



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Keichinger v Brahma Resources Ltd., 2025 ABLPRT 907574

Date: 2025-10-03
File No: RC2024.1076
Order No: LPRT907574/2025
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:
NE 22-51-3-W4M as described in Certificate of Title No. 232 364 049 +1 (the “*Land*”), particularly the area granted for a well site in L.S. 9 by Alberta Energy Regulator Licence No. 0403382 (the “*Licence*”), collectively (the “*Site*”).

Between:

Brahma Resources Ltd.,
and
Topanga Resources Ltd.,

Operators,

- and -

Henry George Keichinger,
and
Cindy Sorley-Keichinger,

Applicants.

Before: Megan Lee Perry (“the Panel”)

Appearances by written submissions:

For the Applicants: Agri-Energy Partners Ltd.

For the Operators: None

**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 THIRTEEN THOUSAND SEVEN HUNDRED THIRTY-ONE and 25/100 DOLLARS (\$13,731.25) to Henry George Keichinger in the Province of Alberta comprised of compensation that became due in the years 2021, 2022, 2023, and 2024 (the "Compensation") and costs awarded in this Order.

DECISION AND REASONS

BACKGROUND

[1] Henry George Keichinger and Cindy Sorley-Keichinger filed a first-year application dated August 19, 2024, under section 36 of the Act, together with a request to amend application (collectively, the "Application") seeking recovery of unpaid compensation due under a surface lease agreement, consent of occupant agreement, or Compensation Order for the above Site (the "Right-of-Entry Instrument") dated October 7, 2008. The Applicants claim \$3,400.00 annually, for a total amount of \$30,600.00 under the Application for the years 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024. The Applicants also request costs in the amount of \$630.00 related to this proceeding.

[2] The Land was previously owned by Henry George Keichinger's father, William Andrew Keichinger. William Andrew Keichinger passed away on July 23, 2021. The Applicants provided a copy of his Certificate of Death, together with a Notarial Certificate attesting it is annexed to a true copy of the Last Will and Testament of William Andrew Keichinger and stating that Henry George Keichinger is named as the executor therein.

[3] A Historical Land Title Certificate shows that the Land was transferred into Henry George Keichinger's name as executor for William Andrew Keichinger on November 27, 2023. That same day, the Land was transferred from Henry George Keichinger in his capacity as executor, into Henry George Keichinger's name personally.

[4] In support of their Application, the Applicants provided a First Year Declaration signed by Henry George Keichinger and Cindy Sorley-Keichinger, certifying they are entitled to the Compensation claimed and that none of the Compensation claimed has been received. A second First Year Declaration certifying the same was provided by Henry George Keichinger in his capacity as executor for the estate of William Andrew Keichinger.

ISSUES

1. Who is entitled to any outstanding Compensation?

2. Who is an Operator for the purpose of section 36 of the *Act*?
3. Is there money past due and unpaid by the Operators under a Right of Entry Instrument?
4. Should the Tribunal direct the Minister to pay any of the money past due under section 36 of the *Act*?
5. Should the Tribunal suspend and terminate the Operators' rights?
6. Should the Tribunal award costs under section 39 of the *Act*?
 - a. If costs are awarded, should the Tribunal direct the Minister to pay those costs to the Applicants without further process?

DECISION

1. Henry George Keichinger is entitled to any outstanding Compensation.
2. For the purposes of section 36 of the *Act*, the Operators are Brahma Resources Ltd. and Topanga Resources Ltd.
3. The written evidence proves compensation in the amount of \$13,600.00 is payable to the Applicant, Henry George Keichinger, by the Operators jointly.
4. Without further notice, the Tribunal directs the Minister to pay Henry George Keichinger Compensation in the amount of \$13,600.00 from the General Revenue Fund.
5. The decision to suspend or terminate the Operators' rights is reserved.
6. The Operators shall pay costs to Henry George Keichinger in the sum of \$131.25 including GST.
 - a. The Tribunal directs the Minister to pay costs in the amount of \$131.25 without further process.

ANALYSIS

1. *Who is entitled to any outstanding Compensation?*

[5] Before the Panel can assess whether compensation is outstanding, it is necessary to first determine to whom compensation would be owing for the years the Applicants have claimed. Section 1(i)(i) of the *Act* defines "owner" as the person named in the certificate of title. The current certificate of title lists Henry George Keichinger as the owner of the Land. In their written submissions, the agent for the Applicants clarified that they had Henry George Keichinger sign a declaration both in his personal capacity and as executor for the estate of William Andrew Keichinger, to ensure all title holders

were accounted for. They further note that “any years due to William Keichinger are now due to his estate...”

[6] The Panel finds that Henry George Keichinger is entitled to receive any outstanding compensation. The decision of the Tribunal in *Canadian Natural Resources Limited v Mike-Ro Farms Ltd.*, ABSRB 420 (“Mike-Ro”) deals with the nature of the interest created by a surface lease in paragraphs 31 and 32:

Upon the sale of the property and transfer of the lease, the new owner essentially steps into the shoes of the previous Lessor. Upon the sale of the property and transfer, the past Lessor, unless specifically addressed in the transfer arrangement, ceases to be a Lessor and ceases to be entitled to receive compensation under the surface lease.

A surface lease is an interest in land. Without evidence to the contrary, the rights and obligations of the Lessor under s. 27 flow from the previous Lessor to the new Lessor with the transfer of the land . . .

[7] The *Mike-Ro* decision has been followed in *Richardson et al v. Tudor Corporation et al*, 2021 ABSRB 1228 (CanLII), *Ember Resources Inc v Simber Farms Ltd.*, 2020 ABSRB 805 (CanLII) and, most recently, *Jones v Lexin Resources Ltd.*, 2023 ABLPRT 658 (“Jones”).

[8] As explained in the *Jones* decision at paragraph 25:

The relevant date for determining whose name is on the certificate of title is the date that the decision was made by the Tribunal. The *Act* speaks in the present tense. Under section 36(6) the Tribunal has the discretion to order that the Minister pay the “person referred to in subsection (3)”. Subsection 3 provides as follows:

Where any money payable by an operator under a compensation order or surface lease has not been paid and the due date for its payment has passed, the person entitled to receive the money may submit to the Tribunal written evidence of the non-payment.

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In the absence of evidence to the contrary, the current owner named on title is the person entitled to receive payment, even if deceased. Such an interpretation is consistent with the purpose of compensation under the *Act*: to compensate the owner for loss of use for the land taken and for adverse effect to the remaining land. A person who is no longer the owner of the land does not suffer loss of use or adverse effect. (emphasis added)

[9] Cindy Sorley-Keichinger is not nor was she during the years for which compensation is alleged to be outstanding, a registered owner of the Land. Accordingly, she is not entitled to any of the Compensation. The Panel acknowledges that although

the Applicants did state the estate of William Andrew Keichinger would be entitled to any compensation the deceased would be entitled to, they do not present any argument that the deceased ought to receive any of the outstanding compensation. This Panel adopts the reasoning of the aforementioned decisions and finds that the current landowner, Henry George Keichinger, is entitled to receive any outstanding compensation.

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

[10] The Tribunal gave notice pursuant to s. 36(4) to Brahma Resources Ltd. as well as Topanga Resources Ltd., 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.

[11] 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) – Alberta Energy Regulator (“AER”) Licence Holder

[12] 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 Brahma Resources Ltd. (“Brahma”) as of February 15, 2013. The panel notes that the Applicants submitted correspondence from Topanga Resources Ltd. (“Topanga”) dated December 17, 2015, wherein Topanga indicated that effective September 1, 2015, Brahma had assigned its interest in certain surface leases, including the Site, to Topanga. However, it is unclear specifically what rights were assigned. The Panel notes Brahma received notice of this Application and was therefore afforded the opportunity to provide written submissions in the event they objected to their inclusion in the Application. The Panel therefore finds that Brahma as the licence holder for the Site, is an Operator under section 36(1)(c) for the years 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.

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

[13] Under s. 36(1)(d) working interest participants and their successors are Operators. An AER Well Summary Report dated March 9, 2025, shows Brahma as 100% working interest participant as of February 15, 2013. The Panel therefore finds that Brahma Resources Ltd. is an Operator under section 36(1)(d) for the years 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024 because the AER Well Summary Report dated March 9, 2025, for the Licence shows it was a working interest participant on the Site as of February 15, 2013.

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

[14] Under section 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 Topanga Resources Ltd. (“Topanga”) is an Operator for the purpose of section 36(1)(e) on the due dates in 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024 because it is named as the

successor to the former surface lease holder, Brahma, as indicated in its own correspondence to the former landowner.

3. *Is there money past due and unpaid by the Operators under a Right-of-Entry Instrument?*

[15] The next issue is whether there is sufficient evidence to conclude that the Compensation is outstanding. The Applicants provided evidence of a Right-of-Entry Instrument, and the Compensation rate is supported by the Application and supporting documentation, including the original lease agreement and a letter from Topanga Resources Ltd. evidencing payment for the 2015 year. The Applicants declared in writing that the Compensation has not been paid for the years claimed, noting that payment was last received in 2015.

[16] As an executor for his father's estate and subsequently in his personal capacity, the panel is satisfied that Henry George Keichinger is in a position to speak to the outstanding compensation for the years 2021, 2022, 2023, and 2024. However, no documentation or further explanation has been provided to the Panel to explain how the Applicants can confirm compensation was not received for the years claimed prior to 2021. In *Wetter Estate v Aries Resources Ltd*, 2017 ABSRB 565 the board found that when an application is brought on behalf of a deceased landowner, evidence of non-payment must come from someone with personal knowledge of the deceased's finances. Past decisions have found that a statutory declaration from a person who would have personal knowledge of the deceased landowner's finances, such as their former power of attorney or accountant, confirming that the compensation was not received was sufficient evidence of non-payment (see for reference: *Schwarzenberger v Canadian Oil and Gas International Inc*, 2019 ABSRB 892, *Marks v Verity Energy Ltd*, 2019 ABSRB 238, and *Halvorson v Redwater Energy Corp*, 2024 ABLPRT 653.). Although the Panel has determined that Henry George Keichinger, as the current landowner, is entitled to receive any outstanding compensation, the Panel does not have any evidence before it to confirm or substantiate that William Andrew Keichinger did not receive payment for the years he was alive and the owner of the Land.

[17] The Panel finds it does not have sufficient evidence to confirm non-payment of the Compensation for the years 2016, 2017, 2018, 2019, or 2020. However, the Panel is satisfied that compensation is owed to Henry George Keichinger for annual payment due under the Right-of-Entry Instrument for the years 2021, 2022, 2023, and 2024. This amount is calculated as four payments of \$3,400.00 for a total amount owing of \$13,600.00. The Site is not reclaimed, and the Right-of-Entry Instrument remains in effect. The Panel finds that the Operators are liable for the Compensation due to Henry George Keichinger.

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

[18] *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 specified that, barring exceptional circumstances, 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 Henry George Keichinger the sum of \$13,600.00 from the General Revenue Fund.

5. *Should the Tribunal suspend and terminate the Operators' rights?*

[19] The Tribunal can suspend and terminate an operator's rights to access the Site when appropriate. The Panel reserves its decision to suspend and terminate at this time to avoid delay in payment to the Applicant, however, if either of the Operators attempts to access the Site but still does not pay compensation, the Tribunal may issue a suspension/termination order.

6. *Should the Tribunal award costs under section 39 of the Act?*

[20] The Applicants retained the services of Agri-Energy Partners Ltd. for representation in this matter and seek recovery of their costs for same. Agri-Energy Partners Ltd. supplied their invoice in the sum of \$420.00, for four hours at \$100 per hour plus GST, together with a second invoice in the sum of \$210.00 for two hours at \$100 per hour plus GST. The description of their work performed includes client meetings to discuss missing payments, collection of signatures, scanning of documents, completion and submission of application, file tracking, follow up communication, and any additional administration. The second invoice was for the amendment filed to include the 2024 year.

[21] Section 39(1) of the *Act* puts costs of and incidental to proceedings under the *Act* in the discretion of the Tribunal. Rule 31(2) the *Surface Rights Board Rules* provides guidance as to the factors the Tribunal may consider when awarding costs.

[22] In *Bear Canyon Farms Holdings Ltd v Apex Energy (Canada) Inc*, 2018 ABSRB 64, ("*Bear Canyon*") the Tribunal held:

[17] A factor weighing towards a lower costs award is the low complexity of the proceedings. Board administration provides a reasonably short application form (2 pages) for section 36 applications and drafts the required statutory declaration for applicants. The vast majority of the information requested on the form, such as Applicant's name, land description, rate of annual compensation, and year(s) claimed for unpaid compensation are generally within the knowledge of applicants. The proceedings are entirely by writing and are usually unopposed by the Operator. In the majority of these kinds of straightforward section 36 applications, applicants are able to file all paperwork by themselves and do so correctly.

[18] Board administration performs all necessary searches, including searches for the responsible operator and its insolvency status; Board administration prepares a statutory declaration which the Applicant is requested to swear before commissioner of oaths; and the Board

convenes a Panel to make a determination, generally without an in-person hearing."...

[20] ...in the opinion of the [p]anel, an experienced professional should usually be able to file a section 36 application within one hour or less.

[23] This Panel applies the reasoning in *Bear Canyon* and awards costs for one hour of professional assistance at a rate of \$100.00 per hour plus 5 percent GST in the sum of \$5.00, for completion of the first application. The Panel recognizes additional time was incurred to file the Request to Amend Application, however the paperwork for same is even more straightforward and inherently should require significantly less time than an initial application. The Panel awards costs for an additional 15 minutes of professional assistance at a rate of \$100.00 per hour, being the sum of \$25.00 plus 5 percent GST being \$1.25. The total cost awarded is therefore \$131.25.

[24] Costs in the amount of \$131.25 are payable by the Operators to Henry George Keichinger.

COSTS ORDER

[25] IT IS ORDERED that costs in the amount of ONE HUNDRED THIRTY-ONE and 25/100 DOLLARS (\$131.25) are payable by the Operators to Henry George Keichinger.

6a. If costs are awarded, should the Tribunal direct the Minister to pay those costs to the Applicant without further process?

[26] The claim for costs is part of the application process and operators have the ability to review the entire Tribunal file which includes the costs claim. Directing the Minister to pay the costs without further process results in efficiency and expeditious payment without incurring further costs.

[27] The Direction to Pay for costs will issue immediately.

Dated at the City of Edmonton in the Province of Alberta this 3rd day of October, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

Megan Lee Perry, Member