

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

Date: December 13, 2001

File No. 1459

Board Order No. 348ARR

BEFORE THE BOARD:

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 SOUTH WEST QUARTER OF SECTION 8, TOWNSHIP 85, RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT  
(A6-8-85-17 W6M)  
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED  
220 9900 - 100 AVENUE  
FORT ST. JOHN, BC  
V1J 5S7  
(THE APPLICANT)

AND:

CLIFFORD KIMMIE  
SHIRLEY KIMMIE  
BOX 71  
CECIL LAKE, BC  
V0C 1G0  
(THE RESPONDENT)

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ARBITRATION ORDER OF THE BOARD

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BACKGROUND

A rental review arbitration was conducted before a panel consisting of Frank Breault, member of the Board and Rodney J. Strandberg, Chair of the Board, in Fort St. John on 5 October 2001. Cliff and Shirley Kimmie (Applicants) appeared on their own behalf. Barry Taylor, surface land man, appeared for Canadian Natural Resources Ltd. (Respondent).

### **Nature of Arbitration**

Before the Panel of the Board were applications for arbitration of renegotiation of compensation for two leases by the Respondent of land owned by the Applicants.

By Notice filed May 3, 2001 the Applicants requested a renegotiation and review of compensation for the Southwest 1/4 8-85-17, CNRL Forte Cecil A6-8-85-17 West of the 6<sup>th</sup> Meridian. The Applicants stated that the original lease between the Applicants and Morrison Petroleum Ltd. was dated 9 March 1992. A copy of the original of that lease was not available for review.

Prior to the hearing the members of the Panel attended at the well site to view it.

By agreement between the parties, in order to expedite the hearing, evidence for both arbitrations between the parties was heard at the same time. The Applicants presented their evidence on both applications followed by the Respondent's presentation regarding both well sites. After all evidence and submissions were completed the Panel reserved its decision. This is that decision.

### **Well Site A6-8-85-17**

The well site is located on the north side of the Applicants' property. It is accessed by a road along the north boundary. The lease site and access road affect 9.41 acres of the surface. The access road is used to access at least one of the Respondent's wells and at least one owned by another company, Talisman Energy.

It is an oil well. There appears to be a relatively new flow line constructed in the lease. There are oil storage tanks on the property and an unused flare pit. The well site is upwind from the Applicant's home and is not visible from it.

### **POSITIONS OF THE PARTIES**

### Applicant

The Applicants advised that this lease had caused them many problems. They indicated that the fence around the site was poorly constructed and that they had lost a horse in that area. This well site had an unused flare pit full of water. It was unclear to whether the water is contaminated. The Applicants were concerned that the road into this well site was being used by the Respondent to access other wells, without compensation, and also by at least one other company to access its well without notice to them or compensation. The Applicants were concerned that while plans had been made for the construction of a power line on the south side of the access road the Respondent had, without notice to them, constructed it on the north side of the road along the fence line. They anticipated difficulties in servicing and maintaining the fence. The Applicants were also concerned that the gates on the roads were not closed and locked. Although they had asked the Respondent to ensure this was done apparently it was not done and livestock were able to cross cattle guards and unauthorized persons were able to enter the property.

They estimate a loss of approximately 8 calves per year, worth on average & 700.00 and believed these were shot by hunters.

The Applicants presented comparable compensation amounts in Exhibits 7 & 8 for leases in the immediate area. These comparable leases are recently dated. Their position is that appropriate compensation is \$ 800.00 per acre for annual compensation of \$ 5,176.00. They also sought an award of interest on unpaid compensation from the date any revised compensation was considered to commence to the date that payment is received.

### Respondent

The Respondent acknowledges that there had been ongoing problems with unauthorized persons entering on the Applicants property.

The Respondent's view was that calculating compensation on a per acre basis was not the proper approach because the *Petroleum and Natural Gas* Act sets out criteria to be considered, some of which cannot be calculated on a per acre basis. It was further noted that compensation calculated on a per acre basis would overcompensate for larger well sites.

The Respondent relied on Exhibit #4, a summary of what it considered an assortment of comparable sites showing first year and annual compensation amounts, on both a total basis and on a per acre basis.

The Respondent calculated loss of profit based on a memorandum from Christopher M. Baker of Pioneer Land Services Ltd. dated 15 April 1999 to Encal Energy Ltd. (Exhibit 5). This sets out a calculation for loss of grazing revenue, which, if accepted, would provide a loss of profit of \$ 75.00 per acre for 9.41 acres for a total of \$ 705.75.

The Respondent did not accept that any cattle were lost as a result of its activities. The Respondent was not able to advise whether it was receiving any additional compensation from other companies for use of the access road.

The Respondent felt that concerns regarding gates, signage and the access road allowing unauthorized persons onto the property were operational in nature and matter that could or should be worked out between the Respondent and the Applicants. The Respondent suggestion for annual compensation, based on its comparables was:

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|--|--------------|
| 1. Crop loss for 9.41 acres @ \$ 75.00 per acre totaling | \$ 707.75;   |
| 2. Nuisance and disturbance totaling                     | \$ 2,000.00; |
| 3. Other factors totaling                                | \$ 300.00    |

### Analysis

The Panel's responsibility is to determine what is appropriate compensation to the Applicants for continuing damages incurred resulting from the Respondent's activities in each year. Section 21 of the *Petroleum and Natural Gas* Act guides the Panel regarding the factors, which may be considered in determining compensation. Some of the factors are amenable to a form of mathematical calculation based on a unit such as an acre; some are intangible and not susceptible of easy calculation. Once all of the factors are given appropriate consideration the Panel still has an overriding duty to consider whether the amount determined is proper. The Panel has the ultimate responsibility to exercise its discretion to adjust that, which may be the outcome after a consideration of all factors to ensure that compensation is fair to the surface and sub-surface owners of rights.

The Panel does not accept that a calculation on a per acre basis is the appropriate way to determine compensation. The size of the lease is one factor to consider but it is just one of many which must be considered.

After reviewing the comparable information provided to the Panel by the parties, those provided by the Applicant is preferred. These comparables are current and relate to property close to the Applicants land. The information provided by the Respondent in Exhibit # 4 does not provide the date on which the compensation was determined and is of little assistance in determining the appropriate compensation. The locations chosen by the Respondent are not near the Applicants land and deal with different uses of the land by the surface rights owner.

The Panel finds Exhibit #5, the memorandum from Pioneer Land Services of limited use. While this Exhibit makes reference to a meeting with officials of the BC Ministry of Agriculture and Food, nothing in it suggests that the figures arrived at by its author were reviewed, commented on or approved of by those officials. The calculations are based on assumptions of forage production, the amount of feed required to support one cow with a calf and an assertion regarding consumption. The value of private grazing for this area is based on anecdotal evidence. The calculation uses what the Panel regards as self-serving language, such as "extremely generous figures." The Panel is aware that the document was prepared for a specific audience and purpose. It cannot be viewed as objective or reliable. Information verified, accepted and approved of by neutral persons is of far greater use to the Panel.

The Board also accepts that the Applicants have lost cattle, likely due to the unauthorized activities of hunters on the land. This is a loss arising directly from the Respondent activities on the leased land. The Respondent summarily rejected this claim. The Panel finds it likely that there has been a loss similar in nature to what was described. The absence of verifiable data suggests that the total amount claimed for this loss, 8 animals @ \$ 700.00 per animal per year, may not be reliable. The Panel cannot reject a compensable head of damage merely because evidence, which might serve to support or prove this loss, is unavailable or may not be totally reliable.

The Respondent agreed that if the locking of gates and the posting of signs led to a reduction in losses reported by the Applicants then the relationship between unauthorized presence of hunters on the property and loss of cattle might be established. While there is no jurisdiction to order that the Respondent keep gates locked, construct cattle guards which do not allow cattle to leave the property or to post signs to prevent trespass, if these steps are taken and animal loss reduced then there may be an adjustment to compensation in the future.

### Award

After having carefully considered the factors which the Panel is directed by statute to consider in Section 21 of the Act, the time value of money and after having heard and carefully considered the evidence presented at this Arbitration, the Panel concludes that the appropriate compensation to be paid to the Applicants by the Respondent is \$ 7,000.00 per annum. This compensation will commence on the anniversary date of the lease immediately preceding May 3, 2001; the date the Mediation and Arbitration Board received the date the application for Arbitration. This is 9 March 2001.

It appeared to the Panel that the renegotiation process had been delayed by changes in the ownership of the lease. The parties, however, were unable to agree on any commencement date earlier than that specified by legislation.

### IT IS HEREBY ORDERED THAT:

1. Commencing on 9 March 2001 and on the 9th day of March each and every year thereafter until altered by agreement of the parties or further board order the annual compensation payable to the Applicants by the Respondent for this lease is \$ 7,000.00;
2. In addition to the increased compensation the Applicants will receive interest on the difference between the new compensation and compensation already paid calculated at

the rates of interest fixed by the Province of British Columbia as post-judgment interest as set out in Schedule # 1 to this Order;

3. The Respondent will within thirty (30) days of this Order provide an accounting to the Board office of the payments made by it since the 9<sup>th</sup> day of March 2001 together with confirmation that the revised compensation and interest have been paid and a calculation of the interest paid to the Applicants;
4. The Respondent will provide to the Board and the Applicants, within thirty (30) days a copy of the original lease in this matter.
5. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD  
UNDER THE  
**PETROLEUM AND NATURAL GAS** ACT

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Rodney J. Strandberg, Chair

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S. Frank Breault, Member