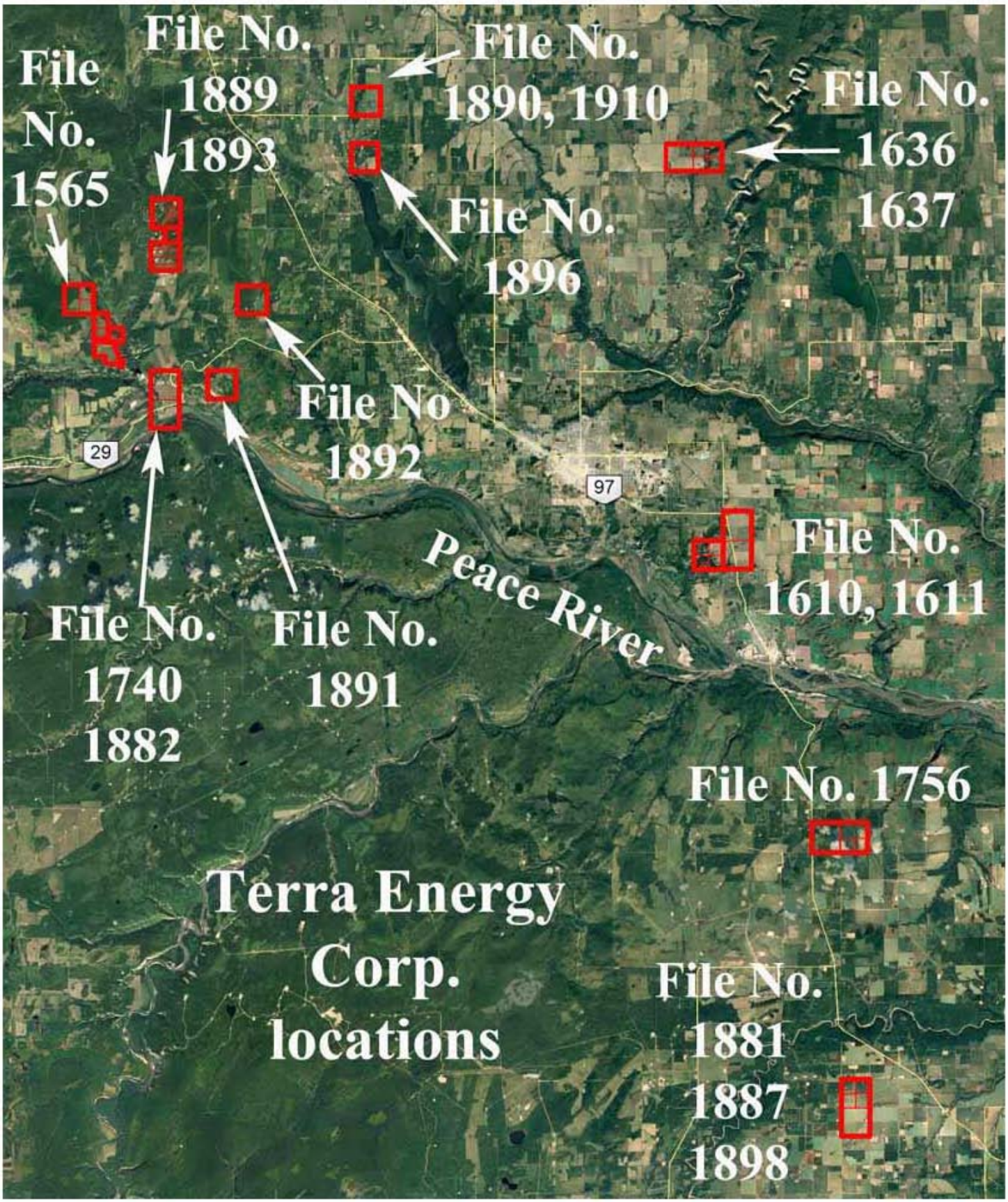
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File No. 1740 1882
File No. 1891
File No. 1756
Terra Energy Corp. locations
File No. 1881 1887 1898

Mediation and Arbitration Board
 # 114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

FILE NO. 1565

Date: March 4, 2007
Board Order No. 403A

BEFORE THE ARBITRATOR:

IN THE MATTER OF
THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, c. 361 as amended **(THE ACT)**

AND IN THE MATTER OF
SW 29-84-21 W6M PID 011-099-224,
SE 31-84-21 W6M PID 044-384-148
(**THE LANDS)**

BETWEEN:

TERRA ENERGY CORP.

(APPLICANT)

AND:

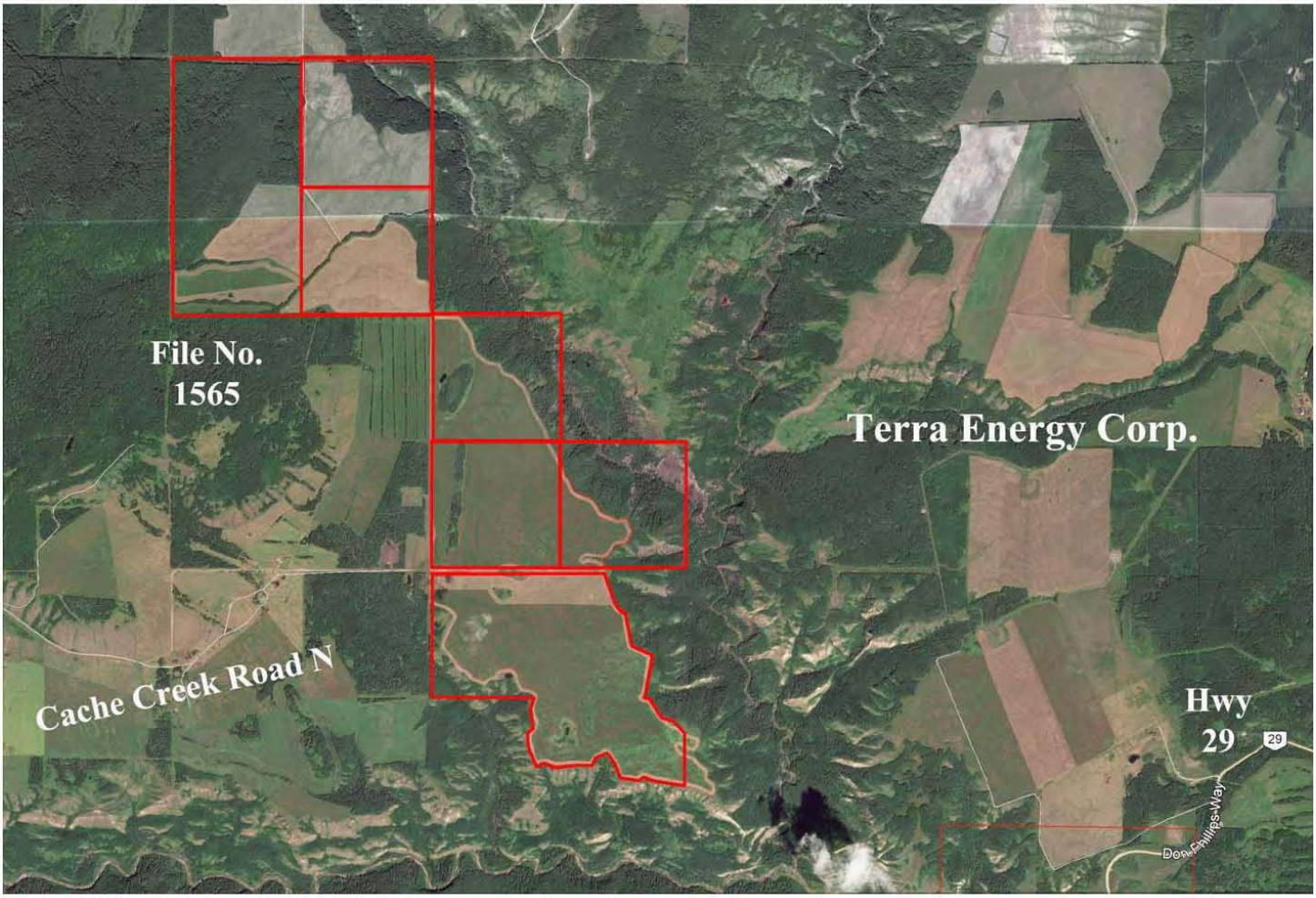
RHYASON RANCH LTD.

(RESPONDENTS)

_____

ARBITRATION ORDER

_____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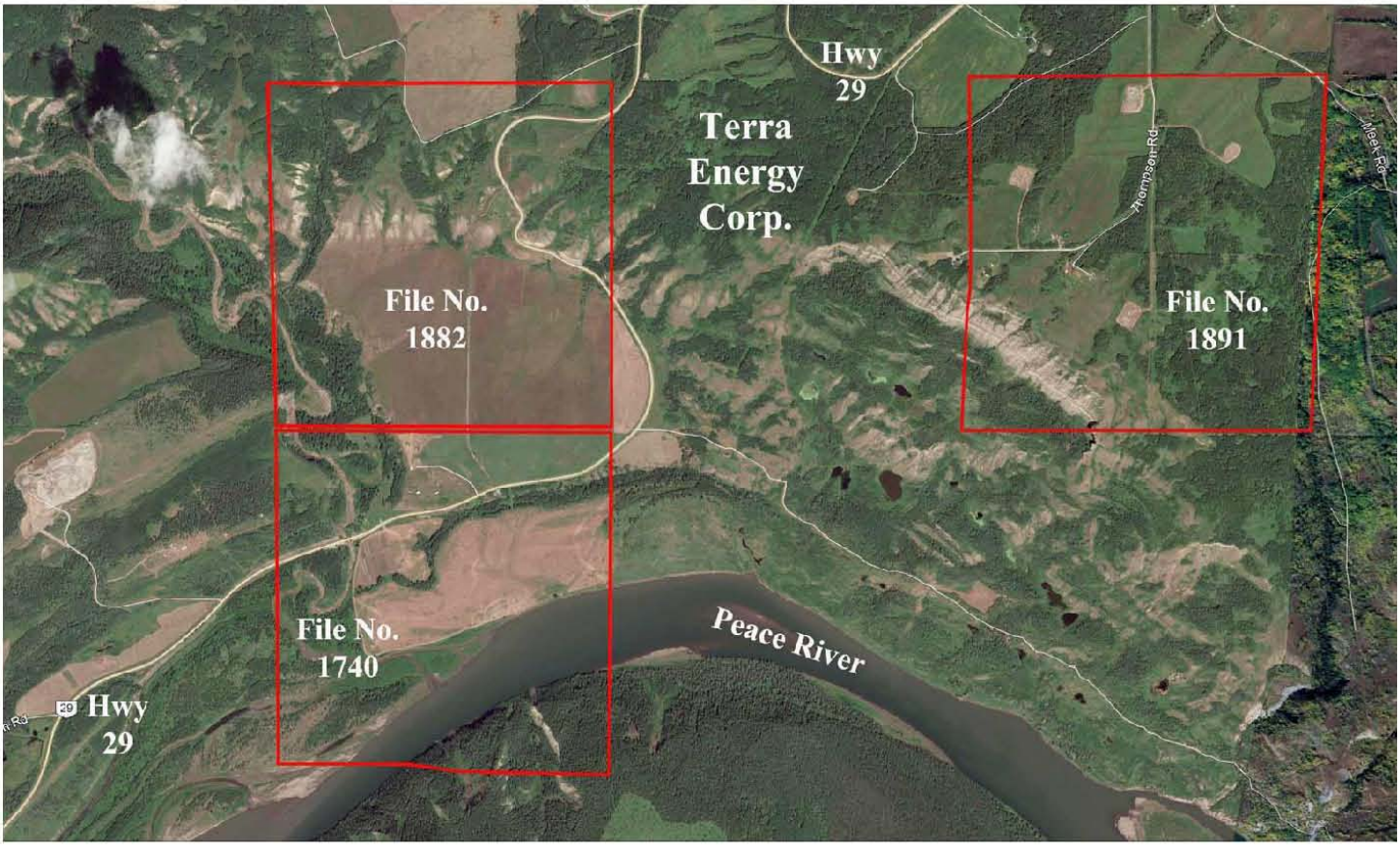
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1740
Peace River
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Appearances:

Mr. Robert R. Bourne, counsel for Terra Energy Corp.
Mr. Tim Blair, representative
Ms. Shawn Specht, counsel for Rhyason Ranch Ltd.
Mr. Arthur Hadland, representative for Rhyason Ranch Ltd.
Mr. Greg Rhyason, principal of Rhyason Ranch Ltd.

Witnesses:

Mr. Tim Beatty, Mr. Tim Blair, Mr. Brian Dunn and Mr. Randy Finnebraaten for Terra Energy Corp.
Mr. Arthur Hadland, Mr. Larry Peterson, Mr. Remi Farvacque and Mr. Greg Rhyason for Rhyason Ranch Ltd.

This matter was heard in Fort St. John, British Columbia, on January 23 and 24, 2007.

ORDER

1. Introduction

The Applicant Terra Energy Corp. (“Terra”) applied to the Mediation Arbitration Board on June 15, 2006, under Section 16(1)(a) of the ***Petroleum and Natural Gas Act***, R.S.B.C. 1996, c. 361, to enter upon the Lands for the purposes of gas and oil exploration.

More specifically, Terra is seeking a right of entry order granting access to the Respondent’s property to construct and operate 3 wells on two well sites and to construct and

operate the necessary access roads. Initially, Terra intends to construct a temporary access road (the "Access Road") and drill at least one well site at 5-29-84-21 W6M ("Well 5-29") on the Lands. If Well 5-29 is commercially viable, Terra may make the Access Road a permanent road and will construct a second well, at A5-29-84-21 W6M ("Well A5-29"). Together, these two wells constitute the First Well Site. If Well A5-29 is commercially viable, Terra intends to construct another well ("Well 1-31") at 1-31-84-21 W6M (the "Second Well Site") along with a short access road diverting off the main Access Road. The well sites are outlined on the attached plans/maps marked "Appendix "A," "B," "C," "D" and "E."

2. Fact and Background

The history of the relationship between the parties and their negotiations is briefly set out below. In my view, there is little reason to go into great detail.

Terra Energy Corp. is an Alberta resource company carrying on business in, among other places, British Columbia. It has a drilling licence issued by the British Columbia Ministry of Energy and Mines (No. 56998).

Rhyason Ranch Ltd. ("Rhyason Ranch") is owned by Mr. Greg Rhyason. He also operates a construction firm, active in the oil fields. From the documentary evidence it appears that the ranch was put together over time from three smaller properties from about 1994. The ranch is approximately 7,000 acres; some 3,800 are cultivated. In addition, the ranch includes some 12,000 acres of leased

Crown land for grazing. Mr. Rhyason raises cattle and bison on various parts of the property. He explained that he has about 850 cows of the Angus breed and 300 female bison on the ranch. The Ranch is a licensed game farm. He also explained that the ranch had organic status between 1994 and 1999. He would like to obtain certification again in the future. Organic certification affects the value of the products of the ranch, from bison to ducks. Mr. Rhyason testified to the emotional value of the property to him and explained that he has hunted on the property since he was young, and that was concerned about maintaining its pristine environment.

Brian Dunn testified that he went to Rhyason on March 29, 2006, and met with Mr. Rhyason. Mr. Dunn, a land agent working for Terra, went to the approximate location of Wells 5-29 and A5-29 – no survey had been performed at the time. Regarding Well A5-29, which is actually located on a neighbouring property, Mr. Dunn explained that Mr. Rhyason proposed that it be drilled from a well site to be located on his property (the First Well Site). On all of the evidence, I accept that Mr. Rhyason was agreeable to having Terra drill the neighbouring property from his land. The location of the road was discussed in general terms, and Terra agreed to go around the ranch headquarters. At this point no survey had been conducted and the actual road location could not be determined.

Towards the end of April there was a further telephone conversation between Mr. Dunn, resulting in a letter, dated April 21, 2006, to Mr. Rhyason setting out “comparison rates” for the area and briefly discussing security issues.

That letter did not meet Mr. Rhyason's expectations. Accordingly, Mr. Rhyason wanted to deal with Mr. Beatty, Terra's vice-president, directly, and not Mr. Dunn. Shortly after receiving the letter from Mr. Dunn, Mr. Brad Martin, the ranch manager, wrote to Mr. Beatty setting out in 18 points what Rhyason wanted in return for allowing entry, including construction to be done by Rhyason Construction, $1,000/acre annual rental, construction of high grade roads and culverts, $20,000 initial right of entry fee, and a minimum of $20,000/annum for monitoring and managing security on the lands after construction. Mr. Beatty responded to the letter on May 3, 2006. While the company was prepared to continue negotiations, in view of the positions taken by the Respondent, Terra would refer the matter to the Mediation Arbitration Board. Mr. Beatty testified at the arbitration that he thought the parties were too far apart and, thus, agreement unlikely. Mr Rhyason wrote back to him on May 23, 2006, that he was prepared to meet "directly" with Mr. Beatty as soon as possible. It is fair to say that Mr. Rhyason did not find Terra cooperative. In his view, he was simply trying to negotiate the best terms possible.

A telephone conference was set up for May 31. Mr. Rhyason failed to participate. He agrees that he missed the call. Mr. Beatty wrote to him that while the company was willing to negotiate, the "18 points" were, in his view, in "excess of the norms and practice of industry and landowners." Mr. Rhyason felt that Terra should have done more to contact him and should have done more to accommodate his demands. However, on or about June 15, 2006, Terra filed the application with the Board.

On August 1, 2006, Mr. Rhyason wrote to Mr. Beatty, with a detailed proposal, dealing with the Access Road, well sites, livestock and control, and environmental issues. Among the demands mentioned in the letter were the requirement that Rhyason Construction undertake construction and maintenance on a "competitive basis," a $25,000 entry fee and $1,000/acre rental for well sites. From his standpoint, Mr. Rhyason could not "imagine" why Terra wanted someone else to do the construction work in connection with the road and the well sites. His company was one of the best in the country. His company would do a better job because it was his own land. It would also do the work economically because the rates are generally known among contractors and do not differ much.

Mr. Rhyason had numerous concerns that he attempted to address in his correspondence, including the culverts proposed for the creek crossings. He explained that a previous owner had put in large culverts that washed out after two years. Flooding had resulted in washed out fields. Mr. Rhyason was also concerned about wet road conditions that made driving difficult or impossible, and that the road would in effect split the ranch. In any event, I find it telling that there is no mention of any alternative routing of access in Mr. Rhyason's August 1, 2006 letter. Quite the contrary, his letter stated that "access is to be diverted around the ranch yard site." In fact, in cross examination, Mr. Rhyason admitted that the issue of alternative route was not mentioned prior to the Board's mediation. In my view, Mr. Rhyason knew that his proposal of $25,000.00 for each right of entry was high.

Although Mr. Rhyason, at one point during his direct testimony, stated that “if [Terra] didn’t come in, I would be much happier,” and “money doesn’t mean anything to me,” he was, in fact, quite properly, simply trying to get as much as possible out of Terra, to get the best deal with the maximum compensation and the best possible terms. He also wanted to “set a precedent.” He expected Terra to “come back” with counter offers to his proposals. I think that he ultimately “over-played” his hand.

Mr. Beatty responded to the letter on August 21, 2006 in some detail. Among others, Terra was not prepared to award the construction work to Mr.Rhyason’s company. The work was to be awarded based on competitive bids from a number of contractors (including Mr. Rhyason’s company). As well, Terra was not prepared to pay more than “market rates for access determined using area precedents and legislated requirements.” The market rate used by Terra for land value until the arbitration was $500.00/acre. In my view, Terra was, quite properly, seeking to obtain entry on terms favourable to it.

The Board convened a mediation meeting on August 28, 2006. As the parties failed to reach an agreement, the Board ordered the matter proceed to arbitration by order dated September 5, 2006. The parties agreed to delay a survey of the Lands until the end of November 2006, until the end of the hunting season, reflected in the mediation order to grant entry for the “sole purpose of conducting a survey on or after November 22, 2006.” The parties also agreed that an arbitration hearing would take place after November 22. The mediation was preceded by a pre-hearing conference in

accordance with the Board's practice on July 19, 2006. The Respondent was represented in both the pre-mediation conference and mediation by Mr. Rhyason and Mr. Arthur Hadland. The purpose of the pre-hearing conference is to set out ground rules for the mediation, including the issues to be addressed. In any event, the parties did reach an agreement in mediation.

On October 12, 2006, a pre-hearing telephone conference was held through the Board's offices, attended by the parties or their representatives, including Mr. Hadland and Mr. Rhyason, who were a little late. The parties had notice of the pre-hearing conference and had full opportunity to address the issues. Based on the submissions and discussions at the pre-hearing conference, I made a number of orders, dealing with the arbitration including "statements of points" to be filed by the parties, witness lists, document exchange, and the timing of same, including:

1. The parties shall attend for an arbitration hearing on January 23, 2007, commencing at 9:30 A.M. at Fort St. John, British Columbia.

2. The parties expect that the hearing may take 1 day.

The orders, including the dates for the various steps in the process, the delivery of the Applicant's "statement of points" and supporting documents by December 22, 2006 and the Respondent's "statement of points" and supporting documents by January 17, 2007, were made in full consultation with and between the parties. The Applicant

delivered its submission and documents to the Respondent on or before December 22, 2006.

The mediation order issued provided for the survey to be carried out on or after November 22, 2006. On that date, Mr. Dunn attended the ranch with a survey crew and a consultant, Ms. Mary Forbes, from a local archaeological firm. The latter was brought along to show where potential archaeological sites might be, to do a “quick assessment” to avoid future problems. Mr. Remi Farvacque, a registered archaeologist from the same firm, testified at the hearing for Rhyason Ranch. While he had never actually been on the property, he testified that there might be archaeologically significant sites in the property, in particular in the south east corner. All the same, in cross examination, Mr. Rhyason agreed that he had refused to allow further studies on the Lands.

Following the survey, the locations of the well sites were determined. The Access Road was also determined at that time, utilizing a combination of existing private and Crown trails, new access road on Rhyason’s private land and public road allowance. The road also bypassed the ranch headquarters. It is my understanding that the Access Road in general terms followed the general concept from the meeting March at Rhyason Ranch attended by Mr. Dunn. Mr. Randy Finnebraaten, an independent contractor working as Terra’s construction supervisor, also attended the Rhyason Ranch on November 22. Mr. Rhyason was present for some of the time the crew was there. Mr. Finnebraaten testified that Mr. Rhyason showed “us” around the property, around the creek and “second bridge,” to the existing trails to

the two well locations. Mr. Finnebraaten explained that the route chosen was appropriate, and the main reason for the choice was the existing trail.

On January 9, 2007, the Board received a request from Ms. Shawna L. Specht who advised that she “was in the process of being retained by Mr. Greg Rhyason.” Counsel sought an adjournment of the arbitration scheduled for January 23, 2007. By letter dated January 11, 2007, the Board rejected the request.

On January 16, 2007, counsel renewed her request for an adjournment. In view of the circumstances, I denied the adjournment. The application was made late, almost three months after the pre-arbitration conference on October 12, 2006 and close to the arbitration date and Rhyason had ample time to obtain legal counsel. Rhyason was (and at the time of the arbitration remains) represented and assisted by Mr. Arthur Hadland who, while not a lawyer, is “experienced in this area.” As noted above, the dates for the various steps in the process - exchange of the parties’ respective statements of points and documents etc. were made in full consultation with and between the parties. The Applicant delivered its submission and documents to the Respondent on or before the December 22, 2006 date set out in the pre-hearing order. As reflected in my Order dated October 12, 2006, in order to accommodate the holiday, the Respondent had almost one month after the receipt of the Applicants submission and documents, until January 17, 2006.

The hearing commenced as scheduled on January 23 as scheduled, and continued on January 24, 2007 in Fort St. John.

3. Issues

The Application raises a number of issues:

1. Does Section 9 of the ***Act*** require that a party negotiate in good faith, and, if it does, whether, Terra negotiated in good faith with Rhyason?
2. Does the ***Act*** require an Applicant to establish the most appropriate plan to access the well?
3. If Terra is granted access, what are the appropriate terms of entry, occupation and use, and what is the appropriate level of compensation?

It is fair to say that the Parties have significantly different positions on these issues.

Issues one and two are of a preliminary nature, and I turn to those first.

4. Good Faith Negotiations and Section 9

The Rhyason Ranch's basic position is that right of entry should not be granted. In support of that, Rhyason relies specifically on Section 9 of the ***Act***:

> 9 (1) A person may not enter, occupy or use land, other than Crown land, to explore for, develop or produce petroleum or natural gas

> or explore for, develop or use a storage reservoir unless
>
> (a) the person makes, with each owner of the land, a surface lease in the form and content prescribed authorizing the entry, occupation or use,
>
> (b) the board authorizes the entry, occupation or use, or
>
> (c) as a result of a hearing under section 20, the board makes an order specifying terms of entry, occupation and use, including payment of rent and compensation.
>
> (2) A person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir is liable,
>
> (a) to pay compensation to the land owner for loss or damage caused by the entry, occupation or use, and
>
> (b) if the board so orders, to pay rent for the duration of the occupation or use.
>
> (3) For the purposes of subsection (2) (a), if a certificate of restoration is required after the entry, occupation or use, the liability for payment of compensation ends on the date stated in the certificate.

If I understand Rhyason Ranch's argument, it is that Terra is required to negotiate in good faith before proceeding to mediation-arbitration. This is "inherent" in Section 9. Not surprisingly, Rhyason Ranch's position on the facts is that Terra did not negotiate in good faith.

The Applicant's position is that Section 9 does not impose a requirement of good faith negotiations and, in any event,

that it did negotiate in good faith. Terra says that there is no such obligation, express or implied, in Section 9, or, indeed, the Act as a whole. Section 9(1) simply sets out methods of gaining access to private land for oil and gas exploration and production: (1) by agreement with a landowner, (2) through Board authorization, or (3) through a Board order following an arbitration hearing.

In my view, there is no merit to the Respondent's argument and I dismiss it. The Respondent provided no analysis of the statutory language or, indeed, cited any authority in support of its position. There is nothing, express or implied, in the plain and ordinary language of Section 9 requiring a party to negotiate in good faith, it simply sets out, as argued by Terra, methods of gaining access, either through negotiation or some Board process. If the legislative intent is what Rhyason Ranch asserts, it would have been relatively simple to provide for it in the statutory language.

Moreover, to suggest, as Rhyason Ranch does, that the granting of a right of entry is "completely" discretionary, is wrong. It is, I think, important to consider the overall thrust of this part of the legislation, namely to provide access to subsurface rights holders, while allowing the Board to set terms and compensation. In this case, and that is not in dispute, Terra has a drilling license from the Crown in respect of oil and gas on the Lands. It is well remembered that the relevant subsurface rights in British Columbia belong to the Crown, unless the rights have been granted to a landowner in the original Crown grant.

In my view, the process for entry, occupation and use under the ***Act*** is relatively straightforward. The parties either negotiate an arrangement suitable to them, i.e. voluntarily, or they engage the Board by application, as happened here, through mediation and, failing that, through arbitration, where terms of entry and compensation may be finally settled. Contrary to Rhyason's apparent position that entry, occupation and use is simply a matter of compensation, i.e. money, both the mediation and the arbitration processes may result in orders setting out both terms – detailing how entry, occupation and use must be exercised – and, of course, monetary compensation (see Section 21). To characterize this as a matter of compensation only, with respect, incorrect.

Even if I am wrong in law, I am of the view that, on the facts, there is little evidence to support the position that Terra did not negotiate in good faith. In my view, both parties engaged in the process as self-interested agents to make the best "deal" possible. They were just not successful and, therefore, ended up in arbitration.

5. Appropriateness of Entry

Rhyason Ranch's position is that right of entry should also be denied because Terra Energy failed to show that its proposal was appropriate for the Lands. It is inappropriate to subject the Respondent landowner to what amounts to a "reverse onus" to prove that Terra Energy's proposal was not appropriate and demonstrate the existence

of more suitable alternatives. This amounts to a denial of a fair hearing. Rhyason Ranch submits that Sections 18(3) and 19(1) provides the arbitrator with the power to assess the suitability of Terra's proposal. The proposed access road raises environmental, ecological, archaeological, financial and other concerns and is not appropriate. Rhyason Ranch argues that I ought to consider an alternative plan for the accessing of the well sites, namely though neighbouring property. This access road is more appropriate.

Terra says that Rhyason Ranch is not correct. Neither is there express language in the *Act* providing that the Board assess the merits of potential locations for access roads or well sites, nor can such a meaning be reasonably implied.

Section 9, 18, 19 and 20 of the *Act* set out, in part, the Board's powers:

> 9 (1) A person may not enter, occupy or use land, other than Crown land, to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir unless …
>
> (c) as a result of a hearing under section 20, the board makes an order specifying terms of entry, occupation and use, including payment of rent and compensation.
>
> 18(3) If an application is made under section 16 (1), and if the mediator believes, as a result of a mediation hearing, that the applicant should be permitted to enter, occupy or use the land, the mediator may make an order under section 19.

> 19(1) A mediator may make an order permitting, subject to the terms the mediator may specify in the order, an applicant under section 16 to enter, occupy or use the land for a purpose stated in that section.
>
> 20(2) Unless the applicant and the other persons otherwise agree, the board must review an order of the mediator made under section 19, and may confirm or vary the order, subject to the terms it considers proper.

In my view, the legislation provides the Board with the power to set terms and determine compensation in relation to entry, occupation and use. Under Section 9(1)(c) the Board may make an order "specifying terms … including … payment of rent and compensation." Sections 19(1) and 20(1) also speak to the Board's power in mediation and in a subsequent arbitration to set terms "it considers proper."

The Board has the power to dismiss an application. The mediator may, after a first mediation hearing, "dismiss [an] application" (Section 18(2) (a)), subject to review (Section 26(2)). In my view, the Board may dismiss all or part of an application at any time after it has been filed on a number of grounds, including that an application is not within the Board's jurisdiction, amounts to an abuse of process, or was made in bad faith. It is readily apparent that none of those grounds are applicable here. Terra is seeking access to subsurface rights belonging to the Crown, which has seen fit to grant a drilling license to the Applicant, for purposes that fall squarely within the parameters of the Act, exploration, development and production of oil and gas.

I do not agree with the Applicant's position that I have no power, express or implied, to assess the substantive merits of the proposed access road(s). I accept the Respondents argument to this extent: if I were unable to assess the merits of a proposed access, to some extent, my role would be limited to an assessment of damages and compensation. I would simply have to accept whatever proposal put before me by an applicant, and I would be unable to balance the interests of surface rights and subsurface rights. I do not think that was what the *Act* contemplated. In short, I am of the view that I generally have the jurisdiction to set the terms with respect to the entry, occupation and use *within the context of the application before me*. That necessarily involves *some* consideration of the substantive merits of the proposal for access. Important considerations, in my view, are to minimize the impact on the landowner of the entry, occupation and use, and to attempt to establish reasonable terms related to that entry, occupation and use.

That said, even on the assumption that I did agree, on the facts, that the approach though the neighbouring property was the "most appropriate," and I hasten to add that I make no such finding, I do not agree with Rhyason Ranch that the Board must scrutinize an application to determine if it is the "most appropriate." While "appropriateness" – to use the parties' language – may enter into my considerations, an applicant does not have to show that a proposal is the "most appropriate." There is no basis in the statute for such an assertion. The Respondent did not provide any authority to support its position. At the end of the day,

the Applicant has the burden to show that a proposal is in some sense “appropriate” or “suitable” or “fitted for the purpose.”

Concerns regarding the “appropriateness of the access may generally be addresses through terms of entry, compensation and damages. Section 9 of the Act reads, in part:

> 9(2) A person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir is liable,
>
> (a) to pay compensation to the land owner for loss or damage caused by the entry, occupation and use, and …

Under Section 16(1)(b), an application may be made to the Mediation Arbitration Board by a land owner for damages caused.

Further, my jurisdiction is constrained by the application and the statutory provisions. I have no jurisdiction to issue an entry order on an adjoining property, where there is no application by Terra for entry to that property before me.

As well, I am constrained by the jurisdiction of other regulatory regimes, health, forestry, environment, to name but a few. There are other regulatory bodies specifically dealing with the oil and gas industry, and the exploration and development of oil and natural gas resources in British Columbia, including the Oil and Gas Commission (e.g., ***Oil and gas Commission Act***, R.S.B.C. 1998, c. 39). The Oil and

Gas Commission has extensive powers to regulate the oil and gas industry (e.g. Section 96 of the ***Petroleum and Natural Gas Act***). The Applicant correctly notes that matters such as environmental and archaeological assessments are part of other regulatory processes.

Section 3 of the ***Oil and Gas Commission Act*** reads:

3 The purposes of the commission are to

(a) regulate oil and gas activities and pipelines in British Columbia in a manner that

(i) provides for the sound development of the oil and gas sector, by fostering a healthy environment, a sound economy and social well being,

(ii) conserves oil and gas resources in British Columbia,

(iii) ensures safe and efficient practices, and

(iv) assists owners of oil and gas resources to participate equitably in the production of shared pools of oil and gas,

(b) provide for effective and efficient processes for the review of applications related to oil and gas activities or pipelines, and to ensure that applications that are approved are in the public interest having regard to environmental, economic and social effects,

(c) encourage the participation of First Nations and aboriginal peoples in processes affecting them,

(d) participate in planning processes, and

(e) undertake programs of education and communication in order to advance safe and efficient practices and the other purposes of the commission.

In my view, the Respondent's argument, for example, that Terra failed to perform an archaeological assessment is not

only disingenuous, as Rhyason Ranch refused an archaeologist onto the land, it also ignores the regulatory context of the oil and gas industry. Such assessments are part of the process with the Oil and Gas Commission (see, for example, ***Heritage Conservation Act***, R.S.B.C. 1996, c. 187 and Oil and Gas Commission: ***Performance-Based Approach to Archaeological Assessment*** (November 2005).

Rhyason Ranch also argues that the proposed route is not "appropriate in the circumstances:" Terra did not adduce evidence regarding such matters as soil conditions, road conditions, flooding, culverts, potential water contamination, geotechnical considerations, environmental impact and comparative cost considerations regarding the proposed route and the alternative route though the neighbouring property. Some of these matters may be relevant to determine if, for example, a proposed access is "appropriate," others again, are more appropriately dealt with through other regulatory processes, such as the Oil and Gas Commission which has an ongoing and continuing role in the regulation of the industry. The Respondent's submission fails to address the regulatory aspects of its concerns.

I do not agree that there is a "reverse onus" on the Respondent. The onus rests on terra to establish its right to enter onto the Lands. Rhyason Ranch has raised a number of "novel" arguments and it must support these arguments with the applicable law and evidence. It was not denied the opportunity to present relevant evidence. In fact, Rhyason was given considerable latitude, and much evidence adduced related to the benefits of the alternative access though

the neighbouring property. Other evidence focussed on the supposed “bad faith” conduct of the Applicant. Again other evidence sought, wrongly, in my view, to establish the case that it would make more financial and economic sense for Terra to use the alternative access route. Much of this evidence was of marginal relevance. With respect, while the evidence and argument at one level appeared to address the issue of whether the proposal was “appropriate in the circumstances,” fundamentally the thrust was on the alternative route, on land that was outside the scope of the Application before the Board. That was misdirected. More emphasis on specific concerns arising out of the proposal and how they might be addressed in terms of reasonable terms would be of greater assistance to the Board in this arbitration.

The access road was ultimately chosen following a survey of the property and, at the very least, some consultation with the landowner. It is routed around the ranch headquarters. Terra sought to avoid obvious archaeological sites. It is generally routed around the boundaries of the fields and utilizes, to a large degree, existing trails and a public road allowance. Mr. Finnebraaten said that with respect to the choice of an appropriate access route, the “biggest reason” was the existing trail. He testified that the land had relatively flat grade. He also explained that Mr. Rhyason showed him, Mr. Dunn and the survey crew a “detour around the property and residences,” “around the creek” to the “second bridge” (a culvert), onto the “existing trail” past the two well locations. Mr.Finnebraaten also testified that culverts would be adequate for the two creek crossings. While Mr. Rhyason’s view was that bridges over

the creek crossings were necessary, I note that only culverts are currently used on the trails. On the evidence before me, I am satisfied that the access road is "appropriate" or "suitable."

In short, I dismiss Rhyason's argument that the application for right of entry should be dismissed. The Applicant is entitled to an order for entry onto the Lands on the terms and conditions set out in this order.

6. Configuration

The Respondent argues that separate orders for the Access Road and for each well site are necessary. The Rhyason Ranch says that creates more consistency and clarity.

Not surprisingly, Terra does not agree. It says that this request is neither reasonable or in accordance with the Board's practice. The construction of the Access Road is tied to the construction of the First and the Second Well Site.

I agree with Terra and dismiss this request. In my view, the road and the well sites are necessarily connected and I do not see any benefit to separate orders for each.

7. Compensation

Section 21 of the Act provides:

> 21 (1) In determining an amount to be paid periodically or otherwise on an application made under section 12 or 16 (1), the board may consider
>
> (a) the compulsory aspect of the entry, occupation or use,
>
> (b) the value of the land and the owner's loss of a right or profit with respect to the land,
>
> (c) temporary and permanent damage from the entry, occupation or use,
>
> (d) compensation for severance,
>
> (e) compensation for nuisance and disturbance from the entry, occupation or use,
>
> (f) money previously paid to an owner for entry, occupation or use,
>
> (g) other factors the board considers applicable, and
>
> (h) other factors or criteria established by regulation.

I intend to deal with the parties' positions and the evidence under each heading.

Mr. Hadland's dual role as paid "representative," sitting at the counsel table and assisting counsel, with that of "expert witness" was troubling to me. From early on in the Board's process, including mediation, Mr. Hadland acted as Rhyason Ranch's representative. In my respectful view, his appearance as a witness is tainted by his role as a representative. He claimed that when he acts as an "expert," he is guided by some code of ethics. In Terra's

cross examination of him, he acknowledged that when he was acting “outside” the expert role, he was reaching for “new ground.” I find it hard to accept that he can so easily separate the two roles. In the result, I treat his “expert” evidence with considerable caution.

Terra says that the compensation proposed is appropriate and is comparable to the maximum paid to owners in the area. Nor surprisingly, Rhyason Ranch’s position is generally the opposite, although there is agreement on, for example, land value and crop loss.

For easy reference, the amounts awarded as first years’ payments and annual payments are set out and summarized in the attached Appendixes “F,” “G,” and “H.”

a. The compulsory aspect

Compensation under this heading is intended to compensate the land owner for the fact that entry, occupation and use is required by law. A land owner loses the right to decide whether to lease his land or not, the selection of his tenant, and the use of his land. In the past, this has been a one-time payment.

Terra proposes $2,000 per well under this heading and say that this figure is industry standard applied across the province. The Applicant relies on earlier decisions of the Board and cites ***Calahoo Petroleum Ltd. v. Adley Callison*** (Board Order 279A, January 23, 1996, unreported) in support of the proposition that this is an appropriate amount. The loss of a right is not tied to the number of parcels of

land or land value. There is no precedent for adjusting this compensation on that basis.

Rhyason says that this Board order is more than nine years old and does not reflect current land values. The evidence of Mr. Hadland suggests that land values have increased 2 ½ fold in the period since the Board's earlier decision. As well, oil prices have increased dramatically and logic dictates that the land owner should be compensated proportionally. This evidence is undisputed says Rhyason. The Lands represent a significant amount of "personal value" to Mr. Rhyason who says he has hunted there since he was a young man (see e.g., ***Dome Petroleum Ltd. v.Juell***). It is a "trophy ranch" which will be divided by the Access Road. Therefore, it is reasonable $5,000 for a "single well site located on a quarter section and for each parcel [of land] crossed." Moreover, because this is an ongoing occupation, "compulsory" should be paid annually as long as there is entry, occupation and use, rather than as a one-time payment:

First Well Site:	$	5,000.00
Second Well Site:	$	5,000.00
Access Road (6 parcels)	$	30,000.00
Total	$	40,000.00

In reply, Terra says that there is no basis for adjusting the compensation for the compulsory aspect. ***Calahoo Petroleum*** makes it clear that the compensation under this heading is not tied to land value or individual circumstances. Those factors are considered under other

headings. Terra also says that there is no basis or precedent for awarding compulsory compensation annually or on a per parcel basis.

I certainly appreciate the Respondent's position that the entry, occupation and use is an imposition, and that Mr. Rhyason, at present, at least, would prefer not to have Terra on his Lands at all, the total of the access sought is some 29 acres. To put that in perspective, the Ranch is substantial, encompassing 7000 acres, plus 12,000 acres leased grazing. About half of the ranch is under cultivation, some 3,800 acres. While I appreciate the sentimental value attached by Mr. Rhyason to the Lands, I am of the view that he was exaggerating. On all of the evidence, his concern with the proposed Access Road, "dividing" the ranch, did not arise until around the time of the mediation and later. In my view, his real concern was to get the best possible agreement with Terra. As mentioned earlier, I think he over-played his hand and ended up at arbitration. In the circumstances, I do not accept the $5,000.00 proposed by Rhyason Ranch.

Although, as noted by Applicant, the issue of continuing payments, e.g. annual payments, seems to have been argued before the Board in ***Calahoo Petroleum***, and rejected, there is no analysis or reasoning to support that conclusion. The Board simply found that it "considers $2,000.00 as fair compensation for this Right-of-Entry." I do not agree with the Respondent that an award under this heading should be paid annually. While it is correct that the entry, occupation and use is a continuing occurrence, the compulsion is related to the "forced," i.e. involuntary,

nature of the entry, and the loss of rights occurs at the time of entry.

There is also no precedent to support the contention that compensation should be paid for each parcel or section of land crossed. In his testimony, Mr. Hadland proposed this, but he was unable to provide any basis whatsoever or precedent for this concept. He agreed that as an “advocate” he was trying to “reach out for new ground” and, in my view, that was exactly what he was doing. On this point I agree with Terra Energy.

Both parties appear to recognize that the $2,000 is industry standard. However, it is not clear what that standard, the $2,000, is based on. Neither Mr. Dunn nor Mr. Hadland were able to throw any light on this question. Obviously, the value of $2,000 in 1996 or 1998 was greater than it is today. Between 1996 and 2005, the Statistics Canada Consumer Price Index increased by approximately 20%. In the circumstances, I might have been prepared to increase the compensation awarded under this. In the absence of any evidence on this point by the parties, I prefer to leave the compensation at the $2,000.00 proposed for each well, paid in the first year.

b. Value of Land and Owner's loss of Right or Profit

Terra’s initial submissions on this point are brief. It accepts that land value proposed by Rhyason Ranch is $600.00/acre and that the crop loss value is $250.00/acre.

Rhyason Ranch says that Mr. Hadland's appraisal sets the value of the ranch at $4,300,000, at $600.00/acre for agricultural purposes. If the value was based on industrial purposes the value would be much higher, says Rhyason.

However, Rhyason Ranch says that Terra's conversion of these "highly prized" agricultural lands to industrial purposes, the market value of the ranch will be irrevocably reduced. Mr. Larry Peterson, a realtor specializing in "trophy ranches," testified that in his opinion the market value of the Lands, which in his opinion was a "trophy ranch," would decrease by a minimum of 10% as a result of Terra's proposed use, because purchasers of trophy ranches do not want oil and gas development on their land. Mr. Peterson said that a neighbouring ranch, the Wilderness Ranch, had been difficult to sell because of "industrial activity on the property," although it generated $60,000 from oil and gas activities. It had been on the market for nine years. The respondent says that the Applicant failed to call any evidence to contradict Mr. Peterson's testimony.

The Respondent acknowledges that the parties agree with respect to the value of crop loss, but says that there is disagreement with respect to the quantum of acres.

The Applicant argues that Mr. Peterson's evidence is without value. He simply made a "bare assertion" without any real data or analysis. In addition, his evidence does not support the assertion that the value of the ranch would decrease by 10%. In cross examination, Mr. Peterson

specifically admitted that he considered future developments (i.e. other than those proposed) in determining the 10% reduction. He also admitted that some purchasers consider the revenue from oil and gas developments and that the Lands could be divided into large portions without any industrial use and sold to purchases who did not want industrial use. Specifically, with respect to the Wilderness Ranch, there was no evidence as to the asking price for the ranch, nor was there any analysis of the factors affecting the marketing or sale of this property. The only evidence of actual sales in the area is set out in Mr. Hadland's appraisal and the property sold at the highest per acre value was the property which had oil and gas development as the "only redeeming feature."

I turn first to crop value. From my calculations there is actually no difference between the two parties as to acreage; Terra's proposal is based on 29.03 acres, the same as in Rhyason Ranch's submission. Therefore, if the crop loss value is agreed to be $250.00/acre, the compensation is a simple calculation.

The value of the ranch land is agreed at $600.00/acre and Terra accepts the appraised value of the ranch $4,300,000. Under this heading, the land value is set at $600.00.

The question is whether to award compensation for loss in the market value of the ranch and, if so, in what amount. No issue was taken with my jurisdiction to award compensation for loss of market value to the property. Having carefully considered Rhyason's submissions, and the

evidence, I do not accept that the market value of the ranch will decrease as argued. I agree with Terra Energy on this point. My reasons for rejecting the claim for loss of value of the ranch are set out below.

Mr. Peterson offered an opinion based on his years of experience as a realtor dealing with large ranches in the area. I note that Mr. Peterson is also a neighbour of Rhyason Ranch. I was trouble by the fact that he offered no real foundation or analysis, by data showing market values or comparative values with any statistical evidence, in support of his opinion. He relied on the sales or properties set out in Mr. Hadland's report. I agree with Terra that this amounts to little more than a bald assertion.

As noted by Terra Energy, in large measure, the focus of Mr. Peterson's opinion is potential impact of future development, in terms of further well sites and, in particular, pipeline development. His very brief written opinion, dated January 15, 2007, submitted into evidence at the arbitration states:

> "I have been asked to give my professional opinion as [sic.] the effect of a proposed pipeline construction and further well site development and it's subsequent affect on market value of the Rhyason Ranch."

Mr. Peterson's concern with respect to pipelines is that compensation is normally paid on a one-time basis only whereas the property owner is faced with years of problems.

In his view, prospective buyers do not want properties with pipelines running though them.

Mr. Peterson also observed that for oil and gas well sites, although annual lease payments factor in as additional value for the property, he was finding more and more that prospective buyers for large “trophy” ranches discount or eliminates such properties. On his evidence, it is not clear to me what exactly a “trophy ranch” is, other than, perhaps, a large property. Mr. Peterson’s report went on to state his opinion that the “majority of prospective buyers today consider oil and gas development as a negative.” Aside from the anecdotal character of the evidence, there is as well, in my respectful view, a degree of inconsistency. On the one hand, in his written opinion, he states that appraisers consider oil and gas development a positive factor in assessing land value and, on the other, that the “majority of buyers” consider such development a negative. How he arrived at this “majority” is unclear on the evidence. Mr. Hadland also testified that oil and gas development may impact positively on land value. I appreciate that Rhyason Ranch is a large property and that special considerations might apply. However, the ranch has been put together from three smaller ranches and, in cross examination Mr. Peterson acknowledged, “in theory,” that it could be divided up and sold in smaller parcels. In his direct testimony, he qualified his written opinion somewhat and explained that in “midsize” ranches, where the owners are trying to “make a living,” oil and gas development could be considered a positive factor. As noted by Terra Energy in cross examination, in Mr. Hadland’s appraisal report listing “comparable sales,”

relied upon by Mr. Peterson, the property with oil and gas revenue actually sold for the highest price per acre, namely $594.00/acre. Mr. Peterson testified that a nearby ranch, the Wilderness Ranch had been listed for 9 or 10 years, and had difficulty selling because of industrial development. There was no evidence as to the efforts undertaken to sell this property or the asking price. Moreover, in his direct testimony, Mr. Petersen explained that on the Wilderness Ranch the “trees had been cleared from most of it,” and there were “very visible” sour gas wells off the main road.

Rhyason Ranch denies that Mr. Peterson relied on (a summary of) a 2003 report attached to his written opinion, “Impact of Oil and Gas Activity on Rural Residential Property Values,” as the source of his calculations. On of the figures mentioned in the report is 10% decrease in property values in certain circumstances. In my view this “summary” cannot be relied upon, it is just that, a “summary,” not the report itself with (presumably) the detailed analysis to support its conclusions. Moreover, the study is based on residential properties in Alberta between 1 and 40 acres to “exclude agricultural land use.” The circumstances are easily distinguishable from the circumstances at hand. The report does not assist me.

In order to seriously support a substantial claim such as $430,000.00, I would have expected better evidence. In short, I deny the claim for $430,000.00.

Land value is set at $600.00/acre and crop loss at $250.00/acre. The amount for land value is a one-time

payment and is payable prior to entry. The amount for crop loss is payable annually.

c. Temporary and Permanent damage

Terra's evidence was that industry standard compensation under this heading range between $1,600.00 and $2,300.00. Terra's proposal is $2,300.00, the maximum. Terra also says that it has taken steps to minimize the damage to the property by routing the access along edges of fields, using an existing trail and an un-constructed road allowance.

Rhyason Ranch says that the industry standard is not tied to specifics of the property. Mr. Brian Dunn, who testified for Terra, did not provide any rationale for this amount. In any event, while Rhyason Ranch ultimately agrees with the $2,300.00, it argues that it should be applied to each parcel:

First Well Site:	$	2,300.00
Second Well Site:	$	2,300.00
Access Road (6 parcels)	$	13,800.00
Total	$	18,400.00

I accept that the industry standard amount for temporary and permanent damage is $2,300.00. The parties appeared to agree that that was "industry standard," although, quite frankly, I share the concern expressed by Rhyason as to the basis or rationale for this "standard." In cross examination, Mr. Dunn stated simply that this was the maximum number used by his firm and the industry. He

agreed that it had been in place for “several years.” The Respondent’s witness, Mr. Hadland was not able to cast light on how long this standard had been place. In the circumstances, and in the absence of better evidence, I prefer to leave this amount at $2,300.00.

As mentioned above, I am not persuaded to accept that compensation should be based on the number of parcels crossed.

In conclusion, the compensation under this heading is properly set at $2,300.00, and paid annually.

d. Compensation for Severance

Terra is proposing compensation at $600.00/acre and Mr. Dunn estimates that severance for the First Well Site is 3.00 acres ($1,800.00) and 0.5 acres ($300.00) for the Second Well Site.

Rhyason Ranch says that compensation under this heading is meant to address “interruption of the agricultural land,” not simply making land accessible for farming. Rhyason Ranch argues that I should accept the evidence of Mr. Hadland, who estimated severance to be an “absolute minimum of 10 acres,” over that of Mr. Dunn.

I prefer Terra’s estimate. Rhyason Ranch’s concept is vague and ill-defined. Terra’s “estimate” was made with reference to the plans of the well sites and the access road. In cross examination, Mr. Dunn, Terra’s land agent, explained that “severance” refers to land that cannot be

accessed by farm equipment. He based his estimate on his experience as a farmer. He also candidly agreed that he could not be exact as to the amount of severance, if it was more, “it would be minimal.” He did not agree with Mr. Hadland’s estimate of 10 acres on account of severance, which he characterized as “high.” I have carefully reviewed Mr. Dunn’s and Mr. Hadland’s testimony and, in all of the circumstances, I prefer Mr. Dunn’s view on this point. Ultimately, Mr. Hadland in his direct testimony said that he was “just guessing,” and that actual severance could not be determined until after the fact.

There is no issue between the parties that this amount is paid annually. In short, severance is determined at 3.5 acres at $600.00/acre, paid annually.

e. Compensation for Nuisance and Disturbance

Compensation under this heading is intended to compensate for the nuisance and disturbance cause by entry and use of the lands, including traffic and operational activities.

For nuisance and disturbance, Terra is proposing $2,200.00 for each of Wells 5-29 and 1-31. This is the maximum in the range typically paid to landowners in the area. Terra argues that there is nothing about its proposal that is out of the ordinary. As Well A5-29 is on the same well site as 5-29, it would not require any additional land use. Terra proposes an additional $1,000.00 in this respect.

Rhyason Ranch does not agree that Terra has “mitigated” the nuisance and disturbance and it should be compensated at

the maximum possible. As the wells will be constructed at different times, the intrusion of construction vehicles will occur at multiple times, and will likely take longer than estimated by Mr. Beatty. As well, as Terra intends to control road maintenance, this will cause additional, uncontrollable and permanent nuisance. Terra's proposal is "woefully inadequate" and Rhyason proposes, as well, $2,200 for each well site and each of six parcels, for a total of $17,600.00.

In reply, the Applicant notes that nuisance and disturbance is a result of traffic during construction and production, it is not tied to the number of parcels crossed.

Despite the respective arguments, on the evidence of both parties this amount is maximum as per "industry standard." Mr. Dunn agreed in cross examination that the standard has been in place for "a while" and was not based on "specific factors." Anyway, there is no disagreement as to the actual amount, the issue is whether it is payable based on the number of parcels crossed. As mentioned I do not accept the "parcel" concept advanced by the Respondent here. Despite the relatively long Access Road, and the gradual development of the two Well Sites, I am not persuaded that the nuisance and disturbance will not be adequately compensated by awarding the maximum. I re-iterate my concerns about the lack of substantive and evidentiary basis for this "industry standard." In the circumstances, the proposal by Terra is reasonable and I accept it. This amount is payable on an annual basis.

f. Money Previously Paid to an Owner

Under this heading, Rhyason Ranch argues that a mediated agreement between Imperial Oil and Mr. Velander is relevant. In that case, which has similarities to the case at hand, the "mediated settlement is based on $900.00/acre, which was increased to $1,000.00/acre," and it is open for me to use this value as the basis for compensation.

Terra says that the Velander settlement is not comparable at all. It involves four well sites and five wells, each with separate access roads. Moreover, Rhyason did not provide any evidence of the land values in the area of the Velander property or establish that the circumstances of that agreement are similar to those in the case at hand.

The parties here agree on the land value, namely $600.00, and whether another landowner in mediation obtained a better result is, in my view, immaterial. In fact, the Board encourages settlement of these matters by agreement and mediation.

g. Other Factors

Terra proposes to compensate for "other factors" in the amount of $4,673.00 for Well 5-29.

Rhyason Ranch rejects this proposal. There is no basis for it, other than it rounded out the numbers such that the compensation equalled 600.00/acre. Instead, Mr. Rhyason should receive $24,350.00 to compensate him for the

personal time spent by him due to Terra's failure to negotiate in good faith. That amount would round out the compensation "in line with the market forces" (Imperial Oil) such that the property is valued at $1,000.00/acre.

I do not agree with Rhyason Ranch on this point. Apart from the fact that I have no credible evidence of the time spent by Mr. Rhyason, and I entertain some serious doubt as to whether his time is compensable under this heading, $600.00/acre is what the parties agreed. That amount derives from Mr. Hadland's appraisal which, presumably, is a better indictor of the "market forces," i.e. actual sales, than a mediated settlement or voluntary agreement between parties. In my view, that is a better basis, if any, for compensation under this heading.

I accept the amount proposed by Terra, $4,673.00, payable annually.

7. Terms of Order

In addition to compensation, there are issues with respect to appropriate terms to be included in the order for entry, occupation and use.

a. Fencing

Terra proposes the use of 5 feet buffalo wire with reinforced steel posts. Mr. Randy Finnebraaten, a rancher with experience raising buffalo, testified that is adequate.

The Respondent agrees with Terra but says that it needs to be consulted on all locations prior to construction. It also says that Rhyason should be allowed to construct the fencing, and be paid at market rate, or, if not, be advised of time and date of entry and construction. If the fence is damaged or in need of repair, Terra must attend to it within 48 hours.

In reply, Terra notes that there is no evidence to support a requirement for fencing other than as proposed, around the well sites. Terra does not agree to retain the Respondent to construct the fencing. The fencing contract will be awarded after a competitive process and is a business decision, having regard to relevant factors such as cost and availability. In any event, it is not within the Board's jurisdiction to order the Applicant to retain a specific contractor (***Penn West***, ***above***).

If parties voluntarily, on their own or though mediation, negotiate an agreement, they can provide for consultation. In fact, they are free to include terms and conditions that are unlikely to be granted and included in an arbitration order. My concern is to provide an order that is both practical and enforceable. In my view, based on the history of the relationship between the parties as it unfolded before and during the arbitration, requiring consultation would simply be unworkable.

I specifically decline to order Terra Energy to use Mr. Rhyason or his construction company in the construction of the fence. This is not a reflection on him or his company. I leave it up to Terra to award the construction contract

as they see fit. I accept that Terra will award the fencing contract after a competitive process in which the Respondent will be invited to participate, and that it is a business decision, having regard to relevant factors such as cost and availability. In light of the parties' relationship to date, this is likely to become an ongoing source of problems. Ultimately, however, that may be immaterial as I agree with Terra Energy that it is not within the Board's jurisdiction to order the Applicant to retain the services of a specific contractor. As noted in ***Penn West Petroleum Ltd. v. Silver Hammer Farms Inc. (Thorhald Skafte)***, Board Order No. 308A, unreported, May 30, 2000, it is

> "beyond the scope of the [PNG Act] for the Board to direct the Applicant to make use the services of any specified individual".

I determine that only the well sites need to be fenced using the 5 feet buffalo wire fence with reinforced steel posts.

b. Road Use Agreement

Terra proposes to access and use 3.93km of the Respondent's private road that runs from North Cache Creek Road onto the Lands and interconnects with the proposed access road at the SE ¼ of 12-85-22 W6M. Terra proposes to use the CAPLA Master Road Use Agreement, attached as Appendix "F" with the two exceptions: 1. that the rates be fixed subject to rental reviews, and 2. that the Agreement cannot be

terminated until after the wells have been abandoned and reclaimed. Terra is proposing $1,000.00/km as an initial fee for the right to use the private road and $900.00 in annual rental. These figures are industry standard. The Agreement allows the Respondent a large measure of control.

Rhyason Ranch says that Terra should re-draft the Agreement to comply with British Columbia law, and resubmitted to the arbitrator if the parties fail to agree.

In reply, Terra submits that the language of the CAPLA Agreement is plain and appropriate regardless of jurisdiction, and that the exceptions proposed affords Terra a reasonable measure of protection.

I agree with Rhyason Ranch that the Agreement should be amended to comply with British Columbia law. The CAPLA Agreement it appears to me that it is in plain language and appropriate, generally, regardless of jurisdiction. However, I direct that British Columbia law applies to the Agreement. Particularly, I direct that Article 16.2 be amended such that the laws of British Columbia apply and that the courts of British Columbia have jurisdiction with respect to the Agreement. The Agreement is attached to this order as Appendix “I”.

I also find the exceptions proposed by Terra Energy reasonable: 1. that the rates be fixed subject to rental reviews, and 2. that the Agreement cannot be terminated until after the wells have been abandoned and reclaimed. In Terra’s closing argument, the proposed rates are $1,000.00/km for the fist year; and $900.00 for the

following years, the annual rates. In Terra's "statement of points" submitted to the Respondent the proposed rates are the reverse, except that the annual are not per kilometre. While counsel for Terra, at the arbitration, confirmed the position in the closing argument, it seems appropriate that the annual rates are reflective of the length of road. In short, the Agreement is amended such that the rates for the purposes of Article 2.1 are set at $1,000 per kilometre as an initial fee for the right to use the private road and $900.00 per kilometre in annual rental. Article 2.2, providing for rental review upon 60 days notice, is deleted. These rates are subject to rental review under the *Act*. I also direct that Article 15.1 be amended such that the Agreement cannot be terminated until after the wells have been abandoned and reclaimed, subject to the *Act*. In my view, this is a reasonable solution.

c. Weed Control

To address the Respondent's concerns about the introduction of weeds and disease on the property, Terra is prepared to steam clean all equipment prior to entry onto the Lands during drilling, completion and work-over operations. This, says Terra, meets all current industry standards. Terra's view is that a weed assessment is not appropriate as there would be no way to determine the source of any new weeds that may enter onto the property in the future.

The Rhyason Ranch is seeking a weed assessment performed at the expense of the Applicant. It would be readily apparent which weeds are airborne or in the area, as opposed to

those transported via Terra vehicles. It must be a term of the order that any foreign weed be dealt with by Terra in accordance with Rhyason Ranch's "organic practices." Rhyason accepts the proposal to have vehicles steam cleaned. However, this must be during the entire term of production.

Terra submits that it is not industry practice to steam clean ordinary vehicles that enter the property during the productions phase.

In the circumstances, I find that Terra's proposal to steam clean all equipment prior to entry onto the Lands during drilling, completion and work-over operations. This does not include ordinary vehicles that enter the property during the production phase. This appears to meet industry standards.

I decline to order that a weed assessment be carried out at the expense of the Applicant. In my view, while such an assessment might establish a "base line" as to the weeds present on the property at the time of the assessment, it would not, on the evidence before me at the arbitration be readily apparent which weeds were transported by Terra's vehicles. It is also not clear to what exactly Rhyason Ranch's "organic practices" are. I am also concerned that, contrary to Rhyason's assertions, that such an assessment will minimize the potential for conflict in the future, it will have the exact opposite effect.

In any event, the ***Petroleum and Natural Gas Act*** provides:

> 9(2) A person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas or explore for, develop or use a storage reservoir is liable,
>
> (a) to pay compensation to the land owner for loss or damage caused by the entry, occupation and use, and …

Under Section 16(1)(b) an application may be made to the Mediation Arbitration Board by a land owner for damages caused. In such an application, the burden rests with the landowner to establish the damages.

d. Security

To prevent entry onto the Lands, Terra proposes to gate and keep gates locked using a double lock system.

Rhyason Ranch argues that a double locked gate is not sufficient and requires that Terra should have a person manning and recording all entry and exit on the property. The records should be provided to the Respondent upon request. Manning must be in place at any time that a service rig or other business out of the ordinary course of production is being carried out on the property by Terra.

Terra says that Rhyason's proposal is not ordinary practice. A double lock system is a practical and effective method.

In my view, a double lock system is a practical and reasonably effective measure, and I so direct. The locked gates will prevent intrusion and the added advantage that

the double locks will make it simple to determine responsibility for leaving gates open. In addition, I direct that the Applicant shall construct gates at the entrances to the Access Road, at the entrances to the Well Sites and at all reasonably necessary points on or in conjunction with the Access Road. If the parties fail to agree with respect to the number necessary gates, I retain jurisdiction to deal with the issue.

e. Construction

Terra argues that it is prepared to use a competitive bid process for construction of the access road and well sites, and will invite the Respondent to participate. Terra will award the contract to the successful bidder in its absolute discretion. Terra opposes the proposal from Rhyason Ranch to award it the construction work on the basis of an average of three other contractors. It is unlikely that three other contractors will bid for work they cannot be awarded. In any event, it is "beyond the scope of the [PNG Act] for the Board to direct the Applicant to make use the services of any specified individual" (***Penn West Petroleum Ltd.***).

The respondent's position is that Rhyason Contracting, a business owned and operated by Mr. Rhyason, should be used for all construction on the Lands. It takes issue with Mr. Beatty's assertion that it would be "unethical" not to follow a competitive bid process and not in the interest of shareholders. It says the market rates are well known. Moreover, it is normal (and common sense) in the industry for the landowner to do the construction on his property.

Rhyason Ranch also submits that the Board is not prohibited from ordering that a specific contractor be used, only that non-market rates cannot be imposed on Terra.

Terra replies that Rhyason did not provide the necessary evidence to support its position, including what competitive rates might be.

In negotiations between parties it is, of course, open to them to agree that an oil company will use the services of a landowner for the purposes of construction on the lands. In this case, the parties did not agree to that.

As mentioned above, I do not have the jurisdiction to order Terra to use the services of a specific contractor (***Penn West Petroleum Ltd***). In any event, this would be in the nature of specific performance, requiring some degree of ongoing supervision of the relationship and, even if there was jurisdiction, I would decline to order it, given the relationship between these parties.

f. Flaring, Venting and Sour Gas

Rhyason Ranch says that the Applicant failed to address this issue. Rhyason Ranch's position is that there should be no flaring or venting, including that of sour gas on the property at any time, as, in Mr. Rhyason's view, this is devastating on agriculture and livestock. It is particularly important to Rhyason which operates an organic bison ranch. Mr. Rhyason testified that "certain company

vehicles are equipped to address this issue” and Terra should be directed to employ such vehicles.

Terra says that Mr. Beatty testified that flaring may be necessary. All natural gas wells require flaring as part of the testing process, and is required after testing to address safety and emergency conditions.

I decline to make the order sought by Rhyason Ranch. In the circumstances, and on the submissions and evidence before me, I am not satisfied that this is an order I ought to make. Flaring, venting and sour gas are part of the regulatory process before the Oil and Gas Commission. For example, Section 71(4) of the ***Drilling and Production Regulation***, B.C. Reg 362/98, as amended, prohibits flaring, except in amounts required because of drill stem testing, unless there is authorization from the Commission. The focus in the Board’s decision is the right of entry, terms and compensation for the entry, as opposed to the ongoing and continuing regulatory process which, in my view, fall squarely within the jurisdiction of the Oil and Gas Commission.

g. Cattle Guards

Rhyason Ranch argues that cattle guards should be placed at all relevant points along the access road. It says that Terra must be ordered to consult with Rhyason Ranch with respect to the location and “comply” with its requirements.

There is no submission from Terra on this point.

I direct that Terra Energy place cattle guards at all reasonably necessary points on the access road. If the parties fail to agree, I retain jurisdiction to deal with the issue.

h. Compensation and Indemnification for Damages

Rhyason Ranch says that a “standard clause” should be part of the order to protect the landowner.

I do not agree with this request. There is nothing provided here as to the details of such a clause. At minimum, the party proposing a term of an order should be required to spell out what it is seeking. Further, the Board has the jurisdiction to entertain damage claims arising from entry, occupation and use (Sections 9(1) and 16(1).

i. Default of Obligations

Rhyason Ranch also requires that it be a term of the order that if the Applicant default on any obligation under the order, and the default is not remedied within 60 days, the order shall expire, the right of entry revoked and the Applicant is liable for damages the Respondent.

On this point, Terra argues that the ***Act***, and specifically Section 26, provides a mechanism for review, rescission or amendment of an order. Nothing further needs to be included in the order.

I accept Terra's argument on this issue and decline to make the direction requested. Section 26 provides:

> 26 (1) An order of the mediator or board granting the right to enter, occupy or use land may be enforced in the same manner as a writ of possession issued by a court.
>
> (2) The board may, on its own motion or on application,
>
> (a) rehear an application before making a determination, and
>
> (b) review, rescind, amend or vary a direction or order made by it, the chair or a board member

If Terra defaults on its obligations under this order, Rhyason Ranch may enforce it though the courts. As well, Rhyason Ranch may return to the Board and make an application for the Board to "review, rescind, amend or vary [the] direction or order."

8. Costs

Rhyason Ranch submits that it should be granted costs in this matter. It says that the Applicant set the timing of the arbitration, and it was not even able to present all of its evidence on the first day. Moreover, the Respondent is a lay-person and could not be expected to anticipate such matters as timing and number of witnesses. As well, due to the timing of the arbitration and the exchange of documents

occurring over the holidays, the Respondent did not know what evidence the Applicant would bring to the hearing and was not in a position to anticipate it.

The Applicant says that it is not appropriate to award costs in this case. Both the Applicant and the Respondent, represented by Mr. Hadland, "who represented himself as having experience in these matters," and Mr. Rhyason were parties to setting the timing for submissions and the date for the arbitration. Moreover, the hearing would have been concluded in one day except for the Respondent raising matters outside the jurisdiction of the Board and irrelevant to the issues before the Board. Terra denies that Rhyason did not have adequate time to prepare or could not anticipate the issues. Issues such as land value, crop loss, annual rent etc. are well known and did not depend on receiving the Applicant's statement of points. The Respondent was well aware of the issues through the negotiation and mediation process.

Section 47 of the ***Administrative Tribunals Act***, S.B.C. 2004, c. 45, provides the Board with the Authority to award costs. It reads:

> 47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:
>
> (a) requiring a party to pay part of the costs of another party or an intervener in connection with the application;

> (b) requiring an intervener to pay part of the costs of a party or another intervener in connection with the application;
>
> (c) if the tribunal considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal in connection with the application.
>
> (2) An order under subsection (1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the court.

I am of the view that I have the discretion to award costs.

In the circumstances of this application costs may be appropriate. However, while the parties have generally addressed this issue, there is little evidence before me with respect to costs. In the result, I ask the parties to provide me with written submissions on the amount and basis for costs in this case. I would ask the parties to provide such evidence as may be required by way of affidavits. If there is any issue as to credibility, such issue(s) may be resolved through cross examination. The Board's administrator will contact the parties to schedule written submissions.

THEREFORE THE BOARD MAKES THE FOLLOWING ORDERS:

1. Upon payment by the Applicant to the Respondent of the first year's payment, set out in Appendix "F" attached

to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus the payment of initial fee for the road use of $1,000.00 per kilometer, set at 3.93 kilometers for the private part of the Access Road, the Applicant shall have entry to, occupation and use of the that part of the Lands, described as First Well Site herein, together with the Access Road, for the purposes of exploration, development and production of petroleum and natural gas.

2. Upon payment by the Applicant to the Respondent of the annual payment, set out in Appendix “F” attached to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus the $900.00 per kilometer on account of annual rental for road use, the Applicant shall continue to have entry to, occupation and use of the that part of the Lands, described as First Well Site herein, together with the Access Road, for the purposes of exploration, development and production of petroleum and natural gas.
3. The amount set out in Item 2. of the order shall be paid no later than the anniversary date of the payment set out in Item 1. of this order in each of the following years.
4. Upon payment by the Applicant to the Respondent of the first year’s payment, set out in Appendix “G” attached to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus any amount payable on account road use, the Applicant shall have entry to, occupation and use of the that part of the Lands, described as Well A5-29-84-21 W6M herein, for the

purposes of exploration, development and production of petroleum and natural gas.

5. Upon payment by the Applicant to the Respondent of the annual payment, set out in Appendix “F” attached to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus any amount payable on account of road use, the Applicant shall continue to have entry to, occupation and use of that part of the Lands, described as Well A5-29-84-21 W6M herein, together with the Access Road, for the purposes of exploration, development and production of petroleum and natural gas.
6. The amount set out in Item 5. of the order shall be paid no later than the anniversary date of the payment set out in Item 4. of this order in each of the following years.
7. Upon payment by the Applicant to the Respondent of the first year’s payment, set out in Appendix “H” attached to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus any amount payable on account of road use, the Applicant shall have entry to, occupation and use of the that part of the Lands, described as Second Well Site herein, together with the Access Road, for the purposes of exploration, development and production of petroleum and natural gas.
8. Upon payment by the Applicant to the Respondent of the annual payment, set out in Appendix “F” attached to this Order, pursuant to Section 21(1) of the *Petroleum and Natural Gas Act*, plus any amount payable on account of road use, the Applicant shall continue to have entry to, occupation and use of that part of the

Lands, described as Second Well Site herein, together with the Access Road, for the purposes of exploration, development and production of petroleum and natural gas.

9. The Applicant shall construct a five (5) feet buffalo wire fence with reinforced steel posts around each of the Well Sites.

10. The Applicant and the Respondent shall comply with the terms and conditions of the CAPLA Master Road Use Agreement, attached as Appendix “I” (the “Agreement”) with the following exceptions:

(a) Article 2.2 is deleted and the rental rates for the purpose of the Agreement are fixed at $1,000.00 per kilometer as the initial payment and $900.00 per kilometer per year thereafter, subject to rental review under the *Act*;

(b) Article 15.1 is amended such that the Agreement shall continue to be in force and effect between the parties until the Wells have been abandoned and reclaimed, subject to the *Act*; and

(c) The Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia and each party irrevocably agree to attorn to the jurisdiction of the courts of the Province of British Columbia and all courts of appeal thereunder.

12. For the purposes of weed control, the Applicant shall steam clean all equipment prior to entry onto the Lands during drilling, completion and work-over operations.

13. The Applicant shall construct gates at the entrances to the Access Road, at the entrances to the Well Sites and at all reasonably necessary points on or in

connection with the Access Road. The gates shall be locked using a double lock system.

14. The Applicant shall construct cattle guards at all reasonably necessary points on or in connection with the Access Road.

MEDIATION AND ARBITRATION BOARD

DATED THIS 5th DAY OF MARCH, 2007

IB S. PETERSEN,
VICE-CHAIR

APPENDIX “F”

WELL SITE COMPENSATION SUMMARY: Well 5-29-84-21 W6M

Acres, including Access Road: 24.78

			First year payments	Annual payments
(a)	Compulsory Aspect:	$	2,000.00	
(b)	Value of Land and Loss of Profit			
	Land: $600/24.78 acre	$	14,868.00	
	Crop: $250/24.78 acre	$	6,195.00	6,195.00
(c)	Temporary and Permanent Damage:	$	2,300.00	
(d)	Compensation for Severance ($600/3 acre)	$	1,800.00	1,800.00
(e)	Compensation for Nuisance and Disturbance:	$	2,200.00	2,200.00
(f)	Money Previously Paid to an Owner:	$		
(g)	Other Factors	$	4,673.00	4,673.00

TOTAL COMPENSATION:

FIRST YEAR PAYMENT:	$	34,036.00	
ANNUAL PAYMENT:	$		14,868.00

APPENDIX “G”

WELL SITE COMPENSATION SUMMARY: Well A5-29-84-21 W6M

Acres, including Access Road: 0

			First year payments	Annual payments
(a)	Compulsory Aspect:	$	2,000.00	
(b)	Value of Land and Loss of Profit			
	Land: $___/___ acre	$		
	Crop: $___/____ acre	$		
(c)	Temporary and Permanent Damage:	$		
(d)	Compensation for Severance ($600/3 acre)	$		
(e)	Compensation for Nuisance and Disturbance:	$	1,000.00	1,000.00
(f)	Money Previously Paid to an Owner:	$		
(g)	Other Factors	$		

TOTAL COMPENSATION:

FIRST YEAR PAYMENT: $ 3,000.00

ANNUAL PAYMENT: $ 1,000.00

APPENDIX “H”

WELL SITE COMPENSATION SUMMARY: Well 1-31-84-21 W6M

Acres: 4.25

			First year payments	Annual payments
(a)	Compulsory Aspect:	$	2,000.00	
(b)	Value of Land and Loss of Profit			
	Land: $600/4.25 acre	$	2,550.00	
	Crop: $250/4.25 acre	$	1,062.50	1,062.50
(c)	Temporary and Permanent Damage:	$	2,300.00	
(d)	Compensation for Severance ($600/.5 acre)	$	300.00	300.00
(e)	Compensation for Nuisance and Disturbance:	$	2,200.00	2,200.00
(f)	Money Previously Paid to an Owner:	$		
(g)	Other Factors	$		

TOTAL COMPENSATION:

FIRST YEAR PAYMENT: $ 10,412.50

ANNUAL PAYMENT: $ 3,562.50

Mediation and Arbitration Board
 # 310 9900 100th Ave
Fort St. John, BC V1J 5S7

FILE NO. 1565
Date: ~~**September 24, 2007**~~ January 14, 2008
Board Order No. 403C
Amended

BEFORE THE ARBITRATOR:

IN THE MATTER OF
THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, c. 361 as amended
(THE ACT)

AND IN THE MATTER OF
SW 29-84-21 W6M PID 011-099-224,
SE 31-84-21 W6M PID 044-384-148
(THE LANDS)

BETWEEN:

TERRA ENERGY CORP.

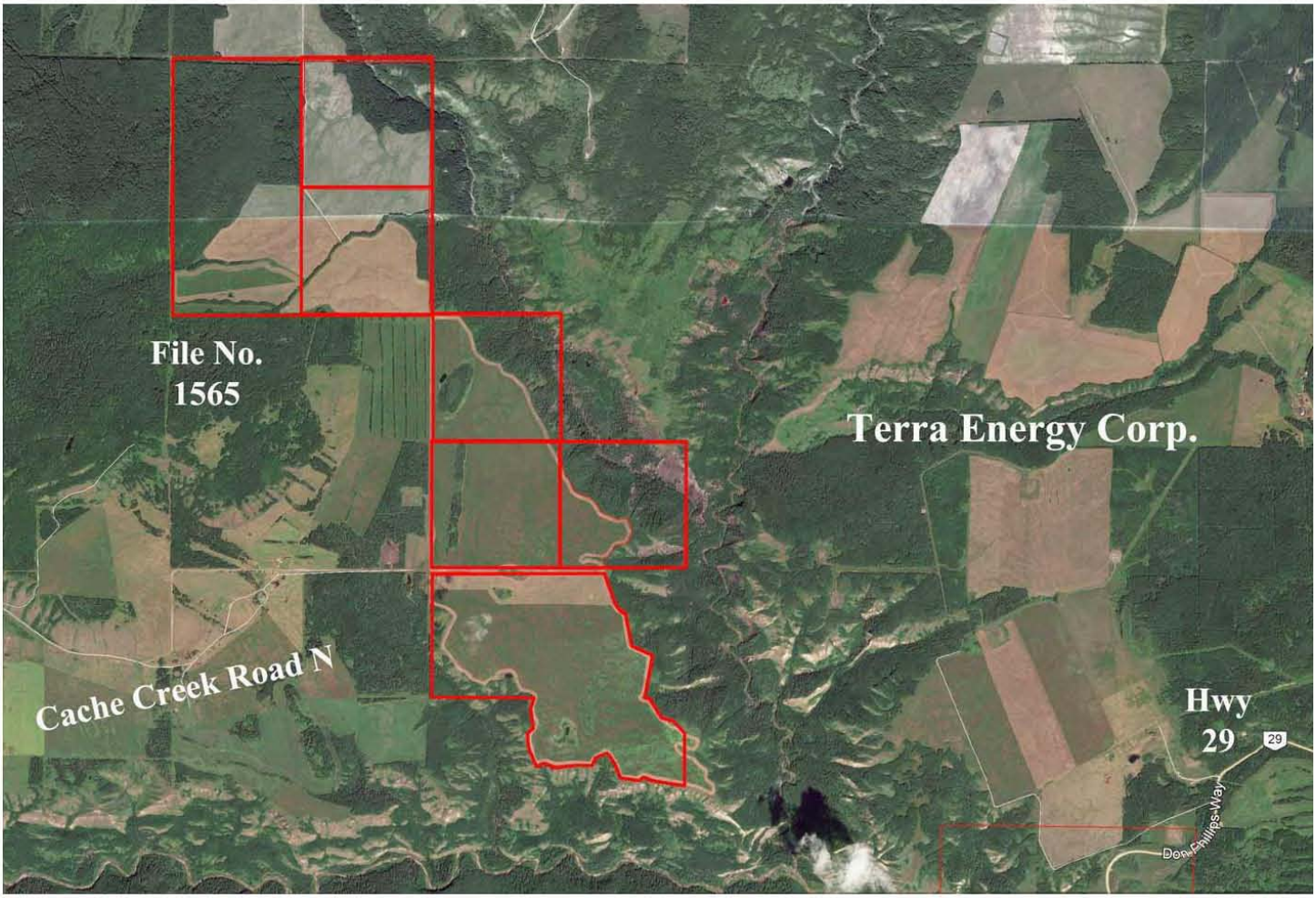
(APPLICANT)

AND:

RHYASON RANCH LTD.

(RESPONDENTS)

ARBITRATION ORDER


File No.
1565
Terra Energy Corp.
Cache Creek Road N
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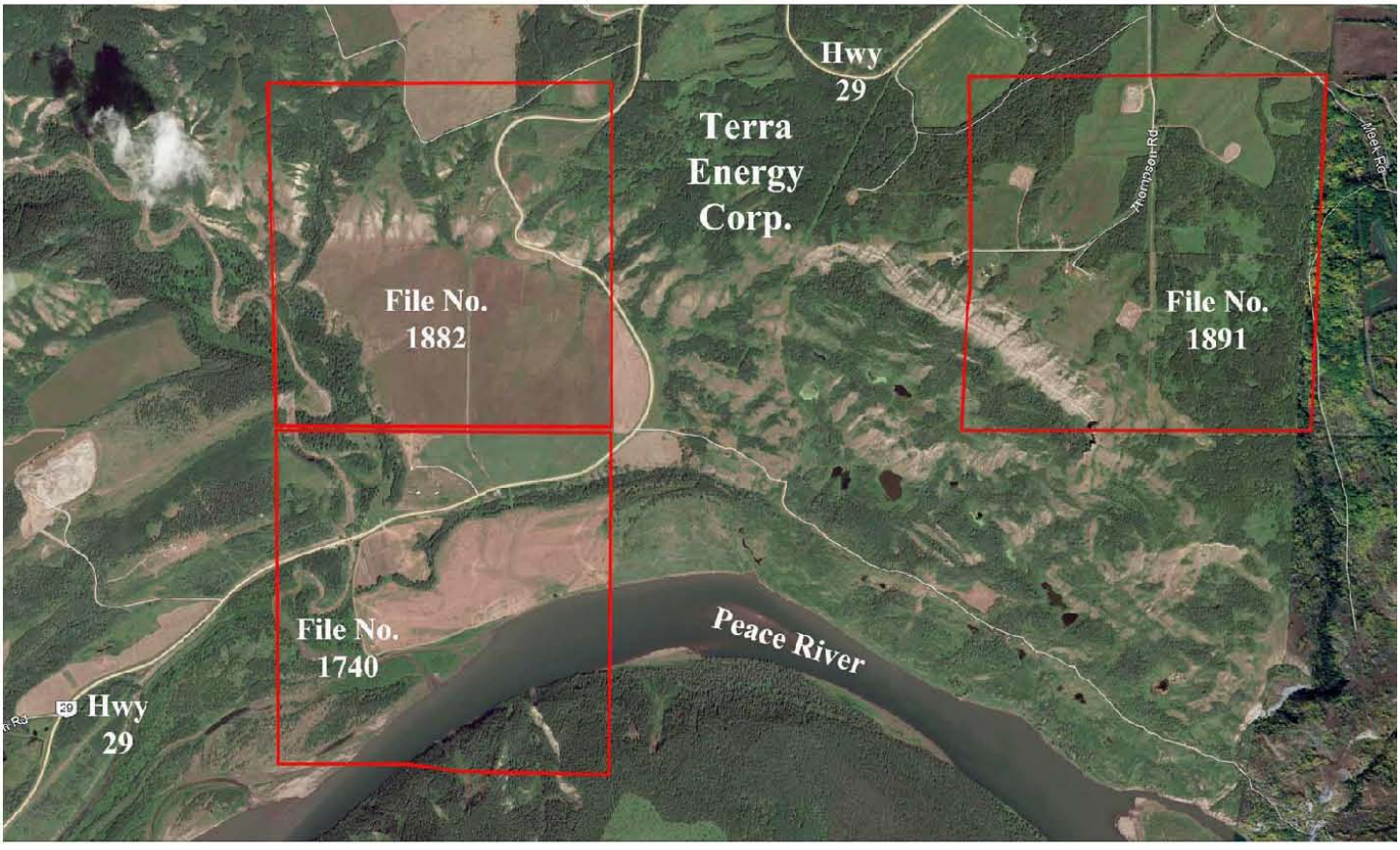
29
29
Don Phillips Way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29
Terra
Energy
Corp.
File No.
1882
File No.
1891
Thompson Rd
File No.
1740
Peace River
Hwy
29
29

Appearances:

Mr. Robert R. Bourne, counsel for Terra Energy Corp.
Ms. Shawn Specht, counsel for Rhyason Ranch Ltd.

ORDER

I. INTRODUCTION AND BACKGROUND

This decision deals with Rhyason Ranch's application for costs.

Terra Energy Corp. ("Terra") applied to the Mediation Arbitration Board on June 15, 2006, under Section 16(1)(a) of the ***Petroleum and Natural Gas Act***, R.S.B.C. 1996, c. 361, for right of entry for the purposes of oil and gas exploration. Terra holds drilling licenses for the Lands.

Communications between the parties following the initial contact in late March 2006 did not produce any agreement on right of entry and in mid June, Terra applied to the Board. On August 28, the Board conducted a mediation meeting. As the parties failed to agree, the Board ordered the matter to proceed to arbitration. Terra agreed to hold off conducting a survey of the Lands until after November 22 to accommodate the hunting season on the ranch.

The arbitration was preceded by a pre-hearing conference on October 12, 2006. Following the conference, I made a number of orders regarding the conduct of the arbitration, including timelines for production of documents, submissions, and witness lists. I also scheduled the hearing for one day on January 23, 2007 in Fort St. John, B.C. The timelines, hearing date and length of hearing were scheduled in full consultation with the parties. Mr. Arthur Hadland represented or assisted Mr. Greg Rhyason, the principal of Rhyason Ranch, from March 2006.

On January 9, 2007, the Board received an application for an adjournment of the hearing from counsel for Rhyason Ranch. She advised that she was in the process of being engaged by Mr. Rhyason. The Board rejected the adjournment request. On January 16, counsel renewed her request for an adjournment. I denied the request, among others because it was made close to the hearing date, the hearing had been set in consultation with the parties, and Rhyason Ranch had had ample time to engage and instruct counsel. I noted, as well, that

Rhyason Ranch had been represented and assisted by Mr. Hadland who, while not a lawyer, was "experienced in the area," according to Rhyason Ranch.

Terra's application was heard at a two day arbitration, January 23 and 24, 2007. Following extensive written submissions from the parties, I issued a decision on the merits on March 5, 2007 (***Terra Energy Corp. v. Rhyason Ranch Ltd***. MAB Order No. 403A).

At the arbitration, Rhyason Ranch opposed the application based on Terra's alleged failure to negotiate in good faith prior to applying to the Board. Rhyason Ranch argued that there was a statutory duty to do so. I concluded that there was no merit to Rhyason Ranch's position. I also found there was little evidence to support the position that Terra did not negotiate in good faith. Both parties engaged in the process as self-interested agents to make the best "deal" possible. They were not successful and their dispute ended up in arbitration.

Rhyason Ranch's position was that right of entry should also be denied because Terra failed to show that its proposal, in particular the proposed access road, was appropriate for the Lands, raising environmental, ecological, archaeological, financial and other concerns, and, therefore, that I ought to consider a more appropriate access route to the well sites, through a neighbour's property. Terra argued that I did not have the jurisdiction to consider the appropriateness of the proposed road access. I concluded that I had the jurisdiction to set the terms with respect to the entry, occupation and use within the context of the application before me, something that necessarily involved consideration of the substantive merits of the proposed access. In the circumstances, I issued the right of entry as proposed by Terra.

Finally, the arbitration dealt with terms of the right of entry, including such matters as road construction, fencing, and compensation issues, such as land value, loss of rights, nuisance, temporary and permanent damage, severance and other factors set out in Section 21 of the ***Act***.

The parties' submissions on the merits only addressed costs in a rather general manner, and in my view, further submissions were required and requested. Rhyason Ranch filed a submission on April 3, 2007, Terra made its response on April 13, and Rhyason Ranch replied on April 18.

II. ISSUES

This is the first opportunity for the Board to deal with costs in the context of Section 47 of the ***Administrative Tribunals Act***, S.B.C. 2004, c. 45 ("***ATA***"). Prior to the ***ATA***, the Board had the power to award costs or compensation on the basis of the now repealed Section 27 of the ***Act*** (repealed S. B.C. 2004, c. 45, s. 152, effective October 25, 2004, B.C. Reg 425/2004)). Broadly framed,

the issues are: When does the Board order costs? On the basis of what principles? What is included in an order for costs?

Specifically, this case raises three issues:

1. Whether the landowner is entitled to compensation for the legal costs and disbursements and, if so, how much?
2. Whether the landowner is entitled to compensation for other "representational" and expert costs and disbursements and, if so, how much?
3. Whether the landowner is entitled to reimbursement for the time spent and expenses incurred dealing with the subject matter of the application, including negotiations prior to the Board's process being engaged?

III. SUBMISSIONS OF THE PARTIES

Rhyason Ranch claims total costs in the amount of $44,088.61. Its submissions on costs are supported by affidavits of a paralegal from the law firm representing Rhyason Ranch and of Mr. Greg Rhyason, the principal of Rhyason Ranch.

The first affidavit attaches an invoice from Mr. Hadland, detailing his activities on behalf of Rhyason Ranch and an invoice from counsel for her professional services. Counsel's account is for a total of $14,060.00 at $200.00 per hour (presumably including applicable taxes as the account does not indicate otherwise), plus $517.00 in costs and disbursements. The affidavit also notes that the "professional services descriptions are not shown for matters of client confidentiality."

Mr. Hadland invoiced 84 hours at the rate of $125.00, for a total of $10,500.00 plus GST, for the period from March 29, 2006 until the last day of the arbitration, January 29, 2007. A substantial portion of his time, 37 hours, was charged to preparation for the arbitration between January 12 and 17. He also invoiced for unspecified registry services (January 3, 2007), office expenses, and 10 days of vehicle use at $50.00 per day.

According to Mr. Rhyason's affidavit, he charged $150.00 per hour for his activities in connection with Terra, 84 hours like Mr. Hadland, and for the same activities, for a total of $12,600 plus GST. He also charged office expenses, telephone, mail etc. ($1,214.71) and clerical staff expenses – "2 girls @ 2 days (10 hours/day) @ 36.00" – for $1,440.00. He charged for his use of his vehicle, also for 10 days, at $150.00 per day.

Rhyason Ranch argues that Section 47 of the ***ATA*** gives me wide discretion to award costs. Rhyason Ranch argues that it is entitled to $44,081.61 in costs in the circumstances. It says that the arbitration and the associated expenses

resulted from Terra's failure to negotiate in good faith. Terra did not put forward its "suggested financial and other considerations for the proposed well sites" until the arbitration. The fact that Terra was successful obtaining right of entry should not preclude Rhyason Ranch from recovering costs. Costs serve multiple purposes, including encouraging parties to make reasonable efforts to settle their disputes (***Skidmore v. Blackmore*** (1991), 122 DLR (4^{th}) 330).

Rhyason Ranch refers to ***AEC Oil & Gas v. Nobbs*** (MAB Order No. 352A, May 21, 2002) for the proposition that costs is an aspect of the balancing of interests between landowners and oil companies and, as well, ought to reflect the involuntary nature of the process. In this case, if the landowners' costs are not granted, they will eat up most of the compensation awarded in the arbitration. Rhyason Ranch says that a landowner is entitled to his personal time spent on this and out-of-pocket expenses (***Star Oil & Gas Ltd. v. Maclean*** (MAB Order No. 344A, June 10, 2002).

The costs of Mr. Rhyason are attributable to the time he had to divert from his other business ventures to deal with Terra from the first site visit in March 2006 until the arbitration. The hourly rate is Mr. Rhyason's "business rate" for his contracting business and the 84 hours claimed is "a conservative estimate." The rate claimed for his vehicle is his business rate for vehicle use.

While Terra agrees that the arbitrator has the discretion to award costs under Section 47 of the ***Administrative Tribunals Act***, Terra argues this is not a case where it should be exercised. The arbitrator must consider a number of factors, including the nature of the costs incurred, the reasons for incurring them, the contributions of counsel or advisors, fairness in the Board's process, and whether parties have taken a "realistic approach" in dealing with the issues before the Board (***Nurnberger v. Orefyn Energy Advisors Corp***. (MAB Order No. 345A, December 13, 2001; ***Thompson v. Calpine Canada Resources Ltd***. (MAB Order No. 341A, July 30, 2001). Rhyason did not take a realistic approach and devoted time to issues of little relevance and unsupported by the evidence, denial of right of entry and appropriateness of the proposed access route. Mr. Rhyason's unrealistic demands, including $25,000 per right of entry, were the reasons the parties ended up in arbitration. Success is an important factor that the Board should consider in its cost award (***Superintendent of Real Estate v. Real Estate Council B.C. et al***., FST 05-007, January 13, 2006; ***Cheema v. Insurance Council of B.C. et al***., FST 05-019 June 15, 2006; ***Thomson v. Superintendent of Real Estate***, FST 04-001, April 4, 2005). Here, the Board found in favour of Terra on a majority of issues.

Terra argues that there is no precedent for awarding costs on a client-solicitor basis (***Penn West Petroleum v. Silver Hammer Farms*** (MAB Order No. 308A, May 30, 2000). In any event, Rhyason Ranch provides no particulars of the work performed and some the legal fees claimed are related to unsuccessful adjournment applications. Disbursements claimed should not reflect that

counsel does not reside in the area. Terra also points to the Board's statement in ***AEC Oil***, that the oil company was not "responsible for any of the account of [the landowner's counsel]." There was no evidence that the account was paid or intended to be paid. The lawyer did not appear at the mediation or arbitration.

Terra also says that Rhyason Ranch's claim for the invoiced costs of Mr. Hadland is not appropriate. His credentials as an expert were never established and Mr. Hadland's dual role as representative and expert compromised any evidence he provided. His positions were unreasonable and unsupported by the authorities and the ordinary practice in the industry. Mr. Hadland's appraisal was not prepared for the arbitration but for other unrelated reasons. Moreover, there is no evidence that the invoices have actually been paid (***ACE***).

Terra disagrees with Mr. Rhyason's claim for his time at $150.00 per hour, based on his hourly business rate, vehicle use at $150.00 per day, and 40 hours of clerical time. These costs are inappropriate. There is no evidence of lost wages or profits and the total claim is out of line with Board orders for costs ranging between $200.00 and $3,000.00 (***Thompson v. Calpine Canada Resources Ltd.***;***Rose Prairie Wolfe Ranch Ltd. v. Encal Energy Ltd.***, MAB Order No. 338ARR, May 11, 2001; ***Talisman Energy Inc. v. Beresheim***, MAB Order No. 336A, May 11, 2001; ***Iten v. Devon Canada Corp.***, MAB Order No. 360A, November 19, 2002; ***Baxter v. Search Energy Inc.***, MAB No. 352ARR, May 23, 2002; ***Baxter v. Search Energy Inc.***, MAB No. 351ARR, May 23, 2002; ***AEC Oil & Gas v. Nobbs***; ***Star Oil and Gas Ltd. v. MacLean***; ***Nurnburger v. Oryfyn Energy Advisors Corp***. The vehicle charge is not a reasonable estimate of actual charges and includes an element of profit. There is no evidence of actual costs for clerical staff costs and the 40 hour estimate is unreasonable.

Rhyason Ranch replies that the Board has discretion to determine right of entry and takes issue with the suggestion that there was no evidence in support of its positions. It denies devoting the bulk of the time on irrelevant issues of no merit, and says that the hearing would not have taken more than one day in any case. Terra made no reasonable proposals prior to the arbitration and costs should be awarded to discourage such conduct. Moreover, success is not determinative because of the involuntary nature of the process from the landowner's perspective. There was no basis for the majority of Terra's proposals other than arbitrary "industry norms."

With respect to the lack of particulars on the account for legal services, Rhyason Ranch argues that client confidentiality is a fundamental right and should only be disclosed in rare circumstances. In any event, the dates in the account make it clear that the charges are related to the arbitration.

Terra specifically waived Mr. Hadland's expert qualifications and did not object to him acting in the dual capacity of representative and expert. His role was little different from that of witnesses for Terra. As well, Rhyason Ranch says it does

not matter whether the accounts for legal and consulting services have been paid, they are due and owing.

Concerning Mr. Rhyason's charges, he was compelled to give up substantial time and incur costs for legal counsel and a consultant. It is reasonable to assume that Mr. Rhyason would have been occupied and busy elsewhere but for having to attend the hearing and deal with Terra's application. The hours claimed are not unreasonable, including those of the clerical staff who produced multi-tabbed voluminous materials outside of office hours.

IV. ANALYSIS AND DECISION

Administrative tribunals, such as the MAB, do not have the power to award costs unless provided for expressly or by necessary implication in the board's enabling statute (***Re National Energy Board Act*** [1986] 3 FC 275 (FCA).

It is common ground between the parties that Section 47 of the ***Administrative Tribunals Act "ATA")***, S.B.C. 2004, c. 45, provides the Board with the authority to award costs.

Section 47 of the ***ATA*** reads:

> 47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:
>
> (a) requiring a party to pay part of the costs of another party or an intervener in connection with the application;
>
> (b) requiring an intervener to pay part of the costs of a party or another intervener in connection with the application;
>
> (c) if the tribunal considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the tribunal in connection with the application.
>
> (2) An order under subsection (1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the court.

This is the first opportunity for the Board to deal with costs in the context of Section 47. Prior to the ***ATA***, the Board awarded legal costs or compensation on the basis of Section 27 of the ***Act*** :

> 27. (1) The board may award costs of or incidental to any proceeding before the board, the chair or board member, and may fix the amount of costs and determine who must pay those costs.

As indicated by the cases cited by the parties, the Board's cost awards — including compensation for the landowner's time and expenses — to landowners can only be described as modest, ranging between $200.00 to $3,000.00 (***Thomson*** ($200), ***Nurnburger*** ($800), ***AEC Oil*** ($600), ***Star Oil*** ($2,000), ***Rose Prairie Wolfe Ranch*** ($500), ***Talisman Energy*** ($400.00. In ***Iten***, which arose out of an application for damages for an oil spill from a flow line, the landowners kept track of their time, spent on re-mediation of the oil spill and preparation for mediation and arbitration, and submitted annotated invoices for 49 hours spent at $125.00 per hour, for a total of $6,338.90. The Board carefully considered the matter and awarded the $3,000.00 all inclusive. In ***Baxter***, the applicant landowners sought $5,000.00 in costs for preparing and attending the arbitration (and another arbitration heard at the same time) and the Board decided that the appropriate amount was $750.00. In the companion case, the Board awarded $500.00.

In ***Penn West***, the Board rejected a claim for costs on a client and solicitor basis and awarded the landowner costs on a party and party basis at scale 3 under the Supreme Court tariff. In ***Nurnburger***, the landowner submitted a bill of costs in the amount of $3,828.98 based on scale 3 of the Supreme Court tariff. The Board found that he was entitled to some contribution to his legal expenses and awarded $800.00. In yet another case, ***AEC Oil***, the MAB rejected the tariff and the principles for awarding costs in the courts. Costs or compensation have been awarded on an *ad hoc* and not always consistent basis.

It is clear from Section 47, that the Board has a broad discretion to award costs, and may order one party to pay part of the costs of another party or intervener. However, that discretion must be exercised judicially and based on the facts of each case (***Henderson v. Laframboise***, [1930] OJ No. 149 (CA), para. 13). The statutory language does not provide much guidance, although one express limitation is that the Board can only order part payment of costs.

Given the earlier decisions of the Board, it may be useful to reflect briefly on the meaning of "costs" under the ***ATA*** and, therefore, the ***Act***. In ***Bell Canada Communications v. Consumers Association of Canada***, [1986] SCJ No. 8, the Supreme Court of Canada interpreted the word "costs" in the context of Section 73 of the ***National Transportation Act*** -- "the costs of and incidental to a proceeding ..." to mean "legal costs." In other words, "costs" are legal costs (see also ***BC Vegetable Greenhouse I, LP v. BC Vegetable Marketing Commission***, BC Farm Industry Review Board, May 20, 2005, para. 23). In the courts, self-represented litigants may also receive legal costs (***Skidmore v.***

Blackmore, above). In ***Roberts v. College of Dental Surgeons of BC***, 1999 BBCA 103 Mr. Justice Goldie explained:

> Para. 30 Generally, "costs", when used in this province in the context of legal proceedings, comprehends two classifications: one, a lawyer's recovery of his or her account from the client. ...:
>
> > The term "costs" also denotes the expenses which a person is entitled to recover from the other side by reason of his being a party to legal proceedings. They include court fees, stamps, etc., and also, where the party is represented by a solicitor, the reasonable and proper charges and fees of the solicitor and counsel. *The amount of these costs is ascertained by the process of taxation, which is regulated by certain principles of general application*. [Emphasis by Goldie JA]
>
> Para. 31 It is evident that when a party is paid costs under the second classification the amount so paid will operate as an indemnity in respect of the recipient's own costs. Only in exceptional circumstances will this amount to a full indemnity.

The costs at issue here are legal costs in the second sense; costs a party is entitled to recover from another by reason of being party of a legal proceeding. The purpose of these costs is to provide part indemnity for the party's own costs (Section 47). In other words, the legislation seems to have contemplated less than full indemnity, something that, in any event, is rare in the courts.

As an administrative tribunal, the Board's processes are intended to be less formal that those provided by the courts. In some cases, professionals other than lawyers may represent parties. In other cases, parties may represent themselves. Different professionals may also represent parties at different stages of the process. In the absence of a tariff, there may be difficulties assessing time spent and the value of the time of a self-represented party. All the same, given the nature of the Board's processes, I am of the view that parties before the MAB may be entitled to the equivalent of legal costs whether they are represented by legal counsel or not. However, in my opinion Section 47 does not provide the authority to award compensation, for example, for time spent by a landowner in dealing with the subsurface rights holder or for opportunity costs, i.e. that the landowner could profitably have spent his or her time engaged in some other enterprise.

Unless qualified by statute or by agreement of the parties, costs in BC have a traditional meaning, governed by the provisions of Rule 57 of the Supreme Court Rules (***Ridley Terminals Inc. v. Minette Bay Ship Docking Ltd.*** [1990] BCJ No. 865 (CA)). In ***Shpak v. Institute of Chartered Accountant of BC***, [2003] BCJ 514 (BCCA), the Court noted that "...where the provisions for costs in the

constituent statute, or Rules properly passed pursuant to the statute, do not indicate otherwise, the provisions of Rule 57 will govern the tribunal's award of costs " (para. 56). Section 47(1) authorizes the Board to award costs of a proceeding. The specification of those costs, particularly, paragraph (c), and the power of the Lieutenant Governor in Council to create a tariff suggests that the intent of the legislature was to exclude the application of Rule 57 of the Rules of Court. Section 47 stand on its own subject to any regulations made under Section 60 (J.L.A. Sprague, ***The Annotated Administrative Tribunals Act***, Toronto, Ont.: Carswell, 2005). In my view, the Supreme Court tariff is not applicable.

Terra argues that success must be an important consideration. In the courts, outcome of a dispute, or success, is a primary consideration. In the "absence of special circumstances, the successful party is entitled to a reasonable expectation of obtaining an order for the payment of his costs by the unsuccessful party" (***Henderson v. Laframboise***, para. 13). Where success is divided, costs are not awarded (see also ***CCH Canadian Ltd. V. law Society of Upper Canada***, [2000] FCJ No. 92 (TD)). In some regulatory proceedings, on the other hand, there may not be clear winners and losers and it may be considered a quite proper exercise of discretion that a successful applicant pay the costs of other participants (***Re National Energy Board Act, above***).

While I agree that success, or outcome, cannot be ignored, there are significant differences between court proceedings and those before the Board. As an administrative tribunal, the Board's processes are intended to be less formal that those provided by the courts. Specifically, the Board has recognized that the need to balance the interests of the surface rights holders and the subsurface rights holders, recognizing the compulsory and compensatory aspects of the process (***AEC Oil***).

Landowners in B.C. generally hold title to the surface of their land, but they do not usually hold title to the sub-surface minerals, including petroleum and natural gas. The Crown usually retains these rights, and has the power to dispose of them to companies that may subsequently wish to remove the resources. The legislative scheme under the ***Act*** allows subsurface rights holders, such as oil and gas companies, access to those rights; for example, oil and gas rights leased form the Crown. As the Crown is the dominant tenant, the surface rights holders ultimately have little choice but to allow access to those subsurface rights, either by agreement or through the MAB's processes. Either way, the process results in a loss of rights for the surface rights holder. The purposes of Part Three of the ***Act*** are, on the one hand, to provide entry to private lands for purposes connected with exploration, development and production or storage of oil and gas; and, on the other, to provide compensation to surface rights holders, such as landowners, and set terms for the entry occupation and use (***Terra Energy Corp. v. Meek***, MAB No. 409AR, May 16, 2007). Rhyason Ranch

should not be denied costs simply because Terra was successful in obtaining a right of entry. Indeed, only in rare and exceptional circumstances would the Board deny entry. A right of entry order is not, in my view, a proper measure of success. The compulsory aspect of the Board's proceedings reflect the fact that surface rights holders may become parties simply by virtue of that status.

While the Board may set terms of entry, compensation is the most significant quid pro quo established by the ***Act*** for entry, occupation and use. Section 21 details the heads of compensation, including the compulsory aspect of the entry, occupation and use, the value of the land and the loss of profit or right, temporary and permanent damage, and compensation for severance, and "other factors the Board considers applicable." Exercising its role under the ***Act***, the Board attempts to balance interests of surface rights holders and subsurface rights holders, and must give consideration to other factors than quantum or success. Under some right of entry orders, some compensation payments are payable in the first year, only while others are payable annually. Given the cost of legal services, it is likely that they could consume a substantial portion of any amount of compensation. From that standpoint, in my view, the compensatory aspects of legal costs of the surface rights holder must be a significant factor in the Board's cost awards.

However, any legal cost award must be reasonable and necessary in all of the circumstances. In this case, both parties point to the costs as deterring frivolous actions and defences, encouraging parties to make reasonable efforts to settle, and discouraging improper or unnecessary steps in the litigation. The arbitrator may consider a number of factors, including the nature of the costs incurred, the reasons for incurring them, the contributions of counsel or advisors, fairness in the Board's process, and whether parties have taken a "realistic approach" in dealing with the issues before the Board (***Nurnberger*** and ***Thompson***). This list is not exhaustive. In my view, the onus rests on the party submitting costs for assessment to establish affirmatively the necessity and reasonableness of the charges claimed as disbursements (***Holzapfel v. Matheusik*** [1987] BCJ No. 1227 (BCCA), p. 3).

The degree of success in outcome may provide some measure or indication of whether parties adopted a "realistic approach." Under the ***Expropriation Act***, RSBC 1996, c. 125, a landowner may be entitled to "actual reasonable legal costs" if the amount awarded exceeds the amount paid by 115% or some or all of the costs in the court's discretion even if amount awarded is less. In ***Kodila v, BC (Ministry of Transportation)*** [2007] BCJ No. 2450 (BCSC), the plaintiff was entitled to have costs determined under the ***Tariff of Cost Regulation***, BC Reg 189/99. The court noted that it "was reasonable for the plaintiff to pursue compensation ... and that ... did not take a broad approach to the issues but rather confined his claim to the narrow issues before me" (para. 31). In my view,

given the compulsory and compensatory aspects of the Board proceedings a surface rights holder must generally have an expectation of part indemnity for reasonable and necessary representational costs and disbursements.

The statutory language found in Section 47(1)(a), (b) and (c) provides the power to make an order for payment of costs "in connection with an application," emphasizing that costs may encompass the entirety of the progress of the matter before the Board, whatever its ultimate outcome (***BC Vegetable Greenhouse***, para. 25). In my view, therefore, the legal costs awarded must be "in connection with the application."

The process before the Board may be broken down into a series of steps. The Board has the discretion to award costs for the necessary steps in its process, including, for example, initial investigations and instructions, preparation for and attending to pre-mediation conferences and mediation, instructions regarding mediators' orders, preparation for and attending to pre-arbitration conferences and arbitration, and "orders ... in relation to any matter that the tribunal considers necessary for the purpose of controlling its own process" (Section 14(c), ***ATA***). As a general principle, given the emphasis in ***Act*** and by the Board on mediation and voluntary dispute resolution, a surface rights holder may well expect a greater proportion of reasonable and necessary costs associated with the mediation stage in the MAB process. In my opinion, this will encourage both parties to adopt reasonable positions early on in the process and discourage unnecessary litigation.

On a related note, it ought not to be necessary for subsurface rights holders to come before the Board to obtain an order for right of entry to conduct a survey. Parties do not require the Board's authorization or order to enter lands for the purposes of conducting a survey (see Section 59.1, ***Land Surveyors Act***, RSBC 1996, c. 248).

Like the courts, legal costs awarded will also include reasonable and necessary disbursements and expenses related to the proceeding such as mail, courier expenses, photocopying, travelling and subsistence expenses, the cost of necessary experts, and experts' reports. Any claim for disbursements must be properly documented. As well, the onus rests on the party submitting costs for assessment to establish affirmatively the necessity and reasonableness of the charges claimed as disbursements (***Holzapfel v. Matheusik***).

I am of the view that the Board's costs awards must be guided by principles that include the following:

1. Generally, costs must provide partial indemnity to the surface rights holder for reasonable and necessary representational costs, including legal fees and disbursements, in connection with the application;
2. However, those costs must also encourage parties before the MAB to make reasonable offers to settle their disputes, encourage them to narrow the issues in dispute, and discourage improper or unnecessary steps in the litigation.

I now turn to the application of these principles to the case at hand.

V. APPLICATION OF PRINCIPLES

Rhyason Ranch claims to be entitled to $44,081.61 in costs in the circumstances. Given the costs awarded by the MAB in the past, this is a substantial claim.

1. Arbitration Costs and Disbursements

I am of view that Rhyason ranch is entitled to legal costs "in connection" with this application. As the surface rights holder, Rhyason Ranch is entitled to some indemnity for part of its reasonable legal costs and disbursements. Rhyason Ranch's counsel's account is for a total of 67 hours, $14,060.00 at $200.00 per hour, presumably including applicable taxes as the account does not indicate otherwise, plus $517.00 in costs and disbursements. These costs are said to relate to the arbitration. The account appears to cover the period from January 9 to March 23, 2007. In my view, the hourly rate claimed is reasonable.

Briefly, there were three main issues before me at the arbitration:

1. Whether right of entry should be denied because of Terra's alleged failure to negotiate in good faith prior to applying to the Board;
2. Whether right of entry should also be denied because Terra failed to show that its proposal, in particular the proposed access road, was the most appropriate for the Lands; and
3. Determining compensation and terms for the right of entry.

With respect to the first issue, in my view, Rhyason Ranch's position was without merit. As well, with respect to both the first and second issue, Rhyason Ranch emphasized the regulatory failings of Terra's application seeking to have the application dismissed, rather than the compensatory aspects. The regulatory aspects are outside the jurisdiction of the MAB and within the jurisdiction of the Oil and Gas Commission. In its evidence and argument, Rhyason Ranch focussed on the failings of Terra's proposal based on considerations that

included financial, construction conditions, environmental and geotechnical grounds.

That is not to say that Rhyason Ranch ignored compensation and terms. In terms of the outcome, while critical of the "industry standards" proposed by Terra, Rhyason Ranch provided little evidence and argument to support a departure from those standards, other than noting that these standards have been in place for many years. There was little dispute that the amounts proposed were, in fact, the standards. As noted by the Alberta Court of Appeal in ***Nova, An Alberta Corporation v. Bain et al***. (1984), 33 LCR 91, p. 93, "if the board ... finds a pattern established it not only should apply the results of that pattern, it should not depart from it without good reason for doing so." For example, Rhyason sought $5,000 in compensation for the compulsory aspect of the right of entry for each single well site and for each parcel of land crossed, paid annually as long as there is entry, occupation and use, rather than as a one-time payment as is standard. Overall, I find that Rhyason Ranch's approach was "unrealistic," not just in terms of departure from industry standards but also in terms of the rationale put forward. While I accept that Mr. Dunn's evidence regarding the bases for, and the origin of the standards left a lot to be desired, Mr. Hadland's evidence in that regard offered little but bald assertions about "reaching for new ground." Despite these misgivings, I am prepared to award costs to Rhyason Ranch. On the issue of compensation, I note that Terra substantially increased its offer at the commencement of the arbitration, from $500/acre to $600/acre. In my view, one day would have been sufficient to deal with the issues of terms and compensation in this application.

Terra objects to the lack of particulars on counsel's statement of account. I share that concern. While client solicitor confidentiality is important, the Board does not, like the courts, have a tariff and it is, therefore, necessary for the parties to be able to subject an amount claimed, on account of fees and disbursements, to some measure of scrutiny to ensure that it is reasonable and appropriate in all of the circumstances. Ultimately the choice for a party may well be between seeking the financial benefit of having costs assessed or retaining client solicitor privilege. There must be sufficient information and material to enable me to determine what would be a reasonable fee (see, for example, ***Denovan v. Lee*** (1991), 62 BCLR (2d) 213).

Regardless of the lack of particulars, which is troubling, Rhyason Ranch obviously and demonstrably did incur legal costs. Counsel became involved in the application from early January 2007. Counsel would have had to attend to obtaining initial instructions, reviewing the file, drafting or assisting in the drafting of statement of points, preparing for a hearing of ordinary complexity or importance, attending to the hearing, and, finally, providing written submissions on the merits and on the issues relating to costs. In all of the circumstances, I find that $3,000 is a reasonable amount on account of legal fees.

Terra objects to costs for two adjournment applications. I agree. In my view, the adjournment applications were unnecessary and without proper foundation, particularly, the "information provided [was] fairly general and little persuasive value" (***Terra Energy Corp. v. Rhyason Ranch Ltd.***, Board Order No. __, January 2007).

In the ***Penn West*** case, the MAB disallowed "any disbursements relating to the fact that counsel for the [landowner] does not ordinarily reside in the Peace River area of British Columbia." I do not agree. In my view it is important for landowners to be able to engage counsel of their choice. Indeed, they may not be able to find local counsel willing to represent them and they ought not to be restricted to the Peace River area. In my view, the amount claimed for counsel's disbursements is reasonable. I award $517.00 in disbursements.

2. Mediation Costs and Disbursements

I am of view that Rhyason ranch is also entitled to some of its costs with respect to Mr. Hadland's representative (and other) efforts "in connection" with this application.

Mr. Hadland invoiced 84 hours at the rate of $125.00, for a total of $10,500.00 plus GST, for the period from March 29, 2006 until the last day of the arbitration, January 29, 2007. A substantial portion of his time, 37 hours, was charged to preparation for the arbitration between January 12 and 17, after, it would appear, Rhyason had engaged counsel.

I do not take issue with the hourly rate claimed by Mr. Hadland. In my view, that is not unreasonable in the circumstances. I do not award any fees for the period prior to the application or for the period after Rhyason Ranch engaged counsel to deal with the application. The first entry in counsel's account is dated January 9, 2007. While there may be rare and exceptional instances where it would be reasonable to engage more than one representative, this is not one of those.

Mr. Hadland's account is not particularly detailed or informative. It is, therefore, difficult to ascertain what services Mr. Hadland performed in "in connection with the application." However, as Rhyason Ranch's representative or asistant, Mr. Hadland would have been attending to Mr. Rhyason's initial instructions and information gathering, preparing and attending to the pre-mediation conference, preparing and attending to the mediation, preparing and attending to the pre-arbitration conference, reviewing Terra's statement of points, and assisting with the preparation of Rhyason Ranch's statement of points. In all of the circumstances, I am prepared to allow $2,000 for Mr. Hadland's representative efforts. In my view, this provides substantial indemnity for reasonable representational costs associated with Mr. Hadland.

In addition, I am reluctantly prepared to allow $250 for Mr. Hadland's attendance at the arbitration to give evidence as an expert and related preparation. Terra accepted his expert status at the arbitration and cannot now challenge that. I did not find Mr. Hadland's expert evidence necessary other than on the issue of overall land value. His assessment of land value ($600/acre) was accepted by Terra at the commencement of the hearing.

As well, Mr. Hadland invoiced for unspecified registry services (Northern Registry Services, January 3, 2007, $155.29), office expenses, telephone mail etc. ($214.71), and 10 days of vehicle use at $50.00 per day ($500). While some of these expenses may be legitimate disbursements, there is no supporting documentation provided in support, nor are they sufficiently particularized. There is not sufficient evidence to support this claim for disbursements and I dismiss it.

3. The Landowner's Time and Expenses

In past cases of the Board, landowners have been awarded reasonable compensation for the time spent preparing for and attending mediation and arbitration plus out of pocket expenses. In one case, ***Iten***, for example, the all inclusive cost award included even the time spent re-mediating an oil-spill. These cases were based on the previous legislation. In my view, Section 47(1) of the ***ATA*** allows the Board to award part payment of legal costs, i.e. reasonable legal fees and disbursements in connection with the application. It does not provide for payment for "opportunity costs" or lost profits from his involvement in this matter. In my view, Mr. Rhyason is not entitled to payment for the 84 hours he claims, as "a conservative *estimate*" (emphasis added), he spent dealing with Terra from the initial contacts in March 2007 through to the conclusion of the arbitration. His time "estimate" appears identical to Mr. Hadland's invoice, including an identical "typo." In short, I deny his claim for the time he claims to have spent on this matter.

Mr. Rhyason also charged office expenses, telephone, mail etc. ($1,214.71) and clerical staff expenses – "2 girls @ 2 days (10 hours/day) @ 36.00" – for $1,440.00. He charged for his use of his vehicle, also for 10 days, at $150.00 per day, $1,500. The rate claimed for his vehicle is his business rate for vehicle use. I also deny the claim for these expenses.

While I appreciate that Rhyason Ranch did incur costs, for example, for the preparation of maps and document binders for the arbitration, these expenses are not supported by any supporting documentation. I appreciate Mr. Rhyason's statement in his affidavit that he can produce invoices etc. upon request. However, the time to document the claim was at the time of the submission.

V. DECISION ORDERS

In summary, Rhyason Ranch is entitled to $3,000 on account of legal fees and $517 on account of disbursements. I also award a total of $2,250 on account of Mr Hadland representational role and his expert evidence. I deny Mr. Rhyason's claim for time and expenses.

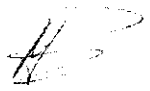
VI. DECISION

THEREFORE THE BOARD MAKES THE FOLLOWING ORDERS:

1. Terra must pay legal costs and disbursements to Rhyason Ranch in the amount of $ 5,767. The amount is payable no later than 30 days from the date of this order unless the parties agree otherwise.

MEDIATION AND ARBITRATION BOARD

DATED THIS 14th DAY OF JANUARY, 2008



IB S. PETERSEN,
VICE-CHAIR

File No. 1565
Board Order # 1565-3

May 12, 2010

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
SW 29-84-21 W6M PID 011-099-224,
SE 31-84-21 W6M PID 044-384-148
(The "Lands")

BETWEEN:

Terra Energy Corp.

(APPLICANT)

AND:

Rhyason Ranch Ltd.

(RESPONDENT)

BOARD ORDER ON RECONSIDERATION

Heard by way of written submissions closing April 30, 2010.

Rick Williams, Barrister and Solicitor, for the Applicant
Shawna Specht, Barrister and Solicitor, for the Respondent

INTRODUCTION AND ISSUE

[1] By decision rendered March 4, 2007, following arbitration proceedings, the Board gave Terra Energy Corp. (Terra Energy) the right to enter, occupy and use Lands owned by Rhyason Ranch Ltd. (Rhyason Ranch) for the construction and operation of wellsites and an access road, and determined the amount of compensation payable by Terra Energy to Rhyason Ranch for the entry, occupation and use of Rhyason Ranch's Lands. By decision rendered January 14, 2008 (the Costs Decision), the Board determined Rhyason Ranch's entitlement to costs of the arbitration and ordered Terra Energy to pay Rhyason Ranch $5,767.00 in costs.

[2] Rhyason Ranch now asks the Board to reconsider its Costs Decision on the basis that there has been a change in circumstances since the Board made its decision. The change of circumstance is that on April 7, 2008, subsequent to the Board's decisions granting a right of entry, determining compensation for entry, and determining Rhyason Ranch's entitlement to costs, the Oil and Gas Commission (OGC) denied Terra Energy's application to construct an access road to the proposed wellsites on Rhyason Ranch's land. Rhyason Ranch submits that because of this change in circumstances, the Board's Costs Decision should be reconsidered and the award of costs should be increased. Terra Energy submits the circumstances do not warrant an increase to the costs award and submits that the application for reconsideration should be dismissed.

[3] Section 26(2) of the *Petroleum and Natural Gas Act* (*PNGA*) provides that the Board may review, rescind, amend or vary an order made by it. The issue is whether the Board should, in the circumstances, exercise its discretion under section 26(2) of the *PNGA* to vary its order for the payment of costs to Rhyason Ranch by Terra Energy.

BACKGROUND

[4] In early 2006, Terra Energy began considering options for the construction of its wells. Terra Energy initially intended to drill the wells on neighbouring property to the Rhyason Ranch Lands. Terra Energy approached the owner of the neighbouring property but he was not willing to allow Terra Energy access to his property or to discuss the issue. In late March of 2006, representatives of

Terra Energy met with Mr. Rhyason, the principal of Rhyason Ranch, and his representative. Mr. Rhyason suggested that Terra Energy construct an access road on his land rather than the neighbouring land. On the basis of this suggestion, Terra Energy proposed the location of two wells and an access road on the Rhyason Ranch Lands. The location of the road and wellsite were agreed in general terms, with Terra Energy agreeing to avoid the residence and ranch headquarters.

[5] Mr. Rhyason and Mr. Dunn, Terra Energy's land agent, had a further conversation in April 2006 and by letter dated April 21, 2006, Mr. Dunn wrote to Mr. Rhyason setting out compensation rates. Being unsatisfied with the rates proposed, Rhyason Ranch wrote to Terra Energy indicating Rhyason Ranch would allow entry subject to various conditions including terms of compensation and that the construction work for the road and wellsites would be done by Rhyason Contracting Ltd., an affiliated company owned by Mr. Rhyason. On May 3, 2006, Terra Energy responded indicating that while they were prepared to continue negotiating the terms of access, in view of the terms suggested by Rhyason Ranch, they would refer the matter to the Board. Mr. Rhyason responded by letter of May 23, 2006 and suggested the parties meet to discuss conditions of entry. A telephone call was set up for May 31, 2006. Mr. Rhayson did not participate. Mr. Beatty of Terra Energy wrote to Mr. Rhyason expressing the view that Rhyason Ranch's conditions were "in excess of the norms and practices of industry and landowners".

[6] By letter dated June 15, 2006 Terra Energy served Rhyason Ranch with a copy of its application to the Board. The Board received Terra Energy's application on June 27, 2006. The Board conducted a pre-hearing telephone conference on July 19, 2006 and an in person mediation on August 28, 2006. The Board granted Terra Energy right of entry to the Rhyason Ranch Lands for the sole purpose of conducting a survey and referred the matter to arbitration. At Mr. Rhyason's request, Terra Energy agreed to hold off conducting a survey until after November 22, 2006 to accommodate the hunting season, and the parties agreed the arbitration would not proceed until after that date.

[7] The Board conducted a pre-hearing telephone conference on October 12, 2006 and scheduled the arbitration for January 23, 2007. The Board made various other procedural orders relating to the conduct of the arbitration and the delivery of statements of points and witness lists in advance of the arbitration. Terra Energy filed its Statement of Points by December 22, 2006 in accordance with the Board's order.

[8] On January 9, 2007, the Board received an application from counsel "in the process of being retained" by Rhyason Ranch seeking an adjournment of the arbitration. By letter dated January 11, 2007, the Board denied the request. Counsel for Rhyason Ranch renewed the application to adjourn the arbitration on

January 16, 2007 and by decision dated January 18, 2007, the Board again denied the request. For the first time in these proceedings, the letters seeking an adjournment raised the possible need for an environmental impact study.

[9] Rhyason Ranch provided written submissions approximately two weeks in advance of the scheduled arbitration objecting to the proposed route for the access road and proposing an alternate route using, for the most part, public access to the south of the Rhyason Ranch Lands, and a much smaller portion of the Rhyason Ranch Lands.

[10] The arbitration proceeded on January 23, 2007 and continued on January 24, 2007. The Board rendered its decision on March 4, 2007 (Order 403A) granting the right of entry for the access road and wellsites and determining the compensation payable. Rhyason Ranch filed a Petition for judicial review of the Board's decision on May 4, 2007. The parties agreed to adjourn the judicial review pending conclusion of the OGC's processes with respect to Terra Energy's applications for permits to construct the access road and wellsites. The Petition has not been heard.

[11] Rhyason Ranch sought costs of the arbitration in the amount of $44,088.61. By decision rendered January 14, 2008, the Board ordered Terra Energy to pay costs to Rhyason Ranch in the amount of $5,767.00 (Order 403C). Rhyason Ranch asked the Board to reconsider the Costs Decision and by letter dated February 13, 2008, the Board declined to exercise its discretion to reconsider the Costs Decision. Rhyason Ranch filed a Petition for judicial review of the Board's Costs Decision on March 11, 2008. The Petition has not been heard.

[12] On April 7, 2008, the OGC denied Terra Energy's application to construct the proposed access road through the Rhyason Ranch Lands.

[13] Rhyason Ranch made this application on January 5, 2010 asking the Board, once again, to reconsider the Costs Decision. By letter dated January 22, 2010, the Board agreed to conduct a reconsideration on the basis that there had been a change in circumstance since the Board's Costs Decision. In consultation with counsel for the parties, the Board set out a timeline for the provision of affidavit evidence and written submissions.

SUBMISSIONS

[14] Rhyason Ranch argues that the Costs Decision should be reconsidered and the costs payable to it increased because the route of entry authorized by the arbitrator was rejected by the OGC. Rhyason Ranch characterizes the route of the access road as the "central subject matter in dispute" at the arbitration and submits that the costs incurred were directly related to this issue. Rhyason

Ranch argues further that Terra Energy has never sought to construct the wellsites for which it was granted entry and, as such, the compensation ordered by the arbitrator has never been paid. Rhyason Ranch submits the costs awarded were significantly below actual costs incurred and that it continued to incur legal fees before the OGC. It provides unredacted copies of the accounts originally submitted in support of their initial claim for costs, which was largely disallowed by the arbitrator for failure to provide adequate supporting documentation, among other reasons. Rhyason Ranch submits Terra Energy should have applied to the OGC before making an application to the Board and that, if it had, an arbitration would likely not have been needed. Rhyason Ranch submits it should be awarded costs of up to $48,000 which is comparable to both the actual costs expended by Rhyason Ranch at the arbitration and the compensation both the arbitrator and Rhyason Ranch anticipated would be received.

[15] Terra Energy disagrees that the "central issue" between the parties at the arbitration was the route for the access road although it agrees that much of Rhyason Ranch's time and evidence at the arbitration was focused on the routing of the access road. Terra Energy submits it was the unreasonable positions advanced by Mr. Rhyason with respect to compensation for access that necessitated the arbitration. It disputes that an arbitration could have been avoided if the route had been determined in advance because of Mr. Rhyason's positions on compensation. In any event, Terra Energy submits that as the OGC was not willing to entertain an application without either a surface lease or entry order being in place, Terra Energy had no choice but to apply to the Board before applying to the OGC. In any event, Terra Energy submits the route issue did not arise until two weeks before the arbitration and that, until then, the disagreement between the parties was essentially with respect to compensation. Terra Energy submits further that the OGC's decision was based on an environmental report obtained after the arbitration and not available to the arbitrator. Terra Energy submits that it would have preferred to submit to the OGC process first, and that it too has incurred considerable costs in relation to this matter. Terra Energy submits that much of Rhyason Ranch's submissions attempt to reopen the whole proceedings and challenge the efficacy of both of the arbitrator's decisions and are improper in the context of a reconsideration of the Costs Decision on the basis of a change of circumstances.

[16] Both parties accuse the other of having been unreasonable throughout.

ANALYSIS

[17] I have reviewed the submissions provided for this reconsideration, the submissions originally provided to the arbitrator in the costs application and the Board's decisions. Circumstances have changed since the Board made its Costs

Decision in that the proposed route for the access road, for which the arbitrator granted right of entry and determined compensation, was not approved by the OGC. The issue is whether this change in circumstances should cause the Board to exercise its discretion to vary the Costs Decision to increase the amount of costs payable to Rhyason Ranch. Essentially, the issue is whether as a result of the change in circumstances, Terra Energy should bear greater responsibility for the costs incurred by Rhyason Ranch throughout these proceedings.

[18] This reconsideration is not an opportunity for Rhyason Ranch to reargue findings of the arbitrator not relevant to the change in circumstances. If Rhyason Ranch is of the view that the Board has erred with respect to any of those findings, its remedy is to pursue the judicial review, the Board having previously declined to exercise its discretion to reconsider the Costs Decision prior to the change of circumstances.

[19] I have reviewed the arbitrator's costs award with a view to assessing whether and how the "route issue" played into the award that he made in order to determine whether the change in circumstance should result in an increase to his award. After reviewing some general principles with respect to costs, the arbitrator found, at page 12-13, "that the Board's costs awards must be guided by principles that include the following:

1. Generally costs must provide partial indemnity to the surface rights holder for reasonable and necessary representational costs, including legal fees and disbursements, in connection with the application;

2. However, those costs must also encourage parties before the MAB to make reasonable offers to settle their disputes, encourage them to narrow the issues in dispute, and discourage improper or unnecessary steps in the litigation."

[20] In applying those general findings to the circumstances of this case, the arbitrator reiterated the three main issues before him in the arbitration, at page 13, as follows:

"1. Whether right of entry should be denied because of Terra's alleged failure to negotiate in good faith prior to applying to the Board;

2. Whether right of entry should be denied because Terra failed to show that its proposal, in particular the proposed access road, was the most appropriate for the Lands; and

3. Determining compensation and terms for the right of entry."

[21] With respect to the second issue, the arbitrator said at page 13-14:

> "Rhyason Ranch emphasized the regulatory failings of Terra's application seeking to have the application dismissed, rather than the compensatory aspects. The regulatory aspects are outside the jurisdiction of the MAB and within the jurisdiction of the Oil and Gas Commission. In its evidence and argument, Rhyason Ranch focused on the failings of Terra's proposal based on considerations that included financial, construction conditions, environmental and geotechnical grounds."

[22] It was the OGC's responsibility, not the Board's, to assess the proposed route from a regulatory perspective. The Board's decision to grant right of entry to Terra Energy did not, and could not, sanction the proposed route from a regulatory perspective and was always subject to the requisite permits being issued by the OGC. The possibility that the OGC would not permit an installation for which right of entry was granted was always present.

[23] In the arbitration decision itself, while finding that Terra Energy did not have to demonstrate to the Board that the proposed route was "the most appropriate route", only that Terra Energy had the onus to "establish its right to enter onto the Lands", and in finding that Terra Energy was entitled to the right of entry order, the arbitrator was mindful that the regulatory concerns with respect to the proposed route were not within the Board's jurisdiction and that much of Rhyason Ranch's evidence and argument was misdirected. The arbitrator was mindful that the Board did not have jurisdiction to assess much of the evidence and argument that Rhyason Ranch presented with respect to the proposed access road. The fact that the OGC ultimately did not approve the route proposed by Terra does not make the evidence and argument presented to the Board any more relevant to the issues before the Board in the arbitration.

[24] One of the general principles that the arbitrator considered in determining the amount of costs payable was that costs should encourage parties to make reasonable offers to settle their disputes, encourage them to narrow the issues in dispute, and discourage improper or unnecessary steps in the litigation. A review of the record and the affidavit evidence in this application discloses that it was not until two weeks prior to the scheduled arbitration that Rhyason Ranch took serious issue with the proposed route for the access road. Prior to that time, Rhyason Ranch's concern with the access road centred on its request that the access road avoid the residence, something to which Terra Energy agreed. Throughout the early discussions between the parties, Rhyason Ranch was agreeable to having Terra Energy enter the lands, and was generally agreeable to the route for the proposed access road. In fact, the suggestion to access the wellsites through the Rhyason Ranch Lands came initially from Mr. Rhyason. Mr. Rhyason's conditions for the access, expressed in correspondence both before and after proceedings were commenced before the Board, did not primarily relate

to environmental issues, concerns about the amount of land being removed from the Agricultural Land Reserve or other concerns about the route. The first letter to Terra Energy (Exhibit B, Affidavit of Tim Beatty, April 14, 2010) indicated, "I am prepared to allow entry onto my ranch, subject to a complete agreement in writing and payment of the first year entry fees and annual rentals". The letter goes on to set out the "conditions for entry". The conditions include:

- All access construction, well site construction and, after well site completion, the construction of high grade roads complete with culverts to access the adjoining fields to be done by Rhyason Contracting Ltd.
- Construction of facilities and future operations to be done by Rhyason Contracting Ltd.
- Road access security during construction to be performed by Rhyason Contracting Ltd. at $1500/day
- A minimum annual fee of $20,000 for monitoring and managing security on the ranch lands after the construction period
- Initial right of entry for each wellsite to be $20,000
- Annual rentals for each drilled well to be at a minimum of $1,000 per acre. Future rental reviews will be subject to a minimum 3% annual increase compounded over the first five year rental period
- Signing bonus of $20,000
- Any death or injury to livestock will be reimbursed at a fee of minimum $2,000 per animal
- Annual weed control and monitoring by landlord to be at an annual fee of $3,000. In the event of introduction of any weed not present on the ranch lands, the cost of control will be increased by an annual amount of $5,000, for each introduced identifiable or prominently observable weed
- Road use agreement will provide the landlord with a $600/acre annual rental subject to the five year annual review increase at 3% compounded annually

[25] These conditions primarily relate to compensation and ensuring that Mr. Rhyason's contracting company would be engaged to do all of the associated construction work. Even with respect to conditions related to environmental concerns, such as weed control, the condition includes the annual fee to be paid to Rhyason Ranch as landlord for annual weed control and monitoring, and the increased fees payable for the introduction of new weeds.

[26] In its response to the proposed conditions, Terra Energy noted that it should not award contracting work outside a fair bidding process. Mr. Rhyason's letter of August 1, 2006 to Terra Energy again expressed consent to Terra Energy's entry onto the Rhyason Ranch Lands subject to various revised conditions including:

- Access construction and future maintenance to be undertaken by Rhyason Contracting Ltd. on a competitive basis
- Road use agreement will provide the landowner with a $800 per acre annual rental, subject to the five year annual review increase of 3% compounded annually
- Wellsite construction to be undertaken by Rhyason Contracting Ltd. on a competitive basis
- Right of entry for each well is to be $25,000.00
- Annual rental is to be $1,000.00 per acre or a minimum of $5,000.00 per wellsite, whichever is greater
- Future rental increases to be based on a 3% annual increase compounded annually
- Facilities and pipelines to be undertaken by Rhyason Contracting Ltd. on a competitive basis
- Payment of an outstanding account and collection expenses for an earlier work invoice

[27] Most of the conditions again relate solely to compensation or ensuring that Rhyason Contracting Ltd. will do the construction work. Some of the amounts set out for compensation increase from the earlier letter. The only condition mentioned under the heading of environmental issues is the matter of weed control, again with fees payable to Rhyason Ranch as the landlord. The only route issue expressed is that access be diverted around the ranch yard site (paragraph 1 (f)). Terra Energy's response of August 21, 2006, indicated construction activities would be competitively bid to 2-4 contractors including Rhyason Contracting Ltd. Without proposing specific amounts for compensation, Terra Energy indicated it would pay "market rates for access determined using area precedents and legislated requirements". Terra Energy agreed to divert access roads around the ranch yard site.

[28] It was not until after Terra Energy filed its Statement of Points and newly engaged counsel for Rhyason Ranch sought to adjourn the arbitration that "environmental concerns" with the proposed route for the access road were raised as an issue.

[29] I find Mr. Rhyason's position at the arbitration that the proposed route was not appropriate, and that an alternate route should be used, to be entirely inconsistent with the position taken by him throughout the proceedings up until that time. Until then, the conditions of entry essentially related to the amount of compensation payable and the contracting of the construction work. Mr. Rhyason was content to have Terra Energy access the Rhyason Ranch Lands as long as he received the compensation demanded and on the condition that his company would benefit by being contracted to do the work. It was not until just

prior to the scheduled arbitration that he took the position that the route for the access road was not appropriate. Mr. Rhyason invited the entry hoping to be able to benefit financially from it. When Terra Energy was not agreeable to the financial conditions, he was no longer prepared to consent to the entry and took the position that Terra Energy should consider an alternate route.

[30] I do not accept Rhyason Ranch's contention that it was unreasonable in the circumstances for Terra Energy to refuse to consider an alternate route. The arbitration had already been delayed to accommodate Mr. Rhyason. The proposal for an alternate route came too late in the day and was entirely inconsistent with the negotiations to date. I agree with the arbitrator's characterization that the positions taken by Mr. Rhyason with respect to compensation were "unrealistic". While it is unfortunate the parties did not step back and reassess the situation when Mr. Rhyason suggested an alternate route, given the tenor of the negotiations to that point, the fact that the route had prior to that point been acceptable to Mr. Rhyason and, in fact, had been proposed in consultation with him, the subsequently unrealistic positions taken by Rhyason Ranch with respect to compensation, and the necessity to proceed through the Board before applying to the OGC, it is understandable that Terra Energy would want to proceed with the arbitration.

[31] Mr. Rhyason's position at the arbitration that the proposed route for the access road through the Rhyason Ranch Lands was inappropriate, and that there was a better route to access the proposed wellsites using public roads was ultimately accepted by the OGC. The right of entry granted by the Board was never exercised. But given that the concerns raised with the route were not raised until late in the day and that they were concerns that were outside of the jurisdiction of the Board in any event, I fail to see how the fact that the OGC denied Terra Energy's application for the proposed access road should now make Terra Energy responsible for a greater proportion of Rhyason Ranch's costs of the arbitration.

[32] I agree that it would have been preferable if Terra Energy's application to the OGC could have been dealt with prior to the Board being asked to issue an entry order and determine compensation for the proposed entry. At the time, however, the administrative policies in place required the applications to proceed in the order that they did. It is not Terra Energy's fault that it felt compelled to proceed to the Board before making an application to the OGC. The less than optimal dispute resolution model in place resulted in all parties, including the Board, expending resources that need not have been expended. The Board and the OGC have since entered a Memorandum of Understanding to avoid situations where the Board is asked to issue an entry order before all of the regulatory issues within the jurisdiction of the OGC respecting a proposed installation are worked out. If there are regulatory issues with a proposed oil and gas installation, the Board will now defer its processes pending resolution of

those issues by the OGC. In that way, landowners, companies and the Board will not expend resources and incur costs in Board proceedings respecting right of entry in the absence of the regulatory concerns having already been addressed.

[33] While there has been a change of circumstances since the Board rendered its Costs Decision, I am not satisfied that I should exercise the Board's discretion to vary the costs award in view of all of the circumstances. It is likely that had matters played out differently, including if the regulatory concerns with the route had been identified earlier on and if the OGC's processes had preceded the Board's processes, that Rhyason Ranch may have incurred considerably less costs in relation to the Board's processes than it ultimately did. But I am not convinced, in all of the circumstances, that Terra Energy should be responsible for bearing all or a greater portion of Rhyason Ranch's costs of the arbitration, or that the arbitrator's award of costs should be varied.

CONCLUSION

[34] I decline to vary the Costs decision and dismiss the application.

Dated May 12, 2010

FOR THE BOARD

Cheryl Vickers
Chair

File No. 1610
Board Order # 1610-1

December 2, 2008

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
SW ¼ Section 24, Township 83, Range 18 W6M and
NE ¼ Section 14, Township 83, Range 18 W6M

(The "Lands")

BETWEEN:

Terra Energy Corporation

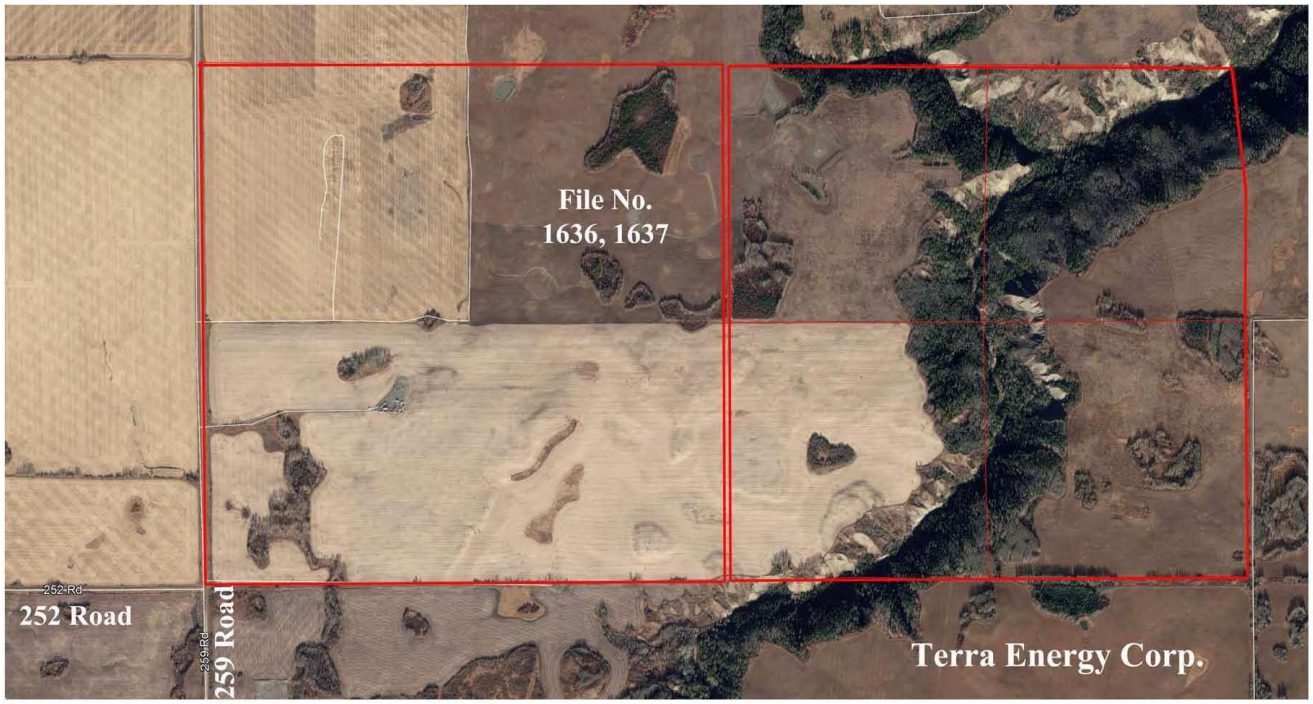
(APPLICANT)

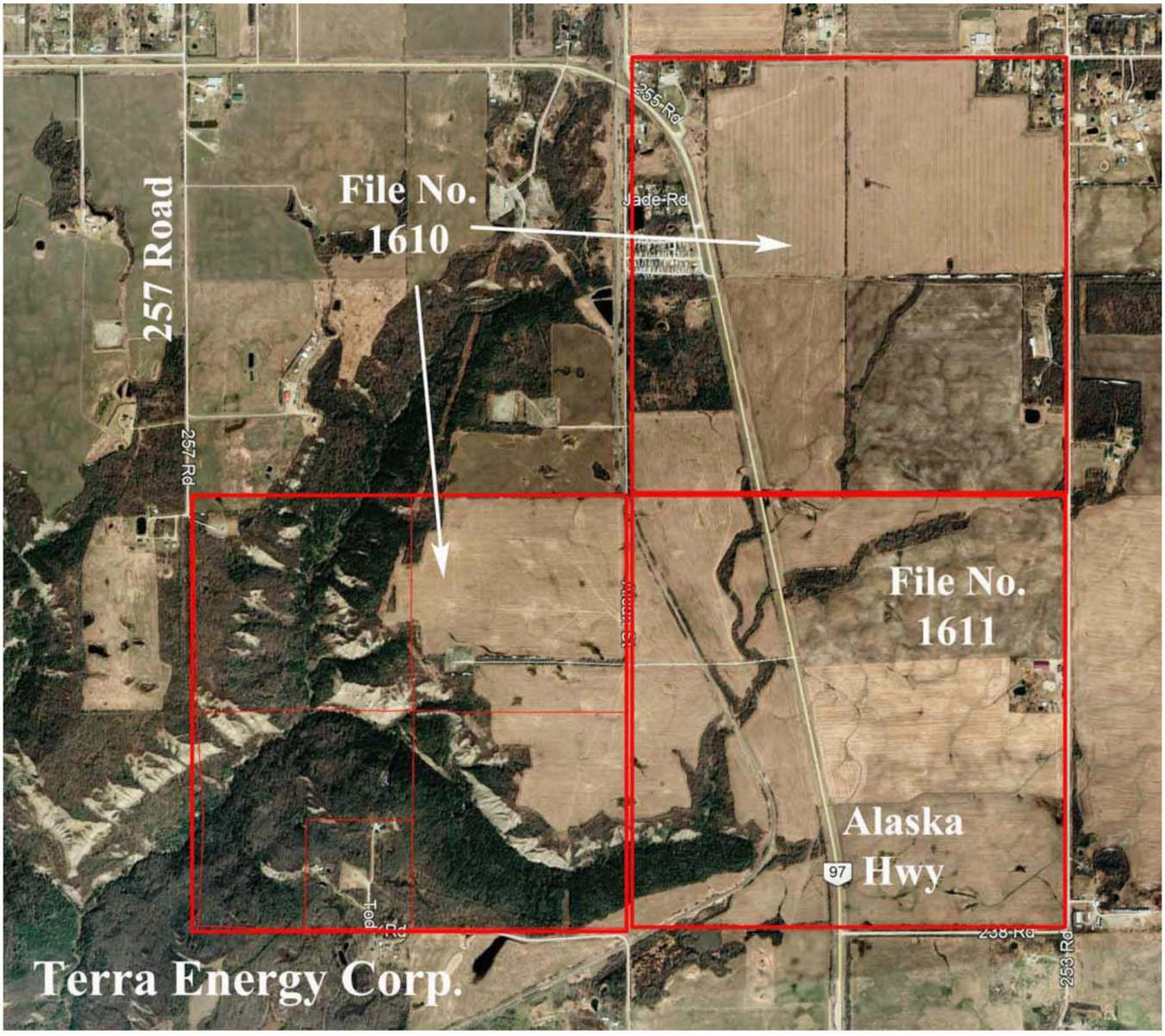
AND:

Austin Hadland and Evelyn Hadland

(RESPONDENTS)

BOARD ORDER


File No.
1636, 1637
252 Road
259 Road
Terra Energy Corp.


257 Road
File No.
1610
255 Rd
Jade Rd
File No.
1611
Alaska
97 Hwy
Terra Energy Corp.

Heard by telephone conference:	November 18 and December 1, 2008
Mediator:	Cheryl Vickers
Appearances:	Rick Williams, Tim Blair and John Hrycyk on behalf of the Applicant Gwen Johansson and Arthur Hadland on behalf of the Respondents

[1] Terra Energy Corporation (Terra) applies to the Board for mediation and arbitration seeking entry to Lands owned by Austin and Evelyn Hadland in order to survey, construct, install and operate a flowline serving to interconnect an existing Terra wellbore at 06-11-83-18W6 and a licensed but not yet drilled well at 14-12-83-18W6 with a third party processing facility at 10-23-83-18W6. The Hadlands have concerns with the route proposed by Terra and have suggested various alternatives. Both parties have expressed a willingness to engage with the Oil and Gas Commission (OGC) to determine the most appropriate route for this flowline.

[2] I am satisfied that Terra needs access to the Lands for the purpose of surveying and preparation of a construction plan, soil sampling and archaeological assessment in order to make an application to the OGC. Once an application is before the OGC, both parties can engage with the OGC with respect to whether the proposed route should be permitted and discuss alternatives.

[3] The Mediation and Arbitration Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, Terra shall have the right of entry to and access across the Lands commencing December 16, 2008 until January 31, 2009 for the purpose of completing the technical surveys or assessments required to file a Pipeline Application to the Oil and Gas Commission including surveying, soil sampling, and conducting an archaeological assessment.

2. Entry to the Lands for the purpose of surveying, soil sampling and archaeological assessment shall be subject to the terms set out in Appendix "A".

3. Terra shall deposit with the Mediation and Arbitration Board security in the amount of $1,000.00. All or part of the security deposit may be returned to Terra or paid to the Hadlands upon the agreement of the parties or as ordered by the Board.

4. Terra shall pay to the Hadlands the amount of $500.00 as partial payment for compensation under the *Petroleum and Natural Gas Act* and/or their costs of these proceedings.

5. Terra shall serve the Hadlands with a copy of this Order prior to entry onto the Lands by providing a copy of the Order to Arthur Hadland.

6. The application as it relates to right of entry to the Lands for the purpose of construction, installation and operation of a flowline is adjourned. The Board retains jurisdiction with respect to this application and to determine compensation payable to the Hadlands for this or any further right of entry granted in connection with this application or for any damages incurred by the Hadlands as a result of the entry.

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

Dated: December 2, 2008

FOR THE BOARD

Cheryl Vickers
Chair

APPENDIX A

Right of entry to the Lands for surveying, soil sampling, archaeological assessment for the purpose of making an application to the Oil and Gas Commission is subject to the following terms and conditions:

- Terra shall make the least possible surface imprint by accessing only those portions of the Lands as may be reasonably necessary to conduct the work for which entry is authorized;
- Terra shall provide Arthur Hadland with 48 hours notice of any intended access;
- Arthur Hadland may accompany Terra's representatives and contractors at his option while they are accessing the Lands;
- Terra's representatives or contractors shall not use ATV's or other motorized equipment on any unfenced areas of the Lands;
- Terra shall remove any debris, stakes, markings or other things left on the Lands once the OGC process has completed or before then, at the request of Arthur Hadland, if the things are no longer required to be on the Lands

File No. 1611
Board Order # 1611-1

December 2, 2008

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF
NW ¼ Section 13, Township 83, Range 18 W6M and
SW ¼ Section 13, Township 83, Range 18 W6M

(The "Lands")

BETWEEN:

Terra Energy Corporation

(APPLICANT)

AND:

Arthur Hadland and Laurel Hadland

(RESPONDENTS)

BOARD ORDER

Heard by telephone conference:	November 18 and December 1, 2008
Mediator:	Cheryl Vickers
Appearances:	Rick Williams, Tim Blair and John Hrycyk on behalf of the Applicant Gwen Johansson and Arthur Hadland on behalf of the Respondents

[1] Terra Energy Corporation (Terra) applies to the Board for mediation and arbitration seeking entry to Lands owned by Arthur and Laurel Hadland in order to survey, construct, install and operate a flowline serving to interconnect an existing Terra wellbore at 06-11-83-18W6 and a licensed but not yet drilled well at 14-12-83-18W6 with a third party processing facility at 10-23-83-18W6. The Hadlands have concerns with the route proposed by Terra and have suggested various alternatives. Both parties have expressed a willingness to engage with the Oil and Gas Commission (OGC) to determine the most appropriate route for this flowline.

[2] I am satisfied that Terra needs access to the Lands for the purpose of surveying and preparation of a construction plan, soil sampling and archaeological assessment in order to make an application to the OGC. Once an application is before the OGC, both parties can engage with the OGC with respect to whether the proposed route should be permitted and discuss alternatives.

[3] The Mediation and Arbitration Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, Terra shall have the right of entry to and access across the Lands commencing December 16, 2008 until January 31, 2009 for the purpose of completing the technical surveys or assessments required to file a Pipeline Application to the Oil and Gas Commission including surveying, soil sampling, and conducting an archaeological assessment.

2. Entry to the Lands for the purpose of surveying, soil sampling and archaeological assessment shall be subject to the terms set out in Appendix "A".

3. Terra shall deposit with the Mediation and Arbitration Board security in the amount of $1,000.00. All or part of the security deposit may be returned to Terra or paid to the Hadlands upon the agreement of the parties or as ordered by the Board.

4. Terra shall pay to the Hadlands the amount of $500.00 as partial payment for compensation under the *Petroleum and Natural Gas Act* and/or their costs of these proceedings.

5. Terra shall serve the Hadlands with a copy of this Order prior to entry onto the Lands by providing a copy of the Order to Arthur Hadland.

6. The application as it relates to right of entry to the Lands for the purpose of construction, installation and operation of a flowline is adjourned. The Board retains jurisdiction with respect to this application and to determine compensation payable to the Hadlands for this or any further right of entry granted in connection with this application or for any damages incurred by the Hadlands as a result of the entry.

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

Dated: December 2, 2008

FOR THE BOARD

Cheryl Vickers
Chair

APPENDIX A

Right of entry to the Lands for surveying, soil sampling, archaeological assessment for the purpose of making an application to the Oil and Gas Commission is subject to the following terms and conditions:

- Terra shall make the least possible surface imprint by accessing only those portions of the Lands as may be reasonably necessary to conduct the work for which entry is authorized;
- Terra shall provide Arthur Hadland with 48 hours notice of any intended access;
- Arthur Hadland may accompany Terra's representatives and contractors at his option while they are accessing the Lands;
- Terra's representatives or contractors shall not use ATV's or other motorized equipment on any unfenced areas of the Lands;
- Terra shall remove any debris, stakes, markings or other things left on the Lands once the OGC process has completed or before then, at the request of Arthur Hadland, if the things are no longer required to be on the Lands

File Nos. 1636 and 1637
Board Order No. 1636/37-1

July 28, 2010

MEDIATION AND ARBITRATION BOARD

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

AND IN THE MATTER OF

SW ¼ Section 27, Township 85, Range 18, W6M, Peace River District
SE ¼ Section 27, Township 85, Range 18, W6M, Peace River District
SW ¼ Section 26, Township 85, Range 18, W6M, Peace River District
except Plan PGP46547

(The "Lands")

BETWEEN:

TERRA ENEGY CORP.

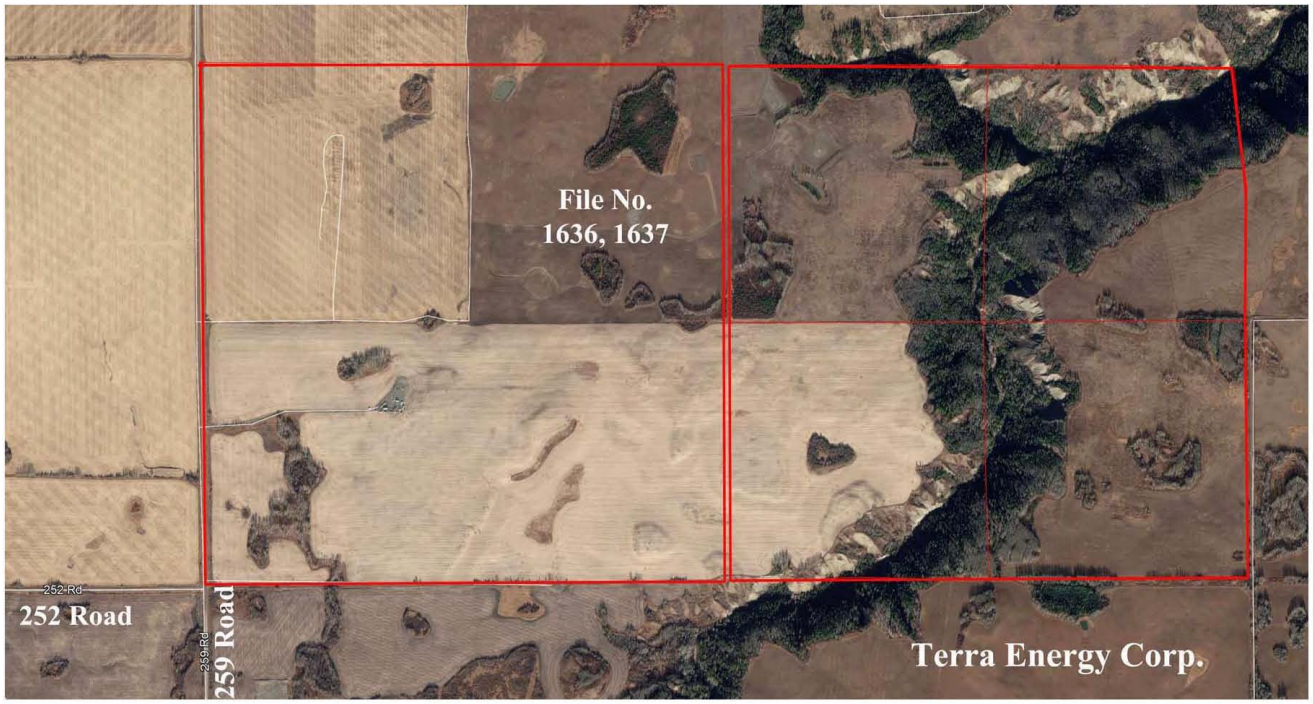
(APPLICANT)

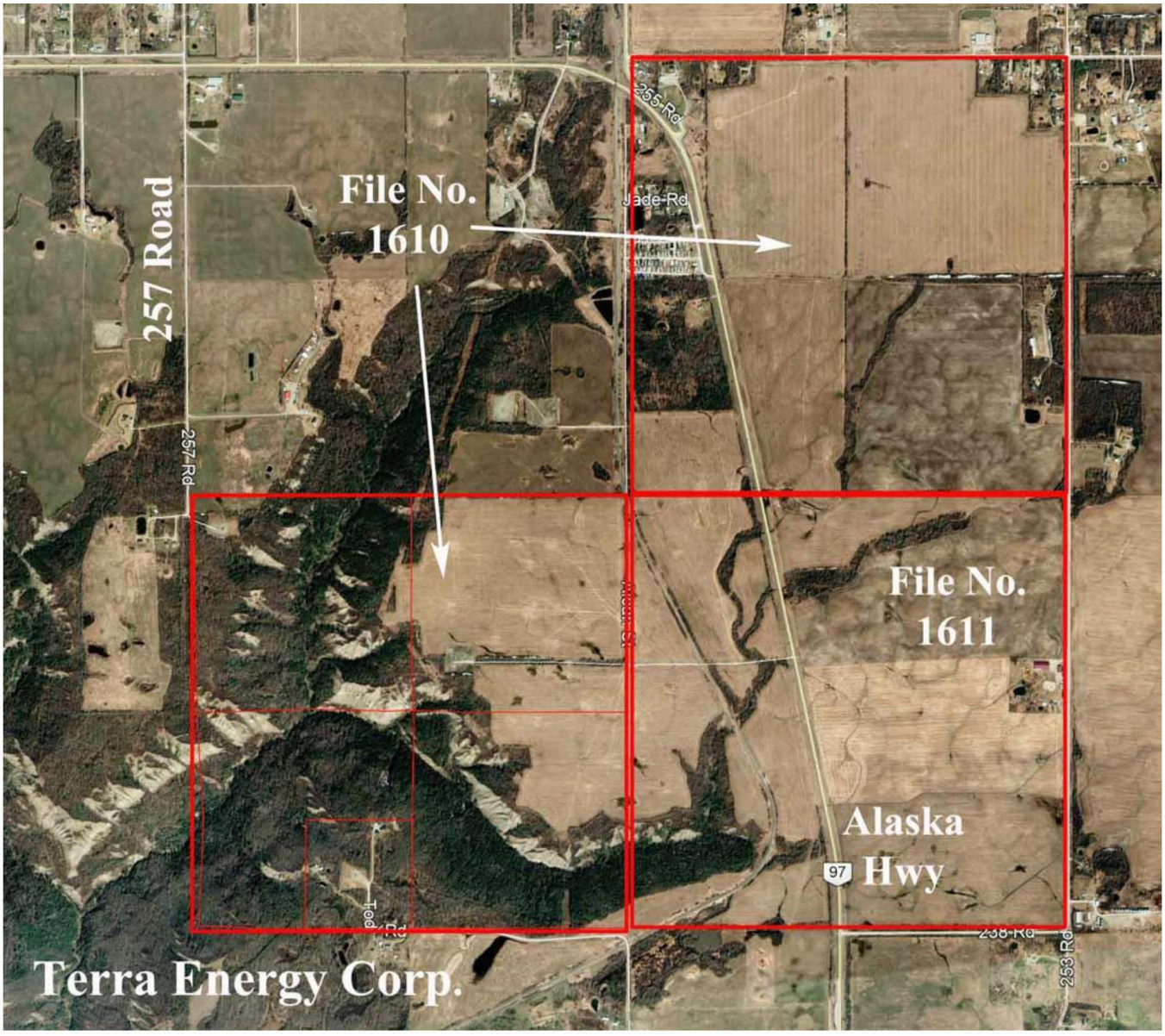
AND:

SQUIRREL FARMS INC.

(RESPONDENT)

CONSENT ORDER


File No.
1636, 1637
252 Road
259 Road
Terra Energy Corp.


257 Road
File No.
1610
255 Rd
Jade Rd
File No.
1611
Alaska
97 Hwy
Terra Energy Corp.

Appearances:	Rick Williams, Counsel, Tim Beatty, John Hrycyk and Sacha Plotnikow for the Applicant, Terra Energy Corp.
	Richard Kantz, Blaine Meek and Gary Bickford for the Respondent, Squirrel Farms Inc.

Following an agreement reached at a pre-mediation telephone conference, and at the request of the parties to incorporate the terms of their agreement into a Consent Order of the Board, the Mediation and Arbitration orders, BY CONSENT:

MAB File 1637 – The Wellsite

1. Upon payment of the amounts set out in paragraphs 2 and 3 below, Terra Energy Corp. ("Terra") including its employees, contractors and assigns shall have the right of entry to and access across the portion of the Lands shown in Schedule "A" for the purpose of constructing, drilling, operating and producing a well as set out in OGC File 9632808, Well Authorization 26359.

2. Within seven (7) days of the Board issuing this Order, Terra will pay to the Respondent, Squirrel Farms Inc., $27,000.00, which amount includes payment of all back rent for the well site and other amounts due to date.

3. Terra will pay annual rent commencing on July 11, 2010 in the total amount of $4,512.00, until such time as the wellsite is abandoned and Terra reclaims the site to Oil and Gas Commission Standards.

4 The rent is reviewable every four years, with the first review being anytime after July 11, 2014.

MAB File 1636 – The Flow Line

5. Squirrel Farms Inc. ("Squirrel") agrees to the proposed routing and construction of the flow line as shown on Schedule "B".

6. Terra confirms there will not be any above ground risers or pigging facilities on the right of way on Squirrel's land.

7. Squirrel agrees to not raise any objection with the Oil and Gas Commission on Terra's application to it for the flow line, provided the routing remains the same as shown on Schedule "B".

8. Once the flow line is approved by the OGC and Terra can establish a need for the flow line, specifically that the well has been drilled and completed, Squirrel will consent to the Board issuing a right of entry order to Terra to construct, operate and maintain the flow line.

9. Terra and Squirrel agree that, if a right of entry order is granted by the Board, as above, appropriate compensation for the flow line will be set at $13,773.00, provided the amount is paid within 2 years of the date of this Order, if not the amount will be renegotiated.

General

10. Terra must serve a copy of this Order on Squirrel prior to entry on the Lands. Service may be accomplished by sending a copy of the Order by registered mail.

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

DATED July 28, 2010

FOR THE BOARD

Cheryl Vickers, Chair

TERRA ENERGY CORP.

MAB Order 1636/37-1
Schedule "A"

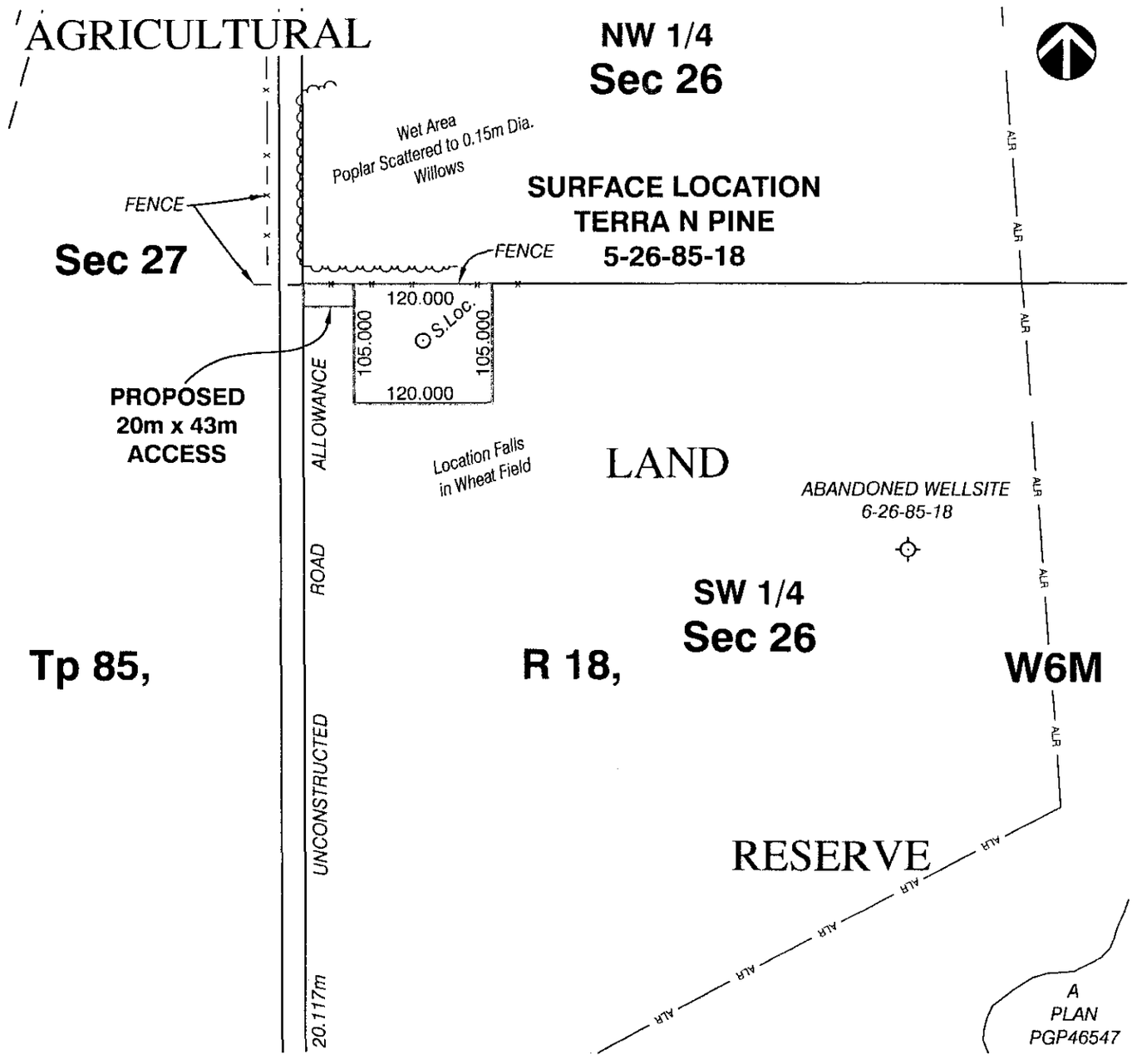
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED SURFACE LOCATION & 20m ACCESS

IN

SOUTH WEST 1/4 SECTION 26, Tp 85, R 18, W6M EXCEPT PLAN PGP46547

PEACE RIVER DISTRICT



OWNER(S): SQUIRREL FARMS INC., INC. NO. 830087

TITLE No. CA877047

PID No. 014-939-517

SURFACE LOCATION 1.26 *ha* 3.11 *Ac*

20.0m ACCESS 0.09 *ha* 0.22 *Ac*

Certified correct this 25th *day of* JUNE *2009.*

S.D. PENGELLY, B.C.L.S.

McElhanney

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 2	*DRAWN BY: RC*
SCALE: 1:5000	*JOB : 3111-16249IP1*

TERRA ENERGY CORP.

MAB order 1636/37-1
Schedule "B"

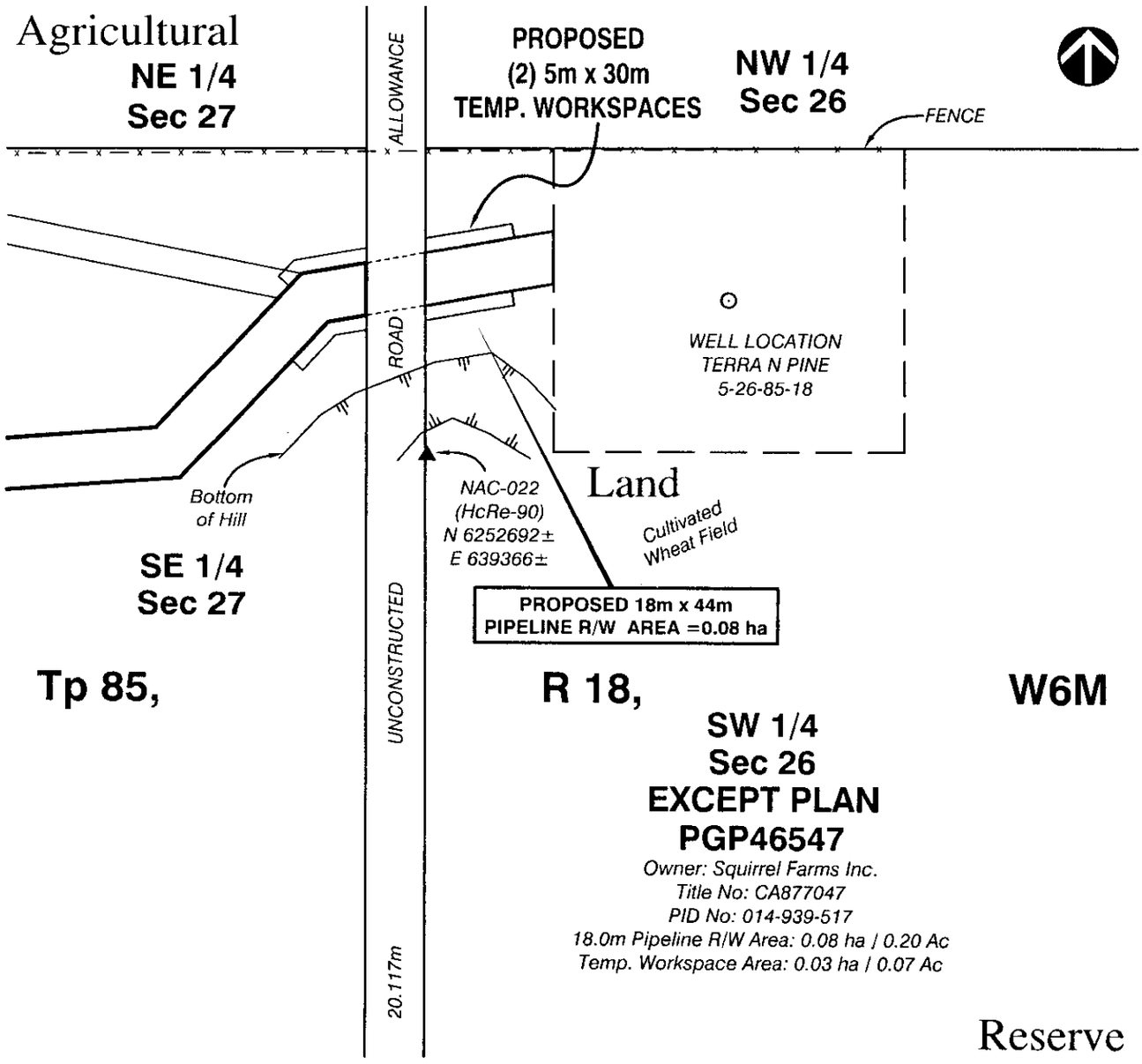
INDIVIDUAL OWNERSHIP PLAN

SHOWING 18.0m PIPELINE RIGHT OF WAY AND TEMP. WORKSPACES

WITHIN THE

SOUTH WEST 1/4 OF SECTION 26, EXCEPT PLAN PGP46547, Tp 85, R 18, W6M

PEACE RIVER DISTRICT



OWNER: Squirrel Farms Inc.

TITLE CA877047

PID 014-939-517

PIPELINE R/W 0.08 *ha* 0.20 *Ac*

TEMP. WORKSPACES 0.03 *ha* 0.07 *Ac*

Certified correct this 3rd *day of* January *2010.*

S.D. PENGELLY, BCLS

McElhanney

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED AND GREEN.

REVISION: 2	*DRAWN BY: NMA*
SCALE: 1:2000	*JOB : 3111-J19200IP1*

TERRA ENERGY CORP.

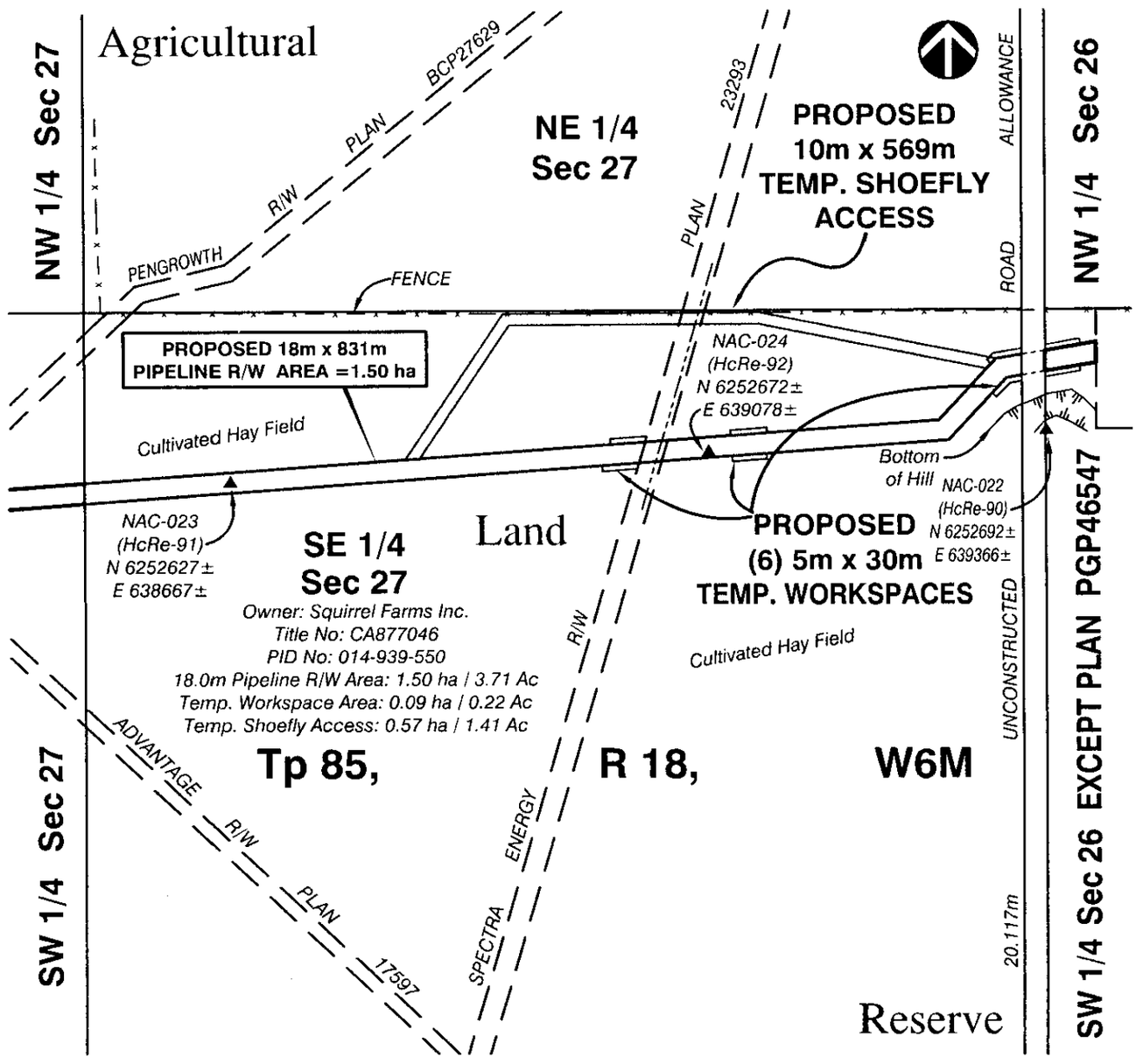
INDIVIDUAL OWNERSHIP PLAN

SHOWING 18.0m PIPELINE RIGHT OF WAY, TEMPORARY SHOEFLY ACCESS AND TEMPORARY WORKSPACES

WITHIN THE

SOUTH EAST 1/4 OF SECTION 27, Tp 85, R 18, W6M

PEACE RIVER DISTRICT



OWNER: Squirrel Farms Inc.

TITLE CA877046

PID 014-939-550

PIPELINE R/W	1.50	*ha*	3.71	*Ac*
WORKSPACES	0.09	*ha*	0.22	*Ac*
SHOEFLY ACCESS	0.57	*ha*	1.41	*Ac*

Certified correct this 3rd *day of* January *2010.*

S.D. PENGELLY, BCLS

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356 Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED AND GREEN.

REVISION: 2	*DRAWN BY: NMA*
SCALE: 1:5000	*JOB : 3111-J19200IP2*

TERRA ENERGY CORP.

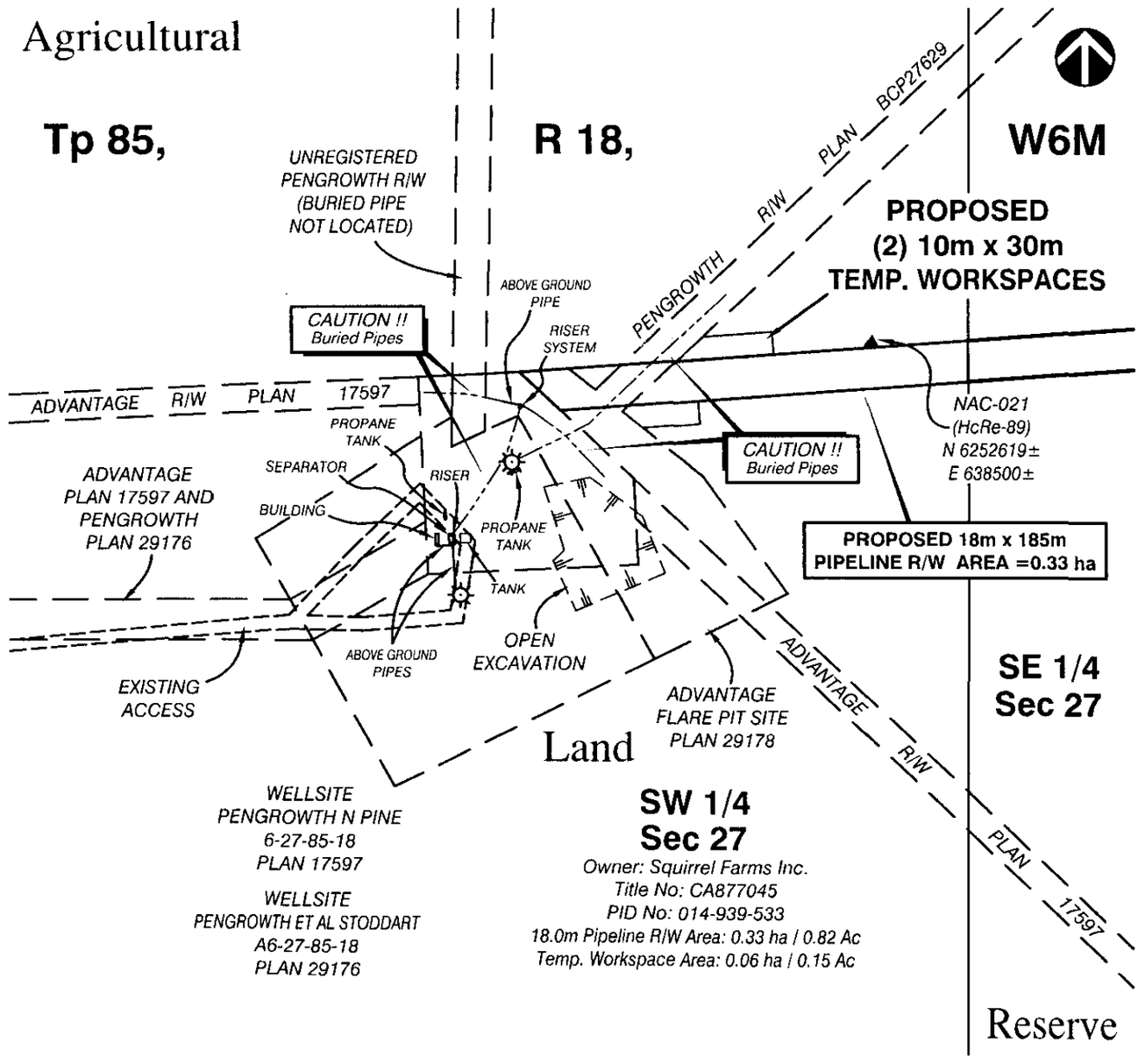
INDIVIDUAL OWNERSHIP PLAN

SHOWING 18.0m PIPELINE RIGHT OF WAY AND TEMPORARY WORKSPACES

WITHIN THE

SOUTH WEST 1/4 OF SECTION 27, Tp 85, R18, W6M

PEACE RIVER DISTRICT



OWNER: Squirrel Farms Inc.

TITLE CA877045

PID 014-939-533

PIPELINE R/W 0.33 *ha* 0.82 *Ac*

WORKSPACES 0.06 *ha* 0.15 *Ac*

Certified correct this 3rd *day of* January *2010.*

S.D. PENGELLY BCLS

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0366. Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED & GREEN.

REVISION: 1	*DRAWN BY: NMA*
SCALE: 1:2500	*JOB : 3111-J19200IP3*

File No. 1740
Board Order 1740-1

January 19, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS 24410 AND PGP38491;
THE FRACTIONAL NORTH EAST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(the Lands)

BETWEEN:

Terra Energy Corp.

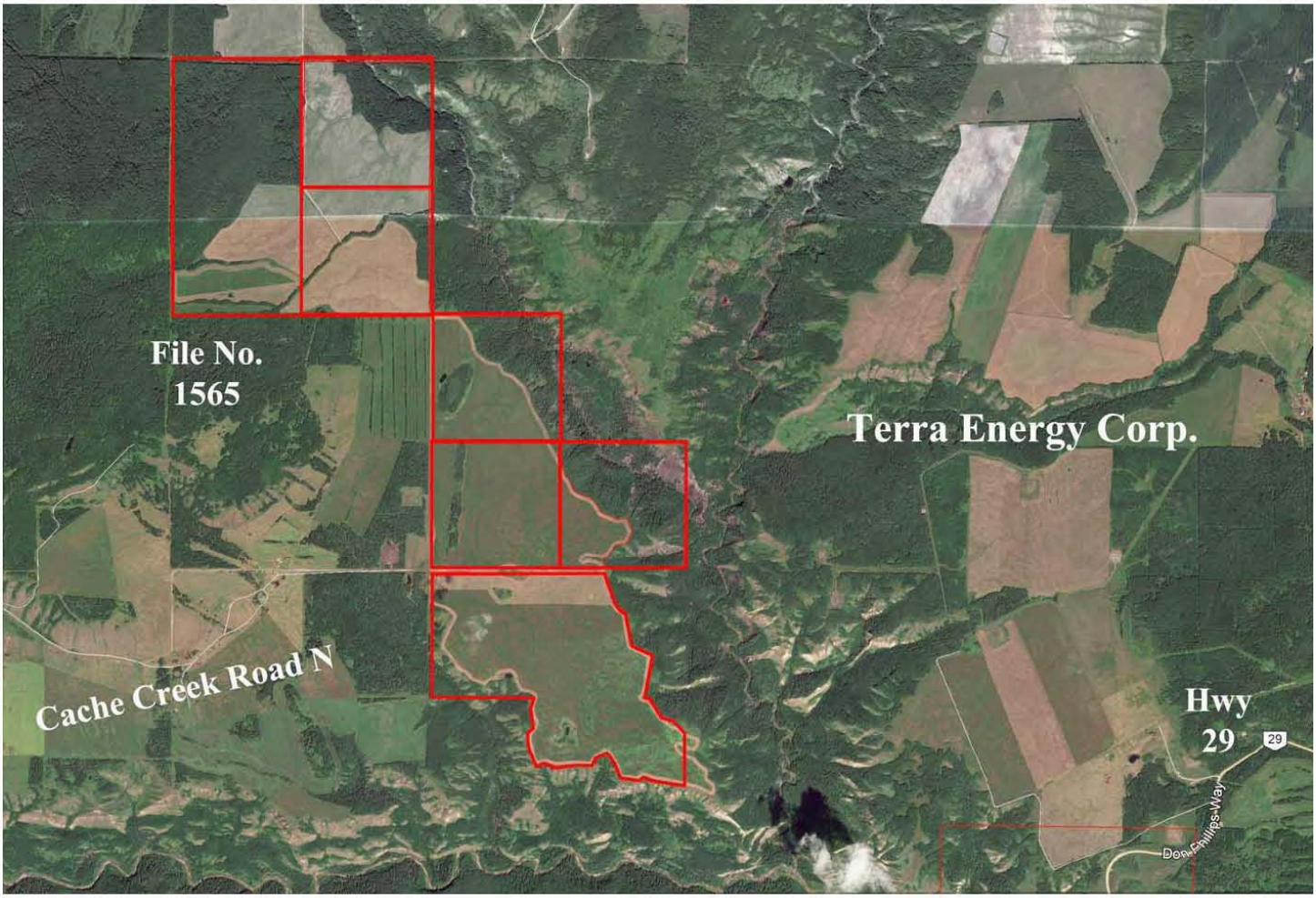
(APPLICANT)

AND:

Arleen Lois Boon and Kenneth Victor Boon

(RESPONDENT)

BOARD ORDER


File No.
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Terra Energy Corp.
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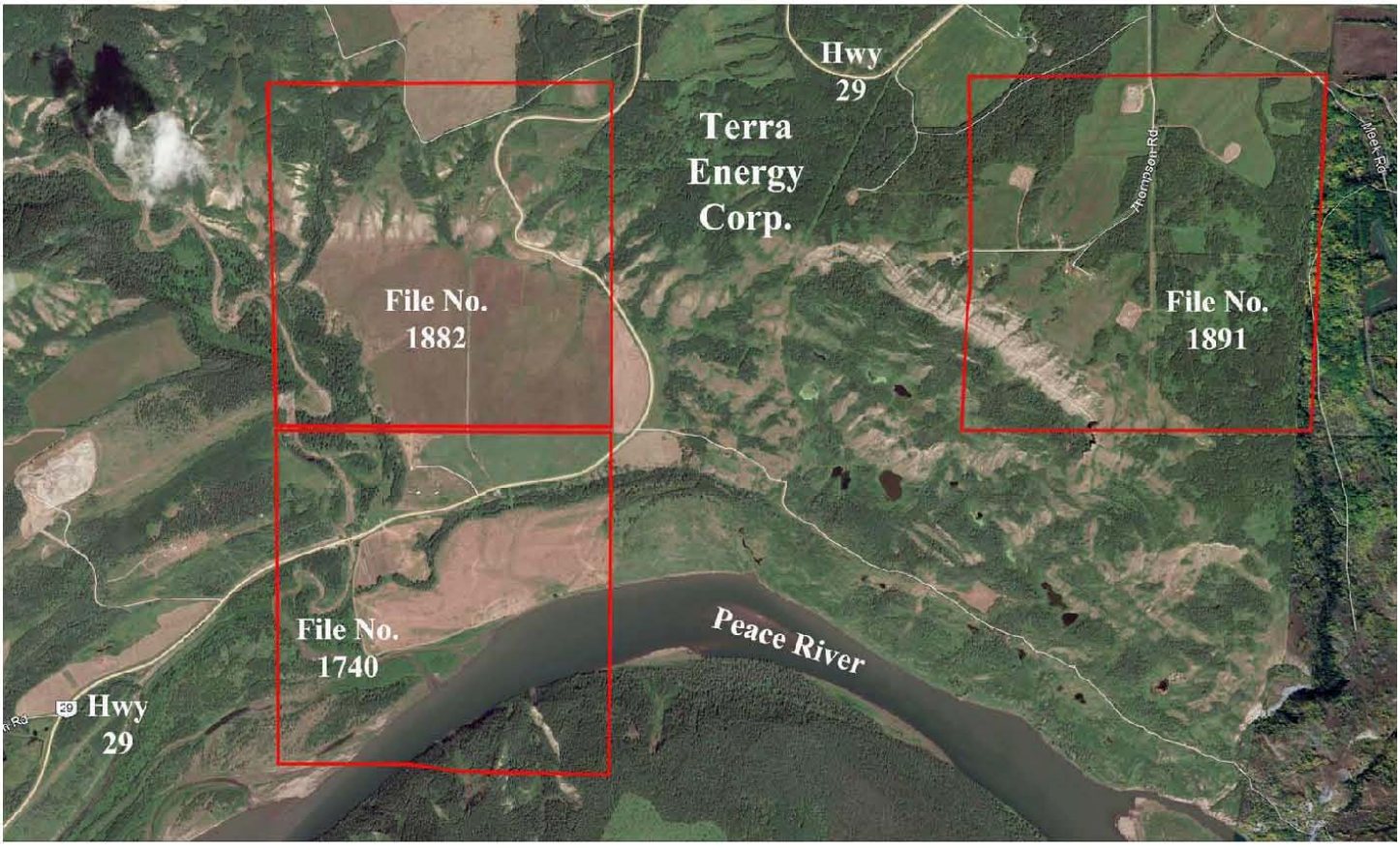
Hwy
29
29
Don Phillips Way


Hwy
29
Terra
Energy
Corp.
File No.
1882
File No.
1891
Thompson Rd
File No.
1740
Peace River
Hwy
29
29

Terra Energy Corp. ("Terra") seeks a right of entry order to access certain lands legally owned by Arleen and Kenneth Boon to carry out an approved oil and gas activity, namely the operation and maintenance of a flow line.

On January 12, 2012, the Board conducted a telephone mediation. The parties discussed two issues: a water source well where the Oil and Gas Commission has not issued a permit and a right of entry for an existing flow line where the Oil and Gas Commission has issued a permit to Terra.

This Order is limited to the flow line.

The flow line was constructed some time ago by another company, but although the company made annual payments for land occupied by buildings, the right of entry was never formalized. Terra is the successor to the company that constructed and operated the flow line.

After considering submissions from the parties and a the existence of the permit from the Oil and Gas Commission, the Board is satisfied that Terra requires the right of entry for the purposes of gas and oil activities.

ORDER

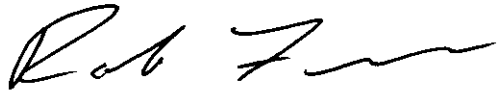
1. Terra shall have the right of entry and access to and access across the portion of the lands shown outlined in red on the Individual Ownership Plans attached as Appendix "A" (the "Lands") for the purposed of carrying out the approved oil and gas activity, namely the operation and maintenance of the flow line.

2. As the flow line was already constructed and the land reclaimed no security deposit or partial compensation order is required.

3. 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 19, 2012

FOR THE BOARD



Rob Fraser, Vice Chair

TERRA ENERGY CORP.

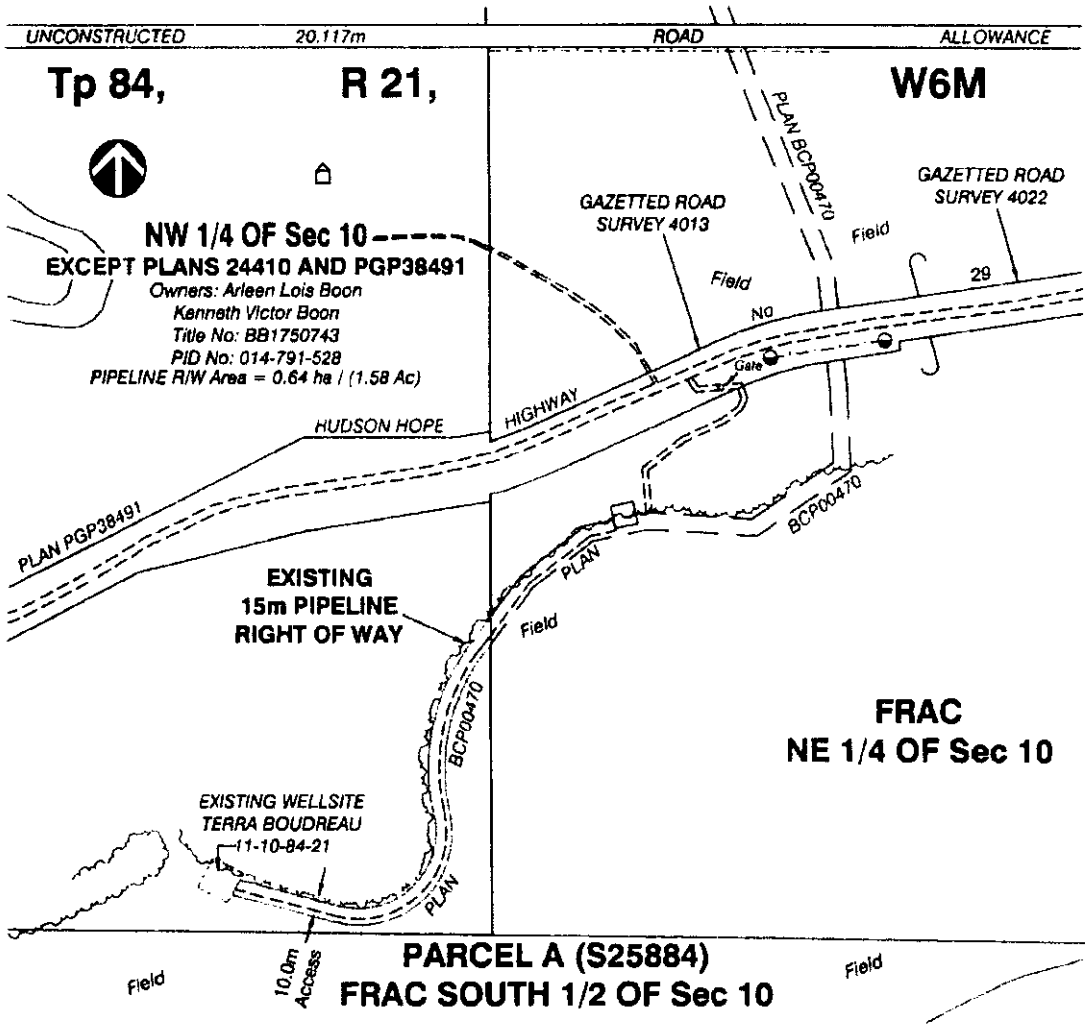
INDIVIDUAL OWNERSHIP PLAN

SHOWING 15m PIPELINE R/W

IN

THE NW 1/4 OF Sec 10, Tp 84, R 21, W6M
EXCEPT PLANS 24410 AND PGP38491

PEACE RIVER DISTRICT



OWNER(S): Arleen Lois Boon
Kenneth Victor Boon

TITLE BB1750743

PID 014-791-528

PIPELINE R/W 0.64 ha 1.58 Ac.

Certified correct this 25th day of NOVEMBER 2011.

S.D. PENGELLY B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd
8608 - 72nd Street
Fort St. John, British Columbia
Phone (250)787-0356, Fax (250)787-0310

McElhanney

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 1	DRAWN BY: TL
SCALE: 1:5000	JOB : 3111-J20198/P3

TERRA ENERGY CORP.

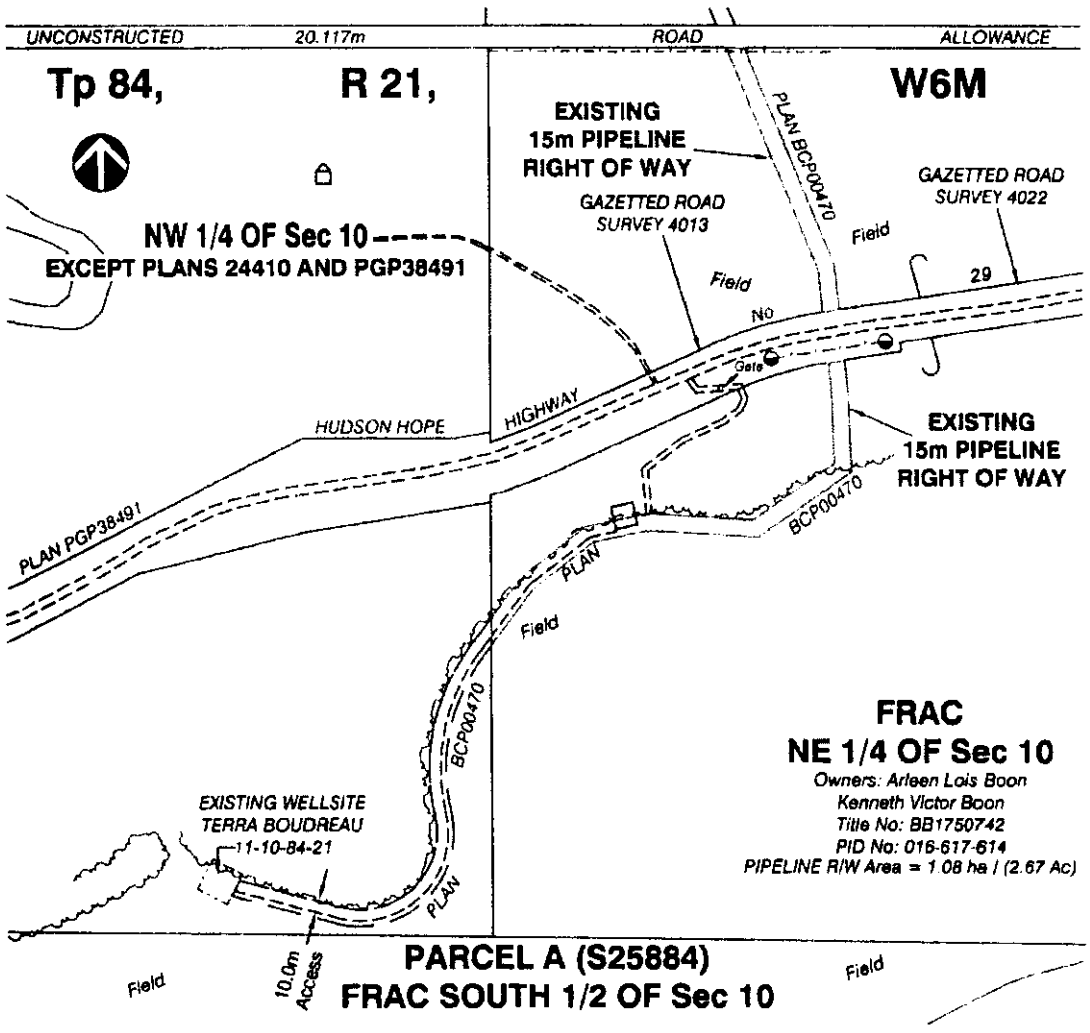
INDIVIDUAL OWNERSHIP PLAN

SHOWING 15m PIPELINE R/W

IN

THE FRACTIONAL NE 1/4 OF Sec 10 Tp 84, R 21, W6M

PEACE RIVER DISTRICT



OWNER(S): Arleen Lois Boon
Kenneth Victor Boon

TITLE BB1750742

PID 016-617-614

PIPELINE R/W 1.08 *ha* 2.67 *Ac.*

Certified correct this 25th *day of* NOVEMBER *2011.*

Scott Pengelly
S.D. PENGELLY B.C.L.S.

McElhanney

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone (250) 787-0356, Fax (250) 787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 1	*DRAWN BY: TL*
SCALE: 1:5000	*JOB : 3111-J20198IP4*

File No. 1740
Board Order 1740-2

March 8, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS 24410 AND PGP38491; THE FRACTIONAL NORTH EAST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Terra Energy Corp.

(APPLICANT)

AND:

Arleen Lois Boon and Kenneth Victor Boon

(RESPONDENTS)

BOARD ORDER

Heard by way of written submissions closing March 2, 2012.

Submissions from:	Ken Boon and Arlene Boon received February 17, 2012 and March 2, 2012, on their own behalf
	Rick Williams, Barrister and Solicitor, received February 20, 2012, on behalf of Terra Energy Corp.
Panel Chair:	Cheryl Vickers

INTRODUCTION AND ISSUE

[1] Terra Energy Corp. (Terra) applied to the Surface Rights Board (the Board) for an entry order to Lands owned by Ken and Arlene Boon. Terra submits access to the Lands is required to carry out an oil and gas activity, namely the operation and maintenance of a water source well and a flow line. By Order dated January 19, 2012, the Board granted Terra right of entry to the Lands for the operation and maintenance of a flowline (Order 1740-1). Mr. and Mrs. Boon take issue with the Board's jurisdiction to grant an entry order for the operation and maintenance of a water source well.

[2] On January 23, 2012, the Oil and Gas Commission (OGC) issued a permit to Terra to drill and operate the water source well and to construct and operate road access for the purpose of exploring for, developing and producing water, subject to various conditions. The Boons have filed an appeal of the OGC's decision to issue the permit to the Oil and Gas Appeal Tribunal. That appeal has not yet been heard.

[3] The only issue before me at this time is whether the Board has jurisdiction to grant right of entry to private land for the operation and maintenance of a water source well. The issue turns on the question of whether operation and maintenance of a water source well is an "oil and gas activity" or "a related activity" as those terms are defined in the *Oil and Gas Activities Act* (*OGAA*) and adopted by the *Petroleum and Natural Gas Act* (*PNGA*).

ANALYSIS

[4] The Board's jurisdiction is set out at section 147 of the *PNGA* and includes jurisdiction in relation to an application under Division 5 of the *PNGA* by a person who requires a right of entry. Pursuant to section 158 of the *PNGA*, a person who requires a right of entry may apply to the Board for mediation and arbitration if the person and the landowner are unable to agree on the terms of a surface lease. Pursuant to section 159 of the *PNGA*, the Board or a designated mediator may make an order authorizing a right

of entry "if the Board or mediator, as applicable, is satisfied that an order authorizing the right of entry is required for a purpose described in section 142(a) to (c)". The purposes described in section 142(a) to (c) are:

(a) to carry out an oil and gas activity,
(b) to carry out a related activity; or
(c) to comply with an order of the commission.

[5] Mr. and Mrs. Boon submit that the purpose for which Terra seeks access to their Lands, namely the operation and maintenance of a water source well, is not "an oil and gas activity" or "a related activity", and therefore, the Board does not have jurisdiction to grant a right of entry order. Terra submits it requires access to the Lands for "an oil and gas activity" and the Board has jurisdiction to grant an entry order.

[6] I agree that the operation and maintenance of a water source well is not "a related activity". A "related activity" is an activity that must not be carried out except as authorized by a "specified enactment" or in accordance with a "specified enactment", and the carrying out of which is required for an oil and gas activity. The *Water Act* is a "specified enactment", but a "water source well" is not an activity authorized or regulated by the *Water Act*. The definition of "well" in the *Water Act*, which includes "an artificial opening in the ground made for the purpose of exploring for, or extracting and using, ground water", specifically excludes "an artificial opening regulated under... the *Oil and Gas Activities Act*" (*OGAA*). The question, therefore, becomes whether the operation and maintenance of a water source well is an "oil and gas activity".

[7] "Oil and gas activity" is a defined term that includes "the exploration for and development of petroleum, natural gas or both" and "the production, gathering, processing, storage or disposal of petroleum, natural gas or both" (*PNGA*, section 1; *OGAA*, section 1(2)). A "water source well" is defined in the *PNGA* as "a hole in the ground drilled to obtain water for the purpose of injecting water into an underground formation in connection with the production of petroleum or natural gas". The activity of injecting water into an underground formation in connection with the production of petroleum and natural gas is known as hydraulic fracturing. The injection of fluids down a wellbore under high pressure causes the formation to crack open, creating passages for the reservoir hydrocarbons to flow more easily into the wellbore. This is Terra's intended use of the water source well and the purpose for which the water source well has been permitted by the OGC.

[8] A "water source well" by definition is "in connection with the production of petroleum and natural gas" and clearly part of the production of petroleum or natural gas. The operation and maintenance of a water source well is, therefore, an "oil and gas activity" as defined by the *OGAA* and *PNGA*, and the Board has the jurisdiction to make an order authorizing right of entry.

ORDER

[9] The Board has jurisdiction to make an order authorizing entry to private land for the operation and maintenance of a water source well if satisfied an order authorizing entry is required. Terra's application is referred back to the mediator to assist the parties with resolution of compensation and other terms of entry and to determine whether a right of entry order is required.

DATED: March 8, 2012

FOR THE BOARD

Cheryl Vickers, Chair

File No. 1740
Board Order 1740-3

March 22, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS 24410 AND PGP38491

THE FRACTIONAL NORTH EAST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Terra Energy Corp.
(APPLICANT)

AND:

Arleen Lois Boon and Kenneth Victor Boon
(RESPONDENTS)

BOARD ORDER

Terra Energy Corp. ("Terra") seeks a right of entry order to access certain lands legally owned by Arleen and Kenneth Boon to carry out an approved oil and gas activity, namely the operation and maintenance of a water source well site. The right of entry order includes the access, the MCC station and the existing well site.

On March 15, 2012, the Board conducted a telephone mediation to consider Terra's application. The parties made submissions on the wording of the Oil and Gas Commission's (OGC) permit when contrasted with the wording in Terra's application, the amount of the security deposit, the amount of partial compensation, and the various terms and conditions. As well, in separate correspondence Terra agreed to a voluntary partial payment of the Boon's costs and expenses.

The Board contacted the OGC and asked whether the wording of the permit covers the wording found in Terra's application. The OGC declined to provide a legal opinion, but said "that it is a Commission practice to use the general terms "drill and operate" in a well permit to include, as applicable, all activities, monitoring, and maintenance obligations required to operate the well." As well, the scope of a permit to "drill and operate" is limited to what is described in the survey plan that forms part of the survey.

The Boons applied to the Oil and Gas Appeal Tribunal (OGAT) for a stay of the permit. In decision 2012-OGA-001(a), the Tribunal dismissed the stay application and at paragraph 61 considered whether the wording of the permit allowed Terra to drill a new well. The Tribunal found that Terra is limited to the survey plan, which only shows the existing access road and water source well and the permit does not allow Terra to build a new road or drill a new well.

After considering submissions from the parties, the existence of the permit from the Oil and Gas Commission, the correspondence from the OGC and the decision of the OGAT, the Board is satisfied that Terra requires the right of entry for the purposes of oil and gas activities.

ORDER

1. Upon payment of the amounts set out in paragraphs 3 and 4, Terra shall have the right of entry to and access across the portion of the lands shown outlined in red on the Individual Ownership Plans attached as Appendix "A" (the "Lands") for the purposes of carrying out the approved oil and gas activity, namely the operation and maintenance of a water source well site, access, flow line and associated works.

2. Terra's right of entry shall be subject to the terms and conditions attached as Appendix "B" to this right of entry Order.

3. Terra shall deliver to the Surface Rights Board security in the amount of $10,000 by cheque made payable to the Minister of Finance. All or part of the security deposit

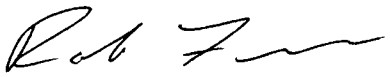
may be returned to Terra, or paid to the landowner, upon agreement of the parties or as ordered by the Board.

4. Terra shall pay to the landowner as partial compensation the total amount of $6,000.

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 March 22, 2012

FOR THE BOARD



Rob Fraser, Vice Chair

Appendix A - 1740-3

TERRA ENERGY CORP.

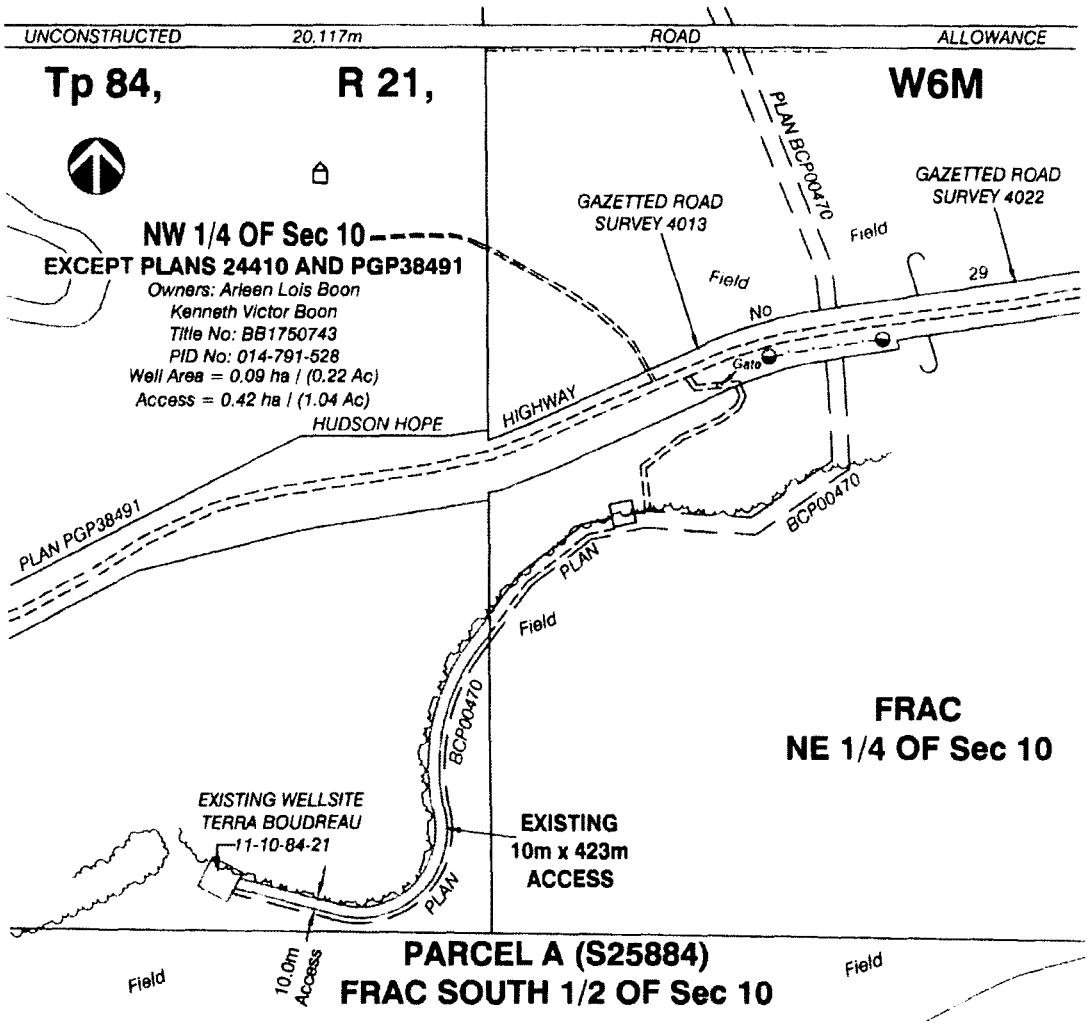
INDIVIDUAL OWNERSHIP PLAN

SHOWING 30m x 30m WATER WELLSITE AND 10m ACCESS

IN

THE NW 1/4 OF Sec 10, Tp 84, R 21, W6M EXCEPT PLANS 24410 AND PGP38491

PEACE RIVER DISTRICT



OWNER(S): Arleen Lois Boon
Kenneth Victor Boon

TITLE BB1750743

PID 014-791-528

WELLSITE 0.09 ha 0.22 Ac.

ACCESS 0.42 ha 1.04 Ac.

Certified correct this 25th day of NOVEMBER 2011.

Scott Pengelly
S.D. PENGELLY B.C.L.S.

McElhanney

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8606 - 72nd Street
Fort St. John, British Columbia
Phone (250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 3	DRAWN BY: TL
SCALE: 1:5000	JOB : 3111-J20198IP1

Appendix A - 17403

TERRA ENERGY CORP.

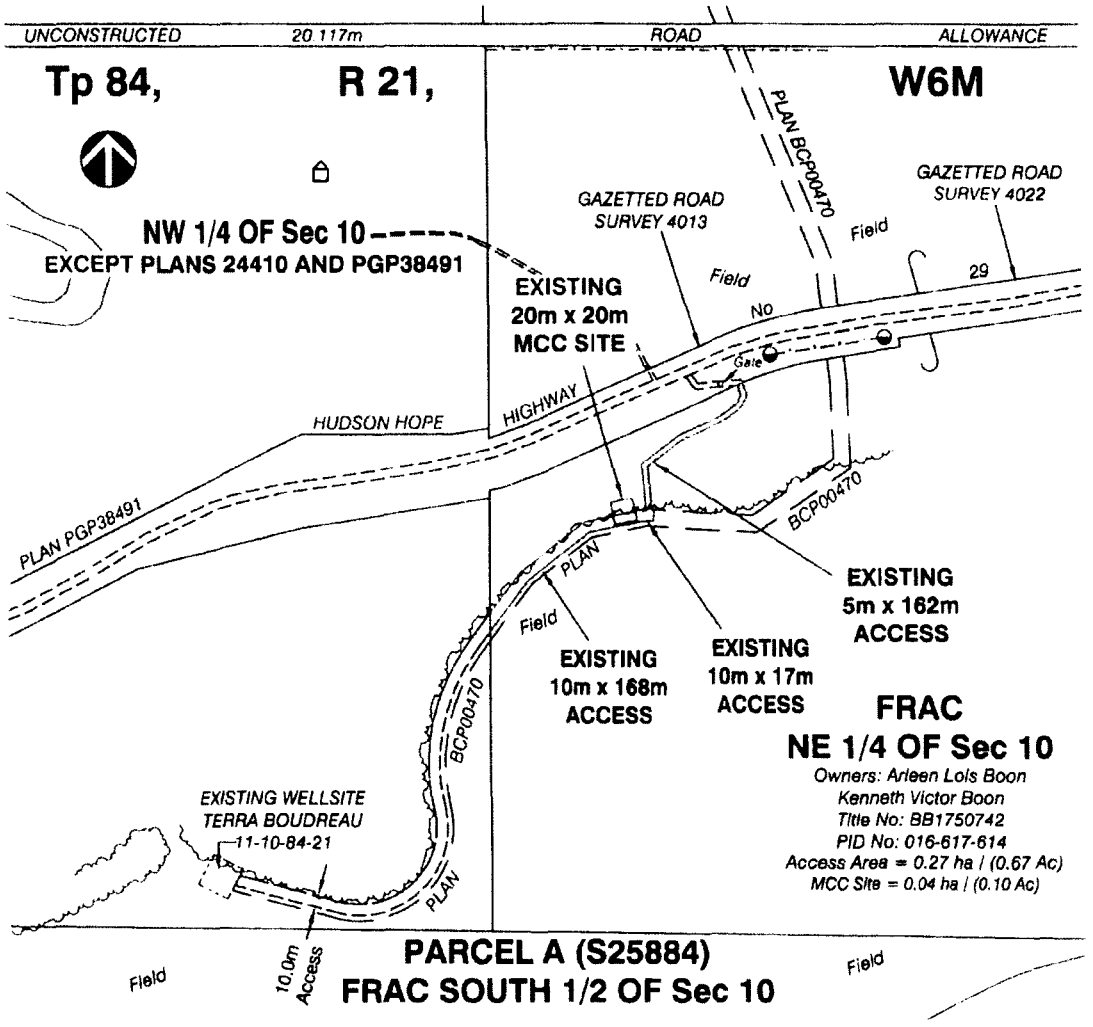
INDIVIDUAL OWNERSHIP PLAN

SHOWING 20m x 20m MCC SITE, AND ACCESS

IN

THE FRACTIONAL NE 1/4 OF Sec 10 Tp 84, R 21, W6M

PEACE RIVER DISTRICT



OWNER(S): Arleen Lois Boon
Kenneth Victor Boon

TITLE BB1750742

PID 016-617-614

ACCESS 0.27 ha 0.67 Ac.

MCC SITE 0.04 ha 0.10 Ac.

Certified correct this 25th day of NOVEMBER 2011.

Scott Pengelly
S.D. PENGELLY B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8806 - 72nd Street
Fort St. John, British Columbia
Phone: (250)787-0356, Fax: (250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 4	DRAWN BY: TL
SCALE: 1:5000	JOB : 3111-J20198IP2

Appendix B

1. Terra shall make all reasonable efforts to contain its operations to the areas indicated in red on the Individual Ownership Plans, including but not limited to, the travel and movement of personnel, vehicles, equipment, unless otherwise approved by the landowners.

2. Terra shall make a reasonable effort to prevent the entry and spread of weeds on the Lands caused by Terra's operations.

3. Terra covenants and agrees to indemnify and save harmless the landowner from liabilities, damages, costs, claims, liens, suits or actions arising directly out of Terra's operations on the Lands, other than that arising from or related to the wilful conduct or negligence of the landowner.

4. Terra must make all reasonable attempts to notify the landowner if any work, other than routine maintenance or inspection is to be done on the land.

5. Grading to smooth any ruts left by Terra on the access will be done in a timely manner at Terra's expense.

6. Any required repair and maintenance on the access will be at Terra's expense, other than that arising from or related to the wilful conduct or negligence of the landowner.

7. Currently, the landowner farms over top of the pipeline and power line, and will continue to with the knowledge that Terra can use the access as required.

8. No fencing of lands to be done unless both parties agree. If fencing becomes necessary, Terra will be responsible for all associated costs.

9. The existing gate to the access will be locked with a Terra lock at all times that access is not required. Terra will ensure that the Boons have either a key or the combination to Terra's lock.

File No. 1756
Board Order No. 1756-1

August 15, 2012

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
THE NORTH EAST ¼ OF SECTION 29 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH WEST ¼ OF SECTION 28 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WESTERLY 14 FEET IN PARALLEL WIDTH THEREOF

(The "Lands")

BETWEEN:

TERRA ENERGY CORP.

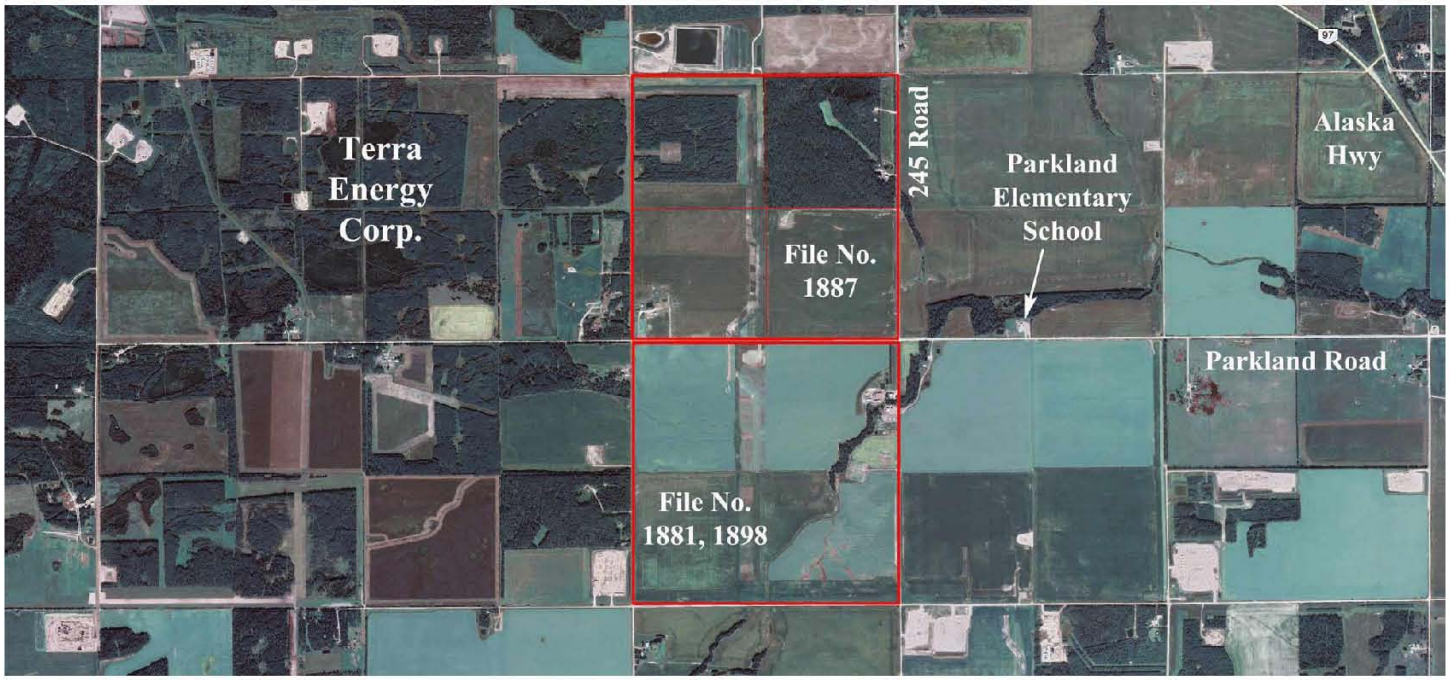
(Applicant)

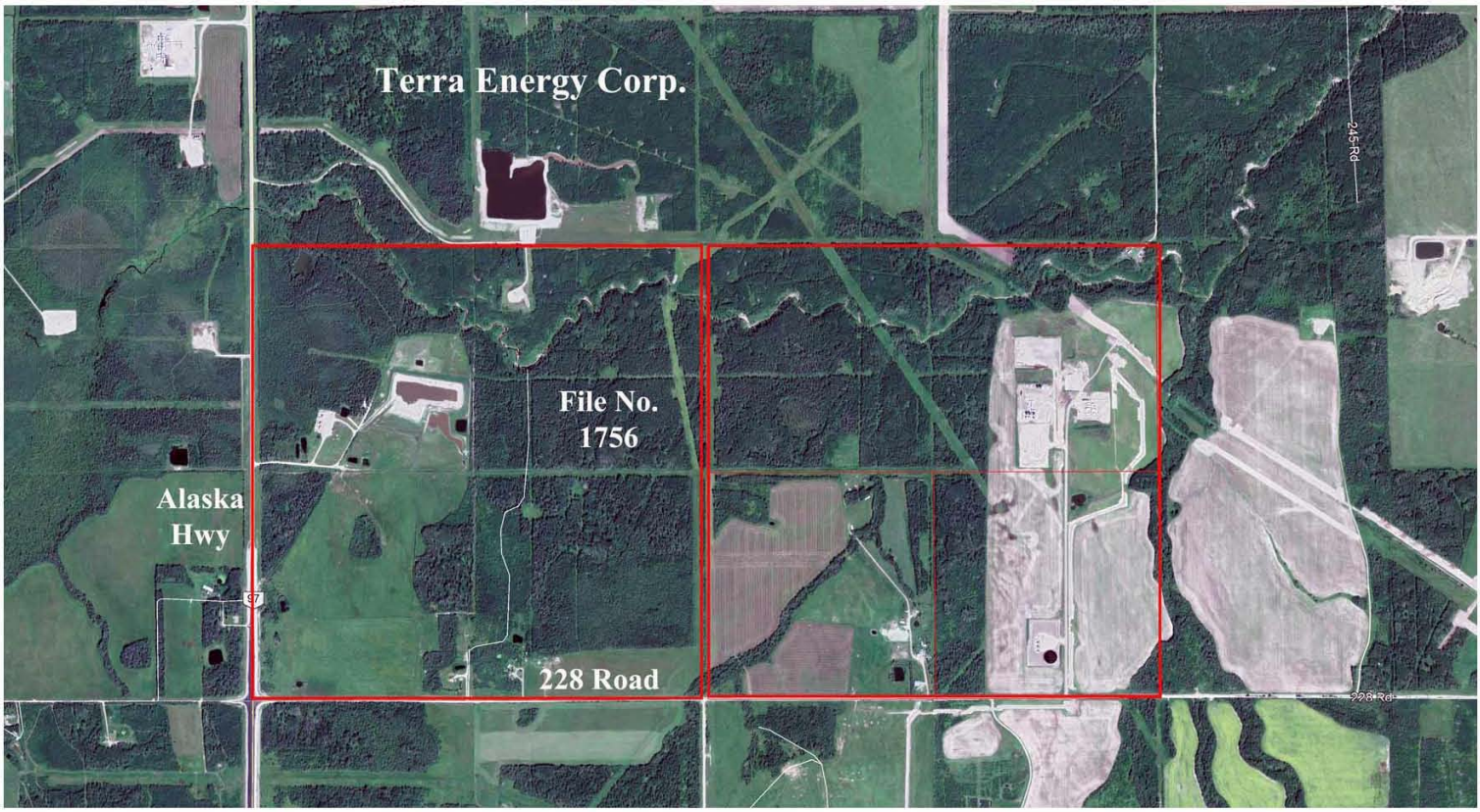
AND:

DANIEL LEIGH KERR AND PATRICIA ALBA BELL

(Respondents)

BOARD ORDER


Terra
Energy
Corp.
File No.
1887
245 Road
Parkland
Elementary
School
Alaska
Hwy
Parkland Road
File No.
1881, 1898


Terra Energy Corp.
245 Rd
File No.
1756
Alaska
Hwy
97
228 Road
228 Rd

Terra Energy Corp. ("Terra") applies to the Board on behalf of Crew Energy Inc. ("Crew") seeking a right of entry order to access certain lands legally owned by Daniel Leigh Kerr and Patricia Alba Bell to carry out an approved oil and gas activity, namely the operation and maintenance of an existing flow line. Following construction, Terra sold the flowline to Crew.

Following an agreement reached by the parties, and at the request of the parties to incorporate the terms of their agreement into a Consent Order of the Board, the Surface Rights Board orders, BY CONSENT:

1. On payment of the agreed compensation, Crew shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" and outlined in red for the purposes of carrying out the approved oil and gas activity, namely the operation and maintenance of the flow line.

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

DATED: August 15, 2012

FOR THE BOARD

Rob Fraser
Mediator

TERRA ENERGY CORP.

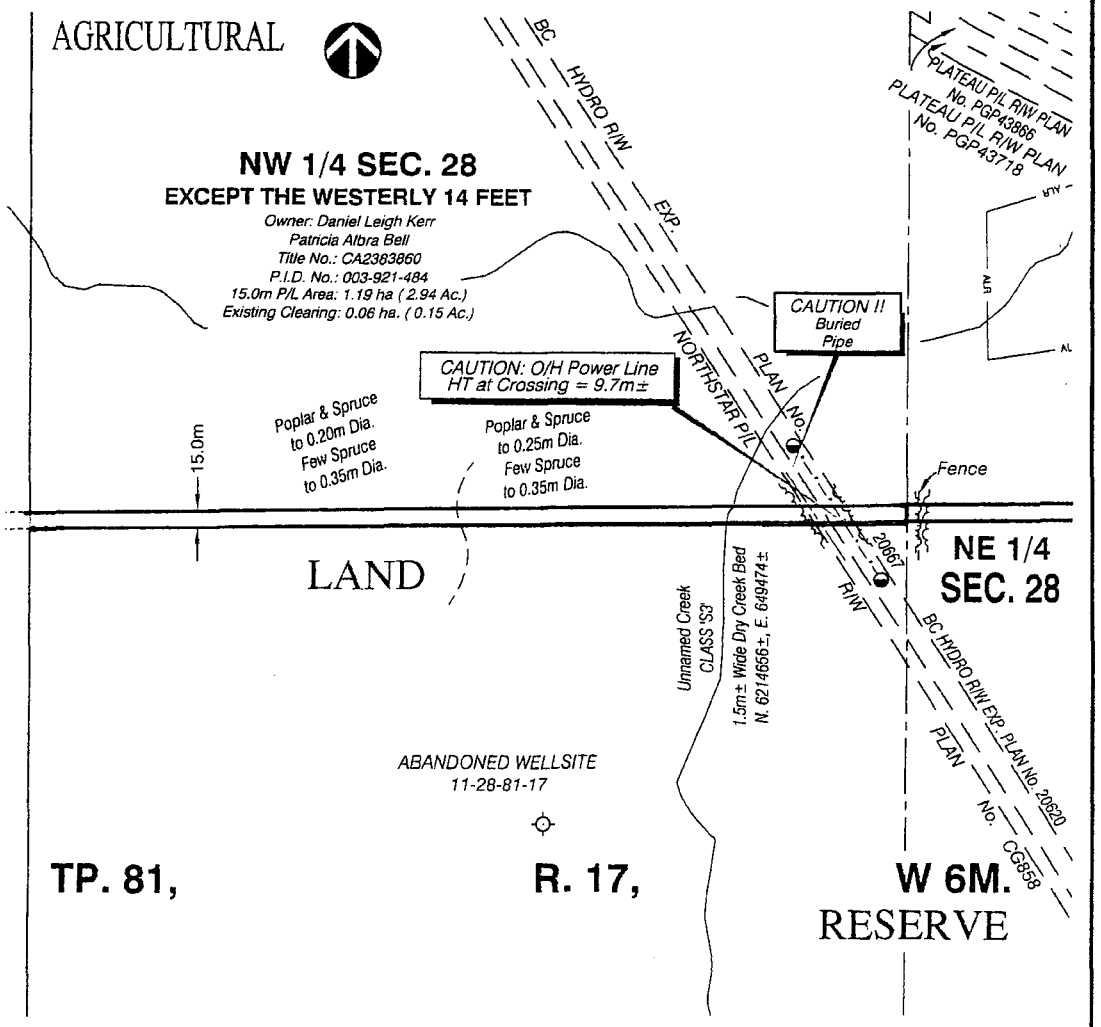
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 15.0m PIPELINE RIGHT OF WAY

IN

NORTH WEST 1/4 SECTION 28, TOWNSHIP 81, RANGE 17, W.6M. EXCEPT THE WESTERLY 14 FEET

PEACE RIVER DISTRICT



OWNER(S): Daniel Leigh Kerr
Patricia Albra Bell

TITLE No. CA2383860

PID No. 003-921-484

P/L R/W 1.19 ha 2.94 Ac.

Certified correct this 13th day of April 2012.

S/D. PENGELLY B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8806 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 1	DRAWN BY: TOP
SCALE: 1:5,000	JOB No. : 3111-16426IP2A

TERRA ENERGY CORP.

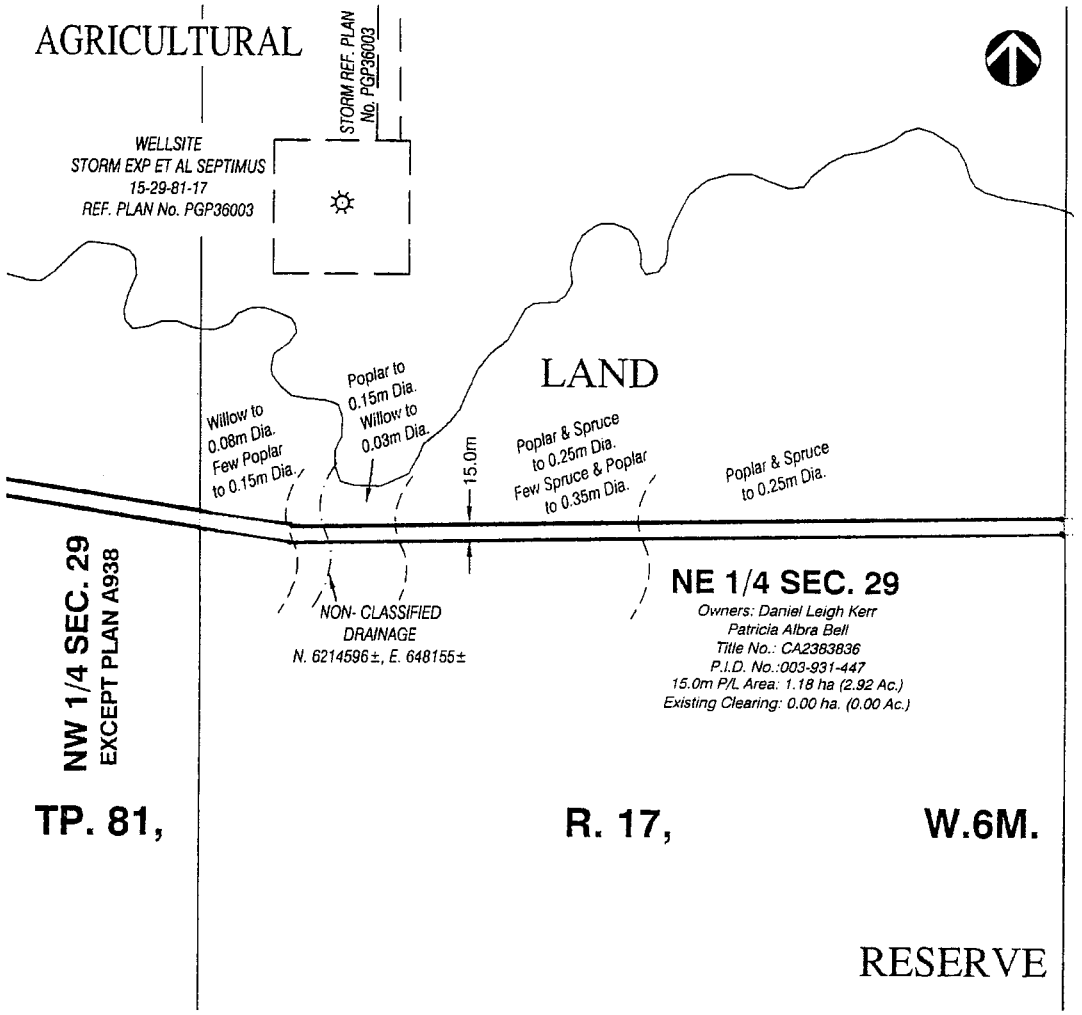
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 15.0m PIPELINE RIGHT OF WAY & TEMP. WORKSPACES

IN

NORTH EAST 1/4 SECTION 29, TOWNSHIP 81, RANGE 17, W.6M.

PEACE RIVER DISTRICT



OWNER(S): Daniel Leigh Kerr

Patricia Albra Bell

TITLE No. CA2383836

PID No. 003-931-447

P/L R/W 1.18 ha 2.92 Ac.

Certified correct this 13th day of April 2012.

S.D. PENGELLY, B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED & GREEN.

REVISION: 1	DRAWN BY: TOP
SCALE: 1:5000	JOB No.: 3111-16426IP3A

File No. 1756
Board Order No. 1756-1amd

August 21, 2012

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
THE NORTH EAST ¼ OF SECTION 29 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH WEST ¼ OF SECTION 28 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WESTERLY 14 FEET IN PARALLEL WIDTH THEREOF

(The "Lands")

BETWEEN:

TERRA ENERGY CORP.

(Applicant)

AND:

DANIEL LEIGH KERR AND PATRICIA ALBRA BELL

(Respondents)

BOARD ORDER

This Order replaces the Board's Order issued August 15, 2012.

Terra Energy Corp. ("Terra") applies to the Board on behalf of Crew Energy Inc. ("Crew") seeking a right of entry order to access certain lands legally owned by Daniel Leigh Kerr and Patricia Albra Bell to carry out an approved oil and gas activity, namely the operation and maintenance of an existing flow line. Following construction, Terra sold the flowline to Crew.

Following an agreement reached by the parties, and at the request of the parties to incorporate the terms of their agreement into a Consent Order of the Board, the Surface Rights Board orders, BY CONSENT:

1. On payment of the agreed compensation, Crew shall have the right of entry to and access across the portion of the Lands shown on the Individual Ownership Plans attached as Appendix "A" and outlined in red for the purposes of carrying out the approved oil and gas activity, namely the operation and maintenance of the flow line.

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

DATED: August 21, 2012

FOR THE BOARD

Rob Fraser
Mediator

TERRA ENERGY CORP.

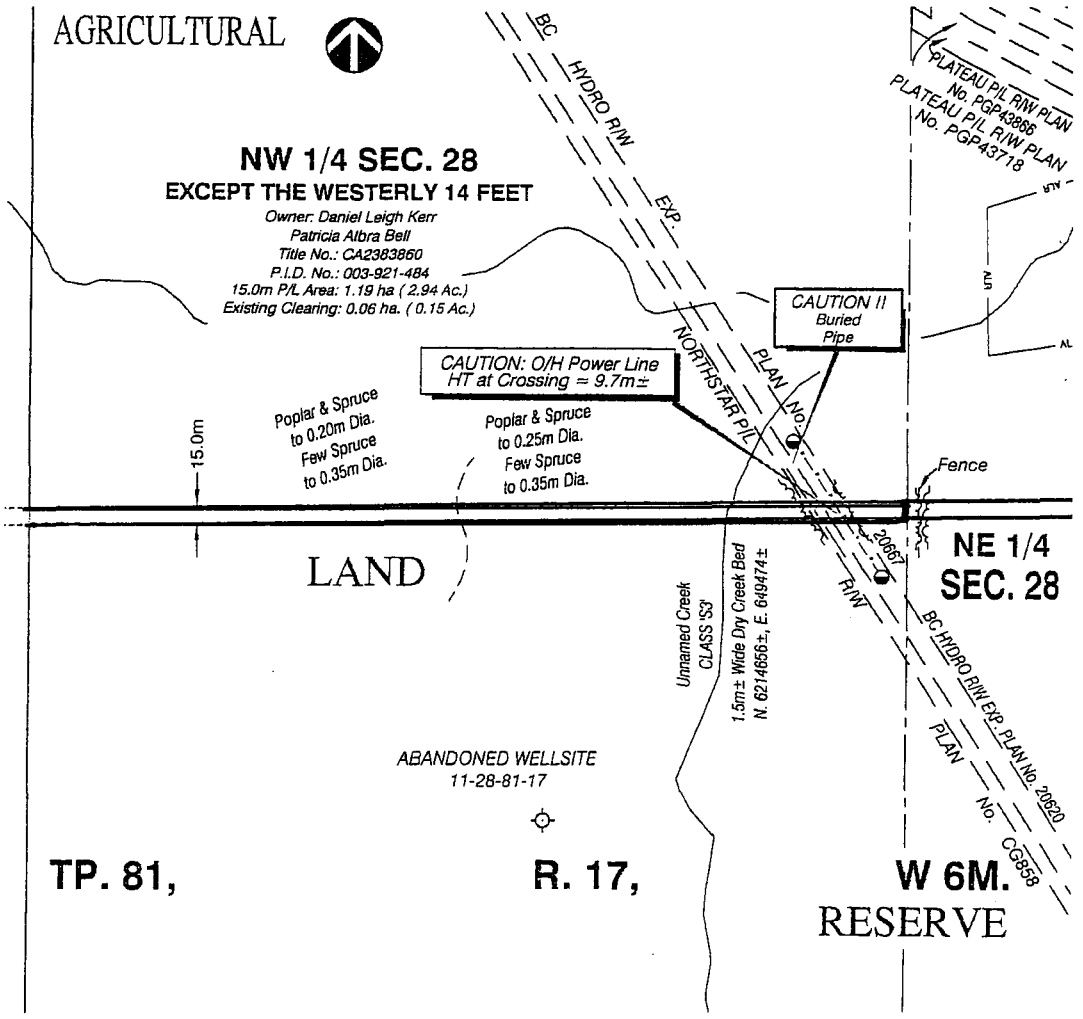
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 15.0m PIPELINE RIGHT OF WAY

IN

NORTH WEST 1/4 SECTION 28, TOWNSHIP 81, RANGE 17, W.6M. EXCEPT THE WESTERLY 14 FEET

PEACE RIVER DISTRICT



OWNER(S): Daniel Leigh Kerr
Patricia Albra Bell

TITLE No. CA2383860

PID No. 003-921-484

P/L R/W 1.19 ha 2.94 Ac.

Certified correct this 13th day of April 2012.

Scott Pengelly

S.D. PENGELLY B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED.

REVISION: 1	DRAWN BY: TOP
SCALE: 1:5,000	JOB No. : 3111-16426/P2A

TERRA ENERGY CORP.

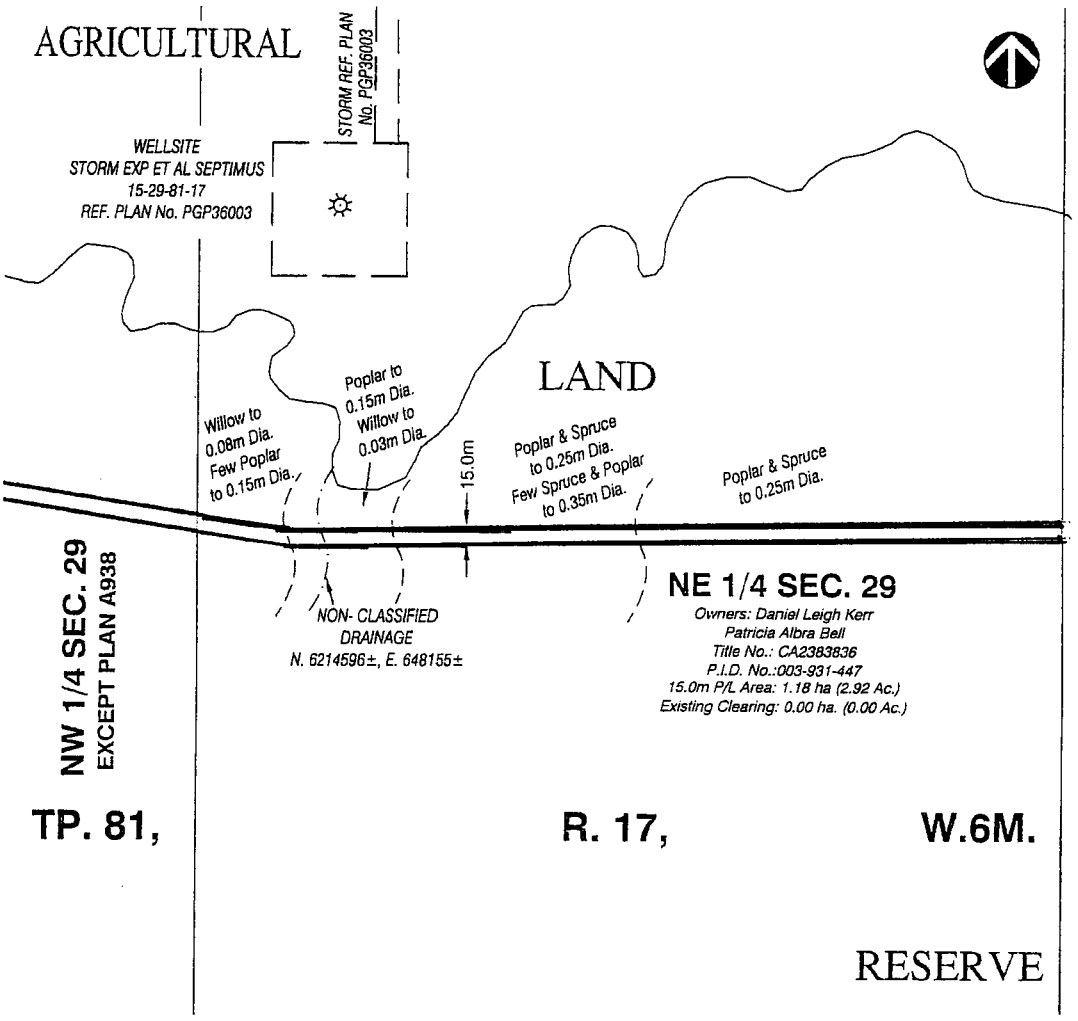
INDIVIDUAL OWNERSHIP PLAN

SHOWING PROPOSED 15.0m PIPELINE RIGHT OF WAY & TEMP. WORKSPACES

IN

NORTH EAST 1/4 SECTION 29, TOWNSHIP 81, RANGE 17, W.6M.

PEACE RIVER DISTRICT



OWNER(S): Daniel Leigh Kerr
Patricia Albra Bell

TITLE No. CA2383836

PID No. 003-931-447

P/L R/W 1.18 ha 2.92 Ac.

Certified correct this 13th day of April 2012.

Scott Pengelly

S.D. PENGELLY, B.C.L.S.

McELHANNEY GEOMATICS
Professional Land Surveying Ltd.
8808 - 72nd Street
Fort St. John, British Columbia
Phone:(250)787-0356, Fax:(250)787-0310

DISTANCES ARE IN METRES.
PORTIONS REFERRED TO ARE OUTLINED IN RED & GREEN.

REVISION: 1	DRAWN BY: TOP
SCALE: 1:5000	JOB No.: 3111-16426IP3A

File No. 1881
Board Order No. 1881-1

March 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
THE NORTH WEST ¼ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Rodney Allen Strasky and
Kim Lori Strasky

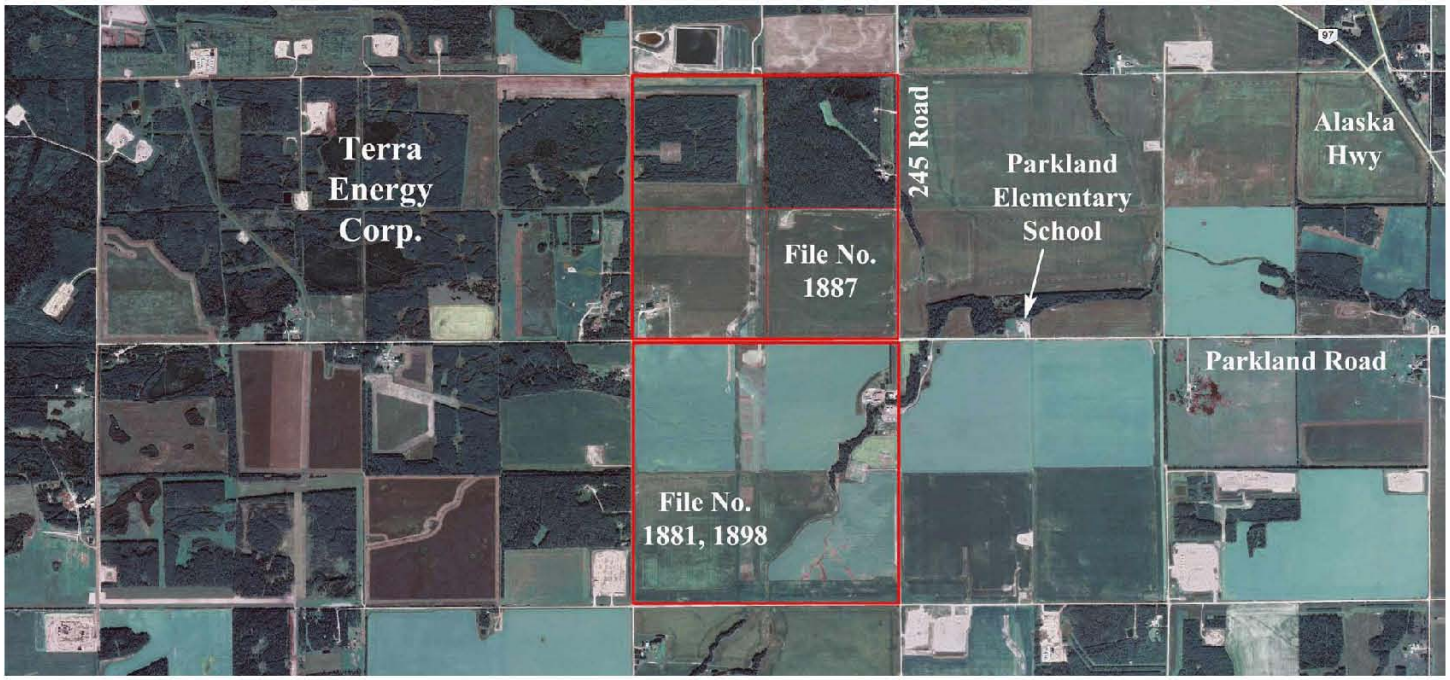
(APPLICANTS)

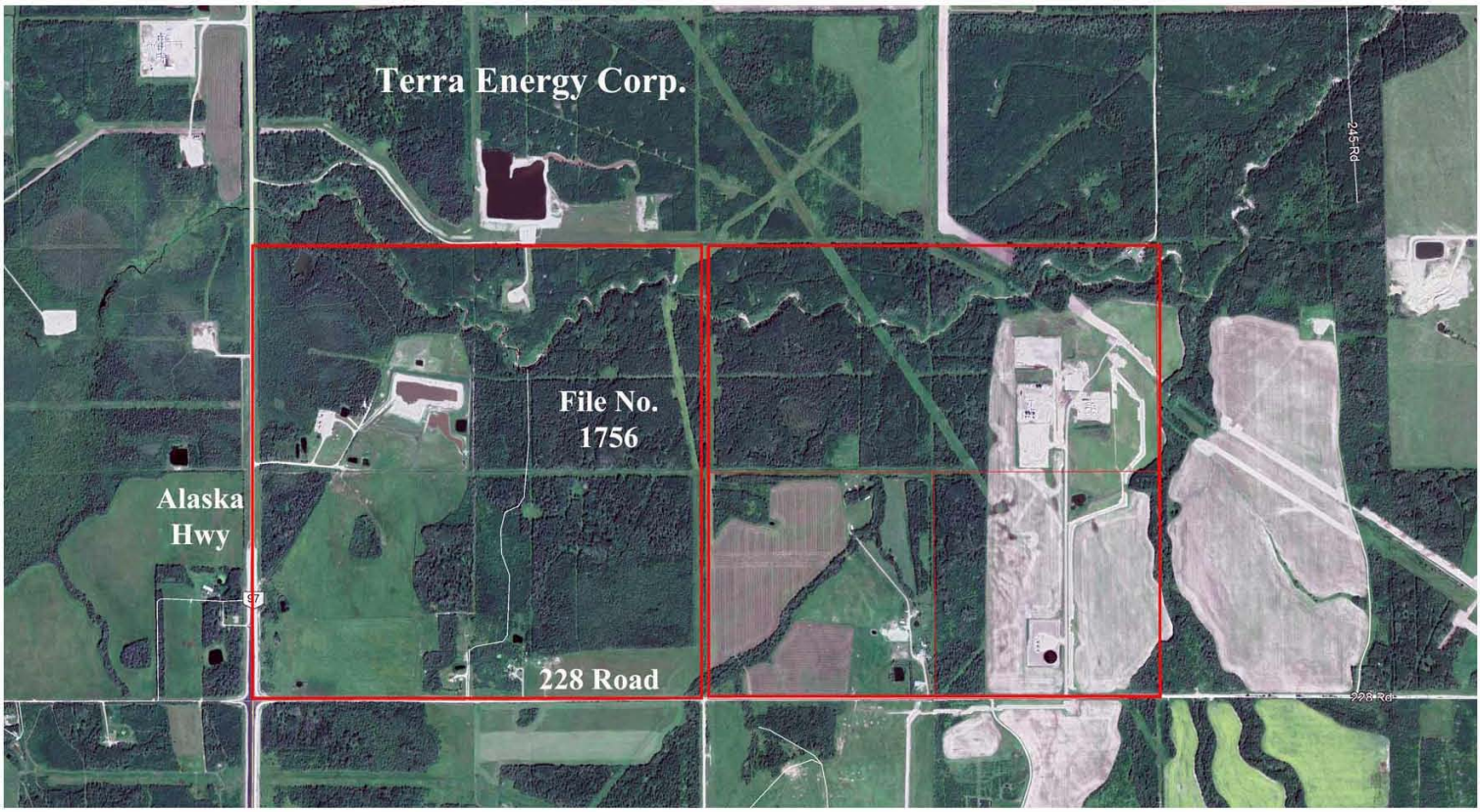
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


Terra
Energy
Corp.
File No.
1887
245 Road
Parkland
Elementary
School
Alaska
Hwy
Parkland Road
File No.
1881, 1898


Terra Energy Corp.
245 Rd
File No.
1756
Alaska
Hwy
97
228 Road
228 Rd

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*.

The Applicants, Rodney Allen Strasky and Kim Lori Strasky, are the owners of the Lands described as: THE NORTH WEST ¼ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well is pursuant to a surface lease dated December 17, 2009 between Rodney Allen Strasky and Kim Lori Strasky, and Terra Energy Corp. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $5,052.00 to Rodney Allen Strasky and Kim Lori Strasky. Terra Energy Corp. failed to make the annual payment required by December 17, 2015.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Rodney Allen Strasky and Kim Lori Strasky $5,052.00 in unpaid rent plus interest from December 17, 2015. The Applicants are entitled to costs of this application.

Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board may suspend a right of entry when a right holder fails to pay rent in accordance with a surface lease. I heard from the parties on this issue in a telephone conference on March 10, 2016. This is an operating well. I am advised that Terra Energy Corp. is actively making efforts to market assets to raise capital to pay various financial obligations. In the circumstances I am satisfied that it is not in either party's interest to suspend the right of entry at this time. However, the Applicants are at liberty to re-new their request to suspend the right of entry if Terra Energy Corp. does not satisfy the order for payment below within a reasonable period of time.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Rodney Allen Strasky and Kim Lori Strasky the sum of $5,052.00 plus interest calculated in accordance with the *Court Order Interest Act* from December 17, 2015.

2. Terra Energy Corp. shall forthwith pay to Rodney Allen Strasky and Kim Lori Strasky $213.91 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: March 16, 2016
FOR THE BOARD

Cheryl Vickers, Chair

File No. 1882
Board Order No. 1882-1

March 9, 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
THE NORTH ½ OF SECTION 15 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Lloyd Stewart Bentley

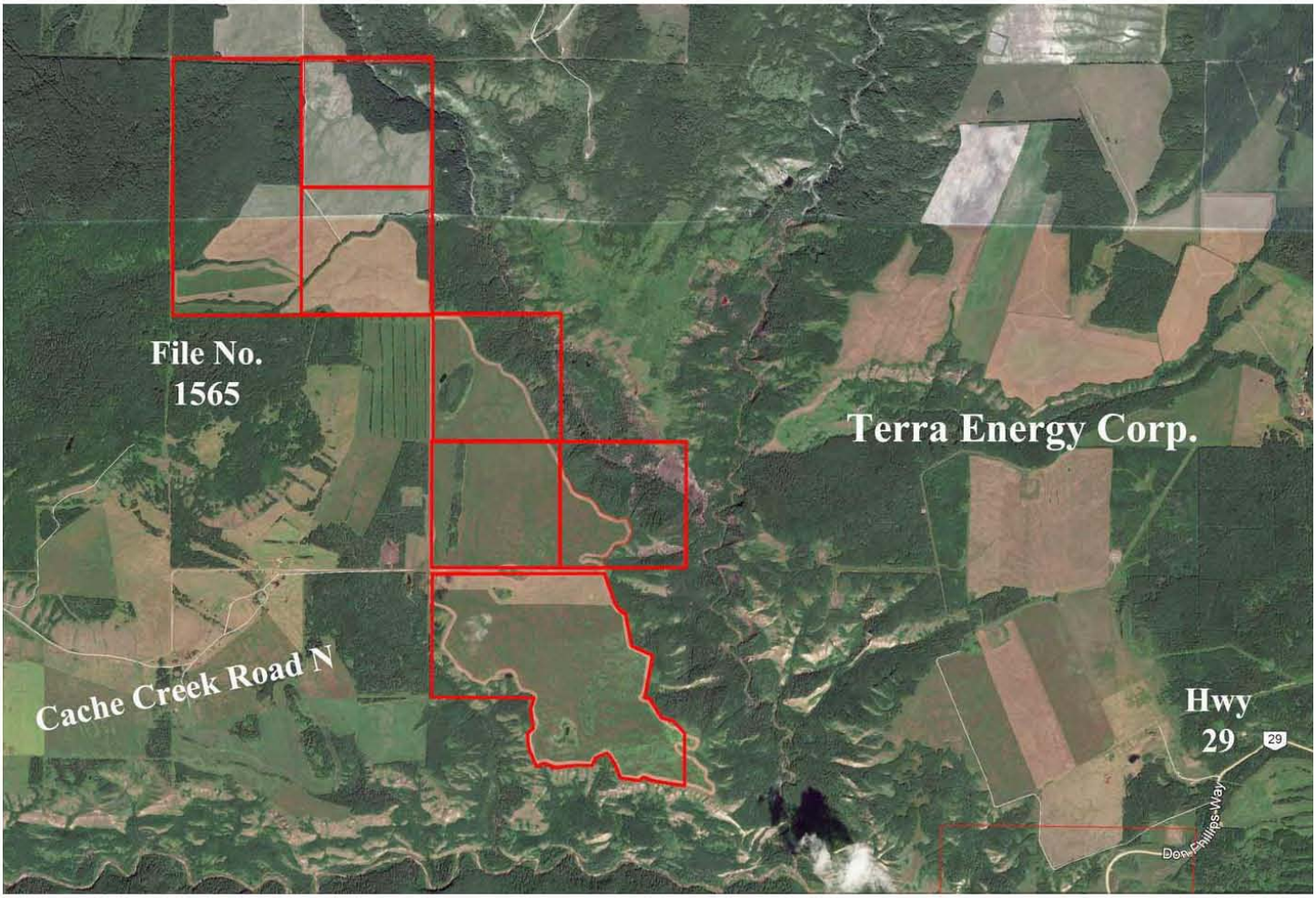
(APPLICANT)

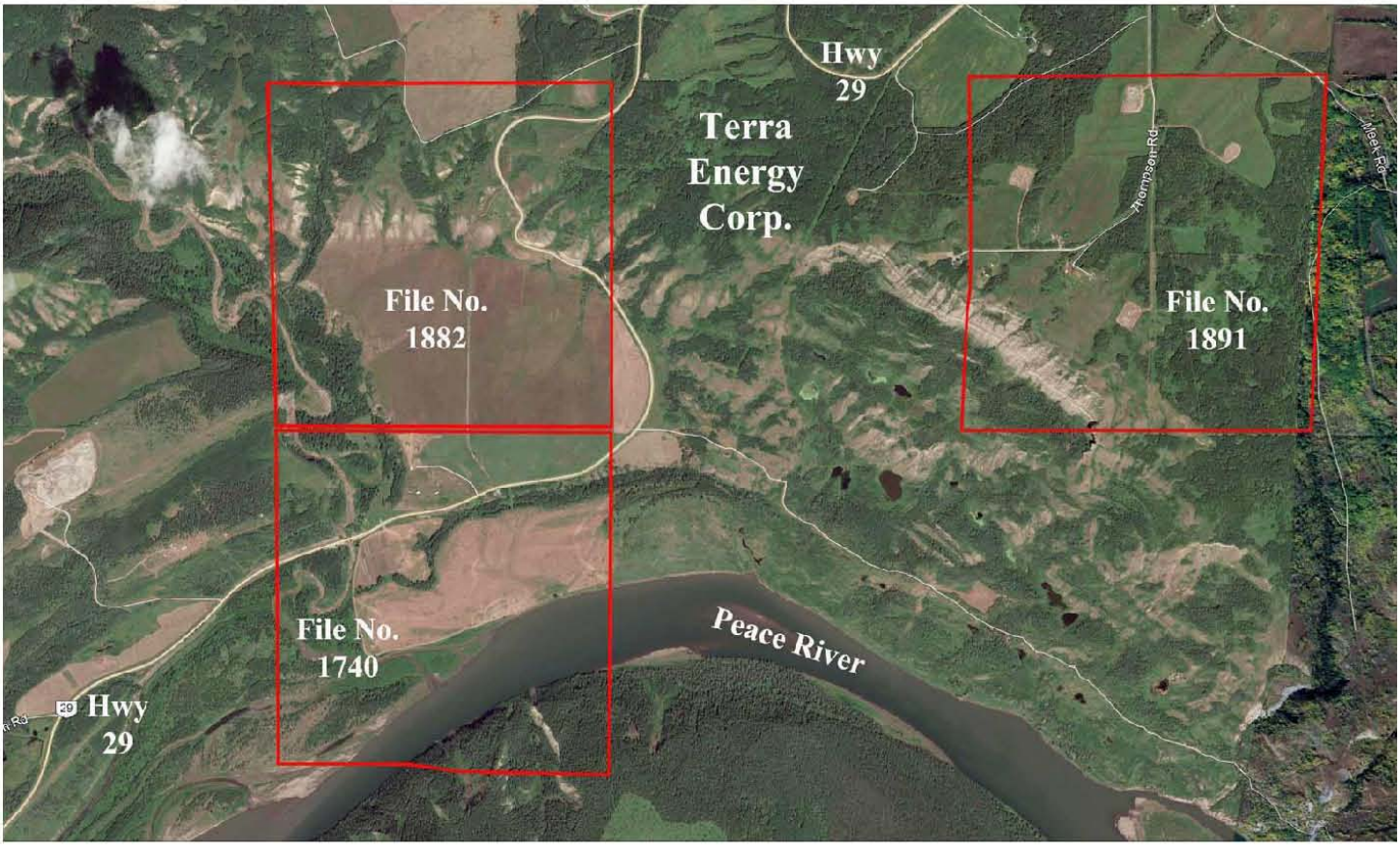
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


File No.
1565
Terra Energy Corp.
Cache Creek Road N
Hwy
29
29
Don Phillips Way


Hwy
29
Terra
Energy
Corp.
File No.
1882
File No.
1891
Thompson Rd
File No.
1740
Peace River
Hwy
29
29

This application is brought under section 164 and 176 of the *Petroleum and Natural Gas Act.*

The Applicant, Lloyd Stewart Bentley, is the owner of the Lands described as: THE NORTH ½ OF SECTION 15 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of a non-producing well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well is pursuant to a surface lease between Lloyd Stewart Bentley and Terra Energy Corp. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp. is required to make annual rent payments to Lloyd Stewart Bentley of $5,308.00. Terra Energy Corp. failed to make the payment due on November 6, 2015. Terra Energy Corp. does not dispute that the annual rent of $5,308.00 payable on November 6, 2015 is owing to Lloyd Stewart Bentley.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Lloyd Stewart Bentley $5,308.00 in unpaid rent plus interest from November 6, 2015. Lloyd Stewart Bentley is entitled to costs of this application. The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Lloyd Stewart Bentley the sum of $5,308.00 plus interest calculated in accordance with the *Court Order Interest Act* from November 6, 2015.

2. Terra Energy Corp. shall forthwith pay to Lloyd Stewart Bentley $148.29 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: March 9, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1887
Board Order No. 1887-1

March 23, 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
THE NORTH WEST ¼ OF SECTION 9 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

James Thomas Strasky and
Patricia Jean Strasky

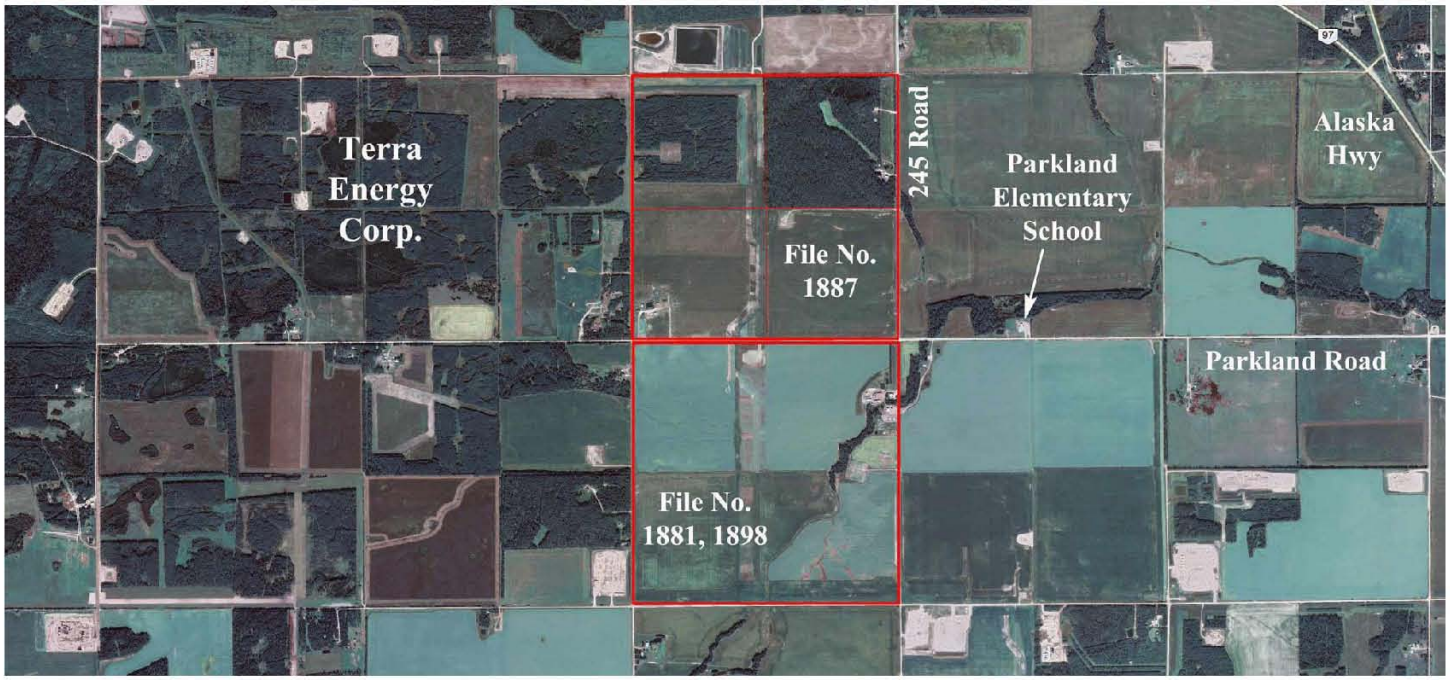
(APPLICANTS)

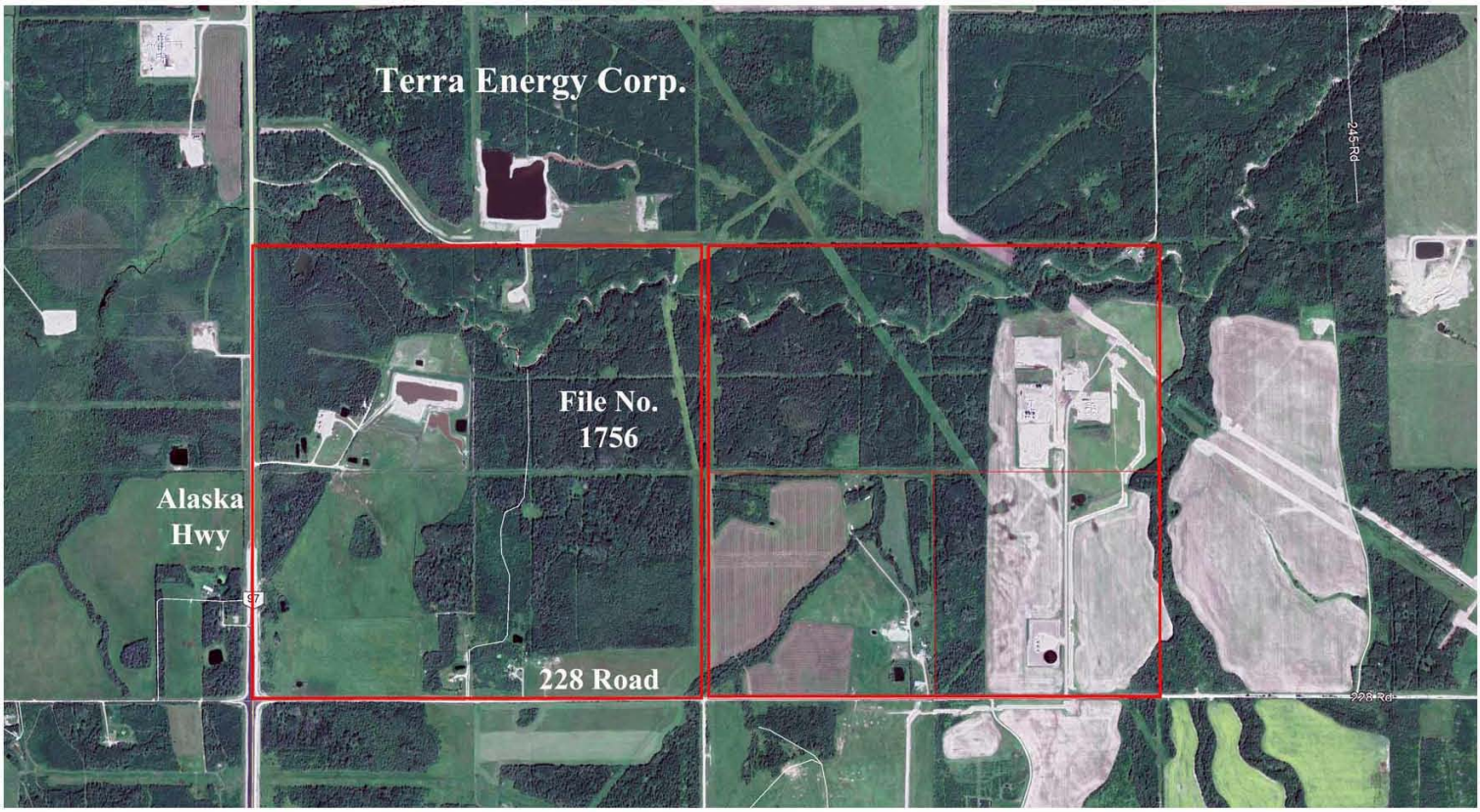
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


Terra
Energy
Corp.
File No.
1887
245 Road
Parkland
Elementary
School
Alaska
Hwy
Parkland Road
File No.
1881, 1898


Terra Energy Corp.
245 Rd
File No.
1756
Alaska
Hwy
97
228 Road
228 Rd

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*.

The Applicants, James Thomas Strasky and Patricia Jean Strasky, are the owners of the Lands described as: THE NORTH WEST ¼ OF SECTION 9 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well is pursuant to a surface lease dated January 20, 2009 between James Thomas Strasky and Patricia Jean Strasky, and Terra Energy Corp. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $4,024.00 to James Thomas Strasky and Patricia Jean Strasky. Terra Energy Corp. failed to make the annual payment required by January 20, 2016.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes James Thomas Strasky and Patricia Jean Strasky $4,024.00 in unpaid rent plus interest from January 20, 2016. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to James Thomas Strasky and Paticia Jean Strasky the sum of $4,042.00 plus interest calculated in accordance with the *Court Order Interest Act* from January 20, 2016.

2. Terra Energy Corp. shall forthwith pay to James Thomas Strasky and Patricia Jean Strasky $125.00 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: March 23, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1889
Board Order No. 1889-1

March 23, 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

THE SOUTH ½ OF THE SOUTH ½ OF SECTION 10 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
BLOCK A OF SECTION 10 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
THE NORTH ½ OF THE NORTH ½ OF SECTION 3 TWONSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
GRAZING LEASE ON THE SOUTH ½ OF SOUTHEAST ¼ OF SECTION 15, THE NORTH EAST ¼ AND THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 10, THE EAST ½ OF SECTION 1, ALL OF TOWNSHHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT AND CONTAINING 254.10 HECTARES, MORE OR LESS
(The "Lands")

BETWEEN:

Warren Ralph Donis and
Nadine Lucia Donis

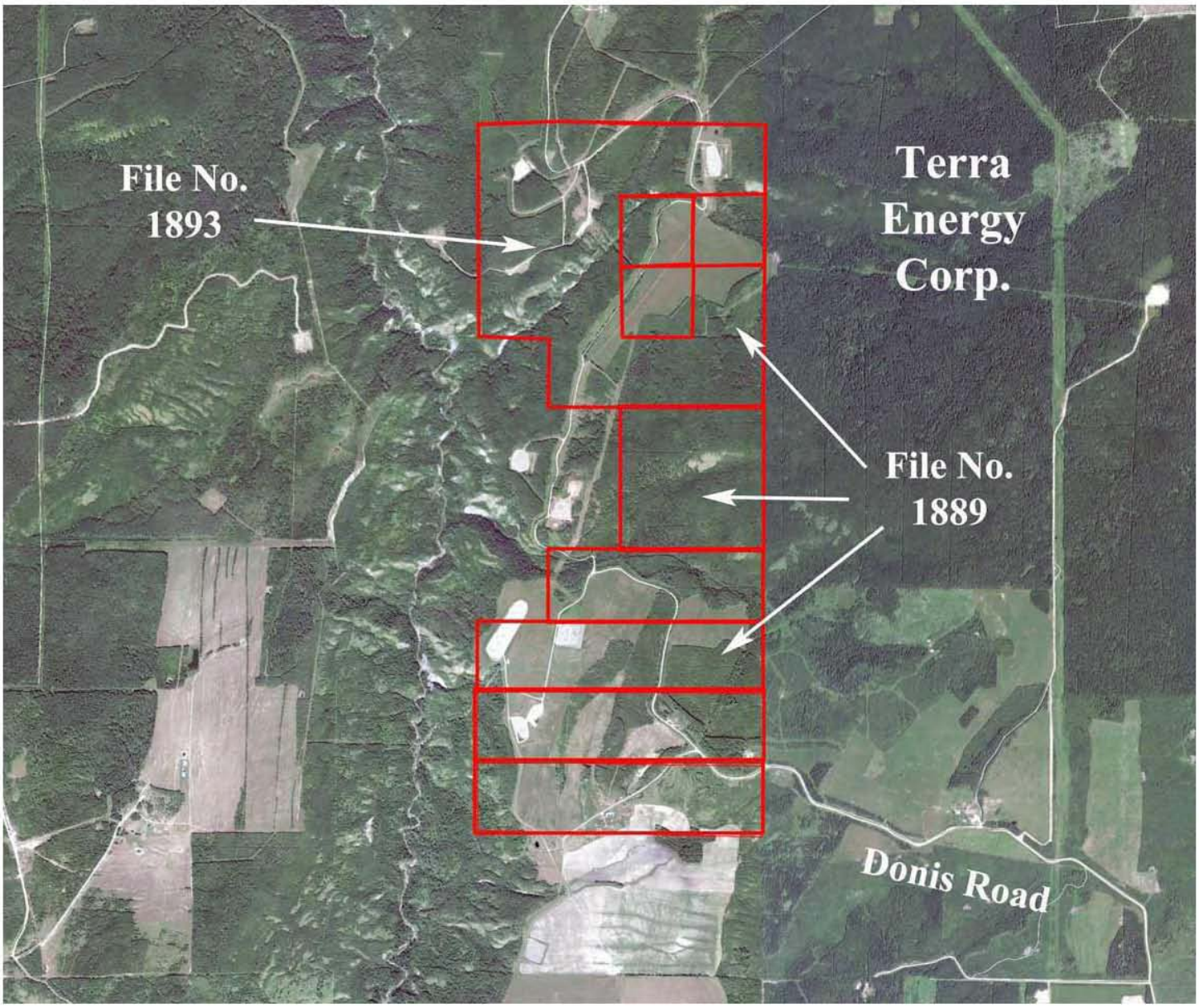
(APPLICANTS)

AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


File No.
1893
Terra
Energy
Corp.
File No.
1889
Donis Road

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*.

> The Applicants, Warren Ralph Donis and Nadine Lucia DOnis, are the owners of the Lands described as:
>
> THE SOUTH ½ OF THE SOUTH ½ OF SECTION 10 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
> BLOCK A OF SECTION 10 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
> THE NORTH ½ OF THE NORTH ½ OF SECTION 3 TWONSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;
> GRAZING LEASE ON THE SOUTH ½ OF SOUTHEAST ¼ OF SECTION 15, THE NORTH EAST ¼ AND THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 10, THE EAST ½ OF SECTION 1, ALL OF TOWNSHHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT AND CONTAINING 254.10 HECTARES, MORE OR LESS

The Respondent, Terra Energy Corp., is the operator of wells and other oil and gas operations located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the wells is pursuant to various surface leases. Pursuant to the surface leases, Terra Energy Corp., is required to make annual payments to Warren Ralph Donis and Nadine Lucia Donis. The Board finds that Terra Energy Corp. failed to make the annual payments set out below as of the dates set out below for each of the locations indicated:

Well location	**Amount owning**	**Date of Agreement**	**Date Amount Owing**
A11-10-85-21	$1,650.00	January 22, 2012	January 22, 2016
B4-10-85-21	$1,320.00	February 24, 2008	February 24, 2016
C4-10-85-21	$1,760.00	February 24, 2008	February 24, 2016
6-10-85-21	$330.00	November 13, 2013	November 13, 2015
4-10-85-21	$4,620.00	November 6, 2012	November 6, 2015
A4-10-85-21	$1,320.00	January 19, 2008	January 19, 2016

Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Warren Ralph Donis and Nadine Lucia Donis unpaid rent as set out in the column "Amount Owing" above, plus interest as of the date set out in the column "Date Amount Owing" above with respect to each payment. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Warren Ralph Donis and Nadine Lucia Donis the sums of:
    a) $1,650.00 plus interest calculated in accordance with the *Court Order Interest Act* from January 22, 2016;

b) $1,320.00 plus interest calculated in accordance with the *Court Order Interest Act* from February 24, 2016;
c) $1,760 plus interest calculated in accordance with the *Court Order Interest Act* from February 24, 2016;
d) $330.00 plus interest calculated in accordance with the *Court Order Interest Act* from November 13, 2015;
e) $4,630 plus interest calculated in accordance with the *Court Order Interest Act* from November 6, 2015;
f) $1,320 plus interest calculated in accordance with the *Court Order Interest Act* from January 19, 2016.

DATED: March 23, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1890
Board Order No. 1890-1

April 7, 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
THE SOUTH WEST ¼ OF SECTION 2 TWONSHIP 86 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN H827
(The "Lands")

BETWEEN:

Donald Neil McLean and Irene Mary McLean
(formerly known as Irene Mary Konopad)

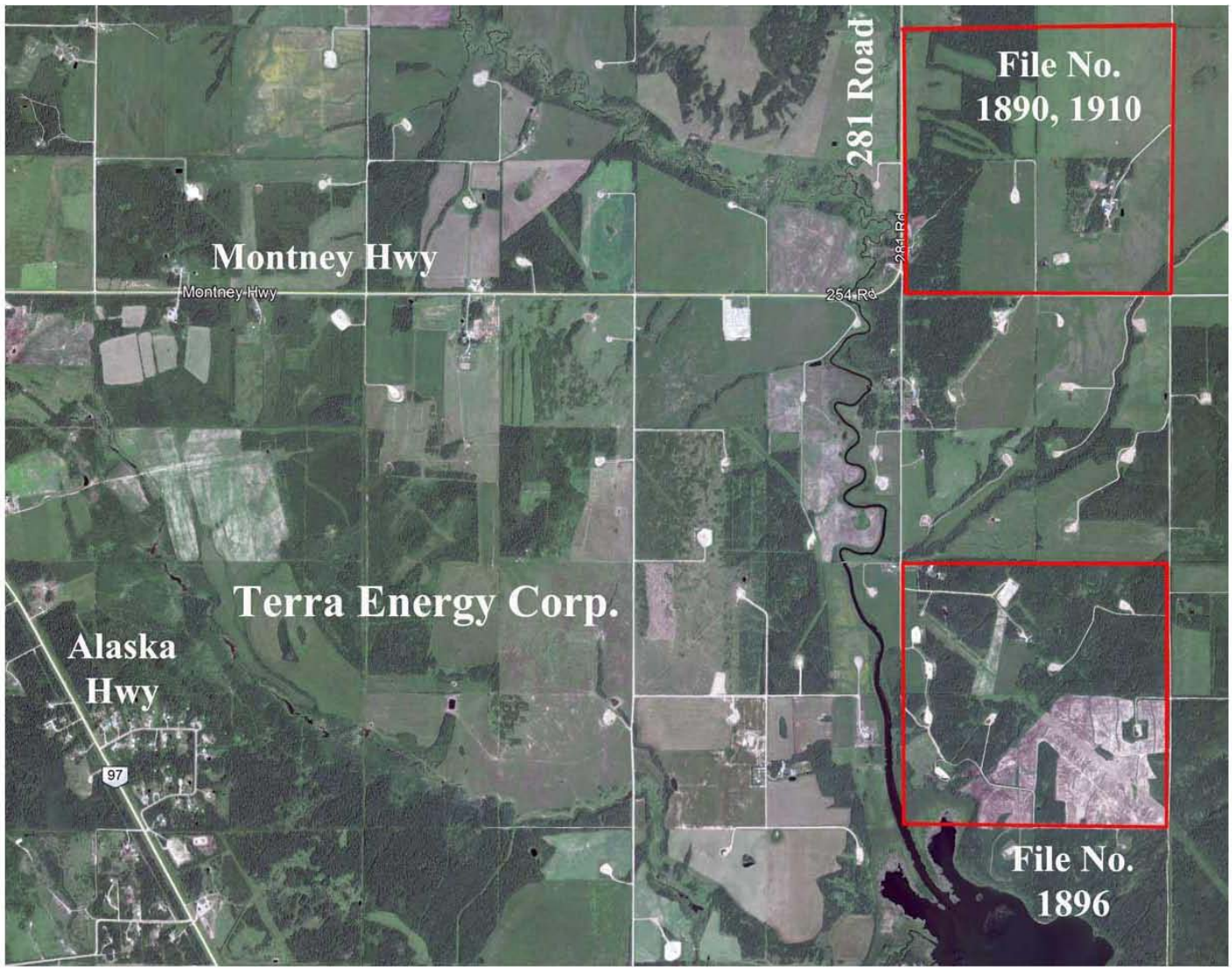
(APPLICANTS)

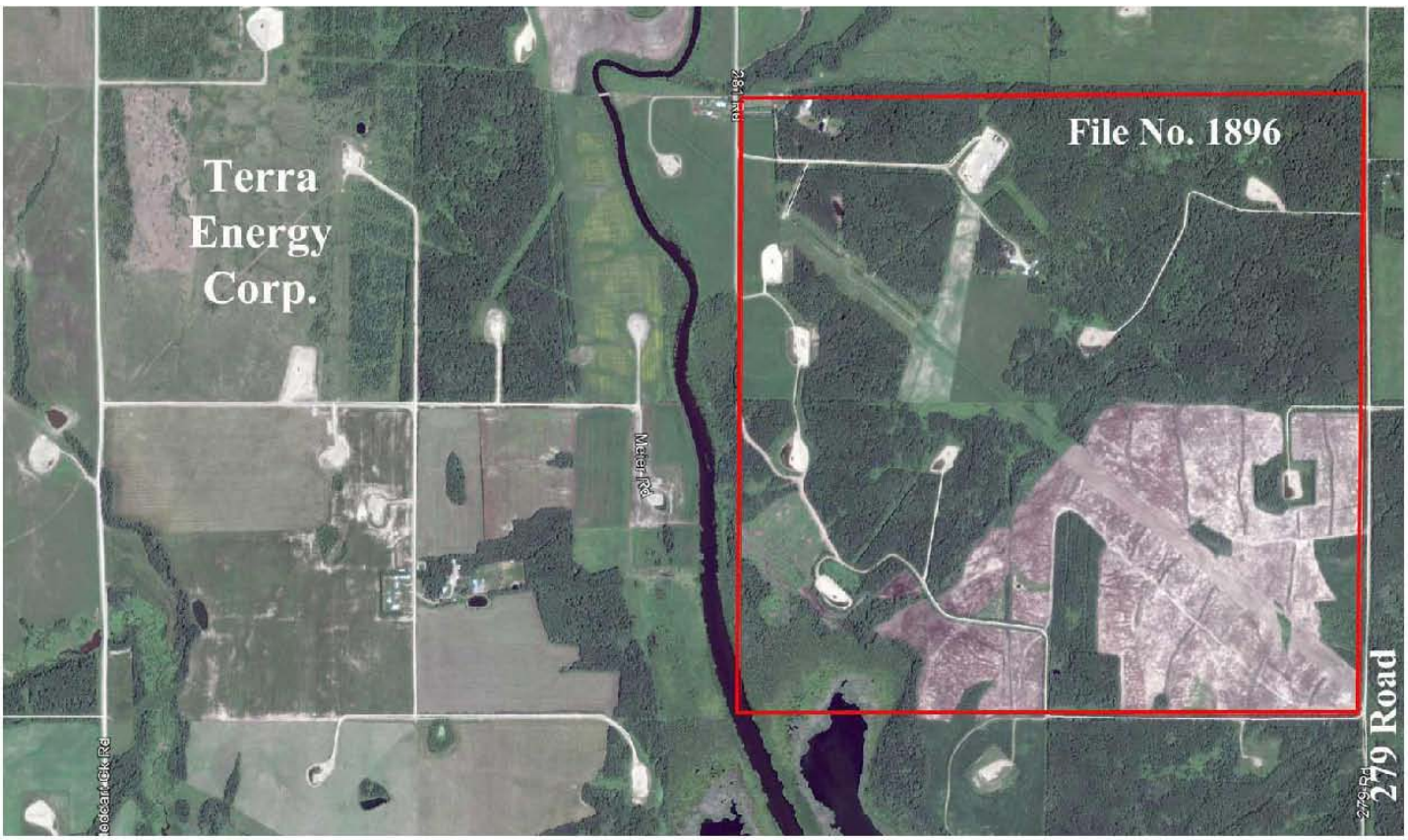
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


281 Road
File No.
1890, 1910
Montney Hwy
Montney Hwy
254 Rd
Terra Energy Corp.
Alaska
Hwy
97
File No.
1896


Terra
Energy
Corp.
File No. 1896
Meier Rd
279 Road

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. It was received by the Board March 15, 2016. The application includes proof of service by registered mail on the Respondent.

The Applicants, Donald Neil McLean and Irene Mary McLean, are the owners of the Lands described as: THE SOUTH WEST ¼ OF SECTION 2 TOWNSHIP 86 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN H827. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well and associated access road is pursuant to a surface lease agreement entered October 31, 1978, between James Dennis Lea and General American Oils Ltd. and last amended effective October 31, 2008. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $5,608.00 to Donald Neil McLean and Irene Mary McLean. Terra Energy Corp. failed to make the annual payment required by October 31, 2015.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Donald Neil McLean and Irene Mary McLean $5,608.00 in unpaid rent plus interest from October 31, 2015. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Donald Neil McLean and Irene Mary McLean the sum of $5,608.00 plus interest calculated in accordance with the *Court Order Interest Act* from October 31, 2015.

2. Terra Energy Corp. shall forthwith pay to Donald Neil McLean and Irene Mary McLean $69.27 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: April 7, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1891
Board Order No. 1891-1

March 30, 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
BLOCK A OF SECTION 13 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN PGP38270
(The "Lands")

BETWEEN:

Arlene Lois Boon

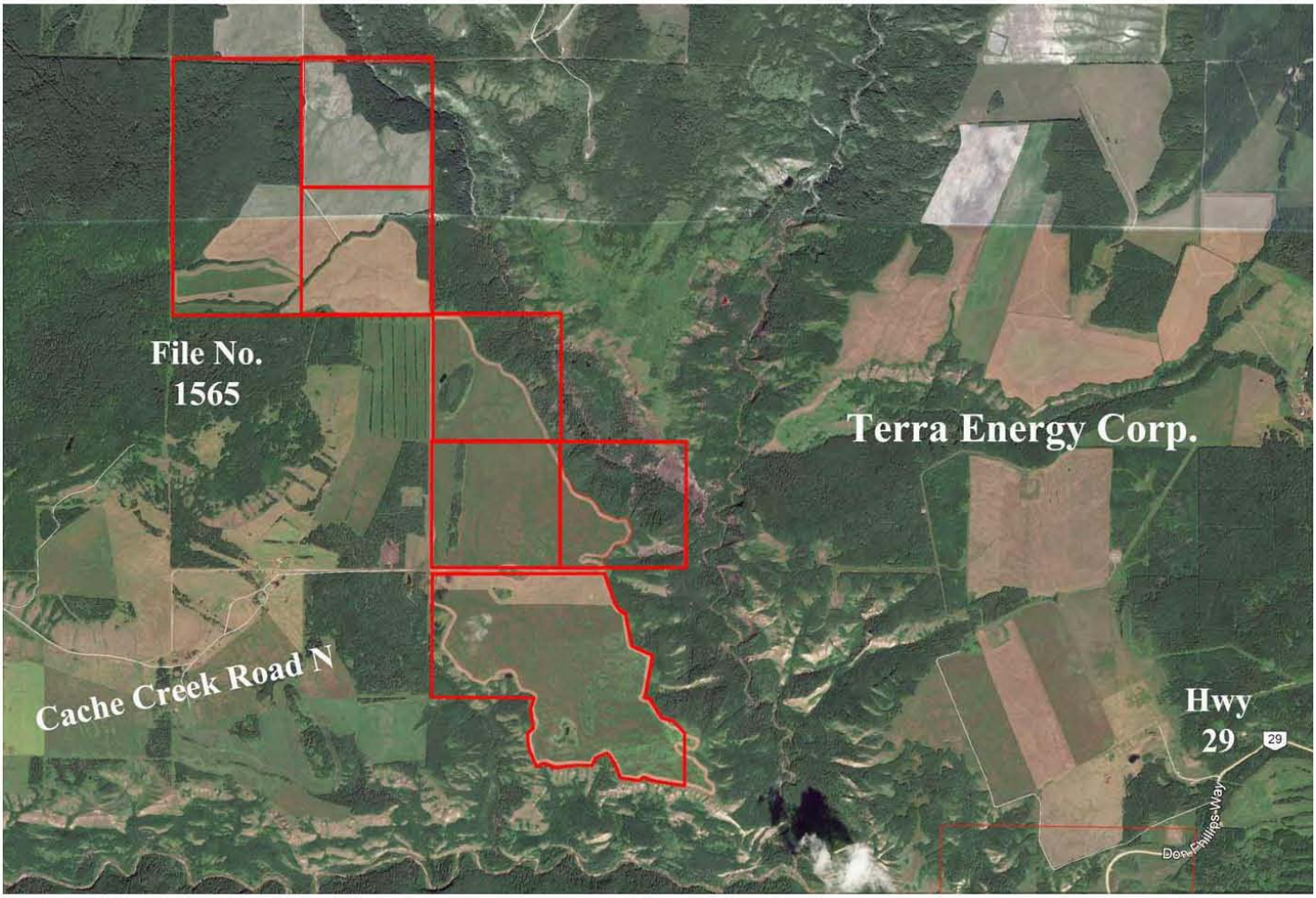
(APPLICANT)

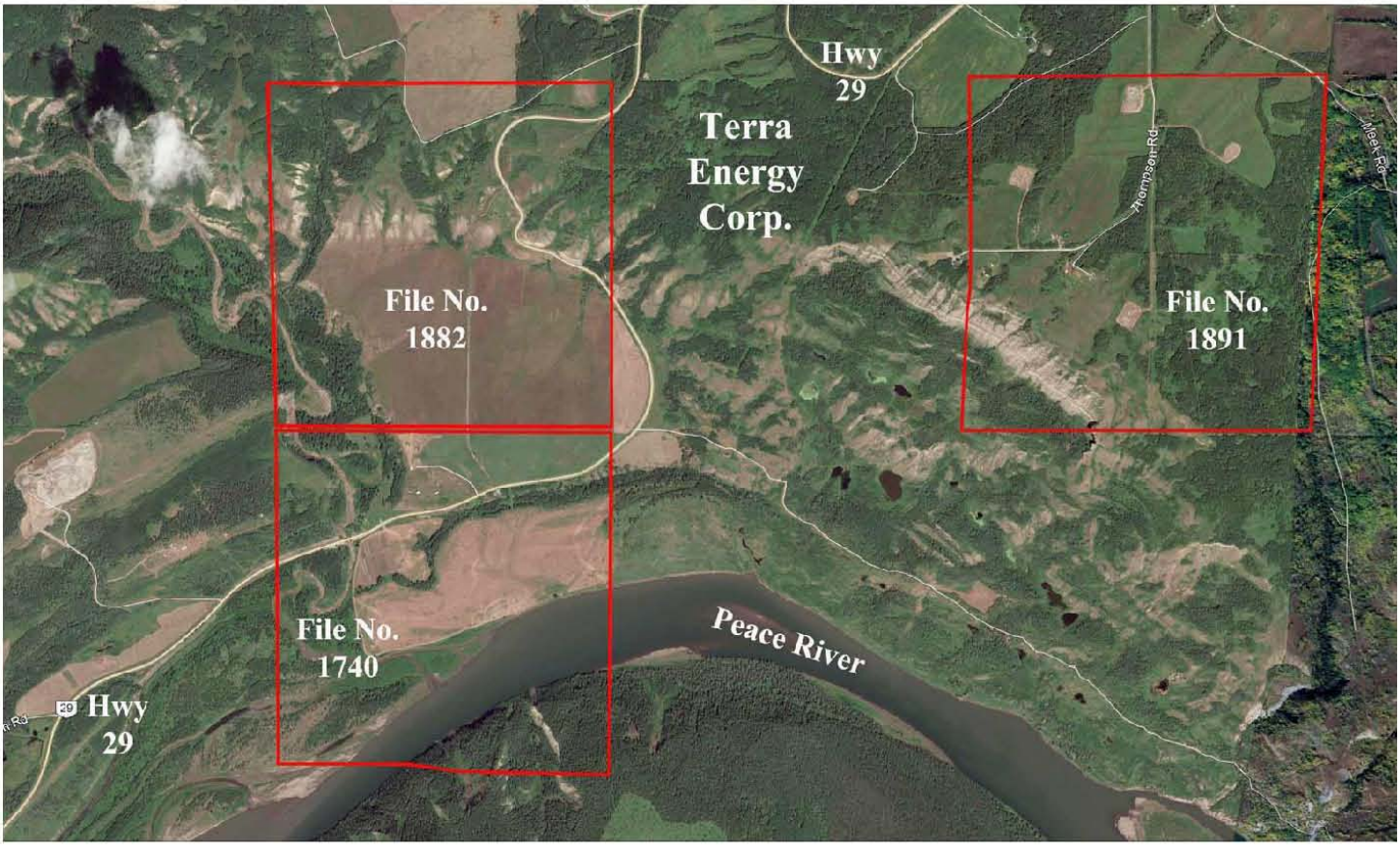
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


File No.
1565
Terra Energy Corp.
Cache Creek Road N
Hwy
29
29
Don Phillips Way


Hwy
29
Terra
Energy
Corp.
File No.
1882
File No.
1891
Thompson Rd
File No.
1740
Peace River
Hwy
29
29

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. It is deemed received by the Board March 29, 2016. The application includes proof of service by registered mail on the Respondent.

The Applicant, Arlene Lois Boon, is the owner of the Lands described as: BLOCK A OF SECTION 13 TOWNSHIP 84 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN PGP38270. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well and associated access road is pursuant to surface lease agreements entered January 8, 1998 and last amended effective January 8, 2013. (the Surface Leases).

Pursuant to the Surface Leases, Terra Energy Corp., is required to make annual payments of $5,300.00 and $825.00 to Arlene Lois Boon. Terra Energy Corp. failed to make the annual payments required by January 8, 2016.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Arlene Lois Boon $6,125.00 in unpaid rent plus interest from January 8, 2016. The Applicant is entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Arlene Lois Boon the sum of $6,125.00 plus interest calculated in accordance with the *Court Order Interest Act* from January 8, 2016.

2. Terra Energy Corp. shall forthwith pay to Arlene Lois Boon $86.55 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: March 30, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1892
Board Order No. 1892-1

March 30, 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
THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 84 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Philip Nathaniel Bell and
Anne-Mari Kimberly Bell

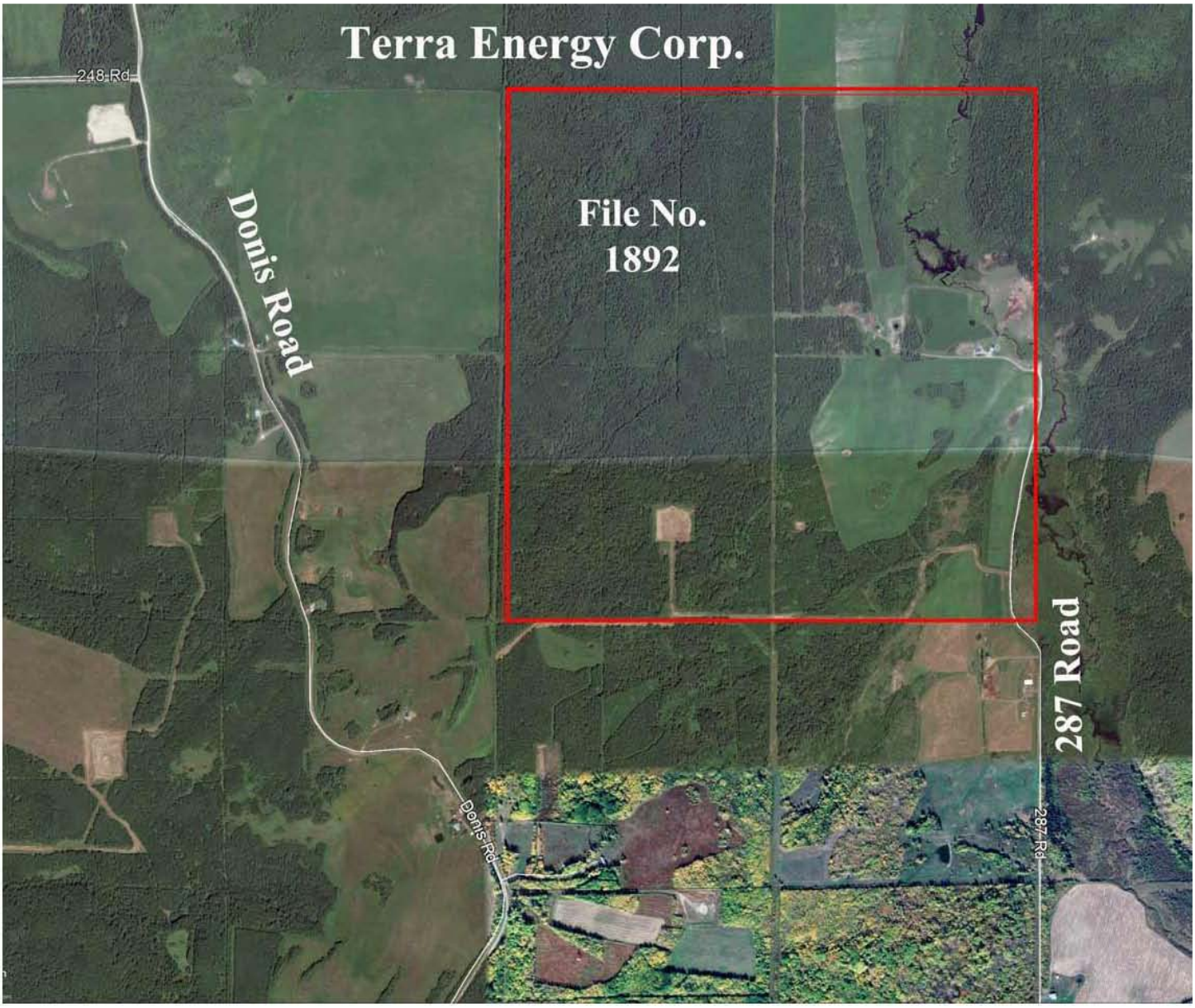
(APPLICANTS)

AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


Terra Energy Corp.
248 Rd
Donis Road
File No.
1892
287 Road
Donis Rd
287 Rd

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. It was received by the Board March 29, 2016. The application includes proof of service by registered mail on the Respondent.

The Applicants, Philip Nathaniel Bell and Anne-Mari Kimberly Bell, are the owners of the Lands described as: THE SOUTH EAST ¼ OF SECTION 31 TOWNSHIP 84 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well d is pursuant to a surface lease agreement entered July 11, 2006 and last amended effective July 11, 2015. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make an annual payment of $6,232.00 to Philip Nathaniel Bell and Anne-Mari Kimberly Bell. Terra Energy Corp. made partial payment of $4,300.00 in December 2015 of the lease payment owing as of July 11, 2015, but has failed to make payment of $1,932.00 owing as of July 11, 2015.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Philip Nathaniel Bell and Anne-Mari Kimberly Bell $1,932.00 in unpaid rent plus interest from July 11, 2015. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Philip Nathaniel Bell and Anne-Mari Kimberly Bell the sum of $1,932.00 plus interest calculated in accordance with the *Court Order Interest Act* from July 11, 2015.

2. Terra Energy Corp. shall forthwith pay to Philip Nathaniel Bell and Anne-Mari Kimberly Bell $261.34 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: March 30, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1893
Board Order No. 1893-1

April 11, 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

LEGAL SUBDIVISION 11 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
LEGAL SUBDIVISION 12 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
LEGAL SUBDIVISION 13 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Thomas Peter Jarratt and
Deborah Louise Jarratt

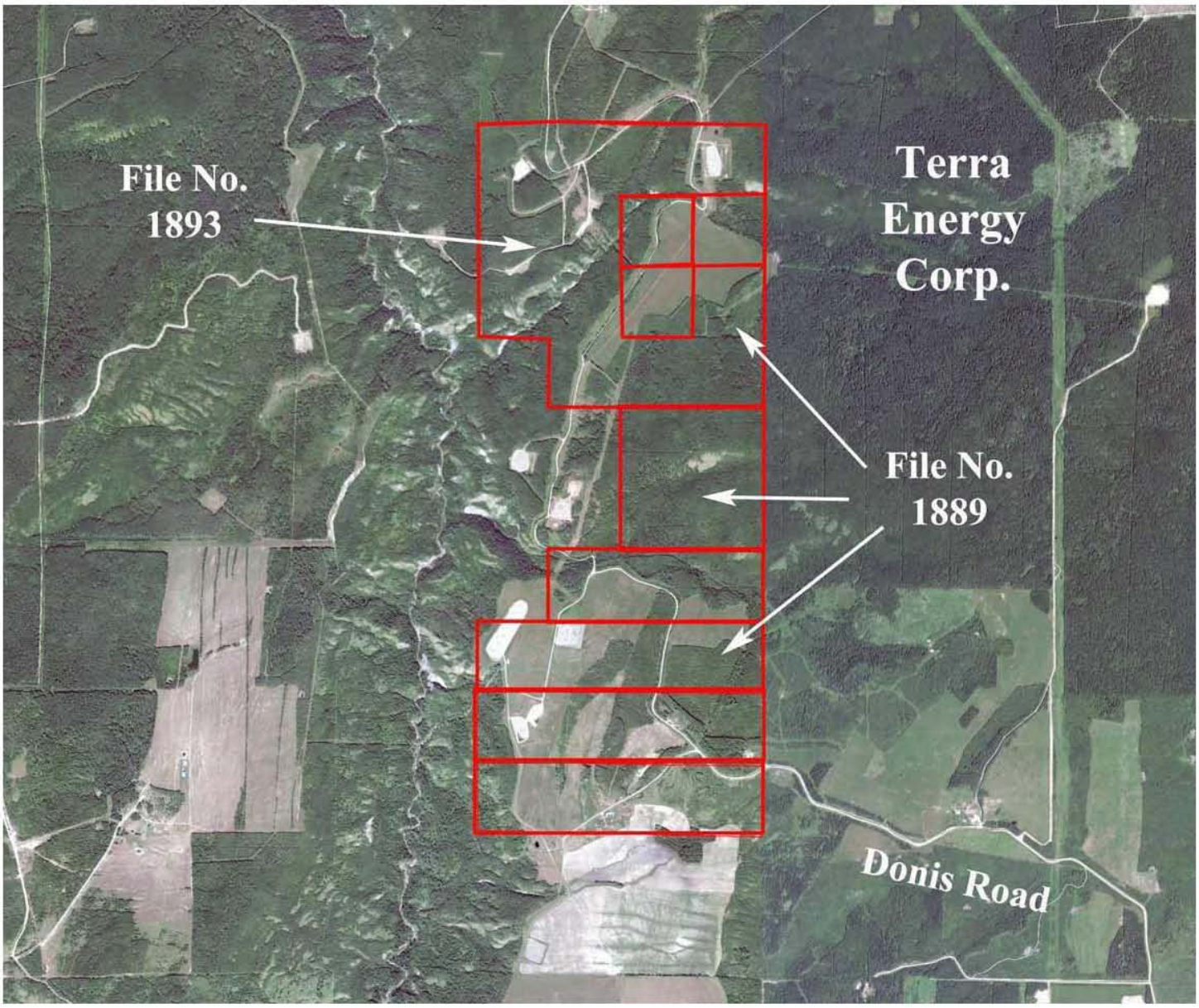
(APPLICANTS)

AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


File No.
1893
Terra
Energy
Corp.
File No.
1889
Donis Road

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. It was deemed received by the Board March 29, 2016. The application includes proof of service by registered mail on the Respondent.

The Applicants, Thomas Peter Jarratt and Deborah Louise Jarratt, are the owners of the Lands described as:

> LEGAL SUBDIVISION 11 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
> LEGAL SUBDIVISION 12 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
> LEGAL SUBDIVISION 13 SECTION 15 TOWNSHIP 85 RANGE 21 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

The Respondent, Terra Energy Corp., is the operator of oil and gas activities located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the oil and gas activities is pursuant to a surface lease agreement entered January 19, 1998 and last amended effective January 19, 2008. (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $12,320.00 to Thomas Peter Jarratt and Deborah Louise Jarratt. Terra Energy Corp. failed to make the annual payment required by January 19, 2016.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Thomas Peter Jarratt and Deborah Louise Jarratt $12,320.00 in unpaid rent plus interest from January 19, 2016. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Thomas Peter Jarratt and Deborah Louise Jarratt the sum of $12,320.00 plus interest calculated in accordance with the *Court Order Interest Act* from January 19, 2016.

2. Terra Energy Corp. shall forthwith pay to $113.54 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: April 11, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1896
Board Order No. 1896-1

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
THE NORTH WEST ¼ OF SECTION 26 TOWNSHIP 85 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Cheryl Rae Large

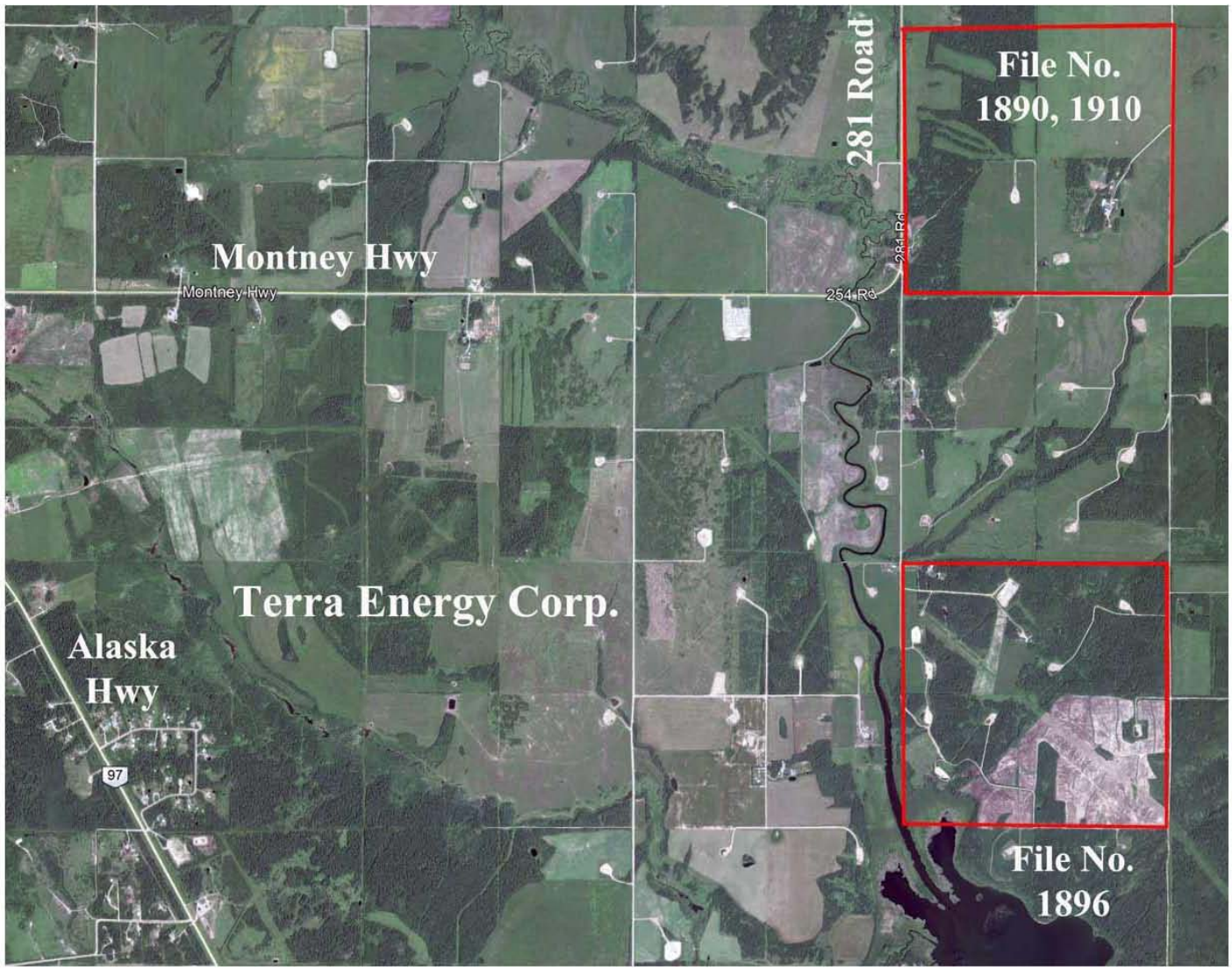
(APPLICANT)

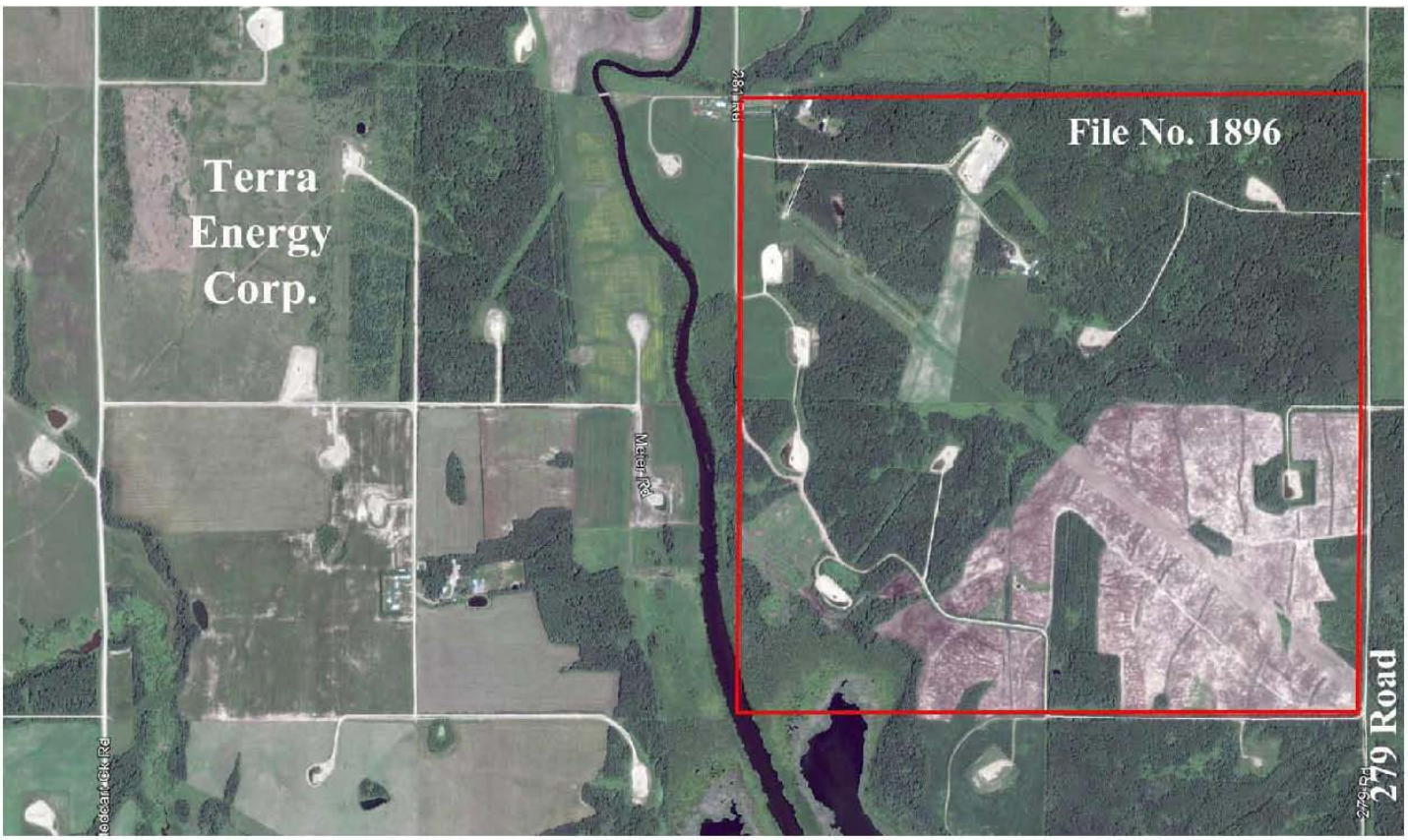
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


281 Road
File No.
1890, 1910
Montney Hwy
Montney Hwy
254 Rd
Terra Energy Corp.
Alaska
Hwy
97
File No.
1896


Terra
Energy
Corp.
File No. 1896
Meier Rd
279 Road

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. The application has provided proof of service by registered mail on the Respondent.

The Applicant, Cheryl Rae Large, is the owner of the Lands described as: THE NORTH WEST ¼ OF SECTION 26 TOWNSHIP 85 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of wells located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the wells and for access is pursuant to surface lease agreements last amended December 21, 2006 (the Surface Leases).

Pursuant to the Surface Leases, Terra Energy Corp., is required to make annual payments of $5,400.00 with respect to the well known as Terra Stoddart 14-26-85-20 W6M and $4,000.00 with respect to the well known as Terra Stoddart 12-26-85-20 W6M to Cheryl Rae Large and Owen Francis Large, who is now deceased. Terra Energy Corp. failed to make the annual payments of $5,400.00 January 10, 2016 and $4,000.00 due April 25, 2015 owing to Cheryl Rae Large.

Also pursuant to the Surface Leases, Terra Energy Corp. was required by October 7, 2015 to make an annual payment of $750.00 with respect to an access road to Terra Stoddart 5-26-85-20 W6M and an annual payment of $3,300.00 with respect to a well known as Terra Stoddart A12-26-85-20 W6M. On January 11, 2016 Terra Energy Corp. paid Cheryl Rae Large the sum of $4,050.00 owing as of October 7, 2015 but did not paid interest on the late payment.

The Board finds that Terra Energy Corp. has failed to pay rent owing under surface leases. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Cheryl Rae Large $5,400.00 in unpaid rent plus interest from January 10, 2016, and $4,000.00 in unpaid rent plus interest from April 25, 2015.

The Board finds that Terra Energy Corp. owes Cheryl Rae Large interest on $4,050.00 from October 7, 2015 to January 11, 2016.

The Applicant is entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Cheryl Rae Large the sum of $5,400.00 plus interest calculated in accordance with the *Court Order Interest Act* from January 10, 2016.

2. Terra Energy Corp. shall forthwith pay to Cheryl Rae Large and Francis Owen Large the sum of $4,000.00 plus interest calculated in accordance with the Court Order interest Act from April 25, 2015.

3. Terra Energy Corp. shall forthwith pay Cheryl Rae Large interest calculated in accordance with the Court Order Interest Act for the period between October 7, 2015 and January 11, 2016 on the sum of $4,050.00

4. Terra Energy Corp. shall forthwith pay to Cheryl Rae Large $59.00 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: April 22, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1898
Board Order No. 1898-1

April 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
THE SOUTH ½ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Rodney Allen Strasky and
Kim Lori Strasky

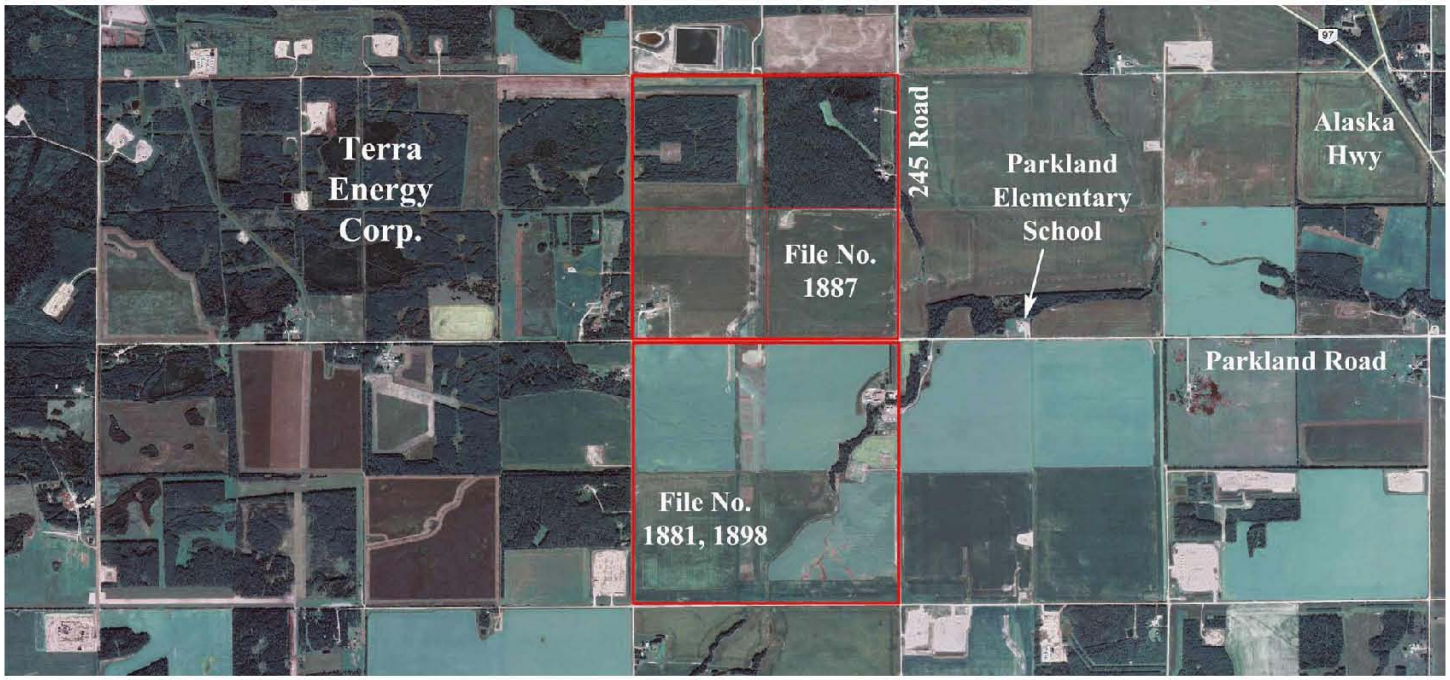
(APPLICANTS)

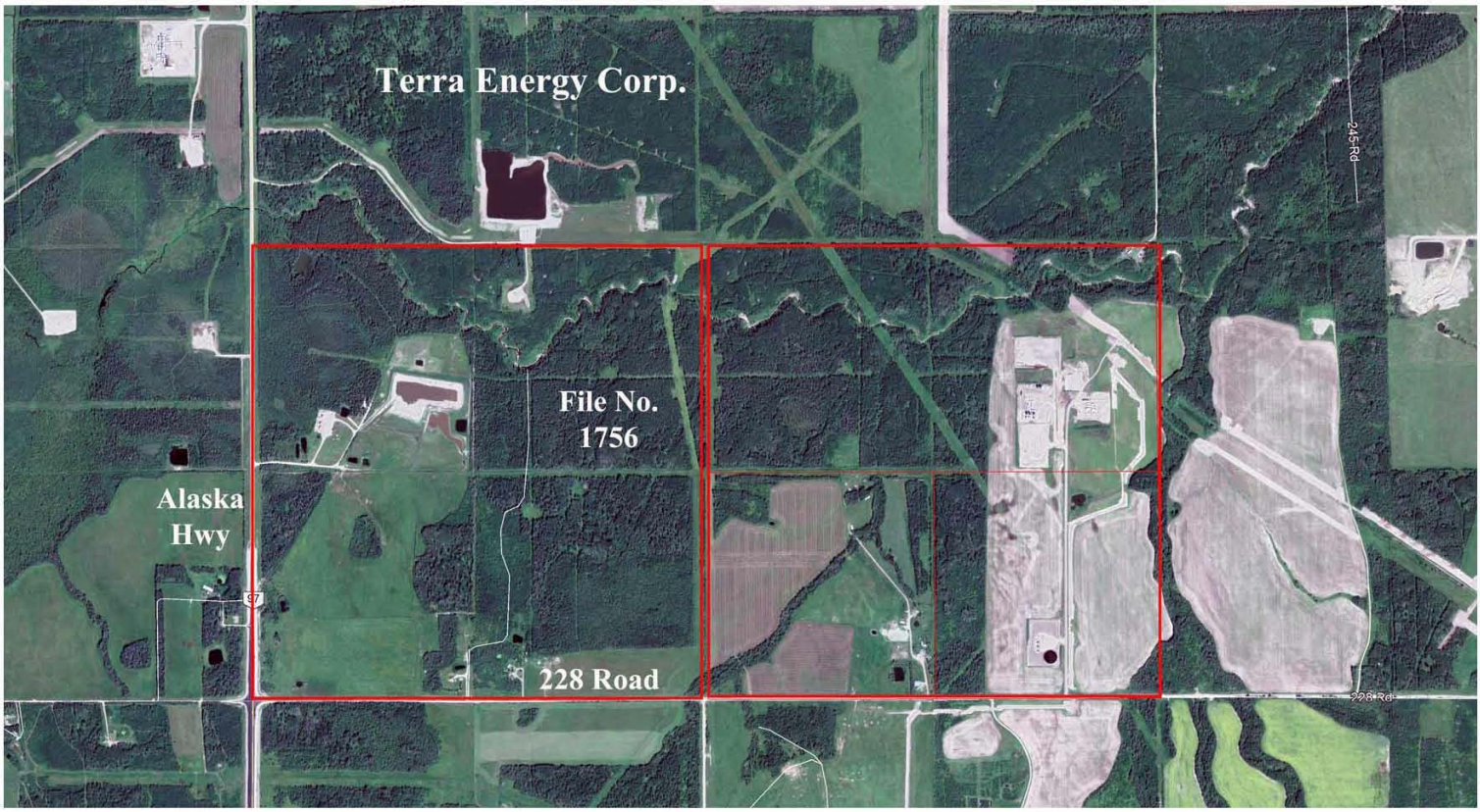
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


Terra
Energy
Corp.
File No.
1887
245 Road
Parkland
Elementary
School
Alaska
Hwy
Parkland Road
File No.
1881, 1898


Terra Energy Corp.
245 Rd
File No.
1756
Alaska
Hwy
97
228 Road
228 Rd

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. The application includes proof of service by registered mail on the Respondent.

The Applicants, Rodney Allen Strasky and Kim Lori Strasky, are the owners of the Lands described as: THE SOUTH ½ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT and THE NORTH EAST ¼ OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well is pursuant to a surface lease between Rodney Allen Strasky and Kim Lori Strasky, and Terra Energy Corp. last amended effective April 13, 2011 (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $5,029.00 to Rodney Allen Strasky and Kim Lori Strasky. Terra Energy Corp. failed to make the annual payment required by April 11, 2016.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Rodney Allen Strasky and Kim Lori Strasky $5,029.00 in unpaid rent plus interest from April 11, 2016. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Rodney Allen Strasky and Kim Lori Strasky the sum of $5,029.00 plus interest calculated in accordance with the *Court Order Interest Act* from April 11, 2016.

2. Terra Energy Corp. shall forthwith pay to Rodney Allen Strasky and Kim Lori Strasky $60.50 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: April 28, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair

File No. 1910
Board Order No. 1910-1

August 17, 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
THE SOUTH WEST ¼ OF SECTION 2 TOWNSHIP 86 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN H827
(The "Lands")

BETWEEN:

Donald Neil McLean and Irene Mary McLean
(formerly known as Irene Mary Konopad)

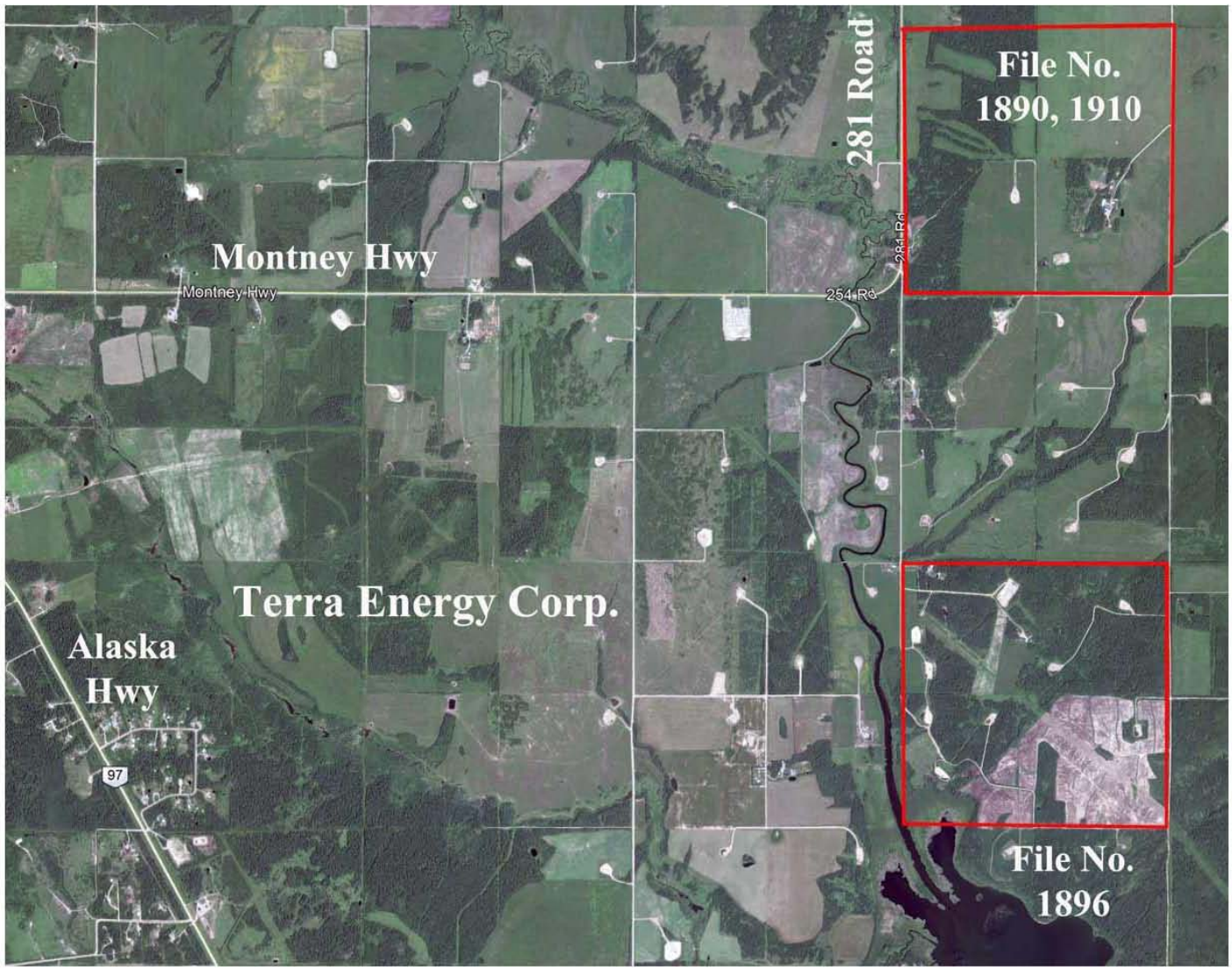
(APPLICANTS)

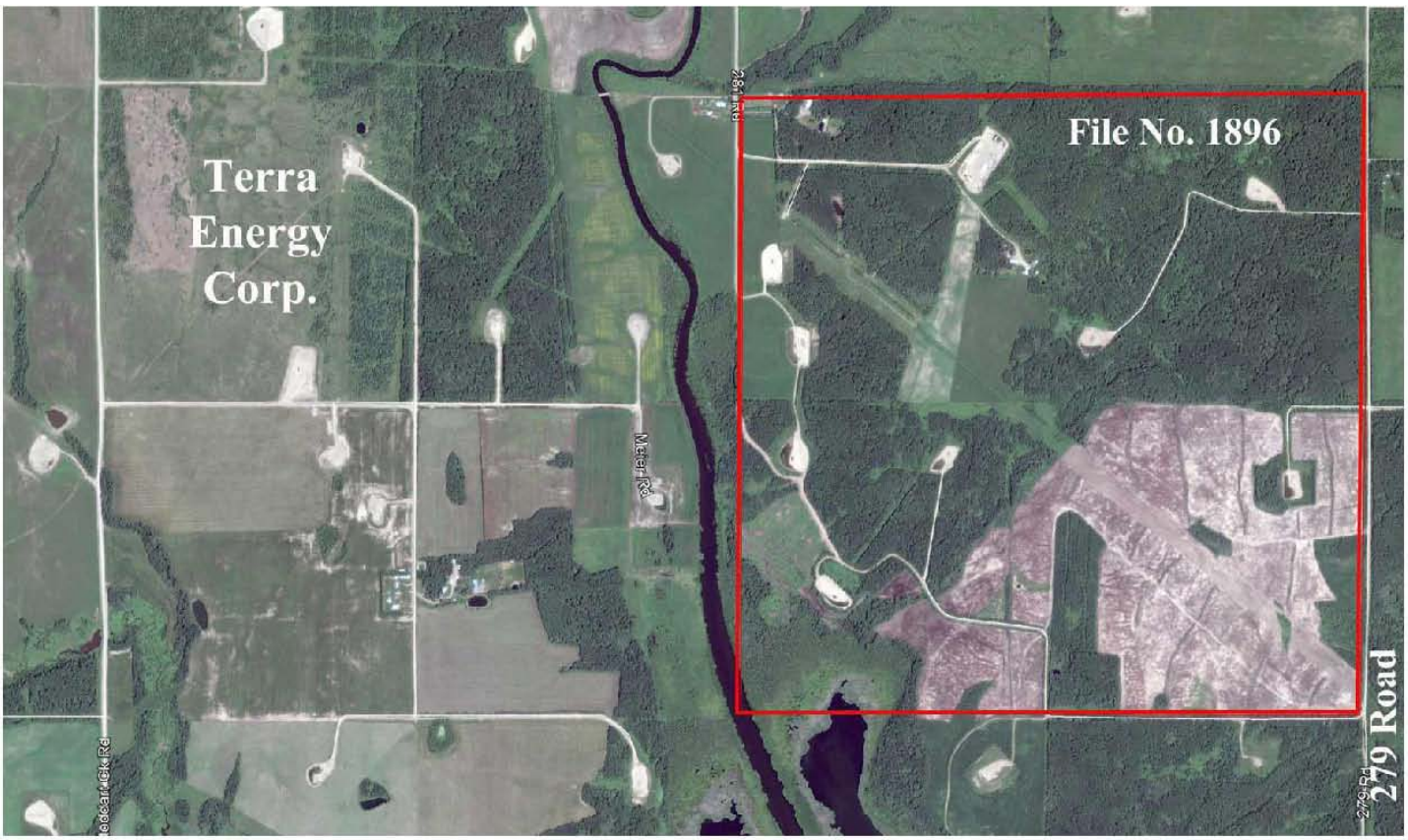
AND:

Terra Energy Corp.

(RESPONDENT)

BOARD ORDER


281 Road
File No.
1890, 1910
Montney Hwy
Montney Hwy
254 Rd
Terra Energy Corp.
Alaska
Hwy
97
File No.
1896


Terra
Energy
Corp.
File No. 1896
Meier Rd
279 Road

This is an application brought under sections 164 and 176 of the *Petroleum and Natural Gas Act*. It was received by the Board August 8, 2016. The application includes proof of service by registered mail on the Respondent.

The Applicants, Donald Neil McLean and Irene Mary McLean, are the owners of the Lands described as: THE SOUTH WEST ¼ OF SECTION 2 TOWNSHIP 86 RANGE 20 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN H827. The Respondent, Terra Energy Corp., is the operator of a well located on the Lands. The Respondent's right of entry to the Lands for the purpose of operating the well and associated access road is pursuant to a surface lease agreement entered July 17, 2007 (the Surface Lease).

Pursuant to the Surface Lease, Terra Energy Corp., is required to make annual payments of $3,385.00 to Donald Neil McLean and Irene Mary McLean. Terra Energy Corp. failed to make the annual payment required by July 17, 2016.

The Board finds that Terra Energy Corp. has failed to pay rent owing under a surface lease. Pursuant to section 176 of the *Petroleum and Natural Gas Act*, the Board determines that Terra Energy Corp. owes Donald Neil McLean and Irene Mary McLean $3,385.00 in unpaid rent plus interest from July 17, 2016. The Applicants are entitled to costs of this application.

The Board orders as follows:

1. Terra Energy Corp. shall forthwith pay to Donald Neil McLean and Irene Mary McLean the sum of $3,385.00 plus interest calculated in accordance with the *Court Order Interest Act* from July 17, 2016.

2. Terra Energy Corp. shall forthwith pay to Donald Neil McLean and Irene Mary McLean $69.27 in costs plus interest calculated in accordance with the *Court Order Interest Act* from the date of this Order.

DATED: August 17, 2016

FOR THE BOARD

_____
Cheryl Vickers, Chair