

Before:

Metis Settlements Appeal Tribunal
Land Access Panel

Between:

Leslie G. Nooskey
and
Paddle Prairie Metis Settlement, Appellant,

-and-

Hewitt Oil (Alberta) Ltd., Metis Settlements General Council, Leslie G. Nooskey,
Bobby (Robert) H. Ghostkeeper, Estate of Rosemary Wanuch,
and
Andrew Ducharme, Respondents.

Concerning:

Right of Entry Orders E2294/85 and 0372/86

Decision Date:

Decided this 28th day of August, 2008

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Don Cunningham, Panel Chair
Violet Haggerty, Panel Member
John Brosseau, Panel Member

Parties present at the hearing:

Leslie G. Nooskey, Appellant

Paddle Prairie Metis Settlement, Appellant

Represented by:

Leslie House, Councillor

Reta Nooskey, Land and Membership Clerk

Everett Lambert, Economic Development Officer and Resources Coordinator

Andrew Ducharme

MSAT staff present:

Harold Robinson, Tribunal Secretary

Karen Mustus, Oil and Gas Officer

Russell Teed, Dispute Resolution Officer

Place and date of the Hearing:

Paddle Prairie Metis Settlement Community Hall

Paddle Prairie Metis Settlement, Alberta

August 12, 2008

Issues/relief - what the parties want

The following issues were raised before the Land Access Panel on August 12, 2008:

1. What compensation, if any, is due to Leslie G. Nooskey for the SE-25-104-21-5 under Right of Entry Order E2294/85?
2. What aspects of the mediated agreements between Hewitt Oil (Alberta) Ltd. and the Paddle Prairie Metis Settlement and other affected parties can be confirmed by the Land Access Panel?
3. What is the status of Right of Entry Orders E2294/85 and 0372/86?

Evidence, Analysis, and Findings

1. *Compensation due to Leslie G. Nooskey*

Leslie G. Nooskey said that if evidence was produced to show that he was paid the \$9,946.65, he would abide by that evidence. The Paddle Prairie Metis Settlement provided this evidence to the Land Access Panel by way of two cancelled cheques (\$3,794.23 and \$6,502.42) in Mr. Nooskey's name for compensation relating to the SE-25-104-21-5.

2. *Mediated Agreements*

Section 190(1)(d) of the *Metis Settlements Act* [R.S.A. 2004] (the Act) enables the Tribunal (and its panels) to “confirm a mediated or other agreement reached between 2 or more persons in dispute in the form of a decision of the Tribunal.”

Mediated agreements were reached between the parties on April 6, 2001 for Right of Entry Orders E2294/85 and 0372/85. The terms of the agreements are as follows:

E2294/85

- \$1,420.95 annual rental from 1992 to 1999 payable to Leslie G. Nooskey, totaling \$9,946.65.
- \$500.00 to Robert Ghostkeeper for rentals due from 1992 to 1999.

0372/86

- \$2,352.50 payable to Paddle Prairie Metis Settlement for annual rentals from 1993 to 1999 totaling \$14,115.00.

Though the mediated agreement for Right of Entry Order 0372/86 did not include any changes involving interest holder Rosemary Wanach—who has since passed away—the Land Access Panel believes it proper, if not long overdue, to confirm the mediated terms set out above.

3. *Status of Right of Entry Orders E2294/85 and 0372/86?*

Right of Entry Orders E2294/85 and 0372/86 are still in effect. They have not been terminated, and cannot be terminated until such time as the conditions set out in section 120 of the Act have been met. In particular, section 120(3) of the Act mandates that “no decision may be made to terminate a right of entry order to which Part 6 of the *Environmental Protection and Enhancement Act* applies unless a reclamation certificate has been issued in respect of the land to which the order relates.”

Given the circumstances at hand, the Land Access Panel thinks it proper to exercise its authority under sections 190(f) and 190(o) of the Act to direct the parties to meet and confirm what compensation—however nominal—should be paid under these Right of Entry Orders until such time as the Orders are properly terminated. Further, given that this matter was first brought before the Tribunal in 1999, it is appropriate that the rates be negotiated and set from 1999 to the present rental review period.

Order

The Land Access Panel hereby finds and orders that:

1. Leslie G. Nooskey has been fully paid for compensation affecting the SE-25-104-21-5 under Right of Entry Order E2294/85 to September 17, 1999.
2. The mediated agreements of April 6, 2001 are hereby confirmed and the Compensation Order E2408/85 is hereby amended by striking out the compensation provisions and by substituting the following:
 - (a) The amount payable to Leslie G. Nooskey is \$9,946.65 (\$1,420.95 annual) for the periods September 18, 1992 to September 17, 1999.
 - (b) The amount payable to Robert (Bobby) Ghostkeeper is \$500.00 for the periods September 18, 1992 to September 17, 1999.
3. The mediated agreements of April 6, 2001 are hereby confirmed and the Compensation Order 0741/86 is hereby amended by striking out the compensation provisions and by substituting the following:


For the periods February 19, 1993 to February 18, 1999, the sum of \$14,115.00 (\$2,352.50 annual) is payable to Paddle Prairie Metis Settlement.
4. Right of Entry Orders E2294/85 and 0372/86 are still in effect. The parties, Hewitt Oil (Alberta) Ltd., Paddle Prairie Metis Settlement, Metis Settlements General Council, Leslie G. Nooskey, Bobby (Robert) H. Ghostkeeper, Andrew Ducharme, including representatives for the estate for Rosemary Wanuch, are hereby directed to meet and negotiate compensation rates from September 18, 1999 and February 19, 1999, respectively, to the present time. In this regard, the parties are further directed

to consider the reclamation work already done and what—if any—impacts there currently are on the lands.

The parties have 90 days from today's date to develop and deliver their agreement to the Land Access Panel for its review and possible confirmation.

5. Finally, the parties are hereby notified that any application to terminate Right of Entry Orders E2294/85 and 0372/86 must meet the conditions set out in section 120 of the Act.

Dated in the City of Edmonton in the
Province of Alberta on the 28th day of
August, 2008.



Don Cunningham, Panel Chair