



# Bearspaw Petroleum Ltd.

Application for Natural Gas Pipelines

March 8, 2005

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2005-017: Bears paw Petroleum Ltd., Application for Natural Gas Pipelines

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## **ALBERTA ENERGY AND UTILITIES BOARD**

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Calgary Alberta

### **BEARSPAW PETROLEUM LTD. APPLICATION FOR NATURAL GAS PIPELINES FENN-BIG VALLEY/STETTLER FIELDS**

**Decision 2005-017  
Application No. 1377394**

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## **1 DECISION**

Having carefully considered all of the evidence and submissions, the Alberta Energy and Utilities Board (EUB/Board) approves Application No. 1377394.

## **2 INTRODUCTION**

### **2.1 Application**

Bearspaw Petroleum Ltd. (Bearspaw) submitted a pipeline application in May 2004 and a related application in September 2004. However, Bearspaw then submitted Application No. 1377394 in December 2004 to replace the two above-mentioned applications. This application, under Part 4 of the *Pipeline Act*, was for approval to construct and operate two pipelines from a pipeline tie-in point at Legal Subdivision (LSD) 3, Section 10, Township 37, Range 20, West of the 4th Meridian to a pipeline tie-in point at LSD 1-32-37-20W4M. The first proposed pipeline would be approximately 8.29 kilometres (km) in length, with a maximum outside diameter of 114.3 millimetres (mm), and would transport natural gas with a maximum hydrogen sulphide (H<sub>2</sub>S) concentration of 50 moles per kilomole (5.0 per cent). The proposed pipeline would operate as a level-1 pipeline. The second proposed pipeline would be approximately 8.29 km in length, with a maximum outside diameter of 88.9 mm, and would transport natural gas with no H<sub>2</sub>S content. Both of the proposed pipelines would be constructed within the same right-of-way. [Figure 1](#) illustrates the route of the proposed pipelines and the land in northeast quarter of Section 29-37-20 W4M (section 29) occupied by Mr. Eichhorn.

### **2.2 Intervention**

Mr. Eichhorn objected to the original applications, as they crossed his land. Many of his concerns related to reclamation and compensation for damages following Bearspaw's construction of an oil effluent pipeline across his land in 2002. EUB field staff facilitated a meeting with Bearspaw and Mr. Eichhorn in July 2004 in an effort to address outstanding concerns. While the facilitation did progress towards resolution, not all issues were resolved and Mr. Eichhorn maintained his objection to the project. The two applications were set down for a hearing.

In Application 1377394, Bearspaw chose an alternate route for the proposed pipelines so that it would not transverse Mr. Eichhorn's land. However, the new routing of the proposed pipeline transverses lands that Mr. Eichhorn occupies on a seasonal basis. Mr. Eichhorn raised concerns about the manner in which he and other landowners have been treated by Bearspaw, the impact

of the pipeline construction on the orderly management of his grazing operations, soil conservation, and reclamation of the right-of-way.

### **2.3 Hearing**

The Board held a public hearing in Stettler, Alberta, on February 9, 2005, before Board Member T. M. McGee (Presiding Member) and Acting Board Members N. G. Berndtsson, P.Eng., and W. G. Remmer, P.Eng. A site visit was completed on the morning of February 9, 2005, prior to the opening of the hearing. Those who appeared at the hearing are listed in [Appendix 1](#).

Bears paw completed the undertakings agreed to at the hearing on February 11, 2005. As such, the hearing is considered closed as of that date.

## **3 ISSUES**

The Board considers the issues respecting the application to be

- need/route,
- impacts, and
- communication/negotiations.

## **4 NEED/ROUTE**

### **4.1 Views of the Applicant**

Bears paw submitted that there was a need for the pipeline containing natural gas with H<sub>2</sub>S to conserve and market solution gas currently being flared at times and to bring oil production back on line that had been shut in.

Bears paw also submitted that the second pipeline that would transport natural gas without H<sub>2</sub>S was necessary to gather natural gas produced in the Fenn/Big Valley area and transport it into the Stettler sweet gas gathering system to provide operational flexibility on the delivery of gas to its various gas plants in the area.

Bears paw explained that it had reached agreement with all landowners on the pipeline route and the only outstanding objector was Mr. Eichhorn, who was a temporary grazing lease occupant on the lands in Section 29 where Bears paw had relocated the proposed pipelines.

### **4.2 Views of the Interveners**

Mr. Eichhorn indicated he did not dispute the need for either pipeline or the original or the applied-for route selected by Bears paw. His concerns related to construction, reclamation, and the impacts the proposed pipeline may have on his grazing operations.

### **4.3 Views of the Board**

The Board finds that there is a need for the proposed pipelines to reduce flaring and allow for production that is currently shut in. The panel also accepts Bears paw's argument that approval of this application will continue to support the efficient and economic operations in the Fenn/Big Valley area and will improve the conservation of resources in the area.

The Board further notes Mr. Eichhorn's statement at the hearing that since the proposed pipelines were moved to adjacent lands (section 29), he did not object to either the need or route for the subject pipelines. The Board is satisfied that there is a need for these pipelines, the route is appropriate, and it is in the public interest.

## **5 IMPACTS**

### **5.1 Views of the Applicant**

Bears paw indicated that the subject pipelines would serve a mature oil field and, as the characteristics of the production and H<sub>2</sub>S content from these fields were well known, the product was not expected to change significantly in the future. Bears paw did acknowledge that production had been changing slightly with time. However, it asserted that there was an adequate buffer between the current 3.5 per cent H<sub>2</sub>S and what the pipelines were licensed for (5 per cent H<sub>2</sub>S). Bears paw maintained that the pipelines would not have to be relicensed to a higher level in the foreseeable future.

Bears paw agreed to several commitments related to the original applications and confirmed at the hearing that it would honour those commitments for the portion of the pipelines that transversed section 29. The Board has included these commitments in Appendix 2.

However, Bears paw did not believe that a wider right-of-way was necessary to separate soils or to avoid sloughing in the pipeline trench. It indicated that it would hire a third-party inspection service to ensure proper construction and also meet its commitments to the intervener.

Bears paw also believed that Mr. Eichhorn's request to fence the pipeline right-of-way to keep cattle off during reclamation was not warranted and added that this was not industry practice. Additionally, Bears paw stated that the owner of the land had not requested fencing during pipeline right-of-way reclamation.

### **5.2 Views of the Intervener**

Mr. Eichhorn was concerned about the future impacts of the existing and proposed pipelines if the H<sub>2</sub>S content should increase. He indicated that his house and yard were about 300 m from the existing oil effluent pipeline and he was concerned that the transportation of H<sub>2</sub>S solution gas within the Bears paw system might change the properties of the existing pipeline that cross his lands over time.

With respect to pipeline construction, Mr. Eichhorn stated that there was sandy soil in the vicinity of the proposed pipeline right-of-way. As such, he said that Bears paw should plan for a

wider work area to prevent sloughing and mixing of the different soil horizons. In addition, Mr. Eichhorn indicated that an independent third-party inspector was needed to ensure that the needs of both the company and occupant were met.

To ensure proper reclamation, Mr. Eichhorn also suggested that fencing was required to keep the animals away from the right-of-way in order for new growth to take hold. He stated that the native grasses in the area were sensitive and difficult to reclaim; without fencing, cattle grazing could add four to six years to the time required to fully reclaim the right-of-way.

### **5.3 Views of the Board**

The Board is satisfied that the H<sub>2</sub>S produced by the current and future development in the area is reasonably stable and is unlikely to increase the operational level of the pipeline. In addition, should the pipeline operation level increase beyond the current level 1, an application to the EUB to amend the licence, with associated landowner/occupant notification, would be required. With regard to Mr. Eichhorn's concern that his house is only 300 m from the pipeline, the Board notes that the setback associated with a level-1 pipeline is the right-of-way.

The Board is satisfied that the commitments made by Bears paw with respect to third-party inspections, soil conservation, and right-of way reclamation are appropriate and adequate for section 29 of the proposed pipelines. In regard to the width of the right-of-way, the Board notes that there was no evidence submitted in support for the need for a wider right-of-way. As such, the Board is satisfied that the 15 m right-of-way is adequate.

As the landowner was not present to discuss the need for or impact of fencing on the land during reclamation, the Board is also not persuaded that there is a need for fencing in this instance.

## **6 COMMUNICATION/NEGOTIATIONS**

### **6.1 Views of the Applicant**

Bears paw stated that it carried out all of its required public consultation obligations and believed that all of Mr. Eichhorn's technical concerns had been resolved during an EUB field facilitation meeting held in July 2004. Bears paw indicated that it had ended the negotiations soon after EUB staff left the meeting, when the claim for monetary compensation or contingency payment was put forward. Bears paw said that it had later engaged the services of an external consultant to discuss Mr. Eichhorn's concerns about the pipeline applications, but this individual was not able to resolve the remaining issues. Bears paw stated that more formal appropriate dispute resolution (ADR) would not be of assistance in resolving this dispute, as it believed the only outstanding matter was the contingency payment.

Bears paw stated that it was through the intervener's hearing submissions and this proceeding that it had learned more details about Mr. Eichhorn's issues relating to the proposed pipeline and respecting damages arising from the oil effluent pipeline constructed by Bears paw in 2002. It stated that it regretted the miscommunications regarding the damages and the inappropriate offer by the land agent to tie damage compensation to withdrawal of the objection to the proposed

pipelines. Bears paw explained that it had tried to correct the overall issues and misunderstandings but was unsuccessful in reopening the negotiations.

Bears paw stated that it hoped the hearing would result in some common ground and understanding between Bears paw and Mr. Eichhorn. Bears paw indicated that it wished to deal with Mr. Eichhorn's concerns and open the lines of communications.

## **6.2 Views of the Intervener**

Mr. Eichhorn stated that the biggest problem in this situation had been communications. He stated that other than the field facilitation meeting, there was little opportunity for meaningful dialogue with someone with sufficient authority to make decisions. Mr. Eichhorn stated that Bears paw had not responded to his concerns and issues associated with the existing pipeline across his lands in a timely or effective manner. Mr. Eichhorn had concerns about the way he had been treated and the conditioning of compensation payment for past damages to withdrawing objection to the proposed pipelines. This concern led him to believe that he needed a lump sum contingency payment so that he would not need to deal with Bears paw on an ongoing basis for the next 25 years. He also indicated that this was intended as an opening offer, but Bears paw quickly ended the discussions when this matter was raised. Mr. Eichhorn stated that he had hoped for some good, honest negotiations that should have led to a resolution or, if necessary, proceed to ADR.

He did not agree that the only outstanding matter was the contingency payment; in fact, he stated that the payment no longer applied, as the pipeline was no longer on his property. He indicated that the matter was still outstanding because he had not received any requests from Bears paw to confirm wording for certain clauses or any documentation to confirm changes to the documents. Mr. Eichhorn stated that he felt bad that the situation had led to a hearing, as he had provided options, such as having Bears paw give a significant charitable donation. However, when Bears paw followed up with an offer to buy some paint for a restoration project undertaken by a local historical society, Mr. Eichhorn said he felt insulted.

Mr. Eichhorn indicated that he hoped some kind of arrangement or understanding would come from the hearing so that communications could be better in the future. He hoped that Bears paw could become a better corporate citizen.

## **6.3 Views of the Board**

The Board agrees that Bears paw has met the notification and consultation requirements of *Guide 56: Energy Development Applications and Schedules* and has also attempted to resolve the outstanding issues with Mr. Eichhorn through facilitation.

The Board notes that both parties regretted that negotiations broke down and that it was necessary to hold a hearing. Both parties also agreed that communications were difficult and problems in the past had led to the breakdown in the negotiations over the proposed pipelines. The Board believes it is unfortunate that the parties did not build on the initial successes of the EUB field facilitation meeting and, as a minimum, explore the underlying reasons for the outstanding issues, rather than breaking off negotiations.

The Board is of the view that had these parties participated in a follow-up meeting facilitated by EUB staff or a mediator when the route was relocated off Mr. Eichhorn's land, the outstanding concerns could have been further addressed.

The Board hopes the parties will follow up on their communications, as stated in the hearing, including on how Bears paw's commitments can effectively meet their needs.

Dated in Calgary, Alberta, on March 8, 2005.

**ALBERTA ENERGY AND UTILITIES BOARD**

*<original signed by>*

T. M. McGee  
Presiding Member

*<original signed by>*

N. G. Berndtsson, P.Eng.  
Acting Board Member

*<original signed by>*

W. G. Remmer, P.Eng.  
Acting Board Member



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**APPENDIX 1 HEARING PARTICIPANTS**

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**Principals and Representatives**  
(Abbreviations used in report)**Witnesses**

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Bears paw Petroleum Ltd. (Bears paw)  
J. Gruber, of  
Thackray Burgess

D. Ostermann  
P. Wright, P.Eng.  
D. Wright, of  
Emerson Process Management

S. Eichhorn  
B. K. O’Ferrall, Q.C., of  
McLennan Ross LLP

S. Eichhorn

Alberta Energy and Utilities Board staff  
G. Bentivegna, Board Counsel  
G. McClenaghan, P.Eng.  
D. Buechler

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## **APPENDIX 2 SUMMARY OF COMMITMENTS AND CONDITIONS**

The Board notes throughout the decision report that Bears paw Petroleum Ltd. has undertaken to conduct certain activities in connection with its operations that are not strictly required by the EUB's regulations or guidelines. These undertakings are described as commitments and are summarized below. It is the Board's view that when a company makes commitments of this nature, it has satisfied itself that these activities will benefit both the project and the public, and the Board takes these commitments into account when arriving at its decision. The Board expects the applicant, having made the commitments, to fully carry out the undertaking or advise the EUB if, for whatever reasons, it cannot fulfill a commitment. The EUB would then assess whether the circumstances regarding the failed commitment warrant a review of the original approval.

### **COMMITMENTS BY BEARSPAW FOR SECTION 29-37-20W4M**

- Bears paw will provide sufficient notice to Mr. Eichhorn such that any concerns regarding grazing rotation can be addressed.
- An independent third-party pipeline inspector will oversee and supervise the construction and provide liaison between the contractor, landowner, and occupant.
- Where the right-of-way crosses native grass, it will be reseeded with native grass species as part of the reclamation.
- Bears paw will engage the services of a reclamation specialist to conduct an annual review for four years.
- Bears paw will continue to work with Mr. Eichhorn and the landowners to address their concerns.

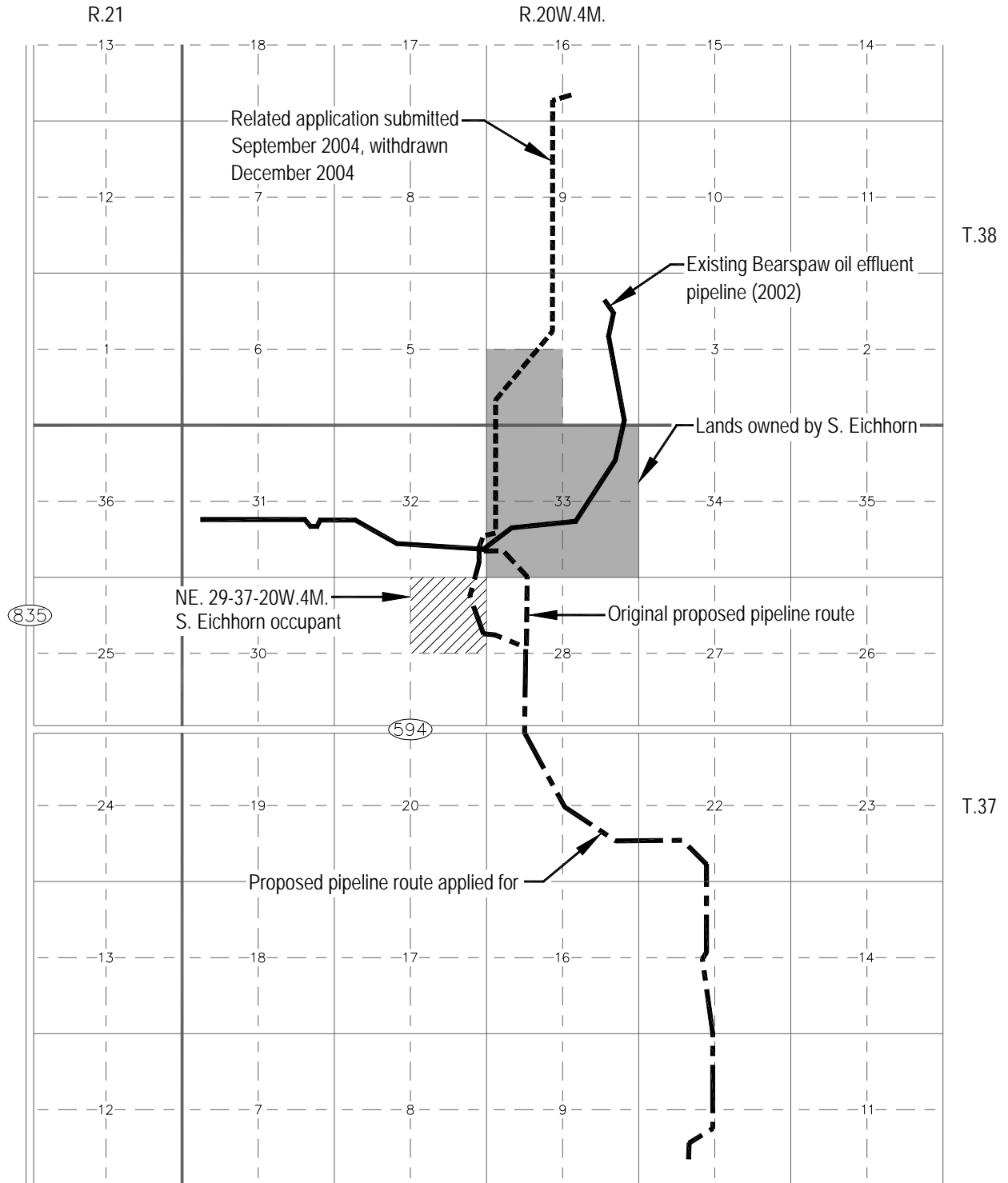


Figure 1. Project area