

**September 29, 2016**

**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**

**THE EAST ½ OF SECTION 32, TOWNSHIP 113, PEACE RIVER DISTRICT;  
THE WEST ½ OF SECTION 32, TOWNSHIP 113, PEACE RIVER DISTRICT;  
THE SOUTH ½ OF SECTION 5, TOWNSHIP 112, PEACE RIVER DISTRICT;  
THE NORTH ½ OF SECTION 5, TOWNSHIP 112, PEACE RIVER DISTRICT  
EXCEPT PLAN PGP43769;  
THE SE ¼ OF SECTION 6, TOWNSHIP 112, PEACE RIVER DISTRICT  
EXCEPT THE MOST SOUTHERLY 20.116 METRES;  
SECTION 7, TOWNSHIP 112, PEACE RIVER DISTRICT;  
THE SOUTH ½ OF THE NORTH WEST ¼ OF SECTION 8 TOWNSHIP 112, PEACE  
RIVER DISTRICT  
(the "Lands")**

**BETWEEN:**

**Kevin Thiessen and  
Tina Thiessen**

**(APPLICANTS)**

**AND:**

**Canadian Natural Resources Limited**

**(RESPONDENT)**

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**BOARD ORDER**

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Heard: July 26 and 27, 2016 in Fort St. John  
Appearances: Thor Skafte and Kevin Thiessen, for the Applicants  
Darrin Naffin, Barrister and Solicitor, for the Respondent

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## **INTRODUCTION**

[1] These are applications for the review of rent payable under 22 surface leases between Kevin and Tina Thiessen, the Applicant landowners, and Canadian Natural Resources Limited (CNRL), the Respondent.

[2] Mr. and Mrs. Thiessen submit the annual rent payable under each of the leases should be increased. CNRL submits the landowners have not met the burden upon them to demonstrate that the current rent does not adequately cover their ongoing losses arising from CNRL's use and occupation of their Lands and that the applications should be dismissed or, in the alternative, that the rent payable under each lease should be reduced. In determining the appropriate rent, the parties disagree on how to estimate loss of profit and on the appropriate amount to be paid for either tangible or intangible loss arising from nuisance and disturbance. The parties disagree on whether the current rents should be adjusted for inflation, and if so, how such an allowance should be calculated.

[3] For seven of the leases, the parties disagree on the area of the lease. For all 22 leases, the parties disagree on the effective date of the rent review.

[4] The Thiessen's have also filed a separate application with the Board claiming compensation for damages arising from CNRL's rights of entry. That application was not part of this arbitration and I make no findings in this proceeding with respect to the damage claims.

## **ISSUES**

[5] The issues are:

- a) What is the effective date of rent review for each of the 22 leases?
- b) Where lease area is not agreed, what is the lease area for the calculation of rent?
- c) For each of the 22 leases, does the current rent compensate for ongoing losses or should it be varied?

[6] After setting out some background, I will divide this decision into three sections. The first will deal with the effective date issue, the second with determining compensable area, and the third with the review of the rents.

## **BACKGROUND**

[7] Kevin and Tina Thiessen are the registered owners of land legally described as:

The East ½ of Section 32, Township 113, Peace River District;  
The West ½ of Section 32, Township 113, Peace River District;  
The South ½ of Section 5, Township 112, Peace River District;  
The North ½ of Section 5, Township 112, Peace River District Except Plan PGP43769;  
The SE ¼ of Section 6, Township 112, Peace River District Except the Most Southerly 20.116 Metres;  
Section 7, Township 112, Peace River District;  
The South ½ of the North West ¼ of Section 8 Township 112, Peace River District (collectively the Lands).

[8] CNRL uses portions of the Lands to operate natural gas wells and as access roads pursuant to surface leases with Mr. and Mrs. Thiessen. Some of the leases were in place when the Thiessens acquired the Lands and some of the leases were signed by the Thiessens after they acquired the Lands.

[9] All of the rents were last reviewed in 2009.

[10] The Thiessens operate a farm known as Buck Ridge Farm comprising 2,700 acres and including the Lands. They use some of the Lands for the cultivation of crops including oats, barley, wheat, canola, peas, timothy, and fescue, and some of the Lands for raising cattle and growing forage. They do not grow all of these crops or raise cattle every year. They have not raised cattle since 2014.

## I. EFFECTIVE DATE OF RENT REVIEW

### FACTS

[11] Sometime in 2013, Mr. Thiessen contacted Ashley Scriba of CNRL by telephone to initiate a review of rents payable under the surface leases on his Lands. Ms. Scriba told him that there was another rent review involving CNRL leases proceeding to arbitration and that CNRL would wait for the results of that case before making a decision on his rents. The Board released its decision in *Iverson v. CNRL*, Order 1797-1, on January 8, 2014. Mr. Thiessen communicated back and forth for some time with Ms. Scriba following the release of the *Iverson* decision, but CNRL was not willing to increase the rents payable under the leases with the Thiessens.

[12] Mr. Thiessen retained the services of Mr. Skafte in May of 2014 to assist with the rent review negotiations. He and Mr. Skafte attended meetings with CNRL personnel in Fort St. John on June 9 and November 24, 2014, and in Calgary on September 9, 2014 to discuss the rent payable without resolution.

[13] The Board received the Thiessen's application for Rent Review on February 16, 2015. The application indicates that the date of the Form 2 – Notice to Negotiate was January 9, 2015.

## **LEGISLATION**

[14] The process for the negotiation and amendment of rent payable under a surface lease or board order is set out in sections 165 and 166 of the *Petroleum and Natural Gas Act*. Section 165(2) provides that a right holder who holds a right of entry under a surface lease or Board order or the landowner whose land is subject to the right of entry “may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order”. I will call this notice a Notice to Negotiate. The Board’s Rules prescribe Form 2 to provide notice under section 165 of the *Petroleum and Natural Gas Act* for rent renegotiation. The method of delivery is prescribed on the Form 2 itself as registered mail.

[15] Section 165(3) provides that a Notice to Negotiate may not be served before the 4<sup>th</sup> anniversary of the effective date of the surface lease or Board order or the effective date of the most recent amendment to the rental provisions in the surface lease or Board order, whichever is the later. Section 165(4) requires a person serving a Notice to Negotiate to file a copy of the Notice to Negotiate with the Board. Section 165(6) provides that if persons giving and receiving a Notice to Negotiate agree to an amendment of rental provisions, the right holder must submit a copy of the agreement to the Board. Section 165(7) provides that an agreed amendment to the rental provisions is effective from the anniversary of the effective date of the surface lease or order immediately preceding the Notice to Negotiate and retroactive to the extent necessary.

[16] Section 166 deals with the process when the parties do not agree to amend the rental provisions in a surface lease or Board order. Section 166(1) provides that if persons giving and receiving a Notice to Negotiate do not agree to an amendment of the rental provisions within 60 days after receipt of the Notice to Negotiate, either party may apply to the Board to resolve the disagreement. Section 166(3) allows the Board to vary the rental provisions in a surface lease or Board order when an application is

made to it. Section 166(4) provides that any order varying the rental provisions is effective from the anniversary date of the surface lease or Board order immediately preceding the Notice to Negotiate and is retroactive to the extent necessary.

## **SUBMISSIONS**

[17] The parties' respective positions on the effective date of each rent review are set out below together with the date of each surface lease and last rent review:

Ref	Location	Date of original Surface Lease	Last Rent Review	Thiessen effective date	CNRL effective date
1	a-6-A/94-A-14	26-June-1995	26-June-2009	June 27, 2012	June 26, 2014
2	a-26-A/94-A-14	28-November-1990	30-October-2009	October 30, 2012	November 28, 2014
3	a-27-A/94-A-14	3-November-2004	3-November-2009	November 3, 2013	November 3, 2014
4	b-5-A/94-A-14	6-May-1995	6-May-2009	May 6, 2013	May 6, 2014
5	b-16-A/94-A-14	23-April-1999	23-April-2009	April 23, 2013	April 23, 2014
6	b-25-A/94-A-14	12-April-2003	12-April-2009	April 12, 2013	April 13, 2014
7	b-36-A/94-A-14	12-April-2003	3-April-2009	April 12, 2013	April 12, 2014
8	b-a36-A/94-A-14	22-September-2003	22-September-2009	April 12, 2013	September 22, 2014
9	b-49-A/94/A-14	22-November-2000	22-November-2009	November 22, 2013	November 22, 2014
10	b-C46-A/94-A-14	14-September-2005	14-September-2014	September 14, 2012	September 14, 2014
11	cb-6-A/94-A-14	17-October-1995	26-June-2009	October 17, 2013	October 17, 2014
12	c-A6-A/94-A-14	17-October 1995	29-July-2009	July 29, 2013	October 17, 2014
13	c-17-A/94-A-14	29-July-1995	29-July-2009	July 29, 2013	July 29, 2014
14	c-39-A/94-A-14	26-January-2000	26-January-2009	January 26, 2013	January 26, 2014
15	c-97-I/94-A-11	9-August-2005	5-August-2009	August 9, 2013	August 9, 2014
16	d-6-A/94-A-14	28-November-1990	29-July-2009	November 28, 2013	November 28, 2014
17	d-A6-A/94-A-14	9-August-2005	9-August-2009	August 9, 2013	August 9, 2014
18	d-16-A/94-A-14	12-April-2003	12-April-2009	April 12, 2013	April 12, 2014
19	d-26-A/94-A-14	14-Novemeber-2002	14-November-2009	November 14, 2013	November 14, 2014
20	d-27-A/94-A-14	14-September-2005	14-September-2009	September 14, 2013	September 14, 2014
21	d-95-I/94-A-11	28-February-1995	28-February-2009	September 14, 2013	February 28, 2014
22	d-96-I/94-A-11	16-May-1970	16-May-2009	May 16, 2012	May 16, 2014

[18] As can be seen from the chart above, CNRL uses the 2014 anniversary date of each lease as the effective date for each rent review. In most cases, the Thiessens use the 2013 anniversary date and in a few cases the 2012 anniversary date. For Reference 12, the Thiessens use the 2013 anniversary of the last rent renewal, which apparently did not conform to the anniversary date of the lease. In four instances, References 1, 2, 6, and 8, the effective date used by the Thiessens does not conform to the anniversary date of either the lease or the last rent renewal.

[19] CNRL argues that sections 165 and 166 of the *Petroleum and Natural Gas Act* mandate both the process for seeking an amendment to the rental provisions in a surface lease and the effective date of any amendment ordered by the Board. CNRL submits that section 165(2) requires the service of a notice “in the form and manner established by the rules of the board”, and that it is the anniversary date of the surface lease immediately preceding that notice that becomes the effective date of any revised rent. CNRL argues that the serving of a notice in the form established by the rules of the Board, what I have called a Notice to Negotiate, is mandatory.

[20] The Thiessens argue that the notice established by the rules of the Board is not mandatory. They argue CNRL had effective notice of their request to renegotiate the rental provisions in the surface leases when Mr. Thiessen contacted Ms. Scriba in 2013 to discuss. The Thiessens rely on the Board’s decision in *Iverson v. CNRL, supra*. In that case the Board found that use of the prescribed form to initiate the rent review process is preferable but not necessary if written communications between the parties effectively serve the purpose of the notice to clearly initiate the process and engage the other party.

## **ANALYSIS**

### **What is the effective date of rent review for each of the 22 leases?**

[21] Section 165(2) of the *Petroleum and Natural Gas Act* provides that a right holder or landowner “may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order”. The phrase “in the manner established by the rules of the board” being surrounded by commas, is a restrictive clause defining the notice that may be served on the other party in the preceding phrase. The grammatical and ordinary meaning of the words in section 165(2) is that the notice that may be served by either the right holder or landowner on the other party must be in the form established by the rules of the Board and must be served in the manner established by the rules of the Board. It is this notice that initiates the rent review process and that dictates the

effective date of any amendment to rental provisions in a lease or board order, whether by agreement or as determined by the Board.

[22] Despite the clear wording of the legislation, the Board has nevertheless allowed notice to be given other than by the form and manner established by the rules in circumstances where the Board was able to determine that notice had effectively been given and the parties had clearly engaged in a process of negotiation towards a renewed rent. The *Iverson* case is one such decision. The circumstances of the *Iverson* case were that, with respect to one of the surface leases in issue, the landowner had sent a hand written note clearly asking for a rent review to the right holder and the right holder had responded with a letter containing a written proposal for rent review. With respect to the other two surface leases in issue, the right holder had sent a letter to the landowner offering to amend the rental provisions in the leases and the landowner had responded. The Board found, in the circumstances, that the purpose of the notice provisions of the Act to clearly initiate the process had been met, and that the right holder had clearly engaged in the process.

[23] In *Wilderness Ranch Ltd. v. Progress Energy Canada Ltd.*, Order 1786-90-1, no notice in the form prescribed by the Board had ever been sent. The evidence disclosed that there had been negotiations between the parties for some time. The Board found that notice had been effectively given in the form of an email from the right holder with an offer to amend the rent. The Board found it could not rely on earlier undated written communications to provide effective notice.

[24] In both *Iverson* and *Wilderness Ranch*, the Board was prepared to accept a dated written communication from the landowner expressing clear intent to give notice followed by a written offer to amend the rent from the right holder, or a written dated communication from the right holder including an offer to amend the rent as effective notice. In both cases, the right holders' engagement in the process, with written offers for amended rent, essentially precluded them from arguing that effective notice had not been given.



[25] In this case, the evidence discloses that the parties had certainly discussed rent review prior to the Notice to Negotiate having been sent, but there is no evidence of a dated written communication from the landowner clearly invoking the process, nor is there any evidence of dated written communications from CNRL including offers to amend the rent. The circumstances are distinguishable from those in both *Iverson* and *Wilderness Ranch*. The only evidence of written notice in any form having been sent by the Thiessens to CNRL is the reference on the application to the date of the Form 2. Even if there was clear written notice in another form delivered by the Thiessens to CNRL, there is no evidence before me of any written communication from CNRL in response with an offer to amend the rent.

[26] In the circumstances, I am unable to find effective notice to invoke the rent review process in advance of the Form 2. I find the rent review process was not initiated in accordance with the requirements of the *Petroleum and Natural Gas Act* until January 19, 2015 which is the date of the Form 2. This is the “notice in the form and manner prescribed by the board” required by section 165(2) of the *Petroleum and Natural Gas Act* and the date that establishes the effective date of any amended rent ordered by the Board in accordance with section 166(4). I find the effective dates for each of the rent reviews is the anniversary date of each surface lease preceding January 19, 2015 as set out below:

Ref	Location	Effective Date
1	a-6-A/94-A-14	June 26, 2014
2	a-26-A/94-A-14	November 28, 2014
3	a-27-A/94-A-14	November 3, 2014
4	b-5-A/94-A-14	May 6, 2014
5	b-16-A/94-A-14	April 23, 2014
6	b-25-A/94-A-14	April 13, 2014
7	b-36-A/94-A-14	April 12, 2014
8	b-a36-A/94-A-14	September 22, 2014
9	b-49-A/94/A-14	November 22, 2014
10	b-C46-A/94-A-14	September 14, 2014
11	cb-6-A/94-A-14	October 17, 2014
12	c-A6-A/94-A-14	October 17, 2014
13	c-17-A/94-A-14	July 29, 2014

14	c-39-A/94-A-14	January 26, 2014
15	c-97-I/94-A-11	August 9, 2014
16	d-6-A/94-A-14	November 28, 2014
17	d-A6-A/94-A-14	August 9, 2014
18	d-16-A/94-A-14	April 12, 2014
19	d-26-A/94-A-14	November 14, 2014
20	d-27-A/94-A-14	September 14, 2014
21	d-95-I/94-A-11	February 28, 2014
22	d-96-I/94-A-11	May 16, 2014

## II. COMPENSABLE AREA

[27] For each of the 22 leases, the Thiessen's seek an increase to the current rent based on what they claim to be the compensable area. Their proposed increase is based on claims for crop loss, added inputs due to overlap, adverse effect, and an inflationary increase, all of which will be discussed in the next section of this decision. The calculations supporting their claim for each lease are set out at Tab 7 of Exhibit 1. A calculation sheet is provided for each lease.

[28] CNRL provides a report (Exhibit 2) prepared by Robert J. Telford, an appraiser and land consultant, setting out Mr. Telford's estimates for loss of profit, and tangible and intangible nuisance and disturbance for each lease based on CNRL's view of compensable area.

[29] The parties disagree on the compensable areas of leases 1, 2, 3, 11, 12, 15 and 18 as set out below:

Ref	Location	Area in acres per Thiessens	Area in acres per CNRL
1	a-6-A/94-A-14	4.79	4.44
2	a-26-A/94-A-14	8.32	7.87
3	a-27-A/94-A-14	4.08	7.64
11	cb-6-A/94-A-14	5.10	5.06
12	c-A6-A/94-A-14	4.74	4.37

15	c-97-I/94-A-11	3.73	3.36
18	d-16-A/94-A-14	4.68	4.18

[30] In some cases, the difference between the parties arises from a disagreement as to whether any area of land is severed by the lease. In some cases, the difference is not explained.

**Severance**

[31] The compensable area of a lease may be increased for the purpose of calculating loss of profit where the lease causes an area of land to be severed. Severance occurs where an area in addition to the area covered by a lease is rendered permanently incapable of access by farm equipment, or otherwise permanently incapable of use by the landowner, as a result of the placement of the lease. Where area is severed rendering it incapable of use, loss of profit arising from the lease should include the loss of profit attributable to the severed area. The parties agree the compensable area of leases 4, 6, 7, and 13 should be increased to compensate for severance as follows:

<b>Ref.</b>	<b>Location</b>	<b>Acres in Lease</b>	<b>Acres severed</b>	<b>Compensable Area in acres</b>
4	b-5-A/94-A-14	4.62	3.50	8.12
6	b-25-A/94-A-14	4.27	3.58	7.85
7	b-36-A/94-A-14	4.35	0.50	4.85
13	c-17-A/94-A-14	4.40	0.50	4.90

[32] For some leases, the Thiessens claim for severance arises from an allegation that there is either temporary or permanent damage to the land from the right of entry. Temporary damage rendering land unusable from time to time is not compensable as severance, but may be compensable with an award of damages where evidence establishes the damage and loss is likely caused by the right of entry. If damage causes an area of land to be permanently unusable, it could be compensated for with annual rent as if the area was severed where evidence establishes the permanent loss of use is likely caused by the right of entry. Mr. Thiessen has filed claims for damages which were not heard as part of this arbitration, and I do not make any findings with respect to either temporary or permanent damage in this proceeding. Where his claim

for severance in this application is based on an allegation that there is permanent damage caused by the right of entry rendering an area of land unusable, that claim is deferred to be heard with the claim for damages.

## **EVIDENCE AND ANALYSIS**

### **Where lease area is not agreed, what is the lease area for calculation of rent?**

#### **Ref. 1 – A-6-A/94-A-14**

[33] Mr. Thiessen claims the compensable area is 4.79 acres. The lease area is 4.44 acres. Mr. Thiessen's evidence is that there is severe washing occurring in the SE corner of the lease, with the wash extending under the fence and into the field. The calculation sheet for this lease (Exhibit 1, Tab 7-P1) indicates: "The lease, together with the other leases in the immediate area, severs 3.5 acres from the rest of the field." The difference in areas, however, is .35 acres. Mr. Thiessen provided an undated photograph of the washout associated with this lease. Mr. Thiessen acknowledged that the extent and severity of washouts varies from year to year depending on weather conditions.

[34] As this claim for severance is based on an allegation that an area of land has been damaged presumably as a result of the lease, it will be left for the damage claim. There is nothing in evidence to support that either 3.5 acres or .35 acres has been severed as a result of the placement of the lease rendering it inaccessible by farm equipment on a permanent basis. I find the compensable area for the purpose of determining loss of profit is the lease area of 4.44 acres.

#### **Ref. 2 – a-26-A/94-A-14**

[35] Mr. Thiessen claims the compensable area is 8.32 acres. The lease area is 7.87 acres. It is not clear from the evidence what gives rise to the difference in compensable areas. Mr. Thiessen provides several undated photographs of this location (Exhibit 1, Tab 8-2 through 8-6) captioned "Numerous severe washouts in to [sic] Landowner adjacent fields from lease Water drainage, and foxtail weeds." The evidence does not

support a severance of .45 acres caused by the location of the lease, being the difference in compensable area claimed by Mr. Thiessen and the area of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 7.87 acres.

**Ref. 3 – a-27-A/94-A-14**

[36] Mr. Thiessen claims the compensable area is 4.08 acres. CNRL's evidence is the compensable area is 7.64 acres. The lease area is 9.24 acres. The evidence does not explain the discrepancies and I can see nothing in the evidence to support a conclusion that the compensable area would be other than the lease area. I find the compensable area for the purpose of determining loss of profit is the lease area of 9.24 acres.

**Ref. 11 – cb-6-A/94-A-14**

[37] Mr. Thiessen claims the compensable area is 5.10 acres. The lease area is 5.06 acres. The evidence is conflicting and it is not clear on what basis the claim for additional area is based. Mr. Thiessen provides several undated photographs of this location (Exhibit 1, Tab 8-29 through 8-31) captioned "Drainage water from lease running across access road into landowner adjacent fields, causing washouts and reducing landowner profits". To the extent the Thiessens may be advancing a claim for severance based on alleged permanent damage, it will be left for the damage claim. The calculation sheet for this lease (Exhibit 1, Tab 7-Z1) indicates "This is an example of a good tear dropped lease". The aerial photograph of this location in Mr. Telford's brief does not support that there is any severance. The evidence does not support a permanent severance of .04 acres as a result of the location of the lease and I find the compensable area for the purpose of determining loss of profit is the lease area of 5.06 acres.

**Ref. 12 – c-A6-A/94-A-14**

[38] Mr. Thiessen claims the compensable area is 4.74 acres. The lease area is 4.37 acres. Mr. Thiessen provides several undated photographs (Exhibit 1, Tab 8-26 and 8-

27) depicting a washed out berm and flooding. From the aerial photograph of this location in Mr. Telford's evidence, the field appears to be farmed into the lease area and there is no indication of a severed area. The evidence does not support a permanent severance of .4 acres as a result of the location of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 4.37 acres.

**Ref. 15 – c-97-I/94-A-11**

[39] Mr. Thiessen claims the compensable area is 3.73 acres. The lease area is 3.36 acres. It is not clear from the evidence what gives rise to the difference in compensable areas. The calculation sheet for this lease (Exhibit 1, Tab 7D1-1) indicates: "This lease is in pasture land and has foxtail and noxious weed issues, due to lack of weed control. The lease is cut into a hillside, giving rise to erosion problems." The evidence does not support a permanent severance of .40 acres as a result of the placement of the lease. I find the compensable area for the purpose of determining loss of profit is the lease area of 3.36 acres.

**Ref. 18 – d-16-A/94-A-14**

[40] Mr. Thiessen claims the compensable area is 4.68 acres. The lease area is 4.16 acres. The calculation sheet for this lease (Exhibit 1, Tab 7G1-1) indicates: "The location of the lease causes a 0.5 acre severance parcel". The evidence does not disclose where the alleged severed area is. The aerial photograph in Mr. Telford's brief depicts what appears to be a strip of field between the well site and the access road. The lease document itself, however, shows the lease area lying immediately adjacent to the access road with no area in between. I find the evidence does not sufficiently support severance of .5 acres and find the compensable area for the purpose of determining loss of profit is the lease area of 4.16 acres.

[41] To summarize, I conclude the compensable area of each lease is as follows:

Ref	Location	Compensable Area in acres
1	a-6-A/94-A-14	4.44
2	a-26-A/94-A-14	7.87
3	a-27-A/94-A-14	9.24
4	b-5-A/94-A-14	8.12
5	b-16-A/94-A-14	3.56
6	b-25-A/94-A-14	7.85
7	b-36-A/94-A-14	4.85
8	b-a36-A/94-A-14	1.14
9	b-49-A/94/A-14	4.92
10	b-c46-A/94-A-14	3.19
11	cb-6-A/94-A-14	5.06
12	c-A6-A/94-A-14	4.37
13	c-17-A/94-A-14	4.90
14	c-39-A/94-A-14	4.34
15	c-97-I/94-A-11	3.36
16	d-6-A/94-A-14	8.71
17	d-A6-A/94-A-14	3.85
18	d-16-A/94-A-14	4.18
19	d-26-A/94-A-14	5.78
20	d-27-A/94-A-14	4.60
21	d-95-I/94-A-11	4.13
22	d-96-I/94-A-11	3.11

### III. RENT REVIEW

#### LEGAL FRAMEWORK

[42] Section 154 of the *Petroleum and Natural Gas Act* sets out the factors the Board may consider in determining the initial compensation or annual rent payable for the use and occupation of private land. Those factors are as follows:

- (a) the compulsory aspect of the entry;
- (b) the value of the applicable land;
- (c) a person's loss of 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 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.

[43] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[44] Section 154(2) of the *Petroleum and Natural Gas Act* further provides that in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was originally granted or last renewed.

[45] The purpose of a rental payment is to address the immediate and ongoing impact to the landowner and to the lands of an operator's activity on private land (*Dalglish v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)). The rental payment is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing use of the lands. In an application for rent review, any revised rent is payable for the period following the effective date, not for past losses. In determining a revised annual rent with reference to actual loss and on consideration of the relevant factors, an analysis of probable future use of the land and probable future losses must be undertaken (*Canadian Natural Resources Ltd. v. Bennett, et al*, 2008 ABQB 19).

[46] The onus is on the applicants, Mr. and Mrs. Thiessen, to establish their ongoing prospective losses and to establish that an increase to the rental payment under each lease is warranted to compensate for ongoing losses (*Progress Energy Canada Ltd. v. Salustro* 2014 BCSC 960). The Board must base its finding with respect to loss on the evidence before it. The burden of providing evidence to substantiate loss rests with the applicants.



## **EVIDENCE**

[47] Of the factors listed in section 154 of the *Petroleum and Natural Gas Act*, I heard evidence respecting loss of profit (referred to as crop loss by the Thiessens), damage, severance, nuisance and disturbance (referred to as “added inputs” and “adverse effect” by the Thiessens), terms of other surface lease, and previous orders of the Board. I have already discussed severance. I will discuss the evidence of both parties relevant to the other factors in general terms and then make some general findings. I will discuss the evidence in more detail when considering whether the rent should be amended for each lease.

[48] As previously indicated, for each of the 22 leases, the Thiessen’s seek an increase to the current rent. Their proposed increase is based on claims for crop loss, added inputs due to overlap, adverse effect, and an inflationary increase. The calculations supporting their claim for each lease are set out at Tab 7 of Exhibit 1. A calculation sheet is provided for each lease. Mr. Thiessen gave evidence at the hearing.

[49] CNRL provided a report (Exhibit 2) prepared by Robert J. Telford, an appraiser and land consultant, setting out Mr. Telford’s estimates for loss of profit, and tangible and intangible nuisance and disturbance for each lease. Mr. Telford also gave evidence at the hearing along with Kira Gerow, a professional agrologist. Mr. Telford’s estimates of loss do not exceed the current rents.

### **Crop Loss or Loss of Profit**

[50] The Thiessens’ calculation of crop loss is set out at Tab 7 of Exhibit 1 which provides a crop sales report (Tab 7-O) indicating the yield and price for each crop, and an individual calculation sheet for each lease (Tab 7P through K1). The Thiessens estimate crop loss using their average actual yields for oats, barley, wheat, canola, peas, timothy, and fescue, and the average price obtained for each crop in each year the crop was grown from 2009 to 2015, an average yield and price for forage, and an estimated return for steers. Not every crop is grown every year, so for some crops, the

average yield and price calculated is not based on the entire seven years production. The return for steers is based on requiring three acres per animal and a price of \$2,100 per animal. The Thiessens take the average yield and average price, calculated over the number of years the crop was grown between 2009 and 2015, and multiply by the compensable acreage to determine potential average total return from the lease area for that crop. They then average the total of the nine potential crops (including steers and forage) and use that average as their claim for crop loss. For three of the leases, described as pasture leases, Ref. 9 (b-49-A/94-A-14), Ref. 14 (c-39-A/94-A-14), and Ref. 15 (c-97-I/94-A-11), crop loss is estimated solely on the basis of raising steers.

[51] Tab 6 of Exhibit 1 is a report from Dr. John Church, a professional agrologist and Associate Professor of Natural Resource Science at Thompson Rivers University. Dr. Church also gave evidence at the hearing. Dr. Church's report and evidence discusses the beef industry in British Columbia. The report provides information about different types of cattle production and the associated costs, and compares marketing options. It is a generic report that describes how the industry works and is not specific to the Thiessens' cattle operation. Dr. Church did not have a role in preparing the Thiessens' claims for loss of profit.

[52] Mr. Telford uses the production records provided by Mr. Thiessen for 2010-2015 for the various crops grown, to estimate loss of profit from the lease areas, but excludes any income from steers. He utilizes input costs of \$95/acre based on input costs provided by Mr. Thiessen averaging \$200/acre but including some duplication depending on the crop produced. For the three pasture locations (Refs. 9, 14, and 15), he uses the value for hay forage provided by Mr. Thiessen with the input costs provided by Mr. Thiessen for these locations deducted.

### **Temporary and Permanent Damage**

[53] The Thiessens provide photographic evidence of washouts and erosion, claiming these events are caused by CNRL's rights of entry. Some, but not all of the leases have washouts and erosion extending onto the adjacent fields. Mr. Thiessen's evidence

was that the extent and duration of these issues varies from year to year. The Thiessen's have also filed a separate application with the Board claiming compensation for damage to the Lands arising from CNRL's rights of entry. As I have said before, that application was not part of this arbitration and I make no findings in this proceeding with respect to the damage claims. Erosion is also noted in the Thiessens' claim for Adverse Effects, discussed below. Mr. Thiessen confirmed he is not seeking to be doubly compensated.

[54] Generally speaking, if there is damage to land arising from a right of entry the right holder is liable to rectify the damage or compensate for it. A claim for damages may be made as and when damage occurs, or may be made at the same time as an application for rent review. It is, however, a separate application and may claim for past losses whereas rent is compensate for probable future losses. As such, claims for damage are not appropriately included in annual rent unless the evidence substantiates probable ongoing loss from damage caused by the right of entry. As the Thiessens have filed a separate claim for damages, and will have the opportunity in other proceedings to provide evidence to substantiate these claims, I will not include an award for temporary or permanent damage in the annual rent.

### **Nuisance and Disturbance**

[55] The Thiessens make claims for "Added Inputs" and "Adverse Effect" which can be compared to Mr. Telford's breakdown of nuisance and disturbance into tangible and intangible nuisance and disturbance. The Thiessens claim for "Added Inputs" is to compensate for the added costs of farming around each of the leases due to overlap. Mr. Telford estimates loss for added inputs as a calculation of tangible nuisance and disturbance.

[56] The Thiessens also claim an amount for Adverse Effect which they describe as:

"A fee compensating property owners for nuisance issues resulting from oil and gas activity on their property such as:

Loss of privacy anybody and everybody in our back yard (loss of private hunting area to supply wild meat).  
Eye sore on our property.  
Lack of maintenance by Subsurface Rights Holder.  
Permanent erosion issues.  
Frustration when working around lease with equipment.  
Weed issues on lease and access, ...”

[57] The compensation sheets also reference “Landowner property damage due to adverse effects not repaired as of December 2015”. To the extent the Thiessens claim compensation for “permanent erosion issues”, or “Landowner property damage” these claims should be advanced as part of their claim for damages. The other nuisance issues described as adverse effects are typically matters included in an award for nuisance and disturbance. I heard no evidence specific to any of the leases about loss of privacy or hunting area. For some of the leases I heard evidence about “eye-sore”, lack of maintenance, frustration when working around the lease and weed issues. I will discuss the evidence specific to each lease in more detail below when considering whether the rent for any particular lease should be increased.

[58] Mr. Telford describes intangible nuisance and disturbance as “those items that may occur and that cannot be readily calculated” that “may involve noise of the facilities, and ongoing dealings with surveyors, contractors and the company”.

[59] I will discuss the Thiessens’ evidence respecting Added Inputs and Mr. Telford’s evidence respecting tangible nuisance and disturbance together, and the Thiessens’ evidence respecting Adverse Effect and Mr. Telford’s evidence respecting intangible nuisance and disturbance together.

#### Added Inputs/Tangible Nuisance and Disturbance

[60] The Thiessens claim for Added Inputs is based on the cost per acre for thirteen operations described as: pre-seed burn spraying, pre-seed chemical, seeding cost, fertilizer, seed cost, spraying cost, herbicide, liquid fertilizer, liquid fertilizer application

costs, swathing, combining, heavy harrowing after harvest, and desicating peas. The total cost of operations relevant to each of seven potential crops (oats, barley, wheat, canola, peas, timothy and fescue) are multiplied by 75% of the claimed compensable acreage to determine the added input cost for each crop, and the average calculated and claimed as the added inputs due to overlap. No added inputs are claimed for two of the three pasture leases (Ref. 9 and 15), but are claimed for Ref. 14. The use of 75% of the compensable area of the lease to calculate added input costs is not explained.

[61] Mr. Thiessen's evidence is that the leases create additional headlands. His evidence is that he uses a GPS when doing field work and that for a 160 acre field he ends up covering 175 acres due to overlap.

[62] Mr. Telford's estimated compensation for tangible nuisance and disturbance includes the extra time, turns, inputs and potential crop yield reductions associated with having to farm around the leases. He bases his estimates on the farm operations necessary for cereal/oil seed production, uses equipment costs based on Alberta data, and makes assumptions respecting equipment size that are favourable to the landowner. For each location he calculates the costs associated with additional distance for headlands and realignment, and additional turns, and crop loss due to unseeded areas, additional inputs and compaction. He uses a rate of 20% to account for loss of production due to overlap which he considers generous based on a study and discussions with other landowners. His evidence is that when using GPS, overlap is generally less than 5%.

[63] For the pasture locations, Mr. Telford's evidence is the tangible impact of the leases is due to the extra time and supervision associated with pasture land and the grazing of cattle which he estimates at 8-10 hours per year during the grazing season at \$50/hour, and estimates \$450.00 in tangible nuisance and disturbance associated with the pasture locations.

Adverse Effect/Intangible Nuisance and Disturbance

[64] The Thiessens claim for adverse effect ranges from \$2,000 to \$4,000 per lease.

[65] For most of the leases, the calculation sheet contains notes describing the issues with the site such as washouts, weeds, inconvenience in farming around the lease, erosion, and other matters, which I will discuss when dealing with each lease. Tab 8 of Exhibit 1 includes photographs of most of the leases depicting issues with weeds, washouts or erosion. Mr. Thiessen also provided evidence about weeds, washouts and erosion for some of the leases. As discussed above, to the extent this claim is to compensate for damage, it should be advanced in the claim for damages, not as intangible nuisance and disturbance.

[66] Ms. Gerow provided evidence of her observations respecting weeds at the various sites. She inspected each of the sites the day before the arbitration. Her evidence is that many of the locations are free of weeds and have active vegetation management. Where she noted the presence of weeds they are primarily contained on the lease area. Her evidence is that weeds are prevalent in the area on roadsides, and in yards, ditches and staging areas. She noted foxtail on adjacent lands and scentless chamomile in Mr. Thiessen's yard area.

[67] Mr. Telford estimates intangible nuisance and disturbance at \$400 per location (with one exception) on the assumption that the landowner would spend an additional day a year dealing with these items on an annual basis. For Ref. 21 he reduces this estimate by 50% to \$200.00 because it is an access road that leads to a number of wellsites.

[68] I set out the Thiessens' claims for added inputs, Mr. Telford's calculations for tangible nuisance and disturbance, the Thiessens' claims for adverse effect and Mr. Telford's calculation for intangible nuisance and disturbance for each of the leases in the chart below:

Ref	Location	Thiessen Added Inputs	Telford Tangible N&D	Thiessen Adverse Effect	Telford Intangible N&D
1	a-6-A/94-A-14	\$703.10	\$1,576.79	\$4,000.00	\$400.00
2	a-26-A/94-A-14	\$1,221.26	\$883.41	\$2,000.00	\$400.00
3	a-27-A/94-A-14	\$598.89	\$1,021.29	\$2,500.00	\$400.00
4	b-5-A/94-A-14	\$1,191.90	\$1,365.09	\$4,000.00	\$400.00
5	b-16-A/94-A-14	\$522.56	\$814.92	\$2,000.00	\$400.00
6	b-25-A/94-A-14	\$1,152.27	\$769.30	\$2,000.00	\$400.00
7	b-36-A/94-A-14	\$711.91	\$951.39	\$2,000.00	\$400.00
8	b-a36-A/94-A-14	\$83.67	\$562.43	\$1,000.00	\$400.00
9	b-49-A/94/A-14	Nil	\$450.00	\$2,000.00	\$400.00
10	b-C46-A/94-A-14	\$468.25	\$767.17	\$2,000.00	\$400.00
11	cb-6-A/94-A-14	\$748.61	Nil	\$4,000.00	\$400.00
12	c-A6-A/94-A-14	\$695.76	\$694.75	\$2,000.00	\$400.00
13	c-17-A/94-A-14	\$719.25	\$740.98	\$3,000.00	\$400.00
14	c-39-A/94-A-14	\$211.90	\$450.00	\$2,000.00	\$400.00
15	c-97-I/94-A-11	Nil	\$450.00	\$2,000.00	\$400.00
16	d-6-A/94-A-14	\$1,278.50	\$1,756.41	\$4,000.00	\$400.00
17	d-A6-A/94-A-14	\$565.13	\$1,229.85	\$2,000.00	\$400.00
18	d-16-A/94-A-14	\$686.96	\$859.92	\$2,000.00	\$400.00
19	d-26-A/94-A-14	\$848.42	\$1,914.65	\$2,000.00	\$400.00
20	d-27-A/94-A-14	\$675.21	\$1,446.40	\$3,000.00	\$400.00
21	d-95-I/94-A-11	\$606.23	Nil	\$3,000.00	\$200.00
22	d-96-I/94-A-11	\$456.50	\$787.88	\$2,000.00	\$400.00

### **Other Leases and Other Board Orders**

[69] Tab 11 of Exhibit 1 includes copies of the Board's decisions in *Iverson, supra* and in *Helm v. Progress Energy Ltd.*, Order 1634-1, December 2, 2010. The Board's determinations of rent in both of those cases was based on the evidence specific to each case.

[70] Mr. Telford provides a Negotiated Agreement Review (Exhibit 3). The review identifies similar facilities within 10 miles of the Lands with rents negotiated within 5 years of the effective dates for these leases. CNRL is the only operator in the area. Exhibit 3 identifies 16 locations, all with the same landowner, that Mr. Telford considers comparable to the subject leases.

[71] The agreements typically compensate for severance, nuisance and disturbance associated with access roads at \$1,500.00, and associated with wellsites and combined

wellsites and access roads at \$2,000.00. This figure can be compared to Mr. Thiessen's combined claims for added inputs and adverse effect which range from a low of \$2,000.00 for Ref. 9 and 15 to a high of \$5,278.50 for Ref. 16, and to Mr. Telford's estimates of tangible and intangible nuisance and disturbance which range from a low of \$200.00 for Ref. 21 to a high of \$2,324.65 for Ref. 19.

[72] As for crop loss, the agreements compensate for loss of profit associated with cultivation of oats at \$264.00/acre, peas at \$300/acre, fescue at \$450/acre and hay and pasture at \$250/acre.

### **Inflationary Increase**

[73] The Thiessens' calculation sheets include an amount for an inflationary increase. Each sheet is accompanied by a printout from the Bank of Canada Inflation Calculator showing the inflationary adjustment from 2009 to 2016 for each rental payment.

[74] Mr. Telford does not add an amount for inflation or the change in the value of money to estimates of loss. His evidence is that the estimate for loss of profit uses current values of commodities as well as input and equipment costs so inflation is accounted for. Mr. Naffin submitted that if an inflationary increase was to be added to the previous rental payments, it should be calculated to 2014, which is the effective date of any rent renewal.

## **ANALYSIS**

### **General Findings on Compensation Factors**

#### **Crop Loss or Loss of Profit**

[75] I find Mr. Thiessen's claim for crop loss is not a reasonable reflection of his probable loss of profit from the leased areas. First, his inclusion of a retail price for finished steers in estimating average crop loss inflates the probable loss from the leased areas. Including a finished retail price for steers does not account for the cost of



rearing the steer and, therefore, overstates the potential profit from this activity. Dr. Church's evidence suggests the cost of producing a finished steer is in excess of \$1,700. The net revenue for a steer is, therefore, around \$400.00, not \$2,100.00.

[76] Further, the evidence is that Mr. Thiessen only ever raised steers in the fenced pasture fields, yet income from steers has been included for every lease location whether in a fenced pasture field or not. The evidence is further that Mr. Thiessen has not raised steers at all since 2014 and that at least one of the fenced pasture fields is being converted from pasture to cultivated land.

[77] As land cannot be used for raising cattle and growing crops at the same time, an estimate of loss based on an average of both uses is not realistic or reasonable.

[78] Mr. Skafta defended the inclusion of the steers, and indeed the inclusion of all of the other crops in estimating crop loss on the grounds that it was possible that Mr. Thiessen could have grown any of the crops or possible that he could have used the Lands to raise steers. However, compensation is not for possible loss of profit, it is for reasonably probable loss of profit. I find it was not reasonably probable as of 2014 the Thiessens would use all of the Lands to raise steers.

[79] As with the steers, Mr. Thiessen's use of the average actual price obtained for each of the possible crops does not account for the cost of growing any particular crops and is not a reflection of profit, but of potential gross revenue. Mr. Telford deducts production costs from his estimates of income. However, it is evident from the other leases provided by CNRL (Exhibit 3), that use of gross rather than net revenue is the general practice when compensating for loss of profit from crop cultivation. The other leases in evidence compensate for loss of profit associated with cultivation of oats at \$264.00/acre, peas at \$300/acre, fescue at \$450/acre and hay and pasture at \$250/acre. These amounts exceed Mr. Thiessen's estimate of average gross revenue per acre for peas at \$261.19 and fescue at 263.23. They are lower than Mr. Thiessen's

estimates of average gross revenue per acre for oats at \$360.28 and hay at \$262.00. They all exceed Mr. Telford's net figures.

[80] Mr. Telford's per acre loss of profit ranges from a low of \$132.50 to a high of \$194.93. I find Mr. Telford's practice of accounting for input costs to calculate a net profit results in lower estimates for crop loss or loss of profit than is typically agreed to in other agreements in the area, and does not conform with the Board's practice generally to estimate loss of profit for cultivated land using figures more reflective of gross rather than net revenue.

[81] Other than for the leases in pasture land, the evidence does not indicate which of the eight crops grown by Mr. Thiessen would probably have been grown in each field as of the rent renewal date and for the next few years. For leases in cultivated fields, as I cannot tell that it is more probable than not that any particular field would be used for the higher value crops, in estimating loss of profit I will use the averages provided by Mr. Thiessen based on his actual average yields for all eight crops excluding steers. For leases in pasture fields, I will estimate loss of profit based on Mr. Thiessen's average yields for hay.

## **Nuisance and Disturbance**

### **Added Inputs/Tangible Nuisance and Disturbance**

[82] I prefer Mr. Telford's estimate of the probable loss associated with working around the leases because it is specific to each lease location and takes into account the actual additional headlands associated with each lease, rather than an arbitrary percentage of the lease area itself. Mr. Thiessen's use of 75% of the leased area to calculate added inputs does not make sense. His evidence was that for a 160 acre filed he covers 175 acres due to overlap. The difference between 175 acres and 160 acres equates to overlap of just over 9% of the filed size. The Thiessens add input costs multiplied by 75% of the lease area or claimed compensable area to each lease regardless of the

lease's location in the field, whether there are additional headlands associated with the lease, or the extent of the inconvenience and difficulty when farming around that lease. For some locations, using 75% of the lease area to calculate added inputs creates a claim for working around a lease where no additional headlands are in fact created because of the location of the lease on the edge of a field. For most of the locations, Mr. Telford's estimate of loss for tangible nuisance and disturbance to account for working around the lease is higher than the Thiessens' claim for Added Inputs.

[83] In considering whether the current rents should be amended I will use Mr. Telford's calculations for tangible nuisance and disturbance to compensate for loss associated with added time to work around the leases, and losses due to overlap and compaction.

#### Adverse Effect/Intangible Nuisance and Disturbance

[84] The Thiessens' evidence does not explain why the claim for adverse effects varies from lease to lease. In many cases, nuisance and disturbance is confused with allegations of temporary or permanent damage. In some cases, the assertions about so called adverse effects on the calculation sheets is either not supported with evidence or the evidence respecting that lease is inconsistent. In some cases, the assertions on the calculation sheets are obviously in error. Generally speaking, I find the evidence on the Thiessens' calculation sheets relevant to intangible nuisance and disturbance to be unreliable because of the inconsistencies and errors. On the other hand, I find Mr. Telford's estimate does not account for intangible nuisance and disturbance other than additional time spent by the landowner, such as noise, traffic, dust and unsightliness, and likely undercompensates for this factor. Where Mr. Thiessen provided evidence in his testimony of intangible nuisance and disturbance specific to a particular lease distinct from evidence respecting damage, I have generally accepted that evidence.

[85] A payment for intangible nuisance and disturbance will of necessity be arbitrary as the nature of intangible nuisance and disturbance makes it incapable of precise calculation. I accept that the rents should include an allowance for intangible nuisance

and disturbance that is at a minimum equivalent to Mr. Telford's estimate, but in most cases will be higher.

#### Combined Tangible and Intangible Nuisance and Disturbance

[86] The other leases indicate that CNRL's "going rate" for nuisance and disturbance is \$2,000 for wellsites and access roads and \$1,500 for access roads. Mr. Skafte was critical of this lease selection because it only involves one operator and one landowner. However, as CNRL is the only operator in the area, there are no leases from other operators to compare. The Thiessens did not provide evidence of leases from other operators. Mr. Thiessen argued the *Iverson* and *Helm* decisions provided evidence of other leases. The evidence in one case does not become evidence in another case just because the decision is referred to. The decisions in both of those cases reflect the evidence before the Board in those cases and are based on that evidence. The evidence of other leases presented to the Board in the *Iverson* case was not before the Board in this case. The *Helm* decision was based on an analysis of the factors set out in section 154 of the *Petroleum and Natural Gas Act*, not an analysis of other leases, and on the evidence before it the Board found \$1,500.00 to be an appropriate amount for nuisance and disturbance associated with the well site lease.

[87] I accept that \$2,000.00 is the "going rate" for combined tangible and intangible nuisance and disturbance. In considering whether the current rents adequately compensate for tangible and intangible nuisance and disturbance I will use \$2,000.00 as a minimal "going rate" for this factor.

#### Inflation

[88] Generally, the Board must consider the change in the value of money in a rent review to ensure that the rent continues to adequately compensate for reasonably probable ongoing losses. If the current rent adequately compensates for reasonably probable ongoing losses, it is not necessary to add an amount for inflation. If it does

not, applying an inflation factor may raise the rent sufficiently to provide adequate compensation. If an amount for inflation is required for any of the rents in issue, it will be to 2014, the effective date of these rent renewals.

## **Rent**

### **Does the current rent compensate for ongoing losses or should it be varied?**

#### **Ref. 1 – a-6-A/94-A-14**

[89] This is a 4.4 acre lease used for a wellsite and access road. The current rent is \$4,400.00. The Thiessens submit the annual rent should be \$6,769.00, which includes crop loss of \$1,528.09, added inputs of \$703.10, adverse effect of \$4,000.00 and an inflationary increase of \$537.35. The Thiessen's rent request is based on 4.79 acres, whereas I have found the compensable area is 4.4 acres.

[90] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, and using 4.44 acres, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$1,202.21.

[91] Mr. Telford calculates \$1,576.79 for tangible nuisance and disturbance associated with working around this lease. Adding this figure to the estimated loss of profit equals \$2,779.00, leaving \$1,621.00 of the current rent of \$4,400.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$3,197.79, which is considerably higher than the amount being paid for nuisance and disturbance in other surface leases in the area.

[92] I find the current rent of \$4,400.00 more than adequately compensates the Thiessen's for their probable ongoing losses associated with this lease. I will leave the current rent as is rather than reducing it, however, recognizing the difficulty in quantifying nuisance and disturbance and the inherent arbitrariness of any payment for

this loss. The parties agreed the current rent adequately compensated for loss in 2009. I find it does not need to be increased, but neither am I inclined to reduce it.

**Ref. 2 – A-26-A/94-A-14**

[93] This is a 7.87 acre lease used for a wellsite and access road. The current rent is \$5,000.00. The Thiessens submit the annual rent should be \$6,476.00, which includes crop loss of \$2,643.76, added inputs of \$1,221.26, adverse effect of \$2,000.00 and an inflationary increase of \$610.62. The Thiessen's rent request is based on 8.32 acres, whereas I have found the compensable area is 7.87 acres.

[94] Adjusting Mr. Thiessen's estimate for crop loss to remove the steers, and using 7.87 acres, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$2,131.62.

[95] Mr. Telford calculates \$883.41 for tangible nuisance and disturbance associated with working around this lease. Adding this figure to the estimated loss of profit equals \$3,015.03, leaving \$1,984.97 of the current rent of \$5,000.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,868.38, which is higher than the amount being paid for nuisance and disturbance in other surface leases in the area.

[96] I find the current rent of \$5,000.00 more than adequately compensates the Thiessens for their probable ongoing losses associated with this lease. The current rent does not need to be increased, but I am not inclined to reduce it either.

**Ref. 3 – a-27-A/94-A-14**

[97] This is a 9.24 acre lease used for a wellsite and access road. The current rent is \$4,800.00. The Thiessens submit annual rent should be \$4,976.00, which includes crop loss of \$1,311.35, added inputs of \$598.89, adverse effect of \$2,500.00 and an inflationary increases of \$566.19. The Thiessens based their claim on 4.08 acres; CNRL used 7.64 acres. I have found the compensable area is 9.24 acres.

[98] Using Mr. Thiessen's average yields for eight crops, I estimate loss of profit for 9.24 acres at \$2,516.63. Mr. Telford's calculation for tangible nuisance and disturbance for this lease is \$1,021.29. Adding these two numbers together equals \$3,737.92, which leaves \$1,062.08 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,083.37. I find the current rent of \$4,800.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 4 – b-5-A/94-A-14**

[99] This is a 4.62 acre lease used for a wellsite and access road. The parties agree the lease severs 3.5 acres so the compensable area is 8.12 acres. The current rent is \$4,400.00. The Thiessens submit the annual rent should be \$8,184.00, which includes crop loss of \$2,454.46, added inputs of \$1,191.90, adverse effect of \$4,000.00, and an inflationary increase of \$537.35.

[100] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$2,050.76. Adding Mr. Telford's estimate of \$1,365.09 for tangible nuisance and disturbance equals \$3,415.85, leaving \$984.15 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,329.24. I find the current rent of \$4,400.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 5 – b-16-A/94-A-14**

[101] This is a 3.56 acre lease used for a wellsite. The current rent is \$3,200.00. The Thiessens submit the annual rent should be \$4,078.00, which includes crop loss of \$1,164.22, added inputs of \$522.56, adverse effect of \$2,000.00 and an inflationary increase of \$390.80.

[102] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at \$998.25. Adding Mr. Telford's estimate of \$814.92 for tangible nuisance and disturbance equals \$1,813.17, leaving \$1,386.83 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,301.75.

[103] Mr. Thiessen's evidence is that this lease is just below his house and that he "looks at this one". His evidence is that while some equipment has been taken out, pipes and wires have been left hanging. I am satisfied that the intangible nuisance and disturbance component of this rent should be a little higher than the "going rate" to account for the unsightliness of this lease in proximity to the Thiessen's residence. Applying the Bank of Canada Inflation Calculator to adjust the \$3,200.00 rent last renewed in 2009 to 2014 results in an increase to \$3,506.89, which I find provides a sufficient increase to adequately compensate for ongoing losses. I find the annual rent for this lease should be amended to \$3,510.00 effective April 23, 2014.

**Ref. 6 – b-25-A/94-A-14**

[104] This is a 4.35 acre lease used for a wellsite. The parties agree the lease severs 3.5 acres so the compensable area is 7.85 acres. The current rent is \$3,500.00. The Thiessens submit the annual rent should be \$6,037.00, which includes crop loss of \$2,457.55, added inputs of \$1,152.27, adverse effect of \$2,000.00, and an inflationary increase of \$1,152.27.

[105] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$2,077.87. Adding Mr. Telford's estimate of \$769.30 for tangible nuisance and disturbance equals \$2,847.17, leaving \$652.83 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal only \$1,422.13 which is below the "going rate". Adjusting this rent solely for inflation will only increase it by just over \$300.00 which will not provide a sufficiently high increase to



bring the allowance for nuisance and disturbance up to \$2,000.00. I find the annual rent for this lease should be increased to \$4,100.00 effective April 13, 2014.

**Ref. 7 – b-36-A/94-A-14**

[106] This is a 4.35 acre lease used for a wellsite and access road. The parties agree the lease severs a .5 acre area so the compensable area is 4.85 acres. The current rent is \$3,400.00. The Thiessens submit the annual rent should be \$4,645.00, which includes crop loss of \$1,472.50, added inputs of \$711.91, adverse effect of \$2,000.00 and an inflationary increase of \$460.11.

[107] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$1,279.74. Adding Mr. Telford's estimate of \$951.39 for tangible nuisance and disturbance equals \$2,231.13, leaving \$1,168.87 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,120.26. I find the current rent of \$3,400.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 8 – b-a36-A/94-A-14**

[108] This is a 1.14 acre lease used for a wellsite. The current rent is \$1,200.00. The Thiessens submit the annual rent should be \$1,661.00, which includes crop loss of \$1,472.50, added inputs of 167.34, adverse effect of \$2,000.00 and an inflationary increase of \$146.55, all reduced by 50%. The reduction is not explained but I assume it is because this appears to be a lease extension to Ref. 7.

[109] The calculation sheet for this lease appears to contain errors. The crop loss, based on the average yield for nine crops including steers, is calculated as \$478.10, yet \$1,472.50 is claimed. If the crop loss is adjusted to remove steers, the crop loss based on the average yield for eight crops is \$439.12.

[110] Mr. Telford's estimate for tangible nuisance and disturbance is \$562.43. This figure added to the crop loss equals \$1,040.83 leaving \$159.17 of the current rent for intangible nuisance and disturbance. As this is a lease extension, compensation for nuisance and disturbance is mostly compensated for in the rent for the original lease, Ref. 7, as the expansion of a wellsite does not substantially increase the nuisance and disturbance from the wellsite once any additional well has been drilled. Nevertheless, I find the rent should include at least \$500 for intangible nuisance and disturbance. I find the annual rent for this lease should be increased to \$1,540.00 effective September 22, 2014.

**Ref. 9 – b-49-A/94-A-14**

[111] This is a 4.92 acre lease used for a wellsite and access road. The current rent is \$3,500.00. The lease is in a pasture field, not a cultivated field. The Thiessens submit the annual rent should be \$5,837.00, which includes crop loss of \$3,409.56 based solely on the production of steers, adverse effect of \$2,000.00 and an inflationary increase of \$427.43.

[112] As this lease is in a pasture field rather than a cultivated field, I find the loss of profit from this lease should be calculated solely on the basis of hay production. Using Mr. Thiessen's average yields for hay, I estimate the loss of profit from this lease at \$1,291.50. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit based on the production of hay is deducted from the current rent of \$3,500.00, \$2,208.50 is left for tangible and intangible nuisance and disturbance. I find the current rent adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 10 – b-c46-A/94-A-14**

[113] This is a 3.19 acre lease used for a wellsite. The current rent is \$2,393.00. The Thiessens submit the annual rent should be \$3,852.00, which includes crop loss of \$1,091.42, added inputs of \$468.25, adverse effect of \$2,000.00, and an inflationary increase of \$292.24.

[114] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$948.72. Adding Mr. Telford's estimate of \$767.17 for tangible nuisance and disturbance equals \$1,715.89, leaving \$677.11 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$1,444.28, below the "going rate". I find this rental payment should be increased by about \$600.00 to continue to compensate the Thiessens for their probable ongoing losses. This increase exceeds the amount calculated by the Bank of Canada Inflation Calculator. I find the annual rent for this lease should be amended to \$3,000.00 effective September 14, 2014.

**Ref. 11 – b-6-A/94-A-14**

[115] This is a 5.06 acre lease used for a wellsite and access road. The current rent is \$4,300.00. The Thiessens submit the annual rent should be \$6,696.00, which includes crop loss of \$1,632.80, added inputs of \$748.61, adverse effect of \$4,000.00, and an inflationary increase of \$314.88. The Thiessens rent request is based on 5.10 acres, whereas I have found the compensable area is 5.06 acres.

[116] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, (but not adjusting for the small difference in compensable area) I estimate loss of profit from the lease area based on Mr. Thiessen's average yields for eight crops at \$1,502.53.

[117] Mr. Telford calculates tangible nuisance and disturbance for working around this site at nil. It is evident from the aerial photograph that the site is surrounded on three sides by bush, and that there would not be any additional turns or loss due to overlap

involved with working around this site. There is, therefore, no need to compensate for “added inputs”.

[118] Mr. Thiessen’s evidence respecting this lease is that a ditch is supposed to drain to a culvert but it rarely does. His evidence is he spends 6-7 hours in the spring cleaning the snow out of the ditch so that water will run to the culvert. I accept that Mr. Thiessen spends additional time in connection with this lease to deal with drainage issues. I estimate tangible nuisance and disturbance for his time spent dealing with drainage issues at \$350.00 (7 hours x \$50.hour).

[119] Adding together loss of profit of \$1,502.53 and tangible nuisance and disturbance of \$350.00 equals to \$1,852.53 leaving \$2,447.47 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,797.47. I find the current rent of \$4,300.00 more than adequately compensates the Thiessen’s for probable ongoing losses associated with this lease. I will leave the current rent in place.

**Ref. 12 – c-A6-A/94-A-14**

[120] This is a 4.37 acre lease used for a wellsite and access road. The current rent is \$4,700.00. The Thiessens submit the annual rent should be increased minimally to \$4,768.00, which includes crop loss of \$1,498.21, added inputs of \$695.76, adverse effect of \$2,000.00 and an inflationary increase of \$314.88. The Thiessens rent request is based on 4.74 acres, whereas I have found the compensable area to be 4.37 acres.

[121] Adjusting Mr. Thiessen’s estimate for crop loss to remove steers, and based on 4.37 acres, I estimate loss of profit based on Mr. Thiessen’s average yield for eight crops at \$1,190.23. Adding Mr. Telford’s estimate of \$694.75 for tangible nuisance and disturbance equals \$1,894.98, which leaves \$2,805.02 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$3,499.77. I find the current rent of \$4,700.00 more

than adequately compensates the Thiessens for their probable ongoing losses associated with this lease. I will leave the current rent in place.

**Ref. 13 – c-17-A/94-A-14**

[122] This is a 4.40 acre lease used for a wellsite and access road. The parties agree the lease severs .5 of an acre so the compensable area is 4.90 acres. The current rent is \$3,080.00. The Thiessens submit the annual rent should be \$5,582.00, which includes crop loss of \$1,496.20, added inputs of \$719.25, adverse effect of \$3,000.00, and an inflationary increase of \$376.14.

[123] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at \$1,290.83. Adding Mr. Telford's estimate of \$740.98 for tangible nuisance and disturbance equals \$2,031.81, leaving \$1,048.19 of the current rent of \$3,080.00 for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$1,789.17. I find this rental payment should be increased slightly to increase the allowance for intangible nuisance and disturbance and ensure it continues to adequately compensate for ongoing probable loss. Applying the Bank of Canada Inflation Calculator to adjust the rent of \$3,080.00 last renewed in 2009 to 2014 results in an increase to \$3,375.38, which sufficiently increases the rent to allow just over \$2,000.00 for tangible and intangible nuisance and disturbance. I find the annual rent for this lease should be amended to \$3,375.00 effective July 29, 2014.

**Ref. 14 – c-39-A/94-A-14**

[124] This is a 4.34 acre lease used for a wellsite and access road. The current rent is \$3,200.00. The lease is in a field that has been used for pasture but is being transitioned into a field for cultivation. As of the effective date for this rent renewal, the field was pasture. The Thiessens submit annual rent should be \$5,641.00, which includes crop loss of \$3,038.00 based solely on the production of steers, added inputs of \$211.90, adverse effect of \$2,000.00, and an inflationary increase of \$390.80.

[125] As this lease was in a pasture field as of the effective date for the rent renewal, I find loss of profit should be estimated on the basis of hay production. Using Mr. Thiessen's average yield for hay, I estimate loss of profit at \$1,139.25. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit from hay production is deducted from the current rent of \$3,200.00, \$2,060.75 is left for tangible and intangible nuisance and disturbance. I find the current rent of \$3,200.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 15. – c-97-1/94-A-11**

[126] This is a 3.36 acre lease used for a wellsite and access road. The current rent is \$2,800.00. This lease is in a pasture field. The Thiessens submit annual rent should be \$4,953.00, which includes crop loss of \$2,611.00 based solely on the production of steers, adverse effect of \$2,000.00, and an inflationary increase of \$341.95. The Thiessen's rent request is based on 3.73 acres, whereas I have found the compensable area to be 3.36 acres.

[127] As this lease is in a pasture field, I find loss of profit should be calculated on the basis of hay production. On the basis of Mr. Thiessen's average yield for hay I estimate loss of profit at \$882.00. Mr. Telford estimates tangible nuisance and disturbance on the basis of additional landowner time for supervising cattle. The evidence is that Mr. Thiessen did not have cattle as of the effective renewal date. However, if the field was not used to pasture cows, it could be used to grow and harvest hay involving additional time and inconvenience to work around the lease. When estimated loss of profit from hay production is deducted from the current rent of \$2,800.00, \$1,918.00 is left for tangible and intangible nuisance and disturbance, a little less than the "going rate". I

find the annual rent for this lease should be amended to \$2,900.00 effective August 9, 2014.

**Ref. 16 – d-6-A/94-A-14**

[128] This is an 8.71 acre lease used for a wellsite and access road. The Thiessens' evidence is that the current rent is \$5,920.00 whereas CNRL's evidence is the current rent is \$4,700.00. The rent agreed in the lease negotiated in 1990 was \$3,742.00. The Thiessens submit the annual rent should be \$8,588.00, which includes crop loss of \$2,949.95, added inputs of \$1,278.50, adverse effect of \$4,000.00, and an inflationary increase of \$360.00.

[129] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yields for eight crops at \$2,187.83. Adding Mr. Telford's estimate of \$1,756.41 for tangible nuisance and disturbance equals \$3,944.27. If the current rent is \$5,920.00 as indicated by the Thiessens, it leaves \$1,975.73 for intangible nuisance and disturbance. If it is \$4,700.00 as indicated by CNRL it only leaves \$755.73 for intangible nuisance and disturbance. The Thiessen's calculation sheet for this lease (Exhibit 1, Tab 7E1-1) provides the following note:

This lease is in the centre of a 200 acre field with access cutting off a land parcel between the lease and a natural draw. The access has massive erosion issues affecting the economic value of the landowner's property, and causing a sharp rise in increased operating costs due to location of the lease.

[130] There is no other evidence before me to support either that the "massive erosion issues" are caused by the right of entry or as to how or to what extent they affect the economic value of the property or cause an increase in operating costs. Mr. Telford's estimate of tangible nuisance and disturbance of \$1,756.41 accounts for losses associated with working around the lease in the centre of the field, and exceed the landowner's calculation for added inputs.

[131] Applying the Bank of Canada Inflation Calculator to adjust the original rent of \$3,742.00 negotiated in 1990 to 2014 results in an increase to \$5,991.97. I find the

annual rent for this lease should be amended to \$5,990.00 effective November 28, 2014 to compensate the Thiessen's for probable ongoing losses.

**Ref. 17 – d-a6-A/94-A-14**

[132] This is a 3.85 acre lease used for a wellsite and access road. The current rent is \$2,888.00. The Thiessens submit annual rent should be \$4,320.00, which includes crop loss of \$1,402.50, added inputs of \$565.13, adverse effect of \$2,000.00 and an inflationary increase of \$352.69.

[133] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at \$1,065.14. Adding Mr. Telford's estimate of \$1,229.85 for tangible nuisance and disturbance equals \$2,294.99, leaving \$593.01 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$1,822.86, which is below the "going rate". Applying the Bank of Canada Inflation Calculator to adjust the rent of \$2,888.00 last renewed in 2009 to 2014 results in an increase to \$3,164.97, which allows approximately \$2,100.00 for tangible and intangible nuisance and disturbance. I find the annual rent for this lease should be amended to \$3,165.00 effective August 9, 2014.

**Ref. 18 – d-16-A/94-A-14**

[134] This is a 4.18 acre lease used for a wellsite. The current rent is \$3,500.00. The Thiessens submit the annual rent should be \$4,764.00 based on crop loss of \$1,649.97, added inputs of \$686.96, adverse effect of \$2,000.00, and an inflationary increase of \$427.23. The Thiessens' rent request is based on 4.68 acres, whereas I have found the compensable area to be 4.18 acres.

[135] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, and based on 4.18 acres, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at \$1,138.48. Adding Mr. Telford's estimate of \$859.92 for tangible nuisance and disturbance equals \$1,998.40, leaving \$1,501.60 of the current rent for intangible



nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,361.52.

[136] The notes on the Thiessen's calculation sheet for this lease (Exhibit 1, Tab 7G1-1) indicate the lease is directly east of the landowner's yardsite and in their view daily. Although the current rent allows in excess of \$2,000 for tangible and intangible nuisance and disturbance, I am satisfied the rent should be increased slightly to provide a greater allowance for intangible nuisance and disturbance. Applying the Bank of Canada Inflation Calculator to adjust the rent of \$3,500.00 last renewed in 2009 to 2014 results in an increase to \$3,835.66. I find the annual rent for this lease should be amended to \$3,835.00 effective April 12, 2014.

**Ref. 19 – d-26-A/94-A-14**

[137] This is a 5.78 acre lease used for a wellsite and access road. The current rent is \$4,046.00. The Thiessens submit the annual rent should be \$5,135.00, which includes crop loss of \$1,792.65, added inputs of \$848.42, adverse effect of \$2,000.00, and an inflationary increase of \$494.11.

[138] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit based on Mr. Thiessen's average yield for eight crops at \$1,510.98. Adding Mr. Telford's estimate for tangible nuisance and disturbance of \$1,914.65 equals \$3,425.63, leaving \$620.37 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$2,535.02. I find the current rent of \$4,046.00 more than adequately compensates the Thiessen's for their probable ongoing losses associated with this lease. I will leave the current rent in place.

**Ref. 20 – d-27-A/94-A-14**

[139] This is a 4.60 acre lease used for a wellsite and access road. The calculations sheet for this lease (Exhibit 1, Tab 7I1-1) notes that "this lease in addition with a-27-A, severs a 5 acre parcel between the two leases on three sides." Despite this note, no

severance is claimed or accounted for in the calculations, so I use the lease area of 4.60 acres. The current rent is \$3,188.00. The Thiessens submit the annual rent should be \$5,523.00, which includes crop loss of \$1,458.57, added inputs of \$675.21, adverse effect of \$3,000.00, and an inflationary increase of \$389.33.

[140] Adjusting Mr. Thiessen's estimate for crop loss to remove steers, I estimate loss of profit on the basis of Mr. Thiessen's average yield for eight crops at \$1,238.40. Adding Mr. Telford's estimate for tangible nuisance and disturbance of \$1,446.40 equals \$2,684.80, leaving \$503.20 for intangible nuisance and disturbance. The combined allowance for tangible and intangible nuisance and disturbance equals \$1,949.60. I find this rent should be increased slightly to bring the allowance for tangible and intangible nuisance and disturbance above \$2,000.00. Applying the Bank of Canada Inflation Calculator to adjust the rent of \$3,188.00 last renewed in 2009 to 2014 results in an increase to \$3,493.74, which I am satisfied provides a sufficient increase. I find the annual rent for this lease should be adjusted to \$3,490.00 effective September 14, 2014.

**Ref. 21 – d-95-l/94-A-11**

[141] This is a 4.13 acre lease used for an access road. The current rent is \$2,900.00. The Thiessens submit the annual rent should be \$5,300.00, which includes crop loss of \$1,339.22, added inputs of \$606.23, adverse effect of \$3,000.00 and an inflationary increase of \$354.16.

[142] Adjusting Mr. Thiessen's estimate for crop loss to remove the steers, I estimate loss of profit on the basis of Mr. Thiessen's average yield for eight crops at \$1,145.24. Mr. Telford estimates tangible nuisance and disturbance for working around this site as nil. From the aerial photograph it is evident that this access road extends along the edge of a field so it does not create any additional headlands.

[143] With loss of profit estimated at \$1,145.24, the current rent allows \$1,754.76 for nuisance and disturbance, which is above the "going rate" for access roads. I find the

current rent of \$2,900.00 adequately compensates the Thiessens for their probable ongoing losses associated with this lease.

**Ref. 22 – d-96-l/94-A-11**

[144] This is a 3.11 acre lease used for a wellsite and access road. The current rent is \$2,400.00. The Thiessens submit the annual rent should be \$3,793.00, which includes crop loss of \$1,043.38, added inputs of \$456.50, adverse effect of \$2,000.00 and an inflationary increase of \$293.10.

[145] Adjusting Mr. Thiessen’s estimate for crop loss to remove the steers, I estimate loss of profit on the basis of Mr. Thiessen’s average yield for eight crops at \$901.68. Adding Mr. Telford’s estimate for tangible nuisance and disturbance of \$787.88 equals \$1,689.56, leaving \$710.34 of the current rent for intangible nuisance and disturbance. The combined allowances for tangible and intangible nuisance and disturbance equal \$1,498.22, below the “going rate”. I am satisfied this rental payment should be increased by about \$500.00, which exceeds the amount calculated by the Bank of Canada Inflation Calculator, to continue to compensate the Thiessens for their ongoing probable losses. I find the annual rent for this lease should be amended to \$2,900.00 effective May 16, 2014.

[146] To summarize, I find the current rents adequately compensate the Thiessens for their ongoing probable losses for the following leases:

Ref.	Location	Rent	Effective date of rent review
1	a-6-A/94-A-14	\$4,400.00	June 26, 2014
2	A-26-A/94-A-14	\$5,000.00	November 28, 2014
3	a-27-A/94-A-14	\$4,800.00	November 3, 2014
4	b-5-A/94-A-14	\$4,400.00	May 6, 2014
7	b-36-A/94-A-14	\$3,400.00	September 22, 2014
9	b-49-A/94-A-14	\$3,500.00	November 22, 2014
11	b-6-A/94-A-14	\$4,300.00	October 17, 2014
12	c-A6-A/94-A-14	\$4,700.00	October 17, 2014
14	c-39-A/94-A-14	\$3,200.00	January 26, 2014

19	d-26-A/94-A-14	\$4,046.00	November 14, 2014
21	d-95-I/94-A-11	\$2,900.00	February 28, 2014

[147] I find the rents for the following leases should be amended as of the effective dates set out below to the amounts set out below:

Ref.	Location	Amended Rent	Effective Date of rent review
5	b-16-A/94-A-14	\$3,510.00	April 23, 2014
6	b-25-A/94-A-14	\$4,100.00	April 13, 2014
8	b-a36-A/94-A-14	\$1,540.00	September 22, 2014
10	b-c46-A/94-A-14	\$3,000.00	September 14, 2014
13	c-17-A/94-A-14	\$3,375.00	July 29, 2014
15	c-97-I/94-A-11	\$2,900.00	August 9, 2014
16	d-6-A/94-A-14	\$5,990.00	November 28, 2014
17	d-a6-A/94-A-14	\$3,165.00	August 9, 2014
18	d-16-A/94-A-14	\$3,835.00	April 12, 2014
20	d-27-A/94-A-14	\$3,490.00	September 14, 2014
22	d-96-I/94-A-11	\$2,900.00	May 16, 2014

## ORDER

[148] The Surface Rights Board orders:

A. The annual rent payable under the following leases shall remain as set out below as of the effective dates set out below:

Ref.	Location	Rent	Effective date of rent review
1	a-6-A/94-A-14	\$4,400.00	June 26, 2014
2	A-26-A/94-A-14	\$5,000.00	November 28, 2014
3	a-27-A/94-A-14	\$4,800.00	November 3, 2014
4	b-5-A/94-A-14	\$4,400.00	May 6, 2014
7	b-36-A/94-A-14	\$3,400.00	September 22, 2014
9	b-49-A/94-A-14	\$3,500.00	November 22, 2014
11	b-6-A/94-A-14	\$4,300.00	October 17, 2014
12	c-A6-A/94-A-14	\$4,700.00	October 17, 2014
14	c-39-A/94-A-14	\$3,200.00	January 26, 2014
19	d-26-A/94-A-14	\$4,046.00	November 14, 2014
21	d-95-I/94-A-11	\$2,900.00	February 28, 2014

B. The rent payable under the following leases shall be amended as set out below as of the effective dates set out below:

Ref.	Location	Amended Rent	Effective Date of rent review
5	b-16-A/94-A-14	\$3,510.00	April 23, 2014
6	b-25-A/94-A-14	\$4,100.00	April 13, 2014
8	b-a36-A/94-A-14	\$1,540.00	September 22, 2014
10	b-c46-A/94-A-14	\$3,000.00	September 14, 2014
13	c-17-A/94-A-14	\$3,375.00	July 29, 2014
15	c-97-I/94-A-11	\$2,900.00	August 9, 2014
16	d-6-A/94-A-14	\$5,990.00	November 28, 2014
17	d-a6-A/94-A-14	\$3,165.00	August 9, 2014
18	d-16-A/94-A-14	\$3,835.00	April 12, 2014
20	d-27-A/94-A-14	\$3,490.00	September 14, 2014
22	d-96-I/94-A-11	\$2,900.00	May 16, 2014

C. CNRL shall forthwith pay to the Thiessens the difference in rent owing under the leases set out at B above as of the effective date of each rent review and as owing on each anniversary subsequent to the effective date to the date of this order, to make the rent payable under each lease current to the date of this order.

DATED: September 29, 2016

FOR THE BOARD



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Cheryl Vickers, Chair