

Before:

Metis Settlements Appeal Tribunal  
Land Access Panel

Between:

Hector Deschamps

-and-

Metis Settlements General Council, Fishing Lake Metis Settlement,  
and Crescent Point Resources Ltd.

Concerning:

Right of Entry Order 0499/88 and Compensation Order 1450/88  
involving N½-34-056-02-W4M and the road allowance adjoining the  
West boundary of NW-35-056-02-W4M in the Province of Alberta.  
Excepting thereout all Mines and Minerals.

Decision Date:

April 17, 2008

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

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**Land Access Panel Members**

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

**Parties present at the hearing**

Hector Deschamps, Appellant  
Pearl Deschamps, wife of Appellant  
Janice Agrios, Legal Counsel representing Fishing Lake Metis Settlement  
Arlene Calliou, Oil and Gas Coordinator, Fishing Lake Metis Settlement  
Kim Fayant, Land and Membership Clerk  
Herb Lehr, Fishing Lake Metis Settlement Member  
Howie Sniderman & Keltie Lambert, Legal Counsel representing Metis Settlements General Council

**MSAT staff present at hearing**

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

**Place and date of the hearing**

Fishing Lake Metis Settlement  
October 30, 2007

**Objections to the Panel**

In a letter dated August 1, 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. *Amendment of Right of Entry Order*: Crescent Point Resources Ltd. (Crescent Point) is requesting that the rough plan currently attached to Right of Entry Order (REO) 0499/88 be replaced with an “as built” plan that details the exact length of the access road. Crescent Point is also requesting the compensation provisions be amended to reflect the rate of compensation agreed upon effective November 1, 2003.
2. *Change of occupant and eligibility for compensation*: Mr. Hector Dechamps—the Appellant—wants to be recognized as the occupant under Right of Entry 0499/88 as of 1991 and to be paid compensation including alleged arrears from that date.

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

## **1. Amendment of Right of Entry Order (REO)**

### **1.1 Applicable legislation – jurisdiction and decision-making criteria**

The Land Access Panel has assumed jurisdiction under 120 of the *Metis Settlements Act* (the Act) [R.S.A. 2004]. Section 120 of the Act also sets out the legislative requirements for amending right of entry orders. The relevant portions read as follows:

#### **Termination (sic) of right of entry order**

120(1) On application to it the Land Access Panel may

- (a) terminate or amend a right of entry order made by it or the Existing Leases Land Access Panel if the Land Access Panel is satisfied that
    - (i) an existing mineral lease holder or operator is not using the right of entry order, or
    - (ii) there is good reason to terminate or amend the order, or
  - (b) if the application is by an existing mineral lease holder for additional surface access or amendment of a right of entry order, grant, terminate or amend a right of entry order as required.
- (2) No decision can be made under subsection (1) without an inquiry into the matter, and a hearing if the existing mineral lease holder or operator so requests.

### **1.2 Evidence before the Panel**

REO 0499/88 was issued on March 2, 1988. It granted access to wellsite 9-34-56-2-W4M and access road. Compensation Order 1450/88 was issued on June 16, 1988.

MSAT received a written application from Crescent Point on November 25, 2003 requesting that REO 0499/88 be amended to replace “Plan A” and “Plan B” with an “as built” plan, titled “Plan A.1.” Crescent Point also provided a copy of a Request for Amending Compensation Order setting out Fishing Lake Metis Settlement’s proposed compensation rates. Crescent Point is in agreement with the rates, but requested that the access road length be revised.

Crescent Point provided an “as built” plan, which was reviewed at the hearing. Counsel for Fishing Lake Metis Settlement commented on the “as built” plan, indicating that a portion (measuring about .6 km) of the access road under 0499/88 should also be highlighted. Other than that observation, however, no other objections were raised about the “as built” plan.

If Plan A.1 is amended to reflect Fishing Lake Counsel’s observation, this would effectively adjust the length of the access road from 3.91 kilometres to 2.14 kilometres.

### **1.3 Findings of Fact**

- The “as built” plan (Plan A.1) provides an accurate blueprint of the wellsite and access road.
- Counsel for Fishing Lake Metis Settlement rightly pointed out that the highlighting on the “as built” plan should be extended by .6 kilometres to properly reflect actual usage.
- Taken together, the length of road being used relating to REO 0499/88 is 2.14 kilometres.
- The “as built” plan clearly shows the access road does not affect the road allowance lying between the North West Quarter of Section 35 and the adjoining Township to the West.
- Fishing Lake Metis Settlement and Crescent Point agree that the rate of compensation should be \$2,420.00 + \$358.00/km for access road effective November 1, 2003.

### **1.4 Analysis / Reasons**

Section 120 of the Act allows the Land Access Panel to amend right of entry orders if there is good reason to do so. In this regard, changing the REO 0499/88 will enable the parties to understand actual usage with greater accuracy, and to affirm their agreement concerning new compensation rates. This provides a good reason to change the right of entry order.

### **1.5 Decision**

Crescent Point Resources Ltd. has met the conditions set out in section 120 of the Act to amend REO 0499/88 and to confirm the rate of compensation agreed upon by Crescent Point and Fishing Lake Metis Settlement.

In this regard, Plan A.1 will replace Plans A and B. The highlighting on Plan A.1 will be adjusted by MSAT staff to reflect the observations presented at the hearing, which will effectively detail the overall road length as being 2.14 kilometres, rather than the 3.91 kilometres currently being used to calculate compensation.

## 2.0 Change of occupant & eligibility for compensation

### 2.1 Applicable legislation – jurisdiction and decision-making criteria

The rules / legislation that apply to this matter are sections 3(2) of the *Fishing Lake Metis Settlement... Surface Rights Compensation Distribution to Members Bylaw* and 119 of the Act (the latter of which gives the Panel the authority to deal with this matter).

The sections read as follows:

3(2) If an occupant acquires land affected by an Existing or pending Agreement or Right-of-Entry Order, then the Occupant is not entitled to any Compensation payable pursuant to the Agreement or Right-of-Entry Order, except in the case of the following:

- a) an estate, then any Compensation payable will be payable to the heir in accordance with section 3.4.
- b) a transfer within family, then any Compensation payable will be payable to the transferee in accordance with Section 3.4.

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.

In short, the bylaw allows compensation to be paid to members who receive their interest through a transfer from a family member, even when the transfer takes place after oil and gas agreements are in place in relation to the land. Put another way, section 3(2) provides an exception to the rule that otherwise stops payments to members who get their land interest *after* an oil and gas agreement is already in place.

Section 119 of the Act gives the Panel the authority to amend right of entry and compensation orders to properly reflect occupancy interests. It also sets out the criteria for making amendments to show a change of occupant, including the case at hand, where the timing of that occupancy is at issue.

### 2.2 Evidence before the Panel

As previously indicated, REO 0499/88 was issued on March 2, 1988. It named David Deschamps as an occupant.

Hector Deschamps is David Deschamps' nephew. Hector testified that his uncle, David Deschamps tried to abandon (transfer) his land interest to him in 1991 in order to keep the land (NE-34-056-02-W4M) "in the family." As told by Hector, David was living in Ottawa in 1991

when he received a “warning letter” from the Settlement indicating that he would have to return to the Settlement, or risk losing his land.

Hector said that David had no interest in returning to live in the Settlement, but that he did return and filled in abandonment paperwork. Hector added that David needed money to return to Ottawa, which he provided to David.

According to Hector, the abandonment paperwork was given to the Settlement, but was never filed or acted on, which he submits is not his fault. Had the paperwork been done, Hector argues that he would have been an occupant since 1991. More to the point, though, Hector is of the opinion that if the land was transferred to him from a family member (his uncle), then section 3(2) of the bylaw should apply, which would entitle him to receive compensation even though he got the land after the oil and gas agreements were in place.

The record shows that a Provisional Metis Title was issued to Hector Deschamps on November 12, 1996 for NE-34-056-02-W4M, and he was awarded full Metis Title on July 18, 2006. The record also shows that REO 0499/88 was amended on October 21, 2003 to include Hector Deschamps as occupant.

Finally, the record, insofar as it applies to Hector Deschamps, also shows that he submitted his appeal to the Metis Settlements Appeal Tribunal on August 18, 2006.

For its part, Crescent Point submitted paperwork to demonstrate that it had made payments as required by REO 0499/88 and Compensation Order 1450/88.

Counsel for Fishing Lake Metis Settlement—Janice Agrios—submitted written evidence showing that David Deschamps applied for an Allotment interest in NE-34-056-02-W4M on June 5, 1995. She provided further evidence that Settlement Council rejected David’s application.

Ms. Agrios further submitted that since there is no written record of alleged abandonment, Fishing Lake Metis Settlement By-law 940052 applies to exclude Mr. Hector Deschamps from receiving compensation because he did not receive title in the property until after REO 0499/99 was in place. Section 3.2 of the By-law reads as follows:

*Distribution of compensation*

3.2 If a member becomes the occupant of land for which an agreement or right of entry order exists or is pending, the occupant does not receive any compensation for the agreement or right of entry order.

**2.3 Findings of Fact**

- David Deschamps was listed on REO 0499/88.
- No transfer documentation was provided showing David Deschamps intended to abandon his interest in NE-34-056-02-W4M to Hector.
- Documentation is provided to show that David Deschamps applied to convert his Allocation interest in NE-34-056-02-W4M to an Allotment interest on June 5, 1995.

- Fishing Lake Settlement Council rejected David Deschamps application for an Allotment interest on June 13, 1995.
- Hector Deschamps was awarded Provisional Metis Title by Fishing Lake Metis Settlement on November 12, 1996.
- REO 0499/88 was amended on October 21, 2003 to show Hector Deschamps as an occupant.
- Hector Deschamps was awarded full Metis Title to NE-34-056-02-W4M on July 18, 2006.
- Hector Deschamps filed a written appeal on August 18, 2006 requesting compensation and other relief for NE-34-056-02-W4M.
- Regular compensation payments have been made by the existing mineral lease holder as required by REO 0499/88 and Compensation Order 1450/88.

#### **2.4 Analysis / Reasons**

To grant the relief that Hector Deschamps is requesting, the Panel needs to satisfy itself that he received the land by way of a transfer from a family member. In considering this matter, the Panel is mindful that a legislated land registration system has been set up to enable proper transfers of land interests and to track those interests. The system is in place to promote consistency and certainty with respect to interests in Settlement lands.

Though somewhat of an oversimplification, the principles of consistency and certainty are met through the proper execution of recognized land transfer forms and the registration of those forms at the Metis Settlements Land Registry. In order to adhere to and promote the principles of consistency and certainty, the Panel is of the opinion that if documentation does not exist to show a transfer has been properly executed and registered, the onus is on the appellant to produce other evidence that is clear and un-contradicted.

In the case at hand, the suggestion that David Deschamps attempted to abandon his land in 1991 is not backed-up with any transfer documents. Indeed, the transfer documentation which does exist shows that David Deschamps attempted to convert his interest in NE-34-056-02-W4M to an Allotment interest in 1995 in his own name, which contradicts the appellant's claim that David wanted to transfer the land to him.

Given this contradiction between the appellant's submission and the written record, it cannot be said that the appellant met the test of providing evidence that is clear and un-contradicted. As such, the Panel is not satisfied that the claimant has proven that he received, or should have received, the land through a transfer between family members.

The Panel also considered the lapse of time in relation to amending the REO under section 119 of the Act. Specifically, the lapse of time from 1991, when the appellant claimed to have received the transfer from David Deschamps through the alleged abandonment route, until 2006 when he filed his written appeal is considerable. In this regard, the Panel is of the opinion that where rights may exist, members will be deemed to know their rights and must not simply sit on them. Put another way, they must act within a *reasonable time* to give effect to their rights. In the case at hand, the passage of 15 years from the alleged abandonment to the appellant's filing of an appeal is too long of a delay. This delay cannot be deemed reasonable by any measure to now amend the right of entry order under section 119 of the Act.

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 has the authority to make laws providing for the distribution of compensation received in relation to a project, and have exercised this authority in accordance with the bylaw-making requirements in the Act.

## **2.5 Decision**


The appellant has not proved that the land was effectively transferred to him from his uncle, nor has he met the statutory conditions required to retroactively amend REO 0499/88 or Compensation Order 1450/88.

## **Order**

**It is hereby ordered that:**

- A. Right of Entry Order 0499/88 is amended by striking out the words from the land Schedule “the road allowance adjoining the West Boundary of the North West Quarter of Section 35”. Right of Entry Order 0499/88 is further amended by striking out Plan “A” and Plan “B” and substituting Plan A.1 attached to this Order, including additional highlighting by Tribunal staff to demarcate the compensable road length as being 2.14 kilometres.
- B. Compensation Order 1450/88 is further amended by striking out the provisions regarding compensation and by substituting the following:
  - i. As of November 1, 2003 and on or before November 1 of each year thereafter, **\$3,186.12** (\$2, 420.00 + (\$358.00/km access road x 2.14 km)) payable to Fishing Lake Metis Settlement.
  - ii. The increase in the annual compensation shall attract interest at the *Judgment Interest Act* rate in effect on the date of the hearing from the effective date until paid.

Dated in the City of Edmonton in the Province of Alberta on the 17 day of April, 2008.

  
Don Cunningham, Panel Chair

If you require a copy  
of the plan attached to  
and forming part of  
the order, please  
contact the Metis  
Settlements Land  
Registry at:  
(780) 427-1117

(Toll free, dial 310-0000 then 780-427-1117)