

BOARD ORDER: MGB 154/03

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF COMPLAINTS pertaining to certain linear property assessments for the 2002 tax year filed by the following linear property owners/operators.

BETWEEN:

Apache Canada Ltd., Burlington Resources Canada Ltd. and Star Oil & Gas Ltd., represented by J.T. Consulting - Complainants

- a n d -

The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, represented by Brownlee Fryett - Respondent

BEFORE:

Members:

L. Lundgren, Presiding Officer
A. Knight, Member
R. Scotnicki, Member

Secretariat:

D. Woolsey

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on February 25, 2003.

At the hearing, the MGB accepted the following withdrawals.

ACode	Assessee Name	MCode	Municipality Name	PPI-ID
0JL8	Apache Canada Ltd.	0226	Mountain View County	580857
0JL8	Apache Canada Ltd.	0243	County of Paintearth	648672
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	688081
0ZT8	Apache Canada Ltd.	0480	Woodlands County	603473
0BL1	Burlington Resources Canada Ltd.	0336	M.D. of Wainwright	700628

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The remaining Permanent Property Inventory Identifiers (PPI-IDs) still under complaint and the subject of this Board Order are listed in Appendix “C”.

Scheduling of Hearing

On March 25 and April 3, 2003, the MGB received applications for linear property assessment complaints from Burlington Resources Canada Ltd. and J.T. Consulting on behalf of Apache Canada Ltd. and Star Oil & Gas Ltd. Pursuant to the Complainants’ correspondence of October 18, 2002 the MGB issued Notices of Withdrawal on November 12, 2002 confirming the following withdrawals.

A Code	Assessee Name	M Code	Municipality Name	PPI-ID
0JL8	Apache Canada Ltd.	0299	County of Stettler	617157
0JL8	Apache Canada Ltd.	0299	County of Stettler	617158
0JL8	Apache Canada Ltd.	0299	County of Stettler	631433
0JL8	Apache Canada Ltd.	0377	Clearwater County	593481
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	686387
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	648682

A Code	Assessee Name	M Code	Municipality Name	PPI-ID
0BL1	Burlington Resources Canada Ltd.	0482	Yellowhead County	638251
0BL1	Burlington Resources Canada Ltd.	0263	Red Deer County	646622

A Code	Assessee Name	M Code	Municipality Name	PPI-ID
0346	Star Oil & Gas Ltd.	0142	Special Areas Board #2	552055

On December 16, 2002 the MGB issued a Notice of Hearing serving notice that the date of February 25, 2003 was set to hear the complaint. A copy of the Notice of Hearing was sent to the following municipalities.

- | | | |
|-------------------------|------------------------|------------------------|
| County of Camrose | Flagstaff County | M.D. of Wainwright |
| Lacombe County | Special Areas Board #4 | County of Wetaskiwin |
| Mountain View County | County of Paintearth | M.D. of Greenview |
| Red Deer County | M.D. of Provost | M.D. of Big Lakes |
| County of Stettler | Beaver County | Yellowhead County |
| Clearwater County | Lac Ste. Anne County | Special Areas Board #2 |
| Woodlands County | Parkland County | Brazeau County |
| M.D. of Northern Lights | County of Thorhild | M.D. of MacKenzie |
| Kneehill County | Vulcan County | |

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In this Notice of Hearing, the above-noted municipalities were notified because the linear property under complaint is located in their municipality. Also, this Notice gave direction to the municipality on the appropriate procedures that it should take if it wished to be granted status as an Intervenor for the February 25th hearing. None of the municipalities made any submissions or representations to the MGB.

The complaints on the properties as mentioned in Appendix “C” were filed by J.T. Consulting on behalf of the Complainants, had the issue of pipeline usage in common and, therefore, the complaints were heard together.

BACKGROUND

The subject property is pipe which is associated with abandoned wells. The records of the Alberta Energy and Utilities Board (AEUB) illustrate the registered status of the pipe as “Operational”, however, the records also show an abandoned well within the Legal Subdivision (LSD). The Complainants submitted AEUB records to the Designated Linear Assessor (DLA) to show that the subject pipe was associated with abandoned wells.

The DLA prepared the assessment on the subject property with consideration only to the recorded status of the pipe at the AEUB, that is, each pipe was treated for assessment purposes as “Operational” as recorded in the records of the AEUB.

The valuation standard for linear property is a regulated cost approach. Regulations, guidelines and manuals set out the specific procedures which the DLA must follow to prepare the linear assessment.

OVERVIEW

The subject linear property is assessed on the basis of regulated rates. The 2001 Linear Property Assessment Manual (2001 Manual) prescribes a 90% depreciation rate for pipe which is registered as discontinued at the AEUB. The Complainants argue that the subject linear property should qualify for additional depreciation because pipe attached to an abandoned well is of similar utility to pipe attached to a suspended well or a non-producing well. There are sufficient records at the AEUB to indicate that the well is non-producing and, therefore, the associated pipe carries the same characteristics. The Complainants argue the lack of application of additional depreciation is unfair when the subject pipe is non-operational and does not receive additional depreciation.

The Respondent argues that the subject linear property does not qualify because the pipe is recorded as operational pipe at the AEUB, the legislation and procedures mandating the actions of the DLA have

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changed since the previous year and an abandoned well is not linear property. The definition of a non-producing well has also changed. The definition now excludes an abandoned well which results in the situation that pipe associated with an abandoned well does not qualify for additional depreciation. In addition, the subject pipe is not attached and does contain flowing product and the Complainants cannot access the same benefit of additional depreciation as those who have filed up-to-date records with the AEUB. This dispute requires the resolution of the following specific issues.

ISSUES

1. Do the various changes in the 2001 Manual result in abandoned wells no longer qualifying as non-producing wells and as a result is pipe associated with an abandoned well ineligible for additional depreciation if it is registered as operational pipe at the AEUB? Or is the DLA obliged to apply additional depreciation to the subject linear property? Does Section 292 of the Act require the DLA to look to the actual characteristics of the subject property?
2. Are the characteristics of a pipe associated with an abandoned well sufficiently similar to pipe attached to a suspended well to warrant the former to be treated equitably and receive the same additional depreciation? If an inequity exists, what authority does the MGB have to provide a remedy?
3. Is the DLA required to rely only on the records of the AEUB or should the DLA be asking for further reports when it appears pipe is associated with an abandoned well?
4. Are the circumstances for the subject pipe similar to the circumstances contained in Board Order MGB 168/01?
5. With the linear property owner/operator having supplied the records of abandoned wells directly to the DLA rather than to the AEUB, is the DLA obligated to utilize the submitted records or the specific record of the status of the pipe at the AEUB?
6. Does the linear property owner/operator lose his right to additional depreciation if the owner/operator has not reported the correct status of pipe to the AEUB or is the onus on the DLA to ensure that similar property is treated fairly and equitably within the confines of the regulated procedure?
7. Has the DLA applied the regulations in a fair and equitable fashion?
8. If an inequity exists within the regulations, does the MGB have the authority to rule on the inequity?

LEGISLATION

In deciding this matter, the MGB examined the legislative authority contained in the Act, the Regulation, the 2001 Minister's Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment and Railway (Guidelines) and the 2001 Alberta Linear Property Assessment Manual (2001 Manual).

Municipal Government Act

The source of the DLA's authority to prepare assessments for linear property is found in Part 9 of the Act.

Section 284 defines certain terms for, among other things, the purposes of linear property assessment. The definition of linear property includes pipe.

284(1) In this Part and Parts 10, 11 and 12,

(k) "linear property" means

(iii) pipelines, including

(A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,

(B) any pipe for the conveyance or disposal of water, steam, salt water, glycol, gas or any other substance intended for or used in the production of gas or oil, or both,

(C) any pipe in a well intended for or used in

(I) obtaining gas or oil, or both, or any other mineral,

(II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,

(III) supplying water for injection to an underground formation, or

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(IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,

(D) well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,

(E) the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and

(E.1) the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,

but not including

(F) the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in

(I) any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or

(II) a regulating or metering station,

or

(G) land or buildings;

Section 285 states unequivocally that an assessment must be prepared for each property, excluding only specifically enumerated properties found in Section 298. There is no suggestion that the properties under complaint fall under Section 298. Section 298 is not duplicated in this order for purposes of brevity.

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in Section 298.

After mandating the assessment of all property within a municipality the Act goes on to provide direction as to the method of assessment for specific types or property. The Act directs that a designated assessor must prepare assessments for linear property. Section 292 is the primary provision that sets

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out the DLA's authority for assessing linear property. It directs the DLA to the regulations for the valuation standard, imposes the requirement that the assessment must reflect both the valuation standard and the specifics of the relevant linear property. Those specifics will be found by the DLA in the records of the AEUB or in a report supplied by the operator of the linear property if the DLA requests it.

292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for linear property, and

(b) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the linear property, as contained in

(i) the records of the Alberta Energy and Utilities Board, or

(ii) the report requested by the assessor under subsection (3).

(3) If the assessor considers it necessary, the assessor may request the operator of linear property to provide a report relating to that property setting out the information requested by the assessor.

(4) On receiving a request under subsection (3), the operator must provide the report not later than December 31.

(5) If the operator does not provide the report in accordance with subsection (4), the assessor must prepare the assessment using whatever information is available about the linear property.

In the Act the DLA is an assessor appointed by the Minister.

284(1) In this Part and Parts 10, 11 and 12,

(d) "assessor" means a person who has the qualifications set out in the regulations and

(i) is designated by the Minister to carry out the duties and responsibilities of an assessor under this Act, or

2001 Minister's Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment and Railway

As well, the Guidelines define assessor.

1.002 GENERAL DEFINITIONS

(c) assessor means:

- (i) in respect of Linear Property, the person designated by the Minister to carry out the duties and responsibilities of an assessor under the Act, and

Municipal Government Act

Section 293 of the Act is a directive to all assessors, including the DLA. It dictates a general mandatory methodology for the DLA that the assessment must be prepared in a fair and equitable manner, applying the valuation standards and procedures in the Regulations. Where the Regulations are silent as to procedure, subsection 2 directs the DLA to take into consideration assessments of similar property.

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

These latter two sections go to the heart of the dispute because the issue in this hearing is primarily concerned with the DLA's authority and whether the practice adopted in this case is a regulated procedure authorized in the 2001 Manual or a procedure authorized under section 293(2) of the Act.

The authority of the MGB is enunciated in Section 499(2)(a) of the Act.

499(2) The Board must not alter

- (a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality, and*

Accordingly, the relevant regulations must be examined which, in this case, is the following.

Alberta Regulation 289/99: Matters Relating to Assessment and Taxation Regulation

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The valuation standard and procedures referred to in Sections 292/293 above are found in Section 6 of the Regulation.

Valuation standard for linear property

6(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

It is readily observed that the “standard” in this case is the outcome of a calculation found in the Guidelines. While guidelines do not usually have the legal authority of legislation or regulations, in the case of linear property, Section 6 of the Regulation prescribes them as having legal force. The valuation standard and procedures that the DLA must apply will accordingly be found therein.

2001 Minister’s Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, and Railway

Section 1.001(f) explains that the Guidelines for linear property are comprised of the 2001 Alberta Linear Property Assessment Manual.

These guidelines are comprised of the following.

1.001 APPLICATION

(f) 2001 Alberta Linear Property Assessment Manual, in the case of linear property in a municipality, attached as Appendix II

Section 3.002 contains the calculation for the assessment of linear property. The factors that are to be used in the calculation are set out in the 2001 Manual. The part of the calculation that is the subject of this hearing is 3.002(d).

3.002 CALCULATION OF ASSESSMENT

The assessed value of linear property in a municipality, excluding wellsite land, shall be calculated by:

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- (a) establishing the base cost as prescribed in Schedule A of the 2001 Alberta Linear Property Assessment Manual;
- (b) multiplying the base cost by the appropriate Assessment Year Modifier prescribed in Schedule B of the 2001 Alberta Linear Property Assessment Manual, to adjust base cost to the assessment year;
- (c) multiplying the amount determined in clause (b) by the appropriate depreciation factor prescribed in Schedule C of the 2001 Alberta Linear Property Assessment Manual;
- (d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the 2001 Alberta Linear Assessment Manual.

In the subject case, it is the application of (d) which is in dispute between the parties. The Complainants argue that the DLA did not apply the depreciation correctly according to Schedule D and did not have the authority to apply a conversion factor.

2001 Alberta Linear Property Assessment Manual

Section 1.005 of the 2001 Manual provides definitions for “Discontinued” pipe, “Non-producing well” and “Operational” pipe. Each of these words has distinctive meanings. Accordingly, section 1.005 defines a Non-producing well. There is no definition in any of the legislation for an abandoned well.

1.005 PIPELINE (PL)

In this manual, the following definitions apply:

- (b) “Discontinued” is the status of pipe as determined by the record at the Alberta Energy and Utilities Board.
- (g) “Non-producing well” means a well for which an assessment is prepared but did not produce for the period of 12 months before October 31 of the assessment year as determined by the record at the Alberta Energy and Utilities Board or as determined by the assessor.
- (h) “Operational” is a pipe status given to linear property by the Alberta Energy and Utilities Board or as determined by the assessor.
- (m) “Suspended” is the status of a well as determined by the record at the Alberta Energy and Utilities Board.

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Section 4.003.100 of Schedule D of the 2001 Manual deals with “additional depreciation”, which in this case is applicable when any of the three conditions listed thereunder are met. The question for the present case is whether or not additional depreciation is applicable to the properties because they have been discontinued and fall under the “D” code.

4.000 SCHEDULE D – ADDITIONAL DEPRECIATION
4.003 PIPELINE
4.003.100 Pipe

Additional depreciation of pipe shall be determined using the table below.

Code	Pipe	Depreciation Factor
W	Pipe that has a from facility code WE and the from location is within an LSD that has a Non Producing Well	0.10
D	Discontinued	0.10
B	Pipe constructed prior to 1940*	0.50

* Status declared by each company

In addition, the MGB also referred to the Regulations, procedures and depreciation tables referred to in Board Order MGB 168/01 to examine how the language has changed.

SUMMARY OF COMPLAINANTS’ POSITION

Utility of Pipe Qualifies for Additional Depreciation

The Complainants argue that the characteristics of the subject pipe are obvious and that the pipe is not utilized because it is associated with an abandoned well. The subject pipe is no different than other pipe attached to a non-producing well. In the latter case, the DLA applies additional depreciation, whereas in the former the DLA has not applied additional depreciation. In both cases the functionality of the pipe is the same. The Complainants were of the opinion that Section 292 and 293 of the Act oblige the DLA to examine the property characteristics with respect to the activity for the 12 months preceding October 31st of the assessment year.

In support, the Complainants refer to the words “activity” and “production capability” which are used throughout the guide. The information of the Complainants illustrates that the properties under complaint were out of service for 12 months preceding October 31st and these properties are not connected to

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operating well zones that could provide material to transport. The DLA has an obligation to apply additional depreciation.

Since linear property is assessed based on a regulated cost system, the system assumes value is inherent when equipment serves a purpose. When the purpose is no longer met, the value of the equipment diminishes. In Alberta's regulated system, provision for additional depreciation for idled or out-of-service equipment can be found in the Minister's Guidelines.

The DLA has discretion to apply additional depreciation. This discretion must be exercised in the context of the legislation and regulations. The Complainants do not see the depreciation schedule in the 2001 Manual as limiting, but rather as enabling the DLA to recognize the functional characteristics of the subject pipe.

MGB 168/01

The Complainants are of the opinion that the same conclusions reached in Board Order MGB 168/01 are applicable to the subject property. The focus of the definition of a non-producing well is on the production status, not the registered classification. This principle of consideration of functional utility should be carried over to the current complaints and a common sense application of the legislation should be applied.

DLA Obligated to Use Only Records of AEUB or Records Submitted by Complainants

The Complainants argue that Section 292 does not oblige the DLA to use just the records of the AEUB. These sections provide the DLA with the authority to seek other sources of information, not just blind reliance on the records of the AEUB. In previous years, the DLA was obliged to examine the actual use of the pipe. This had been the practice in prior years with flow lines that had serviced abandoned wells receiving a \$0.00 assessment.

AEUB records are created for reasons other than to produce property assessments. The DLA should request information from the linear operator to determine the operational status of the pipe. The Complainants filed with the DLA the "Assessment Detail Reports" describing the operational details of the subject pipe and the DLA did not consider these reports when he prepared his assessments.

The Complainants take the position that records do exist at the AEUB from which the DLA can determine that the pipe is associated with a non-producing well. However, the DLA has purged the assessment records of abandoned wells. For a nominal fee, the AEUB can provide a complete record of wells abandoned since 1945 and a partial listing of those abandoned prior to 1945. The listings

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provide well by legal description and well co-ordinates. These records have been provided to the DLA who has refused to act on this information.

Equity

The Complainants acknowledge that abandoned wells have been dropped from the assessment roll because, in their opinion, the wells have an assessed value of zero. What is important is the activity or production capability as discussed within the 2001 Manual and the Guidelines. The Complainants believe that the equity concept dictates pipe that is not in service for the prescribed timeframe due to reasons of an abandoned well or zones, must have additional depreciation applied.

The Complainants point out that Section 293 (2) applies to the DLA in the subject case and, as a result, the DLA should apply additional depreciation to the subject pipe even when there is no prescribed depreciation in the Regulation and 2001 Manual. Section 293 (2) indicates that when a prescribed procedure does not exist, the assessor must take into consideration the assessments of similar property.

MGB Authority

The authority of the MGB is enunciated in Section 499 (2) (a) of the Act. This requires the MGB to consider fairness and equity in the assessments of the subject with those of similar properties. This coupled with Section 293 (2) provides the MGB with the authority to impose a fair and equitable solution contrary to the position of the Respondent.

In the view of the Complainants, the legislative scheme allows the MGB to review output, throughput and various other means of measuring realized production levels which can be compared to design capability for the purpose of determining utility and additional depreciation. Clearly, the Guidelines contain within Schedule D the ability to apply additional depreciation for pipe serving non-producing wells.

The Complainants are not challenging the assessment policy as established by legislation, but are only asking for the MGB to apply fairness and equity to the subject pipe by applying additional depreciation. The MGB does have the jurisdiction to correct errors. In this case, the records of the AEUB, specifically the records of abandoned wells as described above, are available to the DLA to check the status of the associated pipe.

SUMMARY OF RESPONDENT'S POSITION

Consideration of Pipe Utility

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The Respondent argues that the actual condition of the linear property is not a consideration that is supported by the legislation as argued by the Complainants. The Respondent points out that the legislative approach to non-linear property and linear property is significantly different when it comes to the consideration of the condition of the property. In the case of non-linear property, the Act refers to “the characteristics and physical condition” of the property whereas in the case of linear property the Act refers to “the specifications and characteristics” of the linear property. This is further qualified by the phrase “as contained in the records of the Alberta Energy and Utilities Board” or a report requested by the assessor.

In the view of the Respondent, there was a deliberate choice of words by the legislators. The term characteristics and physical condition have a broader meaning than the words used for linear property. The terms used for linear property are more limiting and are confined to the records of the AEUB.

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MGB 168/01

The key difference between the case in Board Order MGB 168/01 and the current case is that the definition of a non-producing well in the 2001 Manual has been changed and no longer includes an abandoned well. In the new definition of a non-producing well specific reference is made to “a well for which an assessment is prepared”. As well, an abandoned well is not linear property and, therefore, there is no assessment prepared. The Respondent referred to the definition of linear property in section 284 (1)(k)(iii) and specifically to well head installations (D) in which the term “intended for or used for” is referenced. Under AUEB legislation abandoned means permanently dismantled and, as a result, the abandoned well is neither intended for use or used and, therefore, is not linear property.

As stated, according to the AEUB, abandonment means the permanent dismantlement of linear property which requires very specific procedures to be carried out by the Complainants with the AEUB. Currently, the subject pipe is registered as operational and not as discontinued. As a result, the “W” policy in the depreciation table does not apply to the subject pipe. In addition, specific direction has been added to the Guidelines to indicate that the depreciation allowances in the guidelines are exhaustive.

Records

In order to qualify for additional depreciation, the owner must have the subject pipe registered as “Discontinued” at the AEUB. Specific procedures established by the AEUB exist to have pipe registered as “Discontinued”. The Complainants have not followed that procedure and, therefore, they cannot benefit from a lack of action. During questioning, the Complainants clarified that the reason for not changing the status of the pipe at the AEUB was the associated cost.

In the case of the subject pipe, the DLA did request from the linear property operator an “Assessment Detail Report” and these reports were used as a cross reference to the records of the AEUB. The DLA relied on the records of the AEUB and specifically the registered status of the pipe at the AEUB as “Operational”.

Equity

The application of equity in the context of linear property is achieved through the consistent application of the valuation standard across the province. Fairness and equity are achieved through the development of standardized costs and depreciation rates and their consistent applications across the province. Correctness, fairness and equity apply to linear property assessment as a result of common law and not as a result of section 499 (2)(a) of the Act, which applies only to non-linear assessments.

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The valuation standard for the subject linear property is a regulated cost approach. In this case the DLA has properly applied all the steps in the application of the regulated approach and consistently applied the depreciation in the schedule to the subject property.

The subject property does not qualify for additional depreciation under the “W” policy in the depreciation schedule nor does it qualify for additional depreciation as “Discontinued” pipe as the subject pipe is registered as operational at the AEUB.

MGB Authority

Both the DLA and the MGB have limited authority when it comes to linear property. The DLA must produce the assessment within the strict confines of the regulated assessment practices. The DLA and the MGB are not in a position to substitute their opinion on equity for the specific requirements within the Act, regulations and associated manuals. The MGB is not in a position to change assessment policy which is reflected in the legislation. In support the Respondent referred to Board Orders MGB 287/98 and MGB 089/02 in which the MGB concluded that the MGB does not have authority to address assessment and legislative policy and can only exercise its discretion to determine if there are any errors made by the DLA in applying the regulated legislation.

In the subject case, the Complainants are asking the MGB to substitute its opinion of the legislative policy for that of the legislators. This is not within the MGB’s authority.

FINDINGS

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the matter to be as follows.

- 1) Board Order MGB 168/01 has little relevance in the subject complaints due to amendments to the Guidelines in subsequent assessment years.
- 2) As a result of the changes to the Manual relative to abandoned well and the application of depreciation on operational pipe attached to an abandoned well, there is increased emphasis on the specific status of pipe registered at the AEUB in order to determine whether additional depreciation is to be applied.
- 3) Under the new 2001 definition of a non-producing well, an abandoned well is excluded.

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- 4) There is no discretion to apply additional depreciation to pipe that is associated with an abandoned well.
- 5) The DLA is obliged to rely on the “Operational” status of the subject pipe as registered in the records of the AEUB.
- 6) There was no attempt by the Complainants to change the registered status of the subject pipe at the AEUB, nor was there any indication that an attempt was made to correct an error in the records at the AEUB.
- 7) The subject pipe does not have a from location within an LSD with a non-producing well.
- 8) There was no evidence submitted to show that similar pipe associated with an abandoned well was given 90% depreciation.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

At the hearing, the MGB accepted the following recommendations.

ACode	Assessee Name	MCode	Municipality Name	PPI-ID	Original Assessment	New Assessment
0JL8	Apache Canada Ltd.	0243	County of Paintearth	648673	\$ 17,470	\$ 1,750
0346	Star Oil & Gas Ltd.	0506	M.D. of Big Lakes	577202	\$ 56,390	\$ 5,640
0346	Star Oil & Gas Ltd.	0506	M.D. of Big Lakes	578266	\$ 101,460	\$ 10,150

The complaints in respect to the assessment on the balance of the subject linear property as outlined in Appendix “C” are denied and the assessment is confirmed.

It is so ordered.

REASONS

Introduction

The Complainants asked the MGB to apply a simple relationship between pipe and an abandoned well and to accept that the pipe is non-operational and to provide additional depreciation to the subject pipe.

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Although this seems a logical conclusion, this conclusion cannot be reached when one specifically examines the Act, the Regulation and the 2001 Manual which prescribe how linear property assessments are prepared and when additional depreciation is mandated.

The MGB finds the circumstances in the subject case substantially different from the decisions in Board Order MGB 168/01. The MGB at that time found an abandoned well was included within the meaning of a non-producing well and, therefore, pipe attached to an abandoned well met the criteria for additional depreciation. In general, and as described in more detail below, the MGB finds in this case the regulatory scheme for the preparation of a linear assessment for the subject pipe has changed sufficiently to force a different conclusion. In the context of the changes to this regulatory scheme, specifically the definitions and the applied additional depreciation schedules, the MGB places greater weight on the proposition that the linear property owner/operator only receives advantage of additional depreciation if the status of the pipe has been registered as “Discontinued” or if there is a non-producing well (not including an abandoned well) within the LSD.

The Act directs the DLA to prepare the assessments on linear property pursuant to the valuation standards set out in the Regulation. Alberta Regulation 289/99 directs the DLA to the valuation standard contained in the Guidelines. Within these Guidelines, the procedures establish the steps to be taken to calculate the linear assessment based on a cost approach and prescribes the specific criteria to be applied for depreciation and additional depreciation in the 2001 Manual. It is the changes to the 2001 Manual which convinced the MGB that the subject case is different from MGB 168/01.

The MGB is convinced, in this case, that the DLA consistently applied the Regulations and that there were no examples of pipe associated with an abandoned well within the context of the changes to the Regulations and 2001 Manual which was given a 90% depreciation. The specific reasoning of the MGB is provided below.

Legislative Changes

The MGB accepts the argument of the Respondent that the extensive changes to the Regulations and the 2001 Manual provide a different meaning to how additional depreciation is to be applied compared to the Regulations and manual in place at the time of MGB 168/01.

Firstly, the MGB notices that there is no longer a definition for abandoned well in the 2001 Manual as illustrated below.

1999 Alberta Linear Property Assessment Manual

1.2.3 PIPELINE (PL)

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In this manual, the following definitions apply:

- a) “Abandoned” is the status of pipe determined on the record at the Alberta Energy and Utilities Board or as determined by the assessor designated by the Minister of Municipal Affairs.

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2001 Linear Property Assessment Manual

There is no definition for an abandoned well in this specific manual. The 2001 Manual does not recognize an additional depreciation rate for abandoned pipe as illustrated below.

1999 Alberta Linear Property Assessment Manual

- 4. SCHEDULE D – ADDITIONAL DEPRECIATION
- 4.3 PIPELINE
- 4.3.1 Pipe

Additional depreciation of pipe shall be determined using the table below.

ADDITIONAL DEPRECIATION FACTOR TABLE

Code	Pipe	Depreciation Factor
PLW	Pipe that has facility code WE and the to or from location is within an LSD that has a non producing well	0.10
PLD	Discontinued	0.10
PLA	Abandoned	0
PLO	Pipe Constructed prior to 1940*	0.50

*Status declared by each company.

2001 Linear Property Assessment Manual

- 4.000 SCHEDULE D – ADDITIONAL DEPRECIATION
- 4.003 PIPELINE
- 4.003.100 Pipe

Additional depreciation of pipe shall be determined using the table below.

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Code	Pipe	Depreciation Factor
W	Pipe that has a from facility code WE and the from location is within an LSD that has a Non Producing Well	0.10
D	Discontinued	0.10
B	Pipe constructed prior to 1940*	0.50

* Status declared by each company

Secondly, the 2001 Manual has clauses in Schedules C and D which indicate that the depreciation listed in the tables is exhaustive. In the view of the MGB, this further indicates the placement of limitations on the application of additional depreciation.

Schedule C

The depreciation factors for linear property as described in Schedule C are exhaustive. No additional depreciation can be applied except as specified in Schedule D.

Schedule D – Additional Depreciation

The additional depreciation for linear property as specified in Schedule D is exhaustive. No further additional depreciation is to be given by the assessors.

In addition, increased emphasis has been placed on the records of the AEUB as the definitions of “Discontinued” and “Suspended” refer only to the records of the AEUB.

1.05 PIPELINE (PL)

- (b) “Discontinued” is the status of pipe as determined by the record at the Alberta Energy and Utilities Board.
- (m) “Suspended” is the status of a well as determined by the record at the Alberta Energy and Utilities Board.

The MGB accepts that the combination of the following changes support the argument of the DLA that no additional depreciation is applied under the current legislation to the subject pipe:

- removal of the definition of abandoned;
- deletion of reference to report requested by DLA; and
- elimination of abandoned pipe from the depreciation table and the exhaustive clauses.

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As stressed by the Respondent, the new definition of “Non-producing well” takes on significant meaning and the addition of the words “a well for which an assessment is prepared” can be given the meaning as presented by the Respondent. That is, an abandoned well no longer falls within the definition of a non-producing well for assessment purposes.

Pipe Attached to an Abandoned Well /AEUB Records

The MGB has concluded that under the legislative changes an abandoned well is not included within the definition of non-producing well. This takes the MGB back to the status of the pipe. Clearly Section 292 of the Act indicates that the linear assessment must reflect the specifications and characteristics of the property as reflected in the records of the AEUB or a report requested by the DLA. The MGB rejects the argument of the Complainants that specifications and characteristics should be given a broad meaning to include the utility or actual use of the subject pipe. Section 292 provides a significant qualifier to the specification and characteristics of the pipe, namely, that these specifications and characteristics are as recorded at the AEUB.

This left the MGB with only the specific registered status of the pipe as “Operational” at the AEUB to accept as the factual status of specifications and characteristics of the pipe as of October 31st of the assessment year. In the context of the changes to the Regulations and the 2001 Manual, the MGB accepts there is increased onus on a linear property owner/operator to register the status of any pipe with the AEUB before it can expect to have the benefits of any additional depreciation applied by the DLA according to the additional depreciation schedule. In this case, the MGB heard that it was clearly a free choice not to register the pipe as “Discontinued” and that there were no errors or mistakes in the record of the pipe at the AEUB. The Act mandates the DLA determine the specifications and characteristics of the linear property as recorded in the records of the AEUB.

Even though the Complainant placed before the DLA, at the request of the DLA, AEUB records illustrating abandoned wells, the cumulative impact of the changes to the 2001 Manual and specifically the change to the definition of a non-producing well places greater emphasis on the specific registered status of the pipe at the AEUB. These changes increase the responsibility of the linear property owner/operator to register the specific status of the pipe at the AEUB rather than rely on the DLA to make an association between an abandoned well and the pipe previously attached.

Since there was no extensive argument or substantive evidence provided as to whether or not an abandoned well is linear property, the MGB leaves this matter to a future decision should this still be in dispute. In this case, the MGB places significant weight on the cumulative changes to the 2001 Manual as the driving force behind this decision.

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Application of the Depreciation Schedule

The MGB looked carefully as to whether or not the DLA did apply the additional depreciation table correctly as the Complainants argued that the DLA had not done so. Including the new definition of a non-producing well in the “W” Code for the additional depreciation would result in the following:

“Pipe that has a from facility code WE and the from location is within an LSD that has a Non-Producing Well (not including an abandoned well).”

However, having concluded that the current definition of a non-producing well does not include an abandoned well, the Complainants did not provide evidence that the subject pipe had a from facility code within an LSD that had a non-producing well. The Complainants’ arguments rested solely on the factual basis of the relationship to an abandoned well. Again, under the existing 2001 Manual an abandoned well is not included within the definition of a non-producing well.

Equity

The MGB agrees with the Respondent that the thrust of the Complainants’ case is to request a change to legislation and to challenge the equity principles within the regulations and the 2001 Manual itself. One of the primary tenants of legislative interpretation is that the legislators had full knowledge and understanding of what they were adopting. This is not a situation where equity principles favour one possible interpretation over another, the legislative intention of the changes is clear. If there is inequity within the legislative scheme, then it can only be undone by an act of the legislators and not by the MGB.

The MGB, however, has full authority to determine if the DLA applied the regulations in a fair and equitable manner. Once the issue is resolved that an abandoned well is not included in the definition of a non-producing well for the application of additional depreciation, there was very little evidence submitted by the Complainants to show that pipe associated with an abandoned well should receive additional depreciation.

In this case, the Complainants attempted to argue that Section 293 (2) of the Act should apply and the DLA should be forced to apply additional depreciation to the subject pipe because the utility of the subject pipe is like that of pipe attached to a suspended well or other like non-producing wells. The MGB rejects this argument since Section 293 (2) is contingent upon there not being any procedures set out in the Regulation to prepare the assessments. There are procedures to prepare the assessment and, more importantly, there are specific procedures for the application of additional depreciation. In order to qualify for additional depreciation, the subject pipe must be pipe constructed prior to 1940 or must

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be registered in the records of the AEUB as Discontinued or must have a from location within an LSD that has a non-producing well. The subject pipe does not qualify under any of these specific conditions.

In order for Section 293 (2) to apply, the MGB would have had to be presented with evidence to show that the DLA applied a procedure outside of the three mentioned criteria to similar pipe as the subject to convince the MGB that an equity remedy should be applied. There was no evidence that pipe associated with an abandoned well was given additional depreciation in any other location in the province.

The Complainants attempted to draw a comparison between the subject pipe and pipe attached to a suspended well which in certain circumstances received 90% depreciation. Pursuant to the new definition, a suspended well may qualify as a non-producing well, however, an abandoned well is no longer within the definition of a non-producing well and, therefore, this comparison cannot be made. The lack of application of additional depreciation to pipe associated with an abandoned well and the application of additional depreciation of pipe associated with a suspended well is embedded in the 2001 Manual. The MGB accepts this as a directive of the legislators.

Conclusion

The MGB believes that the subject property was assessed correctly and the Regulations were applied in a fair and equitable manner. The Complainants have raised a question about the fairness of the additional depreciation policy as impeded in the 2001 Manual. The MGB accepts that the legislators made a purposeful change not to provide additional depreciation to pipe associated with an abandoned well and that the only way this can be changed is for the legislators to do so. As stated, the changes to the 2001 Manual provide a significantly different meaning as to when additional depreciation is applied. The MGB did find that these changed procedures were applied in a fair and equitable manner to the subject pipe and similar pipe. The Complainants are not without a remedy, they have the option to register their pipe at AEUB as Discontinued.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 29th day of October 2003.

MUNICIPAL GOVERNMENT BOARD

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(SGD) L. Lundgren, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
R. Beaupre	J.T. Consulting for the Complainants
J. Thibault	J.T. Consulting for the Complainants
C. Zukiwski	Brownlee Fryett for the Respondent
D. Driscoll	Alberta Municipal Affairs for the Respondent
G. Moffatt	Witness for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1C	Package containing the following correspondence: April 5, 2002 MGB to Burlington Resources – Status of Complaint April 5, 2002 Burlington to Designated Linear Assessor April 5, 2002 MGB to J.T. Consulting/Star Oil & Gas – Status of Complaint April 5, 2002 J.T. Consulting/Star Oil & Gas to the Designated Linear Assessor April 5, 2002 MGB to J.T. Consulting/Apache Canada Ltd. – Status of Complaint April 5, 2002 J.T. Consulting/Apache Canada Ltd. to the Designated Linear Assessor April 5, 2002 E-mail from MGB to J.T. Consulting/Apache Canada Ltd. on Status of Complaint September 20, 2002 J.T. Consulting to MGB on the Preliminary Hearing of September 9, 2002
2C	J.T. Consulting's Will Say Statement of the Witness, includes a list of 12 withdrawals

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3C

J.T. Consulting - Complainant's rebuttal to Respondent's Legal Argument

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APPENDIX "B" (CONT'D)

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
4C	J.T. Consulting's for Apache Canada Ltd. dated February 7, 2002
5C	J.T. Consulting's pipeline inventory/status changes for Star Oil & Gas Ltd. dated January 31, 2002
6C	J.T. Consulting's pipeline inventory/status changes for Burlington Resources Canada Ltd. dated January 25, 2002
7C	J.T. Consulting's pipeline inventory/status changes for Fletcher Challenge Oil & Gas Inc., c/o Apache Canada Ltd. dated February 7, 2002
8R	Respondent's submission on Burlington Resources Canada Ltd. – Volume of Documents
9R	Respondent's submission on Star Oil & Gas Ltd. – Volume of Documents
10R	Respondent's submission on Apache Canada Ltd. – Volume of Documents
11R	Respondent's submission on Fletcher Challenge Oil and Gas Inc. (Amalgamated with Apache Canada Ltd.) – Volume of Documents
12R	Respondent's Legal Argument
13R	Resume of Michael Gerald Moffatt for the Respondent
14R	AEUB Interim Directive ID 2000-09
15R	Resume of Dan Driscoll for the Respondent

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APPENDIX "C"

Remaining PPI-IDs still under complaint and the subject of this Board Order.

ACode	Assessee Name	MCode	Municipality Name	PPI-ID
0JL8	Apache Canada Ltd.	0049	County of Camrose	693499
0JL8	Apache Canada Ltd.	0195	Lacombe County	544768
0JL8	Apache Canada Ltd.	0226	Mountain View County	580858
0JL8	Apache Canada Ltd.	0263	Red Deer County	586151
0JL8	Apache Canada Ltd.	0299	County of Stettler	668501
0JL8	Apache Canada Ltd.	0299	County of Stettler	668510
0JL8	Apache Canada Ltd.	0299	County of Stettler	668549
0JL8	Apache Canada Ltd.	0511	M.D. of Northern Lights	745718
0ZT8	Apache Canada Ltd.	0049	County of Camrose	667410
0ZT8	Apache Canada Ltd.	0110	Flagstaff County	628286
0ZT8	Apache Canada Ltd.	0110	Flagstaff County	628287
0ZT8	Apache Canada Ltd.	0110	Flagstaff County	628288
0ZT8	Apache Canada Ltd.	0191	Kneehill County	557630
0ZT8	Apache Canada Ltd.	0195	Lacombe County	667203
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	648669
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	648671
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	648686
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	648688
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	662844
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666054
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666055
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666056
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666061
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666063
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666070
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666071
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666078
0ZT8	Apache Canada Ltd.	0243	County of Paintearth	666080
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	598647
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	612243
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	631283
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	631285
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	631286
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	662844

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ACode	Assessee Name	MCode	Municipality Name	PPI-ID
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	765825
0ZT8	Apache Canada Ltd.	0258	M.D. of Provost	765849
0ZT8	Apache Canada Ltd.	0299	County of Stettler	598583
0ZT8	Apache Canada Ltd.	0299	County of Stettler	643814
0ZT8	Apache Canada Ltd.	0299	County of Stettler	643817
0ZT8	Apache Canada Ltd.	0299	County of Stettler	643820
0ZT8	Apache Canada Ltd.	0299	County of Stettler	823674
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	668083
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	686427
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	688070
0ZT8	Apache Canada Ltd.	0465	Special Areas Board #4	688082

ACode	Assessee Name	MCode	Municipality Name	PPI-ID
0BL1	Burlington Resources Canada Ltd.	0020	Beaver County	761849
0BL1	Burlington Resources Canada Ltd.	0110	Flagstaff County	586807
0BL1	Burlington Resources Canada Ltd.	0193	Lac Ste. Anne County	633134
0BL1	Burlington Resources Canada Ltd.	0195	Lacombe County	631057
0BL1	Burlington Resources Canada Ltd.	0314	County of Thorhild	648554
0BL1	Burlington Resources Canada Ltd.	0314	County of Thorhild	648555
0BL1	Burlington Resources Canada Ltd.	0314	County of Thorhild	693121
0BL1	Burlington Resources Canada Ltd.	0334	Vulcan County	634438
0BL1	Burlington Resources Canada Ltd.	0480	Woodlands County	671925
0BL1	Burlington Resources Canada Ltd.	0481	M.D. of Greenview	648407
0BL1	Burlington Resources Canada Ltd.	0482	Yellowhead County	636753
0BL1	Burlington Resources Canada Ltd.	0506	M.D. of Big Lakes	560159
0BL1	Burlington Resources Canada Ltd.	0506	M.D. of Big Lakes	584317
0BL1	Burlington Resources Canada Ltd.	0506	M.D. of Big Lakes	700708
0BL1	Burlington Resources Canada Ltd.	0511	M.D. of Northern Lights	668138

ACode	Assessee Name	MCode	Municipality Name	PPI-ID
0346	Star Oil & Gas Ltd.	0263	Red Deer County	572160
0346	Star Oil & Gas Ltd.	0263	Red Deer County	572162
0346	Star Oil & Gas Ltd.	0299	County of Stettler	563036
0346	Star Oil & Gas Ltd.	0383	Brazeau County	561173
0346	Star Oil & Gas Ltd.	0503	Saddle Hills County	653162
0346	Star Oil & Gas Ltd.	0505	M.D. of MacKenzie	643290
0346	Star Oil & Gas Ltd.	0506	M.D. of Big Lakes	577404