

Advisory 2019-1

FAO Cautions Landowners about the Surface Rights Board (SRB) use of a “Condition of Leased Area Form”

The Farmers' Advocate Office (FAO) has been contacted by numerous landowners regarding a form sent to landowners or occupants who have applied for recovery of unpaid rentals to the Surface Rights Board (SRB). If you have applied to the SRB for a Section 36 Recovery of Rentals, the SRB may send you a “**Condition of Leased Area Form**” for you to complete about the condition of the leased area.

Specifically, we have heard reports that:

- The information gathered in the “Condition of Leased Area Form” is being used to assess the impacts of loss of use and adverse effects to assess what the Minister will direct as payment from General Revenue.
- Decisions have reduced the amount recommended in the Minister’s direction for payment and landowners may see a reduction in the amount of annual compensation awarded based upon the information considered by the panel.
- Landowners and the public are experiencing difficulty reviewing current SRB decisions as the last update to the website was June 2018 and CanLii has few recent published SRB decisions.

Landowners should be aware that:

- The SRB uses discretion in its decisions to ensure that a landowner would not receive an award that results in “unjust enrichment”. Unjust Enrichment is a legal concept that is normally assessed as follows:

To successfully claim unjust enrichment against another person, a claimant must prove three things:

1. the person received a benefit,
2. the claimant suffered a loss corresponding in some way to the benefit, and
3. there was no juristic reason for the benefit and the loss.

We are assessing relevant SRB decisions in an attempt to understand how the legal test has been applied in Section 36 application decisions.

- When completing any form or document take the time to understand the request and provide complete and accurate information.
- Treat this document as a landowner submission to the SRB and strongly state your case to ensure it will be given proper weight in the decision making process.
- Provide specific and correct information that speaks to the loss of use and adverse effects that impact your farming operation.

- Consider all of the impacts to your farming operation and use of the land. For example if the use of GPS equipment has been impacted by even the simplest infrastructure remaining on the site, then this information should be provided.
- Review your original agreements that might have specific reference to the use of land or any provisions for farming portions of the surface lease. For example, the original agreement may have indicated that the farmers will cultivate, seed and harvest a portion of the leased area in an exchange to save the company an expense for weed control and limit the care and custody expense.
- The amount provided for annual rental is based on a landowner's Adverse Effect and Loss of Use, not the state of the industry. **Adverse Effect** reflects the alterations made to a landowner's business practices as well as the time, stress, and inconvenience experienced by a landowner as a result of the presence of a surface disturbance. **Loss of Use** is provided to compensate a landowner for the inability to use and benefit from a portion of their land on an ongoing basis.
- The Condition of Leased Area Form asks about existing fencing and equipment. Be specific in the details and provide examples of the impacts associated.
- Companies are responsible for paying the annual rental on a surface lease until a Reclamation Certificate is issued under section 144 of the *Environmental Protection and Enhancement Act*. Prior to a company making their application for reclamation to the Alberta Energy Regulator (AER), they must disclose the full application to the landowner and provide 30 days to review. The reclamation process will not be complete without industry consultation being initiated with the landowner.

As advocates for rural Albertans, the Farmers' Advocate Office works to ensure that their rights and interests are recognized, understood and protected. We are available to assist landowners and occupants with guidance and direction navigating the regulatory system and process. The FAO point of view is to understand the importance of the rural situation, so we are waiting for additional information from the SRB to assist landowners. It is important that the information we provide to stakeholders be accurate and transparent as we provide service to our clients.

For more information, contact the FAO through the Ag Info Centre at 310-FARM (3276) or by e-mail at farmers.advocate@gov.ab.ca

For more information on the *Surface Rights Act* Section 36 Recovery of Rentals process, you can reach the Surface Rights Board at 780-427-2444 (for toll free dial 310-000 first) or by e-mail at srb.lcb@gov.ab.ca