

THE SURFACE RIGHTS BOARD OF MANITOBA

WINNIPEG, MANITOBA

Order No. 3/2011
File No. 02/2011

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

AND IN THE MATTER OF: LSD 3-2-5-27 WPM in Manitoba

BETWEEN:

Penn West Petroleum Ltd.

Applicant (Operator)

- and -

John Wayne Tilbury and Richard William Tilbury

Respondents (Landowners)

RIGHT OF ENTRY AND COMPENSATION ORDER

Manitoba

The Surface Rights Board

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Order No. 3/2011
File No. 02/2011
January, 2012

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:

LSD 3-2-5-27 WPM in Manitoba

BETWEEN:

Penn West Petroleum Ltd.

Applicant (Operator)

- and -

John Wayne Tilbury and Richard William Tilbury

Respondents (Landowners)

RIGHT OF ENTRY AND COMPENSATION ORDER

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

And Whereas the Operator applied for an Order granting Right of Entry pursuant to Section 21 of *The Surface Rights Act* with respect to a booster station on L.S.D. 3 in Section 2, Township 5, Range 27 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. The lease between the parties dated September 25, 2008, is hereby cancelled and replaced by this Order.

2. Compensation shall be \$6,800.00 payable to John Wayne Tilbury and Richard William Tilbury 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 John Wayne Tilbury and Richard William Tilbury payable on or before the anniversary date of this Order and each year thereafter until the expiry of this Order.

Dated this 12th day of January, 2012.

T.A. Cowan
Presiding Member

Schedule "A"
Terms and Conditions

Schedule "A" terms and conditions attached to and forming part of Order No. 3/2011, File No. 02/2011.

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 an existing valve site and booster pump station and the operation thereof 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 Demised Premises, all excavation in connection therewith to be restored, 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 carry on its operations in such a manner as shall cause as little permanent injury as is practicable to the Demised Lands and to pay compensation for damage done by it to growing crops, fences, and buildings or other improvements 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. Fencing

During the continuance of this Board Order, to erect and put upon the boundaries of the Demised Premises a good and substantial fence if so requested by the Owner and to replace all fences which the Operator may have removed for its purposes and repair all fences which it may have damaged, and, if and when so requested by the Owner, to provide proper livestock guards at any point of entry upon the said lands used by it and, upon the use thereof, to close all gates.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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:

Owners:	John Wayne Tilbury Box 2 Melita MB R0M 1L0	Richard William Tilbury Box 2 Melita MB R0M 1L0
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Operator: Penn West Petroleum Ltd.
P.O. Box 1450
Calgary AB T2P 2L6

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

17. Time of the Essence

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

18. Manitoba Law to Apply

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

19. 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.

20. Power

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

21. 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 or should the Operator make payment of the full initial consideration in the amount of \$6,800.00 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.

PENN WEST PETROLEUM LTD.

INDIVIDUAL OWNERSHIP PLAN

SHOWING

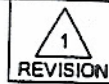
BOOSTER PUMP STATION

IN

S.W. 1/4 SEC. 2 TWP. 5 RGE. 27 WPM

R.M. OF ALBERT

SCALE: 1:5000



OWNER(S): RICHARD WILLIAM TILBURY & JOHN WAYNE TILBURY

LEGEND

- PORTIONS REFERRED TO SHOWN THUS
- WORKSPACE AREA SHOWN THUS
- SURVEY MONUMENTS FOUND SHOWN THUS
- SURVEY MONUMENTS PLANTED SHOWN THUS
- SURVEY MARKS (0.013@ I.P.) PLANTED SHOWN THUS
- DISTANCES ARE SHOWN IN METRES

TITLE NO.: 2071878

AREA REQ'D (NEW): 1.495 ha
3.69 ac.

AREA REQ'D (TOTAL): 1.612 ha
3.98 ac.

DATE: 2011.01.17
CERTIFIED CORRECT:

Phillips & Stevens

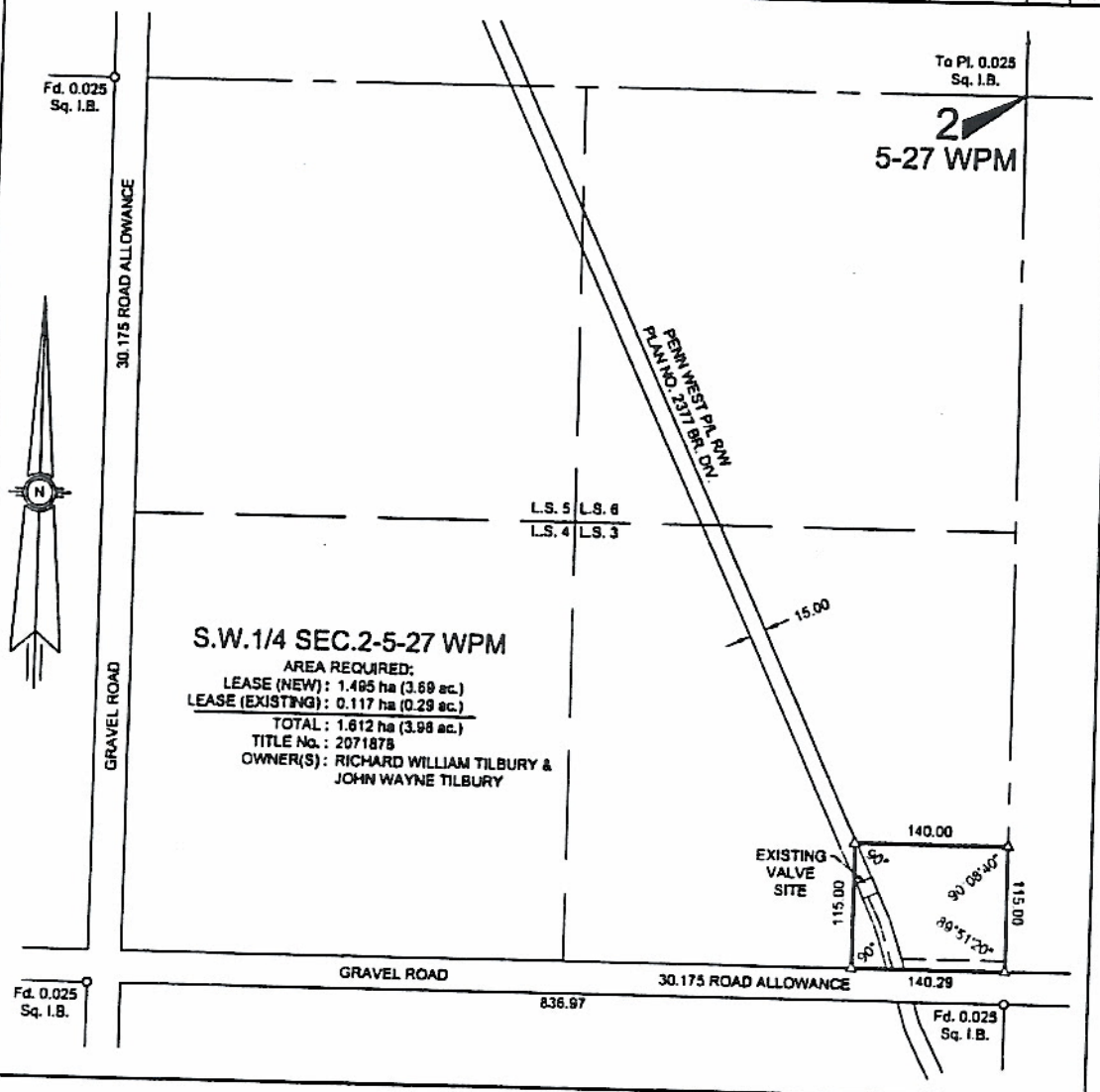
473 Henderson Highway
Winnipeg, Manitoba R2K 2E7
Tel. 643-2089 Fax. 646-9626
Toll Free 1-800-667-9566
Web: philipssurveys.com
Email: info@philipssurveys.com

Michael Paré
Michael Paré
MANITOBA LAND SURVEYOR

PHILLIPS & STEVENS JOB NO.: 201010388

REV.	DATE	DESCRIPTION	DWG	CKD
0	2010.12.02	ISSUED	CV	BWS
1	2011.01.17	REVISED AREA	KF	BWS

CALTECH SURVEYS LTD
Calgary (403) Ph: 283-8088 Fax: 283-8088
Regina (306) Ph: 775-1814 Fax: 775-1818
Unity (306) Ph: 228-4368 Fax: 228-4367



**THE SURFACE RIGHTS BOARD OF MANITOBA
WINNIPEG, MANITOBA**

File No. 02/2011

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

AND IN THE MATTER OF: LSD 3-2-5-27 WPM in Manitoba

BETWEEN:

Penn West Petroleum Ltd.

Applicant (Operator)

- and -

John Wayne Tilbury and Richard William Tilbury

Respondents (Landowners)

**REASONS FOR DECISION
FOR RIGHT OF ENTRY AND COMPENSATION ORDER**

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

AND IN THE MATTER OF: LSD 3-2-5-27 WPM in Manitoba

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

DATE OF HEARING: November 21, 2011

DATE OF DECISION: January 12, 2012

BETWEEN:

Penn West Petroleum Ltd.

Applicant (Operator)

- and -

John Wayne Tilbury and Richard William Tilbury

Respondents (Landowners)

APPEARANCES: Murray W. Douglas, Kanuga Thuringer LLP

For the Applicant(Operator)

WITNESSES:

- 1) Bradley Caldwell, Foreman, Penn West Petroleum Ltd.
- 2) Doug Bloor, Land Agent, Sun Valley Land Ltd.
- 3) Robert Telford, Land Consultant & Appraiser,
McNally Land Services Ltd.
- 4) Keith Grainger, Landman, Penn West Petroleum Ltd.

called by the Applicant
(Operator)

- 1) John Wayne Tilbury
- 2) Richard William Tilbury

called by the Respondents
(Landowners)

Background & Evidence

This was an application by Penn West Petroleum Ltd. ("Penn West") under section 21 of *The Surface Rights Act* requesting additional 3.69 acres of surface rights for the purpose of expanding existing pipeline infrastructure that is located on the SW 2-5-27 WPM. The land is owned by John Wayne Tilbury and Richard William Tilbury, and an existing valve site covering 0.29 acres is located within the SW 2-5-27 WPM on their land. Penn West possesses the surface rights for the existing valve site under a lease agreement with the Tilburys. The landowners are not opposed to granting the requested surface rights to Penn West for the pipeline infrastructure but there is a disagreement concerning the amount of compensation required for the project.

Pursuant to subsection 25(2) of *The Surface Rights Act*, the members of the Board inspected the site on November 1, 2011. From this inspection, the Board members confirmed that the existing surface land use is agriculture. The Board also confirmed that the land contains a valve site for a pipeline right-of-way and that the expansion would fall within the definition of a "typical well site" of between 2 and 4 acres.

The Board proceeded with the scheduled hearing on November 21, 2011.

The development proponent, Penn West, was represented by Murray W. Douglas of Kanuga Thuringer LLP. The Operator's first witness was Bradley Caldwell (sworn) of Penn West. Mr. Caldwell described the need for the booster station, and indicated that for engineering reasons, the booster station must be located on the proposed site. The second witness representing Penn West was Doug Bloor (sworn) of Sun Valley Land Ltd. Mr. Bloor indicated that the landowners had granted approval to survey the site and discussed the technical requirements for the booster station, including the need for an additional 3.69 acres. Compensation was also discussed on different occasions.

The third witness called by the development proponent was Robert J. Telford (sworn). Mr. Telford (expert witness) is a land consultant with McNally Land Services Ltd. and provided advice on the possible land compensation and values. Mr. Telford described the empirical method of land value assessment and indicated that the best and highest use of land is agriculture. Mr. Telford filed a background report for the Board's consideration. The fourth witness called by Penn West was Keith Grainger (sworn), landman for the development proponent. Mr. Grainger described the technical requirements of locating the booster station.

John Wayne Tilbury (sworn) and Richard William Tilbury (sworn) conducted an oral presentation regarding their concerns with the proposed booster station addition. Although the landowners are not opposed to the establishment of the booster station, they do not agree to the compensation package being offered by Penn West. In addition to their objection concerning compensation, they have requested the Board to direct the location of the proposed booster station. The landowners had approved the existing 0.29 acre valve site development in 2008 and entered into a surface lease agreement.

Messrs. Tilbury did not object to a "new lease agreement" (ie., one board order covering both the current surface rights of Penn West and the new surface rights being requested).

Exhibits

For the Applicant (Operator) and recorded into the records as Exhibit Nos. 1 and 2:

- Document containing:
 - Tab A
 - Tab B (1-12)
 - Tab C
 - Tab D (1-5)
 - Tab E (1-13)
- Compensation and Appraisal Report

For the Respondents (Landowners)

- No evidence was submitted for the records by the Respondents (Landowners)

Issues

1. Does the Surface Rights Board have the legislative authority to grant surface rights?
2. Does the Surface Rights Board have the authority to cancel the existing surface lease and issue a Board Order covering the entire project area?
3. How much additional compensation is the surface rights owner entitled to?
4. Does the Surface Rights Board have the authority to direct the location of the booster station and related infrastructure and buildings?
5. Costs?

1. Does the Surface Rights Board have the legislative authority to grant surface rights?

Penn West is the owner and operator of a valid pipeline construction permit which is used for the safe and economical transportation of oil through SW 2-5-27 WPM. Penn West Petroleum Ltd. also has a valid surface lease with the landowners for a 0.29 valve site also located on SW 2-5-27 WPM. Penn West has proposed to expand the existing pipeline infrastructure by establishing a booster station and negotiated to acquire an additional 3.69 acres of surface rights to facilitate the development. Subsequently, Penn West has applied to the Petroleum Branch of Manitoba Innovation, Energy and Mines for a construction permit in accordance with section 149(1) of *The Oil and Gas Act*. The construction permit has been conditionally modified subject to the acquisition of the appropriate surface rights. As stated, the landowners do not object to these surface rights being granted.

The parties did not agree to compensation for access rights in accordance with section 151(3) of *The Oil and Gas Act*, and therefore, the development proponent applied to the Surface Rights Board under section 21 of the Act for a determination of compensation.

The Surface Rights Board has the legislative authority to grant surface rights on adjacent lands for the continued operation of infrastructure development in accordance with section 20(1) of *The Surface Rights Act*.

2. Does the Surface Rights Board have the authority to cancel the existing surface lease and issue a Board Order covering the entire project area?

This application stemmed from the desire of Penn West to modify its existing lease of surface rights to include additional surface rights. Penn West requested that the Board make a single order that encompasses the existing surface rights as well as the additional surface rights. The landowners did not object to this.

It is the Board's view that it is appropriate in the circumstances for the surface tenures to be homogenized in order to provide security of tenure to both parties and regulatory consistency between *The Oil and Gas Act* and *The Surface Rights Act*. A Board Order runs with the land for a period of twenty one (21) years where a surface lease has an effective expiry date and for efficiency and consistency, the Board intends to cancel the existing surface lease and replacing it with a comprehensive Board Order. Given the parties' agreement and the fact that this application stemmed from negotiations concerning the existing surface rights agreement, the Board is satisfied that it has authority to make an Order relating to the existing surface rights and the new surface rights.

3. How much compensation is the surface rights owner entitled to?

The Surface Rights Board carefully considered all evidence regarding compensation provided during the hearing and examined comparable leases. The Board evaluated the evidence that compared both the empirical and global methodologies of determining compensation and found there was very little difference in the compensation amounts regardless of which method was used for the calculation and arrived at a figure of \$7900.00 for initial payment.

The Board also reviewed its "Reasons" in other Board Orders where a "standard rate" of compensation was awarded for a "typical" wellsite, and the clarification of the words "standard" and "average" were established.

The Board considered any differences presented and applied their knowledge to determine if there were significant differences between a booster pump station for a pipeline compared to a "typical" wellsite and determined that there were none.

The Board considered the size of the site in all calculations. The size of the site is comprised of 0.29 acres for the existing valve site and 3.69 acres for the expanded site for a total of 3.98 acres. The 0.29 acre valve site is covered by an existing surface lease dated September 25, 2008. The original 2008 surface lease provided for a \$600.00 initial payment plus an annual rental payment of \$600.00. The Board concluded that annual compensation payments for 2011 for the valve site have been made.

The award for initial payment is \$4900.00 less the \$600.00 already paid, for a total of \$4300.00, plus annual rental as calculated below.

The annual rental was considered in two parts. Firstly, an amount for 2011 and secondly, for the subsequent years.

Compensation for 2011 is awarded at \$3000.00. The landowners have already received annual rental in the amount of \$600.00 for 2011. This compensation covered the 12 month period September 25, 2011 to September 25, 2012. Therefore, the award for 2011 is reduced by the portion applicable from November, 2011 to September, 2012. The annual compensation equals an equivalent of \$50.00 per month. Therefore, the award was reduced by \$500.00 for this 10 month period. The 2011 compensation is awarded at \$2500.00.

Therefore, first year payment shall be \$6800.00.

Annual compensation for subsequent years is awarded at \$3000.00.

4. Does the Surface Rights Board have the authority to direct the location of the booster station and related infrastructure and buildings?

The landowners have some concerns that the Operator intends to place its booster station in a location that will cause greater hardships than would other locations. The landowners requested the Board to direct the Operator where to place the booster station.

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 concluded that this amendment only applies to the location of access roads to a well site and not the location of the infrastructure on the subject property.

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

5. Costs

The Board makes no order as to costs.

Dated this 12th day of January, 2012.

T.A. Cowan
Presiding Member