



Mineral Rights and Leases in Alberta

By John Ballem

The freehold oil and gas lease comes into play whenever the mineral rights are owned by private citizens rather than by government. Historically, in western Canada, the Hudson's Bay Company and the Canadian Pacific Railway have been the two largest holders of private land. The Hudson's Bay Company acquired the mineral rights to 7 million acres when it received 1/20 of the "fertile belt" from the Dominion of Canada in 1869. This was
(Cont'd, p. 3)

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**Luncheon Presentation
Hans Maciej
Vice President,
Canadian Petroleum Association
on
OPEC: Its History and Its Impact
on the World Petroleum Industry**

Time: 12:00 noon

Date: Wednesday, November 23, 1988

Place: The Palliser Hotel

Cost: Society members, \$15; non-members, \$17.

RSVP: Rhonda Boorman 269-6721 by November 21

one part of the agreement to surrender lands granted to the HBC by King Charles II in 1670. Until 1908, private citizens who purchased lands from the HBC received both the surface and mineral rights. After that date, the Hudson's Bay Company reserved minerals to itself.

The Canadian Pacific Railway acquired the mineral rights to 10 million acres along the railway right-of-way. Until 1908, the CPR reserved only coal when it sold lands to private citizens; thus, those who purchased land prior to that year also acquired ownership of oil and gas. For a period after 1908, the CPR reserved "petroleum" as well as coal, but a disagreement arose with land owners about whether "petroleum" included natural gas. The dispute, the Borys case, went to the Judicial Committee of the Privy Council. The court held that "petroleum" did not include natural gas, and that the existence of petroleum or natural gas should be determined by the conditions that exist in the reservoir. This decision resulted in split mineral titles and separate natural gas and petroleum leases. The CPR eventually reserved all mines and minerals for itself.

Early settlers to the prairies were able to acquire surface and mineral right when they were granted their 160 acre homesteads. By 1888, however, the Crown reserved all mines and minerals.

As a result of this series of events, about 10% of mineral rights in Alberta are owned privately; 80% by the provincial government; and 10% by the federal government. The privately owned mineral rights have disproportionate importance in Alberta because they are located in areas that have proved highly productive for oil and gas.

What the Lease Does The freehold lease deals with property rights to minerals which, if they exist at all, are to be found thousands of meters underground. These minerals can also migrate from place to place, so that oil and gas originally in place under one person's land may ultimately be produced from a well on someone else's land - Law of Capture.

Archives

Basically the purpose of a freehold oil and gas lease is to establish a contractual arrangement that allows the lessee to explore for oil and gas, and to produce these substances if they are found. The mineral owner benefits by the payment of the initial bonus consideration and also participates in any success by reserving a royalty.

Early Forms of Lease The development of the oil and gas lease was based on the American experience with the drilling of artesian wells to produce salt water. The salt industry evolved a form of lease whereby the owners of the land would grant to others the right to explore for and produce salt in return for a portion of whatever was produced.

With the Leduc No. 1 discovery in February 1947, there was frenzied leasing activity in the area, with Imperial the first off the mark. Imperial formed a small in-house committee to take the lease in use by the Standard Oil of New Jersey subsidiary companies in the United States and make the necessary changes so that it could be used as a standard form in Canada. The American forms included surface rights, and the Alberta government passed legislation requiring that surface rights be acquired through a separate document.

The standard leases were used in the leasing blitz within a fifty mile radius of the Leduc discovery. Lawrence Youngblood, a well known lease hound from Oklahoma, and his ten helpers secured the leases, although many had to be subsequently replaced because of errors in working with the unfamiliar affidavits and certificates required under Canadian law.

In 1950-1951, Imperial carried out leasing blitzes in Saskatchewan and Manitoba and accumulated on million acres. As a result, Imperial leases, or variations on them, became widely accepted in western Canada. Rio Bravo and Chevron were also based on the American salt lease. Shell, on the other hand, had quite a different form which afforded it a much more secure title.

(cont'd pg. 7)

Tar Sands Fascination Stuck to Pioneering Researcher

Reprinted from The Edmonton Journal

One hundred years after his birth, Dr. Karl Clark's daughter is compiling a book of his letters that reveal his enduring passion to exploit the tar sands.

In the 1920's and 30's, "there was a powerful fascination for the tar sands by a lot of people," Mary Clark Sheppard says. "Once you get tar stuck to your boots, you can't get it off!"

In fact it was gumbo - thick, wet heavy clay - that clung to Clark's boots the first time he visited Western Canada from Ottawa, where he was working for the federal government.

Sheppard has an old photo of her father and a Model T Ford on a rutted gumbo road that couldn't be travelled after a heavy rain, and couldn't be gravelled because the gravel wasn't available.

Clark studied the problem and decided "they had to water-proof the Prairie roads," Sheppard says.

He thought oil would do the job. "There wasn't much oil in Western Canada," Sheppard says.

"But he did know there was tar sand in Fort McMurray."

The raw tar sand was applied to some roads. "But he reasoned that it didn't make sense to move a product to Edmonton that was seven-eighths sand," Sheppard says. "It was the oil that was valuable."

So Clark proposed to separate the oil, move it south, then add it to local sand.

In his Ottawa laboratory, he mixed some chemi-

cals with hot water and separated oil from sand. "This caused quite a stir," Sheppard says.

Indeed, it stirred Henry Marshall Tory, then president of the University of Alberta, to hire Clark as the first full-time employee of the Scientific and Industrial Research Council of Alberta (now the Alberta Research Council).

Clark soon realized that the oil sands had more potential than just covering country roads. Ten years later, he had almost perfected his process for separating and recovering the oil.

The Alberta government built the Clearwater pilot plant to apply the technology.

"It did produce oil," Sheppard says. "Some days the oil separated beautifully - but on other days it did not. That was heartbreaking."

But Clark learned from the experience, she adds. "He realized that tar sands are acidic, and you have to neutralize the acid to get a separation."

By 1933, Clark has refined his process. In 1949, the Bitumont plant proved that oil could be extracted and separated in a single process.

It was first applied commercially by the Great Canadian Oil Sands (now Suncor), which opened its plant in 1967 - a few months after Clark died.

He did visit it during construction and was delighted, Sheppard says. "It was the culmination of what he'd worked for."

The process has since been used by Syncrude and likely would be used by the proposed OSLO plant.

Clark *(cont'd from p. 3)*

While Clark developed an efficient, commercial extraction process, he never claimed to have invented the first process for separating oil from sand. Crude techniques have been around for centuries, Sheppard says: "There's a theory that Moses' basket was coated with bitumen to keep it from sinking."

October 20 was the 100th anniversary of the birth of Karl Clark.

Mary Clark Sheppard's book, *Oil Sands Scientist: The Letters of Karl A Clark, 1920-1949*, with a foreword by Robert Blair of Nova Corporation, will be published by the University of Alberta Press in March, 1989.

Energy Awareness Week

Let's Be Aware of Energy

The Petroleum History Society is one of the sponsors of Energy Awareness Week, which will include an impressive series of events to promote greater understanding of our energy heritage. The week's events will deal with all energy forms, including oil and gas, coal and electricity.

The Society's contribution to the week will be a luncheon speech by Hans Maciej, Vice President of the Canadian Petroleum Association, who will discuss "OPEC: Its History and Its Impact on the World Petroleum Industry" (see notice on page 1.) In the Calgary area, other highlights include the following:

The Alberta Science Centre/Planetarium will host an unusual guest when Petrowell Servicing Ltd. sets up one of its petroleum service rigs on centre grounds. The truck-mounted rig will be working on a real 150-metre hole during a week of school and public tours.

In addition, the Eleventh Canadian National Energy Forum will be held at the Westin Hotel from November 21-22. Top executives from Canada's

energy industries will attend this prestigious conference, which precedes the World Energy Congress to be held in Montreal in September 1989.

Other events include CPA-sponsored natural gas plant tours for high school students; Energeum tours; tours of the new Eau Claire YMCA and University of Calgary power plants; public tours of SAIT's R-2000 home in Hawkwood; residential energy workshops for homeowners; talks on alternative energy at the downtown public library; and "Catch the Sun" shows at the Alberta Science Centre/Planetarium's Star Chamber.

Students from grades 4 to 12 can win tours of Petrowell's service rig for their classes by coming up with the best ideals for classroom participation during Energy Awareness Week. The winning classes will have their tours paid for by Petrowell and four Calgary oil companies: The Alberta Energy Company, Chevron Canada Resources Ltd., Esso Resources Canada, and Texaco Canada.

For more information, call 297-6324 and ask for the Energy Awareness Week calendar of events.

President's Report

Recent attempts by our society to secure a Revenue Canada charitable donation number for the Oral History Project have met with no success. We do not appear able to answer to their satisfaction all the questions raised by Revenue Canada and, in fact, the government department has recommended certain changes to the Society's bylaws. At this stage in the negotiations, the inexperience of the Society executive in dealing with government agencies is troublesome.

We would greatly appreciate any assistance you, as a Society member, could contribute: If you

have had any experience in obtaining a charity registration number for another group or project - or if you can recommend a consultant who might be able to stickhandle this through the system on our behalf, -- we need your help. If the Oral History Project cannot be certified as a charitable educational organization, raising funds to conduct this extremely important project will be far more difficult.

Please, if you will help call me at 290-2840 (work) or 288-9089 (home).

--W.R.S. (Bill) McLellan, President

Auction of Old Drilling Rig Postponed

The auction sale of artifacts from the Altamont Museum has been postponed from October to early next year, tentatively March 1989. You may remember from the last issue of *Archives* that one of the items to be auctioned is an 85-year-old cable tool drilling rig. This postponement is good news, since it gives petroleum history buffs more time to find ways to save this interesting piece of Alberta's history.

Although concerned that the rig could be sold outside Alberta, the Petroleum History Society lacks the resources to bid on the rig. Our objective is simply to encourage publicity within the province to help ensure that potential Alberta-based buyers are aware that the rig is for sale.

In addition to the article in the last newsletter, we wrote letters to everyone we could think of who might be a potential purchaser. This has generated a reasonable level of interest. Please help spread the word that this rig is available; if you

would like the Petroleum History Society to forward information to someone, please contact me at 283-9268.

For more information on the rig or the auction, see the September issue of *Archives* or call Mike Gorman at McLaren Auction Inc., 279-0415.

--Micky Gulless, Treasurer

The Publisher

Archives is published periodically by the Petroleum History Society, 3800, 150 6th Ave. S.W., Calgary, T2P 3Y7; (403) 269-6721. Editor: Peter McKenzie-Brown.

Submissions on historical topics related to Canada's petroleum industry are welcome. For information on membership or society activities, contact society president W.R.S. McLellan (403) 290-2840.

Mineral Rights *(from p. 2)*

Role of the Court The next stage in the evolution of the lease came when it began to be subjected to the scrutiny of the courts. The conventional oil and gas lease is structured so that it will terminate automatically if certain things are not done, and done on time.

It is fair to say that when the Canadian court were called upon to interpret the provisions of the lease they construed the language literally and strictly. The results often astonished and dismayed those who had prepared it.

An example from the 1950's involved an interpretation of the pooling clause, which is extremely important since many of the leases in Alberta comprise only homesteaded quarter sections. The pooling clause grants the lessee the right to pool the lands with others to form a production spacing unit, -- for example, 640 acres in the case of natural gas.

The early forms of the pooling clause contained these words "when such pooling or combining is necessary in order to conform with any regulations or orders of the Government of the Province of Alberta or and other authoritative body..." these words seemed innocuous enough particularly since one must have a proper production spacing unit before a well can be produced. However, the court took the view that only an affirmative and specific requirement that the lands be pooled would satisfy the clause. Since the pooling was therefore not effective, the lands were not being produced and the lease was found to have terminated. After this decision the oil companies were quick to delete any reference to regulations or orders.

There are other examples of the strict and literal approach taken by courts. The phrase "after the expiration of the said 10-year term" was held to apply only to production ceasing after the primary term expiration, and not to the situation at the end of the primary term. Again, the lessees were quick to insert a reference to operations being carried on "at the end of the primary term". Over the years, most

leases have also been amended with a provision that the lease will not terminate when production or drilling operations are suspended for any cause, and not just for a cause beyond the lessee's reasonable control.

The shut-in well clause is another provision that has been substantially amended over the years. The clause enables the lessee to make a payment that will deem the lands to be producing even when they are not, and it was originally confined to natural gas if the well was shut-in because of a lack of market. Successive variations of this clause included oil wells as well as gas wells and eliminated any reference to why the wells were shut-in.

The above changes were not made uniformly and on an industry-wide basis. Some companies made the changes while others did not or continued to use the old form until their supply ran out. There was also substantial variations in the wording of amendments. As a result there is an extremely wide range of lease in use today.

CAPL 88 As I worked on my textbook, *The Oil and Gas Lease in Canada* and particularly as I prepared the second edition, it became more and more obvious to me that there was no reason or justification for the wide variety in the forms of leases. Accordingly, I included a "model" form of lease which was free of the lethal booby-traps and land mines found in the conventional form - all of which were placed there by the oil companies themselves. In a couple of speeches to the Petroleum Landman's Association and the Canadian Bar Association, I strongly urged that a standard form be prepared. A joint committee of these two associations developed a standard form of lease known as CAPL 88, and it is finding wide acceptance.

CAPL 88 can only operate in the future, however, and the thousands of conventional leases that are "out there" will continue to give gainful employment to oil and gas lawyers and sleepless nights to the personnel of oil company land departments.

Epitaph for a Maverick

By Aubrey Kerr

*(Petroleum historian Aubrey Kerr recently released his newest book, **Corridors of Time**. This self-published volume is available from the author -- 912 80 Ave. S.W., Calgary T2V 0V3 --for \$28.95.)*

An era came to an end November 22, 1979 with the death of George H. Cloakey. George was cast in the mould of the Herrons, the Browns and the Lowerys -- flamboyant and autocratic. He grew up in the shadow of his father who had started a real estate business in Olds at the turn of the century. George Sr. had caught the oil fever and hit it rich. Like his contemporaries, he displayed his wealth ostentatiously and without embarrassment. (What's different from contemporary millionaires, except that today it's less visible to the common gaze?) One of George Sr.'s main interests was cars. Everyone remembered his front-wheel drive Cord whizzing in and out from Turner Valley, always picking up roughnecks. For George Jr., automobiles became an obsession and the despair of Calgary car dealers. Several of them vowed not to deal with him because of his incessant complaints, one of them by cable to Rolls' U.K. headquarters.

One of George Jr.'s most disappointing ventures was the Crossfield play. He and a couple of friends assembled a large block of land in that area. They persuaded Imperial Oil to drill a deep test on a farm-out (lsd 9-11-28-2-W5M) in 1945. Rod Morris, then with Imperial, sat on the well. Despite unmistakable evidence of oil and gas, the well was abandoned, but not until the zone had been perforated and shot with 120 quarts of solidified nitro-glycerin. This coup de grace collapsed the casing. Eleven years later, the main Crossfield Mississippian subcrop was "discovered" nearby! George never forgot that, nor let anyone else forget it.

When Leduc hit in February 1947, George was called in by Major Lowery, founder of Home Oil. Hours spent in the old Edmonton Land Titles Building turned up freehold leases, but why didn't Cloakey try to obtain the Rebus tract? With his unerring landman's instinct, he tied up land for Lowery from under the noses of several other companies. His helper was Peter Greschuk (now Justice) who administered the Dower Act. Nate Goodman, then Conservation Board engineer, remembered George flashing \$100 bills -- one of which would be a week's salary -- in the Leduc beer parlour prior to going out to acquire Bill Sycz's quarter section for Home (surface and minerals for \$58,000).

Cloakey really got off the ground in 1949 when he joined forces with a group of Vancouver speculators and a New York lawyer/entrepreneur named Robert Reed. The result was Britalta, a publicly listed company which made fortunes for quite a few. With treasury stock at 0.5 cents per share, George and the directors couldn't lose. One of their first ventures was in conjunction with Canadian Delhi Oil Ltd., a company organized by Clint Murchison to move gas to eastern Canada.* Smiley Raborn Jr. was managing director, and Bill Leuschner, was in charge of drilling; the drilling contractor was Hon, an affiliated company set up to ensure availability of rigs.

The rank wildcat, Winchell Coulee, was drilled near the edge of the Disturbed Belt about four miles west of Water Valley. Through a series of problems (not unknown in these days), they ran out of hole and were unable to adequately evaluate the Mississippian, which had tantalizing shows of oil. It was during this period that Britalta stock gyrated wildly on the market, rising from \$0.90 to \$10, then down again. The author recalls spending many evenings with George and visiting the well site when Delhi was trying to get answers.

Simultaneously, Britalta was developing the Medicine Hat gas sand east and north of that city. Once again, George was a central figure when his com-

pany was seeking gas exports to Saskatchewan. The Conservation Board held hearings in the Hat in January 1957. The application was bitterly opposed by the City. (This may have been the first case of an intervention for practical reasons -- so that the Hat could retain all that cheap gas for its own industries!) Britalta had no option but to produce its wells if it was to prevent drainage by the intervenor.

The Board's recommendation for removal was made in March but the permit was not issued until August 1957. Gas was to be moved commencing in 1958. A copy of the first cheque, made out by Saskatchewan Power Commission in the amount of about \$25,000, was suitably framed and had a place of honour in Britalta's office. This was George's greatest coup, the fact that a small company, entirely on its own, was the first to sell east-bound export gas -- ironically enough, to a "socialist" user.

By 1956, other forces were at work and after much internal dissension, a U.S. based company, Wilshire Oil, took over. George bowed out (I should say stormed out) and set up ABC so as to be first in the **Oil and Gas Register**

The most interesting phase of Cloakey's life was to begin when he came into contact with an electrical engineer from California -- Miller by name. Miller had a device he claimed could find oil. This black box needed some technical calibration and a professional to help interpret the results. Thus, the late Dr George Hume, formerly of the Geological Survey of Canada and then with Westcoast Transmission, teamed up with Cloakey. One of the interesting sidelights of this venture was the requirement for air conditioning in the four-wheel drive vehicle so as to ensure low relative humidity. Static electricity was involved. Cloakey, with his Ottawa connections, arranged to show the gimmick to the National Research Council. When the boffins wanted to look inside the box, the two George's refused.

On Hume's death, Cloakey no longer operated the device, but never tired of telling the author how close they had drilled to anomalies. People at Pa-

cific Pete had been under direct orders from Frank McMahon to drill Hume's plays, one of which ever came true. Pacific's drilling department complained about all the coring they had to do because Hume had pinpointed the depth at which hydrocarbons would be found. In all fairness to Cloakey, he never once claimed results in terms of production, emphasizing that the black box was only a qualitative tool indicating hydrocarbons.

George's leadership and ability showed themselves in quite another way, when he was appointed Chairman of the Board of Governors of Calgary General Hospital in 1970. True to his style, he didn't let petty functionaries get in his way. There were many noses out of joint as he pushed for, and built, important extensions to the hospital plant.

George Cloakey may have seemed irascible and impossible to deal with to many of the people he came into contact with, but in fact he had an exacting and demanding nature -- an attribute which sometimes seems scarce in today's hectic pace, and a far cry from the old Valley days.

*Canadian Delhi was purchased by Sulpetro in 1981. The latter company was sold to Esso Resources in 1987.

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