

File Nos. SL2010.0194, SL2010.0195, SL2011.0210,  
SL2011.0211 and SL2011.0212

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(SRA)

Before:

SURFACE RIGHTS BOARD  
("SRB")

IN THE MATTER OF certain lands in the Province of Alberta subject to surface leases and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

REASONS FOR DECISION

forming part of those decisions attached and numbered  
2012/0258, 2012/0259, 2012/0260, 2012/0261 and 2012/0262.

PRESIDING PANEL

- D. A. Sibbald, Q.C., Presiding Chair

APPEARANCES:

For the Operator:	Counsel:	Daron Naffin, Bennett Jones LLP
	Witnesses:	Robert Telford, McNally Land Services Ltd. Gerry Melenka, Romaneski Urban Planning and Management Ltd.
For the Lessor:	Counsel:	Debbie Bishop, Ackroyd LLP Dean Maurier and Thomas Fath, the Lessor
	Witnesses:	Brian Gettel, Gettel Appraisals Ltd. Dean Matheson, My Landman Group Inc.

1.0 BACKGROUND

Applications were received by the SRB from 1369900 Alberta Ltd. (the "Lessor") pursuant to Section 27 of the SRA for a review of the compensation payable under five surface leases.

In accordance with Section 27(11) of the SRA, the SRB scheduled a hearing at Edmonton, Alberta, which proceeded on February 13 and 14, 2012, with respect to all five applications. All testimony at the hearing was given under oath or affirmation.

At the opening of the hearing, Penn West Petroleum Ltd. (the "Operator") and the Lessor (collectively, the "Parties") confirmed their agreement, as set out in Exhibit 1, to the following:

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SRB File No.	Surface Land Description	Ownership of Land	Effective Date	Type of Taking	Current Rental Amount
SL2010.0194	NE ¼ 34-52-26-W4M (LS 10)	1369900 Alberta Ltd.	March 12, 2007	Well Site and Access Road	\$3,300.00
SL2010.0195	NE ¼ 34-52-26-W4M (LS 15)	1369900 Alberta Ltd.	August 21, 2008	Well Site and Access Road	\$3,300.00
SL2011.0210	NE ¼-34-52-26-W4M (LS 9)	1369900 Alberta Ltd.	October 6, 2011	Well Site and Access Road	\$3,300.00
SL2011.0211	NE ¼-34-52-26-W4M (LS 16)	1369900 Alberta Ltd.	August 16, 2011	Well Site and Access Road	\$2,400.00
SL2011.0212	NE ¼-34-52-26-W4M (LS 9)	1369900 Alberta Ltd.	September 15, 2011	Satellite Site	\$2,800.00

## 2.0 FACTUAL OVERVIEW

The Lessor, which is part of the Fath Group of companies, acquired the Lands, approximately 128 acres plus an additional adjacent 20.83 acres, for \$7,750,000.00 in 2008. The surface leases and facilities were in place at that time.

The Lands are located in Parkland County, approximately 2.4 kilometres west of the westerly limit of the city of Edmonton and eight kilometres east of the city of Spruce Grove. The Lands are bordered on the north by a service road adjacent to Highway 16A, on the east by Pinchbeck Road and on the west and south by adjacent lands. The land to the south is the Ranch Golf and Country Club.

At the effective dates, and through to the time of the hearing, the Lands were used for agricultural production by a tenant of the Lessor.

The Lands are designated under the Acheson Industrial Area Structure Plan (ASP) as commercial/industrial. The ASP is currently under review by Parkland County. The land use bylaw designates the Lands as industrial reserve district. Brian Gettel, the appraiser retained by the Lessor, described the purpose of that designation as “to provide for low intensity development with minimal servicing requirements, and to reserve land for future expansion of industrial and commercial lands uses.” See Exhibit 2 at Tab F page 28.

At the time of the hearing, no applications for land use redesignation or subdivision had been made.

A general summary of each of the five sites is as follows:

- a. SL2010.0194 – This is a 4.09 acre oil well site and access road located in LSD 10. There are a pump jack, two small tanks and a metal shed enclosed within a chain link fence. The Operator or its contractor accesses the site each day by a half ton truck. (LS 10 Site)
- b. SL2010.0195 – This is a 5.5 acre oil well site and access road located in LSD 15. There are a pump jack and one small tank enclosed within a chain link fence. The Operator or its contractor accesses the site each day by a half ton truck. (LS 15 Site)
- c. SL2011.0210 – This is a 3.875 acre oil well site and access road located in LSD 9. There is a pump jack enclosed within a chain link fence. The Operator or its contractor accesses the site each day by a half ton truck. (LS 9 Site)
- d. SL2011.0211 – This is a 3.575 acre oil well site and access road located in LSD 16. There are a pump jack and a small tank enclosed within a chain link fence. The Operator or its contractor accesses the site each day by a half ton truck. (LS 16 Site)
- e. SL2011.0212 – This is a 2.35 acre satellite site located in LSD 9. There are two steel buildings, associated equipment, a storage tank and a vent stack. The Operator or its contractor accesses the site each day by a half ton truck. (LS 9 Satellite Site)

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3.0 POSITION AND KEY SUBMISSIONS OF THE PARTIES

3.1 The Lessor

The central position of the Lessor is that compensation should not be based on the Lands' agricultural use but rather should reflect their status as development land. Brian Gettel, ("Gettel") the appraiser who testified on behalf of the Lessor, is an highly experienced appraiser with extensive experience testifying before the SRB, other Boards, and the courts. He opined that the appropriate method of determining the annual rate of compensation for these sites is based on an analysis utilizing an urban land rental rate.

Under this methodology, Gettel provided an estimate of the market value of the Lands at each effective date at \$40,000.00 to \$50,000.00 per acre, and then applied a 10 percent yield factor based on his opinion that "typical yield rates for conventional investment real estate within urban settings...usually vary between 7.50% and 10% on an annual basis." See Exhibit 2 at Tab F, page 39. He opined that the resulting values were the appropriate annual compensation for loss of use and that under such an analysis the owners would not "endure any appreciable adverse effect until such time as that they pursue developing said lands." See Exhibit 2 at Tab F, page 74.

The result of Gettel's analysis is summarized as follows:

SRB File No.	Land Description	Effective Date	Annual Loss of Use	Annual Adverse Effect	Annual Rate of Compensation
SL2010.0194	NE ¼ 34-52-26-W4M (LS 10)	March 12, 2007	\$13,088.00	\$0.00	\$13,088.00
SL2010.0195	NE ¼ 34-52-26-W4M (LS 15)	August 21, 2008	\$22,000.00	\$0.00	\$22,000.00
SL2011.0210	NE ¼-34-52-26-W4M (LS 9)	October 6, 2011	\$12,400.00	\$0.00	\$12,400.00
SL2011.0211	NE ¼-34-52-26-W4M (LS 16)	August 16, 2011	\$11,440.00	\$0.00	\$11,440.00
SL2011.0212	NE ¼-34-52-26-W4M (LS 9)	September 15, 2011	\$7,520.00	\$0.00	\$7,520.00

Dean Maurier and Thomas Fath, both of the Fath Group, provided some background evidence about their companies' experience in developing land, including that located in SE-9-53-26-W4M which has been subdivided and is currently being marketed with some sales having taken place. They also testified that the Lands were purchased in 2008 with the intention of developing it as industrial subdivided sites. While acknowledging that water and sanitary services are not yet on the Lands, they advised that they are "in the preliminary stages of resolving the alignments and design of extending these services to our property." See Exhibit 6 at page 2 Fath described the expected cost as being affordable.

A land agent, Dean Matheson, also testified on behalf of the Lessor. He provided information about rates of compensation under six surface leases in the Drayton Valley area. He did not provide an opinion of what the compensation should be for the sites under review

In her closing submission, counsel for the Lessor advised that the information from Matheson was being provided as evidence that the urban rental methodology was being utilized in the surface rights compensation negotiations and not for the purpose of being directly comparable sites. Matheson also commented on the comparables presented on behalf of the Operator. That evidence will be discussed below.

3.2 The Operator

The Operator submits that the compensation should be based on the use of the land at the effective date and not on an anticipated future use. While acknowledging that the urban rental methodology may be appropriate in some factual settings, it is argued that at the effective dates for these compensation reviews, the timing and nature of any future development is too speculative to form the foundation for determining the rate of compensation under these five leases.

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An opinion from a land use planner, Gerry Melenka, was presented that it would be at least two years from the time an initial application was provided to Parkland County before the planning approval process could be completed. He pointed out that access to the Lands would have to be changed, as acknowledged by Gettel in his report at page 23 under Tab F of Exhibit 2, which would require the approval of Alberta Transportation since provincial highways are involved.

Robert Telford testified on behalf of the Operator. Telford, like Gettel, is an appraiser who has extensive experience providing evidence before the SRB, other boards and the courts. Telford's experience includes having been qualified to provide expert evidence on compensation based on patterns of dealings in several proceedings in the Alberta Court of Queen's Bench.

Telford provided two alternate methods of estimating the appropriate rate of compensation under these five surface leases.

First, based on information obtained from the occupant who actually farms the Lands, including the crop rotation and yields, Telford estimated the agricultural loss. In order to do so he relied on statistical information such as that for market pricing. He then developed an estimate of the average annual gross return at \$509.70 per acre and average annual net return at \$389.70 per acre. He then estimated that the extra costs associated with the presence of the facilities on the Lands would result in a tangible loss, an adverse effect, of \$360.00 to \$720.00 per year for each site. He added an additional \$400.00 per year to account for the intangible adverse effect arising from the sites.

The results of that process are summarized below (Exhibit 3).

SRB File No.	Surface Land Description	Effective Date	Annual Loss of Use	Annual Adverse Effect	Annual Rate of Compensation
SL2010.0194	NE ¼ 34-52-26-W4M (LS 10)	March 12, 2007	\$2,085.90	\$1,120.00	\$3,205.90
SL2010.0195	NE ¼ 34-52-26-W4M (LS 15)	August 21, 2008	\$2,805.00	\$720.00	\$3,525.00
SL2011.0210	NE ¼-34-52-26-W4M (LS 9)	October 6, 2011	\$1,976.25	\$1,120.00	\$3,096.25
SL2011.0211	NE ¼-34-52-26-W4M (LS 16)	August 16, 2011	\$1,823.25	\$720.00	\$2,543.25
SL2011.0212	NE ¼-34-52-26-W4M (LS 9)	September 15, 2011	\$1,198.50	\$1,120.00	\$2,318.50

The second method proposed by Telford was based on a pattern-of-dealings approach. Telford determined that the only active operator in the area is the Operator, Penn West Petroleum Ltd. He testified that based on criteria he provided, the Operator gave him 39 surface leases for consideration. Although more detail of his analysis is set out below, Telford concluded 13 of the agreements were "more comparable than the others based upon land use, land use designation, field orientation, and facility type." See Exhibit 5, page 1 He then opined that the following would be the appropriate rates of compensation:

SRB File No.	Surface Land Description	Effective Date	Field Orientation and Facilities	Annual Rate of Compensation
SL2010.0194	NE ¼ 34-52-26-W4M (LS 10)	March 12, 2007	Midfield with well head and pump jack	\$4,500.00
SL2010.0195	NE ¼ 34-52-26-W4M (LS 15)	August 21, 2008	Boundary	\$3,500.00 to \$4,000.00
SL2011.0210	NE ¼-34-52-26-W4M (LS 9)	October 6, 2011	Boundary	\$3,500.00 to \$4,000.00
SL2011.0211	NE ¼-34-52-26-W4M (LS 16)	August 16, 2011	Boundary	\$3,500.00 to \$4,000.00
SL2011.0212	NE ¼-34-52-26-W4M (LS 9)	September 15, 2011	Satellite	\$6,000.00

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In his closing submissions, counsel for the Operator argued that the Panel had essentially the following three options:

- accept Gettel's approach;
- utilize the pattern-of-dealings approach; or
- leave the compensation at the current rates.

The Panel was urged to reject Gettel's approach as being too speculative and either apply the pattern of dealings to set new rates or leave the rates as they are currently.

#### 4.0 ISSUES

Issue 1: What is the rate of compensation for each surface lease at the relevant effective date?

Issue 2: Is interest payable and if so at what rate?

Issue 3: Are costs payable and, if so, what amount is payable?

#### 5.0 RELEVANT LEGISLATION

The relevant provisions from the SRA are:

##### ***Determining compensation***

**25(1)** *The Board, in determining the amount of compensation payable, may consider...*

- (c) *the loss of use by the owner or occupant of the area granted to the operator,*
- (d) *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,....*

##### ***Review of rate of compensation***

**27(1)** *In this section,*

- (a) *"lessor" means a party to a surface lease who is entitled to receive compensation under that surface lease;*
- (b) *"operator" means an operator who is obligated to pay compensation under a surface lease to a lessor, or who is obligated to pay compensation under a compensation order to a respondent;*
- (c) *"parties" means,*
  - (i) *with respect to the review or fixing of a rate of compensation under a surface lease, the operator and the lessor, and*
  - (ii) *with respect to the review or fixing of a rate of compensation under a right of entry order, the operator and the respondent;*
- (d) *"rate of compensation" means the amount of compensation payable on an annual or other periodic basis under a surface lease or compensation order in respect of the matters referred to in section 25(1)(c) and (d)....*

**(8)** *If, by the end of the compensation year in which the notice is given, the parties cannot agree on a rate of compensation, the party desiring to have the rate of compensation reviewed or fixed may make an application to the Board for proceedings to be held to determine the rate of compensation....*

**(11)** *The Board shall hold proceedings to determine the rate of compensation and, as soon as it is convenient afterwards, shall make an order fixing, confirming or varying the rate of*

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*compensation payable commencing on the anniversary date of the surface lease or compensation order, as the case may be, next following the date notice was given under subsection (4)....*

RSA 2000 cS-24 s27;2009 c31 s11

## 6.0 EXHIBITS FILED

Number:	Description:	Filed by:
1	Agreed Statement of Facts	Panel
2	Binder of Lessor's Evidence	Lessor
3	Report of Robert Telford	Operator
4	Report of Gerry Melenka	Operator
5	Binder of Operator's evidence re Pattern of Dealings	Operator
6	Statement of Dean Maurier	Lessor
7	Plan of Fath Acheson Business Park	Lessor
8	Operator's Comments on Additional Leases of the Operator submitted by Lessor	Lessor
9	Plan depicting all five sites in NE ¼ - 34 -52-26 -W4M	Lessor
10	Tentative Plan for NE ¼ - 34 -52-26 -W4M	Lessor
11	Two Photos of 13-26-52-26 W4M	Lessor
12	Two Photos of 12-26-52-26 W4M	Lessor
13	Two Photos of 10-26-52-26 W4M	Lessor
14	Two Photos of 100/14-26-52-26 W4M	Lessor

## 7.0 DECISION

Issue 1: The rates of compensation as determined by the Panel as of the agreed to effective dates, are as follows:

SRB File No.	Surface Land Description	Effective Date	Annual Rate of Compensation
SL2010.0194	NE ¼ 34-52-26-W4M (LS 10)	March 12, 2007	\$4,700.00
SL2010.0195	NE ¼ 34-52-26-W4M (LS 15)	August 21, 2008	\$4,250.00
SL2011.0210	NE ¼-34-52-26-W4M (LS 9)	October 6, 2011	\$4,500.00
SL2011.0211	NE ¼-34-52-26-W4M (LS 16)	August 16, 2011	\$4,500.00
SL2011.0212	NE ¼-34-52-26-W4M (LS 9)	September 15, 2011	\$6,000.00

Issue 2: Since the parties reached an agreement on the payment of interest, the Panel makes no determination on that issue.

Issue 3: The determination of the costs payable, if any, is reserved. In the event the parties are unable to resolve the issue, they are to provide written submissions in accordance with the timelines set out below in Section 10.

## 8.0 FINDINGS AND ANALYSIS

### 8.1 Issue 1: Rate of Compensation

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### 8.1.1 Overview

The purpose of a review of compensation under Section 27 of the SRA is to allow for a review of the annual compensation payable every five years. As stated in *Nexen Inc. v. Farm Air Properties et al*, SRB Decision No. 2008/0182 at page 11: “those changes must, of course, be related to the ‘compensation payable on an annual other periodic basis...in respect of those matters referred to in Section 25(1)(c) and (d)’” of the SRA.

Section 25(1)(c) provides for compensation for “loss of use...of the area granted to the operator.” Section 25(1)(d) provides for compensation for “ the adverse effect of the area granted to the operator on the remaining land...and for the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator.”

The SRA provides that the parties to a surface lease are each entitled to request a review of the compensation every five years. If they cannot agree on the rate, either party can request that the SRB determine the rate. The following statement by Kerans, J.A., in *Jorsvick v. Pennzoil Petroleum Ltd.* [1988] A.J. No. 327 at page 2 is instructive:

We emphasize that the function of the Board on each review is to look forward. The ‘changed circumstances’ test, therefore, is not appropriate....

It follows that once either party triggers a review, the entire question of annual compensation is at large, and must again be fixed by the Board on the basis of the material then before it. What happened earlier is merely a factor to be considered. It is not correct to say that the applicant, to gain a change in the award, must show altered circumstances. It is correct to say that, to gain any new award, the applicant will only get the award he proves he is entitled to. The onus is on the applicant, whoever he may be. There is no presumption for or against the previous award.

The Lessor applied for the reviews at issue.

In order to determine the rates of compensation at the effective dates for each of these five surface leases, the Panel considered the following questions:

- a. Does the application of an urban rental rate provide an appropriate method to determine the rates of compensation?
- b. If not, does the evidence establish a pattern of dealings? If yes, are there cogent reasons to depart from that pattern?
- c. If no pattern is established, what rates of compensation should be fixed based on the available evidence?

### 8.1.2 Urban Rental Rate

The Lessor submits that in determining the rate of compensation the Panel should not base its findings on the past but should look to the future. The Panel agrees with that concept within the context of the quotation set out above from *Jorsvick v. Pennzoil Petroleum Ltd.* It is not necessary for a party to establish that there has been a change from the past to have a different rate determined by the SRB. The evidence must, on the other hand, establish that a proposed rate provides compensation for the losses actually sustained as a consequence of the area granted and the associated activities of the operator. It is not sufficient to provide evidence of losses which may occur in the future if certain events occur. To do so borders on, if not amounts to, speculation which cannot form the basis of the Panel’s determination of compensation.

In support of its position that an urban rental rate should form the basis of the rate of compensation, the Lessor relies on *Muntean v. GNE Resources Ltd.*, 1993 CanLII 7137 (AB QB), *ExxonMobil Canada Energy v. Westpoint Properties Inc.*, SRB Decision No. 2003/0023, *Rywood Resources Ltd. v. Winfield Power Company Ltd. et al* SRB Decision No. 99/0080 and *Nexen Inc. v. Farm Air Properties Inc.* SRB Decision No. 2008/0182. Each of those cases is distinguishable on the basis that the land from which the area was granted was located in a developed urban setting and was a much smaller parcel than the 128 acres which make up the Lands in this case. There is insufficient, if any, evidence that the Lessor is forgoing an urban

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rental due to the presence of the area granted. There may be, as counsel for the Operator noted, a loss of agricultural rent since the Lessor is renting out the Lands for use as agricultural production, but the amount of that loss was not put into evidence.

The evidence provided by Matheson about compensation paid for sites at Drayton Valley is of little probative value to determining if an urban rental rate should be utilized. Both Matheson and Gettel acknowledged that they are not familiar with the negotiations leading to those agreements and are only assuming that the parties may have used that method. Moreover, those sites are in developed areas annexed by the town of Drayton Valley which places them in a different status of use than the Lands.

The uncontroverted evidence is that, at each of the effective dates and through to the present, the Lands are being used for agricultural production. Although the Lessor has a stated intention of developing the Lands at some undetermined future time, no applications have been made for the requisite approvals with either Parkland County or the province. Both appraisers opined that the highest and best use of the Lands is holding for future development.

The Panel is cognizant that the

scheme in s. 27 of the Act is for quinquennial review by the Board of awards for annual compensation. It follows that the duty of the Board on this review is to fix an annual award that would be fair for the next five-years and no further because a projection beyond that date would be unrealistic. (*Jorsvick v. Pennzoil Petroleums Ltd.* at page 2).

Either party is entitled to request a review every five years. It is possible that by the time of the next review the loss will be better measured on a different basis.

The loss at the effective dates and through to the time of the hearing is that associated with the current use of the Lands for agricultural production. To measure that loss based on a yield achieved for the rental of urban land is neither rational nor supported by the evidence.

### 8.1.3 Pattern of Dealings

It is well established that if a pattern of dealings is established, compensation should be based on that finding, subject to there being a cogent reason to depart from same.

As stated in *Conocophillips Canada Resources Corp. v. Lemay* 2009 ABQB 72 at page 39:

Our Court of Appeal continues to reaffirm the pattern of dealings methodology, as recently as in the **Imperial case**, supra, where at para. 21 the Court stated:

The meaning and import of pattern of dealings is well established. A pattern of dealings arises "where there are such a number of deals established so that it may be said that a pattern has been established by negotiation between the landowners and oil companies in a district". The Board should depart from such a pattern for only the most cogent reasons: see *Livingston v. Siebens Oil & Gas Ltd.* (1978), 8 A.R. 439 (C.A.) at para. 11; *Petryshen v. Nova* (1982), 23 Alta. L.R. (2d) 193 (C.A.). The principle contemplates "comparable" patterns of dealings, in terms of the rights granted, the type of land, proximity, date, acreage and the nature of the parties.

The only evidence presented in support of a pattern of dealings is that presented by Telford on behalf of the Operator – see Exhibit 5. The Operator in this case is the operator in all of 39 agreements presented. Telford testified that Penn West is the only active operator within an area of approximately eight to ten miles. While the Panel acknowledges that a pattern may be established in such circumstances, it does make the evidence less reliable.

As noted above, the rate of compensation to be determined is defined in Section 27(1)(d) of the SRA to include compensation in respect of the matters referred to in sections 25(1)(c) and (d).



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As a result, it is common for those two categories to be determined separately and then added together to form the rate of compensation. In this case the comparables presented by Telford did not break out the component parts but rather just provided the total. For the purpose of using the compensation under other surface leases as comparables, the Panel is satisfied that no breakdown is required. As stated by MacLean, J., in *Eastman v. PanCanadian Petroleum Limited et al*, unreported, ABQB No.8208-0170, Medicine Hat, at page 6:

I am satisfied that the evidence in this particular case supports the fact or supports the proposition that it is the total figure, the end figure, that is important not just to the oil company, but to the land owner as well....

Telford opined that of the 39 agreements, 13 locations were "more comparable" than the others. As noted by counsel for the Lessor, those agreements relate to only three quarter sections. Although the landowner's identity is blanked out on the agreements for reasons of confidentiality, it is likely a limited number of owners are included in that sample. Moreover, at least three of the 13 surface leases have not had a change in the annual compensation within the time period covered by the effective dates in question.

The Lessor challenged the validity of this Telford's evidence on the grounds that he had omitted agreements from nearby Sections 11, 26 and 27 in Township 52, Range 26. Telford's explanations were as follows:

- Section 11 – The landowner has agreed to "freeze" the compensation in exchange for Penn West's commitment to take steps to mitigate the impact of the sites on the landowner's development plans.
- Section 26 – Telford was involved in the negotiations with landowners in this area following a major blowout in 2004. He testified that the operator has agreed to pay higher than the going rate to accommodate landowner concerns and obtain their agreement to drill another well on that quarter section.
- Section 27 – Telford testified that the locations excluded from this quarter section were battery sites and well sites with multiple well heads thus differentiating them from the sites under review.

The Panel accepts the explanations provided by Telford as being appropriate reasons for excluding those agreements. The absence of reliable information from those nearby locations does call into question whether the information provided can be said to have proven that "*a pattern has been established by negotiation between the landowners and oil companies in a district*" (see *Livingston v. Siebens Oil & Gas Ltd. (1978)*, 8 A.R. 439 (C.A.) at para. 11).

On balance, the Panel finds that the available information does not provide a sufficient evidentiary basis to establish that a pattern of dealings exists. The comparables provided by Telford are of too limited a pool of both landowners and sites within the area.

#### 8.1.4 Rates of Compensation

While the comparables provided by Telford do not establish a pattern of dealings, they do provide sufficient information upon which to establish the rate of compensation for each of the surface leases under review.

As noted by Telford, they establish a range of compensation from \$3,300.00 to \$6,000.00 per year. Matheson opined that four of the 13 locations considered more comparable by Telford were the most comparable. Those sites are all located immediately east of the Lands in Section 35-52-26-W4M and have the same industrial reserve district designation as the Lands. Telford testified, and the Panel finds, that the lands on which those sites are located are owned by a lawyer who has extensive experience in surface rights compensation and is very knowledgeable of the basis upon which compensation is determined. The three sites of those which are mid-field locations with an access road and a pump jack and range in size from 3.675 to 5.040 acres, each have annual compensation of \$5,000.00 effective in 2010 for two of them and 2012 for the third. The

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compensation for the fourth site of 3.675 acres, which is also mid-field but has a separator and pop tank as well as a pump jack, is \$6000.00.

The well site and access road located in NE ¼-34-52-26-W4M (LS 10 Site), has many of the same attributes including proximity, size, facilities and location in the field. A rate of compensation for that surface lease effective March 12, 2007, should be somewhat lower to reflect the earlier effective date and the Panel finds it to be \$4,700.00. That rate of compensation will again be subject to review as of March 12, 2012.

The Panel accepts that the impact of a surface lease located on the boundary of a field is less than if located mid-field. Telford opined that the surface lease for the well sites and access roads located in NE ¼-34-52-26-W4M (LS 15 Site), NE ¼-34-52-26-W4M (LS 9 Site) and NE ¼-34-52-26-W4M (LS 16 Site), should be considered as boundary sites. The basis for that opinion is the aerial photographs in Exhibit 3 which indicate that the farming pattern is not affected by the presence of the well sites and associated roads. In the absence of any evidence to the contrary, the Panel accepts the designation of those three surface leases as boundary locations.

Other than the boundary location the LS 15 Site, LS 9 Site and the LS 16 Site are very similar in size and the facilities on site to the three mid-field comparables referenced above. After adjusting for that factor and the effective dates, the Panel finds the following rates of compensation are appropriate:

- NE ¼ 34-52-26-W4M (LS 15 Site)– \$4,250.00, effective August 21, 2008;
- NE ¼ 34-52-26-W4M (LS 9 Site) - \$4,500.00, effective October 6, 2011; and
- NE ¼ 34-52-26-W4M (LS 16 Site) - \$4,500.00, effective August 16, 2011.

The surface lease for the satellite site located on NE ¼-34-52-26-W4M (LS 9 Satellite Site) has more production facilities than the other sites but is smaller at 2.35 acres compared to the range of 3.575 to 5.5 acres for the other four surface leases under review. The fourth of the Section 35 sites referenced above is somewhat larger at 3.675 acres but has sufficiently similar facilities, field location, and effective date of May 2010 to justify the same rate of compensation of \$6,000.00 for the satellite site located on NE ¼ 34-52-26-W4M (LS 9 Satellite Site), effective September 15, 2011

## 9.0 INTEREST

Since the parties reached an agreement on the payment of interest, the Panel makes no determination on that issue.

## 10.0 COSTS

The Panel will reserve on the issue of costs and, in the event it cannot be resolved, directs the parties to provide written submissions to the Board and the opposing party in accordance with the following timelines:

- The Lessor - within three weeks of the date of this decision;
- The Operator - within two weeks of receiving the Lessor's submission; and
- The Lessor's Reply, if any – within one week of receiving the Operator's submission.

The parties are reminded of the provisions of Rule 31(1) and (2) of the SRB Rules and are asked to provide their submissions in a manner which complies with the requirements of the Rule addressing the factors to be considered as set out in the Rule.

File Nos. SL2010.0194, SL2010.0195, SL2011.0210  
SL2011.0211 and SL2011.0212

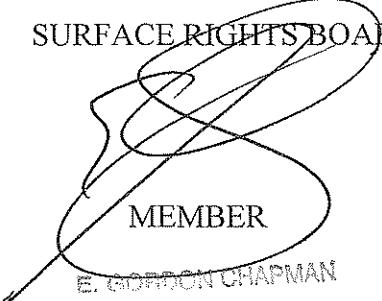
Reasons for Decision

11.....

ORDERS

Orders will issue determining and varying the rate of compensation payable by the Operator as set out in the attached decisions.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD  
  
MEMBER  
E. GORDON CHAPMAN

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

B E T W E E N:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

DECISION

On the relevant evidence heard and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached and forms part of, the Board determines that the rate of compensation payable by the Operator in respect of the surface lease shall be varied to \$4,700.00 annually effective on and after March 12, 2007, and payable on March 12 each year after unless and until varied by agreement or a further review.

The costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD

MEMBER

J. E. GORDON CHAPMAN

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(the "*Act*")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

DECISION

On the relevant evidence heard and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached and forms part of, the Board determines that the rate of compensation payable by the Operator in respect of the surface lease shall be varied to \$4,250.00 annually effective on and after August 21, 2008, and payable on August 21 each year after unless and until varied by agreement or a further review.

The costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER

E. GORDON CHAPMAN

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

DECISION

On the relevant evidence heard and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached and forms part of, the Board determines that the rate of compensation payable by the Operator in respect of the surface lease shall be varied to \$4,500.00 annually effective on and after October 6, 2011, and payable on October 6 each year after unless and until varied by agreement or a further review.

The costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER

E. GORDON CHAPMAN

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

DECISION

On the relevant evidence heard and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached and forms part of, the Board determines that the rate of compensation payable by the Operator in respect of the surface lease shall be varied to \$4,500.00 annually effective on and after August 16, 2011, and payable on August 16 each year after unless and until varied by agreement or a further review.

The costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER  
E. GORDON CHAPMAN

*SURFACE RIGHTS ACT*  
RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

B E T W E E N:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

DECISION

On the relevant evidence heard and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached and forms part of, the Board determines that the rate of compensation payable by the Operator in respect of the surface lease shall be varied to \$6,000.00 annually effective on and after September 15, 2011, and payable on September 15 each year after unless and until varied by agreement or a further review.

The costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD

MEMBER

E. GORDON CHAPMAN



*SURFACE RIGHTS ACT* RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

ORDER VARYING RATE OF COMPENSATION

UPON THE APPLICATION of 1369900 Alberta Ltd. for review of the rate of annual compensation payable under the lease and the Board having heard the representations of the Operator and the Lessor; and

By Decision No. 2012/0258, dated March 14, 2012, in which the Board determined that the rate of annual compensation shall be varied;

IT IS ORDERED that

1. the rate of annual compensation payable under the Lease is varied to FOUR THOUSAND, SEVEN HUNDRED and 00/100 DOLLARS (\$4,700.00) annually, effective on and after March 12, 2007, and payable on March 12 in each year after unless and until varied by a further review; and
2. the costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER  
E. GORDON CHAPMAN

*SURFACE RIGHTS ACT* RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

ORDER VARYING RATE OF COMPENSATION

UPON THE APPLICATION of 1369900 Alberta Ltd. for review of the rate of annual compensation payable under the lease and the Board having heard the representations of the Operator and the Lessor; and

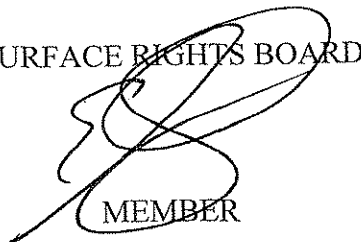
By Decision No. 2012/0259, dated March 14, 2012, in which the Board determined that the rate of annual compensation shall be varied;

IT IS ORDERED that

1. the rate of annual compensation payable under the Lease is varied to FOUR THOUSAND, TWO HUNDRED FIFTY and 00/100 DOLLARS (\$4,250.00) annually, effective on and after August 21, 2008, and payable on August 21 each year after unless and until varied by a further review; and
2. the costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER

E. GORDON CHAPMAN

*SURFACE RIGHTS ACT* RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

ORDER VARYING RATE OF COMPENSATION

UPON THE APPLICATION of 1369900 Alberta Ltd. for review of the rate of annual compensation payable under the lease and the Board having heard the representations of the Operator and the Lessor; and

By Decision No. 2012/0260, dated March 14, 2012, in which the Board determined that the rate of annual compensation shall be varied;

IT IS ORDERED that

1. the rate of annual compensation payable under the Lease is varied to FOUR THOUSAND, FIVE HUNDRED and 00/100 DOLLARS (\$4,500.00) annually, effective on and after October 6, 2011, and payable on October 6 each year after unless and until varied by a further review; and
2. the costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER  
E. GORDON CHAPMAN

*SURFACE RIGHTS ACT* RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

BETWEEN:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

ORDER VARYING RATE OF COMPENSATION

UPON THE APPLICATION of 1369900 Alberta Ltd. for review of the rate of annual compensation payable under the lease and the Board having heard the representations of the Operator and the Lessor; and

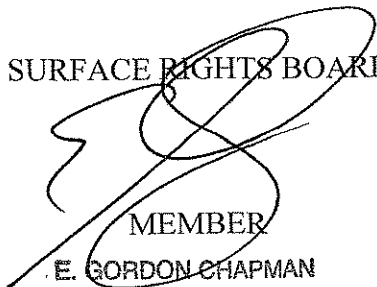
By Decision No. 2012/0261, dated March 14, 2012, in which the Board determined that the rate of annual compensation shall be varied;

IT IS ORDERED that

1. the rate of annual compensation payable under the Lease is varied to FOUR THOUSAND, FIVE HUNDRED and 00/100 DOLLARS (\$4,500.00) annually, effective on and after August 16, 2011, and payable on August 16 each year after unless and until varied by a further review; and
2. the costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER  
E. GORDON CHAPMAN

*SURFACE RIGHTS ACT* RSA 2000 Chapter S-24  
(the "Act")

Before:

SURFACE RIGHTS BOARD  
(the "Board").

IN THE MATTER OF section 27 of the *Act*; and

IN THE MATTER OF certain lands in the Province of Alberta subject to a surface lease and described as the NE ¼, Sec. 34, Twp. 52, Rge. 26, W4M (the "Lands").

B E T W E E N:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

1369900 ALBERTA LTD.,

Lessor.

ORDER VARYING RATE OF COMPENSATION

UPON THE APPLICATION of 1369900 Alberta Ltd. for review of the rate of annual compensation payable under the lease and the Board having heard the representations of the Operator and the Lessor; and

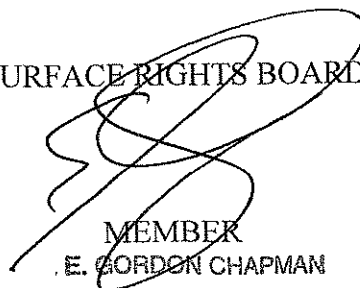
By Decision No. 2012/0262, dated March 14, 2012, in which the Board determined that the rate of annual compensation shall be varied;

IT IS ORDERED that

1. the rate of annual compensation payable under the Lease is varied to SIX THOUSAND and 00/100 DOLLARS (\$6,000.00) annually, effective on and after September 15, 2011, and payable on September 15 each year after unless and until varied by a further review; and
2. the costs of these proceedings are reserved.

Dated at the City of Edmonton in the Province of Alberta on March 21, 2012.

SURFACE RIGHTS BOARD



MEMBER  
E. GORDON CHAPMAN