



**LAND AND PROPERTY RIGHTS TRIBUNAL**

**Citation:** Castlebar Farms Ltd. v. Topanga Resources Ltd., 2023 ABLPRT 904541

**Date:** 2023-07-12

**File No:** RCR2022.0239

**Order No.:** LPRT904541/2023

**Municipality:** County of Vermilion River

**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:

SE ¼-28-50-2-W4M as described in Certificate of Title No. 902 102 851 (the “*Land*”), particularly the area granted for Alberta Energy Regulator Licence No. 0412853 (the “*Licence*”), collectively (the “*Site*”)

**Between:**

Topanga Resources Ltd.

and

Brahma Resources Ltd.

Operators,

- and -

Castlebar Farms Ltd.

Applicant.

**Before:** Susan McRory (“the Panel”)

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**DIRECTION TO PAY  
PURSUANT TO SECTION 36(7) OF THE ACT**

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The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of FOUR THOUSAND TWENTY and 00/100 DOLLARS (\$4020.00) (the “Compensation”) to Castlebar Farms Ltd. for compensation that became due in 2021.

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**DECISION AND REASONS**

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[1] This matter concerns a repeat application under section 36 of the *Surface Rights Act* seeking recovery of unpaid compensation due under a surface lease agreement dated September 24, 2009 for the above site. The Applicants claimed \$4,020.00 annually for compensation due in 2021.

[2] The original decision of the Tribunal awarding compensation dates back to 2020 where the Landowner received payment from General Revenue for 2018 and 2019 (Decision 2020/0806, Direction to Pay 3805/2020) The sole operator at that time was identified as Topanga Resources Ltd. (TOPANGA) and its access rights were terminated effective November 20, 2020.

The Landowner also received payment for 2020. (Direction to Pay LPRT0296/2021)

[3] On January 10, 2022 a representative for the Landowner submitted a returning application. The Applicant indicated that although the site is not longer fenced, that workers are not visiting the site and the land is being used for crops, equipment remains that this equipment continues to interfere with farming operations:

The wellsite (2.99 acres) and access road (2.06 acres) comprise a total area of 5.05 acres. The wellhead and all production equipment, including two storage tanks occupy the well-site. All 5.05 acres were severed from highly productive cultivated farmland on a fully open quarter section of land. Absence of lease maintenance and the time spent dealing with non-payment of annual rentals has increased the adverse effect this lease has on farming operations.

[4] Records from the Alberta Energy Regulator (AER) dated August 30, 2022 confirmed that TOPANGA was still the Licensee with Rock Energy Inc. (ROCK) as the 100 % working interest participant effective March 28, 2016. Corporate Registry confirms the ROCK is an amalgamated company and that its amalgamation successor is Raging River Exploration Inc. (RAGING RIVER). In turn, RAGING RIVEW amalgamated with BAYTEX ENERGY Ltd. (BAYTEX)

[5] On that basis, Notice and Demands for Payment were issued and to BAYTEX on August 31, 2022 and TOPANGA requiring a reply with 30 days.

TOPGANGA did not respond.

[6] Although late, on October 27, 2022 BAYTEX did respond indicating that ROCK had sold the well in question to Brahma Resources Ltd. (BRAHMA) in 2015 and provided confirmation from the AER as to the transfer of the licence. According to the more recent Well Summary report obtained from the AER on Marcy 2, 2023, TOPANGA is now the 100 % working interest participant effective January 11, 2023. However, BRAHMA, as the successor in interest to ROCK would have been the working interest participant as of the date of non-payment being September 24, 2021.

[7] On May 1, 2023 Notice and Demand for Payment were issued to BRAHMA requiring a response within 30 days. There was no response.

### 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 Operators are Topanga Resources Ltd. and Brahma Resources Ltd.
2. The written evidence proves compensation in the amount of \$4020.00 is payable to the Applicants by the Operators jointly
3. Without further notice, the Tribunal directs the Minister to pay the Applicants the amount of Compensation in the amount of \$4020.00 for 2021.

### ANALYSIS

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

[8] This is a repeat application under section 36(7) of the Act. As the Minister has already made payment under section 36(6) with respect to TOPGANGA, there is no further requirement for notice. However, as new evidence established that 100% working interest held by ROCK has been sold to BRAHMA, notice was provided to BRAHMA. No response was received

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

[10] Under section 36(1)(c) the holder of a licence issued by the AER and its successors, is an Operator. The License for the Site is in the name of TOGANGA as of October 16, 2015, therefore, the Panel finds this party is an Operator under section 36(1)(c) in 2021.

[11] Under s. 36(1)(d) working interest participants and successors are Operators. The Panel finds that BRAHMA is an Operator under section 36(1)(d) for 2021 as there is evidence of a transfer from ROCK to BRAHMA that was approved by the AER in 2015. Successors in interest are operators under section 36(1).

#### ***2. Is there money past due and unpaid by the Operator to the Applicants?***

[12] The Certificate of Title confirms the Applicant is the owner, therefore, the Panel finds that the Applicant is entitled to receive the money. The Applicants have provided evidence of a surface lease agreement and the compensation is supported by the Application and supporting documentation. The Applicant has declared in writing that the Compensation has not been paid in 2021.

[13] The Panel is satisfied that compensation is owed to the Applicant for annual payment due under a surface lease agreement. The amount is calculated as one payments of \$4,020.00 due for 2021. The Site has not been reclaimed, and the Right-of-Entry Instrument remains in effect. The Panel finds that at the time the Compensation became due, the Operators were liable for the Compensation due to the Applicant.

**3. *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?***

[14] In *Devon Canada Corporation v Alberta (Surface Rights Board)* 2003 ABQB 7, 337 AR 135 (“*Devon*”), the Court considered the Tribunal’s responsibility when considering an order under s. 36(5) and (6) and held at paragraph 29 that the function of s. 36(5) and 36(6) appears to provide the surface owner with assurance that they need not fear the operator will not pay them. Further:

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.

[15] According to *Devon*, the Panel’s decision to direct the Minister to pay from the General Revenue Fund is discretionary. The Panel adopts the reasoning in *Praskach Farms Ltd. v Lexin Resources Ltd.*, 2020 ABSRB 85 where the Tribunal concisely summarized the scope of authority under section 36 of the Act, the factors to consider when directing the Minister to pay either the full amount of compensation owing or a reduced amount if payment if the full amount is unjustified. The Tribunal held (at paragraph 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.

[16] The Panel finds that the payment of the full amount owing would not result in overpayment to the Applicant as equipment on the site continues to impact farming operations. The Minister is directed to pay a total of \$4,020.00 to the Applicant from the General Revenue Fund under section 36(6) of the *Act*.

[17] The Operators remain responsible to pay the full amount owing.

Dated at the City of Edmonton in the Province of Alberta this 12<sup>th</sup> day of July 2023.

**LAND AND PROPERTY RIGHTS TRIBUNAL**



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Susan McRory, Chair.