File No. OG 006-98

L. Kamerman	)	Wednesday, the 17th day
Mining and Lands Commissioner	)	of June, 1998.

THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P. 12, as amended by 1994, c. 27, s. 131 and 1996, c. 30, s. 56-70, for an Order requiring the joining of the interests of the Applicant and the interests of the Respondent, for the purpose of drilling or operating a well and the apportioning of the costs and benefits of such drilling or operation within a spacing unit comprised of the Northwest Quarter of Lot 7, Concession IV, in the Township of Mersea, County of Essex, hereinafter referred to as the "Spacing Unit" and more particularly described in Schedule "A" and shown on Schedule "B", attached hereto and forming part of this Order;

(amended, June 17, 1998)

AND IN THE MATTER OF

The Respondent's property, being Part of Lot 7, in Concession IV, Township of Mersea, County of Essex, municipally described as 462 Highway 77, R.R. #3, Leamington, Ontario, N8T 3Y6, and shown as Part 8 on Schedule "B" attached hereto and more particularly described in Schedule "A" attached hereto;

(amended, June 17, 1998)

AND IN THE MATTER OF

Ministry of Natural Resources Spacing Order S.O. 98-2, dated the 29th day of January, 1998;

AND IN THE MATTER OF

Ontario Regulation 245/97.

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B E T W E E N:

TALISMAN ENERGY INC.

(amended May 27, 1998)

Applicant

- and -

JACK MURRAY HYATT

Respondent

O R D E R

WHEREAS a hearing was held in this matter at 9:30 a.m. on May 27, 1998, in the Woodslee Room of the Holiday Inn Select at 1855 Huron Church Road, Windsor, Ontario, with Mr. David Wayne Lewis, Counsel for the Applicant, having introduced evidence and submissions, with no one appearing on behalf of the Respondent, Mr. Jack Murray Hyatt;

UPON reading the material filed in support of the application and hearing from Counsel for the Applicant;

AND WHEREAS the Spacing Unit in this matter is comprised of the northwest quarter of Lot 7, Concession IV, Township of Mersea, being of Ordovician age, being Tract 3 on a Plan of Drilling and Spacing Units, shown on Schedule "B" attached hereto;

AND WHEREAS the Lessors have leased to the Applicant their oil and gas interests in the Spacing Unit, with their interest within the tract and Spacing Unit summarized in Schedule "C" attached hereto;

1. THIS TRIBUNAL ORDERS that the interests of the Applicant, Talisman Energy Inc. and the interests of the Respondent, Jack Murray Hyatt, in the Spacing Unit be and are hereby joined and be governed by the Petroleum and Natural Gas Lease and Grant, attached hereto as Schedule "D";

2. THIS TRIBUNAL FURTHER ORDERS that the Applicant, Talisman Energy Inc. is appointed as Operator of any wells drilled within the Spacing Unit.

3. THIS TRIBUNAL FURTHER ORDERS that this Order be effective on the 17th day of June, 1998;

AND WHEREAS clause 14(4)(e) of Ontario Regulation 245/97 requires a statement as to the duration of the Order, and whereas the Habendum Clause of the lease found at Schedule "D" attached hereto and forming part of this Order sets out the term;

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4. **THIS TRIBUNAL FURTHER ORDERS** that the duration of this Order will be governed by the Habendum Clause of the Petroleum and Natural Gas Lease and Grant found at Schedule "C" attached to and forming part of this Order, and without limiting the generality of the foregoing, will be for a term of three (3) years, commencing on the 17th day of June, 1998 and continuing as long as operations, as defined in the Petroleum and Natural Gas Lease and Grant, are conducted upon the Spacing Unit or any unitized lands, with no cessation, in the case of each cessation of operations, of more than 90 consecutive days, or until such time as all wells located on the Spacing Unit have been abandoned or plugged.

5. **THIS TRIBUNAL FURTHER ORDERS** that service of this order will be affected by the tribunal by regular and registered mail and the Applicant, Talisman Energy Inc. through hand delivery to the residence of the Respondent, Mr. Jack Hyatt, at 462 Highway 77, R.R. #3, Leamington, Ontario, N8H 3Y6.

6. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by either party to this application.

7. **THIS TRIBUNAL FURTHER ORDERS** that upon payment of the required fees, this Order be filed in the Registry Division of the Land Registry Office, in Windsor, Ontario.

DATED this 17th day of June, 1998.

Reasons for this Order are attached.

Original signed by L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

File No. OG 006-98

L. Kamerman	)	Wednesday, the 17th day
Mining and Lands Commissioner	)	of June, 1998.

THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P. 12, as amended by 1994, c. 27, s. 131 and 1996, c. 30, s. 56-70, for an Order requiring the joining of the interests of the Applicant and the interests of the Respondent, for the purpose of drilling or operating a well and the apportioning of the costs and benefits of such drilling or operation within a spacing unit comprised of the Northwest Quarter of Lot 7, Concession IV, in the Township of Mersea, County of Essex, hereinafter referred to as the "Spacing Unit" and more particularly described in Schedule "A" and shown on Schedule "B", attached hereto and forming part of this Order;

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The Respondent's property, being Parts of Lot 7, in Concession IV, Township of Mersea, County of Essex, municipally described as 462 Highway 77, R.R. #3, Leamington, Ontario, N8T 3Y6, and shown as Part 8 on Schedule "B" attached hereto and more particularly described in Schedule "A" attached hereto;

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B E T W E E N:

TALISMAN ENERGY INC.
(amended May 27, 1998)
Applicant

- and -

JACK MURRAY HYATT

Respondent

REASONS

This matter was heard on Wednesday, May 27, 1998, in the Woodslee Room of the Holiday Inn Select at 1855 Huron Church Road, Windsor, Ontario.

Appearances

David Wayne Lewis Counsel on behalf of the Applicant, Talisman Energy Inc.

Jack Murray Hyatt No one appearing

Service

The application dated April 7, 1998 and received by the tribunal on April 8, 1998, states in part:

> On behalf of the Applicant, Elexco Ltd. has served one copy of this application upon the Respondent on or about April 7, 1998.

The tribunal attempted to serve Mr. Hyatt with its Appointment for Hearing by Registered Return Mail, but the Appointment was returned unclaimed.

The tribunal considered the Affidavit of its Registrar, Mr. Daniel Pascoe, dated May 28, 1998, which sets out the following in Paragraph 1:

> 1. I advised Mr. Jack Murray Hyatt of the details of the Appointment for Hearing Order of the Mining and Lands Commissioner via telephone conversation on Wednesday, the 15th day of April, 1998. These details included the date of the hearing, being the 27th day of May, 1998, the time of the commencement of the hearing, being 10:00

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> o'clock in the forenoon, the location of the hearing, being the Woodslee Room of the Holiday Inn Select at 1855 Huron Church Road in Windsor, Ontario, for the purpose of hearing and determining the matter of Talisman Energy Incorporated (**sic**) v. Jack Murray Hyatt.

The handwritten notation in the file in the handwriting of Mr. Pascoe, for April 15, 1998, states as follows:

> -spoke to Jack Hyatt & he is very angry at Talisman Energy & he thought that I was somehow working for them. He hung up on me! - I called back - No answer. - He absolutely will not talk to anyone about this application. - He thought I was taping the call and used a fair amount of profanity.

Background

Talisman Energy Inc. ("Talisman") is a federally incorporated company having its head offices in Calgary, Alberta and having interests in Ontario, throughout Canada, and internationally. It operates 700 wells in Lake Erie and has 85 wells on shore, being the largest producer of its kind in the province. Included in its book of leases filed with the application (Ex. 2) are leases with Pembina Exploration Limited and The Consumer's Gas Company Ltd. carrying on business as Tellus Oil and Gas, all of which are owned by Talisman.

The application in this matter is brought pursuant to clause 8(1)(a) of the **Oil, Gas and Salt Resources Act** (the "**Act**") for an order joining the various interests in a spacing unit for the purpose of drilling a well. Talisman owns all of the interests in the spacing unit underlying this application, except the oil and gas interests of Jack Hyatt. It is seeking to join the interest of Talisman with Hyatt's, whereby Mr. Hyatt will be deemed to have entered into a lease, the terms of which will be those found in the draft lease document forming part of the application ("Book 2, Tab 3"), and whereby Talisman will be directed to pay the initial consideration (payment of $200.00) shown in that draft lease.

Issues

1. Is there adequate service of an application or Appointment for Hearing, where the evidence suggests that the respondent is avoiding service?

2. Under what conditions should an order for joining the interests of an unleased landowner with those of an oil and gas developer be allowed?

3. Can the purpose of the **Oil, Gas and Salt Resources Act** be ascertained?

4. Are there overriding considerations where the interests of one of the parties should be favoured over those of the other?

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Evidence

Robin Roy Charles Inwood gave evidence on behalf of Talisman. Mr. Inwood is Elexco Ltd.'s ("Elexco") Marketing Director, Elexco being the agent for Talisman in this application. His duties include bringing forth this application for joining the interest of Jack Murray Hyatt with Talisman in a pooled spacing unit. As is required by the **Act**, Talisman requires a licence to acquire, drill and produce oil and gas in Ontario. In order to secure a license, the company must demonstrate that the entire spacing unit is under lease. The ordered spacing unit incorporating the Hyatt lands is 50 acres (20.235 hectares) in size, being tracts 2 and 3, Lot 7, Concession IV, in the Township of Mersea.

Pursuant to Ontario Regulation 245/97 ("O.Reg. 245/97"), subsection 8(3) requires that exploratory wells drilled into or below Ordovician age shall be on a pooled spacing unit of not less than 20.23 hectares [50 acres], and located within a target area of 107 metres [351 feet] from any boundary. Once a discovery has been made, either the operator discovering the well, or any other person, may apply, pursuant to section 10 of O.Reg. 245/97, for the establishment of spacing units for development wells. The size of the section 10 spacing units is based upon information obtained from the discovery well, known geology, the drainage capability of the pool and other available information. The spacing unit size is established on the basis of optimum size for production without harming the correlative rights of adjacent interest owners. In other words, the spacing units established for development are an attempt by the Minister to find the balance between optimum production and the prevention of the draining of oil and gas from surrounding lands.

The Spacing Order for the subject lands is S.O. 98-02, having been passed January 29, 1998, which establishes spacing units according to Spacing Order Plan No. 98-02 ("Plan" (Ex. 4)), dated January 27, 1998 and filed with the Ministry of Natural Resources. This Plan is found at Tab 10 of Book 2, Entitled "General Matters" (Ex. 3), with the subject lands being found within that Plan.

Mr. Inwood referred to definitions found in the **Act**:

> **1.** (1) In this Act,
>
> . . .
>
> "spacing unit" means a surface area and the subsurface beneath the surface area, established for the purpose of drilling for or producing oil and gas;

Mr. Inwood explained that the spacing unit is prescribed (s. 8 of O.Reg. 245/97) to drill to a geological target. The pool involving the subject lands is ordovician. According to the regulation, the exploratory well must be drilled in a spacing unit of not less than 50 acres. Once

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the discovery has been made and the Spacing Order is in place, no person may produce oil or gas from a well unless all of the interests in the applicable spacing unit have been pooled [ss. 13(3) of the **Act**].

As shown on the Plan, the discovery well is located at Tract 3, in Lot 6, Concession V. The Lots in Mersea Township are comprised of 200 acres, with each Lot divided into 8 tracts. These tracts are combined in such a way to yield spacing units of not less than 50 acres. As Mr. Inwood described, these combinations of tracts can be "stood up" or "laid down", which essentially describes whether the spacing units are longer north-to-south or east-to-west.

The Plan of Drilling Spacing Units (found at Tab 10, Book 2, Exhibit 3), being Schedule A to the application ("Schedule A"), (this document was amended in the course of filings, due to an error on its face), is comprised of tracts 2 and 3 of Lot 7, Concession IV and is further made up of 10 Parts. These 10 Parts coincide with parcels owned by the various oil and gas interest owners in this spacing unit. As shown on the Schedule found at Tab 11, Book 2 (Ex. 3), nine of the ten interest owners are shown with corresponding parts, internal file number, instrument number, the name(s) of the lessor(s), the number of acres in the spacing unit and detailed information regarding the terms of the leases. Only Jack Murray Hyatt is shown without a corresponding lease or instrument number. His interest, which corresponds to Parcel 8 on Schedule A, is .909 acres.

As required by O.Reg. 245/97, Book 1, Tabs 1-9 (Ex. 2) show the nine leases which are in place. Asked whether there are any special clauses, Mr. Inwood indicated that shut-in amounts are shown and leases which were executed before 1994 have amending agreements to clarify what pooling is. One lease, corresponding to Parcel 7, also has four additional clauses, such as rights of entry only with prior written consent, or no location of wells on those lands without prior written consent.

Filed as "Exhibit B" to the application, and found at Tab 3 of Book 2, (Ex. 3) is the proposed lease document, unexecuted, between Talisman and Jack Murray Hyatt. Included in the terms of this proposed lease, which is consistent with the others, are a delay rental provision, royalty, shut-in clause and pooling clauses. Specifically, the draft lease proposes consideration of $200.00 upon the signing of the agreement. Payment of $200.00 is payable for shut-in or suspended wells, under the conditions set out in clause 3. The royalty payment is set out in clause 4 at 12.5 percent, with a portion of the leased substances being eligible for use by Talisman as may reasonably be required with no royalty payable. Clause 9 sets out terms for pooling and unitization, including allocations to those portions of the spacing unit the proportion of production of the pool.

Mr. Inwood explained that, if the application is granted, Talisman would have 100 percent of the interests in the ordered spacing unit pooled and would be able to pool the interests in the spacing unit, thereby being able to apply for a licence and drill a production well. The location of the proposed well would have to be within the target zone shown on the spacing unit (Ex. 4), as denoted by the dashed lines within the solid lines which set out the boundaries of the ordered spacing unit. In the case involving this application, the well would be drilled within Part 1, to the northerly portion of the spacing unit.

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Mr. Inwood stated that Talisman has been attempting to negotiate a lease with Mr. Hyatt since 1993, and has been unsuccessful. An alternative to having Mr. Hyatt deemed to have entered into the draft lease filed, pursuant to clause 8(a) of the **Act**, would be to join the interest of Mr. Hyatt with that of Talisman, so that they would each be treated as having been joined, Mr. Hyatt's approximately 2 percent interest with Talisman's approximate 98 percent interest, so that Mr. Hyatt would be responsible for his share of the costs of drilling and producing that well. As set out in the application, the manner in which Talisman proposes to proceed is set out, namely that Mr. Hyatt would be advised of the drilling of the well, and would have 30 days to decide how he will proceed, namely to put up his proportionate share of development funds. If he does not reply in the time allotted, he would be subject to a 200 percent penalty cost. This is a similar provision to other working interest cost-sharing arrangements in a pool, differing from that of the royalty arrangement.

Talisman feels that, since Mr. Hyatt is a landowner, he should be treated the same as other land owners in this ordered spacing unit, namely that he should be deemed to have an oil and gas lease.

Ronald James Stinson gave evidence on behalf of Talisman as a geologist, working for their office in London, Ontario. His role is that of well site geologist for onshore and offshore drilling operations.

Mr. Stinson explained that the discovery well was located near this spacing unit, on Lot 3, Concession V, Township of Mersea. The selection of the well site was based upon seismic evidence, whereby a low was featured on the seismic data, indicative of ordovician trenton production. With seismic data, the more lines you have, the more you are able to identify the edges of the formation. It meanders like a creek and the trend identified was made subject to the spacing order. There are many other wells which have been drilled in this trend, such as to the northwest and southeast of the application site, which are in production. This is indicative of the likelihood of success within the subject spacing unit proposed drilling. Mr. Stinson explained that the discovery well data allows the operator to identify lands upon which desired drilling could take place, which are made subject to the Minister's ordered spacing units, pursuant to section 10 of O.Reg. 245/97.

Mr. Stinson described for the tribunal that seismic research involves shooting holes in the ground, laying them with explosive charges, and attaching gramophones via long lines. Upon detonation, records are transmitted back to the computer, which produces a seismic record section. When processed, it comes out as a geological display of the surface formations down through the various earth layers.

Findings

Service

The matter of the non-attendance of the Respondent, Mr. Jack Murray Hyatt, is of concern to the tribunal. Subsection 115(3) of the **Mining Act**, from which the tribunal derives its powers in these matters, states that service by registered mail is sufficient compliance

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with section 6 of the **Statutory Powers Procedure Act**. However, clause 116(1)(e) is found to be applicable in these circumstances. It is set out:

> **116.** (1) Sections 114 and 115 apply despite the *Statutory Powers Procedure Act* and, subject to that Act, the Commissioner may,
>
> . . .
>
> (e) order or allow such substituted or other service as he or she considers proper;

Subsection 6(1) of the **Statutory Powers Procedure Act**, R.S.O. 1990, c. S.22, as amended, (the "**SPPA**") states:

> **6.** (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal.

In the normal course of events, notice of hearing means a written notice. The provisions in the **SPPA** go on to state what must be included in the body of the notice, namely, the time, place and purpose of the hearing, and the fact that if the party does not attend the hearing, the tribunal may proceed in his or her absence and the party will not be entitled to any further notice of proceedings.

It is quite clear from the evidence at the hearing that Mr. Hyatt was attempting to avoid service. The handwritten notes of Mr. Daniel Pascoe in the file indicate that Mr. Hyatt was not willing to discuss this matter, but as indicated from Mr. Pascoe's affidavit, Mr. Hyatt had actual notice of proceedings. In other words, Mr. Hyatt had actual notice of the Appointment for Hearing.

While the tribunal would be reluctant to do so under most circumstances, nonetheless, it is satisfied that Mr. Hyatt has been deliberately avoiding service of its Appointment for Hearing and has had actual notice of its terms. Therefore, the tribunal finds that it is proper, pursuant to clause 116(1)(e) of the **Mining Act**, the actual notice of the Hearing of May 27, 1998, which Mr. Hyatt received via telephone from the tribunal Registrar, Mr. Daniel Pascoe, is adequate notice of proceedings.

Joining of Interests in Spacing unit

Unlike in other provincial legislation, such as the **Mining Act**, there is no "purpose" section found in the **Oil, Gas and Salt Resources Act**. In the former, the provision quite specifically states the objects and objectives of those working under the legislation:

> **2.** The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario.

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The statutory scheme of the **Oil, Gas and Salt Resources Act** provides that in order to be able to "drill, operate, deepen, alter or enter a well or engage in any other activity on or in a well, a licence must first be obtained from the Minister [s.11(1)]. Similarly, no oil or gas may be purchased from a well for which there is no licence. Licensing provisions are found in section 3 of Ontario Regulation 245/97 (O.Reg. 245/97), which refers back to a document entitled, "Oil, Gas and Salt Resources of Ontario Operating Standards, Version 1.0"

An exploratory well must be drilled in accordance with section 7 of O.Reg. 245/97, which provides that drilling within the various aged formations (Devonian, Silurian, Ordovician) must be within pooled spacing units of certain sizes (2.53 hectares, 10.12 hectares, and 20.24 hectares, respectively) complying with certain boundary set-backs for purposes of drilling (61 metres, 107 metres, and 107 metres, respectively). Essentially, this means that the drilling of a well for exploration purposes cannot occur on land which has not been pooled to the required size, and even once pooled, there will be restrictions on where the drilling may take place, namely set backs from the boundary of the spacing unit.

The definitions found in O.Reg. 245/97 for "pooled spacing unit" and "pooling" are reproduced:

> **1.** In this Regulation,
>
> "pooled spacing unit" means a spacing unit in all various oil and gas interests have been pooled;
>
> "pooling" means the joining or combining of all the various oil and gas interests within a spacing unit for the purpose of drilling and subsequently producing a well;

Although the definitions are seemingly circuitous, it is clear that there must be one pooled spacing unit for purposes of drilling an exploratory well. There is an exception to this, found in section 9 of O.Reg. 245/97, which provides that the Minister may issue a licence to drill an exploratory well without a pooled spacing unit; but as a condition of the licence, no production can take place until the oil and gas interests within the statutory sized spacing unit have been pooled.

Once a discovery has been made, there is a procedure established whereby the Minister will establish spacing units within the entire pool [s.10], which is defined in the body of the **Oil, Gas and Salt Resources Act** as,

> "pool" means an underground accumulation of oil or gas or both, separated or appearing to be separated from any other such underground accumulation"

Subsection 10(5) and clause 13(c) of O.Reg. 245/97 provide,

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> **10.** Except where the Minister has otherwise approved, no person shall drill a development well into a pool referred to in subsection (1) until a spacing order is issued.
>
> **13.** No person shall,
>
> (c) produce oil or gas from a well in a spacing unit unless all the interests in the oil and gas in the spacing unit have been pooled for the purpose of producing from the well.

The tribunal would prefer to make findings regarding the purpose of the **Oil, Gas and Salt Resources Act**, giving consideration to the submissions of parties made on both sides of the issue after a hearing. Such was not the case here, as Mr. Hyatt elected to not attend, even though he was aware of the hearing. Therefore, the tribunal will make the following observations regarding the structure of this legislation.

Aside from possible exceptions for drilling the exploratory well, which essentially establishes the existence of an oil and gas pool, no production activity can take place on land for which there is no spacing unit order in place, and for which there is no pooling of all oil and gas interests in the spacing unit affected.

Oil and gas production in Ontario is governed by legislation. An individual landowner cannot sink a well on his or her property for the purposes of obtaining sufficient resources to meet individual needs. Rather, before **any** well can be sunk, a licence must be obtained from the Ministry. Even with a licence, the individual or oil and gas producer is limited to where drilling may occur, namely within the regulated set-back areas of an ordered spacing unit.

From the legislative framework, the following conclusions are drawn.

1 .Drilling of a production well may take place only within the circumscribed boundaries of a spacing unit which has been ordered by the Minister.

2. Once spacing units have been ordered pursuant to section 7.1 of the **Oil, Gas and Salt Resources Act** and section 10 of the regulation, effectively a grid is superimposed upon the lands covering the known or projected pool of the oil and gas.

3. Although the **Oil, Gas and Salt Resources Act** makes provision to amend the designation of a spacing unit, [clauses 7.1(1)(b) and 17(1)(e)], no such regulation exists to date.

According to the regulation, no drilling may occur on a spacing unit unless all of the interests in the oil and gas in that unit have been pooled. Following a discovery, all of the surrounding lands believed to be situated over the pool are ordered into established spacing units, which effectively sets out a grid over the lands involved. Given that there are no pockets

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of land within a pool which are not subject to spacing units, the developer is limited to attempting to pool all of the interests in oil and gas in a spacing unit before a production well may be drilled.

The legislative scheme is designed to protect the oil and gas interests of those whose interest in land is located on and in the spacing unit. The size of the Ordered Spacing Units [s. 10, O. Reg. 245/97] is chosen to allow optimum production while providing some protection to adjacent landowners from drainage - the size of the spacing unit is such that the well is most likely to drain approximately the size of the spacing unit and no more, given underground pressures etc. Unlike solid minerals, oil and gas are subject to migration under the land formations, so that changes in pressure arising from production at other sources within the pool, may ultimately affect oil and gas interests located on adjacent properties. Prior to the regulation of the oil and gas industry, it was possible to sink a well on a property and drain off the resource from abutting properties. However, the legislation is an attempt to deal with these correlative rights, namely the rights of adjoining landowners to what might become a producing well. By capturing a fixed area of land within an ordered spacing unit and requiring that the interests in that spacing unit be pooled prior to sinking a production well, owners of small pieces of land are protected from having the oil and gas drained out from under their lands without due compensation.

The question to be determined in this application is whether an owner of a small portion of a spacing unit, in this case 1.844 percent, can prevent drilling and production from taking place, not only on their own land, but on the land of all of their neighbours who have been ordered as part of the applicable spacing unit.

The tribunal is at a disadvantage in not having heard from the respondent, Mr. Hyatt, in this matter. It is totally unclear what the nature of his objections to being pooled in a spacing unit might be. It is unknown whether his objections are of an environmental nature. If they are, the applicant would have been put to the test of persuading the tribunal that none exist, or that such concerns could be adequately dealt with. Mr. Hyatt's concerns could be that he does not wish to have oil and gas works on his property. If this is his sole concern, it too could be adequately dealt with. In point of fact, his lands are located within the set-back area for this spacing unit, so that no drilling may occur on his land without the intervention of the tribunal. This is because his land is already protected in this regard by the regulation. However, were this not the case, it would be possible to raise this as an issue in the hearing, determine whether drilling on a respondent's property is absolutely necessary to the proposed works, and if not, specify that no such drilling is to take place on the respondent's lands. Indeed, this can be seen from Tab 11 of Book 2 (Ex. 3), where one of the landowners already pooled in the subject spacing unit, Daniel John Kasarda, has a clause in his lease Pembina Exploration Limited, to the effect that wells cannot be located on his land without his prior written consent [This clause is contained in the lease between Gerald William Land and Elizabeth Martha Land as lessors and The Consumer's Gas Company Ltd. carrying on business as Telesis Oil and Gas, which was assigned to Pembina, and for which Kasarda is successor in title, subject to the terms of the original lease, which was subsequently amended as between him and Pembina].

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The respondent does his position considerable harm in seeking to avoid service of the Appointment for Hearing, as the specific reasons for his opposition to the proposed lease are unknown and anything which the tribunal might say in this regard is pure speculation.

What are the effects of the failure to pool all of the oil and gas interests in a spacing unit, so that production could begin? First, and most importantly, all of the other land owners in the spacing unit are deprived of their opportunity to deal with the lands as they see fit. Not only are they deprived of the potential royalties arising from production, but they also are put in the position of being at risk from having their lands drained by production from pooled spacing units which adjoin theirs. Taken to its logical conclusion, and in the absence of an application for unitization, meaning an application to join the interests in the entire pool, the oil and gas reserves under the leased lands in this spacing unit are effectively sterilized to production and very vulnerable to having that resource seriously depleted, if not drained entirely, from under their lands.

The legislation is clearly drafted to balance the rights of individual property owners and producers, protecting the correlative rights of the individual land owners, meaning that surrounding landowners are protected from having oil or gas drained without compensation. It is also, however, designed to provide for careful, well supported exploratory drilling, as evidenced for the need to form a pooled spacing unit in most cases, methodical production found in ordered spacing units which are fully pooled, and ultimately, where circumstances warrant or the producers or Minister so wish, unitization of the entire pool.

The tribunal finds that it is not the purpose of the **Oil, Gas and Salt Resources Act** to allow a sole landowner to hold other landowners and an oil and gas producer in a spacing unit hostage by withholding their agreement to enter into a lease for the oil and gas interests. A fully pooled spacing unit is not only a benefit to the pooled spacing unit landowners and the producer; it offers benefit by way of royalties to the Province and directly creates jobs as well as jobs in spin-off industries and support.

For all of the above-stated reasons, the tribunal finds that this application will be granted. Rather than force on Mr. Hyatt the position of being a participating operator, the tribunal prefers that he be put in the same position as all of the other lessors in the pooled spacing unit. The tribunal finds that, notwithstanding Mr. Hyatt's unwillingness to enter into a lease agreement with Talisman, he should not be put in the punitive position of having his share of revenue from the well charged with the penalty of double the production costs. The tribunal has considered the lack of cooperation on the part of Mr. Hyatt to date, and finds that it is unlikely that he would willingly contribute his share of all costs to drill or abandon the proposed well within 30 days of being invoiced therefore.

Notwithstanding the above findings regarding the purpose of the legislation, it is recognized by the tribunal that in future applications of this nature, opposing landowners may persuade it that there are valid reasons which may override the general purpose of the legislation, as found above, or might even dislodge the above findings concerning the purpose of the legislation. Findings in cases such as the current application for which there is no representation on the part of those opposed must be seen to be of limited precedential or persuasive value, as one side of these proceedings was entirely silent. 12

Costs

There were no submissions made on the issue of costs. However, the tribunal finds that it places the applicant and the tribunal in an unfortunate position where opposition to an application such as this one is not opposed in person or in writing at the hearing. This being the case, in future, all Appointments for Hearing will give notice to prospective respondents that failure to attend the hearing of the matter may result in costs being awarded against them.

The tribunal finds that there will be no costs payable by either party to this application.

Conclusions

For the forgoing reasons, the application of Talisman will be granted, whereby the relationship between Talisman and Jack Murray Hyatt will be governed by the Petroleum and Natural Gas Lease which will be appended as a schedule to its Order.