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January 25, 2005

File No 17417

DELIVERED

ALBERTA ENERGY AND UTILITIES BOARD
640 - Fifth Avenue, S.W.
Calgary, AB
T2P 3G4

COPY

Attention: Ms. Karen Mather

Dear Ms. Mather:

Re: Non-Routine Well Licence Applications, Devon Wimborne 6-9-34-26
W4M, 8-9-34-26 W4M, 14-9-34-26 W4M and 16-9-34-26 W4M

We are in receipt of a copy of a letter from Devon Canada Corporation ("Devon") to the Alberta Energy and Utilities Board (the "Board") dated January 11, 2005. As we understand it, among other related applications, Devon has made applications for well licences required to drill the four captioned wells (the "Devon Section 9 Wells"), and has made concomitant applications for reduced well spacing, which would be required to allow these four wells to be drilled within the same section.

Luscar is the owner of the coal underlying and within Section 9-34-26, W4M ("Section 9"). In that regard, a copy of the current Certificate of Title is attached. Devon alleges that Luscar's objection to Devon's wells based solely on disputed ownership of coalbed methane (also known as natural gas from coal) ("CBM") in Section 9 is inappropriate as a basis for objecting to Devon's well licence applications. Further, Devon states that the Board is the inappropriate forum for making a determination as to the ultimate ownership of CBM in Section 9 and, consequently, who has the right to produce CBM from the coal formations underlying and within Section 9. Devon alleges that Luscar asserts "an unsubstantiated claim in a regulatory forum which cannot ultimately resolve the issue" of ownership of CBM and suggest that it is open to Luscar to pursue a definitive determination of ownership rights to CBM before the courts.

Luscar agrees with Devon only with respect to the conclusion that the Board is not the appropriate forum to ultimately resolve the issue of ownership of CBM. However, on all other matters contained within Devon's January 11, 2005 letter, Luscar disagrees. Luscar does not dispute that Devon is entitled to pursue natural gas. However, that entitlement alone does not entitle Devon to produce CBM.

Luscar acknowledges that the ultimate determination of ownership of freehold CBM, as between the coal owner and the natural gas owner, has yet to be determined in Alberta. However, by analogy to "split title" cases involving solution gas and natural gas, Luscar submits that there is a very real likelihood that, at the end of the day, the courts would uphold the coal owner's entitlement to CBM in Alberta. Consequently, if, as Devon alleges, Luscar's claim to CBM is unsubstantiated, it is equally accurate to state that Devon's claim to the right to produce CBM, solely by reason of Devon's right to produce natural gas, is unsubstantiated.

It is that very fact that precludes Devon from fulfilling the requirements of the *Oil and Gas Conservation Act* (RSA 2000 c. O-6, as amended) (the "Conservation Act") and of Guide 56.

Section 16(1) of the Conservation Act states,

"16(1) No person shall apply for or hold a licence for a well

- (a) for the recovery of oil, gas or crude bitumen, or
- (b) for any other authorized purpose

unless that person is a working interest participant and is entitled to the right to produce the oil, gas or crude bitumen from the well or the right to drill or operate the well for the other authorized purpose, as the case may be." (emphasis added)

This language is mirrored in Section 7.9.11 of Guide 56, entitled "Right to Produce or Operate", which states in part:

"37) Prior to submitting a well licence application, the applicant must

- b) be entitled to the right to produce the oil, gas, or crude bitumen from the well or have the right to drill or operate the well for the authorized purpose."

The ultimate paragraph of section 7.9.11 of Guide 56 states:

"The issuance of a well licence or conducting of an EUB audit is not to be relied upon by the licensee or third parties as a legal determination or confirmation of mineral entitlement or of the right to produce hydrocarbons or to conduct other activities on lands covered by the licence."

Section 9 of Guide 56 - Schedule 4, entitled "MINERAL RIGHTS" requires a positive representation by the applicant that:

- "1. The applicant has the rights for all intended purposes of the proposed well
... YES NO

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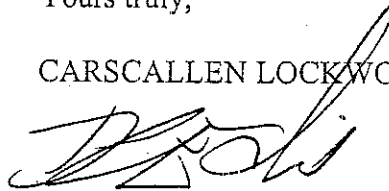
It is clear and unequivocal from the Conservation Act and from Guide 56 (which has the force of regulation), that, firstly, Devon, as applicant, must, as a matter of law, be entitled to the right to produce CBM from Section 9 in order to satisfy the requirements of the legislation and the Board. Secondly, the onus of demonstrating that entitlement to produce CBM is upon Devon, as the applicant, not upon Luscar, as the objecting party. Devon has not satisfied that onus. In the absence of a final determination as to ownership of freehold CBM in Alberta, and in the face of Luscar's competing claim as to the ownership of CBM underlying and within Section 9, Luscar respectfully submits that Devon has failed to meet and cannot meet the statutory test required of the applicant to demonstrate its entitlement to produce CBM. Finally, if Devon has responded affirmatively to Question 9.1. of Schedule 4 and has alleged that it has the right for all intended purposes of the proposed Devon Section 9 Wells, Luscar formally disputes that evidence.

Devon has also raised an operational matter relating to minimal disturbance construction techniques. Although laudable, Luscar submits, with respect, that construction techniques are irrelevant in the Board's consideration of whether Devon has demonstrated its entitlement to produce CBM

Should you have any questions concerning this matter, please do not hesitate to contact the writer.

Yours truly,

CARSCALLEN LOCKWOOD LLP



D.C. Edie

al

c. via telecopy
Devon Canada Corporation, Attention: M. Geoff Cain
Luscar Ltd., Attention: R. Donick, B. Mason
EnCana Corporation, Attention: W. Smith



ALBERTA REGISRIES
LAND TITLE CERTIFICATE

M	LINC	SHORT LEGAL	TITLE NUMBER
	0024 453 813	4;26;34;9;NW	041 128 618 +11
	0024 453 821	4;26;34;9;NE	
	0021 748 819	4;26;34;9;SW	
	0021 742 689	4;26;34;9;SE	

LEGAL DESCRIPTION

FIRST

*ALL COAL, WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 9
QUARTER NORTH WEST
AND THE RIGHT TO WORK THE SAME
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

SECOND

*ALL COAL, WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 9
QUARTER NORTH EAST
AND THE RIGHT TO WORK THE SAME
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

THIRD

*ALL COAL WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 9
QUARTER SOUTH WEST
AND THE RIGHT TO WORK THE SAME
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

(CONTINUED)

FOURTH

*ALL COAL WITHIN, UPON OR UNDER:
MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 9
QUARTER SOUTH EAST
AND THE RIGHT TO WORK THE SAME
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE

MUNICIPALITY: KNEEHILL COUNTY

REFERENCE NUMBER: 011 085 018 +8

REGISTRATION	DATE(DMY)	REGISTERED OWNER(S) DOCUMENT TYPE	VALUE	CONSIDERATION
041 128 618	13/04/2004	TRANSFER OF LAND		SEE INSTRUMENT

OWNERS

LUSCAR LTD
OF 1600,10235-101 ST
EDMONTON
ALBERTA T5J 3G1

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
041 121 800	05/04/2004	CAVEAT RE : SEE CAVEAT CAVEATOR - FORDING INC. SUITE 1000, 205 9 AVENUE SE CALGARY ALBERTA T2G0R4 "ENDORSED BY 041122105 ON 20040405"

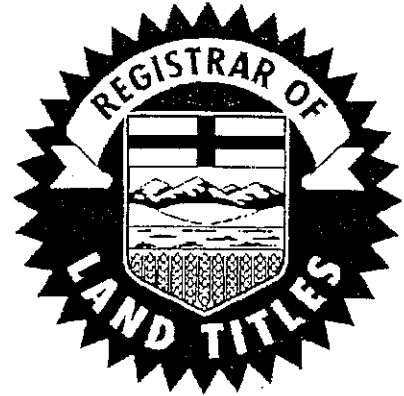
(CONTINUED)

TOTAL INSTRUMENTS: 001

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURAI
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HEREIN THIS 25 DAY OF JANUARY, 2005 AT 10:40 A.M.

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CUSTOMER FILE NUMBER: 17417



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