



F A O

Farmers' Advocate Office

**BALZAC COMMUNITY ADVISORY
PANEL (BalCAP)**

February 10, 2009

**Balzac Community Hall
Balzac, AB**

RE-THINKING RURAL ALBERTA

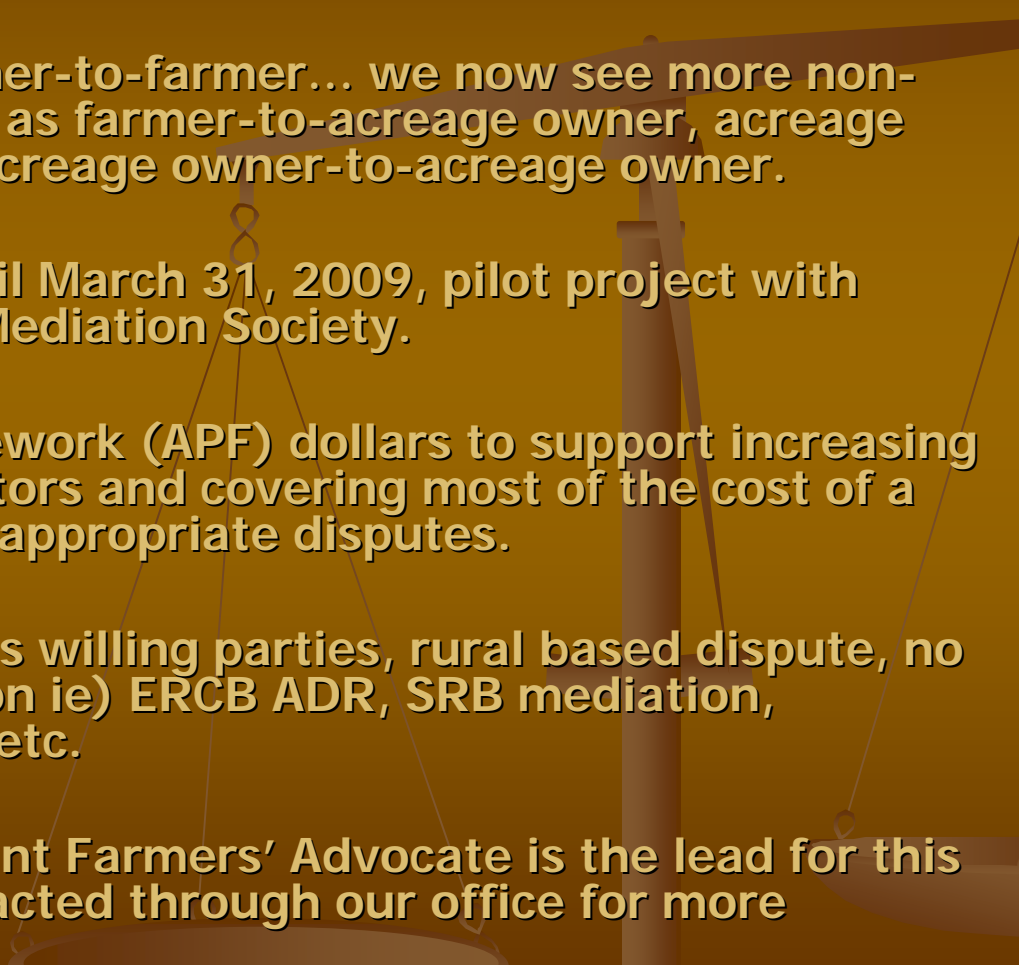
- **FAO OPERATIONS**
 - **FAO RURAL UMPIRE NETWORK**
 - **RECENT SRB DECISIONS**
 - **RECENT COURT DECISIONS**
 - **PIPELINE JURISDICTION ISSUE**
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FAO Divisions



- **Rural Consumer Protection**
 - Farm Implement Act Administration
 - Farm Implement Inspection
 - Farm Implement Dispute Resolution
- **Rural Opportunities**
 - Pre-planning for Energy Activity
 - Land Management to Maximize Future Economic Opportunity.
 - BMP for Site Location and Pipeline
 - Negotiation Strategy
 - Protect your Interests – Capitalize on Opportunities
- **Fair Process**
 - Appeals R Us!
 - AFSC, WWRRP, WCAC,
 - Farm Implement Board

FAO RURAL UMPIRE NETWORK

- Dispute resolution becoming more complex with more tendency to seek rights based solution.....this is undesirable.
 - Traditional disputes farmer-to-farmer... we now see more non-traditional disputes such as farmer-to-acreage owner, acreage owner-to-municipality, acreage owner-to-acreage owner.
 - Starting November 1 until March 31, 2009, pilot project with Alberta Arbitration and Mediation Society.
 - Agricultural Policy Framework (APF) dollars to support increasing the roster of rural mediators and covering most of the cost of a professional mediator in appropriate disputes.
 - FAO established criteria is willing parties, rural based dispute, no other avenue of resolution ie) ERCB ADR, SRB mediation, Municipal Appeal Board, etc.
 - Graham Gilchrist, Assistant Farmers' Advocate is the lead for this project and may be contacted through our office for more information.
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MISSION

The mission of the Surface Rights Board is to provide accessible processes, delivering timely and fair decisions within our legislated mandate.

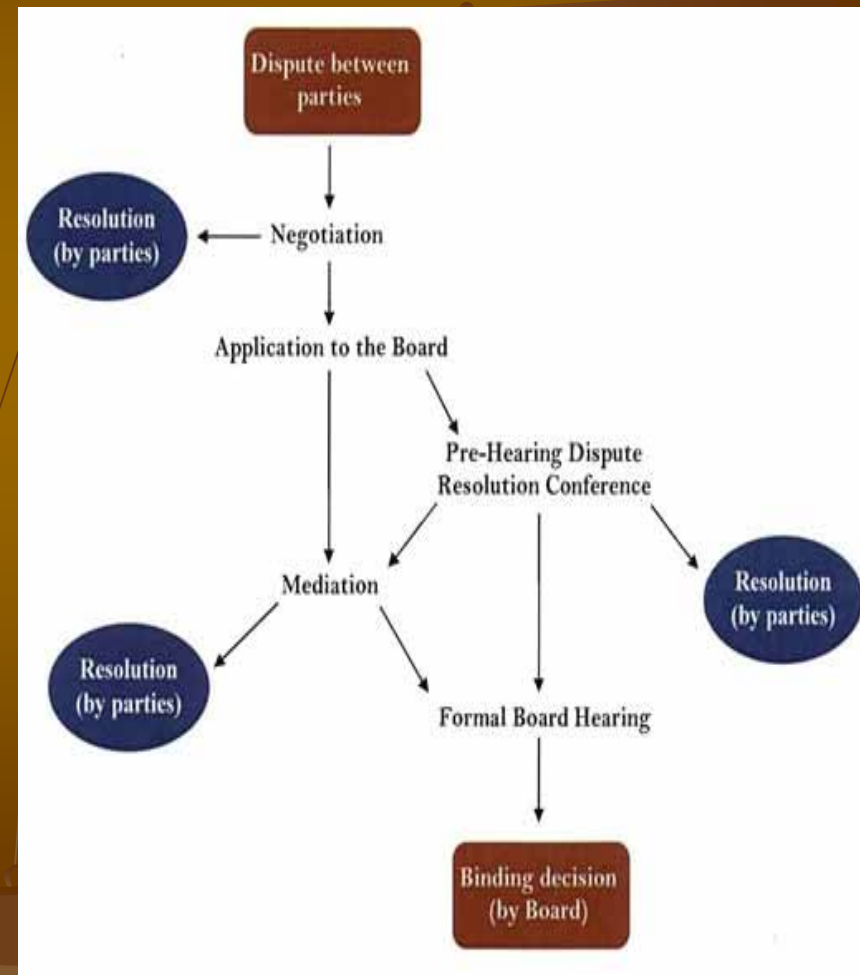
OUR VALUES

In carrying out its mission, the Surface Rights Board is guided by the following values:

- fairness
- impartiality
- excellence
- efficiency
- timeliness
- accessibility
- accountability
- transparency
- independence
- integrity

VISION

- The Surface Rights Board will be known for:
- Providing independent, community-based, accessible, fair, timely and ethical processes.
- Supporting Board Members in the provision of high quality adjudication services.
- Ensuring a high level of awareness and knowledge of the Board's mandate and purposes.
- Creating a healthy work environment that supports staff to provide quality service and to continually learn and develop knowledge, skills and expertise

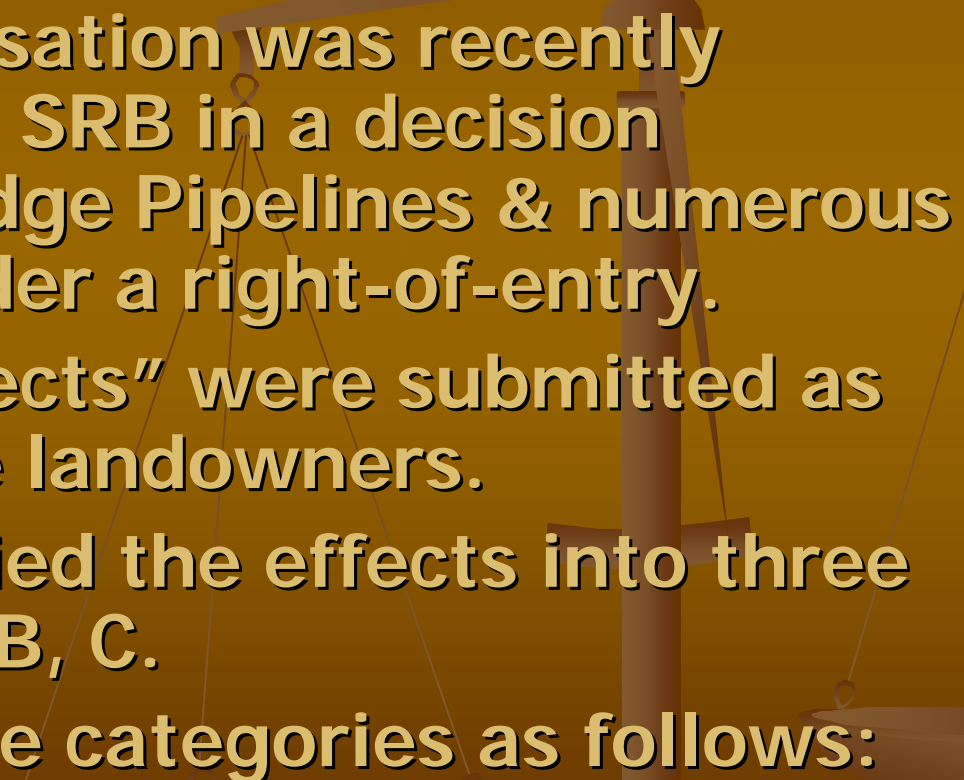


Compensation for Pipelines



- **“COMPENSATION IS NOT FOR LAND VALUE, IT IS FOR RIGHTS TAKEN”** SRB DECISION NO. 2008/0348
- **Besides the per acre value of land, the Board may consider;**
 - Value of small parcel sales
 - Loss of use/adverse effect of remainder of land
 - The damage to the land that might be caused the operator
 - Any other factors it considers proper under the circumstances.
- **All heads of compensation apply when determining pipeline compensation**

Compensation for Pipelines – Continued

- Annual compensation was recently awarded by the SRB in a decision involving Enbridge Pipelines & numerous landowners under a right-of-entry.
 - A list of 23 “effects” were submitted as evidence by the landowners.
 - The SRB classified the effects into three categories – A, B, C.
 - They defined the categories as follows:
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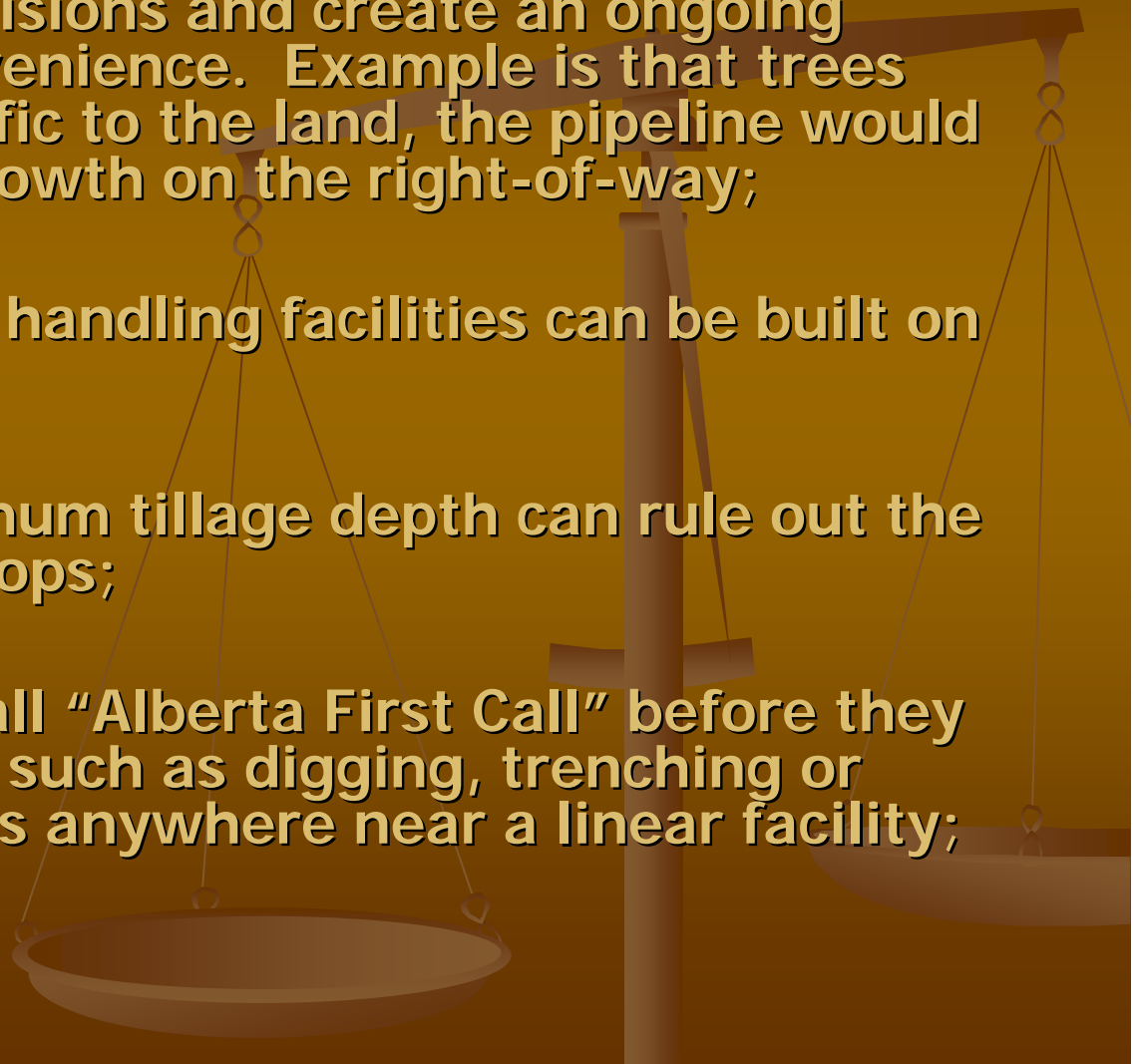
CATEGORIES



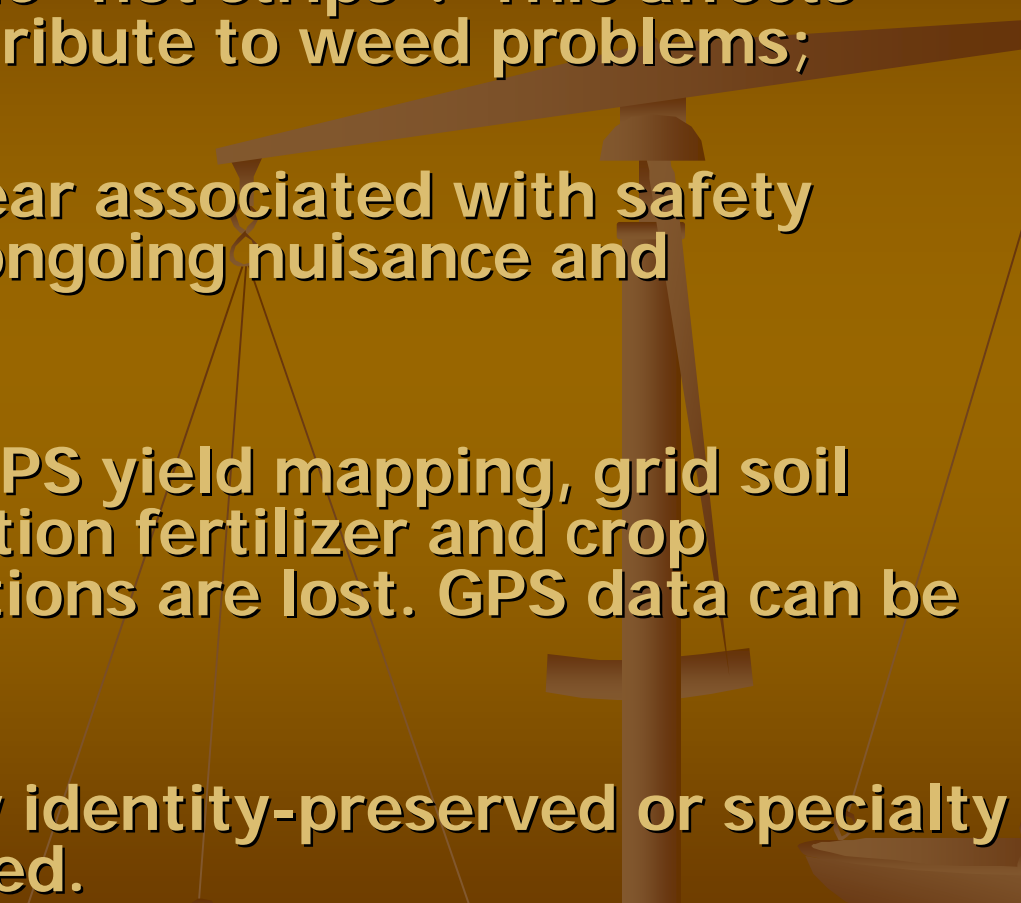
- A Have an ongoing and/or recurring component and are compensable.
- B Are items that “might happen” or “could happen” and are not compensable based on a past court decision (Zubick et al. v. Corridor Pipeline Ltd.) that stated “...cannot relate to some uncertain event that may take place at some uncertain time in the future.”
- C Are “effects” that are comments, precedents or damage issues that do not attract annual compensation in and of themselves.

A ITEMS

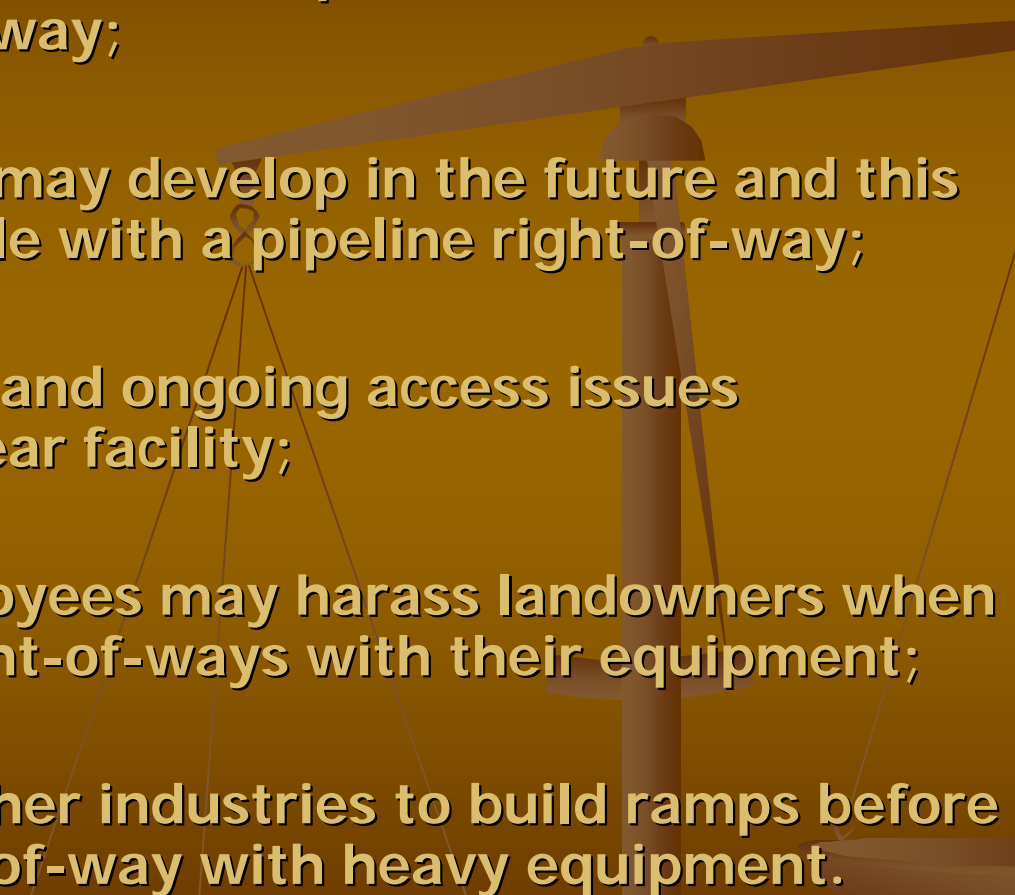
- Pipelines introduce new factors into landowners annual cropping decisions and create an ongoing nuisance and inconvenience. Example is that trees are a crop and specific to the land, the pipeline would not allow for tree growth on the right-of-way;
- No livestock or crop handling facilities can be built on the right-of-way;
- Restriction of maximum tillage depth can rule out the possibility of new crops;
- Landowners must call "Alberta First Call" before they can do ground work such as digging, trenching or installing fence posts anywhere near a linear facility;



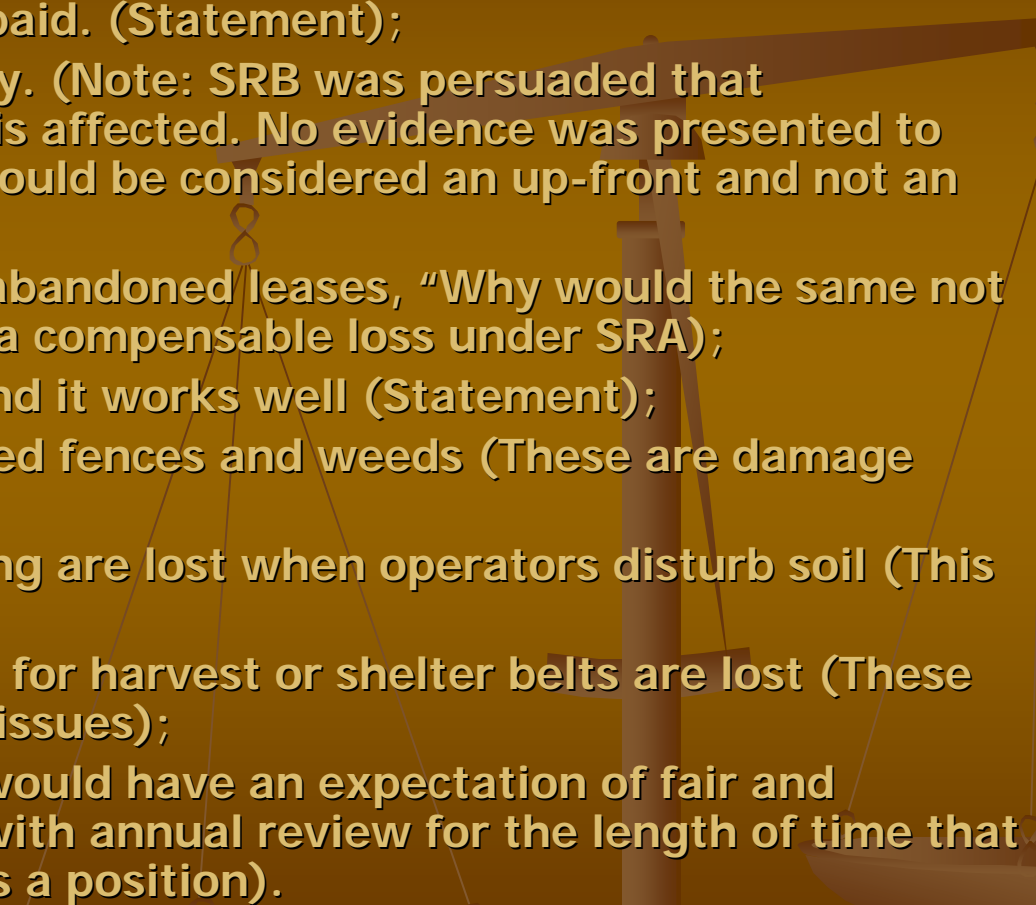
A ITEMS: Cont'd

- Pipelines can create "hot strips". This affects crops and can contribute to weed problems;
 - The concern and fear associated with safety issues creates an ongoing nuisance and inconvenience;
 - Many benefits of GPS yield mapping, grid soil sampling, prescription fertilizer and crop protection applications are lost. GPS data can be distorted;
 - The ability to grow identity-preserved or specialty crops may be limited.
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B ITEMS:

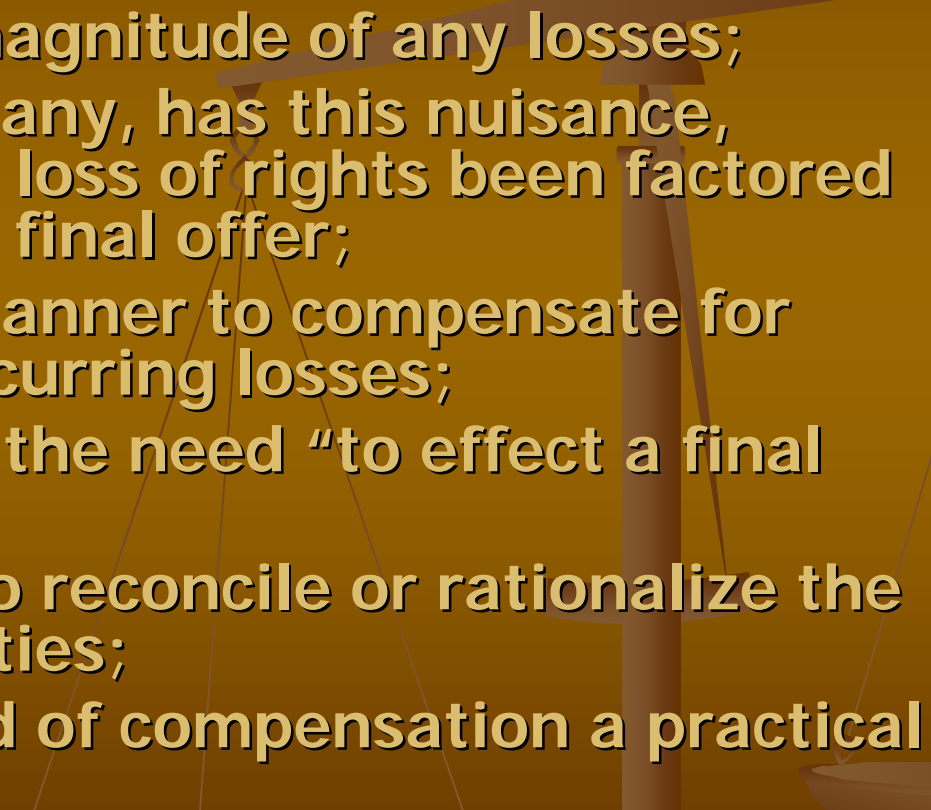
- Industrial and residential development cannot occur on the pipeline right-of-way;
 - New crops/livestock may develop in the future and this may not be compatible with a pipeline right-of-way;
 - There are continuing and ongoing access issues associated with a linear facility;
 - Some company employees may harass landowners when landowners cross right-of-ways with their equipment;
 - Operators' require other industries to build ramps before crossing their rights-of-way with heavy equipment.
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C ITEMS:

- Effects Last 75-100 years (Comment);
 - Pipelines benefit the operator and society and therefore fair compensation should be paid. (Statement);
 - Pipelines devalue property. (Note: SRB was persuaded that marketability of the land is affected. No evidence was presented to support this claim. This would be considered an up-front and not an annual item);
 - Landowners are paid for abandoned leases, "Why would the same not apply to pipelines?" (Not a compensable loss under SRA);
 - Nova set the precedent and it works well (Statement);
 - Issues of settling, damaged fences and weeds (These are damage issues);
 - Benefits of zero-till farming are lost when operators disturb soil (This is a damage issue);
 - Trees on the right-of-way for harvest or shelter belts are lost (These are construction damage issues);
 - In society, loss of rights would have an expectation of fair and equitable compensation with annual review for the length of time that the rights are lost. (This is a position).
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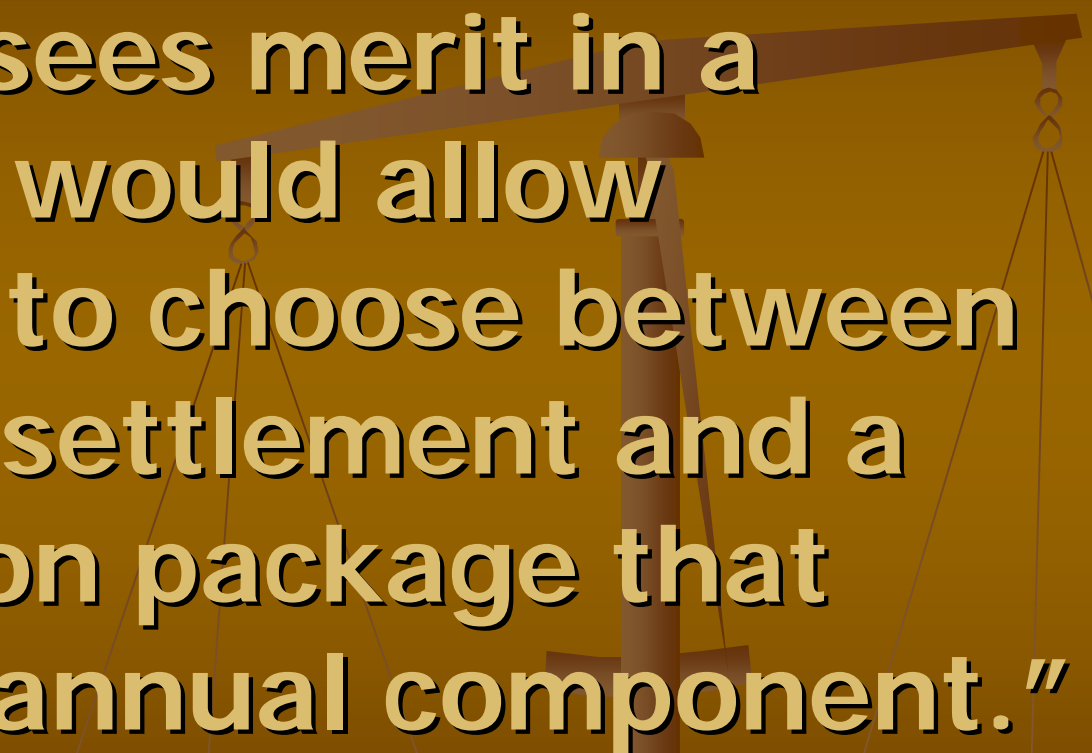
Further Findings from SRB Pipeline Decision

SRB indicated future evidence for annuals on pipelines should address:

- What will be the magnitude of any losses;
 - To what degree, if any, has this nuisance, inconvenience and loss of rights been factored into the operator's final offer;
 - What is the best manner to compensate for ongoing and/or recurring losses;
 - How compelling is the need "to effect a final resolution";
 - Is there any way to reconcile or rationalize the position of the parties;
 - Is an annual award of compensation a practical solution.
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SRB Concluding Comments

“The Board sees merit in a system that would allow landowners to choose between a lump sum settlement and a compensation package that includes an annual component.”



Court Decisions



- "...that the rate of compensation must be set for a five-year period which is *in the future.*" (2008 ABQB 19; CNRL v Bennett & Bennett Holdings)

Justice Langston concluded "...that Adverse Effect does not arise solely from the exclusion of the leased parcel ... it also arises from the need to interact with the operator as a business associate." Justice Langston further defined the adverse effect component into two categories; tangible (physically measurable); and non-tangible (difficult to measure) effects of a forced business relationship.

Tangible: eg. time and costs incurred in farming around the lease; incidental losses outside the production area due to compaction, overlaps or misses etc.

Intangible: eg. extra time for business and decision planning, planning for weed control, payment for ongoing forced business relationship etc.

Court Decisions



- **“There is no doubt that an empirical approach may not be flawless, but “cogent” does not mean “perfect”...”**
(2009 ABQB 72; Conocophillips Canada Resources Corp. v Lemay)

Justice Mason stated “It is my assessment that empirical evidence can form the basis for an exception to the pattern of dealings on the basis that it is more cogent evidence to assist in determining compensation...”

- ❖ Decision altered award by approximately \$140 and \$550 respectively
- ❖ Court noted that there was no evidence offered as to where the initial number in a pattern of dealings originated or how the final numbers in the pattern were calculated
- ❖ Judge awarded all legal costs and 40% of the applicants personal costs
- ❖ Licensed land agent was asked if detailed evidence would “trump” pattern of dealings....answered yes, if vetted and quantifiable by another expert
- ❖ Full decision can be found on our website.

Final Comments



- Most, if not all, of the decisions of the SRB that clarify definitions or award amounts not historically granted are or may be appealed to the courts.
- The courts may vary decisions, re-hear SRB cases or confirm SRB decisions.
- Incorporate the arguments that work into your negotiation strategy.
- FAO will endeavour to communicate on-going changes.

TransCanada/Nova Gas Pipeline Jurisdiction

- Landowner organization sent an letter, along with a request for donation to rural residents suggesting "regulatory disaster on the horizon"
- Concerns expressed were related to an application by TransCanada Pipelines to have their three main gas transportation systems regulated under one regulator being the National Energy Board (NEB). 2 of the 3 systems are currently under the NEB. Application occurred June 2008
- Public hearing was held November 2008 and landowner organization was an intervenor
- Landowner concerns were about changes to crossing restrictions, loss of annual payments, and abandonment issues
- The NEB has publicly addressed the landowner mail out but can not comment further as the Board has not issued any decision with respect to this application at this time. Decision expected by the end of March 2009
- At this time, concerns are speculative. NEB and company have indicated willingness to address any and all concerns that may be outstanding after decision is rendered
- Read your easement, talk with your company, use the system if outstanding concerns remain
- Remember that the NEB is independent and quasi-judicial; can't influence them through political or special interest lobby

CONTACT INFORMATION



Farmers' Advocate Office

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www.farmersadvocate.gov.ab.ca