



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Kingcott v Fairwest Energy Corporation, 2025 ABLPRT 904414

Date: 2025-07-23

File No: RC2024.0664

Order No: LPRT904414/2025

Municipality: Special Area 2

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 10-28-12-W4M as described in Current Certificate of Title No. 201 098 065 +5 and Historical Certificate of Title No. 001 184 625 +5 (cancelled May 29, 2020) (the “Land”), particularly the area granted for an access road in L.S. 3 and L.S. 4 to facilities licenced under Alberta Energy Regulator Licence No. 0441401 (the “Licence”).

Between:

Fairwest Energy Corporation,

Operator,

- and -

David Kingcott and Wendy Kingcott,

Applicants,

- and –

West Lake Energy Corp.,

Other Party.

Before: Steven Kelly, Member
 (“the Panel”)

Appearances by written submissions:

For the Applicant: Kris Bower, Land Agent, WellTraxx Ltd.

For the Operator: No submissions

For Others: Dave Clark, West Lake Energy Corp.

**DIRECTION TO PAY PURSUANT TO
SECTION 36 OF THE ACT**

The Tribunal directs the Minister to pay out of the General Revenue Fund the total sum of TWENTY SIX THOUSAND and 00/100 DOLLARS (\$26,000.00) jointly to David and Wendy Kingcott in the Province of Alberta, comprised of compensation that became due in the years 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023 and 2024 (the “Compensation”).

DECISION AND REASONS

BACKGROUND

[1] The Applicants filed an application dated May 16, 2024, under s. 36 of the *Act* (the “Application”) seeking recovery of unpaid compensation due under a surface lease agreement for the subject Land (the “Surface Lease”). The Applicants claim \$2,000.00 annually as unpaid compensation for the years 2012 through 2023, inclusive, for a total amount of \$24,000.00.

[2] The Applicants filed a Request to Amend the Application on December 2, 2024, claiming additional outstanding amounts due under the Surface Lease. The Applicants claim \$2,000.00 in annual compensation for 2024, bringing the total amount of the Application to \$26,000.00 as unpaid compensation for the years 2012 through 2024, inclusive.

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 Applicants under a Right of Entry Instrument?
3. Should the Tribunal direct the Minister to pay the Applicants any of the money past due under section 36 of the *Act*?
4. Should the Tribunal suspend and terminate the Operator’s rights?

DECISION

1. For the purposes of section 36 of the *Act*, the Operator is Fairwest Energy Corporation.
2. The written evidence proves compensation in the amount of \$26,000.00 is payable to the Applicants by the Operator.
3. Without further notice, the Tribunal directs the Minister to pay the Applicants Compensation in the amount of \$26,000.00 from the General Revenue Fund.
4. The decision to suspend or terminate the Operator’s rights is reserved.

ANALYSIS

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

[3] The Tribunal gave notice of unpaid compensation pursuant to s. 36(4) to the following entities on February 4, 2025: Fairwest Energy Corporation (“Fairwest”), Surge Energy Inc. (“Surge”), and West Lake Energy Corp. (“West Lake”). The notice identified these entities as Operators, owing to their status as Licensee or Working Interest Participant in the Alberta Energy Regulator Well Summary Report for Well 0485193.

[4] For the reasons given below, the Panel has determined that Fairwest is the sole Operator for the purposes of s.36 of the *Act*.

[5] The Panel has determined that the demands for payment and notice issued in relation to Well Licence 0485193 were issued in error. As sole Operator for Well Licence 0441401, only Fairwest should have received the demand for payment and notice relating to unpaid compensation under the Surface Lease.

Submissions

[6] West Lake made a written submission to the Tribunal on February 19, 2025, explaining what it saw as confusion in the Application between the well and the associated access road. West Lake noted that the well licence referred to in the Tribunal’s notice is 0485193, which has the well name 100-04-10-028-12W4 and surface location in the SW quarter of 11-28-12W4. West Lake submitted a map, highlighting the 0485193 well location, and showing an access road going west and north from the well site. It also submitted a survey plan showing the access route for well licence 0485193. Finally, it noted that West Lake has 100 percent working interest in 048193.

[7] West Lake made the following submission for the Surface Lease: the access road is located in the SW quarter of 10-28-12W4; the access road serves the well designated as 102-16-03-028-12W4; and the well has a surface location in the NW quarter of 3-28-12W4. West Lake included markings on its map to identify these facilities, as well as a survey plan for the well at this surface location, which has licence number 0441401. West Lake noted that it has no working interest in this well.

[8] West Lake submitted that it did not believe it was the operator of the Surface Lease, nor did it see any way that it could be using the access road to access its own surface lease (to the east of the subject Land) given that a water body was in between. West Lake stated that it would not make any payments for outstanding compensation for the Surface Lease pending a review by the Tribunal.

Reasons

[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] The Panel undertook an analysis of the subsections of s. 36 that are applicable to Well Licence 0441401, which is served by the access road on the subject Land.

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

[11] Under s. 36(1)(c) the holder of a licence issued by the AER and its successors, is an Operator. The subject Land is leased for the purpose of an access road to serve the site licenced by the AER under Well Licence 0441401. Fairwest Energy Corporation is the licence holder for the wellsite and access road as of December 15, 2011. Therefore, the Panel finds this party is an Operator under s. 36(1)(c) for the years 2012 through 2024.

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

[12] Under s. 36(1)(d), working interest participants and successors are Operators. The Panel finds that Fairwest is an Operator under s. 36(1)(d) for the years 2012 through 2024, because the AER Well Summary Report dated February 19, 2025, for Licence 0441401 shows Fairwest Energy Corporation to have 100 percent working interest in the Site as of December 15, 2011. The Panel finds that there are no other working interest participants, and therefore no other parties that would be Operators under s. 36(1)(d), for the years 2012 through 2024.

Section 36(1)(e) – Holder of a surface lease or right of entry order

[13] Under s. 36(1)(e) the holder of the surface lease or right of entry order for the Site and its successors, is an Operator. The Panel finds Fairwest Energy Corporation is an Operator for the purpose of s. 36(1)(e) on the due dates in 2012 through 2024 because it is named as the holder of caveat 111 323 802, a surface lease registered on the Certificate of Title before the Panel.

[14] Taken together, these provisions make clear that Fairwest is the sole Operator under s. 36 of the *Act*. Licence 0441401 is held by Fairwest Energy Corporation, Fairwest has been the licence holder and 100 percent working interest participant since the licence was issued, and Fairwest is named as the holder of a surface lease registered on title for the Land.

[15] Although West Lake did not explicitly request to be removed from these proceedings on the basis that it is not a party to the subject Surface Lease, the Panel finds its submission to provide compelling evidence for the Tribunal to reconsider the s. 36 notices that were issued to companies identified as Operators. This reconsideration addresses West Lake's status as Operator under Licence 0441401 and includes the other parties that received s. 36(4) notices.

[16] The access road at issue in this proceeding exists to provide access to the Licence 0441401 site. There is no evidence that any companies other than Fairwest use the access road, either to access the 0441401 wellsite (which they would have no reason to do) or to access other nearby wellsites.

[17] For greater certainty, Tribunal staff included the AER OneStop report and Well Summary Report for Licence 0485913 on the record of this proceeding, given that this was the licence cited in the s. 36(4) notices. West Lake Energy Corp. assumed the licence for well 0485913 on January 26, 2022, at which time it became the 100 percent working interest participant. This finding confirms the submission of West Lake as to its working interest.

[18] There are no parties having interest in both licences, 0441401 and 0485193, either currently or in the past. It follows that s. 36(4) notices sent to parties based on their having interest in Licence 0485193 were sent in error, as these parties have had no interest in the matter before this Panel. Notices sent to Surge, West Lake and Fairwest for past due compensation related to 0485193 are therefore rescinded.

[19] The Panel finds that a s. 36(4) notice for compensation owing to the Applicant should have been issued to Fairwest, given its status as Operator of the access road to the wellsite for Licence 0441401.

[20] Tribunal staff obtained corporate registration information for the entities named in this proceeding, on various dates, from the Alberta Corporate Registration System (CORES). A search dated July 31, 2024, confirms the status of Fairwest Energy Corporation as "Struck", as of February 2, 2015, for failure to file annual returns.

[21] The West Lake submission includes a Certificate of Dissolution under the *Canada Business Corporations Act*, which certifies the dissolution of Fairwest Energy Corporation as of June 26, 2015.

[22] As to the requirement to issue a new Notice and Demand for Payment for outstanding compensation due under the Surface Lease, the Panel concludes that in accordance with the *Interpretation of Section 36(4) of the Surface Rights Act Guideline 2020.1*, no notice to Fairwest Energy Corporation is required because it was struck more than five years ago.

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

[23] According to Alberta Land Title records provided to the Panel by the Tribunal administration, the registered owners of the Land for the relevant periods were as follows:

David Kingcott, from July 5, 2000, to May 29, 2020, as confirmed by Historical Land Title Certificate 001 184 625 +5 (Cancelled).

David and Wendy Kingcott, as Joint Tenants, from May 29, 2020, pursuant to a transfer of land registered on May 29, 2020 (the Current Certificate of Title 201 098 065 +5).

[24] In the absence of any evidence to the contrary, the presumption is that the person entitled to the compensation is that person named on the certificate of title at the time that the decision is made; see, e.g., *Canadian Natural Resources Limited v Mike-Ro Farms Ltd.*, ABSRB 420, para 31, 21, *Richardson et al. v. Tudor Corporation et al.*, 2021 ABSRB 1228(CanLII), *Ember Resources Inc. v. Simber Farms Ltd.*, 2020 ABSRB 805 (CanLII) and *Jones v. Lexin Resources Ltd.*, 2023 ABLPRT 657 (CanLII). Section 1(i) of the *Act* defines the owner as the person on the certificate of title.

[25] The Applicants provided a copy of the original Surface Lease, dated November 17, 2011. The evidence confirms that David Kingcott was the owner of the Land when the Surface Lease was executed.

[26] The Application (filed by David and Wendy Kingcott), the historical Certificate of Title (showing that David Kingcott was the sole owner from July 5, 2000 to May 29, 2020), and the current Certificate of Title (showing that David and Wendy Kingcott are the joint tenant owners as of May 29, 2020) provide sufficient evidence regarding ownership of the Land for the entire period that annual compensation under the Surface Lease came due.

[27] The Applicants and their representative (Kris Bowers, WellTraxx) submitted forms required by the Tribunal for the Initial Application and the amendment. The forms have been executed by both Applicants. Declaratory statements in the Application confirm that the Applicants have not received compensation due for the years shown (that is, 2012 through 2023 on the Initial Application and 2024 for the amended application).

[28] The Panel reviewed the terms and status of the Surface Lease. Annual compensation was set at \$2,000.00 under the terms originally agreed by the parties. There is no evidence to indicate a revised annual compensation amount was negotiated. As to the status of the Surface Lease, the Panel notes that the AER OneStop report for 0441401, filed on the hearing record by Tribunal staff, reports the well status as "Issued". There is no evidence that the wellsite is reclaimed. Therefore, the Surface Lease for the access road remains in effect.

[29] The Panel finds it appropriate to consider the matter of the delay in the filing of the Application, noting that the Tribunal may deny payment of unpaid past compensation that became due more than five years before the application was received (in this case before 2019). The Panel is mindful of the Board's decision, in *Nelson v Canoke Petroleum Company* 2018 ABSRB 372 ("*Nelson*"), which considered an application for recovery of unpaid compensation that went back 24 years. That decision held:

[19] When landowners make claims for unpaid compensation that are current and relate to recent activities on a site, the Board can exercise its discretion and make a finding on actual loss. However, when landowners come forward with claims seeking payment for many years in the past, this task becomes more difficult, if not impossible. While the courts have confirmed that there is no statutory limitation to apply under section 36 for relief from the Board (*Devon* at para 2 and *Provident* at para 38), the Board's view is that delay is still a relevant factor to consider.

[20] When there is a delay of 24 years in applying to the Board for relief, memories fade and fail; witnesses are no longer available; land ownership changes; operators change or cease; and information, documents and other potentially important information surrounding the site and the remaining land are lost or no longer available. The longer the delay, the more difficult it is for the Board to use its expertise to determine the facts surrounding the case and assess the loss of use and adverse effect in any meaningful way. Further, it is difficult to assess whether payments have been made. There may not be any information available regarding clean up or steps toward reclamation of the site or other compensation that may have been paid to the owner after an operator ceased using the lands.

[21] Considering the significant challenges caused by a delay advancing a claim for unpaid rent, the Panel finds that a period of five years is reasonable as a benchmark for considering unpaid compensation under section 36 of the *Act*. Landowners that wish to have the rate of compensation reviewed have an option to make an application to the Board every five years under section 27. A five-year period is a reasonable amount of time to establish the facts surrounding the loss of use and adverse effect related to a site.

[30] This Panel agrees with the reasons in *Nelson*. However, in this case, there is good continuity of evidence and information regarding ownership of the Land for the period during which compensation is claimed. There is proof of the Surface Lease, well license and well status. The Applicants filed no information about the condition of the Site, however it is accepted that the Operator is insolvent and is not accessing it. There is no evidence that the Site has been reclaimed.

[31] On the balance of probabilities, the Panel concludes that compensation owed to the Applicants under the Surface Lease has not been paid. The Panel finds that the compensation claim is supported by the Application and supporting documentation. This amount owing is calculated as thirteen (13) annual payments of \$2,000.00 due for 2012 through 2024, inclusive, for a total of \$26,000.00.

[32] The Panel finds no evidence that the Applicants have requested any arrangement for payment of outstanding compensation other than to them as current joint tenant owners of the Land. The order has therefore been issued to the Applicants on this basis.

3. Should the Tribunal direct the Minister to pay the Applicants any of the money past due from the General Revenue Fund under section 36 of the *Act*?

[33] *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 (a valid Surface Lease) and money is owing, accordingly the Minister is directed to pay the Applicants \$26,000.00 from the General Revenue Fund.

4. Should the Tribunal suspend and terminate the Operator's rights?

[34] The Tribunal can suspend and terminate an operator's rights to access the Land when appropriate. The Panel reserves its decision to suspend and terminate at this time to avoid delay in payment to the

Applicants, given that the Operator (Fairwest Energy Corporation) is insolvent and is not accessing the access road on the subject Land. However, if the Operator attempts to use the access road in the future, but has not paid the compensation owing, the Tribunal may issue a suspension/termination order.

Dated at the City of Calgary in the Province of Alberta this 23rd day of July, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

Steven Kelly, Member