File No. 2190
Board Order No. 2190-1

May 30, 2022

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

THE NORTH WEST ¼ SECTION 30 TOWNSHIP 81 RANGE17 WEST OF THE
6^{TH} MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ SECTION 30 TOWNSHIP 81 RANGE 17 WEST OF THE 6^{TH}
MERIDIAN PEACE RIVER DISTRICT
(The “Lands”)

BETWEEN:

Sherwin Anne McDonald

(APPLICANT)

AND:

ARC Resources Ltd.

(RESPONDENT)

BOARD ORDER

Heard:	By way of written submissions closing May 11, 2022
Appearances:	Laurie McDonald, for the Applicant Kevin Krall, for the Respondent

INTRODUCTION AND ISSUE

[1] The Applicant, Sherwin Anne McDonald, is the owner of the Lands legally described as: THE NORTHWEST ¼ OF SECTION 30 TOWNSHIP 81 RANGE 17 WEST OF THE 6^{TH} MERIDIAN PEACE RIVER DISTRICT ("NW 30") and THE NORTHEAST ¼ OF SECTION 30 TOWNSHIP 8, RANGE 17 WEST OF THE 6^{TH} MERIDIAN PEACE RIVER DISTRICT ("NE 30"), (collectively, "the Lands"). The Respondent, ARC Resources Ltd. ("ARC"), as the successor to Storm Exploration Inc. ("Storm"), has a statutory right of way and a surface lease on the Lands for oil and gas activities. The Applicant alleges ARC has used the surface lease to access the property to the north to work on a pipeline located on the property to the north in a manner not contemplated by the surface lease and seeks a ruling from the Board to that effect. ARC submits the surface lease permits the activity complained of.

[2] The Applicant also alleged ARC failed to provide advance notice of entry to the Lands with heavy equipment as required by the surface lease. ARC has agreed on a go forward basis that it will provide advance notice when access is required to the Lands with anything larger than a pickup truck, including when accessing the property to the north. As the Applicant does not object to daily operational use of the surface lease access road without prior notice, but only seeks notice when heavy equipment is to be used I will consider the notice issue to be resolved. The issue remains, however, as to whether the surface lease permits ARC to use the access road for the purpose of conducting repairs to the pipeline located on the property to the north.

FACTS

[3] In 2004, Storm and the owners of the property to the north of the Lands known as the SW ¼ of Section 31 ("SW 31"), entered a right of way agreement permitting Storm's

entry to SW 31 for the construction, operation, and maintenance of a pipeline on SW 31. The right of way extends along the southern boundary of SW 31 immediately adjacent to NW 30 before turning away from the boundary to the northeast. The pipeline was constructed in the right of way on SW 31 was reseeded and restored. A riser for the pipeline is located in the right of way at a location described as 3-31-81-17 (“the Riser”). A riser is a portion of a pipeline that comes out of the ground and is used for maintenance and inspection purposes. I presume there is a surface lease respecting use of the area required for the Riser on SW 31, although any surface lease for the Riser site is not in evidence before me and none is registered on the Title to SW 31.

[4] In 2005, Storm and the previous owner of the Lands entered a right of way agreement (“the 2005 ROW”) permitting Storm’s entry to NW 30 for the construction, operation, and maintenance of a pipeline on NW 30 extending northeast and north from a wellsite on NW 30 to connect with the pipeline just over the boundary on SW 31 at the location of the Riser. The pipeline was constructed on NW 30, and the right of way was reseeded and restored.

[5] In 2006, Storm and the previous owner of the Lands entered a surface lease over the Lands for an access road and wellsite (“the 2006 Surface Lease”). The access road extends along the northern boundary of NW 30 over and past the location where the NW 30 pipeline meets the pipeline on SW 31 then turns to the southeast to cross into NE 30 where the well site is located.

[6] The lease and grant clause in the 2006 Surface Lease provides for the grant and lease of the leased area “for any and all purposes as may be necessary for the drilling of a single well for the purposes of exploring for petroleum, natural gas, and related hydrocarbons and such other substances that may be produced in association with or incidental to the production thereof, and for the development and production of such substances and the safe operation and maintenance of the well, and for no other purposes, save and except the abandonment and reclamation of the Leased Area.”

The Leased Area depicted on the plan attached to the 2006 Surface Lease shows the access road and wellsite and a proposed borrow pit and sump.

[7] Schedule A to the 2006 Surface Lease contained additional terms and conditions including one-time payments for the borrow pit and sump and providing that the “The Tenant agrees to contact the Landowner prior to entry onto the said Lands.”

[8] The 2006 Surface Lease was not registered on the Title to the Lands.

[9] In 2011, ARC became the successor to Storm by way of amalgamation.

[10] ARC and the Applicant entered a new surface lease dated December 19, 2012, on essentially the same terms as the 2006 Surface Lease with the exception of annual compensation and the terms at Appendix A (“the 2012 Surface Lease”). The 2012 Surface Lease is registered against the Title to the Lands.

[11] The lease and grant clause in the 2012 Surface Lease is identical to that in the 2006 surface lease. Schedule A includes the following clause:

> This surface lease agreement allows the Tenant to access a riser located at 3-31-81-17.

[12] Through a smart pig test of the pipeline on SW 31 in 2021, ARC identified possible corrosion. Between December 15 and 17, 2021, ARC utilized the 2012 Surface Lease access road along the northern boundary of the Lands to access the Riser, where at the Riser and approximately 50 metres along the pipeline right of way on SW 31, it carried out integrity digs of the pipeline, inspected and then replaced two small sections of the pipeline piping. The evidence is not more specific as to what exactly ARC did, what equipment was involved and if or for how long any equipment may have been left on the access road on NW 30. The Applicant submits ARC “used the lease road as a staging and jumping off spot to dig up the pipeline that is outside the riser site on the neighboring property”. I assume some heavy equipment was involved to do the integrity

digs and to transport replacement pipe or other materials used in the pipeline repairs and that such equipment may have been left on the access road for a period not exceeding three days.

ANALYSIS

Was ARC's use of the access road in breach of the 2012 Surface Lease?

[13] Appendix A to the 2012 Surface Lease permits ARC to access the Riser. ARC submits the reason the parties included the express authorization in the lease to access the Riser was to be able to use the access road for maintenance of the pipeline. ARC submits the Riser is required and utilized for the maintenance of the pipeline and that it would make no commercial sense for access to be granted to the Riser without the parties contemplating possible work being required on the pipeline. ARC submits all work was within the contemplated and intended scope of the parties when they signed the lease.

[14] The Applicant submits she did not anticipate that ARC would use the access road to access the pipeline on the neighbouring property beyond the Riser site.

[15] The intent of a contract must be discernible from the words of the contract itself. The words of the contract say ARC may use the lease area to access the riser site. While it may make commercial sense to ARC that "accessing the riser site" includes "conducting repairs on the associated pipeline", that intent is not evident from the words used and without expressly including specific words to that effect, it cannot be assumed that both parties to the contract attached the same intent or understanding to the words used.

[16] The Surface Lease Regulation, BC Reg 497/74 provides at section 1(a): "no surface area covered by the lease shall be used for purposes other than those set out in the lease unless the grantor of the lease consents in writing to such other use."

[17] Other than the uses permitted by the lease and grant clause in the 2012 Surface Lease (which does not permit access to the Riser or pipeline to the north), all the grantor has consented to in writing is that the surface lease permits ARC "to access a riser located at 3-31-81-17."

[18] While it is not entirely clear precisely what use ARC made of the leased access road in December 2021, if it used the road to access any area beyond the Riser or to store machinery, supplies and equipment used to conduct pipeline repairs, I find that use was not permitted by the terms of the 2012 Surface Lease. The Applicant does not seek compensation for ARC's non-compliance with the 2012 Surface Lease and none is ordered.

[19] ARC makes alternative arguments respecting its right to use the 2005 ROW over NW 30 so as to complete the same tasks completed by way of using the access road. As ARC did not purport to exercise any rights under the 2005 ROW, and there is no complaint before the Board that ARC was in breach of any term of that agreement, it would not be appropriate to comment on the extent of ARC's rights under that agreement.

DATED: May 30, 2022

FOR THE BOARD

Cheryl Vickers, Vice-Chair