

MEDIATION AND ARBITRATION BOARD  
UNDER THE PETROLEUM AND NATURAL GAS ACT  
#114-10142-101st Avenue  
Fort St. John BC  
V1J 2B3

Date: September 10 1999

File No. 1297

Board Order No 252A

**BEFORE THE MEDIATOR:**

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

AND IN THE MATTER OF A PORTION OF  
THE NORTHEAST QUARTER OF SECTION  
THIRTY-SIX (36), TOWNSHIP EIGHTY-  
FOUR (84), RANGE FOURTEEN (14), WEST  
OF THE SIXTH MERIDIAN (W6M), PEACE  
RIVER DISTRICT:  
**(THE LANDS):**

**BETWEEN:**

IMPERIAL OIL RESOURCES LTD.  
237 - 4th AVE., SW.  
CALGARY, AB T2P 0H6  
**APPLICANT**

**AND:**

NORMAN KINDRAT  
GOODLOW, BRITISH COLUMBIA  
VOC 1S0  
**RESPONDENT**

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**ARBITRATION ORDER**

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**BACKGROUND:**

Initial contact was made in November 1993 by Mr. McClellan to discuss Imperial Oil Resources Ltd. Enhanced Oil Recovery project with respect to lease sites 16-36-84-14 and 8-36-84-14 W6M. Mr. Kindrat had some outstanding issues occurring from previous work and no agreement was reached in regard to the Enhanced Oil Recovery project.

Mr. Kindrat wanted the Applicant to move the project off his land onto the Applicant's adjoining land. The Applicant agreed to re-route some flowlines and facilities. However flowline Right-Of-Way would still be required heading east from existing wellsites 16-36-84-14 and 8-36-84-14. A Grant of Statutory Right-Of-Way was signed for one flowline only in each Right-Of-Way.

When the Applicant evaluated the project it was decided to ask Mr. Kindrat for additional Right-Of-Way. Mr. McClellan compensation offer to Mr. Kindrat was for \$ 1,000.00 per acre for the flowline Right-Of-Way, plus any damages to be assessed after construction was complete. Mr. Kindrat's compensation request was for \$ 1,000.00 per acre multiplied by the number of flowlines in the ground, and \$ 100.00 per tree that would be removed. The Applicant then applied for a Mediation Hearing in December 1993.

Mediation took place by a conference call 18 January 1994 between Mr. McClellan (Applicant), Mr. Kindrat (Respondent) and Mr. Loucks (Chair) of the Mediation and Arbitration Board. As a result of the Mediation Hearing Board Order No. 252M was issued. Board Order No 252M granted Right-Of-Entry with respect to the Right-Of-Way heading in an easterly direction from existing wellsite 16-36-84-14 to the property line. Compensation issues were to be settled at an Arbitration Hearing at a later date.

A tree count was taken before construction began in February 1994. Mr. Kindrat was not satisfied with the cleanup in the spring. A site inspection was conducted with Mr. Loucks, Mr. H. Bell representing the Board, Mr. Kindrat and Mr. R. Velandar representing the Respondent and Mr. McClellan and Mr. J. Mo representing the Applicant.

Mr. McClellan, being unable to negotiate a Grant of Statutory Right-Of-Way heading NW from 16-36-84-14, applied to the Board on 4 May 1994 for Permission to Enter.

Mr. Kindrat indicated at the Mediation Hearing held 11 May 1994 he wanted annual compensation for the flowline Right-Of-Way. Board Order No. 252-2M resulted which granted Right-Of-Entry with respect to the flowline heading NW from the existing wellsite 16-36-84-14 to the property line. Issues of compensation were to be settled at an Arbitration Hearing at a later date. A tree count was taken on the area of concern.

The Respondent did not accept the Applicant's offer of \$ 1,000.00 for trespass and unauthorized access and disturbance of a beaver dam. Cleanup was completed late summer and early fall 1995.

In 1996, the Respondent was still concerned with the work and reclamation, specifically the depth of the flowlines, the stability of the creek banks and the surface reclamation. In August 1996, the Applicant contracted consultants to address the Respondent's concerns. In April 1997 the requested reports were referred to:

1. Ministry of Environment Lands & Parks, Water Management Branch, Mr. D. Melnyk
2. Ministry of Employment and Investment, Mr. Richard Caesar, Pipeline Applications Officer
3. Provincial Agricultural Land Commission, Mr. Jim Gilliland

for review and response. Over the next several months correspondence was exchanged between the Government agencies and Imperial Oil Resources Ltd. The proposed work was scheduled to begin in August 1998. At that time the Respondent refused entry for the reclamation work.

### **The Arbitration Hearing**

The Arbitration Hearing was held on 28 July 1999 in the Boardroom of Execuplace Business Centre, 10142 101 Avenue Fort St. John, BC beginning at 9:00 a.m. The Arbitration Panel consisted of Ray Rutherford Chair, Connie Shortt Vice-Chair, Bud Hosker, Ivor Miller, and Mavis Nelson, Board members.

Attending the Arbitration Hearing was Mr. Norman Kindrat representing himself, Ms. Joanne Nutter, Mr. R. McClellan and Mr. P. Miller representing the Applicant. It was agreed that the hearing would deal with both Board Order No. 252M and No. 252-2M. Those persons giving evidence were sworn in by Vice-Chair Connie Shortt.

An onsite inspection had been conducted the previous afternoon with the Arbitration Panel, Ms. Joanne Nutter and Mr. Richard Alessio representing the Applicant; and Mr. Norman Kindrat representing the Respondent.

In the few days prior to the hearing, a number of concerns were dealt with between the two parties and reclamation work was in progress. The reclamation work being done included replacing topsoil and cultivating the land. The two parties came to a mutual agreement on crop loss and weed control on both right-of-ways.

### **Applicant's Position**

The Applicant presented its case by referring to the binder of information detailing the problems with respect to the rights-of-way in question from 1993 to date. This information was available to the Arbitration Panel and the Respondent for review prior to the hearing. The two parties informed the Arbitration Panel of the matters that had been settled prior to the beginning of the hearing and asked the Arbitration Panel to focus on the following:

1. Comparative aspen and poplar prices: The value of the trees removed during construction.
2. The Grant of Statutory Right-Of-Way dated 9 December 1993 and Board Order No. 252M that resulted in the change of the width of the Right-Of-Way extending east from 16-36-84-14 wellsite to allow for multiple flowlines, and the NW Right-Of-Way allowing multiple flowlines
3. the issue of annual rental for flowline Rights-of-ways

### **Respondent's Position**

The Respondent presented his information and asked the Arbitration Panel to give consideration to the following:

1. He wishes to have the trees replaced (on the Right-Of-Way east of the wellsite 16-36-84-14), to restore his shelterbelt, and northwest from the wellsite through the creek. He valued these trees at \$ 100.00 per tree.
2. The Respondent stated that the land is NOT being returned to him to use as he wishes as with multiple flowlines underground he cannot replace the trees to re-establish the shelterbelt.
3. The Respondent wishes to be compensated for EACH flowline in the Right-Of-Way at \$1,000.00 per flowline.
4. The Respondent wants a bond to insure indemnification or annual payment of rent to ensure that a large time lapse would not occur before any damages were dealt with as has been his past experience. He also expressed his satisfaction with how quickly the reclamation work was progressing with the last superintendent in charge.

### **Comments**

The Applicant and the Respondent indicated they are negotiating (and are close to agreement on) the trespass, unauthorized access off the Right-Of-Way, and the disturbance of a beaver dam. These events occurred during construction of a portion of the Right-Of-Way. The disturbance and resultant damage is not within the jurisdiction of the Mediation and Arbitration Board.

As previously noted, the matter of crop loss and weed control have been settled between the two parties.

The Board further recommends that an agreement be drawn up between the two parties for future use to ensure the Respondents concerns regarding entry on his lands and compensation and/or repair of damages be addressed.

### **DECISION:**

The Arbitration Panel having reviewed all the evidence presented at the hearing; the arguments made in support thereof, and have considered both the Applicants and the Respondents requests.

The Arbitration Panel is of the opinion that the compensation pursuant to Section 21 (1) of the Petroleum and Natural Gas Act be awarded as follows:

1. In the matter of 16-36-84-14 East Right-Of-Way:

a) for the compulsory aspect of the entry, occupation or use of the said lands as Board Order No. 252M permitted and as the land cannot be restored to its original condition due to multiple flowlines	\$ 500.00
b) the value of the land being \$ 1,000.00 per acre X 0.902 acres	\$ 902.00
c) temporary and permanent damage: 226 trees as per evidence, assuming these would be marketable timber as of today. Based on the Applicants evidence of 80 tons per acre X 0.902 Acres = 72.16 tons, and 50% of the Right-Of-Way acreage was treed = 36.08 tons, and based on a value of \$ 30.00 per ton	\$ 1,082.40
<b>Total</b>	<b>\$ 2,484.40</b>
Less amount awarded by Board Order No. 252M	\$ 790.00
<b>Balance Due</b>	<b>\$ 1,694.40</b>

2. In the matter of 16-36-84-14 Northwest Right-Of-Way:

a) for the compulsory aspect of the entry, occupation or use of the said lands as Board Order No. 252-2M permitted	\$ 500.00
b) the value of the land being \$ 1,000.00 per acre X 1.176 acres	\$ 1,176.00
c) temporary and permanent damage: 130 as per evidence assuming these would be marketable timber as of today and based on the above calculations	\$ 622.22
g) workspace	\$ 500.00
<b>Total</b>	<b>\$ 2,798.22</b>
Less amount awarded by Board Order No. 252-2M	\$ 1,500.00
<b>Balance Due</b>	<b>\$ 1,298.22</b>

**TOTAL BALANCE DUE** (\$1,694.40 + \$ 1,298.22) **\$2,992.62**

**IT IS HEREBY ORDERED THAT:**

1. The Applicant shall pay to the Respondent (for the rights acquired pursuant to Board Order 252M and Board Order 252-2M), the total balance due in the amount of two thousand, nine

hundred ninety-two dollars and sixty-two cents (\$ 2,992.62) by causing a cheque to be delivered to the Respondent along with a certified true copy of this order.

2. Upon payment of the sum of \$ 2,992.62, the Applicant shall be entitled to all the rights of an operator, to enter, occupy or use of the land granted under the provisions of the Petroleum and Natural Gas Act and Amendments thereto, upon the lands referred to in Board Order 252M and 252-2M.
3. Additional damages that are within the jurisdiction of the Mediation and Arbitration Board that are unforeseen or not considered in this Board Order would be considered by an Arbitration Panel upon the filing of the applicable form with the Mediation and Arbitration Board. .
4. Nothing in this Order is, or operates as consent, permit or authorization that by enactment, a person is required to obtain in addition to this Order.

Dated at the City of Fort St. John, BC this 10th day of September, 1994.

MEDIATION AND ARBITRATION BOARD  
UNDER THE  
PETROLEUM AND NATURAL GAS ACT

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Ray Rutherford, Chair

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Connie Shortt, Vice-Chair

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Bud Hosker, Member

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Ivor Miller, Member

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Mavis Nelson, Member