

Manitoba



Mineral Resources

Surface Rights Board

380-1385 Ellice Avenue, Winnipeg, Manitoba, Canada R3G 3P2

T 204-948-0731 F 204-948-25780000

www.manitoba.ca

November 4, 2014

Mr. Glen Harasymchuk
McNeill, Harasymchuk
Box 520
Virden MB R0M 2C0

Mr. David Swayze
Meighen Haddad Law Firm
110-11th Street
Brandon MB R7A 4J4

Re : Board Order 07-2014
Variation of Compensation on
LSD 1-19-9-29 WPM and LSD's 9 & 15-21-9-29 WPM

The Board has identified a typographic error on Page 8 of the above noted Board Order. The error occurs in the last sentence of the first paragraph. The \$4,000 should have read \$4,100 which corresponds to the amount in the Decision.

Therefore, in accordance with Section 25(7)(b) of *The Surface Rights Act*, the Board hereby amends and replaces Pages 7/8 of Board Order 07-2014 dated October 30, 2014 with the enclosed Pages 7/8.

Please update your copy of the Board Order accordingly. I apologize for any confusion.

Thank you.

A handwritten signature in black ink, appearing to read "H. Clare Moster", written in a cursive style.

H. Clare Moster
Acting Presiding Member
Surface Rights Board

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

Hearing:

Town Municipal Office
Virden, Manitoba
October 7, 2014

Order No: 07-2014

File No: 05-2014

Page 1

Date issued: October 30, 2014

BEFORE: Clare Moster, Acting Presiding Member
Claude Tolton, Board Member
Russell Newton, Board Member

Barbara Miskimmin, Board Administrator

BETWEEN:

Applicant
(Landowners)

Kris & Gwen Jorgensen

- AND -

Respondent
(Operator)

Tundra Oil & Gas Partnership

Occupant

(none)

CONCERNING:

The well sites, including their associated access roads, in Lsd 1 Section 19-9-29WPM and Lsds 9 & 15 Section 21-9-29WPM in the Province of Manitoba (the "well sites").

PURPOSE OF HEARING:

To hear and receive evidence regarding three (3) applications under Sec. 21 of *The Surface Rights Act* of Manitoba ("the Act") received from the Applicant for variation of annual compensation for the well sites.

VARIATION OF COMPENSATION

BACKGROUND:

The Applicant applied via application dated March 21, 2014, with proof of service dated March 31, 2014, requesting the Board determine the compensation that should be paid on the Lsd 1 of Section 19-9-29WPM well site.

The Applicant submitted an additional two (2) applications dated June 2, 2014 with proof of service dated June 2, 2014, requesting the Board determine the compensation that should be paid on the well sites, including the access roads, located on Lsds 9 & 15 of Section 21-9-29WPM.

The Parties, together with the Board, agreed to hear the matter during the fall 2014. The Parties were also informed that, in accordance with Section 25(2) of the Act, the Board would be viewing the well sites on August 20, 2014, and to notify the Board if the Parties were interested in participating.

On August 20, 2014 the Board visited each of the three (3) well sites and both Parties attended.

Pursuant to Subsection 25(1) of the Act, a Notice of Hearing was sent to the Parties on September 3, 2014 informing them that the three (3) applications would be heard at a hearing scheduled for October 7, 2014 in Virden, Manitoba.

At the start of the Hearing, the Parties both confirmed the only issue before the Board was the issue of annual compensation for the three (3) well sites.

Before the start of the hearing, the Respondent provided members of the Board with a binder (Exhibit No. 1) containing the evidence it would be introducing during the hearing.

The Applicant, in presenting their position, advised the Board it would be using information contained in Exhibit No. 1 as its evidence, and had no other evidence of its own to be filed as an exhibit.

ISSUES:

- 1. Determination of whether the current annual rent amount on each of the well sites should be varied, and if so, by how much?**
- 2. Is the Applicant entitled to interest on any amounts owing?**
- 3. Are costs to be awarded?**

APPEARANCES:

APPLICANT: Kris and Gwen Jorgensen

Counsel: Glen Harasymchuk (McNeill, Harasymchuk, McConnell)

Witness: Gwen Jorgensen - co-landowner (sworn)

RESPONDENT: Tundra Oil & Gas Partnership

Counsel: David E. Swayze, Meighen Haddad LLP

Witness: Chris Masson – Surface Land Manager, Tundra (sworn)

EXHIBITS:

Exhibit #1 – Binder filed by Tundra Oil & Gas Partnership consisting of a Table of Contents and two (2) parts.

Part B - information pertaining to the well sites on LSD 9-21-9-29WPM and LSD 15-21-9-29WPM

Tabs B1 to B10

Part C - information pertaining to well site LSD 1-19-9-29WPM

Tabs C1 to C11

DECISION:

Upon hearing the evidence and the submissions of the Parties; decision being reserved until today's date:

It is the Order of This Board That:

1. The amount of compensation for each well site be awarded as follows:
Lsd 1-19-9-29WPM: \$4,100
Lsd 9-21-9-29WPM: \$3,200
Lsd 15-21-9-29WPM: \$3,200

2. The Respondent shall pay to the Applicant interest at a rate of 3.0% per annum on any unpaid portion of the amount of the above ordered compensation as follows:
- from March 31, 2014 to date of payment for the Lsd 1-19-9-29WPM well site, and
- from June 2, 2014 to date of payment for well sites on Lsds 9 & 15-9-29WPM.

3. The Board makes no award for costs.

REASONS FOR DECISION

1. **Determination of whether the current annual rent amount on each of the well sites should be varied, and if so, by how much?**

In Board Order No. 01-2014, a variation of annual compensation order pertaining to six (6) well sites on land owned by Carlyle Glenn Jorgensen and operated by Tundra Oil & Gas Partnership, the Board stated that both land owners and operators expect consistency in rulings of the Board, so as to better know what the Board may decide when taking an issue to the Board. The Board also indicated there should be an upper and lower range of annual compensation which the majority of well sites and their associated access roads would fall. The determination of those limits would include such governing factors as: location and size of well site; location, size and construction of access road; land value and use; all considered in conjunction with the matters listed under Subsection 26(1) of the Act.

The six (6) well sites included in Order 01-2014 each accommodated a single vertical well, were located on cropped land, had a well site area of 3.56 acres located in the middle of the legal subdivision, had non built-up access roads (trails) of varying lengths with areas ranging from 0.7 acres to 2.14 acres, with total lease areas ranging from 4.26 acres to 5.7 acres, and with an average total lease size of 4.79 acres. Using the criteria described above, together with an assessment of comparable leases and its own knowledge and experience of farmland values and agricultural practices, the Board determined a range of compensation between \$3,000 and \$3,400 for those particular leases, with the length of the access road being the differentiating factor.

The Board, having taken into consideration that land values have increased, has now determined that a range of annual compensation between \$3,200 and \$3,600 will now be considered fair and reasonable for typical well sites.

As noted in the Background section, the Board viewed the well sites on August 20, 2014. The location of these wells sites were approximately six (6) miles north of the well sites under Order 01-2014.

Sites on Lsds 9 & 15 21-9-29WPM:

The Board found the two (2) single vertical well sites, on Lsds 9 & 15 -21-9-29WPM, to be similar in nature to the well sites covered by Board Order No. 01-2014 described above. They were located on cropped land in the approximate middle of the legal subdivision, each had a well site area of 2.99 acres and non built-up access roads (trails) of 0.188 acres and 0.55 acres,

respectively. Their total lease areas were 3.45 acres and 3.54 acres respectively, making them smaller than the smallest (4.26 acre) well site under Order 01-2014.

Based on the above criteria and information, the Board was looking for information from the parties to show what, if anything, was unique about the subject well sites, which would differentiate them from the sites in Order 01-2014.

As already noted under the Background section, the Applicant filed no evidence of its own, but simply referred to portions of the Exhibit filed by the Respondent. Much of the Applicant's testimony related to their concerns regarding maintenance (spraying of weeds, foxtail), the difficulty of farming around well sites (particularly in wet years such as 2014), and a safety concern during aerial spraying relating to the stem (rod) protruding out of the 15-21-9-29WPM wellhead. They also expressed concerns relating to the large number of flow lines and pipelines crossing their property which made construction of new drainage very difficult.

The Applicant did make reference to two (2) surface leases with another operator for well sites on their land in NE 1/4 28-9-29WPM. They testified that operator is paying annual rent of \$4,500 for a 2-horizontal well pad and \$3,200 for a single horizontal well site. Their testimony indicated the well sites were 3.56 acres in size and abutted an undeveloped road allowance, which was now being developed by the operator to be used for access to the wells. Although these leases were provided to the Respondent to review at the Hearing, they were neither filed as exhibits nor seen by the Board. Although mention was made in regards to another operator on the same quarter section, no information was provided by the Applicant. The Board noted that the well site areas of these leases were both larger than the total leased area of the Applicant's 9-21 and 15-21 well sites, and the single horizontal well site had a voluntarily negotiated annual rental of \$3,200. No evidence was presented by the Applicant to show that the subject two (2) well sites were non-typical well sites as defined by the Board in previous orders.

The main argument of the Applicant was that the Board must use the matters described under Subsection 26(1) of the Act in determining compensation to be paid and that the first matter listed, being Clause (a), should be weighted as the most important matter, namely:

"(a) the value of the land having regard to its present use before allowance of surface rights,"

Referencing Tab B2 of the Exhibit, the Applicant noted that there was a 47% increase in the land assessment from the 2011 tax year to the 2014 tax year for the NE 1/4 21-9-29WPM on which the 2 vertical wells in Lsds 9 & 15 -21-9-29WPM are located.

The Applicant stated that by applying the 47% increase in land assessment on NE 1/4 21-9-29WPM to the \$2,800 annual rents established in 2011 for the subject two (2) well sites located on that quarter, would increase the annual rent on each of those well sites to \$4,100.

As noted above, the Board considers that "value of land" is only one component of the criteria to be used when determining annual compensation.

The Applicant also stated that using the Respondent's simple practice of determining rentals by only differentiating between pasture land and cropland did not reflect the situations which could be unique to an individual site. As well, the Applicant stated that by only using the Respondent's rental comparables in the area resulted in the Respondent dictating rental rates.

Regarding the well sites on LSDs 9 & 15-21-9-29 WPM, the Respondent's position was that the Board has in recent decisions used the "global approach" (or "pattern of dealings"), and so the Respondent had used that approach, including the compensation amounts ordered by the Board in its most recent compensation Order No. 01-2014 (Carlyle Glenn Jorgensen v Tundra Oil & Gas Partnership) when dealing with the Applicant. As indicated above, that Order covered six (6) single vertical well sites on cropped land with non built-up trails as access roads. The well sites in that Order were each 3.56 acres in size with access roads of various lengths ranging from 0.7 to 2.14 acres in size. The total area of the leases varied from 3.63 acres to 5.7 acres. The Board awarded compensation of \$3,000 for two 4.26 acre leases, \$3,200 for one 4.26 acre lease, and \$3,400 for two 4.96 acre leases and one 5.7 acre lease.

The two (2) single vertical well leases under consideration, other than being smaller in total size (3.45 acres and 3.54 acres respectively), are of the same nature as the six (6) well sites under Order No. 01-2014. They are located in the middle of Lsds on cropped land with access roads being non built-up trails.

The Respondent presented evidence showing 26 similar well sites with other land owners in the same general area where those landowners had agreed to accept offers for annual compensation of \$3,200. These agreements were made between May and October, 2014.

Although the Board is aware that the Respondent is the major operator in the area, the Board would have liked to have had comparables for other operators in the area, so as to be able to ascertain how truly global are the comparables filed by the Respondent.

Using the criteria previously stated, together with an assessment of comparable leases and its own knowledge and experience of farmland values and agricultural practices, as well as the new range of rates mentioned above, the Board has determined that, for each of these particular smaller leases with non built-up roads, compensation in the amount of \$3,200 is fair and reasonable.

In accordance with the requirement of Subsection 33(1), June 2, 2014 being the date the applications were filed, will also be the effective date of the variation of compensation.

Site on Lsd 1-19-9-29WPM:

The Board, in viewing the well site on Lsd 1 in 19-9-29WPM, determined it to be a well site abutting the road allowance on its east side, having no access road, and being a 2-horizontal well pad. A part of the north portion of the site appeared to be on cropped land, with the larger remaining portion on pasture land.

Referencing Tab C5 of the Exhibit, the Applicant noted the 33% increase in the land assessment from the 2011 tax year to the 2014 tax year for the SE 1/4 19-9-29WPM on which the 2-horizontal well pad in Lsd 1-19-9-29WPM is located.

Again, the Applicant stated the 33% increase in land assessment should be applied to the \$4,000 annual rent which has been in effect since 2011 for the well site on this quarter section. The result would be an increase in annual rent to \$5,300 which is the amount the Applicant was requesting.

The Applicant also made verbal reference to a 2-horizontal well pad well site it had a surface lease with another operator on Lsd 13-28-9-29WPM. Apparently that operator (Paradise) had offered annual rent in the amount of \$4,500. The referenced well site being comparable to the subject Lsd 1-19-9-29WPM well site, as it also abutted a road allowance, was on cropped land and had no access road. The Board noted the leased area of the referred to well site was 3.56 acres. This being smaller than the 4.74 acre lease for the subject Lsd 1-19-9-29WPM well site.

The Respondent, similar to the two vertical well sites, provided comparable leases to the Lsd 1-19-9-29WPM well site. These comprised five (5) lease agreements which Tundra had signed with other landowners in the same area between April and July, 2014. Each site was for a 2-horizontal well pad, situated on pasture land, abutting road allowances, having no lease road, and with areas ranging from 4.28 acres to 5.7 acres. The Board notes the subject Lsd 1-19-9-29WPM well site is 4.74 acres, which is near the average size of the five (5) comparable leases. The annual compensation agreed to by these other landowners was \$4,000. The Board notes that although this lease covers a significant portion of pasture land, the Applicant has been receiving \$4,000 annual rent since the lease was agreed to in January, 2011.

The Respondent gave evidence that its common practice in determining the annual compensation payable for a two (2) well pad site was to determine the compensation payable for a single well site on the same location and add an additional \$1,000 to that amount.

The Respondent also noted the Board's approach in determining a range of annual rental values for single well sites, and recommended the Board determine a similar range of values for multi-well pads. It said this would provide the industry and landowners with a benchmark to use in negotiating compensation for such situations.

The Board recognizes the benefit of having such benchmark compensation guidelines for multi-well pad sites. Using surface lease information routinely filed with the Board, as well as information filed by Parties at this and recent Board hearings, the Board has developed the following Table to be used for such purposes.

Compensation Guidelines for Multi-well Surface Leases & Board Orders:

Average Area of Well Site ¹ :		Number of Wells	Annual Compensation:	
Hectares	Acres		Crop land	Pasture
1.44	3.56	1	\$3,600	\$3,200
1.92	4.74	2	\$4,400	\$4,000
2.22	5.49	3	\$5,000	\$4,600
2.52	6.23	4	\$5,500	\$5,100
2.83	7.00	5	\$5,900	\$5,500
3.11	7.70	6	\$6,200	\$5,800

¹ These areas do not include an access road. An access road would entail greater compensation.

In determining the compensation for this Lsd 1-19-9-29WPM well site, the Board recognized the 4.74 acres size, the 2 horizontal well pad, the site abuts a road allowance and has no access road, the well site is primarily on pasture land, and the above established compensation guidelines. These factors were used by the Board, in conjunction with the matters listed under Subsection 26(1) of the Act, together with an assessment of comparable leases and its own knowledge and experience of farmland values and agricultural practices. The Board determined compensation in the amount of \$4,100 for the Lsd 1-19-9-29WPM well site is fair and reasonable.

In accordance with the requirement of Subsection 33(1) of the Act, March 31, 2014 being the date the application was filed, will also be the effective date of the variation of compensation for the Lsd 1-19-9-29WPM well site.

2. Is the Applicant entitled to interest on any amounts owing?

Recognizing that the effective date of these compensation awards is June 2, 2014 for both the Lsd 9-21-9-29WPM and the Lsd 15-21-9-29WPM well sites, and March 31, 2014 for the Lsd 1-19-9-29WPM well site, the Board is of the opinion that interest should be payable on any outstanding payment, and has determined that the Applicant is entitled to interest at a rate of 3.0% per annum on any unpaid portion of the amounts of the above ordered compensation, from their respective effective dates for the variation of compensation.

3. Are costs to be awarded?

Subsections 26(4) and (5) of the Act provide for how a final offer of compensation made prior to the commencement of a hearing may determine whether costs will be awarded. If the offer is less than 90% of the compensation awarded by the Board, the Board is required to increase the compensation awarded to include certain costs as provided for in the Act.

The practice of the Board is to have the Respondent provide the Board Administrator, prior to the commencement of the hearing, with a sealed copy of its last offer to the Applicant. The amount of the sealed offer determines whether costs are to be ordered by the Board.

After the Board arrived at the above noted decision on compensation, the sealed offers provided by the Respondent were opened. It was confirmed by the Board that each well site had been filed as a separate application. Therefore, determination of costs would be considered individually for each well site. The sealed offers revealed an offer of \$3,200 for the Lsd 9-21-9-29WPM well site and the Lsd 15-21-9-29WPM well site, and \$4,000 for the Lsd 1-19-9-29WPM well site.

Applying the 90% rule as provided under the above Subsections of the Act, the Board determined that none of the three (3) applications qualified for costs under Subsection 26(4).

The Board also determined that it would award no costs under the discretionary power afforded the Board under Subsection 26(3).

Decision delivered this 30th day of October, 2014.



H. Clare Moster,
Acting Presiding Member