

File Nos. 2038, 2039, 2040  
Board Order No. 2038-1

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June 27, 2025

**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 NORTH EAST  $\frac{1}{4}$  OF SECTION 22 TOWNSHIP 85 RANGE 14  
WEST OF THE 6<sup>TH</sup> MERIDIAN PEACE RIVER DISTRICT;

THE NORTH WEST  $\frac{1}{4}$  OF SECTION 22 TOWNSHIP 85 RANGE 14  
WEST OF THE 6<sup>TH</sup> MERIDIAN PEACE RIVER DISTRICT EXCEPT THE MOST  
WESTERLY 25 METRES IN PARALLEL WIDTH THEREOF ("the Lands")

BETWEEN:

Samuel Wayne Roberts,  
Shawn Milton Roberts and  
Brenda Leslie Roberts

(APPLICANTS)

AND:

Whitecap Resources Inc.

(RESPONDENT)

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**BOARD ORDER**

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Heard: By written submissions closing May 2, 2025  
Submissions received from: Elvin Gowman, for the Applicants, undated  
Rick Williams, Barrister and Solicitor, for the  
Respondent, dated April 15, 2025

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## OVERVIEW

[1] The Applicants, Samuel, Shawn and Brenda Roberts (collectively “the Roberts”) are the fee simple owners of the Lands legally described on the facepage of this decision. For simplicity, I will refer to the two parcels as NE 22 and NW 22. The Roberts allege that the Respondent, Whitecap Resources Inc. (“Whitecap”), conducts oil and gas activities on the Lands without proper tenure. They identify three disputed areas: Area A relating to an active water injection well identified as 16-22-85-14 on NE 22; Area B relating to an active oil well identified as 10-22-85-14 also on NE 22; and Area D relating to a suspended oil well identified as 14-22-85-14 on NW 22.

[2] In short, the Roberts allege that when the Lands were granted by the Crown to their original owner, the disputed areas already containing oil and gas installations, were not excluded from the Crown grants. The Roberts submit they hold title to the disputed areas and that Whitecap occupies and uses the areas without appropriate tenure. They ask the Board to regularize Whitecap’s occupation of the Lands with respect to these three disputed areas with right of entry orders and seek compensation from Whitecap for its entry to and use of the Lands.

[3] Whitecap submits the Lands were granted by the Crown subject to existing rights of way granted to Texaco Exploration Company for the operation of a pipeline and wellsites and that Whitecap acquired the rights of way from Texaco’s successor. Whitecap submits it has the right to occupy and use the disputed areas and that no compensation is owed to the Roberts.

[4] I have reviewed the Crown grants and all of the documentary evidence provided with the submissions. Below, under the Facts heading, I have described the facts that I have accepted as applicable to the issues before me. For the reasons that follow, I find that the Lands were granted by the Crown subject to already existing rights in favour of Whitecap’s predecessors. Whitecap has appropriate tenure to the Lands, rights of entry orders are not required, and no compensation is owed by Whitecap to the Roberts for its occupation and use of the Lands to date.

## FACTS

[5] By Order in Council D8259, dated June 19, 1969 (OIC D8259) the Crown granted a statutory right of way to Texaco Exploration Company and its successors and assigns.

[6] The statutory right of way conveys “the full free and uninterrupted right and privilege to enter labour and pass along over and under the Crown lands shown outlined in red on Plan 17837...for all purposes necessary or incidental to the operation of a pipeline or wellsite.” Plan 17837 includes Disputed Areas A and D. OIC D8259 was registered in the Land Title Office on July 16, 1969.

[7] By Order in Council E1258 (OIC E1258) dated February 5, 1970, the Crown granted a statutory right of way to Texaco Exploration Company and its successors and assigns. The statutory right of way conveys “the full free and uninterrupted right and privilege to enter labour and pass along over and under the Crown lands shown outlined in red on Plan 18210...for all purposes necessary or incidental to the operation of a pipeline or wellsite.” Plan 18210 includes Disputed Area B. OIC D8259 was registered in the Land Title Office.

[8] In March 1971, the rights of way shown on Plans 17837 and 18210 were assigned to Texaco Canada Exploration Company Ltd.

[9] In June 1978, Texaco Canada Exploration Company Ltd. and Texaco Canada Ltd. amalgamated creating an amalgamated company with the name Texaco Canada Ltd. Texaco Canada Ltd. subsequently changed its name to Texaco Canada Inc. Texaco Canada Inc. became the holder of the right of ways shown on Plans 17837 and 18210.

[10] In February 1982, Texaco Canada Inc. assigned the rights of way shown on Plans 17837 and 18210 to Texaco Canada Resources Ltd. The assignment document is registered in the Land Title Office under Number S6149.

[11] On June 6, 1983, via Crown Grant No. 6352/1234 (Crown Grant 6352), Winnis Margaret Baker became the fee simple owner of NE 22 “as shown on the official plan confirmed by the Surveyor General of the Province of British Columbia and coloured red on the annexed plan”. The annexed plan colours the whole of NE 22 with the exception of a road allowance but including Disputed Areas A and B in red. Winnis Margaret Baker became the fee simple owner of NE 22 including Disputed Areas A and B, but excepting the road allowance not coloured red.

[12] Ms. Baker’s fee simple estate, however, was subject to several provisos. Crown Grant 6352 goes on the say:

PROVIDED THAT the estate herein granted is subject to:

(a)...

(b)...

(c) statutory rights-of-way in favour of Texaco Canada Resources Ltd. registered in the Land Title Office under Numbers P36903, S6149 and S8848 including the right of the Grantor to continue to renew it.

[13] The rights of way in favour of Texaco Canada Resources Ltd. covering Disputed Areas A and B are included in the document registered in the Land Title Office under Number S6149.

[14] NW 22 was granted in fee simple to Winnis Margaret Baker on June 6, 1983 via Crown Grant 2655/1197 (Crown Grant 2655). Crown Grant 2655 conveys the land “shown on the official plan confirmed by the Surveyor General of the Province of British Columbia and coloured red on the annexed plan”. The annexed plan colours the whole of NW 22 with the exception of a road allowance but including Disputed Area D in red. Winnis Margaret Baker became the fee simple owner of NW 22 including Disputed Area D, but excepting the road allowance not coloured red.

[15] The grant of fee simple was made, however, subject to similar provisos as set out in Crown Grant 6352 discussed above as follows:

PROVIDED THAT the estate herein granted is subject to:

- (a)...
- (b)...
- (c) a statutory right-of-way in favour of Texaco Canada Resources Ltd. registered in the Land Title Office under numbers..D8259...including the right of the Grantor to continue to renew it.

[16] D8259 is the OIC granting the right of way to Texaco Canada Resources covered by Plan 17837.

[17] In 1993, Texaco Canada Resources Ltd. and two Esso entities amalgamated to become Imperial Oil Resources (Imperial Oil) and the right of way in favour of Texaco Canada Resources Ltd. transferred to Imperial Oil. In March 2014, Whitecap acquired the rights of way from Imperial Oil.

[18] The Roberts became the fee simple owners of NE 22 in December 2016. Shawn and Brenda Roberts became the fee simple owners of NW 22 in April 1999.

## **ANALYSIS**

### **Does Whitecap have Tenure over the Disputed Areas?**

[19] Section 23(2) of the *Land Title Act* provides that the person named in a title as registered owner is “indefeasibly entitled to an estate in fee simple to the land described

in the infeasible title subject to...the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant”.

[20] Both Crown Grants 6352 and 2655 contained the proviso that the estate granted was subject to the rights of way in favour of Texaco Canada Resources Ltd. that cover Disputed Areas A, B and D. While Winnis Margaret Baker became the owner of the fee simple estate of the whole of NE 22 and NW 22 with the exception of the road allowance area, I find the Crown Grants were very clearly made subject to the rights of way in favour of Texaco Canada Resources Ltd. granted by OIC's D8259 and E1258 as shown on Plans 17837 and 18210. These rights of way are now held by Whitecap.

[21] The current title to NE 22 displays a statutory right of way in favour of Whitecap referencing the transfer of OIC's D8259 and E1258 and document S6149. The Roberts fee simple title to NE 22 continues, therefore, to be subject to the rights of way originally granted to Texaco Canada Resources Ltd and now owned by Whitecap. I find Whitecap has legal tenure for its activities in Disputed Areas A and B.

[22] The current title to NW 23 displays a statutory right of way in favour of Whitecap referencing D8259. Shawn and Brenda Roberts' fee simple title to NW 23 continues, therefore, to be subject to the right of way granted to Texaco Canada Resources Ltd. and now owned by Whitecap. I find Whitecap has legal tenure for its activities on Disputed Area D.

### **Are the Roberts entitled to compensation for Whitecap's use of the Disputed Areas?**

[23] I understand the Roberts to be claiming compensation for Whitecap's past and ongoing use of Disputed Areas A, B and D outlined on Plans 17837 and 18210. Sometime after 1999, Imperial Oil expanded the boundaries of Disputed Area D. In 2006, Imperial Oil entered a Temporary Workspace and Lease Extension Agreement with Shawn Roberts (the "Expansion Agreement") providing compensation for previous use of the expanded area and annual rent for use of the expanded area going forward. Whitecap continued to pay the annual rent under the Expansion Agreement following its acquisition of Imperial Oil's rights and the parties have subsequently entered a Rental Increase Agreement establishing annual rent for Whitecap's continued use of the expanded area. I do not understand the Roberts to be claiming any further compensation for Whitecap's use of the expanded portion of Area D covered by the Expansion Agreement and Rental Increase Agreement.

[24] The Roberts claim \$25,000 as the initial payment to go along with a right of entry order for Disputed Areas A, B and D. As I have found Whitecap has legal tenure to the Disputed Areas, no right of entry orders are required. I will nevertheless consider whether compensation is payable.

[25] I understand the Roberts claim to be entitled to compensation for Whitecap's use and occupation of the Disputed Areas under the *Petroleum and Natural Gas Act*. The basis for this claim is not clear. They have provided me with current and historical versions of the *PNGA* referencing in particular section 18A.(1) from a 1965 version of the *PNGA* which stated that "where the surface of a location issued under this Act is on Crown land, the surface rights to which, subsequent to the location, are disposed of by the Crown, the holder of the location is liable to compensate the transferee of the surface rights for unimproved land required for its operation to an amount per acre not greater than the amount per acre which he would be required to pay to the Crown for unimproved land." Without pointing to a particular section of the *PNGA* now in force or providing any rationale for the application of a 1965 statute to this claim, the Roberts submit the provision is consistent with today's *PNGA* requirement for payment of compensation to the fee simple owner and/or legal occupant.

[26] Whitecap submits the Crown has not disposed of the surface rights to the Disputed Areas as required by the 1965 *PNGA*, but specifically excluded them from the Crown grants. I disagree that the surface area of the Lands associated with Disputed Areas A, B and D were not disposed of by the Crown Grants. These areas were outlined in red on the annexed plans to the Crown Grants and were included in the transfer of indefeasible title. The indefeasible title was nevertheless subject to the existing rights of way in favour of Texaco Canada Resources Ltd. Those rights continue to exist on the title giving Whitecap tenure for the purposes of its oil and gas activities in the disputed areas.

[27] But even if the provision in force in 1965 requiring compensation when a surface location is transferred by Crown grant applies to the present case, which is certainly not evident from the arguments before me, there is no evidence as to what the appropriate rate per acre for compensation would be. Is it the per acre rate that would have applied when the Crown grants were made in 1983? Is it the rates that would have applied in 1999 and 2016 when NE 22 and NW 22 last transferred? Or is it the per acre rate that might apply today? Further, there is no evidence of any loss to the Roberts arising from Whitecap's use and occupation of the Disputed Areas or the value of that loss if any.

[28] In *Kovacs v. Imperial Oil and Esso Resources Canada Limited*, [1987] B.C.J. No. 629 (S.C.), the Supreme Court of British Columbia found that where a Crown grant of land is made subject to statutory rights of way, no additional compensation for the use of the right of way is owed to the landowner. In *Kovacs*, as in the present case, rights to access ungranted Crown lands were granted by Order in Council for oil and gas purposes. A subsequent Crown grant of the land was issued subject to the rights previously granted. In a claim by a subsequent landowner for compensation, the Court found the current holder of the right of way could rely on the right of way granted by the Order in Council as preserving their right to enter and use the lands without trespass or paying compensation to the landowner.

[29] The Roberts purchased the Lands subject to the rights of way in favour of Whitecap that are registered against title. There has been no “taking” by Whitecap from the Roberts.

[30] These applications were brought under section 158 of the *PNGA* alleging that Whitecap did not have proper tenure to the Lands for its activities and seeking right of entry orders to provide Whitecap with tenure and compensation that would generally go with a right of entry order. I have found Whitecap has tenure to the Disputed Areas; right of entry orders are not required and likewise any initial compensation that would go with a right of entry order to compensate for a “taking” is not required. This application was not brought under section 163 of the *PNGA* claiming loss to the landowner or damage to the land as a result of the rights of entry. This decision does not preclude such an application if the circumstances warrant.

[31] I find there is no basis for the Roberts claim for compensation under section 158 of the *PNGA*.

## **ORDER**

[32] The applications are dismissed.

DATED: June 27, 2025

FOR THE BOARD

Cheryl Vickers, Vice Chair