



## LAND AND PROPERTY RIGHTS TRIBUNAL

**Date:** 2023-04-26

**File No.:** RC2019.2685

**Order No.:** LPRT901564/2023

**In the matter of a proceeding commenced under** section 36 of the *Surface Rights Act*, RSA 2000, c S-24 (the “Act”)

**And in the matter of** land in the Province of Alberta within the:

SW 1/4-8-82-3-W6M as described in Certificate of Title No. 182 205 314 (the “Land”), particularly the area granted for Alberta Energy Regulator Licence Nos. 0315763 and 0364519 (the “Site”).

**Between:**

Mojek Resources Inc.,

Operator,

- and -

Fingerhut Farms Inc.

Applicant.

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### SECTION 36(6) DIRECTION TO PAY

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The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of FIFTEEN THOUSAND SEVEN HUNDRED EIGHTY-ONE and 25/100 DOLLARS (\$15,781.25) (the “Compensation”) to Fingerhut Farms Inc. of Fairview in the Province of Alberta for compensation that became due in the years 2020, 2021 and 2022.

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### DECISION AND REASONS

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[1] The Applicant filed an application under section 36 of the Act seeking recovery of unpaid compensation due under a Surface Lease Agreement dated August 30, 2004 for the above site (the “Right of Entry Instrument”).

#### ISSUES

[2] The issues before the Panel are:

- (1) Which of the parties should be named as the Operator for the purposes of section 36 of the *Act*?
- (2) Is there money past due and unpaid by the Operator to the Applicant under the Right of Entry Instrument?
- (3) If money is past due and unpaid, is there any reason why the Tribunal should direct the Minister to pay a reduced amount?

- (4) Should the Tribunal direct the Minister to pay any of the amount owed to the Applicant out of the General Revenue Fund?
- (5) Should the Tribunal suspend and terminate the Operator's rights?

## DECISION

- [3] The Panel decides:
- (1) For the purposes of section 36 of the Act, the Operator is Mojek Resources Inc.
  - (2) Compensation of \$15,781.25 is payable to the Applicant by the Operator.
  - (3) There is no reason to direct the Minister to pay a reduced amount.
  - (4) The Tribunal directs the Minister to pay the full amount of the Compensation payable to the Applicant.
  - (5) The decision to suspend or terminate the Operator's rights is reserved.

## REASONS

[4] The Operator is as defined under section 36(1) of the Act and a reclamation certificate has not issued so the Operator is responsible to pay compensation to the Applicant.

[5] The Panel is satisfied that the demand for payment and notice to the Operator meets the requirements of the Act pursuant to s. 36(4) and the *Interpretation of Section 36(4) Surface Rights Act Guideline*, ABSRB 2020-1.

[6] After a review of the completed Application Form, signed declaration and supporting documents, the Panel is satisfied that the Compensation is owed by the Operator to the Applicant for annual payments due under the Right of Entry Instrument. This amount is calculated 2 payments of \$6,000.00 for the years 2020 and 2022. A payment in the amount of \$2,218.75 was obtained through a Garnishment Order, reducing the outstanding compensation as one payment of \$3,781.25 due for the year 2021.

[7] There is no evidence to convince the Panel that payment of the full Compensation would result in overpayment to the Applicant.

[8] The Minister is directed to make full payment of the Compensation out of the General Revenue Fund.

[9] The Panel is satisfied that the prerequisites to directing the Minister to pay under section 36(6) have been met.

[10] The decision to suspend or terminate the Operator's rights is reserved.

Dated at the City of Medicine Hat in the Province of Alberta this 26th day of April, 2023.

**LAND AND PROPERTY RIGHTS TRIBUNAL**



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Miles Weatherall, Member