

**CHINNECK LAW**  
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November 13, 2009

**Matter #: 08-938**

**By Fax – 1-416-440-7656**

**By Email - [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca)**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 26th Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Huron Bayfield Gas Storage Project – Stanley 4-7-XI Pool**

I am writing in response to Tribute's letter to you dated November 3<sup>rd</sup>, 2009 authored by Mr. Budd, which demands a reply.

Mr. Budd may wish to withdraw his comments, which are both unsubstantiated and unprofessional. Mr. Budd has no knowledge that I "continue to mislead my client or that I am attempting to mislead the Board". For the record, I am doing neither and there is no misleading information that I am disseminating or withholding.

I have stated, and will continue to state, that Tribute has no interest in 76.441% of the Stanley Reef. That is an accurate statement which is evidenced by the decision of Mr. Justice Little that terminated and vacated both leases, and by the written Unit Operation Agreement (the "UOA") signed by my client and by Tribute's predecessor November 30<sup>th</sup>, 1984 which is binding on Tribute. By the UOA, the parties specifically agreed that 52.1408 acres of the 68.2106 acre Stanley Reef, being 76.441% lay beneath Lots 7 and 8, Concession 11, being the 200 acres owned by Farms ("Farms' Lands"). 76.441% is known as the lease factor. I attach copies of Schedules C and D from the UOA which respectively show the location of the Stanley Reef (within the stippled "Participating Area Boundary") relative to Farms' Lands (outlined in green) and the acreage and the lease factor set out above. I would be pleased to forward a copy of the complete UOA upon request.

**Please reply to the selected office**

37 Ridout Street S., London ON Canada N6C 3W7

Fax: 519-432-4811

Tel: 519-679-6777

24 Hincks Street, St. Thomas, ON Canada N5R 3N6

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The same boundary of the Stanley Reef can also be seen in Schedule 16 (page 25 of 29) of Tab B to Tribute's OEB Application EB-2009-0340. When viewed in conjunction with Schedule B-2 to Tribute's OEB application EB-2009-0340, even an untrained eye can see that  $\frac{3}{4}$  of the Stanley Reef lies beneath Farms' Lands.

My statement is accurate and not misleading and will continue to be so unless and until the Ontario Court of Appeal overturns the decision of Mr. Justice Little that terminated and vacated Tribute's leases on Farms' Lands, and that will not happen, if it does, until the Appeal is heard on January 26<sup>th</sup>, 2010.

Mr. Budd's reference to 46.2% is a reference to the surface acreage of Farms' Lands that lies within the designated storage area proposed by Tribute (the "DSA") expressed as a percentage of the total lands to be included in the DSA.

Mr. Budd is talking about something that is completely different than what I am referring to. The percentage he refers to relates to a DSA that is proposed; there is no agreement to support it and, with respect, is completely irrelevant to the material issue which is how much of the real asset, the Stanley Reef, underlies Farms' Lands. The percentage I refer to is the percent of the Stanley Reef that lies beneath Farms' Lands and is evidenced by the agreement of the parties. Mr. Budd's letter appears to be an effort to persuade the OEB that Tribute controls a majority of the mineral and storage rights over the Stanley Reef, which in fact it does not.

If any party should be accused of disseminating or withholding misleading information, it is Tribute. Tribute, in its unsuccessful court application to obtain an order declaring its leases on Farms' Lands to be valid, represented to Mr. Justice Little in an affidavit sworn by its President, Ms. Lowrie, that: "**If the Gas Storage Lease and/or Oil and Gas Lease are found to be invalid, then Tribute will have to abandon the Application insofar as it relates to the DSA**". She was referring to Tribute's application to the OEB respecting the Stanley Reef. A copy of paragraph 34 of Ms. Lowrie's affidavit sworn December 19<sup>th</sup>, 2008 is attached. Did Tribute disclose to the OEB these representations that it made to Mr. Justice Little? Why is Tribute making its application on the Stanley Reef in the face of such a bald representation to the Court?

It is Farms' position that Tribute's statement is an acknowledgement that it cannot proceed with its application to the OEB on the Stanley Reef without the leases that it currently does not have.

Please feel free to call me with any questions.

Yours very truly,  
**Chinneck Law**  
Professional Corporation

Per:  Jed M. Chinneck

JMC:mak

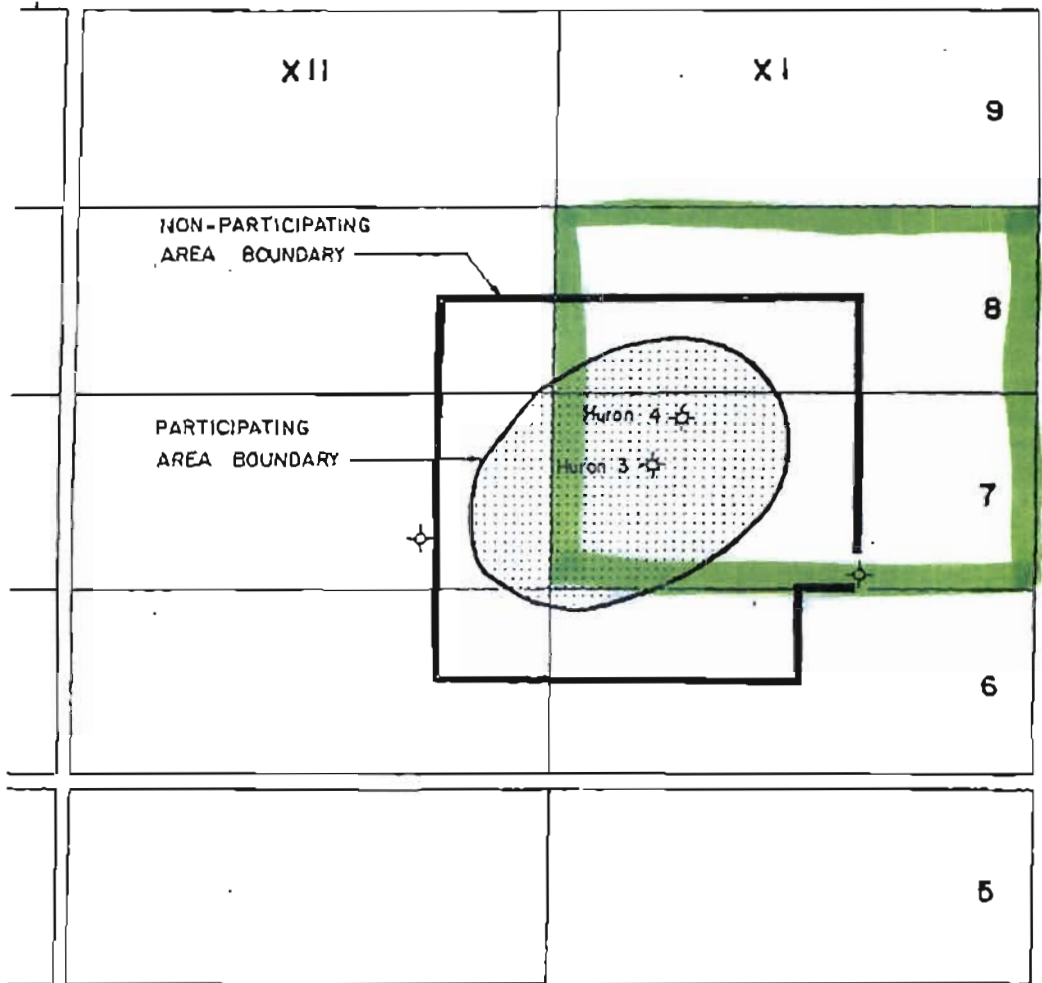
Encls.

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cc: Ms. Zulma DeBonis, Ontario Energy Board  
McKinley Farms Ltd.  
Mr. Christopher Lewis  
Mr. Peter Budd

SCHEDULE "C"



STANLEY 4-7-XI POOL  
 STANLEY TOWNSHIP, HURON COUNTY, ONTARIO  
 SHOWING  
 PARTICIPATING & NON-PARTICIPATING  
 POOL AREA  
 STANLEY REEF RESOURCES LTD.

Scale 1 inch = 1000 feet

L. J. BOYER

OCTOBER 24, 1964

LOT	CON.	POOL AREA (ACRES)	
		PARTICIPATING	NON-PARTICIPATING
8	XII	0.1722	12.3278
8	XI	10.3880	20.8620
7	XII	13.5445	11.4555
7	XI	41.7528	20.7472
6	XII	0.5452	11.9548
6	XI	1.8079	23.1921
TOTALS		68.2106	100.5394

*J. G. M. I.*

UNIT OPERATION AGREEMENT

STANLEY 4-7-X1 POOL

STANLEY TOWNSHIP, HURON COUNTY

SCHEDULE "D"

ORIGINAL EFFECTIVE JANUARY 1, 1985

Lease No.	Registered Instrument No.	Name of Lessor	Acreage In Unit Area	Acreage in Participating Area	Acreage in Non-Participating Area	% of Lessors' Acreage in Participating Area to Total Acreage of Participating Area
SR1	20221	Paul Daniel Steckle and Kathryn Diane Steckle	12.500	0.1722	12.3278	.253
SR216	160688	McKinley Farms and Hatchery Limited	93.750	52.1408	41.6092	76.441
SR228	214992	Keith Emmanuel Gingerich and Helen M. Gingerich	12.500	0.5452	11.9548	.799
SR229	214993	Jan Kryn Van Zandwyk and Luella Van Zandwyk	25.000	13.5445	11.4555	19.857
SR 230	215075	Margaret M. Scotchmer and Robert Campbell McKinley	25.000	1.8079	23.1921	2.650
<u>TOTALS</u>			<u>168.750</u>	<u>68.2106</u>	<u>100.5394</u>	<u>100.000</u>

*J. G. Miller*

DSA, additional compensation for storage rights, which additional compensation will be the same as the compensation that is being paid by Union Gas Limited to all members of the Lambton Landowners Storage Association, which additional compensation rates have been approved by the OEB in past gas storage hearings. This additional compensation, which will be offered to all of the landowners in the DSA including McKinley Farms, is equal to approximately One Hundred (\$100.00) Dollars per acre per year for each acre within the DSA, Thirty (\$30.00) Dollars per acre per year for each acre outside the DSA, One Thousand One Hundred and Fifty (\$1,150.00) Dollars per year for each Wellhead located on the lands of a landowner (in the case of McKinley Farms there will be three Wellheads located on its lands) and approximately Nine Hundred (\$900.00) Dollars per acre per year for each surface acre occupied by Tribute for storage operations. The increased compensation to McKinley Farms would be equal to approximately Twenty Thousand (\$20,000.00) Dollars per year and to the other landowners within the DSA a total of approximately Thirty Thousand (\$30,000.00) Dollars per year.

34. If the Gas Storage Lease and/or the Oil and Gas Lease are found to be invalid, then Tribute will have to abandon the Application insofar as it relates to the DSA. This will mean that Tribute would lose an investment to date of approximately One Million Six Hundred and Forty-six Thousand (\$1,646,000.00) Dollars and McKinley Farms and the other landowners owning land within the DSA will lose future compensation payments totalling approximately Fifty Thousand (\$50,000.00) Dollars per year. In addition, the public interest will not be served if the DSA is not developed as a gas storage reservoir.

35. Tribute anticipates that if it is allowed to proceed with its Application before the OEB to develop the DSA that it will spend, in addition to money already invested, approximately Eight Million (\$8,000,000.00) Dollars in obtaining the necessary OEB Orders and developing the infrastructure necessary to operate the DSA as a gas storage facility (which total estimate excludes the cost of a transmission line and the cost of compression).