# Pipelines and Transmission Lines in Alberta

Lamont and Strathcona Counties
February 2014
Heartland Hall

## Contract ....Design and Management

Open ended Granting clause:

Conveys a specific set of rights for the right of way including future uses, access rights and considerations;

Opportunity to negotiate rights conveyed and access considerations over and above SRA;



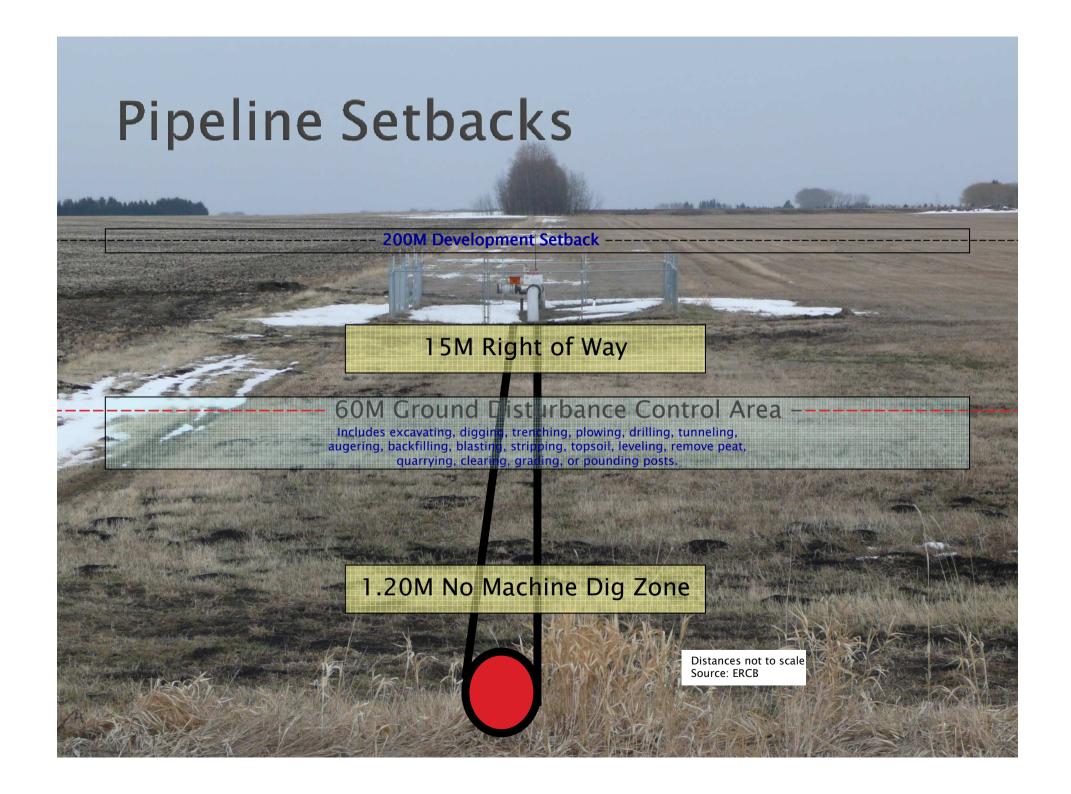
# Pipeline Compensation Annual loss of use for this surface riser Lump sum for rights taken.



Minimum 60 M Control Zone

Possible loss of use when unable to extract known and licensed gravel peat, marl, sand and clay deposits.

200 M Economic Zone limits development. Evidence of real/actual (not future wishing) loss needed for damage claim.



#### SRA Compensation Framework

Entry Fee = Legislated \$500/acre to a maximum of \$5000 and minimum of \$250 per titled unit

Land/Market Value

(open market principle of willing buyer willing seller)

Signing Bonus and "Other Considerations" may be outside scope of Surface Rights Act

General Disturbance

(Initial Inconvenience = dust noise traffic time negotiating at initial construction)

Annual = Compensation

Loss of Use

(Production Loss)

(Gross Loss)

Adverse Effect
Tangible and Intangible
(impacts to surrounding
lands
and agricultural operations)

#### BUT...

Court Queen's Bench

New hearing ... new evidence led

Confirm the SRB decision

Or

Vary the decision and issue a cost award



- ▶ 23 Linear affects associated with pipelines
- ▶ SRB determined 8 affects warranted annual

"SRB would like to see a system where landowners have an option of lump sum or annual compensation award"

- Compensation awarded by the SRB with the annual component equated to 4 to 5 times the land value of the right of way
- Objection by NCSRA but not by individual landowners

#### **ACQB** Reaffirms

#### SRB Enbridge decision was unreasonable:

- SRB must look at Pattern of Dealings first
- SRB can only depart when there are most cogent reasons.

#### Court pointed out:

- Presumes the negotiation is balanced
- Marketplace rules



Enbridge acknowledged resistance to annual rental payment Cheecham to Edmonton:

77 Agreements=\$1500 acre TWS \$950 acre

71Agreements= \$1900 1cre TWS \$950 acre

Enbridge upped compensation to 1st 77

14 holdouts on line for annual compensation Enbridge agreed if Legislation changes or courts award annual they would pay

- Comparable POD's (pattern of dealings)should consider:
  - \* consideration to rights granted
  - \* type of land (highest and best use)
  - \* proximity (location of development)
  - \* date of agreements
  - \* size of taking (acreage)
  - \* nature of the parties (owner/occupant)
  - \* amounts paid

Pattern of Dealings (POD):

...such a number of deals to establish a pattern. SRB should only divert from pattern of dealings with cogent reasons.

The majority of landowners agreeing to compensation on the line established the pattern.

... less than 10% can establish a POD

- Contract considered to be consenual unless:
  - \* Grossly unfair transaction
  - \* Victim lacked independent or unsuitable advice;
  - \* Imbalance in bargaining power (victims ignorance and/or disability);
  - \* Other party knowingly took advantage of other party;

- Proof of imbalance required:
  - \* No contrary evidence on knowledge of landowners;
  - \* No contrary evidence that agreements weren't consenual;
  - \* No evidence to inequality of bargaining positions.

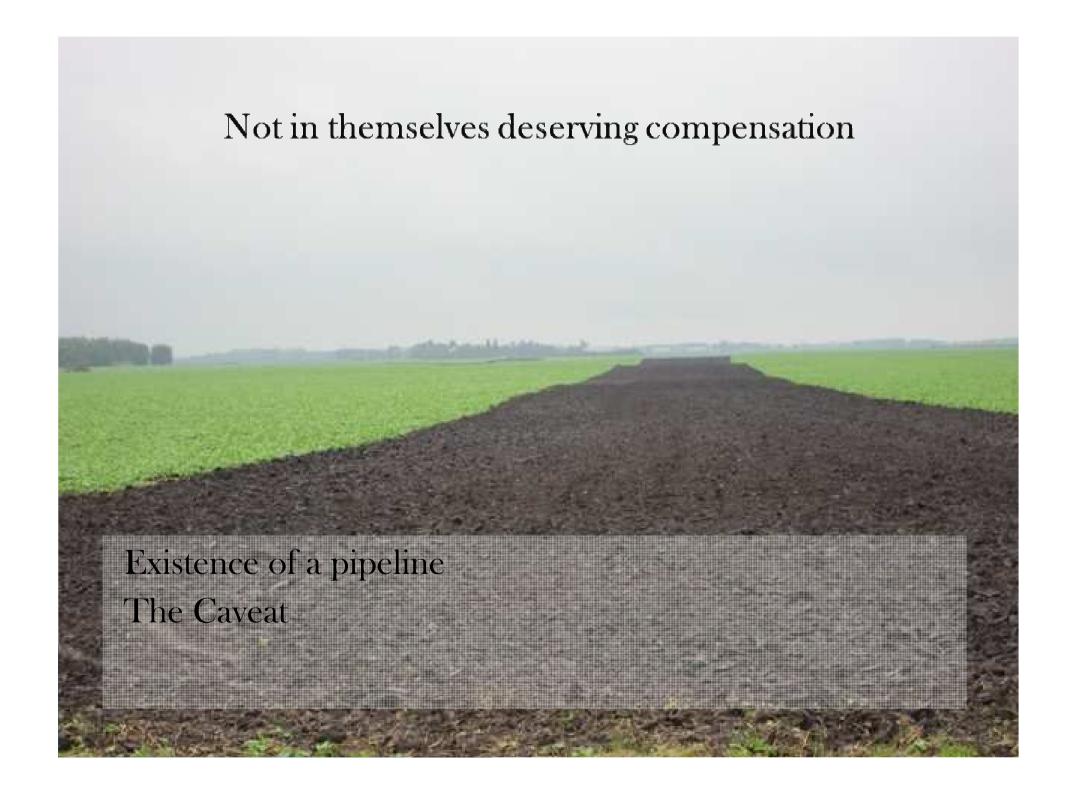
#### The Court

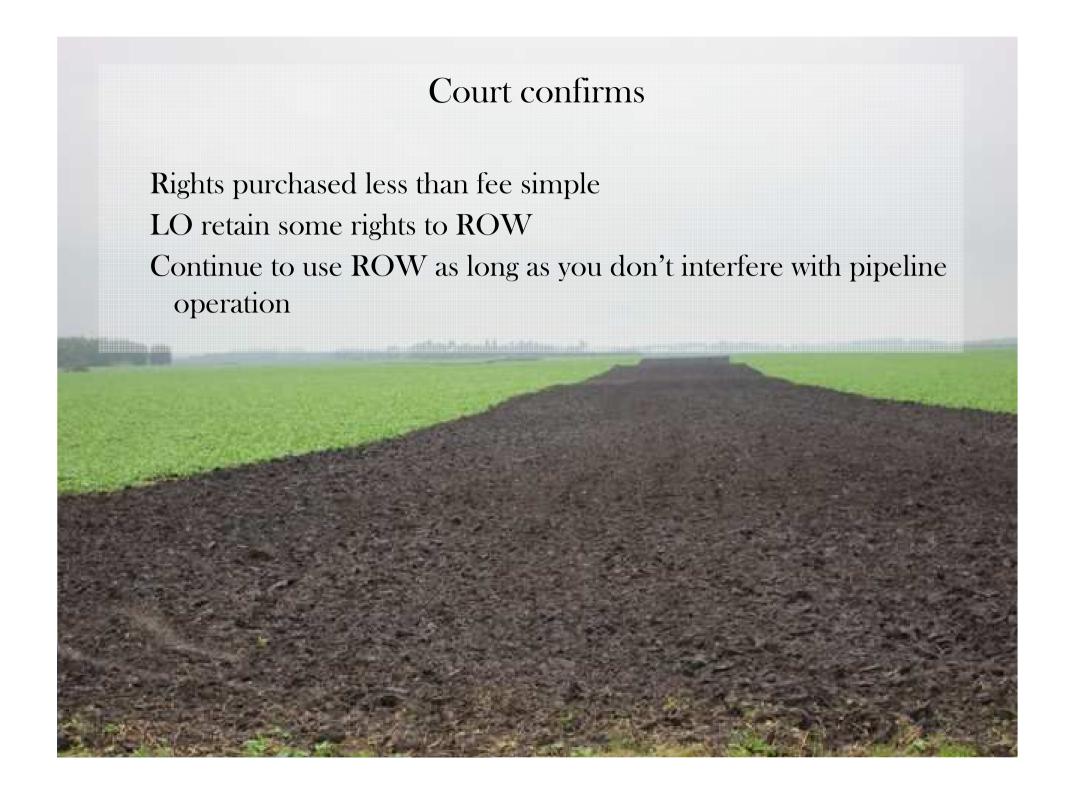
- Landowners identified 23 alleged long term effects;
- Effects did not relate specifically (no evidence) to any of the properties of landowners to the appeal;
- > No reason given by SRB for equal award of values on TWS and ROW;
- > TWS continues in perpetuity until reclamation (Pennine vs Bruder) EPEA continues obligation

#### **SRB** Decision

SRB annual based on 8 elements of percieved continuous impact:

- \* continuous adaptation of farming practices
- \* presence of pipeline ongoing nuisance
- \* caveats ongoing nuisance









Rights purchased less than fee simple
LO retain some rights to ROW
Continue to use ROW as long as you don't interfere with pipeline operation





## 10 Things in favor of a ROE

Known Length
Known Terms
Revocable
1 hole, 1 Pipe
No "As Built"

Interest Awards
Pipeline ROE
Reviewable
Non-payments
Easier
Cost Awards
Contract Certainty

#### Challenges ....

- > Enforceability of conditions
- Open to interpretation
- > Setbacks and concerns of adjacent owners who have no rights
- > Future development impact:
  - = damage claims at occurrence of future event
- > Potential impact to resource development (gravel)
- Policy gaps: contracts; removal of lines
- Environmental Impacts and spills
- Rocks surfacing

#### Challenges....

- Fractionalization of agricultural and urban lands;
- Permanency of Infrastructure;
- Jurisdictional transfers;
- Implications to future land values and development potential;
- Parameters of enforcement under REDA:
  - \* Only applies to agreements negotiated after Nov 30/2013;
  - \* Existing agreements not grandfathered in;
  - \* Costs of Mediation and representation in accessing system;
  - \* Agreement only enforceable based on negotiated conditions;
  - \* CAPL agreements are broad open ended;

#### Considerations ...

- Knowledge
- Representation
- Accessing system (regulator/arbitrator)
- Understanding technologies
- Roles of Government/Regulator/Arbitrator
- Accessible resources
- Building on success
- Engaging in negotiation/facilitation/ mediation

# **Energy Agreements**

- Montana vs. Mueller
- AUC and AER grants access to land in AB not the SRB;
- If the regulator grants license and/or permit SRB has no choice but to issue the right of entry;
- SRB is ancillary and in aid of regulator;
- No statutory right of appeal on ROE; limited to judicial review;
- SRB is a compensation Board

#### What's on the Radar.....

- Denial of signing bonus for contracting specific representation;
- Binding families including underage children to privacy clauses;
- Denial of signing bonus if conditions no accepted as;
- Denial of signing bonus if not signed within tight timelines;

Thankyou!