



NO. 73629-9-1  
COURT OF APPEALS DIVISION I  
THE STATE OF WASHINGTON

---

In re the Estate of:  
ELIZABETH K. WAGNER  
Deceased.

---

ELMER R. WAGNER  
as beneficiary, Appellant-Cross Respondent,

v.

JILL WRIGHT a/k/a "JILL ARCHER," as Personal Representative  
and as beneficiary to the Estate of Elizabeth K. Wagner,  
JILL WRIGHT a/k/a "JILL ARCHER,"  
and JOHN DOE ARCHER  
and the marital community composed thereof,  
Respondent-Cross Appellant.

---

Response to Petition for Review

---

**Elmer R. Wagner**  
607 126 St Ct NW.  
Gig Harbor, WA.  
Phone: (253) 851-5604  
(253-941-0333)

## **TABLE OF CONTENTS**

2 Table Of Authorities	2
3) Statement of Fact	3-5
4) Argument	6-12
5) Conclusion	12-13
6) List of Appendices Items	15-17

## TABLE OF AUTHORITIES

### **RULE 9.11 States: ADDITIONAL EVIDENCE ON REVIEW**

11.28.250

Pac. Nw. Life Ins. Co. v. Turnbull, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988).

*Note 1* ***The statement of this case is properly and accurately represented in the Appellant's reply brief filed February 24, 2016 by Attorney C. R. Solemn of the firm of Ledger Square Law.***

***As a lay person, Mr. Wagner can only provide additional information that would shed more light on the truth.***

*Note 2* ***The appendix has numerical references to the documents which are evidence to support Mr. Wagner's statement of fact, argument, and conclusion***

## **Statements of Fact**

### **1) On September 6, 2016 the Court rendered the following decision: (Quote)**

"Jill's response to this argument is simple: the trial Court merely followed the advice of the accountant, and the accountant was right. The trial Court adopted the accountant's advice. The CPA, Deaton, testified at the earlier evidentiary hearing to explain his accounting. He stated that if Elmer were compensated his 25 percent of the deficit capital payments owed by the other beneficiaries, he would be due an additional \$19,000. Deaton opined that this would make Elmer whole 14 No. 73629-9-1/15 again, and going forward, the royalty payments from the Tvedt/Murphy trust would be divided equally amongst the four beneficiaries. Before the trial began, the Court granted Elmer's motion to have the oil and mineral deed proceeds deposited into the Court registry. After trial, the Court stated in its conclusions of law that the monies held in the Court registry would be released to the Tvedt/Murphy estate trust upon **a full accounting of the estate and the Tvedt/Murphy trust**, and upon satisfaction of all outstanding debts **and monies owed to Elmer**. Generally, a court that has custody over funds has the authority and duty to distribute funds to the party or parties who are entitled to the funds. Pac. Nw. Life Ins. Co. v. Turnbull, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988). The Court has broad discretion to avoid an unlawful or unjust result in distributing funds. Id. Here, **the other beneficiaries were required to pay back their overpayments to the estate.**

The estate then owed Elmer \$19,789 to make him whole. This was not a personal obligation of Jill, Todd, and Kurt. It was the estate's responsibility to distribute the funds

that were owed to Elmer. Deaton's accounting method treats the estate itself as an entity. Elmer has made no colorable argument explaining why the trial Court abused its

discretion by treating the estate as an entity. The distribution from the Court registry effectuated the division of funds determined in the estate accounting.

Therefore, we disbursement of funds. affirm the trial court's decision."(End

Quote, emphasis added)

**2) *The other beneficiaries did not pay back their overpayments to the estate.***

**Note: This is in conflict with 1) above. (See appendices item 8)**

3) *The Court of Appeals was not provided with a full accounting of the Court registry to determine if the overpayments shown in Mr. Deaton's audit had been*

*returned. Note: This is in conflict with 1) above. (See appendices item 8)*

4) *The Court of Appeals was unaware of the recent actions of Ms. Archer*

*concerning royalties being withheld By Enerplus. (See Summary of Deposits and*

*Expenditures for Accounts 0,1,9 Community First Credit Union Estate of Elizabeth*

*Wagner Worksheet from Mr. Deaton's audit #1 - Appendices Item 1 and Paid Up*

*Oil and Gas Lease Appendices Item 2)*

5) *On the 10th Of December 2010 Ms. Archer's two brothers, Kurt Kulesza and*

*Todd Kulesza signed Division Orders with Enerplus **to have payments made***

*outside the estate for mineral rights held by the Estate of Elizabeth K. Wagner.*

*Ms. Archer signed a Division Order later. (See Oil and Gas Lease Appendices*

*Item 2 and STIPULATION OF INTEREST AND RATIFICATION OF OIL AND*

*GAS LEASES Appendices Item 6)*

- 6) *On February 4, 2016 Enerplus sent to Mr. Wagner copies of leases signed by Jill Wright (aka Ms. Archer) and her brothers (See Email Appendices Item 3)*
- 7) *Enerplus has been operating wells on oil bearing properties of the Estate of Elizabeth K. Wagner since 2010 (See Oil and Gas Lease Appendices Item 2 and Search for wells Appendices Item 7)*
- 8) *The Stipulation of interest and Ratification of Oil and Gas Leases indirectly shows current and past payments belonging to the trust would go one third each to Jill Archer, Kurt Kulesza, and Todd Kulesza. This payment schedule shows that Mr. Wagner was **not** included in the Tvedt-Murphy Mineral Trust. (See STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES appendices Item 6)*
- 9) *Ms. Archer refuses to acknowledge Mr. Wagner as a heir to the estate of Elizabeth K. Wagner on the Tvedt-Murphy Mineral Trust deed. (See appendices item 18 )*
- 10) *The executrix has recently signed other division orders with Enerplus for more wells and refuses to provide a copy to Mr. Wagner. (See appendices item 19 Ms. Archer's email)*
- 11) *On advice of council Mr. Wagner did not sign the STIPULATION OF INTEREST sent to him by Enerplus. . (See appendices item 14 Chrystina's email)*
- 12) *Ms. Archer refuses to provide Mr. Wagner documents relative to the distribution orders she is signing. (See Appendices # 19).*

## Argument

1) Ms, Archer and her brothers have surreptitiously hidden the fact that they have been taking estate oil royalties from Enerplus since 2010. There is no record of the payments from the wells identified with Enerplus in Mr. Deaton's audit.

The above facts, which are supported by documentation in the appendices, are evidence that some estate assets are and were purposely being held outside the estate. This is probably the reason Ms. Archer will not put Mr. Wagner's name on the trust deeds. How much more is she hiding? The oil producing wells are not identified in the audit of the estate of Elizabeth K. Wagner By the CPA, Deaton. These assets were and continue to be held outside the estate by Ms. Archer, Kurt Kulesza, and Todd Kulesza since December 2010. Mr. Wagner is entitled to one fourth of the royalties and signing bonus paid by Enerplus. On or about February 4, 2016 Mr. Wagner was contacted by Enerplus to have him sign STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES.. The only reason this fraud was exposed was by a well search by Mr. Wagner and emails to Enerplus. **See appendices item 13 emails to Enerplus**). It was only after Mr. Wagner's queries that Enerplus begin withholding payments to the other three heirs. Once the payments were withheld, obviously Ms. Archer contacted Enerplus. Enerplus eventually sent Mr. Wagner STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES in an attempt to rectify the situation. After a review by Mr. Wagner's attorney, the STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES was rejected.

(See appendices Item 14) The same property description is on the Tvedt-Murphy Mineral

Trust deed, the Hugh Murphy Estate deed to Elizabeth K. Wagner and the

STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS

LEASES sent from Enerplus. Recently Mr. Wagner contacted Enerplus to establish

what could be done and if any payments had been made to the other heirs. (See

appendices item 18) . Also Enerplus was aware that the property was going through

probate as noted in Mr. Kruger's email of 8/27/10 which states (Quote)"I do not

feel as though we need to move forward on negotiating or preparing a lease for the

interest of Elizabeth Kulesza Wagner until we have the probated will and a

Personal Representative Deed of Distribution for her estate. "(End Quote) (See

appendices item 15) Apparently, Enerplus felt that the probated will and the Deed

of Distribution were completed by December 2010 at which time Enerplus paid the

signing bonus as noted in the STIPULATION OF INTEREST AND

RATIFICATION OF OIL AND GAS LEASES which states: (Quote)

*"A. **Paid Up Oil and Gas Lease** dated August 22, 2010 (recorded October 12, 2010 as Document No. 3046278), from Todd Kulesza, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation;*

*B. **Paid Up Oil and Gas Lease** dated August 22, 2010 (recorded October 12, 2010 as Document No. 3046279), from Kurt Kulesza, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation; and*

*C. **Paid Up Oil and Gas Lease** dated August 22, 2010 (recorded February 10, 2011 as Document No. 3049107), from Jill Wright, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation,..." (End*

Quote) . (See appendices items 2 & 6 pg 1)



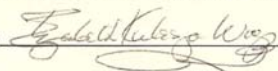
Enerplus has refused to provide Mr. Wagner any information other than the STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES and copies of the Paid Up Oil and Gas Leases. (See appendices item 20)

In view of the above, it is clear the intentions all of the other heirs are again attempting to deny Mr. Wagner of his rightful inheritance and the other heirs were and are deliberately in violation of 11.28.250 and also the no contest provision of the will of Elizabeth K. Wagner.

ARTICLE VI  
NO CONTEST

In the event that any devisee, legatee or beneficiary under this will, or any one of my heirs shall begin or maintain any proceeding to challenge or deny any provision of this Will, any share or interest given to that person shall lapse and go into the residue of my estate and my Personal Representative is directed and required to refrain from making any distribution of any sums whatsoever to that person, if any, who shall seek to contest this will or any of its provisions.

Testatrix's signature



End Page 3 Of 4

2) Also the **Court was not aware that the overpayments** that were shown in Mr. Deaton's audit **had not been returned to the registry**. (Appendices Items 8, pages 1 and 2 and Item 12) Mr. Mills' *colorable* skills guided the Court to make the **incorrect assumption** that the overpayments to Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza (\$6,168.93) had been returned to the Estate. As a result of Mr. Mills' colorable skills **the other heirs have received an unjust enrichment at the expense of Mr. Wagner.** **Appendices Items 9 and 10 show both the Auditor and Mr. Mills knew the overpayments should be returned.** Also it appears that Mr. Mill's math and logic skills are lacking; if the moneys were returned to the estate, the debt would be repaid and all would share equally in what was left in the registry.

However, **the overpayments were not returned to the registry**. Therefore, Mr. Wagner's one fourth of the debt owed by the other heirs would need to come from

their share of what was still in the registry. Mr. Mills, the accountant and Ms. Archer were wrong and **Mr. Wagner is correct.** (See appendices item 9 ) The method for distributing the money from the registry after all debts are reconciled other than the over payments to the other heirs is shown in appendices item 11.

After Mr. Wagner is made whole, the other heirs then would need to follow the Judge's advice and decide, among themselves, how to distribute the remainder.

Also the Court on page 26 lines 22-23 Verbatim Record of Proceedings (From Audio Recording) December 12, 2014 states (Quote)

"22 I have no problem with Mr. Wagner getting the money

23 he's due out of the registry of the court

then the distribution becomes very simple Says the Court.

Give Mr. Wagner what he is owed and split the remainder with the three remaining heirs."(End Quote)

The Court should uphold Mr. Wagner's claim. The current distribution was explained by Mr. Mills using his *colorable* skills to convince the Court but it **denies** Mr. Wagner his rightful inheritance of **\$24575,55** (see appendices item 21) and **provides an unjust enrichment for the other heirs.** (Note: Mr. Mills states in the Transcript of the hearing

Verbatim Record of Proceedings (From Audio Recording) June 4, 2015 -page 16 "

2 And I think that the math, by way, could sort of be --

3 if we had a mathematician here, I think a mathematician

4 would show us that there's ways to make it all come out the

5 same as long as we're comparing apples to apples and oranges.....

**(Note: For the auditor and Mr. Mills scrutiny, Appendices Item 11 is Mr. Wagner's 9th grade algebraic solution of the distribution problem that they are invited to correct.)**

3) The other heirs are intending to continue to take estate funds outside the will of Elizabeth K. Wagner by their third and latest attempt to frivolously claim that Mr. Wagner acted as an Attorney and not just a Scrivener. Mr. Wagner typed only what his wife wrote. No more. No less. in relation to the composition of the will. **This accusation is Not True and without merit!** Liz sent the other heirs copies of the will for comment before Liz signed it. Also the other heirs failed to challenge the will for about two years after the will was approved and accepted for probate. This latest attempt is **obviously an effort to delay the inevitable in the hopes Mr. Wagner, because of his age and health, will die** before the Court can make a decision. Mr. Wagner has endured almost four years of fruitless legal haggling which has cost Mr. Wagner his retirement savings. Greed, cunning and colorable half truths have created a costly can of worms.

Mr. Wagner has provided evidence that he believes can separate the wheat from the chaff, it is now up to the court to use it winnowing fork. *Note: Colorable: False; counterfeit; something that is false but has the appearance of truth. colorable(Plausible), adjective ad captandum, alleged, apparent, apparently.)*

4) The Court should award Mr. Wagner fair and equitable attorney fees. Mr. Wagner successfully has shown by his claims that

- 1) Ms. Archer never had a one third interest in the Property,
- 2) Ms. Archer and Estate Heirs should be divested of the monies they wrongfully took as a result of Ms. Archer's erroneous claim to one third of the property sale proceeds,

3) Mr. Wagner is entitled to recovery for his community/equitable lien respecting mortgage payments and improvements concerning the property,

4) all assets and accounts owned by Mr. Wagner and Liz, his late wife, with joint rights of survivorship passed to Mr. Wagner outside of the Estate and were not subject to any claim of interest by the Estate.

5) The other heirs failed to return the overpayments of Ms. Archer

(\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93) for a total of \$77,473.78 to the estate.

6) The other heirs converted the inheritance of Mr. Wagner by taking direct payments from Enerplus.

7) the executrix, Ms. Archer, has failed in the administration of the estate and should be immediately replaced.

5) Moreover, the Court denied Ms. Archer's and the Estate's untimely, false demeaning, frivolous claims that Mr. Wagner engaged in the unauthorized practice of law and exerted undue influence over Liz.

6)) Equally important is that the Court specifically found that Mr. Wagner's claims were necessary to clarify Liz's Will and the administration of the Estate and Trust.

7) There is **nothing** in the records that shows Ms. Archer has paid anything to Mr. Mills or Ms. Danielle except from the registry (\$10,000) which was paid equally to both Mr. Mills and Mr. Arceneaux by order of the Court.

Therefore, Mr. Wagner now respectfully requests the Court provide him with just, fair reasonable attorney fees and costs, These fees and costs were incurred by Mr. Wagner as a result of the improper acts of Ms. Archer and her brothers.

Mr. Wagner, now almost 82, has lost four years of priceless retirement time. The cost incurred in initiating this action and maintaining it for four years has unreasonably depleted his retirement savings.

## **Conclusion**

- 1) The above facts and arguments with supporting documentation show that the personal representative should be immediately removed under the provisions of RCW11.28.250. and replaced with an unbiased Trustee.
- 2) The heirs, Ms. Archer, Kurt Kulesza and Todd Kulesza, have intentionally violated the no contest clause of the will and their inheritance is to be immediately put into the residue of the estate to be administered by a new unbiased trustee.
- 3) The other heirs have been unjustly enriched at the expense of Mr. Wagner by the misguided decisions of the Court derived from Mr. Mills *Colorable* skills of deception. If justice is to be served, the money paid to Mr. Mills on 7/1/15 (\$24,366.47) and 7/16/15 (\$1,995.02) from the registry should be immediately returned to the registry by Mr. Mills for proper distribution by a new unbiased trustee.
- 4) The new trustee can pay the IRS with the excess money returned by Mr. Mills since it will be in the residue of the estate and the estate can be closed when the IRS debt is satisfied.

5) The Court has failed in its evaluation of what is equitable. Mr. Wagner, based on the information above, should be awarded all of his legal expenses to date. This case would not have existed and Mr. Wagner could have enjoyed the past four years of his retirement if the other heirs had been honest, reasonable and forthright.

**And**

**6) According to RULE 9.11 which States:**

(1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

(b) Where Taken. The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence.



**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years,. On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

John Stradford Mills 705 S. 9th Street Tacoma, WA jmills@jmills.pr	D U.S. First Class Mail, D Via Legal Messenger D Overnight Courier X Electronically via email D Facsimile
--	---

DATED this 10th day of December 2016 at Gig Harbor ,Washington.

  
\_\_\_\_\_

## List of Appendices Items

### 1 Summary sheet of Mr. Deaton's audit. . (December 31, 2012)

This shows that no money from Enerplus was in the audit. Ms. Archer and the other heirs received money from Enerplus outside the estate on estate assets. Thereby cheating Mr. Wagner of his right full inheritance. This is a violation of the condition of the will and falls under the disinheritance clause.

### 2) Paid up Oil and gas leases to Jill Wright (Ms. Archer)

This shows that Enerplus was convinced that Ms. Wright was the owner of the mineral rights shown on the lease. (Executed December 10, 2010) It also shows that the **payments went to heirs home and not into the estate account.** Actually these mineral rights are part of the estate.

3) Email from Nancy McKay (Enerplus) to Mr. Wagner (Feb 4, 2016) This email shows that Enerplus and the other heirs needed to rectify the payments scheme in place which did not agree with the terms of the Will of Elizabeth K. Wagner. Mr. Wagner is not recognized as an heir. See 2) above for copy of lease.

### 4) Deed (April 5, 1991) from Hugh Murphy Estate to Elizabeth K. Wagner (Decedent)

This deed shows the properties deeded to the decedent are the same as on the Paid up Oil and gas leases and the STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES (Appendices Item 6)

### 5) Executors Mineral Deed (5/29/12)

Jill Wright (Ms. Archer) as executrix transfers properties from estate of Elizabeth K. Wagner in the State of Washington to Jill Wright executor of a trust (Tvedt/Murphy Mineral Trust) at her home in Chicago IL. (No trust papers were ever disclosed which would show the beneficiaries)

### 6) STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES

This document shows that mineral rights on appendices 2, 4 and 5 contain the same properties on appendices 6. It names all heirs of the estate. It shows payments are to go to Jill Wright, Kurt Kulesza and Todd Kulesza as "Paid up leases. It does not show a paid up lease to Mr. Wagner **who is also an heir.**

### 7) North Dakota Search For Wells

This search is from the North Dakota government web site (<https://www.dmr.nd.gov/oilgas/findwellsvw.asp>) and shows Enerplus operating ETHAN HALL 6B-7-1H at NENW 6-147-93 starting 2/11/11 and ETHAN HALL 6B-31-30-1H. starting 12/24/10. These wells are situated on mineral rights owned by the estate of Elizabeth K. Wagner and to which Mr. Wagner is an heir.



## List of Appendices Items

### 8) Summary Sheets of Registry from County

These sheets are from the county records and show that the overpayments to Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93) for a total of \$77,473.78 **were not returned** to the estate (Court Registry)

### 9) Email Mr. Mills to Mr. Arceneaux (March 24, 2015)

Two rights do not make a wrong!. Mr. Mills is very cunning in his presentation. However, he has demonstrated very poor math and logic skills. If all the overpayments are returned then all debts are paid and the registry should be split four ways, However the overpayments were not returned to the registry; therefore, **Elmer is owed 1/4 of the value of the Court Registry +1/4 whatever is not returned of the overpayments to the court registry.**

10) The Email between Mr. Mills and accounting firm shows both of them knew that the overpayments were not returned and that Mr. Wagner was due 1/4 of the overpayments .

### 11) Mr. Wagner's algebraic solution for the consideration of the Court.

Since Mr. Mills needed a math solution when addressing the Court. Mr. Wagner offers one for Mr. Mills and the Courts consideration. Mr. Wagner feels that it would be appropriate for Mr. Mills to seek a confirmation from a real expert.

### 12) Reallocation of funds from audit by Mr. Deaton

Shows overpayments to Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93) for a total of \$77,473.78

### 13) Email Elmer Wagner to S Farrow (Enerplus) March 19,2014

These emails made Enerplus aware that there was a royalty payment concern.

### 14) Email Mrs. Solum (Attorney for Mr. Wagner) to Ms. McKay (Enerplus)

Advised that Mr. Wagner would not be signing the STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES

### 15) Email from Jason Kruger (Enerplus) to Mr. Wagner August 27, 2010

Email states "I do not feel as though we need to move forward on negotiating or preparing a lease for the interest of Elizabeth Kulesza Wagner until we have the probated will and a Personal Representative's Deed of Distribution for her estate." **If this is the case why are there Paid up Oil and gas leases to Jill Wright dated December 10, 2010. And why is a STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES needed now.**

### List of Appendices Items

16) Ms. Archer's intent is to wait until Mr. Wagner dies. It appears that this has been her strategy for the past four years. Mr. Wagner had to pay for subpoenas to obtain documents from financial institutions and oil companies in order to move the audit along . Ms. Archer could have achieved the same effect with letters.

17) Email Ms. Archer to Heirs

Promises to send recent Paid up Oil and gas leases from Enerplus to Mr. Wagner

18) Email N. McKay (Enerplus) To Ms. Archer & Mr. Wagner

Proposes four solutions to release of funds being held. Ms. Archer refuses to recognize Mr. Wagner on second and third options.

19) Email From Ms. Archer to the heirs (September 29, 2016)

Ms. Archer denies to give information to Mr. Wagner while providing it to the other heirs. Also this action is in violation of a Court order. This action is in conflict with the duties of a Personal Representative/Trustee.

20) Emails to and from Enerplus are documents that show Enerplus is unwilling to give Mr. Wagner proof of payments to the other heirs.

21) This is the calculation of balance due to Mr. Wagner based on algebraic solution on Appendices Item 11.

**Summary of Deposits and Expenditures for Accounts 0,1,9  
Community First Credit Union  
Estate of Elizabeth Wagner  
Worksheet #1**

No income  
from Enerplus

Total Deposits for the period 10/8/2010 -

12/31/2013:

Continental	\$	
Hess	\$	
Bank Interest	\$	
Sale of Home	\$	
"Other Deposits"	\$	
<b>Total (Agrees to Transaction Activity Detail)</b>	<b>\$</b>	
<b>Less: \$5,000 Proceeds From Sale of Ring Dist. To Mr.</b>	<b>\$</b>	
<b>Total</b>	<b>\$</b>	<b>4</b>

Total Disbursements:

Jill	\$	
Elmer	\$	
Kurt	\$	
Todd	\$	
Attorney Fees	\$	
Taxes	\$	
Checking Fee	\$	
Ring Proceeds to Mr. Wagner	\$	
Court Ordered Transfer into Court Registry	\$	
<b>Total (Agrees to Transaction Activity Detail)</b>	<b>\$</b>	
<b>Less: \$5,000 Proceeds From Sale of Ring Dist. To Mr.</b>	<b>\$</b>	
<b>Total</b>	<b>\$</b>	<b>4</b>

Net (Deposits less disbursements)	\$	
Less: Unidentified Expenses	\$	
Account Balance at 12/31/2013 (Agrees to	\$	

Appendices Item # 1 page 1 of 1

Shows audit ended before registry was closed.

PAID UP

PAID UP OIL AND GAS LEASE

THIS LEASE AGREEMENT is made as of the 22nd day of August, 2010 between Jill Wright, individually and as an heir of Elizabeth Kulesza Wagner, whose address is 5649 South Blackstone #1, Chicago, IL 60637 as Lessor (whether one or more), and Enerplus Resources (USA) Corporation, 1700 Lincoln Street, Suite 1300, Denver, Colorado 80203, as Lessee. All printed portions of this lease were prepared by the party hereinabove named as Lessee, but all other provisions (including the completion of blank spaces) were prepared jointly by Lessor and Lessee.

1. In consideration of Ten and More Dollars cash bonus in hand paid and the covenants herein contained, Lessor hereby grants, leases and lets exclusively to Lessee the following described land, hereinafter called leased premises:

Township 147 North, Range 93 West, 5<sup>th</sup> PM  
Section 6: Lots 1 (35.25), 2 (35.21), E/2NW/4, NE/4  
Township 148 North, Range 93 West, 5<sup>th</sup> PM  
Section 31: SE/4SE/4

Same as on Estate and Trust Deeds

in the county of Dunn, State of North Dakota, containing 350.46 gross acres, more or less (including any interests therein which Lessor may hereafter acquire by reversion, prescription or otherwise), for the purpose of exploring for, developing, producing and marketing oil and gas, along with all hydrocarbon and nonhydrocarbon substances produced in association therewith. The term "gas" as used herein includes helium, carbon dioxide and other commercial gases, as well as hydrocarbon gases. In addition to the above-described leased premises, this lease also covers accretions and any small strips or parcels of land now or hereafter owned by Lessor which are contiguous or adjacent to the above-described leased premises, and, in consideration of the aforementioned cash bonus, Lessor agrees to execute at Lessee's request any additional or supplemental instruments for a more complete or accurate description of the land so covered. For the purpose of determining the amount of any shut-in royalties hereunder, the number of gross acres above specified shall be deemed correct, whether actually more or less.

2. This lease, which is a "paid-up" lease requiring no rentals, shall be in force for a primary term of Three (3) years from the date hereof, and for as long thereafter as oil or gas or other substances covered hereby are produced in paying quantities from the leased premises or from lands pooled therewith or this lease is otherwise maintained in effect pursuant to the provisions hereof.

3. Royalties on oil, gas and other substances produced and saved hereunder shall be paid by Lessee to Lessor as follows: (a) For oil and other liquid hydrocarbons separated at Lessee's separator facilities, the royalty shall be three-sixteenths (3/16ths) of such production, to be delivered at Lessee's option to Lessor at the wellhead or to Lessor's credit at the oil purchaser's transportation facilities, provided that Lessee shall have the continuing right to purchase such production at the wellhead market price then prevailing in the same field (or if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) for production of similar grade and gravity; (b) for gas (including casinghead gas) and all other substances covered hereby, the royalty shall be three-sixteenths (3/16ths) of the proceeds realized by Lessee from the sale thereof, less a proportionate part of ad valorem taxes and production severance, or other excise taxes and the costs incurred by Lessee in delivering, processing or otherwise marketing such gas or other substances, provided that Lessee shall have the continuing right to purchase such production at the prevailing wellhead market price paid for production of similar quality in the same field (or if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) pursuant to comparable purchase contracts entered into on the same or nearest preceding date as the date on which Lessee commences its purchases hereunder; and (c) if at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil or gas or other substances covered hereby in paying quantities, but such well or wells are either shut in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this lease. If for a period of 90 consecutive days such well or wells are shut in or production therefrom is not being sold by Lessee, then Lessee shall pay shut-in royalty of one dollar per acre then covered by this lease, such payment to be made to Lessor or to Lessor's credit in the depository designated below, on or before the end of said 90-day period and thereafter on or before each anniversary of the end of said 90-day period while the well or wells are shut in or production therefrom is not being sold by Lessee; provided that if this lease is otherwise being maintained by operations, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled therewith, no shut-in royalty shall be due until the end of the 90-day period next following cessation of such operations or production. Lessee's failure to properly pay shut-in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

4. All shut-in royalty payments under this lease shall be paid or tendered to Lessor or to Lessor's credit DIRECT TO LESSOR AT ABOVE ADDRESS or its successors, which shall be Lessor's depository agent for receiving

3049107  
Page: 1 of 4  
OIL AND GAS LEASE \$19.00  
Chris Larsen, Dunn County Recorder 2/10/2011 11:01 AM  
By \_\_\_\_\_

Shows payment went to heirs home and not into the estate account.

payments regardless of changes in the ownership of said land. All payments or tenders may be made in currency, or by check or by draft and such payments or tenders to Lessor or to the depository by deposit in the U.S. Mails in a stamped envelope addressed to the depository or to the Lessor at the last address known to Lessee shall constitute proper payment. If the depository should liquidate or be succeeded by another institution, or for any reason fail or refuse to accept payment hereunder, Lessor shall, at Lessee's request, deliver to Lessee a proper recordable instrument naming another institution as depository agent to receive payments.

5. If Lessee drills a well which is incapable of producing in paying quantities (hereinafter called "dry hole") on the leased premises or lands pooled therewith, or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of Paragraph 6 or the action of any governmental authority, then in the event this lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences operations for reworking an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled therewith within 90 days after completion of operations on such dry hole or within 90 days after such cessation of all production. If at the end of the primary term, or at any time thereafter, this lease is not otherwise being maintained in force but Lessee is then engaged in drilling, reworking or any other operations reasonably calculated to obtain or restore production therefrom, this lease shall remain in force so long as any one or more of such operations are prosecuted with no cessation of more than 90 consecutive days, and if any such operations result in the production of oil or gas or other substances covered hereby, as long thereafter as there is production in paying quantities from the leased premises or lands pooled therewith. After completion of a well capable of producing in paying quantities hereunder, Lessee shall drill such additional wells on the leased premises or lands pooled therewith as a reasonably prudent operator would drill under the same or similar circumstances to (a) develop the leased premises as to formations then capable of producing in paying quantities on the leased premises or lands pooled therewith, or (b) to protect the leased premises from uncompensated drainage by any well or wells located on other lands not pooled therewith. There shall be no covenant to drill exploratory wells or any additional wells except as expressly provided herein.

6. Lessee shall have the right but not the obligation to pool all or any part of the leased premises or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal completion shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil well or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate government authority, or, if no definition is so prescribed, "oil well" means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel, and "gas well" means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on a 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and the term "horizontal completion" means an oil well in which the horizontal component of the gross completion interval in the reservoir exceeds the vertical component thereof. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production of which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears to the total gross acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. In making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent that any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

7. If Lessor owns less than the full mineral estate in all or any part of the leased premises, the royalties and shut-in royalties payable hereunder for any well on any part of the leased premises or lands pooled therewith shall be reduced to the proportion that Lessor's interest in such part of the leased premises bears to the full mineral estate in such part of the leased premises.

8. The interest of either Lessor or Lessee hereunder may be assigned, devised or otherwise transferred in whole or in part, by area and/or by depth or zone, and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns. No change in Lessor's ownership shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until 60 days after Lessee has been furnished the original or certified or duly authenticated copies of the documents establishing such change of ownership to the satisfaction of Lessee or until Lessor has satisfied the notification requirements contained in Lessee's usual form of division order. In the event of the death of any person entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to the credit of decedent or decedent's estate in the depository designated above. If at any time two or more persons are entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to such persons or to their

credit in the depository, either jointly or separately in proportion to the interest which each owns. If Lessee transfers its interest hereunder in whole or in part Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the area covered by this lease, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

9. Lessee may, at any time and from time to time, deliver to Lessor or file of record a written release of this lease as to a full or undivided interest in all or any portion of the area covered by this lease or any depths or zones thereunder, and shall thereupon be relieved of all obligations thereafter arising with respect to the interest so released. If Lessee releases all or an undivided interest in less than all of the area covered hereby, Lessee's obligation to pay or tender shut-in royalties shall be proportionately reduced in accordance with the net acreage interest retained hereunder.

10. In exploring for, developing, producing and marketing oil, gas and other substances covered hereby on the leased premises or lands pooled or unitized therewith, in primary and/or enhanced recovery, Lessee shall have the right of ingress and egress along with the right to conduct such operations on the leased premises as may be reasonably necessary for such purposes, including but not limited to geophysical operations, the drilling of wells, and the construction and use of roads, canals, pipelines, tanks, water wells, disposal wells, injection wells, pits, electric and telephone lines, power stations, and other facilities deemed necessary by Lessee to discover, produce, store, treat and/or transport production. Lessee may use in such operations, free of cost, any oil, gas, water and/or other substances produced on the leased premises, except water from Lessor's wells or ponds. In exploring, developing, producing or marketing from the leased premises or lands pooled therewith, the ancillary rights granted herein shall apply (a) to the entire leased premises described in Paragraph 1 above, notwithstanding any partial release or other partial termination of this lease; and (b) to any other lands in which Lessor now or hereafter has authority to grant such rights in the vicinity of the leased premises or lands pooled therewith. When requested by Lessor in writing, Lessee shall bury its pipelines below ordinary plow depth on cultivated lands. No well shall be located less than 200 feet from any house or barn now on the leased premises or other lands used by Lessee hereunder, without Lessors consent, and Lessee shall pay for damage caused by its operations to buildings and other improvements now on the leased premises or such other lands, and to commercial timber and growing crops thereon. Lessee shall have the right at any time to remove its fixtures, equipment and materials, including well casing, from the leased premises or such other lands during the term of this lease or within a reasonable time thereafter.

11. Lessee's obligations under this lease, whether express or implied, shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction including restrictions on the drilling and production of wells, and the price of oil, gas and other substances covered hereby. When drilling, reworking, production or other operations are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this lease shall not terminate because of such prevention or delay, and at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any express or implied covenants of this lease when drilling, production or other operations are so prevented, delayed or interrupted.

12. In the event a portion or portions of the leased premises is pooled or unitized with other land so as to form a pooled unit or units, operations on, completion of a well upon, or production from such unit or units will not maintain this lease in force as to that portion of the leased premises not included in such unit or units. The lease may be maintained in force as to any portion of the leased premises covered hereby and not included in such unit or units in any manner provided for herein; provided, however, if at the end of the primary term or after the expiration of the primary term, Lessee is then engaged in drilling or reworking operations on the non-unitized portion of the leased premises or on acreage pooled therewith, or if Lessee has completed a well as a producer or a dry hole anywhere on the leased premises or lands pooled therewith within ninety (90) days prior to the expiration of the primary term, this lease shall remain in full force and effect as to all non-unitized acreage so long as Lessee commences drilling operations on the non-unitized portion of the leased premises or on acreage pooled therewith within ninety (90) days of the completion of such well as a producer or a dry hole and conducts continuous operations thereon with no cessation of longer than ninety (90) days between the completion of drilling or reworking operations on a well and the commencement of such operations for the next succeeding well.

13. No litigation shall be initiated by Lessor with respect to any breach or default by Lessee hereunder, for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default, within such period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this lease shall not be forfeited or cancelled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

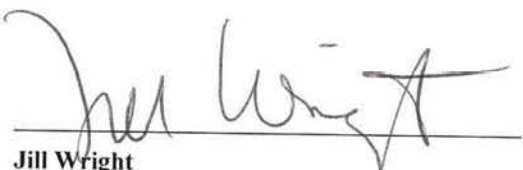
14. Lessor hereby warrants and agrees to defend title conveyed to Lessee hereunder, and agrees that Lessee at Lessee's option may pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the leased premises. If Lessee exercises such option, Lessee shall be subrogated to the rights of the party to whom payment is made and, in addition to its other rights, may reimburse itself out of any royalties or shut-in royalties otherwise payable to Lessor hereunder. In the event Lessee is made aware of any claim inconsistent with Lessor's title, Lessee may suspend the payment of royalties and shut-in royalties hereunder, without interest, until Lessee has been furnished satisfactory evidence that such claim has been resolved.

  
OIL AND GAS LEASE \$19.00  
Chris Larsen, Dunn County Recorder  
By \_\_\_\_\_

**3049107**  
Page: 3 of 4  
2/10/2011 11:01 AM

Appendices Item # 2 page 3 of 4

IN WITNESS WHEREOF, this lease is executed to be effective as of the date first written above, but upon execution shall be binding on the signatory and the signatory's heirs, devisees, executors, administrators, successors and assigns, whether or not this lease has been executed by all parties hereinabove named as Lessor.

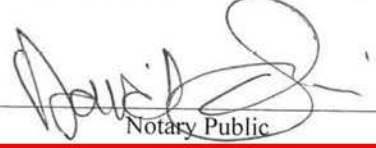
LESSOR (WHETHER ONE OR MORE)  
  
Jill Wright

ACKNOWLEDGEMENT - INDIVIDUAL  
STATE OF ILLINOIS )  
County of Cook ) SS.

This instrument was acknowledged before me on this 10<sup>th</sup> day of December, 2010, by **Jill Wright**, to me known to be the identical person described in and who executed the within and foregoing instrument of writing and acknowledged to me that she duly executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: 12/17/12

  
Notary Public



Print name of Notary: David Tognarelli  
Residing at: 726 Clark St. Evanston, IL 60201

Appendices Item # 2 page 4 of 4



**Subject:** RE: Tvedt/Murphy Mineral Trust: Stipulation of Interest and Ratification of Oil and Gas Leases (Wrong addresses)

**From:** Nancy McKay (NMckay@enerplus.com)

**To:** namonsa@yahoo.com;

**Cc:** chrystina@ledgersquarelaw.com; SFarrow@enerplus.com; BFritz@enerplus.com;

**Date:** Thursday, February 4, 2016 11:39 AM

Date & Reference to leases and Stipulation document

Mr. Wagner,  
 Per your request, and as a courtesy, attached are copies of the leases set out on the Stipulation and Ratification. These leases are of public record in Dunn County, ND. The Stipulation of Interest and Ratification of Oil and Gas Leases is a corrective document that will set out the interests of all parties. This document will cure title requirements for distribution of suspended and future royalty payments. Please let me know if you have additional questions,  
 Nancy

---

Nancy McKay  
 Landman  
 US Operations  
 Enerplus  
 T. 720-279-5522

-----Original Message-----  
 From: Elmer Wagner [mailto:namonsa@yahoo.com]  
 Sent: Thursday, February 04, 2016 12:00 PM  
 To: Nancy McKay  
 Subject: RE: Tvedt/Murphy Mineral Trust: Stipulation of Interest and

<https://mg.mail.yahoo.com/neo/launch?.rand=3o3v6988qigct> 11/24/2016

Appendices Item # 3 page 1 of 1



HUGH APRIL 1991

PERSONAL REPRESENTATIVE'S DEED OF DISTRIBUTION

THIS INDENTURE, Made this 5 day of APRIL, 1991, between Hugh Redmond Murphy, Personal Representative of the Estate of Hugh Murphy a/k/a Hugh T. Murphy a/k/a Hugh Thomas Murphy, (Grantor), and ELEANOR M. MURPHY, of c/o Helen J. Lierboe, 111 SW Harrison, Apt. 11H, Portland, Oregon 97201; ANTHONY BERNARD MURPHY, of 6947 Sandy Point Road NE, Olympia, Washington 98506; MONICA M. GILMORE, of P.O. Box 287, Harrison, Idaho 83833; ANN CRAWFORD, of 1401 East 52, Tacoma, Washington 98404; JOAN M. PLESANT, of 5204 Sanders, El Paso, Texas 79924; CHRIS MURPHY, of 1021 South 312th Street, Federal Way, Washington 98003; BILL MURPHY, of 8408 Phillips Road, SW #48, Tacoma, Washington 98498; GREG M. MURPHY, of 412 1/2 Porter Way, Milton, Washington 98354; SUE MISCHEL, of 22746 Marine View Drive, Unit B, Des Moines, Washington 98198; ELIZABETH KULESZA WAGNER, of Box 4206, Federal Way, Washington 98063; HUGH REDMOND MURPHY, of HC01, Box 15, Killdeer, North Dakota 58640; THOMAS JOHN MURPHY, of HC01, Box 33, Killdeer, North Dakota 58640, (Grantee), WITNESSETH

WHEREAS, Grantor is the duly appointed and acting Personal Representative of the Estate of Hugh Murphy a/k/a Hugh T. Murphy a/k/a Hugh Thomas Murphy; and

WHEREAS, the Grantee is entitled to distribution of certain real property hereinafter described from the Estate of said decedent;

NOW THEREFORE, the Grantor does hereby grant, convey, transfer and distribute to Grantee all of the right, title and interest of said decedent and said estate in and to all of the oil, gas, casinghead gas, casinghead gasoline, coal and other minerals in and under and that may be produced from the following described lands situated in Dunn County, North Dakota, in the following proportions:

- Eleanor M. Murphy 1/6th
- Anthony Bernard Murphy 1/6th
- Monica M. Gilmore 1/6th
- Ann Crawford 1/42nd
- Joan M. Pleasant 1/42nd
- Chris Murphy 1/42nd
- Bill Murphy 1/42nd
- Greg M. Murphy 1/42nd
- Sue Mischel 1/42nd
- Elizabeth Kulesza Wagner 1/42nd
- Hugh Redmond Murphy 1/6th
- Thomas John Murphy 1/6th

180616

OFFICE OF REGISTER OF DEEDS  
 State of North Dakota,  
 County of Dunn  
 I hereby certify that the within instrument was filed for record the 11 day of April A.D. 19 91 at 1:34 o'clock P. M., recorded in book 111 page 23  
 Pamela L. Murphy  
 Register of Deeds

T144N, R95W, Dunn County, ND  
 Section 11: SW 1/4 SE 1/4 NOTHING

\$11.00  
 Winkjer, McKennett, Stenehjem, Murphy & Reiersen, P.C.  
 P.O. Box 1366  
 Williston, ND 58802-1366

T144N, R95W, Dunn County, ND  
 Section 11: NW 1/4 (one-half interest) NE 1/4 (one-half interest)  
 Section 10: S 1/2 NE 1/4 (one-half interest) N 1/2 SE 1/4 (one-half interest)  
 Nothing

Indexed	✓
Granted	✓
Grantee	✓

T147N, R93W, Dunn County, ND  
 Section 6: Lots 1, 2, E 1/2 NW 1/4 and NE 1/4  
 T148N, R93W, Dunn County, ND  
 Section 31: SE 1/4 SE 1/4 NOTHING

NOTHING



T148N, R94W, Dunn County, ND  
 Section 14: NE 1/4 SW 1/4 WATCH-WELLS DIAG (SEC 24)

T146N, R96W, Dunn County, ND  
 Section 3: All Good \*

together with the right of ingress and egress for the purpose of

Appendices Item # 4 page 1 of 1

**AFTER RECORDING RETURN TO:**

Suzanne W. Danielle  
Attorney at Law  
33838 Pacific Hwy S, A-201  
Federal Way, WA 98003

---

**Grantor** (Borrower): Jill R. Wright, Executor of Estate of Elizabeth K. Wagner  
**Grantee** (Lender): Jill R. Wright, Trustee of Tvedt/Murphy Mineral Trust  
**Document Assigned:** 1/42nd <sup>portion</sup> of Deed recorded under #180616

**EXECUTOR'S MINERAL DEED**

THE GRANTOR, JILL R. WRIGHT, acting in her capacity as Executor of the Estate of ELIZABETH K. WAGNER, deceased, f/k/a ELIZABETH KULESZA WAGNER, in accordance with the terms and provisions of the Last Will and Testament of ELIZABETH K. WAGNER, deceased, conveys and warrants to

JILL R. WRIGHT, as Trustee of the TVEDT/MURPHY MINERAL TRUST, whose address is  
5649 S. Blackstone #1, Chicago, IL 60637,

all of the right, title and interest in ELIZABETH KULESZA WAGNER's undivided one-forty-second (1/42nd) interest (as previously conveyed by DEED OF DISTRIBUTION dated April 5, 1991 and recorded on April 11, 1991 with the Office of Register of Deeds, DUNN COUNTY under recording number 180616) in and to all of the oil, gas, casinghead gas, casinghead gasoline, coal and other minerals, in and under and that may be produced from the following described lands situated in DUNN COUNTY, NORTH DAKOTA:

Township 144 North, Range 95 West  
Section 11: SW ¼  
SE ¼

Township 144 North, Range 95 West  
Section 11: NW ¼ (one-half interest)  
NE ¼ (one-half interest)  
Section 10: S ½ NE ¼ (one-half interest)  
N ½ SE ¼ (one-half interest)

Appendices Item # 5 page 1 of 2

  
MINERAL DEED \$17.00  
Chris Larsen, Dunn County Recorder  
By \_\_\_\_\_

**3058907**  
Page: 1 of 3  
5/29/2012 2:33 PM

CLR-000003

Township 146 North, Range 96 West  
Section 3: All

Property on paid up leasesE

Township 147 North, Range 93 West  
Section 6: Lots 1, 2, E1/2 NW 1/4 and NE 1/4  
Township 148 North, Range 93 West  
Section 31: SE 1/4 SE 1/4

Township 148 North, Range 94 West  
Section 14: NE 1/4 SW 1/4

together with the right of ingress and egress for the purpose of exploring for, developing, producing, and removing the same.

ELIZABETH K. WAGNER died testate on July 21, 2010, and GRANTOR is the duly qualified and acting Executor of her estate which is Probate Cause No. 10-4-05043-1KNT in the Superior Court of King County, State of Washington. An Order granting Nonintervention Powers and Order of Solvency were entered on August 25, 2010. This Deed is given pursuant to the terms and provisions of the Last Will and Testament of ELIZABETH K. WAGNER. The warranties contained in this deed bind only the estate, but not the Personal Representative personally.

DATED the 15<sup>th</sup> day of May, 2012.

*Jill R. Wright*  
JILL R. WRIGHT, Executor of the  
Estate of ELIZABETH K. WAGNER

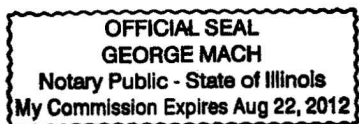
STATE OF IL )  
COUNTY OF COOK ) ss.

On this day personally appeared JILL R. WRIGHT, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed for the purposes therein mentioned.

Given under my hand and official seal this 15<sup>th</sup> day of May, 2012.

*George Mach*  
Print Name George Mach  
Notary Public in and for the State of Illinois  
Residing at 1906 E. Pawnee, Mt. Prospect, IL  
My appointment expires 8/22/12

Appendices Item # 5 page 2of 2



26  
MINERAL DEED \$17.00  
Chris Larsen, Dunn County Recorder  
By \_\_\_\_\_

3058907  
Page: 2 of 3  
5/29/2012 2:33 PM

**STIPULATION OF INTEREST AND RATIFICATION OF OIL AND GAS LEASES**

This Stipulation of Interest and Ratification of Oil and Gas Leases (“Stipulation”) is made effective on August 22, 2010 (“Effective Date”) by and between: (i) **Elmer R. Wagner**, whose address is 30326 10th Ave. S., Federal Way, Washington 98003; (ii) **Kurt M. Kulesza**, whose address is 30490 227th Pl. SE, Black Diamond, Washington 98010; (iii) **Todd P. Kulesza**, whose address is 3802 47th Ave. NE, Tacoma, Washington 98422; (iv) **Jill R. Wright**, in her individual capacity, whose address is 5649 S. Blackstone Ave. #1, Chicago, Illinois 60637; (v) **Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust**, whose address is 5649 S. Blackstone Ave. #1, Chicago, Illinois 60637; and (vi) **Jill R. Wright, as Personal Representative of the Estate of Elizabeth Kathleen Wagner, deceased**, whose address is 5649 S. Blackstone Ave. #1, Chicago, Illinois 60637, referred to collectively as the “Parties.”

**WHEREAS**, via menses conveyances, Elizabeth Kathleen Wagner owned mineral interests

(“Subject Interests”) in the following lands located in Dunn County, North Dakota, to wit:

Township 147 North, Range 93 West, 5th P.M.

Section 6: Lots 1, 2, E/2NW/4, NE/4

Township 148 North, Range 93 West, 5th P.M.

Section 31: SE/4SE/4

(collectively, the “Subject Lands”).

**WHEREAS**, Elizabeth Kathleen Wagner died in King County, Washington on

WELL LOCATIONS and **Paid up**  
Oil and Gas Lease

**WHEREAS**, certain of the Parties executed oil and gas leases covering the Sub

follows:

A. Paid Up Oil and Gas Lease dated August 22, 2010 (recorded October 12, 2010 as Document No. 3046278), from Todd Kulesza, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation;

B. Paid Up Oil and Gas Lease dated August 22, 2010 (recorded October 12, 2010 as Document No. 3046279), from Kurt Kulesza, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation; and

C. Paid Up Oil and Gas Lease dated August 22, 2010 (recorded February 10, 2011 as Document No. 3049107), from Jill Wright, individually and as an heir of Elizabeth Kulesza Wagner, to Enerplus Resources (USA) Corporation,

(collectively, the “Subject Leases”).

**WHEREAS**, according to Affidavit of Death and Heirship dated December 10, 2010 (recorded February 10, 2011 as Document No. 3049108), Elizabeth Kulesza Wagner died testate,

and she was survived by Elmer Wagner, her spouse, and the following marriage: Jill R. Wright, Kurt M. Kulesza, and Todd P. Kulesza.

Appendices Item # 6 Page1 of 2

**WHEREAS**, the Estate of Elizabeth K. Wagner was originally administered in the Superior Court of the State of Washington in and for the County of King as Case No. 10-4-05043-1.

**WHEREAS**, local administration of the Estate of Elizabeth K. Wagner, deceased, was administered as a domiciliary proceeding in Dunn County as Case No. 13-2013-PR-00013, and Jill R. Wright was confirmed as the domiciliary foreign personal representative of the Estate of Elizabeth K. Wagner.

**WHEREAS**, by the following instruments, the Subject Interests were distributed from Jill R. Wright, as Personal Representative of the Estate of Elizabeth K. Wagner, to Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust:

A. Executor's Mineral Deed dated May 15, 2012 (recorded May 29, 2012 as Document No. 3058907); and

B. Personal Representative's Mineral Deed of Distribution dated February 28, 2013 (recorded March 14, 2013 as Document No. 3064323).

**WHEREAS**, the Parties, as relatives, devisees, and/or successors in interest to the Estate of Elizabeth K. Wagner, do hereby desire to amend and clarify of record their ownership of the Subject Interests.

**NOW, THEREFORE**, in consideration of the sum of ten dollars (\$10.00) and mutual advantages to be derived hereunder, the receipt, adequacy and sufficiency of which are expressly acknowledged by the undersigned, the Parties and each of them do hereby agree and stipulate that their ownership of the Subject Interests are as set out below; and, the Parties do further hereby grant, bargain, sell, convey, transfer, assign, deliver, and cross-convey unto each other whatever interest in the Subject Lands necessary to effectuate said stipulated ownership: NAME:

Elmer R. Wagner, as life tenant, with remainder to:

Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust

Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust

Jill R. Wright, as Personal Representative of the Estate of Elizabeth Kathleen Wagner, deceased

Jill R. Wright, individually

Kurt M. Kulesza

Todd P. Kulesza

SHARE OF THE SUBJECT INTERESTS:

Payment

1/4

3/4

0

0

0

0

Appendices Item # 6 Page 2 of 2

# Search For Wells



**Operator:**

**Field:**

**Section:**  **Township:**  **Range:**

## Search for Operator = "ENERPLUS RESOURCES USA CORPORATION"

Search for Section = "6" Township = "147" Range = "93"

File No	CTB No	API No	Well Type	Well Status	Status Date	DTD	Location	Operator	Well Name	Field
18545	118545	3302501016	OG	A	2/11/2011	20605	NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ETHAN HALL 6B-7-1H	MOCCASIN CREEK
18546	118546	3302501017	OG	A	12/24/2010	20829	NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ETHAN HALL 6B-31-30-1H	MCGREGORY BUTTES
19624		3302501172	OG	LOC	9/25/2013		NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ANNA G. BAKER 6B-30-2H TF	MCGREGORY BUTTES
21111		3302501415		Confidential			NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ANNA G. BAKER 6B-7-2H TF	MOCCASIN CREEK

WELL LOCATIONS

Appendices Item # 7 Page 1 of 1

----- A C C O U N T I N G   S U M M A R Y -----

Total Current Bail:		Tot Payments Received:	196636.71
Total Bail Payable:			
Total Current Bond:			
Total Bond Payable:			
Total Undisbursed Funds:			
Total Disbursed to Payees:	196636.71		

Disp Code:  
Last Receipt Date: 07/09/2015  
Case Fund Investments: N

Before  
Audit was  
presented

These are oil  
royalty deposits  
from estate and  
trust Credit Union  
Accounts

----- R E C E I P T S -----					
RCPT DATE	RECEIPT NUMBER	PYMT TYPE	PMYT MODE	PAYER NAME	
11/04/2013	13080645002	TE	CK	CONTINENTAL RESOURCES, IN	
09/05/2013	13090456701	TE	CK	CONTINENTAL, RESOURCES	
10/02/2013	13090480201	TE	CK	CONTINENTAL, RESOURCES	4733.73
07/31/2013	13200369401	TE	CK	TRUST OF, TVEDT MURPHY ME	25990.00
07/31/2013	13200369501	TE	CK	ESTATE OF, ELIZABETH K. WA	56000.00
08/05/2013	13200383001	TE	CK	CONTINENTAL RESOURCE, INC	4816.09
12/09/2013	13200574301	TE	CK	CONTINENTAL RESOURCES, INC	5316.61
03/05/2014	14080089802	TE	CK	CONTINENTAL, RESOURCES	5414.38
03/05/2014	14080089802	TE	CK	CONTINENTAL, RESOURCES	-5414.38
03/05/2014	14080092602	TE	CK	CONTINENTAL, RESOURCES	6414.38
06/04/2014	14080256202	TE	CK	CONTINENTAL, RESOURCES	6498.05
07/08/2014	14080302102	TE	CK	CONTINENTAL, RESOURCES	6752.80
08/06/2014	14080352702	TE	CK	CONTINENTAL, RESOURCES	6050.41
09/05/2014	14080395701	TE	CK	CONTINENTAL RESOURCES, INC	5863.39
10/08/2014	14080446302	TE	CK	CONTINENTAL, RESOURCES	5790.17
12/29/2014	14080579902	TE	CK	CONTINENTAL, RESOURCES	4123.93
02/05/2014	14090050601	TE	CK	CONTINENTAL, RESOURCES	6539.56
05/07/2014	14090198901	TE	CK	CONTINENTAL, RESOURCES	7029.32
12/03/2014	14090493801	TE	CK	CONTINENTAL, RESOURCES	4368.52
08/29/2014	14160554502	SUO	CK	EISENHOWER & CARLSON, PLLC	50.00
01/07/2014	14200005501	TE	CK	CONTINENTAL RESOURCES, INC	4078.18
04/08/2014	14200181101	TE	CK	CONTINENTAL RESOURCES, INC	6487.38
11/05/2014	14200490801	TE	CK	CONTINENTAL RESOURCES, INC	5459.72
03/04/2015	15080105502	TE	CK	CONTINENTAL, RESOURCES	2148.04
05/06/2015	15080231102	TE	CK	CONTINENTAL, RESOURCES	2101.76
06/10/2015	15080291302	TE	CK	CONTINENTAL, RESOURCES	2268.51
07/09/2015	15080365802	TE	CK	CONTINENTAL, RESOURCES	2660.03
04/08/2015	15090136801	TE	CK	CONTINENTAL, RESOURCES	2123.67
02/05/2015	15200043201	TE	CK	CONTINENTAL RESOURCES, INC	3013.22

Total Received:	196636.71
Total Bail Forfeiture:	
Total Bail/Bond Applied:	

*The are no deposits from the other  
heirs on this page. Where is the  
\$77,473.78?*

Appendices Item # 8 Page 1 of 2

- - - - - D I S B U R S E M E N T S - - - - -

DISBURSE DATE	PAYEE NAME	CHK NU	REF NU	PAYMENT AMOUNT	CHECK STS	A/P TYPE
11/07/2013	DWYER PEMBERTON & COULSON	115789	91575	5000.00	C	Tender
02/20/2014	DWYER PEMBERTON & COULSON	122067	97922	8839.00	C	Tender
06/05/2014	EISENHOWER CARLSON PLLC	129223	105159	52143.00	C	Tender
08/07/2014	EISENHOWER CARLSON PLLC	133207	109184	109185		
08/07/2014	ELMER R WAGNER	133208	109185	109186		
08/07/2014	J MILLS, LAWYER	133209	109186	112003		
09/18/2014	EISENHOWER CARLSON PLLC	135998	112003	114184		
10/23/2014	DWYER PEMBERTON & COULSON	138149	114184	129192		
06/11/2015	DWYER PEMBERTON & COULSON	152908	129192	129193		
06/11/2015	ELMER R WAGNER	152909	129193	129546		
06/18/2015	DWYER PEMBERTON & COULSON	153258	129546	130488		
07/01/2015	ELMER R WAGNER	154191	130488	130489		
07/01/2015	J MILLS, LAWYER IOLTA TRU	154192	130489	131365		
07/16/2015	ELMER R WAGNER	155058	131365	1995.02	C	Tender
07/16/2015	J MILLS, LAWYER IOLTA TRU	155059	131366			

Contains unjust enrichment to the other heirs at the expense of Mr. Wagner

Total Disbursed: 196636.71

Note: Void and stop payment detail is not included in the disbursed total

END OF REPORT



**J. Mills**

**From:** J. Mills <jmills@jmills.pro>  
**Sent:** Tuesday, March 24, 2015 4:21 PM  
**To:** carceneaux@eisenhowerlaw.com  
**Subject:** Wagner Estate  
**Attachments:** Summary from Accounting.pdf; \$29K to Elmer.pdf; \$52K to Elmer.pdf; Elmer.xlsx

Chad –

Attached is an Excel accounting.

I started with Deaton's work. His summary is attached, and I believe we stipulated that it was a good accounting.

Deaton has everything before December 31, 2013. In other words, he has all the money owed back and the lawsuit.

However, Deaton's worksheet actually accounts for the ruling on "Community Interest" in the home and \$52,143 paid by the court to satisfy 100% of the community interest that occurred May 30, 2014.

He says that Elmer was underpaid a total of \$29,435.59, right? It's the bottom of Deaton's second column.

OK, now also, Deaton says that the other three heirs "owe" money to the estate, and the numbers are Kurt \$6,168.93, and Todd - \$10,235.

So, I totaled that up, it's \$77,473.78.

If the three children paid that back into the estate, then that money would all be distributed 1/4 to each, meaning that Elmer is entitled to a quarter of the roughly \$77K owed by the kids; meaning Elmer is owed an additional \$19,368.45, right?

So, the total owed to Elmer is \$48,804.04.

However, Elmer received a distribution from the court on August 1, 2014 in the amount of \$29,015.00. Both orders paying money to Elmer.

By this accounting then Elmer is owed \$19,789.04 out of the registry, right? The balance of funds should be \$19,789.04 assuming that we ignore tax liabilities.

Seem right?

**Elmer is owed 1/4 of the value of the Court Registry +1/4 whatever is not returned of the overpayments to the court registry**

J. Mills, returned  
6362

9<sup>th</sup> Tacoma, WA 98405; phone

The information contained in this message may be privileged, confidential, and protected from disclosure to the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or disclosure of this information is strictly prohibited.

Right

Wrong

Funds(12/31/13)	(\$54,229.92)	Less: Current Disbursements of
Estate	(\$28,589.47)	Less: Expenses Paid by the
		Total Funds Due to Mr.
Wagner	\$431.84	

Keep in mind, Mr. Wagner still has a 25% interest in the amounts due from the other three heirs. The \$29,015 payment has no impact on the collections or disbursement of funds from the other three heirs. Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still "owes" \$6,168.93 and Mr. Todd Kulesza still "owes" \$10,235.25.

To address the additional questions sent subsequent to the original two:

1. The \$52,134 distributed according to the attached May 30, 2014 order is in fact what's referenced in note 3 of your summary, and
2. Whether your accounting numbers as shown on the summary take into account the later, August 2014, distribution to Mr. Wagner of \$29,015?
  - a. Yes we accounted for the \$52,134. We were unaware of the motion to release funds from the registry of \$29,015. That should be deducted from Mr. Wagner's total amount. However, the \$52,134 has already been deducted. You do not need to deduct that again.
3. Was there any accounting update that was done after 7/25/2014?
  - a. There was no accounting update done after 7/25/2014.

I hope this helps clarify. Let me know if you have any questions.

**BRI GIOVANNINI** | CPA | Senior Accountant | DP&C | Tacoma, WA  
 | Phone 253-572-9922 ext. 116  
 | [bjgiovannini@dpcpa.com](mailto:bjgiovannini@dpcpa.com)



To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any matters addressed herein.

This transmission is intended only for the party to whom it is addressed and may contain privileged and confidential information. Any unauthorized use, dissemination or copying of this transmission is prohibited. If you have received this transmission in error, please notify us immediately by telephone, return this transmission and delete or destroy any copies (digital or paper). Unless expressly stated in this e-mail, nothing in this message should be construed as a digital or electronic signature.

Algebraic Calculation Of Registry Distribution- by E. R. Wagner Class of 1953

Fact: Mr. Wagner is owed 1/4 of the total value of the registry after all other debts and correction are satisfied.

Fact: The heirs were overpaid Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93) for a total of \$77,473.78

Fact Mr. Wagner owns 1/4 of the overpayment made to the other heirs

Given: The other three heirs have **not** to agreed to an equal split of the total overpayments nor have they returned their overpayments,

Given: There are no other outstanding debts or corrections to the amounts owed by the estate.

Then the following applies:

Let x represent the total in the registry.

Therefore if there are "x" dollars were in the registry, then the total **value** of the registry is "(x + \$77,473.78)"

Each of the heirs owns one fourth of the money in the registry.( Note: The money in the registry was **only royalty payments.** The sale of the house had already been accounted for in Mr. Deaton's corrected audit numbers.)

Then

- 1) Ms. Archer has a credit in the registry of  $1/4 (x + \$77,473.78) - (\$61,069.60/4)$
- 2) Mr. Kurt Kulesza has a credit in the registry of  $1/4 (x + \$77,473.78) - (\$6,168.93/4)$
- 3) Mr. Todd Kulesza has a credit in the registry of  $1/4 (x + \$77,473.78) - (\$10,235.25/4)$
- 4) Mr. Wagner has a credit in the registry of

$$1/4(x + \$77,473.78) + (\$61,069.60/4) + (\$6,168.93/4) + (\$10,235.25/4)$$

$$\text{Note: } (\$61,069.60/4) + (\$6,168.93/4) + (\$10,235.25/4) = (\$77,473.78/4) = \$19,368.44$$

Thus Mr. Wagner is owed from the estate  $1/4 (x + \$77,473.78) + \$19,368.44$

Modified  
Secure

Appendicies Item # 11 page 1 of 1

**Reallocation of Funds Per Courts Findings of Fact and Conclusions  
Estate of Elizabeth Wagner  
Worksheet #4**

	<i>Jill Archer</i>	<i>Elmer Wagner</i>	<i>Kurt Kulesza</i>	<i>Todd Kulesza</i>
Funds Distributed Through December 31, 2013 (cash) <sup>1</sup>	\$ 88,678.11	\$ 54,229.92	\$ 89,834.44	\$ 93,900.76
Proceeds from Escrow - Sale of Home	\$ 55,057.00	\$ -	\$ -	\$ -
<b>Total Funds Distributed Through December 31, 2013 (cash)</b>	<b>\$ 143,735.11</b>	<b>\$ 54,229.92</b>	<b>\$ 89,834.44</b>	<b>\$ 93,900.76</b>

**Deposits Related to Estate:**

Proceeds From Sale of Home <sup>2</sup>	\$ 368,158.00			
Mr. Wagner Court Ordered Community Interest	\$ (52,143.00) <sup>3</sup>			
Remaining Proceeds Divided Equally (25%)	\$ 116,015.00	\$ 29,003.75	\$ 29,003.75	\$ 29,003.75
<b>Total Allocation of Proceeds From Sale of Home:</b>	<b>\$ 29,003.75</b>	<b>\$ 29,003.75</b>	<b>\$ 29,003.75</b>	<b>\$ 29,003.75</b>
Proceeds From Mineral/Royalty Income:				
Continental	\$ 308,062.06			
Hess	\$ 20,630.58			
Proceeds From Mineral/Royalty Income <sup>4</sup>	\$ 328,692.64	\$ 82,173.16	\$ 82,173.16	\$ 82,173.16
Other Income/Deposits Not Titled:				
Bank Interest	\$ 86.94			
*Other Deposits* (Less \$5,000 King)	\$ 4,225.35			
Other Income/Deposits Not Titled	\$ 4,312.29	\$ 1,078.07	\$ 1,078.07	\$ 1,078.07
<b>Total Revenue Due to Heirs Before Expenses</b>	<b>\$ 112,254.98</b>	<b>\$ 112,254.98</b>	<b>\$ 112,254.98</b>	<b>\$ 112,254.98</b>
Less: Current Disbursements of Funds (up to 12/31/13)	\$ (144,735.11)	\$ (54,229.92)	\$ (89,834.44)	\$ (93,900.76)
<b>Total Funds Due To (From) Before Expenses</b>	<b>\$ (32,480.13)</b>	<b>\$ 58,025.06</b>	<b>\$ 22,420.54</b>	<b>\$ 18,354.22</b>

**Expenses Related to Estate:**

Expenses Paid by the Estate:				
Attorney Fees	\$ 30,814.58	\$ 7,703.65	\$ 7,703.65	\$ 7,703.65
Taxes	\$ 1,276.86	\$ 319.22	\$ 319.22	\$ 319.22
Checking Fees	\$ 266.45	\$ 66.61	\$ 66.61	\$ 66.61
Court Order Transfer into Court Registry	\$ 82,000.00	\$ 20,500.00	\$ 20,500.00	\$ 20,500.00
<b>Total Expenses Allocated to Heirs</b>	<b>\$ 114,357.89</b>	<b>\$ 28,589.47</b>	<b>\$ 28,589.47</b>	<b>\$ 28,589.47</b>

**Summary and Conclusion:**

<b>Total Revenue to Disburse Before Expenses</b>	<b>\$ (32,480.13)</b>	<b>\$ 58,025.06</b>	<b>\$ 22,420.54</b>	<b>\$ 18,354.22</b>
Less: Total Expenses Allocated to Heirs	\$ (114,580.47)	\$ (28,589.47)	\$ (28,589.47)	\$ (28,589.47)
<b>Total Funds Due To (From) Heirs</b>	<b>\$ (61,069.60)</b>	<b>\$ 29,435.58</b>	<b>\$ (6,168.93)</b>	<b>\$ (10,235.25)</b>

<sup>1</sup> Proceeds from the sale of the Federal Way residence does not tie to the bank transaction detail as the total proceeds from the sale were not directly deposited into the account. The court ruled that Mrs. Archer was not entitled to 1/3 of the sale proceeds and subsequently our calculations were re-calculated using the Chicago Title Settlement Statement.

<sup>2</sup> In our analysis of the Estate bank accounts, we saw no indication that any income was received from other mineral lease companies such as Tracker Resource Development II, LLC, Encore Operating, L.P, WPK Energy Williston, LLC or Diamond Resources.

<sup>3</sup> \$52,143.00 was paid out of the court registry account to Elmer Wagner (see worksheet #5).

<sup>4</sup> See transaction activity detail.

Subject: Re: Email from Jill Robin Wright<jilly.wright@gmail.com> dated Tue Oct 9, 2010 @4:33 PM

From: Elmer Wagner

(namonsa@yahoo.com) To:

Appendices Item # 12 page 1 of 1

SFarrow@enerplus.com;

Cc: carceneaux@eisenhowerlaw.com;

Date: Wednesday, March 19, 2014 2:32 PM

Sara,

Thank you very much for your prompt reply. When your Accounts Payable responds, just drop me a line.

Thank

Appendicies Item # 13 page 1 of 3

you

---

again,

Elmer

Wagner

On Wednesday, March 19, 2014 1:34 PM, Sara Farrow

<SFarrow@enerplus.com> wrote:

Mr. Wagner,

I do not show any revenue paid to the Estate. I have sent an email to Accounts Payable to see if they have made any payments to the Estate. I will let you know if they have. We are trying to research the \$3,866.36 but so far do not see that we made the payment.

Sara Farrow

Senior

Division

Order

Analyst

US

Operation

s

Enerplus

T. 720-279-6741

Appendicies Item # 13 page 2 of 3

From: Elmer Wagner  
[mailto:namonsa@yahoo.com] Sent:  
Wednesday, March 19, 2014 8:55  
AM  
To: Sara Farrow  
Cc: Chad E. Arceneaux  
Subject: Re: Email from Jill Robin Wright<jilly.wright@gmail.com> dated Tue  
Oct 9, 2010 @4:33 PM

March 19, 2014

Re: Email from Jill Robin Wright<> · [jilly.wright@gmail.com](mailto:jilly.wright@gmail.com) > dated Tue Oct 9, 2012 @4:33  
PM

Ms. Farrow,

On October 9, 2012 You were sent an email from Jill Robin Wright now known as Jill  
Archer and aka Jill Lavelle.

As you may know Ms. Wright is now involved with a TEDRA action which concerns  
possible fraud and embezzlement.

From the discovery phase of the TEDRA action Ms. Archer submitted a copy of her email  
to you. I was unaware of her correspondence to you before that time. I am named in the  
will of my late wife as a beneficiary. Copy attached.

In her email to you she alludes to a **payment of \$3866.36 from Enerplus in June 2011**.  
Currently there is a forensic audit being conducted on the Estate of Elizabeth K. Wagner.  
In the documents from subpoenaed information from 1St Community Credit Union  
where the estate account resides shows there was no deposit from Enerplus at that time.  
The subpoena to 1ST Community Credit Union was issued by my attorney, Mr. Chad  
Arseneaux of the firm *of* Eisenhower Carlson located in Tacoma Washington.

Is it possible that you can confirm there was or was not any payment to the estate  
regarding this matter? If you can, it will avoid the need for a subpoena.

Also the estate has not been closed as a result of the TEDRA action and the Court has  
ordered all estate proceeds to be deposited in the Court registry. If Enerplus or any  
subsidiaries are withholding any money from the estate at this time, I would appreciate  
being informed of the amount as it needs to be part of the forensic audit.

It is unfortunate that this action is necessary and I apologize for any inconvenience it  
may cause you. Your prompt reply is greatly appreciated

Appendices Item # 13 page 3 of 3

Q All ▾ Elmer, search your mailbox Search Mail Search Web

Search results Archive Move Delete Spam More

FW: Tvedt/Murphy Mineral Trust: Stipulation & Ratification

**Chrystina Solum** <chrystina@ledgersquarelaw.com> Mar 3 at 5:46 PM  
To: Elmer Wagner  
CC: Amy Shackelford

FYI.

---

**From:** Chrystina Solum  
**Sent:** Thursday, March 3, 2016 5:46 PM  
**To:** 'Nancy McKay' <NMckay@enerplus.com>  
**Cc:** Amy Shackelford <amy@ledgersquarelaw.com>  
**Subject:** RE: Tvedt/Murphy Mineral Trust: Stipulation & Ratification

Ms. McKay,

Mr. Wagner is unwilling to sign a release of his right to dispute the administration of the Estate. He will not be executing the Stipulation and Ratification.

Thank you,

Chrystina

---

**From:** Nancy McKay [mailto:NMckay@enerplus.com]

(697 unread) - wag... Skype Microsoft Excel - W... .0001 Response 12-...

Appendices Item # 14 page 1 of 1

Subject: Re: Re: Lease

From: Jason Krueger (Jasonkrueger@verizon.net)  
To: namonsa@yahoo.com;

Date: Friday, August 27, 2010 9:35 AM

Mr. Wagner,

I am one of the Landman working for Enerplus Resources on the Ft. Berthold Indian Reservation.

As I have stated in regards to negotiating the lease my manager is reviewing the chain of events that have transpired and will let me know how they wish to proceed especially since there are so many issues that you have with the proposed lease.

You failed to answer my previous question in regards to the estate being probated, as that does present a whole new issue for title to the interests you will be receiving from the probate.

The issue in regards to the deed that you have rises from the deed not being specific. Everyone received there share based on All of his right, title and interest to the described lands. It does not give a specific amount of acreage that was being passed to anyone. Unless you have a deed that states the specific amount of land that he passed that is not filed in the courthouse, in which case we would like to see. I have asked this question several times and the only deed we have seen is the one filed at the Dunn County Courthouse.

I do not feel as though we need to move forward on negotiating or preparing a lease for the interest of Elizabeth Kulesza Wagner until we have the probated will and a Personal Representative's Deed of Distribution for her estate.

Jason Krueger Independent Landman (214)766-1672

On Aug 27, 2010, Elmer Wagner <namonsa@yahoo.com> wrote:

August 27, 2010 (9:02 AM PDST)

Dear Mr. Kruger,

Your response is interpreted to mean you have agency status for Enterplus and are willing to negotiate issues of difference at this time. Please advise me immediately if this is not the case.

Appendices Item # 15 page 1 of 1

12/4/2016



- [Jill Archer <jilly.archer@gmail.com>](mailto:jilly.archer@gmail.com)
- 
- Oct 5 at 6:06 AM

To [Elmer Wagner](#)

Hide

CC

- [Kurt and Ann Kulesza \(waterlogged3@comcast.net\)](mailto:waterlogged3@comcast.net)
- [Todd Kulesza](#)
- [Jill Archer](#)
- [tkulesza@gmail.com](mailto:tkulesza@gmail.com)

Ms. Archer believes if she waits long enough that I will die before it is settled.

Hide

Message body

Mr. Wagner,

Let's keep this between us: The staff at Enerplus have no interest in our dispute, only in the resolution of it.

I have already laid out the real costs of changing the deeds in a previous email. Do you have new realistic data that will show how that option is somehow now the least costly? Show me your detailed plan that doesn't ignore all associated costs to the Trust, and we'll consider it.

Meanwhile, there is that other option which Nancy didn't add to her list, which is to do nothing and wait, and costs nothing. By not signing the Stipulation & Ratification document you are choosing to wait, which is my choice as well. I am pleased that you and I are in agreement about this.

Our reasons for waiting may be different, to be sure, but all roads lead to Rome.

J. Archer

Trustee, Tvedt-Murphy Mineral Trust

Appendices Item # 16 page 1 of 1

**From:**Jill Archer (Jilly.archer@gmail.com)

**Subject:** Re: Trust report

**To:** namonsa@yahoo.com;

**Cc:** Tkulesza 1@gmail.com; waterlogged3@comcast.net;  
jilly.archer@gmail.com;

**Date:** Saturday, September 24, 2016 2:01 AM

Emphasis added

Wagner,

my apologies, that was in error. I don't always catch my own typos. The two division orders were not from Hess, but from **Enerplus**, which you

may recall is the company that is *withholding all Trust income* until you sign their documentation, as the rest of us already have. (I refer to documentation that Enerplus attorneys wrote many months ago which guarantees each of us an equal share, that they had to write to satisfy their records, because way back in 2010, not long after Lizzy died, we each signed *separate* division orders, which confused their bookkeeping once we established the shared estate, then later the Trust.)

Anyway, it's unclear why you won't sign and loosen those funds, except that perhaps you had forgotten that early history with Enerplus. Your reluctance to sign anything written up by oil company attorneys as it stands is well known among us, and God knows they need careful scrutiny, but it isn't always helpful towards a resolution. As in this case of our money sitting in Enerplus accounts.

Mr. Wagner hasn't seen any division orders from Ms. Archer. Nor has he received any signing bonus. But Ms. Archer knows that he is an heir to the estate!

So, the fact of the situation is that the new well orders may produce but the Trust (i.e. all of us, equally) cannot benefit until such time as your signature is no longer necessary. Personally, I'd rather not wait that long.

Consider this a courteous a "**heads up**", because I'm sure you could use your share as much as I could.

ps I'll scan the division orders and include them in the 3rd quarter report



Ms. Archer now refuses to send them. The court order says she has to send the info that is requested by Mr. Wagner.

Appendices Item # 17 page 1 of 1

**Subject:** Tvedt/Murphy Mineral Trust  
**From:** Nancy McKay (NMckay@enerplus.com)  
**To:** jilly.archer@gmail.com; namonsa@yahoo.com;  
**Cc:** waterlogged3@comcast.net; tkulesza@coatingsunlimited.com; BFritz@enerplus.com; SFarrow@enerplus.com;  
**Date:** Tuesday, October 4, 2016 1:39 PM

Good Afternoon,

Yesterday I received an email from each of you. It appears that there has not been a resolution to your dispute. To reiterate information previously communicated to you, according to our legal counsel you have the following options to settle this dispute:

Rejected by Mr. Wagner on advice of attorney

- All parties must execute a Stipulation of Interest and Ratification of Oil and Gas Leases (I have provided this document to you, but has not been executed by all parties.)

- A Corrective Deed from the Estate of Elizabeth Wagner, executed by all interested parties including the Trustee of the Tvedt/Murphy Mineral Trust.

- A Deed from the Tvedt/Murphy Mineral Trust conveying a life estate to Eimer Wagner

Unacceptable to Ms. Archer!

- Obtain a judgment from the North Dakota courts, as the judgment from King County, Washington is not binding on North Dakota property.

Our attorney further advises that North Dakota Century Code §47-16-39.1 allows an operator to withhold royalties “in the event of a dispute of title existing that would affect distribution of royalty payments.” Additionally, the Century Code provides that “If the mineral owner and mineral develop

<https://mg.mail.yahoo.com/neo/launch?.rand=3o3v6988qigct> 11/24/20

Subject: Report of the Tvedt-Murphy Mineral Trust:  
Third Quarter of 2016 (Sept 30, 2016)

People

From: Jill Archer <jilly.archer@gmail.com>

To: namonsa@yahoo.com;Tkulesza 1@gmail.com; waterlogged3@comcast.net;  
jilly.archer@gmail.com

Date: Sep 29 at 10:59 AM

Hello All,

Here's the Trust report for the third quarter.

Income in Q3 (July through September): Total: \$4232.60

Hess total \$234.32 [\$130.55 (July); \$0 (Aug); \$103.77 (Sept)]

Continental Resources total: \$3,998.28 [\$1,469.08 (July); \$1,374.56 (Aug); \$1,054.64 (Sept)]

Enerplus: New income is under \$100, according to Margaret. I don't have the exact amount so it's not included in the total Q3 income

Outgo in Q3: \$3000 (Tax payment to the IRS, autopay)

Balance in Community 1st Credit Union: +\$7,679.11. The statement screenshot from the credit union for the third quarter is attached.

Notes: I was intending to include the new Enerplus division orders here for your records, but have decided not to. The details of the division orders cannot in fairness to the others be given to Mr Wagner who is holding up the release of Trust monies from that company. Those of you who have signed, if you want a copy of the two new Enerplus Division Orders, send me an email.

We owe approx \$16,000 to the IRS as of this date, as we continue to pay down that bill for 2013 taxes. Our income is less each month, and soon could be less than the auto-pay amount. I would prefer to maintain a cushion of a few thousand dollars but it's likely this will be eaten up by the IRS in the next 16 months.

Possible tax assistance: I have consulted a tax attorney who, for a \$500 fee, might be able to negotiate a "offer & compromise" with the IRS. No guarantees, but it could conceivably save us thousands of dollars, and since our income is dwindling we are a prime candidate. They are "Attorney Tax Relief" and have a good BBB rating.

<http://attorneystaxrelief.com/>

<http://www.bbb.org/chicago/business-reviews/attorneys-and-lawyers-tax/attorneys-tax-relief-llc-in-chicago-il-88723230/>

What do you think? Should we do this?

If you have questions, don't hesitate to email or phone.

Jill

**Ms. Archer  
refuses to  
provide equal  
information.  
What else does  
she hide?**

**Appendices Item # 19 page 1 of 1**

**Subject:** Re: Your concerns.  
**From:** Elmer Wagner (namonsa@yahoo.com)  
**To:** CJohnstone@enerplus.com;  
**Cc:** nmckay@enerplus.com;  
**Date:** Thursday, December 8, 2016 10:10 AM

Mr. Johnstone,

If necessary, it will be sent to your attention.

Thank You.

Elmer Wagner

---

**From:** Craig Johnstone <CJohnstone@enerplus.com>  
**To:** "namonsa@yahoo.com" <namonsa@yahoo.com>  
**Cc:** Nancy McKay <NMckay@enerplus.com>  
**Sent:** Thursday, December 8, 2016 8:17 AM  
**Subject:** Your concerns.

Mr. Wagner, if you feel that you must, you can serve our registered office in PA or in Colorado. If you would prefer, you can serve us at our Denver head office at

US Bank Tower  
Suite 2200, 950 - 17th Street  
Denver, CO 80202-2805

Confidentiality Notice: This electronic transmission and any attachments are confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege. Any disclosure, distribution, copying or the taking of any action concerning **Appendices Item # 20 page 1 of 3** or any attachments

**Subject:** RE: Tvedt/Murphy Mineral Trust: Stipulation of Interest and Ratification of Oil and Gas Leases

Mr. Wagner,  
Our Legal Department maintains that we have provided the documentation that needs to be executed by all parties to resolve this issue.  
Nancy

**From:** Elmer Wagner [mailto:namonsa@yahoo.com]  
**Sent:** Wednesday, December 07, 2016 10:43 AM  
**To:** Nancy McKay <NMckay@enerplus.com>  
**Subject:** Fw: Tvedt/Murphy Mineral Trust: Stipulation of Interest and Ratification of Oil and Gas Leases (Wrong addresses)

Nancy,

My reply to the court is due soon. It would be nice to be able to provide the court some reply to my email to you dated last Friday.

Elmer

----- Forwarded Message -----

**From:** Elmer Wagner < >  
**To:** Nancy McKay < >  
**Sent:** Friday, December 2, 2016 8:55 PM  
**Subject:** Re: Tvedt/Murphy Mineral Trust: Stipulation of Interest and Ratification of Oil and Gas Leases (Wrong addresses)

Nancy,

After spending considerable time reviewing some old files, I have found that:

"On **Fri, 8/27/10**, **Jason Krueger** < > wrote:

I do not feel as though we need to move forward on negotiating or preparing a lease for the interest of Elizabeth Kulesza Wagner until we have the probated will and a Personal Representatives Deed of Distribution for her estate."

and

"Whereas On Dec 13, 2010 the Executrix (Jill Wright) sent a letter to Jason Kruger which **erroneously and boldly** states Elmer Wagner is not on his (Elmer's) letter was

**Appendices Item # 20 page 2 of 3**

Registry Calculation

Final Payments from Registry To:	Payments from registry	Heir	Owed to Registry by heirs	1/4 of over payments owed to Elmer	Value of registry	Each heirs share of total registry	Registry owes Elmer	Balance owed Elmer	Mills was paid	Balance to Residue
Elmer	19789.12	Jill	61069.60		135093.56	33773.39				
Elmer	8122.16	Kurt	6168.93		135093.56	33773.39				
Elmer	655.01	Todd	10235.25		135093.56	33773.39				
Total Elmer	28566.29	Elmer		19368.45	135093.56	33773.39	53141.84	24575.55		
Mills	24366.47									
Mills	1995.02									
Total Mills	26361.49								26361.49	
Deaton's double payment	2692									
Total	57619.78		77473.78		135093.56	135093.56				1785.95