

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: 1015

Board Order No. 352 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
SOUTH WEST QUARTER OF SECTION 19,
TOWNSHIP 86, RANGE 19
WEST OF THE SIXTH MERIDIAN PEACE RIVER
DISTRICT
(A6-19-86-19 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 review 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 there are two wells on the lease, and the size of the lease known, as A6-19-86-19 was 9.52 acres. Current annual compensation is \$ 5,800.00 paid on the 11 March 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 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.

The Applicants noted that the Respondent took over this well site from Petro Canada. Initially there was a single gas well on this lease. There is also now a pump-jack with a gas motor that the Applicants note can be heard at their residence on cold winter days. There are now two producing wells on the property, one a natural gas well and one an oil well. The lease is also used for the storage of pipe, tanks and what the Applicants referred to as junk. The Applicants noted that there may be contamination migrating underground in a

northeast direction from the well-site. Cardboard insulation blows from the well site onto the fields. It appears that there may be a migration of gravel onto the fields of the Applicants. The Applicants also noted that there has been some evidence of unauthorized persons entering their property through this well site or the access road to it.

The location of the well-site and access road cuts across the Applicants' property dividing a large field into two smaller ones. This causes the Applicants problems in properly tilling the soil causing excessive packing of the ground, over seeding and over fertilizing of the land, reducing crop yields. Additional time is also taken in maneuvering farm machinery around the well site. The Applicants note that there is a flow line on the property in which their machinery gets stuck. The Applicants also note an ongoing problem with the way snow is piled onto the land from the lease and access road. In the spring the Applicants are delayed in entering onto the land as the snow melts and runs in a northerly direction across it toward the creek thereby hindering the ability of the Applicants to plant crops. The consequence of this is that the crops have a shorter growing season with the risk of earlier frost damage leading to a reduction in both quality and volume of crops produced.

The Applicants sought an award of annual compensation for the 9.52 acre lease of \$ 15,105.00 based on the factors set out in section 21 of the *Petroleum and Natural Gas Act*.

B. Respondent

The Respondent noted that many of the difficulties experience by the Applicants relate to the previous owner of the lease. The Respondent accepts that there may be some severance of land around the well site. The Respondent notes that some aspects of the Applicants claim for compensation are of such variability that they should be the subject matter of additional or separate claims by the Applicants for damages, perhaps on an annual basis, rather than being incorporated into an award of annual compensation by the Board.

The Respondent offers the sum of \$ 6,500.00 for annual compensation and, further, pledges to work on communication and response to the Applicants' concerns regarding the Respondent's activities on the land.

Discussion

When considering this well-site the factors given the greatest weights are the nuisance experienced by the Applicants with the smaller size of the fields and the consequential difficulty in farming the land, the annual nuisance of water flowing across the property and possible soil erosion, the reduced crop yield and the risks of unauthorized entry into the property. This site is unusual because it is a two-well site and also because the Applicants rotate their crops. It is also notable that the Applicants enjoy productive soil and are viewed as the best risk for crop insurance purposes.

The Board must always determine what use, if any, is to be made of the evidence of the current rate of 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 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 any changes in the value of money. It is not, however, the Board's task to use the existing rate of compensation as any starting point to determine appropriate compensation, it is the Board's task to, while considering the current compensation, determine what in all of the circumstances will be the appropriate compensation in future.

The Board concludes that annual crop loss whether due to compaction, over seeding, over fertilizing or delays in getting onto the property should be the subject matter of additional claims for compensation by the Applicants, perhaps on an annual basis. The Board should not attempt to incorporate these amounts into an annual award of compensation in light of the great variability in the crop grown, yields and price each year. An alternative approach would be for the Applicants to make application under Section 24 (2) of the Petroleum and Natural Gas Act for a reconsideration of annual compensation for the purpose of awarding new compensation if additional crop loss or damage occurs after the date of this order.

After carefully considering the factors the Board is directed by legislation to consider, and the evidence adduced by the parties as well as their submissions the Board determines that appropriate annual compensation for this lease site should be \$ 7,250.00.

Costs

The Applicant sought the sum of \$ 5,000.00 for this arbitration and the other arbitration heard at the same time.

Having carefully considered the time, which would be reasonably taken by parties in preparing for this arbitration the Board, determines that the appropriate amount of compensation payable forthwith by the Respondent is \$ 750.00.

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 \$ 7,250.00 for this well site and access, commencing with the payment due 11 March 2001 and payable on the 11 March 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 \$ 750.00 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