

Before:

**Metis Settlements Appeal Tribunal
Land Access Panel**

Between:

Mervin Bellerose,

Applicant,

-and-

**Paddle Prairie Metis Settlement,
Long Run Exploration Ltd.,
Metis Settlements General Council
and
Metis Settlements Land Registry,**

Respondents.

Concerning:

Compensation

Decision Date:

August 16, 2017

DECISION

MSAT Panel members:

Don Cunningham, Chairperson
David Drummond, Panel Member
Cody Hodgson, Panel Member

Parties:

Mervin Bellerose

Observers:

Terence (Terry) Piper

MSAT Staff:

Karen Mustus, Oil and Gas Officer

Hearing:

Conference Room, Nova Inn, Manning, Alberta
June 19, 2017

1.0 Context

[1] Mervin Bellerose (Mervin) received annual surface rights compensation from the Paddle Prairie Metis Settlement for three consecutive years after a reclamation certificate was issued in 2011 for a wellsite on 11-01-104-25-W5M. Specifically, Paddle Prairie paid Mervin \$2,420.00 in 2012 and 2013 and another \$3000.00 in 2014, totaling \$7840.00. The Settlement discovered its mistake in 2015 and asked that Mervin pay back the \$7840.00. Mervin refused and the Settlement is now withholding other surface rights compensation until the \$7840.00 “debt” is collected.

[2] Mervin said neither Paddle Prairie nor Cenovus Energy Inc. told him about the reclamation. Mervin said the first he heard about it was in 2015 when he received notice from Paddle Prairie that they wanted him to pay back the compensation payments he received in 2012-2014. Given the lack of notice about the reclamation and the late notice of overpayment (coming three years after the first “overpayment” in 2012), Mervin does not think Paddle Prairie has the right to call the overpayment a debt, or to withhold other surface rights payments now due to him. In this regard, Mervin wants the Appeal Tribunal to clarify what surface rights payments are now due to him.

[3] Paddle Prairie Metis Settlement Council rescinded its earlier written consent to have Mervin’s hearing at the Paddle Prairie Council Offices. Paddle Prairie Metis Settlement wrote to the Appeal Tribunal on June 15, 2017 indicating the hearings scheduled for June 19, 2017 “will not be held at Paddle Prairie Metis Settlement” and that “Settlement Council does not agree to participate in any way.” In response, the Appeal Tribunal quickly found another location for the hearing(s) and advised the parties, by phone and/or email on June 16, 2017, that the hearing(s) would proceed on June 19, 2017 as scheduled but the location was changed to the Nova Inn Meeting Room in Manning, which is approximately 90 km away from Paddle Prairie. Settlement Council did not attend the hearing.

1.1 Evidence before the Panel

Mervin Bellerose, the Applicant

[4] Mervin Bellerose said he ought to have been notified in writing about the reclamation activities for 11-01-104-25-W5M and that he should have also been given the right to inspect the reclamation before the Reclamation Certificate was issued on April 20, 2011. Mervin said the first he knew about the reclamation was in 2015 when he was told by someone in the Settlement Office that he owed \$7,840.00 for three years of “overpayment,” followed by receipt of a bill for the same amount.

[5] Mervin said he has since looked at the reclaimed wellsite and has no issue with the reclamation work, but he does have an issue with the lack of notice and consultation he feels is due to him as the landowner. In Mervin's opinion, the oil company did not do their due diligence. Mervin said that had notification been given to him in 2011, he would not have accepted the cheques from the Settlement in 2012, 2013 and 2014.

[6] Mervin added that the Alberta Energy Regulator did not follow the rules for reclaiming wellsites; which Mervin said includes notification requirements and rights of inspection by the landowner. While Mervin did not point this Panel to any specific legislation, regulations or contractual obligations, he felt very strongly that the Alberta Energy Regulator did not follow the correct reclamation process.

[7] Mervin added that since he signed off the surface lease agreement for the 11-1-104-25-W5M, the oil company knew to contact him and how to contact him.

[8] The Panel questioned Mervin about the NW-1-104-25-5 and why he had a recorded Allocation¹ interest in the land. Mervin said the land is not surveyed. He said the Settlement recognizes him the landowner for the land.

Paddle Prairie Metis Settlement, the Respondent

[9] Paddle Prairie Metis Settlement administration sent a number of documents to the Appeal Tribunal and the documents were included in the hearing package. The hearing package was subsequently sent to all the parties, including Paddle Prairie Metis Settlement Council, and reviewed at the hearing into this matter on June 19, 2017.

[10] As indicated in paragraph [3] above, Paddle Prairie Metis Settlement Council did not attend the hearing in Manning, Alberta on June 19, 2017, nor did any members of its administration. However, as permitted under section 32 of the Appeal Tribunal's Rules of Procedure, this Panel confirmed that Paddle Prairie Council received notice of the change of location and proceeded with the hearing as scheduled.

¹ Land Interests Conversion Regulation, Allocations 4(1) A member of a settlement association under the former Act who holds an allocation when this Regulation comes into force or, if the member has transferred the allocation or died before this Regulation comes into force, the successor in title to the member, may apply to the settlement council in whose area the allocation is located for one of the following interests: (a) Metis title; (b) provisional Metis title; (c) an allotment; (d) any other interest permitted by General Council Policy. (2) An application under this section must be in a form approved

1.2 Findings of Fact

[11] This Panel is of the view that the following evidence provided by Mervin and otherwise contained in the hearing package, (which was distributed to all the parties, including Paddle Prairie Metis Settlement Council), is relevant and more likely than not to be true:

- (a) Mervin Bellerose is a resident member of the Paddle Prairie Metis Settlement.
- (b) The Metis Settlements Land Search Report for the NW-1-104-25-5 shows Mervin L. Bellerose as holding a recorded Allocation interest and a filed Conversion Application.
- (c) Metis Settlements General Council, Paddle Prairie Metis Settlement, and Alberta Energy Company Ltd. entered into a Surface Rights Agreement dated November 1, 1990, Schedule "F", AEC Boyer 11-1-104-25-W5M, and Consent of Occupant signed by Mervin L. Bellerose dated November 28, 1994.
- (d) On April 20, 2011, Reclamation Certificate No. 00288644-00-00 was issued for a wellsite on 11-01-104-25-W5M.
- (e) Mervin was not given any notice in writing that the reclamation was coming for the wellsite in question, or that it was completed in 2011.
- (f) On October 13, 2011, Cenovus Energy Inc. paid \$2,420.00 to Paddle Prairie Metis Settlement for 11-1-104-25-W5M.²
- (g) Paddle Prairie Metis Settlement Cheque Requisition dated October 28, 2013 shows a payment to Mervin Bellerose in the amount of \$2,420.00 for a wellsite.
- (h) Paddle Prairie Metis Settlement Cheque Requisition dated October 17, 2014 shows a payment of \$3,000 to Mervin Bellerose ("wellsite (2) @3000").
- (i) There is no cheque requisition from the Settlement for 2012, but Mervin confirmed that he received payment for the wellsite in 2012.
- (j) Paddle Prairie did not inform Mervin that he had been overpaid for the wellsite until 2015.

² It is noted on the Cenovus Energy Inc. ledger dated October 13, 2011 (Tab 17) that the "Settlement [was] paid [by Cenovus Energy Inc.] for 2011, therefore Mervin does not owe for 2011."

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- (k) Mervin Bellerose holds interests in other Settlement lands in which oil and gas operations are underway, including a Metis Title interest in the NW-10-103-24-5 and NE-9-103-24-5 and an Allotment interest in the NW-9-103-24-5, SE-9-103-24-5 and the SW-9-103-24-5.
- (l) Paddle Prairie Metis Settlement Cheque Requisition dated October 30, 2015 shows a payment \$3,400 for road use for the E ½ 9 and NW 10-103-24-W5M to Mervin Bellerose.
- (m) Paddle Prairie Metis Settlement Memo date January 26, 2016 shows “LSD (NW 01-104-25-W5M) is not paid, due to Reclamation Certificate #00288644 in 2011, for Mervin Bellerose. Please bill Mervin Bellerose for \$3000.00.”
- (n) Paddle Prairie Metis Settlement, Resource Report “RE: Mervin Bellerose dated April 11, 2016,” reads that “Mervin Bellerose owes \$7,840.00 dating back to 2012-2014.”
- (o) Another Paddle Prairie Metis Settlement Memo RE: Mervin Bellerose dated April 12, 2016, reads that Mervin Bellerose owes \$7,840.00 for wellsite covered by Reclamation Certificate 00288644-00-00:
- i. 2012 \$2,420.00
 - ii. 2013 \$2,420.00
 - iii. 2014 \$3,000.00
- (p) On October 18, 2016, Mervin filed an appeal with the Appeal Tribunal.
- (q) On November 8, 2016, Paddle Prairie Metis Settlement emailed Mervin Bellerose that they “. . .cannot release payments because of the amount owed to settlement . . .”
- (r) Paddle Prairie Metis Settlement ledger dated December 5, 2016 shows Mervin Bellerose received surface rights compensation payments in 2012, 2013, 2014, and 2015.
- (s) Cenovus Energy Inc. advised the Appeal Tribunal that Cenovus Energy Inc. sold all its assets from the Paddle Prairie Metis Settlement and surrounding area to Guide Exploration in January 2012 and Schedule “E” to the Joint Benefits Agreement dated August 21, 2014 between Paddle Prairie Metis Settlement and Long Run Exploration Ltd., includes a Road Use Agreement pertaining to interests held by Mervin.

1.3 How the law applies to this matter

[12] The Appeal Tribunal’s authority to update compensation orders or surface lease³ comes from Part 4, Division 7 of the *Metis Settlements Act (MSA)*. In this case, section 119 of the *MSA* cloaks the Appeal Tribunal—and the Land Access Panel (LAP) in particular—with the authority to determine who the proper occupants are and what compensation, if any, should be paid to them.

Rehearing and review of Decisions

119 The Land Access Panel may, without a hearing, amend a compensation order or right of entry order, regardless of who made it, with respect to a person named in it.

- (a) when the Panel is satisfied that there has been a change of existing mineral lease holder or operator, or
- (b) when the Panel is satisfied that there has been a change of occupant and compensation should be properly paid to a new occupant.

[13] Put simply, LAP has the authority and duty to determine when occupants should be paid for oil and gas activities on lands to which they hold an interest. In Mervin’s case, LAP will consider whether he was entitled to surface compensation for the years 2012-14 for the wellsite on 11-01-104-25-W5M and whether he is entitled to surface compensation for other oil and gas activities on other Settlement lands in which he holds registered interests.

[14] In all compensation matters, including this one, LAP must be satisfied of two things: that there has been a change of occupant *and* that it is proper to pay him.

[15] With respect to the initial condition of occupancy, we look to section 111(h)(iii) of the *MSA* for the definition of occupant and to the *Metis Settlements Land Search Reports* to see whether Mervin meets the definition:

S, 111 In this Division,

. . .

- (h) “occupant” means
 - (i) a settlement council
 - (ii) the person in actual possession of a parcel of patented land, and
 - (iii) a person having a right or interest in patented land that is registered in the *Metis Settlements Land Registry*

[16] While section 111(h)(iii) uses the conjunction “and” suggesting that one must be all three things: a settlement council and the person in actual possession and a person having a registered

³ Section 111(j) “surface lease” means a lease or other instrument under which the surface of a parcel of patented land is held for any purpose for which a right of entry order may be made under this Division, and that provides for compensation.

right or interest, we think it only reasonable to interpret this section as meaning “all these things, together or separately” are included as occupants.

[17] Mervin is an occupant because he satisfies sections 111(h)(ii) and (iii) in that he appears to be in actual possession of patented lands, including part of the 11-01-104-25-W5M, and because Mervin currently has registered interests in the NW-10-103-24-5 (Metis Title), NE -9-103-24-5 (Metis Title), NW-9-103-24-5 (Allotment), SW-9-103-24-5 (Allotment) and SE-9-103-24-5 (Allotment).

[18] Now that occupancy has been determined, the second condition set out in section 119(b) of the *MSA*—whether compensation should be properly paid to the occupant—is determined by basic criteria, including:

- whether the operator has properly surrendered any parts of the lands under its surface lease⁴; and
- whether there is a local bylaw⁵ or contract or other legal instrument prescribing other conditions for payment to the occupant.

[19] On the face of it, previous and current compensation payments to Mervin relate to authorized projects and various right of entry orders⁶/surface leases guaranteeing Cenovus Energy Inc. access to their project sites for a fee.

[20] With respect to the so-called overpayments relating to the wellsite at 11-01-104-25-W5M, the *Amendment to Surface Lease Agreement* dated October 30, 1994⁷, Schedule F shows Mervin Bellerose as an occupant for the wellsite.⁸

[21] Article 24 of the original *Surface Lease Agreement* allows an operator to surrender part or parts of the lands and to reduce its rent (compensation payments) accordingly, providing it

- gives General Council and Grantor notice to that effect, and providing
- proper abandonment, restoration and reclamation of the surrendered portions has been completed pursuant to the *Land Surface Conservation and Reclamation Act*, or its successor legislation.

⁴ Or if the operator has properly terminated its right of entry order.

⁵ It does not appear the Paddle Prairie Metis Settlement has an oil and gas compensation bylaw in place (like Fishing Lake Metis Settlement, for example), except that its Residency Bylaw does place a restriction on payments to resident members (see Tab 7 of the hearing package).

⁶ Including right of entry order E1496/76 covering unsurveyed 11-01-104-25-W5M, and right of entry orders E246/76, E1501/76, E170/80 and E261/80 covering township 103 where Mervin holds a number of registered interests.

⁷ See Tab 13 of the hearing package.

⁸ Specifically for “Boyer 11-1-104-25-W5M and concerning Access Road and Pipeline Right of Way.”

[22] With the passage of the *Metis Settlements General Council Mineral Project Policy* in September 1996 and the transfer of sole authority over local projects to the affected settlement,⁹ it is unnecessary for an operator to provide notice of surrender to General Council and the Grantor. Just providing notice to the Grantor will do.

[23] So, who is the Grantor and did Cenovus provide good and sufficient notice of its intent to surrender the land? According to the Surface Rights Agreement, “the Settlement Council or Member [is] individually or collectively called [the] Grantor.”

[24] In this regard, with Mervin’s inclusion in Schedule F (above), Cenovus was obliged to notify both Paddle Prairie Settlement Council and Mervin of its intent to surrender the wellsite at 11-01-104-25-W5M. That Cenovus included Settlement Council is evidenced by the Settlement’s Land Clerk’s signature¹⁰ as the “landowner” on the December 6, 2010 *Wellsite Reclamation Certificate Application Form*¹¹, however, we see no evidence that Mervin was similarly notified.

[25] Does this oversight in notice invalidate the surrender? We think not.

[26] The reason that the oversight doesn’t invalidate the surrender is that it was reasonable for Cenovus to believe it had met its notification obligations when the Settlement Land Clerk signed off not just on behalf of the Settlement, but as the “landowner,” suggesting at least priority ownership over the parcel. Furthermore, the Land Clerk was entitled to sign off as the “landowner” because the *Metis Settlements General Council Mineral Projects Policy* defines “landholder” as “the person shown in the Land Registry as the holder of the Metis Title to the parcel”; and because Paddle Prairie holds the Metis Title to the land.

[27] Getting back to the second requirement for surrender—that proper abandonment, restoration and reclamation of the surrendered portions was completed—the issuance of the reclamation certificate by Alberta Environment; and the absence of any specific legislated shortcomings by Mervin, is sufficient proof that the lands were properly reclaimed. Again, Cenovus was entitled to consider Paddle Prairie Metis Settlement as the landowner for the purposes of reclamation for this particular parcel (11-01-104-25-W5M) and the Land Clerk’s signature on the reclamation application as the landowner solidifies this view.

[28] Taken together, Cenovus was entitled to stop paying for the wellsite on 11-01-104-25-W5M as of April 20, 2011, or at the end of that year’s rental cycle. This means that regardless of whether Mervin met other requirements under, say, section 8 of the *Paddle Prairie Residency*

⁹ See section 2.1 of the MSGC Mineral Projects Policy, GC-9603.

¹⁰ See Rita Nooskey’s signature on the Reclamation Application Form, Tab 15.

¹¹ See Tab 15 of the hearing package.

*Bylaw*¹², Mervin was not entitled to any compensation payments after 2011 for the wellsite on 11-01-104-25-W5M because the lands had been properly surrendered under the Surface Lease Agreement. However, this is not to say that the unfunded¹³ payments made to Mervin by Paddle Prairie Metis Settlement in 2012, 2013 and 2014 constitute a debt to the Settlement.

[29] When Paddle Prairie took on the responsibility of signing off as the landowner, it left Mervin out of the loop. Mervin did not know that Cenovus had surrendered the wellsite or gotten a reclamation certificate until 2015 when presented with a bill by Paddle Prairie. Rather, Mervin was used to getting his annual compensation for the wellsite on 11-01-104-25-W5M and had no reason to ask why he was receiving his compensation cheque for 11-01-104-25-W5M or any reason to expect the payments to stop.

[30] In this regard, the payments from 2012-14 were not a random windfall requiring some investigation in that they followed the normal course of events/practice. Rather, Mervin was entitled to anticipate the annual payments until notified of the surrender.

[31] Conversely, to the extent that the first demand for repayment in 2015 came three years after the first payment of \$2420.00 in 2012 and many months after the last payment of \$3000.00 in 2014, it seems patently unfair to expect Mervin to have held onto the payments in the event that the Settlement made a mistake. Put another way, with the passage of time and the specific circumstances at hand, Mervin was entitled to rely on the payments from the Settlement as being good and proper.

[32] Finally, while it is clear that Settlement members can accrue debts to a Settlement—and that there are consequences to such debts such as being ruled ineligible to run for Council—it is not clear what legislative mechanism was utilized by the Settlement to turn its administrative errors/overpayment into Mervin's debt.

[33] Turning to other compensation matters, this Panel finds Mervin Bellerose holds registered interests in the NE-9-103-24-5, SE-9-103-24-5, and NW-10-103-24-5 and for wellsite 9-9 (\$3,000.00¹⁴) located in the NE-9-103-24-5 and is an Occupant as defined in Section 111(h)(iii)

¹² See Tab 7 of the hearing package that a Settlement member has to have his place of residence on the Settlement to receive surface rights compensation.

¹³ Unfunded* in that the Settlement did not receive compensation from Cenovus to cover the pay-out to Mervin.

¹⁴ In reviewing the documentation submitted for the hearing package and noted that the paperwork submitted by the Settlement does not provide details on the compensation calculations and agreement details. These details are important in determining the amount payable under a specific agreement or right of entry order. In addition, Long Run Exploration Ltd. provided a copy of Schedule "E" of the Joint Benefit Agreement dated August 21, 2014, which shows a new formula for paying road use on the Paddle Prairie Metis Settlement. It would be beneficial to all parties of existing surface lease agreements and right of entry orders to review Schedule "E" and determine the effect, if any, on compensation amounts payable to individual members.

111(h)(iii) for the purposes of surface rights compensation. Apart from Paddle Prairie's withholding of payments for the so-called debt of \$7840.00, the Settlement has not voiced any other concerns about the propriety of paying Mervin annual compensation for the lands just identified above.

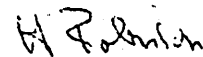
[34] This means that Mervin meets the conditions for payment set out in section 119(b) of the MSA and should receive annual compensation for road use (\$3,400.00) in the NE-9-103-24-5, SE-9-103-24-5, and NW-10-103-24-5 and for wellsite 9-9 (\$3,000.00) located in the NE-9-103-24-5.

1.4 Order

[35] As set out in section 190(1)(f) of the MSA, in any matter before it, the Appeal Tribunal may make a decision granting whole or part of the application or grant any further or other relief in addition to or in substitution for it that seems appropriate to the Tribunal. Our other power under section 190(1)(o) of the MSA is to "provide any remedy that, in all the circumstances, fairness requires." Taken together, the Panel orders Paddle Prairie Metis Settlement to pay Mervin within 50 days of this Order:

- \$3,400.00 for surface rights compensation for road use (NE-9-103-24-5, SE-9-103-24-5, and NW-10-103-24-5) for the period November 1, 2016 to October 31, 2017; and
- \$3,000.00 for surface rights compensation for wellsite 9-9-103-24-5 for the period November 1, 2016 to October 31, 2017.

Dated in the City of Edmonton, in the Province
of Alberta on this 16th day of August 2017.



for Don Cunningham
Panel Chair

all parties of existing surface lease agreements and right of entry orders to review Schedule "E" and determine the effect, if any, on compensation amounts payable to individual members.

