

MEDIATION AND ARBITRATION BOARD
UNDER THE PETROLEUM AND NATURAL GAS ACT
#114-10142-101st Avenue
Fort St. John BC
V1J 2B3

Date: September 10 1999

File No. 1297

Board Order No 252A

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND
NATURAL GAS ACT, BEING CHAPTER 361
OF THE REVISED STATUTES OF BRITISH
COLUMBIA, AND AMENDMENTS THERETO:
(THE ACT):

AND IN THE MATTER OF A PORTION OF
THE NORTHEAST QUARTER OF SECTION
THIRTY-SIX (36), TOWNSHIP EIGHTY-
FOUR (84), RANGE FOURTEEN (14), WEST
OF THE SIXTH MERIDIAN (W6M), PEACE
RIVER DISTRICT:
(THE LANDS):

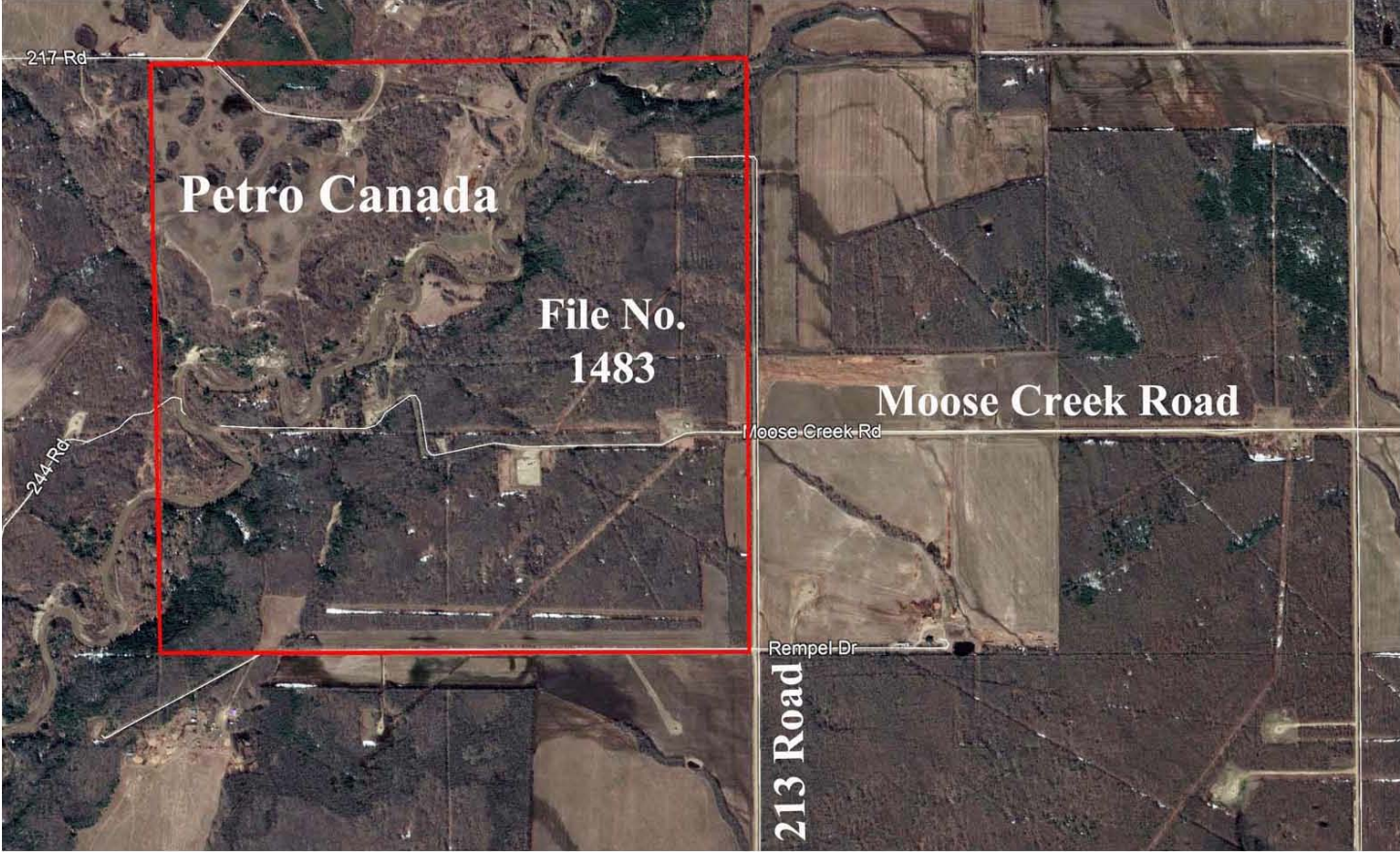
BETWEEN:

IMPERIAL OIL RESOURCES LTD.
237 - 4th AVE., SW.
CALGARY, AB T2P 0H6
APPLICANT

AND:

NORMAN KINDRAT
GOODLOW, BRITISH COLUMBIA
VOC 1S0
RESPONDENT

ARBITRATION ORDER



217 Rd

Petro Canada

**File No.
1483**

Moose Creek Road

Moose Creek Rd

244 Rd

Rempel Dr

213 Road

BACKGROUND:

Initial contact was made in November 1993 by Mr. McClellan to discuss Imperial Oil Resources Ltd. Enhanced Oil Recovery project with respect to lease sites 16-36-84-14 and 8-36-84-14 W6M. Mr. Kindrat had some outstanding issues occurring from previous work and no agreement was reached in regard to the Enhanced Oil Recovery project.

Mr. Kindrat wanted the Applicant to move the project off his land onto the Applicant's adjoining land. The Applicant agreed to re-route some flowlines and facilities. However flowline Right-Of-Way would still be required heading east from existing wellsites 16-36-84-14 and 8-36-84-14. A Grant of Statutory Right-Of-Way was signed for one flowline only in each Right-Of-Way.

When the Applicant evaluated the project it was decided to ask Mr. Kindrat for additional Right-Of-Way. Mr. McClellan compensation offer to Mr. Kindrat was for \$ 1,000.00 per acre for the flowline Right-Of-Way, plus any damages to be assessed after construction was complete. Mr. Kindrat's compensation request was for \$ 1,000.00 per acre multiplied by the number of flowlines in the ground, and \$ 100.00 per tree that would be removed. The Applicant then applied for a Mediation Hearing in December 1993.

Mediation took place by a conference call 18 January 1994 between Mr. McClellan (Applicant), Mr. Kindrat (Respondent) and Mr. Loucks (Chair) of the Mediation and Arbitration Board. As a result of the Mediation Hearing Board Order No. 252M was issued. Board Order No 252M granted Right-Of-Entry with respect to the Right-Of-Way heading in an easterly direction from existing wellsite 16-36-84-14 to the property line. Compensation issues were to be settled at an Arbitration Hearing at a later date.

A tree count was taken before construction began in February 1994. Mr. Kindrat was not satisfied with the cleanup in the spring. A site inspection was conducted with Mr. Loucks, Mr. H. Bell representing the Board, Mr. Kindrat and Mr. R. Velander representing the Respondent and Mr. McClellan and Mr. J. Mo representing the Applicant.

Mr. McClellan, being unable to negotiate a Grant of Statutory Right-Of-Way heading NW from 16-36-84-14, applied to the Board on 4 May 1994 for Permission to Enter.

Mr. Kindrat indicated at the Mediation Hearing held 11 May 1994 he wanted annual compensation for the flowline Right-Of-Way. Board Order No. 252-2M resulted which granted Right-Of-Entry with respect to the flowline heading NW from the existing wellsite 16-36-84-14 to the property line. Issues of compensation were to be settled at an Arbitration Hearing at a later date. A tree count was taken on the area of concern.

The Respondent did not accept the Applicant's offer of \$ 1,000.00 for trespass and unauthorized access and disturbance of a beaver dam. Cleanup was completed late summer and early fall 1995.

In 1996, the Respondent was still concerned with the work and reclamation, specifically the depth of the flowlines, the stability of the creek banks and the surface reclamation. In August 1996, the Applicant contracted consultants to address the Respondent's concerns. In April 1997 the requested reports were referred to:

1. Ministry of Environment Lands & Parks, Water Management Branch, Mr. D. Melnyk
2. Ministry of Employment and Investment, Mr. Richard Caesar, Pipeline Applications Officer
3. Provincial Agricultural Land Commission, Mr. Jim Gilliland

for review and response. Over the next several months correspondence was exchanged between the Government agencies and Imperial Oil Resources Ltd. The proposed work was scheduled to begin in August 1998. At that time the Respondent refused entry for the reclamation work.

The Arbitration Hearing

The Arbitration Hearing was held on 28 July 1999 in the Boardroom of Execuplace Business Centre, 10142 101 Avenue Fort St. John, BC beginning at 9:00 a.m. The Arbitration Panel consisted of Ray Rutherford Chair, Connie Shortt Vice-Chair, Bud Hosker, Ivor Miller, and Mavis Nelson, Board members.

Attending the Arbitration Hearing was Mr. Norman Kindrat representing himself, Ms. Joanne Nutter, Mr. R. McClellan and Mr. P. Miller representing the Applicant. It was agreed that the hearing would deal with both Board Order No. 252M and No. 252-2M. Those persons giving evidence were sworn in by Vice-Chair Connie Shortt.

An onsite inspection had been conducted the previous afternoon with the Arbitration Panel, Ms. Joanne Nutter and Mr. Richard Alessio representing the Applicant; and Mr. Norman Kindrat representing the Respondent.

In the few days prior to the hearing, a number of concerns were dealt with between the two parties and reclamation work was in progress. The reclamation work being done included replacing topsoil and cultivating the land. The two parties came to a mutual agreement on crop loss and weed control on both right-of-ways.

Applicant's Position

The Applicant presented its case by referring to the binder of information detailing the problems with respect to the rights-of-way in question from 1993 to date. This information was available to the Arbitration Panel and the Respondent for review prior to the hearing. The two parties informed the Arbitration Panel of the matters that had been settled prior to the beginning of the hearing and asked the Arbitration Panel to focus on the following:

1. Comparative aspen and poplar prices: The value of the trees removed during construction.
2. The Grant of Statutory Right-Of-Way dated 9 December 1993 and Board Order No. 252M that resulted in the change of the width of the Right-Of-Way extending east from 16-36-84-14 wellsite to allow for multiple flowlines, and the NW Right-Of-Way allowing multiple flowlines
3. the issue of annual rental for flowline Rights-of-ways

Respondent's Position

The Respondent presented his information and asked the Arbitration Panel to give consideration to the following:

1. He wishes to have the trees replaced (on the Right-Of-Way east of the wellsite 16-36-84-14), to restore his shelterbelt, and northwest from the wellsite through the creek. He valued these trees at \$ 100.00 per tree.
2. The Respondent stated that the land is NOT being returned to him to use as he wishes as with multiple flowlines underground he cannot replace the trees to re-establish the shelterbelt.
3. The Respondent wishes to be compensated for EACH flowline in the Right-Of-Way at \$1,000.00 per flowline.
4. The Respondent wants a bond to insure indemnification or annual payment of rent to ensure that a large time lapse would not occur before any damages were dealt with as has been his past experience. He also expressed his satisfaction with how quickly the reclamation work was progressing with the last superintendent in charge.

Comments

The Applicant and the Respondent indicated they are negotiating (and are close to agreement on) the trespass, unauthorized access off the Right-Of-Way, and the disturbance of a beaver dam. These events occurred during construction of a portion of the Right-Of-Way. The disturbance and resultant damage is not within the jurisdiction of the Mediation and Arbitration Board.

As previously noted, the matter of crop loss and weed control have been settled between the two parties.

The Board further recommends that an agreement be drawn up between the two parties for future use to ensure the Respondents concerns regarding entry on his lands and compensation and/or repair of damages be addressed.

DECISION:

The Arbitration Panel having reviewed all the evidence presented at the hearing; the arguments made in support thereof, and have considered both the Applicants and the Respondents requests.

The Arbitration Panel is of the opinion that the compensation pursuant to Section 21 (1) of the Petroleum and Natural Gas Act be awarded as follows:

1. In the matter of 16-36-84-14 East Right-Of-Way:

a) for the compulsory aspect of the entry, occupation or use of the said lands as Board Order No. 252M permitted and as the land cannot be restored to its original condition due to multiple flowlines	\$ 500.00
b) the value of the land being \$ 1,000.00 per acre X 0.902 acres	\$ 902.00
c) temporary and permanent damage: 226 trees as per evidence, assuming these would be marketable timber as of today. Based on the Applicants evidence of 80 tons per acre X 0.902 Acres = 72.16 tons, and 50% of the Right-Of-Way acreage was treed = 36.08 tons, and based on a value of \$ 30.00 per ton	\$ 1,082.40
Total	\$ 2,484.40
Less amount awarded by Board Order No. 252M	\$ 790.00
Balance Due	\$ 1,694.40

2. In the matter of 16-36-84-14 Northwest Right-Of-Way:

a) for the compulsory aspect of the entry, occupation or use of the said lands as Board Order No. 252-2M permitted	\$ 500.00
b) the value of the land being \$ 1,000.00 per acre X 1.176 acres	\$ 1,176.00
c) temporary and permanent damage: 130 as per evidence assuming these would be marketable timber as of today and based on the above calculations	\$ 622.22
g) workspace	\$ 500.00
Total	\$ 2,798.22
Less amount awarded by Board Order No. 252-2M	\$ 1,500.00
Balance Due	\$ 1,298.22

TOTAL BALANCE DUE (\$1,694.40 + \$ 1,298.22) **\$2,992.62**

IT IS HEREBY ORDERED THAT:

1. The Applicant shall pay to the Respondent (for the rights acquired pursuant to Board Order 252M and Board Order 252-2M), the total balance due in the amount of two thousand, nine

hundred ninety-two dollars and sixty-two cents (\$ 2,992.62) by causing a cheque to be delivered to the Respondent along with a certified true copy of this order.

2. Upon payment of the sum of \$ 2,992.62, the Applicant shall be entitled to all the rights of an operator, to enter, occupy or use of the land granted under the provisions of the Petroleum and Natural Gas Act and Amendments thereto, upon the lands referred to in Board Order 252M and 252-2M.
3. Additional damages that are within the jurisdiction of the Mediation and Arbitration Board that are unforeseen or not considered in this Board Order would be considered by an Arbitration Panel upon the filing of the applicable form with the Mediation and Arbitration Board. .
4. Nothing in this Order is, or operates as consent, permit or authorization that by enactment, a person is required to obtain in addition to this Order.

Dated at the City of Fort St. John, BC this 10th day of September, 1994.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Ray Rutherford, Chair

Connie Shortt, Vice-Chair

Bud Hosker, Member

Ivor Miller, Member

Mavis Nelson, Member

MEDIATION AND ARBITRATION BOARD

Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: 22 November 2002

File No. 1483

Board Order No. 364M

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND
NATURAL GAS ACT BEING CHAPTER 361 OF
THE REVISED STATUTES OF BRITISH
COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF THE
NORTH HALF SECTION 17, TOWNSHIP 84,
RANGE 14 WEST OF THE SIXTH MERIDIAN
PEACE RIVER DISTRICT
(NORTH ½ 17 - 84 - 14 W6M)
(THE LANDS)

BETWEEN:

PETRO - CANADA
150 6TH AVENUE SW
CALGARY, ALBERTA
T2P 3E3
(THE APPLICANT)

AND:

FRANCIS ALLEN BERGE
CHRISTINA YVONNE BERGE
GENERAL DELIVERY
CLAYHURST, BC
V0C 1G0
(THE RESPONDENT)

MEDIATION ORDER

The Mediation and Arbitration Board received an Application on 17 October 2002 from Raymond Fromme, agent for Petro - Canada. The Application was for a Right-Of-Entry concerning road access to two riser sites and a bell hole. Negotiations with the Owners of the land, Mr. Francis Allen Berge and Ms. Christina Yvonne Berge had not resulted in an agreement.

Pursuant to Section 16 (2) of the Petroleum and Natural Gas Act, a copy of the Application was sent by registered mail to the Respondent on 16 October 2002.

Pursuant to Section 18 (1) of the Petroleum and Natural Gas Act, Rodney Strandberg was designated Mediator. The Mediator confirms that the Application was properly filed.

Mediation was conducted on 20 November 2002 in the residence of Francis and Christina Berge (the "Owners"). Rodney Strandberg appeared as Mediator. Kathryn Ross appeared on behalf of Petro - Canada. Wesley Berge, son of the Owners, also attended as a person whose interests might be affected by the Order sought.

BACKGROUND:

Petro - Canada has a lease with the Owners regarding the riser sites and bellhole on the property. The Owners have an executed lease with Imperial Oil for road access to an Imperial Oil lease. The parties agreed that the Imperial Oil road impacted 2.5 acres of the Owner's property. The Owners receive \$700.00 per acre as annual payments from Imperial Oil.

Petro - Canada constructed roads over the Owner's property to allow access to the riser sites and bell hole. For approximately the last 10 years Petro - Canada has used the Imperial Oil road and then Petro - Canada 's own roads to access these sites, primarily for inspection purposes, approximately 4 or 5 times per year. The parties agreed that the Petro - Canada roads impacted approximately 3 acres of the Owner's land.

Petro - Canada has never signed a lease with the Owners for the roads it constructed on the Owner's property. Petro - Canada has never paid compensation to the Owner's for the roads.

Petro - Canada wished to enter into a road use agreement with Imperial Oil to deal with maintenance of the Imperial Oil road but this cannot be done without the permission of the Owners.

As the parties were unable to agree on necessary matters to allow a lease to be executed, Petro - Canada applied to the Mediation and Arbitration Board on 17 October 2002 for a right of entry regarding the roads and to determine appropriate compensation to be paid.

POSITION OF THE PARTIES

Petro - Canada

Initially, Petro - Canada offered to increase the compensation being paid for the lease regarding the riser sites and bellhole from the current level of \$ 1,100.00 per annum to \$ 2,500.00 and to make a one time payment of \$ 6,000.00 for past compensation not paid; and \$ 1,500.00 for the time and inconvenience to the Owner's in dealing with this matter, including the Mediation.

After it was clearly understood that the Application and this Mediation could not deal with the existing executed lease for the riser site, Petro - Canada reconsidered its offer and offered to pay, in addition to the one time payment and compensation for time totaling \$ 7,500.00, the sum of \$700.00 per acre for 3.5 acres of road for a total annual payment of \$ 2,450.00.

Landowners

It was the view of the Owners that they should receive \$ 700.00 per acre per year for the total area impacted by the roads used by Petro - Canada, 5.5 acres, for a total annual payment of \$ 3,750.00. The Owners were prepared to accept the one-time payments totaling \$ 7,500.00 offered by Petro - Canada.

The Owners were also concerned with providing consent to Petro - Canada to enter into road use agreements with Imperial Oil, as the Owners were uncertain how this might impact their rights as the owners of the surface.

DISCUSSION

The major issue between the parties was the appropriate compensation to be paid for the use by Petro - Canada of the road that was the subject matter of the lease between the Owners and Imperial Oil.

It was the view of the Mediator that although the Owners were entitled to be compensated for the use by Petro - Canada of the Imperial Oil road, it could not be said that this use had the same impact as the use of roads constructed by Petro - Canada. The lease payments from Imperial Oil were designed, in whole or in part, to compensate the Owners for the disruption to their rights as a result of the construction and maintenance of the road and the use made of the road by Imperial Oil. The Owners are to be compensated for any incremental impact on their rights by the use made of this pre-existing road by Petro - Canada.

After discussion, it was agreed by the parties that for two acres of the Imperial Road, being the difference between the 5.5-acre total length of the road required by Petro - Canada and the 3.5 acres to be compensated at \$ 700.00 per acre, the sum of \$ 350.00 per acre for a total of \$ 700.00 per year would be appropriate compensation. It was further agreed that if Imperial Oil should terminate its lease of the road then the appropriate compensation would increase to \$ 700.00 per acre per year for a total of \$ 1,400.00.

After discussion, the Owners also agreed to execute consent to allow Imperial Oil and Petro - Canada to enter into a road use agreement over the shared portion of the road upon receipt of the money ordered to be paid pursuant to this order.

All issues between the parties are resolved at mediation. Accordingly, the Order of the Mediation and Arbitration Board is:

IT IS HEREBY ORDERED THAT;

1. Pursuant to section 19 (1) of the Petroleum and Natural Gas Act, following payment of the amount ordered, and for so long as the annual payments are made as ordered, the Applicant, Petro - Canada is entitled to enter upon the land of the Owners for the purpose of using and maintaining the existing roads constructed on the land of the Owners for the purpose of accessing and inspecting the pipeline now existing on the land.
2. The Applicant shall forthwith and in any event within two weeks of the date of this order (6 December 2002) pay to the Respondent the agreed upon sum of \$ 7,500.00 representing the one time payment of past compensation and compensation for the Owner's time, and will provide proof of payment of this amount to the Owners to the Mediation and Arbitration Board within the same time period. This payment is deemed to be the payment required pursuant to Section 19 (2) (b) of the Petroleum and Natural Gas Act.
3. The Applicant shall pay annual rent in the sum of \$ 3,150.00, payable 22 November 2002 and payable on the 22nd day of November of each year thereafter until further order of the Board or agreement between the parties.
4. The Owners shall, immediately upon receipt of the sum of \$ 10,650.00 representing the one time payments agreed to and the first year annual compensation execute a consent to allow Petro - Canada to enter into a road-use agreement with Imperial Oil.
5. Immediately upon the execution of the road use agreement, Petro - Canada will forward a copy of it to the Owners and to the Mediation and Arbitration Board.
6. Pursuant to Section 19 (2) (c) of the Petroleum and Natural Gas Act the Applicant shall forthwith and in any event within two weeks of the date of this order (6 December 2002) deliver a certified true copy of this order to the Owners of the land.
7. Pursuant to Section 19 (2) (a) of the Petroleum and Natural Gas Act the Applicant is required to deposit security with the Board consisting of a consent to the cancellation of this Board Order which will be held by the Board and released to the Owners upon the Owners providing

proof in a form satisfactory to the Board that the Applicant has failed to comply with a term of this Order. A copy of this consent is attached to this Order and incorporated by reference.

8. Nothing in this order is, or operates as consent, permit or authorization that by enactment, a party is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 22nd day of November 2002.

**MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT**

Rodney J. Strandberg, Chair