

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: May 11, 2001

File No. 1447

Board Order No. 336A

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 EAST ½
SECTION 12 TOWNSHIP 113, AND THE SOUTHWEST ¼
SECTION 12 TOWNSHIP 113 PEACE RIVER DISTRICT
WEST OF THE SIXTH MERIDIAN
(SW ¼ 12-113 & E ½ 12-113 W6M)
(THE LANDS)

BETWEEN:

TALISMAN ENERGY INC.
SUITE 3400, 888 -3RD STREET SW
CALGARY, AB
T2P 5C5
(THE APPLICANT)

AND:

WALTER BERRESHEIM
BOX 6214
FORT ST. JOHN, B. C.
V1J 4H7
(THE RESPONDENT)

ARBITRATION ORDER

The Mediation and Arbitration Board received an application from Doug Doray, Surface Landman for Roy

Northern Land Services Ltd. (Roy Northern), agent for Talisman Energy Inc., 13 February 2001 for permission to enter upon the land of the Respondent.

Ivor Miller conducted a Mediation Hearing in this matter on March 19, 2001 at 10:00 a.m. Mountain Standard Time. At the conclusion of that mediation a Right-Of-Entry order was not granted, further mediation hearings were refused and the unresolved issues were to be settled by an Arbitration to be heard not later than April 30, 2001.

The Arbitration Hearing in this matter was conducted in the Mediation and Arbitration Board (Board) office located at 10142 101st Avenue, Fort St. John, on April 19, 2001. The Arbitration panel consisted of Mavis Nelson, Board member, and Rod Strandberg, Chair of the Board heard evidence regarding the application by Talisman Energy Inc. (Applicant) to enter on land owned by the Respondent, Walter Berresheim. The land is legally described as SW 1/4 Section 12, Twp. 113, Peace River District; and the E ½ Section 12, Twp. 113 Peace River District, except the south 90 feet (Land).

Attending on behalf of Talisman was Doug Doray and Eddie Taylor from Roy Northern and Luella E. Reimer a representative of Talisman.

Ms. Andrea Hall appeared as a representative with the landowner, Walter Berresheim.

Nature of the Application

Talisman applied for an Order to allow it to enter upon the Respondent's land for the purpose of constructing a flow line to join two natural gas wells. The flow line was to run from well site b-37-L, to d-39-L. This flow line crosses the Respondent's property, which is bisected by a gravel road. To the west of the road the cultivated land is rented to John Fehr. To the east of the road the flow line follows along an existing access road to the well site located at b-37-L.

POSITION OF THE PARTIES

There were a variety of issues between Talisman and the Respondent regarding the proposed use of the Respondent's property. During the Arbitration it became clear that the sole issue the parties wished the Board to address was compensation payable. A variety of other issues raised by the Respondent were agreed to by Talisman. During the Arbitration a request was made for the parties to formalize an agreement on these other issues. A letter of agreement dated May 1, 2001 setting out some 22 terms and conditions regarding the use of the Land, was provided to the Mediation Arbitration Board.

The Applicant

On the issue of compensation Talisman felt that its offer of \$ 950.00 per acre for the flow line Right-Of-Way, and with \$ 100.00 X 3 temporary work spaces, was fair compensation and likely exceeded the fair market value of the Land.

Talisman noted that to the east of the gravel road the flow line would follow an existing access road causing minimal inconvenience or disturbance to the Respondent's surface rights. To the west of the road the flow line would pass under cultivated land. Talisman felt that the routing of the flow line and the depth of its installation

would ensure that there would be minimal inconvenience or disruption to the Respondent and his future use of the Land.

Talisman was opposed to any agreement or order by the Board that annual compensation is paid for the flow line on the Land.

The Respondent

The Respondent felt that he was entitled to an annual payment for the presence of the flow line. It was his position that the existence of a flow line or pipe line below the surface of his property would restrict his future use of Land. And that any encumbrance on title, such as an Order from this Board, might impact the marketability or value that he might receive for his Land. He wished an annual payment for the flow line payable until the line was abandoned, removed or decommissioned. He felt that by requiring the Applicant to make annual payments to him, the Applicant would be more accountable and responsive to his concerns.

The Respondent provided no evidence to the Board that the existence of the flow line or right of entry order on title would reduce the marketability or market value of the Land. He indicated that although he had many other properties, which had registered right-of-way agreements or Right-Of-Entry orders on the title, he had no experience that the presence of those charges reduced the marketability or fair market value.

Concerning restrictions on the future use of the Land, the Respondent felt that the fact of the existence of a flow line or pipe line would unduly restrict his choice of operations. This concern would be greater on the cultivated western portion of the Land, as the construction of a flow line along an existing access road on the Eastern side would have less adverse impact on his use of the Land.

In support of his position the Respondent relied upon two previous orders of the Board, Board Orders 90A and 91A, ordered annual payments of \$10.00 per year in 1977. The factual circumstance in which these Board Orders were granted was not made clear during the Arbitration.

The Respondent was requesting \$ 950.00 per acre for the flow line construction together with \$ 100.00 per temporary work space, and annual payments of \$ 250.00 per year. In addition he requested compensation for the damages such as crop loss and timber loss resulting from the construction of the flow line.

The Respondent also sought \$ 450.00 compensation for his time and his legal fees in the sum of \$ 2,000.00 plus GST.

Discussion

After having reviewed the evidence and the submissions of the parties and bearing in mind the factors to which the Board is directed to consider pursuant to Section 21 (1) of the *Petroleum and Natural Gas Act*, the Panel conclude that the appropriate compensation for the Right-Of-Entry is the sum of \$ 950.00 per acre. This award does not deal with any consequential damages resulting from the construction of the flow line, such as crop or timber loss. Either of the parties is at liberty to ask the Board to assess damages consequential upon the construction of the flow line if they are unable to reach agreement.

Although the Respondent's position was that the presence of the flow line would unduly restrict his activities or affect the marketability of his Land, this position was not supported by any evidence. The Respondent's request for an annual payment is not a factor under Section 21 (1) of the Petroleum and Natural Gas Act and the Board declines to order an annual payment in this case.

The evidence did not support that the presence of the flow line would interfere with the current or contemplated use of the Land or that the existence of the flow line and any encumbrance on title could have an adverse effect on the marketability of the Land.

On the issue of the Respondent's legal fees the Board cannot accede to this request. Ms. Hull, who appeared as a representative of Mr. Berresheim, is not a member of the Law Society of British Columbia. Ms. Hull is, therefore, precluded from charging legal fees for work performed for the Respondent in British Columbia. It would be contrary to public policy and the existing legislation for the Board to order payment of the Respondent's legal fee.

On the issue of costs incurred by Mr. Berresheim in preparing for the Mediation and Arbitration in this matter the Board awards him \$ 400.00 for his time.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 20 (2) of the Petroleum and Natural Gas Act, the Order of the Mediator is varied to provide that the Applicant is entitled to enter upon the land of the Respondent for the purpose of constructing a flow line between well site b-37-L and d-39-L;
2. Pursuant to Section 21 of the Petroleum and Natural Gas Act the Applicant will pay to the Respondent the sum of \$ 4,405.00 forthwith and, in any event, within thirty days of the date of this Order calculated as follows:
 1. \$ 950.00 per acre x 3.9 acres, for the flow line = \$3,705.00;
 2. \$ 300.00 for temporary work spaces; and;
 3. \$ 400.00 representing compensation for Mr. Berresheim for his time in preparing for and attending the Mediation and Arbitration in this proceeding
3. Pursuant to Section 25(3) of the Petroleum and Natural Gas Act the Applicant shall forthwith file a Certified Copy of this Order with the Registrar of the appropriate Land Title district and provide details of that filing with the Board;
4. No portion of this Order varies the legislative, statutory or regulatory requirements of the Petroleum and Natural Gas Act or any other legislation effect regarding the construction of this flow line.
5. The parties have liberty to have other issues of compensation arising from the construction of the flow line which is the subject matter of this application dealt with by further application to the Board.
6. The terms and conditions contained in the letter of agreement dated May 1, 2001 (Schedule "A") together with the copy of a letter from Ms. Hull to the Board (Schedule "B") is attached and forms

part of this Order. If there is a discrepancy between the letters and this Order on any item, the letters will govern the relationship between the parties to this Order.

7. 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, British Columbia, this 11th day of May 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney Strandberg, Chair

Mavis Nelson, Member