

**CHINNECK LAW**  
*professional corporation*

[info@chinneck.ca](mailto:info@chinneck.ca)  
[www.chinneck.ca](http://www.chinneck.ca)  
Trade Mark Agent  
Commissioner  
Notary Public  
Lawyer

November 5, 2012  
**File #11-616**

**By Email – [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)**  
**By Fax – 1-416-440-7656**  
**By Regular Mail**

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: Tribute Resources Inc.**  
**Application for Huron Bayfield and Stanley Gas Storage Project Development**  
**Board File Nos. EB-2011-0076, EB-2011-0077, EB-2011-0078, EB-2011-0285**

Enclosed please find the Submissions of McKinley Farms Ltd. and 2195002 Ontario Inc., which is being served upon you pursuant to the Board's Procedural Order No. 5 dated September 18, 2012.

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



Jed M. Chinneck  
JMC:mak  
Encl.  
[jed@chinneck.ca](mailto:jed@chinneck.ca)  
[www.chinneck.ca](http://www.chinneck.ca)

cc: See attached Schedule

**Tribute Resources Inc.**  
**EB-2011-0076/EB-2011-0077/EB-2011-0078/EB-2011-0285**  
**APPLICANT & LIST OF INTERVENORS**

**APPLICANT**

**Rep. and Address for Service**

**Tribute Resources Inc.**

Ms. Jennifer A. Lewis, Chief Financial Officer  
Tribute Resources Inc.  
309-D Commissioners Road West  
London, Ontario  
N6J 1Y4  
Email: [jlewis@tributeresources.com](mailto:jlewis@tributeresources.com)  
Tel: 519-657-2151  
Fax: 519-657-4296

**Giffen & Partners LLP**

Mr. Christopher A. Lewis - Counsel  
Giffen & Partners LLP  
465 Waterloo Street  
London, Ontario  
N6B 1A4  
Email: [lewis@giffens.com](mailto:lewis@giffens.com)  
Tel: 519-679-0400  
Fax: 519-432-8003

**INTERVENORS**

**Rep. and Address for Service**

**2195002 Ontario Inc.**

Al Corneil  
2195002 Ontario Inc.  
Box 1000 Industrial Road  
St. Marys, Ontario  
N4X 1G2  
Email: [acorneil@tcc.on.ca](mailto:acorneil@tcc.on.ca)

Jed Chinneck - Counsel  
Chinneck Law Professional Corporation  
37 Ridout Street South  
London, Ontario  
N6C 3W7  
Email: [jed@chinneck.ca](mailto:jed@chinneck.ca)  
Tel: 519-679-6777  
Fax: 519-432-4811

**McKinley Farms Ltd.**

William D. Mitches – Counsel  
Chinneck Law Professional Corporation  
37 Ridout Street South  
London, Ontario  
N6C 3W7  
Email: [bill@chinneck.ca](mailto:bill@chinneck.ca)  
Tel: 519-679-6777  
Fax: 519-432-4811

**Huron County Federation of  
Agriculture (HCFA)**

Paul Nairn  
Huron County Federation of Agriculture  
P.O. Box 429  
Clinton, Ontario  
N0M 1L0  
Email: [paul.nairn@ofa.on.ca](mailto:paul.nairn@ofa.on.ca)  
Tel: 519-482-9642  
Fax: 519-482-1416

**Ministry of Natural Resources**

Philip John Polten – Counsel  
Ministry of Natural Resources  
Room 3420  
99 Wellesley Street West  
Toronto, Ontario  
M7A 2S9  
Email: [phil.pothen@ontario.ca](mailto:phil.pothen@ontario.ca)  
Tel: 416-314-2068

**Ministry of Natural Resources**

Demetrius Kappos - Counsel  
Ministry of Natural Resources  
Room 3420  
99 Wellesley Street West  
Toronto, Ontario  
M7A 2S9  
Email: [demetrius.kappos@ontario.ca](mailto:demetrius.kappos@ontario.ca)  
Tel: 416-314-2007  
Fax: 416-314-2030

**Municipality of Bluewater**

Stephen McAuley, Chief Administrative Officer/Clerk  
Municipality of Bluewater  
P.O. Box 250  
14 Mill Avenue  
Zurich, Ontario  
N0M 1G0  
Email: [s.mcauley@town.bluewater.on.ca](mailto:s.mcauley@town.bluewater.on.ca)  
Tel: 519-236-4351 ext. 235  
Fax: 519-236-4329

**Stanley Bayfield Landowners  
Group**

Marnie Van Aaken  
Stanley Bayfield Landowners Group  
37869 Mill Road  
R.R. #1  
Bayfield, Ontario  
N0M 1G0  
Email: [vanaaken@tcc.on.ca](mailto:vanaaken@tcc.on.ca)  
Tel: 519-565-5218

**TransCanada Pipelines  
Limited**

Patrick M. Keys, Senior Regulatory Counsel  
TransCanada Pipelines Limited  
450 – 1 Street S.W.  
Calgary, Alberta  
T2P 5H1  
Email: [patrick\\_keys@transcanada.com](mailto:patrick_keys@transcanada.com)  
Tel: 403-920-6237  
Fax: 403-920-2420

**TransCanada Pipelines  
Limited**

James Bartlett, Manager, Regulatory Research & Analysis  
TransCanada Pipelines Limited  
450 – 1 Street S.W.  
Calgary, Alberta  
T2P 5H1  
Email: [jim\\_bartlett@transcanada.com](mailto:jim_bartlett@transcanada.com)  
Tel: 403-920-7165  
Fax: 403-920-2347

**TransCanada Pipelines  
Limited**

Nadine Berge, Senior Legal Counsel  
TransCanada Pipelines Limited  
450 – 1 Street S.W.  
Calgary, Alberta  
T2P 5H1  
Email: [nadine\\_berge@transcanada.com](mailto:nadine_berge@transcanada.com)  
Tel: 403-920-6253  
Fax: 403-920-2357

**TransCanada Pipelines  
Limited**

Murray Ross  
TransCanada Pipelines Limited  
200 Bay Street, Royal Bank Plaza  
24<sup>th</sup> Floor, South Tower  
Toronto, Ontario  
M5J 2J1  
Email: [murray\\_ross@transcanada.com](mailto:murray_ross@transcanada.com)  
Tel: 416-869-2110  
Fax: 416-869-2119

**Union Gas Limited**

Mark Murray, Manager  
Regulatory Projects and Lands Acquisition  
Union Gas Limited  
P.O. Box 2001, 50 Keil Drive North  
Chatham, Ontario  
N7M 5M1  
Email: [mmurray@uniongas.com](mailto:mmurray@uniongas.com)  
Tel: 519-436-4601  
Fax: 519-436-4641



**Zurich Landowners  
Association**

Heather Redick  
Zurich Landowners Association  
Box 304  
Zurich, Ontario  
N0M 2T0  
Email: [zurichlandowner@hay.net](mailto:zurichlandowner@hay.net)  
Tel/Fax: 519-236-4945

**County of Middlesex**

Chris Traini, County Engineer  
County of Middlesex  
399 Ridout Street North  
London, Ontario  
N6A 2P1  
Email: [ctraini@county.middlesex.on.ca](mailto:ctraini@county.middlesex.on.ca)  
Tel: 519-434-7321  
Fax: 519-434-0638

**Northern Cross Energy  
Limited**

Lynn O'Neill, Manager, Land and Contracts  
Northern Cross Energy Limited  
Suite 840-700 4<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 3J4  
Email: [lonel@northerncross.ca](mailto:lonel@northerncross.ca)

**Lambton County Storage  
Association**

Elaine Harris  
Lambton County Storage Association  
3024 Churchill Line, R.R. #3  
Petrolia, Ontario  
N0N 1R0  
Email: [elaine.harris3@gmail.com](mailto:elaine.harris3@gmail.com)  
Tel: 519-845-3749  
Fax: 519-845-3749

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF**

**The Applications of Tribute Resources Inc.**

**Applications for Huron Bayfield Storage Project Development**

**EB-2011-0076**

**EB-2011-0077**

**EB-2011-0078**

**EB-2011-0285**

**SUBMISSIONS OF**

**MCKINLEY FARMS LTD. AND  
2195002 ONTARIO INC.**

**November 5, 2012**

## 1. Introduction

McKinley Farms Ltd. ("**McKinley**") and 2195002 Ontario Inc. ("**Ontario 219**") (collectively the "**Responders**") are writing this submission to address the Applications of Tribute Resources Inc. and Bayfield Resources Inc., on behalf of Huron Bayfield Limited Partnership and Bayfield Pipeline Corp. ("**Applicants**"). The Applications were filed with the Ontario Energy Board (the "**Board**"). Application numbers are set out below.

As noted in the Staff Submission of the Board, the Applications are organized into four (4) Board files as follows:

- (a) Development of Stanley Pool (Board File No. EB-2011-0076);
- (b) Development of Bayfield Pool (Board File No. EB-2011-0077);
- (c) Leave to Construct a Natural Gas Pipeline (Board File No. EB-2011-0078); and
- (d) Request for Determination of Compensation (Board File No. EB-2011-0285).

In Procedural Order No. 1, the Board indicated that it would not decide the issue of compensation. Therefore, the Responders are not taking any position on the compensation issue at this time.

With respect to the balance of the Applications, the Responders comment as follows:

### Development of Stanley Pool

The Responders **consent** to the designation of the Stanley natural gas pool.

Ontario 219 **objects** to the Board authorizing the Applicants to inject, store, and remove gas from the Stanley Pool for the reasons set out below.

## **Development of Bayfield Pool**

The Responders take no position on the merits, location, need or design of the Bayfield natural gas storage pool or the development of the Bayfield Pool.

## **Leave to Construct a Natural Gas Pipeline**

The Responders take no position on whether the Board should make an Order for leave to construct a natural gas pipeline, subject to the following condition:

If an Order granting leave to construct a natural gas pipeline is granted, that Order should be conditional on the Applicants ensuring the natural gas pipeline has sufficient capacity to handle both the Stanley Pool and the Bayfield Pool.

## **2. Submissions on Development of Stanley Pool**

### **(A) Order designating the Stanley Pool as a Gas Storage Area (also known as Designated Gas Storage Area or “DSA”) pursuant to OEBA s.36(1)**

The Responders **consent** to the designation of the Stanley Pool on the terms proposed by the Applicants, and both Responders adopt the rationale outlined in the Staff Submission dated October 22<sup>nd</sup>, 2012.

### **(B) Order authorizing Applicants to inject, store and remove gas from the Stanley Pool (also known as appointing Operator) pursuant to s.38(1) of the OEBA**

The Responders **object** to the Board granting to the Applicants the authority to inject gas into, store gas in and remove gas from the Stanley Pool or DSA.

The Responders object for the following reasons:



1. The Applicants have no right to store gas under the McKinley Lands; and
2. Granting the Applicants' request would be to ignore an Order of the Court; and
3. Granting the Applicants' request would be manifestly unfair to Ontario 219 who owns all storage rights under the McKinley Lands.

Following are the rationale for each reason:

**1. The Applicants have no right to store gas under the McKinley Lands**

(a) On October 18<sup>th</sup>, 2012, the Judgment of the Honourable Madame Justice Rady of the Ontario Superior Court of Justice in the Application by Ontario 219 against Tribute Resources Inc. was issued. A copy of the Judgment is annexed hereto as Schedule A.

(b) The Judgment makes it clear that the Tribute Oil and Gas Lease does not permit storage of gas under the McKinley Lands, and also makes it clear that the Lease in favour of Ontario 219 is the only instrument permitting injection into, storage under or on and withdrawal of gas from the McKinley Lands.

(c) By the Unit Operation Agreement, the Applicants and McKinley Farms Ltd. or their predecessors agreed that 76.441% of the Stanley Pool underlies the McKinley Lands.

(d) The Applicants have given notice that they intend to appeal the decision of Madame Justice Rady, but at this time, her Judgment is unequivocal.

(e) It is clear that the Applicants have no rights to store gas in the majority of the Stanley Pool.

**2. Granting the Applicants' request would be to ignore an Order of the Court**

(a) If the Board grants the Applicants' request, it will, in effect, be flying in the face of the Order of Madame Justice Rady.

**3. Granting the Applicants' request would be manifestly unfair to Ontario 219 who owns all storage rights under the McKinley Lands**

(a) Ontario 219 holds the storage rights under the McKinley Lands which overly 75% of the Stanley Pool, not the Applicants.

(b) "Top-Leasing" is common in the oil and gas industry. It is the process by which a company, usually an oil and gas company, seeks and obtains either an oil and gas lease or a gas storage lease or both from a landowner despite existing leases in favour of other oil and gas companies, on the hope or expectation that the existing lease(s) will be or be found to be expired or invalid, thereby boosting the priority of the later-registered lease(s) when the earlier leases are so found to be expired or invalid.

(c) That is exactly what has happened in the subject case. Ontario 219 obtained and registered a gas storage lease on the McKinley Lands which now ranks first in priority. Ontario 219 alone owns the gas storage rights under the McKinley Lands, in light of the decision of the Ontario Court of Appeal (that did not agree with the Applicants' argument that its gas storage lease should not be found void) and in light of the decision of Madame Justice Rady referenced above.

(d) Ontario 219 alone owns the storage rights under the McKinley Lands. It would be manifestly unfair for the Board to grant these rights to the Applicants who have no such rights; to do so would be to ignore the law of contract. By way of example, it would be like a board member as a parent allowing his or her older son to drive and use as his own a bicycle that his or her younger son had contracted to lease from his best friend. It is perverse and flies in the face of contract law, let alone reason. The person entitled to use the bicycle is the person who has contracted for its use; not someone who has no rights in it but arbitrarily asks for rights that it does not own.

(e) If the Applicants want so badly to have the right to store gas under the McKinley Lands, then let the Applicants negotiate those rights on terms that are fair and reasonable to the legal owner thereof, Ontario 219.

(f) Until last week, the Applicants have refused all of the Responders' requests to attempt to settle.

The Responders remain willing and available to enter into further negotiations with the Applicants to attempt to enter an agreement that reasonably address their concerns.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 5, 2012



---

Chinneck Law Professional Corporation  
Barristers & Solicitors  
37 Ridout Street South  
London, Ontario  
N6C 3W7  
Tel: 519-679-6777  
Fax: 519-432-4811

Jed M. Chinneck (LSUC# 21375C)  
Email: [jed@chinneck.ca](mailto:jed@chinneck.ca)

William D. Mitches (LSUC# 54632Q)  
Email: [bill@chinneck.ca](mailto:bill@chinneck.ca)

Lawyers for McKinley Farms Ltd. and  
2195002 Ontario Inc.



# Schedule A

Court File No. 5041/2011

## ONTARIO SUPERIOR COURT OF JUSTICE

THE HONOURABLE ) THURSDAY, THE 18<sup>TH</sup>  
JUSTICE H.A. RADY ) DAY OF OCTOBER, 2012

BETWEEN:

2195002 ONTARIO INC.

Applicant

-and-

TRIBUTE RESOURCES INC.

Respondent



### JUDGMENT

THIS APPLICATION was heard on July 27<sup>th</sup>, 2012 without a jury at the Court House, 80 Dundas Street, London, Ontario in the presence of the lawyers for all parties,

ON READING the Notice of Application and the evidence filed by the parties and on hearing the submissions of the lawyers for the parties.

1. THIS COURT DECLARES AND ADJUDGES that the Oil and Gas Lease dated October 12, 1977 and registered as instrument no. 160688, as amended by the Unit Operation Agreement registered as instrument no. 215978, (collectively the "**Tribute Oil and Gas Lease**") does not, by its terms, permit storage of gas in or under the lands identified by PIN no. 41217 – 0069 (LT) in the County of Huron (the "**Lands**").

2. THIS COURT DECLARES AND ADJUDGES that a Gas Storage Lease in favour of 2195002 Ontario Inc. as Lessee (the "**Gas Storage Lease**") dated March 3, 2009 and registered as instrument no. HC56300 in the Land Registry of Huron County on March 4, 2009 is the only instrument registered on title to the Lands permitting injection into, storage under or on, and withdrawal of gas from the Lands.



3. THIS COURT ORDERS that Tribute Resources Inc. pay costs to 2195002 Ontario Inc. fixed in the amount of \$16,400.00, inclusive of HST, forthwith.

THIS JUDGMENT BEARS INTEREST at the rate of 3.0% per year commencing on October 18<sup>th</sup>, 2012.



---

REGISTRAR



2195002 ONTARIO INC.  
Applicant

- and -

TRIBUTE RESOURCES INC.  
Respondent

Court File No. 5041/2011

ONTARIO SUPERIOR COURT JUSTICE  
Proceedings commenced at London

JUDGMENT

William D. Mitches  
Chinneck Law Professional Corporation  
Barristers & Solicitors  
37 Ridout Street South  
London, Ontario N6C 3W7  
LSUC #54632Q  
Tel: 519-679-6777  
Fax: 519-432-4811  
[bill@chinneck.ca](mailto:bill@chinneck.ca)  
Solicitors for the Applicant