

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”).

SUBMISSION OF CONOCOPHILLIPS CANADA RESOURCES CORP.

(“ConocoPhillips Canada”)

August 25, 2006

**SUBMISSION OF CONOCOPHILLIPS CANADA
RESOURCES CORP.
("CONOCOPHILLIPS CANADA")**

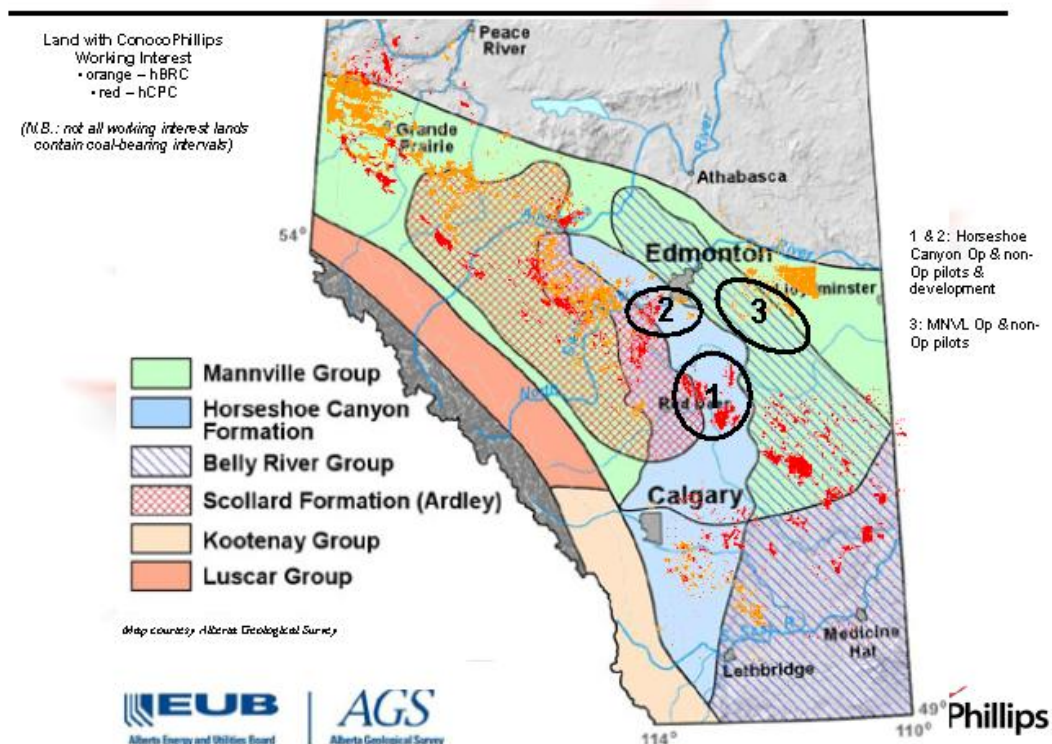
INTRODUCTION

1. ConocoPhillips Canada is filing this Submission, concurrently with the filing of a joint submission by ConocoPhillips Canada, Devon, Fairborne, Quicksilver Resources Canada Inc., ("Quicksilver"), Canpar Holdings Ltd. ("Canpar"), and Centrica Canada Limited ("Centrica") ("Joint Submission") in response to the EUB Notice of Hearing and Letter to Counsel.

2. As ConocoPhillips Canada indicated in its Notice of Intervention in this proceeding, ConocoPhillips Canada is the third largest producer of petroleum and natural gas in Canada and holds substantial leasehold interests in lands with the potential for the production of natural gas stored in coal ("coalbed methane").

3. As is shown in Figure 1, ConocoPhillips Canada is well positioned to explore for, win and develop coalbed methane from lands in which it holds a working interest.

Figure 1



4. By virtue of ConocoPhillips Canada's leasehold interests, ConocoPhillips Canada holds the rights to production of, among other things, natural gas and related hydrocarbons, except coal. In the vast majority of these lands, the coal rights are held by Encana or other third parties, resulting in the same split-title situation as found in the wells at issue in Proceeding No. 1457147.

5. In this Submission, ConocoPhillips Canada:

- describes its leasehold interests lands located in townships 32 through 40, ranges 20 through 26 W4M, which are in the area of the Fairborne wells and the Devon wells at issue in Proceeding No. 1457147;
- demonstrates that ConocoPhillips Canada holds certain leases in the exact forms and bearing the approximate same dates as leases in the same areas as many of the leases held by Devon and Fairborne;
- demonstrates that the language of the grants, and consequently rights granted to ConocoPhillips Canada under its leases are, identical or substantively the same as the language of the grants, and consequently the rights granted to Devon and Fairborne under their respective leases; and
- describes the basis for ConocoPhillips Canada's position in this proceeding that EnCana is acting in a manner that is frustrating and delaying ConocoPhillips Canada's development of its leasehold interests and the economic, orderly and efficient development of coalbed methane in Alberta

6. The EUB has recognized this impact as a broad public interest and industry concern by issuing Bulletin 2006-19, where the Board has determined that all applications in relation to the legal entitlement to coalbed methane are to be held in abeyance pending the outcome of Proceeding 1457147.

7. ConocoPhillips Canada urges the EUB to expeditiously determine that coalbed methane is natural gas and that it is the natural gas rights holders that have legal entitlement to coalbed methane. Further, ConocoPhillips Canada requests that the EUB, having confirmed that it is the

holders of the natural gas rights that have legal entitlement to coal bed methane, rescind Bulletin 2006-19 and confirm that natural gas rights holders enjoy all of the rights and incidents of such legal entitlement, including the issuance of well licences to applicants that meet the legislative requirements.

CONOCOPHILLIPS CANADA LANDS

8. ConocoPhillips Canada has analyzed the defined area Townships 32 through 40, Ranges 20 through 26 W4M (the “map region”) outlined in its Notice of Intention to Participate:

9. The scope and nature of the analysis was three fold:

1. To examine the various forms of freehold and EnCana leases granting natural gas in the map region in which ConocoPhillips Canada holds interests on behalf of itself or others, to compare both the granting clause and leased substances definition with those Devon and Fairborne leases that are applicable to lands in this proceeding and to determine whether the lease forms are substantively the same.
2. To determine the registration of title as it pertains to the ownership of coal rights vs. natural gas in the map region; and
3. To assess the potential impact of this proceeding on like leases within and beyond the map region boundary.

10. The analysis involved the examination of granting clauses and leased substances definitions for 201 EnCana leases granting natural gas (“EnCana Gas Leases”), 252 Freehold Leases granting natural gas and Leased by parties other than EnCana or its predecessors (“Non-EnCana Gas Leases”) and search of the 1,171 underlying titles.

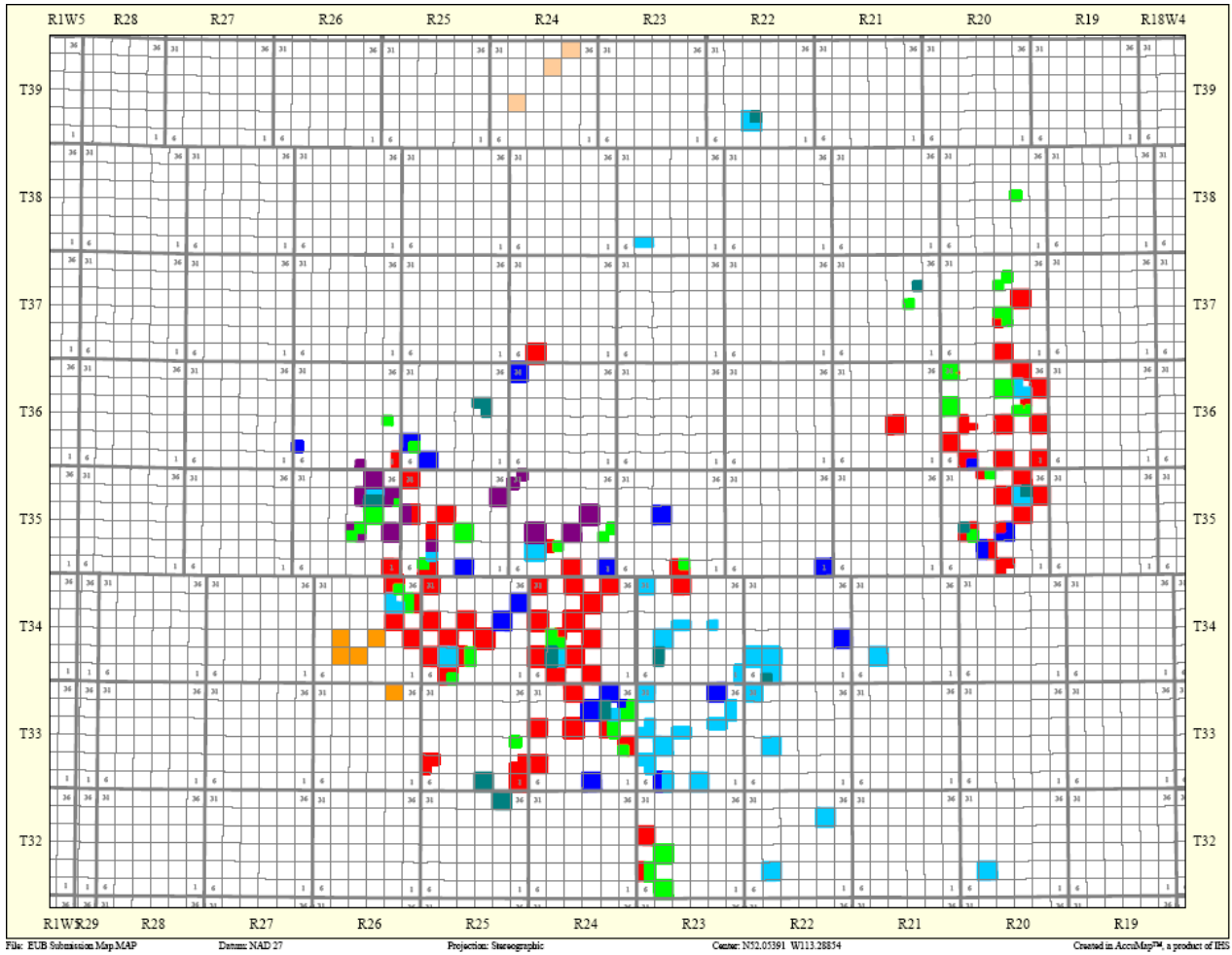
11. With regard to EnCana Gas Leases and the Non-EnCana Gas Leases in the map region, we conclude that these proceedings and EUB Bulletin 2006-19 have impact on significant numbers of like ConocoPhillips Canada leases within and beyond the boundaries of the map region. The conclusion is based on the following:









1. The similarity of granted substances and lease provisions among the freehold leases held by Devon, Fairborne and ConocoPhillips.
2. ConocoPhillips Canada's interests in the region are major, encompassing over two hundred EnCana Gas Leases. The EnCana Gas Leases in the region account for over 44,000 gross acres and represent less than one third of the current holdings of ConocoPhillips Canada's interests in EnCana Gas Leases by lease count.
3. There were two-dozen EnCana lease forms used within the map region over a period of 52 years from circa 1951 through 2003. The form of granting clause and leased substances remained substantially the same prior to the lease form revision in 1993. These 1993 revisions were the first to distinguish between coalbed methane and other forms of natural gas and post 1992 forms account for only one quarter of the EnCana Gas Leases within the map region.
4. Approximately 90% of the titles underlying the EnCana Gas Leases include both natural gas and coal. Where this is the case, coal is excluded as a leased substance, under the provisions of either the granting clause or leased substances definition.
5. Of the Non-EnCana Gas Leases, 88% of underlying coal is held under separate title. EnCana holds 35% of these split coal titles, 31% are held by Luscar and with the exception of a single coal title (Exxon/Mobil), the balance (22%) are held by the Crown. None of the Non-EnCana Gas Leases examined within the map region distinguished between coalbed methane and other forms of natural gas in either the granting clauses or leased substances definitions.

12. For ease of reference, ConocoPhillips Canada has indicated its information on the following map¹:

¹ In addition to the EnCana Gas Leases in the map region, ConocoPhillips Canada holds interests in 448 EnCana Gas Leases outside of this defined area.

FIGURE 2



-  Land subject to leases in favour of Fairborne in the applications.
-  Land subject to leases in favour of Devon in the applications.
-  Land interests held by ConocoPhillips Canada in EnCana Gas Leases and where the lease form distinguishes CBM from remaining Natural gas Rights (*1993 Amended EnCana Lease form*)
-  Land interests held by ConocoPhillips Canada in EnCana Gas Leases under an identical or equivalent form as Devon/EnCana Leases with no CBM specification or mention.
-  Land interests where ConocoPhillips Canada has been granted Non-EnCana Gas Leases and where public information shows that title to the underlying coal is on separate title and held by EnCana.
-  Land interests where ConocoPhillips Canada has been granted Non-EnCana Gas Leases and where public information shows that title to the underlying coal is on separate title and held by Luscar.
-  Land interests where ConocoPhillips Canada has been granted Non-EnCana Gas Leases and where public information shows that title to the underlying coal is on separate title and held by the Crown (or in a single case – Exxon Mobil).
-  Land interests where ConocoPhillips Canada has been granted a Non-EnCana freehold lease of natural gas rights and where public information shows that title to the underlying coal and natural gas is incorporated in the same title.

13. By way of summary, within the map region in relation to EnCana Gas Leases:
1. ConocoPhillips Canada holds for its own benefit or on behalf of others (including EnCana) interests in 201 EnCana Gas Leases granting entitlements to 43,932 acres/68.6 sections.
 2. The 201 EnCana Gas Leases have been granted in 24 different forms ranging from the earliest (*circa June 26, 1951*) through (*circa October 14, 2003*).²
 3. 186 of the EnCana Gas Leases grant Natural gas interests where EnCana is the owner of all mines and minerals. (42,096 acres/65.7 sections)
 4. 17 of the EnCana Gas Leases grant lands where EnCana or other third parties are the owners of underlying Coal title.³
14. In regard to Non-EnCana Gas Leases in the map region:
1. ConocoPhillips Canada holds interests for its own benefit, or on behalf of others, in 252 Non-EnCana Gas Leases granting entitlements to 40,742 acres/63.7 sections. None of these leases distinguish between coalbed methane and other forms of natural gas.
 2. 30 of the Non-EnCana Gas Leases grant natural gas interests where the Freehold Lessor owns both natural gas and coal. (4,597 acres/7.18 sections)⁴
 3. 223 of the Non-EnCana Gas Leases grant natural gas where there is split title in relation to the underlying coal rights. (36,940 acres/57.7 sections)

² Eight Leases were unavailable for examination at the time of this submission.

³ Two of the EnCana Leases grant Natural Gas in Lands where coal title is consolidated and split in separate parcels, hence, the double count.

⁴ One of the Non-EnCana Freehold Leases grant Natural Gas in Lands where coal title is consolidated and split in separate parcels, hence, the double count of one lease.

4. 89 of the Non-EnCana Gas Leases grant natural gas rights where EnCana is the owner of all or a portion of the underlying split Coal titles. (14,027 acres/21.9 sections)
5. 78 of the Non-EnCana Gas Leases grant natural gas rights where Luscar is the owner of all or a portion of the underlying split Coal title. (15,702 acres/24.5 sections)
6. 56 of the Non-EnCana Gas Leases grant natural gas rights where third parties including the Crown are the owners of underlying split Coal title. (7,048 acres/11 sections)

15. Turning to the EnCana Gas Leases, the leases granted by EnCana to Devon were reviewed and compared against the leases granted by EnCana to ConocoPhillips Canada.

ConocoPhillips Canada holds 62 leases granting interests in (11,681 acres/18.25 sections), where EnCana, as the freehold owner of all mines and minerals, has granted Natural gas to ConocoPhillips Canada and where the precise wording of the grant is:

[“**...DOES HEREBY GRANT AND LEASE** to” (the Named Lessee) , “a body corporate having an office in the City of Calgary, in the Province of Alberta, hereinafter called the “Lessee” all the petroleum and natural gas, natural gasoline and related hydrocarbons other than coal, and also including sulphur as recovered in solution or in association with any of the liquid or gaseous hydrocarbons (collectively hereinafter referred to as “the leased substances”) which may be found within, upon or under the said lands, or within, upon or under any lands excepted from the said lands, or any roadways, lanes or rights-of-way adjoining the said lands, together with the exclusive right and privilege to explore, drill for, win, take, remove, store and dispose of the leased substances, together with such surface rights as may be required by the Lessee for its drilling and production operations on the said lands, provided the Lessor owns and occupies the said surface rights at the date of this Lease.”];

This clause is identical with the granting clause under 7 of the 13 leases held by Devon that are central to this proceeding.⁵

⁵ PanCanadian Lease forms N.R. 578-4M-3-54-A.W., N.R. 578-I-2M-3-57-A.W. and N.R. 578-2-IM-9-61-A.W. use the exact form and bear the approximate dates as leases in the application area as held by Devon.

16. We noted that in 1993, EnCana significantly amended the granting clause and/or lease substance definition in its standard form leases used in the region to distinguish coalbed methane from the broader definition of natural gas with wording identical or similar to the following:

“leased substances” – means natural gas only and substances produced in association therewith, whether hydrocarbon or not, except coal and petroleum and except natural gas derived from or associated with coal deposits.”⁶

“leased substances” – means natural gas only, including all materials and substances whether liquid, solid, or gaseous and whether hydrocarbon or not produced in association therewith or found in any water in any reservoir, but excludes petroleum, natural gas produced in association with petroleum which gas was in a liquid state in virgin reservoir conditions (“solution gas”), coal, natural gas derived from or associated with coal deposits, and valuable stone.”⁷

17. By 2003, EnCana had further amended the lease substance definition in its standard form leases to more specifically distinguish coalbed methane from other natural gas, with wording identical or similar to the following:

““Coal Bed Methane” means coal bed methane, coal gas, coalbed gas, coal seam gas and all other forms of natural gas found in, derived from or directly related with coal seams, coal beds or carbonaceous shales.”⁸

⁶ PanCanadian Petroleum Lease form 551a - 93

⁷ PanCanadian Petroleum Lease forms 551a – 93 Rev.1 (95), 551a – 93 Rev.1 (98), 551a – 93 Rev.3 (02),

⁸ EnCana Lease form ECA-2003 (a) Parkland Amended Clause 2 Para 4 (deemed well)

18. While incorporating varied granting clause wording, the 17 different forms used prior to the introduction of revised lease forms in 1993, yielded natural gas entitlements as in the above. However, when specifically compared to the language of that granting clause, we see the results in table 1 below:

Table 1 – Comparison of Lease Granting Clause and Leased Substances definition to Devon Leases granted by EnCana or its predecessors

Granting clause form	Lease Count	Circa	Acreage	Section Count
Identical ⁹	62	March 23, 1954 – February 26, 1965	11,681	18.25
Equivalent ¹⁰	106	June 26, 1951 – July 1, 1993	19,505	30.5
Non-Equivalent (lease distinguishes CBM from remaining Natural gas rights) ¹¹	25	November 8, 1993 – October 7, 2003	11,121	17.3
Files unavailable at Examination	8	-	1,625	2.5
Total	201	June 26, 1951 – October 7, 2003	43,932	68.6

“Non-equivalent” leases are those EnCana Gas Leases that contain specific language in the granting clause or lease substance definition and distinguishes coalbed methane as a leased, or excluded lease substance.

19. In reference to the Non-EnCana Gas Leases, the leases granted to Fairborne were reviewed and compared against the freehold leases granted by parties other than EnCana to ConocoPhillips Canada.

ConocoPhillips Canada holds at minimum, 33 leases granting interests in (918 acres/1.43 sections), where multiple freehold owners other than EnCana, have granted Natural gas to ConocoPhillips Canada and where the precise wording of the grant is:

[“...**HEREBY GRANTS AND LEASES** exclusively unto the Lessee all the leased substances (as hereinafter defined) subject to the royalties hereinafter reserved, within, upon or under the said lands, together with all of the present or future right, title, estate and Interest, If any, of the Lessor in and to the leased substances or any of them within,

⁹ PanCanadian Forms N.R. 578-4M-3-54-A.W., N.R. 578-I-2M-3-57-A.W. and N.R. 578-2-IM-9-61-A.W

¹⁰ PanCanadian Forms 551 - Rev.2, 551,551A and 551B REV. 2, 551a, 551a-Rev. 2, 551a-Rev.2 (Amended), 58 LF - 2/65, 58 REV. 1 LF-2/65, 59 AF 2/65, N.R. 586-3M-6-58-A.W., O. & G. 107-LF-2/65-2M-11-67-A.W., OG 117-2M-6-71 AF 2/65 and Unspecified formats

¹¹ PanCanadian forms 551a-93, 551a-93 - Rev.1 (01), 551a-93 - Rev.1 (02), 551a-93 - Rev.1 (95), 551a-93 Rev.1 (95 Amended), 551a-93 Rev.1 (98) and ECA-2003 (a) Parkland Amended

upon or under any lands excepted from the said lands and any roadways, lanes or rights of way adjoining the said lands; together with the exclusive right and privilege to explore for, drill for, operate for, produce, win, take, remove, store, treat and dispose of the leased substances and the right to inject substances into the said lands for the purpose of obtaining, maintaining or Increasing production from the said lands, the pooled lands or the unitized lands and to store and recover any such substances injected into the said lands.”];

And where the precise wording of the leased substances definition under the lease form is:

[“(e) "leased substances" means all petroleum, natural gas and related hydrocarbons (except coal), and all materials and substances (except valuable stone), whether liquid, solid or gaseous and whether hydrocarbons or not, produced in association with petroleum, natural gas or related hydrocarbons or found in any water contained in any reservoir.””]

20. The granting clauses, leased substances definition and form under the ConocoPhillips Canada Non-EnCana leases are identical with the granting clauses and leased substances definition under 9 of the leases held by Fairborne that are central to this proceeding.¹²

CONOCOPHILLIPS CANADA IS MATERIALLY AND ADVERSELY IMPACTED

21. ConocoPhillips Canada currently estimates capital spending for 2007 onwards of in excess of \$40 million for the Three Hills and Fenn Areas alone, shown within the map region on in Figure 2. Most new wells are to tie in to gathering systems and other facilities that were built to serve both Crown and freehold lease production. Over half of this planned capital spending is intended for the development of the ConocoPhillips Canada’s EnCana leasehold interests within the Three Hills area, which development is being frustrated or delayed as a result of this dispute over the legal entitlement to coalbed methane.

JOINT SUBMISSION

22. ConocoPhillips Canada participated in the retention of Mr. Matthew J. Mavor, as an expert qualified to opine on the matters addressed in his report filed as part of the Joint Submission [Exhibit 18-001-2006-08-25], has read his report and agrees with Mr. Marvor’s

¹² The ConocoPhillips Canada Non-EnCana CAPL 91 ALTA leases use the exact form and bear the approximate dates as leases in the application area held by Fairborne - see Fairborne.

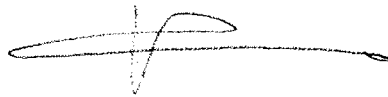
analysis and conclusions expressed in his report. Mr. Mavor's analysis and conclusions are entirely consistent with ConocoPhillips Canada's experience as the third largest producer of petroleum and natural gas in Canada.

DISPOSITION SOUGHT

23. ConocoPhillips Canada urges the EUB to expeditiously determine that coalbed methane is natural gas and that it is the natural gas rights holders that have legal entitlement to coalbed methane. Further, ConocoPhillips Canada requests that the EUB, having confirmed that it is the holders of the natural gas rights that have legal entitlement to coal bed methane, rescind Bulletin 2006-19 and confirm that natural gas rights holders enjoy all of the rights and incidents of such legal entitlement, including the issuance of well licences to applicants that meet the legislative requirements.

Submitted this 25th day of August, 2006

**CONOCOPHILLIPS CANADA RESOURCES
CORP.**



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