

**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: 02-2016**

**File No: 02-2016**

**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**

**Tundra Oil and Gas Partnership**

**Occupant**

**Don Douglas Lee**

**CONCERNING:**

The well site and access road on Lsd 15 in Section 32-1-25 WPM in the Province of Manitoba (*hereinafter referred to as the "demised premises" as more specifically shown on Schedule "A" to this Order*).

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**PURPOSE OF ORDER**

To grant continuing right of entry and compensation for the demised premises.

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**RIGHT OF ENTRY and COMPENSATION**

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**BACKGROUND:**

Board Order No. 01-2016, issued this same date, provides the background related to Board orders and operations that were carried out, or had been planned to be carried out, on the demised premises.

Under the "Reasons for Decision" section of Order No. 01-2016, the Board provided the following reasoning:

**"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."

Under the "Decision" section of that Order the Board ordered the following:

- "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."

The Board in considering the issuance of this Order has addressed a number of issues.

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**ISSUE:**

- ~~1. Is there a need for a new right of entry and compensation order to cover the demised premises?~~
2. What terms and conditions governing right of entry should apply to any replacement order?
3. What annual compensation should apply under any replacement order?

**DECISION:**

Considering the continued usage of the demised premises following the issuance of Board Order No. 01-2016, the Board has determined there is need for a new right of entry order to cover the demised premises as originally planned and shown on Schedule "A" hereto, and therefore it is the Order of This Board That:

1. The Operator is granted right of entry to the demised premises subject to the terms and conditions specified and set out in Schedule "B" hereto.
2. This Order takes effect with the simultaneous issuance of Board Order No. 01-2016.
3. Annual compensation shall continue to be paid at the rate ordered under Board Order No. 67/87, or any variance thereof subsequently agreed to between the Parties in accordance with Item 12 of the Terms and Conditions attached as Schedule "A" to Board Order No. 02-2012. Provision for review of annual rent is covered under Item 12 of the Terms and Conditions contained in Schedule "B" to this Order.

**REASONS FOR DECISION**

1. Is there a need for a new right of entry and compensation order to cover the demised premises?

The issuance of Board Order No. 01-2016 results in there being no agreement or Board order authorizing and governing the continued usage of the demised premises.

Therefore, a new right of entry Board order covering the demised premises is required.

The Board is cognizant that the well on Lsd 16 has been abandoned and that access to the 15-32 well site includes usage of the original access road to the 16-32 well site from the road allowance on the east side of Section 32. The Board assumes, in issuing this Order, that the Operator has a right of entry agreement with the Landowner for continued use of the 16-32 access road.

2. What terms and conditions governing right of entry should apply to any replacement order?

When Board Order 02-2012 was made, it included a "Schedule "A" containing terms and conditions which are generally part of a Board right of entry order. That Order also contained a Schedule "B" which provided additional terms and conditions, requested by the Landowner, primarily intended for the three (3) horizontal wells planned on the demised premises.

The Board has decided that the demised premises for this Order should reflect the demised premises that were contained in the original Board Order 5/86.

Therefore the Board is attaching Schedule "A", being the sketch plan marked as Exhibit "1A" to Right of Entry Order No. 5/86, which shows the demised premises in this Order.

Schedule "B" to this Order contains the Terms and Conditions applicable to this Order and has been prepared based on similar terms and conditions contained in Schedule "A" of Board Order No. 02-2012.

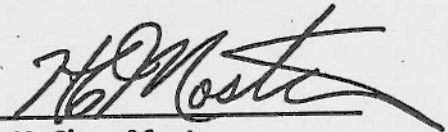
**3. What annual compensation should apply under any replacement order?**

The Board assumes that annual rent has continued to be paid to the Landowner pertaining to right of entry to the 15-32 well site. The amount of compensation would either be the \$2,000 stipulated in Board Order No. 67/87 or an amount subsequently agreed to between the Parties following a review of rent as provided for under Board Order No. 02-2012.

Item 12 of the Terms and Conditions attached to this Order as Schedule "B" provides for review of rent every three years upon the request of either Party, in accordance with the provisions of Sections 29 and 31 of the Surface Rights Act.

Therefore there is no need for the Board to order any variance in annual compensation under this Order.

Decision delivered July 6, 2016.



**H. Clare Moster**  
**Presiding Member**

**Schedule "A"**

**Attached to and forming part of Board Order No. 02-2016**

**"Demised Premises"**

EXHIBIT "1A"

SITE PLAN

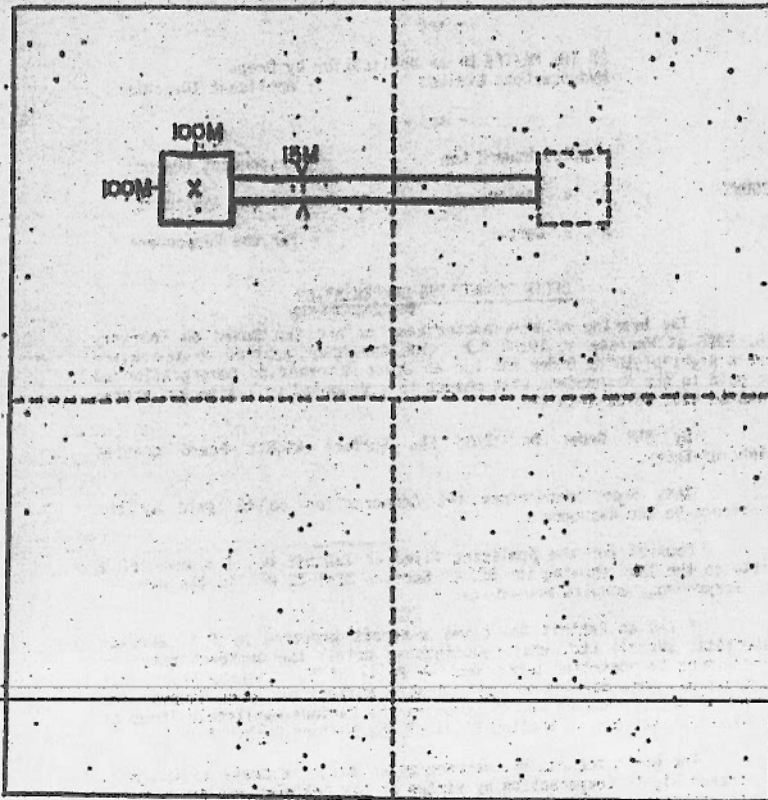
Showing Proposed Location of the

WELLSITE AND ACCESS ROAD

in

Lot 15 Sec. 35 Twp. 1 Rge. 25 W. 1 Mer.

(Subject to change by mutual agreement prior to drilling, with lesser consideration to be applied on any alternative site.)



**Approximate Area Required:**

Well-site = 2.47 acres

Access-way = 1.12 acres

Total = 3.59 acres

Accepted this   day of March, 19

Lessor DOUGLAS HOWARD LEE

Witness

**Schedule "B"**  
**Attached to and forming part of Board Order No 02-2016**  
**Terms and Conditions**

**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 consideration hereinafter to be determined, does hereby lease to the Operator all and singular those parts of the lands shown upon the sketch or plan attached hereto as Schedule "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 any and all purposes and uses as may be necessary or useful in connection with any of the Operator's operations including, without limitation, the exploration, development, production and transmission of oil, gas and any related hydrocarbons or substances produced in association therewith.

**3. Site Assessments**

The Operator shall have the right to conduct soil and water samples on the demised premises, and to condition, maintain, reclaim and restore the surface of the demised premises during the term of the Board Order or any renewal thereof.

**4. Indemnification**

The Operator shall indemnify and save harmless the Owner from and against any and all claims or demands that may directly result from the Operator's use and occupation of the demised premises, other than through wilful damage or gross negligence by the Owner.

**5. Culverts**

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The Operator shall construct and maintain such culverts and other structures on the demised premises as may be reasonably required to ensure the unimpeded flow of water through natural drainage courses.

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**6. Weeds**

The Operator shall control all weeds on the demised premises but in so doing, will not use a soil sterilant without the written consent of the Owner. The Operator may use commonly accepted herbicides and weed sprays.

#### **7. Compensation for Damages**

The Operator shall pay compensation for damage done by its servants and/or agents which, without restricting the generality thereof, shall include damage to crops, machinery, livestock, fences, buildings, or other improvements of the Owner upon the other than the demised premises.

#### **8. Abandonment**

Upon abandonment of any well drilled by the Operator on the demised premises, the Operator shall cause such well to be plugged and all excavations in connection therewith to be filled and completed in accordance with all applicable laws and regulations of the Province of Manitoba.

#### **9. Repair, Removal or Replacement of Equipment**

The Operator may at all times during the continuance of this Board Order remove or replace any buildings, structures, fixtures, casing in wells, pipelines, material and equipment of whatsoever nature or kind which it may have placed on or in the demised premises or in any area to be surrendered.

#### **10. Taxes**

The Owner and the Operator shall each promptly pay and satisfy all taxes, rates and assessments that may be assessed or levied against the demised premises as a result of their respective use and occupation of the demised premises.

#### **11. Compliance with Laws and Regulations**

The Owner and the Operator shall comply with all applicable laws and regulations as may be in force from time to time pertaining to the respective activities on the demised premises.

#### **12. Review of Rental Every Three Years Upon Request of Either Party**

In accordance with the provisions of Sections 29 and 31 of *The Surface Rights Act*, upon the request of either party to this Board Order, the amount payable in respect of the demised premises shall be subject to review any time after three (3) year period next following the date of the determination of the compensation sought to be varied.

#### **13. Renewal**

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~~If the Operator is not in default in respect of any of the covenants and conditions contained in this Board Order at the date of expiration of the term of twenty-one (21) years hereinbefore provided, then this Board Order shall be automatically renewed for a further term of twenty-one (21) years commencing on the day following the expiration of the aforesaid term. Such extended term shall be subject to all the provisions, including this provision for renewal.~~

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#### **14. Reclamation**

The Operator shall, upon the surrender of the whole or any portion of the demised premises, promptly restore the surface of the demised premises which are subject of such surrender, as nearly as possible to its original condition in accordance with applicable laws and regulations.

**15. Surrender**

Subject to the provisions of Clause 14 hereof, the Operator shall have the right at any time, by giving written notice to the Owner to that effect, to surrender and terminate this Board Order effective as at a date to be specified in such notice. Provided that if no date is specified in such notice, then the effective date of the surrender shall be the day before the following anniversary date of the within Board Order. There shall be no refund to the Operator of any annual compensation which may have been paid in advance.

**16. Discharge of Encumbrances**

The Operator may, at its option, pay or discharge all or any portion of any balance owing under any agreement for sale or mortgage, or of any tax, charge, lien or encumbrance of any kind or nature whatsoever which may now or hereafter exist on or be assessed against or in any way affect the demised premises, in which event the Operator shall be subrogated to the rights of the holder or holders thereof, and may in addition thereto, at its option, reimburse itself by applying on account the repayment of the amount(s) so paid by it, the annual compensation or other sums accruing to the Owner under the terms of this Board Order.

**17. Manitoba Law**

This Board Order shall for all purposes be construed according to the law of the Province of Manitoba.