

**File No. 2213**  
**Board Order No. 2213-1**

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**October 6, 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 1 DISTRICT LOT 3983 RANGE 5 COAST DISTRICT  
PLAN 7300 (PID 009-433-678)  
(The "Lands")

BETWEEN:

Kitselas Geothermal Inc.

(APPLICANT)

AND:

Michele Magret Elisabeth Murdoch,  
Ronald James Murdoch,  
Hannah Michele Murdoch and  
Haley Janine Marlies Murdoch

(RESPONDENTS)

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**BOARD ORDER**

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Mediation conducted: October 2 and 4, 2023  
Mediation attended by: Cheryl Vickers, Mediator; Tim Thompson, Alison Thompson and David Try, on behalf of the Applicant; Michele Murdoch and Ronald Murdoch, on behalf of the Respondents

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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”).

Michele Magret Elisabeth Murdoch, Ronald James Murdoch, Hannah Michele Murdoch and Haley Janine Marlies Murdoch (collectively “the Murdochs”) are the owners of land legally described as: LOT 1 DISTRICT LOT 3983 RANGE 5 COAST DISTRICT PLAN 7300 (“the Lands”). The Lands comprise 10 acres with 650 feet of waterfrontage on Lakelse Lake. The Lands are within the area covered by the Permit.

KGI intends to seek a well authorization permit from the BC Energy Regulator (“BCER”) allowing drilling of up to 10 thermal gradient (TG) wells out of number of potential sites none of which are on the Lands, and up to 4 exploration wells out of a possible 50 potential sites, one of which is on the Lands and several of which are close by on adjacent and neighbouring property also within the Permit area. A decision respecting the exact locations of the 4 exploration wells cannot be made until after the TG drilling program is underway and the data collected from that program analyzed.

If the proposed wellsite on the Lands is selected as a viable site, KGI will require access to the Lands for construction of an access road and wellsite pad, drilling of the wellsite and any associated activity and seeks an order authorizing entry to the Lands for that purpose. If one or more of the potential wellsites on a neighbouring property is selected, KGI seeks an order authorizing entry to the Lands for purposes ancillary to the drilling of a geothermal well in particular, the placement of pumps and waterlines so that water can be drawn from Lakelse Lake and used in the drilling process on neighbouring property.

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 to the Lands 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*.

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.

Section 159(4) of the *PNGA* requires that as condition of an order authorizing right of entry to land, the Board mediator 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. If KGI accesses the Lands for purposes ancillary to the drilling of geothermal wells only, the loss to the Murdochs and consequent compensation owing is anticipated to be minimal. If KGI accesses the Lands to construct an access road and wellsite and drill a geothermal well, the loss to the Murdochs and consequent compensation owing, while impossible to estimate now, could be considerable. Consequently, the right of entry order below is made in two parts with differing partial payments required depending on the nature of the access ultimately needed. In either scenario, the Board retains jurisdiction to determine final compensation payable if the parties cannot agree.

## **ORDER**

The Surface Rights Board orders:

1. Upon payment of the amount set out in paragraph 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 performing ancillary activities to support geothermal drilling within the Permit area, including the placement of pumps and water lines to draw water from Lakelse Lake for the drilling of geothermal wells within the Permit area.
2. KGI shall pay to the owners of the Lands as partial compensation the amount of \$1,000.00.
3. Upon payment of the amount set out in paragraphs 4 and 5 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 one (1) exploration well 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 necessary or ancillary to the Well Authorization that may be required by any government authority other than the BCER;
  - c. Conduct continued testing; monitoring and maintenance of any well drilled in accordance with the Well Authorization;
  - d. Conduct any work after the well has 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.
4. KGI shall pay to the owners of the Lands as partial compensation the amount of \$5,000.00.
5. KGI shall deliver to the Surface Rights Board security in the amount of \$20,000.00 by cheque made payable to the Minister of Finance. All or part of the security deposit may be returned to KGI, or paid to the owners of the Lands, upon agreement of the parties or as ordered by the Board.
6. Nothing in this order operates as a consent, permission, approval, or authorization of matters within the jurisdiction of the BCER.

DATED: October 6, 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 owners 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 paragraphs 1 and 3 of this Order.
3. KGI will give notice to the owners of the Lands at least 48 hours prior to entering the Lands. Notice shall be given in writing by email unless otherwise agreed by the parties that notice may be provided by alternate means. To the extent reasonably possible, KGI will work with the owners of the Lands respecting timing for entering the Lands.
4. KGI shall make its best efforts to minimize its impact on the Lands and to any occupants of the Lands and shall consult with the owners of the Lands with respect to its use of the Lands for ancillary purposes including the placement of pumps and waterlines in an effort at minimizing loss to the landowners or damage to the Lands and to minimize and nuisance and disturbance to occupants of the Lands.
5. KGI crews shall conduct themselves in a professional manner, be cognizant of concerns respecting privacy when working around residences, and make their best efforts to avoid unnecessary invasions of privacy.
6. For as long as KGI requires access to the Lands pursuant to this Order, KGI shall acquire and maintain, at its own expense, applicable comprehensive general liability insurance with inclusive limit of not less than Five Million Dollars for personal injury and property damage. Before entering the Lands for the first time, KGI shall provide the landowners with a copy of the applicable insurance certificate.
7. If either party has concerns respecting the other party's compliance with these terms, they shall notify the other party in writing of those concerns. The parties will use their best efforts to rectify any concerns, failing which, the Board retains jurisdiction to resolve concerns respecting the implementation of or compliance with this Order and to amend this Order, on the written application of a party copied to the other party, as the Board may find appropriate.