

File No. 1230
Board Order # 207A-amd

January 10, 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 WEST ½ OF SECTION 36 TOWNSHIP 85 RANGE 20 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT**

(The "Lands")

BETWEEN:

Progress Energy Ltd.

(APPLICANT)

AND:

Paul Bryan Cowger

(RESPONDENT)

BOARD ORDER

By Order dated October 11, 1985, (attached to this Order as Appendix "A"), the Mediation and Arbitration Board (now the Surface Rights Board) granted Husky Oil Operations Ltd. right of entry to the Lands to construct and operate a wellsite and for access thereto, and by Order dated April 16, 1987 (attached to this Order as Appendix "B"), the Board confirmed the right of entry and determined the compensation payable. Husky Oil Operations Ltd. constructed the wellsite and on the Lands as contemplated by the Right of Entry Order.

Progress Energy Ltd. is the successor to Husky Oil Operations Ltd. The wellsite on the Lands is currently operated by Progress Energy Ltd. The Lands are currently owned by Paul Bryan Cowger.

The Surface Rights Board orders as follows:

1. Orders 207M and 207A are amended to change Husky Oil Operations Ltd. to Progress Energy Ltd. and to delete Francis Joseph Cowger as a Respondent.
2. Progress Energy Ltd. has the right to enter, occupy and use that portion of the Lands shown on the Individual Ownership Plan attached as Appendix "C" for the purpose of operating a wellsite and for access thereto as permitted by the Oil and Gas Commission.
3. Nothing in this order operates as consent, approval, permission or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated January 10, 2012

FOR THE BOARD



Cheryl Vickers
Chair

APPENDIX "A" 207A and

File No. 1230

Board Order No. 207M

FRIDAY, THE 11th DAY OF OCTOBER, A.D. 1985

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, 1979, BEING CHAPTER 323 OF THE REVISED STATUTES OF BRITISH COLUMBIA, 1979 AND AMENDMENTS THERETO: THE ACT:

AND IN THE MATTER OF A PORTION OF L.S.D. FOURTEEN (14), WEST 1/2 OF SECTION THIRTY-SIX (36), TOWNSHIP EIGHTY-FIVE (85), RANGE TWENTY (20), WEST OF THE 6th MERIDIAN (W6M), PEACE RIVER DISTRICT.

BETWEEN:

HUSKY OIL OPERATIONS LTD.
P.O. BOX 6525, STATION "D"
CALGARY, ALBERTA
T2P 3G7

APPLICANT

AND:

FRANCIS JOSEPH COWGER
P.O. BOX 13
NORTH PINE, B.C.
and
PAUL BRYAN COWGER
P.O. BOX 39,
MONTNEY, B.C.

RESPONDENTS

This is an application by Husky Oil Operations Ltd., under the entry, occupation or use provisions of the Petroleum and Natural Gas Act, 1979, for an order of the Mediator under Section 19 of "The Act".

The Applicant having applied for an Order permitting it to enter part of the above described land for the purpose of constructing a wellsite and access thereto and the Mediator having inspected the above described land.

And whereas the Respondents have verbally agreed to Entry by way of a Board Order.

And whereas it appears that issues inhibiting an immediate completion of a Lease Agreement satisfactory to both parties are not resolved and the Mediator being of the opinion that the Applicant's request for Right of Entry, should be granted forthwith.

IT IS HEREBY ORDERED THAT:

1. Further Mediation on the matter be adjourned sine die.
2. The Applicant deposit with the Board a security deposit in the amount of \$500 payable to the Minister of Finance, Province of British Columbia
3. (1) The Applicant pay the Respondents a sum of two thousand, five hundred dollars (\$2500.00) by causing a cheque in that amount to be forwarded by Registered Mail to Francis J. Cowger and Paul B. Cowger, c/o Paul B. Cowger P.O. Box 39, Montney, B.C., which cheque will be accompanied by a copy of this Order or,

(11) By delivering the aforesaid cheque together with a copy of this Order to the Respondent, Paul B. Cowger
4. The Applicant further notify the Respondents and all other interested persons of this Order by causing its servants or agents when entering upon the property herein before described, to have with them and to produce upon request of any person thereon a True Copy of this Order.
5. Following completion of 2,3 and 4, the Applicant shall be permitted to enter that area outlined in red on the Plan of Survey attached hereto as Schedule "A" for the purposes of exploring for, developing or producing Petroleum and Natural Gas or for any purpose connected with or incidental to that purpose.

Dated at the City of Fort St. John, Province of British Columbia, this 11th day of October, A.D. 1985.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

CERTIFIED TRUE COPY

DATE

Al Stewart

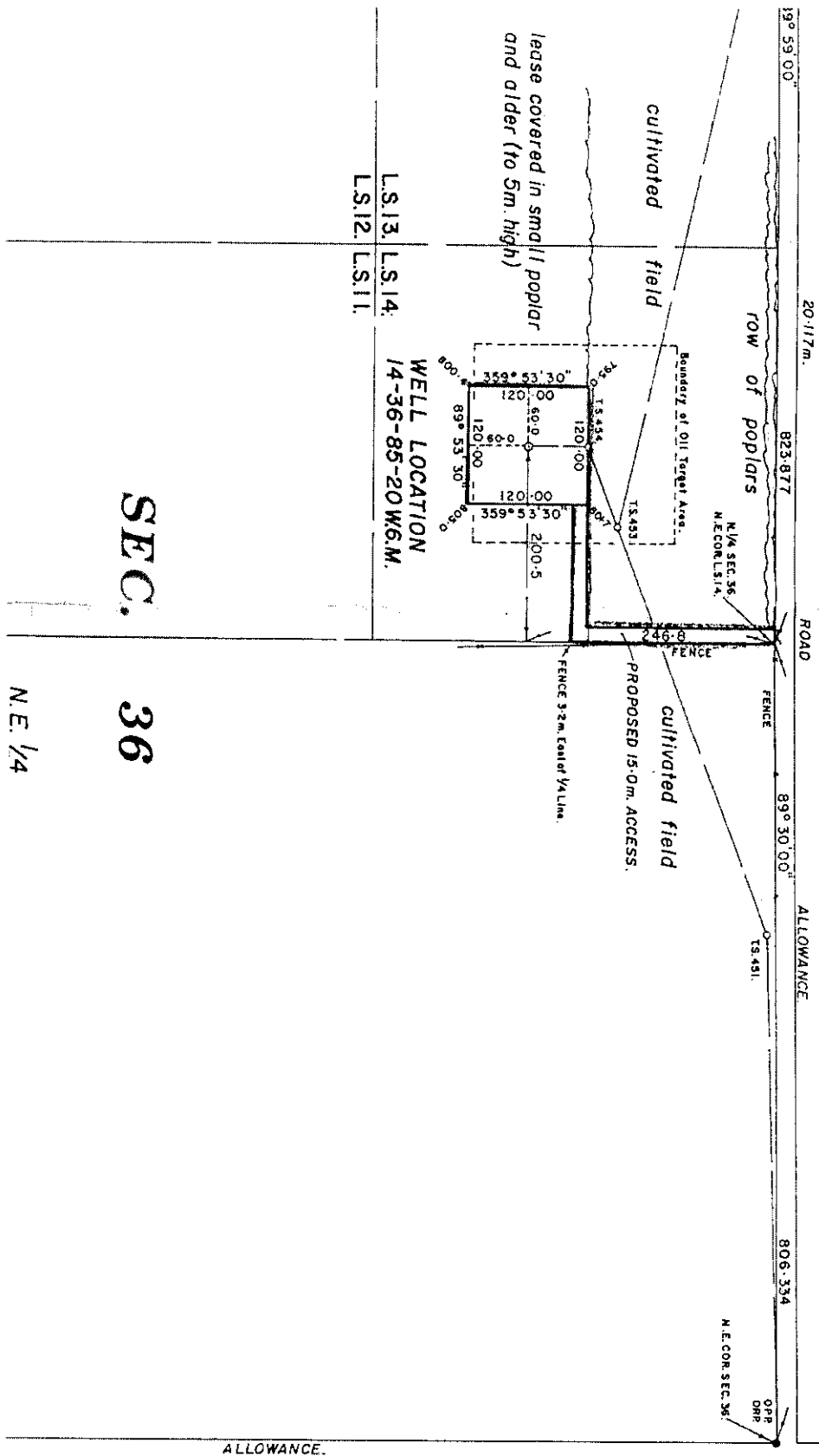
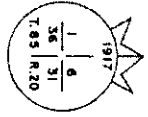
October 15, 1985

Al Stewart

MEDIATOR

TP 86 , RGE. 20 W 6.M.

SEC. 1.



FINAL

NOTES:

Bearings are Astronomical the North Boundary of S. and are referred to the C. Tp. 85, Rge. 20, W.6.M.

All dimensions are in decimals thereof.

All open traverse legs were independently for direct!

LEGEND:

- TS. Traverse
 - IP. Standard I
 - PP. Standard I
 - CIP. Capped I/c
 - PCGN Standard C
 - PROCK. Stake F
 - W. Loc. Well Loco
 - ⊛ Producing V
 - ◆ PDLS Old Patter
 - Mon. Boundary I
 - △ Trig. Triangulatic
 - Old
 - Stn. Station
 - BT. Bearing Tr
 - R.P. Reference f
 - P.A.M. Pits & Mo
 - SP. Shot Pain
- TOTAL CO-ORDINATES
- OFFSETS OF W. LOC. 1-

FRIDAY, THE 11th DAY OF OCTOBER, A.D. 1985

BEFORE THE MEDIATOR:

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APPLICANT

AND:

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P.O. BOX 13
NORTH PINE, B.C.
and
PAUL BRYAN CONGER
P.O. BOX 39,
MONTNEY, B.C.

RESPONDENTS

ORDER

THURSDAY, THE 16th DAY OF APRIL, A.D. 1987

BEFORE THE MEDIATION
AND ARBITRATION BOARD:
(THE BOARD)

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, 1979, BEING CHAPTER 323 OF THE REVISED
STATUTES OF BRITISH COLUMBIA, 1979 AND AMEND-
MENTS THERETO: (THE ACT)

AND IN THE MATTER OF A PORTION OF L.S.D. FOURTEEN
(14,) WEST HALF (W½) OF SECTION THIRTY-SIX (36),
TOWNSHIP EIGHTY-FIVE (85), RANGE TWENTY (20),
WEST OF THE SIXTH MERIDIAN (W6M), PEACE RIVER
DISTRICT

BETWEEN:

HUSKY OIL OPERATIONS LTD.
P.O. BOX 6525, STATION "D"
CALGARY, ALBERTA
T2P 3G7

APPLICANT

AND:

FRANCIS JOSEPH COWGER
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AND

PAUL BRYAN COWGER
P.O. BOX 39
MONTNEY, B.C.

RESPONDENTS

WHEREAS Following an earlier postponement the interested parties were advised that an Arbitration Hearing concerning the Right-of-Entries covered by Board Orders 207-M, 208-M, 209-M dated the 11th day of October A.D. 1985 and 214-M, 215-M dated the 4th day of September A.D. 1985 would be held in the Boardroom, Execuplace, 10142 - 101st Avenue in the City of Fort St. John, British Columbia, commencing at 10:30 a.m.

AND WHEREAS the hearing was convened on the appointed day in the presence of L. Blair Scarratt, Landman representing the Applicant and Mr. and Mrs. P. Cowger representing the Respondents, together with legal counsel Darryl Carter, L.L.B. There were also several other interested parties attending as observers.

AND WHEREAS the Board had reviewed the evidence adduced at the Hearing and the arguments made in support thereof, and in matters where evidence is wanting or inconclusive drawn on its own knowledge and expertise.

AND WHEREAS before setting out the findings in this particular case the Board believes a recital of some of the principles adhered to in determining compensation should be set out for the benefit of the parties hereto, namely.

- 1: The Board recognizes the fact that the Crown Provincial, has issued two separate and distinct bundles of Rights respecting property.
 - a) The surface rights to an owner in fee simple.
 - b) The subsurface rights to a holder of the mineral rights including hydrocarbons.

- 2: The Board accepts the principle referred to by Justice Bouck of the Supreme Court of B.C. in a decision dated Nov. 14, 1979 (Chambers and the Mediation and Arbitration Board and Esso Resources) who observed that the common law provision which granted an implied right to the holder of the (dominate) mineral interest respecting access to the surface of the land has been subjugated to the provisions of the Petroleum and Natural Gas Act. This Act provides a workable method whereby the owner of the mineral (Petroleum and Natural Gas) rights may gain access to explore for the product if entry is not granted or compensation not agreed to by the surface owner, thru a step by step process from application, to mediation, to arbitration and finally to a binding Order.

- 3: The Board concurs with Justice Berger in Dome Petroleum Limited and Mildred E. Juell who observed that entry and occupation is not an Act of Expropriation. No land and no legal interest in the land is taken from the owner.

- 4: The Board also concurs with Justice J.A. Cody who when speaking for the B.C. Court of Appeal in re: Pacific Petroleum Ltd. (1958) stated "Compensation is not for land or an interest in land taken, but is for entry on land and loss or damage by operations carried on thereon."

- 5: The Board accepts Justice Spencer's directive in Scurry Rainbow Oil Limited and C.C. Lamoureux when he stated that the value to be determined (of the land in question) is value to the owner, taking into consideration special value, if any.

- 6: While accepting that value of land is value to the owner, the Board feels weight must be given to Justice Berger's directive in Dome Petroleum and M. Juell when he made clear that placing a value on the land as it were a small parcel is an error and further that the Board is correct in considering the reversionary value thereof.

7: The Board is satisfied that within Section 21, S.S. a-h of the Act there is ample latitude provided for consideration of both objective and subjective areas of compensation in arriving at a final decision.

Mr. Scarratt presented all of the evidence advance on behalf of the Applicant. His offers respecting both first year and annually thereafter were contained in Exhibit #1. He acknowledged co-operation from the land owners in accessing the property and completing the drilling program. According to Mr. Scarratt out of the 12.91 acres required for 3 wellsites only .91 acres of one wellsite was located on improved land. His estimate of value of land was based on what he considered to be fair market value on an enbloc basis. Other headings were assigned a value according to his own best judgement.

Mr. Carter, L.L.B. conducted the direct examination of Mr. and Mrs. P. Cowger, who also appeared on behalf of F.J. Cowger co-owner of the lands involved. The Cowgers placed in evidence a number of surface leases which they had negotiated with other operators as well as several which had been negotiated with adjacent surface owners. A summary prepared by Mrs. Cowger was appended to each lease indicating the first year and annual compensation agreed to on a per acre basis. The Respondents requested compensation equivalent to the sum received from Poco Petroleum for a lease site on L.S.D.#2 of 35-86 which according to them was a site very similar in all respects to the sites occupied by the Applicant.

In summary Mr. Scarratt referred to the fact that all locations were on unimproved land, not affecting the Respondents current family operation. The drilling took place in winter thereby keeping the inconvenience and disturbance to a minimum. The enmass presentation of other negotiated leases without substantiated opinion of the landmen involved should not be given great weight. The compensation contained in the schedules presented by Husky represented a good faith offer by the company.

In summary Mr. Carter suggested Mr. Scarratt's method of determining compensation and the one held by the Cowgers represented two different philosophies. The Applicant placed an over emphasis on fair market value when value to the owner is the important consideration. If an overall pattern of compensation has been established the Board should not depart from that pattern without very good reason.

Mr. Scarratt knew of the agreements the Respondents had negotiated with Poco Petroleum, and further knew they would be relying upon them in the hearing, yet didn't bother to produce any contrary evidence. Mr. Carter suggested including a first year rental in addition to other sums agreed upon was not double compensation as lease agreements provide for a first year rental.

It is the Board's observation after reviewing the transcript and exhibits filed in support thereof that:

- a) Mr. Scarratt's approach to compensation by relating sums to Section 21 of the Act, while in keeping with the method preferred by the Board, contains some deficiencies particularly with regard to value of the land.

- b) The Respondents were successful in negotiating leases with one company, namely Poco Petroleum, which in the Board's opinion appear to be quite generous but in line with leases the same company negotiated with other surface owners in the same general area at or about the same time. The Board is of the opinion that the numbers generated are not supported by demonstrable losses or damages as contemplated by the Act and referred to by Justice J.A. Cody when he said "Compensation is not for land or an interest in land taken, but is for entry on land and loss or damage by operations carried on thereon."

Compulsory Aspect of Entry

The Board concurs with the Applicant's calculation and has therefor set the allowance at \$1,000 for the compulsory aspect of entry, occupation or use.

VALUE OF LAND AND THE OWNER'S LOSS OF A RIGHT OR PROFIT WITH RESPECT

THE LAND

The area granted by Order 207M comprises 4.78 acres of which only 0.91 acres in on improved pasture land. The Board does not accept Mr. Scarratt's calculations based upon a market value of \$93.75 per acre as representative of fair value to the owner. Therefor based upon our knowledge of land values and accepting that value to the owner does not necessarily change in times of depressed markets since this land is not for sale, we have determined that fair value to the owner, after taking into consideration the reversionary value thereof (as the B.C. Court has directed we should do) is \$400 per acre for 0.91 acres and \$250 per acre for 3.87 acres.

The periodic amount is deemed by the Board in the circumstances of this case to be \$666, plus loss of profit (pasture loss) of \$159 which equals \$825 per year.

DAMAGE RESULTING FROM THE ENTRY, OCCUPATION OR USE

Even though most of the land is unimproved there will still be some damage and extra work involved when the land is returned to the Respondents.

The Board considers that \$150 per acre is fair recompense for damage to the land and will be so fixed.

COMPENSATION FOR SEVERANCE

There is little if any severance involved, however the Board concurs with the Applicant's offer of a token amount in the sum of \$100 payable for the first year only.

COMPENSATION FOR NUISANCE AND DISTURBANCE

Compensation for the time lost dealing with the company representatives, consultation with legal counsel and attending the Arbitration Hearing have been agreed to by Applicant and Respondents and will be dealt with under costs.

The Board believes that the Applicant's figure of \$800 for both first year and periodically thereafter, while greater than awarded in most cases involving unimproved land is warranted. Particularly when these wellsites will open up access to unauthorized persons, which in turn will subject the Respondents to added nuisance and disturbance.

The Board therefor concurs with this amount.

OTHER FACTORS

The only other factors that came before the Board were the matter of costs associated with the retention of legal counsel and interest on any balance of compensation payable. There was agreement between the parties on these matters so they will be addressed at the conclusion.

THE BOARD DOES AND HEREBY ORDERS THAT

- (1) The portion of the surface which the Applicant required for the efficient and economical performance of its operation is 4.78 acres (1.93 hectares) and the exact position thereof is delineated and outlined in red on the Plan of Survey attached hereto as Schedule "A".
- (2) The amount of compensation which shall be payable shall be:

	Amount First Year	Payable Periodically
(a) Compulsory aspect of entry, occupation or use	\$1,000.00	
(b) Value of land and the owners loss of a right or profit with respect to the land value of land 0.91 x 400 and 3.87 x 250	1,332.00	666.00
Loss of profit (pasture)	159.00	159.00
(c) Damage to land 150 x 4.78	717.00	
(d) Compensation for severance	100.00	
(e) Nuisance and disturbance	<u>800.00</u>	<u>800.00</u>
	4,108.00	1,625.00

The Applicant will pay to the Respondent forthwith the following sums:

Compensation awarded for the 1st year	\$4,108.00
Less: Sum paid out under Order 207M	<u>2,500.00</u>
Balance of first year compensation	1,608.00
Periodic compensation for 1986	<u>1,625.00</u>
Total	\$3,233.00

The Applicant shall pay to the Respondent annually in advance on the 11th day of October of each year commencing on the 11th day of October A.D. 1987, the sum of \$1,625.00 until such time as this Order be cancelled or amended pursuant to Section 26(2)(b) of the Act, and Amendments thereto.

With a further provision that should the Respondents bring the land adjacent to this access and wellsite into production for hay or other crops prior to the next quinquennial review the Board will consider a written request for a rental review.

Since the Applicant agreed to pay the Respondents interest on any balance due at a rate equal to the average for term deposits for the corresponding time period, it is hereby ordered that interest at the rate of 6 3/4% shall be payable on the balance of first year compensation retroactive to October 11, 1985. On the periodic compensation at the rate of 5 1/4% retroactive to October 11, 1986.

COSTS

While the Board pursuant to Section 27 of the Act, has discretion to award costs and determine by whom they shall be paid, in this matter the Applicant and the Respondents mutually agreed to the following sums:

1) Legal fees, including advice, disbursements & presentation	\$2,150.00
2) Respondents attendance & time	<u>500.00</u>
Total:	\$2,650.00

There was a further request that these costs be prorated between the five files considered at this Hearing. Therefor the amount applicable to this Right-of-Entry is \$530.00.

Upon payment of the sums aforesaid the Applicant shall be entitled to all rights of an operator to whom the right to enter, occupy or use of land has been granted under the provisions of the Petroleum and Natural Gas Act, 1979, and Amendments thereto, upon the lands hereinbefore described.

Dated at the City of Fort St. John, Province of British Columbia this 15th day of April A.D. 1987.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

CHAIRMAN

MEMBER

MEMBER

ORIGINAL TRUE COPY

DATE

[Signature]

April 24 - 1987

[Signature]

[Signature]

[Signature]

TP. 86 , RGE. 20 , W.G.M.

SEC. 1.

FINAL

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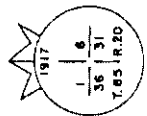
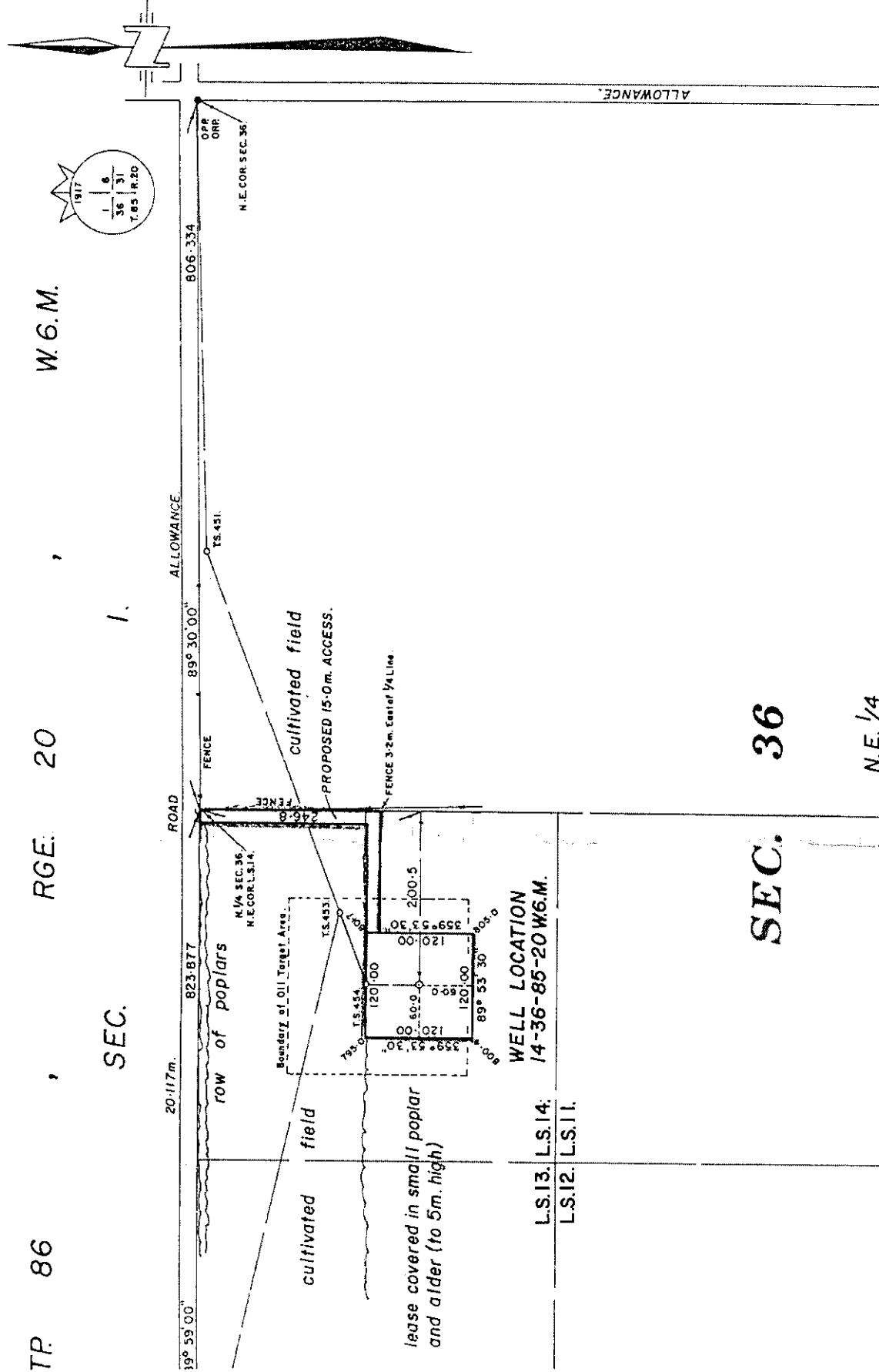
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- PP Standard I
- CIP Capped Irc
- PCON Standard C
- PROCK Stake F
- W. Loc. Well Loca
- ✱ Producing I
- ◆ Old Pattern
- Mon Boundary I
- △ Trig. Triangulation
- Old
- Sta. Station
- B.T. Bearing Tr.
- R.P. Reference I
- P&M Pits & Mar
- S.P. Shot Point

TOTAL CO-ORDINATES

OFFSETS OF W. LOC. I



ALLOWANCE

SEC. 36

N.E. 1/4

THURSDAY, THE 16th DAY OF APRIL, A.D. 1987

BEFORE THE MEDIATION
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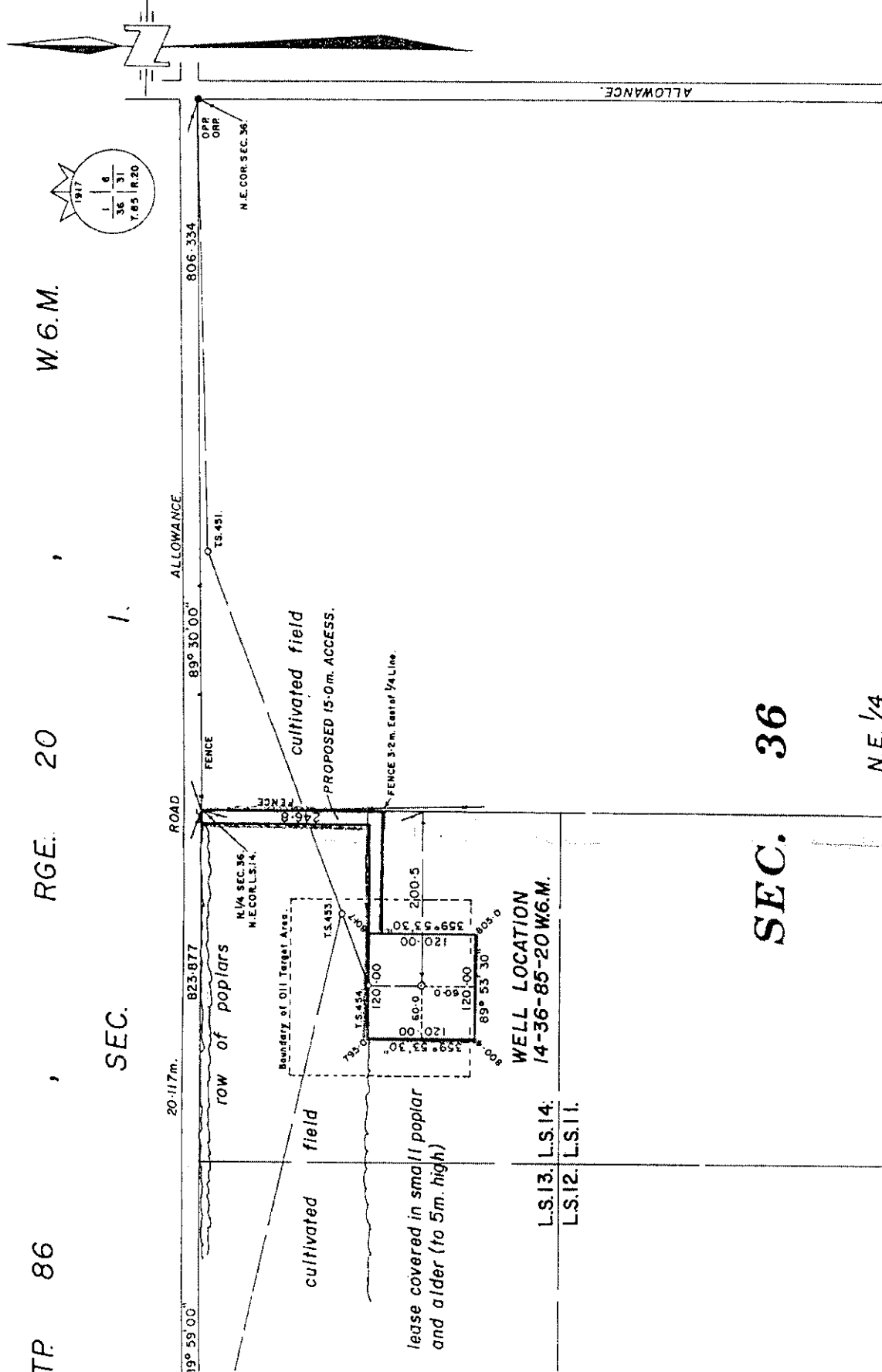
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- TOTAL CO-ORDINATES
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W. 6. M.

RGE. 20

SEC.

SEC. 36

N.E. 1/4

WELL LOCATION
14-36-85-20 W. 6. M.

L.S. 13. L.S. 14.
L.S. 12. L.S. 11.