

MEDIATION AND ARBITRATION BOARD  
#114, 10142 - 101st Ave.  
Fort St. John, BC  
V1J 2B3

Date: April 29, 1999

File No. 1380

Board Order No. 297A

**BEFORE THE BOARD**

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

AND IN THE MATTER OF A PORTION OF  
THE EAST HALF OF SECTION FIFTEEN,  
TOWNSHIP EIGHTY, RANGE FOURTEEN,  
WEST OF THE SIXTH MERIDIAN (W6M),  
PEACE RIVER DISTRICT.  
(7-15-80-14 W6M)  
**(THE LANDS)**

**BETWEEN:**

STAR OIL & GAS LTD.  
3500 150- 6th AVENUE, SW  
CALGARY, AB  
T2P 3Y7  
**(APPLICANT)**

**AND:**

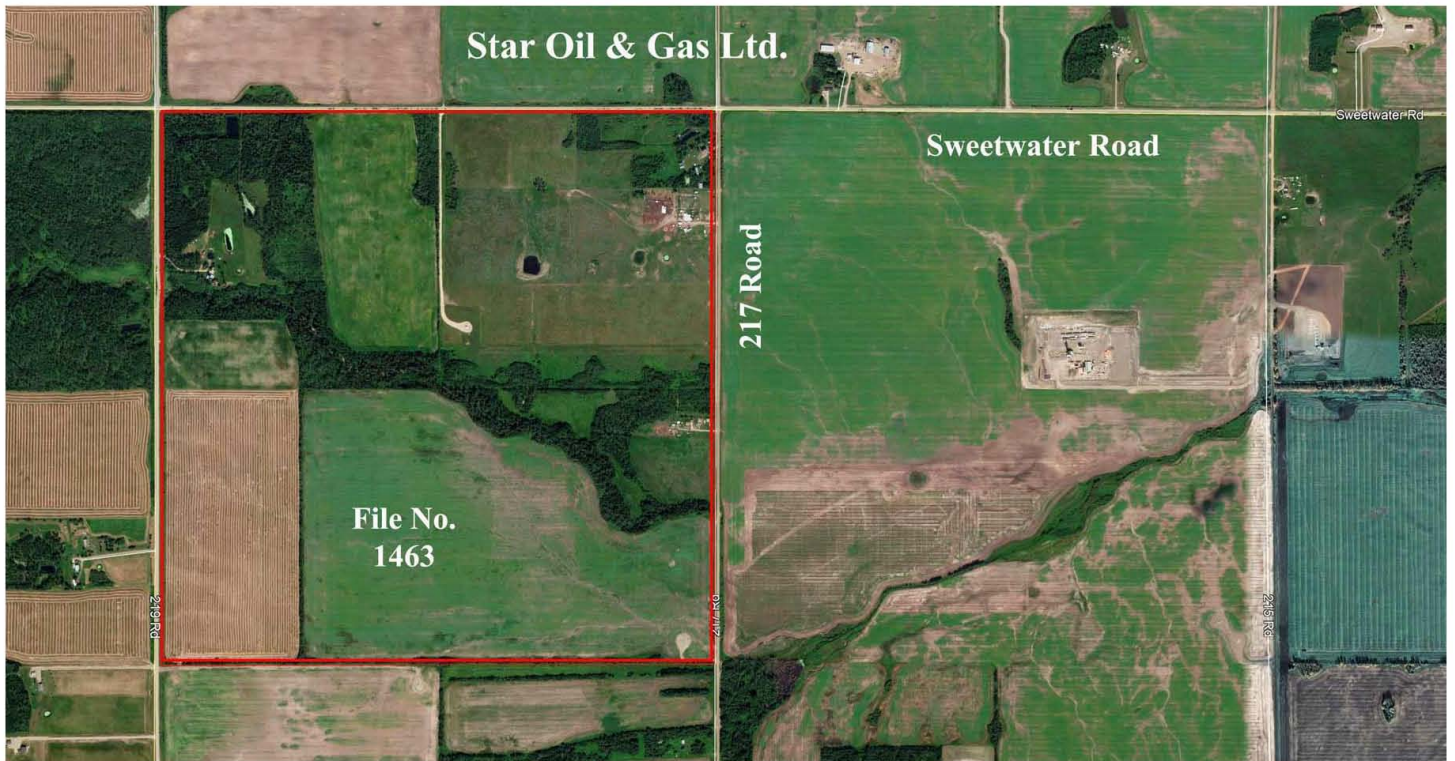
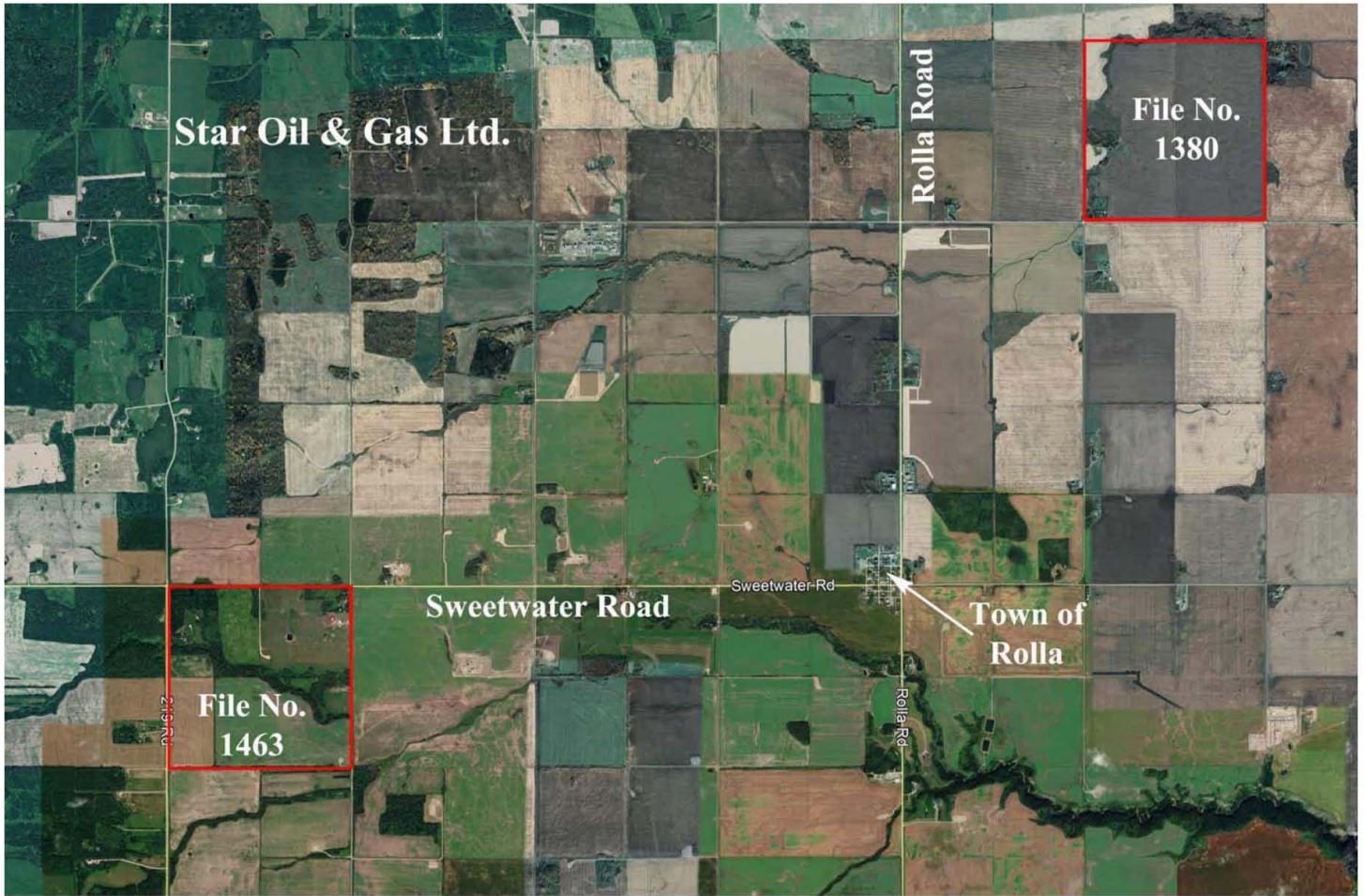
SKYLINE FARMS LTD.  
P.O. BOX 870  
DAWSON CREEK, B.C.  
V1G 4H8  
**(RESPONDENT)**

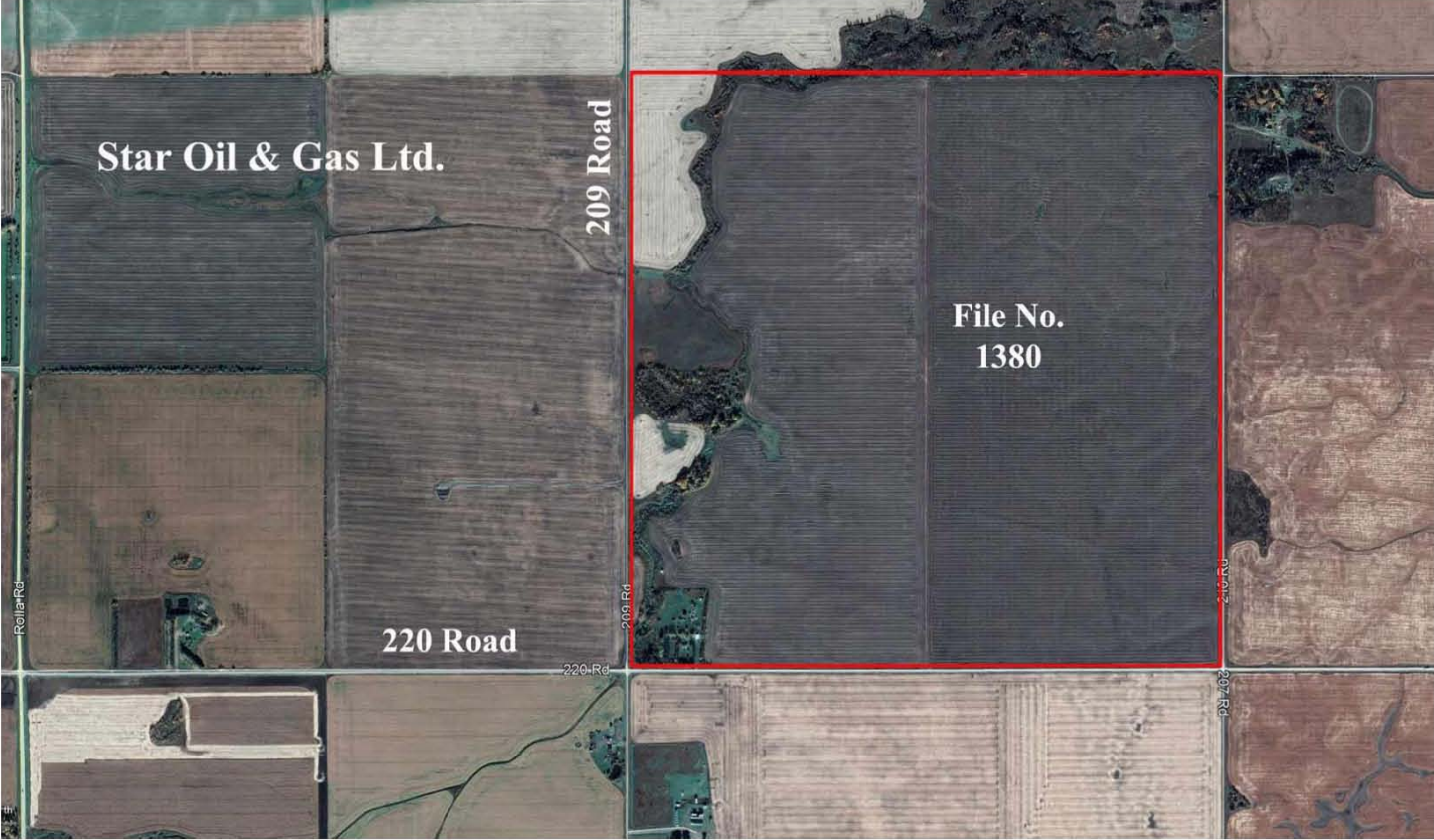
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**BOARD ORDER**

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BACKGROUND





The Mediation and Arbitration Board received on 26 February 1999, an application for Right-Of-Entry, from Star Oil & Gas Ltd.; after it became apparent that a surface lease agreement could not be reached between the parties on the well site known as Star Doe 7-15-80-14, lease number 42385.

Connie S. Shortt was named Mediator. The Mediator inspected the 2.18 ha (5.39 ac) wellsite and access on Monday 15 March 1999.

A Mediation Hearing was held on 18 March 1999 at 9:00 a.m. in the Boardroom of Execuplace Business Centre, 10142 101 St. Avenue, Fort St. John B.C. The Mediation Hearing was unsuccessful in resolving the outstanding issues. The Mediator issued an order which forwarded all issues to an Arbitration Hearing to be heard by an Arbitration Panel.

## HEARING

The Arbitration Hearing was held 12 April 1999 at 10:00 a.m. in Execuplace Business Centre, 10142 101st Avenue, Fort St. John B.C. Present at the Mediation Hearing representing the Applicant Star Oil & Gas was Cal Jaycock (senior geologist), Brock Campbell (coordinator surface rights and aboriginal affairs), Darren Rosie Landman with Longstaff Land Surveying Ltd.

The Respondent Skyline Farms Ltd. was represented by Gene Vipond, owner. The Arbitration Panel consisted of Board Members Connie S. Shortt, Mavis Nelson, Ivor Miller and Bud Hosker. Connie Shortt chaired the hearing.

## APPLICANT

Cal Jaycock, senior geologist gave evidence for Star Oil & Gas Ltd. It was the contention of the Applicant that the well should not be directionally drilled for the following reasons.

1. The additional costs could make the project nonviable.
2. Seismic reports and a well in the area show that all possible production zones could not be penetrated at their apex due to the layout of the subsurface formations.
3. A concern was displayed that if this well was forced to be directional drilled that in the future all landowners would insist on wells being placed solely at the convenience of the landowner.

4. Getting stuck in the hole is more likely with directional drilling, while pipe recovery is less likely.

## RESPONDENT

Gene Vipond made the following points to back up his request the wellsite not be as surveyed in his field but be relocated on the edge of his field.

1. His fields are large, usually over 320 acres, and the trend is to larger fields and they will likely continue to grow larger yet.
2. It is very difficult to farm around anything with large equipment. The possibility of hooking something and incurring added costs increases with the size of machinery.
3. Low contour roads will not help as fill will have to be placed in low lying spots.
4. A cost sheet was submitted using figures of estimated additional cost.
5. Evidence was given that Mr. Vipond is a certified grain grower and thus his loss of profit may be greater.

## DECISION

The Board, having reviewed all the evidence presented at the Arbitration Hearing and giving consideration to the arguments, have decided that a Right-Of-Entry should be granted to allow the drilling program of Star Oil & Gas to proceed as per Exhibit "A" Survey Plan of the Wellsite.

## AWARD

Star Oil & Gas Ltd provided a Wellsite Compensation Formula (Exhibit #2). The figures were not disputed by Mr. Vipond.

Compensation payable to the Respondent will be calculated in accordance with Section 21 of the Petroleum and Natural Gas Act, RSBC Chapter 361.

### Section 21

(a) **Compulsory Aspect of Entry:**

The landowner has lost the right to farm the land as he is accustomed, and this will continue for the life of the well.

The Board considers \$ 2,000.00 for the Right-Of-Entry (first year payment) and \$ 500.00 annually to be fair compensation.

**(b) The Value of the land and the owners loss of right or profit with respect to the Land:**

In determining the land value, both parties agree \$ 500.00 per acre and net crop loss would be \$ 200.00 per acre were fair market value.

The Board concurs the land is fairly valued at \$ 500.00 per acre, and \$ 200.00 annually for crop loss.

**(c) Temporary and Permanent Damage to the Land:**

The Board concurs with the \$ 100.00 per acre to cover soil compaction and erosion due to the construction of the road and site.

The Board considers this to be a one time payment of \$ 524.00 to be fair compensation.

**(d) Compensation for Severance**

The Board concurs with the figures given in Exhibit A referring to costs due to overlap and misses with big equipment.

The Board awards \$ 100.00 per acre for 1.5 acres.

**(e) Compensation for Nuisance and Disturbance from entry occupation or use.**

The Board concurs with the figures given in Exhibit A of \$ 750.00 for the first year and \$ 750.00 annually.

**(f) Money previously paid for occupation or use:**

Not applicable

**(g) Other factors:**

Mr. Vipond has a reasonable request to have the lease moved to an outside perimeter of his property to avoid the time and inconvenience of farming around the wellsite and access road. However, Star Oil & Gas Ltd. presented evidence to show their necessity of drilling a vertical well on this location. Increased costs being one factor

but mainly the prospect of a successful commercial well could easily depend on encountering the prospective zones at their apex.

The Board awards \$ 800.00 first year and \$ 800.00 annually to compensate Mr. Vipond's concerns.

The Board considers \$ 200.00 (one time payment) to be fair compensation for the temporary workspace.

**Summary of the amount to be paid under Section 21 of the Petroleum and Natural Gas Act.**

	<b>First Year</b>	<b>Annual</b>
(a) Compulsory aspect of Entry, occupation or use	\$ 2,000.00	\$ 500.00
(b) Value of land and Owner's loss of a right or profit with respect to the land	\$ 2,620.00	
© Temporary & permanent damage from the entry	\$ 1,048.00	\$ 1,048.00
(d) compensation for severance	\$ 524.00	
(e) compensation for nuisance & disturbance from the entry, occupation or use	\$ 150.00	\$ 150.00
(f) money previously paid to an owner for entry, occupation or use	\$ 750.00	\$ 750.00
(g) other factors	N/A	N/A
	\$ 800.00	\$ 800.00
<b>Total Compensation</b>	<b>\$ 7,892.00</b>	<b>\$ 3,248.00</b>
Temporary Workspace	\$ 200.00	
<b>BALANCE DUE</b>	<b>\$ 8,092.00</b>	<b>\$ 3,248.00</b>

**IT IS HEREBY ORDERED THAT:**

The Board hereby orders Star Oil & Gas Ltd. to pay Skyline Farms Ltd. the amount of \$ 8,092.00 prior to entry, and annual rent of \$ 3,248.00 before or on the anniversary of this Board Order, until such a time this order may be canceled or amended pursuant to 'section 26 (2) of the Petroleum and Natural Gas Act, or until such time an agreement is renegotiated pursuant to Section 11 (2) of the Petroleum and Natural Gas Act, or until a date stated in the restoration certificate pursuant to Section 20 (3) (b) of the Petroleum and Natural Gas Act. The first annual payment (of \$ 3,248.00) shall be due on 29 April 2000.

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, province of British Columbia this 29th day of April 1999.

MEDIATION AND ARBITRATION BOARD  
UNDER THE  
PETROLEUM AND NATURAL GAS ACT

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Connie Shortt, Vice-Chair

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Bud Hosker, Member

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Ivor Miller, Member

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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: 10 June 2002**

**File No. 1463**

**Board Order No. 344A**

**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  
SOUTH WEST QUARTER OF SECTION 35,  
TOWNSHIP 79, RANGE 15 WEST OF THE  
SIXTH MERIDIAN PEACE RIVER DISTRICT  
(4-35-79-15 W6M  
(THE LANDS)**

**BETWEEN:**

**STAR OIL & GAS LTD.  
3500, 150-6<sup>TH</sup> AVENUE SW  
CALGARY, ALBERTA  
T2P 3Y7  
(THE APPLICANT)**

**AND:**

**NEIL GLEN MACLEAN  
VICTORIA ANN MACLEAN  
BOX 746  
DAWSON CREEK, BC  
V1G 4H7  
(THE RESPONDENT)**

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**ARBITRATION ORDER (COSTS)**

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## **BACKGROUND**

An Arbitration Hearing was held in the Provincial Building conference room in Dawson Creek, B.C. on 30 May 2002 to resolve outstanding issues arising from an Application filed by Star Oil & Gas Ltd in this matter. The Arbitration Panel consisted of Rodney J. Strandberg and William B. Wolfe. The Applicant was represented by Les Dellow (Mitchell Schuller & Dellow) as legal counsel with John Hagen, (Longstaff Land Surveying Ltd.) as agent for Star, appearing in person and Brock Campbell appearing during part of the Arbitration by telephone. Neil and Victoria MacLean appeared in person on their own behalf, accompanied by Bert Harrod as an observer.

In 2001, Star Oil & Gas Ltd (Star) through their land agent, Mr. John Hagen of Longstaff Land Surveying Ltd. approached Neil and Victoria MacLean (MacLean) concerning proposed plans to drill three exploration holes on the MacLean property. These locations were;

1. NW1/4, Section 34, Township 79, Range 15, W6M;
2. NW ¼, Section 35, Township 79, Range 15, W6M and
3. SW ¼, Section 35, Township 79, Range 15, W6M (hereafter respectively referred to as 14-34, 14-35 and 4-35).

MacLean granted permission to Star to allow the three sites to be surveyed on the understanding that compensation would be paid for any damage caused by the survey activity. Star completed all three surveys and on or about 16/17 October, 2001 Mr. Hagen met with MacLean to discuss the 3 proposed well sites and present terms for lease agreements. MacLean declined to accept the terms proposed by Star and on 20 October 2001 telephoned Mr. Hagen with a counter-offer, which was refused by Star.

Geological data obtained from other wells drilled south and east of the MacLean property gave indications of poor reservoir quality and Star determined that the 14-34 location would likely not be commercially viable. Notice of termination of the application for 14-34 was given to Mr. and Ms. MacLean on 30 October 2001.

On 01 November 2001, the Mediation and Arbitration Board received an application for Mediation and Arbitration from John Hagen, as agent for Star. The purpose of the application was for the grant of Right of Entry to construct well sites and access at the 14-35 and 4-35 locations.

Pursuant to Section 18 (1) of the Petroleum and Natural Gas Act, Mr. Frank Breault was designated Mediator. A brief Mediation Hearing was conducted on 09 November 2001 in the Provincial Building conference room in Dawson Creek, B.C. beginning at 10:00 am. In attendance representing the Applicant were John Hagen, acting as agent for Star and the Respondents, Neil MacLean and Victoria MacLean. Bert Harrod, a neighbour of the MacLeans was also in attendance. It was agreed that because Mr. Brock Campbell, Coordinator of Surface Rights and Aboriginal Affairs in the Calgary office of Star, was not in attendance for personal reasons, a second Mediation Hearing would be scheduled.

On 14 November 2001, a second Mediation Hearing was conducted in the Provincial Building at Dawson Creek, B.C. with the same parties present in addition to Mr., Campbell.

In a Mediation Order dated 30 November 2001, the Mediator declined to issue a Right-of-Entry Order, refused further Mediation Hearings and referred issues of right-of-entry, compensation and any other matters to further negotiation between the parties, or to resolution by an Arbitration Panel of the Mediation and Arbitration Board. In addition, the Mediator directed Star to remove survey stakes and flagging from MacLean's property by a specified date and to pay MacLeans the amount of \$ 500.00 for entry onto the property for the purpose of surveying the three originally proposed well sites and access roads.

On 19 November 2001 Star through its agent, Mr. Hagen reached an agreement to compensate MacLean in the total amount of \$ 1,000.00 for right-of-entry and damages connected with surveying of site 14-34. At the same time, Star tendered final lease offers on 14-35 and 4-35 sites to MacLean. No response was received from MacLean within the 5 day expiry period of these offers.

Further unfavorable geological results in the district led Star to give notices of termination of application for drill site 14-35 on 10 December 2001 and site 4-35 on 06 March 2002.

### **NATURE OF THE APPLICATION**

As the parties were unable to agree on the quantum of costs due to MacLeans pursuant to Section 27 of the Petroleum and Natural Gas Act, this sole remaining issue was dealt with at this Arbitration to determine the awarding of costs to the Respondent in connection with time spent in negotiating, reviewing and evaluating various offers made by Star in connection with proposed well sites 14-34, 14-35 and 4-35.

### **AGREEMENT OF THE PARTIES**

The parties agreed that:

1. Compensation for Right-of-Entry pursuant to the 30 November, 2001 Mediation Order in addition to compensation for timber cut and clean-up of brush related to the surveying activities of Star had already been dealt with by way of previous payments to MacLean of \$1,000.00 for 14-34, \$ 500.00 for 14-35 and \$ 500.00 for 4-35.
2. Compensation for crop losses incurred by Mr. Piper, the farmer leasing the land, would be dealt with by direct negotiation between Star and Piper.
3. This arbitration would be confined to the single issue of costs incurred by the Respondents in connection with lease negotiations for sites 14-35 and 4-35.

## **POSITIONS OF THE PARTIES**

### **A. Respondents**

The Respondents requested costs in the amount of \$ 5,000.00 representing compensation for;

1. time spent directly in dealing with Star and its agents,
2. time spent in educating themselves concerning activities and regulations of the oil and gas business, comparative lease values etc.,
3. time spent preparing for and attending mediation and arbitration hearings,
4. time spent removing survey stakes from their property and,
5. incidental out-of-pocket expenses related to long distance telephone charges, trips to offices of government regulators in Fort St. John etc.

The Respondents did not keep accurate records of their time spent on issues related to Star's proposed activities on their land but based their \$ 5,000.00 figure on an estimated 2 weeks of time for 2 people (160 hours) at \$ 25.00 per hours = \$ 4,000.00 plus an additional sum of \$ 1,000.00 compensation for time spent in attending two mediation hearings and one arbitration hearing. The Respondents also estimated their amount of out of pocket expenses for mileage, postage, meals, long distance charges and the like at \$ 400.00.

### **B. Applicant**

Mr. Dellow disputed the figure of 160 hours of time spent by the Respondent on the Star leasing issue as excessive, particularly in the absence of any firm record of how and when the time was spent. He made reference to two recent orders of the Mediation and Arbitration Board in which landowners seeking total costs of \$ 5,000.00 in connection with two well sites were granted combined costs of \$ 1,250.00. Mr. Hagen presented diarized evidence that he had devoted a total of 25 hours of time to the three Star files – 14-34, 14-35, 4-35 excluding the time spent at the two Mediation Hearings and this Arbitration. He stated that his hourly rate of pay was \$ 16.00.

Mr. Dellow introduced as an exhibit, Appendix B, B.C. Reg. 221/90 Supreme Court Rules describing scales of costs and descriptions of tariffs used in awarding costs in B.C. Supreme Court. Using this template, Mr. Dellow agreed that a reasonable assignment of costs to the Respondent, including costs of attendance at the present arbitration hearing, would be ± \$ 1,520.00.

## **DECISION**

The Respondents sought compensation totaling \$ 5,000.00 for the preparation and attendance at two mediations heard on 09 November and 14 November 2001 and the arbitration hearing of 30 May 2002, as well as additional time spent educating themselves on various aspects of the oil and gas business to better "level the negotiating playing field" and to familiarize themselves with the Board process.

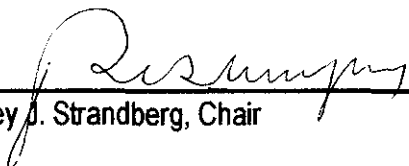
After carefully considering the submissions of the parties and the evidence placed before this Board and giving some weight to the previous inexperience of the Respondents in dealing with oil and gas exploration and development activity, the Board determines that an appropriate award of compensation to the Respondents for their time and out-of-pocket expenses is \$ 2,000.00.


**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Section 27 of the Petroleum and Natural Gas Act, the Applicant will pay to the Respondent costs in the amount of \$ 2,000.00 within 30 days of the date of this order (10 July 2002).
2. Within 30 days of the date of this Order (10 July 2002) the Applicant will provide to the Board proof of payment of the sum of \$2,000.00 representing the costs to which the Respondent is entitled pursuant to this Order.
3. Should the Applicant not pay costs within 30 days, as ordered, then the Respondents will receive on the unpaid amount interest calculated in accordance with the Court Ordered Interest Act for post-judgment interest.
4. No portion of this Order varies or amends any lease or other contractual agreement between the Applicant and the Respondents.
5. 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, British Columbia, this 10th day of June 2002

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

  
\_\_\_\_\_  
Rodney J. Strandberg, Chair

  
\_\_\_\_\_  
William J. Wolfe, Member