



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: 599052 Alberta Ltd v Ember Resources Inc, 2024 ABLPRT 903125

Date: 2024-07-20

File No: RC2020.0356

Order No.: LPRT903125/2024

Municipality: Red Deer 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:

NE 1/4 23-35-23 W4M as described in Certificate of Title No.112 165 766 (the “Land”), particularly the area granted for Alberta Energy Regulator Licence No. 0398221 (the “Licence”), collectively (the “Site”).

Between:

Trident Exploration (Alberta) Corp.

And

Ember Resources Inc.,

Operator,

- and -

599052 Alberta Ltd.

Applicant.

Before: Janet Mitchell (“the Panel”)

Appearances by written submissions:

For the Applicant: Paul Vasseur

For the Operator: Not Represented

**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 ONE THOUSAND SEVEN HUNDRED FIFTY and 00/100 DOLLARS (\$1,750.00) (the “Compensation”) to 599052 Alberta Ltd. of Trochu in the Province of Alberta for compensation that became due in the years 2019.

DECISION AND REASONS

[1] The Applicant filed an application dated January 3, 2020, under section 36 of the *Act* (the Application) seeking recovery of unpaid compensation due under a Surface Lease Agreement dated July 18, 2007, for the above Site (the “Right-of-Entry Instrument”). The Applicant filed a Request to Amend the Application to claim subsequent outstanding amounts due under the right-of-entry instrument on October 5, 2023. The Applicant claims \$1,750.00 annually, for a total amount of \$8,750.00 under the Application for 2019 to 2023.

[2] The Site was suspended on March 24, 2017

ISSUES

1. Who is an Operator for the purpose of section 36 of the *Act*?
2. Is there money past due and unpaid by the Operator to the Applicant under a Right of Entry Instrument?
3. Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36(6) of the *Act*?

DECISION

1. For the purposes of section 36 of the *Act*, the Operator is Trident Exploration (Alberta) Corp. for the year 2019 and Ember Resources Inc. is the Operator for the period 2019 to 2023.
2. The written evidence proves compensation in the amount of \$1,750.00 is payable to the Applicant jointly by the Operators.
3. Without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of \$1,750.00 from the General Revenue Fund.

ANALYSIS

1. Who is an operator for the purpose of section 36 of the *Act*?

[3] The Tribunal gave notice pursuant to s. 36(4) to Ember Resources Inc. and the Panel is satisfied that the demand for payment and notice 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.

[4] Section 36(1) and (2) expands the definition of *operator* so that it has a broader meaning than in the rest of the *Act*.

Trident Exploration (Alberta) Corp.

Section 36(1)(c) – Alberta Energy Regulator (“AER”) Licence Holder

[5] Under section 36(1)(c) the holder of a licence issued by the AER and its successors, is an Operator. The Licence for the Site was in the name of Trident Exploration (Alberta) Corp. as of January 25, 2012, till December 29, 2019, therefore, the Panel finds this party is an Operator under section 36(1)(c) for the year 2019.

Ember Resources Inc.

Section 36(1)(c) – Alberta Energy Regulator (“AER”) Licence Holder

[6] Under section 36(1)(c) the holder of a licence issued by the AER and its successors, is an Operator. The Licence for the Site is in the name of Ember Resources Inc. as of December 30, 2019; therefore, the Panel finds this party is an Operator under section 36(1)(c) for the years 2019 to 2023.

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

[7] Under s. 36(1)(d) working interest participants and successors are Operators. The Panel finds that Ember Resources Inc. is an Operator under section 36(1)(d) for the years 2019 to 2023 because the AER Well Summary Report dated November 15, 2023, for the Licence shows it was a working interest participant on the Site as of December 30, 2019.

2. Is there money past due and unpaid by the Operator to the Applicant under a Right-of-Entry Instrument?

[8] The Certificate of Title confirms the Applicant is the owner, therefore, the Panel finds the Applicant is entitled to receive the money. The Applicant provided evidence of a Right-of-Entry Instrument and the compensation is supported by the Application and supporting documentation. The Applicant declared in writing that the Compensation has not been paid for the years claimed.

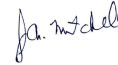
[9] In a letter dated July 22, 2022, Ember provided cheque stubs to show that the payments for 2020, 2021, 2022 and 2023 were made for the site. The Panel is satisfied that one year of compensation is owed to the Applicant for annual payment due under the Right-of-Entry Instrument. This amount is calculated as one payment of \$1,750.00 due for 2019 for a total amount owing of \$1,750.00. The Site is not reclaimed, and the Right-of-Entry Instrument remains in effect. The Panel finds that at the time the Compensation became due, the Operators are jointly liable for the Compensation due to the Applicant.

2. Should the Tribunal direct the Minister to pay the Applicant any of the money past due from the General Revenue Fund under section 36(6) of the Act?

[10] *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 specified that under s. 36 of the *Act*, the Applicant need only prove there is a Right of Entry Instrument and there is default on the payment, therefore, the Panel directs the Minister to pay the full amount owing. The Panel determined there is a right of entry instrument and money is owing, accordingly the Minister is directed to pay the Applicant \$1,750.00 from the General Revenue Fund.

Dated at the City of Edmonton in the Province of Alberta this 20th day of July 2024.

LAND AND PROPERTY RIGHTS TRIBUNAL



Janet Mitchell, Member