ORDER
THE BOARD OF ARBITRATION
Under The Surface Rights Acquisition and Compensation Act, RSS 1978 c S-65

Hearing No. 2582

Lloydminster, Saskatchewan
March 22, 2017

IN THE MATTER OF:
BETWEEN:

DONALD MILES FERGUSON, MARILYN RAE FERGUSON
and MICHAEL LESLIE FERGUSON
(Owners & Applicants)

- AND -

HUSKY OIL OPERATIONS LIMITED
(Operator & Respondent)

CONCERNING:

South West Quarter of Section 21-49-23-W3M

PURPOSE OF ARBITRATION:

To hear and receive evidence and to determine the annual compensation payable on E.B. 30/14, (5.71 acres).

APPEARANCES:

For the Operator:

- Murray W. Douglas, Kanuka Thuringer LLP
- Doug Hastings, Senior Surface Landman, Husky Oil Operations Limited
- Mark Crittenden, Project Engineer, Husky Oil Operations Limited
- Rob Telford, Land Consultant & Appraiser, McNally Land Services Ltd.

For the Owner:

- J. Darryl Carter, Q.C., Stringham LLP
- John Hardes, Gravel Control, Hardy Services Inc.
- Rod Ferguson
- Jason Ross

For the Board of Arbitration:

- Duane Smith, Chairman
- James Wilson, Vice-Chairman
- Don Peterson, Board Member
- Linda Benjamin, Board Secretary

EXHIBITS:
Board Exhibits:

1. Copy of E.B. 30/14
2. Copy of the Notice of Hearing

Operator Exhibits:

1. Exhibit Book No. 1
2. Exhibit Book No. 2
3. Exhibit Book No. 3
4. Road Use Agreement
5. Husky letter – December 3, 2015
6. Paradise Hill Invoice – September 11, 2015
7. Damage Release – 2014 – Canola on ROW
8. Large Map of Project
9. February 2016 Husky letter to Hardy Services
10. Market Evaluation Report
11. Estimate of Compensation Report

Owner Exhibits:

1. Hardy Services Inc. Letter of June 9, 2014
2. Hardy Services Inc. brochure
3. Memo to Rod Ferguson from John Hardes
4. Husky Survey Plan NW 22-49-23-W3M
5. Lafarge paper sketch (2 pages)
6. Owner/Occupant & Applicant's Documents for Hearing
7. Husky Energy Letter to Donald, Marilyn and Michael Ferguson of October 24, 2016

DECISION: (Section 47)

Survey – Section 47(1)(a)

Based on a previous Board Order – (C.B. 5/16) the Board awards $500.00 for the first quarter of land and $100.00 per each additional quarter for the same Owner.

Value of the Land - Section 47(1)(b)(i) is awarded at $918.75 per acre.

1. The Board recognizes the Operator's calculation for the value of land through the evidence presented and hereby awarded as there was no other valid evidence for land value presented by Owner. The Board notes that it is not of past practices to award duplicate compensation. In this case an award for land value was provided at time of the original taking of land, and the additional award herein may be misconstrued as double compensation beyond the original payment of the 1970 and 2001. The evidence

presented by the Operator was based upon Section 47 of the Act and was accepted by the Board, along with the consideration of Sections 50 and 52 of the Act.

2. The Board has also taken into consideration Section 50 of the Act as the work performed is considered by the Board as a re-entry of the land. Subsection 50(1) entitles the Operator the right to re-entry for removal or laying of a flowline or service line. And accordingly, the Operator must compensate the Owner for all damages caused by the work performed. Section 52 further allows the Operator the right to re-entry of the easement for the purposes of repairing, maintaining, replacing or inspecting, with the obligation that the Operator must compensate the Owner for all damages occurred, based on the proof of valid evidence provided by the Owner of such damages.

3. In determining the prescribed land value, the Board recognizes the method of Direct Comparison Approach as presented by the Operator, with the addition of the Board's past practice to award a land value based upon a 25% residual, not 75% as presented by the Operator. The Board is of the opinion there is no requirement for further factors to be considered or the use of the Blackstock formula in determining an award. The Board also makes note of the Operator's evidence that voluntary consents were signed by other owners at $750.00 per acre.

4. In the view of the Board the 'taking of land' to establish the original easements occurred at the time of the original easement(s) establishing the terms and conditions, along with the compensation awarded at the time. The Board decision is that since the time of original taking there has been no additional taking by the Operator as was argued by the Owner. The Board's decision is that compensation was duly made when the parties mutually agreed to the original taking.

5. Owner's Counsel presented a concept of a 'time warp'. In the case of the Act the Board is to grant an award based upon the time of taking of land and not based upon some arbitrary future period or future value based upon assumptions. Counsel further argues a view that the Board is 'not to put on blinkers and ignore evidence arising after

that date'. This is not the case, as the Board but must adhere to the legislation in place under the Act.

6. Also, as the Board must make its decision under the guidelines of the Act, therefore there is no relation to Owner's Counsel argument that the Act "must be interpreted broadly in favor of landowners to ensure that they are fully compensated". In the Board's view, there is no justification that there is an imbalance of representation at a Hearing that shall favor one party over another. Each party had counsel present as a representative of their argument and had the ability to present valid evidence to support their position.

7. The Board must weigh consideration of all evidence provided by both parties and the testimony put forth before the Board. And as such, the evidence put forth by Counsel for the Owner is of little, if any sound base, for the Board to place any weight in accordance to the Owner's claim for compensation. The Owner as the Applicant has the responsibility and onus to present their argument and evidence to support the claim made.

8. The Owner has presented the concept of a willing seller and purchaser of land providing greater monetary value or sound basis to a land transaction then that of a taking of land. The Board does not disagree with the theory of the value of land affected by the aspect of a desirous state of a seller and purchaser relation. However, it is not the Board's position to factiously place a value of land based solely on the aspect of a motivated seller and purchaser, but moreover based upon past practices of land sales. For the Board to set a value based on the concept of a motivated seller and purchaser is rather presumptuous, as there was no evidence to support the value of an offer to purchase or any form of a commitment of a purchaser. Therefore, placing value on speculation of value is best determined by the actual sales of reasonable and normal practices in the area. Had the Owner's Counsel put forth any form of evidence of value of the land the Board would have considered the evidence and placed a weighting in determining the value of the land. The lack of evidence by the Owner's Counsel has

restricted the Board in forming a view of value other than the evidence presented by the Operator.

9. The Board recognizes and accepts the evidence of land value put forth by the Operator in Exhibit 10 as being valid with the 12 sales in the area as sufficient representation of land value. Further, the one extreme value of a sale beyond the normal is invalid in the opinion of the Board and that shall not have any weighting to determine value of land. This sale is not the norm and may have extenuating circumstances beyond the market place that could not be determined or justified by either party.

10. The Board acknowledges the 2016 Husky letter for compensation for SW 21-49-23-W3M in the amount of $5,710.00, but shall place no weighting in evaluating value or compensation, as it is based upon 2016 values, and not the values of 2014 at the time of re-entry.

Loss of Use – Section 47(i)

1. Both parties had legal counsel representation present, therefore it is an expectation by the Board that counsel shall represent their clients and support the claim with evidence to assist the Board in the decision. In this case the insufficient evidence as to the Loss of Use hinders the Board from the determination of actuals' of losses. Due to the lack of evidence the Board must place all weighting of Loss of Use on the Operator's submission of evidence.

2. The Board recognizes the evidence put forth in Operator's Exhibit No. 11 for Loss of Use. The Board did not receive any reference to the receipt of direct loss from past crop analysis or production records for the land from the Owner. And as such, the Board must place full weighting on the evidence submitted before the Board. Therefore, the Board awards compensation for Loss of Use as follows:

SW ¼ of 21 – Page 7 (Operator's Exhibit No. 11– hayland - $250.00/acre loss of use)

Section 47(v)(i) - Reversionary

The Board recognizes the method of Direct Comparison Approach as presented with the addition of the Board's past practice to award based upon a 25% residual, not 75% as presented by the Operator. This was taken into account when determining the $918.75 per acre land value.

Section 47 (b)(iii)(iv)(vi)Severance/Nuisance and Adverse Effect

1. The Board does not realize any change from the original taking of the land that demands compensation for Severance/Nuisance and Adverse Effect. No permanent damage was observed as the installation of the new/replacement pipeline was completely within an existing easement agreement.

2. The Board's view is that both parties must adhere to the easements whereby each party must recognize the fact that neither shall damage or affect the others business. The Operator shall not affect the business operations of the Owner off-easement, nor shall the Owner affect the business operations of the Operator on-easement.

Section 47(b)(vii) Damage or Loss

The Board took into consideration whether there was severance from the purpose of original use of the land at time of taking and found there was not.

SUMMARY OF EVIDENCE:

1. A request for mediation was received by the Board Office from the solicitor for the Owners. The Board granted the request and the matter was sent to mediation in late 2014. The Board was advised by the mediator that no settlement was reached and that the solicitor for the Owners would contact the Board Office to schedule a hearing. The Owner's solicitor contacted the Board Office for a compensation hearing.

2. On March 21, 2017 the Owners, representatives from the Operator and the Board Members for this hearing attended on site at the NW of 22-49-23-W3M and conducted a review of the flowline and surrounding areas.

3. On March 22, 2017 a compensation hearing for this location, as well as three (3) other locations was held at Lloydminster, Saskatchewan.

4. Mr. Douglas, solicitor for the Operator asked for permission to identify some issues prior to the evidence of the Owners being submitted. He stated that the Operator's position was that there were existing easements (which would be filed as material in their exhibit books) that had the exact same boundaries as the right of ways granted under the Right of Entry Orders. He said that as it related to those easements and value of gravel and quantify of gravel, the Owners have no right to excavate pits on easements, and as it relates to any setbacks, the setbacks would be the same under the easements as they would be under the Right of Entry Orders. In other words, the boundaries are the same, they existed prior to the Right of Entry Orders being granted, so any claim for loss of gravel or access to gravel is not attributable to those Orders, therefore any evidence relating to that is not relevant.

5. The Board responded that any evidence place before the Board should be stated by how it relates to the current legislation of the Board. The Board ruled they would accept the evidence and weigh it according to the legislation.

6. Mr. Douglas responded that the legislation would be Section 47(b)(i) which speaks to the value of the land or interest in the land acquired by the Operator, not fee simple title value, but the value of the interest taken by the Operator for the right of way.

7. Mr. John Hardes, Gravel Control for Hardy Services Inc. was the first sworn witness for the Owners. Owner Exhibits No. 1, 2, 3, 4 and 5 were filed with the Board. Mr. Hardes reviewed the company's history in the area. Mr. Hardes testified that they started excavation in the area just beside the Ferguson's land in a pit owned by Don McKay and his mother Margaret McKay. Adjacent to that, in the next quarter, was an area owned by the Presleys, which they then moved to. Their next progression was to try and buy gravel from the Fergusons. They started in a corner of NW22 and the gravel was piled on Presley land. He stated that Owner Exhibit No. 5 showed test holes that they dug (Nos. 1 to 7) and also the pipeline right of way with S1, S2 and S3 marked on it that were test holes that Husky had done in the winter of 2014.

8. A rough estimate of the value of the gravel on the Fergusons land was provided by Mr. Hardes. The Owner Exhibit No. 3 had his calculations for the 4.14 Husky right of way line. He estimated 24 feet of gravel (8 yards). 4.14 acres at 8 yards deep was used as

an average and amounted to: 1 acre of gravel 1 yard thick was 4,840 yards. The pipeline right of way should then hold approximately 160,300 yards, and the value from the agreement they had with the Fergusons would be $5.00 per yard. In a dollar figure this amounted to $801,504.00. In addition to that the buffer zone next to pipeline right of ways (at a one to one slope at 8 yards deep). He estimated 450 yards long for the pipeline x 8 yards wide and 8 yards deep = 28,800 yards of gravel at $5.00 a yard would amount to $144,000.00 for the buffer area. When questioned by the Board Mr. Hardes stated that he was quoting two separate areas of gravel, the right of way area and the slope buffer area. Mr. Carter was questioned about what areas he would be claiming compensation for and he answered both under the easement and the slope beside the easement. The Chairman asked Mr. Carter to address the areas of the Act that the claim would be made pursuant to and he confirmed he would.

9. Mr. Hardes indicated that his brother manages the company and he had been speaking with Husky to work around right of ways. The last he had heard was that Husky was going to cut and cap an abandoned line that runs to 7 of 22, but nothing was finalized as yet.

10. In cross examination Mr. Hardes stated that when excavating gravel the company would not proceed any deeper if they encountered water. He indicated a geotechnical report of the gravel deposits had not been done by his company.

11. Mr. Hardes stated the process was that they identified an area where gravel was located and then dealt with the landowners on a price per yard. The Ferguson (Rod) verbal agreement was to crush 20 to 25,000 yards in 2014. The crusher then supplies the gravel company with a report of number of yards crushed and the landowner is paid from that invoice. He was not aware of how R.M. volume reports were done.

12. Mr. Rodney Ferguson and Jason Ross were sworn in and gave testimony. Mr. Ferguson indicated he had been contacted by Dave Neigum of Scott Land when he was away in Arizona, who said he was going to make a one time offer from Husky.

13. Mr. Douglas interjected at this point and stated that the offers made by his client were on a without prejudice basis, so he objected to any offers, including mediation being addressed. He stated he had no problem with a chronology of events but not amounts discussed. He also stated that it was a relevance issue as well.

14. Mr. Carter disagreed with the position of Mr. Douglas as it had been made by a verbal offer and negotiations between the parties should be a part of the process so the Board would be aware of each sides position. He stated it was submitted to the Board by way of Exhibits previous to the hearing. The Board ruled that Mr. Ferguson could proceed with all evidence of the value of gravel, but not including an offer made prior to the hearing, if made on a without prejudice basis.

Mr. Carter challenged that Mr. Ferguson was not told the offer was on a without prejudice basis. The Board adjourned briefly to review each argument.

15. The hearing re-convened and the Vice-chairman addressed the parties as follows:

"The Board has taken into consideration the arguments from both parties and would reference C.B. 7/16 where a without prejudice issue was raised and this was the position of the Board at the time":

A challenge was heard by the Board regarding a specific letter in evidence (Tab 31 of Operator Exhibit No. 1) being sent "Without Prejudice" and therefore not being admissible as evidence at the hearing. The Board heard argument from both solicitors, reviewed same and replied with the following decision:

The Board's practice and Owner/Operator practices have been not to submit without prejudice communications as evidence, which is the Board's preference.

However, the Board, at its discretion, may or may not accept evidence stated as "without prejudice".

The decision by the Board in this case depends on the content of the without prejudice submission:

a) If the content relates to compensation/settlement/specific negotiations, the Board will not accept it.

b) If the content is of a general nature the Board will accept it.

Therefore based on the letter in Tab 31, the Board considers this of a more general nature and will allow it to be examined and remain submitted as evidence.

c) If the purpose is to prove an agreement between two parties then it is acceptable to submit same.

16. In this case, the Board reviewed this and the situation at hand and stated: "*any evidence submitted, the Board has the ability to weight that evidence and determine whether we accept that evidence. Given the situation here of the verbal discussion, the Board has decided to accept Mr. Ferguson's evidence, statement and testimony and the Board will take into consideration the fact of the weight of it or whether they accept that as evidence and the relevancy of it as they issue their order.* "

The Chairman stated that this was on the basis that Mr. Ferguson is not a lawyer and in those discussions, he would not necessarily know the meaning of with or without

prejudice, and by not accepting that, thinking he could come to a hearing. Had he known that he might not be able to share, that might reduce his feeling of what rights he may have at the hearing. The Chairman also said they feel it is a good compromise in that scenario, keeping in mind that the Board is going to be very concerned about the weight that they place on what that testimony is, as Mr. Ferguson spoke to any offers and whether it was relevant at all. Mr. Douglas's objection was duly noted.

17. Operator Exhibit books 1, 2 and 3 were filed. Mr. Carter referenced Book 3, Tab 1 in speaking to Mr. Rod Ferguson. It was an email from Husky's solicitor to the Board regarding discussions with Brad Ferguson. Mr. Ferguson indicated that Brad had talked to them about removing gravel prior to the installation of the line. The Operator did not agree to it.

18. Mr. Ross was asked by Mr. Carter to add to this testimony. It was his understanding that the gravel was an issue to begin with. At the time his father-in-law had requested that the pipeline be re-routed. He said Husky did a cost analysis on the re-route of the line and found that it wasn't feasible to re-route the line. After that he said Brad had suggested that Rod be allowed to remove the gravel from the said right of way, from the line that had been shut down, because it had issues and needed to be replaced. As that was not an option, in his opinion, the offer from Husky showed some remorse and was as compensation for not being able to allow the extraction to occur and therefore did have relevance to the compensation portion of the hearing.

19. Mr. Ferguson reiterated that he had received a phone call from Dave Neigum and it was stated that Husky had checked into re-routing the line. He said it was indicated to be a one time offer, take it or leave it, and he asked what would happen if he didn't accept it. Mr. Neigum advised they would go to the Board for a hearing and Mr. Ferguson decided not to sign any papers for the right of entry. He stated he did not like to be dealt with in that manner.

20. Mr. Douglas cross-examined Mr. Ross regarding his involvement previous to this hearing and he stated he worked at Scott Land and felt it was a conflict of interest. Mr. Douglas asked if Mr. Ross knew what line was being replaced. Mr. Ross indicated that an existing line was to be replaced but did not know about any paralleling of the lines. He knew of a right of entry application to replace a line.

21. Mr. Ferguson was questioned about the excavation on the NW of 22. He was asked if Husky had amended the wellsite and shrunk it to allow Hardy to get as close as possible and excavate as much as possible. Mr. Ferguson confirmed that. Operator Exhibit Nos. 4, 5, 6 and 7 were filed and reviewed by Mr. Ferguson and Mr. Douglas. Crop loss/loss of hay monies were paid for NW 22 in the amount of $13,000.00, being $11,000.00 for acres that couldn't be seeded and $2,000.00 for hay bales for his horses for 2015 and payment for 2014 crop loss for canola on NW of 23 in the amount of $1,515.00.

22. Mr. Douglas Hastings, Senior Surface Landman for Husky Energy was the first witness for the Operator. He reviewed his position with the company and his involvement with this right of way from day one when an integrity problem came to his attention. A project was kicked off to replace a portion of the line in 2013. The purpose of the replacement was due to a corrosion issue from Pike Peaks junction to Gully Lake Battery. A large map (Operator Exhibit No. 8) was referred to. There were two easements involved, an 18.29 meter right of way, 60 foot easement which contained a crude line and the 10 meter right of way beside it, containing a condensate line. The 18.29 right of way crude was an easement for 1970 and the 3 inch condensate line in the 10 meter right of way was constructed in 2001. Mr. Hastings pointed out the location of the site visit previous to the hearing.

23. He testified initially they felt they needed a new right of way to replace the one with integrity issues. They looked at paralleling the line all the way with a new 20 meter right of way. They had concerns and found that there were issues with adding new lands and looked at other options for minimizing that. The other option was to go into the existing easements and that was looked at in 2014. He stated he was involved with negotiations with the Fergusons, which were unsuccessful and Right of Entry applications to the Board were made. The Right of Entry Orders that subsequently issued contained no new land, only existing easement acreages. The northwest quarter of 22 became the main focus as Mr. Ferguson had a concern with compensation for the gravel, and other family members wanted that issue resolved before they signed any agreements.

24. Operator Exhibit Book No. 1 was reviewed. The previous easements and Board Orders and Land Titles documents formed part of the book. 1970 and 2001 easements were both signed by Rod Ferguson. The right of entry orders were reviewed for all

the other parties involved other than the Fergusons. Other than the NW of 22 there were 3 other outstanding files that compensation was not settled upon. All other locations on the line replacement had compensation agreements. Tab 5 photographs were reviewed which indicated a gravel pile on the easement, which was later removed.

25. Operator Exhibit Book No. 2 was reviewed which contained comparable easements. They were taken during the same time period, within a 5 mile radius which ranged from $1,200.00 to $1,500.00 for land value only.

26. In cross-examination the Chairman verified that the easements were for new takings, not re-entries.

27. Mr. Carter asked Mr. Hastings about the gravel tests done by Husky on the Ferguson land. Mr. Hastings said that backhoe testing was done outside of the easement area and when gravel was found it prompted Husky to look into using the existing easement rather than taking new ground beside it. He reviewed the 2014 Right of Entry Orders regarding a placement line for crude oil and the 2016 replacement condensate line due to integrity issues, as well as the 18.29 meter 1971 right of way agreement and the 10 meter 2001 agreement.

28. Exhibit No. 1 of the Operator (Tab 3) – Pipeline Easement signed in 2001 was for the condensate line. Clause 2 on page 1 Mr. Carter stated dealt with construction of additional lines where Husky would have to negotiate with the Owner unless they had been put in the original construction operation. Mr. Hastings indicated that they had tried to negotiate re-entry and had to go by way of right of entry because the Fergusons would not sign for permission to enter. Mr. Carter was reminded by the Board that the compensation hearing was for the 2014 right of entries only, not the 2016.

29. Mr. Hastings was asked to review Exhibit No. 7 of the Owner regarding a letter of 2016 from Husky. He said land value was $1,000.00/ac for land value at that time (2016) and that it was Husky's practice of paying one-half land value for re-entry or temporary workspace (one-half of $2,000.00). Relevance was questioned by Mr. Douglas.

30. Mr. Mark Crittenden, Engineer, Husky Oil Operations was the next sworn witness for the Operator. He stated his role in 2014 was to work with the engineering department to oversee this project to completion. He described the project as being a replacement of an inline corrosion issue in the 8 inch crude line. In late 2013 the line was shut down. After the right of entry orders were granted in July of 2014 surveying and stripping began.

The project was completed in October of that year, with line being put into production November 12, 2014. November 21, 2014 construction cleanup was completed. He noted the creek on NW of 22 was bored. Pictures from Operator Exhibit No. 3 Tab 4 were reviewed. Mr. Crittenden stated that removing gravel from the existing easement was not an option in 2014 as a 3 inch condensate line was still running and the battery would have had to be shutdown, which they could not do.

31. In cross-examination by Mr. Carter Mr. Crittenden said that there was concern about removing gravel in 2014 near the line as there was still a line in operation. He was not a Geotechnical engineer and did not know how far off the right of way excavation could occur.

32. Mr. Robert J. Telford, President of McNally Land Services Ltd. provided the next sworn testimony on behalf of the Operator. Operator Exhibit No. 10 was filed, which was a Market Value Appraisal Report and Operator Exhibit No. 11, which was an Estimate of Compensation Report.

33. Mr. Telford advised the Board of his background and was accepted as an expert witness who would not provide legal opinions.

34. Mr. Telford reviewed his Appraisal Report including photographs. The highest and best use of the land was determined to be agriculture, with the potential for aggregate extraction and on page 14 an estimated market value of $1,225.00 was shown as of the effective dates of the Board Orders in 2014.

35. When questioned by the Chairman, Mr. Telford advised that at 2014 there was a Discretionary Use zoning from the R.M. for aggregate extraction. He had contacted the council and the Administrator for the R.M. who indicated none of the properties had that discretionary use as of 2014.

36. Mr. Telford reviewed 12 sales in the immediate vicinity of the subject property for comparables. Page 45 of his report contained the summary of relevant data to achieve the 2014 value of $1,225.00 per acre.

37. Operator Exhibit No. 11 was reviewed in detail and was evaluated pursuant to Section 47 (1)(2) of the Surface Rights Acquisition and Compensation Act as of the effective 2014 dates. The project was described as a replacement line into existing easements. There were no new lands taken. The northwest of 22 was reviewed on pages 8 and 9. The land use was cultivated with some potential for gravel extraction in

the future. Mr. Telford referred to Section 50 but used Section 47(1) a, 47 (1)b and 47(2) to arrive at the total compensation of $2,912.53. On page 23 the loss of use of the land was calculated at $375.71.

38. When questioned by the Board, Mr. Telford advised that he felt no excavation was allowed in the original 1970 and 2001 easements and that Mr. Ferguson never had the rights since 1970 and 2001 and this project was just putting another overlapping disposition. The impact of the gravel losses would have been in 1971 and 2001. He was further questioned about the slope area off easement and a potential loss of gravel. Mr. Telford reiterated his first comments regarding losing those rights in 1970 and 2001 but that he had also read from some emails that Husky was willing to work with Mr. Ferguson so that he could get as close as he could. He didn't know what that was until it was measured and it could be a future damage, when Mr. Ferguson goes to excavate that area. Mr. Telford said there would be a lot of geotechnical that would be required. Mr. Telford also stated that it would be his opinion that because of the right of ways have been there since 1970 and 2001, the fact that they put another pipeline in the same area, hadn't changed what had been impacted since the original right of ways. He said "you can't lose what you didn't have".

39. When the Board questioned Mr. Telford about crop loss going forward he indicated that he didn't think there was going to be any ongoing crop loss and that a good job of reclamation had been done.

40. The chairman asked if there was a Geotechnical Report that better described the gravel, would that have impacted his report, Mr. Telford stated he would have to have seen the report and perhaps forecast losses for future years, especially if it was some time later. He said that at the effective date, there were no losses, because there was no gravel extraction on the quarter. Since that date there has only been minor extraction near the wellsite. He further stated he would need to see a lot more accurate levels of gravel by regular bore holes, showing the seams and the overburden. He would need to know both the volume and quality of gravel. Mr. Douglas stated that if an acreage for a supposed slope outside of the easement was to be calculated, that excavation has to also take into account all other easements and registrations and wellsite caveats.

41. In cross-examination Mr. Carter asked if Mr. Telford was giving a legal opinion and Mr. Telford replied no, just interpreting legislation to identify what compensation would be as the result of that legislation.

42. Mr. Carter asked Mr. Telford what the compensation was for and he responded it was to identify compensation to "make the landowner whole" or for the rights taken as Mr. Carter had stated. Mr. Telford also said it was a bundle of rights that was described in his report and the remaining rights (residual) are handled differently in Saskatchewan than Alberta.

43. Summaries were requested from each party with written submissions, including costs for the Owner and rebuttals to follow. It was noted by the Vice-Chairman that not only NW of 22 evidence was to be presented, but also the other 3 locations, as there were 4 Right of Entry Orders for compensation to be determined. As much evidence had been around the gravel issues, the Chairman asked for evidence for crop loss, etc. for all four locations.

44. Mr. Carter stated that the landowners' position was that the compensation for the NW of 22 should be the number Mr. Hardes calculated and that included slope of approximately $945,000.00 in total for on and off easement gravel. The other parcels were for compensation for the rights taken from the landowner and the request was for $4,000.00. He said that was not for crop loss, as crop loss was only settled for Rod Ferguson, but not for the others. The Chairman re-stated that the Board had heard about crop loss payments for the NW of 22 and NW of 23, but not for the other two. In the absence of evidence, he said the Board would consider the payments of the other two locations, in conjunction with Mr. Telford's compensation report and any other evidence.

45. Mr. Douglas stated he was going to present some concepts as he was still struggling with the evidence, as far as damages. He said the first concept was the party claiming the compensation is the party who should bring the evidence. Other examples he used were that there was no effort to excavate the gravel around the easements since the July 2014 orders. He felt much of the evidence presented was speculative in nature. No suggestion was made that the Owners could not get to the gravel on the remainder of the quarter. He stated that to make such a large claim, almost a million dollars, without proper evidence was not acceptable. He said there was no credible

evidence on the calculations, assuming you could excavate all of the gravel on the quarter but for the easement.

46. Mr. Douglas stated the loss or damage had to be caused by the right of entry order. Compensation cannot be paid for something the Owners did not have prior to the orders being issued. The compensation should be for a re-entry on the existing easements.

COSTS:

The Surface Rights Acquisition and Compensation Act allows the Board to award costs relating to the Hearing to the Owner or Occupant. The Board is of the opinion that costs should reflect:

(a) the nature, importance and complexity of the subject matter;
(b) the time and skill that were required to prepare and present the necessary material at the hearing;
(c) the results obtained;

(d) efforts of the parties to negotiate prior to the Hearing

The Board orders $1,200.00, as submitted, payable to the Owners to cover costs for the right of entry hearing as well as the compensation hearing.

TO WHOM THE COMPENSATION IS PAYABLE:

The amount of compensation now due is set out in the decision above-noted and is payable, less $1,137.00, paid by the Board to the Owners (security deposit filed with the right of entry), plus interest at the rate of 1% from the date of the Right of Entry and costs. The Board's practice is to use the Bank of Canada interest rate at the date of right of entry.

The above award is unanimously agreed to by the Board Members present namely: Duane Smith, James Wilson and Don Peterson.

DATED at the Town of Kindersley, in the Province of Saskatchewan this 14th day of June, 2017.

THE BOARD OF ARBITRATION

Linda Benjamin

Linda Benjamin, Board Secretary
For James Wilson, Vice-Chairman

TO: Donald Miles Ferguson, Marilyn Rae Ferguson and Michael Leslie Ferguson

TO: Husky Oil Operations Limited
c/o Kanuka, Thuringer LLP
Attention: Murray W. Douglas

TO: Darryl Carter
Stringam LLP

Husky
OIL OPERATIONS LIMITED

INDIVIDUAL OWNERSHIP PLAN

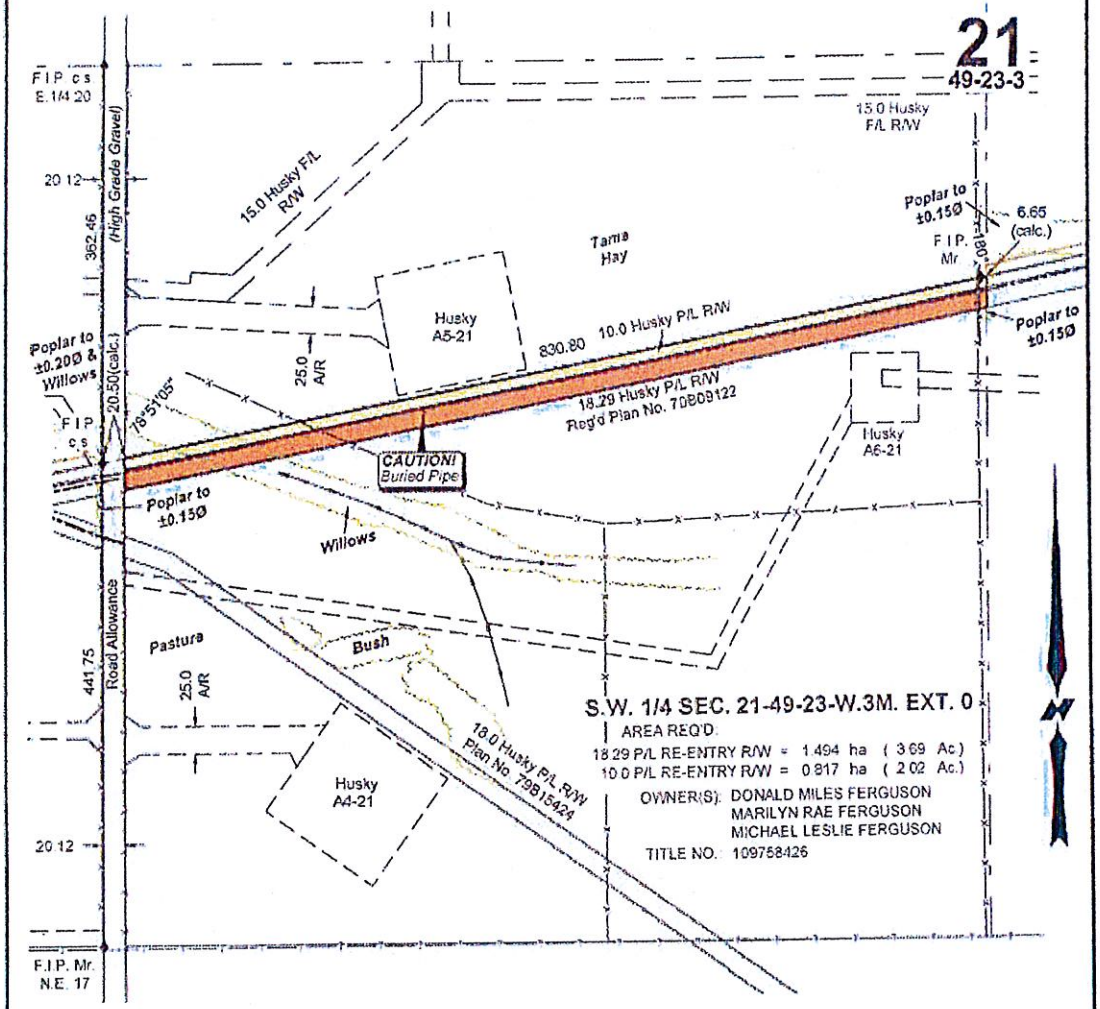
SHOWING

RE-ENTRY RIGHT-OF-WAY

IN

S.W. 1/4 SEC. 21 TWP. 49 RGE. 23 W.3 M.

R.M. OF ELDON NO. 471



100 50 0 100 200 300 Metres

Scale 1:5000

PARF No.: 18703-001
Rev. No. & Date:
Rev. A, Nov. 29, 2013
W.O. No.: 4090321
Surface File No.:

LEGEND

Statutory Iron Posts found

18.29 Pipeline Re-Entry Right-of-Way
10.0 Pipeline Re-Entry Right-of-Way
Distances are in metres and decimals

SASKATCHEWAN LAND SURVEYORS · J. E. SWEENEY · 282 SLS · ASSN.

Certified Correct and true to the best of my knowledge.
Dated January 27th, 2014

Saskatchewan Land Surveyor
(James E. Sweeney)

The pipeline routing is hereby accepted and

Agreed to this _____ Day of _____ 20_____

McElhanney

McElhanney Land Surveys Ltd.
116, 5704 44th Street
Lloydminster, Alberta T9V 2A1
T:(780)875 8867 F:(780)875-4768

REV.	DATE	DESCRIPTION	DRAF	CHKD	SURV	REQ. BY
		REVISIONS				
2	Jun. 19/14	Removed Temp. Workspace	JMA	RJJ	–	E&PS-DH
1	Apr. 21/14	Revised Area Breakdown	JMA	RJJ	–	E&PS-DM
0	Jan. 27/14	Plan Issued	JMA	RJJ	WJSB	E&PS-DM

Plan ID.: L12436IP1-7 | Job No.: 3411-12436 | Page: 1 of 1 | Revision: 2