

devon.

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June 2, 2005

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

ATTENTION: HEATHER HUNT, RESOURCE APPLICATIONS GROUP

Dear Heather,

APPLICATION NO. 1395879

RE: APPLICATION TO ESTABLISH A HOLDING FOR THE PRODUCTION OF GAS FROM THE BELLY RIVER (COALS), TO THE BASE OF THE LETHBRIDGE COAL MEMBER, WIMBORNE AREA (SECTIONS 8, 9 AND 17-34-26W4M)

Devon Canada Corporation ("Devon"), is in receipt of an objection from Luscar Ltd. ("Luscar"), dated May 26, 2005 to the above application. In particular, Luscar states that within the Holding, comprised of Sections 8, 9 & 17-34-26W4M, Devon does not own coal mineral rights. Luscar is claiming the coalbed methane at this location.

It appears to be accepted that Devon is granted and has the right to produce natural gas. It also appears to be common ground, as amongst Devon and Luscar, that the question whether gas produced from coal is other than natural gas included within Petroleum and Natural Gas rights has not been judicially considered in Canada, either generally or in the context of the facts and circumstances that exist with respect to the specific coal rights held by Luscar.

We are of the view that Devon's entitlement to produce natural gas establishes for it an entitlement to the Holding requested. That right is enhanced by:

- The fact the gas sought to be produced is composed primarily of methane and is otherwise indistinguishable from what is commonly and technically accepted as natural gas;
- The technology to be employed and the regulatory authority relating to the recovery of the gas proposed to be recovered is indistinguishable from that generally associated with the recovery of natural gas;

- A review of American cases determining ownership of gas in coal under varying grants and reservations indicates that when American courts have considered the meaning of "coal" they have generally come to the conclusion that coal means the solid substance and not the associated gas in the coal.
- The leading Canadian case of *Borys v. C.P.R.* [1953] 2 D.L.R. 65 (B.C.) suggests that the right to gas in coal is likely to be determined by a Canadian court on the basis of the vernacular meaning of "coal" as that term was understood at the time when the specific coal rights were reserved. There is in that regard no representation before the Board nor is there any indication in any of the title documents to suggest an intent to reserve to the coal owner the right to the gas in the coal.

Devon's application materials establish a strong case for Devon's entitlement to produce gas from the coal. Those application documents, however, also acknowledge the potential for claims to be advanced by the owners of the coal estates with respect to the ownership of the gas in coal. Devon's applications, if granted, will not affect the opportunity for those ownership claims to be pursued through the courts. To the contrary Luscar has not advanced proposals to recover gas from coal, it stands only to benefit from Devon's venture should their legal ownership position be ultimately taken as correct. Devon expects to be accountable, should it ultimately be determined that it is not entitled to produce the gas from coal. For these reasons, approval of the applications will not prejudice the rights of Luscar, should any claim advanced by it ultimately prove successful. The entitlement issue raised, therefore, serves only to put Devon on notice that it may be at risk to be accountable for the gas it produces. This is a position that Devon has acknowledged and accepted.

Devon is sufficiently confident in its entitlement to the gas it is proposing to produce to proceed with the development in the face of that risk.

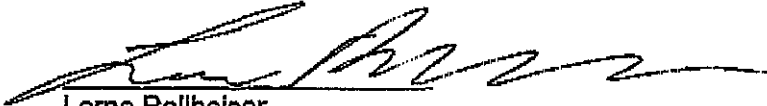
In summary, it is submitted:

- Devon's applications are for a Holding to enable it to produce natural gas;
- Devon's entitlement to produce natural gas from the area and from the zones proposed is not disputed;
- Unless and until it is established that gas in coal is either not "natural gas" within the meaning of Devon's petroleum and natural gas leases or was intended to be and was reserved as part of a coal estate, no basis exists to consider gas in coal as "coal". Furthermore, the EUB and Department of Energy consider coalbed methane to be a form of natural gas. As a result, all acts and regulations administered by the EUB and Department of Energy that pertain to natural gas also pertain to coalbed methane;
- The public interest associated with facilitating reasonable developments, including the recovery and conservation of Alberta's energy resources should lean heavily in favour of Devon's applications being granted;
- The balance of interests as reflected in the absence of any prejudice to Luscar should rest in favour of granting Devon's applications.

Should you have questions or concerns or should there be additional information that the Board would find helpful in its consideration and disposition of these applications, please contact the undersigned at 232-7125. We await the Board's favourable determination of these applications to facilitate timely development.

Yours truly,

Devon Canada Corporation



Lorne Rollhaiser
Solicitor

LER/sjw

Cc: Brenda Mason -- Luscar (via fax only 780-420-6835)