

File No. 1740
Board Order 1740-2

March 8, 2012

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE NORTH WEST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS 24410 AND PGP38491;
THE FRACTIONAL NORTH EAST ¼ OF SECTION 10 TOWNSHIP 84 RANGE 21
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Terra Energy Corp.

(APPLICANT)

AND:

Arleen Lois Boon and Kenneth Victor Boon

(RESPONDENTS)

BOARD ORDER

Heard by way of written submissions closing March 2, 2012.

Submissions from: Ken Boon and Arlene Boon received February 17, 2012 and March 2, 2012, on their own behalf

Rick Williams, Barrister and Solicitor, received February 20, 2012, on behalf of Terra Energy Corp.

Panel Chair: Cheryl Vickers

INTRODUCTION AND ISSUE

[1] Terra Energy Corp. (Terra) applied to the Surface Rights Board (the Board) for an entry order to Lands owned by Ken and Arlene Boon. Terra submits access to the Lands is required to carry out an oil and gas activity, namely the operation and maintenance of a water source well and a flow line. By Order dated January 19, 2012, the Board granted Terra right of entry to the Lands for the operation and maintenance of a flowline (Order 1740-1). Mr. and Mrs. Boon take issue with the Board's jurisdiction to grant an entry order for the operation and maintenance of a water source well.

[2] On January 23, 2012, the Oil and Gas Commission (OGC) issued a permit to Terra to drill and operate the water source well and to construct and operate road access for the purpose of exploring for, developing and producing water, subject to various conditions. The Boons have filed an appeal of the OGC's decision to issue the permit to the Oil and Gas Appeal Tribunal. That appeal has not yet been heard.

[3] The only issue before me at this time is whether the Board has jurisdiction to grant right of entry to private land for the operation and maintenance of a water source well. The issue turns on the question of whether operation and maintenance of a water source well is an "oil and gas activity" or "a related activity" as those terms are defined in the *Oil and Gas Activities Act* (OGAA) and adopted by the *Petroleum and Natural Gas Act* (PNGA).

ANALYSIS

[4] The Board's jurisdiction is set out at section 147 of the *PNGA* and includes jurisdiction in relation to an application under Division 5 of the *PNGA* by a person who requires a right of entry. Pursuant to section 158 of the *PNGA*, a person who requires a right of entry may apply to the Board for mediation and arbitration if the person and the landowner are unable to agree on the terms of a surface lease. Pursuant to section 159 of the *PNGA*, the Board or a designated mediator may make an order authorizing a right

of entry “if the Board or mediator, as applicable, is satisfied that an order authorizing the right of entry is required for a purpose described in section 142(a) to (c)”. The purposes described in section 142(a) to (c) are:

- (a) to carry out an oil and gas activity,
- (b) to carry out a related activity; or
- (c) to comply with an order of the commission.

[5] Mr. and Mrs. Boon submit that the purpose for which Terra seeks access to their Lands, namely the operation and maintenance of a water source well, is not “an oil and gas activity” or “a related activity”, and therefore, the Board does not have jurisdiction to grant a right of entry order. Terra submits it requires access to the Lands for “an oil and gas activity” and the Board has jurisdiction to grant an entry order.

[6] I agree that the operation and maintenance of a water source well is not “a related activity”. A “related activity” is an activity that must not be carried out except as authorized by a “specified enactment” or in accordance with a “specified enactment”, and the carrying out of which is required for an oil and gas activity. The *Water Act* is a “specified enactment”, but a “water source well” is not an activity authorized or regulated by the *Water Act*. The definition of “well” in the *Water Act*, which includes “an artificial opening in the ground made for the purpose of exploring for, or extracting and using, ground water”, specifically excludes “an artificial opening regulated under... the *Oil and Gas Activities Act*” (OGAA). The question, therefore, becomes whether the operation and maintenance of a water source well is an “oil and gas activity”.

[7] “Oil and gas activity” is a defined term that includes “the exploration for and development of petroleum, natural gas or both” and “the production, gathering, processing, storage or disposal of petroleum, natural gas or both” (*PNGA*, section 1; *OGAA*, section 1(2)). A “water source well” is defined in the *PNGA* as “a hole in the ground drilled to obtain water for the purpose of injecting water into an underground formation in connection with the production of petroleum or natural gas”. The activity of injecting water into an underground formation in connection with the production of petroleum and natural gas is known as hydraulic fracturing. The injection of fluids down a wellbore under high pressure causes the formation to crack open, creating passages for the reservoir hydrocarbons to flow more easily into the wellbore. This is Terra’s intended use of the water source well and the purpose for which the water source well has been permitted by the OGC.

[8] A “water source well” by definition is “in connection with the production of petroleum and natural gas” and clearly part of the production of petroleum or natural gas. The operation and maintenance of a water source well is, therefore, an “oil and gas activity” as defined by the *OGAA* and *PNGA*, and the Board has the jurisdiction to make an order authorizing right of entry.

ORDER

[9] The Board has jurisdiction to make an order authorizing entry to private land for the operation and maintenance of a water source well if satisfied an order authorizing entry is required. Terra's application is referred back to the mediator to assist the parties with resolution of compensation and other terms of entry and to determine whether a right of entry order is required.

DATED: March 8, 2012

FOR THE BOARD

A handwritten signature in cursive script, appearing to read "Cheryl Vickers".

Cheryl Vickers, Chair