

**September 18, 2023**

**SURFACE RIGHTS BOARD**

IN THE MATTER OF  
THE GEOTHERMAL RESOURCES ACT, R.S.B.C., C. 171  
AND THE PETROLEUM AND NATURAL GAS ACT  
R.S.B.C., C. 361, AS AMENDED

AND IN THE MATTER OF  
LOT A DISTRICT LOT 4127 RANGE 5 COAST DISTRICT  
PLAN 10882 (PID 005-078-431)  
(The "Lands")

BETWEEN:

Kitselas Geothermal Inc.

(APPLICANT)

AND:

Kenton James Forbes and  
Rebecca Joan Forbes

(RESPONDENTS)

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**BOARD ORDER**

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Mediation conducted: September 18, 2023  
Mediation attended by: Cheryl Vickers, Mediator; Peter Judd, Board Member; Tim Thompson and Alison Thompson, on behalf of the Applicant; Kenton Forbes, on behalf of the Respondents; Caleb Brousseau and Andrea Brousseau, interested parties

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Kitselas Geothermal Inc. (“KGI”) holds a permit issued under the *Geothermal Resources Act* (“*GRA*”) bearing Permit Agreement No. GP67428, approved by Order in Council on February 17, 2023, granting KGI the right to geothermal resources in specified zones and locations (“the Permit”).

Kenton James Forbes and Rebecca Joan Forbes (collectively “the Forbes”) are the owners of land legally described as: LOT A DISTRICT LOT 4127 RANGE 5 COAST DISTRICT PLAN 10882 (PID 005-078-431) (“the Lands”). The Lands are within the area covered by the Permit.

Caleb Brousseau and Andrea Brousseau (collectively “the Brousseaus”) are the prospective purchasers of the Lands pursuant to a purchase and sale agreement closing October 6, 2023.

KGI is seeking a well authorization permit from the BC Energy Regulator (“BCER”) allowing drilling of 2 geothermal exploration wells on the Lands.

Section 3 of the Geothermal Operations Regulation, BC Reg 79/2017, requires a person applying for a well authorization to provide “proof of tenure or right to use private land”. KGI seeks a right of entry order granting access for construction of access and wellsite pads, drilling of wellsites and any associated activity so that it may complete its application to the BCER for a well authorization and conduct a drilling program authorized by the BCER.

The *GRA* provides that the *Petroleum and Natural Gas Act* (*PNGA*) applies “in respect of entry onto and use of land for the purpose of exploring for and producing geothermal resources” (*GRA*, section 1(2)). The *PNGA* requires the Board to mediate disputes respecting access to private land and allows a mediator to make an order authorizing right of entry if the mediator is satisfied a right of entry order is required. (*PNGA*, section 159(1)). Reading the *GRA* and the *PNGA* together, a mediator may make an order authorizing entry to private land if satisfied the order authorizing the right of entry is required for the purpose of exercising exploration or production rights granted under the *GRA*.

KGI and the Forbes were not able to agree to terms of access for KGI’s geothermal activities in part because of the impending sale of the Lands to the Brousseaus. The

Board notified the Brousseaus of the application as interested persons. Given that the Brousseaus are not yet the owners of the Lands, they are not in a position to enter an access agreement although they will ultimately be the landowners affected by any drilling program. I am satisfied that an order authorizing entry to the Lands is required so that KGI can exercise the exploration rights granted under the Permit and complete its application process to the BCER. An order authorizing entry is made below.

Section 159(4) of the *PNGA* requires that as condition of an order authorizing entry to land, the Board make an order requiring the person seeking the right of entry to pay to the landowner an amount on account of rent or compensation that may ultimately be determined owing to the landowner. The Board maintains jurisdiction to finally determine compensation owing to the landowner in the event the parties do not agree.

KGI advises that, in the event it receives authorization from the BCER to drill the proposed wells on the Lands, its drilling activities will not commence until after the purchase and sale of the Lands completes on October 6, 2023. It is the intent of this Order that the payment to the landowner required as a condition of entry to the Lands be made to the landowner at the time entry is required. Once ownership of the Lands changes, either the new owners or KGI may ask the Board to amend this order to reflect that the Lands have new ownership.

## **ORDER**

The Surface Rights Board orders:

1. Upon payment of the amount set out in paragraphs 2 below, KGI shall have the right of entry to and access across the Lands on the Terms and Conditions set out at Schedule "A" for the purpose of exercising its rights under Permit Agreement No. GP67428 issued under the *Geothermal Resources Act* including the right to:
  - a. Drill up to two (2) exploration wells as may be authorized in a well authorization issued by the BC Energy Regulator and as any well authorization may be amended by the BC Energy Regulator (the Well Authorization);
  - b. Conduct any work or activity required by the BCER in advance of the Well Authorization being granted or in relation to the Well Authorization;
  - c. Conduct any work necessary or ancillary to the Well Authorization that may be required by any government authority other than the BCER;
  - d. Conduct continued testing; monitoring and maintenance of any wells drilled in accordance with the Well Authorization;

- e. Conduct any work after wells have been drilled necessary to prepare and submit a development plan and apply for conversion of the Permit to a lease or to complete reclamation of the Lands.
2. KGI shall pay to the owner(s) of the Lands as partial compensation the amount of \$5,000.00.
3. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the BCER.

DATED: September 18, 2023

FOR THE BOARD



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Cheryl Vickers, Mediator

## **SCHEDULE “A”**

### **Terms and Conditions of Entry to the Lands**

1. Upon receipt, KGI must provide the owner(s) of the Lands and the Board a copy of the Well Authorization.
2. KGI shall access only those areas of the Lands and only as much of the Lands as reasonably necessary for the purposes set out in paragraph 1 of this Order.
3. Prior to entering the Lands for the purpose of drilling, KGI will give notice at least 48 hours prior to entry. Notice shall be given in writing by email unless otherwise agreed by the parties that notice may be provided by alternate means.