan is correct to the best of my knowledge and was completed on the 12th day of May, 2011.

MANITOBA SOCIETY OF PROFESSIONAL SURVEYORS
 KEN W. BELY
 MANITOBA LAND SURVEYOR
 MEMBER
 T. BIRD
 Witness

INITIAL
HERE

TJB



DETAIL AT HZNTL 4-30 (1-30 SURFACE)
SCALE 1:1000

INITIAL
HERE

Handwritten initials



Plan Showing Photo Mosaic of

T. BIRD ET AL DALY SINCLAIR PROV HZNTL 4-30-9-29WPM

from a Surface Location in

L.S. 1 - Sec. 30 - Twp. 9 - Rge. 29WPM

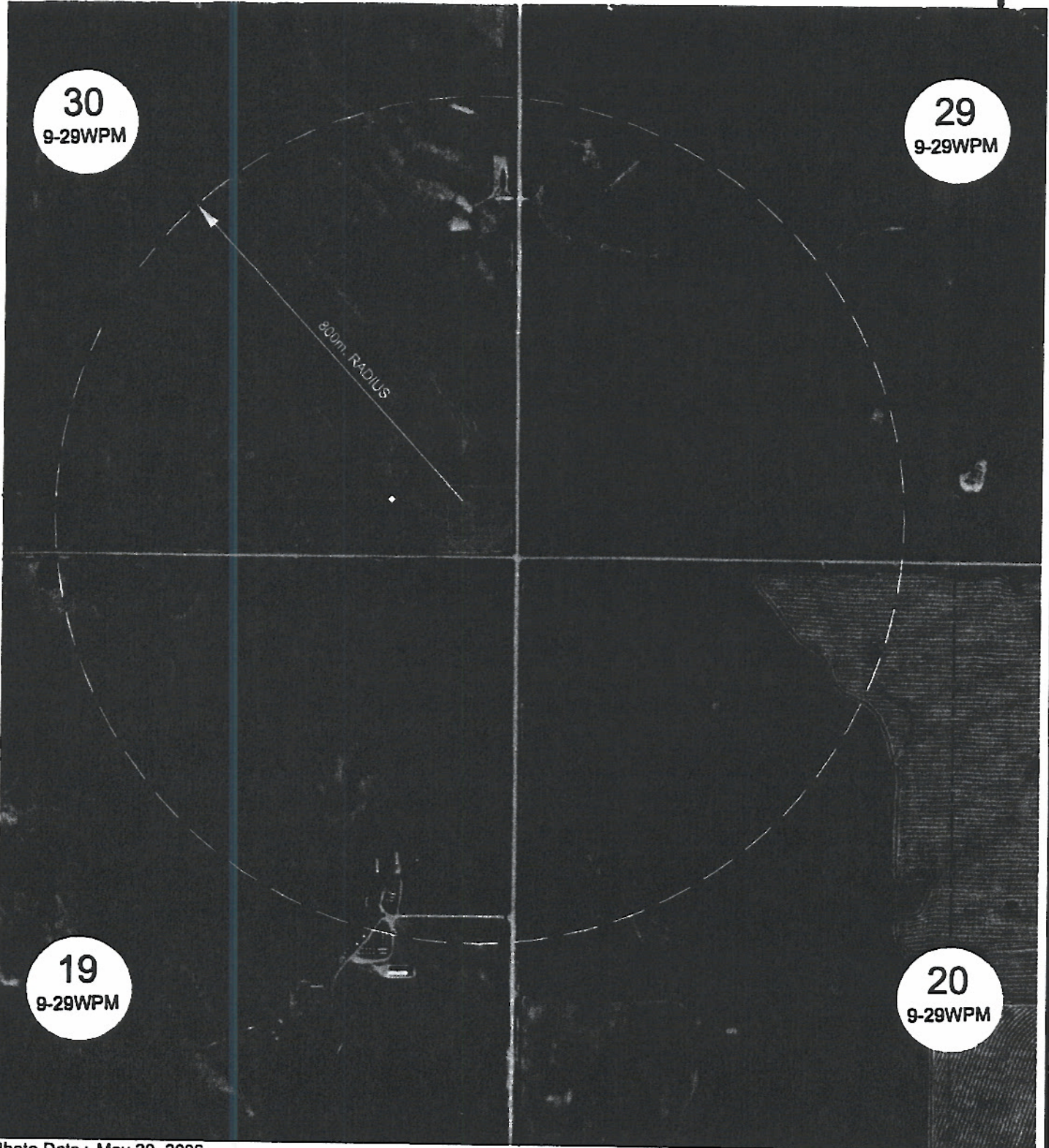



Photo Date : May 20, 2006.
Photo No. : Orthographic Photo

WELL SITE PHOTO PLAN
0 50 100 200 300 400 500
SCALE - 1:10,000


Altus Geomatics
Manitoba
Toll Free: 1-800-465-6233
www.altusgeomaticsmb.com

Client File No:	
REV.	Revision:
0	Date: May 17, 2011
File: 139803W	Job No.: 139803-V
	Initials: KD - CP - PFS

INITIAL
HERE 

THE SURFACE RIGHTS BOARD OF MANITOBA

WINNIPEG, MANITOBA

File No. 05/2011

IN THE MATTER OF: *THE SURFACE RIGHTS ACT C.C.S.M. c. S235*

AND IN THE MATTER OF: LSD 1A-30-9-29 WPM in Manitoba

BETWEEN:

T. Bird Oil Ltd.,

Applicant (Operator)

- and -

Carlyle Glenn Jorgensen,

Respondent (Owner)

**REASONS FOR DECISION FOR SURFACE LEASE
AND ANNUAL COMPENSATION ORDER**

REASONS FOR DECISION

BACKGROUND AND EVIDENCE:

This was an application by T. Bird Oil Ltd. Under section 21 of *The Surface Rights Act* for surface rights with respect to the property located at LSD 1-30-9-29 WPM, for the purposes of drilling and operation of a well site on that property. Carlyle Jorgensen is the owner of the property. The applicant also requested a determination of compensation payable to Carlyle Jorgensen for the surface rights.

Pursuant to subsection 25(2) of *The Surface Rights Act*, the members of the Board inspected the site on October 3, 2011. From this inspection, the Board members determined that the existing surface land use is agriculture and that the land could support a well site.

The Board then proceeded with the scheduled October 3, 2011 hearing.

Warren Waldegger (sworn), Manager, T. Bird Oil Ltd., and Brenda Noble (sworn), Land Supervisor, T. Bird Oil Ltd., provided background information concerning the company's contractual agreement with the mineral lease owners and the negotiating process, together with a draft copy of a surface lease dated July 8, 2011 (see Exhibit #1), to secure surface rights from the landowner. They testified that T. Bird Oil Ltd. was unable to reach an agreement concerning surface rights and compensation with the owner and therefore was bringing the matter to the Board to resolve the dispute.

Evidence filed by T. Bird Oil Ltd. is recorded as Exhibit #1 and contains documents numbered 1 to 43.

The landowner, Carlyle Jorgensen (sworn), was represented by Darryl Carter. Mr. Carter argued that the development proponent is not an operator as defined in *The Surface Rights Act*. Mr. Carter also argued the process of notification used by T. Bird Oil Ltd. suggesting that it was not in compliance with section 21(2) of *The Surface Rights Act*.

Carlyle Jorgensen provided an oral presentation on the negative impacts that oil exploration and development will have on his property. Mr. Jorgensen is opposed to the development because, in his opinion, valuable farmland would be lost and the environmental impacts of the well site would detrimentally affect the use and enjoyment of his property.

No documentary evidence was filed by Darryl Carter or Carlyle Jorgensen.

ISSUES

1. Is T. Bird Oil Ltd. an operator?
2. Was adequate Notice served on the landowner?
3. Location of well site.
4. Surface rights, terms and conditions.
5. Compensation.
6. Costs.

1. Is T. Bird Oil Ltd. an operator?

Under *The Surface Rights Act*, operator is defined as follows:

"operator" means a person who has the right to conduct any operation for the purpose of exploring for a mineral, or for drilling a well for the production of a mineral, and includes any person who has the control and management of a well;

As a note, mineral is defined in *The Surface Rights Act* as meaning oil and gas:

"mineral" means oil and natural gas, or either of them, and any other substance that the Lieutenant Governor in Council may by order declare to be a mineral;

In the present case, the applicant T. Bird Oil Ltd. has provided evidence that it has the right to recover the minerals by way of contractual agreement with the mineral lease owners of LSD 1-30-9-29 WPM. As such, it is an operator.

An operator is entitled to apply for surface rights under section 21 of *The Surface Rights Act*, in the event that there is not agreement as to the surface rights required or the compensation payable to the land owner. Section 21 states:

Application to board for hearing

21(1) An operator, owner or occupant, if any, may

- (a) where there is disagreement as to the surface rights that are required by the operator or as to the compensation to be paid therefore; or
- (b) where there is a dispute between any of them as to
 - (i) the interpretation of a lease or agreement,
 - (ii) the exercise of any right or the performance of any obligation under a lease or agreement or this Act, or
 - (iii) the location of access roads; or
- (c) where a provision of the Act authorizes an application on any other matter; apply to the Board for a determination of the matter and shall serve a notice of the application upon each party that is or may be involved in, or directly affected by, the application and shall forthwith file a copy of the notice with the board.

Surface rights encompass the various rights and obligations that an operator requires in order to explore for oil and gas, set up an operation and extract the oil and gas.

"surface rights" means

- (a) the land or any portion thereof or any interest therein, except oil and gas rights within the meaning of *The Oil and Gas Act*, or a right of entry thereon, required by an operator for the purpose of exploring for, developing, producing or transporting a mineral, or
- (b) the right to establish, install or operate any machinery equipment or apparatus for use or in connection with the drilling, completion or producing operations of a well on a well site, or
- (c) the right or obligation to condition, maintain or restore the surface of land where the land has been or is being held incidental to or in connection with the exploring for, developing or producing a mineral, or the land has been held or is being held incidental to or in connection with the laying, constructing, operating, maintaining or servicing of a battery site, service line, roadway or power line;

Counsel for Carlyle Jorgensen argues that it is premature to grant surface rights to T. Bird Oil Ltd. because it does not have a well licence yet. (A well licence must be obtained under *The Oil and Gas Act* before an operator can create a well.)

The Board finds that *The Surface Rights Act* contemplates that a person can be an operator without a well licence and thus may apply for surface rights without a well licence. In addition, *The Oil and Gas Act* specifically requires that an applicant for a well licence must have surface rights before a well licence can be granted. Section 91 of *The Oil and Gas Act* states:

Applicant must have surface rights

91(1) The director shall not issue a well licence unless the director is satisfied that the applicant has obtained the necessary surface rights in accordance with the requirements of *The Surface Rights Act*.

Counsel for Carlyle Jorgensen argues that the Board must ignore this provision of *The Oil and Gas Act* because it does not make sense and the Board is confined to considering its own legislation. The Board does not agree with this assertion. *The Oil and Gas Act* and *The Surface Rights Act* are related and intertwined enactments. They deal with the oil and gas industry. Put simply, *The Oil and Gas Act* deals with rights of persons in relation to oil and gas beneath the surface of land and *The Surface Rights Act* deals with the rights of persons (who have oil and gas rights) to enter the surface of the land to explore for and extract oil and gas. In the Board's view, the legislature intended that the provisions must be read together and interpreted in a harmonious manner. To do otherwise would place an operator in the "Catch 22" situation where they needed a well licence to get surface rights and surface rights to get a well licence. As such, the Board finds that it is appropriate to consider the application for surface rights.

2. Was adequate Notice served on the landowner?

The Surface Rights Act requires that notice of the application be served on each party. Section 21(2) states:

Contents of notice

21(2) The notice mentioned in subsection (1) shall include

- (a) a description and plan or sketch of the land showing the location of the affected area and showing facilities of the operator in place or proposed;
- (b) a statement as to the nature of the dispute, if any;
- (c) the nature of the order sought;
- (d) an address for service where the applicant may be serviced with any notice required to be served under this Act.

In the present case, the Board determined that the Operator has filed adequate documentation to be in compliance with section 21(2) of *The Surface Rights Act*. Particularly, the Board finds that an application in the form of a letter containing all of the required information was provided to Carlyle Jorgensen.

3. Well Site Location

The owner has major concerns that the Operator intends to place its well in a location that will cause greater hardships than would other well locations. The owner requests the Board to direct the Operator where to place the wells.

The Board refers to the decision of the Manitoba Court of Queen's Bench in Griffith v. Omega Hydrocarbons Ltd. (1986) 2 W.W.R. 622 where the Manitoba Court of Queen's Bench determined that the Manitoba Surface Rights Board did not have under its legislation the jurisdiction to direct the actual location of the well site on the land in question. The Manitoba Court of Queen's Bench sitting in appeal determined that neither the Surface Rights Board nor the Court had the jurisdiction to direct an operator where to locate a well on the land surface.

The Manitoba Court of Queen's Bench in Griffith v. Omega Hydrocarbons Ltd. (1986) 2 W.W.R. 622 at 627 stated:

"Upon a perusal of the Act, I cannot find any section which specifically gives the board the power to make an order as to the location of the well site. In my opinion, such a power cannot be given to a board such as the Surface Rights Board by implication.

The jurisdiction of the Board, and of this court, is limited to making an order that deals with surface rights as that term is defined in the Act. That term does not include the location of the well site on the surface.

And at p.630:

In my judgement, neither the Surface Rights Board nor this court has the jurisdiction under The Surface Rights Act to make an order which either directs the operator where to locate the well site on the land surface or directs the operator as to the method of drilling to be utilized.

Section 25(4)(e) of *The Surface Rights Act* was amended in 1988 to clarify the authority of the Board in relation to the location of access roads. The legislative provision enabled the Board to determine and direct the location of access roads to a well site. The Board has concluded that this amendment only applies to the location of access roads to a well site and not the location of the well site on the subject property.

While there may well be excellent farming or other reasons for a different location for the wells, the Board must defer to the provision of *The Surface Rights Act* and to the case law. The legislation does not provide the Board with jurisdiction to require an operator to place a well in a specific location.

4. Terms and Conditions

The Board determined that surface rights should be granted to T. Bird Oil Ltd. on certain terms and conditions which are set out in Schedule "A" to the Board's Order in this matter (Order 2/2011).

5. Compensation

The hearing that took place on October 3, 2011 involved the above preliminary issues as well as the issues of surface rights and compensation. Counsel for Carlyle Jorgensen had written the Board before the hearing requesting that the October 3, 2011 hearing be used for the purposes of considering only the various issues he was raising. However, the Board through its administrator, had advised him that his matters could be dealt with as preliminary matters and that the hearing would proceed. After the hearing, counsel for Carlyle Jorgensen wrote the Board and requested that if surface rights were granted, the issue of compensation should be dealt with on a different day.

The Board determined that the issue of compensation was squarely before it at the October 3, 2011 hearing. The parties should have been prepared to deal with it and in fact, Mr. Jorgensen gave evidence about the financial impact the creation of a well site on his property would have. As such, the Board has arrived at a decision on compensation.

In arriving at compensation, the Board looked at whether the proposed well site was a typical well site under the "typical well site" definition found in the March 19, 1990 Gabrielle v. Chevron decision and the April 9, 1991 Andrew v. Chevron and Gabrielle v. Chevron decisions. A typical well site is a well site that does not present any special conditions that would make it unduly costly for a farmer to farm the land on which the well site is located. On reviewing the material before it and on viewing the proposed well site, the Board has decided that this well site is a typical well site. The size of the proposed well site is within the Manitoba average of between two and four acres. The Board considered all the evidence and the applicable factors under Section 26 of *The Surface Rights Act*. In particular, the Board analyzed comparable leases and recent land sale information.

After consideration of the evidence, the Board determined that the first year compensation in the amount of \$8000.00 and annual compensation in the amount of \$3000.00 payable to Carlyle Glenn Jorgensen is just and reasonable.

6. Costs

The Board makes no order as to costs.

DATED: October 25, 2011


Presiding Member