



LUSCAR LTD.

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ROBERT Z. DONICK
Corporate Counsel

February 18, 2005

Alberta Energy and Utilities Board
640 - 5 Avenue, SW
Calgary, AB T2P 3G4

VIA FACSIMILE- ORIGINAL COURIERED
1-403-297-4117

Attention: Ms. Lori D. Olijnyk

Dear Madam:

Re: Devon Canada Corporation Applications for Well Licences and Holding

Location: 6-8-34-26 W4M
EUB Application No. 1383132

Location: 6-17-34-26 W4M
EUB Application No. 1383138

Location: 8-8-34-26 W4M
EUB Application No. 1383134

Location: 8-17-34-26 W4M
EUB Application No. 1383139

Location: 14-8-34-26 W4M
EUB Application No. 1383136

Location: 14-17-34-26 W4M
EUB Application No. 1383140

Location: 16-8-34-26 W4M
EUB Application No. 1383137

Location: 16-17-34-26 W4M
EUB Application No. 1383141

EUB Application No. 1377141
Application to Establish Holding

We are in receipt of your letter of February 2, 2005 respecting the captioned applications (the "Devon Sections 8 and 17 Well Licence Applications") for well licences for the four captioned wells (the "Section 8 Wells") on Section 8-34-26 W4M ("Section 8") and the further four captioned wells (the "Section 17 Wells") on Section 17-34-26 W4M ("Section 17"). We are also in receipt of a copy of a letter dated February 4, 2005 from Devon Canada Corporation ("Devon") to the Alberta Energy and Utilities Board (the "EUB") respecting Application 1377141 (the "Holding Application"). As Devon has identified that Section 8 and Section 17 comprise part of Devon's proposed Holding #5 and are subject to the Holding Application, this letter provides the response of Luscar Ltd ("Luscar") to both matters. Luscar opposes all of these applications.

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By letter dated January 25, 2005, counsel for Luscar Ltd. wrote to Ms. Karen Mather of the EUB respecting four non-routine well licence applications for wells W4M (the "Section 9 Wells") in Section 9-34-26 ("Section 9"). Since Devon has identified Section 9 as lands also affected by the Holding Application, please consider this letter to be equally applicable to Devon's applications for the Section 9 Wells.

The Devon Sections 8 and 17 Well Licence Applications

Luscar objects to all eight of Devon's Sections 8 and 17 Well Licence Applications. Luscar is the owner of the coal underlying and within both Section 8 and Section 17. In that regard, copies of the current Certificates of Title are attached. Luscar claims ownership of coalbed methane ("CBM") (also known as natural gas from coal) underlying and within Section 8 and Section 17, by virtue of Luscar's ownership of that coal. In its February 4, 2005 letter to the EUB, Devon alleges that it owns the CBM underlying Section 8, Section 17 and Section 9 by virtue of natural gas leases it has entered into with the natural gas owner. Devon's allegation of ownership has two separate bases. First, Devon puts forward in support of its claim Information Letter IL99-11, in which the ERCB (as it then was) stated that it and the Alberta Department of Energy considered CBM to be a form of natural gas. However, IL99-11 expressly addressed Crown natural gas rights, and did not and does not relate in any way to freehold rights. In fact, the heading of the portion quoted by Devon in support of its position is entitled "*Crown Mineral Leases*". Further, the primary purpose of IL99-11 was to address process, not the fundamental ownership rights of competing parties. Devon's second argument concerns the Alberta Crown's determination of ownership rights, as reflected in the *Mines and Minerals Act*. Under that statute, as between lessees of Alberta Crown natural gas and Alberta Crown coal, it is the natural gas lessee that has the right to produce CBM. Luscar agrees that this is the case for exclusively Crown mines and minerals. However, neither the *Mines and Minerals Act* nor any other Alberta legislation is determinative of the ownership of CBM as between freehold owners of natural gas and freehold coal owners within a common tract of land.

Devon's claim of ownership to CBM through its rights to produce natural gas is also counter to the expressed acknowledgement of ongoing ownership issues by the Coalbed Methane/Natural Gas in Coal Multi-Stakeholder Advisory Committee (the "Multi-Stakeholder Advisory Committee" or "MAC"), an industry task-force group comprised of representatives of, among others, the Department of Energy, the Canadian Association of Petroleum Producers, the Small Explorers and Producers Association of Canada, The Coal Association of Canada, the Freehold Petroleum & Natural Gas Owners Association and the EUB. As recently as February 9, 2005, MAC materials included Mineral Land Tenure Recommendations, entitled "7.0 Tenure". These materials state, in part:

"7.2 Ownership Issues Where ownership is split, e.g., the Crown owns the coal rights and the P&NG rights are freehold or vice versa, or two separate freehold owners exist, it is not clear who has ownership of the CBM/NGC." (emphasis added)

The MAC materials also address (under the heading "7.1 Introduction") the situation set out above in which all rights are held by the Crown.

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 freehold coal owner's entitlement to CBM in Alberta. Consequently, if for any reason the EUB were to determine that Luscar's claim to CBM cannot be unequivocally demonstrated to be a "legally recognized interest" (as noted in your February 2, 2005 letter), it is equally accurate to state that Devon's claim to the right to produce CBM, predicated solely upon Devon's right to produce natural gas, is unsubstantiated and cannot be demonstrated to be a legally recognized interest.

With respect, 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

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 8 and Section 17 in order to satisfy the requirements of the legislation and the EUB. 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 8 and Section 17, 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 Sections 8 and 17 Wells, Luscar formally disputes that evidence.

The Holding Application

Luscar objects to the Holding Application for the same reasons that it objects to the Devon Sections 8 and 17 Well Licence Applications and for the same reason it has already objected to Devon's applications for the Section 9 wells.

In specific further response to your February 2, 2005 letter:

- (a) Luscar, as owner of the coal, is affected to a greater degree than members of the general public; and
- (b) there would be a reasonable and direct connection between Devon's proposed drilling and production of CBM and Luscar's rights and economic interests. Luscar's economic interests will be harmed by Devon producing CBM from coals underlying and within Section 8, Section 17 and Section 9 to which Luscar claims ownership.

Luscar respectfully requests that the EUB not proceed with Devon's applications.

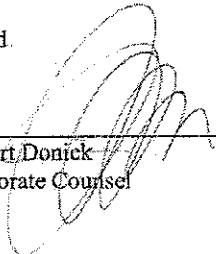
Finally, although Devon has advised Luscar of Devon's intentions respecting exploration for and production of CBM underlying and within Section 8, Section 17 and Section 9, Devon has not made any attempts to resolve its competing claim to title to that CBM with Luscar. Luscar is ready and willing to enter into good faith negotiations with Devon in an attempt to reach a commercial agreement, to the benefit of both Devon and Luscar. Such negotiations, if successful, would contractually remove this dispute as to title between Devon and Luscar in respect of these lands. A commercial agreement would thus allow Devon's Sections 8 and 17 Well Licence Applications, the Holding Application and Devon's applications for the Section 9 Wells to proceed, unopposed by Luscar. Should the EUB for any reason not accept Luscar's submissions, Luscar would request that the EUB delay the processing of these applications for a reasonable period and direct Devon to attempt to reach a commercial solution with Luscar to this

dispute The EUB has previously followed this approach in the Dynegy Canada Inc Application for Pipeline Licence Amendments Okotoks Field (Decision 2000-20)

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

Yours very truly,

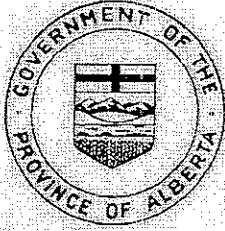
Luscar Ltd.

Per:  _____
Robert Donick
Corporate Counsel

RZD/pk

c Devon Canada Corporation *(Via Fax/Copy mailed 1-403-232-7625)*
2000, 400 3rd Avenue SW
Calgary, AB T2P 4H2
Attention: Ms. Shelly Mueller

Encl.



CERTIFIED COPY OF
Certificate of Title

M

LINC	SHORT LEGAL
0021 748 793	4,26,34,8,NW
0021 748 785	4,26,34,8,NE
0024 841 132	4,26,34,8,SW
0024 841 140	4,26,34,8,SE

TITLE NUMBER: 041 128 618 +7
TRANSFER OF LAND
DATE: 13/04/2004

AT THE TIME OF THIS CERTIFICATION

LUSCAR LTD.
OF 1600, 10235-101 ST
EDMONTON
ALBERTA T5J 3C1

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OF AND IN

FIRST

*ALL COAL, WITHIN, UPON OR UNDER:

MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 8
QUARTER NORTH WEST
AND THE RIGHT TO WORK THE SAME

SECOND

*ALL COAL, WITHIN, UPON OR UNDER:

MERIDIAN 4 RANGE 26 TOWNSHIP 34
SECTION 8
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THIRD

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SECTION 8
QUARTER SOUTH WEST
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FOURTH

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SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-
WRITTEN OR ENDORSED HERON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

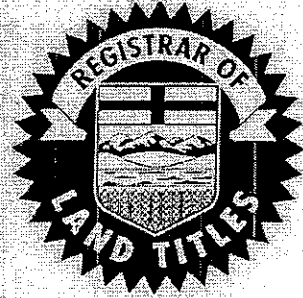
Certificate of Title

TITLE NUMBER: 041 128 618 +7

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"

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 13 DAY OF APRIL, 2004



SUPPLEMENTARY INFORMATION

CONSIDERATION: SEE INSTRUMENT
 MUNICIPALITY: RED DEER COUNTY
 REFERENCE NUMBER:
 011 035 018 +4
 AREA:
 64.7 HECTARES (160 ACRES) MORE OR LESS (0021 748 785)
 TOTAL INSTRUMENTS: 001



CERTIFIED COPY OF
Certificate of Title

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LINC	SHORT LEGAL
0020 967 691	4;26;34;17;NW
0018 525 123	4;26;34;17;NE
0020 734 737	4;26;34;17;SW
0020 734 745	4;26;34;17;SE

TITLE NUMBER: C41 128 618 +12
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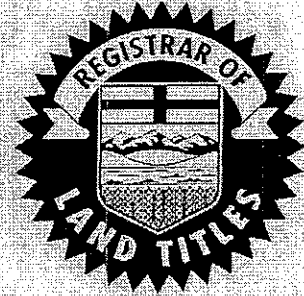
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