

**THE SURFACE RIGHTS BOARD OF MANITOBA**  
**BOARD ORDER**  
**Under *The Surface Rights Act*, C.C.S.M. c. S235**

**Hearing:**

Town Municipal Office  
Virden, Manitoba  
December 10, 2013

**Order No: 01-2014**

File No: 04-2013

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**Date issued:** January 7, 2014

**BEFORE:** Clare Moster, Acting Presiding Member  
Claude Tolton, Board Member  
Russell Newton, Board Member

Barbara Miskimmin, Board Administrator

**BETWEEN:**

**Applicant**  
(Landowner)

**Carlyle Glenn Jorgensen**

**- AND -**

**Respondent**  
(Operator)

**Tundra Oil and Gas Partnership**

**Occupant**

**(none)**

**CONCERNING:**

**Lsds 10, 11, 12, 14, 15 and 16 in Section 19-8-29 WPM in the Province of Manitoba** (the "well sites", including their associated access roads).

**PURPOSE OF HEARING:**

To hear and receive evidence regarding six (6) applications under Sec. 21 of *The Surface Rights Act* of Manitoba ("the Act") received from the Applicant for variation of compensation for the well sites.

**VARIATION OF COMPENSATION**

**BACKGROUND:**

The Applicant applied on August 29, 2013 via six (6) applications requesting the Board determine the compensation that should be paid on the well sites, including the access roads. The Applicant re-filed some applications on November 8, 2013 to correct some deficiencies in the original applications and to make some minor amendments.

The original application on the Lsd 10 well site also requested the Board address the issue of off lease traffic related to the access road. This application was subsequently amended to remove the off lease traffic issue.

The Applicant had requested in his applications that a hearing be set for each well site approximately two (2) weeks apart, starting in early December 2013. The Board decided to hear all the applications at one hearing, and set a hearing date of December 10, 2013. The Applicant indicated this would not provide him with enough time to adequately prepare his case. As various members of the Board were not going to be available in the January to March period of 2014, the Board gave the Applicant the option to either proceed on the scheduled date, or alternatively, opt to have the hearing date set for some time in April 2014. The Applicant did not opt for the later date.

On December 8, 2013 the Applicant requested that the Board and the Respondent view the well sites immediately before the hearing on December 10, 2013. As the Act requires that a minimum of three (3) days notice be given prior to a viewing, the Board notified the Respondent and asked if it was prepared to consent to the proposed viewing. The Respondent provided its consent and a viewing of the well sites was conducted immediately prior to the hearing on December 10, 2013.

At the start of the Hearing, the parties both agreed that the only issue before the Board was the issue of compensation. Neither party raised any procedural or jurisdictional issues and, in particular, the parties agreed that the date of the filing of the applications was the initial filing date of August 29, 2013.

The surface lease between the parties for each well site was dated July 11, 2006. The initial annual rental was \$2,300. The annual rent for each lease was reviewed in 2009, after the initial 3 year period, and increased to \$2,500. On June 4, 2012, after the second 3 year period, the Applicant requested the Respondent to review the lease rentals. On July 11, 2012 the Respondent offered to increase the rent to \$3,000 per lease. The Applicant did not accept this offer and annual rent continued at \$2,500. There was little evidence provided by either party to indicate any negotiation took place regarding the rental review. The Respondent, on May 27, 2013, did make an offer to increase the annual rent to \$3,000 retroactive to July 11, 2012. A deadline date of July 31, 2013 was set for the Applicant to accept the offer. The Applicant did not accept the new offer and proceeded to make the subject applications to the Board.

The understanding of the Board is that at the time of the applications (August 2013) there were non-abandoned wells on each of the sites, with each accessed by a non built-up access road. At the viewing of the well sites on December 10, 2013, the Board noted that the North half section, on which the wells were located, was an open cropped field. Also noted was that wells on four (4) of the well sites (Lsds 11, 12, 14 and 15) had been abandoned and restoration of the well sites and access roads appeared to be near completion. The Board did note where the well sites and their access roads had been located.

On December 10, 2013 the Board heard the six (6) applications.

## **ISSUES:**

- 1. Determination of whether the current annual rent amount on each of the well sites should be varied, and if so, by how much?**
- 2. Is the Applicant entitled to interest on any amounts owing?**
- 3. Are costs to be awarded?**

## **APPEARANCES:**

**APPLICANT:** Carlyle Glenn Jorgensen - land owner (sworn)

**RESPONDENT:** Tundra Oil and Gas Ltd.

Counsel: David E. Swayze, Meighen Haddad LLP

Witness: Glen Ross – Surface Land Manager, Tundra (sworn)

## **EXHIBITS:**

Exhibit #1 – air photo of affected lands (presented by Mr. Jorgensen at the field inspection)

Exhibit #2 – final offer (provided by Mr. Swayze)

Exhibit #3 – binder containing 15 tabs together with supplementary information referred to as “cheat sheet”, mock 1985 surface lease, and mock 2006 surface lease (presented by Mr. Jorgensen)

Exhibit #4 – binder containing 7 tabs (presented by Mr. Swayze)

Exhibit #5 – B/O dated March 19, 1990 – Gabrielle v. Chevron Canada Resources Ltd. (presented by Mr. Swayze)

Exhibit #6 – B/O dated April 9, 1991 – Andrew v. Chevron Canada Resources Ltd. (presented by Mr. Swayze)

Exhibit #7 – B/O 2/2011 dated October 25, 2011 – T. Bird Oil Ltd. v. Jorgensen (presented by Mr. Swayze)

Exhibit #8 – B/O 4/2011 dated January 25, 2012 – Harmsworth Farms Ltd. v. Enerplus (presented by Mr. Swayze)

Exhibit #9 – B/O 5/2011 dated January 25, 2012 – Gabrielle v. Enerplus (presented by Mr. Swayze)

Exhibit #10 – B/O 6/2011 dated January 25, 2012 – Andrew Management Ltd. v. Enerplus (presented by Mr. Swayze)

## **DECISION:**

Upon hearing the evidence and the submissions of the parties; decision being reserved until today's date:

**It is the Order of This Board That:**

- 1. The amount of compensation for each well site be awarded as follows effective August 29, 2013:**

**Lsd 10: \$3,400**

**Lsd 11: \$3,200**

**Lsd 12: \$3,400**

**Lsd 14: \$3,000**

**Lsd 15: \$3,400**

**Lsd 16: \$3,000**

2. **The Respondent shall pay to the Applicant interest at a rate of 1.5% per annum on any unpaid portion of the amount of the above ordered compensation, from August 29, 2013 to the date of payment.**
3. **The Respondent shall pay to the Applicant the Applicant's costs related to the hearing associated with Lsds 10, 12 and 15.**

**Should the parties not be able to agree on the amount of costs to be paid, either party may request the Board to make a ruling as to the amount. Should this occur, both parties would be provided the opportunity to submit their proposed amount, and the Board will use its discretion to determine an amount as authorized under Subsection 26(3) of the Act.**

## **REASONS FOR DECISION**

1. **Determination of whether the current annual rent amount on each of the well sites should be varied, and if so, by how much?**

The Applicant, in the presentation of his evidence, provided information on land values and on the escalation of land prices in the general area of the well sites. Much of his evidence also related to the increases in costs associated with the many components in a farming operation. Although informative, cost information by itself is not one of the matters under subsection 26 of the Act that is to be used to determine compensation. Notwithstanding, the Board is cognizant of the relationship between escalating farm inputs and the increased cost to farming. The subject six (6) well sites were located by the Respondent in the approximate centre of each of the six (6) legal subdivisions, all located on an open half section of cropped land. These locations are a requirement of the Province's petroleum regulations when drilling "vertical" wells. The Board is aware that the North half of the section on which the subject sites are located is an open field, and mindful of the increased costs to the Applicant in having to work around these well sites and their connecting access roads.

Evidence presented by the Respondent included copies of correspondence showing rent review changes offered to the Applicant. The main evidence presented by the Respondent in support of the offers made to the Applicant, were copies of a number of rental review offers made to and accepted by other land owners. This evidence suggested that the majority of rent reviews done by the Respondent in 2013 for annual rentals for well sites on crop land were for \$3,000. The evidence did not indicate whether or not any of these well sites were for horizontal wells where the site may have been abutting or close to a road allowance or boundary of a quarter section and as such, require no access road. Such sites may demand a lesser rental as the inconvenience to farming operations may be reduced, compared to well sites in the centre of Lsds having access roads, whether built-up or not, intersecting a cultivated field. Nor was there evidence as to the total land area covered by each lease in the sample of rent reviews filed as evidence. The Table provided by the Respondent under Tab 6 of Exhibit 4 showed an area of 3.56 acres for a one (1) well lease. It did not indicate the size of any access road, nor show whether the size, location and /or construction (built-up, trail) of an access road was considered when determining compensation. The sample provided for the well site of a

single horizontal well showed an area of 3.56 acres with no access road, as the site abutted a road allowance.

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.

The six (6) lease areas under review each have a well site area of 3.56 acres with varying access road areas (due to various lengths) ranging from 0.70 acres to 2.14 acres, with an average total lease size of 4.79 acres.

Using the above criteria, together with an assessment of comparable leases and its own knowledge and experience of farmland values and agricultural practices, the Board has determined a range of compensation between \$3,000 and \$3,400 for these particular leases, with the length of access road being the differentiating factor.

In accordance with the requirement of Subsection 33(1), August 29, 2013 being the date of the applications will also be the effective date of the variation of compensation.

As noted in the Background section, the Board did view the well sites and are aware that the wells on Lsds 11, 12, 14, and 15 have been abandoned and restoration of the well sites and access roads is near completion. The Board is also aware that the Respondent hopes to have these sites available for the farmer to use in the coming crop year. Notwithstanding the abandonment of these locations, the Respondent continues to have a surface lease covering the area of the original surface lease on each well site and therefore remains responsible for payment of annual rent.

“Information Notice 03-01” dated June 18, 2001 is a notice issued jointly by the Board and the Petroleum Branch which explains in detail how an operator may reduce or eliminate his land rental obligations, and how the rights of the landowner are protected.

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

Recognizing that the effective date of this compensation award is August 29, 2013, the Board is of the opinion that interest should be payable on any outstanding payment, and has determined that the Applicant is entitled to interest at a rate of 1.5% per annum on any unpaid portion of the amount of the above ordered compensation, from August 29, 2013 until the date of payment.

## **3. Are costs to be awarded?**

Subsections 26(4) and (5) of the Act explain how a declined offer prior to a hearing may determine whether costs will be awarded. If the offer is less than 90% of the compensation awarded by the Board, the Board is required to increase the compensation awarded to the landowners by “such

legal, appraisal and other expenses that are incurred by the owner or occupant, as the case may be, for the purposes of preparing and presenting a claim for compensation and that the board considers just and reasonable." The practice of the Board is to permit the Respondent to provide the Board with a sealed copy of its last offer to the Applicant prior to the commencement of the hearing. The amount of the sealed offer determines whether costs are to be ordered by the Board.

The Board arrived at the above noted decision on compensation at a meeting on December 17, 2013. Before opening the sealed offers provided by the Respondent, the Board decided that since each well site had been filed as a separate application, that determination of costs would be considered individually for each well site. The sealed offers provided by the Respondent were then opened revealing an offer of \$3,000 on each of the six (6) applications.

Applying the 90% rule as provided under the above Subsections of the Act, the Board determined that three (3) of the applications, namely Lsds 10, 12 and 15, qualified for costs. Well sites on Lsds 11, 14 and 16 did not.

The Board requests that the Applicant prepare a request for costs in consultation with the Respondent. Should the parties agree on an amount, it will be that amount which shall be deemed to be the amount ordered by the Board. If agreement cannot be reached, each party may submit a proposal to the Board, and the Board shall determine the final amount.

Decision delivered this 7th day of January 2014.



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**H. Clare Moster,**  
Acting Presiding Member