

File: 1490

ARBITRATION ORDER 373A

Parties to the Arbitration:

Imperial Oil Resources Ltd.
237 4th Avenue, S.W.
Calgary, Alberta
T2P 3M9

Applicant

Dennis Raymond Nelson
Mavis Eileen Nelson
Box 14
Goodlow, British Columbia
V0C 1S0

Respondent

Arbitration hearing date: 15 October 2003

The Applicant, Imperial Oil Resources Ltd., (Imperial) filed an application 17 April 2003 with the Mediation and Arbitration Board under the Petroleum and Natural Gas Act for the right to enter land owned by the Respondents Dennis Raymond Nelson and Mavis Eileen Nelson, (Nelsons), for the stated purposes of "continued operation of a well to produce oil," and to fix compensation payable for the entry, occupation and use of the land.

Imperial requests the right to enter from the Board under section 9 (1) (b) of the Petroleum and Natural Gas Act, which states:

9 (1) A person may not enter, occupy or use land, other than Crown land to explore, for, develop or produce petroleum or natural gas, or explore for, develop or use a storage reservoir unless

(a) the person makes, with each owner of the land, a surface lease in the form and content prescribed authorizing the entry, occupation or use,

(b) the board authorized the entry, occupation or use, or

(c) as a result of a hearing under section 20, the board makes an order specifying terms of entry, occupation and use, including payment of rent and compensation.

Imperial had made application previously in this matter, and had withdrawn its application in February 2003. Imperial's application contained the additional statement that the application was "made solely in response to a directive from the Oil and Gas Commission;" as the Oil and Gas Commission was of the opinion that Imperial did not have tenure over the well site. Relief was urgently sought by Imperial as the Oil and Gas

Commission was prepared to issue an order requiring the well be "shut in". Imperial's application states "this enforcement action forces Imperial oil Resources into the untenable position of arguing against the need for the Right of Entry its application seeks."

Background

In 1988, the Respondents applied for and were granted an Agricultural Lease from the Crown under lease #802950, dated 20 July 1988, for lands known as NE ¼ Section 5 and the SE ¼ Section 8, Township 84, Range 14, West of the 6th Meridian.

Situated on the lands was a well producing oil known as "EAGLE ET AL BOUNDARY 8 - 8 - 84 - 14 W6M". Eagle Resources Ltd. had acquired permission to construct the well on what was then Crown land in August 1984, and made application for surface tenure, pursuant to the Lands Act, and received conditional approval in March 1985. The conditions required to obtain a "long term tenure" disposition under the Lands Act was not met.

On 1 September 1985, Imperial became the operator of the well, and duly gave notice to the appropriate agencies. Imperial acknowledges Imperial did not pursue the Lands Act disposition from the Crown.

Eagle Resources had been granted "long term tenure" as documented in the Land and Water British Columbia Inc. file # 8001399 and well authority # 6101. A subsequent Crown file # 8002367, and a temporary permit was issued. When the well was assigned from Eagle Resources to Imperial Oil Resources Ltd., the Client Services Coordinator of the BC Land and Water Branch made numerous requests to Imperial for document submission. Despite the requests, Imperial did not submit the requested information. According to a note to file dated 27 September 2002, file # 8001399 was cancelled because Imperial did not submit the transfer agreement despite the numerous requests (from 1987 to 1994) by Land and Water British Columbia Inc. The cancellation was prior to the Agricultural lease being issued to the Respondents.

Since 1988, the Respondents made the required improvements and payments such that they obtained a Crown grant of the lands #7476/1345 on 19 August 2002, and title was registered in their names. This title included the area covered by Imperial's well site. Had Imperial pursued the Lands Act disposition, that area would have been exempted from the grant and so noted on title, and Imperial would have its tenure, and would not require acquisition of the rights to enter, occupy and use the lands.

Position of the Parties

Imperial seeks to rely on a combination of sources to perpetuate the rights it could have obtained, had it pursued the Lands Act disposition. Imperial asks the Board to interpret the Lands Act, the reservations in the Agricultural Lease and in the Crown Grant issued to the Nelsons under the Lands Act, and section 7 of the Petroleum and Natural Gas Act to mean that its rights, acquired from the predecessor operator are of a quality or kind which obviated the need to register, and thereby give notice of its interest, under the Land Title Act. Imperial also asks the Board to find Imperial has pre-existing rights and therefore no compensation is owed to the Nelsons. Imperial is unable to produce any documents which give them undeniable tenure rights to the Lands which are the subject of their application.

In effect, that the rights Imperial acquired from Eagle Resources Ltd. are of the same nature of kind as the Crown's reservation of mineral rights. Imperial asserts that this Board lacks the jurisdiction to determine this question of law.

Imperial correctly states that both parties operated under mistaken beliefs. The Nelsons knew there was a well and assumed that Imperial had acquired a Crown disposition in respect to the area covered by the well site, and therefore they were not entitled to compensation. After title was issued to the Nelsons, Imperial negotiated with them for a surface lease, and then resiled from that position, asserting it did not need a surface lease or Right of Entry.

Nelsons assert that they are the owners of the land, the title stands, and that Imperial does not have the right to enter on their lands. They ask the Board to find that as Imperial is claiming ownership of the well site, they are owed compensation since the effective date of the Agricultural Lease, and they have complied with all requirements of the Agricultural Lease prior to the purchase of the lands and issuance of title on which the well site is located. They have paid taxes on the whole of the land, including the area covered by the well site, though not on the improvements on the well site, since 1988.

They are willing to grant a surface lease on terms, or to have the Board issue an order granting Imperial the right to enter, occupy and use their land, with conditions including but not limited to the appropriate compensation for the entry, occupation and use.

Issues

The parties did not agree on the following:

1. Unhindered access to, occupation and use of the well site by the Applicant to produce oil;
2. If compensation is owed to the Respondents, the effective date - that is from when the Agricultural lease was granted or when title was granted;
3. Amount of annual and/or initial compensation owed to the Respondents; and
4. Costs to the parties.

Discussion

What is before this Board is an application for a Right of Entry by Imperial, to allow it to operate its well situated on land owned by the Nelsons.

The evidence is clear that the Nelsons own the land on which Imperial's well is located.

Can or should this Board look beyond the evidence of title to determine whether Imperial's pre-existing right to operate its well, this right granted by the Crown, survived the issuance of title to the Nelsons?

Imperial was given ample notice of the Crown's intention to grant title. Imperial was familiar with the requirements of the Petroleum and Natural Gas Act and received some notification in addition to prompt it to complete requirements. Imperial also received notice that it must take steps to preserve its rights.

The Board finds that in choosing not to do so, Imperial let its inchoate rights lapse. That lapse occurred before title was issued to the Nelsons; there was nothing to carry forward. To adopt Imperial's position would involve ignoring the effect of s 23 of the Land Title Act. Imperial could have had the well site excepted, but it did not. Thus the Nelsons are indefeasibly entitled to an estate in fee simple to the land. The right to drill the well on Crown land was acquired through section 7 of the Petroleum and Natural Gas Act, and once title was issued, the relevant section is section 9.

Compensation needs to be determined; the questions are as to whether there should be an initial payment, and for how many years, i.e. from the date of the Agricultural lease or the issuance of title?

The Board finds that as Nelsons have paid taxes on the whole of the land since 1988, the appropriate effective date is the granting of the Agricultural lease - that is 1988. The Board awards the Respondents for the taking of the lands since 1988 to present, the amount of forty three thousand, four hundred and ninety four dollars (\$ 43,494.00) plus interest calculated in accordance with the Court Order Interest Act R. S. B. C. 1996 and amendments thereon. The Board finds that the appropriate compensation for the five years from the date of this order is \$ 3,500.00 per annum, which is due and payable on the anniversary date of this order.

As to whether there should be an "initial taking" payment, there was in fact no initial taking as the well was in production before the Nelsons applied for and were granted the Agricultural Lease, and there was no compulsory aspect to the taking. The Board declines to award compensation for "initial taking".

The Board awards to the Respondents costs for travel and inconvenience in the amount of five thousand dollars (\$ 5,000.00).

The Board finds that Imperial should have the right to enter upon the land to operate the well and produce oil, and therefore grants to the Applicant that right.

ORDER

The Board orders:

- (a) the Applicant to pay to the Respondent forty eight thousand, four hundred and ninety eight dollars (\$ 48,494.00) plus interest calculated in accordance with the Court Order Interest Act R. S. B. C. 1996 and amendments thereon, by 4:00 p.m. on 16 April 2004.
- (b) execute a standard surface lease incorporating the annual compensation in the amount of \$3,500.00 and incorporating the Surface Lease Regulation (B. C. Reg. 497/74), for the well site as outlined in the Individual Ownership Plan drawn by McElhanney Associates, dated 18 September 2002;
- (c) pursuant to section 25 (3) of the Petroleum and Natural Gas Act, Imperial Oil Resources Ltd. will file a copy of the surface lease with the Land Title Office for registration; and
- (d) comply forthwith as expeditious as is reasonable.

Dated at the City of Fort St. John, British Columbia, this 18th day of March 2004.

**MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT**

Thor Skafte, Member

Jim Sodergren, Member