



January 12, 2010

VIA COURIER

Energy Resources Conservation Board
640 – 5th Avenue S.W.
Calgary, Alberta
T2P 3G4

Attention: Dan McFadyen, Chairman

Dear Sir:

Re: ERCB Decision 2009-037 – OMERS/Freehold Lease Issue

I am writing to you as President of the Canadian Association of Petroleum Landmen (the "CAPL") regarding the impact of ERCB Decision 2009-037 on the oil and gas industry.

The ERCB Decision arose as a result of a review pursuant to section 39 of the *Energy Resources Conservation Act* based upon a request by a top lessee as to whether OMERS Energy Inc. ("OMERS") held a valid and subsisting lease for the purposes of issuance of well licences. As a result of such review, the ERCB was required to interpret the phrase "capable of producing the leased substances or any of them" contained in a Petroleum and Natural Gas Lease dated February 8, 2001 between Dennis John Cymbaluk and Heritage Freehold Specialists & Co. Ltd. (the "Freehold Lease").

The ERCB Decision interpreted the phrase "capable of producing the leased substances or any of them" in the Freehold Lease as requiring that "some material, as in a meaningful, volume of production" of petroleum substances be produced in order to extend the Freehold Lease pursuant to clause 3, being the "Suspended Well" clause.

With respect, the interpretation of such phrase in the ERCB Decision does not add clarity to the meaning of the phrase and likely creates more confusion as to the meaning of such phrase. The plain and ordinary meaning of the words "capable of producing the leased substances or any of them" do not imply or require a further qualifier as to "material, as in meaningful volume of production". In fact, such a subjective test creates doubt in the minds of both lessors and lessees and may well lead to potentially thousands of freehold leases being challenged at the ERCB through the section 39 process. We do not believe that the ERCB section 39 process was meant to allow lessors (or top lessees) a process to challenge the legal validity of freehold leases, which responsibility lies with the Courts.

It is my understanding that OMERS has been granted leave to appeal the ERCB Decision and concurrently is pursuing a civil court action with respect to the validity of the Freehold Lease. Until such time as that process is concluded, we ask that you refrain from further suspension and/or revocation of well licenses based upon the principles contained in the ERCB Decision until such time as the Courts have interpreted such phrase and given clear and binding direction to the ERCB as to its meaning.

I would be pleased to discuss this further with you at your convenience.

Yours truly,
CANADIAN ASSOCIATION OF PETROLEUM LANDMEN

A handwritten signature in black ink, appearing to read 'K. Gummo', is written over a horizontal line.

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President
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cc: Gary Leach, SEPAC
David Collyer, CAPP
Frank Ternier, Director Business Development, CAPL