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

Date: 23 May 2002

File No: 1467

Board Order No. 351 ARR

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 NORTH EAST QUARTER OF SECTION 19, TOWNSHIP 86, RANGE 19
WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(16-19-86-19 W6M)
(THE LANDS)

BETWEEN:

BRUCE BAXTER
LOUISE BAXTER
BOX 114
MONTNEY, BRITISH COLUMBIA
V0C 1Y0
(THE APPLICANT)

AND:

SEARCH ENERGY LTD.
700, 400-5TH AVENUE
CALGARY, ALBERTA
T2P 0L6
(THE RESPONDENT)

ARBITRATED RENT REVIEW

NATURE OF APPLICATION

An arbitration of annual compensation was conducted by the Mediation Arbitration Board in Fort St. John at the offices of the Ministry of Forests on the 19 March 2002.

Before the Board were two Applications for reviews of annual compensation filed by Bruce and Louise Baxter (the "Applicants") regarding leases owned by the Respondent, Search Energy Corporation (the "Respondent").

Louise and Bruce Baxter appeared on their own behalf. Theresa Sacha appeared as representative of the Respondent, assisted by Kirk Fowler and Ashley Scriba, employees of Pioneer Land Services Ltd. The Panel consisted of William J. Wolfe and Ivor Miller, members and Rodney J. Strandberg, chairman.

AGREEMENT OF THE PARTIES

The filed exhibits were used for both arbitrations. The arbitrations were conducted at the same time although an Order will be prepared for each lease. At the commencement of the arbitrations Mr. Baxter obtained the agreement of the Respondent that any decision of this board on annual compensation would be binding on all parties and that no party would take an appeal from the order of the Board.

The parties agreed that the size of the lease located within 16-19-86-19 was 3.47 acres. Current annual compensation is $ 2,700.00 paid on the 27 May of each year.

POSITION OF THE PARTIES

A. Applicants

The Applicants farm this land located northwest of Fort St. John. They own eight quarters and rent two other quarters. Both of the Applicants are agricultural technicians and produce, amongst other things, pedigreed boreal red fescue. The Applicants rotate crops on their land producing, in addition to boreal red fescue, canola, feed and malt barley, wheat and peas. The soil is class two and three. This site is ranked as number one for BC crop insurance risk purposes. That is the farm has the lowest risk rating for a claim.

This lease is located across from the Applicants' residence. The well on it is inactive. In 2001 some work was done on a flowline near the lease, utilizing a portion of the lease area. It appears scentless chamomile seeds contaminated the equipment brought onto the lease for this work. During harvest 2001 scentless chamomile was noted growing on the west side of the lease. The Applicants controlled the infestation by handpicking it. The Applicants note that scentless chamomile is a difficult noxious weed to eradicate, requiring a large degree of diligence as it can only be identified when in bloom. There is a short

window of opportunity to remove the blooms before the hardy seeds of the chamomile are dispersed.

The Applicants indicated that they reported this scentless chamomile infestation to the contract operator employed by the Respondent. No action was taken by the Respondent to deal with these weeds.
The Applicants were also concerned that the Respondent had failed to live up to the terms of the Memorandum of Understanding marked as an exhibit to this Arbitration. The Applicants also note that they mowed the lease roads as spraying is not adequate to control the weeds.

The location of the lease and well site on the property effectively severed portions of the land from proper land management. The distance between the edge of the lease and a creek are too small to allow the Applicants to move their equipment into certain areas of their land.

The Applicants sought annual compensation for crop loss based on the size of the severed portions of land as well as for the lease and access road.

The Applicants sought an award of annual compensation of $ 5,275.00 based on the factors set out in section 21 of the *Petroleum and Natural Gas Act* together with an annual amount of $ 1,500.00 for weed surveillance and eradication relating to the presence of the scentless chamomile.

B. Respondent

The Respondent noted that many of the problems being faced by the Applicants were a carry over from the activities from the predecessor in title, Petro Canada. The Respondent felt that many parts of the Applicants' claim for compensation were damages that should be dealt with on a case-by-case basis rather than by incorporation into the annual compensation paid by the Respondent. For example concerns such as annual crop loss which depends, amongst other factors, on the crops planted, the growing season and available prices for that crop as well as any revenue lost due to delay(s) in seeding, or getting on the field to seed shortening the growing season and weed control should be looked at independently and compensated by the Respondent in return for a release of claims for such damages.

The Respondent noted that their initial offer did not include an increase in annual compensation because this was a non-producing well. The Respondent also considered that some of the severance claimed by the Applicants was really not severance, which the Respondent defined as a complete inability to access the land, but was more properly considered nuisance and disturbance associated with difficulty accessing the land. The Respondent also viewed some of the difficulties experienced by the Applicants as directly related to the larger equipment, which the Applicants chose to use on the land, and not related to the Respondent's activity on the land.

The Respondent indicated that it would comply with its obligations under any Memorandum of Agreement with the Applicants.

The Respondent offered annual compensation of $ 3,100.00 together with a one-time payment of $ 500.00 for the Applicants' time dealing with the scentless chamomile in 2001.

Discussion

The Board cannot take into account, in determining compensation, the fact that the well is non-producing. To relate compensation to production would be the equivalent of the Board looking at the value of the land to the taker, which is an incorrect approach in determining compensation. If the Board were to consider this as a factor then the Board would, as a matter of common sense, be required to look at the revenue received by the holder of the subsurface rights in determining annual compensation. This would clearly be in error.

The Board must always consider what use, if any, is to be made of evidence of the current annual compensation. The Board's role, on an annual compensation review, is to look forward to determine what compensation should be paid based on what has occurred in the past. The current level of compensation is relevant because it reflects the market rate of compensation when it was set and also because the legislation requires the Board to consider changes in money when reviewing compensation. The existing compensation is not used as the base, which is adjusted; the Board's task is to consider what, in all of the circumstances, is appropriate compensation to the surface right's holder for the activities of the owner of the subsurface rights.

The Board concurs with the Respondent that many of the factors noted by the Applicants, while legitimate concerns about losses, which are properly compensable, are so variable or incapable of calculation in advance that they should not be considered in setting annual compensation. The concerns, such as crop loss and any losses associated with the presence of the scentless chamomile, the costs of control and eradication, should be the subject of additional and independent claims by the Applicants resulting from the Respondent's activities. These factors may form the basis of a claim for compensation as they are incurred and, if the parties are unable to satisfactorily resolve these issues between themselves, may form the basis of an Application to this Board to determine compensation for damages. Alternatively, these losses may form the basis of an application to the Board under Section 24(2) of the Act to have this order reconsidered.

The factors which the Board finds are not capable of accurate calculation, but are reserved to the parties to deal with on a case-by-case basis include, but are not limited to, annual crop loss, whether due to compaction of the Applicants land, difficulties in properly farming areas of severed land, if the crop planted is unusually profitable or if excessive delays in seeding are encountered due to piled snow or spring run off as well as any expenses

relating to weed eradication on an annual basis. For greater clarity, the compensation awarded under this order is for the reasonably foreseeable and calculable interference with the Applicant's surface rights.

Concerning this well-site, which appears will not be a producing well-site in the future, the factors giving the greatest weight by the Board in determining compensation are the nuisance and inconvenience associated with the location of the well and the road, hindering the Applicants ability to work the land, and the need for the Applicants to be vigilant to inspect the land for scentless chamomile to ensure that it does not spread. The amount of annual compensation awarded takes into account the time taken by the Applicants in inspecting the land for this noxious weed but not for removal or eradication of it. It is the Respondent's obligation to respond, in a timely manner, to any infestations of scentless chamomile; if the response is inadequate or inappropriate then the Applicants may incur additional damages for which they are entitled to compensation.

After carefully considering the submissions of the parties and the evidence placed before this Board together with the factors to which the Board is directed by legislation to consider, the Board determines that fair and reasonable annual compensation for this well-site access road should be $ 3,800.00 .

Costs

The Applicant sought compensation totaling $ 5,000.00 for the preparation and attendance at the two arbitrations heard on the 19 March 2002, as well as additional time spent preparing for this arbitration by attending previous arbitrations involving other landowners to become familiar with the Board's process.

After carefully considering this issue and the submissions of the parties, the Board determines that an appropriate award of compensation to the Applicants for their time on this arbitration is $ 500.00.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 12 of the *Petroleum and Natural Gas Act*, the Respondent will pay to the Applicants annual compensation of $ 3,800.00 for this well site and access, commencing with the payment due 27 May 2001 and payable on the 27 May in every year thereafter until further order of the Board or agreement between the parties.

2. Within 30 days of the date of this Order (22 June 2002) the Respondent will provide to the Board proof of payment of any additional compensation to the Applicants due pursuant to the terms of this Order.

3. Within 30 days of the date of this Order (22 June 2002) the Respondent will provide to the Board proof of payment of the sum of $ 500.00 representing the costs to which the Applicants are entitled pursuant to this Order.

4. Should the Respondent not pay additional compensation or costs within 30 days, as ordered, then the Applicants will receive on the unpaid amount interest calculated in accordance with the *Court Order Interest Act* for post-judgment interest.

5. No portion of this Order varies or amends any lease or other contractual arrangement between the Applicants and the Respondent except as may reasonably be necessary to amend the amount of annual compensation.

6. 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 23rd day of May, 2002

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

_____
Rodney J. Strandberg, Chair

_____
William Wolfe, Member

_____
Ivor Miller, Member