

Before:

Metis Settlements Appeal Tribunal
Land Access Panel

Between:

Calvin L'Hirondelle, Appellant

-and-

Peavine Metis Settlement, Respondent
Arrow Energy Ltd., Respondent

Concerning:

Interests in SW-36-78-15-5

Hearing Date:

May 14, 2008

Decision Date:

June 27, 2008

D e c i s i o n

Land Access Panel Members

Stan Delorme, Panel Chair
Allan Lamouche, Panel Member
Violet Haggerty, Panel Member

Parties present at the hearing

Calvin L'Hirondelle, Appellant
Raymond Carifelle, Chairman, Peavine Metis Settlement
Glenna Cunningham, Council Member, Peavine Metis Settlement
Henry Carifelle, Council Member, Peavine Metis Settlement
Layne Gauchier, Council Member, Peavine Metis Settlement
Dale LeClair, Administrator, Peavine Metis Settlement
Carmen McDermott, Land & Membership Assistant, Peavine Metis Settlement

MSAT staff present at hearing

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

Place and date of the hearing

High Prairie, Alberta
May 14, 2008

Issue/relief - what the parties want

1. *Interest in land - compensation relating to oil and gas activity on the SW-36-78-15-5:*
The Appellant, Calvin L'Hirondelle, requested the Tribunal to recognize and affirm that his interest in the *SW-36-78-15-5* extends from November 21, 1995 to present and that he is also entitled to compensation for pipeline activity in 2002.

1. Clarification of ownership interests in SW-36-78-15-5

1.1 Applicable legislation – jurisdiction and decision-making criteria

This appeal turns on the question of whether the Appellant held a recognized interest in the SW-36-78-15-5 sufficient to be considered an “occupant” when entry onto the land was negotiated and when compensation came due for pipeline activity on the land.

In this regard, Section 8.2 of the Metis Settlements General Council Land Policy [Policy GC-P9201] (Land Policy) sets out the Tribunal’s authority to determine interests in land. It reads as follows:

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a Settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision. [A footnote to section 8.2 reads that section 189 of the Act sets out the conditions under which a dispute or reference can be made to the Appeal Tribunal].

The relevant part of section 189(1) of the *Metis Settlements Act* (the Act) [R.S.A. 2004] is set out below:

Responsibilities

189(1) The Appeal Tribunal

...

- (b) must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, bylaws or General Council Policies.

The Panel is satisfied that section 8.2 of the Land Policy, read in conjunction with section 189(1)(b), effectively gives our Panel the authority to decide the dispute before us. For clarity, section 8.2 of the Land Policy clearly sets out a key appeal function of the Tribunal—which is to settle questions of interests in Settlement lands—while section 189(1)(b) of the Act requires the Tribunal to fulfill all appeal functions named in General Council Policies.

Finally, the Land Access Panel—which is a Panel of the Tribunal—has assumed jurisdiction over this matter because if the Appellant demonstrates that he held an interest in the land when the pipeline was built, he may then be entitled to compensation. Under the Act, such questions of compensation are normally reserved for the Land Access Panel to decide.

1.2 Evidence before the Panel

The Appellant, Calvin L'Hirondelle, testified that he received Provisional Metis Title (PMT) in the SW-36-78-15-5 in November 1995. When asked whether he improved the land or resided in the Settlement between November 1995 and November 2000, (and, indeed, up until 2004), the Appellant said that he had not. When asked whether he applied to renew his PMT interest before its expiration date of November 19, 2000, the Appellant said that he thought he did so after receiving notice of expiry from the Metis Settlements Land Registry. The Appellant did not provide any documentation to back-up this claim.

With respect to the Appellant's position on the matter, he asked the Panel to consider whether the subsequent granting of PMT in the same land (SW-36-78-15-5) by Peavine Settlement Council in February 2004 effectively bridged the gap between the first grant in November 1995 and the second grant in February 2004. According to the Appellant, this second grant effectively gave him continuity of interest from 1995 up until, and including, the second grant in 2004; which, in his opinion, qualified him for compensation relating to oil and gas activity on the land going back to 1995.

The Respondent, Peavine Metis Settlement Council, said that it was simply seeking clarity on the question of the Appellant's interest in the land. Their Land and Membership office provided documents during the investigation stage, including the Memorandum of PMT and Mineral Project Land Use Agreement, which were included in the hearing package for this matter.

The Respondent told the Panel that after the Appellant's interest the SW-36-78-15-5 expired in 2000, they *posted* it (meaning, they put out notice for members to apply for an interest in the land) in June 2002. As set out in the Settlement's records, the Appellant was among those who applied for the land before the posting closed on November 29, 2002.

It was also disclosed by the Respondent that shortly after the posting closed, a pipeline was put through the land (SW-36-78-15-5) in December 2002. It was also disclosed that payment—which is a one-time event for pipelines—was received by the Settlement for the activity.

Finally, the Respondent confirmed that the Appellant was granted another PMT interest in the SW-36-78-15-5 on February 6, 2004.

1.3 Findings of Fact

- The Metis Settlements Land Registry (MSLR) Land Search Report—which was contained in the hearing package and used by the parties—shows the Appellant received a five-year PMT interest in the SW-36-78-15-5 on November 21, 1995.
- The Memorandum of PMT signed by the Appellant reads that the Appellant had “an exclusive right to use and occupy the land for 5 years, starting November 21, 1995 and ending November 19, 2000 as long as you are making improvements needed to get Metis Title and are using the land for the purpose of farming.”
- It also reads that “if you have not received Metis Title to the land at the end of the first 5 year term, but in the Settlement's opinion you are productively using the land and have made satisfactory progress on improvements, you can renew this grant for one more 5 year term.”

- The Memorandum of PMT set out other conditions, including the following provisions of relevance:
 - (1) The basic rules for keeping this grant are:
 - (a) You must remain a resident member of the Settlement;
 - (b) You can only use the land to build a house or operate a farm, ranch or an approved business;
 - (c) ...
 - (3) Your Provisional Metis Title ends on the date specified in the notice unless before then you file a Notice of Appeal with the Appeal Tribunal.
- There is no documentary evidence supporting the Appellant's claim that he applied to renew his PMT interest before the end of the first 5 year term in November 2000.
- By his own admission, Appellant was not a resident of Peavine Metis Settlement during the first 5 year term, nor did he reside on the Settlement from 2000 to 2004.
- The MSLR's record—which was also contained in the hearing package and used by the parties—shows that the Appellant's PMT interest in the SW-36-78-15-5 expired on November 19, 2000 and that this interest was “cancelled in accordance with section 30(1)(b) of the MSLR Regulation.”
- Peavine Metis Settlement and Tirmoil Energy Ltd. executed a Mineral Project Land Use Agreement, including a pipeline Right of Way Agreement for the SW-36-78-15-5, on March 7, 2002.
- Construction on the pipeline took place in December 2002.
- Calvin L'Hirondelle was granted another PMT interest in the SW-36-78-15-5 on February 6, 2004.

1.4 Analysis / Reasons

The *Alberta-Metis Settlements Accord* of 1989 vested the Metis Settlements of Alberta with self-governance authority. A key aspect of this authority is the passage of laws by the Metis Settlements General Council and local Settlement Councils concerning interests in Settlements lands. To this end, the Metis Settlements General Council passed a policy, called the Metis Settlements General Council Land Policy, [Policy GC-P9201], setting out different types of land interests as well as rules for obtaining, perfecting, transferring, or sometimes losing those interests.

Of interest to this Panel are the rules set out for PMT interests.

In this regard, section 2.5 of the Land Policy reads that the nature of PMT is “to enable the member to use the land and make improvements to the extent needed to obtain Metis Title.”

The Land Policy also sets out the boundaries for *Memorandums of Provisional Metis Title*; which are agreements between a Settlement and a member outlining rights and responsibilities with respect to PMT interests in land. According to the Land Policy, Memorandums of PMT should all contain certain basic conditions, such as remaining a resident member of a Settlement,

using the land to build a house, or operate a farm, ranch or an approved business, and time limits to make improvements.

Memorandums of PMT should provide members with a five year period to make improvements to the land, as well as the ability to apply for a five year renewal of the PMT interest prior to the end of the term if more time is needed to make improvements. Note, however, the ability to apply for renewal is not a guarantee of renewal. Council first needs to be satisfied that the land is being used and sufficient progress on improvements have been made.

In the Panel's view, when rules are set out in General Council Policies, they bind all Settlement members, and members are taken to know the law.

In the case at hand, the Memorandum of PMT clearly set out that the Appellant was to make improvements to the land in order to convert his PMT to a full Metis Title, or to otherwise be in a position to apply for renewal of the five-year time limit. Given the Appellant's own admissions that he made no improvements to the land, and that he has no record of applying to renew his PMT interest at any time during the first grant, there is no reason why the Appellant's PMT interest should not have expired on November 19, 2000.

Added to this is the Appellant's other admission that he did not reside on the Settlement from 1995 to 2000, which is a breach of the Memorandum's condition that he remain a resident member.

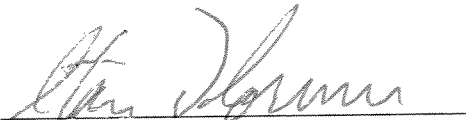
In the Panel's opinion, once the Appellant's interest expired, he was in no better position than any other Settlement member from the period after November 19, 2000 to February 6, 2004, when his new PMT interest was confirmed, to be considered as an "occupant" under the Act. He neither held any registered interests in the land, nor (as an absentee member) enjoyed actual possession of the land. Thus, any compensation relating to pipeline activity on the SW-36-78-15-5 from November 19, 2000 to February 6, 2004 is not his to claim.

Finally, the Panel sees no basis in General Council Policy or law that the second PMT grant in 2004 creates a bridge or continuity of title to the first grant. When the Settlement reposted the SW-36-78-15-5 in 2002, it is conceivable that it may have been awarded to any one of those who applied for it, or that Council could have withdrawn the posting and not made any award at all. It was not a forgone conclusion that the Appellant would receive a second PMT interest in the land and a second chance to improve it and upgrade his interest to Metis Title.

1.5 Decision

The Appellant's appeal to be recognized as holding a continuous interest in the SW-36-78-15-5 from 1995 to present is denied. His first PMT interest in the SW-36-78-15-5 expired on November 19, 2000. Accordingly, no compensation is to be paid to the Appellant for pipeline activity on the SW-36-78-15-5 between November 19, 2000 and February 6, 2004.

Dated in the City of Edmonton in the Province of Alberta on the 27th day of June 2008.



Stan Delorme, Panel Chair