

May 17, 2017

What Happens Next with my Lexin Resources Ltd. Surface Lease?

The Farmers' Advocate Office (FAO) is receiving questions from landowners who had leases with Lexin Resources Ltd. Lexin was formerly known as Compton Petroleum Corporation which sold assets to MFC Industrial Ltd. then a transfer to MFC Bancorp Ltd.

The Alberta Energy Regulator (AER) suspended all licences belonging to Lexin on March 8, 2017 due to concerns about the company's ability to safely manage the sites.

On March 20, 2017, Lexin was placed into receivership by the Alberta Court of Queen's Bench. In the receivership process, Grant Thornton will act as the receiver and will work to facilitate a sales process for the assets to help cover unpaid debts. Care and custody of the Lexin sites is remaining with the Orphan Well Association (OWA) and any named Working Interest Participants (WIPs). Note that receivership process serves secured creditors first. Landowners are not secured creditors.

Surface Leases

Surface lease owners should be aware that if the site is viable, it may be transferred to another operator through the receivership process. The new operator would continue with the existing lease agreement.

If the site is not sold, it would be reclaimed. This can occur in one of two ways. If there are Working Interest Participants (WIPs) on the licence, a WIP may lead on the reclamation of the surface lease. If there are no WIPs, the reclamation will be led by the Orphan Well Association (OWA), which takes care of the abandonment, remediation, and reclamation of sites where there is no longer a viable company responsible.

Note that neither the WIP nor the OWA are responsible for the payment of annual surface lease rentals; they are charged with the responsibility of ensuring public safety and environmental protection while suspending the well, pipeline, or facility.

Unpaid Surface Lease Rentals

On the question of surface lease rentals, if you have not been paid the annual rental for your Lexin surface lease, you should apply to the Surface Rights Board (SRB) for a Recovery of Rentals. The SRB has the power to terminate the company's rights to the site and order payment of rentals from General Revenue.

There is no time limit on making retrospective Section 36 applications for rental recovery, which means that if you were not paid by Compton, MFC or Lexin you can make separate claims for each year you did not receive payment. The SRB ultimately has the power to terminate the company's rights to the site and may direct the Minister to make the payment from General Revenue.

At this time, surface lease owners should be aware that:

1. Since Lexin is in receivership, there will be a stay on proceedings, which means that the SRB cannot proceed on application for unpaid rentals until the receivership process completes. This will result in a delay in getting the funds.
2. Applications do not automatically renew for subsequent years. If you have previously applied to the SRB for an unpaid rental and another unpaid year has passed, you must submit the forms for a recurring application to the SRB.
3. If you do not have copies of your original surface lease, you should contact the SRB to discuss how to best substantiate your claim. Cheque stubs or other correspondence can be used in situations where a copy of the lease cannot be obtained.

Contact

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