

THE ALBERTA ENERGY AND UTILITIES BOARD

**IN THE MATTER OF Proceeding No. 1457147
to the Alberta Energy and Utilities Board.**

**BEARSPAW PETROLEUM LTD.;
DEVON CANADA CORPORATION;
ENCANA CORPORATION;
FAIRBORNE ENERGY LTD.;
and CARBON DEVELOPMENT PARTNERSHIP
(successor in interest to Prairie Mines and Royalty Ltd.,
formerly known as Luscar Ltd.)**

**CLIVE, EWING LAKE, STETTLER
AND WIMBORNE FIELDS**

**SURREBUTTAL ARGUMENT
OF
ENCANA CORPORATION**

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SURREBUTTAL OF ENCANA CORPORATION

1. This submission regards the distinctions various CNG producers suggest between *Continental Resources*¹ and this case, as they apparently have been made without reference to the actual lease wordings and thus incorrectly.
2. The lease wordings at issue in *Continental Resources* parallel in the material regards the lease wordings at issue here² – and the decision suggests a similar disposition here (if ownership of CBM is to be decided), being a determination that a lease of "gas" does not include CBM.
3. First, CNG producers argue that *Continental Resources* concerns a reservation of a "right to drill through, not into, coal seams for gas and oil", which language is not contained in the leases here and so distinguishes the matter.³
4. That, however, was the conclusion of the court in *Continental Resources* based upon a grant and an operation covenant which are materially indistinguishable from those here, and not express lease wordings which would distinguish that case from this one.
5. In *Continental Resources*, the lessor granted "for the sole and only purpose of exploring, drilling, mining and operating for oil, all gases, liquid hydrocarbons and their respective constituent products ...".
6. From that grant, the CNG lessee derived a reservation to drill through but not into the coal, as the court concluded:

The reservation of the right to drill through the coal does not include the right to drill into the coal and develop coalbed methane.⁴

¹ *Continental Resources of Illinois Inc. v. Illinois Methane LLC*, 847 N.E. 2d 897, 364 Ill. App. 3d 691, 2006, reproduced with EnCana Argument filed November 29, 2006

² Material extracts from typical leases, Old Ben for Continental Resources and Devon for this matter, are at Appendix 1, along with typical lease wordings for each

³ Centrica Reply Argument, paras. 25 - 26; Devon Reply Argument, paras. 27 - 28; ConocoPhillips Reply Argument, paras. 42 - 43; Quicksilver Argument, paras. 46 - 47 (each filed December 13, 2006)

for the reason that:

The leases specifically require the lessee to permanently case and cement all holes drilled through coal seams or mine workings.⁵

7. EnCana submits there ought to be the same conclusion here, as the material lease wordings here are virtually indistinguishable from those there:
 - a. here, the lessor granted "all the petroleum and natural gas, natural gasoline and related hydrocarbons other than coal ... together with the exclusive right and privilege to explore, drill for, win, take, remove, store and dispose of the leased substances"; and
 - b. here, the lessee covenanted that it would "properly shut or cement any wells drilled or being drilled upon the leased lands so as to prevent any flow of water into any porous strata or to prevent flow from any substances from one stratum to another".
8. Here, as in *Continental Resources*, there is an express grant of a right to drill for gas with no permission to drill into the coal, and an express obligation to prevent the flow of substances between strata.
9. That covenant to cement, which the lessees expressly agreed to here, means that they are not entitled to CBM from the coals as in *Continental Resources*: if the lessees were entitled to "all gases", flow between zones would not be prohibited by the leases.
10. As Quicksilver said of the *Continental Resources* requirement to cement – which premised the determination that CBM was not the gas lessee's – for the same reason here "it is difficult to see how the court would have concluded otherwise".⁶

⁴ *Continental Resources*, p. 902

⁵ *Continental Resources*, p. 902

⁶ Quicksilver Reply, para. 47, filed December 13, 2006

11. Second, while ConocoPhillips would distinguish *Continental Resources* on the basis that the leases there "contain language specific to CBM", which is not mentioned in its leases here, it obviously did not review the leases there⁷ – as otherwise it would surely have noted CBM is not mentioned in the *Continental Resources* leases.
12. The issue in *Continental Resources* was whether a grant of "all gases" included CBM, even though the leases did not mention the latter – which is indistinguishable from the issue here of whether a grant of "natural gas" includes CBM.
13. Third, while Devon would have the Board believe that *Continental Resources* is of no assistance to the Board in determining "NGC ownership" in this proceeding because the vernacular meaning of the word "coal" was not determined,⁸ Devon misses an issue.
14. As said, the first issue for the CNG producers here is whether "natural gas" under the leases includes CBM, as that is the only entitlement the CNG producers can possibly have.⁹ For the CNG producers to succeed, "natural gas" must include CBM.
15. Finally, *Continental Resources* cannot be distinguished, as CNG producers suggest, on the basis that the rule of capture in Illinois means there is no mineral ownership without physical possession of that mineral,¹⁰ as the rule was not applied to give ownership to the gas lessee there and would not be here either.

⁷ ConocoPhillips Reply, paras. 42-43, filed December 13, 2006

⁸ Devon Reply Argument, para. 28, filed December 13, 2006

⁹ See EnCana Submission 07-024-2006-09-15, paras. 13-21

¹⁰ Devon Reply Argument, para. 27; ConocoPhillips Reply Argument, para. 44; Centrica Reply Argument, para. 28; Quicksilver Reply Argument, para. 48 (each filed December 13, 2006)

- a. The rule of capture did not decide ownership of CBM within the coal under the lands at issue in *Continental Resources*: the lease words requiring cementing of holes in the coal and the fact of the coal owner's responsibility for the CBM did.¹¹
 - b. Nor was the rule of capture in *Continental Resources* applied to CBM found in the mine voids after mining to give ownership to the gas lessee, as the gas had not been reduced to possession (which would have made it personal property).¹²
 - c. The rule of capture in that case was applied to gas produced from coal outside the gas lessee Continental's lands, precluding his claim to ownership of such.¹³
16. And the same would result here – as the CNG producers have only a *profit à prendre* (and not ownership before extraction, in contrast to the coal owners who by their reservation have actual ownership of the coal) and the rule of capture means there is no remedy for substances filtered to surrounding properties.¹⁴
17. The *Continental Resources* case is most instructive if CBM ownership is to be determined here.
- a. It is based upon private party lease of a right to explore for and win a substance – and the lessee's covenant to prevent flow between strata is utterly inconsistent with a determination that natural gas includes CBM.
 - b. Because of that and the coal owner's responsibility for it, CBM was not within a grant of "all gases" – even in the absence of an express coal reservation; and

¹¹ *Continental Resources*, pp 901-902

¹² *Continental Resources*, p. 6

¹³ *Continental Resources*, p. 6

¹⁴ *Borys v CPR*, reproduced 07-026-2006-09-15, Tab 6, at 550

- c. *Southern Ute* (which decided a statutory entitlement) was not applied by the Illinois Court of Appeals.

All of which is respectfully submitted this 4th day of January, 2007.

Code Hunter LLP

Per:



Christian J. Popowich

Katherine L. Reiffenstein

Counsel for EnCana Corporation

APPENDIX 1

Old Ben Coal Company	Calgary and Edmonton Railway Company
GRANT	
<p>Whereas, Lessor desires, subject to the conditions, agreements and covenants hereinafter contained, to grant, lease and let to Lessee the right to drill for oil, all gases, liquid hydrocarbons and their respective constituent products upon, and to take and remove the same from the premises;</p> <p>...</p> <p>Now, therefore, ... Lessor has granted, demised, leased and let exclusively unto Lessee, for the sole and only purpose of exploring, drilling, mining and operating for oil, all gases, liquid hydrocarbons and their respective constituent products ...</p>	<p>[The Lessor] does hereby grant and lease ... all the petroleum and natural gas, natural gasoline and related hydrocarbons other than coal, ... which may be found within, upon or under the said lands, ... together with the exclusive right and privilege to explore, drill for, win, take, remove, store and dispose of the leased substances</p>
OPERATIONS	
<p>Lessee shall so conduct operations on the premises as not unreasonably to interfere with the coal mining operations of Lessor, and Lessee and Lessor shall cooperate in order not to interfere unreasonably with the operations of each other. Lessee shall do all things necessary or advisable, in accordance with good engineering practice, to protect coal veins and to prevent leakage of oil or gas into coal veins and coal mine workings. Lessee shall permanently case and cement all holes drilled in or through coal seams or mine workings and shall promptly plug all dry and abandoned wells, ...</p>	<p>The Lessee shall conduct all its operations on the leased lands in a diligent, careful and workmanlike manner with a view to the maximum total recovery of the leased substances and in compliance with the provisions of law applicable to such operations and without limiting the generality of the foregoing the Lessee covenants:</p> <p>(a) That it shall make such provision for the disposal of the earth, rock, waste or refuse from its workings on the leased lands that the same shall not be an inconvenience, nuisance or obstruction to any railway right-of-way, roadway, pass, passage, river, creek, or place, or to any private, public or Crown lands, or conflict with or embarrass the operating of any mine on the leased lands or adjoining lands, or in any manner whatsoever occasion any private or public damage, nuisance or inconvenience.</p> <p>(c) That it will properly shut or cement any wells drilled or being drilled upon the leased lands so as to prevent any flow of water into any porous strata or to prevent flow from any substances from one stratum to another.</p>

Document No. 90-3305
Filed for record

OIL AND GAS LEASE
from
OLD BEN COAL COMPANY
to
L. L. TUCK

JUL 1 1980
at 1:10 o'clock P.M.
Fee paid \$ 15.00
B. J. Hillier
Recorder

THIS AGREEMENT, made and entered into between OLD BEN COAL COMPANY, ~~Delaware Corporation~~, a Delaware Corporation, with offices in the City of Chicago, Illinois, (hereinafter called "LESSOR"), and L. L. Tuck, P.O. Drawer 369, Littleton, Colorado 80160

(hereinafter called "LESSEE");

WITNESSES:

THAT, WHEREAS, LESSEE desires to lease such interest as LESSOR has in and to the oil, all gases, liquid hydrocarbons and their respective constituent products (including the right to drill for, take and remove the same) underlying the surface of certain lands in Franklin County, Illinois, described in the schedule attached hereto, marked "Exhibit A" and by this reference made a part of this Agreement (sometimes hereinafter being called the "premises"); and

WHEREAS, LESSOR desires, subject to the conditions, agreements and covenants hereinafter contained, to grant, lease and let to LESSEE the right to drill for oil, all gases, liquid hydrocarbons and their respective constituent products upon, and to take and remove the same from the premises;

NOW, THEREFORE, for and in consideration of the sum of \$10.00, cash in hand paid, the receipt of which is hereby acknowledged, and of the payments, covenants and agreements hereinafter mentioned on the part of LESSEE to be paid, kept and performed, LESSOR has granted, demised, leased and let exclusively unto LESSEE, for the sole and only purpose of exploring, drilling, mining and operating for oil, all gases, liquid hydrocarbons and their respective constituent products and of laying pipe lines, building tanks, stations, power lines, telephone lines and other structures and facilities upon the premises to produce, save and take care of said products, all such rights as LESSOR has to do in and upon the premises;

AND IT IS EXPRESSLY UNDERSTOOD, COVENANTED AND AGREED BY THE PARTIES HERETO, AS FOLLOWS:

1. Subject to other provisions for termination set forth in numbered clause 3 hereof, this Agreement shall continue for a primary term of 10 months from the date hereof, which primary term may be extended as hereinafter provided, and as long thereafter as this Agreement shall be further extended by continuous drilling operations as more fully provided in numbered clause 9 hereof, or as long as oil, gas or casinghead gas is produced from the premises under the conditions herein named, as hereinafter provided.

The primary term herein referred to shall be extended as to the entire premises, for a period of 2 months for the first well that is drilled on any part thereof; in other words, when the first well has been completed on some part of the premises, either as a producer or a dry hole, the primary term of this Agreement shall, by reason thereof, be extended to 12 months from the date hereof as to the entire premises, and the primary term shall be further extended, as to the entire premises, for successive additional periods of 2 months each for each additional producing well or dry hole completed on any part thereof during the primary term or any extension thereof, without regard to whether the said first well or any such additional well shall have been drilled by LESSEE or shall have been drilled by any assignee of LESSEE, and without regard to whether LESSEE'S estate or rights hereunder shall have been transferred or assigned, in whole or in part, by LESSOR at the time any such well is drilled. Each such additional producing well or dry hole shall be drilled to at least a depth determined as follows:

- (a) To any depth, at LESSEE'S option, at which oil or gas has been found in paying quantities theretofore on any part of the premises, unless oil or gas in paying quantities is found at a lesser depth; or
- (b) If oil or gas has not been found in paying quantities theretofore on any part of the premises, then through the McClosky formation or to the depth of 3,000 feet, whichever shall be the lesser.

In the event of production of oil or gas from any well on any portion of the premises, then, notwithstanding anything herein contained, this Agreement shall continue in effect with respect to the portion of the premises on which said production is obtained without further drilling operations thereon, except oilfield drilling as hereinafter provided, for as long thereafter as oil or gas is produced from said portion of the premises, for the purpose of determining the "portion of the premises on which said production is obtained", as herein provided, if the production from a well is obtained from a sand or from a lime having a depth of 4000 feet or more, said "portion of the premises on which said production is obtained" shall be considered as being 40 acres in the form of a square, as nearly as practicable, including such well site. If the production be from a

EXHIBIT A

and having a depth of less than 400 feet said "portion of the premises on which said production is obtained shall be considered as being 10 acres in the form of a square, as nearly as practicable, including such well; and if the production be from a depth of less than 500 feet said "portion of the premises on which said production is obtained" shall be considered as being 20 acres comprising 10 acres in the form of a square, as nearly as practicable, including such well and an additional tract of 10 acres in the form of a square, as nearly as practicable, one side of which shall be identical with one side of the 10 acres on which the well is located, in the event the LESSOR refuses permission to drill in said additional 10 acre tract. Each 10, 20, or 40 acres, as the case may be, shall be designated by LESSOR to LESSOR within 30 days after said production well is completed, and if LESSOR fails to make any such designation within said 30 days, LESSOR, at any time thereafter, may make such designation. Promptly after such designation is made LESSOR, at his own expense, shall file for record an appropriate instrument defining the boundaries of such tract.

Nothing herein contained shall be deemed to prevent the designation of any portion of the premises as the "portion of the premises on which said production is obtained" with respect to production of oil or gas from a well even though all or a part of such portion of the premises heretofore has been so designated by reason of production from some other well or wells.

In making the aforesaid designation, the customary regulatory 40 acre subdivision of the governmental section in which such designated acreage is to be used and followed as nearly as practicable as to the 10 acre tract on which the well is located, and if 20 acres are to be designated, the additional 10 acres shall be determined in the same manner and shall be in one tract or side of which is identical with one side of the 10 acre tract. It is recognized that a regulatory 40 acre subdivision of a governmental section may contain more or less than 40 acres and it is agreed that the 10 or 20 acre subdivisions, as the case may be, shall vary slightly in acreage in the proportion that the number of acres actually contained in the regulatory 40 acre tract in which such subdivision is located bears to 40. If 40 acres are to be designated, a regulatory 40 acre subdivision shall be designated insofar as practicable.

It also is recognized that the premises may not be completely divisible into 40 acre subdivisions and full 10 acre tracts or regular 40 acre subdivisions, and, therefore, it is agreed that each tract to be designated shall be reduced in acres and altered in shape if, when, and to the extent necessary to prevent it from being in more than one of such 10 acre tracts in the case of a designation made because of production in said tract or in more than two of such 10 acre tracts in the case of a designation made because of production in more than one of such 10 acre tracts. It is further agreed that LESSOR shall have the right in any time or LESSOR's option, to redeem for LESSOR, by payment, any mortgages, tax or other liens on the premises in the event of default in payment thereof, LESSOR and upon such payment to be subordinated to the rights of the holder thereof; provided, however, that LESSOR shall not have such right to redeem as long as LESSOR shall control any taxes, assessments, or charges, or the royalty hereof by appropriate legal proceedings which shall operate to prevent sale or forfeiture.

LESSOR covenants and agrees that within 30 days of the effective date of this Lease and Agreement LESSOR will commence the drilling of a test well at some location to be selected by LESSOR on the premises, and that LESSOR will continue the drilling of said well with due diligence through the necessity for location or to the depth of 3,000 feet, whichever shall be the lesser depth. It will or gas in paying quantities is encountered in said well, LESSOR shall fully equip the said well, including necessary land, and place the same on production. If LESSOR shall fail to commence said test well within the time herein provided, or after the commencement thereof to drill the same with due diligence to completion, this Agreement notwithstanding shall terminate, but such termination shall not relieve LESSOR of any liability to LESSOR for any damages that LESSOR may hereafter suffer by reason of such breach.

LESSOR is hereby bound by this Agreement, and the sum of \$500.00. If LESSOR shall commence the test well herein provided for within the time specified and, after commencement thereof shall drill the same, with due diligence to completion, then LESSOR shall return said \$500.00 to LESSOR; otherwise, LESSOR shall retain said \$500.00 as liquidated damages for LESSOR's failure to commence the test well herein provided for within the time specified and, after commencement thereof shall drill the same with due diligence to completion, this Agreement notwithstanding shall terminate, but such termination shall not relieve LESSOR of any liability to LESSOR for any damages that LESSOR may hereafter suffer by reason of such breach.

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4. LESSEE shall so conduct operations on the premises as not unreasonably to interfere with the coal mining operations of LESSOR, and LESSEE and LESSOR shall cooperate in order not to interfere unreasonably with the operations of each other. LESSEE shall do all things necessary or advisable, in accordance with good engineering practice, to protect coal veins and to prevent leakage of oil or gas into coal veins and coal mine workings. LESSEE shall permanently case and cement all holes drilled in or through coal seams or mine workings and shall promptly plug all dry and abandoned wells, and generally in all of his operations hereunder shall comply with applicable laws and ordinances, and all regulations issued thereunder, and also with all requirements of LESSOR'S ~~Manager of~~ ^{Engineering-Mining} ~~log~~ (or such other person as LESSOR may designate in writing to LESSEE) not in conflict therewith.

Two copies of all Schlumberger or Halliburton well logs, commonly known as "electric logs", that are prepared shall be furnished to LESSOR without cost for the same or for the work required in the preparation thereof. Each such log shall present a full and complete survey of the drilling covered thereby and shall be delivered to LESSOR promptly after such log is made.

Prior to the drilling of any well on the premises, LESSEE shall submit to LESSOR the tentative surface location of said well, (which location shall comply with all laws, orders and regulations then in effect), for LESSOR'S approval, so that said well may be drilled through adequate columns and so as not to interfere with the underground tunnels theretofore constructed or proposed thereafter to be constructed by LESSOR. LESSOR, within a period of 10 days immediately following the date of the receipt of notice from LESSEE of said tentative location, shall notify LESSEE of its approval or disapproval of said location. If LESSOR disapproves any location, then, but without limitation upon the time which LESSEE otherwise would have within which to notify LESSOR of a tentative location for said well, LESSEE shall have at least 10 days after receipt of any such notice of disapproval within which to notify LESSOR of a different location for said well. The failure of LESSOR to notify LESSEE of its disapproval of any such tentative surface location within the 10 day period above specified shall be equivalent to approval of such location, as of the 10th day. The time required or allowed hereunder for the commencement or completion of said well shall be extended by a period of time equivalent to that elapsing between the date of the first notice of a tentative surface location for said well and the final date of approval of a location therefor. If LESSOR has heretofore sold or leased, or shall hereafter sell or lease, any coal contained in the premises, LESSOR, if it so desires, may notify LESSEE of that fact and of the name and address of the purchaser or lessee of such coal. Until such time thereafter as LESSOR shall notify LESSEE that LESSOR has reacquired such coal the rights of LESSOR, but only to the extent set forth in said notice, to approve or disapprove tentative surface locations of wells under this numbered clause 4, and all the rights of LESSOR under numbered clause 5 hereof in respect of the coal so sold or leased, and all other rights of LESSOR hereunder respecting the protection of coal veins included in such sale or lease, insofar as they relate to the portion of the premises included in such notice of sale or lease, shall be transferred by virtue of such notice to the purchaser or lessee of such coal. This clause, however, shall not be construed as a representation that LESSOR is the present owner or lessee of coal underlying the premises nor as affecting any other obligations of LESSEE to existing owners or lessees of surface or coal. LESSOR reserves the right to refuse permission to drill in any part of the premises where drilling would reduce the amount of mineable and recoverable coal otherwise available from the #6 Coal Seam.

5. Subject to the rights of LESSEE hereunder, nothing herein contained shall restrict LESSOR'S rights to use the premises in the exploration for or mining of coal and other minerals, except oil, all gases, liquid hydrocarbons and their respective constituent products, and to enter upon and use the premises in any way convenient or necessary for such purposes.

6. Either party to this Agreement shall have the privilege of assigning this Agreement as to any part of the premises, but the covenants and conditions herein contained shall extend to and be binding upon its or his assigns; provided, however, that no such assignment shall be made by LESSEE without the written consent of LESSOR to such assignment.

7. In consideration of the premises, LESSEE covenants and agrees to make all payments on behalf of LESSOR as provided in numbered clause 23 hereof and also covenants and agrees that, in addition thereto, royalties shall be paid or delivered to LESSOR as follows:

- (a) LESSEE shall deliver to the credit of LESSOR the equal 1/8th part of all oil or other liquid hydrocarbons produced and saved from said premises by LESSEE, hereunder or under any other lease or assignment or any deed or other instrument covering the premises or any portion thereof, free of all cost, and of all liens or charges against LESSEE or placed thereon by LESSEE either in the pipe line to which LESSEE may connect wells on the premises or in such other transportation facilities as may be acceptable to LESSOR;
- (b) LESSEE shall pay to LESSOR, as royalty, for gas, including casinghead gas and all gaseous substances, produced by LESSEE from said premises, hereunder or under any other lease or assign-

ment or any deed or other instrument covering the premises or any portion thereof, from each well on said premises where gas only is found and used by LESSEE off of said premises, 1/8th of the market value of the well of such gas, it being agreed that if such gas is sold by LESSEE, then LESSEE shall pay to LESSOR, as royalty, 1/8th of the net proceeds derived from the sale of such gas at the well, LESSOR shall have gas free of charge from any gas wells on the premises for all stoves and inside lights in the principal dwelling houses thereon during the time by making LESSOR'S own connections with the wells at LESSOR'S own risk and expense, at a point or points to be designated by LESSEE;

(c) LESSEE shall pay to LESSOR, as royalty, for gas produced by LESSEE from said premises, hereunder or under any other lease or assignment or any deed or other instrument covering the leased premises or any portion thereof, from any oil well on said premises and used by LESSEE for the manufacture of gasoline or any other product, 1/8th of the market value, at the well, for such gas, as such. It is agreed that if gas which is produced by LESSEE from said premises is sold by LESSEE, then LESSEE shall pay to LESSOR, as royalty, 1/8th of the net proceeds derived from the sale thereof.

8. All payments of money to be made by LESSEE to LESSOR shall be made not later than the 25th day of the month next succeeding the month during which the product was taken by LESSEE.

LESSEE shall mail to LESSOR'S ^{Manager of} ~~Engineering-Mining~~ (or such other person as LESSOR may designate in writing to LESSEE) at Benton, Illinois, or at such other address as LESSOR may substitute therefor, a carbon copy of each gauge report for each oil storage tank or battery of oil storage tanks used in connection with the production of oil on the premises, and also a carbon copy of each pipe line run ticket; all such copies to be mailed, as aforesaid, within 24 hours after the gauging of the tanks or the completion of the run to which they relate.

9. It is agreed, in the event oil or gas is produced in any quantity from any well, that after the expiration of the primary term, and all extensions thereof, this Agreement may be further extended as long hereafter as LESSEE shall drill continuously. Drilling shall be considered to be continuous if not more than 90 days shall elapse between the completion of one well and the beginning of the drilling of a subsequent well but the first well completed after the expiration of the primary term, or after the expiration of the primary term as extended, if extended, must be commenced on or before the date of the expiration of the primary term, or the expiration of the primary term as extended, if extended. Each well drilled in the course of continuous drilling operations shall be drilled at least to any depth, at LESSEE'S option, at which oil or gas in paying quantities has been found theretofore on any part of the premises, unless oil or gas in paying quantities is found at a lesser depth. When commenced, drilling shall be prosecuted diligently. Upon the expiration of the primary term hereof, or upon the expiration of the primary term as extended, if extended, or upon the termination of continuous drilling operations, whichever event last shall occur, this Agreement shall terminate as to all portions of the premises not held by production as provided by numbered clause 1 hereof and LESSOR shall be repossessed thereof as completely as though this Agreement had never been executed.

For all purposes of this Agreement, it shall be deemed that a well has been "completed"; (a) if a dry hole, when said well is plugged and abandoned; and (b) if a producing well, when the first oil is run to the tanks by pumped delivery or free flow in excess of earlier injection for treatment or other needs, the first gas is saved; and drilling shall be deemed to have been begun when the first material is placed upon the ground, provided that drilling operations are thereafter prosecuted with diligence to completion.

In the event oil or gas or both are produced from the premises and said production shall for any reason cease or terminate, LESSEE shall have the right at any time within 90 days from the cessation of such production to resume drilling operations in the effort to make such premises again produce oil or gas, which event this Agreement shall remain in force so long as such operations are continuously and diligently prosecuted, and if they result in the production of oil or gas or both, so long thereafter as oil or gas or both are produced in paying quantities from the premises, subject to all other rights and obligations of the parties hereto.

No producing well shall be capped and no production of any well shall be limited or impaired, except as may be required by Federal or state law, order or regulation, or other causes beyond LESSEE'S control, unless written consent so to do is first given by LESSOR. If, and to the extent that for any of the aforesaid reasons, continuous drilling cannot be prosecuted during any period or periods of time, drilling operations shall be suspended during such period or periods. For all purposes of this Agreement, "production" shall be construed as production of oil or gas in paying quantities.

10. LESSEE shall save LESSOR harmless from all liability for injury to any person or damage to the property of any person caused by the operations of LESSEE on the premises, and LESSOR shall save

LESSEE harmless from all liability for injury to any person or damage to the property of any person caused by the future operations of LESSOR on the premises. LESSEE hereby releases LESSOR from any and all damages or costs of any nature whatsoever which may accrue to LESSEE on account of or as a result of LESSOR approving or locating a proposed well or wells through a mine pillar, or any other location in LESSOR'S mines, even though said approval or said location be caused by the negligence of LESSOR, its agents or employees.

11. LESSEE shall promptly pay for all damages caused by LESSEE'S operations to structures, equipment, orchards or growing crops on the premises.

12. LESSEE shall bury all pipe lines below plow depth.

13. LESSEE shall have the right to use, free of charge, water, oil and gas from the premises for LESSEE'S development or operations on the premises.

14. No well shall be drilled nearer than 200 feet from any of LESSOR'S buildings or structures now or hereafter situated on the premises without first securing the written consent of LESSOR thereto.

15. Notwithstanding the provisions of numbered clause 8 hereof, LESSEE will commence an offset well within 60 days after the completion of any producing well not already offset that is hereafter drilled within 330 feet of the exterior boundaries of the premises as such boundaries exist at the time production commences in the well hereby provided to be offset; provided, however, that except as provided in numbered clause 23 hereof, as an alternative to offsetting any well as herein required, LESSEE may release from the terms of this Agreement a tract of approximately 10 acres, if such offset production be in sand, in the form of a square, as nearly as may be possible, the center point of which tract shall be located approximately as follows:

Beginning at the location of the producing well not already offset, thence to, and along a line perpendicular to the line of the premises' boundary nearest to said well, thence continuing in the same direction as aforesaid to a point (which shall be the said center point) which is the same distance from the line of said boundary as is the aforesaid producing well.

And, if such offset production be in lime, LESSEE also shall release an additional tract of 10 acres in the form of a square, as nearly as may be possible, to be selected by LESSOR, one side of which shall be identical with one side of the 10 acre tract located as aforesaid. Notwithstanding the foregoing, if such offset production be from a depth of 4000 feet or more, LESSEE shall release a 40 acre subdivision of a governmental section which is included in the premises and adjacent to the 40 acre subdivision of a governmental section on which the well to be offset is located, and if there be no such full subdivision included in the premises, then the largest fractional part (measured in acreage) so adjacent, shall be released. In any such case, LESSEE also shall release to LESSOR such additional portion of the premises, if any, as may be necessary to permit LESSOR to drill a well through the formation from which production was obtained in the well not already offset. Upon the execution and delivery of said release to LESSOR, LESSEE shall be relieved of drilling such offset well. LESSEE, after the execution and delivery of the aforesaid release, shall permit ingress and egress over LESSEE'S leaseholds to and from the premises covered by said release. Offset drilling commenced by LESSEE shall be prosecuted to completion with due diligence. It is, however, understood that, anything herein contained to the contrary notwithstanding, LESSEE shall not be required to drill more than one well on any "portion of the premises on which said production is obtained" as is more particularly provided in numbered clause 1 hereof. The operation of this numbered clause 15 shall be suspended during any periods of time and as to any portions of the premises in respect of which the drilling of the offset wells contemplated thereby would be unlawful.

16. LESSEE will display to LESSOR at all reasonable times during business hours all books and records kept by LESSEE relative to the production of oil or gas, or both, under the terms of this Agreement, and which appertain to the production of or proceeds from any well drilled under the terms of this Agreement.

17. LESSEE, at all times, will conduct operations in conformity with the terms and provisions of all existing and applicable laws, orders, rules and regulations of any regularly constituted governmental body.

18. LESSEE, at all times, will carry and maintain in force good and sufficient workmen's compensation insurance and public liability insurance including coverage of liability under the Illinois Scaffold Act in connection with all operations under the terms of this Agreement, and will carry and maintain such other insurance coverage as good business judgment shall dictate.

19. LESSEE shall have, and hereby is granted, such surface rights and rights of ingress and egress in, to, upon and from the premises as LESSOR now owns, if any, and which are reasonably required by LESSEE in LESSEE'S operations hereunder, subject to the reasonable needs of LESSOR and the existing rights of tenants. If the surface rights and rights of ingress and egress so required by LESSEE are not owned by LESSOR, or have now been leased or hereafter shall be leased by LESSOR to other tenants,

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LESSEE shall secure the same from such other owners or tenants, at LESSEE'S expense.

20. LESSOR and LESSEE, respectively, shall pay, promptly when due, all taxes on oil and gas produced from the premises, and all taxes in connection with the production thereof, and all other taxes, for which LESSOR and LESSEE, respectively, shall be liable by law; provided, however, that either party to this Agreement shall have the right to contest any taxes, assessments, or charges, or the validity thereof, by appropriate legal proceedings which shall operate to prevent sale or forfeiture.

21. LESSEE shall have the right at any time to remove all of his machinery and fixtures placed on the premises and not necessary for their current operations thereon, including the right to draw and remove casing; provided, however, that in no case shall any casing or other equipment be drawn or removed if such drawing or removal will make possible the leakage of either oil or gas into the number 5 or number 6 veins of coal.

22. LESSEE shall not have any right to use any well drilled hereunder as a water disposal or "inflow" well for the disposal of salt water produced from any other well, or for any other purpose except the production of oil or gas, or both, therefrom.

23. LESSEE HEREBY AGREES in addition to all of LESSEE'S other covenants and agreements herein contained, to assume and perform all obligations, whether express or implied, of Old Ben Coal Company as lessee under any lease or leases, covering any portion of the premises, insofar as the same relate to oil, all gases, liquid hydrocarbons, and their respective constituent products, including, among other things, the payment of royalties on said products, for so long as the assignment hereunder of LESSOR'S rights in such lease or leases, or any part of any of them, shall be effective by reason of the provisions of this Agreement, in order that Old Ben Coal Company may not be placed in default or incur any liability thereunder because of any act or omission of LESSEE. LESSEE also agrees to drill all such wells as may be necessary to prevent Old Ben Coal Company from being placed in default or incurring any liability under any such lease or leases. LESSEE hereby further agrees that when this Agreement shall terminate as to all or any portion of any property included in any such lease or leases, that LESSEE will reassign to LESSOR such lease or leases or such portion thereof.

Notwithstanding anything herein contained to the contrary, it is expressly understood and agreed that if LESSOR, in its sole discretion, shall deem that it is in danger of suffering loss or damage under any lease or leases of property included in the premises, because of any act or omission of LESSEE, LESSOR may give written notice thereof to LESSEE and, if LESSEE shall fail to cure the act or omission complained of in such notice within 30 days from the date of the mailing of any such notice, this Agreement, at the election of LESSOR and without notice, shall terminate as to all portions of the premises not then held by production as provided by numbered clause 1 hereof and LESSOR shall be repossessed thereof as completely as though this Agreement had never been executed.

24. LESSOR, its officers and duly authorized agents and employees, for the purpose of inspection and of conducting its coal mining business, or for any other legitimate purpose, shall have access at all times to the land upon which any well may be drilled under the terms of this Agreement, and to the derrick floor (but at LESSOR'S risk), and it and they shall have access at all reasonable times to all books and records of LESSEE bearing upon the operations contemplated by this Agreement. LESSEE will furnish to LESSOR, upon LESSOR'S request, as drilling progresses, all drill records pertaining to all wells being drilled.

25. No rights to take and remove oil, all gases, liquid hydrocarbons and their respective constituent products from the premises and no interest therein which have been or may be acquired by LESSEE from others than LESSOR, and no claim thereof, shall be asserted against LESSOR or in derogation of its rights under this Agreement.

26. Nothing herein contained shall be construed to constitute a partnership relation between LESSOR and LESSEE.

27. Separate counterparts of this Lease and Agreement may be signed and together shall constitute one agreement.

28. If this Oil and Gas Lease is executed by more than one person as LESSEE, the term "LESSEE" and all references thereto shall be taken in the plural.

29. All notices, remittances and statements required to be sent to LESSOR under the terms of this Agreement shall be mailed to LESSOR at 125 South Wacker Drive, Chicago, Illinois, 60605, or at such other address as may be indicated by LESSOR hereafter in writing; and all notices, receipts and statements required by this Agreement to be sent to LESSEE shall be mailed to LESSEE at

P.O. Drawer 369, Littleton, Colorado 80160, or at such other address as may be indicated by LESSEE hereafter in writing.

30. All covenants and agreements herein contained shall inure to and be mutually binding and obligatory upon the successors, heirs, administrators, executors and assigns of the respective parties hereto.

AND

31. It is expressly understood and agreed that in the event LESSEE'S operations hereunder result in conflict or interference with any operations present or future of the LESSOR or any activities performed by others or required by others on behalf of the LESSOR or its assigns, the LESSEE shall at no expense to the LESSOR or its assigns, revise, remove, relocate or abandon such pipe lines, power lines, roadways, tank batteries, pump units or whatever facilities that are causing such interference with LESSOR'S operations or activities.

32. There are no understandings or agreements relative to this Oil and Gas Lease or its subject matter, that are not fully expressed herein. This Oil and Gas Lease may be altered only by written consent of both parties hereto.

This instrument prepared by Royce K. Traylor, an employee of Old Ben Coal Company, RR # 3, Oakland City, Indiana 47650

NOTARY PUBLIC
1921

personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, as the law and voluntary act for the uses and purposes therein set forth.

[Signature]
19:30

State of Missouri
County of Jefferson
SS.

NOTARY PUBLIC

Given under my hand and seal this 13 day of July, 1921, as their own free and voluntary act for the uses and purposes therein set forth. I, [Name], do hereby certify that personally known to me to be the president of the [Company], and each and severally acknowledged that they signed and delivered the foregoing instrument in the respective capacities herein set forth and caused to be affixed thereto the corporate seal of said corporation, pursuant to authority given by the board of directors of said corporation, as the law and voluntary act of said corporation, and as their own free and voluntary act for the uses and purposes therein set forth.

State of Missouri
County of Jefferson
SS.

[Signature]
19:30

Given under my hand and seal this 13 day of July, 1921, as their own free and voluntary act for the uses and purposes therein set forth. I, [Name], do hereby certify that before me this day in person appeared [Name], personally known to me to be the president of the [Company], and each and severally acknowledged that they signed and delivered the foregoing instrument in the respective capacities herein set forth and caused to be affixed thereto the corporate seal of said corporation, pursuant to authority given under the articles and by-laws of the corporation, as the law and voluntary act of said corporation, and as their own free and voluntary act for the uses and purposes therein set forth.

State of Missouri
County of Boone
SS.

[Signature]
19:30

OLD BEN COAL COMPANY,
A DELAWARE CORPORATION
[Signature]
VICE PRESIDENT

[Signature]
NOTARY PUBLIC

BY WITNESS WHEREOF, the parties have executed this Oil and Gas Lease on this 13 day of July, 1921.

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EXHIBIT "A"

In Township Six (5) South, Range Two (2) East of the
Third Principal Meridian, Franklin County, Illinois:

In Section 13, the West Half of the Northwest
Quarter of said section;

the Northwest Fourth of the
Southwest Quarter of said
section;

In Section 14, the East Half of the Northeast
Quarter of said section;

the Northeast Fourth of the
Southeast Quarter of said
section;

the North Half of the Southeast
Fourth of the Southeast Quarter
of said section.

CONTINENTAL RESOURCES OF ILLINOIS, INC.
F-G-H Leases
Franklin Co., IL

REF #	PERMIT #	WELL NAME	LEASE	LOCATION	SEC	TWN	RNG
130013	46992	OBC-LEFFLER #13-F	F	1035S 1050E NWc SW NW	13	06S	02E
130023	16256	TUCK-CITY OF BENTON #4-F	F	0355N 0480E SWc NW NW	13	05S	02E
130024	52783	OBC-CITY OF BENTON #5F	F	0330S 0505E NWc	13	05S	02E
130026	26266	TUCK-LEFFLER #11-F	F	0230N 0330E SWc NW	13	05S	02E
130032	201881	OLD BEN COAL-RICE #7-F	F	0380S 0340E NWc SW	13	06S	02E
130033	21250	OBC-RICE #8-F	F	0390N 0325E SWc NW SW	13	06S	02E
203719	23785	TUCK-CITY OF BENTON #9-F	F	0330S 0343W NEc NW NW	13	06S	02E
205939	52018	WCU #5	F	0330S 0330E NWc SW NW	13	06S	02E
129994	12479	DUCKWORTH #1-F	F	0490N 0520W SEc NE	14	06S	02E
129995	201880	OLD BEN COAL-MARTIN #6-F	F	0400S 0330E NWc NE SE	14	06S	02E
129996	201488	OBC-MARTIN #12-F	F	0330N 0330E SWc NE SE	14	06S	02E
129998	14291	OBC #2-F	F	0290N 0445W SEc SE NE NE	14	06S	02E
130014	201177	OBC-MITCHELL #14-F	F	0961N 0330W SEc	14	06S	02E
130029	15162	TUCK-OLD BEN #3-F	F	0330S 0350E NWc NE NE	14	06S	02E
130030	25728	TUCK-OLD BEN #10-F	F	0430S 1000W NEc SE NE	14	06S	02E
205880	51940	WCU #5	F	0330S 0093W NEc	14	06S	02E
207551	202170	WEST CITY UNIT #7	F	0513S 0178W NEc SE	14	06S	02E
207586	54725	WCU #11	F	1452S 0028W NEc	14	06S	02E
130003	201911	OBC-BARTON #14-G	G	0330N 0389E SWc NW SW	12	06S	02E
130015	30423	OBC-ODUM #4-G	G	0370N 0330E SWc	12	06S	02E
130016	30583	OBC-ODUM #7-G	G	0357N 0380W SEc SW SW	12	06S	02E
130017	33999	OBC-ODUM #10-G	G	0330S 0593E NWc SW SW	12	06S	02E
130018	201158	OBC-ODUM #13-G	G	0383N 0391E SWc SE SW	12	06S	02E
130019	201133	OBC-ODUM #16-G	G	0577S 0315E NWc SE SW	12	06S	02E
205405	201724	WEST CITY UNIT #1	G	1540N 1135E SWc	12	06S	02E
205505	201882	WEST CITY UNIT #4	G	2120N 1555E SWc	12	06S	02E
130005	201062	TUCK-CITY OF BENTON #5-G	G	0330S 0330E NWc NE NW	13	06S	02E
130008	201710	OBC-CITY OF BENTON #12-G	G	0330N 0330W SEc NE NW	13	06S	02E
130011	201374	OBC-LAYMAN #9-G	G	0762S 0342E NWc NE SW	13	06S	02E
130012	29529	OBC-LEFFLER #6-G	G	0384S 0330E NWc NW SE NW	13	06S	02E
207248	54905	WCU #3	G	0971S 1364E NWc	13	06S	02E
5846	51766	OBC-BRYANT #8-G	G	0335S 0405E NWc SE	14	06S	02E
130004	200550	OBC-BRYANT #3-G	G	0330N 0385W SEc SW NE	14	06S	02E
130028	22955	TUCK-OLD BEN #2-G	G	0935S 1020E NWc NE	14	06S	02E
129999	26252	OBC #2-H	H	0380S 0330E NWc SW NW	12	06S	02E
130001	32340	OBC #4-H	H	0330N 0385E SWc NW	12	06S	02E
130009	200324	OBC-ESCUE #5-H	H	0330S 0230W NEc NW	12	06S	02E
130010	40113	OBC-ESCUE #3-H	H	0330S 0342E NWc NE	12	06S	02E
130027	25773	TUCK-OLD BEN #1-H	H	0515N 0330W SEc NW NW	12	06S	02E
130007	37167	OBC-CITY OF BENTON #8-H	H	0330S 0330E NWc SW NE	13	06S	02E

EXHIBIT B