



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Hutterian Brethren of Bentley Colony v Point Loma Resources Ltd, 2023 ABLPRT 901609

Date: 2023-04-12
File No.: RC2020.2125
Order No.: LPRT901609/2023
Municipality: Lacombe County

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 ¼-13-40-28-W4M as described in Certificate of Title No. 012 397 500 +12 (the “*Land*”), particularly the area granted for the well site and access road for the 00/04-13-040-28W4/0 well, Alberta Energy Regulator Licence No. 0399657 (the “*Site*”).

Between:

Point Loma Resources Ltd.,
and
Rex Energy Ltd.,

Operators,

- and -

Hutterian Brethren of Bentley Colony,

Applicant,

- and -

Silverleaf Resources Inc.,

Other Party.

Before: Tamara M. Bews
(the “*Panel*”).

Appearances by written submissions:

For the Applicant: Christian Hofer, Joseph Hofer, and Ryan Hofer

For the Operators:
Point Loma Resources Ltd. None
Rex Energy Ltd. (formerly, Salt Bush Energy Ltd.) Shainy Vasanji, Land Consultant

For the Other Party:
Silverleaf Resources Inc.

Randy Funkhouser, Surface Land Consultant

**DIRECTION TO PAY PURSUANT TO
SECTION 36(6) OF THE ACT**

The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of THREE THOUSAND FOUR HUNDRED FORTY and 00/100 DOLLARS (\$3,440.00) (the “Compensation”) to Hutterian Brethren of Bentley Colony of Rimbey in the Province of Alberta for compensation that became due in the year 2020.

DECISION AND REASONS

BACKGROUND

[1] On September 4, 2020, the Applicant applied under section 36 of the *Act* seeking recovery of unpaid compensation due under a surface lease agreement dated July 21, 2008 for the Site for the anniversary date: July 21, 2020. The Applicant claims a total amount of \$3,440.00.

[2] During the Tribunal’s routine searches of records maintained by the Alberta Energy Regulator (AER), Alberta Corporate Registry, and Alberta Land Titles, the Tribunal found more than one party that might be an “operator” of the Site under section 36.

[3] By letter dated October 5, 2020, the Tribunal issued a Notice and Demand for Payment to Point Loma Resources Ltd. (Point Loma) regarding the Application. By letter dated May 21, 2021, the Tribunal issued a Notice and Demand for Payment to Salt Bush Energy Ltd. regarding the Application. By letter dated August 9, 2022, the Tribunal issued a Notice and Demand for Payment to Silverleaf Resources Inc. regarding the Application.

[4] The Tribunal received responses from Salt Bush Energy Ltd., Rex Energy Ltd. (formerly, Salt Bush Energy Ltd.) and Silverleaf Resources Inc. (Silverleaf). The Tribunal did not receive a response from Point Loma.

ISSUES

[5] The issues before the Panel are:

- (1) Which corporations are Operators under section 36 of the *Act*?
- (2) Is there money past due and unpaid by the Operators to the Applicant under the surface lease agreement dated July 21, 2008 (the Surface Lease)?
- (3) Should the Tribunal suspend and terminate the Operators’ entry rights under section 36(5) of the *Act*?
- (4) Should the Tribunal direct the Minister to pay the Applicant any of the money past due that has not been paid by the Operators out of the General Revenue Fund under section 36(6) of the *Act*?

DECISION

[6] The Panel decides:

- (1) Under section 36 of the *Act*, the Operators are Point Loma Resources Ltd. and Rex Energy Ltd.
- (2) Compensation of \$3,440.00 is payable to the Applicant by the Operators, jointly, and the written evidence satisfactorily proves that it has not been paid.
- (3) The Tribunal will not suspend and terminate the Operators' right to access the Site.
- (4) Without further notice, the Tribunal directs the Minister to pay the Applicant compensation of \$3,440.00 from the General Revenue Fund.

ANALYSIS

1. *Which corporations are Operators under section 36 of the Act?*

[7] For recovery of compensation applications, the definition of the word operator is set by section 36(1) and (2) of the *Act*. Specifically, section 36(1) and (2) expands the definition of operator so that it has a broader meaning than in the rest of the *Act*.

Section 36(1)(c) – AER Licence Holder

Point Loma and Silverleaf

[8] Under section 36(1)(c) the holder of a licence issued by the AER is an operator. This includes the person who held the licence on the due date and successors to the licence.

[9] AER Well Summary Reports dated May 21, 2021 and May 13, 2022 for Well Licence No. 0399657 show that Point Loma held the AER well licence for the Site from September 14, 2018 to July 29, 2021 and that Silverleaf held the AER well licence for the Site from July 29, 2021 to date.

[10] An Approval and Vesting Order dated April 26, 2021 issued by the Alberta Court of King's Bench (Court File No. 2001-06930) shows that an application was made by BDO Canada Limited, as the Court-appointed receiver, for Point Loma (Court Order) which relates to the Site. The Panel notes that the Court Order approved the purchase and sale agreement dated April 9, 2021 between BDO Canada Limited and Silverleaf for the Purchased Assets (as listed in Schedule B) subject to the approval of the AER of any applicable licences, and delivery of the Receiver's Closing Certificate (as set forth in Schedule A).

[11] Based on the Court Order, the Panel finds that Silverleaf is not responsible for any liabilities or outstanding amounts under the Surface Lease before July 29, 2021. Clause 3 of the Order provides that "... all of the Debtor's right, title and interest in and to the Purchased Assets ... shall vest absolutely in the Purchaser (or its nominee), free and clear of and from any and all ... Claims...". The Court Order confirms that the well associated with the Site is included as part of the Purchased Assets (see schedules attached to the Court Order). Also, AER records for Well Licence No. 0399657 confirm that the court-approved sale has been completed and the Purchased Assets vested in Silverleaf effective July 29, 2021. Accordingly, the Panel finds that Silverleaf is not an operator under section 36(1)(c) of the *Act* for the July 21, 2020 due date.

[12] Having regard to the above, the Panel finds that Point Loma an “operator” under section 36(1)(c) on the Surface Lease due date: July 21, 2020.

Section 36(1)(d) – Working Interest Participants

[13] Under s. 36(1)(d) working interest participants are *operators*. This includes the person who was a working interest participant in the well on the due date and their successors.

Point Loma

[14] An AER Well Summary Report dated May 21, 2021 for Well Licence No. 0399657 shows that Point Loma held a 70% working interest in the well associated with the Site, effective May 8, 2019. Therefore, the Panel finds that Point Loma is an “operator” under section 36(1)(d) on the Surface Lease due date: July 21, 2020.

Rex Energy Ltd. (formerly, Salt Bush Energy Ltd.)

[15] An AER Well Summary Report dated May 21, 2021 for Well Licence No. 0399657 shows that Salt Bush held a 30% working interest in the well associated with the Site, effective May 8, 2019.

[16] In their June 16, 2021 and September 23, 2021 responses to the Tribunal, Rex Energy Ltd. (formerly, Salt Bush) submitted that they are not responsible for the unpaid compensation of \$3,440.00 because Salt Bush (now Rex Energy Ltd.) assigned 100% of its working interest in all wells and minerals in a “Whitemap Area” as shown in their first submission attachment, pursuant to a sale transaction effective December 1, 2019 to Point Loma. In support, Rex Energy (formerly, Salt Bush) attached the following documents:

- Schedule A: PLX Whitemap Area.
- Notice of Assignment dated December 23, 2019.
- Copy of a Business Corporations Act - Certificate of Amendment issued by the Alberta Registrar of Corporations showing that Salt Bush Energy Ltd. changed its name to Rex Energy Ltd. on August 13, 2021.

[17] After carefully reviewing the supporting documents provided, there is insufficient evidence for the Panel to conclude that Rex Energy Ltd. (formerly, Salt Bush) no longer had an interest in the Site effective December 1, 2019. In reaching this conclusion, the Panel makes the following factual findings regarding the two submission attachments relied upon by Rex Energy Ltd. (formerly, Salt Bush):

- Schedule A: PLX Whitemap Area. The Panel cannot ascertain what Schedule A pertains to because the document that it was attached to was not provided to the Tribunal.
- Notice of Assignment dated December 23, 2019 between Sale Bush (as Assignor) and Point Loma (as Assignee) pertaining to a Joint Operating Agreement dated May 23, 2017, made between by or among Point Loma and Salt Bush. This notice of assignment refers to Twp 77-78 Rge 14-15 W4M (for reference purposes). However, the Panel notes that the Site is located on SW¼-13-40-28-13W4M; and not Twp 77-78 Rge 14-15 W4M.

[18] A subsequent AER Well Summary Report dated May 13, 2022 for Well Licence No. 0399657 shows that Silverleaf acquired a 100% working interest in the well associated with the Site effective July 29, 2021. As this date is past when the compensation was due on July 21, 2020, the Panel finds that Salt Bush (now Rex Energy Ltd.) was an operator under section 36(4) as of the 2020 due date.

Silverleaf

[19] An AER Well Summary Report dated May 13, 2022 for Well Licence No. 0399657 shows that Silverleaf acquired a 100% working interest in the well associated with the Site effective July 29, 2021.

[20] As the Panel found above, Silverleaf is not responsible for any liabilities or outstanding amounts under the Surface Lease before July 29, 2021, according to the Court Order. Therefore, the Panel finds that Silverleaf is not an operator under section 36(1)(d) of the *Act* for the July 21, 2020 due date.

Section 36 (1) (e) – Surface Lease Holder

[21] Under section 36(1)(e) the holder of the Surface Lease for the Site is an operator. This includes persons who held the Surface Lease at the time of non-payment; and their successors and assignees.

[22] The Panel notes that Land Title Registration No. 082 393 598 registered on the Current Certificate of Title shows that Point Loma was the holder of the Surface Lease for the Site on the Surface Lease due date: July 21, 2020. On that basis, the Panel finds that Point Loma is an operator under section 36(1)(e) of the *Act*.

[23] Finally, the Panel notes that there is evidence that the Surface Lease has been assigned. In its August 23, 2022 response to the Tribunal, Silverleaf stated that the Surface Lease was assigned by Point Loma, by BDO Canada Limited in its capacity as the receiver and manager of the assets, property and undertaking of Point Loma, to Silverleaf effective April 26, 2021.

[24] As the Panel found above, Silverleaf is not responsible for any liabilities or outstanding amounts under the Surface Lease before July 29, 2021, according to the Court Order. On that basis, the Panel finds that Silverleaf is not an operator under section 36(1)(e) of the *Act*.

Summary

[25] In summary, the Panel finds that the Operators are Point Loma Resources Ltd., and Rex Energy Ltd., jointly.

2. *Is there money past due and unpaid by the Operators to the Applicant under the Surface Lease?*

[26] The current Certificate of Title confirms the Applicant is the owner of the Land and was the owner when the compensation was due. A caveat (registration no. 082 393 598) confirming the Surface Lease was provided and the annual compensation of \$3,440.00 was supported by an Amendment to Surface Lease dated August 5, 2008 between the Applicant, as Lessor, and Cabrerra Resources Ltd., as Lessee, regarding the Site; and a statement dated July 1, 2019 from Point Loma to the Applicant enclosing cheque #004644 regarding a payment of \$3,440.00 for the Site. Also, the Applicant declared in writing that the compensation was not paid.

[27] AER records for Well Licence No. 0399657 show that the well associated with the Site is a coalbed methane well (issued). Given that AER records show the well on the Site as issued, and not reclaimed, the Panel finds that the Surface Lease remains in effect.

[28] In its August 23, 2022 response to the Tribunal, Silverleaf advised that the Applicant was paid \$3,440.00 for the rental period July 21, 2021 to July 20, 2022 and that this issue has been addressed. Silverleaf Resources Inc. submitted that the annual compensation has been paid as agreed upon and are up to date and the Surface Lease is in good standing.

[29] In support, Silverleaf attached the following documents:

- Cheque Remittance and Cheque No. 04644 dated July 1, 2019 from Point Loma to the Applicant in the amount of \$3,440.00 for July 21, 2019 to July 20, 2020 rental period for the Site.
- An email dated October 28, 2021 from Silverleaf Resources Inc. to the Applicant.
- An October 28, 2021 Letter Agreement between Silverleaf Resources Inc. and the Applicant, where the parties agree, among other things, that Silverleaf's cheque no. 001101 in the amount of \$11,520.00 includes a payment of \$3,440.00 for July 21, 2021 to July 20, 2022 rental period for the Site.

[30] Having regard to the above, the Panel finds the Applicant received a payment of \$3,440.00 for July 21, 2019 to July 20, 2020 rental period from Point Loma and a payment of \$3,440.00 for July 21, 2021 to July 20, 2022 rental period for the Site. However, there is no written evidence that the Applicant received a payment of \$3,440.00 for July 21, 2020 to July 20, 2021 rental period. Therefore, the Panel finds that there is sufficient evidence of non-payment for the Surface Lease anniversary date: July 21, 2020 and will direct payment for that year.

[31] In summary, the Panel is satisfied that compensation is owed by the Operators, jointly, to the Applicant for an annual payment due under the Surface Lease. This amount is calculated as one payment of \$3,440.00 due on July 21, 2020.

3. *Should the Tribunal suspend and terminate the Operators' entry rights under section 36(5) of the Act?*

[32] Under section 36(5) of the *Act*, the Tribunal can suspend and terminate an Operator's rights to access the Site when appropriate. There is no reason to delay this application by doing so here because Point Loma is insolvent, and the Site was the subject of a court-approved sale from Point Loma to Silverleaf. Accordingly, the Panel decides that the Tribunal will not suspend and terminate the Operators' rights to access the Site.

4. *Should the Tribunal direct the Minister to pay the Applicants any of the money past due that has not been paid by the Operators out of the General Revenue Fund under section 36(6) of the Act?*

[33] Concerning the condition of the Site, the Applicants submitted, among other things, that:

- (1) The Site is fenced.
- (2) There is equipment or structures on the site, such as a wellhead. The site is rundown and very neglected.
- (3) The site is not being visited by the workers (including for reclamation work). It looks like the well on the Site was shut-in and left to rust.
- (4) The Land is being used for crops.

[34] The Panel notes that the AER Records show that the AER Licence No. 0399657 now held by Silverleaf is for a producing gas well. As a result, the Panel concludes there is equipment on the Site.

[35] In *Devon Canada Corporation v Alberta (Surface Rights Board)*, 2003 ABQB 7, 337 AR 135 ("*Devon*"), the Court of King's Bench considered the Tribunal's responsibility when considering an order under s. 36(5) and (6) and held at paragraph 29:

... the function of sections 36(5) and 36(6) appears to me to provide the surface owner with some assurance that if they cooperate with providing the oil industry access to their lands, they need not fear the operator will not pay them.

The sections provide a pragmatic solution whereby the surface owner need only prove the existence of a lease and that rent has not been paid. Upon proof of such, in most cases, the province would then pay the rent and the operator would then face the province, seeking reimbursement from the operator.

... if the ... owner's claim is unjustified, is patently absurd, or provides an unjust enrichment, the Board should be able to use its discretion under s. 36(6) to refuse to direct that Alberta taxpayers pay the rental arrears.

[36] According to *Devon*, the Panel's decision to direct the Minister to pay out of the General Revenue Fund is discretionary. This was confirmed by the Alberta Court of King's Bench in *Provident Energy Ltd v Alberta (Surface Rights Board)*, 2004 ABQB 650.

[37] In *Praskach Farms Ltd v Lexin Resources Ltd.*, 2020 ABSRB 85 ("*Praskach*"), the Tribunal concisely summarizes the scope of authority under section 36 of the Act, the factors to consider and the evidence needed to support a decision to direct the Minister to pay either the full amount of Compensation owing or a reduced amount if payment of the full amount is unjustified. The Tribunal held (at paragraph 10):

[10] There are two factors particularly important for considering annual compensation and whether directing the Minister to pay the full amount owing is unjustified. ... this is not a review of compensation under section 27, however, the loss of use and adverse effect are components of fair compensation which the Board can consider when determining if directing the Minister to pay the full amount owing is justified.

[38] The Panel adopts and applies the reasoning from *Praskach*. There is no evidence to convince the Panel that payment of the full compensation would result in overpayment to the Applicant. There are active equipment and structures on the Site, including a producing gas well. The Panel finds that the loss of use and adverse effect from the Site has continued to occur.

[39] The Minister is directed to pay a total of \$3,440.00 to the Applicant from the General Revenue Fund under section 36(6) of the Act.

Dated at the City of Calgary in the Province of Alberta this 12th day of April, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Tamara M. Bews, Member