

*Elmer Wagner*

RECEIVED

NOV 28 2016

WASHINGTON STATE  
SUPREME COURT

#93738-9

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.

---

Motion to include recently discovered and unaudited assets

---

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

 ORIGINAL

FILED AS  
ATTACHMENT TO EMAIL

## **TABLE OF CONTENTS**

2 Table Of Authorities	2
3) Statement of Fact	3-4
4) Argument	5
5) Conclusion	5
6) Motion	6

TABLE OF AUTHORITIES

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

**(a) Remedy Limited. The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (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.**

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. xxx

is in final

decision of the Court of appeals and the words of the Introduction.

Note 2 The appendix has numerical references to the documents which are evidence to support Mr. Wagner's argument

### **Statements of Fact**

1) On September 6, 2016 the Court rendered the following decision:

"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 affirm the trial court's disbursement of funds."

- 2) 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 #1 - Appendices Item 1)**
- 3) On the 10th Of December 2010 Ms. Archer's two brothers, Kurt Kulesza and Todd Kulesza signed Division Orders with Enerplus to have payment outside the estate for mineral rights held by the Estate of Elizabeth K. Wagner. Ms. Archer signed one later. (See Oil and Gas Lease Appendices Item 2 )**
- 4) On February 4, 2016 Enerplus sent Mr. Wagner copies of leases signed by Jill Wright (aka Ms. Archer) and her brothers (See Email Appendices Item 2)**
- 5) 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 6)**
- 6) The Stipulation of interest and Ratification of Oil and Gas Leases"indirectly show 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 #5**

## **Argument**

Ms, Archer and her brothers have **stealthfully hidden** the fact that they have been hiding and taking estate oil royalties from Enerplus since 2010.

The above facts, which are supported by documentation in the Appendices, are evidence that some estate assets are being held outside the estate. The oil producing wells are not identified in the audit of the estate of Elizabeth K. Wagner By the CPA, Deaton. These assets were 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.

## **Conclusion**

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, and (4) it would be inequitable to decide the case solely on the evidence already taken in the trial court. The audit requested in the "Motion for a full accounting of the Estate of Elizabeth K. Wagner and the Tvedt/Murphy Mineral Trust, and upon satisfaction of all outstanding debts and monies owed to Elmer." received by the Courts 11/22/2016 should be amended to include the Enerplus information starting November 2010.

**Motion**

**Mr. Wagner moves that the Court, on the basis of the above information, have the unaccounted revenue from Enterplus since November 2010 be included in the "Motion for a full accounting of the Estate of Elizabeth K. Wagner and the Tvedt/Murphy Mineral Trust, and upon satisfaction of all outstanding debts and monies owed to Elmer." which was received by the Court November 22, 2016.**



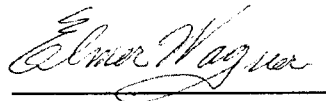
---

**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, not a party to or interested in the above-entitled action, and competent to be a witness herein. 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 98405-4622 jmills@jmills.pro	D U.S. First Class Mail, postage D Via Legal Messenger D Overnight Courier X Electronically via email D Facsimile
---	---

DATED this 29th day of November 2016 at Gig Harbor, Washington.



---

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

No income from Enerplus
----------------------------

<u>Total Deposits for the period 10/8/2010 - 12/31/2013:</u>	
Continental	\$ 308,062.06
Hess	\$ 20,630.58
Bank Interest	\$ 86.94
Sale of Home	\$ 112,101.00
"Other Deposits"	<u>\$ 9,225.35</u>
<b>Total (Agrees to Transaction Activity Detail)</b>	<b>\$ 450,105.93</b>
Less: \$5,000 Proceeds From Sale of Ring Dist. To Mr. Wagner	<u>\$ (5,000.00)</u>
<b>Total</b>	<b>\$ 445,105.93</b>

Total Disbursements:

Jill	\$ 88,678.11
Elmer	\$ 54,229.92
Kurt	\$ 89,834.44
Todd	\$ 93,900.76
Attorney Fees	\$ 30,814.58
Taxes	\$ 1,276.86
Checking Fee	\$ 266.45
Ring Proceeds to Mr. Wagner	\$ 5,000.00
Court Ordered Transfer into Court Registry	<u>\$ 82,000.00</u>
<b>Total (Agrees to Transaction Activity Detail)</b>	<b>\$ 446,001.12</b>
Less: \$5,000 Proceeds From Sale of Ring Dist. To Mr. Wagner	<u>\$ (5,000.00)</u>
<b>Total</b>	<b>\$ 441,001.12</b>

Net (Deposits less disbursements)	\$ 4,104.81
Less: Unidentified Expenses	<u>\$ (598.01)</u>
Account Balance at 12/31/2013 (Agrees to Transaction Activity Detail)	<b>\$ 3,506.80</b>

Appendices Item # 1 page 1 of 1
---------------------------------



**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

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 part of the leased premises is included in or excluded from the unit by virtue of such revision, the

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



**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

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

Appendices Item # 3 page 1 of 1

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

11/24/2016

**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 1/4 (one-half interest)  
N ½ SE ¼ (one-half interest)

WELL LOCATIONS

ON PAID UP LEASE

Township 146 North, Range 96 West  
 Section 3: All

Township 147 North, Range 93 West  
 Section 6: Lots 1, 2, E1/2 NW ¼ and NE ¼

Township 148 North, Range 93 West  
 Section 31: SE ¼ SE ¼

Township 148 North, Range 94 West  
 Section 14: NE ¼ SW ¼

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. Lawrence, Mt. Prospect, IL  
 My appointment expires 8/22/12

Appendices Item # 4 page 2 of 2

OFFICIAL SEAL  
 GEORGE MACH  
 Notary Public - State of Illinois  
 My Commission Expires Aug 22, 2012

 **3058907**  
 MINERAL DEED \$17.00 Page: 2 of 3  
 Chris Larsen, Dunn County Recorder 5/29/2012 2:33 PM  
 By \_\_\_\_\_

**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 July 21, 2010.

**WHEREAS**, certain of the Parties executed oil and gas leases covering the Subject Interests, as 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 children from a prior marriage: Jill R. Wright, Kurt M. Kulesza, and Todd P. Kulesza.

**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:

SHARE OF THE  
SUBJECT  
INTERESTS:

Elmer R. Wagner, as life tenant, with remainder to:	1/4
Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust	
Jill R. Wright, as Trustee of the Tvedt/Murphy Mineral Trust	3/4
Jill R. Wright, as Personal Representative of the Estate of Elizabeth Kathleen Wagner, deceased	0
Jill R. Wright, individually	0
Kurt M. Kulesza	0
Todd P. Kulesza	0

Appendices Item #  
5 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
3545	118545	3302501016	OG	A	2/11/2011	20605	NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ETHAN HALL 6B-7-1H	MOCCASIN CREEK
3546	118546	3302501017	OG	A	12/24/2010	20829	NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ETHAN HALL 6B-31-30-1H	MCGREGORY BUTTES
3624		3302501172	OG	LOC	9/25/2013		NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ANNA G. BAKER 6B-30-2H TF	MCGREGORY BUTTES
1111		3302501415		Confidential			NENW 6-147-93	ENERPLUS RESOURCES USA CORPORATION	ANNA G. BAKER 6B-7-2H TF	MOCCASIN CREEK