

July 17, 2019

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF

THE SOUTH EAST $\frac{1}{4}$ OF SECTION 7 TOWNSHIP 85 RANGE 13
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

James Michael Furze and
Theresa Michelle Furze

(APPLICANTS)

AND:

Whitecap Resources Inc. and
Perry Piper

(RESPONDENTS)

BOARD ORDER

Heard by written submissions

[1] On May 30, 2018, Mr. and Mrs. Furze purchased the Lands legally described as: The South East $\frac{1}{4}$ of Section 7 Township 85 Range 13 West of the 6th Meridian Peace River District. Mr. and Mrs. Furze apply under section 176 of the *Petroleum and Natural Gas Act* for an order for payment of rent owing as of August 4, 2018 under a surface lease registered on the Title to the Lands entered in 1961 between Florence E. Musyowski, the then owner of the Lands, and Imperial Oil Limited for a wellsite and access road (the Surface Lease). Whitecap Resources Inc. (Whitecap) is now the operator of the well and access road on the Lands and the holder of the surface rights granted by the Surface Lease.

[2] In 1978, the then owners of the Lands, Clinton, Bruce and Perry Piper sold the Lands to Stuart and Denise Greer. The Greers and Pipers entered an Assignment of Rent Agreement dated November 23, 1978 whereby the Greers assigned the rents payable under the Surface Lease to the Pipers (the Assignment of Rents).

[3] By email dated April 30, 2018, Mrs. Furze wrote to Whitecap questioning the Pipers' continuing right to receive the rents payable under the Surface Lease and expressing the Furze's disagreement with the terms of the Assignment of Rents. Mr. O'Shea, of Whitecap, indicated that Whitecap supported the agreement with the Pipers and were not at liberty to discuss with the Furzes the rent payable under the Surface Lease. Mr. O'Shea advised Mrs. Furze that she would have to discuss the issue with Perry Piper. Mrs. Furze's emails to Whitecap indicate Mr. Piper was not returning her phone calls.

[4] Whitecap did not pay the rent owing as of August 4, 2018 to the Furzes. The Furzes applied to the Board on August 31, 2018 seeking an order for payment of the rent owing under the Surface Lease.

[5] In a decision rendered March 21, 2019, the Board found it had jurisdiction to determine the threshold issue of whether the Furzes are persons entitled to payment of rent under a Surface Lease, which in turn involved determining whether the Assignment of Rents created an interest in land that ran with the Lands (Order 2005-1).

[6] In a decision rendered June 6, 2019, the Board found that the Assignment of Rents does not create an interest in land and does not run with the Lands. The Board found that the Furzes, as the current owners of the Lands, step into the shoes of the Lessor under the Surface Lease and are the persons entitled to receive the rent or compensation payable under the Surface Lease capable of bringing an application under section 176 of the *Petroleum and Natural Gas Act* (Order 2005-2).

[7] The Board sought submissions from the parties as to whether it should make an Order for payment under section 176 of the *Act*. Only the Furzes responded to this invitation seeking to recover the rent owed as of August 4, 2018. Whitecap previously advised the Board that it took no position on the threshold issue and offered to pay the rent owing as of August 4, 2019 into trust pending determination of entitlement. Whitecap reserved the right to make submissions as to whether the Board should make an order for payment under section 176, but did not respond to the Board's invitation to provide a submission on that issue.

[8] The Board has found that the Furzes are the persons entitled to receive the rent payable under the Surface Lease. The Assignment of Rents does not create an interest in land and run with the Lands and the Furzes are not bound by its

terms. The Furzes became the persons entitled to receive the rent under the Surface Lease upon their purchase of the Lands in May 2018 and were the persons entitled to receive the rent under the Surface Lease as of August 4, 2018 when the rent became due. Whitecap failed to pay the Furzes the rent owing as of August 4, 2018.

[9] Section 176 of the *Petroleum and Natural Gas Act* provides:

176 (1) If a right holder fails to pay rent or compensation owing under a surface lease or order of the board granting the right holder a right of entry, on application by the person entitled to receive the rent or compensation, the board, by order may do any one or more of the following:

- (a) suspend the right of entry with or without terms or conditions;
- (b) determine the unpaid amount and order that interest is payable on that amount;
- (c) terminate the right of entry with or without terms or conditions;
- (d) if the right of entry is terminated under paragraph (c), determine the amount of rent, if any, or compensation owing by the right holder to the date of the termination and order that interest is payable on that amount.

(2) If the board suspends or terminates a right of entry, the board must in accordance with the rules of the board, serve notice of the suspension or termination on the right holder, the owner of the land, the occupant, if any, and the commission.

(3) If a right of entry is suspended under subsection (1)(a) of this section, the obligations of the right holder under the surface lease or order to pay rent, if any, and compensation continue during the period of the suspension.

(4) A suspension of a right of entry under subsection (1)(a) terminates on the date set by the board.

(5) If the suspension of a right of entry is terminated under subsection (4), the board must, in accordance with the rules of the board, serve notice of the termination on the persons who received notice under subsection (2).

[10] I find that Whitecap is a right holder under a surface lease and that Whitecap has failed to pay rent owing under a surface lease to the persons entitled to receive that rent as of August 4, 2019.

[11] The Surface Lease requires the right holder to pay annual rent of \$43.48 per acre. The Board is not able to determine the amount of rent owing as it does not have information as to the size of the leased area, nor does it have information respecting any renewals of rent payable under the Surface Lease. Once the Board is able to determine the amount of rent owing, an order for payment of the rent owing as of August 4, 2018 plus interest will follow. I make the order below to enable the Board to determine the amount of rent owing.

BOARD ORDER

[12] The Surface Rights Board orders that Whitecap Resources Ltd. shall no later than **Friday, July 26, 2019** advise the Board of the amount of rent that it is obligated to pay under the Surface Lease on the Lands entered in 1961 between Florence E. Musyowski and Imperial Oil Limited. **If Whitecap fails to advise the Board of the amount it is obligated to pay in rent under the Surface Lease by Friday, July 26, 2019, the Board may suspend the right of entry with or without terms or conditions.**

DATED: July 17, 2019

FOR THE BOARD



Cheryl Vickers, Chair