

THE SURFACE RIGHTS BOARD of MANITOBA

BOARD ORDER - Revised

Under The Surface Rights Act – C.C.S.M. c. S235.

Hearing:

Town Municipal Office
Virden, Manitoba
July 25, 2019

ORDER NO: 02-2019

File No: 05-2018

Date Issued: August 26, 2019 (Revised – September 16, 2019)

BEFORE: Donovan Toews, Acting Presiding Member
June Greggor, Board Member

Linda Rogoski, Board Administrator

BETWEEN:

Applicant Rhonda Russell and Brad Henderson
(Landowner)

– AND –

Respondent Tundra Oil and Gas Partnership
(Operator)

CONCERNING:

LSDs 13 11-08-28 WPM, 12 11-08-28 WPM, 03 21-08-28 WPM, 04 21-08-28 WPM, 05 21-08-28 WPM in the Province of Manitoba (the well sites, their related access roads and surface leases, hereinafter referred to as the “well sites”).

PURPOSE OF HEARING:

To hear and receive evidence regarding an application under Sec. 30 of *The Surface Rights Act* of Manitoba (“the Act”) received from the Applicant for variation of compensation payable for the well sites.

VARIATION OF COMPENSATION

BACKGROUND:

The Applicant applied via application dated December 17, 2018, with proof of service dated the same. The Applicant requested the Board determine the compensation that should be paid on the well sites.

Following the Board's request, on January 28, 2019 additional information was provided to the Board by the Applicant, specifying the basis for their application. On February 6, 2019 the Board forwarded this addition to the Respondent, and requested supplementary information from the Respondent so as to outline its position in the matter. On February 28, 2019 the Board received a response from the Respondent stating they have submitted three (3) offers directly to the Applicant and have not been able to resolve the issue regarding compensation.

The Parties, together with the Board, agreed to hear the matter on July 25, 2019. Both parties agreed that the issue before the Board was the determination of the amount of annual compensation payable for the well sites.

Pursuant to Subsection 25(1) of the Act, a Notice of Hearing was sent to the Parties on July 2, 2019, followed by a revision on July 3, 2019, informing them that the five (5) applications would be heard at a hearing scheduled for July 25, 2019 in Virden, Manitoba. The Notice also informed that the Board would be viewing the well sites on the same date prior to the Hearing.

On July 25, 2019 the Board visited each of the five (5) well sites, guided by Allan Gervin, Petroleum Inspector, with Mr. Henderson and all parties for the Respondent in attendance.

At the start of the Hearing, the Applicant expressed concerns about the information requested of them by the Respondent as well as about the way in which she was approached in their communications. Ms. Russell did note that some requested information was provided to the Respondent. Counsel for the Respondent did not comment.

The Applicant indicated that she felt it would be helpful to have the board rule on relevant and necessary information to be provided in support of a hearing.

Before the start of the Hearing, the Applicant provided documents, marked Exhibit #5 through 18, to which were referred to during the Hearing, and submitted Exhibits #3 and 4 as evidence to be introduced during the Hearing. Note that Exhibit 13, Lease Agreements, were marked as an exhibit in error. The Lease Agreements were not disclosed to the Respondent nor were they relied on by the board in its analysis so have been removed from the Exhibit list. Prior to the Hearing, the Respondent provided the Board with two (2) binders (Exhibit # 1 and 2) containing the evidence to be introduced during the Hearing.

ISSUES:

1. Determination of whether the annual compensation payable on each well site should be varied, and if so, by how much?
2. Is the Applicant entitled to interest on any amounts owing?
3. The amount of Costs, if any, to be awarded?

APPEARANCES:

APPLICANT: Rhonda Russell and Brad Henderson
Witness: Kevin Gabrielle – Manitoba Surface Rights Association, Vice President

RESPONDENT: Tundra Oil & Gas Partnership
Counsel: Murray Douglas
Witness: Darren Clarke – Telford Land & Valuation Inc., Land Consultant and Appraiser
Witness: Chris Masson – Tundra Oil & Gas Ltd, Manager, Surface Land and Environment
Witness: Doug Simpson – Tundra Oil & Gas Ltd, Production Manager

EXHIBITS:

- Exhibit #1 Submitted by Douglas – Binder containing tabs 1 - 30
- Exhibit #2 Submitted by Douglas – Coiled Binder containing a review of pattern of dealings and comparable lease agreements
- Exhibit #3 Submitted by Russell – Table that includes each well site, the corresponding payment, size, last year of amendment, CPI factor, and the CPI adjustment.
- Exhibit #4 Submitted by Russell – Table excerpted from Board Order 7/2014 titled “Compensation Guidelines for Multi-Well Surface Leases & Board Orders”, with annotations showing the values adjusted for inflation.
- Exhibit #5 Submitted by Russell - Board Order 1/2014 – Carlyle Jorgensen v. Tundra Oil and Gas Partnership
- Exhibit #6 Submitted by Russell - Board Order 7/2014 – Kris & Gwen Jorgensen v. Tundra Oils and Gas Partnership
- Exhibit #7 Submitted by Russell - Board Order 10/2015 – Carlyle Jorgensen v. Tundra Oil and Gas Partnership
- Exhibit #8 Submitted by Russell - Board Order 11/2015 – Evelyn Jorgensen v. Tundra Oil and Gas Partnership
- Exhibit #9 Submitted by Russell - Board Order 4/2011 – Harmsworth Farms Ltd v. Enerplus Resources Corporation
- Exhibit #10 Submitted by Russell - Board Order 6/2011 – Andrew Management Ltd. v. Enerplus Resources Corporation
- Exhibit #11 Submitted by Russell – 2008, 2017, 2018 Property Tax Bills
- Exhibit #12 Submitted by Russell - News articles related to increasing farmland and property values
- Exhibit # 14 Submitted by Russell – News articles and releases related to inflation and 2019 CPI Inflation Charts from www.inflationcalculator.ca
- Exhibit #15 Submitted by Russell – Surface Rights Board Quarterly Activity Reports
- Exhibit #16 Submitted by Russell – Board Order 2/2011 – T. Bird Oil Ltd. v. Carlyle Jorgensen
- Exhibit #17 Submitted by Russell – Board Order 5/2011 – Wallace Gabrielle v. Enerplus Resources Corporation
- Exhibit #18 Submitted by Russell – Email communication between Russell and Douglas

DECISION:

Upon hearing the evidence and the submissions of the Parties; decision being reserved until today's date August 23, 2019:

It is the Order of this Board that:

1. The amount of compensation for each well site be awarded as follows:
 - Well Site 1 (LSD 05 21-08-28WPM): \$3,800
 - Well Site 2 (LSD 04 21-08-28WPM): \$3,600
 - Well Site 3 (LSD 03 21-08-28WPM): \$3,600
 - Well Site 4 (LSD 13 11-08-28WPM): \$3,800
 - Well Site 5 (LSD 12 11-08-28WPM): \$3,600
2. **Interest:** No interest shall be paid.
3. **Costs:** No costs shall be paid.

REASONS FOR DECISION

The following provides relevant information pertaining to the well sites which the Board considered when determining compensation payable:

LSD 13 11-08-28WPM site:

- a) This well site is used to accommodate a single horizontal well.
- b) The well site has dimensions of 120 metres per side giving it an area of 1.44 hectares (3.56 ac).
- c) The well site does not include an access road.
- d) The land is crop land.

LSD 12 11-08-28WPM site:

- a) This well site is used to accommodate a single horizontal well.
- b) The well site has dimensions of 120 metres per side giving it an area of 1.44 hectares (3.56 ac).
- c) The well site has an access road of 0.57 hectares (1.42 ac).
- d) The total leased area is 2.014 hectares (4.98 ac).
- e) The land is pasture land.

LSD 03 21-08-28WPM site:

- a) The well site is used to accommodate a single horizontal well.
- b) The well site has dimensions of 110 metres per side giving it an area of 1.21 hectares (2.99 ac).
- c) The well site has an access road of 0.147 hectares (0.36 ac).
- d) The total leased area is 1.357 hectares (3.35 ac).
- e) The land is crop land.

LSD 04 21-08-28WPM site:

- a) The well site is used to accommodate a single horizontal well.
- b) The well site has dimensions of 120 x 100 x 120.62 x 110 metres per side giving it an area of 1.26 hectares (3.12 ac).
- c) The well site does not include an access road.
- d) The land is crop land.

LSD 05 21-08-28WPM site:

- a) The well site is used to accommodate a single horizontal well.
- b) The surface lease was amended in 2015 that affected the lease road only.
- c) The well site has dimensions of 120 metres per side giving it an area of 1.44 hectares (3.56 ac).
- d) The well site has an access road of 0.14 hectares (0.34 ac).
- e) The total leased area is 1.58 hectares (3.90 ac).
- f) The land is crop land.

Position of the Applicant

The applicant presented the following arguments in support of their position that the annual compensation on these five (5) well sites be increased.

1. The Board in previous Orders has defined the typical well site and has subsequently applied this description to subsequent Orders, including Board Order Nos. 04-2011 and 6-2011, in order to assign compensation guidelines. In the 1990 Gabrielle v Chevron decision, a typical well site was defined as “a well site that does not present any special conditions that would make it unduly costly for a farmer to farm the land on which the well site is located”.

In support of application of this definition to the Applicant’s sites, the applicant quoted the following from Board Order No. 01-2014. “The Board is mindful that both land owners and operators expect consistency in rulings of the Board, so as to better know what the Board may decide when taking an issue to the Board. The Board is of the opinion that there should be an upper and lower range of compensation within which the majority of well sites and their associated access roads would fall. [The determination of those limits would include such governing factors as: location and size of well site; location, size and construction of access road; land value and use; all considered in conjunction with the matters listed under Subsection 26(1) of the Act.]”

Board Order No. 07-2014 was referenced as it established benchmark compensation guidelines entitled “Compensation Guidelines for Multi-well Surface Leases & Board Orders”. The Applicant posits that according to the guideline, the range between \$3,200 and \$3,600 was considered fair and

reasonable for typical well sites in 2014. The range differentiates between crop land and pasture, to which the Applicant maintains there should not be a distinction as it relates to compensation given the varying values of pasture land.

It is the position of the Applicant that unless a well site has special characteristics that fall outside the definition of a typical well site, it should be compensated as such. The Applicant maintains that the majority of their well sites fit within the description, except for the LSD 12 11-08-28WPM site which presents special characteristics given its size and use as pasture land.

2. Compensation payments should be adjusted for inflation so as to reflect other general cost components in society. In support, the Applicant presented evidence to show the rising property tax, crop, and farmland values. The Applicant also presented evidence to show the utilization of inflation adjustment by the provincial government. The Applicant referenced Board Order No. 10-2015, which stated that utilizing the Bank of Canada – Inflation Calculator based on monthly Consumer Price Index (CPI) data, “might be a reasonable and reliable method of calculating compensation changes”. Furthermore, the Applicant noted that in that decision, the Board had found that in general, annual compensation amounts did in general conform to inflation adjusted amounts.

Using the Bank of Canada – Inflation Calculator, the Applicant calculated the adjusted amounts for the current payments of each well sites for increases of 7.15% and 8.26% depending on the well site (Exhibit #3). The base compensation ranges from Board Order No. 07-2014 were also adjusted from \$3,200 and \$3,600 to \$3,464 and \$3,897 respectively at 8.26% (Exhibit #4).

3. The well sites subject to this Hearing fall within the definition of “majority of well sites” and thus qualify for compensation as laid out in the guideline from Board Order No. 7-2014 plus the cost of inflation as adjusted using the Bank of Canada – Inflation Calculator. The Applicant argued the inapplicability of an empirical analysis to a typical well site. Undertaking such an analysis is time consuming and costly, and thus not a realistic option for the average landowner. According to the Applicant, if a well site falls within the definition of a “typical well site”, then such an analysis is not necessary.

The Applicant argued that use of comparable lease agreements in the determination of compensation is not appropriate given that Tundra is a lessee for the great majority of surface lease agreements in the area. The Applicant’s witness spoke on behalf of the Manitoba Surface Rights Association (MSRA) to this end. As echoed in Board Order 10-2015, Mr. Gabrielle reiterated the landowners’ lack of liberty in regard to the acceptance of offers presented by Operators. The resounding sentiment expressed on behalf of the MSRA is the feeling of pressure to accept an offer, being told that is the going rate being paid, and if it was not acceptable, to apply to the Board for a determination. He expressed the disparity and inequality between a landowner and operator: the considerable time and expense required to prepare for and attend a Hearing, coupled with the adversarial nature of a Hearing dissuades many from pursuing this avenue as a viable option. Ultimately many landowners agree to offers out of reluctance rather than satisfaction.

Position of the Respondent

1. In line with Board Order No. 10-2015 and the Lemay Bros. case, the Respondent's position is that the global approach should be utilized unless there is a cogent reason to move away from the pattern of dealings, or "global", approach. The Respondent posited that there is a cogent reason in this case: the detailed empirical analysis undertaken by the Respondent indicates that less compensation is warranted than what the pattern suggests. Therefore the empirical evidence should be given greater weight in the determination of compensation.
2. The following is a summary of the empirical analysis for each site (Exhibit #1 Tab 29):
Note that 26(1)(a) the value of land having regard to its present use before allowance of surface rights was not factored into the calculations as it was noted to not be applicable to annual compensation. Similarly, S. 26(1)(h)(ii) and S. 26(1)(c) were not factored due to non-applicability and no long-term damage is expected.

Similar to the 2009 Alberta Court of Appal Lemay Bros case, the Respondent broke down the compensation amount into three (3) components: loss of use, tangible adverse effect and intangible adverse effect. Tangible adverse effect considered clauses 26(1)(d), (e), and (f) in conjunction due to their closely related nature. This component includes the extra time, turns, inputs and potential crop yield reductions that are associated with having to farm around an obstruction. The calculations were applied to all sites except for the pasture land, LSD 12 11-8-28WPM. The Respondent obtained rates from Manitoba Agriculture Cost Guide 2018-2019 and applied them to four (4) operations: seeding, spraying (pre-seed, post-emergent, pre-harvest), swathing, combining, and harrow. Intangible adverse effect accounts for such items as: noise; access and traffic concerns; visual effects; loss of quiet enjoyment; time dealing with surveyors, contractors and the company on an ongoing basis; and GPS or radio interference.

S. 26(1)(b) loss of use was calculated based on average yields of typical crops using average market prices for 2016 to 2018, and applied to all well sites except for LSD 12 11-8-28WPM. For spring wheat, the average bu/ac was 47.63, \$6.56 for \$/bu, with gross price of \$312.98; canola was 35.8 bu/ac, at \$10.90 \$/bu, and gross price of \$390.59; soybean was 31.83 bu/ac, at \$10.68 \$/bu, and gross price of \$341.15. This amounts to an average of \$350.00 per acre for a three (3) year crop rotation.

LSD 5 21-8-28WPM

- a) Loss of Use: 3.90 acres @ \$350/ac = \$1,365.00
- b) Tangible Adverse Effect: additional distance headlands \$321.84, additional distance realignment \$51.94, additional turns \$204.51, crop loss due to unseeded areas \$266.96, crop loss due to additional inputs and compaction \$28.52, overlap of seed and fertilizer and all operations \$190.84. Total costs \$1,064.61.
- c) Intangible Adverse Effect: the Respondent calculated the cost of nuisance, inconvenience, disturbance and noise to eight (8) hours at \$50.00/hr or \$400.00/year.
- d) Total annual compensation = \$2,830.00
- e) Comparable lease agreements: Loss of Use at \$375/ac, Adverse Effect at \$2,100 for a total of \$3,563.00.

LSD 4 21-8-28 WPM

- a) Loss of Use: 3.12 acres @ \$350/ac = \$1,092.00
- b) Tangible Adverse Effect: additional distance headlands \$279.49, additional distance realignment \$49.98, additional turns \$198.26, crop loss due to unseeded areas \$266.96, crop loss due to additional inputs and compaction \$27.67, overlap of seed and fertilizer and all operations \$185.63. Total costs \$1,007.99.
- c) Intangible Adverse Effect: (8) hours at \$50.00/hr or \$400.00/year.
- d) Total annual compensation = \$2,500.00
- e) Comparable lease agreements: Loss of Use at \$375/ac, Adverse Effect at \$2,100 for a total of \$3,270.00.

LSD 3 21-8-28 WPM

- a) Loss of Use: 3.35 acres @ \$350/ac = \$1,173.00
- b) Tangible Adverse Effect: additional distance headlands \$397.95, additional distance realignment \$70.66, additional turns \$264.22, crop loss due to unseeded areas \$266.96, crop loss due to additional inputs and compaction \$36.70, overlap of seed and fertilizer and all operations \$240.69. Total costs \$1,277.19.
- c) Intangible Adverse Effect: (8) hours at \$50.00/hr or \$400.00/year.
- d) Total annual compensation = \$2,851.00
- e) Comparable lease agreements: Loss of Use at \$375/ac, Adverse Effect at \$1,900 for a total of \$3,157.00.

LSD 13 11-8-28 WPM

- a) Loss of Use: 3.56 acres @ \$350/ac = \$1,246.00
- b) Tangible Adverse Effect: additional distance headlands \$195.77, additional distance realignment \$30.88, additional turns \$137.33, crop loss due to unseeded areas \$266.96, crop loss due to additional inputs and compaction \$19.32, overlap of seed and fertilizer and all operations \$134.76. Total costs \$785.02.
- c) Intangible Adverse Effect: two (2) full days a year, 16 hours at \$50.00/hr or \$800.00/year.
- d) Total annual compensation = \$2,832.00
- e) Comparable lease agreements: Loss of Use at \$375/ac, Adverse Effect at \$2,100 for a total of \$3,435.00.

LSD 12 11-8-28 WPM

- a) Loss of Use: calculated grazing capacity and loss of use based on the value of the grass lost. Based on publication "1670 Feeding Beef Cows and Heifers" published by Agriculture Canada, the average carrying capacity of good condition bush pasture row would be 2.5 acres/AUM, equating to a stocking rate of 0.40AUM/acre. According to a Manitoba Agriculture publication, "Animal Unit Months, Stocking Rate and Carrying Capacity", 1 animal unit requires 780lbs of dry matter forage per month. 0.4 AUM/acre x 780lb = 312lbs/acre. According to Manitoba Agriculture publication "Guidelines for Estimating Beef Cow-Calf Production Costs 2019" the cost of grass hay is \$0.06/lb. The hay loss equates to 312lb/acre x \$0.06/lb = \$18.72/acre. Rounded to \$19/ac @ 4.98 acres = loss of use of \$95.00.

- b) Tangible Adverse Effect: relates directly to extra supervision of the cattle operation, which is estimated to 10 hours per year (grazing season May to September). At a rate of \$50.00 per hour, this amounts to \$500/year.
- c) Intangible Adverse Effect: two full days or 16 hours at \$50.00/hr or \$800.00/year.
- d) Total annual compensation = \$1,395.00
- e) Comparable lease agreements: Loss of Use at \$275/ac, Adverse Effect at \$1,900 for a total of \$3,270.00.

Analysis and Findings of the Board

Determination of whether the annual compensation payable on each well site should be varied, and if so, by how much?

Upon consideration of the evidence provided the Board offers the following:

1. The Board agrees with the Applicant's position and at least one previous Board decision that there is a need to establish guidelines for compensation. While the *Oil and Gas Act* and *Mines and Minerals Act* provide certainty that valuable provincial resources can be accessed to the benefit of the provincial economy, the inability for a landowner to 'say no' to a surface lease as realized through the *Surface Rights Act* may place a landowner at a disadvantage in a compensation negotiation process. The relative market dominance of one operator in the region further suggests that market rates for leases may be difficult to determine and therefore difficult to negotiate. Although landowners have the ability to appeal to the Surface Rights Board at any time, it appears that often their ability to commit the time and resources required to defend a position may be limited, particularly when the differences in opinion regarding compensation amounts are often relatively small.
2. With Order 07-2014, the Board established and referenced Compensation Guidelines in the form of a chart (below) that outlines annual compensation guidelines with reference to site size, number of wells and type of land cover. The Board recognizes that the chart in its current form and content may not be adequate in accounting for a number of variables that may or may not be unique to each application or negotiating setting. Greater clarity regarding site size, land cover, and access roads, for example, would be helpful. This decision of the Board therefore relies in part on the existing Compensation Guideline chart while making reasonable

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

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

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

adjustments to arrive at compensation amounts, modified Guidelines having not yet been established.

3. The current Compensation Guidelines have not been formally adjusted since 2014. The Board agrees with the Applicant's position that increases or decreases in compensation can and should be linked to an acceptable index, in this case, the Consumer Price Index (CPI).
4. The Board agrees with the Applicant's position that land values have risen in the region and that land values may be considered as a variable in determining compensation based on Subsection 26(1) of the *Surface Rights Act*.
5. The Board respects the due diligence provided by the Respondent in providing two reports – one using the empirical method to calculate suggested compensation and one using the global method (or 'pattern of dealings') for same.

The Board is of the opinion however, that, in this case, the empirical method is problematic in a number of respects. The method is complex and presumably costly, as it requires expertise to prepare. This places landowners at a disadvantage if required to submit similar evidence in order to establish a negotiating position, or to defend a position through the hearing process. There are also many variables to be taken into account and a series of assumptions to be made in preparing the analysis, each of which may create grounds for uncertainty and debate, rather than the intended clarity. Lastly, the empirical analysis submitted resulted in suggested compensation amounts that would be substantially lower than most, if not all, rates currently being paid for similar surface rights throughout Manitoba. Consideration of these results did not suggest to the Board that in this case rates being paid or offered were too low, rather that the analysis, while possibly accurate, is somehow flawed in its application.

The Board is also of the opinion that global, or 'pattern of dealings', method is also problematic in situations where one Operator is dominant in a region (as in this case), since 'the going rate' may not be tested by a sufficient number of Operators competing for landowner access, and thereby confirming competitive rates.

Based on these considerations neither method was relied upon by the Board for reaching a decision.

6. The Respondent suggested during his closing arguments that a blending the results of the two compensation evaluation methods may be an approach the Board should consider. The Board is of the opinion that this approach would represent a too 'blunt' an approach, and may serve to further complicate difficulties cited with the alternative methods rather than clarify them.
7. In determining the compensation for the five (5) well sites, the Board considered the characteristics of each site, in conjunction with the above-mentioned Guideline Chart, as well as the matters listed under Subsection 26(1) of the Act.

The Board has awarded compensation with reference to Board Order 07-2014 Compensation Guideline chart, and adjusted for inflation utilizing the Bank of Canada – Inflation Calculator based on monthly Consumer Price Index (CPI) data as submitted by the Applicant. Chart 1 below provides a summary of the various amounts of compensation, both discussed and studied for this case, that were determined to be fair and reasonable.

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

The Board is of the opinion that both parties have operated in good faith in attempting to come to agreement on terms and therefore no monies should be considered to have been outstanding. Correspondingly no interest shall be paid.

3. The amount of Costs, if any, to be awarded?

It is evident to the Board based on an interpretation of the Act in whole, that the 90% rule is meant, at least in part, to help ensure that offers are reasonable, and therefore essentially attaches a ‘cost penalty’ levied against offers that are seen as ‘unreasonable’, which as outlined in Section 26(4) of the Act, are seen to be offers below 90% of the Board’s decided compensation amount.

In this case, the Board elected to treat the five (5) well sites as a single application. It was evident to the Board that the Applicant prepared for the hearing and provided evidence at the hearing that dealt with matters collectively rather than individually, and that the Applicant likely did not incur additional costs as a result of this approach.

On this basis the Board considered the total of the offers for each of five (5) wells to constitute ‘the offer’, and correspondingly considered the total of each of five (5) compensation amounts to be ‘the compensation amount’ for the purpose of consideration of costs. Applying the 90% rule as provided for in Section 26(4) of the Act, the Board determined that the application would not qualify for costs as outlined in Chart 1, and that the offers made were reasonable. It is worthwhile noting that if treated individually, four (4) of the five (5) well sites were well above the 90% rule, and one (1) well site was within 0.5% of the 90% rule. The Board also determined that it would not award costs under the discretionary power afforded the Board under Subsection 26(3).

Chart 1 – Summary of Compensation Amount Options

Well Site #	Well Site 1	Well Site 2	Well Site 3	Well Site 4	Well Site 5	
File#	S4161	S4160	S2824	S3225	S3416	
Location	05-21-08-28	04-21-08-28	03-21-08-28	13-11-08-28	12-11-08-28	
Size (acres)	3.9	3.12	3.35	3.56	4.98	
Type	Crop	Crop	Crop	Crop	Pasture	
Lease Date	2010	2010	2005	2008	2009	
2005 Lease	-	-	2300	-	-	
2006 Adjustment	-	-	-	-	-	
2007 Adjustment	-	-	-	-	-	
2008 Lease/Adjustment	-	-	2500	2500	-	
2009 Lease	-	-	-	-	2500	
2010 Lease	3400	2900	-	-	-	
2011 Adjustment	-	-	2800	2800	-	
2012 Adjustment	-	-	3000	3000	3000	
2013 Adjustment	-	-	-	-	-	
2014 Adjustment	-	-	3400	3200	-	
2015 Adjustment	-	-	-	-	3200	
2016 Adjustment	3600	3400	-	-	-	
2017 Adjustment	-	-	-	-	-	
2018 Russell 'Ask'	-	-	3600	3600	3600	
2018 Tundra 'Offer'	-	-	3400	3400	3300	
2019 Russell 'Ask'	3800	3800	3800	3800	3800	
2019 Tundra 'Offer'	3600	3400	3400	3400	3300	
2014 MSRB Compensation Guideline	3600	3600	3600	3600	3200	
CPI Adjusted Rates to Compensation Guideline (submitted by Applicant)	3897	3897	3897	3897	3464	
Empirical Method Study (submitted by Respondent)	2830	2500	2851	2832	1395	
Global Method Study (submitted by Respondent)	3563	3270	3351	3435	3270	
Average of Global and Empirical (suggested by Respondent)	3197	2885	3101	3134	2333	TOTAL
DECISION	3800	3600	3600	3800	3600	18,400
Envelope Offer (for consideration of costs)	3600 (94.7% of offer)	3400 (94.4% of offer)	3400 (94.4% of offer)	3400 (89.5% of offer)	3600 (94.7% of offer)	17,400 (94.6% of offer)
Notes:	The amount is the amount requested by the Applicant, which is marginally lower than the CPI adjusted amount.	The amount is lower than the amount requested, and is lower than the CPI adjusted amount. The well site is however, smaller than the Average Well Site of 3.56acres noted in the Compensation Guidelines Table.	The amount is lower than the amount requested, and is lower than the CPI adjusted amount. The well site is however, smaller than the Average Well Site of 3.56acres noted in the Compensation Guidelines Table.	The amount is the amount requested by the Applicant, which is marginally lower than the CPI adjusted amount.	The amount reflects the CPI adjusted Guideline amount plus a nominal increase recognizing the larger acreage of the site.	The application was filed as a single application; sites were generally not analyzed or individually represented, therefore the offers are being considered collectively. No costs awarded.

Decision delivered this 26th day of August, 2019.
(Revised – September 16, 2019)



Donovan Toews,
Acting Presiding Member