

METIS SETTLEMENTS ACT

Before:

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Metis Moccasin Resources Inc.,

Applicant,

- and -

**Kikino Metis Settlement
and
Metis Settlements General Council,**

Respondents.

DECISION

Application for Right of Entry

Background

On January 31, 2007 Metis Moccasin Resources Inc. (MMRI) submitted an application for right of entry on the Kikino Metis Settlement (Kikino).

MSAT staff reviewed the application and advised MMRI the application was incomplete and that Alberta Energy and Utilities Board (EUB) approvals and other additional information was required. On March 29, 2007, MMRI provided additional information but did not provide any EUB approvals. MMRI took the position that its application was complete without the EUB approvals.

On May 17, 2007, MSAT wrote to the parties requesting submissions on the issue of whether MMRI's application was complete. The deadline for submission was May 31, 2007, with reply submissions to be received by June 11, 2007, and rebuttals by June 15, 2007. The matter of whether the application is complete was referred to myself, MSAT Vice-Chair, for a decision.

Decision

I have reviewed all of the materials and submissions filed by the parties. I find that MMRI's Right of Entry Order Application is incomplete as it fails to provide the EUB approvals that would be necessary for the proposed projects.

Reasons

LAP or ELLAP?

The *Metis Settlements Act (MSA)* has two separate distinct schemes for an application for right of entry order (REO), one for the Land Access Panel (LAP) and the other for the Existing Leases Land Access Panel (ELLAP). MSAT must determine which Panel would have jurisdiction over the matter. This is determined by the date a mineral lease is obtained.

Section 111(e) defines "existing mineral lease" as a right to work or develop minerals existing on November 1, 1990. Existing mineral lease holder means the holder of an existing mineral lease. The mineral lease belongs to an "operator" within the meaning of s. 111(i), the person who is authorized or permitted to engage in an authorized project. An "authorized project" means a use of, or an activity in, on or under, patented land related to a right to work or develop minerals that is acquired under the Co-management Agreement.

In this case, MMRI acquired the minerals on June 1, 2006 under the Co-management Agreement and clearly MMRI is an "operator". On that basis, I find that LAP would have jurisdiction over this matter and so sections 114(2), 115(3), and 116(2) and (3) of the Right of Entry provisions under the *MSA* would apply.

Application Requirements

Section 115(3) of the *MSA* gives MSAT the authority to determine the “form prescribed” and the “information required” for a Right of Entry application. Section 195 of the *MSA* also gives MSAT discretion to establish the application process / application requirements .

MSAT’s application form requires EUB approvals to be provided with a Right of Entry application. I find that MSAT has jurisdiction to require this and that the requirement is consistent with the relevant considerations in a Right of Entry application and is consistent with related legislation.

Section 116(3) of the *MSA* indicates LAP can address particular matters in a right of entry order decision, including the geographic area it applies to, the activity, the purpose of entry and other conditions that may be necessary. EUB approvals establish the geographic area for the project as well as the nature of the activity being licensed. The EUB approvals can also include important conditions. MSAT must have access to those approvals to assess how the Right of Entry Order will relate to the terms and conditions of the EUB approval and in order to avoid inconsistencies or conflicts between the two approvals.

I find that the wording of section 2.3.3.1 of the EUB’s Directive 056 suggests the EUB would also consider it normal procedure to obtain EUB approval and then deal with surface access. Section 2.3.3.1 states:

Matters of compensation are not within the EUB’s jurisdiction. If a surface rights agreement is unobtainable from the landowner solely due to compensation issues, the applicant may request that the EUB issue the licence to allow the applicant to apply to the Surface Rights Board (SRB) for a right-of-entry-order.

- 45) The applicant may file a routine licence application if the landowner confirms in writing that compensation is the only issue and there are no concerns/objections to the EUB issuing a licence, so that the parties can proceed to the SRB.
- 46) If landowner confirmation as described cannot be obtained, the applicant must file a nonroutine application.
- 47) The applicant must file a nonroutine application if there are unresolved compensation issues identified by participants other than the surface landowner. (Emphasis added.)

While MSAT is not governed by the *Surface Rights Act*, it can be a useful resource for interpretation of the surface rights provisions in the *MSA*. I find that provisions of the *Surface Rights Act* also suggest that EUB licences, permits, and approvals should be in place at the time the right of entry order application is submitted.

Further, having EUB licences, permits and approvals in place before deciding a Right of Entry application also ensures that the REO does not end up granting access to a different geographic area than the EUB ultimately approves in a license. This helps to avoid confusion and to maintain consistency between the various approvals.

MSAT's application requirements are clear and require EUB approvals. I find the MMRI application is incomplete and the application cannot proceed until the EUB approvals are provided to MSAT.

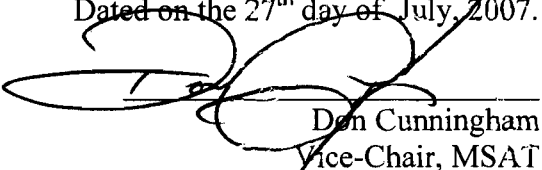
Order

MMRI's Right of Entry Order application, as currently filed, is considered to be incomplete.

MMRI's file will be left open for 6 months. During that time, MMRI can file its EUB approvals, at which time its Right of Entry Order application will be considered complete and the application can proceed forward. If nothing is filed within 6 months and MMRI does not seek an extension of time to file its EUB approvals, the MSAT file on this matter will be closed.

MMRI will file a letter with MSAT no later than August 31, 2007 to advise MSAT of the timelines on which it expects to obtain its EUB approvals.

Dated on the 27th day of July, 2007.



Don Cunningham
Vice-Chair, MSAT