

**2017 CAPL PROPERTY TRANSFER  
PROCEDURE  
2018 CAPL CONFERENCE PRESENTATION**

**“Making Simple Transactions Simple Again”**

**Jim MacLean  
September 17, 2018**

## DESIRED OUTCOMES FROM PRESENTATION

- An understanding of:
  - Why the 2017 update was done and the document objectives.
  - How this document can simplify your low to modest value, straightforward A&D transactions.
  - What the major changes are from the 2000 PTP, primarily in the context of the Schedule of Elections.
  - How you can help with the transition to use.
- Your belief that becoming familiar with the document offers significant near-term payoffs.
  - Your company.
  - You personally.
- A sense of comfort as you review the materials.
  - The thought that went into them.
  - The responsiveness to comments.
  - A sense that we tried to “do the right thing.”
    - Addressed reasonably foreseeable issues with reasonable solutions.
    - A document that will simplify significantly the transactions for which it was designed.
  - Increased level of personal comfort with PTP.
- A willingness to consider evaluation and endorsement if your company has not already embraced the 2017 PTP.
- Your feedback on what you’ve been hearing.

## CONTEXT FOR STANDARDIZATION PROJECTS

- Common themes in all industry document standardization initiatives.
  - Position users to negotiate, document and administer agreements more efficiently and effectively and to mitigate the potential for unnecessary disputes to disrupt or damage ongoing relationships.
  - Enable users of all experience levels to enhance their expertise and ability to contribute to the value creation process.
- The 2000 CAPL Property Transfer Procedure did not become widely accepted across industry.
  - However, it has regularly been used by smaller companies for low to modest value transactions with few apparent material issues.
  - Use of the 2000 PTP actually increased after we initiated the 2017 PTP update project.
- We are proceeding on the assumption that the updated 2017 CAPL Property Transfer Procedure will not be used as the “document of choice” by larger companies or for larger or more complex transactions.
  - But that it will quickly become used by a critical mass of industry for the transactions for which it was designed.

## WHY?

So why even initiate a project to create a 2017 CAPL PTP if: (i) larger companies are so unlikely to use it as their “document of choice”; and (ii) companies would be unlikely to use it for larger or more complex deals?

- A major update was initiated:
  - Because of the inefficiencies inherent in the current approaches to A&D Agreements.
    - Delays in completion of Agreements.
    - Negotiations that get bogged down over the choice of language.
    - Risks that parties with less A&D experience might not address issues appropriately.
    - Biased documents.
    - Overkill for undeveloped lands transactions.
  - But mostly because most deals are relatively straightforward with a low to modest value.
- The 2017 CAPL Property Transfer Procedure can:
  - Reduce cycle time, effort and cost.
  - Focus negotiations on key business terms.
  - Streamline administrative processes.
  - Mitigate risk for less experienced users.
  - Drastically simplify undeveloped land deals.
  - Free up resources to work on other value creation opportunities.

The 2017 CAPL Property Transfer Procedure will “make simple transactions simple again.”

## **WHY REVIEW IF NOT “DOCUMENT OF CHOICE”?**

Why should a larger company review the 2017 PTP if it is not expected to be its “document of choice” for the low to modest value, straightforward transactions for which it was designed?

- A review of the 2017 PTP will identify improvement opportunities in existing precedents.
  - Each provision of the PTP was assessed critically against current industry approaches.
  - When was your last thorough review of your precedent?
- The other party will be commenting on your existing precedent through the lens of the 2017 PTP, such that some differences are likely to require explanation.
- A small or intermediate company on the other side of the transaction will request or require use of the 2017 PTP on an increasing basis for the transactions for which the PTP was designed.
- You might disagree totally today, but your company is likely to discover the enhanced efficiencies resulting from use of the 2017 PTP in due course for select transactions, particularly as acceptance broadens in industry.
  - Most likely early stage “test drives” will be for simple undeveloped lands and non-operated property transactions.

## WHO?

A cross-section of industry stakeholders directly represented, to reflect that the document is an industry document, not just a “land document”.

- “CAPL”- Lawrence Fisher, James O’Connor\*, Mike Ponto, Scott Rideout\*, Aaron Rodatz\*, John Wallace, Brock Young, Jim MacLean
- CAPLA Liaison-Lynn Gregory (also CAPL)
- EPAC Liaisons-CAPL reps noted above\*
- Legal Liaisons- Cam Chiasson & Carolyn Milne
- PADA Liaison- Dennis Eisner (also CAPL)
- PASC Liaisons- Shirley Cooke (Audit) & Cheryl Ryan (Joint Interest Research)
- PJVA Liaison-Paul de Villenfagne
  
- A special effort to reach out to the EPAC community and to change the demographic of the Committee for this document.
  
- Other functional linkages as required over the course of the project, such as the Canada Revenue Agency.

## WHEN?

- Initial industry draft issued in early July, 2016.
- Other drafts issued January, 2017 and July, 2017.
- Additional iterations with commenting parties.
- A desire to “listen, learn, act” by trying to build engagement through transparency and responsiveness to comments.
  - Used the 2015 CAPL Operating Procedure process recipe.
  - Materials made available through CAPL’s web page over the project to optimize accessibility.
  - Redline to 2000 PTP and matrix showing all material changes and rationale for change.
  - Engagement and awareness presentations, articles and meetings.
  - Comment matrix with verbatim comments and our responses.
    - Company codes used, as with the Operating Procedure and Farmout & Royalty Procedure.
    - CAPL projects of this type have typically seen 80%+ of comments used in some way to enhance the quality of the document significantly.
  - Some users had done “test drives” with drafts.
  - Ongoing emphasis on awareness & education.
- CAPL endorsement in December, 2017.

## REPORT CARD

- Fewer commenting parties than expected, but very good feedback that improved the draft significantly.
- Very positive feedback from outside the formal commenting process about the need for the 2017 update and the quality of the work.
- Additional positive feedback from those who had “test driven” drafts for select minor value transactions.
- An outside perspective from George Lepine and Bill Laurin of the EnerNext Law Firm from the February, 2018 CAPL Negotiator:

*...By distilling the various parallel Sale Agreement forms into a single commonly accepted agreement form, the PTP will eliminate much of the time and effort that goes into negotiating specific wording. At the same time, by providing alternative elections for many key substantive issues, the PTP will allow buyers and sellers to quickly focus on negotiating those key issues without engaging in seemingly trivial semantic debates regarding definitions and largely standardized clauses. The PTP strikes a thoughtful and extremely well-reasoned balance between consistency of language and flexibility over key terms. Given the need for cost competitiveness facing the Western Canadian Sedimentary Basin from onshore U.S. oil production, the efficiencies and savings to be realized by industry through a swift and broad adoption of the updated PTP will be recognized by industry from the outset. Adoption of the PTP will also greatly enhance the predictability, consistency and stability of the deal making process. By focusing attention on key substantive issues, the PTP will generally foster a much more meaningful discourse in industry about those substantive issues....*



## ANTICIPATED USE

- Belief that the 2017 PTP will often be used for certain types of transactions in 2018 and beyond by a critical mass of smaller to intermediate companies.
- Low-modest value, straightforward transactions respecting producing properties.
  - Typical value under \$20-25MM.
    - That level because of the discomfort of management and legal advisors in using a CAPL form for a higher value deal, rather than any inherent structural design limitations in the PTP.
    - Expect that some users will use a lower threshold in the early stages of use.
      - An increase in threshold as comfort, confidence and acceptability increase.
  - Assumes, though, that there are no special issues that require significant customization.
    - In other words, no employee issues, required *Investment Canada Act* or *Competition Act* approvals or any other unusual issues.
- Transactions involving only undeveloped lands.
  - Expect significant early use for these deals.
  - Immediate efficiency gain, and possibly also of interest to larger players in the near-term.
- Anticipate that many users that had not previously used the 2000 PTP will take the 2017 PTP for a “test drive” initially on a low value transaction if the other Party is receptive to its use.

## MAJOR DOCUMENT OBJECTIVES

1. Make required modifications, while maintaining the integrity and substance of the 2000 PTP.
  - Provide a new and improved “car manual” that provides users with clear and complete answers to their questions, even if used only as a reference document for a particular agreement.
  - Offer reasonable responses to reasonably foreseeable issues for the transactions for which it has been designed.
2. Create a document that will be used widely soon after completion for its target transactions.
  - Balance needs of Vendors and Purchasers, large and small users.
  - Ongoing emphasis on awareness and education.
  - Extensive use of annotations to assist users of all experience levels with their Agreements immediately.
3. Minimize documentation and administrative effort associated with the A&D Agreements for which it was designed.
  - Simplify Head Agreement for producing properties.
  - A step change in efficiency for undeveloped lands Agreements.
  - See the sample Agreements in the Addendums that have been made available in a Word format.
4. Align document with evolving business needs.
  - Reviewed modern industry precedents and made required modifications.
5. Simplification.

## WHAT YOU'RE GOING TO SEE

- Modifications to align the PTP to the low to modest value, more straightforward sales and asset exchanges for which it is most likely to be used.
- Made the document more user friendly for those transactions, as confirmed by “the test drivers.”
- Major change themes:
  - A shift from “Transferor-Transferee” references to the more traditional “Vendor-Purchaser”, while accommodating Asset Exchanges.
  - Some content shifted from Head Ag’t to the PTP.
  - Significant reduction in the number of elections.
  - Aggressive editing to make the document more user friendly for non-legal users.
  - Significant expansion of the annotations.
    - For users of all A&D experience levels.
    - The rationale for the handling in the PTP.
    - The evolution from the 2000 PTP.
    - Topics that are handled differently and why.
    - Relevant case law.
    - Potential modifications for consideration.
  - Sample election sheets, including points for potential consideration when using the PTP\*.
  - Addendums of sample simple sale and asset exchange transactions using the PTP\*.
  - Addendums of sample sales and swaps of undeveloped lands using the PTP\*.

\*Available in a downloadable Word format.

## **SIMPLIFICATION W/O SACRIFICING QUALITY**

- The 2017 PTP is analogous to the CAPL Operating Procedure and the CAPL Farmout & Royalty Procedure.
  - A breadth and depth of coverage that addresses reasonably foreseeable issues in a way that is logical and reasonably complete.
- The resultant simplicity in the ability to complete agreements is not because those documents are simple—they are inherently complex.
  - The efficiency gain results from the common platform of process and language.
  - Can complete our Agreements much more simply than would be the case if those documents did not exist.
- Pursuit of process efficiency without ever sacrificing the breadth, depth and quality of coverage for the transactions for which the PTP has been primarily designed.

## SETTING THE STAGE-FOUNDATION PRINCIPLE

The party preparing a Purchase and Sale Agreement should structure it to:

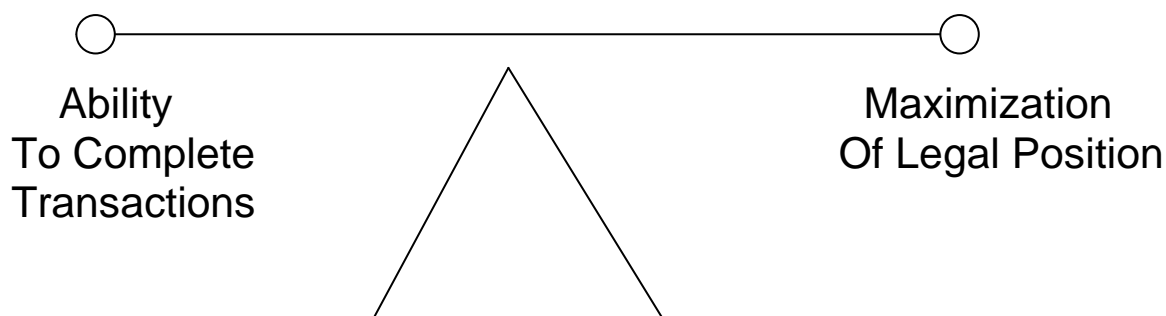
A. Maximize the legal position of that party?

Or

B. Maximize the ability of that party to sell/purchase properties?

The parties need to find the balance.

- The pursuit of the perfect Agreement can frustrate transactions.
- The pursuit of transactions without suitable legal protection places a party at significant risk.



- The Agreement is ultimately one part of the product that a Vendor may be attempting to sell in a very competitive marketplace.
  - Form of the Agreement could have a material impact on a potential Purchaser's perspective of the Assets.

## SETTING THE STAGE-DESIGN OF DOCUMENT

### **Menu Format Accommodates Diverse Transactions**

- Document designed to be able to address 80-90% of typical deals with little required customization.
  - Like a major street, for which the driver has several lanes from which to choose.
  - Not just a “fill in the blanks” document, though.
    - A “power tool” that allows a skilled user to be much more efficient and effective, while suitably managing associated risks.
    - Non-Land/Legal personnel use at their own risk.
    - While safeguards have been included, there are residual risks that require user knowledge (e.g., regulatory restrictions on licence transfers).
  - Users must manage exceptions for those portions of their Agreement for which the PTP does not provide the desired handling.
    - The PTP will still typically provide a suitable platform for the remainder of a Transaction for which customization is required.
  - Options where necessary, but not necessarily options.
  - Analogous to CAPL Farmout & Royalty Procedure.

## SETTING THE STAGE-DESIGN OF DOCUMENT

Provisions expected to be included in the Head Agreement and customized to the particular Transaction.

<u>Provision</u>	<u>Related Annotation</u>
-Definitions Provision	-1.01 - General
-Def'ns of Effective Date & Scheduled Closing Date	-Def'n of Effective Date & Scheduled Closing Date
-List of Schedules	-Def'n of Schedule
-Inclusion of Proprietary Seismic Data	-Def'ns of Base Purchase Price & Excluded Assets, Clause 2.02
-Insurance	-Clause 5.02
-Sec. 116 Certificate re non-resident Vendor	-Paragraph 6.02(a)
-Add'l Reps & Warranties	-Pars 6.02(bb) & 6.04(f)
-Multi-Party Purchaser	-Clause 6.04
-Additional Conditions (e.g., environmental)	-8.01(b), 10.01, 10.02, 10.03 and 10.05C
-*Specific concerns about transferability of Well licences	-Custom provisions in addition to 6.02(q), 6.04(d) and 10.01(e)
-Employee transfers or terminations	-N/A - Custom provisions
-Transactions with a receiver or trustee	-N/A - Custom provisions

\*Critical that users understand the inherent limitations in the PTP if the transfer of a regulatory licence or approval is in question.

- Addressed later in the materials.

## SETTING THE STAGE-MAJOR CHANGES

### Length

The first thing you will notice about the 2017 PTP is that it is materially longer than the 2000 PTP.

- Shift of content from Head Agreement to PTP.
  - Base Purchase Price, tax allocations, Deposit.
- Inclusion of headings for every Subclause.
- Splitting up longer provisions for ease of use.
  - Clauses into Subclauses, use of a list format.
- Alignment with more modern standards.
  - A&D documents, CAPL Operating Procedure.
- Expansion of existing provisions to address recognized issues and more modern approaches.
  - Abandonment and Reclamation Obligations, Environmental Liabilities, Facilities, Tangibles, Title Defects, Wells, Adjustments, Maintenance of Business, Reps & Warranties, Confidentiality.
- Addition of new content.
  - 18 new definitions.
  - Shift of Article 2.00 content from Head Agreement.
  - Miscellaneous provisions added throughout.

Users have much clearer answers on their issues.



# SETTING THE STAGE-MAJOR CHANGES

## Simplification And Format

- Aggressive editing.
  - “Plainer language” without sacrificing content.
  - Breakdown of provisions into Subclauses and list formats.
- Inclusion of headings for each Subclause and several words of context for most cross-references.
- Greater functionality for agreements for the typical straightforward, low to modest value transaction.
  - No expectation that the PTP will be used for:
    - Complex transactions with unusual features.
    - High value transactions, including those that require detailed content for *Investment Canada Act* or *Competition Act* approvals, employees or other unusual issues.
  - Note: PTP assumes that there are no issues associated with the transfer of well licences.
    - A major business term, not a standard form.
    - Onus on the parties to address on a customized basis having regard to then current requirements for the applicable jurisdiction.
- Expanded annotations significantly.
  - Guidance for users of all experience levels.
  - PTP as a reference document for users when reviewing other agreement forms, when trying to negotiate to an objective standard and when updating internal precedents.

## SETTING THE STAGE-MAJOR CHANGES

### Potential Modifications To PTP Defaults

- A reduction in the number of potential elections from 21 data elements to 14, ignoring GST/HST numbers, the elections on reps and addresses.
  - Eliminated elections that seemed unnecessary for provisions in which there was a widely accepted industry approach for most deals.
- Modifications to the PTP defaults might be considered if:
  - (i) the Transaction were an Asset Exchange, rather than a Sale (e.g., GST/HST Numbers; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor reps); or (ii) the Parties wanted to override time periods or thresholds that had been elections or Head Agreement content in the 2000 PTP.
- Examples of the latter are: (i) Clause 2.02 tax allocations; (ii) Clause 2.03 optional 10% Deposit; (iii) Subclause 3.04B access to files period; (iv) Paragraph 4.02A(b) final statement of adjustments w/n 6 months; (v) Clause 6.05 and 13.01 survival period on reps; (vi) optional Subclause 7.01E 50% or more ROFR exercise threshold; (vii) Subclause 8.02A 7 Business Day period for notice of Title Defects; (viii) Subclause 8.02B Alt. 2 Title Defects thresholds of 10% and 25%; (ix) including a different value in Subclause 13.03A; and (x) the \$25,000 minimum claim threshold in Subclause 13.03B.

## SETTING THE STAGE-MAJOR CHANGES

### Potential Modifications To PTP Defaults (ctd.)

- Other provisions that are more likely to be reviewed for a particular Transaction include:
  - (i) the 31 day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding representations in Paragraphs 6.02(i) and (j);
  - (ii) the contemplated handling of freehold mineral tax in Clause 4.01;
  - (iii) the \$10,000 threshold in Subclause 4.02B;
  - (iv) the estimated \$50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h);
  - (v) the estimated \$100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l);
  - (vi) the 60-day maximum period prescribed for replacing signs under Clause 11.02; and
  - (vii) any modifications to the handling of surplus equipment contemplated in Clause 11.03.

# SAY HELLO TO ZOG



"Hey! Look what Zog do!"

And exactly how is Zog relevant to this?

# BECAUSE THIS IS WHAT ZOG CAN DO!

## Addendum III: Sample Sale (Typical Modest Value Producing Property)

### Purchase & Sale Scenarios

This is a simple case study and sample agreement that provides a context for potential simplification of the Transaction by using the Property Transfer Procedure as a Schedule. It is included for illustrative purposes only, and is not to be construed as an endorsement by the CAPL of this form of agreement.

1. Vendor: Dougall Canada Resources Ltd.
2. Purchaser: JOB Resource Management Ltd.
3. Scenario A: Sale of a non-operated property to the Operator. No interest mechanism for the period between the Effective Date and Closing. No extra representations and conditions.

Scenario B: Sale of an operated property in circumstances in which the Purchaser does not have an existing interest. Use of an interest mechanism for the period between the Effective Date and Closing. Inclusion of extra representations and conditions.

4. Sale Price: \$10MM, with the typical 80-20 allocation between P&NG Rights and Tangibles. No Deposit under Scenario A and a \$1MM Deposit under Scenario B.

Note: There is a major qualification about this sample Agreement of which readers must be aware. This sample use of the Property Transfer Procedure could oversimplify a more complex Transaction.

In the Property Transfer Procedure, the definition of Licence Rating, the Vendor's representation in Paragraph 6.02(q) and the Purchaser's representation in Paragraph 6.04(d) have been structured so that they can apply across multiple jurisdictions. (See also the related annotations and the additional annotations on Clause 3.04.)

This sample agreement is presented on the assumption that the ability of the Parties to effect any required transfer of well or tangibles licences under the Regulations is not an issue.

If the ability to effect a transfer of any licence for any of the Assets is in question (as is the case in Alberta in December, 2017), the onus is on the Parties to add custom content in their Head Agreement to address their particular needs. This might be done, for example, by including additional definitions, a Clause that relates to the specific handling required for their circumstances, the inclusion of additional conditions to Closing and, possibly, a Closing in escrow mechanism.

The situation in which there were recognized problems in effecting the required licence transfers is one that the Parties are required to address in the context of their particular circumstances.

This approach was taken for two reasons. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an important emerging issue that should be assessed and handled by the Parties and their applicable business and legal advisors on a case by case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any prescriptive handling of the issue in the PTP based on the Regulations as we currently know them could potentially create unintended consequences for the Parties over time. Simplifying the review of the other procedural aspects of the overall Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP.

**Purchase & Sale Agreement  
Legacy Area, Alberta**

This Agreement made August 1, 2017.

BETWEEN:

DOUGALL CANADA RESOURCES LTD., a body corporate, registered to carry on business in the Province of Alberta and having an office in Calgary, Alberta (hereinafter called the "Vendor")

- and -

JOB RESOURCE MANAGEMENT LTD., a body corporate, registered to carry on business in the Province of Alberta and having an office in Calgary, Alberta (hereinafter called the "Purchaser")

Whereas the Vendor wishes to sell and the Purchaser wishes to purchase the Assets, the Parties agree as follows in consideration of the premises hereto and the covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged:

**1. Definitions**

Each capitalized term used in this Head Agreement will have the meaning given to it in the Property Transfer Procedure. In addition:

- (a) "**Effective Date**" means 8:00 a.m. on August 1, 2017.
- (b) "**Scheduled Closing Date**" means September 30, 2017.

**2. Schedules**

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A", which is a list of elections and amendments to the Property Transfer Procedure;
- (b) Schedule "B", which identifies the Lands and the Leases;
- (c) Schedule "C", which is.....(and so on);
- (...) Schedule "??", which is a copy of the General Conveyance; and
- (...) Schedule "??", which is the form of the Representations and Warranties Certificate.

Subject to the elections and amendments identified in Schedule "A", the Property Transfer Procedure is incorporated by reference into this Agreement.

**3. Purchase And Sale**

The Purchaser agrees to purchase the Assets from the Vendor and the Vendor agrees to sell the Assets to the Purchaser on the terms and conditions set forth in this Agreement. The Base Purchase Price and the allocations for tax purposes are as provided in Clause 2.02 of the Property Transfer Procedure (**Scenario B only**), and the Deposit is as provided in Clause 2.03 of the Property Transfer Procedure.

**4. Additional Representation And Warranty (Scenario “B” only)**

The Vendor makes the following additional representation and warranty under Paragraph 6.02(bb) of the Property Transfer Procedure:

- (a) Inactive Assets: Except as identified in a Schedule, to the Vendor’s knowledge with respect to Assets operated by it, the Assets do not include any inactive well or inactive facility as described in the Regulations issued under the *Oil And Gas Conservation Act (Alberta)*.\*

**5. Additional Conditions (Scenario “B” only)**

A. The following additional conditions precedent are included for the benefit of the Purchaser under Paragraph 10.02(d) of the Property Transfer Procedure:

- (a) Environmental Review: The Purchaser will have completed a review of the environmental condition of the Assets prior to August 26, 2017, through which the Purchaser is satisfied, acting reasonably, with the environmental condition of the Assets;
- (b) Review of Production and Financial Records: The Purchaser will have completed a review of the Vendor’s production and financial records relating to the Assets prior to August 26, 2017, through which the Purchaser is satisfied, acting reasonably, that the information previously provided by the Vendor to the Purchaser with respect to the operating and financial performance of the Assets was not materially inaccurate; and
- (c) Financing: The Purchaser will have completed bank financing for its acquisition of the Assets prior to September 8, 2017.

B. The following additional condition precedent is included for the benefit of the Vendor under Paragraph 10.03(c):

- (a) Board of Directors Approval: The Vendor will have obtained approval of its Board of Directors to this transaction prior to September 1, 2017.

In witness whereof the Parties have duly executed this Agreement.

Dougall Canada Resources Ltd.

JOB Resource Management Ltd.

Per: \_\_\_\_\_  
Tom M. Dougall, President

Per: \_\_\_\_\_  
James E. O’Byrne, President

**\*The Parties would need to structure any representation of this type in the context of the regulatory regime that is in place at the relevant time, and should not presume that this representation reflects the Regulations then in effect.**

**Schedule "A"-Property Transfer Procedure Elections And Amendments**  
**Note: The elections and this election sheet are for illustrative purposes only.**

1. **Definition of Title Defect (Clause 1.01):** Alternate 1 (Scenario A)/2 (Scenario B) will apply.
2. **Definition of Wells (Clause 1.01):** (Specify) Alternate 1 only       ; a combination of Alternates 1 and 2       ; a combination of Alternates 1 and 3: √; or Alternate 2 only        will apply.
3. **Base Purchase Price And Tax Allocations (Clause 2.02):** Base Purchase Price: \$10,000,000.
4. **Receipt And Handling Of Deposit (Clause 2.03):** Optional Clause will √(Scen B)/ will not √(ScenA) apply.
5. **GST/HST And Other Sales Taxes (Subclause 2.05A):** (i) GST/HST Election: Alternate 1 will apply.  
(ii) GST/HST Registration Numbers: R12345678 for the Vendor and R23456789 for the Purchaser.
6. **Interest Accrual (Clause 2.06):** Alternate 1(ScenB)/Neither Alternate 1 or 2 √(ScenA) will apply.
7. **Distribution Of Specific Conveyances (Clause 3.05):** Alternate 1 will apply.
8. **Pipeline Records And Associated Licence Transfers (Subclause 3.07B):** Alternate 1(ScenB) will apply.
9. **Per Diem Rental Adjustment (Paragraph 4.01(d)):** Optional Paragraph will √ / will not        apply.
10. **Adjustment For Income Tax-Interim Period Income (Clause 4.03):** Adjustment: XY%.

11. **Vendor's Representations And Warranties (Clause 6.02):** The representations and warranties that apply are indicated by a Yes below. (Those indicated by a No, N/A or strikethrough do not apply.)

*Note: Those with a reference to B would apply only to Scenario B.*

<u>Yes</u>	(a)	Residency For Tax Purposes	<u>Yes (B)</u>	(o)	Condition Of Tangibles
<u>Yes</u>	(b)	Lawsuits And Claims	<u>Yes</u>	(p)	Provision Of Documents
<u>Yes</u>	(c)	No Default Notices	<u>Yes (B)</u>	(q)	Well And Tangibles Transfers
<u>Yes</u>	(d)	Compliance With Title And Op Docs	<u>Yes (B)</u>	(r)	Records Relating To Op Tang.
<u>Yes</u>	(e)	Payment Of Royalties And Taxes	<u>Yes (B)</u>	(s)	Reg. Production Penalties
<u>Yes</u>	(f)	Encumbrances & ROFRs	<u>Yes (B)</u>	(t)	Reg. Production Allowables
<u>Yes</u>	(g)	No Reduction	<u>Yes</u>	(u)	Area Of Mutual Interest/Exc.
<u>Yes</u>	(h)	Authorized Expenditures	<u>Yes (B)</u>	(v)	No Notice Of Offset Obligations
<u>Yes</u>	(i)	Sale Agreements	<u>Yes</u>	(w)	No Commitment To Deliver
<u>Yes</u>	(j)	Production Handling Agreements	<u>Yes</u>	(x)	Not A Disposition Of Sub. All
<u>Yes (B)</u>	(k)	Environmental Matters	<u>Yes (B)</u>	(y)	Leased Vehicles & Equipment
<u>Yes (B)</u>	(l)	Operations And Compliance	<u>Yes (B)</u>	(z)	No Removal Of Assets
<u>Yes (B)</u>	(m)	Condition Of Wells	<u>Yes</u>	(aa)	Quiet Enjoyment
<u>Yes (B)</u>	(n)	Abandonment Of Wells	<u>Yes (B)</u>	(bb)	Additional Representations

12. **Right Of First Refusal Values (Subclause 7.01B):** Optional sentence will √ / will not        apply.
13. **Rights Of First Refusal And Consents (Subclause 7.01E):** Optional Subclause will        / will not √ apply.
14. **Purchaser's Review (Article 8.00):** Optional Article will √ / will not        apply.
15. **Election Respecting Title Defects (Subclause 8.02B):** Alternate 2 will apply.

16. **Addresses For Service (Clause 15.02):**

<u>Vendor</u>	<u>Purchaser</u>
Dougall Canada Resources Inc.	JOB Resource Management Ltd.
Attention: Land Manager	Attention: Land Manager
#AAA, BBB-C Ave. S.W.	#WWW, YYY-Z Ave S.W.
Calgary, AB T2P 0L7	Calgary, AB T2S 2T4
Fax: (403) 555-5853	Fax: (403) 555-9962

\*Additional modifications to the defaults included in the PTP and on this sample election sheet might be considered if: (i) the Transaction were an Asset Exchange, rather than a Sale (e.g., GST/HST Registration Numbers on this election sheet; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor reps); or (ii) the Parties wanted to override time periods or thresholds prescribed in the 2017 PTP that had been elections or Head Agreement content in the 2000 PTP. Examples of these are: Clause 2.02 tax allocations; Clause 2.03 optional 10% Deposit; Subclause 3.04B access to files period; Paragraph 4.02A(b) final statement of adjustments within six months; Clause 6.05 and 13.01 survival period on reps; optional Subclause 7.01E 50% or more ROFR exercise threshold; Subclause 8.02A seven Business Day period for notice of Title Defects; Subclause 8.02B Alternate 2 Title Defects thresholds of 10% and 25%; including a different value in Subclause 13.03A; and the \$25,000 minimum claim threshold in Subclause 13.03B.

Some other provisions that might be reviewed for a Transaction include: the 31 day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding reps in Paragraphs 6.02(i) and (j); the contemplated handling of freehold mineral tax in Clause 4.01; the \$10,000 threshold in Subclause 4.02B; the estimated \$50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h); the estimated \$100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l); the 60-day maximum period prescribed for replacing signs under Clause 11.02; and any modifications to the handling of surplus equipment contemplated in Clause 11.03.



# WATCH ZOG DO AN ASSET EXCHANGE

## Addendum IV: Sample Asset Exchange (Producing Property)

### Asset Exchange Scenario

This is a simple case study and sample agreement that provides a context for the potential simplification of the Transaction by using the Property Transfer Procedure as a Schedule.\* It is included for illustrative purposes only, and is not to be construed as an endorsement by the CAPL of this form of agreement.

1. Parties: MacIntyre Resource Management Ltd. and Mellon Canada Ltd.
2. Asset Exchange: Each is swapping a non-operated property that the other operates. No special representations or conditions.
3. Consideration: MacIntyre's assets are valued at \$4.5MM and Mellon's at \$5MM, such that MacIntyre must top up with \$500K in cash. The Parties are using the typical 80-20 allocation between P&NG Rights and Tangibles.

Note: The principal purpose of this example is to illustrate the potential structure of an Asset Exchange Agreement. The fact situation in which each is swapping a non-operated interest for an interest in an operated property simplifies the remainder of the Transaction more than would often be the case.

\*Potential modifications to Property Transfer Procedure: Additional modifications to the defaults included in the PTP and on the sample election sheet might be considered if: (i) the Transaction were an Asset Exchange, rather than a Sale (e.g., GST/HST Registration Numbers on this election sheet; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor reps); or (ii) the Parties wanted to override time periods or thresholds prescribed in the 2017 PTP that had been elections or Head Agreement content in the 2000 PTP. Examples of these are: Clause 2.02 tax allocations; Clause 2.03 optional 10% Deposit; Subclause 3.04B access to files period; Paragraph 4.02A(b) final statement of adjustments within six months; Clause 6.05 and 13.01 survival period on reps; optional Subclause 7.01E 50% or more ROFR exercise threshold; Subclause 8.02A seven Business Day period for notice of Title Defects; Subclause 8.02B Alternate 2 Title Defects thresholds of 10% and 25%; including a different value in Subclause 13.03A; and the \$25,000 minimum claim threshold in Subclause 13.03B.

Some other provisions that might be reviewed for a Transaction include: the 31 day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding reps in Paragraphs 6.02(i) and (j); the contemplated handling of freehold mineral tax in Clause 4.01; the \$10,000 threshold in Subclause 4.02B; the estimated \$50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h); the estimated \$100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l); the 60-day maximum period prescribed for replacing signs under Clause 11.02; and any modifications to the handling of surplus equipment contemplated in Clause 11.03.

**Asset Exchange Agreement  
Bronson and Fraser Areas, Alberta**

This Agreement made September 1, 2017.

BETWEEN:

MACINTYRE RESOURCE MANAGEMENT LTD., a body corporate,  
registered to carry on business in the Province of Alberta and having an  
office in Calgary, Alberta (hereinafter called "MacIntyre")

- and -

MELLON CANADA LTD., a body corporate, registered to carry on  
business in the Province of Alberta and having an office in Calgary,  
Alberta (hereinafter called "Mellon")

Whereas MacIntyre and Mellon wish to exchange MacIntyre's interest in the MacIntyre Assets to Mellon for Mellon's interest in the Mellon Assets, the Parties agree as follows in consideration of the premises hereto and the covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged:

**1. Definitions**

Each capitalized term used in this Head Agreement will have the meaning given to it in the Property Transfer Procedure. In addition:

- (a) "**Effective Date**" means 8:00 a.m. on September 1st, 2017.
- (b) "**MacIntyre Assets**" means the Petroleum and Natural Gas Rights more particularly described in Schedule "B" and the Tangibles and Miscellaneous Interests pertaining thereto.
- (c) "**MacIntyre Lands**" means the lands set forth and described in Schedule "B", insofar as rights thereto are granted by the MacIntyre Leases.
- (d) "**MacIntyre Leases**" means the Leases for which MacIntyre is the Transferor hereunder.
- (e) "**Mellon Assets**" means the Petroleum and Natural Gas Rights more particularly described in Schedule "M" and the Tangibles and Miscellaneous Interests pertaining thereto.
- (f) "**Mellon Lands**" means the lands set forth and described in Schedule "M", insofar as rights thereto are granted by the Mellon Leases.
- (g) "**Mellon Leases**" means the Leases for which Mellon is the Transferor hereunder.
- (h) "**Scheduled Closing Date**" means October 24, 2017.

**2. Schedules**

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A", which is a list of elections and amendments to the Property Transfer Procedure;
- (b) Schedule "B", which identifies the MacIntyre Lands and the MacIntyre Leases;

- (c) Schedule "C", which is.....(and so on with respect to Schedules for the MacIntyre Assets);
- (m) Schedule "M", which identifies the Mellon Lands and the Mellon Leases;
- (n) Schedule "N", which is.....(and so on with respect to Schedules for the Mellon Assets);
- (..) Schedule "??", which is a copy of the form of the General Conveyance; and
- (..) Schedule "??", which is the form of the Representations and Warranties Certificate.

Subject to the elections and amendments identified in Schedule "A", the Property Transfer Procedure is incorporated by reference into this Agreement.

### 3. Exchange And Value Of Assets

- A. Mellon agrees to dispose of the Mellon Assets to MacIntyre and MacIntyre agrees to dispose of the MacIntyre Assets to Mellon. These dispositions are on the terms and conditions in this Agreement and for the consideration of the transfer of the Assets being so disposed by the other Party, together with a payment of \$500,000 made by MacIntyre to Mellon at Closing.
- B. This Subclause replaces Clause 2.02 of the Property Transfer Procedure. Subject to the adjustments and modifications that may be made under the Property Transfer Procedure, the Parties agree that the value of the respective Assets for the purposes of the Base Purchase Price contemplated in the Property Transfer Procedure and the applicable allocations among the Assets are:

	<u>MacIntyre Assets</u>	<u>Mellon Assets</u>
(a) To Petroleum and Natural Gas Rights	\$ <u>3,600,000.00</u>	\$ <u>4,000,000.00</u>
(b) To Tangibles (exclusive of GST)	\$ <u>899,990.00</u>	\$ <u>999,990.00</u>
(c) To Miscellaneous Interests	\$ <u>10.00</u>	\$ <u>10.00</u>
Value (Base Purchase Price)	\$ <u>4,500,000.00</u>	\$ <u>5,000,000.00</u>

The Parties will report the Transaction for all federal, provincial and local tax purposes in a manner consistent with the allocation referred to in this Clause.

In witness whereof the Parties have duly executed this Agreement.

MacIntyre Resource Management Ltd.

Mellon Canada Ltd.

Per: \_\_\_\_\_  
Thomas D. MacIntyre, President

Per: \_\_\_\_\_  
Hugh P. Mellon, President

**Schedule "A"-Property Transfer Procedure Elections And Amendments**  
**Note: The elections and this election sheet are for illustrative purposes only.**

1. **Definition of Title Defect (Clause 1.01):** Alternate   1   will apply.
2. **Definition of Wells (Clause 1.01):** (Specify) Alternate 1 only       ; a combination of Alternates 1 and 2   √  ; a combination of Alternates 1 and 3:       ; or Alternate 2 only        will apply.
3. **Base Purchase Price And Tax Allocations (Clause 2.02):** Replaced by Subclause 3B of the Head Agreement.
4. **Receipt And Handling Of Deposit (Clause 2.03):** Optional Clause will   / will not   √   apply.
5. **GST/HST And Other Sales Taxes (Subclause 2.05A):** (i) GST/HST Election: Alternate   1   will apply. (ii) GST/HST Registration Numbers: R345678901 for MacIntyre and R456789012 for Mellon.
6. **Interest Accrual (Clause 2.06):** Alternate       /Neither Alternate 1 or 2   √   will apply.
7. **Place Of Closing (Clause 3.01):** Replace "the Vendor" with "Mellon".
8. **Distribution Of Specific Conveyances (Clause 3.05):** Alternate   1   will apply.
9. **Pipeline Records And Associated Licence Transfers (Subclause 3.07B):** Alternate    will apply. **N/A**
10. **Per Diem Rental Adjustment (Paragraph 4.01(d)):** Optional Paragraph will   √  / will not    apply.
11. **Adjustment For Income Tax-Interim Period Income (Clause 4.03):** Adjustment: XY%.
12. **Vendor's Representations And Warranties (Clause 6.02):** The representations and warranties that apply are indicated by a Yes below. (Those indicated by a No, N/A or strikethrough do not apply.)

<u>  Yes  </u>	(a)	Residency For Tax Purposes	<u>  No  </u>	(o)	Condition Of Tangibles
<u>  Yes  </u>	(b)	Lawsuits And Claims	<u>  Yes  </u>	(p)	Provision Of Documents
<u>  Yes  </u>	(c)	No Default Notices	<u>  No  </u>	(q)	Well And Tangibles Transfers
<u>  Yes  </u>	(d)	Compliance With Title And Op Docs	<u>  No  </u>	(r)	Records Relating To Op Tang.
<u>  Yes  </u>	(e)	Payment Of Royalties And Taxes	<u>  No  </u>	(s)	Reg. Production Penalties
<u>  Yes  </u>	(f)	Encumbrances & ROFRs	<u>  No  </u>	(t)	Reg. Production Allowables
<u>  Yes  </u>	(g)	No Reduction	<u>  Yes  </u>	(u)	Area Of Mutual Interest/Exc.
<u>  Yes  </u>	(h)	Authorized Expenditures	<u>  No  </u>	(v)	No Notice Of Offset Obligations
<u>  Yes  </u>	(i)	Sale Agreements	<u>  Yes  </u>	(w)	No Commitment To Deliver
<u>  Yes  </u>	(j)	Production Handling Agreements	<u>  Yes  </u>	(x)	Not A Disposition Of Sub. All
<u>  No  </u>	(k)	Environmental Matters	<u>  No  </u>	(y)	Leased Vehicles, Equipment...
<u>  No  </u>	(l)	Operations And Compliance	<u>  No  </u>	(z)	No Removal Of Assets
<u>  No  </u>	(m)	Condition Of Wells	<u>  Yes  </u>	(aa)	Quiet Enjoyment
<u>  No  </u>	(n)	Abandonment Of Wells	<u>  No  </u>	(bb)	Additional Representations

13. **Right Of First Refusal Values (Subclause 7.01B):** Optional sentence will   / will not   √   apply.
14. **Rights Of First Refusal And Consents (Subclause 7.01E):** Optional Subclause will   / will not   √   apply.
15. **Purchaser's Review (Article 8.00):** Optional Article will   √  / will not    apply.
16. **Election Respecting Title Defects (Subclause 8.02B):** Alternate   1   will apply.
17. **Addresses For Service (Clause 15.02):**

MacIntyre  
 MacIntyre Resource Management Ltd.  
 Attention: Land Manager  
 #AAA, BBB – Grove Ave. S.W.  
 Calgary, Alberta  
 T2P 5C5  
 Fax: (403) 555-3333

Mellon  
 Mellon Canada Ltd.  
 Attention: Land Manager  
 WWW – Moncton Ave. S.W.  
 Calgary, Alberta  
 T2P 2M3  
 Fax: (403) 555-4444

# WATCH ZOG DO AN UNDEVELOPED SALE

## Addendum V: Sample Sale Of Undeveloped Lands (Selling Entire Interest All Held Rights)

### Purchase & Sale Scenario (No Retained Rights)

This is a simple case study and sample agreement that provides a context for the disposition of only undeveloped lands and the potential simplification of the Transaction by using the Property Transfer Procedure as a Schedule.\* It is included for illustrative purposes only, and is not to be construed as an endorsement by the CAPL of this form of agreement.

This example illustrates the application of this form of Agreement to a simple Transaction in which the Purchaser acquires the entire interest of the Vendor in the Leases for only cash consideration. (Addendum VI is a sale that includes several layers of complexity (the reservation of an ORR by the Vendor, the retention of shallow rights and a trust agreement) to illustrate the versatility of this type of document. Addendum VII illustrates the application of this form of Agreement to a simple exchange of undeveloped acreage.)

1. Vendor: Cherry Canada Resources Ltd.
2. Purchaser: Stewart Energy Inc.
3. Lands: Sale of the Vendor's entire 100% interest in five sections of undeveloped lands without wells.
4. Sale Price: \$200,000.

\*Potential modifications to Property Transfer Procedure: Additional modifications to the defaults included in the PTP and on the sample election sheet might be considered if: (i) the Transaction were an Asset Exchange, rather than a Sale (e.g., GST Business Numbers on this election sheet; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor reps); or (ii) the Parties wanted to override time periods or thresholds prescribed in the 2017 PTP that had been elections or Head Agreement content in the 2000 PTP. Examples of these are: Clause 2.02 tax allocations; Clause 2.03 optional 10% Deposit; Subclause 3.04B access to files period; Paragraph 4.02A(b) final statement of adjustments within six months; Clause 6.05 and 13.01 survival period on reps; optional Subclause 7.01E 50% or more ROFR exercise threshold; Subclause 8.02A seven Business Day period for notice of Title Defects; Subclause 8.02B Alternate 2 Title Defects thresholds of 10% and 25%; including a different value in Subclause 13.03A; and the \$25,000 minimum claim threshold in Subclause 13.03B.

Some other provisions that might be reviewed for a Transaction include: the 31 day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding representations in Paragraphs 6.02(i) and (j); the contemplated handling of freehold mineral tax in Clause 4.01; the \$10,000 threshold in Subclause 4.02B; the estimated \$50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h); the estimated \$100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l); the 60-day maximum period prescribed for replacing signs under Clause 11.02; and any modifications to the handling of surplus equipment contemplated in Clause 11.03.

**UNDEVELOPED ACREAGE CONVEYANCE AGREEMENT  
REMEMBRANCE AREA, ALBERTA**

THIS AGREEMENT made this 1st day of March, 2018.

BETWEEN:

CHERRY CANADA RESOURCES LTD., a body corporate, registered to carry on business in the Province of Alberta and having an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Vendor")

- and -

STEWART ENERGY INC., a body corporate, registered to carry on business in the Province of Alberta and having an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Purchaser")

Whereas the Vendor wishes to sell the Assets to the Purchaser and the Purchaser wishes to purchase them, the Parties agree as follows in consideration of the premises hereto and the covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged:

**1. Definitions**

Each capitalized term used in this Head Agreement will have the meaning given to it in the Property Transfer Procedure. In addition:

- (a) "**Effective Date**" means March 1, 2018.
- (b) "**Scheduled Closing Date**" means March 23, 2018.

**2. Schedules**

The following Schedules are attached hereto and made part of this Agreement:

- (a) Schedule "A", which is a list of elections and amendments to the Property Transfer Procedure;
- (b) Schedule "B", which identifies the Lands and the Leases; and
- (c) Schedule "C", which is a copy of the General Conveyance.

Subject to the elections and amendments identified in Schedule "A", the Property Transfer Procedure is incorporated by reference into this Agreement.

**3. Purchase And Sale**

This Clause replaces Clause 2.02 of the Property Transfer Procedure. The Purchaser agrees to purchase the Assets from the Vendor and the Vendor agrees to sell them to the Purchaser on the terms and conditions set forth in this Agreement. The Base Purchase Price is \$200,000. Except for \$1.00, which is allocated to the Miscellaneous Interests, the entire value of the Assets is allocated to the Petroleum and Natural Gas Rights because there are no Tangibles or Wells associated with the Lands.

In witness whereof the Parties have duly executed this Agreement.

Cherry Canada Resources Ltd.

Stewart Energy Inc.

Per: \_\_\_\_\_  
Douglas C. Cherry, President

Per: \_\_\_\_\_  
John B. Stewart, President

Per: \_\_\_\_\_  
Corinne S. Cherry, Vice-President

**Schedule "A"-Property Transfer Procedure Elections And Amendments**

**Note: This election sheet and the associated elections are for illustrative purposes only.**

1. **Definition of Title Defect (Clause 1.01):** Alternate      will apply. **N/A**
2. **Definition of Wells (Clause 1.01):** (Specify) Alternate 1 only     ; a combination of Alternates 1 and 2     ; a combination of Alternates 1 and 3:     ; or Alternate 2 only      will apply. **N/A**
3. **Base Purchase Price And Tax Allocations (Clause 2.02):** Replaced by Clause 3 of the Head Agreement.
4. **Receipt And Handling Of Deposit (Clause 2.03):** Optional Clause will     / will not √ apply.
4. **GST/HST And Other Sales Taxes (Subclause 2.05A):** (i) GST/HST Election: Alternate 1 will apply.  
(ii) GST/HST Registration Numbers: R12345678 for the Vendor and R23456789 for the Purchaser.
6. **Interest Accrual (Clause 2.06):** Alternate     /Neither Alternate 1 nor 2 √ will apply.
7. **Distribution Of Specific Conveyances (Clause 3.05):** Alternate 1 will apply.
8. **Pipeline Records And Associated Licence Transfers (Subclause 3.07B):** Alternate      will apply. **N/A**
9. **Adjustments (Article 4.00):** This Article is deleted. There are no adjustments because the Lands are undeveloped. (Note: Possible that there could be adjustments if V held <100% and work was then being conducted.)
9. **Per Diem Rental Adjustment (Paragraph 4.01(d)):** Optional Paragraph will     / will not      apply. **N/A**
10. **Adjustment For Income Tax-Interim Period Income (Clause 4.03):** Adjustment:     %. **N/A**
11. **Vendor's Representations And Warranties (Clause 6.02):** The representations and warranties that apply are indicated by a Yes below. (Those indicated by a No, N/A or strikethrough do not apply.)

<u>Yes</u>	(a)	Residency For Tax Purposes	<u>No</u>	(o)	Condition Of Tangibles
<u>Yes</u>	(b)	Lawsuits And Claims	<u>Yes</u>	(p)	Provision Of Documents
<u>Yes</u>	(c)	No Default Notices	<u>No</u>	(q)	Well And Tangibles Transfers
<u>Yes</u>	(d)	Compliance With Title And Op Docs	<u>No</u>	(r)	Records Relating to Op Tang.
<u>No</u>	(e)	Payment Of Royalties And Taxes	<u>No</u>	(s)	Reg. Production Penalties
<u>Yes</u>	(f)	Encumbrances & ROFRs	<u>No</u>	(t)	Reg. Production Allowables
<u>Yes</u>	(g)	No Reduction	<u>Yes</u>	(u)	Area Of Mutual Interest/Exc.
<u>Yes</u>	(h)	Authorized Expenditures	<u>Yes</u>	(v)	No Notice Of Offset Obligations
<u>Yes</u>	(i)	Sale Agreements	<u>Yes</u>	(w)	No Commitment To Deliver
<u>No</u>	(j)	Production Handling Agreements	<u>Yes</u>	(x)	Not A Disposition Of Sub. All
<u>Yes</u>	(k)	Environmental Matters	<u>No</u>	(y)	Leased Vehicles, Equipment...
<u>No</u>	(l)	Operations And Compliance	<u>No</u>	(z)	No Removal Of Assets
<u>No</u>	(m)	Condition Of Wells	<u>Yes</u>	(aa)	Quiet Enjoyment
<u>No</u>	(n)	Abandonment Of Wells	<u>No</u>	(bb)	Additional Representations
12. **Right Of First Refusal Values (Subclause 7.01B):** Optional sentence will     / will not √ apply.
13. **Rights Of First Refusal And Consents (Subclause 7.01E):** Optional Subclause will     / will not √ apply.
14. **Purchaser's Review (Article 8.00):** Optional Article will     / will not √ apply.
15. **Election Respecting Title Defects (Subclause 8.02B, if Article 8.00 selected):** Alternate      will apply. **N/A**
16. **Assets Acquired On "As Is Basis" (Clause 13.04):** Replace the first three sentences of the Clause with the following paragraph: "Notwithstanding Clause 13.01 or any other provision herein, the Purchaser does not assume any obligations from the Vendor hereunder with respect to any abandoned well drilled on the Lands prior to the Effective Date, except to the extent that the Purchaser attempts to re-enter that well. Subject at all times to the preceding sentence, the Purchaser is not relying upon any representation or warranty of the Vendor as to the condition, environmental or otherwise, of the Assets, except as is specifically made under Clause 6.02, and the Purchaser, as of the Effective Date, will:"
17. **Addresses For Service (Clause 15.02):**

<u>Vendor</u> Cherry Canada Resources Ltd. Attention: Manager, Land #AAA, Rolling Greens Ave. S.W. Calgary, AB T2P E10 Fax: (403) 555-8090	<u>Purchaser</u> Stewart Energy Inc. Attention: Manager, Land #BBB, CCC Hume Ave. S.W. Calgary, AB T2V 2M8 Fax: (403) 555-7136
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## ADDENDUMS

- Addendums-General: The Addendum information is available in a downloadable format from the CAPL and CAPLA webpages.
- Addendums I&II: Annotated version of the Schedule of Elections (I) reminds users to confirm the default choices in the PTP and other \$ or time values.
  - Addendum II is the “clean” version of that Schedule.
- Addendum III: A sample P&S Agreement demonstrating the potential use of the PTP on a relatively simple low to modest value sale of a producing property.
- Addendum IV: A sample Asset Exchange Agreement demonstrating the potential use of the PTP on a relatively simple low to modest value swap.
- Addendums V-VII: Sample undeveloped lands transactions show the major potential efficiencies in using the PTP for undeveloped lands deals.
  - A simple sale or swap can be documented in a one or two page Head Agreement, a one page Schedule of PTP elections, plus the applicable Land Schedule(s) and General Conveyance.
  - Transaction specific content for a simple sale or swap can be under half a page!



## HAVE A LOOK AT YOUR OWN PRECEDENTS

### Some Topics To Assess Against The PTP Handling

- How easily can you address undeveloped lands only transactions?
- How easily can you address an Asset Exchange?
- If something were to go wrong, what is the meaning of “gross negligence or wilful misconduct”?
- How easily can you accommodate the sale of only a portion of the Operator’s working interest in lands and facilities within your precedent?
- How do you address Pipeline Records and other regulatory licence transfers?
- Are the obligations for the identification of JV and marketing agreements on a Schedule sufficient?
- How clear is your listing of Facilities and Tangibles?
- How clear is your well list with respect to the handling of abandoned wells, disposal wells, injection wells, etc.?
- How does your agreement manage pricing during the Interim Period (e.g., possibility of out of money hedges)?
- How does your agreement manage overhead accruing to the Vendor as Operator under partner agreements during the Interim Period?
- What is the Vendor’s authority to make discretionary expenditures during the Interim Period (<\$ZZZ or reasonably estimated to be under \$ZZZ)?
- How clearly does your agreement address due diligence site visits?
- How does your agreement address surplus equipment on site?
- How much effort is spent debating the words of your agreement with the other party for your typical low-modest value, straightforward transactions?

## **MAJOR TAKEWAYS FROM PRESENTATION**

- The paradigm that the 2000 PTP was only used by a small number of companies is false.
  - Many small and mid-sized companies have regularly been using the 2000 PTP without major problems, and usage actually increased after the initiation of the 2017 PTP update process.
  - Larger companies are the companies that typically did not use the 2000 PTP.
  - Expectation that the change agents will be the smaller and mid-sized companies.
- The 2000 PTP was assessed very critically against modern standards when preparing the 2017 update.
  - The 2017 PTP is vastly superior to the 2000 PTP as a consequence.
  - That thorough review means that the 2017 PTP actually more closely reflects modern standards than many of the individual company precedents.
- Based on feedback obtained from early users, users of the 2000 PTP are able to adapt easily to the 2017 PTP.
- The text and annotations of the 2017 PTP, as a minimum, offer an excellent resource when reviewing other ag'ts.
- The 2017 PTP offers a breadth and depth of coverage for the transactions for which it was designed that addresses issues in a way that is logical and reasonably complete.
  - Ultimately like the CAPL Operating Procedure and CAPL Farmout & Royalty Procedure.
  - The efficiency gain results from the common platform of process and language, not because of sacrifices to breadth, depth and quality of coverage.
  - Analogue to the 1997 CAPL Farmout & Royalty Procedure in terms of its potential impact on industry work processes.

## SO, WHAT'S IN IT FOR YOU?

The 2017 Property Transfer Procedure is an instrument of opportunity for our industry, your employer and you...

Obtaining familiarity with the PTP in the near-term:

- Better enables you to understand and address issues you have with your current agreements.
  - Enhanced efficiency when required to do more with even less; better business outcomes; and more constructive business relationships.
- Offers additional insights for negotiating and structuring new agreements and updating your precedents.
- Positions you to use the PTP more easily.
- Improves personal and organizational capability.

The 2017 PTP offers significant benefits to Vendors, Purchasers and companies of all sizes for simple, low to modest value transactions.

- Sample agreements in the Addendums offer a compelling case for change.
- Greatly enhanced potential efficiency without sacrificing breadth, depth or quality of content.
  - Analogous to the CAPL Operating Procedure.
- An excellent example of innovation and “technology”.
  - Potential for a fast industry acceptance, as was the case for 1997 CAPL Farmout & Royalty Procedure.
- In our best interest as an industry and as individuals to transition to use quickly.
- Initial change management effort is small relative to the tangible gains for low-modest \$ transactions.

Are we currently actually doing less with more?

## HOW YOU CAN HELP

Invest time with the PTP.

- Assess it on its merits, even if unlikely to become your “document of choice”.
  - Will be used as a reference document when commenting on your agreements in due course or when you comment on another party’s agreement.
  - You’re ultimately likely to use it for some of your simple, low value deals as Purchaser or Vendor, even though you may believe this is very unlikely at this point.
- Take the “PTP Challenge” and experiment with it in the context of an agreement being prepared using your own precedent.
- Encourage your peers to do a comparable assessment.
- Optimize the transition to use.

There are compelling reasons to simplify the handling of simple, low to modest value A&D deals.

- This time, the PTP is going to widely used.

Together, we are going to “make simple transactions simple again.”

## DR. SEUSS AND THE PTP

One of the greatest change management books ever written is Dr. Seuss' *Green Eggs And Ham*.

- There's often an enormous amount of energy expended resisting change without actually exploring if the change is beneficial.
  - Reflects a bias to inertia if the status quo seems to be working OK relative to expected outcomes.
  - "Low for longer" commodity prices, reduced staffing levels and the "need for speed" require us to examine processes critically.
  - Industry must address inefficiencies in the manner in which we choose to manage simple, low to modest value transactions.

If Dr. Seuss were able to see these materials, might he summarize them like this?

When I look at the things  
That Zog can do  
I so want to do them too  
Don't you?

# APPENDIX

This Appendix includes high level background information respecting the major changes made in the 2017 CAPL PTP.

## MAJOR CHANGES

### Article 1.00-Definitions And Interpretation

- Influenced significantly by more modern standards.
- New definitions: Affiliate; Asset Exchange; Base Purchase Price; Excluded Assets; Excluded P&NG Rights; Excluded Tangibles; Extraordinary Damages; Gross Negligence or Wilful Misconduct; Interest Amount; Licencee Rating; Market Price; Pipeline Records; Purchaser; Regulatory Authority; Required Approvals; Scheduled Closing Time; Transaction; and Vendor.
- Significantly modified definitions: Abandonment and Reclamation Obligations; Closing Time; Facilities; Losses and Liabilities; Permitted Encumbrances; Specific Conveyances; Surface Rights; Tangibles; Title Defects; Title and Operating Documents; Transferor; Transferee; and Wells.
- Clauses 1.02-1.15: Generally aligned more closely to 2015 CAPL Operating Procedure (i.e., language and shift of some Clauses from Article 18.00).
  - Offers greater familiarity and comfort for land users who will be the typical users of 2017 PTP.
- Clause 1.07: Annotations about licence transfers.
- Clause 1.08: Less “Purchaser friendly”.
- Clause 1.14: Similar concept as in Subclause 1.02B of 2015 CAPL Operating Procedure.
  - Drafting Party not penalized in an interpretation dispute because it drafted, given use of CAPL PTP and sophistication of Parties.

# MAJOR CHANGES

## Article 2.00-Acquisition And Disposition

- Article 2.00-General: Changes mostly because of shift of standard content from Head Agreement to the PTP.
- Clause 2.01: Rewritten to reflect major restructuring of Article due to shift of content from Head Agreement.
- Clause 2.02: Now in PTP, as the major variable in practice is the blank Base Purchase Price.
  - Other than for specifying the Base Purchase Price, typically a procedural Clause in practice.
  - Assumes 80-20% allocation for P&NG Rights & Tangibles after \$10 for Miscellaneous Interests.
  - Parties would need to modify for exceptions-different % allocations in some cases and, as shown in Addendum IV, a different structure in the Head Agreement for an Asset Exchange.
- Clause 2.03 (former Head Agreement): Optional Deposit requirement using a 10% threshold if selected.
  - 10% as the typical threshold if selected, such that Parties would modify % for exceptions.
  - Business decision is whether to include-the provision is otherwise procedural in nature in practice.
- Clause 2.04: Subclause A is new, and Subclauses B & C address concepts included in the 2000 PTP.
  - Subclause A more clearly shows modifications from the Base Purchase Price to the Purchase Price.
  - Subclause C reflects any wire transfer requirement.
- Clauses 2.05 & 2.06: Modest changes (GST/HST).

# MAJOR CHANGES

## Article 3.00-Closing

- Clause 3.01: Modified to the Vendor's office.
  - Requires modification for an Asset Exchange.
- Clause 3.02: Retained 2000 approach.
- Clause 3.03: Significant expansion to annotations.
- Clause 3.04: Significant expansion to annotations.
- Clause 3.05: Minor changes.
- Clause 3.06: New, to address electronic transfers and a possible deferral because of upcoming rental obligations. (See also Clause 5.05.)
- Clause 3.07: Addresses the handling of Pipeline Records in the context of recent Alberta requirements that are still evolving.
  - Alternates address the financial responsibility for any deficiencies in Pipeline Records that require engineering assessments under the Regulations.
    - Alternate 1: Purchaser responsible for deficiencies.
    - Alternate 2: Vendor responsible for certain identified deficiencies.
    - Alternate 3: Responsibility shared under Head Agreement for certain identified deficiencies.
  - Also see optional rep in Paragraph 6.02(r).
  - An attempt to address an issue that is evolving on a real-time basis, so the handling might change materially over time.



# MAJOR CHANGES

## Article 4.00-Adjustments

- Clause 4.01: Some significant updates.
  - Updated in collaboration with PASC.
  - *Per diem* rentals allocation now optional to facilitate smaller deals (e.g., undeveloped lands).
  - Pricing during Interim Period in 2017 PTP linked to Market Price for transparency in pricing.
  - Vendor can retain overhead accruing to it from third parties during the period it operates on behalf of the Purchaser.
- Clause 4.02: Updated in collaboration with PASC.
  - Replaced the “final statement” election in 2000 with six months.
  - Clearer handling of obligations for further adjustments in Subclause 4.02C with respect to ongoing audit requirements and time restrictions otherwise applicable in Clauses 6.05 and 13.01.
- Clause 4.03: This Clause and 2.05 updated to reflect feedback from the Canada Revenue Agency.
- Clause 4.04: New Clause addressing amounts accruing to Assets for period prior to Effective Date.

## MAJOR CHANGES

### Article 5.00-Maintenance Of Business

- Clause 5.01: Fine-tuning clarification type changes.
- Clause 5.02: Insurance shifted to Subclause 5.02A from Clause 5.01 and significantly expanded.
- Clause 5.03: Modified financial threshold from \$25K to reasonably estimated to be >\$50K; express recognition that some Lands might expire in the normal course in Interim Period; a new Subclause D based on concept in former Clause 5.04; and significantly expanded the annotations.
- Clause 5.04: Clarified that interest is held by Vendor as bare trustee during Interim Period; consequential change to address handling of overhead accruing to the Vendor under Paragraph 4.01(h); and added a new Paragraph (d) addressing amounts held on behalf of third parties.
- Clause 5.05: New, to address potential handling of rentals in the transitional period after Closing.
- Clause 5.06: New, to address handling of production accounting in the month in which Closing occurs.
- Clause 5.07: New Clause to address the fact that Vendor may have been managing certain “silent partner” interests.
- Clause 5.08: Linked to 2017 definition of Gross Negligence or Wilful Misconduct, with some fine-tuning changes for related Vendor entities.

## MAJOR CHANGES

### Article 6.00-Representations And Warranties...

- Clause 6.01: Modified annotations to offer greater context; modified Paragraph (d) about qualifications to enforceability to align to the typical agreement; and added Paragraph (f) re no material change in existence.
- Clause 6.02: A number of changes and additions to text and annotations, some of which are material.
  - Expanded reps re JV ag'ts-Paragraphs (j) & (w).
  - Modified financial threshold to reasonably expected to be >\$50K from \$25K.
  - Qualified operational reps to link them to operated Assets-Paragraphs (m), (n) and (o).
  - Expanded annotations to provide rationale for the handling of transfers of licences in PTP.
    - Note: PTP assumes licences may be transferred- Parties need to handle exceptions on a custom basis.
    - Regulations vary by jurisdiction and over time, so imprudent to address as a “snapshot in time”.
  - Added new reps: Paragraphs (b)-Lawsuits And Claims; (l)-Operations and Compliance; (r)-Records Relating To Operated Tangibles; (x)-Not A Disposition Of Substantially All Vendor's Assets; (y)-Leased Vehicles, Equipment And Premises; and (z)-No Removal Of Assets.

## MAJOR CHANGES

### Article 6.00-Representations And Warranties...(ctd.)

- Clause 6.03 (Former 6.04): Concepts from 2000 Clause 6.05, with expanded annotations.
  - Subclause A is new and qualifies reps if prior disclosure.
  - Subclause B is a major rewrite of the former Subclause 6.05A that emphasizes more fully the “as is, where is” aspect of a transaction.
  - Subclause C is a major rewrite of some of the former Subclause 6.05A with respect to expectations about the Purchaser’s due diligence review.
- Clause 6.04 (Former 6.03): Three new reps and significant expansion of annotations.
  - Paragraphs (b)-No Lawsuits Or Claims; (c)-Acquiring As Principal; and (e)-Financial Capacity.
- Clause 6.05: Concepts from 2000 Clause 6.04, with expanded annotations.
  - Subclause A specifies one year survival of reps, rather than a blank, with an exception for fraud.
  - Subclause B clarifies interrelationship between survival of reps and JV and royalty audits under Subclause 4.02C (with associated annotation), with clarification about process requirements if a claim is being made.
  - Subclause C includes an annotation about an Ontario case dealing with a reliance issue.
  - Subclause D is new and provides a clear statement about the Parties’ expectations about limiting liability in the context of *Limitations Act*, with associated annotation about NOV Enerflow.

## MAJOR CHANGES

### Article 7.00-Third Party Rights And Consents

- Clause 7.01: Significant expansion of annotations and some other material modifications.
  - Subclause A modified to focus on ROFRs because of the inclusion of a new Subclause E.
  - Subclause B expanded.
    - Greater process certainty about handling of ROFR information without being overly prescriptive.
    - Optional sentence for indemnification of the Vendor by the Purchaser if a third party challenges the Purchaser's ROFR values.
  - Subclause C expanded to address challenges to the validity of a ROFR notice, such as the value specified therein, the applicable election period and any purported application of a ROFR exemption.
  - Optional Subclause E modified significantly so independent in 2017 PTP from the Title Defects thresholds prescribed in Alternate 8.02B(2).
    - Termination right for ROFR exercises if Subclause selected at 50% or more of value of Assets, but a different % might be negotiated.
  - Added a new Subclause F to address consents.

## MAJOR CHANGES

### Article 8.00-Purchaser's Review

- Now Optional Article: To reflect increasing tendency to require the Purchaser's due diligence process to be completed prior to execution of the Agreement.
  - Provides each Party with greater control over any required negotiations on concerns, vs a potential lingering dispute after execution.
  - Increases deal certainty if Agreement is executed.
  - Consequential changes offer mutual protections for the prior review if Article 8.00 not selected.
    - Provision of required records, for example.
  - No application of Article 8.00 if not selected, except to limited extent described in the intro.
  - Annotations throughout PTP on this structure.
- General: Onus is on Parties to negotiate the specifics of any contemplated review beyond title in their Head Agreement (e.g., special conditions to Closing), given the typical Assets for which PTP might apply.
- Clause 8.01: Visit logistics addressed more fully.
- Clause 8.02: Reduced number of elections by using typical industry outcomes re timing and thresholds.
  - Expansion of annotations.
  - Parties always free to negotiate different handling.
  - Modified, so that the Title Defects process is distinct from any ROFR exercises for the Clause 8.02 termination thresholds.

## MAJOR CHANGES

### Article 9.00-Dispute Resolution

- Clause 9.01: Simplified by eliminating the 2000 mandatory mediation step in context of likely use of PTP.
- Clause 9.02: Significantly expanded annotations to remind users of the rationale for inclusion of arbitration references.
  - Provides reinforcement for Parties to negotiate a resolution of their disputes by retaining control of their outcome, vs uncertain arbitration outcome.
    - No attempt to encourage arbitration.
    - Very few disputes have ever gone to arbitration under the CAPL Operating Procedure arbitration provisions respecting such topics as ROFR values, title preserving well issues and CAPL “production facility” issues.
  - Also deleted former item (ii), which would more appropriately be managed through litigation.
- Clause 9.03: Modified text and annotations to align more closely to the corresponding 2015 CAPL Operating Procedure Clause.

## MAJOR CHANGES

### Article 10.00-Conditions To Closing

- Clause 10.01: Updated reference annotations on *Investment Canada Act* and *Competition Act*, even though PTP unlikely to apply to those transactions.
  - Added a new Paragraph (e) addressing the possibility that the Vendor and/or the Purchaser may have to submit a security deposit under the Regulations (e.g., due to its Licence Rating).
  - Also added a new Paragraph (f) to address there being no material legal proceedings.
- Clauses 10.02 & 10.03: Fine-tuning changes.
- Clause 10.05: Modified Subclause A to clarify that there are certain accrued obligations that would continue to apply if Closing did not occur.
  - Handling of any Deposit; any confidentiality obligations under this Agreement; and any obligation for breach of contract for failing to exercise diligence in satisfying conditions under Clause 10.06.



## MAJOR CHANGES

### **Article 11.00-Operatorship**

- Clause 11.01: Added the last sentence to require the Vendor to take reasonable steps with third parties to facilitate the Purchaser becoming Operator for properties operated by the Vendor.
  - Reflects typical handling in industry agreements.
  - Onus on the Vendor to negotiate a different outcome if uncomfortable with this in an Agreement.
- Clause 11.03: A new Clause to address the Vendor's obligation to remove from a site any excess inventory of material being retained by it as part of the Excluded Assets.
  - Parties free to modify timing for their own situation.

### **Article 12.00-Failure To Close And Default**

- Clause 12.01: Inclusion of a "having regard to" phrase to qualify liquidated damages references.

## MAJOR CHANGES

### Article 13.00-Liability And Indemnification

- General: Deleted Alternate 2 of 2000 PTP, as former Alternate 1 is now generally accepted.
  - Consequential changes throughout and in annotations.
  - Also updated handling for Affiliates and Gross Negligence or Wilful Misconduct in the Article.
  - Expanded annotations as required.
- Subclause 13.01C: Specifies one year survival of reps, rather than a blank, with exception for fraud.
- Clause 13.02: Expanded annotations for context.
- Clause 13.03: Modified, so that these Subclauses are not optional in the 2017 PTP, with a prescribed \$25K minimum claim value in Subclause 13.03B.
  - Parties always free to negotiate different \$ threshold in either Subclause A or B.
- Clause 13.04: Fine-tuning.

### Article 14.00-Assignment

- Clause 14.01: Fine-tuning to link payouts and cost recoveries more precisely to the Permitted Encumbrances.
- Clause 14.02: Vendor not prevented from pursuing Purchaser's assignees.

### Article 15.00-Notices

- Clauses 15.01 & 15.02: Edits to the Clauses and annotations to align more closely to comparable content in 2015 CAPL Operating Procedure.

## **MAJOR CHANGES**

### **Article 16.00-Confidentiality And Use Of Information**

- Clause 16.01: Replaced 2000 Clause with several Subclauses based on corresponding content from the 2015 CAPL Operating Procedure that would apply in an A&D context.
  - Associated annotations.
- Clause 16.02: A new Clause that addresses the Vendor's confidentiality obligations to the Purchaser.
- Former 16.03: Deleted re ongoing application of an earlier confidentiality agreement.

### **Article 17.00-Public Announcements**

- Clause 17.01: Updated to reflect 2015 CAPL Operating Procedure handling.

### **Article 18.00-Miscellaneous Provisions**

- General: Several Clauses moved from 2000 Article to Article 1.00 and significant edits in a number of remaining provisions to reflect modern standards.
  - Align more closely with language and sequencing in 2015 CAPL Operating Procedure.
- Clause 18.01: Qualified Clause more precisely.
- Clause 18.04: New Clause addressing protection of personal information.
- Clause 18.05: Expanded to address more directly the potential destruction of information.
- Clause 18.07: New Clause addressing potential electronic execution of Specific Conveyances.
- Clause 18.08: Special waivers for Saskatchewan.

### **Miscellaneous Annotations**

- Miscellaneous annotations at the end of the PTP to address potential modifications, undeveloped lands transactions and securities disclosure requirements.
- Expanded annotations re consents and ROFRs.