

**THE SURFACE RIGHTS BOARD OF MANITOBA**  
**BOARD ORDER**  
**Under *The Surface Rights Act*, C.C.S.M. c. S235**

**Hearing:**

Town of Virden  
Municipal Office  
Council Chambers  
October 25, 2016

**Order No: 03-2016**

**File No: 08-2016**

**Date issued:** November 18, 2016

**BEFORE:** Clare Moster, Presiding Member  
Gordon Lillie, Deputy Presiding Member  
Russell Newton, Board Member  
Goldwyn Jones, Board Member  
  
Barbara Miskimmin, Board Administrator

**BETWEEN:**

**Operator**  
*(Applicant)*

**Corval Energy Ltd.**

**- AND -**

**Owner**  
*(Respondent)*

**Woodnorth Farms Ltd.**

**Occupant**

*(no representative)*

**CONCERNING:**

LSD 5, Section 29, Township 8, Range 27, West of the Principal Meridian in Manitoba (herein after referred to as the "said lands").

**PURPOSE OF ORDER**

To hear and receive evidence regarding an application from the Operator for right of entry on the said lands to establish a well site and determination of compensation to be paid if right of entry is granted.

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**RIGHT OF ENTRY and COMPENSATION**

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**BACKGROUND:**

The Operator holds leases to the petroleum and natural gas rights under the South ½ of Section 30-8-27WPM.

The Operator plans to develop those rights by means of a horizontal well with a well site located on the said lands. The location of the proposed well site is shown on Schedule "A" to this Order and shall hereinafter be referred to as the "*demised premises*".

The horizontal well is to be drilled in a westerly direction through LSDs 8, 7, 6 and ending in LSD 5 of Section 30-8-27WPM.

Unable to negotiate a surface lease and compensation with the Owner, by application dated September 1, 2016, the Operator applied to the Surface Rights Board ("*the Board*") under Subsection 21(1) of The Surface Rights Act ("*the Act*") requesting the Board issue an order granting right of entry and determining compensation pursuant to Subsection 25(4) of the Act.

In accordance with Subsection 25(1) of the Act, on September 26, 2016 the Board issued a Notice of Hearing, setting a hearing date of October 25, 2016. The location of the Hearing to be in the Municipal Office of the Town of Virden. In accordance with Subsection 25(1) of the Act, the Board also informed the two (2) parties that it intended to view the site on the morning of October 25<sup>th</sup>, prior to the Hearing. The notice also advised that if the respondent (Owner) failed to appear at the scheduled Hearing, the Board may grant the application and make orders in the absence of the respondent, or dismiss the application in the absence of the applicant (Operator).

The Board viewed the site on October 25, 2016 prior to the Hearing, and representatives of the Operator attended.

The Hearing convened at the scheduled time of 10:00a.m.

No representative of the Owner attended the viewing of the site or the Hearing.

**ISSUES:**

1. Should a right of entry be issued to the Operator to authorize the proposed well site?
2. What terms and conditions governing right of entry should be included in any order issued?
3. What compensation should apply if a right of entry order is issued?
4. Should costs be awarded?

**APPEARANCES:****For the Operator:**

- Richard Press, Vice President Land & Business Development  
Corval Energy Ltd. (*sworn*)
- Ryan Dallyn, Executive Vice-President, Lexterraland (*sworn*)

**For the Owner:**

- (*no representative*)

**EXHIBITS:****Operator:**

#1 Binder with four (4) tabs:

Tab A – Survey Plan (*Illustrative Sketch Plan of proposed well site & location of well bore*)

Tab B - Title (*Status of Title for Title No. 1822318/2*)

Tab C - Mineral Rights (*Summary of P&NG leases for S1/2 of Sec 30-8-27WPM*)

Tab D - Statement of Negotiations (*Chronological history of attempted negotiations*)

Tab E - Determination of Compensation (*Operator's position on how to be determined*)

Tab F - Acquisition Summary (*Summary table listing 24 Surface Leases acquired by Operator in the general area during the 2012-2016 period showing: date, land description, site usage, acreage, 1<sup>st</sup> year consideration and annual rent for each. The first page of the surface lease and the detailed survey plans for each lease were also provided in support of the information contained in the table*)

**DECISION:**

Upon viewing the subject lands and hearing the presentation of the Operator and reviewing the evidence (Exhibit); decision being reserved until today's date:

**It is the Order of this Board That:**

1. The Operator is granted right of entry to the demised premises for the purpose of establishing a well site for the drilling and operation of one horizontal well whose targeted end point is planned to be in Lsd 5-30-8-27WPM.
2. The right of entry granted is subject to the terms and conditions specified and set out in Schedule "B" hereto.
3. The Operator shall pay compensation to the Owner in the following amounts:
  - 1<sup>st</sup> year: \$7,200 to be paid within 30 days of the issuance date of this Order or prior to entry upon the demised premises, whichever first occurs. Interest to be paid on any outstanding amount at a rate of 5% per annum.
  - For each subsequent year: an amount of \$3,000, payable annually in advance of the anniversary date of this Order.
4. No costs are awarded.

**REASONS FOR DECISION**

1. Should a right of entry be issued to the Operator to authorize the proposed well site?
  - The Operator has provided evidence that it has valid petroleum and natural gas rights leases for the South half of Section 30-8-27WPM.
  - The Operator has stated that it wishes to drill a horizontal well from a well site to be located in the extreme northwest corner of Lsd 5 of Sec. 29-8-27WPM, the demised premises as shown on Schedule "A" to this Order.
  - The proposed horizontal well is intended to be drilled through and produce from Lsds 8, 7, 6 and 5 of Section 30-8-27WPM.



- The Operator contends that in order to maximize recovery from Lsd 8 it needs to locate the well site on the adjoining Lsd to the East, namely Lsd 5 of Section 29-8-27WPM. This will enable the wellbore to be in the targeted producing zone when 100 metres from the East boundary of Section 30. The 100 metre distance is the nearest a wellbore may produce when the petroleum and natural gas rights in the adjoining section are not of common ownership or covered by an approved pooling or unitization order under The Oil and Gas Act.
- Two of the stated purposes of the The Oil and Gas Act are:
  - to encourage and facilitate the efficient development and maximum economic recovery of oil and gas in accordance with the principles of sustainable development;
  - to protect the correlative rights of owners
- Licensing of horizontal wells where the well site is on adjacent land to the oil and natural gas rights being targeted is common practice in Manitoba, as it results in achieving the above stated purposes.
- The Operator stated it had also evaluated the option of locating the well site on Lsd 8 of Section 25-8-28WPM and drilling from West to East in the South half of Section 30-8-27WPM. It ruled out that option due to the proximity of a newly relocated farmyard in the northeast quarter of Section 25 as well as the low topography (subject to flooding), of the southeast of Section 25, should additional wells be drilled.
- The proposed well site is on cultivated land with an elevation not subject to flooding.
- The Operator stated the well site boundaries will abut the West and North boundaries of Lsd 5, with sides being 110 metres in length. This will result in a well site being 1.21 ha or 2.99 ac in area, with no access road required. Such corner location helps minimize the disruption to normal farming practices.
- The Owner presented no objections to having the proposed well site on the demised premises.
- Subsection 20(1) of the Act states:
  - “Granting of rights on adjacent or other lands
  - 20(1) The board may by order, subject to the payment of compensation as hereinafter provided, grant to the operator any one or more rights with respect to adjacent or other land as in the opinion of the board is necessary to permit operations to be carried on and to give the operator access to and egress from his operation.”
- After viewing the proposed site, and hearing the rationale for choosing the proposed site, the Board is satisfied that the proposed site is most suitable for its intended purpose, and the Operator should be issued an order granting right of entry.

## 2. What terms and conditions governing right of entry should be included in the right of entry order?

- As provided under Clause 25(4)(f) of the Act, it has been the practice of the Board to attach Terms and Conditions to any order granting right of entry for a well site. In doing so, the Board considers any unique issues or concerns that may be raised to determine if changes or additional provisions need to be included.
- The Operator filed no information as to the terms and conditions it proposed for the right of entry requested.
- The Owner (*Wolf Van Teichman, President & Director of Woodnorth Farms Ltd.*) did send an email dated October 24, 2016 to the Board Administrator in which he outlined four (4) major areas of concern related to the well site and the “Manitoba Surface Lease” proposed by the Operator. A copy of the proposed surface lease was included. The Board Administrator advised the Operator that his concerns would be presented to the Board at the Hearing.
- The Board Administrator provided copies of the Owner’s October 24, 2016 email to Board Members and the Operator at the Hearing.

- The Owner's concerns pertained to terms and conditions in the Manitoba Surface Lease proposed by the Operator. The Board reviewed each of the concerns and determined whether the Terms and Conditions attached to Board right of entry orders ("Schedule "B") addressed the concerns raised.
  - The first concern related to the term of the lease (condition 15. Renewal ) being for an initial term of 21 years with a right of automatic renewal for a further period of 21 years subject to the same terms and conditions. Mr. Teichman may have misinterpreted the meaning to mean the lease could be for "a possible 42 years without automatic or negotiated rental increases to match market conditions as they develop". The immediately preceding paragraph in the proposed lease pertains to "14. Review of Annual Compensation" and states as follows:

***"14. Review of Annual Compensation***

*The Annual Compensation set forth in paragraph (b) under the heading Compensation above shall be reviewed in accordance with The Surface Rights Act (as the same may be amended or replaced)."*

The sections in the Act governing compensation variance (rent review) state as follows:

***"Application for change in compensation after lease***

***30 Subject to section 31, an owner, occupant or operator who has entered into, or who is affected by, a lease may apply to the board for a variation of compensation of the amount of compensation payable under the lease for the surface rights."***

***"When application for change not to be made***

***31 An application under section — 30 for a variation of compensation may not be made within the three year period next following the date of the determination of the compensation sought to be varied."***

The result of the above provisions allows for the annual compensation (rent) in a surface lease to be reviewed every three (3) years. A similar provision in the Act (Section 29) applies to annual compensation set by the Board in an order.

Conditions 2, 3 and 5 of Schedule "B" address this concern.

- The 2<sup>nd</sup> concern raised by the Owner related to Paragraph "19.1 Assignment by Lessee" in the Surface Lease. He contended that the Owner (Lessor) should have "the right to reasonable approve of an assignment of the Lease". An Owner should know who is on his land.

Conditions 20 and 23 of Schedule "B" pertain to Assignment and Notifications and require the Operator to inform the Owner of any assignment and the contact information for the assignee.

- The 3<sup>rd</sup> concern was that there should be "an indemnification clause for malfeasance". He stated that if the Lessee behaves as a reasonable tenant would, the Lessee should have no problem with such a very standard clause, and if not they should be held accountable.

Condition 6 of Schedule "B" pertains to indemnification by the Operator.

- The 4<sup>th</sup> concern expressed was that "such a long term of tenancy might see technological change through time allowing for extraction of resources not belonging to the tenant, for which there should be recourse under the terms of the lease".

As indicated previously, The Oil and Gas Act and regulations thereunder, have provisions governing drilling and production to protect correlative rights.

As noted above, the Terms and Conditions contained in "Schedule "B" and the provisions under The Oil and Gas Act address the concerns raised by the Owner.

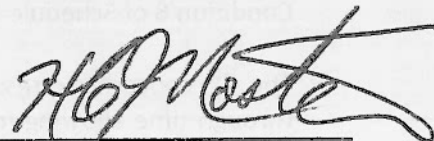
**3. What compensation should apply if a right of entry order is issued?**

- In accordance with the provision of Section 20, the Board having decided to grant the Operator right of entry, is required to have compensation paid to the Owner.
- In support of its application, the Operator in Exhibit #1, under Tab F, provided comparable surface agreements on twenty-four (24) well sites in proximity of the subject lands which it had negotiated in the last three (3) years. The information provided included the first page of each agreement showing the date negotiated and compensation to be paid, as well as detailed survey information including plans showing the location of the well site and any access road, the dimensions and area of the well site and access road, and the type of land involved (cropped or pasture).
- In the absence of no other evidence having been presented, the comparable lease information provided was reviewed.
- The Board also gave consideration to recent compensation orders made by the Board.
- Considering all of the factors, the Board decided that compensation in the following amounts should be ordered:
  - Total First Year = \$7,200
  - Annual Rent for each year thereafter = \$3,000

**4. What if any costs are to be ordered?**

- The Owner also raised the issue that "it is normally completely standard practice for a lessee seeking to impose a lease on a lessor to pay the lessor's reasonable legal fees".
- Section 26 of the Act relates to the awarding of costs of a hearing.
- Subsection 26(4) prescribes when costs must be awarded by the Board. That is determined after the decision on compensation has been made by the Board. The decision amount is only then compared to the final written offer provided in a sealed envelope to the Hearing Secretary by the Operator immediately prior to the commencement of the Hearing. If the final amount offered is less than 90% of the amount ordered by the Board, the Board is required to award costs to the Owner.
- Subsection 16(5) states that if the final offer is greater than the amount decided by the Board, the Board shall not award costs to the Owner.
- Subsection 26(3) states that the determination of costs (in other situations) is in the discretion of the Board.
- The offer in the sealed envelope was opened on November 10, 2016 and revealed the final compensation offered by the Operator was \$7,200 for the first year and \$3,000 as annual rent thereafter.
- Therefore, Subsections 26(4) and (5) do not apply.
- The Board decided that the Owner in not appearing at the Hearing had incurred minimal costs preparing for the Hearing.
- Using its discretion under Subsection 26(3) the Board decided no costs should be awarded.

Decision delivered this 18<sup>th</sup> day of November, 2016.



H. Clare Moster  
Presiding Member



**Schedule "A"**

**Attached to and forming part of Board Order No. 03-2016**

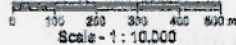
**"Demised Premises"  
LSD 5 of Section 29-8-27WPM**



Plan Showing Photo Mosaic of  
**CORVAL DALY SINCLAIR HZNTL 5-30-8-27WPM**  
from a Surface Location in  
**L.S.D.5 Sec.29 Twp.8 Rge.27 WPM**  
**SKETCH PLAN - ILLUSTRATIVE**



**WELL SITE PHOTO PLAN**



Approximate Acres - 3 Acres

Client File No.	AFE No.
REV. Revision:	
	Job No: 153084

**Schedule "B"****"Terms & Conditions"****Right of Entry Order No. 2016-03****for Well Site on LSD 5 of Section 29-8-27WPM****1. Quiet Enjoyment**

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 this Board Order without any interruption or disturbance from or by the Owner or any other persons claiming by, through or under the Owner.

**2. Term**

The Operator is hereby granted the rights of tenant to the Demised Premises for the purpose of drilling and operating one (1) horizontal well for so long as the well is not abandoned and the demised premises have not been cleaned up and rehabilitated in accordance with the provisions of the Surface Rights Act and The Oil and Gas Act, and regulations thereunder.

**3. Termination**

Should the Operator not commence the drilling of the subject well within twelve (12) months of the issuance of this Order, this Order shall terminate. Continuation of the Order may be authorized by the Board if the Operator submits a request in writing explaining why the drilling requirement has not been met and outlining the Operator's plans and commitment to have the well drilled.

**4. Default**

If the Operator defaults in the payment of any sum payable by way of rent or in the performance of any term, condition or undertaking herein contained on the part of the Operator, the rights and privileges provided the Operator under this Order shall be terminated at the expiration of forty five (45) days after written notice to that effect is given to the Operator by registered mail, unless the Operator shall have, in the meantime, remedied such default or breach of covenant, promise or undertaking, but without prejudice to any other right or remedy to which the Owner is otherwise entitled under this Order.

**5. Review of Rental Every Three Years Upon Request of Either Party**

In accordance with the provisions of Sections 29 and 31 of the Surface Rights Act, upon the request of either party to this Order, the amount of annual compensation payable in respect of the demised premises shall be subject to review any time after three (3) year period next following the date of the last determination of the compensation sought to be varied.

**6. Indemnity Against Claims and Actions**

The Operator will 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.

**7. Taxes Paid by Owner**

The Owner shall promptly pay and satisfy all taxes, rates and assessments that may be assessed or levied against the said lands during the continuance of this Order.



**8. Taxes Payable by Operator**

The Operator shall promptly pay and satisfy all taxes, rates, and assessments that may be assessed, assigned or levied in respect to any and all machinery, equipment, structures, and works, placed by the Operator in, on, over or under the Demised Premises.

**9. Compensation for Damage**

The Operator shall pay compensation for damage done by it to growing crops, fences, timber or buildings of the Owner upon the Demised Premises or said lands.

**10. Retention and Redistribution of Topsoil**

Prior to the commencement of drilling operations, the Operator shall strip the topsoil from the area around the immediate wellbore and the mud pits and retain the topsoil for redistribution over the affected areas upon restoration of the Demised Premises.

**11. Digging of Pits for Mud and Sludge**

Operator shall dig a pit or pits or have adequate metal reservoirs and deposit therein the mud and sludge resulting from the drilling operations and will not permit the same to escape into the Owner's land adjoining the Demised Premises.

**12. Destruction of Weeds**

The Operator will take all necessary precautions to keep down and destroy all noxious weeds on the Demised Premises using only commonly accepted agricultural herbicides in effecting weed control.

**13. Shallow Ditches or Approaches to Permit Owner to Cross Roadway with Farm Machinery**

Operator shall construct any roadway on the Demised Premises so as to have a low crown and gently sloping shallow ditches if requested by the Owner or an adequate number of approaches where required so that the Owner can cross the roadway with farm machinery in moving from one field in the said lands to another field which lies across the roadway.

**14. Culverts**

Operator shall construct and maintain such culverts and other structures on the demised premises as may be reasonably required to ensure the unimpeded flow of water through natural drainage courses.

**15. Power**

If power is required at the demised premises, the service lines will be installed underground. This condition may not apply if the power can be provided without the need of a power pole off of the area of the well site. Power poles are not permitted on access roads.

**16. Fencing of Well Site, Roadway and Excavations**

If requested by the Owner, during the continuance of this Order, the Operator shall erect and put upon the boundaries of the demised premises a good and substantial fence, and the Operator will, if required so by the Owner, enclose and keep enclosed all openings and excavations made in connection with or for the purpose of drilling operations, with fences sufficient to prevent livestock falling there into.

**17. Replacement and Repair of Fences, Guards and Gates**

The Operator shall replace all fences that he has removed for his purposes and repair all fences he has damaged and, if so required by the Owner, provide property livestock guards or gates at any point of

entrance on the Demised Premises used by him and, if gates are installed, shall cause the same to be closed under his use thereof.

**18. Surrender and Removal of Equipment**

The Operator may at anytime, upon thirty (30) days notice to that effect to the Owner, cease the use and occupation of the Demised Premises and in the event of the Operator so doing, this Order shall terminate at the next succeeding anniversary date thereof 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.

**19. Abandonment and Restoration**

Upon the abandonment of the well on the Demised Premises, the Operator shall abandon the well and fill in all excavations in connection therewith, all in compliance with the Acts and regulations of the Government of the Province of Manitoba in that regard, and upon the discontinuance of the use of any portion or portions of the Demised Premises, to restore such portion or portions to the same conditions, so far as it may be reasonably and practicable so to do, as that existing immediately prior to the entry thereon and the use thereof by the Operator.

**20. Assignment by the Operator**

Notwithstanding anything herein to the contrary, the Operator may delegate, assign or convey to other persons or corporations, all or any of the powers, rights and interests obtained by or conferred upon the Operator hereunder to be enjoyed by such person or corporation either singularly or jointly with the Operator, and may enter into all agreements, contract 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 operations granted by this Order.

The Operator shall notify the Owner in writing, within thirty (30) of the effective date of an assignment of this Order, as to the name, address and phone number of the party to whom the assignment has been made.

**21. Discharge of Encumbrances by Operator and Reimbursement**

The Operator shall have the option to pay or discharge any balance owing under any agreement of sale, any tax, charge, lien or encumbrance of any kind or nature whatsoever that may now or hereafter exist on or against or in any way affect the Demised Premises and in that event the Operator shall be subrogated to the rights of the holder or holders of such encumbrances and shall have, in addition thereto, the option to be reimbursed by applying to the amount so paid the rent or other sums accruing to the Owner under the terms of this Order.

**22. Manner of Payment**

All rentals and other sums payable by the Operator to the Owner hereunder may be paid or tendered at par by cheque or draft of the Operator mailed or delivered to the Owner.

**23. Notifications**

All notices or other written communications required or permitted to be given hereunder shall be in writing and may be delivered personally or, except during periods of postal disruption, by registered mail, postage prepaid, to the party to whom the notice is to be given. All such notices shall be addressed to the party to whom it is directed at the following addresses:

Owner: 178 St. George Street, Toronto, Ontario M5R 2M7

Operator: 2400, 500- 4<sup>th</sup> Avenue SW, Calgary, Alberta T2P 2V6

Any party may at any time change its address hereunder by giving written notice of such change of address to the other party in the manner specified in this clause. Any notice given hereunder by personal delivery shall be deemed to have been given and received on the day of delivery, and if given by registered mail and prior to the expiration of the the time period after which such notice is deemed to be given and received by the addressee, there exists a disruption of postal services, then such notice shall not be deemed to be given and received until the expiration of five days following the resumption of postal service.

**24. Manitoba Law to Apply**

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

**25. Additional Terms & Conditions**

Any additional terms and conditions shall be attached as Schedule "C" to this Order.

*No "Schedule C" applies to this Order.*