

Before:

METIS SETTLEMENTS APPEAL TRIBUNAL
LAND ACCESS PANEL

Between:

Dean Howse,

Appellant,

-and-

Metis Settlements General Council, Buffalo Lake Metis Settlement,
Apache Canada Ltd., and Rocky River Petroleum Ltd.,

Respondent,

-and-

Yolanda Cardinal, William Robert Sinclair, Francis Joe Gladue,
Russell Joseph Gordon, Clarence John Berard, Tanya Boudreau, Priscilla Howse,
Pauline Charlene Joe, Lawrence James Ladouceur, Gloria H. Coles,
Conoco Canada Limited, and Alberta Energy Company Ltd.,

Other Parties.

Concerning:

Right of Entry Order 0485/87 and Compensation Order 0741/87

Decision Date:

March 27, 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

Allan Lamouche, Panel Chair
Dorothy Anderson, Panel Member
Ken Allred, Panel Member

Parties present at the hearing

Dean Howse, Appellant
Buffalo Lake Metis Settlement, Respondent
 Bruce Gordon, Chair
 Elmer Ghostkeeper, Councillor
Rocky River Petroleum Ltd., Respondent
 John Provost, Western Land Services
Metis Settlements General Council, Respondent
 Keltie Lambert, Witten Law
 Jonathan Calvert, Witten Law
Gloria Coles, Affected Party

MSAT staff present at hearing

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

Place and date of the hearing

Buffalo Lake Metis Settlement Recreation Centre
Buffalo Lake Metis Settlement, Alberta
Monday, November 5, 2007

Objections to the Panel

In a letter dated September 10, 2007, MSAT asked the parties if there were any objections to the composition or jurisdiction of the Panel. There were no objections.

Issues/relief - what the parties want

1. *Change of existing mineral lease holder*: Apache Canada Ltd. applied for an amending order to show a change of existing lease mineral holder from it to Rocky River Petroleum Ltd.
2. *Recovery of compensation*: Dean Howse applied to recover compensation he alleges is due to him in relation to an allotment interest he held in the NE-21-63-16-W4M.

The issues and requested relief will be dealt with in the order set out above.

1. Change of existing mineral lease holder

1.1 Applicable legislation – jurisdiction and decision-making criteria

The Land Access Panel has assumed jurisdiction under 119 of the *Metis Settlements Act* (the Act) [R.S.A. 2004]. Section 119 of the Act also sets out the legislative requirements for amending right of entry and compensation orders to show a change of existing mineral lease holder. It reads:

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.

1.2 Evidence before the Panel

Right of Entry Order (REO) 0485/87 was issued on March 9, 1987. It granted access for well site 9-21-63-16-W4M and an access road to Renaissance Energy Ltd. Compensation Order 0741/87 issued on April 10, 1987 provided for the compensation payable.

REO 0485/87 and Compensation Order 0741/87 were both further amended between 1989 and 2003.

MSAT received an application for an amending order on May 22, 2007 to change the existing mineral lease holder from Apache Canada Ltd. to Rocky River Petroleum Ltd. An *Assignment of Surface Lease Agreement* was provided to MSAT showing Apache Canada Ltd. assigned REO 0485/87 and the corresponding Compensation Order 0741/87 to Rocky River Petroleum Ltd.

1.3 Findings of fact

An *Assignment of Surface Lease Agreement* was provided to MSAT showing Apache Canada Ltd. assigned REO 0485/87 to Rocky River Petroleum Ltd.

1.4 Analysis / Reasons

Upon review of the *Assignment of Surface Lease Agreement*, the Panel is satisfied that the parties have met the legislative requirements set out in section 119 of the Act. In particular, Apache Canada Ltd. has proven that it effectively assigned REO 0485/87 to Rocky River Petroleum Ltd.

1.5 Decision

Having satisfied itself that there has been a change of existing mineral lease holder, the Panel will amend REO 0485/87 accordingly.

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

2.0 Recovery of compensation

2.1 Applicable legislation – jurisdiction and decision-making criteria

The Land Access Panel has assumed jurisdiction under section 121 of the Act. Section 121 also sets out criteria for deciding applications for recovery of compensation. It reads as follows:

Recovery of compensation

121(1) If an existing mineral lease holder or operator fails to pay money

- (a) under a surface lease, or
- (b) ordered to be paid by the Existing Leases Land Access Panel or the Land Access Panel,

within 30 days of the date it is due, the person entitled to receive the money may submit to the Land Access Panel evidence of the failure to pay.

(2) On receipt of satisfactory evidence of failure of the existing mineral lease holder or operator to pay, the Land Access Panel may direct the Provincial Treasurer to pay out of the General Revenue Fund the amount of money to which the person is entitled.

(3) If the Provincial Treasurer pays money to a person under this section, the amount paid constitutes a debt owing by the existing mineral lease holder or the operator to the Crown in right of Alberta.

2.2 Evidence before the Panel

Appellant's evidence

The appellant, Dean Howse, claims that he acquired an interest in the NE -21-63-16-W4M in 1989 and held it until 1993. He further claims that he did not know that there was a well site on the land until sometime after 1993 and that he never received any compensation pursuant to REO 0485/87. Had he known that he was eligible for compensation he would not have given up the land. Mr. Howse has now applied to the Council of Buffalo Lake Metis Settlement for the past compensation that was due to him when he held an interest in the land as well as compensation up to the current date since he would not have sold the land if he had known about the well site and the compensation that went with it. He is claiming \$2000 per year since 1989.

Mr. Howse claimed that there was no road to the land in question and he never was on the land until he surveyed an access road in 2006.

Respondent's evidence

Buffalo Lake Settlement Council: Representatives for the Buffalo Lake Metis Settlement Council acknowledged that the appellant had acquired an interest in the land in 1989, and held it until 1993, even though he had signed an *Application for the Abandonment of Land* on August 30, 1990. The *Application for the Abandonment of Land* was never approved by the Settlement Council and hence had no effect. The Council had no evidence on file other than what was contained in the hearing package to indicate why Mr. Howse did not receive compensation.

Apache Canada Ltd.: Apache Canada Ltd. wrote to MSAT on May 22, 2007. The submission contained copies of historical correspondence dating back to 1989 and copies of cancelled cheques for annual compensation payments. The payment for March 9, 1990 to March 8, 1991 was made payable to The Provincial Treasurer, The Metis Betterment Trust Fund. The payments for the years 1991 to 1999 and 2003 to 2006 were made payable to Buffalo Lake Metis Settlement Corporation or Buffalo Lake Metis Settlement.

2.3 Findings of Fact

- Dean Howse filed a written appeal on January 18, 2007 claiming arrears for annual compensation relating to REO 0485/87 from 1989 to 1993.
- REO 0485/87 was issued on March 9, 1987 for well site 9-21-63-16-W4M and access road
- Dean Howse is not named in REO 0485/87, or any subsequent order or surface lease.
- Dean Howse acquired an *Allotment* interest in the NE-21-63-16-W4M effective June 19, 1989 when the allotment was registered with Alberta Municipal Affairs.
- Dean Howse signed a *Land Application Support Information* on April 5, 1989 stating that he was aware that compensation benefits are to be paid on the lands being applied for.
- A Compensation Report received by Alberta Municipal Affairs on June 13, 1989 shows that Dean Howse was eligible for compensation in the amount of \$243.07.
- Dean Howse signed an *Application for the Abandonment of Land* on August 30, 1990; however, the application was not processed by the Settlement Council of Buffalo Lake Metis Settlement.
- Dean Howse did not visit the NE-21-63-16-W4M until sometime after 1993.
- A Metis Settlements Land Registry report shows that the *Allocation* interest of Dean Howse was cancelled on July 14, 1995.

- Regular compensation payments have been made by the existing lease holder for REO 0485/87 dating back to 1989.

2.4 Analysis / Reasons

Section 121 of the Act sets out the conditions for finding a failure to pay, and for then directing that money be paid out.

The first condition is that the applicant proves an existing mineral lease holder has failed to pay money within 30 days of its due date. The applicant has not met this condition. As evidenced by a series of cancelled cheques, monies have been dutifully paid since 1989 by the existing mineral lease holder to those named in the REO 0485/87.

Given the appellant's failure to prove that monies were not paid to those named in the Orders or Surface Lease Agreement, no further analysis is required.

Though further analysis is not required on the matter of recovery of compensation, the Panel also considered the process required for amending right of entry orders and compensation orders; which would be a prerequisite for ordering any payments to the appellant. In short, section 119(b) of the Act (which is already set out above), allows the Land Access Panel to amend orders to reflect *existing* interests in land. It does not allow the Panel to change orders to reflect past interests holders in land; which is what the appellant is effectively asking the Panel to do. Put another way, when a Settlement member believes he or she has an interest in land that warrants an amendment to a right of entry order or compensation order under section 119 of the Act, the onus is on the Settlement member to apply for the amendment while his or her interest is in existence.

Finally, as further indicated at the hearing, the Panel also considered the appeal in the context of the *Limitations Act* (RSA 2000, c. L-12). The *Limitations Act* sets out provisions barring claims giving rise to civil proceedings from action before the courts after the lapse of certain time periods. In general an action must be brought within two years from the time a claimant knew or ought to have known that he or she had a claim. The *Limitations Act* sets out a 10 year unconditional ultimate limitation period from the date a breach of duty occurs. In an excellent summary of the reasons for limitation periods, the *Alberta Law Reform Institute* in their *Report No. 55* at pages 16-19 makes the following observations:

The objective of a limitations system is to encourage timely resolution of controversies.

. . . a limitation system must strike a balance among the interests of potential claimants, potential defendants and society at large.

. . . With the passage of time . . . the evidence necessary to prove the facts will deteriorate.

. . . the defendant is entitled to have the legal issue resolved in a timely manner. At some point in time after the occurrence of conduct which might have been legally

wrongful, a defendant should gain peace of mind. With respect to societal peace, there is a need for a time when, insofar as human transgressions are concerned, society is freed from stale conflicts and the slate is wiped clean.

... When a point in time has been reached when evidence has become too unreliable to furnish a sound basis for a judicial decision, out of fairness to the defendant, public policy dictates that a claim should not be adjudicated at all.

Applying these considerations to the matter at hand, this Panel is of the opinion that where rights may exist, members must be known to know their rights and must not simply sit on them. They must act within a reasonable time to give effect to their rights while they are still in play. In the case at hand, the passage of 12 years from the cancellation of the appellant's interest in the land to the filing of an appeal is too long of a delay to be deemed reasonable by any measure.

2.5 Decision


The appellant has not met the conditions needed to recover compensation under 121 of the Act. Nor has the appellant met the required conditions for the Panel to order that the REO 0485/87 be amended to show a change in occupant.

Order

It is hereby ordered that:

- A. Right of Entry Order 0485/87 and Compensation Order 0741/87 be amended by striking out "APACHE CANADA LTD." and by substituting "**ROCKY RIVER PETROLEUM LTD.**" as existing mineral lease holder.
- B. Dean Howse is not entitled to recover compensation under section 121 of the Act. Nor is it appropriate to amend REO 0485/87 to show Dean Howse as an occupant.

Dated in the Town of High Prairie in the Province of Alberta on the 27 day of March, 2008.



Allan Lamouche, Panel Chair