

File No. 1609
Board Order # 1609-1

October 23, 2008

MEDIATION AND ARBITRATION BOARD

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

**AND IN THE MATTER OF NE ¼, Sec 16-80-16 W6M, Peace River District; SE
¼, Sec 21-80-16 W6M, Peace River District; NE ¼, 21-80-16 W6M, Peace River
District;**

(The "Lands")

BETWEEN:

Storm Exploration Inc.

(APPLICANT)

AND:

**Benjamin Unruh, Frieda Unruh, Milton Russell Unruh,
Seymour Kenneth Unruh, and Kelly John Unruh**

(RESPONDENTS)

BOARD ORDER

Appearances:

Rob Tiberio, Bret Kimpton, Darren Evans and John Hagen on behalf of the Applicant

Ben Unruh and Kelly Unruh on behalf of the Respondents

[1] The Applicant, Storm Exploration Inc. ("Storm") has applied to the Board for mediation and arbitration respecting right of entry to the Lands owned by the Respondents (the "Unruhs"). Storm wants access to the Lands for the purpose of surveying, construction, operation and maintenance of a wellsite. The Unruhs have refused entry. They have concerns about the development of oil and gas activity on their property and its impact on their health, their ranching operations, wildlife in the area, and the land. As well, they are fundamentally in disagreement with the legal regime that separates ownership of the surface and the subsurface and that allows for compulsory entry onto private land by the holder of subsurface rights.

[2] The Unruh's are opposed to any entry onto their lands, even for the limited purpose of surveying and soil sampling, before they have resolved with Storm how much Storm will pay for the wellsite access and guidelines to govern the access.

[3] The problem is that some of the concerns raised by the Unruhs are concerns that must be discussed with the Oil and Gas Commission (OGC). The OGC is not in a position to engage the parties in a discussion until Storm makes an application for the wellsite license. Storm cannot make an application for the wellsite license without the survey, soil sampling and archaeological study having been done. Issues of compensation, and how much Storm must pay for access, are matters within the jurisdiction of this Board. The impact of the project on the Unruh's will not fully be known until the OGC has had an opportunity to consider regulatory issues and we know with some degree of certainty what the project will look like. Storm agrees that they would prefer to discuss compensation and guidelines for access with the Unruh's in advance of any final entry order being made.

[4] This Board cannot change the law with regard to the division of ownership and the respective rights of surface and subsurface owners, but must endeavor to resolve disputes between parties within the current legal framework of the *Petroleum and Natural Gas Act*. In British Columbia, the holder of rights to develop a subsurface resource has the right to surface access to lands for the purpose of exploring for, developing and producing the subsurface resource. The development, exploration and production must conform with various

regulatory requirements, and owners of the land are entitled to compensation for the entry and for any damages that result from the entry. Storm acknowledges that they must pay compensation for the access, and there will be opportunity for the parties to discuss the amount of that compensation and other conditions of entry before any final entry order is made.

[5] However, in order for Storm to initiate an application to the OGC, thus enabling the OGC to engage with the Unruhs to try and resolve their concerns with respect to the impact of the proposed development on them and the Lands, Storm needs to be able to access the Lands for the purpose of surveying, soil sampling, conducting an archaeological assessment, and for any other technical surveys or assessments required to file a Well Application to the OGC. As the holders of the rights to the subsurface resource, Storm is entitled to this access.

[6] I am satisfied that Storm holds subsurface tenure pursuant to a Petroleum and Natural Gas Lease and needs access to the Lands, at this time, for the limited purpose of surveying, soil sampling, archaeological assessment and any other technical assessment that may be required to initiate an application to the OGC for the purpose exploring for, developing or producing petroleum or natural gas. I make the following Order pursuant to section 18(2) and section 19 of the *Petroleum and Natural Gas Act*.

[7] The Mediation and Arbitration Board orders:

1. Upon payment of the amounts set out in paragraphs 3 and 4, Storm shall have the right of entry to and access across the Lands for a period of sixty (60) days from the date of this Order for the purpose of surveying, soil sampling, conducting an archaeological assessment, and for any other technical surveys or assessments required to file a Well Application to the Oil and Gas Commission.
2. Entry to the Lands for the purpose of surveying, soil sampling and archaeological assessment shall be subject to the terms set out in Appendix "A".
3. Storm shall deposit with the Mediation and Arbitration Board security in the amount of \$2,500.00. All or part of the security deposit may be returned to Storm or paid to the Unruhs upon the agreement of the parties or as ordered by the Board.
4. Storm shall pay to the Unruhs the amount of \$2,500.00 as partial payment for compensation payable for entry to and use of the Lands, calculated as follows:
 - a. For the compulsory aspect of the taking \$2,000.00
 - b. For time spent \$ 500.00

\$2,500.00

5. Storm shall serve the Unruhs with a copy of this Order prior to entry onto the Lands.
6. The application as it relates to right of entry to the Lands for the purpose of construction, operation and maintenance of a wellsite is adjourned. The Board retains jurisdiction with respect to this application and to determine compensation payable to the Unruhs for any further right of entry granted in connection with this application or for any damages incurred by the Unruh's as a result of the entry.
7. Nothing in this order operates as consent, permission, approval or authorization of matters within the jurisdiction of the Oil and Gas Commission.

Dated: October 23, 2008

FOR THE BOARD



Cheryl Vickers
Chair

APPENDIX A

Right of entry to the Lands for surveying, soil sampling, archaeological assessment or any other technical assessment required for the purpose of making an application to the Oil and Gas Commission is subject to the following general terms:

- Storm and/or its contractors shall at all times conduct their work in a safe and responsible manner, which without limitation, shall include: driving with due care and attention when approaching the Lands, including being mindful of speed, the presence of children playing, and the minimization of dust, and taking care in the presence of cattle to avoid disturbance or harm to the cattle
- Storm shall advise the Unruhs immediately of any situation that may require the landowners attention
- The Unruhs shall advise Storm through their agent, John Hagen, of any concerns with respect to the activity of Storm and/or its contractors and of any damage incurred as a result of the entry
- Storm shall be responsible for any damage caused by the entry
- Contractors of Storm entering the Lands pursuant to this Order will be accompanied by a representative of Storm

Surveying of the Lands is subject to the following additional terms:

- Vector Geometrics will conduct the survey. Vector Geometrics will contact the Unruhs prior to their entry. The Unruhs may contact the surveyors, or the attending representative of Storm, with any questions or concerns during the survey
- Surveyors will walk only, and must not use quads or any type of motorized vehicle
- Surveyors will minimize the number of survey stakes used. Any stakes required can be removed after the soils assessment and archaeological assessment have been completed
- Surveyors will only cut trees in areas where the underbrush is too dense for sight lines. This will mostly occur around the proposed wellsite area where larger trees exist
- Any trees cut down will be disposed of in a manner acceptable to the Unruhs

Soil sampling is subject to the following additional terms:

- Muskeg Environmental will conduct the soil assessment. Muskeg Environmental will contact the Unruhs prior to entry. The Unruhs may contact Muskeg Environmental, or the attending representative of Storm, with any questions or concerns during the soil sampling

- Personnel will walk only, and must not use quads or any type of motorized vehicle
- Soil samples will be taken with a hand held soil probe at 250 metre intervals along the middle of the proposed access (and at corresponding points adjacent to the access to act as controls)
- At least 12 samples will be taken in a grid within the wellsite area. Additional samples will be taken around the wellsite for control purposes
- The Unruhs will be provided with a copy of the soil assessment report

Archaeological assessment is subject to the following additional terms:

- Heritage North will conduct the archaeological assessment. The Unruhs will be contacted by Heritage North prior to their entry. The Unruhs may contact Heritage North, or the attending representative of Storm, with any questions or concerns during the assessment.
- The assessment will take place at or near the same time as the soil assessment.
- Personnel will walk only, and will not use quads or any type of motorized vehicle
- The bulk of the assessment will be completed with an archaeologist walking along the proposed access and within the wellsite area. Ground disturbance (shovel testing) will only occur if the archaeologist sees areas of "high potential". These areas are usually knolls or along the banks of watercourses

If activities such as geotechnical assessments (slope stability) or fish habitat assessments (stream crossing where culverts are desired instead of bridges), or any other activity, are required in conjunction with the surveying, soil sampling and archaeological assessment or for the purpose of making a Well Application to the Oil and Gas Commission, the Unruhs must be consulted with respect to any proposed activity.