

Before:

Metis Settlements Appeal Tribunal
Land Access Panel

Between:

Julia Bergen,

Applicant,

-and-

**Paddle Prairie Metis Settlement,
Sunstar Resources Inc., Calver Resources Inc.,
Metis Settlements Land Registry
and
Metis Settlements General Council,**

Respondents.

Concerning:

Recovery of Compensation

Hearing Date:

June 19, 2017

Decision Date:

June 27, 2017

DECISION

The Hearing – parties, place and date

MSAT Panel members:

Don Cunningham, Panel Chair
David Drummond, Panel Member
Cody Hodgson, Panel Member

Parties present at the hearing:

Julia (Julie) Bergen, Applicant

Observers:

Theresa Houle
James Ghostkeeper
Philip Ghostkeeper (via tele-conference)
Terence (Terry) Piper
Mervin Bellerose

MSAT staff present:

Karen Mustus, Oil and Gas Officer

Place and date of the Hearing:

Conference Room, Nova Inn, Manning, Alberta
June 19, 2017 at 9:00 AM

1.0 Context

[1] The Land Access Panel of the Metis Settlements Appeal Tribunal held a hearing on June 19, 2017 to consider an application under Section 121 of the *Metis Settlements Act*.

[2] The Appeal Tribunal's Rules of Procedure allow each Panel the discretion over the hearing and decision making process. Given the overlapping issues and evidence, the Panel held one open hearing. Each party spoke to the shared issues and evidence and also talked about his or her particular circumstance. The Panel elected to issue separate decisions for each appellant.

[3] After consulting with the parties, including Paddle Prairie Metis Settlement (PPMS) Administration, the hearing for this matter (and other matters involving PPMS members) was set for June 19, 2017 at the Paddle Prairie Metis Settlement Council Office. Notices were sent to all the parties by registered mail on June 2, 2017 confirming the place, date and time of the hearing.

[4] Despite its earlier consent to have the hearing(s) in Council chambers on Monday, June 19, 2017, PPMS Council Secretary sent an email to MSAT Staff—but not to any of the parties—at 1:32 the Thursday before the hearing (on June 15) that:

The hearings that you scheduled for June 19 at the Paddle Prairie Metis Settlement will not take place due to the moratorium set in place at the MSGC level. Paddle Prairie does not agree to participate in any way.

Thank you

Sandra Ann

Paddle Prairie Metis Settlement
Council Secretary
780 981 2227
Email:executive@paddleprairie.com

[5] The email from PPMS Council was forwarded to this Panel for its consideration. This Panel directed that the hearing(s) proceed on June 19, 2017, but be moved from Paddle Prairie Offices to the Nova Hotel in Manning, which is a little over an hour away by car from PPMS. All the parties were notified of the change in location by telephone or email and all but one of the Applicants attended the hearing in person. The one who did not attend in person, called in via tele-conference.

[6] Paddle Prairie Metis Settlement Council did not attend the hearing. In this regard, and in keeping with the Appeal Tribunal's Rules of Procedure concerning non-attendance of parties at hearings, this Panel took note that Council had received notice of both the original place and time of the hearing and amended place and time of the hearing, and this Panel directed that the matter(s) proceed in Council's absence.

[7] That PPMS Council chose not to attend the hearing(s) is its decision. However, by belatedly reversing its earlier agreement to have the hearing(s) in its offices, PPMS caused its own members to incur additional travel time, and expense. Given the Appeal Tribunal's statutory mandate to strengthen good governance on the Metis Settlements, we remind PPMS Council that good governance demands that Council respect the rights of Settlement members to be heard.

1.1 Background

[8] Julia Bergen, the Applicant, filed an application under s. 121 of the *Metis Settlements Act* on April 5, 2017, for the recovery of annual rental for January 15, 2017 to January 14, 2018 (\$3,160.16).

[9] The payment of arrears in annual rental is with respect to a Surface Rights Agreement dated January 15, 2007 located in L.S. 10-35 in NE 35-102-23-W5M being land held by Julia Bergen. The interest held is a Metis Title.

[10] The Surface Rights Agreement operates under a Joint Venture Agreement entered into by SunStar Resources Inc. and Calver Resources Inc. effective October 31, 2005.

1.2 Issues

[11] The issues before the Panel are:

- 1) Is there money due and payable by the Operator to the Applicant under a surface lease?
- 2) Does the evidence satisfactorily prove non-payment?
- 3) Should the Panel direct the President of Treasury Board and Minister of Finance to pay out of the General Revenue Fund the amount of money to which the Applicant is entitled, pursuant to s. 121(2) of the *Metis Settlements Act*?

1.3 Decision

[12]

- 1) The amount of \$3,160.16 is payable to the Applicant by the Operator under the Surface Rights Agreement dated January 15, 2007. The Applicant has not been paid for the period January 15, 2017 to January 14, 2018.
- 2) The Panel directs the President of Treasury Branch and Minister of Finance to pay compensation of \$3,160.16 out of the General Revenue Fund to the Applicant pursuant to s. 121(2) of the *Metis Settlements Act*.

1.4 Reasons for Decision and Findings of Fact

[13] The Metis Settlements Land Registry Land Search report shows Julia Bergen holds Metis Title to the NE 35-102-23-W5M.

[14] The Panel finds that the total of \$3,160.16 is owing to the Applicant from the Operator for the annual payment for January 15, 2017 to January 14, 2018.

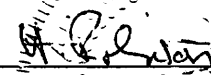
[15] Based on the Joint Venture Agreement, dated October 31, 2005, the Panel finds SunStar Resources Inc. and Calver Resources Inc. to be the "operator".

[16] The Panel notes that the Site has not been reclaimed and accordingly the Surface Rights Agreement remains in effect.

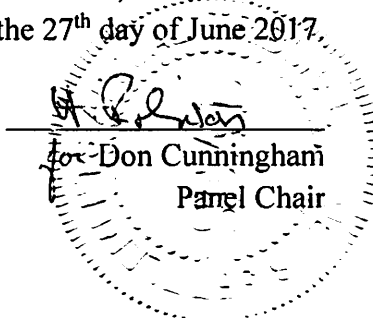
1.5 Order

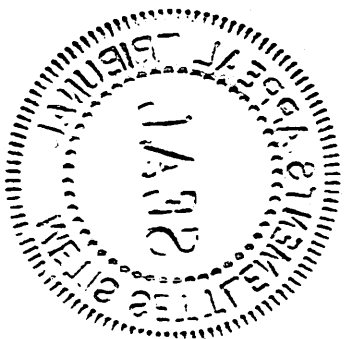
[17] The Panel directs the President of Treasury Board and Minister of Finance to pay Julia Bergen \$3,160.16.

Dated in the City of Edmonton, in the Province
on the 27th day of June 2017.



for Don Cunningham
Panel Chair





APPENDIX A

Metis Settlements Act, RSA 2000, Chapter M-14

111 In this division,

...

(h) ‘occupant’ means:

- (i) a settlement council,
- (ii) the person in actual possession of a parcel of patented land, and
- (iii) a person having a right or interest in patented land that is registered in the Metis Settlements Land Registry.

(i) “operator” means the person who authorized or permitted to engage in an authorized project.

Recovery of compensation

121(1) If an existing mineral lease holder or operator fails to pay money

- (a) under a surface lease, or
- (b) ordered to be paid by the Existing Leases Land Access Panel or the Land Access Panel,

within 30 days of the date it is due, the person entitled to receive the money may submit to the Land Access Panel evidence of the failure to pay.

(2) On receipt of satisfactory evidence of failure of the existing mineral lease holder or operator to pay, the Land Access Panel may direct the President of Treasury Board and Minister of Finance to pay out of the General Revenue Fund the amount of money to which the person is entitled.

(3) If the President of Treasury Board and Minister of Finance pays money to a person under this section, the amount paid constitutes a debt owing by the existing mineral lease holder or the operator to the Crown in right of Alberta.

(4) If a surface lease and a development agreement are combined in one document, this section applies only to that part of the document concerning the surface lease.