

File No. 1885
Board Order No. 1885-1

April 22, 2016

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2162 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #0249877, DISPOSITION NO. 869411
(the "Lands")

BETWEEN:

Crew Energy Inc.

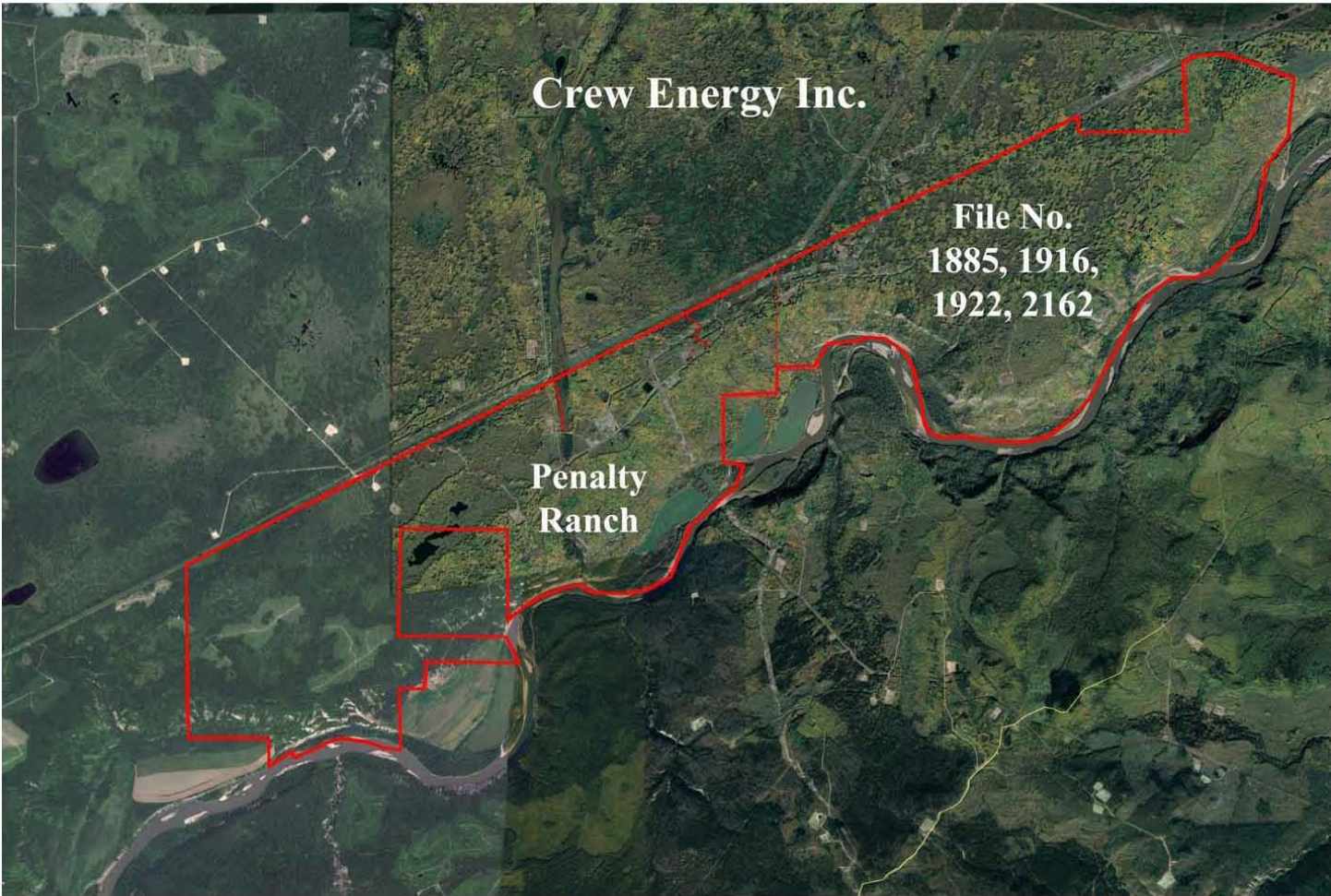
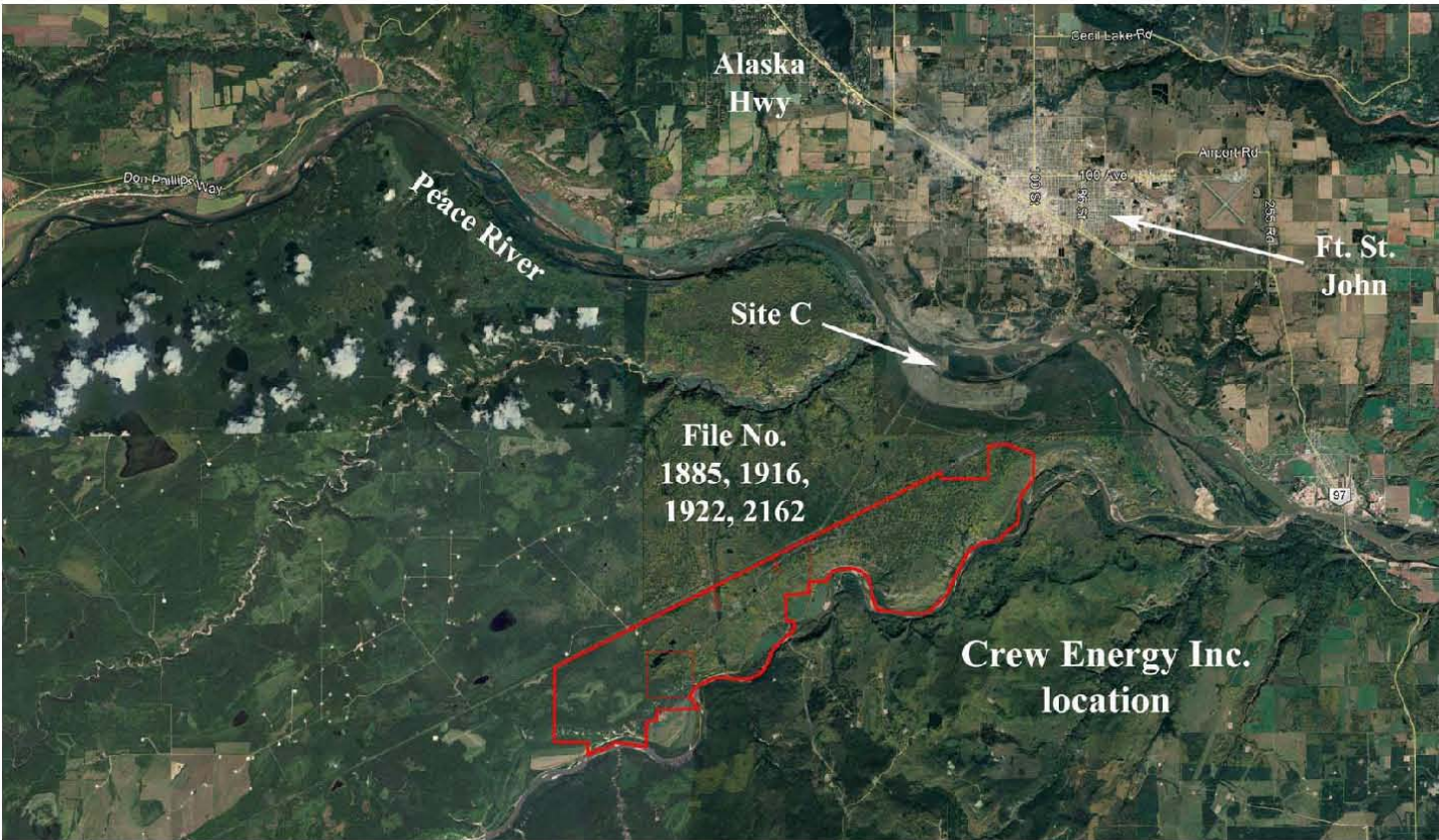
(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER



I conducted a telephone mediation on April 20, 2016 discussing Crew Energy Inc.'s ("Crew") application to the Board for mediation and arbitration services.

Crew seeks a right of entry order to access certain lands to carry out an approved oil and gas activity, namely to construct, drill, complete and operate natural gas wells and associated infrastructure. Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on our discussions and also on the fact that the Oil and Gas Commission has issued a permits for Crew's project I am satisfied that Crew requires the Lands for an approved oil and gas activity.

ORDER

The Surface Rights Board orders:

1. Upon payment of the amount set out in paragraphs 2 and 3, Crew shall have the right of entry to and access the portions of the Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" to construct, drill, complete and operate natural gas wells and associated infrastructure.
2. Crew shall pay to the landowner as partial compensation the total amount of \$1,500.
3. Crew shall deliver to the Surface Rights Board security in the amount of \$2,500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Crew, or paid to the landowner, upon agreement of the parties or as ordered by the Board.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED April 22, 2016

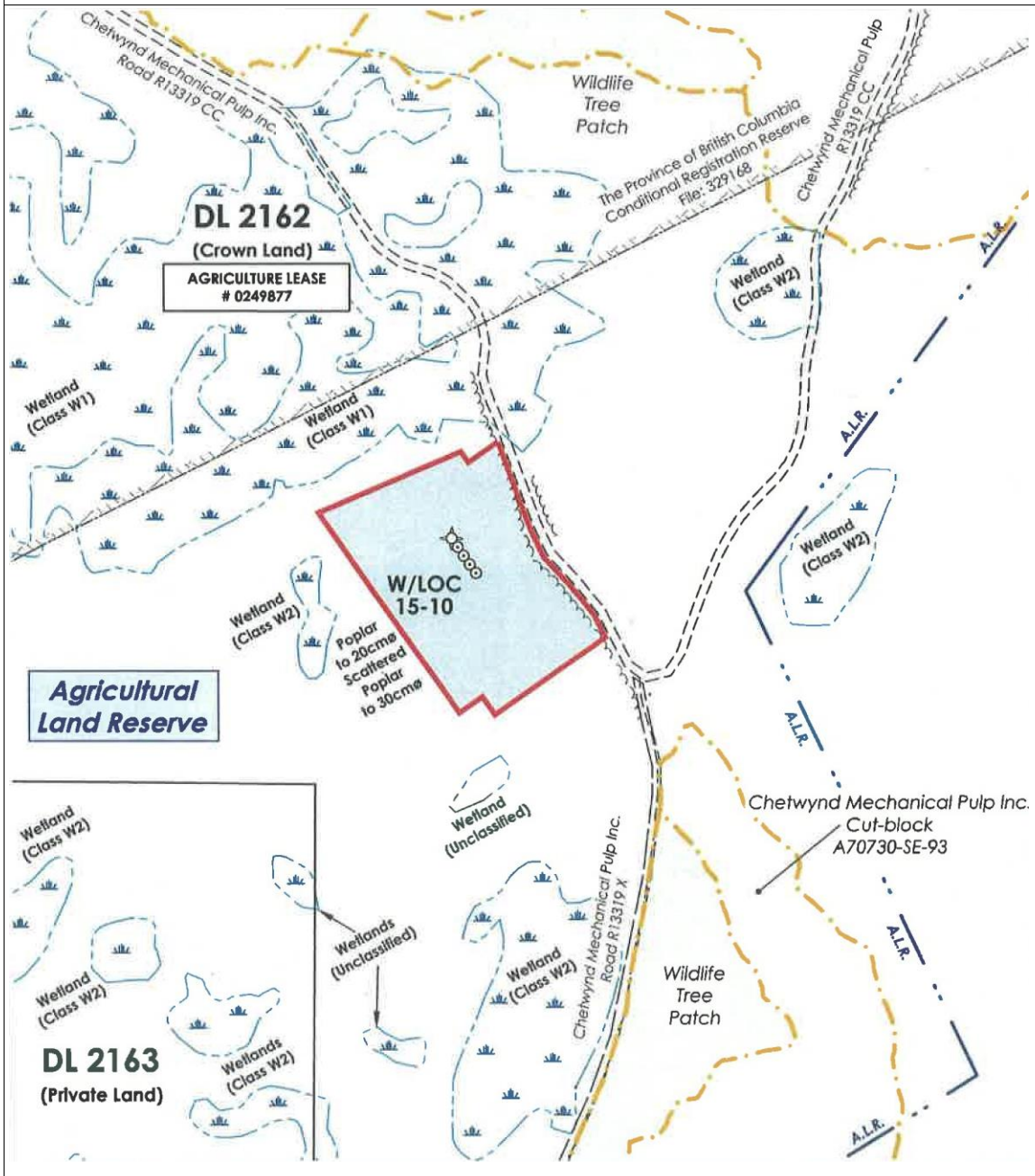
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

CREW ENERGY INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE, ACCESS, AND DECKING SITE WITHIN
DISTRICT LOT 2162
AGRICULTURE LEASE # 0249877
PEACE RIVER DISTRICT




AGRICULTURE LEASE 0249877
 OWNER(S): PENALTY RANCH LTD., INC. NO. 1 69486

NOTES
 SCALE = 1: 5,000
 Distances shown are in metres.

Certified correct this

ISED:
 Wellsite 3.74 ha 9.24 ac
 TOTAL: .. 3.74 ha 9.24 ac

Ashley J.S. Laloe, B.C.L.S. 884
 day of July, 015



AREA REQUIRED:

NO	DATE	REVISION	DRN	CKD	
0	15/04/13	Original plan issued			can-am geomatics can-am geomatics bc Phone: 250781.717 Fort St. John. B.C. Toll Free: .866.208.0983 www.canam.com Fax: 250.787.2323
	15/04/23	Added Access Segment 2			
2	15/10/14	Revised Padsite	ARM		
					CAN-AM FILE: J20140618 CAD FILE: J2014061810P-2 Client File No.: s-02819 AFE No.: 14170810 Land File No.: REVISION

June 16, 2016

SURFACE RIGHTS BOARD

**IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED
AND IN THE MATTER OF**

**DISTRICT LOT 2162 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #0249877, DISPOSITION NO. 86941 1
(the "Lands")**

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

I conducted a telephone mediation on April 20, 2016 discussing Crew Energy Inc.'s ("Crew") application to the Board for mediation and arbitration services.

Crew Energy Inc. ("Crew") seeks a right of entry order to access certain lands to carry out an approved oil and gas activity, namely to construct, drill, complete and operate natural gas wells and associated infrastructure.

At the time of the mediation, I declined to consider a right of entry order as the Oil and Gas Commission ("OGC") had not issued a permit for project 15-9. Crew has now produced to the Board OGC well permits 9643426, 9643427 and 9643428 that relate to this project.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

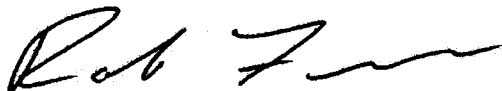
Based on our discussions and also on the fact that the Oil and Gas Commission has issued permits for Crew's project I am satisfied that Crew requires the Lands for an approved oil and gas activity.

The Surface Rights Board orders:

1. Upon payment of the amount set out in paragraph 2, Crew shall have the right of entry to and access the portions of the Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" to construct, drill, complete and operate natural gas wells and associated infrastructure.
2. Crew shall pay to the landowner as partial compensation the total amount of \$1500.
3. Crew shall deliver to the Surface Rights Board security in the amount of \$2500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Crew, or paid to the landowner, upon agreement of the parties or as ordered by the Board.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: June 16, 2016

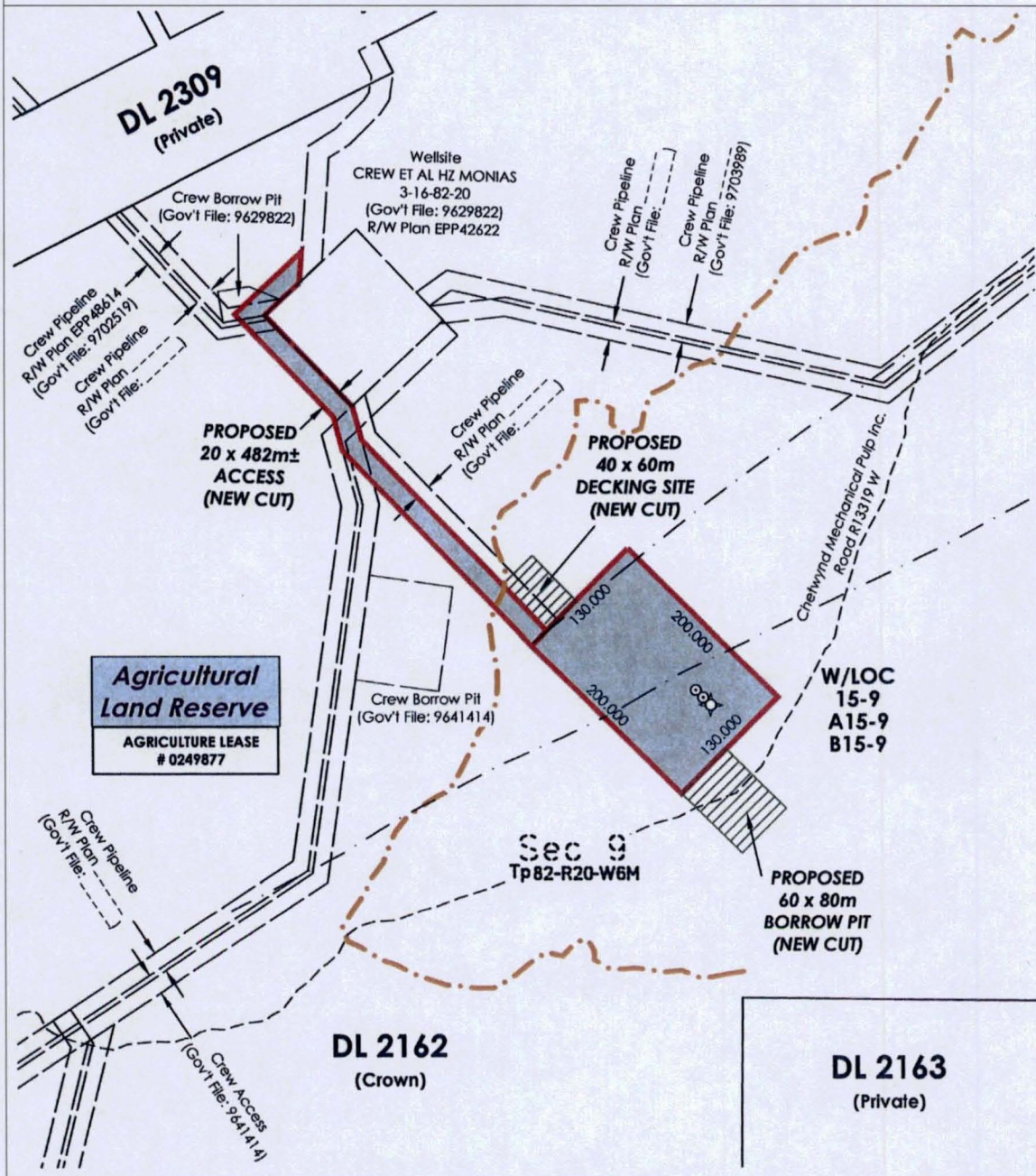
FOR THE BOARD



Rob Fraser, Mediator





APPENDIX "A"

CREW ENERGY INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE, ACCESS, DECKING SITE AND BORROW PIT IN
DISTRICT LOT 2162
AGRICULTURE LEASE # 0249877 PEACE
RIVER DISTRICT



AGRICULTURE LEASE 0249877
 OWNER(S): PENALTY RANCH LTD., INC. NO. 169486

NOTES
 SCALE = 1: 5,000
 Distances shown are in metres.

	Wellsite	2.60 ha	6.42 ac
	Decking Site	0.24 ha	0.59 ac
	Borrow Pit	0.48 ha	1.19 ac
	Access	0.96 ha	2.37 ac
TOTAL:		4.28 ha	10.57 ac

Certified correct this
 28th day of August, 2015.

Ashley S. Large
 Ashley S. Large, B.C.L.S. 884

AREA
 REQUIRED:

O.	DATE	REVISION	DRN	CKD	
0	5/08/28	iginally requested as 4-16-82-20	MC	TC	

**can-am
geomaticsO**

can-am geomatics bc Phone: 250.787.71 n Fort
 St. John, B.C. Toll Free: 1 .866.208.0983
 www.canam.com Fax: 250.787.2323

CAN-AM FILE: J20150557

CAD FILE: J20150557WS-IOPO

Client File No.: s-02955

AFE No.: 151 70283

Land File No.:

REVISION

June 28, 2016

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
DISTRICT LOT 2162 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #0249877, DISPOSITION NO. 86941 1
(the "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

This Order amends order 1885-2 to add Terms and Conditions at Appendix B.
I conducted a telephone mediation on April 20, 2016 discussing Crew Energy Inc.'s ("Crew") application to the Board for mediation and arbitration services.

Crew Energy Inc. ("Crew") seeks a right of entry order to access certain lands to carry out an approved oil and gas activity, namely to construct, drill, complete and operate natural gas wells and associated infrastructure.

At the time of the mediation, I declined to consider a right of entry order as the Oil and Gas Commission ("OGC") had not issued a permit for project 15-9. Crew has now produced to the Board OGC well permits 9643426, 9643427 and 9643428 that relate to this project.

Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. "Oil and gas activity" is a defined term that includes the construction or operation of a pipeline.

Based on our discussions and also on the fact that the Oil and Gas Commission has issued permits for Crew's project I am satisfied that Crew requires the Lands for an approved oil and gas activity.

The Surface Rights Board orders:

1. Upon payment of the amount set out in paragraph 2, Crew shall have the right of entry to and access the portions of the Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" to construct, drill, complete and operate natural gas wells and associated infrastructure on the Terms and Conditions set out at Appendix "B".
2. Crew shall pay to the landowner as partial compensation the total amount of \$1500.
3. Crew shall deliver to the Surface Rights Board security in the amount of \$2500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Crew, or paid to the landowner, upon agreement of the parties or as ordered by the Board.
4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: June 28, 2016

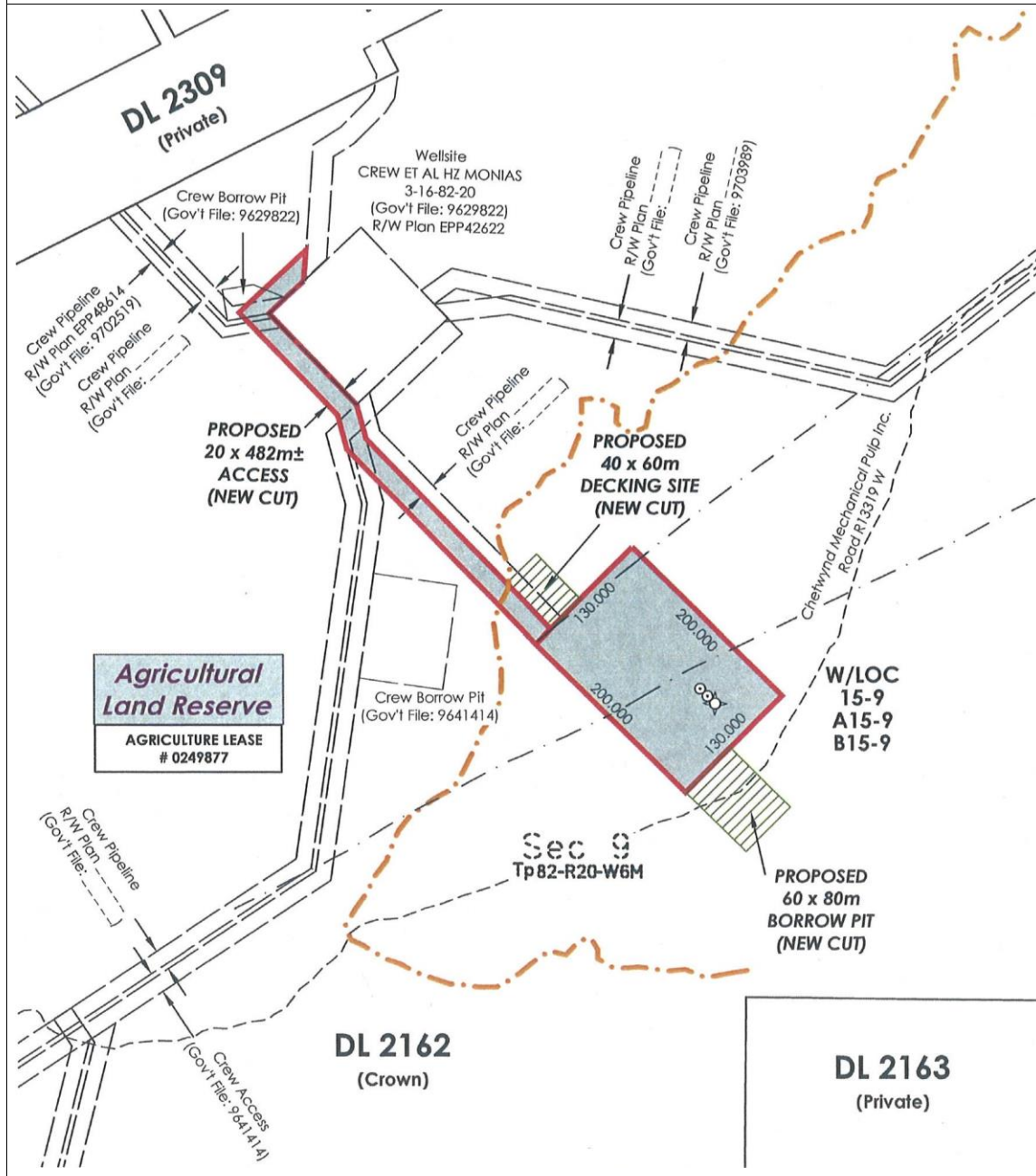
FOR THE BOARD



Rob Fraser, Mediator





APPENDIX "A"

CREW ENERGY INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
WELLSITE, ACCESS, DECKING SITE AND BORROW PIT IN
DISTRICT LOT 2162
AGRICULTURE LEASE # 0249877 PEACE
RIVER DISTRICT



AGRICULTURE LEASE 0249877
 OWNER(S): PENALTY RANCH LTD., INC. NO. 169486

NOTES
 SCALE = 1: 5,000
 Distances shown are in metres.

	Wellsite	2.60 ha	6.42 ac
	Decking Site	0.24 ha	0.59 ac
	Borrow Pit	0.48 ha	1.19 ac
	Access	0.96 ha	2.37 ac
TOTAL:		4.28 ha	10.57 ac

Certified correct this
 28th day of August, 2015.

Ashley S. Large
 Ashley S. Large, B.C. 15884

AREA
 REQUIRED:

O.	DATE	REVISION	DRN	CKD	<p>can-am geomaticsO</p> <p>can-am geomatics bc Phone: 250.787.71 n Fort St. John, B.C. Toll Free: 1 .866.208.0983 www.canam.com Fax: 250.787.2323</p>	CAN-AM FILE: J20150557	
0	5/08/28	iginally requested as 4-16-82-20	MC	TC		CAD FILE: J20150557WS-IOPO	
						Client File No.: s-02955	REVISION
						AFE No.: 151 70283	
						Land File No.:	

Appendix B

Terms and Conditions

1. Crew will fence the well pad following construction;
2. Crew will take reasonable efforts to control dust on the areas covered by the right of entry and to enforce the speed of those under its control using the access road.
3. Crew will take all reasonable efforts to ensure cattle are not harmed.

November 25, 2016

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2162 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #344644, DISPOSITION NO. 869411

(the "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

Crew Energy Inc. ("Crew") seeks a right of entry order to access certain lands to carry out an approved oil and gas activity, namely to construct, operate and maintain two flowlines and associated infrastructure.

On November 24, 2016, I conducted a telephone mediation to discuss whether the Board ought to grant Crew a right of entry onto the lands so they can construct this project. After considerable discussion, I determined that Crew requires access to the Lands for an approved oil and gas activity, which is to construct flowlines to connect to their project approved in Board Order 1885-1 amd. Supporting this decision is the fact that the Oil and Gas Commission has issued permits for these projects (Commission numbers 9709629, 9709382).

Board Order

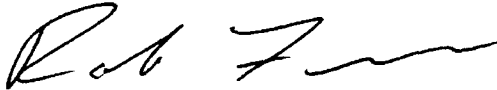
The Surface Rights Board Orders:

1. Upon payment of the amount set out in paragraph 2, Crew shall have the right of entry to and access the portions of the Lands shown outlined in red on the Individual Ownership Plans attached as Appendix "A" and Appendix "B" for the purpose of carrying out the approved oil and gas activities, namely the construction, operation and maintenance of two flow lines and associated infrastructure in association with British Columbia Oil and Gas Commission Pipeline Permit Nos. 9709629 and 9709382, both issued on May 6, 2016.
2. Crew shall pay to the landowner as partial compensation the total amount of \$3,000.
3. Crew shall deliver to the Surface Rights Board security in the amount of \$2,500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Crew, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: November 25, 2016

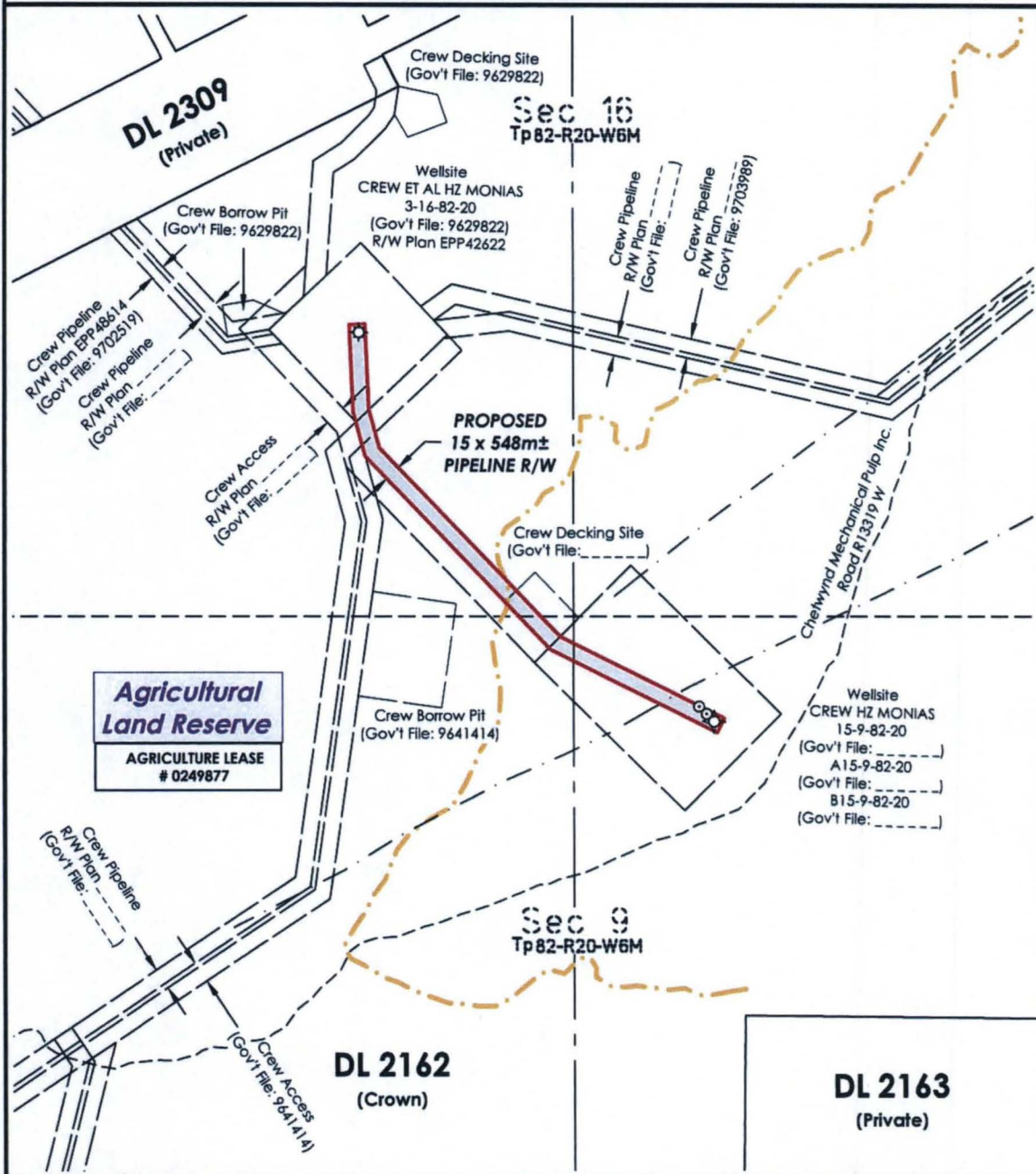
FOR THE BOARD

A handwritten signature in black ink, appearing to read "Rob Fraser", written in a cursive style.

Rob Fraser, Mediator

**CREW ENERGY INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
15m PIPELINE RIGHT OF WAY IN
DISTRICT LOT 2162
AGRICULTURAL LEASE #0249877
PEACE RIVER DISTRICT**

APPENDIX A



AGRICULTURAL LEASE #: 0249877
OWNER(S): PENALTY RANCH LTD., INC. NO. 169486

NOTES
SCALE = 1: 5,000
Distances shown are in metres.

Certified correct this
11th day of May, 2016.

AREA REQUIRED:

	15m PIPELINE R/W	0.82 ha	2.03 ac
TOTAL:		0.82 ha	2.03 ac

Ashley J.S. Large, BCLS 884

NO	DATE	REVISION	DRN	CKD
0	15/09/08	Original plan issued	MC	TC
1	16/05/11	Extended Pipeline R/W	LMP	AJL

can-am geomatics®

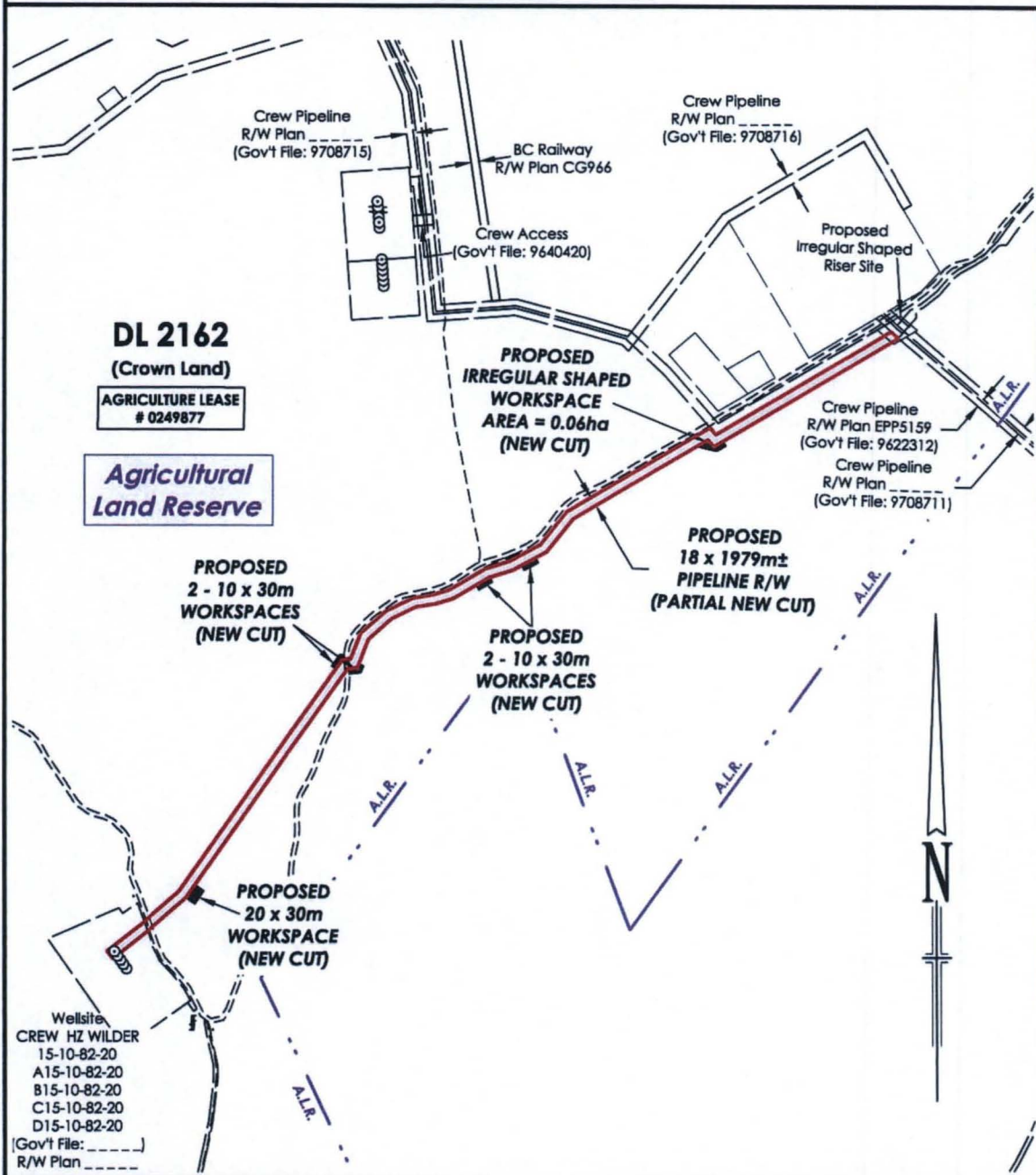
can-am geomatics bc Phone: 250.787.7171
Fort St. John, B.C. Toll Free: 1.866.208.0983
www.canam.com Fax: 250.787.2323

CAN-AM FILE: J20150642
CAD FILE: J20150642PL-IOP-1
Client File No.: P-01526
AFE No.: 15170352
Land File No.: 1

REVISION

**CREW ENERGY INC.
INDIVIDUAL OWNERSHIP PLAN
SHOWING PROPOSED
18m PIPELINE RIGHT OF WAY IN
DL 2162
AGRICULTURE LEASE # 0249877
PEACE RIVER DISTRICT**

APPENDIX "B"



AGRICULTURE LEASE #: 0249877
OWNER(S): PENALTY RANCH LTD., INC. NO. 169486

NOTES
SCALE = 1 : 10000
Distances shown are in metres.

Certified correct this
11th day of May, 2016.

AREA REQUIRED:

	18m Pipeline R/W	3.56 ha	8.80 ac
	Workspaces	0.24 ha	0.59 ac
TOTAL:		3.80 ha	9.39 ac

Ashley J.S. Large, BCLS 884

NO.	DATE	REVISION	DRN	CKD
0	15/05/22	Original plan issued	SJR	ASL
1	15/08/19	Revised Pipeline and Workspaces	CA	AJL
2	16/05/11	Extended Pipeline R/W	LMP	AJL

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CAN-AM FILE: J20140671
CAD FILE: J20140671PL-IOP-2
Client File No.: P-01490
AFE No.: 14170806
Land File No.:

2
REVISION

File No. 1922
Board Order No. 1922-1

January 20, 2017

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2634 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #344644, DISPOSITION NO. 869411

(the "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

Crew Energy Inc. ("Crew") seeks a right of entry order to access certain lands to carry out an oil and gas activity, namely to construct, drill and operate multiple petroleum and natural gas wells with associated infrastructure on one padsite.

Crew applied to the Board for mediation and arbitration services, asking the Board to issue a right of entry order for this project.

On November 24, 2016, I conducted a mediation that discussed this application along with other related projects on lands occupied by Penalty that they lease from the Crown under agricultural lease #344644.

I find that this project is part of a larger integrated project (Board Orders 1885-1amd, 1885-2amd and 1916-1) and supported by the Oil and Gas Commission's Permit (Application Determination Number 100101266; Well Authorization No.:32634, 32635, 32636, 32637, 32638, 32639, 32640, 32641, 32642, 32643; and other authorized activities) I find it is an approved oil and gas activity.

The Surface Rights Board Orders:

1. Upon payment of the amount set out in paragraph 2, Crew shall have the right of entry to and access the portions of the Lands shown outlined in red on the Individual Ownership Plan attached as Appendix "A" to construct, drill and operate multiple petroleum and natural gas wells with associated infrastructure.
2. Crew shall pay to the landowner as partial compensation the total amount of \$1,500.
3. Crew shall deliver to the Surface Rights Board security in the amount of \$2,500 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to Crew, or paid to the landowner, upon agreement of the parties or as ordered by the Board.
4. Crew shall fence the well pad following construction, after freezing conditions have subsided.
5. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the Oil and Gas Commission.

DATED: January 20, 2017

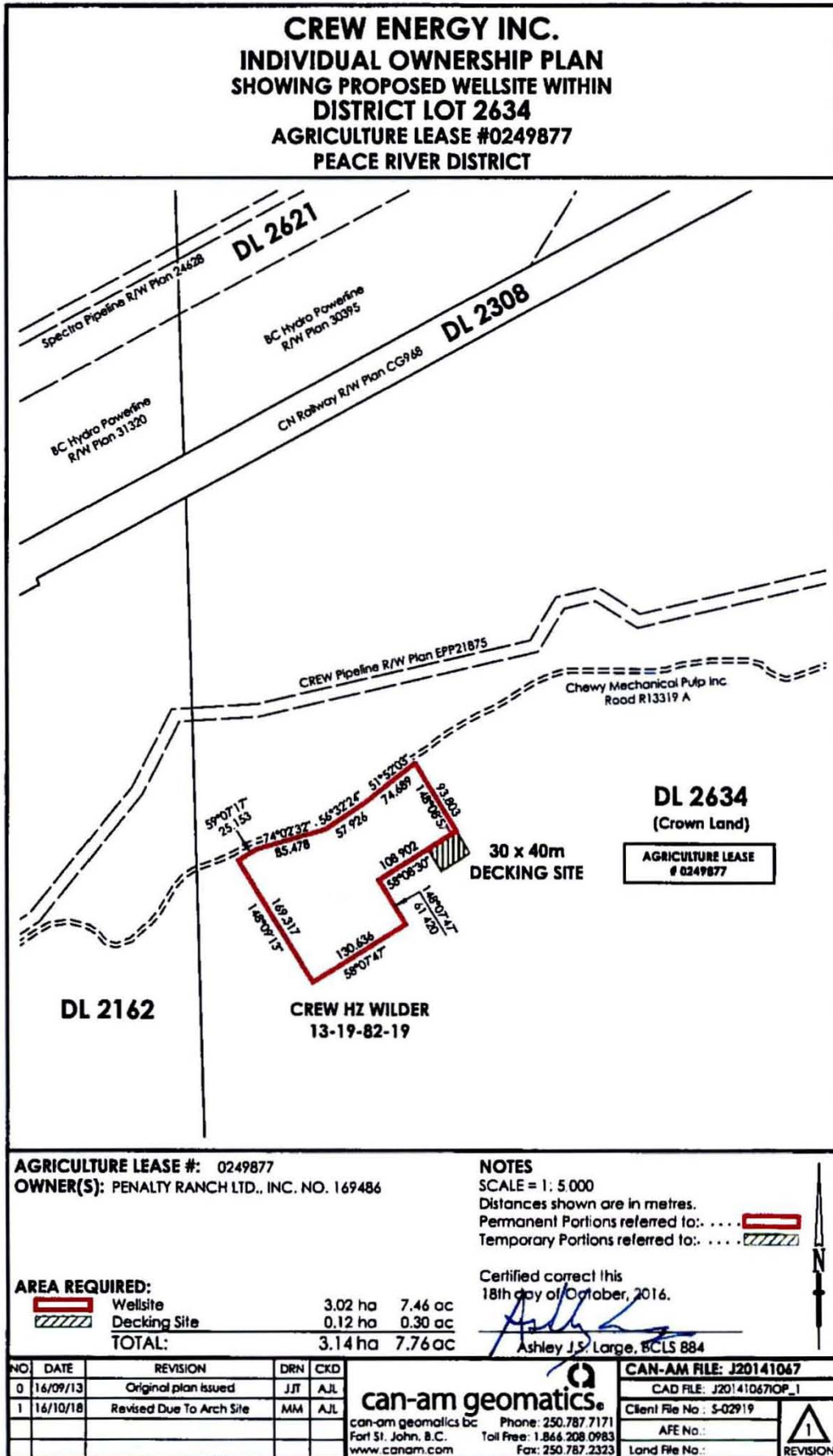
FOR THE BOARD



Rob Fraser, Mediator

APPENDIX "A"

Order 1922-1



File Nos. 1885, 1916, 1922
Board Order No. 1885-1916-1922-3

June 10, 2019

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2634 PEACE RIVER DISTRICT,
AGRICULTURAL LEASE #344644, DISPOSITION NO. 869411

(the "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

Heard by written submissions

This is an application by Crew Energy Inc. (Crew Energy) under section 167(1) of the *Petroleum and Natural Gas Act* for an order terminating rights of entry orders authorizing entry to the Lands by Crew Energy for oil and gas activities. The Lands are Crown Lands over which the Respondent, Penalty Ranch Ltd. (Penalty Ranch), has been granted an agricultural lease dated April 25, 2008 (the Agricultural Lease).

The Oil and Gas Commission granted permits to Crew Energy for oil and gas activities and has, subsequent to the issuance of the rights of entry orders by the Board, issued licenses of occupation to Crew Energy to conduct its oil and gas activities on the Lands.

Penalty Ranch opposes the application. It submits Crew Energy is trespassing on the Agricultural Lease without paying damages or rent. Crew Energy submits that the licenses of occupation were granted in accordance with the terms of the Agricultural Lease allowing the Province to resume portions of the Lands for use not compatible with grazing, and that it no longer requires the rights of entry orders to gain entry to the Lands for its oil and gas activities.

The Board is satisfied that as the Oil and Gas Commission has issued licenses of occupation to Crew Energy for the purpose of accessing and occupying portions of the Lands for its oil and gas activities, that Crew Energy does not require rights of entry orders, and that the rights of entry orders issued by the Board should be terminated.

Any dispute between Penalty Ranch and the Oil and Gas Commission respecting the issuance of licenses of occupation is not within the jurisdiction of the Board to resolve. Similarly, any dispute between Penalty Ranch and the Province respecting interpretation of the Agricultural Lease and whether the license of occupation is a proper exercise of the Province's authority under the Agricultural Lease to resume portions of the Lands is not within the jurisdiction of the Board to resolve.

ORDER

The Surface Rights Board orders that the following rights of entry orders are terminated:

- a) Order 1885-1 issued April 22, 2016;
- b) Order 1885-2 issued June 16, 2016 and Order 1885-2amd issued June 28, 2016;
- c) Order 1916-1 issued November 25, 2016;
- d) Order 1922-1 issued January 20, 2017.

Penalty Ranch may retain any amounts paid to it as partial payment in accordance with the Orders listed above.

DATED: June 10, 2019

FOR THE BOARD



Cheryl Vickers, Chair

File No. 2162
Board Order No. 2162-1

June 8, 2020

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2162 PEACE RIVER DISTRICT, AGRICULTURAL LEASE #344644,
DISPOSITION NO. 869411
(The "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

[1] This is an application for costs by the Respondent landowners, Penalty Ranch Ltd. (Penalty Ranch) following the dismissal of an application by Crew Energy Inc. (Crew) for a right of entry order on the basis that the Board did not have jurisdiction.

[2] The Oil and Gas Commission (OGC) granted Crew a permit to construct and operate a pipeline carrying produced water on land including Crown land leased by Penalty Ranch pursuant to an Agricultural Lease. The OGC's permit granted permission to occupy and use Crown land excluding the area within Penalty Ranch's Agricultural Lease unless right of entry was obtained through the Surface Rights Board.

[3] Crew applied to the Board under section 159 of the *Petroleum and Natural Gas Act* (PNGA) for a right of entry order for the construction and operation of the pipeline on the land leased by Penalty Ranch.

[4] The Board convened a mediation teleconference at which Penalty Ranch submitted the Board did not have jurisdiction because the proposed pipeline was not a "flow line" within the meaning of the *PNGA*. The mediator referred the issue of jurisdiction to me.

[5] While taking no position on Penalty Ranch's objection to the Board's jurisdiction, Crew advised that the proposed pipeline was to convey produced water from storage tanks within a plant site to a disposal well for injection and that it was similar to the proposed pipeline in *Arc Resources Ltd. v. Hommy*, Order 1837-1, where the Board determined it did not have jurisdiction. On the basis of that advice, I determined that the Board did not have jurisdiction with respect to Crew's application for a right of entry order.

[6] Penalty Ranch now seeks costs of \$900 inclusive of \$500 for time spent by Anja and Hans Kirschbaum (the owners of Penalty Ranch), and \$400 for time spent by its agent, Elvin Gowman, in dealing with Crew's application and attending the mediation. Mr. Kirschbaum advises that Mr. Gowman's time is billed at \$100/hour. He advises that

he and Anja Kirschbaum had to take a five hour round trip to Dawson Creek to attend the mediation call because they do not have reliable telephone service due to the remote location of their ranch and the Board had advised it would proceed without them if they failed to attend the scheduled telephone mediation. He says they also spent a couple of hours researching and meeting with Mr. Gowman.

[7] Crew submits costs should not be awarded for the following reasons:

- i) Crew was compelled by the permit condition to come to the Board;
- ii) Crew took no position on Penalty Ranch's application; and
- iii) Penalty Ranch could have made its application at the outset and avoided the need to attend the mediation call.

[8] Crew questions whether the Board has jurisdiction to make any costs award, having determined it does not have jurisdiction on the underlying application.

[9] I find the Board does have jurisdiction to award costs even where it has determined that it does not have jurisdiction with respect to the merits of an application.

[10] Section 170 of the *PNGA* empowers the Board to order a party to an application to pay all or part of the actual costs incurred by another party "in connection with the application". The authority of the Board to award costs is not restricted in relation to the determination reached in an application, which as in this case, could be a finding that the application does not fall within the jurisdiction of the Board.

[11] In *Altakla v. Power*, 2004 BCHRT 253, the Human Rights Tribunal (HRT) determined it did not have jurisdiction with respect to the matter before it but found that it did have jurisdiction to award costs (although it chose not to do so in the circumstances). The HRT's enabling legislation granted the tribunal the power to order costs against parties who engage in improper conduct "in the course of a complaint". With respect to this authority, the HRT said: "There is no suggestion in this language

that the Tribunal's jurisdiction to order costs for such conduct is limited to those cases in which it ultimately determines the complaint to be within its jurisdiction".

[12] The HRT goes on to reason as follows:

19 The Tribunal has, as it must, the jurisdiction to determine if it has jurisdiction over a complaint [citation omitted]. In making that determination, it may need to seek submissions, decide an application or even hold a full hearing on the merits of the complaint: see Blake, *Administrative Law in Canada* (3rd ed.) (Markham: Butterworths, 2001) at p. 110. The Tribunal must be able to control its processes through the course of determining whether it has jurisdiction or not.

...

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Rights holders should expect to pay an amount towards a landowner's actual costs in connection with an application when seeking a right of entry order.

[18] In the circumstances, I find Crew Energy should pay \$300 towards Mr. Gowman's time, representing 3 hours at \$100/hour) and \$300 towards Anja and Hans Kirschbaum's time representing 6 hours (3 hours each) at \$50/hour, for a total of \$600.

ORDER

[19] Crew Energy Inc. shall forthwith pay to Penalty Ranch Ltd. \$600 in costs.

DATED: June 8, 2020

FOR THE BOARD



Cheryl Vickers, Chair

File No. 2162
Board Order No. 2162-1

June 8, 2020

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2162 PEACE RIVER DISTRICT, AGRICULTURAL LEASE #344644,
DISPOSITION NO. 869411
(The "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

[1] This is an application for costs by the Respondent landowners, Penalty Ranch Ltd. (Penalty Ranch) following the dismissal of an application by Crew Energy Inc. (Crew) for a right of entry order on the basis that the Board did not have jurisdiction.

[2] The Oil and Gas Commission (OGC) granted Crew a permit to construct and operate a pipeline carrying produced water on land including Crown land leased by Penalty Ranch pursuant to an Agricultural Lease. The OGC's permit granted permission to occupy and use Crown land excluding the area within Penalty Ranch's Agricultural Lease unless right of entry was obtained through the Surface Rights Board.

[3] Crew applied to the Board under section 159 of the *Petroleum and Natural Gas Act* (PNGA) for a right of entry order for the construction and operation of the pipeline on the land leased by Penalty Ranch.

[4] The Board convened a mediation teleconference at which Penalty Ranch submitted the Board did not have jurisdiction because the proposed pipeline was not a "flow line" within the meaning of the *PNGA*. The mediator referred the issue of jurisdiction to me.

[5] While taking no position on Penalty Ranch's objection to the Board's jurisdiction, Crew advised that the proposed pipeline was to convey produced water from storage tanks within a plant site to a disposal well for injection and that it was similar to the proposed pipeline in *Arc Resources Ltd. v. Hommy*, Order 1837-1, where the Board determined it did not have jurisdiction. On the basis of that advice, I determined that the Board did not have jurisdiction with respect to Crew's application for a right of entry order.

[6] Penalty Ranch now seeks costs of \$900 inclusive of \$500 for time spent by Anja and Hans Kirschbaum (the owners of Penalty Ranch), and \$400 for time spent by its agent, Elvin Gowman, in dealing with Crew's application and attending the mediation. Mr. Kirschbaum advises that Mr. Gowman's time is billed at \$100/hour. He advises that

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[8] Crew questions whether the Board has jurisdiction to make any costs award, having determined it does not have jurisdiction on the underlying application.

[9] I find the Board does have jurisdiction to award costs even where it has determined that it does not have jurisdiction with respect to the merits of an application.

[10] Section 170 of the *PNGA* empowers the Board to order a party to an application to pay all or part of the actual costs incurred by another party "in connection with the application". The authority of the Board to award costs is not restricted in relation to the determination reached in an application, which as in this case, could be a finding that the application does not fall within the jurisdiction of the Board.

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ORDER

[19] Crew Energy Inc. shall forthwith pay to Penalty Ranch Ltd. \$600 in costs.

DATED: June 8, 2020

FOR THE BOARD



Cheryl Vickers, Chair

File No. 2162
Board Order No. 2162-1

June 8, 2020

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

DISTRICT LOT 2162 PEACE RIVER DISTRICT, AGRICULTURAL LEASE #344644,
DISPOSITION NO. 869411
(The "Lands")

BETWEEN:

Crew Energy Inc.

(APPLICANT)

AND:

Penalty Ranch Ltd.

(RESPONDENT)

BOARD ORDER

[1] This is an application for costs by the Respondent landowners, Penalty Ranch Ltd. (Penalty Ranch) following the dismissal of an application by Crew Energy Inc. (Crew) for a right of entry order on the basis that the Board did not have jurisdiction.

[2] The Oil and Gas Commission (OGC) granted Crew a permit to construct and operate a pipeline carrying produced water on land including Crown land leased by Penalty Ranch pursuant to an Agricultural Lease. The OGC's permit granted permission to occupy and use Crown land excluding the area within Penalty Ranch's Agricultural Lease unless right of entry was obtained through the Surface Rights Board.

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DATED: June 8, 2020

FOR THE BOARD



Cheryl Vickers, Chair

File No. 2162
Board Order No. 2162-1

June 8, 2020

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

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BETWEEN:

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AND:

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(RESPONDENT)

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