IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO: 212 OF 2006

BETWEEN:
(SARSTOON-TEMASH INSTITUTE FOR (INDIGENOUS MANAGEMENT (SATIIM) CLAIMANT
(
(AND
(
(FOREST DEPARTMENT (Ministry of Natural Resources and the Environment) DEFENDANT
(
(
(U.S. CAPITAL ENERGY-BELIZE LIMITED INTERESTED PARTY

Mr. Dean Barrow SC, and Mrs. Lois Young Barrow SC, with
Ms. Antoniette Moore for the Claimant
Dr. Elson Kaseke for the Defendant.
Mr. Derek Courtenay SC, for Interested Party.

AWICH, J.

29. 9. 2006 JUDGMENT

1. Notes: Judicial review; whether permission given under the National Parks System Act, to enter a national park, by an officer other than the officer mentioned in the Act, has been unlawfully given, whether a decision granting permission to enter a national park to carry out seismic surveys for petroleum prospecting was contrary to the intention in the Act, and whether the intention in the Act can be deduced from ss 2,4, and 5 only. Whether giving permission to carry out seismic surveys was also contrary to ss 20 and 21 of the Environmental Protection Act and regulation 7 of Statutory Instrument No. 107 of 1995 made under the Act, because environmental impact assessment had not been carried out.
Whether the decision granting permission was in breach of substantive legitimate expectation of SATIIM with whom government had agreement to co-manage the national park, and if so, whether overriding public interest would be justification. If the decision was unlawful on all or any one ground, whether the discretionary relief of quashing the decision and permission may be granted. Interpretation of statute, the literal meaning of words and the natural grammatical meaning of sentences and reading an Act as a whole.

2. The Complaint.

Following the grant, on 8.6.2006, of permission under R 56.2 of the Supreme Court (Civil Procedure) Rules 2005, to Sarstoon-Temash Institute for Indigenous Management, SATIIM, to file judicial review proceedings, SATIIM filed its case on 21.6.2006. SATIIM's complaint is that the Forest Department of the Government of Belize, the defendant, unlawfully, under the National Parks System Act Cap 215, the Environmental Protection Act , Cap 328, and a co-management agreement between the Government and SATIIM, gave permission to US Capital Energy Belize Ltd. to enter Sarstoon -Temash National Park, and carry out seismic surveys, part of exploration work for petroleum. US Capital Energy Belize Ltd. is a subsidiary of US Capital Energy Partners L. P.
British Virgin Islands. I shall refer to it as the Company. It has been cited as an interested party.

3. The Forest Department denies the claim. It says the permission to enter the Sarstoon- Temash National Park and carry out seismic surveys was not granted unlawfully under the National Parks System Act and the co-management agreement. It concedes in the end, that there has been a breach of the Environmental Protection Act and adds that the breach is being addressed.

4. Background:

Sarstoon - Temash National Park is an area in the south-eastern part of Belize, declared a national park in 1994, by the Minister responsible, in Statutory Instrument No. 42 of 1994, under s: 3 of the National Parks System Act. A national park is defined in s: 2 as: "any area established . for the protection and preservation of natural and scenic values of national significance for the benefit and enjoyment of the general public." The land area had been the traditional area of the Kekchi or Q'eqchi and Garifuna communities. The Q'ekchi are the original indigenous people, the Garifuna are nineeth century migrant settler community. It is said that the communities used to obtain medicinal plants, building materials and food materials from the area without restriction
before the area was declared a national park.

5. SATIIM is a body corporate incorporated on 18.11. 1999, under the Companies Act. Six people subscribed their names to its memorandum of association and founded it. Five were village representatives of the villages in the surrounding area, namely; Crique Sarco, Sunday Wood, Consejo Creek, Midway and Barranco. One was a representative of the Q'eqchi Council of Belize. The objectives for which the representatives associated themselves included among others, to co-manage the Sarstoon-Temash National Park with the Government in harmony with the vision and aspirations of the indigenous peoples of the area, to ensure the participation of the indigenous communities and to support their values, needs and priorities, to undertake conservation and development measures in regard to natural resources and ecosystems in respect to forests, sea, fisheries, marine life, flora, fauna, hydrological, archaeological historical and cultural resources, and to undertake and promote educational and scientific research activities.

6. It is not an issue that SATIIM has sufficient interest in the subject matter of the case. By an agreement dated 27.3.2003, SATIIM and the Government of Belize, represented by the Forest Department entered a "co-management agreement". Under the agreement SATIIM acquired the right to co-manage the Sarstoon-Temash National Park with the Government. They would together formulate and implement detailed management objectives and plans in which budgets, targets, priorities, personnel requirements and permitted activities in the park would be specified. SATIIM would have the responsibilty for the day to day management, while the Government would have the responsibility for security and enforcement of regulations.
SATIIM also acquired several beneficial interests such as the right to collect fees charged at the park and to retain 70%, and the right to first refusal of any concessions to operate recreational facilities, and to sell food and refreshment at the park. The agreement is for five years, but SATIIM may terminate it upon six months notice, whereas the Government may resume sole responsibility for the park by agreeing with SATIIM on a transition period not exceeding one year.

7. When the complaint, the subject of this case arose, SATIIM was managing the Sarstoon -Temash National Park in accordance with the co-management agreement. One of its successes had been to get the park designated for inclusion on an international list of "Wetlands of International Importance" under the Convention on Wetlands of International Importance, 2.2.1971, Ramsa Iran. The designation was accepted and Sarstoon-Temash National Park was included on the list of Wetlands of International Importance Especially as Waterfowl Habitat.

8. US Capital Energy Belize Ltd, was afforded opportunity to be heard in court at permission stage and at the judicial review hearing. It supported the case for the defendant. When SATIIM filed the application for permission to file this judicial review case the Company had already started expending money for the seismic surveys, and it had entered a contract with another company to carry out seismic surveys. The Company would like to see this case concluded speedily so as to avoid losses.

9. The Facts

An outline of the material facts upon which SATIIM's case is based is as follows. On 14.11.2005, SATIIM learnt that US Capital Energy Belize Ltd. might have entered a contract with the Government that would allow the Company to carry out exploration for oil work in a contract area that included the Sarstoon-Temash National Park, and that the Company had requested to be issued with a permit to enter the park to carry out seismic surveys. In December 2005, SATIIM wrote to the Forest Department objecting very strongly on the grounds that: SATIIM did not take part in the agreement and in any decision to grant permit to the Company to enter the park, seismic surveys in the park would be contrary to the co-management agreement, and that allowing seismic surveys for oil exploration would be unlawful under the National Parks System Act, the Petroleum Act and the Environmental Protection Act, and would be scientifically destructive to ecosystems in the park.
Following the letter, SATIIM met in January 2006, with an official of the Department and a representative of the Company and discussed the matter. On

16.2.2006, SATIIM wrote to the Department expressing, among other views, its fear about the "change to ecological character of the Park", that oil exploration in the park would cause.

10. Despite that letter and the opposition by SATIIM, a memorandum dated
7.4.2006, issued. The subject therein was stated in the heading as: "PERMISSION TO ACQUIRE SEISMIC DATA WITHIN NATIONAL PARK, PERMISSION GRANTED UNDER SECTION 6 OF THE NATIONAL PARKS SYSTEM ACT ." The memorandum stated: " The Chief Forest Officer hereby gives to US Capital Energy Belize Ltd.. permission "to enter upon the Sarstoon - Temash National Park for the purpose of acquiring seismic data referred to as conducting seismic surveys". It was signed by Mr. Wilber Sabido, Chief Forest Officer, for the Department, and Mr. Alister King for the Company. On
12.4.2006, the Department wrote a letter addressed to Mr. Gregorio Choc, Managing Director of SATIIM, informing SATIIM that the Department had "taken a decision to issue a permit to U. S. Capital Energy - Belize Ltd. to conduct seismic testing in the Sarstoon - Temash National Park by virtue of S: 6 of the National Parks System Act". The letter was exhibited, a permit was not.
In presenting SATIIM's case both learned senior counsel for SATIIM treated the memorandum of 7.4.2006, and on occasions, the letter of 12.4.2006, as the "permit" that they say was also unlawfully issued. Learned counsel for the Department seemed to acquiesce to that. By a letter dated 27.4.2006, the Company informed the Chief Forest Officer that "seismic program had officially started on the 24.4.2006". By a letter dated 9.5.2006, attorneys for SATIIM gave notice to the Company that it would apply to the Supreme Court for judicial review of the decision granting permission to the Company to enter the park.

11. The above facts on which SATIIM complains stem from an agreement styled; "Production Sharing Agreement", made on 22.1.2001, between the Government of Belize of the one part and US Capital Energy Belize Ltd., of the other part. By article 2.1 of the agreement, the Government granted to the Company exclusive right to conduct petroleum operations within "a contract area" known as Block 19, measuring 759,678 acres or 12 square miles. It extends from the border with Guatemala to the Atlantic Ocean.
Sarstoon-Temash National Park is only a small part of that, measuring about 42,000 acres. It is, however, considered a very important part of the contract area. According to the president of the Company, identification had been made, "of a particularly interesting structure lying within the park which evinced gravity highs, magnetic highs, and anti-cline and some surface oil, which rendered this area the most promising within the contract area". SATIIM's case is about the smaller park area only, so there is no inhibition to the Company proceeding with exploration work in the rest of Block 19, assuming the Company has generally complied with the laws of Belize.

12. The Department and the Company do not contest these facts, they contest the points of law advanced on behalf of SATIIM in impugning the administrative decision and action by the Department.

13. SATIIM's grounds for judicial review are as follows. 1. The Chief Forest Officer had no authority to grant permission and permit to anyone to enter the park. The person authorised to issue permit to

enter a national park is, "the Minister" responsible or "the administrator". The administrator is appointed by the Public Service Commission as provided b y s: 10 of the National Parks system Act. SATIIM says, the permission and the permit in this case were issued by the Chief Forest Officer, not by an administrator, so they were issued unlawfully. Sections 5, 6, 7 and 10 of the National Parks System Act were cited in support. 2. "The Forest Department did not have power to make the decision and issue the permit as evidenced by the permission or agreement document - GC16 and the letter of 12th April 2006, the decision is ultra vires section 5(2) of the National Parks System Act." 3. "[B]y regulation 7 of the Environmental Protection Regulations, seismic testing is an aspect of oil exploration and requires an environmental impact assessment, the decision . and the intention expressed by US Capital Energy Belize Ltd. in a letter of 27th April, 2006, of the Company to begin seismic testing are in violation of regulation 7, and [are] unlawful". 4. "It was the legitimate expectation of SATIIM that the defendant would make decisions concerning the Sarstoon-Temash National Park in accordance with the commitments and objectives of the co- management agreement." .

14. I have to mention at the outset that there has been no claim made to any proprietary right or easement right or usufract right based on the iniginous status of the local communities as was made in the Australian case, Mabo and Others v Queensland (No.2) [1993] 1LRC 194, on behalf of the indiginous Meriam people and in two other Australian cases, 1. The Wik Peoples v State of Queensland and others and 2.) The Thayorre People v State of Queensland and Others [1997] 3LRC 513, in which joint judgment was given. The claims were made on behalf of the indiginous Wik and Thayorre peoples.

15. The fifth ground that the decision was unreasonable and irrational has been denied to SATIIM by the court at permission stage and full reason has been given. The decision to give permission to enter the park for the purpose of oil exploration was not unreasonable in the sense of the Associated Provincial Picture Houses Ltd. v Wednesburey Corporation [1984] 1KB 223,case. The Government was entitled to take a decision such as that authorising seismic surveys which could provide the Government with facts as to whether it would in the end opt for oil exploitation in the area and abandon the "protection and preservation of natural and scenic values of national significance for the benefit and enjoyment of the general public". That will be a decision that will entail choice between competing economic and social merits, a political choice, an area about which the Government is entitled to make a decision. Court is not the proper arbiter in such a matter. From the affidavits filed the choices have divided the local people probably evenly. Some preferred the benefit from the national park, and others preferred the benefit that may accrue from extraction of oil from the area.

16. The grounds that the decision to give permission and issue permit was unreasonable and irrational because, it breached statutory laws, and breached the co-management agreement, have already been raised as parts of grounds 1 and 2 about breaches of statutory law and the co-management agreement, there was no need to repeat them under the grounds of unreasonableness and irrationality.

17. The Department's answers to SATIIM's grounds were that: 1. the decision to give permission and to issue a permit was not unlawful under any provision of the National Parks System Act; and 2. the decision and the issuance of permit were not unlawful under the co-management agreement. The third answer has fallen by the wayside. At the permission stage learned counsel Dr. Kaseke for the Department, submitted that the decision and issuance of permit were not unlawful under the Environmental Protection Act, because the method to be used in the seismic surveys outlined in an affidavit by an expert, would not cause any environmental damage. Learned counsel has since changed his mind. He rightly and responsibly concedes that: " oil exploration activities which include seismic surveys require environmental impact assessment." An affidavit by Mr. Martin Alegria, Chief Environmental Officer, has been filed to inform the court that the Company has since "applied. for approval to do environmental impact assessment.", and that the terms of the assessment have been approved. Counsel submits that in the present circumstances, namely, that the project is of significant economic value to the country and that the Company has already spent over $1.5 million, the court may exercise its discretion to decline to make an order quashing the decision giving permission and to decline to quash the permit to enter the park, despite the omission to comply with S; 20 of the Environmental Protection Act.

18. The Company adopted for its case, the grounds and submissions made for the Department, and made further submissions in respect to relief in the event the court found that the permission was given contrary to law. The Company submits that the court may exercise discretion not to quash the permission and the permit because it will cause great loss to the Company; more than $1.5 million, has already been spent by the Company.
It says it did nothing wrong. It had asked the Forest Department about having environmental impact assessment carried out, the Department advised that it was not necessary for the seismic surveys intended. About the co-management agreement, the Company submits that it has not been made statutory and should not be allowed to affect rights of others who may enter other contracts with the Government.

19. Determination:

(Sections 20 and 21 of the Environmental Protection Act and regulation 7 of the Regulations, S.I. No. 107 of 1995).

Notwithstanding the admission by counsel that environmental impact assessment was necessary and had not been carried out, I need to make it clear that S: 20(1) of the Environmental Protection Act, requires that "any person intending to undertake any project . which may significantly affect the environment shall cause an environmental impact assessment to be carried out by a suitably qualified person, and shall submit [it] to the Department for evaluation and recommendations". The Act goes on to provide that the assessment is to be evaluated, recommended and approved before the project is undertaken - see subsection (7). Under S: 21, projects, programmes and activities may be prescribed by the Minister by Statutory Instrument, for which environmental impact assessment must be carried out. By Statutory Instrument No. 107 of 1995, "petroleum projects" were prescribed for which environmental impact assessments are required. "Oil exploration project" was specifically prescribed under the general heading

petroleum projects. The other two are "oil production" and "oil refining". So there is no opportunity for exercising discretion as to whether oil exploration significantly affects the environment, it is deemed by law to significantly affect the environment. It is a fact that the seismic surveys for which permission was given and were started on 24.4.2006, were part of oil exploration project. No environmental impact assessment had been carried out in respect to the surveys. The permission given for and the commencement of the seismic surveys were in breach of ss: 20 and 21 of the Environmental Protection Act, and are unlawful.

20. (Was a permit issued?).

There is another point which I need to deal with at this early stage. I have to decide straight away whether a permit was ever issued. I start by pointing out that although the two parts of the first ground were about, whether permission to enter the national park has been given unlawfully or not, and whether a permit has been issued unlawfully or not, only the permission, which is in the memorandum dated 7.4.2006, was produced, the permit was not. It was stated in the permission that it was given under s: 6 of the National Parks System Act.
There has been no evidence to show that a permit has been issued. I make a finding of fact that no permit has been issued. The challenge to the issuance of a permit was mistaken.

21. As a matter of law, issuing a permit is the subject of s:5 or s:7 of the Act, not the subject of s: 6 under which the Chief Forest Officer stated that permission was given. Under s: 5 a permit may be issued by "a prescribed officer". Under s: 7, it may be issued at the discretion of the Minister to bona fide organizations, scientists and other professionals or specialists.". It is not part of SATIIM's case that the Chief Forest Officer is not a prescribed officer, the officer given power under s: 5, or that the Chief Forest Officer acted under s: 6 on behalf of the Minister exercising his power under s: 7 and issued a permit. It is SATIIM's case that the Chief Forest Officer acted in place of the administrator, though unlawfully, when he gave permission that he said was given under s:
6.
So according to the claim and the facts, issuing of a permit under s: 5 or s: 7 is really not part of this case. As far as the first ground is concerned SATIIM's case is reduced to the claim that the Chief Forest Officer, acting unlawfully in place of the administrator, gave permission, not a permit, under s: 6 of the National Parks System Act.

22 I have to emphasize that the permission given in the memorandum dated,
7.4.2006, was stated in the heading of the memorandum and in the letter of
12.4.2006 to SATIIM, to have been given under s: 6 of the National Parks System Act. Section 6 requires that either, the Minister acting under s:
7 issues permit for the activities at s: 6(a) to (m) and for the purposes stated in s: 7, or a "written authorization of the administrator", not a permit, be obtained.

It is in s: 5 that a permit issued by a prescribed officer who could be the administrator if prescribed, is required. But the evidence here is that the document was issued under s: 6. Note also that the permit in s: 5 allows entry to a park only for the purpose of enabling the permit holder to study or observe the fauna or flora.
Those are rather passive acts which do not include physical contact with the fauna and flora, whereas the activities in s: 6 do include physical contacts and even some destruction of fauna and flora and digging the land. So giving permission which is a "written authorisation "under s: 6 for seismic surveys would be appropriate and was clearly intended by the Department because vegetation would be cut for preparing trails, and the ground would be drilled, for carrying out seismic surveys. A permit under s: 5 would not authorize those activities. For convenience of reference, the relevant parts of s: 5 are as follows:
"5(1). No person shall enter or remain within any national park except under the authority and in accordance with the conditions of a permit issued by the prescribed officer on payment of the prescribed fee.
5(2). A permit under subsection (1) shall be issued only for the purpose of enabling the permit holder to study or observe the fauna and flora in a national".
23 Let me remind myself at this point, that the issues in the first two grounds and the submissions about them are connected. The first issue is whether or not the Chief Forest Officer, could lawfully, in place of the administrator, issue written authorization (in this case, the memorandum of permission dated 7.4.2006) under S: 6. The second issue is whether any power to issue permit or authorization under the Act must not detract from the intention in the Act which intention is said to be the protection and preservation of the character of a national park. My determinations follow in the sequence of the grounds set out above.

24 (The Administrator).

The submission that the administrator and the Minister are the only persons authorized to issue permission under S: 6 is based directly on the actual mention in the section, of the administrator and of the Minister in reference to S: 7 which gives the Minister alone a discretionary power:
The two sections and s: 8 state:

"6. No person shall, within any national park, nature reserve, wildlife sanctuary or natural monument, except as provided under section 7, or with the written authorisation of the Administrator-

(a) permanently or temporarily reside in or build any structure of whatever nature whether as a shelter or otherwise;

(b) damage, destroy or remove from its place therein any species of flora;

(c) hunt and species of wildlife;

(d) remove any antiquity, cave formation, coral or other object of cultural or natural value;

(e) quarry, dig or construct roads or trails;

(f) deface or destroy any natural or cultural features or any signs and facilities provided for public use and enjoyment;

(g) introduce organic or chemical pollutants into any water;

(h) clear land for cultivation;

(i) graze domestic livestock;

(j) carry firearms, spears, traps or other means for hunting or fishing;

(k) introduce exotic species of flora and fauna;

(l) catch fish by any means whatsoever;

(m) do any other act which may be prohibited by any Order made by the Minister from time to time.

7-(1) The Minister may at his discretion issue permits to bona fide organizations and scientists and other qualified professionals or specialists for cave exploration, collection of specimen of particular species of flora and fauna, group education activities, archaeological or phalaeontological exploration, scientific research and related activities.
All such permits shall require that copies of all data and findings from any of these activities, or any papers based on them, shall be provided to the Minister.

(2) The Minister may at his discretion, and subject to such conditions as he may think desirable to attach thereto, issue permits for fishing in any national park, wildlife sanctuary or natural monument where such activity will not destroy or seriously detract from those values that were the principal reason for establishment of the unit.

8-(1) The Minister may from time to time make rules for the proper conduct and good management of any national park, nature reserve, wildlife sanctuary or natural monument or of the entire National Parks System and make rules which, inter alia -
."

25 It appears to me that the Department did not get the Minister to give the permission because the Department realised that the power of the Minister under s: 6 is in reference to his power under s: 7 and is limited to the people and purposes therein. The Minister would give permission only to: "bona fide organizations, scientists and other professionals.,"
and for instance, for the activity at s: 6(e), namely, to quarry dig or construct roads or trails, and only for the collection of specimen, cave exploration and group education activities. On the other hand, the administrator's power under s: 6 is not limited in respect to categories of those he gives written authorization to, it is limited only in respect to the activities for which he gives the authorization, namely, the activities in s: 6(a) to (m). Conducting seismic surveys fits within the activities at 6(b), (e), (f) and (m). Of course, wider

powers of the Minister are provided for in other sections of the Act. He may even declare, by Statutory Instrument, that an area shall cease to be a national park - see s: 3(2) of the Act.

26 Counsel for SATIIM submit that where a provision in an Act assigns a power or function to a particular official, only that official can exercise that power or carry out that function. No authority was cited in support. The point of law in the submission by counsel has been described in some cases as a maxim, and there has been warning that it must be applied to statutes with caution because the omission to mention other persons or things which appear to be excluded may arise from inadvertence or accident or because it never occurred at drafting that they needed specific mention - see Colquhoun v. Brooks (1889) 14 App. Cas.
493 H.L. and also Prescold (Central) Ltd. v. Minister of Labour [1969]
1WLR 1337.

27. My search in the Interpretation Act, Cap 1, of Laws of Belize, for an answer to the submission, did not yield any direct answer. The nearest provision I located was S: 31(2) which states:

"31.(2) where an Act confers a power or imposes a duty on the holder of an office as holder, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office".

The section helps to clarify that someone acting in a post has the power or duty of the substantive holder of the post. It does not, in my view, clarify the question as to whether some other office holder, especially the supervisor of the office holder or one more senior in rank, may exercise the power or carry out the duty in place of the holder of the office.

28. I think there has been an omission in s: 6; it was not envisaged at legislating or drafting that the post of an administrator may one time for good reason such as cost saving reason, not be established. Had it been envisaged, the legislators might have specified who else would give written authorization under s: 6.
That is of no help now. The court must supply the answer to the issue in s: 6 as it reads today. The court in our system, the Common Law system, does not have the convenience of entering non liquet for a judgment.

29. Generally, in my view, the submission by counsel for SATIIM is correct in respect to constitutional offices such as the offices of: the Governor General, the Prime Minister, the Chief Justice, the Leader of Opposition, Judges, the Attorney General, Cabinet Ministers, Solicitor General, Ombudsman, the Director of Public Prosecutions, the Commissioner of Police, Auditor General and others. The submission is also correct in respect to positions to which holders are elected. The submission may be correct to some extent in respect to posts held by professionals or for which the holder must obtain special skill.

30. According to s: 10 of the National Parks System Act, an administrator "may" be appointed by the Public Service Commission, for each national park, nature reserve, wildlife sanctuary and natural

monument. It is said that there are 84 of them country-wide, and that no administrator has been appointed for any of them because the management of each has been entrusted to the local community.
For the Sarstoon-Temash National park, the co-management agreement gives the day to day management to SATIIM, and permission to retain 70% of fees collected. It may well be that because of these provisions in the agreement, the Department saw no need to have an administrator appointed for the Sarstoon-
Temash National Park. I think it was necessary to have an administrator appointed by the Public Service Commission, and if necessary, have financial arrangement in the agreement that compensates for his or her salary. The post has been provided for by law and given powers and duties. The only way out would be to amend s: 6 so as to accommodate the policy of the Executive to assign management of national parks, wildlife sanctuary, nature reserve and natural monument to local communities.

31. So I may now again pose the issue about no mention of the Chief Forest Officer in s: 6 in a simplified question form. Could the Chief Forest Officer lawfully, in place of the administrator for the Sarstoon-Temash National Park, issue written authorization under s: 6 for a person to carry out seismic surveys in the park, if an administrator had not been appointed?

32. I have considered that detailed job description for the post of the administrator of
the park has not been given in the Act. I have also considered that no facts on which the administrator may base his decision have been given in the Act so that it may be concluded that those facts would or would not came to the knowledge or information of the Chief Forest Officer. I have also considered that no special skills have been prescribed as requirements for the post of the administrator so that it may be said that the administrator exercises special skills which the Chief Forest Officer does not have, when the administrator considers whether or not to give written authorization under s: 6 . Further, I have considered that the administrator is ultimately answerable to the Chief Forest Officer, and that the latter is charged under s: 10 of the Act with the overall responsibility for the administration of the Act. The section states:

"10(2) The Chief Forest Officer shall be responsible for the administration of the Act".

33 All those factors I have considered lead me to the conclusion that the Chief Forest Officer may lawfully, in place of the administrator, issue written authorization under s: 6 of the National Parks System Act for a person to enter and carry out, in a national park, any one of the activities set out in the section.
There is affidavit evidence that seismic surveys activities include cutting some flora to open up trails, an activity at subsection 6(b), and digging and constructing trails, an activity at subsection 6(e). For those activities, the restricted discretion of the Minister or a written authorization of the administrator is required. It is my conclusion that the memorandum dated 7.4.2006, signed by the Chief Forest Officer, giving permission to US Capital Energy Belize Ltd. was a lawful written authorization given under s: 6. of the National Parks System Act.

34. (Limitation as to purpose for entering the park and ultra vires).

Counsel for SATIIM made a long and detailed submission about the permission in the memorandum dated 7.4.2006, authorising the activities in s: 6 (a) to (m) which activities they say detract from the nature of a national park and therefore are ultra vires the Act. Put another way, the submission was that any permission, authorization or permit for entering a national park by whoever it may be given, must be given for a purpose not inconsistent with the protection and preservation of "natural and scenic values", the purpose of entering must not detract from the purpose for which an area is declared a national park. I have already excluded permit from consideration.

35. Counsel for SATIIM rely on what they described as the "scheme of the Act", that is, the scheme of the National Parks System Act. They point out that the definition of a national park in s: 2 is: "any area established as a national park .
for the protection and preservation of natural and scenic values of national significance for the benefit and enjoyment of the public".
They argue that if it is considered that it is in the national interest to carry out seismic surveys for petroleum exploration, then the Minister should first declare under s:
3(2) that the whole or part of the Sarstoon-Temash National Park shall cease to be a national park.

36. The latter argument is surprising because the objectives of the case had been portrayed as the protection of the environment and the protection and preservation of ecosystems in the Sarstoon- Temash National Park. It may well be that the desire to have local communities resume obtaining medicinal, building and food materials from the area of the park has been shifted to the fore in the course of submissions. I note however, that the shift in emphasis did not let in by the back door, any claim to indiginous right to the land or any easement or usufract. Counsel for the Department at one point mentioned that the land area belonged to the state. There has been no challenge to that. My determinations are made on the assumption, not proof, that the Government owns the land in the area. If it was desired to pursue a claim to right to the land, the claim should have been clearly made a ground in the claim form.

37. Counsel further support their submission by pointing out that s: 4 is in the general scheme of the Act, it prohibits entry to a national park except for:
observing the fauna and flora, and for education, research and recreation.
They furthermore, point out that s: 5 also supports their submission about the scheme of the Act because the section permits entry only upon a permit having been issued, "for the purpose of enabling the permit holder to study or observe the fauna or flora in the national park".
The relevant parts of the two sections are as follows:

"4. Save as hereinafter provided-
(a) no person shall be entitled to enter any national park except for the purpose of observing the fauna and flora therein and for the purpose of education, recreation and scientific research.

(b) . . .
(c) no animal shall be hunted, killed or taken and no plant shall be damaged, collected or destroyed in a national park or nature reserve;

5-(1) No person shall enter or remain within any national park except under the authority and in accordance with the conditions of a permit issued by the prescribed officer on payment of the prescribed fee.

(2) A permit under subsection (1) shall be issued only for the purpose of enabling the permit holder to study or observe the fauna and flora in national park".

38. So following from the above submissions, counsel for SATIIM submit that the purposes for the written authorization by the administrator in s: 6 (now the memorandum dated 7.4.2006, by the Chief Forest Officer) are unlawful purposes because they detract from the purpose for which a national park is established, and are inconsistent with the provisions in ss: 4 and 5. The particular purposes that this case is concerned with and which counsel say detract from the purpose of a national park are in s: 6(b) and 6(e), namely, damaging, destroying or removing from its place any species of fauna and flora, and quarrying, digging or constructing trails. They are part of the process of seismic surveys in oil exploration.

39. Counsel did not relate their phrase, the scheme of the Act, to any known canons of interpretation of statute or to any usual interpretation terminology. Literally, the expression, scheme of the Act, means the plan or planning of the Act. So when counsel submit that ss: 2, 4, and 5 together provide for the character of a national park and for prohibitions of activities that are contrary to the protection and preservation of the character of a national park, they in effect, urge the court to infer from the planning of the Act, the motive or policy for the enactment.

40. It certainly helps when interpreting an Act for court to take note of the motive or policy for an Act, but court must remain conscious of the fact that motive or policy is based on the social or economic merit for the proposed Act, which merit is a political question and is not the concern of the court. A reminder is in the words of Lord Wilberforce, in the House of Lords in, Bramley LBC v Greater London Council [1983] 1 AC 768. At page 820 he said: "It cannot be too emphatically stated that your Lordships . . . are not concerned with the wisdom or indeed the fairness of the Greater London Council's decision to reduce by 25 percent the fares charged in Greater London by the London Transport Executive which made it necessary to issue the supplementary precept. . . All that your Lordships are concerned with is the legality of that decision: was it within the limited powers that Parliament has conferred by statute upon the Greater London Council?"
Bramley LBC was a judicial review case about an increase of local council rates so as to reduce bus and train fares by 25 percent pursuant to a promise in an election manifesto. It was held that the increase in the precept was ultra vires.

41. There is another aspect of the phrase, the scheme of the Act. On occasions counsel used the phrase to approximate to the intention of the Act. They say that the scheme of the Act authorises the creation,

protection and preservation of a national park. That submission urges on the court that the intention in the Act is that once an area is declared a national park, it must be protected and preserved exclusively as a national park regardless. My assessment of the intention in the Act is that it includes the creation, protection and preservation of a national park and that certain activities may be authorised notwithstanding that they may not be for the purposes of protecting and preserving the character of a national park. I obtain that from the literal meanings of the words and the natural and grammatical meaning of the provision in s: 2, which describe the nature of a national park, and from the literal meanings of the words, and the natural and grammatical meanings of the provisions in ss: 4,5,6 and 7, which describe activities which may be specifically authorised in a national park.

42. If by inviting the court to look at the scheme of the Act counsel meant to invite the court to look at the Act as a whole and the words in context in order to arrive at the intention of Parliament as expressed in the Act, then I accept the submission as correct. That rule which was confirmed in the case of River Wear Commissioners v. Adamson (1877) 2 App. Cas. 743, as the golden rule of interpretation, still holds good. In the case, s: 74 of the Harbours, Docks and Piers Act 1847 (UK) provided that: "The owner of every vessel . . . shall be answerable to undertakers for any damage done by such vessel . . . or by any person employed about the same, to the harbour, dock or pier or the quays connected therewith . . ." Another section exempted the owner from liability when an independent licensed pilot was in charge of the vessel. There was no mention of liability for damage caused by storms. Severe storms caused the respondent's vessel to be abandoned. It was swept to a dock belonging to the appellant and damaged the dock. The trial court held the owner, the respondent, liable for the damage, on the ground that s: 74 of the Act did not exclude liability arising from storms. On appeal to the Court of Appeal and on further appeal to the House of Lords, it was held that the true meaning of the enactment was that where damage was occasioned by storms when the crew had been compelled to leave and had no control of the vessel, the owners were not liable. That was largely deduced from the provision in the section that exempted the owner from liability when an independent pilot was in control of the vessel. It was clarified in the judgment that control of the vessel was necessary for liability to arise, although s: 74 that imposed liability on the owner of a vessel did not state so. It was also held that the intention in the Act was to clarify procedure, given the history, by clarifying who was liable to dock owners, and not to create a new scope of liability in addition to liabilities that existed under the Common Law.

43 Counsel for SATIIM do not claim that the literal meaning of any of the words in ss: 6 and 7 is ambiguous or that the natural and grammatical meanings of the provisions in the sections are uncertain so the court may declare the real meaning of such words and the provisions in the sections. Counsel simply urge the court to abandon the literal meanings of the words used and the natural and grammatical meanings of the provisions in subsection
6(a) to (m), particularly in subsections 6 (b) and (e) which authorise digging, quarrying and constructing trails in a national park. They say that is necessary because the activities therein are inconsistent with the intention in the Act which is the creation, protection and

preservation of a national park so as to maintain the character of a national park.

44 The submission is wrong in law. Where the literal meaning of a word is plain, court is obliged to take that meaning as expressing the intention in the enactment-see Applin v Race Relations Board [1975] 2 All E.R. 73 H.L. and also ACT Construction Ltd. v Customs and Excise Commissioners [1982] 1All ER 84 or [1981] 1WLR 1542 H.L. It is my view that in addition to declaring its intention to create, protect and preserve a national park, Parliament intended by the express words used, to authorise the activities in subsections 6(a) to (m), although some of the activities are not consistent with the protection and preservation of the character of a national park. I see no absurdity or inconvenience in Parliament creating subsections 6(a) to (m) as exceptions to the main intention of creating, protecting and preserving national parks and their character, so that the court may give meanings other than the literal meanings of words and the natural and grammatical meanings of the provisions in the subsections.

45 The ground that the Department did not have power to make the decision, "as evidenced by the permission or agreement document G.C.16, the decision is ultra vires s: 5(2)", is in my view, based on an erroneous view of what ultra vires is. A section in an Act cannot be regarded as ultra vires another section in the same Act unless the section is made subject to that other section. If there is an apparent inconsistency between two provisions of the same Act, the court has first to resolve whether the inconsistency is real taking the statute as a whole. If the inconsistency is real, that is, there is irreconcilable inconsistency between the two provisions, the court must decide which one is the leading provision, and which one must give way --see Institute of Patent Agents v Lockwood [1894] AC 347 HL, and also Laker Airways Ltd. v Department of Trade [1977] 2 ALL ER 182. Reading the Act as a whole, I see no real inconsistency between ss:2 and 5 on the one hand, and ss: 6 and 7 on the other hand. Sections 6 and 7 state exceptions to the general intention of protecting and preserving national parks, in clear words and grammatical expressions.

46. It is my determination that the intention in the National Parks System Act is to empower the Minister to establish national parks in any area of Belize.
"for the protection and preservation of natural and scenic values of national significance for the enjoyment of the general public", and it is the intention in the provisions in ss: 6 and 7 to allow the activities therein to take place within a national park, notwithstanding.

47. The two sections, 6 and 7, are not inconsistent with the intention of the Act, they are part of the intention. They are not ultra vires any other section of the Act.
The permission given by the Chief Forest Officer in the memorandum dated
7.4.2006, under s: 6 is not ultra vires the Act. In this case, it makes good sense if the Minister was considering declaring the Sarstoon-Temash National Park to cease to be a national park so that petroleum may be extracted from the area, that the Minister would start by gathering data on which to base his decision. A good administrative decision is usually based on reliable information.

48. (Substantive Legitimate expectation).

The co-management agreement of 27.3.2003, between the Government and SATIIM is a common fact between the parties. The ground that by the co-
management agreement SATIIM acquired substantive legitimate expectation has been proved. Counsel submit that the legitimate expectation was that "STNP would continue to be managed with the objective of conserving its biodiversity."
On the facts, I see a wider substantive legitimate expectation. By the co-
management agreement or promise, SATIIM and through it, the local communities also acquired financial interest in the management of the Sarstoon
- Temash National Park, and some sense of ownership, though not legal interest, in the national park. Substantive legitimate expectation accrued out of the interests. The first question to be determined is whether by giving permission to the Company to carry out seismic surveys in the park the Government has reneged on its promise in the co-management agreement and has harmed SATIIM's financial and priprietary interests described above, and therefore acted unlawfully against both the procedural and substantive legitimate expectation of SATIIM.

49. The answer to that first question is that the co-management agreement has not been cancelled, SATIIM still runs the park in accordance with the agreement. Its financial and proprietary interests have not been harmed, nor have its management objectives, including "the expectation that the [park] would continue to be managed with the objective of conserving its biodiversity", been harmed yet. Obviously SATIIM, not unreasonably, sees the exploration for oil embarked upon as a threat to its financial and proprietary interests in the national park. It is reasonable for SATIIM to suppose that in the event the result of the exploration confirms that there is oil in the park in exploitable quantity, the Government will declare the Sarstoon- Temash National Park or part of it to cease to be a national park. SATIIM would then lose its financial, proprietary and community interests which include employment of people from the local communities. It would be in that event that SATIIM's substantive legitimate expectation would be harmed. For now the Government has authorised only seismic surveys and there has been no evidence that SATIIM's legitimate expectation has been affected or will be affected by the carrying out of seismic surveys. The complaint that there has been infringment of the substantive legitimate expectation of SATIIM has been made prematurely. For that reason, SATIIM's case on the ground of breach of substantive legitimate expectation fails. The question of procedural legitimate expectation does not then arise.

50. Had I decided that the Government reneged and harmed or was about to harm the substantive legitimate expectation of SATIIM, my final determination would not necessarily have been different. Procedurally, the Government would not have been found to have acted unlawfully in regard to procedural fairness.
Evidence abounds of consultations and discussions between the Government and SATIIM, and even with the Company. SATIIM was given the necessary facts and it put forward its views, although in the end the

Government decided to proceed with petroleum exploration. The right to a fair hearing accruing from an established procedural legitimate expectation does not require that the complainant's view must necessarily be accepted by the decider- see Council of Civil Service Unions v. The Minister for the Civil Service [1985] A.C. 375.

51. Secondly, The co-management agreement which is a manifestation of a government policy, cannot create any legitimate expectation that precludes the right of the government to change its policy if public interest warrants.
Examples are in: R v. Secretary of State for the Home Department ex parte Ruddock [1987] 1 WLR 1982, and Re Finlay [1985] A.C. 318. In the latter case the Minister (in the UK) responsible for prisons changed his policy as to the guidelines for parol of prisoners as the result of public outcry. It was held that the Minister was entitled to change his policy despite the expectation of the prisoner that he would be considered for parol based on the old guidelines. In this case, I would have to consider whether the expected revenue from petroleum and the resulting national development would be sufficient public interest to warrant change of policy. Of course a change in policy would not ignore the usual rules as to fair procedure.

52. The general rule about the power of the Executive in regard to executive policy and executive discretion is that the Executive, the Government, cannot enter an agreement that fetters it from exercising executive or governmental powers. In this case, the Government could not, by the co-management agreement, surrender its discretion as to formulating national development policy or its discretion under s. 3(2) to declare an area or part of it to cease to be a national park, a power obviously given in recognition that government policies and priorities may change. The Government has not exercised the latter discretion in respect to the Sarstoon Temash National Park, but the power and discretion must be left available. Moreover, even if I were to accept that the legitimate expectation that accrued was the limited one that the Sarstoon-Temash National Park "would continue to be managed with the objective of conserving its biodiversity," the rights of SATIIM under the co-management agreement are expressly subject to termination by the Government by resumption of control over a one year transition period. So even that legitimate expectation could be lawfully terminated under the agreement should the Government deem it necessary in the public interest. For now the Government has only authorised the collection of data and has not changed the management policy and objectives, the complaint would still be premature.

53. I have already mentioned that had I determined that the Government has ended or is about to end the substantive legitimate expectation of SATIIM, which accrued from the financial and proprietary interests acquired from the co-management agreement, I would have to consider whether the public benefit resulting from the authorized oil exploration and the possible subsequent developmental benefit from extraction of oil would be regarded as warranting change in policy. Such a merited public interest is referred to as an overriding interest. It entitles the Government to change its policy and terminate the co-management agreement lawfully, of course, taking into account the rule as to fairness. Two cases that illustrate how overriding interests operate are R v North and East Devon Health

Authority, ex parte Coughlan (Secretary of State for Health and Another intervening) [2001 QB 213 Or [1989] 2C CLR 27, and R v Secretary of State for the Home Department, ex parte Ruddock [1987] 1 WLR 1482. My determination as regards the ground of violation of legitimate expectation is that it fails.

54. (The Ramsar Convention 2.2(1971).

The Ramsar Convention on Wetlands, Ramsa, Iran, 2.2.1971, is no doubt a very important convention aimed at protecting wetlands which some might ordinarily have dismissed as waste marshlands or swamps. The convention recognizes that "wetlands constitute a resource of great economic, cultural, scientific and recreational values", recognizes " the fundamental ecological functions of wetlands as regulators of water regime and as habitats supporting a characteristic fauna and flora, especially waterfowls", and recognizes "
the interdependence of man and his environment". The convention is a commitment by member countries to protect and preserve wetlands within their territories so as to secure the values recognizsed. I do not, however, consider that the Ramsar Convention on Wetlands, has any bearing on this case. Article 2.3 of the Convention provides: "The inclusion of a wetland in the list does not prejudice the exclusive sovereign rights of the contracting party in whose territory the wetland is situated." And article 2.5 provides for addition, reduction or even deletion of a designated wetland from the list. The wetlands areas of the Sarstoon- Temash National Park designated and included on the list of International Wetlands under the convention could be reduced or the entire wetlands area could be removed from the list under the convention lawfully. I fully reconise though that the social and economic decision to be made as to whether to carry out an economic development project in an area of important environmental value is always a difficult one. An example is in the Australian case, Commonwealth v Tasmania (1983) 158 CLR 1, the Tasmania Dam case.

55. I accept the general merit of the submission by learned senior counsel Mr. Derek Courtenay, that the co-mangement agreement is not an Act of Parliament and does not have statutory effect in regard to a subsequent agreement between the Government and the Company. However, I understood the point urged by counsel for SATIIM to be that the Government must act lawfully in regard to its commitment under the co-management agreement, whatever its commitment may be with the Company. I think counsel for SATIIM is right in that. It is possible for the Government to act lawfully in regard to the co-management agreement and still be able to enter contract with others including the Company lawfully.

56. (The Question of Relief).

Of the four grounds of SATIIM's claim, only one has succeeded, namely, that the permission to enter the Sarstoon-Temash National Park was given and preparatory work was started without an environmental impact assessment of the project having been carried out, recommended and approved by the Department of the Environment. That was contrary to ss:
20 and 21 of the Environment Protection Act. The relief sought is that the court may quash the decision and the permission. The permission is

of course in the memorandum dated 7.4.2006. The letter dated 12.4.2006, was merely a means of conveying the information.

57. Counsel for SATIIM have cited several cases in support of their prayer for relief. I do not think it is right for a court when exercising discretionary power to adhere strictly to precedent. I think the particular facts become more important in deciding which way the discretionary power of the court may be exercised.

58. The important material facts in the consideration as to how to exercise discretion in this case are these. The company had expanded $1.5 million before the case was filed. It may lose money if its arrangement with another company to carry out the seismic surveys does not proceed on schedule. On the other hand SATIIM has so far lost nothing as the result of the permission given. In the course of the proceedings, the Company having conceded failure to carry out environmental impact assessment, has engaged experts to carry out the necessary environment impact assessment. That will have to be studied and recommended by the Department of the Environment. The Department may not recommend the project based on the assessment or it may recommend the project upon conditions or unconditionally. I must also bear in mind that the outcome of the assessment must be given much weight in the decision as to how the court will exercise its discretion. I think it is important for the court to exercise its discretion in a way that its discretionary decision will not influence the outcome of the environmental impact assessment. It seems to me that in this case a decision not to quash the permission is likely to be misunderstood to prejudge the result of the environmental impact assessment. Moreover, allowing seismic surveys to proceed when the result of the environmental impact assessment is not yet known allows the Company to spend more money which will be lost in the event the environmental impact assessment does not favour the carrying out of seismic surveys.

59. I think the better and just decision is to exercise discretion in favour of quashing the permission given in the memorandum dated 7.4. 2006, signed by Mr.
Wilber Sabido for the Forest Department, and Mr. Alister King for US Capital Energy Belize Limited, to the Company to enter the Sarstoon - Temash National Park for the purpose of carrying out seismic surveys. I exercise that discretion.
The Environmental impact assessment said to be underway may proceed to conclusion and may be duly considered under the Environmental Protection Act.
It will then be open to the Forest Department, having taken into consideration the environmental impact assessment recommendation, to decide whether or not to grant permission to the Company to enter the Sarstoon- Temash National Park for the purpose of carrying out seismic surveys.

60. Costs.

Of the four grounds relied on by SATIIM for its claim, only one has succeeded and it is the ground about non-compliance with ss: 20 and 21 of the Environmental Protection Act, conceded by the Forest Department. I need to reflect that in the award for costs. Of the three grounds

lost, the ground about unreasonableness should have not been raised at all.
Court time taken by this case has been made unnecessarily long by that ground. The costs I award to SATIIM against the Forest Department is one-half of the total costs, to be agreed or tax. There is no award for costs against US Capital Energy Ltd because it enquired as to the necessity for carrying out environmental impact assessment and was informed by the Forest Department that it was not necessary. The Company will bear own costs.

61. The summaries of the orders I make are as follow:

61.1 The permission given in the memorandum dated 7.4.2006, signed by Mr.
Wilber Sabido, Chief Forest Officer, for the Forest Department, and Mr. Alister King for US Capital Energy Belize Ltd, to the Company to enter the Sarstoon-Temash National Park for the purpose of carrying out seismic surveys is declared unlawful under ss: 20 and 21 of the Environmental Protection Act.

61.2 An order of certiorari issues to quash the said permission.

61.3 One-half of the costs of these proceedings are awarded to SATIIM, payable by the Forest Department.

61.4 No costs are awarded against US Capital Energy Belize Ltd, and it will bear own costs.

62. Pronounced this Wednesday the 27th day of September 2006.
At the Supreme Court.
Belize City.

Sam Lungole Awich Judge Supreme Court of Belize