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Farmers' Advocacy Office

Independent Land Information & Advocacy Office - Dawson Creek, British Columbia

**Submission in Response
to the Ministry of Energy and Mines Consultation Paper
on Information Sharing by the Surface Rights Board**

Aspen Grove
Property Services



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This paper is submitted by the Farmers' Advocacy Office, in response to a paper prepared by the Ministry of Energy and Mines entitled Consultation Paper on Information Sharing by the Surface Rights Board. The discussion questions posed are responded to below.

***Is the proposed information to be shared appropriate?
What information should or should not be published?***

The first item of concern to the Farmers' Advocacy Office is paragraph 3, page 4 of the Consultation paper, which states:

“The Ministry does not intend to allow the Board to publish the name or personal information of the landowner or the occupant of the surface lease location.”

The Farmers' Advocacy Office wishes to draw the Ministry's attention to the BC Standard Surface Lease agreement, which can be found at <http://www.empr.gov.bc.ca/OG/oilandgas/Neemac/Pages/default.aspx>

“That surface lease agreement was a recommendation of the Northeast Energy and Mines Advisory Committee (NEEMAC). It was negotiated through the cooperation of NEEMAC member landowner groups, regional government, and the oil and gas industry, including:

- Custodians of the Peace Country Society
- Peace River Regional District
- Peace River Forage Association (B.C.)
- Canadian Association of Petroleum Producers (CAPP)
- Small Explorers and Producers Association of Canada (SEPAC)
- Canadian Association of Petroleum Landmen (CAPL)

The B.C. Ministry of Energy, Mines and Petroleum Resources helped to facilitate the negotiation of the surface lease agreement.”

At Section 30 (c) and (d) of the lease agreement, landowners consent to the release of their names and such personal information as is contained in the lease:

(c) The Owner and the Operator acknowledge that this Lease and any amendments thereto are required to be submitted to the Mediation and Arbitration Board.

(d) By execution of this Lease, the Owner and Operator agree that the lease and any information contained herein and any amendments thereto may be disclosed by the Mediation and Arbitration Board and the Registrar of Land Titles, and the Parties expressly consent to such disclosure.

Further, all leases exceeding 3 years in term are required to be registered in the Land Title Office by the Land Title Act, Section 20, which states:

Unregistered instrument does not pass estate

20 (1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

(2) An instrument referred to in subsection (1) confers on every person benefited by it and on every person claiming through or under the person benefited, whether by descent, purchase or otherwise, the right

(a) to apply to have the instrument registered, and

(b) in proceedings incidental or auxiliary to registration, to use the names of all parties to the instrument, whether or not a party has since died or become legally incapacitated.

(3) Subsection (1) does not apply to a lease or agreement for lease for a term not exceeding 3 years if there is actual occupation under the lease or agreement.

Land owners names and addresses are public information at the Land Title Office, and at the BC Assessment Office. While there is considerable lack of registration by industry of surface leases, the fact remains that this is public information.

The Petroleum and Natural Gas Act, at Section 178 (c) states:

(3) A surface lease or amending agreement submitted to the board must be available for public inspection at the office of the board during its regular office hours.

The Farmers' Advocacy takes the position that it is the intent of legislation that all information contained in the surface lease or amending agreement is to be made available to the public since the lease or amending agreement in its entirety must be available for public inspection under Section 178 – albeit at a current location that is inaccessible to most northeast BC landowners. These leases are not redacted to exclude any information.

In order for information from surface leases to be useful to the public, the entire lease (or right of way agreement) with all terms and conditions, and the IOP (Individual Ownership Plan) must be published. The best format would be a searchable data base with a link to the PDF copy of the lease. This would apply to all amending agreements or rental reviews.

The importance of the IOP is its usefulness in comparing the impact of the lease on a property based on size and location of the well site and any access road, or the impact of a pipeline right of way on a property by its width, location and the manner in which it transects the property, and the extent of any temporary workspaces, sumps or borrow pits. Without exact locations and acreages, impact cannot be accurately assessed.

The effective date of a surface lease, amending agreement or rent review, or right of way agreement is extremely important, because without an effective date it is not possible to determine if the rental rate is current or historic.

All terms and conditions, including any compensation in kind, such as the lessee (oil and gas company) constructing a dugout for the lessor (landowner), or contracting with the lessor to do compensable work on the site, must be included, because they form part of the consideration of the lease agreement and need to be weighted in any comparable analysis of leases.

Without publication of surface leases, there is no point in having them collected at the Surface Rights Board. The Board cannot use them in decision-making – it must rely up on evidence put before it by the parties to the hearing. The parties are unable to present the leases to the Board as evidence at a hearing, if they do not have access to them.

There is no information contained in a lease or right of way agreement that should not be published. There is no restriction “by law, contract or policy” that precludes full publication – rather, the relevant laws and contracts promise it.

Publication of complete surface lease information is consistent with the Open Information and Open Data Policy. Premier Christy Clark gave this direction to government:

Open Data

1. Ministries must take steps to expand public access to government data by making it available online unless restricted by law, contract or policy;
2. Ministries must re-prioritize and expand data collection efforts towards those that enable citizens and sectors to create value from government data;
3. Ministries must adopt BC's open license for data and ensure data accessibility through DataBC in accordance with BC's Open Data Policy, which includes the requirement that data be published in an open machine-readable format;
4. DataBC must ensure that citizens can give feedback on, and assessment of, the quality of published information and provide input to which data should be prioritized for publication.

Open Information

1. To the extent practicable and subject to the Freedom of Information and Protection of Privacy Act and other valid restrictions, ministries should use modern technology to disseminate useful information in a routine way rather than waiting for specific requests under the FOIPPA Act.

Ministers will be expected to provide quarterly reports to Cabinet on their progress in meeting these open government objectives.¹

¹ Direction to the Government from the Premier and Executive Council, Open Information and Open Data Policy
http://www.cio.gov.bc.ca/local/cio/kis/pdfs/open_data.pdf

***In what format should the information be made available?
How should the information be presented?***

The simplest, most effective way of presenting the information is in a searchable electronic data base.

Given that the Government moved the Surface Rights Board to Richmond, a location not readily accessible to affected landowners, it is imperative that the lease documents be available in their entirety in electronic format.

An supplementary form of access would be to make catalogued paper copies available at Service BC locations in the Peace River and Northern Rockies regions, filed by legal description. This would accommodate those landowners who are not able to access the information electronically. Currently the Farmers' Advocacy Office assists such landowners in accessing relevant lease information.

The Farmers' Advocacy Office currently has a searchable data base where a researcher can click on a satellite imagery map, and find out basic information about a lease – legal description, effective date, size in acres, and annual rent per acre. The researcher can then produce a spreadsheet of leases within the screen area, with an average and median. This is minimal information.

Because the legislation provides for the entire lease to be available to the public at the Surface Rights Board, the searchable data base should make that experience available electronically. Therefore, the best way would be to have a similar satellite imagery map, but instead of the basic information on a pop up, the link would be to the actual document including IOP. Over time, as more leases become available, it would be necessary to filter by effective date—possibly having a map for each year, so that current and historic information could easily be researched.

Separating leases and right of way agreements would be necessary. Pipeline rights of way would clutter a map. They may be better presented in a searchable data base by year, and legal (district lot, or section/township/range, or in the case of properties outside the Peace River Block by section/township). Again, the actual document including IOP should be linked.

The Farmers' Advocacy Office has been remotely accessing documents filed at the Surface Rights Board in order to populate its data base, and would be pleased to work with any developers of a Surface Rights Board data base to develop a useful product.

Further concerns not addressed in the Consultation Paper

The matter of non-compliance by industry with the legislated requirement to file surface leases and amending documents within 90 days of execution continues to be a concern. Section 178 (1) and (2) of the Petroleum and Natural Gas Act stipulates:

Submission of surface lease information

- 178** (1) A right holder who holds a right of entry under a surface lease must submit to the board, not more than 90 days after the date the right holder acquires the right of entry,
- (a) the right holder's name and address,
 - (b) a description of the land that is subject to the right of entry, and
 - (c) a copy of the surface lease, including the terms of the right of entry and any rental provisions.
- (2) A right holder described in subsection (1) must submit to the board a copy of any agreement amending a surface lease not more than 90 days after the date of execution of the amending agreement.

The Publication Regulation in and of itself will not make surface lease information available to the public in a transparent manner unless the matter of compliance is addressed by way of an Administrative Penalty Regulation.

We note that Section 180 of the Petroleum and Natural Gas Act provides that the Surface Rights Board can suspend a right of entry under a lease if a company has failed to file. This Section does not require any regulation. All that is required is for the Board to be made aware of a lease that has not been filed, and it can commence action.

Section 180 (1) and (2) provides:

Suspension of right of entry under surface lease

- 180** (1) If the board is satisfied that a right holder has failed to submit a surface lease or agreement as required under section 178 (1) or (2), the board, without prior notice, may suspend the right of entry under the surface lease until the surface lease or amending agreement has been submitted to the board.
- (2) If the board suspends a right of entry, the board must, in accordance with the rules of the board, serve notice of the suspension on the right holder, the landowner, the occupant, if any, and the commission.

Clearly the legislation was written with the intent to enforce compliance with the requirement to file surface lease information with the Board, and the absence of an Administrative Penalty Regulation contributes to the blatant disregard of the legislation by certain companies within the industry.

The Administrative Penalty should be of sufficient magnitude to ensure compliance. First time penalty \$25,000, doubling with each successive offence.

The Publication Regulation will be an empty promise in the absence of a strong and actively enforced Administrative Penalty Regulation.

Timing of Regulations

The final concern of the Farmers' Advocacy Office is the timing of implementation of the regulations.

- The Publication Regulation should be retroactive to October 4, 2010, the date the Oil and Gas Activities Act and changes to the Petroleum and Natural Gas Act were proclaimed.
- The Administrative Penalty Regulation should be retroactive to October 4, 2010, with a 60-day grace period from the date the regulation is approved and ordered, for leases that have not been filed with the Surface Rights Board in accordance with the provisions of the Petroleum and Natural Gas Act.

Conclusion

The Farmers' Advocacy Office looks forward to the early implementation of the Publication and Administrative Penalty Regulations, and the availability of complete surface lease and right-of-way information to the public.