



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: De Beaudrap v Ember Resources Inc, 2025 ABLPRT 902876

Date: 2025-05-26

File No: RC2019.2545

Order No: LPRT902876/2025

Municipality: Kneehill 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:

SE-23-32-22 W4M, as described in Certificate of Title No. 241 273 052 +2, particularly the area granted for a well site and roadway in LSD 7 by Alberta Energy Regulator Licence No. 0344521 (the “Licence”), collectively (the “Site”).

Between:

Trident Exploration (Alberta) Corp.
and
Ember Resources Inc.,

Operators,

-and-

Jacques Louis De Beaudrap
and
Eileen De Beaudrap,

Applicants,

-and-

Michael Francis Kubinec
and
Wendy Jean Kubinec,

Former Landowners,

-and-

Brandi Jean Marie Rosgen,

Current Landowner.

Before: Susan McRory (“the Panel”)

Appearances by written submissions:

For the Applicant: Paul Vasseur, representative.

For the Operator Ember Resources Inc: Kari Swennumson, Lead, Surface Land Coordinator

**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 ONE THOUSAND NINE HUNDRED TWENTY-TWO and 63/100 DOLLARS (\$1,922.63) to Brandi Jean Marie Rosgen in the Province of Alberta, comprised of compensation that became due in the year 2019.

**SUSPENSION ORDER
SECTION 36(5)(a) OF THE ACT**

IT IS ORDERED that Ember Resources Inc.'s right to enter the site is suspended immediately under section 36(5)(a) of the Act. This does not affect any of the Operator's obligations, nor any other person's rights against the Operator(s). The Right-of-Entry Instrument remains in place for purposes of shutting-in, suspension, abandonment, and reclamation.

DECISION AND REASONS

SUMMARY

[1] This matter began with an application under section 36 seeking compensation for a missed payment in 2019. The rate of annual compensation was reported to be \$3,655.00. While no copy of the original surface lease was provided, registered on title was a caveat protecting a surface lease dated August 12, 2005. There was clear evidence as to the last payment made for a rental period described as "From Aug 12/2018 To Aug 11/2019." It was later determined that a partial payment of \$1,732.37 had been made.

[2] On January 9, 2025, this Panel issued Order LPRT900143/2025 which identified the operators as Trident Exploration (Alberta) Ltd. (TRIDENT) and Ember Resources Inc. (EMBER).

However, given the change in the ownership of the site, this Panel directed that notice of these proceedings be provided to the current landowner and that all parties should be given an opportunity to provide submissions. A detailed chronology of events is outlined in Order LPRT900143/2025 and will not be repeated here.

[3] On April 25, 2025 the current landowner responded indicating as follows:

I, Brandi Rosgen, am the current landowner of SE ¼, 23-32-22 W4M as of October 21, 2024. Therefore, I am entitled to the compensation.

The current certificate of title confirms that Ms. Rosgen is the owner of the land. There are no caveats on title with respect to an assignment of rentals to any other party.

[4] On April 2, 2025, Order LPRT901583/2025 extended the time for providing submissions to ensure that all parties had an opportunity to respond. There has been no reply.

This Panel is prepared to proceed.

ISSUES

1. Is there money past due and unpaid by the Operator(s) to the Applicant under a Right of Entry Instrument?
2. Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36 of the Act?
3. Should the Tribunal suspend and terminate the Operators' rights?

DECISION

1. The written evidence proves compensation in the amount of \$1,922.63 is payable to Brandi Jean Marie Rosgen by the Operators, jointly.
2. Without further notice, the Tribunal directs the Minister to pay Brandi Jean Marie Rosgen Compensation in the amount of \$1,992.63 from the General Revenue Fund.
3. Ember Resources Inc.'s right to enter the site is suspended **immediately**.

ANALYSIS

Is there money past due and unpaid by the Operator(s) to the Applicant under a Right of Entry Instrument?

[5] As discussed in Order LPRT900143/2025, the original applicants Jacques De Beaudrap and Eileen De Beaudrap are not the owners of the land. The land was sold to Michael Francis Kubinec and Wendy Jean Kubinec effective February 10, 2021 and then to Ms. Rosgen effective October 21, 2024.

[6] As discussed in LPRT900143/2025, because a surface lease is an interest in land, the right to entitlement flows with the land.

In the absence of evidence to the contrary, the current owners would be the persons entitled to be paid. Upon transfer or sale, there are steps that the parties can take to ensure that payment continues to go to the original owner and to protect that interest by way of caveat. There is no caveat on title to suggest this has been done.

[7] In this case, notice of the proceedings was provided to Michael Francis Kubinec and Wendy Jean Kubinec. The Kubinecs did not respond.

[8] Notice of these proceedings was provided to Ms. Rosgen, and she has responded. All parties were given an opportunity to respond but no further submissions have been provided.

[9] Therefore, this Panel finds that Brandi Jean Marie Rosgen, as the current owner of the land, is the person entitled to receive the money. The original application includes evidence of a Right-of-Entry Instrument, and the compensation is supported by the Application and supporting documentation.

While none of the intervening owners have declared in writing that the Compensation has not been paid for 2019, in its submissions regarding a partial payment, EMBER has confirmed that the balance of the payment due in 2019 remains outstanding.

On that basis, this Panel is satisfied that compensation is owed to Brandi Jean Marie Rosgen for annual payment due under the Right-of-Entry Instrument. This amount is calculated as one payment of \$3,655.00 due for 2019 minus a partial payment of \$1,732.37 for a total amount owing of \$1,922.63. 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 were jointly liable for the Compensation due to Brandi Jean Marie Rosgen.

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

[10] This application predates the decision of the Court of King's Bench in Bateman v Alberta (Surface Rights Board), 2023 ABKB 640. In Bateman, Justice Carruthers specified that under s. 36 of the *Act*, the Applicant need only prove there is a Right of Entry Instrument and default on the payment, and that absent extraordinary circumstances, the Minister should be directed to make full payment.

However, in this case, the status of the License is "Issued" and on a pre-Bateman analysis, full payment is justified. Therefore, the Minister is directed to pay Brandi Jean Marie Rosgen \$1,922.63 from the General Revenue Fund.

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

[11] EMBER is the current Licensee and 100% working interest participant. The status of the License is "Issued". EMBER is a sophisticated operator and is aware of the direction from the Court that a Vesting Order does not protect a subsequent purchaser. EMBER is aware of these proceedings and has chosen not to provide further submissions. EMBER is an active corporation. An active corporation should not be able to profit from the land without paying the landowner. Proper Notice was provided to EMBER, but EMBER did not make full payment. Accordingly, this Panel suspends EMBER's right to enter the site **immediately**. The Panel decides not to terminate at this time to avoid delay in payment to Brandi Jean Marie Rosgen.

Dated at the City of Edmonton, in the Province of Alberta this 26th of May, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

Susan McRory, Chair