

*MÉTIS SETTLEMENTS ACT*

Before:

**The LAND ACCESS PANEL of the  
MÉTIS SETTLEMENTS APPEAL TRIBUNAL**

Between:

**Settlement Council for Kikino Métis Settlement**

Appellant,

- and -

**Husky Oil Operations Limited, Métis Settlements General Council,  
Kikino Métis Settlement and Kikino Cattlemen's Association,**

Respondents,

Concerning Change of Existing Mineral Lease Holder and Change of Occupant:  
Right of Entry Order No. E78/78 and Compensation Order No. E376/81  
Right of Entry Order No. E1037/80 and Compensation Order No. E380/81  
Right of Entry Order No. E1279/81 and Compensation Order No. E356/84

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**DECISION**

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## MSAT Order No. 172

### Background

On April 20, 2005, the Land Access Panel (“LAP”) received a letter from Husky Oil advising that Renaissance Energy Ltd., Husky Oil Limited, and Husky Oil Operations Limited had amalgamated to become Husky Oil Operations Limited effective August 25, 2000. A change of existing mineral lease holder / operator LAP Form 119(a), a certificate of amalgamation and a list of the 18 Right of Entry Orders affected were attached to the letter. The Right of Entry Orders are set out in the table attached as Schedule “A” to this Order.

MSAT’s research included pulling Métis Settlements Land Registry reports to determine potential occupants in the existing Right of Entry Orders. LAP reviewed the matter under s. 119 of the *Métis Settlements Act (MSA)*.

On June 10, 2005, LAP advised the affected parties that the change of existing mineral lease holder and change of occupant amendments would be granted.

On June 30, 2005 a request was received from Bill McElhanney of Ackroyd, Piasta, Roth & Day LLP on behalf of Kikino Métis Settlement, requesting an extension of time to look into the issue of whether the Kikino Cattlemen’s Association (“KCA”) was an occupant of the lands affected by Right of Entry Order No. E78/78, E1037/80, and E1279/81. In the letter of June 10, 2005, LAP indicated the KCA would be removed, as occupant, on the basis that KCA did not have a registered interest in the lands affected by the three Right of Entry Orders. LAP has jurisdiction to review, rescind, amend or replace one of its decisions on receipt of further evidence, pursuant to s. 190(1)(h) of the *MSA*. LAP therefore granted the requested extension and allowed until July 29, 2005 for further submissions.

On July 26, 2005, Ackroyd, Piasta, Roth & Day LLP wrote to LAP to advise that the Kikino Métis Settlement took the position that the KCA was in actual possession of the lands affected by the Right of Entry Orders and should be regarded as an occupant. On August 18, 2005, MSAT responded by requesting:

- i.) documentation showing that the KCA is a registered legal entity and;
- ii.) a copy of the agreement between Kikino Métis Settlement and the KCA affecting the parcels in question.

On August 31, 2005, the Settlement submitted a copy of the Grazing Lease between Kikino Métis Settlement and KCA and indicated that a further response would follow regarding the KCA’s status as a legal entity.

The Grazing Lease indicated that Kikino Métis Settlement agreed to lease land to KCA, including the lands affected by Right of Entry Order No. E78/78, E1037/80, and E1279/81. The Grazing Lease provides that the KCA must provide the Settlement with copies of its incorporation documents.

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On September 22, 2005, MSAT forwarded a further request for documentation to establish that the KCA was a registered legal entity. On October 12, 2005, the Settlement advised of its position that the Kikino Cattlemen's Association is a bona fide occupant pursuant to s.111(h)(ii) in that it is a "person in actual possession of a parcel of patented land". The letter also goes on to indicate that the Kikino Métis Settlement would like an amending order reflecting that the KCA is an occupant.

On October 31, 2005, MSAT forwarded another request for:

- i.) documentation showing that the KCA was a registered legal entity and;
- ii.) information as to the effective date of the Grazing Lease.

A response on November 7, 2005 asked that MSAT demonstrate "where in the legislation there is a mandatory provision requiring a registered legal entity in order to satisfy the "actual possession" provisions of the Act".

By letter dated February 16, 2006, MSAT explained that the requests for confirmation that the KCA is a registered legal entity related to the issue of whether it is a "person" as required by s. 111(h) of the *MSA*.

On March 1, 2006, Mr. McElhanney replied to advise he did not have sufficient time to prepare a full submission regarding the interpretation of the word "person". He advised the Settlement took the position that KCA was a corporation and that s. 28(1)(nn) of the *Interpretation Act* defined person to include a corporation.

### **Jurisdiction**

Section 119 of the *MSA* provides that:

#### ***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 properly be paid to a new occupant.*

### **Decision**

LAP finds Husky Oil Operations Limited is the existing mineral lease holder in respect of Right of Entry Order No. E78/78, E1037/80 and E1279/81 and the corresponding compensation orders, E376/81, E380/81, and E356/84, respectively.

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LAP finds the Kikino Cattlemen's Association does not qualify as an "occupant" within the meaning of s. 111(h) of the *Métis Settlements Act*.

LAP finds Métis Settlements General Council, Kikino Métis Settlement and Settlement Council for Kikino Métis Settlement are the current occupants of the parcels affected by Right of Entry Order No. E78/78, E1037/80, and E1279/81.

### **Reasons**

LAP finds adequate evidence has been filed to establish Renaissance Energy Ltd., Husky Oil Limited, and Husky Oil Operations Limited had amalgamated to become Husky Oil Operations Limited. Accordingly, Right of Entry Order No. E78/78, E1037/80 and E1279/81 and all related compensation orders, will be amended to reflect the change in existing mineral lease holder.

LAP finds that the KCA does not qualify as an "occupant" within the meaning of s. 111(h)(iii) of the *MSA*. The KCA does not have a registered interest in the parcels affected by Right of Entry Order No. E78/78, E1037/80 and E1279/81. To be considered an occupant under s. 111(h)(ii), KCA must establish it is a "person". LAP finds that KCA is not a human being and does not have the status of a natural person under any statute. The next question is whether it is a legal person. Mr. McElhanney's submissions that KCA is a person are based on the position that it is a "corporation". LAP received no evidence that would show KCA was a registered society or corporation, despite several requests. Without such evidence, LAP cannot find that KCA is a corporation. The *Interpretation Act* section referred to by Kikino does not include unincorporated associations or companies in the definition of "person" and unincorporated association are not recognized as legal persons in the way that a corporation is. On that basis, the Panel finds that the KCA is not a "person" in a legal sense and cannot be an "occupant" as that term is defined by s.111(h)(ii) of the *MSA*.

### **Order**

Right of Entry Order No. E78/78, E1037/80 and E1279/81 and the corresponding compensation orders, E376/81, E380/81, and E356/84, respectively, will be amended and released reflecting this decision.

Dated in the City of Edmonton in the  
Province of Alberta on the 15<sup>th</sup> day of  
September, 2006.

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**Andre, L'Hirondelle**  
Panel Chair

Schedule "A"

Right of Entry Order No.	Compensation Order No.
E143/77	E897/77
E78/78	E376/81
E456/85	E1600/85
0527/86	0956/86
801/62	1499/62
18/66	987/66
185/66	1830/66
1211/67	755/68
1210/67	756/68
0704/86	0957/86
3131/89	0064/90
E1037/80	E380/81
E1405/79	E379/81
E1462/81	E358/84
E1446/81	E357/84
E1279/81	E356/84
E260/79	E377/81
2106/61	1498/62