BRITISH COLUMBIA

Oil and Gas
Appeal Tribunal

Fourth Floor, 747 Fort Street
Victoria BC V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

Website: www.ogat.gov.bc.ca
Email: ogatinfo@gov.bc.ca

DECISION NO. 2019-OGA-002(a)

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

BETWEEN:	Blane and Maryann Meek	**APPLICANTS**
AND:	Oil and Gas Commission	**RESPONDENT**
AND:	Primavera Resources Corp.	**THIRD PARTY**
BEFORE:	A Panel of the Oil and Gas Appeal Tribunal Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on May 14, 2019	
APPEARING:	For the Applicants: Self-represented For the Respondent: Claire Bond, Counsel For the Third Party: Rick Williams, Counsel Heidi Rolfe, Counsel	

STAY APPLICATION

[1] This decision addresses an application by Blane and Maryann Meek (the "Applicants") for a stay of permit 100107275 (the "Permit"). The Permit was issued on January 30, 2019 by the Oil and Gas Commission (the "OGC"), and authorizes Primavera Resources Corp ("Primavera") to extend an existing well pad and construct, drill, complete, and flare well no. 37961 (the "Well"). Primavera intends to produce petroleum and/or natural gas from the Well. The Well is located west of the City of Fort St. John in northeastern BC, and approximately 150 metres from the Applicants' home.

[2] On March 7, 2019, the Applicants appealed the Permit to the Oil and Gas Appeal Tribunal (the "Tribunal"). On March 14, 2019, the Applicants requested a stay of the Permit pending the Tribunal's decision on the merits of the appeal.

[3] The stay application was heard by way of written submissions.

BACKGROUND

[4] 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. Sections 11 and 13 of the *Consultation and Notification Regulation* prescribe the content of a notice and an invitation to consult, respectively.

[5] The Applicants are the registered owners of a quarter section of land ("SW ¼ Section 13") in the Peace River District.

[6] In February 1998, the then Ministry of Employment and Investment issued well authorization 11308 to Suncor Inc. to construct a well site, access road, and associated camp site, and to drill and develop a petroleum or natural gas well on SW ¼ Section 13. Sometime later, Suncor Inc. sold its rights associated with that well. Those rights were bought and sold several times by different companies, before being purchased by Primavera.

[7] According to Primavera's evidence, on August 8, 2018, its land agent hand delivered a consultation and notification letter dated August 7, 2018, to the Applicants. According to the Applicants, they never received a consultation and notification letter from Primavera.

[8] A copy of the August 7, 2018 consultation and notification letter was provided to the Tribunal. The letter is addressed to Blane Meek, and contains information about Primavera's proposal to construct, drill, complete and possibly flare a new well on the existing well pad, and extend the original well pad. The letter states that Primavera proposed to drill sequential wells for sour gas (i.e., natural gas containing measureable amounts of hydrogen sulphide) approximately 1,900 metres deep into a subsurface reservoir known as the Montney formation. The letter sets out the anticipated nature and timing of the proposed activities. The letter states that the Applicants may respond in writing to Primavera within 21 days of receiving the letter, advising whether they have any objections to the proposal, and they may make a written submission directly to the OGC any time before it makes a decision on the proposal. The letter further states that if the wells prove to be capable of production, Primavera may propose to drill future wells on adjoining lands within the area of its mineral rights.

[9] Between September 21, 2018 and April 18, 2019, Primavera and the Applicants were involved in mediation and arbitration proceedings before the Surface Rights Board regarding Primavera's ability to enter onto the well pad, and the amount of compensation Primavera would pay to the Applicants. Those proceedings are completely separate from the process of applying for a permit from the OGC, and the appeal proceedings before the Tribunal.

[10] Meanwhile, on January 4, 2019, Primavera applied to the OGC for the Permit.

[11] With its application to the OGC, Primavera provided a table showing Primavera's notification and consultation activities. According to that table, a consultation and notification letter was sent to the Applicants by mail, and no written submissions were provided by the Applicants. The table also states that the Applicants had unresolved concerns regarding compensation, which were being addressed through the Surface Rights Board's process.

[12] According to an affidavit sworn on May 7, 2019, by the OGC's delegated decision-maker for the Permit, the OGC received no written submissions from the Applicants regarding Primavera's application for the Permit.

[13] On January 30, 2019, the OGC issued the Permit to Primavera.

[14] On January 31, 2019, Primavera sent a copy of the Permit to the Applicants by email.

[15] The Applicants maintain that they did not see the Permit until February 27, 2019, when it became part of Primavera's application to the Surface Rights Board for a Right of Entry Order. They also maintain that they never received a copy of the Permit by mail.

[16] On March 7, 2019, the Applicants appealed the Permit, and applied for an extension of time to file the appeal. The grounds for appeal in their Notice of Appeal have been summarized by the Tribunal as follows:

- there have been several oil spills on the well site, and nothing in the Permit indicates that measures have been taken to prevent further spills;
- access to the well site goes through a Conservation and Recreation Reserve, and increased industrial activity will negatively impact the Reserve;
- Primavera may be in trespass on the well site;
- this property is affected by the Site C dam, with a Stability Impact Line for the reservoir lying approximately 100 metres south of the proposed development, and the impacts that may arise from hydraulic fracturing do not appear to have been considered;
- further development of the well site will negatively affect the Applicants' land, which was recently approved for a five acre subdivision, and Primavera could achieve its goals from another location;
- it is public knowledge that ground movement in the area has been affected by the Site C dam, and the Applicants are concerned that the permitted activities will add to the land's instability;
- if hydraulic fracturing triggers a catastrophic event, Primavera can go elsewhere to accomplish its goals, but the Applicants' property will be lost forever.

[17] The Applicants request the "repeal" of the Permit.

[18] On March 14, 2019, the Applicants requested a stay of the Permit pending the Tribunal's decision on the merits of the appeal.

[19] By a letter dated April 16, 2019, the Tribunal granted the Applicants' application for an extension of time to file the appeal, and provided a schedule for the parties to provide their written submissions on the application for a stay.

[20] The Applicants submit that a stay of the Permit should be granted. They submit that the appeal raises serious issues, they will suffer irreparable harm if a stay is denied, and the potential harm to their interests if a stay is denied, outweighs the potential harm to Primavera's interests if a stay is granted.

[21] The OGC takes no position on the stay application as a whole. However, the OGC submits that section 72(2) of the *OGAA* provides a land owner of land on which an operating area is located with a right to appeal a determination "only on the basis that the determination was made without due regard to" a submission previously made by the land owner, or a consultation and notification report. The OGC submits that the Applicants have not demonstrated that the appeal raises serious issues, to the extent that they rely on issues that were raised after the Permit was granted.

[22] Primavera opposes the stay application. Primavera submits that the Applicants have not established that their interests will likely suffer irreparable harm if a stay is denied, and the evidence does not support a conclusion that the balance of convenience favours granting a stay.

ISSUE

[23] The sole issue arising from this application is whether the Tribunal should grant a stay of the Permit pending a decision on the merits of the appeal.

APPLICABLE LEGISLATION AND TRIBUNAL RULES

[24] Section 72(3) of the *Oil and Gas Activities Act* 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.

[25] The Tribunal has made *Rules of Practice and Procedure* under section 11(1) of the *Administrative Tribunals Act*. Rule 22 states as follows:

Rule 22 – Stay (Suspend) the Determination or Review Decision

1. To apply for a stay pending a decision on the merits of an appeal, a party must deliver a written request to the Tribunal that explains:
   a. the reason(s) why a stay of the determination or review decision being appealed is required; and
   b. whether other parties agree to the stay (if known).
2. If the other parties do not agree, or this is not known, in addition to (1) above, the party applying for a stay must explain as follows:
   a. whether the appeal concerns a serious issue;
   b. whether the party applying for the stay will suffer irreparable harm if the stay order is denied; and
   c. whether the balance of convenience favours granting the application.

[26] The onus is on the Applicants to demonstrate good and sufficient reasons why a stay should be granted.

[27] The Tribunal will address each aspect of the three-part test in Rule 22(2) as it applies to this application.

DISCUSSION AND ANALYSIS

Serious Issue

[28] The test adopted by the Tribunal in Rule 22(2) is based on the three-part test set out in *RJR-MacDonald Inc*. v. *Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385 (S.C.C.) [*RJR-MacDonald*].

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

> 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.

[30] The Court also stated that, as a general rule, unless the case is frivolous or vexatious, or is a pure question of law, the inquiry as to whether a stay should be granted should proceed to the next stage of the test.

[31] The Applicants submit that the appeal raises serious issues, including the OGC's apparent lack of consideration of the fact that the oil and gas activity site is approximately 100 metres from the Stability Impact Line for the Site C dam, and the impact that hydraulic fracturing in the Well may have on land that is already vulnerable. In addition, the Applicants submit that the OGC failed to consider the environment, the economy, and social well-being as required by section 4 of the *OGAA*.

[32] As stated above, although the OGC takes no position on the stay application, the OGC submits that the Applicants have not demonstrated that the appeal raises serious issues, to the extent that the Applicants rely on issues that were not raised until after the Permit was granted, given the basis on which the Applicants may file an appeal under section 72(2) of the *OGAA*.

[33] Primavera acknowledges that the appeal raises serious issues, to the extent that the appeal relates to the question of whether the OGC gave due regard to a submission from the Applicants before the Permit was issued.

[34] In reply, the Applicants submit that they never received a consultation and notification letter from Primavera. The Applicants also submit that Primavera's evidence that a consultation and notification letter was hand delivered to them by Primavera's land agent contradicts the information in the consultation and notification table that Primavera provided to the OGC, which states that the consultation and notification letter was sent to the Applicants by mail.

The Tribunal's Findings

[35] The Tribunal finds that the Applicants' Notice of Appeal and written submissions raise issues that are not frivolous, vexatious or pure questions of law. There is conflicting evidence before the Tribunal regarding whether the Applicants received Primavera's notification and consultation letter, which described in some detail the oil and gas activities which are now authorized under the Permit. If, in

fact, the letter was never received by the Applicants, they may not have known about the invitation to consult and make written submissions regarding the application for the Permit. Even if the Applicants knew about Primavera's intention to apply for the Permit, they may not have known about their right to make written submissions if they did not receive the consultation and notification letter. Without the consultation and notification letter, they also may not have known sufficient details about the proposed oil and gas activities to provide an informed written response to the invitation to consult, had they known about their right to do so.

[36] While there is evidence that, before the Permit was issued, the Applicants and Primavera were engaged in discussions about Primavera's access to the well site and the amount of financial compensation it would pay to the Applicants, those discussions served different purposes, and engaged different legislative requirements, than those associated with permit applications under the *OGAA*. The Surface Rights Board's proceedings are completely separate from, and have different purposes and legislative requirements than, both the OGC's permitting process and the present appeal proceedings. Correspondence and discussions about access to the well site and financial compensation do not meet the consultation and notification requirements that apply to permit applications under the *OGAA* and the *Consultation and Notification Regulation*.

[37] If the Applicants never received Primavera's notification and consultation letter, the notification and consultation process would have been seriously flawed, and information that the OGC considered regarding the Applicants' concerns about the permit application would also have been seriously flawed. The parties' conflicting evidence about whether the Applicants ever received Primavera's notification and consultation letter cannot be resolved in this preliminary decision.

[38] For all of these reasons, the Tribunal concludes that the appeal raises serious issues, and therefore, the Tribunal has considered the next part of the test.

Irreparable Harm

[39] In the second part of the test, the Tribunal must consider whether the Applicants may suffer irreparable harm if a stay is denied. As stated in *RJR-MacDonald*, 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.

[40] In assessing the question of irreparable harm, the Tribunal is guided by this statement from *RJR-MacDonald*:

> "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.)).
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> [underlining added]

[41] The Applicants submit that they will suffer irreparable harm if a stay is denied. They maintain that if hydraulic fracturing occurs at the well site, there could be substantial ground movement that renders the Applicants' land unusable. They submit that it is well known that hydraulic fracturing often causes increased ground instability. They also submit that the banks of the Peace River are known to be unstable in certain areas, and there have been recent instances of instability and slides. The Applicants argue that these circumstances are a "recipe for disaster", given the well site's close proximity to the Site C dam Stability Impact Line. The Applicants assert that, if the bank slides into the Peace River as a result of this activity, they would lose their land, and the home on it, forever. They maintain that this damage would be catastrophic and irreversible.

[42] In support of those submissions, the Applicants provided an aerial photo map titled "Map 13: Cache Creek Slide – Km 81-88". The aerial photo map shows the well site, a section of the Peace River, and the Stability Impact Line and other Impact Lines associated with the Site C dam. The well site is located slightly north of the Stability Impact Line. Slightly south of the Stability Impact Line, the land appears to be partially covered in vegetation and partially bare soil, as the land slopes unevenly downwards towards the north bank of the Peace River. The areas of bare soil appear to be steep slopes.

[43] The OGC took no position on this part of the test.

[44] Primavera submits that the permitted activities will cause no irreparable harm to the Applicants. Primavera submits that the Applicants have provided no evidence to support their allegation that a land slide may occur and that their land may become unusable if Primavera exercises its rights under the Permit. Primavera submits that there is nothing connecting the Applicants' concerns about pre-existing soil stability issues with their concerns about the permitted activities. Primavera notes that the well site is not within the Stability Impact zone for the Site C dam, the original well site is approximately 97 metres away from the Stability Impact Line, and the expanded well site is approximately 217 metres away from the Stability Impact Line. Primavera also notes that section 17 of the *Environmental Protection and Management Regulation* requires that Primavera must not cause soil in the operating area to become unstable.

[45] Furthermore, Primavera submits that even if the permitted activities caused harm to the Applicants' property, the Applicants' losses would be compensable through the Surface Rights Board's process, and therefore, would not be irreparable in nature.

[46] Primavera also provided affidavit evidence that it intends to commence construction, drilling and completion at the well site in August 2019, and that these activities will take several weeks and involve a team of up to 20 personnel.

[47] In reply, the Applicants submit that the OGC must have been aware of the proximity of the permitted activities to the Stability Impact Line, yet the OGC did not require an assessment of the danger posed by hydraulic fracturing. The Applicants note that the OGC suspended hydraulic fracturing operations by a company in the Septimus area (southeast of Fort St. John) while earthquakes were investigated by the OGC. In support of those submissions, the Applicants provided a copy of a newspaper story about those events.

[48] In addition, the Applicants submit that their land surveyor was advised by the Ministry of Transportation and Infrastructure that the Applicants must conduct a geotechnical investigation before they can proceed with the subdivision plans for their land. The Applicants submit that the OGC and Primavera, and not the Applicants, should be responsible for conducting a geotechnical investigation. In support of those submissions, the Applicants provided a copy of an April 12, 2019 letter from Tryon Professional Lands Surveyors and Engineers which states, in part:

> The Ministry of Transportation & Infrastructure has brought up a concern about the stability of your property with the cliff along the south boundary. They have requested that as part of the subdivision approval process they will require a geotechnical engineer to review the property.
>
> A geotechnical engineer will be required to follow the most recent version of the APEGBC [Association of Professional Engineers of British Columbia] Guidelines for Legislated Landslide Assessments for Residential Developments in BC and include the Appendix D: Landslide Assessment Assurance Statement, duly executed, with any report. The final report must be provided for the approving officer to refer to and retain in the record of the approved decision.
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> The Approving Officer could consider a subdivision plan at risk from an event, based upon a specific probability of occurrence of that event. When quantifying the frequency of occurrence of natural hazards, the geotechnical engineer must distinguish between two different types of events: damaging events and life-threatening events.
>
> When considering damaging events only, unless otherwise specified, a probability of occurrence of 1 in 475 years (10% probability in 50 years) for individual landslide hazards should be used as a minimum standard. This value is the probability of the damaging event occurring. The qualified professional is to identify the run-out extent, of area of influence, of the event.
>
> Where life-threatening catastrophic events are known as a potential hazard to a building lot the geotechnical engineer is to consider events having a probability of occurrence of 1 in 10,000 years and is to identify areas beyond the influence of these extreme events.
>
> Large scale development must consider the same 1:10,000 year events and must also consider the total risk to the new development. …

The Tribunal's Findings

[49] The Tribunal finds that "irreparable harm" refers to the nature of the harm suffered, rather than its magnitude. Based on the legal test set out in *RJR-MacDonald*, irreparable harm 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." The onus is on the Applicants for a stay to establish that they may suffer irreparable harm if a stay is denied, between the date when the Permit was issued and when the Tribunal issues a final decision on the appeal.

[50] The Tribunal finds that, if a stay is denied, the Permit will remain in effect until the Tribunal issues a final decision on the merits of the appeal. Primavera's evidence indicates that it intends to commence construction, drilling and completion of the Well in August 2019. The hearing of the appeal has not yet been scheduled, but it is now early June. It is uncertain whether the appeal would be heard and decided within the two months before August 2019. Thus, if a stay is denied, the permitted activities would likely commence in August 2019 as planned.

[51] Based on the aerial photo map provided by the Applicants, it is apparent that the Stability Impact Line for the Site C dam bisects SW ¼ Section 13, and is 100 to 200 metres away from the well site. The website for the Site C dam project states that the Stability Impact Line is "the boundary beyond which land is not expected to be affected by landslide events caused by the creation and operation of the reservoir. This line considers extremely unlikely landslide events."[1] Thus, the Tribunal finds that the Stability Impact Line accounts for the impact of the Site C dam and its reservoir on slope stability risks, but does not account for the added potential impact of the construction and drilling of the Well on slope stability.

[52] The Applicants have provided evidence, in the April 12, 2019 letter from Tryon Professional Lands Surveyors and Engineers, that the Ministry of Transportation and Infrastructure requires a geotechnical engineer to assess the landslide risk on SW ¼ Section 13 before residential development may commence on that land. Although the April 12, 2019 letter is focused on assessing the potential risk of landslides in association with residential construction on SW ¼ Section 13, the Tribunal finds that those potential risks apply equally (if not more so) to the construction, drilling and completion of the Well on SW ¼ Section 13, which will involve the use of drilling equipment and a team of up to 20 personnel.

[53] It is clear from the April 12, 2019 letter that the risks of both "damaging" landslide events (i.e., 10% probability in 50 years) and "life threatening" landslide events associated with development on SW ¼ Section 13 is currently unknown, but that the Ministry of Transportation and Infrastructure is sufficiently concerned about the potential for such events that it is requiring a risk assessment by a geotechnical engineer. There is no evidence before the Tribunal that Primavera or the OGC conducted a slope stability assessment or a landslide risk assessment, or even considered the possible existence of such risks, before the Permit was issued. Furthermore, the Permit contains no terms or conditions that address slope stability or landslide risks.

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[1] https://www.sitecproject.com/sites/default/files/information-sheet-preliminary-impact-lines-april-2012-update-20120402.pdf

[54] The Panel further finds that there is inadequate evidence regarding how any harm to the Applicants, whose home is located 150 metres from the well site, would be remedied or repaired if a "damaging" or "life threatening" landslide occurred as a result of the permitted activities. While it is possible that the Applicants may be able to receive financial compensation through the Surface Rights Board's process for damage to their property, that process does not address harm to public safety or a loss of life arising from oil and gas activities on a person's land.

[55] Even if the likelihood of such events occurring before the merits of the appeal is decided is very low, the *RJR-MacDonald* test states that "irreparable" harm is harm that "could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application," and it includes cases "where a permanent loss of natural resources will be the result when a challenged activity is not enjoined". In the circumstances of this case, the Tribunal finds that if such a "damaging" or "life threatening" landslide occurred on SW ¼ Section 13 as a result of the oil and gas activities permitted on that land, it would constitute harm to the Applicants that is irreparable in nature.

[56] For all of these reasons, the Tribunal finds that the Applicants have established that a refusal to grant a stay could so adversely affect their interests as land owners that the harm could not be remedied if the eventual decision on the merits of the appeal does not accord with the result of the stay application. However, the Tribunal emphasizes that the findings above are made for the limited purpose of deciding the stay application, and have no bearing on the merits of the appeal.

Balance of Convenience

[57] The balance of convenience part of the three-part test requires the Tribunal to determine which of the parties will suffer greater harm from the granting of, or refusal to grant, a stay pending a final decision on the merits of the appeal.

[58] The Applicants submit that the balance of convenience favours granting a stay. They submit that both they and Primavera have significant risks if the permitted activities proceed and land slippage occurs. The Applicants maintain that Primavera could lose their infrastructure and production from the well site, but Primavera could go elsewhere to accomplish its goals, whereas the Applicants stand to lose their land and their house if a slide occurs.

[59] The OGC took no position on this part of the three-part test.

[60] Primavera submits that the Applicants have merely offered speculation as to the potential for harm to their interests, whereas Primavera would suffer significant harm if a stay is granted. In particular, Primavera advises that its budgets for the construction and drilling/completion phases of the permitted activities are approximately $300,000 and $6 million, respectively, and delays in those activities will cause Primavera to lose the value of the oil and gas that would have been produced from the Well. Primavera estimates that it would lose $1.43 million in revenue in the first month of a production delay, and losses in revenue will accrue for each additional month of delay. Primavera submits that any delay in the

permitted activities will also cause a delay in the Province receiving royalties from the oil and gas that would be produced at the Well.

[61] In support of its submissions, Primavera provided an affidavit sworn by Andrew Wiacek, Primavera's President, and an affidavit sworn by Aldo Villani, Primavera's Surface Land and Aboriginal Relations Consultant.

[62] In reply, the Applicants submit that Primavera ought to have known that an appeal of the Permit was possible, and any delay in the Province receiving royalties from the Well's production would be miniscule compared to the Province's budget.

The Tribunal's Findings

[63] The Tribunal has already found that the Applicants have provided evidence to establish that their interests may suffer irreparable harm if a stay is denied. While the likelihood that a "damaging" or "life threatening" landslide event will occur if a stay is denied may be low, the potential consequences if a landslide occurs, in terms of the risk of harm to the Applicants, public safety and the environment, would be significant and irreparable in nature.

[64] Regarding the potential harm if a stay is granted, the Tribunal finds that a stay may cause some temporary financial hardship for Primavera, as there could be a delay for a few months in the permitted activities, which would delay Primavera's receipt of revenues from any oil and gas produced by the Well. However, there is no evidence that the oil and gas resources at the Well would be permanently lost, and there is no evidence that Primavera would suffer irreparable harm to its business interests, if a stay is granted. The Tribunal finds that, if a stay is granted but the appeal is ultimately unsuccessful, the financial harm that Primavera would suffer appears to be temporary in nature, as there would simply be a delay in Primavera receiving the financial benefits of selling the oil and gas.

[65] In weighing the balance of convenience under the *RJR-MacDonald* test, the interests of the public may also be taken into account. According to *RJR-MacDonald*, when the purposes of the relevant legislation promote public interests, which may include protection of the environment or human health, it is generally presumed that the legislation has such an effect. As stated in *RJR-MacDonald*:

> The third branch of the test, requiring an assessment of the balance of inconvenience, will normally determine the result in applications involving *Charter* rights. A consideration of the public interest must be taken into account in assessing the inconvenience which it is alleged will be suffered by both parties. These public interest considerations will carry less weight in exemption cases than in suspension cases. When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation actually has such an effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.
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> …

> Among the factors which must be considered in order to determine whether the granting or withholding of interlocutory relief would occasion greater inconvenience are the nature of the relief sought and of the harm which the parties contend they will suffer, the nature of the legislation which is under attack, and where the public interest lies.
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> [underlining added]

[66] Regarding the public interests served by the *OGAA*, section 4 of the *OGAA* sets out the purposes of the OGC, which include the following:

> (a) to regulate oil and gas activities in British Columbia in a manner that
>
> (i) provides for the sound development of the oil and gas sector, by fostering a healthy environment, a sound economy and social well-being,
>
> (ii) conserves petroleum and natural gas resources,
>
> (iii) ensures safe and efficient practices, and
>
> (iv) assists owners of petroleum and natural gas resources to participate equitably in the production of shared pools of petroleum and natural gas;
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> (b) to provide for effective and efficient processes for the review of applications for permits and to ensure that applications that are approved are in the public interest having regard to environmental, economic and social effects;
>
> …
>
> [underlining added]

[67] In addition, section 25(1)(b) of the *OGAA* provides the OGC with the discretion to issue a permit authorizing an oil and gas activity "after considering the government's environmental objectives, if any have been prescribed for the purposes of this section". Division 1 of the *Environmental Protection and Management Regulation* specifies the "government's environmental objectives". The prescribed environmental objectives pertain to water, riparian values, wildlife and wildlife habitat, old-growth management areas, resource features, and cultural heritage resources.

[68] In *Richard Bruce Mitchell and Sharan Mitchell v. Oil and Gas Commission* (Decision No. 2017-OGA-026(a), September 20, 2017), the Tribunal considered these provisions in the context of a stay application, and held as follows at para. 75:

> Together, the relevant sections of the *OGAA* and its regulations indicate that one of the objectives of the legislative scheme is to manage and mitigate the environmental effects of permitted oil and gas activities, in the public interest. Therefore, in deciding an application for a stay of such a permit, based on the *RJR MacDonald* test, there is a general presumption that the oil and gas activity authorized by the permit in consistent with the applicable environmental objectives and is in the public interest, having regard to the

environmental effects of the permitted activity, as well as the positive and/or negative economic and social effects.

[69] In the present case, the Tribunal has already found that there is no evidence that either Primavera or the OGC conducted a slope stability assessment or landslide risk assessment before the Permit was issued, and the Permit contains no terms or conditions that address slope stability or landslide risks. Although Primavera notes (under the heading "Irreparable Harm") that section 17 of the *Environmental Protection and Management Regulation* requires that Primavera must not cause soil in the operating area to become unstable, the Tribunal finds that section 2 of that regulation states "This regulation applies only to Crown land and does not apply to subsurface oil and gas activities associated with an operating area." Thus, it appears that those regulatory requirements only apply to Primavera's activities on Crown land, and not on privately-owned land such as SW ¼ Section 13.

[70] In these circumstances, Tribunal cannot assume that the Permit, on its face, provides adequate protection against the potential impacts of the permitted activities in terms of the risk of slope instability, and the potential for permanent damage associated with a landslide. Denying a stay would result in Primavera proceeding with the permitted activities despite the apparent uncertainties regarding potential effects of the permitted activities on the Applicants' land, environmental values, and public safety. In weighing the balance of convenience, the Tribunal cannot assume that the Permit, on its face, provides adequate protection for the public interest in the environment and public safety, consistent with the public interest objectives of the *OGAA*. However, the Tribunal cautions that these findings are made for the limited purpose of deciding whether to issue a stay, and have no bearing on the merits of the appeal.

[71] In summary, the Tribunal concludes that denying a stay would cause greater risk of harm to the Applicants' interests and the public interests that are served by the *OGAA*, than Primavera would likely suffer if a stay is denied, pending a final decision on the merits of the appeal. Accordingly, the balance of convenience weighs in favour of granting a stay of the Permit.

DECISION

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

[73] For the reasons provided above, the application for a stay of the Permit is granted.

"Alan Andison"

Alan Andison, Chair
Oil and Gas Appeal Tribunal

June 5, 2019