

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 memorandum endorsed 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.

3. **Amending Order** - If an amending order is presented for registration, it is registered using document type code SRBA and endorsed on the appropriate Certificate of Title (use PF16 to enter particulars). Certified copies of intervening orders are only required if the operator's name has been changed and not recorded on the Certificate of Title.

"ORDER # _____"

4. **Assignment of Board Order** - Except for a board order issued by the Board of Public Utility Commissioners under the former Pipeline Act, R.S.A. 1955, c. 234, an amending order is required to assign the rights granted to another party.

"ORDER # _____; PARTY NAME
CHANGED TO _____"

5. **Discharge**

a) A further Board Order terminating the right of entry is required to discharge the original order. (7)

b) Where a memorandum of an order is endorsed against a certificate of title and the Board give 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. (8)

6. **Fees** - The fee in (9) [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.

7. **Searches by Board** - The Board or any person authorized by the Board may obtain searches and certified copies of certificates and documents free of charge. (10)

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
7. s. 28
8. s. 34(2)
9. s. 34(1)
10. s. 37