

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER OF the *Alberta Energy and Utilities Board Act*, R.S.A. 2000, c. A-17 (the "EUB Act"), and the regulations made thereunder; and

IN THE MATTER OF section 40(1) of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, (the "ERC Act") and the regulations made thereunder; and

IN THE MATTER OF Part 2 of Proceeding No. 1457147, Bearspaw Petroleum Ltd. ("Bearspaw"), Carbon Development Partnership (Successor in Interest to Prairie Mines and Royalties Ltd., Formerly Luscar Ltd.) ("CDP"), Devon Canada Corporation ("Devon"), EnCana Corporation ("EnCana"), and Fairborne Energy Ltd. ("Fairborne"), in relation to the Clive, Ewing Lake, Stettler and Wimborne Fields; and

IN THE MATTER OF Alberta Energy and Utilities Board ("EUB" or "Board") Bulletin 2006-19 ("Bulletin 2006-19"); and

IN THE MATTER OF EUB Notice of Hearing dated June 23, 2006 ("Notice of Hearing"); and

IN THE MATTER OF EUB letter to Legal Counsel dated July 27, 2006 ("Letter to Counsel").

**REPLY SUBMISSION OF
CONOCOPHILLIPS CANADA RESOURCES CORP.
("ConocoPhillips Canada")**

September 29, 2006

ALBERTA ENERGY AND UTILITIES BOARD
REPLY SUBMISSION OF CONOCOPHILLIPS CANADA
SEPTEMBER 29, 2006

I.	INTRODUCTION.....	1
II.	JOINT REPLY.....	1
III.	STANDARD OF PROOF.....	2
	A. COAL PRODUCERS' CLAIM.....	2
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	2
IV.	JURISDICTION OF THE EUB.....	2
	A. COAL PRODUCERS' CLAIM.....	2
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	3
V.	CBM IS A NATURAL GAS.....	5
	A. COAL PRODUCERS' CLAIM.....	5
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	5
VI.	NATURE OF LEASES.....	7
	A. COAL PRODUCERS' CLAIM.....	7
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	7
VII.	ENTITLEMENT & PRINCIPLE OF <i>NEMO DAT QUOD NON HABET</i>.....	8
	A. COAL PRODUCERS' CLAIM.....	8
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	9
VIII.	FACILITATION OF DEVELOPMENT.....	10
	A. COAL PRODUCERS' CLAIM.....	10
	B. CONOCOPHILLIPS CANADA'S RESPONSE.....	10
IX.	DISPOSITION SOUGHT.....	11

REPLY SUBMISSION OF CONOCOPHILLIPS CANADA

I. INTRODUCTION

1. The Reply of ConocoPhillips Canada is organized by topics that correspond to the September 15, 2006 submissions filed by EnCana and CDP (collectively, the "Coal Producers"). The Coal Producers' submissions are essentially argument. ConocoPhillips Canada therefore considers it unnecessary at this stage of the proceeding to reply to every aspect of the Coal Producers' submissions. The lack of reply to any particular issue should not be taken as agreement. ConocoPhillips Canada reserves the right to make full submissions at the conclusion of this proceeding in respect of the entire hearing record.

II. JOINT REPLY

2. In addition to this Reply, ConocoPhillips Canada concurrently files a joint reply (the "Joint Reply") with Devon, Fairborne, Quicksilver Resources Canada Inc., Canpar Holdings Ltd. and Centrica Canada Limited (collectively referred to in this Reply as the "Natural Gas Rights Holders"). Issues addressed in the Joint Reply are not repeated in ConocoPhillips Canada's Reply.

3. The Joint Reply includes Mr. Matthew J. Mavor's rebuttal evidence addressing the report of Dr. Jeffrey R. Levine prepared for EnCana and CDP. ConocoPhillips Canada participated in the retention of Mr. Mavor, has read Mr. Mavor's rebuttal evidence and agrees with his analysis and conclusions. Mr. Mavor's analysis and conclusions are entirely consistent with ConocoPhillips Canada's experience as the third largest producer of petroleum and natural gas in Canada.

4. In addition, ConocoPhillips Canada participated in the retention of David Percy, Q.C., Dean and W.F. Bowker professor in the Faculty of Law at the University of Alberta, as an expert qualified to opine on the matters set out in his report and filed as Attachment "A" to the Joint Reply. ConocoPhillips Canada has read Dean Percy's report and agrees with his analysis and conclusions.

III. STANDARD OF PROOF

A. *Coal Producers' Claim*

5. CDP claims that the standard of proof required in this proceeding is a "standard of certainty".¹

B. *ConocoPhillips Canada's Response*

6. ConocoPhillips Canada disagrees. Canadian jurisprudence is clear that in tribunal proceedings the standard of proof is a balance of probabilities.² Within a proceeding that standard does not change.³ A balance of probabilities is a less onerous standard than "certainty".

7. With respect to section 16(2) of the *Oil and Gas Conservation Act* R.S.A 2000, c. O-6 ("*OGC Act*"), a party must prove entitlement to produce oil, gas or crude bitumen "to the satisfaction of the Board". This standard is also lower than "certainty". It is satisfied by demonstrating, as the Natural Gas Rights Holders have done, an existing natural gas lease.

8. By demonstrating a right to produce natural gas pursuant to their well license applications, the Natural Gas Rights Holders have met the standard of proof required by Section 16 of the *OGC Act* and applicable jurisprudence. Once the Board determines under section 16(1) of the *OGC Act* that a party is entitled to produce gas it is not under any statutory requirement to consider further issues with respect to the nature of the gas produced or engage in the exercise of interpreting individual leases.

IV. JURISDICTION OF THE EUB

A. *Coal Producers' Claim*

9. EnCana claims "the Board cannot grant the approvals sought as it has no jurisdiction to decide ownership."⁴ CDP also challenges the Board's "jurisdiction to determine ownership".⁵

¹ Submissions of CDP, page 15, paragraph 30.

² See, for example, *V.(K.) v. College of Physicians & Surgeons* 173 D.L.R (4th) 431 (C.A.), leave to appeal to S.C.C. refused.

³ Sara Blake, *Administrative Law In Canada*, (Butterworths), 4th ed. page 69.

⁴ Submissions of EnCana page 1, paragraph 5.

⁵ Submissions of CDP, page 8, paragraph 18.

B. ConocoPhillips Canada's Response

10. Contrary to the claims of the Coal Producers, the EUB has jurisdiction to decide the entitlement to coalbed methane ("CBM"). The EUB's jurisdiction arises from its statutory mandate, common law, its technical expertise and the unique Alberta regulatory framework applicable to CBM.

11. EnCana's claims respecting jurisdiction directly contradict its position in the Review and Variance proceedings on EnCana and Luscar review applications. The following exchange occurred before the EUB on January 31, 2006:

Mr. Larder: Mr. Popowich, is it your client's position that this Board has the authority or the jurisdiction to determine who owns the coalbed methane?

Mr. Popowich: Yes, and that is said with reference to Section 16 of the Oil and Gas Conservation Act and reference also, if I may, to the Goodwell decision and from memory, paragraphs 26, 30 and I will give you one other paragraph where the Court of Appeal, Mr. Larder, recognized that it was incumbent upon the Board and they had to determine relative ownership of the parties.⁶

12. The EUB is created by statute and therefore its jurisdiction is derived from the wording, structure and purpose of its enabling legislation.⁷ Tribunals have jurisdiction to decide questions of law where: (i) the empowering legislation contains an express grant of jurisdiction; or (ii) there is an intent within the tribunal's enabling statute to grant such jurisdiction.⁸ The *Public Utilities Board Act*⁹ ("*PUB Act*") and the *Alberta Energy and Utilities Board Act*¹⁰ ("*AEUB Act*") are clear that EUB has jurisdiction to make determinations on CBM entitlement.

13. The *PUB Act* and the *AEUB Act* establish the EUB's jurisdiction to confirm that the Natural Gas Rights Holders have legal entitlement to CBM. Section 38 of the *PUB Act* states that "the [Public Utilities] Board may, as to matters within its jurisdiction, hear and determine all questions of law or of fact." Section 15 of the *AEUB Act* establishes that "for the purposes of carrying out its functions, the Board has all of the powers, rights and privileges of the ERCB [Energy Resources Conservation Board] and PUB [Public

⁶ Transcript from Review and Variance Proceedings - Review Applications by EnCana Corporation and Luscar Ltd. Re: Devon Canada Corporation, Fairborne Energy Ltd. and Bears paw Petroleum Applications (January 31, 2006), page 46, lines 3-13.

⁷ Sara Blake, *Administrative Law In Canada*, (Butterworths), 4th ed. page 117.

⁸ See, for example, *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504 (SCC)

⁹ R.S.A 2000, Chapter P-45

¹⁰ R.S.A 2000 Chapter A-17

Utilities Board] that are granted and provided for by any enactment or by law". The power to determine questions of law and fact were therefore passed to the EUB upon enactment of the *AEUB Act*.

14. The *PUB Act* and *AEUB Act* provide the EUB with jurisdiction to address the technical and legal aspects of CBM entitlement. The Board itself in EUB Decision 2002-048 states that "[T]he Board does agree that it has the power to determine questions of law or fact in matters properly before it."¹¹

15. The EUB's jurisdiction to consider CBM entitlement arises not only from its originating legislation, but also from its authority to interpret statutes it administers, including the *OGC Act*. The Board's jurisdiction is not, as CDP alleges, "constrained by"¹² the *OCG Act*. To the contrary, Section 4 of the *OGC Act* grants the EUB broad jurisdiction over oil and gas issues. Section 7 of the *OGC Act* provides the Board with the power to make any just and reasonable orders to affect that Act's purposes. On the basis established by the *PUB Act*, *AEUB Act* and *OGC Act*, the Board clearly has jurisdiction to interpret section 16 of the *OGC Act* and make a determination on the Natural Gas Rights Holders' entitlement to produce CBM. It also possesses unique expertise to determine questions of fact pertaining to natural resources.

16. In addition to its statutory jurisdiction, the EUB's technical and scientific knowledge is directly relevant to a consideration of CBM. Its considerable expertise includes addressing issues on hydrocarbon exploration, development and production as well as balancing policy interests among industry, government and public stakeholders. The Board's consideration of a matter that engages those areas of expertise would likely, as indicated in *Alberta Energy Co. v. Goodwell Petroleum Corp et al* (2003), 339 A.R. 201 (Alta. C.A.) at paragraph 26, be accorded considerable deference by the courts. Canadian jurisprudence is unambiguous that courts give great deference to the decisions of administrative bodies dealing with specialized technical issues.

¹¹ EUB Decision 2002-048 (May 23, 2002), page 6.

¹² Submissions of CDP, page 5, paragraph 11.

17. The Board employed its technical expertise in drafting EUB Informational Letter IL 91-11. A guiding regulatory principle in EUB Informational Letter IL 91-11 is that CBM is a natural gas.¹³

The ERCB and [Alberta] Energy consider coalbed methane to be a form of natural gas. As a result, all acts and regulations administered by the ERCB and Energy that pertain to natural gas also pertain to coalbed methane... most ERCB and Energy practices and policies relating to drilling and production of conventional gas reservoirs can be applied directly to coalbed methane.¹⁴

18. The Alberta legislative and regulatory framework that applies to gas also applies to CBM including in respect of well licensing, surface leases, well spacing, drilling and completion of wells and production.¹⁵ Furthermore, in Alberta, exploration and production of gas from coal is regulated like the exploration and production of other types of natural gas and is subject to similar natural gas taxes on freehold production.

19. ConocoPhillips Canada is seeking a determination that the Natural Gas Rights Holders have legal entitlement to produce CBM. There is no statutory, jurisprudential or scientific basis for the Coal Producers' claims that the EUB lacks jurisdiction to make that decision.

V. CBM IS A NATURAL GAS

A. *Coal Producers' Claim*

20. At paragraphs 31 to 33 of its submissions CDP alleges that the question of whether CBM is natural gas "is not useful in determining the issues" relevant to this proceeding.

B. *ConocoPhillips Canada's Response*

21. Contrary to CDP's submissions, the question of whether CBM is a natural gas is at the crux of the dispute over entitlement. CBM is a natural gas pursuant to the *OGC Act* and in the context of technical, scientific and chemical analysis.

¹³ See also A.R. Lucas and C.D Hunt, *Canadian Energy Law Service*, (Thompson & Carswell), page 30-3283, paragraph 378.

¹⁴ Coalbed Methane Regulation, EUB Informational Letter IL 91-11, (August 26, 1991) page 1.

¹⁵ Coalbed Methane Regulation, EUB Informational Letter IL 91-11, (August 26, 1991) pages 2-3.

22. CBM is captured by the *OGC Act's* definition of "gas".¹⁶ Under the *Coal Conservation Act*¹⁷ coal is defined as a substance fundamentally different from gas.¹⁸ The Board has exclusive jurisdiction pursuant to section 1(2) of the *OGC Act* and section 1(2) of the *Coal Conservation Act* to determine whether CBM is gas or coal.¹⁹ On the basis of legislation, jurisprudence and the evidence of Mr. Mavor and Dean Percy, it is clear that CBM is gas.

23. The technical evidence of Mr. Mavor, entitled *Concerning Coalbed Methane Reservoir Behaviour* [Exhibit 18-001-2006-08-25], is clear that CBM is a natural gas that is not distinct in composition or character from any other type of natural gas. Mr. Mavor explains the scientific differences between CBM and coal, including their differences on the earth's surface, after extraction from the ground and in the subsurface before and after human disturbance.

24. EUB Informational Letter IL 91-11 is clear that the Board and Alberta Energy consider "coalbed methane to be a form of natural gas".²⁰ EUB Information Letter IL 91-11 is a definitive guide to the exercise of regulatory authority on CBM. It is made in the natural resources context and based on the expertise of both the Board and Alberta

¹⁶ 1(1)(y) "gas" means raw gas or marketable gas or any constituent of raw gas, condensate, crude bitumen or crude oil that is recovered in processing and that is gaseous at the conditions under which its volume is measured or estimated;

1(1)(ee) "marketable gas" means a mixture mainly of methane originating from raw gas, if necessary through the processing of the raw gas for the removal or partial removal of some constituents, and that meets specifications for use as a domestic, commercial or industrial fuel or as an industrial raw material;

1(1)(ff) "methane" means, in addition to its normal scientific meaning, a mixture mainly of methane that ordinarily may contain some ethane, nitrogen, helium or carbon dioxide; and

1(1)(tt) "raw gas" means a mixture containing methane, other paraffinic hydrocarbons, nitrogen, carbon dioxide, hydrogen sulphide, helium and minor impurities, or some of them, that is recovered or is recoverable at a well from an underground reservoir and that is gaseous at the conditions under which its volume is measured or estimated.

¹⁷ R.S.A 2000, c.C-17

¹⁸ 1(1)(d) "coal", in addition to its ordinary meaning, includes manufactured chars, cokes and any manufactured solid coal product used or useful as a reductant or energy source or for conversion into a reductant or energy source.

¹⁹ Section 1(2) of the *OGC Act* states:

The decision of the Board is final as to whether any product or mixture comes within a definition in subsection (1) or as to whether a definition in subsection (1) is applicable in a particular case.

Section 1(2) of the *Coal Conservation Act* states:

A decision by the Board as to whether a definition in subsection (1) is applicable in a particular case is final.

²⁰ See also A.R. Lucas and C.D Hunt, *Canadian Energy Law Service*, (Thompson & Carswell), page 30-3283, para. 378.

Energy. Whether EUB Information Letter IL 91-11 takes into account a broad range of dictionary definitions or the notion of entitlement in the context of matrimonial or labour law, as CDP advocates at paragraph 32 of its submissions, is irrelevant.

25. The essence of EUB Information Letter IL 91-11 was subsequently captured by section 67(1) of the *Mines and Minerals Act*, R.S.A. c. M-17 with respect to minerals owned by the Crown.²¹ The *Mines and Minerals Act* treats gas and coal as different substances and only grants coal lessees the right to recover CBM in very limited, safety-related circumstances.

26. In these proceedings, the Natural Gas Rights Holders have provided their natural gas leases as evidence to the Board. Natural Gas Rights Holders' leases demonstrate an entitlement to produce natural gas from locations that are the subject matter of their well license applications. There has been no suggestion from the Coal Producers that Natural Gas Rights Holders' leases have been improperly executed or entered into.

27. On the basis of Alberta's legislative and regulatory framework as well as independent scientific and technical evidence, it is overwhelmingly clear that CBM is natural gas and is not coal. The evidence in this proceeding establishes natural gas lease rights and confirms Natural Gas Rights Holders' entitlement to produce CBM.

VI. NATURE OF LEASES

A. *Coal Producers' Claim*

28. EnCana alleges that "[n]ot one of the leases under which the CNG owners seek to produce mentions CBM, and so they need prove "natural gas" in the contemporaneous vernacular included CBM".²²

B. *ConocoPhillips Canada's Response*

29. ConocoPhillips Canada disagrees with EnCana. ConocoPhillips Canada's leases entered into with EnCana prior to 1993 do not exclude CBM or any other types of gas. In 1993 EnCana changed its granting clauses in leases entered into with ConocoPhillips Canada to exclude CBM in its grant of natural gas.

²¹ 67 (1) A coal lease grants the right to the coal that is the property of the Crown in the location in accordance with the terms and conditions of the lease but, subject to subsection (2), does not grant any rights to any natural gas, including coalbed methane.

²² Submissions of EnCana, page 5, paragraph 19.

30. In its initial submissions ConocoPhillips Canada described its relevant leases in detail. The grants and rights granted to ConocoPhillips Canada are substantively the same as those of the other Natural Gas Rights Holders. As there are no material differences between the Natural Gas Rights Holders' leases, there is no requirement on the Board to interpret the language of each lease independently.

31. The prevailing jurisprudence, including the *Borys v. Canadian Pacific Railway* and *Anderson v. Amoco Canada Oil & Gas* decisions, inexorably drives the conclusion that gas from coal is granted with a grant of natural gas.²³ This jurisprudence in tandem with EUB Information Letter IL 91-11 ensures that since 1991 there is a well-settled industry expectation that petroleum and natural gas owners have rights to CBM and that CBM is a natural gas.

32. Dean Percy's submissions, found at Attachment "A" to the Joint Reply, address in further detail the legal history of the differentiation of ownership rights to sub-surface minerals. The law set out in existing legislation and jurisprudence is clear that rights to CBM do not rest with the coal rights holder as the Coal Producers allege.

VII. ENTITLEMENT & PRINCIPLE OF *NEMO DAT QUOD NON HABET*

A. *Coal Producers' Claim*

33. CDP claims that "if Devon and Fairborne's lessors cannot prove title (and consequently entitlement) to CBM, then they cannot give any title (and consequently entitlement) to CBM to Devon and Fairborne as lessees"²⁴ and that "the maxim *nemo dat quod non habet* is applicable to the current circumstances".²⁵ CDP proceeds to address the issue of entitlement by claiming that "it is impossible for the Board to determine that the gas producers are entitled to produce the CBM".²⁶

34. EnCana alleges at pages 7 through 12 of its submissions that CBM entitlement is subject to a "*bona fide* dispute".

²³ *Borys v. Canadian Pacific Railway*, [1953] A.C. 217 (P.C.); *Amoco Production Co. v. Southern Ute Tribe*, 144 L Ed 2d 22.

²⁴ Submissions of CDP, page 20, paragraph 40.

²⁵ Submissions of CDP, pages 19-20, paragraph 39.

²⁶ Submissions of CDP, page 12, paragraph 26.

B. ConocoPhillips Canada's Response

35. ConocoPhillips Canada disagrees with the Coal Producers. There is no evidence before the Board indicating that the Natural Gas Rights Holders are not entitled to produce CBM from the wells for which they have sought approval.
36. The title document evidence provided to the Board at Appendix "A" of Fairborne and Devon's respective submissions indicates those parties are entitled to produce natural gas from the locations in respect of which they seek approvals. Natural gas is included in the petroleum and natural gas lease rights held by Devon and Fairborne. Therefore, on the basis of their leases as well as scientific and technical evidence, legal entitlement to CBM rests with these gas rights holders.
37. Mr. Mavor's expert report indicates that CBM "is separate and distinct from coal itself and should be considered in the same manner as natural gas".²⁷ Devon and Fairborne have adequately demonstrated their entitlement in these proceedings to natural gas, including CBM. Therefore, the *nemo dat* principle is not applicable.
38. There is further evidence on record demonstrating that the *nemo dat* principle is not applicable to EnCana's grants. As indicated above, in 1993 EnCana revised its granting clauses for leases with ConocoPhillips Canada. It excluded CBM in its grant of natural gas. This exclusion suggests that EnCana determined it had title to, or at the very least the right to grant or reserve, CBM. Moreover, EnCana would presumably not have removed CBM from its post-1993 leases with ConocoPhillips Canada unless it believed CBM was included in prior natural gas grants to ConocoPhillips Canada.
39. The Coal Producers ignore Devon and Fairborne's evidence demonstrating entitlement to natural gas. CDP further ignores scientific evidence proving that CBM is natural gas. In support of its allegations CDP instead relies on definitions of entitlement in family, tort and employment law,²⁸ definitions that are entirely inapplicable to CBM and therefore irrelevant.
40. In support of its position that there is a "*bona fide* dispute", EnCana submits that a reservation of coal includes an entire strata.²⁹ EnCana is simply wrong. The legal flaws in EnCana's argument are addressed in the submissions of Dean Percy and set out at

²⁷ Mavor Report, Attachment "A" to the Joint Submission of the Natural Gas Rights Holders, page 20.

²⁸ Submissions of CDP, page 10, paragraphs 23 to 25.

²⁹ Submissions of EnCana, page 10, paragraphs 53-55.

Attachment "A" to the Joint Reply. Moreover, from a scientific perspective CBM and coal are distinct substances within a strata in the same manner as gas and oil are within an oil reservoir.

VIII. FACILITATION OF DEVELOPMENT

A. *Coal Producers' Claim*

41. In its submissions, EnCana seeks the following remedies: (i) compulsory pooling orders requiring payment of proceeds to the Alberta Provincial Treasurer; (ii) reducing drilling space units; (iii) quieting title before drilling; and (iv) three month cessation of CBM production.³⁰

B. *ConocoPhillips Canada's Response*

42. None of EnCana's proposed remedies address the fundamental question of entitlement to produce CBM. EnCana essentially requests that the Board forbear from making a clear determination on entitlement or to delay that decision. EnCana's proposed remedies are therefore irrelevant.

43. Compulsory pooling results in production sharing between owners of different tracts. However, the issue before the Board is entitlement to CBM, not production allocation between parties. Compulsory pooling is therefore an illogical remedy because it does not engage the issue of which party is entitled to produce CBM. Furthermore, EnCana provides no indication of what would eventually be done with the production proceeds held by the Provincial Treasurer.

44. The remedies EnCana seeks are exclusively in its own self interest and do not alleviate the potential for gas producers' stranded or foregone capital or loss of production opportunity. EUB Bulletin 2006-19³¹ prevents a CBM developer from drilling on split title lands without agreement from the coal owner. The result is that, contrary to the public interest in the economic, orderly, efficient development of oil and gas resources in Alberta, the Coal Producers enjoy a veto over freehold CBM production. That impasse has led to the current proceeding.

³⁰ Submissions of EnCana, page 15, paragraphs 79-91 and paragraph 102.

³¹ *Applications Involving Objects Relation to Coalbed Methane* (May 30, 2006)

IX. DISPOSITION SOUGHT

45. Legislative definitions and scientific evidence establish that CBM is a gas. The record is also clear that ConocoPhillips Canada's leases, among those of the other Natural Gas Rights Holders, entitle them to produce CBM. ConocoPhillips Canada has satisfied the requirements of Section 16 of the *OGC Act*.

46. ConocoPhillips Canada seeks the orderly and efficient development of, and under its leasehold interests is entitled to, CBM. Regulatory uncertainty respecting the development of CBM is contrary to the public interest and directly impacts ConocoPhillips Canada's ability to do business in Alberta. As ConocoPhillips Canada indicated in its initial submissions, roughly \$20 million planned capital expenditure for the Three Hills area is being frustrated or delayed due to this dispute over the question of entitlement to CBM.

47. ConocoPhillips Canada therefore seeks a disposition that ensures a stable regulatory environment and facilitates the economic, orderly and efficient development of CBM in Alberta. It requests that the EUB expeditiously determine that CBM is natural gas and that the Natural Gas Rights Holders have legal entitlement to produce CBM. ConocoPhillips Canada further requests that the EUB, having confirmed that the holders of natural gas rights have entitlement to CBM, rescind Bulletin 2006-19 and confirm that Natural Gas Rights Holders enjoy all of the rights and incidents of such entitlement, including the issuance of well licenses to applicants that meet legislative requirements.

Submitted this 29th day of September, 2006

**CONOCOPHILLIPS CANADA
RESOURCES CORP.**



By its Counsel
Hugh D. Williamson, Q.C.