

Before:

Metis Settlements Appeal Tribunal
Land Access Panel

Between:

Imperial Oil Resources Limited,
Metis Settlements General Council, Fishing Lake Metis Settlement, Irene Calliou
and Crescent Point Resources Ltd.

Concerning:

Certain lands within the South West Quarter of Section 12, the West Half and South
East Quarter of Section 1, Township 57, Range 2; and the East Half of Section 36,
Township 56, Range 2, all West of the 4th Meridian, in the Province of Alberta.
Excepting thereout all Mines and Minerals.

Decision Date:

February 22, 2008

L a n d A c c e s s P a n e l
D e c i s i o n

Land Access Panel Members

Don Cunningham, Panel Chair
Allan Lamouche, Panel Member
Dorothy Anderson, Panel Member

Parties present at the hearing

Irene Calliou
Arlene Calliou
Janice Agrios, Lawyer for Fishing Lake Metis Settlement
Howie Sniderman & Keltie Lambert, Lawyers for Metis Settlements General Council

MSAT staff present at hearing

Karen Mustus, Oil and Gas Officer
Harold Robinson, Tribunal Secretary

Place and date of the hearing

Fishing Lake Metis Settlement
October 30, 2007

Issues raised by the parties

The following issues were raised by the parties:

1. change of existing mineral lease holder; and
2. review and fixing of compensation rates for Compensation Order No. E335/81.

Positions of the parties

Change of existing mineral lease holder

Imperial Oil Resources Limited and Crescent Point Resources Ltd. provided assignment documentation indicating that a change of existing mineral lease holder took place on August 30, 2004. None of the other parties took issue with the assignment.

Review and fixing of compensation rates

Counsel for Fishing Lake Metis Settlement advised the Panel that Imperial Oil Resources Limited and Crescent Point Resources Ltd. have agreed to the amounts of compensation payable and to whom the compensation is payable. It was requested that the Panel issue an amending order giving effect to their agreement.

Counsel for Fishing Lake Metis Settlement further advised the Panel that distribution of compensation should be done in accordance with the Fishing Lake Metis Settlement Compensation Distribution bylaws.

Findings of Fact

Change of existing mineral lease holder

- The Appeal Tribunal received an application on August 2, 2005 to change the existing mineral lease holder for Right of Entry Order No. E848/79 from Imperial Resources Oil Limited to Crescent Point Resources Ltd.
- The Appeal Tribunal also received a fully-executed original of the assignment agreement related to Right of Entry Order No. E848/79.
- The Appeal Tribunal did not receive any objections to the change of existing mineral lease holder.

Review and fixing compensation rates

- Counsel for Fishing Lake Metis Settlement indicated that Fishing Lake Settlement Council, Imperial Oil Resources Limited and Crescent Point Resources Ltd. agree to the rates, including interest, set out at Tab 41 of the hearing package [030212/0066 1170179.DOC].
- Irene Calliou held a registered Allotment interest in the South West Quarter of Section 12, the West Half and South East Quarter of Section 1, Township 57, Range 2, and the East Half of Section 36, Township 56, Range 2, all West of the 4th Meridian with the expiry date of July 1, 2007.
- Fishing Lake Metis Settlement passed a series of bylaws concerning the distribution of oil and gas proceeds.
- The validity of these bylaws were not directly challenged by any of the parties at the hearing.

Analysis

Change of existing mineral lease holder

The legislative requirements for amending right of entry and compensation orders to show a change of existing mineral lease holder is set out in section 119 of the *Metis Settlements Act* (the Act) [R.S.A. 2004]. It reads:

- 119 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.

The assignment agreement dated August 30, 2004 shows that Imperial Oil Resources Limited assigned its entire interest in Right of Entry Order No. E848/79 to Crescent Point Resources Ltd.

Upon review of the assignment agreement, the Panel is satisfied that the assignment agreement effectively changed the existing mineral lease holder from Imperial Oil Resources Limited to Crescent Point Resources Ltd. as of August 30, 2004.

Having satisfied itself that there has been a change of existing mineral lease holder, the Panel will amend Right of Entry Order No. E848/79 accordingly.

Further, the Land Access Panel has adopted the practice of updating right of entry and compensation orders to reflect the establishment of the Metis Settlements General Council and Settlement Councils since the passage of the *Alberta-Metis Settlements Accord* legislation in 1990. These amendments will be set out under the heading marked "Order."

Review and fixing of compensation rates

The legislative requirements for reviewing and fixing rates of compensation are set out in sections 123 through 128 of the Act. In brief, these sections allow the Land Access Panel to hear applications and make orders fixing, confirming, or varying the rate of compensation.

During the hearing, the Panel was told by Counsel for Fishing Lake Metis Settlement that Fishing Lake Settlement Council, Imperial Oil Resources Limited and Crescent Point Resources Ltd. agree to the rates, including interest, set out at Tab 41 of the hearing package [document number: 030212/0066 1170179.DOC]. The Panel has accepted Counsel's assertion as reliable. Further, given that no objections concerning the overall rates of compensation were raised by the other party to this matter, Irene Calliou, the rates and interest will be fixed in the manner set out at Tab 41 of the hearing package.

To the extent that concerns were raised by Irene Calliou about compensation, they focused on the distribution scheme required under Fishing Lake Metis Settlement's bylaws, not on the total amounts paid in relation to the projects. Irene Calliou wondered whether she was getting her fair share from the total compensation paid to the Settlement.

Counsel for Fishing Lake Metis Settlement submitted that Irene was getting her fair share. Counsel reviewed Fishing Lake Metis Settlement's bylaws concerning the distribution of compensation and stated that Fishing Lake Metis Settlement had the authority to pass such a bylaw under the Metis Settlements General Council Mineral Projects Policy GC-9603. She made specific reference to section 3.7(2) of the Policy, which reads that "A Settlement may, by bylaw, provide for the distribution of compensation received in relation to a project."

Counsel also submitted that the bylaws were properly passed and in effect.

These submissions were not challenged by Irene Calliou.

Without a specific challenge outlining good reasons why a bylaw should not be followed, the Panel is of the opinion that bylaws—which are the laws of the Settlement—should be applied as intended. Fishing Lake Metis Settlement enjoys the authority to make laws providing for the distribution of compensation received in relation to a project, and have exercised their authority in accordance with the bylaw-making requirements in the Act.

Accordingly, Irene Calliou will receive payment in a manner consistent with the application of Fishing Lake Metis Settlement's bylaws. This means that Irene Calliou—who holds an *Allotment* interest in relation to the lands where the project is located—is entitled to receive a portion of the compensation payments up to September 6, 2006. However, as set out in section 4(c) of the *Fishing Lake Metis Settlement... Surface Rights Compensation Distribution to Members Bylaw #2006-016*, Irene Calliou's right to annual payments ends on September 6, 2006, because she holds an *Allotment* interest. For ease of reference, section 4(c) is set out below:

4. Compensation payable by an Operator, including accrued interest, is allocated by the Settlement Council to the Occupant as follows:
 - (a) ...
 - (b) ...
 - (c) The Memorandum of Allotment Occupant or lease holder shall be entitled to 20% of the initial and *no annual*, except for compensation for special damages [emphasis added].

Order

Change of existing mineral lease holder

Right of Entry Order No. E848/79 and Compensation Order No. E335/81 are hereby amended as to the style of cause:

by striking out "IMPERIAL OIL RESOURCES LIMITED" and by substituting "**CRESCENT POINT RESOURCES LTD.**" as existing mineral lease holder; and further

by striking out "HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY THE MINISTER RESPONSIBLE FOR NATIVE AFFAIRS, FISHING LAKE METIS

SETTLEMENT ASSOCIATION NO. 10 and ALLAN CALLIOU” and by substituting “**METIS SETTLEMENTS GENERAL COUNCIL, SETTLEMENT COUNCIL FOR FISHING LAKE METIS SETTLEMENT, FISHING LAKE METIS SETTLEMENT, and IRENE CALLIOU**” as Occupants.

Review and fixing of compensation rates

Compensation Order No. E335/81 is amended to reflect the rates set out in Tab 41 of the hearing package, and specifically, by striking out the provisions regarding compensation and substituting the following:

- | | |
|--|-----------------|
| 1. For the period from July 25, 1993 to July 24, 1998 | \$2,826.00/year |
| $\$295.00/\text{km} \times 2.8 \text{ km (access road)} = \$826.00 + \$2,000.00 \text{ (well site)}$ | |
| Payable as follows: | |
| (a) Fishing Lake Metis Settlement | \$896.50/year |
| $\$2,826.00 - \$1,043.00 - \$10.00 = \$1,773.00 \times 50\% + \$10.00$ | |
| (b) Irene Calliou | \$1,929.50/year |
| $2,826.00 - \$1,043.00 - \$10.00 = \$1,773.00 \times 50\% + \$1,043.00$ | |
| 2. For the period from July 25, 1998 to July 24, 2003 | 3,110.00/year |
| $\$325.00/\text{km} \times 2.8 \text{ km (access road)} = \$910.00 + \$2,200.00 \text{ (well site)}$ | |
| Payable as follows: | |
| (a) Fishing Lake Metis Settlement | 1,038.50/year |
| $(\$3,110.00 - \$2,826.00 = \$284.00 \times 50\% = \$142.00 + \$896.50)$ | |
| (b) Irene Calliou | 2,071.50/year |
| $(\$3,110.00 - \$2,826.00 = \$284.00 \times 50\% = \$142.00 + \$1,929.50)$ | |
| 3. As of July 25, 2003 and on or before July 25 of each year thereafter ¹ | \$3,422.40 |
| $\$358.00/\text{km} \times 2.8 \text{ km (access road)} = \$1,002.40 + \$2,420.00 \text{ (well site)}$ | |
| Payable as follows: | |
| (a) Fishing Lake Metis Settlement | \$1,194.70/year |
| $(\$3,422.40 - \$3,110.00 = \$312.40 \times 50\% = \$156.20 + \$1,038.50)$ | |

¹ Footnotes are part of this Order. To ensure consistency with the change of existing mineral lease holder, the Panel confirms Imperial Oil Resources Limited is responsible for annual compensation payable and any interest attached thereto for the periods from July 25, 1993 to August 30, 2004 and Crescent Point Resources is responsible from August 31, 2004 ongoing.

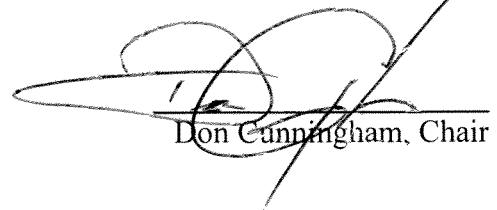
(b) Irene Calliou \$2,227.70/year²
(\$3,422.40 - \$3,110.00 = \$312.40 x 50% = \$156.20 + \$2,071.50)

The interest on the annual compensation shall accrue interest according to the rate specified in the *Judgment Interest Act* in effect on the date of Land Access Panel Order No. 10 until paid.

Finally, the compensation payable pursuant to this Order shall be eligible for review as of July 25, 2007 to be effective July 25, 2008; and every five (5) years thereafter.

Dated at the City of Edmonton in the Province of Alberta this 22nd day of February, 2008.

LAND ACCESS PANEL



Don Cunningham, Chair

² For clarity, as already determined in this Order, Irene Calliou will receive payment in a manner consistent with the application of the Fishing Lake Metis Settlement bylaws. This means that Irene Calliou—who holds an *Allotment* interest in relation to the lands where the project is located—is entitled to receive a portion of the compensation payments up to September 6, 2006. However, as set out in section 4(c) of the *Fishing Lake Metis Settlement... Surface Rights Compensation Distribution to Members Bylaw #2006-016*, Irene Calliou's right to annual payments ends on September 6, 2006, because she holds an *Allotment* interest.

For additional clarity, payments should be as follows:

1. For the period from July 25, 2006 to September 5, 2006
Payable as follows:
 - i. Irene Calliou \$262.30
(\$2,227.70/year pro-rated 43/365 days)
2. For the period from July 25, 2006 to July 24, 2007
Payable as follows:
 - i. Fishing Lake Metis Settlement \$3,160.10
3. For the period July 25, 2007 and each year thereafter
Payable as follows:
 - i. Fishing Lake Metis Settlement \$3,422.40