

**THE SURFACE RIGHTS BOARD OF MANITOBA**

**WINNIPEG, MANITOBA**

Order No. 1/2003

File No. 05-2002

**IN THE MATTER OF:**

***THE SURFACE RIGHTS ACT C.C.S.M. c. S235***

**AND IN THE MATTER OF:**

**L.S.D. 1 to 16-35-1-25 W.P.M. in Manitoba**

**BETWEEN:**

**EOG Resources Canada Inc.,**

**Applicant (Operator)**

**- and -**

**[REDACTED] and [REDACTED]**

**Respondents (Owners)**

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**RIGHT OF ENTRY AND COMPENSATION ORDER**

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Manitoba

The Surface Rights Board

)  
) Order No. 1/2003  
) File No. 05-2002  
) JUNE 5, 2003

**BEFORE:**

T.A. (Art) Cowan, Presiding Member  
Dennis Cochrane, Deputy Presiding Member  
Claude Tolton, Member  
Ivan Carey, Member  
Barb Miskimmin, Secretary

**IN THE MATTER OF:**

***THE SURFACE RIGHTS ACT C.C.S.M. c. S235***

**- AND -**

**IN THE MATTER OF:**

L.S.D. 1 to 16-35-1-25 W.P.M. in Manitoba

**BETWEEN:**

EOG Resources Canada Inc.,

Applicant (Operator)

**- and -**

and

Respondents (Owners)

**RIGHT OF ENTRY AND COMPENSATION ORDER**

Whereas the Operator and the Owners are unable to agree to terms of a lease for surface rights;

And Whereas the Operator applied for an Order granting Right of Entry pursuant to Section 21 of *The Surface Rights Act* with respect to 16 proposed well sites on L.S.D. 1 to 16 in Section 35, Township 1, Range 25 W.P.M. in Manitoba;

Now Therefore the Board orders that:

1. The application for Right of Entry is granted subject to the terms and conditions set out in Schedule "A" which is affixed to this Order and forms part of this Order.

2. Compensation, shall be \$125,600.00 (\$62,800.00 payable to [REDACTED] and [REDACTED] and \$62,800.00 payable to [REDACTED]), to be paid prior to the Operator exercising the Right of Entry, or within 60 days of this Order, whichever occurs first, and annual compensation of \$44,800.00 (\$22,400.00 payable to [REDACTED] and [REDACTED] and \$22,400.00 payable to [REDACTED]), payable on or before the anniversary date of this Board Order and thereafter. The amount of compensation payable in respect of each well site is detailed in Schedule "B" which is affixed to this Order and forms part of this Order.

This Board Order is without prejudice to the rights of either party.

Dated this 5<sup>th</sup> day of June, 2003.

  
\_\_\_\_\_  
Presiding Member

Order No. 1/2003

**Schedule "A"**  
**Terms and Conditions**

Attached to and forming part of Order No. 1/2003, File No. 05-2002.

1. Quiet Enjoyment

That the Owner has good title to the Lands as hereinbefore set forth, has good right and full power to lease the lands and grant the rights and privileges in the manner herein set forth, and that the Operator, upon observing and performing the covenants and conditions on the Operator's part herein contained, shall and may peaceably possess and enjoy the Demised Premises and the rights and privileges hereby granted during the term of the Board Order without any interruption or disturbance from or by the Owner or any person whomsoever.

2. Use of Demised Premises

The Operator may use the Demised Premises as well sites for the drilling of 16 wells and the operation thereof and the taking of production therefrom with the right, liberty and privilege in, upon, under or across the Demised Premises, to erect and maintain all structures and equipment necessary for, and ancillary to its drilling, and production operations.

3. Renewal

If the Operator is not in default in respect of any of the covenants and conditions contained in this Board Order at the date of the expiration of the term of twenty five (25) years hereinbefore set forth, then the Operator may renew this Board Order for a further term of twenty five (25) years from the said date at compensation, including annual rental calculated as herein provided and effective as of the date of renewal. Such extended term shall be subject to all the provisions hereof including this provision for renewal.

4. Discharge of Encumbrances

If at any time the interest of the Operator becomes in danger of being lost by way of foreclosure or cancellation of an agreement for Sale, the Operator may, at its option, pay or discharge all or part of any balance owing under any agreement for Sale or Mortgage or any tax, charge, lien or encumbrance of any kind or nature whatsoever which may now or hereafter exist on or against or any way affecting the Lands, in which event the Operator may reimburse itself by applying the amount so paid by it against the compensation, rentals or other sums accruing to the Owner under the terms of this Board Order.

5. Powerlines

The right to install power is for underground power only. All electrical power lines are to be buried along the access road to the well site to a depth of not less than one metre below the surface of the land. Any other route may be used if there is written agreement between the Owner/Occupant and the Operator.

6. Payment of Compensation For Demised Premises

The Operator shall pay the compensation, including the annual rentals, hereinbefore reserved in each and every year in advance during the term of this Board Order.

## 7. Payment of Compensation For Damage

That the Operator shall pay compensation for damage done by the Operator, or anyone authorized or permitted by it to enter upon the Demised Premises which, without restricting the generality thereof, shall include livestock, growing crops, fences, buildings or other improvements of the Owner upon the Lands other than the Demised Premises.

## 8. Cancellation in Event of Default

In the event the Operator defaults in the payment of any sum payable by way of compensation, including annual rent, or in the performance of any covenant, promise or undertaking herein contained on the part of the Operator, this Board Order shall be terminated at the expiration of sixty (60) days after written notice to that effect, is given the Operator by registered mail, unless the Operator shall have in the meantime remedied such default or breach of covenant, promise or undertaking.

## 9. Maintenance of Demised Premises

The Operator shall dig a pit or pits or have adequate metal reservoirs and deposit therein the mud and sludge resulting from drilling operations and any other workings in respect thereto and not permit the same to escape onto the Lands. The Operator shall take all necessary precautions to keep down, destroy and continue to destroy, at the proper season of the year all noxious weeds on the Demised Premises. In the event of snow removal, the snow removal shall be retained on the Demised Premises.

## 10. Permit Owner to Use Roadway With Farm Machinery

- a) The Operator will use low profile access roads with shallow or no ditches that accommodate crossing with farm machinery, unless otherwise instructed by the Owners. The owners are entitled to use the said roadway(s) without charge.
- (b) The Operator shall use an All Terrain Vehicle (ATV) whenever possible for routine inspections.

## 11. Fencing of Well Site, Roadway and Excavations

Upon completion of the drilling and during the continuance of this Board Order, the Operator shall erect and put upon the boundaries of the well site and roadway a good and substantial fence, but only if so required by the Owner, and to maintain and repair the same and, if reasonably required by the Owner, to enclose and keep enclosed all openings or excavations made in connection with or for the purpose of drilling operations aforesaid with fences and guards sufficient to prevent injury to livestock and further to remove the said fence at the request of the Owner, if no longer required.

## 12. Replacement, Repair of Fences, Livestock Guards or Gates

The Operator shall forthwith replace all fences to their former condition which may have been damaged, and if and when so reasonably required by the Owner, provide proper livestock guards or suitable gates at any point of entrance to the Demised Premises and, if the gates are installed, will cause the same to be promptly closed or locked after use.

### 13. Indemnity Against Claims and Actions

The Operator shall indemnify and save harmless the Owner of, from and against all actions, suits, claims and demands by any person whomsoever in respect of any loss, injury, damage or obligation arising out of or connected with the operations carried on by the Operator, its servants or agents in, under or upon the Demised Premises or the lands adjacent thereto.

### 14. Topsoil to be Saved

The Operator shall remove and save the topsoil from those portions of the Demised Premises to be excavated or upon which a roadway is to be constructed or that portion of the well site commonly used by vehicles and equipment and will return the topsoil onto the Demised Premises when the excavations are filled and/or upon surrender in whole or in part of the Demised Premises; PROVIDED HOWEVER that, if the roadway is constructed, the topsoil from that roadway may be evenly spread in the ditches thereof.

### 15. Reduction of Acreage

The Operator shall have the right at any time and from time to time, upon written notice to that effect to the Owner, surrender any portion of the Demised Premises by restoring the land proposed to be surrendered, as hereinafter set forth, and by giving the Owner a revised plan of the portion retained. The rental shall be no less than hereinbefore provided.

### 16. Surrender and Removal of Equipment

Provided that the Operator is not in default in respect of any of the covenants and conditions contained in this Board Order, it may at any time, upon six (6) months notice to that effect to the Owner, cease to use and occupation of the Demised Premises or any part thereof and shall restore the same as provided in Clause 17 of this Board Order whereupon this Board Order shall terminate at the next anniversary date and the Operator may, within the balance of the rental year, remove or cause to be removed from the Demised Premises all structures, materials and equipment of whatsoever nature or kind which the Operator may have placed on or in the Demised Premises.

### 17. Abandonment and Restoration

Upon the abandonment, in whole or in part, of a well on the Demised Premises, the Operator shall cause the same to be plugged and all excavations in connection therewith to be filled in, all in compliance with the regulations of the government of the Province of Manitoba in that regard, and upon the discontinuance of the use of any portions of the Demised Premises, to restore such portions or portions to the same condition as that existing immediately prior to entry thereon and the use thereof by the Operator and/or to pay a monetary sum of money in lieu thereof or on account of the inability of the Operator to restore the same to the condition existing at the time of its entry thereon. The Operator giving the notice of intention to abandon shall be responsible, without further proof, to carry out the restoration regardless of fault of its predecessors in interest, if any. The obligation to pay annual rental hereunder shall continue until proper restoration has been completed as required by said regulations.

## 18. Review of Compensation

Notwithstanding anything contained in this Board Order, upon the request of any party of this Order, the amount of compensation payable (except the element of forceable taking) in respect to the Demised Premises shall be subject to review within three (3) months before or within three (3) months after the expiration of each three (3) year interval following the date of this Order. Such request shall be in writing and given to the other party within the three (3) month multiple period aforementioned. In the case of any disagreement as to the amount of compensation to be paid or any matter in connection therewith, the relevant provisions of *The Surface Rights Act* or any similar legislation later enacted, each as amended from time to time, shall apply. In the event that the compensation cannot be mutually agreed upon in sufficient time to meet the anniversary date, the Operator shall pay to the Owner the rental for each year based upon the existing rental amount and upon the new rental being agreed the necessary adjustments, together with interest, shall be made between the parties.

## 19. Manner of Payment

All compensation, rentals and other sums payable by the Operator to the Owner hereunder, may be paid or tendered at par by cheque of the Operator mailed or delivered to the Owner so as to be received on or before the due date thereof.

## 20. Payment of Taxes

- (a) The Owner shall promptly pay and satisfy all taxes, rates, levies and assessments that may be assessed or levied against the Lands during the continuance of this Board Order.
- (b) The Operator shall pay all taxes, rates, levies and assessments which may be assessed or levied with respect to the works or operations of the Operator.

## 21. Assignment By Operator

The Operator may delegate, assign or convey to other persons or corporations, all of the powers, rights and interest obtained by or conferred upon the Operator hereunder to be enjoyed by such persons or corporations, and may enter into all agreements, contracts and writings and do all necessary acts and things to give effect to the provisions of this clause, provided that such persons or corporations must use the Demised Premises for the operations contemplated by the parties hereto.

## 22. Notification of Change of Interest

In the event of any of the parties selling, delegating, assigning or conveying their interest to other persons or corporations, the party disposing of its interest shall forthwith give the other party notice of such change and the name and address of the new Owner or Operator, as the case may be.

### 23. Notices

Except as hereinbefore provided, any notice required to the given hereunder shall be deemed to have given ten (10) clear days after such notice is mailed by prepaid registered or certified post or by recognised national carriers properly addressed to a party and, for the purpose of this paragraph, the address for service of the parties shall be:

Owner:

[REDACTED]

Operator: EOG Resources Canada Inc.  
1300, 700-9<sup>th</sup> Avenue SW  
Calgary AB T2P 3V4

A party hereto may change its address for service by giving written notice to the other party.

### 24. Surface Lease to Run with the Land

- (a) In the event the Land is registered under *The Real Property Act*, the Operator may file with the Registrar of the appropriate land titles office a caveat founded on this Board Order;
- (b) Upon the expiry for any reason of the latter of the term or any renewal term of this Board Order, the Operator shall forthwith provide the Owner a Withdrawal of Caveat registered pursuant to sub-paragraph (a) hereof.

### 25. Enurement

These presents and everything herein contained shall enure to the benefit of and binding upon the Owner, its heirs, executors, administrators, successors and assigns and upon the Operator, its successors and assigns.

### 26. Manitoba Law

This Board Order shall for all purposes be construed according to the laws of The Province of Manitoba.



Order No. 1/2003

**Schedule "B"**  
**Compensation Payable in Respect of Each Legal Subdivision.**

Attached to and forming part of Order No. 1/2003, File No. 05-2002.

All lands located in Section 35-1-25 WPM.

<b>Legal Description</b>	<b>Land Owner</b>	<b>First Year</b>	<b>Annual</b>
LSD 1	[REDACTED]	\$7850.00	\$2800.00
LSD 2 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 3	[REDACTED]	\$7850.00	\$2800.00
LSD 4 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 5	[REDACTED]	\$7850.00	\$2800.00
LSD 6 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 7	[REDACTED]	\$7850.00	\$2800.00
LSD 8 (WIW)	[REDACTED]	\$7850.00	\$2800.00
<b>Total</b>		<b>\$62800.00</b>	<b>\$22400.00</b>
LSD 9	[REDACTED]	\$7850.00	\$2800.00
LSD 10 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 11	[REDACTED]	\$7850.00	\$2800.00
LSD 12 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 13	[REDACTED]	\$7850.00	\$2800.00
LSD 14 (WIW)	[REDACTED]	\$7850.00	\$2800.00
LSD 15	[REDACTED]	\$7850.00	\$2800.00
LSD 16 (WIW)	[REDACTED]	\$7850.00	\$2800.00
<b>Total</b>		<b>\$62800.00</b>	<b>\$22400.00</b>

**THE SURFACE RIGHTS BOARD OF MANITOBA**

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**IN THE MATTER OF:** *THE SURFACE RIGHTS ACT C.C.S.M. c. S235*

**AND IN THE MATTER OF:** L.S.D. 1 to 16-35-1-25 W.P.M.

**BETWEEN:**

EOG Resources Canada Inc., Applicant (Operator)

- and -

[REDACTED] and  
[REDACTED] and [REDACTED], Respondents (Owners)

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**REASONS FOR DECISION FOR RIGHT OF ENTRY  
AND COMPENSATION ORDER**

---

**IN THE MATTER OF:**      ***THE SURFACE RIGHTS ACT C.C.S.M. c. S235***

**AND IN THE MATTER OF:**    L.S.D. 1 to 16-35-1-25 W.P.M. in Manitoba

**BEFORE:**                      T.A. (Art) Cowan, Presiding Member  
                                      Dennis Cochrane, Deputy Presiding Member  
                                      Claude Tolton, Member  
                                      Ivan Carey, Member  
                                      Barb Miskimmin, Secretary

**DATE OF HEARING:**        March 14 & 27 and April 15, 2003, Waskada, Manitoba  
                                      April 22, 2003, Brandon, Manitoba

**DATE OF DECISION:**     JUNE 5, 2003

**BETWEEN:**                      EOG Resources Canada Inc., Applicant (Operator)

- and -

 and   
 and  Respondents (Owners)

**APPEARANCES:**              **Robert J. M. Adkins and Kara L. Crawford**


for the Applicant (Operator)

**Paul Elash**

for the Respondents (Owners)

**WITNESSES:**                      Alex Orr, Senior Surface Landman, EOG  
                                      Craig Burton, P.Eng., Project Reservoir Engineer, EOG  
                                      Gary Martens, P.Ag., Instructor, U of M  
                                      Mark Brady, Land Consultant, Brady Land Services Ltd.  
                                      Curtis Schoenfeld, P.Eng., Project Reservoir Engineer, EOG  
                                      Brian Tompkins, M.Sc., Project Geologist, EOG

called by the Applicant (Operator)

  
                                      Steve Halabura, P.Geo., North Rim Exploration Ltd.

called by the Respondents  
 (Owners)

**REASONS FOR DECISION FOR RIGHT OF ENTRY  
AND COMPENSATION ORDER**

**BACKGROUND:**

Owners of mineral rights (operators) require surface rights in order to access their mineral rights. Surface rights are defined in *The Surface Rights Act* as follows:

“surface rights” means

- (a) the land or any portion thereof or any interest therein, except oil and gas rights within the meaning of The Oil and Gas Act, or a right of entry thereon, required by an operator for the purpose of exploring for, developing, producing or transporting a mineral, or
- (b) the right to establish, install or operate any machinery equipment or apparatus for use or in connection with the drilling, completion or producing operations of a well on a well site, or
- (c) the right or obligation to condition, maintain, or restore the surface of land where the land has been or is being held incidental to or in connection with the exploring for, developing or producing a mineral, or the land has been held or is being held incidental to or in connection with the laying, constructing, operating, maintaining or servicing of a battery site, service line, roadway or power line;

In Manitoba, to obtain surface rights, Operators must enter into a leasing agreement with the Owner of the land. If a leasing agreement cannot be negotiated, an Operator has the right to apply to The Surface Rights Board under Section 21 of *The Surface Rights Act* for an Order permitting access to the land and for the resolution of compensation issues. Section 21 states:

**Application to board for hearing**

21(1) An operator, owner or occupant, if any, may

- (a) where there is disagreement as to the surface rights that are required by the operator or as to the compensation to be paid therefore; or
- (b) where there is a dispute between any of them as to
  - (i) the interpretation of a lease or agreement,
  - (ii) the exercise of any right or the performance of any obligation under a lease or agreement or this Act, or
  - (iii) the location of access roads; or
- (c) where a provision of the Act authorizes an application on any other matter; apply to the board for a determination of the matter and shall serve a notice of the application upon each party that is or may be involved in, or directly affected by, the application and shall forthwith file a copy of the notice with the board.

In the present case the Operator has provided by evidence that it has the right to recover the minerals by six Petroleum and Natural Gas Leases with the mineral owners of Section 35-1-25 W.P.M.

The Operator applies under Section 21 for a Right of Entry Order claiming that they cannot agree with the Owners on matters related to a lease for surface rights. The Board has also been asked to determine the compensation payable to the Owners.

Pursuant to subsection 25(2) of *The Surface Rights Act*, the Board inspected the proposed site on March 14, 2003. Following the inspection, the Board proceeded with the scheduled March 14, 2003 hearing in Waskada, Manitoba.

**EXHIBITS:**

For the Operator and recorded into records:

- |                |   |
|----------------|---|
| Exhibit No. 1  | Applicant's Brief (document containing 27 tabs)   |
| Exhibit No. 3  | 6 Air Photos of Section 35-1-25 WPM   |
| Exhibit No. 4  | March 4/03 letter from Thompson Dorfman Sweatman to Mr. Paul Elash - regarding agricultural use, etc.<br><br>March 10/03 letter from Thompson Dorfman Sweatman to Mr. Paul Elash - regarding Board procedures, etc.   |
| Exhibit No. 8  | 10 photos (taken this year) of leased non built up roads  |
| Exhibit No. 11 | April 10/03 letter to Canadian Grain Commission from Thompson Dorfman Sweatman<br>April 14/03 reply from Canadian Grain Commission to Thompson Dorfman Sweatman - RE: HACCP guidelines<br><br>April 10/03 letter to Health Canada from Thompson Dorfman Sweatman<br>April 14/03 reply from Health Canada to Thompson Dorfman Sweatman - RE: Pest Control Products Act |
| Exhibit No. 14 | Applicant's Written Argument  |

For the Owners and recorded into the records:

- |                |  |
|----------------|--|
| Exhibit No. 2  | October 15/02 letter from Paul Elash to EOG Resources (Att: A. Orr) - regarding initial contact  |
| Exhibit No. 5  | March 11/03 "Proposal For Preparation of Report Expressing Expert Opinion Concerning Application of Directional Drilling Technology in SW Manitoba" - prepared by North Rim Exploration Ltd. |
| Exhibit No. 6  | Land Owners Brief (document containing 22 tabs)  |
| Exhibit No. 7  | Document entitled "Increased Costs to Farm around 16 Surface Lease Well Installations & Access Roads on 640 acres"   |
| Exhibit No. 9  | 3 photos of effects on leased roads (ruts/equipment)   |
| Exhibit No. 10 | April 7/03 "Expert Opinion Concerning Application of Directional Drilling Technology in SW Manitoba" - supplementary information - prepared by North Rim Exploration Ltd.                    |
| Exhibit No. 12 | April 22/03 letter to [REDACTED] from Health Canada RE: Pest Control Products Act  |
| Exhibit No. 13 | Six (6) Manitoba Surface Rights Board Orders Nos. 37/85, 39/85, 41/85, 43/85, 45/85 & 47/85 and Sample Calculation of Compensation [REDACTED] vs. Omega)                                     |
| Exhibit No. 15 | Respondent's Brief of Fact & Law   |

## EVIDENCE:

The first witness called by the Operator was Alex Orr, Senior Surface Landman, EOG Resources Canada Inc. Alex Orr (sworn) provided evidence of his efforts to negotiate in good faith with the landowners for surface leases.

The second witness called by the Operator was Craig Burton, P.Eng., Project Reservoir Engineer, EOG Resources Canada Inc. Craig Burton (sworn) provided evidence comparing the economics of development and production between horizontal drilling and vertical drilling as it relates to Section 35-1-25 W.P.M. In Craig Burton's opinion, the practice of horizontal drilling is not an economically feasible option for petroleum extraction on the subject property. Craig Burton indicated that the horizontal drilling approach would add an estimated \$1,000,000 to the project and subsequently would make the project economically unattractive.

In cross examination, Curtis Schoenfeld, P.Eng., Project Reservoir Engineer, EOG Resources Canada Inc. and Brian Tompkins, M.Sc., Project Geologist, EOG Resources Canada Inc. (both sworn) (these gentlemen were replacement witnesses for Craig Burton who was not available after the first day of testimony) provided evidence that supported Craig Burton's testimony indicating that horizontal drilling was not economically viable for this location because of the risk associated with the geology of the site.

The third witness called by the Operator was Gary Martens, P.Ag., Instructor, U. of M., (sworn) who provided evidence concerning the possible impacts that locating oil wells may have on the agricultural practices of Section 35-1-25 W.P.M. In his opinion, modern farming operations have smaller profit margins and typically require longer, more efficient equipment to remain economically viable. Gary Martens indicated that oil wells do not prevent agriculture activity but do, in fact, make the agriculture practice more difficult and expensive. In Gary Martens' opinion, the extra burden placed upon the agriculture practice could be considered as part of the compensation for disturbance.

The fourth witness called by the Operator was Mark Brady, Land Consultant, Brady Land Services, Regina, Saskatchewan. Mark Brady (sworn) provided evidence as to his efforts to contact the Owners to gain consent to survey the sites and to negotiate surface leases on behalf of EOG Resources Canada Inc.

[REDACTED] (sworn), one of the Owners provided evidence with respect to the loss of valuable farmland located on Section 35-1-25 W.P.M. due to the proposed well sites. [REDACTED] testified that there would be excessive wear and tear on equipment, over-spraying, under-spraying and other farm costs associated with the proposed well sites. [REDACTED] testified that Section 35-1-25 W.P.M. currently has no obstacles and that 16 well sites would negatively impact his row crops. [REDACTED] indicated that his family has purchased and used farm equipment to make the farm operation more efficient. In addition to the above, [REDACTED] also provided evidence that he was in the process of developing a proposal for a hog operation. He also is developing other agricultural opportunities for pesticide free products such as sunflowers.

The second witness called by the Owner was Steve Halabura, P.Geo. North Rim Exploration Ltd. (affirmed via telephone conference). Steve Halabura provided evidence on behalf of the Owner, concerning the merits of developing a parcel of land using vertical or horizontal wells for oil and gas exploration and development. Steve Halabura also discussed the comparative costs of using both technologies as they relate to the southwestern Manitoba oil patch. Steve Halabura obtained technical information from the Petroleum Branch, Manitoba Industry, Trade and Mines, and based upon his experience and the information obtained, concluded that there was insufficient data to determine whether horizontal wells were a technically and economically viable development tool in the Waskada field.

[REDACTED] (sworn), one of the Owners provided evidence concerning his involvement in the farming operation and the proposed hog operation. [REDACTED] indicated that he was evaluating the feasibility of establishing a hog farm on Section 35-1-25 W.P.M. [REDACTED] also gave background evidence regarding the changing nature of the agriculture industry since the mid-eighties and that farming operations were larger and more efficient. In addition, [REDACTED] also discussed a previous surface lease that was entered into in the mid-eighties between himself and Andex Oil Co. Ltd.

## ISSUES:

1. Well site location;
2. Terms and conditions, including access roads;
3. Should compensation be awarded for possible anticipated loss or damage?
4. Compensation;
5. Costs.

## DECISION:

### Well Site Location

The Owners have submitted that one of their major concerns is that the Operator intends to place its wells in locations that will cause greater economic loss to the Owners than would other well locations. The Owners request the Board to direct the Operator where to place the wells. The Owners support this submission with evidence relating to the hardship they would suffer if the wells were placed in the locations that the Operator intends.

The Operator submits that the Board does not have authority under The Surface Rights Act to direct the location of well sites.

The Board refers to the decision of the Manitoba Court of Queen's Bench in [REDACTED] v. Omega Hydrocarbons Ltd. (1986) 2 W.W.R. 622 where the Manitoba Court of Queen's Bench determined that the Manitoba Surface Rights Board did not have under its legislation the jurisdiction to direct the actual location of the well site on the land in question. The Manitoba Court of Queen's Bench sitting in appeal determined that neither the Surface Rights Board nor the Court had the jurisdiction to direct an operator where to locate a well on the land surface.

The Manitoba Court of Queen's Bench in [REDACTED] v. Omega Hydrocarbons Ltd. (1986) 2 W.W.R. 622 at 627 stated:

*"Upon a perusal of the Act, I cannot find any section which specifically gives the board the power to make an order as to the location of the well site. In my opinion, such a power cannot be given to a board such as the Surface Rights Board by implication.*

*The jurisdiction of the Board, and of this court, is limited to making an order that deals with surface rights as that term is defined in the Act. That term does not include the location of the well site on the surface.*

And at p.630:

*In my judgement, neither the Surface Rights Board nor this court has the jurisdiction under the Surface Rights Act to make an order which either directs the operator where to locate the well site on the land surface or directs the operator as to the method of drilling to be utilized.*

Section 25(4)(e) of *The Surface Rights Act* was amended in 1988 to clarify the authority of the Board in relation to the location of access roads. The legislative provision enabled the Board to determine and direct the location of access roads to a well site. The Board has concluded that this amendment only applies to the location of access roads to a well site and not the location of the well site on the subject property.

While there may well be excellent farming or other reasons for a different location for the wells, the Board must defer to the provisions of the Surface Rights Act and to the case law. The legislation does not provide the Board with jurisdiction to require an operator to relocate a proposed well site.

### **Location Of The Access Roads**

The approximate location of the access roads was submitted by EOG Resources Canada Inc. as part of Exhibit No. 1 (tab 5). EOG Resources Canada Inc. provided evidence that they would consider changes to the location of the access roads. Both parties are to establish, after consultation and agreement, the exact location of the access roads. The survey plans of the access roads to be filed with the Surface Rights Board. Consideration should be given to locating the access roads from the west. If the parties cannot agree to the location of the access roads, the decision will be made by the Surface Rights Board.

### **Compensation for Possible Anticipated Loss**

The Owners have submitted that they should receive compensation for certain possible future damages. The Board considered the evidence regarding the possible development of a hog operation and the pesticide free production of sunflowers by the Owners. The Board is of the opinion that the Owner has no right to compensation unless the loss or damage has been suffered or unless it has been established on a balance of probabilities that the loss or damage will occur in the future. The mere possibility of damage or loss of opportunity is not a basis for an award of compensation unless there is a specific statutory provision to that effect.

An award of compensation must be based upon evidence and must be in respect to some real loss or damage suffered or being suffered by the Owner which has a casual connection with the operation in respect of which the Right of Entry is granted.

### **Compensation**

In arriving at compensation, the Board looked at whether the proposed sites were typical well sites under the "typical well site" definition found in the March 19, 1990 [REDACTED] v. Chevron decision and the April 9, 1991 [REDACTED] v. Chevron and [REDACTED] v. Chevron decisions. A typical well site is a well site that does not present any special conditions that would make it unduly costly for a farmer to farm the land on which the well site is located. On reviewing the material before it and on viewing the proposed well sites, the Board has decided that these well sites are typical well sites. The size of each proposed well site is within the Manitoba average of between two and four acres. The Board considered all the evidence and the applicable factors under Section 26 of *The Surface Rights Act*. In particular, the Board analysed the comparable leases and the recent land sale information relied on by both parties.

After consideration of all evidence the Board determined that the first year compensation in the amount of \$125,600.00 (\$62,800.00 payable to [REDACTED] and [REDACTED] and [REDACTED] and \$62,800.00 payable to [REDACTED]), and annual compensation in the amount of \$44,800.00 (\$22,400.00 payable to [REDACTED] and [REDACTED] and \$22,400.00 payable to [REDACTED]), as more particularly set out in Schedule "B" of the Order (Order No. 1/2003), is just and reasonable.



## Costs

After arriving at the above decision, the Board opened the sealed offer provided by the Operator. As provided in section 26 of the *The Surface Rights Act* the amount of the sealed offer can have an effect on the costs ordered by the Board. After examining the offer, there would appear to be some confusion concerning the figures provided by the Operator. The letter of offer dated January 24, 2003 states one amount while the supporting documentation adds up to a different amount. The Board requests supplementary clarification from the Operator as to what offer it intended to make. The Owners are, of course, entitled to make a submission on this issue as well.

Decision delivered this 5<sup>th</sup> day of June, 2003.

T.A. Cowan  
T.A. Cowan, Presiding Member