



Oil and Gas Appeal Tribunal

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DECISION NO. 2018-OGA-006(a)

In the matter of an appeal under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36.

BETWEEN:	Jedidiah & Amber Franklin	APPLICANTS (APPELLANTS)
AND:	Oil and Gas Commission	RESPONDENT
AND:	Leucrotta Exploration Inc.	THIRD PARTY
BEFORE:	A Panel of the Oil and Gas Appeal Tribunal Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on December 14, 2018	
APPEARING:	For the Applicants: Jedidiah Franklin For the Respondent: Dorothy Foster, Counsel For the Third Party: Rick Williams, Counsel	

STAY APPLICATION

[1] Jedidiah and Amber Franklin (the "Applicants") appealed a permit issued to Leucrotta Exploration Inc. ("Leucrotta") by the Oil and Gas Commission (the "OGC"). The Applicants also applied for a stay of the permit pending the Tribunal's decision on the merits of the appeal.

[2] The permit authorizes Leucrotta to carry out certain activities for the purposes of carrying out oil and gas exploration, development and production. The permitted activities include drilling and operating a gas well, and using a road to access the well site. The Applicants' appeal focuses on the aspects of the permit that allow Leucrotta to use an access road located on land owned by the Applicants.

BACKGROUND

[3] The *Oil and Gas Activities Act* (the "OGAA") regulates oil and gas activities in BC. The permit was issued under section 25 of the OGAA. Under section 22 of the OGAA, an applicant for a permit must notify owners of land on which the applicant intends to carry out an oil and gas activity of the applicant's intention to apply for the permit, and the notice must advise the land owner that he or she may make a submission to the OGC with respect to the application.

[4] The Applicants own several quarter sections of land in the Peace River region of BC. The Applicants operate an organic farm on their land. The road that Leucrotta is permitted to use runs between two of the Applicants' quarter sections, on the western edge of the quarter section that is legally described as: the South West ¼ of Section 34, Township 82, Range 15 (the "SW Quarter of Section 34"). This quarter section is in the Agricultural Land Reserve.

[5] According to Leucrotta, it sent a consultation and notification letter to the Applicants' mailing address on August 3, 2018. The letter notified the Applicants of Leucrotta's intention to apply for a permit authorizing it to drill and operate a gas well on neighbouring land, and to use the road on the SW Quarter of Section 34 to access the proposed well.

[6] According to the Applicants, they received no such letter from Leucrotta, and they had no opportunity to express their concerns before the permit was issued.

[7] On August 20, 2018, Leucrotta applied for the permit.

[8] Leucrotta's application included a spreadsheet showing its consultation and notification activities with land owners. Under the heading "Summary of Engagement", the spreadsheet states as follows regarding the Applicants:

Landowner does not have an objection to the project. Negotiations are ongoing; compensation related.

[9] On August 27, 2018, Prospect Environmental Services Inc. prepared a "Pre-Construction Environmental Assessment" (the "Prospect Report") for Leucrotta, regarding the proposed well site and associated developments. The executive summary in the Prospect Report states, in part:

Invasive plants were observed, primarily within the existing road surface portions of the proposed development; care should be taken ... to minimize the spread of weeds by washing equipment and removing debris from undercarriage before entering the site and prior to leaving the site.

[10] The Prospect Report also states on page 8 that wildlife including moose, deer, songbirds and bear were observed in the proposed development area, and operational measures (such as critical timing windows for the observed wildlife species) should be considered to limit the impacts of disturbance on those species.

The permit

[11] On September 3, 2018, the OGC issued the permit to Leucrotta.

[12] The permit contains a number of conditions regarding any stream crossings for roads, wetland crossings, and instream works associated with the permitted oil and gas activities. Regarding road use, the permit requires Leucrotta to obtain liability insurance protecting the Province, the OGC, and the permit holder. The permit contains no specific conditions that address the potential spread of invasive plants or potential impacts on wildlife associated with Leucrotta's use of the road.

[13] No written reasons for the decision to issue the permit were provided in the OGC's Record of Decision.

The appeal

[14] On November 13, 2018, the Applicants appealed the permit to the Tribunal. Given that the appeal was filed after the 15-day appeal period that applies to land owners under the *OGAA*, the Applicants requested an extension of time to file the appeal. In that regard, the Applicants assert that they did not receive the consultation and notification letter from Leucrotta, that they did not receive the permit until mid-October, and that they did not meet with anyone from Leucrotta until November 7, 2018.

[15] Leucrotta did not oppose the application for an extension of time. The OGC took no position on the application for an extension of time. Accordingly, the Tribunal accepted the appeal as filed.

[16] The Applicants' grounds for appeal have been summarized by the Tribunal as follows:

- the Applicants did not receive the consultation and notification letter from Leucrotta and had no opportunity to express their concerns before the permit was issued, contrary to section 22 of the *OGAA*;
- although the Applicants knew that Leucrotta was planning some development in the area, they had no idea that things were progressing without their knowledge or what the time frame would be;
- the Applicants' concerns should have been addressed before the permit was issued; particularly, the potential for noxious weeds and pathogens to be brought onto their organic farm, and the disruption of wildlife feeding, migration and breeding in the area;
- the permit does not reflect the fact that the road is a private road encumbered by two easements, and the OGC had no jurisdiction to issue a permit over a private road; and
- the permit does not appear to have given consideration to the fact that the area is environmentally sensitive habitat (e.g. is a known ungulate winter habitat).

The stay application

[17] In their Notice of Appeal, the Applicants requested a stay of the permit.

[18] In summary, the Applicants submit that if a stay is denied, there will be a permanent loss of environmentally sensitive wildlife habitat, and noxious weeds and pathogens may be brought onto the Applicants' organic farm, which would have long-term and catastrophic consequences. The Applicants argue that such harm would be irreversible, whereas granting a stay would cause no harm to Leucrotta because alternative routes are available to access the well site.

[19] Leucrotta submits that the stay application should be denied. Leucrotta argues that the Applicants have not established that their interests will suffer irreparable harm if a stay is denied. Leucrotta also argues that the balance of convenience favours denying a stay.

[20] The OGC takes no position on the stay application.

The right of entry order

[21] On October 31, 2018 (before the Applicants appealed the permit), Leucrotta applied to the Surface Rights Board for a right of entry order in relation to the road on the SW Quarter of Section 34. Under the *Petroleum and Natural Gas Act*, the Surface Rights Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity.

[22] On December 12, 2018, the Surface Rights Board granted the right of entry order to Leucrotta, subject to certain conditions.

[23] Although Leucrotta's submissions on the stay application were filed before the right of entry order was issued, its submissions discuss the application for the right of entry order. Although the right of entry order was issued before the Applicants filed their reply submissions on the stay application, the Applicants' reply submissions do not refer to the issuance of the right of entry order. In any event, the right of entry order is a public document, and is available on the Surface Rights Board's website. Given its relevance to this appeal, the Panel has reviewed the content of the right of entry order.

[24] Among other things, the right of entry order states that Leucrotta must pay the Applicants \$2,000 "as partial compensation", and Leucrotta agrees to: make all reasonable efforts to ensure proper weed management on the road; ensure that its agents and servants close and lock all gates on the road; steam clean any vehicles that will be used for construction operations on the adjacent property before being brought on the road; use fresh water spraying on the road surface to control dust when required during times of heavy operation; and, indemnify and save harmless the Applicants from any damages, losses, costs, claims and demands made by the registered easement holder, caused by Leucrotta's access to the road.

ISSUE

[25] The sole issue arising from this application is whether the Tribunal should grant a stay of the permit, pending the Tribunal's decision on the merits of the appeal.

APPLICABLE LEGISLATION AND LEGAL TEST

[26] Section 72(3) of the *OGAA* grants the Tribunal the authority to order a stay:

72(3) Subject to subsection (4), the commencement of an appeal does not operate as a stay or suspend the operation of the determination or decision being appealed, unless the appeal tribunal orders otherwise.
[Of note, subsection (4) is not relevant to this decision.]

[27] The Tribunal's *Practice and Procedure Manual* mandates that the Tribunal's practice, when considering an application for a stay, is to apply the three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385 (S.C.C.); [1994] S.C.J. No. 17 [*"RJR-MacDonald"*].

[28] More particularly, an applicant for a stay must demonstrate the following:

- (a) there is a *serious issue* to be tried;
- (b) the applicant will suffer *irreparable harm* if the stay is not granted; and
- (c) the “balance of convenience” test, namely: whether the harm that the applicant will suffer if a stay is refused exceeds any harm that may occur if a stay is granted.

[29] A stay is considered to be an extraordinary remedy. The onus is on the Applicants to demonstrate good and sufficient reasons why a stay should be granted. The Tribunal is required to apply the balance of probabilities standard of proof.

DISCUSSION AND ANALYSIS

[30] The Panel has considered each part of the *RJR-MacDonald* test.

Serious Issue

[31] In *RJR-MacDonald*, the Court stated as follows:

49. ... What then are the indicators of “a serious question to be tried”? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. ...

[32] The Court pointed out that, as a general rule, this part of the three-part test has a low threshold, and the inquiry should proceed to the next stage of the test unless the application is viewed as being frivolous or vexatious, or deals with a pure question of law.

[33] The Applicants submit that the appeal raises serious issues regarding the OGC’s decision to issue the permit without any consultation with the Applicants as land owners. The Applicants also submit that there is no evidence that the OGC considered the fact that the road is privately owned, and is encumbered by easements. Furthermore, the Applicants submit that the OGC failed in regard to its obligations to consider the environment, the economy, and social well-being pursuant to section 4 of the *OGAA*.

[34] Given the low threshold to be applied at this stage of the test, Leucrotta takes no position on whether the appeal raises serious issues.

[35] However, Leucrotta denies the Applicants’ allegation that it did not provide them with the consultation and notification letter in August 2018. Leucrotta submits that the letter was delivered to the same address that the Applicants have provided for service in the appeal process. Leucrotta maintains that even if the Applicants did not see or open the letter, they are deemed to have received it five days after it was delivered, pursuant to section 2 of the *Service Regulation*, B.C. Reg. 199/2011. Furthermore, Leucrotta submits that it has been in discussions with the Applicants about the proposed well and the associated use of the road since February 2018.

The Panel’s findings

[36] The Panel finds that the Applicants' grounds for appeal and submissions on the stay application raise serious issues regarding the potential for the permitted road use to adversely affect wildlife in the area, and to spread noxious weeds or pathogens that could adversely affect the Applicants' farming operations. The Applicants also raises questions regarding Leucrotta's consultation and notification of the Applicants, the information that the OGC considered before it granted the permit to Leucrotta, and whether the OGC has the jurisdiction to grant a permit authorizing the use of a private road that is subject to easements. Those issues are neither frivolous nor vexatious. In addition, the issues raise questions of fact, and not simply questions of law.

[37] Accordingly, the analysis must proceed to the second part of the three-part test.

Irreparable Harm

The second part of the *RJR-MacDonald* test requires an applicant to demonstrate that his or her interests will suffer irreparable harm if a stay is not granted. The Court put it this way, at page 405:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interest that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)).

[underlining added]

[38] The Applicants submit that Leucrotta intends to proceed with the permitted activities as soon as possible, given its application for the right of entry order. In these circumstances, the Applicants submit that, without a stay, the permitted activities may occur before the appeal has been heard or decided by the Tribunal.

[39] In addition, the Applicants submit that increased traffic levels associated with the permitted activities could result in permanent loss of environmentally sensitive wildlife habitat, as the road goes through a wildlife corridor and ungulate winter habitat. Furthermore, traffic may bring noxious weeds and pathogens onto the Applicants' organic farm, which would have long term and catastrophic consequences. The Applicants currently have a locked gate at the northern end of the road on their property.

[40] In summary, the Applicants maintain that the proposed use of the road will cause irreversible damage.

[41] Leucrotta submits that the Applicants' arguments regarding the alleged irreparable harm have no merit. Leucrotta advises that it intends to build the well site, drill the well, and use the road as necessary for those things, during winter when the ground is frozen. It chose this timing for several reasons, including:

- the owner of the land where the well site is to be located prefers that construction occur during frozen conditions, to minimize nuisance and disturbance on his land;
- the risk of spreading weeds is reduced when operations are conducted during frozen ground conditions;
- impacts on farming operations are reduced overall, as farming does not usually occur when the ground is frozen; and
- it is significantly less expensive to construct the well site and drill the well when the ground is frozen, as it is not necessary to install and maintain matting on the road and the well site.

[42] Regarding the alleged harm to wildlife if a stay is denied, Leucrotta submits that the Applicants have provided no evidence to support their claims. Leucrotta argues that speculative claims, unsupported by evidence, are insufficient to establish irreparable harm. Leucrotta submits that there is no evidence of a likelihood of harm to wildlife, let alone the Applicants' interests, from the permitted road use.

[43] Similarly, Leucrotta submits that the Applicants' claim that the permitted road use would cause the introduction of noxious weeds and pathogens to their farm is speculative and unsupported by any evidence. Leucrotta submits that the right of entry order will require Leucrotta to take measures that will prevent such harm from arising, especially if well construction occurs in the winter. Furthermore, Leucrotta submits that even if such harm occurred, it would not be irreparable because the Applicants would be entitled to compensation, pursuant to the indemnity clause in the right of entry order and section 163 of the *Petroleum and Natural Gas Act* (which provides that a land owner may apply to the Surface Rights Board for mediation and arbitration if the exercise of a right of entry on their land causes damage to the land or causes loss to the land owner).

[44] In reply, the Applicants submit that it is not clear that the permit authorizes use of an existing road. The permit states that it authorizes Leucrotta to "construct, operate and maintain an oil and gas road", and the *Oil and Gas Road Regulation* and associated OGC guidelines do not provide for the assumption of a private road for oil and gas activities. In addition, the Applicants maintain that the Prospect Report supports their submissions with respect to irreparable harm.

[45] In support of their submissions, the Applicants provided an affidavit, with the Prospect Report attached as an exhibit.

The Panel's findings

[46] According to *RJR-MacDonald*, the term “irreparable harm” refers to the nature, rather than the magnitude, of the harm suffered:

It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. (page 405)

[47] In keeping with the *RJR-MacDonald* rationale, irreparable harm would include a likelihood of a “permanent loss of natural resources” or non-compensable damage to the Applicants’ interests as land owners and farmers, arising from the permitted activities. The Applicants have the onus of establishing that irreparable harm to their interests is likely to occur if a stay is denied.

[48] The Panel has reviewed the parties’ submissions and evidence, including the Prospect Report, the terms and conditions of the permit, and the terms and conditions of the right of entry order. Although the permit does not include a map showing the location of the road that Leucrotta is permitted to use, which would have made it easier to understand the exact location of the road, the permit specifies the latitudinal and longitudinal coordinates of the road, and those coordinates appear to coincide with the existing road on the SW Quarter of Section 34. Also, although the permit states that Leucrotta is authorized to “construct, maintain and operate” the road, the maps in the Prospect Report and appendix A of the right of entry order clearly show that the road to be used to access the proposed well is the existing road along the western edge of the SW Quarter of Section 34. The map in the Prospect Report also states that the road is a “constructed access road” with “no soil stripping required”, and indicates that the existing road is bordered by a strip of aspen trees on the SW Quarter of Section 34.

[49] Based on this information, the Panel concludes that the permit authorizes the use of the existing road that runs along the western edge of the SW Quarter of Section 34, and does not authorize the construction of any new roadways or the clearing of additional areas on the SW Quarter of Section 34. Thus, any potential harm to the Applicants interests that may arise from the permitted road use, if a stay is denied, would be limited to the potential effects associated with increased traffic due to Leucrotta’s construction and operation of the well on neighbouring land.

[50] Leucrotta now holds the permit and the right of entry order, and Leucrotta advises that it intends to proceed with the permitted activities during the winter when the ground is frozen. In these circumstances, the Panel finds that, without a stay, it is possible that, without a stay of the permit, the permitted activities will commence before the appeal has been decided by the Tribunal. However, if a stay is denied and Leucrotta proceeds while the appeal is outstanding, the Panel finds that this would not necessarily render the appeal moot. The concerns raised in the Applicants’ grounds for appeal relate to Leucrotta’s use of the existing road, as opposed to construction of a new road. Unlike a permit to construct a new road, this is not a case where concerns related to a construction process may be rendered moot once construction is complete. If the Tribunal finds, after a full hearing of the appeal, that the appeal has merit, the Tribunal could still issue a decision that varies or rescinds the permit with respect to Leucrotta’s use of the road, even after Leucrotta commences using the road. Leucrotta would take a risk by proceeding

with the permitted activities while knowing that the appeal could result in the permit being varied or rescinded.

[51] The Prospect Report states on page 5 that invasive plants (Canada thistle, wild oat, sow thistle, nettles, stinkweed and goatsbeard) were observed “throughout the existing access road/farm trial”. Given that these invasive plants are already present on the road surface in the SW Quarter of Section 34, the question is whether the permitted road use would cause spreading beyond where they already exist.

[52] On page 6, the Prospect Report recommends a number of measures to minimize the spread of invasive plants, such as removing soil from vehicles and equipment, and cleaning them in the field with an air compressor or broom, in addition to daily washing. As the Panel has noted, above, the permit contains no specific conditions that address the potential spread of invasive plants associated with Leucrotta’s use of the road. If the permit had contained such conditions, it may have helped address the Applicants’ concerns about the spread of invasive plants and pathogens onto their farm land. However, the right of entry order imposes some requirements on Leucrotta that are intended to address that concern. Specifically, the right of entry order states that Leucrotta agrees to:

- make all reasonable efforts to ensure proper weed management on the road;
- ensure that its agents and servants close and lock all gates on the road;
- steam clean any vehicles that will be used for construction operations on the adjacent property before being brought on the road;
- use fresh water spraying on the road surface to control dust when required during times of heavy operation; and
- indemnify and save harmless the Applicants from any damages, losses, costs, claims and demands made by the registered easement holder, caused by Leucrotta’s access to the road.

[53] The Panel finds that the right of entry order requires Leucrotta to take several measures that are intended to reduce the risk of noxious weeds or pathogens spreading beyond where they already exist on the road. The Panel further finds that the risk of such harm is further reduced if Leucrotta’s activities occur when the ground is frozen and plants cannot begin to grow, as planned by Leucrotta. Granting a stay and delaying the permitted activities for several months may actually increase this risk, if the appeal is ultimately unsuccessful and Leucrotta proceeds when the ground is not frozen.

[54] Furthermore, the Panel finds that even if noxious weeds or pathogens did spread beyond the road and onto the Applicants’ farm land, the Applicants would be entitled to compensation, pursuant to the indemnity clause in the right of entry order, and section 163 of the *Petroleum and Natural Gas Act* which provides that a land owner may apply to the Surface Rights Board for mediation and arbitration if the exercise of a right of entry on their land causes damage to the land or causes loss to the land owner. As such, this type of harm, if it occurred would not be irreparable in nature according to the test in *RJR-MacDonald*, as stated above.

[55] Regarding the risk that increased road traffic may cause irreparable harm to wildlife, the Prospect Report states on page 8 that the important windows for the observed wildlife are as follows:

- moose and deer: May 15 to July 15;
- songbirds: June 15 to July 31; and
- bear: November 1 to April 15.

[56] The Prospect Report also states on page 8 that, other than observing these timing windows, additional protection is not required, as no dens or significant bedding/calving areas were observed and no clearing of timber is expected.

[57] The Panel finds that, contrary to the Applicants' claims, the Prospect Report does not indicate that the road goes through a wildlife corridor and ungulate winter habitat. The Panel finds that if Leucrotta's activities occur in the winter, as planned, the timing will avoid the important times for deer, moose and songbirds. In other words, winter construction and drilling would be consistent with the Prospect Report's recommendations regarding how to minimize impacts on deer, moose, and songbirds. As such, the Panel finds that there is no evidence that denying a stay would likely cause irreparable harm to deer, moose and songbirds.

[58] In addition, the Panel finds that winter development would not avoid the important timing window for bear, but the Prospect Report states that no bear dens were observed in the area. On this basis, the Panel concludes that the development is unlikely to impact bears that would be hibernating in dens during the winter, and there is insufficient evidence that denying a stay would likely cause irreparable harm to bear.

[59] Moreover, no new road construction is contemplated on the Applicants' land, and there is no evidence, in the Prospect Report or otherwise, that increased traffic levels associated with the permitted activities would likely result in the permanent loss of environmentally sensitive wildlife habitat.

[60] For these reasons, the Panel finds that the Applicants have not established a likelihood of irreparable harm to their interests if a stay is denied. However, the Panel emphasizes that this decision has been made for the limited purpose of deciding the present stay application. The findings in this decision have no bearing on the merits of the appeal.

Balance of Convenience

[61] The third part of the test in *RJR-MacDonald* requires a determination of which of the parties will suffer greater harm if a stay is – or is not – granted, pending a final decision on the merits of the appeal. According to Leucrotta's submissions, the Panel need not address this question, having already determined that the Applicants' evidence falls short of establishing that the Applicants will likely suffer irreparable harm if a stay is denied. However, for greater certainty, the Panel will address the balance of convenience.

[62] The Applicants submit that alternate routes are available for Leucrotta to access the well site, but Leucrotta did not explore the possibility of accessing the

well site through the land where the well site is located. In addition, the Applicants argue that if a stay is granted, any delay to Leucrotta's activities would be temporary in nature.

[63] Leucrotta submits that the balance of convenience favours denying a stay. Leucrotta maintains that the alleged harm to the Applicants, if a stay is denied, is speculative and unsupported by evidence, whereas the harm to Leucrotta would be irreparable if a stay is granted. Leucrotta submits that granting a stay would likely result in Leucrotta being unable to perform the permitted activities when the ground is frozen, and this would result in increased development costs of approximately \$340,000 for Leucrotta, due to having to install and maintain matting on the road and at the well site. In addition, not performing the permitted activities when the ground is frozen would increase the risk of spreading invasive weeds, and causing nuisance and disturbance to the farming operations of the Applicants and neighbouring farmers, since farmers generally do not work their land when the ground is frozen. It would also cause increased nuisance and disturbance to the land owner where the well site is located. Furthermore, Leucrotta maintains that any delays in the permitted activities would impact its long-term operational plans and the timeliness of potential related future projects in the area.

[64] Furthermore, Leucrotta maintains that the alternate route suggested by the Applicants to access the well site would result in greater potential impact on wildlife, since it would require the construction of a new road and associated clearing activities.

[65] In support of its submissions, Leucrotta provided an affidavit from Kiel Crowe, a Senior Exploration Engineer with Leucrotta. He attests to the impacts of a stay if it results in delaying the permitted activities until the spring or summer of 2019, after frozen ground conditions have subsided, and the impacts of such a delay on Leucrotta's construction costs and operational plans.

[66] In reply, the Applicants argue that any delay to Leucrotta's activities, if a stay is granted, would be the result of Leucrotta's failure to do the necessary consultation and planning in a more timely and transparent manner, and its failure to provide the OGC with relevant details regarding the Applicants' road.

The Panel's findings

[67] The Panel has already found that the Applicants failed to establish that their interests will likely suffer irreparable harm if a stay is denied. There is no evidence that denying a stay would likely result in irreparable harm to wildlife in the area, or would likely cause invasive weeds or pathogens to spread onto the Applicants' farm land. Even if the permitted activities did cause invasive weeds to spread beyond the road and onto the Applicants' farm land, the Applicants would be entitled to financial compensation.

[68] In contrast, the Panel finds that granting a stay would result in a delay in the permitted activities, which would cause increased construction costs to Leucrotta, if the appeal is ultimately unsuccessful and the permitted activities proceed. Even if the Tribunal heard the appeal in an expedited manner and issued the decision within the time frame specified in the Tribunal's Practice Directive No. 1 (e.g.,

within three months of the close of the hearing, if the hearing is conducted in writing or the total number of days to complete an oral hearing is two days or less), it is likely that the decision would not be issued in time for Leucrotta to complete construction before the ground thawed. Leucrotta has provided evidence that proceeding after the ground has thawed would lead to increased construction costs of \$340,000, due to the need to use matting on the road and at the well site. There is no evidence that Leucrotta could recover those additional costs as damages or some other form of compensation, if the appeal is ultimately unsuccessful.

[69] Furthermore, the Panel finds that granting a stay and delaying construction would actually lead to an increased risk of spreading invasive weeds on the Applicants land, and increased inconvenience and disruption to farming operations, due to the permitted activities occurring after the ground has thawed.

[70] For all of these reasons, the Panel finds that the balance of convenience favours denying a stay, pending the Tribunal's decision on the merits of the appeal.

DECISION

[71] In making this decision, the Panel has considered all of the relevant documents and evidence, whether or not specifically reiterated herein.

[72] For the reasons provided above, the application for a stay in respect of the road authorization in the permit is denied.

"Alan Andison"

Alan Andison
Chair, Oil and Gas Appeal Tribunal
January 8, 2019