

NEWSLETTER

The Freehold Owners Association ("FHOA")

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2010 - A GOOD YEAR FOR FHOA & FREEHOLDERS

In this issue of your newsletter we discuss what the Freehold Owners Association has accomplished on behalf of freehold owners in 2010 and where your association is going in 2011.

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CBM Legislation

As we advised those of you for whom we have current e-mail addresses, on October 27, 2010, the Government of Alberta introduced Bill 26. This legislation confirms that coal bed methane ("CBM") is owned by the owner of natural gas in split title situations. The bill received Royal Assent on December 2, 2010.

Your association has been lobbying for legislation to resolve the CBM ownership issue since the coal owners first advanced their claims to CBM beneath split title land in 2002. This legislation has taken far longer than we would have liked but it is certainly better late than never.

FHOA thanks Energy Minister Ron Liepert and the Alberta Government for bringing forward this legislation. We also thank the Liberal and New

Democrat opposition who spoke and voted in favour of Bill 26. Special thanks to Education Minister Dave Hancock, Transportation Minister Luc Ouellette, Aboriginal Affairs Minister Len Webber and MLA's George VanderBurg, Ty Lund and Verlyn Olson who supported FHOA's efforts to have the CBM ownership issue addressed. FHOA is particularly grateful to Ray Prins, MLA for Lacombe-Ponoka, for his tireless efforts on this file on FHOA's behalf.

FHOA also thanks the thousands of individual freehold owners who signed our petition seeking this legislation.

Government Grant

At FHOA's April 17, 2010 annual general meeting, MLA George VanderBurg, on behalf of Alberta's Minister of Energy, announced that Alberta Energy was providing FHOA with a grant of \$250,000 in the form of two installments of \$125,000 in each of the fiscal years commencing March 31, 2010 and March 31, 2011.

The purpose of this grant is to assist the Freehold Owners Association in providing information and education to individual freehold owners on:

- the importance of estate planning for freehold owners to prevent title fractionation and minimize tax;
- the terms and conditions in freehold leases;
- special issues involved in the development of CBM; and
- the concept of using price and productivity sensitive royalties in freehold leases so as to level the

playing field between Crown and freehold.

FHOA wishes to publicly thank former Energy Minister Mel Knight and, in particular, his former Parliamentary Assistant (now Aboriginal Affairs Minister) Len Webber for their interest in freehold issues and assistance in arranging the Freehold Oil and Gas Issues Consultation which gave rise to this grant.

To date, FHOA has expended approximately \$41,000 of the 2010 - 2011 grant. The majority of these funds have been dedicated to freehold mineral rights owner workshops and seminars. FHOA has also contracted with a web designer and started work on a group of video productions intended to present various issues critical to freeholders in a user-friendly, audio-visual format. The balance of the 2010 - 2011 funding will be dedicated to enhancing FHOA's website with these audio-visual aids and to creating 'hard copy' publications which deal with specific freehold owner issues and can be made available to freeholders who do not use the internet.

At this point, priorities remain flexible and FHOA welcomes input from members regarding specific educational issues which members would like the association to focus on initially.

Workshops and Seminars

During the first week of November, the association hosted three freehold owner workshops and a seminar. The workshops were held in High River, Olds and Camrose commencing at 4:00 p.m.

and provided an opportunity for attendees to ask questions one-on-one with the expert presenters after a modestly-priced supper. The seminar in Edmonton was structured identically to the 30 seminars which FHOA has previously hosted (presentations 7:00 - 9:30 pm; floor questions thereafter).

FHOA was fortunate in having good weather for all of these events and each was well attended. Presentations focussed on estate planning and freehold lease issues. Senior Energy Resources Conservation Board ("ERCB") staff and Board members were also present to answer regulatory questions.

In response to a questionnaire distributed at these events, the topics which attendees wanted discussed at future events in order of priority were:

1. Lease and option agreements
2. CBM
3. Estate planning and tax issues

Attendees also favoured events held in the fall and spring and on week days or Saturdays. Edmonton, Red Deer and Camrose were the preferred destinations for future seminars and workshops. A modest preference for evening events was also expressed.

FHOA intends to hold another series of events in the spring of 2011. We are committed to a location in southern Alberta but will canvass our full membership for preferred times and locations prior to announcing the spring schedule.

During the workshop suppers, Just Freehold Energy Corp. made a short presentation on why the company was formed, its relationship to FHOA and what Just Freehold has done and is doing to establish itself as the freeholders' energy company. FHOA thanks Just Freehold for sponsoring the workshop suppers and, for the information of members who may be interested, we've included a summary of Just Freehold's current financial offering with this newsletter.

Pore Space Legislation

During the recently completed fall

session of the Alberta legislature, the government passed Bill 24. This bill effectively expropriates subsurface pore space without compensation for purposes of carbon sequestration. In FHOA's view, subsurface pore space in Alberta belongs to freehold mineral rights owners.

FHOA's board of directors will be meeting in December to discuss an appropriate response to Bill 24. FHOA's next newsletter will discuss this issue in more detail.

OMERS Appeal of the ERCB's 'Capable of Producing' Ruling

The ERCB is responsible for issuing well licenses in Alberta. In order to obtain and maintain an ERCB well license an energy company must be entitled to produce the hydrocarbons for which the well is drilled. In the case of freehold mineral rights this means the energy company must hold a valid freehold lease.

In early 2009, the ERCB held a hearing to determine the validity of a freehold lease of a quarter section of mineral rights owned by a FHOA member. OMERS Energy Inc. was continuing our member's CAPL 91 Lease under the 'Suspended Wells' clause which provides for the lease to be continued indefinitely after the primary term with token \$1/per acre per year payments and a shut in well "*capable of producing the leased substances*". Montane Resources Ltd. had leased the same quarter and asserted that the OMERS lease was not valid because OMERS' wells were not capable of producing the leased substances. FHOA sought and was granted the right to intervene on its own behalf and on behalf of its member.

The critical issue before the ERCB was the meaning of the phrase 'capable of producing the leased substances'. OMERS argued that a well capable of producing the leased substances in any quantity, no matter how insignificant, was sufficient to continue the lease. Montane argued that a well must be capable of sustained production at an economic rate to qualify as 'capable of production'. FHOA submitted that OMERS' interpretation would allow energy companies to continue CAPL 91 leases indefinitely for

speculative purposes and that this was contrary to the fundamental purpose of a freehold lease - to develop the mineral rights for the benefit of both parties to the lease agreement.

In May of 2009, the ERCB ruled that "*the lease established a contractual arrangement to facilitate production of the resource from the lands, with a resulting benefit for both the lessor and lessee*" and that "*there must at least be some material, as in meaningful, volume of production possible for the lessee to rely on the suspended wells clause to extend the lease*". The ERCB also ruled that "*the well must have that ability in its existing configuration and state of completion*" and concluded that OMERS lease had expired on its own terms (ERCB Decision 2009-037).

OMERS has been granted leave to appeal the ERCB decision to the Court of Appeal of Alberta. The appeal will probably be heard in the first quarter of 2011. FHOA's member has applied for leave to intervene in this appeal. Our member's application will be heard on December 15, 2010.

In FHOA's view, the ERCB ruling is one of the most important regulatory decisions involving freehold mineral rights in many years. If the ERCB ruling is upheld by the Court of Appeal it will go a long way towards fostering fairness in the relationship between individual freeholders and the energy companies that develop our resources.

Making a Difference

FHOA has made a difference for freehold owners and with your support we can continue to do so. We urge those of you who have not renewed your membership to renew and, if you can afford to do so, make a donation to FHOA.

On behalf of the board of directors,
Else Pedersen, President

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