

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

In re:

WALTER ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

DOMINION RESOURCES BLACK  
WARRIOR TRUST, by and through its  
TRUSTEE, SOUTHWEST BANK,

Plaintiff,

vs.

WALTER BLACK WARRIOR BASIN LLC,

Defendant.

Adversary Case No. 15-00102-TOM

**DEBTOR'S OBJECTION TO DOMINION'S VERIFIED APPLICATION FOR  
TEMPORARY RESTRAINING ORDER**

Walter Black Warrior Basin, LLC ("WBWB"), one of the Debtors in the Chapter 11 Cases (defined below) and the defendant herein, hereby submits this objection (the "Objection") to the Verified Application for Temporary Restraining Order (the "TRO Application") filed by Dominion Resources Black Warrior Trust ("Dominion"), and in support of its objection, respectfully states as follows:

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



## **BACKGROUND**

1. On July 15, 2015 (the “Petition Date”), Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

2. On May 31, 1994, Dominion Black Warrior Basin, Inc., Dominion Resources, Inc., Mellon Bank (DE) National Association, and NationsBank of Texas, N.A. entered into that certain Trust Agreement of Dominion Resources Black Warrior Trust (the “Trust Agreement”), thereby creating Dominion.

3. Dominion claims an overriding royalty interest (the “Royalty Interest”) in certain production proceeds (the “Proceeds”) from the sale of gas from certain gas wells operated by WBWB pursuant to an Overriding Royalty Conveyance (the “ORC”) dated June 1, 1994.

4. On August 11, 2015, Dominion filed an Original Complaint and Application for Preliminary and Permanent Injunction, thereby commencing this Adversary Proceeding, seeking (i) declaratory relief that the Royalty Interest and the Proceeds attributable thereto are not property of WBWB’s estate, and (ii) a preliminary injunction prohibiting WBWB from commingling the Proceeds with other funds of the Debtors, encumbering the Proceeds, or refusing to pay the Production Proceeds to Dominion (the “AP Complaint”).

5. Contemporaneously with the filing of the AP Complaint, Dominion filed a Verified Application for Temporary Restraining Order (the “TRO Application”), in which it

seeks orders (i) requiring WBWB to segregate the Proceeds, (ii) prohibiting WBWB from allowing any lien to be placed on the Proceeds, and (iii) requiring WBWB to distribute Proceeds to Dominion.

6. Dominion argues that the extraordinary relief requested in the AP Complaint and the TRO Application is justified because the Royalty Interest is an interest in real property under Alabama law. Consequently, Dominion argues that it has a bona fide ownership interest in the Proceeds; that the Proceeds are not property of the Debtors' estate under section 541 of the Bankruptcy Code; and that the Debtors therefore have no right to encumber the Proceeds, commingle them with other funds that belong to the Debtors, or refuse to pay them to Dominion.

7. Dominion's argument is fundamentally flawed, however, because it rests on the false premise that an overriding royalty interest is a real property interest under Alabama law. Under Alabama law, the Royalty Interest is not a real property interest, but a simple contractual right to payment that may be impaired in chapter 11. Moreover, under section 541(b)(4)(B)(i) of the Bankruptcy Code, only one, narrowly defined type of overriding royalty interest is excluded from property of the estate, and Dominion has specifically admitted that the Royalty Interest is not the kind of overriding royalty interest that fits within this single narrow exception. Therefore, Dominion cannot show a likelihood of success on the merits, and cannot meet the standard for obtaining a temporary restraining order.

8. Moreover, Dominion cannot carry its burden of proof on the three remaining requirements for a temporary restraining order: (a) necessity to prevent irreparable injury; (b) that the threatened injury outweighs the harm of the injunction; and (c) that the injunction would not be adverse to the public interest. In summary, Dominion argues that its

claims against WBWB should be taken outside of the chapter 11 estate, and that it is entitled to avoid the effects of WBWB's bankruptcy case. The impairment of contracts is the "essence of bankruptcy." *In re City of Stockton*, 526 B.R. 35, 50 (Bankr. E.D. Cal. 2015). No litigant is entitled to a separate settlement of its claims against a debtor by filing an adversary proceeding and obtaining an injunction that requires the debtor to treat its claims to the detriment of the estate and other creditors and parties in interest. WBWB's bankruptcy may adversely affect Dominion's claim, but this circumstance does not constitute irreparable harm under the injunction standards of Rule 65 of the Federal Rules of Civil Procedure.

9. Similarly, the extraordinary relief that Dominion seeks through a temporary restraining order is not consistent with the balancing of interests that is the primary function of chapter 11, and does not serve the public interest. Without limitation, an injunction against WBWB would prejudice the rights and interests of the twenty-two other Debtors in the Chapter 11 Cases, who are not parties to this adversary proceeding, and other creditors and parties in interest also not joined in this action, including the Debtors' lessors, secured creditors, and unsecured creditors—all parties to whom the Debtors (not just WBWB) owe fiduciary obligations to preserve the estate and to treat claims in accordance with the priority scheme set forth in the Bankruptcy Code. Rule 7001(2) of the Federal Rules of Bankruptcy Procedure provides that an adversary proceeding is the proper procedural mechanism to determine the validity, priority, or extent of interests in property. But with the TRO Application, Dominion seeks not only a determination of an interest in property, but a judgment to take property out of the estate, away from the Debtors and other parties in interest and dispose of it outside the Chapter 11 process. This is not a proper use of Rule 65.

## **SUMMARY OF ARGUMENT**

Dominion, as noted, has taken the position that the Royalty Interest is a real property interest. Dominion's argument for a TRO to exclude from the bankruptcy estate the funds it alleges are subject to the Royalty Interest depends on a determination that the Royalty Interest is an interest in real property. In contrast, if the Royalty Interest is a mere right to payment, Dominion has nothing more than an unsecured claim against property of the Debtors' estate.

An overriding royalty interest is an interest carved out of the working interest of an oil and gas lease. Therefore, the nature of the Royalty Interest is determined by, or derivative of, the nature of the property interest created by the underlying oil and gas lease. This is consistent with the long-accepted real property maxim that one cannot convey a greater interest than one possesses. If a lease is personal property, an overriding royalty interest in that lease generally will be viewed as personal property. Similarly, if the lease is real property, the associated overriding royalty interest will usually be classified as real property. *See* Casey Doherty, Harry Perrin & John West, Selected Issues Regarding Overriding Royalty Interests, Net Profit Interests and Production Payments in Oil and Gas Bankruptcies, 1, 3 (June 5, 2013), ([http://statebaroftexasbankruptcy.com/wp-content/uploads/2013/05/8\\_\\_Oil\\_\\_Gas\\_Bankruptcy\\_Issues.pdf](http://statebaroftexasbankruptcy.com/wp-content/uploads/2013/05/8__Oil__Gas_Bankruptcy_Issues.pdf)). The nature of the property interest in oil and gas leases is determined by state law. *Butner v. U.S.*, 440 U.S. 48, 55 (1979) (“[P]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”).

In Alabama, the surface owner does not “own” the oil and gas beneath the tract, but only the exclusive right to explore for and develop the oil and gas on the tract. Under this

“nonownership” theory of gas ownership, gas is not owned until it is reduced to possession by production. If the surface owner does not “own” gas *in situ*, then by logical extension, an oil and gas lease cannot convey a fee interest in the oil and gas. Wayne C. Byers & Timothy N. Tuggey, Oil and Gas Leases and Section 365 of the Bankruptcy Code: A Uniform Approach, 63 AM. BANKR. L.J. 337, 339 (1989). Consistent with this principle, Alabama courts hold that oil and gas leases do not convey a real property interest in the oil and gas in the land, but only the right to enter the property to explore for gas and oil and reduce it to possession (thereby establishing ownership). If oil and gas leases do not create real property interests under Alabama law, then interests carved out of such leases, such as overriding royalty interests, also cannot be real property interests. Dominion’s Royalty Interest cannot rise to a greater interest than the leases from which it arose. Since oil and gas leases do not convey real property interests under Alabama law, the Royalty Interest is not a real property interest, and Dominion has no rights greater than any other unsecured creditor with a contractual right to payment.

In the Eleventh Circuit, a party seeking a temporary restraining order must establish all four of the following elements: (1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be adverse to the public interest. *Gissendaner v. Comm’r of Ga. Dep’t of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015). Dominion cannot satisfy its burden of persuasion as to any of these elements. It is not likely to succeed on the merits because, as noted, oil and gas leases are not conveyances of a real property interest under Alabama law, and therefore interests deriving from such leases, such as the Royalty Interest, also are not real property interests. As such, Dominion is nothing more than a creditor with an unsecured claim

that may be impaired in bankruptcy. An impairment of a contract right may injure Dominion, but Dominion is not entitled to injunctive relief to spare it from the operation of the Bankruptcy Code. If an injunction issues, the entire chapter 11 priority scheme established by Congress will be upended, and Dominion, an unsecured creditor, will jump ahead of secured creditors, priority claimants, and similarly situated unsecured creditors—a harm greater than that which will result if Dominion’s contract claim is treated in the ordinary course in the Chapter 11 Cases along with similarly situated claims. An injunction that disrupts the Bankruptcy Code’s carefully drafted priority structure is in contravention of the public interest. For all of these reasons, Dominion’s TRO Application should be denied.

## **ARGUMENT**

### **I. Dominion Cannot Show a Likelihood of Success on the Merits**

#### **A. In Alabama, A Landowner Does Not Have a Fee Interest In the Gas In the Ground, And Therefore An Oil and Gas Lease Cannot Convey a Fee Interest To The Lessee**

There are disparate (and unevenly applied) theories of oil and gas ownership throughout the United States, but most states follow one of two generally accepted theories. Many states (including Texas) have adopted the “ownership-in-place” theory of ownership of natural gas. Under this theory, “gas and oil in place are minerals and realty, subject to ownership, severance, and sale, while embedded in the sand or rocks beneath the earth’s surface, in like manner and to the same extent as is coal or any other solid mineral.” *NCNB v. West*, 631 So. 2d 212, 223 (Ala. 1993), citing *Stephens County v. Mid-Kansas Oil & Gas Co.*, 254 S.W. 290, 292 (Tex. 1923). Thus, in ownership-in-place states, “the owner of a tract of land holds the fee in oil and gas underlying the boundaries of his property even though the oil and gas are not the subject of actual possession until brought to the surface.” *Id.*

In contrast, other states, including Alabama, determine ownership of oil and gas under the “nonownership theory,” which recognizes the migratory nature of oil and gas and requires actual possession to establish ownership. *Id.* (“Alabama determines ownership of oil and gas under the nonownership theory.”) Therefore, the right held by the landowner is not a fee interest in the oil and gas in the land, but “the right to reduce the oil and gas to possession or to sever this right for economic consideration.” *Id.*; *see also In re Hillsborough Holdings Corp.*, 207 B.R. 299, 303 (Bankr. M.D. Fla. 1997) (citing *NCNB v. West* and affirming that “Alabama . . . does not follow the ‘ownership in place’ theory of ownership”); 1 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW at §§ 203, 203.1 (Rev. Ed. 2007) (identifying Alabama as a non-ownership state, based on the Alabama Supreme Court’s decisions in *NCNB v. West* and *Sun Oil Co. v. Oswell*, 62 So. 2d 783 (Ala. 1953)).

This distinction between the “ownership-in-place” and “non-ownership” theories of gas ownership is critical. In “ownership-in-place” states, oil and gas leases are more likely to be deemed conveyances of real property in which the transferee obtains a determinable fee in minerals. In contrast, in nonownership states, like Alabama, the land owner does not “own” the gas in the ground, so an oil and gas lease cannot transfer ownership of a fee interest in the gas, but merely use, possession or the right to try to capture the gas, thereby establishing ownership. The leading treatise on oil and gas law summarizes the consequences of subscribing to the non-ownership theory versus the ownership-in-place theory as follows:

Perhaps the most significant consequence of adopting one or another theory of oil and gas ownership is the classification of mineral, royalty, and leasehold interests as corporeal or incorporeal. If the theory of the jurisdiction is that of nonownership or qualified ownership, mineral, royalty, and leasehold interests are invariably viewed as incorporeal (sometimes labelled a mere license but more frequently a *profit á prendre*, servitude, or other variety of incorporeal interest). In



states adopting the ownership in place theory, such interests may, but need not necessarily, be viewed as corporeal in character.”

1 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW at § 204.2 (Rev. Ed. 2007).

Black’s Law Dictionary defines “incorporeal rights” as “rights to intangibles, such as legal actions, rather than rights to property (rights to possession or use of land).” BLACK’S LAW DICTIONARY (10th ed. 2014). In short, the surface owner in a nonownership state does not own the oil and gas under the tract in place, and accordingly, cannot convey a fee interest in the oil and gas. Instead, the lease operates to transfer an exclusive right to search for and produce oil and gas from the tract. Byers & Tuggey, Oil and Gas Leases and Section 365 of the Bankruptcy Code: A Uniform Approach, 63 Am. Bankr. L.J. 337, 340 (1989). When this interest is transferred to a lessee, the lessee obtains a *profit á prendre*; i.e., a right to take the profits or produce of the land of another, not a real property interest in the gas in the ground. *Id.*

**B. Consistent With the Nonownership Theory of Gas Ownership, Oil and Gas Leases In Alabama Do Not Convey a Fee Interest, But Only the Right To Enter the Land And Explore For Oil and Gas and Reduce It To Possession**

In Alabama, gas leases do not effectuate a conveyance of a fee interest in the gas—the result that logically flows out of the “nonownership” theory of gas ownership. In one such case, *Rechard v. Cowley*, 80 So. 2d 419 (Ala. 1918), the Alabama Supreme Court, analyzing the nature of an oil and gas lease, noted the “migratory” nature of oil and gas—the parlance of adherents to the nonownership theory:

The intent in these writings was to confer the right, the privilege, on the ‘lessees’ of prospecting the land for oil and gas and to take it when found. Oil and gas are furtive, migratory, self-transmissive minerals; and because of this characteristic or quality contracts and rights relating thereto require the application of principles different, in many respects, from those applicable to other minerals that are not affected with the characteristics a learned court has described as *ferae naturae*.

*Id.* at 420. The Court went on to hold that the lease of minerals with such “peculiar characteristics” did not convey an interest of the oil and gas as part of the land:

The construction or interpretation of contracts relating to oil and gas, where their terms admit of doubt or certainty, should favor the owner—the “lessor” so to speak, because of the peculiar characteristics of these minerals. ***It is manifest, from the terms of these instruments and the object they undertook to effect with respect to the peculiar minerals in contemplation, that no grant in praesenti of the oil and gas as part of the realty was intended.*** It is also clear that no tenancy at will was created, since the instruments fixed, so far as the “lessor” was concerned a minimum term for the exploration and the possession to accomplish that end. For an effective, though nominal, consideration, the owner conferred on the “lessee” the right, the privilege, to explore for oil and gas, to enter for that purpose, to operate to that end, and to take the oil and gas that may be found; whereupon the compensation to the owner should be as provided in the writing.”

*Id.* at 421 (emphasis added). In *Sun Oil*, the Alabama Supreme Court affirmed the holding of the *Rechard* court:

The lease does not grant the ownership of the oil and other minerals, but grants and leaves to Sun the land described for purposes of investigating, exploring, prospecting, drilling, mining for, and producing oil and other minerals.

*Sun Oil*, 62 So. 2d at 788. The Alabama Supreme Court has characterized coal mining leases similarly, holding that a lease to mine coal “created merely a leasehold interest in the lessee, a chattel real, and did not convey to the lessee any title to the coal in situ.” *State v. Roden Coal Co.*, 73 So. 5, 8 (Ala. 1916). In short, in the context of both gas leases and coal leases, the Alabama Supreme Court has found the interest conveyed to the lessee to be a true leasehold interest, a simple right to “use the land for a purpose,” and not a fee interest. *Id.*

Dominion has not alleged that the gas leases underlying the Royalty Interest are anything other than standard oil and gas leases that confer on the lessee the right to explore for gas, enter the land for that purpose, and reduce to possession any gas found on the land. In its AP

Complaint, Dominion cites *Borden v. Case*, 118 So.2d 751, 753 (Ala. 1960) for the proposition that “[u]nder Alabama law, an oil and gas lease is a conveyance of an interest in real property.” AP Complaint at ¶ 21. *Borden*, however, does not say this. Instead, in deciding a statute of frauds issue, the *Borden* court says that it is “*assuming, without deciding*, that an oil, gas, and mineral lease is a conveyance of an interest in real property within the purview of the statute of frauds.” *Borden*, 118 So. 2d at 753 (emphasis added). This offhand statement by the *Borden* court in connection with discussion of a peripheral issue has no precedential effect in light of the decisive holdings in *Rechard* and *Sun Oil* that an oil and gas lease is not the conveyance of a fee interest in oil and gas under Alabama law. The fact that Dominion cites *Borden*, and no other cases, for the proposition that an oil and gas lease is a conveyance of an interest in real property under Alabama law underscores the weakness of its authority on this point.

**C. The Nature of Dominion’s Royalty Interest Is Derivative of the Nature of the Property Interest Created by the Underlying Oil and Gas Leases, and Since Oil and Gas Leases are Personal Property Interests Under Alabama Law, Dominion’s Royalty Interest Is Also a Personal Property Interest**

As discussed above, under Alabama law, oil and gas leases convey only the right to mine, prospect, and explore for oil and gas in the ground and reduce it to possession, not a fee interest in the minerals in the ground. Because an overriding royalty interest is carved out of the working interests in the gas lease, the nature of the interest created by an overriding royalty interest is derivative of the nature of the interest in the underlying gas leases. 1 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW at § 204.2. (Rev. Ed. 2007) <sup>2</sup> Given the clear authority in Alabama holding that oil and gas leases do not grant a fee interest in the oil and gas in the

---

<sup>2</sup> See also Perrin, Selected Issues Regarding Overriding Royalty Interests, Net Profit Interests, and Production Payments in Oil and Gas Bankruptcies, [http://statebaroftexasbankruptcy.com/wp-content/uploads/2013/05/8\\_-\\_Oil\\_\\_Gas\\_Bankruptcy\\_Issues.pdf](http://statebaroftexasbankruptcy.com/wp-content/uploads/2013/05/8_-_Oil__Gas_Bankruptcy_Issues.pdf)

land, an overriding royalty interest carved out of such oil and gas leases cannot be a fee interest either.

Case law from other jurisdictions supports the view that overriding royalty interests take on the same character as the gas leases out of which they arise, so if the gas lease creates a personal property interest, the overriding royalty interest is necessarily a personal property interest as well. In *Denver Nat. Bank of Denver, Colo, v. State Comm'n of Revenue and Taxation*, 272 P.2d 1070 (Kan. 1954), the court held that an overriding royalty interest arising out of an oil and gas lease took on the same character as the gas lease, which in Kansas is personal property:

It is well settled that an oil and gas lease conveys no interest in land but is merely a license to explore and is personal property, an incorporeal hereditament, a *profit á prendre*. The [overriding royalty] interests owned by the decedent arose from oil and gas leases. They take on the same character as the instrument from which they arose . . .

*Id.* at 1073. Similarly, in *Dougherty v. California Kettleman Oil Royalties, Inc.*, 69 P.2d 155 (Cal. 1937), the court held that an overriding royalty interest could not be characterized as a greater interest than the lease from which it arose:

It is perfectly clear that the term “real estate,” as used in the constitutional provision, applies only to freehold interests. It does not apply to terms less than a freehold, such as an interest for a term of years. It has quite recently been held by this court that an oil and gas lease for a term of years is not real estate, that although such a lease creates an interest in real property, or in real estate, being less than a freehold it is a chattel real which is personal property. Obviously a royalty interest, such as is here involved, cannot rise to a greater dignity than the lease upon which it is predicated.

*Id.* at 164.

One of the cases cited by Dominion further supports this principle. See *Ferguson v. Coronado Oil Co.*, 884 P.2d 971, 978 (Wyo. 1994). The *Ferguson* court, in addressing the net

profit interests at issue in that case, observed that the classification of the interest turned on the language of the instrument at issue, explaining, “[t]wo general considerations can be stated: (1) a net profits interest in an oil and gas lease has no independent meaning, and (2) its nature is determined from the instrument creating the interest.” *Ferguson*, 884 P.2d at 976. Thus, Dominion’s own cases establish that the nature of the conveyance instrument determines the nature of any interests arising from the instrument. Underlying the holdings in all of these cases is the time-honored principle that a grantor cannot convey a greater interest in the land than he possesses. *Gregg v. Lessee of Sayre*, 33 U.S. 244 (1834) (grantor “could convey no greater interest in the land than he possessed”).

The Alabama Supreme Court has expressly held that an oil and gas lease conveys only a personal property interest under Alabama law. Dominion has not alleged that the underlying oil and gas leases are anything other than standard oil and gas leases that, in exchange for compensation to the lessor, permit the lessee to enter the land for a specified term, explore for gas, and reduce it to possession. As noted, the sole case cited by Dominion for the proposition that an oil and gas lease conveys a real property interest in Alabama, *Borden*, does not stand for this principle, but only states, in deciding an unrelated issue, that it is “assuming, without deciding, that an oil, gas, and mineral lease is a conveyance of an interest in real property. . .” *Borden* 118 So.2d at 753. When Alabama courts actually analyze and decide the ultimate issue, however, they hold that oil and gas leases convey only the right to explore and mine for gas and reduce it to possession, not an ownership interest in the minerals in the ground. *Rechard*, 202 Ala. at 339; *Sun Oil*, 258 Ala. at 332. The controlling authority in Alabama thus supports the

view that an oil and gas lease, and therefore, any interest carved out of an oil and gas lease, such as the Royalty Interest, should similarly be characterized as a mere personal property interest.<sup>3</sup>

**D. None of the Cases Cited By Dominion Alter the Conclusion That Dominion's Royalty Interest Is Not a Real Property Interest Under Alabama Law**

Dominion cites several cases for the proposition that interests in gas and other minerals constitute severable interests in real property under Alabama law, and that mineral interests in land are considered to be real estate in Alabama. *See, e.g., Locke v. Locke*, 280 So.2d 773, 775 (Ala. 1973); *Nelson v. Teal*, 301 So.2d 51, 52 (Ala. 1974); *Lake v. Sealy*, 165 So. 399, 401 (Ala. 1936); *McCall v. Nettles*, 37 So.2d 635 (Ala. 1948). To the extent that these cases support the “ownership-in-place” theory of gas ownership, they were implicitly overruled, at least with respect to oil and gas interests, by *NCNB v. West* and its express holding that Alabama is a nonownership state. *NCNB v. West*, 631 So.2d at 223. But even assuming for the sake of argument that Dominion’s cases are still good law in Alabama, they do not support Dominion’s position that the Royalty Interest is a real property interest.

Dominion’s argument is that because the gas in the ground is a real property interest according to these cases, then the Royalty Interest must also be a real property interest. But there is a critical step missing in Dominion’s analysis: the nature of the leases conveying the interest in the gas, out of which the Royalty Interest was carved. The material question is not whether the minerals in the ground are real property interests, but whether the leases in those minerals are real property interests. Even if the landowner owns the minerals in fee, that does not mean that the lessee does.

---

<sup>3</sup> As Dominion does not have an ownership interest in the Proceeds payable in connection with the Royalty Interest, it goes without saying that it cannot sustain any causes of action, such as conversion, that are premised on an ownership interest.

While an oil and gas lease in a nonownership state cannot properly be interpreted to convey a fee interest, it does not follow that an oil and gas lease in an ownership-in-place state **must** be interpreted to convey a fee interest. The authors of the leading oil and gas treatise note that “[i]n states adopting the ownership in place theory, [mineral, royalty, and leasehold] interests may, *but need not necessarily*, be viewed as corporeal in nature.” 1 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW at § 204.2 (Rev. Ed. 2007) (emphasis added); *see also Id.* at § 209 (“[s]everal states which adopt the ownership in place theory differentiate between severed mineral interests and the interests of an oil and gas lessee, classifying the former as corporeal and the latter as incorporeal”). Michigan, for example, is an ownership-in-place state that regards rights conveyed under oil and gas leases to be “interests in real estate,” but still holds that the “interest of an oil and gas lessee is regarded as a *profit á prendre*, an interest in the real estate, but not an interest in the oil and gas itself, at least not until the oil and gas are extracted.” *In re Aurora Oil & Gas Co.*, 439 B.R. 674, 678 (Bankr. W.D. Mich. 2010), *citing VanAlstine v. Swanson*, 417 N.W.2d 516, 520 (Mich. 1987) (*profit á prendre* “transfers no present interest in the minerals in place”).

Similarly, at least one Alabama court analyzing the nature of coal interests viewed coal in the land as a fee interest of the landowner, but still held that a coal mining lease “created merely a leasehold interest in the lessee, a chattel real, and did not convey to the lessee any title to the coal *in situ*.” *Roden Coal*, 73 So. at 8. Thus, even if Alabama is an ownership-in-place state, and gas in the ground is a real property interest under Alabama, it does not follow that oil and gas leases convey a fee interest in those minerals to the lessee under Alabama law, and in fact, they do not under the holdings of *Rechard*, *Sun Oil*, and *Roden Coal*. And once again, if a

mineral lessee does not hold a fee interest under Alabama law, then a royalty holder does not either.

Other cases cited by Dominion similarly do nothing to support Dominion's position. One example, *Earle v. International Paper Co.*, 429 So.2d 989 (Ala. 1983), deals with reservations and exceptions of minerals rights by the grantor in connection with the conveyance of the surface rights, not oil and gas leases.

Similarly, *Dauphin Island Prop. Owners Ass'n v. Callon Institutional Royalty Investors I*, 519 So.2d 948, 951 (Ala. 1988), is a rule against perpetuities case, and the statements by the Court about the nature of royalty interests are mere dicta. In any event, to the extent that the *Dauphin Island* court was inclined to view royalty interests as real property interests, it was based in part on the fact that it was evaluating a royalty carved out of the landowner's interest, not the working interest. Therefore, the court relied on early Alabama cases holding that mineral interests in Alabama are real property interests (*Locke, Teal, McCall*). Those cases were implicitly overruled by the Alabama Supreme Court in *NCNB v. West*, which was published five years after *Dauphin Island* and held that Alabama is a nonownership state, at least with respect to oil and gas interests. But if *Dauphin Island* is still good law in Alabama, its characterization of royalty interests as real property interests is plainly limited to its own facts. In at least one case decided after *Dauphin Island*, the Alabama Supreme Court held a royalty interest that granted the royalty holder nothing more than the right to receive payment of a designated portion of production proceeds on minerals that were actually produced was not a real property interest, but a contractual right to payment. *Pilcher v. Turner*, 530 So. 2d 198, 200 (Ala. 1988).

Finally, cases from Texas holding that royalty interests are real property interests are inapposite, given that Texas law on these issues is fundamentally different than Alabama law,



which governs here. *See, e.g., Sheffield v. Hogg*, 80 S.W.2d 741 (Tex. 1935); *In re MCZ, Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987); *Ferguson.*, 884 P.2d at 978 (Wyo. 1994) (applying Wyoming law).

Dominion also cites an Alabama statute, Ala. Code § 9-17-33, to argue that WBWB is required by statute to pay Dominion. This statute says nothing about the legal characterization of royalty interests. Specifically, it does not establish the Royalty Interest is a real property interest or even purport to address the issue. It does nothing more than acknowledge that parties to a contract are obligated to pay their contractual obligations. As rights to payment are regularly impaired in bankruptcy, however, Ala. Code § 9-17-33 does nothing to further Dominion's argument. *See In re Dawkins*, 13 B.R. 741 (1981) (constitutional prohibition against impairment of contracts applies only to states and not to Congress).

In short, Dominion has cited no legal authority to counter the clear Alabama precedent holding that oil and gas leases are not conveyances of real property interests, and that any interests arising out of the leases must take on the same character.

**E. If Congress Intended to Exclude Dominion's Interest From Property of the Estate, It Would Have Done So**

Section 541(a)(1) of the Bankruptcy Code provides that property of a debtor's estate includes "all legal and equitable interests of the debtor in property as of the commencement of the case." Section 541(b) sets forth certain exclusions from property of the estate. Section 541(b)(4)(B)(i) provides that property of the estate does not include any interest of the debtor in liquid or gaseous hydrocarbons to the extent that "the Debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred." A "production payment" is defined in § 101(42A) as "a term overriding royalty interest satisfiable

in cash or in kind—(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and (B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.” Finally, the Bankruptcy Code defines “term overriding royalty” as “an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, for a term limited by time, quantity, or value realized.” 11 U.S.C. § 101(53C).

In other words, under the Bankruptcy Code, certain kinds of overriding royalty interests—“term overriding royalty” interests—are expressly excluded from property of the estate. The Royalty Interest, however, is not limited by time, quantity or value realized, and is therefore not a “term overriding royalty” as defined by the Bankruptcy Code. Dominion has conceded that the Royalty Interest is not a term overriding royalty: “[DOMINION’S COUNSEL]: “There are lots of different kinds of interests in oil and gas properties. The term overriding royalty interest is a defined term of the Bankruptcy Code. That’s different. We are different than a lessor’s royalty, Your Honor.” Hrg. Tr., 41:11-14 (Aug. 3, 2015).

As Dominion’s counsel noted, there are many different kinds of interests in oil and gas properties. But Congress excluded from property of the estate only the kinds set forth in §541(b)(4), including the narrow category of “term overriding royalty” interests, which Dominion has admitted is not what the Royalty Interest is. If Congress intended to exclude from property of the estate interests like Dominion’s, it could have easily done so. Whatever the Royalty Interest is, Dominion has admitted that it is not the only kind of overriding royalty interest that Congress has expressly excepted from property of the estate under §541(b)(4)(B)(i).

Moreover, Congress intended for section 541 to define property of the estate in the broadest sense possible. *United States v. Whiting Pools*, 462 U.S. 198, 204-205 (1983); *In re Builders Transport, Inc.*, 471 F.3d 1178, 1185 (11<sup>th</sup> Cir. 2006). Accordingly, exclusions from the estate are to be interpreted narrowly. *In re Powell*, 187 B.R. 642, 644 (Bankr. D. Minn. 1995). In *United States v. Butner*, the Supreme Court recognized that state law would define the nature of property interests, but emphasized that federal law—currently section 541 of the Bankruptcy Code—establishes the scope of the estate and the kinds of property interests included in the estate. *See Butner*, 440 U.S. at 55. Furthermore, the Supreme Court admonished that bankruptcy does not change state law analyses of property interests “*unless some federal interest requires a different result.*” *Id.* (emphasis added). Therefore, while state law controls what interest, if any, a debtor has in property, “[u]nder § 541(a), the determination of whether a debtor’s interest in property constitutes ‘property of the estate’ is a question of federal law.” *In re Greer*, 242 B.R. 389, 394 (Bankr. N.D. Ohio 1999), citing *Butner*, 440 U.S. at 54-55.

Therefore, regardless of the nature of overriding royalty interests under state law—which may vary widely from state to state—Congress plainly determined that only *one kind* of overriding royalty interest is excluded from property of the estate under Section 541, and it is a kind of overriding royalty interest that the Royalty Interest is not. So while Dominion’s characterization of the Royalty Interest is incorrect under Alabama law, and WBWB reserves all rights with respect to Alabama law, whether the Royalty Interest is included in the estate or not is not an issue of Alabama law, but rather a matter of federal law under section 541 of the Bankruptcy Code. Regardless of state law, only one, narrowly defined type of overriding royalty interest is excluded from the estate under Section 541, and all others are not. Dominion’s concession that the Royalty Interest does not fit that narrow exclusion is dispositive. The funds

that Dominion seeks to capture and exclude from the estate are clearly estate property regardless of Dominion's construction of state law.

F. **Dominion's Public Filings Acknowledge That Its Royalty Interest May Not Be Treated a Real Property Interest Under Alabama Law**

Despite the vehemence with which Dominion now argues that its Royalty Interest is unequivocally a real property interest, its public SEC filings set forth the uncertainty of its position under Alabama law. In the trust prospectus dated June 21, 1994, Dominion made the following disclosure to investors:

Although the matter is not entirely free from doubt, Alabama counsel has opined that the Royalty Interests constitute interests in real property under Alabama law. Consistent therewith, the Conveyance states that the Royalty Interests constitute real property interests. The Company has recorded the Conveyance in the appropriate real property records of Alabama in accordance with local recordation provisions. *If, during the term of the Trust, the Company or any Company Interest Owner becomes involved as a debtor in bankruptcy proceedings under the Federal Bankruptcy Code, it is not entirely clear that the Royalty Interests would be treated as real property interests under the laws of Alabama.*

Trust Prospectus dated June 21, 1994, attached hereto as Exhibit A (emphasis added). Dominion made identical disclosures in its SEC Form 10-K for the fiscal years ended December 31, 2013 and December 31, 2014, reasonable disclosures to make given that twenty years of jurisprudence did nothing to increase the likelihood that the Alabama Supreme Court would treat the Royalty Interest as a real property interest under Alabama law. *See* Dominion Resources Black Warrior Trust SEC Form 10-K dated December 31, 2014, p. 30, and Dominion Resources Black Warrior Trust SEC Form 10-K dated December 31, 2013, p. 30, attached hereto as Exhibit B.<sup>4</sup>

---

<sup>4</sup> The Court may take judicial notice of relevant documents publicly filed with the SEC for purposes of determining what statements the documents contain. *Bryant v. Avado Brands*, 187 F.3d 1271, 1277 (11<sup>th</sup> Cir. 1999).

## II. Dominion Has Failed to Meet Its Burden of Showing Irreparable Harm

Dominion cannot show a substantial likelihood of success on the merits, and its TRO Application is due to be denied on that basis alone. Dominion also bears the burden of showing that it will suffer irreparable harm if the injunction does not issue. *U.S. v. Jefferson County*, 720 F.2d 1511 (11<sup>th</sup> Cir. 1983). Dominion has failed to meet this burden and cannot show that a TRO should issue. The “irreparable harm” that Dominion seeks a TRO to avoid is the kind of harm common to all creditors who face impairment of their contracts in bankruptcy. But “impairment of contracts is the essence of bankruptcy.” *In re City of Stockton*, 526 B.R. 35, 50 (Bankr. E.D. Cal. 2015). It has long been accepted that the “especial purpose of all bankruptcy legislation is to interfere with the relations between the parties concerned—to change, modify, or impair the obligation of their contracts.” *In re City of Stockton*, 478 B.R. 8, 15 (Bankr. E.D. Cal. 2012), citing *Ashton v. Cameron City Cnty. Water Improvement Dist. No. 1*, 298 U.S. 513, 530 (1936). Stated another way:

The goal of the Bankruptcy Code is adjusting the debtor-creditor relationship. Every discharge impairs contracts. While bankruptcy law endeavors to provide a system of orderly, predictable rules for treatment of parties whose contracts are impaired, that does not change the starring role of contract impairment in bankruptcy.

*Id.* at 16. Given that impairment of contract rights is a foundational principle of the Bankruptcy Code, the fact that Dominion now faces impairment of its contract in bankruptcy cannot constitute irreparable harm for injunctive purposes.

Moreover, if Dominion ultimately prevails on the merits regarding the nature of the Royalty Interest, the Debtors may satisfy Dominion’s claim for unpaid proceeds through money damages or other treatment in the Debtors’ chapter 11 plan. Therefore, Dominion cannot show that it would be irreparably harmed in the absence of injunctive relief. *See Moore v. Consol.*

*Edison Co. of N.Y.*, 409 F.3d 506, 510 (2d Cir. 2005) (“Where there is an adequate remedy at law, such as an award of money damages, injunctions are unavailable except in extraordinary circumstances”).

**III. The Harm to the Debtors, Their Creditors, the Bankruptcy Estate and the Chapter 11 Process if the Injunction Issues Outweighs Any Harm to Dominion**

Dominion is nothing more than a creditor with an unsecured claim that is subject to impairment in bankruptcy, and while such impairment may cause injury to Dominion, it is fully contemplated by the Bankruptcy Code. Any hardship to Dominion is a hardship inherent in its position as a creditor of a Chapter 11 debtor. In contrast, if an injunction issues, the entire Chapter 11 priority scheme established by Congress will be reordered, and Dominion, an unsecured creditor, will jump ahead of secured creditors, priority claimants, and similarly situated unsecured creditors—a harm greater than that which Dominion will suffer if its contract claim is treated in the ordinary course in the Chapter 11 Cases along with similarly situated claims.

Courts have noted that “irreparable harm in the bankruptcy context refers to either irreparable harm to the interest of a creditor or irreparable harm to the bankruptcy estate. Of these, irreparable harm to the bankruptcy estate is clearly of the greatest relevance to the court.” *In re Lickman*, 286 B.R. 821, 829 (Bankr. M.D. Fla.2002). While Dominion naturally wants to be paid, as all creditors do, it is not entitled to a TRO to spare it from the ordinary operation of the priority provisions of the Bankruptcy Code. The relief Dominion seeks undermines a core purpose of Bankruptcy Code: the equitable payment of the claims of similarly situated creditors in accordance with the statutory priority scheme. Numerous parties besides WBWB will be harmed if Dominion is permitted to dismantle the congressionally mandated priority scheme,

including secured creditors, lessors, priority claimants, unsecured creditors, the other Debtors and many others who are not before the Court in this adversary proceeding.

One stakeholder whose interests Dominion ignores is the purchaser of the gas that WBWB produces. WBWB sells its entire production to Alabama Gas Company (“Alagasco”) pursuant to a Base Contract for the Sale and Purchase of Natural Gas dated August 1, 2010 (the “Alagasco Contract”). Some of WBWB’s production comes from wells subject to the Trust, but the majority does not. Gas from all WBWB wells is commingled and sold to Alagasco, and Alagasco pays WBWB for all the gas by electronic fund transfer in one lump sum. Accordingly, the proceeds of gas produced by wells in which Dominion claims an interest are commingled with the proceeds of gas produced by other wells before WBWB even receives the funds. To trace and segregate funds attributable to the Royalty Interest would require Alagasco to change its method of payment to WBWB. Dominion clearly is not entitled to an injunction forcing Alagasco to change its payment methods.

First, Alagasco is not even a party to this proceeding. Second, Dominion specifically agreed in ¶4.01 of the ORC that “sales of Subject Gas may continue to be made by the Company Interests Owner pursuant to the Sonat Agreement” (i.e., the predecessor to the current Alagasco Contract), while ¶4.02 of the ORC obligates the Company Interest Owners to “perform all material obligations binding on it under the Sales Contracts in accordance with the terms thereof. . .” Thus, not only did Dominion assent to the payment arrangements provided for in the gas sales contracts between WBWB and the gas buyers, but it specifically required WBWB to perform all material obligations under those sales contracts. Third, section 6.06 of the ORC provides that “the Royalty Owner has no right or power . . . to share in any operating decision whatsoever, including, without limitation, the alteration, change, [or] amendment . . . of any

other contract . . . as to all or any part of the Company Interests hereunder.” Under the plain language of this section, Dominion has no rights to force WBWB to invoice for gas sales, or hold money in a bank account in a particular way, particularly if a contract with the gas purchaser provided otherwise. In short, neither WBWB’s contract with Dominion, nor WBWB’s separate contract with the third party purchaser of its product, allows Dominion to control or demand payment or treatment of funds in the manner demanded by the TRO application.

The balancing of hardships at issue here, then, is not just between WBWB and Dominion, but between Dominion and all of the stakeholders in the Chapter 11 Cases—as well as the Chapter 11 process itself—and if the injunction issues, the potential harm to the Debtors, its creditors, other stakeholders, and the chapter 11 reorganization process far outweighs any harm to Dominion.

#### **IV. The Injunction Sought By Dominion Would Be Contrary To Public Policy**

In the bankruptcy context, the “public interest” factor requires the balancing of the public interest in successful bankruptcy reorganizations with other competing social interests. *Matter of Dore*, 54 B.R. 353, 359 (Bankr. W.D. Wisc. 1985). An injunction that disrupts the Bankruptcy Code’s carefully drafted priority structure is in contravention of the public interest.

#### **CONCLUSION**

For all of these reasons, the Debtors respectfully request an order (1) denying Dominion’s TRO Application; and (2) granting such other relief as the Court deems just.



Dated: August 17, 2015  
Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ Patrick Darby

Patrick Darby  
Dylan Black  
Cathleen Moore  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2119  
Telephone: (205) 521-8000  
Email: pdarby@babco.com, dblack@babco.com  
ccmoore@babco.com  
- and -

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

Kelley A. Cornish (*pro hac vice*)  
Claudia R. Tobler (*pro hac vice*)  
Ann K. Young (*pro hac vice*)  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000  
Email: kcornish@paulweiss.com, ctobler@paulweiss.com,  
ayoung@paulweiss.com

*Proposed Counsel to the Debtors and  
Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of August, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lee R. Benton  
Samuel Stephens  
Jamie Alisa Wilson  
Benton & Centeno, LLP  
2019 Third Avenue North  
Birmingham, AL 35203  
[lbenton@bcattys.com](mailto:lbenton@bcattys.com)  
[sstephens@bcattys.com](mailto:sstephens@bcattys.com)  
[jwilson@bcattys.com](mailto:jwilson@bcattys.com)

Michael Leo Hall  
Burr & Forman LLP  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203  
[mhall@burr.com](mailto:mhall@burr.com)

/s/ Patrick Darby  
\_\_\_\_\_  
Patrick Darby

# **EXHIBIT A**

## PROSPECTUS



## 6,850,000 Trust Units Dominion Resources Black Warrior Trust

Each unit of beneficial interest ("Unit") offered hereby evidences an undivided interest in the assets and liabilities of Dominion Resources Black Warrior Trust (the "Trust"). The Trust is a fixed investment trust formed to hold overriding royalty interests (the "Royalty Interests") in proved developed natural gas properties (the "Underlying Properties") in the Portsville coal formation of the Black Warrior Basin, Tuscaloosa County, Alabama. The Royalty Interests will be carved out of the interests (the "Company Interests") in the Underlying Properties owned by Dominion Black Warrior Basin, Inc., an Alabama corporation (the "Company"), which is an indirect wholly-owned subsidiary of Dominion Resources, Inc., a Virginia corporation ("Dominion Resources").

The coal seam gas produced from the Underlying Properties and sold prior to 2003 qualifies for the tax credit allowed by Section 29 of the Internal Revenue Code of 1986, as amended. The Royalty Interests will be entitled to the Section 29 tax credits attributable to their share of the natural gas production from the Underlying Properties. A holder of units (a "Unitholder") will be able to use the Section 29 tax credits only if he is the owner of the Units at the time the coal seam gas is produced and only to the extent that he has sufficient regular tax liability in excess of his alternative minimum tax liability. See "Federal Income Tax Consequences" and "Risk Factors — Tax Considerations."

The Trust will receive quarterly payments based on the revenues received from the sale of natural gas produced from the Underlying Properties attributable to the Royalty Interests. The cash proceeds from the payments made to the Trust (net of Trust administrative expenses) will be distributed to Unitholders on a quarterly basis with respect to periods prior to termination of the Trust. In addition, the Section 29 tax credits will be allocated quarterly to Unitholders through December 31, 2002.

A total of 7,850,000 Units are outstanding, all of which are being offered by Dominion Resources for purchase in this offering (including the 1,000,000 Units subject to purchase pursuant to the Underwriters' over-allotment option). The Trust will not receive any of the proceeds from the offering made hereby. Prior to this offering, there has been no public market for the Units. See "Underwriting" for the factors considered in determining the initial public offering price of the Units. The Units have been approved for listing on the New York Stock Exchange, subject to official notice of issuance, under the symbol "DOM."

In the event that the Underwriters' over-allotment option is not exercised in full, the remaining Units held by Dominion Resources will be available for subsequent sales by Dominion Resources. See "Underwriting."

See "Risk Factors" for certain considerations relevant to an investment in the Units, including risks associated with the availability to a Unitholder of tax benefits such as Section 29 tax credits and depletion deductions. See also "Federal Income Tax Consequences — Section 29 Tax Credits."

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

	Price to Public	Underwriting Discounts and Commissions (1)	Proceeds to Dominion Resources(2)
Per Unit .....	\$20.00	\$1.40	\$18.60
Total(3) .....	\$137,000,000	\$9,590,000	\$127,410,000

- (1) Dominion Resources has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933. See "Underwriting."
- (2) Before deducting expenses of this offering estimated to be \$1,075,000 payable by Dominion Resources and excluding \$300,000 of organizational expenses to be reimbursed by the Trust to Dominion Resources.
- (3) Dominion Resources has granted the Underwriters an option, exercisable for 45 days from the date of this Prospectus, to purchase from time to time up to 1,000,000 additional Units on the same terms and conditions set forth above to cover over-allotments, if any. If the Underwriters exercise such option in full, the total Price to Public, Underwriting Discounts and Commissions and Proceeds to Dominion Resources will be \$157,000,000, \$10,990,000 and \$146,010,000, respectively. See "Underwriting."

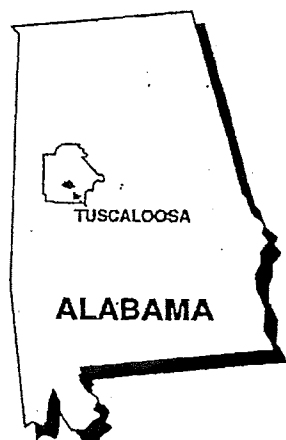
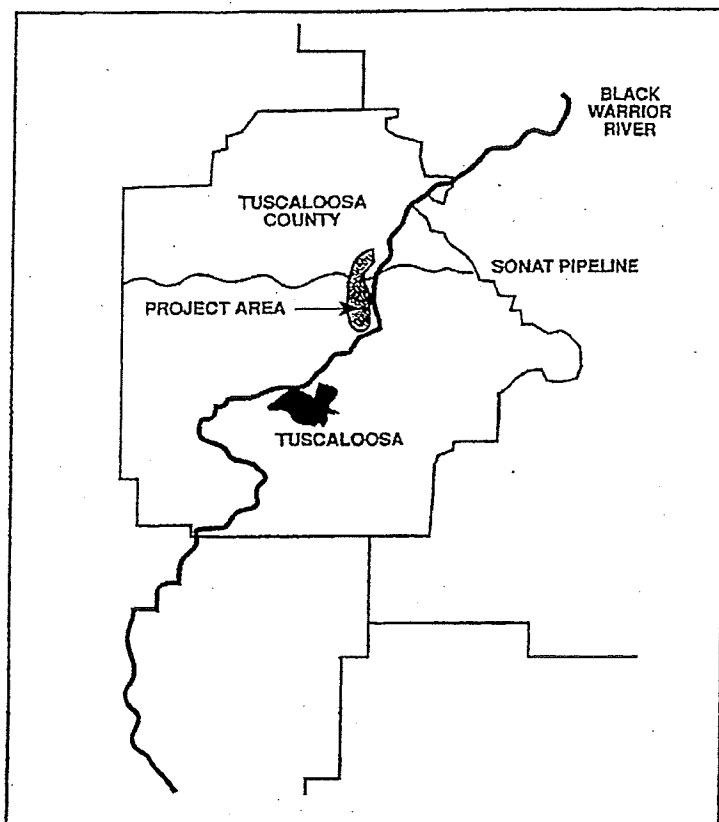
The Units are being offered by the Underwriters named herein, subject to prior sale, when, as and if accepted by them and subject to certain conditions. It is expected that certificates for the Units offered hereby will be available for delivery on or about June 28, 1994, at the offices of Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

**Smith Barney Inc.**

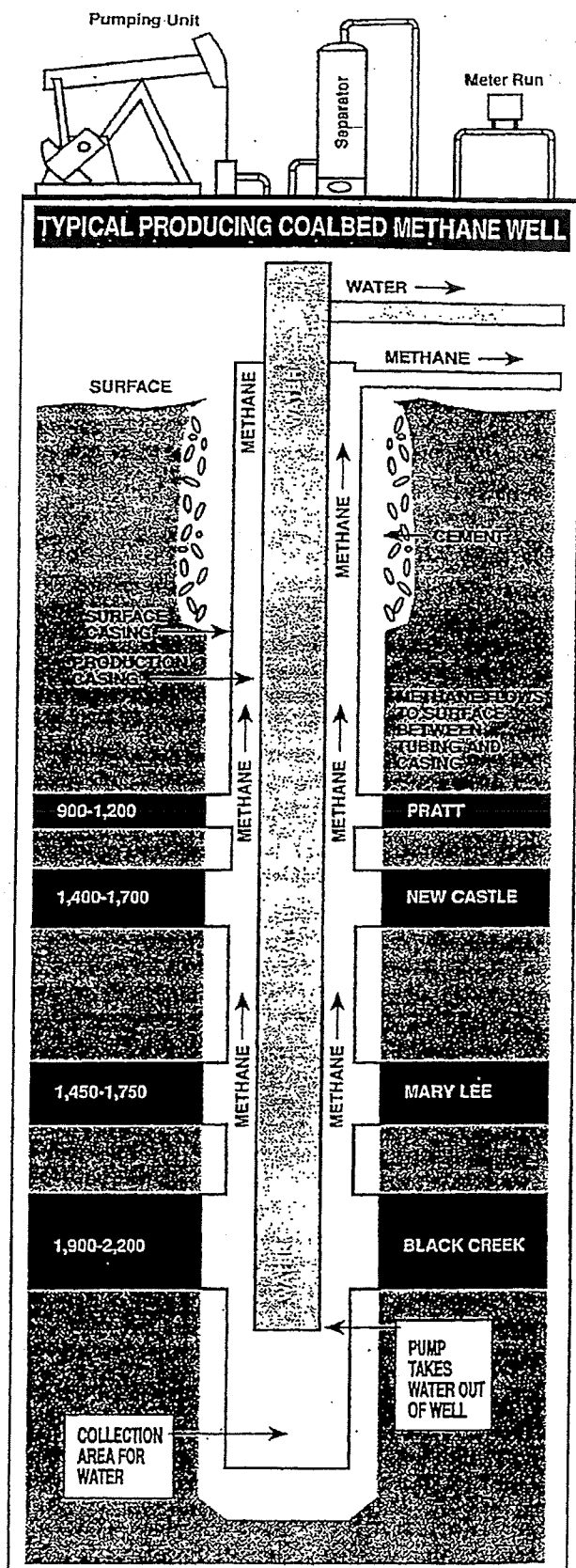
**Lehman Brothers**

**Wheat First Butcher Singer**

June 21, 1994



**DOMINION  
BLACK WARRIOR  
BASIN, INC.  
THE UNDERLYING  
PROPERTIES  
PROJECT AREA**



IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE UNITS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON THE NEW YORK STOCK EXCHANGE, IN THE OVER-THE-COUNTER MARKET, OR OTHERWISE. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

## PROSPECTUS SUMMARY

*The following summary is qualified in its entirety by the more detailed information and financial statements appearing elsewhere in this Prospectus and should be read only in conjunction with the entire Prospectus. A glossary of certain defined terms used in this Prospectus is set forth in the Glossary included as Exhibit B to this Prospectus. Throughout this Prospectus natural gas prices are expressed in million British thermal units ("MMBtu") and production is expressed in million cubic feet ("MMcf"). For purposes herein, natural gas is assumed to have a Btu content of 990 MMBtu per MMcf.*

### Dominion Resources Black Warrior Trust

Each unit of beneficial interest ("Unit") offered hereby evidences an undivided interest in the assets and liabilities of Dominion Resources Black Warrior Trust (the "Trust"), a fixed investment trust formed under the Delaware Business Trust Act. The Trust was formed to hold overriding royalty interests (the "Royalty Interests") burdening proved developed natural gas properties (the "Underlying Properties") in the Pottsville coal formation of the Black Warrior Basin, Tuscaloosa County, Alabama. The Royalty Interests owned by the Trust have been carved out of the interests of Dominion Black Warrior Basin, Inc., an Alabama corporation (the "Company"), in the Underlying Properties (the "Company Interests"). The Company is an indirect wholly-owned subsidiary of Dominion Resources, Inc., a Virginia corporation ("Dominion Resources").

All of the natural gas production attributable to the Underlying Properties (the "Gas") is from the Pottsville coal formation and constitutes coal seam gas. Under current law, Gas from the wells currently existing on the Underlying Properties (the "Existing Wells") qualifies for a federal income tax credit allowed by Section 29 of the Internal Revenue Code of 1986, as amended (the "Code"), which is available to an owner of natural gas that is produced and sold through December 31, 2002, provided certain requirements are met. Unitholders will receive quarterly distributions of the cash proceeds received by the Trust attributable to the Royalty Interests (net of Trust administrative expenses) and quarterly allocations of Section 29 tax credits for production attributable to the Royalty Interests. For a detailed discussion of the risks associated with the ability of a Unitholder to use the Section 29 tax credits, see "Risk Factors — Tax Considerations" and "Federal Income Tax Consequences."

Sonat Marketing Company, a Delaware corporation ("Sonat Marketing"), is required to purchase all of the Gas production attributable to the Company Interests (the "Subject Gas") pursuant to a gas purchase agreement between the Company and Sonat Marketing (the "Gas Purchase Agreement") that extends as long as reserves on the Underlying Properties produce natural gas. The Gas Purchase Agreement provides a minimum price of \$1.85 per MMBtu (the "Minimum Price") and a maximum price of \$2.63 per MMBtu (the "Maximum Price") for the estimated production of Subject Gas (the "Monthly Base Quantities") through December 31, 1998. Sonat Marketing has entered into a put and call agreement with a nationally recognized commodities brokerage firm intended to limit its potential losses as a result of the Minimum Price. In addition, the payment obligations of Sonat Marketing under the Gas Purchase Agreement will be guaranteed (up to \$10 million) by Sonat Inc., a Delaware corporation ("Sonat"). See "The Royalty Interests — Gas Purchase Agreement."

As of June 1, 1994, net proved reserves attributable to the Royalty Interests were estimated by Ryder Scott Company Petroleum Engineers ("Ryder Scott"), independent petroleum engineers, to be 63.3 Bcf based on estimated future net revenues and considering the Section 29 tax credits. The estimated future net revenues, discounted at 10 percent and based on an average 1993 Contract Price of \$2.12 per MMBtu, were approximately \$95.4 million. The average Contract Price for the first three months of 1994 would have been \$2.27 per MMBtu. As of June 1, 1994, Section 29 tax credits attributable to estimated production from the Royalty Interests had an estimated value, discounted at 10 percent, of approximately \$41.5 million, assuming a constant tax credit of approximately \$0.98 per MMBtu (the 1993 rate). The Section 29 tax credit is adjusted annually for inflation (or deflation). See "— Summary Reserve Information," "The Royalty Interests — Historical Natural Gas Sales Price and Production" and "Federal Income Tax Consequences."

Because no additional properties will be contributed to or purchased by the Trust, the assets of the Trust will deplete over time and a portion of each cash distribution made by the Trust will, therefore, be analogous to a return of capital. The Trust will terminate only under certain circumstances. See "Description of the Trust Agreement — Termination and Liquidation of the Trust."

### The Trust Assets

*The Underlying Properties.* The Underlying Properties consist of interests in the Pottsville coal formation in the Black Warrior Basin located along the Black Warrior River in Tuscaloosa County, Alabama. The Underlying Properties comprise



34,212 acres of land in an area approximately five miles wide and 23 miles long located on the Tuscaloosa to Bankhead Lake portion of the Black Warrior Basin. The Pottsville coal formation ranges from the surface to a depth of 4,100 feet, and the deepest Existing Well is 2,600 feet. Initial production of coal seam gas (the main constituent of which is methane) from the Underlying Properties began in December 1988. The Company acquired its interest in the Underlying Properties in December 1992. As of June 1, 1994, the Underlying Properties contained 532 wells that were producing natural coal seam gas, all of which were drilled prior to 1993 and will all qualify for Section 29 tax credits.

Initially, 122 of the Existing Wells were completed to the Pratt coal seam. All of the Existing Wells penetrate depths below the Pratt coal seam, which has a depth ranging from 900 to 1200 feet. In 1993, the Company implemented a program to recomplete Existing Wells to the Pratt coal seam so that a total of 522 out of a total of 532 Existing Wells would be completed or recompleted to the Pratt coal seam as of March 31, 1997. As of June 1, 1994, approximately 250 of the Existing Wells had been completed or recompleted to the Pratt coal seam. The Company will pay the Trust \$1,850 per well per quarter through March 31, 1997 for each well not so recompleted in accordance with the schedule of recompletions set forth in the Conveyance (as defined below). In addition, if the Company fails to recomplete any of the Existing Wells scheduled to be recompleted under the Conveyance by March 31, 1997, the Company will pay the Trust an amount equal to the value attributed to the Royalty Interests' share of the "behind-pipe" reserves in the Reserve Estimate (as defined below) for each well not so recompleted, as set forth in the Conveyance. See "The Royalty Interests — Pratt Recompletion Payments."

The Underlying Properties are operated by The River Gas Corporation, an Alabama corporation ("River Gas"), pursuant to an operating agreement among the Company, River Gas and the other working interest owners of the Underlying Properties (the "Operating Agreement"). See "The Royalty Interests — Operation of the Properties."

Wells in the Black Warrior Basin produce natural gas from coal seam formations that have production characteristics materially different from conventional natural gas wells. The primary factor affecting recovery of coal seam gas reserves in the Black Warrior Basin is the lowering of reservoir pressure through "dewatering" operations. In a typical coal seam well on the Underlying Properties, average daily natural gas production generally will increase as wells are "dewatered" until natural gas production reaches a "peak" at which time natural gas production will decline. In general, the Company believes that production from the Existing Wells is currently at or near its peak.

The Black Warrior Basin covers 6,000 square miles in west central Alabama and contains seven Pennsylvania age multi-seam coal groups in the Pottsville formation: the Black Creek, Mary Lee, Pratt, Cobb, Gwin, Utley and Brookwood coal groups. Since June 1986, over 16 coalbed methane natural gas developments have been initiated in the Black Warrior Basin and over 4,000 wells have been permitted by the State Oil and Gas Board of Alabama in the Black Warrior Basin. As of December 31, 1993, cumulative production in the coalbed methane portion of the Black Warrior Basin was over 395 Bcf. In addition to the Company and River Gas, other significant producers in the coalbed methane portion of the Black Warrior Basin include Taurus Exploration, Inc., Torch Operating Company, Black Warrior Methane, Chevron USA, Inc., Amoco Production Company and Meridian Oil Inc. Annual coalbed methane natural gas production in the Black Warrior Basin has increased from approximately 13 Bcf in 1986 to approximately 100 Bcf in 1993, and five interstate pipelines provide ready access to markets throughout the United States.

*The Royalty Interests.* The Royalty Interests will entitle the Trust to receive 65 percent of the Gross Proceeds from the production and sale of the Subject Gas. The term "Gross Proceeds" generally means the aggregate amounts received by the Company from the sale of the Subject Gas, at the central delivery points in the gathering system for the Underlying Properties (collectively, the "Central Gathering Point"). The definitions, formulas and accounting procedures and other terms governing the computation of the Royalty Interests will be set forth in the overriding royalty conveyance pursuant to which the Company will convey the Royalty Interests to the Trust (the "Conveyance"), which is included as an exhibit to the Registration Statement of which this Prospectus is a part.

#### Summary Reserve Information

The following table sets forth, as of June 1, 1994, estimated net proved natural gas reserves, estimated future net revenues and the discounted estimated future net revenues attributable to the Company Interests and the Royalty Interests. All such reserves constitute proved developed reserves. These amounts are based upon a reserve estimate as of June 1, 1994 (the "Reserve Estimate") which was prepared by Ryder Scott, using the terms which would be applicable under the Gas Purchase Agreement assuming such agreement was in place. The Reserve Estimate was prepared in accordance with criteria established by the Securities and Exchange Commission (the "Commission") except that it is based upon a constant delivered average 1993 Contract Price of \$2.12 per MMBtu. The average Contract Price for the first three months of 1994 would have

been \$2.27 per MMBtu had the Gas Purchase Agreement been in effect during such period. Ryder Scott has delivered to the Company reserve reports as of January 1, 1994 and June 1, 1994, summaries of which are included as Exhibit A to this Prospectus. The estimated economic life of each of the Existing Wells used in calculating the estimated net reserves has been determined taking into account the Section 29 tax credits.

	Estimated Net Proved Natural Gas Reserves (Bcf)	Estimated Future Net Revenues (Dollars in Thousands)	
		Undiscounted	Discounted
<b>The Company Interests</b>			
Proved Developed Producing.....	78.2	\$ 64,745	\$57,188
Proved Developed Nonproducing .....	19.2	23,717	16,985
Total .....	<u>97.4</u>	<u>\$ 88,462</u>	<u>\$74,173</u>
<b>The Royalty Interests</b>			
Proved Developed Producing.....	50.8	\$100,178	\$77,198
Proved Developed Nonproducing .....	12.5	24,537	18,200
Total .....	<u>63.3</u>	<u>\$124,715</u>	<u>\$95,398</u>

Based upon the production estimates used in the Reserve Estimate for the June 1, 1994 through December 31, 2002 period, and assuming constant future Section 29 tax credits at the 1993 rate of \$0.98 per MMBtu, the estimated total future tax credits available from the production and sale of the net proved reserves from the Company Interests and the Royalty Interests would be approximately \$91.5 million and \$59.5 million, respectively, and would have a discounted present value (assuming a 10 percent discount rate) of approximately \$63.8 million and \$41.5 million, respectively. The Reserve Estimate includes proved developed nonproducing reserves which are in connection with the Company's program to complete or recomple 522 out of a total of 532 Existing Wells to the Pratt coal seam by the end of the first quarter of 1997, of which approximately 250 were completed or recomple as of June 1, 1994. The proved developed nonproducing reserves in the Reserve Estimate were attributable to the 272 Existing Wells which are scheduled to be, but had not been, recomple to the Pratt coal seam as of June 1, 1994. See "The Royalty Interests — The Underlying Properties — Behind Pipe Production" and " — Pratt Recomple Payments."

Unitholders will receive, on a quarterly basis, cash distributions relating to their share of the Subject Gas produced and sold from and after June 1, 1994, and will be entitled to Section 29 tax credits relating to their share of the Subject Gas produced and sold after the date of consummation of the offering made hereby, provided certain requirements are met. For a detailed discussion of the risks associated with the ability of a Unitholder to use the Section 29 tax credits, see "Risk Factors — Tax Considerations" and "Federal Income Tax Consequences."

As the owner of the Royalty Interests, the Trust will not be entitled to receive a specific quantity of natural gas in-kind. Rather, the Trust will generally be entitled to receive 65 percent of the Gross Proceeds. For a discussion of the uncertainties associated with estimating reserves, see "Risk Factors — Risks Associated with the Oil and Gas Industry — Reduced Value of Units if Reserve Estimate is Inaccurate" and "The Royalty Interests — Reserve Estimate." The Company will own the Company Interests subject to and burdened by the Royalty Interests, and will be entitled to any proceeds realized from its retained interest in the Underlying Properties.

#### The Offering

<b>Units Offered</b> .....	7,850,000 Units, including 1,000,000 subject to the Underwriters' over-allotment option.
<b>Units Outstanding</b> .....	7,850,000 Units, all of which are currently owned by Dominion Resources. If the Underwriters' over-allotment option is not exercised, Dominion Resources will own up to 1,000,000 Units after this offering. Although Dominion Resources is the sponsor of the Trust, the Units are not obligations of Dominion Resources.
<b>Use of Proceeds</b> .....	Dominion Resources will receive all of the net proceeds from the offering and intends to use such proceeds for general corporate purposes, which may include acquisition of oil and natural gas



**Listing and Proposed Trading Symbol .....**

properties. See "Use of Proceeds." The Trust will not receive any of the proceeds from the sale of the Units.

The Units have been approved for listing on the New York Stock Exchange, subject to official notice of issuance, under the symbol "DOM."

**Quarterly Cash Distributions .....**

Unitholders of record on the 60th day following the last day of each calendar quarter prior to the termination of the Trust (or if such day is not a business day, the next business day) will receive cash distributions within 70 days following the end of the calendar quarter generally consisting of the payments received by the Trust from the production and sale of the Subject Gas during such calendar quarter (net of Trust cash reserves and expenses). The first distribution to Unitholders will be made on or before September 8, 1994 to holders of record on August 29, 1994 and will be based upon amounts received in respect of production attributable to the Royalty Interests during the period June 1, 1994 through June 30, 1994. Depletion deductions and Section 29 tax credits will be available to Unitholders only with respect to the Subject Gas produced and sold after the consummation of the offering.

**The Trust and the Trustee .....**

The Trust is a passive entity formed pursuant to a Trust Agreement (the "Trust Agreement") among the Company, as grantor, Dominion Resources, as sponsor, Mellon Bank (DE) National Association, as Delaware trustee (the "Delaware Trustee"), and NationsBank of Texas, N.A., as trustee (the "Trustee").

**Trust Termination.....**

The Trust will be terminated upon the occurrence of: (i) an affirmative vote of the holders of not less than 66 $\frac{2}{3}$  percent of the outstanding Units to terminate the Trust; (ii) such time as the ratio of the cash amounts received by the Trust attributable to the Royalty Interests in any calendar quarter to administrative costs of the Trust for such calendar quarter is less than 1.2 to 1.0 for two consecutive calendar quarters; or (iii) March 1 of any year if it is determined, based on a reserve report as of December 31 of the prior year, prepared by a firm of independent petroleum engineers mutually selected by the Trustee and the Company, that the net present value (discounted at 10 percent) of (a) estimated future net revenues from proved reserves attributable to the Royalty Interests (calculated in accordance with criteria established by the Commission except that it will be based upon a constant delivered average Contract Price for such prior year and will use substantially the same methodology and assumptions used by Ryder Scott in estimating the proved reserves attributable to the Company Interests in the Reserve Estimate) plus (b) the amount of all remaining Section 29 tax credits attributable to the Royalty Interests, is equal to or less than \$5.0 million. Upon such occurrence, the remaining assets of the Trust will be sold, the proceeds therefrom (after expenses) will be distributed to the Unitholders and the Trust will be terminated. Although not required to do so, Dominion Resources or one of its affiliates may purchase the remaining assets of the Trust. With respect to any sale of the Royalty Interests, the Trustee first must receive an opinion of a nationally recognized investment banking firm that

the price paid was at least equal to such assets' fair market value or that the price is fair from a financial point of view to the Unitholders.

**Conditional Right of Repurchase** .....

Dominion Resources will retain the right to repurchase all (but not less than all) of the outstanding Units from Unitholders at any time if, at the time of exercise of such right, 15 percent or less of the outstanding Units is owned by persons or entities other than Dominion Resources and its affiliates, at a repurchase price generally equal to the greater of (i) the highest price at which Dominion Resources or any of its affiliates acquired Units during the 90 days immediately preceding the date (the "Determination Date") that is three New York Stock Exchange trading days prior to the date on which notice of such exercise is delivered to Unitholders and (ii) the average closing price of Units on the New York Stock Exchange for the 30 trading days immediately preceding the Determination Date.

**The Royalty Interests**

**General** .....

The Royalty Interests will entitle the Trust to receive 65 percent of the Gross Proceeds. The Trust will have no right to take in-kind its share of the production of the Subject Gas. The Royalty Interests will be non-operating interests and will bear only expenses related to property, production and related taxes (including severance taxes). The Trust will be paid 65 percent of the Gross Proceeds for each calendar quarter in arrears on or before the last business day prior to the 45th day following the end of such calendar quarter.

**Gas Purchase Agreement** .....

Gas production attributable to the Company Interests will be subject to a Gas Purchase Agreement between the Company and Sonat Marketing, extending as long as reserves on the Underlying Properties produce natural gas. Under the terms of the Gas Purchase Agreement, Sonat Marketing will be obligated to purchase at the Central Gathering Point the Subject Gas for the Contract Price.

**Operating Agreement** .....

Pursuant to the Operating Agreement dated December 31, 1992, River Gas operates and maintains the Underlying Properties for the Company and the other working interest owners of Existing Wells on the Underlying Properties. The term of the agreement continues until December 31, 1995. Thereafter, the Operating Agreement will be automatically renewed for additional one year periods, unless either party provides written notice to the other party of its desire to terminate the Operating Agreement at least six months prior to the date on which the agreement is to terminate.

**Administrative Services Agreement** .....

Pursuant to the Administrative Services Agreement between the Trust and Dominion Resources, Dominion Resources will provide all accounting, bookkeeping and other administrative services and certain reports for the Trust. In consideration of the satisfactory performance of the services on the part of Dominion Resources, the Trust will pay Dominion Resources for the period beginning June 1, 1994 and ending June 30, 1994 and for each calendar quarter thereafter, throughout the term of the Trust, the administrative services fee. The administrative services fee will

be \$25,000 for the period beginning June 1, 1994 and ending June 30, 1994, will be \$75,000 per calendar quarter commencing July 1, 1994 and will be increased annually by three percent beginning January 1, 1995. The administrative services fee will be paid quarterly no later than the 70th day following the end of each calendar quarter for the services performed during such calendar quarter.

**Dominion Resources' Assurances.....**

Pursuant to the Trust Agreement, Dominion Resources has agreed to cause each of the following obligations to be paid in full when due: (i) all liabilities and operating and capital expenses that any Company Interests Owner becomes obligated to pay as a result of its obligations under the Conveyance and (ii) the obligations of the Company to indemnify the Trust, the Trustee and the Delaware Trustee for certain environmental liabilities under the Trust Agreement (collectively, the "Payment Obligations").

All of Dominion Resources' obligations will terminate upon: (i) termination and cancellation of the Trust, (ii) the sale or other transfer by the Company of all or substantially all of the Company's interest in the Underlying Properties subject to the terms of the Trust Agreement and (iii) the sale or other transfer of a majority of Dominion Resources' direct or indirect equity ownership interest in the Company, *provided that*, with respect to clauses (ii) and (iii) above, Dominion Resources' obligations will terminate only if: (a) the transferee has, at the time of the assignment or transfer, a rating assigned to its outstanding unsecured long-term debt from Moody's Investors Service of at least Baa3 or from Standard & Poor's Ratings Group of at least BBB- (or an equivalent rating from another nationally recognized statistical rating organization); (b) the transferee (and such of its affiliates which (1) constitute an "affiliated group" for federal income tax purposes and (2) have executed guarantees of such transferee's performance assurance obligations) does not have a rating assigned to its unsecured long-term debt from a nationally recognized statistical rating organization and, at the time of the transfer, has a consolidated net worth (determined in accordance with generally accepted accounting principles) of not less than \$200 million *provided that* such net worth requirement shall be reduced by \$10 million on January 1 of each year commencing January 1, 1995 (*provided, however*, if such transferee is an affiliate of Dominion Resources, then Dominion Resources' obligations shall not terminate until the later of (x) December 31, 1995 and (y) the date such transferee meets the requirements set forth in clause (a)) or (c) the transferee is approved by the holders of a majority of the outstanding Units; and *provided further*, that in the case of clauses (ii) or (iii) above the transferee also unconditionally agrees in writing, in form reasonably satisfactory to the Trustee, to assume Dominion Resources' remaining obligations under the Trust Agreement with respect to the assets transferred and under the Administrative Services Agreement.

**Pratt Recompletion Payments.....**

Based on the Reserve Estimate, approximately 19.2 Bcf of natural gas reserves attributable to the Company Interests and approximately 12.5 Bcf of natural gas reserves attributable to the

Royalty Interests represent net proved developed nonproducing (or "behind-pipe") reserves for 272 of the Existing Wells scheduled to be recompleted to the Pratt coal seam. The Reserve Estimate assumes that the Company will complete its program to recomplete such Existing Wells to the Pratt coal seam so that a total of 522 out of a total of 532 Existing Wells would be completed or recompleted to the Pratt coal seam as of March 31, 1997. As of June 1, 1994, approximately 250 of the Existing Wells had been completed or recompleted to the Pratt coal seam. The Company will pay the Trust \$1,850 per well per quarter through March 31, 1997 for each well not so recompleted in accordance with the schedule of recompletions set forth in the Conveyance. In addition, if the Company fails to recomplete any of the 272 Existing Wells scheduled to be recompleted under the Conveyance by March 31, 1997, the Company will pay the Trust an amount equal to the value attributed to the Royalty Interests' share of the "behind-pipe" reserves in the Reserve Estimate for each well not so recompleted, as set forth in the Conveyance. See "The Royalty Interests — Pratt Recompletion Payments."

#### **Summary Unaudited Pro Forma Distributable Cash and Section 29 Tax Credits**

Pro forma distributable cash for the year ended December 31, 1993 was \$3.47 per Unit assuming formation of the Trust and conveyance of the Royalty Interests at the beginning of 1993. The pro forma Section 29 tax credit per Unit arising from the sale of production from the Royalty Interests for the year ended December 31, 1993 was \$1.70. All pro forma financial information assumes cash is received by the Trust and distributed to Unitholders and Section 29 tax credits are allocated to Unitholders at the time of production, rather than at the time such distributions and allocations would actually have been made. To illustrate, Unitholders will receive two distributions of cash and allocations of Section 29 tax credits during calendar year 1994, the first in September, which will include cash distributions based upon the Subject Gas sold between June 1, 1994 and June 30, 1994 and an allocation of Section 29 tax credits based on the Subject Gas produced from the closing date of the offering made hereby to June 30, 1994, and the second in December consisting of cash distributions and Section 29 tax credits relating to the Subject Gas sold between July 1, 1994 and September 30, 1994. The actual distribution of cash and allocation of Section 29 tax credits for the Subject Gas sold during the fourth quarter of 1994 will not be made until March 1995. See "Federal Income Tax Consequences" and the unaudited Pro Forma Statement of Distributable Cash of the Trust included elsewhere in this Prospectus.

#### **Hypothetical 1995 Cash Distributions and Tax Information**

Based upon the 1995 production estimates used in the Reserve Estimate, a hypothetical Contract Price of \$2.36 per MMBtu, property, production and related taxes (including severance taxes) at currently effective rates and estimated Trust administrative expenses, the hypothetical cash distributions for 1995 would be \$3.10 per Unit. See "Hypothetical 1995 Cash Distributions and After-Tax Returns — Assumptions and Methodology." Under this hypothetical case and based upon an assumed purchase price of \$20 per Unit and a Section 29 tax credit of approximately \$1.04 per MMBtu for 1995 coal seam gas production (1993 Section 29 tax credit of \$0.98 per MMBtu increased by estimated inflation of approximately three percent for each of 1994 and 1995), Dominion Resources estimates that a purchaser of a Unit in this offering who continues to own that Unit through December 31, 1995 would recognize a loss for 1995 federal income tax purposes resulting in a federal income tax benefit of \$0.16 per Unit and would be entitled to a Section 29 tax credit for 1995 totaling \$1.48 per Unit. Such estimates are based upon numerous additional assumptions as described in greater detail in "Hypothetical 1995 Cash Distributions and After-Tax Returns." The assumptions utilized (including, without limitation, the \$2.36 per MMBtu Contract Price) in the hypothetical example should not be viewed as estimates or projections by Dominion Resources. Actual prices, costs, production and other factors could differ significantly from the assumptions utilized in the hypothetical example. While the information utilized for purposes of illustrating the amount of loss and Section 29 tax credits available to Unitholders for calendar year 1995 is derived from, among other things, production estimates for calendar year 1995, the actual amount of loss and Section 29 tax credits available to Unitholders for calendar year 1995 will be derived from actual production in the fourth quarter of 1994 and the first three quarters of 1995. Because

royalty payments to the Trust will be generated by depleting assets, a portion of each cash distribution will be analogous to a return of capital. Accordingly, cash returns attributable to the Units are expected to decline over the term of the Trust.

### **Dominion Resources**

Dominion Resources was organized in 1983 as a holding company and its principal assets are its investments in its subsidiaries. Dominion Resources owns all of the outstanding common stock of Virginia Electric and Power Company ("Virginia Power"), its largest subsidiary. In addition, Dominion Resources owns all of the outstanding common stock of Dominion Energy, Inc. ("Dominion Energy") and Dominion Capital, Inc. ("Dominion Capital"). Dominion Energy owns all of the outstanding common stock of the Company. The Company was formed in 1992 to hold Dominion Energy's investment in the Underlying Properties.

Virginia Power is a regulated public utility engaged in the generation, transmission, distribution and sale of electric energy within a 30,000-square-mile area in Virginia and northeastern North Carolina. It transacts business under the name *Virginia Power* in Virginia and under the name *North Carolina Power* in North Carolina. Virginia Power sells electricity to retail customers (including governmental agencies) and to wholesale customers such as rural electric cooperatives and municipalities. The Virginia service area comprises about 65 percent of Virginia's total land area but accounts for over 80 percent of its population.

Dominion Energy is active in a number of partnerships to develop nonutility electric power generation projects outside the territory served by Virginia Power. Dominion Energy is involved in projects in six states, as well as, Argentina and Belize, which total approximately 2,031 Mw. Units in operation throughout 1993 in which Dominion Energy has an interest include four natural gas-fueled units totaling 1,290 Mw owned by Enron/Dominion Cogen Corporation, two geothermal units in California, a waste coal unit in West Virginia, a solar unit in California, four small hydroelectric units in New York, a wood- and coal-fueled unit in Maine, two units in Argentina and two natural gas-fired projects in California. During 1991, Dominion Energy announced its plans to develop a 21 Mw run-of-river hydroelectric unit in Belize, and construction began during 1992. Dominion Energy also participates in partnerships to acquire and develop natural gas reserves. In 1993, it added more than 151 Bcf of natural gas reserves. Production from Dominion Energy holdings in 1993 totaled 34 Bcf. By the end of 1993, Dominion Energy held the equivalent of 342 Bcf in natural gas reserves.

Dominion Capital provides financial services to Dominion Resources and other nonutility subsidiaries and also uses its own assets to make equity and fixed-income investments. In addition, Dominion Capital, through its wholly-owned subsidiary Dominion Lands, Inc., is involved in joint venture real estate development projects in Virginia and North Carolina.

Dominion Resources' executive offices are located at 901 East Byrd Street, Richmond, Virginia 23219, telephone (804) 775-5700.

### **River Gas**

The River Gas Corporation, an Alabama corporation ("River Gas"), was formed in November 1987 to develop the Underlying Properties. River Gas has engaged in coal bed methane well development and operation since that time. It currently operates 565 coal bed methane wells, 532 in the Black Warrior Basin (all of which are contained within the Underlying Properties) and 33 in Carbon County, Utah. Texaco and Dominion Reserves-Utah, Inc., an affiliate of Dominion Resources, are joint venture partners with River Gas in the joint venture in Utah.

### **Summary of Federal Income Tax Consequences**

THE TAX CONSEQUENCES OF AN INVESTMENT IN UNITS TO A PARTICULAR INVESTOR WILL DEPEND IN PART ON HIS TAX CIRCUMSTANCES, PARTICULARLY HIS ALTERNATIVE MINIMUM TAX CIRCUMSTANCES. EACH PROSPECTIVE INVESTOR SHOULD CONSULT HIS TAX ADVISOR ABOUT THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF INVESTING IN UNITS.

The following is a summary of certain federal income tax consequences of acquiring, owning, and disposing of Units and is based on the opinions of Baker & Botts, L.L.P., special counsel to Dominion Resources on oil and gas and federal income tax matters ("Special Counsel"). For a more detailed discussion of these consequences and the qualifications to and limitations of the opinions of Special Counsel and the risks associated with the ability of a Unitholder to use the Section 29 tax credits, see "Federal Income Tax Consequences" and "Risk Factors — Tax Considerations."



<b>Taxation of the Trust .....</b>	The Trust will not be a taxable entity for federal income tax purposes.
<b>Taxation of Unitholders .....</b>	The income, deductions, and credits of the Trust will be reported directly by the Unitholders based on each Unitholder's taxable year and method of accounting and without regard to the timing or amount of distributions from the Trust.
<b>Income and Deductions .....</b>	The income of the Trust will consist primarily of a specified share of the proceeds from the sale of coal seam gas produced after consummation of the offering from the Underlying Properties. The portion of the initial payment from the Trust that is attributable to natural gas produced before the Units are sold to the public will not be royalty income, but a return of capital. The Trust may also earn interest income on any funds being held for distribution or as a reserve. The deductions of the Trust will consist of state taxes and administrative expenses. In addition, each Unitholder will be entitled to amortize the cost of the Units through cost depletion over the life of the Royalty Interests (or if greater, through percentage depletion equal to 15 percent of gross income).
<b>Section 29 Tax Credits .....</b>	The Unitholders will be entitled, provided certain requirements are met, to Section 29 tax credits with respect to natural gas that is produced from the Existing Wells from currently producing and behind pipe reserves and the proceeds from the sale of which prior to 2003 are attributable to the Royalty Interests. The amount of the credit will be \$0.98 per MMBtu, adjusted for inflation or deflation subsequent to 1993.
<b>Quarterly Allocations .....</b>	Under the Code, a Unitholder is entitled to Section 29 tax credits only to the extent that he is an owner of the economic interest at the time the coal seam gas is produced. The Trustee intends to allocate the income received by the Trust during a quarter, and the Section 29 tax credit allocable to such income, to Unitholders of record on the quarterly record date for such quarter. Such an allocation may be challenged by the IRS, but any challenge is likely to have a material adverse impact only if successful and only for Unitholders who do not own Units for a full quarter for each record date, particularly Unitholders who acquire Units shortly before a record date and sell shortly after a record date.
<b>Use of Credits .....</b>	The Section 29 tax credits allocable to a Unitholder are allowable as a dollar-for-dollar reduction of what would otherwise be his regular federal income tax liability. The credits cannot be used to reduce his liability for any alternative minimum tax for any taxable year but can be carried forward to reduce his regular tax liability in a subsequent year. Any amount of tax credit in excess of a Unitholder's total tax liability for a year is permanently lost.
<b>Unitholder Reporting Information .....</b>	The Trustee will furnish to Unitholders tax information concerning royalty income, depletion, and the Section 29 tax credits on an annual basis. Estimated year-end tax information will be furnished to Unitholders no later than March 15 of the following year, with final information furnished promptly after the IRS publishes the prior year's Section 29 tax credit rate.
<b>Tax Shelter Registration .....</b>	The Trust will be registered as a tax shelter.

## RISK FACTORS

### Risks Associated with the Oil and Gas Industry

#### *Reduced Value of Units if Reserve Estimate is Inaccurate*

The value of the Units will be substantially dependent upon the proved reserves attributable to the Royalty Interests. The reserve data set forth herein, which was prepared by Ryder Scott in a manner customary in the industry, is an estimate only, and actual quantities, rates of production and values of natural gas are likely to differ from the estimated amounts set forth herein, and such differences could be significant.

There are many uncertainties inherent in estimating quantities and values of proved reserves and in projecting future rates of production and the amount and timing of development expenditures. Reserve engineering is a subjective process of estimating underground accumulations of natural gas that cannot be measured in an exact manner. The accuracy of any reserve estimate is a function of the quality of available data and of the geological and engineering evaluation of that data. Results of testing and production subsequent to the date of an estimate may justify revision of such estimate. Further, reserve estimates for any given property may vary from engineer to engineer even though each engineer bases his estimate on common data and utilizes techniques and principles customary in the industry.

For properties with short production histories, reserve estimates in many instances are based upon volumetric calculations and upon analogy to similar types of production or producing fields. Relative to many conventional natural gas producing properties, both coal seam gas producing properties in general, and the Underlying Properties in particular, have short production histories. In addition, there are no significant coal seam reservoirs which have been produced to depletion that can be used as analogies to the Underlying Properties.

The discounted present values of reserves shown herein were prepared using guidelines established by the Commission for disclosure of reserves (except for certain pricing assumptions) and may not be representative of the market value of such reserves or the Units. A market value determination would include many additional factors. For a description of the procedures used to establish the initial public offering price for the Units, see "Underwriting."

#### *Potentially Reduced Distributions and Returns to Unitholders Due to Volatility of Natural Gas Prices and Production*

The Trust's revenues and distributions to Unitholders will be dependent on, among other things, the sales prices for natural gas produced from the Underlying Properties and the quantities of natural gas sold. Natural gas prices have historically been volatile and are likely to continue to be volatile. Such volatility makes it difficult to estimate the future levels of cash distributions to Unitholders or the value of the Units. While the Minimum Price will mitigate to some extent the negative effects of such volatility, the Maximum Price may limit the benefits Unitholders realize from future price increases. See "The Royalty Interests — Gas Purchase Agreement." The natural gas prices utilized in preparing the estimates of proved reserves and future net revenues included in this Prospectus are based upon a constant delivered average 1993 Contract Price of \$2.12 per MMBtu. The average Contract Price for the first three months of 1994 would have been \$2.27 per MMBtu had the Gas Purchase Agreement been in effect during such period. See "The Royalty Interests — Reserve Estimate."

Prices for natural gas are subject to wide fluctuations in response to relatively minor changes in supply, market uncertainty and a variety of additional factors that are beyond the control of the Trust and Dominion Resources. These factors include Btu content, political conditions worldwide, the price and available quantities of imported oil and natural gas, the price of residual and distilled fuel oils, the level of consumer product demand, the severity of weather conditions, government regulations, the price and availability of alternative fuels and overall economic conditions.

Since early 1980, nationwide natural gas production capacity on occasion has exceeded demand, which has caused lower prices and periods of curtailment or proration of production. In addition, excess natural gas production capacity in the United States and Canada generally has resulted in downward pressure on natural gas prices in recent times. Price volatility and the risk of production curtailment make it difficult to estimate the future levels of cash distributions to Unitholders or the value of the Units.

#### *Distributions and Returns to Unitholders Could be Reduced if Production is Interrupted*

The value of the Units will be dependent upon the production levels attributable to the Royalty Interests. There are many uncertainties inherent in projecting future rates of production, including factors beyond the control of the producer. Distributions to Unitholders and allocations of tax credits could be adversely affected if any of the risks typically associated with the

development, production and transportation of natural gas and the operation of natural gas producing properties were to occur, including personal injuries, property damage or damage to productive formations or equipment.

#### *Seasonal Demand May Cause Distributions to Vary Substantially*

Due to the seasonal nature of demand for natural gas and its effect on natural gas prices, the amount of cash distributions by the Trust may vary substantially on a seasonal basis. Generally, natural gas prices tend to be higher during the first and fourth quarters of a calendar year. Because of the delay between the receipt of revenues related to the Royalty Interests and the dates on which distributions will be made to Unitholders, however, any seasonality that affects prices generally should be reflected in distributions to Unitholders in later periods. See "Description of the Trust Agreement — Distributions and Income Computations."

#### *Governmental Regulations Could Reduce Distributions and Returns to Unitholders*

The operations on the Underlying Properties associated with the production and sale of natural gas produced from such properties are subject to various federal, state and local laws and regulations relating to, among other things, the transportation of natural gas, allowable production and environmental matters. On January 1, 1993, all federal price controls on the wellhead price of natural gas were removed. See "The Royalty Interests — Competition and Markets" and " — Regulation of Natural Gas."

Activities on the Underlying Properties are subject to existing federal, state and local laws, rules and regulations governing health, safety and the environment. It is anticipated that, absent the occurrence of an extraordinary event, compliance with existing federal, state and local laws, rules and regulations governing health and safety will not have a material adverse effect upon the Trust or Unitholders. However, federal, state and local laws, rules and regulations regulating environmental matters, such as, for example, water discharge and wastewater regulations, are constantly changing, and Dominion Resources cannot predict the effect that any such change to existing laws, rules and regulations governing environmental matters would have on the distributions and returns to Unitholders. Dominion Resources cannot predict what effect additional regulation or legislation, enforcement policies thereunder, or claims for damages to property, employees, other persons or from operations on the Underlying Properties could have on the Trust or Unitholders, and such impacts could be significant.

Alabama regulatory agencies have authority to set the allowable production levels for natural gas production for the Underlying Properties. Reductions in allowable production may extend the timing of recovery of reserves. Although Dominion Resources is not aware of any pending or contemplated proceedings to change allowable rates of production from the Underlying Properties, there can be no assurances made that such changes will not be made. The Unitholders and the Trust will not have any control over such changes. Reductions in the allowable production from the Underlying Properties could affect the timing or amount of distributions to Unitholders and may reduce returns attributable to the Units.

While the Company believes the Underlying Properties are in material compliance with all environmental laws and regulations, such regulations have generally become more stringent and costly over time. As a royalty holder the Trust may not be directly subject to increased costs; however, such costs may be taken into account by the Company in exercising its rights to abandon a well and may accelerate the termination of the Trust. See "The Royalty Interests — Sale and Abandonment of Underlying Properties" and "Description of the Trust Agreement — Termination and Liquidation of the Trust."

#### **Risks Associated With the Units**

##### *Reserves Constitute Depleting Assets; Cash Distributions and Returns to Unitholder will Decrease Over Time*

Payments to the Trust will consist of proceeds from the sale of natural gas which constitute depleting assets. The reserves attributable to the Underlying Properties are expected to decline substantially during the term of the Trust and a portion of each cash distribution made by the Trust will, therefore, be analogous to a return of capital. As a result, cash distributions and pre- and after-tax returns attributable to Units will decrease materially over time. For example, based upon the production estimates set forth in the Reserve Estimate, annual production attributable to the Company Interests is estimated to decline from 17.4 Bcf in 1995 to 6.6 Bcf in 2000. See "Hypothetical 1995 Cash Distributions and After-Tax Returns" and "Description of the Trust Agreement — Termination and Liquidation of the Trust."



*Terms of the Gas Purchase Agreement Limit a Unitholder's Participation in Increases in Natural Gas Prices*

In formulating the terms of the Gas Purchase Agreement through December 31, 1998 Sonat Marketing agreed to the Minimum Price commitment for natural gas set forth in the Gas Purchase Agreement in return for a Maximum Price. Therefore, while the Minimum Price assures a Unitholder a minimum price at which the Base Quantity of the Subject Gas must be purchased, until January 1, 1999 Unitholders will not benefit from natural gas prices in excess of \$2.63 per MMBtu.

*The Trustee and the Unitholders will have No Control over Operations and Development of the Underlying Properties*

Under the terms of the Conveyance, neither the Trustee nor the Unitholders will be able to influence or control the operation or future development of the Underlying Properties. Unitholders will therefore be reliant on the Company and the other working interest owners to make all decisions regarding operations on the Underlying Properties.

The Conveyance does not prohibit the transfer of the Underlying Properties by the Company, subject to and burdened by the Royalty Interests. The Company and the other working interest owners of the Underlying Properties will have the right, subject to certain restrictions, to abandon any well or lease on the Underlying Properties under certain circumstances. Upon abandonment of any such well or lease, that portion of the Royalty Interests relating thereto will be extinguished. See "The Royalty Interests — Sale and Abandonment of the Underlying Properties."

River Gas operates the Underlying Properties pursuant to the Operating Agreement. Beginning December 31, 1995, either River Gas or the Company may terminate the Operating Agreement upon six month's prior written notice to the other party. The Trust will not be able to appoint or control the appointment of replacement operators.

*Operators of Wells Will Not Owe a Direct Duty to Unitholders*

Under the terms of the Operating Agreement, River Gas owes a duty to the Company and the other working interest owners to conduct the operations on the Underlying Properties in a good and workmanlike manner and following practices that (a) are engaged in or accepted by a significant portion of the natural gas production industry at the time the decision was made or (b) in the exercise of reasonable judgment in light of the facts known at the time the decision was made would have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety, expeditiousness and protection of the environment. River Gas has no direct contractual or fiduciary duty to protect the interests of the Trust or the Unitholders.

*Production May be Less than Estimated in Reserve Estimate*

Wells in the Black Warrior Basin produce natural gas from coal seam formations which have production characteristics materially different from conventional natural gas wells. The primary factor affecting recovery of coal seam reserves in the Black Warrior Basin is the lowering of reservoir pressure through "dewatering" operations. In a typical coal seam well on the Underlying Properties, average daily natural gas production generally will increase as wells are "dewatered" until natural gas production reaches a "peak" at which time natural gas production will decline. The amount of time necessary to "dewater" a well and cause it to reach its peak production, and the ultimate level of a well's peak production, are difficult to estimate. Substantially all of the Existing Wells have reached their peak production, subject to additional production that may result from the Pratt coal seam recompletions. Although the assumptions used to prepare the Reserve Estimate for the Underlying Properties are based on dewatering history and peak production levels from similar wells within the Underlying Properties that had already reached their peak production, no assurances can be given that such assumptions will accurately predict actual production. In addition, such assumptions are based on the Company's recompletion by the end of the first quarter of 1997 of 522 Existing Wells to the Pratt coal seam so that as of such date 522 out of a total of 532 Existing Wells will be completed or recompleted to the Pratt coal seam (of which approximately 250 were completed or recompleted as of June 1, 1994), and no assurance can be given that such recompletions will occur, or if they do occur that the actual production will be in the amounts set forth in the Reserve Estimate. Reserves in the Underlying Properties are therefore subject to an additional risk that actual quantities, peak levels and timing of natural gas recovery may vary from the estimates included in the Reserve Estimate, and such levels could be significant. See "The Royalty Interests — The Underlying Properties — Behind Pipe Production" and "— Water Removal and Disposal."

*Suspension of Sonat Marketing's Obligation to Purchase Production May Reduce Distributions, Deductions and Section 29 Tax Credits*

Sonat Marketing's obligation to purchase natural gas pursuant to the Gas Purchase Agreement (as well as the Company's obligation to sell such natural gas) may be suspended to the extent affected by the occurrence of any event not within the control of the affected party that renders the affected party unable to perform its obligations under the Gas Purchase

Agreement if the event could not have been prevented by the exercise of reasonable diligence including: acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, curtailment, interruption or other unavailability of transportation, inability to acquire or delay in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, materials or supplies that are required to enable the affected party to perform its obligations. Following any such event, the affected party's obligations under the Gas Purchase Agreement will be suspended during the period of its inability to perform, and such party will as far as possible remedy the event with reasonable dispatch. During the pendency of any such suspension, the cash available for distribution, and the depletion deductions and Section 29 tax credits available for allocation, by the Trust to Unitholders could be reduced materially or eliminated entirely.

*Additional Wells Could Reduce Gross Proceeds Attributable to Royalty Interests*

Well spacing rules, which are in effect in Alabama, generally govern the space between wells drilled to the same productive formation and are promulgated in order to prevent waste and confiscation of property. Exceptions or changes to these rules may be granted by the applicable regulatory agency upon application of an interested party, following notice to other interested parties, if, in the agency's opinion, good reasons exist therefor after consideration of evidence presented by the applicant and any opponents. The Company is not aware of any plans to change spacing regulations with respect to the Underlying Properties in Alabama. No assurances can be made, however, that exceptions or changes will not be made in the future.

The Company and its affiliates or unrelated third parties may acquire interests in properties adjoining the Underlying Properties. It is possible that wells drilled on adjoining properties would drain reserves attributable to the Underlying Properties.

The Company has agreed not to consent to, cooperate with, assist in or conduct infill drilling (except as required by law) on any of the Underlying Properties in which the Company owns an interest as of June 1, 1994 for the term of the Trust. Although the Company believes that it is unlikely that any additional wells will be drilled, if the Operating Agreement is terminated, the Company cannot prevent one of the other owners of an interest in the Underlying Properties from drilling additional wells on the Underlying Properties. Additional wells, if drilled, could recover a portion of the reserves otherwise producible from wells burdened by the Company Interests, thereby reducing the Gross Proceeds attributable to the Royalty Interests.

*No Appraisal of Royalty Interests or Prior Market for Units*

The number of Units delivered to Dominion Resources in exchange for the Royalty Interests and the initial public offering price of the Units have been determined by negotiation among Dominion Resources and the Underwriters. Among the factors considered in determining such number of Units and the initial public offering price, in addition to prevailing market conditions, were the terms of the Gas Purchase Agreement, current and historical natural gas prices, current and prospective conditions in the supply and demand for natural gas, reserve and production quantities estimated for the Underlying Properties and attributable to the Royalty Interests, the financial multiples of publicly-traded securities of comparable entities, earnings of comparable entities in recent periods, the value of Section 29 tax credits and the Trust's earnings prospects. None of Dominion Resources, the Company, the Trust or the Underwriters has obtained any independent appraisal or other opinion of the value of the Royalty Interests from any investment banking firm or financial advisor, although Ryder Scott has estimated the reserves attributable to the Royalty Interests in their reports, summaries of which are attached hereto as Exhibit A.

The Trust has been organized by Dominion Resources in order to enable Dominion Resources to make the public offering of Units contemplated hereby. Immediately prior to consummation of the offering made hereby, all of the outstanding Units will be owned by Dominion Resources. There has not been any prior market, public or private, for the Units, and there can be no assurance that one will develop subsequent to the offering made hereby.

*Payments to Dominion Resources Reduce Distributions and Returns to Unitholders*

Pursuant to the Administrative Services Agreement, Dominion Resources will receive payments for services rendered to the Trust which payments will reduce, effectively, the amounts available to the Trust for distribution to Unitholders. Such payment rates were determined by Dominion Resources without the involvement of any non-affiliated third party. However,

Dominion Resources believes that the payments that it will receive are reasonable in light of the services to be provided, and that the payment rates are similar to those that could have been negotiated in each case by non-affiliated parties.

#### *Royalty Interests Possibly Subject to Rejection in Bankruptcy of the Company*

Although the matter is not entirely free from doubt, Alabama counsel has issued a legal opinion that the Royalty Interests constitute interests in real property under Alabama law. Consistent therewith, the Conveyance states that the Royalty Interests constitute real property interests and the Company will record the Conveyance in the appropriate real property records of Alabama, in accordance with local recordation provisions. If, during the term of the Trust, the Company or any Company Interests Owner becomes involved as a debtor in bankruptcy proceedings under the Federal Bankruptcy Code, it is not entirely clear that the Royalty Interests would be treated as real property interests under the laws of Alabama.

#### *Unitholders May Lack Limited Liability*

Consistent with Delaware law, the Trust Agreement provides that the Unitholders will have the same limitation on liability as is accorded under the laws of such state to stockholders of a corporation for profit. No assurance can be given, however, that the courts in jurisdictions outside of Delaware will give effect to such limitation.

#### *Unitholders Have Limited Voting Rights*

Pursuant to the Delaware Business Trust Act, Unitholders have no voting rights with respect to the management of the Trust except as provided in the Trust Agreement. While Unitholders will have certain voting rights pursuant to the terms of the Trust Agreement, these rights are more limited than those of stockholders of a corporation. For example, there is no requirement for annual meetings of Unitholders or for an annual or other periodic reelection of the Trustee or the Delaware Trustee. In addition, sales and dispositions of the Royalty Interests may be made without Unitholder approval under certain circumstances, including upon termination of the Trust. No Unitholder approval for such sales or dispositions is required even though they may constitute a disposition of all or substantially all of the assets of the Trust. Also, the Trust may terminate without Unitholder approval. See "Description of the Trust Agreement — Termination and Liquidation of the Trust." Unitholders are not entitled to any rights of appraisal or similar rights in connection with the termination of the Trust. For a further description of Unitholder voting rights, see "Description of the Trust Agreement — Voting Rights of Unitholders."

#### *Limited Ability of Unitholders to Enforce Rights or Institute Proceedings*

The Trust Agreement requires under certain circumstances that the Trustee and the Trust pursue claims against Dominion Resources and the Company with respect to any breach by Dominion Resources or the Company of the terms of the Conveyance or the Trust Agreement (and requires that any such claims be brought in arbitration), without the joinder of any Unitholder. The Trust Agreement does not provide for any procedure allowing Unitholders to bring an action on their own behalf to enforce the rights of the Trust under the Conveyance and does not provide for any procedure allowing Unitholders to direct the Trustee to bring an action on behalf of the Trust to enforce the Trust's rights under the Conveyance. Each Unitholder has a statutory right, however, under the Delaware Business Trust Act to bring a derivative action in the Delaware Court of Chancery on behalf of the Trust to enforce the rights of the Trust if the Trustee has refused to bring the action or if an effort to cause the Trustee to bring the action is not likely to succeed. The rights of the Unitholders to bring a derivative action on behalf of the Trust under the Delaware Business Trust Act is substantially similar to the derivative rights afforded to stockholders of a Delaware corporation under the Delaware General Corporation Law. See "Description of the Trust Agreement — Arbitration and Actions by Unitholders."

#### *Dominion Resources' Conditional Right of Repurchase*

Dominion Resources will retain under the Trust Agreement the right to repurchase all (but not less than all) outstanding Units at any time at which 15 percent or less of the outstanding Units is owned by persons or entities other than Dominion Resources and its affiliates. Any such repurchase would generally be at a price equal to the greater of (i) the highest price at which Dominion Resources or any of its affiliates acquired Units during the 90 days immediately preceding the date (the "Determination Date") that is three New York Stock Exchange trading days prior to the date on which notice of such exercise is delivered to Unitholders and (ii) the average closing price of Units on the New York Stock Exchange for the 30 trading days immediately preceding the Determination Date. Any such repurchase would be conducted in accordance with applicable federal and state securities laws. See "Description of the Trust Agreement — Conditional Right of Repurchase."

*Dominion Resources' Ownership of Units and Units Available for Future Sale Could Adversely Affect Market Price of Units*

After the offering made hereby, assuming the Underwriters' over-allotment option is not exercised, Dominion Resources will own 1,000,000 Units representing approximately 13 percent of the outstanding Units. Dominion Resources has agreed that it will not offer, sell, contract to sell or otherwise dispose of any Units, except for the Units sold in the offering made hereby, for a period of 180 days after the date of this Prospectus without the consent of Smith Barney Inc., which consent may not be unreasonably withheld. The Underwriters may, however, release Dominion Resources from such obligation without notice to the Unitholders or the public. After the expiration of that 180-day period, Dominion Resources will be free to sell Units at any time. All such sales by Dominion Resources will be made pursuant to an effective registration statement under the Securities Act, or an exemption from such registration. No prediction can be made as to the effect that market sales of Units, or the availability of Units for sale, will have on the market price prevailing from time to time. The availability for sale, or actual sales, of substantial amounts of Units in the public market could adversely affect prevailing market prices.

**Conflicts of Interest**

The interests of Dominion Resources and its affiliates and the interests of the Trust and the Unitholders with respect to the Underlying Properties could at times be different. The following is a summary of certain conflicts of interest:

*Obligations of Company Interests Owner May Exceed its Share of Distributions and Tax Credits.*

As a working interest owner in the Underlying Properties, the Company Interests Owner is responsible for an average of approximately 98 percent of the operating costs of the Existing Wells but only entitled to approximately 28 percent of the revenues therefrom, after giving effect to the Royalty Interests. Based on the Reserve Estimate, beginning in the year 2000, the projected operating costs to be borne by the Company Interests Owner will exceed its projected share of Gross Proceeds and Section 29 tax credits. The terms of the Conveyance provide, however, that the Company Interests Owner will make decisions with respect to the Company Interests pursuant to the standard of a reasonably prudent operator.

*Sale or Abandonment of Underlying Properties May Terminate Assurances*

The Company Interests Owner's interests may conflict with those of the Trust and Unitholders in situations involving the sale or abandonment of Underlying Properties. The Company Interests Owner has the right at any time to sell any of the Underlying Properties subject to the Royalty Interests and may abandon a well or lease included in the Underlying Properties if such well or lease is not capable of producing in commercial quantities determined before giving effect to the Royalty Interests. Under certain circumstances, a sale or abandonment will effectively terminate Dominion Resources' assurances of the Company Interests Owner's obligation to the Trust with respect to the Underlying Properties sold or abandoned. Such sales or abandonment may not be in the best interest of the Trust or the Unitholders.

*Dominion Resources May Profit from Contracts with the Trust*

The amount that Dominion Resources may charge for services it renders under the Administrative Services Agreement is established in such contract at rates that do not necessarily take into account the actual cost of rendering such services by Dominion Resources. Accordingly, Dominion Resources may profit or suffer losses in connection with the performance of such contract.

**Environmental Considerations**

While the Company believes the Underlying Properties are in material compliance with all environmental laws and regulations, such regulations have generally become more stringent and costly over time. As a royalty holder the Trust may not be directly subject to increased costs; however, such costs may be taken into account by the Company in exercising its rights to abandon a well and may accelerate the termination of the Trust. See "The Royalty Interests — Sale and Abandonment of Underlying Properties" and " — The Underlying Properties — Water Removal and Disposal" and "Description of the Trust Agreement — Termination and Liquidation of the Trust."

**Tax Considerations**

The principal tax risk is the possibility that a Unitholder will be unable to use the Section 29 tax credits allocated to him for one or more of the following reasons:

# **EXHIBIT B**



10-K 1 d858805d10k.htm FORM 10-K

Table of Contents


---

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

---

## FORM 10-K

(Mark One)

- ☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2014

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: 001-11335

### Dominion Resources Black Warrior Trust

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**75-6461716**  
(I.R.S. employer  
identification number)

**Royalty Trust Management  
Southwest Bank  
2911 Turtle Creek Boulevard  
Suite 850**

**Dallas, Texas 75219**  
(Address of principal executive offices; Zip Code)

Registrant's telephone number, including area code:  
(855) 588-7839

#### SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of Each Class  
Units of Beneficial Interest

Name of Each Exchange on  
Which Registered  
New York Stock Exchange, Inc.

#### SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of

## Table of Contents

The Trustee may, at any time after the tenth day following receipt by Walter Exploration & Production of written notice from the Trustee that a Payment Obligation has not been paid when due, make demand of Walter Exploration & Production for payment stating the amount due. Walter Exploration & Production is obligated to cure any failure to pay the obligation within 10 days following receipt of the foregoing demand. After written request of the Unitholders owning of record not less than 25 percent of the Units then outstanding served upon the Trustee, and absent action by the Trustee within 10 days following receipt by the Trustee of such written request to enforce such obligations for the benefit of the Trust, such Unitholders may, acting as a single class and on behalf of the Trust, seek to enforce Walter Exploration & Production's performance obligations.

All of Walter Exploration & Production's obligations will terminate upon: (i) the termination and cancellation of the Trust, (ii) the sale or other transfer by the Company of all or substantially all of the Company's interest in the Underlying Properties subject to the terms of the Trust Agreement and (iii) the sale or other transfer of a majority of Walter Exploration & Production's direct or indirect equity ownership interest in the Company; provided that, with respect to clauses (ii) and (iii) above, Walter Exploration & Production's obligations will terminate only if: (a) the transferee has a specified credit rating or the transferee together with an affiliate that guarantees the transferee's obligations has not less than a specified net worth or (b) the transferee is approved by the holders of a majority of the outstanding Units; and provided further, that in the case of clauses (ii) or (iii) above the transferee also unconditionally agrees in writing, in form and substance reasonably satisfactory to the Trustee, to assume Walter Exploration & Production's remaining obligations under the Trust Agreement with respect to the assets transferred and under the Administrative Services Agreement.

## **Title to Properties**

Alabama counsel to the Company has opined that the Company's title to its interest in the Underlying Properties, and the Trust's title to the Royalty Interests, are good and defensible in accordance with standards generally accepted in the natural gas industry, subject to such exceptions that, in the opinion of Alabama counsel, are not so material as to detract substantially from the use or value of the Company Interests or the Royalty Interests.

Although the matter is not entirely free from doubt, Alabama counsel has opined that the Royalty Interests constitute interests in real property under Alabama law. Consistent therewith, the Conveyance states that the Royalty Interests constitute real property interests. The Company has recorded the Conveyance in the appropriate real property records of Alabama in accordance with local recordation provisions. If, during the term of the Trust, the Company or any Company Interests Owner becomes involved as a debtor in bankruptcy proceedings under the Federal Bankruptcy Code, it is not entirely clear that the Royalty Interests would be treated as real property interests under the laws of Alabama.

## **Item 3. Legal Proceedings.**

The Trust is named as a defendant in an action, styled *Southwest Royalties, Inc. v. Dominion Black Warrior Basin, Inc., et al.*, filed in the Circuit Court of Fayette County Alabama on October 5, 2007 regarding the quieting of title in certain oil and gas rights related to property in Fayette and Tuscaloosa Counties in Alabama. The plaintiff alleges that defendants are knowingly producing gas in violation of the deeds in question. The plaintiff is also alleging conversion of gas, continuing trespass by defendants on plaintiff's property, and suppression of material facts by defendants, and plaintiff is requesting an accounting, injunctive relief and compensatory and punitive damages, plus court costs and attorneys fees. The Trustee does not believe this litigation will have a material effect on the Trust's financial statements.

## **Item 4. Mine Safety Disclosures.**

Not applicable.

10-K 1 d671842d10k.htm FORM 10-K

Table of Contents


---

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

---

**FORM 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2013**

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: 001-11335

**Dominion Resources Black Warrior Trust**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**75-6461716**

(I.R.S. employer  
identification number)

**U.S. Trust, Bank of America  
Private Wealth Management  
901 Main Street**

**17th Floor**

**Dallas, Texas 75202**

(Address of principal executive offices; Zip Code)

Registrant's telephone number, including area code:  
(214) 209-2400

**SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:**

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Units of Beneficial Interest	New York Stock Exchange, Inc.

**SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or



## Table of Contents

All of Walter Exploration & Production's obligations will terminate upon: (i) the termination and cancellation of the Trust, (ii) the sale or other transfer by the Company of all or substantially all of the Company's interest in the Underlying Properties subject to the terms of the Trust Agreement and (iii) the sale or other transfer of a majority of Walter Exploration & Production's direct or indirect equity ownership interest in the Company; provided that, with respect to clauses (ii) and (iii) above, Walter Exploration & Production's obligations will terminate only if: (a) the transferee has a specified credit rating or the transferee together with an affiliate that guarantees the transferee's obligations has not less than a specified net worth or (b) the transferee is approved by the holders of a majority of the outstanding Units; and provided further, that in the case of clauses (ii) or (iii) above the transferee also unconditionally agrees in writing, in form and substance reasonably satisfactory to the Trustee, to assume Walter Exploration & Production's remaining obligations under the Trust Agreement with respect to the assets transferred and under the Administrative Services Agreement.

## **Title to Properties**

Alabama counsel to the Company has opined that the Company's title to its interest in the Underlying Properties, and the Trust's title to the Royalty Interests, are good and defensible in accordance with standards generally accepted in the natural gas industry, subject to such exceptions that, in the opinion of Alabama counsel, are not so material as to detract substantially from the use or value of the Company Interests or the Royalty Interests.

Although the matter is not entirely free from doubt, Alabama counsel has opined that the Royalty Interests constitute interests in real property under Alabama law. Consistent therewith, the Conveyance states that the Royalty Interests constitute real property interests. The Company has recorded the Conveyance in the appropriate real property records of Alabama in accordance with local recordation provisions. If, during the term of the Trust, the Company or any Company Interests Owner becomes involved as a debtor in bankruptcy proceedings under the Federal Bankruptcy Code, it is not entirely clear that the Royalty Interests would be treated as real property interests under the laws of Alabama.

## **Item 3. Legal Proceedings.**

The Trust is named as a defendant in an action, styled *Southwest Royalties, Inc. v. Dominion Black Warrior Basin, Inc., et al.*, filed in the Circuit Court of Fayette County Alabama on October 5, 2007 regarding the quieting of title in certain oil and gas rights related to property in Fayette and Tuscaloosa Counties in Alabama. The plaintiff alleges that defendants are knowingly producing gas in violation of the deeds in question. The plaintiff is also alleging conversion of gas, continuing trespass by defendants on plaintiff's property, and suppression of material facts by defendants, and plaintiff is requesting an accounting, injunctive relief and compensatory and punitive damages, plus court costs and attorneys fees. The Trustee does not believe this litigation will have a material effect on the Trust's financial statements.

## **Item 4. Mine Safety Disclosures.**

Not applicable.