

File No. 1643/1644
Board Order No. 1643/44-2

November 20, 2012

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NE ¼ Section 11, Township 77, Range 17, W6M, Peace River District
SW ¼ Section 14, Township 77, Range 17, W6M, Peace River District
NW ¼ Section 11, Township 77, Range 17, W6M, Peace River District

(The "Lands")

BETWEEN:

MURPHY OIL COMPANY LTD.

(APPLICANT)

AND:

DUANE HALLIDAY and SUZANNE HALLIDAY

(RESPONDENTS)

BOARD ORDER

Heard: by way of written submissions, last received on September 12,
2012

Panel: Rob Fraser

Appearances: Rick Williams, Barrister and Solicitor, for the Applicant
Duane Halliday, Respondent

INTRODUCTION

[1] The Applicant, Murphy Oil Company Ltd. (Murphy Oil), applies to the Board for mediation and arbitration respecting the right of entry to Lands owned by Duane Halliday and Duane and Suzanne Halliday, and compensation payable for that entry.

[2] On July 22, 2010, the Board issued Order 1643/1644-1 granting Murphy Oil the right to enter the Lands for the construction of the flow line. In its Order, the Board noted the parties could not resolve the issue of compensation and refused further mediation.

[3] The right of way covers 9.17 acres, and the temporary work space is 5.05 acres.

[4] My decision considers the submissions of both parties regarding the appropriate compensation required to account for Murphy Oil's entry onto the lands.

Preliminary Issue 1: Flow Line versus Flow Lines

[5] Mr. Halliday takes issue with the wording of the Board's Order 1643/1644-1, as the writer refers to "flowline" and pipeline in the singular when in fact Murphy Oil installed five flowlines on the Lands. Mr. Halliday says because the Order refers to only one flow line, the other four are installed illegally. Murphy Oil says the Oil and Gas Commission ("OGC") issued a permit for five flow lines. Murphy Oil argues that the Board granted access to Murphy Oil to complete the work authorized by the OGC and that the wording of the Board's order is of no significance. Murphy Oil points to the construction plans that refer to "five pipes", plus the wording of a Court Order issued on September 20, 2012 that refers to "flow lines".

[6] I find nothing turns on the fact that the Board refers to "flow line" in the singular when the project involves the installation of five flow lines. I find that Mr. Halliday was aware of the number of flow lines as the OGC refers to "five pipes" in their approved construction plans. As well, in Murphy Oil's original application to the Board for mediation and arbitration services, Murphy Oil refers to "flow lines" in the plural rather than the singular.

[7] However, it is not important whether Mr. Halliday was aware of the installation of one flow line or five, or whether the Board used the singular rather than the plural. The Board Order granted Murphy Oil access to the Lands to complete the work approved by the OGC. The OGC approved the installation of five pipes, which are the five flow lines installed by Murphy Oil. It is not within the Board's jurisdiction to approve the number of flow lines for any given project. The Board's jurisdiction is limited to granting access for the completion of the project, and for settling the issue of compensation if the parties are unable to resolve it themselves. Whether the Board referred to a "flow line" or "flow lines", the entry order was for the construction of the works as approved by the OGC, and the wording of the Board's Order does not limit the project to one flow line nor does it make the presence of the other four illegal.

Preliminary Issue 2: The Riser Site

[8] The parties entered into two leases for a riser site and access. Neither formed part of the Board's Order and compensation for these leases, which is settled between the parties, is not part of this arbitration.

Settled Damages

[9] Murphy Oil paid Mr. Halliday \$4,000 for fence repairs and \$16,000 for timber removed and used in the construction of the project. As well, Murphy Oil paid Mr. Halliday \$1,160 for damage to 29 bales of oats.

Settlement with Suzanne Halliday

[10] Suzanne Halliday is the former wife of Duane Halliday. She is currently a resident of Australia and may now have a different last name.

[11] On July 20, 2012, Murphy Oil and Suzanne Halliday reached an agreement for her portion of compensation for the NW ¼ Section 11, Township 77, Range 17, W6M. Murphy Oil paid her \$1,400 for timber loss, \$500 for fence cuts, and \$2,221 for compensation and pasture loss.

ISSUE

[12] The sole issue before me is the determination of the appropriate compensation owing to Duane Halliday resulting from Murphy Oil's right of entry onto the Lands for the purposes of construction of an approved pipeline project.

SUBMISSIONS

[13] Mr. Halliday seeks damages of \$258,340.00 from Murphy Oil. Murphy Oil says that they are prepared to pay Mr. Halliday \$22,719.50 (\$13,679.00 for loss of rights and land value and \$9,040.50 for loss of profits). Mr. Halliday breaks down his claim into components and provides reasons for each amount. Murphy Oil provides an appraisal report of the bare land per acre market value of the lands, plus an agricultural damages report.

[14] John Wasmuth, an accredited and experienced real estate appraiser and a professional agrologist employed by Canadian Resource Valuation Groups Inc., prepared Murphy Oil's reports.

Reduction in Market Value

[15] Mr. Halliday says the value of one quarter of the Lands is negatively impacted by the right of way, and seeks \$60,000, or half the land value as compensation. In support, he provides correspondence from three potential purchasers who declined to buy the land because of the presence of the right of way and flowlines.

[16] In his appraisal report, Mr. Wasmuth analyzed the impact of pipeline rights of way on the market value of land. He reviewed the available literature and applied his extensive experience (30+ years). He found that there are no North American studies that demonstrate a negative impact on the market value of agricultural holdings resulting from the presence of a pipeline right of way. As well, in his years of experience of performing thousands of appraisals of agricultural lands, he has never found a correlation between rights of way and value indicating a negative impact on the market prices of agricultural land containing underground pipelines.

[17] I find Mr. Wasmuth's report persuasive evidence and find that there is no support for an award of damages to account for a loss of market value due to the right of way or due to the presence of Murphy Oil's flowlines. The correspondence produced by Mr. Halliday indicates that his potential purchasers declined to enter into purchase agreements because they believed that the location of the right of way interfered with where they wished to place a residence. These letters indicate the desires of these purchasers, but are not evidence of a loss of value.

[18] Mr. Halliday did not provide any testable support for his opinion, such as an appraisal report, establishing whether the right of way actually creates a negative impact and if so, the amount of reduction in the market value of the land.

Loss of Timber:

[19] Mr. Halliday claims \$16,840 for the loss of timber. Mr. Zeke Reimers, in his affidavit, says that Murphy Oil paid Mr. Halliday \$16,000 for the agreed value of the

timber removed in clearing the land and in construction. Mr. Halliday signed a general release with respect to the timber. As well, Murphy Oil agreed to pay an additional \$1,400 to Suzanne Halliday for her share of the timber.

[20] I find that there is not sufficient evidence to include a further \$840 for timber loss, as the parties have agreed to \$16,000 and Murphy Oil has paid that amount to Mr. Halliday.

Loss of Pasture

[21] Mr. Halliday claims a total loss of \$79,000 for his loss of pasture. He calculates the loss for SW ¼ Section 14, Township 77, Range 17, W6M as \$200 per acre for 116 acres, or \$23,200 for 2011 and 2012.

[22] For NW ¼ Section 11, Township 77, Range 17, W6M he calculates a loss based on \$200 per acre for 18 acres, or \$3,600.

[23] For NE ¼ Section 11, Township 77, Range 17, W6M, Mr. Halliday calculates his loss as \$200 per acre for 160 acres, or \$32,000.

[24] Mr. Halliday selects \$200 per acre, saying this figure is used by Murphy Oil in calculating the loss of use for pasture.

[25] Mr. Wasmuth provides a detailed calculation of productivity in his agricultural damages report. Based on his experience, he estimates a 100% crop loss for the years 2010, 2011 and 2012, with 75% loss in 2013, 50% loss in 2014, and 25% loss in 2015.

[26] He estimates the loss by calculating the forage yield of the lands, for both native and tame pasture lands. Then he determines the price of the forage crop, and applies this to the area of the pipeline right of way and to the temporary work space. For NE11 & SW 14 he estimates the loss at \$2,340 for the right of way and \$1,152 for the temporary work space, or a total of \$3,492. For NW 11, he estimates the loss of the right of way at \$350 and for the temporary work space at \$243, or a total of \$593. He concludes that \$4,085 represents the agricultural loss arising from the construction of the flow lines in the right of way, and for the disruption in the temporary work space.

[27] Mr. Wasmuth produced a thorough and comprehensive analysis of the loss of forage. He considered the time it would take to bring the land back to full productivity, he limited his calculations to the actual land involved, and he provided a detailed calculation of the potential loss. In contrast, Mr. Halliday produced figures without any support. I give most weight to Mr. Wasmuth's evidence, and I find that the best estimate of agricultural loss is \$4,085.

Value of the Land

[28] Mr. Halliday seeks a sum of \$115,500 as the value of the land taken by Murphy Oil for the right way and for the temporary work space. He claims that another company paid \$77,000 to go the same route as Murphy Oil. He says Murphy Oil used 1.6 as much land and their pipeline density is 1.4 times greater. He reaches his conclusion of value by calculating $1.6 + 1.4 = 3 / 2 = 1.5 \times \$77,000 = \$115,500$. Mr. Halliday does not provide any other evidence to support his conclusion.

[29] Mr. Wasmuth prepared a market value appraisal of the lands. He reviewed the amount cultivated, the soil rating, the topography, the zoning and the ALR status. He also analyzed the highest and best use, concluding the use is for agricultural production and that the highest and best use did not change because of the of the Murphy Oil project.

[30] In arriving at his estimate of the fee simple estate, Mr. Wasmuth analysed eight sales of lands similar in size, soil class, topography and zoning. He made adjustments for differences as necessary and found that the value of the bare land ranged from \$540 per acre to \$768 per acre, with an average of \$674 per acre and a median of \$699 per acre. His final conclusion is \$700 per acre as of July 2010. Mr. Wasmuth then applies this to the area of the right of way, which totals 9.17 acres for a land value of \$6,419.

[31] In valuing the temporary work space, Mr. Wasmuth considers that this is a short term taking and looks to the appropriate rental rate, which he determines to be \$25 per annum for three years, or \$75 per acre. However, in valuing the temporary work space, he relies on the industry standard of using 50% of the land value, or \$350 per acre. He applies this to the 5.05 acres of temporary work space to estimate the value at \$1,768.

[32] Mr. Wasmuth considers whether the presence of the right of way negatively impacts the value of the lands outside of the right of way. He considers the highest and best use of the land both before and after the right of way taking, and concludes that the taking will most likely not change the highest and best use from agricultural production.

[33] Mr. Wasmuth reviewed the relevant literature, applied his own extensive experience, and because there is no change in the highest and best use of the lands concludes that the right of way will not cause any reduction in the market value of the remaining portions outside of the right of way.

[34] I find that Mr. Wasmuth performed a detailed analysis of the value of the Lands, and I give most weight to his opinion of value. Mr. Halliday provides neither evidence nor rationale for his calculation. I find that the actual value for the land in the right of way is \$6,419 and the actual value of the land in the temporary work space is \$378.75 ($\75×5.05 acres) but I will accept the industry standard of 50% of the value of the land in the right of way, or \$1,768 ($\350×5.05 acres). I also find that there is no evidence or theoretical support for a diminishment in value of the lands outside of the right of way.

ANALYSIS

[35] The sole remaining issue in this dispute is my determination of the appropriate compensation payable to Mr. Halliday by Murphy Oil resulting from the right of way and the activities associated with the installation of the flowlines.

[36] The factors the Board may consider in setting compensation are found in Section 154(1) of the *Petroleum and Natural Gas Act*, which provides as follows:

154 (1) In determining an amount to be paid periodically or otherwise on an application under this Part, the board may consider, without limitation, the following:

- (a) the compulsory aspect of the right of entry;
- (b) the value of the applicable land;
- (c) a person's loss of a right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;
- (e) compensation for severance;
- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any, of one or more other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the board or to which the board has access;
- (j) previous orders of the board;
- (k) other factors the board considers applicable;
- (l) other factors or criteria established by regulation.

[37] The specific factors in Mr. Halliday's claim for compensation and the specifics of Murphy Oil's offer to settle are covered by section 154. I do not need to consider factors other than those specified in the legislation.

[38] I found that the Board's Order was for a right of entry to construct the work approved by the OGC, regardless of how many flowlines Murphy Oil placed in the right of way. This is not a factor to be considered in determining compensation.

[39] Likewise, the riser site and access are not part of the Board's Order and therefore are not factors in determining compensation.

[40] After considering the evidence of the parties, I found that there was no evidence to support a reduction in the land value as a result of Murphy Oil's activities on the Lands. I found that the parties had settled on an amount for the loss of timber, and there was no evidence leading me to conclude that there should be any further compensation. For the loss of pasture, I accepted Mr. Wasmuth's estimate of \$4,085. For the loss of the land, I again accepted Mr. Wasmuth's opinion that the value of the land in the right of

way is worth \$6,419 and the value of the land in the temporary work space is \$378.75, but accepted his adjustment to the industry standard or \$1,768.

[41] Mr. Halliday's total loss is either $\$4,085 + \$6,419 + \$378.75 = \$10,882.75$ or accepting the industry standard applied to the temporary workspace, his total loss is $\$4,085 + \$6,419 + \$1,768 = \$12,272$.

[42] Mr. Halliday's maximum total loss of \$12,272 is below Murphy Oil's offer of \$22,719.50. Murphy Oil's offer for the loss of land is \$13,679, which exceeds Mr. Wasmuth's opinion of \$8,187, adopting the industry standard for temporary workspace.

[43] In *Western Industrial Clay Products Ltd. v. Mediation and Arbitration Board*, 2001 BCSC 1458, the Court said that the upper limit for compensation is the value of the land and if the landowner receives the full amount of the land value the Board must not make an additional payment for the compulsory aspect of the taking. The Board reiterated this principle in *Arc Petroleum Inc. v. John Miller and Mary Miller* (SRB Order 1633-3, May 2011).

[44] Mr. Wasmuth's opinion of the land value is for the fee simple value of the land. However, Murphy Oil is acquiring only a partial interest and not the full fee simple so to accurately determine the appropriate land loss, I should consider the residual or reversionary interest. In this case, Mr. Wasmuth did not adjust for any reversionary interest so therefore, his opinion of \$700 per acre exceeds the appropriate amount per acre for land loss.

[45] If the only evidence before me was that of Mr. Halliday and Mr. Wasmuth, I would find that \$8,187 exceeds the actual land loss. However, Murphy Oil made an offer based on what it had paid other landowners for similar situations. Although Murphy Oil's offer exceeds the actual loss, out of fairness Mr. Halliday should not receive an amount less than that received by others in the area. Therefore, I accept Murphy Oil's offer as reasonable compensation in these circumstances.

[46] One of the factors the Board may consider in setting compensation is the compulsory aspect of the taking. In this case, since the amount of compensation exceeds the actual value of the land, I find Murphy Oil's offer is sufficient to compensate Mr. Halliday for the compulsory aspect of his loss.

[47] Another factor the Board may consider is nuisance and/or severance. I have no evidence of any loss for these factors, and if there is any, it is incorporated in Murphy Oil's offer that exceeds Mr. Halliday's actual loss.

[48] In summary, I find that Murphy Oil produced the only credible evidence that assisted me in finding the appropriate compensation to account for their activities on Mr. Halliday's Lands. Murphy Oil's total offer for all factors of \$22,719.50 exceeds the actual loss of \$12,272.00, but for reasons of fairness is the appropriate compensation for any negative impacts to the Lands and for any loss of pasture. I find any compensation for the compulsory aspect of the taking and for nuisance/severance is

accounted as Murphy Oil's offer exceeds the actual loss. As well, I find no evidence to support a loss of land value because of the presence of the flowlines and the right of way.

ORDER

[49] The Board orders Murphy Oil Company Ltd. to pay to Duane Halliday the sum of \$22,719.50 to account for the losses from all sources resulting from Murphy's activities on Mr. Halliday's Lands.

DATED: November 20, 2012

FOR THE BOARD

A handwritten signature in black ink, appearing to read "Rob Fraser", written in a cursive style.

Rob Fraser, Arbitrator