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

Hearing Nos. 2570

Regina, SK
April 27, 2016

IN THE MATTER OF:
LSD 3, Section 30, Township 5, Range 13, West of the Second Meridian,

CAMERON and JANE KERR

(Owner & Applicant)

- AND –

VALLEYVIEW PETROLEUM LTD.

(Operator & Respondent)

PURPOSE OF ARBITRATION:
To hear and receive evidence regarding an application for rental review received from the Owners.

APPEARANCES:
For the Operator:
- Daniel D. Cugnet
- Matt Cugnet

For the Owner:
- Cameron and Jane Kerr

For the Board of Arbitration:
- Ken McDonald
- James Wilson, Vice-Chairman
- Duane Smith, Chairman
- Linda Benjamin, Board Secretary

EXHIBITS:
Board Exhibits:
1. Copy of the Rental Review Application
2. Copy of the Notice of Hearing

The Board makes note that Disclosure was filed by the Operator and the Owner.

Owner Exhibits:

1. Owner Hearing Binder
2. Proof of Receipt Doc (Spill)
3. Lease – January 1, 1997
4. Picture – January, 2012- Phase I
5. Matrix Report – Page 2
6. 2008 Air Monitor Report

7. Email – April 26, 2016 – Ryan Swayze to Kerrs
8. Tax Notice 2015
9. Canada Trust Questionnaire

Operator Exhibits:

1. Printed copy of Disclosure
2. Extra Pictures

DECISION:

The Board wishes to make clear to all parties that this hearing and resulting decision were for a rental review of a lease held by Valleyview Petroleums Ltd. on 3-30-5-13-W2M only. Other matters that were previously adjudicated by the Board do not form part of this decision.

Crop Loss: $40.00 per acre

1. The crop loss payment by Cenovus (Owner Exhibit No. 1, Tab 17) was a payment made due to specific remediation efforts that were required by the Operator to clean up from a spill. The specific nature of this payment does not represent a fair market value for crop loss. Additionally, the agreement for this payment has expired and was not renewed by the current operator.

2. The Kerr's had no sales receipts for their hay as it hasn't sold. The Board determined a value still needed to be assessed as this is no different than a grain farmer storing crop in a bin to sell at a future date. However, the hay was not stockpiled for sale. The Kerrs arbitrarily decided it may be "contaminated" from the oil activity and therefore would not sell it, but rather they gave it to Ian Thackeray, who cut and baled the hay. The Board asked the Kerrs if they had the hay tested for contaminants and they had not. Thus, the Kerrs themselves put a value of $0 on the hay produced. The Board finds it very unusual for the Kerrs not to have had the hay tested, but simply assume it was contaminated.

3. The lease comparables provided by the Owners in Exhibit No. 1, Tab16, only provided a total annual payment. There were no survey plats, testimony of crops grown, no value of crops to separate crop loss from the portion of payment for severance/nuisance/adverse effect, as well as no description of farming operations. Thus the Board had no understanding of severance, nuisance or adverse effect issues. The weight applied to the comparables was reduced significantly

4. Ian Thackeray, who cuts/bales the hay on the site, pays nothing to the Kerrs for this and the Kerrs pay nothing to Mr. Thackeray, as they want the land looked after by their choice. This

arrangement applies to the whole quarter of the land. Thus the Kerrs have placed a zero value on their hay production by their own choice.

5. There was no evidence provided of tons of hay produced per acre or what the price per ton of hay would have been. Also, no evidence of the number of cuts of hay per year was provided. The Board could not determine any specific value.

6. Valleyview, in the testimony had offered a range of $20.00 to $40.00 /acre crop loss stating they would accept a number of $40.00/acre for hay. While this is an arbitrary number, given the lack of evidence, or a potential of $0 for the hay production as established by the Kerrs, the Board accepted the $40.00/acre crop loss offer by the Operator at the hearing.

Severance/Nuisance/Adverse: $875.00 (total for all three heads)

1. The whole quarter of land, including the site in question is alfalfa mix hay. Thus there are no equipment changes required for the hay production.

2. The site is a corner site with minimal severance created. The lease site is farmed and there are no difficulties created in the production of hay as a result of this.

3. When the Kerrs signed the original in their words "specialized crop" (alfalfa/brome grass)agreement with Cenovus and the land production changed from a cereal crop to an alfalfa/grass crop, the size of the equipment required for crop production was reduced and the number of operations per section decreased by at least 50%. It is arguable that the payment for severance/nuisance/adverse effect could have been reduced at that time given the reduction of severance and adverse effect with hay production.

4. As mentioned under the crop loss section, the comparables provided in evidence did not have survey plats, no testimony of equipment on lease or equipment used in farming operations was provided; no farm patterns and how they may have been impacted, nor whether the leases from the comparables were cultivated land, hay or pasture. Thus the weight placed on these for purposes of severance/nuisance and adverse effect was significantly reduced by the Board.

5. In assessing any adverse effect impact, Mr. Kerr was not aware of the exact size of swather or hay rake used by Mr. Thackeray. He assumed it was a 25 foot swather and a 30 foot hay rake. Four operations per year were required to complete the production of hay. It was not mentioned if the swather was a pull type or self propelled. As this site is a corner site, with no equipment on site, and only a partially fenced down hole wellhead exposed, the site being alfalfa/grass mix, like

the balance of the quarter of land, it is much easier to farm vs. that of a large grain operation, the Board determined there is minimal adverse effect created from this lease.

6. In general, the Board finds that most of the adverse effect and nuisance argued by the Kerrs is created from their own fear and unfounded suspicions as stated in testimony – "Yes, I believe oil companies are poisoning the earth". The Board found the Kerrs to be very unreasonable in their dealings with Valleyview, thus creating an environment not conducive to negotiations. The site itself, nor the Operator, were creating any excess adverse effect or nuisance to the owners.

The Board found that the Kerr's lacked credibility in some of their arguments. Specifically, when Mrs. Kerr stated she had the right to enter upon Valleyview's lease because the lease didn't specifically say she couldn't. She told the Board her lawyer advised her she could and that appeared to the Board to be unreasonable, without the permission of the Operator. The Board would further note that while the Owners desire to have entrance onto the lease, they are also, on the other hand, fearful for Ian Thackery's wellbeing when he is haying around the lease.

7. The Board acknowledges Kerr's argument of an imposed relationship through the creation of a lease site. Specifically, the Board notes from their evidence:

"Compensable adverse effects does not arise solely from the exclusion of the leased parcel from the landowner's operation, the existence of the physical structures, or the presence of an access road. It also arises from the need to interact with the Operator as a business associate. The problem for the landowner is that it did not voluntarily choose to have this business relationship, and the Operator constitutes a business associate that does not have the same objectives for the now mutually-held business asset, the land, as the landowner." (AgriLaw: May 2010, Cohen Highley).

Thus the Board does accept some adverse effect and nuisance as a result of this.

8. The Kerrs raised the issue of weed control on site. However, the Owners stated that they wanted no spraying on the land and only weed whipping to be used. The Operator stated that the Kerrs had never called to request any weed control actions be taken.

9. The Owners were concerned that there was no lease site sign in place on the lease. This is beyond the jurisdiction of the Board to address, but testimony from the Operator was that there was a sign in place at the time of the hearing.

10. Tab 18 of the Owner Exhibit No. 1 contained a letter from the Ministry of Economy regarding the Owner's concern relating to the oil well situated on their property (currently before the Board in this hearing). The reclamation process was not an issue to be dealt with at a rental review hearing. However, the Owners are encouraged to work with the Ministry of Economy for the duration of reclamation.

11. The Owners also raised the concern of future risk to them in farming around the site. The Board has indicated in Board Order C.B. 4/14 that they do not make awards for future risk.

SUMMARY OF EVIDENCE:

1. Cameron and Jane Kerr were sworn in and Jane Kerr provided the Board with an outline of their evidence contained in Owner Exhibit No. 1. Each Tab was reviewed and the Board stated that questions from the Operator would be allowed as the evidence was put forth in the interests of efficiency for the entire hearing.

2. Mrs. Kerr reviewed the original lease and spills report, making note of the effects of leaching of spills into ground water off lease and the effects on crop loss.

3. Tab 3 of Owner Exhibit No. 1 contained a 2006 Perennial Crop Cover Agreement for the SW/NE of 30-5-13-W2M in order to mitigate Encana's (Cenovus') environmental impact on the lands. This agreement was for a 7 year term. Mrs. Kerr stated a "specialized crop" was seeded to help absorb contaminants in the soil. When questioned by the Board, it was revealed this was a crop of alfalfa/brome grass mix.

4. Owner Exhibit No. 3 was a Lease Amendment for the NE of 30 which indicated loss of use at $300.00 per acre in 2011. Tab 17 of Owner Exhibit No. 1 contained a release, which the Kerrs indicated paid $325.00 per acre for crop loss. They also referenced C.B. 1/13 for $300.00 per acre for 16 of 30 site.

5. Numerous references were made to Phase I and II assessments as well as pictures illustrating the site at different points in time. The Kerrs were reminded by the Board that they were present at this hearing for a rental review and as such were not able to deal with past spill issues or remediation and/or final reclamation of the site at that time.

6. Argument was put forth by the Kerrs that payment should be made by the Operator for risk in farming around the site and any unknown risks. They also expressed concerns about how the well was being abandoned.

7. At this point Mr. Matt Cugnet was sworn in and provided testimony for the Operator regarding the abandonment procedures. Mr. Cugnet is a geologist and spoke to concerns relating to leaks, "bubble tests" performed and the fact that two leopard frogs were alive and well, living within the water on site.

8. A 2006 Air Monitoring Report was also filed by the Kerrs.

9. Owner Exhibit No. 7 was an email from Ryan Swayze regarding the range of value for pitrun gravel. The Operator asked when the last time the Kerrs sold gravel and was advised 2004. The Operator stated that if there was sand and gravel present it would have been compensated for at the initial taking of the leased area.

10. Mrs. Kerr stated that they felt they were entitled to enter upon the lease site because their lease agreement didn't say they couldn't and that their lawyer said they could. She indicated they had a weed problem and the Operator responded that they had not been notified of one, but would address the issue should they be advised of it. Mrs. Kerr stated that since they pay the entire taxes on the land they should be allowed to go on Valleyview's leased area.

11. Comparable (Tab 16 of Owner Exhibit No. 1) was filed for SW 19 (south of 3-30), indicating the new rental of $3,050.00 for 2.99 acres. Mr. Dan Cugnet (Operator) objected to this because it was not apparent if it were pasture or crop land and what crops were grown. He noted the difference in the amount of crop loss payment between crop land and pasture/hayland.

12. The Kerrs stated they did not want spray used on their land; they wanted whipper snippers used on site.

13. Mrs. Kerr argued the effects of a lease on mortgaged land value. She stated that a loan could not be obtained on the property without a Phase I and II assessment. It was noted by the Operator that both have been completed. Matt Cugnet indicated that any "anomalies" on the lease edge could possibly be from the gravel on the land or a coal vein and that further soil sampling would be done. He also indicated that there was no measureable methane around the wellbore. Mr. Cugnet stated there was currently a sign on the site and no complaints regarding a sign and/or weeds had been received by the Operator from the Kerrs.

14. In conclusion, the Kerrs requested $7,600.00 be paid by the Operator, broken down as follows:

Original Lease $2,300.00
Secondary Ground Disturbance - $1,000.00
Weeds and neglect - $2,300.00

Fire Risks - $1,000.00
No road sign to alert of danger - $1,000.00

Costs were also requested by the Owner of $616.25 for time and binder preparation.

15. Dan Cugnet provided sworn testimony on behalf of the Operator. He reviewed two extra pictures not provided in the previous written disclosure. One illustrated that there appeared to be no "out of control" weed issues on site The second, was a picture of the water on site, indicating no bubbling, as well as animal tracks, but no dead carcasses nearby.

16. Mr. Cugnet provided testimony that Mr. Thackery (neighbour) cuts, bales and uses the hay from this land to feed his own cattle. Mrs. Kerr indicated that no value was paid for the hay as they did not want to sell contaminated hay, but have never tested the hay. She indicated that they believe it needs to be cut to keep hay lively. Mr. Cugnet stated that $40.00/acre is the value of the hay based on what the Thackerys would be paying elsewhere.

17. Mr. Cugnet asked the Kerrs if they thought oil companies were poisoning the earth and Mr. Kerr said yes.

18. Mr. Cugnet gave testimony that the adverse effect has been reduced from grain to hay. There is no return currently, but the operator would accept $40.00 per acre. He stated the site is in the corner of a hayfield so severance is minimal. He proposed $800.00 per year for severance/adverse effect/nuisance. He said this well was non-producing, beside the road ditch and $800.00 was justified. He argued the Kerrs were only at the hearing for more money vs. factual evidence and the hearing was just a "shakedown" or "means to an end".

DECISION SUMMARY:

Crop Loss: $40.00/acre x 2.99 acres = $119.60
(rounded to $120.00)

Severance/Nuisance/Adverse: $875.00

Total: $995.00

TO WHOM THE COMPENSATION IS PAYABLE:

The compensation is payable to the Owners, Cameron and Jane Kerr.

EFFECTIVE DATE:

The effective date of this Order is May 25, 2016.

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 costs for this Board Order in the amount $500.00. The request for costs for the time and effort to prepare for the hearing, disclosure and the production of the evidence binder was a reasonable argument from the Kerrs. There is an argument whether or not costs are justified, given the negotiations and the nature in which these were carried out. The fear and unreasonableness of the Kerrs created an unnecessary need for a hearing. However, the Board wishes to acknowledge some of the legitimate time and effort required for the hearing and thus makes this award.

The Operator made an argument for costs to be awarded to them in the amount of $4,032.00, arguing that they fit the definition of an "occupant" under the Act and accordingly stating that Section 29(2) applies to them being entitled to compensation. The Board refers to Board Orders C.B. 1/16 and C.B. 2/16, stating that compensation to Operators under the Act is outside the Board's jurisdiction. The Act clearly intends to treat Occupants and Operators separately even though the Operator may be "in lawful possession" of the land as argued by the Operator. It would be unreasonable to assume the Operator could also meet the definition of an Occupant.

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

DATED at the Town of Kindersley, in the Province of Saskatchewan this 4th day of October 2016.

THE BOARD OF ARBITRATION

Linda Benjamin, Board Secretary
For Duane Smith, Chairman

TO: Cameron and Jane Kerr

TO: Valleyview Petroleum Ltd.

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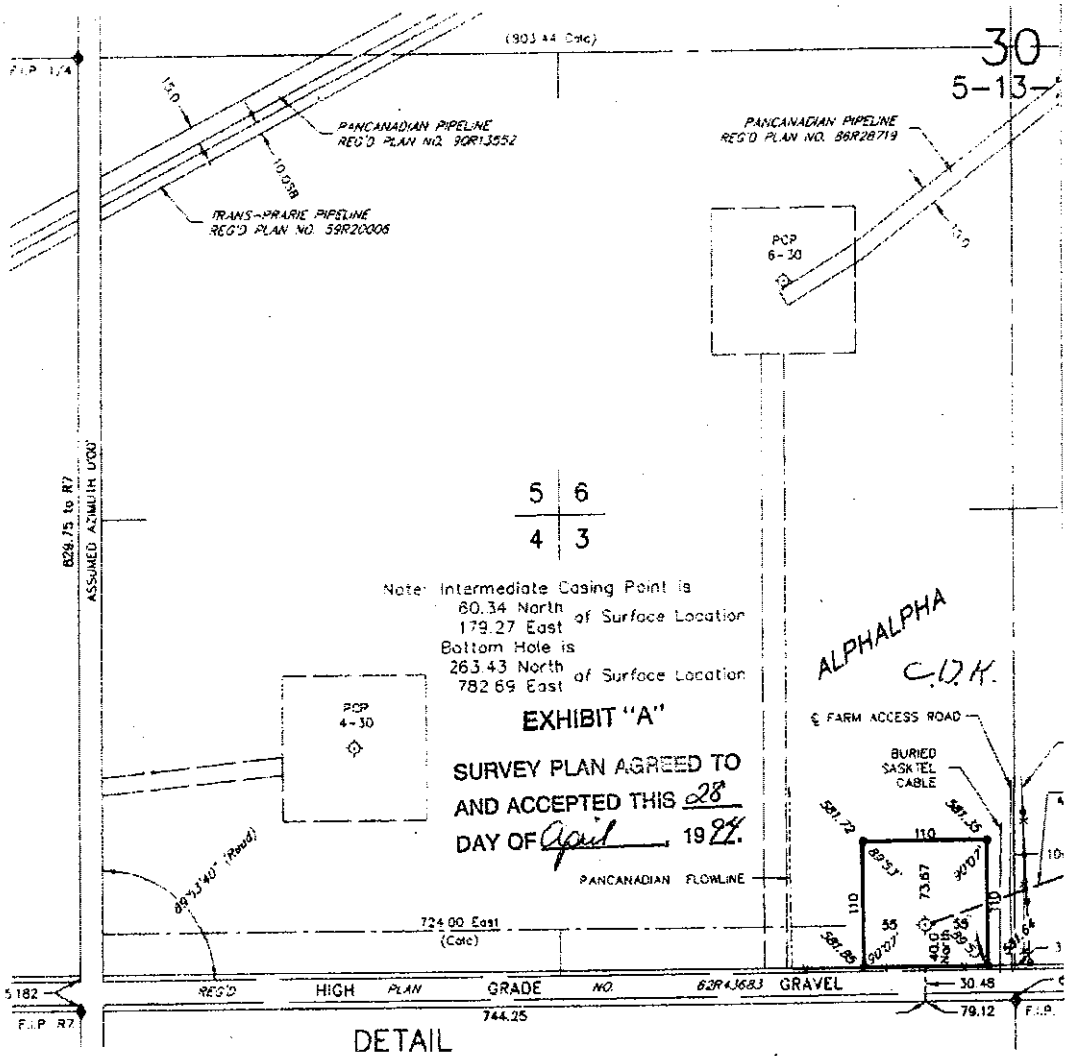
5-13-



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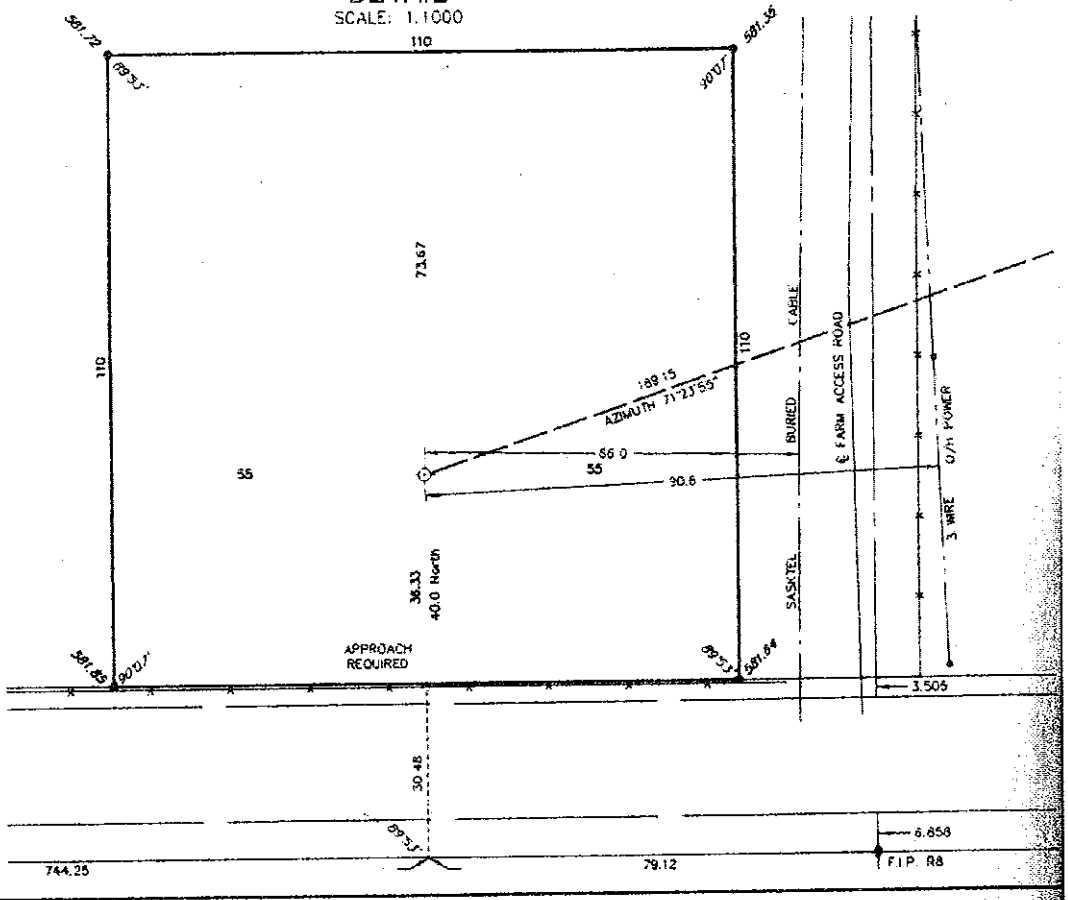

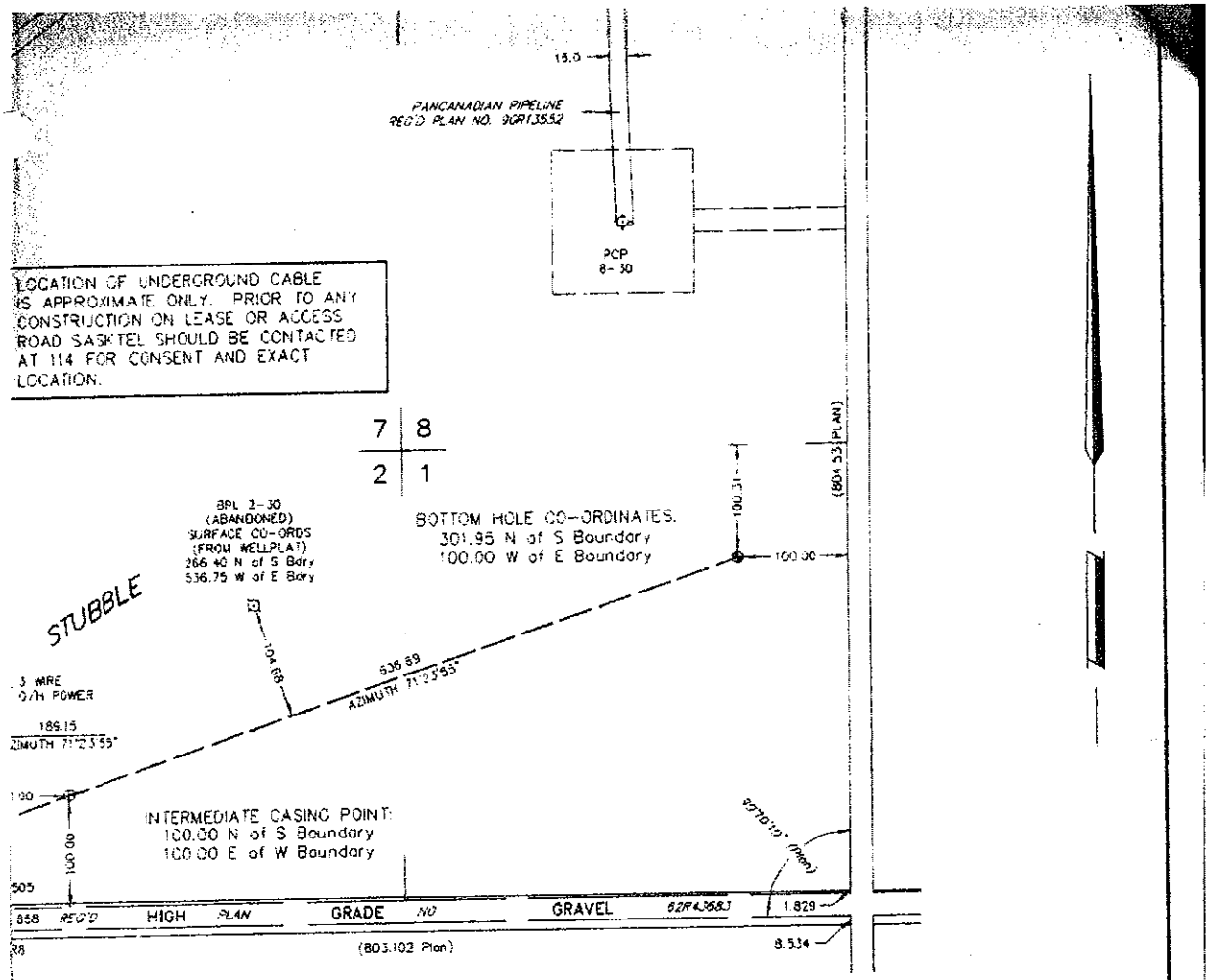

RICHLAND NCP WEYBURN HZ A3-30 D1-30-5-13
Well Site
LSD.3 – SEC.30 – TWP.5 – RGE.13 – W.2M.

I certify that the survey represented by this plan is correct to the best of my knowledge and was completed on the 19th day of May, 1994.

W.J. Schoenfeld, S.L.S.

Witness

CONDON
Professional Land Surveyors
1066 ALBERT STREET
REGINA, SASK. S4R 2P8
(306) 522-5628
1-800-667-3546

OPERATOR
RICHLAND PETROLEUM CORPORATION

WELL CENTRE ELEVATION: 581.44
Elevations shown are in Geodetic Datum

SURFACE CO-ORDINATES
40.00 N of S Boundary
724.00 E of W Boundary
Section 30

BOTTOM HOLE CO-ORDINATES:
301.95 N of S Boundary
100.00 W of E Boundary
Section 30

AREAS: Well Site = 1.21 ha. 2.99 acs.

There are no surface or underground improvements within 76m. of well location except as shown.
Distances are in metres. SCALE: 1:5000
Survey monuments planted shown thus..... •
Survey monuments found shown thus..... ♦
Portions referred to bounded thus ———

CARTESIAN CO-ORDINATES: 41.33 N
724.00 E
SW. 30

Job No. 94-37-13778