

Subject: **RIGHT OF ENTRY ORDERS UNDER THE SURFACE RIGHTS ACT**

## BACKGROUND

An owner of a mineral or the operator who has the right to the mineral (hereinafter collectively referred to as "operator") may enter on the surface of land to remove the mineral if he has obtained the consent of the owner and the occupant of the surface or if he has been granted a right of entry by order by the Surface Rights Board. (1) The Surface Rights Board (2) has the power to grant right of entry orders in respect of the surface of any land (3) which are registrable at the Land Titles Office.(4) A right of entry order grants the operator the right to enter upon the surface in order to exercise his right to work the mineral. Unless otherwise provided in the order, such an order vests in the operator the exclusive right, title and interest in the surface of the land in respect of which the order is granted, other than the right to a certificate of title and the right to carry away any of the surface of the land. (5)

## REGISTRATION PROCEDURE

1. An original or a copy of the Board Order certified as a true copy by a Board member, an employee of the Board authorized to perform that function or the Board's solicitor, without the requirement of any proof of the appointment of the person certifying it or the authenticity of his signature, (6) is registrable. Generally, a copy of the order with the appropriate certification and an indication that the chairman signed the original is presented for registration.

2. The particulars of the endorsement against the appropriate certificate(s) of title or non-patent land record sheet(s) are:

"SURFACE RIGHTS BOARD ORDER # \_\_\_\_\_  
IN FAVOUR OF XYZ LTD. (PLAN 8410023 (if applicable))."

When making the endorsement, the number assigned to the order by the Board must be included because it is the practice of the Board to refer to that number in any future dealings with it.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: SRBO

3. **Amending Order** - If an amending order issued by the Surface Rights Board is presented for registration, it is endorsed on the appropriate Certificate of Title:

"ORDER # \_\_\_\_\_ "

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: SRBA

4. **Assignment of Board Order** - An [Assignment of Surface Rights Board Order](#) is required to assign a Surface Rights Board Order to another operator. (7) Normal execution is required from the current operator as shown on the current certificate of title. If the operator shown on the current certificate of title is not the correct current operator, certified copies of the intervening Surface Rights Board Amending Orders are required to be attached to the [Assignment of Surface Rights Board Order](#). The operator/assignee must comply with s. 27 of the *Land Titles Act*.

When an order issued by the Board of Public Utility Commissioners under the former Pipeline Act, R.S.A. 1955, c. 234, is registered, it is assigned by the current operator completing the same [Assignment of Surface Rights Board Order](#) form.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form for the assignment is: Transfer of Instrument

The code used for registration at Land Titles is: TFIN

A copy of the Assignment of Board Order document is made and used to remove any Surface Rights Board Amending Orders (SRBA) that were previously registered on title that updated the operator name.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

5. **Discharge**

a) A further Board Order terminating the right of entry is required to discharge the original order. (8)

b) Where an endorsement of an order is registered against a certificate of title and the Board gives the Registrar notice that no part of the land described in the certificate(s) of title is affected by the order referred to in the memorandum, the notice is registered without fee. The memorandum is discharged under registration number of the notice. (9)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

6. **Fees** - [Tariff item 11\(6\)](#) is charged except for an order which discharges a previously registered order in which case [Tariff item 11\(5\)](#) is charged.

### **STATUTE AND CASE REFERENCES**

Statute references are to the Surface Rights Act, S.A. 2000, c. S-24, unless otherwise indicated.

1. s. 12(1)
2. s. 3(1) - The Surface Rights Board was established under the Surface Rights Act, R.S.A. 1980, c. S-27, and is continued by the Surface Rights Act, S.A. 2000, c. S-24
3. s. 12(3)
4. s. 34
5. s. 16
6. s. 32, s. 34, s. 34(1)
7. s. 35.1
8. s. 28
9. s. 34(2)