File No. ER 912 Decision No. E63/78

THE SURFACE RIGHTS ACT

Before:

The SURFACE RIGHTS BOARD (hereinafter referred to as "the Board").

: IN THE MATTER OF certain lands within the North West Quarter of Section 33, Township 51, Range 25, West of the 4th Meridian, In the Province of Alberta. : Excepting thereout all Mines and Minerals.

B E T W E E N:

WESTHILL RESOURCES LIMITED,

Applicant,

- and -

D. BRUCE COOK
and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT,

Respondents.

D E C I S I O N

Upon the application by Westhill Resources Limited, the Board by Order No. E442/77, dated May 2, 1977, granted to the Applicant the right of entry of a part of the surface of the North West Quarter of Section 33, Township 51, Range 25, West of the 4th Meridian, In the Province of Alberta (hereinafter referred to as "the said land"), for a well site and roadway for the Applicant's operations for or incidental to the drilling for and production of petroleum and natural gas.

The part of the said land granted to the Applicant is delineated and outlined in red on the plan attached to the Order, and comprises 2.07 acres for a well site and 0.56 of an acre for a roadway thereto, a total of 2.63 acres.

A hearing to determine the compensation payable by the Applicant was held by the Board on April 21, 1978, at the Board's offices in Edmonton, Alberta.

APPEARANCES:

Mr. William Rodgers and Mr. Nello W. Marano, President and Secretary, respectively, of the Applicant company.

Mr. James A. Cox and Mr. James L. Oake of the law firm of Broda, Cox & Trofimuk of Edmonton, Co-counsel for the Respondent Cook.

WITNESSES:

For the Respondent:

Mr. E. J. Shaske, A.A.C.I., of the firm of Edward J. Shaske & Associates;

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Mr. H. A. Kang, of the firm of Underwood McLennan & Associates Limited; and

Mr. D. Bruce Cook, registered owner of the said land.

The other Respondent, the Minister of the Environment, was not present or represented at the hearing although duly notified of the hearing.

The said land is located adjacent to the westerly bank of the North Saskatchewan River, in the southwesterly quadrant of the City of Edmonton, at approximately 23rd Avenue and 184 Street. The neighborhood lying to the north and east is known in the city records as West Jasper Place. The said land lies within the Edmonton Devon Restricted Development Area (hereinafter referred to as "the R.D.A.").

The following exhibits were filed with the Board in respect of the matter herein:

Exhibit 1: A copy of a schedule headed Oil and Gas Lease Economic Evaluation, prepared by the Applicant (submitted by Mr. Oake).

Exhibit 2: A letter dated June 9, 1976 from Alberta Environment addressed to Mr. J. A. Cox of the law firm of Broda Cox et al.

Exhibit 3: A copy of a Conceptual Plan of the Cook lands (NW¼-33-51-25-4 and Parcel A Plan 5888 C.L.).

Exhibit 4: A copy of a Plan Showing Top of Bank Traverse Within Pt. of SW¼-4-52-25-W4 and Pt. of NW¼-33-51-25-W4, A.L.S. certified November 26, 1976.

Exhibit 5: A copy of a (revised) plan prepared by Underwood McLellan & Associates Ltd., dated February 1977, and titled Proposed Land Use, Part of SW¼-4-52-25-W4 and Part of NW¼-33-51-25-W4, City of Edmonton, Cook's Property.

Exhibit 6: An appraisal of the NW¼-33-51-25-W4, prepared by Edward J. Shaske & Associates.

The Board, comprised of the three members whose signatures appear hereunder, pre-inspected the subject site on the said land on April 17, 1978, and noted that there is a well head with attendant piping, tankage and a flare stack on the site. The immediately adjacent land is being used for farming purposes.

Reading from a prepared statement,(a copy of which is on file with the Board), Mr. Marano testified that the Westhill Armisie 13-33-51-25 well was drilled and completed as an oil well in May 1977, and is presently producing from the "C" Zone of the lower Cretaceous sandstone. The well site lies 500 feet to the south and west of the bank of the North Saskatchewan River

and a tributary ravine. The said land is zoned agriculture by the City of Edmonton and as of April 20, 1978 no permit had been issued for subdivision of the said land. The City Engineering Department stated that existing plans of the City do not propose opening the area for further development for at least 10 to 15 years. The City has recently (deadline December 9, 1977) offered for sale 414 acres of Petroleum and Natural Gas Lease on the remainder of Section 33 (a copy of the notice is attached to the submission as Exhibit No. 5).

The Armisie oil field, in which the subject well is located, has been designated as a field by the Energy Resources Conservation Board since about 1951, and there have been producing wells with storage facilities and pipelines within the field since that time. The Respondent's title contains notification of an Easement dated January 28, 1952 in favor of The Imperial Pipe Line Co. Ltd. (Plan 3249 H.W.). It is clear therefore, Mr. Marano suggests, that anyone purchasing or developing land in this area has done so with the knowledge of the underlying oil field and the attendant possibilities of its development. Mr. Marano submitted that oil and gas activities are not fatal to urban development as evidenced by the co-existence of wells and batteries and residential housing developments in such places as the Town of Devon and the City of Los Angeles. There is no evidence that the petroleum extraction operations have deterred the sale of or affected the value of adjacent properties. The Westhill Armisie 13-33-51-25 well contains no hydrogen sulphide gas or other toxic material.

The lower Cretaceous "A" zone, through which the well was drilled, indicated potential commercial production of natural gas with a probable life of 7 to 10 years. The "C" zone, from which the well is producing, is estimated to contain 160,000 barrels of recoverable oil, and at the present production rate of 100 barrels of oil per day and on a declining balance, the well should be depleted in 10 years.

Mr. Marano estimated the losses to the farming use as follows:

Based on continuous-cropping practices with wheat at 50 bushels per acre at $3.00 per bushel, barley at 90 bushels per acre at $2.50 per bushel and alfalfa at 2 ton per acre at $50.00 per ton, the average annual

loss on 2.63 acres amounts to $416.41. Using a reclamation factor of 250%, and adverse effect of $500.00 annually, the first years losses are estimated at $1,957.45 and annually thereafter at $920.00.

Mr. Marano cited payments for Surface Leases in the general Edmonton area as follows:

7-36-53-27-W4 (Spruce Grove) - damages amounted to $900.00 per acre.

6-26-52-1-W5 (Spruce Grove)
Damages for first year - $1,000.00 per acre
Yearly rental - $300.00 per acre.

SW-36-52-1-W5 (Spruce Grove)
First year damages and crop loss-$4,200.00
Annual rental -$300.00 per acre.

Sec. 25-51-25-W4 (Whitemud Creek, S. Edmonton area)
Two wells drilled on same L.S.D., with second well using part of same access road.
First year damage and crop loss - $4,000.00 for each well.
Yearly rentals - $1,800.00 first well
- $1,000.00 second well

Sec. 12-51-25-W4 (Board Order, October 1975)
5.44 acres - first year - $3,756.00
annually thereafter - $1,030.00
(information hearsay but believed to be accurate).

SE¼ 5-52-25-W4 (Board Order E109/78, dated February 8, 1978)
2.62 acres - first year - $8,293.00
annually thereafter - $2,763.00.

In conclusion, Mr. Marano submitted that the Applicant considers the award under Order No. E109/78 (supra) fair and equitable and applicable to the matter herein, except that costs should be assessed on the reasonable costs incurred by the Respondent Cook. And finally, Mr. Marano stated that the survey stakes were removed by the person farming the land in May 1977, necessitating a re-survey at a cost of $233.75, and requested that this amount be deducted from the compensation determined payable.

In response to a question from Counsel Oake, Mr. Rodgers said that the economic projections are based on theory and an estimate of the reservoir size, which geological evidence indicates is not large. Although the field could produce for 27 years under normal allowables the Applicant is authorized to produce at an accelerated rate under G.P.P. (good production practices), whereby the well can be produced at any rate which won't damage the field. Mr. Oake tendered Exhibit 1 as evidence of the well's projected economic life.

Mr. Cook testified that he purchased the said land in 1972 for development as a residential subdivision within the city. Due to R.D.A. regulations affecting the said land he engaged the engineering firm of Underwood McLellan to prepare a proposal for development of the said land for consideration by Alberta Environment. As a result he received conditional approval for development from Alberta Environment (Exhibit 2). He said that he is aware of the high initial costs of development at $45,000.00 to $50,000.00 per acre; is able to finance such a development; and has no intention of selling the said land now. The said land is presently rented for farming to a Mr. D'Hulster at an annual cash rental of $500.00. He said he was not aware at the time of purchase of the said land that it had a potential for oil production, even though he had it appraised by a Mr. Kvatum prior to purchasing it. He has met with adjacent landowners, in particular Mr. Saxton, regarding an overall plan for servicing the area.

Mr. Kang, M.Sc., professional planner with Underwood McLellan, testified that planning for development of the said land began in 1974/75, at which time he prepared a conceptual plan for presentation to Alberta Environment (Exhibit 3) for consideration. Following receipt of the letter from Environment (Exhibit 2), the "top of the bank" traverse was established (Exhibit 4) and the 200-foot setback requirement was met on a revised plan (Exhibit 5), which was drawn in accord with Environment's specifications. Mr. Kang said that in his opinion the plan as now drawn will be approved when submitted and the said land can be developed subject to the matter of timing on servicing. However, due to the well site having now been superimposed on the plan as drawn, and if the well is still there at the time development commences, it will be necessary to redesign the plan to accommodate the well site and road, and the estimated cost of this is $2,000.00.

Mr. Kang estimated the loss of developable land due to the well site and road as using:

40% of total land goes to reserve and roadways.

60% net use land = 26,136 square feet per acre.

Lots 55 feet by 110 feet (6,050 square feet) = 4.32 units per acre.

2.63 acres x 4.32 units per acre = 11.36 units lost.

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As a rigid shape is being taken out of the plan design, the actual loss would be greater than mathematically indicated.

In further evidence, Mr. Kang said that no plan has yet been submitted to the City for approval as plans for servicing the area with a major trunk system across the ravine must first be resolved. If the area were to await city servicing it could take 10 years or more, but it is the general practice for developers to motivate development and put in the servicing. This would depend on economics and the necessary funding. If the owners of the lands decide to proceed with development by funding the servicing themselves then, Mr. Kang said, he could not foresee any problem in getting the City's approval for development, and this normally takes 2 to 4 years.

Mr. Shaske gave evidence for the Respondent in connection with his appraisal (Exhibit 6) of the said land and the effect of the well site placed thereon. Only the supporting facts and a brief summary of the appraiser's conclusions will be recited hereunder and the other evidence will be considered in detail under the appropriate head of compensation (infra):

1. The effective date of the appraisal is May 2, 1977.
2. The said land is zoned AG, Agricultural District.
3. The soil is Class No. 1 (A.R.D.A. rating).
4. The present use is agricultural and the highest and best use is agricultural as an interim use.
5. The value of the land (2.63 acres) is $32,000.00.
6. Loss of (agricultural) use of the land annually is $526.00.
7. Adverse effect on the (agricultural) use of the remaining land annually is $400.00.
8. Return on investment annually is $3,200.00.
9. Property to the north across the ravine is developed for residential uses and fully serviced residential lots are selling for $45,000.00 per lot (Wimpey Western Limited).
10. Information obtained from the City is that city servicing of the area encompassing the said land is not anticipated prior to about 1986. The estimate of value is based on this premise.

In argument, Mr. Marano stated that the Applicant is leasing the 2.63 acres, not purchasing it, and therefore evidence on market value is not relevant. The Respondent Cook purchased the said land in 1972 for $130,000.00 and there is no loss to him by the Applicant's presence on the said land. The Applicant is presently negotiating with Imperial Oil Limited to use the adjacent pipeline to move the oil to the south, and if negotiations are successful there will be only a well head on the site. The Respondent is an astute business man, knowledgeable of the risks attendant on land ownership, including the possibility of a well in this proven field.

Mr. Cox pointed out that all the planning for development of the said land was done prior to the granting of the right of entry and was not brought on by the Applicant's entry on the land. The land is developable and will be developed as Cook has the necessary finances, and compensation as outlined by the witness Shaske is appropriate. Mr. Cox and Mr. Shaske both stated emphatically the view that the Respondent is entitled to a fair return on the present value of the land and not on the original investment.

The issue before the Board is the determination of compensation and the factors which the Board may consider are set out at section 23 (2) of the Act, which reads:

> "(2) The Board, in determining pursuant to subsection (1) the amount of compensation payable, may consider
>
> (a) the value of the land,
>
> (b) the loss of use by the owner or occupant of the area granted to the operator,
>
> (c) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,
>
> (d) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and
>
> (e) such other factors as the Board considers proper under the circumstances.".

The Board considers that it must reject the Applicant's evidence on payments made to other landowners as being in any was pertinent to the determination herein. Three of the Surface Leases cited were in the Spruce Grove area while the fourth is within the R.D.A. outside the city limits. The Board Order referred to in Section 12 is also outside the city limits in the Ellerslie area. Board Order E109/78, although in respect of lands within the City in close proximity to the said land is founded on facts considerably at variance with those herein, and it is also pertinent that that Order is presently under appeal to the District Court.

Having observed the premises first hand prior to the hearing and having considered the evidence adduced, the Board makes the following findings on losses and damages incurred by the Respondent and the compensation payable therefor:

COMPENSATION FOR THE AREA GRANTED AND RELATED DAMAGES:

Although the said land lies within the R.D.A., it is clear from Exhibit 2 that Alberta Environment, the authority charged with considering development applications within R.D.A.-designated lands, was prepared as early as 1976 to grant approval for development of the said land upon certain prerequisite conditions having first been met, and quoting from that Authority's letter of June 9, 1976 (Exhibit 2):

> "We are prepared to grant Ministerial Consent for the proposed subdivision (of the NW¼-33-51-25-W4) once the top of the bank and resultant setback area (200 feet) has been established through a field inspection by Department of the Environment staff in the presence of your client or his surveyor. When the results of this meeting has been shown on a plan of survey the Land Assembly division will recommend that the aforementioned Consent be given."

It is also clear that the stated conditions have been met by the Respondent (Exhibit 4), and that a new Proposed Land Use plan was subsequently prepared which incorporates those conditions.

All these preparatory matters leading to the proposed subdivision of the said land occurred prior to the granting of the right of entry to the Applicant, and prior to the time the Respondent would have had knowledge that an oil well might be located on the said land.

On the evidence, the Board finds the highest and best use for the said land to be for agricultural purposes in the immediate future, as an interim use awaiting the "ripening" of the land for a higher and better use as a multi-purpose housing development. The evidence also indicates that the said land will likely be ripe for this changed use in about 5 to 10 years, the timing being wholly dependent on the emerging economic environment in relation to housing needs and provision of servicing to the area. The Board also finds that the subject well may still be producing at the time the land use changes from agricultural to urban development, as the life of the well, based on G.P.P. at an accelerated depletion rate, is indicated to be about 10 years. Considering these projected development-times and well-life estimates, and the apparent high front end costs of funding the necessary servicing prior to developing the said land for an urban-type use, the Board estimates the probability of the well still being on production at the time the use conversion of the said land could reasonably be expected to occur, at 20 percent.

As the Applicant has been granted exclusive use of the surface of the specified area (2.63 acres) for an indefinite period of time, the physical damage done to the land is not of immediate consequence to the landowner. Furthermore, since the land-use potential will in all probability have changed from agricultural to urban development at the time termination of the right of entry is effected, or shortly thereafter, the physical damage as related to that changed use will not be of consequence. Accordingly, the Board finds the physical damage to the land to not be a factor for consideration in assessing damages payable.

However, quite apart from the observable physical damage to the land, there is a further damage of an intangible nature, viz., a damage to the bundle of rights inherent in the ownership and right of use and quiet enjoyment of the said land. By the granting of the right of entry order a second right has been superimposed on the landowner's existing rights, and with that second right being dominant for the term of the right of entry order (section 20 (1) (a) of the Act), it follows unequivocally that the existing rights, those of the landowner, have been diminished or diluted to some degree.

Section 20 (1) (a) provides that a right of entry order vests in the Applicant, unless otherwise provided, "the exclusive right, title and interest in the surface of the land in respect of which the order is granted other than (1) the right to a certificate of title (---)." The order of the Board "otherwise provides" that the owner has the right to cross the area described in the order and to allow livestock to graze thereon, both related to a purely agricultural or concomitant use.

Clearly then, the rights of the owner of the said land have been diluted by virtue of the rights granted to the Applicant to the point where the rights remaining with the owner are to hold title to the area, to cross over the area, to allow livestock to graze on the area, and to have the area revert back to his use upon termination of the right of entry. Having in mind the indefinite term of the right of entry order, conceding however the evidence that the effective term of the order could be no more than 10 years, it is clear that the rights remaining vested in the owner during the term of the order are of only minimal value, and the Board finds that the damage to the land and surface rights resulting from the right of entry, damage both tangible and intangible in character, is to the full extent of the value of the land to the owner, based on the highest and best use of the said land during the term of the right of entry order.

Mr. Shaske in Exhibit 6 has made a detailed study of the market in respect of comparable lands having a potential for urban development and located within or adjacent to the City of Edmonton, using data from 16 sale transactions and 2 offering prices and adjusting for time differentials, and the Board accepts Shaske's evidence on land value as the most cogent evidence before the Board. Shaske estimated the value of the 2.63 acres acquired by the Applicant to be $32,000.00, as of May 2, 1977, or approximately 2.63 $12,200 per acre. In arriving at this estimate, he assumed that the land could not likely be serviced by the City prior to 1986, and used an 11% discounting rate to adjust for this time lag. On Shaske's evidence the Board finds the present worth of the 2.63 acres acquired by the Applicant, based on its potential for urban development, to be $12,200 per acre.

Clearly the said land is currently zoned as low density agricultural (AG, Agricultural District), and until such time as the land is re-zoned only such uses as are compatible with the aim of "conserving the natural resources of the area for purpose of primary production" are permitted, generally on site areas of not less than 20 acres. There is no evidence that the Respondent Cook has taken any steps to initiate rezoning of the said land, and the Board accepts Shaske's statement that "Rezoning to allow a use other than residential is not probable, therefore, the (best use under the) current zoning as a rural site would be to leave it vacant in order that it may 'ripen' into an anticipated use of eventual residential development, and one that forms a higher present value than it would under the immediate and alternate uses to which the land might be put."

The Board finds that the damage to the Respondent's interest in the said land is in part the loss of 2.63 acres of land under agricultural use, subject to the further consideration that the well may still exist and be on production at the time the said land realizes its potential for a higher and better use as a residential-type development, which consideration the Board has estimated as representing a 20 percent probability. No evidence was adduced on the probable value of land within the City of Edmonton having only an agricultural-use potential in the foreseeable future (clearly a purely hypothetical assumption, but one which in the Board's view is necessary and proper in the light of the projected life of the subject well), but having regard to agricultural land values in other areas of the Province for similar-type lands, the Board estimates the value of the said land as located and in use for agricultural purposes, and having no potential for subdivision in the foreseeable future, would not exceed $1,000.00 per acre. This premise is also in accord with the current zoning of the area in which the said land is located, and as stated by Shaske, interim zoning upgrading prior to final rezoning is not probable, and the said land likely will retain its current zoning status (agricultural) until it is ripe for rezoning and development as residential.

Based on the current zoning and use-potential of the said land within the projected well-life term, the difficulties and high cost of servicing

the area which likely will tend to deter early development of the said land to a higher and better use, and the estimated 20% possibility that subdivision development on the said lands will commence prior to expiry of the economic life of the well, the Board finds the value of the land acquired for the well site and roadway (2.63 acres) to be $3,240.00 per acre, or a total of $8,520.00 (rounded off).

The determination above is predicated on the premise, which is basic to the Board's findings, that the well's production and/or effective economic life will have expired in about 10 years time and the area acquired by the Applicant will be restored and returned to the Respondent owner at that time, and that subdivision of the said land for residential use could, but probably will not be commenced during the term of the projected well life. Should these premises, which are founded on the evidence adduced, prove to be at fault, the right should be reserved to the Respondent Cook to return the matter to the Board for review, and the Board so reserves.

INJURIOUS AFFECTION AND/OR ADVERSE EFFECT:

It is clear from the evidence that planning for development of the said land as a multi-type residential development commenced some time prior to the entry by the Applicant on the said land. Plans had been prepared for submission to Alberta Environment for subdivision approval in respect of the R.D.A. designation and to meet the requirements of that body requisite to subdivision approval (Exhibits 3 and 4). Further to that a plan dated February 1977 was prepared on a Projected Land Use concept (Exhibit 5). Mr. Kang testified that it is now necessary to revise that plast plan in order to accommodate the right of entry area if the well is still there at the time subdivision plans are finalized, and estimated the cost of this revision at $2,000.00.

As it appears possible if not probable that the well will still be in existence at the time a final subdivision plan is formulated and presented for planning approval, even if not at the time actual subdivision is commenced there being normally a 2- to 4-year time lag in obtaining subdivision approval (as stated by Kang in evidence), the Board considers the cost of revising

the land use plan to be a valid claim and considers it in the nature of adverse effect on the use-potential of the remaining land.

In looking to injurious affection to the remaining land, having regard to the stated projections of anticipated well life and subdivision development timing, the Board cannot envision that any significant injurious affection to the value of the remainder of the said land will arise as a result of the Applicant's operations. The witness Kang testified that the 2.63 acre site and road will result in the loss of about 11 or 12 marketable residential lots from net subdivisible area, and possibly a further loss due to the shape. The witness Shaske testified that fully-serviced residential lots in a developing area north of the said land are selling at $45,000.00 per lot. Kang's evidence was also that the proposed plan (Exhibit 5) will require revision to accommodate the imposition of the Applicant's right of entry area at an estimated cost of $2,000.00 and this cost has been allowed. Presumably, and logically, the revision would be such that the 2.63-acre area can become marketable as subdivided lots once the well is abandoned and the right of entry terminated. In the Board's view, having in mind the projected well life, the result will not be the loss to the Respondent of marketable residential lots but rather a short-term delay in the marketing aspect, and considering the normal span of time required in the exposure to and ultimate disposition of lots in the market this does not seem to be a significant factor. Counsel argued that the well life is indefinite and the Board order is in perpetuity but this is not in accord with the facts. Granted, the term of the right of entry is in perpetuity and the order remains in effect until terminated pursuant to section 25 of the Act, but the evidence in itself as adduced serves to attach to the order a term certain of about 10 years.

On the evidence the Board finds that the right of entry area, if still in effect at the time subdivision development is commenced, will not materially affect the marketing pattern of lots arising from the subdivision. However, there is little doubt that with the well there, and particularly with the installations now existing on the site which in the absence of evidence to the contrary must be assumed as likely to continue to be on

site for the life of the well, a vendor in marketing those lots in close proximity to the installations could meet with buyer resistance and perhaps have to accept a reduced price in order to dispose of those lots; or alternatively hold off such sales for a period of time with attendant holding costs.

While it must be admitted that the above considerations are somewhat, if not entirely speculative, the Board considers that the possibility exists and must be recognized in a monetary manner, and estimates the possible injurious affection to the value of an indefinite area of land adjacent to the Applicant's well site and road at $5,000.00. Adverse effect and/or injurious affection to the use of remainder of the said land is therefore fixed in the amount of $7,000.00, inclusive of the cost of preparing a revised plan.

ANNUAL COMPENSATION:

The Board received evidence from the Respondent Cook that the said land is presently rented for agricultural purposes at an annual cash rental. It appears therefore that there are two aspects of annual compensation to consider; the annual loss and inconvenience to the renter in his occupation of the land for agricultural use on an interim, short-term basis, and the loss to the owner of returns on the land as a long-term investment property.

Marano estimated the annual compensation payable for loss of use (crop loss) and adverse effect at a total of $920.00; Shaske's estimate of annual compensation for these same factors was $926.00. Clearly there is no dispute on this aspect of compensation, and the Board will fix the annual compensation payable to the renter-occupant, whoever that person may be from time to time while the land continues to enjoy an agricultural use, at $920.00.

The Respondent Cook has a certain investment in the property, and with particular reference to the 2.63 acres over which he has been momentarily deprived of control, and is entitled to a reasonable return on that investment. It is argued by counsel and the Respondent's appraiser that the return should be based on the present worth of the property for future

multi-use residential development. With all due respect to those learned gentlemen, the Board does not agree with this concept. Much of the value (of $32,000.00) is rather speculative at this time. It is highly subject to the whims of city planning authorities, economics of development ten years hence, development trends within and without the city, and the whims of the public in the housing market. A change in direction in any of these influencing and controlling factors would inevitably result in the total evaporation of a part of this current estimated value. Having in mind that the value as estimated by the appraiser (and the Board has accepted it as reasonable on the trends in sight and reasonable to foresee at this time) is based on a development scheme which may occur some ten years hence at about the time the well's life is expected to expire, the Board is of the view that the return to the Respondent on his interest in the investment in the 2.63 acres should be based on a more stable and assured value, rather than a "windfall" form of value.

Shaske found in his studies of the current land market that values of certain lands had appreciated at rates well in excess of 100% per year, but concluded that having regard to the historical appreciation of land market advances, an appreciation factor of 18% per year was reasonable. He said however that a higher appreciation rate could be justified.

The Respondent purchased the said land in 1972 at a price indicated to be about $1,300.00 per acre, and applying a normal appreciation factor in the range of 18% to 25% per year, the Board finds the Respondent's actual investment in the land as of 1977 to be about $5,000.00 per acre, or a total of about $13,000.00. As it is somewhat in the nature of an equity investment as calculated, the Board feels that a rate of return of at least 15% should be allowed, and will fix the annual compensation payable to the Respondent as a return on his investment at $2,000.00.

COSTS:

The Respondent is claiming for costs as follows:

For appraisal fees.....	$2,060.50
For the witness Kang.....	300.00
For counsel fees.....	1,800.00
	$4,160.50

Shaske presented a very comprehensive appraisal report which has proven of considerable value to the Board in its deliberations, and although the Board has not accepted Shaske's conclusions, estimates and opinions in total, it feels that the total cost of the appraisal (which included costs of his appearance as a witness) should be allowed.

Kang appeared as an expert witness, and the Respondent is entitled to certain costs for that witness' appearance and time spent in preparing material. The Board will fix the costs of Kang's witness fees and preparation time at $100.00.

Counsel's claim for $1,800.00 seems unreasonable considering the length of the hearing and the amount of time necessarily spent in preparation. The issues brought before the Board were not particularly complex and perhaps the fees claimed include time spent on other related matters not in issue in these proceedings. The Board will fix the costs for counsel in the amount of $1,000.00 as being reasonable.

Cook did not submit a claim for his own time in attendance as Respondent and as witness in his own behalf, but the Board feels he is entitled to some costs, and will fix this at $50.00.

Total costs are fixed in the amount of $3,210.50.

INTEREST:

Pursuant to section 23 (6) of the Act the Board deems that interest should be allowed on the amount awarded as compensation for the area granted and related damages, and considers a just rate of interest to be 9% per annum, payable from the date of the right of entry order to the date of the order determining compensation. The amount on which interest will be payable is $8,520.00.

One further matter remains for consideration. Marano stated that it was necessary to resurvey the area at a cost of $233.75 as the stakes were removed, and asked that this amount be deducted from the compensation.

Mr. Marano did not positively identify the person responsible other than to say it was "the person working the land in May of 1977". Had the

identification been positive and proved to be a person entitled to receive compensation, the Board might be inclined to give the matter serious consideration. However, section 33 (4) of the Act refers specifically to a refusal "to allow the operator to enter upon and use the lands" and the costs incurred in "obtaining entry upon and use of the land", and the episode referred to appears to be more in the nature of a nuisance and irritation, albeit somewhat costly to the Applicant. The request to deduct the costs from the compensation is declined, as clearly entry onto the land as authorized by the Board order was not obstructed by any party.

In summary, the amount of compensation payable by the Applicant for this right of entry will be:

(a) For the period from May 2, 1977 to May 1, 1978, the sum of TWENTY-ONE THOUSAND, SIX HUNRED, FIFTY and 50/100 DOLLARS ($21,650.50), computed as follows:

Compensation for the area granted and related damages.....	$ 8,520.00
Injurious affection/adverse effect.....	7,000.00
Annual compensation.....	2,920.00
Costs.....	3,210.50
	$21,650.50

together with interest calculated on $8,520.00 at the rate of 9% per annum from May 2, 1977 to the date of the order determining compensation,

of which amount TWENTY THOUSAND, SEVEN HUNDRED, THIRTY and 50/100 DOLLARS ($20,730.50) is payable to D. Bruce Cook and NINE HUNDRED, TWENTY and 00/100 DOLLARS ($920.00) is payable to the user-occupant of the said land in an agricultural use during 1977.

(b) For the period from May 2, 1978 to May 1, 1979, the sum of TWO THOUSAND, NINE HUNDRED, TWENTY and 00/100 DOLLARS ($2,920.00), of which amount TWO THOUSAND and 00/100 DOLLARS ($2,000.00) is payable to D. Bruce Cook and NINE HUNDRED, TWENTY and 00/100 DOLLARS ($920.00) is payable to such party as may be the user-occupant of the said land in an agricultural use during 1978.

(c) After May 1, 1979 and so long as the said Order No. E442/77 is in effect, for each year or portion thereof, the sum of TWO THOUSAND, NINE HUNDRED, TWENTY and 00/100 DOLLARS ($2,920.00), to be paid on or before May 2, 1979, and on or before the 2nd day of May in each year thereafter, of which amount the sum of TWO THOUSAND and 00/100 DOLLARS ($2,000.00) is payable to D. Bruce Cook and the sum of NINE HUNDRED, TWENTY and 00/100 DOLLARS ($920.00) to such party as may be the user-occupant of the said land in an agricultural use from time to time.

Dated at the City of Edmonton in the Province of Alberta this 20th day of July, 1978.

SURFACE RIGHTS BOARD

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